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Presidential Documents

Title 3—

The President

Presidential Determination No. 89-9 of December 22, 1988

Economic Assistance to Fiji

Memorandum for the Secretary of State

By virtue of the authority vested in me by Section 614(a)(1) of the Foreign Assistance Act of 1961, as amended, I hereby:

(1) determine that it is important to the security interests of the United States to authorize the disbursement of Fiscal Year 1986 Economic Support and Development Assistance Health Funds for Fiji allocated before the May 14, 1987 military coup and to reinstate Fiji's eligibility for future allocations of economic assistance to Fiji, notwithstanding Section 513 of the Foreign Operations, Export Financing and Related Programs Appropriations Act, 1989 (and successor provisions of substantially similar effect) and;

(2) authorize the furnishing of such assistance.

You are requested to report this Determination to the Congress immediately, and none of the assistance provided for herein shall be furnished until after such report has been made.

This Determination shall be published in the **Federal Register**.

Ronald Reagan

THE WHITE HOUSE,
Washington, December 22, 1988.

[FR Doc. 89-1341
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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

MERIT SYSTEMS PROTECTION BOARD

5 CFR Part 1201

Office of Personnel Management; Filing Time Limit for a Petition for Reconsideration

AGENCY: Merit Systems Protection Board.

ACTION: Final rule.

SUMMARY: The U.S. Merit Systems Protection Board (Board) is amending its regulation at 5 CFR Part 1201 by revising the section concerning the time limit for the Office of Personnel Management (OPM) to file a petition for reconsideration of a Board final order pursuant to 5 U.S.C. 7703(d). The current § 1201.118(b) was intended to implement the rule announced by the court in *Devine* v. *Sutermeister*, 724 F.2d 1558 (Fed. Cir. 1983), which provides that the 30-day time period within which OPM may seek reconsideration under 5 U.S.C. 7703(b) runs from the data OPM receives notice of the decision of the Board. 724 F.2d at 1562, n.4. However, as the Board had noted in its decision in *Hammond* v. *Department of Navy*, 37 M.S.P.R. 531 (1988), the current regulation adopted a method of calculating the 30-day period which was inconsistent with the Board's then existing practice and the rule of *Sutermeister*. That is, the regulation at § 1201.118(b) provides for determining the 30-day period from the date of the Board's order.

Based on actual practice since the *Sutermeister* rule, the Board has determined that neither the practice advocated by that rule, nor the Board's current regulation represents an appropriate method for determining the time limit applicable to OPM reconsideration petitions. Adoption of the *Sutermeister* rule would require the Board to serve all of its decisions on OPM by certified mail with a return receipt in order to determine the date on which OPM received notice of the decision. That procedure is unduly expensive and burdensome. On the other hand, the current § 1201.118(b) may not provide adequate time for OPM's review of the decision since the 30-day period starts to run from the date of the Board's decision.

This revision, requiring OPM to file its petition within 35 days after the date of service of the Board's final decision or order, would be administratively feasible and, because it allows five days for delivery, it would also effectuate the purpose of the court's rule in *Sutermeister*.

EFFECTIVE DATE: January 19, 1989.

FOR FURTHER INFORMATION CONTACT: Robert E. Taylor, Clerk of the Board, (202) 653-7282.

SUPPLEMENTARY INFORMATION:

List of Subjects in 5 CFR Part 1201

Administrative practice and procedure, Civil rights, Government employees.

Accordingly, the Board amends 5 CFR Part 1201 as follows:

PART 1201—PRACTICES AND PROCEDURES

1. Authority for Title 5 CFR Part 1201 continues to read:

Authority: 5 U.S.C. 1205 and 7701(j).

2. Section 1201.118(b) is revised to read as follows:

§ 1201.118 OPM petition for reconsideration.

* * * * *

(b) *Time limit.* The Director must file the petition for reconsideration within 35 days after the date of service of the Board's final order.

* * * * *

Date: January 13, 1989.

Robert E. Taylor,
Clerk of the Board.

[FR Doc. 89-1214 Filed 1-18-89; 8:45 am]
BILLING CODE 7400-01-M

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Parts 1945 and 1980

Implementation of Farmer Program Loan Provisions of the Disaster Assistance Act of 1988

AGENCY: Farmers Home Administration, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulations to provide special disaster assistance to eligible farmers and ranchers who sustained severe production losses to their 1988 crop(s) as a result of widespread drought and other natural disasters. This action is necessary to implement the provisions of the Disaster Assistance Act of 1988. The intended effect is to incorporate provisions of the law into existing FmHA regulations.

DATES: Interim rule effective January 19, 1989. Written comments must be submitted on or before February 21, 1989.

ADDRESSES: Submit written comments, in duplicate, to the Office of the Chief, Directives Management Branch, Farmers Home Administration, USDA, Room 6348, South Agriculture Building, 14th Street and Independence Avenue SW., Washington, DC 20250. The Regulatory Impact Analysis Statement (RIA) and all written comments made pursuant to this notice, will be available for public inspection during regular working hours at the above address.

FOR FURTHER INFORMATION CONTACT: Morris Monesson, Deputy Director, Farmer Programs Loan Making Division, USDA South Building, 14th and Independence Avenue SW., Washington, DC 20250, telephone (202) 382-1641.

SUPPLEMENTARY INFORMATION:

Classification

This action was reviewed under USDA procedures established in Department Regulation 1512-1, which implements Executive Order 12991, and was determined to be major because it will result in an annual effect on the economy of $100 million or more.

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Memorandum of Law

The Acting General Counsel has reviewed the regulations which the Farmers Home Administration (FmHA) is publishing as an interim final rule to implement sections 311, 312, and 313 of the Disaster Assistance Act of 1988, Pub. L. 100-387, 7 U.S.C. 1421 note and has found that these regulations comply with that statute and that FmHA has the authority to propose such regulations pursuant to section 339 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1989).

Summary of RIA

The Disaster Assistance Act of 1988 (Pub. L. 100-387), dated August 11, 1988, provides additional assistance to crop and livestock producers affected by drought and other natural disasters in 1988. The farm lending programs of the Farmers Home Administration are directly affected by provisions of Title III, Subtitle B, Disaster Credit and Forbearance, of the Act.

Section 311 of the subtitle temporarily removes the requirement that an emergency loan applicant must have had crop insurance in effect on a crop(s), if it was available, in order for FmHA to consider disaster losses to such crop(s) for the purposes of determining emergency loan eligibility and the maximum amount of emergency loan entitlement. This eligibility restriction was enacted as part of the 1985 Food Security Act, with the intention of substituting crop insurance for reliance on disaster loans. *The restriction is waived only for crops planted for harvest in 1988.*

Without the 1988 crop insurance linkage, it is likely the emergency loan program in 1989 will increase from the 1989 budget estimate of $100 million to the $600 million limit authorized by the 1989 appropriations. This additional lending would increase 1989 budget outlays, over the budget estimate, by $500 million.

Section 312 of the Act (1) encourages the most effective possible use of direct operating loan funds, "as authorized under existing law," to meet the credit needs of farmers and ranchers affected by the 1988 drought and other designated natural disasters affecting crops planted for harvest in 1988; (2) authorizes a broader range of refinancing purposes for the guaranteed operating loan program, and extends eligibility to any producer qualifying for disaster assistance for crop losses in 1988 or having a major loss of a crop in 1988 as a result of the 1988 drought and other natural disasters in 1988, provided the producers "otherwise meet the criteria for guaranteed loan borrowers * * * established by the Secretary;" and (3) authorizes the transfer of unobligated emergency disaster loan funds from FY 1988 to the guaranteed operating loan program in FY 1989, provided the funds first shall be used to satisfy the level of assistance estimated by the Secretary to meet the needs of person eligible for emergency disaster loans.

No significant budget impact is anticipated due to these provisions. The appropriated amounts for the guaranteed operating loan program during FY 1988 through FY 1988 has been increased from $1.88 billion to $2.40 billion, while the percent usage of those guarantee funds has decreased from 82.3 percent in FY 1988 to 37 percent in FY 1988. The FY 1989 budget provides for $2.30 billion, which far exceeds the projected demand; and therefore, in all likelihood, there will be no need for the Secretary to draw on the $548,109,000 of unobligated disaster emergency loan carry-over from FY 1988.

Section 313 urges the Secretary of Agriculture to exercise forbearance and expedite the use of credit restructuring and other credit relief mechanisms authorized under existing law.

No significant budget impact is estimated for these provisions, as these loan making and loan servicing authorities were taken into account in preparation of the FY 1989 budget.

Intergovernmental Consultation

For the reasons set forth in the final rule related to Notice, 7 CFR Part 3015, Subpart V (48 FR 29115, June 24, 1983) and FmHA Instruction 1940-J, "Intergovernmental Review of Farmers Home Administration Programs and Activities" (December 23, 1983), Emergency Loans and Farm Operating Loans are excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Programs Affected

These changes affect the following FmHA programs as listed in the Catalog of Federal Domestic Assistance:

10.404—Emergency Loans.
10.406—Farm Operating Loans.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program." It is the determination of FmHA that the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91-190, an Environmental Impact Statement is not required.

Discussion of Interim Rule

FmHA is implementing this Interim Rule immediately with a 30 day comment period. The "Disaster Assistance Act of 1988," (Pub. L. 100-387), dated August 11, 1988, amended FmHA's statutory loan making authorities. It is necessary to implement these authorities upon publication to provide immediate assistance to farmers and ranchers who have suffered major crop production losses as a result of severe drought and other natural disasters in 1988.

Farmers who have suffered severe production losses are in dire need of disaster program assistance to purchase livestock feed for replacement of feed crops lost as a result of the disaster(s), and to repay to creditors and suppliers annual production loans, open supplier accounts, and installments due on intermediate and long-term debts.

Also, many farmers who do not qualify for Emergency (EM) loans are in need of refinancing and reamortizing or rescheduling their 1988 operating loans and/or the annual installments due on other farm debt, which their present lenders will be reluctant to do without an FmHA guarantee.

The Act mandates changes in the emergency loan regulations and the guaranteed operating loan regulations, which will temporarily ease the requirements for obtaining assistance under these programs. Inquiries have already been made concerning this law; and applications are being held in abeyance until the regulations are issued. Any delay in implementing the law will have an adverse effect on many distressed farmers. Due to the severity of the drought and other natural disasters that have impacted nearly all areas of the country in 1988, many farmers have had devastating crop losses; and the nation's surpluses of certain crops and commodities have been significantly reduced. By implementing these regulations immediately, assistance will be provided to many needy farmers and ranchers, who are or will be in danger of losing their operations without this assistance.

Background

The loan making, supervision and servicing of FmHA borrowers is governed mainly by the Consolidated Farm and Rural Development Act (CONACT) (7 U.S.C. 1921 et seq.). The purpose for revising the FmHA regulations at this time is to implement various sections of the Disaster Assistance Act of 1988 (Pub. L. 100-387) as it applies to certain farmer program loans. Those sections are as follows:

Section 207—Crop Insurance Coverage for the 1989 Crops.
Section 311—Emergency Loans.
Section 312—1989 Farm Operating Loans.
Section 313—Forbearance and Restructuring for Farm Loans.

Due to the urgent need of financial assistance for many farmers and ranchers, FmHA has expedited the implementation of these changes.

Changes

The existing emergency (EM) loan regulations state that applicants will not be eligible for EM loans to cover damages and losses to any crop(s) harvested after December 31, 1986, which was not insured, but could have been insured with Federal Crop Insurance Corporation (FCIC) crop insurance or multi-peril crop insurance, unless the crop(s) could not be planted due to the declared/designated/authorized disaster(s). The Disaster Assistance Act of 1988 suspends this requirement for farmers and ranchers who suffered severe crop production losses due to drought and other natural disasters in 1988, and who otherwise qualify for emergency loan assistance. *This waiver applies only to those crops planted for harvest in 1988.*

While the law provides for the waiver of crop insurance for the 1988 crop year, it requires that eligible emergency loan applicants must agree to purchase multi-peril crop insurance for the 1989 crop or commodity which suffered disaster losses in 1988, and for which the EM loan is sought. However, the applicant will not be required to obtain 1989 crop insurance if any of the following conditions exist:

1. Crop insurance is not available for the crop for which the loan is sought. (This means that crop insurance must have been applied for during the open season for the crop(s) in question, and not that it was unavailable at the time of application for the EM loan.)

2. The applicant's annual premium rate for the crop insurance will be more than 25 percent greater than the average premium rate charged for insurance on the 1988 crop in the county where the applicant's farming operation is located.

3. The annual premium for such crop insurance is greater than 25 percent of the amount of the EM loan sought.

4. The applicant's 1988 production loss, with respect to the crop(s)/commodity(ies) for which the EM loan is made, does not exceed 65 percent.

5. The applicant can establish, by appeal to the FmHA County Committee, that the purchase of crop insurance would impose an undue financial hardship, and that a waiver of the requirement to obtain crop insurance be granted by the County Committee.

The law also requires FmHA to provide guaranteed operating loans through September 30, 1989, to farmers and ranchers who are eligible for Agricultural Stabilization and Conservation Service (ASCS) disaster program payments under Subtitle II of the Disaster Assistance Act of 1988, and who meet the existing eligibility requirements for a guaranteed operating loan. Such guaranteed loans may be made to refinance 1988 annual operating loans, and/or 1988 and/or 1989 annual installments due and payable on real estate and chattel debt, to applicants who are unable to make payments as a result of losses caused by drought and other natural disasters occurring in 1988. The borrower's accounts with such lender must have been current prior to 1988; the lender must allow the borrower to repay such refinanced loans and installments over a period of up to six years from the original due date of the loan(s) or the installment(s) refinanced; and the borrower must otherwise meet the criteria established for guaranteed operating loan borrowers as prescribed in Subtitle B of the CONACT.

Additionally, the law requires FmHA to provide guaranteed operating loans through September 30, 1989, to farmers and ranchers who have incurred major losses due to drought, hail, excessive moisture, or related conditions in 1988, and who cannot repay their 1988 operating debt and/or 1989 installments due on other farm debt. Guarantees under Subtitle B of the CONACT would be available to borrowers who prove production losses of sufficient quantity to qualify for ASCS disaster program benefits.

List of Subjects

7 CFR Part 1945

Agriculture, Disaster assistance.

7 CFR Part 1980

Agriculture, Loan programs—agriculture.

Therefore, Chapter XVIII, Title 7, Code of Federal Regulations, is amended as follows:

PART 1945—EMERGENCY

1. The authority citation for Part 1945 continues to read as follows:

Authority: 7 U.S.C. 1989, 42 U.S.C. 1480, 5 U.S.C. 301, 7 CFR 2.23, 7 CFR 2.70.

Subpart D—Emergency Loan Policies, Procedures and Authorizations

2. Section 1945.167 is amended by revising paragraph (a) to read as follows:

§ 1945.167 Loan limitations and special provisions.

(a) *EM loans are not authorized for losses to crops grown in areas where FCIC crop insurance or multi-peril crop insurance is available.* Applicants will not be eligible for EM loans to cover damages and losses to any crop(s) harvested after December 31, 1988, which was not insured, but could have been insured with FCIC crop insurance or multi-peril crop insurance. In such instances, applicants will not qualify for EM loans based on losses to those crops which could have been insured against the losses, unless the crop(s) could not be planted due to the declared/designated/authorized disaster(s). However, as a result of the 1988 drought and other natural disasters, the Disaster Assistance Act of 1988 provides for the waiver of this mandatory crop insurance requirement, but *only for crops planted for harvest in 1988.* Under this waiver provision, disaster related production losses sustained to 1988 crops, planted for harvest in 1988, will be counted in the eligibility calculation and the maximum EM loan entitlement determination, regardless of whether or not crop insurance was available to the applicant or whether or not such insurance was purchased by the applicant. "Planted for harvest in 1988" means:

(1) *For annual crops,* planted for harvest in 1988;

(2) *For perennial crops,* planted in 1988 or earlier and producing an annual crop for harvest in 1988.

* * * * * *

3. Section 1945.169 is amended by revising the introductory text of paragraph (n) and adding new paragraphs (n)(5) and (n)(6) to read as follows:

§ 1945.169 Security requirements.

* * * * * *

(n) *Crop insurance.* Crop insurance is a good management tool. Loan approval officials will, therefore, during the loan making process, encourage *all* borrowers who grow insurable crops to obtain and maintain FCIC crop insurance or multi-peril crop insurance, if it is available.

* * * * * *

(5) As a result of the 1988 drought and other natural disasters affecting 1988 crops, the Disaster Assistance Act of

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1988 provides that *all* recipients of EM loans, based on 1988 production losses, *must* agree to obtain multi-peril crop insurance, under the Federal Crop Insurance Act, for the 1989 crop or commodity which suffered disaster losses in 1988, and for which the EM loan is sought. However, applicants shall *not* be required to obtain crop insurance for a 1989 crop/commodity when any one of the following conditions exists:

(i) Crop insurance was not available for the crop for which the loan is sought, i.e., there was no open season and no opportunity to acquire said insurance;

(ii) The applicant's annual premium rate for crop insurance will be more than 25 percent greater than the average premium rate charged for insurance on the 1988 crop in the county where the applicant's farming operation is located;

(iii) The annual premium costs for such crop insurance is greater than 25 pepoent of the amount of the EM loan sought;

(iv) The applicant's 1988 production loss, with respect to the crop(s) for which the EM loan is made, does not exceed 65 percent. Calculations for this determination will be performed by ASCS and entered on Form FmHA 1945-29, "ASCS Verification of Farm Acreages, Production and Benefits," in Part II, Column (b). The ASCS County Office will enter all crops for which an application for disaster assistance has been filed in the disaster year for each farm unit, and enter the percent of loss after each crop listed. Any listed crop that has a loss greater than 65 percent must be insured for 1989, if it is planned to be planted. Any listed crop that does not have a loss greater than 65 percent will not have an insurance requirement, but EM borrowers should be encouraged to purchase insurance on all crops for which it is available;

(v) The applicant can establish, by appeal to the FmHA County Committee, that the purchase of crop insurance coverage would impose an undue financial hardship, i.e., the premium cost of the required insurance would prevent the applicant from projecting a positive cash flow, and thus disqualify the applicant for EM loan assistance. Each appeal to the County Committee for waiver of purchasing crop insurance for the 1989 crop(s) must be accompanied by a completed "Farm and Home Plan," Form FmHA 431-2, or comparable plan of operation for 1989, signed by the applicant and the County Supervisor. When the County Committee approves the waiver, it will be so stated ott the "County Committee Certification or Recommendation," Form FmHA 440-2. If the County Committee denies the waiver, that decision will be documented on Form 440-2 and the applicant will be given full appeal rights under Subpart B of Part 1900 of this chapter, "Farmers Home Administration Appeal Procedure."

(6) When an applicant purchases the necessary crop insurance for 1989 as a condition to receiving an EM loan and, after the EM loan is closed, allows the policy(ies) to lapse or causes it (them) to be cancelled before completion of the 1989 production year, the borrower will become immediately liable for full repayment of all principal and interest outstanding on any EM loan made under the provisions of Title II, Subtitle A, Section 207(d) of the Disaster Assistance Act of 1988. The loan approval official will insert this requirement in Item 41 of Form FmHA 1940-1, "Request for Obligation of Funds," which is signed by the applicant and the FmHA loan approval official.

* * * * *

PART 1980—GENERAL

4. The authority citation for Part 1980 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23 and 2.70.

Subpart B—Farmer Program Loans

5. Section 1980.101(a) is amended by adding a sentence to read as follows:

§ 1980.101 Introduction.

(a) * * * Exhibit G contains the policies and procedures modifying the Guaranteed Operating (OL) loan regulations (Loan Note Guarantees Only), as described in § 1980.175 of this subpart, to incorporate the provisions of Pub. L. 100-387, the "Disaster Assistance Act of 1988."

* * * * *

6. Exhibit G to Subpart B is added to read as follows:

Exhibit G to—Subpart B—1989 Farm Operating Loans authorized by the "Disaster Assistance Act of 1988"

I. General

This exhibit contains the policies and procedures modifying the guaranteed Operating (OL) loan regulations (Loan Note Guarantees Only), as described in § 1980.175 of this subpart, to incorporate the provisions of Pub. L. 100-387, the "Disaster Assistance Act of 1988." Subparts A and B of Part 1980 are applicable to this program, except as modified by this exhibit. OL loan note guarantee requests from lenders, under this exhibit, *must* be approved on or before September 30, 1989.

II. Introduction

The authorities contained in this exhibit enable FmHA to guarantee loans made by lenders, as set forth in Subparts A and B of Part 1980, under Subtitle B of the Consolidated Farm and Rural Development Act, as modified by Title III, Subtitle B, Section 312, of the "Disaster Assistance Act of 1988." The purposes of these OL loans include: refinancing and reamortizing 1988 annual operating loans, and/or 1988 and/or 1989 installments that are or will become due and payable during 1988 and/or 1989 on real estate debt (including buildings and storage facilities), farm equipment debt, livestock debt, or other operating debt of farmers and ranchers that otherwise cannot be repaid due to major production losses sustained as a result of drought or related conditions, hail, flood, or other natural disasters occurring in 1988.

III. Definitions

A. *Farmer*—A producer of agricultural crops/commodities for sale in the market place. Includes crop farmers, livestock ranchers and producers of livestock products.

B. *Installment*—An amortized payment scheduled under the terms of a promissory note. For loans made as annual crop loans, the total amount due is the installment. For notes with a demand payment feature, refer to paragraph IV C(5) of this exhibit for clarification of conditions that pertain to refinancing such notes.

C. *Major losses*—Production losses, as defined by ASCS, of sufficient magnitude to qualify a producer for ASCS emergency livestock assistance or disaster program payments.

D. *Operating loan*—A loan made for any authorized annual operating loan purpose, for calendar year 1988, as stated in § 1980.175(c) of Subpart B, for which payment cannot be made due to drought or related conditions, hail, flood, or other natural disasters occurring in 1988.

IV. Program Administration

Loan guarantee requests will not be approved until a determination is made by the Agricultural Stabilization and Conservation Service (ASCS) that the prospective borrower is eligible for benefits under an ASCS livestock feed program or disaster payment program, or that the borrower incurred major production losses as determined by ASCS, but for other reasons is not eligible for ASCS disaster program benefits, and that the use of such benefits are first considered for reducing the prospective borrower's outstanding financial obligations incurred in the disaster year. This is to ensure that loan guarantees are not approved in excess of such borrower's actual financial needs.

A. *Eligibility.*

1. Guaranteed Operating loans made under Subtitle B of the Consolidated Farm and Rural Development Act. Farmers and ranchers who have suffered major losses as a result of drought or related conditions, hail, flood, or other natural disasters occurring in 1988, and who cannot repay their 1988 operating debt and/or their 1988 and 1989 installments due on other farm debt may qualify for a guaranteed OL loan under FmHA Instruction 1980-B, § 1980.175(b).

2. Guaranteed Operating Loans made under Subtitle A of Title II of the Disaster Assistance Act of 1988. Farmers and ranchers who are determined eligible to receive disaster program benefits from ASCS, based on production losses to any commercial crop grown for harvest in 1988, may receive loans from lenders, guaranteed by FmHA, subject to the eligibility requirements contained in § 1980.175(b) of this subpart, and the following:

(a) Guarantees will be approved only for those farmers unable to make scheduled payments on their 1988 annual operating loans and/or 1988 and/or 1989 scheduled installments on other farm debts, as a result of the conditions stated in paragraph II of this exhibit. If a request is made to refinance an installment not yet due and payable, the projected plan of operation *must* show that the prospective borrower will be unable to meet the installment when it comes due.

(b) Farmers *must* otherwise be current with their obligations to the lender making the guaranteed loan, when the guarantee is approved. If a guarantee is approved to refinance installments due more than one creditor, the prospective borrower *must* be current with all creditors refinanced, when the guarantee is approved.

(c) The lender's guarantee request package, as prescribed in § 1980.113 and Exhibit A of this subpart, *will* contain a properly executed (signed by an authorized ASCS official) Form CCC 441, "Application for 1988 Disaster Benefits," with attached worksheet, "1988 Disaster System Producer Calculated Payment Report," for each farm. This will establish that the farmer has been determined eligible by ASCS for a disaster program(s) payment(s).

(d) The FmHA County Committee *will* certify that the prospective borrower meets the requirements contained in § 1980.175(b).

B. *Limitations.* Farmers receiving ASCS disaster benefits *only* in the form of:

1. Emergency feed and related assistance, under section 101 of Title I of the Act;

2. Assistance for dairy farmers, under section 102 of Title I of the Act;

3. Emergency forage program assistance, under section 103 of Title I of the Act; or

4. Forest crop assistance, under Subtitle B of Title II of the Act, *will not be eligible for loan guarantees under this exhibit.*

C. *Loan Purposes.* Eligible loan purposes include any of the following:

1. Refinancing 1988 annual operating loans.
2. Refinancing 1988 loan installments.
3. Refinancing 1989 loan installments.
4. Loans or loan installments to be refinanced must be due or will become due and payable during 1988 or 1989, and must have been incurred for:
(a) Real estate debt (including buildings and storage facilities);
(b) Farm equipment debt;
(c) Livestock debt; or
(d) Other operating debt.
5. When a creditor or lender requests refinancing of a promissory note that contains a demand payment feature, and the debt was incurred for more than one purpose, e.g., operating expenses, machinery and/or equipment purchase, debt carryover, and other capital expenditures, *only* the annual operating expense portion, plus an amount equivalent to an annual installment(s) for each of the other purposes, can be included in the guaranteed loan.

D. *Terms.* 1988 annual operating loans and/or 1988 and/or 1989 installments refinanced will be scheduled for repayment on terms that will provide the borrower a reasonable opportunity to continue to receive new operating credit while repaying the guaranteed loan. When a loan is made to refinance more than one installment with the same creditor, or more than one installment with different creditors, the term of the guaranteed loan will be limited to not more than 6 years from the earliest due date of any installment being refinanced.

1. This exhibit does not preclude participation by more than one lender.

2. Different lenders of the same prospective borrower may request separate guarantees when refinancing their installments, provided:

(a) Separate notes are taken and repayment of each note does not exceed 6 years from the original installment due date; and

(b) The security requirements in § 1980.175 (g) and (h) are met, except as stipulated in paragraph IV E of this exhibit.

E. *Security.* Adequate security *must* exist for the proposed debt(s) to be refinanced. A current market value appraisal will be completed in accordance with § 1980.113(d)(9) of this subpart to ensure that sufficient collateral equity exists to fully secure the loan being guaranteed.

1. Section 1980.175(d)(5) of this subpart, which requires separate and identifiable security, *will not* apply. Junior liens on collateral *may* be accepted when practical and agreeable with the lender proposing in the loan.

2. When a lender requests a guarantee for refinancing its own debt secured by chattels, a new financing statement *will* be required to implement the requirements of § 1980.109(b)(1) and (2). A lien search will be made to show that the proposed collateral is, in fact, encumbered by the lender; and the subsequent filing will give the intended junior lien position. For these loans, the loan agreement, promissory note, and any new security instruments will contain language stating:

(a) The security position of the guaranteed loan being made is junior to the lender's original lien, and

(b) The amount of the prior lien.

3. For real estate installments being refinanced, the best lien obtainable on the real estate serving as collateral for the loan, *may* be accepted, provided the junior lien position will afford sufficient collateral equity to fully secure the guaranteed loan being made. If the junior lien will not fully secure the new guaranteed loan, the lender must obtain additional collateral having sufficient equity to assure the new guaranteed loan will be fully secured. This will be accomplished by either subordination of an existing lien(s) on the real estate in question or a lien on other real estate having sufficient collateral equity to make up the deficiency in security value.

4. When a single loan is made to refinance more than one creditors' installments, the best lien obtainable *may* be taken, as a minimum, on the same items of collateral that serve as security for the loan installments being refinanced, provided the sum of the liens against the collateral does not exceed the present market value of the collateral.

F. *Servicing.*

1. Servicing of loans made under this exhibit will be in accordance with § 1980.130 of this subpart, paragraph IX of Form FmHA 449-35, "Lender's Agreement," and paragraph VII of Exhibit A, Attachment 1, "Approved Lender Program, Lender's Agreement."

2. If it becomes necessary for the lender to make a protection advance to protect or preserve the collateral, or if liquidation becomes necessary, the lender will determine whether a substantial recovery can be made.

G. *Appeals.* Adverse decisions by FmHA officials will be processed in accordance with Subpart A of Part 1980 and Subpart B of Part 1900 of this chapter.

Date: January 12, 1989.

Roland R. Vautour,

Under Secretary for Small Community and Rural Development.

[FR Doc 89-1247 Filed 1-18-89; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Parts 221 and 389

[Docket No. 43343; Amdt. 221-68; Amdt. 389-37]

RIN 2105-AB00

Electronic Filing of Tariffs

AGENCY: Office of the Secretary; Department of Transportation.

ACTION: Final rule.

SUMMARY: The Department is making final a proposed rule that will allow carriers to file passenger fares tariffs electronically. The rule is in response to an emergency rulemaking petition filed by the Airline Tariff Company (ATPCO).

The new rule will provide the carriers an alternative to file their passenger fares tariffs electronically, rather than in the paper medium. The purpose of the change is to improve the Department's ability to handle the ever-increasing volume of paper tariff filings in a more expeditious manner and to provide the industry and the public with the benefits of modern technology.

DATE: This regulation is effective February 21, 1989.

FOR FURTHER INFORMATION CONTACT: Thomas G. Moore, Chief, Tariffs Division, P-44, Department of Transportation, 400 7th Street SW., Washington, DC 20590, Telephone: (202) 366-2414.

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SUPPLEMENTARY INFORMATION:

Background

Under section 403 of the Federal Aviation Act of 1958, as amended (Act), all U.S. and foreign air carriers are required to file tariffs with the Department of Transportation (the "Department" or "DOT") setting forth passenger fares, cargo rates, other charges and rules which apply to air transportation between a point or points in the United States, its territories or possessions, on the one hand, and foreign points, on the other. Once approved by the respective government aviation authorities, as required under bilateral agreements and/or the Act, these tariffs become legally binding contracts of carriage for international air transportation.

The airlines currently file tariffs on paper in accordance with the requirments contained in 14 CFR Part 221 of the Department's regulations. These requirements have remained essentially the same since their inception in 1938, when the former Civil Aeronautics Board (the "Board") was established. Now, half a century later, carriers and their tariff publishing agents are still submitting all proposed fares, rates, and rules on paper, and DOT analysts are still searching through voluminous paper documents to evaluate all proposed tariffs.

This paper system worked well in a regulatory environment when tariffs were more stable and static. However, the aviation environment has changed dramatically in the last ten years. U.S. domestic air transportation has been completely deregulated and the international aviation marketplace has become increasingly more competitive. Carrier fares, rules, and rates are now subject to frequent, sometimes daily, changes. As a result, the volume of tariff pages filed has increased tremendously, creating a burden on the Department, the industry and the public that has become virtually unmanageable and unworkable.

By the Notice of Proposed Rulemaking issued July 8, 1988 (53 FR 25615) (NPRM), we announced a proposal designed to provide near-term, interim relief. We proposed to allow any carrier or its tariff filing agent (the "filer"), to file its passenger fares electronically with the Department by establishing and maintaining a database of all such fares, subject to certain conditions imposed by the Department. The public would have access to this data through terminals installed by the filer and located at Departmental headquarters, and at no charge. The Department would record its decisions regarding these fare filings into this database.

All daily data transactions and Department decisions would be recorded on an electronic storage device at Departmental headquarters. This would constitute the "Official DOT tariff database". All Departmental actions would also appear in the "on-line tariff database" maintained by the filer.[1] At the end of each day, each filer would submit to the Department an electronic copy of all transactions made during that day for comparison with the daily data transaction record. We would compare the daily electronic copy furnished by the filer with the copy of the daily transactions that we recorded on our computer to ensure that the records, particularly the on-line databases, were complete and accurate. If they were not, we would take steps to ensure immediate corrective action.

Electronic filing would be strictly optional. The paper system would remain available to those carriers or filing agents still wishing to use it.

Comments

We received comments on our proposal from Airline Tariff Publishing Company (ATPCO), Air Transport Association of America (ATA), ABC International (ABC), American Airlines, Inc. (American), Eastern Air Lines, Inc. (Eastern), The Flying Tiger Line Inc. (Flying Tiger), USAir, Inc. jointly with Piedmont Aviation, Inc., (USAir/Piedmont), Venturi Associates, the Information Industry Association (IIA), and KLM Royal Dutch Airlines (KLM).[2]

All of the commenters support the adoption of the proposed rule. Each, however, suggests certain modifications or clarifications. Most of the suggested changes are purely technical, going to refinements or improvements based upon the commenter's own experience with computer technology and programming. Some of the suggested changes are more substantive in character, going to policy issues directly related to the rule itself. In the summary below, and in the discussion section which follows, we shall address these substantive matters first.

Substantive Comments

ATPCO, supported by American, Eastern, Flying Tiger, KLM, USAir/Piedmont, and ATA, recommends that the proposed rule be expanded to incorporate all tariffs, rather than being limited just to passenger tariffs. It objects to the imposition of the electronic filing fee, alleging that the proposed rule contained no cost justification for the fee. Moreover, it argues that no electronic filing fee should be assessed on those existing records which are converted from the paper to the electronic medium upon the implementation of filing official tariffs electronically.

ABC requests that the rule be amended to require that the Department or the filer make the "raw tariff data" [3] available to any user or any other interested person on a reasonable, non-discriminatory basis keyed to added cost. They propose that this be done by any of the following methods: remote computer link, daily transmissions, or on a machine-readable tape. ABC also requests that the rule be amended to clearly define the term "remote access".

IAA recommends that daily tariff data should be consolidated onto a single storage medium (such as magnetic tape or CD–ROM [4]) and be made available to the public and private sector users who may wish such data. IIA also seeks clarification on which party, the Government or the private entity, would be liable for the accuracy and integrity of the information contained in the filer's on-line tariff database. Finally, IIA recommends that an expiration date be placed on the rule, or in the absence of an expiration date, that the rule include one or more milestones marking points at which the interim solution will be reviewed by senior Departmental officials.

Technical Comments

ATPCO, supported by American, Eastern, Flying Tiger, KLM, USAir/

[1] The term "on-line tariff database" means the remotely accessible, on-line version, maintained by the filer, of (1) the electronically filed tariff data submitted to the "official DOT tariff database," and (2) the Departmental approvals, disapprovals and other actions, as well as Departmental notations concerning such approvals, disapprovals or other actions, that Subpart W of the proposed Part 221 requires the filer to maintain in its database. The term "official DOT tariff database" means those data records (as set forth in §§ 221.283 and 221.286 of the rule) which would be in the custody of, and maintained by, the Department of Transportation.

[2] KLM accompanied its submission with a motion for leave to file out of time. We will grant KLM's motion.

[3] The term "raw tariff data", as a practical matter, means encoded machine-readable computer data, normally in a binary format, which may be transmitted to a user in a magnetic or other medium. This machine-readable data then can be read electronically by another computer with the requisite software without any human interpretation. Once the data is read by the other computer it will convert such data into letters and numbers which may then be read by an individual.

[4] The abbreviation "CD–ROM" means a compact optical disk, read-only, which contains encoded machine-readable tariff data, normally in a binary format, which may be interpreted by a computer and converted into letters and numbers.

Piedmont and ATA, (a) objects to those requirements that would require the filer to provide on-line access to the tariff database 24 hours per day, 7 days per week; (b) objects to the requirement that, in the event of failure, the primary dedicated circuit be restored in 4 hours; (c) seeks clarification on the data fields that are to be made available to the Government and on the size of the fields; (d) objects to the requirement for inclusion of the "tariff number" in the Filing Advice Status File; (e) objects to those provisions of § 221.283(b)(7)(ii) which would preclude the providing of reasons for Departmental action; (f) seeks clarification of the "routing" as used in § 221.283(b)(8)(viii) and 283.283(c)(8); (g) objects to the requirement of specifying a "discontinue date" as set forth in § 221.283(b)(8)(ix); (h) objects to the requirement for the specification of unique rule numbers as proposed § 221.284; (i) objects to annotating the fare records in the name of the former carrier when such carrier is adopted by another carrier; (j) recommends that the double filing of paper associated with Special Tariff Permission Applications be modified to require that the paper page be filed only once; (k) seeks clarification of the statement in Section 221.500 that the paper tariff would be considered the "official tariff" during the 90 day experimental period; (l) recommends that, during the experimental period under § 221.500, filers be permitted to file only selected fares; (m) recommends that the rule be amended to allow the filer to assess the public a charge for copies made from a filer's printer in the Department's Public Reference Room.

Venturi Associates recommends that any user fees established by any filer for its services at Departmental Headquarters not be cost prohibitive.

IIA recommends that: (a) The Department consolidate the information submitted by each filer into a single data feed at Departmental Headquarters for easier access by the user, and (b) the Department consider making all the electronic tariff data available through a single terminal located in the Department's Public Tariff Reference Room.

Discussion and Disposition of Comments—Substantive Issues—

Scope of Rule

We have decided not to expand the rule beyond the passenger fare tariff scope that ATPCO recommended in its petition and that we tentatively adopted in our NPRM. As we said in the NPRM, "our simple objective here is to provide some measure of interim relief to the Department and to the industry from the burdens of filing paper tariffs." (53 FR 25616.) We regard the general industry support for, and complete absence of opposition to, the NPRM, as indicative of a widespread recognition that our rule would indeed meet this objective. This is not to say that we lack sympathy for the commenters' wish that we move farther faster. However, before acting on ATPCO's petition, we fully explored all the options available to us and weighed the costs and benefits of those options. We determined that we could not reconcile an expansion of the rule beyond passenger fare tariffs with our perceived need for, and thus our urgent desire for, prompt, interim relief. That is still our view. Given the additional and more complex technical questions sure to arise with any proposed expansion, our limited resources to address those questions, and the time that would inevitably be expended in the process, we have concluded that the public interest would be much better served by retaining the present scope of the rule.

In this connection, we are mindful of the concern expressed by some commenters that we might simply stop at this interim step and never complete the electronification process. Decidely that is not our intent. We made clear in the NPRM that even as we moved towards providing interim relief, our longer-term automation efforts were continuing. If anything, these efforts should be enhanced and speeded by the experience we gain under the interim approach. The complexity of the process and the difficulty of predicting precisely when certain breakthroughs can be achieved dissuaded us from adopting a specific deadline or even fixed milestones, as has been suggested. Nevertheless, we repeat and reemphasize what we said in the NPRM, namely, that we are not departing from our ultimate goal of establishing a fully integrated electronic tariff system. 53 FR 25616.

Filing Fees

We shall maintain the proposed level of filing fees. In the NPRM (53 FR 25620), we described the cost methodology we employed in setting the interm filing fees. We cited two studies we relied upon, *Tariffs Computerization Project-Feasibility Study and Cost Analysis Report (June 1985)* and *Preliminary Electronic Tariff ADP Requirements Study (March 1987)*. We also indicated that we were deriving labor cost estimates from existing labor costs. We specifically adhered to the fee development guidelines as set forth in applicable organizational regulations, OR–204, effective January 10, 1983, Dockets 30586 and 30816 (48 FR 635, January 6, 1983.[5] These guidelines provide that:

(a) The fees charged for eligible services must be fair and equitable, and should be a *reasonable approximation* of the attributable costs that are expended to benefit the recipients, and (b) The cost of providing a particular service must be divided among the beneficiaries in a fair and equitable manner. Any computation, however, must necessarily be based on *numerous approximations* and can only be expected to be accurate within reasonable limits. (Emphasis added).

Against this background, we find that the proposed fees are consistent with established methodology and entirely justified in the circumstances. No commenter has presented persuasive evidence to the contrary. The commenters have suggested that we use the experimental 90 day period contained in § 221.500 to gather actual cost data, and to set the fee as predicated on these costs. We shall, in fact, gather such actual cost data and examine it with an eye toward improving the accuracy of our approximations. However, in the event we are unable to gain sufficient empirical cost data during this period to fine-tune our filing fee, we intend to assess the *interim* filing fee for "official tariff" submissions.

We would expect that once we are in an operational mode of accepting "official electronic tariffs" we will be able to determine whether the proposed filing fee has proven accurate, insufficient, or excessive. If in fact it has proven excessive, refund requests may be made under 14 CFR 389.27(b) of the Department's Organizational Regulations.

We shall accept a suggestion of the commenters that the Department not assess the electronic filing fees on those existing records which are converted from the paper to the electronic medium upon the implementation of the "official" tariff. The commenters state that the assessment of an electronic filing fee would be improper since filing fees will have already been paid under the paper regime. We agree that this recommendation has merit and we grant this request.

The commenters request that they not be required to refile all the effective and prospective records when they convert from paper to an electronic mode. As an

[5] These were formerly the organizational regulations of the Board and were codified in 14 CFR Part 389, which were promulgated under the Office of Management and Budget (OMB) Circular A–25, September 23, 1959. Responsibility for administering these rules transferred to the Department following CAB Sunset.

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alternative they recommend that the Department accept such fare records on a machine-readable tape. This request also has merit, and we will grant it. We will, however, require that when a filer is given final authority to convert from the paper to the electronic mode as the "official" tariff that the filer must furnish the Department with a copy of the existing effective and prospective records on a machine-readable tape or any other mutually acceptable electronic medium. The filer will also be required to furnish an affidavit to the Department attesting to such records.

We also want to clarify one other issue concerning conversion from paper to electronic filing. In the event that there is a discrepancy between the "official" paper tariff and the records submitted by the filer on the day of conversion, the records contained in the "official" paper tariff will be the prevailing record. We will amend §§ 221.500 and 389.25(b) to accommodate these changes.

Availability of Raw Tariff Data

ABC has requested that either the Department or the filer be required to make available to any user or any other interested person, on a reasonable, non-discriminatory basis keyed to added costs, the "raw tariff data" used to produce the tariff information appearing on a video display screen. ABC also recommends that these persons be able to obtain such data from the Department or the filer in any of the following methods: (a) Electronically filed tariff data on a bulk basis by remote computer link, (b) tariff information on an "inquiry" basis by remote computer link, or (c) daily magnetic tapes containing all of the day's tariff transactions. ABC states that: (A) access to the "raw tariff data" is necessary for it to inject competition into the fare data collection/dissemination arena; (b) entry by others into the data dissemination and/or fare filing business will strengthen the presence of market forces and will reduce the prospects of database bias that can result when one company with a preexisting market controls the database; and (c) electronic access to data is a key component of the legal requirement that an agency make adequate public dissemination of complete information in its possession and control, and that it allow for redissemination by private companies in "value added form".

On September 20, 1988, ATPCO filed a reply to ABC's comments, urging that we reject ABC's recommendation.[6]

ATPCO argues that ABC has confused the Department's obligation to provide access to tariff data with the issue of whether the Department has an obligation to disseminate such data; that in fact, no such obligation to disseminate exists, and that this rule should not be expanded to impose one. ATPCO states that such information as that requested by ABC should be obtained through the Freedom of Information Act (5 U.S.C. 552); that ABC currently obtains machine-readable tariff tapes as a value-added service from ATPCO which is identical to the terms offered and prices charged to other ATPCO subscribers; that the Department must consider whether such a dissemination service substantially duplicates similar services that would otherwise be available from the private sector; that ABC seeks dissemination of this data at the Department's expense or, failing that, at the tariff filers' expense; and that ABC seeks, for its own profit-making purposes, a low-cost subscription service of machine readable tariff data which would be subsidized by the tariff filers or the Department.

On October 11, 1988, ABC filed a rejoinder to ATPCO's response, which for the most part expands on the points it previously raised.[7] ABC does however raise two additional points that warrant our consideration.

ABC argues that under the findings in *Army Times Publishing Co.* v. *Department of the Army*, 684 F. Supp. 720 (D.D.C. 1988), the Department is required to make bulk tariff data available in a machine-readable format upon request. ABC further argues that, based on the Federal Maritime Commission's (FMC) report on tariff automation inquiry as set forth at 50 FR 13066, April 20, 1988, had the Department of Transportation decided to employ a central DOT database (rather than using the remote databases in possession of various tariff filers), we would be obligated to disseminate tariff information in a machine-readable format such as that being proposed by the FMC.

Having carefully reviewed the comments, as well as the relevant statutory and regulatory provisions, we have decided not to accept ABC's recommendations with respect to prescribing a cost basis for the dissemination of "raw tariff data". We will require the filer to provide, upon request, a copy of the machine-readable data (raw tariff data) of all daily transactions made to the on-line tariff database, at the terms and prices it may set, provided that they are non-discriminatory, *i.e.* they are substantially equivalent for all similarly-situated persons. (§ 221.600(d).) We do not, on the other hand, accept ABC's recommendations that the Department obligate itself to disseminate electronically filed data.

Our principal guidance on this issue comes from OMB Circular A–130, 50 FR 52730, December 24, 1985 (OMB Circular). Under the terms of the OMB Circular there is a clear distinction between "access to information" and "dissemination of information". *Access* to information is defined "as the function of providing to members of the public, upon their request, the government information to which they are entitled under law". Section 6.f. of the OMB Circular. *Dissemination* of information is defined "as the function of distributing government information to the public, whether through printed documents, or electronic or other media, and does not include intra-agency use of information, inter-agency sharing of information, or responding to requests for 'access to information' ". Section 6.g. of the OMB Circular. Appendix IV to the Circular lists types of information fitting the two categories.

The first category, access, refers to those situations in which the Government agency's role is passive; access is what the Government's responsibilities are when the public comes to the Government and asks for information the Government has and the public is entitled to, *e.g.* compilations of routine time and attendance records for Federal employees, or publication of thousands of pages of common carrier tariff filings by regulatory agencies. The second category, dissemination, refers to an active outreach by the Government, *i.e.* to those situations in which the Government provides the public with information without the public having to come and ask for it. According to the controlling OMB Circular, those situations arise where there is a specific statutory requirement for dissemination, where dissemination is necessary for the proper performance of agency functions, and where such dissemination does not duplicate efforts in other sectors.

In reviewing all of the comments to our proposed rule, there is no

[6] ATPCO accompanied its reply with a motion for leave to file an otherwise unauthorized document. We will grant the motion.

[7] ABC accompanied its rejoinder with a motion for leave to file an otherwise unauthorized document. We will grant the motion.

disagreement that filed tariff information, be it in the paper or electronic medium, is subject to public access, as defined by the OMB Circular.[8] However, the commenters plainly disagree on our proposed rule as concerns to whom, how and at what cost, filed electronic tariff information should be disseminated. In order to answer these questions we are required to weigh them against the criteria contained in the OMB Circular.

With respect to the Government's obligation to disseminate filed tariff information, the first OMB criterion is whether or not the Department is required by a statutory mandate to do so. We find no such obligation here.

This dissemination function has been the responsibility of the carriers since 1938 under the requirements of section 403(a) of the Act. The Civil Aeronautics Board confirmed and refined this statutory requirement in 1977 by promulgating 14 CFR 221.179, which required the carriers to provide a subscription service to their tariffs at a charge not to exceed a reasonable estimate of the added cost of providing the service. The Board stated that this rule would: (a) Require air carriers and foreign air carriers which are required to file tariffs, to offer a subscription service for passenger fares, freight rates and charter services, and (b) provide for greater dissemination of information about proposed tariff changes. See ER–1001, adopted June 1, 1977, Docket 29988, and 42 FR 28870, June 6, 1977. This requirement also applies to transmission of electronic tariffs to subscribers (§ 221.600).

ABC in its rejoinder, nevertheless argues that if we had decided to employ a central DOT tariff database (rather than using the remote databases in the possession of various filers), we would be required to disseminate machine-readable tariff data at a reasonable, added cost basis. ABC bases its argument on the FMC's report on tariff automation at 50 FR 13066, April 20, 1988. We disagree. The FMC proposes to offer the following dissemination service:

> Once the tariff data is officially on file, the Commission will download the entire data base in "flat files", formatted onto computer tapes which will be sold to any person at the relatively inexpensive, marginal cost of dissemination. *This will satisfy the Commission's statutory duty of providing copies of tariffs at a reasonable charge.* (*Id.* at 13066.) (Emphasis added.)

While the FMC believes that it has such a statutory mandate, we find no such mandate in our statutes. Accordingly, we do not accept ABC's argument that we are required to disseminate data in a similar manner as that being proposed by the FMC.

The second OMB criterion is whether or not it is necessary for the proper performance of the Department's functions to disseminate filed tariff information. We do not find such a dissemination function to be necessary to DOT's mission. We note that carriers and their agents have undertaken the effort to publish their tariffs to such an extent that the private sector has developed an ongoing market for this information.

In our proposed rule at 53 FR 25617, we listed our statutory and regulatory tariff responsibilities. One of those functions was, "The Department maintains records for open access to published tariffs and to tariff filings and STPA's". We went on at 53 FR 25618 to state that any proposal to amend the current tariff filing procedure must ensure that the Department can fulfill its statutory and regulatory responsibilities. We were careful to ensure that our proposal would meet that test, and no commenter has demonstrated that we were unsuccessful in this regard. Our goal was not, however, to use this rulemaking as a device to expand existing tariff functions. Since we have never disseminated filed tariff information, and since no compelling arguments have been made that would convince us to do otherwise, we find no merit to this aspect of ABC's arguments.

The third criterion of OMB Circular A–130 is that an agency should refrain from offering those services that are provided by the private sector, especially those services which are normally within the province of the private sector.[9] The services that ABC is requesting are currently being provided by the private sector. Specifically, as we said above, since 1938, dissemination of filed tariff information has been the responsibility of the carriers. ATPCO states that "ABC currently obtains machine-readable tariff tapes as a value-added service from ATPCO which is identical to the terms and prices with other ATPCO subscribers." Accordingly, we find no merit to the recommendation that we should disseminate filed electronic tariff information such as that sought by ABC. In this regard, ABC can take no comfort from House Report, H. Rpt. 99–560, 99th Cong., 2d Sess. (1986), *Electronic Collection and Dissemination of Information by Federal Agencies: A Policy Overview*, on which it seeks to rely. That report clearly states that "an agency should limit the services that it offers to the public and should leave the private sector to provide value-added services. An agency should not offer an information service to the public simply because it has the capability to provide the service." *Id.* at 12.

On the other hand, we agree with ABC that the rule should provide for electronic access to the database maintained by each filer. Such access may facilitate the further dissemination of tariff information to users and potential users through the provision of other value-added services by processing intermediaries such as ABC. ATPCO currently provides such a service in the form of machine-readable tapes, and we see no reason why we should not, as a matter of discretionary authority under the statute, require continued access to this basis, without prejudice to the provision of other remote access services as well.

The other issue that is raised concerning dissemination of filed tariff information is the cost of such information.

ABC recommends that all daily transactions to the on-line tariff database should be provided in machine-readable format to any person, upon request, on an added cost basis.

As ATPCO makes clear, the provision of raw tariff data is itself a value-added service, whether on an inquiry basis or even on a bulk machine-readable basis, because such services involve the development and use of format and documentation programs. We are therefore neither able nor disposed to prescribe an added-cost standard, or indeed any other particular cost standard, for the provision of such service.

The OMB Circular requires that where such information is provided through the private sector, the prices for such

[8] In regard to public access, ABC in its rejoiner argues that we are required to make copies of the machine-readable data available under the "Freedom of Information Act", based on the findings in *Army Times Publishing Co.* v. *Department of the Army*, 684 F. Supp. 720 (D.D.C. 1988). We agree. As we have said, with respect to providing services involving passenger fares filed electronically, the Department proposes to follow the provisions regarding Freedom of Information Act requests, at 49 CFR Part 7 (also see 14 CFR Part 310). (53 FR 25623.)

[9] We note in this connection, the comments made by Robert Gellman, Counsel to the United States House Subcommittee on Government Information, Justice, and Agriculture, at the Department's first meeting of its Advisory Committee on Electronic Tariff Filing System. Mr. Gellman said: "If an agency sets up an automated file then releases the file in automated form to the public, you have just destroyed the investment of the private sector company in creating and maintaining its database * * *. I think in point-in fact, an agency should look for a way to avoid doing that." Minutes at pages 25 and 29.

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information should not be unreasonable. ATPCO states that it is currently providing bulk information to all subscribers on identical terms and prices. We have received no complaints concerning the terms and prices under which ATPCO is furnishing machine-readable data as a value-added service and, accordingly, we have no basis to believe that ATPCO's terms and prices are other than reasonable, in the generic sense used by OMB. At the same time, we believe that it is both feasible and desirable to provide in the rule that access to raw data, including charges therefor, must be on a non-discriminatory basis. We would of course apply this standard to the raw tariff data (machine-readable data) that any other filer chooses to file with the Department.

Consistent with our statutory obligations and the OMB Circular, we believe that our rule achieves an equitable balance between the needs of the Department, the filer, the public, the private sector and any other interested person in obtaining access and dissemination of the electronic tariff databases. Accordingly, we will add to § 221.600 provisions that will require the filer to provide to any person a copy of the machine-readable data of all daily transactions made to its on-line tariff database on a non-discriminatory basis, that is, one in which the terms and prices are substantially equivalent for all similarly-situated persons. We are also adding to § 221.4 a definition for machine-readable data as a result of our requirements under § 221.600.

In this connection, we note that IIA has made a similar request, in seeking that we require all daily tariff data to be consolidated onto a single storage medium for availability to the public. As with ABC, we see this as going to matters of dissemination best resolved in the private sector through commercial arrangements and, to the extent that we are not adopting ABC's suggestions, we shall not adopt that of IIA.

Remote Access

ABC agrues that the rule's provisions guaranteeing remote access for the public to the filer's on-line tariff database are ambiguous. The basic problem ABC percieves is that the rule does not clearly define what is meant by remote access. By way of clarification, we recall that we stated in the preamble to our NPRM at 53 FR page 25620, that we would require a filer to make its on-line tariff database available to the public, at DOT headquarters, at no charge, during normal business hours. We said that the public would have access to this data through a filer supplied "CRT". A CRT with an attending central processing unit converts machine-readable data into letters and numbers which then may be read by an individual. The data displayed on a CRT is generally labeled as "output data". We expect the public to have access to this output data in our public tariff reference room. (Sections 221.280 (b)(2) and (b)(3)). A filer must also provide a subscription service to this output data under the terms of § 221.600(b) of our rule.[10]

The Hold Harmless Clauses

Section 221.280(b)(2) would require electronic filers to install computer equipment in the Public Reference Room at Departmental headquarters and to indemnify and hold harmless the Department and the U.S. Government from any claims or liabilities resulting from the defects in the equipment, its installation or maintenance. IIA raised the question as to the whether this requirement was intended to apply also the information available through the equipment. It was concerned that we would required the filer to indemnify the Government for any claims resulting from information that was not accurate or lacked integrity.

This clause was not intended to apply to the information contained in the on-line tariff database. That database is generated by and maintained by the filer, who is responsible to the public for its accuracy and integrity. To make this clear, we will require that all filers include a statement, each time their systems are accessed, to the fact that: "The information contained in this system is for informational purposes only, and is a representation of tariff data that has been formally submitted to the Department of Transportation in accordance with applicable law or a bilateral treaty to which the U.S. Government is a party". (§ 221.280(c)).

Technical Comments

Various commenters object to those requirements of § 221.280 that would require the on-line tariff database to be available 24 hours a day, 7 days a week. The commenters allege that this would be unduly burdensome and needlessly expensive. As an alternative the commenters recommend that the fiber be permitted to bring its computer down between 0:00 a.m. and 6:00 p.m. on Sundays, when necessary for maintenance or other operational reasons. We regard the proposed alternative as reasonable and as non-prejudicial to our ability to meet our program goals; accordingly, we shall adopt it. (§ 221.280(b)(5)).

Various commenters object to the requirements of § 221.280 that would require the primary circuit to be restored within four hours after failure. The commenters state that the restoration of the circuit places on then an obligation beyond their control, since the line is the responsibility of the phone company. Their concern appears valid, and we will relieve them of the obligation, *provided that*: the filer must notify the Chief of the Tariffs Division of the Department's Office of International Aviation as soon as possible after the failure of the primary circuit, but not later than two hours after failure, and must provide the name of a contact person at the telephone company who has the responsibility for dealing with the problem. (§ 221.280(b)(13)).

Various commenters seek clarification of those requirements of § 221.280 that would require the filer to make data fields available to the Department in any record which is part of the on-line tariff database. The commenters state that the data elements need to be identified and that there needs to be a description of the use to be made of the data fields and a specification on their size. We are not in a position at this time to furnish this information. We first must have in place our local area network, the equipment we will employ to download the data, and firm plans for the ultimate use of such data. Further, since this is one of the requirements for filing, we wish to ensure that we will maintain our right to require a filer to make fields available to us upon a reasonable request.

Various commenters object to the requirements of § 221.283(a)(4) that would require the tariff number to be included in the Filing Advice Status File. The commenters state that this file is intended to serve as an index to the Government Filing File and, therefore, that the inclusion of the tariff number in the former file serves no useful purpose. We agree and have deleted this requirement.

Various commenters object to § 221.283(b)(7)(ii) because under it the Department would not be required to give its reasons for approvals or disapprovals of filed tariffs. The commenters say that this would be contrary to our current practice. They suggest that § 221.283(b)(7)(ii) be revised to read "Actions taken and reasons

[10] We note that our functional definition of "remote access" is consistent with DOT's reply comments to the Interstate Commerce Commission's proposed electronic filing of tariffs in Ex Parte No. 444, *i.e.*, that subscribers should have remote access to the formal tariff for a reasonable fee, and that hard copies of the electronic tariff could be made by subscribers by means of their printers.

therefor." The commenters are correct that we have traditionally provided reasons for our decisions. Since it was not our intent to adopt a new policy in this regard, we will adopt the proposed change. As a related matter, we have revised § 221.283(b)(7)(iii) to read "Remarks, except that internal Departmental data shall not be made public." This will ensure that the Department has the capability to send germane remarks to the filer which may or may not relate to the specific approval or disapproval of a particular tariff.

Various commenters seek clarification of the term "Routing (RG)" as used in §§ 221.283(b)(8)(viii) and 221.283(c)(8). The commenters state that these sections should actually refer to "Routing Number(s)." We shall adopt this change. We also feel it needs to be made clear that many fares are subject to the abbreviation "MPM" (maximum permissible mileage), and we have amended the rule to include these changes.

Various commenters object to the provisions of § 221.283(b)(8)(ix) that require the filer to show a discontinue date. The commenters state that the use of a discontinue date is confusing since such a date is only used when a fare has been superseded by a subsequent fare record. The commenters recommend that § 221.283(b)(8)(ix) be amended to read "Effective date and discontinue date if the record has been superseded." We will make this change. As a related matter, we will also add a § 221.283(b)(8)(xi) to read "Expiration date." Our reason for this change is that when we were drafting the rule we had considered "discontinue date" to be synonymous with "expiration date", since many proposed fares bear an expiration date. We now realize this may not have been correct.

Various commenters object to the requirement of § 221.284 that unique rule numbers be used for certain types of fares. While they do not oppose the concept of using unique rule numbers for certain fare types, they would prefer that rule numbers be set by mutual agreement between the filer and the Department rather than by rule. They further state that the specification of rule numbers by regulation could adversely affect the industry, if in fact those rule numbers were in conflict with rule numbers that had been used over the years to identify certain other fare types. We do not find this proposal to be unreasonable and we have amended the rule to provide for this.

Various commenters object to the requirement of § 221.285 that the filer annotate the fare records in the name of the former carrier when such carrier is adopted by another carrier. The commenters recommend as an alternative that the adoption be stated in the justification when the fares are electronically filed. We will not adopt these recommendations. The information at issue is important to our ability to research historical fares and is also useful for other regulatory purposes. Following the course proposed by the commenters thus would have a negative impact on our ability to perform the tariff function. Such a result would be inconsistent with our overriding principles in streamlining the tariff system. Finally, we do not perceive this requirement to be an undue burden on any filer. Therefore, we will not accept this proposal. The commenters also state that the rule is unclear as to how long the note must be maintained. Here, we agree that the rule is ambiguous, and we have clarified it. Specifically, we intended that the note would have to appear only once, when the fares are initially adopted. We have amended our rule to provide for this clarification. (§ 221.285).

Various commenters recommend that § 221.302 be amended to provide that a filer submitting a Special Tariff Permission Application under this section need file the associated paper page only once. This would be achieved by allowing the filer to file the paper page in the final proposed paper format with reference to the appropriate electronic filing advice number. The page would also bear a consecutive revision number and an issued and proposed effective date. If for some reason all or part of the proposal were denied or other action were taken against the proposal, the page would be revised promptly to remove such information. We will approve this change in the rule subject to one modification. We will require that when we deny or take other action against any page so filed under revised § 221.302, the filer must revise and file an amended page reflecting our action within two business days following the denial or other action.

Various commenters state that under the terms of § 221.500 it is not clear whether, during the 90-day experimental period when the filer is required to file electronic tariffs, the electronic or the paper tariff is to be considered as the "official tariff." It was and still is our intention that during the experimental period the "official tariff" would be the paper tariff. We have amended our rule to make this clear.

Various commenters suggest that, during our proposed 90-day experimental period, if they should choose to take advantage of electronic filing, that they not be required to file all fares electronically. They say that being required to file all fares would pose an undue burden on the filer and a strain on the Department's resources. We will not accept this suggestion. First, we are not convinced that the need to file all fares will pose the problems for the filers or for our own resources that the commenters predict. More importantly, though, even if such problems were to arise, we would not regard them, on balance, as sufficient justification for following a different approach. The critical goal of the 90-day experimental period is to provide both the filers and the Department with an authentic "dry run" under the electronic system. To this end, we are convinced that we should seek to have the data going into the system be as nearly approximate to that with which the system—and our staff—will have to cope following the end of the experimental period. Only in this way can the experimental period serve its purpose of assuring the Department, the industry, and the public that the electronic system is indeed ready to assume its role as a repository of official tariffs.

In addition, we would note that the proposal for less than complete filing runs counter to the recommendation of those same commenters that the 90-day experimental period be used to determine the appropriate electronic filing fee. Plainly, for such calculations to be meaningful, they must be derived from a system operating in a fashion closely approximating that which will prevail following the experiment, *i.e.*, a system where the electronically filing carriers will be filing all fares, not just selected ones.

Various commenters suggest that § 221.260(b)(3) be revised to allow the filer to assess a fee on a public user at Departmental headquarters when the user makes copies from a filer's printer located in the Department's Public Tariff Reference Room. The commenters state that this proposal is consistent with the preamble of the rule, but that no such enabling provisions were contained in the rule. We agree with the commenters. This omission was a drafting oversight that we will correct. We will not, however, include these provisions in § 221.260, since this section relates to requirements for filing. Instead we will add a new § 221.650 permitting the filer to assess a reasonable fee for copies of tariffs made from the filer's printer, provided that no administrative burden is placed on the Department to require the collection of the fee or to provide services.

Venturi Associates, the primary tariff watching service in the Department's Tariff Public Reference Room, recommends that if any user charges are made for public access at Departmental headquarters that they not be cost prohibitive. Our intent was that access at Departmental headquarters would be provided without charge. To the extent

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this may not have been clear in our NPRM, we confirm it here. We will consider those individuals working for "tariff watching services" to be members of the public; access at Departmental headquarters will be provided to them without charge.

IIA recommends that, if there be more than one filer, we consider consolidating the information into a single data feed at Departmental headquarters in order to provide for easier access by the public. At this early stage we are not in a position to determine whether the suggestion would be cost effective or whether it indeed would be genuinely necessary. We will monitor the situation in this regard as we gain experience under the new system. In the event there is more than one filer, we will take the necessary steps to have a menu driven screen that will provide easy access to the public to each filer's database.

IIA recommends that public access to all electronic data at Departmental headquarters be provided through a single terminal located in the Tariff Public Reference Room. While we can appreciate the benefits that would accrue to the public under this recommendation, we are not persuaded that we can direct the filers to use a common terminal. Under our rule each filer is required to install its *own* terminal in the Tariff Public Reference Room for public access. Therefore, in order to provide for a common terminal, the filers would have to reach an accord to provide it. Of course, the filers can consider IIA's recommendation when installing their terminals in the Tariff Public Reference Room, and we would urge them to do so.

Other Issues

In drafting the rule we overlooked one point that we want to clarify here. In §§ 221.283(b)(8)(vii) and 221.283(c)(7) the filer is required to show the controlling fare rule number.

The rule as currently drafted makes no provision for the situation where the controlling rule is published in a separate governing tariff. In order to resolve this problem we are amending these two sections to require that appropriate reference be made to the tariff containing the controlling fare rule.

Executive Order 12291, Regulatory Flexibility Act, and Paperwork Reduction Act, Federalism Assessment

The Department certifies that this rule is not a major rule as defined by Executive Order 12291. It is, however, considered a significant rule under the Department's policies and procedures because it involves important Departmental policies and is a matter of significant interest to the aviation industry. We have prepared a Regulatory Evaluation which is summarized below. Copies of the evaluation have been placed in Docket 43343. (A copy may be obtained by contacting Thomas G. Moore, Chief, Tariffs Division, P–44, Department of Transportation, 400 7th Street SW., Washington, DC 20590, Telephone: (202) 366–2414.) Further, I certify that this rule would not have significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, Pub. L. 96–354. Virtually all airlines that provide international air transportation are large corporations. This rule been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the concepts discussed therein do not have sufficient federalism implications to warrant the preparation of a federalism assessment.

With respect to the Paperwork Reduction Act of 1980, Public Law 96–511, this rule will produce a small increase in the carriers' reporting burden because of their need to make formal application to file electronically. This new information requirement has been submitted to the Office of Management and Budget for approval.

However, we believe that the net paperwork burden associated with the tariff filing requirements should dramatically decrease. For example, in 1987, the international airlines filed with the Department 241,230 tariff pages applicable to international air transportation. Of this total, 219,503 applied to passenger service, and 21,727 applied to cargo service. Of the 219,503 tariff pages filed, we estimate that 65 percent involved passenger fares only. Assuming all carriers currently filing tariffs in paper form elect to file electronically, we would estimate an actual paperwork reduction of 142,676 pages filed with the Department, which would produce a reduction of approximately 60 percent in the paperwork burden.

As we said above, carriers, or their agents, electing to file tariffs electronically will be subject to a new reporting requirement. Specifically, they will need to make a one-time application under § 221.280 for authorization to file tariffs electronically. However, we expect these applications to be straightforward and short, not exceeding a few pages. Given the thousands of pages of paperwork to be saved by this electronic filing option, we believe that, on balance, the paperwork involved in the initial application would be a minor burden.

Regulatory Evaluation

The Department received many comments to our ANPRM which indicated that, while electronic filing could be expected to reduce the costs of filing tariffs, the magnitude of any such changes were difficult to quantify absent a specific ETS proposal. We solicited comments in our NPRM on the economic impact of our proposed rule. None were received.

As we stated in our ANPRM, and again in our NPRM, it costs the government over $500,000 a year and the industry at least $5 million a year to file and process printed tariffs. The benefits that will accrue to the government, the public and the industry by automating the tariff filing system are clear. All of the comments that we have received to date confirm that automation would be beneficial. Our March 1987 *Cost-Benefit Analysis*, which detailed costs (in excess of $21 million a year, with 78 percent of such costs being borne by the industry) and benefits that could accrue to both the Government and the industry with automation, further concluded that it was clearly cost-effective to automate the tariff filing function.

In its petition, ATPCO stated that the ability to file fares tariffs electronically would reduce industry tariff costs by over $2.5 million per year, just for printing costs. ATPCO went on to state that the industry would also benefit financially from the ability to implement new fare packages more quickly in an automated environment than under the paper filing system.

The government would also benefit. Right now, our tariff workload has reached a saturation point and we fully expect this workload to continue to increase substantially. Under these circumstances, we are finding it increasingly difficult to fulfill our statutory and regulatory responsibilities.

A principal feature of this rule is that it would be permissive. That is, it would provide carriers wishing to file fares electronically the option of doing so. It would not, however, eliminate the current, paper-based system. Carriers preferring to file as they have been doing could continue to do so. We believe the rule will reduce economic and paperwork burdens on the industry and on the government. But the key point is that the impact of this rule is within the discretion of the affected parties. To the extent that there is impact, the impact promises to be positive.

We believe that implementation of the rule will provide the Department and the industry with some much-needed paperwork relief, even while the Department continues its work on the ETS.

List of Subjects

14 CFR Part 221

Air fares and rates, Explosives, Freight, Handicapped, Contracts, Claims, Consumer protection. Travel.

14 CFR Part 389

Archives and records.

This rule is being issued under the authority delegated to the Assistant Secretary for Policy and International Affairs contained in 49 CFR 1.56(j)(2)(ii). For the reasons set forth in the preamble, the Department of Transportation amends 14 CFR Parts 221 and 389 as follows:

PART 221—TARIFFS

1. The Authority citation for Part 221 continues to read as follows:

Authority: Secs. 102, 204, 401, 402, 403, 404, 411, 416, 1001, 1002, Pub. L. 85–726, as amended, 72 Stat. 740, 743, 754, 757, 758, 760, 769, 771, 788; 49 U.S.C. 1302, 1324, 1371, 1372, 1373, 1374, 1381, 1388, 1481, 1482.

2. The Table of Contents for Part 221 is amended by adding Subpart W as follows:

Subpart W—Electronically Filed Tariffs

Sec.
221.251 Applicability of the subpart.
221.260 Requirements for filing.
221.270 Time for filing and computation of time periods.
221.275 Requirements for filing paper tariffs.
221.280 Content and explanation of abbreviations, reference marks and symbols.
221.2182 Statement of filing with foreign governments to be shown in air carrier's tariff filings.
221.283 The filing of tariffs and amendments to tariffs.
221.284 Unique rule numbers required.
221.285 Adoption of provisions of one carrier by another carrier.
221.286 Justification and explanation for certain fares.
221.287 Statement of fares.
221.300 Suspension of tariffs.
221.301 Cancellation of suspended matter.
221.302 Special tariff permission.
221.400 Discontinuation of electronic tariff system.
221.500 Filing of paper tariffs required.
221.600 Transmission of electronic tariffs to subscribers.
221.650 Copies of tariffs made from filer's printer(s) located in Department's public reference room.
221.700 Actions under assigned authority and petitions for review of staff action.

§ 221.4 [Amended]

3. Section 221.4 is amended by adding the following definitions in alphabetical order:

* * * * *

Area No. 1—means all of the North and South American Continents and the islands adjacent thereto; Greenland; Bermuda; the West Indies and the islands of the Caribbean Sea; and the Hawaiian Islands (including Midway and Palmyra).

Area No. 2—means all of Europe (including that part of the Union of the Soviet Socialist Republics in Europe) and the islands adjacent thereto; Iceland; the Azores; all of Africa and the islands adjacent thereto; Ascension Island; and that part of Asia lying west of and including Iran.

Area No. 3—means all of Asia and the islands adjacent thereto except that portion included in Area No. 2; all of the East Indies, Australia, New Zealand, and the islands adjacent thereto; and the islands of the Pacific Ocean except those included in Area No. 1.

* * * * *

Bundled Normal Economy Fare—means the lowest one-way fare available for unrestricted, on-demand service in any city-pair market.

CRT—means a video display terminal that uses a cathode ray tube as the image medium.

* * * * *

Direct-service market—means an international market where the carrier provides service either on a nonstop or single-flight-number basis, including change-of-gauge.

ECAC agreement—means the Memorandum of Understanding between the United States and various member nations of the European Civil Aviation Conference, signed on December 17, 1962, as revised and renewed on October 11, 1984, as further revised and renewed on February 13, 1987, and as may be subsequently further revised and renewed.

Electronic Tariff—means an international passenger fares tariff or a special tariff permission application transmitted to the Department by means of an electronic medium, and containing fares for the transportation of persons and their baggage or property, and including such associated data as arbitraries, footnotes, routings, and fare class explanations.

* * * * *

Field—means a specific area of a record used for a particular category of data.

Filer—means an air carrier, foreign air carrier, or tariff publishing agent of such a carrier filing electronic tariffs on its behalf in conformity with this subpart.

* * * * *

Machine-Readable Data—means encoded computer data, normally in a binary format, which can be read electronically by another computer with the requisite software without any human interpretation.

Official DOT Tariff Database—means those data records constituted pursuant to §§ 221.283 and 221.286 of this subpart, which are in the custody of, and are maintained by, the Department of Transportation.

On-line Tariff Database—means the remotely accessible, on-line version, maintained by the filer, of (1) the electronically filed tariff data submitted to the official DOT tariff database, and (2) the Departmental approvals, disapprovals, and other actions, as well as any Departmental notation concerning such approvals, disapprovals, or other actions, that Subpart W of Part 221 requires the filer to maintain in its database.

* * * * *

SFFL—means the Standard Foreign Fare Level as established by the Department of Transportation under section 1002 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1482).

* * * * *

Unbundled Normal Economy Fare—means the lowest one-way fare available for on-demand service in any city-pair market which is restricted in some way, *e.g.*, by limits set and/or charges imposed for enroute stopovers or transfers.

* * * * *

4. Subpart W is added to Part 221 to read as follows:

Subpart W—Electronically Filed Tariffs

§ 221.251 Applicability of the subpart.

(a) Any carrier, consistent with the provisions of this subpart, and Part 221 generally, may file its international passenger fares tariffs electronically in machine-readable form as an alternative to the filing of printed paper tariffs as provided for elsewhere in Part 221. This subpart applies to all carriers and tariff publishing agents and may be used by either if the carrier or agent complies with the provisions of Subpart W. Any carrier or agent that files electronically under this subpart must transmit to the Department the remainder of the tariff in a form consistent with Part 221, Subparts A–V on the same day that the electronic tariff would be deemed received under § 221.270(b).

(b) To the extent that Subpart W is inconsistent with the remainder of Part 221, Subpart W shall govern the filing of electronic tariffs. In all other respects, Part 221 remains in full force and effect.

§ 221.260 Requirements for filing.

(a) No carrier or filing agent shall file an electronic tariff unless, prior to filing, it has signed a maintenance agreement or agreements, furnished by the Department of Transportation, for the maintenance and security of the on-line tariff database.

(b) No carrier or agent shall file an electronic tariff unless, prior to filing, it has submitted to the Department's Office of International Aviation, Tariffs Division, and received approval of, an application containing the following commitments:

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(1) The filer shall file tariffs electronically only in such format as shall be agreed to by the filer and the Department. (The filer shall include with its application a proposed format of tariff. The filer shall also submit to the Department all information necessary for the Department to determine that the proposed format will accommodate the data elements set forth in § 221.283.)

(2) The filer shall provide, maintain and install in the Public Reference Room at the Department (as may be required from time to time) one or more CRT devices and printers connected to its on-line tariff database. The filer shall be responsible for the transportation, installation, and maintenance of this equipment and shall agree to indemnify and hold harmless the Department and the U.S. Government from any claims or liabilities resulting from defects in the equipment, its installation or maintenance.

(3) The filer shall provide public access to its on-line tariff database, at Departmental headquarters, during normal business hours.

(4) The access required at Departmental headquarters by this subpart shall be provided at no cost to the public or the Department.

(5) The filer shall provide the Department access to its on-line tariff database 24 hours a day, 7 days a week, except, that the filer may bring its computer down between 6:00 a.m. and 6:00 p.m. Eastern Standard Time or Eastern Daylight Saving Time, as the case may be, on Sundays, when necessary, for maintenance or for operational reasons.

(6) The filer shall ensure that the Department shall have the sole ability to approve or disapprove electronically any tariff filed with the Department and the ability to note, record and retain electronically the reasons for approval or disapproval. The carrier or agent shall not make any changes in data or delete data after it has been transmitted electronically, regardless of whether it is approved, disapproved, or withdrawn. The filer shall be required to make data fields available to the Department in any record which is part of the on-line tariff database.

(7) The filer shall maintain all fares filed with the Department and all Departmental approvals, disapprovals and other actions, as well as all Departmental notations concerning such approvals, disapprovals or other actions, in the on-line tariff database for a period of two (2) years after the fare becomes inactive. After this period of time, the carrier or agent shall provide the Department, free of charge, with a copy of the inactive data on a machine-readable tape or other mutually acceptable electronic medium.

(8) The filer shall ensure that its on-line tariff database is secure against destruction or alteration (except as authorized by the Department), and against tampering.

(9) Should the filer terminate its business or cease filing tariffs electronically, it shall provide to the Department on a machine-readable tape or any other mutually acceptable electronic medium, contemporaneously with the cessation of such business, a complete copy of its on-line tariff database.

(10) The filer shall furnish to the Department, on a daily basis, on a machine-readable tape or any other mutually acceptable electronic medium, all transactions made to its on-line tariff database.

(11) The filer shall afford any authorized Departmental official full, free, and uninhibited access to its facilities, databases, documentation, records, and application programs, including support functions, environmental security, and accounting data, for the purpose of ensuring continued effectiveness of safeguards against threats and hazards to the security or integrity of its electronic tariffs, as defined in this subpart.

(12) The filer must provide a field in the Government Filing File for the signature of the approving U.S. Government Official through the use of a Personal Identification Number (PIN).

(13) The filer shall provide a leased dedicated data conditioned circuit with sufficient capacity (initially not less than 9.6K baud rate) to handle electronic data transmissions to the Department. Further, the filer must provide for a secondary or a redundancy circuit in the event of the failure of the dedicated circuit. The secondary or redundancy circuit must be equal to or greater than 4.8K baud rate. In the event of a failure of the primary circuit the filer must notify the Chief of the Tariffs Division of the Department's Office of International Aviation, as soon as possible, after the failure of the primary circuit, but not later than two hours after failure, and must provide the name of the contact person at the telephone company who has the responsibility for dealing with the problem.

(c) Each time a filer's on-line tariff database is accessed by any user during the sign-on function the following statement shall appear:

> The information contained in this system is for informational purposes only, and is a representation of tariff data that has been formally submitted to the Department of Transportation in accordance with applicable law or a bilateral treaty to which the U.S. Government is a party.

§ 221.270 Time for filing and computation of time periods.

(a) A tariff, or revision thereto, or a special tariff permission application may be electronically filed with the Department immediately upon compliance with § 221.280, and anytime thereafter, subject to § 221.500. The actual date and time of filing shall be noted with each filing.

(b) For the purpose of determining the date that a tariff, or revision thereto, filed pursuant to this subpart, shall be deemed received by the Department:

(1) For all electronic tariffs, or revisions thereto, filed before 5:30 p.m. local time in Washington, DC, on Federal business days, such date shall be the actual date of filing.

(2) For all electronic tariffs, or revisions thereto, filed after 5:30 p.m. local time in Washington, DC, on Federal business days, and for all electronic tariffs, or revisions thereto, filed on days that are not Federal business days, such date shall be the next Federal business day.

§ 221.275 Requirement for filing paper tariffs.

(a) Any tariff, or revision thereto, filed in paper format which accompanies, governs, or otherwise affects, a tariff filed electronically, must be received by the Department on the same date that a tariff or revision thereto, is filed electronically with the Department under § 221.270(b). Further, such paper tariff, or revision thereto, shall be filed in accordance with the requirements of Subparts A–V of Part 221. No tariff or revision thereto, filed electronically under this subpart, shall contain an effective date which is at variance with the effective date of the supporting paper tariff, except as authorized by the Department.

(b) Any printed justifications, or other information accompanying a tariff, or revision thereto, filed electronically under this subpart, must be received by the Department on the same date as any tariff, or revision thereto, filed electronically.

(c) If a filer submits a filing which fails to comply with paragraph (a) of this section, or if the filer fails to submit the information in conformity with paragraph (b) of this section, the filing will be subject to rejection, denial, or disapproval, as applicable.

§ 221.280 Content and explanation of abbreviations, reference marks and symbols.

(a) *Content.* The format to be used for any electronic tariff must be that agreed to in advance as provided for in § 221.260, and must include those data elements set forth in § 221.283. Those portions that are filed in paper form shall comply in all respects with Part 221, Subparts A–V.

(b) *Explanation of Abbreviations, Reference Marks and Symbols.* Abbreviations, reference marks and symbols which are used in the tariff shall be explained in each tariff.

(1) The following symbols shall be used:

R—Reduction
I—Increase
N—New Matter
X—Canceled Matter
C—Change in Footnotes, Routings, Rules or Zones
E—Denotes change in Effective Date only.

(2) Other symbols may be used only when an explanation is provided in each tariff and such symbols are consistent throughout all the electronically filed tariffs from that time forward.

§ 221.282 Statement of filing with foreign governments to be shown in air carrier's tariff filings.

(a) Every electronic tariff filed by or on behalf of an air carrier that contains fares which, by international convention or agreement entered into between any other country and the United States, are required to be filed with that country, shall include the following statement:

> The rates, fares, charges, classifications, rules, regulations, practices, and services provided herein have been filed in each country in which filing is required by treaty, convention, or agreement entered into between that country and the United States, in accordance with the provisions of the applicable treaty, convention, or agreement.

(b) The statement referenced in § 221.282(a) may be included with each filing advice by the inclusion of a symbol which is properly explained.

(c) The required symbol may be omitted from an electronic tariff or portion thereof if the tariff publication that has been filed with any other country pursuant to its tariff regulations bears a tariff filing designation of that country in addition to the C.A.B./D.O.T. number appearing on the tariff.

§ 221.283 The filing of tariffs and amendments to tariffs.

All electronic tariffs and amendments filed under this subpart, including those for which authority is sought to effect changes on less than bilateral/statutory notice under § 221.302, shall contain the following data elements:

(a) A *Filing Advice Status File*—which shall include:

(1) Filing date and time;
(2) Filing advice number;
(3) Reference to carrier;
(4) Reference to geographic area;
(5) Effective date of amendment or tariff;
(6) A place for government action to be recorded; and
(7) Reference to the Special Tariff Permission when applicable.

(b) A *Government Filing File*—which shall include:

(1) Filing advice number;
(2) Carrier reference;
(3) Filing date and time;
(4) Proposed effective date;
(5) Justification text; reference to geographic area and affected tariff number;
(6) Reference to the Special Tariff Permission when applicable;
(7) Government control data, including places for:
(i) Name of the government analyst, except that this data shall not be made public, notwithstanding any other provision in this or any other subpart;
(ii) Action taken and reasons therefor.
(iii) Remarks, except that internal Departmental data shall not be made public, notwithstanding any other provision in this or any other subpart;
(iv) Date action is taken; and
(v) Personal Identification Number; and
(8) Tariff, or proposed changes to the tariffs, including:
(i) Market;
(ii) Fare code;
(iii) One-way/roundtrip (O/R);
(iv) Fare Amount;
(v) Currency;
(vi) Footnote (FN);
(vii) Rule Number, provided that, if the rule number is in a tariff, reference shall be made to that tariff containing the rule;
(viii) Routing (RG) Number(s), provided that the abbreviation MPM (Maximum Permissible Routing) shall be considered a number for the purpose of this file;
(ix) Effective date and discontinue date if the record has been superseded;
(x) Percent of change from previous fares; and
(xi) Expiration date.

(c) *A Historical File*—which shall include:

(1) Market;
(2) Fare code;
(3) One-way/roundtrip (O/R);
(4) Fare amount;
(5) Currency;
(6) Footnote (FN);
(7) Rule Number, provided that, if the rule number is in a tariff other than the fare tariff, reference shall be made to that tariff containing the rule;
(8) Routing (RG) Numbers, provided that the abbreviation MPM (Maximum Permissible Routing) shall be considered a number for the purpose of this file;
(9) Effective Date;
(10) Discontinue Date;
(11) Government Action;
(12) Carrier;
(13) All inactive fares (two years);
(14) Any other fare data which is essential; and
(15) Any necessary cross reference to the Government Filing File for research or other purposes.

§ 221.284 Unique rule numbers required.

(a) Each "bundled" and "unbundled" normal economy fare applicable to foreign air transportation shall bear a unique rule number.

(b) The unique rule numbers for the fares specified in this section shall be set by mutual agreement between the filer and the Department prior to the implementation of any electronic filing system.

§ 221.285 Adoption of provisions of one carrier by another carrier.

When one carrier adopts the tariffs of another carrier, the effective and prospective fares of the adopted carrier shall be changed to reflect the name of the adopting carrier and the effective date of the adoption. Further, each adopted fare shall bear a notation which shall reflect the name of the adopted carrier and the effective date of the adoption, provided that any subsequent revision of an adopted fare may omit the notation.

§ 221.286 Justification and explanation for certain fares.

Any carrier or its agent, must provide, as to any new or increased bundled or unbundled (whichever is lower) on-demand economy fare in a direct-service market, a comparison between, on the one hand, that proposed fare, and on the other hand, the ceiling fare allowed in that market based on either the pertinent ECAC Zone or SFFL. If, however, the carrier's proposed fare is intended to match that already approved for another direct-service carrier, the proponent carrier may forego the comparison and instead, simply identify the direct competitor's fare it claims to match.

§ 221.287 Statement of fares.

All fares filed electronically in direct-service markets shall be filed as single factor fares.

§ 221.300 Suspension of tariffs.

(a) A rate, fare, charge, change, rule or other tariff provision that is suspended by the Department pursuant to section 1002 of the Act (49 U.S.C. 1482) shall be noted by the Department in the Government Filing File and the Historical File.

(b) When the Department vacates a tariff suspension, in full or in part, and after notification of the carrier by the Department, such event shall be noted by the carrier in the Government Filing File and the Historical File.

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(c) When a tariff suspension is vacated or when it becomes effective upon termination of the suspension period, the carrier or its agent shall refile the tariff showing the effective date.

§ 221.301 Cancellation of suspended matter.

When, pursuant to an order of the Department, the cancellation of rules, fares, charges, or other tariff provision is required, such action shall be made by the carrier by appropriate revisions to the tariff.

§ 221.302 Special tariff permission.

(a) When a filer submits an electronic tariff or an amendment to an electronic tariff for which authority is sought to effect changes on less than bilateral/statutory notice, and no related tariff material is involved. The submission shall bear a sequential filing advice number. The submission shall appear in the Government Filing File and the Filing Advice Status File, and shall be referenced in such a manner to clearly indicate that such changes are sought to be made on less than bilateral/statutory notice.

(b) When a filer submits an electronic tariff or an amendment to the electronic tariff for which authority is sought to effect changes on less than bilateral/statutory notice, and it contains related paper under § 221.275, the paper submission must bear the same filing advice number as that used for the electronic submission. Such paper submission shall be in the form of a revised tariff page as prescribed by Subpart H of 14 CFR Part 221, rather than as a separate request for Special Tariff Permission. All material being submitted on a paper tariff page as part of an electronic submission, will clearly indicate the portion(s) of such tariff page that is being filed pursuant to, and in conjunction with, the electronic submission on less than bilateral/statutory notice.

(c) Departmental action on the Special Tariff Permission request, both electronic and paper, shall be noted by the Department in the Government Filing File and the Filing Advice Status File.

(d) When the paper portion of a Special Tariff Permission that has been filed with the Department pursuant to paragraph (b) of this section is disapproved or other action is taken by the Department, such disapproval or other action will be reflected on the next consecutive revision of the affected tariff page(s) in the following manner:

(1) The portion(s) of ____ Revised Page ____ filed under EFA No. ____ was/were disapproved by DOT.

(2) *Example of other action:* the portion(s) ____ Revised Page ____ filed under EFA No. ____ was/were required to be amended by DOT.

(e) When the Department disapproves in whole or in part or otherwise takes an action against any page filed under this section the filer must revise and refile a revised page within two business days following the disapproval or notice of other action.

(f) All submissions under this section shall comply with the requirements of § 221.283.

§ 221.400 Discontinuation of electronic tariff system.

In the event that the electronic tariff system is discontinued, or the source of the data is changed, or a filer discontinues its business, all electronic data records prior to such date shall be provided immediately to the Department, free of charge, on a machine-readable tape or other mutually acceptable electronic medium.

§ 221.500 Filing of paper tariffs required.

(a) After approval of any application filed under § 221.200 of this subpart to allow a filer to file tariffs electronically, the filer in addition to filing electronically must continue to file printed tariffs as required by Subparts A–V of Part 221 for a period of 90 days, or until such time as the Department shall deem such filing no longer to be necessary: *Provided,* That during the period specified by this section the filed printed tariff shall continue to be the official tariff.

(b) Upon notification to the filer that it may commence to file its tariffs solely in an electronic mode, concurrently with the implementation of filing electronically the filer shall:

(1) Furnish the Department with a copy of all the existing effective and prospective records on a machine-readable tape or other mutually acceptable electronic medium accompanied by an affidavit attesting to the accuracy of such records; and

(2) Simultaneously cancel such records from the paper tariff in the manner prescribed by Subparts A–V of Part 221.

§ 221.600 Transmission of electronic tariffs to subscribers.

(a) Each filer that files an electronic tariff under this subpart shall make available to any person so requesting, a subscription service meeting the terms of paragraph (b) of this section.

(b) Under the required subscription service, remote access shall be allowed to any subscriber to the on-line tariff database, including access to the justification required by § 221.200. The subscription service shall not preclude the offering of additional services by the filer or its agent.

(c) The filer at its option may establish a charge for providing the required subscription service to subscribers: *Provided,* That the charge may not exceed a reasonable estimate of the added cost of providing the service.

(d) Each filer shall provide to any person upon request, a copy of the machine-readable data (raw tariff data) of all daily transactions made to its on-line tariff database. The terms and prices for such value-added service may be set by the filer: *Provided,* That such terms and prices shall be non-discriminatory, *i.e.*, that they shall be substantially equivalent for all similarly-situated persons.

§ 221.650 Copies of tariffs made from filer's printer(s) located in Department's public reference room.

Copies of information contained in a filer's on-line tariff database may be obtained by any user at Departmental Headquarters from the printer or printers placed in Tariff Public Reference Room by the filer. The filer may assess a fee for copying, provided it is reasonable and that no administrative burden is placed on the Department to require the collection of the fee or to provide any service in connection therewith.

§ 221.700 Actions under assigned authority and petitions for review of staff action.

When an electronically filed record which has been submitted to the Department under this subpart, is disapproved (rejected), or a special tariff permission is approved or denied, under authority assigned by the Department of Transportation's Regulations, 14 CFR 385.13, such actions shall be understood to include the following provisions:

Applicable to a Record or Records Which is/are Disapproved (rejected):

The record(s) disapproved (rejected) is/are void, without force or effect, and must not be used.

Applicable to a record or records which is/are disapproved (rejected), and to special tariff permissions which are approved or denied:

This action is taken under authority assigned by the Department of Transportation in its Organization Regulations, 14 CFR 385.13. Persons entitled to petition for review of this action pursuant to the Department's Regulations, 14 CFR 385.50, may file such petitions within seven days after the date of this action. This action shall become effective immediately, and the filing of a petition for review shall not preclude its effectiveness.

Issued in Washington, DC, on January 13, 1989.

Gregory S. Dole,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 89-1290 Filed 1-18-89; 8:45 am]

BILLING CODE 4910-62-M

PART 389—FEES AND CHARGES FOR SPECIAL SERVICES

1. The Authority citation for Part 389 continues to read as follows:

Authority: Sections 204, 1002, Pub. L. 85-726, as amended, 72 Stat. 743, 797; 49 U.S.C. 1324, 1502. Act of August 31, 1951, Ch. 376, 65 Stat. 290; 31 U.S.C. 483a.

2. Section 389.20 is revised to read as follows:

§ 389.20 Applicability of subpart.

(a) This subpart applies to the filing of certain documents and records of the Department by non-government parties, and prescribes fees for their processing.

(b) For the purpose of this subpart, record means those electronic tariff records submitted to the Department under Subpart W of 14 CFR Part 221, and contains that set of information which describes one (1) tariff fare, or that set of information which describes one (1) related element associated with such tariff fare.

§ 389.21 [Amended]

3. The first line of § 389.21(a) is amended by adding *"or record"* after the word *"document"*.

§ 389.22 [Amended]

4. Section 389.22(a) is redesignated as § 389.22(a)(1) and a new § 389.22(a)(2) is added to read as follows:

(a) * * *

(2) Except as provided in § 389.23, records which are not accompanied by the appropriate filing fees shall be retained and considered filed with the Department. The Department will notify the filer concerning the nonpayment or underpayment of the filing fees, and will also notify the filer that the records will not be processed until the fees are paid.

§ 389.25 [Amended]

5. Section 389.25 is redesignated as § 389.25(a) and a heading is added reading as follows:

(a) *Document-filing fees.*

6. Section 389.25(b) is added reading as follows:

* * * * *

(b) *Electronic Tariff Filing Fees*—The filing fee for one (1) or more transactions proposed in any existing record, or for any new or canceled records, shall be 5 cents per record; *Provided:* That no fee shall be assessed for those records submitted to the Department pursuant to § 221.500(b)(1) of this subpart.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1204

Information Security Program

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: NASA is amending 14 CFR Part 1204 by revising Subpart 1204.10, "Inspection of Persons and Personal Effects on NASA Property." This revision makes organizational title changes found in § 1204.1002 and § 1204.1003(b).

EFFECTIVE DATE: January 19, 1989.

ADDRESS: NASA Security Office, Code NIS, NASA Headquarters, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Erwin V. Minter, 202-453-2953.

SUPPLEMENTARY INFORMATION: Since this action is internal and administrative in nature and does not affect the existing regulations, notice and public comment are not required.

The National Aeronautics and Space Administration has determined that:

1. This rule is not subject to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601-612, since it will not exert a significant economic impact on a substantial number of small entities.

2. This rule is not a major rule as defined in Executive Order 12291.

List of Subjects in 14 CFR Part 1204

Airports, Authority delegations (Government agencies), Federal buildings, facilities and real estate, Government contracts, Government employees, Government procurement, Grant programs—science and technology, Intergovernmental relations, Labor unions, Security measures, Small businesses.

For the reason set out in the Preamble, 14 CFR Part 1204, Subpart 1204.10, is amended as follows:

PART 1204—ADMINISTRATIVE AUTHORITY AND POLICY

1. The authority citation for Part 1204 Subpart 1204.10 continues to read as follows:

Authority: 42 U.S.C. 2455(a).

2. Subpart 1204.10 is revised to read as follows:

Subpart 1204.10—Inspection of Persons and Personal Effects on NASA Property

Sec.

1204.1000 Scope of subpart.
1204.1001 Policy.
1204.1002 Responsibility.
1204.1003 Procedures.

Subpart 1204.10—Inspection of Persons and Personal Effects on NASA Property

§ 1204.1000 Scope of subpart.

This subpart establishes NASA policy and prescribes certain minimum procedures concerning the inspection of persons and property in their possession on NASA installations.

§ 1204.1001 Policy.

In the interest of national security, NASA will provide appropriate and adequate protection or security for facilities, property, and information in its possession or custody. In furtherance of this policy, NASA reserves the right to conduct an inspection of any person, including any property in the person's possession or control, as a condition of admission to or continued presence on any NASA installation.

§ 1204.1002 Responsibility.

The Director for each Field Installation and the Assistant Administrator for Headquarters Operations are responsible for implementing the provisions of this subpart when it is determined that such action is necessary because of bomb threats, unexplained loss of Government property, or other unusual situations, for the protection or security of the installation and the personnel and property therein. In the local implementation of this subpart, the Directors of NASA Installations (and component installations) located on Federal property under the control of other agencies will coordinate their action with appropriate officials of the other agencies concerned.

§ 1204.1003 Procedures.

(a) All entrances to NASA installations will be conspicuously posted with the following notices:

PURSUANT TO NASA REGULATIONS THE ENTRANCE OF INDIVIDUALS TO, OR THEIR CONTINUED PRESENCE ON, THIS INSTALLATION IS CONDITIONED UPON THEIR CONSENT TO INSPECTION OF THEIR PERSONS, AND OF PROPERTY IN THEIR POSSESSION OR CONTROL.

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(b) Inspection pursuant to this subpart will be conducted only by NASA security personnel or members of the installation security patrol or guard force. Such inspections will be conducted in accordance with guidelines established by the Director, NASA Security Office, NASA Headquarters.

(c) If an individual does not consent to an inspection, it will not be carried out, and the individual will be denied admission to, or be escorted from, the installation.

(d) If, during an inspection, an individual is found to be in unauthorized possession of items believed to represent a threat to the safety or security of the installation, the individual will be denied admission to, or be escorted from, the installation and appropriate law enforcement authorities will be notified immediately.

(e) If, during an inspection conducted pursuant to this subpart, an individual is in possession of U.S. Government property without proper authorization, that person will be required to relinquish the property to the security representative conducting the inspection pending proper authorization for the possession of the property or its removal from the installation. The individual relinquishing the property will be given a receipt therefor.

Dale D. Myers,

Deputy Administrator.

[FR Doc. 89-1199 Filed 1-18-89; 8:45 am]

BILLING CODE 7510-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

Excluded Nonnarcotic Over-the-Counter Substances

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Final rule.

SUMMARY: This rule excludes the Benzedrex Inhaler from the provisions of the Controlled Substances Act, since the product meets the statutory definition of an excluded product.

DATES: Effective February 21, 1989. Comments or objections may be submitted on or before March 20, 1989.

ADDRESS: Comments or objections should be submitted in quintuplicate to: Administrator, Drug Enforcement Administration, 1405 I Street, NW., Washington, DC 20537. Attn: DEA Federal Register Representative.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug Control Section, Drug Enforcement Administration, Washington, DC 20537. Telephone: (202) 633-1366 (FTS 633-1366).

SUPPLEMENTARY INFORMATION: The Controlled Substances Act (CSA) (21 U.S.C. 801 *et seq.*) at 21 U.S.C 811(g)(1) requires that the Attorney General exclude any nonnarcotic substance from a schedule if such substance may, under the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 301 *et seq.*), be lawfully sold over the counter without a prescription. The Benzedrex Inhaler, NDC #49692-0828, meets the criteria for such an exclusion. The Benzedrex Inhaler contains propylhexedrine, a Schedule V nonnarcotic controlled substance as an active medicinal ingredient. The inhaler is permitted, under the FD&C Act, to be sold over the counter without a prescription. In accordance with 21 CFR 1308.21, the sponsor of the product, SmithKline Consumer Products, has applied to the Administrator of the Drug Enforcement Administration (DEA) for exclusion of the product from the provisions of the CSA pursuant to 21 U.S.C. 811(g)(1). The application has been received by the Deputy Assistant Administrator, Office of Diversion Control.

The Deputy Assistant Administrator finds that the product meets the criteria for exclusion from the CSA in accordance with 21 U.S.C. 811(g)(1). Any interested person may file written comments on or objections to this order on or before March 20, 1989. If any such comments or objections raise significant issues regarding any finding of fact or conclusion of law upon which the order is based, the Deputy Assistant Administrator shall immediately suspend the effectiveness of this order until he may reconsider the application in light of the comments and objections filed. Thereafter the Deputy Assistant Administrator shall reinstate, revoke, or amend his original order as he determines appropriate.

The Deputy Assistant Administrator hereby certifies that this matter will have no significant impact upon small businesses or other entities within the meaning the intent of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*

The addition of a product to the list of excluded nonnarcotic over-the-counter substances has the effect of removing it from the CSA and the implementing regulations.

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The Office of Management and Budget has determined that these changes are internal agency matters which do not require formal review by that agency.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Narcotics, Prescription drugs.

Under the authority vested in the Attorney General by 21 U.S.C. 811(g)(1) and delegated to the Administrator of DEA by Department of Justice Regulations (28 CFR 0.100), and redelegated to the Deputy Assistant Administrator of DEA, Office of Diversion Control by 28 CFR 0.104, the Deputy Assistant Administrator hereby amends 21 CFR Part 1308 as set forth below.

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

1. The authority citation for 21 CFR Part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b).

2. Section 1308.22 is amended by adding to the table, in the appropriate alphabetical order, the product listed below.

§ 1308.22 Excluded Substances.

* * * * *

EXCLUDED NONNARCOTIC OVER-THE-COUNTER SUBSTANCES

Trade name or designation	Dosage form	Composition	Potency	Manufacturer or distributor
•	•	•	•	•
Benzedrex Inhaler	Inhaler	Propylhexedrine	250.00 mg	SmithKline Consumer Products
•	•	•	•	•

Dated: January 11, 1989.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 89-1230 Filed 1-18-89; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 286b

[OSD Administration Instruction No. 81]

Privacy Program

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: Administrative changes to Part 286b provides guidance and procedures for use in establishing the Privacy Program in the Office of the Secretary of Defense and those organizations assigned to OSD for administrative support. This amendment incorporates certain organizational realignments within the Office of the Secretary of Defense which include the designation of the Inspector General, Department of Defense, as a separate component of the Department of Defense, and necessitates a change in processing Privacy Act requests pertaining to that agency. It changes the titles of certain officials and agencies, and information concerning the participation of the OSD components in computer matching programs.

EFFECTIVE DATE: The name change pertaining to the Organization of the Joint Chiefs of Staff (OJCS) to the "Joint Staff" is effective September 29, 1988. The Inspector General, Department of Defense, becomes a DoD Component for purposes of the Privacy Act effective January 3, 1989. All IG, DoD-related Privacy Act requests, appeals, and litigation actions received on or after January 3, 1989, will be sent to the Office of the Inspector General, Department of Defense. All outstanding IG, DoD-related Privacy Act requests remaining on file with the Office of the Secretary of Defense will be transferred January 3, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Dan Cragg, OSD Privacy Act Officer, Records Management Division, The Pentagon, Washington, DC 20301-1100, telephone 202-697-2501 or AUTOVON 227-2501.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 286b Privacy

Accordingly, 32 CFR Part 286b is amended as follows:

PART 286b—[AMENDED]

1. The authority citation for Part 286b continues to read as follows:

Authority: Privacy Act of 1974, Pub. L. 93-579, 88 Stat. 1896 (5 U.S.C. 552a)

§ 286b.2 [Amended]

2. In § 286b.2(a) change "Organization of the Joint Chiefs of Staff (OJCS)" to "Joint Staff" and remove "Inspector General of the Department of Defense (IG, DOD),"

§ 286b.5 [Amended]

3. In § 286b.5(a) change "Deputy Assistant Secretary of Defense (Administration) (DASD)(A)), Office of the Assistant Secretary of Defense (Comptroller) OASD(c))" to "Director of Administration and Management (DA&M)"

§ 286b.5 [Amended]

4. In § 286b.5(b)(2), (d)(2), and (e)(1), change "DASD(A)" to "DA&M"

§ 286b.5 [Amended]

5. In § 286.5(e)(2), change "Records Administration, ODASD(A)" to "OSD Records Administrator, WHS"

§ 286b.6 [Amended]

6. In § 286b.6(a)(2), (c)(5)(iv), (c)(7) (both places), (c)(8), (c)(9), and (d)(1) change "DASD(A)" to "DA&M"

§ 286b.6 [Amended]

7. In §286b.6(c)(6) change "Deputy Assistant Secretary of Defense (Administration)" to "Director of Administration and Management"

8. In § 286b.6(c)(7)(ii), (c)(7), and (c)(9) change "DASD(A)'s" to "DA&M's"

9. Add § 286b.6(d)(4) to read as follows:

§ 286b.6 Procedures.

* * * * *

(d) * * *

(4) Paragraph B of Chapter 11, DoD 5400.11-R, prescribes that all requests for participation in a matching program (either as a matching agency or a source agency) be submitted to the Defense Privacy Office for review and compliance. OSD Components will submit these requests through the Records Management Division.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

January 12, 1989.

[FR Doc. 89-1175 Filed 1-18-89; 8:45 am]

BILLING CODE 3810-01-M

32 CFR Part 359

[DoD Directive 5105.22]

Defense Logistics Agency

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: This document revises 32 CFR Part 359. It reflects changes mandated by the Goldwater-Nichols DoD Reorganization Act of 1986 (10 U.S.C. 191-193). It also assigns responsibility for management oversight of the Agency to the Under Secretary of Defense for Acquisition.

EFFECTIVE DATE: December 6, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. R. Furtner, Office of the Director for Administration and Management (Organizational and Management Planning), the Pentagon, Washington, DC 20301, telephone 202-697-4281.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 359

Organization and functions (Government agencies).

Accordingly, 32 CFR Part 359 is revised to read as follows:

PART 359—DEFENSE LOGISTICS AGENCY (DLA)

Sec.

359.1 Purpose.
359.2 Mission.
359.3 Organization and management.
359.4 Responsibilities and functions.
359.5 Authority.
359.6 Relationships.
359.7 Administration.

Appendix A—Assigned DoD Programs and/or Systems

Appendix B—Delegations of Authority

Authority: 10 U.S.C. 191-193

§ 359.1 Purpose.

Pursuant to authority vested in the Secretary of Defense under Title 10, this Part revises 32 CFR Part 359 to update the responsibilities, functions, relationships, and authorities of the Defense Logistics Agency (DLA).

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§ 359.2 Mission.

The DLA shall function as an integral element of the military logistics system of the Department of Defense to provide effective and efficient world-wide logistics support to the Military Departments and the Unified and Specified Commands under conditions of peace and war, as well as to other DoD Components, Federal Agencies, foreign governments, or international organizations, as assigned. This support shall include:

(a) The provision of material commodities and items of supply that have been determined, through the application of approved criteria, to be appropriate for integrated management by a single agency on behalf of all DoD Components, of that has been otherwise specifically assigned by appropriate authority.

(b) The performance of logistics services directly associated with furnishing material commodities and items of supply (hereafter referred to as "Items").

(c) The administration of Department-wide supply and logistics management systems, programs, and activities, as assigned, including the provision of technical assistance, support services, and information.

§ 359.3 Organization and management.

DLA is established as a Combat Support Agency of the Department of Defense under the overall supervision of the Under Secretary of Defense for Acquisition (USD(A)) and, with the exception of those responsibilities, functions and relationships assigned to the Chairman, Joint Chiefs of Staff (CJCS), by this Part, is under the direction, authority, and control of the USD(A) pursuant to 32 CFR Part 382. It shall consist of a Director and such subordinate organizational elements as are established by the Director or specifically assigned to the Agency by the Secretary of Defense.

§ 359.4 Responsibilities and functions.

(a) The *Director, Defense Logistics Agency* (DLA) shall:

(1) Organize, direct, and manage the DLA and all assigned resources; procure assigned items; and administer, supervise, and control all programs, services, and items assigned to DLA.

(2) Provide staff advice and assistance on supply and logistics matters to the Office of the Secretary of Defense (OSD), the Military Departments, other DoD Components, and other designated organizations, as appropriate.

(3) Maintain a wholesale distribution system for assigned items and accomplish all material management functions required to ensure responsive support to the associated supply and logistics requirements determination, supply control, procurement, quality and reliability assurance, industrial responsiveness and mobilization planning, receipt, storage, inventory accountability and distribution control, transportation, repair, maintenance and manufacture, shelf-life control, provisioning, technical logistic data and information, engineering support, value engineering, standardization, reutilization and marketing, and other related supply and logistics management functions, as appropriate.

(4) Provide contract administration services in support of the Military Departments and other DoD Components, the National Aeronautics and Space Administration, and other designated Federal and State Agencies, foreign governments, and international organizations.

(5) Operate centralized management information and technical report data banks in DLA; oversee the management of contractor-operated DoD Information Analysis Centers in selected fields of science and technology; and provide scientific and technical information to DoD Components, individuals, businesses, educational institutions, government laboratories, government contractors, and others consistent with policy guidance provided by the Under Secretary of Defense for Research and Engineering.

(6) Perform systems analysis and design, procedural development, and maintenance for supply and service systems and other logistics matters assigned by the Secretary of Defense.

(7) Administer, manage, and operate the DoD-wide programs and systems listed in enclosure 1, and recommend periodic revisions to this list, as appropriate.

(8) Develop, monitor, and maintain effective supply relationships with the General Services Administration (GSA) in order to ensure the timely availability of GSA items required by DoD Components.

(9) Support the Commanders of Unified Commands, and through overseas elements of DLA, provide coordinated and responsive logistics support; develop policies; plans, and procedures; develop resources requirements; ensure security compliance by DLA personnel; and provide for the management and direction of DLA overseas activities.

(10) Perform such other functions as may be assigned by the Secretary of Defense or USD(A).

(b) The *Under Secretary of Defense (Acquisition)* (USD(A)) shall:

(1) Provide guidance and direction to DLA on operational policies and procedures related to the development and operation of defense logistics programs and systems.

(2) Consult with the CJCS on such areas as critical logistics war fighting deficiencies and military requirements for defense acquisition programs.

(3) Obtain recommendations from the CJCS relative to DLA's contribution to war fighting readiness and sustainment of the Unified Commands.

(c) The *Chairman, Joint Chiefs of Staff* (CJCS), under the authority and direction of the Secretary of Defense, shall:

(1) Provide advice and recommendations to the USD(A) regarding the mission, functions, and responsibilities of DLA.

(2) Provide advice on matters pertaining to the policies, planning, design, maintenance, testing, and evaluation of logistics systems.

(3) Obtain advice and recommendations from the USD(A) and from the Director, DLA, on matters within the areas of responsibility assigned to DLA.

(4) Review DLA planning and programming documents, assess their responsiveness to operational requirements, and provide direction to the Director, DLA.

(5) Periodically submit (not less than every 2 years) to the Secretary of Defense a report with respect to DLA's responsiveness and readiness to support operating forces in the event of war or threat to national security and other recommendations that the Chairman deems appropriate.

(6) Provide for the participation of DLA in joint training exercises and assess performance.

(7) Provide tasking related to defense readiness to the Director, DLA.

(8) Develop and submit JCS logistics requirements and priorities to the Director, DLA.

(d) The *Commander of a Unified Command* is authorized to, and as appropriate shall:

(1) Following approval from the Director, DLA, or the CJCS, and within the Commander's geographic area, direct DLA elements to ensure effective operations.

(2) In a major emergency, assume temporary operational control of all DLA elements in the Commander's area of responsibility, with notification immediately following to the CJCS, the appropriate operational commander, and the Director, DLA.

(e) *Commanders of Component Commands* shall:

(1) Exercise such responsibilities and authorities pertinent to DLA elements as may be assigned or delegated to them by the Commander of their Unified Command.

(2) Provide for the physical security and administrative and logistic support of DLA elements as agreed to by DLA and Component Commands concerned under inter-Service support agreements.

(f) Within their areas of responsibility, the CJCS, the CINCs, the Secretaries of the Military Departments, and the heads of other DoD Components shall provide to the Director, DLA, support and logistical planning information, including information on funding shortfalls that impact the responsibilities and functions assigned to DLA.

§ 359.5 Authority.

The Director, DLA, is specifically delegated authority to:

(a) Meet the needs of the Military Departments and other authorized customers by conducting, directing, supervising, or controlling all procurement activities regarding property, supplies, and services assigned to DLA for procurement in accordance with applicable laws, DoD Regulations, the FAR and the DFARS. To the extent that any law or Executive order specifically limits the exercise of such authority to persons at the Secretarial level, such authority shall be exercised by the USD(A).

(b) Prescribe procedures, standards, and practices for the Department of Defense governing the execution of assigned responsibilities and functions.

(c) Obtain such reports, information, advice, and assistance from other DoD Components consistent with the policies and criteria of DoD Directive 7750.5[1] as may be necessary for the performance of assigned functions and responsibilities.

(d) Establish new DLA facilities or recommend to the USD(A) the reassignment to DLA or use of existing facilities of the Military Departments by DLA, as deemed necessary for improved effectiveness and economy.

(e) Provide membership on the Defense Acquisition Regulatory Council (DAR Council), participate with the Secretaries of the Military Departments and Federal Agencies in developing and publishing the FAR and participate with the Secretaries of the Military Departments in developing and publishing the DFARS.

(f) Exercise the administrative authorities contained in the Appendix B to this Part.

§ 359.6 Relationships.

(a) In performing assigned functions, the Director, DLA, shall:

(1) Have free and direct access to, and communicate with, all elements of the Department of Defense and other Executive Departments and Agencies, as necessary.

(2) Maintain appropriate liaison with other DoD Components, Agencies of the Executive branch, foreign governments, and international organizations for the exchange of information on programs and activities in the field of assigned responsibilities.

(3) Maintain close working relationships with weapon systems managers of the Military Departments to ensure integration of effort and exchange of technical programs and reference data.

(4) Use established facilities and services of the Department of Defense and other Federal Agencies, whenever practicable, to avoid duplication and to achieve an appropriate balance among modernization, readiness, sustain ability, efficiency, and economy.

§ 359.7 Administration.

(a) The Director shall be an active duty, commissioned officer of General or Flag rank, appointed by the Secretary of Defense based on the recommendation of the CJCS as approved by the USD(A).

(b) The Deputy Director shall be an active duty, commissioned officer of General or Flag rank, approved by the USD(A) based on the recommendation of the CJCS and Director, DLA.

(c) DLA shall be authorized such personnel, facilities, funds, and other administrative support as the Secretary of Defense deems necessary.

(d) The Military Departments shall assign military personnel to DLA in accordance with approved authorizations and procedures for assignment to joint duty.

(e) Programming, budgeting, funding, auditing, accounting, pricing, and reporting activities of DLA shall be in accordance with established DoD policy and procedures. DLA shall use appropriated funds to finance the operating costs of the Agency; a stock fund to finance all inventories procured for resale; a transaction fund to finance the purchase of needed stockpile materials; and, when appropriate, an industrial fund for financing industrial-commercial type operations.

Appendix A—Assigned DoD Programs and/or Systems

The following DoD programs and/or systems or aspects of these programs and/or systems are assigned to DLA to administer, manage, and/or operate:

- DoD Coordinated Procurement
- Federal Catalog System
- DoD Industrial Plant Equipment
- Operating Military Parts Control Advisory Groups for Standardization of Parts at the System Equipment Desig: Stage
- Defense Automatic Addressing System
- Defense Precious Metals Recovery
- Assigned Aspects of DoD Food Service Management
- Defense Procurement Management Review
- Defense Energy Information System
- Centralized Referral System
- Overseas Employment Referral
- Automation Resources Management System
- Depot Maintenance and Maintenance Support Cost Accounting and Production Reporting and Information System
- DoD Shelf-life Item Management
- DoD Scientific and Technical Information
- DoD Information Analysis Center
- DoD Hazardous Materials Information System
- Hazardous Material Technology Development
- DoD-wide Interchangeability and/or Substitutability
- Dod Personal Property Utilization and Disposal
- DoD Industrial Resources Management
- Integrated Material Manager for Bulk Petroleum
- DoD Specification Standardization
- National Defense Stockpile Program

Appendix B—Delegations of Authority

Pursuant to the authority vested in the Secretary of Defense, and subject to the direction, authority, and control of the Secretary of Defense, and in accordance with DoD Policies, Directives, and Instructions, the Director, DLA, or in the absence of the Director, the person acting for the Director, is hereby delegated authority as required in the administration and operation of DLA to:

1. Exercise the powers vested in the Secretary of Defense by 5 U.S.C. 301, 302(b), and 3101 pertaining to the employment, direction and general administration of DLA civilian personnel.

2. Fix rates of pay for wage-rate employees exempted from the Classification Act of 1949 by 5 U.S.C. 5102 on the basis of rates established under the Combined Federal Wage System. In fixing such rates, the Director, DLA, shall follow the wage schedule established by the DoD Wage Fixing Authority.

3. Establish advisory committees and employ part-time advisors as approved by the Secretary of Defense for the Performance of DLA functions pursuant to the provisions of 10 U.S.C. 173, 5 U.S.C. 3109(b), and the agreement between the Department of Defense and the Office of Personnel Management (OPM) on employment of experts and consultants, dated June 21, 1977.

[1] Copies may be obtained, if needed, from the U.S. Naval Publications and Forms Center, Attn: Code 1062, 5801 Tabor Avenue, Philadelphia, PA 19120.

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4. Administer oaths of office incident to entrance into the Executive Branch of the Federal Government or any other oath required by law in connection with employment therein, in accordance with the provisions of 5 U.S.C. 2903, and designate in writing, as may be necessary, officers and employees of DLA to perform this function.

5. Establish a DLA Incentive Awards Board and pay cash awards to, and incur necessary expenses for the honorary recognition of, civilian employees of the Government whose suggestions, inventions, superior accomplishments, or other personal efforts, including special acts or services, benefit or affect DLA or its subordinate activities, in accordance with the provisions of 5 U.S.C. 4503 and OPM regulations.

6. In accordance with the provisions of 5 U.S.C. 7532; Executive Orders 10450, 12333, and 12356; and DoD Directive 5200.2, "DoD Personnel Security Program," December 20, 1979:

a. Designate the security sensitivity of positions within DLA.

b. Authorize, in case of an emergency, the appointment of a person to a sensitive position in DLA for a limited period of time for whom a full field investigation or other appropriate investigation, including the National Agency Check, has not been completed.

c. Authorize the suspension, but not terminate the services of a DLA employee in the interest of national security.

d. Initiate investigations, issue personnel security clearances and, if necessary, in the interest of national security, suspend, revoke, or deny a security clearance for personnel assigned or detailed to, or employed by DLA. Any action to deny or revoke a security clearance shall be taken in accordance with procedures prescribed in DoD 5200.2-R, "DoD Personnel Security Program," January 1987.

7. Act as agent for the collection and payment of employment taxes imposed by Chapter 21 of the Internal Revenue Code of 1954, as amended; and, as such agent, make all determinations and certifications required or provided for under the Internal Revenue Code of 1954, as amended (26 U.S.C. 3122), and the Social Security Act, as amended (42 U.S.C. 405(p) (1) and (2)), with respect to DLA employees.

8. Authorize and approve overtime work for DLA civilian personnel in accordance with 5 U.S.C. Chapter 55, Subchapter V, and applicable OPM regulations.

9. Authorize and approve:

a. Travel for DLA civilian personnel in accordance with Joint Travel Regulations, Volume 2, "DoD Civilian Personnel."

b. Temporary duty travel for military personnel assigned or detailed to DLA in accordance with Joint Travel Regulations, Volume 1, "Members of Uniformed Services."

c. Invitational travel to persons serving without compensation whose consultative, advisory, or other highly specialized technical services are required in a capacity that is directly related to, or in connection with, DLA activities, pursuant to 5 U.S.C. 5703.

10. Approve the expenditure of funds available for travel by military personnel assigned or detailed to DLA for expenses regarding attendance at meetings of technical, scientific, professional, or other similar organizations in such instances when the approval of the Secretary of Defense, or designee, is required by law (37 U.S.C. 412 and 5 U.S.C. 4110 and 4111). This authority cannot be redelegated.

11. Develop, establish, and maintain an active and continuing Records Management Program, pursuant to 44 U.S.C. 3102 and DoD Directive 5015.2, "Records Management Program," September 17, 1980.

12. Establish and use imprest funds for making small purchases of material and services, other than personal services, for DLA when it is determined more advantageous and consistent with the best interests of the Government, in accordance with DoD Instruction 5100.71, "Delegation of Authority and Regulations Relating to Cash Held at Personal Risk Including Imprest Funds," March 5, 1973.

13. Authorize the publication of advertisements, notices, or proposals in newspapers, magazines, or other public periodicals as required for the effective administration and operation of DLA, consistent with 44 U.S.C. 3702.

14. Establish and maintain appropriate property accounts for DLA and appoint Boards of Survey, approve reports of survey, relieve personal liability, and drop accountability for DLA property contained in the authorized property accounts that has been lost, damaged, stolen, destroyed, or otherwise rendered unserviceable, in accordance with applicable laws and regulations.

15. Promulgate the necessary security regulations for the protection of property and places under the jurisdiction of the Director, DLA, pursuant to DoD Directive 5200.8, "Security of Military Installations and Resources," July 29, 1980.

16. Establish and maintain, for the functions assigned, a publications system for the promulgation of common supply and service regulations, instructions, and reference documents, and changes thereto, pursuant to the policies and procedures prescribed in DoD 5025.1-M, "Department of Defense Directives System Procedures," April 1981.

17. Enter into support and service agreements with the Military Departments, other DoD Components, Government Agencies, and foreign governments, as required for the effective performance of DLA functions and responsibilities.

18. Exercise the authority delegated to the Secretary of Defense by the Administrator of the General Services Administration (GSA) on the disposal of surplus personal property.

19. Exercise the authority and responsibility of the Secretary of Defense as delegated to the Director, DLA, for the National Industrial Equipment Reserve established by the National Industrial Equipment Reserve Act of 1948, as amended (50 U.S.C. 451 et seq.).

20. Designate an officer or employee of DLA to serve as the Competition Advocate of the Agency, pursuant to 10 U.S.C. 2318.

21. Maintain an official seal and attest to the authenticity of official DLA records under that seal.

The Director, DLA, may redelegate these authorities as appropriate, and in writing, except as otherwise specifically indicated above or as otherwise provided by law or regulation.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

January 11, 1989.

FR Doc. 89-1115 Filed 1-18-89; 8:45 am]

BILLING CODE 3810-01-M

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32 CFR Part 360

[DoD Directive 5105.40]

Defense Mapping Agency

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: This document revises 32 CFR Part 360. It reflects changes mandated by the Goldwater-Nichols DoD Reorganization Act of 1986 (10 U.S.C. 191-193). It also assigns responsibility for management oversight of the Agency to the Under Secretary of Defense for Acquisition.

EFFECTIVE DATE: December 12, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. R. Furtner, Office of the Director for Administration and Management (Organizational and Management Planning), the Pentagon, Washington, DC 20301, telephone 202-697-4251.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 360

Organization and functions (Government agencies).

Accordingly, 32 CFR Part 360 is revised to read as follows:

PART 360—DEFENSE MAPPING AGENCY (DMA)

Sec.

360.1 Purpose.
360.2 Mission.
360.3 Organization and management.
360.4 Responsibilities and functions.
360.5 Relationships.
360.6 Authority.
360.7 Administration.

Appendix—Delegations of Authority.

Authority: 10 U.S.C. 191-193.

§ 360.1 Purpose.

Under the authority vested in the Secretary of Defense by Title 10, this part revises 32 CFR Part 360 to update the responsibilities, functions, relationships, and authorities of the Defense Mapping Agency (DMA).

§ 360.2 Mission.

DMA shall provide support to the Office of the Secretary of Defense

(OSD), the Military Departments, the Chairman, Joint Chiefs of Staff (CJCS) and the Joint Staff, the Unified and Specified Commands, and the Defense Agencies (hereafter referred to collectively as "DoD Components") on matters concerning mapping, charting, and geodesy (MC&G).

§ 360.3 Organization and management.

DMA is established as a Combat Support Agency of the Department of Defense under the overall supervision of the Under Secretary of Defense for Acquisition (USD(A)) and, with the exception of the responsibilities, functions, and relationships assigned to the Chairman, Joint Chiefs of Staff (CJCS) by this Directive, is under the direction, authority, and control of the USD(A) in accordance with 32 CFR Part 382. It shall consist of a Director and such subordinate organizational elements as are established by the Director within resources authorized by the Secretary of Defense.

§ 360.4 Responsibilities and functions.

(a) The *Director, Defense Mapping Agency (DMA),* shall:

(1) Organize, direct, and manage the DMA and all assigned resources.

(2) Serve as Program Manager and coordinator of all DoD MC&G resources and activities, to include reviewing the execution of all DoD plans, programs, and policies for MC&G activities not assigned to DMA.

(3) Provide staff advice and assistance on MC&G matters to the OSD, the Joint Staff, the Military Departments, other DoD Components, and other Government Agencies, as appropriate.

(4) Develop MC&G guidance for the Department of Defense, review Military Department program and fiscal documents related to MC&G matters, and recommend appropriate actions to the Secretary of Defense.

(5) In support of the CJCS, review and validate the MC&G requirements and priorities of the DoD Components and other Government agencies, and develop a consolidated statement of MC&G requirements and priorities.

(6) Ensure responsive support to the MC&G requirements of the Military Departments and the Unified and Specified Commands.

(7) Establish policies and provide DoD participation in national and international MC&G activities, in coordination with the Assistant Secretary of Defense (International Security Affairs) (ASD(ISA)) and the Assistant Secretary of Defense (International Security Policy) (ASD(ISP)), and execute DoD responsibilities under interagency and international MC&G agreements.

(8) Establish and/or consolidate DoD MC&G data collection requirements and provide them to the USD(A), who shall verify and set priorities for such requirements; and collect or task other DoD Components to collect and provide necessary data.

(9) Establish DoD MC&G research, development, test, and evaluation (RDT&E) requirements, in coordination with the USD(A), and task other DoD Components or private contractors to accomplish such requirements.

(10) Carry out the statutory responsibilities assigned to the Department of Defense under Chapter 167 of 10 U.S.C. for providing nautical charts and marine navigation data for the use of all vessels of the United States and of navigators generally, and the responsibilities assigned under Chapter 13 of 44 U.S.C. for printing notices to mariners and other publications.

(11) Establish and maintain a Joint Manpower Program that will be reviewed annually by the Joint Staff under the provisions JCS MOP 173.

(b) The *Secretaries of the Military Departments* and the *Commanders of Unified and Specified Commands* shall:

(1) Develop and submit to DMA their MC&G requirements and priorities.

(2) Provide support, within their respective fields of responsibilities, to the Director, DMA, as required to carry out the assigned mission of the Agency.

(3) Assess the responsiveness of the DMA to their operational needs.

(c) The *Chairman, Joint Chiefs of Staff (CJCS),* shall:

(1) Review DMA planning and programming documents, assess their responsiveness to operational requirements, and provide direction to the Director, DMA.

(2) Periodically (not less than every 2 years), submit to the Secretary of Defense a report on DMA's responsiveness and readiness to support operating forces in the event of war or threat to national security, and other recommendations the CJCS deems appropriate.

(3) Advise the Secretary of Defense on MC&G requirements and priorities.

(4) Provide guidance to the DMA and the Unified and Specified Commands that will serve as the basis for interrelationships between these organizations.

(5) Obtain the advice and recommendations from the Director, DMA, on matters within the areas of responsibility assigned to the DMA.

(6) Provide for the participation of DMA in joint training exercises and monitor performance.

§ 360.5 Relationships.

(a) In performing assigned functions, the Director, DMA, shall:

(1) Be responsible to the CJCS for operational matters as well as requirements associated with the joint planning process. For these purposes, the CJCS is authorized to task and communicate directly with the DMA.

(2) Maintain appropriate liaison with other DoD Components and other Agencies of the Executive branch for the exchange of information on programs and activities in the field of assigned responsibilities.

(3) Make use of established facilities and services in the Department of Defense or other governmental agencies, wherever practicable, to achieve maximum efficiency and economy.

(4) Ensure that the Secretary of Defense, the CJCS, the Secretaries of the Military Departments, and commanders and directors of other DoD Components are kept fully informed concerning DMA activities with which they have substantive concern.

(b) The Secretaries of the Military Departments and Heads of other DoD Components shall:

(1) Provide assistance within their respective fields of responsibility to the Director, DMA, in carrying out the responsibilities and functions assigned to the DMA.

(2) Coordinate with the Director, DMA, on all programs and activities that include or are related to MC&G.

§ 360.6 Authority.

The Director, DMA, is specifically delegated authority to:

(a) Task DoD Components directly to accomplish the MC&G RDT&E and data collection requirements established by DMA and verified by the USD(A).

(b) Have free and direct access to, and direct communications with, all elements of the Department of Defense and other Executive Departments and Agencies, as necessary, to carry out DMA functions and responsibilities.

(c) Obtain such reports and information, consistent with the policies and criteria of DoD Directive 7750.5 and advice and assistance from other DoD Components, as necessary, to carry out DMA functions and responsibilities.

(d) Establish facilities necessary to accomplish the DMA mission in the most efficient and economical manner.

(e) Exercise the administrative authorities in the Appendix of this Part.

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§ 360.7 Administration.

(a) The Director, DMA, shall be an active duty, commissioned officer of General or Flag rank appointed by the Secretary of Defense, based on the recommendation of the CJCS and approval of the USD(A).

(b) The Deputy Director shall be selected by the Director, DMA, and approved by the USD(A). When the Deputy Director is a military officer, selection shall be based on the recommendation of the CJCS.

(c) DMA shall be authorized such personnel, facilities, funds, and other administrative support as the Secretary of Defense deems necessary.

(d) The Military Departments shall assign military personnel to DMA in accordance with approved authorizations and procedures for assignment to joint duty. The CJCS shall review and provide recommendations on the DMA joint manpower program to the USD(A), as appropriate, for those functions where DMA is responsive to the CJCS.

Appendix—Delegations of Authority

Pursuant to the authority vested in the Secretary of Defense, and subject to the direction, authority, and control of the Secretary of Defense, and in accordance with DoD policies, Directives, and Instructions, the Director, DMA, or in the absence of the Director, the person acting for the Director, is hereby delegated authority as required in the administration and operation of DMA to:

1. Exercise the powers vested in the Secretary of Defense by 5 U.S.C. 301, 302(b), and 3101 pertaining to the employment, direction, and general administration of DMA civilian personnel.

2. Fix rates of pay for wage-rate employees exempted from the Classification Act of 1949 by 5 U.S.C. 5102 on the basis of rates established under the Coordinated Federal Wage System. In fixing such rates, the Director, DMA, shall follow the wage schedule established by the DoD Wage Fixing Authority.

3. Establish advisory committees and employ part-time advisers, as approved by the Secretary of Defense, for the performance of DMA functions pursuant to 10 U.S.C. 173, 5 U.S.C. 3109(b), and the agreement between the Department of Defense and the Civil Service Commission on employment of experts and consultants, dated March 14, 1975.

4. Administer oaths of office to those entering the Executive branch of the Federal Government or any other oath required by law in connection with employment therein, in accordance with 5 U.S.C. 2903, and designate in writing, as may be necessary, officers and employees of DMA to perform this function.

5. Establish a DMA Incentive Awards Board and pay cash awards, and incur necessary expenses, for the honorary recognition of civilian employees of the Government whose suggestions, inventions, superior accomplishments, or other personal efforts, including special acts or services, benefit or affect DMA or its subordinate activities, in accordance with 5 U.S.C. 4503 and applicable Office of Personnel Management (OPM) regulations.

6. In accordance with 5 U.S.C. 7532; Executive Orders 10450, 12333, and 12356; and DoD Directive 5200.2, "DoD Personnel Security Program," December 20, 1979; as appropriate:

a. Designate any position in DMA as a "sensitive" position.

b. Authorize, in case of an emergency, the appointment of a person to a sensitive position in the Agency for a limited period of time for whom a full field investigation or other appropriate investigation, including the National Agency Check, has not been completed.

c. Authorize the suspension, but not terminate the services, of an employee in the interest of national security in positions within DMA.

d. Initiate investigations, issue personnel security clearances and, if necessary, in the interest of national security, suspend, revoke, or deny a security clearance for personnel assigned or detailed to, or employed by DMA. Any action to deny or revoke a security clearance will be taken in accordance with procedures prescribed in DoD 5200.2-R, "DoD Personnel Security Program," January 1987.

7. Act as agent for the collection and payment of employment taxes imposed by Chapter 21 of the Internal Revenue Code of 1954, as amended; and, as such agent, make all determinations and certifications required or provided for under section 3122 of the Internal Revenue Code of 1954, as amended, and section 205(p) (1) and (2) of the Social Security Act, as amended (42 U.S.C. 405(p) (1) and (2)) with respect to DMA employees.

8. Authorize and approve overtime work for DMA civilian officers and employees in accordance with 5 U.S.C. Chapter 55, Subchapter V, and applicable OPM regulations.

9. Authorize and approve:

a. Travel for DMA civilian officers and employees in accordance with Joint Travel Regulations, Volume 2, "DoD Civilian Personnel."

b. Temporary duty travel for military personnel assigned or detailed to DMA in accordance with Joint Travel Regulations, Volume 1, "Members of Uniformed Services."

c. Invitational travel to persons serving without compensation whose consultive, advisory, or other highly specialized technical services are required in a capacity that is directly related to, or in connection with, DMA activities, pursuant to 5 U.S.C. 5703.

10. Approve the expenditure of funds available for travel by military personnel assigned or detailed to DMA, for expenses regarding attendance at meetings of technical, scientific, professional, or other similar organizations in such instances when the approval of the Secretary of Defense, or designee, is required by law (37 U.S.C. 412 and 5 U.S.C. 4110 and 4111). This authority cannot be redelegated.

11. Develop, establish, and maintain an active and continuing Records Management Program, pursuant to section 506(b) of the Federal Records Act of 1950 (44 U.S.C. 3102).

12. Establish and use imprest funds for making small purchases of material and services, other than personal services, for DMA, when it is determined more advantageous and consistent with the best interests of the Government, in accordance with DoD Instruction 5100.71, "Delegation of Authority and Regulations Relating to Cash Held at Personal Risk Including Imprest Funds," March 5, 1973.

13. Authorize the publication of advertisements, notices, or proposals in newspapers, magazines, or other public periodicals as required for the effective administration and operation of DMA consistent with 44 U.S.C. 3702.

14. Establish and maintain appropriate property accounts for DMA and appoint Boards of Survey, approve reports of survey, relieve personal liability, and drop accountability for DMA property contained in the authorized property accounts that has been lost, damaged, stolen, destroyed, or otherwise rendered unserviceable, in accordance with applicable laws and regulations.

15. Promulgate the necessary security regulations for the protection of property and places under the jurisdiction of the Director, DMA, pursuant to DoD Directive 5200.8, "Security of Military Installations and Resources," July 29, 1980.

16. Establish and maintain, for the functions assigned, an appropriate publications system for the promulgation of common supply and service regulations, instructions, and reference documents, and changes thereto, pursuant to the policies and procedures prescribed in DoD 5025.1-M, "Department of Defense Directives System Procedures," April 1981.

17. Enter into support and service agreements with the Military Departments, other DoD Components, or other Government Agencies, as required for the effective performance of DMA functions and responsibilities.

18. Exercise the authority delegated to the Secretary of Defense by the Administrator of the General Services Administration (GSA) for the disposal of surplus personal property.

19. Enter into and administer contracts, directly or through a Military Department, a DoD contract administration services component, or other Government Department or Agency, as appropriate, for supplies, equipment, and services required to accomplish the mission of DMA. To the extent that any law or Executive Order specifically limits the exercise of such authority to persons at the Secretarial level, such authority shall be exercised by the appropriate Under Secretary or Assistant Secretary of Defense.

20. Sell maps, charts, and related products to the public as governed by OMB Circular A-25 and 10 U.S.C. 2794.

21. Authorize the release of classified DoD MC&G products to foreign nationals within DoD disclosure policies.

22. Lease property under the control of DMA, under terms that will promote the national defense or that will be in the public interest, pursuant to 10 U.S.C. 2667.

23. Execute responsibilities of 10 U.S.C. 2795 relating to international agreements.

The Director, DMA, may redelegate these authorities, as appropriate, and in writing, except as otherwise specifically indicated above or as otherwise provided by law or regulation.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

January 11, 1989.

[FR Doc. 89-1116 Filed 1-18-89; 8:45 am]

BILLING CODE 3810-01-M

32 CFR Part 362

[DoD Directive 5105.19]

Defense Communications Agency

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: This document revises 32 CFR Part 362. It reflects changes mandated by the Goldwater-Nichols DoD Reorganization Act of 1986 (10 U.S.C. 191–193). It also assigns responsibility for management oversight of the Agency to the Under Secretary of Defense for Acquisition and consolidation of the Joint Tactical Command, Control, and Communications Agency (32 CFR Part 376) with the DCA.

EFFECTIVE DATE: December 12, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. R. Furtner, Office of the Director for Administration and Management (Organizational and Management Planning), the Pentagon, Washington, DC 20301, telephone 202–697–4281.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 362

Organization and functions (Government agencies).

Accordingly, 32 CFR Part 362 is revised to read as follows:

PART 362—DEFENSE COMMUNICATIONS AGENCY (DCA)

Sec.

362.1 Purpose.
362.2 Definitions.
362.3 Mission.
362.4 Organization and management.
362.5 Responsibilities and functions.
362.6 Relationships.
362.7 Authority.
362.8 Administration.
Appendix—Delegations of Authority.

Authority: 10 U.S.C. 191–193.

§ 362.1 Purpose.

Under the authority vested in the Secretary of Defense by Title 10, United States Code this part revises 32 CFR Part 362 and supersedes 32 CFR Part 376. This revision updates and consolidates the responsibilities, functions, relation-ships, and authorities of the Defense Communications Agency (DCA). It also incorporates the responsibilities and authorities of the Joint Tactical Command, Control, and Communications Agency (JTC³A).

§ 362.2 Definitions.

Defense Communications System (DCS). (a) The DCS is a composite of DoD-owned and leased telecommunications subsystems and networks comprised of facilities, personnel, and material under the management control and operational direction of the DCA. It provides the long-haul, point-to-point, and switched network telecommunications needed to satisfy the requirements of the Department of Defense and certain other Government Agencies, including those required to interconnect the NCA, the JCS, and the Unified and Specified Commanders with the general purpose networks.

(b) The DCS includes fixed, transportable, and mobile facilities. It consists of:

(1) Switching and/or relay facilities to include associated software of the general purpose (common user) networks, such as Automatic Voice Network (AUTOVON), Defense Switched Network (DSN), Automatic Digital Network (AUTODIN), Defense Data Network (DDN), Automatic Secure Voice Communications Network (AUTOSEVOCOM), and Secure Voice System (SVS).

(2) Transmission media and/or circuits that provide user and/or subscriber connection into the DCS networks, or which interconnect the switching and/or relay facilities and/or the user and/or subscriber terminals in use by the DCS. This includes the assets of the Defense Satellite Communications System, except those portions that are specifically excluded from the DCS.

(c) Although the DCA specifies the interconnection and interface standards when operated with DCS networks, the DCS does not include:

(1) Mobile and/or transportable communications facilities and assets organic to Army, Navy, Air Force, and Fleet Marine forces, unless specifically designated as components of the DCS.

(2) Ship and/or ship, ship and/or shore, air and/or air, air and/or ground, and other tactical telecommunications as defined in DoD Directive 7750.5.

(3) Post, camp, base, and station user and/or subscriber facilities and terminals.

(4) On-site telecommunications facilities associated with or integral to weapons systems and to missile launch complexes, including those required for countdown, command, control, weapons destruct, and range safety.

(5) Consoles and display devices integral to the Unified and Specified Command Centers, their DoD Component Headquarters, and the Military Services' operations centers.

Department of Defense Acquisition System. A single uniform system whereby all equipment, facilities, and services are planned, designed, developed, acquired, maintained, and disposed of within the Department of Defense. The system entails establishing policies and practices that govern acquisitions determining and prioritizing resource requirements, directing and controlling the process, contracting, and reporting to Congress.

Fielding Plan. A fielding plan details the coordination and execution involved in the deployment of a system or equipment, and addresses interoperability opportunities and constraints. The plan includes sufficient information for a common understanding between the program sponsor and the gaining command for equipment quantities, implementation schedules, skill qualifications and training, and any additional manpower, facilities, or support requirements.

Joint C³ Systems. C³ systems that interoperate with systems of other Military Services or other nations in joint or combined operations.

Military Departments' Operations and Maintenance (O&M) Commands. Defined for the purposes of this document as the Army Information Systems Command (AISC), Air Force Communications Command (AFCC), and the Navy Telecommunications Command (NAVTELCOM).

Military Satellite Communications (MILSATCOM) Systems. The totality of existing and planned DoD satellite communications capability consisting of the space, ground, and control segments. MILSATCOM systems include the interfaces between satellite systems and ground segments, and the interfaces with other communications systems.

National Communications System (NCS). (a) The NCS was established by E.O. No. 12472. It consists of the telecommunications assets of the entities represented on the NCS Committee of Principals and an administrative structure consisting of the Executive Agent, the NCS Committee of Principals, and the Manager.

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(b) The mission of the NCS is to assist the President, the National Security Council (NSC), the Director of the Office of Science and Technology Policy (OS & TP), and the Director of the Office of Management and Budget (OMB) in:

(1) The exercise of the telecommunications functions and responsibilities assigned in E.O. No. 12472.

(2) The coordination of the planning for, and provision of, national security emergency preparedness communications for the Federal Government under all circumstances, including crisis or emergency, attack, recovery, and reconstitution.

National Military Command System (NMCS). The NMCS is the priority DoD Component of the WWMCCS designed to support the NCA in the exercise of their responsibilities. It also supports the JCS in the exercise of their responsibilities.

Operational Test Agency (OTA). Separate and independent from the material developing and/or procuring Agency and from the using Agency, the major field OTA shall be responsible for planning and conducting operational tests, reporting test results, and providing an evaluation of the tested system's operational effectiveness and suitability directly to the Agency's Director.

Procedural Interface Standards. Specifications for accomplishing the exchange of information across an interface. They define: (a) The form or format in which information is to be exchanged.

(b) The prescribed information exchange language, syntax, and vocabulary to be used in the information exchange.

(c) Interface operating procedures that govern the information exchange.

Technical Interface Standards. Specifications of the functional, electrical, and physical characteristics necessary to allow the exchange of information across an interface between different C^3 and information systems or equipment.

Worldwide Military Command and Control System (WWMCCS). The WWMCCS is the worldwide command and control system that provides the means for operational direction and technical administrative support involved in the function of command and control of U.S. military forces.

§ 362.3 Mission.

DCA is responsible for planning, developing, and supporting command, control, communications, and information systems that serve the needs of the National Command Authorities (NCA) under all conditions of peace and war. It provides guidance and support on technical and operational command, control, communications (C^3), and information systems issues affecting the Office of the Secretary of Defense (OSD), the Military Departments, the Joint Chiefs of Staff (JCS) and the Joint Staff, the Unified and Specified Commands, and the Defense Agencies (hereafter referred to collectively as "DoD Components"). It ensures the interoperability of the Worldwide Military Command and Control System (WWMCCS), the Defense Communications System (DCS), theater and tactical command and control systems, North Atlantic Treaty Organization (NATO) and/or allied C^3 systems, and those national and/or international commercial systems that affect the DCA mission. It supports national security emergency preparedness (NSEP) telecommunications functions of the National Communications System (NCS), as prescribed by E.O. 12472.

§ 362.4 Organization and management.

DCA is established as a Combat Support Agency under the overall supervision of the Under Secretary of Defense for Acquisition (USD(A)) and, with the exception of those responsibilities and functions assigned to the Chairman, Joint Chiefs of Staff (CJCS), by this part, is under the direction, authority, and control of the USD(A) pursuant to 32 CFR Part 382. It shall consist of a Director and such subordinate organizational elements as are established by the Director or specifically assigned to the Director by the Secretary of Defense.

§ 362.5 Responsibilities and functions.

(a) The *Director, Defense Communications Agency* (DCA), shall:

(1) Manage the DCA and its field organizations in accordance with the assigned mission.

(2) Provide technical and management advice, and perform planning support, systems engineering, and test and/or evaluation support through the design, development, deployment, and evolution of the WWMCCS, as defined in DoD Directive 5100.30 [1]. This includes the National Military Command System (NMCS) under DoD Directive S-5100.44 [2] and suporting comunications, especially connectivity to nuclear forces. In accordance with DoD Directive 5100.79 [3] provide the necessary guidance, direction, and support to accomplish the definition of technical concepts and performance characteristics for engineering the WWMCCS in consonance with the approved WWMCCS architecture. Recommend revision of the WWMCCS architecture to meet changing policy, doctrine, requirements, systems environments, threats, technology, and resources.

(3) Perform systems engineering for the DCS and ensure that the DCS is planned, improved, operated, maintained, and managed effectively and efficiently. Ensure end-to-end interoperability and architecture are adequate to meet mission needs. Exercise program management responsibility with management control over the activities of the DoD Components that directly support the establishment and improvement of the DCS.

(4) In accordance with JCS MOP No. 178 formulate the DoD-wide Military Satellite Communications (MILSATCOM) architecture. Analyze user requirements and maintain the user data base. Define system performance criteria for MILSATCOM systems. Establish, in coordination with the DoD Components, overall goals and long-term system plans and transitions for MILSATCOM systems. Perform general systems engineering to promote end-to-end interoperability and performance to meet mission needs. Analyze, on a continuing basis, Military Service programs, plans, budgets, and MILSATCOM systems performance deficiencies, and recommend corrective action as appropriate. Manage, operate, and support the MILSATCOM systems office to perform functions specified in DoD Directive 5105.44.

(5) Ensure the end-to-end interoperability of strategic and tactical C^3 and information systems used by the NCA and the DoD Components for joint and combined operations. Develop and maintain joint architectures, technical and procedural interface standards, specifications, protocols, and definitions; and test and/or verify the interoperability of hardware and procedures for strategic and tactical C^3 and information systems. Recommend certification for these systems and their equipment interfaces. With respect to tactical command, control, communications, and intelligence (C^3I) systems, the provisions of DoD Directive 4630.5 [4] shall be observed.

(6) Provide automated information systems, analytical, and other technical support for JCS- and OSD-managed programs. Manage, design, develop, maintain, test, and evaluate standard operating systems and applications software for WWMCCS, as directed. Assist in implementing configuration control over evolving information systems.

(7) Develop systems architectures and provide systems engineering support. Ensure the evolution of integrated C^3 and information systems supporting the NCA's and DoD Components' capability to effectively employ weapon systems and forces. Identify and implement technical improvements and assist the CJCS and the Commanders of the Unified and Specified Commands in identifying C^3 systems deficiencies.

(8) Manage nationally sensitive special C^3 programs, as directed by higher authority.

(9) Acquire commercial communications services (e.g., long-haul C^3 circuits, facilities, networks, and associated equipment) for the Department of Defense and other Federal Agencies, as directed; initiate and manage actions relating to regulatory and tariff matters, including rates for these commercial communications services; and maintain the Communications Services Industrial Fund.

(10) Execute tasks as manager of the NCS as may be assigned by law or directed by the Secretary of Defense in the latter's capacity as Executive Agent for the NCS.

(11) Review Military Department progarms and budgets related to the DCA mission, and recommend actions, through appropriate channels, to the Secretary of Defense.

(12) Provide DoD representation and/or participation in selected national and international C^3 activities.

(13) Assist OSD and JCS activities by assessing technology; recommend and conduct a program of research, development, test, and evaluation (RDT&E) necessary to ensure that C^3 systems remain capable of performing their assigned functions in threatened environments. Monitor and coordinate, as appropriate, DoD Component C^3 RDT&E programs.

(14) Exercise operational direction and management control of the DCS through the DCA Operations Control Complex and the Military Departments' operations and maintenance (O&M) commands. Perform circuit engineering and allocation, and direct restoral for the DCS, in coordination with the NCS's National Coordinating Center.

(15) Adhere to DoD Acquisition System policies.

(16) Establish and maintain a major field independent operational test capability, as an operational test agency (OTA) under the director, and conduct operational test and evaluation (OT&E) in accordance with DoD Directive 5000.3 [5]. Conduct OT&E in a mission and threat environment as operationally realistic as possible.

(17) Serve as Executive Agent and authority for the Joint Interoperability of Tactical Command and Control Systems (JINTACCS) Program and the Tactical Command, Control, Communications, and Intelligence (C^3I) Interoperability Improvement Program.

(18) Provide administrative support to the White House Communications Agency and to the Defense Mobilization System Planning Activity.

(19) Serve on the Military Communications Electronics Board.

(20) Provide planning, engineering, and technical support to the DoD Components, as needed, to ensure the evolution and integration of C^3 and information systems within WWMCCS.

(21) Provide liaison with, and communications support for, the United States Secret Service (USSS) in accordance with DoD Directive 3025.13 [6].

(22) Perform those functions and responsibilities assigned by such other Directives and/or taskings as may be issued by higher authority.

(23) Provide organizational, fiscal, administrative, and technical support to the JTC^{3}A.

(24) Develop and maintain databases of developmental and existing interoperability standards.

(25) Coordinate information system security (communications security and computer security) interoperability requirements with cognizant DoD Components.

(b) The *Director, Joint Tactical Command, Control, and Communications Agency* (JTC^{3}A), shall operate the JTC^{3}A as a field activity of the DCA, report directly to the Director, DCA, and shall:

(1) By reviewing tactical C^3 fielding plans and by defining interface specifications, develop and maintain a joint tactical C^3 architecture defining joint tactical communications systems (including nonstrategic nuclear forces C^3) required to ensure interoperability and information flow among command and control (C^2) systems.

(2) Develop, test, and maintain technical and procedural interface standards to be used by tactical C^3 systems in joint or combined military operations, in accordance with guidance provided by the CJCS, and verify that such systems have implemented the approved interface standards.

(3) Monitor and coordinate programs for which JTC^{3}A has responsibility, but which are included in the programs of other DoD Components and Government Agencies, and monitor other programs that may affect tactical C^3 interoperability.

(4) Provide source documents from which the DoD Components can develop training materials to facilitate implementation of the tactical C^3 architecture.

(5) Develop and maintain databases of tactical C^3 developmental and existing interoperability standards.

(6) Coordinate secure tactical C^3 communications interoperability requirements with the National Security Agency (NSA)/Central Security Service (CSS), the Defense Intelligence Agency (DIA), the Military Departments, and the JCS.

(7) In coordination with NSA/CSS and the Military Departments, and in accordance with DoD Directive C-5200.5 [7], develop a tactical secure communications architecture as an integral part of the overall joint architecture, including orderly and timely introduction of systems to satisfy interoperability requirements.

(c) The *Under Secretary of Defense (Acquisition)* (USD(A)) shall:

(1) Exercise direction, authority, and control over the DCA.

(2) Provide guidance on C^3I policies, priorities, requirements, systems, resources, and programs.

(3) Review DCA's planning and programming documents.

(d) The *Chairman, Joint Chiefs of Staff* (CJCS), shall provide guidance and, as appropriate, tasking to the Director, DCA, with regard to military C^3 doctrine, operational policies, requirements, procedures, and required support for the execution of operations plans of the Unified and Specified Commands. The CJCS shall:

(1) Review DCS's planning and programming documents, assess their responsiveness to the operational requirements, and provide direction to the Director, DCA.

(2) Periodically (not less than every 2 years), submit to the Secretary of

[1] Copies may be obtained, if needed, from the U.S. Naval Publications and Forms Center, Attn: Code 1062, 5801 Tabor Avenue, Philadelphia, PA 19120.

[2] Classified document Not Releasable to the public.

[3] See footnote 1 to § 362.5(a)(1).

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Defense a report with respect to DCA's responsiveness and readiness to support operating forces in the event of war or threat to national security and other recommendations that the CJCS deems appropriate.

(3) Provide for the participation of DCA in joint training exercises and monitor performance.

(4) Develop and submit JCS C³ and information systems requirements and priorities to the Director, DCA, and initiate validation of required operational capabilities of the operational commanders for satisfaction by DCA.

(5) Provide direction and guidance to the Director, DCA, on systems engineering and technical support for operation of the NMCS and to the WWMCCS.

(e) The *Commanders in Chief (CINCs) of the Unified and Specified Commands* shall:

(1) Develop agreements to delineate command and operational relationships with the DCA field organizations within the CINCs' areas of responsibility to ensure mutual responsiveness and coordination of effort.

(2) Assess the responsiveness of C³I systems to operational needs. Develop and submit C³I systems requirements and priorities to the CJCS for validation and further processing to the Director, DCA.

(f) The *Secretaries of the Military Departments* and the *Directors of the Defense Agencies* shall:

(1) Provide support to include planning, programming, and budgeting; test and evaluation; operations and maintenance; and integrated logistics support for programs, projects, and systems for which DCA is responsible.

(2) Advise the Director, DCA, of funding shortfalls that would prevent effective operations and maintenance of existing systems, or prevent or delay scheduled implementation of new subsystems or projects.

(3) Coordinate with the Director, DCA, on all programs and activities that include, or are related to, C³ and information systems for which DCA has a primary or collateral responsibility. Provide to DCA, for review and approval before execution, technical specifications, statements of work, and proposed contract changes impacting on configuration, cost, performance, or schedules of all systems for which DCA is responsible. Obtain DCA's concurrence on draft acquisition plans and request DCA representation on source selection advisory councils and source selection evaluation boards for C³ and information systems, subsystems, and projects.

(4) Submit C³I systems requirements to DCA, as appropriate.

(5) Submit copies of all requirements involving development, acquisition, or modification of all tactical C³ systems or equipment, copies of all Test and Evaluation (T&E) Master Plans for such materials, fielding plans, and such other reports, as required by DoD Directive 4630.5 to the Director, JTC³A.

(6) Periodically review the efficiency, economy, and effectiveness of the DCA.

§ 362.6 Relationships.

In performing assigned functions, the Director, DCA, shall:

(a) Coordinate actions, as appropriate, with other DoD Components and those Departments and Agencies of Government having related functions.

(b) Maintain liaison with other DoD Components and other Agencies of the Executive Branch for the exchange of information on programs and activities in the field of assigned responsibility.

(c) Use established facilities and services in the Department of Defense or other Government Agencies, whenever practicable, to achieve maximum efficiency and economy.

§ 362.7 Authority.

The Director, DCA, is specifically delegated authority to:

(a) Command the DCA and its field activities.

(b) Have free and direct access to, and communications with, all elements of the Department of Defense and other Federal Agencies, as necessary, to carry out DCA's functions and responsibilities.

(c) Obtain such reports and information, consistent with the policies and criteria of DoD Directives 7750.5 [*] and 4630.5 and advice and assistance from other DoD Components, as necessary, to carry out DCA functions and responsibilities.

(d) Exercise the administrative authorities contained in the Appendix of this Part.

§ 362.8 Administration.

(a) The Director and the Vice Director, DCA, shall be active duty, commissioned officers of General or Flag rank appointed by the Secretary of Defense.

(b) DCA shall be authorized such personnel, facilities, funds, and other administrative support as the Secretary of Defense deems necessary.

(c) The Military Departments shall assign military personnel to DCA in accordance with approved authorizations and procedures. After review, the CJCS shall provide recommendations on the DCA joint manpower program to the USD(A).

Appendix—Delegations of Authority

Pursuant to the authority vested in the Secretary of Defense, the Director, DCA, or, in the absence of the Director, the person acting for the Director, is hereby delegated, subject to the direction, authority, and control of the Secretary of Defense, and in accordance with DoD policies, Directives, Instructions, and pertinent OSD Regulations, authority as required in the administration and operation of DCA to:

1. Exercise the powers vested in the Secretary of Defense by 5 U.S.C. 301, 302(b), and 3101 on the employment, direction, and general administration of DCA civilian personnel.

2. Establish a DCA Incentive Awards Board and authority cash awards to, and incur necessary expenses for, the honorary recognition of civilian employees of the Government whose suggestions, inventions, superior accomplishments, or other personal efforts, including special acts or services, benefit or affect DCA in accordance with the provisions of 5 U.S.C. 4503, applicable OPM regulations, and DoD Directive 5120.15 "Authority for Approval of Cash Honorary Awards for DoD Personnel," August 13, 1985.

3. Establish advisory committees pursuant to 5 U.S.C. 3109(b), 10 U.S.C. 173, P.L. 92-463, "Federal Advisory Committee Act," and DoD Directive 5105.18, "DoD Committee Management Program," March 20, 1984.

4. Exercise in accordance with 5 U.S.C. 7332; Executive Orders 10450, 12333, and 12356; and DoD 5200.2-R, "DoD Personnel Security Program," January 1987, the following:

a. Designate the security sensitivity of positions within DCA.

b. Authorize, in case of an emergency, the appointment of a person to a sensitive position in DCA for a limited period of time and for whom a full field investigation or other appropriate investigation, including the National Agency Check (NAC), has not been completed.

c. Authorize the suspension, but not terminate the services, of a DCA employee in the interest of national security.

d. Initiate investigations, issue personnel security clearances and, if necessary, in the interest of national security, suspend, revoke, or deny a security clearance for personnel assigned, detailed to, or employed by DCA. Any action to deny or revoke a security clearance shall be taken in accordance with procedures prescribed in DoD 5200.2-R.

5. Act as agent for the collection and payment of employment taxes imposed by chapter 21 of the "Internal Revenue Code of 1954," as amended, and, as such agent, make all determinations and certifications required or provided for under section 3122 of the Internal Revenue Code, as amended, and section 205(p) (1) and (2) of the "Social Security Act," as amended (42 U.S.C. 405(p) (1) and (2)), with respect to DCA employees.

6. Authorize and approve overtime work for DCA civilian employees in accordance with 5 U.S.C., chapter 55, subchapter V, and applicable Office of Personnel Management (OPM) regulations.

7. Authorize and approve:

a. Travel for DCA civilian employees in accordance with Joint Travel Regulations, volume 2.

b. Temporary duty travel for military personnel assigned or detailed to DCA in accordance with Joint Travel Regulations, volume 1.

c. Invitational travel to persons serving without compensation whose consultative, advisory, or other highly specialized technical services are required in a capacity that is directly related to, or in connection with, DCA activities pursuant to 5 U.S.C. 5703.

8. Approve the expenditure of funds available for travel by military personnel assigned or detailed to DCA for expenses incident to attendance at meetings of technical, scientific, professional, or other similar organizations in such instances where the approval of the Secretary of Defense is required by law (37 U.S.C. 412) and 5 U.S.C. 4110 and 4111. This authority cannot be redelegated.

9. Develop, establish, and maintain an active and continuing Records Management Program, pursuant to 44 U.S.C. 3102 and DoD Directive 5015.2, "Records Management Program," September 17, 1980.

10. Establish and use imprest funds for making small purchases of material and services, other than personal services, for the DCA when it is determined more advantageous and consistent with the best interests of the Government, in accordance with DoD Instruction 5100.71, "Delegation of Authority and Regulations Relating to Cash Held at Personal Risk including Imprest Funds," March 5, 1973.

11. Authorize the publication of advertisements, notices, or proposals in newspapers, magazines, or other public periodicals as required for the effective administration and operation of DCA consistent with 44 U.S.C. 3702.

12. Establish and maintain property accounts for DCA and appoint Boards of Survey, approve reports of survey, relieve personal liability, and drop accountability for DCA property in the authorized property accounts that have been lost, damaged, stolen, destroyed, or otherwise rendered unserviceable, in accordance with applicable laws and regulations.

13. Promulgate the necessary security regulations for the protection of property and places under the jurisdiction of the Director, DCA, pursuant to DoD Directive 5200.8, "Security of Military Installations and Resources," July 29, 1980.

14. Establish and maintain, for the functions assigned, a publications system for the promulgation of common supply and service regulations, Instructions, and reference documents, and changes thereto, pursuant to DoD 5025.1-M, "DoD Directives System Procedures," April 1981.

15. Enter into support and service agreements with the Military Departments, other DoD Components, or other Government Agencies, as required, for the effective performance of DCA functions and responsibilities.

16. Exercise the authority delegated to the Secretary of Defense by the administration of the General Services Administration (GSA) with respect to the disposal of surplus personal property.

17. Enter into and administer contracts directly or through a Military Department, a DoD contract administration services component, or other Government Department or Agency for supplies, equipment, and services required to accomplish the mission of DCA. To the extent that any law or Executive order specifically limits the exercise of such authority to persons at the Secretarial level of a Military Department, such authority shall be exercised by the appropriate Under Secretary or Assistant Secretary of Defense.

18. Award contracts for the lease of commercial C³ capabilities as prescribed in DoD Directive 5100.32, "Delegation of Authority with Respect to Contracts for the Procurement of Public Utility Services," September 6, 1974.

19. Designate an officer or employee of DCA to serve as the Competition Advocate of the Agency, pursuant to 10 U.S.C. 2318.

The Director, DCA, may redelegate these authorities as appropriate, and in writing, except as otherwise specifically indicated above, or as otherwise provided by law or regulation.

[*] See footnote 2 of § 362.5(a)(1)

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

January 11, 1989.

[FR Doc. 89-1117 Filed 1-18-89; 8:45 am]

BILLING CODE 3810-01-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1228

Transfer of Records to the National Archives

AGENCY: National Archives and Records Administration.

ACTION: Final rule.

SUMMARY: This rule prescribes how agency heads certify that permanently valuable records more than 30 years old are needed for current agency business and to clarify the procedures for removing statutory and other restrictions imposed on records transferred to the National Archives of the United States. The rule affects only Federal agencies.

EFFECTIVE DATE: January 19, 1989.

FOR FURTHER INFORMATION CONTACT: Adrienne C. Thomas or Nancy Allard at 202-523-3214 (FTS 523-3214).

SUPPLEMENTARY INFORMATION:

On September 2, 1988, NARA published a notice of proposed rulemaking on the transfer of records to the National Archives (53 FR 34131). Comments were received from one Federal agency and one Federal employee.

The Federal agency, which creates and has custody of a large quantity of classified and sensitive unclassified documents, recommended that the proposed § 1228.180(c)(2)(ii) be eliminated. As we pointed out in the preamble to the proposed rule, the proposed paragraph (c) is a restatement of the procedures currently contained in § 1228.180(b). No substantive changes are made to these procedures, which reflect the statutory requirements of 44 U.S.C. 2108. We cannot delete § 1228.180(c)(2)(ii), as suggested by the Federal agency, because that would result in a regulation contrary to 44 U.S.C. 2108. However, we have included additional information which should clarify the handling of classified and other sensitive information contained in records over 30 years old.

We have deleted the reference to GRS item number in § 1228.180(a)(2)(ii)(B) since the recently issued revised General Records Schedules no longer cover any permanent records.

The comment from the Federal employee supported the proposed rule without change.

This rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981. As required by the Regulatory Flexibility Act, it is hereby certified that this proposed rule will not have a significant impact on small business entities.

List of Subjects in 36 CFR Part 1228

Archives and records.

For the reasons set forth in the preamble, Chapter XII of Title 36 of the Code of Federal Regulations is amended as follows:

PART 1228—DISPOSITION OF FEDERAL RECORDS

1. The authority citation for Part 1228 is revised to read as follows:

Authority: 44 U.S.C. chapters 21, 29, and 31.

2. Section 1228.180 is revised to read as follows:

§ 1228.180 Authority.

(a) *Transfer of records.* The Archivist of the United States is authorized by 44 U.S.C. 2107 to:

(1) Accept for deposit with the National Archives of the United States the records of a Federal agency or of the Congress determined by the Archivist of the United States to have sufficient historical or other value to warrant their continued preservation by the U.S. Government; and

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(2) Direct and effect the transfer to the National Archives of the United States of Federal agency records that have been in existence for more than 30 years and that have been determined by the Archivist of the United States to have sufficient historical or other value to warrant their continued preservation by the U.S. Government, unless the head of the agency which has custody of the records certifies in writing to the Archivist that the records must be retained in agency custody for use in the conduct of the regular current business of the agency. Records that are scheduled in a NARA-approved records schedule to be transferred to the National Archives of the United States after a specified period of time are subject to the certification requirement only if the records are not transferred as scheduled.

(i) In order to certify that records must be retained for the conduct of regular current business, an agency should consider the following factors:

(A) Character of use (to be retained by an agency, records should be used for the normal routine business of the agency at the time of certification);

(B) Frequency of use (to be retained by an agency, records should be used more than one time per month per file unit); and,

(C) Preservation of the records (to be retained by an agency, permanently valuable records should be preserved in accordance with NARA guidelines).

(ii) The written certification of need of a series of 30-year-old records for current agency business must:

(A) Include a comprehensive description and location of records to be retained;

(B) Cite the NARA approved authority for the disposition of the records if scheduled (SF 115 item number);

(C) Describe the current business for which the records are required;

(D) Estimate the length of time the records will be needed by the agency for current business (if no date is provided by the agency, approved certification requests will be effective for a maximum of five years);

(E) Explain why the current needs of the agency cannot be met by the services NARA provides for records deposited with the National Archives of the United States; and,

(F) If the records are being retained to enable the agency to provide routine public reference, cite the statute authorizing this agency activity.

(iii) NARA will not accept an agency certification that a specific body of records over 30 years old, regardless of physical form or characteristics, is being used for the "conduct of the regular current business," if that agency is retaining such records primarily to:

(A) Provide to persons outside the agency access which can be provided by NARA; or

(B) Function as an agency archives, unless specifically authorized by statute or NARA.

(b) *Custody of records transferred.* Under 44 U.S.C. 2108, the Archivist of the United States is responsible for the custody, use, and withdrawal of records transferred to him.

(c) *Transferred records subject to statutory or other restrictions.* (1) When records, the use of which is subject to statutory limitations and restrictions, are so transferred, permissive and restrictive statutory provisions concerning the examination and use of records applicable to the head of the transferring agency are applicable to the Archivist of the United States and the employees of the National Archives.

(2) Before records are transferred to the National Archives, the head of an agency may state in writing restrictions that appear to him or her to be necessary or desirable in the public interest on the use or examination of records. The head of an agency must, however, justify and cite the statute or Freedom of Information Act exemption (5 U.S.C. 552(b)) that authorizes placing restrictions on the use or examination of records being considered for transfer. If the Archivist agrees, restrictions will be placed on the records.

(i) *For records less than 30 years old.* Unless required by law, the Archivist will not remove or relax restrictions placed upon records less than 30 years old without the concurrence in writing of the head of the agency from which the material was transferred or of his or her successor, if any. If the transferring agency has been terminated and there is no successor in function, the Archivist is authorized to relax, remove or impose restrictions in the public interest.

(ii) *For records 30 or more years old.* After the records have been in existence for 30 years or more, statutory or other restrictions referred to in this section shall expire unless the Archivist determines, after consulting with the head of the transferring agency, that the restrictions shall remain in force for a longer period. Such restrictions may be extended by the Archivist beyond 30 years only for reasons consistent with standards established in relevant statutory law, including the Freedom of Information Act (5 U.S.C. 552). Restrictions are systematically extended beyond 30 years where agencies advise NARA on the transferring document (now a Standard Form 258) that a particular category of records requires such protection. NARA has identified specific categories of records, including classified information and information that would invade the privacy of an individual, which may require extended protection beyond 30 years. *See* 36 CFR Part 1256.

Dated: December 27, 1988.

Claudine J. Weiher,

Acting Archivist of the United States.

[FR Doc. 89-1220 Filed 1-18-89; 8:45 am]

BILLING CODE 7515-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3503-4]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Final rulemaking.

SUMMARY: On September 6, 1988 (53 FR 34315 and 34310), USEPA proposed to approve revisions to the Indiana State Implementation Plan (SIP) for sulfur dioxide (SO_2) under USEPA's "parallel processing" procedures. The revisions consist of Indiana's SO_2 emission limits and plans for Dearborn, Gibson, Lake, and Porter Counties. USEPA's actions were based upon revision requests which were submitted by the State to satisfy the requirements of section 110, and Part D for Lake County, of the Clean Air Act (Act).[1] USEPA, today, is approving Indiana's emission limits and plans for all of these counties.

USEPA is also amending Title 40 CFR Part 52 to reflect the State of Indiana's recodification of certain rules in the Indiana SO_2 SIP.

DATE: This final rulemaking becomes effective February 21, 1989.

ADDRESSES: Copies of the SIP revisions, comments, and support documentation are available at the following addresses for review: (It is recommended that you telephone Kent Wiley, at (312) 886-6034, before visiting the Region V office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604

Office of Air Management, Indiana Department of Environmental Management, 105 South Meridian Street, P.O. Box 6015, Indianapolis, Indiana 46206-6015.

A copy of today's revisions are available for inspection at: U.S. Environmental Protection Agency, Public Information Reference Unit, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Kent Wiley, Air and Radiation Branch (5AR-26), Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-6034.

SUPPLEMENTARY INFORMATION: On September 6, 1988, USEPA proposed to approve revisions to the Indiana SO_2 SIP, for Gibson County (53 FR 34315) and for Dearborn, Lake, and Porter Counties (53 FR 34310). The SIPs for these counties currently consist of the general provisions of Indiana's SO_2 rule, 325 IAC 7-1, which USEPA approved on January 19, 1988 (53 FR 1354). The proposed revisons consist of (1) the site-specific SO_2 emission limits and other requirements in 326 IAC 7-1-20 (Dearborn County, submitted on November 16, 1988), 326 IAC 7-1-19 (Gibson County, submitted July 12, 1988), 326 IAC 7-1-6.1 (Lake County, submitted November 16, 1988, and December 6, 1988), and 326 IAC 7-1-21 (Porter County, submitted November 16, 1988, and December 6, 1988), and (2) the 6.0 lbs/MMBTU emission limit in 326 IAC 7-1-2, which is the emission limit applicable to all other sources not specifically listed in the county-specific rules (except for new sources subject to federally enforceable new source review permits).

Background information for USEPA's rulemaking action is contained in the September 6, 1988, **Federal Register** notices and will not be repeated here. The specific emission limitations and plan requirements for these counties are also discussed in the September 6, 1988, notices.

USEPA today approves the emission limits and other requirements for sources in these counties and the overall SO_2 plans for these counties on the ground that they satisfy the requirements of section 110 (and as to Lake County, Part D) of the Clean Air Act.

Response to Public Comments

In response to the Notices of Proposed Rulemaking (NPRs), comments concerning Lake County were submitted by:

(1) Inland Steel Corp (Inland)

(2) AMOCO Oil Company (AMOCO)

(3) Northern Indiana Public Service Company (NIPSCO)

(4) Marblehead Lime Co. (Marblehead).

Comments concerning Gibson County were submitted by:

(1) Public Service Indiana (PSI).

Comments concerning Dearborn County were submitted by:

(1) Joseph E. Seagram & Sons Inc. (Seagram)

(2) Ohio Environmental Protection Agency (OEPA)

(3) The Greater Cincinnati Chamber of Commerce SO_2 Task Force (GCCC)

(4) Cincinnati Gas & Electric (CG&E).

The Indiana Deaprtment of Environmental Management (IDEM) also submitted comments concerning all four counties under consideration in this notice.

Requirements for Advance Notice and Additional Recordkeeping in Dearborn, Lake, and Porter Counties

In the NPR for Dearborn, Lake, and Porter Counties, USEPA solicited comments concerning the need for advance notice prior to switching emission limits for certain sources which are subject to multiple emission limit scenarios.

Comments: IDEM stated that although advance notification is not necessary for enforcement purposes, the rules do require advance notification in certain instances for convenience in enforcement. In cases where the alternative emission limits are dependent upon the fuel type and number of units operating simultaneously, IDEM stated that advance notification may be impractical. Furthermore, IDEM stated that the lack of advance notification does not hamper its ability to enforce the limits in force.

Seagram, NIPSCO, Inland, and AMOCO believed that prior notification is not necessary, not reasonably feasible, and is overly burdensome for the affected sources.

Response: USEPA has reviewed Dearborn, Lake, and Porter County rules and has determined that, for the reasons provided by IDEM, they contain sufficient provisions for enforcement. Consequently, USEPA accepts these rules.[2]

In the NPR for Dearborn, Lake, and Porter Counties, USEPA requested that IDEM clarify: (a) The methods to be used to obtain the additional records and data required by the State rules for sources subject to alternative emissions limits, and (b) whether these records and data can be used to determine compliance.

Comments: IDEM addressed these items in its comments. Concerning the methods for obtaining data, IDEM stated that it is not necessary to specify an additional method to determine facility operating status, fuel type, or actual heat input and that its procedures for collecting continuous emission monitoring (CEM) data are specified in the rule for the applicable sources. IDEM also maintained that the lack of a fuel sampling and analysis method should not prevent final approval because IDEM has made a commitment to incorporate specific methods in 326 IAC 7-1-3, because the previously approved rule requires certain companies to submit compliance plans (which will specify the fuel sampling and analysis method), and because USEPA's has previously approved the rules for other counties without fuel sampling and analysis requirements.

IDEM also stated that records currently required by its rules are intended to be used to determine compliance. Inland and Seagrams noted that they are required under these rules to collect data for the State to determine compliance. NIPSCO objected to the additional information required by the State rule.

Response: USEPA is approving the rules as submitted by Indiana. USEPA accepts the State's position that the records and data, as required by these rules, can be used to determine compliance. USEPA acknowledges IDEM's commitment to revise 326 IAC 7-1-3 in the near future to include fuel sampling and analysis methods.

Any comment, such as NIPSCO's, concerning the State requirements for recordkeeping etc. must be raised at the State level. USEPA has determined that the rule meets the applicable provisions of the Clean Air Act. USEPA does not have the authority to modify the State rule in response to NIPSCO's objection.

Lake County—Other Comments: IDEM noted minor errors in the NPR and provided corrections. These follow: (1) There are four boilers at AMAIZO and

[1] Lake County has been designated as an area which has not attained the primary national ambient air quality standards for SO_2 under section 107 of the Act, 42 U.S.C. 7407. See 40 CFR 81.315. It is thus subject to additional requirements under Part D of the Act.

[2] As a general matter, USEPA prefers fixed emission limits, rather than optional limits which increase the burden of States and USEPA in assuring compliance. USEPA has determined that the rules for Dearborn, Lake, and Porter Counties are enforceable as required by the CAA. This approval is based on the factual circumstances here and should not be interpreted as obliging USEPA to approve optional limits submitted by a State in other circumstances. As always, USEPA has the authority, on a case specific basis, to use section 114 to establish additional monitoring, recordkeeping, and reporting requirements, as necessary, to assure compliance with these rules for Dearborn, Gibson, Lake, and Porter Counties.

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five boilers at AMOCO Power Station #3; (2) the range of emission limits for Inland 4AC Station Boilers 401–404 cannot exceed 1.5 lbs/MMBTU. IDEM also commented that USEPA's partial listing of emission limits and other requirements in 326 IAC 7–1–8.1 could mislead the public on the rule's scope. (AMOCO pointed out that the State rule expresses limits for some sources in terms of "lbs/ton" rather than "lbs/MMBTU" and requires records of specific gravity of the fuel rather than the heating value of the fuel.)

Response: USEPA accepts these corrections. USEPA also acknowledges that the partial listing in the NPR may have been confusing and, therefore, directs the reader to 326 IAC 7–1–8.1 for a complete presentation of the applicable emission limits and other requirements for Lake County.

Comment: Marblehead Lime stated that the proposed SIP revisions concerning its plant are not approvable for the following reasons: (1) The requirement to build five new taller stacks is unacceptable due to the construction and additional operating costs, there are engineering problems with building a stack in the waters of Lake Michigan, and the proposed stack height increases are exceedingly rigorous and harsh and are a dispersion technique contrary to section 123 of the Act. (2) The modeled violations occur at locations (over Lake Michigan) that are not representative of ambient air. (3) The State's modeling contained major errors, e.g., it was done in the rural mode, not the urban mode, the wrong building dimensions were used, receptors were modeled with an incorrect elevation, meteorological data were developed from inappropriate sites, the height of the measurements was not representative of Marblehead Lime, no model validation was done, and the modeling overpredicts 24-hour average concentrations as indicated by the annual calibration.

Marblehead also claimed that the State regulation was improperly adopted by the State. Marblehead further claimed that the regulation discussed at the public hearing was "substantially different" from the regulation preliminarily adopted by the Board, and that such revision, it asserted, is improper without prior notice. Furthermore, Marblehead Lime also stated that because it was deprived of meaningful technical support data, it was therefore also deprived of its legal opportunity to comment.

Response: USEPA has examined each concern of the commenter and has concluded that the State rule for Marblehead Lime is approvable by USEPA. Each concern is addressed below: (1) USEPA finds the requirement to build a taller stack to be acceptable under section 123 of the Act. The required stack height would not exceed the Good Engineering Practice formula height, as prescribed under 40 CFR 51.100(ii)(i). Comments related to economic or technological feasibility must be raised at the state level because USEPA is not authorized to consider such matters in its review of SIPs under Section 110(a)(2).[5]

(2) USEPA has consistently maintained that air over Lake Michigan is ambient. Ambient air is that portion of the atmosphere external to buildings, to which the general public has access. Thus, according to 40 CFR 50.1(e), ambient air is defined in terms of public access, not frequency of access, length of stay or other factors. The only specified exception to this definition is the atmosphere over land owned by a source and to which access is precluded by a fence or other physical barriers. Thus USEPA concludes that the air over Lake Michigan is ambient air.

(3) USEPA does not find that the modeling issues raised in the comments are errors. IDEM properly used the urban mode of ISC for the Lake County SIP as required by the "Guideline on Air Quality Models (Revised)," which states: "For analysis of whole urban complexes, the entire area should be modeled as an urban region if most of the sources are located in areas classified as urban."

USEPA finds that acceptable input data were used in running the model. The meteorological data base was developed using the most recent complete, representative data for Lake County sources. The primary data site consisted of measurements from the 91 m level on the nearby Hammond Tower. The 91 m height is representative of the emission-weighted average stack height for the county. Substitutions for missing values were made using data from other nearby representative sites. The assumption of a uniform receptor and stack base elevation in the modeling, although not met at every point, is generally consistent with the flat terrain throughout the study area. The building dimensions used by IDEM were apparently provided by Marblehead Lime initially and no data such as plots plans have been provided to refute the accuracy of these dimensions.

Concerning model validation, USEPA recognizes that air quality measurements can be useful in assessing the accuracy of mathematical models, but maintains that it is not necessary to validate all models at all sites. Model calibration may be appropriate for improving the accuracy of estimated concentrations, but only for annual average concentrations. Short-term model calibration tends to be unreliable due to uncertainties in concurrent source and meteorological data. The results of an annual calibration cannot be used to infer the accuracy of the model to predict short-term concentrations; that determination can only be made using short term data. Marblehead submitted no monitoring data to refute the accuracy of the State's modeling.

Finally, USEPA accepts the State's determination that the regulations were properly adopted. In a letter dated November 23, 1988, IDEM stated that the Lake County rule was adopted and promulgated in full compliance with the Indiana Code. The legality and form of the final was approved by the Indiana Attorney General. IDEM stated that the required 21-day notice for public hearing was met,[6] that it informed Marblehead Lime concerning its intention to recommend rule revisions prior to and at the public hearing of May 1988, that it worked with Marblehead Lime prior to and during the rulemaking process to explore alternative control strategies, and that the public comment period was extended until July 1988 to allow the public to comment on the rule revisions. IDEM has stated its commitment to work with Marblehead Lime and, if necessary, to submit a SIP revision to USEPA for this source.

USEPA has determined that the State's procedures in this case were reasonable, particularly in light of the deference which is accorded the State in interpreting the procedural aspects of its air pollution laws, so long as the interpretation is consistent with the Act.[6]

Gibson County

Comment: IDEM agreed with USEPA's statement in the NPR that any future modeling, including modeling performed pursuant to PSI's compliance plan, must comply with the USEPA modeling guidelines in effect at that time. PSI, however, objected to this position for two reasons: First, PSI cited a state background document for Gibson County which stated that the compliance plan may be equivalent for

[5] See *Union Electric Co. v U.S.E.P.A.*, 427 U.S. 246 (1976).

[6] IDEM also met the requirements of 40 CFR 51.102 that 30 days notice be given prior to promulgation.

[6] See, e.g. *Florida Power and Light Company v. Costle*, 650 F.2d 579 (5th Cir. 1981).

each set of alternative emission limits. PSI claimed that, for equivalency, the same model must be used since a new model may produce more stringent alternative emission limits. Second, PSI asserted that if a model is currently sufficient to demonstrate attainment, then it should be adequate for all future regulatory analysis.

Response: USEPA maintains that the modeling analysis accepted for this rulemaking action will not necessarily be accepted for any future rulemaking actions, including consideration of revised emission limitations developed pursuant to PSI's compliance plan. These must be supported with modeling performed in accordance with USEPA modeling guidelines in effect at that time. The modeling requirements may change due to advances in the science and resulting improvement in available techniques.

Comment: PSI requested that USEPA note in its final approval that the compliance plan will automatically be included in the SIP, upon submittal by IDEM, without further notice.

Response: Neither the State rule, nor the USEPA proposed rulemaking, provides that the compliance plan shall automatically be incorporated into the SIP. The rule specifically states that the compliance plan shall be submitted to USEPA as a revision to the Indiana SIP. Before this revision can become part of the SIP, the requirements of 40 CFR Part 51, Subpart F must be satisfied.

Comment: In the NPR, USEPA stated that Unit 5 at the Gibson Station currently has a federally enforceable PSD emission limit. PSI claimed that this was not true because (1) the permit for Unit 5 was never acted upon by USEPA, (2) State law prohibits the State from issuing permits for periods longer than 5 years, and (3) the State PSD construction permit was superceded by a State operating permit on August 20, 1982.

Response: The emission limits and related items in the federal PSD permit are federally enforceable.[6] Acting pursuant to EPA's delegation of PSD authority on July 25, 1977, Indiana issued a permit on March 17, 1977, which, for state purposes, authorized the construction of Unit 5, but which, for federal purposes, established emission limits and related terms as required by the PSD provisions of the Act. The federal PSD permit became effective upon its issuance by the state and was not superceded by the state's operating permit, which contains the same emission limits set forth in the construction permit. The provisions of State law cited by PSI do not prohibit the State from acting as USEPA's agent in issuing permits under federal PSD regulations.

Comment: PSI claimed that the compliance methodology contained in 326 IAC 7–1–3 does not become federally enforceable in a given county until such time as the SIP for that county is approved.

Response: On January 19, 1988, USEPA approved 326 IAC 7–1–3 for all counties (53 FR 1354). Thus, contrary to the comment, 326 IAC 7–1–3 is already included in the Indiana SIP statewide, and specifically in the Gibson County SIP.

Comment: PSI supported approval of the State's compliance schedule. PSI claimed that the State's documentation demonstrated that the schedule is reasonably expeditious.

Response: USEPA stated in the NPR that the primary and secondary NAAQS compliance dates are consistent with the requirements of section 110 of the Act and with 40 CFR 51.110. USEPA received no adverse comments and maintains this position.

Comment: IDEM noted that, on July 12, 1988, it had submitted the State promulgated rule for Gibson County, which became effective on May 13, 1988.

Dearborn County

Comment: GCCC requested a 30-day extension of the comment period. Alternatively GCCC requested written assurance that the Dearborn County rulemaking would have no effect on the rulemaking for Hamilton County, Ohio, that the Dearborn County rulemaking would not make any determinations applicable to Hamilton County, and that USEPA has made no decision concerning whether to issue a SIP call for Hamilton County. If this written assurance were not given, then GCCC would object to denial of its request for extension for several reasons. GCCC withdrew its request for extension upon receiving a written assurance that, for the reasons set out below, this rulemaking concerns the Dearborn County SIP, and does not bind USEPA to require a SIP revision for Hamilton County, Ohio.

Response: USEPA is currently under court order to take final rulemaking action on the Dearborn County SO_2 plan by December 30, 1988 *(Sierra Club v. Thomas,* S.D. Ind. NA 194–C (October 26, 1987)). The comment period expired on October 6, 1988. Extending the comment period by an additional 30 days would have jeopardized the ability of USEPA to meet the terms of the court order. Because USEPA has satisfied the requirements of the Administrative Procedure Act, 5 U.S.C. 552 *et seq.*, USEPA believes that the 30-day public comment period allowed the public the opportunity to participate and comment meaningfully on this action.

Comment: CG&E expressed concern over USEPA's inaction on the Ohio Environmental Protection Agency's (OEPA) November 1987 SIP revision submittal for the Cincinnati Gas and Electric's Miami Fort plant. CG&E asserted that this revision is approvable (based on the previously approved SIP modeling and the need to discount only the amount of excess stack height credit), and that USEPA's inaction on the Miami Fort revision and action on the subsequent Dearborn County submittal should not affect the acceptability of the Miami Fort revision. CG&E urged USEPA to approve the SIP revision for Miami Fort or to state explicitly that Dearborn County final action does not establish any finding or conclusion applicable to Hamilton County.

Response: Comments on SIP submittals by the State of Ohio are not relevant to this rulemaking on a SIP for Indiana. USEPA will respond to these comments when and if they are submitted in the context of a rulemaking on the Ohio SIP.[7]

Comment: OEPA stated that the Dearborn County rulemaking should not affect the Hamilton County, Ohio SIP. OEPA and the GCCC noted that they were proceeding on a program to review the Hamilton County SIP and any action on Hamilton County should await completion of this study. The commenters stated that if Indiana believes that Ohio sources are interfering with attainment and maintenance of the NAAQS in Indiana, then Indiana has the option of petitioning under section 126 of the Clean Air Act; this rulemaking is not the proper means of allocating emissions among neighboring states.

Response: USEPA's approval for Dearborn County's revised SIP is based on its acceptance of IDEM's air quality modeling showing that the emissions from Dearborn County sources under

[6] See 40 CFR 52.21(b)(17) for the definition of "federally enforceable."

[7] OEPA's November 1987 submittal consisted of a proposed rule developed pursuant to the requirements of USEPA's July 8, 1985, Stack Height Rule relating to Miami Port. Although OEPA requested USEPA to parallel process this proposed revision, USEPA informed OEPA on December 18, 1987, that the revision was incomplete. USEPA does not intend to initiate rulemaking on Miami Fort until the State has completed its submittal. USEPA is proceeding with rulemaking on Dearborn County and will address with the Hamilton County SIP in a separate action.

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Porter County

Comment: IDEM noted that clerical errors identified by USEPA in the NPR have been corrected.

Response: USEPA acknowledges this.

Comment: IDEM stated that the emission limitations in 326 IAC 7-1-21 were shown to protect the 3-hour NAAQS based on both urban and rural modeling.

Response: USEPA's proposed approval of Porter County plan was based on the State's rural modeling analysis. Although USEPA is aware that IDEM also performed urban modeling here, USEPA believes that the rural modeling has been shown to be consistent with USEPA modeling guidelines and, thus, has chosen to rely on it in this rulemaking.

Miscellaneous: Recodification of Indiana Rules

In addition to taking final action to approve the SIP submittals for Dearborn, Gibson, Lake and Porter Counties, USEPA today is amending 40 CFR Part 52 to reflect the State of Indiana's recodification of various rules that USEPA previously approved: specifically, 326 IAC 7-1-1 through 7-1-7; and the county-specific rules for Jefferson, LaPorte, Marion, Sullivan, Warrick, and Wayne Counties. In prior **Federal Register** notices, USEPA approved these rules, which had been submitted as part of 325 IAC. The State of Indiana subsequently recodified those rules as part of 326 IAC. No substantive changes have been made in these rules following USEPA's approvals.[8]

Conclusion

USEPA is approving Indiana's emission limits, other requirements, and overall plans for Dearborn, Gibson, Lake, and Porter Counties, because they meet the requirements of section 110 (and for Lake, Part D) of the Act. The Office of Management and Budget has exempted these rules from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 20, 1989. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

[8] In USEPA's proposed approval of all of Indiana's SO_2 rules, the possibility of a recodification was referenced. USEPA stated that all rules would be codified under Title 326, instead of Title 325, when and if they were submitted as such. In keeping with this statment, USEPA is approving Indiana's recodification of its SO_2 rules today

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Intergovernmental relations, Sulfur oxides.

Dated: December 30, 1988.

Jack Moore,

Acting Administrator.

Title 40 of the Code of Federal Regulations, Chapter I, Part 52, is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS, INDIANA

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7642.

§ 52.770 [Amended]

2. Section 52.770 is amended by adding new paragraph (c)(72) to read as follows:

(c) * * *

(72) on November 16, 1988, Indiana submitted its SO_2 plan for Dearborn County; on July 12, 1988, it submitted its SO_2 plan for Gibson County; on November 16, 1988, and December 6, 1988, it submitted its SO_2 plan for Lake County, and on November 16, 1988, and December 6, 1988, it submitted its SO_2 plan for Porter County. These plans consist of the provisions and requirements in 326 IAC 7-1 approved or reinstated for these counties at Paragraph (c)(66), any SO_2 emission limits in 326 IAC 7-1-2 applicable in these counties (as incorporated by reference at paragraph (c)(66)(i)(C) of this section, and the site-specific SO_2 emission limits and other requirements in 326 IAC 7-1-20 (Dearborn County), 326 IAC 7-1-8.1 (Lake County), 326 IAC 7-1-19 (Gibson County), and 326 IAC 7-1-21 (Porter County).

(i) Incorporation by Reference.

(A) 326 IAC 7-1-20, Dearborn County Sulfur Dioxide Emission Limitations, as published in the August 1, 1988, *Indiana Register* (IR) at 11 IR 3784.

(B) 326 IAC 7-1-19, Gibson County Sulfur Dioxide Emission Limitations, as published on June 1, 1988, at 11 IR 3019.

(C) 326 IAC 7-1-8.1, Lake County Sulfur Dioxide Emission Limitations, as published on November 1, 1988, at 12 IR 262, and corrected on December 1, 1988, at 12 IR 597.

(D) 326 IAC 7-1-21, Porter County Sulfur Dioxide Emission Limitations, as published on November 1, 1988, at 12 IR 259, and corrected on December 1, 1988, at 12 IR 567.

(E) 326 IAC 7-1-1, Applicability, as published on December 1, 1988, at 12 IR 552.

* * * * *

3. Section 52.770 is amended by revising the introductory text of paragraph (c)(71), (c)(71)(i)(C), and removing paragraph (c)(71)(i)(D), to read as follows:

(c) * * *

(71) On March 23, 1988, Indiana submitted its SO_2 plan for Morgan County; on July 12, 1988, it submitted its SO_2 plan for Floyd County, and on November 16, 1988, it submitted its SO_2 plan for Warrick County. On December 6, 1988, it submitted its Warrick County rule as published in the *Indiana Register*. These plans consist of the provisions and requirements in 326 IAC 7-1 approved or reinstated for these counties at Paragraph (c)(66), any SO_2 emission limits in 326 IAC 7-1-2 applicable in these counties (as incorporated by reference at paragraph (c)(66)(i)(C) of this section), and the site-specific SO_2 emission limits and other requirements in 326 IAC 7-1-16 (Floyd County), 326 IAC 7-1-18 (Morgan County), and 326 IAC 7-1-17 (Warrick County).

(i) Incorporation by Reference

(A) * * *

(B) * * *

(C) 326 IAC 7-1-17, Warrick County Sulfur Dioxide Emission Limitations, as published on December 1, 1988, at 12 IR 553.

* * * * *

4. In § 52.770, the introductory text of paragraph (c)(66) is amended by adding the following sentence to the end of the existing paragraph: "Indiana recodified 325 IAC 7-1-1 through 7-1-7 to 326 IAC 7-1-1 through 7-1-7 and submitted the recodified rules on November 16, 1988."

5. Section 52.770 is amended by revising paragraph (c)(66)(i)(A) and removing paragraph (c)(66)(i)(B), to read as follows:

(c) * * *

(66) * * *

(i) Incorporation by Reference

(A) 326 IAC 7-1-1 through 326 7-1-7, Sulfur Dioxide Emission Limitations, as published in the April 1, 1988, *Indiana Register* (IR) at 11 IR 2511.

* * * * *

6. Section 52.770 is amended by revising the introductory text of paragraph (c)(67); revising paragraphs (c)(67)(i) (A), (B), (C), (D) and (C); and removing paragraph (c)(67)(i)(H), to read as follows:

(c) * * *

(67) On February 3, 1988, Indiana submitted its SO_2 plan for Jefferson, LaPorte, Marion, Sullivan, and Wayne Counties; on March 23, 1988, it submitted its SO_2 plan for Vermillion County; and on August 1, 1988, it

the revised rule would not cause violations of the NAAQS in Indiana or elsewhere; and also, that any nonattainment of the SO_2 NAAQS in Dearborn County, following implementation of this revised rule, would be attributable to emissions from Hamilton County. However, these factual judgments which are made for the purpose of taking final action on this Indiana SIP revision, do not bind the Agency to require a SIP revision for Hamilton County nor do they govern the Agency's review of any such SIP revision for that Ohio County.

In this rulemaking USEPA is not allocating SO_2 emissions between Ohio and Indiana. This rulemaking only concerns Indiana's obligation to reduce Dearborn County sources' emission as necessary both to attain the NAAQS in Indiana and to avoid contributing to NAAQS violations elsewhere. USEPA has not received a section 126 petition relevant to this proceeding and thus does not respond to the commenter's suggestion that such a petition would be an appropriate means to allocate SO_2 emissions between Ohio and Indiana.

Comment: GCCC claimed that the Dearborn County modeling does not justify reopening the Hamilton County SIP. GCCC and OEPA claimed that current Hamilton County SIP limits are adequate because: (1) There have been no monitored violations in Hamilton County, (2) the limits were developed consistent with the Modeling Guidelines in effect at the time and approved by USEPA, (3) the CRSTER modeling used was upheld by the U.S. Court of Appeals for the Sixth Circuit, (4) CRSTER has been shown to be conservative for receptors near stack top, which is the case in western Hamilton County, and (5) CRSTER has been validated, while IDEM's modeling techniques have not been.

Additional problems raised by the GCCC with regard to IDEM's modeling include: (6) The screening complex terrain model results are too crude for regulatory purposes because the model is deliberately designed to overestimate concentrations, (7) ISC with downwash was not developed and has not been validated for circumstances similar to those in Hamilton County (i.e., the model should be restricted to flat terrain and neutral/slightly unstable conditions), and (8) a model comparison study performed by OEPA shows that the concentrations predicted by ISC with downwash are more than double the concentrations predicted by CRSTER or ISC without downwash. GCCC also requested USEPA to include in the record of this rulemaking a copy of the ISC User's Manual and a description of the physical situations under which the downwash algorithm was developed and validated.

Response: These comments address the validity of IDEM's modeling if used for the purpose of determining the adequacy of the Hamilton County, Ohio SIP. The comments fail to address the *only* subject of this proceeding, namely, whether the SIP revision submittal for Dearborn County, Indiana, satisfies the requirements of the Act. In this notice USEPA will respond to these comments only to the very limited extent that they may be interpreted to concern the appropriateness of USEPA's approval of the Dearborn County SIP revision.

USEPA accepts IDEM's modeling for the purpose of supporting the Dearborn County SIP. According to the Modeling Guidelines, the model that most accurately estimates concentrations in the area of interest should be used. By recommending the use of certain air quality models, the Guidelines create a presumption of reliability and accuracy. For sources located in complex terrain, and for complicated sources with special problems, such as building downwash, and such as those in Dearborn County, the guidelines recommend the use of VALLEY (or Complex run in the VALLEY mode) or the Industrial Source Complex (ISC) model. CRSTER is not appropriate here because it does address complex terrain or building downwash; the cases cited by the commenter do not indicate that USEPA should use CRSTER here. IDEM has used the Guideline model in this situation. Thus, USEPA believes that IDEM's modeling is both consistent with the Guidelines and provides reliable concentration estimates.

Comment: The GCCC urged USEPA to develop a more reasonable technical basis for approving the Dearborn County SIP. Alternatively, the commenter urged USEPA to either delay final rulemaking on Dearborn County until completion of the Hamilton County study or state in the final notice that the "* * * Indiana modeling does not apply, establish facts, or create presumptions or conclusions as to any Clean Air Act requirements beyond the Indiana border."

Response: IDEM's modeling analysis is consistent with USEPA's Modeling Guidelines. This model has been demonstrated to provide reliable concentration estimates in circumstances such as those relevant to this proceeding. No actual data refuting the accuracy of these models have been provided by the commenters. Thus, USEPA accepts IDEM's modeling for Dearborn County. Any determinations concerning the applicability of IDEM's modeling "beyond the Indiana border" will be made on a case-by-case basis. Such matters are beyond the scope of this rulemaking action.

Comments: IDEM asserted that USEPA is obligated to issue a notice of SIP deficiency to Ohio on the basis of IDEM's modeling. IDEM stated that Ohio should be required to submit a revised SIP within one year and to follow current modeling guidelines. IDEM cited its history of having to deal with SIP calls, Section 126 petitions, SIP revisions, potential enforcement actions, lawsuits, and revocation of its SO_2 enforcement policy. IDEM questioned USEPA's willingness to implement the Act in cases where Indiana's air quality is jeopardized by another State.

Response: USEPA wishes to emphasize that its rulemaking on Dearborn County is not dependent on the issuance of a SIP call for Hamilton County; the two actions are separate. Approval of the Dearborn County plan is based only on USEPA's determination that this part of the Indiana SIP is consistent with the requirements of section 110 of Act. Action on the Hamilton County SIP will occur through USEPA's implementation of the Act there.

Comment: The GCCC argued that USEPA's rulemaking may be a "major" action under Executive Order No. 12291 because it appears to affect more than Dearborn County. If, however, USEPA explicitly disclaims any effect on Hamilton County, then the commenter would be willing to accept the finding that this is not a major action.

Response: This rulemaking applies only to Dearborn, Gibson, Lake, and Porter Counties and is not a major action, because it merely approves, for Federal purposes, Indiana State rules. USEPA will make a determination as to whether a SIP for Hamilton County is a "major action" under Executive Order 12291 at the time it rulemaks on a plan for that county.

Comment: IDEM and Seagram noted a few errors in the September 6, 1988 **Federal Register** notice and offered corrections (i.e., final compliance date for Dearborn County sources is the effective date of the rule for all sources, except Tanners Creek Unit 4, for which it is August 1, 1991; name of company is "Joseph E. Seagram & Sons, Inc."; the word "burning" is misspelled).

Response: USEPA accepts these corrections.

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submitted its SO_2 plan for Vigo County. On November 16, 1988, Indiana submitted the same rules in its plans for Jefferson, LaPorte, Marion, Sullivan, and Wayne Counties, as recodified into Title 326 of the Indiana Administrative Code. These plans consist of the provisions and requirements in 326 IAC 7-1 approved or reinstated for these counties at paragraph (c)(66), any SO_2 emission limits in 326 IAC 7-1-2 applicable in these counties (as incorporated by reference at (c)(66)(i)(C)), and the site-specific SO_2 emission limits and other requirements in 326 IAC 7-1-13 (Jefferson County), 326 IAC 7-1-12 (LaPorte County), 326 IAC 7-1-9 (Marion County), 326 IAC 7-1-14 (Sullivan County), 326 IAC 7-1-15 (Vermillion County), 326 IAC 7-1-10.1 (Vigo County), and 326 IAC 7-1-11 (Wayne County).

(i) Incorporation by Reference

(A) 326 IAC 7-1-13, Jefferson County Sulfur Dioxide Emission Limitations, as published in the April 1, 1988, *Indiana Register* (IR) at 11 IR 2526.

(B) 326 IAC 7-1-12, LaPorte County Sulfur Dioxide Emission Limitations, as published on April 1, 1988, at 11 IR 2526.

(C) 326 IAC 7-1-9, Marion County Sulfur Dioxide Emission Limitations, as published on April 1, 1988, at 11 IR 2518.

(D) 326 IAC 7-1-14, Sullivan County Sulfur Dioxide Emission Limitations, as published on April 1, 1988, at 11 IR 2526.

(E) * * *

(F) * * *

(G) 326 IAC 7-1-11, Wayne County Sulfur Dioxide Emission Limitations, as published on April 1, 1988, at 11 IR 2525.

* * * * *

7. Section 52.773 is amended by removing and reserving paragraph (b) and revising paragraph (h), to read as follows:

§ 52.773 Approval status.

* * * * *

(h) The Administrator finds that the SO_2 strategies for Lake, LaPorte, Marion, Vigo, and Wayne Counties satisfy all requirements of Part D, Title 1 of the Clean Air Act, as amended in 1977. See § 52.770 (c)(67) and (c)(72).

* * * * *

§ 52.795 [Amended]

8. Section 52.795 is amended by removing and reserving paragraph (e).

[FR Doc. 89-301 Filed 1-18-89; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 86

[FRL-3460-7]

Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines; Test Procedures for Light-Duty Vehicles and Light-Duty Trucks and Selective Enforcement Auditing of New Light-Duty Vehicles, Light-Duty Trucks and Heavy-Duty Engines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is amending regulations at 40 CFR Part 86, Subparts B, G and K. These regulations govern the Federal test procedure (FTP) for new gasoline-fueled and diesel-fueled light-duty vehicles (LDVs) and light-duty trucks (LDTs), and the Selective Enforcement Auditing (SEA) of new LDVs, LDTs and heavy-duty engines (HDEs). The main purpose of these amendments is to delete from Subpart K the requirement that manufacturers report LDT and HDE internal quality assurance emission test data. It is expected that the data will still be submitted voluntarily to EPA. Another purpose is to ensure a common basis for diesel hydrocarbon measurements during the FTP for LDVs and LDTs as specified in Subpart B. In addition, these amendments are intended to clarify specific aspects of the existing regulations and to improve the efficiency of the LDV, LDT and HDE SEA program.

Each amendment and the reason for its implementation are described in the accompanying chart. The more significant amendments are described in detail in the **SUPPLEMENTARY INFORMATION** section.

EFFECTIVE DATE: This final rule is effective February 21, 1989.

ADDRESSES: Copies of materials relevant to this rulemaking proceeding are contained in Public Docket EN-88-17 at the Central Docket Section of the U.S. Environmental Protection Agency, Room 4, South Conference Center (LE-131), Waterside Mall, 401 M Street SW., Washington, DC 20460, and are available for public inspection between 8:00 a.m. and 3:00 p.m., Monday through Friday. As provided in 40 CFR Part 2, a reasonable fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Sinkez, Manufacturers Operations Division (EN-340-F), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Phone (202) 382-4104.

SUPPLEMENTARY INFORMATION:

I. Background

A notice of proposed rulemaking (NPRM) was published on September 3, 1987. The public comment period closed on December 22, 1987. Three manufacturers and the Engine Manufacturers Association submitted comments. The significant comments have been summarized and responded to in a document called "Summary and Analysis of Comments" that is available in the Public Docket (see ADDRESSES above). The final rule incorporates the "Summary and Analysis of Comments" in establishing the new regulations.

II. Most Significant Amendments

The following is a description of the more significant amendments and an abbreviated discussion of the respective comments. The amendments include paragraph citations adjacent to each of the headings. These citations refer to the amendment discussed under that heading.

A. Manufacturer's Test Data (§ 86.1005-84(c))

EPA's SEA regulations, at 40 CFR Part 86, Subpart K, mandate the submission of manufacturers' internal quality audit data from their emission testing programs on 1984 and later model year production LDTs and HDEs. In addition, 40 CFR 86.1005-84(c) requires that the submissions be in a standard format on an Automatic Data Processing (ADP) storage device, if available.

Manufacturers' internal quality audit data provides EPA with some additional assurance that manufacturers are producing engines and vehicles in compliance with applicable emission regulations. Prior to the promulgation in 1980 of § 86.1005-84(c), some manufacturers conducting internal quality audits had been submitting their data voluntarily to EPA. However, since the promulgation of § 86.1005-84(c), manufacturers have been required to submit their data.

By this action today, the requirement in Subpart K of 40 CFR Part 86 that this internal quality audit data be submitted is being deleted. While the submission of emissions test data is useful in evaluating the emission compliance of production engines and vehicles, EPA does not believe that the current SEA program would be significantly impaired by deleting the requirement that manufacturers submit their emissions test data. This is because EPA believes that manufacturers will still continue to submit the data voluntarily. This is the case with the submission of LDV quality audit test data which is not presently required to be submitted. Moreover, EPA may still exercise its authority under section 208 of the Clean Air Act to require the submission of emissions data in appropriate circumstances should a manufacturer not submit the data voluntarily. Additionally, no comments were submitted regarding this amendment. Therefore, in the final rule the previous requirement for the submission of manufacturers' internal quality audit data is deleted.

B. Heated Flame-Ionization Detector Procedures (§§ 86.111-82 and 86.121-82)

Regulations at 40 CFR Part 86, Subpart B, set forth the procedures required to be followed in setting up an exhaust gas analytical system for testing exhaust hydrocarbon (HC) emissions from LDVs and LDTs. The current regulations require the use of a Heated Flame-Ionization Detector (HFID) in testing for HC emissions from diesel-fueled LDVs and LDTs, while allowing the use of a non-heated Flame-Ionization Detector (FID) for testing gasoline-fueled LDVs and LDTs. In the NPRM, EPA proposed to expressly extend the procedures used to optimize and calibrate the FID to the HFID. Current optimization and calibration requirements specify only the FID.

Specifically, the Agency proposed revised hydrocarbon analyzer calibration procedures to clarify the Agency's intent with respect to HFID settings and to ensure a common basis for diesel and gasoline hydrocarbon measurements. The Agency has become aware that some confusion exists in the automobile industry concerning the allowable HFID procedures. EPA proposed that the HFID be optimized and calibrated following the procedure specified in the NPRM unless an alternative method is approved by the Agency.

In addition, certain language incorporating standard industry practices was proposed to clarify the official HFID calibration procedure by including an additional description of the "overflow" zero and span system.

General Motors Corporation (GM) commented that the proposed amendment would cause a drastic change in HC analyzer calibration procedures, possibly affecting the basis for hydrocarbon standards and fuel economy measurements. GM noted that the proposed optimization procedure does not produce the desired response using a Beckman Model 400 analyzer using H2/N2 fuel, and is impossible to comply with using a Horiba FIA-23A analyzer. GM believes that the best method of optimizing FID and HFID response is the FID optimization techniques described in the Society of Automotive Engineers (SAE) paper 770141. EPA agrees with GM's comment that the proposed optimization procedure may not produce the desired response curve, or may not be possible to comply with using certain analyzers. Consequently, the proposed procedure has been revised somewhat in the final rule to reflect a more universal approach, as suggested by GM.

Specifically, since the Beckman 400 FID is commonly used by the automobile industry, as well as by EPA, and the recommendations of SAE paper 770141 are commonly used to optimize those FIDs, EPA has incorporated in the final rule the recommendations of SAE paper 770141 to optimize these Beckman 400 FIDs.

Because the recommendations of SAE paper 770141 are based on testing using FIDs, however, EPA cannot conclude that the recommendations of SAE paper 770141 are applicable to HFIDs, as GM suggests. Therefore, EPA did not incorporate these recommendations in the final rule for HFIDs. However, the recommendations of SAE paper 770141 may be approved as an alternate procedure, as permitted by the final rule, for HFIDs, if a manufacturer demonstrates with experimental data that those recommendations are applicable to HFIDs. In addition, this is consistent with the Agency's interpretation of the hydrocarbon analyzer calibration procedures listed in Subpart N of 40 CFR Part 86 for testing HDEs.

In conclusion, in the final rule, EPA has specified the following options as procedures for optimizing FIDs and HFIDs:

(1) For all FIDs and HFIDs, the procedures specified by the applicable FID or HFID manufacturer; or

(2) For Beckman 400 FIDs only, the recommendations of SAE paper 770141; or

(3) For HFIDs only, the peaking procedure as specified in the proposed rule; or

(4) For any FID or HFID, an alternate procedure if approved in advance by the Administrator.

Regarding the additional description of the "overflow" zero and span system for HFIDs, GM commented that the specified overflow gas flow rate of 190 to 210 percent is too high and would cause problems related to the CVS propane injection verification check and in maintaining sample probe and line temperature specifications; as well as result in waste of reference gases. GM recommended that this provision be changed to specify an overflow gas flow rate of greater than 125 percent.

EPA agrees that an overflow rate of 190 to 210 percent may be excessive. The intent of the proposal was to specify a flow rate that was high enough to guarantee that no diluted reference gas would reach the analyzer; however, a manufacturer could use a lower flow rate if it produced equivalent results. This demonstration would be required only once for each sampling system.

Upon consideration of the comments on this issue, EPA has concluded that an overflow gas flow rate of greater than 125 percent should be adequate to prevent diluted reference gas from reaching the HFID, and that a manufacturer using an overflow gas flow rate of greater than 125 percent should not have to conduct a demonstration test program. Consequently, the final rule specifies that the overflow gas flow rate should be greater than 125 percent of the HFID flow rate with the CVS blower operating, and that, as proposed, a lower flow rate may be used if it has been experimentally shown to produce equivalent results.

The Agency is also correcting a minor omission in 40 CFR 86.111-82(ii) of the proposal. In the description of the "overflow" zero and span system, the final rule clarifies the fact that this method assures that the reference gas enters the HFID in the same concentration as the injected reference gas.

III. Less Significant Amendments

In addition to the more significant amendments discussed in the previous section, EPA is implementing several minor amendments. One amendment allows the use of precision blending devices (gas dividers) to obtain required calibration gas concentrations. Other amendments clarify specific aspects of the existing regulations and are intended to improve the efficiency with which the LDV, LDT and HDE SEA program will be conducted in the future.

Comments received on these minor amendments are summarized and responded to in the Summary and Analysis of Comments. Additionally, each amendment contained in this final rule and the need for it are summarized in the chart at the end of this preamble.

IV. Administrative Designation

Under Executive Order 12291, EPA must judge whether a rule it intends to propose or issue is "major" and therefore subject to the requirement to prepare a Regulatory Impact Analysis (RIA). EPA has determined that this regulation is not "major" for the following reasons:

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(1) The proposed amendments will not result in an annual effect on the economy of $100 million or more. The majority of these amendments are administrative or technical in nature and will have no measurable cost impact.

(2) Because of the limited cost impact, this rulemaking will not result in a major increase in costs or prices for consumers, individual industries, Federal, state, or local governments, or geographic regions.

(3) Due to its limited cost impact and its applicability to all domestic and foreign manufacturers, EPA does not expect this rulemaking to have any significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S. manufacturers to compete with foreign manufacturers in domestic or export markets.

Because of its "non-major" classification, the Agency has not prepared an RIA to accompany this proposal.

V. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, EPA is required to perform a regulatory flexibility analysis (RFA) of any regulation unless the Administrator certifies that the regulation will not have a significant impact on a substantial number of small entities. Since these amendments will affect only motor vehicle and engine manufacturers, none of which are small entities, and will not significantly affect any manufacturer's compliance cost, it is certified that this rule will not have a significant economic impact on a substantial number of small entities. Accordingly, the Agency has not prepared a regulatory flexibility analysis to accompany this rule.

VI. Office of Management and Budget Review

As required by Executive Order 12291, this final rule has been reviewed by the Office of Management and Budget (OMB). Any written OMB comments to EPA and EPA's response to those comments will be available for inspection in the public docket for this rulemaking.

VII. Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by OMB under the provisions of the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* and have been assigned OMB control number 2060-0064.

Public reporting burden for this collection of information is estimated to vary from 0 to 95 hours per response, with an average of 40 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

As a result of today's rulemaking, the reporting to EPA of manufacturer internal quality audit data has been changed from a mandatory requirement to a voluntary action. Reporting time per respondent is estimated to remain the same since it is expected that most respondents will continue to reply on a voluntary basis.

Send comments regarding the burden estimate or any other aspect of this collection information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

VIII. Judicial Review

The final actions described in this notice are made under the authority of sections 206, 206(a), and 301 of the Clean Air Act and are nationally applicable. Under section 307(b)(1) of the Clean Air Act, judicial review may be sought only in the United States Court of Appeals for the District of Columbia Circuit. Petitions for judicial review must be filed by March 20, 1989. Judicial review may not be obtained in subsequent enforcement proceedings.

List of Subjects in 40 CFR Part 86

Administrative practice and procedures, Air pollution control, Gasoline, Motor vehicles, Labeling, Motor vehicle pollution, and Reporting and recordkeeping requirements.

Authority: Secs. 206, 206(a), 301(a), Clean Air Act as amended, 42 U.S.C. 7525, 7542(a), 7601(a).

Dated: January 9, 1989.

Lee M. Thomas,

Administrator.

EXPLANATION OF PROPOSED AMENDMENTS AND REVISIONS

Section	Paragraph	Change	Reason
86.111-82	(b)(3) (ii), (iii), (iv), (v)	Adds additional description of the "overflow" zero and span system.	Provides clarification.
86.114-79	(a)(7)	Prescribes requirements for using precision blending devices.	Allows blending devices to be used without prior approval of Administrator, makes regulation consistent with standard industry practice.
86.121-82	(d), (h)	Includes HFID in the section on hydrocarbon analyzer calibration.	Ensures common basis for diesel HC measurement.
86.140-82	(b)(4)(ii)	Revises specification of "over-flow" gas flow rate	Makes specification consistent with § 86.111-82.
86.601		Redesignate as § 86.601-84	Provides model year designation.
86.602		Redesignate as § 86.602-84	Do.
86.603		Redesignate as § 86.603-88	Do.
	(a)(1)	Provides for specification of the number of test vehicles to be selected per day.	Provides clarification, ensures expeditious audit performances.
86.604		Redesignate as § 86.604-84	Provides model year designation.
86.605		Redesignate as § 86.605-88	Do.
	(a)(2)(vii)	Adds requirement of maintaining a paper copy of driver's trace.	EPA needs to be able to verify the proper conduct of the test.
	(f)	Remove	Updated language regarding business confidentiality claims appears in § 86.615.
86.606		Redesignate as § 86.606-84	Provides model year designation.
86.607		Redesignate as § 86.607-84	Do.
86.608		Redesignate as § 86.608-88	Do.
	(a)(3)(ii)	Deletes requirement of advance approval for optional test fuel temperature measurement and fuel tank drainage procedures so long as equivalent method is used.	Reduces paperwork and administrative burden.

EXPLANATION OF PROPOSED AMENDMENTS AND REVISIONS—Continued

Section	Paragraph	Change	Reason
	(c) (1), (2), (3)	Prescribes manner of optional mileage accumulation for SEA test vehicles.	Reinstates and clarifies inadvertently deleted provisions, ensures expeditious audit performance.
86.609		Redesignate as § 86.609-84	Provides model year designation.
86.610		Redesignate as § 86.610-84	Do.
86.612		Redesignate as § 86.612-84	Do.
86.614		Redesignate as § 86.614-84	Do.
86.615		Redesignate as § 86.615-84	Do.
Table of Contents of Part 86.	Title of Subpart K	Adds light duty trucks to title	Makes title more accurate.
86.1003-84		Redesignate as § 86.1003-88	Updates model year designation based on proposed changes.
	(c)(1)	Provides for specification of the number of test vehicles or engines to be selected per day.	Provides clarification, ensures expeditious audit performances.
86.1005-84		Redesignate as § 86.1005-88	Updates model year designation based on proposed changes.
	(a)(1)(ii)	Updates regulatory citations	To make consistent with current regulations.
	(a)(2)(vi) (A), (B), (C), (D).	Updates regulatory citations	To make consistent with current regulations.
	(a)(2)(viii)	Adds requirement of maintaining paper copy of driver's trace.	EPA needs to be able to verify the proper conduct of the test.
	(c), (d), (e), (f)	Remove (c), which had required submission of internal quality control audit data, and redesignate (d), (e) and (f) as (c), (d) and (e).	Voluntary submission of internal audit data is adequate.
	(g)	Remove	Updated language regarding business confidentiality claims appears in § 86.1015.
86.1008-84		Redesignate as § 86.1008-88	Updates model year designation based on proposed changes.
	(a)(4)(ii)	Deletes requirement of advance approval for optional test fuel temperature measurement and fuel tank drainage procedures so long as equivalent method is used.	Reduces paperwork and administrative burden.
	(c) (1), (2), (3)	Prescribes manner of optional service and mileage accumulation for SEA test engines and vehicles.	Reinstates inadvertently deleted provisions, clarifies manner of accumulation, ensures expeditious audit performances.
	(g) (1), (2), (3), (4)	Prescribes rates of testing for SEA test vehicles.	Reinstates inadvertently deleted provision, ensures expeditious audit performances.

For the reasons set forth in this preamble, Part 86, Subparts B, G and K, Chapter I of Title 40, Code of Federal Regulations, are amended as follows:

PART 86—[AMENDED]

1. The authority citation for Part 86 continues to read as follows:

Authority: Sections 202, 203, 206, 207, 208, 215, and 301(a) of the Clean Air Act, as amended; 42 U.S.C. 7521, 7522, 7524, 7525, 7541, 7542, 7549, 7550, and 7601(a).

2. Section 86.111-82 is amended by revising paragraph (b)(3) to read as follows:

§ 86.111-82 Exhaust gas analytical system.

* * * * *

(b) * * *

(3) For diesel vehicles a continuous hydrocarbon sample shall be measured using a heated analyzer train as shown in Figure B82-3 (or B82-4). The train shall include a heated probe, a heated continuous sampling line, a heated particulate filter and a heated hydrocarbon instrument (HFID) complete with heated pump, filter and flow control system.

(i) The response time of this instrument shall be less than 1.5 seconds for 90 percent of full scale response.

(ii) The continuous HC sample system may use an "overflow" zero and span system; see § 86.140-82(b)(4). In this type of system (figures B82-3A and B82-4A), zero or span gas is introduced into the heated sample line at a flow rate that exceeds the sample flow rate to the HFID. The excess gas overflows the sample probe into the dilution tunnel. This method assures that the reference gas enters the HFID in the same concentration as the injected reference gas and at the same rate as the sample exhaust gas. In addition to zero and span checks, it may also be used to calibrate the HC analyzer per § 86.121-82(b). The overflow gas flow rate into the sample line shall be greater than 125 percent of the HFID flow rate with the CVS blower operating. A lower flow rate may be used if it has been experimentally shown to produce equivalent results and current documentation is maintained. The overflow gases shall enter the heated sample line as close as practicable to the outside surface of the dilution tunnel.

(iii) No other analyzers may draw a sample from the continuous HC sample probe, line or system, unless a common sample pump is used for all analyzers and the single sample line system design reflects good engineering practice.

(iv) Sample transport time from sampling point to inlet of instrument shall be less than 4 seconds.

(v) The sample line and filter shall be heated to maintain a sample gas temperature of 375±10 °F (191±6 °C) before the filter and before the HFID.

* * * * * *

3. Section 86.114-79 is amended by revising paragraph (a)(7) to read as follows:

§ 86.114-79 Analytical gases.

(a) * * *

(7) The use of precision blending devices (gas dividers) to obtain the required calibration, as defined below, is acceptable, provided that the calibration curver they produce name a calibration gas within 2 percent of its certified concentration. This verification shall be performed at between 15 and 50 percent of the full scale concentration of the range and shall be included with each gas calibration incorporating a blending device. Alternative procedures to verify the validity of the analyzer calibration curves generated using a gas

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divider are acceptable provided the procedures are approved in advance by the Administrator.

* * * * *

4. Section 86.121–82 is amended by revising the introductory text, paragraph (a), introductory text, by revising paragraph (a)(3), by removing paragraph (a)(4), by redesignating paragraph (a)(5) as (a)(4) and by revising the introductory text of paragraph (b) to read as follows:

§ 86.121–82 Hydrocarbon analyzer calibration.

The hydrocarbon analyzers shall receive the following initial and periodic calibration. The HFID shall be operated at a temperature of 375±10 °F (191±6 °C).

(a) *Initial and periodic optimization of FID and HFID response.* Prior to its introduction into service and at least annually thereafter, the FID and HFID hydrocarbon analyzers shall be adjusted for optimum hydrocarbon response. Alternate methods yielding equivalent results may be used, if approved in advance by the Administrator.

* * * * *

(3) One of the following is required for FID or HFID optimization:

(i) For all FIDs and HFIDs, the procedures specified by the applicable FID or HFID manufacturer.

(ii) For Beckman 400 FIDs only, implementation of the recommendations outlined in Society of Automotive Engineers (SAE) paper No. 770141, "Optimization of Flame Ionization Detector for Determination of Hydrocarbons in Diluted Automobile Exhaust;" author, Glenn D. Reschke.

(iii) For HFIDs only, the following peaking procedure. (A) With the fuel and air flow rates set at the manufacturer's recommendations, determine the analyzer response from the difference between the span-gas response and the zero gas response. Incrementally adjust the fuel flow above and below the manufacturer's specification. Record the span and zero response at these fuel flows. A plot of the difference between the span and zero response versus the fuel flow will be similar to the one shown in Fig. B87–11. Adjust the fuel-flow rate to the highest setting that produces the maximum analyzer response.

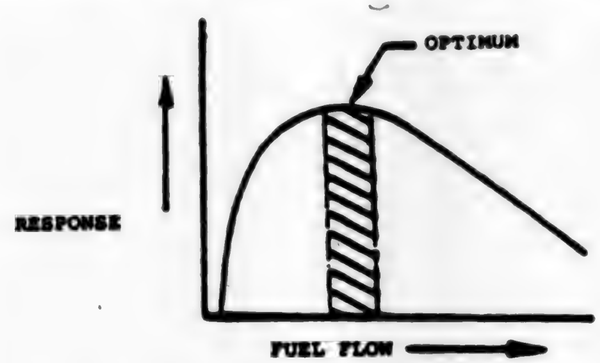


FIGURE B87-11 RESPONSE VS. FUEL FLOW

(B) To determine the optimum air flow, use the fuel flow setting determined in paragraph (a)(3)(iii)(A) of this section and vary air flow.

(iv) Alternative procedures may be used if approved in advance by the Administrator.

* * * * *

(b) *Initial and periodic calibration.* Prior to its introduction into service and monthly thereafter the FID or HFID hydrocarbon analyzers shall be calibrated on all normally used instrument ranges. Use the same flow rate as when analyzing samples.

* * * * * *

5. Section 86.140–82 is amended by revising paragraph (b)(4)(ii) to read as follows:

§ 86.140–82 Exhaust sample analysis.

(b) * * *

(4) * * *

(ii) Connect zero and span line directly to HC sample probe and introduce gases at a flow rate greater than 125 percent of the HFID flow rate with the CVS blower operating (see figures B82–3A or B82–4A). Excess flow must be allowed to exit probe inlet.

* * * * *

§ 86.601 [Redesignated as § 86.601–84]

6. Section 86.601 is redesignated as § 86.601–84.

§ 86.602 [Redesignated as § 86.602–84]

7. Section 86.602 is redesignated as § 86.602–84.

§ 86.603 [Redesignated as § 86.603–88]

8. Section 86.603 is redesignated as § 86.603–88. In the newly redesignated § 86.603–88, paragraph (c)(1) is revised to read as follows:

§ 86.603–88 Test orders.

* * * * *

(c)(1) The test order will specify the vehicle configuration selected for testing, the time and location at which vehicles must be selected, and the procedure by which vehicles of the specified configuration must be selected. The test order may specify the number of vehicles to be selected per day and may include alternative configurations (primary, secondary, etc.) to be selected for testing in the event that vehicles of the first specified configuration are not available for testing because those vehicles are not being manufactured at the specified assembly plant, not being manufactured during the specified time, or not being stored at the specified assembly plant or associated storage facility. If total production of the specified vehicle configuration is less than the number specified in the test order, the manufacturer will select the actual number of vehicles produced per day. If the first specified configuration is not being manufactured at a rate of at least four vehicles per day over the expected duration of the audit, the Assistant Administrator for Air and Radiation or his designated representative may select vehicles of a primary alternate configuration for testing in lieu of the first specified configuration. Likewise, vehicles of a secondary alternate configuration may be selected in lieu of vehicles of the first specified configuration or primary alternate configuration. In addition, the test order may include other directions or information essential to the administration of the required testing.

(Approved by the Office of Management and Budget under the control number 2060–0064)

* * * * *

§ 86.604 [Redesignated as § 86.604–84]

9. Section 86.604 is redesignated as § 86.604–84.

§ 86.605 [Redesignated as § 86.605–88]

10. Section 86.605 is redesignated as § 86.605–88. In the newly redesignated § 86.605–88, paragraph (f) is removed, and paragraph (a)(2)(ix) is added to read as follows:

§ 86.605–88 Maintenance of records; submittal of information.

(a) * * *

(2) * * *

(ix) A paper copy of the driver's trace for each test.

(Approved by the Office of Management and Budget under the control number 2060–0064)

* * * * *

§ 86.606 [Redesignated as § 86.606–84]

11. Section 86.606 is redesignated as § 86.606–84.

§ 86.607 [Redesignated as § 86.607–84]

12. Section 86.607 is redesignated as § 86.607–84.

§ 86.608 [Redesignated as § 86.608–88]

13. Section 86.608 is redesignated as § 86.608–88. In the newly redesignated § 86.608–88, paragraph (a)(2)(ii) is revised and paragraphs (c)(1), (c)(2) and (c)(3) are added to read as follows:

§ 86.608–88 Test procedures.

(a) * * *

(2) * * *

(ii) The manufacturer may measure the temperature of the test fuel at other than the approximate mid-volume of the fuel tank, as specified in § 86.131(a), and may drain the test fuel from other than the lowest point of the tank, as specified in § 86.131(b), provided an equivalent method is used. Equivalency documentation shall be maintained by the manufacturer and shall be made available to the Administrator upon request.

(c) * * *

(1) Mileage accumulation must be performed in any manner using good engineering judgement to obtain emission results representative of normal production vehicles. This mileage accumulation must be consistent with the new vehicle break-in instructions contained in the applicable vehicle owner's manual, if any.

(2) The manufacturer shall accumulate mileage at a minimum rate of 300 miles per vehicle during each 24 hour period, unless otherwise provided by the Administrator.

(i) The first 24 hour period for mileage accumulation shall begin as soon as authorized vehicle checks, inspections and preparations are completed on each vehicle.

(ii) The minimum mileage accumulation rate does not apply on weekends or holidays.

(iii) If the manufacturer's mileage accumulation target is less than the minimum rate specified (300 miles per day), then the minimum daily accumulation rate shall be equal to the manufacturer's mileage accumulation target.

(3) Mileage accumulation shall be completed on a sufficient number of test vehicles during consecutive 24 hour periods to assure that the number of vehicles tested per day fulfills the requirements of paragraph (g) of this section.

(Approved by the Office of Management and Budget under the control number 2060–0064)

* * * * *

§ 86.609 [Redesignated as § 86.609–84]

14. Section 86.609 is redesignated as § 86.609–84.

§ 86.610 [Redesignated as § 86.610–84]

15. Section 86.610 is redesignated as § 86.610–84.

§ 86.612 [Redesignated as § 86.612–84]

16. Section 86.612 is redesignated as § 86.612–84.

§ 86.614 [Redesignated as § 86.614–84]

17. Section 86.614 is redesignated as § 86.614–84.

§ 86.615 [Redesignated as § 86.615–84]

18. Section 86.615 is redesignated as § 86.615–84.

19. The title of Subpart K is revised as follows:

Subpart K—Selective Enforcement Auditing of New Heavy-Duty Engines and Light-Duty Trucks

§ 86–1003.84 [Redesignated as § 86.1003–88]

20. Section 86.1003–84 is redesignated as § 86.1003–88. In the newly redesignated § 86.1003–88, paragraph (c)(1) is revised to read as follows:

§ 86.1003–88 Test orders.

* * * * *

(c)(1) The test order will specify the engine or vehicle configuration selected for testing, the manufacturer's vehicle or engine assembly plant or associated storage facility from which the engines or vehicles must be selected, the time and location at which engines or vehicles must be selected, and the procedure by which engines or vehicles of the specified configuration must be selected. The test order may specify the number of vehicles or engines to be selected per day.

(i) If total production of the specified vehicle configuration is less than the number specified in the test order, the manufacturer will select the actual number of vehicles produced per day.

(ii) Heavy-duty engine manufacturers will be required to select a minimum of four engines per day unless an alternate selection procedure is approved pursuant to § 86.1007–84(a) or unless total production of the specified configuration is less than four engines per day. If total production of the specified configuration is less than four engines per day, the manufacturer will select the actual number of engines produced per day.

(Approved by the Office of Management and Budget under the control number 2060–0064)

* * * * *

§ 86.1005–84 [Redesignated as § 86.1005–88]

21. Section 86.1005–84 is redesignated as § 86.1005–88. In the newly redesignated § 86.1005–88, paragraphs (c) and (g) are removed, and paragraphs (a)(1)(ii) and (a)(2)(vi) (A), (B), (C) and (D) are revised, paragraph (a)(2)(viii) is

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added, and paragraphs (d), (e) and (f) are redesignated and revised as paragraphs (c), (d) and (e), respectively, to read as follows:

§ 86.1006–88 Maintenance of records; submittal of information.

(a) * * *

(1) * * *

(ii) If testing heavy-duty diesel engines, the equipment requirements specified in § § 86.1306–84, 86.884–8 and 86.884–9 of this part;

* * * * *

(2) * * *

(vi) * * *

(A) If testing heavy-duty gasoline engines, the record requirements specified in § 86.1344–88 and § 86.1542–84 of this part;

(B) If testing heavy-duty diesel engines, the record requirements specified in § 86.1344–88 and § 86.884–10 of this part;

(C) If testing light-duty gasoline-fueled trucks, the record requirements specified in § 86.142–82 and § 86.1542–84 of this part; and

(D) If testing light-duty diesel trucks, the record requirements specified in § 86.142–82 of this part; and

(vii) * * *

(viii) A paper copy of the driver's trace for each test.

* * * * *

(c) Pursuant to a request made by the Administrator, the manufacturer shall submit the following information with regard to engine or vehicle production:

(1) Number of engines or vehicles, by configuration and assembly plant, scheduled for production for the time period designated in the request.

(2) Number of engines or vehicles, by configuration and assembly plant, produced during the time period designated in the request which are complete for introduction into commerce.

(d) Nothing in this section limits the Administrator's discretion in requiring the manufacturer to retain additional records or submit information not specifically required by this section.

(e) The manufacturer shall address all reports, submissions, notifications, and requests for approvals made under this subpart to: Director, Manufacturers Operations Division, U.S. Environmental Protection Agency, EN–340F, 401 M Street SW., Washington, DC 20460.

(Approved by the Office of Management and Budget under the control number 2060–0064)

* * * * *

§ 86.1008–84 [Redesignated as § 86.1008–88]

22. Section 86.1008–84 is redesignated as § 86.1008–88. In the newly redesignated § 86.1008–88, paragraphs (a)(4)(ii) and (c) are revised and paragraphs (g)(1), (g)(2), (g)(3) and (g)(4) and an OMB number are added to read as follows:

§ 86.1008–88 Test procedures.

(a) * * *

(4) * * *

(ii) The manufacturer may measure the temperature of the test fuel at other than the approximate mid-volume of the fuel tank, as specified in paragraph (a) of § 86.131, and may drain the test fuel from other than the lowest point of the fuel tank, as specified in paragraph (b) of § 86.131, provided an equivalent method is used. Equivalency documentation shall be maintained by the manufacturer and shall be made available to the Administrator upon request.

* * * * *

(c) Prior to performing exhaust emission testing on an SEA test engine, the manufacturer may accumulate on each engine a number of hours of service equal to the greater of 125 hours or the number of hours the manufacturer accumulated during certification on the emission-data engine corresponding to the configuration specified in the test order. Prior to performing exhaust emission testing on an SEA test vehicle, the manufacturer may accumulate a number of miles equal to the greater of 4,000 miles or the number of miles the manufacturer accumulated during certification on the emission-data vehicle corresponding to the configuration specified in the test order.

(1) Service or mileage accumulation must be performed in any manner using good engineering judgment to obtain emission results representative of normal production vehicles. This service or mileage accumulation must be consistent with the new vehicle break-in instructions contained in the applicable vehicle owner's manual, if any.

(2) The manufacturer shall accumulate service at a minimum rate of 16 hours per engine or mileage at a minimum rate of 300 miles per vehicle during each 24-hour period, unless otherwise provided by the Administrator.

(i) The first 24 hour period for service or mileage accumulation shall begin as soon as authorized checks, inspections and preparations are completed on each engine or vehicle.

(ii) The minimum service or mileage accumulation rate does not apply on weekends or holidays.

(iii) If the manufacturer's service or mileage accumulation target is less than the minimum rate specified (16 hours or 300 miles per day), then the minimum daily accumulation rate shall be equal to the manufacturer's service or mileage accumulation target.

(3) Service or mileage accumulation shall be completed on a sufficient number of test engines or vehicles during consecutive 24-hour periods to assure that the number of engines or vehicles tested per day fulfills the requirements of paragraph (g) of this section.

* * * * *

(g) * * *

(1) Heavy-duty engine manufacturers with projected sales for the United States market for that year of 30,000 or greater shall complete emission testing at their testing facility on a minimum of two engines per 24-hour period, including each voided test and each diesel engine smoke test.

(2) Heavy-duty engine manufacturers with projected sales for the United States market for that year of less than 30,000 shall complete emission testing at their testing facility on a minimum of one engine per 24-hour period, including each voided test and each diesel engine smoke test.

(3) Light-duty truck manufacturers shall complete emission testing on a minimum of four vehicles per 24-hour period, including each voided test.

(4) The Administrator may approve a lower daily rate of conducting emission tests based upon a request by a manufacturer accompanied by a satisfactory justification.

(Approved by the Office of Management and Budget under the control number 2060–0064)

* * * * *

[FR Doc. 89–1000 Filed 1–18–89; 8:45 am]

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40 CFR Part 300

[FRL 3500–3]

National Oil and Hazardous Substances Contingency Plan; National Priorities List Update

AGENCY: Environmental Protection Agency.

ACTION: Notice of deletion of a site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) announces the deletion of the Matthews Electroplating Site from the National Priorities List (NPL). The NPL is Appendix B to the National Oil and Hazardous Substances Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended.

EPA and the State of Virginia have determined that no further Fund-financed remedial action is appropriate at this site, and that actions taken to date are protective of public health, welfare, and the environment.

EFFECTIVE DATE: January 19, 1989.

FOR FURTHER INFORMATION CONTACT: Paul Leonard, RPM, EPA, Region III, General Remedial Response Section (3HW24), Hazardous Waste Management Division, 841 Chestnut Building, 6th Floor, Philadelphia, PA 19107, (215) 597–8257.

SUPPLEMENTARY INFORMATION: The EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and maintains the NPL as the list of those sites. Sites on the NPL may be the subject of Hazardous Substance Response Trust Fund (Fund) financed remedial actions. Any site deleted from the NPL remains eligible for Fund-financed remedial actions in the unlikely event that conditions at the site warrant such action. § 300.66(c)(8) of the NCP states that Fund-financed actions may be taken at sites deleted from the NPL. Deletion of a site from the NPL does not affect responsible party liability or impede agency efforts to recover costs associated with response efforts.

The site EPA deletes from the NPL is:

1. Matthews Electroplating, Roanoke County, VA.

An explanation of the criteria for deleting this site from the NPL was presented in section II of the July 20, 1988 Notice of Intent to Delete (53 FR 27371). A description of the site and how it meets the criteria for deletion was presented in section IV of that Notice.

The closing date for comments on the Notice of Intent to Delete was August 19, 1988. Only one response was received; it reflected concurrence with this action. An additional notice was placed in the local paper announcing the Intent to Delete and extending the comment period to September 23, 1988. No comments were received.

PART 300—AMENDED

1. The authority citation for Part 300 continues to read as follows.

Authority: Section 105, Pub. L. 96–510, 94 Stat. 2764, 42 U.S.C. 9605 and sec. 311(c)(2), Pub. L. 92–500 as amended, 86 Stat. 865, 33 U.S.C. 1321 (c)(2); E.O. 12316, 46 FR 42237; E.O. 11735, 38 FR 21243.

Appendix B—[Amended]

2. The NPL in 40 CFR Part 300, Appendix B is amended as follows: In Group 2 remove the following entry and move up the other entries accordingly. Matthews Electroplating, Roanoke Co., Virginia. The NPL will reflect this deletion in the next final update.

Date: December 21, 1988.

Stanley L. Laskowski,

Deputy Regional Administrator.

[FR Doc. 89–1102 Filed 1–18–89; 8:45 am]

BILLING CODE 6560–50–M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 201–33

[FIRMR Amdt. 15]

Reutilization of Excess and Exchange/Sale Automatic Data Processing Equipment with an Original Acquisition Cost Below $1,000,000

AGENCY: Information Resources Management Service, GSA.

ACTION: Final rule.

SUMMARY: This regulation delegates to Federal agencies authority and responsibility for the screening of excess and exchange/sale automatic data processing equipment (ADPE) with an original acquisition cost (OAC) below $1,000,000 on a component basis. A recent analysis of the ADPE reported to GSA for interagency reuse during the last two years revealed that there is a minimal amount of savings to be realized for the reuse of ADPE with an OAC under $1,000,000. Additionally, these savings are further reduced when the costs of nationwide interagency screening are considered. Since all ADPE under $1,000,000 OAC will be screened only within the individual agencies that own or lease the equipment, excess auxiliary or accessorial ADPE with an OAC of $1,500 or less will no longer be reported to the Federal Supply Service (FSS) for interagency screening. GSA procedures regarding the use of want and match lists are also revised to reflect this change.

EFFECTIVE DATE: January 19, 1989.

FOR FURTHER INFORMATION CONTACT: Margaret Truntich or Mary Anderson, Regulations Branch (KMPR), Office of Information Resources Management Policy, telephone (202) 566–0194 or FTS, 566–0194.

SUPPLEMENTARY INFORMATION: (1) The purpose of this amendment is to simplify and streamline the reuse and disposal of excess and exchange/sale ADPE.

(2) A notice of proposed rulemaking regarding this action was published in the Federal Register on April 7, 1988. All comments received have been considered.

(3) Explanation of the changes being made by this issuance are shown below:

In Part 201–33, the following changes are made.

(a) Wherever the office symbol "KHE" appears in this Part, it is replaced with the new office symbol "KMAS."

(b) Section 201–33.000–1 is added to provide general information regarding GSA's reuse program. The purpose of this change is to clarify the intent of the program to create an environment where agencies can screen used up-to-date ADPE for reuse and dispose of older ADPE easily and quickly.

(c) Section 201–33.001 is redesignated as § 201–33.001–1 and a new § 201–33.001 is added to state GSA's basic reuse policies. This new section removes the requirement to screen on an interagency basis used ADPE components with an original acquisition cost (OAC) below $1,000,000. Agencies must still screen such ADPE for reassignment within the agency. This change recognizes the fact that less costly ADPE is becoming obsolete more quickly than in earlier years. Four years seems to be the maximum for economic use of this equipment. The policy of the Government is to create an environment where up-to-date resources can flow in as they are needed and older resources can flow out easily and quickly.

(d) The newly redesignated § 201–33.001–1 is amended to incorporate the following changes. Paragraph (a) of the newly redesignated § 201–33.001–1 is revised and redesignated as paragraph (b). Paragraph (b) is amended by removing the provision that requires separate reporting of auxiliary and accessorial ADPE with an OAC of $1,500 or less. Since all ADPE with an OAC under $1,000,000 will be screened for reuse by agencies and it is not readily apparent what is auxiliary and accessorial ADPE, separate reporting is no longer efficient and effective and shall be discontinued. A new paragraph (a) is added to make all succeeding provisions of Part 201–33 apply only to used ADPE components that have an OAC of $1,000,000 or more.

(e) Section 201–33.002 is amended by revising the existing paragraph (b) addressing sole source procurements to eliminate redundant information contained in other parts of the FIRMR.

(f) Section 201–33.003 is amended by removing the reference to excess auxiliary and accessorial ADPE with an OAC of $1,500 or less.

(g) Section 201–33.003–2 is amended by removing redundant and outdated provisions. Paragraph (a)(3) is removed to eliminate the requirement that agencies must obtain GSA approval to

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use excess owned ADPE for redundancy or excess parts. A reference to a sole source finding and determination in paragraph (b) is removed to eliminate redundant information found elsewhere in the FIRMR. Paragraph (c) is removed to eliminate redundant information found elsewhere in the FIRMR. Paragraphs (d) and (e) are redesignated as paragraphs (c) and (d) respectively.

(h) Section 201–33.004 is amended by revising the second sentence of the introductory paragraph to change the frequency of publication of the availability list for excess and exchange/sale ADPE. Since fewer items will be screened in the future, the availability list will only be issued periodically as changes occur. Paragraph (a) of this section is revised to reflect that the availability list will only be sent to agency points of contact. Paragraph (b) is deleted and paragraph (c) is redesignated as paragraph (b).

(i) Section 201–33.005 is removed to delete the provisions regarding want lists and holds. Since only large dollar items will be screened, there will be less need for this requirement in the future.

(j) Section 201–33.006 is amended by removing the reference to excess auxiliary and accessorial ADPE with an OAC of $1,500 or less.

(k) Section 201–33.008 is recaptioned and revised to require agencies to report ADPE for surplus disposition in accordance with FPMR Parts 101–44 and 101–45.

(l) Section 201–33.009–5 is amended by revising paragraph (b) to remove the reference to the deleted § 201–33.005.

(m) Section 201–33.011 is revised to remove references to excess auxiliary and accessorial ADPE with an OAC of $1,500 or less and the transfer of outdated ADPE. Specifically, the introductory paragraph is revised, paragraph (c) is removed, paragraph (b) is redesignated as paragraph (c), and a new paragraph (b) is substituted for the existing paragraph (b). The newly designated paragraph (b) establishes the new standard reports numbering system that shall be followed in the submission of SF 120s, Reports of Excess Personal Property.

(n) Section 201–33.012 is amended by clarifying GSA procedures for processing outdated ADPE, by removing all references to the "match list" in paragraph (b)(1) and by removing paragraph (b)(2). Since fewer items will be screened by GSA in the future, GSA will no longer maintain a "match list."

(4) The General Services Administration had determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981. GSA actions are based on adequate information concerning the need for, and the consequences of, the rule. The rule is written to ensure maximum benefits to Federal agencies. This is a Governmentwide regulation that will have little or no net cost effect on society. It is therefore certified this rule will not have a significant impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

List of Subjects in 41 CFR Part 201–33.

Computer technology, Government property management, Information resources activities.

PART 201–33—REUSE OF ADP EQUIPMENT

1. The authority citation for Part 201–33 is revised to read as follows:

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c) and Sec. 101(f), 100 Stat. 1783–345, 40 U.S.C. 751(f).

2. The table of contents of Part 201–33 is amended by adding entries for §§ 201–33.000–1 and 201–33.001–1 and by revising the entries for §§ 201–33.001, 201–33.005, and 201–33.006 to read as follows:

* * * * *

201–33.000–1 General.
201–33.001 Policy.
201–33.001–1 Applicability.
* * * * *
201–33.005 [Reserved]
* * * * *
201–33.008 Reporting of surplus ADPE.
* * * * *

3. Throughout Part 201–33, remove the office symbol "KHE" wherever it appears and substitute in its place the new office symbol "KMAS."

4. Section 201–33.000–1 is added to read as follows:

§ 201–33.000–1 General.

Pub. L. 89–306, the Brooks Act, required the General Services Administration (GSA) to establish a program to transfer excess ADPE between Federal agencies as a means of ensuring the economic and efficient acquisition and use of ADP resources. The goal of GSA's reuse program is to create an environment where agencies can screen used up-to-date ADPE for reuse and dispose of older ADPE easily and quickly. GSA's reuse program recognizes the fact that less costly ADPE is becoming obsolete at a faster rate than more costly ADPE.

5. Section 201–33.001 is redesignated as § 201–33.001–1 and a new § 201–33.001 is added to read as follows:

§ 201–33.001 Policy.

Federal agencies shall make available for intra-agency or interagency screening all ADPE that is no longer needed for the purpose for which it was acquired. Federal agencies shall screen used Government ADPE to determine whether it can satisfy their ADP requirements in an efficient and effective manner. The following additional policies apply to the screening of Government ADPE.

(a) When no longer required, outdated ADPE shall not be reassigned or screened for reuse within the Federal Government. This equipment shall be disposed of in the same manner as all other surplus property unless (1) a study has shown that the outdated ADPE represents the lowest overall cost solution to a requirement, or (2) the ADPE is part of an exchange/sale transaction.

(b) ADPE components that are not outdated and have an OAC of less than $1,000,000 shall be screened for reassignment only within, the holding agency. Any such components that cannot be reassigned shall be reported for disposal in the same manner as other surplus or exchange/sale property. Agencies shall establish internal procedures to accomplish intra-agency screening. Agency procedures shall include the requirements of §§ 201–33.002, 201–33.003–2, and 201–33.010. Interagency transfers of ADPE with an OAC of $1,000,000 or less are permitted if the holding agency learns of a potential user outside the screening process.

(c) ADPE components that are not outdated and have an OAC of $1,000,000 or more shall be reported to GSA for interagency screening.

(d) In special circumstances, agencies may recommend that GSA (KMAS) screen on an interagency basis ADPE components that are not outdated and have an OAC of less than $1,000,000.

6. The newly redesignated section 201–33.001–1 is revised to read as follows:

§ 201–33.001–1 Applicability.

(a) Further provisions of this Part 201–33 pertain only to used ADPE components with an OAC of $1,000,000 or more and apply to all Federal agencies. Sction 201–33.012 pertains to outdated ADPE while the remaining sections pertain to ADPE that is not outdated.

(b) Agencies shall apply the provisions of this part to their grantees and contractors who operate ADP equipment under grants, contracts, or subcontracts, when the ADP equipment is—

(1) Leased and the total cost of leasing is reimbursed under one or more Government contracts or grants;

(2) Acquired by a contractor or grantee under a contract or grant under the terms of which title is either vested in the Government or the Government is obligated or has the option to take over title;

(3) Furnished to the grantee or contractor by the Government; or

(4) Operated by the grantee or contractor as part of a Government-owned or -controlled facility.

7. Section 201–33.002 is amended by revising paragraph (b) to read as follows:

§ 201–33.002 Reassignment of ADPE within Federal agencies.

* * * * *

(b) The reassignment of Government-leased ADPE when it is no longer required for the purpose and use for which it was originally acquired is in the nature of a procurement and subject to the applicable laws and regulations governing procurement by Federal agencies.

* * * * *

8. Section 201–33.003 is revised to read as follows:

§ 201–33.003 Reutilization of excess ADPE.

Federal agencies shall determine whether their ADP requirements can be efficiently and economically satisfied by using excess or exchange/sale ADPE. Agency procedures shall include screening of availability lists for ADPE. To obtain maximum reutilization and to minimize the procurement of new ADPE, excess and exchange/sale ADPE shall be made available for transfer to other Federal agencies in accordance with the provisions of this Part 201–33. Any need for excess ADPE expressed by a Federal agency, including the Senate, the House of Representatives, the Architect of the Capitol and any activities under the Architect's direction, the District of Columbia, and mixed-ownership Government corporations, shall take precedence over disposal, provided such a need is made known to GSA prior to shipment or delivery in case of donation or prior to removal of the property from Government control in case of sale. Outdated ADPE will not be offered for agency screening. The reuse of outdated ADPE shall be subject to the provisions of § 201–33.012.

9. Section 201–33.003–2 is amended by removing paragraphs (a)(3) and (c), redesignating paragraphs (d) and (e) as paragraphs (c) and (d), and revising paragraph (b) to read as follows:

§ 201–33.003–2 Consideration for use of excess Government-owned or -leased ADPE.

* * * * *

(b) The reutilization of excess leased ADPE is in the nature of a procurement and subject to the applicable laws and regulations governing procurement by Federal agencies.

* * * * *

10. Section 201–33.004 is revised to read as follows:

§ 201–33.004 Availability list.

GSA publishes and distributes an availability list to inform Federal agencies of available excess and exchange/sale ADPE. This list is published periodically as necessary.

(a) GSA will send copies of the availability list to agency reuse points of contact. Agencies shall ensure the widest possible distribution of availability lists to achieve full consideration for reutilization of available ADPE.

(b) Requests concerning the availability of ADPE or for copies of the availability list shall be addressed to GSA (KMAS).

§ 201–33.005 [Removed and reserved]

11. Section 201–33.005 is removed and reserved.

12. Section 201–33.006 is amended by revising the introductory paragraph to read as follows:

§ 201–33.006 Requests for transfer of excess ADPE or exchange/sale ADPE.

Requests for transfer of excess ADPE or reimbursable transfer of exchange/sale ADPE between Federal agencies shall be accomplished in accordance with this Part 201–33 by completing an SF 122, Transfer Order Excess Personal Property. The SF 122 shall contain the name and telephone number (commercial and FTS) of the agency official to be contacted regarding transportation details.

* * * * *

13. Section 201–33.008 is retitled and revised to read as follows:

§ 201–33.008 Reporting of surplus ADPE.

Upon completion of interagency screening for reuse, all Government-owned ADPE not reutilized by other agencies or disposed of through exchange/sale shall be reported for disposition in accordance with FPMR Parts 101–44 and 101–45.

§ 201–33.009–5 [Amended]

14. Section 201–33.009–5, paragraph (b), is amended by removing the parenthetical phrase "(see § 201–33.005)".

15. Section 201–33.011 is amended by revising the introductory paragraph; removing paragraph (c); redesignating paragraph (b) as paragraph (c); and adding a new paragraph (b) to read as follows:

§ 201–33.011 Reporting excess or exchange/sale ADPE.

Excess or exchange/sale ADPE shall be reported on an original and four copies of SF 120, Report of Excess Personal Property (illustrated in FAR 53.301–120), and when necessary, SF 120A, Continuation Sheet (Report of Excess Personal Property) or in equivalent electronic form. Any questions should be referred to the General Services Administration (KMAS), Washington, DC 20405, for resolution.

* * * * *

(b) Each SF 120 shall be numbered following a standard numbering system consisting of the FEDSTRIP or Department of Defense (DOD) activity address code of the reporting activity and the current Julian date. The report number, when combined with the four-digit assigned item number, allows each component to be separately identified. Instructions for completing the SF 120 are found on the back of the form. Examples of SF 120s are illustrated in Appendix E of the FIRMR looseleaf edition.

* * * * *

§ 201–33.012 [Amended]

16. Section 201–33.012 is amended by removing from the third sentence of paragraph (b)(1) the phrase "as an * * * exception to normal procedures if such equipment is reported," by removing the remaining four sentences of paragraph (b)(1) starting with "When GSA (KMA) approves the request, * * *," and by removing paragraph (b)(2) and the paragraph designation for paragraph (b)(1).

Dated: December 28, 1988.

Richard G. Austin,

Acting Administrator of General Services.

[FR Doc. 89–1069 Filed 1–18–89; 8:45 am]

BILLING CODE 6820–25–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 300

Disaster Preparedness Assistance

AGENCY: Federal Emergency Management Agency (FEMA).

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ACTION: Final rule.

SUMMARY: This final rule prescribes requirements for the implementation of section 201 of Pub. L. 93-288, as amended by Pub. L. 100-707 (the newly-entitled Robert T. Stafford Disaster Relief and Emergency Assistance Act, which was previously known as the Disaster Relief Act of 1974). Section 201 establishes a mechanism for providing Federal technical assistance to States, and authorizes grants to develop and improve capabilities of State governments to deliver disaster assistance and to prepare for and mitigate natural hazards to which the grant recipient is exposed.

EFFECTIVE DATE: January 1, 1989 [The recently enacted Robert T. Stafford Disaster Relief and Emergency Assistance Act increased the amount of funding available to states. Since the Act serves as an authorization and appropriation, it has been determined that this funding is immediately available to the states. Some states have already expressed an interest in obtaining the new funding as quickly as possible.]

FOR FURTHER INFORMATION CONTACT: Gregory S. Jones, Office of Disaster Assistance Programs, FEMA, Room 714, 500 C Street, SW., Washington, DC 20472, Telephone: (202) 646-2660.

SUPPLEMENTARY INFORMATION: On July 14, 1988, FEMA published for comment in the **Federal Register** (Vol. 53, No. 135) a proposed rule to amend 44 CFR Part 300. Section 201 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Act") authorizes matching grants of up to $50,000 to States for "improving, maintaining, and updating State disaster assistance plans." "Disaster assistance" within the context of the Act includes "programs for both public and private losses sustained in disasters." Additionally, an essential component of "disaster assistance" and "disaster preparedness" as cited at section 101 of the Act, "Findings, Declarations, and Definitions" and section 201 of the Act, "Disaster Preparedness Assistance," is hazard mitigation—the systematic approach to reduce vulnerability to losses and thereby serve the fundamental purpose of the legislation "to alleviate the suffering and damage which results from disasters." The delivery of disaster assistance programs, including mitigation planning, requires the improvement and maintenance of State plans and procedures to (1) identify the tasks needed to deliver disaster assistance and to reduce, avoid or mitigate natural hazards; (2) make clear assignments to specific offices to execute these tasks; (3) reflect the State authorities for executing disaster assignments; and, (4) provide for adequate training of personnel in their disaster assignments.

The disaster preparedness improvement grants are intended to support, improve, and maintain such efforts. The delivery of disaster assistance to individuals and communities and efforts to reduce vulnerability to losses may be considered as the major components of a State disaster assistance program. The limited resources in a given year to improve or maintain such State programs requires judicious application of the grants to meeting the State's highest disaster assistance priorities. It is important for States to take advantage of technical assistance resources available from the appropriate FEMA Regional Director to identify areas of highest concern or needed revision and include those priorities in their statements of work as part of the application process for the disaster preparedness improvement grant.

In response to the proposed rule, several comments were received.

One comment received stated that the Federal funding limitation of up to $25,000 is not sufficient for a state to prepare adequately for provision of disaster relief assistance. Recent amendments to Federal disaster legislation raised the Federal funding limitation to $50,000 per annum per grant.

Some comments received took exception with FEMA policy requiring states to adopt a single multi-hazard plan that addresses their major hazards while disaster assistance plans as defined in this regulation deal only with natural hazards. FEMA has determined that the purpose of the Disaster Preparedness Improvement Grant Program is to provide resources to states to develop and maintain their capabilities to carry out State responsibilities related to requesting and administering assistance provided in accordance with Pub. L. 93-288, as amended by Pub. L. 100-707, and to undertake hazard mitigation activities aimed at preventing, avoiding or reducing the need for such assistance. States may incorporate these disaster assistance capabilities into new or existing State emergency plans in the format most appropriate to the State. There is no requirement that states separate disaster preparedness plans from other hazard plans.

FEMA has determined that this rule does not contain a collection of information requirement as described in section 3504(h) of the Paperwork Reduction Act.

Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969 and the implementing regulations of the Council of Environmental Quality (40 CFR Parts 1500-1508), FEMA has determined that this rule does not have a significant impact upon the quality of human environment. A finding of no significant impact is included in the formal docket file and is available for public inspection and copying at the Rules Docket Clerk, Office of the ; General Counsel, Federal Emergency Management Agency, Room 505, 500 C Street, SW., Washington, DC 20472.

This rule is not a major rule within the context of Executive Order 12291. It will not have an annual impact on the economy of $100 million or more.

The rule will not have a significant economic impact on small entities, within the meaning of 5 U.S.C. 605 (The Regulatory Flexibility Act). Therefore, no regulatory analysis will be prepared.

Consistent with Executive Order 12612, FEMA has determined that this rule assists States and local units of government in reducing vulnerability from recurring or potentially severe natural hazards by supporting disaster preparedness and hazard mitigation planning activities.

This program encourages states to develop their own program initiatives within the limits of authorized activity as allowed by the Act. This rule imposes no additional costs or burdens on the States, but rather, has a long-term Federal and state cost-saving potential.

List of Subjects in 44 CFR Part 300

Disaster assistance.

Accordingly, amend 44 CFR Part 300 Chapter I, Subchapter E as follows:

PART 300—[AMENDED]

1. The authority citation of Part 300 continues to read:

Authority: 42 U.S.C. 5121 *et seq.*; Reorganization Plan No. 3 of 1978, E.O. 12148.

§§ 300.1 and 300.3 [Removed]

§§ 300.2, 300.4 and 300.5 [Redesignated as §§ 300.1, 300.2 and 300.3 Respectively]

2. Sections 300.1 and 300.3 have been removed. Sections 300.2, 300.4, and 300.5 are redesignated as §§ 300.1 through 300.3 and revised to read as follows:

§ 300.1 Definitions.

As used in this part:

(a) "The Act" means the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.*

(b) "Disaster assistance plans" means those plans which identify tasks needed to deliver disaster assistance and to avoid, reduce, or mitigate natural hazards; make assignments to execute those tasks; reflect State authorities for executing disaster assignments; and provide for adequate training of personnel in their disaster or mitigation assignments.

(c) "Mitigation" means the process of systematically evaluating the nature and extent of vulnerability to the effects of natural hazards present in society and planning and carrying out actions to minimize future vulnerability to those hazards to the greatest extent practicable.

(d) "State" means any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, Commonwealth of the Northern Mariana Islands, the Trust Territory of the Pacific Islands, the Federated States of Micronesia, or the Republic of the Marshall Islands.

§ 300.2 Technical Assistance.

Requests for technical assistance under section 201(b) of the Act shall be made by the Governor or his/her designated representative to the Regional Director.

(a) The request for technical assistance shall indicate as specifically as possible the objectives, nature, and duration of the requested assistance; the recipient agency or organization within the State; the State official responsible for utilizing such assistance; the manner in which such assistance is to be utilized; and any other information needed for a full understanding of the need for such requested assistance.

(b) The request for assistance requires participation by the State in the technical assistance process. As part of its request for such assistance, the State shall agree to facilitate coordination among FEMA, local governments, State agencies and the businesses and industries in need of assistance in the areas of disaster preparedness and mitigation.

§ 300.3 Financial Assistance.

(a) The Regional Director may provide to States upon written request by the State Governor or an authorized representative, an annual improvement grant up to $50,000, but not to exceed 50 percent of eligible costs, except where separate legislation requires or permits a waiver of the State's matching share, e.g., with respect to "insular areas", as that term is defined at 48 U.S.C. 1469a(d). The nonfederal share in all cases may exceed the Federal share.

(b) The improvement grant shall be product-oriented; that is, it must produce something measurable in a way that determines specific results, to substantiate compliance with the grant workplan objectives and to evidence contribution to the State's disaster capability. The following list, *which is neither exhaustive nor ranked in priority order,* offers examples of eligible products under the Disaster Preparedness Improvement Grant Program:

(1) Evaluations of natural hazards and development of the programs and actions required to mitigate such hazards;

(2) Hazard mitigation activities, including development of predisaster natural hazard mitigation plans, policies, programs and strategies for State-level multi-hazard mitigation;

(3) Updates to State disaster assistance plans, including plans for the Individual and Family Grant (IFG) Program, Public Assistance Program, Hazard Mitigation Grant Program, Disaster Application Center operations, damage assessment, etc.;

(4) Handbooks to implement State disaster assistance program activities;

(5) Exercise materials (EXPLAN, scenario, injects, etc.) to test and exercise procedures for State efforts in disaster response, including provision of individual and public assistance;

(6) Standard operating procedures for individual State agencies to execute disaster responsibilities for IFG, crisis counseling, mass care or other functional responsibilities;

(7) Training for State employees in their responsibilities under the State's disaster assistance plan;

(8) Report of formal analysis of State enabling legislation and other authorities to ensure efficient processing by the State of applications by governmental entities and individuals for Federal disaster relief;

(9) An inventory of updated inventory of State/local critical facilities (including State/local emergency operations centers) and their proximity to identified hazard areas;

(10) A tracking system of critical actions (identified in postdisaster critiques) to be executed by State or local governments to improve disaster assistance capabilities or reduce vulnerability to natural hazards.

(11) Plans or procedures for dealing with disasters not receiving supplementary Federal assistance;

(12) Damage assessment plans or procedures;

(13) Procedures for search and rescue operations; and,

(14) Disaster accounting procedures.

(c) The State shall provide quarterly financial and performance reports to the Regional Director. Reporting shall be by program quarter unless otherwise agreed to by the Regional Director.

Date: January 11, 1989.

Grant C. Peterson,

Associate Director, State and Local Programs and Support.

[FR Doc. 89-1108 Filed 1-18-89; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 43 and 63

[CC Docket No. 86-494; FCC 88-405]

Common Carrier Services; Regulatory Policies and International Telecommunications

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: On December 12, 1988 the Commission adopted an Order on Reconsideration in CC Docket No. 86-494, FCC 88-405, that abolishes the annual core equipment reporting requirements established in the Report and Order and Supplemental Notice of Inquiry, CC Docket No. 86-494, FCC 86-71 (released March 25, 1988), 53 FR 12546 (April 15, 1988). The Commission concluded that although there is no real question of its authority to require information concerning the procurement of core equipment by common carriers for regulatory purposes, there is no compelling regulatory need to gather information on procurement of core equipment at this time. In this Order on Reconsideration the Commission also reaffirmed that it would require revenue and traffic reports from common carriers owned by foreign-owned telecommunications entities. In order to be responsive to the concerns expressed by the National Telecommunications and Information Administration (NTIA), the Commission concluded that it should not establish a separate notification requirement for carriers owned by foreign telecommunications entities and that the traffic and revenue reports would only be required from carriers owned by foreign telecommunications entities that are considered dominant for the provision of international telecommunications services originating or terminating in the United States. The Commission concluded that this information will permit it to determine whether it should propose additional

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regulatory action in the context of its continuing review of its international competitive carrier and international settlements policies.

EFFECTIVE DATE: January 4, 1989.

ADDRESSES: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT:

William J. Kirsch, Deputy Assistant Bureau Chief, International Policy Division, Common Carrier Bureau, (202) 632-0745.

John Copes and Michael Mandigo, Attorney/Advisors, International Policy Division, Common Carrier Bureau, (202) 632-0745.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order on Reconsideration adopted December 12, 1988, and released January 4, 1989.

The Report and Order is available for inspection and copying during normal business hours in the FCC Dockets Branch, 1919 M Street NW., Room 230, Washington, DC 20554. It may also be purchased from the Commission's copy contractors, International Transcription Service, 2100 M Street, Suite 140, Washington, DC 20037, (202) 857-3800.

The Order on Reconsideration grants, in large part, petitions for reconsideration filed by the National Telecommunications and Information Administration (NTIA), Siemens, Bell South and GTE. The Order cites several reasons for declining to go forward with the annual procurement reporting requirement. First, a new statutory scheme, the "Telecommunications Trade Act of 1988," has been established that explicitly addresses telecommunications trade issues, including the procurement of core equipment. Second, although the Commission has statutory authority under the Communications Act to require carriers to file annual procurement reports for regulatory purposes, the Commission concludes that there is no compelling regulatory need to gather this information at this time. Third, the Commission supports the purposes of the Paperwork Reduction Act and recognizes the concern of the Office of Management and Budget that federal agencies seek to minimize the paperwork burden for carriers subject to the Commission's jurisdiction. Finally, the Commission concludes that as a matter of policy the Commission should not take action, including information collection, solely for trade purposes. As a result, with the Order on Reconsideration, the Commission considers its examination of the trade issues associated with the procurement of equipment in this proceeding, including the potential collection of information for trade-related reasons, to be completed.

The Order on Reconsideration affirms, however, the Commission decision to establish revenue and traffic reporting requirements related to the provision of carriers owned by foreign telecommunications entities providing common carrier services within the United States established in the Report and Order and Supplemental Notice of Inquiry. The Commission concluded that the common carrier reporting requirements established in the Report and Order are fully consistent with the principle of national treatment and any national treatment obligations of the United States.

In order, however, to be responsive to NTIA, which was the sole party to seek reconsideration on this issue, the Commission adopted several modifications to the common carrier reporting requirements established in the Report and Order. First, the Commission concluded that foreign telecommunications entities should simply be reminded of their statutory obligation, under section 413 of the Communications Act, to designate in writing an agent within the District of Columbia upon whom service of notices, processes, and orders may be made. Second, the Commission limited the common carrier service revenue and traffic reporting requirements to carriers owned by foreign telecommunications entities that are considered dominant for the provision of international telecommunication services originating or terminating in the United States.

In addition, in order to be responsive to the concerns expressed by the Office of Management and Budget (OMB) with regard to the Paperwork Reduction Act, the Commission concluded that the common carrier revenue traffic reports should be filed annually, instead of quarterly, and should sunset after three years. The Commission noted, however, that since the common carrier reporting requirements apply to nine or fewer persons they are not subject to OMB review under the Paperwork Reduction Act. Moreover, as required by the Act, the Commission notified FTC Communications, Inc., Cable and Wireless Communications, Inc., and Consortium Communications International, Inc., that this information collection request in not subject to the requirements of section 3507 of the Paperwork Reduction Act.

The Commission concluded that these common carrier reports would permit the Commission to make a more informed judgment whether to consider proposing that carriers owned by foreign telecommunications entities be considered dominant for the provision of domestic, interstate, long-distance services. These reports may also assist the Commission in making a more informed judgment concerning what, if any, additional action the Commission should consider proposing to lower accounting rates for international telecommunications services originating in the United States. The Commission concluded, however, that its examination of the trade issues that might be associated with the provision of common carrier services is completed and the Commission ordered that this docket is concluded.

List of Subjects

47 CFR Part 43

Communications common carriers, Reporting and recordkeeping requirements.

47 CFR Part 63

Communications common carriers, Reporting and recordkeeping requirements.

47 CFR Parts 43 and 63 are amended as follows:

PART 43—[AMENDED]

1. The Authority Citation for Part 43 continues to read as follows:

Authority: Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154 unless otherwise noted. Interpret or apply sections 211, 219, 48 Stat. 1073, 1077, as amended; 47 U.S.C. 221, 219, 220, unless otherwise noted.

2. Section 43.61 is revised to read as follows:

§ 43.61 Reports of carriers owned by foreign telecommunications entities.

(a) The following carriers are required to file with the Commission an annual revenue and traffic report in triplicate with respect to all common carrier telecommunications services they offer within the United States.

(1) Cable and Wireless Communications, Inc.;

(2) FTCC Communications Inc.; and

(3) Consortium Communications International, Inc.;

(b) The Chief, Common Carrier Bureau has the authority to require that no more than six additional communications carriers owned by foreign telecommunications entities that are classified as dominant for the provision of international telecommunications services originating or terminating in the United States file § 43.61 reports;

(c) The report should be captioned—§ 43.61 report and should provide the following:

(1) Revenues, number of messages and number of minutes for message telephone service traffic originated and/or terminated by the filing carrier;

(2) Revenues, number of messages, and number of minutes for telex traffic originated and/or terminated by the filing carrier;

(3) Revenues, number of messages, and number of minutes for telegraph traffic originated and/or terminated by the filing carrier;

(4) Revenues, number of messages, and number of minutes for any other basic switched services (specified by service) originated and/or terminated by the filing carrier; and

(5) Number of leases and revenues from private line services provided by the filing carrier;

(d) Section 43.61 Reports for:

(1) The calendar year 1988 must be filed on or before August 1, 1989;

(2) The calendar year 1989 must be filed on or before August 1, 1990; and

(3) The calendar year 1990 must be filed on or before August 1, 1991.

(e) These reports shall apply to nine or fewer persons and therefore are not subject to the review of the Office of Management and Budget under the Paperwork Reduction Act.

PART 63—[AMENDED]

3. The authority citation for Part 63 continues to read as follows:

Authority: Sec. 4, 48 Stat. 1066, as amended 47 U.S.C. 154. Interpret or apply sec. 214, 48 Stat 1075, as amended; 47 U.S.C. 214.

§ 63.601 [Removed]

4. Section 63.601 is removed.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89-1179 Filed 1-18-89; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Amsonia Kearneyana To Be an Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service determines that a plant, *Amsonia kearneyana* (Kearney's blue-star), is an endangered species. This plant is known from a single canyon on the western slopes of the Baboquivari Mountains on the Tohono O'odham (formerly Papago) Indian Reservation in Arizona. The entire population consists of 8 plants and is currently being threatened by habitat degradation from cattle grazing and possibly by insect predation on the seeds. This rule implements the protection provided by the Endangered Species Act of 1973 (Act), as amended, for *Amsonia kearneyana*.

EFFECTIVE DATE: February 21, 1989.

ADDRESS: The complete file for this rule is available for public inspection, by appointment, during normal business hours at the Service's Ecological Services Field Office, 3616 W. Thomas Rd., Suite #6, Phoenix, Arizona.

FOR FURTHER INFORMATION CONTACT:

Sue Rutman, Endangered Species Botanist, U.S. Fish and Wildlife Service, 3616 W. Thomas Rd., Suite #6, Phoenix, Arizona 85019 (602/261-4720 or FTS 261-4720).

SUPPLEMENTARY INFORMATION:

Background

Amsonia kearneyana is a herbaceous perennial that is endemic to a single west draining canyon in the Baboquivari Mountains, southern Pima Country, Arizona. *Amsonia kearneyana* grows in the riparian vegetation zone lining a dry, rocky wash. Plants are rooted in alluvial deposits of small boulders and cobbles along the wash. The species grows in full sun or under the partial shade of *Celtis reticulata* (net-leaf hackberry), *Juglans major* (Arizona walnut), *Quercus oblongifolia* (Mexican blue oak), or *Acacia greggii* (catclaw acacia). The vegetation surrounding the riparian zone is semidesert grassland (Turner and Brown 1982). The single population lies entirely within the Tohono O'odham Indian Reservation.

Amsonia kearneyana has up to 50 erect of ascending stems, giving mature plants a hemispherical form. The stems reach a height of 4 to 8 decimeters (16 to 32 inches) and arise from a thickened, somewhat woody root. Lance-shaped leaves with soft hairs are arranged alternately on the stem. White flowers appear in April or May and are borne in clusters on the ends of branches. Fruits are 3 to 10 centimeters (1 to 4 inches) long, and contain corky seeds about 8 to 11 millimeters (0.5 inches) long.

Currently the population size is small and declining. Twenty five plants were found by Phillips and Brian (1982) during their status survey for the plant. Four years later in 1986, Service botanists, Bureau of Indian Affairs (BIA) personnel, and Steve McLaughlin, a local expert on the species, located only eight plants.

Two observations suggest that the reproductive success of *Amsonia kearneyana* may be insufficient to maintain the species. First, only one of the 25 plants found in 1982 was a seedling. A greater proportion of seedlings would be expected in a successfully reproducing population. Second, mature reproducing individuals had only a few developing fruits in 1986 and these fruits contained a small number of developing seeds. Possible reasons for the low number of fruits, seeds, and seedlings include: Extreme temperature or soil moisture conditions, lack of pollinators or poor pollinator efficiency, lack of seedling establishment sites due to overgrazing, and trampling of seedlings by cattle.

The first collections of *Amsonia kearneyana* were made by Mr. F. Thackery from its only known locality on May 24, 1926, and again on April 9, 1928. Mr. R.E. Woodson, Jr. described the species using Thackery's material and a 1927 collection by Peebles, Harrison, and Kearney (Woodson 1928). The species was named in honor of Mr. T.H. Kearney, then of the U.S. Bureau of Plant Industry, who supplied much information about the genus in Arizona to Woodson and other botanists. Although Woodson (1928) originally regarded *Amsonia kearneyana* as a sterile hybrid between two species of the subgenera *Articularia* and *Sphinctosiphon* he believed *Amsonia kearneyana* ranked as a distinct species of recent hybrid origin. Subsequently, Woodson (1938) reduced the taxon to synonymy under *Amsonia palmeri* in 1938. He justified the reduction by citing its sterile seeds, its floral similarities with *Amsonia palmeri*, and its locality near the range of *Amsonia palmeri*. In a recent revision of the genus, McLaughlin (1982) recognized *Amsonia kearneyana* as a valid taxon. McLaughlin based his conclusion on his observations that 66 percent of seeds were viable and that the taxon has distinct morphological characteristics.

Federal action involving this species began with section 12 of the Endangered Species Act of 1973, which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94-51, was presented to Congress on January 9 1975. On July 1, 1975, the Service published a notice in the **Federal Register** (40 FR 27823) of its acceptance of this report as a petition within the context of section 4(c)(2), now section

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4(b)(3)(A), of the Act and of its intention thereby to review the status of those plants. *Amsonia kearneyana* was included as endangered in the July 1, 1975, petition.

On December 15, 1980, (45 FR 82485) and September 27, 1985, (50 FR 39526), the Service published updated notices reviewing the native plants being considered for classification as threatened or endangered. *Amsonia kearneyana* was included in these notices as a category 1 species, meaning that substantial information was on hand to support the biological appropriateness of proposing to list as endangered or threatened.

Section 4(b)(3)(B) of the Endangered Species Act, as amended in 1982, requires the Secretary to make findings on certain pending petitions within one year of their receipt. Section 2(b)(1) of the Act's Amendments of 1982 further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. Because the 1975 Smithsonian report was accepted as a petition, all the taxa contained in the notice, including *Amsonia kearneyana*, were treated as being newly petitioned on October 13, 1982. On October 13, 1983; October 12, 1984; October 11, 1985; and October 10, 1986 the Service made the one-year findings that the petition to list *Amsonia kearneyana* was warranted, but precluded by other listing actions of higher priority. Biological data, supplied by Phillips and Brian (1982), fully support a listing of *Amsonia kearneyana* as endangered. The July 10, 1987, proposal (52 FR 26030) of *Amsonia kearneyana* to be endangered constituted the final 12-month finding for this species.

Summary of Comments and Recommendations

In the July 10, 1987, proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, the tribe and other interested parties were contacted and requested to comment. A newspaper notice was published in the Tucson Daily Star and the Tucson Citizen on August 25, 1987 which invited general public comment. One comment was received and is discussed below.

The U.S. Forest Service commented that the species does not occur on land within the National Forest System. They had no new information on the species nor did they take a position on the proposal.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service determined that *Amsonia kearneyana* should be classified as an endangered species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Amsonia kearneyana* Woodson (Kearney's blue-star) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.*

The historic and present known ranges of *Amsonia kearneyana* are the same; however, the number of plants in the population has declined significantly from 25 in 1962 to 8 in 1986. The habitat of *Amsonia kearneyana* has been severely modified by cattle grazing. Although the plant does not appear to be eaten by cattle, several indirect effects of grazing may have contributed to a decrease in plant numbers. Severe overgrazing causes a decline in plant species diversity, which may be accompanied by a reduction in pollinator numbers and species. Given the small population size of *Amsonia kearneyana*, pollinator availability and maximum pollen transfer may be critical for the maintenance of genetic variation and adaptive potential.

Loss of plant cover and the disturbance of topsoil are other effects of cattle grazing. Together, these factors increase the potential for erosion and flooding. *Amsonia kearneyana* is very vulnerable to flooding because of its location along a single drainage that periodically floods. A flash flood may have occurred in this drainage in 1983, a year when widespread flooding occurred in southern Arizona. Such a flood would explain the decline in plant numbers from 25 in 1962 to 8 in 1986.

Cattle grazing may negatively affect the number of successfully established seedlings. Grazing causes topsoil disturbance, which can result in a reduction of the number of seedling establishment sites. Seedlings may be killed by trampling.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.*

No detrimental uses of this plant are known. However, one purposeful act of vandalism could cause the extinction of this species.

C. *Disease or predation.*

McLaughlin (1982) suggested that stinkbugs (*Chlorochroa ligata*) could be responsible for the destruction of up to 100 percent of this species' annual seed production. Stinkbugs have been observed damaging seeds of *Amsonia grandiflora*. Although such seed predation has not been documented for *Amsonia kearneyana*, stinkbugs also occur within the range of *Amsonia kearneyana*, and it therefore seems likely that its seeds may also be damaged. McLaughlin (1982) speculated that destruction by stinkbugs accounted for Woodson's (1928) report of zero percent seed viability for *Amsonia kearneyana*.

D. *The inadequacy of existing regulatory mechanisms.*

Amsonia kearneyana was included in Section 3-601B of the Arizona Native Plant Law, effective February 5, 1988. This law prohibits the collection of this species unless a permit for educational or scientific purposes if granted by the Arizona Commission of Agriculture and Horticulture. The constitution of the Tohono O'odham Tribe grants access to the Reservation and permission to collect plants to tribal members only. However, the Tribal Council may grant access and collection permits to non-members. The Endangered Species Act will provide additional protection and encouragement of active management for this plant through section 7 (interagency cooperation) requirements and through section 9, which prohibits removal and reduction to possession of plants occurring on Federal lands.

E. *Other natural or manmade factors affecting its continued existence.*

The low numbers and limited distribution of *Amsonia kearneyana* increase the species' vulnerability to natural or man-caused stresses. Further reduction in the number or density of plants could reduce the reproductive capabilities and genetic variability of the species.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list *Amsonia kearneyana* as endangered without critical habitat. Endangered status seems appropriate, because *Amsonia kearneyana* is in danger of extinction throughout its range owing to degradation of its habitat and poor reproduction. Critical habitat is not being designated for the reasons discussed below.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for *Amsonia kearneyana* because its limited distribution makes it vulnerable to the threat of vandalism. Publication of critical habitat descriptions and maps would call attention to this species, making it even more vulnerable to vandalism. The BIA and Tohono O'odham Nation have been notified of the location and importance of protecting this species' habitat. Protection of this species' habitat will be addressed through the recovery process and through the section 7 consultation jeopardy standard. Therefore, it would not be prudent to determine critical habitat for *Amsonia kearneyana* at this time.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service at the earliest opportunity. The protection required of Federal agencies and the prohibitions against taking are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Amsonia kearneyana occurs on tribal land on the Tohono O'odham Indian Reservation. The BIA is responsible for issuing livestock grazing permits on tribal lands (25 CFR 166.7) and is currently conducting soil and range condition surveys with the Soil Conservation Service to develop the basis for a permitting system (Heuslein, BIA Phoenix, pers. comm., 1988). Federal activities that could impact *Amsonia kearneyana* and its habitat include, but are not limited to, issuance of permits for grazing, range improvements, or any other activities that do not include planning for this species' continued existence. The Service will continue to work with the BIA and the Tohono O'odham Nation to secure protection and proper management of *Amsonia kearneyana* while accommodating agency activities to the extent possible.

The Act and its implementing regulations found at 50 CFR 17.61 set forth a series of general trade prohibitions and exceptions that apply to all endangered plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to import or export any endangered plant, transport it in interstate or foreign commerce in the course of a commercial activity, sell or offer it for sale in interstate or foreign commerce, or remove it from areas under Federal jurisdiction and reduce it to possession. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. With regard to *Amsonia kearneyana*, it is anticipated that few, if any, trade permits would ever be sought or issued because the species is not common in cultivation or in the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Permit Branch, Office of Management Authority, U.S. Fish and Wildlife Service, Hamilton Building, Room 400, Washington, DC 20240 (703/343-4955).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

McLaughlin, S.P. 1982. A revision of the southwestern species of *Amsonia* (Apocynaceae). Annals of the Missouri Botanical Garden 69(2):336–350.

Phillips, B.G. and N. Brian. 1982. Status report on *Amsonia kearneyana*. U.S. Fish and Wildlife Service, Office of Endangered Species, Albuquerque, NM. 12 pp.

Turner, R.M. and D.E. Brown. 1982. Sonoran desert scrub. *In* D.E. Brown (ed.). Biotic Communities of the American Southwest-United States and Mexico. Desert Plants 4:181–221.

Woodson, R.E., Jr. 1928. Studies in the Apocynaceae III. A monograph of the genus *Amsonia*. Annals of the Missouri Botanical Garden 15:379–434.

Woodson, R.E., Jr. 1938. *Amsonia*. North American Flora. 29:126–131.

Author

The primary author of this rule is Peggy Olwell, Endangered Species Botanist, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, NM 87103 (505–766–3972).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulation Promulgation

Accordingly, Part 17, Subchapter B of Chapter 1, Title 50 of the Code of Federal Regulations, is amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*); Pub. L. 99–625, 100 Stat. 3500 (1986), unless otherwise noted.

2. Amend § 17.12(h) by adding the following, in alphabetical order under the family Apocynaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species							
Scientific name	Common name	Historic range	Status	When listed	Critical habitat	Special rules	
•	•	•	•	•	•	•	
Apocynaceae—Dogbane family:							
Amsonia kearneyana	Kearney's blue-star	U.S.A. (AZ)	E		543	NA	NA
•	•	•	•	•	•	•	

Dated: December 22, 1988.

Becky Norton Dunlop,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 89-1286 Filed 1-18-89; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 655

[Docket No. 81030-8009]

Atlantic Mackerel, Squid, and Butterfish Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of final initial specifications for 1989.

SUMMARY: NOAA issues this notice of final initial specifications for the 1989 fishing year for the Atlantic mackerel, squid, and butterfish fisheries. Regulations governing these fisheries require the Secretary of Commerce (Secretary) to publish specifications for the current fishing year. This action is intended to promote the development of the U.S. Atlantic mackerel, squid, and butterfish fisheries.

EFFECTIVE DATE: January 1, 1989.

ADDRESS: Copies of the Mid-Atlantic Fishery Management Council's analysis and recommendations are available from John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19901.

FOR FURTHER INFORMATION CONTACT: Kathi L. Rodrigues, 508-281-3600, ext. 324.

SUPPLEMENTARY INFORMATION: Regulations implementing the Fishery Management Plan for Atlantic Mackerel, Squid, and Butterfish Fisheries (FMP), prepared by the Mid-Atlantic Fishery Management Council (Council), appear at 50 CFR Part 655. Preliminary initial specifications for the 1988 fishing year for Atlantic mackerel, squid, and butterfish were published on October 28, 1988 (53 FR 43741), with request for public comment.

The following table lists the final initial annual specifications in metric tons (mt) for the maximum optimum yield (Max OY), allowable biological catch (ABC), and initial optimum yield (IOY), which is the sum of domestic annual harvesting (DAH) and total allowable level of foreign fishing (TALFF) for Atlantic mackerel, *Illex* and *Loligo* squids, and butterfish. These initial specifications are the amounts that the Northeast Regional Director, NMFS, (Regional Director) has determined will produce the greatest overall net benefit to the nation for the 1989 fishing year beginning January 1.

TABLE.—INITIAL ANNUAL SPECIFICATIONS FOR ATLANTIC MACKEREL, SQUID, AND BUTTERFISH FOR THE 1989 FISHING YEAR, JANUARY 1 THROUGH DECEMBER 31, 1989.

[In metric tons]

Specifications	Squid		Atlantic Mackerel	Butterfish
	Loligo	Illex		
Max OY [1]	44,000	30,000	[2]N/A	16,000
ABC [3]	37,000	22,500	230,000	16,000
IOY	22,012	15,000	74,000	10,024
DAH	22,000	15,000	[4] 44,000	10,000
DAP	22,000	12,000	30,000	10,000
JVP	0	3,000	10,000	0
TALFF	12	0	[5]30,000	24

[1] Maximum OYs as stated in the FMP.
[2] Not applicable; see the FMP.
[3] IOY can rise to this amount.
[4] Includes 14,000 mt projected recreational catch.
[5] For every 9 mt TALFF, foreign partner is required to purchase 3 mt JVP and 1 mt U.S. processed product. If U.S. processed product is unavailable, an additional 3 mt JVP may be substituted.

The above specifications contain no changes from those proposed and published on October 28, 1988.

Responses to Comments

Comments were submitted by Blue Water Fish Tackle Co., Scan Ocean, Inc., the Royal Netherlands Embassy (RNE), the Embassy of the Polish People's Republic (PPR), National Fisheries Institute, Inc. (NFI), Seafreeze Ltd., Mayflower International Ltd., Lunds Fisheries, Inc., and Nantucket Sound Fish Weirs, Inc.

Comment: Blue Water Fish Tackle Co. commented that there should be no directed foreign fishing on squids, mackerel, or butterfish in the Exclusive Economic Zone (EEZ) because these species are needed to sustain populations of large ocean pelagics such as tuna, swordfish, and billfish.

Response: There is no directed foreign fishing proposed for squids and butterfish. Therefore, the response will address foreign fishing for Atlantic mackerel only.

Large oceanic pelagics such as tuna, swordfish, and billfish are known to feed on a variety of species. For instance, sampling of swordfish stomach contents reveal herring, menhaden, bluefish, silver hake, argentine, and rattails, as well as several species of squids, mackerels, and butterfish. Another investigation identified 28 types of food items that were consumed by sailfish. Although large pelagics are known to feed on Atlantic mackerel, they are opportunistic, feeding on a wide variety of species, and not dependent on any particular one.

Predator-prey relationships are particularly complex and are not among the factors considered in setting the Atlantic mackerel IOY. However, maintenance of a spawning stock size of 600,000 mt is central to the allocation process. NMFS biologists estimate that the current condition of the stock would allow 200,000 mt of Atlantic mackerel to be removed from the stock and still maintain a total stock size of over one million mt. The 30,000 mt allocated for TALFF, if harvested, is not likely to adversely affect the Atlantic mackerel stock or reduce it to a point where large pelagics would be affected.

Comment: RNE, Scan Ocean, Inc., and the PPR commented that the proposed TALLF and JVP amounts for Atlantic mackerel are substantially lower than the amounts requested by foreign nationals, and lower than that which was available in 1988. The low amounts make planning fishing operations difficult because it appears the amounts requested will not be available. The commenters believe that TALFF and JVP levels should be raised to accommodate the applications submitted by the Netherlands and Poland.

Response: Atlantic mackerel TALFF and JVP are components of IOY and are not set directly in relation to amounts requested in foreign fishing applications. IOY is to provide maximum benefits to the United States. The basis for setting IOY is described in the proposed rule published on October 28, 1988. It is expected that maximum net benefits will be derived this year from the purchase requirements of joint venture and processed product associated with allocations of TALFF.

Comment: The RNE requested confirmation that the difference between the Atlantic mackerel ABC and IOY (330,000 mt minus 74,000 mt) could be made available to the foreign fleets. The RNE requested that consideration be given to the fact that fleet owners must make their fishing plans well in advance of actual fishing operations, and need to know the quantities which are actually available.

Response: Thirty thousand mt of TALFF and 10,000 mt of JVP are available to foreign fleets to begin the 1989 fishing year. However, regulations for the Atlantic mackerel, squid, and butterfish fisheries provide that the IOY may be adjusted by the Regional Director, in consultation with the Council, at any time during the fishing year. The basis for adjustment must either be that U.S. fishermen will exceed the initial DAH or that an adjustment will produce maximum net benefits to the United States. Given the likelihood that the domestic fishery will not exceed DAH this year, any increase in benefits to the United States from the 1989 Atlantic mackerel fishery would, for the most part, result from the required purchase ratios of 3,000 mt of JVP and 1,000 mt of U.S. processed product for every 9,000 mt of TALFF (9:3 and 1 policy). Any inseason adjustments to TALFF will depend largely on the performance of the foreign fleet, as measured by adherance to the 9:3 and 1 policy.

Comment: RNE, PPR, Lunds and Scan Ocean commented that the 9:3 and 1 policy is unachievable and cost prohibitive. Scan Ocean commented that it will have to renegotiate with its foreign partners because original negotiations for the joint venture were predicated on a policy of 9:3 or 1.

Response: The policy requiring joint venture purchase and processed product purchase was announced to the industry in the final rule setting the specifications for 1988. This was accomplished via a **Federal Register** notice on Debember 11, 1987 (52 FR 47034), specifically to provide the industry with advance notice. The 9:3 and 1 policy is intended to promote the development of the domestic mackerel fishery by encouraging the participation of U.S. harvesters and processors. Five foreign fishing applications for the 1989 Atlantic mackerel fishery were received, (two of which comply closely with the 9:3 and 1 policy. This indicates that some consider the ventures to be economically viable. These applications will be given preference in allocation decisions.

Comment: Scan Ocean, Inc. and Lund's Fisheries, Inc., commented that the option to sell over-the-side to foreign vessels is essential to the Atlantic mackerel fishery because there is not enough shoreside capacity or interest on the part of U.S. processors to handle the large volume necessary to market this low-priced species profitably.

Response: An IOY has been established which provides for 10,000 mt of JVP to be made available for the 1989 fishing year. This amount is in proportion to the available TALFF according to the 9:3 and 1 policy. However, since JVP provides more benefits to the United States than foreign directed fishing, applications requesting additional JVP without TALFF, may justify an adjustment to the IOY to increase JVP. In addition, the TALFF and JVP can be increased consistent with performance against the ratios noted above.

Comment: NFI commented that the same processing capacity exists for *Illex*, as well as *Loligo* squid and, therefore, there should be no JVP for *Illex* squid as there is none for *Loligo* squid. NFI further commented that an allocation of *Illex* squid JVP conflicts with the FMP goal of full U.S. development of the squid fishery and frustrates U.S. marketing efforts.

Response: As stated in the final rule implementing the 1988 specifications March 4, 1988 (53 FR 6991), despite the considerable capacity of the U.S. freezer trawler fleet and U.S shoreside facilities, the availability of higher priced species makes *Illex* squid a less desirable species to U.S. processors. The *Illex* squid fishery does not appear to be at the point of development where U.S. interests will process all of the DAH. In 1988, U.S. processors utilized only 1,941 mt of the available 14,000 mt of *Illex* squid. Foreign processors can provide the necessary market outlet for joint venture produced *Illex* squid.

Comment: Seafreeze, Inc. asked several questions regarding *Illex* squid and Atlantic mackerel JVP and TALFF levels. They are as follows:

1. Given increases in U.S. processing capacity, how will an *Illex* squid JVP level of 3,000 mt be in the best interest of the U.S. industry, particularly in view of competition with domestic product? How many wet boats will be able to participate in this joint venture, and what will be the level of financial return to the industry and the economy? Will this level exceed that which would be generated if 3,000 mt were harvested, processed, and marketed by a domestic shoreside facility?

Response: As mentioned above, it is not capacity alone which is considered in setting the DAP. It is the capacity and the intent of the U.S. industry to process the DAH that forms the basis of DAP determination. Despite considerable harvesting/processing capacity, the United States produced very little *Illex* squid in 1988. Although it is recognized that 3,000 mt of JVP *Illex* squid may compete in the world market with U.S. processed product, this amount will provide a much needed economic benefit to the fleet of small "wet" boats that do traditionally fish for *Illex* squid. Some U.S. fishermen report that, for the time being, the competition provided by foreign joint ventures ensures them a better price. It is unknown how many U.S. boats will participate or whether there will be a joint venture; however, testimony at the public hearing held by the Council in August, 1988, indicated a considerable interest exists for joint ventures from New York/New Jersey area fishermen.

The Congress, in passing an amendment to the Magnuson Fishery Conservation and Management Act in 1978 (Pub. L. 95-354), clearly intended that U.S. fishermen have the option of selling fish to foreign processors if U.S. processors did not have the capacity and intent to utilize it. The following is quoted from the *Congressional Record:* "The amount of U.S. harvested fish which will not be processed by U.S. fish processors will be available for immediate sale to foreign fish processors."

The price differential between shoreside processed and joint venture produced *Illex* squid depends upon a variety of factors. Generally speaking, shoreside processing should provide the greatest economic return. However, to date, U.S. processors have not utilized the entire DAH, and therefore, joint ventures remain an alternative.

2. How will an *Illex* squid JVP level of 3,000 mt stimulate market development for U.S. product when it will not be marketed as domestic product?

Response: The *Illex* squid JVP level of 3,000 mt is not necessarily intended to stimulate market development for U.S. product. This amount represents the portion of DAH that U.S. processors are not expected to utilize during the 1989 fishing year. This provides a potential economic benefit to the nation by allowing domestic harvesters an opportunity to market product they would not otherwise be able to sell

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shoreside. There is no indication that a 3,000 mt JVP will hinder market development for U.S. product.

3. What criteria will be utilized to ensure that foreign partners engaged in *Illex* squid JVP will properly handle the product, which has been a problem in the past?

Response: There are no criteria employed by NMFS to ensure that foreign partners properly handle the product once it is received over-the-side from U.S. vessels. When a product is purchased, the owner has exclusive control of that product.

4. How will TALFF and JVP for mackerel stimulate the domestic industry, given the domination of the world market by foreign fleets (and resulting low world market price) and the decreasing interest by domestic fishermen to participate in joint ventures?

Response: This comment was made and responded to in the publication of the final specifications for 1988. That response is repeated below:

"The U.S. Atlantic mackerel fishery is underutilized due to the limited market for export. The Council's policy is to foster growth in this fishery the same way as it did the squid and butterfish fisheries. That is, by developing export markets for U.S. product by offering, for a time, TALFF and JVP as an inducement toward the purchase of U.S. processed product. The Atlantic mackerel TALFF and JVP allocations provide benefits to the United States in several ways. First, the requirement of a JV purchase for TALFF provides U.S. harvesters at least a temporary market for their product. Second, U.S. processors have a market for 1 mt of their product for every 9 mt of TALFF allocated, a potential sale of 10,000 mt this year. It is hoped that U.S. product will thereby gain a foothold in the marketplace. Finally, the United States gains revenues from fees collected from foreign nations fishing in the EEZ".

5. What criteria will be utilized in evaluating applications for mackerel TALFF?

Response: Criteria used to evaluate applications for mackerel TALFF include consideration of the 0.3 and 1 policy, as well as the criteria outlined under section 201(e)(1)(E) of the Magnuson Act. In addition, consideration was given to decreasing the impact on marine mammals that may occur in association with the mackerel fishery.

6. How all NMFS gauge compliance with mackerel purchase requirements? How will NMFS verify that U.S. processed mackerel is or is not available and how will the price be determined?

Response: Compliance with the joint venture purchase requirements are monitored by the Northeast Region Foreign Fishery Observer Program. One hundred percent observer coverage is maintained aboard every foreign vessel.

Compliance with purchase requirements have in the past been difficult to determine. Currently, the Regional Director is considering whether to require foreign partners to produce a bill of lading to document processed product purchases prior to release of additional TALFF.

7. The Federal Register (53 FR 43741, October 28, 1988) states, "The Council's policy for development of U.S. fisheries has been to stimulate growth and investment on the domestic side with a concurrent phasing-out of foreign participation. Maximum benefits have been provided to U.S. fishing interests by application of this policy to the *Loligo* squid and butterfish fisheries. The Council proposes to follow the same course in developing the Atlantic mackerel fishery." However, it should be noted that foreign participation in the butterfish fishery was ended in a very short time frame. Please explain the similarity between these two fisheries and the mackerel fishery (including world market trends and conditions; global stock distributions and importance). In view of any potentially significant difference, can this same policy be applied to the mackerel fishery and provide maximum benefits to U.S. fishery interests?

Response: TALFF and JVP for the butterfish fishery was reduced to bycatch levels when U.S. processors demonstrated the capacity and intent to utilize the entire DAH, which was determined to equal IOY. As explained in response to comments above, the Atlantic mackerel fishery has not achieved the level of development where U.S. processors and harvesters can utilize the entire IOY. Analysis of economic considerations, including world market conditions, can be obtained from the Council (see ADDRESS).

Comment: Nantucket Sound Fish Weirs, Inc. commented that Atlantic mackerel TALFF should be reduced to zero in order to increase demand for U.S. produced mackerel. This commenter advocates applying the same strategy to the development of the mackerel fishery as was used for the *Loligo* squid fishery.

Response: The Council's policy for developing the mackerel fishery is to follow the same course followed for *Loligo* squid. However, the domestic mackerel fishery has not reached the point where maximum benefits to the United States would be derived from a zero level of TALFF. Meanwhile, TALFF and associated JVP purchases provide an economic benefit to some U.S. processors and harvesters.

In addition, the Atlantic mackerel stock is considered underfished to the point where the individual growth rate is inhibited due to density-dependent factors and it has become advisable, from a biological standpoint, to reduce the population by fishing.

Classification

This action is authorized by 50 CFR Part 655 and complies with E.O. 12291.

(16 U.S.C. 1801 *et seq.*)

List of Subjects in 50 CFR Part 655

Fisheries, Reporting and recordkeeping requirements.

Dated: January 13, 1989.

James W. Brennan,

Assistant Administrator For Fisheries, National Marine Fisheries Service.

[FR Doc. 89-1200 Filed 1-17-89; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 54, No. 12
Thursday, January 19, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 959

South Texas Onions; Proposed Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule regarding South Texas onions would authorize expenses and establish an assessment rate under Marketing Order 959 for the 1988–89 fiscal period. Authorization of this budget would allow the South Texas Onion Committee to incur expenses reasonable and necessary to administer the program. Funds for this program would be derived from assessments on handlers.

DATE: Comments must be received by January 30, 1989.

ADDRESS: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, UDSA, P.O. Box 96456, Room 2085–S, Washington, DC 20090–6456. Comments should reference the date and page number of this issue of the Federal Register and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Robert F. Matthews, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456, telephone 202–447–2431.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Order No. 959 (7 CFR Part 959), regulating the handling of onions grown in South Texas. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 35 handlers of Texas onions under this marketing order, and approximately 75 producers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of the handlers and producers may be classified as small entities.

An annual budget of expenses is prepared by the committee and submitted to the Department of Agriculture for approval. The members of the committee are handlers and producers of onions. They are familiar with the committee's needs and with the costs for goods, services and personnel in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the committee is derived by dividing anticipated expenses by expected regulated shipments of onions. Because that rate is applied to actual regulated shipments, it must be established at a rate which will produce sufficient income to pay the committee's expected expenses. A recommended budget and rate of assessment is usually acted upon by the committee before the season starts, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approval must be expedited so that the committee will have funds to pay its expenses.

The South Texas Committee met on October 19, 1988, and unanimously recommended a 1988–89 budget of $379,675 and an assessment rate of 5½ cents per 50-pound container. Regulated shipments during the 1989 season are projected to be 5.76 million 50-pound bags and to yield $316,800 in assessment income. This amount when added to $9,500 from interest and $53,375 from the reserve would be adequate to cover budgeted expenses.

Last year's budget totalled $312,380, and the assessment rate was initially established at 5½ cents per container. However, the assessment rate was increased in May to 7 cents per container due to an expected shortfall in production caused by unfavorable weather conditions. The higher assessment rate was deemed necessary to prevent a depletion of the committee's reserve fund.

While this proposed action would impose some additional costs on handlers, and some of the additional costs may be passed on to producers, these costs would be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

Based on the foregoing, it is found and determined that a comment period of less than 30 days is appropriate because the assessment rate approval for this program needs to be expedited. The committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis.

List of Subjects in 7 CFR Part 959

Marketing agreements and orders, Onions (Texas).

For the reasons set forth in the preamble, it is proposed that 7 CFR Part 959 be amended as follows:

PART 959—ONIONS GROWN IN SOUTH TEXAS

1. The authority citation for 7 CFR Part 959 continues to read as follows:

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Authority: Secs. 1–19, 49 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 959.229 is added to read as follows:

§ 959.229 Expenses and assessment rate.

Expenses of $279,875 by the South Texas Onion Committee are authorized and an assessment rate of $0.055 per 50-pound container or equivalent quantity of regulated onions is established for the fiscal period ending July 31, 1989. Unexpended funds may be carried over as a reserve.

Dated: January 13, 1989.

William J. Doyle,

Associate Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89-1230 Filed 1-18-89; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF THE TREASURY

31 CFR Part 103

Extension of Time for Comments on Proposed Bank Secrecy Act Regulations

AGENCY: Departmental Offices, Treasury.

ACTION: Advance notice of proposed rulemaking, extension of comment period.

SUMMARY: Notice is hereby given that the Department of the Treasury is extending the comment period on the Advance Notice of Proposed Rulemaking Relating to Identification Requirements Required to Purchase Bank Checks, Cashier's Checks, Traveler's Checks and Money Orders, published in the **Federal Register** on December 23, 1988 (53 FR 51846). The Treasury Department has determined that more time is needed for the public to review and comment on the proposal.

DATE: Comments now will be accepted through February 15, 1989.

ADDRESS: Comments should be addressed to Amy G. Rudnick, Director, Office of Financial Enforcement, Department of the Treasury, Room 4320, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

FOR FURTHER INFORMATION CONTACT: Kathleen A. Scott, Attorney Advisor, Office of the Assistant General Counsel (Enforcement), (202) 566-8047.

Dated: January 13, 1989.

Salvatore R. Martoche,

Assistant Secretary (Enforcement).

[FR Doc. 89-1204 Filed 1-18-89; 8:45 am]

BILLING CODE 4810-25-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[FRL-3429-2]

State Implementation Plan Completeness Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This notice describes the procedure for assessing whether a State implementation plan (SIP) submittal is adequate to trigger the Clean Air Act requirement that EPA review and take action the submittal. The notice describes, among other things, the criteria for determining the "completeness" of the submittal. EPA is concerned that uncertainty and excessive delays in reviewing SIPs frustrate the development of an optimum State/Federal partnership, cause confusion for sources regarding applicable regulations, and generally dampen initiative in State regulatory programs. Prompted by this concern, EPA is instituting a wide range of SIP processing reforms as described elsewhere in this **Federal Register**. The proposed rulemaking described below is one of these reforms.

EPA's previous SIP processing procedures provided no mechanism to reject or otherwise eliminate essentially unreviewable SIP submittals (i.e., those missing information necessary to make a reasonable decision as to their procedural and environmental adequacy). Heretofore, SIP submittals that lacked required basic information such as evidence of legal authority or of properly conducted public hearings, or technical support information sufficient to describe a proposed change, generally went through full notice and comment rulemaking (proposed and final) before being rejected. Today's proposal provides a procedure and screening criteria to enable States to prepare adequate SIP submittals, and to enable EPA reviewers to promptly screen SIP submittals, identify those that are incomplete, and return them to the State for corrective action without having to go through rulemaking.

EPA believes that this change, together with those described elsewhere in this **Federal Register**, should enable SIP submittals to be prepared and processed more efficiently and, overall, should improve the quality of SIP submittals.

DATE: All comments should be submitted to EPA at the address shown below by March 6, 1989.

ADDRESSES: Interested parties may submit written comments in duplicate to Public Docket No. A–88–18 at: Central Docket Section (A–130), South Conference Center, Room 4, U.S. Environmental Protection Agency, Attention: Docket No. A–88–18, 401 M. Street, SW., Washington, DC 20460.

Materials relevant to this rulemaking have been placed in Docket No. A–88–18 by EPA and are available for inspection at the above address between 8:00 a.m. and 3:30 p.m., Monday through Friday. The EPA may charge a reasonable fee for copying.

FOR FURTHER INFORMATION CONTACT: Mr. James Weigold, Office of Air Quality Planning and Standards (MD–11), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; Telephone (919) 541–5642 or (FTS) 629–5642.

SUPPLEMENTARY INFORMATION:

Background

The 1970 Clean Air Act (CAA) established the air quality management process as a basic philosophy for air pollution control in this country. Under this system, EPA establishes air quality goals (National Ambient Air Quality Standards—NAAQS) for common pollutants. There are now standards for 6 pollutants: ozone, carbon monoxide, sulfur dioxide, nitrogen dioxide, particulate matter (PM_{10}, and lead. States then develop control programs to attain and maintain these NAAQS. These programs are defined by State Implementation Plans (SIPs) which are approved formally by EPA and are legally enforceable by the Agency. Under section 110(a)(2), a SIP must demonstrate attainment, describe a control strategy, contain legally enforceable regulations, include an emission inventory and procedures for new source review, outline a program for monitoring, and show adequate resources. In addition, there can be many other requirements specific to the pollutant being considered. Under section 110(a)(3), revisions to a SIP must not interfere with the SIPs ability to meet these requirements. The consequences of State failure to get SIP approval may be serious; they include Federal promulgation of control regulations and economic sanctions.

Affirmative action is required by EPA on essentially all aspects of every SIP and SIP revision. Since EPA's final decision comes after a regulation already is adopted and implemented at the State level, excessive delay in the review process often is a major source of friction in EPA's relations with State and local agencies. SIP processing at EPA has a schedule goal of 5/2–5/2 for final action. That is, the Regions nominally have 5 months to review submittals in both the proposal and promulgation phases; Headquarters nominally has 2 months in each phase. However, SIP actions often take considerably longer than the total 14 months allocated to publish a final decision.[1]

The lengthy decision process has resulted in strong criticism from sources both inside and outside the EPA. In response, the Deputy Administrator commissioned in July 1987 a senior level task group to assess the problems inherent in the process and to recommend solutions. The task group conducted its assessment and presented recommendations to the Deputy Administrator. The recommendations were approved fully and are described in a companion notice in today's **Federal Register**. One of these recommendations concerns a procedure and criteria for identifying a "complete" SIP package, thereby providing States with guidance on preparing adequate SIP revisions and EPA with a clearly defined mechanism to keep essentially unreviewable SIP revisions out of the review process.

This is important because if a State submits a SIP change without properly stated emission limits, legal authority or compliance schedules, or which contains other obvious deficiencies, it can enter the full EPA review system. Such a SIP either will be eventually disapproved, or languish while the State is required (perhaps months later) to supply essential data. Heretofore, EPA's procedures did not provide in any comprehensive way prompt rejection for incompleteness. Independently, however, some Regional Offices have tried to deal with this problem, and have developed procedures wherein SIP submittals are judged against a set of completeness criteria. The purpose of these procedures has been to keep incomplete packages out of the more extensive review system, thereby saving both EPA and the State valuable time and resources. Today, EPA is proposing to institute an EPA-wide procedure for completeness review of all SIP submittals.

[1] Note that section 110(a)(2) of the Clean Air Act requires that "The Administrator shall, within four months after the date required for submission of a [SIP], approve, or disapprove such [SIP] for each portion thereof." Under the Agency's present processing workload, such a time limit is literally impossible to meet for all but the most trivial of actions. EPA maintains that this deadline does not apply to SIP revisions, but rather only to the initial SIP, submitted after EPA promulgates a NAAQS. Some courts have supported EPA's position; other courts have held that a 4-month review period applies to a SIP revision.

Completeness Review

In order to free EPA resources that would otherwise be consumed in processing incomplete and inherently unapprovable SIPs, EPA has created a completeness review process. Under this process, EPA will review a SIP for completeness when it is initially submitted to determine if all the necessary components have been included to allow the agency to properly review and act on the substance of the SIP revision. This will be a quick screen that will assess the reviewability of a SIP submittal, not its ultimate approvability. EPA will then promptly inform the submitting State whether the agency will proceed to process the SIP revision or if it must be modified by the State because it is incomplete.

There are several benefits to an early determination of completeness. First, the State is informed promptly as to the reviewability of the submittal, a current source of uncertainty in the SIP process. Second, SIP submittals that are inadequate for processing are returned to the State to be corrected, rather than going through the review process only to be disapproved because of a lack of information. Third, unreviewable SIPs are removed from the process early so that resources at the Federal level are allocated to processing only SIPs that are adequate for review. Finally, the completeness criterial provide the States with guidelines on how to prepare reviewable SIPs. It is expected that once the agencies involved (State and local, EPA) become accustomed to the completeness review process, the number of unreviewable submittals will diminish sharply.

Screening criteria have been developed that define the essential elements of an acceptable package, that will avoid obvious inadequacies, and that can be applied uniformly with limited subjective judgement and review. The criteria were developed by EPA Regional Offices already using a list of criteria to determine completeness of SIP packages in an informal way. On March 16, 1988 a policy for determining completeness of SIP submittals was issued by Gerald A. Emison, Director, Office of Air Quality Planning and Standards (OAQPS), to the Regional Offices (a copy has been placed in the docket as item II–B–4). The policy includes basic criteria for determining completeness, and sample letters for accepting and rejecting SIP submittals. This policy will be followed by EPA until today's proposed regulation is made final.

As part of this action, the Administrator is proposing to add these criteria for determining the completeness of State submittals to 40 CFR Part 51 as Appendix V. In addition, EPA proposes to modify § 51.103(a) such that State submissions that do not meet the criteria are not considered official plan submissions for purposes of meeting the requirements of Part 51. In order to be considered as a complete SIP submission or an official submission for Part 51, each plan must meet the criteria described below and in Appendix V. The basic criteria are adaptable for use in parallel processing of State regulations by EPA.[2]

EPA is creating this completeness review process under the authority of Section 301 of the Clean Air Act, which authorizes the Administrator to prescribe such regulations as are necessary to carry out his functions under the Act. EPA is interpreting the terms "plan" in section 110(a)(1) and (2) and "revision" in Section 110(a)(3) to be only those plans and revisions that contain all of the components necessary to allow EPA to a adequately review and take action on such plan or revision under section 110 (and, where applicable, Part D). EPA believes that Congress would not have intended to require EPA to review and take action on SIP submittals that were simply not reviewable because they were lacking important components. Therefore, the Administrator concludes that Section 110(a) requires him to act only on complete State submittals.

Completeness Criteria

The criteria for determining whether a submittal by the State is complete have been separated into two categories: (a) Administrative information and (b) technical support information. Administrative information includes the documentation necessary to demonstrate that the basic administrative procedures have been adhered to by the State during the adoption process. Technical support information includes the documentation that adequately identifies all of the required technical components of the plan submission.

Administrative Information

The administrative information required by the criteria are those basic

[2] Parallel processing is a procedure by which EPA processes, as a proposal, State rules which have not yet been fully adopted by the State in order to expedite the final review process.

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documents that demonstrate that the State has properly followed the administrative requirements called for by the Clean Air Act for the adoption of State implementation plans. These include a letter from the Governor or his designee requesting that EPA approve the SIP revision, and evidence that the revision has been adopted by the State in final form, either as part of the State code if the revision is a regulation, or as appropriate source specific documentation in the form of a permit, order, or a consent agreement. The State also must provide documentation that the necessary legal authority exists within the State to adopt and implement the plan revision, must include the requisite copies of the actual revision (regulation, permit, order, etc.), and must indicate that the revision is enforceable by the State. Finally, the State must submit information indicating that the program administrative procedures have been followed, including evidence of public notice and hearings, a compilation of the public comments, and the State's response to these comments.

Technical Support

The purpose of the technical support information is to identify the State's view of the impact of the revision on the environment. The components are intended to demonstrate that the applicable requirements, such as those for attainment and maintenance of ambient standards, increment consumption, and control technology, are in conformance with basic statutory and EPA requirements. In order for EPA to make a reasonable decision concerning the adequacy of a proposed SIP revision, certain information at a minimum must be included in each submittal. Therefore, for purposes of determining the completeness of a SIP submission the implementation plan revision must include an adequate description of the:

(a) Pollutants involved;
(b) Source location and attainment status of the area;
(c) Emissions changes;
(d) Demonstration that standards/increments are protected;
(e) Information used for any modeling demonstration;
(f) Evidence of continuous emissions controls;
(g) Evidence of emissions limitations and other restrictions necessary to ensure emission levels;
(h) Compliance strategies; and
(i) Technological and economic justification for the change where applicable.

Upon receipt of the plan revision, the Regional Office will objectively examine the revision for inclusion of the administrative and technical support information. When the revision is determined complete, the formal review of the adequacy of the information and the approvability of the revision will proceed. In those situations where the submission does not meet the basic criteria as discussed above and set forth in Part 51, Appendix V, the submission will be returned to the State with a letter indicating the deficiencies found. In accordance with the change proposed in 40 CFR 51.103(a), any submission that does not meet the criteria of Appendix V will not be considered an official submission triggering the Act's requirements for EPA review and action. The basic requirements are similar for sequential and parallel processing, varying only in form dictated by the method of processing. In order to be effective, the determination of completeness should be made expeditiously. The Regional Office generally will make a determination of completeness within 45 days of receiving a SIP revision, using the criteria to make an objective decision.

After the decision has been made on completeness, the Regional Offices will process the SIP revision if the submission is complete, or return the SIP revision to the State if it is incomplete. A letter will be sent to the State, informing the State of the completeness status of the SIP revision. If a SIP submittal is incomplete, the deficiencies will be detailed in the letter to the State. If a SIP submittal is complete, the Regional Office will include EPA's expected processing schedule in the letter to the State.

Administrative Requirements

The docket is an organized and complete file of all the information considered by EPA in the development of these SIP processing changes. The docket is a dynamic file because material is added throughout the notice preparation and comment process. The docketing system is intended to allow members of the public and industries involved to identify and locate documents so that they can effectively participate in the process. Along with the statement of basis and purpose of the SIP processing changes and EPA responses to significant comments, the contents of the docket, except for interagency review materials, will serve as the record in case of judicial review (see Clean Air Act, section 307(d)(7)(A), 42 U.S.C. 7607(d)(7)(A).

Section 317(a) of the Clean Air Act, 42 U.S.C. 7617(a), states that economic impact assessments are required for revisions to standards or regulations when the Administrator determines such revisions to be substantial. The changes described today do not change the substantive requirements for preparing and submitting an adequate SIP package. No increase in cost as a result of complying with the changes described today is expected; moreover, the monitoring, recordkeeping, and reporting requirements have been determined to be insubstantial. Because the expected economic effect of the changes is not substantial, no detailed economic impact assessment has been prepared.

The information collection requirements of these changes are considered to be no different than those currently required by the Clean Air Act and EPA procedures. Thus, the public reporting burden resulting from today's notice is estimated to be unchanged from existing requirements. The public is invited to send comments regarding the burden estimate or other aspect of information collection, including suggestions for reducing any burden, to the docket and the following: Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

Under Executive Order 12291, EPA is required to judge whether an action is "major" and therefore subject to the requirement of a regulatory impact analysis (RIA). The Agency has determined that the SIP processing changes announced today would result in none of the significant adverse economic effects set forth in section 1(b) of the Order as grounds for a finding of "major." The Agency has, therefore, concluded that this action is not a "major" action under Executive Order 12291.

This rule was submitted to OMB for review consistent with section 307(d) of the Clean Air Act. A copy of the draft rule as submitted to OMB, any documents accompanying the draft, any written comment received from other agencies (including OMB), and any written responses to those comments have been included in the docket.

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601-612, requires the identification of potentially adverse impacts of Federal actions upon small business entities. The Act requires the completion of a regulatory flexibility analysis for every action unless the Administrator certifies that the action will not have a significant economic impact on a substantial number of small entities. For reasons described above, I hereby certify that the final rule will not have a significant impact on a substantial number of small entities.

Date: January 9, 1989.

Lee M. Thomas,

Administrator.

For the reasons set out in the preamble, 40 CFR Part 51 is proposed to be amended as follows:

PART 51—[AMENDED]

1. The authority citation for Part 51 continues to read as follows:

Authority: This rulemaking is promulgated under authority of Sections 101(b)(1), 110, 160-69, 171-178, and 301(a) of the Clean Air Act, 42 U.S.C. 7401(b)(1), 7410, 7420-7429, 7501-7508, and 7601(a).

2. Section 51.103 is proposed to be amended by revising paragraph (a) introductory text to read as follows:

§ 51.103 Submission of plans, preliminary review of plans.

(a) The State makes an official plan submission to EPA when the plan conforms to the requirements of Appendix V to this part, and the State delivers five copies of the plan to the appropriate Regional office, with a letter giving notice of such action. The State must adopt the plan and the Governor or his designee must submit it to EPA as follows:

* * * * *

3. Part 51 is proposed to be amended by adding Appendix V to read as follows:

Appendix V—Criteria for Determining the Completeness of Plan Submissions.

1.0. Purpose

This Appendix V sets forth the minimum criteria for determining whether a State implementation plan submitted for consideration by EPA is an official submission for purpose of review under § 51.103.

1.1. The EPA shall return to the submitting official any plan or revision thereof which fails to meet the criteria set forth in this Appendix V, or otherwise request corrective action, identifying the component(s) absent or insufficient to perform a review of the submitted plan.

1.2. The EPA shall inform the submitting official when a plan submission meets the requirements of this Appendix V, such determination resulting in the plan being an official submission for purposes of § 51.103.

2.0. Criteria

The following shall be included in plan submissions for review by EPA:

2.1. Administrative Materials

(a) A formal letter of submittal from the Governor or his designee, requesting EPA approval of the plan or revision thereof (hereafter "the plan").

(b) Evidence that the State has adopted the plan in the State code or body of regulations; or issued the permit, order, consent agreement (hereafter document) in final form. That evidence shall include the date of adoption or final issuance as well as the effective date of the plan if different from the adoption/issuance date.

(c) Evidence that the State has the necessary legal authority under State law to adopt and implement the plan.

(d) A copy of the actual regulation, or document submitted for approval and incorporation by reference into the plan, including indication of the changes made to the existing approved plan, where applicable. The submittal shall be a copy of the official State regulation/document signed, stamped, dated by the appropriate State official indicating that it is fully enforceable by the State. The effective date of the regulation/document shall, whenever possible, be indicated in the document itself.

(e) Evidence that the State followed all of the procedural requirements of the State's laws and constitution in conducting and completing the adoption/issuance of the plan.

(f) Evidence that public notice was given of the proposed change consistent with procedures approved by EPA, including the date of publication of such notice.

(g) Certification that public hearing(s) were held in accordance with the information provided in the public notice and the State's laws and constitution, if applicable.

(h) Compilation of public comments and the State's response thereto.

2.2. Technical Support

(a) Identification of all regulated pollutants affected by the plan.

(b) Identification of the locations of affected sources including the EPA attainment/nonattainment designation of the locations and the status of the attainment plan for the affected areas(s).

(c) Quantification of the changes in plan allowable emissions from the affected sources; estimates of changes in current actual emissions from affected sources or, where appropriate, quantification of changes in actual emissions from affected sources through calculations of the differences between certain baseline levels and allowable emissions anticipated as a result of the revision.

(d) The State's demonstration that the National Ambient Air Quality Standards, prevention of significant deterioration increments, reasonable further progress demonstration, and visibility, are protected if the plan is approved and implemented.

(e) Modeling information required to support the proposed revision, including input data, output data, models used, justification of model selections, ambient monitoring data used, meteorological data used, justification for use of offsite data (where used), modes of models used, assumptions, and other information relevant to the determination of adequacy of the modeling analysis.

(f) Evidence, where necessary, that emission limitations are based on continuous emission reduction technology.

(g) Evidence that the plan contains emission limitations, work practice standards and recordkeeping/reporting requirements, where necessary, to ensure emission levels.

(h) Compliance/enforcement strategies, including how compliance will be determined in practice.

(i) Special economic and technological justifications required by any applicable EPA policies.

2.3. Exceptions

2.3.1. The EPA, for the purposes of expediting the review of the plan, has adopted a procedure referred to as "parallel processing." Parallel processing allows a State to submit the plan prior to actual adoption by the State and provides an opportunity for the State to consider EPA comments prior to submission of a final plan for final review and action. Under these circumstances the plan submitted will not be able to meet all of the requirements of paragraph 2.1 (all requirements of paragraph 2.2 will apply). As a result, the following exceptions apply to plans submitted explicitly for parallel processing:

(a) The letter required by paragraph 2.1(a) shall request that EPA propose approval of the proposed plan by parallel processing.

(b) In lieu of paragraph 2.1(b) the State shall submit a schedule for final adoption or issuance of the plan.

(c) In lieu of paragraph 2.1(d) the plan shall include a copy of the proposed/draft regulation or document.

(d) The requirements of paragraphs 2.1(e)-2.1(h) shall not apply to plans submitted for parallel processing.

2.3.2. The exceptions granted in paragraph 2.3.1 shall apply only to EPA's determination of proposed action and all requirements of paragraph 2.1 shall be met prior to publication of EPA's final determination of plan approvability.

[FR Doc. 89-1001 Filed 1-18-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Federal Insurance Administration

44 CFR Part 67

[Docket No. FEMA-5946]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations and proposed base flood elevation modifications listed below for selected locations in the nation. These base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the

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National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2787.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the proposed determinations of base (100-year) flood elevations and modified base flood elevations for selected locations in the nation, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR 67.4(a).

These elevations, together with the floodplain management measures required by section 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under Section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the floodplain area. The elevation determinations, however, impose no restriction unless and until the local community voluntarily adopts floodplain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the floodplain and do not prohibit development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; of itself it has no economic impact.

List of Subjects in 44 CFR Part 67

Flood Insurance, Flood Plains.

The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

The proposed base (100-year) flood elevation for selected locations are:

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
ALABAMA	
Houston County (unincorporated areas)	
Choctawhatchee River:	
Just upstream of U.S. Highway 84	*141
At confluence of Little Choctawhatchee River	*146
Little Choctawhatchee River:	
At confluence with Choctawhatchee River	*146
About 1.2 miles upstream of Brannon Stand Road	*219
Newton Creek:	
About 1,700 feet upstream of U.S. Highway 84	*208
About 3,700 feet upstream of U.S. Highway 84	*209
Beaver Creek:	
About 300 feet upstream of Brannon Stand Road	*221
About 2.3 miles upstream of Brannon Stand Road	*239
Limestone Creek:	
Just upstream of State Highway 108	*170
About 1.7 miles upstream of State Highway 203	*225
Chipola Creek:	
At mouth	*174
Just downstream of County Road	*256
Cowarts Creek:	
Just downstream of County Highway 55	*161
About 1.1 miles upstream of County Highway 54	*204
Maps available for inspection at the County Courthouse, Dothan, Alabama.	
Send comments to the Honorable Robert Crowder, Chairman, County Commission, Houston County, P.O. Box 6406, Dothan, Alabama 36302.	
Marengo County (unincorporated areas)	
Chickasaw Bogue:	
At mouth	*81
About 1.1 miles upstream of State Highway 39	*90
French Creek: Within county	*84
Black Warrior River: Within county	*83
Tombigbee River:	
About 2,000 feet downstream of confluence of Chickasaw Bogue	*81
At confluence of Black Warrior River	*89
Maps available for inspection at the County Courthouse, Linden, Alabama.	
Send comments to The Honorable Jay Loftin, Chairman, County Commission, Marengo County, P.O. Box 421, Linden, Alabama 36748.	
St. Clair County (unincorporated areas)	
Canoe River:	
At county boundary	*418
Just downstream of Logan Martin Dam	*428
Just upstream of Logan Martin Dam	*476
Just downstream of H. Neely Henry Dam	*483
Just upstream of H. Neely Henry Dam	*508
At county boundary	*510

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
West Branch Fishing Creek:	
Just downstream of Pleasant Valley Road	*516
About 0.76 mile upstream of Pleasant Valley Road	*536
Little Cahaba River:	
About 1.5 mile downstream of County Road 10	*653
About 0.85 mile downstream of County Road 10	*656
Cahaba River:	
About 1,000 feet downstream of county boundary	*579
At county boundary (upstream crossing)	*585
Beaver Creek:	
Just upstream of U.S. Highway 231	*607
About 1,500 feet upstream of County Road 30	*696
Big Canoe Creek:	
Just upstream of Double Bridge Road	*548
About 1.25 mile upstream of Pinedale Road	*558
Maps available for inspection at the County Courthouse, Ashville, Alabama.	
Send comments to The Honorable Bruce Etheridge, Chairman, County Commission, St. Clair County, County Courthouse, Ashville, Alabama 35953.	
CALIFORNIA	
Butte County (unincorporated areas)	
Butte Creek:	
Just upstream of Skyway Road	*246
Approximately 6,700 feet upstream of Skyway Road	*276
Approximately 3,625 feet downstream of covered bridge	*324
Approximately 3,875 feet upstream of Honey Run Road	*381
Wyman Ravine:	
Just upstream of Simpson Lane	*95
Approximately 1,460 feet upstream of Lone Tree Road	*120
Just upstream of Palermo Road	*153
Just downstream of Lincoln Boulevard	*174
Approximately 1,000 feet northwest of the intersection of Messina Avenue and Lincoln Boulevard	#1
Wyman Ravine Tributary 1:	
At confluence with Wyman Ravine	*143
Just downstream of Messina Avenue	*155
Just downstream of Palermo Huricut Highway Bridge	*174
Palermo Tributary:	
At confluence with Wyman Ravine Tributary 1	*148
Just upstream of Palermo Road	*159
Just downstream of Messina Avenue	*171
Keefer Slough:	
Just upstream of State Route 99	*177
Approximately 2,080 feet downstream of Landmark Lane	*200
Approximately 660 feet upstream of Keefer Road	*239
Approximately 500 feet east of its crossing with State Route 99	#1
Ruddy Creek:	
Approximately 2,520 feet downstream of Biggs Avenue	*151
At Grand Avenue	*175
Just downstream of Nelson Avenue	*191
Ruddy Creek Tributary:	
At confluence with Ruddy Creek	*169
Just downstream of Sixteenth Street	*194
Just downstream of Twentieth Street	*199
Maps are available for review at the Butte County Department of Public Works, 7 County Center Drive, Oroville, California.	
Send comments to The Honorable Martin Nichols, Chief Administrative Officer, Butte County, 25 County Center Drive, Oroville, California 95965.	
Shelter (city), Kern County	
Shallow Flooding:	
Intersection of Walker Street and Mannel Avenue	*346
Just Southeast of the intersection of East Lerdo Highway and Santa Fe Railroad	#1

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Maps are available for review at City Hall, 320 James Street, Shafter, California.	
Send comments to The Honorable Donald C. Zachary, Mayor, City of Shafter, City Hall, 320 James Street, Shafter, California 93263.	
COLORADO	
Fremont County (unincorporated areas)	
Arkansas River:	
Approximately 1,000 feet downstream of State Route 115	*5,096
Approximately 250 feet downstream of State Route 67	*5,148
Approximately 1,400 feet upstream of confluence with Chandler Creek	*5,180
Approximately 900 feet downstream of Mackenzie Avenue	*5,230
Approximately 2,100 feet upstream of City of Canon City eastern corporate limits and approximately 11,500 feet upstream of confluence with Four-Mile Creek	*5,300
Oak Creek:	
Approximately 180 feet downstream of State Route 115	*5,183
Just upstream of the Denver and Rio Grande Western Railroad	*5,195
Approximately 925 feet upstream of the Atchison, Topeka and Santa Fe Railroad	*5,264
Coal Creek:	
Approximately 100 feet upstream of the City of Florence corporate limits	*5,195
Approximately 2,150 feet upstream of the City of Florence corporate limits	*5,209
Approximately 4,200 feet upstream of the City of Florence corporate limits	*5,228
North East Canon Drainage Area (East Branch):	
Approximately 35 feet upstream of Central Avenue	*5,372
Just downstream of High Street	*5,440
Approximately 1,400 feet downstream of New York Avenue	*5,520
Approximately 100 feet downstream of New York Avenue	*5,545
North East Canon Drainage Area (West Branch):	
Approximately 1,260 feet downstream of the confluence with Fruitland Ditch	*5,392
Approximately 2,320 feet downstream of Washington Street	*5,415
Approximately 60 feet downstream of Washington Street	*5,450
Approximately 1,800 feet upstream of the intersection of Vermont Avenue and High Street	*5,498
Chandler Creek:	
Approximately 100 feet downstream of the Denver and Rio Grande Western Railroad	*5,262
Approximately 3,950 feet upstream of the Denver and Rio Grande Western Railroad	*5,302
Just upstream of County Road 11A	*5,360
Approximately 1,560 feet upstream of County Road 11A	*5,364
Maps are available for inspection at the Fremont County Planning Department, County Courthouse, 6th and Macon Avenue, Canon City, Colorado. Send comments to The Honorable Dennis Jones, Chairman, Fremont County Board of Commissioners, County Courthouse, 6th and Macon Avenue, Canon City, Colorado 81212.	
Logan County (unincorporated areas)	
South Platte River:	
Approximately 7,000 feet downstream of the Burlington Northern Railroad	*3,917
Approximately 1,750 feet upstream of the Burlington Northern Railroad	*3,929
Approximately 18,000 feet upstream of the Burlington Northern Railroad	*3,950
Pawnee Creek Overflow:	
At confluence with Sand Creek	*3,929
At confluence with Sterling No. 1 Ditch	*3,953
Sand Creek:	
At State Highway 138	*3,923
Approximately 525 feet downstream from Hall Road	*3,955
Approximately 3,060 feet upstream from Hall Road	*3,988
Maps are available for review at the Logan County Courthouse, Zoning Administrator's Office, 300 Ash Street, Sterling, Colorado.	
Send comments to The Honorable James Reed, Chairman, Logan County Board of Commissioners, County Courthouse, 300 Ash Street, Sterling, Colorado 80757.	
Monument (town), El Paso County	
Crystal Creek:	
Approximately 420 feet downstream of North Monument Lake Road	*6,916
Approximately 120 feet downstream of North Monument Lake Road	*6,922
Approximately 40 feet downstream of Washington Street	*6,980
Just downstream of Beacon Light Road	*7,012
Approximately 1,040 feet upstream of Beacon Light Road	*7,044
Dirty Woman Creek:	
Approximately 50 feet downstream of Mitchell Avenue	*6,886
Approximately 25 feet upstream of Old Denver Highway	*6,928
Approximately 250 feet downstream of U.S. Highway 85/87	*6,960
Maps are available for inspection at the Town Hall, Town of Monument, 166 2nd Street, Monument, Colorado 80132.	
Send comments to The Honorable Larry McGinn, Mayor, Town of Monument, 166 2nd Street, Monument, Colorado 80132.	
Morgan County (unincorporated areas)	
South Platte River:	
At the Washington County Line	*4,103
Approximately 3,500 feet downstream of the Burlington Northern Railroad	*4,130
Approximately 300 feet downstream of the confluence with Beaver Creek	*4,155
Approximately 3,500 feet upstream of State Highway 71	*4,190
Approximately 1,800 feet downstream of the confluence with Wildcat Creek	*4,210
Approximately 2,800 feet upstream of the confluence with Badger Creek	*4,240
Just downstream of Colorado State Highway 52	*4,272
Approximately 650 feet downstream of the confluence with Bijou Creek	*4,295
Approximately 1,000 feet upstream of the county road at Narrows	*4,320
Approximately 1,500 feet upstream of the county road at Waldora	*4,340
Approximately 2,700 feet upstream of the confluence of Cottonwood Draw	*4,360
Approximately 2,200 feet downstream of Colorado State Highway 39	*4,380
Approximately 1,000 feet downstream of Colorado State Highway 144	*4,405
At the Weld County line	*4,423
Beaver Creek:	
Between the east and west bound lanes of Interstate 76	*4,229
At Old DLD Road	*4,239
Approximately 9,800 feet upstream of the confluence with the Upper Platte and Beaver Canal	*4,258
Maps are available for inspection at the Morgan County Planning and Zoning Department, 218 West Kiowa, Fort Morgan, Colorado 80701.	
Send comments to The Honorable Richard Neb, Chairman, Morgan County Commissioners, Box 598, Fort Morgan, Colorado 80701.	
Pueblo County (unincorporated areas)	
St. Charles River:	
Approximately 3,100 feet downstream of Ford Road	*4,572
At 27th Lane	*4,681
Approximately 20 feet upstream of Denver and Rio Grande Western Railroad	*4,886
Approximately 20 feet downstream of I-25	*4,985
Approximately 1,800 feet upstream of the confluence with Sterling Arroyo	*5,086
Fountain Creek:	
At confluence of Arkansas River	*4,642
Approximately 70 feet downstream of confluence of Steele Hollow	*4,930
At Pinion Road	*5,020
Approximately 8,925 feet upstream of Pinion Road	*5,055
Approximately 100 feet downstream of El Paso County border	*5,162
Salt Creek:	
At confluence of Arkansas River	*4,647
At U.S. Highway 277	*4,647
Approximately 100 feet downstream of U.S. Highway 50	*4,664
Approximately 50 feet upstream of Burlington Northern Railroad	*4,650
Approximately 100 feet downstream of St. Charles Reservoir No. 3 Outlet	*4,980
Approximately 5,500 feet upstream of old railroad grade	*5,110
Stumble Creek:	
Approximately 900 feet downstream of U.S. Highway 50	*4,525
Approximately 110 feet downstream of Grant Road	*4,570
Approximately 10 feet upstream of 42nd Lane	*4,591
Approximately 10 feet upstream of Olson Road	*4,627
Approximately 1,675 feet upstream of 40th Lane	*4,663
Wild-Horse Dry Creek:	
Approximately 5,000 feet downstream of Lowell Avenue	*4,734
Approximately 150 feet downstream of Lowell Avenue	*4,783
Approximately 200 feet downstream of U.S. Highway 50	*4,778
Approximately 200 feet downstream of confluence of Dry Creek	*4,810
Approximately 7,800 feet upstream of confluence of Dry Creek	*4,887
Good Night Arroyo:	
At old railroad grade	*4,722
Approximately 200 feet upstream of Aqua Drive	*4,750
Approximately 4,500 feet upstream of Red Creek Road	*4,874
Dry Creek:	
Approximately 1,050 feet downstream of Booth Canal	*4,821
At Atchison, Topeka and Santa Fe Railroad	*4,840
Approximately 20 feet downstream of City of Pueblo Corporate Limit and approximately 11,150 feet upstream of Atchison, Topeka and Santa Fe Railroad	*4,734
Maps are available for review at Department of Planning and Development, 1120 Court Street, Pueblo Colorado 81003-2898. Send comments to The Honorable George D. Ameya, Chairman, Pueblo County Board of Commissioners, 10th and Main Streets, Pueblo, Colorado 81003.	
Sterling (city), Logan County	
South Platte River:	
Approximately 2,800 feet downstream of the Burlington Northern Railroad	*3,922
Approximately 1,800 feet upstream of the Burlington Northern Railroad	*3,929
Approximately 2,450 feet upstream of U.S. Highway 6	*3,938
Pawnee Creek Overflow:	
Approximately 500 feet downstream from Elm Street	*3,931
Approximately 100 feet upstream of North Railway Street	*3,941
Approximately 100 feet upstream of Westview Drive	*3,950
Sand Creek:	
At State Highway 138	*3,923
Approximately 150 feet downstream from North Seventh Avenue	*3,931
Approximately 2,900 feet upstream of North Seventh Avenue	*3,937
Approximately 50 feet upstream of Hall Road	*3,961

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PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Maps are available for review at the Department of Public Works, Centennial Square, Sterling, Colorado.	
Send comments to The Honorable Edith Evans, Mayor, City of Sterling, Centennial Square, Sterling, Colorado 80751.	
GEORGIA	
Bartow County (unincorporated areas)	
Allatoona Lake: Within community	*861
Etowah River:	
At county boundary	*618
Just downstream of Thompson-Weinman Dam	*686
Just upstream of Thompson-Weinman Dam	*686
Just downstream of Allatoona Dam	*701
Pumpkinvine Creek:	
At mouth	*683
About 2.0 miles upstream of U.S. Route 41	*732
Pettit Creek:	
At mouth	*678
Just downstream of Interstate 75	*776
Nancy Creek:	
At mouth	*687
About 380 feet upstream of Cassville Road	*753
Maps are available for inspection at the County Courthouse, Cartersville, Georgia.	
Send comments to The Honorable Frank Moore, Chairman, Board of Commissioners, Bartow County, P.O. Box 543, Cartersville, Georgia 30120.	
Burke County (unincorporated areas)	
Mobleton Creek:	
Just upstream of Thomson Bridge Road	*199
Just downstream of Waynesboro Bypass	*214
Savannah River:	
At confluence of McBean Creek	*106
About 7 miles upstream from confluence of McBean Creek	*115
Maps available for inspection at the Tax Appraiser's Office, Courthouse Office, Waynesboro, Georgia. Send comments to The Honorable C.W. Hopper, Jr., Administrator, Burke County, P.O. Box 62, Waynesboro, Georgia 30830.	
Jenkins County (unincorporated areas)	
Ogeechee River:	
About 4.5 miles downstream of U.S. Route 25	*142
About 1.6 miles upstream of U.S. Route 25	*145
Buckhead Creek:	
At mouth	*144
About 0.9 mile upstream of confluence of Little Buckhead Creek	*150
The Canal:	
At mouth	*144
Just upstream of Scarboro Road	*162
Little Buckhead Creek:	
At mouth	*151
Just upstream of Harvey Street	*157
Maps available for inspection at the County Clerk's Office, County Courthouse, Millen, Georgia. Send comments to The Honorable Ronald Breedlay, Chairman, County Commission, Jenkins County, P.O. Box 797, Millen, Georgia 30449.	
ILLINOIS	
De Witt County (unincorporated areas)	
Clear Creek:	
About 1,500 feet upstream of U.S. Route 51	*696
About 2,250 feet upstream of Alexander Street	*718
North Fork Salt Creek:	
At mouth	*697
About 2 miles upstream of Wapell-Parnal Road	*797
Salt Creek:	
About 3.0 miles downstream of Illinois Central Gulf Railroad	*648
Just downstream of Clinton Lake Dam	*661
Just upstream of Clinton Lake Dam	*697
About 0.7 mile upstream of Interstate 74	*711

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Salt Creek Tributary:	
At mouth	*709
About 900 feet upstream of State Route 54	*709
Tenmile Creek:	
About 1.25 miles upstream of State Route 10	*700
About 900 feet upstream of Woodlawn Avenue	*709
Maps available for inspection at the County Zoning Office, County Courthouse, 201 West Washington Street, Clinton, Illinois. Send comments to The Honorable Nicholas J. Waddock, Chairman, County Board, De Witt County, County Courthouse, 201 West Washington Street, P.O. Box 439, Clinton, Illinois 61727-0439.	
Farmer City (city), De Witt County	
Salt Creek:	
About 2,500 feet downstream of South Main Street	*702
About 600 feet downstream of confluence of Salt Creek Tributary	*709
Salt Creek Tributary:	
About 550 feet upstream of State Route 54	*709
About 900 feet upstream of State Route 54	*709
Maps available for inspection at the City Hall, 106 South Main Street, Farmer City, Illinois. Send comments to The Honorable Maurice Miller, Mayor, City of Farmer City, 106 South Main Street, P.O. Box 49, Farmer City, Illinois 61842-0049.	
Pearl City (village), Stephenson County	
Yellow Creek:	
Just downstream of Pearl City Road	*814
About 0.9 mile upstream of Pearl City Road	*816
Goldmine Road Tributary:	
About 1,300 feet downstream of Pearl City Road	*814
About 500 feet upstream of Chicago and North Western railroad	*819
Maps available for inspection at the Post Office, Pearl City, Illinois.	
Send comments to The Honorable George Vael, Village President, Village of Pearl City, Village Hall, P.O. Box 233, Pearl City, Illinois 61062-0233.	
IOWA	
Clarksville (city), Butler County	
Shell Rock River:	
Just downstream of the Missouri, Kansas, Texas Railroad	*923
Approximately 1,600 feet upstream of the Chicago and North Western railroad	*931
Maps available for inspection at the City Hall, 115 West Superior, Clarksville, Iowa.	
Send comments to The Honorable Beryl F. Martin, Mayor, City of Clarksville, City Hall, 115 West Superior, Clarksville, Iowa 50619.	
KENTUCKY	
Ballard County (unincorporated areas)	
Mississippi River:	
At confluence of Mayfield Creek	*329
At confluence of Ohio River	*331
Ohio River:	
At mouth	*331
About 7.6 miles upstream of Lock and Dam No. 53	*335
Sugar Creek:	
About 0.6 mile downstream of State Highway 1937	*352
About 400 feet upstream of U.S. Highway 62	*362
Sugar Creek Tributary:	
At mouth	*360
About 700 feet upstream of mouth	*360
Mayfield Creek:	
At mouth	*329
At county boundary	*353
Maps available for inspection at the County Courthouse, Wickliffe, Kentucky.	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Send comments to The Honorable Lloyd Key, Judge/Executive, Ballard County, County Courthouse, Wickliffe, Kentucky 42087.	
Clay City (city), Powell County	
Red River:	
About 2,200 feet downstream of Mountain Parkway	*626
About 1.6 miles upstream of 9th Street	*630
Brush Creek:	
At mouth	*626
Just upstream of 9th Avenue	*631
Maps available for inspection at the City Hall, Clay City, Kentucky.	
Send comments to The Honorable Arnold Carmichael, Mayor, City of Clay City, City Hall, Clay City, Kentucky 40312.	
Ohio County (unincorporated areas)	
Rough River:	
At mouth	*391
About 4.2 miles upstream of State Route 54	*441
Green River:	
At confluence of Rough River	*391
At upstream crossing of county boundary	*414
Maps available for inspection at the Judge's Office, County Courthouse, Hartford, Kentucky.	
Send comments to The Honorable C.B. Embry, Jr., Judge/Executive, Ohio County, P.O. Box 148, Hartford, Kentucky 42347.	
Rockport (city), Ohio County	
Green River: Within community	*400
Maps available for inspection at the City Hall, Rockport, Kentucky.	
Send comments to The Honorable David Roop, Jr., Mayor, Town of Rockport, General Delivery, Rockport, Kentucky 42369.	
MAINE	
Canton (town), Oxford County	
Androscoggin River:	
Approximately 400 feet downstream of Riley Dam	*375
At upstream corporate limits	*403
Whitney Brook:	
At confluence with Androscoggin River	*395
Approximately 220 feet upstream of State Route 108	*397
Maps available for inspection at the Town Clerk's Office, Town Hall, Canton, Maine.	
Send comments to The Honorable Benjamin McCollister, Chairman of the Town of Canton Board of Selectmen, Oxford County, P.O. Box 907, Canton, Maine 04221.	
Clinton (town), Kennebec County	
Kennebec River:	
At the downstream corporate limits	*121
At the upstream corporate limits	*126
Sebasticook River:	
At the downstream corporate limits	*109
At the upstream corporate limits	*138
Maps available for inspection at the Municipal Building, Clinton, Maine.	
Send comments to The Honorable Irving Bouchard, Chairman of the Town of Clinton Board of Selectmen, Kennebec County, P.O. Box 219, Clinton, Maine 04927.	
Frankfort (town), Waldo County	
North Branch of Marsh River:	
At confluence of South Branch of Marsh River	*11
Approximately 150 feet downstream of Frankfort Dam	*14
At Frankfort Dam	*24
Marsh Stream:	
Just downstream of U.S. Route A	*25

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Approximately 6,000 feet upstream of Frankfort Dam	*34
Approximately 1,400 feet downstream of Bangor and Aroostook Railroad	*77
Approximately 100 feet upstream of West Winterport Dam	*160
Approximately 1.2 miles upstream of West Winterport Dam	*162
Maps available for inspection at the Municipal Building, Frankfort, Maine.	
Send comments to The Honorable Laurence Redmond, Chairman of the Board of Selectmen for the Town of Frankfort, Waldo County, P.O. Box 57, Frankfort, Maine 04438.	
Lincolnville (town), Waldo County	
West Penobscot Bay:	
At U.S. Route 1 bridge over Ducktrap River	*10
Shoreline at approximately 600 feet north of County boundary (southern corporate limits)	*34
Maps available for inspection at the Town Hall, Lincolnville, Maine.	
Send comments to The Honorable Richard McLaughlin, Chairman of the Town of Lincolnville Board of Selectmen, Waldo County, R.R. 1, Box 4660, Lincolnville, Maine 04849.	
Richmond (town), Sagadahoc County	
Kennebec River:	
At downstream corporate limits	*18
At upstream corporate limits	*25
Mill Brook:	
At confluence with the Kennebec River	*18
Approximately 80 feet upstream of Maine Central Railroad	*39
Maps available for inspection at the Town Office, Richmond, Maine.	
Send comments to The Honorable Paula Umberhind, Chairman of the Town of Richmond Board of Selectmen, Sagadahoc County, P.O. Box 159, Richmond, Maine 04357.	
Winterport (town), Waldo County	
Penobscot River: Entire shoreline within community	*11
Marsh Stream:	
Approximately 1,400 feet downstream of Bangor and Aroostook Railroad	*77
Upstream corporate limits	*162
Maps available for inspection at the Municipal Building, School Street, Winterport, Maine.	
Send comments to The Honorable Carol Higgins, Manager of the Town of Winterport, Waldo County, P.O. Box 559, Winterport, Maine 04496.	
MISSISSIPPI	
Adams County (unincorporated areas)	
Mississippi River:	
At county boundary	*67
About 2.0 miles upstream of confluence of Coles Creek	*83
St. Catherine Creek:	
At mouth	*76
About 0.7 mile upstream of U.S. Highway 61	*125
Maps available for inspection at the Chancery Clerk's Office, County Courthouse, Natchez, Mississippi.	
Send comments to The Honorable Mavis Wallace, President, Board of Supervisors, Adams County, P.O. Box 1180, Natchez, Mississippi 39120.	
Holmes County (unincorporated areas)	
Black Creek:	
Just upstream of State Highway 12	*216
About 1.6 miles upstream of State Highway 12	*217
Maps available for inspection at the Chancery Clerk's Office, Chancery Clerk's Building, County Courthouse Grounds, Lexington, Mississippi.	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Send comments to The Honorable William Green, President, Board of Supervisors, Holmes County, P.O. Box 239, Lexington, Mississippi 39095.	
Lauderdale County (unincorporated areas)	
Bailey Branch:	
At mouth	*332
About 1,400 feet upstream of Windsor Drive	*352
Harper Creek:	
At mouth	*315
About 3.7 miles upstream of State Highway 19	*362
Harper Creek Tributary:	
At mouth	*315
About 1.0 mile upstream of State Highway 19	*340
Loper Creek:	
At mouth	*302
At confluence of Gunn Branch	*332
Gunn Branch:	
At mouth	*332
About 2,500 feet upstream of State Highway 493	*353
Nanabe Creek:	
At mouth	*343
Just downstream of U.S. Highway 45 Bypass	*356
Just upstream of U.S. Highway 45 Bypass	*362
At confluence of Brandon Branch	*376
Okatibbee Creek:	
About 2.4 miles downstream of Interstate 59	*299
About 0.8 miles upstream of confluence of Suqualena Creek	*318
Okatibbee Creek Tributary:	
At mouth	*310
Just downstream of abandoned railroad	*313
Just upstream of abandoned railroad	*319
Just upstream of Old 8th Street	*324
Sowashee Creek:	
About 3.1 miles downstream of Valley Road	*288
Just downstream of Lockead Drive	*354
Just upstream of Lockead Drive	*360
About 2.3 miles upstream of U.S Highway 45 Bypass	*365
Suqualena Creek:	
At mouth	*318
About 4.2 miles upstream of State Highway 19	*359
Maps available for inspection at the County Engineer's Office, Courthouse Annex, Meridian, Mississippi.	
Send comments to The Honorable Raymond Fountain, President, Board of Supervisors, Lauderdale County, 410 21st Avenue, Meridian, Mississippi 39301.	
Lawrence County (unincorporated areas)	
Pearl River:	
Just upstream of County Road	*200
At northern county boundary	*216
Maps available for inspection at the County Courthouse, Monticello, Mississippi.	
Send comments to The Honorable James E. Givens, President, Board of Supervisors, Lawrence County, Monticello, Mississippi 39654.	
Leake County (unincorporated areas)	
Pearl River:	
About 1 mile downstream of State Highway 35	*341
About .97 mile upstream of State Highway 35	*343
Tuscolameta Creek:	
About 2,700 feet downstream of Illinois Central Gulf Railroad	*354
About 2,700 feet upstream of State Highway 35	*357
Maps available for inspection at the Chancery Clerk's Office, County Courthouse, Carthage, Mississippi.	
Send comments to The Honorable Darrell Dickens, President, Board of Supervisors, Leake County, P.O. Box 72, Carthage, Mississippi 39051.	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Marion (town), Lauderdale County	
Sowashee Creek:	
About 2,200 feet upstream of confluence of Nanabe Creek	*344
Just downstream of Lockead Drive	*354
Just upstream of Lockead Drive	*360
About 1.3 miles upstream of U.S. Highway 45 Bypass	*373
Maps available for inspection at the City Clerk's Office, City Hall, Dale Drive, U.S. Highway 45 North, Marion, Mississippi.	
Send comments to The Honorable John L. Crocker, Mayor, Town of Marion, City Hall, P.O. Box 95, Dale Drive, U.S. Highway 45 North, Marion, Mississippi 39342.	
Mt. Olive (town), Covington County	
Okatoma Creek:	
About 3,900 feet downstream of State Highway 35	*320
About 800 feet downstream of 2nd Street	*338
Town Creek Tributary:	
Just upstream of West Front Street	*332
About 3,100 feet upstream of West Front Street	*342
Town Creek:	
At mouth	*322
Just upstream of Fourth Street	*331
Maps available for inspection at the City Hall, Mt. Olive, Mississippi.	
Send comments to The Honorable Hugh Warren, Mayor, Town of Mt. Olive, P.O. Drawer J, Mt. Olive, Mississippi 39119.	
Noxubee County (unincorporated areas)	
Kembrels Canal:	
About 1 mile upstream of State Highway 15	*400
About 1.1 miles upstream of Illinois Central Gulf Railroad	*408
Maps available for inspection at the County Administrator's Office, County Courthouse, Philadelphia, Mississippi.	
Send comments to The Honorable Dudley Warren, President, Board of Supervisors, Noxubee County, P.O. Box 67, Philadelphia, Mississippi 39350.	
Pike County (unincorporated areas)	
Taylorsboro River:	
At southern county boundary	*232
About 500 feet above State Highway 575	*239
Bogue Chitto:	
About 1.5 miles downstream of U.S. Highway 98	*255
About 1.3 miles upstream of U.S. Highway 98	*299
Town Creek:	
About 400 feet downstream of Illinois Central Gulf Railroad	*366
About 1,650 feet upstream of Illinois Central Gulf Railroad	*372
Maps available for inspection at the County Courthouse, Magnolia, Mississippi.	
Send comments to The Honorable Tommy Pauli, President, Board of Supervisors, Pike County, P.O. Box 309, Magnolia, Mississippi.	
Vicksburg (city), Warren County	
Hatcher Bayou:	
At confluence of Stouts Bayou	*110
About 0.8 mile upstream of confluence of Durden Creek	*127
Durden Creek:	
At mouth	*121
Just downstream of Brown Lake Dam	*125
Just upstream of Brown Lake Dam	*148
At confluence of Durden Creek Tributary No. 3	*171
Durden Creek Tributary No. 1:	
At mouth	*140
About 1,400 feet upstream of Lake Hill Drive	*161
Durden Creek Tributary No. 2: Within community	*145
Durden Creek Tributary No. 3:	
At mouth	*171

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Kendale Creek:	
At mouth	*311
Just downstream of Hiawatha Trail	*334
Just upstream of Hiawatha Trail	*344
About 1,450 feet upstream of Hiawatha Trail	*352
Gasters Creek:	
About 1.2 miles downstream of Lee Avenue	*272
About 2,750 feet upstream of confluence of Kendale Creek	*325
Cams Creeks:	
About 1.8 miles downstream of Cox Maddox Road	*264
Just downstream of Cox Maddox Road	*330
Just upstream of Cox Maddox Road	*336
About 850 feet upstream of Cox Maddox Road	*340
Pocket Creek:	
About 1.8 miles downstream of Steel Bridge Road	*272
About 2,400 feet upstream of Steel Bridge Road	*291

Maps available for inspection at the Land Records Department, County Courthouse, Sanford, North Carolina.
Send comments to The Honorable James W. Mills, County Manager, Lee County, County Courthouse, P.O. Box 987, Sanford, North Carolina 27330.

Richmond County (unincorporated areas)

Hitchcock Creek:	
About 0.6 mile downstream of Midway Pond Dam	*151
About 950 feet downstream of Midway Pond Dam	*157
South Prong Falling Creek:	
About 0.5 mile upstream of confluence of Beaverdam Branch	*242
About 660 feet downstream of U.S. Route 74	*259

Maps available for inspection at the Planning Office, County Courthouse, Rockingham, North Carolina.
Send comments to The Honorable Richard O. Tilley, County Manager, Richmond County, County Courthouse, P.O. Box 504, Rockingham, North Carolina 28379.

Rockingham (city), Richmond County

Falling Creek:	
About 700 feet downstream of Old Mill Dam	*172
Just downstream of Old Mill Dam	*172
Just upstream of Old Mill Dam	*182
At confluence of North Prong Falling Creek	*212
South Prong Falling Creek:	
At confluence of North Prong Falling Creek	*272
Just downstream of Long Street	*223
Just upstream of Long Street	*229
About 0.5 mile upstream of confluence of Beaverdam Branch	*242
North Prong Falling Creek:	
Just downstream of Broad Avenue	*212
Just upstream of Hinson Lake Dam	*223
Hitchcock Creek:	
About 0.2 mile downstream of Midway Pond Dam	*157
Just upstream of Steele Street	*177

Maps available for inspection at the Planning Director's Office, City Hall, 311 East Franklin Street, Rockingham, North Carolina.
Send comments to The Honorable Lee Galloway, City Manager, City of Rockingham, City Hall, 311 East Franklin Street, Rockingham, North Carolina 28379.

Sanford (city), Lee County

Little Buffalo Creek:	
About 0.8 mile downstream of CSX railroad (downstream crossing)	*303
About 1,900 feet upstream of Third Street	*367
Big Buffalo Creek:	
About 1,900 feet downstream of Norfolk Southern Railway (upstream crossing)	*261
About 1,800 feet upstream of Jefferson Davis Highway	*290
Stunt Creek:	
At mouth	*291
Just downstream of Garden Street Extension	*320
Persimmon Creek:	
About 1,250 feet downstream of Wicker Street	*291
Just downstream of Keller-Andrews Road	*321
Just upstream of Keller-Andrews Road	*327
Just downstream of Carthage Street	*328
Persimmon Creek Tributary:	
At mouth	*304
About 3,500 feet upstream of Westover Drive	*334

Maps available for inspection at the City Planning Office, City Hall, Sanford, North Carolina. Send comments to The Honorable Tom Spivey, City Manager, City of Sanford, City Hall, P.O. Box 338, Sanford, North Carolina 27330.

NORTH DAKOTA

Medora, (City) Billings County

Little Missouri River:	
Approximately 750 feet downstream of Interstate Highway 94	*2,269
Approximately 2,150 feet upstream of the Burlington Northern Railroad	*2,272

Maps are available for review at the Billings County Courthouse, Office of Medora City Hall, Medora, North Dakota. Send comments to the Honorable Rod Tjaden, Mayor, City of Medora, P.O. Box 416, A, Medora, North Dakota 58601.

OHIO

Amesville (village), Athens County

Federal Creek:	
About 3,400 feet downstream of confluence of McDougall Branch	*831
About 2,100 feet upstream of State Street	*833

Maps available for inspection at the Village Clerk's Office, Village Hall, Amesville, Ohio. Send comments to the Honorable W.P. Clark, Village President, Village of Amesville, Village Hall, P.O. Box 218, Amesville, Ohio 45711.

Auglaize County (unincorporated areas)

Auglaize River:	
Just upstream of Deep Cut Road	*816
About 2300 feet upstream of County Route 25A	*867
St. Marys River: Just upstream of Greenville Road	*883
Grand Lake St. Marys: Along shoreline	*873

Maps available for inspection at the Commissioner's Office, County Courthouse, Wapakoneta, Ohio. Send comments to the Honorable Dow Wagner, President, County Board of Commissioners, Auglaize County, County Courthouse, Wapakoneta, Ohio 45895.

Buckland (village), Auglaize County

Auglaize River:	
Just downstream of CSX railroad	*837
About 1,000 feet upstream of State Route 197	*840

Maps available for inspection at the City Hall, 109 North Main, Buckland, Ohio. Send comments to the Honorable Ted Vorhwees, Mayor, Village of Buckland, 109 North Main, Buckland, Ohio 45819.

Darke County (unincorporated areas)

Greenville Creek:	
About 900 feet downstream of Conrail	*995
About 0.9 mile upstream of Jaysville-St. John's Road	*1,012
Swamp River:	
Just upstream of State Route 121	*965
About 3.0 miles upstream of State Route 121	*971
Middle Fork East Fork Whitewater River:	
About 1,350 feet downstream of Hill Road	*1,105
About 3,760 feet upstream of Hill Road	*1,116

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Maps available for inspection at the County Engineer's Office, County Courthouse, Greenville, Ohio. Send comments to the Honorable James Berge, President, Board of Commissioners, Darke County, County Courthouse, Greenville, Ohio 45331.	
Fulton County (unincorporated areas)	
Swan Creek:	
About 1,700 feet downstream of County Route 1–1	*683
Just upstream of County Route L	*791
Diversion D1:	
About 1,700 feet downstream of Township Road 4	*682
About 0.5 mile upstream of Township Road 4	*689
Division D2:	
About 600 feet downstream of County Route E-F	*678
About 700 feet upstream of Norfolk Southern Railway	*687
Fawless Creek:	
About 0.8 mile downstream of County Route 3	*672
Just downstream of County Route H	*702
Stream No. 2:	
About 2,100 feet downstream of County Route E	*673
About 1,200 feet upstream of Township Road E	*677
Al Creek:	
About 1.4 miles downstream of Interstate 90	*672
Just downstream of County Route M	*746
Stream No. 7:	
About 1,800 feet downstream of County Route M	*719
Just downstream of County Route N	*728
Tennis Creek:	
Just upstream of County Route 1	*709
Just downstream of Township Road 4–1	*727
North Tennis Creek:	
About 1.3 miles downstream of Grand Trunk Western Railroad	*720
Just downstream of Township Road 4–1	*724
North Turkey Foot Creek:	
Just upstream of Township Road E	*721
About 0.8 mile upstream of County Route 13	*743
Bad Creek:	
Just upstream of County Route A	*667
Just downstream of State Route 109	*686
Blue Creek:	
Just upstream of Township Road 1	*666
Just downstream of Township Road C	*673
Beech Creek:	
Just upstream of Township Road 34	*712
Just downstream of County Route D	*729
Tributary A:	
About 1,400 feet downstream of County Route 1–1	*684
Just downstream of County Route 3	*691

Maps available for inspection at the County Courthouse, 210 South Fulton Street, Wauseon, Ohio.
Send comments to The Honorable Lowell Rupp, Chairman, County Commissioners, Fulton County, 210 South Fulton Street, Room 810, Wauseon, Ohio 43567

Gallia County (unincorporated areas)

Ohio River:	
At western county boundary	*560
About 0.4 mile upstream of eastern county boundary	*574
Chickamauga Creek:	
At Gallipolis corporate limit	*569
About 2,800 feet upstream of CSX railroad	*580
Little Chickamauga Creek:	
About 400 feet downstream of CSX railroad	*589
About 0.8 mile upstream of George Creek Road	*604
Tributary A:	
At mouth	*584
About 3,100 feet upstream of mouth	*609
Tributary B:	
At mouth	*593
About 3,500 feet upstream of Bulaville-Porter Road	*619

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
About 1,100 feet upstream of Indiana Avenue	*178
Asacher Bayou Tributary No. 1:	
About 700 feet upstream of mouth	*114
About 1,900 feet upstream of Williams Drive	*189
Asacher Bayou Tributary No. 2:	
At mouth	*118
About 1.0 mile upstream of mouth	*139
Mississippi River: Within community	*109
Beulah Bayou:	
About 900 feet upstream of mouth	*110
Just downstream of Rifle Range Road	*114
Beulah Bayou Tributary:	
At mouth	*110
About 0.8 mile upstream of Rifle Range Road	*118

Maps available for inspection at the Building Inspector's Office, City Hall, 1401 Walnut Street, Vicksburg, Mississippi.
Send comments to The Honorable Robert M. Walker, Mayor, City of Vicksburg, 1401 Walnut Street, P.O. Box Drawer 150, Vicksburg, Mississippi 39180.

MISSOURI

Dunklin (city), Ripley County

Quick Creek:	
At mouth	*248
About 1,800 feet upstream of Vine Street	*269
Current River:	
At confluence of Quick Creek	*248
Just downstream of U.S. Highway 160	*249

Maps available for inspection at the City Hall, 119 State Street, Doniphan, Missouri.
Send comments to The Honorable Larry Ponder, Mayor, City of Doniphan, City Hall, 119 State Street, P.O. Box 100, Doniphan, Missouri 63935.

NEVADA

Clark County (unincorporated areas)

Muddy River:	
At Fish and Game Division Structure	*1,240
At Cooper Avenue	*1,260
Approximately 100 feet upstream of Gubler Avenue	*1,308
Approximately 6,000 feet upstream of State Highway 169	*1,422
At confluence with Weiser Wash	*1,452
At Interstate Highway 15	*1,521
Approximately 3,100 feet upstream of confluence with California Wash	*1,556
Area west of intersection between Rice Street and Gubler Road	#1
At intersection of State Highway 169 and Hemps Road	#1
Approximately 6,600 feet north and 1,400 feet west of the intersection of Cooper Avenue and Virginia Street	#1
Overton Wash:	
Approximately 500 feet downstream of Main Street	#2
Approximately 4,900 feet upstream of Union Pacific Railroad (UPRR)	*1,311
Approximately 12,200 feet upstream of UPRR	*1,437
Approximately 1,000 feet east of Main Street	#1
Approximately 500 feet east of Main Street	#2
West Branch Muddy River:	
Approximately 1,100 feet downstream of Cooper Avenue	*1,258
Approximately 2,400 feet upstream of Cooper Avenue	*1,272
Approximately 800 feet downstream of Cottonwood Avenue	*1,289
Draining Springs Canyon (Alluvial Fan):	
Approximately 3,000 feet west of intersection between State Highway 169 (SH169) and Hoodoo Highway, along SH169	#1
Approximately 4,300 feet west of intersection between SH169 and Hoodoo Highway along SH169	#2
Approximately 5,300 feet west of intersection between SH169 and Hoodoo Highway, along SH169	#3
Bridge Canyon (Alluvial Fan):	
At intersection between Edison Road and Hoodoo Highway	#1
Approximately 4,300 feet south of intersection of State Highway 169 and Hoodoo Highway	#1
Approximately 6,900 feet west of intersection of State Highway 169 and Hoodoo Highway	#1
Hills Springs Canyon (Alluvial Fan):	
Approximately 5,000 feet due south of intersection of Hoodoo Highway and Edison Road	#2
Approximately 2,000 feet due west of intersection of Edison Road and Hoodoo Highway	#3
Approximately 3,100 feet north of intersection of Edison Road and Hoodoo Highway	#4
Approximately 6,000 feet west of Hoodoo Highway	#4
Southwest Unnamed Canyon (Alluvial Fan):	
Approximately 11,000 feet south of intersection between Hoodoo Highway and Edison Road, along Hoodoo Highway	#1
Coolwaxent Alluvial Fan Areas	
Draining Springs Canyon or Bridge Canyon (Alluvial Fan): At intersection of Edison Road and Cooley Road	#1

Maps are available for review at the office of the Director of Public Works, Clark County Bridger Building, 225 Bridger Avenue, Las Vegas, Nevada.
Send comments to The Honorable Paul M. Christensen, Chairman, Clark County Board of Commissioners, Clark County Bridger Building, 225 Bridger Avenue, Las Vegas, Nevada 89155.

NEW YORK

Athens (village), Greene County

Hudson River: Entire length within community	*12

Maps available for inspection at the Athens Village Hall, 2 First Street, Athens, New York.
Send comments to The Honorable Robert Van Valkenburg, Mayor of the Village of Athens, Greene County, 2 First Street, Athens, New York 12015.

Cairo (town), Greene County

Acra Tributary:	
At confluence with Catskill Creek	*264
Approximately 700 feet upstream of Joseph Holzmann Road	*807
Catskill Creek:	
At downstream corporate limits	*176
At upstream corporate limits	*369
Shingle Kill:	
At confluence with Catskill Creek	*260
At confluence of Trout Brook	*545
Aft Shallow Flooding Area: Approximately 600 feet south of County Route 34	*484
Trout Brook:	
At confluence with Shingle Kill	*548
Approximately 0.6 mile upstream of Bald Hills Road	*629

Maps available for inspection at the Cairo Town Hall, Main Street, Cairo, New York.
Send comments to The Honorable William Lamoreux, Supervisor of the Town of Cairo, Greene County, P.O. Box 736, Cairo, New York 12413.

Catskill (village), Greene County

Hudson River: Entire length within community	*11
Catskill Creek:	
At confluence with Hudson River	*11
Approximately 0.6 mile upstream of U.S. Route 9 west bridge	*23

Maps available for inspection at the Catskill Village Hall, 422 Main Street, Catskill, New York.
Send comments to The Honorable Frank Sangermini, President of the Village of Catskill Board of Trustees, Greene County, 422 Main Street, Catskill, New York 12414.

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Coxsackie (town), Columbia County	
Agawamuck Creek:	
At confluence with Claverack and North Creeks	*241
At corporate limits	*300
Claverack Creek (Lower Reach):	
At downstream corporate limits	*122
Approximately 2,470 feet upstream of Webb Road	*137
Claverack Creek (Upper Reach):	
Approximately 2,100 feet downstream of confluence of Agawamuck and North Creeks	*226
At confluence of Agawamuck and North Creeks	*241
North Creek:	
At confluence with Claverack and Agawamuck Creeks	*241
At corporate limits	*256

Maps available for inspection at the Claverack Town Hall, Route 217, Claverack, New York.
Send comments to The Honorable John Hass, Supervisor of the Town of Claverack, Columbia County, R.D. 1, Hudson, New York 12534.

Coxsackie (town), Greene County

Cob Creek:	
Approximately 0.5 mile upstream of Potic Reservoir Dam	*430
Approximately 0.3 mile upstream of Tranquility Road	*491
Coxsackie Creek:	
Downstream corporate limits	*106
Approximately 1.5 miles upstream of County Route 49	*148
Climer Tributary:	
Confluence with Coxsackie Creek	*114
Approximately 180 feet upstream of Bronck Mill Road	*155
Reservoir Tributary:	
Confluence with Coxsackie Creek	*120
Approximately 560 feet upstream of Berrus Road	*139
East Branch Murderer's Creek:	
Downstream corporate limits	*74
Approximately 400 feet upstream of Adams Road	*90
West Branch Murderer's Creek:	
Downstream corporate limits	*74
Approximately 460 upstream of Flats Road	*121
Potic Creek:	
At the Schoharie Turnpike/downstream corporate limits	*373
Approximately 0.3 mile upstream of County Route 45	*425
Hudson River:	
Downstream corporate limits	*13
Upstream corporate limits	*14

Maps available for inspection at the Town Hall, 13 Reed Street, Coxsackie, New York.
Send comments to The Honorable Joseph T. Garland, Supervisor of the Town of Coxsackie, Greene County, 16 Reed Street, Coxsackie, New York 12051.

NORTH CAROLINA

Lee County (unincorporated areas)

Little Buffalo Creek:	
Just upstream of U.S. Route 15	*284
Just downstream of CSX Railroad (downstream crossing)	*318
Just upstream of CSX Railroad (downstream crossing)	*328
About 600 feet downstream of Westhampton Street	*341
Little Crane Creek:	
At county boundary	*316
Just downstream of Cedar Lane Road	*367
Big Buffalo Creek:	
About 1.3 miles downstream of Norfolk Southern Railway (downstream crossing)	*240
About 2,400 feet upstream of Boone Trail Road	*271
Persimmon Creek:	
Just downstream of Carthage Street	*328
About 2,350 feet upstream of Carthage Street	*345

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PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Tributary C:	
At mouth	*575
About 700 feet upstream of Mitchell Road	*611
Tributary D:	
At mouth	*574
Just downstream of Unnamed Road	*619
Tributary E:	
At mouth	*588
About 3,500 feet upstream of mouth	*636
Tributary F:	
At mouth	*579
About 1,300 feet upstream of Kerr-Bethel Road	*611
Tributary G:	
At mouth	*583
About 1 mile upstream of Kerr-Bethel Road	*616
Tributary H:	
At mouth	*586
About 300 feet upstream of Green Duty Road	*630
Clear Fork:	
About 1.2 miles downstream of State Route 141	*567
Just upstream of Centenary Cemetery Road	*591

Maps available for inspection at the County Engineer's Office, State Route 160, 220 Jackson Pike, Gallipolis, Ohio.
Send comments to The Honorable Karl Burleson, President, County Commissioners, Gallia County, County Courthouse, Gallipolis, Ohio 45631.

Hamilton (Village), Vinton County

Little Raccoon Creek:	
About 1,800 feet downstream of Wilkesville Street	*564
About 2,400 feet upstream of Wilkesville Street	*565
Trigg Run:	
Just upstream of Wilkesville Street	*566
Just downstream of CSX railroad	*584

Maps available for inspection at the Municipal Building, Railroad Street, Hamden, Ohio.
Send comments to The Honorable Dave Gardner, Mayor, Village of Hamden, Municipal Building, Railroad Street, Hamden, Ohio 45634.

Lawrence County (unincorporated areas)

Ohio River:	
At downstream county boundary	*543
At upstream county boundary	*560
Indian Guyan Creek:	
At mouth	*564
About 0.6 mile upstream of County Route 65	*566
McKinney Creek:	
At mouth	*564
About 3,000 feet upstream of Township Road 170	*577
Symmes Creek:	
About 2,300 feet downstream of confluence of Big Ranch Creek	*563
About 1,400 feet upstream of confluence of Leatherwood Creek	*563
Wolf Creek:	
At mouth	*563
About 775 feet upstream of Township Road 149	*566

Maps available for inspection at the County Commissioner's Office, County Courthouse, 111 South Fifth Street, Ironton, Ohio.
Send comments to The Honorable Donald Lambert, President, County Commissioners, Lawrence County, County Courthouse, 111 South Fifth Street, Ironton, Ohio 45638.

Lynchburg (Village), Highland County

East Fork of Little Miami River:	
At confluence of Turtle Creek	*866
About 1,500 feet upstream of High Street	*882
Turtle Creek:	
At confluence with East Fork of Little Miami River	*866
Just upstream of CSX railroad	*867

Maps available for inspection at the Municipal Building, Lynchburg, Ohio.
Send comments to The Honorable John Steggs, Mayor, Village of Lynchburg, Municipal Building, Lynchburg, Ohio 45142.

Mercer County (unincorporated areas)

Wabash River:	
At county boundary	*851
At confluence of Beaver Creek	*856
Beaver Creek:	
At mouth	*855
Just downstream of Grand Lake Dam	*862
Grand Lake St. Marys: Along shoreline	*873

Maps available for inspection at the Commissioner's Office, County Courthouse, Celina, Ohio.
Send comments to The Honorable Ronald Puthoff, Chairman, County Board of Commissioners, Mercer County, County Courthouse, Celina, Ohio 45822.

Paulding County (unincorporated areas)

Auglaize River:	
About 1.2 miles downstream of State Route 637	*702
About 1.4 miles upstream of State Route 637	*704
Flatrock Creek:	
About 0.56 mile downstream of confluence of Opossum Run	*714
About 1.0 mile upstream of State Route 49	*745

Maps available for inspection at the County Commissioner's Office, County Courthouse, Paulding, Ohio.
Send comments to The Honorable Joseph Vogel, President, County Commissioners, Paulding County, County Courthouse, Paulding, Ohio 45879.

St. Marys (city), Auglaize County

St. Marys River:	
About 0.8 mile downstream of High Street	*856
About 550 feet upstream of Greenville Road	*863

Maps available for inspection at the Municipal Building, 101 East Spring, St. Marys, Ohio 45885.
Send comments to The Honorable Michael Lynch, Mayor, City of St. Marys, Municipal Building, 102 East Spring, St. Marys, Ohio 45885.

Versailles (village), Darke County

Swamp Creek:	
About 0.4 mile downstream of Conrail	*886
About 0.6 mile upstream of Center Street	*971

Maps available for inspection at the Village Hall, Versailles, Ohio.
Send comments to The Honorable Larry Sutter, Mayor, Village of Versailles, Village Hall, P.O. Box 168, Versailles, Ohio 45380.

Wapakoneta (city), Auglaize County

Auglaize River:	
About 1.3 miles downstream of Hamilton Street	*872
About 900 feet upstream of County Route 25A	*886
Duster Run:	
At mouth	*862
Just downstream of U.S. Route 25	*882

Maps available for inspection at the City Office Building, 102 Perry Street, Wapakoneta, Ohio.
Send comments to The Honorable Charles Brading, Mayor, City of Wapakoneta, City Office Building, 102 Perry Street, Wapakoneta, Ohio 45895.

OREGON

Paisley (city), Lake County

Chewaucan River:	
Approximately 760 feet downstream of State Highway 31	*4,354
Approximately 1,350 feet upstream of State Highway 31	*4,370
Approximately 250 feet upstream of Mill Street	*4,401

Maps are available for review at City Hall, Paisley Community Building, 705 Chewaucan Street, Paisley, Oregon 97636.
Send comments to The Honorable Calvin E. Young, Mayor, City of Paisley, City Hall, P.O. Box 100, Paisley, Oregon 97636.

PENNSYLVANIA

Bamesboro (borough), Cambria County

West Branch Susquehanna River:	
At downstream corporate limits	*1,437
At upstream corporate limits	*1,457
Walnut Run:	
At confluence with West Branch Susquehanna River	*1,447
At upstream corporate limits	*1,480
Porter Run:	
At confluence with West Branch Susquehanna River	*1,448
Approximately 40 feet upstream of L.R. 11087	*1,468

Maps available for inspection at the Borough Office, First United Federal Building, 10th and Maple Streets, Barnesboro, Pennsylvania.
Send comments to The Honorable John Mino, Mayor of the Borough of Barnesboro, c/o Fred Nastasi—Borough Secretary, Cambria County, First United Federal Building—Room 107, 10th and Maple Streets, Barnesboro, Pennsylvania 15714.

Bedford (township), Bedford County

Raystown Branch Juniata River:	
Approximately 150 feet downstream of the upstream corporate limits with the Borough of Bedford	*1,083
Approximately 0.8 mile upstream of U.S. Route 30	*1,100
Texas Run:	
At downstream corporate limits	*1,071
Approximately 0.5 mile upstream of Blanche Street	*1,099
Dunning Creek:	
Approximately 200 feet downstream of CONRAIL	*1,054
At upstream corporate limits	*1,079

Maps available for inspection at the Municipal Building, R.D. #1, Valley Road, Bedford, Pennsylvania.
Send comments to The Honorable Howard Rapp, Chairman of the Township of Bedford Board of Supervisors, Bedford County, R.D. #2, Bedford, Pennsylvania 15522.

Confluence (borough) Somerset County

Youghiogheny River:	
Approximately 1,450 feet upstream of corporate limits	*1,324
At upstream corporate limits	*1,326
Casselman River:	
At confluence with Youghiogheny River	*1,325
Approximately 250 feet upstream of corporate limits	*1,348
Laurel Hill Creek:	
At confluence with Casselman River	*1,326
Approximately 1,800 feet upstream of corporate limits	*1,332

Maps available for inspection at the Borough Office, Confluence, Pennsylvania.
Send comments to The Honorable John Tressler, President of the Borough of Confluence Council, Somerset County, Ashland Oil, Confluence, Pennsylvania 15424.

Everett (borough), Bedford County

Bloody Run:	
Approximately 80 feet above the confluence with Raystown Branch Juniata River	*1,006
Approximately 50 feet upstream of State Route 26	*1,102

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)

Maps available for inspection at the Borough Office, Mechanic Street, Everett, Pennsylvania.
Send comments to The Honorable Paul R. Shaffer, President of the Borough of Everett, Bedford County, 83 Bridge Avenue, Everett, Pennsylvania 15537.

Falls Creek (borough), Jefferson and Clearfield Counties

Falls Creek:	
Approximately 50 feet downstream of corporate limits	*1,399
Approximately 100 feet upstream of corporate limits	*1,440

Maps available for inspection in care of Patricia J. Gundrum, Borough Secretary, 117 Taylor Avenue, Falls Creek, Pennsylvania.
Send comments to The Honorable Robert Hauck, President of the Borough of Falls Creek Council, Jefferson and Clearfield Counties, 228 Reed Street, Falls Creek, Pennsylvania 15840.

Hopewell (township), Bedford County

Raystown Branch Juniata River:	
Approximately 450 feet upstream of downstream corporate limits	*876
Approximately 4.1 miles upstream of Legislative Route 05056	*916
Yellow Creek:	
Approximately 500 feet downstream of T-655	*876
Approximately 1,570 feet upstream of State Route 36	*1,061

Maps available for inspection at the Township Building, Route 26—South of Kearney Kettle Restaurant (Valley Building), Everett, Pennsylvania.
Send comments to The Honorable W. Edward Crawford, Chairman of the Township of Hopewell Board of Supervisors, Bedford County, R.D. 2, Box 306, Everett, Pennsylvania 15537.

Lilly (borough), Cambria County

Little Conemaugh River:	
At downstream corporate limits	*1,882
0.2 of a mile upstream of Church Street	*1,905
Bear Rock Run:	
At confluence with Little Conemaugh River	*1,881
At upstream corporate limits	*1,935

Maps available for inspection at 303 Main Street, Lilly, Pennsylvania.
Send comments to The Honorable John Nacneski, Vice President of the Borough of Lilly Council, Cambria County, 261 Curran Street, Lilly, Pennsylvania 15938.

Manns Choice (Borough), Bedford County

Raystown Branch Juniata River: Upstream and downstream corporate limits	*1,130
Buffalo Run:	
Downstream corporate limits	*1,131
Approximately 540 feet upstream of State Route 31/96	*1,135

Maps available for inspection at the Borough Building, Main Street, Manns Choice, Pennsylvania.
Send comments to The Honorable Scott Williams, President of the Borough of Manns Choice Council, Bedford County, Manns Choice, Pennsylvania 15550.

Midway (Borough), Washington County

Robinson Run:	
At downstream corporate limits	*1,051
At upstream corporate limits	*1,086

Maps available for inspection at the Borough Office, Railroad Street, Midway, Pennsylvania.
Send comments to The Honorable Thomas McGinnis, President of the Midway Borough Council, Washington County, Prospect Street, Midway, Pennsylvania 15060.

Nanty Glo (Borough), Cambria County

South Branch Blacklick Creek:	
At downstream corporate limits	*1,700
At upstream corporate limits	*1,711
Davis Run:	
At confluence with South Branch Blacklick Creek	*1,710
Approximately 50 feet upstream of Bell Street	*1,787

Maps available for inspection at the Nanty Glo Municipal Building, Chestnut Street, Nanty Glo, Pennsylvania.
Send comments to The Honorable Michael Demchek, President of the Borough of Nanty Glo Council, Cambria County, Chestnut Street, Nanty Glo, Pennsylvania 15943.

Napier (township), Bedford County

Raystown Branch Juniata River:	
Approximately 0.4 mile downstream of State Highway 31	*1,112
At confluence of Shawnee Branch	*1,141
Approximately 0.4 mile upstream of T-418	*1,170

Maps available for inspection at the Old Shellsburg Elementary School, Route 96, Shellsburg, Pennsylvania.
Send comments to The Honorable Harry Miller, Jr., Chairman of the Township of Napier Board of Supervisors, Bedford County, R.D. #1, Box 302, Shellsburg, Pennsylvania 15559.

Patton (borough), Cambria County

Chest Creek:	
At downstream corporate limits	*1,723
At upper most upstream corporate limits	*1,742
Little Chest Creek:	
At confluence with Chest Creek	*1,738
At upstream corporate limits	*1,766

Maps available for inspection at the Borough Building, 4th & Magee Streets, Patton, Pennsylvania.
Send comments to The Honorable Paul J. Short, Borough of Patton Councilmen, Cambria County, 4th and Magee Streets, Patton, Pennsylvania 16668.

Penn (township), Centre County

Elk Creek:	
Approximately 1,400 feet downstream of L.R. 673	*1,066
At upstream corporate limits	*1,079
Pine Creek:	
At confluence with Penns Creek	*1,028
At upstream corporate limits	*1,036
Penns Creek:	
Approximately 2,125 feet downstream of L.R. 673	*1,026
Approximately 1,800 feet upstream of L.R. 673	*1,031

Maps available for inspection in c/o Barbara Shaffer, Township Secretary, R.D. 1, Box 15, Coburn, Pennsylvania (2 miles outside of Coburn on Long Lane).
Send comments to The Honorable Norman C. Buck, Chairman of the Township of Penn Board of Supervisors, Centre County, Coburn, Pennsylvania 16832.

Port Matilda (borough), Centre County

Bald Eagle Creek:	
At downstream corporate limits	*977
At upstream corporate limits	*997
Laurel Run:	
At confluence with Bald Eagle Creek	*983
Approximately 125 feet upstream of upstream corporate limits	*1,016

Maps available for inspection at the Borough Building, 400 South High Street, Port Matilda, Pennsylvania.
Send comments to The Honorable Gerald Smith, Mayor of the Borough of Port Matilda, Centre County, P.O. Box 156, Port Matilda, Pennsylvania 16870.

Sandy (township), Clearfield County

Clear Run:	
At confluence of Sandy Lick Creek	*1,307
Approximately 0.6 mile upstream of Clear Run Road	*1,445
Sandy Lick Creek:	
At downstream corporate limits	*1,306
Approximately 1.1 miles upstream of Platt Road	*1,418

Maps available for inspection at the Municipal Building, in care of Wick Marsh, 12th and Chestnut Streets, Pennsylvania.
Send comments to The Honorable Edward Watson, Jr., Chairman of the Township of Sandy Board of Supervisors, Clearfield County, 11 Wilson Avenue, DuBois, Pennsylvania 15801.

Shade (township), Somerset County

Dark Shade Creek:	
Approximately 500 feet downstream of S.R. Appl. 6448	*2,149
Approximately 120 feet upstream of confluence of Little Dark Shade Creek	*2,154
Little Dark Shade:	
Approximately 0.4 mile downstream of State Route 160	*2,158
Approximately 0.28 mile upstream of State Route 160	*2,165

Maps available for inspection at the Township Building, off Route 160, Cairnbrook, Pennsylvania.
Send comments to The Honorable Edward J. Zelonis, Supervisor of the Township of Shade, Somerset County, P.O. Box 38, Cairnbrook, Pennsylvania 15824.

Snyder (township), Jefferson County

Little Toby Creek:	
Approximately .75 mile downstream of Pittsburgh and Shawmut Railroad	*1,448
Approximately 1.9 miles upstream of T-572	*1,469
Rattlesnake Creek:	
Approximately 350 feet downstream of CONTRAIL	*1,449
Approximately .8 mile upstream of L.R. 33048	*1,478

Maps available for inspection in care of John A. Ross, Township Supervisor, R.D. 1, Brockway, Pennsylvania.
Send comments to The Honorable Fred Weakley, Chairman of the Township of Snyder Board of Supervisors, Jefferson County, R.D. 1, Brockway, Pennsylvania 15824.

Unionville (borough), Centre County

Bald Eagle Creek:	
Approximately 895 feet downstream of Chestnut Street	*771
Approximately 950 feet upstream of upstream corporate limits	*780
De Witt Run:	
At confluence with Bald Eagle Creek	*774
Approximately 25 feet upstream of corporate limits	*812

Maps available for inspection at the Fleming Post Office, Route 220, Fleming, Pennsylvania.
Send comments to the Honorable Earl Repka, President of the Borough of Uniorville Council, Centre County, Fleming, Pennsylvania 16835.

Washington (township), Jefferson County

Falls Creek:	
Approximately 175 feet downstream of corporate limits	*1,439
Approximately 1.4 miles upstream of corporate limits	*1,496

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Maps available for inspection in care of V.E. Lundberg, R.D. 1, Falls Creek, Pennsylvania. Send comments to the Honorable V.E. Lundberg, Chairman of the Township of Washington Board of Supervisors, Jefferson County, R.D. 1, Falls Creek, Pennsylvania 15840.	
Worth (Township), Centre County	
Bald Eagle Creek:	
Approximately 3,380 feet upstream of corporate limits	*988
At upstream corporate limits	*977
Maps available for inspection at Kathy Brandt's residence, Township Secretary, R.D. 1, Port Matilda, Pennsylvania.	
Send comments to the Honorable Ronald Reese, Supervisor of the Township of Worth, Centre County, R.D. 2, Box 813, Port Matilda, Pennsylvania.	
TENNESSEE	
Martin (city), Weakley County	
Cane Creek Tributary:	
At mouth	*348
Just downstream of Illinois Central Gulf Railroad	*361
Cane Creek:	
Just upstream of Mount Pelia Road	*337
Just upstream of K Street	*367
Maps available for inspection at the City Hall, 101 University Street, Martin, Tennessee.	
Send comments to the Honorable Bob Peeler, Mayor, City of Martin, P.O. Box 280, Martin, Tennessee 38237.	
TEXAS	
Muleshoe (city), Bailey County	
Shallowater Draw:	
At the downstream corporate limits	*3,775
Approximately 1.4 miles upstream of upstream corporate limits	*3,802
Playa No. 2—Outflow:	
At corporate limits	*3,775
Approximately 185 feet upstream of Country Club Drive	*3,788
Shallowater Draw Diversion:	
Approximately 660 feet downstream of West Avenue J	*3,794
Approximately .6 mile upstream of upstream corporate limits	*3,802
Maps available for inspection at 215 South 1st Street, Muleshoe, Texas.	
Send comments to the Honorable Darrell Turner, Mayor of the City of Muleshoe, Bailey County, 215 South 1st Street, Muleshoe, Texas 79347.	
Pelsor (city), Atascosa County	
Rutledge Hollow Creek:	
Approximately 1,850 feet downstream of Seventh Street	*422
Approximately 900 feet upstream of upstream corporate limits	*411
Tributary A:	
At confluence with Rutledge Hollow Creek	*424
At Avenue F	*444
Tributary B:	
Approximately 75 feet downstream of downstream corporate limits	*466
At upstream corporate limits	*468
Tributary C:	
Approximately 1,600 feet downstream of Boyd Street	*444
Approximately 300 feet upstream of Boyd Street	*460
Maps available for inspection at the City Hall, 409 Avenue H, Pelsor, Texas.	
Send comments to The Honorable Robert Enriquez, Mayor of the City of Pelsor, Atascosa County, P.O. Box 578, Pelsor, Texas 78066.	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
UTAH	
Tooele (city), Tooele County	
Settlement Canyon:	
At Corporate limits that are located approximately 300 feet downstream of Tooele Ordnance Depot Road	*4,838
Approximately 1,150 feet downstream of West View Street	*4,860
Approximately 140 feet downstream of Airport Road	*4,988
Approximately 2,850 feet downstream of Coleman Street	*5,019
Approximately 150 feet downstream of Pioneer Avenue	*5,128
Approximately 2,510 feet upstream of State Highway 36	*5,200
Middle Canyon Creek:	
Approximately 730 feet downstream of State Highway 36	*4,740
Approximately 2,810 feet downstream of 1000 North Road	*4,830
Approximately 630 feet upstream of 1000 North Road	*4,868
Approximately 750 feet upstream of State Highway 178	*5,010
Approximately 1,420 feet upstream of Third North Street	*5,068
Unnamed Canyon:	
Approximately 280 feet upstream of Second South Street	*5,000
Approximately 640 feet upstream of Seventh Street	*5,260
Approximately 210 feet upstream of Skyline Avenue	*5,325
Unnamed Canyon Tributary:	
At the confluence with Unnamed Canyon	*5,288
Approximately 580 feet upstream of Skyline Avenue	*5,324
Unnamed Canyon No. 2:	
Approximately 180 feet downstream of Sunset Road	*5,301
Approximately 675 feet upstream of Sunset Road	*5,368
Approximately 2,180 feet upstream of Sunset Road	*5,334
Maps are available for inspection at the Engineering Department, City Hall, 90 North Main Street, Tooele, Utah 84074.	
Send comments to The Honorable George Dicks, Mayor, City of Tooele, 90 North Main Street, Tooele, Utah 84074.	
VIRGINIA	
Augusta County (unincorporated areas)	
Grove Creek:	
At confluence with Christians Creek	*1,255
Approximately 1,850 feet upstream of State Highway 627	*1,334
Christians Creek Tributary:	
At confluence with Christians Creek	*1,257
Approximately 0.5 feet upstream of CSX Transportation	*1,352
Lewis Creek Tributary:	
At downstream County boundary	*1,470
Approximately 80 feet upstream of State Highway 613	*1,485
Howes Tributary:	
At confluence with Middle River	*1,159
Approximately 2,300 feet upstream of Interstate Highway 81 Entrance Ramp	*1,348
Wayne Cave Tributary:	
At confluence with North River	*1,093
Approximately 0.5 feet upstream of State Highway 606	*1,103
Pettyfield Run:	
At confluence with South River	*1,232
Approximately 2,100 feet upstream of State Highway 798	*1,276
Mine Branch:	
At confluence with South River	*1,232
Approximately 1,000 feet upstream of State Highway 693	*1,438
Upper North River:	
At the downstream County boundary	*1,278

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Approximately 0.9 feet upstream of State Highway 730	*1,554
Jennings Branch:	
At confluence with Middle River	*1,280
Approximately 0.3 mile upstream of State Highway 736	*1,588
Christians Creek:	
At confluence with Middle River	*1,152
Approximately 550 feet upstream of State Highway 340	*1,383
Hamilton Branch:	
At confluence with Calfpasture River	*1,640
Approximately 0.8 mile upstream of State Highway 629	*1,690
Long Meadow Run:	
At confluence with Christians Creek	*1,155
Approximately 1.1 miles upstream of State Highway 608	*1,282
Grassy Run:	
At confluence with Little Calfpasture River	*1,508
Approximately 0.50 mile upstream of State Highway 42	*1,586
Middle River:	
At downstream County boundary	*1,091
Approximately 1,580 feet upstream of State Highway 678	*1,575
Little Calfpasture River:	
At downstream County boundary	*1,444
Approximately 0.9 mile upstream of State Highway 601	*1,686
South River:	
At downstream County boundary	*1,084
Approximately 660 feet upstream of State Highway 613	*1,639
Pratts Run:	
At downstream County boundary	*1,390
At downstream side of U.S. Highway 250	*1,593
North River:	
At confluence of Middle River	*1,091
At the upstream County boundary	*1,107
Taylor Hollow:	
At downstream County boundary	*1,555
Approximately 1,900 feet upstream of County boundary	*1,587
Lewis Creek:	
At confluence with Middle River	*1,184
Approximately 80 feet upstream of State Highway 693	*1,687
Buttermilk Spring Run:	
At downstream County boundary	*1,543
Approximately 0.7 mile upstream of County boundary	*1,595
Staples Hollow: At west side corporate limits of the Town of Craigsville	*1,563
Sulphur Springs Hollow: At west side corporate limits of the Town of Craigsville	*1,558
Staples Hollow: At west side corporate limits of the Town of Craigsville	*1,626
Maps available for inspection at the Department of Community Development, County Office Building, 6 East Johnson Street, Staunton, Virginia.	
Send comments to The Honorable R. E. Hutt, Augusta County Administrator, P.O. Box 590, Staunton, Virginia 24401.	
Harrisonburg (City), Independent City	
Tributary No. 1:	
At confluence with Blacks Run	*1,295
Approximately 0.53 mile upstream from Route 974	*1,452
Tributary No. 2:	
At confluence with Tributary No. 1	*1,267
Approximately 0.63 mile upstream from Deer Run Road	*1,381
Tributary No. 3:	
At confluence with Tributary No. 1	*1,307
Approximately 1.21 miles upstream from Interstate 81	*1,416
Tributary No. 4:	
At confluence with Tributary No. 1	*1,407
Approximately 340 feet upstream from Keezletown Road	*1,440

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Blacks Run:	
Approximately 550 feet downstream from State Route 998	*1,194
Approximately 1.09 miles upstream from State Route 753 (North Liberty Street)	*1,381
Sunset Heights Branch:	
Approximately 500 feet downstream of State Route 726	*1,264
Approximately 0.46 mile upstream from confluence of West Fork Sunset Heights Branch	*1,337
West Fork Sunset Heights Branch:	
At confluence with Sunset Heights Branch	*1,306
At upstream corporate limits	*1,356
Maps available for inspection at the Office of the City Engineer, Municipal Building, 345 South Main Street, Harrisonburg, Virginia.	
Send comments to The Honorable Marvin B. Milan, Manager of the City of Harrisonburg, Independent City, 345 South Main Street, Harrisonburg, Virginia 22801.	
WEST VIRGINIA	
Marlinton (Town), Pocahontas County	
Greenbrier River:	
Approximately .6 mile downstream of downstream corporate limits	*2,123
Approximately .64 mile upstream of State Route 39	*2,133
Knapp Creek:	
At confluence with Greenbrier River	*2,126
At upstream corporate limits	*2,156
Maps available for inspection at the Municipal Building, 709 Second Avenue, Marlinton, West Virginia.	
Send comments to The Honorable Doug Dunbrack, Mayor of the Town of Marlinton, Pocahontas County, 709 Second Avenue, Marlinton, West Virginia 24954.	
Pocahontas County (Unincorporated Areas)	
Greenbrier River:	
Approximately 700 feet downstream of Route 27–3	*2,051
Approximately 0.7 mile upstream of State Route 39	*2,133
Approximately 1,800 feet downstream of confluence of Deer Creek	*2,415
Approximately 200 feet upstream of confluence of Leatherbark Run	*2,447
Approximately 350 feet downstream of Town of Durbin corporate limits	*2,706
Approximately 580 feet downstream of confluence of West Fork Greenbrier River	*2,710
East Fork Greenbrier River:	
At Town of Durbin corporate limits	*2,722
Approximately 800 feet above confluence of Gum Cabin Hollow	*2,926
Deer Creek:	
At confluence with Greenbrier River	*2,420
Approximately 2,000 feet upstream of confluence with Greenbrier River	*2,430
Approximately 4 miles upstream of confluence with Greenbrier River	*2,541
Approximately 1,100 feet upstream of County Route 7–1	*2,567
North Fork:	
At confluence with Deer Creek	*2,567
Approximately 1.6 miles upstream of County Route 8	*2,871
Knapp Creek:	
At confluence with Greenbrier River	*2,125
At confluence of Douthat Creek	*2,314
Approximately 0.6 mile above State Route 92	*2,577
Sugar Camp Run:	
At confluence with Knapp Creek	*2,523
Approximately 80 feet upstream of County Route 13	*2,566
Douthat Creek:	
At confluence with Knapp Creek	*2,314
Approximately 0.4 mile above confluence of Wade Hollow	*2,431
Cummings Creek:	
At confluence with Knapp Creek	*2,216
Approximately 0.4 mile above confluence of Shrader Hollow	*2,380

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Browns Creek:	
At confluence with Knapp Creek	*2,215
Approximately 80 feet upstream of County Route 11–6	*2,358
Stamping Creek:	
At confluence with Greenbrier River	*2,059
Approximately 0.7 mile upstream of confluence of Blue Lick Run	*2,553
Big Spring Fork:	
At confluence with Elk River and Old Field Fork	*2,670
Approximately 0.8 mile above CSX Transportation	*2,682
Elk River:	
At confluence of Laurel Run	*2,667
Approximately 300 feet above confluence of Laurel Run	*2,670
Old Field Fork:	
At confluence of Big Spring Fork	*2,670
Approximately 1.4 miles above confluence of Mill Creek	*2,922
Swago Creek:	
At confluence with Greenbrier River	*2,100
Approximately 250 feet above confluence of McClintock Run	*2,182
Maps available for inspection at the County Courthouse, 10th Avenue, Marlinton, West Virginia.	
Send comments to The Honorable Walter Halmick, President of the Pocahontas County Commission, 900 C 10th Avenue, Marlinton, West Virginia 24954.	
Webster County (Unincorporated Areas)	
Elk River:	
Approximately 2,575 feet downstream of the confluence of Ezra Run	*1,037
Approximately 2.80 miles upstream of the confluence of Ezra Run	*1,100
Approximately 4.20 miles downstream of the confluence of Big Run	*1,175
Approximately 0.95 mile downstream of the confluence of Big Run	*1,250
Approximately 860 feet upstream of the confluence of Lynch Run	*1,325
Approximately 1.8 mile upstream of the confluence of Kingfisher Creek	*1,400
Approximately 0.67 mile upstream of the confluence of Back Fork Elk River	*1,475
Approximately 1,490 feet upstream of the confluence of Dyers Run	*1,550
Approximately 0.75 mile downstream of the confluence of Mill Run	*1,625
Approximately 0.91 mile downstream of the confluence of Steps Run	*1,700
Approximately 1.04 miles upstream of the confluence of Baltimore Run	*1,775
Approximately 580 feet downstream of the confluence of Bergoo Creek	*1,879
Left Fork Elk River:	
At confluence with Elk River	*1,454
At divergence from Elk River	*1,465
Right Fork Holly River:	
Approximately 1,870 feet downstream of the confluence of Highbank Run	*1,090
Approximately 0.86 mile upstream of the confluence of Weese Run	*1,125
Approximately 0.65 mile downstream of the confluence of Deep Run	*1,200
Approximately 1,430 feet downstream of the confluence of Grassy Creek	*1,275
Approximately 920 feet downstream of the confluence of Wrack Timber Run	*1,350
Approximately 1,120 feet downstream of the confluence of Mudlick Run	*1,425
Approximately 0.60 mile downstream of the confluence of Desert Fork	*1,500
Approximately 780 feet upstream of the confluence of Desert Fork	*1,580
Approximately 300 feet downstream of the confluence of Upper Mudlick Run	*1,660
Approximately 1,150 feet upstream of the second crossing of County Route 18	*1,740
Approximately 1,100 feet downstream of the confluence of Laurel Fork	*1,820
Approximately 220 feet upstream of the confluence of Laurel Fork	*1,847

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Left Fork Holly River:	
Approximately .71 mile downstream of the confluence of Haslam Creek	*1,451
Approximately 1.35 miles upstream of the confluence of Laurel Fork	*1,550
Approximately 2.20 miles upstream of the confluence of Laurel Fork	*1,595
Gauley River (Lower):	
Approximately 225 feet downstream of County boundary	*2,025
Approximately .65 mile upstream of the confluence of Mill Fork	*2,037
Gauley River (Upper):	
Approximately 50 feet downstream of CSX Transportation Railroad Bridge	*2,191
Approximately .73 mile downstream of the confluence of Price Run	*2,250
Approximately 400 feet downstream of the confluence of Laurel Creek	*2,298
Back Fork Elk River:	
At Webster Springs corporate limits	*1,478
Approximately .41 mile upstream of the confluence of Bear Run	*1,550
Approximately .72 mile upstream of the confluence of Dry Bed Run	*1,620
Approximately 1,810 feet upstream of the confluence of Laurel Run	*1,700
Approximately 600 feet upstream of the confluence of Aaron Run	*1,790
Approximately .51 mile downstream of the confluence of Steps Gap Run	*1,850
At the confluence of Sugar Creek	*1,925
Approximately 750 feet upstream of the confluence of Middle Run	*1,967
Birch River:	
Approximately .70 mile downstream of the confluence of Ming Run	*1,489
Approximately 330 feet downstream of the confluence of Braggs Run	*1,565
Approximately 760 feet downstream of the confluence of Silk Run	*1,640
Approximately 1,070 feet downstream of the confluence of Chuffy Run	*1,715
Approximately 400 feet downstream of the confluence of Baughman Run	*1,790
At the confluence of Johnson Branch	*1,982
Laurel Creek:	
Approximately .55 mile downstream of the confluence of Laurel Creek	*1,508
Approximately 1,100 feet upstream of the confluence of Amos Run	*1,575
Approximately 880 feet downstream of the confluence of Lost Run	*1,680
Approximately 1.0 mile upstream of the confluence of Lost Run	*1,780
Approximately 0.4 mile downstream of the confluence of McAvoy Run	*1,880
Approximately 0.46 mile upstream of the confluence of Given Run	*1,960
At the confluence of Dry Branch	*2,080
Approximately 0.39 mile downstream of Little Glade Run	*2,160
Approximately 1,200 feet upstream of the confluence of Little Glade Run	*2,212
Holden Creek:	
At confluence with Left Fork Holly River	*1,469
Approximately 1,370 feet upstream of the confluence of Bear Run	*1,550
Approximately 0.61 mile upstream of the confluence of Big Lick Fork	*1,656
Leatherwood Creek:	
At confluence with Elk River	*1,816
Approximately 0.71 mile upstream of the most downstream crossing of County Route 26–4	*1,891
Big Ditch Run:	
Approximately 1.06 mile downstream of John Gaff Road	*2,219
Approximately 0.55 mile upstream of John Gaff Road	*2,230
Williams River:	
At confluence with Gauley River	*2,191
Approximately 0.43 mile upstream of the confluence of Spice Run	*2,258
Grassy Creek:	
At the confluence with Right Fork Holly River	*1,288

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PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Approximately 540 feet downstream of the confluence of Woody Run	*1,360
Approximately 0.71 mile upstream of the confluence of Woody Run	*1,480
Approximately 1.05 miles downstream of the confluence of Leatherwood Run	*1,580
Approximately 760 feet downstream of the confluence of Leatherwood Run	*1,702
Sycamore Creek:	
Approximately 0.66 mile upstream of the confluence of Sugarcamp Run	*2,017
At downstream County Boundary	*2,039
Sugar Creek:	
At the confluence with Back Fork Elk Creek River	*1,927
Approximately 760 feet upstream of the confluence of Little Sugar Creek	*2,047
Pine Glade Run:	
At the confluence with the Gauley River	*2,102
Approximately 1.64 miles upstream of the confluence with the Gauley River	*2,245

Maps available for inspection at the County Coordinator's Office, 112 Ball Street, Webster Springs, West Virginia.
Send comments to The Honorable Joe Adams, President of the Webster County Commission, County Courthouse, Webster Springs, West Virginia.

Webster Springs (City), Webster County

Left Fork Elk River:	
At confluence with Elk River	*1,453
At divergence from Elk River	*1,485
Back Fork Elk River:	
At confluence with Elk River	*1,457
Approximately 940 feet upstream of upstream corporate limits	*1,489
Elk River:	
At downstream corporate limits	*1,455
Approximately 0.8 mile upstream of State Route 20	*1,482

Maps available for inspection at the Municipal Building, 148 McGraw Avenue, Webster Springs, West Virginia.
Send comments to The Honorable Sandra Given, Mayor of the Town of Webster Springs, 148 McGraw Avenue, Webster Springs, West Virginia 26288.

WISCONSIN

Barron (city), Barron County

Yellow River:	
About 3,900 feet downstream from confluence of Cluderer Creek	*1,084
About 1,100 feet upstream from Mill Street Dam	*1,115
Cluderer Creek:	
At mouth	*1,086
Just upstream of Mill Street	*1,110

Maps available for inspection at the City Hall, 307 East La Salle Street, Barron, Wisconsin.
Send comments to The Honorable Bard Killebrew, Mayor, City of Barron, City Hall, 307 East La Salle Street, Barron, Wisconsin 54812.

Barron County (unincorporated areas)

Red Cedar River:	
At southern county boundary	*1,004
Just upstream of confluence of Unnamed Tributary to Red Cedar River	*1,112
Yellow River:	
At mouth	*1,057
About 0.66 mile upstream of Mill Street at the City of Barron	*1,115
Rice Lake: Along shoreline	*1,125
Lightning Creek:	
About 2,100 feet downstream of Alma Street	*1,167
Just downstream of Alma Street	*1,171

Maps available for inspection at the Zoning Office, County Courthouse, 300 East La Salle, Barron, Wisconsin.
Send comments to The Honorable Arnold Ellison, Chairman, County Board, Barron County, County Courthouse, 300 East La Salle, Barron, Wisconsin 54812.

Boaz (village), Richland County

Mill Creek:	
About 0.6 mile downstream of State Highway 171	*738
About 1,150 feet upstream of State Highway 171	*740

Maps available for inspection at the Clerk's Office, Village Hall, Boaz, Wisconsin.
Send comments to The Honorable John Stafford, Village President, Village of Boaz, Village Hall, Boaz, Wisconsin 53573.

Brodhead (city), Green County

Sugar River:	
About 1,000 feet downstream of Soo Line Railroad	*781
About 1 mile upstream of confluence of Decatur Raceway	*784
Decatur Raceway:	
At confluence with Sugar River	*783
About 350 feet upstream of County Highway F	*787

Maps available for inspection at the City Hall, 1103 West 2nd Avenue, Brodhead, Wisconsin.
Send comments to The Honorable Kennetha Edwards, Mayor, City of Brodhead, City Hall, 1103 West 2nd Avenue, Brodhead, Wisconsin 53520.

Rosendale (village), Fond du Lac County

Unnamed Creek:	
About 2,300 feet downstream of Hill Road	*879
About 0.84 mile upstream of Main Street	*906

Maps available for inspection at the Municipal Building, 208 North Main Street, Rosendale, Wisconsin.
Send comments to The Honorable Robert Miller, Village President, Village of Rosendale, Municipal Building, 208 North Main Street, Rosendale, Wisconsin 54974.

The proposed modified base (100-year) flood elevations for selected locations are:

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS

State	City/town/county	Source of flooding	Location	# Depth in feet above ground *Elevation in feet (NGVD) Existing	Modified
California	Lake County, unincorporated areas.	Forbes Creek	Approximately 1,825 feet upstream of Parallel Drive	None	*1,367
			Approximately 1,325 feet upstream of Parallel Drive	None	*1,385
		Pier 1900 Drain	Just upstream of Parallel Drive	None	*1,348
			Just downstream of Todd Road	None	*1,365
		Todd Road Drain	Approximately 675 feet upstream of confluence with Manning Creek and Todd Road Drain	None	*1,333
			Just downstream of State Highway 29	None	*1,339
		Harley Drain	Just downstream of State Highway 29	#1	None
		10th Street Drain	Just downstream of Scotts Valley Drive	None	#1
		North Branch Forbes Creek	Just east of Highway 29, approximately 2,500 feet south of its intersection with Scotts Valley Road	#1	None

Maps are available for inspection at the County Courthouse, 255 North Forbes Street, Lakeport, California 95453.
Send comments to the Honorable Kareg MacKay, Chairperson, Lake County Board of Supervisors, 255 North Forbes Street, Lakeport, California 95453.

California	City of Lakeport, Lake County.	Forbes Creek	Approximately 200 feet downstream of Main Street	*1,331	*1,331
			At the intersection of Frobes Street and Martin Street	*1,334	#2

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	# Depth in feet above ground *Elevation in feet (NGVD) Existing	Modified
		North Branch, Forbes Creek	Approximately 500 feet upstream of Fairgrounds Road	*1,340	*1,341
			Approximately 510 feet upstream of Pacific Regency Way	*1,363	*1,367
			Approximately 2,480 feet upstream of Pacific Regency Way	None	*1,383
			Approximately 200 feet downstream of Armstrong Street	*1,340	*1,341
			Approximately 520 feet upstream of Russell Street	*1,348	*1,349
			At the intersection of Eslep Street and Martin Street	*,1338	#1
		Pier 1900 Drain	Just upstream of Main Street	None	*1,334
			Just downstream of State Highway 29	None	*1,345
		Tenth Street Drain	At Main Street	None	#1
			At the intersection of Main Street and 10th Street	*1,335	#1
			Just upstream of Bush Street	*1,341	*1,337
			Approximately 160 feet upstream of Pool Street	*1,349	*1,349
			Approximately 200 feet east of the intersection of Central Park Avenue and 11th Street	#1	#3

Maps are available for inspection at City Hall, 225 Park Street, Lakeport, California.
Send comments to The Honorable Artin Pischke, Mayor, City of Lakeport, 200 Park Street, Lakeport, California 95453.

California	Napa County, unincorporated areas.	San Pablo Bay	At the southeastern tip of Coon Island	*8	*7
		Napa River	At the northern tip of Bull Island	*8	*7
			Approximately 1,400 feet upstream of State Highway 29	*9	*8
			Approximately 200 feet upstream of Imola Avenue	*10	*13
			Approximately 500 feet upstream of First Street	*21	*22
			Approximately 500 feet upstream of Milliken Creek	*36	*29
			Just downstream of West Trancas Road, case with the Lakepark Levee in place	*30	*30

Maps are available for review at the Napa County Department of Public Works, 1195 Third Street, Room 301, Napa, California.
Send comments to the Honorable Bob White, Chairman, Napa County Board of Supervisors, 1195 Third Street, Room 301, Napa, California 94559.

California	City of Novato, Marin County.	Novato Creek	Approximately 3,000 feet downstream of Southern Pacific Railroad, 1,600 feet east of Highway 101	*8	*7
			Approximately 120 feet downstream of Southern Pacific Railroad, 1,600 feet east of Highway 101	*9	*8
			Just upstream of Old U.S. Highway 101 (Redwood Highway)	*12	*11
			Just downstream of Grant Avenue	*35	*34
			Approximately 100 feet upstream of Sutro Avenue	*87	*88
			Approximately 2,850 feet upstream of Sutro Avenue	*100	*100
		Warner Creek	Approximately 100 feet downstream of South Novato Boulevard	*14	*13
			Approximately 125 feet upstream of Tamalpais Avenue	*25	*22
			Approximately 1,000 feet upstream of McClay Avenue	*40	*41
		Vineyard Creek	At confluence with Warner Creek. Approximately 880 feet downstream of Center Road	*39	*41
			Approximately 80 feet upstream of Wilson Avenue	*61	*61
			Just upstream of Trumbull Avenue	*91	*90
			Approximately 1,325 feet upstream of Mill Road	*116	*118
			Approximately 1,500 feet upstream of the confluence of an unnamed tributary	None	*145
		Unnamed tributary to Vineyard Creek	Approximately 175 feet upstream of Angelica Court	None	*134
			Approximately 300 feet upstream of a Private Drive	None	*147
		Wilson Creek	At the confluence with Warner Creek	*35	*32

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PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
			Approximately 100 feet upstream of Center Road.	*40	*40
			Approximately 50 feet upstream of McClay Avenue.	*57	*57
			Approximately 525 feet upstream of Shields Land.	None	*79
		Arroyo San Jose Creek	Just upstream of St. Andrews Drive	*189	*189
			Approximately 970 feet upstream of St. Andrews Drive.	None	*200
			Approximately 1,360 feet upstream of St. Andrews Drive.	None	*220
		Pacheco Creek	Approximately 2,700 feet downstream of Skeet Range Road.	*8	*8
			Just downstream of Skeet Range Road	*20	*20
			Just upstream of Entrance Road	*44	*42

Maps are available for review at the Department of Community Development Engineering Section, 901 Sherman Avenue, Novato, California.

Send comments to the Honorable Hugh Turner, Mayor, City of Novato, 901 Sherman Avenue, Novato, California 94947.

California	City of Redding, Shasta County.	Churn Creek	Approximately 150 feet downstream of Interstate 5.	*629	*629
			Approximately 60 feet downstream of Oasis Road.	None	*641
			Approximately 3,325 feet upstream of Oasis Road.	*None	*661
		Olney Creek	Approximately 1,010 feet upstream of Sacramento Drive.	*461	*461
			At upstream side of Southern Pacific Railroad.	None	*472
			Just upstream of Anderson Cottonwood Irrigation District Canal.	None	*477
		Clover Creek	Approximately 4,850 feet downstream of Meadow View Drive Bridge.	None	*472
			Approximately 2,700 feet upstream of Meadow View Drive Bridge.	None	*485
			Approximately 400 feet downstream of Rancho Road Bridge.	None	*504
			Approximately 3,400 feet downstream of Forest Hills Drive.	None	*515
			Approximately 1,260 feet upstream of Forest Hills Drive.	None	*531
		Salt Creek	At confluence with Churn Creek	*614	*614
			Just downstream of Oasis Road	None	*630
			Approximately 275 feet upstream of Crooked Lane.	None	*647
		Boulder Creek	At confluence with Churn Creek	*567	*567
			Approximately 2,125 feet downstream from Interstate 5.	None	*597
			Just upstream of Interstate 5	None	*605
			At State Route 273	None	*626
			At Southern Pacific Railroad	None	*666
		Oregon Gulch	Approximately 800 feet downstream of Shasta General Hospital.	None	*460
			Approximately 100 feet upstream of Westside Road.	None	*487
			At Cedar Street	None	*484
			Approximately 2,030 feet upstream of Cedar Street.	None	*510
			Approximately 3,625 feet upstream of Cedar Street.	None	*539
		Canyon Hollow Creek	At confluence with Sacramento River	*463	*463
			At Anderson Cottonwood Irrigation District Canal.	None	*469
			Approximately 25 feet downstream of Market Street (Northbound).	None	*487
			Approximately 0 feet downstream of Canyon Creek Road (Upstream Crossing).	None	*510
			Approximately 4,395 Canyon Creek Road (Upstream Crossing).	None	*563
		Buckeye Creek	Approximately 2,650 feet downstream of Oasis Road.	None	*639
			Approximately 825 feet downstream of Oasis Road.	None	*650
			At Oasis Road	None	*658

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
Maps are available for review at City Hall, 760 Park View Avenue, Redding California.					
Send comments to the Honorable Maurice Johannessen, Mayor, City of Redding, 760 Park View Avenue, Redding, California 96001.					
California	City of San Diego, San Diego County.	Tijuana River	At Hollister Street	*27	*27
			At Tijuana Street	*46	*45
			Approximately 4,400 feet above Tijuana Street.	*54	*54
		Carmel Valley Creek	Approximately 125 feet downstream from the center of Sorrento Valley Road.	*12	*12
			At El Camino Real	*26	*28
			Approximately 165 feet upstream of Shaw Valley Road.	*83	*83
			Approximately 75 feet downstream of Bell Valley Creek.	*95	*93
			At confluence of Bell Valley Creek	*95	*93
			Approximately 320 feet upstream of the confluence of McGonigle Canyon and Deer Canyon.	None	*126
		Kit Carson Park Creek	At confluence with Lake Hodges	*327	*326
		Los Penasquitos Creek	Approximately 340 feet downstream of Chambers Dam.	*341	*341
			Approximately 100 feet upstream of Chambers Dam.	*346	*353
			Approximately 1,500 feet below upstream corporate limit.	None	*393
			At upstream corporate limit	None	*408
		San Diego River	Approximately 1,300 feet downstream of Friars Road.	*69	*69
			Approximately 60 feet upstream of Zion Avenue.	None	*80
			Approximately 2,080 feet upstream of Private Road.	None	*132
		San Diego River at Santee	Approximately 1,600 feet below downstream end of Hollins Lake.	None	*289
			Approximately 1,300 feet above upstream end of Hollins Lake.	None	*305
			At upstream corporate limits	None	*318
		Green Valley Creek	Approximately 210 feet above Rios Road at limit of detailed study.	None	*499
			Approximately 1,480 feet above Rios Road at upstream corporate limit.	None	*526
		Murphy Canyon Creek	Approximately 200 feet above Friars Road	None	*71
			Approximately 50 feet above culvert upstream of Friars Road.	None	*86
			Just upstream of Aero Drive culvert	None	*160
			Just upstream of Interstate Highway 15/ Balboa Avenue Interchange culvert.	None	*208
			Approximately 60 feet above upstream face of Clairemont Mesa on-ramp to Interstate Highway 15.	None	*251
		Santa Ysabel Creek	At confluence with Lake Hodges	None	*326
			Approximately 165 feet upstream of the confluence of Santa Maria Creek.	None	*370
			Approximately 60 feet upstream of Battle Monument Road.	None	*385
			Just upstream of State Highway 78	None	*426
		Santa Maria Creek	Approximately 5,440 feet upstream from the center of State Highway 78.	None	*444
			Approximately 280 feet upstream of the confluence of Santa Ysabel Creek.	None	*370
			Approximately 60 feet upstream of Battle Monument Road.	None	*385
			Approximately 40 feet upstream of Bandy Canyon Road at corporate limits.	None	*398
		Lake Hodges	Above Interstate Highway 15	None	*326
			At confluence of Kit Carson Park Creek	*327	*326
		San Diego Bay	At mouth of Otay River	#5	#6
			Shelter Island entire shoreline	#5	#6
			At San Diego-Coronado Bay Bridge	None	#5
		Pacific Ocean	Approximately 5,000 feet north and 1,700 feet west of the southernmost extent of Point Loma.	None	#21
			Approximately 300 feet west of Sunset Cliffs Boulevard and Point Loma Avenue.	None	#9

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PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	▲Depth in feet above ground *Elevation in feet (NGVD) Existing	Modified
		Petit Creek	About 3,200 feet downstream of Rockmart Road.	None	*678
			About 800 feet downstream of Peeples Valley Road.	None	*730
		Nancy Creek	Just upstream of Mission Road	None	*692
			Just upstream of CSX railroad	None	*712

Maps available for inspection at the City Hall, Cartersville, Georgia.
Send comments to The Honorable David Tillman, Mayor, City of Cartersville, P.O. Box 648, Cartersville, Georgia 30120.

Georgia	City of Emerson, Bartow County.	Pumpkinvine Creek	About 1,900 feet downstream of U.S. Route 41.	None	*709
			About 1,800 feet upstream of U.S. Route 41.	None	*713

Maps available for inspection at the City Hall, Emerson, Georgia.
Send comments to The Honorable Henry L. Jordan, Mayor, City of Emerson, P.O. Box 300, Emerson, Georgia 30137.

Georgia	City of Millen, Jenkins County.	Buckhead Creek	Just downstream of Norfolk Southern Railway.	None	*144
			At confluence of Little Buckhead Creek	None	*151
		The Canal	About 975 feet downstream of U.S. Route 25.	None	*146
			About 1,800 feet downstream of Pine Avenue.	None	*167
		Little Buckhead Creek	At mouth	None	*151
			Just upstream of Norfolk Southern Railway	None	*155

Maps available for inspection at the City Administrator's Office, City Hall, Millen, Georgia.
Send comments to The Honorable Forrest Boyer, City Administrator, City of Millen, City Hall, P.O. Box 929, Millen, Georgia 30442.

Illinois	City of Clinton, DeWitt County.	Coon Creek	About 1,500 feet upstream of Grant Street	*698	*696
			About 2,250 feet upstream of Alexander Street.	*716	*716
		Goose Creek	At mouth	*714	*714
			About 250 feet upstream of Welch Street	*722	*720
		Tenmile Creek	Just downstream of Old Lincoln Road	*700	*700
			About 900 feet upstream of Woodlawn Avenue.	*706	*706

Maps available for inspection at the Zoning Office, 118–120 West Washington Street, Clinton, Illinois.
Send comments to the Honorable Carl Towel, Mayor, City of Clinton, 118–120 West Washington Street, P.O. Box 378, Clinton, Illinois 61727–1696.

Kentucky	City of Hartford, Ohio County.	Rough River	About 0.3 mile downstream of U.S. Route 231.	None	*394
			About 0.6 mile upstream of U.S. Route 231	None	*395

Maps available for inspection at the City Hall, 114 Washington Street, Hartford, Kentucky.
Send comments to the Honorable Earl Russell, Mayor, City of Hartford, City Hall, 114 Washington Street, Hartford, Kentucky 42347.

Mississippi	Township of Batesville, Panola County.	Cole Creek	About 1,000 feet downstream of State Highway 6.	None	*215
			Just downstream of State Highway 6	None	*217
		Little Tallahatchie River	Just upstream of Panola Avenue	None	*194
		Whitten Creek	About 0.5 mile downstream of U.S. Highway 51.	None	*205
			About 0.5 mile upstream of State Highway 35.	None	*232

Maps available for inspection at the City Clerk's Office, City Hall, 103 College Street, Batesville, Mississippi.
Send comments to the Honorable Bobby Baker, Mayor, Township of Batesville, P.O. Box 689, Batesville, Mississippi 38606.

Mississippi	City of Meridian, Lauderdale County.	Okatibbee Creek	About 2.4 miles downstream of Interstate 59.	*286	*288
			About 1.2 miles downstream of State Boulevard Extension Road.	None	*311
		Loper Creek	At mouth	None	*302
			At confluence of Gunn Branch	None	*332
		Magnolia Creek	At confluence with Sowashee Creek	*328	*326
			Just downstream of 36th Steet	*380	*380
		Sowashee Creek	About 3.0 miles downstream of Valley Road	*269	*269
			About 0.4 mile upstream of confluence of Clear Branch.	None	*342

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	▲Depth in feet above ground *Elevation in feet (NGVD) Existing	Modified
			Approximately 550 feet west of the intersection of Wilbur Street and Ocean Boulevard.	None	#13
			Approximately 200 feet west of the intersection of Calumet Avenue and Sea Ridge Drive.	None	#18
			Approximately 300 feet west of the intersection of Palomar Avenue and Camino De La Costa Road.	None	#10
			Approximately 100 feet north and 250 feet west of the intersection of Camino Del Grande and Calle Optima.	#6	#6
			Approximately 950 feet north and 2,250 feet west of the intersection of North Torrey Pines Road and Miramar Road.	None	#15
			Approximately 3,000 feet west of the intersection of North Torrey Pines Road and Torrey Pines Scenic Drive.	None	#9

Maps are available for review at the Engineering and Development Department, 202 C Street, San Diego, California.
Send comments to The Honorable Maureen O'Connor, Mayor, City of San Diego, California 92101.

California	Stanislaus County, unincorporated areas.	Del Puerto Creek	Approximately 2,300 feet upstream of the confluence with San Joaquin River.	None	*47
			Approximately 100 feet upstream of Vineyard Avenue.	None	*88
			Just feet upstream of State Highway 33	None	*107
			Just upstream of Raines Road	None	*180
		Salado Creek	Just downstream of the Southern Pacific Railroad.	None	*95
			Just upstream of Ward Avenue	None	*102
			Just upstream of Sperry Avenue	None	*128
			Just downstream of Raines Road	None	*181
		Orestimba Creek	Approximately 1,000 fee downstream of River Road.	None	*82
			Approximately 150 feet upstream of Morris Road.	None	*90
			At Southern Pacific Railroad	None	*105
			Approximately 100 feet upstream of Eastin Road.	None	*123
			At Delta-Mendota Canal	None	*166

Maps are available for review at the Stanislaus County Offices, Public Works Department, 1100 H Street, Modesto, California.
Send comments to The Honorable Dan Terry, County Board of Supervisors, 1100 H Street, Modesto, California 95354.

Connecticut	Cheshire, Town, New Haven County.	Quinnipiac River	Downstream side of Cheshire Street Bridge	*110	*111
			At upstream corporate limits	*122	*124
		Mill River	Approximately 50 feet upstream of Mansfield Road.	None	*158
			At downstream side of Williamsburg Drive	None	*209
			Approximately 50 feet upstream of Higgins Road.	None	*147
			Upstream side of Ives Row Road	None	*160

Maps are available for inspection at the Town Planning Development Department, Town Hall, Cheshire, Connecticut.
Send comments to the Honorable Edward O'Neill, Manager of the Town of Cheshire, New Haven County, Town Hall, 84 South Main Street, Cheshire, Connecticut 06410.

Connecticut	Southington, Town, Hartford County.	Quinnipiac River	At downstream corporate limits	*119	*120
			Approximately 450 feet downstream of the upstream corporate limits.	*168	*169
		Spring Lake Brook	At confluence with Quinnipiac River	None	*156
			Downstream side of Flanders Road	None	*243
		East Branch Judd Brook	At confluence with Judd Brook and Humiston Brook.	None	*143
			Approximately 650 feet downstream of Frost Street.	None	*188

Maps are available for inspection at the Town Planning Department, Town Hall, Southington, Connecticut.
Send comments to the Honorable John Weichsel, Manager of the Town of Southington, Hartford County, Town Hall, 75 Main Street, Southington, Connecticut 06489.

Georgia	City of Cartersville, Bartow County.	Etowah River	About 1.9 miles downstream of Rockmart Road.	None	*671
			About 0.75 mile upstream of confluence of Petit Creek.	None	*679

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD) Existing	Modified
Maps available for inspection at the Building Inspector's Office, City Hall, 601 24th Avenue, Meridian, Mississippi.					
Send comments to the Honorable J.W. Kemp, Mayor, City of Meridian, P.O. Box 1430, Meridian, Mississippi 39301.					
Mississippi	City of Natchez, Adams County.	Mississippi River	About 0.5 mile downstream of John R. Junkin Drive.	None	*77
			About 2.1 miles upstream of John R. Junkin Drive.	None	*78
		St. Catherine Creek	About 1.7 miles downstream of Woodville Road.	None	*76
			About 0.7 mile upstream of U.S. Highway 98.	*125	*125
Maps available for inspection at the City Engineer's Office, City Hall, 112 South Pearl Street, Natchez, Mississippi.					
Send comments to the Honorable David Armstrong, Mayor, City of Natchez, 112 South Pearl Street, P.O. BOx 1185, Natchez, Mississippi 39120.					
Missouri	City of Independence, Clay and Jackson Counties.	Adair Creek	At mouth	None	*763
			Just downstream of State Highway 291	*778	*778
		Crackerneck Creek	At mouth	None	*755
			Just downstream of Selsa Road	*762	*762
		North Fork Crackerneck Creek	At mouth	None	*755
			Just downstream of Selsa Road	*760	*760
		Spring Branch	At mouth	None	*750
			Just downstream of Lake City Buckner Road.	*763	*763
		Bundschu Creek	At mouth	None	*736
			About 1.1 miles upstream of mouth	*751	*751
		Little Blue River	Just upstream of U.S. Highway 24	None	*732
			About 1.93 miles upstream of Interstate 470.	None	*772
		East Fork Little Blue River	At mouth	None	*759
			Just upstream of eastbound U.S. Highway 40.	none	*768
Maps available for inspection at City Hall, 111 East Maple, Independence, Missouri.					
Send comments to The Honorable Barbara Potts, Mayor, City of Independence, City Hall, 111 East Maple, Independence, Missouri 64050.					
Nevada	City of Reno, Washoe County.	Truckee River	Approximately 500 feet upstream of McCarran Boulevard.	*4,395	*4,400
			Approximately 600 feet downstream of Rock Boulevard.	*4,409	*4,408
			Just downstream of Greg Street	*4,422	*4,421
			Approximately 300 feet downstream of U.S. Highway 395.	*4,444	*4,445
		Steamboat Creek	At Pembroke Drive	*4,391	*4,392
		Silver Lake Playa	Entire shoreline	None	*4,967
		Lemmon Valley Playa	Entire shoreline	None	*4,920
Maps are available for review at the City Hall Annex, 450 Sinclair Street, Reno, Nevada.					
Send comments to the Honorable Peter J. Sferrazza, Mayor, City of Reno, P.O. Box 1900, Reno, Nevada 89505.					
Nevada	City of Sparks, Washoe County.	Truckee River (before levee overtopping).	Approximately 1,600 feet downstream of confluence of Steamboat Creek.	*4,391	*4,390
			Approximately 470 feet upstream of confluence of Steamboat Creek.	*4,391	*4,391
			Approximately 500 feet upstream of McCarran Boulevard.	*4,395	*4,400
			Approximately 600 feet downstream of Rock Boulevard.	*4,409	*4,408
			Just downstream of Greg Street	*4,422	*4,421
			Approximately 950 feet upstream of Glendale Avenue.	*4,440	*4,439
		Truckee River (after levee overtopping).	Approximately 470 feet upstream of confluence of Steamboat Creek.	*4,391	*4,390
		Truckee River (overflow channel).	Approximately 350 feet upstream of Rock Boulevard.	None	*4,419
			Approximately 200 feet downstream of Glendale Avenue.	*4,435	*4,433
		North Truckee Drain (with effects of Spanish Springs Detention Basin).	Approximately 175 feet downstream of Lincoln Way.	*4,392	*4,392
			At East Prater Way	4,395	4,392
			Approximately 150 feet downstream of Shadow Lane.	*4,412	*4,407
			Approximately 100 feet downstream of Saddleback Lane.	*4,412	*4,410

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD) Existing	Modified
Maps are available for review at the City Hall, 431 Prater Way, Sparks, Nevada.					
Send comments to the Honorable James L. Spoo, Mayor, City of Sparks, 431 Prater Way, Sparks, Nevada 89431.					
Nevada	Washoe County, unincorporated areas.	Truckee River	Approximately 500 feet downstream of Southern Pacific Railroad.	*4,387	*4,387
			Approximately 800 feet upstream of Southern Pacific Railroad.	*4,388	*4,389
			Approximately 470 feet upstream of confluence of Steamboat Creek.	*4,391	*4,391
			Approximately 4,030 feet downstream of McCarren Boulevard.	*4,393	*4,392
		Steamboat Creek	At confluence with Truckee River	*4,391	*4,392
			At Pembroke Drive	*4,391	*4,391
		North Truckee Drain (with effects of Spanish Springs Detention Basin).	Just upstream of Saddleback Lane	*4,413	*4,411
			Approximately 750 feet upstream of Saddleback Lane.	*4,414	*4,415
		Spanish Springs Detention Basin.	Entire basin	None	*4,447
		Spanish Springs Creek	In Section 11 above Spanish Springs Detention Basin.	None	#1
		Sun Valley Detention Basin	Entire basin	None	*4,445
		Silver Lake Playa	Entire shoreline	None	*4,967
		Lemmon Valley Playa	Entire shoreline	None	*4,920
Maps are available at the Washoe County Department of Public Works, 1205 Mill Street, Reno, Nevada.					
Send comments to the Honorable Gene McDowell, Chairman, Washoe County Board of Commissioners, P.O. Box 11130, Reno, Nevada 89510.					
New York	Amenia, Town, Dutchess County.	Wassaic Creek	Approximately 950 feet above confluence with the Tenmile River.	None	*420
			At confluence of Amenia Stream	None	*452
		Webatuck Creek	Approximately 700 feet above confluence with Tenmile River.	None	*420
			Approximately 80 feet below County Route 2.	None	*488
		Amenia Stream	At confluence with Wassiac Creek	None	*451
			Approximately 840 feet above State Route 343.	None	*549
		Tributary to Amenia Stream	At confluence with Amenia Stream	None	*543
			Approximately 910 feet above upstream end of State Route 343 culvert.	None	*550
Maps available for inspection at the Town Hall, Amenia, New York.					
Send comments to the Honorable Peter G. Bavis, Supervisor of the Town of Amenia, Dutchess County, P.O. Box 126, Amenia, New York 12501.					
New York	Athens, Town, Greene County.	Hudson River	At confluence of Corlaer Kill	None	*11
			Upstream corporate limits with Town of Coxsackie.	None	*13
		Sleepy Hollow Lake	Entire length within community	None	*74
		Catskill Creek	Approximately .8 mile downstream of confluence of Potic Creek.	None	*147
			Approximately 2.4 miles upstream of confluence of Potic Creek.	None	*177
Maps available for inspection at the Athens Town Hall, 2 First Street, Athens, New York.					
Send comments to the Honorable William Maher, Supervisor of the Town of Athens, Greene County, 2 First Street, Athens, New York 12015.					
New York	Coxsackie, Village, Greene County.	Coxsackie Creek	At downstream corporate limits	None	*111
			Approximately 1 mile upstream of State Route 385.	None	*114
		Hudson River	At downstream corporate limits	None	*14
			At upstream corporate limits	None	*14
Maps available for inspection at the Village Hall, 38 Mansion Street, Coxsackie, New York.					
Send comments to the Honorable Peter Willis, Mayor of the Village of Coxsackie, Green County, 38 Mansion Street, Coxsackie, New York 12051.					
New York	Mamaroneck, Town, Westchester County.	Long Island Sound	Hommocks Road, approximately 600 feet southeast of intersection with Boston Post Road.	*14	*13
			At Satans Toe	*14	*19
			At Premium Point	*14	*18

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	*Depth in feet above ground *Elevation in feet (NGVD) Existing	Modified
Maps available for inspection at the Town Center, 740 West Boston Post Road, Mamaroneck, New York.					
Send comments to The Honorable Dolores A. Batalis, Supervisor of the Town of Mamaroneck, Westchester County, 740 West Boston Post Road, Mamaroneck, New York 10543.					
North Carolina	City of Hamlet, Richmond County.	South Prong Falling Creek	About 600 feet downstream of U.S. Route 74.	None	*259
			Just downstream of Richmond College Lake Dam.	None	*264
Maps available for inspection at the City Administrator's Office, City Hall, 201 Main Street, Hamlet, North Carolina.					
Send comments to The Honorable Thomas Smart, Mayor, City of Hamlet, City Hall, P.O. Box 1229, Hamlet, North Carolina 28345.					
Ohio	City of Greenville, Darke County.	Greenville Creek	About 1,425 feet downstream of U.S. Route 127.	None	*1,010
			About 550 feet upstream of abandoned railroad.	None	*1,021
Maps available for inspection at the Municipal Building, 100 Public Square, Greenville, Ohio.					
Send comments to the Honorable Jack Harless, Mayor, City of Greenville, Municipal Building, 100 Public Square, Greenville, Ohio 45331.					
Tennessee	City of Chattanooga, Hamilton County.	Ninemile Branch	About 0.5 mile downstream of Old Dayton Pike.	None	*684
			About 1.9 miles upstream of Old Dayton Pike.	None	*764
		Friar Branch	At mouth	None	*673
			About 1.3 miles upstream of Silverdale Road.	None	*806
		Black Creek	At mouth	None	*655
			About 0.8 mile upstream of U.S. Route 11	None	*684
		Mackey Branch	At mouth	None	*690
			Just upstream of Shallowford Road	None	*752
		Ryall Springs Branch	At mouth	None	*690
			Just upstream of Morris Hill Road	None	*742
Maps available for inspection at the Chattanooga/Hamilton County Regional Planning Commission, City Hall Annex, 100 East 11th Street, Chattanooga, Tennessee.					
Send comments to the Honorable Gene Roberts, Mayor, City of Chattanooga, City Hall, East 11th Street, Chattanooga, Tennessee 37402.					
Tennessee	Unincorporated areas of Hamilton County.	Hurricane Creek	About 1,400 feet downstream of confluence of Hurricane Creek Tributary.	None	*737
			At confluence of Johnson Branch	None	*825
		Johnson Branch	At mouth	None	*825
			Just downstream of East Brainerd Road	None	*851
		Possum Creek	At mouth	*686	*687
			About 1.3 miles upstream of Back Valley Road.	None	*851
		Ryall Springs Branch	About 500 feet downstream of Private Drive	None	*743
			About 1,300 feet upstream of Royal Shadows Drive.	None	*851
		Savannah Creek	At mouth	*686	*687
			Just downstream of Smith Road	None	*747
		Ninemile Branch	At mouth	None	*676
			About 1,050 feet downstream of Old Dayton Pike.	None	*691
		North Chickamauga Creek	Just upstream of Lower Mill Road	None	*670
			About 2.0 miles upstream of Thrasher Pike	None	*753
		Pitts Branch	At mouth	None	*676
			Just upstream of Boy Scout Road	None	*676
		Mackey Branch	About 1,300 feet downstream of Shallowmeade Lane.	None	*752
			About 0.4 mile upstream of Hickory Ridge Drive.	None	*811
		Hurricane Creek Tributary	At mouth	None	*741
			Just downstream of Ringgold Road	None	*815
		Wolftever Creek	At mouth	*686	*687
			Just downstream of McDonald Road	None	*807
		Little Wolftever Creek	At mouth	*751	*751
			Just downstream of White Oak Valley Road	None	*819
		Falling Water Creek	At mouth	*675	*676
			Abut 2,050 feet above unnamed road	None	*805
Maps available for inspection at the Chattanooga/Hamilton County Regional Planning Commission, City Hall Annex, 100 East 11th Street, Chattanooga, Tennessee.					
Send comments to the Honorable Dalton Roberts, County Executive, Hamilton County, 208 Hamilton County Courthouse, Chattanooga, Tennessee 37402.					
Texas	San Marcos, City, Hays and Caldwell Counties.	San Marcos River	1.4 miles downstream of downstream corporate limits.	None	*574
			At confluence of Sink Creek at Spring Lake	*586	*579

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	*Depth in feet above ground *Elevation in feet (NGVD) Existing	Modified
		Sink Creek	At confluence with San Marcos River at Spring Lake.	*586	*579
			Approximately 630 feet upstream of corporate limits.	*591	*587
		Purgatory Creek	At confluence with San Marcos River	*580	*574
			At upstream corporate limits	None	*607
		Willow Springs Creek	At confluence with San Marcos River	None	*574
			Approximately 170 feet upstream of corporate limits.	None	*638
		Stream CC-1	At downstream corporate limits	None	*605
			Approximately 1,500 feet upstream of Interstate Route 35.	None	*640
		Blanco River	At downstream corporate limits	586	*584
			Approximately 1,340 feet upstream of Interstate Route 35.	None	*612
		Bypass Creek	At downstream corporate limits	583	*574
			Approximately 0.8 mile upstream of corporate limits.	None	*600
		Bypass Creek, Tributary 1	For entire length within the community	None	*578
		Bypass Creek, Tributary 2	At confluence with Bypass Creek	None	*579
			At upstream corporate limits	None	*580
		Purgatory Creek, Diversion 1	At confluence with Purgatory Creek	None	*584
			At divergence from Purgatory Creek	None	*605
Maps available for inspection at the City Hall, 630 East Hopkins, San Mrcos, Texas.					
Send comments to the Honorable Kathy Morris, Mayor of the City of San Marcos, Hays and Caldwell Counties, 630 East Hopkins, San Marcos, Texas 78666.					
Washington	City of Auburn, King County	Green River (with levees)	Approximately 0.1 mile downstream of N.E. corporate limits.	None	*49
			Approximately 100 feet upstream of pedestrian bridge.	None	*56
			Approximately 0.5 mile upstream of 8th Street, N.E.	None	*65
		Green River (without levees)	Approximately 0.35 mile upstream of Green Valley Road.	*87	*87
			Approximately 0.94 mile upstream of Green Valley Road.	*92	*92
		Mill Creek (Auburn)	Approximately 100 feet upstream of State Highway 167.	*42	42
			Approximately 300 feet upstream of 29th Street, N.W.	*50	*48
			Approximately 1,200 feet downstream of West Main Street.	*59	*60
			Approximately 100 feet upstream of State Highway 18.	*69	*66
			At State Highway 167	*69	*69
		Areas of ponding	Between 35th and 37th Streets, N.E., approximately 2,000 feet east of East Valley Highway.	None	*52
			Approximately 300 feet east of the end of 37th Street, N.E.	None	*52
			On the east side of Green River Road, approximately 1,000 feet east of the end of 37th Street, N.E.	None	*52
			On the east side of Green River Road, approximately 1,300 feet east of the end of 30th Street, N.E.	None	*52
			Area between Auburn-Black Diamond Road and State Highway 18, approximately 3,500 feet east of Burlington Northern Railroad crossing of Auburn-Black Diamond Road.	None	*57
Maps are available for inspection at City Hall, 25 West Main Street, Auburn, Washington 98001.					
Send comments to the Honorable Robert Roegner, Mayor, City of Auburn, 25 West Main Street, Auburn, Washington 98001.					
Washington	City of Bellevue, King County.	Lake Sammamish	Approximately 450 feet due east of intersection of West Lake Sammamish Parkway N.E. and Rosemont Place N.W.	*34	*33
			Approximately 550 feet due east of intersection of West Lake Sammamish Parkway S.E. and N.E. 2nd Street.	*34	*33

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PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
Maps are available for review at City Hall, 11511 Main Street, Bellevue, Washington.					
Send comments to the Honorable Nan Campbell, Mayor, City of Bellevue, P.O. Box 90012, Bellevue, Washington 98009-9012.					
Washington	City of Carnation, King County.	Tolt River	Approximately 50 feet upstream of the C.M.S. and P. Railroad.	None	*87
			Approximately 2,550 feet upstream of the C.M.S. and P. Railroad.	None	*102
Maps are available for review at City Hall, 4621 Tolt Avenue, Carnation, Washington.					
Send comments to the Honorable Alan Morris, Mayor, City of Carnation, 4621 Tolt Avenue, Carnation, Washington 98014.					
Washington	City of Kent, King County	Mill Creek (Kent)	Just upstream of South 228th Street	*33	*31
			At Private Road (Bridge)	*36	*36
			Just upstream of East Titus Street	*45	*41
			Approximately 850 feet upstream of East Titus Street.	*53	None
		Mill Creek (Auburn)	At the confluence with Green River	*42	*42
			At West Valley Highway South	*42	*42
		Green River (without levees)	Approximately 1,050 feet southwest of intersection of Andover Park West with C Drive.	*30	*29
			Approximately 1,000 feet northwest of intersection of Kent-Des Moines Road with Frager Road.	*38	*36
			Approximately 600 feet north of the confluence of Mill Creek (Auburn).	*42	*41
			Approximately 1,000 feet north of south 259th Street, between Central Avenue and Burlington Northern Railroad.	None	*43
		Green River (with levees)	Approximately 3,865 feet upstream from Bike Trail Bridge along the Green River, at end of South 194th Street.	*30	*29
			Approximately 4,340 feet downstream of South 212th Street.	*32	*31
			Approximately 2,980 feet downstream of South 212th Street.	*33	*32
			Just upstream of the confluence with Midway Creek.	*36	*36
			At State Route 516	*39	*39
			Just downstream of Chicago, Milwaukee, St. Paul, and Pacific Railroad.	*42	*42
			Just upstream of Burlington Northern Railroad.	*44	*44
			Just west of intersection of Green River Road and 94th Place South.	*47	*47
Maps are available for review at City Hall, 220 Fourth Avenue South, Kent, Washington.					
Send comments to the Honorable Dan Kelleher, Mayor, City of Kent, 220 Fourth Avenue, South, Kent, Washington 93032.					
Washington	King County, unincorporated areas.	Raging River	At Interstate Highway 90	None	*426
			Approximately 120 feet upstream from the confluence with Lake Creek.	None	*542
			Approximately 1,900 feet upstream of Upper Preston Road SE.	None	*672
		Green River (without levees)	Approximately 1,050 feet downstream of Pacific Highway, State Route 99.	*9	*9
			Just downstream of Interstate Route 5	14	13
			Approximately 3,430 feet upstream of 56th Avenue South.	17	17
			Approximately 1,700 feet north of the intersection of South 196th Street and Russell Road.	None	*29
			Approximately 1,300 feet southwest of the intersection of Frager Road and State Route 516.	*45	*39
			Approximately 2,300 feet west of the intersection of South 262nd Street and South 68th Street.	*45	*41
			Approximately 800 feet north of the intersection of South 79th Avenue and South 266th Street.	None	*43
			Approximately 1,000 feet east of the intersection of 14th Street NE. and O Street NE.	*60	*61
			Approximately 900 feet downstream of State Route 18.	*72	*71

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
			Approximately 1,800 feet upstream of Auburn Black Diamond Road.	*76	*77
			Approximately 1,600 feet upstream of Green Valley Road.	*86	*87
			Approximately 300 feet upstream of confluence with Newaukum Creek.	*155	*155
			Just downstream of Flaming Geyser Bridge	*196	*197
		Green River (with levees)	Approximately 7,200 feet upstream from bike trail bridge.	*31	*30
			Approximately 3,000 feet downstream of South 212th Street.	*32	*32
			At confluence of Mullen Slough	*40	*38
			Approximately 600 feet downstream of West Valley Highway.	*41	*41
			At Chicago, Milwaukee, St. Paul and Pacific Railroad.	*43	*42
			Approximately 750 feet downstream of Burlington Northern Railroad.	*44	*44
			Approximately 4,200 feet upstream of East Valley Highway.	*46	*46
			Approximately 5,600 feet downstream from pedestrian bridge.	*52	*52
			Approximately 500 feet upstream from pedestrian bridge.	*56	*56
			At State Route 18	*72	*74
		Mill Creek	Approximately 100 feet upstream of West Valley Highway/South 68th Street.	*45	*42
			At South 259th Street	*45	*42
			Approximately 300 feet west of the intersection of West Valley Highway and South 285th Street.	*45	*42
			Approximately 700 feet downstream of State Highway 167.	*45	*42
		Big Soos Creek	Approximately 200 feet downstream of the Burlington Northern Railroad.	None	*171
			Approximately 100 feet upstream of the confluence with Jenkins Creek.	None	*273
			Approximately 325 feet downstream of 256th Street SE.	None	*324
			Approximately 250 feet downstream of 208th Street SE.	None	*355
			At 162nd Street SE	None	*380
			Approximately 1,150 feet upstream of 122nd Place SE.	None	*397
		Swamp Creek	Approximately 1,070 feet upstream of the confluence of Sammamish River.	None	*17
			Just upstream of 73rd Avenue NE	None	*44
			Approximately 100 feet downstream of 204th Street NE.	None	*82
		North Creek	At the confluence with Sammamish River	None	*23
			Approximately 150 feet downstream of Interstate Highway 405.	None	*26
			Approximately 200 feet upstream of Interstate Highway 405.	None	*27
			Approximately 475 feet upstream of Interstate Highway 405.	None	*28
		Little Bear Creek	Just upstream of the confluence with Sammamish River.	None	*24
			Just downstream of State Route 522 Northbound.	None	*74
			Approximately 3,100 feet upstream of 195th Street NE.	None	*111
		Bear Creek	At confluence with Sammamish River	None	*32
			Approximately 1,050 feet upstream of the confluence with Sammamish River.	None	*32
			Approximately 1,650 feet upstream of the confluence with Sammamish River.	None	*34
			Approximately 1,800 feet downstream of the Burlington Northern Railroad Bridge.	None	*35
			Approximately 1,500 feet downstream of the Burlington Northern Railroad Bridge (at corporate limits for Redmond).	None	*36
			Approximately 100 feet upstream of Avondale Road.	None	*91
			Just downstream of 148th Street NE	None	*165

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD) Existing	Modified
			Approximately 3,550 feet upstream of a private road off Woodinville-Duvall Road.	None	*256
		Issaquah Creek	Approximately 175 feet upstream of May Valley Road SE.	None	*226
			Just downstream of Cedar Grove Road	None	*293
			Approximately 60 feet downstream of the confluence with Carey Creek and Holder Creek.	None	*396
		West Fork Issaquah Creek	Approximately 100 feet downstream of 229th Drive SE.	None	*232
			Approximately 75 feet downstream of 217th Street SE.	None	*314
			Approximately 150 feet downstream of 129th Way SE.	None	*325
		Holder Creek	At the confluence with Carey Creek and Issaquah Creek.	None	*396
			Approximately 3,000 feet upstream of the confluence with Carey Creek and Issaquah Creek.	None	*444
			Approximately 610 feet upstream of State Highway 18 Access Road.	None	*483
		May Creek	At Coal Creek Parkway	None	*285
			Just downstream of 148th Avenue SE	None	*310
			Just downstream of Renton-Issaquah Road SE.	None	*325
			Approximately 150 feet downstream of 109th Avenue SE.	None	*341
		May Creek Tributary	Approximately 300 feet upstream from the confluence with May Creek.	None	*328
			Just upstream of 168th Avenue SE	None	*329
		Toll River	Approximately 50 feet upstream of the C.M.S. and P. Railroad.	None	*87
			Approximately 5,300 feet upstream of the C.M.S. and P. Railroad.	None	*120
			Approximately 8,000 feet upstream of the C.M.S. and P. Railroad.	None	*141
			Approximately 17,480 feet upstream of the C.M.S. and P. Railroad.	None	*196
			Approximately 29,000 feet upstream of the C.M.S. and P. Railroad.	None	*275

Maps are available for inspection at the Building and Land Development Division, 3600 136th Place S.E., Bellevue, Washington 98006.

Send comments to the Honorable Timothy Hill, King County Executive, 400 King County Courthouse, 516 3rd Avenue, Seattle, Washington 98104.

Washington	City of Redmond, King County.	Bear Creek	Approximately 1,500 feet downstream of Burlington Northern Railroad Bridge (at corporate limits).	None	*36
			Downstream side of Burlington Northern Railroad Bridge.	None	*39
			Upstream side of Burlington Northern Railroad Bridge.	None	*40
			Approximately 100 feet upstream of State Highway 202.	None	*42
		Lake Sammamish	Approximately 1,100 feet due east of intersection of West Lake Sammamish Parkway, NE., and Redmond-Bellevue Road.	*32	*33
			Approximately 325 feet east of intersection of West Lake Sammamish Parkway, NE., and NE. 24th Street.	*32	*33

Maps are available for review at City Hall, 16670 N.E. 85th Street, Redmond, Washington.

Send comments to The Honorable Dorsen Marchione, Mayor, City of Redmond, City Hall, 15670 N.E. 85th Street, Redmond, Washington 98052-3584 Q03

Washington	City of Renton, King County.	Green River (without levees)	Approximately 1,240 feet south along Union Pacific Railroad from confluence of Black River on the west side of the tracks.	*19	*20
		Springbrook Creek	At the confluence with Black River	*15	*15
			At Southwest 16th Street	*16	*16
		Cedar River	Approximately 200 feet upstream of North Boeing Bridge.	*15	*15
			Just downstream of South Boeing Bridge	*22	*23
			Approximately 50 feet downstream of Houser Way North.	*32	*32
			Approximately 2,340 feet upstream of Interstate 405.	*40	*40
		Rolling Hills Creek	Just south of SW Grady Way, approximately 400 feet east of Hardie Avenue SW.	None	*24

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD) Existing	Modified
			Along South Renton Village Place, approximately 1,500 feet west of Talbot Road South.	None	*24

Maps are available for inspection at City Hall, 200 Mill Avenue, South Renton, Washington.

Send comments to the Honorable Earl Clymer, Mayor, City of Renton, 200 Mill Avenue South, Renton, Washington 98055.

Washington	City of Seattle, King County	Thornton Creek	Approximately 120 feet downstream of footbridge.	None	*15
			Approximately 40 feet upstream of Sand Point Way NE.	None	*23
			At NE 104th Street	None	*38
			Approximately 50 feet downstream of pedestrian walkway.	None	*49
		North Fork Thornton Creek	Approximately 225 feet upstream of pedestrian walkway.	None	*50
			Just downstream of 35th Avenue NE	None	*85
			Just upstream of Lake City Way NE	None	*130
			Approximately 40 feet upstream of NE. 125th Street.	None	*178
			Just downstream of 19th Avenue NE	None	*211
			Approximately 60 feet upstream of 10th Avenue NE.	None	*254
		South Fork Thornton Creek	Approximately 20 feet upstream of the confluence with Thornton Creek.	None	*50
			Just upstream of Lake City Way NE	None	*122
			Just downstream of 15th Avenue NE	None	*180
			Approximately 40 feet downstream of 5th Avenue NE.	None	*241
		Longfellow Creek	Approximately 20 feet upstream of SW. Brandon Street.	None	*117
			Approximately 50 feet downstream of SW. Myrtle Street.	None	*166
			Approximately 1,845 feet upstream of SW. Holden Street.	None	*253
		Area of Shallow Flooding	Approximately 350 feet north and 100 feet east of the intersection of N. 125th Street and Ashworth Avenue North.	None	*#3

Maps are available for inspection at City Hall, Department of Construction and Land Use, 500 4th Avenue, Seattle, Washington 98104.

Send comments to the Honorable Charles Royer, Mayor, City of Seattle, 600 4th Avenue Seattle, Washington 98104.

Washington	City of Tukwila, King County	Green River (Without Levees)	Approximately 4,382 feet downstream of Interstate Route 5.	*12	*11
			Approximately 2,300 feet downstream of the foot bridge.	*19	*18
			At the confluence of the Black River	*19	*18
			Approximately 1,500 feet west of the intersection of Treck Drive with Andover Park East.	*23	*25
			At the intersection of South 180th Street and Andover Park East.	None	*27
			At the intersection of South Center Parkway and C Drive.	None	*26
		Green River (With Levees)	At the confluence with Black River	*19	*19
			Just upstream of Strander Boulevard	*25	*24
			At the corporate limits between the City of Tukwila with King County and the City of Kent.	*30	*29

Maps are available for inspection at City Hall, 6200 Southcenter Boulevard, Tukwila, Washington 98188.

Send comments to the Honorable Gary L. Van Dusen, Mayor, City of Tukwila, 6200 Southcenter Boulevard, Tukwila, Washington 98188.

West Virginia	Camden-on-Gauley, Town, Webster County.	Gauley River	At downstream corporate limits	None	*2,027
			At upstream corporate limits	None	*2,029

Maps available for inspection at the Mayor's Office, Main Street, Camden-on-Gauley, West Virginia.

Send comments to the Honorable Hazel Queener, Acting Mayor of the Town of Camden-on-Gauley, Webster County, Route 1, Box 136, Camden-on-Gauley, West Virginia 26208.

West Virginia	Durbin, Town, Pocahontas County.	West Fork Greenbrier River	At confluence of Greenbrier River	None	*2,713
			Approximately 220 feet downstream of U.S. Route 250.	None	*2,747
		Greenbrier River	Approximately 350 feet downstream of corporate limits.	None	*2,706

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	# Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
		East Fork Greenbrier River	Approximately 100 feet downstream of confluence of West Fork Greenbrier River.	None	*2,712
			Approximately 100 feet above confluence with Greenbrier River.	None	*2,713
			Approximately 400 feet upstream of corporate limits.	None	*2,722

Maps available for inspection at the Mayor's Office, Main Street, Durbin, West Virginia.

Send comments to the Honorable John Bosley, Mayor of the Town of Durbin, Pocahontas County, P.O. Box 137, Durbin, West Virginia 26264.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

Issued: January 9, 1989.

[FR Doc. 89-1081 Filed 1-18-89; 8:45 am]

BILLING CODE 6718-03-M

DEPARTMENT OF DEFENSE

48 CFR Part 235

Department of Defense Federal Acquisition Regulation Supplement; Research and Development Sources

AGENCY: Department of Defense (DOD)

ACTION: Proposed rule and request for comments.

SUMMARY: The Defense Acquisition Regulatory Council is considering revisions to DFARS 235.004, DD Form 1630 and Supplement No. 4. DD Form 1630 and Supplement No. 4, which provides instructions on completing the Form, would be deleted. DFARS 235.004 would be amended so that SF 129 would be used in lieu of DD Form 1630.

DATE: Comments must be received by the DAR Council at the address shown below on or before February 21, 1989 to be considered in developing a final rule.

ADDRESS: Interested parties should submit written comments to: Defense Acquisition Regulatory Council, ATTN: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, ODASD(P)/DARS, c/o OASD(P&L) (M&RS), Room 3D139, The Pentagon, Washington, DC 20301-3062. Please cite DAR Case 88-90 in all correspondence related to this subject.

FOR FURTHER INFORMATION CONTACT: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, (202) 697-7266.

SUPPLEMENTARY INFORMATION:

A. Background

DFARS Supplement No. 4 prescribes the use of the DD Form 1630 in obtaining supplemental information from contractors who have expressed a desire to be placed on an R&D bidder's mailing list. This form is approximately 75 pages long. Indications are that the R&D community (industry and government) is not using the form or the information on the form. These revisions would delete the DD Form 1630 and Supplement No. 4, and replace them with the SF 129 which is only two pages in length, including the instructions.

B. Regulatory Flexibility Act

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq) because indications are that most R&D entities are not using the DD Form 1630. An initial Regulatory Flexibility Analysis has therefore not been performed. Comments are invited from small businesses and other interested parties.

Comments from interested parties concerning the affected DFARS Subpart will also be considered in accordance with section 610 of the Act. Such comments must be sumbitted separately. Please cite DAR Case 88-610D in the correspondence.

C. Paperwork Reduction Act

When finalized, this proposed change will reduce the hours for OMB Control Number 0704-0215 to zero and the OMB Control Number will be discontinued.

List of Subjects in 48 CFR Part 235

Government procurement.

Charles W. Lloyd,

Executive Secretary, Defense Acquisition Regulatory Council.

Therefore, it is proposed that 48 CFR Part 235 be amended as follows:

PART 235—RESEARCH AND DEVELOPMENT CONTRACTING

1. The authority citation for 48 CFR Part 235 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DOD Directive 5000.35, and DOD FAR Supplement 201.301.

2. Section 235.004 is amended by revising paragraph (a) and by adding paragraph (S-70) to read as follows:

235.004 Publicizing requirements and expending research and development sources.

(a) In addition to the requirements of FAR 35.004(a), where the contracting mission warrants it, purchasing activities will use the SF 129 to establish and maintain Research and Development Bidders Mailing Lists.

* * * * *

(S-70) Solicitation Mailing Lists.

(1) Organizations interested in being solicited for research and development procurements will submit applications on SF 129. Such application may be submitted directly to the Department of Defense agencies, activities and installations engaged in the procurement of research and development in scientific and technological fields in which the applicant possesses demonstrable capabilities or actual technical competence.

(2) Annual Reports or Financial Statements may be submitted with the SF 129. Any additional information, such as organizational brochures, folders, flyers, and pictures, should not be provided unless requested by the goverment.

(3) To assure retention on research and development solicitation mailing lists, prospective contractors should update information submitted in accordance with this section at least once a year.

[FR Doc. 89-1141 Filed 1-18-89; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 575

[Docket No. 25; Notice 60]

RIN # 2127-AB21

Consumer Information Regulations; Uniform Tire Quality Grading Standards

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Uniform Tire Quality Grading Standards (UTQGS) require that manufacturers and brand name owners of passenger car tires provide to consumers information about the relative performance of a tire in terms of treadwear, traction, and temperature resistance. This notice of proposed rulemaking (NPRM) offers four proposals that the agency believes would reduce the variability and simplify the calculations related to treadwear grades. First, the wheel alignment of the test vehicle would be set at the center of the permissible range specified by the manufacturer. This would eliminate a potential source of variability. Second, the agency would change the rotation guidelines to require that each tire be driven on each wheel position on each vehicle throughout the convoy. Third, the agency would simplify the treadwear grading method so that tire tread depth measurements are taken only after the break-in period and at the conclusion of the test. Fourth, the agency would replace the current 10 unit interval grade assignment with a 20 interval grade assignment.

DATES: Comment closing date: Comments on this notice must be received on or before March 20, 1989.

Proposed effective date: If a final rule adopts these proposals, these amendments would become effective 30 days after the publication of the final rule; except the proposal to change the grading interval would become effective one year after the publication of the final rule.

ADDRESS: Comments should refer to the docket and notice number set forth in the heading of this notice and be submitted to: Docket Section, NHTSA, Room 5109, 400 Seventh Street SW., Washington DC 20590. Docket hours are 8:00 a.m. to 4:00 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Nelson Gordy, Office of Market Incentives, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590. Telephone: (202) 366-4797.

SUPPLEMENTARY INFORMATION: Section 203 of the National Traffic and Motor Vehicle Safety Act ("Safety Act") requires that the Secretary of Transportation prescribe a "uniform quality grading system for motor vehicle tires." As explained in that section, the purpose of this system is to "assist the consumer to make an informed choice in the purchase of motor vehicle tires." The agency has specified these requirements in the Uniform Tire Quality Grading Standards (UTQGS) regulation (49 CFR 575.104), which requires that manufacturers and brand name owners of passenger car tires provide consumers with information about the relative performance of a tire in terms of treadwear, traction, and temperature resistance.

This notice of proposed rulemaking (NPRM) focuses on the treadwear grades required by § 575.104(e). The primary purpose of the treadwear grades is to aid consumers in the selection of new tires by informing them of the performance expectations of tread life for each tire offered for sale. This allows the fire purchaser to compare the relative tread life of passenger car tires. Although these treadwear grades are not intended to be used to predict the actual mileage that a particular tire will achieve, these treadwear grades must be reasonably accurate to help consumers predict the tread life.

The treadwear grades are based on a tire's projected mileage as tested on a single, predetermined course laid out on the public roads near San Angelo, Texas (see Figure 3 of § 575.104). A tire's projected mileage is the distance that it is expected to travel before it wears down to its treadwear indicators. Each treadwear test requires the convoy to travel to total of 6,400 miles. Under the current regulations, a tire's tread depth is measured every 800 miles (§ 575.104(e)(2)(viii)). Based upon these measurements, the tire's projected mileage is calculated. A tire's treadwear grade is expressed as the percentage which its projected mileage represents relative to 30,000 miles. For example, a tire with a projected mileage of 24,000 miles would be graded "80", (i.e., 24,000 is 80 percent of 30,000 miles), while one with a projected mileage of 39,000 would be graded "130," (i.e., 39,000 is 130 percent of 30,000).

Because the measured treadwear upon which the grades are based occurs under outdoor road conditions, any comparison between candidate tire performances must involve a standardization of results by correction for the particular environmental conditions of each test. For instance, were rates are greater during the summer because rubber wears faster in hotter weather. Accordingly, the treadwear performance of a candidate tire is measured by comparing its wear rate with that of a "course monitoring tire" (CMT) run in the same test conditions. The CMT's are selected from a single production lot manufactured at a single plant, under more stringent quality control measures (set by contract with NHTSA) than would otherwise apply to production tires. The treadwear of the CMT reflects changes in course severity due to factors such as road surface wear and environmental conditions, and is used to adjust the measured treadwear of the candidate tire. The resulting adjusted candidate tire treadwear is used to calculate the treadwear grade the tire manufacturer will assign to the candidate tire.

Under the current regulations, each test convoy consists of one rear wheel drive passenger car with four CMTs and no more than three other real wheel drive passenger cars with the candidate tires of the same construction type. 49 CFR 575.104(e)(1)-(2). Candidate tires on the same axle must be of the identical manufacturer and line, but front tires on a test vehicle may differ from rear tires as long as all four are of the same size designation. After a two circuit (800 mile) break-in period, the initial tread depth of each tire is determined by averaging the depth measures in each groove at six equally spaced points. After each 800 miles of the test, each tire's tread depth is measured again in the same manner, the tires are rotated on the car, the order of the cars in the convoy is changed, and the wheel alignments may be readjusted if necessary to come within the ranges of the vehicles manufacture's specifications. At the end of the 16 circuit test, each tire's overall wear rate is calculated from the nine measured tread depths and their corresponding mileage after break-in by using the regression line technique in Appendix C of § 575.104.

Section 575.104(d)(1) requires that the treadwear grading information be disseminated in the following ways. First, the grade must be permanently molded into or onto the sidewall. Second, the grade and an explanation of the treadwear grading process, as shown in Figure 2 of § 574.104 must appear on a paper label affixed to the tire tread. Third, the tire grade and an explanation of the performance requirements must be made available to prospective first purchasers of

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replacement tires and new motor vehicles.

NHTSA has long been concerned with the amount of variability in the treadwear grading tests. This variability in treadwear grades reduces the effectiveness of the UTQGS by providing to tire purchasers imprecise and possibly even misleading information about the estimated relative treadlife of tires. To the extent that the variability in treadwear grades is reduced, the treadwear grades will provide consumers with more accurate information. Accordingly, the agency has been examining possible means to reduce the variability of the treadwear grades.

In an attempt to reduce this variability associated with the treadwear grading tests, the agency has undertaken a number of studies related to treadwear grading. (See Docket 00-25: "Study of Causes of Variability in Wear Rate," F.C. Brenner, Docket 00-25-GR-255, September 1983; "An Evaluation of the Effects of Load and Pressure on Tire Treadwear," Southwest Research Institute, Docket 00-25-GR250, DOT HS-806 456, June 1983; "An Investigation of a Low-Variability Tire Treadwear Test Procedure and Treadwear Adjustment for Ambient Temperature," Southwest Research Institute, Docket 00-25-GR-260, DOT HS-806-710, January 1985; "The Effect of Vehicle Variables on Tire Grading," Texas Test Fleet, Inc. Docket 00-25-GR-257, March 15, 1984; "Statistical Analysis of Tire Treadwear Data, Transportation System Center, Cambridge, MA Docket 00-25-GR-261, DOT-HS-806-743, May 1985; "Assessment of Front-Wheel Drive and Multipurpose Passenger Vehicles/ Trucks for UTQGS," Smiths Tire and Auto Testing, Inc., Docket 00-25-N50-10 thru 18, April 4, 1986; "Statistical Analysis of UTQGS Data," Buckly, Docket 00-25-GR-266, July 11, 1986; "Analysis of Course Monitoring Tires on Vehicles of Different Makes," NHTSA, Docket 00-25-GR-269, June 21, 1988; "Treadwear Grade Comparison Between Standard and Simplified Methods," NHTSA, Docket 00-25-GR-270, June 21, 1988) These studies indicated that significant differences in treadwear were caused by such factors as tire pressure, loading, wheel alignment and suspension, vehicle make and model, the impact of different driver characteristics, tire rotation, front wheel as compared to rear wheel drive, and environmental factors such as temperature, wet miles, and season; and differences in drivers and instrumentation. The date from the Transportation System Center's study indicate that the use of CMT's lowered test variability by 50 percent and that there is a 95 percent probability that the measured grade for treadwear is within +/− 17 percent of the true grade.

SPECIFIC PROPOSALS TO IMPROVE TREADWEAR GRADING

A. Require Precise Wheel Alignment Specifications

NHTSA believes that requiring the wheel alignment of the test vehicle to be at the center of the manufacturer's specified setting would be one way to reduce the variability of the treadwear grades. Under the current regulation (§ 574.104(e)(2)(iv)), the UTQGS evaluators may follow the manufacturer's specifications which allow wheel alignment to vary by ⅛ of an inch. Under this proposal, the regulation would require the wheel to be aligned to the midpoint of the vehicle manufacturer's specifications for wheel alignment factors such as toe-in, caster, and camber. Toe-in is the degree to which the front wheels turn in so that their forward radii are closer together. Caster is the tilting of the steering axis either forward or backward from the vertical. Camber is the inward or outward tilting of the front wheels from the vertical. The regulations also require that the alignment is readjusted after each 800 miles.

A 1983 study by the Southwest Research Institute determined that the average wear rate for three convoys varied by as much as 14 percent, due to a difference of ⅛ inch between permissible settings. ("An Evaluation of the Effects of Load and Pressure on Tire Treadwear," *SRI*, Docket 00-25-GR-250, DOT HS-806, 456, June 1983). One convoy set its alignment at the manufacturer's specification, the second was set at the lower permissible limit, and the third was set at the upper permissible limit. This study indicates that treadwear variability could be reduced by specifying that the alignment be set at the center of the vehicle manufacturer's specification. Accordingly, this notice proposes to amend the UTQGS to require tires to be aligned to the center of the vehicles manufacturers' specifications.

B. Tire Rotation Among Convoy Vehicles

The agency also notes that there is some evidence that the variability in treadwear grades is caused in part by tires being tested on different vehicles. One agency study sought to quantify the effects of vehicle and driver factors on the treadwear grades for tires. ("Analysis of Course Monitoring Tires on Vehicles of Different Makes," NHTSA, Docket 00-25-GR-269, June 21, 1988.) For this study, identical CMTs were installed on 30 different vehicles. the CMTs remained on the vehicle on which they were installed, as currently specified in the UTQGS. After the vehicles were driven in accordance with the current UTQGS requirements, the evaluators calculated a 30 percent difference between the highest and lowest treadwear rates. Since the CMT's are as nearly identical as possible for mass- produced goods, this 30 percent difference is atributable to factors other than the qualities of the tires themselves.

The agency would be able to eliminate this source of variability in treadwear grades by amending the UTQGS to take account of these driver and vehicle factors that affect the measured treadwear rates. While the current regulations allow a convoy to contain "no more than four passenger cars," the proposed regulation would require a convoy to be composed of exactly four passenger cars. Accordingly, the agency is proposing to amend the UTQGS to require each tire in a convoy to occupy each of the four wheel positions on each of the four vehicles in a convoy for 400 miles. This would mean that each tire would be rotated 17 times during the 6,400 mile test. Initially, the tires would be rotated to the other three positions on the vehicle on which they begin the testing, in the forward "x" pattern, so that the tires run 400 miles at each wheel on that vehicle. The forward "x" pattern moves tires on the rear axle to the opposite side of the front axle, and tires on the front axle to the same side on the rear axle. After 1,600 miles, when the forward "x" pattern is completed on each vehicle, the four tires on each vehicle would be moved to the following vehicle in the convoy, the tires on the last vehicle would be moved to the first vehicle in the convoy, and the rotation pattern would be repeated, until each tire had been used at each wheel of every car in the convoy. Additionally, each tire would be visually inspected for tire anomalies after each rotation. If any tire indicates abnormal wear, tread separation, a bulging sidewall, or any other sign of probable failure, then that tire would be replaced. NHTSA has tentatively concluded that this proposed amendment would significantly reduce the variability in treadwear grades resulting from the test vehicles and test drivers.

C. Simplication of the treadwear grading procedure

In addition to the above proposed changes to reduce the variability of treadwear grades, NHTSA is also proposing to simplify the requirements for measuring treadwear depth. Under the current procedures, the evaluator must measure treadwear depth on all tries nine times during the 6,400 mile test. Accordingly, an evaluator using a four car convoy must make 4,320 measurements. This is calculated by multiplying four (cars in a convoy) times four (tires on each car) times five (grooves on each tire) times six (equally spaced points on each groove to be measured) times nine (measurements). After making these 4,320 measurements, the evaluator calculates the measured treadwear rate by making a regression analysis of tread depth versus mileage.

A study of data obtained from the Southwest Research Institute (SWRI) compared the treadwear grades calculated using the current procedures with the treadwear grades calculated using a simplified procedure. ("Treadwear Grade Comparison Between Standard and Simplified Methods," NHTSA, Docket 00-25-GR-270, June 21, 1988). Under this simplified procedure, the evaluator measures tread depth only twice, after the 800 mile break-in period and at the end of the 6,400 mile test. The difference in tread depth is then divided by the number of miles driven. In this study, the agency compared the treadwear grades assigned to a group of tires using this simplified method with the treadwear grades that would be assigned using the method currently specified in the UTQGS. From this comparision, it was concluded that the difference in the treadwear grades was not statistically different for five of the six groups of tires that were compared. For the sixth group, in which the variation in treadwear grades was statistically significant, the grade differences were all within the 10 percent round-off limit permitted in UTQGS. Since the grade differences in this case are within the 10 point round-off limit, they would be well within the 20 point limit proposed in this NPRM.

This notice proposes to adopt the simplified treadwear grading procedure evaluated by the agency. Under this proposal, tread depth measurements would be made only after the break-in period and at the end of the testing. This would reduce the total measurements from the current 4,320 to 900 measurements, calculated by multiplying four (cars in a convoy) times four (tires on each car) times five (grooves on each tire) times six (equally spaced points on each groove to be measured) times two (measurements). The agency believes that the measuring of tread depth at the point following the break-in period and at the end of the 6,400 mile course would provide sufficient data to determine treadwear because wear rates are esentially linear and information about the wear rates in between these points is not needed to establish the slope of tread wear. As mentioned earlier, an agency study determined that the treadwear grades obtained by the simplified grading method were not significantly different from the nine point method. Additionally, the calculation of tires' treadwear rates would be simplified. This would be accomplished by substituting a technique where one simply subtracts the average tread depth after the testing from the average tread depth after break-in, and dividing the difference by 6,400 (the number of miles the tires are driven) for the currently specified regression analysis.

D. Increase Treadwear Grade Interval from 10 to 20 Points

The final step in determining the treadwear grade to be assigned to tires is to express the projected mileage for a candidate tire as a percentage of 30,000 miles, rounded off to the next lowest ten percentage points. For example, a tire with a projected mileage of 21,000 miles would be graded 70, as would a tire with a projected mileage of 24,000 miles would be graded 80. Under this 10 unit scale, each single grade level inteval, (i.e., 80 vs. 70) represents a difference of 3,000 miles in projected tread life.

The current 10 unit scale was designed at a time when most tires were either bias or bias belted construction. Since tires of those constructions generally have projected mileages between 20,000 and 40,000 miles, the 3,000 mile difference in projected tread life for each grade interval represented between 7.5 and 15 percent of a tire's projected tread life. NHTSA determined that this difference was significant enough to provide meaningful information to tire purchasers.

However, the 10 unit scale may not provide consumers with meaningful information for radial tires, which now comprise approximately 88 percent of the new tire market. Radial tires usually have a projected tread life of approximately 60,000 miles. Thus, each grade interval represents only 5 percent of a typical radial tire's tread life. NHTSA is concerned that grade intervals that represent a difference of only 5 percent of a tire's tread life may not provide consumers with meaningful information.

To address this concern, this notice proposes to increase the grade interval from 10 to 20. With this increase, a grade interval difference would represent 10 percent of a typical radial tire's tread life. NHTSA has already concluded that a grade interval difference that represents 10 percent of a typical tire's tread life provides meaningful information to consumers, in the case of a 10 unit interval for bias and bias belted tires. Since most tires are now of radial construction, an increase in the grade interval to 20 will ensure that the treadwear grades provide consumers with meaningful information about the projected tread life of those radial tires. NHTSA notes that it proposed to increase the grade interval for these very reasons at 46 FR 10429, February 2, 1981.

The agency is proposing that this amendment, if adopted, would become effective one year after the final rule is published. As previously noted, all of the other changes proposed in this notice would become effective 30 days after publication of a final rule. The reason for this longer leadtime is that the tire manufacturers will need more time than 30 days to recompute the grade of some of their existing tire lines, print new labels and brochures with the changed grades, and change their molds to show the change on the sidewall of those tires.

Economic and Other Impacts

NHTSA has evaluated this proposal and determined that it is neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of the Department of Transportation regulatory policies and procedures. The agency believes that a full regulatory evaluation is not needed because the costs associated with the four proposals would have only minimal impacts. The agency believes that there would be no additional costs related to the first proposal because it merely entails changes to the current testing procedures. Although the second proposal would result in some additional labor costs and the initial cost related to obtaining CMTs, these costs would not be significant. The agency believes that the third proposal would result in a savings in labor costs. The agency further believes that if adequate lead time is provided to ensure that there are no additional printing costs, there would be no additional costs related to the fourth proposal because this requires only a change in grading practices.

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The agency has also reviewed this proposal in accordance with the Regulatory Flexibility Act. I hereby certify that this proposal, if adopted as a final rule, would not have a significant impact on a substantial number of small entities. The parties affected by these proposed changes would be tire manufacturers and brand name owners. Few if any, of the tire manufacturers are small entities, but some of the brand name owners may qualify as small entities. However, the economic impacts of these proposed changes would be minimal, as described above. Hence, any impacts on brand name owners and tire manufacturers would not be significant. Small organizations and small governmental entities may be affected by these proposed changes, as purchasers of new tires. Again, however, any economic impacts on these small entities would not be substantial.

The agency has also reviewed this proposal under the National Environmental Policy Act and determined that this proposal would not have a significant effect on the human environment, if it were adopted as a final rule.

This proposal has also been analyzed in accordance with the principles and criteria contained in Executive Order 12291, and NHTSA has determined that this proposal does not have significant federalism implications to warrant the preparation of a Federalism Assessment.

The Office of Management and Budget (OMB) has already approved NHTSA's requirements that treadwear grades be disseminated by being molded on the sidewall of tires, by paper labels, and by brochures, based on the current testing procedures (OMB # 2127–0519). However, this proposal would simplify the existing testing procedures and change the grade interval to be used when disseminating this information. These changes to the approved collection of information requirement have not yet been approved by OMB. Accordingly, the changed collection of information requirements will be submitted to OMB for its approval, pursuant to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Comments on the proposed changes to the collection of information requirement should be submitted to: Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503, Attention: Desk Officer for NHTSA. It is requested that comments sent to the OMB also be sent to the NHTSA rulemaking docket for this proposed action.

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accomplished by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR Part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after the date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for a new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 575

Consumer protection, Labeling, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, it is proposed that 49 CFR § 575.104, Uniform Tire Quality Grading Standards be amended as follows:

PART 575—CONSUMER INFORMATION REGULATIONS

1. The authority citation for Part 575 would continue to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1407, 1421, 1423; delegation of authority at 49 CFR 1.50.

§ 575.104 [Amended]

2. Section 575.104(d)(2)(i) would be revised to read as follows:

(d) * * *

(2) *Performance*—(i) *Treadwear.* Each tire shall be graded for treadwear performance with the word "TREADWEAR" following by a number of two or three digits representing the tire's grade for treadwear, expressed as a percentage of the NHTSA nominal treadwear value, when tested in accordance with the conditions and procedures specified in paragraph (e) of this section. Treadwear grades shall be at twenty point intervals (e.g., 120, 140).

* * * * *

3. Section 575.104(e) would be revised to read as follows:

(e) *Treadwear grading conditions and procedures*—(1) *Conditions.* (i) Tire treadwear performance is evaluated on a specific roadway course approximately 400 miles in length, which is established by the NHTSA both for its own compliance testing and for that of regulated persons. The course is designed to produce treadwear rates that are generally representative of those encountered in public use for tires of differing construction types. The course and driving procedures are described in Appendix A of this section.

(ii) Treadwear grades are evaluated by first measuring the performance of a candidate tire on the government test course, and then correcting the projected mileage obtained to account for environmental variations on the basis of the performance of the course monitoring tires run in the same convoy. The course monitoring tires are made available by the NHTSA at Goodfellow Air Force Base, San Angelo, Tex., for purchase by any person conducting tests at the test course.

(iii) In convoy tests, each vehicle in the same convoy, except for the lead vehicle, is throughout the test within human eye range of the vehicle immediately ahead of it.

(iv) A test convoy consist of four passenger cars, each having only rear-wheel drive.

(v) On each convoy vehicle, all tires are mounted on identical rims of design or measuring rim width specified for tires of that size in accordance with 49 CFR 571.109, S4.4.1 (a) or (b), or a rim

having a width within −0 to +.0.50 inches of the width listed.

(2) *Treadwear grading procedure.* (i) Equip a convoy with course monitoring tires by placing four course monitoring tires on one vehicle. On each other vehicle, place four candidate tires with identical size designations. On each axle, place tires that are identical with respect to manufacturer and line.

(ii) Inflate each candidate and each course monitoring tire to the applicable pressure specified in Table 1 of this section.

(iii) Load each vehicle so that the load on each course monitoring and candidate tire is 85 percent of the test load specified in § 575.104(h).

(iv) Adjust wheel alignment to the midpoint of the vehicle manufacturer's specifications.

(v) Subject candidate and course monitoring tires to "break-in" by running the tires in the convoy for two circuits of the test roadway (800 miles). At the end of the first circuit, rotate each vehicle's tires by moving each front tire to the same side of the rear axle and each rear tire to the opposite side of the front axle. Visually inspect each tire for a tire anomaly. A tire anomaly is any indication of abnormal wear, tread separation, bulging of the sidewall, or any indication of tire failure. Void the grading results from any tire with an anomaly. Replace any tire with an anomaly.

(vi) After break-in and at the conclusion of the test, allow the tires to cool to the inflation pressure specified in paragraph (e)(2)(ii) of this section or for 2 hours, whichever occurs first. Measure, to the nearest 0.001 inch, the tread depth of each candidate and each course monitoring tire, avoiding treadwear indicators, at six equally spaced points in each groove. For each tire compute the average of the measurements. Do not measure those shoulder grooves which are not provided with treadwear indicators.

(vii) Adjust wheel alignment to the midpoint of the manufacturer's specifications.

(viii) Drive the convoy on the test roadway for 6,400 miles.

(A) After each 400 miles, rotate each vehicle's tires by moving each front tire to the same side of the real axle and each rear tire to the opposite side of the front axle. Visually inspect each tire for treadwear anomalies.

(B) After each 800 miles, rotate the vehicles in the convoy by moving the last vehicle to the lead position. Do not rotate driver positions within the convoy. In terms of vehicle position, vehicle one shall become vehicle two, vehicle two shall become vehicle three, vehicle three shall become vehicle four, and vehicle four shall become vehicle one.

(C) After each 800 miles, adjust the wheel alignment to the midpoint of the vehicle manufacturer's specifications, if necessary.

(D) After each 1,600 miles, when the on-vehicle rotation has been executed four times in the forward x pattern to allow each tire to run 400 miles on each vehicle position, the complete set of four tires is moved to the following vehicle to repeat the rotation pattern. Tires on the last vehicle are moved to the lead vehicle.

(ix) Determine the projected mileage for each candidate tire as follows:

(A) For each course monitoring and candidate tire in the convoy, using the average tread depth measurements obtained in accordance with paragraph (e)(2)(vi) of this section and the corresponding mileages as data points, determine the slope (m) of the tire's wear in mils of tread depth per 1,000 miles by the following formula:

$$m = 1000\,\frac{(Yl - Yo)}{(Xl - Xo)}$$

where:
Yo = average tread depth after break-in, mils
Yl = average tread depth at 6,400 miles, mils
Xo = 0 miles (after break-in).
Xl = 6,400 miles of travel

This slope (m) will be negative in value. The tire's wear rate is defined as the slope (m) expressed in mils per 1000 miles.

(B) Average the wear rates of the four course monitoring tires as determined in accordance with paragraph (e)(2)(ix)(A) of this section.

(C) Determine the course severity adjustment factor by dividing the base wear rate for the course monitoring tires (see note below) by the average wear rate for the four course monitoring tires determined in accordance with paragraph (e)(2)(ix)(B) of this section.

Note: The base wear rates for the course monitoring tires will be furnished to the purchaser at the time of purchase.

(D) Determine the adjusted wear rate for each candidate tire by multiplying its wear rate determined in accordance with paragraph (e)(2)(ix)(A) of this section by the course severity adjustment factor determined in accordance with paragraph (e)(2)(ix)(C) of this section.

(E) Determine the projected mileage for each candidate tire using the following formula:

$$(Pm) = \text{Projected mileage} = \frac{-1000\,(Yo - 62)}{mc} + 800$$

where
Yo = average tread depth after break-in, mils
mc = the adjusted wear rate for the candidate tires as determined in accordance with paragraph (e)(2)(ix)(D) of this section.

(F) Compute the percentage (P) of the NHTSA nominal treadwear value for each candidate tire using the following formula: P = 100 Pm/30,000

Round off the percentage to the nearest lower 20 unit increment.

Appendix C to § 575.104 [Removed]

4. Appendix C of § 575.104 would be removed.

Issued on: January 13, 1989.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 89–1277 Filed 1–18–89; 8:45 am]

BILLING CODE 4910-59-M

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49 CFR Part 580

[Docket Number 87–09: Notice 5]

RIN: 2127–AC42

Odometer Disclosure Requirements

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the current provisions of the odometer disclosure regulation that require the transferor of a motor vehicle to disclose to his transferee, in writing, whether the odometer was altered, set back, or disconnected; whether it was altered for repair or replacement and set back to the reading before such service; or whether the odometer was repaired or replaced and set back to zero.

Specifically, this notice proposes to permit a transferor to choose whether or not to disclose information relating the

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repair, replacement, or disconnection of the vehicle's odometer. It would permit the transferor to use either an odometer disclosure statement containing two sets of certifications or an abbreviated disclosure form to disclose the mileage to his transferee. This change should help minimize the costs of the transition to the new disclosure forms.

DATE: Comments on this NPRM are due no later than January 30, 1989.

ADDRESS: Written comments should refer to the docket number of this notice and should be submitted to: Docket Section, Room 5109, Nassif Building, 400 Seventh Street SW., Washington, DC 20590. [Docket hours are 8:00 a.m. to 4:00 p.m.].

FOR FURTHER INFORMATION CONTACT: Judith Kaleta, Office of the Chief Counsel Room 5219, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590 (202–366–1834).

SUPPLEMENTARY INFORMATION: To implement the Truth in Mileage Act of 1986 and to close some loopholes in the Federal odometer laws, the National Highway Traffic Safety Administration (NHTSA) published a notice of proposed rulemaking (NPRM) on July 17, 1987. 52 FR 27028 (1987). The agency received numerous comments on the NPRM, representating the opinions of new and used car dealers, auto auctions, leasing companies, State motor vehicle administrators, and enforcement and consumer protection agencies. Each of the comments was considered and a final rule was published on August 5, 1988. 53 FR 29464 (1988).

A portion of the final rule, which will become effective on April 29, 1989, amends the form and content of the current odometer disclosure statement. Currently, a transferor is required to issue to his transferee an odometer disclosure statement containing two sets of certifications. In the first set of certifications, the transferor must certify whether or not the odometer reading reflects the actual mileage of the vehicle, or whether it reflects the mileage in excess of the designed mechanical limit of the odometer. In the second set of certifications, the transferor must disclose information as to whether the odometer was altered (repaired or replaced), set back, or disconnected. Alternatively, if the transferor discloses the mileage to his transferee on the certificate of title or other State document that evidences ownership of a vehicle, the transferor is not required to disclose whether the odometer was altered, set back, or disconnected. In view of the advantage of having a disclosure on the title, the agency permitted this shortened disclosure on documents issued by the State due to the practical limitations of space. *See*, 42 FR 38007 (1977); 44 FR 784 (1980).

Seeing no reason to differentiate between the disclosure on documents issued by the States and the separate disclosure statements, we proposed to eliminate the second set of certification requirements for transferors who issue an odometer disclosure statement that is neither on the title or on any other document issued by a State. 52 FR 27024 (1987). We received no comments on this proposal and it was adopted as proposed, thereby shortening the odometer disclosure statement. This rule will become effective on April 29, 1989.

The agency received a letter from the Virginia Independent Automobile Dealers Association (VIADA) concerning the use of a shortened odometer disclosure statement. VIADA requested that transferor be permitted to use the shortened odometer disclosure statement immediately, to minimize the cost burdens of the transition to the new form. VIADA asserts that if transferors were allowed to use the new forms sooner, the transition between the use of the current form with the second set of certifications and the new, shorter odometer disclosure statement would be less costly. VIADA claims that neither the association which provides forms to its members, nor printers and dealers, can accurately predict the number of odometer disclosure statements that will be needed between now and the April 29, 1989 effective date. In order to ensure an adequate supply, VIADA, its members, and other dealers will more than likely order more disclosure statements than necessary, resulting in unnecessary costs.

The agency agrees that prohibiting transferors from using the new, shorter odometer disclosure forms until April 29, 1989, could result in unnecessary costs. It was not NHTSA's intention to impose any additional costs on transferrors. Therefore, we are proposing to revise paragraph (d) of § 580.4 to read as follows: "In addition to the information provided under paragraphs (a), (b), and (c) of this section, the transferor *may* also certify * * *" information concerning the disconnection or service of the odometer. (Emphasis has been added to highlight the discretion given to the transferor). This would minimize any adverse economic impact associated with the change to an abbreviated odometer disclosure statement. This would also result in benefits to consumers and the enforcement community, because the new forms include additional disclosure information, i.e., printed names and a warning of odometer discrepancy.

There is a good cause for an effective date earlier than thirty days: minimizing the economic impacts of the final rule of August 1988 and gaining the investigative and consumer benefits of additional information on the new forms. Therefore, consistent with the Administrative Procedures Act, 5 U.S.C. 551 *et seq.*, we propose that this revision to paragraph (d) of § 580.4 be effective immediately upon publication of the final rule in the **Federal Register**. This amendment shall remain in effect until April 29, 1989. On April 29, 1989, the August 1988 final rule becomes effective and a new § 580.5 will amend the current § 580.4 as revised by this rulemaking action. However, as noted in the preamble to the August 1988 final rule, there is no prohibition against a seller providing information concerning the odometer reading in addition to the information required by the regulation. 53 FR 29470 (1988).

Federalism Assessment

I certify that this rule has been assessed in light of the principles, criteria, and requirements as outlined in Executive Order 12612. Because this proposed rule does not have federalism implications affecting the relationship between the national government and the States, no Federalism Assessment has been prepared.

Regulatory Impacts

A. Costs and Benefits to Dealers and Consumers

NHTSA has analyzed this rule and determined that it is neither "major" within the meaning of Executive Order 12291, nor "significant" within the meaning of the Department of Transportation regulatory policies and procedures. Because we estimate that the impacts of this proposal would be minimal, a regulatory evaluation has not been prepared. However NHTSA seeks comments from dealers and/or consumers on costs that they expect to incur.

B. Small Business Impacts

The agency has also considered the impacts of this rule in relation to the Regulatory Flexibility Act. I certify that this rule will not have a significant economic impact on a substantial number of small entities. Because this proposed rule gives transferors, both large and small businesses (dealers), discretion in determining whether to use a new, abbreviated odometer disclosure statement or the current form, the costs to these transferors will be minimized. Small businesses (dealers) will need to spend the same executing each form as will large businesses (dealers). It is not possible to minimize this burden. However, since these small entities will make fewer sales than large businesses, they will spend less time overall on these forms. Accordingly, no regulatory flexibility analysis has been prepared. However, the agency invites comments from small businesses on this issue.

C. Environmental Impacts

NHTSA has considered the environmental implications of this rule, in accordance with the National Environmental Policy Act, and determined that it will not significantly affect the human environment. Accordingly, an environmental impact statement has not been prepared.

D. Paperwork Reduction Act

This proposed rule would require that dealers, distributors, consumers, and other transferors disclose mileage information and is consistent with the NHTSA's final rule concerning odometer disclosure information that becomes effective April 29, 1989. These proposed requirements are considered to be information collection requirements as that term is defined by OMB in 5 CFR Part 1320 and have already been approved by the Office of Management and Budget (OMB) through June 30, 1990. (OMB #2127–0047).

Public Comments

Interested persons are invited to submit comments on the proposal. It is requested, but not required, that ten (10) copies be submitted. All comments must not exceed fifteen (15) pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the fifteen page limit. This limitation is intended to encourage commenters to detail their preliminary arguments in a concise fashion.

This notice provides for a comment period of ten days. We believe that the length of the comment period is justified for several reasons. First, transferors are currently permitted to use an abbreviated odometer disclosure statement if that statement is contained on the certificate of title to the vehicle or on other State documents evidencing ownership. Second, we issued a notice to eliminate the second set of certifications by a transferor and shorten the odometer disclosure in July 1987. No one commented on that proposal. Third, this new rule would be discretionary and would not impose any new burdens upon transferors. Fourth, expedited rulemaking action is necessary to minimize the burdens upon transferors. If the issuance of a final rule is delayed, transferors could incur unnecessary costs associated with purchasing forms that may not be needed.

All comments received before the close of business on the comment closing date listed above will be considered and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration will be considered as suggestions for future rulemaking action. The agency will continue to file relevant information as it becomes available. It is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments by the docket should enclsoe a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 580

Consumer protection, Motor vehicles, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR Part 580 would be amended as follows:

1. The authority citation for Part 580 continues to read as follows:

PART 580—[AMENDED]

Authority. Sec. 408(a), Motor Vehicle Information and Cost Savings Act, Pub. L. 92–513, 86 Stat. 947 (15 U.S.C. 1988); 49 CFR 1.51.

2. Section 580.4(d) is revised as follows:

§ 580.4 Disclosure of odometer information.

* * * * *

(d) In addition to the information provided under paragraphs (a), (b), and (c) of this section, the transferor may also certify that:

(1) The odometer was not altered for repair or replacement purposes while in the transferor's possession, and he has no knowledge of anyone else doing so;

(2) The odometer was altered for repair or replacement purposes while in the tranferor's possession, and the mileage registered on the repaired or replacement odometer was identical to that before such service; or

(3) The odometer was altered for repair or replacement purposes, the odometer was incapable of registering the same mileage, it was reset to zero, and the mileage on the odometer before repair was _____ miles/kilometers.

Issued on January 13, 1989.

Erika Z. Jones,

Chief Counsel, National Highway Traffic Safety Administration.

[FR Doc. 89–1276 Filed 1–17–89; 9:50 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Delisting of Echinocereus Engelmannii Var. Purpureus (Purple-Spined Hedgehog Cactus)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to remove *Echinocereus engelmannii* var. *purpureus* (purple-spined hedgehog cactus) from the list of Endangered and Threatened Plants. This action is based on a review of all available data, which indicate that this plant is not a discrete taxonomic entity and does not meet the definition of a species as defined by the Endangered Species Act of 1973, as amended, and therefore, was listed in error. *Echinocereus engelmannii* var. *purpureus* is a sporadically occurring dark-colored and short-spined phase of *Echinocereus engelmannii* var. *chrysocentrus* localized in the Virgin River Basin of southwestern Utah *Echinocereus engelmannii* var. *chrysocentrus* is common and has a broad distribution in the Mojave Desert of Arizona, California, Nevada, and Utah.

DATES: Comments from all interested parties must be received by March 20, 1989. Public hearing requests must be received by March 6, 1989.

ADDRESSES: Comments and materials concerning this proposal should be sent to the State Supervisor, Fish and Wildlife Enhancement, 1745 West 1700 South, Salt Lake City, Utah 84104. Comments and materials received will be available for public inspection, by appointment, during normal business hours the above address.

FOR FURTHER INFORMATION CONTACT: Larry England, botanist, at the above address (801/524–4430 or FTS 588–4430).

SUPPLEMENTARY INFORMATION: .

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Background

Echinocereus engelmannii var. *purpureus* was described in the scientific literature in 1939 from specimens collected near St. George, Utah, in 1949 (Benson 1969). *E. e. purpureus* differs from *E. e. chrysocentrus* (see Benson 1962) largely by the characteristics of the lower descending central spine which is darker (all the central spines of *E. e. purpureus* are dark purple), shorter, and more slender in *E. e. purpureus*. *E. e. purpureus* was listed as endangered on October 11, 1979 (44 FR 58868). Since the Federal listing of *E. e. purpureus* as endangered in 1979, no populations of the taxon have been located. Individual plants exhibiting characteristics described for *E. e. purpureus* occur sporadically within the population of *E. e. chrysocentrus* in southwestern Utah (Woodbury and England 1988).

Woodbury and England (1988) demonstrated that many morphological variations occur within the population of *E. e. chrysocentrus* in southwestern Utah and that none of these variations exhibit and population integrity independent of *E. e. chrysocentrus* as described by Benson (1962) and Taylor (1985). Miller (1988) states that *E. e. purpureus* is a betalain color phase within the southwestern Utah population of *E. engelmannii* and may be of no more than horticultural interest. In the newly published "A Utah Flora," Welsh et al. (1987) reduces *E. e. purpureus* to synonymy with *E. e. chrysocentrus*. Field observations by Bureau of Land Management and Service biologists and botanists have confirmed the findings described above.

Summary of Factors Affecting the Species

50 CFR 424.11 requires that certain factors be considered before a species can be listed, reclassified, or delisted. These factors and their application to *Echinocereus engelmannii* (Parry) Lamaire var. *purpureus* L. Benson (purple-spined hedgehog cactus) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The purple-spined hedgehog cactus (*E. e. purpureus*) has been determined to be no more than a sporadically ocurring vegetative phase, based primarily on spine characteristics, of *E. e. chrysocentrus*. *E. e. chrysocentrus* is a common species in the vegetative composition of the Mojave Desert in southwestern Utah (see Benson 1962, Cronquist et al. 1972, Welsh et al. 1987). *E. e. chrysocentrus*, which includes *E. e. purpureus*, is not significantly threatened with destruction, modification, or curtailment of its habitat throughout a significant portion of its range. The final rule (44 FR 58868) designating *E. e. purpureus* as an endangered species identified the urban sprawl of St. George, Utah, as a threat contributing to the endangerment of that species. If *E. e. purpureus* were a valid taxon and met the definition of a "species" as described by the Endangered Species Act of 1973, as amended (Act), then this factor would be relevant. However, since the entity shows no population integrity independent of *E. e. chrysocentrus*, it cannot be scientifically defended as either a species, subspecies, or taxonomic variety.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Cylindrical cacti, in general, are of horticultural interest. However, *E. e. chrysocentrus*, which includes *E. e. purpureus*, is abundant enough throughout its range so as not to be jeopardized at present, or in the foreseeable future, by horticultural exploitation of its wild population. Here again, as stated above in Section A, if *E. e. purpureus* were a valid taxon, then this factor would be relevant.

C. *Disease or predation.* Disease or predation is not a threat to *E. e. chrysocentrus*, which includes *E. e. purpureus*.

D. *The inadequacy of existing regulatory mechanisms.* All native cacti are on Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (Convention). *E. e.* var. *purpureus* is included on Appendix I of the Convention. The Convention regulates and in some cases prohibits the export and international trade in species on its appendices. A recent law in Utah authorizes the Department of State Lands and Forestry to provide for protection of plant species designated as either threatened or endangered by the Federal Government under authority of the Act. The Bureau of Land Management, in its land use planning documents, has recognized the species and has provided guidelines for its conservation. This rule, if made final, will necessitate the reevaluation of *E. e. purpureus* in the context of its status on Appendix I of the Convention and in State and Federal land use planning documents.

E. *Other natural and manmade factors affecting its continued existence.* None known.

The regulations at 50 CFR 424.11(d) state that a species may be delisted if: (1) it becomes extinct, (2) it recovers, or (3) the original classification data were in error. The Service believes current scientific information exists that demonstrates that *E. e. purpureus* does not represent a valid taxonomic entity and, therefore, does not meet the definition of "species" as defined in section 3(16) of the Act. Therefore, *Echinocereus engelmannii* var. *purpureus* was listed in error.

Effects of Rule

The proposed action would result in the removal of this species from the List of Endangered and Threatened Plants. Federal agencies would no longer be required to consult with the Secretary of the Interior to insure that any action authorized, funded, or carried out by such agency is not likely to jeopardize the continued existence of *E. e.* var. *purpureus*. There is no designated critical habitat for this species. Federal restrictions on taking this species would no longer apply. There are no specific preservation or management programs for the species that would be terminated.

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions regarding any aspect of this proposal are hereby solicited from the public, other concerned governmental agencies, the scientific community, industry, or other interested parties. The Service particularly requests any evidence of populations of *Echinocereus engelmannii* whose individuals are plants referable only, or largely, to the variety *purpureus* as described in the scientific literature (Benson 1969, 1982; Taylor 1985).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in Federal Register on October 25, 1983 (49 FR 49244).

References Cited

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Miller, J.M. 1988. Floral pigments and phylogeny in *Echinocereus* (Cactaceae). Systematic Botany 13(2): 173–183.
Taylor, N.P. 1985. The genus *Echinocereus*. Timber Press, Portland, Oregon. 160pp.
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Woodbury, L.A. and J.L. England. 1988. Morphological variation in the *Echinocereus engelmannii* population in southwestern Utah. Unpublished report, U.S. Fish and Wildlife Service, Salt Lake City, Utah. 4 pp.

Author

The author of this proposed rule is John L. England, botanist, U.S. Fish and Wildlife Service (see **ADDRESS** section above).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Proposed Regulation Promulgation

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 et seq.); Pub. L. 99–625, 100 Stat. 3500 (1986), unless otherwise noted.

§ 17.12 [Amended]

2. It is proposed to amend § 17.12(h) by removing the entry "*Echinocereus engelmannii* var. *purpureus* (purple-spined hedgehog cactus)" under "Cactaceae" from the List of Endangered and Threatened Plants.

Dated: December 22, 1988.

Becky Norton Dunlop,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 89–1289 Filed 1–18–89; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 658

[Docket No. 80990–8260]

Shrimp Fishery of the Gulf of Mexico

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule and request for comments on extension of emergency final rule.

SUMMARY: NOAA proposes to amend the regulations for the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico (FMP) to (1) modify, temporarily, until November 3, 1989, the boundary of the Tortugas shrimp sanctuary (established by the FMP) to reduce the area closed to trawl fishing, and (2) require a report of the incidental take of any threatened or endangered sea turtle in the opened part of the Tortugas shrimp sanctuary. This action will enable fishermen to harvest marketable-sized shrimp from a small area that otherwise would be closed to shrimp trawling and will provide adequate protection to sea turtles, as required by the Endangered Species Act (ESA).

In addition, comments are invited on extending the effective date of the emergency final rule which modified until Feb. 2, 1989, the boundary of the Tortugas Shrimp Fishery.

DATES: Written comments on the final rule must be received on or before February 21, 1989.

Comments are also invited through January 31, 1989 on extending the effective date of the Emergency Final Rule published in the **Federal Register** on November 9, 1988 (53 FR 45270).

ADDRESSES: Comments may be sent to, and copies of the Biological Opinion and the environmental Assessment/Regulatory Impact Review may be obtained from, Michael E. Justen, Southeast Region, NMFS, 9450 Koger Boulevard, St. Petersburg, FL 33702.

Comments on the reporting requirement should be directed to the Office of Information and Regulatory Affairs, Office of Management and budget, Washington, DC 20503, Attention: Desk Officer for NOAA.

Reporting forms, sea turtle identification guides, and resuscitation techniques may be requested from, and completed forms should be sent to, the Director, Galveston Laboratory, NMFS, Avenue U, Galveston, TX 77550.

FOR FURTHER INFORMATION CONTACT: Michael E. Justen, 813–893–3722.

SUPPLEMENTARY INFORMATION: The shrimp fishery is managed under the FMP and its implementing regulations at 50 CFR Part 658, as provided by the Magnuson Fishery Conservation and Management Act (Magnuson Act). Under the FMP, the Director, Southeast Region, NMFS (Regional Director), may modify by no more than 10 percent the geographical scope of the Tortugas shrimp sanctuary specified at § 658.22, after (1) consultation with the gulf of Mexico Fishery Management Council (Council), (2) consideration of specified criteria, and (3) determination that benefits may be increased or adverse impacts decreased by the modification.

The primary purpose of establishing the sanctuary was to protect small shrimp and allow them to attain a larger, more valuable size prior to harvest. The FMP stipulates that, prior to any modification of the sanctuary, NMFS will monitor and assess the impacts of the closure and advise the Council of its findings. The Council may also consider the advice of its Shrimp Advisory Panel regarding the findings.

When the sanctuary was partially opened in 1983–1984, NMFS determined that harvestable populations of shrimp occur periodically within a small portion of the sanctuary—a fact strongly supported by public testimony. Fishermen contend that shrimp from within this portion of the sanctuary emigrate to untrawlable areas and are unavailable to the fishery. Poor recruitment of shrimp to the Tortugas fishery has resulted in 2 consecutive years of poor production and economic loss to the adjacent shrimp ports. As identified in the FMP, poor recruitment in the unique shrimp fishery is more a function of environmental forces that of overfishing. Opening the area of the sanctuary containing all sizes of shrimp is consistent with optimum yield because it will allow shrimpers to obtain, on a temporary basis, a more valuable catch per unit of effort.

Thus, the Regional Director, after consulting with the Council and considering the criteria for modifying the sanctuary, has determined that the small portion (approximately 54 square nautical miles) of the sanctuary that periodically contains harvestable shrimp should be opened for 1 year. This area is less than 10 percent of the total geographical scope of the sanctuary and such modification will increase the benefits to fishermen by optimizing the yield of shrimp. This temporary geographic modification is consistent with Objective 1 of the FMP because it

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provides temporary economic relief to the stressed fishermen while continuing to optimize the yield of shrimp recruited to the fishery.

To maximize the intended economic benefits of this action, it was necessary to make the geographic modification as soon as possible after November 1, 1988. November 1 marks the onset of the 6-month period when peak landings occur. Accordingly, NOAA published an emergency final rule on November 9, 1988 (53 FR 45270), that implemented the geographic modification effective from November 4, 1988 through February 2, 1989. NOAA also invited comments on extending the effective date of the emergency Final Rule from February 2, 1989 through April 4, 1989. Comments on this extension will be accepted through January 31, 1989. This extension period will assure the public of meaningful opportunity to comment on the Proposed Rule to temporarily modify the boundary of the Tortugas Shrimp sanctuary, and on the reporting requirement of the incidental take of any threatened or endgangered sea turtle in the opened part of the sanctuary. Extending the effective date of the Emergency Final Rule will also maximize the intended economic benefits of this action because it will prevent a gap between expiration of the Emergency Final Rule and the Anticipated effective date of this proposed rule.

This proposed rule (1) would continue the geographic modification of the Tortugas shrimp sanctuary through November 3, 1989, and (2) require a report of the incidental take of any threatened or endangered sea turtle in the opened portion of the Tortugas shrimp sanctuary. The latter could not be implemented in the emergency final rule because it was necessary to meet the requirements of the Paperwork Reduction Act. However, a voluntary report of such incidental take and compliance with the sea turtle resuscitation procedures and release techniques were identified in the emergency final rule as means for fishermen to avoid the taking prohibition of the ESA.

Endangered Species Impacts

NOAA initiated consultation under Section 7 of the Endangered Species Act regarding the impact of this proposed rule on endangered and threatened sea turtles. A Biological Opinion resulting from that consultation found that this proposed rule would not jeopardize the continued existency of any endangered or threatened species or result in adverse modification of the critical habitat of such species. However, implementation of this proposed rule is likely to result in the take and mortality of sea turtles, particularly loggerhead and Kemp's ridley turtles.

To mitigate and monitor the incidental take of sea turtles, NOAA proposes to establish two conditions applicable to shrimp trawling in the opened portion of the Tortugas shrimp sanctuary, as follows:

(1) If a sea turtle is taken in a shrimp trawl, sea turtle resuscitation procedures and release techniques specified at 50 CFR 227.72(e)(1) must be followed.

(2) If a sea turtle is taken in a shrimp trawl, the date and the status of each sea turtle taken must be reported to NMFS within 24 hours after landing.

(Reporting forms, sea turtle identification guides, and resuscitation techniques are available (see ADDRESSES).)

By complying with these conditions, a person fishing for shrimp who incidentally takes an endangered or threatened sea turtle in the opened portion of the Tortugas shrimp sanctuary would avoid violating the Endangered Species Act's general prohibitions on taking. The regulations that will require use of turtle excluder devices and other conservative measures in the Gulf of Mexico, scheduled to be effective May 1, 1989, will be applicable in the opened portion of the Tortugas shrimp sanctuary at that time.

Classification

The Assistant Administrator for Fisheries, NOAA, (Assistant Administrator), determined that this proposed rule is consistent with the national standards and other provisions of the Magnuson Act and other applicable law.

The General Counsel of the Department of Commerce certified to the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities because the geographical area affected by the rule is small and, as a result, the number of shrimp trawlers affected in the Gulf-wide fishery would not be substantial. As a result, a regulatory flexibility analysis was not prepared.

The Council prepared a regulatory impact review (RIR) for this proposed rule and the Under Secretary for Oceans and Atmosphere, NOAA, determined that the rule is not major under E.O. 12291 because it would not have an annual effect on the economy of $100 million or more; would not result in an increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and would not result in significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Council prepared an environmental assessment (EA) for this proposed rule and, based on the EA, the Assistant Administrator concluded that there will be no significant adverse impact on the human environment as a result on this rule. Copies of the EA/RIR are available (see ADDRESSES).

This proposed rule contains a collection-of-information requirement subject to the Paperwork Reduction Act. A request to collect this information thas been submitted to the Office of Management and Budget (OMB) for approval. Public reporting burden for this collection of information is estimated to average 12 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: Michael E. Justen, Southeast Region, NMFS, and to the Office of Information and Regulatory Affairs, OMB (see ADDRESSES).

This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

The Council determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management program of Florida. This determination was submitted for review by Florida under Section 307 of the Coastal Zone Management Act. Florida failed to comment within the satutory time period and concurrence is therefore implied.

List of Subjects in 50 CFR Part 658

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: January 13, 1989.

James W. Brennan,

Assistant Administrator For Fisheries, National Marine Fisheries Service.

For reasons set forth in the preamble, 50 CFR Part 658 is proposed to be amended as follows:

PART 658—SHRIMP FISHERY OF THE GULF OF MEXICO

1. The authority citation for Part 658 continues to read as follows:

Authority: 16 U.S.C. 1801 *et. seq.*

2. In § 658.5, a new paragraph (c) is added, to be effective from the date a final rule implementing this proposed rule becomes effective, through November 3, 1989, to read as follows:

§ 658.5 Reporting requirements.

* * * * *

(c) *Tortugas shrimp sanctuary.* The owner or operator of any fishing vessel that fishes for or lands shrimp or any part thereof in or from that part of the Tortugas shrimp sanctuary described at § 658.22 (b) of this part, and who incidentally takes any endangered or threatened sea turtle, must provide the following information regarding any such taking to the Director, Galveston Laboratory, NMFS, 4700 Avenue U, Galveston, TX 77550, 409–766–3500, within 24 hours after landing.

(1) Date;
(2) Shrimp vessel name;
(3) Species of turtle caught:
(i) Loggerhead;
(ii) Kemp's ridley; or
(iii) Other (specify, see turtle identification guide);
(4) Status of turtle when released:
(i) Alive; or
(ii) Dead;
(5) Did the turtle have a tag?
(6) If so, what was the tag number?
(7) Coordinates of capture (loran readings or latitude and longitude);
(8) Approximate tow time; and
(9) Additional comments.

3. In § 658.22, effective from February 3, 1989 through November 3, 1989, the existing text is redesignated as paragraph (a) and a new paragraph (b) is added to read as follows:

§ 658.22 Tortugas shrimp sanctuary.

* * * * *

(b) The provisions of paragraph (a) of this section notwithstanding, effective from November 4, 1988 through November 3, 1989, that part of the Tortugas shrimp sanctuary seaward of a line connecting the following points is open to trawl fishing: From point F at 24°50.7' N. latitude, 81°51.3' W. longitude to point Q at 24°46.7' N. latitude, 81°52.2' W. longitude (the intersection of the extension of the sanctuary boundary line from point N to point F (in a direction of 191° from true north) and the line denoting the seaward limit of Florida's waters); thence along the seaward limit of Florida's waters, as shown on the current edition (March 21, 1967) of NOAA chart 11439, to point R at 24°44.7' N. latitude, 82°10.0' W. longitude; thence north to point S at 24°45.1' N. latitude, 82°10.0' W. longitude (the intersection of 82°10.0' W. longitude and the sanctuary boundary line from point F to point G) see Figure 1).

[FR Doc. 89–1262 Filed 1–18–89; 8:45 am]

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50 CFR Part 661

[Docket No. 90111–9011]

Ocean Salmon Fisheries off the Coasts of Washington, Oregon, and California

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NOAA issues this proposed rule to implement Amendment 9 (amendment) to the Fishery Management Plan for Commercial and Recreational Salmon Fisheries off the Coasts of Washington, Oregon, and California Commencing in 1978 (FMP). The amendment proposes to: (1) Replace the long-term spawning escapement goal and rebuilding schedule for Klamath River fall chinook with fixed annual spawning escapement and harvest rates and a minimum spawning escapement floor for naturally spawning adults; (2) modify the ocean harvest allocation of coho and chinook between non-Indian commercial and recreational fisheries north of Cape Falcon, Oregon; (3) revise the coastwide notice procedures for inseason management actions; (4) conform Federal and State regulations regarding the incidental harvest of steelhead by recreational fishermen; (5) authorize inseason reporting requirements for commercial fishermen to provide timely accounting of catches from any regulatory area subject to quota management (the proposed rule for this measure will be published separately); and (6) remove the limitations on commercial and recreational season beginning and ending dates. The amendment is intended to update the FMP to reflect current conditions in the fishery and prevent overfishing while achieving, on a continuing basis, the optimum yield.

DATES: Comments on the amendment and the proposed rule must be received by March 3, 1989.

ADDRESSES: Comments should be sent to Rolland A. Schmitten, Director, Northwest Region, NMFS, 7600 Sand Point Way NE., BIN C15700, Seattle, WA 98115–0070; or E. Charles Fullerton, Director, Southwest Region, NMFS, 300 S. Ferry Street, Terminal Island, CA 90731–7415. Copies of the amendment, including the environmental assessment and the regulatory impact review/initial regulatory flexibility analysis, are available from the Pacific Fishery Management Council, Metro Center, Suite 420, 2000 SW., First Avenue, Portland, OR 97201–5344.

FOR FURTHER INFORMATION CONTACT: William L. Robinson (Northwest Region, NMFS), 206–526–6140, Rodney R. McInnis (Southwest Region, NMFS), 213–514–6199, or Lawrence D. Six (Pacific Fishery Management Council), 503–221–6352.

SUPPLEMENTARY INFORMATION:

Background

Under the Magnuson Fishery Conservation and Management Act (Magnuson Act), the FMP was prepared by the Pacific Fishery Management Council (Council) and approved by the Secretary of Commerce (Secretary) on March 2, 1978. Since then, the FMP has been amended eight times, with implementing regulations codified at 50 CFR Part 661. From 1979 to 1983, the FMP was amended annually. In 1984, a framework amendment to the FMP was implemented which provided a mechanism for making preseason and inseason adjustments in the regulations without annual FMP amendments (49 FR 43679, October 31, 1984). Amendments to the framework FMP were also implemented in 1987 and 1988.

Development of Amendment 9 began in September 1987 when a "scoping session" was held by the Council. Subsequent Council discussions identified six issues requiring further analyses and possible modifications to the FMP. A draft amendment was prepared and distributed to interested persons for review on October 14, 1988. Comments were invited, and five public hearings were held on November 2 and 3, 1988 (53 FR 41222, October 20, 1988).

After considering the comments received on the draft amendment at public hearings and Council meetings, and from its Salmon Technical Team (STT), Salmon Advisory Subpanel, Scientific and Statistical Committee, and Enforcement Consultants, the Council made its final selection of preferred alternatives for the amendment at its November 16–18, 1988 meeting in Portland, Oregon. The Council selected non-status quo alternatives for the six issues.

The major purposes of Amendment 9 are to (1) replace the long-term spawning escapement goal and rebuilding schedule for Klamath River fall chinook with fixed annual spawning

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escapement and harvest rates which will allow a fixed percentage from each brood of natural spawners to escape the fisheries and spawn, subject to a minimum escapement floor for naturally spawning adults; (2) modify the ocean harvest allocation of coho and chinook between non-Indian commercial and recreational fisheries north of Cape Falcon, Oregon; (3) revise the coastwide notice procedures for inseason management actions; (4) conform Federal and State regulations regarding the incidental harvest of steelhead by recreational fishermen; (5) authorize inseason reporting requirements for commercial fishermen to provide timely accounting of catches from any regulatory area subject to quota management; and (6) remove the limitations on commercial and recreational season beginning and ending dates. These issues, their impacts, and the rationale for the Council's recommended changes are summarized below.

Amendment Issue 1—Klamath River Fall Chinook Escapement Goal

This part of the amendment replaces the current escapement goal for Klamath River fall chinook established in 1984 by the framework FMP. The current escapement goal begins with an interim rebuilding schedule to increase ocean escapements and culminates in a long-term spawning escapement goal by 1996 of 97,500 naturally spawning adults and 17,500 hatchery adults.

The amendment would establish fixed annual spawning escapement and harvest rates which will allow a fixed percentage of the potential adults from each brood of natural spawners to escape the fisheries and spawn, subject to a minimum spawning escapement floor for naturally spawning adults. Thus, the optimum spawning escapement goal, expressed as a fixed spawning escapement rate, will be determined by the annual productivity of the stock. The annual harvest, expressed as a fixed harvest rate, is expected to approximate maximum sustainable yield (MSY) over the long term.

A number of concerns regarding the appropriateness of the current long-term spawning escapement goal and rebuilding schedule have been raised in recent years. The current long-term spawning escapement goal was based on estimates of spawning escapement in the early 1960s and was first adopted by the Council in 1978. Parties seeking a larger harvest argue that the productivity of the Klamath River basin may have been reduced since the early 1960s by habitat degradation, and that placing larger numbers of spawners in the river will not increase the future production of chinook from the river. They offer as evidence the fact that run sizes decreased in the early 1960s despite greatly reduced ocean fisheries. Others point to the lack of spawning chinook in areas of the basin with apparently good habitat which formerly supported chinook as evidence that there needs to be an increase in spawning escapement. They argue that the current long-range spawning escapement goal may not be sufficiently large to produce MSY from this resource.

Interim escapement goals for Klamath River fall chinook are currently expressed in the rebuilding schedule as ocean escapement levels to the mouth of the river. Under the framework FMP, a specific spawning escapement goal is not provided for until after 1996. The framework FMP states that spawning escapement goals will be set when ocean and in-river allocations are agreed upon. Beginning in 1986, ocean and in-river harvest allocations have been negotiated. A permanent negotiating forum consisting of harvesters and managers of Klamath River fall chinook now exists, the Klamath Fishery Management Council (KFMC). The KFMC was established under the Klamath and Trinity River Basins Restoration Act (Pub. L. 98-552) to, among other things, establish a long-term plan and policy for managing the ocean and in-river harvest of Klamath River salmon, and recommend ocean harvesting regulations to the Council. (The KFMC was preceded by the Klamath River Salmon Management Group (KRSMG) which was formed in 1985 under the auspices of the Pacific Fishery Management Council.)

The current stock rebuilding schedule relies on an increase of 20 percent in average ocean escapement every four years until the long-term goal is achieved between 1994 and 1996. When ocean escapements are well above the required rebuilding level during any four-year period, the framework FMP allows escapement for the remaining years in that period to be reduced to a level which may be below that necessary to maintain minimal production. Therefore, the current rebuilding schedule does not adequately prevent potential underescapement and subsequent harm to the resource.

Amendment 9 addresses all these concerns. It establishes fixed spawning escapement and harvest rates to provide optimum spawning escapement based on stock productivity and harvests which will better achieve MSY. Implementing harvest and escapement rates, rather than a fixed escapement level, allows the magnitude of landings and escapement to vary in proportion to stock abundance. This reduces the possibility of having complete fishing closures in any one year. At the same time it allows for natural variation in the spawning escapement to provide information or productivity from which to assess optimum spawning escapement and ultimately determine a more appropriate fixed spawning escapement goal. The amendment also establishes a spawning escapement floor for naturally spawning adults to prevent extremely low spawning escapements in any one year which might lead to extended periods of depressed natural production and failure to meet hatchery escapement needs.

This management approach was developed by the Klamath River Technical Team (KRTT), the KRSMG, and the KFMC, and was used during the 1986–1988 ocean salmon fishery seasons. The Council adopted initial spawning escapement and harvest rate percentages based on the 1986 recommendation of the KRSMG (i.e., a 35 percent natural spawning escapement rate and a 65 percent harvest rate for each brood (year class) of fish). These specific rates are based on the best available assessment of the measurable biological parameters for the stock and the selectivities of the ocean and in-river fisheries acting upon it. The Council intends that Klamath River fall chinook be managed as a unit wherever they may be in the ocean. Therefore, the spawning escapement and harvest rates are overall rates which apply over the entire range of the stock. However, harvest rates on Klamath River fall chinook stocks may differ greatly between geographic areas as long as the overall harvest rate does not exceed 65 percent.

Under Amendment 9, the STT may consider annually information on the appropriateness of the 35 percent natural spawning escapement rate goal and provide its determination to the Council before preseason management options are developed. Upon recommendation of the STT and approval by the Council, the recommendation to change the spawning escapement and harvest rates will be forwarded to the Secretary for implementation under existing procedures. The procedures for modifying escapement goals are described in the framework FMP and the implementing regulations (50 CFR 661.22 and Appendix section IV.B.)

The amendment also provides a framework within which compatible harvest allocations can be determined. However, it does not establish harvest rates for specific fisheries and, thus, does not allocate the resource between user groups. The harvest allocations negotiated by the users groups are part of the Klamath River Salmon Management Long-Term Harvest Sharing Agreement signed by KFMC members in July 1987.

The Council adopted a minimum escapement floor of 35,000 naturally spawning adults as recommended by the KRTT. This decision was based, in part on the fact that a 35,000 fish floor was a higher escapement level than for any year since 1978, and was about 30 percent higher than the 1979–85 average escapement of 26,800. The STT considered the 35,000 fish floor to be too low and recommended an escapement floor of 43,000 naturally spawning adults based upon their analysis of two stock recruitment curves and the judgment of biologists regarding the spawning capacity of individual spawning areas. The KRTT responded by questioning the spawning capacity of an area without taking into account the interaction of juvenile chinook salmon in main stem rearing areas. Furthermore, the KRTT expressed little confidence in the stock recruitment curves developed by the California Department of Fish and Game and relied on by the STT.

The Council considered the contradictory recommendations of both the KRTT and STT and adopted the 35,000 fish floor because it provides a level of protection for natural spawners at very low levels of production that is higher than during the 1976–85 period, and prevents additional hardships to fishermen that would result from foregoing additional harvests at the 43,000 fish floor. The Council concurred with the KRTT in its conclusion that additional spawners from a 43,000 fish floor would not greatly assist the achievement of significantly higher escapement levels. Major improvements in escapement will most likely occur as a function of improved juvenile survival.

The KRTT tested the effectiveness of the 35,000 fish floor by modeling a 40-year time series of data which included three consecutive years of poor recruitment. The resulting yield to the fishery was about 17 percent greater than the floor in place than in the absence of a floor. Thus, the Council concluded that the requirement for a 35,000 fish floor will protect spawning escapement in years of low production while at the same time improving long-term yield to the fishery. The 35,000 fish floor is also expected to protect sufficient numbers of hatchery fish to meet hatchery production needs in most years. Any subsequent modification of the spawning escapement floor must be by FMP amendment.

The fishery model upon which the Klamath River natural spawning escapement rate is based will be continually under review as new information on the stock and the fisheries become available. The parameters of the model will be reviewed by the KRTT, the STT, and the Council's Scientific and Statistical Committee. Changes in the model parameters may be approved by the Council, based on the best scientific information available. As productivity measurements become available for a wide range of escapement levels of naturally spawning adults, the ultimate objective is to derive the optimum spawning escapement goal, expressed as a fixed spawning escapement level or a fixed spawning escapement rate, and to incorporate it into the framework FMP by the amendment process.

Amendment Issue 2—Harvest Allocation of Non-Indian Fisheries North of Cape Falcon, Oregon

This part of the amendment modifies the ocean harvest allocation of coho and chinook salmon between non-Indian commercial and recreational fisheries north of Cape Falcon, Oregon, originally established in 1984 by the framework FMP. Specifically, it changes the current allocation schedule to increase the number of salmon allocated to recreational fishermen at all levels of coho and at low levels of chinook salmon abundance; establishes clear allocation objectives for the Council to follow; provides greater flexibility to deviate from the allocation schedule, if necessary, to achieve the Council's objectives more effectively; and establishes allocation priorities to guide the Council's actions when recommending such deviations.

For the past three years, the Council has recommended harvest allocations for the non-Indian commercial and recreational ocean salmon fisheries north of Cape Falcon which have deviated from the framework FMP's allocation schedule. The Secretary has implemented these recommendations each year by emergency rule.

Significantly reduced allowable harvests for both commercial and recreational fisheries since the mid-1980's have greatly shortened seasons, resulting in negative socio-economic impacts within the coastal communities which depend on the recreational and commercial fishing industries. Recent total allowable ocean harvest quotas have been consistently below those anticipated at the time the framework salmon FMP amendment was proposed and approved. At these chronic low stock abundance levels, the present allocation schedule establishes allowable commercial and recreational harvest quotas which have not provided for the fisheries most beneficial for both the commercial and recreational users.

The current allocation schedule has resulted in extremely short recreational seasons which have been particularly damaging to local community businesses which depend on attracting recreational fishermen from many different geographical areas. Not only have recreational fishing seasons been extremely short, but they have been continually disrupted by numerous inseason regulatory changes in an effort to achieve more closely full utilization of the remaining coho and chinook salmon quotas. Both of these factors have made it difficult for coastal communities to attract and sustain large numbers of charter and private boat fishermen and have significantly reduced community income. The Council believes that determination of the base recreational allocation which provides more stability to the local communities is an inappropriate determination to make annually during the Council's short preseason process. Thus, the Council has proposed a new long-term allocation schedule which reflects the Council's emphasis on increased stability for the recreational fishery.

The failure of the present allocation schedule has (1) required extensive preseason transfers of fish and emergency action to achieve more optimal commercial and recreational fisheries; (2) contributed to the inseason loss of significant percentages of allowable harvest by both commercial and recreational fisheries, resulting in failure to attain fully the optimum yield (OY); (3) required extensive use of inseason management changes, particularly in the recreational fishery, to try to achieve reasonable season length and more fully utilize available harvests; and (4) exacerbated negative socio-economic impacts of the reduced seasons on local communities.

Not only have the allowable harvests been greatly and consistently reduced in recent years, but large percentages of the allowable harvests have gone unharvested, due in some part to the limited flexibility in the allocation schedule of the framework amendment. In 1986, the commercial fishery harvested only 76 percent of its chinook quota and 65 percent of its coho quota.

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In 1987, the commercial fishery exceeded its chinook quota by 9 percent but was only able to harvest 43 percent of its coho quota, forfeiting over 80,000 coho. The 1988 recreational fishery harvested 103 percent of its coho quota while landing 84 percent of the chinook quota. In 1987, the recreational fishery was unable to harvest 26 percent of its coho quota while landing 100 percent of its chinook quota.

There are several reasons for the reduced non-Indian ocean salmon fisheries north of Cape Falcon. Certain weak chinook and coho salmon stocks have limited the ocean harvest rate in recent years. Other constraints and adjustments under the U.S.-Canada Pacific Salmon Treaty, Treaty Indian and non-Indian allocations requirements under *U.S.* v. *Washington* and *Hoh Indian Tribe* v. *Baldrige*, and inside/outside sharing have all had a part in the harvest changes. Managers and users are working with these issues on an annual and long-term basis to assure increased allowable harvests for the future. However, significant increases in available non-Indian ocean harvest are not likely for some years. The present total allowable ocean harvest is simply not sufficient to provide more than near minimal needs of the recreational and commercial fisheries. Modifying the present allocation schedule to allow more flexibility for commercial and recreational users will not resolve this problem, but it is expected to allow for more efficient use of the available harvest quotas for both fisheries. It should also significantly reduce the need for annual emergency regulations.

The problem of incompletely harvesting quotas results from the tremendous fishing power of the commercial fishery, the unpredictability of its harvest potential in one- and two-day seasons, the variability in relative chinook and coho abundance, and the inflexibility of the present allocation schedule regarding fish which may be transferred between commercial and recreational fisheries both preseason and inseason. Coho and chinook are caught concurrently in this area and fishermen have only limited ability to target on one species without impacting the other. When the quota of one species is taken, the fishery must close for both species. The present allocation does not allow for adjusting quotas inseason between recreational and commercial fisheries to take advantage of possible variations in species harvest rates between the two fisheries. Therefore, both fisheries may be closed with a considerable portion of quota unharvested. The limited inseason management measures, such as area closures and recreational bag limit changes, which have been implemented to correct for imbalance in quota attainment have been largely ineffective. They have served only to increase confusion and dissatisfaction among fishermen.

In April 1987, the Council asked the States of Oregon and Washington to review the harvest allocation schedule north of Cape Falcon. Beginning with a user group meeting in October 1987, followed by numerous meetings and extensive discussions among fishery representatives making up the North of Cape Falcon Allocation Work Group, this process resulted in the allocation alternatives presented to the Council.

In January 1988, the Council requested the Secretary to modify the allocation schedule by emergency regulation (53 FR 8234, March 14, 1988). The Secretary denied the Council's request and recommended that the Council pursue implementation through the FMP amendment process (53 FR 19771, June 1, 1988). In April 1988, the Council requested the Secretary to implement a modified allocation for the 1988 fishing season which again deviated from the current allocation schedule. The Secretary approved the request and the 1988 regulations were published in the **Federal Register** on May 4, 1988 (53 FR 16002).

The proposed new allocation schedule is the result of the information and experience gained during the Council's review process. In adopting the amendment, the Council is recommending overall allocation objectives, a modified harvest allocation schedule, more flexibility to deviate from the harvest allocation schedule by preseason and inseason trades and transfers of chinook and coho salmon between fisheries, and fishery allocation priorities to guide the Council's actions when it deviates from the allocation schedule. The Council believes an increase in the recreational harvest allocation for chinook and coho salmon is required to achieve OY north of Cape Falcon.

Overall allocation objectives recommended by the Council are as follows: (1) Provide recreational opportunity by maximizing the duration of the fishing season, while minimizing daily and area closures, gear restrictions, and daily bag limits; and (2) maximize the value of the commercial harvest while providing fisheries of reasonable duration.

Initial allocations each year will be based on the revised allocation schedule. This schedule provides to the recreational fishery an increased coho allocation at all levels of total allowable coho harvest and an increased chinook allocation at levels below a total allowable harvest of about 150,000 chinook. At current low levels of total allowable coho and chinook harvests, the increase in the recreational allocation will increase recreational season length while maintaining a portion of the available harvest for the commercial fishery.

Because the rate at which the recreational fishery utilizes its quotas is much slower than the commercial fishery, the number of coho harvested by the commercial fishery in one day may provide a week or more of recreational fishing. The transfer to the recreational allocation will thereby result in an extension of the overall period of fishing activity. This should generally distribute the economic benefits to local communities over a longer period of time, resulting in more economic stability in those local communities. While the transfer to the recreational fishery is a direct loss to the commercial fishery, a portion of that loss is offset by the ability and historic practice of some commercial fishermen to move to other fishing areas. Although recreational fishermen also can relocate their fishing effort to some extent, many local community businesses which depend on recreational fishing seasons for peak summer income are not able to relocate. Also, the greater recreational chinook allocation will allow for a longer season through a chinook-only recreational fishery in years of low allowable coho harvest. Having these factors built into the allocation schedule, rather than depend on preseason trades, provides additional assurance to local communities for the base recreational seasons that can by expected. This should further benefit the social, cultural and economic stability of the region and reduce annual uncertainty over the duration of recreational seasons.

Preseason and inseason deviations from the revised schedule which establish final allocations will be guided by the following fishery allocation priorities. (1) At total allowable harvest levels up to 300,000 coho and 100,000 chinook, provide coho for the recreational fishery for a late June through early September all-species season; provide chinook to allow access to coho and, if possible, a minimal chinook-only fishery prior to the all-species season; and adjust days per week and/or institute area restrictions to stabilize season duration. For the commercial fishery, provide chinook for a May and early June chinook season and provide coho for hooking mortality and/or access to a pink salmon fishery, and ensure that part of the chinook season will occur after June 1. (2) At total allowable harvest levels above 300,000 coho and above 100,000 chinook, relax any restrictions for the recreational fishery in the all-species fishery and/or extend the all-species season beyond Labor Day as coho quota allows; provide chinook for a Memorial Day through late June chinook-only fishery; and adjust days per week to ensure continuity with the all-species season. For the commercial fishery, provide coho for an all-species season in late summer and/or access to a pink salmon fishery; and leave adequate chinook from the May through June season to allow access to coho.

To increase the likelihood that both fisheries catch their allowable harvests, preseason and inseason species trades will be allowed using the exchange ratio of four coho to one chinook as a guideline, but not a specific constraint. Inseason transfers between the commercial and recreational fishery quotas will allow fish deemed "uncatchable" in one fishery to be reallocated to the other fishery. Such actions will require consultation with user group representatives before implementation.

This part of the amendment decreases the commercial share of coho from a range of 31 to 69 percent under the present allocation to a range of 25 to about 55 percent (the percent increases as coho abundance increases). For chinook, the amendment changes the commercial share from a range of 54 to 63 percent under the present allocation (the percent increases as coho abundance decreases). The amendment reallocates coho and chinook primarily to assure more stable recreational seasons at moderate to low total allowable harvest levels. The primary negative impacts of this reallocation are (1) a greater probability of no commercial all-species season rather than the one- or two-day seasons which may occur under the present allocation when commercial quotas are in excess of 30,000 coho, and (2) a decrease in the commercial chinook quota primarily at low allowable harvest levels of both chinook and coho. The reallocation under the amendment diminishes, but does not eliminate, the commercial fishery. Conversely, it enhances the recreational fishery, but still leaves it at levels well below the historial averages. Only a significant increase in total allowable harvest north of Cape Falcon will allow aboth commercial and recreational fisheries to approach average historical seasons.

The overall benefits from the amendment are primarily the result of gains in the recreational sector exceeding losses to the commercial sector. Modifying the framework allocation schedule will not resolve the problem of reduced allowable ocean harvest levels, but it is intended to allow for more productive use of the available harvest for both commercial and recreational fisheries. Therefore, the Council adopted this alternative as the best approach to meeting its allocation objectives for each fishery while improving the overall socio-economic impacts of the ocean fisheries on local communities.

Amendment Issue 3—Inseason Notice Procedures

This part of the amendment revises the notice procedures for inseason management actions. Specifically, inseason actions taken under both fixed and flexible inseason management provisions may be effective and enforceable by announcement in designated information sources before a notice is filed for public inspection with the Office of the Federal Register (OFR).

Current federal salmon regulations require that notice of inseason actions be filed with the OFR prior to becoming effective. This requirement has resulted in logistical problems when management decisions are made late in the day and insufficient time exists to file a notice with the OFR the same day, or if it becomes necessary to take action when the OFR is closed, e.g., during a three-day holiday weekend.

Two primary problems have resulted from delayed implementation of inseason actions. First, quotas have been overharvested if fishery closures cannot be made effective at the time quotas are projected to be achieved. Quotas have also been underharvested. In one instance, delays in implementing adjustments to recreational management measures to slow the harvest of chinook, which was approaching its quota, caused the chinook quota to be reached and the season to be closed before the majority of the coho quota could be caught.

The second problem is the uncertainty in forecasting when actual filing with the OFR will occur, which makes it difficult to provide fishermen adequate prior notice of the actual effective time of an action. Because the actual time of filing is not known beforehand, announcements of inseason actions through public media are often made relatively late and are of limited effectiveness. This increases the possibility that fishermen may unintentionally violate new regulations and possibly by subject to enforcement action. Conversely, if NMFS announces an inseason action before the notice is filed with the OFR, fishermen may be under the mistaken assumption that a legally enforceable action has occurred when it has not.

The Council has addressed these problems by recommending that effective, enforceable notice of an inseason management action be provided by making actual notice of the action available to fishermen. The communication channels by which actual notice will be given will be specified in the preseason annual regulations, and will include: (1) Broadcast by the U.S. Coast Guard on the "Notice to Mariners" broadcast (VHF Channel 16 will annoutice the clear channel or frequency over which broadcasts are made); and (2) state and federal telephone hotline numbers to be specified annually in the preseason regulations. Notices of inseason actions will also continue to be filed with the OFR.

Actual notice by means of "Notice to Mariners" broadcasts and specified hotlines will make inseason changes effective even if they occur prior to filing with the OFR. All the normal channels currently used by state agencies to inform the public of regulatory changes will also remain in use.

Amendment Issue 4—Steelhead Management Intent

This part of the amendment conforms federal and state regulations on the incidental harvest of steelhead by allowing such harvest by recreational fishermen while retaining the prohibition against such harvest by commercial fishermen.

The current framework FMP and federal regulations prohibit non-Indian commercial and recreational fishermen from taking and retaining, or possessing, any steelhead. Current regulations of the States of Washington, Oregon, and California, however, allow the incidental harvest of steelhead by recreational fishermen and prohibit such harvest by commercial fishermen.

The Council adopted the alternative that makes federal and state regulations consistent by allowing legally licensed recreational fishermen, but not commercial fishermen, to harvest steelhead. Ocean harvest of steelhead in the recreational fisheries off the coasts of Washington, Oregon, and California is rare, and results in an insignificant impact on the steelhead resource. Because the harvest of steelhead in the

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ocean is such a rare occurrence, adoption of this alternative has no measurable impact on either commercial or recreational fishermen, but will reduce confusion resulting from incompatible federal and state regulations and from recreational fishermen being unable to distinguish steelhead from salmon.

Amendment Issue 5—Radio Reporting Requirements for Commercial Salmon Fishermen

This part of Amendment 9 authorizes inseason radio reporting requirements for commercial fishermen to provide timely accounting of catches from any regulatory area subject to quota management. It involves a collection-of-information requirement subject to the Paperwork Reduction Act and to OMB review and approval. A request to collect this information is being submitted to OMB for approval and the issuance of a control number. Because of the time requirements associated with OMB's review and approval, this part of the proposed rule will be published separately (as a proposed rule) for public review and comment. It is intended that after receiving and considering public comment, the regulatory text will be combined with the rest of the final rule when published.

Amendment Issue 6—Limitations on Season Beginning and Ending Dates

This part of the amendment removes the current limitations on commercial and recreational season beginning and ending dates.

The framework FMP contains five specific prohibitions governing season beginning and ending dates. For example, currently no commercial coho fishery north of the Oregon-California border may open prior to July 1. With the recent creation of the Klamath management zone (KMZ) (Orford Reef Red Buoy, Oregon, to Horse Mountain, California) and the development of all-species fisheries in the KMZ during June, this prohibition has been an issue in the Council's preseason process. In 1988, emergency action was required to allow a uniform fishery to occur throughout the KMZ in June.

Another current prohibition states that no commercial chinook or coho fishery will extend after October 31. The Council and NMFS have approved commercial and recreational chinook-only fisheries in Oregon state waters (0–3 nautical miles off shore) after October 31 to target on abundant local fall chinook stocks and avoid impacts on weak stocks.

Given the demonstrated need for more flexibility in shaping seasons, the Council recommended removing the specific limitations on season beginning and ending dates. The increasing complexity of management requires more latitude in setting seasons to avoid impacts on weak stocks, optimize harvest of abundant stocks, and maximize socio-economic benefits.

Technical Corrections

Two technical changes are implemented by this rule. A typographical error in the scientific name for steelhead, *Salmo gairdneri*, is corrected. All references to the Salmon Plan Development Team are changed to reflect the group's new name, the Salmon Technical Team.

Classification

Section 304(a)(1)(A) of the Magnuson Act requires the Secretary, upon receiving a fishery management plan or plan amendment prepared by a Council, to make a preliminary evaluation for purposes of deciding if it is consistent with the national standards and sufficient in scope and substance to warrant review. The Secretary has decided Amendment 9 does warrant review. Under section 304(a)(1)(D)(ii) of the Magnuson Act, the Secretary is to publish proposed regulations by the 15th day after the statutory receipt date for the amendment. The Secretary has not yet determined that Amendment 9, which these regulations would implement, is consistent with the national standards, other provisions of the Magnuson Act, and other applicable law. The Secretary, in making that determination, will take into account the data, views, and comments received during the comment period on the proposed rule.

The Council prepared an environmental assessment for this amendment which indicates that there will be no significant impact on the environment as a result of this rule. The environmental assessment has been published in a booklet with Amendment 9 and may be obtained from the Council at the address listed above.

The Under Secretary of Oceans and Atmosphere has determined that this proposed rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. This determination was based on analysis of the regulatory impact review (RIR) prepared for this rule which demonstrates that the rule will not result in (1) an annual major increase in costs or prices for consumers, individual industries, or government agencies; (2) an annual effect on the economy of $100 million or more; or (3) significant adverse effect on competition, employment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. This proposed rule, if adopted, will have a significant economic impact on a substantial number of small business entities for purposes of the Regulatory Flexibility Act, and thus required preparation of an initial regulatory flexibility analysis (IRFA). The RIR/IRFA may be obtained from the Council at the address listed above.

A summary of the economic impacts evaluated in the RIR/IRFA are set forth below and all apply to small business entities because this industry consists only of small entities.

Amendment Issue 1—Klamath River Fall Chinook Escapement Goal

Under the Council-adopted alternative, escapement and harvest rates will allow higher landings when ocean abundance is low compared to the fixed escapement goal. Thus, more year-to-year stability in the fishery is expected. Conversely, escapement and harvest rates will allow lower landings when ocean abundance is high, thus limiting the potential for very large catches relative to the status quo. However, given that these rates may be modified each year during the preseason regulation development process, the harvest rate could be increased in a year of particularly high abundance. Since the actual capacity of the Klamath River basin is not certain, the frequency that such high levels of ocean abundance will be achieved is unknown. The 35,000 fish minimum spawning escapement cannot be changed except by FMP amendment and thus provides the necessary margin of safety.

Amendment Issue 2—Harvest Allocation of Non-Indian Fisheries North of Cape Falcon, Oregon

Both alternatives to the status quo show improvement in net economic value (NEV) in most of the relevant ranges of the quotas in addition to negative values over different areas of the ranges of quotas considered. Neither alternative appears to be clearly superior to the other, or to the status quo, over all areas of the relevant ranges. For the Council-adopted alternative, the estimated changes in NEV over the likely range of harvest levels (50,000 to 600,000 coho and 50,000 to 300,000 chinook) are between −$140,000 and $710,000. Negative values are generally found at combined allowable harvest levels below 100,000 coho and below 250,000 chinook. However, at these levels, the assumptions of the analysis are violated by the proposed chinook-only recreational season. The impact of this season would be to increase the NEV's for the Council-adopted alternative over those generated by the analysis, and reduce or eliminate the negative values. The estimated changes in personal income generated in coastal communities over the likely range of harvest levels are between −$47,000 and $1,198,000.

Amendment Issue 3—Inseason Notice Procedures

The Council-adopted alternative could provide positive impacts by allowing more timely utilization of certain management actions.

Amendment Issue 4—Steelhead Management Intent

By reducing confusion over conflicting Federal and State regulations and allowing recreational fishermen to retain steelhead, the impacts of the Council-adopted alternative are positive.

Amendment Issue 5—Radio Reporting Requirements for Commercial Salmon Fishermen

The economic effects of this amendment measure will be summarized in a separate proposed rule.

Amendment Issue 6—Limitations on Season Beginning and Ending Dtes

Although the impacts of the Council-adopted alternative depend on what actions are taken annually which depart from the current prohibitions, the impacts could be significantly positive by allowing the Council to be more responsive to annually identified socio-economic needs. In some previous years, commercial fishermen have argued for earlier seasons to take advantage of better prices.

This proposed rule is exempt from the procedures of Executive Order 12291 under section 8(a)(2) of that order. Deadlines imposed under the Magnuson Act, as amended by Pub. L. 99–659, require the Secretary to publish this proposed rule by the 15th day after an FMP amendment is received. The proposed rule is being reported to the Director, Office of Management and Budget, with an explanation of why it is not possible to follow procedures of the order.

The Council determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management programs of the States of Washington, Oregon, and California, and the San Francisco Bay Conservation and Development Commission. NMFS has submitted this determination for review by the responsible state agencies an the San Francisco Bay Commission under section 307 of the Coastal Zone Management Act.

This rule does not contain an information collection requirement subject to the Paperwork Reduction Act.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians.

Dated: January 13, 1989.

James W. Brennan,

Assistant Administrator For Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR Part 661 is proposed to be amended as follows:

PART 661—[AMENDED]

1. The authority citation for 50 CFR Part 661 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

§ 661.22 [Amended]

2. In § 661.22(a) and in the Appendix, in section II.A., in section II.B.2. paragraph (b)(iii), in section III.A.2. paragraph (b), and in section III.A.3., the words "Salmon Plan Development Team" are revised to read "Salmon Technical Team".

3. In § 661.5, paragraph (a)(8) is revised and a new paragraph (a)(16) is added to read as follows:

§ 661.5 Prohibitions.

(a) * * *

(8) Take and retain, possess, or land any steelhead (*Salmo gairdneri*) taken in the course of commercial fishing within the fishery management area, unless such take and retention qualifies as treaty Indian fishing as that term is defined in this Subpart A of this part.

* * * * *

(16) Fish without having first listened to the telephone hotline or the U.S. Coast Guard broadcast to ascertain whether or not there has been an inseason action taken under § 661.21 affecting the fishery in which the fishing is to occur.

* * * * *

4. In § 661.20, in paragraph (a), in the introductory text, in the second sentence, the words "and selective fisheries" are revised to read "selective fisheries, and inseason notice procedures"; and new paragraph (a)(5) is added to read as follows:

§ 661.20 Annual actions.

(a) * * *

(5) *Inseason notice procedures.* Telephone hotlines and U.S. Coast Guard broadcasts.

* * * * *

§ 661.21 [Amended]

5. In § 661.21, in paragraph (a)(1), the words "by publishing a notice in the **Federal Register**" are revised to read "by notice issued"; in paragraph (a)(2), the words "by publication of a notice in the **Federal Register**" are revised to read "by notice issued"; and in paragraph (a)(3), the words "by publication of a notice in the **Federal Register**" are revised to read "by notice issued".

6. In § 661.23, paragraph (d) is removed, paragraphs (e) and (f) are redesignated (d) and (e), and paragraphs (a) through (c) are revised to read as follows:

§ 661.23 Notice procedures.

(a) *Notification.* (1) Annual and certain other actions taken under §§ 661.20 and 661.22 will be by notice filed with the **Federal Register**.

(2) Inseason actions taken under § 661.21 will be by notice available from telephone hotlines and U.S. Coast Guard broadcasts as specified annually under § 661.20(a). Inseason actions will also be filed with the **Federal Register** as soon as practicable following the action.

(b) If time allows, the Secretary will invite public comment prior to the effective date of any notice filed with the **Federal Register**. If the Secretary determines, for good cause, that a notice must be filed without affording a prior opportunity for public comment, public comments on the notice will be received by the Secretary for a period of 15 days after the filing of the notice with the **Federal Register**.

(c) *Effective dates.* (1) Notice of annual and certain other actions taken under §§ 661.20 and 661.22 will be filed with the **Federal Register** and will be effective upon filing, unless a later time is specified in the notice.

(2) Notice of inseason actions taken under § 661.21 will be effective from the time specified in the actual notice of the action, or at the time the notice which is filed with the **Federal Register** is effective, whichever comes first.

(3) Any notice issued under this section will remain in effect until the expiration date stated in the notice or until rescinded, modified, or superseded. However, no notice of an inseason

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action has any effect beyond the end of the calendar year in which it is issued.

* * * * *

Appendix.—[Amended]

7. In the Appendix, in section II.B.1., in paragraph (c), in the second sentence, the words "desired level of escapement for a four-year ocean management period" are revised to read "established escapement goal".

8. In the Appendix, in section II.B.1., in paragraph (d), the sixth sentence which reads "The maximum season length off the Oregon coast will be May 1 through October 31." is removed, and the words " during the period September 15 through October 31" in the last sentence are removed.

9. In the Appendix, in section II.B.2., paragraphs (a)(i) through (iv) are revised to read as follows:

Appendix

* * * * *

II. Annual Changes to Management Specifications

* * * * *

B. *Procedures for Establishing and Adjusting Annual Management Measures.*

* * * * *

2. Allocation of ocean harvest levels.

(a) * * *

(i) Allocation schedule. (A) Initial allocation of coho and chinook salmon north of Cape Falcon, Oregon, will be based on the following schedule:

Allowable ocean harvest (thousands of fish)	Percentage [1]	
	Commercial	Recreational
Coho:		
0–300	25	75
>300	60	40
Chinook:		
0–100	50	50
>100–150	60	40
>150	70	30

[1] The percentage allocation is tiered and must be calculated in additive steps when the harvest level exceeds the initial tier. For example, for a total allowable ocean harvest of 150,000 chinook, the recreational allocation would be equal to 50 percent of 100,000 chinook plus 40 percent of 50,000 chinook or 50,000 + 20,000 = 70,000 chinook.

(B) The initial allocation may be modified annually in accordance with paragraph (iii) of this section.

(ii) Total allowable ocean harvest will be maximized to the extent possible consistent with treaty obligations, State fishery needs, and spawning requirements. Every effort will be made to establish seasons and gear requirements which provide troll and recreational fleets a reasonable opportunity to catch the available harvest. These may include single-species directed fisheries with landing restrictions for other species.

(iii) Fishery allocation priorities. Deviations from the allocation schedule must be structured to achieve, to the extent practicable, the following fishery allocation priorities when establishing final harvest allocations.

(A) At total allowable harvest levels up to 300,000 coho and 100,000 chinook: For the recreational fishery, provide coho for a late June through early September all-species season; provide chinook to allow access to coho and, if possible, a minimal chinook-only fishery prior to the all-species season; and adjust days per week and/or institute area restrictions to stabilize season duration. For the commercial fishery, provide chinook for a May and early June chinook season and provide coho for hooking mortality and/or access to a pink fishery, and ensure that part of the chinook season will occur after June 1.

(B) At total allowable harvest levels above 300,000 coho and above 100,000 chinook: For the recreational fishery, relax any restrictions in the all-species fishery and/or extend the all-species season beyond Labor Day as coho quota allows; provide chinook for a Memorial Day through late June chinook-only fishery; and adjust days per week to ensure continuity with the all-species season. For the commercial fishery, provide coho for an all-species season in late summer and/or access to a pink fishery; and leave adequate chinook from the May through June season to allow access to coho.

(iv) Allocation flexibility. To provide flexibility to meet the dynamic nature of the fisheries and to be consistent with the fishery allocation priorities in paragraphs 2(a)(iii) (A) and (B), deviations from the allocation schedule will be allowed as follows:

(A) Preseason species trades (chinook and coho) may be made based upon the recommendation of the commercial and recreational Salmon Advisory Subpanel representatives for the area north of Cape Falcon. The socio-economic impacts of any such recommendation will be compared to those of the standard allocation schedule. This analysis will be made available to the public during the preseason process for establishing annual management measures.

(B) Inseason transfers, including species trades of chinook and coho, may be permitted in either direction between commercial and recreational fishery quotas to allow for uncatchable fish in one fishery to be reallocated to the other. Fish will be deemed uncatchable by a respective commercial or recreational fishery only after considering all possible annual management actions to allow for their harvest which meet fishery allocation priorities including single species fisheries. Implementation of inseason transfers will require consultation with the pertinent commercial and recreational Salmon Advisory Subpanel representatives from the area involved and the Salmon Technical Team, and a clear establishment of available fish and impacts from the transfer.

(C) Preseason trades will use an exchange ratio of four coho to one chinook as a guideline. Inseason trades or transfers may vary from the guideline ratio to meet the fishery allocation priorities in paragraphs 2(a)(iii) (A) and (B) of this section.

(D) The percentages presented in the allocation schedule are averages for the entire area between Cape Falcon and the U.S.-Canada border. The geographic distribution of the allocation percentages may be varied by major subareas, i.e., north of Leadbetter Point and south of Leadbetter Point, if there is need to do so to protect the weak stocks. Deviations from the overall percentages in each major subarea will generally not exceed 90 percent of the allocation of each species which would have been established in the absence of the transfer.

10. In the Appendix, in section II.B.7., in paragraph (a), the second sentence is removed; paragraphs (c)(i) through (iii) are removed; paragraphs (c)(iv) and (v) are redesignated as (c)(i) and (ii), respectively; paragraphs (d)(i) and (ii) are removed; and paragraph (d) introductory text and paragraph (d)(iii) are redesignated as paragraph (d).

11. In the Appendix, in section II.B., new paragraph 11 is added to read as follows:

* * * * *

II. * * *

B. * * *

11. Inseason notice procedures.

Telephone hotlines and U.S. Coast Guard broadcasts will provide actual notice of inseason actions for commercial, recreational, and treaty Indian fishing. Fishermen must monitor either or both information sources. Inseason actions will also be published in the **Federal Register** as soon as practicable.

* * * * *

12. In the appendix, in section III.A.1., the words "by publishing a notice in the **Federal Register**" are revised to read "by notice issued".

13. In the Appendix, in section III.B.2., paragraph (c) is revised to read as follows:

* * * * *

B. * * *

2. * * *

(c) Notice of inseason actions will be available through telephone hotlines and U.S. Coast Guard broadcasts. In addition, notice of inseason actions will be filed with the **Federal Register** as soon as practicable following the action.

* * * * *

14. In the Appendix, in section IV.A., in the table "Summary of Specific Management Goals for Stocks in the Salmon Management Unit," in the third column, the heading "Rebuilding schedule" and the accompanying text in the column is removed; in the row for Klamath Fall Chinook, in the second column, the words "97,500 natural; 17,500 hatchery" are revised to read "35 percent of the potential adults from each brood of natural spawners, but no fewer than 35,000 naturally spawning adults in any year (footnote 3)"; and footnote 3 is revised to read "The minimum escapement floor of 35,000 naturally spawning adults may be modified only by amendment to the FMP."

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Notices

Federal Register
Vol. 54, No. 12
Thursday, January 19, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of revision of Privacy Act systems of records.

SUMMARY: Notice is hereby given that the United States Department of Agriculture (USDA) is revising four of its Privacy Act (PA) Systems of Records; is deleting four of its Systems of Records; and is proposing a new System of Records to the Systems of Records maintained by the Agricultural Research Service (ARS).

EFFECTIVE DATE: This notice will be adopted without further publication in the **Federal Register** on March 20, 1989, unless modified by a subsequent notice to incorporate public comments. Comments must be received by the contact person listed below on or before February 21, 1989.

ADDRESSES: Interested persons may submit written comments to Stasia A.M. Hutchison, PA Coordinator, ARS, USDA, Room 331, Building 005, BARC-West, Beltsville, Maryland 20705; telephone (301) 344–3928, (FTS) 344–3928.

FOR FURTHER INFORMATION CONTACT: Stasia A.M. Hutchison, PA coordinator, ARS, USDA, Room 331, Building 005, BARC-West, Beltsville, Maryland 20705; telephone (301) 344–3928, (FTS) 344–3928.

SUPPLEMENTARY INFORMATION: Pursuant to the PA, 5 U.S.C. 552a, USDA hereby takes the following action: I. Four Systems of Records maintained by ARS are being revised for the following reasons:

1. USDA/ARS–1, "Solicitation of Bids or Proposals for Procurement Contracts." The purposes of this revision to the system of records are to (1) change the designation from USDA/SEA–4 to USDA/ARS–1; (2) reflect organizational changes; (3) make clarifying stylistic changes; (4) identify changes in record system location and system manager; and (5) add three routine uses of the records.

2. USDA/ARS–2, "Research Medical Records System on Patients and Human Volunteers Participating in Research at the ARS Human Nutrition Research Centers in Grand Forks, Beltsville, and San Francisco." The purposes of this revision to the system of records are to (1) change the designation from USDA/SEA–6 to USDA/ARS–2; (2) reflect organizational changes; (3) make clarifying stylistic changes; (4) identify changes in system name; (5) identify changes in the record system location and system manager; (6) indicate the authorities for maintaining the system; (7) indicate that the records are stored on diskettes and microfilm; and (8) indicate that clinical records are maintained for 7 years.

3. USDA/ARS–3, "Dosimetry Report on Individuals in USDA Required by Radiological Safety Committee to Wear Radiation Exposure Measuring Badges when Appropriate." The purposes of this revision to the system of records are to (1) change the designation from USDA/SEA–7 to USDA/ARS–3; (2) reflect organizational changes; (3) make clarifying stylistic changes; (4) identify changes in the system location and system manager; (5) indicate the index to the system will be maintained on the computer; (6) indicate that the records will be retrieved by the individual's social security number, name, or agency; and (7) indicate the computer records will be safeguarded against unauthorized access.

4. USDA/ARS–4, "Education and Radiation Training and Experience Reports on Persons in USDA Using Radioactive Materials and/or Equipment which Emit Ionizing Radiation." The purposes of this revision to the system of records are to (1) change the designation from USDA/SEA–8 to USDA/ARS–4; (2) reflect organizational changes; (3) make clarifying stylistic changes; (4) identify changes in the system location and system manager; (5) indicate the records will be stored on computer disks, computer printouts, microfilm, and microfiche; (6) indicate the records will be retrieved by individual's assigned code number, city, and State; (7) indicate the records are retained in accordance with the U.S. Nuclear Regulatory Commission's recordkeeping requirements; and (8) indicate dosimetry information is provided by a contractor.

II. Four Systems of Records are being deleted as follows:

1. USDA/SEA–1, "Biographical Material and Nominating Statements on SEA Employees Proposed for Major Awards." This system is being deleted because the records are no longer retrievable by a personal identifier.

2. USDA/SEA–2, "Biographical Material on Persons Related to Science or Agriculture." This system is being deleted because the records are no longer maintained by USDA.

3. USDA/SEA–3, "Manpower File." This system is being deleted because the records are no longer maintained by USDA.

4. USDA/SEA–5, "Training File." This system is being deleted because the records are no longer maintained by USDA.

III. A new system of records is being proposed as follows:

A new system of records, USDA/ARS–5, "ARS Health and Fitness Center" is being proposed. The purpose of this system of records is to enable the staff of the ARS Health and Fitness Center to monitor the health and physical fitness of the members.

A "Report on New System" for each System of Records, required by 5 U.S.C. 552a(r), as implemented by the OMB Circular A–130, was sent to the President of the Senate, the Speaker of the House of Representatives, and the Office of Management and Budget on January 9, 1989.

Signed at Washington, DC, on January 9, 1989.

Peter C. Myers,

Acting Secretary.

PRIVACY ACT SYSTEM USDA/ARS–1 REPORT

The purposes of this system of records revision are to change the designation from USDA/SEA–4 to USDA/ARS–1; reflect organizational changes; make clarifying stylistic changes; and identify changes in the system location, routine uses, and system manager.

The authority for maintaining this system of records is 5 U.S.C. 301.

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Use of this system, as established, should not result in infringement of any individual's right to privacy.

Access to these records will be limited to USDA employees who maintain the records and have a need for the records in the performance of their duties.

Use of this system will have no effect upon privacy and other personal or property rights of individuals or on the preservation of the constitutional principles of federalism and separation of powers.

The records are stored in Government office buildings, locked offices, or locked file cabinets and maintained in file folders.

The revised system of records is not exempt from any provisions of the Privacy Act.

USDA/ARS-1

SYSTEM NAME:

Solicitation of Bids or Proposals for Procurement Contracts, USDA/ARS.

SYSTEM LOCATION:

Records are maintained at the following locations:

Office of the Director, USDA–ARS-Contracting and Assistance Division, NAL Building, 4th Floor, 10301 Baltimore Boulevard, Beltsville, Maryland 20705.

Office of the Director, USDA–ARS-Facilities Construction Management Division, Federal Building, Room 522, 6505 Belcrest Road, Hyattsville, Maryland 20782.

Area Administrative Officer, USDA–ARS-Beltsville Area, Building 003, BARC-West, Room 309, Beltsville, Maryland 20705.

Area Administrative Officer, USDA–ARS-Mid South Area, P.O. Box 225, Stoneville Road, Stoneville, Mississippi 38776.

Area Administrative Officer, USDA–ARS-Midwest Area, 1815 North University Street, Peoria, Illinois 61604.

Area Administrative Officer, USDA–ARS-North Atlantic Area, 600 East Mermaid Lane, Philadelphia, Pennsylvania 19118.

Area Administrative Officer, USDA–ARS-Northern Plains Area, 2925 Redwing Road, Suite 350, For Collins, Colorado 80526.

Area Administrative Officer, USDA–ARS-Pacific West Area, 800 Buchanan Street, Albany, California 94710.

Area Administrative Officer, USDA–ARS-South Atlantic Area, P.O. Box 5677, College Station Road, Athens Georgia 30613.

Area Administrative Officer, USDA–ARS-Southern Plains Area, 1612 Welsh Street, Suite 130, College Station, Texas 77840.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who submit bids or proposals to furnish supplies or perform services under contract with ARS.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system consists of files of all bids or offers received and awards made in regard to solicitations issued by ARS, including copies of actual bids or offers and modifications thereto, and reports or statements by bidders or offerors about their financial and professional or technical capabilities with respect to furnishing the supplies or rendering the services described in the solicitation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

PURPOSE:

This information is used by the contract specialists in the day-to-day administration of the contracts; in deciding courses of action in the event of contractor default; and in handling congressional inquiries and protests made by other competing bidders or offerors.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records in this system may be disclosed: (1) To the Department of Justice when relevant and useful for the defense of suits against the United States or its officers or for the institution of suits for the recovery of claims by the USDA; (2) to an appropriate agency, whether Federal, State, or local, charged with the responsibility of investigating or prosecuting a violation of law or rule, regulation, or order issued pursuant thereto, when information available indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation, or order issued pursuant to such statute; (3) in response to a request for discovery or appearance of a witness, to the extent that what is disclosed is relevant to the subject matter involved in a pending judicial or criminal proceeding or in response to a subpoena issued in a proceeding before a court or adjudicative body, to the extent that the records requested are relevant to the proceedings; and (4) to a congressional office made at the request of the individual to whom the record pertains.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders.

RETRIEVABILITY:

Records are indexed by solicitation number, contract number, and name of contractor.

SAFEGUARDS:

Records are kept in locked file cabinets and offices when not in the custody of procurement officers or their subordinates.

RETENTION AND DISPOSAL:

Records are maintained until 6 years after contract termination or final contract payment is made.

SYSTEM MANAGER(S) AND ADDRESS:

Office of the Director, Contracting and Assistance Division, USDA–ARS, NAL Building, 4th Floor, 10301 Baltimore Boulevard, Beltsville, Maryland 20705; Office of the Director, Facilities Construction Management Division, USDA–ARS, Federal Building, Room 522, 6505 Belcrest Road, Hyattsville, Maryland 20782; or the Area Administrative Officers at the addresses given herein.

Notification procedures: Any individual may request information regarding this system of records or information as to whether the system contains records pertaining to him from the System Manager.

Record access procedures: Any individual may gain access to a record in the system that pertains to him by submitting a written request to the System Manager.

Contesting record procedures: Any individual may contest a record in the system that pertains to him by submitting pertinent written information to the System Manager.

Record source categories: Information in this system comes from the business firm or individual concerned or the Small Business Administration in the case of small business set-aside procurements, and previous ARS records of procurement contracts in which the business firm or individual was the principal party to the contract.

PRIVACY ACT SYSTEM USDA/ARS-2 REPORT

The purposes of this system of records revision are to change the designation from USDA/SEA–8 to USDA/ARS–2; reflect organizational changes; make

clarifying stylistic changes; and identify changes in the system name, system location, authority for maintenance of the system, storage, retention and disposal, and system managers.

The authorities for maintaining this system of records are 7 U.S.C. 2201, 7 U.S.C. 427, and 7 U.S.C. 3101 et seq.

Use of this system, as established, should not result in infringement of any individual's right to privacy.

Access to these records will be limited to USDA employees who maintain the records and have a need for the records in the performance of their duties.

Use of this system will have no effect upon privacy and other personal or property rights of individuals or on the preservation of the constitutional principles of federalism and separation of powers.

The records are stored in Government office buildings, locked offices, or locked file cabinets and are maintained in file folders or on magnetic tapes, diskettes, or mirofilm.

The revised system of records will not be exempt from any provisions of the Privacy Act.

USDA/ARS-2

System name: Research Medical Records System on Patients and Human Volunteers Participating in Research at the ARS Human Nutrition Research Centers in Grand Forks, Beltsville, and San Francisco, USDA/ARS.

System location: USDA, ARS, Grand Forks Human Nutrition Research Center, Northern Plains Area, 2420 Second Avenue North, Grand Forks, North Dakota 58201; USDA, ARS, Beltsville Human Nutrition Research Center, Building 308, Room 223, Beltsville Agricultural Research Center, Beltsville, Maryland 20705; and USDA, ARS, Western Human Nutrition Research Center, P.O. Box 29997, (Building 1110), Presidio of San Francisco, California 94129.

Categories of individuals covered by the system: Individuals participating in human researech carried out by the staffs of the Laboratories of the Human Nutrition Research Centers.

Categories of records in the system: Medical and nutritional histories, medical and nutritional examinations, diagnostic and treatment data, social and economic data, clinical laboratory data, statistical summaries, and correspondence.

Authorities for maintenance of the system: 7 U.S.C. 2201, 7 U.S.C. 427, and 7 U.S.C. 3101 et seq.

Purposes: To analyze research findings and to prepare a report of the findings (the identification of individuals who participate in the research is not revealed in the repost of research findings).

Routine uses of records maintained in the system, including categories of users and the pupposes of such uses: Records in this system may be disclosed: (1) To the Department of Justice when relevant and useful for the defense of suits against the United States or its officers or for the institution of suits for the recovery of claims by the USDA; (2) to an appropriate agency, whether Federal, State, or local, charged with the responsibility of investigating or prosecuting a violation of law or rule, regulation, or order issued pursuant thereto, when information available indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation, or order issued pursuant to such statute; (3) in response to a request for discovery or appearance, of a witness, to the extent that what is disclosed is relevant to the subject matter involved in a pending judicial or criminal proceeding or in response to a subpoena issued in a proceeding before a court or adjudicative body, to the extent that the records requested are relevant to the proceedings; and (4) to a congressional office in response to an inquiry from a congressional office made at the request of the individual to whom the record pertains.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are kept in file folders or maintained on magnetic tapes, diskettes, or microfilm.

Retrievability: Records are indexed by the name of the volunteer and a number assigned to the volunteer.

Safeguards: Records are kept in locked file cabinets and offices.

Retention and disposal: Clinical records are maintained for a period of 7 years. Scientific records are discarded at the discretion of the principal investigator or research leader.

System manager(s) and address: USDA, ARS, Grand Forks Human Nutrition Research Center, Northern Plains Area, 2420 Second Avenue, North, Grand Forks, North Dakota 58201; USDA, ARS, Beltsville Human Nutrition Research Center, Building 308, Room 223, Beltsville Agricultural Research Center, Beltsville, Maryland 20705; and USDA, ARS, Western Human Nutrition Research Center, P.O. Box 29997, (Building 1110), Presidio of San Francisco, California 94129.

Notification procedures: Any individual may request information regarding this system of records or information as to whether the sytem contains records pertaining to him from the System Manager.

Record access procedures: Any individual may gain access to a record in the system that pertains to him by submitting a written request to the System Manager.

Contesting record procedures: Any individual may contest a record in the system that pertains to him by submitting pertinent written information to the System Manager.

Record source categories: Information in this system comes primarily from the volunteer, health care personnel, other hospitals and physicians, employers, and social agencies.

PRIVACY ACT SYSTEM USDA/ARS-3 REPORT

The purposes of this system of records revision are to change the designation from USDA/SEA–7 to USDA/ARS–3; reflect organizational changes; make clarifying stylistic changes; and identify changes in the system location, storage, retrievability, safeguards, and system manager.

The authorities for maintaining this system of records are 42 U.S.C. 2111 and 42 U.S.C. 2201(b).

Use of this system, as established, should not result in infringement of any individual's right to privacy.

Access to these records will be limited to USDA employees who maintain the records and have a need for the records in the performance of their duties.

Use of this system will have no effect upon privacy and other personal or property rights of individuals or on the preservation of the constitutional principles of federalism and separation of powers.

The records are stored in Government office buildings, locked offices, or locked file cabinets and are maintained in file folders or on microfilm.

The revised system of records will not be exempt from any provisions of the Privacy Act.

USDA/ARS-3

SYSTEM NAME:

Dosimetry Report on Individuals in USDA Required by Radiological Safety Committee to Wear Radiation Exposure Measuring Badges when Appropriate, USDA/ARS.

SYSTEM LOCATION:

Radiological Safety Staff, ARS, USDA, 6505 Belcrest Road, Room 463, Federal Building, Hyattsville, Maryland 20782.

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CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All individuals who use radioactive material and/or radiation equipment which emit strong beta particles, neutrons, gamma rays, or X-rays.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system indicates individual's name, date of birth, and social security number; issue date; monthly beta, gamma, neutron, and X-ray dosages; classification of dosages as deep or shallow; and cumulative totals for the calendar quarter, calendar year, and lifetime.

AUTHORITIES FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2111 and 42 U.S.C. 2201(b).

PURPOSE:

The system permits the maintenance of a monthly and cumulative record of each badge wearer's radiation exposure.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records in this system may be disclosed: (1) To the Nuclear Regulatory Commission for review, compliance, and investigation purposes; (2) to a doctor, hospital, or other competent medical authority in event of a medical emergency involving radiation exposure; (3) to the Department of Labor, Veterans Administration, Social Security Administration, U.S. Civil Service Commission, Department of Defense, Federal agencies which may have special civilian employee retirement programs, national, State, county, municipal, or other publicly recognized chartiable or social security administration agency to adjudicate a claim for benefits under the Bureau of Retirement, Insurance, and Occupational Health or the recipient's benefit program(s), or to conduct an analytical study of benefits being paid under such programs; (4) to health insurance carriers or plans participating in Federal Employees' Health Benefits Program in support of a claim for health insurance benefits involving radiation exposure; (5) to Federal Employees' Group Life Insurance Program in support of a claim for life insurance benefits involving radiation exposure; (6) to an organization to which the individual is transferred, upon written request of that organization; (7) to the Department of Justice when relevant and useful for the defense of suits against the United States or its officers or for the institution of suits for the recovery of claims by the USDA; (8) to an appropriate agency, whether Federal, State, or local, charged with the responsibility of investigating or prosecuting a violation of law or rule, regulation, or order issued pursuant thereto, when information available indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation, or order issued pursuant to such statute; (9) in response to a request for discovery or appearance of a witness, to the extent that what is disclosed is relevant to the subject matter involved in a pending judicial or criminal proceeding or in response to a subpoena issued in a proceeding before a court or adjudicative body, to the extent that the records requested are relevant to the proceedings; and (10) to a congressional office in response to an inquiry from a congressional office made at the request of the individual to whom the record pertains.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Current system is maintained in file drawers in Radiological Safety Staff office. Past reports maintained in Federal Records Center (FRC). Microfilms of past reports maintained in FRC and in file cabinet in Radiological Safety Staff office. Index to the system is maintained on a computer system controlled by the Radiological Safety Staff.

RETRIEVABILITY:

Records are indexed and accessed by social security number or selected by the individual's name, agency, or location.

SAFEGUARDS:

Access is limited to authorized Radiological Staff and contractor employees by control of access to the computers and passwords. Records are kept in locked file cabinets and offices.

RETENTION AND DISPOSAL:

U.S. Nuclear Regulatory Commission requires retention of records until such time as the Commission authorizes their disposition.

SYSTEM MANAGER(S) AND ADDRESS:

Radiological Safety Officer, Radiological Safety Staff, ARS, USDA, 6505 Belcrest Road, Room 463, Federal Building, Hyattsville, Maryland 20782.

NOTIFICATION PROCEDURES:

Any individual may request information regarding this system of records or information as to whether the system contains records pertaining to him from the System Manager.

RECORD ACCESS PROCEDURES:

Any individual may gain access to a record in a system that pertains to him by submitting a written request to the System Manager.

CONTESTING RECORD PROCEDURES:

Any individual may contest a record in the system that pertains to him by submitting pertinent written information to the System Manager.

RECORD SOURCE CATEGORIES:

Personal information about each individual is provided by the individual. Dosimetry information is provided by a commercial supplier of personal dosimeters under contract with USDA who routinely receives, processes, and evaluates the dosimeters and furnishes the System Manager with the appropriate information.

Privacy Act System USDA/ARS–4 Report

The purposes of this system of records revision are to change the designation from USDA/SEA–8 to USDA/ARS–4; reflect organizational changes; make clarifying stylistic changes; and identify changes in the system location, storage, retrievability, safeguards, retention and disposal, system manager, and record source categories.

The authorities for maintaining this system of records are 42 U.S.C. 2111 and 42 U.S.C. 2201(b).

Use of this system, as established, should not result in infringement of any individual's right to privacy.

Access to these records will be limited to USDA employees who maintain the records and have a need for the records in the performance of their duties.

Use of this system will have no effect upon privacy and other personal or property rights of individuals or on the preservation of the constitutional principles of federalism and separation of powers.

The records are stored in Government office buildings, locked offices, or locked file cabinets and maintained in file folders or on computer disks, computer printouts, microfilm, or microfiche.

The revised system of records will not be exempt from any provisions of the Privacy Act.

USDA/ARS–4

SYSTEM NAME:

Education and Radiation Training and Experience Reports on Persons in USDA Using Radioactive Materials and/or Equipment which Emit Ionizing Radiation, USDA/ARS.

SYSTEM LOCATION:

Radiological Safety Staff, ARS, USDA, 6505 Belcrest Road, Room 463, Federal Building, Hyattsville, Maryland 20782.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All persons in USDA who are responsible for, or independent users of, radioactive materials and/or equipment which emit ionizing radiation.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system consists of information on a person's educational background including formal courses and on-the-job training in radiation; experience in actual use of radioactive materials and/or equipment which emit ionizing radiation; experience in the use of radiation detection and measuring instrumentation; and additional information such as pertinent publications, speeches, etc., which will assist in the evaluation of a person's qualifications to safely use radioactive materials and/or equipment which emit ionizing radiation to protect his health and to minimize danger to life or property.

AUTHORITIES FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2111 and 42 U.S.C. 2201(b).

PURPOSES:

The system is used by the Department's Radiological Safety Committee and Radiological Safety Staff in its determination to approve or deny a person's procurement and use of potentially hazardous radioactive materials and/or equipment which emit ionizing radiation. When applicable, the system supplies information for maintenance of required radiation exposure records on persons who are required to wear personnel monitoring devices while using radioactive materials and/or equipment which emit ionizing radiation.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records in this system may be disclosed: (1) To the Nuclear Regulatory Commission for review, compliance, and investigation purposes; (2) to the Department of Labor, Veterans Administration, Social Security Administration, U.S. Civil Service Commission, Department of Defense, Federal agencies which may have special civilian employee retirement programs, national, State, county, municipal, or other publicly recognized charitable or social security administration agency to adjudicate a claim for benefits under the Bureau of Retirement, Insurance, and Occupational Health or the recipient's benefit program(s) or to conduct an analytical study of benefits being paid under such programs; (3) to health insurance carriers or plans participating in Federal Employees' Health Benefits Program in support of a claim for health insurance benefits involving radiation exposure; (4) to Federal Employees' Group Life Insurance Program in support of a claim for life insurance benefits involving radiation exposure; (5) disclosed to an organization to which the individual in transferred, upon written request of that organization; (6) to the Department of Justice when relevant and useful for the defense of suits against the United States or its officers or for the institution of suits for the recovery of claims by the USDA; (7) to an appropriate agency, whether Federal, State, or local, charged with the responsibility of investigating or prosecuting a violation of law or rule, regulation, or order issued pursuant thereto, when information available indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation, or order issued pursuant to such statute; (8) in response to a request for discovery or appearance of a witness, to the extent that what is disclosed is relevant to the subject matter involved in a pending judicial or criminal proceeding or in response to a subpoena issued in a proceeding before a court or adjudicative body, to the extent that the records requested are relevant to the proceedings; and (10) to a congressional office in response to an inquiry from a congressional office made at the request of the individual to whom the record pertains.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in file folders or maintained on computer disks, computer printouts, microfilm, and microfiche. Information will be transmitted and stored on USDA and contractor computers.

RETRIEVABILITY:

Records are indexed and accessed by individual's name, assigned code number, city, and State.

SAFEGUARDS:

Access is limited to authorized Radiological Safety Staff and contractor employees by control of access to the computers and passwords. Records are kept in locked file cabinets and offices.

RETENTION AND DISPOSAL:

U.S. Nuclear Regulatory Commission requires retention of records until such time as the Commission authorizes their disposal.

SYSTEM MANAGER(S) AND ADDRESS:

Radiological Safety Staff, ARS, USDA, 6505 Belcrest Road, Room 463, Federal Building, Hyattsville, Maryland 20782.

NOTIFICATION PROCEDURES:

Any individual may request information regarding this system of records or information as to whether the system contains records pertaining to him from the System Manager.

RECORD ACCESS PROCEDURES:

Any individual gain access to a record in the system that pertains to him by submitting a written request to the System Manager.

CONTESTING RECORD PROCEDURES:

Any individual may contest a record in the system that pertains to him by submitting pertinent written information to the System Manager.

RECORD SOURCE CATEGORIES:

Personal information about each individual is provided by the individual. Dosimetry information is provided by a commercial supplier of personal dosimeters under contract with USDA who routinely receives, processes, and evaluates the dosimeters and furnishes the System Manager with the appropriate information.

PRIVACY ACT SYSTEM USDA/ARS–5 REPORT

The purpose of this system of records notice is to add a new system of records.

The authority for maintaining this system of records is 5 U.S.C. 301.

Use of this system, as established, should not result in infringement of any individual's right to privacy.

Access to these records will be limited to USDA employees who maintain the records and have a need for the records in the performance of their duties.

Use of this system will have no effect upon privacy and other personal or property rights of individuals or on the preservation of the constitutional principles of federalism and separation of powers.

The records are stored in a Government office building or locked office and are maintained in file folders.

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This system of records will not be exempt from any provisions of the Privacy Act.

USDA/ARS–5

System name: ARS Health and Fitness Center, USDA/ARS.

System location: ARS Health and Fitness Center, ARS, USDA, Building 010, BARC–West, Beltsville, Maryland 20705.

Categories of individuals covered by the system: USDA employees and their families that are members of the ARS Health and Fitness Center

Categories of records in the system: The system contains the member's name, date of birth, office and home address, medical history, general health information, and physicians name and phone number.

Authority for maintenance of the system: 5 U.S.C. 301.

Purposes: The information is made available to the staff at the ARS Health and Fitness Center to monitor the health and physical fitness of the members.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Records in this system may be disclosed: (1) To the Department of Justice when relevant and useful for the defense of suits against the United States or its officers or for the institution of suits for the recovery of claims by the USDA; (2) to an appropriate agency, whether Federal, State, or local, charged with the responsibility of investigating or prosecuting a violation of law or rule, regulation, or order issued pursuant thereto, when information available indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation, or order issued pursuant to such statute; (3) in response to a request for discovery or appearance of a witness, to the extent that what is disclosed is relevant to the subject matter involved in a pending judicial or criminal proceeding or in response to a subpoena issued in a proceeding before a court or adjudicative body, to the extent that the records requested are relevant to the proceedings; and (4) to a congressional office in response to an inquiry from a congressional office made at the request of the individual to whom the record pertains.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained in file cabinets.

Retrievability: Records are indexed alphabetically by name of the member.

Safeguards: The records are kept in a locked office.

Retention and disposal: Records are maintained until the member cancels his/her membership.

System manager(s) and address: ARS Health and Fitness Center Manager, ARS, USDA, Building 010, BARC–West, Beltsville, Maryland 20705.

Notification procedures: Any individual may request information regarding this system of records or information as to whether the system contains records pertaining to him from the System Manager.

Record access procedures: Any individual may gain access to a record in the system that pertains to him by submitting a written request to the System Manager.

Contesting record procedures: Any individual may contest a record in the system that pertains to him by submitting pertinent written information to the System Manager.

Record source categories: Information in this system comes directly from the individual.

PRIVACY ACT SYSTEM USDA/SEA–1 REPORT

The purpose of this notice is to delete this system of records because the records are no longer retrievable by a personal identifier.

PRIVACY ACT SYSTEM USDA/SEA–2 REPORT

The purpose of this notice is to delete this system of records because the records are no longer maintained by USDA.

PRIVACY ACT SYSTEM USDA/SEA–3 REPORT

The purpose of this notice is to delete this system of records because the records are no longer maintained by USDA.

PRIVACY ACT SYSTEM USDA/SEA–5 REPORT

The purpose of this notice is to delete this system of records because the records are no longer maintained by USDA.

[FR Doc. 89–1207 Filed 1–18–89; 8:45 am]

BILLING CODE 3410–03

Forms Under Review by Office of Management and Budget

January 13, 1989.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96–511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, DC 20250. (202) 447–2118

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Deck Officer of your intent as early as possible.

Revision

• Foreign Agricultural Service
Targeted Export Assistance (TEA) Progam
None
On Occasion; Annually
State or local governments; Businesses or other for-profit; Non-profit institutions; 985 responses; 78,147 hours; not applicable under 3504(h)
Richard E. Passig (202) 447–4327

• Farmers Home Administration
7 CFR Part 1930–C, Management and Supervision Of Multiple Family Housing
Borrowers and Grant Recipients
FmHA 444–27A, 1944–8, –25, –27, –29, 1930–5, –6, –7, and –8
On Occasion; Monthly
Individual or households; State or local governments; Farms; Businesses or other for-profit; Non-profit institutions; Small businesses or organizations; 1,701,985 responses; 1,980,334 hours; not applicable under 3504(h)
Jack Holston (202) 382–9736

Extension

• National Agricultural Statistics Service
Mink Survey
None
Annually
Farms; 970 responses; 162 hours; not applicable under 3504(h)
Larry Gambrell (202) 447–7737

• Agricultural Marketing Service
Irish Potatoes Grown in Colorado, Marketing Order No. 948.
None
Annually
Farms; Businesses or other for-profit; 39 responses; 4 hours; not applicable under 3504(h)
Virginia M. Olson (202) 475–3930

Larry K. Roberson,

Acting Departmental Clearance Officer.

[FR Doc. 89–1249 Filed 1–18–89; 8:45 am]

BILLING CODE 3410–01–M

Forest Service

Copper Basin Land Exchange and Mine Plan; Prescott National Forest and Phoenix District (BLM) Yavapai County, AZ; Revised Notice of Intent To Prepare an Environmental Impact Statement

This notice is revised from that published in the **Federal Register**, Vol. 53, No. 150, Thursday, August 4, 1988, page 29349. It is revised to inform interested persons, organizations and agencies the timing for scoping of the Copper Basin Land Exchange and Mine Plan Proposals. Paragraph 7 of the previously published notice is revised to read:

Federal, State or local agencies, organizations and individuals who may be interested in, or affected by the decisions are invited to participate in the scoping process for these proposals. Scoping began with citizen interviews on December 1, 1988. These interviews will continue through the month of January 1989. Scoping meetings, open to all who have an interest in this project, will be held as detailed below.

Date, Time and Place

January 26, 1989, 7:00 to 10:00 p.m.—Kirkland Posse Hall, Kirkland, Arizona
January 27, 1989, 7:00 to 10:00 p.m.—Sheraton Resort & Conference Center 1500 Hwy 69, Prescott, Arizona
January 28, 1989, 7:00 to 7:00 p.m.—Sheraton Resort & Conference Center 1500 Hwy 69, Prescott, Arizona

Paragraph 9 of the Notice is revised to read:

The analysis is expected to take 18 to 24 months, and will be prepared by the independent engineering and environmental consulting firm of Espey, Huston & Associates of Austin, Texas. The Forest Service, which is the lead agency responsible for the Environmental Impact Statement, will direct the consultant's work on these proposals. The draft Environmental Impact Statement should be available by December 1989. The final Environmental Impact Statement is scheduled to be completed in September 1990.

The period for providing written comment and suggestions concerning scoping and the analysis for the Environmental Impact Statement has been extended from November 30, 1988, to February 10, 1989. Please send your correspondence to Mr. Coy G. Jemmett, Forest Supervisor, Prescott National Forest, 344 South Cortez, Prescott, Arizona 86303.

For your convenience questions about the Land Exchange and Mine Plan Proposals and the Environmental Impact Statement should be directed to Ray Thompson, Copper Basin Interdisciplinary Team Leader, Prescott National Forest, phone: 602–445–1762.

Coy G. Jemmett,

Forest Supervisor.

Dated: January 10, 1989.

[FR Doc. 89–1213 Filed 1–18–89; 8:45 am]

BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

Alabama Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights (CCR), that a meeting of the Alabama Advisory Committee to the Commission will convene at 11:00 a.m. and adjourn at 1:00 p.m. on February 7, 1989, at the Holiday Inn (Medical Center), 120 South 20th Street, Birmingham, Alabama 35233. The purpose of the meeting is to discuss the status of the Commission and the recent Regional SAC Chairs Conference in which the Alabama Committee was represented; to hear a report on civil rights progress and/or problems; and to plan a project for Fiscal Year 1989.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Rodney Max, (205/328–5760) or Bobby Doctor, CCR staff at (202/523–5571 or TDD 202/376–8117). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact Mr. Doctor at least (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, January 6, 1989.

Melvin L. Jenkins,

Acting Staff Director.

[FR Doc. 89–1278 Filed 1–18–89; 8:45 am]

BILLING CODE 6335–01–M

Arkansas Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Arkansas Advisory Committee to the Commission will convene at 9:00 a.m. and adjourn at 6:00 p.m., on Friday, February 3, 1989, at the Holiday Inn-Center City, 617 South Broadway, Little Rock, Arkansas. The purpose of the meeting is to hold a community forum to receive information identifying civil rights issues, developments, and efforts to ameliorate any problems concerning discrimination against elderly persons in Arkansas. Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Acting Chairperson, Alan Patteson, Jr., or William F. Muldrow, Acting Director of the Central Regional Division, (816) 426–5253 (TDD 816/426–5009). Hearing impaired persons who will attend the forum and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, January 6, 1989.

Melvin L. Jenkins,

Acting Staff Director.

[FR Doc. 89–1279 Filed 1–18–89; 8:45 am]

BILLING CODE 6335–01–M

Colorado Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that the Colorado Advisory Committee to the Commission will convene a meeting at 9:15 a.m. and adjourn 3:00 p.m., on February 7, 1989, at the Executive Tower Inn, 1405 Curtis Street, Denver, Colorado 80202. The purpose of the meeting is to obtain information on education issues as a preclude to Advisory Committee program planning.

Persons desiring additional information, or planning a presentation

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to the Committee, should contact Committee Chairperson, Maxine Kurtz or Philip Montez, Director of the Western Regional Division, (213) 894–3437 (TDD 213/894–0508). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, January 6, 1989.

Melvin L. Jenkins,

Acting Staff Director.

[FR Doc. 89–1280 Filed 1–18–89; 8:45 am]

BILLING CODE 6335–01–M

North Dakota Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the United States Commission on Civil Rights, that the Native American Issues Subcommittee of the North Dakota Advisory Committee to the Commission will convene at 10:00 a.m. and adjourn at 12:00 noon, on February 9, 1989, at the Alumni Room, Memorial Union, University of North Dakota, Columbia Road, Grand Forks, North Dakota. The purpose of the meeting is to discuss a proposal on housing and utility issues on Indian reservations in North Dakota.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Bryce Streibel or Philip Montez, Director of the Western Regional Division (213) 894–3437, (TDD 213/894–0508). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, January 6, 1989.

Melvin L. Jenkins,

Acting Staff Director.

[FR Doc. 89–1281 Filed 1–18–89; 8:45 am]

BILLING CODE 6335–01–M

Oregon Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Oregon Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 4:30 on February 10, 1989, at the Hilton Hotel, Southwest Sixth Avenue, Portland, Oregon 97204. The purpose of the meeting is to plan activities and programming for the coming year.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, James Huffman or Philip Montez, Director of the Western Regional Division (213) 894–3437, (TDD 213/894–0508). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, January 11, 1989.

Melvin L. Jenkins,

Acting Staff Director.

[FR Doc. 89–1282 Filed 1–18–89; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

[Docket Nos. 8107–01, 8107–02]

Actions Affecting Export Privileges; John W. McKenzie

Summary

Pursuant to the December 13, 1988 Recommended Decision and Order of the Administrative Law Judge, which Decision and Order is attached hereto and affirmed in principle part by me, John W. McKenzie, individually and doing business as TEKSYS, Inc., with addresses of 6215 Raintree Court, Dallas, Texas 75240 and c/o East West Research and Design, 111/3 Nagombo Road, Peliyagoda, Sri Lanka, is, and the Respondents are collectively, denied for a period of five years from the date hereof all privileges of participating in any transaction involving commodities or technical data exported from the United States in whole or in part, or to be exported, or that are otherwise subject to the regulations (14 CFR Parts 768–700); provided, however, that commencing one year from the date hereof the denial period is suspended for the balance of the five year term, and shall be terminated at the end of such term, provided that the Respondents, or either of them, have committed no further violations of the Act, the Regulations, or the final Order entered in this proceeding.

Background and Discussion

The ALJ originally made his Recommended Decision and Order in this case on October 14, 1988. The matter was Remanded to the ALJ on November 15, 1988 in order that he might answer two questions posed by the Remand. One question concerned whether or not Respondents involved with the same violations should be treated equally with respect to sanctions absent compelling reasons to do otherwise. The other question sought the ALJ's opinion on certain "boiler plate" language generally found in denial orders. The ALJ's answers to those questions are found in his attached Recommended Decision and Order.

The ALJ's recommended sanction of the Respondents in this case remains unchanged from that in his October 14, 1988 Recommended Decision and Order. Although I am not convinced by the ALJ's arguments concerning the reason for the different sanctions in the two related cases, the evidence is not of such a nature that I can say as a matter of law the ALJ was in error in imposing the sanction that he has recommended. For that reason, I affirm the ALJ's Recommended Decision and Order. In doing so, I should also note that the ALJ again repeats his claim that Departmental counsel intentionally filed separate charging letters in related cases so as to inflate, presumably for personal performance reasons, the number of cases prosecuted by the Department. It is axiomatic that each individual charged in a particular matter, whether or not he or she acts in concert with another, represents a separate prosecution which must be proved in accordance with the rules of evidence. The change may or may not be contained in a joint charging letter. If it is contained in a joint charging letter, the Respondent may move for a proceeding separate from that of the other Respondents, subject to a decision on that motion by the ALJ. Likewise, a Respondent might move to consolidate separate cases into one proceeding. Finally, it is within the prerogative of the Administrative Law Judge to consolidate related cases on his own order, subject to the review of the Under Secretary, should the facts warrant such a consolidation order. It is certainly wihin the prerogative of the ALJ to inquire of the Department with respect to each new charging letter whether or not it is related to another, separately filed charging letter. The ALJ's allegation is uncalled for; it relates more to his

disagreement with applicable statute of limitations than it does to the cases involved.

As to the question on the clarity of one clause versus a similar one, the question is moot. I have previously decided the issue. Also, I disagree with the ALJ's characterization of Departmental counsel's behavior with respect to the issue.

Order

On December 13, 1988, the ALJ entered his Recommended Decision and Order in the captioned matter. That Decision and Order, a copy of which is attached hereto and made a part hereof, has been referred to me for final action. I hereby affirm the Recommended Decision and Order of the ALJ, subject only to my disassociation with this remarks concerning multiple charging letters by Departmental counsel and to modification of Paragraph III, pp 13 and 14, to which I add the following paragraph: "Such denial of export privileges shall extend only to those commodites and technical data which are subject to the Act and Regulations."

This constitutes final agency action in this matter.

Date: January 12, 1989.

Paul Freedenberg,

Under Secretary for Export Administration.

Default Decision And Order On Remand

Preliminary Statement

Appearance for Respondent: John W. McKenzie, 6215 Raintree Court, Dallas, TX 75240, c/o East West Research and Design, 111/3 Nagombo Road, Peliyagoda, Sri Lanka.

Appearance for Agency: Thomas C. Barbour, Attorney-Advisor, Office of Chief Counsel for Export Administration, U.S. Department of Commerce, Room H–3329, 14th & Constitution Avenue, NW., Washington, DC 20230.

On April 27, 1988, the Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (Agency), issued a charging letter to John W. McKenzie, individually and doing business as Teksys, Inc. (Respondents), charging Respondents with violating the Export Administration Act of 1979, as amended (50 U.S.C. App. 2401–2420, as amended, the Act) and §§ 387.5 and 387.6 of the Export Administration Regulations (the Regulations).[1] An Order dated May 18, 1988, extended the time in which to answer the charging letter to July 15, 1988. The Respondents failed to answer.

Because of the failure to answer, this Office issued an Order, dated August 4, 1988, ruling Respondents in default and directing Agency Counsel to file an evidentiary submission by September 3, 1988. Pursuant to § 388.8 of the Regulations, which provides:

DEFAULT (a) General

If a timely answer is not filed, the department shall file with the Administrative Law Judge a proposed Order together with the supporting evidence for the allegations in the charging letter. The Administrative Law Judge may require further submissions and shall issue any Order he deems justified by the evidence of record, any Order so issued shall have the same force and effect as an Order issued following the disposition of contested charges.

Agency Counsel filed the Motion for Default Judgment on September 2, 1988. The Agency also submitted documentary evidence to support allegations made in the charging letter. A copy of the above mentioned Motion for Default Judgment was also sent to the Respondents on September 2, 1988 to which there has been no response. The Administrative Law Judge's Decision was issued on October 14, 1988. On November 15, 1988 the proceeding was remanded to this Office soliciting responses to two questions addressed hereafter.

Facts and Discussion

The charging letter issued on April 27, 1988 alleged that the Respondents violated §§ 387.5 and 387.6 of the Regulations. Specifically, Agency submits that, on or about April 2, 1983, April 23, 1983, April 30, 1983, and May 14, 1983, Respondents exported or caused to be exported, from the United States to the Netherlands [2] U.S.-origin electronic communication equipment (General Electric hand held two-way radios) with knowledge that those goods were intended to be, and in fact were, reexported to Libya. Since Respondents had failed to obtain from the Agency the validated export license required by § 372.1(b) of the Regulations for each of these exports to Libya, the Agency asserts that Respondents committed five violations of § 387.6 of the Regulations.

The Agency also submits that, in connection with the shipments made on or about April 2, 1983 and April 30, 1983, and the two shipments made on or about April 23, 1983, Respondents made false representations of material fact by stating on the Shipper's Export Declaration (SED), accompanying each of the four shipments that the commodities being shipped were intended for ultimate destination in the Netherlands when Respondents knew that the commodities were intended for ultimate destination in Libya. The Agency alleges that in so doing, Respondents committed four violations of § 387.5 of the Regulations.

The Respondents have filed no response to the charging letter, nor have any of the facts alleged in the charging letter been contested by the Respondents or anyone else employed by Teksys, Inc. The Agency submitted documentary evidence showing that Counsel for Respondent Teksys, Inc. admitted that the company had made the five shipments of U.S.-origin electronics communications equipment to Libya through the Netherlands (Agency Exh. 1).[3]

The Agency submitted several Teksys, Inc. employee statements, including one made by Respondent McKenzie, indicating that Teksys, Inc. had a business relationship with a Libyan company in the late 1970's through the early 1980's (Agency Exh. 2–5). Other documentary evidence demonstrated that in late 1982, Respondent Teksys, Inc. received several orders for U.S.-origin electronic communication equipment from this company (Agency Exh. 6). In accordance with a September 29, 1982 letter from the Libyan company to Respondent Teksys, Inc., testing of electronic communication equipment was to take place at Teksys, Ltd. (a Teksys, Inc. subsidiary) in Dallas, Texas or in Amsterdam, the Netherlands (Agency Exh. 7). The employee statements indicate that the acceptance testing took place in Amsterdam, because the Libyans who were to perform this acceptance testing were unable to travel to Texas.

Other evidence showed that Respondent Teksys, Inc. filled orders received from the Libyan company in five separate shipments of U.S.-origin electronic communication equipment to its foreign subsidiary in Amsterdam (Agency Exh. 8–12). This evidence clearly demonstrates Respondent Teksys, Inc. knew, based on the purchase orders received, that the U.S.-origin electronic communication

[1] The Act was reauthorized and amended by the Export Administration Amendments Act of 1985, Pub. L. 99–64, 99 Stat. 120 (July 12, 1985), and amended by the Omnibus Trade and Competitiveness Act of 1988, Pub. L. 100–418, 102 Stat. 1107 (Aug. 23, 1988).

The Regulations, formerly codified at 15 CFR Parts 368–399, were redesignated as 15 CFR Parts 768–799, effective October 1, 1988 (53 FR 37751, September 28, 1988).

[2] There was one shipment made on each of the above-mentioned dates, two shipments on April 23, 1983.

[3] This admission was made in a memorandum submitted to the United States Attorney, who later declined criminal prosecution in this matter.

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equipment was intended for ultimate destination to the company in Libya.

Section 372.1(b) of the Regulations requires a validated export license for the export of this equipment to Libya. The equipment in question had been subject only to G–Dest controls until the presidential order restricting trade with Libya. Respondent McKenzie asserts that he was not informed of that change. He should have been. The absence of any such license for each of the five shipments constitutes five violations of § 387.6 of the Regulations.

The evidence further demonstrates that separate SED's were filed with the U.S. Customs Service for the shipments made on or about April 2, 1983 and April 30, 1983 and for two shipments made on or about April 23, 1983. These documents reflect that ultimate destination of these shipments was the Netherlands. The shipments were made to Amsterdam, and then the equipment was shipped to the company in Libya (Agency Exh. 1, 13). By making false statements of a material fact in connection with the submission of these export control documents to officials of a United States Agency, Respondents committed four violations of § 387.5 of the Regulations.

Conclusion

The evidence submitted by Agency Counsel supports the charges made by the Agency in the April 27, 1988 charging letter. The Respondents exported or caused to be exported U.S.-origin electronic communication equipment with knowledge that those goods were intended to be reexported to Libya without the required authorization from the U.S. Department of Commerce. Further, Respondents made false representations of material fact on the Shipper's Export Declarations regarding the ultimate destination of the goods.

The pattern of conduct demonstrated by the violations shows an intent to violate United States export laws and regulations. The goods unlawfully exported to Libya by the Respondents were controlled for foreign policy purposes. I find that an Order denying export privileges for five years is warranted and is reasonably necessary to protect the public interest, and to achieve effective enforcement of the Export Administration Act and the Regulations. However, I also recognize that Respondent, who presents the classic media image of a high-flying wheeling-dealing Texan, has been essentially bankrupted by his failure to know and follow the bureaucratic rules that are so anathema to his ilk.

Remand Questions and Responses

On November 15, 1988 this proceeding was remanded to this office soliciting responses to two questions which are addressed thereafter.

1. The violations at issue in the captioned matter are the same as were at issue in *In re Richard C. Carter* (Docket No. 8108–01, Oct. 6, 1988). In that case the ALJ approved a consent agreement imposing a three year denial period on the Respondent. What factors support treating the instant Respondent in a substantially different manner? Should not those charged with the same violations be treated equally absent compelling reasons to do otherwise?

Review of the files in this proceeding and (*Carter*, Docket No. 8106–01 (53 FR 43911, October 31, 1988)) reflects that these matters were initiated as separate cases. Initially this Office attempted to track them concurrently, however, with the issuance of the pro forma consent decision in *Carter*, any relationship between the proceedings was removed. The handling of these cases supports the comment previously made to the effect that Agency Counsel seek to inflate the number of a few stale cases. By so doing, the numbers are inflated, however, the connection between the cases is not reflected in the automated docket system. Here the attempted connection between these two matters was lost when one was settled. It is also appropriate to observe that in approving consent agreements there has been little by way of substantive or evidentiary materials submitted which would provide the factual basis for determining the relationship of the various parties or the degree of their comparative derelictions in different proceedings. An effort is now being made to provide some more substantive submissions in consent cases and to jointly track related cases. *See Behar*, Docket No. 8501–01 (53 FR 48686, December 2, 1988). However, as may be noted from the footnote on the first page of the Agency submission for default here, the hostility of Agency Counsel to even the attempt to connect the related cases is manifest. Nor did Agency Counsel indicate that there should have been parallel consideration respecting penalties. Had the submission to this Trier of the facts contained the representations and supporting materials, made for the first time on pages 3 and 4 of the Initial Submission to the Under Secretary, that tardily submitted request could have been considered.

The approval in *Carter* was based upon an agreed settlement, the assessment of the penalty here was based upon independent consideration of a factual record, including the U.S. Attorney's decision not to proceed criminally. The materials set forth in the record, including the fifteen exhibits, fully support the disposition reached here. While it is a truism that those charged with identical violations should be treated equally, here there were reasons for treating the two Respondents differently. Even Agency Counsel suggested that a three year denial was appropriate for Respondent Carter and a five year denial was appropriate for Respondent McKenzie.[4] Evaluation of the presentation made in this case led to the judgment that a substantial part of the denial period should be suspended. The Damocles Sword approach is particularly well suited in these cases to encourage compliance, which is the principle purpose of these proceedings.

Review of the file also indicates that while Carter was specifically named and the record appears to reflect that he and the company manager were the individuals who executed the documents in the various export transactions charged, Respondent McKenzie was not specifically identified with the transactions. The record rather indicates that it was his status as the chief executive of the company which established his responsibility. The explanation in Agency Exh. 1 and the other documents supports the conclusion that the equipment was not highly technical or sophisticated, there was a change in export control policy which the company and Respondent McKenzie failed to ascertain and implement, as they should have done, and that the export controls violated were of a foreign policy rather than a national security nature.

This Tribunal is statutorily charged with exercising its independent judgment in these cases. Agency Counsel's arguments and conclusions, to the extent they are supported by record evidence, deserve consideration.[5] Mere

[4] Hopefully, the fact of a default or a request for hearing would not be the basis for increasing the suggested penalty.

[5] Agency Counsel's advice to the effect that the Administrative Law Judges actions should be set aside or modified raises substantial question. In *Dart v. U.S.*, 848 F.2d 217 (DC Cir. 1988) the Court of Appeals said:

It is clear that the common usage of the word "modify" does not describe the Secretary's action in this case. The dictionary's first meaning of "modify" is: "to make more temperate and less extreme." *Webster's Third New International Dictionary* 1452 (Merriam-Webster ed. 1981.). At most, the word means "to make a basic or important change in." *Id.* (fourth definition).

argument or assertion is not such a sufficient basis. The disposition affirmed here is supported by the record.

2. Is there any legal reason why the final sentence of paragraph III of the proposed Decision and Order should not read as follows: "Such denial of export privileges shall extend to *commodities and technical data* which are subject to the act and regulations?

No! Over a period of eight months in 1987 representatives of this office met with representatives of the Under Secretary (then the Assistant Secretary) to respond to concerns of the Under Secretary's staff respecting the form language of the Orders. The precise language now complained of was suggested by the Under Secretary's representative. As of November 3, 1987 a standard style and content was implemented. Recently, on September 23, 1988, the General Counsel's office tardily expressed its views, and on October 20, 1988, those comments, with this office's edits, were forwarded to the Under Secretary's office. That transmittal gave notice of the revision being implemented and which is used here. In it, the sentence containing the contested language is deleted because it is redundant. There has been no response. The denial and civil penalty language is of substantial significance to individuals and the bar. The form and content of such orders could be improved through participation by the public and particularly the bar. Public notice and comment followed by the codification in the regulations is appropriate.

Order

I. For a period of five years from the date of the final Agency action, Respondent

John W. McKenzie individually and doing business as Teksys, Inc.
6215 Raintree Court, Dallas, Texas 75240
c/o East West Research and Design 111/3 Nagombo Road, Peliyagoda, Sri Lanka

and all successors, assignees, officers, partners, representatives, agents, and employees hereby are denied all privileges of participating, directly or indirectly, in any manner of capacity, in any transaction involving commodities or technical data exported from the United States in whole or in part, or to be exported, or that are otherwise subject to the Regulations.

II. Commencing one year from the date that this Order becomes effective, the denial of export privileges set forth above shall be suspended, in accordance with § 388.16 of the Regulations, for the remainder of the five year period set forth in Paragraph I above, and shall be terminated at the end of such five year period, provided that Respondents have committed no further violations of the Act, the Regulations, or the final Order entered in this proceeding. During the four year suspension period, Respondent may participate in transactions involving the export of U.S.-origin commodites and technical data from the United States or abroad in accordance with the requirements of the Act and the Regulations.

III. Participation prohibited in any such transaction, either in the United States or abroad, shall include, but not be limited to, participation:

(1) As a party or as a representative of a party to a validated or general export license application;

(ii) In preparing or filing any export license application or request for reexport authorization, or any document to be submitted therewith;

(iii) In obtaining or using any validated or general export license or other export control document;

(iv) In carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported from the United States, or to be exported; and

(v) In the financing, forwarding, transporting, or other servicing of such commodities or technical data.

IV. After notice and opportunity for comment, such denial of export privileges may be made applicable to any person, firm, corporation, or business organization with which the Respondent is now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of trade or related services.

V. All outstanding individual validated export licenses in which Respondent(s) appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of Respondent(s)'s privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

VI. No person, firm, corporation, partnership, or other business organization, whether in the United States or elsewhere, without prior disclosure to and specific authorization from the Office of Export Licensing, shall, with respect to commodities and technical data, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with any Respondent or any related person, or whereby any Respondent or any related person may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly:

(i) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transshipment, or diversion of any commodity or technical data exportd in whole or in part, or to be exported by, to, or for any Respondent or related person denied export privileges, or

((ii) Order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance or otherwise service or participate in any export, reexport, transshipment or diversion of any commodity or technical data exported or to be exported from the United States.

VII. This Order as affirmed or modified shall become effective upon entry of the Secretary's final action in this proceeding pursuant to the Act (50 U.S.C.A. app. 2412(c)(1)).[6]

Hugh J. Dolan,
Administrative Law Judge.

Date: December 13, 1988.

[FR Doc. 89–1203 Filed 1–18–89; 8:45 am]

BILLING CODE 3510–DT–M

Telecommunications Equipment Technical Advisory Committee; Partially Closed Meeting

A meeting of the Telecommunications Equipment Technical Advisory Committee will be held February 7, 1989, 9:30 a.m., Room 1617–F at the Herbert C. Hoover Building, 14th Street and Constitution Avenue, NW., Washington,

[6] The usual notices respecting submissions within the 30 day statutory review process and the suspense date for secretarial action have been omitted. It appears that the remand action is an extra-statutory process which results in a failure to comply with the time standards for secretarial action contained in section 13(c)(1) of the Export Administration Act. Whether it is also extra-legal I leave for others review.

This tribunal, like inferior courts must frequently suffer the inadequacies of yet wet behind the ears Counsel. The similar inadequacies of the behind the scenes greenhorn secretarial scriveners as manifest in this and a number of other recent cases, where neither the record nor the decision appear to have been perused is disconcerting.

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DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions that affect the level of export controls applicable to telecommunications and related equipment or technology.

Agenda

Open Session

1. Opening Remarks by the Chairman.
2. Presentation of Papers or Comments by the Public.
3. Proposals from the Public are Requested on Changes to CCL 1567A—Circuit Switches.
4. Discussion of a Technology Hierarchy for Packet Switching Hardware and Software.
5. Discussion of Recent Regulatory Changes.

Executive Session

6. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The general session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1988, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C. 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public. A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC. For further information or copies of the minutes, call Betty Ferrell at (202) 377–2583.

Date: January 10, 1989.

Betty Anne Ferrell,

Director, Technical Advisory Committee Unit, Office of Technology & Policy Analysis.

[FR Doc. 89–1238 Filed 1–18–89; 8:45 am]

BILLING CODE 3510-DT-M

International Trade Administration

[A-337-001]

Sodium Nitrate From Chile; Intention To Review and Preliminary Results of Changed Circumstances; Administrative Review and Tentative Determination To Revoke Antidumping Duty Order

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of intention to review and preliminary results of changed circumstances; administrative review and tentative determination to revoke antidumping duty order.

SUMMARY: Because of changed circumstances, we tentatively determine to revoke the antidumping duty order on sodium nitrate from Chile. The revocation will apply to all entries of sodium nitrate from Chile entered, or withdrawn from warehouse, for consumption on or after March 1, 1987. Interested parties are invited to comment on these preliminary results and tentative determination to revoke.

EFFECTIVE DATE: January 19, 1989.

FOR FURTHER INFORMATION CONTACT: J. David Dirstine or Phyllis Derrick, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–2923.

SUPPLEMENTARY INFORMATION:

Background

On April 28, 1988, the Department of Commerce ("the Department") published in the **Federal Register** (53 FR 15258) the final results of its last administrative review of the antidumping duty order on sodium nitrate from Chile (48 FR 12580, March 25, 1983) for the period March 1, 1986 through February 28, 1987. On July 27, 1988, Olin Corporation, the petitioner, informed the Department that it is no longer interested in the order and stated its support of revocation of the order. On that same date, Olin Corporation also withdrew its previous request dated March 9, 1988 for a section 751(a) administrative review covering the period March 1, 1987 through February 29, 1988. On September 12, 1988, Sociedad Quimica y Minera de Chile, S.A., respondent, likewise withdrew its previous request for an administrative review under section 751(a) of the Tariff Act of 1930 ("the Tariff Act"). Under section 751 (b) and (c) of the Tariff Act, the Department may revoke an antidumping duty order that is no longer of interest to domestic interested parties.

Scope of the Review

Imports covered by this review are shipments of industrial grade sodium nitrate (98 percent or more pure), currently classifiable under item number 280.2500 of the *Tariff Schedules of the United States Annotated* and under item number 3102.50.00 of the *Harmonized Tariff Schedule.*

The review covers one exporter of this merchandise to the United States, Sociedad Quimica y Minera de Chile, S.A. ("SQM"), and the period March 1, 1987 through February 29, 1988.

Preliminary Results of the Review

As a result of our review, we preliminary determine that the petitioner's affirmative statement of no interest in continuation of the antidumping duty order on sodium nitrate from Chile provides a reasonable basis for terminating the current section 751(a) administrative review and initiating a section 751(b) "changed circumstances" administrative review to revoke the order.

Therefore, we tentatively determine to revoke the order on sodium nitrate from Chile effective March 1, 1987. We intend to instruct the Customs Service to proceed with liquidation of all unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after March 1, 1987, without regard to antidumping duties and to refund any estimated antidumping duties collected with respect to those entries. The current requirement for a cash deposit of estimated antidumping duties will continue until publication of the final results of this review.

Interested parties may request a hearing within 8 days of the date of publication of this notice. Any hearing, if requested, will be held 35 days after the date of publication or the first workday thereafter. Pre-hearing briefs and/or written comments from interested parties may be submitted not later than 25 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in those comments, may be filed not later than 32 days after the date of publication. The Department will publish the final results of the review and its decision on revocation, including its analysis of any such comments or hearing.

This intention to review, tentative determination to revoke, and notice are in accordance with sections 751(b) and 9c) of the Tariff Act (19 U.S.C. 1675(b)

and (c) and §§ 353.53 and 353.54 of the Commerce Regulations (19 CFR 353.53 and 353.54).

Jan W. Mares,

Assistant Secretary for Import Administration.

Date: January 10, 1989.

[FR Doc. 89–1241 Filed 1–18–89; 8:45 am]

BILLING CODE 3510-DS-M

[A-583–501]

Postponement of Preliminary Antidumping Duty Determination; 12-Volt Motorcycle Batteries From Taiwan

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: This notice informs the public that we have received a request from the petitioner in this investigation to postpone the preliminary determination, as permitted in section 733(c)(1)(A) of the Tariff Act of 1930, as amended (the Act), (19 U.S.C. 1673b(c)(1)(A)).

Based on this request, we are postponing our preliminary determination as to whether sales of 12-volt motorcycle batteries from Taiwan have occurred at less than fair value until not later than April 7, 1989.

EFFECTIVE DATE: January 19, 1989.

FOR FURTHER INFORMATION CONTACT: James Riggs, (202) 377–1766 or Mary S. Clapp, (202) 377–3965, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION: On November 21, 1988 (53 FR 46903), we published the notice of reinstitution of antidumping duty investigation to determine whether 12-volt motorcycle batteries from Taiwan are being, or are likely to be, sold in the United States at less than fair value. The notice stated that we would issue our preliminary determination by February 16, 1989.

On December 30, 1988, counsel for the petitioner requested that the Department extend the period for the preliminary determination by 50 days, until April 7, 1989, in accordance with section 733(c)(1)(A) of the Act. Section 733(c)(1)(A) of the Act provides that the Department may postpone its preliminary determination concerning sales at less than fair value until not later than 210 days after the date on which a petition is filed if the petitioner makes a timely request for such an extension. Counsel for the petitioner has done so. Accordingly, we are postponing the date of the preliminary determination until not later than April 7, 1989.

The U.S. International Trade Commission is being advised of this postponement in accordance with section 733(f) of the Act.

This notice is published pursuant to section 733(c)(2) of the Act.

Jan W. Mares,

Assistant Secretary for Import Administration.

January 11, 1989.

[FR Doc. 89–1242 Filed 1–18–89; 8:45 am]

BILLING CODE 3510-DS-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Extending Coverage of Export Visa Requirements for Certain Man-Made Fiber Textile Products Produced or Manufactured in the Hungarian People's Republic

January 12, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs extending coverage of export visa requirements.

EFFECTIVE DATE: January 23, 1989.

FOR FURTHER INFORMATION CONTACT: Jerome Turtola, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Pursuant to the terms of the export visa arrangement established under the terms of the current bilateral textile agreement between the Governments of the United States and Hungarian People's Republic, export visas will be required for man-made fiber textile products in Category 669–P.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States Annotated (see **Federal Register** notice 53 FR 44937, published on November 7, 1988). Also see 49 FR 8659, published on March 8, 1984.

James H. Babb,

Chairman, Committee for the Implementation for Textile Agreements.

Committee for the Implementation of Textile Agreements

January 12, 1989.

Commissioner of Customs,
Department of the Treasury,
Washington, DC 20229

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on March 5, 1984, as amended, by the Chairman, Committee for the Implementation of Textile Agreements, that directed you to prohibit entry of certain cotton, wool and man-made fiber textile products produced or manufactured in Hungary for which the Government of the Hungarian People's Republic has not issued an appropriate export visa.

Effective on January 23, 1989, the March 5, 1984 directive is being amended further to require an export visa for man-made fiber textile products in Category 669–P [1], produced or manufactured in Hungary and exported from Hungary on and after January 1, 1989. Merchandise in Category 669–P which has been exported prior to January 1, 1989 shall not be denied entry for lack of a visa.

Shipments entered or withdrawn from warehouse on or after January 23, 1989 and exported on or after January 1, 1989 which are not accompanied by an appropriate export visa shall be denied entry and a new visa or visa waiver must be obtained.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89–1237 Filed 1–18–89; 8:45 am]

BILLING CODE 3510-DR-M

COMMODITY FUTURES TRADING COMMISSION

Citrus Associates of the New York Cotton Exchange; Proposed Amendments Relating to the Frozen Concentrated Orange Juice Futures Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed contract market rule changes.

SUMMARY: The Citrus Associates of the New York Cotton Exchange ("CANYCE" or "Exchange") has submitted a proposal to amend its frozen

[1] In Category 669–P, only tariff numbers 6305.31.0010, 6305.31.0020 and 6305.39.0000.

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concentrated orange juice ("FCOJ") futures contract. The proposed amendments will provide that Exchange-licensed tank storage facility operators must load-out FCOJ against all shipping certificates tendered by their holders no later than 30 business days after the date of demand. In accordance with Section 5a(12) of the Commodity Exchange Act and acting pursuant to the authority delegated by Commission Regulation 140.96, the Director of the Division of Economic Analysis ("Division") of the Commodity Futures Trading Commission ("Commission") has determined, on behalf of the Commission, that these proposals are of major economic significance. On behalf of the Commission the Division is requesting comment on these proposals.

DATE: Comments must be received on or before February 21, 1989.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Reference should be made to the amendments to the CANYCE FCOJ futures contract.

FOR FURTHER INFORMATION CONTACT: Fred Linse, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, (202) 254–7303.

SUPPLEMENTARY INFORMATION: The FCOJ contract's current rules mandate that operators of Exchange-licensed tank facilities must load-out (deliver) FCOJ promptly upon demand by a holder of a single shipping certificate within a reasonable period following such demand in accordance with industry practice, but not later than 10 calendar days from the date of demand. The current terms of the contract also provide that if the holder of a shipping certificate holds other such certificates issued by the same facility and demands the load-out of FCOJ against more than one certificate on the same date, the tank storage facility operator is required to execute delivery within a reasonable period in accordance with industry practice. Currently, the contract's rules do not specify a precise period of time within which FCOJ must be loaded-out in cases where a shipping certificate holder demands load-out against more than one certificate on the same date.

Under the proposed amendments, a tank storage facility operator making delivery of FCOJ to a holder of one or more certificates would be required to load-out the FCOJ for shipment commencing no later than 10 calendar days and ending no later than 30 business days after the date of demand by the holder. The proposed amendments also would specify that a tank facility operator must use its best efforts to make prompt deliveries, including the making of interim, pro-rata deliveries to satisfy outstanding demands by certificate holders who demand the load-out of FCOJ against two or more certificates. In the event the tank facility fails to load-out FCOJ within 30 business days of the date of demand, the proposed amendments waive additional storage charges and require that the tank facility pay to the certificate holder a penalty of $150 for each business day in excess of 30 business days.

The proposed amendments also would require that certificate holders and tank facility operators use their best efforts to arrange a schedule specifying the dates and times that FCOJ will be made available by the facility operator for load-out and will be picked up by the holders of certificates. If the holder does not adhere to this schedule, then the tank storage facility operator will not be subject to the penalties noted above. In addition, for any certificates for which the holder fails to adhere to the schedule of load-out, the holder must make a new demand for load-out and will be subject to the same proposed 10 calendar day/30 business day load-out procedures specified above for all certificates for which new demands have been made for load-out.

The Exchange indicates that, following Commission approval, the amended rules would be made effective with respect to all shipping certificates outstanding on the effective date and all new shipping certificates issued for delivery on the contract thereafter.

The Exchange indicates that purpose of the proposed amendments is to assure the load-out of FCOJ against shipping certificates in an orderly manner. Specifically, the CANYCE indicates that its intention is to assure that holders of single shipping certificates continue to receive load-out of FCOJ in an orderly manner without placing unnecessary restraints on the capacity of the facility to fill all demands for the load-out of FCOJ against two or more shipping certificates.

Copies of the proposed amendments will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Copies of the amended terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254–6314.

The material submitted by the Exchange in support of the proposed amendments may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1987)). Requests for copies of such material should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the proposed amendments should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC, by the specified date.

Issued in Washington, DC on January 12, 1989.

John R. Mielke,

Acting Director, Division of Economic Analysis.

[FR Doc. 89–1198 Filed 1–18–89; 8:45 am]

BILLING CODE 6351–01–M

CONSUMER PRODUCT SAFETY COMMISSION

Medical Advisory Committee on Asphyxiation; Establishment and Solicitation of Applications for Membership

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of establishment of advisory committee and solicitation of applications for membership.

SUMMARY: The Commission is establishing a Medical Advisory Committee on Asphyxiation Hazards consisting of five to seven members to provide advice concerning possible modification of regulations banning toys and other articles intended for children under three years of age which present choking, aspiration, or ingestion hazards because of small parts. The Commission is seeking applications for membership on this advisory committee from persons with training and experience in one or more of the following medical disciplines: Thoracic surgery, pediatrics and pediatric surgery, emergency room physician at a children's hospital, pathology, and otorhinolaryngology (ear, nose and throat).

DATE: Applications for membership should be submitted by March 20, 1989.

ADDRESS: Applications should be sent to the Directorate for Health Sciences, Consumer Product Safety Commission, Washington, DC 20207.

FOR ADDITIONAL INFORMATION CONTACT: Robert Hazard, M.D., Directorate for Health Sciences, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 492–6477.

SUPPLEMENTARY INFORMATION:

A. Background

The Federal Hazardous Substances Act (FHSA) (15 U.S.C. 1261 *et seq.*) authorizes the Commission to issue rules banning any toy or children's article which presents an electrical, mechanical, or thermal hazard. In 1979, the Commission issued regulations under provisions of the FHSA to ban certain toys and articles intended for children under three years of age which present unreasonable risks of injury because of small parts. Those regulations are codified at 16 CFR 1500.18(a)(9) and Part 1501 and are intended to address risks of death and injury to children from choking on, aspirating, or ingesting toys or other children's articles which have small parts.

In the **Federal Register** of June 7, 1988 (53 FR 20665), the Commission published an advance notice of proposed rulemaking to begin a proceeding which could result in the amendment of existing requirements for toys and articles intended for children under three years of age to address risks of injury associated with small parts that present choking, aspiration, or ingestion hazards.

B. Advisory Committee

The Commission seeks assistance from a panel of five to seven members to provide advice on the following topics:

1. Criteria for one or more test fixtures that are appropriate for determining if a toy or other children's article could present an asphyxiation hazard because of blockage of the throat.

2. The medical basis of recommendations to the Commission to effectively address the hazards of asphyxiation, caused by blockage in the throat, associated with toys or other children's articles.

3. Medical opinion on whether the scope of the regulations should include such items as balloons and articles madeof fabric or foam.

4. The appropriateness of using three years as the upper age limit for establishing minimum size requirements of toys and children's articles to address asphyxiation, aspiration, and ingestion hazards.

The duties of the committee will be solely advisory and will be limited to recommendations for modifying existing FHSA regulations which address asphyxiation, aspiration, or ingestion hazards to children associated with toys and children's articles having small parts, as determined by the Commission and the Program Manager for Emerging Hazards/Vulnerable Populations.

Copies of the the charter for the advisory committee are available from Robert Hazard, M.D., Directorate for Health Sciences, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 492–6477.

Each member of the panel shall be qualified by training and experience in one or more of the following medical disciplines: Thoracic surgery (bronchoscopist/endoscopist), pediatrics and pediatric surgery, emergency room physician at a children's hospital, pathology, and otorhinolaryngology (ear, nose and throat). To the extent possible, the Commission will seek a balanced membership of individuals from varying medical disciplines who have specific expertise in and experience with foreign body asphyxiation caused by blockage in the throat.

Committee members will be entitled to receive reimbursement for expenses in accordance with section 79(d) of the Advisory Committee Act (5 U.S.C. App. 2) and the Commission's regulations governing advisory committees codified at 16 CFR § 1018.32.

C. Membership applications

The Commission will consider applications from individuals who are interested in serving on the Medical Advisory Committee on Asphyxiation Hazards, and from those who submit the names of other persons. In the latter case, the application should include a statement that the individual being nominated would be willing to serve on the panel.

Applications need not be submitted in a particular format, but they should contain the following information:

1. Name of applicant for a position on the advisory committee.

2. Home address and telephone number, including area code.

3. Employment affiliation (if any):

a. Current position and description of duties;

b. Employer's name, address and telephone number, including area code; type of employing organization (e.g. health care, manufacturing, educational, governmental, public interest, retail), including self-employed.

c. Consulting work (if any, specify kind of consulting work, for whom performed, and if paid or volunteer).

d. CPSC contract work or grant (if any, specify contract title, number, and involvement).

4. Experience/Expertise. Specify and describe education, experience, or publications related to foreign body blockage in the throat. Resumes or curricula vitae may be submitted in responding to this item.

5. Other affiliations. Without restating information given above, specify all past and current, paid and volunteer affiliations that are related to product safety or membership on the Medical Advisory Committee on Asphyxiation Hazards.

6. Signature of applicant or of individual submitting application on behalf of another individual.

Applications should be submitted by March 20, 1989 to the Directorate for Health Sciences, Consumer Product Safety Commission, Washington, DC 20207.

D. Privacy Act Notice

The information requested in section C, above, may become part of a Privacy Act system of records and will be used to evaluate applicants for the Medical Advisory Committee on Asphyxiation Hazards. There are no penalties for not submitting the information requested in section C, except for possibly precluding selection of the applicant. The authority for collecting the information is section 9 of the Federal Advisory Committee Act (5 U.S.C. App. 2).

Dated: January 12, 1989.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 89–1215 Filed 1–18–89; 8:45 am]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Department of the Army

Armed Forces Epidemiological Board; Open Meeting

1. In accrodance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463) announcement is made of the following committee meeting:

Name of Committee: Armed Forces Epidemiological Board, DOD.

Date of Meeting: February 16, 1989.

Time: 0800–1600

Place: Walter Reed Army Institute of Research, Washington, DC.

Proposed Agenda: Army and Navy Streptococcus surveillance, status of influenza strains, clinical and field trials of typhoid fever vaccines, Air Force polio vaccine program, update on HIV serotesting for the Armed Forces, HIV prevalence in Army reservists, Air Force testing for Ehrlichiosis.

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2. This meeting will be open to the public but limited by space accommodations. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. Interested persons wishing to participate should advise the Executive Secretary, AFEB, Skyline Six, 5109 Leesburg Pike, Room 667, Falls Church, Virginia 22041–3258.

Dated: January 4, 1989.

Robert A. Wells,

Colonel, USA, MSC, Executive Secretary.

[FR Doc. 89–1283 Filed 1–18–89; 8:45 am]

BILLING CODE 3710-08-M

Armed Forces Epidemiological Board; Open Meeting

1. In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463) announcement is made of the following committee meeting:

Name of Committee: Armed Forces Epidemiological Board, DOD.

Date of Meeting: 17 February 1989

Time: 0830–1530

Place: Walter Reed Army Institute of Research, Washington, DC.

Proposed Agenda: Reports by the Preventive Medicine Officers of the Armed Forces, Navy plan for physical examinations and cardiovascular screening, comments on legal plan of action for the national tropical medicine program, HTLV–I testing, automated support of ambulatory care, live fire testing and combat casualty prediction, status, Army drug testing program, update on worldwide medical risk assessment.

This meeting will be open to the public but limited by space accommodations. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. Interested persons wishing to participate should advise the Executive Secretary, AFEB, Skyline Six, 5109 Leesburg Pike, Room 667, Falls Church, Virginia 22041–3258.

Dated: January 4, 1989.

Robert A. Wells,

Colonel, USA, MSC, Executive Secretary.

[FR Doc. 89–1284 Filed 1–18–89; 8:45 am]

BILLING CODE 3710-08-M

Military Traffic Management Command; Military Personal Property Claims Symposium; Open Meeting

Announcement is made of meeting of the Military Personal Property Claims Symposium. This meeting will be held on 16 February 1989 at the Sheraton Crystal City Hotel, Arlington, Virginia, and will convene at 0830 hours and adjourn at approximately 1500 hours.

Proposed Agenda: The purpose of this symposium is to provide a public forum for the discussion of matters of mutual interest concerning the Department of Defense Personal Property Shipment and Storage Program.

All interested persons desiring to submit topics to be discussed should contact the Commander, Military Traffic Management Command, ATTN: MT–PPM, at telephone number 756–1600, between 0800–1530 hours. Topics to be discussed should be received on or before February 2, 1989.

Date: January 9, 1989.

Joseph R. Marotta,

Colonel, GS, Director of Personal Property.

[FR Doc. 89–1285 Filed 1–18–89; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF ENERGY

Conduct of Employees; Waiver of Post-Employment Restrictions

Section 207(f), title 18, United States Code, and section 605(a)(3) of the Department of Energy Organization Act (Pub. L. 95–91) authorize the Secretary of Energy to waive the post-employment restrictions of subsections (a), (b), and (c) of section 207, title 18, United States Code, and of subsection (a)(1) of section 605 of the Department of Energy Organization Act, respectively, to permit a former employee with outstanding scientific or technological qualifications to make appearances before or communications to the Department in connection with a particular matter which requires such qualifications (in the case of section 207), or which lies in a scientific or technological field (in the case of section 605), where it has been determined that such a waiver would serve the national interest.

It has been established to my satisfaction that Ronald W. Cochran, currently Acting Director of the Department of Energy Office of New Production Reactors, has a unique combination of outstanding technological qualifications in the fields of metallurgy, laser research, and special isotope separation processes, and extensive experience in management and administration of scientific research and development programs, especially as they relate to construction and design of nuclear plant systems. I am further satisfied that it will serve the national interest to permit him, in his new capacity as Deputy Associate Director for the Laser Program at Lawrence Livermore National Laboratory, to appear before and communicate with employees of the Department of Energy and other Government agencies with respect to the planning, funding, technological development, operation, and management of the Laboratory's laser program and other related programs, including the Special Isotope Separation Project. I am satisfied that these activities are in a scientific or technological field which requires the qualifications stated.

I have, therefore, waived the post-employment prohibitions of subsections (a), (b), and (c) of section 207, title 18, United States Code (in consultation with the Director of the Office of Government Ethics), and of subsection (a)(1) of section 605 of the Department of Energy Organization Act, with respect to contact by Mr. Cochran with employees of the Department of Energy and other Government agencies to permit him to undertake the stated activities.

Date: January 11, 1989.

John S. Herrington,

Secretary of Energy.

[FR Doc. 89–1285 Filed 1–18–89; 8:45 am]

BILLING CODE 6450-01-M

[Unsolicited proposal No. US0000000UFB]

Intent to Negotiate a Grant with the University of Kansas

Summary: Based upon a determination made pursuant to 10 CFR 600.14(e), the U.S. Department of Energy (DOE), Idaho Operations Office intends to negotiate on a noncompetitive basis a grant for $140,000 with the University of Kansas Center for Research, Inc., Lawrence, Kansas. This activity is based on submission of an Unsolicited Proposal titled, "Gelled Polymer Systems for Permeability Modification in Petroleum Reservoirs" to the DOE. The grant will be to develop procedures for the design and evaluation of processes that modify the permeability of hydrocarbon reservoirs by coupling results of laboratory experiments with mathematical models. The grant will also develop gelling systems that have the potential for in-depth permeability modification. The participant will: (1) Develop physical and chemical descriptions of gelling systems, (2) experimentally investigate gelation in porous media, and (3) develop correlations and mathematical models of in situ gelation. This program is a continuation of research presently being funded by DOE, therefore, competition for support would have a significant adverse effect on continuity or completion of the activity. The use of gelled polymers as proposed by the University of Kansas to impove the volumetric sweep of fluid displacement processes represent an innovative approach with the potential to significantly impact the DOE mission. Public response may be addressed to the contract specialist stated below.

Contact: Trudy A. Thorne, Contract Specialist, U.S. Department of Energy, Idaho Operations Office, 785 DOE Place, Idaho Falls, Idaho 83402. Telephone: (208) 526–9519.

Date: January 4, 1989.

H. Brent Clark,

Director, Contracts Management Division.

[FR Doc. 89–1284 Filed 1–18–89; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[Docket No. PP–89]

Application by Bangor Hydro-Electric Co. for a Presidential Permit

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of application by Bangor Hydro-Electric Company for a permit to construct, connect, operate and maintain electric transmission facilities at the international border between the United States and Canada.

SUMMARY: Bangor Hydro-Electric Company (Bangor Hydro) has applied to the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) for a Presidential permit to construct, connect, operate and maintain electric transmission facilities at the international border between the United States and Canada. This application is contained in the ERA Docket No. PP–89.

Bangor Hydro is proposing to construct single-circuit, 345 kilovolt (kV), overhead transmission line which would cross the U.S.-Canadian international border at Baileyville, Maine, extend approximately 80 miles through the State of Maine, and terminate at an existing 345/115 kV substation in Orrington, Maine. Bangor Hydro has submitted this application on behalf of itself and/or a new transmission company or partnership yet to be determined.

FOR FURTHER INFORMATION CONTACT:

Anthony J. Como, Economic Regulatory Administration (RG–22), Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585. (202) 586–5935

Lise Courtney M. Howe, Office of General Counsel (GC–41), Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585. (202) 586–2900.

SUPPLEMENTARY INFORMATION: On December 16, 1988, Bangor Hydro applied to the ERA, pursuant to Executive Order 10485, as amended by Executive Order 12038, for a Presidential permit to construct, connect, operate and maintain electric transmission facilities at the international border between the U.S. and Canada. This application has been docketed as PP–89. Bangor Hydro's proposed project is scheduled for service by 1991 and would consist of construction of an 80-mile, 345 kV, overhead electric transmission line which would cross the U.S.-Canadian border at Baileyville, Maine, and terminate at an existing 345/115 kV substation located at Orrington, Maine. The proposed facilities would connect at the international border with similar facilities to be constructed by the New Brunswick Electric Power Commission (NBEPC).

Bangor Hydro states that the proposed line likely will be constructed, owned and operated under a joint venture. Bangor Hydro, the NBEPC, and Maine Public Service Company are conducting studies related to the construction, maintenance and operation of the proposed transmission line. The actual entity or form of entity contemplated by the joint venture has not yet been determined. At the time such determination is made, the entity may be substituted for Bangor Hydro as the applicant.

According to the applicant, the proposed interconnection is intended to provide Bangor Hydro and other New England electric utilities with the ability to obtain increased power system efficiency, reduced power costs, improved power system reliability and additional power supplies from Canada.

The proposed interconnection would operate in parallel with a heavily loaded existing 345 kV line owned by the Maine Electric Power Company (MEPCO). According to Bangor Hydro, the existing MEPCO line operates nearly continuously at its 700 megawatt (MW) limit. Bangor Hydro's proposed new line would increase by 300 MW the power transfer capability between the NBEPC and Bangor Hydro and/or other New England utilities.

The applicant contends that the additional 300 MW of transfer capacity would provide opportunities for short-term economic interchanges of power between the NBEPC and the New England region. In addition, the applicant has estimated that the additional 300 MW of transfer capacity will make available approximately 30-40 MW of emergency capacity to the electric utilities in the New England region even if no generating capacity is actually purchased by New England utilities.

Finally, Bangor Hydro claims that the increased power transfer capability would provide for the transmission of long-term capacity from Canada if and when additional power purchases are made.

Any person desiring to be heard or to protest this application for a Presidential permit should file a petition to intervene or protest with the Economic Regulatory Administration, Room 3H–087, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, in accordance with §§ 385.211 or 385.214 of the Rules of Practice and Procedure (18 CFR 385.211, 385.214).

Any such petitions and protests should be filed with the ERA on or before February 21, 1989. An additional copy of such petitions to intervene or protests also should be filed with:

Frederick S. Samp., Esq., Bangor Hydro-Electric Co., 33 State Street, P.O. Box 932, Bangor, Maine 04401.

William J. Madden, Jr. Esq., Bishop, Cook, Purcell & Reynolds, 1400 L Street NW., Washington, DC 2005–3502.

Pursuant to 18 CFR 385.211, protests and comments will be considered by the ERA in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene under 18 CFR 385.214. Section 385.214 requires that a petition to intervene must state, to the extent known, the position taken by the petitioner and the petitioner's interest in sufficient factual detail to demonstrate either that the petitioner has a right to partitipate because it is a State Commission; that it has or represents an interest which may be directly affected by the outcome of the proceeding, including any interest as a consumer, customer, competitor, or security holder of a party to the proceeding; or that the petitioner's participation is in the public interest.

Before a Presidential permit may be issued, the environmental impacts of the proposed DOE action (i.e., granting the Presidential permit, with any conditions and limitations, or denying the permit) must be evaluated pursuant to the National Environmental Policy Act of 1969 (NEPA). The NEPA compliance process is a cooperative, non-

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adversarial process involving members of the public, state governments and the Federal government. The process affords all persons interested in or potentially affected by the environmental consequences of a proposed action an opportunity to present their views, which will be considered in the preparation of the environmental documentation for the proposed action. Intervening and becoming a party to this proceeding will not create any special status for the petitioner with regard to the NEPA process. Notice of upcoming NEPA activities and information on how the public can participate in those activities will be published in the Federal Register, local newspapers and public libraries and/or reading rooms in the vicinity of the proposed transmission line.

Copies of this application will be made available, upon request, for public inspection and copying at the Department of Energy's Freedom of Information Room, Room 1E-190, Forrestal Building, 100 Independence Avenue SW., Washington, DC, from 8:00 a.m. to 4:00 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC on January 11, 1989.

Constance L. Buckley,

Acting Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 89-1267 Filed 1-18-89; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 86-55-NG]

Access Energy Corp.; Order Extending Blanket Authorization To Import Natural Gas

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of order extending blanket authorization to import natural gas.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an order extending Access Energy Corporation's (Access) blanket authorization to import natural gas. The order issued in ERA Docket No. 86-55-NG authorizes Access to import up to 290 Bcf of natural gas over a two-year period beginning January 1, 1989, through December 31, 1990.

A copy of this order is available for inspection and copying in the Natural Gas Division Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, January 11, 1989.

Constance L. Buckley,

Acting Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc 89-1266 Filed 1-18-89; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. CP87-75-001 et al.]

Tennessee Gas Pipeline Co. et al; National Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Tennessee Gas Pipeline Company

[Docket No. CP87-75-001]

January 9, 1989

Take notice that on January 5, 1989,[1] Tennessee Gas Pipeline Company (Applicant), P.O. Box 2511 Houston, Texas 77252, filed in Docket No. CP87-75-001, as part of a Stipulation and Agreement (Stipulation) between Applicant and Providence Gas Company (Providence), an amendment to its pending application filed in Docket No. CP87-75-000 pursuant to sections 7(c) and 7(b) of the National Gas Act to change Providence's right to receive firm transportation service within its proposed 30,000 dekatherms per day (Dtd) Rate Schedule CD-6 contract entitlement with the option to convert the entire 30,000 Dtd Maximum Daily Quantity (MDQ) and 10,950,000 Dth Annual Quantity Limitation (AQL) to firm transportation, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

In Docket No. CP87-75-000, Applicant requests authorization to (1) sell for resale up to 30,000 Dtd and 10,950,000 Dt annually to Providence under its existing Rate Schedule CD-6, (2) construct and operate the necessary facilities to effectuate the sale for resale, and (3) transport on any day third party supplies on behalf of Providence up to a volume equal to the difference between Providence's MDQ and the volume purchased on that day from Tennessee. In Docket No. CP87-75-001 and the Stipulation, Applicant now proposes to replace the February 11, 1988, Precedent Agreement and attached Gas Sales Contract filed in Docket No. CP87-75-000 with the December 29, 1988 Revised Precedent Agreement and Gas Sales Contract filed as part of the subject amendment and Stipulation.

Specifically, in Docket No. CP87-75-001 Applicant is proposing to eliminate its contractual obligation to provide the within MDQ firm transportation service for Providence requested in its Docket No. CP87-75-000. In lieu thereof, Applicant proposes to provide Providence with the option to convert its entire Rate Schedule CD-6 sales MDQ and AQL to firm transportation in the following increments: (1) Twenty-five percent (25%) of the MDQ and AQL during the first and second year of the Gas Sales Contract; (2) twenty percent (20%) of the MDQ and AQL during the third year of the Gas Sales Contract; and (3) fifteen percent (15%) of the MDQ and AQL during the forth and subsequent years of the Gas Sales Contract.

Applicant requests that the proposed transportation conversion option be subject to (1) Applicant receiving Commission authorization to abandon the sales service and to provide the requested firm transportation service, (2) the availability of capacity on Applicant's system from Providence's potential firm gas transportation receipt points stated in Exhibit B to the Gas Sales Contract, and (3) Applicant's receipt of Commission authorization to charge transportation rates equivalent to the non-gas components of Applicant's Rate Schedule CD-6 sales rates. In this regard, Applicant requests pregranted authority to abandon the sales service and to provide the firm transportation in accordance with such conversion rights at rates equivalent to the non-gas component of Applicant's Rate Schedule CD-6.

Applicant states that subject to certain conditions stated in Article I of the Gas Sales Contract, Providence has agreed to convert up to fifty percent (50%) of the proposed MDQ and AQL from a firm sales service to a firm transportation service from a potential point of receipt on the pipeline Applicant proposes to construct to deliver gas produced from the Mobil Bay Area. Applicant explains that such conversion rights will be in lieu of the conversion rights set forth above for the contract year in which Providence converts to firm transportation from a point of receipt on the Mobile Bay pipeline. In addition, Applicant has agreed to build certain facilities to enable Providence to exercise its conversion rights, subject to the fulfillment of certain conditions, including Providence's agreement to either reimburse Applicant for the costs of the facilities or pay an incremental rate for transportation on the facilities. Finally, Applicant indicates that Providence will be entitled to any standby service that is offered by Applicant and will not be precluded by the Gas Sales Contract from participating in any gas inventory charge which is offered by Applicant and approved by the Commission, provided that such participation will not affect Providence's obligation to convert gas sales to firm transportation to a point of receipt on the Mobile Bay pipeline as set forth above.

Applicant states that the Commission Staff's environmental review of the facilities proposed in Docket No. CP87-75-000 is underway. The Stipulation provides for the possibility of a bifurcation of these proceedings whereby the services proposed herein would be authorized subject to the satisfactory resolution of any remaining environmental issues.

Comment date: January 30, 1989, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

[1] The petition to amend was tendered for filing on January 5, 1989; however, the fee required by § 381.207(b) of the Commission's Rules (18 CFR 381.207) was not paid until January 6, 1989. Section 381.103(b)(2)(iii) of the Commission's Rules provide that the filing date is the date on which the fee is paid.

2. Williams Natural Gas Company

[Docket No. CP89-525-000]

January 10, 1989

Take notice that on January 4, 1989, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP89-525-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate measuring and regulating facilities to replace existing facilities in Lawrence County, Missouri, for the delivery of natural gas to the Kansas Power and Light Company (KPL), under the certificate issued in Docket No. CP82-479-000 under the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

WNG states that the existing facilities were installed under Commission authorization in Docket No. CP66-108-000 to serve a new resale customer of KPL, the Hudson Turkey Farm (Hudson), in Monett, Missouri. It is explained that the facilities were inadequate for the volume of gas being delivered, and that the service commenced on a partial basis. It is asserted that WNG now proposes to correct the error by installing facilities with sufficient capacity to serve KPL. It is stated that Hudson's full requirement is expected to be 4,535 Mcf of gas per year with a maximum of 72 Mcf on a peak day. It is estimated that the cost of construction would be $10,330, which would be paid from treasury cash. WNG states that the change in facilities is not prohibited by any existing tariff and that WNG has sufficient capacity to deliver the full volumes without any negative impact on existing customers.

Comment date: February 24, 1989, in accordance with Standard Paragraph G at the end of this notice.

3. Alabama-Tennessee Natural Gas Company

[Docket No. CP89-526-000]

January 10, 1989.

Take notice that on January 3, 1989, Alabama-Tennessee Natural Gas Company (A-T), P.O. Box 918, Florence, Alabama 35631, filed in Docket No. CP89-526-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity to transport natural gas on behalf of the city of Florence Natural Gas Department (Shipper), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

A-T requests authorization to transport on behalf of Shipper, on an interruptible basis for a term of two (2) years, up to 12,436 dt. equivalent of gas per day. A-T states that Shipper would cause gas to be delivered to various points of interconnection of the facilities of Tennessee Gas Pipeline Company (Tennessee) or Columbia Gulf Transmission Company (Columbia Gulf) or Tennessee River Intrastate Gas Company, Inc. (TRIGAS) for redelivery to A-T. A-T, it is said, would receive such gas at the existing point(s) of interconnection between A-T and Tennessee located in Alcorn County, Mississippi or Colbert County, Alabama, and/or Columbia Gulf located in Alcorn County, Mississippi, and/or TRIGAS, located in Colbert County, Alabama. A-T states further that it would redeliver to Shipper an equivalent quantity of gas to existing point(s) of interconnection between the facilities of A-T and Shipper as set out in Exhibit F of the application.

For this transportation service, A-T indicates that Shipper has agreed to pay each month, the applicable transportation charge(s) as approved by the FERC.

Comment date: February 24, 1989, in accordance with Standard Paragraph G at the end of this notice.

4. Williams Natural Gas Company

[Docket No. CP89-530-000]

January 10, 1989.

Take notice that on January 4, 1989, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP89-530-000 a request pursuant to §§ 157.205 and 284.223(2)(b) of the Commission's Regulations under the Natural Gas Act for authorization to transport gas for Armco, Inc., Midwestern Steel Division (Armco) under WNG's blanket certificate issued in Docket No. CP86-631-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open for public inspection.

WNG states that it would transport, on an interruptible basis, up to a maximum to 15,000 MMBtu of natural gas per day for Armco. WNG states that various receipt points would be located in Colorado, Kansas and Wyoming and the delivery points would be on WNG's pipeline system in Kansas and Missouri. WNG indicates that the total volume of gas to be transported for Armco on a peak day would be 15,000 MMBtu; on an average day would be 12,000 MMBtu; and an annual basis would be 5,475,000 MMBtu. WNG indicates it would perform the proposed transportation service for Armco pursuant to a service agreement dated August 30, 1988, between WNG and Armco.

WNG states that it commenced the transportation of natural gas for Armco on October 1, 1988, at Docket No. ST89-510-000 for a 120-day period pursuant to § 284.223(a)(1) of the Commission's Regulations. WNG states that it proposes to continue this service in accordance with §§ 284.221 and 284.223. WNG states that no new facilities are proposed in order to provide this transportation service.

WNG also states that it has no knowledge of any agency relationship under which a local distribution company or an affiliate of Armco will receive natural gas on behalf of Armco.

Comment date: February 24, 1989, in accordance with Standard Paragraph G at the end of this notice.

5. Tennessee Gas Pipeline Company

[Docket No. CP89-542-000]

January 10, 1989.

Take notice that on January 5, 1989, Tennessee Gas Pipeline Company, (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP89-542-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205)

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for authorization to provide a transportation service for Reed Minerals, A Division of Harsco Corp. (Reed Minerals), an end-user, under the blanket certificate issued in Docket No. CP87-115-000 on June 18, 1987, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open for public inspection.

Tennessee states that pursuant to a transportation agreement dated October 17, 1988, as amended by letter agreement dated December 2, 1988, under its Rate Schedule IT, it proposes to transport up to 5,100 dekatherms (dt) per day equivalent of natural gas for Reed Minerals from points of receipt listed in Exhibit "A" of the agreement to delivery points also listed in Exhibit "A". Tennessee states that it would receive the gas at existing points on its system located offshore Louisiana and in the State of Louisiana, and that it would transport and redeliver the gas to delivery points interconnecting with (1) Columbia Gas Transmission Corporation at (a) Dungannon and (b) Brinker, both located in Columbiana County, Ohio, and (c) Cambridge, located in Guernsey County, Ohio, and (2) CNG Transmission Corporation at Broadrun Cornwell in Kanawha County, West Virginia.

Tennessee advises that service under § 284.223(a) commenced December 1, 1988, as reported in Docket No. ST89-1340 (filed December 16, 1988). Tennessee further advises that it would transport 5,100 dt on an average day and 1,861,500 dt annually.

Comment date: February 24, 1989, in accordance with Standard Paragraph G at the end of this notice.

6. United Gas Pipe Line Company

[Docket No. CP89-476-000]

January 10, 1989

Take notice thaty on December 22, 1988, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP89-476-000 a request pursuant to §§ 157.205 and 284.225 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to provide an interruptible transportation service on behalf of Texas Gas Marketing, Inc., a marketer of natural gas, under United's blanket certificate issued in Docket No. CP88-6-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open for public inspection.

United states that the interruptible gas transportation service agreement dated May 6, 1988, proposes to transport a maximum daily quantity of 103,000 MMBtu equivalent of natural gas and an annual quantity of 37,595,000 MMBtu equivalent of natural gas, using existing facilities to provide transportation service pursuant to that agreement. It is stated that the executed amended agreement contains the location of the receipt and delivery points in Exhibits A and B. United further states that service commenced October 31, 1988, as reported in Docket No. ST89-1218 pursuant to § 284.223(a) of the Regulations.

Comment date: February 24, 1989, in accordance with Standard Paragraph G at the end of this notice.

7. Williams Natural Gas Company

[Docket No. CP89-528-000]

January 10, 1989.

Take notice that on January 3, 1989, Williams Natural Gas Company (Williams), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP89-528-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to provide transportation on behalf of Western Kraft-Willamette Industries, Inc. (Western Kraft), under Williams' blanket certificate issued in Docket No. CP86-631-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Williams requests authorization to transport, on an interruptible basis, up to a maximum of 300 MMBtu of natural gas per day for Western Kraft from receipt points located in Kansas and Oklahoma to delivery points located in Kansas and Missouri. Williams anticipates transporting on an average day 200 MMBtu and an annual volume of 109,500 MMBtu.

Williams states that the transportation of natural gas for Western Kraft commenced on November 1, 1988, as reported in Docket No. ST89-1152-000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations and the blanket certificate issued to Williams in Docket No. CP86-631-000.

Comment date: February 24, 1989, in accordance with Standard Paragraph G at the end of this notice.

8. United Gas Pipe Line Company

[Docket No. CP89-534-000]

January 10, 1989.

Take notice that on January 5, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations in Docket No. CP89-534-000, to provide interruptible transportation service on behalf of Gulf South Pipeline Company, a Hinshaw pipeline company, under United's blanket certificate issued in Docket No. CP88-6-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

United states that the Interruptible Gas Transportation Agreement T1-21-1993, dated November 18, 1988, proposes to transport a maximum daily quantity of 15,450 MMBtu, and that service commenced December 1, 1988, as reported in Docket No. ST89-1349, pursuant to § 284.223(a) of the Commission's Regulations.

Comment date: February 24, 1989, in accordance with Standard Paragraph G at the end of this notice.

9. K N Energy, Inc.

[Docket No. CP89-540-000]

January 10, 1989.

Take notice that on January 5, 1989, K N Energy, Inc. (K N), P.O. Box 15265, Lakewood, Colorado 80215, filed in Docket No. CP89-540-000 a request pursuant to § 157.205(b) of the Commission's Regulations under the Natural Gas Act for authorization to construct and operate sales tapes for the delivery of gas to end-users, under the blanket certificate issued in Docket Nos. CP83-140-000, CP83-140-001, and CP83-140-002 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open for public inspection.

K N proposes to construct and operate sales taps to various end-users located along its jurisdictional pipelines. K N states that the proposed sales tapes are not prohibited by any of its existing tariffs and that the additional taps will have no significant impact on K N's peak day and annual deliveries.

Comment date: February 24, 1989, in accordance with Standard Paragraph G at the end of this notice.

10. United Gas Pipe Line Company

[Docket No. CP89-532-000]

January 10, 1989

Take notice that on January 5, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas, filed in Docket No. CP89-532-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to provide transportation service on behalf of Superior Natural Gas (Superior), a marketer or natural gas, under United's blanket certificate issued in Docket No. CP88-6-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

United requests authorization to transport, on an interruptible basis, up to a maximum of 20,000 MMBtu of natural gas per day for Superior, from Vermilion Parish, Louisiana, to Ouachita, Rapides, St. Landry, and LaSalle Parishes, Louisiana. United anticipates transporting an annual volume of 7,519,000 MMBtu.

United states that the transportation of natural gas for Superior commenced November 1, 1988, as reported in Docket No. ST89-1375-000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations and the blanket certificate issued to United in Docket No. CP88-6-000.

Comment date: February 24, 1989, in accordance with Standard Paragraph G at the end of this notice.

11. United Gas Pipe Line Company

[Docket No. CP89-531-000]

January 10, 1989.

Take notice that on January 5, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP89-531-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Texaco Gas Marketing (Texaco), a marketer, under the blanket certificate issued in Docket No. CP88-6-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

United states that pursuant to a transportation agreement dated July 22, 1988, as amended, under its Rate Schedule ITS, it proposes to transport up to 103,000 MMBtu per day equivalent of natural gas for Texaco. United states that it would receive the gas at existing interconnections in multiple states and that it would transport and redeliver the gas for Texaco's account at existing interconnections in multiple states.

United advises that service under § 284.223(a) commenced October 31, 1988, as reported in Docket No. ST89-1373 (filed on December 19, 1988). United further advises that it would transport 103,000 MMBtu on an average day and 37,595,000 MMBtu annually.

Comment date: February 24, 1989, in accordance with Standard Paragraph G at the end of this notice.

12. United Gas Pipe Line Company

[Docket No. CP89-533-000]

January 10, 1989.

Take notice that on January 5, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP89-533-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Texican Natural Gas Company (Texican), a marketer, under the blanket certificate issued in Docket No. CP88-6-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

United states that pursuant to a transportation agreement dated October 1, 1988, under its Rate Schedule ITS, it proposes to transport up to 25,750 MMBtu per day equivalent of natural gas for Texican. United states that it would receive the gas at an existing interconnection between United and Sea Robin Pipeline Company near Erath, Vermilion Parish, Louisiana, and that it would transport and redeliver the gas at an interconnection with Southern Natural Gas Company near Perryville, Ouachita Parish, Louisiana.

United advises that service under § 284.223(a) commenced December 6, 1988, as reported in Docket No. ST89-1274 (filed on December 14, 1988). United further advises that it would transport 25,750 MMBtu on an average day and 9,398,750 MMBtu annually.

Comment date: February 24, 1989, in accordance with Standard Paragraph G at the end of this notice.

13. Columbia Gas Transmission Corporation

[Docket No. CP89-514-000]

January 10, 1989.

Take notice that on December 30, 1988, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue SE., Charleston, West Virginia 25314, filed in Docket No. CP89-514-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to partially abandon sales service to Baltimore Gas and Electric Company (BG&E), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Columbia proposes to abandon 24,175 dt equivalent per day of firm sales service to BG&E under Rate Schedule CDS. It is stated that such abandonment reflects BG&E's request effective April 1, 1989, and represents BG&E's final reduction in firm sales service pursuant to Article VIII of the stipulation and agreement in Columbia's PGA settlement in Docket No. TA82-1-21-001, *et al.*, as approved by the Commission in an order issued June 14, 1985 (31 FERC ¶ 61,307). It is indicated that the proposed abandonment results in a reduction of Rate Schedule CDS service from 316,000 dt equivalent per day to 293,825 dt equivalent per day.

Comment date: January 31, 1989, in accordance with Standard Paragraph F at the end of this notice.

14. City of Gallaway, Tennessee

[Docket No. CP89-524-000]

January 10, 1989.

Take notice that on December 30, 1988, the City of Gallaway, Tennessee (Gallaway), P.O. Box 168, Gallaway, Tennessee 38036, filed in Docket No. CP89-524-000 an application pursuant to section 7(a) of the Natural Gas Act for an order directing Texas Gas Transmission Corporation (Texas Gas) to connect its facilities and to render sales service to Gallaway, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Gallaway states that all gas service in Gallaway, Fayette County, Tennessee, is currently provided through privately-owned propane deliveries. It is stated that Gallaway seeks to receive an initial service and natural gas supply from Texas Gas pursuant to Texas Gas' Rate Schedule SG-1. It is also stated that the requested service will be provided to an area of Fayette County, Tennessee, including the City of Gallaway, Tennessee, and its environs. In the initial year of service, Gallaway states it would supply gas to 141 residential customers and 10 commercial customers.

Gallaway proposes to receive service from one meter station to be constructed by Texas Gas in Shelby County, Tennessee. In addition, it is stated that Gallaway would install the necessary 23,300 feet of 4-inch line connecting Texas Gas' facilities to the City of Gallaway at a total cost of $300,000. It is stated that the maximum daily capacity of the line will be 200 Mcf.

Gallaway states that it will finance the project through a grant ($165,000) and a loan ($135,000) from the United States Department of Agriculture, Farmers Home Administration.

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Comment date: February 24, 1989, in accordance with Standard Paragraph G at the end of this notice.

15. Green Canyon Pipe Line Company

[Docket No. CP89-515-000]

January 10, 1989.

Take notice that on December 30, 1988, Green Canyon Pipe Line Company (Green Canyon), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP89-515-000 an application pursuant to section 7(c) of the Natural Gas Act and Subpart E of Part 157 of the Commission's Regulations for an optical certificate of public convenience and necessity authorizing the construction and operation of new offshore pipeline facilities and transportation rates applicable to transportation service through the proposed facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Green Canyon states that it is a newly organized corporation which is a wholly-owned subsidiary of Transco Energy Company. Green Canyon further states that it does not have any present operations but would, upon approval of the certificate requested herein, be a natural gas company engaged in the transportation of natural gas in interstate commerce and would be subject to the Commission's jurisdiction under the Natural Gas Act.

Green Canyon states that significant reserves are currently being developed in the West Green Canyon area of offshore Louisiana, notably the Green Canyon Block 6 lease and the Green Canyon Block 184 Unit (together referred to as the West Green Canyon area). It is stated that production from a portion of the reserves in the West Green Canyon area would be ready to commence by approximately September 1, 1989. Green Canyon notes that representatives of various subsidiaries of Transco Energy Company engaged in negotiations with various producers in the Green Canyon area for the purpose of obtaining contractual commitments by such producers to transport their gas through offshore pipeline facilities to be built by Green Canyon. Given these commitments, it is stated, Green Canyon has agreed to propose construction of connecting facilities and to provide such producers with firm transportation through the facilities, once construction is authorized and undertaken.

Green Canyon's proposed facilities would enable West Green Canyon reserves to be transported from production platforms to Transcontinental Gas Pipe Line Corporation's (Transco) existing Southeast Louisiana Gathering System offshore facilities in South Marsh Island Block 106, offshore Louisiana (SMI 106). Green Canyon states that Transco would provide subsequent transportation to market. Green Canyon further states that it has been advised by Transco that such downstream transportation would be provided by Transco pursuant to section 311 of the Natural Gas Policy Act or pursuant to the Order No. 436/500 certificate issued to Transco in Docket No. CP88-328-000. Specifically, Green Canyon proposes to construct and operate:

- 25.39 miles of 20-inch pipeline from SMI 174 to SMI 106;
- 26.57 miles of 16-inch diameter pipeline from Green Canyon Block 52 (GC 52) to SMI 174; (Block 52 Lateral)
- 4.02 miles of 10.75-inch diameter pipeline from GC 6 to an interconnect with the Block 52 lateral in Ewing Bank Block 976 (EB 976);
- 10.22 miles of 16-inch diameter pipeline from SMI 205 to SMI 174; and
- Meter and regulating stations and appurtenant facilities at SMI 174, SMI 205, GC 52, C 6 and SMI 106.

It is indicated that the capacity of the proposed facilities would be approximately 219,671 Mcf per day and that the project would cost an estimated $48,785,931. Green Canyon states that the proposed project would be financed initially with short-term loans and corporate funds, with long-term financing to be arranged later as part of Green Canyon's permanent financial structure.

Green Canyon proposes one-part firm and interruptible transportation rates over the projected economic life of the project using a levelized cost of service, as more fully explained in Exhibit P of the application. Green Canyon asserts that its proposed transportation rates have been designed on a 100 percent load factor throughput, thus placing Green Canyon's ability to earn its allowed rate of return at risk unless Green Canyon operates its facilities at maximum capacity. Given its proposed rate design and its assumption of risk, Green Canyon asserts that it should not be subjected to any rate review condition.

Green Canyon states that firm capacity in its pipeline not already committed to producers with contractual commitments will be made available to potential shippers pursuant to an "open season" which would commence on the effective date of an order granting the authorizations requested herein and would end 21 days from such date. It is stated that all parties would be treated equally, with capacity allocated among the parties, if necessary on a pro rata basis. Green Canyon further states that interruptible transportation would initially be made available during the same "open season" period, with allocation of capacity to be made, if necessary, on a pro rata basis. Green Canyon explains that after the "open season" period, both firm and interruptible capacity would be made available on a first-come, first served-basis.

Comment date: January 31, 1989, in accordance with Standard Paragraph F at the end of the notice.

16. Panhandle Eastern Pipe Line Company

[Docket No. CP89-491-000]

January 10, 1989.

Take notice that on December 28, 1988, Panhandle Eastern Pipe Line Company (Panhandle), Post Office Box 1642, Houston, Texas 77001 filed in Docket No. CP89-491-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval for partial abandonment of sales service to Kansas Power and Light Company (KPL), to reflect KPL's election to continue sales service under Panhandle's Rate Schedule G-2 which expired October 31, 1988, at a reduced sales contract demand (CD) level, with fewer delivery points, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that KPL is an existing firm sales customer of Panhandle, initially certificated in Docket No. G-254, pursuant to Panhandle's Rate Schedules G-2 and G-3. Panhandle states that the term of the existing G-2 and G-3. Panhandle states that the term of the existing G-2 contract (Missouri) expired October 31, 1988; the G-3 contract (Kansas) terminates October 31, 1988. It is further states that at KPL's request, Panhandle is seeking Commission authorization to partially abandon a portion of the jurisdictional sales service to KPL that is allocated to the G-2 contract.

Panhandle and KPL have entered into a sales agreement dated October 28, 1988, under Panhandle's Rate Schedule G-2 which provides for a reduction of KPL's CD level effective on November 1, 1988. The proposed abandonment will, according to Panhandle, reduce the annualized total G-2 CD from 8,200,650 Mcf to 2,370,111 Mcf. Panhandle requests that the abandonment authority be granted retroactively to November 1, 1988, to the daily amount in Column No. 3, as shown below:

Month	Current CD Mcf	Reduction Mcf	Resulting CD Mcf
January	34,600	24,600	10,000
February	34,600	24,600	10,000
March	34,600	24,600	10,000
April	28,000	19,908	8,092
May	15,100	10,736	4,364
June	7,600	10,736	4,364
July	6,850	4,870	1,980
August	6,850	4,870	1,980
September	12,400	8,816	3,584
October	20,750	14,753	5,997
November	34,600	24,600	10,000
December	34,600	24,600	10,000

According to Panhandle, KPL has requested the following changes to the G-2 Service Agreement:

(1) Remove the "Hallmark" and "Klapmeyer" delivery points from the G-2 contract as was previously authorized in Docket Nos. CP60-86 and CP60-87.

(2) Abandon sales at the "Stillwell" and "159th and State Line" delivery points under the G-2 contract and add these points under the G-2 contract and add these points to the G-3 contract.[1]

(3) Abandon a portion of sales under the G-2 contract at the "Kansas-Missouri State Line" delivery point. The sales at this delivery point were to serve farm taps located along the Kanass-Missouri line. The Missouri farm taps will remain under the G-2 contract and will be addressed as the "Missouri State Line" delivery point. The "Kansas" farm taps will be added to the G-3 contract.

Upon approval of the partial abandonment of service requested herein, Panhandle will make the appropriate corresponding changes to it's FERC Gas Tariff Original Volume No. 1 to reflect the reductions in the level of sales service provided to KPL.

Panhandle states that it filed on January 27, 1988, in Docket No. CP88-213, a comprehensive proposal to modify and restructure its services in response to *inter alia* the Commission's efforts to restructure the natural gas industry. It is stated that such application is still pending Commission authorization. Therefore, Panhandle states it has been engaged in negotiations with its customers to develop new arrangements to replace or extend the terms of its existing firm sales contracts as they expire, to be effective for the period of time between the expiration of the existing contract until Commission authorization is received and accepted for the revised sales service proposed in Docket No. CP88-213, as amended.

Accordingly, it is stated that this application embodies the agreement which Panhandle and KPL have reached regarding continued service during the interim period.

Finally, Panhandle states that it has filed in Docket Nos. RP88-240, RP88-241, RP89-9 and RP89-10 revised tariff sheets to recover portions of prudently incurred take-or-pay costs from each of its customers, including KPL. The portion of such costs attributable to KPL are described therein, and may be amended, supplemented, revised or modified pursuant to Commission authorization or as required by law. Panhandle states that by this filing it is not waiving and of its rights to recover from KPL prudently incurred take-or-pay costs or any other costs properly attribuable to KPL.

Comment date: January 31, 1989, in accordance with Standard Paragraph F at the end of this notice.

17. Tennessee Gas Pipeline Company

[Docket No. CP89-525-000]

January 10, 1989.

Take notice that on January 3, 1989, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP89-525-000 a request pursuant to §§157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to perform an interruptible transportation service for Diamond Shamrock Offshore Partners Limited Partnership (Diamond Shamrock), a producer, under Tennessee's blanket certificate issued in Docket No. CP87-115-000, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Tennessee states that pursuant to a transportation agreement dated October 31, 1988, it proposes to receive up to 15,000 dt equivalent of natural gas per day from a receipt point located offshore Louisiana and redeliver the gas into the facilities of Texas Gas Transmission Corporation at Egan in Acadia Parish, Louisiana. Tennessee states that the peak day and average day volumes would be 15,000 dt equivalent of natural gas and 1,800,000 dt equivalent of natural gas would be transported annually. It is stated that on November 2, 1988, Tennessee initiated a 120-day transportation service for Diamond Shamrock under § 284.223(a) as reported in Docket No. ST89-1077.

Tennessee further states that no facilities need be constructed to implement the service. It is indicated that Tennessee would provide the service for a term of five months and month-to-month thereafter. Tennessee proposes to charge the rates and abide by the terms and conditions of its Rate Schedule IT.

Comment date: February 24, 1989, in accordance with Standard Paragraph G at the end of this notice.

18. United Gas Pipe Line Company

[Docket No. CP89-535-000]

January 10, 1989.

Take notice that on January 5, 1989, United Gas Pipeline Company (United), P.O. Box 1478, Houston, Texas 77251, filed in Docket No. CP89-535-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under the blanket certificate issued in Docket No. CP88-6-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

United proposes to transport natural gas on an interruptible basis for Kimball Resources, Inc. (Kimball). United explains that service commenced December 4, 1988, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89-1351. United explains that the peak day quantity would be 30,900 MMBtu, the average daily quantity would be 30,900 MMBtu, and that the annual quantity would be 11,278,500 MMBtu. United explains that it would receive natural gas for Kimball's account at an existing interconnection with Sea Robin Pipeline Company near Erath, Louisiana. United states that it would redeliver the gas at existing interconnections in the state of Louisiana.

Comment date: February 24, 1989, in accordance with Standard Paragraph G at the end of this notice.

19. Texas Gas Transmission Corporation

[Docket No. CP89-504-000]

January 10, 1989.

Take notice that on December 29, 1988, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP89-504-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to provide an interruptible transportation service for Bishop Pipeline Corporation (Bishop), under Texas Gas's blanket certificate issued in Docket No. CP88-686-000 pursuant to section 7 of the Natural Gas Act, all as more fully set

[1] It is stated that Panhandle is filing concurrently herewith a prior notice application reflecting changes in delivery points on the G-3 contract as provided in Section 284.10 of the Commission's Regulations.

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forth in the request on file with the Commission and open to public inspection.

Texas Gas proposes to transport on a peak day up to 20,000 MMBtu of natural gas for Bishop, with an estimated average daily quantity of 5,000 MMBtu. On an annual basis, it is stated that Texas Gas could transport up to 1,025,000 MMBtu. Texas Gas states that the transportation service is being rendered through the use of Texas Gas's existing facilities, and, pursuant to a gas transportation agreement dated October 20, 1988, the location of the points of receipt and delivery are specified in Exhibits B and C, respectively, of the agreement. It is further stated that the ultimate consumers of the gas have been identified in the request as Seimens Energy, Phillip Morris and Alcatel, Inc. Texas Gas states that transportation service for Bishop commenced November 14, 1988, under the 120-day automatic provisions of § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89-1277.

Comment date: February 24, 1989, in accordance with Standard Paragraph G at the end of this notice.

20. Shell Western E & P Inc.

[Docket No. CP89-468-000]

January 10, 1989.

Take notice that on December 21, 1988, Shell Western E & P Inc. (Shell Western), P.O. Box 2463, Houston, Texas 77252-2463, filed in Docket No. CP89-468-000 a petition under Rule 207 of the Commission's Rules of Practice and Procedure [18 CFR 385.207] for a declaratory order requesting that the Commission disclaim jurisdiction over certain natural gas facilities and the natural gas treating plant currently owned by El Paso Natural Gas Company (El Paso), located in Terrell, Val Verde and Crockett Counties, Texas (collectively referred to as the Terrell Facilities), if such facilities are acquired by Shell Western pursuant to a May 14, 1988, Settlement Agreement (Settlement).

It is stated that El Paso currently operates gathering facilities connecting eighty-nine wells in the J.M., J.M. North and Brown Bassett Fields (referred to as the Fields) in the above mentioned counties with the natural gas plant located in Terrell County. The facilities are comprised of (i) the J.M. Field system, consisting of approximately 15.0 miles of 24" O.D. field feeder pipeline and approximately 25.8 miles of gathering lines ranging in size from 8⅝" O.D. to 24" O.D.; and (ii) the Brown Bassett system, consisting of approximately 48.2 miles of various size lines ranging in size from 6⅝" O.D. to 24" O.D. purification and treating service, primarily to remove carbon dioxide from the gas.

It is stated that the Settlement resolves Shell Western's take-or-pay and pricing litigation pending in Texas state court and provides for the release of certain gas volumes from the Fields and transportation by El Paso of those released volumes in interstate commerce. As partial consideration for the Settlement, El Paso agreed to sell the Terrell Facilities to Shell Western for a cash payment by Shell Western. Shell Western states that it intends to operate the Terrell Facilities as an integrated, non-jurisdictional gathering and treating system. It is further stated that the acquisition, however, is conditioned upon the receipt from the Commission of a declaratory order satisfactory to Shell Western that Shell Western's acquisition, ownership and operation of the Terrell Facilities will not be subject to Commission jurisdiction.

Shell Western states that upon its acquisition of the Terrell Facilities and pursuant to the terms of the Gas Measurement, Gathering, Treating, Compression and Dehydration Agreement dated October 21, 1988, it will gather, purify, treat and dehydrate for El Paso all gas that El Paso purchases from producers and tenders to Shell Western. It is stated that the gathering agreement becomes effective only upon Shell Western's acquisition of the Terrell Facilities and applies only to gas purchased by El Paso pursuant to gas purchase agreements in existence as of May 14, 1988, between El Paso and producers behind the Terrell Plant.

According to Shell Western, in the event of El Paso's release and temporary or permanent abandonment of gas behind the Terrell Plant, including Shell Western's own production pursuant to the Settlement or otherwise, Shell Western is obligated to enter into negotiations with individual producers for gathering, treating and other agreements to carry such gas to the Terrell Plant for treatment. It is further stated that, although not yet resolved, services at the Terrell Plant may be performed for other producers either (1) with Shell Western as sole plant owner for a fee; or (2) with Shell Western acting as operator and co-owner with other producers who may purchase an ownership interest in the Terrell Plant from Shell Western.

It is averred that El Paso's sale of the Terrell Facilities to Shell Western is also conditioned upon the receipt by El Paso of appropriate abandonment authority; El Paso is filing for this authority contemporaneously with this petition. Finally, Shell Western states that the acquisition, ownership and operation of the Terrell facilities by Shell Western are not subject to the Commission's jurisdiction because such facilities constitute a traditional production and gathering function.

Comment date: January 31, 1989, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

21. Tennessee Gas Pipeline Company

[Docket No. CP89-543-000]

January 11, 1989.

Take notice that on January 5, 1989, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252 filed in Docket No. CP89-543-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon a firm transportation service for Trunkline Gas Company (Trunkline), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Tennessee states that by order issued May 24, 1968, in Docket No. CP68-245, as amended, it is authorized to transport up to 510,000 Mcf per day of gas on a firm basis for Trunkline, in accordance with a transportation agreement dated June 18, 1968, as amended. Tennessee states that under the arrangement, it receives gas from Trunkline at two points near Centerville, St. Mary Parish, Louisiana and transports the gas through its Kinder-Sabine Line and redelivers gas to Trunkline in Jefferson Davis or Vermilion Parishes, Louisiana.

It is stated that the contract (as embodied in Tennessee's Rate Schedule T-11) was due to expire on its own terms on November 1, 1988. Tennessee explains that in order to continue the transportation service, Tennessee and Trunkline entered into an amendment to the 1968 contract dated May 1, 1987. Tennessee indicates that it subsequently filed an application to amend its certificate to reflect the terms and conditions contained in the 1987 contract. Tennessee notes that by order dated July 8, 1988, the Commission amended the certificate in certain respects but denied certain other aspects of Tennessee's proposal. Tennessee explains that Trunkline was dissatisfied with the Commission's July 8, 1988, order and that subsequent efforts to seek rehearing have proved unsuccessful.

Tennessee states that since transportation service, as envisioned under the May 1, 1987, amended contract, has never commenced, Tennessee and Trunkline have now made other arrangements regarding firm transportation by Tennessee of Trunkline's gas. Specifically, it is indicated that Tennessee and Trunkline have agreed to terminate the 1968 contract and the May 1, 1987 amended agreement, effective November 1, 1988. It is further stated that on November 1, 1988, Tennessee commenced firm transportation service for Trunkline pursuant to its Order No. 436/500 blanket certificate. Since Trunkline no longer needs the service authorized in Docket No. CP68-245 and since Tennessee and Trunkline have made alternative arrangements, Tennessee is requesting abandonment of the transportation service in Docket No. CP68-245.

Comment date: February 1, 1989 in accordance with Standard Paragraph F at the end of this notice.

22. Tarpon Transmission Company

[Docket No. CP89-549-000]

January 11, 1989.

Take notice that on January 6, 1989, Tarpon Transmission Company (Tarpon), P.O. Box 1478, Houston, Texas, filed in Docket No. CP89-549-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to provide transportation service on behalf of Panhandle Trading Company (Panhandle Trading), a marketer of natural gas, under Tarpon's blanket certificate issued in Docket No. CP88-89-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Tarpon requests authorization to transport, on an interruptible basis, up to a maximum of 80,870 MMBtu of natural gas per day for Panhandle Trading from Eugene Island Blocks 360 and 381, Offshore Louisiana, to Ship Shoal Block 274, Offshore Louisiana. Tarpon anticipates transporting, on an average day 5,900 MMBtu and an annual volume of 2,153, 500 MMBtu.

Tarpon states that the transportation of natural gas for Panhandle Trading commenced November 1, 1988, as reported in Docket No. ST89-872-000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations and the blanket certificate issued to Tarpon in Docket No. CP88-89-000.

Comment date: February 27, 1989, in accordance with Standard Paragraph G at the end of this notice.

23. Tennessee Gas Pipeline Company

[Docket No. CP89-544-000]

January 11, 1989.

Take notice that on January 6, 1989, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP89-544-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide a transportation service for Arco Oil and Gas Company, Division of Atlantic Richfield Company (Arco), a producer, under the blanket certificate issued in Docket No. CP87-115-000 on June 18, 1987, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Tennessee states that pursuant to a transportation agreement dated November 23, 1988, under its Rate Schedule IT, it proposes to transport up to 100,000 dekatherms (DT) per day equivalent of natural gas for Arco from points of receipt listed in Exhibit "A" of the agreement to delivery points also listed in Exhibit "A". Tennessee states that it would receive the gas at existing points on its system located offshore Louisiana and in the states of Texas and Louisiana, and that the redelivery points and ultimate delivery points are located in the states of Alabama and Mississippi.

Tennessee advises that service under § 284.223(a) commenced December 8, 1988, as reported in Docket No. ST89-1472 (filed December 29, 1988). Tennessee further advises that it would transport 100,000 dt on an average day and 36,500,000 dt annually.

Comment date: February 27, 1989, in accordance with Standard Paragraph G at the end of this notice.

24. The Kansas Power and Light Company

[Docket No. CP89-485-000]

January 11, 1989.

Take notice that on December 23, 1988 The Kansas Power and Light Company (KPL) P.O. Box 889, Topeka, Kansas 66612, filed in Docket No. CP89-485-000 an application requesting the Commission issue KPL a section 7(f) determination for a service area comprised of the Kansas City, Kansas, metropolitan area and environs including certain areas in the adjoining states of Oklahoma and Missouri, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

On September 8, 1982, in Docket No. CP82-266-000 the Commission issued KPL a blanket transportation certificate pursuant to § 284.222 of the Commission's Regulations and concurrently in Docket No. CP82-268-000 granted KPL exemption from jurisdiction pursuant to section 1(c) of the Natural Gas Act.

In the subject application, KPL requests the Commission issue a determination of two service areas pursuant to section 7(f) of the Commission's Regulations. The first service area includes the metropolitan area of Kansas City, Kansas, and the surrounding communities in Atchison, Doniphan, Leavenworth, Wyandotte, Johnson and Miami counties of Kansas, and in the counties of Buchanan, Platte, Clay, Jackson, and Cass and the northern part of Bates County, in Missouri. The second service area consists of Cherokee County, Kansas, and the counties of Ottawa and Delaware, in Oklahoma, and the counties of Jasper, Newton and McDonald in Missouri.

KPL states that a section 7(f) service area determination will enhance its gas supply options, permit it to operate more effectively, expand its distribution system across state boundaries and afford its customers the attendant gas cost benefits that results from a reduction of state constraints and Federal jurisdiction.

Comment date: February 1, 1989, in accordance with Standard Paragraph F at the end of this notice.

25. Southern Natural Gas Company

[Docket No. CP89-572-000]

January 11, 1989

Take notice that on January 9, 1989, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202-2563, filed in Docket No. CP89-572-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) and the Natural Gas Policy Act (18 CFR 284.223) for authorization to transport natural gas for TXG Gas Marketing Company (TXG), a marketer, under Southern's blanket certificate issued in Docket No. CP88-316-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Southern proposes to transport, on an interruptible basis, up to 50,000 MMBtu of natural gas equivalent per day pursuant to a transportation agreement dated October 7, 1988, between Southern and TXG. Southern would receive gas at various receipt points in Louisiana, offshore Louisiana.

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Mississippi, Alabama, Texas and offshore Texas and redeliver equivalent volumes of gas, less the applicable fuel charge set forth in Rate Schedule IT and any shrinkage, at various delivery points in Mississippi.

Southern further states that the estimated average daily and annual quantities would be 25,000 MMBtu and 9,125,000 MMBtu, respectively. Service under § 284.223 (a) commenced on November, 2, 1988, as reported in Docket No. ST89-1546, it is stated.

Comment date: February 27, 1989, in accordance with Standard Paragraph G at the end of this notice.

26. Transwestern Pipeline Company

[Docket No. CP89-539-000]

January 11, 1989.

Take notice that on January 5, 1989, Transwestern Pipeline Company (Transwestern), 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP89-539-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon the sale of natural gas to Williams Natural Gas Company to (Williams), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Transwestern seeks authority to abandon its firm sales obligation, of up to 127,214 dekatherms of natural gas per day, to Williams under Rate Schedule CDQ-3, effective February 1, 1989. In addition, Transwestern requests approval for the elimination of Rate Schedule CDQ-3 from its FERC Gas Tariff, Second Revised Volume No. 1, also effective February 1, 1989. It is further requested that the Commission condition such abandonment authorization by permitting Transwestern to reserve its right to recover from Williams, pursuant to any filing made by Transwestern subsequent to the effective date of the requested abandonment authorization under the alternate passthrough procedures of Order No. 500, Williams' equitable share of the take-or-pay buyout and buydown and contract reformation costs (transition costs) incurred by Transwestern in maintaining gas supplies to meet the sales service entitlements of its firm customers. No abandonment of facilities is contemplated under the application.

It is alleged that conditioning the requested authorization on reservation of Transwestern's right to recover from Williams subsequent to issuance of abandonment authorization an equitable share of the transition costs, is the only equitable method of recovering those costs from Williams and preventing the shifting of such costs to other Transwestern customers due to merely an accident in timing, *i.e.*, that Williams has requested abandonment of service to be effective February 1, 1989, prior to the March 31, 1989, filing deadline for Order No. 500 alternate passthrough proposals.

It is asserted that the reservation of rights by Transwestern proposed in the application is a necessary adjunct to the total elimination of Williams' purchase obligation from Transwestern and Williams' exist from the system as both a firm sales and transportation customer. It is claimed that this ensures that Williams would pay an equitable share of transition costs incurred by Transwestern prior to the proposed abandonment as a direct result of the restructuring of Williams' purchase obligation, which began with the issuance of Order No. 380, continued with the Docket No. RP85-175 settlement, and finally terminates with the instant application. It is alleged that refusal to condition the requested abandonment authorization would lead to the inequitable result of assigning to Transwestern's other customers transition costs directly incurred due to Transwestern's obligation to supply gas to Williams on demand prior to February 1, 1989, and due to Williams' voluntary purchasing practices.

Comment date: February 1, 1989 in accordance with Standard Paragraph F at the end of this notice.

27. Natural Gas Pipeline Company of America

[Docket No. CP89-516-000]

January 11, 1989.

Take notice that on December 30, 1988, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois, 60148 filed in Docket No. CP89-516-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) and the Natural Gas Policy Act (18 CFR 284.223) for authorization to transport natural gas for BHP Petroleum, Inc. (BHP), a producer of natural gas, under Natural's blanket certificate issued in Docket No. CP86-582-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Natural proposes to transport on an interruptible basis up to 100,000 MMBtu of natural gas equivalent per day on behalf of BHP pursuant to a gas transportation agreement dated April 25, 1988, as amended on September 22, 1988, between Natural and BHP. Natural would receive the gas at various existing points of receipt on its system in Texas, Oklahoma, New Mexico, offshore Louisiana and Wyoming and redeliver equivalent volumes, less fuel and lost and unaccounted for volumes, at existing delivery points in Illinois and Iowa.

Natural further states that the estimated average daily and annual quantities would be 50,000 MMBtu and 18,250,000 MMBtu, respectively. Service under § 284.223(a) commenced on November 1, 1988, as reported in Docket No. ST89-1509-000, it is stated.

Comment date: February 27, 1989, in accordance with Standard Paragraph F at the end of this notice.

28. United Gas Pipe Line Company

[Docket No. CP89-536-000]

January 11, 1989.

Take notice that on January 5, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP89-536-000 a request pursuant to §§ 157.205 and 284.223 (18 CFR 157.205 and 284.223) of the Commission's Regulations under the Natural Gas Act for authority to provide interruptible transportation service for Cabot Energy Marketing Corporation (Cabot) a marketer of natural gas, under United's blanket transportation certificate authorization which was issued by Commission order on January 15, 1988, in Docket No. CP88-6-000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

United indicates that it will receive the gas at an existing point in Beckham County, Oklahoma, and deliver the gas for the account of Cabot in Wheeler, County, Texas, at an existing interconnection with the Red River Pipeline Company. United will transport the gas pursuant to its Rate Schedule ITS.

United proposes to transport up to 206,000 MMBtu of gas per peak day and approximately 206,000 MMBtu of gas and 75,190,000 MMBtu of gas on an average day and annually, respectively. United indicates that the transportation service commenced under the 120 day automatic authorization of § 284.223(a) of the Commission's Regulations on December 6, 1988, pursuant to a transportation agreement dated October 1, 1988. United notified the Commission of the commencement of the transportation service in Docket No. ST89-1303-000 on December 15, 1988.

Comment date: February 27, 1989, in accordance with Standard Paragraph G at the end of this notice.

29. Williams Natural Gas Company

[Docket No. CP89-536-000]

January 11, 1989.

Take notice that on January 6, 1989, Williams Natural Gas Company (Williams), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP89-554-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas for Petrus Oil Company, L.P. (Petrus), a producer/marketer, under the blanket certificate issued in Docket No. CP86-631-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Williams proposes to transport on an interruptible basis for Petrus up to 100,000 MMBtu of natural gas on a peak day, approximately 100,000 MMBtu on an average day, and 36,500,000 MMBtu on an annual basis. Williams states that it would transport this gas from various receipt points in Kansas, Oklahoma and Texas to various delivery points on Williams' system in Kansas, Missouri, Texas and Wyoming. Williams explains that service commenced under the automatic authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST89-1185-000.

Comment date: February 27, 1989, in accordance with Standard Paragraph G at the end of this notice.

30. Williams Natural Gas Company

[Docket No. CP89-552-000]

January 11, 1989.

Take notice that on January 6, 1989, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP89-552-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (19 CFR 157.205) for authorization to transport natural gas for Texaco Gas Marketing, Inc. (Texaco), under WNG's blanket certificate issued in Docket No. CP86-631-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

WNG proposes to transport on an interruptible basis up to 20,000 MMBtu of natural gas on a peak day, 20,000 MMBtu on an average day and 7,300,000 MMBtu on an annual basis for Texaco. It is stated that WNG would receive the gas for Texaco's account at various existing points on WNG's system in Kansas and Oklahoma and would deliver equivalent volumes at an existing point on WNG's system in Kansas. It is asserted that the service would be effected using existing facilities and that no construction of facilities would be required. It is explained that the transportation service commenced November 4, 1988, under the self-implementing authorization of § 284.223 of the Commission's Regulations as reported in Docket No. ST89-1186.

Comment date: February 27, 1989, in accordance with Standard Paragraph G at the end of this notice.

31. Southern Natural Gas Company

[Docket No. CP89-574-000]

January 11, 1989

Take notice that on January 9, 1989, Southern Natural Gas Company (Southern), Post Office Box 2563, Birmingham, Alabama 35202-2563, filed in Docket No. CP89-574-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations (18 CFR 157.205 and 284.223) for authorization to perform an interruptible transportation service for Sonat Marketing Company (Marketing), a marketer, under Southern's blanket certificate issued in Docket No. CP88-316-000, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file and open to public inspection.

Southern states that pursuant to a transportation agreement dated October 3, 1988, it proposes to receive up to ten billion Btu of natural gas per day from Marketing at specified points located Offshore Texas and Louisiana and in the states of Louisiana, Texas, Mississippi, Alabama, and Georgia and redeliver the gas at a specified point in Shelby County, Alabama. Southern states that the peak day, average day, and annual volumes would be ten billion Btu, eight billion Btu, and 2,900 billion Btu, respectively. It is stated that on November 2, 1988, Southern initiated a 120-day transportation for Marketing under § 284.223(a) as reported in Docket No. ST89-1547.

Southern further states that no facilities need be constructed to implement the service. Southern states that the contract provides for a primary term of one month with successive terms of one month thereafter unless cancelled by either party. Southern proposes to charge rates and abide by the terms and conditions of its Rate Schedule IT.

Comment date: February 27, 1989, in accordance with Standard Paragraph G at the end of this notice.

31. Natural Gas Pipeline Company

[Docket No. CP89-548-000]

January 12, 1989

Take notice that on January 6, 1989, Natural Gas Pipeline Company of America (Natural) 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP89-546-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas under its blanket authorization issued in Docket No. CP86-582-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Natural proposes to transport natural gas on an interruptible basis for Anadarko Trading Company (Anadarko), a marketer of natural gas, pursuant to an interruptible transportation service agreement dated June 27, 1988 (#ICP-1247). Natural proposes to transport on a peak day up to 80,000 MMBtu per day; on an average day up to 40,000 MMBtu; and on an annual basis 14,600,000 MMBtu of natural gas for Anadarko. Natural proposes to receive the gas for Anadarko's account at receipt points located in Offshore Louisiana, Louisiana, Texas, Offshore Texas, New Mexico, Oklahoma, Illinois, Kansas, and Iowa. Natural would redeliver the gas at delivery points located in Louisiana, Offshore Louisiana, Texas, Offshore Texas, Illinois and Missouri.

It is explained that the proposed service is currently being performed pursuant to the 120-day self implementing provision of § 284.223(a)(1) of the Commission's Regulations. Natural commenced such self-implementing service on November 5, 1988, as reported in Docket No. ST89-1610-000.

Comment date: February 27, 1989, in accordance with Standard Paragraph G at the end of this notice.

32. United Gas Pipe Line Company

[Docket No. CP89-562-000]

January 12, 1989

Take notice that on January 9, 1989, United Gas Pipe Line Company (United), P.O. Box 1478 Houston, Texas 77251-1478, filed in Docket No. CP89-562-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on

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behalf of Texaco Gas Marketing (Texaco), a natural gas marketer, under its blanket authorization issued in Docket No. CP88-6-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

United would perform the proposed interruptible transportation service for Texaco, pursuant to an interruptible transportation service agreement dated September 2, 1988, as amended November 28, 1988 (Contract No. TI-21-1831). The transportation agreement is effective for a primary term of one month from the date of first delivery thereunder or such date that the parties mutually agree to terminate the agreement, and shall continue month to month thereafter unless terminated by thirty days written notice by either party. United proposes to transport up to a maximum of 103,000 MMBtu of natural gas per day; on an average day up to 103,000 MMBtu; and on an annual basis 37,595,000 MMBtu of natural gas for Texaco. United proposes to receive the subject gas at various points located in the states of Louisiana and Mississippi. It is stated that the points of delivery are located in the state of Mississippi. United avers that no new facilities are required to provide the proposed service.

It is explained that the proposed service is currently being performed pursuant to the 120-day self implementing provision of § 284.223(a)(1) of the Commission's Regulations. United commenced such self-implementing service on November 28, 1988, as reported in Docket No. ST89-1378-000.

Comment date: February 27, 1989, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 89-1219 Filed 1-18-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. C88-413-000, et al.]

ANR Gathering Co., et al.; Applications for Extension of Blanket Limited-Term Certificates With Pregranted Abandonment [1]

Take notice that each Applicant listed herein has filed an application pursuant to section 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for amendment of its blanket limited-term certificate with pregranted abandonment previously issued by the Commission for a term expiring March 31, 1989, to extend such authorization for an unlimited term, all as more fully set forth in the applications which are on file with the Commission and open for public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before January 27, 1989, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,

Secretary.

Docket No.	Date filed	Applicant
C88-413-000	12-22-88	ANR Gathering Co., Coastal Tower, 9 Greenway Plaza, Houston, TX 77046.
C88-419-000	12-22-88	ANR Supply Co., Coastal Tower, 9 Greenway Plaza, Houston, TX 77046.
C87-621-002	12-22-88	Mountain Industrial Gas Co. P.O. Box 1087, Colorado Springs, CO. 80944.
C88-274-001	12-22-88	Coastal States Gas Transmission Co., Coastal Tower, 9 Greenway Plaza, Houston, TX 77046.

[FR Doc. 89-1216 Filed 1-18-89; 8:45 am]

BILLING CODE 6717-01-M

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

[Docket No. C89-194-000, et al.]

Coastal Gas Marketing Co., et al.; Applications for Blanket Certificates With Pregranted Abandonment [1]

January 11, 1989

Take notice that each Applicant listed herein has filed an application pursuant to section 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for an unlimited-term blanket certificate with pregranted abandonment authorization, all as more fully set forth in the applications which are on file with the Commission and open for public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before January 27, 1989, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,

Secretary.

Docket No.	Date filed	Applicant
C89-194-000	12-22-88	Coastal Gas Marketing Co., Coastal Tower, 9 Greenway Plaza, Houston, TX 77046.
C89-196-000	12-23-88	Clajon Marketing, L.P., Clayton Williams Jr. Building, Suite 200, 500 North FM 1604 East, San Antonio, TX 78232-1298.

[FR Doc. 89-1217 Filed 1-18-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. C180-3-000, et al.]

FMP Operating Co., A Limited Partnership; Application

January 11, 1989

Take notice that on December 23, 1988, FMP Operating Company, A Limited Partership (FMPO) of 1615 Poydras Street, P.O. Box 60004, New Orleans, Louisiana 70160, filed an application pursuant to section 7(c) of the Natural Gas Act and § 157.23, *et seq.* of the Commission's regulations for certificate authorization to continue certain sales of natural gas previously made by American Royalty Producing Company (ARPCO) and FPCO Oil & Gas Company (FPCO) under the certificates and rate schedules listed in the Appendix. FMPO also requests that the related FERC Gas Rate Schedules now designated in the name of ARPCO or FPCO be redesignated in the name of FMPO. The application is on file with the Commission and open for public inspection.

FMPO states that by Assignment, Bill of Sale and Conveyance executed May 1, 1988, and effective January 1, 1988, ARPCO and FPCO assigned title to the properties covered under the certificates and rate schedules listed in the Appendix to FMPO.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 27, 1989, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for FMPO to appear or to be represented at the hearing.

Lois D. Cashell,

Secretary.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Appendix

Certificate docket No.	Former certificate holder	FERC gas rate schedule No.	Purchaser
C80-3	FPCO Oil & Gas Company	1	Transcontinental Gas Pipe Line Corporation
C81-506	do	2	Do.
C83-221	do	3	Do.
C86-749	do	4	Williams Natural Gas Company
C87-1	American Royalty Producing Company	1	El Paso Natural Gas Company
C87-2	do	2	Do.
C87-3	do	3	Do.
C87-4	do	4	Do.
C87-5	do	5	Do.
C87-6	do	6	Do.
C87-7	do	7	Do.
C87-8	do	8	Do.
C87-9	do	9	Do.
C87-10	do	10	Do.
C87-11	do	11	Do.
C87-12	do	12	Do.
C87-13	do	13	Do.
C87-14	do	14	Do.
C87-15	do	15	Do.
C87-16	do	16	Do.
C87-17	do	17	Do.
C87-18	do	18	Do.
C87-19	do	19	Do.
C87-20	do	20	Do.
C87-21	do	21	Do.

Appendix—Continued

Certificate docket No.	Former certificate holder	FERC gas rate schedule No.	Purchaser
C87-22	do	22	Do.
C87-23	do	23	Do.
C87-24	do	24	Do.
C87-25	do	25	Do.
C87-26	do	26	Do.
C87-27	do	27	Do.
C87-261	do	28	Do.
C87-261	do	29	Do.
C87-261	do	30	Do.
C87-261	do	31	Do.
C87-261	do	32	Do.
C87-261	do	33	Do.
C87-261	do	34	Do.
C87-261	do	35	Do.

[FR Doc. 89-1218 Filed 1-18-89; 8:45 am]
BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3505-6]

State Implementation Plan Processing Reform

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of procedural changes.

SUMMARY: This notice describes changes being implemented in the way State implementation plans (SIPs) are processed at EPA. The Act requires States to develop plans for attaining and maintaining the six national ambient air quality standards established by EPA. These SIPs, including all revisions to such plans, are reviewed and approved or disapproved by EPA. This process of State plan preparation, submittal to EPA, and subsequent EPA review has been very time-consuming and resource-intensive. The EPA is concerned that uncertainty and excessive delays in processing SIPs frustrate the development of an optimum State/Federal partnership, cause confusion for sources regarding applicable regulations, and generally dampen intitiative in State regulatory programs. Prompted by this concern, the Deputy Administrator called for an assessment by senior officials of the processing of SIPs at EPA. The purpose of the assessment was to identify problems and propose solutions.

The problems identified centered on an excessive concern by EPA for the potential precedent-setting value of individual SIP revisions, manifested by excessive delay in reaching decisions on many SIP actions and in uncertainty on the part of sources and State/local agencies as to the outcome of the SIP review process. The changes being implemented, described in detail below, focus on tailoring EPA review to the significance of the action, and adhering to established procedures for processing SIPs within EPA in order to promptly identify problems with SIP submittals and to generally improve the certainty of the process itself. These changes include, among others: review of SIP submittals for completeness against specific criteria, and requiring prompt modification of incomplete submittals; delegation of SIP decision authority to EPA Regional Administrators for a range of SIP actions which are not nationally significant; and providing for the option to "grandfather" SIP submittals that were prepared in good faith by a State but which may become deficient to some degree because of a change in EPA policy subsequent to State adoption.

EPA believes that these changes will produce a number of important benefits. SIP submittals should be processed more efficiently and review decisions made more quickly and equitably; overall, the quality of SIP submittals should be improved. By working more closely, relations between EPA Regional Offices and State/local agencies will be improved, enhancing the effectiveness of air quality management programs generally. Finally, the changes should result in a more accessible and accountable system, enabling parties outside EPA to determine more easily the status of SIP submittals.

DATES: This action will be effective January 19, 1989. All comments should be submitted to EPA at the address shown below by March 6, 1989.

ADDRESSES: Interested parties may submit written comments in duplicate to Public Docket No. A-88-18 at: Central Docket Section (A-130), South Conference Center, Room 4, U. S. Environmental Protection Agency, Attention: Docket No. A-88-18, 401 M. Street, SW., Washington, DC 20460.

Materials relevant to this notice have been placed in Docket No. A-88-18 by EPA and are available for inspection at the above address between 8:00 a.m. and 3:30 p.m., Monday through Friday. The EPA may charge a reasonable fee for copying.

FOR FURTHER INFORMATION CONTACT: Mr. James Weigold, Office of Air Quality Planning and Standards (MD-11), U. S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; Telephone (919) 541-5642 or (FTS) 629-5642.

SUPPLEMENTARY INFORMATION:

Background

The 1970 Clean Air Act (CAA) established the air quality management process as a basic philosophy for air pollution control in this country. Under this system, EPA establishes air quality goals (National Ambient Air Quality Standards—NAAQS) for common pollutants. There a re now standards for 6 pollutants: ozone (O_3), carbon monoxide (CO), sulfur dioxide (SO_2), nitrogen dioxide, particulate matter (PM_{10}), and lead. States then develop control programs to attain and maintain these NAAQS. These programs are defined by State Implementation Plans (SIPs) which are approved or disapproved formally by EPA and, to the extent they are approved, are legally enforceable by EPA. A SIP must demonstrate attainment and maintenance of the applicable NAAQS, describe a control strategy, contain legally enforceable regulations, include an emission inventory and procedures for the preconstruction review of new pollution sources, outline a program for monitoring, and show adequate

resources for the State to implement the SIP. In addition, there can be many other requirements specific to the pollutant being considered. The consequences of State failure to get SIP approval may be serious, including Federal promulgation of control regulations and sanctions.

Affirmative action is required by EPA on essentially all aspects of every SIP action. Since EPA's final decision comes after a regulation already is adopted and implemented at the State level, excessive delay in the review process often is a major source of friction in EPA's relations with State and local agencies.

There can also be differences of opinion between EPA's Regional Offices and Headquarters. Regions provide guidance and support to States in writing SIPs and then must review them and recommend approval or disapproval. The need for flexibility in dealing with each State and situation is important to the Regions. On the other hand, Headquarters' offices have a major responsibility to ensure basic national consistency on legal, policy, and technical issues. Thus, SIP decisions are under constant pressure because they are visible and quantitative tests of the elusive balance sought between State flexibility and the firmness and consistency provided by national directives.

More than 1600 SIP related actions have been processed from 1983 to the present, averaging almost 350 per year. Many of these involved multiple issues. About 75 percent of the actions fell into three categories: attainment demonstrations, single source actions, and (although technically not SIP revisions) actions involving redesignation of attainment status. Most of the remainder involved new source review actions and emission trades.

A rough assessment has been made of the future SIP load. With the promulgation of a national ambient air quality standard for PM_{10}, and the proposed post-1987 ozone and CO attainment policy, the number of SIP submittals will increase significantly over the next few years. About 100 attainment SIPs and more than 160 "committal" type actions for PM_{10} will have to be reviewed. Shortly thereafter, attainment SIPs for ozone (60-70 areas) and for CO (another 50-60 areas) will be sumitted. Potential revisions to EPA's 1985 stack height regulations resulting from the court decision in *NRDC v. Thomas*, 838 F. 2d 1224 (D.C. Cir. 1988), could require review of SIP emission limits for as many as 200 stationary sources. In addition, it is possible that about 30 Section 111(d) SIPs on control of municipal waste combustors will be developed during this period. The preceding are in addition to the average load of 350 submittals per year.

The Current Review Process at EPA

A comprehensive system has been set up for processing SIPs at EPA, involving full notice and comment rulemaking. The major steps are summarized below.

(1) State prepares the SIP, gets necessary approval under State law, provides justification and documentation, and submits it to the Regional Office for the Governor or his designee. The SIP can range in size from a few to hundreds of pages.

(2) EPA Regions comprehensively evaluate the submittal for policy, legal and technical adequacy, prepare a Technical Support Document (TSD), and prepare a proposed final rule indicating approval or disapproval of the action. The rule is signed by the Regional Administrator, if it is a proposal, and sent on for review by EPA Headquarters. The Headquarters' offices thereupon undertake an evaluation of the Regional Office package, regardless of the significance of the SIP action.

(3) The Office of Air Quality Planning and Standards (OAQPS) in Durham, North Carolina manages the Headquarters' review, coordinating the technical, policy and legal evaluation with all relevant Headquarters offices. These may include the Office of General Counsel and the Office of Policy, Planning and Evaluation, as well as several groups within the Office of Air and Radiation (OAR).

Each group, concurs with comment, or nonconcurs. Negotiation with the Regions over SIP issues or interpretation frequently is a part of Headquarters' review.

(4) Proposals are sent to the Assistant Administrator for Air and Radiation for concurrence. Disapprovals and partial approvals of SIPs must undergo Office of Management and Budget review (under Executive Order 12291) before being sent to the Office of the Federal Register (OFR) for publication.

(5) After review by the Assistant Administrator for OAR, all final actions go to the Administrator for signature and then are sent to the OFR.

SIP processing at EPA has a scheduled goal of 5/2-5/2 for final action. That is, the Region nominally have 5 months to review submittals in both the proposal and promulgation phases; Headquarters nominally has 2 months in each phase. However, SIP actions often take considerably longer than the total 14 months allocated to publish a final decision.[1]

The lengthy decision process has resulted in strong criticism from sources both inside and outside the EPA. In response, the Deputy Administrator commissioned in July, 1987 a senior level task group to assess the problems inherent in the process and to recommend solutions. The task group conducted its assessment and presented recommendations to the Deputy Administrator.[2] The recommendations were approved fully and are described herein. However, before discussing the steps being taken by EPA to reform its SIP processing procedures, it is useful to examine the approach taken by the task group, and the problems uncovered.

The Assessment

The project involved a three-level approach. It included (1) formation of a senior-level task group on SIP Processing which met throughout the four-month project, (2) direct discussions with staff intimately involved in SIP processing, both individually (or in small groups) and at a day-long Headquarters/Regional Office workshop, and (3) interviews with senior executives (Deputy Regional Administrators, Office Directors) now at EPA, and former policy makers with EPA and State air agencies. In addition, a few limited analytical assessments (e.g., historical SIP activity, number and distribution of SIPs currently at EPA) were done to better characterize the issue.

The task group consisted of senior officials from EPA's Regional Offices, Headquarters' groups associated with SIP processing, and State air agencies. The group met three times, first to discuss the general problem to be addressed, agree on a course of action, and assign special short-term projects. The second meeting was primarily concerned with process update and with presentations by Regional Office and State agency representatives to give their unique prespectives on the issues.

[1] Note that section 110(a)(2) of the Clean Air Act requires that "The Administrator shall, within four months after the date required for submission of a [SIP], approve, or disapprove such [SIP] for each portion thereof." Under the Agency's present processing workload, such a time limit is laterally impossible to meet for all but the most trivial of actions. EPA maintains that this deadline does not apply to SIP revisions, but rather only to the initial SIP, submitted after EPA promulgates a NAAQS. Some courts have supported EPA's position; other courts have held that a 4-month review period applies to a SIP revision.

[2] The repost on the project is entitled "Final Report of the Task Group on SIP Processing," October 1987. A copy is located in the docket as Item II-B-6.

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Finally, at the third meeting, results of analytic studies were presented, and the range of options for improving the process was discussed. These meetings led to the SIP processing changes that are being announced today.

The work of the task group was reinforced by discussions with people directly involved with SIP review in order to get an operations view of the issues. This included a comprehensive one-day workshop attended by approximately 50 EPA staff personnel. This group, intimately familiar with the processing and review of SIP packages, exchanged ideas on both issues and potential solutions during the workshop.

To gain yet another perspective, a series of interviews was conducted with persons currently or recently involved with SIP processing from a broader policy sense. For example, the persons interviewed included a former EPA Deputy Administrator, the former heads of State and local air programs, senior industry officials, several past EPA Assistant Administrators, and four current Deputy Regional Administrators. (The complete list of persons interviewed and their summarized views are contained in an appendix to the task group report.)

Significantly, there was a noticeable degree of consistency among those interviewed both in terms of their perception of major problems and in terms of the general thrust of solutions to be pursued. Almost all believed that EPA is too cautious in making SIP decisions, that SIPs vary widely in importance and EPA should tailor its review accordingly, and that the current SIP review system is operated too informally. They also believed that the "moving target" problem (a change in the technical or policy basis for EPA decisions after a SIP has been submitted) needed to be addressed.

Problems Identified

It is clear that the process of reviewing and judging SIPs has been a constant struggle for EPA and the States and is a source of increasing tension. Concerns voiced by participants during the assessment indicated problems at each level of SIP preparation and review. Some cited abuse of the system by the States to relax source limits. Others believed EPA was too inflexible and overzealous, resulting in major processing delays for minor benefits.

It is likely that present problems, if left unattended, will become worse because of continuing resource constraints and plans that call for significant increases in SIP activity over the next few years, particularly in the complex areas of ozone, CO, and PM_{10}.

In a relatively recent development, some enforcement actions have been affected by courts which have ruled that EPA cannot enforce the current federally approved SIP against a source for violations occurring more than four months after a SIP revision affecting the source has been submitted to EPA, unless EPA has finally acted on the submittal.

As a result of the discussions and projects described earlier, it was possible to identify a number of fundamental problems that appear to be associated with SIP processing. Some of these problems are concerned primarily with the procedural aspects of SIP review, while others relate more to the underlying philosophy of the SIP review process (i.e., what is the process supposed to accomplish), and the attitudes of the SIP reviewers. For example, there is within EPA a strong concern for consistency in SIP decisions, and a fear that each decision may have important consequences in terms of establishing national precedent. However, such concern may be appropriate for only a small percentage of actions reviewed. Moreover, it appears that the SIP process has been depended upon as a vehicle to identify, resolve, and articulate national policy issues, often at the expense of timely decision making.

The issues identified fall into three basic categories: inordinate concern for the consequences of individual decisions; excessive EPA review, including full review for minor or clearly deficient actions; and uncertainty concerning the outcome of review. These problem categories are discussed briefly below.

A. Inordinate Concern for Individual Actions

As noted, the current process places a premium on consistency, stemming in large part from a fear that a decision statement or explanation concerning a specific State or source may force similar decisions in other States for similar sources. Although there is a need for consistency at some level (e.g., concerning the basic components of an ozone attainment program or a new PM_{10} SIP), it may not be necessary for the results of all decisions to be similar State to State and source to source. It must be remembered that SIPs are intended to be tailored by the States to their specific air quality problems, and the mix of sources from which emissions reductions can be obtained, within the constraints of the Clean Air Act (such as the requirement for reasonably available control technology in nonattainment areas). Although it is important for policy and broad technical requirements to be applied consistently, it is not necessary that the result of their application to localized problems turn out the same.

Because of the emphasis on consistency and the fear of setting precedent with individual decisions, SIP reviewers have been reluctant to risk making mistakes on any SIP change; this, considering the number of actions EPA must review, inhibits rapid review and decision making. There needs to be a greater willingness on the part of all concerned with the process to risk an occasional noncritical mistake in return for more rapid processing and earlier identification of the outcome of the review.

B. Excessive Review

Some SIP packages deserve the full attention of EPA staff and management; as noted, certainly the basic State programs for post-1987 ozone attainment and programs to achieve the newly promulgated PM_{10} ambient air quality standard will need such review. Similarly, SIP revisions for new programs that dictate consistent national implementation, or that involve complex and evolving policy issues, such as generic bubble regulations, should receive review and sign-off by EPA Headquarters. But the same cannot be said for changes to an emission limit on a local printing plant, composition of State boards, or negative declarations under section 111(d). Under EPA's current approach to SIP review, all changes receive Regional Office and Headquarters' review prior to both proposal and final approval (except for those SIPs, aobut 20 percent of the total, processed as direct final [3]). All final actions, no matter how trivial, currently are signed by the Administrator.

There are several problems with this multiple review for all actions: it inherently takes longer than processing only at the Regional Office level; it ties up the scarce Headquarters' resources available for SIP review (thus making a long process even longer); and by introducing more reviewers into the process, it increases the chance of rejection for procedural or other reasons which have no impact on air quality.

There are other aspects to the excessive review problem. If a State

[3] Under this procedure, EPA publishes a single Federal Register notice which indicates that the SIP action will be final in 60 days unless an interested party requests the opportunity to provide adverse comment. If a party does wish to provide adverse comment, EPA then follows the normal SIP processing procedure of notice of proposal and subsequent final rulemaking.

submits a SIP change without properly stated emission limits, legal authority or compliance schedules, or which contains other obvious deficiencies, it can enter the system and be subject to complete EPA review and disapproval. EPA's procedures did not provide in any comprehensive way for immediate rejections for incompleteness. Independently, however, some Regional Offices have tried to deal with this problem. For example, Region I has developed a set of completeness criteria their States must follow; Region VII provides States with an extensive checklist describing the information the Region will look for in a wide range of SIP actions. The purpose is to keep incomplete packages out of the more extensive review system.

On the other hand, even if the submittal is prepared correctly, some actions seem unsuited for full review. Examples include simple recodification of regulations, address changes, or changing modeling or stack test methods to conform to revised EPA guidelines. In such actions, the State is doing exactly what is required and appropriate. Although such changes can be processed as direct final, even that is probably more resource intensive than they are worth. However, there is presently no better way to treat such changes administratively, or keep them out of the system entirely.

Finally, several members of the Task Group believed that, in addition to being concerned with SIP processing, EPA should also examine the SIP process in a more basic way. Specifically, there was debate and interest expressed by some in promoting direct acceptance of operating permits or other State single source emission limits. This would be conditioned on EPA approval of the State's overall framework and strategy for achieving an ambient air quality standard. EPA's continuing role would be to track a State's overall progress and periodically audit the State's implementation of the permit process, taking corrective action as necessary. Some initial steps are being taken in this direction. For example, in response to the "federal enforceability" issue contained in the Chemical Manufacturers Association (CMA) consent agreement concerning challenges to EPA's new source review regulations, EPA is considering the possibility of allowing State operating permits to be deemed federally enforceable in certain situations provided that the State's operating permits program has been incorporated into the SIP and approved by EPA. However, full implementation of a system involving direct acceptance of State permits or other limits requires much conceptual discussion concerning State/EPA regulations and fundamental changes to other parts of the national air program, and may require changes to the Clean Air Act.

C. Uncertainty Concerning the Outcome of the Process

It might be expected that processing a revision to a SIP, given the EPA's years of experience, would be a fairly routine process. However, that often is not the case. The fate of a given SIP revision, in terms of both the nature and timing of the ultimate decision, can be uncertain for a number of reasons. Important information necessary for decision making may be left out of a SIP package, or the format and justification for the change may be deficient. This can result not only from inexperience and lack of training at the State and local level, but also from a lack of clear policy guidance from EPA and timely issue resolution. Policies important to SIP preparation and approval may be unstated or poorly documented. In some cases, there may be no policy at all to address a specific SIP issue, and the SIP process itself, through the aggregation of a series of similar actions, is used to evolve a policy. This situation, in part, derives from sporadic management involvement in the SIP process. Constant attention is needed to assure that packages are moved through the system, that problems are promptly identified, and that policy issues are discussed and resolved.

An overt manifestation of uncertainty in the outcome of SIP review is the moving target syndrome. Under current practice, a SIP may be under review at EPA for months and eventually be deemed inappropriate because it doesn't conform to a newly evolved policy, even though it conformed to the policy in place when it was submitted. This not only frustrates the State but results in confusion for the source because until the State actually changes its submittal, it often continues to implement the regulations disapproved by EPA.

Another factor contributing to uncertainty and delay is the reliance on informal communication in processing SIPs. The system traditionally has been characterized by nurturing, not judgmental, interactions. Headquarters and Regional Office personnel are reluctant to formally reject packages, but rather try to work with their colleagues in the processing chain by phone calls and often protracted negotiation. This stems in part from reluctance to compromise others that may have acted in good faith. Also, the documentation needed to support a more formal process on a large number of SIP actions can become an excessive burden. Unfortunately, in many cases the informal process prolongs the review time substantially and results in poor documentation for use in similar situations. In addition, the informal process frequently is criticized by States and sources because they can't adequately track the progress of the change once it gets into EPA review.

Solutions Devised

Based on the task group assessment and the problems identified, EPA has devised a number of changes to the SIP processing system which it will begin implementing today. The changes are designed to tailor SIP review to the significance of the action involved, and to improve the certainty of the SIP review process. The changes, including the legal rationale supporting them, are described briefly below and in depth in the next section of this notice.

A. Tailor Review to Significance of Action

EPA has devised a SIP review system under which increasingly intense review procedures will be applied to increasingly significant actions. Minor actions will undergo relatively little review while major actions will continue to receive full Regional Office and Headquarters review. By tailoring the intensity of review to the significance of the action, this hierarchy of procedures will generally decrease SIP processing times by dramatically shortening review periods for minor SIPs and freeing EPA resources to enable major SIP processing to proceed without existing delays.

1. Completeness Criteria

EPA found that many SIP revision submittals were processed through full EPA review despite the fact that they were missing major components which effectively prevented EPA approval. For example, a State might submit an emission limitation without compliance testing procedures. To free EPA resources that would otherwise be consumed processing such deficient SIPs, EPA has created a completeness review process which is being proposed for public comment in an accompanying notice in today's Federal Register. Under this process, a SIP will be reviewed for completeness against certain basic criteria when it is initally submitted to determine if all the necessary components have been included to allow proper review and an ultimate decision on the substance of the SIP

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revision. This will be a quick process that will look at the reviewability of an SIP submittal, not its approvability. EPA will then promptly inform the submitting State by letter whether EPA will proceed to process the SIP revision or whether it must be returned to the State because it is incomplete.

EPA is creating this completeness review process under the authority of Section 301 of the Clean Air Act which authorizes the Administrator to prescribe such regulations as are necessary to carry out his functions under the Act. EPA is interpreting the terms "plan" in section 110(a) (1) and (2) and "revision" in section 110(a)(3) to be only those plans and revisions that contain all of the components necessary to allow EPA to adequately review and take action on such plan or revision. EPA believes that Congress would not have intended to require EPA to review and take action on SIP submittals that were simply not reviewable because they were lacking important components. Therefore, the Administrator concludes that section 110(a) requires him to act only on complete State submittals.

EPA recently issued a guidance memorandum to the Regional Offices establishing this completeness review procedure, including a list of completeness criteria, on an interim basis pending notice and comment rulemaking. *See* Memorandum, Gerald A. Emison, Director, Office of Air Quality Planning and Standards, to Regional Office Air Division Directors, March 16, 1988 (a copy is included in the docket as item II–B–4). The Regional Offices are currently using this guidance to conduct completeness reviews. However, elsewhere in today's **Federal Register**, EPA is proposing to codify these criteria in regulatory form to provide clear benchmarks for States in preparing complete SIP submittals. Specifically, EPA proposes to add the completeness criteria to 40 CFR Part 51 as Appendix V. EPA also proposes to amend § 51.103(a) to specify that State submissions will not be considered official SIP submissions upon which EPA is required to act under section 110(a) unless they meet the requirements of Appendix V. The details of the completeness criteria are described fully in the accompanying notice.

2. Letter Notice

EPA is creating a new SIP processing procedure for relatively insignificant SIP revisions that the EPA believes are of essentially no interest to the general public. Historically EPA has processed all SIP revisions through full notice and comment rulemaking in the **Federal Register**. For insignificant actions of no public interest, this has been costly and time consuming with no apparent benefit. Under the new letter notice procedure for such insignificant revisions, EPA will simply inform the State and directly affected parties by letter that the submitted SIP revision has been approved. The EPA may not publish a notice of proposed rulemaking and opportunity for public comment or an individual notice of final rulemaking in the **Federal Register**.

EPA's duties to publish proposed and final rulemaking notices and provide opportunity for public comment stem from the Administrative Procedures Act (APA). However, the APA specifically provides that an agency need not provide notice of proposed rulemaking or opportunity for public comment when the agency for good cause finds that it is impracticable, unnecessary, or contrary to the public interst. *See* 5 U.S.C. section 553(b). EPA concludes that it is unnecessary to provide for comment on insignificant SIP revisions because they are of no interest to the general public. Further, in such cases, the delays associated with providing for comment where none would be forthcoming would be contrary to the public interest in expediting SIP processing.

The legislative history of section 553 indicates that the good cause exemption from notice and comment requirements appropriately applies to insignificant SIP revisions. See Senate Comm. on the Judiciary, Administrative Procedure Act: Legislative History, S. Doc. No. 248, 79th Cong., 2d Sess. 200 (1946) ("Unnecessary" means unnecessary so far as the public is concerned, as would be the case if a minor or merely technical amendment in which the public is not particularly interested were involved. "Public interest" supplements the terms "impracticable" or "unnecessary"; it requires that public rulemaking procedures shall not prevent an agency from operating and that, on the other hand, lack of public interest in rulemaking warrants an agency to dispense with public procedure). A number of courts have also held that notice and comment procedures are not required in analagous circumstances. *See, e.g., National Nutritional Foods Association v. Kennedy*, 572 F.2d 377, 385 (2d Cir. 1978); *Texaco, Inc. v. FPC*, 412 F.2d 740, 743 (3d Cir. 1979); *United States v. U.S. Trucking Co.*, 317 F. Supp. 69, 71 (S.D.N.Y. 1970).

Although EPA will not seek comment on letter notice actions or publish individual notices of final rulemaking, in order to keep the general public informed of all SIP actions EPA will publish periodically in the **Federal Register** a summary list of all actions taken under the letter notice procedure. The effective date of all letter notice actions will, however, be the date of the letter itself rather than that of the subsequent summary **Federal Register** notice.

EPA will only use the letter notice procedure for insignificant SIP actions such as recodifications or minor technical amendments that EPA feels confident are of no interest to the general public. Further discussion of the SIP categories to be processed under letter notice can be found below in the implementation section of this notice.

3. Increased Use of Direct Final

For some time EPA has used a SIP processing procedure referred to as direct final rulemaking. In the past, EPA has generally used this procedure mostly for insignificant actions that it considered noncontroversial and on which EPA did not anticipate receiving any adverse comment. EPA is now expanding the use of this historically effective direct final procedure to speed processing for a wider range of such minor SIP actions.

Under the direct final procedure EPA still continues to offer the opportunity for public comment as required by the APA. As before, the procedure merely provides a shortcut for final action where no comment is expected. Moreover, those insignificant SIP actions which are truly of no interest to the public will now be processed under the letter notice procedure described immediately above. Further discussion of the potential categories of SIPs to be processed under the expanded use of direct final procedures is included below in the implementation section.

4. SIP Decision Authority

Historically, all SIP revision actions have been thoroughly reviewed at both the Regional Offices and Headquarters, whether or not the action involved was truly of national significance. This has led to the greatest delays in the SIP processing system, and the task group assessment indicated that overall such duplicative review did not appear to contribute substantially to improved SIP content in many cases. The EPA has concluded that all SIP actions that are not nationally significant, and for which Headquarters has prepared guidance for SIP processing, will now be reviewed only at the Regional Offices. Consequently, the Administrator is delegating his authority under section 110(a) of the Clean Air Act to act on such SIP submittals to the Regional Administrators. Both proposed and final **Federal Register** notices for these actions will henceforth be signed by the Regional Administrators.

Section 301(a)(1) of the Act authorizes the Administrator to delegate any of his powers and duties under the Act to other EPA employees except "the making of regulations." In an early interpretation of this statutory provision EPA concluded that, while proposed SIP rulemaking did not constitute "the making of regulations", any final action on a SIP would fall within this prohibition. Upon further reflection, EPA now concludes that the prohibition on delegation applies only to regulations initially promulgated by EPA, not to plans prepared by States that EPA merely approves or disapproves.

The natural reading of the statutory phrase "the making of regulations" extends only to regulations that the Administrator himself promulgates. Although in approving a SIP revision the Administrator does incorporate State promulgated regulations into the federally enforceable SIP, he still cannot properly be said to be "making" regulations within the meaning of the section 301(a) prohibition on delegation. As a practical matter, EPA has acquiesced in those judicial decisions holding that EPA must follow the rulemaking procedures of the Administrative Procedures Act (APA), 5 U.S.C. 553, when it approves or disapproves State implementation plans. However, even if SIP review is "rulemaking" under the APA, EPA believes these actions do not constitute "the making of regulations * * *" Thus, while section 301(a)(1) of the Clean Air Act prohibits the Administrator from delegating his authority to make federal regulations, it does not prohibit delegation of his authority to act upon regulations made at the State level.

The implementation section of this notice contains a detailed listing of those categories of SIP actions that the Administrator currently is delegating to the Regional Administrators, those categories the Administrator is delegating but which should still receive some input from Headquarters at this time, and those categories that will continue to receive full Headquarters review for the time being. These categories may change over time as Headquarters prepares additional guidance and Regional Offices become more familiar with new issues.

B. Improve Certainty of Process

The second major focus of EPA's changes in the SIP processing system is to improve processing procedures so that individual actions can be handled with greater certainty. These changes involve increased management control and clarified processing guidelines.

1. Adherence to Formal Procedures

EPA has for some time had detailed procedures for processing SIPs through the existing SIP review system. These procedures include time schedules, default provisions, and issue resolution mechanisms. However, for a number of reasons these procedures have often not been followed precisely in the past. With the adoption of the processing reforms described herein, EPA will be revising its procedures to establish guidelines for each type of SIP review mechanism. When the new guidelines are issued, senior management will make clear that in the future they are to be adhered to more rigorously. This will ensure that State submittals move quickly through EPA's review process, with any major issues being raised promptly for resolution.

2. Grandfathering Policy

In the past, a number of States have submitted SIP revisions that were consistent with EPA requirements (regulations, policies, legal interpretations, etc.) in effect at the time of State adoption of the revision. However, in some cases, because of processing delays and policy evolution, the applicable requirements would change before the revisions received EPA approval. The EPA's past procedure was to return the plan to the State for revision or disapprove the action. Not only did this add more time to an already lengthy process, it also strained EPA/State/local agency relations. Moreover, there was the basic question of fairness involved. In such cases, the State submitted the revision in good faith and in accordance with the rules and policies in effect at the time of submission, only to see months go by and find out the change was rejected due to factors totally beyond its control.

EPA has determined that in general it would better serve the States and the interests of the SIP processing system to continue to process most State submittals based on the requirements in effect at the time the State adopted the change to the SIP. To this end, EPA recently issued guidance on grandfathering entitled "Grandfathering of Requirements for Pending SIP Revisions", sent from Gerald Emison, Director, OAQPS, to EPA Regional Office Air Division Directors, June 27, 1988 (a copy is included in the docket as item II–B–5).

The guidance provides a structure for grandfathering pending SIP actions to the extent allowed by law. The law in this area indicates that whenever a new requirement is created by Congress (via statute) or by EPA (via regulation or policy), it becomes generally applicable unless the authority establishing the requirement provides otherwise. When Congress enacts a new statute, it applies to all matters then pending before an agency unless Congress specifically provides otherwise in the statute. The EPA has no authority to grandfather any matter from the new statutory requirements without explicit provisions in the statute.

When EPA issues new regulations, they are also generally applicable unless the regulations themselves include grandfathering provisions. If grandfathering provisions are not explicit in the regulations, courts will apply the new rules to matters pending before EPA. *Thorpe* v. *Housing Authority of Durham*, 393 U.S. 268 (1969). However, an agency does have some flexibility to provide grandfathering provisions in new regulations. Such provisions are usually appropriate where they meet a four-part test. First, the new rule represents an abrupt departure from well-established practice. Second, affected parties have relied on the old rule. Third, the new rules impose a large burden on those affected. Fourth, there is no strong statutory interest in applying the new rule generally. *Sierra Club* v. *EPA*, 719 F.2d 436 (D.C. Cir 1982), cert. den. 468 U.S. 1204 (1984). In the past, EPA has included explicit grandfathering provisions in new regulations where appropriate.

An agency has broad authority to decide how and when to issue new guidance, since as a purely legal matter guidance is not absolutely binding on subsequent proceedings. *Pacific Gas and Electric Co. v. FPC*, 506 F.2d 33 (D.C. Cir. 1974). Historically, however, EPA has provided only limited grandfathering from significant guidance primarily due to the importance of the new guidance to EPA's control programs.

EPA's expanded grandfathering guidance states that complete pending SIP actions generally should be subject only to the requirements in effect at the time the State submittal was prepared. However, the guidance includes a number of exceptions to the general rule. The EPA would not grandfather a pending action where a court ruling has changed a requirement, where a court has convinced EPA that a requirement is no longer supportable, where the Administrator determines that

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grandfathering is not appropriate, where an imminent and substantial adverse environmental impact would result, where grandfathering would foreclose EPA's ability to exercise its authority under the Clean Air Act, or where the State has not acted in good faith in submitting a plan.

The guidance also states the EPA will analyze the need for grandfathering provisions in all new EPA requirements, and will include such provisions in all cases to the extent appropriate.

3. Improved Guidance and Communication

In order to facilitate implementation of the various SIP processing changes EPA is instituting, existing guidance will be upgraded and new guidance prepared wherever needed. Headquarters offices have committed to provide adequate guidance to Regional Offices and to be available for consultation to assist the Regions in implementing the new programs.

EPA will also be improving communications between Headquarters and Regional Offices, and among different Regional Offices, to effectively implement the decentralized SIP processing system. Improved communication techniques, described in the implementation section, include identifying regional SIP contacts, the "regional staff expert" concept, a SIP clearinghouse, a computerized tracking system, periodic conference calls, and national meetings.

4. SIP Processing Management System

The final change EPA is instituting in the SIP processing system is a new SIP processing management system. Under this system EPA managers will maintain close supervision over the SIP processing system to ensure that SIPs move smoothly through the new procedures. The new management system, described in full in the final section of today's notice, includes both an internal and external audit system, an expanded computerized tracking system, and a SIP processing deviation review system.

Implementation of the Changes

The following discussion focuses on the more significant aspects of the implementation of the SIP processing changes announced today; the final portion addresses improvements in the management system which are being instituted to assure the announced changes are properly implemented.

A. Tailor Review to Significance of Action

1. Completeness Criteria

Screening criteria have been developed that define the essential elements of an acceptable SIP package, that will avoid obvious inadequacies, and that can be applied uniformly with limited subjective judgment and review. The criteria were developed by EPA Regional Offices already using a list of criteria to determine completeness of SIP packages in an informal way. The benefits of using completeness criteria to reject deficient packages include improved consistency and quality in the State submittals received for processing, fewer SIPs disapproved for fundamental inadequacies, more effective use of limited resources at both the Federal and State level, and improved guidelines for new State personnel on how to prepare adequate SIPs. As noted earlier, an interim policy for determining completeness of SIP submittals was issued to the EPA Regional Offices. The policy includes basic criteria for determining completeness, and sample letters for accepting and rejecting SIP submittals.

In a separate notice in today's **Federal Register**, the Administrator is proposing to add these criteria and procedure for determining the completeness of State submittals to 40 CFR Part 51. EPA will continue to use the interim policy to assess SIP submittals until final rulemaking action is taken on today's accompanying proposal.

The criteria for determining whether a submittal by the State is complete have been separated into two categories: (a) Administrative information and (b) technical support information. Administrative information includes the documentation necessary to demonstrate that the basic administrative procedures have been adhered to by the State during the adoption process. Technical support information includes the documentation that adequately identifies the technical components of the plan submission.

2. Letter Notice

Using a letter notice for non-substantial actions, which EPA will begin doing after today, is a new process where EPA will merely inform a State and directly affected parties by letter that EPA has approved a given SIP revision. The objective of the letter notice approach is to achieve prompt action by EPA on non-substantial actions where the public interest is not served by full notice and comment processing. By using letter notices, EPA's limited resources can be allocated to the expeditious processing of more significant SIP actions.

Under letter notice, as soon as a revision has been deemed approvable, the Regional Administrator or his designee will send a letter to the State and affected parties, informing them of the approval. The EPA may not publish a notice of proposal and provide an opportunity for public comment beyond that already provided for by the State. In order to keep the public informed of these actions, EPA will publish periodically (annually at a minimum) in the **Federal Register** a summary list of all letter notice actions recently taken, with information concerning the change and the sources affected, as appropriate. These actions will be effective from the date of the letter notice, rather than the eventual summary publication date. The Regional Offices will make the decision whether to process a SIP revision as a letter notice.

EPA intends to use discretion in the application of letter notice processing to insignificant SIP revisions. The following are examples of such revisions. Frequently, States/local agencies will recodify existing regulations into a new structure or to improve the understanding of the program. These changes are superficial from the perspective of the air quality management program and are of little interest to the general public. Other revisions to implementation plans incorporate amended or revised national guidance documents pursuant to EPA directives and are made merely to conform to revised requirements. In other cases, many States have programs using renewable operating permits for the purpose of source regulation. Usually, the permit is renewed without change and the permit action is of little public interest.

Technical amendments, administrative actions, and minor wording changes are further examples of SIP revisions that are suitable for processing by letter notice. It is expected that the list of SIP revisions that can be processed by letter notice will be expanded as experience is gained with the process. EPA specifically requests comment on the appropriateness of using letter notice processing for these and other potential categories.

3. Increased Use of Direct Final

On June 23, 1982 (47 FR 27073), EPA announced procedures to shorten and streamline the SIP review process. One of these procedures was the direct final rulemaking approach. This program has been shown to reduce the SIP processing review time by about 50 percent. Since its inception, many revisions have been published as direct final rules with very few receiving notice from the public of the desire to comment. The following are some types of SIPs that have been processed successfully as direct finals:

- Amendments to definitions to conform to EPA requirements
- Changes in monitoring/modeling procedures to reference new EPA guidelines
- Revisions to incorporate new test methods by reference
- Single source SIP revisions that make a State's requirements more stringent
- Public availability of emissions data
- Permit fees
- Compliance schedules for section 111(D) plans
- Visibility plans
- Volatile organic compound (VOC) consent orders
- Prevention of significant deterioration (PSD) modeling regulations
- Minor changes to inspection and maintenance (I/M) programs
- New opacity regulations
- Variances
- Operating permits for lead SIPs

Of 134 SIP revisions processed most recently as direct finals, only two required republishing as proposed rules because of public comment. This history of very little public comment on direct final rules suggested that EPA could use this effective tool more often to speed up the SIP process.

For this reason, EPA issued a memorandum dated December 23, 1987 entitled "Expanded Use of Direct Final SIP Processing," from Gerald A. Emison, Director, OAQPS, to EPA's Regional Offices (a copy is included in the docket as item II–B–2). For the reasons stated above, this memorandum recommended that the direct final rulemaking approach could be used more frequently by the Regional Offices. It is possible that EPA's plan to expand the application of the direct final rulemaking approach may result in an increase in the number of SIPs being withdrawn and subjected to full notice and comment rulemaking because of the desire by the public to comment. However, any increase in the number of direct final actions withdrawn and converted to proposals should be more than offset by the overall improvement in timely processing of total SIP actions.

4. SIP Decision Authority

A cornerstone of the recommendations of the SIP processing task group is the tailoring of review to the significance of the change. To this end, the Administrator is today delegating signature authority for those SIP revisions that are not of national significance to the EPA Regional Administrators.

Eliminating the serial review by the Regional and Headquarters offices for selected categories of SIPs is potentially the most effective recommendation made by the task group. This recommendation is designed to delegate approval/disapproval authority for the majority of SIPs to the Regional Administrators. As noted earlier, all SIP revisions have received both Regional Office and Headquarters review in the past. The Regional Office would review the State submittal and prepare a recommendation to Headquarters either approving or disapproving a rulemaking action. The implementation plan revision would then be forwarded to EPA Headquarters for another round of technical, legal, and policy review. Except for those SIPs processed as direct final rules, all proposed and final rules receive the full Regional Office and Headquarters review. Historically, the second level Headquarters review rarely changed the final recommendation of the Regional Office, although it often contributed to the legal and technical rationale for an action.

Certain plan revisions clearly can have a significant impact on the implementation of national programs, such as basic strategies for demonstrating attainment with ambient standards. In addition, there are programs where a high level of national consistency is important, or which involve emerging programs where major issues on program implementation may as yet be unresolved. Such actions should receive both a Regional Office and a Headquarters review; the latter will ensure consistent policy application for these nationally significant SIPs. SIP actions which initially will continue to be decided by the Administrator are listed in Table 1. This list and the other lists described below are not intended to be permanent—that is, SIP categories may be shifted among them over time. For example, it is EPA's intention to delegate some of the SIP categories on Table 1 to the Regional Administrators as experience with the new process is gained and policies mature. Conversely, if the Regional Offices have difficulty with a delegated category, such SIP actions may be withdrawn from delegation and be subject to full Headquarters review.

TABLE 1

The following SIP actions must undergo full Regional Office and Headquarters review, with decision and signoff by the Administrator (proposed and final):

- O_3 redesignations and O_3 attainment plans (including I&M programs)
- CO attainment plans dealing with area-wide problems
- CO redesignations except those relating to point-source only problems or hot spots
- Group I PM_{10} plans (attainment demonstrations) inlcuding those resulting from commital SIPs
- New area-wide VOC regulations (e.g., per CTG requirements, or Post-87 requirements)
- VOC revisions with long-term averaging (i.e., greater than 24-hour)
- SO_2 revisions involving (a) unresolved national issues (e.g., stack height remand, statistical attainment demonstrations, expected exceedances methods); (b) more than one Regional Office; (c) international issues.
- SIP revisions proposing or revising State-developed air quality dispersion model guidelines, and SIP revisions based on the use of non-approved models or deviations form EPA's modeling guidance.
- SIP revisions where EPA is under a court-ordered schedule (e.g., Indiana SO_2 SIP)
- SO_2 Statewide plans (all elements)
- SIPs for new generic State-wide programs (e.g., bubbles, PSD/NSR)
- PSD/NSR SIPs submitted to comply with Post-87 O_3/CO policy
- PSD/NSR SIPs for PM_{10} group I areas
- PSD/NSR SIPs submitted to comply with Alabama Power decisions
- Bubbles which trade off growth allowances
- Visibility plans that address existing impairment
- Any FIP
- Any action proposing or imposing a sanction
- Any SIP revision, approval/disapproval of which would significantly deviate from national policy

A second category of SIP revisions, listed in Table 2, are actions where some Headquarters review is deemed appropriate prior to final action. This category was developed to address those SIPs where guidance is relatively new and thus it is prudent for Headquarters to monitor the decision process at the Regional Office level. This category serves as a transition between Headquarters review and Regional Office review and will provide an opportunity for Headquarters oversight without adding a significant review requirement. Although the Regional Administrators will have decision authority for these SIPs, the Headquarters offices will have 30 days from the date the SIP revision package (including the draft **Federal Register** notice and support material) is received at Headquarters, to prepare and send comments to the Regional Office. This review is not intended to be a veto authority by Headquarters but rather to provide Headquarters reviewers an

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opportunity to provide comments to Regional Office decisionmakers.

TABLE 2

The following SIP actions are delegated for Regional Administrator decision and signoff (proposed and final) but require a 30-day opportunity for Headquarters' review before signoff.

- Particulate matter emissions relaxations
- VOC revisions with extended compliance schedules affecting nonattainment areas
- CO attainment plans dealing with hotspots
- CO redesignations relating to point-source only problems and hot spots
- SO_2 area-wide and source-specific SIP revisions and redesignations, where the source(s) or background sources in the aggregate have allowable emissions of 25,000 TPY or more (except primary nonferrous smelters or emission trading)
- SO_2 revisions with (a) averaging times greater than the short-term SO_2 NAAQS; (b) revised emission limits due to changes in stack height credits
- Visibility SIPs involving regional haze
- Direct final rulemaking in categories identified for Administrator signoff (see Table 1)
- Any other action not listed elsewhere

Decision authority for all remaining SIPs is being delegated to the Regional Administrators, with no requirement for consultation with Headquarters prior to signoff. The primary criterion used to judge which SIPs could be delegated to the Regional Administrator for decision was the significance of the action. Another criterion was the availability of appropriate policy memoranda/guidance to the Regions for making decisions on the approvability of a SIP. The categories of SIPs initially to be delegated to the Regional Administrator for final approval authority are listed in Table 3. Although these revisions are being delegated for the Regional Administrator's signature, the Headquarters SIP reviewers will be available for discussions with the Regional Offices on any of the categories of SIP revisions. The Regional Offices also have the option of sending SIP submissions which come under any of these categories to Headquarters for the full review, especially where the Regional Office reviews indicate that national issues may be of concern.

TABLE 3

The following SIP actions are delegated for Regional Administrator decision and signoff (proposed and final). Headquarters review is not required but may be requested by the Regional Office.

- All other bubbles and all other single-source regs.
- VOC extended compliance schedules (except those affecting nonattainment areas)
- PM_{10} Group II and III SIPs TSP redesignations
- Lead attainment plans and revisions
- All other SO_2 SIPs, including redesignations; ambient monitoring plans; malfunction rules; State AAQS
- State stack height regulations and negative declarations
- All other PSD/NSR SIPs
- All other visibility plans
- 111(d) plans/negative declarations
- All other direct final rulemaking
- All letter notice actions

SIP issues (and revisions) in categories of potential national significance will continue to be reviewed in Headquarters and signed by the Administrator. The categories of SIPs delegated to the Regional Administrator for decision and sign-off are inherently localized in scope and do not have potential for national impact. (Obviously, an unusual SIP revision in a delegated category could involve broad issues; the changes in procedure announced today provide for full consultation between the Regional Office and Headquarters, and even for the forwarding of such an unusual action for full Headquarters review.) Thus, except for unusual cases, decisions made by a Regional Administrator will be based on local factors, reflect local issues, and may indeed yield varying results, although Regional Offices will apply policies consistently. Such decisions are, therefore, intended to be non-transferable, i.e., do not set precedents for other Regions. For example, an emission limit for a particulate matter source in a State may require a specific value to conform to the State's demonstration of attainment. The same type of plant in another State, however, might have a different limit imposed based on its location and site-specific factors. In short, it is expected that the outcome of the decision process for similar SIP actions can vary from Region to Region. Each such local action must be judged on its own merits. This is acceptable, provided that national policy and guidance applicable to such actions are applied consistently by all Regions involved.

To provide the Regional Office with the necessary support, EPA is completing a comprehensive compilation of policy statements, guidance, and memoranda applicable to those actions where significant Headquarters review is being eliminated. Moreover, to maintain oversight of this decentralized process, EPA will institute more intensive management systems, designed to ensure national consistency in policy application (see discussion on Management Systems later in this notice).

B. Improve Certainty of the Process

1. Adherence of Formal Procedures

Detailed procedures exist for processing and reviewing SIP revisions. Among other things, the procedures provide for firm schedules, default provisions, and mechanisms for issue resolution. The procedures frequently are not following for a variety of reasons. In some cases, a Regional Office may believe that infomally working/negotiating with the State would provide information or result in changes to the submission that would enable EPA to approve the plan revisions. This can occur because there is an inherent reluctance by reviewers to disapprove a plan into which a State or local agency has put considerable effort. The goal of this informal approach was to enhance the relationship with the State, although the ultimate effect may have been the opposite.

The current guidance and procedures for SIP processing are being reviewed, modified as necessary to stress the need for more formal implementation, and will be republished with a clear senior management directive on their importance. Further, the management system decribed below will help ensure that the reviewing offices follow the formal procedures. This, along with increased management attention to the SIP process, should enable those interested in the results of the SIP review process, internally and externally to EPA, to follow more effectively the progress of individual actions.

2. Grandfathering Guidance

EPA issued grandfathering guidance to the Regional Offices as described earlier. The guidance is to be considered in each rulemaking action on a SIP revision and in all new or revised requirements for SIP's issued by EPA. EPA believes that it deals with the fairness issue, will not have noticeable environmental impact and will strengthen EPA's working relationships with the States and local agencies. Under the guidance, a SIP revision may remain subject to the requirements in effect generally on the date of State adoption of the change. The decision to grandfather will be made by either the Administrator or the appropriate Regional Administrator where decision authority has been delegated.

All SIP revisions potentially subject to grandfathering will be reviewed to determine to what extent the submission complies with the new and revised requirements. For such revisions, EPA will address the impact of the grandfathering decision (positive or negative) in the SIP rulemaking action. In addition, the basis for grandfathering future submittals will be described in all new requirements issued by EPA, addressing the impact on previously approved, pending, and newly submitted SIPs. Such grandfathering provisions generally will have effective dates which are 60 days from the date of signature to allow states to have a reasonable time to complete processing and submit revisions to EPA that may be subject to grandfathering.

Although grandfathering will be considered whenever possible, blancing equity considerations and short-term environmental impacts, it is not automatic and may not be appropriate in all circumstances. These include situations where:

1. The State has not acted in good faith in submitting a plan;
2. A court ruling has changed a federal requirement or has convinced EPA that a previous requirement is no longer supportable;
3. The Administrator determines that it is not appropriate to grandfather under a new EPA policy;
4. A decision to grandfather would have an imminent and substantial adverse environmental impact or foreclose the ability of EPA to exercise its authority under the Clean Air Act (e.g., apply sanctions under Part D).

This guidance builds on existing grandfathering guidance (e.g., air quality dispersion modeling) to establish the general concept of grandfathering where equity dictates such action.

Where grandfathering would render the SIP as a whole substantially inadequate to protect the NAAQS or otherwise to comply with the Act, grandfathering may be allowed only if justified by an individual analysis under the four-part Sierra Club test described earlier, and the grandfathering action would have only a limited life (generally two years). Within that time, the grandfathered revision must terminate (e.g., expiration of a temporary variance), or the State must submit a complete, approvable revision to the SIP to bring it into full compliance with all statutory requirements.

3. Improved Guidance and Communication

Improved guidance and communication is basic to improved certainty in SIP decisionmaking. Many of the recommendations of the test group on SIP processing required new guidance from EPA Headqauarters before they could be implemented. These include: the completeness criteria; increased use of direct final; letter notice for nonsubstantial actions; and signature authority for the Regional Administrators. All of these items are discussed elsewhere in this notice.

Logically, when the final sign-off authority is delegated to the Regional Adminstrator, up-to-date policy and guidance pertinent to the specific categories of SIPs should be assembled and made available to Regional Office reviewers (see section on "SIP Aproval Authority" for categoris of SIPs). The necessary guidance is being assembled for those categories of SIPs for use by the Regional Offices in the absence of Headquarters review. In addition, alternatives for more timely and systematic update of such guidance are being explored.

Complete and up-to-date guidance is a traditional form of communication between EPA Headquarters and the Regional Offices. EPA recognizes that effective communication will become more important with the implementation of the SIP processing reforms announced today, not only between Headquarters and the Regional Offices, but also between the Regional Offices themselves. It is essential that information on SIP review activities, problems and problem resolution be shared promptly by Headquarters and the Regions so that consistent application of policy and guidance can be assured. Several actions are underway in this regard.

The existing SIP tracking system, "SIP TRAX," which presently only follows SIP submittals from their receipt at Headquarters, is being expanded to track a SIP submittal from receipt by the Regional Office to ultimate disposition (see further discussion under the "Management System" below). Data contained in the system will be refined and adjusted as experience is gained under the new procedures. In parallel with this tracking system change, greater emphasis will be placed on the "key SIP contact" persons in the Regional Offices. Already in place, these persons will have expanded responsibility as the Regional Offices do more of the decisionmaking on SIP submittals. It is expected that more frequent use of conference calls, between some or all Regions, will be made, and a workshop on SIP processing issues will be instituted in conjunction with the Headquarters/Regional Office air program staff conference held annually in North Carolina.

To assure that effective dialogue takes place periodically, EPA is examining the establishment of a Regional Office SIP Council. Such a Council would be composed of Regional Office SIP review staff, chaired on a rotating basis by one of the offices. The chair would establish a meeting frequency (by teleconference) which could be monthly or at some similar regular period. The purpose of the meetings would be for each Region to discuss SIP processing activities for the period, to highlight unusual issues that arose, and to identify/resolve points of contention between Regions. Headquarters staff would participate in these Council meetings as advisors and to provide policy/technical expertise. Significant results of such meetings would be posted on an electronic bulletin board for future reference and guidance.

Other initiatives are being considered. These include creation of "policy hotlines" establishing Headquarters experts in various program areas to provide quick response to Regional Office inquiries. As an extension of this concept, Regional Office "experts" are expected to emerge over time who would serve the same function for their colleagues. Although the full scope of improved communications techniques has not been fully defined at this time (indeed, should never be finalized since communications flow inherently should be dynamic), EPA is aware of the importance of this function and is giving it high priority.

4. SIP Processing Management System

Effective management of the SIP review process within EPA, including review by both the Regional Offices and Headquarters, is vital to ensure that implementation plans submitted by States are processed expeditiously. As part of this action to improve SIP processing within EPA, the management system is being revised to monitor the processing of implementation plan revisions under the changes described today. A basic goal of this revised management system is to ensure an appropriate degree of consistency between all reviewers in interpreting and implementing the SIP processing guidance and air quality management program policy. The management system will also evaluate the reviewers' conformance to established review procedures. In addition, an outgrowth of the management system will be the identification of issues and problems in implementation plan guidance, policies, and procedures at both Headquarters and Regional Offices. With such information, EPA can ensure the timely update of policy and processing guidance.

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The management program is designed to ensure the adequacy of the processing procedures and to facilitate the review of implementation plans. Identification of program deficiencies is not intended to result in recriminations but to improve the process. The effect of the improved management program should be increased public confidence in the air quality management program, and more certainty on the part of States and industry regarding the operation of the SIP review process.

Audits

A key feature of the management system is the development of an audit program. The audit program is designed to review actions, generally after processing is complete and final action is taken, to determine whether processing procedures and program policy have been adhered to during the review of the implementation plan. It is not the intent of the management program to review, or second-guess, every SIP action that is processed within EPA.

The frequency of program audits will be based upon several factors. One factor is the total number of implementation plan revisions processed by a particular office. This is important because significant processing deviations are more likely to result when the number of actions is high. A second factor to be considered in determining the frequency of the audit cycle is the type of actions processed—newly implemented programs with a significant level of complexity should receive greater attention than programs which are well established. Another element in determining the frequency of audits will be the prior performance o the reviewing office. Those that have demonstrated problems should receive greater attention and thus more frequent audit than areas with demonstrated capabilities. As a corollary, in addition to examining performance of specific organizations, the audit program will identify program areas where several organizations are demonstrating a lack of understanding, indicating the possible need for improved guidance.

The audit program must be designed such that the interval between audits is not too lengthy. With reasonable frequency, the management system must be able to obtain an overview of the basic program and the personnel responsible for implementing the program. Such a review is necessary to ensure that the skills and knowledge to effectively process all types of plan revisions are maintained; this is necessary even where few and/or routine plan revisions are received.

The audit program will employ two basic sources of information: (1) Records and documents submitted or prepared as part of the formal submittal and review process; and (2) discussions with the individuals in Headquarters and/or Regional Offices involved with processing of plans in general and associated with specific SIP actions. Through review of the processing documentation and the implementation plan submittal, the auditor can determine independently the procedures followed, how specific policies were applied, conformance to national policy and guidance, etc. Discussions with the individual responsible for the processing and review of SIP actions will provide information related to deficiencies that exist in the processing guidance, difficulties in conforming to program policy for specific actions, and elements missing from EPA guidance that should receive attention at the national level.

The Regional Offices will need to maintain the full documentation and history of each SIP action processed. In the majority of cases this will not result in any extra work load since most of this information is contained in the files already maintained by the appropriate Regional Office. In addition to the currently maintained manual records, EPA intends to expand an operational microcomputer-based system for maintaining the status of currently active implementation plans. The current system tracks SIP revisions for maintaining the status of SIP actions upon receipt of the package by Headquarters and contains no information on plan revisions at the Regional Office; the system will be expanded to maintain information on the status of SIP actions under review by any EPA organizational element. This will permit the rapid transfer of information between Regional Offices and Headquarters on the status of all actions which are active within EPA.

There are two types of audit functions anticipated by this program—internal and external. An internal program audit involves the routine audit of the SIP review process by those individuals within the reviewing organization who are directly responsible for the review of the SIP. This internal audit will occur at both Headquarters and the Regional Offices on an ongoing basis. Rather than mandate the procedures to be used by each Regional Office and appropriate Headquarters office for the internal audit, each office will establish audit procedures that are appropriate based upon resources, capabilities, and the nature of SIP revisions processed. For example, it may consist of senior staff familiar with the program requirements reviewing a selected portion of the revisions processed by the SIP review staff. The Regional Offices will focus their internal audit efforts on those actions to be signed by the Regional Administrators.

The external audit is designed to obtain an independent overview of the program. This audit will be conducted by Headquarters individuals with experience in SIP review but who do not take an active role in the process. The external audit will address all facets of the program including adherence to processing procedures, interpretation of EPA policy, the impact of air quality management, and the effectiveness of the revised procedures in expediting the processing of State submissions. In addition, Headquarters offices will be audited on how well new policy is distributed and explained to the Regional Offices. Audit guidelines will be developed and distributed to all offices responsible for SIP review, identifying in advance the major points of emphasis in the audit program. The external audit will examine not only program deficiencies but also the positive aspects of implementation of the program, providing a report both on how program deficiencies can be improved and on how innovative solutions have increased the efficiency of the SIP review process. An important output of the audit program is the identification of training needs for those individuals responsible for SIP review.

Recordkeeping System

As previously mentioned, EPA has implemented a microcomputer-based data system for tracking the progress of SIPs during Headquarters review. This system, "SIP TRAX," currently tracks specific milestones of the Headquarters review process. These include:

(1) When the revision was received in Headquarters;
(2) Date of staff concurrence;
(3) Date of approval by the Assistant Administrator/Administrator;
(4) Date published in the **Federal Register**.

The system is accessible by the Regional Offices through a microcomputer-based bulletin board system and is updated on a weekly basis. SIP TRAX will be expanded to incorporate the initial phases of SIP review that occur in the Regional Offices before the implementation plan is forwarded to Headquarters for review. This is important since the process of transfer of SIP decision responsibilities will result in many SIP actions not coming to Headquarters and thus would not be entered in a system tracking only Headquarters review.

There are several reasons for maintaining such a system. In order for the various Headquarters offices responsible for program development to maintain a sense of the major SIP issues being addressed, a method of summarizing SIP actions processed is necessary. The development of a data base system that can provide such information will reduce the resource burden of soliciting input from Regional Offices. In addition, EPA is frequently asked about the specific status of implementation plan revisions in process by the public, industries, and members of Congress. Since the system will be regularly updated to contain information on all SIP actions, the data base will be more complete and accurate than one solely relying on Regional Offices' responses to periodic inquiries. Overall, an integrated system will allow EPA to determine more accurately the status of, and time and resource commitments allocated to, SIP review wherever it occurs.

Processing Deviations

In addition to the basic program oversight, an important function of the audit will be to identify those circumstances where deviations from processing guidance have occurred. These processing deviations will be examined from the perspective of the potential impact of the action. The identification of processing deviations could result in varying responses, ranging from simple improvements in the review process to those few cases expected where the State may be required to submit a corrective SIP action to resolve a deficiency. The specific corrective action to be taken will be determined on a case-by-case basis.

The majority of implementation plan revisions submitted by States are associated with source specific actions, are administrative in nature, or are in direct response to EPA mandates to incorporate explicit regulatory provisions or language. In most cases, the environmental effect of SIP processing deviations are expected to be insignificant, and thus there should be no need to require the State to submit additional information or to make further revisions to a specific submittal. However, for recurring problems, the State will be notified that a particular aspect of submitting implementation plan revisions should be modified to avoid the problems identified.

More important deviations may include actions where the potential exists for significant environmental impact. As previously stated, SIP actions that are likely to affect the program on a national basis will receive full EPA review and decision by the Administrator. As a result, the actual number of environmentally significant deviations should be limited. Nevertheless, the audit process is designed to identify such situations so that appropriate actions to limit the impact can be taken promptly. In these cases, corrective action will depend on the problem. For proposed actions, EPA may need to withdraw the proposal and reverse the proposed approval/disapproval action. Alternatively, where EPA has fully processed and approved a revision to the implementation plan, it may be necessary to issue a notice of SIP deficiency requiring the State to submit a revision to correct the identified problem. The response to each case will be decided based upon the specific merits of the plan revision involved and the potential environmental impact.

Administrative Requirements

The docket is an organized and complete file of all the information considered by EPA in the development of these SIP processing changes. The docket is a dynamic file because material is added throughout the notice preparation and comment process. The docketing system is intended to allow members of the public and industries involved to identify and locate documents so that they can effectively participate in the process. Along with the statement of basis and purpose of the SIP processing changes and EPA responses to significant comments, the contents of the docket, except for interagency review materials, will serve as the record in case of judicial review (see Clean Air Act, section 307(d)(7)(A), 42 U.S.C. 7607(d)(7)(A)).

The effective date of these changes is January 19, 1989.

Section 317(a) of the Clean Air Act, 42 U.S.C. 7617(a), states that economic impact assessments are required for revisions to standards or regulations when the Administrator determines such revisions to be substantial. The changes described today do not change the substantive requirements for preparing and submitting an adequate SIP package. No increase in the cost as a result of complying with the changes described today is expected; moreover, the monitoring, recordkeeping, and reporting requirements have been determined to be insubstantial. Because the expected economic effect of the changes is not substantial, no detailed economic impact assessment has been prepared.

The information collection requirements of these changes are considered to be no different than those currently required by the Clean Air Act and EPA procedures. Thus, the public reporting burden resulting from today's notice is estimated to be unchanged from existing requirements. The public is invited to send comments regarding the burden estimate or other aspect of information collection, including suggestions for reducing any burden, to the docket and to the following: Chief, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

Under Executive Order 12291, EPA is required to judge whether an action is "major" and therefore subject to the requirement of a regulatory impact analysis (RIA). The Agency has determined that the SIP processing changes announced today would result in none of the significant adverse economic effects set forth in section 1(b) of the Order as grounds for a finding of "major." The Agency has, therefore, concluded that this action is not a "major" action under Executive Order 12291.

This notice was submitted to OMB for review consistent with section 307(d) of the Clean Air Act. A copy of the draft notice as submitted to OMB, any documents accompanying the draft, any written comment received from other agencies (including OMB), and any written responses to those comments have been included in the docket.

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, requires the identification of potentially adverse impacts of Federal actions upon small business entities. The act requires the completion of a regulatory flexibility analysis for every action unless the Administrator certifies that the action will not have a significant economic impact on a substantial number of small entities. For reasons described above, I hereby certify that the final rule will not have a significant economic impact on a substantial number of small entities.

Date: January 9, 1989.

Lee M. Thomas,

Administrator.

[FR Doc. 89–1002 Filed 1–18–89; 8:45 am]
BILLING CODE 6560–50–M

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[ER-FRL-3607-1]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382-5076 or (202) 382-5075.

Availability of Environmental Impact Statements Filed January 9, 1989 Through January 13, 1989 Pursuant to 40 CFR 1506.9.

EIS No. 890004, Final, COE, TX, Applewhite Dam/Reservoir and Leon Creek Diversion Dam/Lake Water Supply Project, Permit Application, Implementation, Section 404 and 10 Permits, Bexar County, TX, Due: February 21, 1989, Contact: Timothy L. Tandy (817) 334-2095.

EIS No. 890005, Final, AFS, CA, Eldorado National Forest, Land and Resource Management Plan, Amador, Alpine, Eldorado and Placer Counties, CA, Due: February 21, 1989, Contact: Jerald N. Hutchins (916) 622-5061.

EIS No. 890006, Draft, EPA, LA, Mississippi River Gulf Outlet Ocean Dredged Material Disposal Site (ODMDS) Designation, Plaquemines Parish, LA, Due: March 6, 1989, Contact: Norm Thomas (214) 655-2260.

EIS No. 890007, DSuppl, AFS, CO, Routt National Forest Land and Resource Management Plan, Incorporation of the Dersch Report, Implementation, Routt, Garfield, Grand, Moffat, Rio Blanco, Jackson and Summit Counties, CO, Due: April 17, 1989, Contact: Reese Pope (303) 879-1722.

EIS No. 890008, Final, IBR, UT, Weber Basin Project, Willard Reservoir Water Use Change, Irrigation to Municipal and Industrial Water Supply Conversion, Implementation, Davis and Weber Counties, UT, Due: February 21, 1989, Contact: Harold Seraland (801) 524-5580.

EIS No. 890009, Draft, AFS, CA, Doe Ridge Golf Course Development and Operation, Special Use Permit, Inyo National Forest, Mono County, CA, Due: March 6, 1989, Contact: Dean McAlister (619) 934-2505.

EIS No. 890010, Draft, UMC, NC, Oak Grove Marine Corps Outlying Field, AV-8B Forward Training Facility Construction and Operation, Implementation, Jones County, NC, Due: March 6, 1989, Contact: Diori Kreske (804) 445-2334.

Dated: January 13, 1989.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 89-1263 Filed 1-18-89; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3508-8]

Office of Policy, Planning and Evaluation; Candidates for Regulatory Negotiation: Extension of Time

This notice announces the extension of the comment period for suggesting candidates for regulatory negotiation. The notice dated December 19, 1988 (53 FR 51003) announced the opening of a 30 day comment period to suggest candidates for regulatory negotiation with the Environmental Protection Agency. This notice announces that the comment period is extended an additional 60 days until March 19, 1989. Candidate suggestions should be made to: Chris Kirtz, U.S. Environmental Protection Agency, PM 223, 401 M Street SW., Washington, DC 20460; (202) 382-7565. Additional information on EPA's Regulatory Negotiation Project can be obtained by writing or calling Chris Kirtz or Deborah Dalton at the above address and phone number.

Thomas Kelly,

Director, Office of Standards and Regulations.

[FR Doc. 89-1232 Filed 1-18-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Interest Rate Applicable to Discrimination and Compensation Awards

AGENCY: Federal Mine Safety and Health Review Commission.

ACTION: Notice.

SUMMARY: The Commission has adopted a new method for calculating the rate of interest applicable to monetary awards in discrimination and compensation cases.

DATES: This action is effective for Commission cases in which decisions are issued after November 28, 1988.

ADDRESSES: Requests for copies of the Commission's decision should be addressed to Richard L. Baker, Executive Director, Federal Mine Safety and Health Review Commission, 1730 K Street, NW., 6th Floor, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: L. Joseph Ferrara, General Counsel, Office of the General Counsel, 1730 K Street, NW., 6th Floor, Washington, DC 20006, telephone: 202-653-5610 (202-566-2673 for TDD Relay). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: The Federal Mine Safety and Health Review Commission has adopted a new method for calculating the rate of interest applicable to monetary awards to prevailing complainants in discrimination and compensation cases arising under sections 105(c) and 111 respectively of the Federal Mine Safety and Health Act of 1977. This action was taken in *Loc. U. 2274, UMWA* v. *Clinchfield Coal Co.*, 10 FMSHRC 1493 (November 28, 1988), *pet. for review filed*, No. 88-1873 (D.C. Cir. Dec. 16, 1988).

Section 105(c) of the Mine Act, 30 U.S.C. 815(c), prohibits discrimination against miners for engaging in protected activities under the Mine Act. Under sections 105(c) (2) and (3), a miner who has been found to have been discriminated against is statutorily entitled to appropriate relief, including back pay and interest. 30 U.S.C. 815(c)(2) and (3). Section 111 of the Mine Act, 30 U.S.C. 821, requires an operator to pay certain amounts of compensation to miners who have been idled by a withdrawal order issued by the Secretary of Labor. In adjudications arising under section 111, the Commission also awards interest on back pay awards. *Clinchfield Coal Co., supra.*

In the past, the Commission's rate of interest on monetary awards in discrimination proceedings, as announced in *Secretary on behalf of Bailey* v. *Arkansas-Carbona Co.*, 5 FMSHRC 2042 (December 1983), was based on the "adjusted prime rate" announced semi-annually by the Internal Revenue Service ("IRS") under formerly applicable versions of 26 U.S.C. 6621 for purposes of fixing interest on overpayment and underpayment of taxes. However, as of January 1, 1987, as a result of the Tax Reform Act of 1986, Pub. L. 99-514, 100 Stat. 2085 (1986), the IRS discontinued its use of the "adjusted prime rate" and now uses the "short-term Federal rate" as the rate of interest on overpayment and underpayment of taxes. 26 U.S.C.A. 6621 (Supp. 1988).[1]

[1] The "short-term Federal rate" is determined by the Secretary of the Treasury based on the average market yield on outstanding marketable obligations of the United States with remaining periods to maturity of three years or less. 26 U.S.C.A. 1274(d)(1)(C)(i) (Supp. 1988). The "short-term Federal rate" is determined for the first month in each calendar quarter and applies during the first calendar quarter beginning after such month. 26 U.S.C.A. 6621(b) (Supp. 1988). The rates are founded to the nearest full percent. 26 U.S.C.A. 6621(b)(3) (Supp. 1988). The overpayment interest rate (paid by the IRS on tax refunds) is the short-term Federal rate plus 2 percentage points and the underpayment rate (paid by the taxpayer on additional taxes) is the short-term Federal rate plus 3 percentage points. 26 U.S.C.A. 6621 (a) (Supp. 1988).

In its *Clinchfield Coal* decision, the Commission decided to adopt the "short-term Federal rate" applicable to the underpayment of taxes (the interest paid by the taxpayer on additional taxes) as the interest rate for discrimination and compensation awards. Accordingly, the rate of interest to be used in calculating interest for both discrimination and compensation awards in Commission proceedings will be the "short-term Federal rate" plus 3 percentage points. *See* 26 U.S.C.A. 6621(a) (Supp. 1988). This new method of calculating the rate of interest will be applicable in all cases in which decisions are issued after the date of the *Clinchfield Coal* decision.

The applicable interst rates with their corresponding daily rates for back pay and compensation awards from January 1, 1978, through March 31, 1989, adjusted to include appropriate Federal short-term underpayment rates from January 1, 1987, are as follows:

January 1, 1978 to December 31, 1979, 6% (.0001666 per day)
January 1, 1980 to December 31, 1981, 12% (.0003333 per day)
January 1, 1982 to December 31, 1982, 20% (.0005555 per day)
January 1, 1983 to June 30, 1983, 16% (.0004444 per day)
July 1, 1983 to December 31, 1984, 11% (.0003055 per day)
January 1, 1985 to June 30, 1985, 13% (.0003611 per day)
July 1, 1985 to December 31, 1985, 11% (.0003055 per day)
January 1, 1986 to June 30, 1986, 10% (.0002777 per day)
July 1, 1986 to September 30, 1987, 9% (.0002500 per day)
October 1, 1987 to December 31, 1987, 10% (.0002777 per day)
January 1, 1988 to March 31, 1988, 11% (.0003055 per day)
April 1, 1988 to September 30, 1988, 10% (.0002777 per day)
October 1, 1988 to March 31, 1989, 11% (.0003055 per day) [2]

The public may obtain lists of the applicable interest rates and the daily interest factors by submitting written requests addressed to the Commission's Executive Director, 1730 K Street, NW., 6th Floor, Washington, DC 20006.

Authority: 30 U.S.C. 815(c)(3) and 821.

Dated: January 12, 1989.

Ford B. Ford,

Chairman of the Federal Mine Safety and Health Review Commission.

[FR Doc. 89-1287 Filed 1-18-89; 8:45 am]

BILLING CODE 6735-01-M

[2] It may be necessary to convert the interest rates announced by the IRS to daily rates in order to calculate interest on periods of less than one year. *See Arkansas-Carbona, supra*, 5 FMSHRC at 2051-53.

FEDERAL ELECTION COMMISSION

[Notice 1989-1]

Filing Dates for Alabama Special Elections

AGENCY: Federal Election Commission.

ACTION: Notice of filing dates for Alabama Special Elections.

SUMMARY: Alabama has scheduled special elections in the third Congressional District to fill the seat that was held by Representative Bill Nichols, who died December 13, 1988. There are three possible special elections, but only two may be necessary

- *Primary Election:* February 14, 1989.
- *Possible Runoff Election:* March 7, 1989. If no candidate wins a majority of votes in his/her party primary, the two top vote-getters in that primary will participate in a runoff.
- *General Election:* March 7 or April 4, 1989. If a March 7 runoff is held, the general election will be moved to April 4. Reporting requirements are explained below.

FOR FURTHER INFORMATION CONTACT: Ms. Bobby Werfel, Public Information Office, 999 E Street, NW., Washington, DC 20463. Telephone: (202) 376-3120; Toll Free (800) 424-9530.

SUPPLEMENTARY INFORMATION:

Principal campaign committees of candidates who participate in these Alabama special elections must file reports according to the schedules given in charts 1 through 5. The committee treasurer should consult the chart that corresponds to the candidate's situation. All committees will be required to resume filing on a semiannual basis.

Party committees and PACs that make contributions or expenditures in connection with the special elections during the coverage dates listed in the charts must file the appropriate reports. Monthly filers, however, do not file special pre- and post-election reports.

Report	Period covered	Reg./cert. mailing date [1]	Filing date
Chart 1: Committees involved in the special primary (2/14/89) only:			
Pre-primary	[3] 01/01/89—01/25/89	01/30/89	02/02/89
Mid-year	01/26/89—06/30/89	07/31/89	07/31/89
Chart 2: No runoff; general 3/7/89. Committees involved in *only* the special primary (2/14/89) and special general (3/7/89):			
Pre-primary	[3] 01/01/89—01/25/89	01/30/89	02/02/89
Pre-general	01/26/89—02/15/89	02/20/89	02/23/89
Post-general	02/16/89—03/27/89	04/06/89	04/06/89
Mid-year	03/28/89—06/30/89	07/31/89	07/31/89
Chart 3: Runoff held. Committees involved in *both* the special primary (2/14/89) and special runoff (3/7/89):			
Pre-primary	[3] 01/01/89—01/25/89	01/30/89	02/02/89
Pre-runoff	01/26/89—02/15/89	02/20/89	02/23/89
Mid-year	02/16/89—06/30/89	07/31/89	07/31/89
Chart 4: Runoff held; General 4/4/89. Committees involved in the special primary (2/14/89) and the special general (4/4/89), but not the special runoff (3/7/89):			
Pre-primary	[3] 01/01/89—01/25/89	01/30/89	02/02/89
Pre-general	01/26/89—03/15/89	03/20/89	03/23/89
Post-general	03/16/89—04/24/89	05/04/89	05/04/89
Mid-year	04/25/89—06/30/89	07/31/89	07/31/89
Chart 5: Runoff held; General 4/4/89. Committees involved in the special primary (2/14/89), special runoff (3/7/89) and special general (4/4/89):			
Pre-primary	01/01/89—01/25/89	01/30/89	02/02/89
Pre-runoff	01/26/89—02/15/89	02/20/89	02/23/89
Pre-general	02/16/89—03/15/89	03/20/89	03/23/89
Post-general	03/16/89—04/24/89	05/04/89	05/04/89

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Report	Period covered	Reg./cert. mailing date [1]	Filing date
Mid-year	04/25/89—06/30/89	07/31/89	07/31/89

[1] Reports sent by registered or certified mail must be postmarked by the mailing date. Otherwise, they must be received by the filing date.
[2] From the date of registration, or January 1, 1989, whichever is later.

Danny L. McDonald,
Chairman, Federal Election Commission.
[FR Doc. 89-1206 Filed 1-18-89; 8:45 am]
BILLING CODE 6715-01-M

[Notice 1989-2]

Filing Dates for Indiana Special Election

AGENCY: Federal Election Commission.
ACTION: Notice of filing dates for Indiana Special Election.

SUMMARY: Committees required to file reports in connection with the Indiana Special Election to be held on March 28, 1989, must file a 12-day Pre-Election Report by March 16, 1989, and a 30-day Post-Election Report by April 27, 1989.

FOR FURTHER INFORMATION CONTACT: Ms. Bobby Werfel, Public Information Office, 999 E Street, NW., Washington, DC 20463. Telephone: (202) 376-3120; Toll Free (800) 424-9530.

SUPPLEMENTARY INFORMATION: All principal campaign committees of candidates in the Special Election and all other political committees which support candidates in this election shall file a 12-day Pre-Election Report due on March 16, 1989, with coverage dates from January 1, 1989, through March 8, 1989, and a 30-day Post-Election Report due on April 27, 1989, with coverage dates from March 9, 1989, through April 17, 1989.

After filing these reports, committees should file a Mid-Year Report due July 31, 1989.

Dated: January 12, 1989.
Danny L. McDonald,
Chairman, Federal Election Commission.
[FR Doc. 89-1205 Filed 1-18-89; 8:45 am]
BILLING CODE 6715-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

New Insurance Requirements for the Public Assistance Program

AGENCY: Federal Emergency Management Agency.
ACTION: Notice.

The Federal Emergency Management Agency (FEMA) will publish interim regulations to implement the changes to the Disaster Relief Act of 1974, Pub. L. 93-288, which were made by the Disaster Relief and Emergency Assistance Amendments of 1988, Pub. L. 100-707. This legislation amended the Disaster Relief Act of 1974, and retitled it the Robert T. Stafford Disaster and Emergency Assistance Act (Stafford Act). However, given the lead time that will be needed to deal with a notable change to the Public Assistance Program, advance notice for affected public and private non-profit entities is warranted.

Section 406(d) of the Stafford Act contains a new provision intended to promote the purchase of flood insurance. If not heeded, it could result in substantial reductions of Federal disaster assistance.

The new flood insurance purchase requirement represents a major departure from FEMA's past approach to known flood hazards, which was governed by the "first bite free" concept of the Flood Disaster Protection Act of 1973, Pub. L. 93-234. The Flood Disaster Protection Act is silent on a property owner's obligation to purchase flood insurance for facilities in identified flood plains prior to seeking Federal assistance. Heretofore, there has been no penalty for a government or private non-profit entity which has chosen prior to the occurrence of a major disaster not to purchase flood insurance for its facilities in special flood hazard areas. Such governments or private non-profits have been able to wait for a major disaster declaration and the subsequent Federal assistance for the repair of its facilities before having to buy the insurance. This "first bite free" arrangement is expressly eliminated by section 406(d) of the Stafford Act.

Section 406(d) of the Stafford Act specifically addresses facilities which are located in a special flood hazard area which has been identified for more than 1 year prior to a major disaster. It stipulates that where such facilities are damaged by flooding, the otherwise eligible Federal disaster assistance shall be reduced by the maximum amount of insurance proceeds which would have been payable had they been fully covered. FEMA's interim regulations for the Amendments will state that a flood plain building and its contents must be fully covered, meaning that they must be protected up to the value of the building and its contents or the maximum amount of flood insurance available under the Standard Flood Insurance Policy (SFIP), whichever is less. The SFIP is issued through the National Flood Insurance Program (NFIP), which is administered by FEMA pursuant to the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*

Section 406(d) of the Stafford Act becomes effective on May 22, 1989. That date is 180 days after the November 23, 1988 effective date of Pub. L. 100-707. Public and private non-profit entities with flood plain facilities are strongly urged to consider buying flood insurance before May 22, 1989, in order to protect against known flood hazards, and to avoid potentially large reductions in future disaster assistance.

Notice that the "first bite free" concept will no longer apply, and that public and private non-profit entities will be expected to assume responsibility prior to the occurrence of a major disaster for protecting those facilities exposed to known flood hazards, will be widely disseminated. Among other measures to be taken, special notices will be sent to the more than 17,000 communities participating in the NFIP, letters will be sent to the state emergency management directors, and a number of government associations will be contacted. These types of notification are required by section 406(d)(4) of the Stafford Act.

FOR FURTHER INFORMATION CONTACT: Alex Burns, Office of Disaster Assistance Programs, Federal Emergency Management Agency, Room 714, 500 C Street, SW., Washington, DC 20472. Telephone (202) 646-3670.

Dated: January 12, 1989.
Grant C. Peterson,
Associate Director, State and Local Programs and Support.
[FR Doc. 89-1195 Filed 1-18-89; 8:45 am]
BILLING CODE 6718-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

National Institute for Occupational Safety and Health; Meeting

The following meeting will be convened by the National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control (CDC):

Name: Peer Review of Research Protocol for the NIOSH Fatal Accident Circumstances and Epidemiology (FACE) Project.
Date: January 31, 1989.
Place: Division of Safety Research, Room 203, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505-2888.
Time: 9:00 a.m.-3:00 p.m.
Status: Open to the public, limited only by space available.
Purpose: To conduct a peer review of the proposed study design and analysis protocol for the FACE project.
Additional information may be obtained from: Carol Conroy, Ph.D., M.P.H., Division of Safety Research, NIOSH, Mail Stop S109, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505-2888. Telephone: Commercial: (304) 291-4885, FTS: 923-4885

Dated: January 13, 1989.
Elvin Hilyer,
Associate Director for Policy Coordination Centers for Disease Control.
[FR Doc. 89-1292 Filed 1-18-89; 8:45 am]
BILLING CODE 4160-18-M

Health Care Financing Administration

Statement of Organization, Functions, and Delegations of Authority

Part F. of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services, Health Care Financing Administration (HCFA), **Federal Register**, Vol. 52, No. 185, dated Thursday, September 24, 1987, pg. 35987; Vol. 52, No. 144, dated Tuesday, July 28, 1987, pp. 28195-28196; Vol. 52, No. 43, dated Thursday, March 5, 1987, pp. 6880-6884; and Vol. 50, No. 74, pg. 15230, dated Wednesday, April 17, 1985) are amended to reflect a realignment of functions in the Office of Program Operations Procedures (OPOP), Bureau of Program Operations in the Office of the Associate Administrator for Operations as well as the creation of a new division entitled the Division of Operational Systems Development. Also, the Part A appeals responsibilities from the Office of Financial Operations (OFO), Division of Overpayment Prevention (DOP) are being transferred to the OPOP, Division of Entitlement Requirements.

The specific amendments to Part F. are described below:

- Section FP.10.A.3., Office of Program Operations Procedures (FPA8)(Organization), is deleted in its entirety and replaced by the following section. Section FP.10.A.3. now reads:

3. Office of Program Operations Procedures (FPA8).

a. Division of Provider Procedures (FPA81).
b. Division of Carrier Procedures (FPA82).
c. Division of Entitlement Procedures (FPA84).
d. Division of Operational Systems Development (FPA85).

- Section FP.20.A.3., Office of Program Operations Procedures (FPA8) (Functions), is deleted in its entirety and replaced by the following section. Section FP.20.A.3. now reads:

3. Office of Program Operations Procedures (FPA8).

Develops and promulgates the specifications, requirements, methods, systems, standards and procedures to implement and maintain the operational systems for the Medicare program Part A, Part B and Drug Benefit including detailed definitions of the relative responsibilities of providers, contractors, HCFA and the beneficiaries of HCFA's programs. Manages the Medicare contractor and drug processors workload, establishes priorities and monitors the implementation of major systems changes. Reviews and evaluates systems, systems plans and proposals and Automated Data Processing acquisition and modifications involving carriers, intermediaries and drug processors. Plans, directs and coordinates operational policy, systems and procedures for the establishment and maintenance of Medicare entitlement, premium billing and collection. Maintains a National Coding System for use in processing Medicare claims. Manages contractor medical review and drug utilization review functions and develops and promulgates specifications and requirements for contractor processing of beneficiary and provider appeals.

a. Division of Provider Procedures (FPA81)

Directs the development and issuance of specifications, requirements procedures, functional standards, and instructional material to implement and maintain operational systems for medical audit of claims, for processing Medicare Part A and outpatient claims, and for defining their applications to Medicare contractors, providers, suppliers of services, and HCFA. Develops productivity investments and data initiatives designed to promote efficiency and uniformity of operations. Maintains contractor and provider instructional manuals. Serves as the Bureau resource for implementing legislative changes impacting on Part A and outpatient program operations. Prepares general systems plans and develops requirements for the detailed design and programming for special purpose software modules used by Medicare contractors. Develops and clarifies methodologies for performing medical review. Plans, conducts, and evaluates studies aimed at long-range improvements in systems, methods, and procedures as they relate to the administration of the Medicare program. Integrates systems within the framework of HCFA policies, goals, and objectives in an efficient and cost-effective manner. Develops, directs, and coordinates systems plans and studies for the effective integration of all Medicare automated and nonautomated processing systems at the contractor level. Designs and conducts studies, demonstrations, and surveys to improve Medicare operational systems, methods, and procedures. Designs and tests new claims processing modules and changes. Conducts, reviews, and performs analyses for future development of subsystems functions in such areas as data management, database systems analysis and design, terminal operations, minicomputers, and operational security. Coordinates systems demonstration projects and participates in the review and evaluation of systems-related application projects. Provides direction to, and liaison with, HCFA components involved in the maintenance of health insurance utilization records. Manages data exchange systems between contractors and HCFA.

b. Division of Carrier Procedures (FPA82)

Directs the development and issuance of specifications, requirements, procedures, functional standards and instructional material to implement and maintain operational systems for processing Medicare Part B claims and defining their applications to Medicare carriers, providers, suppliers of services, beneficiaries, and HCFA. Directs the program operation and financial management of the Part B medical review program conducted by Medicare carriers including development of

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nationally mandated prepayment screens and operational policy and procedures for carrier postpayment medical review. Directs the annual carrier program statistical data preparation and submittal process and serves as a focal point for efforts to assure the quality of data. Manages contractor workloads and sets priorities for workloads which compete for contractor resources. Develops and monitors the implementation of productivity investments and data initiatives designed to promote efficiency and uniformity of operations. Develops and manages all aspects of the contractor budget activities including justification, guidelines, reallocations and tracking for the contractor productivity and participating physician budgets. Serves as the focal point for all contractor budget activities for the Office. Serves as the Bureau resource for assessing the administrative impact of proposed legislation and regulations and implementing legislative changes impacting on Part B program operations. Maintains and issues Medicare Carriers Manual instructions. Manages the annual reasonable charge update process. Issues instructions for the annual physician/supplier participation enrollment and monitoring of physicians charges. Assists in developing and conducting studies for the effective integration of all Medicare Part B automated and nonautomated processing systems at the contractor level. Assists in studies, demonstrations, and surveys to improve Medicare Part B operational systems, methods and procedures. Maintains the national procedure coding system for Part B claims processing including procedures for local coding variations. Provides staff support and coordinates agency positions for the HCFA member of the American Medical Association (AMA) CPT Editorial Panel which is responsible for approving changes to procedure codes for physician services and represents HCFA on the Alpha-Numeric Panel which approves modifications to procedure coding for non-physician services. Plans, conducts, and evaluates studies aimed at long-range improvements in methods and procedures as they relate to the administration of the Medicare program. Integrates systems within the framework of HCFA policies, goals and objectives in an efficient and cost-effective manner.

c. Division of Entitlement Requirements (FPA84)

Plans, directs, and coordinates the development of operational policy, systems and procedures for establishing and maintaining Medicare entitlement records, billing and collecting Medicare premiums, administering State buy-in agreements and coordinating entitlement for individuals covered under the Medicare program. Plans, directs, and coordinates the development of operational policy, specifications, procedural requirements and other materials to implement, maintain or revise the appeals process for Part A and B claims. Develops procedures for conforming Bureau of Program Operations (BPO) systems of records with the Privacy Act including maintaining the system of records current in the **Federal Register** and clearing requests for information. Acts as the Privacy Act Coordinator for BPO. Assesses the impact of operating systems on beneficiaries of HCFA programs and develops proposals to better meet their needs. Manages use by contractors of telephone, written and personal communications to provide quality services to Medicare beneficiaries. Reviews the adequacy of services furnished by the Social Security Administration (SSA) in establishing entitlement for Medicare beneficiaries and collecting premiums. Prepares and releases instructional material to SSA district offices on the entitlement, premium and buy-in processes. Issues instructions to SSA and SSA field offices on resolving entitlement, premium and buy-in problems and assists in resolving individual problems of beneficiaries when normal processes fail. Manages premium collections for billable individuals, third-party groups, and the State buy-in program.

d. Division of Operational Systems Development (FPA85)

Designs, develops and manages, at the national level, activities required to implement new systems for improvement of the Medicare eligibility systems, Part A and Part B claims processing systems, drug benefit claims processing systems and the Medicare program database. Prepares systems plans and develops policies for the design, implementation and evaluation of standardized systems and modules for use by Medicare carriers, intermediaries and drug processors. Directs the design, development, testing and implementation of innovative systems designed to improve national Medicare claims operations including the Common Working File System, standard claims processing systems and prescription drug claims processing systems. Provides national analysis and planning for new Medicare systems required by legislative initiatives. Evaluates HCFA-wide systems plans for their impact on functions related to Part A, Part B and drug processing systems. Integrates new systems within the framework of HCFA policies, goals and objectives in an efficient and cost-effective manner. Coordinates new systems initiative activities with other HCFA components, the Social Security Administration, HCFA regional offices, provider groups and other affected organizations.

• Section FP.20.A.4., Office of Financial Operations (FPA7) is being amended to reflect a transfer of functions from the Office of Financial Operations to the Division of Entitlement Requirements, OPOP. The new Office of Financial Operations functional statement reads as follows:

4. Office of Financial Operations (FPA7)

Establishes the policies and procedures by which contractors and regional offices prepare and submit periodic budget estimates. In consultation with other HCFA and BPO components, develops and negotiates the national budget for Medicare contractors, including workload and funds estimates. Controls and manages the Medicare cash flow and related banking activities. Reviews periodic contractor expenditure reports to evaluate budget execution and determine the allowability of costs. Prepares analyses of Medicare expenditure trends and patterns. Reviews regional office and contractor performance in determining the correct amount of provider, physician and supplier overpayments, and assists contractors in negotiations related to the acceptability of the technique for determining the amount of overpayments and the methods of recovery. Prepares cases when compromises are not appropriate and overpayments are collectible and assists the Claims Collection Officer in preparing such cases for disposition. Prepares manual instructions concerning the procedures for the recovery of provider cost report, physician and supplier overpayments. Designs, implements and maintains a Medicare overpayment tracking system. Establishes procedures and guidelines to target the audit activities of Medicare contractors. Assures that audit funds are utilized to provide a high rate of return in program savings. Directs special audit projects. Compiles operational and performance data for recurring and special reports to reflect the status and trends in program operations effectiveness.

• Section FP.20.A.4.d., Division of Overpayment Prevention (FPA77), is being amended to reflect a transfer of functions from the Office of Financial Operations to the Division of Entitlement Requirements, OPOP. The new Division of Overpayment Prevention functional statement reads as follows:

d. Division of Overpayment Prevention (FPA77)

Analyzes the capabilities of the Medicare regional offices, intermediaries and carriers to ascertain the most efficient management of HCFA's debt resulting from overpayments to providers and suppliers. Develops operating policy and manual instructions for regional offices and contractors on the proper determination and recovery of Medicare overpayments. Analyzes, controls and monitors outstanding overpayments to assure that contractors, in negotiations with providers, physicians and suppliers, are performing effectively in following the law and regulations regarding particular techniques of determining the amount of overpayments, the responsibility for repayment and the method of recovery. Develops operating policy for determining when recovery actions may be nonprofitable. Makes final determinations regarding the acceptability of compromises of beneficiary overpayments (up to $20,000). In cases for which recovery action is pursued, maintains the control system relating to the statute of limitations for filing suit and processes uncollectible overpayment cases to, and maintains liaison with the General Accounting Office, the Office of Inspector General, the Office of the General Counsel and the Department of Justice.

Dated: December 28, 1988.

William L. Roper,

Administrator.

[FR Doc. 89-1245 Filed 1-18-89; 8:45 am]

BILLING CODE 4120-01-M

National Institutes of Health

National Heart, Lung, and Blood Institute; Meeting of the Sickle Cell Disease Advisory Committee

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Sickle Cell Disease Advisory Committee, Division of Blood Diseases and Resources, National Heart, Lung, and Blood Institute, February 17, 1989. The meeting will be held at the National Institutes of Health, 7550 Wisconsin Avenue, Federal Building, Conference Room B1-19, Bethesda, Maryland 20892.

The entire meeting will be open to the public from 9 a.m. to 5 p.m., to discuss recommendations on the implementation and evaluation of the Sickle Cell Disease Program. Attendance by the public will be limited to space available.

Ms. Terry Bellicha, Chief, Communications and Public Information Branch National Heart, Lung, and Blood Institute, National Institutes of Health, Building 31, Room 4A21, (301) 496-4236, will provide a summary of the meeting and a roster of the committee members upon request.

Dr. Clarice D. Reid, Acting Director, Division of Blood Diseases and Resources, NHLBI, Federal Building, Room 508, (301) 496-6931, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.839, Blood Diseases and Resources Research, National Institutes of Health.)

Dated: January 11, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89-1228 Filed 1-18-89; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Diabetes and Digestive and Kidney Diseases; Meeting of the National Digestive Diseases Advisory Board

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the National Digestive Diseases Advisory Board on February 27, 1989, from 8:00 a.m. to approximately 5 p.m. at the Crystal City Marriott, 1999 Jefferson Davis Highway, Arlington, Virginia 22032. The meeting, which will be open to the public, is being held to discuss the Board's activities and to continue evaluation of the implementation of the long-range digestive diseases plan. Attendance by the public will be limited to space available. Notice of the meeting room will be posted in the hotel lobby.

Mr. Raymond M. Kuehne, Executive Director, National Digestive Diseases Advisory Board, 1801 Rockville Pike, Suite 500, Rockville, Maryland 20852, (301) 496-6045, will provide on request an agenda and roster of the members. Summaries of the meeting may also be obtained by contacting his office.

Dated: January 11, 1989.

Betty Beveridge,

NIH Committee Management Officer.

[FR Doc. 89-1229 Filed 1-18-89; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Diabetes and Digestive and Kidney Diseases; Meeting of the National Kidney and Urologic Diseases Advisory Board

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the National Kidney and Urologic Diseases Advisory Board on February 17, 1989, from 8:00 a.m. to approximately 5 p.m. at the Crystal City Marriott, 1999 Jefferson Davis Highway, Arlington, Virginia 22032. The meeting, which will be open to the public, is being held to discuss the Board's activities and the development of a long-range plan to combat kidney and urologic diseases. Attendance by the public will be limited to space available. Notice of the meeting room will be posted in the hotel lobby.

Dr. Ralph Bain, Executive Director, National Kidney and Urologic Diseases Advisory Board, 1801 Rockville Pike, Suite 500, Rockville, Maryland 20852, (301) 496-6045, will provide on request an agenda and roster of the members. Summaries of the meeting may also be obtained by contacting his office.

Dated: January 11, 1989.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 89-1230 Filed 1-18-89; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Diabetes and Digestive and Kidney Diseases; Meetings of the National Kidney and Urologic Diseases Advisory Board Steering Subcommittee

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the National Kidney and Urologic Diseases Advisory Board Steering Subcommittee on February 16, 1989, from 8:30 a.m. to approximately 4:30 p.m. at the Crystal City Marriott, 1999 Jefferson Davis Highway, Arlington, Virginia 22032. The meeting, which will be open to the public, is being held to make final preparations for the National Kidney and Urologic Diseases Advisory Board Meeting. Attendance by the public will be limited to space available. Notice of the meeting room will be posted in the hotel lobby.

Dr. Ralph Bain, Executive Director, National Kidney and Urologic Diseases Advisory Board, 1801 Rockville Pike, Suite 500, Rockville, Maryland 20852, (301) 496-6045, will provide on request an agenda and roster of the members. Summaries of the meeting may also be obtained by contacting his office.

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Dated: January 11, 1989.
Betty J. Beveridge,
NIH Committee Management Officer.
[FR Doc. 89-1231 Filed 1-18-89; 8:45 am]
BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

National Earthquake Prediction Evaluation Council; Reestablishment

This notice is published in accordance with section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463). Following consultation with the General Services Administration, notice is hereby given that the Secretary of the Interior is reestablishing the National Earthquake Prediction Evaluation Council. The purpose of the Council shall be to evaluate predictions made by scientists not on the Council including both Government and non-Government scientists and to advise the Director of the Geological Survey as a basis for his deciding whether to issue a prediction or take other action pertinent to the potential for the occurrence of a future significant earthquake.

Further information regarding the Council may be obtained from the Director, U.S. Geological Survey, Department of the Interior, 12201 Sunrise Valley Drive, Reston, Virginia 22092.

The certification of reestablishment is published below.

Certification

I hereby certify that reestablishment of the National Earthquake Prediction Evaluation Council is necessary and in the public interest in connection with the performance of responsibilities assigned to the Geological Survey in the National Earthquake Hazards Reduction program transmitted to the Congress on June 22, 1978, by the President under Sec. 5(f)(1) of the Earthquake Hazards Reduction Act of 1977, and in furthering the objectives of Sec. 202 of the Disaster Relief Act of 1974.

Date: January 3, 1989.
Donald Paul Hodel,
Secretary of the Interior.
[FR Doc. 89-1288 Filed 1-18-89; 8:45 am]
BILLING CODE 4310-31

Fish and Wildlife Service

Louisiana; Application

AGENCY: Fish and Wildlife Service, Interior.

ACTION: The Fish and Wildlife Service is in the process of issuing a right-of-way permit across the Lacassine National Wildlife in Cameron Parish, Louisiana.

Notice is hereby given as required under section 28 of the Mineral Leasing Act of 1920 (41 Stat. 449; 30 U.S.C. 185) as amended by Pub. L. 93-153, that Mobil Exploration & Producing U.S. Inc., has applied for a right-of-way for a 12-inch pipeline, to be located on lands of the Lacassine National Wildlife Refuge in Cameron Parish, Louisiana, described as follows:

T.12 S., R.4 W., Louisiana Meridian

In Section 16, the centerline of the pipeline easement crosses that part of the E½ of a tract referred to as the Refuge Headquarters Tract at a location more particularly described as follows:

Beginning at a point on the west boundary of said Refuge Headquarters Tract at the intersection with the centerline of the proposed pipeline right-of-way, southerly approximately 700 feet (42.42 rods) from the northwest corner of said tract; thence N.56°01'E., approximately 15 feet (0.07 rods) to the east boundary of said tract and there terminating, and in

Section 17, the centerline of the pipeline easement crosses that part of said section more particularly described as follows:

Beginning at a point on the east boundary of said section at the intersection with the centerline of the proposed pipeline right-of-way southerly, 2,340 feet (141.82 rods) from the northeast concern thereof; thence S.58°48'2., approximately 1,170 feet (70.91 rods); thence S.52°48'W., approximately 271 feet (16.42 rods); thence S.46°37'W., approximately 2,112 feet (128 rods); thence S.46°10'W., approximately 169 feet (10.24 rods); thence S.89°14'W., approximately 1,469 feet (89.03 rods); thence S°46'E., approximately 5 feet (0.32 rods) to the Texas Gas tie-in and there terminating.

SUMMARY: This notice advises the public that the Fish and Wildlife Service plans to issue a permit to Mobil Exploration & Producing U.S. Inc., for a 12-inch pipeline on a portion of the Lacassine National Wildlife Refuge.

EFFECTIVE DATE: February 21, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. William A. Reid, Realty Specialist, Division of Realty, 75 Spring Street SW., Room 1260, Atlanta, Georgia 30303, Telephone (404) 331-3543 or FTS 242-3543.

James W. Pulliam, Jr.,
Regional Director.
November 21, 1988.
[FR Doc. 89-1289 Filed 1-18-89; 8:45 am]
BILLING CODE 4310-55-M

Bureau of Land Management

[CA-060-09-4212-17; CA 23966]

California; Emergency Area Closure; Riverside County, CA

Emergency Area Closure

The following order, affecting the SW1/4, Section 12, T. 6S., R. 8E., SBM., was issued on January 5, 1989.

I have determined that current use of this area is causing environmental degradation and is a serious threat to public health. This problem is the result of a number of people living in unauthorized sub-standard housing without sanitary facilities or a portable water supply.

In order to rectify this situation, I hereby order the above captioned public land closed to entry pursuant to 43 CFR 8364.1. Persons exempt from this order shall include law enforcement personnel and those persons engaged in retrieving personal property from the site, or those with other specific authorization. Any person who knowingly and willfully violates this closure may be subject to $1000 fine and/or one year imprisonment.

This order shall remain in effect until further notice.

Dated: January 6, 1989.
Russell L. Kaldenberg,
Area Manager.
[FR Doc. 89-1187 Filed 1-18-89; 8:45 am]
BILLING CODE 4310-40-M

[UT-020-09-5101-09-X;AA]

Salt Lake District; Intent; Tooele County, UT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: The Bureau of Land Management (BLM) intends to prepare an Environmental Impact Statement (EIS) for a proposed hazards waste treatment facility in Tooele County, Utah. The facility proposed by USPCI, Inc., would treat an estimated 130,000 tons of wastes annually utilizing thermal incineration. Both Tooele County and the State of Utah have siting criteria to which the proposed facility site and any alternative sites would be subject to. The proposed site would be about 60 miles west of Salt Lake City, Utah. Wastes would be received via both road and rail.

The proposed facility would be located on private land and would require permits from Tooele County, the State of Utah and the Environmental Protection Agency. The facility would also require transportation and utility rights-of-way across public land. Granting of the rights-of-way would constitute a major federal action requiring preparation of an EIS in conformance with the National Environmental Policy Act and the Council on Environmental Quality Regulations.

The EIS will analyze the impacts of constructing and operating the proposed facility at the proposed site and one or more alternative sites. It will also analyze the no-action alternative.

An interdisciplinary team will evaluate the subjects of air, water, soil, vegetation, wildlife, archaeology, geology/minerals, recreation, threatened and endangered species and others.

The Salt Lake District of BLM will hold two public meetings to receive input for the preparation of the EIS and to identify issues, concerns, and alternatives. The first meeting will be held on February 1, 1989, in the Department of Natural Resources auditorium, 1636 West North Temple, Salt Lake City, Utah starting at 7:00 p.m. The second meeting will be held on February 2, 1989, at the south auditorium, Tooele County Courthouse, 47 South Main Street, Tooele, Utah, also starting at 7:00 p.m. For more information contact Dennis Oaks, Bureau of Land Management, Salt Lake City, Utah, 84119, telephone (801) 524-5348.

James M. Parker,
Utah State Director.
[FR Doc. 89-1183 Filed 1-18-89; 8:45 am]
BILLING CODE 4310-DQ-M

[ID-060-09-4410-08]

Coeur d'Alene District, ID; Plan Amendments for Emerald Empire and Chief Joseph Management Framework Plans

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability, proposed amendments to the Emerald Empire and Chief Joseph Management Framework Plans (MFPs) to designate 12 Research Natural Areas (RNAs) and/or Areas of Critical Environmental Concern (ACEC).

Notice: Notice is hereby given that the proposed plan amendment for the Emerald Empire and Chief Joseph MFPs to designate 12 RNAs/ACECs is available. Note—The Chief Joseph MFP covers lands in the Cottonwood Resource Area.

SUMMARY: The following areas are proposed for designation:

Name	Acreage	Proposed designation	Resource area
1. Hideaway Islands	170	RNA/ACEC	Emerald Empire.
2. Lund Creek	2,905	RNA/ACEC	Emerald Empire.
3. Wapshilla Ridge	400	RNA/ACEC	Cottonwood.
4. Lower and Middle Cottonwood Islands	14	RNA/ACEC	Cottonwood.
5. Captain John Creek	1,241	RNA/ACEC	Cottonwood.
6. Long Gulch	45	RNA/ACEC	Cottonwood.
7. Lucile Caves	438	RNA/ACEC	Cottonwood.
8. Skookumchuck	28	RNA/ACEC	Cottonwood.
9. Craig Mountain	31901	ACEC	Cottonwood.
10. Elk City Dump/American Hill Lake	30	ACEC	Cottonwood.
11. Lower Lolo Creek	3,464	ACEC	Cottonwood.
12. Lower Salmon River Canyon (Hammer Creek to confluence)	13,452	ACEC	Cottonwood.

For each RNA/ACEC, specific management actions have been developed. In most cases, these management actions prescribe resource use limitations which are designed to protect those natural values which have been identified in the nomination and evaluation processes. For one area (Elk City Dump/American Hill Lake), the management actions are designed to protect human safety.

The following general resource use limitations will apply:

1. Except for rehabilitation works, ground disturbing activities will be prohibited or controlled to maintain the current ecological condition of each area.

2. None of the areas, except for portions of the Lower Lolo Creek Area, will be managed for timber production. Timber will be removed only when necessary to protect or enhance adjacent forest lands or other resource values.

3. For most areas, no new rights-of-way or new roads will be authorized. For the Captain John Creek and Lower Lolo Creek Areas, any new right-of-way applications will be reviewed to see if the proposal would enhance or negatively affect values for which the area was designated as a special area. If the proposed right-of-way would adversely affect the area's quality as an RNA/ACEC, the right-of-way would be denied.

4. Each area will be either "closed" to off-road-vehicle use or designated for "limited" use which requires vehicles to use only existing roads.

5. Each area will be protected as indicated in the District fire management plan which calls for active suppression of wildfire.

Besides the management actions common to all of the areas, there are actions which would be specific for individual RNA/ACECs. Information about specific actions can be obtained from the Coeur d'Alene BLM District Office.

SUPPLEMENTARY INFORMATION: Detailed information about the RNA/ACECs can be obtained by contacting Ted Graf, District Planning Coordinator, Bureau of Land Managment, Coeur D'Alene District Office, 1808 N. Third Street, Coeur d'Alene, Idaho 83814, phone (208) 765-1511.

Planning Protest

Any party that participated in the plan amendments and is adversely affected by the amendment may protest this action only as it affects issues submitted for the record during the planning process. The protest shall be in writing and filed with the Director (760), Bureau of Land Management, 1800 C Street, NW., Washington, DC 20240, within 30 days of this notice. The procedures for filing a protest are contained in 43 CFR 1610.5-2.

Designation

In the absence of any planning protests, this action will become the final determination of the Department of the Interior and the Plan Amendments will be in effect.

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Date: January 10, 1989.
Fritz U. Rennebaum,
District Manager.
[FR Doc. 89-1186 Filed 1-18-89; 8:45 am]
BILLING CODE 4310-89-M

[AA-620-09-4111-01-2412]

Decision of the Secretary of the Interior Implementing Reduction in Rental Rate for Oil and Gas Leases

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Decision of the Secretary of the Interior Implementing Reduction in Rental Effective March 1, 1989, Through February 29, 1992, For All Onshore Oil and Gas Leases Except Those Issued Under the Provisions of the Federal Onshore Oil and Gas Leasing Reform Act of 1987 and Those Reinstated Under the Provisions of the Federal Oil and Gas Royalty Management Act of 1982.

SUMMARY: The Secretary of the Interior has reduced to not greater than $1 per acre or fraction thereof per year the rate of rental beginning with the lease anniversary year commencing March 1, 1989, and for each subsequent year, ending on February 29, 1992, for all onshore oil and gas leases then in force except those issued under the provisions of the Federal Onshore Oil and Gas Leasing Reform Act of 1987 and those reinstated under the provisions of the Federal Oil and Gas Royalty Management Act of 1982.

EFFECTIVE DATE: March 1, 1989.

ADDRESS: Inquiries or suggestions should be sent to: Director (620), Bureau of Land Management, Room 602, Premier Building, 18th and C Streets, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Jeffrey F. Zabler, (202) 653-2182.

SUPPLEMENTARY INFORMATION: The Secretary of the Interior has announced a decision to expand and continue to grant rental reductions to adjust the rate of rental for all onshore oil and gas leases except those issued under the provisions of the Federal Onshore Oil and Gas Leasing Reform Act of 1987 and those reinstated under the provisions of the Federal Oil and Gas Royalty Management Act of 1982. Reductions were previously granted in 1988 and again in 1987 for certain leases. This action becomes effective March 1, 1989, and will continue through February 29, 1992, unless, after considering factors related to the rental rate such as the level of development of Federal leases, economic conditions in the oil industry, the level of imports, and the like, the Secretary decides to terminate the rental reduction at an earlier date. In such case, he will do so only after giving lessees three months notice of his intended action. The rental paid in a year a lease is issued is not affected by this policy and will remain the statutorily set $1.50 per acre or fraction thereof. The reduction applies to all rentals for all leases in effect on March 1, 1989, except those leases issued under the provisions of the Federal Onshore Oil and Gas Leasing Reform Act of 1987 and those leases reinstated under the provisions of the Federal Oil and Gas Royalty Management Act of 1982, regardless of the rate then applicable unless that rate already is less than $1 per acre per year.

This rental reduction is granted by the Secretary of the Interior under Section 39 of the Mineral Leasing Act of 1920 (30 U.S.C. 209) which states in part: "The Secretary of the Interior, for the purpose of encouraging the greatest ultimate recovery of coal, oil, gas, * * * and in the interest of conservation of natural resources, is authorized to waive, suspend, or reduce the rental * * * on an entire leasehold * * * whenever in his judgment it is necessary to do so in order to promote development * * *."

There are many costs to the developers and producers of oil and gas: The cost of acquiring the lease, the cost of holding the lease, the cost to explore, the cost to develop, and the cost to process the product. This action is being initiated to reduce one of the costs, the costs of holding the lease. If leases are relinquished, the resource cannot be developed until the land is re-leased in the future. It is anticipated that a uniform rental reduction to $1 an acre will keep more lands under lease and provide additional capital for exploration and development.

The domestic production of oil and gas resources is the cornerstone of our national security. There are several recent and alarming developments which seriously threaten the domestic oil and gas industry. In 1983, there were 146.5 million acres of Federal lands under lease for oil and gas development. Five years later, at the end of Fiscal Year 1988, there are just under 70 million Federally owned acres under lease for this strategic resource, less than 48 percent of the 1983 figure. At the same time, oil prices worldwide have plummeted from over $30 per barrel to just over $10 per barrel because of a worldwide glut created by oil rich OPEC nations, and oil and gas imports have rocketed to 43 percent of our nation's consumption, aggravating the nation's balance of trade deficit, weakening a native strategic industry and exposing the nation to another energy crisis. The drop in oil prices has been paralleled by cost increases in exploration, development and production. Profits have been reduced or eliminated to the point that this strategic industry is being forced to rely more heavily on foreign operations to survive at the expense of domestic energy development. A continuation of this trend will have deleterious and long-term effects.

An adjunct of the decline of this domestic industry has been the economic and social decline of those regions dependent on the industry. Wages and employment opportunities have been hard pressed to the detriment of the local population. This, in turn, has placed downward pressure on demand for goods and services from all parts of the nation and has restrained the forces for overall economic growth.

Industry opportunity to otherwise use these funds while continuing to hold and maintain Federal leases will facilitate the national interest by promoting long-term development of domestic strategic energy resources. It is expected that this, in turn, will decrease energy dependence and exert positive influences on the balance of trade and regional and national economic well being.

Date: January 12, 1989.
Donald Paul Hodel,
Secretary of the Interior.
[FR Doc. 89-1212 Filed 1-18-89; 8:45 am]
BILLING CODE 4310-89-M

[WES-010-4333-10/GP9-0107]

Intent to Amend The Rio Puerco Resource Management Plan

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Rio Puerco Resource Area Plan Amendment.

SUMMARY: The Rio Puerco Resource Area is preparing a General Management Plan (GMP) which will amend the Rio Puerco Resource Management Plan (RMP, finalized November 1986) as it pertains to El Malpais Special Management Area (SMA). The GMP represents a greater level of detail in the planning process which is more site specific than the RMP and could be compared to an activity plan. The Rio Puerco RMP established El Malpais SMA and called for management which emphasized protection of wildlife habitat, visual values, cultural values, scientific/interpretive values and recreational values. Pub. L. 100-225 created El Malpais National Monument and National Conservation Area (NCA) on December 31, 1987 and established joint planning and management by the National Park Service and the BLM. Pub. L. 100-225 included all lands described as El Malpais SMA and additional contiguous public and private land.

SUPPLEMENTARY INFORMATION: The BLM Albuquerque District is initiating the preparation of a GMP which will include an Environmental Assessment (EA) for El Malpais NCA. The GMP will guide BLM programs and management practices for the NCA.

DATES: Public scoping meetings and informal open houses were held in Grants and Albuquerque, New Mexico, in August and December of 1988. Any additional comments will be accepted on or before February 21, 1989. Comments should be sent to the address listed below. The draft document will be available for public review during November of 1989. Public hearings on the draft document will be held in Grants and Albuquerque, New Mexico, during December of 1989.

ADDRESS: The Bureau of Land Management contact for El Malpais GMP is: Herrick E. Hanks, Bureau of Land Management, Rio Puerco Resource Area Office, 425 Montano NE, Albuquerque, NM 87107, commercial (505) 761-4504, FTS 474-4504.

Dated: January 11, 1989.
Larry L. Woodard,
State Director.
FR Doc. 89-1184 Filed 1-18-89; 8:45 am]
BILLING CODE 4310-FB-M

Bureau of Reclamation

Realty Action; Competitive Sale of Public Land

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of realty action.

SUMMARY: The following described land has been identified for disposal under the Act of February 2, 1911 (36 Stat. 895, 43 U.S.C. 374). The Bureau of Reclamation will accept bids on the following land, and will reject any bids, written or oral, for less than $280,000, the appraised fair market value.

DATE: March 15, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Dennis Burgett, Realty Specialist, Bureau of Reclamation, P.O. Box 9980, Phoenix, Arizona 85068, telephone (602) 870-6734, FTS 765-1734.

Land Identified for Disposal as Follows

Tract APO-GR-11-79-4

A parcel of land in the Northeast quarter of the Northwest quarter (NE1/4NW1/4) of Section Eight (8), Township Three (3) North, Range Five (5) East, Gila and Salt River Meridian, Maricopa County, Arizona containing 3.51 acres, more or less, and being more particularly described as follows:

Beginning at the southwest corner of said NE¼NW¼, that bears South 44°56'22" East 1871.08 feet from the Northwest corner of said Section 8; thence along the west boundary of said NE¼NW¼ North 00°03'36" West 647.64 feet; thence leaving said west boundary South 36°07'14" East 803.14 feet to the south boundary of said NE¼NW¼, that bears South 32°42'49" West 1567.02 feet from the North quarter of said Section 8; thence along said south boundary North 89°51'51" West 472.70 feet to the point of beginning.

The land will be offered for sale through the competitive bidding process. The sale will be held at the Bureau of Reclamation, Arizona Projects Office, 23636 North Seventh Street, Phoenix, Arizona 85024 on March 15, 1989. Bidder registration will begin at 9:00 a.m. Bid opening will be at 10:00 a.m. at which time sealed bids will be opened and oral bids will be accepted. Sealed bids will be received at the foregoing address until 4:00 p.m. March 10, 1989. The Bureau of Reclamation may accept or reject any or all offers; or withdraw any land or interest in land for sale, if, in the opinion of the authorized officer, consummation of the sale would not be fully consistent with the Act of February 2, 1911 (36 Stat. 895, 43 U.S.C. 374), or other applicable laws.

The sale of the land is consistent with the Bureau of Reclamation land use planning and it was determined that the public interest would be served by offering these lands for sale; the parcel listed and platted is offered for sale "as is" and "where is."

Resource clearances consistent with the National Environmental Policy Act of 1969 (42 U.S.C. Section 4321, *et seq.*) requirements have been completed and approved. A land report including categorical exclusion No. APO-88-5 dated March 10, 1989, is available for review at the Bureau of Reclamation, Arizona Projects Office, 23636 North Seventh Street, Phoenix, Arizona 85024.

The deed issued for the parcel sold will be subject to right-of-way for ditches and canals constructed by the authority of the United States in accordance with the Act of August 30, 1890 (26 Stat. 391, 66 U.S.C. 945), and reservations for public road and utility easements identified by the City of Scottsdale and the County of Maricopa. This land sale will be for the surface estate only.

For a period of 45 days from the date of this notice, interested parties may submit comments to the Regional Director, Lower Colorado Region, Bureau of Reclamation, P.O. Box 427, Boulder City, Nevada 89005. Any adverse comments will be evaluated by the Regional Director who may vacate or modify this Notice of Realty Action and issue a final determination. In the absence of any action by the Regional Director, this Notice of Realty Action will become final determination of the Department of the Interior.

John D. Brown,
Acting Regional Director, Lower Colorado Region, Bureau of Reclamation.
[FR Doc. 89-1105 Filed 1-18-89; 8:45 am]
BILLING CODE 4310-09-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-285]

Certain Chemiluminescent Compositions and Components Thereof and Methods of Using the Same; Commission Determination to Review and Remand an Initial Determination Terminating Respondent Luc Noel From the Investigation on the Basis of a Proposed Consent Order

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review and remand to the presiding administrative law judge (ALJ) an initial determination (ID) (Order No. 11) terminating the above-captioned investigation as to respondent Luc Noel on the basis of a proposed consent order.

ADDRESS: Copies of the consent order, the ID, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202-252-1000.

FOR FURTHER INFORMATION CONTACT: Thomas J. O'Connell, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC, telephone 202-252-1108. Hearing-impaired individuals are

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advised that information on this matter can be obtained by contacting the Commission TDD terminal on 202–252–1810.

SUPPLEMENTARY INFORMATION: On December 12, 1988, the presiding ALJ issued an ID granting the renewed joint motion of complainant American Cyanamid Company and respondent Luc Noel to terminate the investigation with respect to Luc Noel on the basis of a proposed consent order. No petitions for review of the ID or agency or public comments were received.

Having examined the ID and supporting documents, the Commission, pursuant to Commission interim rule 210.55, has determined to review on its own motion and remand the ID to the presiding ALJ for action consistent with its remand order.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), as amended by the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100–418), and §§ 210.55 and 210.56 of the Commission's Interim Rules of Practice and Procedure, 53 FR 33070 (August 29, 1988).

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: January 13, 1989.

[FR Doc. 89–1254 Filed 1–18–89; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–285]

Certain Chemiluminescent Compositions and Components Thereof and Methods of Using the Same; Change of Commission Investigative Attorney

Notice is hereby given that, as of this date, Jeffrey R. Whieldon, Esq., of the Office of Unfair Import Investigations will be the Commission investigative attorney in the above-cited investigation instead of William M. Nugent, Esq.

The Secretary is requested to publish this Notice in the **Federal Register.**

Dated: January 9, 1989.

Lynn I. Levine,

Director, Office of Unfair Import Investigations.

[FR Doc. 89–1256 Filed 1–18–89; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 731–TA–380 (Final)]

Digital Readout Systems and Subassemblies Thereof From Japan

Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines,[2] pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673(b)) (the act), that industries in the United States are not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports from Japan of digital readout (DRO) systems and subassemblies thereof,[3] provided for in subheading 9031.80.00 of the Harmonized Tariff Schedule of the United States (item 710.80 of the Tariff Schedules of the United States) that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted this investigation effective September 12, 1988, following a preliminary determination by the Department of Commerce that imports of DRO systems and subassemblies thereof from Japan were being sold at LTFV within the meaning of section 731 of the act (19 U.S.C. 1673). Notice of the institution of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of September 28, 1988 (53 FR 37870). The hearing was held in Washington, DC, on December 1, 1988, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on January 9, 1989. The views of the Commission are contained in USITC Publication 2150 (January 1989), entitled "Digital Readout Systems and Subassemblies Thereof from Japan: Determination of the Commission in Investigation No. 731–TA–380 (Final) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation." By order of the Commission.

Issued: January 11, 1989.

Kenneth R. Mason,

Secretary.

[FR Doc. 89–1256 Filed 1–18–89; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–284]

Certain Electric Power Tools, Battery Cartridges, and Battery Chargers; Decision To Extend Deadline for Determining Whether To Review Initial Determination

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission has extended from January 23, 1989, to January 30, 1989, its administrative deadline for determining whether to review an initial determination (ID) (Order No. 26) granting a motion to intervene in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: P.N. Smithey, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–252–1061.

SUPPLEMENTARY INFORMATION:

Background

The subject investigation is being conducted to determine whether there is a violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation or sale of certain electric power tools, battery cartridges, and battery chargers from Taiwan. The complainants are Makita USA, Inc., and its subsidiary, Makita Corporation of America. (The complainants will be referred to jointly as "Makita.") There are currently 31 respondents: 14 from Taiwan and 17 from the United States. Makita's complaint alleges that the respondents have engaged in registered and/or common-law trademark infringement, false representation, false advertising, and/or passing off in the importation or sale of the accused merchandise. *See* 53 FR 31112 (Aug. 17, 1988) as amended by 53 FR 47587 (Nov. 23, 1988).

On November 29, 1988, The Robert Bosch Corporation ("Bosch") moved to intervene in the investigation as respondent. *See* Motion of the Robert Bosch Corporation to Intervene Under 19 CFR 210.26 (Motion No. 284–30). That motion was subsequently amended to request that Bosch's subsidiary, the Robert Bosch Power Tool Corporation ("Bosch"), be permitted to intervene instead of The Robert Bosch Corporation. *See* Amended Motion to Intervene Substituting The Robert Bosch Power Tool Corporation for The Robert Bosch Corporation (Motion No. 284–40). On December 9, 1988, the Commission investigative attorneys filed a response supporting Bosch's motion. On December 13, 1988, Makita filed a response opposing the motion.

On December 21, 1988, the presiding administrative law judge filed with the Commission Secretary an ID (Order No. 26) granting Bosch's motion to intervene.

Pursuant to interim Commission rule 210.54(a)(1) (53 FR 33043 and 33071 (Aug. 29, 1988)), on January 3, 1989, Makita petitioned for review of the ID and also requested oral argument before the Commission. Under interim rule 210.54(a)(3) (53 FR 33043 and 33071 (Aug. 29, 1988)), the deadline for other parties to file responses to the petition is the close of business on January 11, 1989. Under interim rules 210.53(h), 210.54(b)(1), and 210.55 (54 FR 33043, 33070, and 33071 (Aug. 29, 1988)), the Commission's administrative deadline for determining whether to review the ID is the close of business on January 23, 1989.

After expiration of the deadline for filing responses to the petition, the short time remaining for the Commission to review all submissions and determine whether to grant the petition and request for oral argument by the January 23, 1989, deadline will be reduced further because of federal holidays occurring on January 16 and 20, 1989. In order to give adequate consideration to information and arguments contained in responses to the petition as well as the petition itself, as required by interim rule 210.54(b)(2) (53 FR 33043 and 33071 (Aug. 29, 1988)), the Commission has ordered a one-week extension of the administrative deadline for determining whether to review the ID—*i.e.*, an extension to January 30, 1989. *See* interim rule 210.53(h) (53 FR 33043 and 33070 (Aug. 29, 1988)) and 19 CFR 201.14(b).

Public Inspection

Copies of the original and amended motions to intervene and the responses thereto, the ID granting the amended motion, the petition for review of the ID, and all other nonconfidential documents on the record of the investigation (including responses to the petition) are available for public inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, Docket Section, U.S. International Trade Commission, 500 E Street SW., Room 112, Washington, DC 20436, telephone 202–252–1802. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission TDD terminal on 202–252–1810.

By Order of the Commission.

Issued: January 13, 1989.

Kenneth R. Mason,

Secretary.

[FR Doc. 89–1257 Filed 1–18–89; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 731–TA–425 (Preliminary)]

Light-Duty Integrated Hydrostatic Transmissions and Subassemblies Thereof, With or Without Attached Axles, From Japan

Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines,[2] pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury, or that the establishment of an industry in the United States is materially retarded, by reason of imports from Japan of light-duty integrated hydrostatic transmissions and subassemblies thereof, with or without attached axles,[3] provided for in items 660.85, 660.97, 666.00 and 666.10 of the Tariff Schedules of the United States (TSUS), and classifiable in subheadings 8412.29.80, 8412.90.90, 8413.60.00, 8413.81.00, 8432.90.00, 8433.90.10, 8433.90.50, 8434.90.00, and 8436.99.00 of the Harmonized Tariff Schedule of the United states (HTS), that are alleged to be sold in the United States at less than fair value (LTFV).

Background

On November 22, 1988, a petition was filed with the Commission and the Department of Commerce by Eaton Corp., Eden Prairie, Minnesota, alleging that an industry in the United States is materially injured and is threatened with material injury, by reason of LTFV imports of light-duty integrated hydrostatic transmissions and subassemblies thereof, with or without attached axles, from Japan. Accordingly, effective November 22, 1988, the Commission instituted preliminary antidumping investigation No. 731–TA–425 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of December 16, 1988 (53 FR 46987). The conference was held in Washington, DC, on December 14, 1988, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on January 6, 1989. The views of the Commission are contained in USITC Publication 2149 (January 1989), entitled "Light-Duty Integrated Hydrostatic Transmissions and Subassemblies Thereof, With or Without Attached Axles, from Japan: Determination of the Commission in Investigation No. 731–TA–425 (Preliminary) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation." By order of the Commission.

Issued: January 9, 1989.

Kenneth R. Mason,

Secretary.

[FR Doc. 89–1258 Filed 1–18–89; 8:45 am]

BILLING CODE 7020–02–M

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[1] The record is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

[2] Acting Chairman Brunsdale and Commissioner Cass determine that industries in the United States are materially injured by reason of imports from Japan of digital readout (DRO) systems and subassemblies thereof. See their Concurring and Dissenting views, *infra*.

[3] DRO systems provide linear or rotational displacement information for high-precision industrial equipment such as metalworking machine tools, and generally consist of an electronic console and one measurement transducer for each axis of linear or rotational displacement to be measured.

The products covered in this investigation are DRO systems, whether assembled or unassembled. An unassembled DRO system is a console and a transducer (glass scale, magnetic, rotary encoder, but not laser), and parts thereof, that can be used in DRO systems, which are imported into the United States either together or separately. This coverage is intended to include transducers destined for use in DRO systems at the time of importation and not include transducers that are not used in DRO systems.

[1] The record is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

[2] Commission Cass dissenting.

[3] The subject articles, which have a maximum input horsepower of twenty or fewer, comprise the following: Parts and subassemblies of non-electric engines and motors not specially provided for (TSUS item 660.85 and HTS subheadings 8412.29.80 and 8412.90.90); pumps for liquids, liquid elevators, and parts thereof, the foregoing not specially provided for (TSUS item 660.97 and HTS subheadings 8413.60.00 and 8413.81.00); other parts, not specially provided for, of machinery for soil preparation and cultivation (TSUS item 666.00 and HTS subheadings 8432.90.00, 8433.90.50, 8434.90.00, and 8436.99.00); and parts of lawnmowers (TSUS item 666.10 and HTS subheading 8433.90.10) (Federal Register of Dec. 16, 1988 (53 FR 46987)).

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Certain Straight Knife Cloth Cutting Machines; Change of Commission Investigative Attorney

[Investigation No. 337-TA-288]

Notice is hereby given that, as of this date, Deborah D. Sorkin, Esq., of the Office of Unfair Import Investigations will be the Commission investigative attorney in the above-cited investigation instead of William M. Nugent, Esq.

The Secretary is requested to publish this Notice in the **Federal Register**.

Dated: January 9, 1989.

Lynn I. Levine,

Director, Office of Unfair Import Investigations.

[FR Doc. 89-1250 Filed 1-18-89; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket no. 31261]

Merchants Grain and Transportation, Inc.; Transfer Exemption of Poseyville and Owensville Railroad Co. Inc.—Merchants Management Corp.

Merchants Grain and Transportation, Inc. (Merchants) has filed a Notice of Exemption for the transfer of its controlling interest in the Poseyville and Owensville Railroad Company, Inc. (P&O) to a wholly owned subsidiary corporation, Merchants Management Corp. (MMC). P&O was created through a Notice of Exemption filed March 17, 1987 in Finance Docket No. 31010. An exemption from the continuance in control requirements of 49 U.S.C. 11343, *et seq.*, was granted to Merchants in order that it could control P&O, along with other transportation subsidiaries, in Finance Docket no. 31031, served May 21, 1987. Merchants is now transferring its 99.3 percent ownership interest in P&O to MMC.

This is a transaction within a corporate family of the type specifically exempted from prior review and approval under 49 CFR 1180.2(d)(3).[1] The transaction will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family.

To ensure that all employees who may be affected by the transaction are given the minimum protection afforded under 49 U.S.C. 10505(g)(2) and 49 U.S.C. 11347, the labor conditions set forth in *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979), are imposed.

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleading must be filed with the Commission and served on: Charles H. White, Jr., and John T. Sullivan, 1730 Pennsylvania Ave, NW., Suite 400, Washington, DC 20006.

Dated: January 10, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89-1009 Filed 1-18-89; 8:45 am]

BILLING CODE 7035-01-M

[1] Although the parties incorrectly describe the transaction as exempt pursuant to 49 CFR 1180.a(d)(1), the transaction is properly one under 49 CFR 1180.2(d)(3) within a corporate family.

DEPARTMENT OF LABOR

Labor Advisory Committee for Trade Negotiations and Trade Policy; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463 as amended), notice is hereby given of a meeting of the Steering Subcommittee for the Labor Advisory Committee for Trade Negotiations and Trade Policy.

Date, time and place: February 14, 1989, 9:30 a.m., Rm. S4215 A&B Frances Perkins, Department of Labor Building, 200 Constitution Avenue, NW., Washington, DC 20210.

Purpose: To discuss trade negotiations and trade policy of the United States.

This meeting will be closed under the authority of section 10(d) of the Federal Advisory Committee Act and 5 U.S.C. 552b(c)(1). The Committee will hear and discuss sensitive and confidential matters concerning U.S. trade negotiations and trade policy.

For further information, contact: Fernand Lavallee, Executive Secretary, Labor Advisory Committee, Phone: (202) 523-6565.

Signed at Washington, DC this 13th day of January, 1989.

Eugene K. Lawson,

Deputy Under Secretary, International Affairs.

[FR Doc. 89-1210 Filed 1-18-89; 8:45 am]

BILLING CODE 4510-28-M

Employment and Training Administration

Federal-State Unemployment Insurance Program; Project to Review the Unemployment Insurance Service's Measures of State Employment Security Agencies' (SESAs) Performance

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of study project.

SUMMARY: The Employment and Training Administration (ETA) announces an Unemployment Insurance (UI) project to review the current system for measuring the UI performance of State Employment Security Agencies (SESAs) and to examine alternative methods of evaluating this performance. This review is being undertaken as part of ETA's ongoing efforts to increase the flexibility of States in the financial and operational management of their UI programs, while at the same time assuring that the Secretary of Labor's statutory oversight responsibilities are appropriately carried out.

DATE: Comments must be received in the Department of Labor by the close of business on February 21, 1989.

ADDRESS: Submit comments to Mary Ann Wyrsch, Director, Unemployment Insurance Service, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Room S-4231, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Mary Ann Wyrsch, Director, Unemployment Insurance Service, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Room S-4231, Washington, DC 20210. Telephone 202-523-7631 (this is not a toll free number).

SUPPLEMENTARY INFORMATION:

A. Project Objectives

In the context of the increased State financial and operational flexibility, the Performance Measurement Review (PMR) project is conducting an in-depth examination of alternate methods of measuring SESA UI performance to assure that the Secretary's statutory responsibilities for the administration of the UI program are being effectively carried out. The objectives of the project are to:

(1) Review the Secretary of Labor's legal responsibility for the UI program.

(2) Identify and justify alternative methods of evaluating SESA UI performance.

(3) Examine linkages between components of the UI oversight programs.

(4) Determine what constitutes a minimum level of performance, where appropriate.

(5) Review the Secretary's responsibilities for maintaining a comprehensive performance oversight system for the UI program.

The project will, therefore, coordiante its activities with two other ongoing performance activities: Revenue Quality Control (RQC), and Cash Management Improvement. The project will be linked with these initiatives in the following manner:

- *Cash Management Improvement.* This effort seeks to revise the cash management approach for State UI Trust Funds and to improve measures used in assessing SESAs' Trust Fund cash management performance. The final performance measures derived from this study will be incorporated into a comprehensive measurement system coordinated through the PMR project.
- *Revenue Quality Control.* The RQC initiative, as announced in the **Federal Register** on December 23, 1988 (53 FR 52108) will develop a set of performance measures covering potentially all tax operations. These measures will then be examined by the PMR in determining which measures are appropriate for oversight purposes and as benchmarks of SESA performance.

The data derived from the PMR, Cash Management Improvement, and RQC studies will be shared among projects with the intent of developing an integrated oversight system.

Although the UI Benefits Quality Control (BQC) program will not be a focus of this project, it will be considered in the context of how it contributes to a coordinated performance oversight system.

The UI PMR project will be carried out over the next 2 years, with contractor assistance, within the following parameters:

- The focus of the performance measures will be on program outcomes;
- The new or revised performance measurement system will try to minimize reporting burdens and simplify performance measurment; and
- Consideration will be given to defining benchmarks of minimum SESA performance.

B. Public Consultation Process

Since performance measurement affects virtually all areas of UI, dialogue between and input from all interested parties and the ETA will be essential during the project. ETA will seek broad input and participation by all interested parties, including SESAs, during the course of the project. The solicitation of input and the exchange of information is designed to support the development of a mutually beneficial performance measurement system.

To enhance the participative process, ETA has convened a steering committee comprised of ETA Regional and National office staff versed in the various UI performance measurement areas to provide advice and guidance to the project.

In addition, an expert panel of SESA representatives and selected members of the steering committee will be convened by the project's support contractor. The panel will offer its technical advice and collective experiences directly to the contractor to support the tasks and work products required by the contract.

ETA welcomes comments on the current performance measures and suggestions for areas of study during the initial phase of the project.

Analyses and findings as well as recommended performance measures will be shared with interested parties and will formally be published for comment in the **Federal Register** at key points during the project.

C. Schedule of Federal Register Notice Publications

Initial publication, for comment, of proposed performance measures or alternative measures for consideration, along with supporting rationales, is scheduled for October 1989. Comments will be considered in establishing a set of performance measures for testing and refinement. Publication of the final performance measures prior to implementation is scheduled for February 1990.

Signed at Washington, DC, this 9th day of January, 1989.

Roberts T. Jones,

Assistant Secretary of Labor.

[FR Doc. 89-1200 Filed 1-18-89; 8:45 am]

BILLING CODE 4510-30-M

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 89-1; Exemption Application No. D-7005 et al]

Grant of Individual Exemptions; Carpenters Pension Trust for Southern California et al

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of pendency were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 71-1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Carpenters Pension Trust for Southern California (the Trust) Located in Los Angeles, California

[Prohibited Transaction Exemption 89-1; Exemption Application No. D-7005]

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Exemption

The restrictions of section 406(a) of the Act and the sanctions resulting from the applications of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to: (1) The past and continued leasing of office space in a building (the Building) owned by the Trust to DeCarlo & Connor (the Firm), a party in interest with respect to the Trust; (2) the past and continued leasing of certain office space in the Building by the Firm from the Trust which the Firm had been previously subleasing from the Los Angeles County District Council of Carpenters; and (3) the proposed subsequent leasing of additional office space in the Building to the Firm; Provided that each leasing transaction which has taken place or will take place was and will be on terms no less favorable to the Trust than an arm's-length transaction with an unrelated party.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on April 22, 1988 at 53 FR 13345.

Notice of Interested Persons: The applicant represents that it was unable to notify interested persons within the time period specified in the **Federal Register** notice published on April 22, 1988. The applicant states that all interested persons were notified by July 20, 1988. Interested persons were advised that they had 30 days to comment on the proposed exemption.

Written Comments: The Department received one written comment on the notice of proposed exemption (the Notice) from a retiree of the Trust (the Retiree). The Retiree stated that, based on his reading of the Notice, he thought the Firm was supposed to be the "in-house" counsel for the Trust. However, the Retiree stated further that he recently received some mail regarding Trust business from the Law Offices of Richard A. Brownstein (Brownstein), which are also in the Building. The Retiree expressed concern that the Firm may be subleasing office space to Brownstein, contrary to the representations made by the applicant in the Notice.

In response to the Retiree's comment, the applicant represents that the offices occupied by Brownstein are not being subleased from the Firm but are part of an office sharing arrangement that the Trust has with the other Carpenters Trusts (the Trusts), by which the Trusts self-administer their operations. The applicant states that the office sharing arrangement involving Brownstein is covered by Prohibited Transaction Exemtion (PTE) 76-1, 41 FR 12740 (March 28, 1976).[1]

After consideration of the entire record, the Department has determined to grant the exemption.

EFFECTIVE DATE: The effective date of this exemption is January 1, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. E.F. Williams of the Department, telephone (202) 523-8883. (This is not a toll-free number.)

Consolidated Electrical Distributors, Inc. Employees' Retirement Plan (the Plan) Located in Westlake, Village, CA

[Prohibited Transaction Exemption 89-2; Exemption Application No. D-7290]

Exemption

The restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed sale of four mortgage notes (the Notes) to the Plan by Edmundston International, Inc., a wholly-owned subsidiary of Consolidated Electrical Distributors, Inc. (the Plan Sponsor), nor to guarantee of repayment by the Plan Sponsor on default, provided that the terms and conditions of sale are at least as favorable to the Plan as those which the Plan could receive in similar transactions with unrelated parties.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on July 15, 1988 at 53 FR 26911.

Written Comments: The Department received two comments on the proposed exemption and no request for a hearing. The first commentator requested further documentation concerning the proposed exemption. In response to this request, the applicant contacted the commentator and after carefully considering the applicant's explanation of the proposed transaction, the commentator indicated that no further information or documents needed to be provided.

The second commentator questioned: (1) Why the Plan was paying 100% of the appraised value; (2) how much will be charged by the Trustee each year to service the Notes; (3) in case of default, what period of time will elapse until the Plan Sponsor is required to take over payment on the Note; and (4) what guarantee does the Plan have that the Plan Sponsor will be able to assume a Note which is in default.

In response, the applicant explained that the reference to appraised value referred to the appraised value of the Notes and not to the appraised value of the underlying collateral (which presumably was the commentator's understanding). The Plan will buy the Notes at their present unpaid principal balance. With regard to Trustee fees, the applicant represents that the Plan will not incur any additional fees in connection with this transaction since the Trustee's fees are based solely on the amount of assets under management. Specifically, since this is merely an exchange of assets, no increase in the fund balance will occur which could result in an increase in fees paid by the Plan. In the case of a default on any of the Notes sold to the Plan, the applicant represents that the Plan Sponsor will repurchase any such Note which is more than 90 days delinquent in payments, for the outstanding principal balance on the Note plus accrued interest. The applicant states that the Plan Sponsor currently has a net worth in excess of $25 million and accordingly will be able to satisfy any repurchase obligations which may arise to the Plan.

The Department has carefully considered the entire record and on the basis of the applicant's representations has determined to grant the exemption, subject to, among other things, the adoption of the default guarantee by the Plan Sponsor as discussed herein.

FOR FURTHER INFORMATION CONTACT: Mr. Alan H. Levitas of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

Operating Engineers Training Trust (the OE Plan) Located in Whittier, California and Southern California Surveyors Joint Apprenticeship Trust (the SC Plan; together, the Plans) Located in Walnut, California

[Prohibited Transaction Exemption 89-3; Exemption Application Nos. D-7513 and D-7527]

Exemption

The restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act shall not apply to: (1) The proposed sale by the International Union of Operating Engineers, Local Union No. 12 (Local 12) to the OE Plan of 20 units of a two-way communications system (the Radios) and a Base Station, and the proposed sale by Local 12 to the SC Plan of 4 Radios and a Base Station, for $2,400 per Radio and $4,908 per Base Station, provided such amounts are not greater than the fair market value of the Radios and the Base Stations at the time of the sales; and (2) the proposed use by the Plans of Local 12's communications equipment including common hardware and antenna, under the terms described in the notice of proposed exemption, provided such terms are not less favorable to the Plans than those obtainable in an arm's-length transactions with an unrelated party.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on November 10, 1988 at 53 FR 45629.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Welborn Clinic Employees' Retirement Plan (the Plan) Located in Evansville, Indiana

[Prohibited Transaction Exemption 89-4; Exemption Application No. D-7718]

Exemption

The restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply, effective February 28, 1987, to the past and proposed lease by the Plan of certain improved real property located in Evansville, Indiana to the Welborn Clinic, the sponsor of the Plan; provided that all terms of such lease have been and will be at least as favorable to the Plan as those which the Plan could obtain in an arm's-length transaction with an unrelated party.

Effective Date: This exemption is effective February 28, 1987.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on Wednesday, October 26, 1988 at 53 FR 43290.

For Further Information Contact: Ronald Willett of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 13th day of January, 1989.

Robert J. Doyle,

Director of Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 89-1270 Filed 1-18-89; 8:45 am]

BILLING CODE 4510-29-M

[Application Nos. D-7531† and 7532 et al.]

Proposed Exemptions; Mark K. Kim, P.A. Restated Retirement Income Plan, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Regulations and Interpretations, Room N-5671, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-5507, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

[1] The Department expresses no opinion as to whether the office sharing arrangement involving Brownstein satisfies the requirements of PTE 76-1.

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Mark K. Kim, P.A. Restated Retirement Income Plan and Trust and Mark K. Kim, P.A. Restated Money Purchase Pension Plan and Trust (the Plans) Located in Excelsior, Minnesota

[Application Nos. D-7531 and D-7532]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed cash sale to the Plans of a parcel of real property by the Kim Farms partnership, a party in interest with respect to the Plans, provided that the terms of the transaction are no less favorable to the Plans than those obtainable in an arm's-length transaction with an unrelated party.[1]

Summary of Facts and Representations

1. The Plans are a Defined Benefit Plan (DB Plan) and a Money Purchase Plan (MP Plan) with net asset as of June 30, 1988 of $777,475, and $1,149,312, respectively. Dr. and Mrs. Kim are the trustees of both Plans. There are two participants in the DB Plan, that being Dr. and Mrs. Kim, and three participants in the MP Plan. The MP Plan is an individual account plan which allows each participant to select the investments for his account. Funds invested at the direction of the participant are accounted for separately and any earnings, losses, or changes in the value of the investment affect only the account of the participant directing the investment and will not affect the account of any other participant, former participant, or beneficiary.

2. Dr. and Mrs. Kim are the only partners in a partnership known as the Kim Farms Partnership (the Partnership). The Partnership owns 920 acres of farm land (the Property) located in Aitkin County, Minnesota. The Partnership proposes to sell the Property to the Plans for $359,500 in cash, its appraised fair market value. The Property is all tiled [2] and improved by several farm buildings (i.e., granary, silo, barn, etc.). The Property will be allocated to each Plan after it is purchased based on the amount of Plan assets (e.g., percentage allocated to DB Plan equal assets in DB Plan divided by total assets in both Plans). The applicant represents that in no event will more than 25 percent of either Plans' assets be utilized in purchasing the Property.

3. Mr. Gerald Lundbert, AMA [3] appraised the Property as having a fair market value of $359,500 as of July 30, 1988. Mr. Jack E. Maxwell, SRPA, of Maxwell Appraisal Company, appraised the Property as having a fair market value in the range of $350 to $370 thousand as of July 14, 1988. Mr. Maxwell represents that agricultural land is at a low point in the economic cycle and that he anticipates reversal of this trend with potential for appreciation being very good in the next 3 to 10 years.

4. The Property is currently participating in two government agricultural programs, the Conservation Reserve Program and the Set Aside Program which are sponsored by the U.S. Department of Agriculture. These programs involve approximately 456 acres on the Property. The anticipated income with respect to such programs for 1988 is approximately $10,000.

5. Dr. Kim represents that there is little chance of there being additional participants in the DB Plan. However, if there is ever another participant, Dr. Kim will establish a separate defined benefit plan containing comparable provisions for such employee.

6. In summary, the applicant represents that the proposed transaction will satisfy the statutory criteria of section 408(a) of the Act and section 4975(c)(2) of the Code because:

(a) The transaction is a one time transaction for cash;

(b) The Plans will pay the fair market value for the Property as determined by an independent appraiser;

(c) The Plan will not pay any sales commissions or fees in connection with the sale; and

(d) The only assets of the Plans involved in the proposed transaction are those of Dr. and Mrs. Kim and they wish that the proposed transaction be effected.

Notice to Interested Persons: Since the only assets of the Plans involved in the proposed transaction are those of Dr. and Mrs. Kim, it has been determined that there is no need to distribute the notice of proposed exemption to interested persons. Comments and hearing requests on the proposed exemption are due 30 days after the date of publication in the **Federal Register.**

For Further Information Contact: Alan H. Levitas of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

Crane Cams, Inc. Second Amended and Restated Profit Sharing Plan and Trust (the Plan) Located in Hallandale, Florida

[Application No. D-7717]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed sale of the Plan of a parcel of unimproved real property located in Daytona Beach, Florida (the Property) to Crane Cams, Inc. (the Employer), the sponsor of the Plan; provided that all terms of such sale are at least as favorable to the Plan as those which the Plan could obtain in an arm's-length transaction with an unrelated party.

Summary of Facts and Representations

1. The Plan is a defined contribution individual account plan with 234 participants (the Participants) and total assets of $620,481, including the Property, as of September 30, 1987. The trustees of the Plan are Messrs. Grayson Maule and Harvey Crane (the Trustees), each of whom is an officer of the Employer. The Employer is a closely-held Florida corporation engaged in the manufacture of cam shafts for automotive engines in Daytona Beach, Florida. The Plan was terminated effective September 30, 1987, and an application for favorable determination regarding the termination has been filed with the Internal Revenue Service.

2. As of July 25, 1988, 213 of the Participants had received full distributions of their individual account balances in the Plan. With respect to the remaining Participants, the Trustees wish to make full distributions of the remaining account balances in the form of cash in order to facilitate rollovers by those Participants of their account balances into individual retirement accounts. In order to make such final distributions in cash, the Trustees are required to sell the Property. The Employer proposes to purchase the Property from the Plan to enable the completed distribution of Plan assets and is requesting an exemption to permit such purchase transaction under the terms and conditions described herein.

3. The Property is a 3.44 acre parcel of vacant, unimproved land located at Fentress Boulevard and Indigo Drive North in Daytona Beach, Florida. The Employer represents that the Property, zoned for industrial and manufacturing activities, has not been developed or utilized for any purpose since the Plan acquired it for $87,000 cash in 1982 from parties unrelated to the Plan and the Employer. As of September 30, 1987, the Property had a fair market value of $172,000, according to an appraisal performed by the Southern Appraisal Corporation (Southern) located in Ormond Beach, Florida. The Property is situated adjacent to developed property owned by the Employer which constitutes the Employer's principal place of business. In an October 7, 1988, update of Southern's appraisal of September 30, 1987, a representative of Southern, Peter A. Gagne (Gagne), represents that he has considered whether the Property has a higher value to the Employer than to a typical unrelated buyer by virtue of the Property's adjacency to the Employer's property. Gagne states that under the particular circumstances of the proposed transaction, the Property does not have a higher value to the Employer attributable to the Employer's ownership of adjacent real property.

4. The Employer proposes to pay the Plan cash for the Property in the amount of its full market value as of the sale date. Southern's appraisal will be updated as of the sale date and the purchase price will reflect any increases, but no decreases, in the Property's fair market value since September 30, 1987. The Employer will pay all transfer costs and other expenses related to the transaction.

5. In summary, the applicant represents that the proposed transaction satisfies the criteria of section 408(a) of the Act for the following reasons: (1) The transaction will enable the Trustee to complete the distributions of the account balances in the Plan, which is terminated; (2) The Plan will receive cash for the Property in the amount of the Property's fair market value as of the sale date, in no event to be less than $172,000; and (3) The Employer will bear all costs and expenses related to the sale transaction.

For Further Information Contact: Ronald Willett of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Pocono Pines Corporation Defined Benefit Plan (the Pension Plan) and Pocono Pines Corporation Profit Sharing Plan (the Profit Sharing Plan; Collectively, the Plans) Located in Pocono Pines, Pennsylvania

[Application No. D-7728]

Proposed Exemption

The Department is considering granting an exemption under section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted, the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) through (E) of the Code, shall not apply to the Plans' proposed loans (the Loans) of $56,666 each to Pocono Pines Corporation (the Employer), the Plans' sponsor and, as such, a disqualified person with respect to the Plans; provided the terms and conditions are similar to those obtainable by the Plans in an arm's-length transaction with an unrelated party.

Summary of Facts and Representations

1. The Pension Plan is a defined benefit plan with one participant, Harry J. Schoettle, and assets, as of March 31, 1988 of $254,232. The Profit Sharing Plan is a defined contribution plan with assets as of March 31, 1988 of $250,314. Mr. Schoettle is also the sole participant of the Profit Sharing Plan, the sole trustee of both Plans, and the sole shareholder of the Employer.[4]

2. The applicant proposes that each of the Plans loan $56,666, to the Employer. The Loans will constitute less than 25% of each Plan's assets. The Loans will be repaid in 120 equal monthly principal installments of $1,000 per month. Interest will be payable monthly on the unpaid balance at one percentage point above the prime rate as of the first day of each month as published in the *Wall Street Journal.* The Loans will be secured by a recorded first lien on the Employer's residential condominium unit No. C-63 located at Pinecrest Cluster Homes, Monroe County, Pennsylvania (the Property).

3. The Property was appraised on May 3, 1988 by Tom W. Fiers, a licensed real estate broker with Waltren Real Estate, Inc., in Pocono Pines, Pennsylvania. Mr. Fiers represents that neither he nor any firm with which he is associated receives in excess of 1% of his or its annual remuneration from the Employer or the Plans. Mr. Fiers determined that the value of the Property ranged between $172,000 and $176,000. The Property is currently subject to a commercial first mortgage in amount of $120,000. The applicant proposes to apply the proceeds of the Loans to pay off said mortgage.

4. O. Ashley Saunders, Senior Vice President of First Eastern Bank in Stroudsburg, Pennsylvania, opined, as of July 13, 1988, that the terms of the proposed transaction are commercially reasonable.

5. The applicant represents that the Property will be insured for all catastrophes and that if its fair market value ever falls below 150% of the unpaid principal balance, the Employer will add sufficient collateral to the mortgage to raise the Security to 150%. The applicant further represents that there is little possibility that another participant will enter the Pension Plan. However, if that event occurs, the applicant will establish a separate defined benefit plan for such employee containing provisions comparable to those in the Pension Plan.

6. In summary, the applicant represents that the Loans meet the statutory criteria for an exemption under section 4975(c)(2) of the Code because: (a) Mr. Schoettle is the only participant in the Plans to be affected by the Loans and he desires that the transaction be consummated; (b) The Loans will constitute less than 25% of the Plan's assets; (c) the value-to-loan ratio will, at all times, be at least 150%; (d) The Property securing the Loans has been appraised by a qualified independent appraiser; and (e) the Plans will hold a recorded first lien on the Property securing the Loans.

Notice to Interested Persons: Because Mr. Schoettle is the sole participant in the Plans, the Department has determined that there is no need to distribute the notice of pendency of the proposed exemption to interested persons. Comments and requests for hearing must be received within 30 days of the date of publication of this notice of proposed exemption.

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[1] Because Dr. and Mrs. Kim are the only participants in the Defined Benefit Plan, the Department has no jurisdiction under Title I of the Act with respect to this Plan pursuant to 29 CFR 2510.3-3. However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

[2] Tiling involves the laying, burying and installing of culverts and tubing sufficient in scope to redistribute water in a manner that maximizes the use of soil for agricultural purposes.

[3] Mr. Lundbert represents that he was employed as the Aitkin County Assessor for 30 years prior to his retirement in 1985 and that he is a certified Minnesota Assessor.

[4] Since Mr. Schoettle is the sole participant in the Plans and the sole shareholder of the Employer, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3-3(b). However, there is jurisdiction under Title II pursuant to section 4975 of the Code.

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For Further Information Contact: Mrs. B.S. Scott of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

Auto-Chlor System of Washington, Inc. Profit Sharing Retirement Plan (the Plan) Located in San Jose, California

[Application No. D-7777]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed sale for cash by the Plan of certain real property (the Real Property) to Jerry L. Ivy, a party in interest with respect to the Plan, provided that the price paid be no less than the fair market value of the Real Property on the date of sale.

Summary of Facts and Representations

1. The Plan is a profit sharing plan sponsored by Auto-Chlor System of Washington, Inc., Auto-Chlor System of Oregon, Inc., and Auto-Chlor System of Northern California, Inc. (the Plan Sponsors), a brother-sister controlled group of corporations under section 414(b) of the Code, owned primarily by Jerry L. Ivy, Sr., and his children. The Plan Sponsors provide dishwasher service to restaurants, cafeterias and hospitals. As of December 31, 1987, the Plan had 80 participants and $3,417,212 in assets.

2. On May 1, 1979, the Plan acquired from unrelated parties a parcel of undeveloped land in Spokane, Washington (the Spokane Property) as a potential future site for a condominium for $60,000, in the expectation that its value would appreciate substantially over a short period of time. However, after the eruption of Mt. St. Helens volcano in May 1980, and the heavy ashfall in the Spokane area, the resultant depressed economy and sluggish real estate market in that city made it impossible to sell the Spokane Property at a reasonable price.

3. Early in 1987, the heirs of the Clise estate in Seattle, Washington, unrelated third parties, made an offer including an exchange of a parcel of undeveloped commercial property in Seattle (the Real Property) for the Spokane Property. After extensive negotiations, the Plan accepted the offer, since it was thought that the Real Property would be more readily marketable than the Spokane Property. Consequently, on July 1, 1987, the Plan exchanged the Spokane Property (then valued at $180,000) for the Real Property, plus $425,000 in cash. The total acquisition price of the Real Property, including taxes and fees, was $609,253.34. The Real Property is a 21,600 square foot vacant parcel of land located at the corner of Fairview Avenue North and Mercer Street in Seattle.

4. Since its acquisition of the Real Property, the Plan has actively marketed the Real Property without success. Accordingly, the Plan proposes to sell the Real Property at its current fair market value to Jerry L. Ivy, Sr., the majority stockholder of the Plan Sponsors. The Plan will then be able to invest the proceeds of the transaction at more favorable rates and provide for greater diversification of the Plan's assets.

5. On December 23, 1987, Keith M. Riely, MAI, CRE, of Shorrett & Risly, real estate appraisers and consultants in Seattle, Washington, an independent and qualified appraiser, appraised the fair market value of the Real Property at $650,000. The Plan will not incur any fees, taxes or transfer costs in connection with the sale of the Real Property.

6. In summary, the applicant represents that the proposed transaction will meet the statutory criteria of section 408(a) of the Act because (a) The Real Property will be sold for its fair market value on the date of sale; (b) the proposed sale represents a one-time transaction for cash, which can be readily verified; (c) the proposed sale will not involve the payment by the Plan of any fees, taxes or other transfer costs; (d) the proposed sale will enable the Plan to invest the proceeds in investments producing a more favorable yield and will provide for greater diversification of the Plan's assets; and (e) the Plan Trustees have determined that the proposed transaction would be in the best interests and protective of the Plan and its participants and beneficiaries.

For Further Information Contact: Joseph L. Roberts III of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Vascular Surgery, P.C. Money Purchase Pension Plan (the Pension Plan) and Vascular Surgery, P.C. Profit Sharing Plan (the Profit Sharing Plan; Collectively, the Plans) Located in Omaha, Nebraska

[Application Nos. D-7783 and D-7784]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted, the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed cash sale (the Sale) by the Plans of certain collectibles (the Collectibles) to Dr. and Mrs. John W. Smith (the Smiths), disqualified persons with respect to the Plans; provided that the terms and conditions of the Sale are similar to those which the Plans might obtain in an arm's-length transaction with an unrelated party.

Summary of Facts and Representations

1. The Plans are defined contribution plans in which Dr. Smith is the sole participant.[6] As of December 31, 1987, the Pension Plan held assets of $168,514.96 and the Profit Sharing Plan, $254,272.45. The Smiths are the Plans' trustees. First National Bank of Omaha (FNB) is the designated successor trustee.

2. The Collectibles consist of a 2.10 carat diamond (the Diamond) and eleven U.S. silver dollars (the Coins). On January 10, 1980, the Pension Plan purchased the Diamond for a price of $11,710. On December 1, 1980, the Profit Sharing Plan purchased the Coins for a price of $1,062.76.

3. The applicants request an exemption that will permit the Plans to sell the Collectibles to the Smiths for cash in the amount of their appraised value.

4. The Diamond was appraised on June 6, 1988 by Sam Bitkower of Midwest Diamond, Ltd. of Lincoln, Nebraska. Mr. Bitkower determined that the Diamond had a fair market value of $8,900.

On August 23, 1988, Steve Simon of Simon's Jewelry Co. in Omaha, Nebraska, appraised the Coins. He

[6] Since Dr. Smith is the sole participant in the Plans, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3-3(b). However, there is jurisdiction under Title II pursuant to section 4975 of the Code.

determined that the Coins had a fair market value of $500.

5. FNB as an independent fiduciary has reviewed the proposed Sale by report dated October 6, 1988. It has determined the transaction to be in the best interests of the Plans. It does not desire to serve as trustee of employee benefit plans which maintain collectibles as plan assets. It represents that maintaining the Collectibles as plan assets presents the following hardships: (a) Special provision must be made for the holding and security of and accounting for assets not usually held as part of a plan; (b) Collectibles are not readily marketable in the event cash distributions are required; (c) Obtaining timely and accurate appraisal of collectibles is difficult and removing the Collectibles from the Bank's vault and even taking them off-premises might be necessary; and (d) An appraisal would cause an additional fee to be incurred which the Plans would not otherwise be required to pay.

6. In summary, the applicant represents that the proposed transaction meets the criteria of section 4975(c)(2) of the Code because: (1) The Sale is a one-time transaction for cash; (2) The Sale price will be the fair market value as established by independent appraisals of the Collectibles; (3) An independent fiduciary has determined that the proposed transaction is appropriate for and in the best interest of the Plans; (4) Dr. Smith is the only participant in the Plans to be affected by the transaction; and (5) Dr. Smith desires that the transaction be consummated by the Plans.

Notice to Interested Persons: Because Dr. Smith is the only participant in the Plans affected by the transaction, it has been determined that there is no need to distribute the notice of proposed exemption to interested persons. Therefore, comments and requests for a public hearing are due 30 days after the date of publication in the Federal Register.

For Further Information Contact: Mrs. B.S. Scott of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plans and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 13th day of January 1989.

Robert J. Doyle,

Director of Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 89-1271 Filed 1-18-89; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL COMMUNICATIONS SYSTEM

Federal Telecommunication Standards; Inquiry

AGENCY: National Communications System, Office of Technology and Standards.

ACTION: Notice.

SUMMARY: The Federal Telecommunication Standards Committee's (FTSC) Land Mobile Radio (LMR) Subcommittee is currently developing a new Federal standard (Fed Std 1024, Narrowband Digital Land Mobile Radio) for a future generation of narrowband, digital, encrypted Very High Frequency (VHF) and Ultra High Frequency (UHF) land mobile radios. The purpose of this notice is to invite comments from interested organizations on general or specific technical features, techniques, and overall system approaches that should be incorporated into a draft of this proposed standard.

DATE: Comments should be received by March 20, 1989.

ADDRESS: Send comments to the National Communications System, Attn: Office of Technology and Standards, Washington, DC 20305-2010.

FOR FURTHER INFORMATION CONTACT: Mr. Robert M. Fenichel, National Communications System, Telephone (202) 692-2124.

SUPPLEMENTARY INFORMATION: 1. It is planned that Fed Std 1024 will describe a technique that will permit, at a minimum, 12.5 kHz channel spacing. An objective is to describe a technique that will permit 6.25 kHz channel spacing.

2. It is planned that Fed Std 1024 will employ, by reference, a recently developed, high voice quality 4.800 bit/s voice digitization method known as Codebook Excited Linear Predictive (CELP) coding. Supplementary error correction and signalling overhead needs will likely require the aggregate transmitted data rate to be in the neighborhood of 8,000 bits/s.

3. The FTSC LMR subcommittee is well aware of the work of Electronic Industries Association (EIA)/ Telecommunications Industry Association (TIA) Technical Subcommittee TR-45-3. TR-45.3 is currently developing a standard for digital cellular telephone. Several of the techniques now being proposed in TR-45.3 utilize closely related advanced voice digitization and modulation methods. However, it is likely that the differences in operating environment between cellular telephone and land mobile radio will make somewhat different solutions desirable.

4. It is planned that Fed Std 1024 will describe at least three modes of operation:

a. An unencrypted mode of operation,

b. A mode for protection of unclassified, sensitive information (Type II encryption), and

c. A mode for protection of classified information (Type I encryption).

5. Of particular interest to the FTSC LMR subcommittee would be proposals for systems designs that provide for high quality reception of 4,800 bit/s digitized voice, with channel spacings of 6.25 or

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12.5 kHz, in the fading/multipath environment typical of VHF and UHF land mobile radio operation. Key decisions upon which comments are specifically solicited are: (1) Modulation waveform/spectral shaping and error correction coding, (2) aggregate date rate, (3) allocation and assignment of an overhead signalling field, (4) cryptographic synchronization, and (5) over-the-air rekeying.

Dennis Bodson,

Assistant Manager, NCS Technology and Standards.

[FR Doc. 89-1200 Filed 1-18-89; 8:45 am]

BILLING CODE 7010-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-251]

Carolina Power & Light Co.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 121 to Facility Operating License No. DPR-23 to the Carolina Power & Light Company (the licensee), which revised the Technical Specifications for operations of the H. B. Robinson Steam Electric Plant, Unit No. 2, located in Darlington County, South Carolina. The amendment is effective as of the date of its issuance.

The amendment changes certain reactor parameters to reflect the correct reactor coolant loop resistance temperature detector (RTD) system response time and to support the elimination of the RTD bypass system. The amendment also reduces the range of reactor operation over which the allowable Moderator Temperature Coefficient could be positive.

The application for amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Ch. 1, which are set forth in the license amendments.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on August 10, 1988 (53 FR 30679).

Also in connection with this action, the Commission prepared an Environmental Assessment and Finding of No Significant Impact, which was published in the **Federal Register** on December 19, 1988 (53 FR 51021).

For further details with respect to the action, see (1) the application for amendment dated July 26, 1988, as supplemented August 26, and November 1, 1988, (2) Amendment No. 121 to Facility Operating License No. DPR-23, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555 and at the Hartsville Memorial Library, Nuclear Information Depository, 220 N. Fifth Street, Hartsville, South Carolina 29550.

Dated at Rockville, Maryland this 9th day of January 1989.

For the Nuclear Regulatory Commission.

Edward A. Reeves, Jr.,

Acting Project Director, Project Directorate II-1, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 89-1234 Filed 1-18-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-440]

The Cleveland Electric Illuminating Co., et al.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-58, issued to the Cleveland Eectric Illuminating Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company and Toledo Edison Company (the licensees), for operation of the Perry Nuclear Power Plant Unit No. 1 located in Lake County, Ohio.

The amendment would modify the existing technical specifications regarding primary containment integrity while shutdown to allow Type C containment isolation valve local leak rate tests to be performed with up to two (2) three-quarter (¾) inch vent and drain lines open on those penetrations that would otherwise not be testable when this specification is applicable. TS 3.6.1.1.2 and 4.6.1.1.2 and their related bases are affected.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By February 21, 1989, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the intrest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first pre-hearing conference schedule in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene, which must include a list of the contentions that are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-800-325-6000 (in Missouri 1-800-342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to John N. Hannon: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(V) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its intent to make a no significant hazards consideration finding in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated December 29, 1988, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555, and at the local public document room, Perry Public Library, 3735 Main Street, Perry, Ohio 44081.

Dated at Rockville, Maryland, this 11th day of January.

For the Nuclear Regulatory Commission.

Warren H. Swenson,

Acting Director, Project Directorate III-3, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89-1235 Filed 1-18-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-250 and 50-251]

Florida Power and Light Co.; Issuance of Amendment to Facility Operating Licenses and Final Determination of No Significant Hazards Consideration

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment Nos. 134 and 128 to Facility Operating License Nos. DPR-31 and DPR-41, respectively, to the Florida Power and Light Company (the licensee), which revised the Technical Specifications for operation of the Turkey Point Plant, Unit Nos. 3 and 4, located in Dade County, Florida. The amendment were effective as of the date of issuance.

The amendments revise section 3.1.2 of the Technical Specifications (TS) by incorporating revised pressure and temperature (P/T) limits for the Reactor Coolant System and pressurizer. The P/T limits currently in the TS are applicable up to 10 effective full power years, and will soon expire. The amendments replace these P/T curves with revised curves applicable up to 20 effective full power years. The amendments also revise the applicable "Bases" discussion to be consistent with the new limits, and reformat the TS to the consistent with more recent standards TS.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendments.

Notice of Consideration of Issuance of Amendments and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with this action was published in the **Federal Register** on October 19, 1988 (53 FR 40988). A request for a hearing was filed on November 17, 1988 by Joette Lorion.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards considerations are involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendments involve no signifcant hazards considerations. The basis for this determination is contained in the Safety Evaluation related to this action. Accordingly, as described above, the amendments have been issued and made immediately effective and any hearing will be held after issuance.

The Commission has determined that the amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment was prepared for these amendments.

For further details with respect to the action, see (1) the application for amendments dated September 21, 1988, (2) Amendment Nos. 134 and 128 to Facility Operating License Nos. DPR-31 and DPR-41, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC, and at the Environmental and Urban Affairs, Library, Florida International University, Miami, Florida 33199. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects I/II.

Dated at Rockville, Maryland this 10th day of January 1989.

For the Nuclear Regulatory Commission.

Gordon E. Edison, Sr.,

Project Manager, Project Directorate II-2, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 89-1236 Filed 1-18-89; 8:45 am]

BILLING CODE 7590-01-M

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SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 34-26448; File No. SR-Amex-88-23]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Odd-Lot Pricing Procedures

On October 18, 1988, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Commission, pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder,[1] copies of a proposed rule change to revise its odd-lot pricing and execution procedures under Amex Rule 205.

Notice of the proposal together with its terms of substance was provided by a Commission release (Securities Exchnage Act Release No. 26246, November 3, 1988) and by publication in the **Federal Register** (53 FR 45637). No comments were received in connection with the proposal.

According to the Exchange, the proposed rule change is designed to, among other things, enable Amex specialists to provide more competitive executions of odd-lot market orders.[2] Currently, Amex odd-lot procedures link the execution of odd-lot market orders to trading activity in the round-lot market. Under current Amex rules, odd-lot market orders are transmitted to the trading post through the Exchange's Post Execution Reporting System (PER) or delivered manually to the specialist post. These orders generally are held in accumulation in the system, or by the specialist, until a round-lot execution in the security occurs on the Exchange, at which time the odd-lot order receives the price of the electing round-lot transaction. A price differential of plus of minus ⅛ or ¼ point is charged on these orders.

As a result of the proposed rule change, odd-lot market orders will not be executed at the prevailing Amex quote on the security at the moment the order is routed to the trading post through PER or otherwise received at the post. No differential will be charged on these orders. Further, all pre-opening odd-lot market orders will receive the prevailing price at the opening of trading in a security, without a differential. In those instances in which quotations are unavailable due to a system failure, odd-lot orders, according to the Exchange, will accumulate for a period of twenty minutes (unless the Exchange elects to expedite the process), after which they will be given to the specialist for manual execution based upon the quoted market existing at the trading post.[3]

With regard to odd-lot short orders, the amendment would continue to provide that these orders will be executed at the price of the next transaction in the round-lot market following receipt of the order at the trading post or through the PER system which is higher than the last different round-lot price. Because Amex rules prohibit the execution of a short order on a minus tick, an odd-lot order to sell short must be held by the specialist or held within PER until a sale in the security occurs on the trading Floor at a plus or zero plus tick. A differential may continue to be charged in these transactions.

In addition to these amendments, the proposal deletes Rule 205(B)(1) (a) and (b), which contain existing pricing and execution procedures for odd-lot market orders. These procedures will be replaced by amended pricing and execution guidelines for odd-lot market orders, which, as noted above, permit executions of these orders at the prevailing Amex quote. Further, the Exchange proposes to delete section (g) of Rule 205(B)(1), entitled Market Orders Marked "Or on close". Currently, when market orders are executed on the basis of a sale, the "or on close" instruction noted on the order generally guarantees that the investor will receive an execution of his odd-lot order even where no round-lot transaction occurs in the security by permitting an execution of the odd-lot order on the closing quotation in the security at the end of the trading session. Under the proposed procedures, market orders will not be executed based upon the existing bid/offer in the security when the order is represented in the market. Therefore, the odd-lot order will be executed even in the absence of a transaction in the stock in the round-lot market and, accordingly, there will not longer be a need for the "or on close" instruction.[4]

The procedures governing the execution of buy/sell "at the close" odd-lot orders will also be modified under the proposal. As provided by the proposed amendment, a buy order designated "at the close" will be executed at the price of the closing round-lot tansaction in the security, plus a differential. Odd-lot sell orders designated "at the close" and marked "long" will be executed at the price of the closing round-lot sale, minus a differential, while the execution of an odd-lot "at the close" sell order marked "short" will continue to be prohibited under the rule. The Exchange indicates that this change in procedure is primarily designed to conform odd-lot procedures with procedures recently adopted by the Exchange which permit Amex specialists to accept round-lot market "at the close" orders.

Rule 205 would also be amended to provide that the odd-lot portion of a Part of Round Lot ("PRL") order[5] would be executed at the same price as the round lot portion with no differential charged.[6] Consistent with this change, PRL's for sellers option and cash trade would also be executed at the same price as the round lot portion with no differential charged.

The Exchange maintains that the proposed amendment to Rule 205 is consistent with section 6(b) of the Act and furthers the objectives of sections 6(b)(5) and 11A(a)(1) in that it facilitates the efficient execution of odd-lot transactions, which will result in improved execution of customer orders.

After careful consideration, the Commission believes that Amex's proposal to amend its rules governing odd-lot pricing and execution procedures is consistent with sections 6 and 11 of the Act. In particular, the Commission believes that the revised procedures which provide for the pricing of odd-lot market orders at the prevailing market quote in a security rather than a subsequent transaction should provide investors with more timely executions of these orders. The Commission further believes that these orders, in addition to pre-opening odd-lot market orders, will receive execution prices that more accurately reflect market conditions than would otherwise be the case under existing procedures.

We note, however, that the pricing of odd-lot market orders at the prevailing Amex quote as opposed to the Intermarket Trading System (ITS) best bid or offer raises concern. In the Commission's view, using the Amex quote as a pricing reference point could, at times, result in the execution of customer orders outside the best available price. While it is unclear whether elimination of the differential will compensate for any inferior pricing of odd-lot market orders as a result of using the Amex quote, we recognize that the reduced transaction costs may result in improved execution of customer orders. Accordingly, the Commission has determined not to delay approval of the amendment. Instead, the Commission has decided to approve the changes on a one-year pilot basis. During the term of the pilot, the Commission has requested that Amex analyze the difference in executions between using the ITS best bid or offer and the Amex quote without the differential. The Commission is also requesting the Amex to study the feasibility of implementing a pricing system for odd-lot orders using the ITS best bid or offer and no differential.

In view of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6 and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above mentioned proposed rule change be, and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: January 10, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-1224 Filed 1-18-89; 8:45 am]

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[1] 15 U.S.C. 78s(b)(1) and 17 CFR 240.19b-4.

[2] *See* Letter from Simon Krauthamer, Assistant Vice-President, Rulings and Inquiries, Amex, to Ervin Jones, Jr., Esq., Attorney, Division of Market Regulation, dated November 18, 1988 ("Amex November 18, 1988 letter"). An odd-lot market order is an order of less than a unit of trading to buy, sell, or sell short, which carries no further qualifying notations.

[3] *See* Amex November 18, 1988 letter at 2.

[4] *See* Amex November 18, 1988 letter.

[5] An order consisting of a round lot and odd lot portion (*e.g.*, 175 shares).

[6] *See* proposed Commentary .03, Rule 205. In addition, we note that the Exchange is modifying its internal procedures for the entry and execution of PRL orders through the PER system to provide for single price executions.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, GSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. GSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) The purpose of the proposed rule change is to allow GSCC to require applicants for membership in and Members of GSCC to submit financial information to GSCC. The proposed rule requires each applicant and Member to file financial statements and the reports filed with their appropriate regulatory body with GSCC. This information will enable GSCC to assess the applicants and Members' financial responsibility.

(b) Since the rule change will enable GSCC to protect itself against risk it will enable GSCC to facilitate the prompt and accurate clearance and settlement of securities transactions and therefore, is consistent with the requirements of the Securities Exchange Act of 1934 (the "Act"), and rules and regulations thereunder applicable to a clearing agency.

B. Self-Regulatory Organization's Statement on Burden on Competition

GSCC does not believe that the proposed rule will have an impact or impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments on the proposed rule change have not been solicited or received. GSCC will notify Members of the rule change and solicit comments by an Important Notice. GSCC will notify the Securities and Exchange Commission of any written comments received by GSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and published its reason for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be approved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to SR-GSCC-88-03 and should be submitted by February 9, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: January 12, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-1225 Filed 1-18-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-26452; File No. SR-GSCC-88-3]

Self-Regulatory Organizations; Proposed Rule Change by Government Securities Clearing Corp.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on December 22, 1988, GSCC filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by GSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule changes would modify GSCC Rule 2 and procedures thereunder.

[Release No. 34-26451; File No. SR-MBS-88-18]

Self-Regulatory Organizations; MBS Clearing Corp.; Order Approving Proposed Rule Change

On November 22, 1988, MBS Clearing Corporation ("MBSCC") filed with the Commission a proposed rule change (SR-MBS-88-18) under section 19(b) of the Securities Exchange Act of 1934 ("Act"). The proposal would permit MBSCC to assign to Participants Trust

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Company ("PTC")[1] all of MBSCC's rights and obligations under participant agreements with MBSCC Depository Division participants eligible for participation in PTC. The Commission published notice of the proposal in the Federal Register on December 9, 1988.[2] No comments were received. For the reasons discussed below, the Commission is approving the proposed rule change.

The proposed rule change would clarify MBSCC's authority to assign its rights and obligations to PTC in connection with the proposed sale of MBSCC's Depository Division assets to PTC. On October 3, 1988, PTC filed with the Commission an application for registration as a clearing agency under section 17A of the Act in order to provide custodial and book-entry delivery services for certificated mortgage-backed securities.[3] Upon completion of the transaction, PTC will become the successor to MBSCC's Depository Division.

MBSCC believes that the proposal is consistent with the purposes and requirements of section 17A of the Act, because it will facilitate the proposed sale of the MBSCC Depository Division to PTC and provide a mechanism for the orderly transition from MBSCC to PTC. Under the proposal, at or following completion of the PTC–MBSCC transaction, MBSCC will assign to PTC the participant agreements of all Depository Division participants eligible for participation in PTC, and PTC will assume all obligations of the Depository Division thereunder. Upon such assignment and assumption, the participant will become a participant in PTC and will be bound by the rules and procedures of PTC. MBSCC notes that the Depository Division participant agreement contains no prohibitions against assignment and is substantially identical to PTC's participant agreement.[4] Furthermore, PTC's proposed rules are substantially identical to current MBSCC Depository Division rules.[5]

The Commission believes that the proposal is consistent with section 17A of the Act. The proposal clarifies MBSCC's authority to transfer to PTC, in an expeditious manner, its rights and obligations to a multitude of parties under MBSCC's contracts, assuming the proposed transaction is completed.[6] The Commission notes, however, that several steps must be taken before the transaction is completed, including approval of PTC's application for registration as a clearing agency, membership in the Federal Reserve System, and organization under New York State banking laws. This Order does not address those matters.

It is therefore ordered, pursuant to section 19(b) of the Act, that the proposed rule change (SR–MBS–88–18) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: January 12, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–1251 Filed 1–18–89; 8:45 am]

BILLING CODE 8010–01–M

[1] PTC is being organized as a limited purpose trust company and is applying for membership in the Federal Reserve System.

[2] *See* Securities Exchange Act Release No. 26337 (December 2, 1988) 53 FR 48807.

[3] *See* Securities Exchange Act Release No. 26288 (November 8, 1988) 53 FR 46008, in which the Commission published notice of PTC's application for registration as a clearing agency.

[4] PTC's participant agreement is set forth in Exhibit P of PTC's clearing agency registration application. *See* File No. 600–25.

[5] PTC's proposed rules are set forth in Exhibit E–3 of PTC's clearing agency registration application. *See* File No. 600–25.

[6] Before the MBSCC/PTC transaction can be completed, MBSCC Depository Division participants eligible for participation in PTC must become PTC participants. That result could be achieved in two ways. First, MBSCC could terminate each Depository Division participant agreement and each participant could execute a new agreement with PTC. Alternatively, MBSCC could, as it proposes to do in this filing, assign to PTC the participant agreements of all Depository Division participants eligible for participation in PTC. The first alternative could involve substantial cost and delay, potentially hindering the efficient sale of the Depository Division to PTC. The Commission believes that MBSCC's ability to assign Depository Division participant agreements to PTC should eliminate costs and delays posed by the first alternative, thereby facilitating the efficient transfer of the Depository Division to PTC.

[Release No. 34–26483; File No. SR–NSCC–88–13]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by National Securities Clearing Corp.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on December 16, 1988, NSCC filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would amend NSCC's Rules and Procedures as noted in the proposed rule change and summarized below.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) The purpose of the proposed rule change is to advise that NSCC, pursuant to Rule 3, Section 2, will not perform commission bill processing for the Pacific Stock Exchange (PSE).

(b) Since the service will permit the centralization of payment and collection of commission obligations among Members within the standardized National Clearance and Settlement System, it is consistent with the requirements of the Securities Exchange Act of 1934, as amended (the "Act") and the rules and regulations thereunder applicable to a self-regulatory organization.

B. Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule will have an impact or impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Participants were advised of the Pacific Stock Exchange Commission Bill Fee Collection Service by an Important Notice dated September 20, 1988. No written comments have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective, pursuant to section 19(b)(3)(A) of the Securities Exchange Act of 1934.

At anytime within sixty days of the filing of such a proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in the furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change that are filed with Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with porovisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to File No. SR–NSCC–88–13 described above and should be submitted by February 9, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: January 12, 1989.

[FR Doc. 89–1228 Filed 1–18–89; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–26487; File No. 600–25]

Self-Regulatory Organizations; Participants Trust Company; Amendment to Application for Registration as a Clearing Agency

On October 3, 1988, the Participants Trust Company ("PTC") filed with the Securities and Exchange Commission ("Commission") an application for registration as a clearing agency under section 17A of the Securities Exchange Act of 1934, 15 U.S.C. 78(a) ("Act"). Notice of the application appeared in the Federal Register on November 15, 1988.[1] On December 23, 1988, PTC filed an amendment to its application which is briefly described below.

The amendment contains four sets of procedures which clarify corresponding PTC rules. Those sets of procedures are: (1) Collateral loan facility procedures; (2) net debit monitoring level procedures; (3) default settlement financing procedures; and (4) transfer procedures of a security interest to PTC in securities held in PTC participant Proprietary and Agency Accounts.

You are invited to submit written data, views and arguments concerning the foregoing application within fourteen days of the date of publication of this notice in the Federal Register. Such written data, views and arguments will be considered by the Commission in granting registration or instituting proceedings to determine whether registration should be denied in accordance with section 19(a)(1) of the Act. Persons desiring to make written submissions should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Reference should be made to File Number 600–25. Copies of the application and of all written comments will be available for inspection at the Securities and Exchange Commission's Public Reference Room, 450 Fifth Street NW., Washington, DC 20549.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: January 12, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–1223 Filed 1–18–89; 8:45 am]

BILLING CODE 8010–01–M

[1] *See* Securities Exchange Act Release No. 26285 (November 8, 1988), 53 FR 46009.

[Release No. 35–24804]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

January 12, 1989.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by February 6, 1989 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the manner. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Kentucky Power Company (70–7619)

Kentucky Power Company ("KPCo"), 1701 Central Avenue, P.O. Box 1428, Ashland, Kentucky 41101, a public utility subsidiary of American Electric Power Company, Inc., a registered holding company, has filed a declaration pursuant to section 12(d) of the Act and Rule 44 thereunder.

KPCo proposes to sell certain assets to GTE South Incorporated ("GTE"). The assets to be sold consist of electric power distribution poles which are jointly used by KPCo and GTE pursuant to an Agreement Covering the Joint Use of Poles dated January 1, 1988 ("Agreement"). Pursuant to the Agreement, pole ownership will be adjusted by KPCo and GTE initially and every five years thereafter to achieve and maintain a ratio of poles used jointly at 60% owned by KPCo and 40% owned by GTE. It is proposed that KPCo will transfer to GTE approximately 15,477 poles at KPCo's embedded cost of $3,204,910.31. In connection with each proposed sale by KPCo, the jointly used poles to be sold will be released from the lien of KPCo's Mortgage and Deed of Trust.

Allegheny Generating Company (70–7615)

Allegheny Generating Company ("Generating"), 320 Park Avenue, New York, New York 10022, an indirect subsidiary of Allegheny Power System, Inc., a registered holding company, has filed an application under section 6(b) of the Act and Rule 50(a)(5).

Generating has a 40% ownership interest in the 2,100 megawatt Bath County Pumped Storage Project

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("Project"), located in Bath County, Virginia. In order to provide a portion of the financing for its ownership interest in the Project, Generating proposes to issue to dealers, from time-to-time through March 31, 1991, pursuant to an exception from the competitive bidding requirements of Rule 50 under subsection (a)(5), up to $200 million at any one time outstanding of commercial paper ("Commercial Paper"), which shall not mature after September 30, 1991.

The Commercial Paper will be backed by a funding commitment through a $400 million Revolving Credit Agreement with a group of nine banks, as authorized by order dated July 18, 1985 (HCAR No. 23768). Total short-term debt outstanding, including the Revolving Credit Agreement and the Commercial Paper issued, will not at any time exceed $200 million.

Allegheny Power Service Corporation (70–7588)

Allegheny Power Service Corporation ("APSC"), 320 Park Avenue, New York, New York 10022, a subsidiary of Allegheny Power System Inc. ("APS"), a registered holding company, has filed a declaration subject to section 12(b) of the Act and Rule 45 thereunder.

APSC has requested that the Commission authorize interest-bearing borrowings by APSC from APS, at a rate equal to the average interest rate on short-term borrowings by APS during each calendar quarter, as authorized by prior Commission order (HCAR No. 24467, September 29, 1987), or, for any quarter during which APS had no short-term borrowings outstanding, at the prime rate in effect from time-to-time, in amounts which may fluctuate as APSC's cash needs dictate, but in any event not to exceed $7.5 million, such authorization to remain in effect through December 31, 1990.

General Public Utilities Corporation, et al. (70–7583)

General Public Utilities Corporation ("GPU"), a registered holding company, 100 Interpace Parkway, Parsippany, New Jersey 07054, and its subsidiaries, Jersey Central Power & Light Company ("JCP&L"), Madison Avenue at Punch Bowl Road, Morristown, New Jersey 07960, Metropolitan Edison Company ("Met-Ed"), 2800 Pottsville Pike, Reading, Pennsylvania 19605 and Pennsylvania Electric Company ("Penelec"), 1001 Broad Street, Johnstown, Pennsylvania 15907, have filed a declaration pursuant to sections 6(a) and 7 of the Act and Rule 50(a)(5) thereunder.

The GPU Companies request authority, from time to time through March 31, 1992, to: (1) issue, sell and renew to certain banks ("Banks") promissory notes ("Notes") maturing not more than six months from the date of issue, under the terms of a new revolving credit agreement ("Agreement"), with Citibank, N.A., as agent ("Agent"), Chemical Bank, as co-agent and reference agent ("Reference Agent"), and in amounts up to $150 million at any one time outstanding. Under the Agreement, the GPU Companies may also invite competitive bids from the Banks for loans with requested maturities of up to six months in such principal amounts as a GPU Company may request, subject to the $150 million limit of the Agreement; (2) to issue, sell and renew their unsecured promissory notes pursuant to loan participation arrangements and informal lines of credit ("Lines of Credit") in amounts up to the limitations on short-term indebtedness contained in their respective charters but, in the case of GPU, $200 million; (3) to incur other short-term unsecured debt from time to time in amounts up to the limit permitted by their respective charters but, in the case of GPU, $200 million; and (4) in the case of JCP&L, Met-Ed and Penelec to issue and sell their respective unsecured promissory notes as commercial paper ("Commercial Paper") in amounts up to their respective charter limits. In no event, however, would the total amount of such unsecured debt of any GPU Company outstanding at any one time exceed the limitations on such indebtedness imposed by such company's charter but, in the case of GPU, $200 million.

All borrowings under the Agreement and the Lines of Credit will bear interest at rate indexed to one of three optional reference rates, and Commercial Paper will be sold at the prevailing discount rate per annum for commercial paper of comparable quality and of the particular maturity, plus a dealer's discount of not more than ⅛ of 1% per annum. The GPU Companies propose to pay to the Banks an annual commitment fee of ¼ of 1% of the unused commitment and an agency fee of $25,000 to each of the Agent and the Reference Agent, upon signing of the Agreement. The GPU Companies would pay the Banks a competitive bid fee of ⅛ of 1% per annum on competitive bid advances outstanding from time to time.

The GPU Companies have requested that the issuance and sale of Commercial Paper and unsecured promissory notes to lenders other than commercial banks be excepted from the competitive bidding requirements of Rule 50, pursuant to Rule 50(a)(5).

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–1227 Filed 1–18–89; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

Bureau of Consular Affairs

[Public Notice 1091]

Certain Foreign Passports Validity; Malaysia

Malaysia is added to the list of countries which have entered into agreements with the Government of the United States whereby their passports are recognized as valid for the return of the bearer to the country of the foreign issuing authority for a period of at least six months beyond the expiration date specified in the passport. This notice amends Public Notice 954 of February 29, 1988 (51 FR 6853).

Date: January 9, 1989.

Joan M. Clark,

Assistant Secretary for Consular Affairs.

[FR Doc. 89–1289 Filed 1–18–89; 8:45 am]

BILLING CODE 4710–06–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Privacy Act of 1974; System of Records

The Department of Transportation (DOT) herewith publishes a proposal to establish a new system of records.

Any person or agency may submit written comments on the proposed system to: Denise G. Schossler, Department of Transportation, Office of the Secretary, Office of Personnel (M–10), 400 Seventh Street, SW., Washington, DC 20590. Comments must be received within 30 days to be considered.

If no comments are received, the proposed system will become effective 30 days from the date of issuance. If comments are received, the comments will be considered and, where adopted, the document will be republished with the changes.

Issued in Washington, DC, January 11, 1989.

Jon H. Seymour,

Assistant Secretary for Administration.

Narrative Statement for the Department of Transportation Office of Assistant Secretary for Administration

Proposed System of Records

The Department of Transportation (DOT) proposes to establish a system of records entitled Workers' Compensation Information System (WCIS), DOT/ALL 6, to facilitate the effective and efficient administration of the Workers' Injury Compensation Program within DOT, decrease paperwork and increase information availability throughout the DOT human resource management environment. The following narrative statement, which is written in compliance with the terms of the Office of Management and Budget (OMB), Circular A–130, Appendix 1, entitled "Federal Agency Responsibilities for Maintaining Records About Individuals" 50 FR 52738 (1985), describes the proposed system.

1. *Purpose.* The purpose of this proposed system of records is to establish an automated data/information base which will be used to improve claims management of the Workers' Compensation Program (OWCP) within DOT, develop policy guidance, and promote training programs. This information base will also allow program cost to be made known to the lowest appropriate cost centers in order to encourage increased improvement in reducing occupational health and safety program costs, accident rates and increased emphasis on safe work practices and conditions. In addition, the data will be used to facilitate the effective and efficient administration of the agency's airman/air traffic controller health data program system. This system possesses full security and privacy protection systems and interfaces with and collects occupation-related data, including personnel data and data on disability retirement actions, workers' compensation data, organizational and facility identifiers, and medical evaluations on air traffic controllers. The cost data from WCIS will further be used by managers to maintain a true accounting of the costs of job-related mishaps within their organizations. The system permits data gathered at the local level when merged with Department of Labor chargeback information and incorporated with DOT personnel and payroll systems to be aggregated into a data base which provides a National and regional view of information. The system will provide for the use of standard reports and the availability of ad hoc query capabilities which will enhance monitoring capabilities and the productivity of the human resource management work forces. The Department of Transportation believes the proposed system of records is the best means of performing these functions and achieving program objectives as directed by the Office of Management and Budget.

2. *Legal Authority.* The legal authority under which this system of records will be maintained is found in 5 U.S.C. Chapter 81, 20 CFR Chapter I and Department of Labor, Office of Personnel Management, and DOT implementing regulations.

3. *Effect on Individual Rights.* Information contained in this system or resulting from its integration with any other system will be released only to employees of the agency directly involved in these systems and to employees of contractors involved in resultant projects and subject by law to the same security and confidentiality restrictions as the agency. Information provided by the OWCP, DOL, for integration in the system will not be disseminated outside the agency and once merged with the DOT data base will be either destroyed or returned to DOL.

4. *Relationship to Other Government Agencies.* Information on individual's claims for workers' compensation may be supplied by the Department of Labor, Office of Workers' Compensation Programs; the Occupational Safety and Health Administration; or the Office of Personnel Management as appropriate, and upon their approval as detailed by written agreement for integration into this system. This system's data may be shared with these agencies upon their written request and approval under guidelines established by the Privacy Act and the agency's governing regulations as necessary for achievement of the agency's assigned mission.

5. *Security.* Magnetic tape and disc files will be kept with limited accessibility by agency personnel. Other files are retained in a secured work area which is locked during non-duty hours.

6. *Compatibility of Routine Uses With the Purposes for Which the Records were Collected.* Each of the routine uses of the system of records is related to and required for proper management and integration of the injury compensation program with the overall DOT human resource management responsibilities. Total resource management requires that these records be maintained in order to assure sound and accurate administrative and fiscal policy.

7. *OMB Control Numbers.* None.

DOT/ALL 6

SYSTEM NAME:

Workers' Compensation Information System, DOT.

SYSTEM LOCATION:

These records will be maintained at the human resource management offices in DOT Washington, DC., regional and center Headquarters, the Consolidated Uniform Payroll System Office at the Mike Monroney Aeronautical Center in Oklahoma City, Oklahoma, and at the Office of Personnel, Office of the Secretary, in Washington, DC.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All DOT employees who file claims for Federal Employees' Compensation (FEC) or report work-related injuries or occupational health-related illnesses.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records regarding Office of Workers' Compensation (OWCP) claims filed by DOT employees. The system consists of information which is derived from DOT personnel and payroll records and OWCP claims records maintained on DOT employees.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. Chapter 81, 20 CFR Chapter I and 5 U.S.C. 552a, Department of Labor and DOT implementing regulations.

PURPOSES:

These records are maintained in accordance with law and regulation in order to ensure proper and efficient management of the OWCP within DOT. These records are required to assure compliance with the law and regulations and for maintaining program cost analysis and comparison information. These records will provide occupation-related data including personnel data for the purpose of determining patterns of injury or illness and determining case disposition information, and will be used as a source of information for purposes of controverting claims when appropriate, monitoring recovery of injured employees and offering of light duty assignments. Records in this system may also be integrated with other DOT program-related personnel information as required for the sound policy or fiscal management of the program and the agency's mission, or in response to legislative and/or administrative initiatives or

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requirements. These records may be used as a source of information for the development of policy guidance and/or training programs, for program review and evaluation purposes, and for the provision of management information on an as required or ad hoc basis.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records are to be held in confidence and no information shall be disclosed except:

a. To the Department of Labor, OWCP, OSHA, and/or OPM for review of appropriate case and/or investigative actions in collaboration with them.

b. Also, see the Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICS FOR STORING RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders, magnetic tape and disk. Storage is at the geographic location of the servicing human resource management offices, the Headquarters human resource management policy offices, and the Consolidated Uniform Payroll Office in Oklahoma City, Oklahoma.

RETRIEVABILITY:

Records are maintained by employee name, social security and FEC case numbers, and regional/location identifiers.

SAFEGUARD:

Access to and use of these records are limited to those persons whose official duties require such access.

RETENTION AND DISPOSAL:

These records are maintained and disposed of in accordance FPMR 101–11.4, General Records Schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Manager, Department of Transportation Workers' Compensation Program, Office of the Secretary, Office of Personnel, Personnel Policy Division, 400 Seventh Street SW., Washington, DC 20590

Office of Labor and Employee Relations, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591

Chief, Civilian Personnel Division, United States Coast Guard, 200 Second Street SW., Washington, DC 20593–001

Director, Office of Personnel and Training, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590

Director, Office of Personnel, Federal Railroad Administration, 400 Seventh Street SW., Washington, DC 20590

Director, Office of Personnel, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590

Director, Office of Personnel, Urban Mass Transportation Administration, 400 Seventh Street SW., Washington, DC 20590

Director, Office of Personnel, Maritime Administration, 400 Seventh Street SW., Washington, DC 20590

Chief, Personnel Division, Research and Special Programs Administration, 400 Seventh Street SW., Washington, DC 20590

Chief, Personnel Operations Division, Office of the Secretary, 400 Seventh Street SW., Washington, DC 20590

Director, Office of Personnel and Training, Office of Inspector General, 400 Seventh Street SW., Washington, DC 20590

Director, Office of Personnel and Safety, Saint Lawrence Seaway Development Corporation, 180 Andrews Street, Massena, NY 13662–1763

Department of Transportation, Regional Human Resource Management Officers

NOTIFICATION PROCEDURE:

Individuals wishing to know if their records appear in this system of records may inquire in person or writing to the system manager.

RECORD ACCESS PROCEDURES:

Individuals who desire information about themselves contained in this system of records should contact or address their inquiries to the system manager.

CONTESTING RECORD PROCEDURES:

Individuals who desire to contest records about themselves contained in this system should contact or address their inquiries to the system manager.

RECORD SOURCE CATEGORIES:

Information contained in this system is received from DOT records or OWCP records received from and maintained on DOT and its employers.

[FR Doc. 89–1178 Filed 1–18–89; 8:45 am]

BILLING CODE 4910-62-M

Federal Highway Administration

Environmental Impact Statement; Del Norte County, CA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Del Norte County, California.

FOR FURTHER INFORMATION CONTACT: David L. Eyres, District Engineer, Federal Highway Administration, P.O. Box 1915, Sacramento, California 95812–1915. Telephone: (916) 551–1314.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the California Department of Transportation (Caltrans), will prepare an environmental impact statement (EIA) on a proposal to improve Highway 101 in Del Norte County, California, between Post Miles 20.3 and 22.3 from 5.3 miles to 3.5 miles south of Crescent City. The project is located within Del Norte Coast Redwoods State Park and Redwood National Park. The improvement is needed to upgrade and widen the 30 to 40 MPH alignment and because of the severe accident rate at this location.

Alternatives under consideration include: (1) Taking no action; (2) variations of reconstructing the existing 3-lane roadway; (3) easterly and westerly variations of a 4-lane expressway on new alignment (72-foot section with 12-foot lanes, a 4-foot median and 10-foot shoulders); and (4) an alignment bypassing both parks to the east.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. An agency scoping meeting will be held on February 2, 1989, at 10:00 a.m. in Room 59 of the Caltrans District Office, 1656 Union Street, Eureka, California. A public scoping meeting will be held on February 2, 1989, at 7:30 p.m. in the Del Norte County Board of Supervisors Chambers, 450 H Street, Crescent City, California. In addition, a public hearing will be held later as part of the project review process. The draft EIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above by March 20, 1989.

Views of agencies which may have knowledge about historic resources potentially affected by the proposal or interested in the effects of the project on historic properties are hereby solicited.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: January 11, 1989.

David L. Eyres,

District Engineer, Sacramento, California.

[FR Doc. 89–1185 Filed 1–18–89; 8:45 am]

BILLING CODE 4910-22-M

Environmental Impact Statement; Prince William County, VA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Cancellation of notice of intent.

SUMMARY: This notice rescinds the previous Notice of Intent issued on September 9, 1988 to prepare an environmental impact statement for a proposed highway project on Route 234 in Prince William County, Virginia. The proposal was to construct a dual-lane facility from the intersection of Route 1 to the intersection on Route 649 at Limstrong, for a total length of about 13 miles.

FOR FURTHER INFORMATION CONTACT: George E. Kirk, Jr., District Engineer, Federal Highway Administration, P.O. Box 10045, Richmond, Virginia 23240–0045, Telephone (804) 771–2380.

Issued on: January 9, 1989.

George E. Kirk, Jr.,

District Engineer, Richmond, Virginia.

[FR Doc. 89–1186 Filed 1–18–89; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

Comptroller of the Currency

Privacy Act of 1974; Amendment to System of Records

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Notice of Amendment to System of Records and Additional Routine Uses.

SUMMARY: Pursuant to the requirements of the Privacy Act of 1974, the Department of Treasury, Office of the Comptroller of the Currency is amending the primary notice for a system of records previously published under the system name of "Fiscal Personnel System—Treasury/Comptroller," Treasury/Comptroller 310, at 53 FR 6280 (March 1, 1988). This amendment reflects a change in the System's name to "Financial System—Treasury/Comptroller." The System contains records and information on payroll and travel disbursements and other financial data. The amendment also adds three new users of the System and makes other editorial changes. Finally, the amendment adds new routine uses and disclosure policies to facilitate collection of debts under the Debt Collection Act of 1982.

DATE: Comments must be received no later than February 21, 1989. If no comments are received, the new revised system will become effective February 21, 1989.

ADDRESS: Comments may be sent to: Office of Comptroller of the Currency, Communications Division, Washington, DC 20219, Attn: Lynette Carter.

FOR FURTHER INFORMATION CONTACT: Beth Kirby, Attorney, Legal Advisory Services Division, (202) 447–1880, Office of Comptroller of the Currency, Washington, DC 20219.

Dated: January 11, 1989.

Jill E. Kent,

Assistant Secretary of the Treasury (Management).

Treasury/Comptroller 310

SYSTEM NAME:

Financial System—Treasury/Comptroller.

SYSTEM LOCATION:

Office of Comptroller of the Currency, Systems and Financial Management Division, 490 L'Enfant Plaza East, SW., Washington, DC 20219. Components of this System are geographically dispersed throughout six (6) district offices as well as Washington, DC (See addresses listed in Appendix of OCC District Offices.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Present and past employees of the Office of the Comptroller of the Currency.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains payroll and disbursement type records including: Travel records, debt information, and information about employees. The types of records found within this system are: Award, allowance, salary, fund advancement justification and disbursement records; personnel information; leave information; payroll deductions for taxes, life and health insurance, financial institutions, retirement funds including the Federal Employees Retirement System and the Civil Service Retirement System, Thrift Savings Plan, and charitable groups.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

General Authority—12 U.S.C. 1, 5 U.S.C. 301. Individuals wishing to obtain more detailed information should write to the Director, Communications, Office of the Comptroller of the Currency, 490 L'Enfant Plaza East, SW., Washington, DC 20219.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND PURPOSE OF SUCH USES:

These records and information in these records may be used:

(1) To furnish the Internal Revenue Service and other jurisdictions which are authorized to tax the employee's compensation, with wage and tax information in accordance with a withholding agreement with the Department of the Treasury pursuant to 5 U.S.C. 5516, 5517, and 5520;

(2) To furnish the Office of Personnel Management (OPM) with data to update the Central Personnel Data File and other statistical reports as required for the purpose of complying with regulations issued by OPM;

(3) To furnish another federal agency information to effect interagency salary offset; to furnish another federal agency information to effect interagency administrative offset, except that addresses obtained from the Internal Revenue Service shall not be disclosed to other governmental agencies; and to furnish a debt collection agency information for debt collection services. Current mailing addresses acquired from the Internal Revenue Service are routinely released to debt collection agencies for collection services;

(4) To the General Services Administration (GSA) for the purpose of complying with regulations issued by GSA;

(5) To the General Accounting Office for the purpose of conducting audits;

(6) To entities designated to receive payroll deductions;

(7) To the Department of Labor to determine eligibility for unemployment benefits;

(8) To disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing Counsel or witnesses in the course of civil discovery, litigation or settlement negotiations in response to a subpoena, or in connection with criminal law proceedings.

BEST COPY AVAILABLE

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DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12) and section 3 of the Debt Collection Act of 1982: Debt information concerning a government claim against an individual is also furnished, in accordance with 5 U.S.C. 552a(b)(12) and section 3 of the Debt Collection Act of 1982 (Pub. L. 97–365), to consumer reporting agencies to encourage repayment of an overdue debt.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders, magnetic media including computer discs and tapes, microfiche, and hard copy printout. Disbursement records are stored at the Federal Records Center.

RETRIEVABILITY:

Records are retrieved primarily by name (filed alphabetically) or an assigned identification number (Social Security Number or an assigned identification number). Secondary identifiers are used to assure accuracy of data accessed, including date of birth, Social Security Number or Employee Identification Number.

SAFEGUARDS:

File folders are stored in lockable file cabinets or secure rooms; access is limited to officials who have a need for the information; employees are trained to make only authorized disclosures; Computer records are accessed only by authorized personnel.

RETENTION AND DISPOSAL:

Payroll and disbursement records are retained by the Office in accordance with the Comptroller of the Currency's Comprehensive Records Disposition Schedule. Individuals wishing further information should write to the Director, Communications, 490 L'Enfant Plaza East, SW., Washington, DC 20219.

SYSTEM MANAGER AND ADDRESS:

Deputy Comptroller for Systems and Financial Management, 490 L'Enfant Plaza East, SW., Washington, DC 20219.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system, gain access to records maintained in the system or contest any record contained in the system must submit a request containing the following elements: (1) Identify the record system; (2) Identify the category and types of records sought; (3) Indicate the location of the Comptroller of the Currency Office where last employed; (4) Provide at least two items of secondary identification (date of birth), Employee Identification Number, dates of employment or similar information.

RECORD ACCESS PROCEDURE:

Submit request to Director, Communications, Office of the Comptroller of the Currency, 490 L'Enfant Plaza East, SW., Washington, DC 20219.

CONTESTING RECORD PROCEDURE:

Submit request to Director, Communications, Office of the Comptroller of the Currency, 490 L'Enfant Plaza East, SW., Washington, DC 20219.

RECORD SOURCE CATEGORIES:

The information contained in these records is provided by or verified by the subject of the record and OCC employees.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 89-1149 Filed 1-18-89; 8:45 am]

BILLING CODE 4810-33-M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 12
Thursday, January 19, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, January 24, 1989, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.
Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, January 26, 1989, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC. (Ninth Floor)

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of Dates for Future Meetings.
Correction and Approval of Minutes.
Certification for Payment of 1988 Primary Matching Funds.
Proposed Questionnaire to State Parties on Allocation Practices.
Administrative Matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, Telephone: 202–376–3155.

Marjorie W. Emmons,
Secretary of the Commission.

[FR Doc. 89-1355 Filed 1-17-89; 2:37 pm]

BILLING CODE 6715-01-M

FEDERAL MARITIME COMMISSION

TIME AND DATE: 10:00 a.m.—January 25, 1989.

PLACE: Hearing Room One—1100 L Street, NW., Washington, DC 20573–0001.

STATUS: Part of the meeting will be open to the public.

The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Portion open to the Public:

1. Tariff Publication of Free Time and Detention Charges Applicable to Carrier Equipment Interchanged with Shippers or Their Agents—Proposed Implementation of Final Rule in Docket No. 85–19.

Portion Closed to the Public:

1. P6–88—Petition for Investigation—Guam Rate Agreement—Consideration of petition and replies.
2. Docket No. 88–25—*Agreement No. 217–011177: Space Charter Agreement Between Ocean Linie GmbH and Euro-Gulf International, Inc.*—Petition for Declaratory Order—Consideration of petition and replies.

CONTACT PERSON FOR MORE INFORMATION: Joseph C. Polking, Secretary, (202) 523–5725.

Joseph C. Polking,
Secretary.

[FR Doc. 89-1382 Filed 1-17-89; 3:34 pm]

BILLING CODE 6730-01-M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

January 11, 1989.

TIME AND DATE: 10:00 a.m., Thursday, January 12, 1989.

PLACE: Room 600, 1730 K Street NW., Washington, DC.

STATUS: Closed (Pursuant to 5 U.S.C. 552b(c)(10)).

MATTERS TO BE CONSIDERED: In addition to the previously announced item, the following item will be heard in closed session:

2. *Secretary of Labor, MSHA v. Lincoln Sand & Gravel,* Docket No. LAKE 88–67–M. (Issues include considerations of a petition for discretionary review.)

It was determined by a unanimous vote of Commissioners that this item be included on the agenda and that it be discussed in a closed session.

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen, (202) 653–5629/(202) 566–2673 for TDD Relay.

Jean H. Ellen,
Agenda Clerk.

[FR Doc. 89-1272 Filed 1-17-89; 8:42 am]

BILLING CODE 6735-01-M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

January 12, 1989.

TIME AND DATE: 10:00 a.m., Thursday, January 19, 1989.

PLACE: Room 600, 1730 K Street NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Robert Simpson v. Kenta Energy & Roy Dan Jackson,* Docket No. KENT 83–155–M. (Issues include those on remand from the Court of Appeals).

Any person intending to attend this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(d).

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen, (202) 653–5629/(202) 566–2673 for TDD Relay.

Jean H. Ellen,
Agenda Clerk.

[FR Doc. 89-1273 Filed 1-17-89; 8:42 am]

BILLING CODE 6735-01-M

UNITED STATES INSTITUTE OF PEACE

TIME AND DATE: 4:00–7:00 p.m. Monday, January 23, 1989.

PLACE: First Floor Conference Room, 1550–M Street NW., Washington, DC.

STATUS: Open.

PURPOSE AND AGENDA: The fifth of a series of Public Workshops scheduled by the United States Institute of Peace, "Is It Feasible to Negotiate Chemical and Biological Weapons Control?," will focus on the entire range of technical, political, and moral issues related to the production, use, and control of chemical and biological weapons. The panel members will be drawn from the scholarly and policymaking worlds.

CONTACT: Ms. Aileen C. Hefferren, Telephone 202–457–1700.

Dated: January 10, 1989.

Charles Duryea Smith,
General Counsel.

[FR Doc. 89-1274 Filed 1-17-89; 8:46 am]

BILLING CODE 3155-01-M

VOL 54 ISS 12 JA 19 1989 UMI

Corrections

Federal Register
Vol. 54, No. 12
Thursday, January 19, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF DEFENSE

48 CFR Parts 222 and 231

[Defense Acquisition Circular (DAC) 88-3]

Department of Defense, Federal Acquisition Regulation Supplement; Regulatory and Miscellaneous Amendments

Correction

In rule document 88-29355 beginning on page 51557 in the issue of Thursday, December 22, 1988, make the following corrections:

222.7200 [Corrected]

1. On page 51560, in the third column, in amendatory instruction 5, the 10th line should read "L. 100-202,"; and by removing between the word".

231.205.38 [Corrected]

2. On page 51561, in the second column, in the second line, in section 231.205.38(c)(i), "of" should read "or".

BILLING CODE 1505-01-D

DEPARTMENT OF DEFENSE

48 CFR Appendix T

[Defense Acquisition Circular (DAC) 88-2]

Department of Defense, Federal Acquisition Regulation Supplement; Regulatory and Miscellaneous Amendments

Correction

In rule document 88-28733 beginning on page 50410 in the issue of Thursday, December 15, 1988, make the following corrections:

1. On page 50410, in the third column, under **EFFECTIVE DATE**, the second line should read "unless otherwise noted in the **SUPPLEMENTARY INFORMATION.**".

2. On page 50417, in the third column, in the 28th line, "December 18, 1963" should read "December 17, 1963".

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP88-211-004]

CNG Transmission Corp.; Compliance Filing and Motion

Correction

In notice document 89-657 appearing on page 1210 in the issue of Thursday, January 12, 1989, make the following correction:

In the first column, in the headings, the docket number should read as set forth above.

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 798 and 799

[OPTS-46017; FRL-3466-7]

Mouse Visible Specific Locus Test Requirement; Proposed Amendment to Test Rules

Correction

In proposed rule document 88-29606 beginning on page 51847 in the issue of Friday, December 23, 1988, make the following corrections:

1. On page 51849, in the third column, in designated paragraph 3, in the eigth line, "proposed" should read "proposing".

2. On the same page, in the same column, the 20th line from the bottom should read "believes that a valid test for detecting".

3. On the same page, in the same column, in the fourth line from the bottom, "ORNAL" should read "ORNL".

4. On page 51850, in the first column, in the fifth line, "ORNAL" should read "ORNL".

BILLING CODE 1505-01-D

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 410

Training

Correction

In proposed rule document 89-428 beginning on page 822 in the issue of Tuesday, January 10, 1989, make the following correction:

On page 822, in the 2nd column, in the 2nd complete paragraph, in the 13th line, after "in-house" insert "training, there is nothing in the legislative history of the ".

BILLING CODE 1505-01-D

federal register

Thursday
January 19, 1989

Part II

Department of Labor

Office of the Secretary

29 CFR Part 18

Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges; Proposed Rule

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DEPARTMENT OF LABOR

Office of the Secretary

29 CFR Part 18

Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges

AGENCY: Office of the Secretary, Labor.

ACTION: Proposed rule.

SUMMARY: This notice sets forth the proposed Rules of Evidence to be used for formal adjudicatory hearings before the Office of Administrative Law Judges. The existing regulations provide no clear guidance as to the admissibility of evidence in administrative proceedings, resulting in uncertainty as to which documents and testimony may constitute the record in a particular matter. Adoption of the Federal Rules of Evidence, with certain modifications for applicability to the Office of Administrative Law Judges, intends to provide necessary guidance as to the admissibility of evidence in formal adjudicatory hearings.

DATE: Comments are due on or before February 21, 1989.

ADDRESS: Comments should be directed to: Nahum Litt, Chief Administrative Law Judge, U.S. Department of Labor, 1111 20th Street NW., Suite 700, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Deputy Chief Judge John M. Vittone, U.S. Department of Labor, 1111 20th Street NW., Suite 700, Washington, DC 20036; telephone: (202) 653-5052.

SUPPLEMENTARY INFORMATION: The current Rules of Practice and Procedure for Administrative Hearings before the Office of Administrative Law Judges, 29 CFR 18.44 provide that:

> Unless otherwise provided by statute or these rules, and where appropriate, the Federal Rules of Evidence may by applied to all proceedings held pursuant to these rules.

In order to provide more specific guidance as to the admissibility of evidence in administrative hearings, it is proposed that uniform rules of evidence be promulgated. The Proposed Rules of Evidence for the United States Department of Labor modify the Federal Rules of Evidence for application in formal adversarial adjudications conducted by the United States Department of Labor. The civil non-jury nature of the hearings and the broad underlying values and goals of the administrative process are given recognition in these rules. Comments are requested as to whether uniform rules are appropriate for administrative proceedings.

Text to be deleted from the Federal Rules marked by brackets [ ]. Text to be added is enclosed by arrows► ◄. Where the Federal Rules refer to the court, the Proposed Rules refer to the judge, meaning the Administrative Law Judge or other presiding officer. Federal Rules referring to criminal proceedings have been deleted.

The Federal Rules of Evidence differ with the Federal Rules of Evidence in certain areas. Significant changes explained by the Reporter's Notes are set forth in the Appendix to the rules. Comments are particularly requested on whether these changes should be made.

Proposed § 18.103(a) requires the party to make a proper objection to evidence which is considered inadmissible, and no error will be committed if the judge explicitly states that he or she does not rely on such evidence in support of the decision or order.

Proposed § 18.201(b)(1) allows for official notice of facts not subject to reasonable dispute if generally known within the local area; whereas, the Federal Rule requires the fact to be generally known in the territorial jurisdiction of the trial court. This section also allows for official notice of generally recognized scientific, medical or other technical facts within the administrative agency's specialized field of knowledge.

The Federal Rules provide for the applicability of State law with regard to presumptions (Rule 302), privileges (Rule 501), and competency of witnesses (Rule 601). The Proposed Rules incorporate the relevant history of these rules and anticipate that State law will only rarely need be applied. See Proposed §§ 18.302, 18.501, and 18.601.

The Federal Rules provide for the exclusion of evidence based on the danger of unfair prejudice (Rule 403), and for the exclusion of evidence of conviction of a crime for the purposes of impeachment based on the danger of unfair prejudice (Rule 609). Such a concept is unnecessary where the trier of fact is the administrative law judge or other presiding officer. See proposed §§ 18.403 and 18.609.

Proposed §§ 18.803(a)(24), and 18.902(a)(14), regarding the hearsay exception for and self-authentication of written reports of expert witnesses, require that a summary of the expert's litigation experience be included. Several hearsay exceptions and self-authentication provisions have been added. See proposed §§18.803(a)(25)–(30), and 18.902(a)(11)–(16). The Reporter's Notes to proposed §§ 18.803 and 18.902 (Hearsay Exceptions and Self-Authentication) indicate that the question of payment of witness fees is not covered.

Proposed § 18.1101(b)(2) states that the Rules of Evidence are inapplicable to cases arising under the Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C. 901, *et seq.*, and its extensions, and to cases arising under the Federal Coal Mine Health and Safety Act, as amended by the Black Lung Benefits Act, 30 U.S.C. 901, *et seq.* This inapplicability provision recognizes that certain claimants, often *pro se*, should not be bound by strict rules of evidence when presenting claims for entitlement to benefits. Comments are also invited as to whether Rules of Evidence should be applied at all to administrative proceedings under the Administrative Procedure Act.

Procedural Matters

Because this rule is procedural in nature, it is not a major rule as defined by Executive Order 12291. The rule will not have a significant effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. § 601, et seq. The rule as proposed contains no information collection or recordkeeping requirements as defined by the Paperwork Reduction Act of 1980, 44 U.S.C. 3501, et seq.

List of Subjects in 29 CFR Part 18

Administrative practice and procedure, Labor.

Accordingly, Part 18 of Subtitle A of the Code of Federal Regulations is proposed to be amended as set forth below:

Signed at Washington, DC, this 11th day of January 1989.

Ann McLaughlin,

Secretary of Labor.

PART 18—RULES OF PRACTICE AND PROCEDURE FOR ADMINISTRATIVE HEARINGS BEFORE THE OFFICE OF ADMINISTRATIVE LAW JUDGES

1. The authority citation for Part 18 continues to read as follows:

Authority: 5 U.S.C. 301, 5 U.S.C. 551–553.

Subpart A—General

2. Sections 18.1 through 18.59 are designated as "Supart A—General."

§ 18.44 [Removed and Reserved]

3. Section 18.44 *Evidence.* is removed and reserved.

4. A new Subpart B is added to read as follows:

Subpart B—Rules of Evidence for the United States Department of Labor

General Provisions

Sec.
18.101 Scope.
18.102 Purpose and construction.
18.103 Rulings on evidence.
18.104 Preliminary questions.
18.105 Limited admissibility.
18.106 Remainder of or related writings or recorded statements.

Offical Notice

18.201 Official notice of adjudicative facts.

Presumptions in Civil Actions and Proceedings

18.301 Presumptions in general civil actions and proceedings.
18.302 Applicability of state law.

Relevancy and its Limits

18.401 Definition of "relevant evidence."
18.402 Relevant evidence generally admissible, irrelevant evidence generally inadmissible.
18.403 Exclusion of relevant evidence on grounds of confusion or waste of time.
18.404 Character evidence not admissible to prove conduct; exceptions; other crimes.
18.405 Methods of proving character.
18.406 Habit; routine practice.
18.407 Subsequent remedial measures.
18.408 Compromise and offers to compromise.
18.409 Payment of medical and similar expenses.
18.410 Inadmissibility of pleas, plea discussions, and related statements.
18.411 Liability insurance.

Privileges

18.501 General rule.

Witnesses

18.601 General rule of competency.
18.602 Lack of personal knowledge.
18.603 Oath or affirmation.
18.604 Interpreters.
18.605 Competency of judge as witness.
18.606 Reserved.
18.607 Who may impeach.
18.608 Evidence of character and conduct of witness.
18.609 Impeachment by evidence of conviction of crime.
18.610 Religious beliefs or opinions.
18.611 Mode and order of interrogation and presentation.
18.612 Writing used to refresh memory.
18.613 Prior statements of witnesses.
18.614 Calling and interrogation of witnesses by judge.
18.615 Exclusion of witnesses.

Opinions and Expert Testimony

18.701 Opinon testimony by lay witnesses.
18.702 Testimony by experts.
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18.704 Opinion on ultimate issue.
18.705 Disclosure of facts or data underlying expert opinion.
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Hearsay

18.801 Definitions.
18.802 Hearsay rule.
18.803 Hearsay exceptions; availability of declarant immaterial.
18.804 Hearsay exceptions; declarant unavailable.
18.805 Hearsay within hearsay.
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Authentication and Identification

18.901 Requirement of authentication or identification.
18.902 Self-Authentication.
18.903 Subscribing witness' testimony unnecessary.

Contents of Writings, Recordings, and Photographs

18.1001 Definitions.
18.1002 Requirement of original.
18.1002 Admissibility of duplicates.
18.1004 Admissibility of other evidence of contents.
18.1005 Public records.
18.1006 Summaries.
18.1007 Testimony or written admission of party.
18.1008 Functions of the judge.

Applicability

18.1101 Applicability of rules.
18.1102 Reserved.
18.1103 Title.
Appendix—Reporter's Notes.

Subpart B—[Federal] Rules of Evidence for [United States Courts and Magistrates] ►the United States Department of Labor◄

General Provisions

§ 18.101 Scope.

These rules govern [proceedings in the courts of the United States and before United States bankruptcy judges and the United States magistrates,] ►formal adversarial adjudications of the United States Department of Labor conducted before a presiding officer (s) which are required by Act of Congress to be determined on the record after opportunity for an administrative agency hearing in accordance with the Administrative Procedure Act, 5 U.S.C. 554, 556 and 557, or (b) which by United States Department of Labor regulation or by agency practice are conducted in conformance with the foregoing provisions◄, to the extent and with the exceptions stated in section 18.1101 of the part. ►"Presiding officer", referred to in these rules as "the judge", means an Administrative Law Judge, an agency head, or other officer who presides at the reception of evidence at a hearing in such an adjudication.◄

§ 18.102 Purpose and construction.

These rules shall be construed to secure fairness in administration, elimination of unjustifiable expense and delay, and promotion of growth and development of the law of evidence to the end that the truth may be ascertained and proceedings justly determined.

§ 18.103 Rulings on evidence.

(a) *Effect of erroneous ruling.* Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected, and

(1) *Objection.* In case the ruling is one admitting evidence, a timely objection or motion to strike appears of record, stating the specific ground of objection, if the specific ground was not apparent from the context; or

(2) *Offer of proof.* In case the ruling is one excluding evidence, the substance of the evidence was made known to the [court] ►judge◄ by offer or was apparent from the context within which questions were asked. ►A substantial right is affected only if it is more probably true than not true that the error materially contributed to the decision or order of the judge. Properly objected to evidence admitted in error does not affect a substantial right if explicitly not relied upon by the judge in support of the decision or order.◄

(b) *Record of offer and ruling.* The [court] ►judge◄ may add any other or further statement which shows the character of the evidence, the form in which it was offered, the objection made, and the ruling thereon. [It] ►The judge◄ may direct the making of an offer in question and answer form.

[(c) *Hearing of jury.* In jury cases, proceedings shall be conducted, to the extent practicable, so as to prevent inadmissible evidence from being suggested to the jury by any means, such as making statements or offers of proof or asking questions in the hearing of the jury.]

►(c)◄ [(d)] *Plain error.* Nothing in this rule precludes taking notice of plain errors affecting substantial rights although they were not brought to the attention of the [court] ►judge◄.

§ 18.104 Preliminary questions.

(a) *Questions of admissibility generally.* Preliminary questions concerning the qualification of a person to be a witness, the existence of a privilege, or the admissibility of evidence shall be determined by the [court] ►judge◄, subject to the provisions of paragraph (b) of this section. In making [its] ►such◄ determination [it] ►the judge◄ is not bound by the rules of evidence except those with respect to privileges.

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(b) *Relevancy conditioned on fact.* When the relevancy of evidence depends upon the fulfillment of a condition of fact, the [court] ►judge◄ shall admit it upon, or subject to, the introduction of evidence sufficient to support a finding of the fulfillment of the condition.

[(c) *Hearing of jury.*] Hearings on the admissibility of confessions shall in all cases be conducted out of the hearing of the jury. Hearings on other preliminary matters shall be so conducted when the interests of justice require, or when an accused is a witness and so requests.

►(c) *Error in determining.* A ruling on a preliminary question concerning the qualification of a person to be a witness, the existence of a privilege, or the admissibility of evidence is error only if clearly erroneous after due regard is given to the opportunity of the judge to assess the credibility of the witnesses. A ruling concerning relevancy, relevancy conditioned on fact, or involving the exercise of discretion is error only if a clear abuse of discretion.◄

[(d) *Testimony by accused.* The accused does not, by testifying upon a preliminary matter, become subject to cross-examination as to the other issues in the case.]

►(d)◄ [(e)] *Weight and credibility.* This rule does not limit the right of a party to introduce [before the jury] evidence relevant to weight or credibility.

§ 18.105 Limited Admissibility.

When evidence which is admissible as to one party or for one purpose but not admissible as to another party or for another purpose is admitted, the [court] ►judge◄, upon request, shall restrict the evidence to its proper scope [and instruct the jury accordingly].

§ 18.106 Remainder of or related writings or recorded statements.

When a writing or recorded statement or part thereof is introduced by a party, an adverse party may require the introduction at that time of any other part or any other writing or recorded statement which ought in fairness to be considered contemporaneously with it.

[Judicial] ►official◄ Notice

§ 18.201. [Judicial] ►Official◄ notice of adjudicative facts.

(a) *Scope of rule.* This rule governs only [judicial] ►official◄ notice of adjudicative facts.

(b) *Kinds of facts.* [A judicially] ►An officially◄ noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the [territorial jurisdiction of the trial court] ►local area◄, (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned, ►or (3) derived from a not reasonably disputed scientific, medical or other technical process, technique, principle, or explanatory theory within the administrative agency's specialized field of knowledge.◄

(c) *When discretionary.* A [court] ►judge◄ may take [judicial] ►official◄ notice, whether requested or not.

(d) *When mandatory.* A [court] ►judge◄ shall take [judicial] ►official◄ notice if requested by a party and supplied with the necessary information.

(e) *Opportunity to be heard.* A party is entitled upon timely request to an opportunity to be heard as to the propriety of taking [judicial] ►official◄ notice and the tenor of the matter noticed. In the absence of prior notification, the request may be made after [judicial] ►official◄ notice has been taken.

(f) *Time of taking notice.* [Judicial] ►official◄ notice may be taken at any stage of the proceeding.

[(g) *Instructing jury.* In a civil action or proceeding, the court shall instruct the jury to accept as conclusive any fact judicially noticed. In a criminal case, the court shall instruct the jury that it may, but is not required to, accept as conclusive any fact judicially noticed.]

►(g) *Effect of* [*judicial*] ►*official*◄ *notice.* [A judicially] ►An officially◄ noticed fact is accepted as conclusive.◄

Presumptions in Civil Actions and Proceedings

§ 18.301 Presumptions in general civil actions and proceedings.

[In all civil actions and proceedings not] ►Except as◄ otherwise provided for by Act of Congress ►or by rules or regulations prescribed by the administrative agency pursuant to statutory authority◄, a presumption imposes on the party against whom it is directed the burden of going forward with evidence to rebut or meet the presumption, but does not shift to such party the burden of proof in the sense of the risk of nonpersuasion, which remains throughout the trial upon the party on whom it was originally cast.

§ 18.302 Applicability of state law [in civil actions and proceedings].

[In civil actions and proceedings,] ►T◄he effect of a presumption respecting a fact which is an element of a claim or defense as to which State law supplies the rule of decision is determined in accordance with State law.

Relevancy and its Limits

§ 18.401 Definition of "relevant evidence."

"Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

§ 18.402 Relevant evidence generally admissible; irrelevant evidence inadmissible.

All relevant evidence is admissible, except as otherwise provided by the Constitution of the United States, by Act of Congress, ►by executive order◄ by these rules, or by other rules ►or regulations◄ prescribed by [the Supreme Court pursuant] ►the administrative agency◄ pursuant to statutory authority. Evidence which is not relevant is not admissible.

§ 18.403 Exclusion of relevant evidence on grounds of [prejudice,] confusion or waste of time.

Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of [unfair prejudice,] confusion of issues, or misleading the [jury] ►judge as trier of fact◄, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

§ 18.404 Character evidence not admissible to prove conduct; exceptions; other crimes.

(a) *Character evidence generally.* Evidence of a person's character or a trait of character is not admissible for the purpose of proving action in conformity therewith on a particular occasion, except:

[(1) *Character of accused.* Evidence of a pertinent trait of character offered by an accused, or by the prosecution to rebut the same;]

[(2) *Character of victim.* Evidence of a pertinent trait of character of the victim of the crime offered by an accused, or by the prosecution to rebut the same, or evidence of a character trait of peacefulness of the victim offered by the prosecution in a homicide case to rebut evidence that the victim was the first aggressor;]

[(3) *Character of witness.*] ►e◄vidence of the character of a witness, as provided in rules 607, 608, and 609.

(b) *Other crimes, wrongs, or acts.* Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

§ 18.405 Methods of proving character.

(a) *Reputation or option.* In all cases in which evidence of character or a trait of character of a person is admissible, proof may be made by testimony as to reputation or by testimony in the form of an opinion. On cross-examination, inquiry is allowable into relevant specific instances of conduct.

(b) *Specific instances of conduct.* In cases in which character or a trait of character of a person is an essential element of a [charge] claim, or defense, proof may also be made of specific instances of that person's conduct.

§ 18.406 Habit; routine practice.

Evidence of the habit of a person or of the routine practice of an organization, whether corroborated or not and regardless of the presence of eyewitnesses, is relevant to prove that the conduct of the person or organization on a particular occasion was in conformity with the habit or routine practice.

§ 18.407 Subsequent remedial measures.

When, after an event, measures are taken which, if taken previously, would have made the event less likely to occur, evidence of the subsequent measures is not admissible to prove negligence or culpable conduct in connection with the event. This rule does not require the exclusion of evidence of subsequent measures when offered for another purpose, such as proving ownership, control, or feasibility of precautionary measures, if controverted, or impeachment.

§ 18.408 Compromise and offers to compromise.

Evidence of (a) furnishing or offering or promising to furnish, or (b) accepting or offering or promising to accept, a valuable consideration in compromising or attempting to compromise a claim which was disputed as to either validity or amount, is not admissible to prove liability for or invalidity of the claim or its amount. Evidence of conduct or statements made in compromise negotiations is likewise not admissible. This rule does not require the exclusion of any evidence otherwise discoverable merely because it is presented in the course of compromise negotiations. This rule also does not require exclusion when the evidence is offered for another purpose, such as proving bias or prejudice of a witness, ►or◄ negativing a contention of undue delay[, or proving an effort to obstruct a criminal investigation or prosecution].

§ 18.409 Payment of medical and similar expenses.

Evidence of furnishing or offering or promising to pay medical, hospital, or similar expenses occasioned by an injury is not admissible to prove liability for the injury.

§ 18.410 Inadmissibility of pleas, plea discussions, and related statements.

Except as otherwise provided in this rule, evidence of the following is not[, in any civil or criminal proceeding,] admissible against the defendant who made the plea or was a participant in the plea discussions:

(a) A plea of guilty which was later withdrawn;

(b) A plea of nolo contendere;

(c) Any statement made in the course of any proceedings under Rule 11 of the Federal Rules of Criminal Procedure or comparable state procedure regarding either of the foregoing pleas; or

(d) Any statement made in the course of plea discussions with an attorney for the prosecuting authority which do not result in a plea of guilty or which result in a plea of guilty later withdrawn. However, such a statement is admissible [(i)] in any proceeding wherein another statement made in the course of the same plea discussions has been introduced and the statement ought in fairness be considered contemporaneously with it[, or (ii) in a criminal proceedings for perjury or false statement if the statement was made by the defendant under oath, on the record and in the presence of counsel].

§ 18.411 Liability insurance.

Evidence that a person was or was not insured against liability is not admissible upon the issue whether the person acted negligently or otherwise wrongfully. This rule does not require the exclusion of evidence of insurance against liability when offered for another purpose, such as proof of agency, ownership, or control, or bias or prejudice of a witness.

[§ 18.412 Rape cases; relevance of victim's past behavior.]

[(a) Notwithstanding any other provision of law, in a criminal case in which a person is accused of rape or assault with intent to commit rape, reputation or opinion evidence of the past sexual behavior of an alleged victim of such rape or assault is not admissible.]

[(b) Notwithstanding any other provision of law, in a criminal case in which a person is accused of rape or of assault with intent to commit rape, evidence of a victim's past sexual behavior other than reputation or opinion evidence is also not admissible, unless such evidence other than reputation or opinion evidence is—]

[(1) Admitted in accordance with paragraphs (c)(1) and (c)(2) of this section and is constitutionally required to be admitted; or]

[(2) Admitted in accordance with subdivisions (c) and is evidence of—]

[(A) Past sexual behavior with persons other than the accused, offered by the accused upon the issue of whether the accused was or was not, with respect tb the alleged victim, the source of semen or injury; or]

[(B) Past sexual behavior with the accused and is offered by the accused upon the issue of whether the alleged victim consented to the sexual behavior with respect to which rape or assault is alleged.]

[(c)(1) If the person accused of committing rape or assault with intent to commit rape intends to offer under subdivision (b) evidence of specific instances of the alleged victim's past sexual behavior, the accused shall make a written motion to offer such evidence not later than fifteen days before the date on which the trial in which such evidence is to be offered is scheduled to begin, except that the court may allow the motion to be made at a later date, including during trial, if the court determines either that the evidence is newly discovered and could not have been obtained earlier through the exercise of due diligence or that the issue to which such evidence relates has newly arisen in the case. Any motion made under this paragraph shall be served on all other parties and on the alleged victim.]

[(2) The motion described in paragraph (c)(1) of this section shall be accompanied by a written offer of proof. If the court determines that the offer of proof contains evidence described in subdivision (b), the court shall order a hearing in chambers to determine if such evidence is admissible. At such hearing the parties may call witnesses, including the alleged victim, and offer relevant evidence. Notwithstanding subdivision (b) of rule 104, if the relevancy of the evidence which the accused seeks to offer in the trial depends upon the fulfillment of a condition of fact, the court, at the hearing in chambers or at a subsequent hearing in chambers scheduled for such purpose, shall accept evidence on the issue of whether such condition of fact is fulfilled and shall determine such issue.]

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[(3) If the court determines on the basis of the hearing described in paragraph (c)(2) of this section that the evidence which the accused seeks to offer is relevant and that the probative value of such evidence outweighs the danger of unfair prejudice, such evidence shall be admissible in the trial to the extent an order made by the court specifies evidence which may be offered and areas with respect to which the alleged victim may be examined or cross-examined.]

[(d) For purposes of this rule, the term "past sexual behavior" means sexual behavior other than the sexual behavior with respect to which rape or assault with intent to commit rape is alleged.]

Privileges

§ 18.501 General rule.

Except as otherwise required by the Constitution of the United States or provided by Act of Congress or in rules ►or regulations◄ prescribed [by the Supreme Court] ►by the administrative agency◄ pursuant to statutory authority, the privilege of a witness, person, government, State, or political subdivision thereof shall be governed by the principles of the common law as they may be interpreted by the courts of the United States in the light of reason and experience. However, [in civil actions and proceedings,] with respect to an element of a aim or defense as to which State law supplies the rule of decision, the privilege of a witness, person, government, State, or political subdivision thereof shall be determined in accordance with State law.

Witnesses

§ 18.601 General rule of competency.

Every person is competent to be a witness except as otherwise provided in these rules. However, [in civil actions and proceedings,] with respect to an element of a claim or defense as to which State law supplies the rule of decision, the competency of a witness shall be determined in accordance with State law.

§ 18.602 Lack of personal knowledge.

A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may, but need not, consist of the witness' own testimony. This rule is subject to the provisions of rule 703, relating to opinion testimony by expert witnesses.

§ 18.603 Oath or affirmation.

Before testifying, every witness shall be required to declare that the witness will testify truthfully, by oath or affirmation administered in a form calculated to awaken the witness' conscience and impress the witness' mind with the duty to do so.

§ 18.604 Interpreters.

An interpreter is subject to the provisions of these rules relating to qualification as an expert and the administration of an oath or affirmation to make a true translation.

§ 18.605 Competency of judge as witness.

The judge presiding at the [trial] ►hearing◄ may not testify in that [trial] ►hearing◄ as a witness. No objection need be made in order to preserve the point.

§ 18.606 ►Reserved.◄ [Competency of juror as witness.]

[(a) *At the trial.* A member of the jury may not testify as a witness before that jury in the trial of the case in which the juror is sitting. If the juror is called so to testify, the opposing party shall be afforded an opportunity to object out of the presence of the jury.]

[(b) *Inquiry into validity of verdict or indictment.* Upon an inquiry into the validity of a verdict or indictment, a juror may not testify as to any matter or statement occurring during the course of the jury's deliberations or to the effect of anything upon that or any other juror's mind or emotions as influencing the juror to assent to or dissent from the verdict or indictment or concerning the juror's mental processes in connection therewith, except that a juror may testify on the question whether extraneous prejudicial information was improperly brought to the jury's attention or whether any outside influence was improperly brought to bear upon any juror. Nor may a juror's affidavit or evidence of any statement by the juror concerning a matter about which the juror would be precluded from testifying be received for these purposes.]

§ 18.607 Who may impeach.

The credibility of a witness may be attacked by any party, including the party calling the witness.

§ 18.608 Evidence of character and conduct of witness.

(a) *Opinion and reputation evidence of character.* The credibility of a witness may be attacked or supported by evidence in the form of opinion or reputation, but subject to these limitations: (1) The evidence may refer only to character for truthfulness or untruthfulness, and (2) evidence of truthful character is admissible only after the character of the witness for truthfulness has been attacked by opinion or reputation evidence or otherwise.

(b) *Specific instances of conduct.* Specific instances of the conduct of a witness, for the purpose of attacking or supporting the witness' credibility, other than conviction of crime as provided in rule 609, may not be proved by extrinsic evidence. They may, however, in the discretion of the [court] ►judge◄ if probative of truthfulness or untruthfulness, be inquired into on cross-examination of the witness (1) concerning the witness' character for truthfulness or untruthfulness, or (2) concerning the character for truthfulness or untruthfulness of another witness as to which character the witness being cross-examined has testified. The giving of testimony[, whether by an accused or] by any [other] witness, does not operate as a waiver of the [accused's or the] witness' privilege against self-incrimination when examined with respect to matters which relate only to credibility.

§ 18.609 Impeachment by evidence of conviction of crime.

(a) *General rule.* For the purpose of attacking the credibility of a witness, evidence that the witness has been convicted of a crime shall be admitted if elicited from the witness or established by public record during cross-examination but only if the crime (1) was punishable by death or imprisonment in excess of one year under the law under which the witness was convicted[, and the court determines that the probative value of admitting this evidence outweighs its prejudicial effect to the defendant,] or (2) involved dishonesty or false statement, regardless of the punishment.

(b) *Time limit.* Evidence of a conviction under this rule is not admissible if a period of more than ten years has elapsed since the date of the conviction or of the release of the witness from the confinement imposed for that conviction, whichever is the later date [, unless the court determines, in the interests of justice, that the probative value of the conviction supported by specific facts and circumstances substantially outweighs its prejudicial effect. However, evidence of a conviction more than 10 years old as calculated herein, is not admissible unless the proponent gives to the adverse party sufficient advance written notice of intent to use such evidence to provide the adverse party with a fair opportunity to contest the use of such evidence].

(c) *Effect of pardon, annulment, or certificate of rehabilitation.* Evidence of a conviction is not admissible under this rule if (1) the conviction has been the subject of a pardon, annulment, certificate of rehabilitation, or other equivalent procedure based on a finding of the rehabilitation of the person convicted, and that person has not been convicted of a subsequent crime which was punishable by death or imprisonment in excess of one year, or (2) the conviction has been the subject of a pardon, annulment, or other equivalent procedure based on a finding of innocence.

(d) *Juvenile adjudications.* Evidence of juvenile adjudications is [generally] not admissible under this rule. [The court may, however, in a criminal case allow evidence of a juvenile adjudication of a witness other than the accused if conviction of the offense would be admissible to attack the credibility of an adult and the court is satisfied that admission in evidence is necessary for a fair determination of the issue of guilt or innocence.]

(e) *Pendency of appeal.* The pendency of an appeal therefrom does not render evidence of a conviction inadmissible. Evidence of the pendency of an appeal is admissible.

§ 18.610 Religious beliefs or opinions.

Evidence of the beliefs or opinions of a witness on matters of religion is not admissible for the purpose of showing that by reason of their nature the witness' credibility is impaired or enhanced.

§ 18.611 Mode and order of interrogation and presentation.

(a) *Control by [court] ►judge◄.* The [court] ►judge◄ shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation effective for the ascertainment of the truth, (2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue embarrassment.

(b) *Scope of cross-examination.* Cross-examination should be limited to the subject matter of the direct examination and matters affecting the credibility of the witness. The [court] ►judge◄ may, in the exercise of discretion, permit inquiry into additional matters as if on direct examination.

(c) *Leading questions.* Leading questions should not be used on the direct examination of a witness except as may be necessary to develop the witness' testimony. Ordinarily leading questions should be permitted on cross-examination. When a party calls a hostile witness, an adverse party, or a witness identified with an adverse party, interrogation may be by leading questions.

§ 18.612 Writing used to refresh memory.

[Except as otherwise provided in criminal proceedings by section 3500 of title 18, United States Code,] ►I◄f a witness uses a writing to refresh memory for the purpose of testifying, either—

(a) While testifying, or

(b) Before testifying, if the [court] ►judge◄ in its discretion determines it is necessary in the interests of justice, an adverse party is entitled to have the writing produced at the hearing, to inspect it, to cross-examine the witness thereon, and to introduce in evidence those portions which relate to the testimony of the witness. If it is claimed that the writing contains matters not related to the subject matter of the testimony the [court] ►judge◄ shall examine the writing in camera, excise any portion not so related, and order delivery of the remainder to the party entitled thereto. Any portion withheld over objections shall be preserved and made available [to the appellate court] in the event of [an appeal] ►review◄. If a writing is not produced or delivered pursuant to order under this rule, the [court] ►judge◄ shall make any order justice requires], except that in criminal cases when the prosecution elects not to comply, the order shall be one striking the testimony or, if the court in its discretion determines that the interests of justice so require, declaring a mistrial].

§ 18.613 Prior statements of witnesses.

(a) *Examining witness concerning prior statement.* In examining a witness concerning a prior statement made by the witness, whether written or not, the statement need not be shown nor its contents disclosed to the witness at that time, but on request the same shall be shown or disclosed to opposing counsel.

(b) *Extrinsic evidence of prior inconsistent statement of witness.* Extrinsic evidence of a prior inconsistent statement by a witness is not admissible unless the witness is afforded an opportunity to explain or deny the same and the opposite party is afforded an opportunity to interrogate the witness thereon, or the interests of justice otherwise require. This provision does not apply to admissions of a party-opponent as defined in rule 801(d)(2).

§ 18.614 Calling and interrogation of witnesses by [court] ►judge◄.

(a) *Calling by [the court] ►the judge◄.* The [court] ►judge◄ may, on [its] ►the judge's◄ own motion or at the suggestion of a party, call witnesses, and all parties are entitled to cross-examine witnesses thus called.

(b) *Interrogation by [the court] ►the judge◄.* The [court] ►judge◄ may interrogate witnesses, whether called by [itself] ►the judge◄ or by a party.

(c) *Objections.* Objections to the calling of witnesses by the [court] ►judge◄ or to interrogation by [it] ►the judge◄ [may be made at the time or at the next available opportunity when the jury is not present.] ►must be timely.◄

§ 18.615 Exclusion of witnesses.

At the request of a party the [court] ►judge◄ shall order witnesses excluded so that they cannot hear the testimony of other witnesses, and [it] ►the judge◄ may make the order of [it] ►the judge's◄ own motion. This rule does not authorize exclusion of (a) a party who is a natural person, or (b) an officer or employee of party which is not a natural person designated as its representative by its attorney, or (c) a person whose presence is shown by a party to be essential to the presentation of the party's cause.

Opinions and Expert Testimony

§ 18.701 Opinion testimony by lay witnesses.

If the witness is not testifying as an expert, the witness testimony in the form of opinions or inferences is limited to those opinions or inferences which are (a) rationally based on the perception of the witness and (b) helpful to a clear understanding of the witness' testimony or the determination of a fact in issue.

§ 18.702 Testimony by experts.

If scientific, technical, or other specialized knowledge will assist the ►judge as◄ trier of fact to understanding the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

§ 18.703 Bases of opinion testimony by experts.

The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing. If of a type reasonably relied upon by experts

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in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence.

§ 18.704 Opinion on ultimate issue.

[(a) Except as provided in subdivision (b),] ►T◄estimony in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the ►judge as◄ trier of fact.

[(b) No expert witness testifying with respect to the mental state or condition of a defendant in a criminal case may state an opinion or inference as to whether the defendant did or did not have the mental state or condition constituting an element of the crime charged or of a defense thereto. Such ultimate issues are matters for the trier of fact alone.]

§ 18.705 Disclosure of facts or data underlying expert opinion.

The expert may testify in terms of opinion or inference and give reasons therefor without prior disclosure of the underlying facts or data, unless the [court] ►judge◄ requires otherwise. The expert may in any event be required to disclose the underlying acts or data on cross-examination.

§ 18.706 [Reserved]. [Court appointed experts.]

[(a) *Appointment.* The court may on its own motion or on the motion of any party enter an order to show cause why expert witnesses should not be appointed, and may request the parties to submit nominations. The court may appoint any expert witnesses agreed upon by the parties, and may appoint expert witnesses of its own selection. An expert witness shall not be appointed by the court unless the witness consents to act. A witness so appointed shall be informed of the witness' duties by the court in writing, a copy of which shall be filed with the clerk, or at a conference in which the parties shall have opportunity to participate. A witness so appointed shall advise the parties of the witness' findings, if any; the witness' disposition may be taken by any party; and the witness may be called to testify by the court or any party. The witness shall be subject to cross-examination by each party, including a party calling the witness.]

[(b) *Compensation.* Expert witnesses so appointed are entitled to reasonable compensation in whatever sum the court may allow. The compensation thus fixed is payable from funds which may be provided by law in criminal cases and civil actions and proceedings involving just compensation under the fifth amendment. In other civil actions and proceedings the [C]ompensation shall be paid by the parties in such proportion and at such time as the court directs, and thereafter charged in like manner as other costs.]

[(c) *Disclosure of appointment.* In the exercise of its discretion, the court may authorize disclosure to the jury of the fact that the court appointed the expert witness.]

[(d) *Parties' experts of own selection.* Nothing in this rule limits the parties in calling expert witnesses of their own selection.]

Hearsay

§ 18.801 Definitions.

(a) *Statement.* A "statement" is (1) an oral or written assertion or (2) nonverbal conduct of a person, if it is intended by the person as an assertion.

(b) *Declarant.* A "declarant" is a person who makes a statement.

(c) *Hearsay.* "Hearsay" is a statement, other than one made by the declarant while testifying at the [trial or] hearing, offered in evidence to prove the truth of the matter asserted.

(d) *Statements which are not hearsay.* A statement is not hearsay if—

(1) *Prior statement by witness.* The declarant testifies at the [trial or] hearing and is subject to cross-examination concerning the statement, and the statement is (i) inconsistent with the declarant's testimony, [and was given under oath subject to the penalty of perjury at a trial, hearing, or other proceeding, or in a deposition,] or (ii) consistent with the declarant's testimony and is offered to rebut an express or implied charge against the declarant of recent fabrication or improper influence or motive, or (iii) one of identification of a person made after perceiving the person; or

(2) *Admission by party-opponent.* The statement is offered against a party and is (i) the party's own statement in either an individual or a representative capacity, or (ii) a statement of which the party has manifested an adoption or belief in its truth, or (iii) a statement by a person authorized by the party to make a statement concerning the subject, or (iv) a statement by the party's agent or servant concerning a matter within the scope of the agency or employment, made during the existence of the relationship, or (v) a statement by a coconspirator of a party during the course and in furtherance of the conspiracy.

§ 18.802 Hearsay rule.

Hearsay is not admissible except as provided by these rules or [by other rules prescribed by the Supreme Court] ►by rules or regulations of the Administrative Agency prescribed◄ pursuant to statutory authority or by Act of Congress.

§ 18.803 Hearsay exceptions; availability of declarant immaterial.

(a) The following are not excluded by the hearsay rule, even though the declarant is available as a witness:

(1) *Present sense impression.* A statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter.

(2) *Excited utterance.* A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition.

(3) *Then existing mental, emotional, or physical condition.* A statement of the declarant's then existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, design, mental feeling, pain, and bodily health), but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the execution, revocation, identification, or terms of declarant's will.

(4) *Statements for purposes of medical diagnosis or treatment.* Statements made for purposes of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain, or sensations or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment.

(5) *Recorded recollection.* A memorandum or record concerning a matter about which a witness once had knowledge but now has insufficient recollection to enable the witness to testify fully and accurately, shown to have been made or adopted by the witness when the matter was fresh in the witness' memory and to reflect that knowledge correctly. [If admitted, the memorandum or record may be read into evidence but may not itself be received as an exhibit unless offered by an adverse party.]

(6) *Records of regularly conducted activity.* A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, unless the source of information or the method of circumstances or preparation indicate lack of trustworthiness. The term "business" as used in this paragraph includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.

(7) *Absence of entry in records kept in accordance with the provisions of paragraph (a)(6).* Evidence that a matter is not included in the memoranda reports, records, or data compilations, in any form, kept in accordance with the provisions of paragraph (a)(6) of this section, to prove the nonoccurrence or nonexistence of the matter, if the matter was of a kind of which a memorandum, report, record, or data compilation was regularly made and preserved, unless the sources of information or other circumstances indicate lack of trustworthiness.

(8) *Public records and reports.* Records, reports, statements, or data compilations, in any form, of public offices or agencies, setting forth (i) the activities of the office or agency, or (ii) matters observed pursuant to duty imposed by law as to which matters there was a duty to report[, excluding, however, in criminal cases matters observed by police officers and other law enforcement personnel,] or (iii) [in civil actions and proceedings and against the Government in criminal cases,] factual findings resulting from an investigation made pursuant to authority granted by law, unless the sources of information or other circumstances indicate lack of trustworthiness.

(9) *Records of vital statistics.* Records or data compilations, in any form, of births, fetal deaths, deaths, or marriages, if the report thereof was made to a public office pursuant to requirements of law.

(10) *Absence of public record or entry.* To prove the absence of a record, report, statement, or data compilation, in any form, or the nonoccurrence or nonexistence of a matter of which a record, report, statement, or data compilation, in any form, was regularly made and preserved by a public office or agency, evidence in the form of a certification in accordance with rule 902, or testimony, that diligent search failed to disclose the record, report, statement, or data compilation, or entry.

(11) *Records of religious organizations.* Statements of births, marriages, divorces, deaths, legitimacy, ancestry, relationship by blood or marriage, or other similar facts of personal or family history, contained in a regularly kept record or a religious organization.

(12) *Marriage, baptismal, and similar certificates.* Statements of fact contained in a certificate that the maker performed a marriage or other ceremony or administered a sacrament, made by a clergyman, public official, or other person authorized by the rules or practices of a religious organization or by law to perform the act certified, and purporting to have been issued at the time of the act or within a reasonable time thereafter.

(13) *Family records.* Statements of fact concerning personal or family history contained in family Bibles, genealogies, charts, engravings on rings, inscriptions on family portraits, engravings on urns, crypts, or tombstones, or the like.

(14) *Records of documents affecting an interest in property.* The record of a document purporting to establish or affect an interest in property, as proof of the content of the original recorded document and its execution and delivery by each person by whom it purports to have been executed, if the record is a record of a public office and an applicable statute authorizes the recording of documents of that kind in that office.

(15) *Statements in documents affecting an interest in property.* A statement contained in a document purporting to establish or affect an interest in property if the matter stated was relevant to the purpose of the document, unless dealings with the property since the document was made have been inconsistent with the truth of the statement or the purport of the document.

(16) *Statements in ancient documents.* Statements in a document in existence twenty years or more the authenticity of which is established.

(17) *Market reports, commercial publications.* Market quotations, tabulations, lists, directories, or other published compilations, generally used and relied upon by the public or by persons in particular occupations.

(18) *Learned treatises.* To the extent called to the attention of an expert witness upon cross-examination or relied upon by the expert witness in direct examination, statements contained in published treatises, periodicals, or pamphlets on a subject of history, medicine, or other science or art, established as a reliable authority by the testimony or admission of the witness or by other expert testimony or by [judicial] ►official◄ notice. [If admitted, the statements may be read into evidence but may not be received as exhibits.]

(19) *Reputation concerning personal or family history.* Reputation among members of a person's family by blood, adoption, or marriage, or among a person's associates, or in the community, concerning a person's birth, adoption, marriage, divorce, death, legitimacy, relationship by blood, adoption, or marriage, ancestry, or other similar fact of personal or family history.

(20) *Reputation concerning boundaries or general history.* Reputation in a community, arising before the controversy, as to boundaries of or customs affecting lands in the community, and reputation as to events of general history important to the community or State or nation in which located.

(21) *Reputation as to character.* Reputation of a person's character among associates or in the community.

(22) *Judgment of previous conviction.* Evidence of a final judgment, entered after a trial or upon a plea of guilty (but not upon a plea of nolo contendere), adjudging a person guilty of a crime punishable by death or imprisonment in excess of one year, to prove any fact essential to sustain the judgment[, but not including, when offered by the Government in a criminal prosecution for purposes other than impeachment, judgments against persons other than the accused]. The pendency of an appeal may be shown but does not affect admissibility.

(23) *Judgment as to personal, family, or general history, or boundaries.* Judgments as proof of matters of personal, family or general history, or boundaries, essential to the judgment, if the same would be provable by evidence of reputation.

(24) *Other exceptions.* A statement not specifically covered by any of the foregoing exceptions but having equivalent circumstantial guarantees of trustworthiness [to the aforementioned hearsay exceptions], if the court [judge] determines that (i) the statement is offered as evidence of a material fact; (ii) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and (iii) the general purposes of these rules and the interests of justice will best be served by admission of the statement into evidence. However, a statement may not be admitted under this exception unless the proponent of it makes known to the

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adverse party sufficiently in advance of the trial or hearing to provide the adverse party with a fair opportunity to prepare to meet it, the proponent's intention to offer the statement and the particulars of it, including the name and address of the declarant.

►(25) *Self-authentication.* The self-authentication of documents and other items as provided in Rule 902.◄

►(26) *Bills, Estimates and Reports.* In actions involving personal injury or damage to property, the following bills, estimates, and reports as relevant to prove the value and reasonableness of the charges for services, labor and materials stated therein and, where applicable, the necessity for furnishing the same, unless the sources of information or other circumstances indicate lack of trustworthiness, provided that a copy of said bill, estimate, or report has been served upon the adverse party sufficiently in advance of the hearing to provide the adverse party with a fair opportunity to prepare to object or meet it:◄

►(i) Hospital bills on the official letterhead or billhead of the hospital, when dated and itemized.◄

►(ii) Bills of doctors and dentists, when dated and containing a statement showing the date of each visit and the charge therefor.◄

►(iii) Bills of registered nurses, licensed practical nurses and physical therapists, or other licensed health care providers when dated and containing an itemized statement of the days and hours of service and charges therefor.◄

►(iv) Bills for medicine, eyeglasses, prosthetic devices, medical belts or similar items, when dated and itemized.◄

►(v) Property repair bills or estimates, when dated and itemized, setting forth the charges for labor and material. In the case of an estimate, the party intending to offer the estimate shall forward with his notice to the adverse party, together with a copy of the estimate, a statement indicating whether or not the property was repaired, and, if so, whether the estimated repairs where made in full or in part and by whom, the cost thereof, together with a copy of the bill therefore.◄

►(vi) Report of the rate of earnings and time lost from work or lost compensation prepared by an employer on official letterhead, when dated and itemized. The adverse party may not dispute the authenticity, the value of reasonableness of such charges, the necessity therefore or the accuracy of the report, unless the adverse party files and serves written objection thereto sufficiently in advance of the hearing stating the objections, and the grounds thereof, that the adverse party will make if the bill, estimate, or reports is offered at the time of the hearing. An adverse party may call the author of the bill, estimate, or report as a witness and examine the witness as if under cross-examination.◄

►(27) *Medical reports.* In actions involving injury, illness, disease, death, disability, or physical or mental impairment, doctor, hospital, laboratory and other medical reports, made for purposes of medical treatment, unless the sources of information or other circumstances indicate lack of trustworthiness, provided that a copy of the report has been filed and served upon the adverse party sufficiently in advance of the hearing to provide the adverse party with a fair opportunity to prepare to object or meet it. The adverse party may not object to the admissibility of the report unless the adverse party files and serves written objection thereto sufficiently in advance of the hearing stating the objections, and the grounds therefor, that the adverse party will make if the report is offered at the time of the hearing. An adverse party may call the author of the medical report as a witness and examine the witness as if under cross-examination.◄

►(28) *Written reports of expert witnesses.* Written reports of an expert witness prepared with a view toward litigation, including but not limited to a diagnostic report of a doctor, including inferences and opinions, when on official letterhead, when dated, when including a statement of the expert's qualifications, when including a summary of experience as an expert witness in litigation, when including the basic facts, data, and opinions forming the basis of the inferences or opinions, and when including the reasons for or explanation of the inferences and opinions, so far as admissible under rules of evidence applied as though the witness was then present and testifying, unless the sources of information or the method or circumstances of preparation indicate lack of trustworthiness, provided that a copy of the report has been filed and served upon the adverse party sufficiently in advance of the hearing to provide the adverse party with a fair opportunity to prepare to object or meet it. The adverse party may not object to the admissibility of the report unless the adverse party files and serves written objection thereto sufficiently in advance of the hearing stating the objections, and the grounds therefor, that the adverse party will make if the report is offered at the time of the hearing. An adverse party may call the expert as a witness and examine the witness as if under cross-examination.◄

►(29) *Written statements of lay witnesses.* Written statements of a lay witness made under oath or affirmation accompanied by a certificate of acknowledgement executed in a manner provided by law by a notary public or other officer authorized by law to take acknowledgements, so far as admissible under the rules of evidence applied as though the witness was then present and testifying, unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness provided (i) that a copy of the written statement has been filed and served upon the adverse party sufficiently in advance of the hearing to provide the adverse party with a fair opportunity to prepare to object or meet it and (ii) if the witness is not unavailable as defined in Rule 804(a) that no adverse party has sufficiently in advance of the hearing filed and served upon the noticing party a written demand that the witness be produced in person to testify at the hearing. An adverse party may call the declarant as a witness and examine the witness as if under cross-examination.◄

►(30) *Deposition testimony.* Testimony given as a witness in a deposition taken in compliance with law in the course of the same proceeding, so far as admissible under the rules of evidence applied as though the witness was then present and testifying, if the party against whom the testimony is now offered had an opportunity and similar motive to develop the testimony by direct, cross, or redirect examination, provided that a notice of intention to offer the deposition in evidence, together with a copy thereof if not otherwise previously provided, has been served upon the adverse party sufficiently in advance of the hearing to provide the adverse party with a fair opportunity to prepare to meet it. An adverse party may call the deponent as a witness and examine the witness as if under cross-examination.◄

►(b) *[Reserved]*◄

§ 18.804 Hearsay exceptions; declarant unavailable.

(a) *Definition of unavailability.* "Unavailability as a witness" includes situations in which the declarant—

(1) Is exempted by ruling of the [court] ►judge◄ on the ground of privilege from testifying concerning the subject matter of the declarant's statement; or

(2) Persists in refusing to testify concerning the subject matter of the

declarant's statement despite an order of the [court] ►judge◄ to do so; or

(3) Testifies to a lack of memory of the subject matter of the declarant's statement; or

(4) Is unable to be present or to testify at the hearing because of death or then existing physical or mental illness or infirmity; or

(5) Is absent from the hearing and the proponent of a statement has been unable to procure the declarant's attendance (or in the case of a hearsay exception under paragraphs (b) (2), (3), or (4) of this section, the declarant's attendance or testimony) by process or other reasonable means.

A declarant is not unavailable as a witness if exemption, refusal, claim of lack of memory, inability, or absence is due to the procurement or wrongdoing of the proponent of a statement for the purpose of preventing the witness from attending or testifying.

(b) *Hearsay exceptions.* The following are not excluded by the hearsay rule if the declarant is unavailable as a witness:

(1) *Former testimony.* Testimony given as a witness at another hearing of the same or a different proceeding, or in a deposition taken in compliance with law in the course of the same or another proceeding, if the party against whom the testimony is now offered, [or, in a civil action or proceeding], a predecessor in interest, had an opportunity and similar motive to develop the testimony by direct, cross, or redirect examination.

(2) *Statement under belief of impending death.* [In a prosecution for homicide or in a civil action or proceeding,] ►A◄ statement made by a declarant while believing that the declarant's death was imminent, concerning the cause or circumstances of what the declarant believed to be impending death.

(3) *Statement against interest.* A statement which was at the time of its making so far contrary to the declarant's pecuniary or proprietary interest, or so far tended to subject the declarant to civil or criminal liability, or to render invalid a claim by the declarant against another, that a reasonable person in the declarant's position would not have made the statement unless believing it to be true. [A statement tending to expose the declarant to criminal liability and offered to exculpate the accused is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement.]

(4) *Statement of personal or family history.* (i) A statement concerning the declarant's own birth, adoption, marriage, divorce, legitimacy, relationship by blood, adoption, or marriage, ancestry, or other similar fact of personal or family history, even though declarant had no means of acquiring personal knowledge of the matter stated; or (ii) a statement concerning the foregoing matters, and death also, of another person, if the declarant was related to the other by blood, adoption, or marriage or was so intimately associated with the other's family as to be likely to have accurate information concerning the matter declared.

(5) *Other exceptions.* A statement not specifically covered by any of the foregoing exceptions but having equivalent circumstantial guarantees of trustworthiness ►to the aforementioned hearsay exceptions◄, if the [court] ►judge◄ determines that (i) the statement is offered as evidence of a material fact; (ii) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and (iii) the general purposes of these rules and the interests of justice will best be served by admission of the statement into evidence. However, a statement may not be admitted under this exception unless the proponent of it makes known to the adverse party sufficiently in advance of the [trial or] hearing to provide the adverse party with a fair opportunity to prepare to meet it, the proponent's intention to offer the statement and the particulars of it, including the name and address of the declarant.

§ 18.805 Hearsay within hearsay.

Hearsay included within hearsay is not excluded under the hearsay rule if each part of the combined statements conforms with an exception to the hearsay rule provided in these rules.

§ 18.806 Attacking and supporting credibility of declarant.

When a hearsay statement, or a statement defined in Rule 801(d)(2), (C), (D), or (E), has been admitted in evidence, the credibility of the declarant may be attacked, and if attacked may be supported, by any evidence which would be admissible for those purposes if declarant had testified as a witness. Evidence of a statement or conduct by the declarant at any time, inconsistent with the declarant's hearsay statement, is not subject to any requirement that the declarant may have been afforded an opportunity to deny or explain. If the party against whom a hearsay statement has been admitted calls the declarant as a witness, the party is entitled to examine the declarant on the statement as if under cross-examination.

Authentication and Identification

§ 18.901 Requirement of authentication or identification.

(a) *General provision.* The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.

(b) *Illustrations.* By way of illustration only, and not by way of limitation, the following are examples of authentication or identification conforming with the requirements of this rule:

(1) Testimony of witness with knowledge. Testimony that a matter is what it is claimed to be.

(2) Nonexpert opinion on handwriting. Nonexpert opinion as to the genuineness of handwriting, based upon familiarity not acquired for purposes of litigation.

(3) Comparison by [trier] ►judge◄ or expert witness. Comparison by the ►judge as◄ trier of fact or by expert witnesses with specimens which have been authenticated.

(4) Distinctive characteristics and the like. Appearance, contents, substance, internal patterns, or other distinctive characteristics, taken in conjunction with circumstances.

(5) Voice identification. Identification of a voice, whether heard firsthand or through mechanical or electronic transmission or recording, by opinion based upon hearing the voice at any time under circumstances connecting it with the alleged speaker.

(6) Telephone conversations. Telephone conversations, by evidence that a call was made to the number assigned at the time by the telephone company to a particular person or business, if (i) in the case of a person, circumstances, including self-identification, show the person answering to be the one called, or (ii) in the case of a business, the call was made to a place of business and the conversation related to business reasonably transacted over the telephone.

(7) Public records or reports. Evidence that a writing authorized by law to be recorded or filed and in fact recorded or filed in a public office, or a purported public record, report, statement, or data compilation, in any form, is from the public office where items of this nature are kept.

(8) Ancient documents or data compilation. Evidence that a document or data compilation, in any form, (i) is in

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such condition as to create no suspicion concerning its authenticity, (ii) was in a place where it, if authentic, would likely be, and (iii) has been in existence 20 year or more at the time it is offered.

(9) Process or system. Evidence describing a process or system used to produce a result and showing that the process or system produces an accurate result.

(10) Methods provided by statute or rule. Any method of authentication or identification provided by Act of Congress or by [other rules prescribed by the Supreme Court] ►rule or regulation prescribed by the administrative agency◄ pursuant to statutory authority.

§ 18.902 Self-authentication.

(a) Extrinsic evidence of authenticity as a condition precedent to admissibility is not required with respect to the following:

(1) *Domestic public documents under seal.* A document bearing a seal purporting to be that of the United States, or of any State, district, Commonwealth, territory, or insular possession thereof, or the Panama Canal Zone, or the Trust Territory of the Pacific Islands, or of a political subdivision, department, officer, or agency thereof, and a signature purporting to be an attestation or execution.

(2) *Domestic public documents not under seal.* A document purporting to bear the signature in the official capacity of an officer or employee of any entity included in paragraph (a)(1) of this section, having no seal, if a public officer having a seal and having official duties in the district or political subdivision of the officer or employee certifies under seal that the signer has the official capacity and that signature is genuine.

(3) *Foreign public documents.* A document purporting to be executed or attested in an official capacity by a person authorized by the laws of a foreign country to make the execution or attestation, and accompanied by a final certification as to the genuiness of the signature and official position (i) of the executing or attesting person, or (ii) of any foreign official whose certificate of genuiness of signature and official position relates to the execution of attestation or is in a chain of certificates of genuiness of signature and official position relating to the execution or attestation. A final certification may be made by a secretary of embassy or legation, consul, vice consul, or consular agent of the United States, or a diplomatic or consular official of the foreign country assigned or accredited to the United States. If reasonable opportunity has been given to all parties to investigate the authenticity and accuracy of official documents, the [court] ►judge◄ may, for good cause shown, order that they be treated as presumptively authentic without final certification or permit them to be evidenced by an attested summary with or without final certification.

(4) *Certified copies of public records.* A copy of an official record or report or entry therein, or of a document authorized by law to be recorded or filed and actually recorded or filed in a public office, including data compilations in any form, certified as correct by the custodian or other person authorized to make the certification, by certificate complying with paragraph (a)(1), (2), or (3) of this section or complying with any Act of Congress or [rule prescribed by the Supreme Court pursuant to statutory authority] ►by rule or regulation prescribed by the administrative agency pursuant to statutory authority◄.

(5) *Official publications.* Books, pamphlets, or other publications purporting to be issued by public authority.

(6) *Newspapers and periodicals.* Printed materials purporting to be newspapers or periodicals.

(7) *Trade inscriptions and the like.* Inscriptions, signs, tags, or labels purporting to have been affixed in the course of business and indicating ownership, control, or origin.

(8) *Acknowledged documents.* Documents accompanied by a certificate of acknowledgement executed in the manner provided by law by a notary public or other officer authorized by law to take acknowledgments.

(9) *Commercial paper and related documents.* Commercial paper, signatures thereon, and documents relating thereto to the extent provided by general commercial law.

(10) *Presumptions under Acts of Congress [or administrative agency rules or regulations].* Any signature, document, or other matter declared by Act of Congress ►or by rule or regulation prescribed by the administrative agency pursuant to statutory authority◄ to be presumptively or prima facie genuine or authentic.

►(11) *Certified records of regularly conducted activity.* The original or a duplicate of a record of regularly conducted activity, within the scope of Rule 803(6), which the custodian thereof or another qualified individual certifies (i) was made, at or near the time of the occurrence of the matters set forth, by (or from information transmitted by) a person with knowledge of those matters, (ii) is kept in the course of the regularly conducted activity, and (iii) was made by the regularly conducted activity as a regular practice, unless the sources of information or the method or circumstances of preparation indicate lack of trustworthiness; but a record so certified is not self-authentificating under this subsection unless the proponent makes an intention to offer it known to the adverse party and makes it available for inspection sufficiently in advance of its offer in evidence to provide the adverse party with a fair opportunity to challenge it. As used in this subsection, "certifies" means, with respect to a domestic record, a written declaration under oath subject to the penalty of perjury and, with respect to a foreign record, a written declaration signed in a foreign country which, if falsely made, would subject the maker to criminal penalty under the laws of that country. The certificate relating to a foreign record must be accompanied by a final certification as to the genuineness of the signature and official position (iv) of the individual executing the certificate or (v) of any foreign official who certifies the genuineness of signature and official position of the executing individual or is the last in a chain of certificates that collectively certify the genuiness of signature and official position of the executing individual. A final certification must be made by a secretary of embassy or legation, consul general, consul, vice consul, or consular agent of the United States, or a diplomatic or consular official of the foreign country who is assigned or accredited to the United States.◄

►(12) *Bills, estimates, and reports.* In actions involving personal injury or damage to property, the following bills, estimates, and reports provided that a copy of said bill, estimate, or report has been served upon the adverse party sufficiently in advance of the hearing to provide the adverse party with a fair opportunity to prepare to object or meet it:◄

►(i) Hospital bills on the official letterhead or billhead of the hospital, when dated and itemized.◄

►(ii) Bills of doctors and dentists, when dated and containing a statement showing the date of each visit and the charge therefor.◄

►(iii) Bills of registered nurses, licensed practical nurses and physical therapists or other licensed health care providers, when dated and containing an itemized statement of the days and hours of service and the charges therefor.◄

►(iv) Bills for medicine, eyeglasses, prosthetic devices, medical belts or similar items, when dated and itemized.◄

►(v) Property repair bills or estimates, when dated and itemized, setting forth the charges for labor and material. In the case of an estimate, the party intending to offer the estimate shall forward with his notice to the adverse party, together with a copy of the estimate, a statement indicating whether or not the property was repaired, and, if so, whether the estimated repairs were made in full or in part and by whom, the cost thereof, together with a copy of the bill therefor.◄

►(vi) Report of the rate of earnings and time lost from work or lost compensation prepared by an employer on official letterhead, when dated and itemized. The adverse party may not dispute the authenticity, therefor, unless the adverse party files and serves written objection thereto sufficiently in advance of the hearing stating the objections, and the grounds therefor, the adverse party will make if the bill, estimate, or report is offered at the time of the hearing. An adverse party may call the authors of the bill, estimate, or report as a witness and examine the witness as if under cross-examination.◄

►(13) *Medical reports.* In actions involving injury, illness disease, death, disability or physical or mental impairment, doctor, hospital, laboratory and other medical reports made for purposes of medical treatment, provided that a copy of the report has been filed and served upon the adverse party sufficiently in advance of the hearing to provide the adverse party with a fair opportunity to prepare to object or meet it. The adverse party may not object to the authenticity of the report unless the adverse party files and serves written objection thereto sufficiently in advance of the hearing stating the objections, and the grounds therefor, that the adverse party will make if the report is offered at the time of the hearing. An adverse party may call the author of the medical report as a witness and examine the witness as if under cross-examination.◄

►(14) *Written reports of expert witnesses.* Written reports of an expert witness prepared with a view toward litigation including but not limited to a diagnostic report of a doctor, including inferences and opinions, when on official letterhead, when dated, when including a statement of the experts qualifications, when including a summary of experience as an expert witness in litigation, when including the basis facts, data, and opinions forming the basis of the inferences or opinions, and when including the reasons for or explanation of the inferences or opinions, so far as admissible under the rules of evidence applied as though the witness was then present and testifying, provided that a copy of the report has been filed and served upon the adverse party sufficiently in advance of the hearing to provide the adverse party with a fair opportunity to prepare to object or meet it. The adverse party may not object to the authenticity of the report unless the adverse party files and serves written objection thereto sufficiently in advance of the hearing stating the objections, and the grounds therefor, that the adverse party will make if the report is offered at the time of the hearing. An adverse party may call the expert as a witness and examine the witness as if under cross-examination.◄

►(15) *Written statements of lay witnesses.* Written statements of a lay witness made under oath or affirmation accompanied by a certificate of acknowledgement executed in a manner provided by law by a notary public or other officer authorized by law to take acknowledgements, so far as admissible under the rules of evidence applied as though the witness was then present and testifying, provided (i) that a copy of the written statement has been filed and served upon the adverse party sufficiently in advance of the hearing to provide the adverse party with a fair opportunity to prepare to object or meet it and (ii) if the witness is not unavailable as defined in Rule 804(a) that no adverse party has sufficiently in advance of the hearing filed and served upon the noticing party a written demand that the witness be produced in person to testify at the hearing. An adverse party may call the declarant as a wintess and examine the witness as if under cross-examination.◄

►(16) *Deposition testimony.* Testimony given as a witness in a deposition taken in compliance with law in the course of the same proceeding, so far as admissible under the rules of evidence applied as though the witness was then present and testifying, if the party against whom the testimony is now offered had an opportunity and similar motive to develop the testimony by direct, cross, or redirect examination, provided that a notice of intention to offer the depoition in evidence, together with a copy thereof if not otherwise previously provided, has been served upon the adverse party sufficiently in advance of the hearing to provide the adverse party with a fair opportunity to prepare to meet it. An adverse party may call the deponent as a witness and examine the witness as if under cross-examination.◄

►(b) [*Reserved.*]◄

§ 18.903 Subscribing witness' testimony unnecessary.

The testimony of a subscribing witness is not necessary to authenticate a writing unless required by the laws of the jurisdiction whose laws govern the validity of the writing.

Contents of Writings, Recordings, and Photographs

§ 18.1001 Definitions.

(a) For purposes of this article the following definitions are applicable:

(1) *Writings and recordings.* "Writings" and "recordings" consist of letters, words, or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostating, photographing, magnetic impulse, mechanical or electronic recording, or other form of data compilation.

(2) *Photographs.* "Photographs" include still photographs, X-ray films, video tapes, and motion pictures.

(3) *Original.* An "original" of a writing or recording is the writing or recording itself or any counterpart intended to have the same effect by a person executing or issuing it. An "original" of a photograph includes the negative or [other than with respect of X-ray films] any print therefrom. If data are stored in a computer or similar device, any printout or other output readable by sight, shown to reflect the data accuratley, is an "original".

(4) *Duplicate.* A "duplicate" is a counterpart produced by the same impression as the original, or from the same matrix, or by means of photography, including enlargements and miniatures, or by mechanical or electronic re-recording, or by chemical reproduction, or by other equivalent techniques which accurately reproduces the original.

(b) [Reserved]

§ 18.1002 Requirement of original.

To prove the content of a writing, recording, or photograph, the original writing, recording, or photograph is required, except as otherwise provided in these rules. ►, or by rule or regulations prescribed by the administrative agency pursuant to statutory authority,◄ or by Act of Congress.

§ 18.1003 Admissibility of duplicates.

A duplicate is admissible to the same extent as an original unless (a) a genuine question is raised as to the authenticity of the original or (b) in the

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circumstances it would be unfair to admit the duplicate in lieu of the original.

§ 18.1004 Admissibility of other evidence of contents.

►(a)◄ The original is not required, and other evidence of the contents of a writing, recording, or photograph is admissible if:

(1) *Originals lost or destroyed.* All originals are lost or have been destroyed, unless the proponent lost or destroyed them in bad faith; or

(2) *Original not obtainable.* No original can be obtained by any available judicial process or procedure; or

(3) *Original in possession of opponent.* At a time when an original was under the control of the party against whom offered, that party was put on notice, by the pleading or otherwise, that the contents would be subject of proof at the hearing, and that party does not produce the original at the hearing; or

(4) *Collateral matters.* The writing, recording, or photograph is not closely related to a controlling issue.

►(b) [Reserved.]◄

§ 18.1005 Public records.

The contents of an official record, or of a document authorized to be recorded or filed and actually recorded or filed, including data compilations in any form, if otherwise admissible, may be proved by copy, certified as correct in accordance with rule 902 or testified to be correct by a witness who has compared it with the original. If a copy which complies with the foregoing cannot be obtained by the exercise of reasonable diligence, then other evidence of the contents may be given.

§ 18.1006 Summaries.

The contents of voluminous writings, recordings, or photographs which cannot conveniently be examined [in court]► at the hearing◄ may be presented in the form of a chart, summary, or calculation. The originals, or duplicates, shall be made available for examination or copying, or both, by other parties at reasonable time and place. The [court]►judge◄ may order that they be produced [in court.] ►[at the hearing.]◄

§ 18.1007 Testimony or written admission of party.

Contents of writings, recordings, or photographs may be proved by the testimony or deposition of the party against whom offered or by that party's written admission, without accounting for the nonproduction of the original.

§ 18.1008 Functions of [court and jury] ►the judge◄

When the admissibility of other evidence of contents of writings, recordings, or photographs under these rules depends upon the fulfillment of a condition of fact, the question whether the condition has been fulfilled is ordinarily for the [court ►judge◄ to determine in accordance with the provisions of rule 104►(a)◄. However, when an issue is raised (a) whether the asserted writing ever existed, or (b) whether another writing, recording, photograph produced at the [trial] ►hearing◄ is the original, or (c) whether other evidence of contents correctly reflects the contents, the issue is for the ►judge as◄ trier of fact to determine as in the case of other issues of fact.

Applicability

§ 18.1101 Applicability of rules.

[(a) *Courts and magistrates.* These Rules apply to the United States district courts, the District Court of Guam, the District Court of the Virgin Islands, the District Court of the Northern Mariana Islands, the United States Courts of Appeals, the United States Claims Court, and to United States bankruptcy judges and United States magistrates, in the actions, cases, and proceedings and to the extent hereinafter set forth. The terms "judge" and "court" in these rules include United States bankruptcy judges and United States magistrates.]

[(b) *Proceedings generally.* These rules apply generally to civil actions and proceedings, including admiralty and maritime cases, to criminal cases and proceedings, to contempt proceedings except those in which the court may act summarily, and to proceedings and cases under title 11, United States Code.]

►(a) These rules govern formal adversarial adjudications conducted by the United States Department of Labor before a presiding officer (1) which are required by Act of Congress to be determined on the record after opportunity for an administrative agency hearing in accordance with the Administrative Procedure Act, 5 U.S.C. 554, 556 and 557, or (2), which by United States Department of Labor regulation or by agency practice are conducted inconformance with the foregoing provisions. "Presiding officer", referred to in these rules as "the judge", means an Administrative Law Judge, an agency head, or other officer who presides at the reception of evidence in such an adjudication.◄

[(c) Rule of privilege. The rule with respect to privileges applies at all stages of all actions, cases, and proceedings.]

►(b)◄ [(d)] *Rules inapplicable.* The rules (other than with respect to privileges) do not apply in the following situations:

(1) Preliminary questions of fact. The determination of questions of fact preliminary to admissibility of evidence when the issue is to be determined by the [court] ►judge◄ under ►section 18.104.◄

[(2) Grand jury. Proceedings before grand juries.]

[(3) Miscellaneous proceedings. Proceedings for extradition or rendition; preliminary examinations in criminal cases; sentencing, or granting or revoking probation; issuance of warrants for arrest, criminal summonses, and search warrants; and proceedings with respect to release on bail or otherwise.]

►(2) Longshore, Black Lung and Related Acts. Other than with respect to Rules 403 and 611(a), hearings held pursuant to the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. 901; Federal Coal Mine Health and Safety Act as Amended by the Black Lung Benefits Act, 30 U.S.C. 901; and acts such as the Defense Base Compensation Act, 42 U.S.C. 1651 which incorporate 23(a) of the Longshore and Harbor Workers' Compensation Act by reference.◄

[(e) Rules applicable in part. In the following proceedings these rules apply to the extent that matters of evidence are not provided for in the statutes which govern procedure therein or in other rules prescribed by the Supreme Court pursuant to statutory authority: the trial of minor and petty offenses by United States magistrates; review of agency actions when the facts are subject to trial de novo under section 706(2)(F) of title 5, United States Code; review of orders of the Secretary of Agriculture under section 2 of the Act entitled "An Act to authorize association of producers of agricultural products" approved February 18, 1922 (7 U.S.C. 292), and under sections 6 and 7(c) of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499f, 499g(c)); naturalization and revocation of naturalization under sections 310–318 of the Immigration and Nationality Act (8 U.S.C. 1421–1429); prize proceedings in admiralty under sections 7651–7681 of title 10, United States Code; review of orders of the Secretary of the Interior under section 2 of the Act entitled "An Act authorizing associations of producers of aquatic products"

approved June 25, 1934 (15 U.S.C. 522); review of orders or petroleum control boards under section 5 of the Act entitled "An Act to regulate interstate and foreign commerce in petroleum and its products produced in violation of State law, and for other purposes", approved February 22, 1935 (15 U.S.C. 715d); actions for fines, penalties, or forfeitures under part V of title IV of the Tariff Act of 1930 (19 U.S.C. 1581–1624), or under the Anti-Smuggling Act (19 U.S.C. 1701–1711); criminal libel for condemnation, exclusion of imports, or other proceedings under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301–392); disputes between seamen under sections 4079, 4080, and 4081 of the Revised Statutes (22 U.S.C. 256–258); habeas corpus under sections 2241–2254 of title 28, United States Code; motions to vacate, set aside or correct sentence under section 2255 or title 28, United States Code; actions for penalties for refusal to transport destitute seamen under section 4578 of the Revised Statutes (46 U.S.C. 679); actions against the United States under the Act entitled "An Act authorizing suits against the United States in admiralty for damage caused by and salvage service rendered to public vessels belonging to the United States, and for other purposes", approved March 3, 1925 (46 U.S.C. 781–790), as implemented by section 7730 of title 10, United States Code.]

►(c) *Rules inapplicable in part.* These rules do not apply to the extent inconsistent with, in conflict with, or to the extent a matter is otherwise provided for by an Act of Congress or by a rule or regulation of specific application prescribed by the United States Department of Labor pursuant to statutory authority.◄

§ 18.1102 ►Reserved◄. [Amendments.]

[Amendments to the Federal Rules of Evidence may be made as provided in section 2076 of title 28 of the United States Code.]

[28 U.S.C. section 2076.]

[The Supreme Court of the United States shall have the power to prescribe amendments to the Federal Rules of Evidence. Such amendments shall not take effect until they have been reported to Congress by the Chief Justice at or after the beginning of a regular session of Congress but not later than the first day of May, and until the expiration of one hundred and eighty days after they have been so reported; but if either House of Congress within that time shall by resolution disapprove any amendment so reported it shall not take effect. The effective date of any amendment so reported may be deferred by either House of Congress to a later date or until approved by Act of Congress. Any rule whether proposed or in force may be amended by Act of Congress. Any provision of law in force at the expiration of such time and in conflict with any such amendment not disapproved shall be of no further force or effect after such amendment has taken effect. Any such amendment creating, abolishing, or modifying a privilege shall have no force or effect unless it shall be approved by act of Congress.]

§ 18.1103 Title.

These rules may be known and cited as the [Federal Rules of Evidence] ►United States Department of Labor Rules of Evidence◄

►Appendix—Reporter's Notes◄

Reporter's Note to § 18.103.

Section 18.103(a) provides that error is harmless, i.e., a substantial right is not affected, unless on review it is determined that it is more probably true than not true that the error materially contributed to the decision or order of the court. The more probably true than not true test is the most liberal harmless error standard. See *Haddad v. Lockheed California Corp.*, 720 F.2d 1454, 1458–59 (9th Cir. 1983):

> The purpose of a harmless error standard is to enable an appellate court to gauge the probability that the trier of fact was affected by the error. See R. Traynor, [The Riddle of Harmless Error] at 29–30. Perhaps the most important factor to consider in fashioning such a standard is the nature of the particular fact-finding process to which the standard is to be applied. Accordingly, a crucial first step in determining how we should gauge the probability that an error was harmless is recognizing the distinction between civil and criminal trials. See *Kotteakos v. United States*, 328 U.S. 750, 763, 66 S.Ct. 1239, 1247, 90 L.Ed. 1557 (1946); *Valle-Valdez*, 544 F.2d at 914–15. This distinction has two facets, each of which reflects the differing burdens of proof in civil and criminal cases. First, the lower burden of proof in civil cases implies a larger margin of error. The danger of the harmless error doctrine is that an appellate court may usurp the jury's function, by merely deleting improper evidence from the record and assessing the sufficiency of the evidence to support the verdict below. See *Kotteakos*, 328 U.S. at 764–65, 66 S. Ct. at 1247–48; R. Traynor, supra, at 18–22. This danger has less practical importance where, as in most civil cases, the jury verdict merely rests on a more probable than not standard of proof.
>
> The second facet of the distinction between errors in civil and criminal trials involves the differing degrees of certainty owed to civil and criminal litigants. Whereas a criminal defendant must be found guilty beyond a reasonable doubt, a civil litigant merely has a right to a jury verdict that more probably than not corresponds to the truth.
>
> The term "materially contributed" was chosen as the most appropriate in preference to "substantially swayed", *Kotteakos v. United States*, 328 U.S. 750, 66 S.Ct. 1239, 90 L.Ed. 1557 (1946), or "material effect." *Holloway v. Arkansas*, 435 U.S. 475, 98 S.Ct. 1173, 55 L.Ed. 2d 426 (1978). The word "contributed" was employed in *Schneble v. Florida*, 405 U.S. 427, 92 S.Ct. 1056, 31 L.Ed.2d 340 (1972) and *United States v. Hastings*, 461 U.S. 499, 103 S.Ct. 1974, 76 L.Ed.2d 96 (1983).
>
> Error will not be considered in determining whether a substantial right of a party was affected if the evidence was admitted in error following a properly made objection or motion to strike and the judge explicitly states that he or she does not rely on such evidence in support of the decision or order. The judge must explicitly decline to rely upon the improperly admitted evidence. The alternative of simply assuming nonreliance unless the judge explicitly states reliance, goes too far toward emasculating the benefits flowing from rules of evidence.
>
> The question addressed in *Richardson v. Perales*, 402 U.S. 389, 91 S.Ct. 1420, 28 L.Ed.2d 842 (1971) of whether "substantial evidence" as specified in section 556(d) of the Administrative Procedure Act requires that there be a residuum of legally admissible evidence to support an agency determination is of no concern with respect to these rules; only properly admitted evidence is to be considered in determining whether the "substantial evidence" requirement has been satisfied.

Reporter's Note to § 18.104.

As to the standard on review with respect to questions of admissibility generally, § 18.104(a), see *In re Japanese Electronic Products Antitrust Litigation*, 723 F.2d 238, 265–66 (3d Cir. 1983) ("The scope of review of the trial court's trustworthiness determination depends on the basis for the ruling. When the trial court makes § 18.104(a) findings of historical fact about the manner in which a report containing findings was compiled we review by the clearly erroneous standard of Fed.R. Civ.P. 52. But a determination of untrustworthiness, if predicated on factors properly extraneous to such a determination, would be an error of law * * *. There is no discretion to rely on improper factors. Such an error of law might, of course, in a given instance be harmless within the meaning of Fed.R.Civ.P. 61. In weighing factors which we consider proper, the trial court exercises discretion and we review for abuse of discretion. Giving undue weight to trustworthiness factors of slight relevance while disregarding factors more significant, for example, might be an abuse of discretion."). Accord, *United States v. Wilson*, 798 F.2d 509 (1st Cir. 1986).

As to the standard on review with respect to relevancy, conditional relevancy and the exercise of discretion, see, e.g., *United States v. Abel*, 469 U.S. 45, 54, 105 S.Ct. 465, 470, 83 L.Ed.2d 450 (1984) ("A district court is accorded a wide discretion in determining the admissibility of evidence under the Federal Rules. Assessing the probative value of common membership in any particular group, and weighing any factors counselling against admissibility is a matter first for the district court's sound judgment under §§ 18.401 and 18.403 and ultimately, if the evidence is

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admitted, for the trier of fact."); *Alford* v. *United States*, 282 U.S. 687, 694, 51 S.Ct. 218, 220, 75 L.Ed. 624 (1931) ("The extent of cross-examination with respect to an appropriate subject of inquiry is within the sound discretion of the trial court. It may exercise a reasonable judgment in determining when the subject is exhausted."); *Hill* v. *Bache Halsey Stuart Shields Inc.*, 790 F.2d 817, 823 (10th Cir. 1986) ("We recognize that a trial court has broad discretion to determine whether evidence is relevant, and its decision will not be reversed on appeal absent a showing of clear abuse of that discretion. *Beecham* v. *Lee-Norse*, 714 F.2d 1010, 1014 (10th Cir. 1983). The same standard of review applies to a trial court's determination, under Fed.R.Evid. 403, that the probative value of the evidence is outweighed by its potential to prejudice or confuse the jury, or to lead to undue delay. Id.").

Section 18.104(c) in its first sentence treats those matters addressed in § 18.104(a) as subject to a clearly erroneous test for the determination of error. Matters covered by § 18.104(b) fall within the second sentence of § 18.104(c) and are thus subject to a clear abuse of discretion test. Also subject to a clear abuse of discretion test are rulings concerning relevancy and rulings involving the exercise of discretion including items such as § 18.403 balancing, discretion exercised under § 18.609(b), rulings on the form of questions, and matters generally bearing upon the manner, scope, and extent of witness examination.

Reporter's Note to § 18.301

A.P.A. section 556(e) provides that "[w]hen an agency decision rests on official notice of a material fact not appearing in the evidence in the record, a party is entitled, on timely request, to an opportunity to show the contrary." No definition of "official notice" is provided. An administrative agency may take official notice of any adjudicative fact that could be judicially noticed by a court. In addition "the rule is now clearly emerging that an administrative agency may take official notice of any generally recognized technical or scientific facts within the agency's specialized knowledge, subject always to the proviso that the parties must be given adequate advance notice of the facts which the agency proposes to note, and given adequate opportunity to show the inaccuracy of the facts or the fallacy of the conclusions which the agency proposes tentatively to accept without proof. To satisfy this requirement, it is necessary that a statement of the facts noticed must be incorporated into the record. The source material on which the agency relies should, on request, be made available to the parties for their examination." 1 Cooper, State Administrative Law 412–13 (1965). Accord, Uniform Law Commissioners' Model State Administrative Procedure Act section 10 (4) (1961) ("Notice may be taken of judicially cognizable facts. In addition, notice may be taken of generally recognized technical or scientific facts within the agency's specialized knowledge. Parties shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material noticed, including any staff memoranda or data, and they shall be afforded an opportunity to contest the material so noticed. The agency's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence."); Schwartz, Administrative Law section 7.10 at 375 (2d ed. 1984) ("Clearly an agency may take notice of the same kinds of fact of which a court takes judicial notice. It has, however, been recognized that the differences between agencies and courts * * * may justify a broader approach. Under it, an agency may be permitted to take 'official notice' not only of facts that are obvious and notorious to the average man but also of those that are obvious and notorious to an expert in the given field * * *. [A] commission that regulates gas companies may take notice of the fact that a well-managed gas company loses no more than 7 percent of its gas through leakage, condensation, expansion, or contraction, where its regulation of gas companies, over the years has made the amount of 'unaccounted for gas' without negligence obvious and notorious to it as the expert in gas regulation. A workers' compensation commission may similarly reject a claim that an inguinal hernia was traumatic in origin where the employee gave no indication of pain and continued work for a month after the alleged accident. The agency had dealt with numerous hernia cases and was as expert in diagnosing them as any doctor would be. Its experience taught it that where a hernia was traumatic in origin, there was immediate discomfort, outward evidences of pain observable to fellow employees, and at least temporary suspension from work. The agency could notice this fact based upon its knowledge as an expert and reject uncontradicted opinion testimony that its own expertise renders unpersuasive"). Compare Uniform Law Commissioners' Model State Administrative Procedure Act section 4–212(f) (1981) ("Official notice may be taken of: (i) Any fact that could be judicially noticed in the courts of this State, (ii) the record of other proceedings before the agency, (iii) technical or scientific matters within the agency's specialized knowledge, and (iv) codes or standards that have been adopted by an agency of the United States, of this State or of another State, or by a nationally recognized organization or association. Parties must be notified before or during the hearing, or before the issuance of any initial or final order that is based in whole or in part on facts or materials noticed, of the specific facts or material noticed and the source thereof, including any staff memoranda and data, and be afforded an opportunity to contest and rebut the facts or materials so noticed."). Contra Davis, Official Notice, 62 Harv. L. Rev. 537, 539 (1949) ("To limit official notice to facts which are beyond the realm of dispute would virtually emasculate the administrative process. The problem of official notice should not be one of drawing lines between disputable and indisputable facts. Nor should it even be one of weighing the importance of basing decisions upon all available information against the importance of providing full and fair hearings in the sense of permitting parties to meet all materials that influence decision. The problem is the intensely practical one of devising a procedure which will provide both informed decisions and fair hearings without undue inconvenience or expense.").

Section 18.201 adopts the philosophy of Federal Rule of Evidence 201. The Advisory Committee's Note to Rule 201 (b) states:

With respect to judicial notice of adjudicative facts, the tradition has been one of caution in requiring that the matter be beyond reasonable controversy. This tradition of circumspection appears to be soundly based, and no reason to depart from it is apparent. As Professor Davis says:

"The reason we use trial-type procedure, I think, is that we make the practical judgment, on the basis of experience, that taking evidence, subject to cross-examination and rebuttal, is the best way to resolve controversies involving disputes of adjudicative facts, that is, facts pertaining to the parties. The reason we require a determination on the record is that we think fair procedure in resolving disputes of adjudicative facts calls for giving each party a chance to meet in the appropriate fashion the facts that come to the tribunal's attention, and the appropriate fashion for meeting disputed adjudicative facts includes rebuttal evidence, cross-examination, usually confrontation, and argument (either written or oral or both). The key to a fair trial is opportunity to use the appropriate weapons (rebuttal evidence, cross-examination, and argument) to meet adverse materials that come to the tribunal's attention." A System of Judicial Notice Based on Fairness and Convenience, in Perspectives of Law 69, 93 (1964).

The rule proceeds upon the theory that these considerations call for dispensing with traditional methods of proof only in clear cases. Compare Professor Davis' conclusion that judicial notice should be a matter of convenience, subject to requirements of procedural fairness. *Id.*, 94. Rule 201 of the Federal Rules of Evidence incorporated the Morgan position on judicial notice. The contrary position, expressed by Wigmore and Thayer, and advocated by Davis, was rejected. See McNaughton, Judicial Notice-Excerpts Relating to the Morgan-Wigmore Controversy, 14 Vand. L. Rev. 779 (1961) ("They do not differ with respect to the application of the doctrine to 'law'. Nor do they reveal a difference with respect to so-called 'jury notice.' Their difference relates to judicial notice of 'facts.' Here Wigmore, following Thayer, insists that judicial notice is solely to save time where dispute is unlikely and that a matter judicially noticed is therefore only 'prima facie,' or rebuttable, if the opponent elects to dispute it. It is express in Thayer and implicit in Wigmore that (perhaps because the matter is rebuttable) judicial notice may be applied not only to indisputable matters but also to matters of lesser certainty. Morgan on the other hand defines judicial notice more narrowly, and his consequences follow from his definition. He limits judicial notice of fact to matters patently indisputable. And his position is that matters judicially noticed are not rebuttable. He asserts that it is wasteful to permit patently indisputable matters to be litigated by way of formal proof and furthermore that it would be absurd to permit a party to woo a jury to an obviously erroneous finding contrary to the noticed fact. Also, he objects to the Wigmorean conception on the ground that it is really a 'presumption' of sorts attempting to pass under a misleading name. It is, according to Morgan, a presumption with no recognized rules as to how the presumption works, what activates it, and who has the burden of doing how much to rebut it.").

Accordingly, notice that items (ii) and (iv) of the Uniform Law Commissioners Model State Administrative Procedure Act quoted above are not included as separate items in Rule 201. However codes and standards, (iv), to the extent not subject to reasonable dispute fall within Rule 201(b)(2). To the extent such codes and standards do not so fall, proof should be required. Official notice of records of other proceedings before the agency would "permit an agency to notice facts contained in its files, such as the revenue statistics contained in the reports submitted to it by a regulated company." Schwartz, *supra* at 377. Once again, to the extent such information is not capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned, § 18.201(b)(2), proof should be required.

Reporter's Note to § 18.301.

Section 18.301 does not prevent an administrative agency by either rule, regulation, or common law development from allocating burdens of production and burdens of persuasion in an otherwise permissible manner. See *N.L.R.B.* v. *Transportation Management Corp.*, 462 U.S. 400, 403 n.7, 103 S.Ct. 2469, 2475 n.7, 76 L.Ed. 2d 667 (1983) ("Respondent contends that Federal Rule of Evidence 301 requires that the burden of persuasion rest on the General Counsel. Rule 301 provides:

'In all civil actions and proceedings not otherwise provided for by Act of Congress or by these rules, a presumption imposes on the party against whom it is directed the burden of going forward with evidence to rebut or meet the presumption, but does not shift to such party the burden of proof in the sense of the risk of nonpersuation, which remains throughout the trial upon the party on whom it was originally cast.'

The Rule merely defines the term 'presumption.' It in no way restricts the authority of a court or an agency to change the customary burdens of persuasion in a manner that otherwise would be permissible. Indeed, were respondent correct, we could not have assigned to the defendant the burden of persuasion on one issue in *Mt. Healthy City Board of Education* v. *Doyle*, 429 U.S. 274, 97 S.Ct. 568, 50 L.Ed.2d 471 (1977).").

Reporter's Note to § 18.302.

The Advisory Committee's Note to Rule 302, 56 F.R.D. 118, 211 states:

A series of Supreme Court decisions in diversity cases leaves no doubt of the relevance of *Erie Railroad Co.* v. *Tompkins*, 304 U.S. 64, 58 S.Ct. 817, 82 L.Ed. 1188 (1938), to questions of burden of proof. These decisions are *Cities Service Oil Co.* v. *Dunlap*, 308 U.S. 208, 60 S.Ct. 201, 84 L.Ed. 196 (1939), *Palmer* v. *Hoffman*, 318 U.S. 477, 87 L.Ed. 645 (1943), and *Dick* v. *New York Life Ins. Co.*, 359 U.S. 437, 79 S.Ct. 921, 3 L.Ed.2d 935 (1959). They involved burden of proof, respectively, as to status as bona fide purchaser, contributory negligence, and nonaccidental death (suicide) of an insured. In each instance the state rule was held to be applicable. It does not follow, however, that all presumptions in diversity cases are governed by state law. In each case cited, the burden of proof question had to do with a substantive element of the claim or defense. Application of the state law is called for only when the presumption operates upon such an element. Accordingly the rule does not apply state law when the presumption operates upon a lesser aspect of the case, i.e., "tactical" presumptions.

The situations in which the state law is applied have been tagged for convenience in the preceding discussion as "diversity cases." The designation is not a completely accurate one since *Erie* applies to any claim or issue having its source in state law, regardless of the basis of federal jurisdiction, and does not apply to a federal claim or issue, even though jurisdiction is based on diversity. *Vestal, Erie R.R.* v. *Tompkins*: A Projection, 48 Iowa L.Rev. 248, 257 (1963); Hart and Wechsler, The Federal Courts and the Federal System, 697 (1953); 1A Moore Federal Practice p. 0.305[3] (2d ed.1965); Wright, Federal Courts, 217–218 (1963). Hence the rule employs, as appropriately descriptive, the phrase "as to which state law supplies the rule of decision." See A.L.I. Study of the Division of Jurisdiction Between State and Federal Courts, section 2344(c), p. 40, P.F.D. No. 1 (1965).

It is anticipated that § 18.302 will very rarely come into play.

Reporter's Note to § 18.403.

Section 18.403 of the Federal Rules of Evidence provides for the exclusion of relevant evidence on the grounds of unfair prejudice. Since all effective evidence is prejudicial in the sense of being damaging to the party against whom it is offered, prejudice which calls for exclusion is given a more specialized meaning: an undue tendency to suggest decision on an improper basis, commonly but not necessarily an emotional one, such as bias, sympathy, hatred, contempt, retribution or horror. Unfair prejudice is not, however, a proper ground for the exclusion of relevant evidence under these rules. Judges have shown over the years the ability to resist deciding matters on such an improper basis. Accord *Gulf States Utilities Co.* v. *Ecodyne Corp.*, 635 F.2d 517, 519 (5th Cir.1981) ("The exclusion of the evidence under Rule 403's weighing of probative value against prejudice was improper. This portion of § 18.403 has no logical application to bench trials. Excluding relevant evidence in a bench trial because it is cumulative or a waste of time is clearly a proper exercise of the judge's power, but excluding relevant evidence on the basis of 'unfair prejudice' is a useless procedure. Section 18.403 assumes a trial judge is able to discern and weigh the improper inferences that a jury might draw from certain evidence, and then balance those improprieties against probative value and necessity. Certainly, in a bench trial, the same judge can also exclude those improper inferences from his mind in reaching a decision.").

While § 18.403, like Rule 403 of the Federal Rules of Evidence, does speak in terms of both confusion of the issues and misleading of the trier of fact, the distinction between such terms is unclear in the literature and in the cases. McCormick, Evidence section 185 at 546 (3d ed. 1984), refers to the probability that certain proof and the answering evidence that it provokes might unduly distract the trier of fact from the main issues. 2 Wigmore, Evidence section 443 at 528–29 (Chadbourn rev. 1979), describes the concept as follows:

[I]n attempting to dispute or explain away the evidence thus offered, new issues will arise as to the occurrence of the instances and the similarity of conditions, new witnesses will be needed whose cross-examination and impeachment may lead to further issues; and that thus the trial will be unduly prolonged, and the multiplicity of minor issues will be such that the jury will lose sight of the main issue, and the whole evidence will be only a mass of confused data from which it will be difficult to extract the kernel of controversy.

Both commentators are clearly describing the notion of confusion of the issues. While of course a trier of fact confused in the foregoing manner can also be said to have been misled, it is suggested that the concept of misleading refers primarily to the possibility of the trier of fact overvaluing the probative value of a particular item of evidence for any reason other than the emotional reaction associated with unfair prejudice. To illustrate, evidence of the results of a lie detector, even where an attempt is made to explain fully the significance of the results, is likely to be overvalued by the trier of fact. Similarly, the test of *Frye* v. *United States*, 293 F.1013, 1014 (D.C. Cir. 1923), imposing the requirement with respect to the admissibility of scientific evidence that the particular technique be shown to have gained "general acceptance in the particular field in which it belongs," is an attempt to prevent decision makers from being unduly swayed by unreliable scientific evidence. Demonstrative evidence in the form of a photograph, map, model, drawing or chart which varies substantially from the fact of consequence sought to be illustrated similarly may mislead. Finally, any trier of fact may be misled by the sheer amount of time spent upon a question into believing the issue to be of major importance and accordingly into attaching too much significance to it in its determination of the factual issues involved.

Occasionally evidence is excluded not because distracting side issues will be created but rather because an unsuitable amount of time would be consumed in clarifying the situation. Concerns associated with the proper use of trial time also arise where the evidence being offered is relevant to a fact as to which substantial other evidence has already been introduced.

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including evidence bearing on the question of credibility, where the evidence itself possesses only minimal probative value, such as evidence admitted as background, or where evidence is thought by the court to be collateral. In recognition of the legitimate concern of the court with expenditures of time, § 18.403 provides for exclusion of evidence where its incremental probative value is substantially outweighed by considerations of undue delay, waste of time, or needless presentation of cumulative evidence. Roughly speaking, undue delay can be argued to refer to delay caused by the failure of the party to be able to produce the given evidence at the appropriate time at trial but only at some later time. Waste of time may be taken to refer to the fact that the evidence possesses inadequate incremental probative value in light of the time its total exploration will consume. Cumulative refers to multiple sources of different evidence establishing the same fact of consequence as well as multiple same sources, such as ten witnesses all testifying to the same speed of the car or the same character of a witness.

Reporter's Note to § 18.801.

The Conference Report to Rule 501, 1975 U.S. Code Cong. & Ad. News 7098, 7100 states:

Rule 501 deals with the privilege of a witness not to testify. Both the House and Senate bills provide that federal privilege law applies in criminal cases. In civil actions and proceedings, the House bill provides that state privilege law applies "to an element of a claim or defense as to which State law supplies the rule of decision." The Senate bill provides that "in civil actions and proceedings arising under 28 U.S.C. 1332 or 28 U.S.C. 1335, or between citizens of different States and removed under 28 U.S.C. 1441(b) the privilege of a witness, person, government, State or political subdivision thereof is determined in accordance with State law unless with respect to the particular claim or defense, Federal law supplies the rule of decision."

The wording of the House and Senate bills differs in the treatment of civil actions and proceedings. The rule in the House bill applies to evidence that relates to "an element of a claim or defense." If an item of proof tends to support or defeat a claim or defense, or an element of a claim or defense, and if state law supplies the rule of decision for that claim or defense, then state privilege law applies to that item of proof.

Under the provision in the House bill, therefore, state privilege law will usually apply in diversity cases. There may be diversity cases, however, where a claim or defense is based upon federal law. In such instances, federal privilege law will apply to evidence relevant to the federal claim or defense. See *Sola Electric Co. v. Jefferson Electric Co.*, 317 U.S. 173 (1942).

In nondiversity jurisdiction civil cases, federal privilege law will generally apply. In those situations where a federal court adopts or incorporates state law to fill interstices or gaps in federal statutory phrases, the court generally will apply federal privilege law. As Justice Jackson has said:

A federal court sitting in a non-diversity case such as this does not sit as a local tribunal. In some cases it may see fit for special reasons to give the law of a particular state highly persuasive or even controlling effect, but in the last analysis its decision turns upon the law of the United States, not that of any state.

D'Oench, Duhme & Co. v. Federal Deposit Insurance Corp., 315 U.S. 447, 471 (1942) (Jackson, J., concurring). When a federal court chooses to absorb state law, it is applying the state law as a matter of federal common law. Thus, state law does not supply the rule of decision (even though the federal court may apply a rule derived from state decisions), and state privilege law would not apply. See C.A. Wright, Federal Courts 251–252 (2d ed. 1970); *Holmberg v. Armbrecht*, 327 U.S. 392 (1946); *DeSylva v. Ballentine*, 351 U.S. 570, 581 (1956); 9 Wright & Miller, Federal Rules and Procedures section 2408.

In civil actions and proceedings, where the rule of decision as to a claim or defense or as to an element of a claim or defense is supplied by state law, the House provision requires that state privilege law apply.

The Conference adopts the House provision.

It is anticipated that the proviso in Section 18.501 will very rarely come into play.

Reporter's Note to § 18.601.

The Conference Report to Rule 601, 1975 U.S. Code Cong. & Ad. News 7051, 7059 states:

Rule 601 deals with competency of witnesses. Both the House and Senate bills provide that federal competency law applies in criminal cases. In civil actions and proceedings, the House bill provides that state competency law applies "to an element of a claim or defense as to which State law supplies the rule of decision." The Senate bill provides that "in civil actions and proceedings arising under 28 U.S.C. 1332 or 28 U.S.C. 1335, or between citizens of different States and removed under 28 U.S.C. 1441(b) the competency of a witness, person, government, State or political subdivision thereof is determined in accordance with State law, unless with respect to the particular claim or defense, Federal law supplies the rule of decision."

The wording of the House and Senate bills differs in the treatment of civil actions and proceedings. The rule in the House bill applies to evidence that relates to "an element of a claim or defense." If an item of proof tends to support or defeat a claim or defense, or an element of a claim or defense, and if state law supplies the rule of decision for that claim or defense, then state competency law applies to that item of proof.

For reasons similar to those underlying its action on Rule 501, the Conference adopts the House provision. It is anticipated that the proviso to Section 18.601 will very rarely come into play.

Reporter's Note to § 18.608.

Consistent with the position taken in § 18.403, unfair prejudice is not felt to be a proper reason of the exclusion of rulevent evidence in a hearing where the judge is the trier of fact. Sections 18.609 (a) and (b) provide for the use of every prior conviction punishable by death or imprisonment in excess of one year under the law under which the witness was convicted and every prior conviction involving dishonesty or false statement, regardless of punishment, provided not more than ten years has elapsed since the date of the conviction or the release of the witness from the confinement imposed for that conviction, whichever is the later date. Convictions more than ten years old are felt to be too stale to be admitted to impeach the credibility of a witness testifying in any hearing to which these rules apply.

Reporter's Note to § 18.801.

Rule 801(d)(1)(A) of the Federal Rules of Evidence has been revised to permit the substantive admissibility of all prior inconsistent statements. The added protection of certainty of making and circumstances conducive to trustworthiness provided by the restriction that the prior inconsistent statement be "given under oath subject to the penalty of perjury at a trial, hearing, in other proceeding, or in a deposition" were added by Congress to Federal Rule of Evidence 801(d)(1)(A) for the benefit of the criminal defendant. See Graham, Employing Inconsistent Statements for Impeachment and as Substantive Evidence: A Critical Review and Proposed Amendments of Federal Rules of Evidence 801(d)(1)(A), 613 and 607, 75 Mich.L.Rev. 1565 (1977).

Reporter's Note to § 18.802.

Section 18.803(a)(25) provides a hearsay exception for the self-authenticating aspect of documents and other items as provided in § 18.902. Out of court statements admitted under § 18.902 for the purpose of establishing that the document or other item offered into evidence is as purported to be are received in evidence to establish the truth of the matter stated, § 18.801(a)–(c). Section 18.802 provides that "hearsay is not admissible except as provided by these rules * * *." Section 18.902 thus operates as a hearsay exception on the limited question of authenticity. Section 18.902 does not, however, purport to create a hearsay exception for matters asserted to be true in the self-authenticated exhibit itself. As a matter of drafting consistency, it is preferable to have a specific hearsay exception in § 18.803 for statements of self-authentication under § 18.902 then to have a hearsay exception exist in these rules not bearing an 800 number.

Sections 18.803 (a)(26) and 18.803(a)(27) are derived from Rules 4 (e) and (f) of the Arizona Uniform Rules of Procedure for Arbitration. Section 18.803(a)(26(vi) is derived from Illinois Supreme Court Rule 90(c)(4).

Sections 18.803(a)(27) and 18.803(a)(28) maintain the common law distinction between a treating physician, i.e., medical treatment, and an examining or nontreating physician, i.e., medical diagnosis. A treating physician provides or acts with a view toward providing medical treatment. An examining physician is one hired with a view toward testifying on behalf of a party and not toward treating a patient. As such, written reports of the examining physician are not felt to be sufficiently trustworthy to be given the preferred treatment of § 18.803(a)(27). Thus a report of a physician made for the purpose of medical treatment, i.e., treating physician, is admissible if the requirements of § 18.803(a)(27) are satisfied. A report of physician prepared with a view toward litigation, i.e., examining physician, satisfying the requirements of § 18.802(a)(28) is also admissible. The reports of a given physician may, of course, fall within either or both categories. Reports of any medical surveillance test the purpose of which is to detect actual or potential impairment of health or functional capacity and autopsy reports fall within § 18.803(a)(28).

Section 18.803(a)(28) is derived from Rule 1613(b)(1) of the California Rules of Court. A summary of litigation experience of the expert is required to assist the evaluation of credibility.

Section 18.803(a)(29) is derived from Rule 1613(b)(2) of the California Rules of Court.

Section 18.803(a)(30) is derived from Rule 1613(b)(3) of the California Rules of Court.

The proviso relating to the subpoenaing of witnesses is derived from Rule 1305(b) of the Pennsylvania Rules of Court Procedure Governing Compulsory Arbitration. See also §§ 18.902(a)(12)–18.902(a)(16) *infra*.

Sections 18.803(a)(26)–18.803(a)(30) each provide that the adverse party may call the declarant of the hearsay statement, if available, as a witness and examine the witness as if under cross-examination. These rules take no position with respect which party must initially bear the cost of lay witness and expert witness fees nor as to the ultimate disposition of such fees.

Reporter's Note to § 18.902.

Section 18.902(a)(11) is Uniform Rule of Evidence 902(11). The "Comment" states:

Subsection 11 is new and embodies a revised version of the recently enacted federal statute dealing with foreign records of regularly conducted activity, 18 U.S.C. 3505. Under the federal statute, authentication by certification is limited to foreign business records and to use in criminal proceedings. This subsection broadens the federal provision so that it includes domestic as well as foreign records and is applicable in civil as well as criminal cases. Domestic records are presumably no less trustworthy and the certification of such records can more easily be challenged if the opponent of the evidence chooses to do so. As to the federal statute's limitation to criminal matters, ordinarily the rules are more strictly applied in such cases, and the rationale of trustworthiness is equally applicable in civil matters. Moreover, the absence of confrontation concerns in civil actions militates in favor of extending the rule to the civil side as well.

The rule requires that the certified record be made available for inspection by the adverse party sufficiently in advance of the offer to permit the opponent a fair opportunity to challenge it. A fair opportunity to challenge the offer may require that the proponent furnish the opponent with a copy of the record in advance of its introduction and that the opponent have an opportunity to examine, not only the record offered, but any other records or documents from which the offered record was procured or to which the offered record relates. That is a matter not addressed by the rule but left to the discretion of the trial judge.

Sections 18.902(a) (12) and (13) are derived from Rule 4 (e) and (f) of the Arizona Uniform Rules of Procedure for Arbitration.

§ 18.902(a)(12)(vi) is derived from Illinois Supreme Court Rule 90(c)(4).

Section 18.902(a)(14) is derived from Rule 1613(b)(1) of the California Rules of Court. A summary of litigation experience of the expert is required to assist the evaluation of credibility.

With respect to §§ 18.902(a)(13) and 18.902(a)(14) as applied to a treating or examining physician, see Reporter's Note to §§ 18.803(a)(27) and 18.803(a)(28) *supra*.

Section 18.902(a)(15) is derived from Rule 1613(b)(2) of the California Rules of Court.

Section 18.902(16) is derived from Rule 1613(b)(3) of the California Rules of Court.

The proviso relating to the subpoenaing of witnesses is derived from Rule 1305(b) of the Pennsylvania Rules of Civil Procedure Governing Compulsory Arbitration.

Sections 18.902(a) (12)–(16) each provide that the adverse party may call the declarant of the hearsay statement, if available, as a witness and examine the witness as if under cross-examination. These rules take no position with respect to which party must initially bear the cost of lay witness and expert witness fees nor as to the ultimate disposition of such fees.

See also §§ 18.803(a) (25)–(30) *supra*.

Reporter's Note to § 18.1001.

Section 18.1001(a)(3) excludes prints made from X-ray film from the definition of an original. A print made from X-ray film is not felt to be equivalent to the X-ray film itself when employed for purposes of medical treatment or diagnosis.

Reporter's Note to § 18.1101.

Section 23(a) of the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. 922, provides as follows:

In making an investigation or inquiry or conducting a hearing the deputy commissioner or Board shall not be bound by common law or statutory rules of evidence or by technical or formal rules of procedure, except as provided by this chapter, but may make such investigation or inquiry or conduct such hearing in such manner as to best ascertain the rights of the parties. Declarations of a deceased employee concerning the injury in respect of which the investigation or inquiry is being made or the hearing conducted shall be received in evidence and shall, if corroborated by other evidence, be sufficient to establish the injury.

Other acts such as the Defense Base Compensation Act, 42 U.S.C. 1651, adopt section 23(a) of the Longshore and Harbor Workers' Compensation Act by reference. In addition, 20 CFR § 725.455(b) provides as follows with respect to the Black Lung Benefits Act, 30 U.S.C. 901:

Evidence. The administrative law judge shall at the hearing inquire fully into all matters at issue, and shall not be bound by common law or statutory rules of evidence, or by technical or formal rules of procedure, except as provided by 5 U.S.C. 554 and this subpart. The administrative law judge shall receive into evidence the testimony of the witnesses and parties, the evidence submitted to the Office of Administrative Law Judges by the deputy commissioner under § 725.421, and such additional evidence as may be submitted in accordance with the provisions of this subpart. The administrative law judge may entertain the objections of any party to the evidence submitted under this section.

Section 18.1101(c) provides that these rules do not apply to the extent inconsistent with, in conflict with, or to the extent a matter is otherwise provided for by a rule or regulation of specific application prescribed by the United States Department of Labor pursuant to statutory authority. Whether section 23(a) and § 725.455(b) are fact incompatible with these rules is a very difficult question.

Without regard to section 23(a) and § 725.444(b), various other considerations support the conclusion to exclude hearings under Longshore, Black Lung, and related acts from coverage of these rules at this time. Longshore, Black Lung, and related acts involve entitlements. Claimants in such hearings benefit from proceeding pursuant to the most liberal evidence rules that are consistent with the orderly administration of justice and the ascertainment of truth. Claimants in such hearings on occasion appear pro se. While the modifications made by these rules are clearly designed to further liberalize the already liberal Federal Rules of Evidence, it is nevertheless unclear at this time whether even conformity with minimal requirements with respect to the introduction of evidence would present a significant barrier to the successful prosecution of meritorious claims. Rather than speculate as to the impact adoption of these rules would have upon such entitlement programs, it was decided to exclude hearings involving such entitlement programs from coverage of these rules. It is anticipated that application of these rules to hearings involving such entitlement programs will be reconsidered in the future following careful study.

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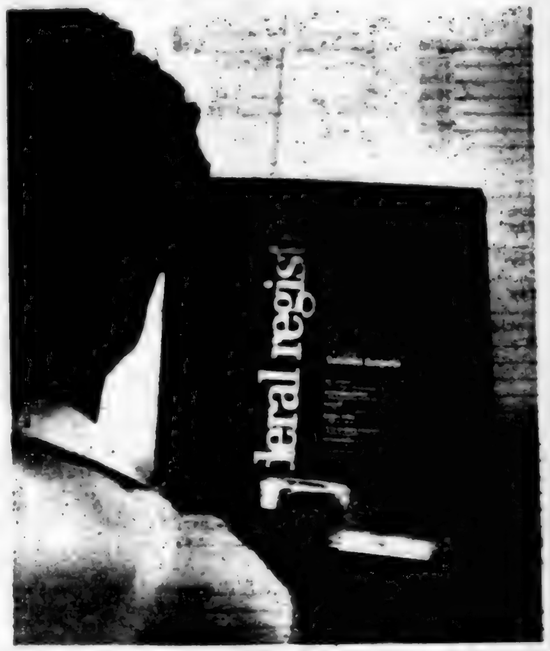
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Part III

Department of Labor

Occupational Safety and Health Administration

29 CFR Part 1910

Air Contaminants; Final Rule

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DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

Air Contaminants

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Final rule

SUMMARY: The Occupational Safety and Health Administration (OSHA) is amending its existing Air Contaminants standard, § 1910.1000 including Tables Z-1, Z-2 and Z-3. This amendment is limited to making more protective 212 Permissible Exposure Limits (PEL) listed in these three Tables; setting new PEL's for 164 substances not currently regulated by OSHA; and maintaining other PELs unchanged. Changes include revision of the PEL; inclusion of Short Term Exposure Limits (STEL) to complement 8 hour time weighted average (TWA) limits; establishment of skin designation; and addition of ceiling limits as appropriate.

All of the revised PELs are included in a single new Table Z-1-A which also includes the existing OSHA PELs under the Transitional Limits Columns. This regulation permits the use of any compliance methodology, until Dec. 31, 1992, to achieve the revised PEL. However, during this time period the established OSHA hierarchy of controls with preference for engineering controls will be applied to achieve the level of the transitional PELs. Tables Z-2 and Z-3 are temporarily maintained since they contain limits which cannot conveniently be included in the format used in Table Z-1-A.

OSHA has reviewed health, risk and feasibility evidence for all 428 substances for which changes to the PEL were considered. In each instance where a revised or new PEL is adopted, OSHA has determined that the new limits substantially reduce a significant risk of material health impairment among American workers, and that the new limits are technologically and economically feasible.

The revised standards will provide additional occupational health protection to 4.5 million workers at an annual cost of approximately $150 per employee protected. This cost is only a fraction of 1% of sales for all affected sectors.

DATES: This final rule shall become effective March 1, 1989. The start-up date for compliance with any combination of controls is September 1, 1989. The start-up date for compliance with preference for feasible engineering controls is December 31, 1992, or in certain circumstances December 31, 1993. See 29 CFR 1910.1000 (f) or Section X of the preamble.

ADDRESS: In compliance with 28 U.S.C. 2112(a), the Agency designates for receipt of petitions for review of the standard, the Associate Solicitor for Occupational Safety and Health, Office of the Solicitor, Room S-4004, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Foster, OSHA Office of Public Affairs, Room N-3647, Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210 (202-523-8151). Copies of this document may be obtained two weeks after the publication date from the OSHA Publications Office, Rm. N-3101, at the above address (202-523-9667) or at any OSHA regional or area office.

SUPPLEMENTARY INFORMATION:

Organization of this Document

This **Federal Register** notice discusses health, feasibility, policy and legal issues, and includes amendments to 29 CFR 1910.1000, Tables Z-1, Z-2 and Z-3. All these amendments are included in a new Table Z-1-A which is part of Section X. Tables Z-2 and Z-3 are reprinted in Section X for reference purposes, and to assist during phased enforcement procedures. The preamble includes a discussion of the generic health effects for 18 individual groupings (e.g., neuropathic, ocular, cardiovascular, etc.) as well as a review of the health effects for all of the individual substances. It also includes the final feasibility and regulatory analysis with feasibility determinations organized by industry sector. All these discussions address the comments submitted to the public record for this rulemaking.

The Docket (H-020) includes considerable additional data, including many health studies, the complete preliminary and final feasibility and regulatory analysis with appendices, and additional feasibility information. This includes the final results of a large scale industry survey and many site visits. A four-volume printed version of this information, organized by substance, is also in the Docket. Also included in the record are extensive public comments which include additional health studies and feasibility analyses. The record includes 13 volumes of oral testimony and questioning of witnesses.

All this information is available for inspection and copying at the Docket Office. A list of exhibits is available in the Docket Office located in Room N-3634 at the above address, (202) 523-7894.

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I. Executive Summary

A. Background

Soon after adoption of the OSH Act in 1970, the Occupational Safety and Health Administration (OSHA) promulgated Permissible Exposure Limits (PELs) for many substances pursuant to the authority granted by section 6(a) which allowed the Agency to promulgate existing Federal Standards or national consensus standards as enforceable OSHA standards. Most of the PELs contained in the Z-Tables of 29 CFR 1910.1000 were adopted from the Walsh-Healey Public Contracts Act as existing Federal Standards. These in turn had been adopted from the 1968 Threshold Limit Values of the American Conference of Governmental Industrial Hygienists (ACGIH). Some consensus standards from the American Standards Association were also adopted at that time, following the 6(a) procedures.

Industrial experience, new developments in technology, and scientific data clearly indicate that in many instances these adopted limits are not sufficiently protective of worker health. In addition, there are no PELs for many toxic materials commonly used in the workplace. This has been demonstrated by the reduction in allowable exposure limits recommended by many technical, professional, industrial, and government organizations, both inside and outside the United States. In addition, these organizations have identified many other substances for which allowable exposure limits are needed to supplement the existing Z-Tables. Many large industrial organizations have felt obligated to supplement the existing OSHA PELs with their own internal corporate guidelines.

OSHA has focused its past priorities on the development of detailed and broad regulations for some high priority substances. This has resulted in major reductions in deleterious health effects for those 24 substances for which regulations have been adopted. However, OSHA has not been able to consider the need for regulating the thousands of substances commonly found in the workplace, or to review the scientific information to determine if different limits are required for the more than 400 substances now regulated under the provisions of the Z-Tables.

OSHA determined that it was necessary to modify this approach through the use of generic rulemaking, which would simultaneously cover many substances. The Hazard Communication Standard is an example of a regulation using such an approach. At this time, OSHA is also in the process of considering the need for development of generic standards to cover: Respiratory protection; medical surveillance; and exposure monitoring. Without a generic approach OSHA would not be able to provide the level of health protection required for many work situations.

OSHA concludes that it is of first priority to modify existing PELs, and to establish PELs for substances for which no exposure limits exist. The existing health literature and expert judgment indicates that such actions are required to protect against: Kidney and liver diseases; respiratory diseases; nerve disorders; carcinogenicity; irritation to various body organs; and many other material impairments to health. Millions of employees are potentially exposed to substances of concern, and adoption of such a regulation would represent one of the most significant steps to ensure the adequacy of health protection for workers. This regulation will achieve these objectives.

B. Proposal

On June 7, 1988, OSHA proposed to amend and expand the PELs for substances covered in the 29 CFR 1910.1000 Z-Tables and add new PELs to address this deficiency. To facilitate this major change for a large number of substances, OSHA initially considered available, generally accepted guidelines or recommendations as its starting point for establishing new PELs. Initially, this involved a review of 14 data bases which might serve this purpose. After analyses of the characteristics of each data base, compared to OSHA requirements, it was decided that OSHA would utilize the already published and widely accepted 1987-88 Threshold Limit Values (TLVs) published by the American Conference of Governmental Industrial Hygienists (ACGIH) and the Recommended Exposure Limits (RELs) developed by the National Institute for Occupational Safety and Health (NIOSH) as the starting point for its analysis. OSHA used both the TLVs and RELs as a starting point for making its own independent judgment regarding selection of the proper PEL. The TLV listing was used to define the bounds of substances included in this rulemaking.

The Proposal considered new PELs for 428 substances. OSHA reviewed the health evidence for each individual substance and preliminarily determined that available evidence would form a reasonable basis for proposing a new limit. It also preliminarily concluded that the new limits were technically and economically feasible. This proposed regulation was intended to reduce diseases (resulting from workplace exposure to chemicals) such as liver and kidney impairments; neuropathy; cardiovascular effects; respiratory effects; lung function deterioration; narcosis; biochemical and metabolic changes; and other material impairment of health. During the Public Hearing, extensive additional information was developed to permit OSHA to make a final determination of the health effects and risk associated with each substance under consideration for adoption of a new PEL.

OSHA also prepared a Preliminary Regulatory Impact Analysis (PRIA) which estimated average annual costs per establishment to achieve compliance, and total costs by industry sector. Preliminarily, OSHA determined that compliance with the proposed PELs would be technologically and economically feasible. As part of this analysis OSHA also identified health related benefits which would be achieved. These benefits included the reduction of occupational illness cases, lost workdays and fatalities.

C. Final Regulation

On the basis of all the information in the record, including the data upon which OSHA based its Proposal, public submissions, additional health and feasibility data (some of which became available during this rulemaking

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process), additional analyses of all data, and consideration of the statutory requirements defined by the OSH Act, a revised set of PELs is issued in this regulation.

Through this regulation, the Occupational Safety and Health Administration (OSHA) is amending its existing Air Contaminants standards, § 1910.1000 including Tables Z-1, Z-2 and Z-3. This amendment is limited to changing many of the Permissible Exposure Limits (PEL) listed in these three Tables while maintaining other PELs unchanged. All PELs are listed in a new Table Z-1-A which replaces Table Z-1.

This amendment reduces the PEL for 212 substances now listed in the Z-Tables, and sets new PELs for 164 substances currently not regulated by OSHA. Changes include revision of the PEL; inclusion of Short Term Exposure Limits (STEL) to complement 8 hour time weighted average (TWA) limits; and, as appropriate, establishment of a skin designation and/or ceiling limits.

All of the revised PELs are included in a single new Table Z-1-A, which also includes the existing PELs enforced by OSHA. This side-by-side format is provided as a user convenience, and as a reference source since this regulation permits the use of any compliance procedures for the first 4 years following publication of the regulation. However, during this time period the established OSHA hierarchy of controls with preference for engineering controls will continue to be applied to achieve the level of the existing PELs.

Tables Z-2 and Z-3 are temporarily maintained since they cannot conveniently be included in the format for Table Z-1-A. The original Table Z-1 has been deleted from the regulation because all of the PELs in that Table have been included in the new Table Z-1-A. The design of this new Table Z-1-A makes identification of all changes to PELs possible by simply comparing Transitional Limits (left side of Table) with Revised Limits (right side of Table).

OSHA has reviewed health, risk and feasibility evidence for all 428 substances for which changes to the PEL were considered. In each instance where a revised or new PEL is adopted, OSHA has determined that the new limits substantially reduce a significant risk of material impairment of health or functional capacity among American workers, and that the new limits are technologically and economically feasible. This determination has been based on further review of the material discussed in the Proposal, public comments and a detailed review of the entire record for this rulemaking.

OSHA's analysis of all the data available following the issuance of the Proposal, receipt of comments and testimony during the public hearing resulted in changes to the proposed PELs. Details of these changes and determination of the PELs adopted in this regulation are included as part of the discussion of specific substances in Section VI. The changes noted above include:

(a) Reducing the PEL noted in the proposal;

(b) Increasing the PEL (not to exceed the existing Table Z-1 PEL) noted in the proposal; and

(c) Identifying the acceptability of respirators, due to feasibility considerations, to achieve compliance with the PEL for a small number of specific operations involving 4 substances.

The final Standard in 29 CFR 1910.1000 covers a total of 600 substances, this includes 428 substances for which OSHA opened the rulemaking process for consideration of revising or establishing new PELs.

(1) Addition of PELs for 164 new substances.

(2) Adoption of more protective PELs for 212 substances.

(3) No changes for 52 substances which were considered in this rulemaking.

In addition to these changes, the new final standard in 29 CFR 1910.1000 reprints existing exposure limits for the following substances which were either not covered or not considered for change in this rulemaking.

(a) No change to existing PELs for 9 substances which are currently undergoing 6(b) rulemaking.

(b) No change to existing PELs for 3 substances (benzene, cotton dust, and formaldehyde) where some segments are not covered by an individual 6(b) Regulation.

(c) PELs for 160 substances, which are unchanged, and were not evaluated during this rulemaking.

The final rule also includes minor changes to the introductory text, and definitions for the tabular listing of the new PELs in 29 CFR 1910.1000.

Specific changes between the Proposal and the final Regulation are noted below:

(A) *Reducing the PEL*
- (1) Camphor
- (2) Fluorine
- (3) Perchloroethylene

(B) *Increasing PEL (Less Than the Previous PEL in 29 CFR 1910.1000)*
- (1) Acetone
- (2) Acetonitrile
- (3) Ammonia
- (4) Borates
- (5) Carbon disulfide
- (6) Carbon tetrachloride
- (7) Chlorine
- (8) Chloroform
- (9) Grain dust
- (10) Mesityl Oxide
- (11) Methyl ethyl ketone peroxide
- (12) Trichloroethylene
- (13) Wood dust

(C) *Increasing PEL to Previously Existing Level in 29 CFR 1910.1000*
- (1) Acetic acid
- (2) Calcium oxide
- (3) Chromium metal
- (4) DDT
- (5) Iron oxide
- (6) Oil mist
- (7) o-Toluidine
- (8) Physical Irritants: 17 individual substances which might otherwise be classified as "Particulates Not Otherwise Regulated" (PNOR) and the generic PNOR classification. (See Section VI-C-10 for details).

(D) *No PEL*
- (1) Asphalt (delaying decision)
- (2) Chromyl chloride
- (3) Fibrous glass (delaying decision)
- (4) Mineral wool (delaying decision)

(E) *Increasing PEL*
- Carbon dioxide (adding STEL and also increasing TWA)

(F) *Special Respirator Provisions*
- (1) Carbon monoxide—Selected operations to meet the requirements of the STEL in the non-ferrous foundries and ferrous steel industry (SIC 33)
- (2) Carbon Disulfide—Selected Rayon Fiber Manufacturing Processes
- (3) Carbon Disulfide—Selected Sausage Casing Manufacturing Processes
- (4) Styrene—Selected Open Molding Boat Manufacturing Processes
- (5) Sulfur dioxide—Selected operations for meeting requirements of the STEL in the non-ferrous foundries and ferrous steel industry (SIC 33)

(G) *Deletion of Skin and STEL Limitations for Some Substances are Identified in Section VI*

Details of the rationale for changing these PELs is provided in the substance specific portions of Section VI. This includes general discussions of health effects in the introductory material to the individual sub-parts of Section VI, as well as detailed discussions for 428 substances.

The revised PELs will protect workers against a wide variety of health effects which could cause material impairment of health or functional capacity. This includes protection against catastrophic effects previously noted as well as more subtle effects resulting in decrements to the central nervous system which produce significant sensory irritation. For each substance, the health evidence in the record provides an adequate basis for establishing a new or revised PEL.

Because of the nature of this rulemaking, OSHA relied heavily on the already published and widely accepted Threshold Limit Values (TLV) published by the American Conference of Governmental Industrial Hygienists (ACGIH) and the Recommended Exposure Limits (RELs) developed by the National Institute for Occupational Safety and Health (NIOSH). OSHA considered both the TLVs and RELs in making its own independent judgment regarding selection of the proper PEL.

Table Z-1-A is designed to include all substances covered by this regulation whether or not the PEL has been changed and whether or not a separate rulemaking is involved.

For four substances used in specific operations, the full record indicates that it is presently not technically feasible to achieve the PEL which is necessary (based on available health information) through engineering controls. For these few specific operations, the use of engineering controls to fully achieve the new PEL is required only where the Assistant Secretary demonstrates that such controls are feasible. In the absence of such a finding by the Assistant Secretary, the employer must use engineering controls to meet at least the level of the PEL existing prior to this revision as listed in Table Z-1-A (Transitional Limits columns), and Tables Z-2 and Z-3. However, any methods of control may be used in these identified situations to achieve the new PELs noted in Table Z-1-A. The specific operating situations falling in this category are identified in the individual substance discussions in Section VI, and the general concept is discussed in the Summary and Explanation of the Standard (Section VIII).

A phased enforcement schedule of 6 months (any control methods) following the March 1, 1989, effective date and approximately 4 years (December 31, 1992) following the regulation publication date (engineering controls preferred) is adopted. In certain circumstances, the December 31, 1992, deadline may be extended to December 31, 1993. See 29 CFR 1910.1000(f) in Section X of this preamble.

The final regulation is limited to consideration of revising the PELs. There is no consideration of the ancillary requirements which are typically developed as part of individual substance rulemaking but were not included in the original § 1910.1000 standard. OSHA has published ANPR's for Exposure Monitoring (53 FR 32591–32595), and Medical Surveillance (53 FR 32595–32598), and is developing a proposal covering revision to the respirator provisions of the OSHA Standards. OSHA has issued a final rule expanding the Hazard Communication Standard.

While medical surveillance, exposure monitoring and other industrial hygiene practices are important, OSHA is not in a position to develop these requirements while at the same time developing PELs for several hundred substances. OSHA has determined that lowering exposures through the development of reduced PELs is of higher priority because it is more effective in reducing occupational diseases and material impairment of health. These ancillary requirements will be addressed as priorities dictate.

OSHA has also determined that it is appropriate to limit this rulemaking to the General Industry sector. Application to the Construction, Maritime and Agriculture Segments may require some modifications to this proposed rule because of differences in exposures and work situations in the established PELs for these segments, and differences regarding feasibility for these sectors. OSHA will pursue this as part of second stage rulemaking and has informally notified the Construction Advisory Committee of its plans.

The average annual cost, per establishment affected by this rule, is estimated to range from $77,000 for petroleum refining (SIC 29) down to $400 per year for auto dealers (SIC 55). The annual cost is approximately $150 per worker protected, and is never more than a fraction of 1% of sales and less than 2% of profits (usually substantially less) except for a very few segments. Benefits will accrue to approximately 4.5 million workers who are currently exposed in excess of the PEL and are expected to include the reduction of over 55,000 occupational illness cases, including almost 24,000 lost workday illness cases and approximately 520,000 lost workdays annually. If not prevented, these illnesses would eventually result in approximately 700 fatalities each year.

OSHA will continue its practice of rulemaking for individual substances when substance specific regulations are necessary and appropriate. An expanded discussion is provided in Section IV-D.

OSHA has also considered the concerns identified regarding the need for extensively tested analytical methods (Ex. 3-980; Ex. 8-47) for enforcement purposes. OSHA believes that enforcement can be initiated without such detailed methods. The OSHA docket includes: (1) Reference to a fully developed and extensively tested OSHA or NIOSH sampling and analytical procedure or, (2) a description of an OSHA in-house sampling and analytical method for all but the seven substances listed in Table IV-E-1. OSHA therefore believes there will be no problems with enforcement of the PELs for all but seven substances. This is consistent with conclusions of NIOSH regarding implementation (Ex. 8-47). Since development of sampling and analytical procedures is a dynamic, rapidly progressing technology, OSHA also believes it is appropriate to adopt PELs for these seven substances, but stay enforcement of these PELs until adequate sampling and analytical methods are available. At such time, OSHA will publish in the **Federal Register** its determination that such methods exist (together with a copy of the method), and indicate the proposed effective date for enforcement of the PEL for the substance in question.

As resources permit, OSHA will attempt to initiate a program in conjunction with NIOSH to develop more extensively tested sampling and analytical methods for those substances where only in-house methods are noted in the Proposal. OSHA believes that this balanced approach is consistent with the statutory requirements of the OSH Act.

II. Index to Preamble Discussion of Individual Substances

The table below provides an index by preamble section and subsection to a discussion of the record and the health effects evidence for each of the 428 substances for which new or revised limits were considered. The substances in the index are arranged in alphabetical order and include H.S. and CAS numbers as well as the principal toxicological or other basis for the selection or revision of each limit. For some of these substances, OSHA determined that no change to the existing PEL was warranted. Section X presents the entire standard and includes Table Z-1-A, which shows the new and revised limits as well as those OSHA limits that were not changed by this rulemaking.

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II. Index to Preamble Discussion of Individual Substances

II. § Number	Substance Name	CAS Number	Primary Basis for Limits	Preamble Section
1001	ACETALDEHYDE	75-07-0	SENSORY IRRITATION	VI.C.3
1002	ACETIC ACID	64-19-7	SENSORY IRRITATION	VI.C.3
1003	ACETIC ANHYDRIDE	108-24-7	ANALOGY	VI.C.12
1004	ACETONE	67-64-1	SENSORY IRRIIATION	VI.C.3
1005	ACETONITRILE	75-05-8	SYSIEMIC IOXICITY	VI.C.8
1006	ACETYLSALICYLIC ACID (ASPIRIN)	50-78-2	SYSTEMIC IOXICITY	VI.C.8
1007	ACROLEIN	107-02-8	SENSORY IRRITATION	VI.C.3
1008	ACRYLAMIDE	79-06-1	CANCER	VI.C.15
1009	ACRYLIC ACID	79-10-7	ANALOGY	VI.C.12
1010	ALLYL ALCOHOL	107-18-6	SENSORY IRRITATION	VI.C.3
1011	ALLYL CHLORIDE	107-05-1	LIVER AND KIDNEY EFFECTS	VI.C.4
1012	ALLYL GLYCIDYL ETHER (AGE)	106-92-3	SENSORY IRRITATION	VI.C.3
1013	ALLYL PROPYL DISULFIDE	2179-59-1	SENSORY IRRITATION	VI.C.3
1014	ALPHA-ALUMINA	1344-28-1	PHYSICAL IRRITATION	VI.C.10
1015	ALUMINUM (ALKYLS)	7429-90-5	ANALOGY	VI.C.12
1016	ALUMINUM (METAL)	7429-90-5	PHYSICAL IRRITATION	VI.C.10
1017	ALUMINUM (PYRO POWDERS)	7429-90-5	RESPIRATORY EFFECTS	VI.C.6
1018	ALUMINUM (SOLUBLE SALTS)	7429-90-5	ANALOGY	VI.C.12
1019	ALUMINUM (WELDING FUMES)	7429-90-5	SYSIEMIC IOXICIIY	VI.C.8

II. Index to Preamble Discussion of Individual Substances (continued)

H. S. Number	Substance Name	CAS Number	Primary Basis for Limits	Preamble Section
1020	AMITROLE (3-AMINO-1,2,4-TRIAZOLE)	61-82-5	CANCER	VI.C.15
1021	AMMONIA	7664-41-7	SENSORY IRRITATION	VI.C.3
1022	AMMONIUM CHLORIDE (FUME)	12125-02-9	SENSORY IRRITATION	VI.C.3
1024	AMMONIUM SULFAMATE (AMMATE)	7773-06-0	PHYSICAL IRRITATION	VI.C.10
1025	ANILINE	62-53-3	BIOCHEMICAL/METABOLIC EFFECTS	VI.C.13
1028	ASPHALT FUMES	8052-42-4	CANCER	VI.C.15
1029	ATRAZINE	1912-24-9	NOAELs	VI.C.9
1031	BARIUM SULFATE	7727-43-7	PHYSICAL IRRITATION	VI.C.10
1032	BENOMYL	17804-35-2	PHYSICAL IRRITATION	VI.C.10
1033	BERYLLIUM & COMPOUNDS	7440-41-7	CANCER	VI.C.15
1034	BISMUTH TELLURIDE (SE-DOPED)	1304-82-1	RESPIRATORY EFFECTS	VI.C.6
1035	BISMUTH TELLURIDE (UNDOPED)	1304-82-1	PHYSICAL IRRITATION	VI.C.10
1036	BORATES, TETRA, SODIUM (ANHYDROUS)	1330-43-4	SENSORY IRRITATION	VI.C.3
1037	BORATES, TETRA, SODIUM (DECAHYDRATE)	1303-96-4	SENSORY IRRITATION	VI.C.3
1038	BORATES, TETRA, SODIUM (PENTAHYDRATE)	12179-04-3	SENSORY IRRITATION	VI.C.3

II. Index to Preamble Discussion of Individual Substances (continued)

H. S. Number	Substance Name	CAS Number	Primary Basis for Limits	Preamble Section
1039	BORON OXIDE	1303-86-2	PHYSICAL IRRITATION	VI.C.10
1040	BORON TRIBROMIDE	10294-33-4	ANALOGY	VI.C.12
1041	BROMACIL	314-40-9	NOAELs	VI.C.9
1042	BROMINE	7726-95-6	SENSORY IRRITATION	VI.C.3
1043	BROMINE PENTAFLUORIDE	7789-30-2	ANALOGY	VI.C.12
1044	BUTANE	106-97-8	NARCOSIS	VI.C.2
1045	2-BUTANONE (MEK)	78-93-3	SENSORY IRRITATION	VI.C.3
1046	2-BUTOXY ETHANOL	111-76-2	SYSTEMIC TOXICITY	VI.C.8
1047	N-BUTYL ACETATE	123-86-4	SENSORY IRRITATION	VI.C.3
1048	BUTYL ACRYLATE	141-32-2	ANALOGY	VI.C.12
1049	SEC-BUTYL ALCOHOL	78-92-2	NARCOSIS	VI.C.2
1050	TERT-BUTYL ALCOHOL	75-65-0	NARCOSIS	VI.C.2
1051	N-BUTYL ALCOHOL	71-36-3	NEUROPATHY	VI.C.1
1052	N-BUTYL GLYCIDYL ETHER (BGE)	2426-08-6	SYSTEMIC TOXICITY	VI.C.8
1053	N-BUTYL LACTATE	138-22-7	SENSORY IRRITATION	VI.C.3
1054	BUTYL MERCAPTAN	109-79-5	SENSORY IRRITATION	VI.C.3
1055	O-SEC-BUTYL PHENOL	89-72-5	ANALOGY	VI.C.12
1056	P-TERT-BUTYLTOLUENE	98-51-1	NOAELs	VI.C.9

II. Index to Preamble Discussion of Individual Substances (continued)

H. S. Number	Substance Name	CAS Number	Primary Basis for Limits	Preamble Section
1057	CALCIUM CARBONATE	1317-65-3	PHYSICAL IRRITATION	VI.C.10
1058	CALCIUM CYANAMIDE	156-62-7	BIOCHEMICAL/METABOLIC EFFECTS	VI.C.13
1059	CALCIUM HYDROXIDE	1305-62-0	ANALOGY	VI.C.12
1060	CALCIUM OXIDE	1305-78-8	ANALOGY	VI.C.12
1061	CALCIUM SILICATE, TOTAL DUST	1344-95-2	PHYSICAL IRRITATION	VI.C.10
1062	CALCIUM SULFATE	7778-18-9	PHYSICAL IRRITATION	VI.C.10
1063	CAMPHOR (SYNTHETIC)	76-22-2	INCREASING PEL	VI.C.16
1064	CAPROLACTAM (DUST)	105-60-2	SENSORY IRRITATION	VI.C.3
1065	CAPROLACTAM (VAPOR)	105-60-2	SENSORY IRRITATION	VI.C.3
1066	CAPTAFOL (DIFOLATAN)	2425-06-1	SENSITIZATION EFFECTS	VI.C.14
1067	CAPTAN	133-06-2	SYSTEMIC TOXICITY	VI.C.8
1068	CARBOFURAN (FURADAN)	1563-66-2	BIOCHEMICAL/METABOLIC EFFECTS	VI.C.13
1069	CARBON DIOXIDE	124-38-9	BIOCHEMICAL/METABOLIC EFFECTS	VI.C.13
1070	CARBON DISULFIDE	75-15-0	CARDIOVASCULAR EFFECTS	VI.C.7
1071	CARBON MONOXIDE	630-08-0	BIOCHEMICAL/METABOLIC EFFECTS	VI.C.13
1072	CARBON TETRABROMIDE	558-13-4	LIVER AND KIDNEY EFFECTS	VI.C.4
1073	CARBON TETRACHLORIDE	56-23-5	CANCER	VI.C.15
1074	CARBONYL FLUORIDE	353-50-4	ANALOGY	VI.C.12

II. Index to Preamble Discussion of Individual Substances (continued)

H. S. Number	Substance Name	CAS Number	Primary Basis for Limits	Preamble Section
1075	CATECHOL (PYROCATECHOL)	120-80-9	ANALOGY	VI.C.12
1076	CELLULOSE	9004-34-6	PHYSICAL IRRITATION	VI.C.10
1077	CESIUM HYDROXIDE	21351-79-1	SENSORY IRRITATION	VI.C.3
1078	CHLORINATED CAMPHENE	8001-35-2	NEUROPATHY	VI.C.1
1079	CHLORINE	7782-50-5	SENSORY IRRITATION	VI.C.3
1080	CHLORINE DIOXIDE	10049-04-4	RESPIRATORY EFFECTS	VI.C.6
1081	1-CHLORO-1-NITROPROPANE	600-25-9	ANALOGY	VI.C.12
1082	2-CHLORO-6-TRICHLOROMETHYL PYRIDINE (NITRAPYRIN)	1929-82-4	PHYSICAL IRRITATION	VI.C.10
1083	CHLOROACETYL CHLORIDE	79-04-9	SENSORY IRRITATION	VI.C.3
1084	O-CHLOROBENZYLIDENE MALONONITRILE	2698-41-1	SENSORY IRRITATION	VI.C.3
1085	CHLORODIFLUOROMETHANE	75-45-6	NOAELs	VI.C.9
1086	CHLOROFORM	67-66-3	CANCER	VI.C.15
1087	CHLOROPENTAFLUOROETHANE	76-15-3	CARDIOVASCULAR EFFECTS	VI.C.7
1088	CHLOROPRENE	126-99-8	SYSTEMIC TOXICITY	VI.C.8
1089	O-CHLOROSTYRENE	2039-87-4	LIVER AND KIDNEY EFFECTS	VI.C.4
1090	O-CHLOROTOLUENE	95-49-8	NOAELs	VI.C.9
1091	CHLORPYRIFOS	2921-88-2	BIOCHEMICAL/METABOLIC EFFECTS	VI.C.13

II. Index to Preamble Discussion of Individual Substances (continued)

H. S. Number	Substance Name	CAS Number	Primary Basis for Limits	Preamble Section
1092	CHROMIC ACID & CHROMATES	Varies	CANCER	VI.C.15
1093	CHROMIUM, METAL	7440-47-3	RESPIRATORY EFFECTS	VI.C.6
1094	CHROMYL CHLORIDE	14977-61-8	CANCER	VI.C.15
1095	CLOPIDOL (COYDEN)	2971-90-6	PHYSICAL IRRITATION	VI.C.10
1096	COAL DUST, < 5% QUARTZ	None	RESPIRATORY EFFECTS	VI.C.6
1097	COAL DUST, > 5% QUARTZ	None	RESPIRATORY EFFECTS	VI.C.6
1098	COBALT CARBONYL	10210-68-1	ANALOGY	VI.C.12
1099	COBALT HYDROCARBONYL	16842-03-8	ANALOGY	VI.C.12
1100	COBALT METAL, FUME, DUST	7440-48-4	SENSITIZATION EFFECTS	VI.C.14
1101	COPPER (FUME)	7440-50-8	INCREASING PEL	VI.C.16
1102	CRAG HERBICIDE (SESONE)	136-78-7	PHYSICAL IRRITATION	VI.C.10
1103	CRUFOMATE	299-86-5	BIOCHEMICAL/METABOLIC EFFECTS	VI.C.13
1104	CYANAMIDE	420-04-2	BIOCHEMICAL/METABOLIC EFFECTS	VI.C.13
1105	CYANOGEN	460-19-5	SENSORY IRRITATION	VI.C.3
1106	CYANOGEN CHLORIDE	506-77-4	SENSORY IRRITATION	VI.C.3
1107	CYCLOHEXANOL	108-93-0	CHANGE IN SKIN DESIGNATION ONLY	VI.C.18
1108	CYCLOHEXANONE	108-94-1	LIVER AND KIDNEY EFFECTS	VI.C.4
1109	CYCLOHEXYLAMINE	108-91-8	SYSTEMIC TOXICITY	VI.C.8

II. Index to Preamble Discussion of Individual Substances (continued)

H. S. Number	Substance Name	CAS Number	Primary Basis for Limits	Preamble Section
1110	CYCLONITE	121-82-4	NOAELs	VI.C.9
1111	CYCLOPENTANE	287-92-3	NARCOSIS	VI.C.2.
1112	CYHEXATIN	13121-70-5	SYSTEMIC TOXICITY	VI.C.8
1113	DDT	50-29-3	SYSTEMIC TOXICITY	VI.C.8
1114	DECABORANE	17702-41-9	NEUROPATHY	VI.C.1
1116	DI-SEC-OCTYL-PHTHALATE	117-81-7	NEUROPATHY	VI.C.1
1117	2,6-DI-TERT-BUTYL-P-CRESOL	128-37-0	NOAELs	VI.C.9
1118	DIAZINON	333-41-5	ANALOGY	VI.C.12
1119	DIBUTYL PHOSPHATE	107-66-4	SENSORY IRRITATION	VI.C.3
1120	2-N-DIBUTYLAMINOETHANOL	102-81-8	SYSTEMIC TOXICITY	VI.C.8
1121	1,1-DICHLORO-1-NITROETHANE	594-72-9	ANALOGY	VI.C.12
1122	1,3-DICHLORO-5, 5-DIMETHYLHYDANTOIN	118-52-5	SENSORY IRRITATION	VI.C.3
1123	DICHLOROACETYLENE	7572-29-4	NEUROPATHY	VI.C.1
1125	P-DICHLOROBENZENE	106-46-7	ANALOGY	VI.C.12
1126	1,1-DICHLOROETHANE	75-34-3	INCREASING PEL	VI.C.16
1127	DICHLOROETHYL ETHER	111-44-4	SENSORY IRRITATION	VI.C.3
1128	DICHLOROMONOFLUOROMETHANE	75-43-4	ANALOGY	VI.C.12

II. Index to Preamble Discussion of Individual Substances (continued)

H. S. Number	Substance Name	CAS Number	Primary Basis for Limits	Preamble Section
1129	1,3-DICHLOROPROPENE	542-75-6	LIVER AND KIDNEY EFFECTS	VI.C.4
1130	2,2-DICHLOROPROPIONIC ACID	75-99-0	SENSORY IRRITATION	VI.C.3
1131	DICROTOPHOS (BIDRIN)	141-66-2	BIOCHEMICAL/METABOLIC EFFECTS	VI.C.13
1132	DICYCLOPENTADIENE	77-73-6	LIVER AND KIDNEY EFFECTS	VI.C.4
1133	DICYCLOPENTADIENYL IRON	102-54-5	PHYSICAL IRRITATION	VI.C.10
1134	DIETHANOLAMINE	111-42-2	NOAELs	VI.C.9
1135	DIETHYL KETONE	96-22-0	ANALOGY	VI.C.12
1136	DIETHYLPHTHALATE	84-66-2	NOAELs	VI.C.9
1137	DIETHYLAMINE	109-89-7	SENSORY IRRITATION	VI.C.3
1138	DIETHYLENE TRIAMINE	111-40-0	ANALOGY	VI.C.12
1139	DIGLYCIDYL ETHER (DGE)	2238-07-5	SYSTEMIC TOXICITY	VI.C.8
1140	DIISOBUTYL KETONE	108-83-8	SENSORY IRRITATION	VI.C.3
1141	DIMETHYL 1,2-DIBROMO-2, 2-DICHLOROETHYL PHOSPHATE	300-76-5	CHANGE IN SKIN DESIGNATION ONLY	VI.C.18
1142	DIMETHYL SULFATE	77-78-1	CANCER	VI.C.15
1143	DIMETHYLANILINE	121-69-7	BIOCHEMICAL/METABOLIC EFFECTS	VI.C.13
1144	DINITOLMIDE (3,5-DINITRO-O-TOLUAMIDE)	148-01-6	NOAELs	VI.C.9

II. Index to Preamble Discussion of Individual Substances (continued)

H. S. Number	Substance Name	CAS Number	Primary Basis for Limits	Preamble Section
1145	DIOXANE (DIETHYLENE DIOXIDE)	123-91-1	LIVER AND KIDNEY EFFECTS	VI.C.4
1146	DIOXATHION (DELNAV)	78-34-2	BIOCHEMICAL/METABOLIC EFFECTS	VI.C.13
1147	DIPHENYLAMINE	122-39-4	NOAELs	VI.C.9
1148	DIPROPYL KETONE	123-19-3	ANALOGY	VI.C.12
1149	DIPROPYLENE GLYCOL METHYL ETHER	34590-94-8	NEUROPATHY	VI.C.1
1150	DIQUAT	85-00-7	ANALOGY	VI.C.12
1151	DISULFIRAM	97-77-8	BIOCHEMICAL/METABOLIC EFFECTS	VI.C.13
1152	DISULFOTON	298-04-4	ANALOGY	VI.C.12
1153	DIURON	330-54-1	NOAELs	VI.C.9
1154	DIVINYL BENZENE	108-57-6	ANALOGY	VI.C.12
1155	ENDRY	112-62-9	PHYSICAL IRRITATION	VI.C.10
1156	ENDOSULFAN	115-29-7	ANALOGY	VI.C.12
1158	EPICHLORONYDRIN	106-89-8	SENSORY IRRITATION	VI.C.3
1159	ETHANOLAMINE	141-43-5	SYSTEMIC TOXICITY	VI.C.8
1160	ETHION (NIALATE)	563-12-2	BIOCHEMICAL/METABOLIC EFFECTS	VI.C.13
1161	ETHYL ACRYLATE	140-88-5	RESPIRATORY EFFECTS	VI.C.6
1162	ETHYL BENZENE	100-41-4	SENSORY IRRITATION	VI.C.3
1163	ETHYL BROMIDE	74-96-4	NARCOSIS	VI.C.2

II. Index to Preamble Discussion of Individual Substances (continued)

H. S. Number	Substance Name	CAS Number	Primary Basis for Limits	Preamble Section
1164	ETHYL ETHER	60-29-7	SENSORY IRRITATION	VI.C.3
1165	ETHYL MERCAPTAN	75-08-1	SENSORY IRRITATION	VI.C.3
1166	ETHYL SILICATE	78-10-4	LIVER AND KIDNEY EFFECTS	VI.C.4
1167	ETHYLENE CHLOROHYDRIN	107-07-3	SYSTEMIC TOXICITY	VI.C.8
1168	ETHYLENE DICHLORIDE (1,2-DICHLOROETHANE)	107-06-2	LIVER AND KIDNEY EFFECTS	VI.C.4
1169	ETHYLENE GLYCOL	107-21-1	SENSORY IRRITATION	VI.C.3
1170	ETHYLENE GLYCOL DINITRATE	628-96-6	CARDIOVASCULAR EFFECTS	VI.C.7
1171	ETHYLIDENE NORBORNENE	16219-75-3	SENSORY IRRITATION	VI.C.3
1172	N-ETHYLMORPHOLINE	100-74-3	OCULAR EFFECTS	VI.C.5
1173	FENAMIPHOS	22224-92-6	BIOCHEMICAL/METABOLIC EFFECTS	VI.C.13
1174	FENSULFOTHION (DASANIT)	115-90-2	BIOCHEMICAL/METABOLIC EFFECTS	VI.C.13
1175	FENTHION	55-38-9	BIOCHEMICAL/METABOLIC EFFECTS	VI.C.13
1176	FERBAM	14484-64-1	PHYSICAL IRRITATION	VI.C.10
1177	FERROVANADIUM DUST	12604-58-9	RESPIRATORY EFFECTS	VI.C.6
1178	FIBROUS GLASS DUST	None	RESPIRATORY EFFECTS	VI.C.6
1179	FLUORINE	7782-41-4	INCREASING PEL	VI.C.16
1180	FLUOROTRICHLOROMETHANE	75-69-4	CARDIOVASCULAR EFFECTS	VI.C.7

II. Index to Preamble Discussion of Individual Substances (continued)

H. S. Number	Substance Name	CAS Number	Primary Basis for Limits	Preamble Section
1181	FONOFOS	944-22-9	ANALOGY	VI.C.12
1182	FORMAMIDE	75-12-7	ANALOGY	VI.C.12
1183	FURFURAL	98-01-1	SENSORY IRRITATION	VI.C.3
1184	FURFURYL ALCOHOL	98-00-0	SENSORY IRRITATION	VI.C.3
1185	GASOLINE	8006-61-9	NARCOSIS	VI.C.2
1186	GERMANIUM TETRAHYDRIDE	7782-65-2	ANALOGY	VI.C.12
1187	GLUTARALDEHYDE	111-30-8	SENSORY IRRITATION	VI.C.3
1188	GLYCERIN (MIST)	56-81-5	PHYSICAL IRRITATION	VI.C.10
1189	GLYCIDOL (2,3-EPOXY-1-PROPANOL)	556-52-5	SYSTEMIC TOXICITY	VI.C.8
1190	GRAIN DUST	None	RESPIRATORY EFFECTS	VI.C.6
1191	GRAPHITE, NATURAL, RESPIRABLE	7782-42-5	RESPIRATORY EFFECTS	VI.C.6
1191A	GRAPHITE, SYNTHETIC	None	PHYSICAL IRRITATION	VI.C.10
1192	GYPSUM, TOTAL DUST	7778-18-9	PHYSICAL IRRIATION	VI.C.10
1194	N-HEPTANE	142-82-5	NARCOSIS	VI.C.2
1195	HEXACHLOROBUTADIENE	87-68-3	LIVER AND KIDNEY EFFECTS	VI.C.4
1196	HEXACHLOROCYCLOPENTADIENE	77-47-4	SENSORY IRRITATION	VI.C.3
1197	HEXACHLOROETHANE	67-72-1	INCREASING PEL	VI.C.16
1198	HEXAFLUOROACETONE	684-16-2	SYSTEMIC TOXICITY	VI.C.8

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H. S. Number	Substance Name	CAS Number	Primary Basis for Limits	Preamble Section
1200	N-HEXANE	110-54-3	NEUROPATHY	VI.C.1
1201	HEXANE ISOMERS	Varies	NARCOSIS	VI.C.2
1202	2-HEXANONE	591-78-6	NEUROPATHY	VI.C.1
1203	HEXONE (METHYL ISOBUTYL KETONE)	108-10-1	LIVER AND KIDNEY EFFECTS	VI.C.4
1204	HEXYLENE GLYCOL	107-41-5	SENSORY IRRITATION	VI.C.3
1205	HYDRAZINE	302-01-2	LIVER AND KIDNEY EFFECTS	VI.C.4
1206	HYDROGEN BROMIDE	10035-10-6	SENSORY IRRITATION	VI.C.3
1207	HYDROGEN CYANIDE	74-90-8	SYSTEMIC TOXICITY	VI.C.8
1208	HYDROGEN FLUORIDE	7664-39-3	SENSORY IRRITATION	VI.C.3
1209	HYDROGEN SULFIDE	7783-06-4	OCULAR EFFECTS	VI.C.5
1210	HYDROGENATED TERPHENYLS	61788-32-7	SYSTEMIC TOXICITY	VI.C.8
1211	2-HYDROXYPROPYL ACRYLATE	999-61-1	SENSORY IRRITATION	VI.C.3
1212	INDENE	95-13-6	ANALOGY	VI.C.12
1213	INDIUM & COMPOUNDS	7440-74-6	RESPIRATORY EFFECTS	VI.C.6
1214	IODOFORM	75-47-8	ANALOGY	VI.C.12
1215	IRON OXIDE (DUST AND FUME)	1309-37-1	RESPIRATORY EFFECTS	VI.C.6
1216	IRON PENTACARBONYL	13463-40-6	NEUROPATHY	VI.C.1
1217	IRON SALTS (SOLUBLE)	Varies	SENSORY IRRITATION	VI.C.3

II. Index to Preamble Discussion of Individual Substances (continued)

H. S. Number	Substance Name	CAS Number	Primary Basis for Limits	Preamble Section
1218	ISOAMYL ALCOHOL	123-51-3	NARCOSIS	VI.C.2
1219	ISOBUTYL ALCOHOL	78-83-1	ANALOGY	VI.C.12
1220	ISOOCTYL ALCOHOL	26952-21-6	ANALOGY	VI.C.12
1221	ISOPHORONE	78-59-1	NARCOSIS	VI.C.2
1222	ISOPHORONE DIISOCYANATE	4098-71-9	SENSITIZATION EFFECTS	VI.C.14
1223	2-ISOPHOPOXYETHANOL	109-59-1	SYSTEMIC TOXICITY	VI.C.8
1224	ISOPROPYL ACETATE	108-21-4	SENSORY IRRITATION	VI.C.3
1225	ISOPROPYL ALCOHOL	67-63-0	SENSORY IRRITATION	VI.C.3
1226	ISOPROPYL ETHER	108-20-3	ODOR EFFECTS	VI.C.11
1227	ISOPROPYL GLYCIDYL ETHER	4016-14-2	SYSTEMIC TOXICITY	VI.C.8
1228	ISOPROPYLAMINE	75-31-0	SENSORY IRRITATION	VI.C.3
1229	N-ISOPROPYLANILINE	768-52-5	ANALOGY	VI.C.12
1230	KAOLIN, TOTAL DUST	None	PHYSICAL IRRITATION	VI.C.10
1231	KETENE	463-51-4	ANALOGY	VI.C.12
1232	LIMESTONE, TOTAL DUST	1317-67-3	PHYSICAL IRRITATION	VI.C.10
1233	MAGNESITE, TOTAL DUST	546-93-0	PHYSICAL IRRITATION	VI.C.10
1234	MAGNESIUM OXIDE FUME	1309-48-4	PHYSICAL IRRITATION	VI.C.10
1235	MALATHION	121-75-5	PHYSICAL IRRITATION	VI.C.10

II. Index to Preamble Discussion of Individual Substances (continued)

H. S. Number	Substance Name	CAS Number	Primary Basis for Limits	Preamble Section
1236A	MANGANESE, FUME	7439-96-5	NEUROPATHY	VI.C.1
1237	MANGANESE CYCLOPENTADIENYL TRICARBONYL	12079-65-1	NEUROPATHY	VI.C.1
1238	MANGANESE TETROXIDE	1317-35-7	NEUROPATHY	VI.C.1
1239	MARBLE, TOTAL DUST	1317-65-3	PHYSICAL IRRITATION	VI.C.10
1240	MERCURY (ARYL AND INORGANIC COMPOUNDS)	7439-97-6	NEUROPATHY	VI.C.1
1241	MERCURY (VAPOR)	7439-97-6	NEUROPATHY	VI.C.1
1242	MERCURY, (ORGANO) ALKYL COMPOUNDS	7439-97-6	NEUROPATHY	VI.C.1
1243	MESITYL OXIDE	141-79-7	SENSORY IRRITATION	VI.C.3
1244	METHACRYLIC ACID	79-41-4	ANALOGY	VI.C.12
1245	METHOMYL (LANNATE)	16752-77-5	BIOCHEMICAL/METABOLIC EFFECTS	VI.C.13
1246	METHOXYCHLOR	72-43-5	PHYSICAL IRRITATION	VI.C.10
1247	4-METHOXYPHENOL	150-76-5	ANALOGY	VI.C.12
1248	METHYL 2-CYANOACRYLATE	137-05-3	SENSORY IRRITATION	VI.C.3
1249	METHYL ACETATE	79-20-9	NOAELs	VI.C.9
1250	METHYL ACETYLENE/PROPADIENE MIXTURE	None	ANALOGY	VI.C.12

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II. Index to Preamble Discussion of Individual Substances (continued)

H. S. Number	Substance Name	CAS Number	Primary Basis for Limits	Preamble Section
1251	METHYL ACRYLONITRILE	126-98-7	NEUROPATHY	VI.C.1
1252	METHYL ALCOHOL	67-56-1	OCULAR EFFECTS	VI.C.5
1253	METHYL BROMIDE	74-83-9	NEUROPATHY	VI.C.1
1254	METHYL CHLORIDE	74-87-3	NARCOSIS	VI.C.2
1255	METHYL CHLOROFORM (1,1,1-TRICHLOROETHANE)	71-55-6	NARCOSIS	VI.C.2
1256	METHYL DEMETON	8022-00-2	ANALOGY	VI.C.12
1257	METHYL ETHYL KETONE PEROXIDE	1338-23-4	ANALOGY	VI.C.12
1258	METHYL FORMATE	107-31-3	ANALOGY	VI.C.12
1259	METHYL IODIDE	74-88-4	ANALOGY	VI.C.12
1260	METHYL ISOAMYL KETONE	110-12-3	ANALOGY	VI.C.12
1261	METHYL ISOBUTYL CARBINOL	108-11-2	SENSORY IRRITATION	VI.C.3
1262	METHYL ISOPROPYL KETONE	563-80-4	ANALOGY	VI.C.12
1263	METHYL MERCAPTAN	74-93-1	SENSORY IRRITATION	VI.C.3
1264	METHYL N-AMYL KETONE	110-43-0	SENSORY IRRITATION	VI.C.3
1265	METHYL PARATHION	298-00-0	ANALOGY	VI.C.12
1266	METHYL SILICATE	681-84-5	OCULAR EFFECTS	VI.C.5
1267	ALPHA-METHYL STYRENE	98-83-9	SENSORY IRRITATION	VI.C.3

II. Index to Preamble Discussion of Individual Substances (continued)

H. S. Number	Substance Name	CAS Number	Primary Basis for Limits	Preamble Section
1268	METHYLCYCLOHEXANE	108-87-2	ANALOGY	VI.C.12
1269	METHYLCYCLOHEXANOL	25639-42-3	LIVER AND KIDNEY EFFECTS	VI.C.4
1270	O-METHYLCYCLOHEXANONE	583-60-8	SENSORY IRRITATION	VI.C.3
1271	METHYLCYCLOPENTADIENYL MN TRICARBONYL	12108-13-3	ANALOGY	VI.C.12
1272	METHYLENE BIS (4-CYCLOHEXYLISOCYANATE)	5124-30-1	RESPIRATORY EFFECTS	VI.C.6
1273	4,4'-METHYLENE BIS (2-CHLOROANILINE)	101-14-4	SYSTEMIC TOXICITY	VI.C.8
1275	METRIBUZIN	21087-64-9	NOAELs	VI.C.9
1276	MICA	12001-26-2	RESPIRATORY EFFECTS	VI.C.6
1277	MINERAL WOOL FIBER	None	RESPIRATORY EFFECTS	VI.C.6
1278	MOLYBDENUM (INSOLUBLE COMPOUNDS)	7439-98-7	PHYSICAL IRRITATION	VI.C.10
1279	MONOCROTOPHOS (AZODRIN)	6923-22-4	ANALOGY	VI.C.12
1280	MONOMETHYL ANILINE	100-61-8	BIOCHEMICAL/METABOLIC EFFECTS	VI.C.13
1281	MORPHOLINE	110-91-8	ANALOGY	VI.C.12
1282	NAPHTHALENE	91-20-3	OCULAR EFFECTS	VI.C.5
1283	NICKEL (SOLUBLE COMPOUNDS)	7440-02-0	RESPIRATORY EFFECTS	VI.C.6

II. Index to Preamble Discussion of Individual Substances (continued)

H. S. Number	Substance Name	CAS Number	Primary Basis for Limits	Preamble Section
1284	NICKEL CARBONYL	13463-39-3	INCREASING PEL	VI.C.16
1286	NITRIC ACID	7697-37-2	ANALOGY	VI.C.12
1287	P-NITROANILINE	100-01-6	ANALOGY	VI.C.12
1288	P-NITROCHLOROBENZENE	100-00-5	BIOCHEMICAL/METABOLIC EFFECTS	VI.C.13
1289	NITROGEN DIOXIDE	10102-44-0	RESPIRATORY EFFECTS	VI.C.6
1290	NITROGLYCERIN	55-63-0	CARDIOVASCULAR EFFECTS	VI.C.7
1291	2-NITROPROPANE	79-46-9	CANCER	VI.C.15
1292	NITROTOLUENE (ALL ISOMERS)	99-08-1, 99-99-0, 88-72-2	ANALOGY	VI.C.12
1293	NONANE	111-84-2	ANALOGY	VI.C.12
1295	OCTACHLORONAPHTHALENE	2234-13-1	LIVER AND KIDNEY EFFECTS	VI.C.4
1296	OCTANE	111-65-9	NARCOSIS	VI.C.2
1297	OIL MIST (MINERAL)	8012-95-1	NOAELs	VI.C.9
1298	OSMIUM TETROXIDE	20816-12-0	SENSORY IRRITATION	VI.C.3
1299	OXALIC ACID	144-62-7	ANALOGY	VI.C.12
1300	OXYGEN DIFLUORIDE	7783-41-7	RESPIRATORY EFFECTS	VI.C.6
1301	OZONE	10028-15-6	RESPIRATORY EFFECTS	VI.C.6
1302	PARAFFIN WAX FUME	8002-74-2	SENSORY IRRITATION	VI.C.3

II. Index to Preamble Discussion of Individual Substances (continued)

H. S. Number	Substance Name	CAS Number	Primary Basis for Limits	Preamble Section
1303	PARAQUAT, RESPIRABLE DUST	4685-14-7	RESPIRATORY EFFECTS	VI.C.6
1294	PARTICULATES NOT OTHERWISE REGULATED	None	PHYSICAL IRRITATION	VI.C.10
1304	PENTABORANE	19624-22-7	NEUROPATHY	VI.C.1
1305	PENTAERYTHRITOL, TOTAL DUST	115-77-5	PHYSICAL IRRITATION	VI.C.10
1306	PENTANE	109-66-0	NARCOSIS	VI.C.2
1307	2-PENTANONE (METHYL PROPYL KETONE)	107-87-9	NARCOSIS	VI.C.2
1308	PERCHLOROETHYLENE	127-18-4	CANCER	VI.C.15
1309	PERCHLORYL FLUORIDE	7616-94-6	ANALOGY	VI.C.12
1310	PERLITE	None	PHYSICAL IRRITATION	VI.C.10
1312	PETROLEUM DISTILLATES (NAPHTHA)	None	NOAELs	VI.C.9
1313	PHENOTHIAZINE	92-84-2	SENSITIZATION EFFECTS	VI.C.14
1314	PHENYL ETHER (VAPOR)	101-84-8	ODOR EFFECTS	VI.C.11
1315	PHENYL GLYCIDYL ETHER	122-60-1	SENSITIZATION EFFECTS	VI.C.14
1316	PHENYL MERCAPTAN	108-98-5	NEUROPATHY	VI.C.1
1317	PHENYLHYDRAZINE	100-63-0	SYSTEMIC TOXICITY	VI.C.8
1318	PHENYLPHOSPHINE	638-21-1	SYSTEMIC TOXICITY	VI.C.8
1319	PHORATE (THIMET)	298-02-2	BIOCHEMICAL/METABOLIC EFFECTS	VI.C.13
1320	PHOSDRIN (MEVINPHOS)	7786-34-7	ANALOGY	VI.C.12

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H. S. Number	Substance Name	CAS Number	Primary Basis for Limits	Preamble Section
1321	PHOSPHINE	7803-51-2	SYSTEMIC TOXICITY	VI.C.8
1322	PHOSPHORIC ACID	7664-38-2	SENSORY IRRITATION	VI.C.3
1323	PHOSPHORUS OXYCHLORIDE	10025-87-3	ANALOGY	VI.C.12
1324	PHOSPHORUS PENTASULFIDE	1314-80-3	ANALOGY	VI.C.12
1325	PHOSPHORUS TRICHLORIDE	7719-12-2	SENSORY IRRITATION	VI.C.3
1326	PHTHALIC ANHYDRIDE	85-44-9	ANALOGY	VI.C.12
1327	M-PHTHALODINITRILE	626-17-5	NOAELs	VI.C.9
1328	PICLORAM (TORDON)	1918-02-1	PHYSICAL IRRITATION	VI.C.10
1329	PICRIC ACID	88-89-1	SENSITIZATION EFFECTS	VI.C.14
1330	PIPERAZINE DIHYDROCHLORIDE	142-64-3	SYSTEMIC TOXICITY	VI.C.8
1331	PLASTER OF PARIS, TOTAL DUST	7778-18-9	PHYSICAL IRRITATION	VI.C.10
1332	PLATINUM, METAL	7440-06-4	NOAELs	VI.C.9
1333	PORTLAND CEMENT	None	PHYSICAL IRRITATION	VI.C.10
1334	POTASSIUM HYDROXIDE	1310-58-3	SENSORY IRRITATION	VI.C.3
1335	PROPARGYL ALCOHOL	107-19-7	ANALOGY	VI.C.12
1336	PROPIONIC ACID	79-09-4	ANALOGY	VI.C.12
1337	PROPOXUR (BAYGON)	114-26-1	BIOCHEMICAL/METABOLIC EFFECTS	VI.C.13
1338	N-PROPYL ACETATE	109-60-4	ANALOGY	VI.C.12

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H. S. Number	Substance Name	CAS Number	Primary Basis for Limits	Preamble Section
1339	PROPYL ALCOHOL	71-23-8	ANALOGY	VI.C.12
1340	N-PROPYL NITRATE	627-13-4	SYSTEMIC TOXICITY	VI.C.8
1341	PROPYLENE DICHLORIDE	78-87-5	LIVER AND KIDNEY EFFECTS	VI.C.4
1342	1,2-PROPYLENE GLYCOL DINITRATE	6423-43-4	NEUROPATHY	VI.C.1
1343	PROPYLENE GLYCOL MONOMETHYL ETHER	107-98-2	SENSORY IRRITATION	VI.C.3
1344	PROPYLENE OXIDE	75-56-9	ANALOGY	VI.C.12
1346	RESORCINOL	108-46-3	NOAELs	VI.C.9
1347	RHODIUM (METAL, FUME & INSOLUBLE COMPOUNDS)	7440-16-6	INCREASING PEL	VI.C.16
1348	RHODIUM (SOLUBLE SALTS)	7440-16-6	INCREASING PEL	VI.C.16
1349	RONNEL	299-84-3	BIOCHEMICAL/METABOLIC EFFECTS	VI.C.13
1350	ROSIN CORE SOLDER PYROLYSIS PRODUCT (AS HCHO)	None	SENSORY IRRITATION	VI.C.3
1351	ROUGE, TOTAL DUST	None	PHYSICAL IRRITATION	VI.C.10
1352	SILICA, AMORPHOUS, DIATOMACEOUS EARTH	68855-54-9	INCREASING PEL	VI.C.16
1353	SILICA, AMORPHOUS, PRECIPITATED OR GEL	None	INCREASING PEL	VI.C.16

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H. S. Number	Substance Name	CAS Number	Primary Basis for Limits	Preamble Section
1354	SILICA, CRYSTALLINE-CRISTOBALITE	14464-46-1	RESPIRATORY EFFECTS	VI.C.6
1355	SILICA, CRYSTALLINE QUARTZ, RESPIRABLE	14808-60-7	RESPIRATORY EFFECTS	VI.C.6
1356	SILICA, CRYSTALLINE TRIDYMITE	15468-32-3	RESPIRATORY EFFECTS	VI.C.6
1357	SILICA, CRYSTALLINE TRIPOLI (AS QUARTZ DUST)	1317-95-9	RESPIRATORY EFFECTS	VI.C.6
1358	SILICA, FUSED	60676-86-0	RESPIRATORY EFFECTS	VI.C.6
1359	SILICON	7440-21-3	PHYSICAL IRRITATION	VI.C.10
1360	SILICON CARBIDE	409-21-2	PHYSICAL IRRIIATION	VI.C.10
1361	SILICON TETRAHYDRIDE	7803-62-5	ANALOGY	VI.C.12
1362	SILVER, METAL, DUST, AND FUME	7440-22-4	INCREASING PEL	VI.C.16
1363	SOAPSTONE, TOTAL DUST	None	RESPIRATORY EFFECTS	VI.C.6
1363A	SOAPSTONE, RESPIRABLE DUST	None	RESPIRATORY EFFECTS	VI.C.6
1364	SODIUM AZIDE	26628-22-8	CARDIOVASCULAR EFFECTS	VI.C.7
1365	SODIUM BISULFITE	7631-90-5	SENSORY IRRITATION	VI.C.3
1366	SODIUM FLUOROACETATE	62-74-8	SYSTEMIC TOXICITY	VI.C.8
1367	SODIUM HYDROXIDE	1310-73-2	SENSORY IRRITATION	VI.C.3
1368	SODIUM METABISULFITE	7681-57-4	SENSORY IRRITATION	VI.C.3

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H. S. Number	Substance Name	CAS Number	Primary Basis for Limits	Preamble Section
1369	STARCH, TOTAL DUST	9005-25-8	PHYSICAL IRRITATION	VI.C.10
1371	STODDARD SOLVENT	8052-41-3	NARCOSIS	VI.C.2
1372	STYRENE (PHENYLETHYLENE)	100-42-5	NARCOSIS	VI.C.2
1373	SUBTILISINS (PROTEOLYTIC ENZYMES)	1395-21-7	SENSITIZATION EFFECTS	VI.C.14
1374	SUCROSE, TOTAL DUST	57-50-1	PHYSICAL IRRITATION	VI.C.10
1375	SULFUR DIOXIDE	7446-09-5	RESPIRATORY EFFECTS	VI.C.6
1376	SULFUR MONOCHLORIDE	10025-67-9	SENSORY IRRITATION	VI.C.3
1377	SULFUR PENTAFLUORIDE	5714-22-7	SENSORY IRRITATION	VI.C.3
1378	SULFUR TETRAFLUORIDE	7783-60-0	RESPIRATORY EFFECTS	VI.C.6
1379	SULFURYL FLUORIDE	2699-79-8	ANALOGY	VI.C.12
1380	SULPROFOS	35400-43-2	BIOCHEMICAL/METABOLIC EFFECTS	VI.C.13
1381	TALC (NON-ASBESTIFORM)	14807-96-6	RESPIRATORY EFFECTS	VI.C.6
1382	TANTALUM	7440-25-7	NOAELs	VI.C.9
1383	TEPHROS	3383-96-8	PHYSICAL IRRITATION	VI.C.10
1384	TERPHENYLS	26140-60-3	BIOCHEMICAL/METABOLIC EFFECTS	VI.C.13
1385	1,1,2,2-TETRACHLOROETHANE	79-34-5	LIVER AND KIDNEY EFFECTS	VI.C.4
1386	TETRAETHYL LEAD	78-00-2	INCREASING PEL	VI.C.16
1387	TETRAHYDROFURAN	109-99-9	SENSORY IRRITATION	VI.C.3

II. Index to Preamble Discussion of Individual Substances (continued)

H. S. Number	Substance Name	CAS Number	Primary Basis for Limits	Preamble Section
1388	TETRAMETHYL LEAD	75-74-1	INCREASING PEL	VI.C.16
1389	TETRASODIUM PYROPHOSPHATE	7722-88-5	SENSORY IRRIATION	VI.C.3
1391	4,4'-THIOBIS (6-TERT-BUTYL-M-CRESOL)	96-69-5	PHYSICAL IRRITATION	VI.C.10
1392	THIODLYCOLIC ACID	68-11-1	SENSORY IRRITATION	VI.C.3
1393	THIONYL CHLORIDE	7719-09-7	ANALOGY	VI.C.12
1394	TIN (ORGANIC COMPOUNDS)	7440-31-5	CHANGE IN SKIN DESIGNATION ONLY	VI.C.18
1395	TIN OXIDE	7440-31-5	RESPIRATORY EFFECTS	VI.C.6
1396	TITANIUM DIOXIDE	13463-67-7	PHYSICAL IRRITATION	VI.C.10
1397	TOLUENE	108-88-3	NARCOSIS	VI.C.2
1398	TOLUENE-2,4-DIISOCYANATE	584-84-9	SENSITIZATION EFFECTS	VI.C.14
1399	O-TOLUIDINE	95-53-4	CANCER	VI.C.15
1400	P-TOLUIDINE	106-49-0	CANCER	VI.C.15
1401	P-TOLUIDINE	108-44-1	BIOCHEMICAL/METABOLIC EFFECTS	VI.C.13
1402	TRIBUTYL PHOSPHATE	126-73-8	ANALOGY	VI.C.12
1403	1,1,2-TRICHLORO-1,2, 2-TRIFLUOROETHANE	76-13-1	CARDIOVASCULAR EFFECTS	VI.C.7
1404	TRICHLOROACETIC ACID	76-03-9	ANALOGY	VI.C.12

II. Index to Preamble Discussion of Individual Substances (continued)

H. S. Number	Substance Name	CAS Number	Primary Basis for Limits	Preamble Section
1405	1,2,4-TRICHLOROBENZENE	120-82-1	SENSORY IRRITATION	VI.C.3
1406	TRICHLOROETHYLENE	79-01-6	NARCOSIS	VI.C.2
1407	1,2,3-TRICHLOROPROPANE	96-18-4	LIVER AND KIDNEY EFFECTS	VI.C.4
1408	TRIETHYLAMINE	121-44-8	SENSORY IRRITATION	VI.C.3
1409	TRIMELLITIC ANHYDRIDE	552-30-7	RESPIRATORY EFFECTS	VI.C.6
1410	TRIMETHYL PHOSPHITE	121-45-9	NOAELs	VI.C.9
1411	TRIMETHYLAMINE	75-50-3	ANALOGY	VI.C.12
1412	TRIMETHYLBENZENE	25551-13-7	SYSTEMIC TOXICITY	VI.C.8
1413	2,4,6-TRINITROTOLUENE (TNT)	118-96-7	BIOCHEMICAL/METABOLIC EFFECTS	VI.C.13
1414	TRIORTHOCRESYL PHOSPHATE	78-30-8	CHANGE IN SKIN DESIGNATION ONLY	VI.C.18
1415	TRIPHENYL AMINE	603-34-9	NOAELs	VI.C.9
1416	TUNGSTEN & COMPOUNDS (INSOLUBLE)	7440-33-7	SYSTEMIC TOXICITY	VI.C.8
1417	TUNGSTEN & COMPOUNDS (SOLUBLE)	7440-33-7	SYSTEMIC TOXICITY	VI.C.8
1418	URANIUM (INSOLUBLE COMPOUNDS)	7440-61-1	NOAELs	VI.C.9
1419	URANIUM (SOLUBLE COMPOUNDS)	7440-61-1	INCREASING PEL	VI.C.16
1420	N-VALERALDEHYDE	110-62-3	ANALOGY	VI.C.12
1421	VANADIUM (V_2O_5, DUST)	1314-62-1	SENSORY IRRITATION	VI.C.3
1422	VANADIUM (V_2O_5, FUME)	1314-62-1	SENSORY IRRITATION	VI.C.3
1423	VEGETABLE OIL MIST	None	PHYSICAL IRRITATION	VI.C.10

II. Index to Preamble Discussion of Individual Substances (continued)

N. S. Number	Substance Name	CAS Number	Primary Basis for Limits	Preamble Section
1424	VINYL ACETATE	108-05-4	SENSORY IRRITATION	VI.C.3
1425	VINYL BROMIDE	593-60-2	CANCER	VI.C.15
1426	VINYL CYCLOHEXENE DIOXIDE	106-87-6	CANCER	VI.C.15
1427	VINYL TOLUENE	25013-15-4	ODOR EFFECTS	VI.C.11
1428	VINYLIDENE CHLORIDE	75-35-4	SYSTEMIC TOXICITY	VI.C.8
1429	VM & P NAPHTHA	8032-32-4	SENSORY IRRITATION	VI.C.3
1430	WELDING FUMES (TOTAL PARTICULATE)	None	SYSTEMIC TOXICITY	VI.C.8
1430a	WOOD DUST, HARD WOOD	None	RESPIRATORY EFFECTS	VI.C.6
1430b	WOOD DUST, SOFT WOOD	None	RESPIRATORY EFFECTS	VI.C.6
1430c	WOOD DUST, WESTERN RED CEDAR	None	RESPIRATORY EFFECTS	VI.C.6
1431	XYLENE (O,M,P-ISOMERS)	1330-20-7	SENSORY IRRITATION	VI.C.3
1432	M-XYLENE-ALPHA,ALPHA'-DIAMINE	1477-55-0	ANALOGY	VI.C.12
1433	XYLIDINE	1300-73-8	ANALOGY	VI.C.12
1434	ZINC STEARATE	557-05-1	PHYSICAL IRRITATION	VI.C.10
1435	ZINC CHLORIDE FUME	7646-85-7	SENSORY IRRITATION	VI.C.3
1436	ZINC CHROMATES (CrVI)	Varies	CANCER	VI.C.15
1437	ZINC OXIDE (FUME)	1314-13-2	SYSTEMIC TOXICITY	VI.C.8
1438	ZINC OXIDE, TOTAL DUST	1314-13-2	PHYSICAL IRRITATION	VI.C.10
1439	ZIRCONIUM COMPOUNDS	7440-67-7	SYSTEMIC TOXICITY	VI.C.8

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III. Pertinent Legal Authority

The publication of a final standard is authorized by sections 6 and 8 of the Occupational Safety and Health Act of 1970 (the Act), 29 U.S.C. 655 and 657. Section 6(b)(5) governs the issuance of occupational safety and health standards dealing with toxic materials or harmful physical agents.

It states:

> The Secretary in promulgating standards dealing with toxic materials or harmful physical agents under this subsection shall set the standard which most adequately assures, to the extent feasible, on the basis of the best available evidence, that no employee will suffer material impairment of health or functional capacity even if such employee has regular exposure to the hazard dealt with by such standard for the period of his working life. Development of standards under this subsection shall be based upon research, demonstrations, experiments, and such other information as may be appropriate. In addition to the attainment of the highest degree of health and safety protection for the employee, other considerations shall be the latest available scientific data in the field, the feasibility of standards, and experience gained under this and other health and safety laws. Whenever practicable, the standard promulgated shall be expressed in terms of objective criteria and of the performance desired.

Section 3 (8) defines an occupational safety and health standard as "a standard which requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe or healthful employment and places of employment."

The Supreme Court has held under the Act that the Secretary, before issuing any new standard, must determine that it is reasonably necessary and appropriate to remedy a significant risk of material health impairment. *Industrial union Department* v. *American Petroleum Institute, (IUD* v. *API).* 488 U.S. 607 (1980). The Court stated that "before he can promulgate any permanent health or safety standard, the Secretary is required to make a threshold finding that a place of employment is unsafe in the sense that significant risks are present and can be eliminated or lessened by a change in practices" (448 U.S. at 642). The Court also stated "that the Act does limit the Secretary's power to require the elimination of significant risk" (488 U.S. 644, n. 49).

The Court indicated, however, that the significant risk determination is "not a mathematical straitjacket," and that "OSHA is not required to support its finding that a significant risk exists with anything approaching scientific certainty." The Court ruled that "a reviewing court [is] to give OSHA some leeway where its findings must be made on the frontiers of scientific knowledge [and that] * * * the Agency is free to use conservative assumptions in interpreting the data with respect to carcinogens, risking error on the side of over protection rather than under protection" (446 U.S. at 655).

The Court also stated that "while the Agency must support its finding that a certain level of risk exists with substantial evidence, we recognize that its determination that a particular level of risk is 'significant' will be based largely on policy considerations." (488 U.S. at 655, n. 62).

After OSHA determines that a significant risk exists and that such risk can be reduced or eliminated by the proposed standard, it must set a standard which is technologically and economically feasible. In *American Textile Manufacturers Institute* v. *Donovan,* 452 U.S. 490, 531, n. 32 (1981) the Supreme Court held that "cost-benefit analysis is not required by statute because feasibility analysis is." The aim is to set the lowest feasible level necessary to eliminate significant risk.

As previously noted OSHA is required under its statutory authority to "set the standard which most adequately assures, to the extent feasible, on the basis of the best available evidence, that no employee will suffer material impairment of health or functional capacity even if such employee has regular exposure to the hazard dealt with by such standard for the period of this working life" under the provisions of 6(b)(5) of the OSH Act. "Material impairment" is therefore a term which needs to be considered when issuing standards.

In this rulemaking, OSHA is considering establishing new or revised PELs for over 400 separate substances. The health effects for these substances cover a wide spectrum of severity including: Life threatening effects; disabling effects; various diseases; irritation to different organs or tissues; and changes in organ functions indicative of future health decrements.

The statutory requirements in section 3(8) and 6(b)(5) are quoted above. Other statutory criteria are set forth in section (2)(b) which states:

> The Congress declares it to be its purposes and policy, through the exercise of its powers to regulate commerce among the several States and with foreign nations and to provide for the general welfare, to assure so far as possible every working man and woman in the Nation safe and healthful working conditions and to preserve our human resources.

One of the earlier Senate drafts of the OSHA bill did not include the word "material" before the word "impairment." That word was added by an amendment of Senator Dominick. The Senator stated in respect to that amendment:

> What we were trying to do in the bill—unfortunately, we did not have the proper wording or the proper drafting—was to say that when we are dealing with toxic agents or physical agents, we ought to take such steps as are feasible and practical to provide an atmosphere within which a person's health or safety would not be affected. Unfortunately, we had language providing that anyone would be assured that no one would have a hazard, or at least, we would require the Secretary to set standards so stating, and that in the HEW standard there would be a requirement to proceed on that basis so that no one would have any problem for the rest of his working life. It was an unrealistic standard. As modified, we would be approaching the problem by looking at the problem and setting a standard or criterion which would not result in harm (Legislative History p. 502).

The D.C. Circuit Court considered the concept of material impairment and reviewed the Legislative History in the Lead Case.

It stated:

> The essential question under Section 6(b)(5) for this case is whether OSHA acted within the limits of this mandate to establish "material" impairment of health when it set a standard designed to protect workers from the subclinical effects of lead. As a statutory matter, after examining precedent and legislative history, we hold that Section 6(b)(5) empowers OSHA to set a PEL that prevents the subclinical effects of lead that lie on a continuum shared with overt lead disease. (United Steelworkers v. Marshall, 647 F. 2d at 1248–49. See also the more extended discussion there).

The legislative history and judicial analysis indicate that OSHA is to take a balanced but protective approach. Some impairments are so slight a discomfort that they are not material and do not provide a basis for regulation. A complaint of minor discomfort, in and of itself, is not material impairment. However, the OSH Act is designed to be protective of workers and is to protect against impairment with less impact than severe impairment.

These health effects are related to two different types of exposure: Acute and chronic. Because of the difference between the health effects associated with these two types of exposures, OSHA must consider different types of PELs (TWA, STEL, or ceiling) to protect against material impairment.

OSHA asked for comment on the subject of "material impairment" (Question 21), especially with regard to

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whether sensory irritation should be considered to be material impairment. There was a relatively limited amount of comment. The most complete response was provided by NIOSH (Ex. 8-47) which stated:

> The recognition of sensory irritation as potentially being "material impairment of health" is consistent with the current scientific consensus related to health effects of environmental agents.
>
> Mucous membrane irritants can cause increased blink frequency and tearing; nasal discharge, congestion, and sneezing; and cough, sputum production, chest discomfort, wheezing, chest tightness, and dyspnea. Work environments often require levels of physical and mental performance considerably greater than encountered in daily living. Even in the absence of any permanent impairment, the symptoms listed can interfere with job performance and safety.
>
> Mucous membrane irritation can result in inflammation, which may lead to increased susceptibility to nonspecific irritants and infectious agents. For example, experimental ozone exposure in humans results in increased airway reactivity. Also, studies of exposure to environmental tobacco smoke have shown irritative symptoms and evidence of increased frequency of respiratory tract illnesses in young children and decreased pulmonary function in adults. * * *
>
> Mucous membrane irritation is associated with respiratory illnesses, depending on the composition of specific exposure and on the dose, duration, and frequency of exposure. No universally applicable conclusion can be drawn at this time regarding the association between irritative symptoms and permanent injury or dysfunction. Where certain individuals show no measurable impairment after an exposure, even when experiencing irritative symptoms, others may develop identifiable dysfunction.
>
> Aside from the effects of irritations, mucous membrane exposure may result in absorption of a substance, with resultant systemic toxicity. An inflamed mucous membrane may be an even more effective route of absorption, either for the irritant or for other substances. Furthermore, injury to bronchopulmonary membranes can impair removal of particulates from the respiratory system.

Thus, according to NIOSH, sensory irritants interfere with job performance and safety, cause inflammation, may increase the victim's susceptibility to other irritants and infectious agents, lead to permanent injury or dysfunction, or permit greater absorption of hazardous substances (Ex. 8-47). In sum, NIOSH and most other respondents agree that sensory irritation caused by occupational exposure to the irritant substances included in this final rule constitutes a material impairment of health (see Section VI.C.3).

Of course, irritation also covers a spectrum of effects, some serious and some trivial. Hence, complaints of minor irritation would not in and of itself constitute material impairment. In addition, OSHA would weigh irritation with physical manifestations more heavily than irritation with purely subjective responses. This does not mean that purely subjective responses would not constitute material impairment. That judgment would depend on the magnitude of the irritation.

OSHA also believes that clinical, tissue or organ changes, or properly documented pain, chest tightness, migraine headache or similar reactions reflected in responses by persons, may also represent material impairment of health. Each of these are considered on a case-by-case basis in this Rulemaking. OSHA believes that its approach is consistent with the Act and Congressional intent regarding material impairment of health.

All of the revised or new PELs in this Rulemaking are within reasonable interpretation of a general approach to identifying situations involving material impairment of health. In a few instances, PELs noted in the Proposal have been modified, or deleted, because it was determined that the proposed level was not needed to reduce a significant risk of material impairment of health. These substances are identified in the Preamble.

OSHA's analyses regarding material impairment of health, as applied in this Rulemaking, are provided in three separate ways. First, they are included in the introductory discussion for Sections VI-C-1 through VI-C-18 in the Preamble. Second, the discussion of each of the 428 substances contains health effect information for all new or revised PELs. Third, the following discussion provides examples and general guidance regarding the OSHA decision process, and accounts for the severity spectrum of health effects, and the separate cases involving chronic and acute exposures.

As previously indicated, health effects cover a wide range of severity levels. A precise delineation between material impairment and non-material impairment is not possible since a variety of factors must be considered, such as the composite health effect and frequency and duration of the effect, to determine if a substance represents a material impairment of health. For example, nerve damage would normally constitute material impairment of health. However, a small reduction in nerve conductivity may not constitute material impairment. Moreover, an occupational, transitory, non-progressive and/or non-intensive coughing reaction may represent non-material impairment. Major intensification of some of these factors could result in a health effect which represents material impairment of health.

Consequently, general considerations can be stated but they must be applied on a case-by-case basis taking into account the scientific evidence, public comments and agency expertise.

OSHA has concluded that updating the Z-Tables to reflect recent information is the highest priority for the Agency. This will reduce exposure limits for approximately 212 substances regulated currently by the Z-Tables and add exposure limits for approximately 164 substances which are currently unregulated. The health literature indicates this must be accomplished to improve worker health; it is one of Congress' concurrent goals and will greatly increase occupational health protection for a very large number of workers.

In order to accomplish this high priority task in a reasonable time in the light of limited administrative resources, it is necessary to narrow somewhat the issues to be faced by the Agency in this proceeding. Consequently, it is necessary to delay other worthwhile goals and concurrent Congressional purposes.

This approach is consistent with the general principles of administrative law. An Agency may set priorities within the framework of its statutory authority. Secondly, an Agency may take substantial steps towards its statutory goals, without having to achieve them completely, when Agency resources are not sufficient to complete all aspects initially.

Congress recognized that the Secretary could not address all occupational safety and health problems simultaneously. It therefore gave the Secretary discretion to set priorities in exercising his rulemaking authority. As section 6(g) of the Act, 29 U.S.C. 655(g), states:

> In determining the priority for establishing standards under this section, the Secretary shall give due regard to the urgency of the need for mandatory safety and health standards for particular industries, trades, crafts, occupations, businesses, workplaces or work environments.

In proposing this addition to the Act, Senator Javits explained that its purpose was "to relieve the Secretary of the necessity for waiting to promulgate whatever standards he wishes to promulgate across the board but, rather, allowing him to yield to more urgent demands before he tries to meet others." Leg. Hist 505. Thus, the Act has "built in flexibilities" that the Secretary may use, such as establishing "the priorities between the various occupations that may require standards." *National Congress of Hispanic American Citizens v. Usery*, 554 F. 2d 1196, 1199 (D.C. Cir. 1977); see also *National Congress v. Marshall*, 626 F.2d 882 (D.C. Cir. 1979). The flexibility expressed in the statute and legislative history is consistent with the well-established principle that an administrator may adopt a "rational, 'one step at a time' approach" to rulemaking. *National Roofing Contractors Ass'n v. Brennan*, 495 F. 2d 1294, 1299 (7th Cir.), cert. denied, 419 U.S. 1105 (1974) (OSHA roofing standard); cf., *Industrial Union Dept. v. American Petroleum Institute*, 488 U.S. 607, 663 (1980) (Burger, concurring) (OSHA can act in its legislative capacity "to focus on only one aspect of a larger problem"); *United Steelworkers v. Auchter*, 763 F. 2d 728, 736 (3rd Cir. 1985) (Although OSHA's decision to exclude workers in some industries from a standard requires explanation. "[s]ection 6(g) clearly permits the Secretary to set priorities for the use of the agency's resources and to promulgate standards sequentially."); *IUD v. Hodgson*, 499 F. 2d 467, 480 n. 31 (D.C. Cir. 1974) ("The [OSHA] statutory scheme is generally calculated to give the Secretary broad responsibility for determining when standards are required and what those standards should be.").

OSHA has concluded that setting exposure limits for the large number of substances involved in this rulemaking has priority at this stage over exploring the need for accompanying medical surveillance, exposure monitoring and industrial hygiene provisions for a much smaller number of substances. Section 6(b)(7) of the Act, of course, indicates that "where appropriate" such provisions are to be included. That was a concurrent goal of Congress as was Congress's goal to lower exposure for the many unregulated or inadequately regulated substances when scientific data indicate lower exposures are needed. However, OSHA has inadequate resources to accomplish both goals at this time. Lower exposures is a higher priority because it is more effective in reducing diseases and material impairments of health.

OSHA has already addressed some of section 6(b)(7)'s goals, as they relate to labels and warnings, in the generic Hazard Communication Standard, 29 CFR 1910.1200. It is working on a standard to improve respirator use for all chemicals (47 FR 20603). It is considering generic regulation for exposure monitoring (53 FR 32501-32595) and medical surveillance (53 FR 32505-32598). OSHA does not have the resources to conclude this rulemaking in any reasonable time, and also consider these issues.

OSHA does have legal authority not to address ancillary provisions in this rulemaking and determinations about the appropriateness of ancillary provisions have not been made. That is a rational use of its priority setting authority in the light of OSHA's limited resources. The language of section 6(b)(7) is not an absolute requirement to include such provisions and this is an "appropriate" circumstance not to include them. The actions already initiated by OSHA indicate it is facing the issue of ancillary provisions in a responsible and reasonable manner.

OSHA is utilizing its priority setting authority for several other matters. There are several substances (both carcinogens and non-carcinogens) where more detailed analysis of the evidence might in the future lead to the conclusion that there is remaining significant risk. If that were the case in a single substance rulemaking, OSHA would explore that issue in great depth and do much more extended economic analysis of several different exposure levels to determine what the lowest feasible level might be.

Past experience has shown this to be a major undertaking both from a health and economic point of view. OSHA, for example, spends an average of $500,000 and takes one year of study to determine the lowest feasible level for a *single* substance. OSHA does not have the resources to engage in that kind of analysis for more than a few substances. The attempt to do so in this rulemaking would significantly reduce the chances of it ever being completed and would result in far more workers being exposed to significant risk in exchange for the incremental risk reduction attained by further lowering the PEL for a small group of substances in this Rulemaking.

When evidence has been available to determine that the proposed level resulted in remaining significant risk and a lower level was feasible, OSHA has issued that lower level. Three chemicals fit that category in this rulemaking. Two are based on OSHA's analysis of evidence presented by NIOSH and a third, perchloroethylene, is based on OSHA's analysis of evidence supplied by the Amalgamated Clothing and Textile Workers Union and the dry cleaning industry.

OSHA has indicated that further, more extensive analysis may lead to the conclusion that significant risk remains for other substances. However, the extensive investment of resources needed to arrive at such conclusions would be determined by the Agency's future priorities.

OSHA's first priority is to achieve substantial reductions in significant risk for this large number of substances. The accomplishment of this goal will create the greatest health benefits for the American worker. OSHA's decisions in this Rulemaking are consistent with the evidence on risk and feasibility which is available at this time. Further consideration of these issues for specific substances can be achieved in future rulemakings as new evidence becomes available and as priorities indicate.

OSHA concludes this is both rational priority setting and a reasonable integration of its priority setting authority and relevant case law. Clearly multi-issue and multi-substance rulemaking require a different balancing than single substance or single issue rulemaking.

OSHA has met legal requirements also in the regulation of carcinogens in the light of priorities and Agency resources. Potential carcinogens tend to require far more administrative resources per substance to regulate, in part because their regulation tends to create more controversy. There are a number of expert organizations which analyze and develop lists of suspect or probable carcinogens. These organizations include ACGIH, NIOSH, the National Toxicological Program (NTP) and the International Agency for Research on Cancer (IARC). These organizations utilize somewhat different criteria and categories for their lists.

The ACGIH TLVs include some substances which it categorizes as carcinogens, but does not set the exposure limit based on carcinogenicity. It includes other substances which it may or may not categorize as carcinogens but for which the exposure limit is set taking into account carcinogenicity. It is only this last category which OSHA considered as carcinogens in its proposal. (This is a separate issue from what exposure limit is set). If NIOSH recommended a different limit for a chemical in this grouping, OSHA considered which of the recommended limits was best supported. OSHA concludes this was a rational use of its priority setting authority. A categorization of carcinogenicity along with a proposed exposure limit is much more useful to OSHA as a starting point for its analysis than a categorization without a recommended numerical limit. IARC

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never recommends numerical limits and in some instances neither has NIOSH.

Attemps to analyze for carcinogenicity a substantially larger number of substances would again require far more scientific and administrative resources than OSHA has available and would probably prevent the prompt completion of this rulemaking. In addition OSHA has spent much of its past efforts in regulating carcinogens. It concludes that it is important to concentrate some of its efforts through this project on noncarcinogenic health hazards. Substances which cause liver/kidney or cardiovascular disease can be just as deadly as carcinogens and can cause higher risks.

Accordingly, OSHA concludes it is a rational use of its priority authority not to consider for regulation as a carcinogen every sustance included, for which there is some evidence or recommendation that it may be carcinogenic. Such substances often require exposure limits to protect against other health hazards they cause, which results in OSHA setting limits in this rulemaking based on non-carcinogenic effects. In these circumstance 29 CFR Part 1900 need not apply when there is no determination to consider regulating a substance as a carcinogen.

There are several substances which OSHA proposed regulating as carcinogens, for which participants submitted evidence to the contrary. In some of those cases OSHA has concluded that it is inappropriate to regulate a substance as a carcinogen at this time because further analysis is necessary. In several cases participants submitted evidence that substances included in the proposal which OSHA did not propose to regulate as carcinogens should be regulating as carcinogens. When OSHA concluded there was sufficient evidence and analysis to meet legal requirements, OSHA has in this final rule regulated the substance as a carcinogen. However, as just stated, OSHA has not itself attempted to analyze further for carcinogenicity substances which it did not propose regulated as a carcinogen, unless participants supplied relevent evidence.

For the substances OSHA is regulating as carcinogens, it has met all requirements of *IUD* v. *API* and has acted consistently with 29 CFR Part 1990. Specifically, OSHA reviewed all data to determine whether there were studies of sufficient merit to determine that the substance was qualitatively a carcinogen.

Secondly, OSHA contracted with Dr. Nathan J. Karch, President of Karch & Associates, Inc., consultant experts in risk assessment, to analyze the available studies for two purposes (Ex. 85): first to determine whether there was sufficient evidence to perform a quantitative risk assessment or to state the reasons why there was not; second, to perform a quantitative risk assessment where the studies permitted, using techniques generally accepted by the scientific community. The risk assessments were presented in the preamble (52 FR 21190–209) and elaborated upon in Dr. Karch's statement. Dr. Karch responded to questions on the risk assessments. (OSHA did not ask Dr. Karch to independently review the strength of the qualitative date since OSHA had preliminarily made that review.)

Utilizing these data, public comments and OSHA analysis of the data, OSHA has issued exposure limits which will substantially reduce significant risk and are feasible. Where a public participant has supplied evidence that a lower level than that proposed would further reduce significant risk and was feasible, OSHA has promulgated that lower level.

In other words, OSHA's decisions in this Rulemaking are based on the entire evidence in the public record, and that the final PEL substantially reduces signficant risk and is feasible. OSHA may reconsider the issues for individual substances as further information becomes available.

For the reasons stated above and in line with its priority setting authority, OSHA concludes it has authority, in the circumstances of a rulemaking which considered changes to PELs for 428 substances, not to explore those issues at this time. This issue and the regulation of other substances as carcinogens may be considered in future 6(b) rulemakings where priorities indicate the issue is important and when administrative and scientific resources become available. OSHA concludes this is consistent with its legal authority and reasonable health policy.

A few of the substances which OSHA is regulating principally for non-carcinogenic effects, but for which there is some evidence of carcinogenicity, fit into an additional category. In these cases there was uncertainty concerning which of two levels would eliminate significant risk of the non-carcinogenic effect. In those cases OSHA used the evidence of carcinogenicity as an additional factor in determining whether the lower level was appropriate.

Most of the chemicals OSHA is regulating are not carcinogens. There are effects which occur immediately, or a relatively short time after exposure. Sometimes the effects are reversible after removal from exposure and treatment, and sometimes the effects are not.

Many of these substances are believed to have effective thresholds, that is there is a level of exposure above which some number of persons will suffer the effect. There is a level somewhat below that, where it appears that few persons would suffer the effect, and there is a lower level where scientists are more confident of that conclusion. At levels below a properly well defined threshold the risk would not be significant. However, there may be a smaller group of employees who might be susceptible at very low levels.

The studies which tend to be performed, examine relatively small groups of animals or persons exposed at one or several levels. A determination is made at which of these levels effects are seen and at which they are not.

The Supreme Court in *IUD* v. *API* was faced with the situation, as is often the case with carcinogens, that high risk is known at relatively high levels of exposure. But scientists do not have direct measurements of what the risk may be at lower levels. Indeed for statistical and methodological reasons they may never be in position to directly measure risk at lower levels or indeed to determine if it is ever eliminated. Consequently, modeling techniques must be used to estimate risk at various levels so as to determine the significance of risk at various levels.

In the case of this rulemaking the type of evidence available makes such modeling techniques generally unnecessary for significant risk determinations. The studies provide direct evidence of whether or not there is an effect and the probability of that effect occurring at the levels to which the Agency is regulating. Consequently, a judgment can be made whether the effect is a significant risk directly from the studies. Similarly, a judgment can be made directly from the studies whether that significant risk is reduced or eliminated.

An example may illustrate this method of analysis. The current OSHA exposure limit for hydrogen sulfide (H_2S) is a 20 ppm STEL and a 50 ppm peak. There are studies showing that at 20 ppm and perhaps below workers develop conjunctivitis, eye irritation and other ocular effects. Those effects present a significant risk of material impairment because they would prevent work, require medical treatment, and would make it difficult to work safely

with the condition. Another study shows that the deleterious health effects do not develop in workers exposed continually at 10 ppm. Consequently OSHA is issuing a final standard of a 10 ppm TWA with a 20 ppm ceiling which should eliminate that significant risk. Direct evidence of significant risk and its probable elimination exist and there would be no point in applying mathematical modeling to the data for purposes of making a significant risk determination.

Often the data are not as clear cut. There may be only an effect study. There may be uncertainty about exposures levels or conflicting results. There may be a no effect study with exposure data and an effect study without exposure data. Studies are often of small size with fairly wide ranges of uncertainty. Consequently, they do not take into account variability of response among humans. Of course, many studies are based on animal data and adjustments must be made to take into account the differences between human and animal susceptibility.

However, judgments as to levels which create, reduce or eliminate significant risk still have the greatest scientific validity in most cases when based directly on specific studies. The uncertainties which exist are likely to be magnified, rather than reduced, when combined with the uncertainties of modeling techniques.

Accordingly OSHA concludes that the type of significant risk analysis undertaken in this rulemaking is most consistent with the studies generally available and is a valid scientific approach. OSHA concludes it is fully consistent with the requirements of the Supreme Court in *IUD* v. *API*.

OSHA has made quantitative estimates of the benefits of this entire standard. These are discussed in Section VII D and are substantial. That analysis demonstrates that on a general basis there is a significant risk of occupationally related illness and death and that this new standard substantially reduces that risk.

Some of the exposure levels incorporate an uncertainty factor. This is sometimes referred to as a "safety factor." Studies are often of small size and, since there is a large variation in human susceptibility, a study because of its small size may not demonstrate an effect that actually exists. (In scientific terminology it lacks statistical power.) For this reason, it is not uncommon to set a limit below that level which the study may have indicated showed no effect.

This has been the standard approach for recommending exposure limits for non-carcinogens by scientists and health experts in the field for many years. (See testimony of Mastromatteo (Ex. 22) and Key (Ex. 17)). Generally, a greater safety or uncertainty factor is used for more severe health effects.

This use of uncertainty or safety factors in a reasonable manner generally does not lead to reducing exposures below the level of significance. Rather, it takes into account the likelihood that effects may exist at levels below the level of the study.

Of course, use of uncertainty factors or safety factors is even more clearly justified when the studies available determine only a level at which there is a significant risk of a health effect exists rather than the level at which there clearly is no significant risk, or when animal studies are used. Clearly, to substantially reduce significant risk, an exposure level must be set below the level where significant risk exists in humans. Similarly, to take into account the possibility of interspecies variability, a level set for humans usually is set below the observed no effect level in an animal. See the extended discussion in the Health Effects Section, specifically Section VI A.

Section 6(b)(5) of the OSH Act states that standards shall be based on many factors including "the best available evidence," the "latest available scientific data in the field," and "experience gained under this and other health and safety laws." OSHA concludes that its approach meets these provisions.

OSHA utilized the research and recommendations of two expert organizations, NIOSH and ACGIH, as the starting point for its analysis. Those organizations regularly review the literature and update their recommendations. (See testimony of Mastromatteo (Ex. 22) and NIOSH (Ex. 8–47)). When participants brought to OSHA's attention other studies, made other recommendations for exposures limits or the proposal was controversial, OSHA fully reviewed the available scientific information. (The final preamble does not always discuss studies which OSHA did not believe were important or relevant to the determination of an exposure limit.) Where there was little or no comment on particular parts of the OSHA proposal, and the evidence OSHA relied on appeared substantial, OSHA did not attempt additional searches of the literature.

OSHA concludes that this is a rational approach to make use of the best available and latest scientific information for making final decisions on exposure limits. An approach attempting to analyze and discuss every single study for substances where the proposed exposure limit is not seriously disputed would not add to the quality of OSHA's final decisions and would interfere with the statutory goal to protect employees from material health impairments. As discussed elsewhere OSHA also relied upon its experience in making final decisions as is encouraged by Section 6(b)(5).

It has been suggested to OSHA that two of its selected categories do not constitute material impairment of health. The first category includes particulates which cause physical irritation and other effects. In the Proposal, OSHA followed for clarity purposes the historical terminology of "nuisance" dust which is misleading. The term "nuisance" is used by ACGIH to cover dusts that, although they do not cause pneumoconiosis or permanent scarring of the lungs, can cause many material health impairments such as chronic bronchitis, chronic throat irritation, skin irritation or eye inflammation. Consequently there is a health need for an exposure limit for all particulates. See the discussion under particulates (Section VI, Health Effects).

Secondly, three chemicals are listed as odorants by ACGIH and also have other effects. In these cases OSHA has not changed the existing PEL. These levels were identified in the Proposal and there was not significant comment that the limits should be raised. No new chemicals are regulated as odorants. Accordingly, OSHA has not had to visit the issue of when an odorant has become so severe as to constitute a material impairment of health.

OSHA feasibility determinations are based on both the statute and on a consistent and extensive body of case law extending over its entire history. In addition to *ATMI* (supra) see for example: *AFL–CIO* v. *Hodgson*, 499 F. 2d 467 (D.C. Cir., 1974); *Society of Plastics Industries* v. *OSHA* (SOCMA), 509 F. 2d 1301 (2d Cir., 1975); *American Iron and Steel Inst.* v. *OSHA* (AISI), 577 F. 2d 825 (3rd. Cir., 1977); *United Steelworkers* v. *Marshall*, 647 F. 2d 1189 (D.C. Cir., 1980); *ASARCO* v. *OSHA*, 746 F. 2d 483 (9th Cir., 1984) and others.

Standards may be expensive and still be feasible if necessary to protect occupational health.

Standards may be economically feasible, though from the standpoint of employers, they are financially burdensome and affect profit margins adversely. Nor does the concept of economic feasibility necessarily guarantee the continued existence of

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individual employers. It would appear to be consistent with the purpose of the Act to envision the economic demise of an employer who has lagged behind the rest of industry in protecting the health and safety of employees * * * (*Hodgson*; 489 F. 2d at p. 478).

An OSHA standard may be technology forcing. OSHA may demonstrate feasibility by showing that only a few plants are now in compliance. Moreover, a standard is still feasible even though some respirator use is needed to achieve compliance.

[T]he Secretary is not restricted by the status quo. He may set standards which require improvements in existing technologies or the development of new technology * * * (SOCMA. 509 F. 2d at p. 1309).

The experience at (2) batteries provides a sufficient basis for the Secretary's reasoned belief that the 0.15 mg/m³ limit could be met (for the entire industry) (AISI, 877 F. 2d at p. 834; See also SOCMA, p. 1309).

The limited respirator use that the standard requires does not in any way render the standard infeasible * * * (ASARCO, 746 F. 2d at p. 483. See also ATMI generally and SOCMA 509 F. 2d at p. 1310, etc.)

OSHA must show a general presumption of feasibility in most operations in an industry with engineering controls to place the burden of proof in enforcement action on the industry to show that compliance with engineering controls cannot be attained in a particular circumstance. But a showing by a particular industry that compliance requires respirators in certain operations or an admission by OSHA that that is the case does not make a standard infeasible. Rather it "will reduce the strength of the presumption a firm will have to overcome in justifying its use of respirators" in an enforcement or variance action. *United Steelworkers*. pp. 1272–73. See also *Building and Construction Trades* (Supra).

In addition, a gloss of experience has been added to this general legal guidance. In the two standards where OSHA thought at the time that it was regulating to the limits of its legal authority on feasibility, subsequent studies indicated the standard was achieved more easily than OSHA predicted.

OSHA predicted the cotton dust standard would cost $500 million in 1977 dollars whereas industry predicted twice the cost and anticipated substantial technical problems. As a matter of fact, a later detailed study indicated that the standard cost only $250 million in 1983 dollars, improved industry competitiveness and productivity as well, and improved health more than predicted. See 50 FR 51121, 51184–87 (Dec. 13, 1985).

OSHA's contractor predicted that the OSHA vinyl chloride standard could not generally be achieved with engineering controls and the attempt would cost $1.5 billion. As a matter of fact, compliance was achieved with engineering controls within three years at a cost of less than 10% of that predicted. See 49 FR 5001. 5253 (Jan. 22, 1980).

In this rulemaking, OSHA concludes that it has demonstrated feasibility without taking that concept to the full limits of its legal authority. Many of the substances regulated constitute acute hazards with apparent thresholds; the limit set to protect health does not approach the limits that could feasibly be achieved.

There are some substances covered by this regulation for which further analysis might indicate a lower limit is needed, possibly the lowest feasible limit. However, the limit set is clearly within the limits of feasibility.

In the case of a few substances, industry has argued that the limit proposed was not technically and/or economically "feasible." In some circumstances where OSHA believed it did not have enough evidence of feasibility in the record to support the level proposed, it has raised the limit to that level which the evidence available demonstrated is clearly feasible. In other circumstances where industry contended that engineering controls could not achieve the proposed level in a specific operation, and there was not sufficient evidence in the record indicating that it could be achieved with engineering and work practice controls, the preamble indicates that respirator use may be appropriate. In any event, the burden of proof would be on OSHA in an enforcement action to demonstrate the level in that operation could be achieved with engineering and work practice controls. Since OSHA's feasibility analysis was based on what industry is already achieving or what could be achieved with standard "off-the-shelf" technology, there are few if any cases where OSHA is attempting to force technology.

Several participants specifically argue that the proposed level was infeasible for a specific because in a specific substance operation it could not be achieved with engineering controls. As the case law clearly indicates, that does not make a standard infeasible. OSHA has in several cases concluded it did not have enough evidence to demonstrate that a level could be achieved with engineering controls in a specific operation. The case law clearly indicates that this does not make a standard infeasible. (See for example, *ASARCO* and *United Steelworkers*, supra). The industry does not have the burden of proving the technical infeasibility of engineering controls in an enforcement case involving these operations which are specifically identified in Section VII. The burden of proof would be on OSHA to prove that the level could be attained with engineering and work practice controls in an enforcement action if OSHA believed that was the case.

A few participants argued that, because engineering controls might not be appropriate in certain maintenance operations or in occasional or intermittent operations, the level set was therefore infeasible. First, these conditions relate to individual operations and do not indicate general difficulties of compliance with engineering controls. Secondly, as OSHA has stated, for some maintenance and intermittent operations, respirators may be the appropriate control methodology. See 52 FR 34549 for example.

Finally, 29 CFR 1910.1000(e) requires the use of engineering controls when feasible. If they are not feasible, the employer may use respirators. Consequently, this standard does not become infeasible simply because engineering controls may not achieve the PEP in a specific operation.

OSHA has a variety of data on technical feasibility. These include exposure data indicating that required levels are already being achieved by some employers in a sector. It also includes judgment by experts that standard controls have achieved or can achieve the required level in that or in analogous operations. Finally, the docket includes a significant amount of information on available existing control technology for each substance. (See for example, Ex. 6 and NIOSH Health Hazard Evaluation (HHE) reports). OSHA concludes that it was not its burden to demonstrate the technical feasibility for the substances it is setting new or more protective levels for. This is analyzed in Section VII.

OSHA also concludes, as discussed in the Economic Feasibility section, that the standard is economically feasible. Indeed, the costs do not approach the levels that would be the legal limits of economic feasibility in terms of affecting the economics of industry, either generally or by industry sector. The estimated ual cost is approximately $600 million. However, approximately, 4.5 million employees receive improved health protection making the cost per employee receiving additional protection approximately $150 each. The total cost is approximately $2 million

per substance being regulated. See the detailed feasibility discussion in Section VII.

Secondly, the cost per industry sector is never more than a small fraction of one percent of sales and with two limited exceptions not more than 2% of net profits, assuming no costs would be shifted to consumers. As the courts have recognized, it is likely that some costs will be shifted to consumers. In the few subsectors where costs reflect a slightly larger percent of profit, OSHA explains in the specific analysis of Section VII why the proposed standard is feasible and will not create disruption to an industry or to competition, although it may have some temporary effects requiring some adjustment.

OSHA's cost and economic feasibility conclusions have a high degree of validity on a sector basis. OSHA has provided much data at the subsector (4 digit SIC) level and has supplied more when requested by participants. That subsector data has probative merit, but there would not be quite as high a degree of confidence in the exact cost totals estimated. There was some questioning of OSHA and its economic panel on this matter. OSHA and the economics panel pointed out that OSHA's survey was designed to have a high degree of statistical certainty at the sector level, and provided useful evidence but not to the same high degree of statistical confidence at a subsector level.

OSHA's responsibility is to demonstrate economic feasibility for an industry. OSHA's feasibility analysis clearly shows feasibility for every sector. The costs are sufficiently low per sector to demonstrate feasibility not only for each sector but also for each subsector. Higher subsector costs would be reflected in higher sector costs. This is confirmed by the subsector data which OSHA initially provided or provided upon request. This also indicates costs are low in relation to sales and profits for subsectors. OSHA is not required to demonstrate feasibility for every plant in a subsector.

At the enforcement level, an employer's demonstration of economic infeasibility for a particular plant may lead to an extended period of time in which to come into compliance with engineering controls allowing the use of respirators during the extended interim period. The fact that this particular standard gives all employers a long period of time in which to comply will reduce feasibility problems for the few employers with possible economic difficulties.

As discussed in the approach and chronology sections, OSHA believes it has provided the public an extensive opportunity to comment and participate in this rulemaking and has complied fully with required administrative procedures. Nine months advance notice of the proposal was given. The proposal contained OSHA health reasoning for each substance proposed for revision or addition of a PEL and cited the studies OSHA relied upon. It discussed OSHA's feasibility reasoning for each sector. Underlying health studies were made available in the docket and are generally available in major libraries and/or computer data bases. The feasibility studies were also available in the docket.

The public was given more than the legal minimum time to comment. The time from proposal to final post-hearing briefs was 5 months. An oral hearing was held in which extensive presentations were made by participants and questioning was permitted of OSHA, its economic panel and witnesses, NIOSH and other participants. OSHA concludes that all of its decisions are based on substantial evidence in the docket which is analyzed in this final preamble.

Several procedural objections were made during the course of the proceeding. The first was that OSHA did not permit sufficient time for comments. OSHA believes the public has been given not only more than the legal minimum period in which to comment but has been given a fair amount of time to comment on the proposal.

The rulemaking permitted 47 days after proposal for prehearing comments, oral testimony up to 79 days after proposal, post hearing evidence up to 4 months after proposal and post hearing briefs up to almost 5 months after proposal. The OSHA Act only requires 30 days for comment. See section 6(b)(2). Three Courts of Appeals have held comment periods of 30–45 days legally sufficient: *Phillips Petroleum* v. *U.S. EPA* 802 F. 2d 549, 558–559 (10th Cir., 1986); *North American Van Lines* v. *I.C.C.*, 660 F. 2d 1087, 1092 (7th Cir., 1981) and *Gonn. Light* v. *N.P.C.* 672 F/2d 529, 534 D.C. Cir., 1982.

The prehearing comment period alone met these requirements. In reality, and as OSHA agreed (Ex. 14 B p. 7), evidence not available by prescribed dates could be submitted as late as Oct. 7, 1988, the post hearing evidence deadline, which was four months after proposal. Final views did not have to be submitted until five months after the proposal. This far more than meets the legal minimums.

All data OSHA relied upon were cited in the preamble and available in the docket. The date were also usually available in libraries and on computer data bases as well. Few participants were interested in more than a few chemical and none indicated an interest in more than 20. There was time to analyze the studies and submit comments in the time periods specified. Indeed, the trade associations and individual participants who objected the most about the time for comments were interested in only one chemical (carbon disulfied, sulfur dioxide, grain dust and styrene). These trade associations had been in existence for more than a decade and had immediate access to available studies, analyses and position papers to support their views. The unions divided up the 20 or so chemicals they expressed an interest in among the various unions and ultimatley did not object to the final post hearing submission dates. Interested participants submitted extensive studies, comments and testimony averaging 3000 pages per controversial chemical. The reality was that all views were effectively presented.

The second procedural issue involves post hearing comments. The OSHA procedural rules initially grant the presiding officer authority to set the date for post hearing comments. (29 CFR 1911.16 (g)). The presiding officer set Nov. 14, 1988, for post-hearing submissions and Dec. 13, 1988, for post-hearing briefs (Ex. 61).

For the reasons just stated, OSHA concluded that these time periods were far more than required by legal minimums or for considerations of fairness. As stated in the approach section, such an extended time frame for post-hearing submissions would greatly delay the completion of this action. This would also interfere with OSHA's priority to complete in a timely fashion this project which is of such significant benefit in protecting the health of employees.

The Chief Administrative Law Judge held that he did not have jurisdiction to change the dates set by the presiding officer. (Ex. 61 B.) Accordingly, the Secretary of Labor and OSHA exercised their authority to set priorities for OSHA and by **Federal Register** Notice of Sept. 7, 1988, (53 FR 34708) set Oct. 7, 1988, for post hearing evidence and Oct. 31, 1988, for post hearing briefs.

The OSHA rule at 29 CFR 1911.4, gives authority to prescribe alternative requirements (such as the October date set) in order to expedite the conduct of the proceeding upon reasonable notice. Reasonable notice was given of the changed dates. There was a period of 30 days from the **Federal Register** notice to

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the date that post hearing evidence was due and OSHA gave notice prior to the Federal Register notice orally and by letter that it desired to have shorter dates for post hearing submissions than initially set. Clearly, the purpose of the new date was to expedite the rulemaking process. Accordingly, all procedural requirements have been met. See also OSHA's discussions in Exs. 60 and 61 A on these two issues and at 53 FR 34708.

Third, for several substances covered by this proceeding, OSHA had proposed new standards in the middle 1970's, held hearings and closed the record. However, no new standard was ever issued, nor was a statement made of why a new standard was not issued.

There were comments on two of those substances in this rulemaking, sulfur dioxide and beryllium. In light of this circumstance and at the request of participants, OSHA submitted the complete earlier record of those proceedings into the record of this rulemaking.

For sulfur dioxide OSHA is issuing a new limit. OSHA has reviewed both the old record and new submissions, and has concluded that the new level is needed to reduce significant risk and is feasible. The discussion in this final preamble meets the procedural requirements of section 6(b)(4) for both the prior and current rulemaking.

For beryllium, OSHA is retaining the existing limit. That limit is already very low. Extensive additional evaluation would be needed to determine if that limit should be changed. Accordingly, OSHA has concluded it is not of sufficient priority to determine if the limit should be changed at this time.

Several participants stated that ACGIH was not a national consensus organization and should not be used as a starting point for OSHA's evaluation. ACGIH is not a national consensus organization as defined by the OSH Act. However, that is not relevant to this rulemaking. Section 6(a) of the Act permitted OSHA to issue as OSHA standards, without rulemaking, national consensus standards. However, that authority expired in May of 1973. This standard is not issued under section 6(a) but under the authority of section 6(b) of the OSH Act. OSHA intends this to be a section 6(b) standard and is following all of the procedures and meeting all of the requirements of section 6(b).

This is a 1900-page typed document covering 600 substances. As a result of the editing process, sometimes slightly different conclusory language is used when an identical conclusion is intended. OSHA wishes to make it clear that wherever a new or more protective exposure limit has been issued, OSHA has concluded based on evidence in the record, and its experience, that such limit is needed to substantially reduce a significant risk of material impairment of health or functional capacity. OSHA has also concluded that such limit is technically and economically feasible.

IV. Overview of Rulemaking

A. History of Health Standards and Need To Revise PELs

One of the principal reasons, if not the single most important basis, for Congress passing the Occupational Safety and Health Act of 1970 was Congress' recognition of the need to protect workers from occupational health hazards. In the preamble to the Act, Congress stated that one of the purposes was to protect employees by "exploring ways to discover latent diseases, establishing causal connections between diseases and work in environmental conditions, and conduct other research relating to health problems, in recognition of the fact that *occupational health standards present problems often different from those involved in occupational safety.*" (emphasis added).

The legislative history indicates Congressional concern for reduction in health risk from both the recognized hazards and from the many newly utilized chemicals. Congress stated in 1970:

> In the field of occupational health the view is particularly bleak, and due to the lack of information and records, may well be considerably worse than we currently know. Occupational diseases which first commanded attention at the beginning of the Industrial Revolution are still undermining the health of workers. Substantial numbers, even today, fall victim to ancient industrial poisons such as lead and mercury. Workers in the dusty trades still contact various respiratory diseases. Other materials in industrial use are only now being discovered to have toxic effects. In addition, technological advances and new processes in American industry have brought numerous new hazards to the workplace. Carcinogenic chemicals, lasers, ultrasonic energy, beryllium metal, epoxy resins, pesticides, among others, all present incipient threats to the health of workers. Indeed, new materials and processes are being introduced into industry at a much faster rate than the present meager resources of occupational health can keep up with. It is estimated that every 20 minutes a new and potentially toxic chemical is introduced into industry. New processes and new resources of energy present occupational health problems of unprecedented complexity. (Senate Report 91-1282, p.2).

To accomplish the goal of protecting workers from occupationally related disease Congress created a three-pronged approach in the OSH Act.

First, Congress desired that OSHA, as soon as possible after it was established, have in existence a set of basic, minimum health and safety standards. To accomplish this it provided in section 6(a) of the OSH Act that OSHA should adopt within its first two years, without hearing or public comment, established federal standards and national consensus standards.

At that time, under the Walsh-Healy Act, the Department of Labor had adopted for government contractors approximately 400 health standards based on the Threshold Limit Value (TLV) recommendations of the American Conference of Governmental Industrial Hygienists (ACGIH). Those were adopted as established federal standards. In addition about 25 exposure limits had been recommended by the American Standards Association (presently called the American National Standards Institute). Those were adopted as national consensus standards. OSHA adopted these initial exposure limits in May 1971. They are for the most part the maximum air contaminant levels set forth in Tables Z-1, Z-2, and Z-3 of 29 CFR 1910.1000.

Congress recognized the need to update and add new standards. It created two mechanisms for this purpose: Regular or "6(b)" standards and emergency or "6(c)" standards.

Congress specified the procedures for developing and promulgating regular standards in sections 6(b)(1)-(4) and 6(f). These sections provide that: The public may petition for new standards; OSHA may set up an advisory committee to assist in developing a standard; and, before issuing a standard, OSHA must publish a proposal with an explanatory preamble, request public comments and then publish an explanatory preamble with a final standard. In addition to these general requirements of informal rulemaking, Congress specified that OSHA must hold an oral hearing if requested and support its determination with substantial evidence in the rulemaking record.

Congress also provided in section 6(c) for the issuance of Emergency Temporary Standards (ETS) to take immediate effect without rulemaking. However, OSHA must then complete a section 6(b) rulemaking within 6 months. The criteria for issuing an ETS is that "employees are exposed to grave danger from exposure to substances or agents determined to be toxic or physically harmful or from new hazards, and that such emergency standard is necessary to protect employees from that danger."

OSHA has found that section 6(c) procedures have not generally accelerated the regulatory process. Most ETS's have been litigated and judicial stays have been issued either on procedural or substantive grounds.

Since the passage of the Act in 1970, OSHA has made substantial progress in improving the occupational health of workers for some priority health hazards. Asbestos and arsenic exposures have been dramatically reduced, substantially reducing cancer risk to employees. Lead exposures have been reduced and we are now seeing a major reduction in employee blood lead levels, and lead related diseases. Cotton dust exposures have been reduced and byssinosis has been nearly eliminated from the textile work force. OSHA has also substantially reduced significant health risk from some of the newer chemicals such as ethylene oxide and vinyl chloride.

Through the hazard communication and access to employee exposure and medical records standards, OSHA has greatly expanded the ability of employees to learn about and protect themselves from health hazards.

OSHA's standards have proven to be feasible, often costing less than estimated. The vinyl chloride standard cost one-tenth OSHA's contractor's estimate. The cotton dust standard has been credited with improving the industry's competitiveness and productivity by stimulating major technology improvements while costing one-half OSHA's estimate.

The preambles to OSHA standards have been lengthy, detailed and sophisticated. They have thoroughly analyzed health studies and controversial scientific issues about carcinogenicity and risk assessment. Extensive analyses of feasibility have been made.

OSHA has issued only 24 substance-specific health regulations since its creation. It has not been able to review the many thousands of currently unregulated chemicals in the workplace or to keep up with reviewing the several thousand new chemicals introduced since its creation.

Using past approaches and practices, OSHA could continue to regulate a small number of the high priority substances and those of greatest public interest. However, it would take decades to review currently used chemicals and OSHA would never be able to keep up with the many chemicals which will be introduced in the future.

OSHA believes it is a major priority to update its existing PELs and to make a substantial effort to control exposure to chemicals newly used in the workplace for which no exposure limits exist. The existing health literature and expert judgment indicate that such new or lower limits are needed to protect against many types of deleterious health effects. These include kidney and liver diseases, respiratory diseases, reductions in lung function, nerve disorders and reduction in nerve function, carcinogenicity, irritation to the eyes, throat, skin and other organs which prevent working safely, and many other disorders and dysfunctions.

As the final regulatory analysis indicates, millions of employees are exposed to levels of these chemicals which, the literature or expert opinion indicates, do or may create deleterious health effects. Clearly, it is a most important occupational health priority to reduce or eliminate such disease and material impairments of health.

Congress clearly indicated that it was a major Congressional priority to consider and control, when needed, the many thousands of unregulated chemicals, and update the existing Z-Table chemicals. For example, the previous quotation indicated Congress' concern with the thousands of newly introduced chemicals. Congress also stated:

> Accordingly, it is essential that such standards (Table Z chemicals) be constantly improved and replaced as new knowledge and techniques are developed. In addition there are occupational hazards, particularly those affecting health—which are not covered by any standards at all. (Senate Report 91-1282, p. 6.)

Government agencies and professional organizations have also recommended that OSHA lower exposures for many Z-Table substances and add limits for currently unregulated substances. The National Institute for Occupational Safety and Health has recommended new or lower exposure limits for approximately 190 chemicals (RELs) in its Recommendations for Occupational Safety and Health Standards, Sept. 1986.

The American Conference of Governmental Industrial Hygienists (ACGIH) 1987-88 Threshold Limit Values (TLVs) adopted new exposure limits for approximately 164 substances not regulated by OSHA, and lower limits, short-term exposure limits, ceiling limits or skin designations for 212 substances now regulated by OSHA.

In light of its priority to address the many unregulated health hazards and improve the existing Z-Table limits, OSHA commenced a review process to determine the best way to achieve this goal. It reviewed its past history and set up an internal task force to consider the matter. In addition, OSHA requested the Administrative Conference of the United States to study the issue and make recommendations.

OSHA's analysis indicated a number of reasons why the standards development process takes so long. These are discussed below. As can be seen some are within OSHA's control and some are not.

OSHA, in the past, has determined which substances it would commence standards development activity upon either through response to petitions or internal reviews. The time and resources spent analyzing what should be done next has been considerable.

An exhaustive review of the literature for each substance has been completed prior to initiating rulemaking. Detailed presentations for each study and lengthy discussions of every conceivable issue have been completed.

The lengthy preamble which has become a regular part of each standard is largely the result of the need for OSHA to defend its standards in suits brought inevitably by both industry and labor. See for example *Synthetic Organic Chemical Mfgs.* v. *Brennan*; *Oil Chemical and Atomic Workers* v. *Brennan*, 503 F.2d 1155, 506, F.2d 385 (3rd. Cir. 1974); Public Citizen, *Health Research Group et al.* v. *Tyson*; *Association of Ethylene Oxide Users* v. *Tyson*, 796 F.2d. 1479 (D.C. Cir. 1986). OSHA feels more confident in the successful defense of a standard if all possible issues have been exhaustively explored.

Individual standards have included a full range of ancillary provisions such as monitoring, medical surveillance, action levels and work practices. This increases the issues that must be studied and discussed, adding to the time taken to complete a standard.

OSHA has performed technical and economic feasibility analyses as required by statute. These have been made lengthier and more time consuming because a range of possible alternative exposure limits have been explored.

The regulatory process is also longer and more resource intensive because of analyses required either by statute or executive order. OSHA develops Environmental Impact Statements as required by the National Environmental Policy Act, conducts Regulatory Flexibility Analyses as required by the Regulatory Flexibility Act and conducts detailed analyses required by the Paperwork Reduction Act. All of the Presidents who have been in office during OSHA's existence have stressed the need to reduce inflation and improve the cost effectiveness of regulations.

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Under various Executive Orders (E.O. 12044, 12291, etc.) OSHA has been required to perform extensive economic analyses.

OSHA has also followed more extensive and elaborate administrative procedures than other health regulatory agencies. In addition to extensive preambles to the proposed and final regulations, there is usually advance notice of a proposal in the **Federal Register**. There is a complete rulemaking docket into which the Agency places all the studies it relied upon. In addition to public comment and an oral hearing as required by law, opportunity is given for post hearing evidence and briefs. During the hearing, questioning of witnesses, OSHA and its contractors is permitted.

Consequently OSHA has permitted the public more extensive procedural opportunities than its statute, the Administrative Procedures Act, or legal doctrine require. See the procedural rules in 29 CFR Part 1911 and *International Harvester* v. *Ruckelshaus*, 478 F.2d 619 (D.C. Cir. 1973). These procedures can increase agency knowledge and have been commended by the courts. (See *Industrial Union Dept.* v. *Hodgson* 499 F.2d 467 (D.C. Cir. 1974). However, they do mean that if delays and continuances are granted at each stage, the length of the rulemaking process is substantially extended.

OSHA in its first 17 years has also had to address difficult scientific feasibility and policy issues. These include extrapolation from animal data to humans (ETO supra), epidemiology, risk assessment and significant risk analysis (Arsenic, 48 FR 1864, January 14, 1983; Asbestos, 51 FR 22612, June 20 1986), feasibility for industries with aging facilities (lead, arsenic, supra), lowest feasible level (Benzene, 52 FR 34460, September 11, 1987, for example and others). Naturally when considering such issues for the first time, an Agency desires to go through extensive reviews before reaching final decisions.

OSHA consulted with the Administrative Conference of the United States (ACUS) to determine what would be appropriate procedures to respond to the issue of the large number of chemicals which need new exposure limits. The Conference issued two lengthy reports of a study conducted by two professors of administrative law. After extensive consideration, the ACUS made two sets of recommendations to OSHA. Recommendation 87–1, 52 FR 23629 (1987) and 87–10, 52 FR 40147 (December 30, 1987).

The Administrative Conference specifically recommended.

1. Updating the 1971 Consensus Standards. The Occupational Safety and Health Administration, as an interim step, should continue to update the Table Z national consensus standards adopted in 1971 if updating can be accomplished by expedited rulemaking procedure (e.g., including more concise preambles) appropriate to the nature of the revised table. OSHA should update the 1971 standards on a generic basis (i.e., include multiple standards in one proceeding) when consensus recommendations are available which are generally accepted by employers and workers in the affected industries, and when the new standards can be evaluated on the basis of risk and feasibility information reasonably available to the Agency. This interim step should not interfere with OSHA's continuing responsibility to promulgate and modify safety and health standards.

As this discussion indicates, there is a clear and generally recognized need to improve occupational health protection of workers from a substantial number of chemicals which are present in the workplace. Clearly an improved approach to regulation is needed to solve this problem in a reasonable time period. OSHA's traditional approach, which has permitted on the average less than two major health regulations per year, is not adequate to address the backlog of at least 400 chemicals generally recognized as needing new or lower exposure limits. OSHA has reviewed the law, Congressional intent, its history, and the recommendations of experts. Based on this review, OSHA adopted the approach described in Section IV–C which it has followed to accomplish the crucial goal of improving occupational health protection of workers. OSHA concluded that this approach has a greater health benefit and will prevent more deaths and various deleterious health effects, than could be achieved by allocating the same resources to comprehensive rulemaking for a small group of substances.

B. Chronology of Regulation

The public process followed by OSHA to implement this rulemaking was started on October 26, 1987, when the Department of Labor published its Semiannual Agenda of Regulations at 52 FR 40404–40534. The entry titled "Permissible Exposure Limit Update" states OSHA would propose a wide scale updating of its exposure limits. That entry scheduled March 1988 for the proposal and October 1988 for the final regulation. It also indicated that the American Conference of Governmental Industrial Hygienists had updated many of its recommended exposure limits (TLVs) since 1968. The 1968 TLVs were used as the basis of most of OSHA's existing 6(a) exposure limits. A similar notice was published in the next Semiannual Agenda on April 29, 1988, at 53 FR 14024.

OSHA published its proposal, "Air Contaminants, Proposed Rule" on June 7, 1988, at 53 20960 (Ex. 2). That document filled 433 **Federal Register** pages. It considered whether exposure limits should be changed for 428 substances. New or lower limits were proposed for 402 substances, one was proposed to be raised and 25 were proposed to be unchanged.

That document included a 21 page discussion of the history, approach and general issues. There followed 250 pages of health discussions which included general discussions by type of effect (cardiovascular, kidney/liver, etc.) and a concise individual discussion of the health effects associated with exposure to each substance. The more important or controversial substances had somewhat longer discussions than other substances. Each individual substance discussion stated the health effects, summarized the major relevant studies, and stated the reason OSHA preliminarily concluded significant risk did or did not exist. Finally, the complete Preliminary Regulatory Impact, Regulatory Flexibility and Feasibility Analysis was printed running 71 pages along with one of the supplements on methodology. (In this instance one **Federal Register** page equaled approximately five double-spaced typed pages.)

OSHA placed in the public docket either before June 7th, or shortly thereafter, all of the studies or documents upon which it relied. This included Exs. 1–1 to 1–1208, which constitute virtually all of the health studies upon which OSHA relied and that were discussed in the preamble (a few minor foreign studies referenced by ACGIH were not available). Also included were many data bases on occupational health such as the ACGIH documentation, NIOSH publications (for example, NIOSH–TIC, Ex. 7, is a 2500 page summary of health effects organized by chemical) and exposure limits of other countries.

Also placed in the Docket were 6 supplements to the Regulatory Impact and Feasibility Analysis (Exs. 4A–4F, approximately 1500 pages). Four volumes of exposure, control technology and feasibility data organized by chemical were placed in the record as Ex. 6 and a computer data tape for those volumes was made available.

The June 7 Proposal scheduled July 1 for notices of intent to appear at the hearing, July 6 for the submission of

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comments and testimony, and July 20 for the hearing to begin. It suggested August 12 for post-hearing evidence and August 26 for post-hearing briefs.

OSHA received several requests for extensions of time, some for quite extended periods such as 9 months. On July 1 (53 FR 24956) (Ex. 5) OSHA granted a brief extension. Comments and testimony were due July 25 and the hearing was scheduled to commence July 28. August 19 and September 2 were recommended respectively for post-hearing evidence and briefs.

In response to the proposal, OSHA received 1248 timely comments (Ex. 3–1 to 3–1248) and 204 late comments (Ex. L–3–1249 to L–3–1452). Approximately 800 of the comments and most of the late comments were very similar letters generated by trade associations interested in the regulation of grain dust, wood dust or styrene. The balance of comments ranged from short to 3000 page submissions expressing views on the Proposal and including various studies.

OSHA also received 92 Notices of Intention to Appear (Exs. 8–1 to 8–92). Approximately half of those included copies of testimony and substantive evidence to be presented at the hearing. Established and published procedures require that persons may testify for no longer than 10 minutes at the hearing without submitting a notice.

The public comments, evidence and testimony totaled approximately 25,000 pages. This included actual comments and views, and attached health and feasibility studies.

OSHA submitted to the docket in a timely fashion on July 25, 1988, statements by the Director of Health Standards, the panel of economic witnesses, and 7 other witnesses requested to testify by OSHA. NIOSH also submitted on that date its comments, testimony and views.

In addition, for the convenience of the public, NIOSH placed in the record the paper copy of all health studies on each substance in the rulemaking organized by substance. This included the minor studies as well as the major ones that OSHA had relied on and had already submitted to the record. This submission was lengthy; however, all this information was indexed in the NIOSH Registry of Toxic Effects of Chemical Substances (RTECS) which is a 5 volume bibliography of occupational health studies which NIOSH is required by statute to create and maintain. (Section 20(a)(6) of the OSH Act). The RTECS have been available for many years. The vast majority of studies NIOSH placed in the docket were publicly available either in major libraries or from several computer data bases. Consequently they had all been readily available to the public for many years. Participants testified that they could be easily researched (Tr. August 4, Test. of Factor).

As OSHA had expected, a review of the comments and testimony indicates that of 428 chemicals in the rulemaking, approximately 280 received no comments or testimony and OSHA preliminary conclusions on risk and feasibility were reasonable and correct. Approximately 100 substances received only limited mention by one or a few participants. Approximately 40 substances received substantive comments but in some of these instances OSHA's proposed PEL was not necessarily controversial. For example, the comments may have been directed at technical improvements. Finally, approximately ten substances received substantial comments and were deemed to be controversial. Because of this filtering process, the rulemaking, as OSHA had anticipated, developed a narrower and more manageable form.

Also, as had been OSHA's prior experience, major industry trade associations were already formed, represented by major law firms, to express views on the more controversial substances. For example, the Styrene Institute, which has been in existence for 12 years, submitted about 2500 pages of comments, studies and attachments (Ex. 3–742) and was represented by Keller & Heckman. The Carbon Disulfide Committee, which has been in existence 11 years, submitted approximately 1000 pages of comments and attachments (Ex. 3–747) and was represented by Gibson, Dunn and Crutcher.

The Trade Unions also made major submissions on the chemicals they were interested in. The Food and Allied Trades Department of the AFL–CIO submitted extensive information on grain dust (Ex. 3–751). The Amalgamated Clothing and Textile Workers Union submitted extensive information on perchloroethylene (Ex. 43). The AFL–CIO (Ex. 39), United Autoworkers (Ex. 42), Workers' Institute of Safety and Health, United Paperworkers, Carpenters and Woodworkers, and other unions also made major submissions.

The oral hearing commenced on July 28. It extended for 13 hearing days with an average of approximately 7 hours of actual hearing time each day. The total transcript was approximately 4000 pages. Approximately 200 witnesses testified and responded to questions. Although there were some limits on questioning by an individual participant, the questioning in total was extensive since there often were more than 10 participants who questioned a particular witness. It was evident that all participants had been able to ask all the questions they wished by the end of the hearing.

The OSHA Staff panel responded to questions for three-quarters of one hearing day. The OSHA economics panel responded to questions on three separate occasions so that the public could complete questioning and have an opportunity to ask questions after having reviewed all OSHA submissions. The other OSHA witnesses fully responded to questions as did NIOSH (Tr. August 1). NIOSH agreed to return for further questions, but participants who initially requested the right to ask further questions withdrew their requests.

OSHA submitted to the Docket on July 25, 1988, approximately 40 site visit reports and on August 8, 1988, approximately 40 more site visit reports were submitted. The site visits were supplementary to the survey data and were not the basis of OSHA's initial feasibility conclusions. The OSHA economics panel returned on August 15, 1988, to answer questions specifically on those visits.

OSHA's initial goal was to complete 100 site visits. However, the visits needed employer approval both for the visit and the subsequent report before the visit could be undertaken and/or the report submitted to the Docket. Consequently OSHA could not completely control the completion of the site visits or submission of the report to the Docket. OSHA completed several additional site visits, but could not complete the related reports prior to the end of the hearing. OSHA submitted those reports to the employer in order to give the employer the option of putting them in the docket. Employers in the steel industry and styrene users did submit several such reports to the docket. Employers with grain exposures initially refused to permit site visits. Although some later agreed to site visits, it was by then too late to complete the visits and submit the reports to the record, so the site visits were not made.

At the end of the hearing, the presiding officer indicated that, because of the broad scope of the hearing, post-hearing evidence should be due 90 days after the close of the hearing and post-hearing briefs 120 days after the close of the hearing (Ex. 81). OSHA indicated both at the hearing and by letters and telephone calls to participants that a shorter period was required to maintain the schedule necessitated by the high

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priority of the Proposal; OSHA stated that it did not think this would be unfair to participants (Exs. 60–6, 61 A). By Federal Register notice of September 7, 1988, (53 FR 34708; Ex. 100), the Secretary of Labor set October 7, 1988, for post-hearing evidence and October 31, 1988, for post-hearing briefs. (This matter is discussed more fully in the Section III, Legal Authority.)

OSHA received 57 post-hearing submissions from public participants totaling approximately 9000 pages. OSHA also received 41 post-hearing briefs. The total record includes substantially more than 4000 separate documents (individual studies, statements, comments, etc.).

The record was closed and certified by the presiding officer on November 10, 1988.

C. Details of Approach Used to Develop Regulation

The first step OSHA took to increase the pace of the regulatory process was to make a determination not to analyze individual substances in order to decide if they were of sufficient priority to be included in the project. Rather OSHA reviewed existing data bases and lists of recommended exposure limits, and determined which of these should be the starting point for the Proposal.

OSHA concluded that the National Institute for Occupational Safety and Health's (NIOSH) Recommended Exposure Limits (RELs) and the American Conference of Governmental Industrial Hygienist's (ACGIH) 1987–88 Threshold Limit Values (TLVs—a copyrighted term) provided the best two lists of substances to be considered for regulation and to provide a starting point for individual substance permissible exposure limits (PELs). See the discussion at 53 FR 20906–7. These lists of substances are developed by organizations of experts very knowledgeable both about the American work place and the health literature. See the testimony of Mastromatteo (Ex. 22) and NIOSH statement (Ex. 8–47). Both NIOSH and ACGIH publish documentation to support their recommendations and permit outside participation in the development of exposure limits.

Based on further analysis, the ACGIH TLVs were picked as the single best list to define the substances to be included in this rulemaking. The details of this OSHA analysis are provided in the Proposal (53 FR 20966–20967) and will not be repeated here. OSHA's major reason was that the TLVs are more extensive than the RELs and more generally used. There are over 600 TLVs and approximately 160 RELs.

By using the ACGIH list of TLVs as the basis for the selection of substances to be considered for this regulation, OSHA has greatly reduced the time it would take to proceed with this rulemaking. The ACGIH's list is broad in scope, attuned to the American workplace and developed by experts with substantial health expertise. Therefore, OSHA concludes that this approach to determining which substances will be considered for regulation is rational and allows OSHA to expedite the process of improving the health of American workers.

No changes to existing limits were considered in this rulemaking for substances covered by limits established in substance-specific section 6(b) rulemaking (24 substances) or substances for which the process of section 6(b) rulemaking has already been initiated (9 substances). Since OSHA had already begun the process of detailed analysis of these substances, additional review was determined to be unduly repetitive and confusing at this point.

OSHA then compared the permissible exposure limits in Tables Z–1, Z–2, and Z–3 to the TLV list. If the TLV and OSHA permissible exposure limits in the Z-Tables were identical, the substance was not considered for change of PEL in this proposal. The basis for this approach is that there is less likelihood to be a need for a change in an exposure limit if an organization which regularly reviews the literature has not changed its recommendation.

If the TLV and the PEL differed, the substance was considered for change of PEL in this rulemaking. Also substances for which there was a TLV, but no PEL, were included in this rulemaking. There is additional elaboration on this methodology in Section IV. D., Boundaries to Regulation.

The second approach OSHA used to shorten the rulemaking process was to rely to a greater extent than in the past on research and recommendations already made by NIOSH and ACGIH as a starting point for OSHA's analysis.

Both organizations have experts undertake a complete review of the literature for individual substances. Then they propose recommendations and permit outside comments on their proposed recommendations. At the next stage, each has a committee of experts again review the literature, as well as the comments on the initially published recommendations before determining the recommended exposure limit.

The approach OSHA followed was to first determine if the ACGIH–TLVs and NIOSH RELs were similar. If they were, or if there was no NIOSH REL, then OSHA reviewed the ACGIH documentation and recommendation. The ACGIH documentation includes summaries and analyses of the major studies. If the REL and TLV differed significantly, OSHA reviewed the studies and reasoning upon which both NIOSH and ACGIH recommendations were based, and then chose the recommendation which in OSHA's view was more appropriate.

In its review OSHA determined first whether the studies and analyses were valid and of reasonable scientific quality. Second, it determined, based on the studies, if the published documentation of the REL or TLV would meet OSHA's legal requirements for setting a PEL. Thus, OSHA reviewed the studies to see if there was substantial evidence of significant risk at the existing PEL or, if there was no PEL, at exposures which might exist in the workplace in the absence of any limit. Third, OSHA reviewed the studies to determine if the new PEL would lead to substantial reduction in significant risk. If this was so, and if the new PEL was feasible (see discussion below), OSHA proposed the new PEL.

OSHA then divided the chemicals into 18 categories, generally by health effect but, in a few instances, by other criteria. These categories included cardiovascular, liver-kidney, respiratory and other types of diseases or material health impairments. Each of these categories received an individual literature review and discussion in the preamble analyzing the etiology of substances which cause that health effect.

Some substances have several effects; the category chosen for each substance was based on the health effect which most influenced the exposure level proposed. However, OSHA individual discussions and conclusions referenced and were based on all health effects associated with the specific substance.

Following each general discussion in the preamble, OSHA summarized the documentation and provided references for each individual substance and stated the reasons for the proposed new exposure limit. OSHA also stated the reasons why it preliminarily concluded that the proposed new limit would substantially reduce significant risk for that substance. In the case of 25 substances, OSHA explained why after review it did not propose a new exposure limit. In one instance OSHA indicated the reasons for proposing to raise a limit.

This method fully informed the public of the basis for OSHA's decisions. The public was then in position to support or

challenge OSHA's proposal, to criticize the studies upon which OSHA relied, and to supply any additional studies, evidence or views during the comment period, during the hearing or as post hearing submissions.

OSHA is gratified by the degree of support for the proposal expressed by rulemaking commenters. For example:

> We believe this proposal is one of the most significant steps taken by OSHA since its inception. The time and resources required for substance specific rulemaking have greatly limited the number of PELs that OSHA has been able to revise since they were adopted in 1971. Continuing individual rulemaking would result in adding to the backlog of outdated PELs, while the method chosen by OSHA for this revision assures that comprehensive update will be completed within a reasonable time (Tr. August 2, Testimony of Tamarelli; SOCMA).
>
> CMA supports the concept of revising the Z Table PELs in order to conform with the threshold limit values, TLVs, that have been adopted or updated by the American Conference of Governmental Industrial Hygienists * * * It is hard for us to understand how anyone could say that the proceeding is too limited in scope. To the contrary, a much more valid criticism might be that OSHA has bitten off more than it can chew. The Agency quite reasonably has concluded that adjusting the permissible exposure limits for chemicals on the TLV list should be its first order of business (Tr. August 10, Testimony of Lynch/CMA).
>
> OSHA has taken a truly significant step in updating and enhancing the regulatory provisions applicable to the workplace * * * OSHA was prudent in our view to rely on the ACGIH TLVs to establish the bounds of the rulemaking (Tr. August 9, Testimony of Holthouser/RMA).
>
> GE strongly supports and endorses the Occupational Safety and Health Administration's 6(b) rulemaking efforts to revise and upgrade the Z Tables in 29 CFR 1910.1000 and encourages everyone concerned about employee health, along with those involved in the rulemaking effort, to pursue a timely conclusion to the process (Tr. August 9, Jones/GE).

The American Industrial Hygiene Association (AIHA), on the other hand, was entirely in favor of OSHA's use of either an ACGIH or NIOSH limit, as the case requires:

> AIHA supports the adoption by OSHA of NIOSH REL values as PELs on a case-by-case basis where such values are supported by the scientific evidence and are feasible from the standpoint of implementation (Ex. 8–16).

NIOSH expressed strong support for this rulemaking in general but submitted specific comments on a number of substances that it believes should have different limits from those proposed (Ex. 8–47). NIOSH's substance-specific comments are addressed in connection with the preamble discussion of these substances in Section VI.

Union representatives concurred with the need to update the Z-Tables. For example, M. Seminario/AFL–CIO stated: "We are pleased that OSHA and many industry representatives have acknowledged finally that the current permissible exposure limits do not protect workers, and we do indeed support regulatory action to update the standards for toxic substances through the use of board-based rulemaking such as the Agency has proposed here. (Tr. August 4, Testimony of Seminario/AFL–CIO).

However, Ms. Seminario did not agree with the approach that OSHA followed stating that "it does not provide the workers with the kind of protection that the OSHA Act requires." Union representatives stated that the proposed standard was not adequate since it did not cover some substances of concern and did not include the ancillary provisions which they felt were important.

OSHA does not agree with this judgment. It is impossible to cover all substances, and OSHA has made a rational and reasonable judgment regarding the bounds of this standard which is supported by most industry and professional associations. OSHA is approaching the subject of ancillary provisions through separate generic rulemakings which have already been initiated. The basis of these judgments are discussed in detail in other parts of this preamble.

OSHA stated in the proposal that it would consider all the additional views and studies presented by participants. Based on what was best supported by the entire record, OSHA would issue as the final standard either the PEL it had proposed, make no change to the existing PEL, or issue a different PEL. OSHA has followed this method of analysis in issuing the final rule.

OSHA's approach has indeed made it possible to increase the efficiency of the regulatory process and issue new and revised PELs to protect the health of workers from a large number of substances which were unregulated, or for which existing exposure limits are out of date. It has also permitted OSHA to rely on the best available scientific information and its past experience, while giving the public both excellent notice and a full and fair opportunity to comment, submit additional studies and make recommendations.

The improved efficiency of this rulemaking effort has not come from sacrificing scientific validity. It has resulted from combining discussions by health effect, concentrating on major issues and studies, using as a starting point the research of expert organizations, and using public comments to bring to attention additional relevant studies and issues. OSHA has addressed in more detail those substances, issues and studies which have been identified in the comments as the most controversial.

In addition, OSHA has increased the efficiency of its feasibility analysis. Its prior substance-by-substance, industry sector by industry sector, process-by-process approach would have resulted in a vast body of duplicative information in a multi-substance rulemaking. In addition, it would have made it impossible to update very many substances in a reasonable period because of the time and resources required.

OSHA followed several approaches to increase the efficiency of its feasibility analysis process. First, it made maximum use of existing information. OSHA's Integrated Management Information System (IMIS) is probably the largest source of accurate exposure date in the world. It has 77,000 exposure measurements, is organized by industry and process, includes judgments by compliance officers who are experts in industrial hygiene, includes the number of workers represented by each measurement, and is computer readable.

OSHA also used the two National Occupational Hazard Surveys (NOHS) by NIOSH. These are good sources of the number of workers potentially exposed to substances in each industry segment. OSHA also analyzed the large volume of data in various publicly available data bases on control technology for various substances, processes and industries. For the convenience of the public, much of these data were combined into four volumes which were made available to the public in the docket. OSHA also stated it would supply these data on computer tape if requested.

OSHA had these data reviewed by approximately twenty experts in industrial hygiene and industrial engineering. They made estimates of substances likely to be used and processes likely to be present in each industry sector covered by this regulation. These estimates were used as starting points. Much more extensive information was gathered in a nationwide survey of 5700 firms.

These experts also made estimates of the cost to reduce exposure based on scale of operation, type of process, and degree of exposure reduction needed. Standard source materials such as industrial manuals were used. Many processes are relatively standardized throughout industry and are used for a

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variety of substances. For example, vat mixing takes place for many substances in many industries. It can be uncontrolled without a cover and involve manual loading of dry chemicals. It can be partially controlled with covers and pump-loading of liquids. It can be fully controlled with enclosure, ventilation and automated loading and unloading. Likely exposures can be estimated by determining the amount of chemicals used and degree of existing controls. Costs can be generalized throughout much of industry from the size of the operation, estimated exposures, and the cost to go from one degree of control to the improved level of control needed to achieve the proposed reduction in exposures.

With this method of analysis, it is possible to make estimates of exposures, controls necessary, exposure levels which can be achieved and costs from data on substances and processes present and numbers of operations for each industry segment. This information is sufficient for determining technical feasibility and costs by industry segment. These data combined with publicly available sales and profit ratio data make it possible to estimate economic feasibility by industry segment.

To gather data on the substances present, types of processes, number of processes, and controls in place by industry segment, OSHA commissioned the largest survey it has ever conducted. Over 5700 questionnaires were administered throughout the covered industry segment based on statistically valid sampling techniques. A vast amount of information was received on substances present, processes used and controls in place.

OSHA concludes that this approach is accurate on an industry sector by industry sector basis for individual processes.

Overall, OSHA has a high degree of confidence that its estimates of technical feasibility, costs and economic feasibility are accurate. OSHA has had far more data available to it than it normally does in a single substance rulemaking. The data were gathered systematically and were combined using a methodology that was statistically valid and devised by persons with great expertise.

In addition, to increase the efficiency of the process, OSHA analyzed the feasibility of the specific proposed exposure level for each substance rather than considering a variety of different exposure levels.

To permit public comment on this approach and related data in an efficient manner, OSHA published the entire Preliminary Regulatory Impact Analysis with the Proposal in the Federal Register. In addition, it was made available to the public in the docket at the time of publication six supplements which described in great detail the methodology and results of the survey by sector.

OSHA concludes that it provides the public with all the information participants would need to comment on, criticize or support OSHA's feasibility conclusions. However, some participants requested more detailed analysis of their sectors. Although OSHA indicated that it believed the date it had made available were sufficient for these purposes, it did where possible supply additional data and make special computer runs when requested by the participants.

OSHA also stated it would consider all additional feasibility data submitted by the public. Many participants did supply additional data. OSHA has reviewed all data in the record in reaching its final feasibility conclusions.

OSHA concludes that the approach it took developed good feasibility data, permitted participants a reasonable opportunity to review OSHA's data and supply their own, and was necessary to make the feasibility analysis process more efficient.

The fourth difference in approach from single substance rulemaking was OSHA's decision to limit this rulemaking to the issue of exposure limits. OSHA has not considered medical surveillance, exposure monitoring, industrial hygiene requirements and other ancillary provisions which were not included in the existing 6(a) standard.

As stated in the Preamble, OSHA has concluded that the highest priority for protecting occupational health is to lower exposure limits for many substances where current knowledge indicates they are too high, or where currently there are no limits but recent scientific knowledge indicates limits are needed. This priority could not be achieved if ancillary provisions were considered at the same time. As discussed in Section III, Legal Authority, OSHA believes it is a rational use of its priority setting power to consider ancillary provisions subsequently either in other generic rulemakings or in substance specific section 6(b) rulemakings. It has already begun that process as discussed there. In any event, OSHA's approach significantly improves occupational health protection.

A final method OSHA has followed to make this rulemaking more manageable is to rely on its experience. OSHA has now made feasibility determinations for several dozen substances and significant risk determinations approximately one dozen times. Various issues regarding the analysis of data have been reviewed many times. OSHA's approaches have been reviewed by the courts and upheld or modified to meet judicial guidance. OSHA has not revisited all of the issues in quite the depth it has given them in the past in light of its experience. Of course, determinations and conclusions required by law have been fully analyzed and supported. OSHA concludes it is both rational to rely on its past experience and specifically permitted by section 6(b)(5) of the Act.

In the most important areas OSHA has not made any attempt to make the regulatory process shorter. First, as discussed, it included individual substance-by-substance health analyses and significant risk determinations. Second, it has made feasibility determinations on the impact of the regulation of all the substances for each industrial sector.

Third, OSHA has followed its traditional elaborate rulemaking process. Nine months, advance notice of the intent to issue a proposal was given. The Proposal explained OSHA's reasoning at great length by citing and discussing the evidence upon which OSHA relied. All the studies and analyses upon which OSHA relied were made available in the docket. More than the minimum period was allowed for comments.

Thirteen days were allowed for oral hearings. Testimony and evidence was required to be submitted in advance and the testimony of OSHA, its economic contractors and witnesses was made available in advance. Participants in the hearings were permitted to question the OSHA panel, contractors, witnesses and each other. Though the questioning permitted for each participant was not unlimited, time was provided at the end to ensure that each participant had completed all questioning he or she desired. As there were frequently more than 10 participants who questioned a single witness, the total amount of questioning was often extensive. The OSHA panel was questioned for approximately four hours and the economics panel for more than six hours. Various arrangements were made to bring back witnesses.

After the hearing, participants were allowed to file post-hearing evidence to respond to comments and testimony, and to supply materials which they could not submit by the deadline for

comments. An additional period was allowed for post-hearing briefs.

These are far more than the minimum procedural requirements of information rulemaking or hybrid rulemaking. Few if any agencies, for example, permit questioning of the agency and its contractors. The process also effectively permits participants a double round of comments.

The various time frames were shorter than some participants desired. However, there was approximately one year between initial notice and final opportunity for submissions and approximately five months from proposal to post-hearing briefs. Not only is this far more than the legal minimum, but it should have been ample to give sufficient time for participants to effectively present their views and supporting evidence.

Adhering to a schedule is crucial for an agency to accomplish a high priority, large scale project in a reasonable period of time. Among other reasons for this is the fact that extra staff must be borrowed and contractor assistance arranged. Both groups have other schedule commitments. If a rulemaking is delayed too long these resources become lost to the project. Moreover, medium length delays during the public participation period become very lengthy delays of a final rule. As OSHA has pointed out, the benefits of this standard to worker health are so significant that lengthy delays of the final rule would result in a major loss in health protection.

Finally, OSHA has fully met the requirements pursuant to statute and executive order to perform required analyses. OSHA has completed the Regulatory Impact, Regulatory Flexibility and other analyses as required.

D. Boundaries to Regulation

The Proposal defined the substances covered by this rulemaking as a sub-set of the substances listed in the 1987–88 Threshold Limit Values (TLV) published by the American Conference of Governmental Industrial Hygienists (ACGIH) (53 FR 20964–20966). OSHA pointed out in the Proposal that the TLV listing had several advantages over other possible lists that might be used for this purpose. Details of the OSHA analysis leading to this decision are noted in the Proposal (53 FR 20966–20967). The primary considerations leading to that OSHA decision were (1) number of substances covered by the TLV listing; (2) available written documentation for the TLVs; (3) potential employee exposures covered by TLVs; and (4) general acceptance of the TLVs by health professionals.

OSHA realized that there are different valid approaches to the question of identifying the boundaries for this type of rulemaking, and any decision must balance completeness with practicality. Several commenters recommended that the number of substances considered in this rulemaking be expanded to include: (1) Other lists; (2) the 160 substances in the existing Z-Tables which were not discussed in the Proposal since their current TLVs were identical with the existing OSHA PEL; and (3) substances which are in the process of active (6b) rulemaking.

Relative to the first point, the additional lists suggested included the following data bases: (a) Recommended Exposure Limits (REL) developed by the National Institute for Occupational Safety and Health; (b) Workplace Environmental Exposure Limits (WEEL's) developed by the American Industrial Hygiene Association; (c) EPA's Integrated Risk Information System (IRIS); (d) standards used by government agencies in the U.S.S.R. and other parts of eastern and western Europe; and (e) internal company limits. The following comments focus on this aspect: Ex. 8–47 (NIOSH), Ex. 43 (Frumin), Ex. 194 (AFL–CIO), Ex. 3–9 and Ex. 46 (Ziem), Ex. 42 C and 197 (UAW). Dr. Phillip J. Landrigan suggested (TR August 1, Test. of Landrigan): (a) Using a single alternative listing instead of the TLVs; (b) combining several lists to define the bounds of this rulemaking; or (c) adopting a smaller sub-set of the TLVs.

During the public hearing it was suggested that benefits would result from developing PELs for additional substances. Specific substances suggested for inclusion in this rulemaking included dimethylformamide (Ex. 47); polychlorinated biphenyls (Tr 7–123); and glycol ethers (Ex. 3–639).

OSHA considered these constructive suggestions intended to expand the scope of this rulemaking in an effort to improve the level of health protection afforded workers. OSHA realizes that there are various approaches to this type of rulemaking and believes that, while some of these suggestions have merit, they introduce untenable problems at this stage of the rulemaking process. OSHA has determined that it is preferable to consider some of these suggestions as part of possible follow-on rulemaking based on the following facts and analyses.

For many of the additional substances provided by these data bases there are no quantitative exposure limits (e.g. IRIS and some NIOSH RELs). For other substances it is not clear that the limits are actually applied to workplace compliance situations (e.g. U.S.S.R. and eastern Europe limit). For others, (internal corporate limits) an extended independent review procedure is not defined. Use of a multiplicity of data bases to define the bounds for this already large rulemaking would overwhelm the resources of OSHA and those concerned parties who wish to comment on any proposed changes. This would greatly delay prompt implementation of a regulation which is urgently needed to protect the health of approximately 17 million workers who are potentially exposed to the 428 substances for which revised PELs were considered in the Proposal. Additional delay would be necessary since OSHA would be required to public a new Proposal to include any substances not identified and discussed in the Proposal.

The record clearly shows that OSHA's decision to use the ACGIH TLVs as the bounds for this effort was generally supported by most commenters for a variety of reasons: Ex. 3–666 (ORC); Ex. 3–740 (ARCO); Ex. 3–741 and 196 (Dow); Ex. 170 (GE); Ex. 3–801 and 176 (SOCMA); Ex. 178 (API); Ex. 3–677 and 47 (RMA); Ex. 52 (HIMA) Ex. 3–678 and 58 (Abbott); Ex. 163 (Ergon Refining), Ex. 186 (Halogenated Solvents Industry Alliance) and Ex. 165 (CMA). These reasons include the general acceptance and probable feasibility of the TLVs, and the need to have clearly defined limits for this rulemaking so it can be concluded in a reasonable time period.

For example, Jeremiah Lynch speaking on behalf of CMA stated:

> It is hard for us to understand how anyone could say the proceeding is too limited in scope * * *. The Agency quite reasonably has concluded that adjusting the permissible exposure limits for chemicals on the TLV list should be its first order of business. Further refinements in the regulation of these chemicals can be dealt with at a later date, to the extent additional requirements are found to be necessary. (Ex. 64).

It is necessary to limit the number of substances included in this rulemaking so that it can be completed in a reasonable time frame. The total number of chemicals in existence is well over 100,000. The 1985–86 edition of the NIOSH Registry of Toxic Effects of Chemical Substances (RTECS; DHHS (NIOSH) Publication No. 87–114) contains 88,683 prime chemical substances. It is impossible to promulgate an OSHA regulation without limiting the number of substances under consideration to manageable proportions. In this regulation such limitations are based on several

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considerations including the: (1) Extent of use in commerce; (2) potential for exposure; and (3) lack of any existing protective limits. The first two criteria are best satisfied by using the well established TLVs as the data base for defining inclusion in this rulemaking. Since the number of substances in the TLV listing would still overwhelm the available resources, OSHA determined that it was reasonable to defer for consideration at a later time those 160 substances for which an OSHA PEL already exists and for which no change in TLV has occurred.

Such exclusion from consideration of change of PEL in this rulemaking does not preclude OSHA from initiating 6(b) rulemaking in the future for any of these substances or for any of the other substances covered by this regulation. Because of this fact, OSHA believes that its initial decision not to consider changing the PEL for those substances where the 1987–88 TLV is identical with the existing OSHA PEL is appropriate.

OSHA also believes that it would unnecessarily complicate this rulemaking as well as the individual rulemakings if changes to existing PELs were considered at this time for the nine substances for which the 6(b) rulemaking process has already been started. The process of developing a 6(b) standard for a single substance differs from the process used in this proceeding since it involves consideration of various ancillary requirements (exposure monitoring, medical surveillance, use of personal protective equipment, labeling, etc.) which are not part of this rulemaking. Extensive dockets have already been developed for the nine substances in this category (Table IV–D–1). Since these 6(b) rulemakings should be completed in the near future as tentatively scheduled by the Regulatory Agenda (52 FR 40494–40542), it would unnecessarily complicate the rulemaking process without any significant benefit if these nine substances were included in this rulemaking.

Until the new regulations for these nine substances are adopted, the existing OSHA PELs will remain in effect as reflected in Table Z–1–A. This same procedure is also used for the 160 substances where the existing PEL is identical with the 1987–88 TLV, and for which new PELs are not proposed in this rulemaking. These 160 substances were listed in Table VII–D of the Proposal (53 FR 21254–21261).

It should be noted that no changes in PEL have been proposed for the 24 substances listed in Table VI–D–2 which are covered by individual 6(b) regulations. The existing PELs for some of these substances are incorporated into the Z–1–A Table both for reference purposes and because the individual 6(b) regulations for some of these substances do not cover all operations, making maintenance of these PELs necessary to provide protection to workers involved in these exempted activities (e.g. benzene, cotton dust, and formaldehyde).

While the TLVs and RELs were used as a starting point for defining PELs, it should be noted that OSHA made its own determination regarding each individual limit. This was based on further evaluation of: (a) The TLV Documentation and the Criteria Document supporting development of the REL; (b) submissions to the public hearing record; and (c) information used in developing some of the other data bases initially considered by OSHA in developing the Proposal.

For a few substances, commenters suggested that it would be preferable to delete a particular substance from this rulemaking and consider it as part of a separate single substance rulemaking. Such comments were specifically directed at wood dust (Ex. 3–746), grain dust (Ex. 3–752 and 3–755), sulfur dioxide (Ex. 8–65), and styrene (Ex. 3–742).

In the case of wood dust and grain dust it is imperative that OSHA act promptly since there is no existing accepted PEL for organic dusts. The Occupational Safety and Health Review Commission has held that the standard for nuisance dusts is *not* to be applicable to wood dust and grain dust. To initiate and complete a 6(b) standard to control these substances would take considerable time. Since there is a clear need for a PEL to protect against the significant risk associated with exposures to wood dust and grain dust, and there is now sufficient health and feasibility data to justify setting a PEL, it is imperative that OSHA act promptly to protect workers exposed to these hazardous substances. The analyses of these data are provided in the discussion of these substances in Section VI. In the case of wood dust, the Inter-Industry Wood Coordinating Committee indicated their concurrence regarding adoption of a 5 mg/m^3 standard, which represents part of the standard OSHA is proposing for wood dust. (Ex. 3–748 and 80).

In the case of sulfur dioxide, the commenter indicated that deletion was appropriate due to the existence of a past record (Ex. 8–65 and Docket No. H–039). OSHA agrees that the past public record must be considered, and has incorporated the previous SO_2 record into the record for this rulemaking (Ex. 10–45). OSHA has carefully considered all relevant information from the previous SO_2 record in making its decision regarding a PEL for sulfur dioxide, and the OSHA analysis of that record is included in the discussion establishing the PEL for sulfur dioxide.

In the case of styrene, acrylamide, and a few other substances, questions were raised regarding the adequacy of available information to develop a PEL in this rulemaking. Questions were raised regarding definition of carcinogenicity, feasibility (economic and technological), proper classifications of health effects, and the proper PEL (Ex. 3–742 and 70). In some instances, OSHA believes that sufficient information was not available to reach a final determination regarding carcinogenicity. However, information submitted by the commenters, together with material considered in the development of the Proposal, was adequate to permit OSHA to reach a conclusion regarding the PEL. The details of these analyses are included in Section VI.

In some instances OSHA has specifically indicated that a specific revised PEL may not fully eliminate significant risk of material impairment. In many instances this is due to information and data limitations noted in the discussion for that specific substance. However, the PEL is based on the best current interpretation of data available at the time of promulgation of the regulation. A PEL may change as more information becomes available, or more accurate analytical procedures are developed. As an example, the PEL for asbestos initially adopted in 1971 was revised in 1972. This level was modified in 1976 and revised again in 1986.

After due consideration of all suggestions to delete substances from this rulemaking, OSHA has determined that the only substance to be deleted from this rulemaking is chromyl chloride for which a PEL was considered but not adopted because OSHA had not given adequate notice in the Proposal. In the case of three other substances (asphalt, fibrous glass and mineral wool), a decision regarding a specific PEL is being delayed. OSHA has discussed the reasons for adopting each PEL in Section VI of the preamble to this standard.

As part of the public hearing submissions and presentations, several individuals suggested expansion of the rulemaking to include provisions for exposure monitoring and medical surveillance; Ex. 8–3 (Landrigan); Ex. 194 (AFL–CIO); Ex. 3–751 (Food & Allied Service Trades Dept.); (Ex. 42 and 197 (UAW); Ex. 43 (Frumin); Ex. 8–61 (Workers Institute); and 8–65 (Melius). OSHA has adopted ancillary provisions for each substance regulated through 6(b) rulemaking. After 17 years, these provisions are included in only the 24 existing individual substance OSHA standards. OSHA finds that this rulemaking is not the appropriate mechanism for extending the ancillary provisions to all substances covered by the Z–Tables and agrees with the following comments of PPG and Dow:

> Further expansion of this rule to specifically impose additional regulatory requirements such as medical surveillance, recordkeeping, personal protective equipment, and training would unnecessarily complicate and confuse the main objective of this proposal rule. There is also a greater likelihood of challenge that has been an impediment to previous attempts to revise air contaminant levels such as the Standards Completion Progress Project. Ex. 3–1158 (PPG)
>
> While we believe OSHA should not adopt medical surveillance and exposure monitoring provisions in this rulemaking, we do believe OSHA should promulgate generic medical surveillance and exposure monitoring standards in a timely fashion. Ex. 169 (Dow)

On September 27, 1988, OSHA published Advance Notices of Proposal Rulemaking (ANPRM) covering "Generic Standards for Exposure Monitoring" (53 FR 32591–32595) and "Medical Surveillance Programs for Employees" (53 FR 32595–32598).

It was pointed out by Dr. I. Rosenthal, Rohm and Haas Co., that "if in the future OSHA supplements up-to-date exposure standards with generic how-to standards addressing medical surveillance, monitoring, personal protective equipment and other similar items the Agency will have established over 400 defacto complete standards." (Ex. Tr. 3–17). OSHA therefore believes that consideration of exposure monitoring and medical surveillance is best achieved through the generic approach which has been initiated with the two September 27, 1988, ANPRM's.

The legal and policy justification for limiting this rulemaking to development of PELs is detailed in the Legal Authority Section of this Preamble. The appropriateness of addressing PELs prior to considering ancillary provisions was also endorsed on technical grounds by Dr. Marcus Key, former Director of NIOSH (Ex.– TR 1–233, TR 1–265; TR 1–266).

Several commenters were concerned with the computational formula presently noted in § 1910.1000(d)(2), for example, Ex. 3–742 (SIRC); Ex. 3–877 (RMA) and Ex. 165 (CMA). These concerns relate to the lack of a requirement that this formula should apply only to those situations in which an additive effect is present. In contrast, the ACGIH discussion of the Threshold Limit Value for Mixtures (TLV and BEI for 1988–89, p. 42) states that this equation is applicable, "when two or more hazardous substances, which act upon the same organ system, are present, their combined effect, rather than that of either individually, should be given primary consideration." This reference goes on to state that "exceptions to the above rule may be made when there is a good reason to believe that the chief effects of the different harmful substances are not in fact additive, but independent as when purely local effects on different organs of the body are produced by the various components of the mixture."

The Proposal only redesignated paragraph § 1910.1000(d) as §1910.1000(f) (53 FR 21263), a change which is no longer necessary. There was no intent to reconsider or clarify this paragraph as part of this rulemaking. This subject was not discussed in the Proposal and was *not* a topic for consideration as part of this rulemaking. Therefore, it is not appropriate to consider any changes to the mixture equation at this time.

During the Public Hearing a few commenters made specific suggestions regarding other expansions to the subjects covered under this rulemaking. These included:

(1) Expansion of the PELs to non-traditional work shifts (TR 3–231, 3–234 (Arco)). OSHA is aware that work schedules in excess of 8 hrs/day are becoming more common. However, it is clear that this rulemaking did not provide an appropriate platform for full discussion of the technical problems associated with adjusting PELs for work shifts other than an 8 hr/day. It appears that such a question is highly substance specific depending on the toxicology and body clearance mechanisms, and the significance of short term exposure peaks. As such it may be more appropriate to provide guidance in the form of an interpretation of acceptable alternate approaches to extrapolating the 8 hr. PEL to other work shift periods. This might be developed through the OSHA Industrial Hygiene Technical Manual or the Field Operations Manual so it could be implemented on a case-by-case basis. OSHA believes that this type of expansion of a Proposal intended to address only PELs is not justified. The use of PELs developed using a 10 hr. definition for developing 8 hr TWA PELs is supported by NIOSH testimony (Ex. 8–47) and this approach has been used in this rulemaking.

(2) Representatives of the Workers Institute for Health and Safety suggested incorporating surface contaminated limits, such as those recommended by NIOSH and EPA for polychlorinated biphenyls (PCB) that are used in the clean-up of the New Mexico State Highway Department Building (TR 7–123 and 7–124). Clearly this represents an exposure index which is significantly different from "Air Contaminants" which is the subject of this Proposal. OSHA therefore concludes that extension of this rulemaking to include consideration of surface contamination limits is not appropriate.

(3) Mr. Richard Henderson representing the Chlorine Institute recommended that, rather than reducing the PEL for mercury, OSHA maintain the existing PEL and develop a comprehensive standard which includes a requirement for periodic urinary mercury determination. The question of the appropriate PEL for mercury is discussed in Section VI of this preamble. Regarding the suggestion of urinary measurements which could be considered for many substances other than mercury, OSHA finds that this represents an exposure index which is significantly different from "Air Contaminants", the subject of this rulemaking. OSHA concludes that extension of this rulemaking to cover this subject is not appropriate.

In summary, OSHA has reviewed all comments to the record which might result in changes to the boundaries of the rulemaking defined in the Proposal. OSHA finds that the suggested additions and deletions would not be appropriate in light of the objectives for this rulemaking established by OSHA and dictated by the statutory requirements of the OSH Act.

Therefore, OSHA concluded that the 428 substances listed in Table I–E of the Proposal (53 FR 20968–20976) should be considered for change in the PEL as part of this regulation. These substances are listed in the Index-Locator Section (II) of this preamble.

The Z–1–A Table in this regulation also incorporates the existing PELs for: (1) The 160 substances from the existing Z–Tables, which were not considered for changes in the PEL; (2) 9 substances for which 6(b) rulemaking is in progress; and (3) some of the 24 substances covered by individual OSHA standards where some sectors are not covered by the individual substance standard.

The Z–1–A Table lists all substances covered by this regulation, whether or not the PEL has been changed, whether or not a 6(b) standard has been undertaken on a specific substance, and whether or not a 6(b) standard covers the substance either fully or partially. In the case of substances regulated by individual substance OSHA standards, the Z–1–A Table cross references the individual standard.

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Table IV-D-1 Substances for which OSHA Has Initiated 6(b) Rulemaking.

CHEMICAL NAME
1,3-Butadiene
Cadmium Dust and Fume
2-Ethoxyethanol (Cellosolve)
2-Ethoxyethyl Acetate
Ethylene Dibromide
Methyl Cellosolve
Methyl Cellosolve Acetate
Methylene Chloride
4,4'-Methylenedianiline

TABLE IV-D-2. Substances Regulated by OSHA Under Section 6(b).

CHEMICAL NAME	STANDARD
2-Acetylaminofluorine	1910.1014
Acrylonitrile	1910.1045
4-Aminodiphenyl	1910.1011
Arsenic (Inorganic)	1910.1018
Asbestos	1910.1001
Benzene	1910.1028
Benzidine	1910.1010
Bis-Chloromethyl Ether	1910.1008
Coke Oven Emissions	1910.1029
Cotton Dust	1910.1043
1,2-Dibromo-3-Dichloropropane	1910.1049
3,3'-Dichlorobenzidine	1910.1007
4-Dimethylaminoazobenzene	1910.1015
Ethylene Oxide	1910.1047
Ethyleneimine	1910.1012
Formaldehyde	1910.1048
Lead	1910.1025
Methyl Chloromethyl Ether	1910.1006
2-Naphthylamine	1910.1004

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TABLE IV-D-2. Substances Regulated by OSHA Under Section 6(b) (continued).

CHEMICAL NAME	STANDARD
3-Naphthylamine	1910.1009
4-Nitrobiphenyl	1910.1003
n-Nitrosodimethylamine	1910.1016
b-Propiolactone	1910.1013
Vinyl Chloride	1910.1017

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E. Special Considerations

In the Proposal several substances were identified (53 FR 20978, Tables I-F-A, I-F-B, I-F-C and I-F-D) as requiring special attention. This was due to the presence of "significant differences" between the exposure limits recommended by the various data bases initially considered in this rulemaking. This same Section of the Proposal also identified some basic assumptions used to initially simplify the definition of "significant difference." The objective of this effort was to encourage comments during the Public Hearing process for those substances where there was greater potential for uncertainly regarding the proposed PEL.

Comments were received on some of these substances. NIOSH (Ex. 8-47) commented on all those substances for which a REL existed, as well as for many other substances noted in these four Tables. Extensive comments were submitted regarding the proposed PELs for Acetone (Ex. 8-54, 3-69, 3-861, 3-741, Tr. VI pp. 89-247); Acrylamide (Ex. 3-961); Carbon disulfide (Ex. 8-19, 8-45, 3-659, 3-674, 3-897, 3-945, 3-1158, 3-753); and Sulfur dioxide (Ex. 3-1123, 8-22, 8-57, 8-65, 3-349, 8-9). A considerable number of comments were also directed at the selection of RELs (SOCMA, Exs. 3-891 and 178; Dow Chemical, Ex. 3-741; Rubber Manufacturers, Ex. 3-877). For example, GE (Ex. 170) stated:

> It is apparent from the testimony given during the hearings and comments submitted into the rulemaking record that the Recommended Exposure Limits (RELs) are a source of considerable controversy * * * a wide cross-section of occupational health professionals from industry, government and academia believe there are substantial flaws in the the contract process under which NIOSH RELs were developed, including limitations in peer reviews, feasibility considerations, and the methodologies employed in the extrapolating animal toxicological data and limited epidemiology findings to workplace exposure limits. (Ex. 170)

NIOSH pointed out that "Each Criteria Document is reviewed by experts representing affected industries, organized labor, and trade or professional organizations, and by scientists, physicians, and other health professionals with related experience in academia, government, or industry. The number of these external peer reviewers normally is greater than 10 and often exceeds twice that number. In addition to the invaluable contribution their comments make to the completed Criteria Document, OSHA receives, along with the completed Criteria Document, the full text of each reviewer's written comments accompanied by itemized annotations indicating how the draft was modified in response, or providing the rationale if the comment or recommendation was not adopted. Each Criteria Document contains an extensive summary in which the basis for the Recommended Exposure Limit (REL) is carefully developed with clear and explicit citation of the data relied upon at all steps of the logical development. No other source of exposure limits approximates the comprehensiveness of these documents" OSHA believes that its use of the RELs in this rulemaking is appropriate.

These submissions achieved the OSHA objectives of stimulating the input of new data, analyses, and information to assist OSHA in this rulemaking based on the full record for each individual substance. The discussion and application of this information to set specific PELs is included in the individual substances discussions in Section VI of this Preamble.

While OSHA did initially identify basic assumptions regarding significant differences (53 FR 20977), the final OSHA decision regarding selection of a specific PEL is based on a case-by-case assessment of the health effects, significant risk, material impairment of health, available sampling and analytical methods, and technological and economic feasibility considerations.

Another special consideration was the question of dealing with substances for which there are sampling and analytical limitations (Table I-F-E of the Proposal, (53 FR 20978)). This was also identified as a concern in Question 9 of the Proposal (53 FR 20981). The responses to this question are detailed in Section V of this Preamble. OSHA concurs that adequate sampling and analytical methods are required to permit enforcement of a PEL. However, OSHA believes that an adequate sampling and analytical method exists when such methods are fully described in the open literature, or when otherwise readily available.

The Public Hearing did not provide much additional information regarding sampling and analytical methods for those substances identified as having inadequate sampling and analytical methods. However, a method was identified for subtilisins and was entered into the docket (Ex. 8-70). Included in Table IV-E-1 of this section are the substances noted in Table I-F-E of the Proposal (53 FR 20978) and two additional substances (oxygen difluoride and phenylphosphine) which were inadvertently omitted from the listing of substances with inadequate sampling or analytical methods along with one substance, cyanamide, which was erroneously listed as having no method.

OSHA has also considered the concerns identified regarding the need for a more extensively tested analytical method (Ex. 3-960; Ex. 8-47) for enforcement purposes. OSHA believes that enforcement can be initiated without such detailed methods. The OSHA docket includes: (1) Reference to a fully developed and extensively tested OSHA or NIOSH sampling and analytical procedure or, (2) a description of an OSHA in-house sampling and analytical method for all but the seven substances listed in Table IV-E-1. OSHA therefore believes there will be no problems with enforcement of the PELs for all but these seven substances. This is consistent with conclusions of NIOSH regarding implementation (Ex. 8-47). Since development of sampling and analytical procedures is a dynamic, rapidly progressing technology, OSHA also believes it is appropriate to adopt PELs for the seven substances (based on the Proposal and the Public Hearing record), but stay enforcement of these PELs until adequate sampling and analytical methods are available. At such time, OSHA will publish in the **Federal Register** its determination that such methods exist (together with a copy of the method), and indicate the proposed effective date for enforcement of the PEL for the substance in question.

As time, resources and priorities permit, OSHA will attempt to initiate a program, in conjunction with NIOSH, to develop more extensively tested sampling and analytical methods for those substances where only in-house methods are noted in the Proposal.

OSHA further considered the three alternative approaches described in the Proposal regarding interim procedures for handling those substances requiring special attention (53 FR 20978-20979). OSHA encouraged public comment on this subject by including a question (number 14) in the Proposal. The responses to this question are detailed in Section V of this preamble and indicate the desireability of implementing new PELs promptly, even if they represent only interim values.

Therefore, OSHA is proceeding to promulgate limits for all of the substances included in the Proposal where statutory requirements are met, while also indentifying some substances which appear appropriate for future consideration.

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Table IV-E-1

Substances with Inadequate Analytical or Sampling Methods

1. Aluminum alkyls

2. Ethylidene norbornene

3. Hexafluoracetone

4. Mercury (alkyl compounds)

5. Oxygen Difluoride

6. Phenylphosphine

7. Sulfur pentafluoride

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F. Construction, Maritime and Agriculture Segments

Currently the exposure limits which apply to construction are the ACGIH Threshold Limit Values of Air Contaminants for 1970 and certain substance specific section 6(b) standards. See 29 CFR 1926.55, 58 and 29 CFR 1910.19. OSHA is required to consult with the Advisory Committee on Construction Safety and Health prior to proposing new standards that have a major impact on construction. See 29 CFR 1911.10(a). OSHA is in the process of formally consulting with the Construction Advisory Committee. After receiving their recommendations and studying feasibility issues for construction, OSHA intends to propose amendments covering exposures to toxic substances in construction reflecting the facts in this final preamble and standard, and the views of the Construction Advisory Committee.

Parts 1916, 1917 and 1918 of 29 CFR cover, respectively, employment in shipyards, marine terminals and longshoring. Part 1916 for shipyards references the 1970 TLVs, of the ACGIH. See 29 CFR 1915.5 and 1915.12(b)(3). Part 1917 for marine terminals references the current Z-Tables. See 29 CFR 1917.2(p), and 1917.23. Part 1918 for longshoring refers to "dangerous gaseous contaminants not immediately dangerous to life" and "heavy concentrations of dusts." See 29 CFR 1918.93 (e) and (f). Certain substance specific section 6(b) standards also cover these industries. See 29 CFR 1910.19.

OSHA, as part of the rulemaking covering construction and after studying feasibility for the maritime sectors, intends to consider applying the final standard to the maritime sectors.

Subpart Z of 29 CFR Part 1910, and the included Z-Tables specifically do not apply to Agriculture. See 29 CFR 1928.21(b). In addition, many of the chemicals which affect agriculture are pesticides regulated by the EPA over which OSHA may not have jurisdiction, pursuant to section 4(b)(1) of the OSHA Act. In the future OSHA will consider, based on relevance, priorities and administrative resources, whether or not it is appropriate to consider coverage for agriculture.

G. Federalism

This final regulation has been reviewed in accordance with Executive Order 12612 (52 FR 41685; October 30, 1987) regarding Federalism. Executive Order 12612 requires that agencies, to the extent possible, refrain from limiting state policy options, consult with states prior to taking any actions that would restrict state policy options, and take such actions only when there is clear constitutional authority and the presence of a problem of national scope. The Executive Order provides for preemption of state law only if there is a clear Congressional intent for the Agency to do so. Any such preemption is to be limited to the extent possible.

During the development of this rule, OSHA has, to the extent possible, refrained from limiting state policy options by developing a rule that permits flexibility on the part of the States through the use of performance language. OSHA also consulted with the States during the public comment and hearing period announced in the notice of proposed rulemaking for this rule. OSHA specifically invited Stephen Cant of the State of Washington to testify about the state's experience in a similar rulemaking. OSH will continue to work with the States that have occupational safety and health plans approved under section 18 of the OSH Act to encourage those states to develop their own policies to achieve program objectives and will continue to work with appropriate state officials as they present their state standards for approval.

Section 18 of the Occupational Safety and Health Act (OSH Act), permits any state to develop its own independent state occupational safety and health program that provides, among other things, worker protection "at least as effective as" that protection provided under the Federal program.

With respect to section 4 of Executive Order 12612, section 18 of the OSH Act also expresses Congress' clear intent to preempt state laws relating to issues with respect to which Federal OSHA has promulgated occupational safety or health standards. Under the OSH Act, a state can avoid preemption only if it submits, and obtains Federal OSHA approval of, a plan for the development of such standards and their enforcement as mentioned above. Occupational safety and health standards developed by such Approved Plan States must, among other things, be as least as effective in providing safe and healthful employment and places of employment as the Federal standards.

Under the OSH Act, if a state develops its own OSHA approved state program, it could include additional requirements in its standards. Moreover, the performance nature of this final rule, of and by itself, allows for flexibility by states to provide at least as much health protection, consonant with the conditions in each state.

In summary, there is a clear national problem, identified by Congress, related to occupational safety and health. While the individual states, if all acted collectively, might be able to deal with the health problems involved, most have elected not to do so in the seventeen years since the enactment of the OSH Act. However, some states such as Washington have taken action. Those states which have elected to participate under section 18 of the OSH Act, would not be preempted by this final regulation and would be able to address special, local conditions within the framework provided by this standard while ensuring that their standards are at least as effective as the Federal standard. State comments were invited on the proposal and those that were submitted to the record were fully considered prior to promulgation of this Final Rule.

The agency certifies that this document has been assessed in light of the principles, criteria, and requirements stated in sections 2 through 5 of Executive Order 12621. There are no provisions of this rulemaking that are inconsistent with the principles, criteria and requirements stated in sections 2 through 5 of Executive Order 12621. States which have approved state occupational safety and health plans may incur additional costs associated with standards development and enforcement as a result of this rulemaking. Funding for these approved state plan programs is available from OSHA under section 18 of the OSH Act. This rulemaking would not change the State's ability to discharge traditional State governmental functions or other aspects of State sovereignty.

H. Glossary

The following terms and acronyms appear in the standard and the preamble supporting it. This glossary is provided as a convenience to the reader.

ACGIH—The American Conference Governmental Industrial Hygienists is a professional society devoted to the development of administrative and technical aspects of worker health protection. Membership is limited to professional personnel in governmental agencies or educational institutions engaged in occupational safety and health programs. The ACGIH issues guidelines and recommendations in the form of Threshold Limit Values (TLVs®) which are published annually.

CAS—The Chemical Abstracts Service (CAS) Registry Number is a numeric designation assigned by the American Chemical Society's Chemical Abstracts Service which uniquely identifies a specific chemical compound.

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This entry allows one to conclusively identify a substance regardless of the name or naming system used.

CHRIS—The Chemical Hazards Response Information System was developed by the U.S. Coast Guard in cooperation with the National Academy of Sciences to provide information on the handling and disposal of toxic substances. CHRIS consists primarily of the Hazardous Chemical Data Manual which contains chemical, physical and health hazard data on approximately 600 hazardous chemicals and substances; and a Hazard Assessment Computer System in an extensive data base of the information contained in the Hazardous Chemical Data Manual.

HSDB—The Hazardous Substances Data Bank, a part of the National Library of Medicine System, will soon be available on OSHA's Computerized Information System (OCIS). This data bank, currently available through TOXNET, contains health and safety profiles for over 4100 chemicals. It includes 144 data elements in 10 categories including use information, substance identification, animal and human toxicity, environmental fate, standards, personal protective equipment, fire, physical and chemical properties.

IARC—The International Agency for Research on Cancer (IARC) is a research organization authorized by the World Health Organization in 1965. IARC's mission is to study the causes of cancer in the human environment. IARC has published (and continues to update) a series of monographs on a substantial number of toxic chemicals and substance in which the carcinogenic risk of these chemicals is evaluated.

ILO—The International Labour Organization (ILO) is a specialized agency associated with the United Nations. Established in 1919 as part of the Versailles Peace Treaty, the ILO serves to band together governments, employers, and workers of 145 nations in an international effort to improve overall working conditions and to protect the life and health of workers.

IMIS—The Integrated Management Information System (IMIS) is a data base developed by OSHA in 1979 with sampling information on more than 100,000 substances. The IMIS contains exposure measurements obtained by OSHA compliance officers during thousands of health inspections; it is the most extensive data base of its kind.

Material—The term "material" is used in the original standard whereas "substance" is used in the revision. The meaning is the same.

MSDS—The Material Safety Data Sheet (MSDS) is a compilation of data and information on individual hazardous chemicals produced by the manufacturers and importers of that chemical, as required by OSHA's Hazard Communication Standard, 29 CFR 1910.1200. An MSDS contains data on chemical identification, current exposure limits, chemical reactivity, fire and explosion limits, and information on health hazards and emergency procedures, spill, leak, and disposal procedures, and any needed special protection or precautions.

NIOSH—The National Institute for Occupational Safety and Health (NIOSH) was created by the Occupational Safety and Health Act of 1970. NIOSH is part of the Centers for Disease Control under the Department of Health and Human Services. Its mandate includes conducting research in developing criteria and/or recommendations to be used in setting occupational exposure standards, identifying and evaluating workplace hazards, measurement techniques, and control technologies, and providing professional education as well as health and safety information.

NOES—The National Occupational Exposure Survey (NOES) is a data base completed in 1982 by NIOSH. NOES is the successor to the first such data base, completed by NIOSH in 1974, and known as the National Occupational Hazard Survey (NOHS). The NOES data base contains a sample of the number of persons exposed by substance and industry from approximately 4500 businesses in 98 geographic areas in the U.S. These surveys provide national estimates of potential exposure to workplace hazards, by industry and occupational group.

OCIS—The OSHA Computerized Information System is a comprehensive data base that contains information and data on standards interpretation, chemical information, hazardous waste activity, 5(a)(1) citations, a health hazard evaluation index, training materials, and other information compiled by OSHA on subjects related to occupational safety and health.

OSHA HS Number—A Health Standard (HS) number is a 4-digit code assigned, for ease in reference, to each of the hazardous substances or chemicals considered for change of PEL in this rulemaking.

PEL—Permissible Exposure Limits (PELs) are limits developed by OSHA to indicate the maximum airborne concentration of a contaminant to which an employee may be exposed over the duration specified by the type of PEL assigned to that contaminant.

Proposal—Refers to the June 7, 1988, Notice of Proposed Rulemaking (NPRM), Air Contaminants.

REL—Recommended Exposure Limits (RELs) are issued by NIOSH to aid in controlling hazards in the workplace. These limits are generally expressed as 8—or 10—hour TWAs for a 40-hour workweek and/or ceiling levels with time limits ranging from instantaneous to 120 minutes. RELs are published in a variety of NIOSH documents.

RTECS—The Registry of Toxic Effects of Chemical Substances (RTECS) is a data base that lists an identification number, synonyms, Department of Transportation (DOT) hazard label information, EPA Toxic Substances Control Act (TSCA) information, OSHA and Mine Safety and Health Administration (MSHA) air exposure limits, and animal and human toxicologic data.

Substance—The term "substance" is used in the revised standard whereas "material" is used in the original. The meaning is the same.

TLV®—The Threshold Limit Value (TLV®) is a registered trademark for an exposure limit developed by the American Conference of Governmental Industrial Hygienists (ACGIH). A listing of TLVs may be found in the ACGIH's "Documentation of the Threshold Limit Values and Biological Exposure Indices for 1986–1988." TLVs may be stated as a time-weighted average (TLV®-TWA), a Short-Term Exposure Limit (TLV®-STEL), or a Threshold Limit Value Ceiling (TLV®-C).

TSCA—The Toxic Substances Control Act (TSCA), administered by the Environmental Protection Agency (EPA), was passed by Congress to protect human health and the environment by requiring testing and necessary use restrictions to regulate the commerce of certain chemical substances.

WHO—The World Health Organization (WHO) is part of the United Nations. WHO's programs in occupational health include development of an occupational health information system, criteria for early detection of health impairment, and the development of internationally recommended health-based permissible exposure limits for occupational exposure to toxic substances.

I. Clearance of Information Collection Requirements

On March 31, 1988, the Office of Management and Budget (OMB) published a new 5 CFR Part 1320, implementing the information collection provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* (48 FR 13666). Part 1320, which became effective on April 30, 1988, sets forth procedures for agencies to follow in obtaining OMB clearance not later than the date of publication of the proposal in the **Federal Register** for collection of information requirements contained in proposed rules. It also requires agencies to include a statement in the notice of proposed rulemaking indicating that such information requirements have been submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act. The PELs update standard will create no additional recordkeeping requirements.

J. Maintaining Z-Tables Current

This Rulemaking was designed to overcome an 18 year gap between the 1971 adoption of the PELs in the 29 CFR 1910.1000 Z-Tables and the present. During this time period there were extensive changes in toxicology and health effects information, and the application of available control technologies. This resulted in the existing Z-Tables in 29 CFR 1910.1000 being out of date and incomplete. The new information demonstrated that some workers are not protected from exposure levels which represent a significant risk of material impairment of health.

Because of the magnitude of changes during this 18-year period, this Rulemaking has involved a large number of substances and interested parties. Consequently, OSHA designed this Rulemaking to use as a starting point the well established TLV's and REL's. The record during the public hearing was then used to determine the appropriate final PEL, consistent with OSHA's statutory obligations.

As a follow-up to this Rulemaking OSHA plans to develop and implement a methodology which will permit OSHA to keep the PELs current as time goes on. This point was raised by several commentors during the public hearing (ORC, TR 3–266; NAM, TR 3–336; G.E., TR 9–172), without specific detail regarding the best procedures OSHA should follow. OSHA agrees with these suggestions, and from the start of this Rulemaking has been considering how this objective can be attained. The program would be designed to be applicable to all sectors (general industry, maritime, construction, and agriculture). The methodology adopted will be designed to avoid duplicative efforts or gaps in coverage, to be protective of workers, and to be cost effective.

Updating the PELs in the Z-Tables on a regular basis insures that the latest evidence is considered as it becomes available, and that appropriate action to either reduce or increase permissible levels is initiated promptly. Commenters to this rulemaking cited several substances for which they believed significant new information would become available in the near future. OSHA intends to evaluate such evidence and, if appropriate, to initiate prompt action to revise the Z-Tables. OSHA may take such action on a single substance or on several substances. This continual, dynamic process of evaluation and revision, consistent with the priorities of the Agency will insure that the Z-Tables reflect the latest scientific evidence on the risks posed by the listed substances.

OSHA will use a variety of sources to determine which substances will be considered for updating. Information developed as a result of NIOSH studies and the annaul updating of the TLVs will, of course, be used by OSHA.

At this time OSHA has not developed the details of the up-date process. It is anticipated that it will be planned with regularly scheduled update intervals, somewhere between 2 and 5 years. The process is expected to follow full 6(b) rulemaking procedures.

V. Summary of Commenters' Responses to NPRM Questions

In the preamble to the proposed rule (53 FR 20961), OSHA asked interested parties and the public for information related to 27 questions. These questions addressed a large number of issues, such as the scope of the rulemaking, the appropriateness of the proposed exposure limits, the availability of feasibility information for particular substances, the definition of material impairment of health, and the availability of engineering and cost data relevant to this rulemaking.

Many commenters (see, for example, Exs. 3–593, 3–660, 3–741, 3–744, 3–891, 3–896, 3–1095, 3–1161, 8–16, 8–19, and 8–47) submitted responses to the questions raised by OSHA. Of these commenters, most chose only to answer selected questions, while NIOSH provided answers to all of the issues raised. The responses of commenters to each of the questions specifically asked in the preamble to the proposal are summarized below. In addition, many participants addressed some of the issues raised by these questions in their comments on the health effects or feasibility of individual substances. These comments are addressed in connection with the preamble discussion for each substance. More detailed responses to some of these comments are discussed in other sections of the preamble, in connection with the health and feasibility discussions for specific substances.

1. Are substances included which should be excluded from this rulemaking?

Several commenters (See, for example, Exs. 3–593, 3–891, 3–896, 3–1095, and 8–47) responded to this question. There was widespread support for OSHA's selection of substances for regulation. For example, the Dow Chemical Company (Ex. 3–741) "supports the PEL project in changing outdated PELs." Several commenters, however, requested that certain aspects of the proposal be modified.

For example, Susan Kernus, Manager of Government Affairs for the Synthetic Organic Chemical Manufacturers Association (SOCMA), stated:

> We do not believe any substances included in the proposal should be excluded, but we strongly object to the adoption of [NIOSH] REL's. We recommend that ACGIH TLV's be adopted for these substances * * *. (Ex. 3–891, p. 6).

George Talley and Michael Garcia, industrial hygienists with the Los Alamos National Laboratory, argued that recommended exposure limits (RELs) with "insufficient or old * * * data" should be deleted, as also should substances for which sampling and analytical methods are unavailable (Ex. 3–1095).

Commenting for the Chevron Corporation, Stanley Dryden stated:

> We support the adoption of the ACGIH Short-Term Exposure Limits (STELs) that were established on the basis of careful review of documented short-term health effects. However, for several substances the proposed STELs are *not* adequately justified * * *. We recommend that the proposed STELs be removed from this rulemaking *except* where there is clear evidence that the STEL is required to protect against a material impairment of health (Ex. 3–896, p. 3).

U.V. Henderson, Jr., Director of Environmental Affairs for the Texaco Company, endorsed OSHA's choice of regulatory candidates by stating: "No substances are included in the listings which should be excluded from rulemaking" (Ex. 3–593). In response to this question, NIOSH expressed support for the inclusion of the proposed substances but urged OSHA to take further action "immediately upon completion of this rulemaking * * * to establish PELs for all substances that are excluded from this rulemaking" and for which NIOSH has made a recommendation to OSHA (Ex. 8–47, p. 17). NIOSH stated that OSHA should initiate "consolidated rulemaking * * * to adopt all NIOSH RELs pending [the

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initiation of] chemical-specific Section 6(b) rulemaking * * *." (Ex. 8-47, p. 17).

The support voiced by these commenters is gratifying to OSHA and increases the Agency's confidence that the substances selected for this generic rulemaking are both necessary and appropriate. The ancillary issues raised by these commenters, such as the appropriate basis for short-term exposure limits, the use of ACGIH TLVs in lieu of NIOSH RELs, and the initiation of other rulemakings in the future, are addressed in other sections of this preamble, e.g., Section VI.C.17 (STELs), Section VI on the Agency's methods of selecting exposure limits, etc. Readers are referred to these sections for a detailed discussion of the record evidence on these topics.

2. Is additional health and feasibility documentation available relative to the proposed PELs beyond that described in the preamble?

Several participants (see, for example, Exs. 3-741, 3-891, 3-1043, and 8-47) specifically responded to this preamble question. (There were of course many responses directed to health effects or feasibility issues on specific substances; these are presented in the discussions for individual substances (see Section VI).) The Synthetic and Organic Chemical Manufacturers Association (SOCMA) reported that it does not possess additional data but has requested its members to submit to the docket any information available to them (Ex. 3-891). Richard Olsen, project manager for the Dow Chemical Company, noted his company's support for the PEL project but stated that Dow was limiting its submission of additional data to certain substances, such as styrene and those chemicals for which OSHA proposed the adoption of NIOSH RELs. According to Mr. Olsen, "Feasibility documentation is not readily available in the time allowed to prepare this submission because it resides mainly with our customers." However, Dow did ask several of its customers to submit feasibility information to the record (Ex. 3-741).

The American Federation of State, County, and Municipal Employees (AFSCME) stated that OSHA had not evaluated 14 other lists developed by professional organizations and foreign bodies" (Ex. 3-1043). AFSCME is of the opinion that OSHA should have started its analysis with the most protective standard.

NIOSH commented that additional health and feasibility data pertaining to these substances and affected sectors are available and urged OSHA to consider criteria documents, health hazard evaluations, current intelligence bulletins and other NIOSH publications when developing the final rule. NIOSH also noted that several foreign governments (e.g., Germany, Sweden, West Germany), organizations (e.g., the American Industrial Hygiene Association, the International Labour Organisation), and research groups (e.g., the National Toxicology Program, the International Agency for Research on Cancer) have provided extensive toxicity information (Ex. 8-47, pp. 17-18).

In the proposal, OSHA relied extensively on the health effects information made available by these and other organizations and individuals; the reference list for the health effects section of the proposal alone included more than 1,000 citations to the toxicological literature. In the development of the final rule, OSHA has gone beyond this initial list to include hundreds of additional citations and has additionally performed a thorough analysis of all data submitted to the rulemaking docket.

OSHA appreciates NIOSH's submission of data to the record and the efforts of SOCMA and the Dow Chemical Company to obtain feasibility data from their members and customers, repectively. Information submitted by NIOSH and these individuals is discussed in other portions of this preamble in connection with the specific feasibility concerns and health effects issues raised by these commenters.

3. Are substances included in this rulemaking used in industries other than those described in the preamble? and

4. Are substances included in this rulemaking used for purposes other than those described in the preamble?

NIOSH (Ex. 8-47) responded to these two questions together by noting that it has submitted to the record a printout of the complete NIOSHTIC data base file. This information often contains industry-specific data on exposures, operations, and controls, and OSHA has analyzed this information as part of this rulemaking. No other commenters provided responses specifically to these questions, and OSHA therefore believes that the proposal and its appendices accurately identified both the major chemical-using industries by Standard Industrial Classification and the major uses applicable to substances included in this rulemaking.

5. Do alternative unpublished exposure guidelines exist, such as those used in private workplaces, which may be suitable for general usage?

Several respondents (see, for example, Exs. 3-741, 3-1095, and 8-47) submitted information about internal corporate guidelines. George M. Talley and Michael Garcia, with the Los Alamos National Laboratory, reported that several industries have such limits (Ex. 3-1095), and the Dow Chemical Company (Ex. 3-741) acknowledged that it has developed internal limits for 250 chemicals used in its plants. However, Dow does not believe that these unpublished exposure guidelines are appropriate "for general usage" because they were developed specifically for Dow's operations and facilities. Dow reports that these limits have not been "appropriately peer reviewed for operations outside our company" (Ex. 3-741, p. 21).

NIOSH commented (Ex. 8-47) that many of the private workplaces it has surveyed have internal exposure guidelines and that, in many cases, these limits are considerably lower than OSHA's existing limits. NIOSH noted that exposure guidelines for two of the substances included in this rulemaking, soluble and insoluble uranium, have been established by the International Commission on Radiation Protection and the National Commission on Radiation Protection.

Several corporations, for example, Rohm and Haas and the Dow Chemical Company, submitted some or all of their internal exposure guidelines to the docket, and OSHA has reviewed these submittals carefully. For the reasons discussed in Section IV.D of this preamble, however, OSHA determined that the ACGIH and NIOSH exposure limits were the most appropriate data bases for OSHA to use as starting points for the rulemaking. In the overwhelming majority of cases, the record has supported this decision, and the limits included in this final rule are consistent with those proposed. In a few instances, OSHA has determined, based on evidence submitted to the record, that another limit is more appropriate; the record evidence in these cases is discussed in detail in the chemical-specific discussions in Section VI.

6. Is there information regarding laboratory analytical procedures which may be used in lieu of those suggested by OSHA to determine exposure to air contaminants?

Several commenters responded to this question (Exs. 3-1095, 8-19, and 8-47). Representatives of the Los Alamos National Laboratory gave OSHA specific information on an improved method for the analysis of methylene dianiline, a substance that is not included in this rulemaking because a section 6(b) rule is being developed for it at the present time (Ex. 3-1095). NIOSH noted several corrections to the NIOSH Analytical Methods published in

Appendix A of the proposal; these corrections have been incorporated into Appendix A of this final rule. In addition, NIOSH stated that, in Appendix A of the proposal, several existing NIOSH analytical methods "have been extended to compounds for which the suggested method has not been verified" (Ex. 8-47, p. 22). In several such instances, according to NIOSH, the compound to which the method has been extended differs from the compound for which the method was originally developed.

According to NIOSH, the analytical methods for the following substances would benefit from additional analysis:

1-3-dichloropropene
2-hydroxypropyl acrylate
propargyl alcohol
isooctyl alcohol
trichloroacetic acid
dichloroacetylene
chlorodifluoromethane
chloropentafluoroethane
o-chlorostyrene
o-chlorotoluene
cyclopentane
hexane isomers
hydrogenated terphenyls
N-isopropylaniline
methyl silicate
nonane
p-toluidine
m-toluidine.

Based on its experience, OSHA concludes that there are adequate methods for the sampling and analysis of the substances. As noted in this preamble, additional work is planned regarding further evaluation of these methods. In addition, OSHA's experience shows that the promulgation of new permissible exposure limits has often encouraged the development of appropriate analytical and sampling methods. In 1971, at the time of the adoption of the start-up standards, few sampling and analytical methods had been developed, and NIOSH was charged with the responsibility of developing and validating such methods. The success of this approach is evidenced by the fact that, at the time of the June proposal, only seven substances of the 428 included in the rulemaking were identified as lacking any sampling and analytical methods (53 FR 20978). (In the course of this rulemaking methods for two of these seven, the subtilisins and cyanamide, were submitted to OSHA.) Another example of the incentive to develop methods provided by the setting of new limits can be seen in the case of OSHA's recent ethylene oxide (EtO) standard. At the time of the promulgation of the final rule, in June of 1984, no accurate and easy-to-use method was available to measure short-term EtO exposures; however, by 1986, OSHA's Salt Lake City Laboratory had developed a simple and efficient method using hydrogen-bromine-impregnated charcoal tubes. By 1987, OSHA's research and development effort had led to the development of a commercial product that is now widely available: small, easy-to-use, and inexpensive charcoal tubes for taking employee-breathing-zone measurements of EtO STEL exposures. In addition, several manufacturers have developed passive dosimeters for EtO STEL monitoring. OSHA believes that this same course of research and development, which illustrates the successful working of the market, will occur for the very few substances currently without analytical methods in this rulemaking.

7. Are the proposed exposure limits for each substance appropriate?

OSHA received responses to this question from many rulemaking participants (see, for example, Exs. 3-593, 3-741, 3-891, 3-896, 8-16, 8-19, and 8-47). (In addition, many commenters addressed the appropriateness of the PELs for specific substances; these commenters are addressed in Section VI.C of the preamble.) There was substantial support among these commenters for adoption of the proposed limits that were based on the ACGIH TLVs (Exs. 3-593, 3-891, 3-741, and 3-1095). For example, the Texaco Company stated, "The TLVs are current, well documented, and widely accepted by the industrial hygiene community" (Ex. 3-593). Several respondents felt that the 17 proposed limits that were based on NIOSH Recommended Exposure Limits (RELs) were not appropriate (Ex. 3-593, 3-891, 3-741, and 3-1095). Typical of the reasoning of these commenters was the statement of U.V. Henderson, Jr., Director of Environmental Affairs for the Texaco Corporation:

> Only the ACGIH TLVs should be used as the best available source for OSHA to update * * * [its] exposure standards. The TLVs are current, well documented, and widely accepted by the industrial hygiene community. Many State-approved OSHA programs incorporate the TLVs as their basis for regulations. The NIOSH recommended limits are oftentimes outdated and conservative. Furthermore, feasibility and cost-effectiveness are not always addressed by NIOSH (Ex. 3-593, Attachment, p. 1).

The American Industrial Hygiene Association (AIHA), on the other hand, was entirely in favor of OSHA's used of either an ACGIH or a NIOSH limit, as the case required:

> AIHA supports the adoption by OSHA of NIOSH REL values as PELs on a case-by-case basis where such values are supported by the scientific evidence and are feasible from the standpoint of implementation.

NIOSH expressed strong support for this rulemaking in general but submitted specific comments on a number of substances that it believes should have different limits from those proposed (Ex. 8-47). However, NIOSH stated at the hearing that, for substances lacking NIOSH RELs, the use of the ACGIH's TLVs as a starting point is appropriate (Tr. pp. 3-130—3-131). NIOSH's substance-specific comments are addressed in connection with the preamble discussion of these substances (see Section VI).

OSHA is gratified by the degree of support for the proposal expressed by these and other rulemaking commenters. The Agency agrees with the AIHA that the appropriate way to establish exposure limits is on a case-by-case basis, considering health effects and feasibility concurrently. This is the methodology used by OSHA in the proposal, and the final rule applies these same principles to the setting of limits for individual substances.

8. Is additional information available for those substances for which ACGIH proposed a higher TLV which might affect OSHA's decision that such a change was not justified?

Only NIOSH (Ex. 8-47) responded specifically to this preamble question. NIOSH expessed the opinion that a comprehensive section 6(b) rulemaking is required if OSHA is considering raising, rather than lowering, a particular exposure limit. OSHA believes that the issue is not so much the *type* of rulemaking, i.e., generic vs. substance-specific, as the significance of the risk involved. For example, when raising a limit, the Agency must be able to show that "exposed workers will not be placed at increased risk for the health effects at issue even after the limit in question has been raised or revoked * * *" (53 FR 21213). The guiding principles were first enunciated by OSHA when the Agency revoked the cotton dust limit for facilities in specific nontextile industries (50 FR 51120 *et seq.*), and this issue was subsequently discussed in the present rulemaking in the proposal section pertaining to substances for which the ACGIH TLVs are higher than OSHA's existing limits (53 FR 21213). OSHA continues to believe that those principles, rather than the type of rulemaking, constitute the test the Agency must meet when a limit is proposed for raising or revocation.

9. Should implementation dates for some substances be delayed because of sampling/analytical limitations or short term feasibility impact considerations?

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Several commenters (Exs. 3–823, 3–891, 3–905, 3–980, 3–1095, 8–16, 3–741, and 3–891) questioned OSHA's promulgation of PELS for substances for which available sampling/analytical methods are not adequate. The Los Alamos National Laboratory (Ex. 3–1095) commented that OSHA "should delay implementation dates for substances that do not have adequate sampling and analytical procedures until such methods are available and validated. It is unreasonable to expect compliance when the chemicals cannot be quantified." NIOSH (Ex. 8–47) commented that some substances have no sampling and analytical methods and that methods for others have not been validated by OSHA or NIOSH.

Appendix A to the proposed rule provided data on the status of sampling and analytical methods for all of the substances included in this rulemaking. For a number of substances, in-house sampling and analysis methods are available; copies of these methods have been supplied by OSHA to any party requesting them, and they are also available in the docket for this rulemaking. No commenter has suggested that any of these in-house methods is inadequate; however, commenters have made general comments on interlaboratory testing and exchange programs and their benefits in terms of method standardization. NIOSH has recommended additional evaluation of the sampling and analytical procedures for several substances.

OSHA has considerable expertise and experience in developing sampling and analytical methods. The Agency has determined that these in-house methods are adequate for enforcement purposes. (Any employer or laboratory wishing a copy of the entire set of methods can purchase them from the ACGIH. Copies of any individual method may be obtained by calling the OSHA Salt Lake City Laboratory, (801) 524–5287.) There have been no objections to any sampling and analytical method for any specific substance. Consequently, OSHA will enforce all of the exposure limits in the final rule except in the seven cases where no sampling and analytical method is known to OSHA.

OSHA identifed seven substances in Table 1–F–E of the proposal (53 FR 20078) as not having adequate sampling/analysis methods (aluminum alkyls, cyanamide, ethylidene norbornene, hexafluoroacetone, mercury [alkyl compounds], subtilisins, and sulfur pentafluoride). (In the course of this rulemaking, commenters submitted methods for two of the substances listed in the proposal as having no method: Cyanamide and the subtilisins. However, commenters also identifed two other substances, phenylphosphine and oxygen difluoride, as lacking methods.) In the final rule, OSHA is promulgating permissible exposure limits for aluminum alkyls, ethylidene norbornene, hexafluoroacetone, mercury [alkyl compounds], oxygen difluoride, phenylphosphine, and sulfur pentafluoride. However, the Agency is staying the enforcement of these limits until an acceptable sampling and analytical technology is devised. When such techniques are developed, OSHA will publish a **Federal Register** notice indicating that fact and setting forth the date on which enforcement will commence.

10. Is there additional information relative to the OSHA plans to adopt some recommended 10-hour TWA RELs as an 8-hour TWA PEL?

OSHA received few comments in response to this question (see, for example, Exs. 3–1095, 3–623, and 8–47).

Representatives of the Los Alamos National Laboratory supported OSHA's use of NIOSH 10-hour limits as 8-hour TWAs:

> [W]e support these plans * * * [because this] is a conservative approach and appropriate (Ex. 3–1095).

George Lathrop of Kerr-McGee Corporation (Ex. 3–623) observed:

> [T]he NIOSH Recommended Exposure Levels (REL's) are based upon 10-hour work shifts in a 40-hour work week. The OSHA PEL's, as well as the ACGH recommended TLV's, are based upon 8-hour work shifts in a 40-hour work week. OSHA preliminarily concludes that the NIOSH REL is equivalent to the OSHA PEL's definition. These two values are equivalent only if their interpretation is based on the length of the work (i.e., 40 hours). If the interpretation of the OSHA PEL's and the NIOSH REL is based on the length of the work shift (8 or 10 hours, respectively), then these values are not equivalent. If OSHA adopts a NIOSH REL for a particular substance, a notation should exist which identifies the exposure level as based on a 10-hour work shift or the level should be adjusted to represent an 8-hour work shift (Ex. 3–623, p. 3).

NIOSH (Ex. 8–47) provided a detailed response and explained that NIOSH 10-hour RELs are intended to apply to either 8-hour or 10-hour days in a 40-hour workweek. NIOSH explained that the 10-hour REL originated during the energy crisis of the 1970s. When many employers began to use 10-hour/4-day work schedules to conserve energy (Ex. 8–47, p. 25). Thus, the 40-hour workweek rather than the length of a workday is, in NIOSH's view, the important time element in the (concentration) X (time) equation: Any given REL can be applied to either four 10-hour days or five 8-hour days without being exceeded. NIOSH supports OSHA's proposal to apply 10-hour NIOSH RELs to 8-hour days by stating:

> The action proposed by OSHA in this rulemaking relative to these RELs is consistent with that original intent (Ex. 8–47, p. 26).

In this final rule, OSHA is therefore applying values derived from NIOSH RELs as 8-hour TWA PELs.

11. Does the most current scientific information generally support acceptance of the hypothesis that all C_{6-8} alkanes are not equally toxic because a metabolite of n-hexane exhibits unique neurotoxic properties?

The C_{6-8} alkanes include pentane, n-hexane, hexane isomers, n-heptane, octane, and the refined petroleum solvents, namely rubber solvent (naphtha), Stoddard solvent, and VM & P naptha. There is some disagreement regarding the question of equal toxicity for all C_{6-8} alkanes, which impacts on the determination of appropriate PELs on the basis of neuropathic effects resulting from exposure to these substances.

n-Hexane has been shown to produce distal axonopathy in both experimental animals and humans; it is metabolized to 2,5-hexanedione (2,5-HD), which is thought to be the agent that produces peripheral neuropathy after exposure to n-hexane (Schaumburg, and Spencer, Thomas 1983/Ex. 1–228). The ACGIH arrived at a TLV of 50 ppm for n-hexane, based primarily on studies by Miyagaki (1967/Ex. 1–196) and Inoue, Takeuchi. Takeuchi et al. (1970/Ex. 1–75) showing peripheral neuropathies at exposure levels as low 210 ppm. A number of studies have shown a consistent relationship between exposure levels of 500 to 2000 ppm n-hexane and the development of characteristic peripheral neuropathies (Yamamura 1969/Ex. 1–42; Yamada 1967/Ex. 1–192). Neuropathic effects have also been shown to occur at level between 210 and 500 ppm n-hexane (Takeuchi, Maluchi, and Takagi 1975/Ex. 1–217).

The NIOSH (1977a/Ex. 1–223) RELs for the C_{6-8} alkanes are based on the belief that polyneuropathy may be caused by other alkanes (or mixtures of alkanes) and their isomers. NIOSH (1977a/Ex. 1–223) relied heavily on two studies by Gaultier, Rancurel, Piva, and Efthymioc (1973/Ex. 1–123) and Truhaut et al. (1973, as cited in ACGIH 1986, p. 305, "n-Hexane"). The report by Gaultier et al. (1973/Ex. 1–123) reported that five workers in a belt-manufacturing shop developed polyneuropathy as a result of exposure to a solvent that contained 60 percent pentane, 14 percent heptane, and 5 percent hexane. The authors concluded that pentane and heptane, as well as hexane, might also have caused this polyneuritis.

Truhaut et al. (1973, as cited in ACGIH 1986, p. 305, "n-Hexane") exposed Wistar rats to airborne hexane (technical grade) at a concentration of 2000 ppm and to heptane (technical grade) at a concentration of 1500 ppm for five hours/day, five days/week, for one to six months. The analysis of technical grade hexane was: 0.3 percent n-pentane, 25.1 percent 2-methylpentane + cyclopentane, 18.4 percent 3-methylpentane, 45 percent n-hexane, 8 percent methyl cyclopentane, 1.2 percent methyl hexane, and 1.2 percent benzene.

The analysis of technical grade heptane was; 9.8 percent 2-methylhexane, 2,3-dimethyl pentane, and cyclohexane; 16.2 percent 3-methylhexane; 52.4 percent n-heptane; 18.2 percent 2,4-dimethylene, methylcyclohexane, and toluene; 3.3 percent methylheptane; 0.1 percent benzene; and 2.8 percent toluene. The exposed rats developed polyneuropathy, and NIOSH considers this study as evidence indicating that different alkanes cause polyneuropathy.

Since 1977, when NIOSH published its criteria document on alkanes (C_{6-8}), considerable evidence has accumulated that demonstrates that peripheral neuropathies are caused only by n-hexane and gamma-diketone metabolites (O'Donoghue 1985).

The following summaries of publications show that n-hexane, and not the hexane isomers, n-pentane, n-hexane, of octane, is the primary cause of peripheral neuropathy.

1. Peripheral neuropathy comparable to that seen in human cases has been reproduced using rats, cats, monkeys, hens, and pigeons exposed to n-hexane, practical grade hexanes (which contain n-hexane and benzene), or gasoline containing n-hexane (O'Donoghue 1985).

2. Egan et al. (1980) exposed rats for 22 hours per day, for periods up to six months, at 500-ppm concentrations of an n-hexane "free" isomer mixture: no evidence of neurotoxic effects was observed. A second group of rats exposed to 1 ppm of methyl n-butyl ketone, a positive control, developed histological evidence of peripheral neuropathy after four months of continuous exposure.

3. Takeuchi et al. (1980) performed a comparative study on the neurotoxicity of n-pentane, n-hexane, and n-heptane in the rat. Rats were exposed to 3000 ppm of n-pentane, n-hexane, or n-heptane for 12 hours/day for 16 weeks. The experiment showed that n-hexane distributed the conduction velocity of the motor nerve and the mixed nerve and prolonged the distal latency in the rats' tails, but that n-pentane and n-heptane did not. Light- and electron-microscopic examinations showed that the peripheral nerve, the neuromuscular junction, and the muscle fibers of the rats exposed to n-hexane or n-heptane showed no particular changes after 16 weeks of exposure. These results show that n-hexane is far more toxic to the peripheral nerve of the rat than is n-pentane or n-heptane.

4. Frontali et al. (1981) exposed rats to n-hexane or n-heptane for 9 to 10 hours/day, 5 to 6 days/week, for a period of 30 weeks. Animals treated with n-hexane at 5000 ppm for 14 weeks or at 2500 ppm for 30 weeks developed the typical giant axonal degeneration already described by Spencer and Schaumburg (1976) in rats treated continuously with 400 to 600 ppm of n-hexane for seven weeks or more. No such alterations were found in the rats subjected to intermittent respiratory treatments with n-pentane at 3000 ppm for 30 weeks or to n-heptane at 1500 ppm for 30 weeks. Again, this demonstrates the greater neurotoxicity of n-hexane compared with that of its isomers.

5. Bahima et al. (1984) conducted a study on female Wistar rats exposed by inhalation to 2000 ppm n-heptane for 12 weeks. No clinical evidence of neurotoxicity was observed after n-heptane exposure. Urinary metabolites were identified by gas chromatography/mass spectrometry. The n-heptane metabolites were 1-, 2-, 3-, and 4-heptanols, 2- and 3-heptanones, 2,5- and 2,6-heptanediols, 5-hydroxy-2-heptanone, 6-hydroxy-2-heptanone, 6-hydroxy-3-heptanone, 2,5- and 2,6-heptanediones, and gamma-valerolactone. 2,5-Heptanedione, a known neurotoxic agent, was the metabolite found in least amounts in the urine. The authors concluded that the lack of neurotoxicity was due to the small amount of 2,5-heptanedione produced after n-heptane exposure.

6. Olson et al (1986) studied the metabolism of n-octane in Fischer 344 rats. The urinary metabolites of n-octane in rats given n-octane by gavage included 2-octanol, 3-octanol, 5-oxohexanoic acid, and 6-oxoheptanoic acid. n-Octane was not metabolized to a ketone, diketone, or diol derivative. None of the metabolites excreted are known to cause peripheral neuropathy in rats.

7. Spencer and Schaumburg (1985) point out that alkanes normally undergo subterminal carbon oxidation. The likelihood of producing neurotoxic levels of gamma-diketone metabolites from alkanes higher in the series than n-hexane is unlikely. Shorter-chain alkanes (pentane) and hexane isomers free of n-hexane also fail to produce the appropriate metabolite and do not induce neuropathy in experimental animals. The authors further conclude that n-hexane is unique among the alkanes in producing peripheral neuropathy in humans.

8. Recent studies have suggested a mechanism for the structural basis of the neurotoxicity of gamm-diketones. Studies reported by Sayre et al. (1988) and Genter et al. (1987) demonstrate that only those hydrocarbons capable of gamm-diketone and pyrrole formation are potentially neurotoxic. Chronic exposure to gamma-diketones results in the formation of giant neurofilament-containing axonal enlargements.

9. Several commenters (Exs. 3–696, 3–740, and 3–593) were in agreement with the points made in the discussion of this issue, above.

10. NIOSH (1988/Ex. 8–47) continues to support its conclusions as to the neurotoxicity of all of the C_{6-8} alkanes, as discussed in the 1977 criteria document (1977a/Ex. 1–223). NIOSH believes that n-hexane and other C_{6-8} alkanes or related chemicals are ultimately metabolized to a gamma-diketone and thus may have similar neurotoxic properties. Accordingly, in the 1977 criteria document on alkanes (C_{6-8}), NIOSH proposed a REL of 350 mg/m ^{3} as a TWA concentration for up to a 10-hour work shift for the straight and branched-chain aliphatic isomers of pentane, hexane, heptane, and octane (NIOSH 1977a/Ex. 1–223).

OSHA finds NIOSH's argument on this issue unconvincing in light of the consistent results obtained by a number of investigators using a variety of experimental procedures (see item 1 through 9, above). Therefore, the Agency concludes that only n-hexane has been proved to cause peripheral neuropathy at this time and that other alkanes, such as n-pentane, n-heptane, octane, and the hexane isomers, do not appear to cause peripheral neuropathy. Consequently, OSHA's initial assessment of the relative toxicity of the C_{6-8} alkanes (53 *FR* 20098) remains unchanged.

12. OSHA has Proposed to use Exposure Limits From two Well-Established sets of Guidelines as a Source of Values to Update the PELs. Is Information available about alternative sources which OSHA might consider for this purpose?

Several commenters (see, for example, Exs. 3–1095, 8–16, and 8–47) responsed

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to this preamble question.
Representatives of the Los Alamos National Laboratory (Ex. 3–1095) noted that many industries have voluntary guidelines that might be considered by OSHA if individual companies or trade associations submit them to the docket.

NIOSH (Ex. 8–47) mentioned as excellent sources the 9 data sets referred to by OSHA in the preamble to the proposal (53 FR 20967) and additionally recommended as a potential source the Nordic Expert Group for Documentation of Occupational Exposure Limits. NIOSH stated:

> No single source should be expected to stand alone as a comprehensive list of candidates for regulation. OSHA should construct its own comprehensive list by drawing information from all available sources (Ex. 8–47, p. 28).

The Agency used the ACGIH TLVs and NIOSH RELs as starting points and then carefully reviewed the testimony and comments submitted in the course of this rulemaking. If additional information was needed, the Agency examined additional toxicological sources. After careful review and evaluation of this body of information on any given substance and in conformance with Agency policy and statutory requirements, OSHA then determined the appropriate PEL or PELs for each substance.

The American Industrial Hygiene Association (AIHA) also responded to this question (Ex. 8–16). The AIHA submitted a complete set of that organization's Workplace Environmental Exposure Level (WEEL) Guides, with supporting documentation, to OSHA to consider as PEL replacement values. The AIHA described the process by which the WEEL committee establishes these levels and reported that such factors as production rate, acute toxicity, and extent of the interest expressed by the entire AIHA membership are taken into account when deciding what substances to consider for WEELs (Ex. 8–16).

As noted in the preamble to the proposal (53 FR 20967), OSHA cnsidered nine sets of exposure limits, including the WEELs, when the proposal was being developed. OSHA agrees in general that the WEEL values "constitute a well-established set of guidelines for more than 40 substances" (Ex. 8–16); however, the Agency was not able to use the WEELs as replacement PELs in the present rulemaking because, to date, fewer than 40 WEELs have been developed. OSHA concludes that the reasons identified by OSHA in the proposal (53 FR 20967) for using the ACGIH TLVs and the NIOSH RELs as starting points were appropriate.

13. OSHA has outlined its criteria for identifying special situations. Are alternative criteria available which might be used in lieu of these, or in addition to them?

Several rulemaking participants responded to this question; these comments were similar to those provided in response to questions 6 and 9 on analytic methods. See the responses to these questions for a discussion of this issue.

14. OSHA has outlined three alternative procedures for dealing with substances requiring special attention. Are additional approaches available which might be used in lieu of these, or in addition to them?

Four commenters (Exs. 3–1095, 3–593, 3–891, and 8–47) responded to this question, which referred to three approaches suggested by OSHA as possible ways of treating the substances in this rulemaking that require special attention (53 FR 20978–79). These three alternatives were:

(1) In-depth review of all available data for each substance and the establishment of a PEL at the level indicated by this review;

(2) Adoption of a limit in this rulemaking, to be followed later by separate rulemaking if the data warrant further analysis; or

(3) Retain the existing OSHA limits for special-attention substances and proceed later with follow-up review and possible 6(b) rulemaking.

A large majority of commenters endorsed the second approach for substances identified in the course of the rulemaking as warranting special attention (see, for example, Exs. 3–1095, 3–593, 3–891, and 8–47).

The Synthetic Organic Chemicals Manufacturing Association (SOCMA) had no suggestions for alternatives to the three approaches suggested by OSHA (Ex. 3–891). SOCMA found the second approach to dealing with special situations most appropriate; however, the association urged OSHA not to use NIOSH recommended exposure limits (RELs) as interim values but instead to rely on the ACGIH limits for this purpose (Ex. 3–891). The Texaco Company agreed with SOCMA that NIOSH RELs should not be used as interim PELs (Ex. 3–593), while representatives of the Los Alamos National Laboratory (Ex. 3–1095) believe that limits should not be promulgated for those substances lacking sampling and analytical methods. NIOSH (Ex. 8–47) supported OSHA's suggestion that it might be appropriate to mandate limits for all substances immediately and then follow this generic rulemaking with separate rulemaking, as the evidence dictates. NIOSH believes that in some instances, a full 6(b) rulemaking is required. According to NIOSH:

> NIOSH concurs with OSHA that it is in the best interest of the worker to promptly provide such increased health protection as is indicated by the evidence in the record (Ex. 8–47, p. 32).

OSHA has concluded that this second approach constitutes the best method of protecting the health and well-being of the largest possible number of workers in the shortest possible time frame. Accordingly, the Agency is today promulgating limits for all but a few of the substances for which limits were proposed. Depending on resources, OSHA may consider for additional rulemaking those substances identified in this preamble as warranting further consideration.

15. OSHA has performed feasibility analyses for the following substances, based on limited available information: acetonitrile, carbon disulfide, carbon monoxide, carbon tetrachloride, chloroform, ethylene dichloride, ethylene glycol dinitrate, fibrous glass dust, hydrogen cyanide, isophorone diisocyanate, nitrogen dioxide, nitroglycerin, and trichloro-ethylene. Is further information available which might be used to supplement the present findings regarding the feasibility of achieving these levels in the workplace?

The Synthetic Organic Chemicals Manufacturing Association (SOCMA) (Ex. 3–891), the Dow Chemical Company (Ex. 3–741), the Teepak Corporation (Ex. 8–19), and NIOSH (Ex. 8–47) each responded to this question. The Dow Chemical Company (Ex. 3–741) commented on the difficulty of obtaining feasibility information, especially for "the small business entities which will be most heavily impacted," while SOCMA (Ex. 3–891) opposed the promulgation of NIOSH limits if the feasibility information available was not adequate. NIOSH (Ex. 8–47) submitted feasibility information to OSHA for the substances listed and for acetone, chlorine, styrene, and sulfur dioxide as well. OSHA appreciates NIOSH's submission and is using this information in its feasibility analyses for individual substances (see Section VI).

For the final rule, OSHA went beyond the feasibility analyses presented in the proposal. The Agency incorporated the substantial amount of feasibility data submitted by NIOSH and other submitters. OSHA also reviewed the site visit reports submitted into the record. Based on the entire record, OSHA has concluded that the Agency has sufficient feasibility data to support the final rule's PELs. These data are analyzed in depth, by industry sector, in Section VII.

16. OSHA has made a preliminary assessment of the proposed rulemaking's impact on large and small establishments. The Act requires OSHA to determine whether a regulation will have a significant impact on a substantial number of small entities, pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 601 et seq. Is there additional information regarding implementation of this rule for small businesses and entities which OSHA should consider?

The U.S. Borax and Chemical Corporation (Ex. 3–744), SOCMA (Ex. 3–891), and the Dow Chemical Company (Ex. 3–741) each responded to this preamble question. SOCMA expects "some adverse impact" on its smaller member companies because these companies are likely to have greater difficulty than others in absorbing the costs of controls (Ex. 3–891). SOCMA believes that such companies are particularly likely to be severely impacted if REL, rather than TLV, values are promulgated as OSHA PELs; in SOCMA's views, selection of TLV values as PELs "will substantially reduce the feasibility problems of the proposal" (Ex. 3–891). The Dow Chemical Company (Ex. 3–741) agrees with SOCMA that the largest impact of the rulemaking will be on smaller establishments, and also that promulgation of values consistent with those of the ACGIH, rahter than with those of NIOSH, will mitigate any such impact.

Eugene Smith, Vice President for Government and Public Affairs of the U.S. Borax and Chemical Corporation, believes that the uses of "sodium tetraborate as well as boron oxide are so ubiquitous in their applications that a complete documentation of their uses in industrial and household applications is virtually impossible" (Ex. 3–744, p. 5). Mr. Smith reports that he is aware of "very small companies who would find installation of the type of engineering controls" described in the proposal financially difficult to implement (Ex. 3–744, p. 5). OSHA is sympathetic to the concerns of U.S. Borax and has focused much of the economic and feasibility analysis for this rule on small entities that will be affected by this revision or expansion of permissible exposure limits. The Regulatory Flexibility Analysis (RFA) accompanying this final rule fully considers the impacts of this regulation on these entities and describes the magnitude of any differential small-business impacts. In the RFA, OSHA concludes that the final rule is feasible for small businesses.

17. OSHA has proposed PELs for some substances, where the basis for this proposal also includes a carcinogenicity designation (e.g., TLV with an A1 or A2 designation; REL with a Ca designation). Should OSHA include a similar carcinogen designation in the Z–4 table in this rulemaking?

Several commenters (Exs. 3–741, 3–1008, 3–1095, 3–593, 3–660, 3–891, 8–16, and 8–47) responded to this question. Some commenters (Exs. 3–741 and 3–891) indicated that OSHA's Hazard Communication Standard already requires employers to inform employees about the carcinogenic hazards of any substances listed as carcinogens by IARC or NTP. According to these respondents, identification of substances as carcinogens in the Z tables would therefore be duplicative and could cause confusion (Ex. 3–891). In addition, adding such information to a table could be confusing because there is no method of adding extensive explanatory material to a table. Other commenters (Exs. 3–593, 3–1095, 8–16 and 8–47) favored the addition of a cancer designation to carcinogenic substances included in the Z tables. For example, the American Industrial Hygiene Association (AIHA) stated:

> AIHA would support the inclusion of a designation on carcinogenicity * * * provided that such designation reflects the weight of evidence for carcinogenic effects * * *. (Ex. 8–16, p. 14).

NIOSH (Ex. 8–47) concurred in recommending the inclusion of such a designation in the final rule's Z tables.

OSHA has carefully reviewed the record evidence on this issue and has investigated the various evaluative critieria used by scientific and regulatory bodies to determine the classification of a substance as a carcinogen. The Agency notes that each organization has a different system and that the criteria used rarely coincide. Thus, the ACGIH uses two designations, A1 and A2, to refect the strength of the evidence for a substance's carcinogenicity, while the EPA has five classifications that represent different kinds of evidence. OSHA believes that the inclusion of a cancer designation on the Z tables would further complicate this already complex situation by adding yet another classification system to those already in use. OSHA is also concerned that adding a cancer designation to the Z-table limits would require frequent updating and revision as additional substances are identified as carcinogens in the future. Therefore, OSHA has determined that the present system (in which the Z tables present the exposure limits for a substance, while the Hazard Communication Standard (29 CFR 1910.1200) determines whether the evidence for a particular substance is such as to require employers to describe its carcinogenicity in their hazard communication programs) is the clearest and simplest approach to alerting workers to the hazards present in their workplaces.

18. OSHA has preliminarily decided that for substances where the ACGIH, TLV is a TWA and the NIOSH, REL is a Ceiling Value which is the same or one-half of the TWA, OSHA will propose that the TWA be adopted as the PEL. Should this approach be modified in the final rulemaking? What approach should be used when the converse of this situation (TLV, Ceiling-REL, TWA) exists.

Several commenters were cautious concerning this approach. Los Alamos (Ex. 3–1095) and NIOSH (Ex. 8–47) concurred, recognizing that an analysis of the data supporting a proposed limit must be developed on a case-by-case basis to discern which limit is appropriate. NIOSH (Ex. 8–47) also stated that the simple numerical relationship that OSHA has proposed is not a scientifically sound basis for choosing between a TWA and a ceiling value.

The Synthetic Organic Chemical Manufacturers Association (SOCMA) (Ex. 3–891) recommended that the TLV be adopted, whether the TLV is a ceiling value or a TWA, since TLVs are the most appropriate levels for adoption. The American Federation of State and County Municipal Employees (AFSCME) (Ex. 3–1043) recommended:

> OSHA should adopt most protective limit unless source dictates otherwise. Ceiling and STELS provide greater protection than TWA of the same numerical value (Ex. 3–1043, p. 5).

Other commenters (Exs. 3–1043, 3–42, and 3–1095) also wanted to ensure that OSHA understood the difference between TWA and ceiling values. OSHA understands that TWAs are not equal to ceiling limits and concurs with the definition of these two limits discussed in NIOSH's submission:

> A TWA is appropriate as a limit when the toxic effect of the substance is directly related to the total dose received in a daily exposure. Ceiling values are intended to minimize toxic effects related to the peak exposure. Ceiling values are necessary when there are immediate acute responses to an air contaminant independent of the total daily dose or when chronic effects are dose-rate

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responses. Ceiling values are also used to minimize the total daily dose when there is intermittent occupational exposure, e.g., ethylene oxide (Ex. 8-47).

OSHA has always recognized the differences between TWA and ceiling limits; in the proposal, OSHA adopted the TWAs only as a starting point. Since that time, OSHA has analyzed the various docket submissions regarding individual substances. Based on these individual analyses, OSHA has developed updated PELs on a case-by-case basis. (For information regarding a specific substance, refer to the discussion for that individual substance.)

19. OSHA preliminarily plans to adopt a phased start-up schedule. This would include an initial start-up requirement permitting the use of alternate control methods for revised PELs, followed at a later date by the required use of control methods fully consistent with the methods of compliance priorities in effect at that time. OSHA will shortly be requesting comments on the heirarchy of controls. An alternate approach is to set compliance dates for engineering controls based on final determinations of that rulemaking. OSHA solicits comments on those approaches and suggestions regarding the appropriate times for the two proposed start-up dates.

The proposed rule (53 FR 20960 *et seq.*) suggested six months from the publication date of the final regulation as a reasonable time for employers to evaluate the exposures of their employees and to come into compliance using any combination of respirators, work practices, and engineering controls. Many commenters, such as the Texaco Company (Ex. 3-693) and the Synthetic Organic Chemical Manufacturers Association (SOCMA) (Ex. 3-691), indicated that the 6-month compliance date phase-in was appropriate. The Kerr-McGee Corporation (Ex. 3-623) was more specific in its comments and contended that the initial six-month period should be extended to a 24-month period to allow industry sufficient time to monitor and develop the necessary control measures. The American Paper Institute (Ex. 3-695) was also of the opinion that an initial six-month compliance period would be too short.

OSHA has extended the period to come into compliance using any method from six months from the date of publication to approximately six months from the effective date; this action adds two months to this period. OSHA concludes, based on the Agency's experience and many comments, that a six-month period after the effective date is sufficient to evaluate exposures and commence a respirator program. Most employers will only have employee overexposures to a relatively few substances. (See also the discussion under the Scope and Application of the standard.)

Several companies stated that OSHA should grant a specific extension for their particular industries as a consequence of feasibility concerns. OSHA has, however, considered the issues of feasibility raised by rulemaking participants for specific industries and has determined that it is feasible, with few exceptions, for employers in affected industries to achieve compliance with the limits promulgated in the final rule. These exceptions are discussed in Section VII of this preamble.

In the proposal, OSHA also estimated that all employers, including those who would have to control exposures to several different chemicals, could achieve compliance within four years using the hierarchy of controls (i.e., preference for engineering controls and work practices, and, if not feasible, personal protective equipment) specified in 29 CFR 1910.1000(e). Regarding the four-year engineering implementation date schedule, OSHA received a number of comments. Most trade associations and employers supported the four-year period, and most unions suggested that one to two years would be sufficient. The State of Washington used 60 days for a similar regulation and reports that there were few difficulties with compliance. NIOSH (Ex. 8-47) suggested that two years was a reasonable time for compliance. The longest period suggested was the period recommended by the Fibre Box Association (Ex. 3-823), which stated that 10 years for compliance by industry was a reasonable time frame. OSHA has evaluated the data from various industries regarding the feasibility of compliance and has determined that it is feasible for employers in nearly all operations to achieve compliance, using engineering and work practice controls, by December 31, 1992. In light of the scope of this regulation, OSHA concludes that a shorter period would not be appropriate.

Since OSHA is in the process of reviewing the hierarchy of controls, OSHA requested comment on whether the compliance period should be tied into the completion of that rulemaking. There were few responses to this query. A few companies (see, for example, Exs. 3-668 and 3-827) suggested that the Agency delay the four-year coming-into-compliance period until after publication of any new regulations on this subject; these commenters cited costs of compliance as a major concern. The Dow Chemical Co. (Ex. 3-741) urged the Agency not to wait to set a start-up date for this rule. OSHA concludes that the December 31, 1992 deadline specified is appropriate and is supported by most of industry. Section 1910.1000(e) has been in effect for 18 years and reflects the view of most industrial hygienists. (See the Summary and Explanation section of the preamble for further details.)

20. OSHA requests comment on whether the establishment of margins of safety below lowest observed or no-effect levels is consistent with the concept of "significant risk," and on whether the specific margins of safety proposed for specific chemicals are appropriate.

Several commenters (see, for example, Exs. 3-744, 3-1095, 3-660, 8-16, and 8-47) submitted information to OSHA in response to this question. Representatives of the Los Alamos National Laboratory (Ex. 3-1095) noted that safety factors must be established on a case-by-case basis, while the U.S. Borax and Chemical Corporation (Ex. 3-744) commented that dose-response information is needed before safety factors can be applied to set an exposure limit. The American Industrial Hygiene Association (AIHA) (Ex. 8-16) is of the opinion that OSHA should adopt a "uniform toxicologic basis for assigning such factors" and should change the term "safety factor" to "uncertainty factor" in the final rule.

NIOSH (Ex. 8-47) stated that safety factors cannot be used to estimate human risk and are therefore not related to the magnitude or significance of a risk; instead, safety factors are intended to reflect uncertainty in knowledge or available data. NIOSH endorsed the use of safety factors as a "pragmatic method" to develop standards except when a nonthreshold process, such as the induction of cancer, is the outcome of concern (Ex. 8-47). NIOSH believes that "standards based on a margin of safety * * * as well as standards derived from a case-by-case evaluation, [should] be periodically reviewed to determine what new information is available" (Ex. 8-47).

OSHA is pleased that these commenters believe that the use of safety factors or margins of safety is an appropriate method of adjusting for the absence of complete information in the standards-setting process. OSHA agrees with NIOSH that this approach to limit-setting is appropriate when threshold effects are the endpoints of concern. (For a full discussion of safety factors, see Section VI.A and the Legal Analysis section of this preamble.)

21. OSHA has identified sensory irritation, which causes rhinitis, cough, sputum production, chest pain, wheezing and dyspnea, as material impairment of health. OSHA invites comments on this understanding.

Many commenters (see, for example, Exs. 3-744, 3-1095, 3-660, 8-47, 3-660, 3-593 and 3-665) responded to this preamble question. A few were of the opinion that transitory or acute effects should not be considered material impairment of health; the U.S. Borax and Chemical Corporation (Ex. 3-744) believes that transitory "rhinitis, cough, sputum production, chest pain, wheezing, and dyspnea" do not constitute material health impairment. Stanley Dryden of Chevron Corporation believes that "mild irritants and odorants" should not be considered to pose a risk of material health impairment (Ex. 3-806).

Most commenters, however, agreed with OSHA that the signs and symptoms listed in this question should be regarded as material health impairments (Exs. 8-47, 3-1095, 3-660 and 3-593). NIOSH stated:

> The recognition of sensory irritation as potentially being "material impairment of health" is consistent with the current scientific consensus related to health effects of environmental agents.
>
> Mucous membrane irritants can cause increased blink frequency and tearing; nasal discharge, congestion, and sneezing; and cough, sputum production, chest discomfort, wheezing, chest tightness, and dyspnea. Work environments often require levels of physical and mental performance considerably greater than encountered in daily living. Even in the absence of any permanent impairment, the symptoms listed can interfere with job performance and safety.
>
> Mucous membrane irritation can result in inflammation, which may lead to increased susceptibility to nonspecific irritants and infectious agents. For example, experimental ozone exposure in humans results in increased airway reactivity. Also, studies of exposure to environmental tobacco smoke have shown irritative symptoms and evidence of increased frequency of respiratory tract illnesses in young children and decreased pulmonary function in adults * * *.
>
> Mucous membrane irritation is associated with respiratory illnesses, depending on the composition of specific exposure and on the dose, duration, and frequency of exposure. No universally applicable conclusion can be drawn at this time regarding the association between irritative symptoms and permanent injury or dysfunction. Where certain individuals show no measurable impairment after an exposure, even when experiencing irritative symptoms, others may develop identifiable dysfunction.

Aside from the effects of irritation, mucous membrane exposure may result in absorption of a substance, with resultant systemic toxicity. An inflamed mucous membrane may be an even more effective route of absorption, either for the irritant or for other substances. Furthermore, injury to bronchopulmonary membranes can impair removal of particulates from the respiratory system (Ex. 8-47).

Thus, according to NIOSH, sensory irritants interfere with job performance and safety, cause inflammation, may increase the victim's susceptibility to other irritants and infectious agents, lead to permanent injury or dysfunction, or permit greater absorption of hazardous substances (Ex. 8-47). In sum, NIOSH and most other respondents agree with OSHA that sensory irritation caused by occupational exposure to the irritant substances included in this final rule constitutes a material impairment of health (see Section VI.C.3).

22. The question also arises of whether odorants present material impairment of health. That issue also might arise in the context of other substances. Based on the evidence in the final record concerning this issue, OSHA will determine if the criteria detailed in Section IV-C-16 have been met, and take appropriate action. OSHA requests comment on this issue.

Section IV.C.11 of the preamble to the proposed rule (53 FR 21135-21136) described the adverse effects associated with exposure to four substances included in the category of odorants. These substances are: Isopropyl ether, phenyl ether, propylene glycol monomethyl ether, and vinyl toluene. NIOSH (Ex. 8-47), the National Renderers Association (Ex. 3-11), the E.I. du Pont Company (Ex. 3-660), the Pharmaceutical Manufacturers Association (Ex. 3-1161), and the Los Alamos National Laboratory (Ex. 3-1095), among others, commented on this issue. According to representatives of the Los Alamos National Laboratory, odorants should not be considered as causing a material health impairment (Ex. 3-1095); John Beary, III, a physician speaking for the Pharmaceutical Manufacturers Association, is of the same opinion (Ex. 3-1161).

NIOSH described several important reasons for minimizing objectionable odors in the workplace.

> Odors emitted by industrial chemicals often play an important role in occupational safety and health. When odors can be detected before health effects occur, they may provide early warning of exposure. A number of chemicals have strong odors at concentrations which are otherwise minimally toxic. These odors may cause undue health concerns among exposed workers or may create safety hazards by distracting workers from their tasks. Strong odors in the workplace may also mask the presence of other, more toxic substances. Strong odors can produce irritation and/or nausea at high concentrations, although these effects may be reversible following cessation of exposure. Olfactory fatigue often occurs and should be considered a functional impairment that can result in increased worker exposure. Olfactory fatigue can reduce the wearer's ability to sense inadequate respirator performance of air-purifying respirators (Ex. 8-47, p. 41).

NIOSH thus concurs with OSHA that intolerable odors may have serious adverse effects in the workplace. And, although it is true that there is wide variation in individual responses to odor (i.e., in the ability to detect an odor), it is also true that one individual may respond to an odor with only mild discomfort, while another becomes overtly nauseated.

OSHA has carefully weighed all of the evidence in the record on the toxicological significance of exposures to odorant chemicals. The Agency finds that odor effects alone do not constitute material health impairment; however, OSHA notes that it is exceedingly rare for a substance only to cause odor effects. It is generally the case that odorant chemicals also cause toxic effects, such as sensory irritation or incipient central nervous system effects that manifest as headaches, nausea, vertigo, or diplopia. However, for the purposes of this rulemaking, OSHA concludes that odor alone does not constitute material health impairment.

23. Is there exposure information available which can be supplied which will refine OSHA's estimates of employee exposures and overexposures to the substances being regulated?

Although two other commenters (Exs. 3-744, 3-742) mentioned this proposal question, the only substantive comment received by OSHA in response specifically to this question came from NIOSH (Ex. 8-47), which noted that it was submitting to the docket all relevant Health Hazard Evaluations (HHEs). OSHA has reviewed these HHEs as they apply to the substances and sectors of interest and has used data from these documents in the Regulatory Impact Analysis that accompanies this final rule.

24. Is there information available which can be supplied to improve or supplement the engineering controls identified as necessary in order to reduce exposure levels? Is there additional cost data which can be supplied to refine the annual costs associated with these controls?

In response to this preamble question, the U.S. Borax and Chemical

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Corporation (Ex. 3-744) submitted data to show that, for the years 1979 through 1987, the average per-year cost for environmental control units at its Borax Operation was $37,609. According to this commenter, since a large plant would have many such units, the cost per plant for SIC 28 facilities presented by OSHA in the proposal (53 FR 21378) is "orders of magnitude" lower than the costs plants would actually experience. In response to U.S. Borax, OSHA points out that the costs presented in the proposal were average annual compliance costs for *all* large plants across *all* of SIC 28. Thus, it is likely that OSHA's costs may not exactly approximate those of any particular plant but will, in the aggregate, reflect those of the average plant in this sector. OSHA has received no cost data or information that calls these average compliance cost estimates into question.

In general, feasibility and cost data were directed toward individual substances rather than being submitted in response to this question. These data are discussed in detail in Section VII.

25. Under what conditions, involving which industrial processes, will respirators be needed during the start-up period, for maintenance operations, or where other controls are infeasible in order to protect employees at the proposed exposure levels? Are respirators currently being used under the conditions identified, or would they need to be purchased? Please describe the type of respirator currently in use or needed.

This question elicited responses from several commenters (Exs. 3-593, 3-741, 3-891, 3-1005 and 8-47). The Texaco Corporation (Ex. 3-593) identified several operations where respirators are required; these included field maintenance of process equipment in refinery and petrochemical plants, confined space operations, asbestos stripping, and equipment repair. The Synthetic Organic Chemical Manufacturing Association (SOCMA) (Ex. 3-891) noted that respirator use varies from job to job and that engineering controls are not always feasible. The Dow Chemical Company (Ex. 3-741) reported that respirators are currently being used in industry where infrequent tasks make the costs of engineering controls infeasible; examples of such operations are maintenance operations, emergency operations, and certain infrequently performed process operations. Dow had no information on the type or extent of current respirator use. NIOSH (Ex. 8-47) submitted data from a 1982 NIOSH-sponsored contractor report that shows that, in 1980, 19.1 percent of mining, manufacturing, and construction workers wore or had access to certified respirators. The same report showed that the market shares of self-contained breathing apparatus, single-use, and chemical cartridge respirators were approximately equal and ranged from 25 to 30 percent each (Ex. 8-47).

OSHA did not raise the issue of methods of compliance in this rulemaking. This question was asked to gather factual information. Section VII discusses those few areas identified where respirator use may be needed. (See also the Legal Analysis sector.)

26. As a result of simultaneously regulating many substances, what cost savings will be realized in purchasing and installing engineering controls? Are alternate engineering controls available to achieve the lower permissible exposure limits being proposed?

OSHA received no substantive responses to this question. Several participants, including NIOSH and the unions presented evidence on situations in which lower levels than those proposed could be achieved by means of engineering and work practice controls. These cases are discussed in Section VII of the preamble.

27. What is the current state of technology control and financing in firms which would need to comply with reduced exposure limits to wood dust?

No commenters provided substantive responses to this question. Much information was submitted on the issues alluded to in this question; however, this information was not submitted in response to this question but rather in relation to the technological and economic feasibility of achieving the proposed limits for wood dust. This information is discussed in Section VII.

In addition to these 27 specific questions, OSHA solicited comments on the appropriateness of considering 10-, 15-, and 20-minute NIOSH RELs as 15-minute STELs and on the appropriateness of adopting PELs having other durations (i.e., 30-, 60-, or 120-minute "ceilings"), such as those recommended by NIOSH (53 FR 21242).

Only the Kerr-McGee Corporation specifically addressed this question. Kerr-McGee (Ex. 3-623) was concerned that OSHA might, in the final rule, establish the NIOSH 30, 60-, or 120-minute ceilings as 15-minute STELs. OSHA agrees with Kerr-McGee that this approach would not be appropriate at this time without additional analysis. Where the NIOSH limit for a substance was for a duration of 30, 60, or 120 minutes, OSHA has generally maintained these intervals in the final rule. The final rule adopts 15-minute STELs in cases where NIOSH has recommended a 10-, 15-, or 20-minute limit.

VI. Health Effects Discussion and Determination of Final PEL

A. General Principles of Toxicology and Dose Response

Introduction

As long ago as the 16th century, people recognized that there is no such thing as an absolutely safe chemical. The Swiss physician Paracelsus, who lived from 1493 to 1541, said:

> All substances are poisons; there is none which is not a poison. The right dose differentiates a poison and a remedy.

On the other hand, methods have been devised to permit any chemical, no matter how poisonous, to be handled safely; this is done either by limiting the dose or controlling the exposure. However, before the necessary degree of control can be determined for a particular exposure or situation, the toxicity of the substance in question must be known. The paragraphs that follow describe the methods used by scientists to measure the relative toxicity of substances and to select exposure limits that will prevent exposed individuals from suffering adverse effects from such exposures. As this discussion demonstrates, methods of choosing exposure limits must, because of the lack or inadequacy of dose-response information for many chemicals, rely on experience in the use of these substances and on scientific and professional judgment.*

Chemicals range in inherent toxicity from those that are relatively harmless even after large doses have been administered to others that cause death if encountered even in small quantities. Toxicologists rank chemicals by categories that range from practically nontoxic (an adult human would have to consume a quart) to supertoxic (fewer than 7 drops would be lethal for most people).

In the occupational setting, it is the risk associated with a particular use of a chemical rather than its inherent toxicity that is important. *Risk* can be defined as the probability that a substance will produce harm under certain conditions of use. The converse of risk is *safety*, which is the probability that no harm will occur under specific circumstances.

* The material in this section derives principally from the following sources: Klaassen, Amdur, and Doull 1986; National Research Council 1988; Cohen 1986a, b; and Turdiff and Rodricks 1987.

The degree of hazard associated with exposure to a specific substance depends on the manner in which it is handled in a particular situation: A supertoxic chemical that is processed in a closed, isolated system may be less hazardous in actual use than a low-toxicity compound handled in an open batch process. Another factor affecting the ability of a chemical to elicit a toxic response is the susceptibility of the biological system or individual. For the relative degree of hazard to be known in a particular instance, this requires knowledge about the chemical agent, the exposure situation, and the exposed subject. In addition, the route of administration and the duration and frequency of exposure must be known.

Route of Exposure

There are four principal routes of exposure by which toxic substances can invade humans or animals. These are inhalation, ingestion, dermal absorption, and parenteral administation (i.e., administration through routes other than the intestinal canal). The route of administration of a toxin also affects the relative toxicity of the agent. For example, a chemical that can be detoxified in the liver will be less toxic if it is administered orally than if it is given systematically (i.e., inhaled). Studies that provide information about the relative toxicity of an agent via different routes of exposure can provide a considerable amount of information about the absorbability of the agent. For example, if exposure to a certain dose of a chemical via all routes of administration causes death within the same time period, it can be assumed that the substance in question is easily and rapidly absorbed. On the other hand, if the dermal dose of a chemical that is required to kill a subject is much higher than the dose required to produce the same effect when the chemical is ingested, one can deduce that the skin provides, to some degree, a barrier against that agent's toxicity. Other, less important, elements affecting the response to a toxic substance include the relative concentration of the substance, the volume of the vehicle used to administer the chemical, the chemical and physical properties of the vehicle, and the dose rate (i.e. the period of time over which the dose is administered).

Duration and Frequency of Exposure

Scientists conduct animal experiments that involve four different types of exposure: Acute, subacute, chronic, and subchronic. Acute exposures are limited to periods of less than 24 hours and can involve either single or repeated exposures within that period. Subacute exposures are repeated exposures that last for one month or less, while subchronic exposures have a duration of one to three months. When a research project having a chronic regimen is conducted, the test animals are dosed repeatedly for a period lasting more than three months. Animals exposed acutely can have both immediate and delayed-onset responses. Similarly, chronic exposures can cause immediate reactions as well as long-term effects.

The frequency of dosing also has an important influence on the magnitude of the toxic effect: A large single dose of an acute toxin will usually have more than three times the effect of one-third the dose given at three different times, and the same dose administered in 10 or 15 applications might have no effect whatsoever. The pattern of dosing is important because it is possible for some of the substance to be excreted between successive administrations or because the lesion caused by the toxin has a chance to be partially or completely repaired between applications. Thus a chronic effect is said to occur: (1) If a toxic sustance accumulates in the system of an exposed person or animal because the dose absorbed is greater than the body's ability to transform or eliminate the substance; (2) if it produces adverse effects that are not reversible; or (3) if it is administered in a manner that permits inadequate time for repair or recovery.

Variation in Response

Responses to toxic insults vary in a number of ways. For example, some toxicants have immediate effects, while others are associated with delayed symptom onset. The latency period for carcinogenic agents may be as long as 40 years for some types of cancer, and even some acute agents, such as some chemicals that have adverse ocular effects, may not cause overt symptoms until hours after exposure.

Another difference in type of response concerns the reversibility or irreversibility of the effect. Reversibility depends on the site of action as well as the magnitude of the insult. That is, some tissues of the body, such as the liver, have considerable ability to regenerate; others, like the kidney or central nervous system, do not.

The site of action associated with toxic substances also varies widely. Local effects are those lesions caused at the site of first contact between the agent and the organisms. Examples of localized effects are skin burns caused by contact with a caustic substance and site-of-contact tumors that develop at the locus of the injection of the carcinogen.

In contrast to localized effects, systemic effects involve the absorption and distribution of the toxic agent from the point of entry to a distant site; the toxic response is manifested at this distant point. An example of a systemic poison is mercury, which produces its toxic effect on the central nervous system. Often, the site of deposition for a chemical is not the organ system most affected by the toxin. For example, although lead is deposited and concentrated in the bone, it affects the central nervous system. Any sites that are adversely affected by the toxic effects, of exposure to a substance, whether they are sites of contact or distal sites, are called the target organs of toxicity.

In cases of systemic poisoning, the system most often affected is the central nervous system (CNS); it is common for the CNS to be involved even when another target, such as the liver, is the primary target organ of toxicity. In descending order of frequency, the systems or organs most often involved in cases of systemic poisoning are the central nervous system, the circulatory system, the blood and hematopoietic system, the visceral organs (liver, kidneys, lungs), and the skin.

Dose-Response

The relationship that associates the dose of a chemical with the effects it causes is called the dose-response relationship. A single data point relating a dose to a response is sufficient to establish a dose-response relationship. As additional data become available, it is possible to expand our understanding of the dose-response relationship to cover a range of doses or exposures. Dose-response is an important principle in toxicology, and an understanding of dose-response is important in establishing occupational or other exposure limits. Knowing how toxic substances act makes it easier to predict the potential effects of exposure. (It is, of course, generally true that lowering dose reduces response, and data are often available to demonstrate that lower doses reduce responses, at least on the grossly observable level. However, data showing that more subtle responses (e.g., those at the subcellular level) have been reduced are rarely available.)

To apply dose-response relationships, it is helpful if several types of data are available. First, it must be possible to relate a response to a particular chemical. Although basic data pointing toward causality may be available, it is

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often difficult to refine the dose-response relationship further. For example, epidemiological studies often identify an association between a disease and one or more causative agents. However, since information on the precise identity of the etiologic agent, the actual dose received, and the true site of the response is usually not available, it is often impossible to use data from epidemiological studies to establish a precise dose-response relation between a specific dose of a toxin and an effect.

The second condition to be met before dose-response can be established is that it must be possible to relate the response to the dose. It is relatively easy to determine that a large dose causes an obvious response. Refining the relationship, however, involves three other requirements: (1) That there be a receptor site; (2) that the response and the intensity of the response be related to the concentration of the toxin at the receptor site; and (3) that the concentration of the toxin at the site be related to the dose given.

The third principle underlying the concept of dose-response is that there must be a quantifiable means of measuring the toxicity of a substance and a method of expressing this measured toxicity. Although lethality in test animals is often used to measure toxicity, the best form of measurement would involve quantification of the sequence of molecular events occurring during the toxic response. In the absence of such endpoints, other good methods are available. For example, it is common to measure an effect believed to be related to the substance in question. The level of activity of an enzyme in the blood is often used as a measure of effect, e.g., serum glutamic-oxaloscetic transaminase (SGOT) levels are used to measure liver damage. Many different endpoints can be used to measure toxic effects, such as changes in muscle tone, heart rate, blood pressure, electrical activity of the brain, motor functioning, and behavior.

The most widely used endpoint, especially when a new substance is involved, is lethality in an animal test system. Lethality studies allow scientists to make comparative assessments of a chemical's toxicity as it relates to that of many other substances. Research of this type also permits the gathering of essential information on dose, duration, route of administration, site of action, and the target organ of toxicity.

Form of the Response

The classic form of dose-response is sigmoidal (Figure 1). This form characterizes the relationship between the amount of a toxin administered and the degree of response to that dose. The response is measured on the ordinate, and the dose is represented on the abscissa.

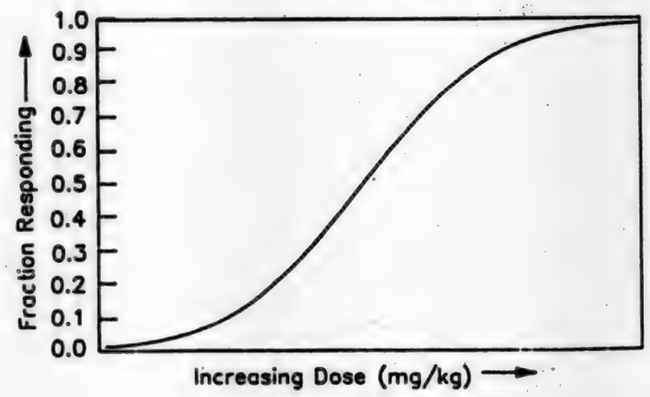
Dose-response can be thought of in two ways:

- As exposure increases, the proportion of the population that manifests the response increases (quantal response); and
- As exposure increases, the intensity of an individual's response increases (graded response).

A relatively flat dose-response curve means that a large change in dose is required before there is a significant change in response. A steep curve, on the other hand, means that a small change in dose will elicit a large increase in response. Although it is sometimes possible to generate a curve of the type shown in Figure 1, it is not necessary to do so to demonstrate that exposure at a given level is associated with a particular response. That is, it is not necessary to have sufficient data to define, in mathematical terms, the dose-response relationship to know that exposure at a given level is associated with adverse consequences.

Figure 1

Diagram of Dose-Response Relationship

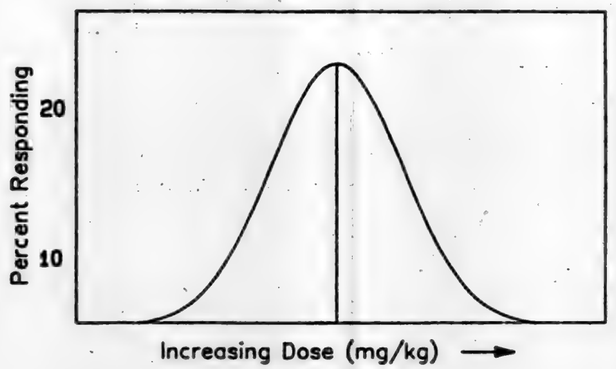


In the regulatory context, it is most common to express dose-response relations in terms of the percentage of the population responding. However, before this information can be evaluated, the endpoint being considered must be known. For every substance, there are several dose-response relationships, depending on endpoint: A substance that produces irritation at low doses may cause more severe symptoms or even death at high doses and in other conditions. For example, many substances that are mucosal irritants at low doses will produce pulmonary edema and nervous system effects at high doses.

Plotting the cumulative percentage of individuals responding against dose produces the typical sigmoid curve. Such a curve reflects the fact that at the lowest dose, zero percent of the population responds, while 100 percent of the population will respond at the highest dose. However, if the percentage responding is plotted against incremental rather than total dose, the curve produced is a normal distribution (Figure 2). This curve says that a relatively small percentage of the population will manifest the response at the lowest dose and that a similarly small percentage of the population will exhibit the effect only at the highest dose. What this normal distribution of response reflects is individual and species variation in exposed populations. A wide degree of variation occurs even in inbred, homogeneous laboratory animals, and such variability increases dramatically when a heterogeneous population, such as workers, is involved. Individuals responding at the left end of the curve shown in Figure 2 are hypersusceptible, while those at the right end could be termed resistant.

FIGURE 2

Diagram of Quantal Dose-Response Relationship



Because the relationship between dose and response is sigmoidal, response approaches zero as dose approaches zero. However, because of the mathematical form used to express this relationship, a true zero response can never be achieved. In the strictest sense, therefore, a true threshold dose level (i.e., the dose with which a zero response is associated) can never be established on the basis of experimental research. Instead, scientists attempt to define the minimum dose associated with a specific endpoint, which is customarily termed the "threshold" dose for that particular endpoint. However, unless a specific endpoint (such as respiratory irritation, cholinesterase inhibition, the development of a tumor, or death) is specified, the concept of a threshold is essentially meaningless. In fact, a separate threshold could be said to exist for each of these endpoints.

The extent to which an experimentally derived "threshold" actually reflects the true threshold for a substance (i.e., the level above which a response will occur and below which no response will occur) depends on several factors, such as the number of animals used to determine the experimental threshold, the number of dose levels tested, and the degree of variation represented in the test subjects. For example, to determine an LD_{50} (the lethal dose that will kill 50 percent of the animals tested) with a high degree of precision requires the use of a minimum of 50 test animals and five dose groups (10 animals in each group). Other factors that can influence the magnitude of the median lethal dose include the sources involved, the sex and age of the animals, the environmental condition prevailing during the test conditions, diet, the health status of the subjects being tested, and the subjects' past exposure to other toxic substances.

In toxicological research, the experimentally observed threshold dose is called the low-observed-effect level (LOEL) or the low-observed-adverse-effect level (LOAEL). Alternatively, the threshold may be expressed as the highest no-observed-effect level (NOEL), i.e., the highest dose administered and found not to produce a given response. Determination of an accurate NOEL requires both a careful interpretation of the toxicological data and the use of an adequate number of test animals. The National Academy of Sciences (1985) has concluded that the chance of finding a no-adverse-effect level (that is, of missing an adverse effect) at a given dose is statistically greater in experiments having a small number of animals than in studies involving a large number of animals. Thus, the degree of confidence one has that a NOEL actually represents a "safe" dose, rather than a research design artifact, increases with the number of animals tested. The greatest degree of confidence is associated with studies involving a large number of animals that were tested at several doses that were administered at close intervals.

In a recent publication (Tardiff and Rodricks 1987), David W. Gaylor of the National Center for Toxicological Research explained that experimentally derived thresholds represent statistical limitations in study design rather than biological characteristics:

> The existence of dose-response relationships might lead one to assume incorrectly the existence of threshold doses below which no toxic effects could occur. As dosage is decreased, the prevalence of an observable toxic effect * * * diminishes to zero. Eventually, a dosage is reached below which the experiment has essentially no resolving power to distinguish between the spontaneous background rate and small induced toxic effects * * *.
>
> If no toxic effects are detected at a specified dosage, this dosage is called the no-effect, or more correctly the no-observed-effect dosage. Because of the limitations of any given experiment, the no-observed-effect dosage is not a precise estimate of a true no-effect level. Lack of statistical significance is not equivalent to no toxic effect. It may or may not be, and further experimentation would be required to resolve this equivocal issue * * *. The no-observed-effect level is not a biological property, but, rather, a statistical property or operational threshold that is highly dependent on sample size.

The scientific issues surrounding the concept of no-observed-effect levels or experimentally derived thresholds have important implications for their use in establishing protective occupational exposure limits. Because the no-observed-effect level cannot represent the "true" threshold for an adverse effect, given the design of most toxicologic studies, regulators and others have used the concept of safety factors (also known as uncertainty factors) to aid them in setting permissible exposure limits; that is, the exposure limit is established at some interval below the no-observed-effect level to provide additional assurance that exposed populations are not likely to suffer harm.

The size of the interval between the permissible exposure limit and the no-

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observed-effect level depends on a professional judgment as to whether the no-observed-effect level is likely to represent a level that is not harmful to humans. Thus, if the available data include a NOEL derived from a well-conducted human study, a smaller safety factor might be used to establish an exposure limit than would be used if the data to be used to establish the limit consisted of a NOEL from an animal study; in the latter case, there is greater uncertainty regarding the relationship between the animal NOEL and human NOEL. Safety factors have also been used to recognize the fact that the human population is heterogeneous and that there may be a wide variation in individual responses to toxic substances (the wide range in the odor thresholds reported for some substances is a good illustration of individual variability in response).

The use of NOELs, LOAELs, and safety factors to develop permissible exposure limits is not a recent development:

> For more than half a century, evaluation of the safe use of chemicals has been focused mainly on the development of toxicity data and on the application of professional judgment to the ad hoc interpretation of such data to derive acceptable levels of exposure for humans. Generally, this practice has taken the form of identifying from studies in laboratory animals the no-observed-effect level and dividing it by a safety factor (usually 100 for NOELs derived from chronic studies) reflecting the uncertainties of relating data to humans under their conditions of exposure and the quality and appropriateness of the data base * * *.
>
> Safety factors are usually chosen prospectively to address the uncertainties of interspecies extrapolation. Although safety factors as small as 2 and as large as 2000 have been used * * * the safety factor of 100 is used most commonly, at least for NOELs derived from chronic toxicity studies, and incorporates adjustments for interspecies variability (usually 10) and intrahuman variability (usually 10) * * *. The resulting value is equivalent to a NOEL in humans (Tardiff and Rodricks 1987, pp. 397, 421.)

Tardiff and Rodricks caution, however, that the use of safety factors has been questioned because these factors "often create the impression that human population thresholds have been identified and that there is virtually no risk below that level of exposure" (Tardiff and Rodricks 1987, p. 421).

Although safety factors have traditionally been used to establish exposure limits for chronic or lifetime exposure situations, they have also been applied to establish limits for acute effects resulting from short-term exposure. The National Academy of Sciences' Committee on Toxicology has been using a safety-factor approach to establish emergency exposure guidance levels (EEGLs), which are exposure levels judged to be acceptable for military personnel performing tasks during emergency situations. An EEGL is not considered to be a safe exposure level for routine or normal operations, but these levels are considered acceptable when tasks must be performed to prevent greater risks (e.g., death or injury caused by fires or explosions). In developing EEGLs, safety factors are generally applied to account for uncertainties in the use of animal data and when extrapolating between different dose routes. The NAS also develops short-term public emergency exposure guidance levels (SPEGLs) to apply to the exposures of the general public to contaminants during airborne chemical releases; SPEGLs are generally set at a level of 0.1 to 0.5 times the EEGL (i.e., an additional safety factor of from 2 to 10) (*Criteria and Methods for Preparing Emergency Exposure Guidance Level (EEGL), Short-Term Public Emergency Guidance Level (SPEGL), and Continuous Exposure Guidance level (CEGL) Documents.* Washington, DC: National Academy Press, National Academy of Sciences 1986).

The use of the safety factor approach in establishing occupational exposure limits was addressed by many rulemaking participants (Exs. 3-744, 3-1095, 8-16, 8-47, 116, and 144; Tr. 1-221, Tr. 2-163 to 2-164). NIOSH (Ex. 8-47) stated that safety factors cannot be used to estimate human risk and are therefore not related to the magnitude or significance of a risk; instead, NIOSH believes that safety factors are intended to reflect uncertainty in the available data. This comment echoes the observation made by Tardiff and Rodricks, i.e., that safety factors do not necessarily identify a human population threshold. NIOSH (Ex. 8-47) also endorsed the use of safety factors as a "pragmatic method" of developing standards (except when a nonthreshold process, such as the induction of cancer, is the outcome of concern). NIOSH also believes that "standards based on a margin of safety * * * as well as standards derived from a case-by-case evaluation, [should] be periodically reviewed to determine what new information is available" (Ex. 8-47).

Dr. Marcus Key, Professor of Occupational Medicine at the University of Texas School of Public Health, also testified on the appropriateness of using safety factors to establish occupational exposure limits:

> We seldom, if ever, know with any precision where a significant risk level begins or ends; hence, the need for safety factors. Safety factors depend on several considerations. * * * mainly on toxicity and the nature of the health effects, but also on the availability of scientific evidence of effects at lower levels.
>
> Professional judgment must be relied on in selecting safety factors, with one to three orders of magnitude being commonly used for serious effects, and 50 percent, or [a] safety factor of 2, [being used] for acute, less harmful effects (Tr. 1-221).

Both Dr. Key (Tr. 1-221) and Dr. Ernest Mastromatteo, Chairman of the ACGIH TLV Committee (Tr. 2-163 to 2-164) testified that safety factors are frequently used by the ACGIH to develop recommended exposure limits.

Some commenters (Exs. 8-16, 116, and 144; Tr. 7-121) were of the opinion that OSHA should adopt a uniform system of assigning safety factors to establish permissible exposure limits. For example, the Workers' Institute for Safety and Health (WISH) (Ex. 116, p. 13) commented that OSHA should review the toxicology profiles prepared by the Agency for Toxic Substances and Disease Registry (ATSDR), in which Reference Doses (RfD) are computed. The RfD, as described by WISH, is "an estimate (with uncertainty spanning perhaps an order of magnitude) of the daily exposure of the human population to a potential hazard that is likely to be without risk of deleterious effects during a lifetime" (Ex. 116, p. 13). The RfD is derived by applying uncertainty factors to experimentally derived NOAELs in a consistent manner. The uncertainty factors used by ATSDR include factors of 10 to account for each of the following:

- Human variation in response;
- Extrapolation from animals to humans;
- Extrapolation of effects associated with lifetime exposure from less-than-lifetime studies; and
- Additional uncertainty in relying on a LOAEL rather than a NOAEL.

In addition, ATSDR applies a factor of from 1 to 10 to account for the overall quality of the scientific evidence.

EPA uses the same approach to develop RfDs for noncarcinogens; EPA's application of this approach is described in a concept paper presented by the EPA Reference Dose Work Group (Ex. 144, Appendix A). As explained by the Work Group:

> The RfD is useful as a reference point for gauging the potential effects of other doses. Usually, doses that are less than the RfD are not likely to be associated with any health risks, and are therefore less likely to be of regulatory concern * * * Nonetheless, a clear conclusion cannot be categorically drawn that all doses below the RfD are "acceptable" and that all doses in excess of the RfD are "unacceptable" (Ex. 144, Appendix A, p. A-10).

The EPA has been compiling dose-response data and information on RfDs for almost 2,000 chemicals in a database called the Integrated Risk Information System (IRIS). The system is described by Dr. Rebecca T. Zagraniski, Assistant Commissioner of the Division of Occupational and Environmental Health, New Jersey Department of Health (Exs. 144 and 144A). In her posthearing submission, Dr. Zagraniski presents an analysis in which EPA RfDs from the IRIS system are converted to Workday Ambient Air Concentrations (WACs) for 43 of the substances included in this rulemaking. These WACs were then compared to OSHA's proposed PELs for the same substances. After converting the RfDs to equivalent lifetime occupational exposure levels, Dr. Zagraniski found that all but three of the resulting WACs were lower than 1 mg/m^3 and that the WACs for noncarcinogens were generally 100 to 1,000 times lower than the PELs being proposed by OSHA in this rulemaking. Dr. Zagraniski commented on these findings as they relate to OSHA's proposal:

> The WACs are not recommended exposure limits because they do not take into account numerous significant considerations including feasibility, anecdotal reports of effects following human exposure, routes of exposure other than inhalation, and other critical information. Also, the WACs for non-carcinogens are based primarily on oral exposure studies. In some cases, there may be inhalation studies which are more appropriate for use in setting an occupational exposure guideline, but which were not discussed in IRIS due to their focus on the oral exposure route. In spite of these constraints, the WACs may be considered preliminary health-based guidelines which are useful as indicators that current PELs and TLVs may need reevaluation (Ex. 144A, p. 4).

In response to Dr. Zagraniski's comments, OSHA notes that the approach suggested by this commenter is new and was not supported by other participants. It is also inconsistent with the recommendation of most expert organizations in this field and would require extensive analysis by OSHA before its merit could be ascertained. Accordingly, OSHA finds this approach inappropriate for use in the present rulemaking.

In this rulemaking, OSHA has evaluated the efficacy of the final rule's limits on a case-by-case basis, although the initial evaluation presented in the NPRM relied heavily on analyses conducted by the ACGIH and NIOSH, the limits promulgated in the final rule are based on an expanded toxicologic assessment using information contained in the rulemaking record. OSHA believes that, at this time, this case-by-case assessment is the best way to establish new and revised limits for the numerous substances addressed in this rulemaking.

Types of Toxicological Evidence

The evidence available to scientists wishing to evaluate the toxicity of a substance can be derived from studies in laboratory animals, *in vitro* studies in cell or tissue systems, reports of clinical observations, studies of exposed human populations, or from intervention studies conducted with human volunteers. The preceding paragraphs have described animal studies (or "bioassays"). The following section discusses the two most common types of human evidence: Data derived from clinical observations and information from epidemiological studies.

Clinical observations. Much of the data on the toxic effects associated with human exposures have come from industrial accidents, fatal poisonings, or other such tragedies. This information is generally more useful in delineating broad categories of pathological effects than in refining a specific dose-response relationship, because the exposure levels causing the accident are known to be high but cannot be quantified with precision.

Epidemiological studies. Studies conducted by epidemiologists are designed to reveal the patterns of disease or mortality prevailing in certain groups of people (usually workers) exposed to a single toxin or to a group of substances. One of the advantages of epidemiological studies is that they involve humans and their responses to actual situations. The interpretation of the results of epidemiological studies is complicated by the inevitable presence of confounding variables that occur whenever human populations are involved. Ideally, the populations being studied (i.e., the study population and the control population) should be fully comparable with regard to every variable except the single characteristic under study. Because it is rarely possible to achieve this degree of comparability, statistical techniques are often used to attempt to adjust for this lack of comparability. In addition, if the measured effect is relatively large, it is unlikely that confounding factors will obscure the true picture.

Broadly speaking, epidemiological studies can have two possible outcomes: They can report an effect or they can report no effect; in the former case, the study is termed a positive study, and in the latter, a negative one. Within each of these categories, it is possible for the study to be correct (that is, to give a true-positive or true-negative result) or to be incorrect (that is, to give a false-positive or a false-negative result). A false-positive result reports that there is an increased risk when in fact there is not, and a false-negative study reports that there is no increased risk when in fact there is.

The probability that a study will detect a statistically significant effect if that effect is actually present is called the power of the study. As the power of a study increases, the likelihood of producing a false-negative error decreases. Power is dependent on two factors: The level of relative risk being evaluated and the number of cases of the effect (i.e., disease) that are expected in the population being studied. The number of expected cases depends both on the sample size and the expected disease frequency in the comparison population. For example, a study involving a small population and a common disease can have the same power as a study of a rare disease in a large population. Consequently, studies of larger samples have sufficient power to detect smaller increases in risk, and studies of smaller samples will be able only to detect large increases in relative risk.

Because epidemiological studies have limitations, it is essential that the power of such studies, particularly of negative studies, be examined to ensure that their sample sizes are adequate to detect the absence of increased risk with validity. When the power of a study is not adequate, negative studies cannot be said either to contradict or to support the conclusion that increased risk exists. Essentially, a negative epidemiologic study identifies a NOAEL, which, as discussed above, reflects the statistical limitations of a study more than the "true" population threshold for an effect. However, a study with a positive result may indicate a relationship if the excess risk is high, even if the study's sample size is small and the effects of some factors are not controlled for.

Quality of Evidence

Dose-response models have often been used in the quantitative assessment of the risks associated with exposures to carcinogenic substances. However, less scientific effort has been devoted to models to be used with non-carcinogenic substances. Mathematically precise methods to establish the true no-effect level or to define the dose-response curves have not been developed for most of the more

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than 400 substances involved in this rulemaking.

Most of the scientific work that has been done was designed to identify lowest observed effect or no-effect levels for a variety of acute effects. As described above, experts in industrial hygiene and occupational health have developed factors to be used to offset, at least to some extent, the insensitivity of NOELs and LOELs to such factors as subcellular effects, sensitive individuals, and chronic effects. It is possible to use these data, combined with professional judgment and OSHA's expertise and experience, to determine that significant risk exists at current levels of exposure and that a reduction in these levels will substantially reduce this risk of material impairment of health. OSHA is also confident that it is not attempting in this rulemaking to reduce exposures to insignificant levels. However, additional analysis may well reveal that the levels being established in the final rule can be refined further in the future.

B. Historical Development of Occupational Exposure Limits Early Limits

Until the development of occupational health standards, the occurrence of adverse health effects resulting from exposures to hazardous substances or conditions in the workplace could only be determined *ex post facto*—after impairment had already occurred to the health and welfare of exposed employees. In her 1910 studies of lead poisoning, Dr. Alice Hamilton was forced to rely on "personal observations of working conditions and the illness and deaths of workers to demonstrate the existence of harmful exposures" (Paull 1984/Ex. 1–256). The concept of occupational exposure limits thus represents a dramatic breakthrough in the battle against occupational disease and remains "one of the most useful and indispensable tools yet devised for safeguarding the health and well-being of industrial workers" (Thomas 1979/Ex. 1–90).

Occupational exposure limits are air quality values that apply in workplaces, and they are derived by studying the correlation between the amount of a toxic substance absorbed by the body and its effects on health. Within the context of occupational exposure, knowledge of this relationship permits quantification of the etiology "of a large number of occupational health impairments, [evaluation of] the risk of such impairments and, if necessary, [consideration of] the effectiveness of preventive measures" (Parmeggiani 1973/Ex. 1–229). More specifically, an understanding of the levels at which disease or other health effects occur can be used to establish limits of occupational exposure below which health hazards are unlikely to occur in most workers.

The historical development of occupational exposure limits began with the published reports of a German scientist whose investigations in 1683 into the effects on experimental animals (and on himself) of carbon monoxide in known air concentrations caused him to conclude that "the boundary of injurious action of carbon monoxide lies at a concentration in all probability of 500 parts per million, but certainly [not less than] 200 parts per million" (Cook 1967/Ex. 1–187). Shortly after the appearance of this first documented dose-response value, another German researcher, K. N. Lehmann, published a series of reports on a number of chemical substances under the title "Experimental Studies on the Effect of Technically and Hygienically Important Gases and Vapors on the Organism." This series culminated in 1936 with a comprehensive paper on chlorinated hydrocarbons, published as Volume 116 of *Archiv für Hygiene*.

In 1912, Rudolf Kobert published a table of exposure limits, based on animal studies, for 20 compounds. One of the first tables of hazardous air concentrations to originate in the United States was a technical paper published in 1921 by the U.S. Bureau of Mines. The 33 substances included in this table were those frequently encountered in the workplace. In addition to limits based on acute toxic effects, this table provided some information on the least detectable odor concentration and the lowest airborne concentration required to cause irritation (Paull 1984/Ex. 1–235; Cook 1967/Ex. 1–167).

Throughout the 1920s and 1930s, data became available that correlated concentrations of harmful substances with observed effects on worker health for such materials as lead and mercury compounds, benzene, and granite dusts. These early occupational health studies, which were based on animal experiments and on findings in exposed workers, provided the kind of data needed to link human exposures "to concentrations that were capable of producing not only acute, but chronic health effects" (Paull 1984/Ex. 1–255).

After 1935, the emphasis of researchers had shifted, for the most part, from the reporting of a series of values for a range of acute effects to results that yielded a single limit based on studies of repeated exposures. Over the years, a sizable amount of data about the levels of exposure that would not produce injurious effects had been amassed for a considerable number of substances. "By the early 1940s, control of the occupational environment to prevent the harmful absorption of toxic materials was becoming an accepted principle, and the practical problem of defining what was 'harmful' was beginning to be met by employing maximum allowable concentrations" (Paull 1984/Ex. 1–255). In 1943, Sterner (Ex. 1–606) explained the meaning of the term maximum allowable concentrations as "the upper limit of concentration of an atmospheric contaminant which will not cause injury to an individual exposed continuously during his working day and for indefinite periods of time" (Paull 1984/Ex. 1–255).

The first lists of maximum allowable concentrations of airborne toxic substances were issued between 1933 and 1938. The Union of Soviet Socialist Republics (U.S.S.R.) was the first country to make occupational exposure limits a statutory obligation; in 1933 it published a list that included 14 substances (although health standards for some air pollutants apparently were used in the Soviet Union during the 1920s). The first American list was published four years later by the State of Massachusetts, and in 1938 Germany issued occupational health standards for a number of organic solvents (Holmberg and Winell 1977/Ex. 1–141). Additionally, the United States "imposed limited occupational safety and health requirements on certain contractors with the Federal government" when the Walsh-Healey Act was passed in 1936 (Mintz 1984/Ex. 1–840).

Standards Developed by Professional Organizations

During the 1940s, American organizations led in the development of occupational health standards, beginning with the American Standards Association (now the American National Standards Institute, or ANSI) list of "maximum acceptable concentrations" (MACs), which appeared in 1941. This list represented a consensus of opinion by the ASA and a number of industrial hygienists who had formed the American Conference of Governmental Industrial Hygienists (ACGIH) in 1938 (Baetjer 1980/Ex. 1–223). Originally conceived of as a time-weighted concentration to be maintained as an average over the working shift, the MAC was redefined in 1957 to mean an upper level (ceiling level) that should never be exceeded (Turner 1976/Ex. 1–79).

An important contribution to occupational health standard-setting was made in 1945 by Warren Cook (Ex. 1–726), who published a list of maximum allowable concentrations for 132 industrial atmospheric contaminants. These limits had been developed by six states, the U.S. Public Health Service, and the American Standards Association, and included Cook's own list of "accepted or tentative values" based on industrial experience, animal experimentation, human sensory response, or a combination of these factors. This table was followed by

> Documentation supported by 107 specific references, indicating the basis and reliability of each value. Cook was the first investigator to codify all of the available data on MAC's and present it in one publication. His list of recommended values was incorporated, practically without changes, by the ACGIH in establishing the TLVs. In support of Cook's inferences, it should be noted that 50 of the * * * values that he recommended in 1945 were subsequently adopted as federal standards, and are still in use today (Paull 1984/Ex. 1–255).

The American Conference of Governmental Industrial Hygienists Subcommittee on Threshold Limits presented its second report at the Eighth Annual Meeting of the ACGIH in 1946. The report included values for 131 gases, vapors, dusts, fumes, mists, and 13 mineral dusts "compiled from the list reported by this subcommittee * * * in 1942, from the list published by Warren Cook in * * * 1945, and from published values of the Z–37 Committee of the American Standards Association" (Cook 1967/Ex. 1–67). The Committee's report noted that:

> Considerable difficulty attends the fixing of satisfactory values for maximal allowable concentrations of chemicals in respirable atmospheres because of the lack of a uniform definition of the maximum allowable concentration concept. One concept is that the M.A.C. value should represent as accurately as possible that concentration at which a worker exposed for a sufficient period of time will just escape physiological or organic injury and occupational disease.
>
> A second concept is that the M.A.C. should represent some fraction of that concentration which will injure the worker in order to allow a margin of safety in the design of protective equipment and guard against possible synergistic effects in the case of multiple exposures. A third concept is that the M.A.C. should perform the functions of the former concepts and in addition provide a work environment free of objectionable but non-injurious concentrations of smokes, dusts, irritants and odors. Obviously all of these concepts cannot be fulfilled with the establishment of a single value. M.A.C. values in use at the present time represent examples of all of these concepts. The committee feels that the establishment of dual lists or a single definition is not possible at the present time (ACGIH 1946).

The report concluded by stressing that the 1946 list of M.A.C. values was presented "with the definite understanding that it be subject to annual revision" (ACGIH 1946).

Papers presented at both the Ninth International Congress on Industrial Medicine in London (1948) and at the Fifteenth International Congress of Occupational Health in Vienna (1966) also dealt with maximum acceptable concentrations. The first of these proposed that zones of toxicity be set up to facilitate an understanding of the relative hazards of substances, "since the boundaries of MAC values were not sharp lines of demarcation" (Cook 1967/Ex. 1–67). At the 1966 meeting, discussion took place on the advantages of the concept of a "peak level" of exposure—an extension of the "ceiling level" notion inherent in the definition of a MAC since 1957. A "peak level" was defined as one "that can be applied to certain substances for brief designated periods and for a strictly limited number of times during the work shift, with a designated time interval between peaks. The 'peak' concept places a limit on the intermittent higher exposures that occur in many industrial operations. The time-weighted average exposure limit is of course to be observed [even when a peak has also been assigned to a substance]" (Cook 1967/Ex. 1–67).

Terminology and definitions throughout this early period were ambiguous and imprecise, reflecting uncertainty as to exactly what needed to be and could be done in the realm of occupational health standard setting. Initially, the ACGIH designated its recommended limits as "maximum allowable concentrations," although this term was often used interchangeably with "threshold limit values." Confusion about the meaning, interpretation, and relative significance of the terms being employed during this embryonic period was common. After 1953, the ACGIH defined the concept of threshold limit values in the preface to its annual published list of occupational health standards as "maximum average atmospheric concentrations * * * for an eight-hour day." This definition of the TLVs as average concentrations differed from the general understanding of the original term "maximum allowable concentrations," which were essentially ceiling values (Stokinger 1962/Ex. 1–998).

Documentation for the 238 substances included in the TLV list for 1956 was provided by Smyth (Ex. 1–759) in a separate paper in which the author:

> Recommended that the TLV's include references to the underlying data, and that the concepts represented by the values be restated in more realistic toxicological terms. In his analysis of the TLVs, he [Smyth] concluded that nine categories of objectionable action were guarded against: Chronic toxicity, acute toxicity, narcosis, irritation, asphyxiation, fume fever, eye pigmentation, allergic response, and cancer (Paull 1984/Ex. 1–255).

At about the same time, Stokinger stated that, in his opinion, the Threshold Limits Committee had avoided grappling with the issue of developing a method for establishing limits for industrial carcinogens and noted that, with the exception of nickel carbonyl, limits had not been assigned for potential carcinogens (Paull 1984/Ex. 1–255). In 1962, however, the TLV Committee included three carcinogens as additions to the TLV list, although these were listed separately in an appendix and did not have assigned TLVs.

Despite the fact that the ACGIH had stressed early on that TLVs were intended as guides and not as rigidly enforceable limits, the American Standards Association's MAC values (or, where none was available, the TLV) were included as mandatory limits in the Safety and Health Standards for Federal Supply Contracts, which were published in 1960 under the Walsh-Healey Act. Following this action the ACGIH issued a statement on the definitions and interpretations of TLVs and MACs (Stokinger 1962/Ex. 1–998). At the same time, the ACGIH announced the production of the first edition of the *Documentation for Threshold Limit Values* (ACGIH 1962); this was followed by another paper in which the work and intentions of the Threshold Limits Committee were reviewed. Turner states that:

> [a]t this time the concept of ceiling values and excursion factors around the time-weighted average values was introduced in order to reduce conflict or confusion with the "maximal" values in the American [ANSI] Standards. A "C" (ceiling value) listing was to be given to those fast-acting substances thought likely to be injurious if the concentration exceeded the limit value by more than a designated factor for a relatively short period (about 15 min.). The factor varied between 3 and 1.25, depending inversely upon the magnitude of the TLV. A corollary was that the factor would also indicate the limit of permissive excursion of the concentration above the TLV for a substance not given a "C" listing, always provided that the time-weighted average concentration did not exceed the TLV. This rule of thumb approach to limiting exposure is no doubt appropriate to certain substances when they are used routinely throughout the working day. It seems to have little relevance

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in other instances where exposure is irregular or where the basis for fixing the TLV is on grounds other than toxicity (Turner 1976/Ex. 1–79).

Several commenters (Tr. pp. 6–30 to 6–31, 7–119, 8–139 to 8–141, and 8–167) were of the opinion that the ACGIH's procedures for establishing TLVs were not open to comment and that its reasons for selecting certain TLVs were not clear. Dr. Ernest Mastromatteo, Chairman of the ACGIH's TLV Committee, explained the organization's limit-setting process at the hearing (Tr. pp. 2–113 to 2–126). He stated that the Committee's minutes have recently been made public and explained that the committee often invited industry or union consultants to help the committee in its work on the TLVs (however, these consultants do not vote on the recommended limits). In addition, Dr. Mastromatteo described the ACGIH's process of placing new or revised limits on an "Intended" list for a period of two years, during which time comments on the proposed limits are invited, and considered.

Permissible Exposure Limits in the Era of OSHA

The enactment of the Occupational Safety and Health Act of 1970 marked the first "comprehensive and serious attempt * * * to protect the health and safety of American workers" (Mintz 1984/Ex. 1–840); it also greatly extended the use of MACs and TLVs by authorizing the newly established Occupational Safety and Health Administration (OSHA) to adopt as its own standards "national consensus standards" and established federal standards (29 U.S.C. 655 (a)). Mintz notes that "in addition to the safety standards adopted under section 6(a), OSHA also adopted permissible exposure limits for approximately 400 toxic substances. These [start-up] health standards, now appearing in 29 CFR 1910.1000 * * * were derived from both national consensus and established federal standards. The national consensus standards had been issued by ANSI, while the established federal standards had been adopted under the Walsh-Healey Act from the TLVs * * * recommended by the * * * ACGIH" (Mintz 1984/Ex. 1–840).

Since OSHA's large-scale adoption of the ANSI consensus standards and the 1968 ACGIH TLVs, the Agency has promulgated standards under section 6(b) of the OSH Act to regulate the industrial use of 24 substances, most of which have been identified as occupational carcinogens, but the ANSI and ACGIH start-up standards continue to comprise the major part of the Agency's occupational health and safety program.

In the interval since the establishment of OSHA and the adoption of the ACGIH and ANSI limits by the Agency, the ACGIH has continued to revise, update, and document the recommended limits that appear in its annual list of TLVs. Since 1968, annual revisions have been made to these limits by the ACGIH. During this time, the TLVs have been "accepted on an international basis as the best available guides for providing healthful occupational environments, and at least 18 countries, including the United States, have either adopted them as legal standards or as guides to legal action, thus verifying their efficacy in accomplishing this purpose" (Paull 1984/Ex. 1–255).

The action OSHA takes today initiates the process of updating the Agency's Z-table permissible exposure limits. That these limits were seriously out of date is attested to by the fact that the ACGIH has found it necessary to revise or add nearly 400 limits to its list in the 20 years since the limits that were later adopted by OSHA were initially published. Recognition that OSHA's Z-table limits need updating to reflect recent developments in toxicology and new data on the health effects associated with exposure to these substances is widespread throughout industry: For example, OSHA's Hazard Communication standard (29 CFR 1910.1200) requires organizations that develop Material Safety Data Sheets (MSDSs) to include on these MSDSs the ACGIH's current TLV values as well as OSHA's limits.

The following section describes the methodology used by OSHA in selecting the limits it is promulgating today. The Agency believes that promulgation of these limits will address a broad range of significant risks now prevalent in industry. As many industrial hygienists and occupational safety and health professionals have noted, the use of permissible exposure limits continues to be the single most efficacious way of protecting the health, functional capacity, and well-being of the American worker.

C. Description of the Substances For Which Limits Are Being Established

In this rulemaking, OSHA considered revising 428 substances, and the final rule is revising existing or adding new limits for several hundred toxic substances currently being manufactured, used, or handled in workplaces throughout general industry. This section of the preamble identifies the PELs being established, describes the available toxicological data, and explains the Agency's rationale for selecting the final permissible exposure limits for these substances.

The universe of substances included in this rulemaking is bounded by the substances for which the American Conference of Governmental Industrial Hygienists (ACGIH) has established a Threshold Limit Value (TLV) for exposures in the work environment. That is, OSHA is not at this time establishing exposure limits for any hazardous substance that is not included in the ACGIH's 1987–88 List of TLVs. In addition, where the limit included in the current ACGIH list was identical to OSHA's existing Z-table limit for the same substance, OSHA did not consider revising its existing limit.

Although new limits are not being established for chemicals excluded from the ACGIH's 1987–88 list, OSHA has not limited its initial consideration of appropriate limits to those levels established by the ACGIH. The Agency has also carefully evaluated the exposure limits recommended by the National Institute for Occupational Safety and Health (NIOSH), OSHA's sister agency. In instances where both NIOSH and the ACGIH have recommended substantially different limits for the same substance, OSHA has thoroughly analyzed the evidence presented by each organization and has made its own judgment of the appropriate level at which to establish the PEL. For all substances addressed in this rulemaking, OSHA has also evaluated the extensive record evidence. The limits being established today thus represent, in the Agency's professional judgment, those levels found to be most consistent with the best available toxicological data, OSHA's mandate, and the case law that has subsequently developed to interpret that mandate. (For a discussion of the relevant legislative and judicial principles, see the sections of this preamble entitled Pertinent Legal Authority, History and Need for Revision of the PELs, and Approach).

For ease of analysis and presentation, the substances included in the scope of this rulemaking have been grouped into 18 separate sub-sections. In general, these groupings reflect the primary basis underlying the ACGIH or NIOSH recommended limits for these substances. In addition, three additional sections cover substances for which the ACGIH has increased its limits, substances for which OSHA is adding short-term limits, and those for which the Agency is adding skin notations.

The following sections are included:

1. Substances for which Limits Are Based on Avoidance of Neuropathic Effects.
2. Substances for which Limits Are Based on Avoidance of Narcotic Effects.
3. Substances for which Limits Are Based on Avoidance of Sensory Irritation.
4. Substances for Which Limits Are Based on Avoidance of Liver or Kidney Effects.
5. Substances for Which Limits Are Based on Avoidance of Ocular Effects.
6. Substances for Which Limits Are Based on Avoidance of Respiratory Effects.
7. Substances for Which Limits Are Based on Avoidance of Cardiovascular Effects.
8. Substances for Which Limits Are Based on Avoidance of Systemic Toxicity.
9. Substances for Which Limits Are Based on Observed-No-Adverse-Effect Levels.
10. Substances for Which Limits Are Based on Avoidance of Physical Irritation and Other Effects.
11. Substances for Which Limits Are Based on Avoidance of Odor Effects.
12. Substances for Which Limits Are Based on Analogy to Related Substances.
13. Substances for Which Limits Are Based on Avoidance of Biochemical/Metabolic Effects.
14. Substances for Which Limits Are Based on Avoidance of Sensitization Effects.
15. Substances for Which Limits Are Based on Avoidance of Cancer.
16. Substances for Which Current ACGIH TLVs Are Less Stringent than Former OSHA PELs.
17. Substances for Which OSHA is Establishing Short-Term Exposure Limits.
18. Substances for Which OSHA is Adding Skin Notations.

A list of the references that OSHA relied on in evaluating the toxicological evidence pertaining to these chemicals appears in Section VI–D.

1. Substances for Which Limits Are Based on Avoidance of Neuropathic Effects

Introduction

Many industrial chemicals have been shown to cause severe neurological effects in exposed workers, and in many cases these effects are irreversible. Limits have been set on the basis of avoidance of neuropathic effects for 20 substances. Table C1–1 lists the former, proposed, and final rule limits, CAS number, and OSHA HS number for each of these substances. The table shows time-weighted averages (TWAs), ceiling limits, and short-term exposure limits (STELs). For this group of 20 substances, OSHA is lowering its former TWA–PEL for three substances; adding a STEL to a former or a revised TWA for four substances; changing a ceiling to a TWA or a TWA to a ceiling for four substances; establishing permissible exposure limits for seven substances not formerly regulated by OSHA; retaining an existing TWA but changing its accompanying ceiling to a STEL for one substance; and lowering the former TWA and changing its accompanying ceiling to a STEL for one substance.

Description of the Health Effects

The human nervous system comprises the central nervous system (CNS) and peripheral nervous system (PNS). The CNS is made up of the brain and spinal cord, while the PNS consists of a network throughout the body of nerves that communicate with the CNS via connections to the spinal cord. The brain and spinal cord are bathed in cerebrospinal fluid, which supplies nutrients to the CNS and also acts as a barrier against some foreign substances. This barrier protects the central nervous system. In general, fat-soluble substances readily diffuse across this barrier and water soluble substances do not.

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TABLE C1-1. Substances for Which Limits Are Based on Avoidance of Neuropathic Effects

H.S. Number/ Chemical Name	CAS No.	Former PEL	Proposed PEL	Final Rule PEL*
1051 n-Butyl alcohol	71-36-3	100 ppm TWA	50 ppm Ceiling, Skin	50 ppm Ceiling, Skin
1078 Chlorinated camphene	8001-35-2	0.5 mg/m^3 TWA, Skin	0.5 mg/m^3 TWA 1 mg/m^3 STEL, Skin	0.5 mg/m^3 TWA 1 mg/m^3 STEL, Skin
1114 Decaborane	17702-41-9	0.05 ppm TWA, Skin	0.05 ppm TWA, Skin 0.15 ppm STEL	0.05 ppm TWA, Skin 0.15 ppm STEL
1116 Di-sec-octyl-phthalate	117-81-7	5 mg/m^3 TWA	5 mg/m^3 TWA 10 mg/m^3 STEL	5 mg/m^3 TWA 10 mg/m^3 STEL
1123 Dichloroacetylene	7572-29-4	—	0.1 ppm Ceiling	0.1 ppm Ceiling
1149 Dipropylene glycol methyl ether	34590-94-8	100 ppm TWA, Skin	100 ppm TWA, Skin 150 ppm STEL	100 ppm TWA, Skin 150 ppm STEL
1200 n-Hexane	110-54-3	500 ppm TWA	50 ppm TWA	50 ppm TWA
1202 2-Hexanone	591-78-6	100 ppm TWA	5 ppm TWA	5 ppm TWA
1216 Iron pentacarbonyl (as Fe)	13463-40-6	—	0.1 ppm TWA 0.2 ppm STEL	0.1 ppm TWA 0.2 ppm STLL
1236A Manganese, fume (as Mn)	7439-96-5	5 mg/m^3 Ceiling	1 mg/m^3 TWA 3 mg/m^3 STEL	1 mg/m^3 TWA 3 mg/m^3 STEL

TABLE C1-1. Substances for Which Limits Are Based on Avoidance of Neuropathic Effects (continued)

H.S. Number/ Chemical Name	CAS No.	Former PEL	Proposed PEL	Final Rule PEL*
1237 Manganese cyclopentadienyl tricarbonyl (as Mn)	12079-65-1	—	0.1 mg/m^3 TWA, Skin	0.1 mg/m^3 TWA, Skin
1238 Manganese tetroxide (as Mn)	1317-35-7	—	1 mg/m^3 TWA	1 mg/m^3 TWA
1240 Mercury (aryl and inorganic compounds) (as Hg)	7439-97-6	0.1 mg/m^3 TWA	0.1 mg/m^3 Ceiling	0.1 mg/m^3 Ceiling, Skin
1241 Mercury, vapor (as Hg)	7439-97-6	0.1 mg/m^3 TWA	0.05 mg/m^3 TWA, Skin	0.05 mg/m^3 TWA, Skin
1242 Mercury, (organo) alkyl compounds (as Hg)	7439-97-6	0.01 mg/m^3 TWA 0.04 mg/m^3 Ceiling	0.01 mg/m^3 TWA 0.03 mg/m^3 STEL, Skin	0.01 mg/m^3 TWA 0.03 mg/m^3 STEL, Skin
1251 Methylacrylonitrile	126-98-7	—	1 ppm TWA, Skin	1 ppm TWA, Skin
1253 Methyl bromide	74-83-9	20 ppm Ceiling, Skin	5 ppm TWA, Skin	5 ppm TWA, Skin
1304 Pentaborane	19624-22-7	0.005 ppm TWA	0.005 ppm TWA 0.015 ppm STEL	0.005 ppm TWA 0.015 ppm STEL

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TABLE C1-1. Substances for Which Limits Are Based on Avoidance of Neuropathic Effects (continued)

H.S. Number/ Chemical Name	CAS No.	Former PEL	Proposed PEL	Final Rule PEL*
1316 Phenyl mercaptan	108-98-5	—	0.5 ppm TWA	0.5 ppm TWA
1342 1,2-Propylene glycol dinitrate	6423-43-4	—	0.05 ppm TWA, Skin	0.05 ppm TWA

* OSHA's TWA limits are for 8-hour exposures; its STELs are for 15 minutes unless otherwise specified; and its ceilings are peaks not to be exceeded for any period of time.

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Chemicals that affect the central nervous system may manifest their toxic effects peripherally. An example of this is the tremor associated with elemental and organic mercury poisoning. Exposure to some chemicals (for example, n-hexane) is associated with axonal degeneration of the nerves in both the central and peripheral nervous systems. Baker (1983/ Ex. 1-230) refers to this dual-system effect as central-peripheral distal axonopathy.

Nervous system toxicants can affect motor function, sensory function, or integrative processes, and they can also cause changes in the behavior of exposed persons. Substances that cause demyelination or neuronal damage can produce motor dysfunction that is expressed as muscular weakness or unsteadiness of gait, while exposures to chemicals that are associated with loss of sensory function may result in alterations in touch, pain, or temperature sensation or damage to sight or hearing. Other neuropathic chemicals affect the way in which information is processed in the brain and can interfere with learning and memory. All of the health effects described above constitute material impairments of health within the meaning of the Act.

Although mature neurons cannot divide and be replaced, the nervous system has considerable ability to restore function lost as a result of exposure to toxic chemicals. This capability to restore function even after neurons have been killed is achieved by two mechanisms: Plasticity of organization and redundancy of function. That is, when some neurons die, other cells that perform the same function may be able to maintain an adequate level of functioning, or other neurons may be able to "learn" how to perform the lost function. However, even when one of these mechanisms comes into play to compensate for neuronal damage, the overall reserve capacity of the nervous system will have been diminished. The loss of this reserve could be critical in a situation in which additional demands are placed on the nervous system. Thus, even so-called reversible neuropathic effects should be seen as toxic effects causing alterations in and material impairment of the normal functioning of the nervous system.

The neurological effects potentially associated with chemical exposures are numerous, and it is not always easy to identify the precise target site. However, recent medical advances have made tests available that can detect neurological damage that was not detectable several years ago. For example, electrophysiological methods have been developed to measure damage to the visual pathway caused by such exposures. Because of the variation in individual responses to chemical exposures, exposure limits should be set with a view toward this range of susceptibility and the avoidance of any neuropathic effects.

Peripheral Nervous System Effects

The pathological mechanisms associated with peripheral neuropathies result from segmental demyelination or axonal degeneration. Segmental demyelination destroys the myelin sheath but leaves the axon intact; this causes a slowing in nerve conduction velocity. Muscle weakness is often the first sign of such segmental demyelination, and this effect can progress to a decline in motor function or paralysis. Although remyelination may occur within weeks after injury, even a temporary loss in motor or sensory function places the affected worker or others at risk of injury.

Axonal degeneration is a more serious effect in that recovery is often slow or incomplete. It causes demyelination secondary to the degeneration of the distal portion of the nerve. This effect occurs when a chemical interferes with the physiologic dynamics of the nerve, e.g., when it decreases the transport of nutrients to the nerve. The axon will degenerate (die back) sufficiently to accommodate the cell's capacity to supply it with nutrients. Axonal degeneration can also occur as a result of biochemical or metabolic derangement of the central nervous system. Alkyl mercury and elemental mercury are examples of chemicals causing this type of effect (Cavanaugh 1977/Ex. 1-202).

Central Nevous System Effects

The mechanism of action of central nervous system toxins is not well understood but is believed to be associated with neurochemical alteration in the brain. Seizures, Parkinsonism, intellectual impairment, narcosis, dementia, cranial neuropathy, and visual disturbances are all examples of effects that can occur after overexposures to neuropathic chemicals. The more serious CNS effects, such as Parkinsonism, dementia, intellectural impairment, and cranial neuropathy, are generally irreversible (Baker 1983/Ex. 1-230). Before these effects are manifested, subtle changes in behavior may occur; if these subtle signs are interpreted correctly, exposure can be stopped before irreversible damage occurs.

Dose-Response Relationships and Neuropathic Effects

The development of chemically induced neurological effects is believed to follow a dose-response pattern. At an exposure intensity or duration below the no-effect level, detectable effects are unlikely to be evident. As exposure intensity/duration increases to and beyond this level, the toxin begins to interfere with the normal cellular processes of the neurological system. At this early stage, transient signs and symptoms may appear. Overt effects become more severe as exposure continues and finally progress to serious loss of neurological function and possible permanent damage to neural tissue. Increases in our ability to detect neurological changes at lower levels of exposure have shown that neurobehavioral changes or impairment may occur at levels previously thought to be innocuous. These early effects can be important indicators of potential functional impairment at exposure levels below those that produce either transient or permanent damage. Heavy metals, solvent, and pesticides are examples of chemicals that can cause symptoms that include nausea, sensory and motor function impairments, depression, sleep disturbances, cognitive impairment, and sexual dysfunction. Limits for substances in this group are generally designed to maintain worker exposures below the level associated with such symptoms. This approach ensures that employees will not be likely to suffer these material impairments of health and provides a margin of safety against the risk of more severe or permanent neurological impairment.

The following discussions describe the record evidence and OSHA's findings for all of the substances in this group and illustrate the material impairments of health faced by workers exposed to these toxicants.

n-BUTYL ALCOHOL

CAS: 71-36-3; Chemical Formula: $CH_3CH_2CH_2CH_2OH$
H.S. No. 1051

OSHA's former PEL for n-butyl-alcohol was a 100-ppm 8-hour TWA: the ACGIH limit is a 50-ppm ceiling, with a skin notation. The proposed and final rule PEL is a 50-ppm ceiling, with a skin notation. NIOSH (Ex. 8-47, Table N1) concurs that these limits are appropriate. n-Butyl alcohol is a colorless, highly refractive liquid with a mild vinous odor that has long been known to cause irritation of the eyes and headaches in occupational settings.

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Systemic effects in the form of vestibular and auditory nerve injuries have been reported in workers in France and Mexico (Seitz 1972 and Velasquez 1984, both as cited in ACGIH 1986/Ex. 1–3, p. 76; Velasquez, Escobar, and Almaraz 1989/Ex. 1–1174). Contact dermatitis of the hands may occur due to the defatting action of liquid n-butyl alcohol, and toxic amounts can be absorbed through the skin. Based on data describing the rate of n-butyl alcohol uptake through the skin of dogs, DiVincenzo and Hamilton (1979, as cited in *Patty's Industrial Hygiene and Toxicology*, 3rd rev. ed., Vol. 2C, pp. 4571–78, Clayton and Clayton 1982) suggested that direct contact of human hands with n-butyl alcohol for one hour results in an absorbed dose that is four times that resulting from inhalation of 50 ppm for one hour.

The former OSHA limit of 100 ppm (TWA) was based on the studies of Tabershaw, Fahy, and Skinner (1944, as cited in ACGIH 1986/Ex. 1–3, p. 76) and of Smyth (1956/Ex. 1–759). These studies indicated that workers experienced no narcotic or systemic effects at levels lower than 100 ppm. However, irritation has been reported in humans exposed to 24 ppm; this irritation became uncomfortable and was followed by headaches at 50 ppm (Nelson, Enge, Ross et al. 1943/Ex. 1–60).

More recent data reported by Seitz (1972, as cited in ACGIH 1986/Ex. 1–3, p. 76), Velasquez (1984, as cited in ACGIH 1986/Ex. 1–3, p. 76), and Velasquez, Escobar, and Almaraz (1989/Ex. 1–1174) indicate serious exposure-related long-term systemic effects on the auditory nerve and hearing loss (hypoacusia); the magnitude of the hearing loss was related to length of exposure. Nine of 11 workers exposed without hearing protection to 80 ppm for periods of from 3 to 11 years displayed impaired hearing. This phenomenon was particularly evident in younger workers (Velasquez 1984, as cited in ACGIH 1986/Ex. 1–3, p. 76; Velasquez, Escobar, and Almaraz 1989/Ex. 1–1174).

Three commenters, ConAgra (Ex. 3–635), the Motor Vehicle Manufacturers Association (MVMA) (Ex. 3–902), and ARCO (Tr. p. 3–237) submitted comments on n-butyl alcohol. Con Agra (Ex. 3–635) misinterpreted OSHA's discussion of a 1984 study (Velasquez, as cited in ACGIH 1986/Ex. 1–3, p. 76) to mean that OSHA attributed all hearing loss found in the workers in this study to n-butyl alcohol exposure. ARCO (Tr. p. 3–237) also questioned n-butyl alcohol's effect on hearing. In response to these commenters, OSHA notes that n-butyl alcohol has been shown in many studies to damage the auditory nerve and further, that workplace noise may also have contributed to the hearing loss observed in these studies. The MVMA comment (Ex. 3–902) lists n-butyl alcohol as a substance for which rulemaking should be delayed, but provides no other details.

OSHA finds that the former PEL of 100 ppm is not sufficiently protective against the acute effects associated with exposure to n-butyl alcohol; in addition, the possibility of auditory nerve damage from exposures below the 100-ppm level makes the former PEL inadequate. A skin notation is necessary because data in beagle dogs suggest that dermal contact with n-butyl alcohol can result in a systemic dose greater than that obtained by inhalation (DiVincenzo and Hamilton 1979). The Agency is establishing a permissible exposure limit of 50 ppm as a ceiling, with a skin notation, for n-butyl alcohol. OSHA concludes that this limit will protect workers against the significant risks of possible vestibular and auditory nerve injury as well as of headaches and irritation, which constitute material impairments of health and are associated with exposure to this substance at levels above the new limit.

CHLORINATED CAMPHENE (80 Percent)

CAS: 8001-35-2; Chemical Formula: $C_{10}H_{10}Cl_8$
H.S. No. 1078

Previously, OSHA had a limit of 0.5 mg/m³, with a skin notation, for chlorinated camphene. The ACGIH has a TLV–TWA limit of 0.5 mg/m³ and a TLV–STEL of 1 mg/m³ for chlorinated camphene (80 percent), with a skin notation, and these were the limits proposed. The final rule retains the 0.5-mg/m³ 8-hour TWA and the skin notation, and adds a 1-mg/m³ STEL for chlorinated camphene, an amber waxy solid with a pleasant, pine-like odor.

Chlorinated camphene has demonstrated a moderately high acute toxicity in animal studies (ACGIH 1986/Ex. 1–3, p. 115). Toxic doses cause varied central nervous system effects, including nausea, muscle spasms, confusion, and convulsions (Hayes 1963/Ex. 1–962). Data indicate that rats and guinea pigs show no significant effects at dietary levels of 800 ppm daily for a six-month period (Alderson Reporting Co., as cited in ACGIH 1986/Ex. 1–3, p. 115). Monkeys tolerate daily feeding at 10 ppm but show toxic symptoms after two weeks' feeding at the 60-ppm level (Sosnierz, Szczurek, Knapek, and Kolodziejczyk 1972/Ex. 1–760). Although chlorinated camphene may accumulate in fatty tissues, it clears quickly when ingestion is terminated (Sosnierz, Szczurek, Knapek, and Kolodziejczyk 1972/Ex. 1–760).

In humans, the acute lethal dose of chlorinated camphene is between 2 and 7 grams, and a dose of 10 mg/kg causes nonfatal convulsions in some exposed individuals. The ACGIH (1986/Ex. 1–3, p.115) concludes that the acute toxicity of chlorinated camphene is equivalent to that of chlordane, for which the fatal human dose is estimated to be around 6 grams; the ACGIH TLV–TWA for chlordane is 0.5 mg/m³. One study of 25 human volunteers failed to reveal toxic responses to daily 30-minute exposures to 500 mg/m³ for 10 consecutive days, followed by similar exposures for three consecutive days three weeks later (Sbelansky 1947, as cited in ACGIH 1986/Ex. 1–3, p. 115). There are no reports of occupational poisonings, and a review of the medical records of employees engaged in the manufacture and handling of chlorinated camphene showed no ill effects in workers exposed for an average of 3.7 years (Frawley 1972, as cited in ACGIH 1986/Ex. 1–3, p. 115).

NIOSH does not concur with OSHA's PELs for this substance; NIOSH believes that chlorinated camphene is a potential occupational carcinogen and should have lower exposure limits (Ex. 8–47, Table N6B; Tr. pp. 3–97, 3–98). No other comments on the health effects of this substance were submitted to the record.

OSHA is retaining the 8-hour TWA PEL of 0.5 mg/m³ TWA and adding a 15-minute STEL of 1.0 mg/m³ for this insecticide. The Agency's skin notation is retained. OSHA concludes that both a TWA and a STEL are required to protect exposed workers against the significant risks of bioaccumulation and neuropathic and systemic effects; the Agency finds that these effects constitute material impairments of health. The STEL ensures that TWA exposures will be maintained under good industrial hygiene control.

DECABORANE

CAS: 17702-41-9; Chemical Formula: $B_{10}H_{14}$
H.S. No. 1114

OSHA's former limit for decaborane was 0.05 ppm TWA, with a skin notation. The ACGIH has a TLV–TWA of 0.05 ppm and a TLV–STEL of 0.15 ppm, also with a skin notation. The proposal retained the 8-hour TWA of 0.05 ppm and added a 0.15–ppm STEL, with a skin notation, and the final rule establishes these limits. NIOSH (Ex. 8–47, Table N1) concurs that these limits are appropriate. Decaborane forms colorless crystals that are stable at ordinary temperatures and have a pungent odor.

The acute toxicity of decaborane is extremely high for small laboratory animals. The 40-hour LC_{50}s for rats and mice are 46 and 12 ppm, respectively (Schechter 1956/Ex. 1–363). Dermal LD_{50}s for rabbits and rats are 71 and 740 mg/kg, respectively (Svirbely 1954a/Ex. 1–385). Acute exposures to decaborane cause loss of coordination, convulsions, weakness, tremors, and hyperexcitability. Decaborane's primary effects are on the kidneys and liver. Studies of repeated exposures to this substance suggest that the toxicity of decaborane is intermediate between that of pentaborane and diborane. The ability of decaborane to penetrate the skin is particularly notable, as is its toxicity to the central nervous system in some species, e.g., rats and rabbits (Svirbely 1954a/Ex. 1–385, 1954b/Ex. 1–530, and 1955/Ex. 1–388). Monkeys showed decreased ability for certain operant behaviors when injected with doses of 3 to 6 mg/kg decaborane (Reynolds et al. 1984, as cited in ACGIH 1986/Ex. 1–3, p. 169). Central nervous system toxicity has been observed in humans exposed occupationally (Krackow 1953/Ex. 1–344). No comments other than NIOSH's were received on the health effects of decaborane.

OSHA is retaining its 8-hour TWA PEL of 0.05 ppm TWA and skin notation, and adding a 15-minute STEL of 0.15 ppm for decaborane. The Agency concludes that these limits will provide protection against the significant risks of material health impairment in the form of neuropathy and kidney and liver damage possible in the absence of a short-term limit for decaborane.

Di-sec-OCTYL PHTHALATE

CAS: 117-81-7; Chemical Formula: $C_{24}H_{38}O_4$
H.S. No. 1116

OSHA formerly had a limit of 5 mg/m³ TWA for di-sec-octyl phthalate. The ACGIH has a TLV–TWA of 5 mg/m³ and a TLV–STEL of 10 mg/m³, and these are the limits that were proposed. In the final rule, OSHA is retaining the 8-hour TWA limit of 5 mg/m³ and adding a 15-minute STEL of 10 mg/m³ for this light-colored, viscous, odorless, combustible liquid.

Di-sec-octyl phthalate (DEHP) is not acutely toxic in small laboratory animals via the oral route. The oral LD_{50} reported for mice is 26.3 g/kg; for rats, it is 33.8 g/kg (Krauskopf et al. 1973/Ex. 1–495). No skin irritation or sensitization potential has been demonstrated in either animals or humans, and the lethal dermal dose in rabbits is about 25 ml/kg (Singh, Lawrence, and Autian 1972/Ex. 1–436). Shaffer, Carpenter, and Smyth (1945/Ex. 1–369) and Lawrence (unpublished data, as cited in ACGIH 1986/Ex. 1–3, p. 223) have reported deaths in rats and chronic inflammation of the lung in mice exposed to DEHP at unspecified levels.

Long-term dietary toxicity studies in rats, guinea pigs, and dogs have established a no-effect dose level of about 60 mg/kg/day, and no carcinogenic or histologic abnormalities were observed at this level (Gesler 1973/Ex. 1–481). Higher doses were associated with growth retardation and increased liver and kidney weights but not histologic abnormalities. Metabolic studies have demonstrated that laboratory animals do not appreciably metabolize DEHP (Dillingham and Autian 1973/Ex. 1–477). Teratogenicity studies in pregnant rats indicated that fertility is unaffected at doses of 0.1, 0.2, or 0.33 percent of the acute intraperitoneal LD_{50} dose for rats, although slight effects on embryonic and fetal development were observed in these animals; skeletal deformities were the most common teratogenic effects observed (Dillingham and Autian 1973/Ex. 1–477). Mutagenic effects were observed at intravenous doses of one-third, one-half, and two-thirds of the acute LD_{50}; these effects are consistent with DEHP's ability to produce dominant lethal mutations (Dillingham and Autian 1973/Ex. 1–477).

A study of workers exposed to a mixture of the vapors of diethyl phthalate, dibutyl phthalate, and di-2-ethylhexyl phthalate reported that exposures to 1 to 6 ppm caused no peripheral polyneuritis (Raleigh, as cited in ACGIH 1986/Ex. 1–3, p. 223). However, Russian investigators examined male and female workers exposed to between 1.7 and 66 mg/m³ of various combinations of airborne phthalates (including butyl phthalate, higher aryl phthalates, dioctyl phthalate and others) and noted complaints of pain, numbness, and spasms in the upper and lower extremities after six to seven years of exposure. Polyneuritis was observed in 32 percent of the workers studied, and 78 percent of these workers showed depression of vestibular receptors (Milkov, Aldyreva, Popova et al. 1973/Ex. 1–646).

OSHA received a comment from the Chemical Manufacturers Association Phthalate Esters Program Panel (Ex. 3–900). Although the Panel did not oppose the proposed PEL for di-sec-octyl phthalate, it objected to this substance's categorization as a neuropathic agent on the grounds that (1) confounding exposures to tricresyl phosphate and vinyl chloride, which are known neurotoxicants occured in the study referenced in the NPRM; and (2) other studies (in humans or animals) have not substantiated that this substance is neuropathic:

> Including [di-sec-octyl phthalate] in this category of compounds [i.e., neuropathic agents] is not justified and could lead to improper labeling of the material or unwarranted regulations, and restrictions on the use of the material based on unfounded conclusions (Ex. 3–900, p. 1).

In response to this comment, OSHA notes that the classfication scheme used in the preamble to the proposed and final rules is not intended to have regulatory implications. As explained earlier in the preamble, OSHA is using this scheme simply to facilitate generic rulemaking; the various categories reflect the health endpoint used by the ACGIH or NIOSH as the point of reference in setting a limit. Most of the substances included in this rulemaking produce multiple health effects and could be classified in more than a single health effects category. Di-sec-octyl phthalate is no exception, and exposure to this substance has been associated with liver damage, testicular injury, and teratogenic and carcinogenic effects in experimental animals, as well as with possible neuropathic effects.

Another commenter, Lawrence H. Hecker of Abbott Laboratories feels that the STEL for di-sec-octyl phthalate is unwarranted (Ex. 3–678, p. 8). OSHA disagrees with Dr. Hecker and finds that, for substances posing serious health hazards, such as those associated with di-sec-octyl phthalate exposure, the STEL further protects workers from the signficant adverise effects that could occur in the short-term excursions above the TWA limit permitted in the absence of a STEL.

NIOSH concurs in OSHA's selection of limits for di-sec-octyl phthalate but believes it should be designated as a potential occupational carcinogen (Ex. 8–47, Table N8A). On the other hand, the Chemical Manufacturers Association's (Ex. 140) analysis of the evidence for DEHP's carcinogenicity led the CMA to conclude that this substance is not a carcinogen. OSHA is aware of di-sec-octyl phthalate's carcinogenic effects in experimental animals and notes that IARC has determined that sufficient evidence exists to designate it as an animal-positive carcinogen. However, adequate data are not available to evaluate the risk of cancer to humans. The Agency will continue to monitor the scientific evidence for di-sec-octyl phthalate and will re-evaluate this substance in the future if such evidence suggests that this is appropriate.

In the final rule, OSHA is retaining the 8-hour PEL of 5 mg/m³ and adding a 15-

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minute STEL of 10 mg/m³ for di-sec-octyl phthalate. The Agency concludes that these limits together will protect workers from the significant risks of neuropathic, hepatic, and other systemic injuries, which constitute material health impairments and are associated with exposure to this substance.

DICHLOROACETYLENE

CAS: 7572-29-4; Chemical Formula:
ClC ≡ CCl
H.S. No. 1123

OSHA previously had no limit for dichloroacetylene. The ACGIH has a TLV-ceiling of 0.1 ppm for this liquid, which explodes upon boiling. OSHA proposed a ceiling limit of 0.1 ppm, and this is the limit established by the final rule.

In preliminary inhalation exposure studies, guinea pigs demonstrated a 4-hour LC_{50} of 20 ppm; death occured two or three days after exposure and was caused by pulmonary edema. In rats, similar exposures to dichloroacetylene in the presence of 330 ppm of trichloroethylene indicated an LC_{50} of 55 ppm (Siegal 1967, as cited in ACGIH 1986/Ex. 1–3, p. 177). When dichloroacetylene was mixed with 9 parts of ether, the 4-hour LC_{50} in rats was 219 ppm; in combination with 7 parts of trichloroethylene, the 4-hour LC_{50} in rats was 55 ppm; and exposure to dichloroacetylene with 10 parts of trichloroethylene caused a 4-hour LC_{50} in guinea pigs of 15 ppm (Siegal, Jones, Coon, and Lyon 1971/Ex. 1–371).

In humans, dichloroacetylene exposure causes headache, loss of appetite, extreme nausea, and vomiting; it affects the trigeminal nerve and facial muscles and exacerbates facial herpes. Disabling nausea was experienced by approximately 85 percent of individuals exposed for prolonged periods of time (not further specified) at concentrations from 0.5 to 1 ppm (Saunders 1967/Ex. 1–361). A number of occupational fatalities have been attributed to exposure to dichloroacetylene (Humphrey and McClelland 1944/Ex. 1–491; Firth and Stuckey 1945, as cited in ACGIH 1986/Ex. 1–3, p. 177). Humphrey and McClelland (1944/Ex. 1–491) reported 13 cases of cranial nerve palsy, nine of which had labial herpes, following exposure to dichloroacetylene. These patients also had symptions of nausea, headache, jaw pain, and vomiting. Autopsies of two of these fatalities revealed edema at the base of the brain (Humphrey and McClelland 1944/Ex. 1–491).

NIOSH concurs with OSHA's limit for dichloroacetylene but believes that this substance should be designated as a potential occupational carcinogen (Ex. 8–47, Table N6A). However, as explained elsewhere in the preamble, OSHA has decided not to designate substances specifically as carcinogens since so many other organizations already do so. OSHA received no other comments regarding the health effects of dichloroacetylene.

In the final rule, OSHA is establishing a ceiling limit of 0.1 ppm for dichloroacetylene. The Agency concludes that this limit will substantially reduce the significant risks of disabling nausea and serious systemic effects posed to workers exposed to dichloroacetylene at the levels formerly permitted by the absence of any OSHA limit. OSHA finds that these health effects constitute material impairments of health.

DIPROPYLENE GLYCOL METHYL ETHER

CAS: 34590-94-8; Chemical Formula:
$CH_3OC_3H_6OC_3H_6OH$
H.S. No. 1149

OSHA formerly had an 8-hour TWA limit of 100 ppm for dipropylene glycol methyl ether (DPGME), with a skin notation. The ACGIH recommends a TLV-TWA of 100 ppm and a TLV-STEL of 150 ppm, with a skin notation, for this colorless liquid with a mild, pleasant, ethereal odor and a bitter taste. OSHA proposed to retain the 8-hour permissible exposure limit of 100 ppm TWA, to add a 150-ppm STEL, and to retain the skin notation for dipropylene glycol methyl ether. NIOSH (Ex. 8–47, Table N1) concurs that these limits are appropriate, and the final rule establishes these limits.

Intact dogs receiving intravenous injections of DPGME exhibited central nervous system depression and died as a result of respiratory failure (Shideman and Procita 1951/Ex. 1–687). Rowe and associates (1954/Ex. 1–435) reported a single acute oral LD_{50} for rats of 5.4 ml/kg. Even at the highest levels tested (not further specified), no single application of DPGME to the skin of rabbits was lethal, although some narcosis and transient weight loss did occur. However, a significant number of deaths occurred in a group of rabbits treated with 65 repeated dermal applications containing DPGME concentrations of 3 ml/kg or higher during a 90-day period. Four animal species, including the monkey, were exposed repeatedly to seven-hour daily inhalation exposures of between 300 and 400 ppm DPGME; the animals exhibited narcosis and changes in the lung and liver (Rowe, McCollister, Spencer et al. 1954/Ex. 1–435).

Humans inhaling DPGME concentrations of 300 to 400 ppm judged this level to be very disagreeable, but 100 ppm was tolerable and, in the opinion of the authors, was unlikely to produce organic injury (Rowe, McCollister, Spencer et al. 1954/Ex. 1–435). Patch tests on the skin of 250 human subjects produced neither irritation nor sensitization (ACGIH 1986/Ex. 1–3, p. 221). Humans exposed to DPGME vapor concentrations at levels between 50 to 2000 ppm experienced eye, nose, and throat irritation before the onset of CNS impairment, which occurred at 1000 ppm in one of two subjects (Stewart, Baretta, Dodd, and Torkelson 1970/Ex. 1–379).

NIOSH (Ex. 150, Comments on Dipropylene Glycol Monomethyl Ether) reported that it is developing a criteria document on the glycol ethers; NIOSH submitted recent toxicity data on DPGME, including the following: rats and mice inhaling concentrations of 50, 140, or 330 ppm DPGME six hours/day for nine days showed increased liver weights (at 50 and 140 ppm for the rat and at 330 ppm for the mouse), but no effects were observed when rats inhaled 15, 50, or 220 ppm DPGME six hours/day, five days/week for 13 weeks (Landry and Yano 1984, as cited in Ex. 150). NIOSH also reported results of a 1985 study by Miller et al. indicating that DPGME is metabolized via the same routes to the same types of metabolites—propylene glycol, and sulfate and glucuronide conjugates of DPGME—as previously identified for PGME (1-methoxy-2-propanol) (Miller, Hermann, Calhoun et al. 1985, as cited in Ex. 150). The Landry and Yano study (1984, as cited in Ex. 150) further indicated that at the concentrations teated, DPGME exerted no teratogenic or reproductive effects (NIOSH/Ex. 150, Comments on Dipropylene Glycol Monomethyl Ether).

The ARCO Chemical Company (Ex. 3–740) questioned the appropriateness of a skin notation for this substance. In response to ARCO, the Agency notes that DPGME, applied essentially according to the Draize method, is absorbed in sufficient quantities through rabbit skin to cause transient narcosis, although the absorption rate was not considered acutely dangerous (*Patty's Industrial Hygiene and Toxicology*, 3rd rev. ed., Vol. 2C, p. 3990, Clayton and Clayton 1982). Topical administration of 10 mg/kg DPGME five times per week for 13 weeks to shaved rabbit skin caused six deaths among seven animals (*Chemical Hazards of the Workplace*, 2nd ed., p. 221, Proctor, Hughes, and Fischman, 1988). To date, there are no human data demonstrating that dermal contact with DPGME is without a significant adverse health risk; therefore, in accordance with the policy

described in Section VI.C.18, OSHA finds that the available evidence does not meet the criterion for deleting an existing skin notation.

In the final rule, OSHA is retaining a PEL of 100 ppm TWA and adding a STEL of 150 ppm for dipropylene glycol methyl ether; the skin notation is retained. The Agency concludes that this combined limit will substantially reduce the significant risks of central nervous system effects and irritation, which constitute material health impairments, that exist when workers are exposed to DPGME for short periods above the 100-ppm PEL.

n-HEXANE

CAS: 110-54-3; Chemical Formula:
$CH_3(CH_2)_4CH_3$
H.S. No. 1200

OSHA's former PEL for n-hexane was 500 ppm. The ACGIH has a 50-ppm TWA limit for this substance, and the NIOSH REL is 100 ppm as a 10-hour TWA. OSHA proposed a limit of 50 ppm TWA for n-hexane, and the final rule establishes this limit. NIOSH (Ex. 8–47, Table N1) concurs that a PEL of 50 ppm is appropriate for n-hexane. Normal hexane is a clear, volatile liquid.

n-Hexane has been shown to produce distal axonopathy in both experimental animals and humans; it is metabolized to 2,5-hexanedione (2,5-HD), which is thought to be the causative agent of most of the adverse neurological effects observed after exposure to hexane (Schaumburg, Spencer, and Thomas 1983/Ex. 1–228).

In the preamble to the proposed rule, OSHA asked:

> Does the most current scientific information generally support acceptance of the hypothesis that the C_{6-8} alkanes are not equally toxic because a metabolite of n-hexane exhibits unique neurotoxic properties?

Several commenters (Exs. 3–593, 3–1246, and 124; Tr. III, pp. 109–110) responded to this question, and their detailed responses are discussed in Section V of this preamble, Summary of Commenters' Responses to NPRM Questions.

The C_{6-8} alkanes include pentane, n-hexane, the hexane isomers, n-heptane, octane, and the refined petroleum solvents. Whether all of these alkanes exhibit the same degree of toxicity or whether one (or more) is uniquely toxic has a direct bearing on the appropriate exposure limits for these substances. Based on a thorough review of the chemical and toxicological literature and the responses of these commenters, OSHA has determined that n-hexane is uniquely toxic to the peripheral nervous system. The Agency finds that 2,5-hexanedione (2,5-HD), a metabolite of n-hexane, is likely to be responsible for this unique toxicity, and the American Petroleum Institute (Ex. 124) agrees with this finding. NIOSH (Tr. III, pp. 109–110), on the other hand, is of the opinion that any ketone or related chemical that can be metabolized to a gamma diketone has the potential to cause peripheral neuropathy. However, representatives of the Texaco Company (Ex. 3–1246) agree with OSHA that n-hexane is uniquely toxic because its toxicity is mediated by 2,5-HD.

The ACGIH established a TLV of 50 ppm for this substance, based primarily on studies (Miyagaki 1967/Ex. 1–198; Inoue, Takeuchi, Takeuchi et al. 1970/Ex. 1–75) showing peripheral neuropathies at exposure levels as low as 210 ppm. NIOSH based its 100-ppm REL on the same studies as those cited by the ACGIH (Miyagaki 1967/Ex. 1–198; Inoue, Takeuchi, Takeuchi et al. 1970/Ex. 1–75). NIOSH reasoned as follows:

> The absence of definitive epidemiologic or toxicologic evidence makes it difficult to determine how much lower the environmental limit should be. Professional judgment suggests [that] a TWA concentration of 350 mg/m³ (100 ppm) offers a sufficient margin of safety to protect against the development of chronic nerve disorders in workers (NIOSH 1977a/Ex. 1–233, p. 74).

The adverse neurological effects of hexane exposure are manifested as both sensory and motor dysfunctions. Initially, there is a symmetric sensory numbness of the hands and feet, with loss of pain, touch, and heat sensation. Motor weakness of the toes and fingers is often present; as the neuropathy becomes more severe, weakness of the muscles of the arms and legs may also be observed (Schaumburg, Spencer, and Thomas 1983/Ex. 1–228). There are no known conditions that predispose an individual to hexane neurotoxicity (Schaumburg, Spencer, and Thomas 1983/Ex. 1–228). The onset of neurological symptoms may not be evident for several months to a year after the beginning of exposure. Recovery may be complete, but severely exposed individuals often retain some degree of sensorimotor deficit.

OSHA received comments on n-hexane from several participants, including NIOSH, the National Cotton Council, the American Petroleum Institute, the Corn Refiners Association, the AFL-CIO, and the United Auto Workers. Two commenters, the National Cotton Council (Tr. pp. 9–45 to 9–47) and the Corn Refiners Association (Ex. 177), stated that the revised PEL for n-hexane would impact their members, but did not provide further detail.

Some commenters (Exs. 194 and 197; Tr. pp. 3–290 to 3–293) urged OSHA to regulate all of the refined petroleum solvents on the basis of neurotoxicity. For example, the AFL-CIO recommended a 10-ppm PEL for all such solvents, and Dr. Franklin Mirer of the United Auto Workers described feasible controls that could be used, in his opinion, to achieve this level. Dr. Philip Landrigan (Tr. pp. 3–280 to 3–293) described the neurotoxic effects of exposure to any of the refined petroleum solvents. In response to these commenters, OSHA notes that it is reducing the limits for a number of these solvents in this rulemaking; however, the scale of this undertaking is such that OSHA was unable to perform the detailed analysis necessary to evaluate the health effects, risks, and feasibility for all of the solvents in this large group of substances.

The dose-response relationship for n-hexane exposure in humans is not well defined, although it is clear that the severity of the resulting neuropathy increases as the exposure level of n-hexane increases. A number of studies have shown a consistent relationship between exposure levels of 500 ppm (OSHA's former exposure limit) to 2000 ppm and the development of characteristic peripheral neuropathies (Yamamura 1969, as cited in ACGIH 1986/Ex. 1–3, p. 305; Yamada 1967/Ex. 1–192). Neuropathic effects have also been shown to occur at levels between 210 and 500 ppm (Takeuchi, Maluchi, and Takagi 1975/Ex. 1–217).

Reports of effects occurring at levels of 210 to 500 ppm indicate that the former OSHA PEL of 500 ppm was not adequate to protect exposed workers from adverse sensorimotor neuropathic effects, and exposure at this level thus represents a significant risk to workers. The decreased sensitivity to pain, touch, and temperature associated with n-hexane exposure can also make a worker more susceptible to injuries and accidents. Further, the delayed onset of a clinical response, which is typical of hexane exposure, increases the probability that exposure will continue until irreversible effects occur.

Both the presence of peripheral neuropathies at 210 ppm and the delay in onset of neurological symptoms indicate that workers exposed at levels above the new limit are at significant risk of developing these symptoms. OSHA therefore establishes a PEL of 50 ppm TWA for n-hexane. The Agency concludes that this PEL will substantially reduce the significant risk

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of peripheral neurophathies and other adverse neuropathic effects, which constitute material impairments of health and are associated with the exposures permitted at levels above the new limit.

2-HEXANONE (METHYL n-BUTYL KETONE)

CAS: 591-78-6; Chemical Formula: $CH_3CO-CH_2CH_2CH_2CH_3$
H.S. NO. 1202

OSHA's former PEL for 2-hexanone was 100 ppm TWA; the NIOSH REL is a 1 ppm (10-hour) TWA; and the ACGIH recommends a TLV–TWA of 5 ppm. The Agency proposed, and the final rule establishes, a permissible exposure limit of 5 ppm as an 8-hour TWA for 2-hexanone. 2-Hexanone is a colorless, volatile liquid with a characteristic acetone-like odor that is more pungent than that of acetone.

Industrial exposure to 2-hexanone causes distal neuropathy manifesting as interference with motor and sensory function; even in cases characterized by minimal intensity, electrodiagnostic abnormalities were seen (ACGIH 1987/Ex. 1–16). In animals, exposure to 2-hexanone causes axonal swelling and thinning of the myelin sheath. A metabolite of 2-hexanone, 2,5-hexanedione, appears to be responsible for the neural damage; this same metabolite is formed when n-hexane (discussed above) is metabolized. Exposures of rats, cats, dogs, monkeys, hens, and guinea pigs to 2-hexanone have resulted in peripheral neuropathies (O'Donoghue 1985). Krasavage, O'Donoghue, and Terhaar (1978) reported that 2,5-hexanedione is 3.3 times more neurotoxic than 2-hexanone and 38 times more neurotoxic than n-hexane in rats. Thus, 2-hexanone would be approximately eleven times more neurotoxic than n-hexane in rats.

The limit of 5 ppm TWA for 2-hexanone recommended by the ACGIH is based on the results of several studies. These include studies showing evidence of peripheral neuropathy at levels of 50 ppm and above after exposures lasting six months or more (Johnson, Anger, Setzer et al. 1979/Ex. 1–994; Streletz, Duckett, and Chambers 1976/Ex. 1–1067). Another study identified 2,5-hexanedione (the metabolite believed responsible for neurotoxic effects) in the serum of humans after a one-day exposure to 50 ppm (DiVincenzo, Kaplan, and Dedinas 1976/Ex. 1–1049).

The NIOSH REL for 2-hexanone of 1 ppm (10-hour TWA) is based on an epidemiologic study describing an outbreak of neurologic disease among workers in a plant that manufactures printed fabrics (Allen, Mendall, Billmaier et al. 1975/Ex. 1–80). This study reported that a screening of 1,157 exposed workers revealed 66 verified cases of distal neuropathy. 2-Hexanone was suspected of being the neurotoxicant because it had only recently been introduced into the process (Allen, Mendall, Billmaier et al. 1975/Ex. 1–80). When recommending its limit, NOISH relied on an industrial hygiene survey of the plant conducted by Billmaier, Yee, Allen et al. (Ex. 1–76) in 1974, which showed that 2-hexanone concentrations near the textile printing machines ranged from 1 to 156 ppm (10-minute area samples). After reviewing this evidence, NIOSH concluded that 1 ppm could not be considered a no-effect level for 2-hexanone-induced neuropathy, and NIOSH (Ex. 8–47, Table N2; Tr. p. 3–66) continues to recommend a limit of 1 ppm TWA for 2-hexanone. The AFL–CIO (Ex. 194) also supports the adoption of the lower NIOSH REL. Dr. Franklin Mirer of the AFL–CIO (Ex. 197) described controls for use in workplaces where solvents present exposure problems.

The ACGIH (1987/Ex. 1–16) stated that interpretation of the results of the Billmaier, Yee, Allen et al. (1974/Ex. 1–76) study was complicated because the exposure measurements reported in the study had been taken after the outbreak of neuropathic effects had occurred. In addition, the ACGIH pointed out that Billmaier and colleagues (1974/Ex. 1–76) found poor work practices at the plant (gloves were rarely used, employees washed their hands with solvent, etc.); thus, dermal exposures may have contributed substantially to the outbreak.

Both human and animal studies show the development of disease at exposure levels well below the former 100-ppm PEL, clearly indicating the need to reduce this significant risk. In the final rule, OSHA is establishing a 5-ppm (8-hour TWA) PEL for 2-hexanone. The Agency concludes that this limit will substantially reduce the significant risk of distal neuropathy, which constitutes a material impairment of health and has been demonstrated to occur at concentrations above the new limit.

IRON PENTACARBONYL

CAS: 13463-40-6; Chemical Formula: $Fe(CO)_5$
H.S. No. 1216

OSHA previously had no exposure limit for iron pentacarbonyl. The ACGIH has a TLV–TWA of 0.1 ppm with a TLV–STEL of 0.2 ppm, measured as iron, for this highly flammable, oily, colorless to yellow liquid. The Agency proposed, and the final rule establishes, permissible exposure limits of 0.1 ppm TWA and 0.2 ppm STEL for iron pentacarbonyl, measured as Fe. NIOSH (Ex. 8–47, Table N1) concurs that these limits are appropriate.

In studies of rats, iron pentacarbonyl has been reported to have approximately one-third the acute toxicity of nickel carbonyl (for which the ACGIH has recommended a TLV of 0.05 ppm TWA) (Sunderman, West, and Kincaid 1950/Ex. 1–304). In 1970, Gage found that a 5.5-hour exposure at 33 ppm caused fatalities in three of eight rats; four of eight animals died after two 5.5-hour exposures at 18 ppm. At 7 ppm, no ill effects were observed in rats exposed 18 times in 5.5 hours (Gage 1970/Ex. 1–318). There are no reports of long-term dose-response exposure studies in laboratory animals, and no evidence exists that iron pentacarbonyl is carcinogenic in either humans or animals (ACGIH 1986/Ex. 1–3, p. 327).

Immediate symptoms of acute exposure to high concentrations of iron pentacarbonyl include headache and dizziness, followed in 12 to 36 hours by fever, cyanosis, cough, and shortness of breath. Another clinical effect of overexposure to this substance is lung injury, and degenerative changes in the central nervous system have also been reported (ACGIH 1986/Ex. 1–3, p. 327). No comments (other than NIOSH's) on the health effects of iron pentacarbonyl were submitted to the rulemaking record.

In the final rule, OSHA establishes a permissible exposure limit of 0.1 ppm TWA and a STEL of 0.2 ppm for iron pentacarbonyl. The Agency concludes that these limits will protect workers from the significant risks of material health impairment in the form of headache, dizziness, fever, dyspnea, cyanosis, pulmonary injury, and central nervous system effects, which are potentially associated with exposures at levels above the new limits.

MANGANESE FUME

CAS: 7439-96-5; Chemical Formula: MnO
H.S. No. 1236a

OSHA previously had a ceiling limit of 5 mg/m³ for manganese fume, measured as manganese. Because of this substance's potential for damage to the lungs and central nervous system, the ACGIH recommends an 8-hour TWA of 1 mg/m³ and a 3-mg/m³ STEL for manganese fume. These limits were proposed and are now established by the final rule. NIOSH (Ex. 8–47, Table N1) concurs that these limits are appropriate.

Symptoms of manganese poisoning range from sleepiness and weakness in the legs (Fairhall 1957a, as cited in ACGIH 1986/Ex. 1–3, p. 354) to difficulty in walking and uncontrolled laughter (Fairhall and Neal 1943, as cited in ACGIH 1986/Ex. 1–3, p. 354). Health surveys of employees exposed to manganese fume have demonstrated a high incidence of pneumonia in these workers (Davies 1948, as cited in ACGIH 1986/Ex. 1–3, p. 354). Tanaka and Lieben (1969/Ex. 1–388) found seven cases of pneumonia and 15 borderline cases of pneumonia among 144 workers exposed to manganese dust or fume concentrations greater than 5 mg/m³; three of these cases were associated with fume rather than dust exposure. Those workers exposed to fume levels below 5 mg/m³ exhibited no signs of pneumonia. In a separate study by Smyth, Ruhf, Whitman, and Dugan (1973/Ex. 1–990), three cases of manganese poisoning were detected among 71 employees exposed to levels of 13.3 mg/m³ manganese fume.

OSHA received several comments on manganese fume and dust (Exs. 3–169, 3–673, 3–675, 3–829, 8–22, and 129). Some commenters stated that reducing the PEL for manganese fume would have a large impact on their industries but did not provide any details (Exs. 3–673, 3–675, and 8–22). Chemetals, Inc., a manufacturer of manganese products, supports the reduction in the PEL for manganese *fume* from a ceiling of 5 mg/m³ to an 8-hour TWA of 1 mg/m³ and a STEL of 3 mg/m³. According to Chemetals:

> [We] agree that the fumes of metals and their compounds have higher toxicities than the dusts * * * and that a time-weighted average is more appropriate for manganese (Ex. 3–169, p. 2).

However, Chemetals urged OSHA to also revise the Agency's limit for manganese dust from a ceiling to an 8-hour TWA (Ex. 3–169). OSHA did not propose a change to its existing 5-mg/m³ ceiling limit for manganese dust. In response to this comment, OSHA notes that manganese dust is not a substance that is included in this rulemaking; the Agency did not propose to regulate manganese dust and is not revising its limits for this substance in the final rule (see the preamble section entitled "Boundaries to the Regulation").

One other commenter, the Specialty Steel Industry of the United States (Ex. 3–829), stated that, in its opinion, there was no basis for reducing OSHA's former PEL for manganese fumes or for supplementing this limit with an STEL. OSHA does not agree with the views of this commenter, because exposures to these fumes have been demonstrated to cause toxic effects in both humans and animals. Workers exposed to manganese fumes developed pneumonia (Tanaka and Lieben 1969/Ex. 1–388), and Stokinger (1981f, in *Patty's Industrial Hygiene and Toxicology*, 3rd rev. ed., Vol. 2A, p. 1767) reports that the 1-mg/m³ limit "is supported by the finding in animals that the higher oxides are more toxic, and the report of an occasional case of Mn poisoning in susceptible workers exposed to ferro Mn fumes around the 1-mg/m³ limit."

Based on a review of all of the record evidence, the final rule establishes a 1-mg/m³ TWA and a 3-mg/m³ STEL for manganese fume. The Agency concludes that both a TWA limit and a STEL are required to protect employees from the significant risks of manganese poisoning, lung damage, and pneumonia, all of which constitute material health impairments, associated with exposure to these fumes.

MANGANESE CYCLOPENTADIENYL TRICARBONYL

CAS: 12079-65-1; Chemical Formula: $C_5H_5-Mn(CO)_3$
H.S. No. 1237

OSHA formerly had no limit for exposure to manganese cyclopentadienyl tricarbonyl (MCT). The ACGIH has a TLV–TWA of 0.1 mg/m³ (measured as manganese), with a skin notation. The Agency proposed, and the final rule establishes, a permissible exposure limit of 0.1 mg/m³ TWA (measured as manganese), with a skin notation, for this substance. NIOSH (Ex. 8–47, Table N1) concurs that these limits are appropriate.

A Russian study reported that a single two-hour exposure to MCT at 120 mg/m³ was fatal to 80 percent of albino rats, although rabbits, guinea pigs, and rats survived a single two-hour exposure at 20 to 40 mg/m³. Chronic exposure of rats for 11 months at levels averaging 1 mg/m³ for four hours daily showed delayed effects (seven months from onset of exposure) of neuromuscular excitability, evidence of kidney damage, and decreased resistance to infection (Arkhipova, Tolgskaya, and Kochetkova 1965/Ex. 1–1046). The tails of 10 white mice were dipped in a gasoline mixture containing 1 gram MCT per 100 ml; a second group of mice had their tails immersed in gasoline without MCT. An equal number of fatalities were observed in the gasoline plus MCT and gasoline-only groups after four or five two-hour applications, and all tails exhibited necrosis. The authors concluded that these effects were caused by the gasoline and not by the MCT (Arkhipova, Tolgskaya, and Kochetkova 1965/Ex. 1–1046). Further studies in rabbits showed that MCT applied dermally as an oil emulsion caused irritation of the skin. These authors also investigated the dermal toxicity of MCT solutions in tetrahydrofuran versus solutions of tetrahydrofuran in oil. All animals whose tails had been dipped in the hydrofuran solution of MCT died within an hour, while animals whose tails had been dipped in pure tetrahydrofuran did not (Arkhipova, Tolgskaya, and Kochetkova 1965/Ex. 1–1046). The same authors concluded that MCT is toxic at low concentrations, has cumulative properties, affects the nervous system, is irritating to the skin, and causes early histological changes in the respiratory tract.

More recent reports describe MCT-induced pulmonary edema and convulsions in the rat (Penney, Hogberg, Traiger, and Hanzlik 1985/Ex. 1–431). The ED_{50} for convulsions were 32 mg/kg orally and 20 mg/kg intraperitoneally; LD_{50} were 24 mg/kg orally and 14 mg/kg intraperitoneally. Necrosis of the bronchiolar tissue and pulmonary parenchymal damage were seen in mice and rats given intraperitoneal doses (Haschek, Hakkinen, Witschi et al. 1982/Ex. 1–1063). No comments other than NIOSH's werre received on MCT.

OSHA has concluded that occupational exposure to MCT poses a risk of neuropathic effects, kidney damage, skin irritation, pulmonary edema, and tissue damage, which together constitute material health impairments. The Agency is therefore establishing an 8-hour TWA PEL of 0.1 mg/m³ for manganese cyclopentadienyl tricarbonyl, with a skin notation, to protect workers against the significant risk of these effects, which have been shown to occur at levels above the new standard.

MANGANESE TETROXIDE

CAS: 1317-35-7; Chemical Formula: Mn_3O_4
H.S. No. 1238

OSHA previously had no exposure limit for manganese tetroxide (compound and fume). The ACGIH recommends a TLV–TWA of 1 mg/m³, measured as manganese, for this brownish-black powder and its dust and fume. The Agency proposed a PEL of 1 mg/m³ TWA for manganese tetroxide, measured as Mn, and the final rule establishes this limit. Ferromanganese fume has been determined by X-ray diffraction analysis to consist primarily of manganese tetroxide.

Findings from a Russian study indicated that intratracheal suspensions of manganese oxide, manganese dioxide, and manganese tetroxide particles (particle size less than 3 μm) produced pneumonitis and other similar

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pulmonary effects in rats (Levina and Robachevskiau 1955/Ex. 1-1041). These investigators also determined that manganese tetroxide has a greater toxicity than do the lower oxides of manganese and that freshly prepared oxides were more potent than those stored for six months to one year.

Two cases of manganese fume poisoning were reported in a plant where concentrations were between 2.7 and 4.7 mg/m³ (Whitlock, Amuso, and Bittenbender 1966/Ex. 1-455), but other investigators have questioned these air sampling results and believe that exposures to manganese tetroxide concentrations of 5 mg/m³ or less cause no harmful effects (Whitman and Brandt 1966/Ex. 1-1103). In a seven-year study, Smyth and co-workers (1973/Ex. 1-990) investigated chronic manganese poisoning in workers exposed to both ferromanganese fumes and dust. Five of 71 employees suffered from chronic manganism; of these five cases, three resulted from fume exposure and two from dust exposure. Two of the three fume-exposure victims were exposed over a five-year period to an estimated average ferromanganese concentration of 13.3 mg/m³; however, the third victim worked in an operation where air concentrations of manganese were less than 1 mg/m³, which suggests that certain individuals may be hypersusceptible to manganese poisoning. The dust-exposed victims worked in areas where air concentrations were in the range of 30 to 50 mg/m³ throughout the study period (Smyth, Ruhf, Whitman, and Dugan 1973/Ex. 1-990).

Martonik (1976, as cited in ACGIH 1986/Ex. 1-13, p. 357) reported that the fume of manganese has greater toxicity than does the dust. During a two-year period, at least one case of acute manganese poisoning was documented at a fume concentration level of 7.5 mg/m³, and another case at the same welding operation may also have involved manganism.

OSHA received two comments on this substance, one from NIOSH (Ex. 8-47; Tr. p. 3-80), and one from Chemetals, a manganese manufacturer (Ex. 3-189). NIOSH (Ex. 8-47, Table N2) does not concur with the limits being established by OSHA. NIOSH (Ex. 8-47, Table N2) notes that, based on the results of the Smyth and co-workers study (1973/Ex. 1-990), the 1-mg/m³ PEL being established by OSHA "may not be protective, especially to the potentially sensitive individual." In response to this NIOSH comment, OSHA states that the Agency intends to monitor the literature on manganese tetroxide closely in the future to determine whether the new limit for this substance is adequately protective.

Chemetals (Ex. 3-189) asked OSHA to promulgate separate limits for the dust and fume of manganese tetroxide based on the relative toxicities of these two particulate forms. OSHA recognizes that some information in the literature (including some discussed above) points to the greater toxicity of the fume and that fumes are generally the more toxic form of particulate. However, the Agency notes that intratracheal suspensions of manganese tetroxide dust caused pneumonitis and other pulmonary effects in Russian workers (Levina and Robachevskiau 1955/Ex. 1-1041) and that several cases of manganism have been caused by dust exposure (Smyth, Ruhf, Whitman, and Anger 1973/Ex. 1-990). The Agency believes it prudent not to distinguish at this time between the dust and the fume but to set the TWA PEL at a level that will protect against the effects of exposure to both forms of particulate.

OSHA is establishing a 1-mg/m³ 8-hour TWA for manganese tetroxide (compound and fume). The Agency concludes that this limit will provide protection against the significant risks of material health impairment in the form of chronic manganese poisoning, pneumonitis, and other respiratory effects that are associated with exposure to manganese tetroxide at levels above 1 mg/m³.

MERCURY (ARYL AND INORGANIC COMPOUNDS)

CAS: 7439-97-6; Chemical Formula: Hg
H.S. No. 1240

The former OSHA limit for all inorganic forms of mercury (Hg) was 0.1 mg/m³ as a ceiling limit, as indicated on Table Z-2; this limit was adopted from ANSI standard Z37.8 (1943). In a compliance directive issued in 1978 (OSHA Instruction CPL 2-2.6), however, the Agency stated that the PEL for inorganic mercury should be expressed as an 8-hour TWA of 1 mg/10 m³ (0.1 mg/m³) rather than as a ceiling. The ACGIH has a 0.1-mg/m³ TLV-TWA for aryl and inorganic mercury compounds. NIOSH (1973b, as cited in ACGIH 1986/Ex. 1-3, p. 358) has recommended a 0.05-mg/m³ limit as an 8-hour TWA. OSHA proposed to return to its 0.1-mg/m³ ceiling limit (measured as mercury) and this limit is being established, together with a skin notation, in the final rule. This action cancels the 1978 compliance directive.

In 1971, shortly after OSHA had adopted the 0.1-mg/m³ ceiling, the ACGIH reduced the TLV-TWA for all forms of mercury, including the inorganic compounds, to 0.05 mg/m³. ANSI also reduced its standard to 0.05 mg/m³ in 1972, and NIOSH recommended the same limit in 1973. The 0.05-mg/m³ limit was based largely on the study of Smith, Vorwald, Patil, and Mooney (1970/ Ex. 1-373) of workers exposed to mercury levels ranging from less than 0.1 to 0.27 mg/m³ in chlor-alkali plants. The authors reported a significant dose-related increase in the incidence of weight loss, tremors, abnormal reflexes, nervousness, and insomnia among workers exposed to concentrations of 0.1 mg/m³ or more. There were slight increases in incidences of insomnia and loss of appetite among workers exposed to 0.1 mg/m³ or less. Smith, Vorwald, Patil, and Mooney (1970/Ex. 1-373) concluded that a limit of 0.1 mg/m³ contained little or no margin of safety. Other studies (Bidstrup, Bonnell, Harvey, and Locket 1951/Ex. 1-1014; Turrian, Grandjean, and Turrian 1956, as cited in ACGIH 1986/ Ex.1-3, p. 358) have also reported symptoms of mercury poisoning among workers exposed below 0.1 mg/m³. The 0.05-mg/m³ limit established by the ACGIH, ANSI, and NIOSH also follows the 1966 recommendation of an international committee (Permanent Commission & International Association on Occupational Health 1966, as cited in ACGIH 1986/Ex. 1-3, p. 358).

In 1980, the ACGIH revised its recommended TLV for aryl and inorganic mercury compounds to 0.1 mg/m³. In revising this limit, the ACGIH cited discrepancies in the literature regarding the ratio of blood and urinary mercury levels to airborne concentrations of mercury (Bell, Lovejoy, and Vizena 1973/Ex. 1-1078; Stopford et al. 1978/Ex. 1-1100). These studies reported lower ratios of mercury body burden to airborne concentration when personal sampling is used rather than area sampling. According to Bell, Lovejoy, and Vizena (1973/Ex. 1-1078), the lower ratio results because mercury exposure measurements are generally found to be higher when personal sampling is conducted, presumably as a consequence of contamination of clothing. The ACGIH argued that the 0.05-mg/m³ limit may be too stringent to apply when personal sampling is conducted. The ACGIH also stated that, in contrast to the effects of elemental or alkyl mercury, little mercury is deposited in the brain following exposure to aryl or inorganic mercury compounds. Based on this reasoning, the ACGIH adopted the higher 0.1-mg/m³ TLV-TWA for aryl and inorganic compounds of mercury. However, the

ACGIH (1986/Ex. 1-3, p. 358) also noted that, although central nervous system effects are less likely to occur from exposure to mercury salts than from other forms of mercury, the risk of renal and oral effects would "presumably be just as great." Therefore, they cautioned that the higher limit for mercury salts "may be subject to debate" (ACGIH 1986/Ex. 1-3, p. 358).

Robert G. Smerko, President of the Chlorine Institute (Ex. 3-828; Tr. pp. 10-171 to 10-177), reviewed the pharmacologic evidence on the various forms of mercury. He concluded that, contrary to the statement by the ACGIH, there is little difference in brain deposition between elemental mercury and mercury compounds:

> The ACGIH differentiated between aryl mercury and inorganic salts of mercury in comparison with elemental mercury vapor * * *. While this is true for large doses of mercury, it overlooks for the fact that absorbed elemental mercury is rapidly oxidized in the blood as reported by Clarkson et al. (1967) * * *.
>
> Only when the rate of absorption exceeds the rate at which the body can oxidize mercury between the point of absorption and the brain does elemental mercury behave differently than aryl mercury and inorganic salts of mercury at the blood-brain barrier (Ex. 3-828, p. 7).

Mr. Smerko requested that OSHA retain its 0.1-mg/m³ limit as an 8-hour TWA, but supplement the limit with requirements for monitoring of urinary mercury levels; Dr. James Melius of the New York State Department of Health (Tr. pp. 11-105, 11-106, 11-109 to 11-111) also stressed the importance of biological monitoring for mercury. This issue is discussed below, for mercury vapor.

In light of this information, which counters the basis for the 0.1-mg/m³ ACGIH TLV, and given the caution expressed by the ACGIH (1986/Ex. 1-3, p. 358) that the 0.1-mg/m³ TWA limit "may be subject to debate," OSHA concludes that the PEL for aryl and inorganic mercury should be 0.1 mg/m³ as a ceiling limit, as indicated in Table Z-2. The health studies cited above indicate that reducing the limit for these forms of mercury will ensure that employees are not at significant risk of adverse neuropathic effects from exposure to these forms of mercury and their compounds. Accordingly, OSHA is establishing a 0.1-mg/m³ ceiling limit (measured as mercury) for aryl and inorganic mercury and compounds. Dr. Grace Ziem (Ex. 46) supported lowering the mercury limit in the final rule, and the Workers Institute for Safety and Health urged OSHA to restore the ceiling (Ex. 116). OSHA is also adding a skin notation to alert employers to the fact that mercury readily penetrates the skin, causing systemic poisoning; several cases of poisoning from this route have been reported (NIOSH 1973b, as cited in ACGIH 1986/Ex. 1-3, p. 358; Ex. 3-828).

One commenter, Stuart B. Cooper, Manager of Regulatory Affairs for Cosan Chemical Corporation (Ex. 3-1162), expressed concern that establishing different PELs for inorganic mercury and elemental mercury vapor would confuse the interpretation of monitoring results in cases in which more than one form of mercury is present. He suggested that, where one form of mercury is present to a greater extent than another form, only the PEL for the predominant form should apply. OSHA agrees that, for some workplaces, such an approach may be reasonable; however, since the limits for inorganic mercury and mercury vapor differ, both in numerical value and required sampling duration, OSHA believes that employers may wish to conduct both ceiling and full-shift air sampling in cases where both forms of mercury are present.

In the final rule, OSHA is establishing a PEL of 0.1 mg/m³ as a ceiling for aryl mercury and the inorganic compounds of mercury, along with a skin notation. The Agency concludes that these limits are necessary to protect exposed workers from the significant risks of neuropathy and systemic toxicity (both of which constitute material impairments of health) that are associated with exposure to these substances at higher levels.

MERCURY (VAPOR)

CAS: 7439-97-6; Chemical Formula: Hg
H.S. No. 1241

OSHA formerly had a TWA limit of 0.1 mg/m³ for mercury (including vapor). The ACGIH recommends a TLV-TWA of 0.05 mg/m³ for mercury vapor, measured as mercury, and a skin notation. NIOSH has a REL of 0.05 mg/m³ as an 8-hour TWA. The Agency proposed a PEL of 0.05.mg/m³ TWA mercury and its vapor, measured as Hg, and the final rule establishes this limit, also with a skin notation. NIOSH (Ex. 8-47, Table N1) concurs that this limit is appropriate. Elemental mercury is a silvery, odorless, heavy liquid.

Inhalation of high concentrations of mercury vapor for relatively brief periods can cause pneumonitis, bronchitis, chest pain, dyspnea, coughing, stomatitis, gingivitis, salivation, and diarrhea (NIOSH 1973b, as cited in ACGIH 1986/Ex. 1-3, p. 359; Ashe, Largent, Dutra et al. 1953/Ex. 1-502). Chronic mercurialism is manifested by central nervous system effects, including tremor, a variety of neuropsychiatric disturbances, and loss of appetite (Kazantzis 1966, as cited in ACGIH 1986/Ex. 1-3, p. 359; Smith, Vorwald, Patil, and Mooney 1970/Ex. 1-373).

Severe organ damage occurred in rabbits exposed for four hours to an average vapor concentration of 28.8 mg/m³. Damage was observed in the kidneys, liver, brain, heart, lungs, and colon (Ashe, Largent, Dutra et al. 1953/Ex. 1-502). A study by Smith, Vorwald, Patil, and Mooney (1970/Ex. 1-373) of 567 male workers exposed to a mean exposure level of 0.065 mg/m³ (S.D. ± 0.085) showed a significant dose-related increase in the incidence of weight loss, tremors, abnormal reflexes, nervousness, and insomnia among workers exposed to 0.1 mg/m³ or higher. There were slight increases in the incidence of insomnia and loss of appetite among workers exposed to 0.1 mg/m³ or less. Smith, Vorwald, Patil, and Mooney (1970/Ex. 1-373) concluded that a limit of 0.1 mg/m³ contained little or no margin of safety. Six of 75 workers regularly exposed to 0.05 to 0.1 mg/m³ of mercury vapor in a glassware manufacturing plant reported insomnia, and one was found to have tremors (Danziger and Possick 1973/Ex. 1-504). One of 11 workers, employed in a mercury mine or refining plant and exposed at vapor concentrations below 0.1 mg/m³ had sore gums, loose teeth, or excess salivation (Rentos and Seligman 1968/Ex. 1-523).

NIOSH (1973b, as cited in ACGIH 1986/Ex. 1-3, p. 358) has recommended a 10-hour TWA limit of 0.05 mg/m³ for inorganic mercury and concluded that hyperactivity, rather than tremor, may be the most typical symptom of chronic mercurialism. Two studies report no evidence of mercury vapor poisoning in industrial settings where characteristic exposures ranged between 0.05 and 0.1 mg/m³ (Danziger and Possick 1973/Ex. 1-504; McGill, Ladd, Jacobs, and Goldwater 1964/Ex. 1-520).

In workers exposed at levels above 0.1 mg/m³, toxic symptoms were seen (Rentos and Seligman 1968/Ex.1-523). Turrian, Grandjean, and Turrian (1956, as cited in ACGIH 1986/Ex. 1-3, p. 358) found that 33 percent of workers exposed to the vapor at levels above 0.05 mg/m³ exhibited hyperexcitability, while only 8 percent of those exposed below that level manifested this symptom. About 20 percent of workers in both groups exhibited tremor. The ACGIH notes that, after exposure to the vapor, "a relatively high percentage of the absorbed mercury remains in the brain," compared with the amount

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deposited in the brain after exposure to the aryl and inorganic compounds (ACGIH 1986/Ex. 1–3, p. 359). The ACGIH accordingly recommends a higher TLV-TWA for aryl and inorganic mercury then for mercury vapor (see, however, the discussion of aryl and inorganic mercury above).

Robert G. Smerko, President of the Chlorine Institute (Ex. 3–828), and the Laboratory Products Association (Ex. 135) urged OSHA to retain its 0.1-mg/m³ PEL and to require urinary mercury analysis in lieu of a reduced PEL because dermal contact with mercury may contribute substantially to its toxicity (Ex. 3–828; Tr. pp. 10–171 to 10–177). Mr. Smerko cited several reports of such effects in his testimony and submission, including reports of poisoning resulting from contact with contaminated clothing. Because dermal contact is a significant route of exposure for mercury, Mr. Smerko commented:

> There is a large probability that air measurements of mercury concentrations (aryl mercury, inorganic salts, or elemental mercury vapor) either overestimate or underestimate the extent of exposure to mercury. The extreme accuracy and precision of the urinary mercury analysis and the amount of work that has been done in correlating urinary mercury concentrations with the presence or absence of effects from exposure to mercury warrant the propsal that a biological standard, or a comprehensive standard that includes an air concentration and urinary mercury concentration, be established for aryl mercury, inorganic salts of mercury, and elemental mercury vapor (Ex. 3–828, p. 9).

Mr. Robert F. Adams, Senior Industrial Hygienist for Occidental Chemical Corporation (Ex. 3–1174), supported the position of the Chlorine Institute on this issue, as did Dr. James Melius of the New York State Department of Health (Tr. pp. 11–105, 11–106, 11–109 to 11–111).

OSHA agrees that prevention of mercury contamination of skin and clothing, as well as the proper handling of contaminated clothing, are essential elements of a program to protect employees from the health hazards of mercury. OSHA also believes that mercury presents one of the rare instances in which a biological-monitoring-based standard may represent an effective and reasonable approach for ensuring worker protection. Margaret Seminario, Associate Director of Occupational Safety, Health, and Social Security for the AFL–CIO, also supported provisions for biological monitoring of mercury (Ex. 194, Appendix 1, p. 3). However, developing such a standard is beyond the scope of this rulemaking, which is being conducted solely to revise OSHA's air contaminant limits.

Despite some of the uncertainties in the studies described above regarding the relationship between airborne exposure levels and health effects, OSHA concludes that the data suggest that the former PEL of 0.1 mg/m³ is not sufficiently protective. Given the severity of the neuropathic effects caused by mercury poisoning, OSHA finds that a reduction in the airborne limit is necessary to ensure that workers are not at significant risk of mercury-related neuropathic effects. Therefore, OSHA is revising its PEL for elemental mercury vapor to 0.05 mg/m³ as an 8-hour TWA. In addition, because skin absorption is a significant route of exposure and leads to systemic poisoning, as evidenced by Mr. Smerko's written testimony, OSHA is including a skin notation in the final rule.

OSHA is establishing an 8-hour TWA PEL of 0.05 mg/m³ TWA for mercury vapor, with a skin notation. The Agency concludes that this limit will substantially reduce the significant risks of acute and chronic mercury poisoning (which constitute material health impairments) that have been demonstrated to occur at exposure levels above 0.05 mg/m³. The skin notation is added because the vapors of elemental mercury can be readily absorbed through the skin.

MERCURY, (ORGANO) ALKYL COMPOUNDS

CAS: 7439-97-6
H.S. No. 1242

OSHA had a former 8-hour PEL of 0.01 mg/m³ TWA and a ceiling limit of 0.04 mg/m³ for the alkyl compounds of mercury. The ACGIH has a TLV-TWA of 0.01 mg/m³ and a TLV-STEL of 0.03 mg/m,³ with a skin notation, for these compounds, measured as mercury. The Agency proposed, and the final rule is establishing, permissible exposure limits of 0.01 mg/m³ as an 8-hour TWA and 0.03 mg/m³ as a STEL, with a skin notation, for the alkyl compounds of mercury (measured as Hg). NIOSH (Ex. 8–47, table N1) concurs with these limits. Alkyl mercury compounds include volatile liquids, such as dimethyl and diethyl mercury, as well as many complex salts, which are usually solids.

Alkyl mercury compounds pose greater health hazards than do the inorganic compounds of mercury because they can penetrate the blood-brain barrier and the placenta very quickly. The primary toxic effects associated with exposure to the organic compounds of mercury are injuries to the central and peripheral nervous systems and to the kidneys (Casarett and Doull 1975/Ex. 1–1144). In addition, data concerning mouse and rat exposures to alkyl mercury compounds have demonstrated toxicity to the gastrointestinal system, pancreas, liver, gonads, and cardiovascular system. Suppression of the immune system and impairment of the endocrine system have also been observed (Shakbazyan, Shevchenko, Borisenko et al. 1977/Ex. 1–933). Fatalities in mice have been reported following exposures of 10 to 30 mg/m³ for 3 to 5 hours (Trakhtenberg 1950/Ex. 1–447).

Methyl mercury is among the most damaging of the alkyl compounds to humans because it accumulates in the body and causes developmental effects (Wilson 1977/Ex. 1–457). A three-month exposure to approximately 1 mg/m³ diethyl mercury caused death in two individuals (Hill 1943/Ex. 1–786). Another fatal case of alkyl mercury poisoning has also been described (Hook, Lundgren, and Swensson 1954/Ex. 1–333). On the basis of his work with laboratory animals, Trakhtenberg (1950/Ex. 1–447) stated that even a concentration as low as 0.00001 mg/m³ could not be tolerated by humans on a continuing basis. However, a later study reported no consistent, acute effects of mercury poisoning at air concentrations between 0.01 and 0.1 mg/m³, despite the fact that brief excursions considerably above this range occurred (Dinman, Evans, and Linch 1958/Ex. 1–311). Organic mercury compounds can be absorbed through the skin (*Dangerous Properties of Industrial Materials*, 7th ed., Sax and Lewis 1989).

Lawrence H. Hecker, representing Abbott Laboratories (Ex. 3–678), objected to the inclusion of a STEL for the alkyl mercury compounds, stating that there is no health basis for such a limit. OSHA believes that both the seriousness of the neurological effects caused by exposure to low levels of alkyl mercury and the ability of alkyl mercury to accumulate in the body necessitate the establishment of a STEL to ensure that the PEL is not exceeded. As discussed in Section VI.C.17 of this preamble, OSHA has determined that a STEL is warranted in instances where extremely hazardous substances are involved.

OSHA is retaining its 8-hour TWA PEL of 0.01 mg/m³ and adding a 15-minute STEL of 0.03 mg/m³ for the alkyl compounds of mercury (measured as Hg), with a skin notation. The Agency concludes that exposure to the alkyl mercury compounds poses significant risks of severe neuropathic and other systemic injuries, which constitute material health impairments, and that both the short-term and 8-hour limits are necessary to reduce these risks. OSHA has added the skin notation to protect against the dermal absorption possible in the absence of a skin notation.

METHYLACRYLONITRILE

CAS: 126-98-7; Chemical Formula: $CH_2=C(CH_3)C\equiv N$
H.S. No. 1251

OSHA previously had no standard for methylacrylonitrile. The ACGIH recommends a 1-ppm TLV-TWA with a skin notation to protect workers who are occupationally exposed to methylacrylonitrile. The Agency proposed, and the final rule establishes, a permissible 8-hour TWA exposure limit of 1 ppm, with a skin notation, for methylacrylonitrile, which is a colorless liquid. NIOSH (Ex. 8–47, Table N1) concurs that these limits are appropriate.

Methylacrylonitrile has been shown to be extremely toxic in animals, both by inhalation and dermal absorption. The dermal LD_{50} in rabbits is 0.35 ml/kg (280 mg/kg) (ACGIH 1986/Ex. 1–3, p. 370). Beagles exposed for 90 days to 13.5 ppm convulsed and lost motor control in their hind limbs. Microscopic brain lesions were detected in one of the dogs. The level at which no effects were detected was determined to be between 3.2 and 8.8 ppm (ACGIH 1986/Ex. 1–3, p. 370). No comments (other than NIOSH's) on the health effects of methylacrylonitrile were submitted to the rulemaking record.

OSHA is establishing a 1-ppm 8-hour TWA PEL and a skin notation for this substance. The Agency concludes this limit will substantially reduce the significant risk of neurological damage (which constitutes a material health impairment) that formerly existed in the absence of an OSHA exposure limit for this substance.

METHYL BROMIDE

CAS: 74-83-9; Chemical Formula: CH_3Br
H.S. No. 1253

OSHA's former PEL for methyl bromide was a 20-ppm ceiling with a skin notation, while the ACGIH limit is 5 ppm as an 8-hour TWA, with a skin notation. NIOSH recommends that the REL for this substance be set at the lowest feasible level. The Agency proposed, and the final rule establishes, a permissible exposure limit of 5 ppm (8-hour TWA), with a skin notation, for methyl bromide. Methyl bromide is a colorless, nonflammable gas with no taste and no odor at low temperatures. At levels above 5 ppm, it has a sweetish odor.

Acute poisoning from methyl bromide is characterized by lung irritation, pulmonary edema, convulsions, and coma. Chronic exposure to low concentrations of methyl bromide generally produces central nervous system effects, including muscle weakness and pain, incoordination, inability to focus one's eyes, and behavioral changes (ACGIH 1986/Ex. 1–3, p. 376; Craft 1983/Ex. 1–196). The onset of neurological signs and symptoms may be delayed for from several hours to a few days after exposure.

Methyl bromide is a gas and is predominantly an inhalation hazard, although there are suggestions that it can also be absorbed through the skin (*Patty's Industrial Hygiene and Toxicology*, 3rd rev. ed., Vol. 2B, p. 3443, Clayton and Clayton 1981). A report by Hine (1969/Ex. 1–70) notes that methyl bromide has been responsible for more deaths among occupationally exposed workers in California than have the organophosphates. It is hypothesized that methyl bromide has a greater potential for toxicity than do other organic bromides because its greater lipophilicity provides increased access to the brain.

Various studies demonstrate methyl bromide's toxicity in humans. Ingram (1951/Ex. 1–175) reported ill effects (symptoms not specified) after exposure to methyl bromide at concentrations of 100 ppm. Similar exposure concentrations were also reported by Hine (1969/Ex. 1–70) in a case study of two date packers in California. Johnson, Setzer, Lewis, and Anger (1977/Ex. 1–87) indicated that 34 packers became sick when exposed to an average methyl bromide concentration of 50 ppm, although concentrations in the packing room may have been as high as 100 to 150 ppm during the purging of a fumigation chamber.

Watrous (1942/Ex. 1–275) described nausea, vomiting, and headache in 90 workers who were exposed for two weeks to concentations "generally below" 35 ppm. These symptoms emphasized the need to create a TLV to protect workers from the nausea, vomiting, and headaches (which together constitute material impairments of health) associated with lower levels of exposure. This need is strengthened by the fact that, since these symptoms are usually delayed in onset, workers may not have sufficient warning of this substance's potential neurotoxicity.

The AFL–CIO (Ex. 194, p. A–12) supports the inclusion of methyl bromide in this rulemaking, but notes that it is a potential occupational carcinogen. NIOSH takes the same position and believes that methyl bromide should be addressed in a full section 6(b) rulemaking (Ex. 8–47, Table N6B; Tr. pp. 3–97, 3–98). OSHA shares the concerns of these commenters and intends to monitor the scientific evidence on methyl bromide's toxicity in the future. The Workers Institute for Safety and Health (WISH) (Ex. 116) is of the opinion that a ceiling limit is more appropriate than an 8-hour TWA for methyl bromide. OSHA finds, however, that the 5-ppm TWA will provide protection against the levels shown to produce poisoning in humans (generally in the 50- to 150-ppm range).

The presence of neurologic symptoms at levels below 35 ppm indicates that the former ceiling limit of 20 ppm is not adequate to protect workers from the effects of methyl bromide poisoning. OSHA is establishing a PEL of 5 ppm TWA, with a skin notation, to protect workers more adequately against these incapacitating symptoms. The Agency concludes that these limits will reduce this significant risk substantially.

PENTABORANE

CAS: 19624-22-7; Chemical Formula: B_5H_9
H.S. No. 1304

OSHA's former limit for pentaborane was 0.005 ppm as an 8-hour TWA. The ACGIH has the same 8-hour TWA but additionally recommends a 15-minute STEL of 0.015 ppm. The Agency proposed, and the final rule establishes, permissible exposure limits of 0.005 ppm as an 8-hour TWA and 0.015 ppm as a 15-minute STEL for pentaborane. NIOSH (Ex. 8–47, Table N1) concurs that these limits are appropriate. Pentaborane is a colorless liquid with a strong and penetrating odor.

In both humans and animals, inhalation of pentaborane vapor causes central nervous system effects (Svirbely 1954a/Ex. 1–385; Rozendaal 1951/Ex. 1–525; Lowe and Freeman 1957/Ex. 1–518; Cordasco, Cooper, Murphy, and Anderson 1962/Ex. 1–545).

The 5-minute LC_{50} for rats and mice is 67 and 40 ppm, respectively; for 60 minutes, these values are 10 and 6 ppm for rats and mice, respectively (Weir, Bath, and Weeks 1961, as cited in ACGIH 1986/Ex. 1–3, p. 459). Rats exposed repeatedly to 3 ppm pentaborane by inhalation exhibited tremors, hyperexcitability, belligerence, and weight loss (Svirbely 1954a/Ex. 1–385). Rats, rabbits, monkeys, and dogs exposed repeatedly to pentaborane vapor at concentrations of 1 ppm for four weeks or 0.2 ppm for six months lost weight (Levinskas, Paslian, and Bleckman 1958/Ex. 1–517). In the same experiments, rats and rabbits exposed at 1 ppm showed reduced activity and impaired locomotor ability, respecuvely, and monkeys and dogs exhibited apathy, loss of appetite, insensitivity to

pain, loss of mobility, tremor, and impaired coordination. The ACGIH (1986/Ex. 1–3, p. 459) notes that the 0.2-ppm concentration reported in the Levinskas, Paslian, and Bleckman (1958/Ex. 1–517) study was a calculated rather than measured value and that the actual exposure level was probably closer to 0.01 ppm.

Humans accidentally overexposed to pentaborane experienced tremors, convulsions, behavioral changes, loss of memory, impaired judgment, and other symptoms of central nervous system intoxication (Svirbely 1954a/Ex. 1–385; Rosendaal 1951/Ex. 1–525; Lowe and Freeman 1957/Ex. 1–518; Cordasco, Cooper, Murphy, and Anderson 1962/Ex. 1–545). No comments other than those from NIOSH were received on the health effects associated with pentaborane exposure.

OSHA is establishing an 8-hour TWA PEL of 0.006 ppm and a 15-minute STEL of 0.018 ppm for pentaborane. The Agency concludes that these limits will protect workers against the significant risk of central nervous system effects, such as tremors and convulsions, behavioral changes, and loss of judgment, potentially associated with exposure to pentaborane at levels only slightly above those formerly permitted by the 8-hour TWA alone. OSHA finds that these neuropathic effects constitute material health impairments within the meaning of the Act.

PHENYL MERCAPTAN

CAS: 108-98-5; Chemical Formula: C_6H_5SH
H.S. No. 1318

OSHA previously had no exposure limit for phenyl mercaptan. The ACGIH has a TLV–TWA of 0.5 ppm. NIOSH recommends a 15-minute ceiling limit of 0.1 ppm for phenyl mercaptan (benzenethiol). The Agency proposed a permissible exposure limit of 0.5 ppm as an 8-hour TWA, and the final rule establishes this limit. Phenyl mercaptan is a colorless liquid with an offensive, garlic-like odor.

The primary acute hazards of exposure to phenyl mercaptan are central nervous system stimulation followed by post-convulsive CNS depression, severe eye and skin irritation, systemic toxicity to spleen, kidney, lung, and liver tissues, and narcotic effects (ACGIH 1986/Ex. 1–3, p. 478).

Phenyl mercaptan has been reported to have 4-hour inhalation LC_{50} values of 33 and 28 ppm for rats and mice, respectively (Doull and Pizak 1962, as cited in ACGIH 1986/Ex. 1–3, p. 478; Fairchild and Stokinger 1958/Ex. 1–415). The oral LD_{50} for the rat is reported to be 46 mg/kg (McCord and Witheridge 1949/Ex. 1–882; Robles 1975, as cited in ACGIH 1986/Ex. 1–3, p. 478). For the rabbit and rat, the dermal LD_{50} values are 134 mg/kg and 300 mg/kg, respectively (Doull and Pizak 1962, as cited in ACGIH 1986/Ex. 1–3, p. 478; Fairchild and Stokinger 1958/Ex. 1–415; Schafer 1972/Ex. 1–362). The responses of animals to phenyl mercaptan exposure were uniform regardless of species, and progressed from CNS stimulation to incoordination, skeletal and muscular paralysis, and respiratory depression, followed at high concentrations by coma and death. High doses (not further specified) administered via inhalation produced lung, liver, and kidney changes in mice (Doull and Pizak 1962, as cited in ACGIH 1986/Ex. 1–3, p. 478; Fairchild and Stokinger 1958/Ex. 1–415; Schafer 1972/Ex. 1–362). In rabbits, phenyl mercaptan is a severe eye and skin irritant (McCord and Witheridge 1949/Ex. 1–882; Robles 1975, as cited in ACGIH 1986/Ex. 1–3, p. 478; Schafer 1972/Ex. 1–362).

In humans, phenyl mercaptan is a moderately toxic skin irritant and causes severe dermatitis, headaches, and dizziness at unspecified levels (Fairchild and Stokinger 1958/Ex. 1–415; McCord and Witheridge 1949/Ex. 1–882). NIOSH (Ex. 8–47, Table N7; Tr. p. 3–99) believes that the limit for phenyl mercaptan is better expressed as a ceiling than as a time-weighted average; however, OSHA believes that a TWA limit set at 0.5 ppm will protect against phenyl mercaptan's toxic effects. No other comments on the health effects of phenyl mercaptan were submitted to the rulemaking record.

OSHA is establishing an 8-hour TWA limit of 0.5 ppm for phenyl mercaptan. The Agency concludes that this limit will protect workers from the significant risks of CNS effects, skin irritation, and systemic injury, all material impairments of health that are potentially associated with exposure to phenyl mercaptan at the uncontrolled levels formerly permitted by the absence of any OSHA limit.

PROPYLENE GLYCOL DINITRATE

CAS: 6423-43-4; Chemical Formula: $C_3H_6N_2O_6$
H.S. No. 1342

OSHA previously had no exposure limit for propylene glycol dinitrate. The ACGIH recommends a TLV–TWA of 0.05 ppm, with a skin notation. The Agency proposed a permissible exposure limit of 0.05 ppm TWA, with a skin notation, for this substance, and NIOSH (Ex. 8–47, Table N1) concurred with the proposed limit. The final rule establishes a PEL of 0.05 ppm but does not include the proposed skin notation. When freshly prepared, propylene glycol dinitrate is a colorless liquid with a disagreeable odor.

Exposure to this substance affects blood pressure, causes methemoglobinuria and respiratory toxicity, injures liver and kidney tissues, and distorts vision. Propylene glycol dinitrate can also cause headache and incoordination.

The oral LD_{50} value for the rat is between 480 and 250 mg/kg (Clark and Litchfield 1969/Ex. 1–543; Andersen and Mehl 1973/Ex. 1–536), and the subcutaneous LD_{50} is 530 mg/kg (Andersen and Mehl 1973/Ex. 1–536). Mice are reported to be somewhat more resistant, with a subcutaneous LD_{50} of slightly more than 1200 mg/kg; however, cats appear to be even more susceptible to propylene glycol dinitrate and exhibit a subcutaneous LD_{50} of between 200 and 300 mg/kg (Clark and Litchfield 1969/Ex. 1–543). In all species studied, death occurs by anoxia, which is caused by almost complete conversion of hemoglobin to methemoglobin (Clark and Litchfield 1969/Ex. 1–543). Skin tests in albino rabbits did not produce irritation, but ocular instillation caused transient conjunctival redness (Jones, Strickland, and Siegel 1972/Ex. 1–742). Twenty-day skin exposures in rabbits at 1 g/kg caused minor irritation, and at 2 g/kg, rabbits became weak and cyanotic; one of five rabbits died, and this animal's hemoglobin and hematocrit values had decreased. When the dose was increased to 4 g/kg, the rabbits' methemoglobin values rose to 34.5 percent at death (Jones, Strickland, and Siegel 1972/Ex. 1–742). Continuous 90-day inhalation exposures at 10 ppm caused kidney and liver changes in dogs; exposures at 35 ppm caused heavy iron deposits in the liver, spleen, and kidneys. Female (but not male) rats showed a drop in blood pressure within 30 minutes after injection of doses above 5 mg/kg. Rhesus monkeys displayed mydriasis in 90-day exposures at 35 ppm but no change in avoidance behavior during a visual discrimination and acuity threshold test (Jones, Strickland, and Siegel 1972/Ex. 1–742).

In humans, eight-hour exposures to 0.2 ppm or higher concentrations of propylene glycol dinitrate resulted in visual distortion and headache (Stewart, Peterson, Newton et al. 1974, as cited in ACGIH 1986/Ex. 1–3, p. 502). Although subjects developed a tolerance for the headache response, the visual effects were cumulative. Impaired balance occurred after 6.5 hours of exposure to 0.5 ppm, and a 40-minute exposure to 1.5 ppm caused eye irritation. Subjects

exposed at 0.5 ppm for 8 hours experienced a consistent elevation in diastolic pressure but no pulmonary irritation. At concentrations of 0.03 to 1.5 ppm, no hematologic effects were observed (Stewart, Peterson, Newton et al. 1974, as cited in ACGIH 1986/Ex. 1–3, p. 502). Studies of human exposures to levels below 0.1 ppm do not report chronic neurotoxicity (Horvath, Ilka, Boyd, and Markhan 1981/Ex. 1–557).

The skin notation included in the proposal for this substance is not included in the final rule because evidence demonstates that the dermal LD_{50} in rabbits is even greater than 2 g/kg (see the discussion in Section VI.C.18 for OSHA's policy on skin notations). No comments except those from NIOSH were received on the health effects of propylene glycol dinitrate.

OSHA is establishing an 8-hour TWA limit of 0.05 ppm for propylene glycol dinitrate. The Agency concludes that this limit will protect workers against the significant risks of hepatotoxic, hematologic, and central nervous system effects (all of which constitute material health impairments) that exist from workplace exposure at the levels permitted in the absence of any OSHA PEL.

Conclusions

OSHA concludes that significant risks are associated with occupational exposure to the group of neuropathic toxicants shown in Table C1–1. The effects caused by such exposures include brain lesions, nausea, vomiting, general depression of the central nervous system, interference with sensory and motor functions, and alterations in the ability of the brain to process information. Affected workers may experience drowsiness, dizziness, loss of ability to concentrate, mood changes, reduced awareness, learning difficulty, unsteadiness, and auditory and visual disturbances. In addition, employees experiencing these effects are imperiled and are likely to hurt themselves or others in accidents caused by their reduced functional capacities. The final rule's promulgation of new or revised exposure limits for these neurotoxins substantially reduces such risks and affords protection to workers against these material health impairments.

2. Substances for Which Limits Are Based on Avoidance of Narcotic Effects

Introduction

OSHA is establishing new or revised limits for 19 substances based primarily on evidence showing that occupational exposure to these substances causes narcosis. The narcotic effects of exposure to such substances as the alcohols, aliphatic hydrocarbons, and chlorinated hydrocarbons have been recognized as serious for many years. Table C2–1 lists these chemicals, their CAS and HS numbers, and their former, proposed, and final rule limits. For seven of these substances, the Agency is lowering the 8-hour TWA permissible exposure limit and revising or adding a STEL. In five additional cases OSHA is retaining its former 8-hour TWA permissible exposure limit and adding a STEL. Eight-hour TWAs and/or STELs are being established for four previously unregulated substances, and in three other cases, OSHA is lowering its 8-hour TWA permissible exposure limit.

Description of the Health Effects

Narcosis is caused by a general depression of central nervous system (CNS) function. When the CNS becomes sufficiently depressed, the awareness or consciousness of affected persons is diminished. Initial symptoms of narcosis include drowsiness, difficulty in concentration, and mood changes; these effects may progress to slurred speech, dizziness, loss of coordination, and, in more severe cases, loss of consciousness, coma, and death. Except in more serious cases, CNS depression is reversible if the exposure ceases. However, because narcosis adversely affects the concentration and coordination of affected workers, these workers and their co-workers are at increased risk of injuries and accidents caused by slowed reaction times, incoordination, and mistakes and errors in judgment. Moreover, these effects constitute material impairments of health or functional capacity within the meaning of the Act, even if they are not permanent.

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TABLE C2-1. Substances for Which Limits Are Based on Avoidance of Narcosis

H.S. Number/ Chemical Name	CAS No.	Former PEL	Proposed PEL	Final Rule PEL*
1044 Butane	106-97-8	—	800 ppm TWA	800 ppm TWA
1049 sec-Butyl alcohol	78-92-2	150 ppm TWA	100 ppm TWA 150 ppm STEL	100 ppm TWA
1050 tert-Butyl alcohol	75-65-0	100 ppm TWA	100 ppm TWA 150 ppm STEL	100 ppm TWA 150 ppm STEL
1111 Cyclopentane	287-92-3	—	600 ppm TWA	600 ppm TWA
1163 Ethyl bromide	74-96-4	200 ppm TWA	200 ppm TWA 250 ppm STEL	200 ppm TWA 250 ppm STEL
1185 Gasoline	8006-61-9	—	300 ppm TWA 500 ppm STEL	300 ppm TWA 500 ppm STEL
1194 Heptane	142-82-5	500 ppm TWA	400 ppm TWA 500 ppm STEL	400 ppm TWA 500 ppm STEL
1201 Hexane isomers	Varies with compound	—	500 ppm TWA 1000 ppm STEL	500 ppm TWA 1000 ppm STEL

TABLE C2-1. Substances for Which Limits Are Based on Avoidance of Narcosis (continued)

H.S. Number/ Chemical Name	CAS No.	Former PEL	Proposed PEL	Final Rule PEL*
1218 Isoamyl alcohol (primary and secondary)	123-51-3	100 ppm TWA	100 ppm TWA 125 ppm STEL	100 ppm TWA 125 ppm STEL
1221 Isophorone	78-59-1	25 ppm TWA	4 ppm TWA	4 ppm TWA
1254 Methyl chloride	74-87-3	100 ppm TWA 200 ppm Ceiling (5 min/3 hrs) 300 ppm Peak	50 ppm TWA 100 ppm STEL	50 ppm TWA 100 ppm STEL
1255 Methyl chloroform (1,1,1-Trichloroethane)	71-55-6	350 ppm TWA	350 ppm TWA 450 ppm STEL	350 ppm TWA 450 ppm STEL
1296 Octane	111-65-9	500 ppm TWA	300 ppm TWA 375 ppm STEL	300 ppm TWA 375 ppm STEL
1306 Pentane	109-66-0	1000 ppm TWA	600 ppm TWA 750 ppm STEL	600 ppm TWA 750 ppm STEL
1307 2-Pentanone (Methyl propyl ketone)	107-87-9	200 ppm TWA	200 ppm TWA 250 ppm STEL	200 ppm TWA 250 ppm STEL

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TABLE C2-1. Substances for Which Limits Are Based on Avoidance of Narcosis (continued)

H.S. Number/ Chemical Name	CAS No.	Former PEL	Proposed PEL	Final Rule PEL*
1371 Stoddard solvent	8052-41-3	500 ppm TWA	100 ppm TWA	100 ppm TWA
1372 Styrene	100-42-5	100 ppm TWA 200 ppm Ceiling (5 min/3 hrs) 600 ppm Peak	50 ppm TWA 100 ppm STEL	50 ppm TWA 100 ppm STEL
1397 Toluene	108-88-3	200 ppm TWA 300 ppm Ceiling (10 min/8 hrs) 500 ppm Peak	100 ppm TWA 150 ppm STEL	100 ppm TWA 150 ppm STEL
1406 Trichloroethylene	79-01-6	100 ppm TWA 200 ppm Ceiling (5 min/2 hrs) 300 ppm Peak	25 ppm TWA	50 ppm TWA 200 ppm STEL

* OSHA's TWA limits are for 8-hour exposures; its STELs are for 15 minutes unless otherwise specified; and its ceilings are peaks not to be exceeded for any period of time.

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The mechanism by which exposure to substances induces narcosis is poorly understood. It is believed that CNS depressants may have the same mechanism of action as general anesthetics, which appear to produce a reversible effect on electrically excitable neuronal membranes.

Dose-Response Relationship and Narcotic Effects

The induction of narcosis following exposure to narcotic agents is expected to follow the classical S-shaped (sigmoidal) dose-response relationship. As exposure level increases, both the percent of exposed persons affected and the severity of the effect increase. Although it is not known whether a true threshold exists for the occurrence of the molecular events leading to narcosis (i.e., disruption of electrical impulses in neurons), there is usually a level at which most exposed individuals will manifest the onset of symptoms associated with narcosis. The no-effect level for a particular substance is determined largely by individual susceptibility, the extent to which the material is absorbed, and the rate at which it is metabolized and eliminated.

The following discussion describes the record evidence and OSHA's findings for the substances in this group and illustrates the material health impairments associated with workplace exposure to these substances.

BUTANE

CAS: 106-97-8; Chemical Formula: C_4H_{10}
H.S. No. 1044.

Previously, OSHA had no limit for butane. The ACGIH has a TLV-TWA of 800 ppm for this colorless, flammable gas. The proposed PEL was 800 ppm as an 8-hour TWA, and NIOSH (Ex. 8-47, Table N1.) concurs with this limit. The final rule promulgates an 8-hour TWA of 800 ppm.

The primary risk of exposure to butane is narcosis, which occurs at high exposure levels. Exposure to 10,000 ppm butane for 10 minutes causes drowsiness, but there are no reports of systemic toxicity or irritation at this level (Gerarde 1963a, as cited in ACGIH 1986/Ex. 1-3, p. 10).

In rats, the 4-hour LC_{50} for butane is 658 g/m³, or about 280,000 ppm (NIOSH 1977i/Ex. 1-1162). Humans exposed to 1000 ppm for a single eight-hour day, or to 500 ppm for two-week periods of eight-hour workdays, showed no harmful subjective or abnormal physiological responses but did show a reduced visual evoked response (VER) wave amplitude during the second week (Stewart, Herrman, Baretta et al. 1977/Ex. 1-575). OSHA received no comments, other than NIOSH's on butane.

In the final rule, OSHA is establishing a permissible exposure limit of 800 ppm TWA for butane. The Agency concludes that this limit will protect workers against the significant risks of drowsiness and other narcotic effects, which together consitute material health impairments and are associated with exposures at the uncontrolled levels permitted in the past by the absence of an OSHA limit.

sec-BUTYL ALCOHOL

CAS: 78-92-2; Chimical Formula: $CH_3CH_2CHOHCH_3$
H.S. No. 1049

OSHA's former limit for sec-butyl alcohol was 150 ppm as an 8-hour TWA. The proposed PELs were 100 ppm as an 8-hour TWA and 150 ppm as a 15-minute STEL, and NIOSH (Ex. 8-47) concurred with these limits. In the final rule, OSHA is establishing an 8-hour TWA of 100 ppm but is not adding a STEL (see the discussion of the Agency's policy on STELs for this rulemaking in Section VI.C.17). sec-Butyl alcohol is a colorless liquid with a strong, wine-like odor.

The acute toxicity of sec-butyl alcohol is reported to be lower than that of n-butanol, for which OSHA is establishing a ceiling of 50 ppm. The oral LD_{50}s in rats for these two substances are 6.5 g/kg for sec-butyl alcohol and 4.4 g/kg for n-butanol, respectively (Smyth, Carpenter, and Weil 1951/Ex. 1-439). Liquid sec-butyl alcohol is less injurious to the eyes than liquid n-butanol (ACGIH 1986/Ex. 1-3, p. 77). Occupational exposures to sec-butyl alcohol at levels of about 100 ppm were reported not to be associated with difficulties (Banks 1966, as cited in ACGIH 1986/Ex. 1-3, p. 77).

OSHA received a comment on this substance from the American Industrial Hygiene Association (AIHA) (Ex. 8-16). The AIHA noted that there was no evidence to support a STEL for this substance and reported that the ACGIH intends to delete this STEL. OSHA has arrived at the same conclusion, and the final rule thus has no STEL for sec-butyl alcohol.

OSHA is reducing the permissible exposure limit for sec-butyl alcohol to 100 ppm TWA to afford protection against the significant risks of narcosis and irritation, which are material health impairments that are caused by exposures to sec-butyl alcohol at concentrations above the revised PEL. The Agency concludes that this limit will substantially reduce this risk.

tert-BUTYL ALCOHOL

CASL 75-65-0; Chemical Formula: $(CH_3)_3COH$
H.S. No. 1050

OSHA formerly had a limit of 100 ppm for tert-butyl alcohol. The ACGIH has a TLV-TWA of 100 ppm, with a TLV-STEL of 150 ppm. OSHA proposed to retain the 8-hour TWA limit of 100 ppm and to add a STEL of 150 ppm for tert-butyl alcohol, and NIOSH (Ex. 8-47, Table N1) concurs. These limits are established by the final rule. At ordinary temperatures and pressures, tert-butyl alcohol exists in the form of colorless, hygroscopic crystals (ACGIH 1986/Ex. 1-3).

Although similar to the other butyl alcohols in many respects, tert-butyl alcohol is more volatile and has a greater potential for narcotic effects than other butyl alcohols (Weese 1928/Ex. 1-1073). Mice exposed to tert-butyl alcohol exhibit a stronger narcotic response than they show when exposed to normal or isobutyl alcohol (Weese 1928/Ex. 1-1073). Repeated daily doses of tert-butyl alcohol that produced narcosis were not fatal in animals (Schaffarzick and Brown 1952/Ex. 1-868). In humans, contact with t-butyl alcohol produces erythema and hyperemia (Oettel 1936/Ex. 1-921). Except for NIOSH's submittal, OSHA received no comments on tert-butyl alcohol.

In the final rule, OSHA is retaining the 8-hour TWA PEL of 100 ppm and adding a 15-minute STEL of 150 ppm for tert-butyl alcohol. The Agency concludes that this combination of limits will protect against the significant risk of narcosis, which constitutes a material health impairment that potentially occurs at levels above the 8-hour TWA PEL.

CYCLOPENTANE

CAS: 287-92-3; Chemical Formula: $CH_2CH_2CH_2CH_2CH_2$
H.S. No. 1111

Previously, OSHA had no limit for cyclopentane. The proposed PEL was 600 ppm as an 8-hour TWA, and NIOSH concurred with this limit (Ex. 8-47, Table N1). The final rule promulgates this limit, which is consistent with that of the ACGIH. Cyclopentane is a mobile, colorless, and flammable liquid.

The existing animal data indicate that cyclopentane is a narcotic agent. As with other alicyclic hydrocarbons, exposure to high concentrations causes excitement, loss of equilibrium, stupor, coma, and, rarely, respiratory failure (Gerarde 1963a, as cited in ACGIH 1986/Ex. 1-3, p. 164). No major animal studies on the effects of cyclopentane exposure have been reported, and evaluations of the toxic properties of this substance have therefore relied on the animal data

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for n-pentane. n-Pentane has been shown to cause narcosis in animals at exposures of 90,000 to 120,000 ppm for 5 to 60 minutes (Abbritti, Siracusa, Cianchetti et al. 1976/Ex. 1–408). Swann, Kwon, and Hogan (1974/Ex. 1–124) reported that a concentration of 130,000 ppm is fatal. Almost no data are available concerning the chronic effects of cyclopentane exposure.

Abbritti, Siracusa, Cianchetti et al. (1976/Ex. 1–406) reported that petroleum solvents used in the Italian shoe industry contain up to 16 percent cyclopentane. Workers exposed to these solvents have developed polyneuropathy, and Oettel (1936/Ex. 1–921) reported that skin exposure to such solvents caused burning and skin blistering after 15 minutes of confined contact. It has not been determined whether the irritation was caused by cyclopentane or by cyclopentane and other substances, such as n-hexane, in the solvent. OSHA received no comments other than those from NIOSH.

In the final rule, OSHA is establishing a PEL of 600 ppm as an 8-hour TWA for cyclopentane. OSHA concludes that occupational exposure to cyclopentane poses a significant risk of irritation and narcosis, which constitute material impairments of health that occur at levels somewhat above the PEL established in the final rule.

ETHYL BROMIDE

CAS: 74-96-4; Chemical Formula: C_2H_5Br
H.S. No. 1163

OSHA formerly had an 8-hour TWA limit of 200 ppm for ethyl bromide. The ACGIH also has a limit of 200 ppm as an 8-hour TWA and 250 ppm as a 15-minute STEL. The proposal retained the PEL of 200 ppm and added a STEL of 250 ppm; these limits are established by the final rule. Ethyl bromide is a colorless, highly volatile, flammable liquid with an ether-like odor; it becomes yellow when exposed to light and air.

The concentrations of ethyl bromide reported as lethal to guinea pigs are 3200 ppm for 9 hours and 1700 ppm for 12.5 hours (Sayers, Yant, Thomas, and Berger 1929/Ex. 1–603). von Oettingen (1955/Ex. 1–676) reported the minimal lethal concentration of this substance for mice as 3500 ppm.

Ethyl bromide acts as a central nervous system depressant (narcotic); additionally, exposure causes irritation of the lungs and congestion and fatty degeneration of the liver, intestinal hemorrhage, and kidney swelling. Several deaths have been reported from the use of ethyl bromide as a general anesthetic (von Oettingen 1955/Ex. 1–676). The record contains no submissions on the health effects of ethyl bromide exposure other than a submission from NIOSH (Ex. 8–47, Table N2; Tr. 3–86) indicating its nonconcurrence. NIOSH noted that one study (Karimullna and Gizatullina 1969) demonstrated liver injury and disrupted liver function in rats exposed 4 hours daily for 6 months to 560 ppm ethyl bromide. NIOSH also reported that an NTP inhalation bioassay to assess the carcinogenicity of ethyl bromide in rats and mice exposed at 100, 200, or 400 ppm was scheduled for peer review in October 1988. OSHA will review this study and any others that become available on this substance to determine whether further action is warranted.

In the final rule, OSHA is retaining its PEL of 200 ppm as an 8-hour TWA and adding a 15-minute STEL of 250 ppm for ethyl bromide. The Agency concludes that these limits will work together to reduce the significant risks of narcosis, kidney and liver damage, and respiratory irritation, all material impairments of health that are associated with occupational exposure to elevated levels of ethyl bromide.

GASOLINE

CAS: 8006-61-9; Chemical Formula: None
H.S. No. 1165

Previously, OSHA had no PEL for gasoline. The ACGIH has a 300-ppm 8-hour TWA and a 500-ppm 15-minute STEL for this substance. OSHA proposed a TWA PEL of 300 ppm and a STEL of 500, and these limits are established in the final rule.

Studies have shown that exposure to 2000 ppm of gasoline for 30 minutes produces mild anesthesia, while exposure to concentrations between 500 and 900 ppm for one hour produces dizziness (Gerarde 1963a and Runion 1975, both as cited in ACGIH 1986/Ex. 1–3, p. 283). However, these authors also found that people exposed to gasoline at concentrations of 160 to 270 ppm for several hours do not experience any symptoms of narcosis but may, as Dr. Liem (Ex. 46) points out, experience eye and throat irritation.

Several commenters noted that gasoline, or specific types of gasoline (i.e., unleaded), may cause kidney and liver damage and cancer, in addition to CNS effects (Exs. 3–740, 8–47, 194, 197; Tr. VII, pp. 70–78). Dr. Franklin Mirer, Director of the Health and Safety Department of the United Auto Workers, made the following statement, which is typical of the views of this group of commenters:

> The crucial study in redefining the toxicity of aliphatic hydrocarbons is an inhalation bioassay of unleaded gasoline conducted by the American Petroleum Institute in 1984. The study found increased kidney tumors in male rats and liver tumors in female mice.
>
> The rat portion of the study gave definitely clear evidence of carcinogenic activity. Kidney tumors appeared in a group of rats exposed at 292 parts per million, although a statistical analysis was not documented in the published report. Of greater concern to me than the carcinogenic effect was that male rats also suffered a characteristic toxic kidney effect[s]. Indications of this toxicity appeared as early as three to six months in rats exposed at 47 parts per million (Tr. VII, pp. 70–71).

NIOSH shares these concerns and commented (Ex. 8–47, Table N8B) that gasoline would be an appropriate candidate for a full Section 6(b) rulemaking.

OSHA is aware that there is a recent and rapidly developing body of evidence about other health effects associated with exposure to gasoline and other petroleum materials and that this is an active area of toxicological research. However, the Agency agrees with the American Petroleum Institute (Ex. 124, p. 4) that complex and difficult scientific questions remain to be answered before conclusions can be drawn about those other potentially toxic effects of gasoline exposure. OSHA believes that it would be inappropriate to delay action on this substance at the present time. NIOSH representatives at the hearing (Tr. pp. 3–130, 3–131) agreed that, in the absence of a NIOSH REL for gasoline, promulgation of the proposed limits would constitute an appropriate first step in affording exposed workers protection against these health effects.

OSHA is establishing an 8-hour TWA of 300 ppm, supplemented with a STEL of 500 ppm, to ensure that workplace exposure levels to gasoline do not exceed the TWA level for any length of time; these limits are intended to protect against narcosis. OSHA concludes that the 8-hour TWA and STEL being promulgated in the final rule will substantially reduce the significant risks posed to workers exposed to gasoline in their places of work. These exposure-related health effects, which include narcosis and liver and kidney damage, clearly constitute material impairments of health within the meaning of the Act.

HEPTANE

CAS: 142-82-5; Chemical Formula: $CH_3(CH_2)_5CH_3$
H.S. No. 1194

The former OSHA limit for heptane was 500 ppm as an 8-hour TWA. The ACGIH TLVs for heptane are 400 ppm as a TWA and 500 ppm as a STEL. NIOSH (1977a/Ex. 1–233) has recommended that workplace exposures to heptane not exceed 85 ppm as a full-shift TWA or 440 ppm as a 15-minute ceiling limit. The proposed PEL and STEL were 400 and 500 ppm, respectively, and these limits are established by the final rule. Heptane is a clear, flammable liquid which is highly volatile.

Patty and Yant (1929, as cited in ACGIH 1986/Ex. 1–3, p. 297) reported that exposure to 1000 ppm of heptane for 6 minutes caused slight dizziness in humans; exposures to higher levels caused vertigo, incoordination, and inappropriate behavior. These authors also reported that a four-minute exposure to 5000 ppm produced complaints of loss of appetite and nausea. Based on this information, as well as on animal data showing 10,000 to 15,000 ppm to be an effect level for heptane-induced narcosis (Fuhner 1921, as cited in ACGIH 1986/Ex. 1–3, p. 297), the ACGIH concluded that heptane was more acutely toxic than hexane. The ACGIH therefore recommended limits for heptane that are somewhat lower than the limits for the hexane isomers.

As discussed in connection with pentane and the hexane isomers, NIOSH (1977a/Ex. 1–233) has recommended the same occupational exposure limits for all of the C_5-C_8 alkanes (i.e., 350 mg/m³ TWA and 1800 mg/m³ as a 15-minute ceiling). This recommendation is based on NIOSH's belief that all C_5-C_8 alkanes possess a potential neurotoxic capability similar to that of n-hexane. OSHA disagrees with this concept (see the discussion of this issue in Section V of the preamble); the Agency finds that the neurotoxicity caused by exposure to n-hexane is the result of the action of a unique metabolite, 2,5-hexanedione; the majority of record commenters agreed with OSHA that n-hexane is uniquely toxic (Exs. 3–693, 3–696, and 3–1246).

NIOSH does not concur with the limits being established for heptane (Ex. 8–47, Table N2) because NIOSH believes that "it would be incorrect to conclude that the neurotoxic properties ascribed to n-hexane are unique to this compound [n-hexane]. Other alkanes or related chemicals [such as heptane] that are ultimately metabolized to gamma diketone may have similar toxicity" (Tr. III, p. 110). However, OSHA does not agree with NIOSH that all of the C_5-C_8 alkanes have equal toxicity (see the discussion in Section V of the preamble); OSHA believes that n-hexane is uniquely toxic.

The AFL–CIO (Ex. 194, p. A–7) reiterated its position that OSHA should promulgate a 10-ppm limit for all of the petroleum solvents, including heptane. However, OSHA has determined (see Section IV.D) that it would be inappropriate at this time to enlarge the scope of this already extensive regulation. The United Auto Workers (Ex. 197) described engineering controls that could be used to achieve the lower levels the unions advocate for all petroleum solvents; these are discussed in Section VII.

Because heptane is considered to be more acutely toxic than hexane, OSHA concludes that it is appropriate to revise its limit for heptane to a level below that established for the hexane isomers to reduce the significant risk of narcosis, which is a material health impairment. Therefore, OSHA is revising its limit for heptane to 400 ppm as an 8-hour TWA and 500 ppm as a 15-minute STEL. The Agency concludes that the TWA and STEL together will substantially reduce this significant occupational risk.

HEXANE ISOMERS

CAS: None; Chemical Formula: $(CH_3)_2C_4H_8$; $n(CH_3)_2C_4H_8$
H.S. No. 1201

Previously, OSHA had no limit for the hexane isomers. The ACGIH TLVs for the hexane isomers are 500 ppm as an 8-hour TWA and 1000 ppm as a 15-minute STEL. NIOSH has a recommended TWA limit for these isomers of 100 ppm, supplemented with a 510-ppm 15-minute ceiling. The proposed and final rule PELs are an 8-hour TWA of 500 ppm and a 15-minute STEL of 1000 ppm. The hexanes are clear, highly volatile liquids with a mild gasoline-like odor.

A study by Drinker, Yaglou, and Warren (1943/Ex. 1–730) shows that humans exposed to 1400 to 1500 ppm of hexane experienced nausea and headache. Patty and Yant (1929, as cited in ACGIH 1986/Ex. 1–3, p. 307) found that a 10-minute exposure to 5000 ppm caused giddiness and dizziness in exposed subjects. A study by Nelson, Enge, Ross et al. (1943/Ex. 1–66) showed no effects in unacclimated subjects exposed to hexane isomers in concentrations of 500 ppm, but narcotic effects have often been seen in subjects exposed at levels above 1000 ppm (Elkins 1959d, as cited in ACGIH 1986, Ex. 1–3, p. 307). The ACGIH based its limit primarily on the Nelson, Enge, Ross et al. (1943/Ex. 1–66) study.

NIOSH recommends limits for the hexane isomers of 100 ppm as a 10-hour TWA and 510 ppm as a 15-minute short-term limit. These recommendations are based on human and animal evidence showing that exposure to n-hexane below concentrations of 500 ppm is associated with the development of polyneuropathy (Inoue, Takeuchi, Takeuchi et al. 1970/Ex.1–75; Miyagaki 1967/Ex. 1–198); NIOSH (1977a/Ex. 1–233) did not distinguish between n-hexane and other hexane isomers when making its recommendation for an exposure limit. NIOSH concluded that all of the C_5-C_8 alkanes are potential neuropathic agents and should have the same PELs as those established for n-hexane.

OSHA disagrees with NIOSH that all C_5-C_8 alkanes are potential neuropathic agents. As discussed in Section V of the preamble, OSHA believes that a metabolite of n-hexane (2,5-hexanedione) is responsible for the unique neurotoxic properties of n-hexane (see also the discussion of n-hexane in Section VI.C.1 of the Preamble). Thus OSHA agrees with the ACGIH that "it seems unlikely that all the hexanes would follow the same metabolic route in the body [as n-hexane], in view of the marked variations in structure of the molecule" (ACGIH 1986/Ex. 1–3, p. 307). The majority of commenters supported OSHA's conclusion that n-hexane is uniquely toxic because of the presence of 2,5-hexanedione and that the other alkanes are not toxic in this way (Exs. 3–593, 3–696, and 3–1246). However, the AFL–CIO (Ex. 194, p. A–7) argued for a lower limit for the hexane isomers and all petroleum solvents (see the discussion for heptane, above), and the UAW (Ex. 197) noted that controls are available to reduce exposures (see Section VII for a discussion of feasibility).

After reviewing the evidence cited by the ACGIH (1986/Ex. 1–3), NIOSH (1977a/Ex.1–233), and commenters to the record, OSHA finds that workers exposed to hexane isomers are at significant risk of experiencing narcosis and of developing neuropathy at exposure levels above the new PELs. The Agency concludes that establishing an 8-hour TWA of 500 ppm and a 15-minute STEL of 1000 ppm will substantially reduce these risks. OSHA finds that both narcosis and neuropathy constitute material health impairments.

ISOAMYL ALCOHOL (PRIMARY AND SECONDARY)

CAS: 123-51-3; Chemical Formula: $(CH_3)_2CHCH_2CH_2OH$—Primary; $(C_2H_5)_2CHOH$—Secondary
H.S. No. 1218

OSHA's former limit for the isoamyl alcohols was 100 ppm as an 8-hour TWA. The ACGIH has established an 8-hour TLV–TWA of 100 ppm and a 15-minute STEL of 125 ppm for these substances, which are colorless liquids that have pungent tastes and an alcoholic odor that causes coughing. OSHA proposed to retain the 8-hour TWA limit of 100 ppm and to add a 125-ppm 15-minute STEL; NIOSH (Ex. 8–47,

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Table N1) concurs with these limits. The final rule retains the 100-ppm 8-hour TWA and adds a 125-ppm STEL for isoamyl alcohol.

In rats, the oral LD_{50} for the primary isoamyl alcohol is 7.07 mg/kg (Smyth, Carpenter, Weil et al. 1969/Ex. 1–442). Haggard, Miller, and Greenberg (1945/Ex. 1–656) determined that isoamyl alcohol's anesthetic toxicity was approximately 12 times higher than that of ethyl alcohol, which has a TLV-TWA of 1000 ppm. Exposure to isoamyl alcohol is not associated with chronic effects.

Smyth (1956/Ex. 1–759) reported that the principal effect of inhalation exposure to this substance is narcosis, and that a 100-ppm level would protect exposed workers against significant narcosis but not against some irritation. Nelson, Enge, Ross, and co-workers (1943/Ex. 1–68) stated that unacclimatized human volunteers reported upper respiratory tract irritation after brief exposures to an isoamyl alcohol concentration of 100 ppm, and objectionable eye and mucous membrane irritation at short-term exposures to 150 ppm. With the exception of NIOSH's submittal, OSHA received no comments on isoamyl alcohol.

In the final rule, OSHA is retaining the 8-hour TWA of 100 ppm and adding a 15-minute STEL of 125 ppm for the isoamyl alcohols (primary and secondary). OSHA concludes that a short-term limit is necessary because the chemically induced eye and throat irritation associated with exposure to the isoamyl alcohols is an acute effect that occurs at concentrations only slightly higher than the 100-ppm 8-hour TWA; in addition, significant narcosis occurs at the levels permitted by the absence of a STEL. The Agency concludes that both the TWA and STEL limits are necessary to ensure that workers are protected against the material impairments represented by significant narcosis, as well as the eye, nose, and upper respiratory tract irritation known to be associated with brief exposures to isoamyl alcohol at levels above 100 ppm.

ISOPHORONE

CAS: 78-59-1: Chemical Formula: $C_9H_{14}O$
H.S. No. 1221

The former OSHA limit for isophorone was 25 ppm as an 8-hour TWA. The ACGIH has established a 5-ppm TLV as a ceiling limit, and NIOSH recommends a workplace standard of 4 ppm as an 8-hour TWA for isophorone. Isophorone is a colorless liquid at room temperature, and it has a camphor-like odor. The proposed limit was 4 ppm as an 8-hour TWA; NIOSH (Ex. 8–47, Table N1) concurs. This is the limit promulgated by the final rule.

Studies in animals and with human volunteers indicate that exposures to high concentrations of isophorone cause nephrotoxic and other adverse effects. A paper by Smyth, Seaton, and Fischer (1942/Ex. 1–378) reported that guinea pigs and rats exposed to 550 ppm isophorone for six weeks demonstrated degenerative changes in the kidneys and liver. At an exposure level of 25 ppm, no adverse effects were noted, but at 50 ppm, the liver of one animal and the kidneys of four others were damaged. The entire group of 20 animals exposed at 50 ppm survived, but 2 of 18 animals died after this level was raised to 100 ppm (Smyth, Seaton, and Fischer 1942/Ex. 1–378). Volunteers exposed for a few minutes to isophorone vapor at concentrations between 40 and 400 ppm experienced eye, nose, and throat irritation; several subjects exposed at the 200-ppm level developed headache, nausea, faintness, dizziness, and a feeling of suffocation (Smyth and Seaton 1940a/Ex. 1–377). Silverman, Schulte, and First (1946/Ex. 1–142) reported that volunteers exposed to 25 ppm isophorone, the former OSHA PEL, complained of irritation of the eyes, nose, and throat. Another study conducted by the Western Electric Company (Ware 1973, as cited in ACGIH 1986/Ex. 1–3, p. 333) reported that workers exposed for a one-month period to levels of 5 to 8 ppm isophorone demonstrated fatigue and malaise. When the workplace level was reduced to between 1 and 4 ppm, there were no complaints of adverse effects. The NIOSH criteria document for the ketones (1978f, as cited in ACGIH 1986/Ex. 1–3, p. 333) notes that all of the ketones are central nervous system depressants and that workplace exposures to more than one ketone may produce additive effects.

A comment from the New Jersey Department of Public Health (Ex. 144) urged OSHA to use EPA's IRIS data to set a limit for isophorone. The use of IRIS data is discussed in Section VI.A.

In the final rule, OSHA is reducing its 8-hour TWA PEL of 25 ppm to an 8-hour TWA of 4 ppm to protect workers against the significant risk of fatigue, nausea, and headaches, which together constitute material health impairments that have been demonstrated to occur at isophorone levels between 5 and 8 ppm. The Agency concludes that this limit will substantially reduce these occupational risks.

METHYL CHLORIDE

CAS: 74-87-3; CHEMICAL FORMULA: CH_3Cl
H.S. No. 1254

OSHA's former limits for methyl chloride were 100 ppm as an 8-hour TWA, 200 ppm as a ceiling (not to be exceeded for more than five minutes in any three-hour period), and 300 ppm as a peak. The ACGIH has a 50-ppm 8-hour TLV-TWA limit and a 100-ppm 15-minute STEL for this substance, and NIOSH recommends the lowest feasible limit because it considers methyl chloride a potential occupational carcinogen. The proposed PELs were 50 ppm as an 8-hour TWA and 100 ppm as a 15-minute STEL; the final rule establishes these limits. Methyl chloride is a colorless, sweet-smelling gas.

There is considerable evidence in humans and some in animals demonstrating that exposure to methyl chloride by inhalation or dermal absorption produces narcosis and other central nervous system effects, including respiratory failure and death (ACGIH 1986/Ex. 1–3, p. 380). In animals, repeated exposures to 500 ppm or to higher concentrations can be life-threatening, but exposures to 300 ppm for 64 weeks caused no apparent effects (Smith and von Oettingen 1947/Ex. 1–527).

Reports in earlier literature described by Fairhall (1969a/Ex. 1–648) indicate that moderate (not further specified) exposure causes ocular symptoms that may persist for weeks, while high (not further specified) exposure has severe effects on the central nervous system. Patty (1963a/Ex. 1–655) states that serious exposure causes central nervous system, liver and kidney, and bone marrow effects, with symptoms of ataxia, staggering gait, weakness, tremors, vertigo, speaking difficulty, and blurred vision. Symptoms may be of several weeks' duration or may even be permanent (Patty 1963a/Ex. 1–655).

The Dow Chemical Company (as cited in ACGIH 1986/Ex. 1–3, p. 380) studied the methyl chloride exposures of employees in 54 job classifications over a four-month period. Exposures ranged from 5 to 78 ppm methyl chloride (8-hour TWAs), averaged 30 ppm over the work shift, and occasionally included peaks as high as 440 ppm. Medical examination of these workers revealed no detectable effects of methyl chloride exposure. However, average eight-hour exposures in the range of 195 to 475 ppm caused symptoms of weakness, drowsiness, staggering gait, thickness of the tongue, and memory lapses in some of the exposed employees (Dow Chemical Company, as cited in ACGIH 1986/Ex. 1–3, p. 380).

In a study of six cases of industrial methyl chloride poisoning, workers chronically exposed to levels between 200 and 400 ppm developed neurotoxic symptoms after two or more weeks of exposure (Scharnweber, Spears, and Cowles 1974/Ex. 1–664). Symptoms included drowsiness, dizziness, mental confusion, clouded vision, staggering gait, and slurred speech, and symptoms sometimes recurred after apparent recovery and in the absence of renewed exposure.

Repko and co-workers (1976/Ex. 1–1165) found that workers exposed to concentrations of methyl chloride ranging from 7.4 to 70 ppm but averaging 33.6 ppm displayed a significant performance decrement, and that exposures below 100 ppm produced significant but transitory changes in functional capacity. OSHA will continue to monitor the toxicological evidence for methyl chloride and will re-evaluate the substance if this evidence suggests that this is appropriate.

OSHA received comments on methyl chloride from NIOSH and the Methyl Chloride Industry Association. NIOSH believes that methyl chloride is an appropriate substance for a section 6(b) rulemaking because, in NIOSH's view, methyl chloride is a potential occupational carcinogen (Ex. 8–47; Tr. 3, pp. 97–98). The AFL-CIO (Ex. 194) agrees with NIOSH on this point. The Methyl Chloride Industry Association (MCIA) indicated its support of OSHA's proposed PELs for this substance and submitted material suggesting that methyl chloride may not be a potential occupational carcinogen (Ex. 148, pp. 2–4). MCIA submitted to the record a copy of the IARC monograph and recent supplement on methyl chloride, which conclude that the evidence for the carcinogenicity of methyl chloride is inadequate in both animals and humans.

In the final rule, OSHA is establishing an 8-hour TWA of 50 ppm and a 15-minute STEL of 100 ppm for methyl chloride. The Agency concludes that these two limits together will substantially reduce the significant risk of neurotoxic effects, including functional impairment, performance decrements, headaches, dizziness, slurred speech, and staggering gait, which together constitute material impairments of health. These effects have been associated with exposure to this substance at the levels permitted by OSHA's former PEL. OSHA will continue to monitor the literature on the toxicity of methyl chloride to determine whether other action is appropriate.

METHYL CHLOROFORM (1,1,1-TRICHLOROETHANE)

CAS: 71-55-6; Chemical Formula: CH_3CCl_3
H.S. No. 1255

Previously, OSHA had an 8-hour TWA limit of 350 ppm for methyl chloroform. The ACGIH has established the same TWA limit in addition to a TLV–STEL of 450 ppm; NIOSH recommends a 15-minute ceiling limit of 350 ppm. The Agency proposed to retain its 8-hour TWA limit and to add a STEL of 450 ppm; NIOSH concurs that these limits are appropriate but would express them as ceilings rather than as TWAs (Ex. 8–47, Table N7). The final rule retains an 8-hour TWA of 350 ppm and adds a STEL of 450 ppm for methyl chloroform, which is a clear, nonflammable liquid.

The primary health effects associated with exposure to methyl chloroform are anesthesia and cardiac sensitization. The oral toxicity of methyl chloroform is low, with LD_{50} values ranging from 5.7 to 12.3 g/kg for rats, mice, rabbits, and guinea pigs. This substance does, however, defat the skin on contact, causing redness and scaling (Torkelson, Oyen, McCollister, and Rowe 1958/Ex. 1–768). Skin absorption is relatively insignificant: The acute precutaneous LD_{50} in rabbits is greater than 16 g/kg, and slight, reversible irritation was observed from applications of 0.5 g/kg to rabbit skin for 90 days (Torkelson, Oyen, McCollister, and Rowe 1958/Ex. 1–768). Repeated exposures of animals to concentrations between 1000 and 10,000 ppm for three months produced anesthesia and lung and liver damage in some species, but exposure to 500 ppm of methyl chloroform vapor for seven hours daily, five days/week for six months caused no toxic changes in guinea pigs, rabbits, or monkeys (Torkelson, Oyen, McCollister, and Rowe 1958/Ex. 1–768). Other animal studies (Gehring 1966/Ex. 1–637; Plea, Evans, and Hine 1958/Ex. 1–754; Rowe, Wujkowski, Wolf et al. 1963/Ex. 1–667) have reported that methyl chloroform has low hepatotoxicity, but cardiac sensitization has occurred at high doses (5000 to 10,000 ppm) (Rennick, Malton, Moe, and Seevers 1949/Ex. 1–864; Trochimowicz, Reinhardt, Mullin et al. 1976/Ex. 1–992). Tests in rats and mice for teratogenicity and carcinogenicity have demonstrated negative results (Schwetz, Leong, and Gehring 1975/Ex. 1–757; NIOSH 1976m, as cited in ACGIH 1986/Ex. 1–3, p. 382; Weisberger 1977/Ex. 1–694).

In humans, it has been reported that anesthetic effects may begin to occur at methyl chloroform concentrations approaching 500 ppm (Stewart, Gay, Schaffer et al. 1969/Ex. 1–529). Deaths from anesthesia and/or cardiac sensitization have been noted in employees working in confined areas (Patty 1963d/Ex. 1–856). Kramer and co-workers (1978/Ex. 1–515) conducted an epidemiological study of men and women exposed for periods ranging from several months to six years to methyl chloroform at levels that occasionally exceeded 200 ppm; when compared to matched-pair controls, no adverse exposure-related effects were found (Kramer, Ott, Fulkerson et al. 1978/Ex. 1–515).

Commenters supplied conflicting evidence to the record on the toxicity of methyl chloroform. The Workers Institute for Safety and Health (WISH) (Ex. 116, Tr. pp. 7–134, 135) noted that there is an extensive amount of recent information on this substance. In particular, WISH mentioned three recent studies (McLeod et al. 1987, Karlsson et al. 1987, and Mackay et al. 1987) that demonstrate that methyl chloroform causes chronic cardiac toxicity on long-term exposure, may have toxic effects on brain cells, and may cause behavioral changes after 3.5-hour exposures to 175 to 350 ppm. WISH believes that these studies and others warrant a further reduction in the PELs for methyl chloroform. However, the Halogenated Solvents Industry Alliance (Ex. 186) criticized these studies and believes that the PELs for methyl chloroform are appropriate.

In the final rule, OSHA is retaining its PEL of 350 ppm as an 8-hour TWA and adding a STEL of 450 ppm for methyl chloroform. The Agency concludes that this combined PEL-STEL limit will protect workers against the significant risk of narcotic and cardiac-sensitizing effects, which constitute material health impairments that are potentially associated with exposure to methyl chloride at the elevated short-term levels permitted by an 8-hour TWA limit alone.

OCTANE

CAS: 111-65-9; Chemical Formula: $CH_3(CH_2)_6CH_3$
H.S. No. 1256

OSHA's former limit for octane was 500 ppm as an 8-hour TWA. The ACGIH has a 300-ppm TWA and a 375-ppm STEL; NIOSH (1977a/Ex. 1–233) recommends a 75-ppm 10-hour TWA and a 385-ppm 15-minute ceiling limit. The proposed PELs were an 8-hour TWA of 300 ppm and a 15-minute STEL of 375 ppm, and these are the limits promulgated in the final rule. n-Octane is a colorless, flammable liquid with an odor like that of gasoline.

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Mice exposed to octane concentrations of 6800 to 13,700 ppm developed narcosis within 30 to 90 minutes (Fuhner 1921, as cited in ACGIH 1986/Ex. 1–3, p. 448). Flury and Zernik (1931h, as cited in ACGIH 1986/Ex.1–3, p. 448) believed the narcotic concentration in humans to be 5000 ppm; Patty and Yant (1929, as cited in ACGIH 1986/Ex. 1–3, p. 448) placed the narcotic concentration at 8000 ppm. Based on this information, the ACGIH concluded that octane was 1.2 to 2 times more toxic than heptane, and recommended TLVs of 300 ppm TWA and 375 ppm STEL.

As discussed in more detail in Section V of the preamble and in the discussions above for the other C_5–C_8 alkanes, the NIOSH (1977a/Ex. 1–233) recommended limits for octane are based on NIOSH's belief that all C_5–C_8 alkanes present a neurotoxic hazard similar to that of n-hexane. OSHA disagrees with this conclusion and has found instead that the neurotoxic properties of n-hexane are unique among the substances in the alkane series. NIOSH continues to recommend these lower limits for all of the C_5–C_8 alkanes, including octane (Ex. 8–47, Table N2; Tr. 3–66 to 122). The AFL–CIO (Ex. 194) and the UAW (Ex. 197) made the same comments for octane as for heptane (see the discussion, above).

The Chevron Corporation (Ex. 3–866) objected to the proposed short-term exposure limit for octane on the grounds that studies showing narcosis at concentrations of 5000 and 6000 ppm do not provide a justification for a STEL. In addition, Chevron stated that, "as a practical matter, a STEL that is only 25 percent greater than the TWA value suggests a level of precision that simply does not exist in exposure assessment techniques. Variations in sampling and analytical methodologies combined with normal statistical variability in exposure patterns make it impossible to reliably distinguish between exposures that differ by only 20 to 25 percent. Intuitively, it is not reasonable to conclude that a concentration that is slightly above an acceptable 8-hour exposure level would be unsafe for a 15-minute exposure" (Ex. 3–866, p. 3).

In response to Chevron, OSHA notes that octane is considered more toxic than heptane, for which OSHA is establishing limits of 400 ppm as an 8-hour TWA and 500 ppm as a 15-minute STEL. Short-term effects have been observed in humans and animals exposed to the hexane isomers at levels below 500 ppm (Nelson, Enge, Ross et al. 1943/Ex. 1–66), and OSHA finds it appropriate to establish a STEL for octane and several other alkanes to protect against these narcotic effects. OSHA disagrees with Chevron that it is not possible to distinguish between octane exposures of 300 ppm and those of 375 ppm; although a ± 25-percent level of precision may be difficult to achieve at very low contaminant concentrations, there should be no sampling and analytical difficulty at the levels being considered here. Finally, OSHA notes that a theoretically possible, although unlikely, exposure scenario that could occur with an 8-hour TWA limit of 300 ppm alone would be an excursion of up to 9600 ppm; such an exposure could produce serious CNS effects in exposed workers. Thus, the purpose of the 375-ppm STEL is to ensure that the TWA limit is not exceeded for any substantial period of time and that exposures are effectively controlled.

In the final rule, OSHA is revising its limits for octane to 300 ppm as an 8-hour TWA and 375 ppm as a 15-minute STEL. The Agency concludes that these limits will protect workers from the significant risks of narcosis, a material health impairment that is associated with octane exposures. OSHA believes that these limits will substantially reduce these significant risks.

PENTANE

CAS: 109-66-0; Chemical Formula: C_5H_{12}
H.S. No. 1309

Previously, OSHA's limit for pentane was 1000 ppm TWA. In 1978, the ACGIH adopted a 600-ppm TLV–TWA and a 750-ppm TLV–STEL. NIOSH (1977a/Ex. 1–233; Ex. 8–47, Table N2) has recommended that workplace exposures to pentane not exceed 120 ppm as a 10-hour TWA and 610 ppm as a 15-minute short-term limit. The proposed and final rule PELs are 600 ppm as an 8-hour TWA and 750 ppm as a 15-minute STEL. Pentane, a colorless, flammable liquid with a gasoline-like odor, is usually encountered in volatile petroleum fractions, some of which are used as solvents. Pure pentrane is used as a blowing agent for plastics, in solvent extraction, and in ice manufacture.

Fairhall (1957c/Ex. 1–184) stated that narcosis and mucous membrane irritation were the only reported toxic effects resulting from exposure to pentane. The reported lethal concentration in humans is 130,000 ppm (Flury and Zernik 1931j/Ex. 1–894; Swann, Kwon, and Hogan 1974/Ex. 1–124). According to Patty and Yant (1929, as cited in ACGIH 1986/Ex. 1–3, p. 463), humans exposed for 10 minutes to 5000 ppm did not complain of any adverse symptoms.

In a report by Gaultier, Rancurel, Piva, and Efthymioc (1973/Ex. 1–123), five cases of polyneuropathy occurred among employees exposed to a solvent containing 80 percent pentane, 14 percent heptane, and 5 percent hexane. Based largely on this report, NIOSH (1977a/Ex. 1–233) recommended the same occupational limit for all C_5–C_8 alkanes as for the neurophatic agent n-hexane (350–mg/m³ TWA and 1800-mg/m³ 15-minute short-term limits; these limits are equal to about 120-ppm TWA and 610-ppm 15-minute short-term limits for pentane).

OSHA points out that the rationale used by NIOSH in setting a limit for pentane ignores the theory that n-hexane is uniquely neuropathic via metabolism to 2,5-hexanedione, which is the same metabolite that is formed during exposure to another neuropathic agent, methyl butyl ketone (see the discussion in Section V of this preamble). OSHA finds that all C_5–C_8 alkanes are not equally toxic; the Agency concludes that a metabolite of n-hexane exhibits unique neurotoxic properties. In OSHA's view, the Gaultier, Rancurel, Piva, and Efthymioc (1973/Ex. 1–123) study does not provide specific isomer exposure data supporting the NIOSH RELs of 120 ppm (TWA) and 610 ppm (STEL).

The Chevron Corporation (Ex. 3–866) objected to the proposed STEL for pentane because, in Chevron's opinion, the health evidence did not justify this addition. However, OSHA finds that the STEL is needed to protect workers from the significant neurotoxic effects of pentane exposure by ensuring that the high short-term excursions possible in the absence of a STEL do not occur. The Workers Institute for Safety and Health (Ex. 118) and the UAW (Ex. 197) submitted the same comments on pentane as on heptane (which see).

In the final rule, the Agency is establishing an 8-hour TWA of 600 ppm and a 15-minute STEL of 750 ppm as the permissible exposure limits for pentane. OSHA concludes that these limits will protect exposed workers from the narcosis long known to be associated with pentane exposure; the Agency finds that narcosis constitutes a material health impairment within the meaning of the Act.

2-PENTANONE (METHYL PROPYL KETONE)

CAS: 107-87-9; Chemical Formula: $CH_3COC_3H_7$
H.S. No. 1307

The former OSHA limit for 2-pentanone was 200 ppm as an 8-hour TWA. The ACGIH has a 200-ppm TLV–TWA and a 250-ppm TLV–STEL; NIOSH (1978k, as cited in ACGIH 1986/Ex. 1–3, p. 406) has recommended a 150-ppm limit as a 10-hour TWA. The proposed PELs were 200 ppm as an 8-hour TWA and 250 ppm as a 15-minute STEL, and these limits are established in the final rule. 2-Pentanone is a clear, flammable liquid with a strong odor resembling acetone and ether.

Both the ACGIH- and NIOSH-recommended limits are based on a study by Specht, Miller, Valaer, and Sayers (1940/Ex. 1–1179), which found that guinea pigs exhibited irritation and weakness on exposure to 2500 ppm, and that exposure to 5000 ppm produced narcosis and coma. The authors concluded that 2-pentanone is considerably less toxic than methyl butyl ketone but is more toxic than methyl ethyl ketone, and, in addition, is likely to be more irritating than either methyl ethyl ketone or acetone. The ACGIH-recommended limits are based on a judgment that the 200-ppm TLV–TWA and 250-ppm TLV–STEL are low enough to prevent narcosis and irritation.

NIOSH (1978k, as cited in ACGIH 1986/Ex. 1–3, p. 406) applied the findings of the Specht, Miller, Valaer, and Sayers (1940/Ex. 1–1179) study to the results of the Nelson, Enge, Ross et al. study (1943/Ex. 1–66); these latter authors reported that volunteers complained of slight irritation on exposure to 100 ppm methyl ethyl ketone. Because 2-pentanone was found by Specht, Miller, Valaer, and Sayers (1940/Ex. 1–1179) to be at least as irritating as methyl ethyl ketone, NIOSH (1978k, as cited in ACGIH 1986/Ex. 1–3, p. 406) stated that a "slight reduction" in the standard was warranted for 2-pentanone. Therefore, NIOSH recommended a 150-ppm limit for 2-pentanone, and NIOSH reiterates this recommendation in the present rulemaking (Ex. 8–47, Table N2; Tr. 3–66). No other comments were submitted regarding the health effects of 2-pentanone.

OSHA has concluded that the combination of a 200-ppm TWA and a 250-ppm STEL will work together to ensure that workplace levels are maintained at levels that will prevent the occurrence of the adverse health effects associated with exposures to this chemical. In the final rule, OSHA is establishing these limits to reduce the significant risks of narcosis, a material impairment of health, which is associated with exposures to 2-pentanone at elevated short-term levels.

STODDARD SOLVENT

CAS: 8052–41–3; Chemical Formula: C_9H_{20}
H.S. No. 1371

OSHA's former limit for Stoddard solvent was 500 ppm as an 8-hour TWA. The ACGIH has established a TLV–TWA of 100 ppm, and NIOSH (1977g, as cited in ACGIH 1986/Ex. 1–3, p. 537) recommends limits of 350 mg/m³ as a 10-hour TWA and 1800 mg/m³ as a 15-minute ceiling for all refined petroleum solvents; these limits correspond approximately to a 60-ppm TWA and a 310-ppm STEL, respectively. Stoddard solvent is a refined petroleum solvent having a flash point in the range of 102 to 110 °F, a boiling point in the range of 154 to 202 °C, and containing 65 percent or more C_{10} and higher-molecular-weight hydrocarbons. OSHA proposed to reduce its 8-hour TWA to 100 ppm, and the final rule promulgates this limit. NIOSH (Ex. 8–47, Table N1) agreed with the Agency's selection of this PEL.

The former OSHA limit of 500 ppm (equivalent to the limit in the 1968 ACGIH TLV list) was based largely on analogy to the irritant and narcotic effects of gasoline vapor in humans (ACGIH 1986/Ex. 1–13, pp. 176–177). The revised ACGIH limit of 100 ppm was based on a report by Carpenter, Geary, Myers et al. (1976/Ex. 1–301), which found slight kidney damage among rats exposed to 330 ppm Stoddard solvent for 65 days. The ACGIH TLV for Stoddard solvent was calculated from the TLVs for nonane and trimethyl benzene, the major components of Stoddard solvent (ACGIH 1986/Ex. 1–3); the TLV for nonane is 200 ppm, based on the Carpenter, Geary, Myers et al. (1976/Ex. 1–301) study's findings of a non-effect level for nonane in rats of 590 ppm, while the TLV for trimethyl benzene is 25 ppm, because there is evidence that humans exposed to the isomers of trimethyl benzene exhibited central nervous system effects (ACGIH 1986/Ex. 1–3).

THE ACGIH (1986/Ex. 10–3, p. 537) notes that guinea pigs exposed for 30 eight-hour days to 290 ppm Stoddard sovlent developed congestion and emphysema of the lungs. The eye irritation threshold in humans is approximately 150 ppm for 15 minutes (ACGIH 1986/Ex. 1–3, p. 537).

The NIOSH limits of a 350-mg/m³ (60-ppm) TWA and an 1800-mg/m³ (310-ppm) 15-minute short-term limit are derived from NIOSH's recommended limits for all of the C_6–C_8 alkanes; NIOSH recommended the same limit for Stoddard solvent as for all C_6–C_8 alkanes both because of the lack of scientific data on Stoddard solvent's chronic effects and because of a report of polyneuropathy occurring among workers exposed to jet fuels containing mixtures of kerosene and gasoline. NIOSH reasoned that, although the C_6–C_8 alkanes present in jet fuel may have been implicated, it was possible that the heavier hydrocarbon components may also have been responsible. Thus, the NIOSH recommended limits for Stoddard solvent reflect a concern that higher-molecular-weight hydrocarbons may be neuropathic. However, no evidence exists that the C_{10} and higher molecular weight hydrocarbons cause neuropathies. NIOSH has re-examined the health evidence for Stoddard solvent in this rulemaking and concurs with OSHA that the 100-ppm 8-hour TWA limit is appropriate for this substance (Ex. 8–47, Table N1). Several commenters (TR. 7–70 to 7–95; Exs. 46, 116, 194, 197) urged OSHA to reevaluate the final rule's limits for this substance because recent evidence points to hepatic and hematopoietic effects. OSHA is aware of the emerging literature and will monitor developments in the future.

In the final rule, OSHA is establishing an 8-hour TWA of 100 ppm to reduce the significant risk, of eye irritation, narcosis, polyneuropathy, and kidney damage, all of which constitute material health impairments that have been demonstrated to occur in either humans or animals at levels well below the former PEL. OSHA finds that the study of Carpenter and co-workers (1978/Ex. 1–301) in animals and the study reported by the ACGIH showing that exposed workers develop eye irritation at levels of 150 ppm and above clearly indicate that a reduced PEL is needed for Stoddard solvent to diminish these significant occupational risks.

STYRENE

CAS: 100–42–5; Chemical Formula: $C_6H_5CH{=}CH_2$
H.S. No. 1372

OSHA's former exposure limits for styrene (listed in 29 CFR 1910.1000, Table Z–2) were 100 ppm as an 8-hour TWA, 200 ppm as a STEL, not to be exceeded for more than 5 minutes in any 3-hour period, and 600 ppm as a ceiling limit. OSHA proposed revising these limits to 50 ppm as an 8-hour TWA and 100 ppm as a 15-minute STEL, based on both the ACGIH TLVs and the NIOSH RELs, which are identical. NIOSH (Ex. 150, Comments on Styrene) concurs that these limits are appropriate for styrene, and they are established in the final rule. Styrene monomer is a colorless, oily liquid with an aromatic odor.

In the proposal, styrene was located in the cancer category; in the final rule, it has been moved into the narcotics section, for the reasons discussed below. According to the generic methodology used by OSHA to group the 428 substances included in this rulemaking, substances were grouped

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according to the guidelines given by the ACGIH for assigning an appropriate exposure limit for a particular substance. In other words, if the ACGIH noted that a particular TLV was designed to protect against irritant effects, that substance was classified by OSHA in the sensory irritant category. This classification scheme was chosen by OSHA because it facilitated the rulemaking process (made unusually complex by the broad scope of the issues addressed) and made the discussion of hundreds of substances easier. However, as is often the case with classification schemes, this methodology oversimplifies the issues, particularly in those situations where a substance has more than one serious health effect.

Styrene is a case in point. This widely used substance is an irritant, a narcotic, and a neuropathic agent; some studies also show that animals exposed to styrene vapor develop tumors. the ACGIH *Documentation* (1986/Ex.1–3) for styrene states:

> [A] time-weighted average TLV of 50 ppm, one-tenth the lowest concentration possibly causing *lymphoid or hematopoietic tumors* in female rats, and a STEL of 100 ppm are suggested as reasonable limits [for styrene] (emphasis added) (ACGIH 1986/Ex. 1–3, p. 339).

Because the ACGIH limit had been set with reference to tumorigenicity (notwithstanding the lack of an A1 or A2 cancer designation), styrene fell into the category of carcinogens for the purposes of the proposal (53 FR 21202).

Many commenters objected to the proposal's classification of styrene as a carcinogen (Exs. 3–741, 3–742, 3–1059, L3–1312B, 8–12, 8–32, 8–48, 8–54, 34, 35, 103, 155, and 187; Tr. 8/3/88, pp 5–9 to 5–127; Tr. pp. 11–265, 11–366). For example, the Styrene Information and Research Council (SIRC) stated:

> Regarding the long-term animal studies on styrene * * * there have been nine * * * seven of which were via the oral route and two via inhalation * * * . All of these studies showed either no evidence of cancer or gave inconclusive results due to study limitations, e.g., faulty study design, high background tumor incidence and/or high morbidity in test and control groups of animals (Ex. 3–742, p. 10).

Other commenters echoed the view of the SIRC. For example, a paper prepared by the Epidemiology Department of the Dow Chemical Company and reported on in Dow's prehearing submission (Ex. 3–741, p. 55) concludes: "[O]verall these data do not support a causal link between lymphatic and hematopoietic cancer and styrene." Dr. Gregory Bond (Ex. 103 and testimony) also criticized the epidemiology studies relied on by OSHA in the proposal, as did the Chemical Manufacturers Association (Ex. 8–54). J. Roger Crawford, Director of Environmental Control for the Outboard Marine Corporation, a manufacturer of outboard and inboard engines, lawn care equipment, and marine products, commented that OSHA's conclusion in the proposal about the carcinogenicity of styrene "is clearly outside the mainstream of most scientific opinion" (Ex. 8–12, p. 3).

In posthearing testimony on behalf of the SIRC, Dr. Robert G. Tardiff, Director of Versar, Incorporated's Risk Focus Division, described the comments of EPA's Science Advisory Board (SAB) on a draft EPA *Water Criteria Document on Styrene*. Dr. Tardiff reported that the SAB had advised EPA to consider styrene a "possible human carcinogen (Category C) at best" (Ex. 34, p. 4). Dr. Tardiff further commented that the Category C classification "would generally lead EPA to regulate the compound based on protection against non-cancer pathology" (Ex. 34, pp. 4–5).

However, EPA's *Guidelines for Carcinogen Risk Assessment* (51 FR 33992) interpret the meaning of a Category C designation somewhat differently than does Dr. Tardiff. In a letter dated March 9, 1988 from the SAB to EPA's Administrator, Lee M. Thomas (Attachment to Ex. 124), the SAB makes clear that factors other than category are important to consider for regulatory purposes:

> From a scientific point of view, it seems inappropriate for EPA and other agencies to regulate substances that are classified as B2 [probable human carcinogens] and not to consider regulation of compounds classified as C * * *. A substance classified as C (limited evidence in animals) for which human exposure is high may represent a much greater potential threat to human health [than substances with classifications of B2, B1, or A where exposures are lower].
>
> EPA and other agencies * * * may, therefore, wish to take steps to reduce high exposures to substances in the C category whenever there appears to be a potentially significant threat to human health (in the sense [where risk estimates are] * * * above the threshold where regulation may be judged appropriate) (Attachment to Ex. 124).

Several animal and human studies have suggested that styrene may be a carcinogen. A nested case-control study conducted by McMichael, Spirtis, Gamble, and Tousey (1978/Ex. 1–208) found significantly increased risks of lymphatic and hematopoietic cancer, lymphatic leukemia, and stomach cancer among workers exposed to both styrene and butadiene. A retrospective cohort mortality study by Meinhardt, Lemen, Crandall, and Young (1982/Ex. 1–198), also among workers exposed concurrently to styrene and butadiene, reported an excess risk of leukemia and aleukemia. In a study sponsored by the Chemical Manufacturers Association (Dow 1978, as cited in EPA 1987/Ex. 1–636), male and female Sprague-Dawley rats were exposed to styrene vapor at concentrations of 600 to 1200 ppm, six hours per day, five days per week, for 18 or 20 months. The higher exposure level was reduced to 1000 ppm after the first two months of exposure because of excessively reduced weight in the male rats. A statistically significant increased incidence of mammary tumors was reported in low-dose female rats (7 of 67) compared with controls (1 of 85); no increase in mammary tumors was reported among high-dose female rats. The authors questioned the significance of this response, since historical control animals from the same laboratory showed a higher background incidence of mammary tumors than did the controls used in this study.

In a 1979 NCI study (NCI 1979b/Ex. 1–948), male and female B6C3F1 mice and Fischer 344 rats were treated by gavage five days per week for 78 weeks (low-dose rat groups were treated for 103 weeks). The study was terminated at 91 weeks for mice and at 104 to 105 weeks for rats. Dose-related increases in alveolar/bronchiolar adenomas and carcinomas were observed only in the low-dose (150 mg/kg) and high dose (300 mg/kg) male mice; the incidence of tumors for vehicle controls, low-dose, and high-dose male mice was 0/20, 6/44, and 9/43, respectively. Although the historical incidence of tumors among untreated controls was 12 percent (32/271), the historical incidence of vehicle controls was 0/40.

However, the human studies cannot be used to demonstrate styrene's carcinogenicity because there were confounding exposures in these cohorts to butadiene, a substance identified by the NTP as carcinogenic. The animal studies also have limitations, such as high background rates of cancer in the controls and non-treatment-related mortality in some of the test animals.

Thus, at this time, OSHA believes that the current evidence on styrene's carcinogenicity does not support its classification in the final rule as a carcinogen. OSHA has reviewed additional evidence and has determined that the most appropriate basis for classifying styrene in this rulemaking is the substance's demonstrated narcotic effects. In its criteria document (1983a), NIOSH agrees that styrene is primarily a narcotic and central-nervous-system toxin

The principal health effects due to styrene exposure involve the central nervous system. These effects include subjective complaints of headache, fatigue, dizziness, confusion, drowsiness, malaise, difficulty in concentrating, and a feeling of intoxication * * *. There have also been reports of liver injury, peripheral nervous system dysfunction, abnormal pulmonary function, chromosomal changes, reproductive effects, and carcinogenicity related to styrene exposures. Although data concerning these latter adverse effects are not well defined at this time, they do provide cause for concern (NIOSH 1983a, p. 150).

Accordingly, OSHA has placed the health-effects discussion for styrene in the preamble section labeled "Narcotic Effects" in this final rule.

OSHA proposed to reduce its former exposure limits for styrene to 50 ppm as an 8-hour TWA and 100 ppm as a 15-minute STEL. The Agency finds clear evidence, based on styrene's narcotic effects, to support these limits. Richard Olsen, representing the Dow Chemical Company, agrees, and stated at the hearing that 50 ppm is likely to be the most "appropriate" limit for styrene (Tr. 3, pp. 250, 251). There is a considerable body of health-effects information in humans for styrene in the toxicological literature. Subjects exposed at 800 ppm for four hours experienced eye and throat irritation and also reported listlessness, drowsiness, and impaired balance (NIOSH 1983a, p. 150). At a concentration of 376 ppm, five human volunteers experienced eye and respiratory tract irritation within 20 minutes and demonstrated decrements in motor function (NIOSH 1983a, p. 150). Three subjects exposed to 100 ppm of styrene for 90 minutes had slower reaction times; on repeated exposure, sleepiness, fatigue, headache, difficulty in concentration, malaise, nasal irritation, and nausea occurred in another group of subjects (NIOSH 1983a, p. 150).

Effects attributable to central nervous system depression were seen in a six-week study involving human subjects exposed to 20, 100, or 125 ppm styrene; the authors of the study reported visual-evoked-response and electroencephalogram changes in these subjects (NIOSH 1983a, p. 150). Other studies report irritation of the eyes and throat at concentrations ranging from 1 to 100 ppm (NIOSH 1983a, p. 151).

Workers in reinforced plastics (RP) facilities in many countries have also evidenced narcotic effects as a consequence of styrene exposure. Swedish, Dutch, and Czechoslovakian workers in RP plants complained of headache, fatigue, drowsiness, giddiness, and dizziness at exposure levels in the range of 4 to 195 ppm (NIOSH 1983a, p. 151).

Respiratory effects were observed in U.S. RP workers exposed to from 9 to 111 ppm styrene; symptoms included wheezing, shortness of breath, and chest tightness. Another study showed a significantly greater number of RP workers with abnormal pulmonary function when compared with workers from a nonstyrene facility (NIOSH 1983a, p. 154).

NIOSH concluded, based on its extensive review of the health-effects literature for styrene, that an 8-hour TWA exposure limit of 50 ppm was appropriate to protect against the health effects observed in workers exposed to styrene at levels of 100 ppm and below. NIOSH also recommends a STEL of 100 ppm for styrene to prevent acute eye and upper-respiratory-tract irritation (NIOSH 1983a, p. 156). The State of New Jersey's Department of Public Health (Ex. 144) urged OSHA to derive a PEL for styrene on the basis of EPA's IRIS data, but this approach was criticized by other commenters (Ex. 187). The use of IRIS data for limit-setting purposes is addressed in Section VI.A of the preamble. At the hearing, representatives of the International Chemical Workers Union urged OSHA to adopt a lower PEL because considerable risk remains at the 50-ppm level (Tr. 9, p. 216). However, the AFL–CIO (Ex. 194) agrees with NIOSH that the 50-ppm and 100-ppm TWA and STEL limits are appropriate.

OSHA finds that workplace exposures to styrene are associated with health effects ranging from narcosis to neuropathies and irritation, which together constitute material impairments of health. The Agency finds that an 8-hour TWA of 50 ppm and a STEL of 100 ppm are necessary to protect against these significant risks of material health impairment. The Agency also notes that large chemical companies (for example, Rohm and Haas and the Dow Chemical Company) have already established internal corporate limits of 25 to 50 ppm (8-hour TWAs) for styrene to protect their workers from the range of serious health effects associated with exposure to this substance (Ex. 25, Appendix II, pp. 1–3).

Some commenters (Ex. 155; Tr. p. 10–111) pointed to the fact that the State of Washington has not yet adopted a 50-ppm limit for styrene as evidence of this limit's infeasibility; however, OSHA notes that Stephen Cant, for the State of Washington's Department of Public Health, stated that his department was monitoring the health evidence for styrene and considered the State's 100-ppm limit an "incremental improvement" (Tr. 2, pp. 105, 106).

OSHA notes that, with the exception of two operations in a single industry (i.e., the boat-building industry), these limits have been found to be achievable with engineering and work-practice controls in all styrene-using operations, including styrene manufacture and other reinforced-plastics operations. OSHA finds that general dilution ventilation, local exhaust ventilation, and process enclosure can be used effectively in tub, shower, and diving board manufacturing because the size and configuration of these items lend themselves to effective control. However, in two operations, manual layup and sprayup, in the boat-building industry, there is insufficient data in this record to indicate that compliance can generally be achieved with engineering and work-practice controls. For these boat-building operations, employers may use any combination of engineering controls, work practices, and respiratory protection to achieve these limits (see the discussion in Section VII of this preamble). For these operations, engineering controls and work practices will only be required to achieve full compliance with the final rule's PELs in cases where the Assistant Secretary can demonstrate that engineering controls and work practices can generally achieve these limits. In the absence of such a finding, the employer must nonetheless use engineering controls and work practices to achieve compliance with the Agency's former PELs for styrene.

TOLUENE

CAS: 108–88–3; Chemical Formula: $C_6H_5CH_3$; H.S. No. 1387

The former OSHA standard for toluene was 200 ppm as an 8-hour TWA limit, with a 300-ppm ceiling (not to be exceeded for more than 10 minutes in any eight-hour period), and a 500-ppm peak. The ACGIH has an exposure limit for toluene of 100 ppm as an 8-hour TWA and 150 ppm as a 15-minute STEL; NIOSH recommends a 100-ppm 8-hour TWA and a 10-minute ceiling of 200 ppm. The proposed PELs were 100 ppm as an 8-hour TWA and 150 ppm as a STEL; NIOSH (Ex. 8–47, Table N1) concurs with these limits, which are established in the final rule. Toluene is a flammable, colorless liquid with an aromatic hydrocarbon odor.

The acute toxicity of toluene in animals is greater than that of benzene. Patty (1963b, as cited in ACGIH 1986/Ex. 1–3, p. 578) reports that the lethal doses of toluene and benzene in mice are 10,000 and 14,000 ppm, respectively.

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The oral LD_{50} for toluene in rats is 7.53 ml/kg (Smyth, Carpenter, Weil et al. 1969/Ex. 1-442). Exposure of rats to 2500 or 5000 ppm of toluene caused a temporary decrease in white cell count but no evidence of damage to the blood-forming organs or the liver. Fairhall (1957d, as cited in ACGIH 1986/Ex. 1-3, p. 576) stated that severe toluene exposure can cause a marked drop in the red blood cell count and partial destruction of the blood-forming elements of the bone marrow, but other researchers report that numerous animal studies indicate that toluene is not a bone marrow toxin (Gerarde 1960c, as cited in ACGIH 1986/Ex. 1-3, p. 578).

A study by Greenberg, Mayers, Heimann, and Moskowitz (1942/Ex. 1-325) reported that painters exposed to toluene levels of 100 to 1100 ppm exhibited enlarged livers, a moderate decrease in red blood cell counts, enlarged red blood cells, and absolute lymphocytosis, but no leukopenia. Wilson (1943/Ex. 1-403) observed 1,000 workers exposed to toluene at levels ranging from 50 ppm to 1500 ppm for periods of one to three weeks. One hundred of these workers developed symptoms severe enough to require hospitalization. At levels less than 200 ppm, 60 of these employees experienced headache, fatigue, and lack of appetite. Those workers exposed to 200 to 500 ppm toluene experienced headache, nausea, bad taste in the mouth, lassitude, temporary amnesia, impaired coordination, and anorexia. Levels of exposure from 500 to 1500 ppm resulted in nausea, headache, dizziness, anorexia, marked loss of coordination, diminished reaction time, pronounced weakness, and heart palpitations. Red cell counts were also decreased, and two cases of aplastic anemia required lengthy hospital treatment; however, the author noted that he could not rule out the possibility that benzene contamination of the toluene was the cause of these effects. Aplastic anemia (including one fatal case) has been noted in six glue sniffers; toluene was the base solvent in the glue (Powars 1966/Ex. 1-433). A man who had inhaled toluene regularly at unspecified levels for 14 years developed permanent encephalopathy (Knox and Nelson 1966/Ex. 1-421).

von Oettingen, Neal, Donahue et al. (1942/Ex. 1-875) exposed human volunteers to toluene levels ranging from 50 ppm to 800 ppm for 8 hours/day. These authors report that exposures to 50 ppm cause drowsiness and headaches and that exposures at 100 ppm result in sleepiness, moderate fatigue, and headaches. At 200 ppm, effects included impairment of coordination and reaction times. Later studies by Ogata, Tomokuni, and Takatsuka (1970/Ex. 1-352) showed an increase in reaction time, a decrease in pulse rate, and a decrease in systolic blood pressure in humans exposed to 200 ppm toluene for seven hours.

The Chevron Corporation (Ex. 3-669) objected to the short-term exposure limit for toluene as being unjustified by either the discussion in the preamble or that in the *ACGIH Documentation* (1986/Ex. 1-3). Chevron also urged OSHA to clarify the proposal's discussion of blood dyscrasias occurring as a result of toluene exposure because, according to Chevron:

> [T]he majority of later studies show no such evidence [of blood dyscrasias]. Due to the tighter specifications for benzene contamination of toluene, we question whether blood dyscrasias will occur (Ex. 3-668, p. 14).

As discussed above in connection with octane and pentane, OSHA finds that a short-term exposure limit is necessary to ensure that workers are not exposed at the elevated levels possible with a TWA limit alone. Levels only slightly above the 8-hour TWA may cause incoordination and amnesia. For example, workers could be exposed to toluene at levels as high as several hundred ppm if the 8-hour TWA limit was promulgated alone. In addition, OSHA notes that the Agency has always had a short-term and ceiling limit for toluene, to protect against this substance's narcotic and neuropathic effects; OSHA continues to find a short-term limit necessary to ensure that workers do not experience the effects seen at levels only slightly above 100 ppm. On the question of blood dyscrasias, OSHA noted in the preamble to the proposal that the author of the study in question (Wilson 1943/Ex. 1-403) himself noted that benzene contamination may have been the cause of these blood effects; OSHA agrees that this may have been the case.

NIOSH (Ex. 150, Comments on Toluene) reports that "[s]everal recent studies indicate measurable biological changes in liver function" as a consequence of exposures to 100 ppm (Seiji et al. 1967) but not at 46 ppm (Yin et al. 1987). NIOSH also states that volunteers' performance on psychological test scores was reduced during 100-ppm exposures to toluene and that these volunteers expressed exposure-related complaints. NIOSH also notes that there is some evidence that toluene causes reproductive effects at levels currently being experienced in the workplace (NIOSH, Ex. 150, Comments on Toluene). NIOSH concluded that "there are significant health effects at the * * * [former] PEL of 200 ppm which will be reduced by the * * * [final rule] PEL of 100 ppm." The New Jersey Department of Health, represented by Dr. Rebecca Zagraniski, also notes that there are more recent studies on toluene (Tr. 11-398).

In the final rule, OSHA is establishing an 8-hour TWA PEL of 100 ppm and a STEL of 150 ppm for toluene. The Agency concludes that studies clearly indicate that a significant risk of hepatotoxic, behavioral, and nervous system effects exists at toluene levels substantially at or only slightly above the Agency's former PEL. OSHA finds that the new limits will protect workers against the significant risk of serious health effects that have been demonstrated to occur even during less than full-shift exposures to toluene.

TRICHLOROETHYLENE

CAS: 79-01-6; Chemical Formula: $CCl_2=CHCl$
H.S. No. 1406

OSHA's former limit for trichloroethylene, adopted from the American National Standards Institute, was 100 ppm TWA, 200 ppm as a ceiling limit not to be exceeded for more than five minutes every two hours, and 300 ppm as a peak limit. The proposed PEL for trichloroethylene was 25 ppm as an 8-hour TWA, and NIOSH (Ex. 8-47, Table N1) supported the proposed limit, which is consistent with the NIOSH REL. The ACGIH has a 50-ppm TLV-TWA and a 200-ppm TLV-STEL for trichloroethylene. Based on its review of the record evidence, OSHA has determined that a 50-ppm TWA PEL and 200-ppm STEL are appropriate limits for trichloroethylene; the final rule establishes these limits.

Trichloroethylene is a colorless, nonflammable, noncorrosive liquid with the sweet odor characteristic of some chlorinated hydrocarbons.

The ACGIH (1986/Ex. 1-3) cited several studies establishing that trichloroethylene primarily affects the central nervous system and liver; some of these studies have indicated that chronic exposure to less than 100 ppm trichloroethylene is associated with a variety of nervous disturbances. Haas (1960, as cited in ACGIH 1986/Ex. 1-3, p. 595) and Grandjean, Muchinger, Turrian et al. (1955/Ex. 1-324) reported nervous symptoms among workers exposed for five years or more to trichloroethylene concentrations ranging from 1 to 335 ppm; the frequency of complaints increased when average exposures exceeded 40 ppm. Bardodej and Vyskocil (1956/Ex. 1-461) also reported symptoms of trichloroethylene poisoning, including tremors, giddiness, anxiety, and alcohol intolerance, among workers exposed above 40 ppm. In contrast, controlled laboratory experiments with human subjects exposed for up to several days to 100 or 200 ppm have generally reported no behavioral or subjective responses. The ACGIH concluded that, although the symptoms reported by workers are subjective and commonly found among individuals having no chemical exposure, the consistency of the reports "suggests the possibility of some subjective complaints as concentrations exceed about 50 ppm" (ACGIH 1986/Ex. 1-3, p. 598). Therefore, the ACGIH recommended a TLV-TWA of 50 ppm and a TLV-STEL of 200 ppm for trichloroethylene to minimize symptoms of headache, fatigue, and irritability.

The ACGIH (1986/Ex. 1-3) also reviewed some of the carcinogenicity data on trichloroethylene. In an NCI bioassay (1976b/Ex. 1-168), mice given trichloroethylene by gavage developed hepatocellular carcinomas, but rats did not. The species difference in response was attributed to a difference in the way trichloroethylene is metabolized between the mouse and rat (Stott, Quast, and Watanabe 1982/Ex. 1-833). An inhalation study in mice, rats, and Syrian hamsters (Henschler, Romen, Reichert et al. 1980/Ex. 1-330) found only an increase in the occurrence of malignant lymphomas in mice, which the authors attributed to the strain of mouse used (NMRI). The ACGIH also cited a number of epidemiologic investigations having cohorts as large as 7,688 workers, in which no correlation between cancer mortality and exposure to trichloroethylene was found (Novotna, David, and Malek 1971, as cited in ACGIH 1986/Ex. 1-3, p. 595; Axelson, Andersson, Hogstedt et al. 1978/Ex. 1-713; Tola, Vilhunen, Jarvinen, and Korkala 1980/Ex. 1-391).

After reviewing all of the available health data, NIOSH (1978m/Ex. 1-1121) concluded that the results of the NCI (1976b/Ex. 1-168) gavage study indicate trichloroethylene (TCE) to be a potential human carcinogen, although NIOSH noted that TCE was "not considered to be a potent carcinogen." NIOSH also stated that a 100-ppm limit would not protect against the neuropathic symptoms, such as headache and fatigue, caused by exposure to trichloroethylene. In support of this conclusion, NIOSH (1978m/Ex. 1-1121) cited three health hazard evaluations conducted in facilities using trichloroethylene as a degreasing agent. In all three facilities, employees consistently experienced symptoms of dizziness, fatigue, nausea, headache, sensory irritation, and difficulty in breathing. Personal TWA exposures to trichloroethylene ranged from 37 to 112 ppm in one plant, 10 to 100 ppm in the second plant, and 10 to 95 ppm in the third plant. NIOSH (1978m/Ex. 1-1121) concluded that these reports documented the presence of adverse effects caused by acute exposure to trichloroethylene at levels of one-fourth to one-half the 100-ppm OSHA limit, at 25 to 50 ppm.

NIOSH recommended a 25-ppm TWA limit for trichloroethylene based on the health hazard reports described above as well as on a NIOSH evaluation of several NIOSH industrial hygiene reports showing that degreasing operations, including those using open-top tanks, are able to achieve 25 ppm uniformly by the use of engineering controls. NIOSH reasoned that these open-tank operations would be among the most difficult of all TCE-using operations to control.

Since publication of the NIOSH (1978m/Ex. 1-1121) report, several recent bioassays on trichloroethylene have been published and are currently being reviewed by EPA. Fukuda, Takemoto, and Tsuruta (1983/Ex. 1-1109) exposed female rats and mice to 50, 150, or 450 ppm trichloroethylene for 103 weeks and reported an increased incidence of lung tumors among mice only. Maltoni, Lefemine, and Cotti (1986/Ex. 1-1160) exposed rats and mice to 100, 300, or 600 ppm trichloroethylene and reported a significant increase of renal adenocarcinomas and Leydig cell tumors in rats, as well as a significant increase in hepatomas and lung tumors in mice. In 1966, the NTP reported an increase in the incidence of kidney tumors in rats given trichloroethylene by gavage; however, the NTP considered the tumor response to be weak (3 of 49 animals) and reported that the results were only statistically significant after corrections for high mortality were made.

Based on the information discussed above, OSHA proposed to revise the PEL for trichloroethylene to 25 ppm as an 8-hour TWA. The proposed limit was supported by NIOSH (Ex. 8-47) and by the AFL-CIO (Ex. 194), which consider trichloroethylene a potential carcinogen. However, the Dow Chemical Company objected to this proposed limit on the grounds that:

> OSHA does not provide justification for reduction of the PEL to 25 ppm based on CNS effects. Although NIOSH (1978m/Ex. 1-1121) mentions [the] CNS effects of trichloroethylene, the 25-ppm REL was not based on concern for these effects * * *. After reviewing the data on the reported [CNS and subjective response] effects of TCE, ACGIH concluded [that] a 50-ppm TWA protects workers from potential adverse effects (Ex. 3-741, pp. 61-62).

Dow also pointed out that neither the ACGIH nor IARC has classified trichloroethylene as a potential carcinogen and that EPA's Science Advisory Board concluded that the weight of evidence for TCE's carcinogenicity "lies on a continuum between their categories B2 [probable human carcinogen] and C [possible human carcinogen]" (Ex. 3-741, p. 62). Dow concluded:

> Since justification for reduction of the PEL below that recommended by ACGIH has not been provided, based on either CNS effects or carcinogenicity, we recommend adoption of the ACGIH TWA of 50 ppm with a 200-ppm STEL * * * (Ex. 3-741, p. 63).

The Halogenated Solvents Industry Alliance (Ex. 8-89, pp. 3-18) expressed an opinion similar to that of Dow Chemical.

In its posthearing submission, Dow submitted the written findings of the EPA's Science Advisory Board (SAB) on trichloroethylene (letter dated March 9, 1988 to Lee M. Thomas, Administrator of EPA, Ex. 106D). In this letter, the SAB concluded that "[t]richloroethylene has the potential to cause cancer in humans, but its potency is low." The Science Advisory Board also stated:

> The endpoints with the most biological plausibility, based upon what is known about the effects of structurally related compounds, are liver and lung tumors in mice and renal tumors in rats * * *. While [the incidence of these tumors] is clearly in excess, [it does] * * * not approach the incidence of 100 percent that occurred for chloroform, for example. This suggests a lower or more moderate potency for trichloroethylene (Ex. 106D).

OSHA believes that the evidence described above supports OSHA's preliminary conclusion in the NPRM (53 FR 21013) that the former 100-ppm TWA PEL for trichloroethylene is insufficiently protective against CNS effects and, further, that exposure to trichloroethylene may present a possible carcinogenic hazard. However, OSHA concludes that the evidence for adverse CNS effects below concentrations of 50 ppm is equivocal; exposures exceeding 50 ppm were found in each of the facilities studied by NIOSH in which symptoms of CNS disturbances were reported. Furthermore, OSHA finds that it is premature to establish a PEL for trichloroethylene based on evidence of its carcinogenicity, given the uncertainties in the evidence. Therefore,

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OSHA concludes that it is appropriate at this time to establish a TWA PEL of 50 ppm and a STEL of 200 ppm to reduce the significant risk of adverse CNS effects that are associated with exposure to trichloroethylene at the former OSHA limits. The Agency considers the adverse effects resulting from exposure to trichloroethylene to be material impairments of health. Accordingly, the Agency is establishing a 50 ppm TWA PEL and 200 ppm STEL for trichloroethylene in the final rule.

Conclusions for This Group of Narcotic Agents

OSHA concludes that workers exposed to these narcosis-causing substances in the workplace are at significant risk of experiencing a broad range of narcotic effects, including loss of consciousness, uncoordinated movements, inability to concentrate, drowsiness, irritability, poor judgement, and inappropriate behavior. These highly undesirable and potentially serious health effects, which are viewed by OSHA as material impairments of health, additionally have the potential to cause serious workplace accidents and injuries because they interfere with reaction times, muscle coordination, and the ability to make good decisions and exercise good judgment. The new or revised exposure limits being established by OSHA in the final rule will protect employees from experiencing these significant risks in their places of work and will contribute to a substantial reduction in these risks.

3. Substances for Which Proposed Limits Are Based on Avoidance of Sensory Irritation

Introduction

Exposure to many chemical agents is associated with the development of sensory irritation, which is initiated when these substances come into contact with mucous membrances or skin. Limits have been set for a large group of chemicals on the basis of their sensory irritant effects. These substances, which number 79, are shown in Table C3-1, along with their former OSHA limits, the limits proposed by OSHA in the June 7, 1988 NPRM, and the final exposure limits being promulgated today. For five of these chemicals, OSHA is reducing the 8-hour TWA and for an additional eight, the Agency is both reducing the 8-hour limit and adding a STEL. In 21 cases, the 8-hour limit remains unchanged but a STEL is being added. In eight instances, a ceiling is being deleted, and this limit is being replaced by an 8-hour TWA and/or STEL value; in five instances, a TWA limit is being deleted and a ceiling value added in its place. For one chemical, methyl n-amyl ketone, OSHA is retaining its existing PEL. Thirty-one of these substances were previously unregulated by OSHA, and for these, the Agency is establishing 8-hour limits, 8-hour limits supplemented by a STEL, or ceiling limits.

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TABLE C3-1. Substances for Which Limits Are Based on Avoidance of Irritant Effects

H.S. Number/ Chemical Name	CAS No.	Former PEL	Proposed PEL	Final Rule PEL*
1001 Acetaldehyde	75-07-0	200 ppm TWA	100 ppm TWA 150 ppm STEL	100 ppm TWA 150 ppm STEL
1002 Acetic acid	64-19-7	10 ppm TWA	10 ppm TWA 15 ppm STEL	10 ppm TWA
1004 Acetone	67-64-1	1000 ppm TWA	250 ppm TWA	750 ppm TWA 1000 ppm STEL
1007 Acrolein	107-02-8	0.1 ppm TWA	0.1 ppm TWA 0.3 ppm STEL	0.1 ppm TWA 0.3 ppm STEL
1010 Allyl alcohol	107-18-6	2 ppm TWA, Skin	2 ppm TWA, Skin 4 ppm STEL	2 ppm TWA, Skin 4 ppm STEL
1012 Allyl glycidyl ether	106-92-3	10 ppm Ceiling	5 ppm TWA 10 ppm STEL, Skin	5 ppm TWA 10 ppm STEL
1013 Allyl propyl disulfide	2179-59-1	2 ppm TWA	2 ppm TWA 3 ppm STEL	2 ppm TWA 3 ppm STEL
1021 Ammonia	7664-41-7	50 ppm TWA	25 ppm TWA 35 ppm STEL	35 ppm STEL

TABLE C3-1. Substances for Which Limits Are Based on Avoidance of Irritant Effects (continued)

H.S. Number/ Chemical Name	CAS No.	Former PEL	Proposed PEL	Final Rule PEL*
1022 Ammonium chloride fume	12125-02-9	--	10 mg/m^3 TWA 20 mg/m^3 STEL	10 mg/m^3 TWA 20 mg/m^3 STEL
1036 Borates, tetra, Na (anhydrous)	1330-43-4	--	1 mg/m^3 TWA	10 mg/m^3 TWA
1037 Borates, tetra, Na (decahydrate)	1303-96-4	--	5 mg/m^3 TWA	10 mg/m^3 TWA
1038 Borates, tetra, Na (pentahydrate)	12179-04-3	--	1 mg/m^3 TWA	10 mg/m^3 TWA
1042 Bromine	7726-95-6	0.1 ppm TWA	0.1 ppm TWA 0.3 ppm STEL	0.1 ppm TWA 0.3 ppm STEL
1045 2-Butanone (MEK)	78-93-3	200 ppm TWA	200 ppm TWA 300 ppm STEL	200 ppm TWA 300 ppm STEL
1047 n-Butyl acetate	[illegible]	150 ppm TWA	150 ppm TWA 200 ppm STEL	150 ppm TWA 200 ppm STEL
1053 n-Butyl lactate	138-22-7	--	5 ppm TWA	5 ppm TWA
1054 n-Butyl mercaptan	109-79-5	10 ppm TWA	0.5 ppm TWA	0.5 ppm TWA

TABLE C3-1. Substances for Which Limits Are Based on Avoidance of Irritant Effects (continued)

H.S. Number/ Chemical Name	CAS No.	Former PEL	Proposed PEL	Final Rule PEL*
1064 Caprolactam (dust)	105-60-2	--	1 mg/m^3 TWA 3 mg/m^3 STEL	1 mg/m^3 TWA 3 mg/m^3 STEL
1065 Caprolactam (vapor)	105-60-2	--	5 ppm TWA 10 ppm STEL	5 ppm TWA 10 ppm STEL
1077 Cesium hydroxide	21351-79-1	--	2 mg/m^3 TWA	2 mg/m^3 TWA
1079 Chlorine	7782-50-5	1 ppm Ceiling	0.5 ppm STEL	0.5 ppm TWA 1.0 ppm STEL
1083 Chloroacetyl chloride	79-04-9	--	0.05 ppm TWA	0.05 ppm TWA
1084 o-Chlorobenzylidene malononitrile	2698-41-1	0.05 ppm TWA	0.05 ppm Ceiling, Skin	0.05 ppm Ceiling, Skin
1105 Cyanogen	460-19-5	--	10 ppm TWA	10 ppm TWA
1106 Cyanogen chloride	506-77-4	--	0.3 ppm Ceiling	0.3 ppm Ceiling
1119 Dibutyl phosphate	107-66-4	1 ppm TWA	1 ppm TWA 2 ppm STEL	1 ppm TWA 2 ppm STEL
1122 1,3-Dichloro-5,5-dimethylhydantoin	118-52-5	0.2 mg/m^3 TWA	0.2 mg/m^3 TWA 0.4 mg/m^3 STEL	0.2 mg/m^3 TWA 0.4 mg/m^3 STEL

TABLE C3-1. Substances for Which Limits Are Based on Avoidance of Irritant Effects (continued)

H.S. Number/ Chemical Name	CAS No.	Former PEL	Proposed PEL	Final Rule PEL*
1127 Dichloroethyl ether	111-44-4	15 ppm Ceiling, Skin	5 ppm TWA 10 ppm STEL, Skin	5 ppm TWA 10 ppm STEL, Skin
1130 2,2-Dichloropropionic acid	75-99-0	--	1 ppm TWA	1 ppm TWA
1137 Diethylamine	109-89-7	25 ppm TWA	10 ppm TWA 25 ppm STEL	10 ppm TWA 25 ppm STEL
1140 Diisobutyl ketone	108-83-8	50 ppm TWA	25 ppm TWA	25 ppm TWA
1158 Epichlorohydrin	106-89-8	5 ppm TWA, Skin	2 ppm TWA, Skin	2 ppm TWA, Skin
1162 Ethyl benzene	100-41-4	100 ppm TWA	100 ppm TWA 125 ppm STEL	100 ppm TWA 125 ppm STEL
1164 Ethyl ether	60-29-7	400 ppm TWA	400 ppm TWA 500 ppm STEL	400 ppm TWA 500 ppm STEL
1165 Ethyl mercaptan	75-08-1	10 ppm Ceiling	0.5 ppm TWA	0.5 ppm TWA
1169 Ethylene glycol	107-21-1	--	50 ppm Ceiling	50 ppm Ceiling

TABLE C3-1. Substances for Which Limits Are Based on Avoidance of Irritant Effects (continued)

H.S. Number/ Chemical Name	CAS No.	Former PEL	Proposed PEL	Final Rule PEL*
1171 Ethylidene norbornene	16219-75-3	--	5 ppm Ceiling	5 ppm Ceiling
1183 Furfural	98-01-1	5 ppm TWA, Skin	2 ppm TWA, Skin	2 ppm TWA, Skin
1184 Furfuryl alcohol	98-00-0	50 ppm TWA	10 ppm TWA 15 ppm STEL, Skin	10 ppm TWA 15 ppm STEL, Skin
1187 Glutaraldehyde	111-30-8	--	0.2 ppm Ceiling	0.2 ppm Ceiling
1196 Hexachlorocyclo-pentadiene	77-47-4	--	0.01 ppm TWA	0.01 ppm TWA
1204 Hexylene glycol	107-41-5	--	25 ppm Ceiling	25 ppm Ceiling
1206 Hydrogen bromide	10035-10-6	3 ppm TWA	3 ppm Ceiling	3 ppm Ceiling
1208 Hydrogen fluoride	7664-39-3	3 ppm TWA	3 ppm TWA 6 ppm STEL	3 ppm TWA 6 ppm STEL
1211 2-Hydroxypropyl acrylate	999-61-1	--	0.5 ppm TWA, Skin	0.5 ppm TWA, Skin
1217 Iron salts (soluble)	Varies with compound	--	1 mg/m^3 TWA	1 mg/m^3 TWA

TABLE C3-1. Substances for Which Limits Are Based on Avoidance of Irritant Effects (continued)

H.S. Number/ Chemical Name	CAS No.	Former PEL	Proposed PEL	Final Rule PEL*
1224 Isopropyl acetate	108-21-4	250 ppm TWA	250 ppm TWA 310 ppm STEL	250 ppm TWA 310 ppm STEL
1225 Isopropyl alcohol	67-63-0	400 ppm TWA	400 ppm TWA 500 ppm STEL	400 ppm TWA 500 ppm STEL
1228 n-Isopropylamine	75-31-0	5 ppm TWA	5 ppm TWA 10 ppm STEL	5 ppm TWA 10 ppm STEL
1243 Mesityl oxide	141-79-7	25 ppm TWA	15 ppm TWA 25 ppm STEL	15 ppm TWA 25 ppm STEL
1248 Methyl 2-cyano-acrylate	137-05-3	--	2 ppm TWA 4 ppm STEL	2 ppm TWA 4 ppm STEL
1261 Methyl isobutyl carbinol	108-11-2	25 ppm TWA, Skin	25 ppm TWA 40 ppm STEL, Skin	25 ppm TWA 40 ppm STEL, Skin
1263 Methyl mercaptan	74-93-1	10 ppm Ceiling	0.5 ppm TWA	0.5 ppm TWA
1264 Methyl n-amyl ketone	110-43-0	100 ppm TWA	100 ppm TWA	100 ppm TWA
1267 alpha-Methyl styrene	98-83-9	100 ppm Ceiling	50 ppm TWA 100 ppm STEL	50 ppm TWA 100 ppm STEL

TABLE C3-1. Substances for Which Limits Are Based on Avoidance of Irritant Effects (continued)

H.S. Number/ Chemical Name	CAS No.	Former PEL	Proposed PEL	Final Rule PEL*
1270 o-Methylcyclohexanone	583-60-8	100 ppm TWA, Skin	50 ppm TWA 75 ppm STEL, Skin	50 ppm TWA 75 ppm STEL, Skin
1298 Osmium tetroxide	20816-12-0	0.002 mg/m^3 TWA	0.002 mg/m^3 TWA 0.006 mg/m^3 STEL	0.002 mg/m^3 TWA 0.006 mg/m^3 STEL
1302 Paraffin wax fume	8002-74-2	--	2 mg/m^3 TWA	2 mg/m^3 TWA
1322 Phosphoric acid	7664-38-2	1 mg/m^3 TWA	1 mg/m^3 TWA 3 mg/m^3 STEL	1 mg/m^3 TWA 3 mg/m^3 STEL
1325 Phosphorus trichloride	7719-12-2	0.5 ppm TWA	0.2 ppm TWA 0.5 ppm STEL	0.2 ppm TWA 0.5 ppm STEL
1334 Potassium hydroxide	1310-58-3	--	2 mg/m^3 Ceiling	2 mg/m^3 Ceiling
1343 Propylene glycol monomethyl ether	107-98-2	--	100 ppm TWA 150 ppm STEL	100 ppm TWA 150 ppm STEL
1350 Rosin core solder pyrolysis products, as formaldehyde	--	--	0.1 mg/m^3 TWA	0.1 mg/m^3 TWA
1365 Sodium bisulfite	7631-90-5	--	5 mg/m^3 TWA	5 mg/m^3 TWA

TABLE C3-1. Substances for Which Limits Are Based on Avoidance of Irritant Effects (continued)

H.S. Number/ Chemical Name	CAS No.	Former PEL	Proposed PEL	Final Rule PEL*
1367 Sodium hydroxide	1310-73-2	2 mg/m^3 TWA	2 mg/m^3 Ceiling	2 mg/m^3 Ceiling
1368 Sodium metabisulfite	7681-57-4	--	5 mg/m^3 TWA	5 mg/m^3 TWA
1376 Sulfur monochloride	10025-67-9	1 ppm TWA	1 ppm Ceiling	1 ppm Ceiling
1377 Sulfur pentafluoride	5714-22-7	0.025 ppm TWA	0.01 ppm Ceiling	0.01 ppm Ceiling
1387 Tetrahydrofuran	109-99-9	200 ppm TWA	200 ppm TWA 250 ppm STEL	200 ppm TWA 250 ppm STEL
1389 Tetrasodium pyrophosphate	7722-88-5	--	5 mg/m^3 TWA	5 mg/m^3 TWA
1392 Thioglycolic acid	68-11-1	--	1 ppm TWA, Skin	1 ppm TWA, Skin
1405 1,2,4-Trichloro-benzene	120-82-1	--	5 ppm Ceiling	5 ppm Ceiling
1408 Triethylamine	121-44-8	25 ppm TWA	10 ppm TWA 15 ppm STEL	10 ppm TWA 15 ppm STEL
1421 Vanadium (V_2O_5, respirable dust)	1314-62-1	0.5 mg/m^3 Ceiling	0.05 mg/m^3 TWA	0.05 mg/m^3 TWA

TABLE C3-1. Substances for Which Limits Are Based on Avoidance of Irritant Effects (continued)

H.S. Number/ Chemical Name	CAS No.	Former PEL	Proposed PEL	Final Rule PEL*
1422 Vanadium (V_2O_5, fume)	1314-62-1	0.1 mg/m^3 Ceiling	0.05 mg/m^3 TWA	0.05 mg/m^3 TWA
1424 Vinyl acetate	108-05-4	--	10 ppm TWA 20 ppm STEL	10 ppm TWA 20 ppm STEL
1429 VM & P Naphtha	8032-32-4	--	300 ppm TWA 400 ppm STEL	300 ppm TWA 400 ppm STEL
1431 Xylenes (o-, m-, and p-isomers)	1330-20-7	100 ppm TWA	100 ppm TWA 150 ppm STEL	100 ppm TWA 150 ppm STEL
1435 Zinc chloride fume	7646-85-7	1 mg/m^3 TWA	1 mg/m^3 TWA 2 mg/m^3 STEL	1 mg/m^3 TWA 2 mg/m^3 STEL

* OSHA's TWA limits are for 8-hour exposures; its STELs are for 15 minutes unless otherwise specified; and its ceilings are peaks not to be exceeded for any period of time.

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Description of the Health Effects

Irritant effects are readily perceived by affected individuals. The symptoms of sensory irritation include stinging, itching, and burning of the eyes, tearing (or lacrimation), a burning sensation in the nasal passages, rhinitis (nasal inflammation), cough, sputum production, chest pain, wheezing, and dyspnea (breathing difficulty). In the majority of cases, the onset of symptoms occurs rapidly upon exposure to the irritant; it is therefore easy to associate the causative agent with the irritant effect.

These effects may cause severe discomfort and be seriously disabling, as is the case with dyspnea or wheezing. The tearing and eye irritation associated with exposure to sensory irritants are often severe and can be as disabling as the weeping caused by exposure to tear gas. In addition to these primary effects, workers distracted by material irritant effects are more likely than nonexposed workers to have accidents and thus to endanger both themselves and others. (These adverse health effects also clearly have substantial productivity impacts.)

The eye irritation caused by exposure to irritants is believed to result from stimulation of the sensory nerve endings in the cornea. There is little information available on the relationship between the severity of the effect and the physical or chemical properties of the irritating substance. In addition, the mechanism of action underlying this irritant effect is not well understood. Mechanisms that have been suggested include physical action of the irritant on nerve endings, binding of the irritant to sulfhydryl groups of protein, inhibition of cellular respiration, and cholinesterase inhibition (Grant 1986/Ex. 1–975). The symptoms of eye irritation are usually transient and do not generally persist after cessation of exposure; however, exposure to concentrations of lacrimators that exceed the levels associated with transient eye irritation may produce corneal or conjunctival injury that requires medical treatment (Grant 1986/Ex 1–975).

Sensory irritation of the pulmonary system primarily affects the upper respiratory tract and causes an increase in sputum production; inflammation of the nasal passages, trachea, and upper bronchial tree; and decreased cilial clearance. These effects produce a burning sensation in the nasal passages and throat; coughing; sneezing; and acute bronchitis. The development of bronchitis indicates that the cilial clearance mechanism has been compromised, and the resulting mucous retention increases the risk of secondary bacterial infection. Wheezing may also be apparent, particularly if the affected individual has a history of hyperreactive airway disease. If exposure is sufficiently intense, the irritant may reach the lower portion of the bronchial tree, causing a chemical burn of the parenchyma and the sudden collection of fluid in interstitial spaces and alveoli (pulmonary edema). Irritation-induced edema may have a delayed onset (12 hours or more) and can cause hypoxia and difficulty in breathing. All of the effects described above are considered to constitute material impairment of health or functional capacity within the meaning of the Act.

For the great majority of substances in this group, current limits are derived from human evidence that exposure to the chemical agent at a particular airborne concentration will be associated with sensory irritation. For a few substances in this group, animal evidence provided the basis for limit setting. Several general types of evidence may be used to revise existing limits:

- Consideration of new human evidence;
- Reinterpretation of human data that formed the basis for setting the 1968 TLV;
- Consideration of evidence from industrial experience showing that employees are not experiencing irritation; and
- Evaluation of new animal evidence.

The studies that provide the basis for the sensory irritant levels being proposed by OSHA are generally controlled-exposure experiments using human volunteers or reports of employee complaints arising in industrial settings.

Dose-Response Relationships and Sensory Irritation

The onset of sensory irritation is considered a "threshold" or NOE level; that is, for any sensory irritant, there is an exposure level below which very few, if any, individuals will experience sensory irritation. As exposure increases above this level, a larger proportion of exposed individuals will notice the effect and the effect will become increasingly severe. At some level above this NOEL, all exposed persons will experience sensory irritation, although the intensity of the response may vary.

The risk of experiencing irritation that is associated with exposures below the NOEL will be minimal (except in the hypersensitive individual), while the risk of experiencing the irritant effect will increase directly as exposure increases. At some point above the NOE level (i.e., at some dose of the substance) the response will be 100 percent, and all exposed persons will experience irritation. According to general toxicologic principles, the shape of the curve that describes responses above the NOEL is sigmoidal, and the steepness of the curve is a function of the variability in individual responses to the particular irritant. For example, if nearly all persons exposed to the substance will experience a response at approximately the same concentration (dose), the curve will be steep; if, on the other hand, the percentage of people responding increases only slowly as concentration rises, the curve will be considerably flatter.

In addition to the relationship between increasing dose and increasing proportion of exposed persons being affected, the intensity of the response also increases with increasing exposure level. Slightly above the NOE level, affected individuals will experience itching and burning of the eyes, nose, and throat; this is a transient effect and disappears upon removal from exposure. For some substances, workers may become inured to the sensations and higher exposure levels are necessary to elicit a subjective response. As exposure levels increase, the irritant effects become more severe to the point where objective signs of mucous membrane irritation are apparent (i.e., redness of the eyes, rhinitis, coughing, and lacrimation).

During the rulemaking, the question arose as to the level of irritation that constitutes a significant risk of material health impairment; OSHA posed this question in the NPRM and a discussion of the responses received appears earlier in this preamble (see Section V, Question 21). Some commenters (Exs. 3–744 and 3–888) were of the opinion that transient irritant effects should not be considered material impairment of health. For example, the U.S. Borax and Chemical Corporation (Ex. 3–744) stated that transient "rhinitis, cough, sputum production, chest pain, wheezing, and dyspnea" do not constitute material impairments of health.

Most commenters, however, recommended that these signs and symptoms be regarded as material health impairments (see, for example, Exs. 8–47, 3–1095, 3–660, and 3–593). For example, NIOSH stated:

> The recognition of sensory irritation as potentially being "material impairment of health" is consistent with the current scientific consensus related to health effects of environmental agents.
>
> Mucous membrane irritants can cause increased blink frequency and tearing; nasal discharge, congestion, and sneezing; and cough, sputum production, chest discomfort, sneezing, chest tightness, and dyspnea. Work environments often require levels of physical and mental performance considerably greater than encountered in daily living. Even in the absence of any permanent impairment, the symptoms listed can interfere with job performance and safety.
>
> Mucous membrane irritation can result in inflammation, which may lead to increased susceptibility to nonspecific irritants and infectious agents. For example, experimental ozone exposure in humans results in increased airway reactivity. Also, studies of exposure to environmental tobacco smoke have shown irritative symptoms and evidence of increased frequency of respiratory tract illnesses in young children and decreased pulmonary function in adults * * *.
>
> Mucous membrane irritation is associated with respiratory illnesses, depending on the composition of specific exposure and on the dose, duration, and frequency of exposure. No universally applicable conclusion can be drawn at this time regarding the association between irritative symptoms and permanent injury or dysfunction. Where certain individuals show no measurable impairment after an exposure, even when experiencing irritative symptoms, others may develop identifiable dysfunction.
>
> Aside from the effects of irritation, mucous membrane exposure may result in absorption of a substance, with resultant systemic toxicity. An inflamed mucous membrane may be an even more effective route of absorption, either for the irritant or for other substances. Furthermore, injury to bronchopulmonary membranes can impair removal of particulates from the respiratory system (Ex. 8–47, pp. 38–40).

Thus, according to NIOSH, sensory irritants interfere with job performance and safety, cause inflammation, may increase the victim's susceptibility to other irritants and infectious agents, lead to permanent injury or dysfunction, or permit greater absorption of hazardous substances (Ex. 8–47).

Another commenter, E.L. DeWitt, an occupational health consultant for the du Pont Company, remarked:

> Irritation takes many forms * * * with the effect being perhaps no more than transient, slight to mild discomfort. Again, this type of irritation needs to be prevented but the 'safety factor' [applied] might be somewhat less in this case. There are also situations where 'irritation' is perceived but is without any accompanying manifestations. In these cases, there may be no real need to modify the exposure limit. The exposure conditions required to produce these findings need to be considered also (Ex. 3–660, p. 4).

OSHA concludes that exposure limits are needed for those substances for which PELs are being established in this rulemaking to protect against sensory irritant effects that result in objective signs of irritation, such as coughing, wheezing, conjunctivitis, and tearing. Such levels of mucous membrane irritation may require medical treatment, adversely affect the well-being of employees, and place the affected individual at risk from increased absorption of the substance and decreased resistance to infection. Exposing workers repeatedly to irritants at levels that cause subjective irritant effects may cause workers to become inured to the irritant warning properties of these substances and thus increase the risk of overexposure. In addition, the long-term effects of repeated low-level sensory irritation have not been well studied.

Therefore, OSHA finds that the sensory irritation caused by exposure to those substances for which PELs are being established in this rulemaking constitutes a material impairment of health and functional well-being and has established exposure limits for these substances at levels that will protect workers from the significant risk of experiencing this material impairment of health.

Analyses of the toxicologic data for the substances in this group of chemicals and OSHA's findings in each case are presented below.

ACETALDEHYDE

CAS: 75–07–0; Chemical Formula: CH_3CHO
H.S. No. 1001

OSHA's previous PEL for acetaldehyde was 200 ppm as an 8-hour TWA. In its NPRM, OSHA proposed revising its limit for acetaldehyde to 100 ppm as an 8-hour TWA and supplementing this with a STEL of 150 ppm; these are the limits currently recommended by the ACGIH. OSHA is establishing permissible exposure limits of 100 ppm as an 8-hour TWA and 150 ppm as a 15-minute STEL in the final rule. Acetaldehye is a colorless liquid with a pungent, fruity odor.

The 200-ppm 1968 TLV established by the ACGIH for acetaldehyde was based on a sensory irritation study conducted by Silverman, Schulte, and First (1946/Ex. 1–142) that showed that unacclimatized individuals experienced eye irritation at 50 ppm, but that a level of 200 ppm was tolerable for an 8-hour day. Reexamination of the data reported by Silverman, Schulte, and First (1946/Ex. 1–142) reveals that, at 200 ppm of acetaldehyde, all exposed persons experienced inflammation of the conjuctivae of the eyes, which manifested as redness. OSHA therefore concluded that its previous PEL of 200 ppm placed exposed employees at risk of conjunctivitis and other irritation and that a reduction to 100 ppm was necessary to reduce this risk. OSHA also proposed a STEL of 150 ppm to supplement the 8-hour limit because, without a STEL, workers could be exposed to levels many times those that have been shown to cause corneal injury, sensitization, and respiratory tract irritation. NIOSH (Ex. 8–47, Table N6B; Tr. pp. 3–97 to 3–98) indicated that acetaldehyde might be a candidate for an individual 6(b) rulemaking. As pointed out by the Workers Institute for Safety and Health (WISH) (Tr. 7–117, Ex. 116, p. 8), IARC has classified acetaldehyde as a possible human carcinogen based on animal data. There is also evidence that acetaldehyde is teratogenic and fetotoxic in animals (Ex. 116). The Agency will continue to monitor the scientific evidence for this substance to examine whether a further reduction in the PEL is warranted.

OSHA concludes that employees are placed at significant risk of conjunctivitis and irritation at the current 8-hour TWA limit of 200 ppm. The Agency has determined that conjunctivitis and sensory irritation represent material impairments of health or functional capacity. Therefore, OSHA is revising the limit for acetaldehyde to 100 ppm as an 8-hour TWA and 150 ppm as a 15-minute STEL to substantially reduce this risk.

ACETIC ACID

CAS: 64–19–7; Chemical Formula: CH_3COOH
H.S. No. 1002

The former OSHA PEL for acetic acid was a 10-ppm 8-hour TWA. OSHA proposed to retain the TWA limit and to supplement it with a 15-ppm STEL. Based on the acute irritant properties of acetic acid. These limits are consistent with the ACGIH recommended TLVs (1986/Ex. 1–3). NIOSH (Ex. 8–47, Table N1) concurred with these proposed limits. However, OSHA's review of the evidence for acetic acid has demonstrated that there is no basis at this time for a STEL, and the final rule thus retains the 8-hour TWA PEL. Acetic acid is a clear, colorless, flammable liquid with a pungent odor.

Sterner (1949/Ex. 1–1207) reported that exposures to concentrations of acetic acid ranging from 800 to 1200 ppm cannot be tolerated by humans for longer than three minutes. The AIHA (Ex. 8–16) stated that unacclimatized workers experience eye and nasal irritation at acetic acid levels in excess of 28 ppm, and that exposure to 50 ppm is intolerably irritating. The ACGIH also reported that acclimatized workers are sometimes able to tolerate exposure to concentrations as high as 30 ppm.

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Guinea pigs exhibited minor changes in respiration after exposure to 5 ppm; exposure to 100 ppm produced a significant increase in pulmonary flow resistance and a decrease in breathing rate and minute volume, which suggests that bronchial constriction is the primary irritant action of acetic acid (Amdur 1961/Ex. 1–601).

The 10-ppm TWA was established on the basis of studies indicating that industrial exposure to acetic acid at 10 ppm was nonirritating (Sterner 1943/Ex. 1–808). However, conjunctival irritation has been reported in humans exposed below 10 ppm (duration not specified) (Baldi 1953/Ex. 1–802), and workers exposed to concentrations of 60 ppm during the workshift, plus one hour daily at 100 to 200 ppm, for 7 to 12 years developed respiratory irritation, conjunctivitis, bronchitis (which was asthma-like in some workers), pharyngitis, erosion of exposed teeth, and gastritis (Parmeggiani and Sassi (1954/Ex. 1–753). Vigliani and Zurlo (1955/Ex. 1–164) observed respiratory, gastrointestinal, and skin irritation in the same group of workers.

In a prehearing comment, Eastman Kodak (Ex. 3–661) argued that there was no toxicologic basis for a 15-ppm STEL, citing Vigliani and Zurlo (1955/Ex. 1–164), who reported that exposure to 20 to 30 ppm is without danger. In addition, Kodak stated that irritation has only been observed "with prolonged and repeated exposures" above the 10-ppm TWA PEL. Eastman Kodak concluded that "[no] significant irritation or other ill effects have been reported by employees that periodically are exposed to levels of acetic acid in excess of the proposed 15-ppm STEL." (Ex. 3–661, p. 4).

OSHA has carefully reviewed the toxicologic evidence in the record and has determined that the evidence supporting a STEL for acetic acid is equivocal. Because information on exposure durations is lacking in the studies cited above (Baldi 1953/Ex. 1–802; Parmeggiani and Sassi 1954/Ex. 1–753), it is not known whether the conjunctival irritation found among exposed workers was due to short-term or prolonged exposure to acetic acid. Eastman Kodak (Ex. 3–661) has maintained that prolonged exposure to acetic acid at levels above the 10 ppm TWA PEL is necessary to cause irritant responses among exposed workers. Therefore, in the final rule, OSHA is retaining its 10 ppm TWA PEL for acetic acid, but is not supplementing this limit with a STEL.

ACETONE

CAS: 67-64-1; Chemical Formula: CH_3COCH_3; H.S. No. 1004

OSHA's previous Z-table limit for acetone was 1000 ppm as an 8-hour TWA. In the NPRM, the Agency proposed to lower this limit to 250 ppm as an 8-hour TWA. This proposed limit was derived from the NIOSH-recommended limit, which was based on a number of industrial and human volunteer studies reporting irritant and central nervous system effects resulting from exposure to acetone concentrations at levels below 1000 ppm; NIOSH (Ex. 8–47, Table N1) and the AFL–CIO (Ex. 194) concurred with the proposed limit. The ACGIH TLVs for acetone are 750 ppm as an 8-hour TWA and 1000 ppm as a 15-minute STEL. OSHA has carefully reviewed the scientific evidence and comments in the record and has determined that it is appropriate to revise the acetone PEL in the final rule to 750 ppm as an 8-hour TWA and to add a short-term limit of 1000 ppm. Acetone is a colorless, highly volatile, flammable liquid with an aromatic odor.

OSHA's proposed 250-ppm TWA limit for acetone was largely based on controlled human studies conducted by Nelson, Enge, Ross et al. (1943/Ex. 1–66) and Matsushita, Yoshimune, Inoue et al. (1989/Ex. 1–191), as well as studies in workers conducted by Vigiliani and Zurlo (1955/Ex. 1–164) and Parmeggiani and Sassi (1954/Ex. 1–753). OSHA's reliance on these studies to establish a revised limit for acetone was criticized by Dr. William C. Thomas, Manager of Toxicology for the Hoechst Celanese Corporation, who testified on behalf of the Ketones Program Panel of the Chemical Manufacturers Association (CMA) (Ex. 8–54; Tr. 8/4/88, pp. 6–114 to 6–127; Exs. 149A, 149C). The National Marine Manufacturers Association (Ex. 181) agreed with Dr. Thomas' remarks. Summaries of each of these studies and of OSHA's response to Dr. Thomas' remarks follow.

In a controlled-exposure experiment, Nelson, Enge, Ross et al. (1943/Ex. 1–66) exposed an average of 10 human subjects (both male and female) to a variety of solvents, including acetone, for three to five minutes. Subjects were asked to judge the level of sensory irritation as absent, slightly irritating, or very irritating. Tests were conducted in a 1200-cubic-foot gas cabinet equipped with an anemostat to distribute the air uniformly. Acetone was reported to produce slight irritation on exposure to 300 ppm, but a concentration of 500 ppm produced a degree of eye, nose, and throat irrigation that was still described by a majority of the subjects as "tolerable."

Dr. Thomas expressed five criticisms of the Nelson, Enge, Ross et al. (1943/Ex. 1–66) study. These were: (1) The short duration of exposure used; (2) the study's failure to account for adaptation because "naive" subjects who had not had previous acetone exposure were used; (3) the authors' reliance on subjective responses rather than on objective medical examination; (4) the use of nominal (calculated) exposures rather than measured exposures; and (5) the introduction of potential bias because students who were involved in the experiment were used as test subjects (Tr. 8/4/88, pp. 6–114 to 6–117; Exs. 149A, 149C).

NIOSH addressed some of these issues in its criteria document for ketones (NIOSH 1978f, as cited in ACGIH 1986/Ex. 1–3, p. 6). In its analysis of the Nelson, Enge, Ross et al. (1943/Ex. 1–66) study, NIOSH (1978f) concluded:

> The concentrations of ketones in the exposure chamber were calculated (nominal) rather than measured analytically, so the true concentration may have been lower than reported * * *.
>
> [T]he use of experimenters as subjects was a possible source of bias, and the exposure periods of 3–5 minutes were not long enough to show if adaptation would occur * * *. The fact that exposure duration did not approach that of a normal workshift is a major limitation of * * * [this study]. However, the data are useful as a guide to the relative irritating properties of ketones and the concentrations at which these [properties] appear (NIOSH 1978f, p. 31).

Thus, despite these experimental limitations, NIOSH concluded that the Nelson, Enge, Ross et al. (1943/Ex. 1–66) study was useful in identifying ketone concentrations that are irritating, and it relied on this study, at least in part, when recommending a 250-ppm TWA limit for acetone (NIOSH 1978f, as cited in ACGIH 1986/Ex. 1–3, p. 6).

The second paper discussed by Dr. Thomas is the report by Matsushita, Yoshimune, Inoue et al. (1989/Ex. 1–191). In this study, the authors exposed 25 healthy male subjects to 0, 100, 250, 500, or 1000 ppm acetone. Subjects were exposed for three hours in the morning and three hours in the afternoon, with a 45-minute period between exposures. Irritant responses were scored on a scale from 0 to 12, with a score of 12 representing severe irritation.

Most of the subjects exposed to 500 or 1000 ppm acetone reported irritation (scored between 4 and 5 in severity) during the first 90 minutes of exposure in the morning and the first 60 minutes of exposure in the afternoon. Subjects ceased to report irritation at the 90-minute mark during the afternoon exposure. A lesser degree of irritation was reported to occur among subjects

exposed to 100 or 250 ppm acetone; however, this irritation subsided after the first 90 minutes of exposure in each of the two exposure periods. Subjects exposed to 250 ppm or higher reported feeling general weakness and a sense of tension even as long as 24 hours after exposure. Blood and urine samples taken during and after exposure showed increasing blood and urinary acetone levels among subjects exposed to 250 ppm or higher. Following the exposure period, these levels fell to normal values within about 25 to 35 hours after exposure was terminated. The authors also reported an increased leukocyte count in subjects exposed to 500 or 1000 ppm acetone; the increased white cell count persisted for about 24 hours after the cessation of exposure. The authors attributed this increased leukocyte count to acetone's irritant properties (Matsushita, Yoshimune, Inoue et al. 1989/Ex. 1–191).

Dr. Thomas criticized this study because it did not describe the methods used by its authors for measuring acetone exposures, and the blood acetone levels reported by Matsushita and colleagues (1989/Ex. 1–191) were about 2.5 times higher than those reported after similar exposures conducted by DiVincenzo, Yanno, and Astill (1973, as cited in ACGIH 1986/Ex. 1–3, p. 6). After a two-hour exposure to 500 ppm acetone, Matsushita, Yoshimune, Inoue et al. (1989/Ex. 1–191) found a blood acetone level of 25 mg/L, compared to a level of 10 mg/L reported by DiVincenzo, Yanno, and Astill (1973, as cited in ACGIH 1986/Ex. 1–3, p. 6). Dr. Thomas suggested that the actual exposure levels employed by Matsushita and associates (1989/Ex. 1–191) may actually have been substantially higher than reported by these authors (Tr. 8/4/88, pp. 6–118 to 6–119; Exs. 149A, C).

OSHA has reviewed the report by DiVincenzo, Yanno, and Astill (1973, as cited in ACGIH 1986/Ex. 1–3, p. 6) and finds that the blood acetone results reported in this paper cannot be directly compared, as Dr. Thomas has done, with those reported by Matsushita, Yoshimune, Inoue et al. (1989/Ex. 1–191), for a number of reasons. First, the subjects studied by DiVincenzo, Yanno, and Astill fasted for eight hours prior to exposure; it is not clear that the subjects studied by Matsushita, Yoshimune, Inoue et al. fasted before they were exposed. Second, the blood acetone values reported by DiVincenzo, Yanno, and Astill were corrected for endogenous acetone (i.e., acetone levels that existed prior to exposure). The authors reported that endogenous acetone levels ranged from 0 to 10 mg/L of blood, or about as high as would occur after a two-hour exposure to 500 ppm of acetone. Whether Matsushita, Yoshimune, Inoue et al. corrected for endogenous blood acetone levels is uncertain; if they did not, their reported blood acetone levels may be as much as two times overstated. The third consideration is that the studies used different methods to measure blood acetone levels. Matsushita, Yoshimune, Inoue, et al. used a colorimetric method, while DiVincenzo, Yanno, and Astill used a gas chromatographic approach. The use of different analytical methods by the two investigative groups complicates any comparison of their blood acetone results. Thus, OSHA does not agree that the results by DiVincenzo, Yanno, and Astill (1973, as cited by ACGIH 1986/Ex. 1–3, p. 6) demonstrate that the exposure levels used by Matsushita, Yoshimune, Inoue et al. (1989/Ex. 1–191) are necessarily understated.

In addition to the two controlled-exposure studies discussed above, two industry studies were relied on by OSHA to support the reduction in the acetone PEL. One report by Parmeggiani and Sassi (1954/Ex. 1–759) indicated that six employees exposed to 307 to 918 ppm acetone in a rayon acetate plant experienced eye and throat irritation, dizziness, and inebriation. Five of the employees showed objective signs of pharyngeal irritation, four had lung irritation, and three had conjunctivitis. Although the authors attributed the observed CNS effects to excessive concomitant exposure to carbon disulfide, the irritant effects are more likely to have been the result of exposure to acetone, because carbon disulfide is not a primary irritant by vapor inhalation (*Chemical Hazards of the Workplace*, 2nd ed., Proctor, Hughes, and Fischman 1988, pp. 120–121). The other report, by Vigliani and Zurlo (1955/Ex. 1–164), found that acetone production workers exposed to 700 ppm acetone for three hours daily for 7 to 15 years experienced inflammation of the respiratory tract, stomach, and duodenum; giddiness; and loss of strength.

Dr. Thomas (Exs. 8–54, 149A, 149C; Tr. 8/4/88, pp. 6–114 to 6–127) criticized these two studies on the basis that the urinary acetone levels reported by Parmeggiani and Sassi (1954/Ex. 1–759) and by Vigliani and Zurlo (1955/Ex. 1–164) indicated that airborne exposures were much higher than the reported values. He stated that, based on these values, the employees observed in both of these studies were likely to have been exposed to acetone levels approximating 5000 ppm. OSHA is not convinced that the exposure levels reported in these two studies are understated. The studies by Matsushita, Yoshimune, Inoue et al. (1989/Ex. 1–191) and DiVincenzo, Yanno, and Astill (1973, as cited in ACGIH 1986/Ex. 1–3, p. 6) clearly demonstrate that blood and urinary acetone levels can increase with continued, daily exposure. Furthermore, in its criteria document, NIOSH (1978f, as cited in ACGIH 1986/Ex. 1–3, p. 6) cites a number of studies that demonstrate that skin absorption of acetone can result in elevated blood and urinary acetone levels. OSHA believes that the high urinary acetone levels reported in the workers studied by Parmeggiani and Sassi (1954/Ex. 1–759) and by Virgiliani and Zurlo (1955/Ex. 1–164) were most likely the result of an accumulated body burden of acetone brought about by long-term exposure and dermal absorption. Given these considerations, it does not appear appropriate to approximate airborne exposure levels on the basis of the urinary acetone levels reported in these two studies.

To summarize, OSHA finds that the studies discussed above show that acetone is capable of producing sensory irritation at concentrations below 1000 ppm and that long-term exposure to acetone at levels below 1000 ppm can cause CNS disturbances. In addition, the ACGIH (1986/Ex. 1–3, p.6) reports that chronic exposure to acetone causes respiratory irritation and headaches. Despite the methodological shortcomings of all of these studies, OSHA is impressed with the consistency of their findings. Both the Nelson, Enge, Ross et al. (1943/Ex. 1–66) and the Matsushita, Yoshimune, Inoue et al. (1989/Ex. 1–91) studies demonstrate that exposure to concentrations of acetone below 1000 ppm are associated with eye, nose, and throat irritation. Both industry studies (Parmeggiani and Sassi 1954/Ex. 1–759; Vigliani and Zurlo 1955/Ex. 1–164) report similar signs and symptoms of irritation and CNS disturbances in workers exposed to concentrations of acetone between 700 and 1000 ppm. OSHA is not persuaded by Dr. Thomas' arguments that exposure levels are understated in these reports; OSHA believes that the quantitative relationship between long-term exposure to acetone and urinary acetone levels is not sufficiently established to draw this conclusion. Therefore, OSHA concludes that the findings of these four studies are consistent in demonstrating the acute and long-term effects of acetone exposure at levels below 1000 ppm.

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The Ketones Panel of the CMA (Tr. 8/4/88, pp. 8–100 to 8–113; Exs. 149A, 149B, and 179) also presented testimony by Dr. Robert Raleigh, Adjunct Professor of Medicine at the University of Rochester School of Medicine. Dr. Raleigh testified on a study he conducted among filter press operators who were exposed exclusively to acetone (Raleigh and McGee 1972, as cited in Ex. 8–54). In this study, 13 workers were asked about symptoms and were medically examined over a one-week period. Using grab bags, acetone samples were taken at random periods during each workshift. Subjective symptoms were recorded with each grab sample. Samples were analyzed by gas chromatography.

Over the period studied, TWA exposures to acetone varied from 950 to 1060 ppm. Of the 13 workers studied, nine (69 percent) reported eye irritation, five (38 percent) reported nasal irritation, and five (38 percent) reported throat irritation. Three (23 percent) employees reported experiencing lightheadedness. Some employees reported these symptoms more than once during the study period. There were four cases of eye irritation following short-term exposures to acetone concentrations below 1000 ppm. Eye irritation that was reported to be "strong" occurred following short-term exposures to 1200 ppm. Physical examination revealed a few instances of redness of the nasal mucosa and slight infection of the mucosa of the nose and throat.

In his written testimony regarding this study, Dr. Raleigh concluded:

> Considering the number of samples taken, the variability of human responses, the slight to mild nature of the response, and the lack of *objective* evidence of eye irritation as noted by the examining physician, I do not believe * * * [instances of irritation occurring below 1000 ppm] indicate the need for a safe level being set below 1000 parts per million (Ex. 8–54, p. 9).

Dr. Raleigh also testified that the occurrence of transient dizziness was no cause for concern:

> [T]his symptom is usually very transient and in my experience I have never noted any adverse consequences from an occasional person * * * who complains of dizziness (Tr. 8/4/88, p. 8–103).

OSHA does not agree with Dr. Raleigh's interpretation of his study or with his view that dizziness, irritation and mild infections of the mucous membranes of the respiratory tract do not constitute material impairments of health. After reviewing the Raleigh and McGee report (1972, as cited in Ex. 8–54), OSHA notes that more than half the workers studied experienced sensory reactions from exposure to acetone at TWA levels equal to the former 1000-ppm OSHA limit. Furthermore, some of these reactions were characterized as "strong." OSHA believes that this study further demonstrates that the Agency's former 1000-ppm 8-hour TWA limit is insufficiently protective and does not prevent workers from experiencing these sensory effects. In addition, in contrast to Dr. Raleigh, OSHA characterizes transient dizziness in and of itself as an "adverse consequence." Dizziness connotes an effect on the central nervous system; in addition, dizziness is a serious safety hazard in the workplace. For the reasons stated earlier in this section, OSHA finds that such effects constitute material impairments of health. Thus, OSHA finds that the Raleigh and McGee study (1972, as cited in Ex. 8–54) is a recent, well-conducted study that provides additional support for the need to lower the former 1000-ppm TWA limit for acetone. Furthermore, OSHA finds the evidence that adverse effects can result from short-term exposures to levels of acetone at or near 750 ppm convincing: two controlled human studies (Nelson, Enge, Rose et al. 1943/Ex. 1–68; Matsushita, Yoshimuna, Inoue et al. 1969/Ex. 1–191) reported sensory irritant effects upon short-term exposure to such levels of acetone, and two industry studies (Parmeggiani and Sassi 1954/Ex. 1–759; Vigliani and Zurlo 1955/Ex. 1–104) reported irritation and CNS effects among employees exposed to acetone levels ranging from 307 to 918 ppm in one instance and about 700 ppm in the other. In addition, two studies (Matsushita, Yoshimune, Inoue et al. 1969/Ex. 1–191; DiVincenzo, Yanno, and Astill 1973, as cited in ACGIH 1986/Ex. 1–3, p. 6) suggest that chronic exposure to acetone on a daily basis leads to the bioaccumulation of acetone.

In light of the studies discussed above, OSHA concludes that it is necessary to reduce the limit for acetone to 750 ppm as an 8-hour TWA and 1000 ppm as a STEL to protect workers from the acute and chronic effects of acetone exposure. OSHA finds that the chemically induced sensory irritation associated with acute exposures to acetone can occur at levels only slightly above the 750-ppm level being established as an 8-hour TWA. In the absence of a STEL, the 750-ppm limit would permit excursions to levels as high as 12,000 ppm for brief periods. Such levels "depress the central nervous system, causing dizziness, weakness, and loss of consciousness" [Proctor, Hughes, and Fischman 1988, p. 40]. An 8-hour TWA of 750 ppm is necessary to protect workers against the bioaccumulation of acetone, chronic irritation of the respiratory tract, and headaches associated with long-term acetone exposures. OSHA considers both the short-term sensory irritation associated with brief exposures to acetone and the increased blood and urinary accumulation and chronic respiratory irritation characteristic of long-term acetone exposures to be material impairments of health. Accordingly, OSHA is establishing in the final rule an 8-hour TWA PEL of 750 ppm and a STEL of 1000 ppm for acetone.

ACROLEIN

CAS: 107–02–8; Chemical Formula: $CH_2=CHCHO$
H.S. No. 1007

OSHA formerly had an 8-hour TWA PEL of 0.1 ppm (0.25 mg/m³) for acrolein. OSHA proposed the addition of a 0.3-ppm STEL to this TWA limit, and the final rule adopts this short-term limit. NIOSH (Ex. 8–47, Table N1) concurred with these proposed limits. These limits for acrolein are the same as those recommended by the ACGIH (1986/Ex. 1–3). Acrolein is a colorless or yellowish flammable liquid with a disagreeable, choking odor.

In early inhalation studies of cats (Iwanoff 1911, as cited in ACGIH 1986/Ex. 1–3, p. 11), exposure to 10 ppm acrolein for 3.5 hours was found to have only transient effects, including salivation, lacrimation, respiratory irritation, and mild narcosis. However, later studies reported that an exposure to 1 ppm of acrolein produced marked nose and eye irritation in five minutes or less (Cook 1945/Ex. 1–720). Over longer periods, studies have demonstrated fatalities in one of six rats exposed for four hours to airborne concentrations of acrolein at 8 ppm; at 16 ppm, the mortality was 100 percent (Smyth 1956/Ex. 1–758). Irritation of the upper respiratory tract is the primary symptom of acrolein inhalation, but lung edema can occur after exposure to high concentrations (Henderson and Haggard 1943a/Ex. 1–861). In addition, skin contact with acrolein causes skin burns and severe injury to the cornea.

No comments (other than NIOSH's) were received on OSHA's proposed 8-hour time-weighted-average limit or its 15-minute short-term limit of 0.3 ppm. OSHA concludes that, in the absence of a STEL, the current 0.1-ppm TWA limit would not protect employees from short-term exposures to airborne concentrations in excess of 1 ppm, the level found by Cook (1945/Ex. 1–720) to cause severe eye and nose irritation. OSHA considers these adverse effects to represent material impairments of health or functional capacity. Therefore, OSHA finds that the 0.3-ppm STEL is necessary to protect employees from the significant risk associated with mucous membrane irritation, and the Agency is revising the exposure limit for acrolein to 0.1 ppm as an 8-hour TWA and 0.3 ppm as a 15-minute STEL.

ALLYL ALCOHOL

CAS: 107–18–6; Chemical Formula: $CH_2=CHCH_2OH$
H.S. No. 1010

OSHA previously had a PEL of 2 ppm TWA for allyl alcohol, with a skin notation. OSHA proposed to supplement this TWA limit with a STEL of 4 ppm and to retain the existing skin notation. NIOSH (Ex. 8–47, Table N1) concurred with this proposal. The final rule establishes a 2-ppm TWA limit, a 4-ppm STEL, and a skin notation for allyl alcohol, which is consistent with the ACGIH (1986/Ex. 1–3) recommendation. Allyl alcohol is a colorless liquid with a pungent, mustard-like odor.

The most important adverse effects of occupational exposures to allyl alcohol are upper-respiratory-tract irritation and burns of the eyes. In a controlled human sensory response study (Dunlap, Kodama, Wellington et al. 1958/Ex. 1–630), a five-minute exposure to 25 ppm resulted in severe eye irritation. Milder irritation has been reported to occur at 5 ppm (McCord 1932, as cited in ACGIH 1986/Ex. 1–3, p. 18). Necrosis of the cornea and temporary blindness occurred in one individual exposed to allyl alchol at a level irritating to the eyes and nose (Smyth 1956/Ex. 1–759). Skin absorption may lead to serious systemic injury (visceral congestion, periportal congestion of the liver, hematuria, and nephritis); in addition, when evaporation from the skin is prevented or reduced, skin contact causes burns (ACGIH 1986/Ex. 1–3, p. 18).

Exposure to airborne concentrations of allyl alcohol causes a series of characteristic effects, including lacrimation, photophobia, blurred vision, and retrobulbar pain (Dunlap, Kodama, Wellington et al. 1958/Ex. 1–630). Exposed individuals do not develop a tolerance for this substance, and they also do not become sensitized (Kodama and Hine 1958/Ex. 1–1066).

The New Jersey Department of Public Health (Ex. 144, 144A) urged OSHA to set its limits for allyl alcohol on the basis of EPA's IRIS data. The use of such an approach is discussed in Section VI.A of the preamble.

In a prehearing comment, Dr. Lawrence Hecker of Abbott Laboratories (Ex. 3–678) stated that a STEL did not appear to be warranted for allyl alcohol, based on his review of the literature. However, Dr. Hecker did not specifically discuss the evidence or rationale underlying this contention. In reviewing the evidence for allyl alcohol, OSHA notes that severe eye irritation has been reported to occur in human subjects exposed to 25 ppm for as short an interval as five minutes (Dunlap, Kodama, Wellington et al. 1958/Ex. 1–630); such an exposure would be permitted under the current limit of 2 ppm as an 8-hour TWA. OSHA also notes that short-term exposure to allyl alcohol produces characteristic effects more severe than those caused by other sensory irritants; these effects include photophobia and blurred vision. OSHA considers the effects of sensory irritation and disturbed vision to constitute material impairments of health or functional capacity. Sax and Lewis (1989) report that the dermal LD_{50} in rabbits is 93 mg/kg, indicating that allyl alcohol readily permeates the skin and causes systemic toxicity.

OSHA concludes that the scientific evidence clearly shows a significant health risk associated with short-term exposure to the levels of allyl alcohol that would be permitted under the former standard; accordingly, the Agency is establishing a 4-ppm 15-minute STEL to supplement its 8-hour TWA limit of 2 ppm. The final rule retains the skin notation for this substance to protect workers from dermal absorption.

ALLYL GLYCIDYL ETHER

CAS: 106–92–3; Chemical Formula: $C_6H_{10}O_2$
H.S. No. 1012

OSHA's former PEL for allyl glycidyl ether (AGE) was 10 ppm (45 mg/m³) as a ceiling. OSHA proposed to revise this limit to a TWA of 5 ppm, and to add a 15-minute STEL of 10 ppm and a skin notation, consistent with the recommended limits of the ACGIH (1986/Ex. 1–3). NIOSH (Ex. 8–47, Table N1) concurred with this proposal. In the final rule, OSHA is establishing the air contaminant limits as proposed, but is not establishing a skin notation for this substance (see Section VI.C.18 for a discussion of the Agency's policy on skin notations). Allyl glycidyl ether is a colorless liquid of characteristic, but not unpleasant, odor.

In limited human exposure studies, AGE has been demonstrated to cause dermatitis and eye irritation; the substance produces moderate primary skin irritation and severe eye irritation in animals (Hine, Kodama, Wellington et al. 1956/Ex. 1–331). At 200 ppm, animals experienced irritation of the eyes and respiratory distress; at higher levels (e.g., 400, 600, and 900 ppm), corneal opacities and severe respiratory difficulties occurred (Hine, Kodama, Wellington et al. 1956/Ex. 1–331). The percutaneous LD_{50} for rabbits is 2.55 g/kg. Intragastric administration of AGE in mice, rats, and rabbits has also been demonstrated to cause depression of the central nervous system (Hine, Kodama, Wellington et al. 1956/Ex. 1–331).

In humans, skin sensitization occurs readily (Hine and Rowe 1963a, as cited in ACGIH 1986/Ex. 1–3, p. 20). In addition to primary irritation and sensitization, the potential exists for cross-sensitization with other epoxy agents (ACGIH 1986/Ex. 1–3, p. 20).

Sax and Lewis (*Dangerous Properties of Industrial Materials*, 7th ed., 1989) report the dermal LD_{50} in rabbits to be 2.25 g/kg; there is no other evidence of systemic poisoning occurring from skin absorption in humans or other animal species. Therefore, in accordance with the general policy described in Section VI.C.18 of this preamble, OSHA is not establishing a skin notation for AGE. Other than those submitted by NIOSH, OSHA received no comments on its proposed revision of the exposure limit for AGE.

In the final rule, OSHA is establishing PELs of 5 ppm (8-hour TWA) and 10 ppm (15-minute STEL) for allyl glycidyl ether. OSHA concludes that these combined limits will reduce the significant risks of sensitization and primary irritation to which employees could otherwise be exposed. OSHA considers these adverse effects material impairments of health and functional capacity.

ALLYL PROPYL DISULFIDE

CAS: 2179–59–1; Chemical Formula: $CH_3=CHCH_2S_2C_3H_7$
H.S. No. 1013

The previous OSHA PEL for allyl propyl disulfide was 2 ppm (12 mg/m³) as an 8-hour TWA. OSHA proposed to supplement this limit with a 3-ppm (18-mg/m³) 15-minute STEL, and NIOSH (Ex. 8–47, Table N1) concurred with this proposal. The final rule establishes a 2-ppm TWA limit and 3-ppm STEL for this substance; these limits are the same as those recommended by the ACGIH (1986/Ex. 1–3). Allyl propyl disulfide is a liquid with a pungent, irritating odor.

Nearly all occupational exposures to allyl propyl disulfide, the primary volatile constituent of onion oil, occur in the processing of onions and onion products. Allyl propyl disulfide's irritative effects on the human eye, nose, and upper respiratory tract are well recognized. The most severe irritation effects have occurred when workers were exposed to allyl propyl disulfide in

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the vicinity of onion slicing machines, where average concentrations of 3.4 ppm have been measured (Feiner, Burke, and Baliff 1966/Ex. 1–604).

No rulemaking participants other than NIOSH commented on the addition of a STEL to the current TWA limit for allyl propyl disulfide. OSHA concludes that, in the absence of a STEL, the 2-ppm TWA limit would not prevent employees from being exposed to short-term concentrations of sufficient magnitude to cause acute irritant effects. The Agency considers this effect to constitute material impairment of health and functional capacity. Accordingly, OSHA finds that a limit on short-term exposure is necessary to protect workers from significant acute irritation and is supplementing its current 2-ppm TWA limit with a 3-ppm 15-minute STEL in the final rule.

AMMONIA

CAS: 7664-41-7; Chemical Formula: NH_3
H.S. No. 1021

OSHA's former exposure limit for ammonia was 50 ppm as an 8-hour TWA. OSHA proposed to revise this limit to 25 ppm TWA and to add a 35-ppm 15-minute STEL, based on the limits established by the ACGIH. NIOSH indicated its agreement with these proposed limits (Ex. 8–47, Table N1). However, in the final rule, the Agency has determined that it is not appropriate to establish a 25-ppm TWA limit for ammonia; the final rule does revise OSHA's exposure limit to 35 ppm as a 15-minute STEL. Ammonia is principally used as a feedstock in the manufacture of fertilizers and other chemical substances and is also used as a refrigerant.

Ammonia is a primary eye and upper respiratory tract irritant. An unpublished study conducted by the Detroit Department of Health and cited by the ACGIH (1986/Ex. 1–3, p. 27) reports that ammonia concentrations in the range of 20 to 25 ppm elicited complaints of discomfort from workers engaged in blueprinting and copying operations. In addition, a study of pigs conducted by Stombaugh et al. (1969) appeared to demonstrate that exposure to ammonia causes systemic effects. Thus the ACGIH established both a full-shift TWA of 25 ppm to protect against chronic effects and a 35-ppm STEL to protect against ammonia's irritant effects.

OSHA also considered NIOSH's recommended 5-minute ceiling limit for ammonia of 50 ppm. When making this recommendation, NIOSH relied on several reports that ammonia concentrations as low as 50 ppm are moderately irritating (Viglani and Zurlo 1955/Ex. 1–104; Mangold 1971; Industrial Bio-test Laboratories 1973, all as cited in NIOSH 1974a/Ex. 1–236; MacEwen, Theodore, and Vernot 1970/Ex.1–627; Pagnotto 1973, as cited in ACGIH 1986/Ex. 1–3, p. 27). NIOSH concluded that the "irritating or annoying effects * * * [of exposure to ammonia are] more dependent upon concentration than length of exposure," and that "a standard expressed as a time-weighted average is inappropriate since it would permit fluctuations to concentrations considerably higher than 50 ppm" (NIOSH 1974a/Ex. 1–238, p. 69). In the proposal, OSHA preliminarily concluded that NIOSH's recommended 50-ppm ceiling limit was above the effect level reported in the Detroit Department of Health studies (1965–1970, as cited in ACGIH 1986/Ex. 1–3, p. 27) for sensory irritation.

Several rulemaking participants objected to a reduction in the current 50-ppm TWA limit (Exs. 3–375, 3–582, 3–756, 3–869, 3–868, 3–902, 3–939, 3–1012, 3–1118, 8–25, 8–29, 8–62, 8–68, 8–123, 8–136, 113, and 122). At the rulemaking hearing, Lucas Seeman, Technical Advisor for the Association of Reproduction Materials Manufacturers (ARMM), testified that there was no basis for the proposed revision since the effects associated with exposure to 50 ppm of ammonia did not, in his opinion, constitute impairment of health:

> The Detroit Health Department studies, which make reference to "worker complaints" of ammonia exposures, appear to be based on subjective reactions of workers and not any manifestation of health impairment or physical evidence of severe irritation.
>
> None of the reference data added [by the ACGIH] in 1980 * * * made reference to any health impairment at the 25-ppm TWA or 35-ppm STEL levels of exposure. References added in 1980 did indicate that at 50 ppm workers reported no irritation, or minor to moderate irritation, and that they quickly became accustomed to the ammonia exposure up to that level (Tr. VII, pp. 222–224).

In reviewing the record evidence, OSHA finds that the 50-ppm 5-minute ceiling limit recommended by NIOSH is not sufficiently protective against ammonia's irritant effects. The evidence discussed by NIOSH (Ex. 150) and the testimony presented by Mr. Seeman (Tr. VII, pp. 222–224) show that, at levels below 50 ppm, some workers experience eye and upper respiratory tract irritation. This view is supported by Proctor, Hughes, and Fischman (*Chemical Hazards of the Workplace*, 2nd ed., 1988, p. 71), who report that even 5-minute exposures to 32 ppm caused nasal dryness in 10 percent of exposed volunteers, and that 5-minute exposures to 50 ppm ammonia caused nasal irritation and dryness in 20 percent of exposed volunteers. Deborah Berkowitz of the AFL–CIO testified that two companies in the meat packing industry evacuate the work place if airborne concentrations of ammonia reach 25 ppm (Tr. pp. 6–310 to 6–311).

OSHA finds that sensory irritation, such as that experienced by volunteers exposed to ammonia (Proctor, Hughes, and Fischman, 1988) constitutes material impairment of health. OSHA also finds that the fact that some workers may become acclimatized to ammonia exposures at concentrations as high as 50 ppm may account for the belief expressed by Mr. Seeman and others that 50 ppm is an acceptable exposure level. However, OSHA does not agree with this view of acclimatization because the long-term consequences of a continual assault on the sensory nerves are not known. In addition, acclimatization lessens the ability of workers to discern airborne concentrations of other hazardous materials.

The ACGIH (1986/Ex. 1–3) believes that an 8-hour TWA limit is necessary for ammonia because a study by Stombaugh, Teague, and Roller (1980/Ex. 1–29) reports that pigs exposed continuously to 103 to 145 ppm ammonia reduced their consumption of food and lost weight. The ACGIH interprets this study to mean that systemic toxicity occurs as a result of chronic exposure to ammonia. However, OSHA interprets this study differently, believing instead that it shows a secondary effect of the irritation traditionally associated with ammonia exposure. That is, in OSHA's view, these pigs stopped eating because they were experiencing too much respiratory and eye irritation to be interested in their food.

Thus, OSHA does not find it necessary in the final rule to establish an 8-hour TWA limit for ammonia to protect against chronic effects. Instead, the Agency concludes that a 15-minute STEL of 35 ppm will protect against this substance's irritant effects, which have been demonstrated to occur in workers exposed to ammonia at and below 50 ppm. OSHA concludes that the eye and upper respiratory tract irritation associated with ammonia exposure constitute material impairments of health and pose a significant risk to exposed workers.

AMMONIUM CHLORIDE (FUME)

CAS: 12125-02-9 Chemical Formula: NH_4Cl
H.S. No. 1022

No previous OSHA PEL had been established for ammonium chloride fumes. Based on the ACGIH recommendation, OSHA proposed a TWA limit of 10 mg/m³ and a 20-mg/m³ STEL, and NIOSH (Ex. 8–47, Table N1) concurred with these proposed limits, and they are established in the final rule. Ammonium chloride is a white crystalline solid, somewhat hygroscopic, with a cool, saline taste.

Ammonium chloride fume is an irritant to the skin and respiratory passages when inhaled and produces mild systemic toxicity when ingested (Sax 1968a/Ex. 1–867). Although exposure-response data are lacking for this substance, the ACGIH (1986/Ex. 1–3) judged that these workplace limits would be sufficient to prevent workers from experiencing respiratory irritation.

OSHA received no comment on the proposed addition of exposure limits for ammonium chloride fume to the Z tables, other than those submitted by NIOSH. OSHA finds that, in the absence of any limit on airborne exposure, employees are at significant risk of respiratory irritation caused by exposure to high concentrations of ammonium chloride fume. OSHA concludes that the respiratory irritation caused by exposure to ammonium chloride fume constitutes a material impairment of health. To substantially reduce this risk, OSHA is establishing an 8-hour TWA limit of 10 mg/m³ and a 15-minute STEL of 20 mg/m³ in the final rule.

BORATES, TETRA, SODIUM SALTS (ANHYDROUS, PENTAHYDRATE, AND DECAHYDRATE)

CAS: 1303-96-4 (Decahydrate); Chemical Formula: $Na_2B_4O_7 \cdot 10H_2O$
1330-43-4 (Anhydrous); Chemical Formula: $Na_2B_4O_7$
12179-04-3 (Pentahydrate); Chemical Formula: $Na_2B_4O_7 \cdot 5H_2O$
H.S. Nos. 1036, 1038, and 1037

OSHA formerly had no exposure limits for the anhydrous or hydrated forms of sodium tetraborate. Based on the ACGIH-recommended TLVs for these substances, OSHA proposed a 1-mg/m³ 8-hour TWA PEL for the anhydrous and pentahydrate forms of sodium tetraborate and a 5-mg/m³ TWA PEL for the decahydrate form. NIOSH (Ex. 8–47, Table N1) concurred with these proposed limits. However, during the rulemaking proceeding, OSHA received several comments on the proposed limits and obtained information on a large health survey currently being conducted by the U.S. Borax and Chemical Corporation. Based on this evidence, the Agency has determined that it is appropriate at this time to establish a 10-mg/m³ 8-hour TWA limit for all forms of the sodium tetraborates. Anhydrous sodium tetraborate is a light gray, orderless solid; the pentahydrate and decahydrate forms are white, orderless, and crystalline.

OSHA's proposed limits were based on some early studies cited by the ACGIH (1986/Ex. 1–3) and on observation that the anhydrous and pentahydrate forms of sodium tetraborate present a greater irritant hazard than does the decahydrate form. These early studies reported that exposure to the tetraborates produces irritation of the skin, eyes, and upper respiratory tract and can cause shortness of breath and nosebleeds. These studies were criticized at the hearings by John Middleton, Manager of Product Safety for the U.S. Borax Research Corporation, because they did not have sufficient exposure data to define a dose-response relationship (Tr. p. 9–113).

During the rulemaking, commenters discussed two NIOSH health hazard evaluations (HHEs) relevant to the borates. The first study (HHE 75–059–496, NIOSH 1978o) was conducted at the Kerr-McGee Chemical Corporation plant in Trona, California. NIOSH performed clinical examinations of nine employees exposed to tetraborates and collected total dust samples for each employee. Clinical examination revealed symptoms of eye irritation in five employees, nose irritation with bleeding in three workers, throat irritation in three employees, and chapping of the hands in four workers. Four of the nine dust samples exceeded 10 mg/m³, with the highest being 29.9 mg/m³. In testimony before the Occupational Safety and Health Standards Board in California in 1985, Dr. Charles Hine of Kerr-McGee stated that dust exposures at the California plant were probably well above the 10-mg/m³ level because employees commented that dust from "frequent windstorms" was the main problem at the plant. Dr. Hine also noted that the NIOSH HHE reported that dust levels at the plant were excessive and that the visibility of employees was impaired (Ex. 3–744, Attachment I).

The second NIOSH HHE (conducted in 1980) reported on a walk-through survey of the U.S. Borax and Chemical Corporation's Boron, CA Operation. This HHE identified health complaints among employees, and its findings led to a larger, more comprehensive health survey in 1981 (HETA 80–109), a report of which was subsequently published in a peer-reviewed journal (Garabrant, Bernstein, Peters et al. 1985). Data on employees' respiratory symptoms were obtained by questionnaire, and total dust measurements were collected from historical data obtained between 1977 and 1981. The authors found no evidence of X-ray abnormalities or declines in pulmonary function among the 629 active employees examined. There was a dose-related and statistically significant increase in the frequency of reported symptoms, which included eye irritation, dry cough, nosebleeds, sore throat, shortness of breath, and chest tightness. Over 10 percent of employees having mean TWA exposures of 8.6 mg/m³, measured as total tetraborate dust, reported experiencing nosebleeds, dry cough, eye irritation, and dryness of the mouth, nose, or throat. At a mean exposure level of 14.6 mg/m³, between 15 and 30 percent of the employees examined reported these symptoms. The authors concluded that borax dust appears to act as a simple respiratory irritant and may cause small changes in pulmonary function among smokers who are also heavily exposed to borate dust.

U.S. Borax submitted to the record the written testimony of Dr. David Heilbron, a biostatistician (Ex. 3–744, Attachment 2), and of Dr. Ralph C. Smith, Professor of Occupational and Environmental Health, School of Public Health, University of Michigan (Ex. 3–744, Attachment 3), both of whom were of the opinion that the Garabrant et al. (1985) study's treatment of exposure data was biased. For example, Dr. Heilbron objected to the grouping of employees into three exposure categories, commenting that such aggregation "can seriously distort a dose-response relationship and particularly, the estimation of an effect threshold * * *" (Ex. 34–744, Attachment 2, p. 4). Dr. Heilbron also took issue with these authors' use of geometric means to describe the tetraborate exposure data; in the opinion of Dr. Heilbron, there was no statistical justification for the use of geometric means because of the heterogeneity of jobs within each exposure group.

OSHA believes that it is not possible to determine whether arithmetic or geometric means are appropriate without having access to the raw data. OSHA notes further that Garabrant and his co-authors (1985) both gathered and analyzed the data and that neither Dr. Heilbron nor Dr. Smith has access to these data.

Dr. Smith (Ex. 3–347, Attachment 3) believes that the exposure data in the Garabrant et al. (1985) study substantially underreported the actual exposures of the workers comprising the

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study group. According to Dr. Smith, when the data are reanalyzed using arithmetic means, the observed health effects would be associated with exposures to much higher dust levels than those presented in the report (Ex. 3-744, Attachment 3, p. 13).

Because the raw exposure data from the study were not available to Dr. Smith, he based his reanalysis of the exposure data on an assumption that all individuals in a job category had exposures equal to the mean exposure level for the job category as a whole. For example, according to Dr. Smith, if "four laborers in the fusing building had average exposures of 40.2 mg/m³ . . . [it was assumed] that all four had the same exposure" (Ex. 3-744, Attachment 3, p. 8). OSHA believes that Dr. Smith's approach provides less information about the actual exposures of the members of the cohort than does Dr. Garabrant's because Dr. Garabrant took two factors (representative data by job category as well as subjective self-reporting of exposure levels by employees) into account, while Dr. Smith only considered a single factor (job category). That is, Dr. Smith assumes that all workers in a job category have the same exposure, while Dr. Garabrant's approach recognizes the impact of such factors as individual differences in work practices, differences in control effectiveness at different workstations, etc., on the exposures of individuals in the same job category. OSHA is therefore unpersuaded by Dr. Smith's reanalysis; the Agency finds Dr. Garabrant's analysis convincing and believes that it more accurately reflects the true exposures of members of this cohort.

Largely because of questions raised concerning the dose-response relationship for tetraborates, U.S. Borax has been conducting a large epidemiologic study at its facility. This study, described at the informal hearing by Mr. Middleton (Tr. pp. 9-114 to 9-115, Ex. 120), will span a three- to four-year period and will obtain about 400 measurements of workplace tetraborate dust. The test protocols have been reviewed by representatives of OSHA, the U.S. Bureau of Mines, NIOSH, the ACGIH TLV Committee, and the Mine Safety and Health Administration. The final report is expected to be released in mid-1989. At the hearing, Mr. Middleton stated the position of U.S. Borax:

> Based on the fact that the present data does not support the establish[ment] of PEL's for these compounds and that U.S. Borax is presently collecting data that could be meaningful in establishing PEL's, we request that OSHA delay action on these compounds until these data are available and can be analyzed by OSHA and MSHA (Tr. pp. 9-115).

OSHA commends U.S. Borax for undertaking this effort to study the relationship between exposure to tetraborates and respiratory effects. OSHA believes that such data are essential to inform employees properly about hazards present in their workplaces and to guide employers in the development of effective occupational health programs. However, OSHA does not agree that the evidence currently available is inadequate to serve as a basis for establishing a PEL for the tetraborates at the present time. The study by Garabrant et al. (1985) does demonstrate a dose-response relationship for respiratory symptoms and exposure to sodium borates. OSHA finds that employees should be protected from experiencing the symptoms that have been reported. These symptoms, which have been reported in the more recent Garabrant et al. (1985) and NIOSH (1978c; 1980b) studies, as well as in the older literature, include nosebleeds, upper respiratory tract irritation, dermatitis, and dyspnea. OSHA believes that this evidence clearly indicates that the tetraborates act as primary respiratory and skin irritants, and that a 10-mg/m³ PEL is clearly warranted. In light of the research currently being conducted by U.S. Borax, however, OSHA notes that the Agency will consider new evidence as it becomes available and will revise its limits if such action appears to be appropriate.

OSHA agrees with U.S. Borax that, at this time, there are insufficient data upon which to establish different PELs for the different hydrated forms of tetraborate. OSHA believes that current sampling and analytical procedures cannot distinguish among the various hydrated forms of tetraborate (Ex. 3-744, Attachment 3, pp. 4-5) and therefore that separate standards of 5 mg/m³ and 1 mg/m³ are not feasible at this time.

OSHA concludes that an 8-hour TWA of 10 mg/m³ is appropriate for the tetraborates, and the final rule establishes this limit. OSHA finds that, in the absence of any limit on exposure, employees are at significant risk of experiencing acute eye, skin, and respiratory irritation effects, and that a 10-mg/m³ PEL will substantially reduce these risks. The Agency considers the eye, skin, and upper respiratory tract irritation caused by exposure to all forms of sodium tetraborates to be material impairments of health.

BROMINE

CAS: 7726-95-6; Chemical Formula: Br_2
H.S. No. 1042

OSHA's previous exposure limit for bromine was 0.1 ppm as an 8-hour TWA. OSHA proposed to supplement this TWA limit with a STEL of 0.3 ppm, the same limit recommended by the ACGIH and NIOSH (Ex. 8-47, Table N1) concurred with this proposal. In the final rule, the Agency is establishing a 0.1-ppm TWA limit and a 0.3-ppm STEL for bromine. Bromine is a dark, reddish-brown, noncombustible, diatomic liquid that has irritating vapors.

Early studies of bromine exposure indicated that workers exposed to 0.75 ppm for 6 hours exhibited no symptoms (Flury and Zernik 1931a, as cited in ACGIH 1986/Ex. 1-3, p. 65). Later studies reported physiological responses to different concentrations of bromine and used these findings to make the following recommendations: The maximum allowable concentration for prolonged exposures should be 0.1 to 0.15 ppm, and the maximum allowable concentration for short-term exposures (i.e., 30 minutes to one hour) should be 4 ppm (Henderson and Haggard 1943b, as cited in ACGIH 1986/Ex. 1-3, p. 65). These investigators found levels of 40 to 60 ppm dangerous for short-term exposures, and a level of 1000 ppm proved rapidly fatal even during short exposures. These authors reported that the effects of exposure to bromine include respiratory irritation and lung edema. Elkins (1959a/Ex. 1108) reported that workers exposed to 1 ppm in a plant handling liquid bromine found this level excessively irritating.

OSHA received no comments on its proposed STEL for bromine, other than the NIOSH concurrence statement. The Agency finds that both the TWA and the short-term limits are necessary to substantially reduce the risk of respiratory irritation and lung damage that could occur following short-term exposures to concentrations of bromine that would be permitted by the 8-hour TWA limit alone. OSHA considers the effects related to bromine exposure material impairments of health. Therefore, OSHA is revising the limit for bromine to 0.1 ppm as an 8-hour TWA and 0.3 ppm as a 15-minute STEL.

2-BUTANONE (METHYL ETHYL KETONE)

CAS: 78-93-3; Chemical Formula: $CH_3COCH_2CH_3$
H.S. No. 1045

OSHA's former exposure limit for 2-butanone was 200 ppm TWA. OSHA proposed to supplement this limit with a STEL of 300 ppm, based on the ACGIH (1986/Ex. 1-3) recommendation. NIOSH (Ex. 8-47, Table N1) concurred with this proposal. The final rule establishes a 200-ppm TWA limit and a 300-ppm STEL for 2-butanone. 2-Butanone is a colorless, flammable liquid with an objectionable odor.

2-Butanone is an ocular and upper respiratory tract irritant. One study (Nelson, Enge, Ross et al. 1943/Ex. 1-66) reported that exposures to 200 ppm for 3 to 5 minutes caused mild eye irritation in some subjects and that others experienced slight nose and throat irritation at concentrations of 100 ppm. Exposure to 350 ppm caused eye and nasal irritation in a majority of subjects tested. Studies conducted in the 1940s noted low-grade intoxication resulting from exposure to 300 to 600 ppm (Smith and Mayers 1944, as cited in ACGIH 1986/Ex. 1-3, p. 395). Later studies have shown that approximately 50 percent of trained panelists experienced eye and nose irritation at 200 ppm (as reported in ACGIH 1986/Ex. 1-3, p. 395).

In the preamble discussion on 2-butanone, OSHA noted that a number of studies indicate that the proposed limits may not be sufficient to fully protect workers from the irritant effects of this substance (ACGIH 1986/Ex. 1-3; Nelson, Enge, Ross et al. 1943/Ex. 1-66). The ACGIH also cited a manufacturer's publication that stated that 200 ppm was the highest concentration judged by human subjects to be "satisfactory" for eight hours. In addition, another study cited by the ACGIH (1986/Ex. 1-3) reported that exposure to 200 ppm was associated with a 50-percent response rate for eye and nasal irritation (the degree of irritation was not specified).

OSHA specifically requested comment on whether its proposed limits for 2-butanone were sufficiently protective. The New Jersey Department of Public Health (Exs. 144, 144A) urged OSHA to set its limits for 2-butanone based on EPA's IRIS data. The use of such an approach is discussed in Section VI.A of the preamble. The AFL-CIO (Ex. 194) supported the establishment of a STEL for butanone.

OSHA has determined that its previous 8-hour TWA limit of 200 ppm was not sufficient to protect workers from experiencing the significant irritation and narcotic effects that are associated with short-term exposures to high concentrations of 2-butanone. After reviewing the available reports describing human sensory responses to short-term exposures to 2-butanone, the Agency concludes that a 300-ppm STEL is also necessary to reduce the significant risk of sensory irritation; exposure to 350 ppm for three to five minutes was reported to cause eye, nose, and throat irritation in a majority of subjects (Nelson, Enge, Ross et al. 1943/Ex. 1-66). Accordingly, OSHA is establishing a 200-ppm TWA limit and a 300-ppm 15-minute STEL for 2-butanone to protect employees from the significant risk of sensory irritation; OSHA considers the irritation caused by 2-butanone to be a material impairment of health or functional capacity.

n-BUTYL ACETATE

CAS No. 123-86-4; Chemical Formula: $CH_3COO(CH_2)_3CH_3$
H.S. No. 1047

The previous OSHA exposure limit for n-butyl acetate was 150 ppm, measured as an 8-hour TWA. OSHA proposed the adoption of a 15-minute STEL of 200 ppm to supplement the TWA limit. NIOSH (Ex. 8-47, Table N1) concurred with this proposal. The final rule establishes limits of 150 ppm as an 8-hour TWA and 200 ppm as a 15-minute STEL for this substance; these are the same limits as those recommended by the ACGIH (1986/Ex. 1-3). n-Butyl acetate is a colorless liquid with a fruity odor.

n-Butyl acetate is an irritant to the eyes, skin, and respiratory system. In a study involving cats exposed for six hours to 6100 ppm, slight narcotic effects were noted (Flury and Wirth 1933, as cited in ACGIH 1986/Ex. 1-3, p. 72). When exposed to 4200 ppm n-butyl acetate for six days at six hours per day, cats experienced slight irritation of the respiratory passage; at 3100 ppm, changes in blood cell morphology were recorded. At exposures of 1600 ppm, these cats exhibited slight irritation of the eyes and increased salivation (Flury and Wirth 1933, as cited in ACGIH 1986/Ex. 1-3, p. 72). Air concentrations of 10,000 ppm n-butyl acetate proved fatal to rats after eight hours; four hours of exposure at the same level produced no deaths (Smyth 1956/Ex. 1-759). A paper by Sayers, Schrenk, and Patty (1936/Ex. 1-802) reported that guinea pigs demonstrated eye irritation effects at 3300 ppm, became unconscious after nine hours of exposure to 7000 ppm, and died after four hours of exposure to 14,000 ppm.

Human volunteers complained that throat irritation, which began at an exposure level of 200 ppm n-butyl acetate, worsened and became quite severe at 300 ppm (Nelson, Enge, Ross et al. 1943/Ex. 1-66). NIOSH was the only commenter to the record in response to OSHA's proposed STEL for n-butyl acetate.

OSHA finds that workers are at significant risk of experiencing severe eye, skin, and respiratory irritation, in addition to narcotic effects, that are associated with short-term exposures to this substance at levels above the 8-hour limit. The Agency considers the irritant and narcotic effects resulting from exposure to n-butyl acetate to be material impairments of health and functional capacity. OSHA concludes that a STEL is necessary to reduce this risk, and the Agency is therefore revising its limit for n-butyl acetate to 150 ppm as an 8-hour TWA and 200 ppm as a 15-minute STEL.

n-BUTYL LACTATE

CAS: 138-22-7; Chemical Formula: $C_7H_{14}O_3$
H.S. No. 1053

OSHA previously had no limit for n-butyl lactate but proposed a 5-ppm 8-hour TWA limit, based on the ACGIH recommendation. NIOSH (Ex. 8-47, Table N1) concurred with the proposed 5-ppm TWA limit, and this limit is established in the final rule. Butyl lactate is a colorless liquid ester of lactic acid.

In humans, prolonged exposures to n-butyl lactate at approximately 7 ppm, with brief peak excursions to 11 ppm, caused headache, irritation of the pharyngeal and laryngeal mucosa, and coughing in all workers, and occasional nausea, vomiting, and sleepinessh in some (Zuidema and Pel 1969, as cited in ACGIH 1986/Ex. 1-3, p. 82). Headache, coughing, and irritation of the pharynx were sometimes related to n-butyl lactate concentrations of 4 ppm; however, no adverse effects were observed at a concentration of 1.4 ppm. Studies employing improved sampling and analytic methods have subsequently concluded that, although the odor of n-butyl lactate is discernible at the 7-ppm level, this concentration does not produce objectionable or injurious effects (Turner 1972/as cited in ACGIH 1986/Ex. 1-3, p. 82).

In the preamble discussion of the proposed limit for this substance, OSHA noted that some studies reported acute adverse effects associated with exposure levels below the proposed 5-ppm TWA limit. This was also pointed out by Dr. Grace Ziem, an independent physician (Ex. 46). Based on the study by Turner (1972, as cited in ACGIH 1986/Ex. 1-3, p. 82), which employed improved sampling and analytical techniques as compared to earlier studies, OSHA judges that promulgation of a 5-ppm 8-hour TWA limit will effectively protect workers from the significant risks of irritation, headache, and nausea caused by exposure to higher conentrations of n-butyl lactate. OSHA considers these adverse effects to represent material impairments of health. Therefore, OSHA is establishing a 5-ppm 8-hour TWA limit for n-butyl lactate.

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n-BUTYL MERCAPTAN

CAS: 109-79-5; Chemical Formula: $CH_3CH_2CH_2CH_2SH$
H.S. No. 1054

n-Butyl mercaptan is a colorless, flammable liquid and has a strong, obnoxious, garlic-like odor. It is used as a solvent, a chemical intermediate, and an odorant for natural gas. OSHA's previous limit for n-butyl mercaptan was 10 ppm as an 8-hour TWA. OSHA proposed a lower limit of 0.5 ppm TWA, based on the ACGIH recommendation, and the final rule establishes this limit.

Humans exposed to concentrations of n-butyl mercaptan report that the "readily noticeable" odor level for this substance is between 0.1 and 1 ppm, although the odor threshold is significantly below this level (ranging from 0.001 to 0.0001 ppm) Gobbato and Terribile (1988/Ex. 1–178) have reported that symptoms of CNS toxicity occurred in humans exposed for one hour to concentrations of n-butyl mercaptan believed to lie in the range of 50 to 500 ppm. These same authors reported that mucosal irritation occurred in human volunteers exposed to 4 ppm of ethyl mercaptan, a closely related substance. Irritation did not occur at exposures to 0.4 ppm. The ACGIH established the TLV for n-butyl mercaptan at 0.5 ppm, to protect against the intolerable odor effects, mucosal irritation, and CNS toxicity that occur on exposure to higher concentrations of this substance.

The current PEL of 10 ppm is between 10 and 100 times higher than the concentration of n-butyl mercaptan that is readily detected by smell and is more than twice the concentration reported as causing mucosal irritation for a closely related substance. OSHA finds that workers are at risk of significant acute effects in the absence of a more stringent limit.

In its prehearing comments, NIOSH (Ex. 8–47, Table N7) pointed out that it has recommended a 0.5-ppm ceiling limit for n-butyl mercaptan, rather than a TWA limit, for this substance. No other comments were submitted to the record. In accordance with the criteria in its June 7, 1988 NPRM (53 *FR* 20977), OSHA is establishing the 0.5-ppm TWA limit for n-butyl mercaptan. The Agency concludes that this PEL will substantially reduce the risks of irritation, CNS toxicity, and intolerable odor effects, which together constitute material health impairments.

CAPROLACTAM (DUST)

CAS: 105-60-2; Chemical Formula: $C_6H_{11}NO$
H.S. No. 1084

OSHA had no previous permissible exposure limit for caprolactam dust; however, a 1-mg/m³ 8-hour TWA and a 3-mg/m³ STEL were proposed, based on the recommended limits adopted by the ACGIH, and NIOSH (Ex. 8–47, Table N1) concurred with these limits. The final rule establishes these limits.

Caprolactam is a white crystalline solid with an unpleasant odor.

In humans, caprolactam has been shown to be a convulsant, a dermal and respiratory irritant, and a dermal sensitizer; however, dosage levels in humans are ill-defined (Ferguson and Wheeler 1973/Ex. 1–1108; Tuma, Orson, Possella, and Waidhofer 1981/Ex. 1–1071). In animals, exposure to caprolactam by several routes can cause convulsions, tremors, mydriasis, opisthotonus (Elison, Lien, Zinger et al. 1971/Ex. 1–1060; Lien, Lien, and Tong 1971/Ex. 1–1069) and salivation (Goldblatt, Farquharson, Bennett, and Askew 1954/Ex. 1–1044). Cardiovascular and respiratory effects have been reported in rabbits and cats, with an initial increase in blood pressure followed by a decrease in blood pressure and an increased respiratory rate (Goldblatt, Farquharson, Bennett, and Askew 1954/Ex. 1–1044). Weight loss and initial growth depression occurred in rats and mice (Morrison, Ross, and Ruth 1980/Ex. 1–1062).

One animal study observed that caprolactam's convulsant effects on rats, rabbits, and cats occur at injection doses above 100 mg/kg (Goldblatt, Farquharson, Bennett, and Askew 1954/Ex. 1–1044). Results of studies in guinea pigs were consistent with these findings (Hohensee 1951, as cited in ACGIH 1986/Ex. 1–3, p. 95). In a 90-day feeding study of dogs, Burdock, Kolwick, Alsaker, and Marshall (1984, as cited in ACGIH 1986/Ex. 1–3, p. 95) reported that dogs given dietary dose levels of 0.1, 0.5, or 1.0 percent caprolactam showed weight losses at both the 1.0-percent and 0.5-percent levels. Hematologic and opthelmologic changes did not occur. In a two-year bioassay of rats and mice, caprolactam was not observed to be carcinogenic (NCI/NTP 1982, as cited in ACGIH 1986/Ex. 1–3, p. 95). A Polish study observed hematologic and systemic changes, increased mortality, kidney and liver damage, and growth inhibition in animals given daily doses of 50 or 100 mg/kg (Zwierzchowski, Kowalski, Szendzikowski, and Slusarchryk-Zalobna 1967, as cited in ACGIH 1986/Ex. 13, p. 98.1). The results of early studies of caprolactam's teratogenicity in rats and rabbits indicate that it is not teratogenic even at doses as high as 1000 mg/kg/day (Gad, Powers, Robinson et al. 1984, as cited in ACGIH 1986/Ex. 1–3, p. 98.1).

Studies of industrial exposures to caprolactam dust in Germany report severe irritation on inhalation of 10 percent caprolactam in dust (Hohensee 1951, as cited in ACGIH 1986/Ex. 1–3, p. 95). Workers experienced a bitter taste, nervousness, epistaxis, upper respiratory tract irritation, and dry and splitting skin on the lips and nose (Hohensee 1951, as cited in ACGIH 1986/Ex. 1–3, p. 95). Direct contact with the solid form of caprolactam produces primary skin irritation (Ferguson 1972, as cited in ACGIH 1986/Ex. 1–3, p. 96.1). Brief (1972, as cited in ACGIH 1986/Ex. 1–3, p. 96.1) also reports that the dust produces skin irritation.

OSHA received no comments, other than NIOSH's, on its proposed limits for caprolactam dust. Based on its review of the health evidence, OSHA concludes that, in the absence of any limit on employee exposure to caprolactam dust, workers are at significant risk of respiratory irritation, adverse nervous system effects, and possible cardiovascular effects; the Agency considers these effects to be material impairments of health. OSHA finds that promulgation of the 1-mg/m³ TWA and 3-mg/m³ STEL limits for caprolactam dust will substantially reduce this risk.

CAPROLACTAM (VAPOR)

CAS: 105-60-2; Chemical Formula: $C_6H_{11}NO$
H.S. No. 1085

OSHA had no previous permissible exposure limit for caprolactam as vapor. The Agency proposed a TWA of 5 ppm (20 mg/m³) for the vapor, supplemented by a STEL of 10 ppm (40 mg/m³), based on the limits adopted by the ACGIH. These limits are established in the final rule. Caprolactam is a white crystalline solid at room temperature; thus, high vapor levels occur only at elevated temperatures.

The health effects of exposure to caprolactam vapor are identical to those described for caprolactam dust, except that contact with the vapor is reported to be even more irritating (Hohensee 1951, as cited in ACGIH 1986/Ex. 1–3, p. 95). Workers exposed to the vapor at approximately 12 ppm complained of a bitter taste in the mouth, nervousness, epistaxis, upper respiratory tract congestion, and dry and splitting skin; other workers reported experiencing heartburn, flatulence, and a heavy feeling in the stomach (Hohensee 1951, as cited in ACGIH 1986/Ex. 1–3, p. 95).

In another report of industrial exposure to the vapor, Ferguson and Wheeler (1973/Ex. 1–1108) reported that workers routinely exposed to unspecified levels and occasionally to concentrations as high as 100 ppm for 18 years reported severe discomfort from burning nose, throat, and eyes. This irritation response was dose-related, with no workers reporting effects at 7 ppm or below, some experiencing transient upper respiratory tract irritation at levels above that, and others reporting eye irritation at concentrations of 25 ppm and above (Ferguson and Wheeler 1973/Ex. 1–1108). Ferguson (1972, as cited in ACGIH 1986/Ex. 1–3, p. 96.1) noted that a group of 143 workers, some of whom were exposed for as long as 17 years to vapor concentrations of 5 to 10 ppm, showed no evidence of adverse effects. At higher vapor exposures (13 to 130 ppm), all subjects experienced eye irritation (Ferguson 1972, as cited in ACGIH 1986/Ex. 1–3, p. 96.1). Human volunteers exposed at low relative humidities to concentrations of the vapor in the range of 10 to 100 ppm showed a dose-related response, but at higher relative humidities, no irritation was observed below a concentration of 14 ppm (Ferguson and Wheeler 1973/Ex. 1–1108).

NIOSH (Ex. 8–47, Table N2; Tr. p. 3–86) did not concur with the Agency's proposal to establish an 8-hour TWA exposure limit of 5 ppm (20 mg/m³) and a 10-ppm (40-mg/m³) STEL for caprolactam vapor. NIOSH (Ex. 8–47) noted that the 1986 ACGIH *Documentation* (Ex. 1–3) lists a TLV–TWA of 1 mg/m³ for the combined vapor and aerosol of caprolactam and 0.22 ppm if the substance is present only as a vapor. The proposed change in the 1986 TLV was recommended to prevent early signs of irritation in some workers. NIOSH observed that "the proposed PEL does not appear to provide a sufficient margin of safety to caprolactam vapor," based on available human exposure responses. No other comments on this substance were submitted to the rulemaking record.

As explained in Section IV.D. of this preamble, which discusses the boundaries of today's rulemaking, the Agency confined its attention to the substances and exposure limits listed in the 1987–1988 edition of ACGIH's *Threshold Limit Values and Biological Exposure Indices* (ACGIH 1987/Ex. 1–16). Caprolactam vapor is listed on ACGIH's Notice of Intended Changes but new limits have neither been reviewed nor adopted by that organization to date. Under these circumstances, OSHA believes it prudent to promulgate the limits as proposed for caprolactam vapor. The Agency is establishing an 8-hour TWA limit of 5 ppm (20 mg/m³) and a 15-minute STEL of 10 ppm (40 mg/m³) for this previously unregulated substance. OSHA concludes that these PELs will substantially reduce the significant risk of eye, upper respiratory tract, and skin irritation that are permitted in the absence of any exposure limit for caprolactam vapor. OSHA considers the irritant effects resulting from exposure to caprolactam vapor to be material impairments of health. The Agency will continue to monitor the health evidence for this substance to determine whether further action is warranted.

CESIUM HYDROXIDE

CAS: 21351-79-1; Chemical Formula: CsOH
H.S. No. 1077

OSHA formerly had no limit for cesium hydroxide; however, based on the ACGIH recommendation, OSHA proposed the establishment of a 2-mg/m³ limit as an 8-hour TWA. NIOSH (Ex. 8–47, Table N1) concurred with OSHA's proposed limit for this substance, and the Agency is establishing this limit for cesium hydroxide in the final rule. Cesium hydroxide is a colorless or yellowish fused crystalline mass; it is the strongest base known and is highly soluble in both water and alcohol.

Animal studies indicate that cesium hydroxide has an acute oral toxicity of about one-third that of potassium hydroxide, which causes lesions of the nasal septum and irritation of the eyes and respiratory tract (Karpov 1971/Ex. 1–1115). The oral LD_{50} for cesium hydroxide in rats is 1016 mg/kg. Although a concentration of 5 percent cesium hydroxide did not produce skin irritation, contact with this concentration did result in severe eye irritation. Cesium hydroxide does not cause skin sensitization (Johnson, Lewis, and Perone 1972, as cited in ACGIH 1986/Ex. 1–3, p. 113). No rulemaking participants other than NIOSH commented on the proposed 2-mg/m³ TWA limit for cesium hydroxide.

In the final rule, the Agency is promulgating an 8-hour TWA PEL of 2 mg/m³ for cesium hydroxide and concludes that this limit will protect workers from the significant risk of severe eye irritation associated with exposure to this substance at levels above the new PEL. The Agency considers the severe eye irritation caused by exposure to cesium hydroxide a material impairment of health and functional capacity.

CHLORINE

CAS: 7782-50-5; Chemical Formula: Cl_2
H.S. No. 1079

The previous OSHA limit for chlorine was 1 ppm as a ceiling limit. OSHA proposed to revise this limit to 0.5 ppm measured over 15 minutes, which was the limit recommended by NIOSH (1976b/Ex. 1–276) in its criteria document; NIOSH (Ex. 8–47, Table N1) concurred with the proposed limit. However, the final rule establishes a PEL of 0.5 ppm TWA with a 15-minute short-term exposure limit of 1 ppm for chlorine. Chlorine is a greenish-yellow, noncombustible gas at atmospheric pressure; it has a suffocating odor. At −35 C, it condenses to an amber liquid.

Exposure to chlorine at concentrations around 5 ppm has been associated with respiratory symptoms, erosion of the teeth, and inflamation of the mucous membranes (Flury and Zernik 1931c/Ex. 1–1199; Patty 1963c/Ex. 1–854). Ferris, Burgess, and Worcester (1967/Ex. 1–316) reported slight effects on the respiratory system in workers exposed to chlorine concentrations ranging from negligible to 7 ppm. Rupp and Henschler (1967/Ex. 1–1122) reported burning of the eyes among human subjects exposed to 0.5 ppm; an unspecified number of these subjects reported painful eyes after 15 minutes' exposure to this level. In a separate test, subjects reported respiratory irritation on exposure to 0.5 ppm, and a concentration of 1 ppm was described as being uncomfortable.

At the time of OSHA's proposal, the limits adopted by the ACGIH were a 1-ppm TLV–TWA and a 3-ppm TLV–STEL; these limits were based on the reports described above and were established to "minimize chronic changes in the lungs, accelerated aging, and erosion of the teeth" (ACGIH 1986/Ex. 1–3, p. 117). NIOSH (1976b/Ex. 1–276) reviewed these studies, as did others (Matt 1969, as cited in Flury and Zernick 1931c/Ex. 1–1199; Beck 1959, as cited in NIOSH 1976b/Ex. 1–276) that reported ocular and respiratory irritation associated with exposure to chlorine levels of around 1 ppm for 30 minutes or less. NIOSH (1976b/Ex. 1–276) recommended a 15-minute 0.5-ppm limit to prevent possible eye and respiratory tract irritation.

The United Paperworkers International Union (UPIU) (Ex. 8–37) cited the NIOSH Criteria Document (Ex. 1–276) and ACGIH Documentation (Ex. 1–3) as evidence that exposure to 0.5 ppm chlorine causes respiratory irritation. The UPIU also submitted several studies indicating that decrements in pulmonary function may persist for several days or weeks following acute exposure to concentrations of chlorine requiring medical treatment. In addition, the UPIU cited a number of studies indicating that pulp mill workers and chlorine production plant workers experience declines in pulmonary function as a result of chronic exposure to low levels of chlorine (Ex. 8–37); however,

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interpretation of many of these studies is complicated by a lack of exposure data or the presence of confounding exposure to other respiratory toxins, such as sulfur dioxide. The UPIU (Ex. 8–37) supported the promulgation of a 0.2 ppm limit for chlorine.

In 1986, the ACGIH proposed revising the TLVs for chlorine to 0.5 ppm as an 8-hour TWA and 1 ppm as a 15-minute STEL. This proposal was based on a review of two recent studies. One study, a 1981 doctoral dissertation by Anglen (Ex. 108A), was sponsored by the Chlorine Institute and was conducted on 29 human subjects. This study reported statistically significant changes in pulmonary function and subjective irritation resulting from exposure to 1 ppm chlorine for eight hours. No significant ocular effects were noted at this exposure level and duration. Exposure to 0.5 ppm for eight hours was not associated with significant declines in pulmonary function, and subjective irritation was also less severe at this level than at 1 ppm (Anglen 1981, Ex. 108A). During the eight-hour exposure to 1 ppm, sensory responses of itching or burning of the throat were reported to be "just perceptible" or "distinctly perceptible." A short-term (30)-minute) exposure to 2 ppm produced no increase in subjective irritation compared with controls.

These findings were confirmed in a study of eight healthy volunteers exposed to 0.5 or 1 ppm chlorine concentrations (Rotman, Fliegelman, Moore et al. 1983/Ex. 1–108B). Significant declines in pulmonary function were associated with exposure to 1 ppm but not to 0.5 ppm.

The Chlorine Institute (Ex. 3–828) described a recent animal study conducted by the Chemical Industry Institute of Toxicology (CIIT). In this study, groups of 20 rats were exposed to 1, 3, or 9 ppm chlorine for six hours/day, five days/week, for six weeks. Exposure to the two highest levels resulted in significant decreases in body weight. Inflammation of the upper and/or lower respiratory tract was observed in the 9-ppm group and, to a lesser extent, in the 3- and 1-ppm groups. Pathological and clinical changes were not observed in the 1-ppm group, but were seen in the 3- and 9-ppm groups.

Several rulemaking participants urged OSHA to adopt the more recent ACGIH limits of 0.5 ppm TWA and 1 ppm STEL (Exs. 3–677, 3–741, 3–828, and 3–1150; Tr. pp. 10–165 to 10–170; Tr. pp. 10–178 to 10–180). For example, the Chlorine Institute commented as follows:

> The imposition of an instantaneous ceiling PEL is inappropriate. The Chlorine Institute's University of Michigan and CIIT studies demonstrate conclusively that sensory effects and adverse pulmonary function effects are directly related to prolonged chlorine exposures and are correctly controlled by a PEL expressed as a Time Weighted Average (TWA) * * *. The Chlorine Institute supports * * * [the ACGIH limits] as the correct PEL for adoption by OSHA, and we submit that the evidence is conclusive that such a PEL is totally protective of worker health in chlorine-producing and chlorine-using industries (Ex. 3–828, p. 3).

In its posthearing comment, NIOSH (Ex. 150) reaffirmed its recommended TWA of 0.5 ppm as a 15-minute limit, based on the findings of Rupp and Henschler (1987/Ex. 1–1122):

> The studies of Anglen (1981) and Rotman (1983), as summarized by the ACGIH, if considered alone, would support the ACGIH TWA TLV of 0.5 ppm with a STEL of 1 ppm. However, in the studies of Rupp and Henschler (1987), exposure to chlorine at concentrations of approximately 0.5 ppm resulted in conjunctival pain in several subjects after 15 minutes; in their second study, subjects reported respiratory irritation after exposure to 0.5 ppm for 25 minutes * * *.
>
> The Rupp and Henschler study (1987), although it has been criticized for lack of a control group (Ex. 3–668) confirms the Anglen (1981), Rotman et al. (1983), and CIIT studies (Ex. 3–829) that there is a significant risk of irritation and a risk of respiratory inflammation at the present PEL of 1 ppm ceiling. Reduction of the current PEL to 0.5 ppm ceiling will reduce the risk of respiratory irritation and pulmonary function changes, and minimize the subjective complaints of irritation (Ex. 150, Comments on Chlorine).

The Dow Chemical Company submitted a critical review of the NIOSH (1976b/Ex. 1–276) criteria document on chlorine and the Rupp and Henschler (1987/Ex. 1–1122) study that was prepared in 1979 by Dr. Ralph G. Smith, who directed the University of Michigan (Anglen 1981) study (Ex. 3–741, Appendix B; Tr. pp. 10–165 to 10–170). In his review, Dr. Smith criticized the Rupp and Henschler (1987/Ex. 1–1122) study because the design of the exposure facility led to uncertainties in determining actual exposure levels present in the test room. He also remarked that the chlorine was passed through "liquid paraffin," which may have produced chlorinated hydrocarbons. In addition, Dr. Smith felt that the air compressor used may have caused contamination of the air in the test room by carbon monoxide and other impurities. Dr. Smith believed these observations were important "because one of the effects allegedly resulting from short exposures to low levels of chlorine was headaches, a symptom which we have never had reported to us by a subject in the University of Michigan (Anglen 1981) exposures" (Ex. 3–741, Appendix B, pp. 9–10).

After reviewing the evidence and testimony presented in the record on the effects of exposure to chlorine gas, OSHA concludes that there is clearly a significant risk of pulmonary function impairment and sensory irritation at the current 1-ppm ceiling PEL; such effects have been demonstrated by the Anglen (1981/Ex. 108A) and Rotman, Fliegelman, Moore et al. (1983/Ex. 108B) studies in human subjects exposed to 1 ppm for 8 hours, an exposure level and duration that would be permitted by the former PEL. In addition, pulmonary inflammation has been observed in rats exposed daily for six weeks to 1 ppm chlorine. Therefore, OSHA finds that it is necessary to revise its current limit for chlorine.

The human studies by Anglen (1981/Ex. 108A) and by Rotman, Fliegelman, Moore et al. (1983/Ex. 108B) also indicate that exposure to 0.5 ppm chlorine for as long as 8 hours is not associated with impairment of pulmonary function or significant sensory irritation; these findings are in contrast to the earlier German reports upon which the NIOSH REL of 0.5 ppm (15 minutes) is based. However, the German studies, in particular those of Rupp and Henschler (1987/Ex. 1–1122), appear to have had methodological shortcomings that call into question the finding that exposure to 0.5 ppm chlorine is associated with: significant acute effects. Therefore, OSHA judges, based on the more recent University of Michigan study, that an exposure limit of 0.5 ppm TWA with a 1-ppm 15 minute STEL will reduce the risk of irritation and pulmonary function decline in workers, and is today revising its limit for chlorine to these values. OSHA considers the effects of respiratory irritation and the declines in pulmonary function associated with chlorine exposure to be material impairments of health.

CHLOROACETYL CHLORIDE

CAS: 79-04-9; Chemical Formula: $ClCH_2COCl$
H.S. No. 1083

No previous exposure limit existed for chloroacetyl chloride. OSHA proposed a 0.05-ppm 8-hour TWA limit for this substance, based on the ACGIH recommendation, and NIOSH (Ex. 8–47, Table N1) concurred with this proposal. This limit is established in the final rule. Chloroacetyl chloride is a colorless liquid with a pungent odor.

The oral LD_{50} in rats fed this substance is between 0.12 and 0.25 g/kg. Chloroacetyl chloride is corrosive to the skin and eyes, and skin absorption of this substance can be lethal. Inhalation of 4 ppm for five to ten minutes caused respiratory problems in rats; however, no effect was observed in these animals when they inhaled 2.5 ppm for a period of seven hours (Dow Chemical Company 1977a, as cited in ACGIH 1986/Ex. 1–3, p. 122). Thirty-day inhalation studies with rats, mice, and hamsters showed eye and respiratory irritation at 2.5 ppm and no effect at 0.5 ppm (Dow Chemical Company 1977a, as cited in ACGIH 1986/Ex. 1–3, p. 122).

Reports of the acute effects associated with exposure to chloroacetyl chloride in humans include mild to moderate skin burns and erythema, eye burns and tearing, cough, dyspnea, and cyanosis, as well as mild gastrointestinal effects. Eye and respiratory irritation occurred in an industrial setting characterized by an exposure level of 0.009 to 0.017 ppm, with excursions as high as 0.140 ppm (Dow Chemical Company 1977a, as cited in ACGIH 1986/Ex. 1–3, p. 122). An accidental drenching with a mixture containing chloroacetyl chloride resulted in extensive first- and second-degree burns, pulmonary edema, and three episodes of cardiac arrest, followed by coma and anoxia-induced brain damage (Pagnotto 1978, as cited in ACGIH 1986/Ex. 1–3, p. 122). Other ingredients of the mixture involved in the accident included xylidine, benzene, and sodium carbonate. Rescuers of this victim experienced hand blisters, chest tightness, and nausea for two days. OSHA received no comments other than NIOSH's on the proposed 0.05-ppm TWA limit for chloroacetyl chloride.

The Agency concludes that an 8-hour TWA limit of 0.05 ppm for chloroacetyl chloride is necessary to protect employees from the significant risk of eye, skin, and respiratory irritation; gastrointestinal effects; and severe systemic effects, including life-threatening coma, cardiac arrest, and pulmonary edema, to which they could otherwise be exposed in the absence of any OSHA limit; the Agency considers each of these exposure-related adverse effects to be material impairments of health and functional capacity. Accordingly, OSHA is establishing an occupational limit of 0.05 ppm as an 8-hour TWA for chloroacetyl chloride.

o-CHLOROBENZYLIDENE MALONONITRILE

CAS: 2698-41-1; Chemical Formula: $ClC_6H_4CH = C(CN)_2$
H.S. No. 1084

OSHA's previous PEL for o-chlorobenzylidene malononitrile (OCBM) was 0.05 ppm as an 8-hour TWA. The Agency has proposed revising this limit to 0.05 ppm as a ceiling, with a skin notation, based on the ACGIH (1988/Ex. 1–3) recommendation. This revision is incorporated in the final rule. NIOSH (Ex. 8–47, Table N1) concurred with OSHA's proposed limit for this substance. o-Chlorobenzylidene malononitrile is a white crystalline solid with a pepper-like odor.

OCBM has extremely irritating properties. It causes intense eye and skin irritation, coughing, difficulty in breathing, chest tightness, running nose, dizziness, nausea, and vomiting. These effects are evident on exposure to concentrations between 12 and 20 mg/m³ (1.5 to 2.5 ppm), and they become incapacitating within 20 seconds of exposure; the effects persist for approximately 5 to 10 minutes after the victim has been removed to fresh air (*Military Chemistry and Chemical Agents* 1963, as cited in ACGIH 1986/Ex. 1–3, p. 124).

OCBM is only slightly toxic to laboratory animals when they are exposed intravenously, subcutaneously, or through inhalation (Punte, Weimer, Ballard, and Wilding 1962/Ex. 1–354). In animals, it has been demonstrated that OCBM is metabolized by the body into cyanide (Frankenberg and Sorbo 1973/Ex. 1–480). Short-term exposures to high levels of OCBM did not cause carcinogenic, teratogenic, or embryolethal effects in animals (McNamara et al. 1973, as cited in ACGIH 1986/Ex. 1–3, p. 124).

Three of four human volunteers exposed to a 1.5-mg/m³ (0.19-ppm) concentration of OCBM aerosol dispersed from a 10-percent solution of methylene chloride for 90 minutes developed headaches, and one showed mild eye and nose irritation. Headache persisted for 24 hours in two subjects. At 4 to 5 mg/m³ (0.5 to 0.6 ppm), subjects' problem-solving abilities were affected and they showed eye irritation, conjunctivitis, lacrimation, and skin burning (Punte, Owens, and Gutentag 1963/Ex. 1–353). Other researchers observed no persistent clinical abnormalities in seven subjects exposed to OCBM at concentrations ranging from 1 to 13 mg/m³ (0.13 to 1.6 ppm) over a 15-day period; however, none of these subjects developed a tolerance for the compound. Severe skin sensitization has also been reported in workers handling OCBM (Shmunes and Taylor 1973/Ex. 1–370). No comments, except those submitted by NIOSH, were received on OSHA's proposed revision of the limit for OCBM.

In the final rule, OSHA is establishing a PEL 0.05 ppm as a ceiling, with a skin notation, to reduce the risks associated with elevated short-term exposures to OCBM. The Agency concludes that workers are at significant risk of experiencing the severe eye and upper respiratory tract irritation, skin sensitization, dyspnea, nausea, lacrimation, vomiting, and performance decrements that are associated with brief exposures to this substance at the former 8-hour TWA PEL. Furthermore, OSHA considers the effects related to exposure to OCBM to represent material impairments of health.

CYANOGEN

CAS: 460-19-5; Chemical Formula: $(CN)_2$
H.S. No. 1105

OSHA previously had no limit for cyanogen. The Agency proposed a limit of 10 ppm as an 8-hour TWA for this colorless gas, which has a pungent, almond-like odor. NIOSH (Ex. 8–47, Table N1) concurred with this proposal, and the final rule establishes the 10 ppm TWA limit, which is the same as that recommended by the ACGIH (1986/Ex. 1–3).

The acute toxicity for cyanogen in various animal species is high (Flury and Zernick 1931d, as cited in ACGIH 1986/Ex. 1–3, p. 154). One hundred ppm was fatal to cats in two to three hours, and 400 ppm was fatal to rabbits in less than two hours. However, rabbits exposed to 100 ppm for four hours showed practically no effects. Cats exposed to 50 ppm were severely affected but recovered (Flury and Zernik 1931d, as cited in ACGIH 1986/Ex. 1–3, p. 154). Investigations in the rat suggest that cyanogen is approximately 10 times less acutely toxic than is hydrogen cyanide (McNerney and Schrenk 1960/Ex. 1–426).

Human tests showed that subjects experienced almost immediate eye and nasal irritation at exposures of 16 ppm (McNerney and Schrenk 1960/Ex. 1–426).

The New Jersey Department of Public Health (Exs. 144, 144A) urged OSHA to set a limit for cyanogen on the basis of EPA's IRIS data. The use of such an approach is discussed in Section VI.A of the preamble.

In the final rule, OSHA is establishing an 8-hour TWA limit for cyanogen. The Agency concludes that this limit is necessary to protect against the significant risk of irritation and systemic effects associated with exposure at the levels permitted in the absence of any OSHA limit. OSHA considers the irritant and systemic effects caused by exposure to cyanogen to be material impairments of health.

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CYANOGEN CHLORIDE

CAS: 506-77-4; Chemical Formula: ClCN
H.S. No. 1108

OSHA previously had no limit for cyanogen chloride; however, a ceiling limit of 0.3 ppm was proposed for this colorless liquid or gas, which has a pungent odor. NIOSH (Ex. 8-47, Table N1) concurred with this proposal. In the final rule, OSHA is establishing a 0.3-ppm ceiling limit, which is the same as that recommended by the ACGIH.

The chronic effects of exposure to cyanogen chloride, which include hoarseness, conjunctivitis, and edema of the eyelid, have long been recognized (Reed 1930/Ex. 1-358). Flury and Zernik (1931d, as cited in ACGIH 1986/Ex. 1-3, p. 155) observed the effects of exposure to cyanogen chloride in five animal species. In mice, a concentration of approximately 500 ppm was fatal within three minutes; in cats, 120 ppm was fatal in 3.5 minutes; 48 ppm was fatal to dogs in six hours; in goats, a 1000-ppm exposure for three minutes caused death after 70 hours; and 1200 ppm was fatal to the rabbit. Several other studies have demonstrated that animals exposed to cyanogen chloride exhibit pulmonary edema and interference with cellular metabolism [Jandorf and Bodansky 1940/Ex. 1-334; Aldridge and Evans 1940/Ex. 1-708].

Human data indicate that 1 ppm is the lowest irritant concentration that can be tolerated for a 10-minute exposure; 2 ppm was intolerable for this time period, and 40 ppm was fatal in 30 minutes (Prentiss 1937/Ex. 1-1164). The Michigan Department of Health (1977, as cited by ACGIH 1986/Ex. 1-3, p. 156) reported that a concentration of about 0.7 ppm caused severe eye and nasal irritation, forcing workers to evacuate the area. NIOSH submitted the only comment received by OSHA on its proposed ceiling limit of 0.3 ppm for cyanogen chloride.

OSHA is establishing this 0.3-ppm ceiling limit for cyanogen chloride in the final rule. The Agency concludes that a ceiling limit is necessary to protect workers from the significant risks of severe irritation, metabolic effects, and pulmonary edema associated with short-term exposures to this substance at levels above the former PEL. The Agency considers the irritant, metabolic, and respiratory effects associated with exposure to cyanogen chloride to be material impairments of health and functional capacity.

DIBUTYL PHOSPHATE

CAS: 107-66-4; Chemical Formula: $(n\text{-}C_4H_9O)_2(OH)PO$
H.S. No. 1119

OSHA previously had an 8-hour TWA PEL of 1 ppm for dibutyl phosphate. The Agency proposed to supplement this limit with a 2-ppm STEL, based on the ACGIH recommendation. NIOSH (Ex. 8-47, Table N1) concurred with this proposal, and the final rule establishes a 1-ppm TWA limit with a 2-ppm STEL for this substance.

There are no published reports of toxic reactions caused by exposure to dibutyl phosphate. However, in a personal communication to the ACGIH, Mastromatteo reported that workers exposed to relatively low levels of dibutyl phosphate developed respiratory tract irritation and headache (Mastromatteo 1964a, as cited in ACGIH 1986/Ex. 1-3, p. 236). No additional data or health effects comment was introduced into the record during the rulemaking proceeding.

OSHA concludes that both a TWA and a STEL are necessary to protect workers from the risk of respiratory tract irritation and headaches reported to occur at low levels of exposure. OSHA judges it likely that, in the absence of a STEL, short-term exposure permitted by the 1-ppm TWA limit alone may be sufficiently high to present a significant risk of respiratory tract irritation and headache to workers; the Agency considers these exposure-related effects to be material impairments of health. Therefore, the Agency is supplementing its 1-ppm 8-hour TWA limit with a 2-ppm 15-minute STEL in the final rule.

1,3-DICHLORO-5,5-DIMETHYL HYDANTOIN

CAS: 118-52-5; Chemical Formula: $C_5H_6Cl_2N_2O_2$
H.S. No. 1122

OSHA previously had a limit of 0.2mg/m³ TWA for 1,3-dichloro-5,5-dimethyl hydantoin (DCDMH). Based on the ACGIH (1986/Ex. 1-3) recommendation, the Agency proposed a TWA limit of 0.2 mg/m³ and a STEL of 0.4 mg/m³ for this white powder, which has a mild odor similar to that of chlorine. NIOSH (Ex. 8-47, Table N1) concurred with OSHA's proposed limits for this substance, and they are established in the final rule.

1,3-Dichloro-5,5-dimethyl hydantoin produces systemic toxicity in laboratory animals. The acute oral LD_{50} in rats of both sexes is 542±84 mg/kg when DCDMH is administered as a 10-percent aqueous suspension. Rats dying within 48 hours of administration showed gastrointestinal hemorrhage at necropsy. The animals tolerated aqueous solutions of DCDMH maintained at 20 ppm available chlorine (Industrial Bio-Test Laboratories 1981 and 1982, as cited in ACGIH 1986/Ex. 1-3, p. 183).

Limited human exposure data have been provided by Baier, who reported that individuals experienced extreme respiratory irritation at an average level of 1.27 mg/m³, but that some experienced this degree of irritation even at 0.7 mg/m³ (Baier 1964, as cited in ACGIH 1986/Ex. 1-3, p. 183). Other than the NIOSH submission, OSHA received no comments on its proposal to revise the limit for DCDMH.

The 0.2-mg/m³ TWA and 0.4-mg/m³ STEL limits that were proposed are based on evidence of systemic toxicity in laboratory animals and respiratory irritation at low exposure levels in human subjects. The Agency concludes that both a TWA and a STEL are required to protect exposed workers from the risk of respiratory irritation that has been shown to occur at levels only slightly above the level specified by the 8-hour TWA limit. OSHA considers the respiratory irritant effects associated with exposure to DCDMH to represent material impairment of health and functional capacity. OSHA also concludes that the combined TWA-STEL limits will reduce this risk substantially and is therefore establishing a 0.2-mg/m³ TWA and a 0.4-mg/m³ STEL for DCDMH.

DICHLOROETHYL ETHER

CAS: 111-44-4; Chemical Formula: $(CH_2ClCH_2)_2O$
H.S. No. 1127

OSHA previously had a 15-ppm ceiling limit, with a skin notation, for dichloroethyl ether. The Agency proposed to revise its limit for dichloroethyl ether to 5 ppm as an 8-hour TWA, with a 10-ppm STEL, and to retain the skin notation. NIOSH (Ex. 8-47, Table N6A; Tr. pp. 3-66 to 3-97) concurred with the proposed limits but indicated that a carcinogen designation should be added to the PEL. The final rule establishes the proposed limits, which are consistent with the ACGIH recommendation. Dichloroethyl ether is a colorless, flammable liquid with a nauseating odor.

The primary health hazards associated with exposure to this substance are irritation of the eyes and, respiratory system and pulmonary damage. Schrenk, Patty, and Yant (1933/Ex. 1-665) reported that guinea pigs exposed to the vapor of dichloroethyl ether at 500 ppm experienced immediate and severe eye and nose irritation, respiratory disturbances after 1.5 to 3 hours, and death after five to eight hours. Lung, kidney, liver, and brain damage were also observed in these animals; exposure to a reduced level of 105 ppm caused eventual death after 10 hours of continuous exposure. A one-hour exposure to 105 ppm caused irritation only (Carpenter, Smyth, and Pozzani 1949/Ex. 1-772). At 35 ppm, for an unspecified duration, irritation but no other adverse effects were observed (Schrenk, Patty, and Yant 1933/Ex. 1-665). Rats responded similarly, with four-hour exposures to 250 ppm proving lethal (Carpenter, Smyth, and Pozzani 1949/Ex. 1-722).

Repeated exposures to 89 ppm (seven hours/day, five days/week for 130 days) caused no serious injury in rats or guinea pigs; only mild stress-related effects were noted (Koeyan 1967/Ex. 1-914). However, other studies of guinea pigs have shown mild primary irritative effects on the skin, and fatalities occurred when 300 mg/kg was applied dermally as a pure liquid for 24 hours (Smyth and Carpenter 1948/Ex. 1-375). Direct contact of dichloroethyl ether with the eye causes moderate pain, conjunctival irritation, and transient corneal injury (Carpenter and Smyth 1946/Ex. 1-659). A sufficient amount of dichloroethyl ether can be absorbed through the skin to be lethal: Sax and Lewis (*Dangerous Properties of Industrial Materials*, 7th ed., 1989) report the dermal LD_{50} in rabbits as 720 mg/kg. Mice have been reported to develop hepatomas after prolonged oral administration (80 weeks) of dichloroethyl ether at 300 mg/kg (Innes, Ulland, Valerio et al. 1969/Ex. 1-270).

Humans exposed briefly to dichloroethyl ether at concentrations above 550 ppm experienced intolerable eye and nasal irritation, with coughing, nausea, and retching. Concentrations between 100 and 200 ppm were irritating but tolerable; however, the odor of dichloroethyl ether was still nauseating at 35 ppm (Schrenk, Patty, and Yant 1933/Ex. 1-665). Eye irritation has been reported from industrial exposure to a concentration of dichloroethyl ether at 2.5 ppm (Bell and Jones 1958/Ex. 1-714). A single fatality, presumably from inhalation of the vapor, has been reported but not documented (Elkins 1959c, as cited in ACGIH 1986/Ex. 1-3, p. 188). NIOSH submitted the only comments on OSHA's proposed revision of the PEL for dichloroethyl ether.

In the final rule, OSHA is establishing a 5 ppm TWA and 10 ppm STEL for this substance. The Agency concludes that a 5-ppm TWA and a 10-ppm STEL will protect workers against the significant risk of irritation, lung injury, and nausea associated with occupational exposure to elevated levels of dichloroethyl ether, and these limits are established in the final rule. OSHA considers the eye and nasal irritation, lung injury, and other symptoms associated with exposure to dichloroethyl ether to be material impairments of health and functional capacity. The skin notation is retained because dichloroethyl ether can cause systemic toxicity if percutaneously absorbed.

2,2-DICHLOROPROPIONIC ACID

CAS: 75-99-0; Chemical Formula: CH_3CCl_2COOH
H.S. No. 1130

OSHA previously had no limit for 2,2-dichloropropionic acid; however, the Agency proposed a 1-ppm 8-hour TWA limit for this liquid, based on the ACGIH (1986/Ex. 1-3) recommendation. NIOSH (Ex. 8-47, Table N1) concurred with the proposed 1-ppm TWA limit, and the final rule establishes it.

In a communication to the ACGIH, the Dow Chemical Company (1977b, as cited in ACGIH 1986/Ex. 1-3, p. 190) reported that 2,2-dichloropropionic acid is corrosive to the skin and can cause permanent injury to the eye. The oral LD_{50} in rats is between 0.7 and 1 g/kg. Seven-hour exposures to a saturated atmosphere of the acid vapor caused no ill effects in rats, and a 120-day study of dietary exposure in rats showed a no-effect level of 15 mg/kg/day (Dow Chemical Company 1977b, as cited in ACGIH 1986/Ex. 1-3, p. 190). Dr. Grace Ziem, an independent occupational physician (Ex. 46), commented that Dow's material safety data sheet on 2,2-dichloropropionic acid reports that the liver and kidneys are target organs in rats fed higher dietary levels.

Acute human exposures have been reported to cause mild to moderate skin, eye, respiratory, and gastrointestinal irritation. Minimal respiratory irritation was observed in workers exposed at concentrations of between 2 and 7 ppm (ACGIH 1986/Ex. 1-3, p. 190).

The Agency concludes that a 1 ppm TWA limit for 2,2-dichloropropionic acid will protect workers from the significant risk of eye, respiratory, and gastrointestinal irritation, and possible liver or kidney injury, at exposure levels permitted in the absence of any OSHA limit. The Agency considers the irritant and adverse organ effects associated with exposure to this substance to be material impairments of health and functional capacity. Therefore, OSHA is establishing a 1-ppm 8-hour TWA limit for 2,2-dichloropropionic acid.

DIETHYLAMINE

CAS: 109-89-7; Chemical Formula: $(C_2H_5)_2NH$
H.S. No. 1129

OSHA's previous limit for diethylamine was 25 ppm as an 8-hour TWA. The Agency proposed to lower this limit to an 8-hour TWA of 10 ppm and to add a 15-minute STEL of 25 ppm, based on the ACGIH (1986/Ex. 1-3) recommendation. NIOSH (Ex. 8-47, Table N1) concurred with these proposed limits, which are established in the final rule. Diethylamine is a colorless liquid with an ammonia-like odor.

Diethylamine is a strong irritant of the eyes, skin, and mucous membranes, and chronic sublethal exposures cause tracheitis, bronchitis, pneumonitis, and pulmonary edema (ACGIH 1986/Ex. 1-3, p. 197). In rabbits, the dermal LD_{50} is 0.82 ml/kg, and instillation of solutions of 1 percent or greater into the eyes of rabbits caused corneal opacity (Sutton 1963/Ex. 1-1101). Direct contact of the skin with diethylamine causes necrosis (ACGIH 1986/Ex. 1-3, p. 197). Rabbits exposed seven hours/day, five days/week for six weeks to 50 or 100 ppm diethylamine survived; those exposed to 50 ppm showed marked lung and corneal irritation, and, occasionally, degeneration of the heart muscle (Brieger and Hodes 1951/Ex. 1-408). In the animals exposed to 100 ppm, these changes were more severe, and the parenchymatous degeneration of the heart muscle was marked (Brieger and Hodes 1951/Ex. 1-408).

OSHA finds that its previous limit of 25 ppm as an 8-hour TWA is only one-half the level found to cause marked lung and corneal irritation in animals exposed for six weeks. The Agency concludes that the 25-ppm limit is not sufficient to protect workers from the significant risk of skin burns, corneal injury, pulmonary irritation, and skin, eye, and upper respiratory tract irritation potentially associated with more prolonged exposures to this substance. OSHA considers the exposure-related effects of diethylamine on the eyes, skin, and respiratory tract to be material impairments of health. To afford workers greater protection from these adverse effects, OSHA is revising its limit for diethylamine to 10 ppm as an 8-hour TWA and 25 ppm as a 15-minute STEL; these limits are established in the final rule.

DIISOBUTYL KETONE

CAS: 108-83-8; Chemical Formula: $[(CH_3)_2CHCH_2]_2CO$
H.S. No. 1140

OSHA previously had an 8-hour limit of 50 ppm TWA for diisobutyl ketone. The Agency proposed to reduce this limit to 25 ppm TWA, based on both the ACGIH and NIOSH recommendations. NIOSH (Ex. 8-47, Table N1) concurred with this proposal, and the final rule

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revises OSHA's limit for diisobutyl ketone to 25 ppm as an 8-hour time-weighted average.

The primary health effects associated with exposure to diisobutyl ketone are eye, nose, and throat irritation, although experimental animals have shown some systemic effects. Diisobutyl ketone has a uniformly low acute toxicity by all routes of exposure. Rats and guinea pigs survived single exposures of from 7.5 to 16 hours to essentially saturated vapor (McOmie and Anderson 1949/Ex. 1–918). Smyth, Carpenter, and Weil (1949/Ex. 1–528) reported that five of six rats died after exposure to 2000 ppm for eight hours; these investigators also reported a percutaneous LD_{50} for rabbits of greater than 20 ml/kg. Direct application of diisobutyl ketone to rabbit skin was only mildly irritating, and no eye irritation was reported after instillation of this substance into the rabbit eye. The oral toxicity for the rat was reported as 8.8 g/kg (Smyth, Carpenter, and Weil 1949/Ex. 1–528). Carpenter and Smyth (1946/Ex. 1–859) reported a no-effect level for diisobutyl ketone of 125 ppm in rats and guinea pigs given 30 seven-hour exposures. At 250 ppm, the liver and kidney weights of female rats increased, and the liver weights of male guinea pigs decreased; at levels of 530 and 920 ppm, rats showed increased liver and kidney weights; and at 1650 ppm, increased mortality was noted (Carpenter and Smyth 1946/Ex. 1–859).

Silverman, Schulte, and First (1946/Ex. 1–142) reported eye irritation and complaints of objectionable odor in volunteer human exposures to concentrations above 25 ppm. No worker illnesses have been linked to diisobutyl ketone exposure (ACGIH 1986/Ex. 1–3, p. 203).

NIOSH (Ex. 150, Comments on Diisobutyl Ketone) concurred with OSHA's proposal to reduce the limit for diisobutyl ketone and reported that there are no new toxicological data beyond those described above; no other comments on this substance were received. The Agency concludes that the previous 50-ppm TWA limit is inadequate to protect workers against the significant risk of irritation associated with workplace exposures to diisobutyl ketone levels greater than 25 ppm. The Agency has determined that the irritation associated with exposure to diisobutyl ketone constitutes a material impairment of health and functional capacity. Therefore, OSHA is revising its limit for diisobutyl ketone to 25 ppm as an 8-hour TWA.

EPICHLOROHYDRIN

CAS: 106-89-8; Chemical Formula: C_3H_5ClO
H.S. No. 1158

OSHA previously had a limit of 5 ppm TWA, with a skin notation, for epichlorohydrin. OSHA proposed to reduce this limit to 2 ppm TWA, also with a skin notation, based on the ACGIH (1986/Ex. 1–3) recommendation, and the final rule establishes an 8-hour TWA limit of 2 ppm and retains the skin designation. Epichlorohydrin is an unstable liquid with an odor like that of chloroform.

In animals, epichlorohydrin is irritating and systemically toxic by all routes of exposure (Shell Chemical Corporation 1958, as cited in ACGIH 1986/Ex. 1–3, p. 233). Fatalities are caused by central nervous system and respiratory tract effects resulting from exposure to high concentrations.

In mice, single 30-minute exposures to 8300 ppm of epichlorohydrin vapor caused muscular paralysis and death from respiratory failure; similar results have been reported for dermal application of the liquid at 0.5 ml/kg in rats, and repeated oral administration at 0.1 mg/kg in mice (Shell Chemical Corporation 1956, as cited in ACGIH 1986/Ex. 1–3, p. 233). At 32 ppm (seven hours/day, five days/week) for 91 days, rats failed to show normal weight gain, and at 16 ppm they showed increased kidney size (ACGIH 1986/Ex. 1–3, p. 233). Gage (1959/Ex. 1–1052) confirmed these findings and demonstrated lung, liver, and kidney injury in rats from repeated six-hour exposures at concentrations ranging from 17 to 120 ppm. No effects were observed by this author at 9 ppm. The oral LD_{50} in rats is reported as 260 mg/kg, and the dermal LD_{50} in rabbits is reported as 755 mg/kg (Lawrence, Malik, Turner, and Autian 1972/Ex. 1–1058). A four-hour exposure at a level of 250 ppm was fatal to rats (Carpenter, Smyth, and Pozzani 1949/Ex. 1–722).

NIOSH (Ex. 8–47, Table N6B) did not concur with OSHA's proposed limit for epichlorohydrin, and considers this substance a potential human carcinogen and a likely candidate for a 6(b) rulemaking. There have been reports of carcinogenicity in mice resulting from both dermal application and subcutaneous injection of epichlorohydrin (Van Duuren, Goldschmidt, Katz et al. 1974/Ex. 1–969), as well as indications of reproductive effects resulting from ingestion; in addition, mutagenic effects have been observed in microbial systems and in the fruit fly (NIOSH 1976c/Ex. 1–972).

In humans exposed to concentrations above 100 ppm for brief periods, lung edema and kidney lesions have been reported (NIOSH 1976c/Ex. 1–972). Exposure at 20 ppm caused burning of eyes and nasal mucosa (Wexler 1971, as cited in NIOSH 1976c/Ex. 1–972). Another exposure to an unknown concentration caused eye and throat irritation, nausea, dyspnea, bronchitis, and an enlarged liver (Schultz 1964/Ex. 1–1064). Painful irritation of subcutaneous tissues follows skin contact in humans (ACGIH 1986/Ex. 1–3, p. 233). The New Jersey Department of Public Health (Exs. 144, 144A) urged OSHA to establish a PEL for epichlorohydrin on the basis of EPA's IRIS data. The use of such an approach is discussed in Section VI.A of the preamble.

OSHA is establishing an 8-hour TWA limit of 2 ppm, with a skin notation, for epichlorohydrin. The Agency concludes that this limit will protect workers from the significant risk of dermal, respiratory, liver, and kidney effects that are potentially associated with exposure to epichlorohydrin at elevated concentrations. OSHA has determined that the respiratory, liver, kidney, and dermal effects associated with exposure to epichlorohydrin represent material impairments of health. The skin notation is retained because of this substance's capacity to penetrate the skin and cause toxicity; according to Lawrence, Malik, Turner, and Autian 1972/Ex. 1–1058, the dermal LD_{50} of epichlorohydrin in rabbits is 755 mg/kg.

ETHYL BENZENE

CAS: 100-41-4; Chemical Formula C_8H_{10}
H.S. No. 1162

OSHA's former limit for ethyl benzene was 100 ppm as an 8-hour TWA. Based on the skin and mucous membrane irritant properties associated with exposure to ethyl benzene, OSHA proposed permissible exposure limits for this substance of 100 ppm as an 8-hour TWA and 125 ppm as a 15-minute STEL. NIOSH (Ex. 8–47, Table N1) concurred with this proposal. The final rule establishes limits of 100 ppm TWA and 125 ppm STEL for ethyl benzene; these limits are consistent with the ACGIH recommendation. Ethyl benzene is a colorless, flammable liquid with an aromatic odor.

The Agency's decision to add a STEL to the existing time-weighted average limit reflects evidence that transient eye irritation occurs in humans at vapor concentrations of 200 ppm; the short-term limit is necessary to protect exposed workers from the risk of such irritation as a result of even brief excursions above the 100-ppm level.

Written comments submitted by ARCO Chemical Company (ACC) (Ex. 3–638) include a detailed discussion of ethyl benzene's toxicity in animals, as reported in several recent studies (ECETOC 1986; Dynamac Corporation 1988) and in a personal communication from the National Toxicology Program's Chemical Manager for Ethyl Benzene. The findings of these investigators include: Moderate dermal irritation on intact and abraded rabbit skin after a 24-hour application; mild conjunctival irritation (without corneal effects) from direct instillation of undiluted ethyl benzene in rabbit eyes; erythema and edema with superficial necrosis, resulting in exfoliation of large patches of skin, following repeated and prolonged application of the undiluted material to rabbit skin; "a slight, cloudy swelling of hepatocytes" in animals subchronically exposed to the vapor as a "result of an increase in the endoplasmic reticulum (SER), which is an adaptive process responsible for increased microsomal enzyme activity and, presumably, increased metabolism of ethyl benzene"; congestion of the lungs, nasal mucosa, liver, and kidneys in mice and rats exposed six hours/day for four consecutive days to ethyl benzene concentrations of 2360 ppm and in mice exposed to 1190 ppm; and lacrimation and salivation in rats exposed at 400 and 800 ppm for six hours/day, five days/week (ECETOC 1986 and Dynamac Corporation 1988, both as cited in Ex. 3–638). ACC stressed the fact that, except at very high concentrations, significant systemic toxicity does not appear to be a manifestation of ethyl benzene exposure.

In addition to providing the results of these up-to-date studies on the health effects in animals of ethyl benzene exposure, the ACC indicated its support for both the retention of the current 100-ppm TWA limit and the adoption of a 125-ppm 15-minute STEL for ethyl benzene. Both concentrations, according to the ACC, "provide a wide safety margin for eye irritation compared to the concentration which can be tolerated in the workplace (1000 ppm)."

The New Jersey Department of Health (Exs. 144, 144A) urged OSHA to set a PEL for ethyl benzene on the basis of EPA's IRIS data. The use of such an approach is discussed in Section VI.A of the preamble.

OSHA concludes that workers exposed to concentrations of ethyl benzene above the 100-ppm level, even briefly, are at significant risk of experiencing irritation; the Agency considers this to be a material impairment of health. Accordingly, the Agency is establishing a short-term limit of 125 ppm for a 15-minute period to supplement the existing 100-ppm time-weighted-average limit for ethyl benzene.

ETHYL ETHER

CAS: 60-29-7; Chemical Formula: $C_2H_5OC_2H_5$
H.S. No. 1164

OSHA's previous limit for ethyl ether was a 400-ppm TWA. The Agency proposed the same time-weighted-average TWA limit, with the addition of a 15-minute STEL of 500 ppm. These limits are established in the final rule and are consistent with those recommended by the ACGIH. Ethyl ether is a colorless, volatile, mobile liquid with a distinct odor and a burning, sweet taste. It is extremely flammable and is a severe fire and explosion hazard when exposed to heat or flame.

Ethyl ether causes narcosis and general anesthesia. Concentrations of 3.6 to 6.5 volumes percent in air are anesthetic to humans; 7- to 10-percent concentrations cause respiratory arrest, and concentrations greater than 10 percent are fatal (ACGIH 1986/Ex. 1–3, p. 259). Repeated workplace exposures deliberately induced to produce the so-called "ether jag" have caused narcosis, exhaustion, headache, dizziness, sleepiness, excitation, and other psychic disturbances (Hake and Rowe 1963a/Ex. 1–1152). In women, albuminuria and polycythemia may result (Browning 1965a/Ex. 1–1017). Repeated exposure may cause skin desiccation; irritation of the mucous membranes and eyes occurs on contact with the liquid or after exposure to high concentrations of the vapor (Hake and Rowe 1963a/Ex. 1–1152). Nelson and co-workers (1943/Ex. 1–66) reported that workers began to experience nasal irritation at 200 ppm (Nelson, Enge, Ross et al. 1943/Ex. 1–66). Henderson and Haggard (1943c, as cited in ACGIH 1986/Ex. 1–3, p. 259) calculated that the amount of ether absorbed by a man of average height at a concentration of 400 ppm would not cause intoxication. Armor (1950, as cited in ACGIH 1986/Ex. 1–3, p. 259) observed that exposure effects occur only at levels of 500 ppm and above.

NIOSH (Ex. 8–47, Table N2; Tr. pp. 3–86 and 3–89) did not concur with OSHA's proposed limits and noted that some individuals may experience sensory irritation upon exposure to these levels, as evidenced by the Nelson, Enge, Ross et al. (1943/Ex. 1–66) study. However, this finding was not supported by Armor (1950, as cited in ACGIH 1986/Ex. 1–3, p. 259). OSHA received no other comments on its proposed limits. The Agency concludes that both of these limits are necessary to protect exposed workers against the significant risk of narcosis and irritation potentially associated with excursions above the 8-hour TWA level, and OSHA is establishing PELs of 400 ppm as an 8-hour TWA and 500 ppm as a 15-minute STEL for ethyl ether in today's rule. The Agency has determined that irritation and narcosis caused by excessive exposure to ethyl ether constitute material impairments of health and functional capacity.

ETHYL MERCAPTAN

CAS: 75-08-1; Chemical Formula: C_2H_5SH
H.S. No. 1165

OSHA previously had a ceiling limit of 10 ppm for ethyl mercaptan. An 8-hour TWA limit of 0.5 ppm was proposed for this substance, based on the ACGIH (1986/Ex. 1–3) recommendation; NIOSH (Ex. 8–47, Table N1) concurred with OSHA's proposal. The final rule establishes a PEL of 0.5 ppm as an 8-hour TWA for ethyl mercaptan. Ethyl mercaptan is a colorless liquid with a persistent and penetrating leek-like odor.

Acute animal toxicity data concerning ethyl mercaptan are taken from a single study that reports the following findings. The 4-hour inhalation LC_{50} values in rats and mice are 2770 ppm and 4420 ppm, respectively. In the rat, the intraperitoneal LD_{50} is reported to be approximately 450 mg/kg. One drop applied to rabbit eyes caused only slight irritation, but high concentrations of vapor caused considerable irritation within 15 minutes. Maximal sublethal intraperitoneal doses have been reported to induce deep sedation, with higher exposures causing restlessness, muscular incoordination, skeletal muscular paralysis, cyanosis, respiratory depression, coma, and death. Although inhalation tests showed no noteworthy pathology in rats, intraperitoneal injection caused lymphatic infiltration of liver with occasional necrosis (Fairchild and Stokinger 1958/Ex. 1–415). In chronic inhalation studies of rabbits, rats, and mice, a five-month exposure to 40 ppm caused minimal cardiovascular and other systemic effects (Blinova 1965/Ex. 1–603).

Studies of human volunteers, exposed at 4 ppm for three hours daily for 5 to 10 days, have reported adverse effects. At this level, all subjects experienced altered taste and olfactory reactions, periodic nausea, mucous membrane irritation, and fatigue. Exposure to 0.4 ppm produced no unpleasant symptoms (ACGIH 1986/Ex. 1–3, p. 262).

The Workers Institute for Safety and Health (WISH) (Ex. 116) was critical of OSHA's proposal to establish an 8-hour TWA limit rather than a STEL or ceiling for ethyl mercaptan. OSHA believes that the health evidence on ethyl mercaptan shows that a 0.5 ppm TWA limit will be sufficient to reduce the adverse acute effects associated with exposure to this

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substance; for example, a 3-hour exposure to 4 ppm, which caused adverse acute effects in human volunteers (ACGIH 1986/Ex. 1–3, p. 282), would exceed 0.5 ppm as an 8-hour TWA. The health evidence discussed above demonstrates that, at the previous PEL of 10 ppm (ceiling), employees were at risk of nausea, fatigue, and irritation; these effects have been demonstrated to occur on exposure to 4-ppm concentrations of this substance for just a few days. OSHA considers these exposure-related effects of nausea, fatigue, and irritation to be material impairments of health. The Agency concludes that the revised limit of 0.5 ppm will substantially reduce this significant risk. Therefore, OSHA is lowering its limit for ethyl mercaptan to 0.5 ppm as an 8-hour TWA.

ETHYLENE GLYCOL

CAS: 107-21-1; Chemical Formula: CH_2OHCH_2OH
H.S. No. 1168

OSHA previously had no limit for ethylene glycol and proposed a ceiling limit of 50 ppm (approximately 125 mg/m^3) for this clear, colorless, odorless, hygroscopic liquid. The final rule establishes a limit of 50 ppm as a ceiling, which is consistent with the limit recommended by the ACGIH for ethylene glycol. Ethylene glycol poses virtually no exposure risk at room temperature because of its low vapor pressure; at elevated temperatures, however, exposures are possible and adverse effects have been reported as a result of exposure to mists.

In studies of rats, guinea pigs, rabbits, dogs, and monkeys, Coon and colleagues (1970/Ex. 1–84) reported that animals exposed over a 30-day period to concentrations of 10 or 57 mg/m^3 for eight hours daily, five days per week, showed no adverse effects. Moderate to severe eye irritation did occur in rats and rabbits exposed at 12 mg/m^3 for 24 hours per day for 90 days (Coon, Jones, Jenkins, and Siegel 1970/Ex. 1–84). Wiley and co-workers (1936/Ex. 1–600) reported no ill effects in animals exposed to approximately 350 to 400 mg/m^3, eight hours per day, for 16 weeks (Wiley, Hueper, and von Oettingen 1936/Ex. 1–600).

Rowe (1963/Ex. 1–865) concluded that daily exposure to 100 ppm of the vapor did not cause systemic or eye injuries, although Troisi (1949/Ex. 1–599) described nystagmus in overexposed workers (concentrations not reported). In a human inhalation study, Wills and colleagues (1974/Ex. 1–562) reported that volunteers exposed to the aerosol from 30 to 22 hours per day for four weeks, at an average concentration of 12 ppm, complained of throat irritation, mild headache, and lower back pain. Complaints were more pronounced when the concentration was raised to 140 mg/m^3 (50 ppm) for part of a day. Average concentrations of 80 ppm were found intolerable by the subjects, who reported a burning sensation in the throat and respiratory passages; irritation was also common at 60 ppm (Wills, Coulston, Harris et al. 1974/Ex. 1–582). Based primarily on this study, NIOSH (Ex. 8–47, p. 6; Tr. p. 3–88) suggested that OSHA reconsider its proposed 50-ppm ceiling limit; however, NIOSH acknowledged that the exposure concentrations used by Wills et al. (1974/Ex. 1–562) were "significantly erratic." NIOSH also described recent evidence that ethylene glycol may be a potential teratogen. OSHA will continue to monitor the toxicologic literature on this substance to evaluate ethylene glycol's potential teratogenicity.

Gary L. Melampy, counsel for the Independent Lubricant Manufacturers Association (ILMA) (Ex. 3–830), commented that OSHA should apply the 50-ppm ceiling limit only to those workplaces where ethylene glycol is used at elevated temperatures. In the final rule, OSHA has not restricted the application of any new or revised PEL to a particular industry segment or industrial process. OSHA recognizes that industrial processes vary in characteristics that affect the degree of risk to which workers are exposed; these characteristics include the amount of material processed or handled, the frequency with which a substance is present, the extent to which a process is open or closed, and the temperatures and pressures at which materials are used. OSHA's policy, which is reflected in all of its previous health standards, has been to base its permissible exposure limits on scientific evidence that exposure to a substance at a given concentration or dose is associated with a health risk and that promulgating a PEL will reduce that risk. Thus, a relationship between exposure level and degree of risk is established and is deemed applicable in all situations where a substance is present. If the characteristics of a process are such that employee exposure to a substance is nonexistent or is well below the levels associated with a health risk, the promulgation of a limit on employee exposure will have little or no effect on the operation or process and imposes no additional burden on the employer. Therefore, in the specific case of ethylene glycol, OSHA sees no reason to limit application of the 50-ppm ceiling limit to those processes where exposure to airborne ethylene glycol is most likely.

Based on evidence of an occupational risk of severe throat and respiratory irritation associated with exposure to the vapor and mist, OSHA is promulgating a ceiling limit of 50 ppm for ethylene glycol; this level is just below the level at which clinical symptoms have been noted in humans. OSHA considers these symptoms, which include throat and respiratory irritation and headache, to be material impairments of health. The Agency concludes that this limit will substantially reduce the significant risk associated with exposures to higher levels that would be permitted in the absence of a PEL.

ETHYLIDENE NORBORNENE

CAS: 16219-75-3; Chemical Formula: C_9H_{12}
H.S. No. 1171

OSHA had no previous limit for ethylidene norbornene. The Agency proposed a ceiling limit of 5 ppm, based on the ACGIH recommendation, and is establishing this limit in the final rule. NIOSH (Ex. 8–47, Table N1) agreed with the selection of this limit. Ethylidene norbornene is a colorless liquid which reacts with oxygen.

In a range-finding study, five of six rats died following a 4-hour exposure to 4000 ppm 5-ethylidene-2-norbornene (Smyth, Carpenter, Weil et al. 1969/Ex. 1–442). Other studies of longer duration have reported that exposures to 237 ppm for seven hours per day, five days per week, for 80 days resulted in death for 21 of 24 rats. No deaths resulted from repeated exposures at 90 ppm, but renal lesions and enlarged livers were observed; liver lesions, testicular atrophy, and hydrothorax occurred only at the 237-ppm level (Kinkead, Pozzani, Geary, and Carpenter 1971/Ex. 1–606). Beagle dogs similarly exposed to 93 ppm for 89 days survived but exhibited such effects as testicular atrophy, hepatic lesions, and slight blood changes. Less pronounced effects were seen after exposures to 61 ppm, and no effects were seen at 22 ppm (Kinkead, Pozzani, Geary, and Carpenter 1971/Ex. 1–606).

Human volunteers exposed for 30 minutes to ethylidene norbornene concentrations of 11 ppm experienced eye and nose irritation; at 8 ppm, transient eye irritation occurred (ACGIH 1986/Ex. 1–3, p. 261). Other than the comment submitted by NIOSH, OSHA receive no comments on its proposal to establish a ceiling limit of 5 ppm for ethylidene norbornene.

In the final rule, OSHA is establishing a 5-ppm ceiling for this substance. The Agency finds that this limit is necessary to minimize the risk of irritation that has been documented to occur in occupational exposures to concentrations as low as 6 ppm for 30-minute periods. OSHA has determined that the eye and nasal irritation associated with exposure to ethylidene norbornene constitute material impairments of health. The Agency concludes that this limit will reduce this risk substantially.

FURFURAL

CAS: 98-01-0; Chemical Formula: $C_5H_4O_2$
H.S. No. 1183

OSHA previous exposure limit for furfural was an 8-hour TWA limit of 5 ppm, with a skin notation. The Agency proposed reducing this limit to 2 ppm TWA and retaining the skin notation, based on the ACGIH recommendation; these limits are established in the final rule. Furfural is a colorless, oily liquid that turns rust-colored when exposed to air and light.

An inhalation exposure to 200 ppm of furfural was fatal to rats but not to mice or rabbits. A four-week exposure of dogs to 130 ppm for six hours a day caused liver damage, but no adverse effects were observed at 63 ppm (AIHA 1985, as cited in ACGIH 1986/Ex. 1–3, p. 280).

Bugyi and Lepoid (1949/Ex. 1–1077) described numbness of the tongue and oral mucosa, absence of a sence of taste, and labored breathing in workers exposed to furfural (at unspecified levels) in a poorly ventilated facility. Korenman and Resnik (1930, as cited in ACGIH 1986/Ex. 1–3, p. 280) stated that inhalations of from 1.9 to 14 ppm furfural caused headaches, itching throat, and eye irritation; Kuhn (1944/Ex. 1–683) reported that exposure to furfural damages the eyesight in some individuals. NIOSH (1975e/Ex. 1–1163) described widespread eye and respiratory tract irritation in workers at a grinding wheel plant exposed to furfural vapor at levels ranging from 5 to 16 ppm. NIOSH (Ex. 8–47, Table N2; Tr. p. 3–86) did not concur with the proposed limit on the basis of these findings and, in addition, urged the Agency to follow up on a recent NTP assay with regard to a possible carcinogenic response in animals exposed to furfural. OSHA notes that Dunlop and Peters (1953/Ex. 1–1169) report that a 15-year study of furfural use in the synthetic resin industry revealed that this substance is not hazardous to employee health in facilities that are adequately ventilated, and that only occasional individual sensitivity was found. The Agency will carefully monitor the results of the NTP Study, currently in peer review, as well as any other scientific evidence pertaining to the health effects of furfural. NIOSH was the only commenter on this substance in the rulemaking record.

After reviewing the evidence above, OSHA concludes that its former 5-ppm limit is not sufficient to protect workers from eye and respiratory tract irritation; this is evidenced by the NIOSH study (1975e/Ex. 1–1183), in which widespread irritation was reported to occur among workers espoused to 5 to 16 ppm. OSHA considers the eye and respiratory tract irritation caused by exposure to furfural to be material impairment of health. Therefore, to protect workers from eye and respiratory tract irritation, OSHA is revising its limit for furfural to 2 ppm as an 8-hour TWA; this limit is established in today's rule. OSHA is also retaining its skin notation; Sax and Lewis *Dangerous Properties of Industrial Materials*, 7th ed., 1989) reported the dermal LD_{50} in rabbits to be 620 mg/kg, indicating that furfural penetrates the skin and can cause systemic effects.

FURFURAL ALCOHOL

CAS: 98-00-0; Chemical Formula: $C_5H_6O_2$
H.S. No. 1184

OSHA's previous limit for furfuryl alcohol was 50 ppm as an 8-hour TWA. In the NPRM, OSHA proposed revising its limit to 10 ppm as an 8-hour TWA and 15 ppm as a 15-minute STEL, and adding a skin notation, based on the ACGIH recommendation. NIOSH (Ex. 8–47, Table N1) concurred with this proposal, and these limits are established in the final rule. Furfuryl alcohol is a colorless liquid which turns red or brown on exposure to light and air.

The bases for the proposed OSHA limits, which were derived from ACGIH-recommended limits, are two foundry studies in which furfuryl alcohol was released during core preparation. Apol (1973/Ex. 1–1180) reported no discomfort among workers exposed to 10.8 ppm furfuryl alcohol, but severe lacrimation occurred at 15.8 ppm. Formaldehyde was also present at a concentration of 0.33 ppm. Burton and Rivera (1972/Ex. 1–944) found no irritation, headache, or dizziness among workers exposed to 8-hour TWA concentrations of 5 and 6 ppm, with excursions up to 16 ppm.

In its criteria document, NIOSH (1979a/Ex. 1–236) also reviewed these studies but concluded that it was unknown whether the lacrimation reported by Apol (1973/Ex. 1–1180) was caused by furfuryl alcohol, formaldehyde, or both combined. NIOSH also noted that the current OSHA limit (50 ppm) is five times lower than the concentration reported to cause no adverse effects in monkeys (Woods and Seevers 1954–1956, as cited in NIOSH 1979a/Ex. 1–236). At the time, NIOSH (1979a/Ex. 1–236) recommended that the 50-ppm limit should remain, since no information existed that showed that this limit offered inadequate protection.

Mr. H.K. Thompson, Corporate Industrial Hygiene Manager of Caterpillar, Inc. (Ex. 3–349), commented that formaldehyde probably contributed more than furfuryl alcohol to the lacrimation observed by Apol (1973/Ex. 1–1180). He also agreed that the 50-ppm PEL was too high, since his personal experience has indicated that eye irritation occurs between 25 and 30 ppm furfuryl alcohol. Mr. Thompson recommended that OSHA revise its limit to 25 ppm TWA and add a 50 ppm STEL.

In its final rule for formaldehyde, OSHA analyzed extensively the dose-response data on formaldehyde's irritant effects. In that analysis, OSHA concluded that severe irritation and lacrimation occur in most individuals when the formaldehyde levels reach 3 ppm or above; at levels between 0.1 and 0.5 ppm, slight eye irritation may occur in some individuals (52 FR 46235). In the foundry study by Apol (1973/Ex. 1–1180), formaldehyde was present at a concentration of 0.33 ppm, about 10 times below the level associated with severe eye irritation. Therefore, OSHA believes that exposure to furfuryl alcohol levels of about 16 ppm was most likely the cause of the lacrimation reported by Apol (1973/Ex. 1–1180).

NIOSH (Ex. 150, Comments on Furfuryl Alcohol) concurred with OSHA's proposal to revise the limits for this substance to 10-ppm TWA and 15-ppm STEL. In its posthearing submission, NIOSH cited a study by Cockcroft et al. (1980, as cited in Ex. 150), who reported that a 50-year-old moldmaker developed asthma after working with a mixture containing furfuryl alcohol, paraformaldehyde, xylene, and a catalyst containing sulfuric acid, phosphoric acid, and butyl alcohol. The patient's bronchial response to inhaled histamines was two to three times more severe following exposure to furfuryl alcohol mixed with butyl alcohol.

OSHA finds that the additional evidence submitted by NIOSH further justifies the proposed limits. This evidence indicates that exposure to furfuryl alcohol may potentiate asthmatic responses that are suggestive of an allergic or hypersensitive condition. Individuals that are so affected frequently respond adversely to exposure levels below those that affect

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most other persons, and the asthmatic response is much more severe than that of respiratory tract irritation.

Therefore, OSHA concludes that the Apol (1973/Ex. 1–1180) study shows that severe eye irritation is associated with exposure to about 16 ppm furfuryl alcohol, and that furfuryl alcohol is capable of inducing more serious asthmatic responses in at least some workers. OSHA has determined that the severe eye irritation and asthma caused by exposure to furfuryl alcohol represent material impairments of health and functional capacity. The Agency is establishing PELs for this substance of 10 ppm as an 8-hour TWA and 15 ppm as a 15-minute STEL, with a skin notation, to reduce these significant risks among exposed employees. The skin notation is added to alert employers that excessive exposure may result from dermal contact; according to Proctor, Hughes, and Fischman (1988, p. 263), furfuryl alcohol is readily absorbed through the skin of animals in sufficient quantity to be lethal.

GLUTARALDEHYDE

CAS: 111-30-8; Chemical Formula: OCH $(CH_2)_3CHO$
H.S. No. 1187

OSHA previously had no limit for glutaraldehyde and proposed establishing a ceiling limit of 0.2 ppm, based on the ACGIH (1986/Ex. 1–3) recommendation. NIOSH (Ex. 8–47, Table N1) concurred with this proposal, and the final rule establishes this limit. Glutaraldehyde is an aliphatic dialdehyde that forms colorless crystals.

Glutaraldehyde is strongly irritating to the nose, eyes, and skin (*Human Sensory Irritation Threshold of Glutaraldehyde Vapor* 1978, as cited in ACGIH 1986/Ex. 1–3, p. 285) and can cause allergic contact dermatitis from occasional or incidental occupational exposure (Jordan, Dahl, and Albert 1972/Ex. 1–1056). The rat oral LD_{50} has been variously reported as 250, 820, and 2360 mg/kg (Stonehill, Krop, and Borick 1963/Ex. 1–1066; Smyth 1963 and NIOSH 1975f, both as cited in ACGIH 1986/Ex. 1–3, p. 285). The dermal LD_{50} in the rabbit is 2560 mg/kg, and the 4-hour inhalation LD_{50} in the rat is 5000 ppm (NIOSH 1975f, as cited in ACGIH 1986/Ex. 1–3, p. 285).

Mice exposed to alkalinized glutaraldehyde at 8 and 33 ppm for 24 hours have shown marked nervous behavior with panting and compulsive washing of the face and limbs; those exposed to 33 ppm exhibited signs of toxic hepatitis at autopsy (Varpela, Otterstrom, and Hackman 1971/Ex. 1–1072).

In a study of a cold-sterilizing operation in which the operator was exposed for 12 minutes to an activated 2-percent aqueous solution, a measurement of 0.38 ppm glutaraldehyde was taken in the operator's breathing zone; the operator and the investigators experienced severe eye, nose, and throat irritation as well as sudden headache at the end of this procedure (Schneider and Blejer 1973, as cited in ACGIH 1986/Ex. 1–3, p. 285). Another study employing very precise methods of airborne concentration measurement reported the irritation response level for glutaraldehyde to be 0.3 ppm and the odor recognition threshold to be 0.04 ppm (Colwell 1976, as cited in ACGIH 1986/Ex. 1–3, p. 285).

Other than the NIOSH submission, OSHA received no comments on its proposal to establish a ceiling level of 0.2 ppm for glutaraldehyde. The Agency finds that the human evidence cited above clearly demonstrates a significant risk of irritation to the eyes nose, and throat associated with short-term exposures to glutaraldehyde at concentrations of 0.3 ppm or above. OSHA considers the irritation effects associated with exposure to glutaraldehyde to be material impairments of health. Therefore, OSHA is establishing a 0.2 ppm ceiling limit for this substance in the final rule.

HEXACHLOROCYCLOPENTADIENE

CAS: 77-47-4; Chemical Formula: C_5Cl_6
H.S. No. 1196

No previous OSHA limit existed for hexachlorocyclopentadiene. The Agency proposed to establish a 0.01-ppm 8-hour TWA limit for this substances, based on the ACGIH (1986/Ex. 1–3) recommendation; NIOSH (Ex. 8–47, Table N1) concurred with this proposal, and the final rule adds this limit to the Z table. Hexachlorocyclopentadiene is a yellow to amber-colored, nonflammable liquid with a pungent odor.

Hexachlorocyclopentadiene has a high order of acute toxicity in laboratory animals. Rabbits, mice, rats, and guinea pigs died from inhaling 89.5 percent of the vapor in air (Treon, Cleveland, and Cappel 1955/Ex. 1–497). In 150 daily exposures of seven hours each, rabbits, rats, and guinea pigs survived concentrations of 0.15 ppm, but a similar exposure was fatal to four of five mice. At approximately twice this concentration, mice, rats, and most rabbits died by or before the 25th exposure, but guinea pigs survived 30 exposures. The hexachlorocyclopentadiene vapors caused tearing, labored respiration, and, at high concentrations, tremors. Treon and associates (1955/Ex. 1–497) observed degenerative changes in the brain, heart, liver, adrenal glands, and kidneys, and pulmonary irritation occurred in all species, even at the lowest concentration of 0.15 ppm. At higher concentrations, pulmonary edema, hyperemia, necrotizing bronchitis, and bronchiolitis were observed (Treon, Cleveland, and Cappel 1955/Ex. 1–497).

In humans, there are few data concerning hexachlorocyclopentadiene's toxicity. Irritation is known to occur, but the intolerable odor and eye irritation associated with exposure to this substance have discouraged prolonged exposures (McGilvray 1971, as cited in ACGIH 1986/Ex. 1–3, p. 300).

The New Jersey Department of Public Health (Exs. 144, 144A) urged OSHA to establish a PEL for hexachlorocyclopentadiene on the basis of EPA's IRIS data. The use of this approach is discussed in section VI.A of the preamble.

The proposed TWA PEL of 0.01 ppm for this severly toxic substance is about 10 times below the level associated with systemic damage and pulmonary irritation in experimental animals. In the absence of any limit on exposure, OSHA finds that employees are at significant risk of intense eye and pulmonary irritation and multiple organ damage; the Agency considers these effects to be material impairments of health and functional capacity. To substantially reduce these risks, OSHA is establishing an 8-hour TWA limit of 0.01 ppm for hexachlorocyclopentadiene.

HEXYLENE GLYCOL

CAS: 107-41-5; Chemical Formula: $(CH_3)_2$-$COHCH_2$-$CHOH$-CH_3
H.S. No. 1204

OSHA previously had no limit for hexylene glycol. Based on the ACGIH recommendation, OSHA proposed a ceiling limit of 25 ppm for this liquid, which has a mild, sweetish odor. NIOSH (Ex. 8–47, Table N1) concurred with this proposed limit, and the final rule establishes it.

In mice, the LD_{50} for hexylene glycol is reported to be 3.8 ml/kg, and it is reported to be 4.79 g/kg in rats. A single dose of 2.0 ml/kg induced hypnosis in mice. Undiluted hexylene glycol instilled into the rabbit eye caused irritation and corneal injury (Smyth and Carpenter 1948/Ex. 1–375).

The Shell Chemical Corporation has reported that oral administration of hexylene glycol can cause nervous system depression that is manifested by an initial state of excitation, followed by deep depression (Shell Chemical Corporation, as cited in ACGIH 1986/Ex. 1–3, p. 309). When the liquid is applied to the skin, mild to moderate irritation occurs, although skin absorption does not. At high concentrations, hexylene glycol vapors evoke a strong sensory response: a five-minute exposure at 1000 ppm produced eye irritation and throat and respiratory discomfort. At concentrations of 50 ppm for 15 minutes, slight eye irritation was reported (ACGIH 1986/Ex. 1–3, p. 309).

Mr. Melampy, Counsel to the ILMA, commented that the proposed 25-ppm ceiling limit "is far below the hazard levels found to exist . . . ," given that exposures to hexylene glycol concentrations of 50 ppm for brief periods of time cause only slight eye irritation. OSHA does not agree with the assessment that a 25-ppm ceiling limit is too low. As discussed earlier in this section, OSHA has determined that no employee should be subjected to mucous membrane or respiratory irritation caused by exposure to toxic agents and that this effect represents material impairment of health and adversely affects the well-being and functional capacity of employees. For hexylene glycol, 50 ppm represents an adverse-effect level, and establishing the limit at this level would not be sufficiently protective. OSHA also concludes that 25 ppm is a reasonable level at which to establish the PEL; this level provides some margin against this substance's irritant effects. Therefore, OSHA finds that establishing a 25-ppm ceiling limit for hexylene glycol is necessary to reduce the risks of eye and respiratory irritation, which occur at exposure levels above the new PEL.

HYDROGEN BROMIDE

CAS: 10035-10-6; Chemical Formula: HBr
H.S. No. 1208

The previous OSHA PEL for hydrogen bromide was 3 ppm as an 8-hour TWA. The Agency proposed revising this limit to 3 ppm as a ceiling limit not to be exceeded at any time during the working day; NIOSH (Ex. 8–47, Table N1) concurred with this proposal. In the final rule, OSHA is establishing this ceiling limit, which conforms to the recommendation made by the ACGIH. Hydrogen bromide (HBr) is a colorless, corrosive, nonflammable gas with an acrid odor.

Animal studies have demonstrated that hydrogen bromide has a considerably higher acute toxicity than hydrogen chloride (HCl) in mice and a somewhat higher acute toxicity than this chemical in rats (NIOSH 1977i/Ex. 1–1182). In mice, the LC_{50} is 800 ppm HBr in air for 60 minutes (and 2500 ppm HCl in air for 30 minutes); in rats, the LC_{50} is 2800 ppm HBr in air for 60 minutes (and 5000 ppm HCl in air for 30 minutes).

The chief toxic effect of hydrogen bromide in humans is primary irritation of the nose and throat. Irritation begins within several minutes at levels of between 3 and 6 ppm. At 2 ppm, the odor of HBr is detectable, but no irritation is experienced (Connecticut State Department of Health 1955, as cited in ACGIH 1986/Ex. 1–3, p. 312). No chronic effects have been associated with exposure to hydrogen bromide. No comments, other than NIOSH's, were received on this substance.

OSHA finds that, under its previous 3-ppm TWA limit, workers were at significant risk of experiencing irritant effects due to short-term exposures to levels of hydrogen bromide exceeding 3 ppm. The Agency considers the irritant effects of exposure to hydrogen bromide to be material impairments of health. Therefore, OSHA is establishing a 3-ppm ceiling limit for this substance in the final rule to limit short-term exposures to hydrogen bromide and reduce this risk.

HYDROGEN FLUORIDE

CAS: 7664-39-3; Chemical Formula: HF
H.S. No. 1208

The previous OSHA standard for hydrogen fluoride was 3 ppm as an 8-hour TWA. OSHA proposed supplementing its 3-ppm TWA with a 15-minute STEL of 6 ppm. These limits are established in the final rule and are the same as those recommended by NIOSH (1976f, as cited in ACGIH 1986/Ex.1–3, p. 315). In its posthearing comments, NIOSH (Ex. 150, Comments on Hydrogen Fluoride) concurred with OSHA's proposed limits for hydrogen fluoride. The ACGIH (1986/Ex. 1–3) recommends a 3 ppm TLV-ceiling for hydrogen fluoride. Hydrogen fluoride is a fuming, colorless liquid; at temperatures above 19 °C (66 °F), it becomes a colorless gas.

Guinea pigs and rabbits survived 40-ppm hydrogen fluoride concentrations for 41 hours, but exposure to 300 ppm for two hours or more was fatal (Machle, Thamann, Kitzmiller, and Cholak 1934/Ex. 1–519). Animals exposed to 3 ppm hydrogen fluoride for 30 days showed no adverse effects (Ronzani 1909, as cited in ACGIH 1986/Ex. 1–3, p. 315). Stokinger (1949a, as cited in ACGIH 1986/Ex. 1–3, p. 315) reported that animals repeatedly exposed to 7 ppm on a daily basis exhibited mild respiratory tract irritation. One study by Largent (1961/Ex. 1–1158) demonstrated kidney, liver, and lung damage in laboratory animals repeatedly exposed to 17 ppm hydrogen fluoride. At 8.6 ppm, the pathologic changes seen in exposed animals were minor, except for lung damage in one dog (Largent 1961/Ex. 1–1158).

In studies with humans, Largent (1960/Ex. 1–516; 1961/Ex. 1–1158) reported that volunteers exposed repeatedly to concentrations of hydrogen fluoride as high as 4.7 ppm for six hours/day for 10 to 50 days experienced irritation and burning of the eyes and nose, in addition to reddening of the skin, at concentrations above 3 ppm. Industrial experience has shown that direct contact of the skin with hydrogen fluoride results in severe burns that may have a delayed onset but later develop into ulcers that eventually scar (Stokinger 1981b/Ex. 1–1127). A report by Eagers (1969, as cited in Stokinger 1981b, above) described several industrial accidents in which workers died in a matter of hours after accidental splashing from ruptured containers of hydrogen fluoride (the cause of death was respiratory failure and cardiac arrest). Kleinfeld (1965/Ex. 1–514) reported a fatal case of hydrogen fluoride poisoning that caused death from pulmonary edema.

NIOSH (1976f, as cited in ACGIH 1986/Ex. 1–3, p. 315), in its criteria document, cites numerous studies that consistently show that long-term occupational exposures to hydrogen fluoride lead to fluorosis in workers. The NIOSH limit is based in part on a study by Derryberry, Bartholomew, and Fleming (1963/Ex. 1–506) showing that the threshold limit for minimal increases in bone density caused by fluoride (fluorosis) is below 4.3 ppm of hydrogen fluoride. The limits proposed by OSHA are the current NIOSH-recommended limits for this substance, and NIOSH's concurrence statement was the only comment received in the record.

Because of hydrogen fluoride's potential to cause respiratory irritation, OSHA finds that a STEL is necessary to reduce the risk associated with elevated, short-term exposures, which would be permitted under the 3 ppm TWA limit alone. The Agency has determined that the irritation caused by exposure to hydrogen fluoride constitutes a material impairment of health. Therefore, OSHA is revising the limits for hydrogen fluoride to 3 ppm as an 8-hour TWA and 6 ppm as a 15-minute STEL; these limits are established in the final rule.

2-HYDROXYPROPYL ACRYLATE

CAS: 999-61-1; Chemical Formula: $CH_2CHCOOCH_2CHOHCH_3$
H.S. No. 1211

OSHA previously had no limit for 2-hydroxypropyl acrylate. A limit of 0.5

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ppm as an 8-hour TWA, with a skin notation, was proposed, based on the ACGIH recommendation. NIOSH (Ex. 8-47, Table N1) concurred with the proposal, and this limit is established in the final rule. 2-Hydroxypropyl acrylate (HPA) is a colorless liquid at room temperature.

In experimental animals, 2-hydroxypropyl acrylate has a high acute toxicity. The Dow Chemical Company (1977c, as cited in ACGIH 1986/Ex. 1-3, p. 320) has reported an oral LD_{50} for the rat of 0.25 to 0.5 g/kg, and a dermal LD_{50} for the rabbit approximately 0.25 mg/kg. In guinea pigs, direct contact with HPA caused severe eye burns and skin corrosion and sensitized some of the experimental animals. Rats exposed to a concentration of 650 ppm HPA in air for seven hours survived. Longer-term inhalation studies (30 days for two hours/day, six days/week) in rats, dogs, rabbits, and mice resulted in some irritation at 5 ppm (Dow Chemical Company 1977c, as cited in ACGIH 1986/Ex. 1-3, p. 320).

OSHA received no comment (other than NIOSH's) on its proposed 0.5-ppm TWA limit and skin notation for this substance. The Agency finds that this limit is necessary to protect workers from the risks of irritant effects, skin and eye burns, and sensitization effects associated with exposure to 2-hydroxypropyl acrylate; OSHA considers these effects material impairments of health. Therefore, OSHA is promulgating a TWA limit of 0.5 ppm, which is below the effect level for irritation found in experimental animals. OSHA is also adding a skin notation to the limit because 2-hydroxypropyl acetate readily penetrates the skin to cause systemic effects; the dermal LD_{50} in rabbits has been reported to be 0.25 mg/kg (ACGIH 1986/Ex. 1-3).

IRON SALTS (SOLUBLE)

CAS: Varies with compound; Chemical Formula: Varies with compound
H.S. No. 1217

OSHA previously had no limit for the soluble iron salts and proposed establishing the ACGIH-recommended limit of 1 mg/m³, measured as iron, for these substances. NIOSH (Ex. 8-47, Table N1) concurred with OSHA's proposed limit for the soluble salts of iron, and the final rule establishes an 8-hour TWA PEL of 1 mg/m³.

When injected into the bloodstream of experimental animals, iron salts (especially the ferric salts) are highly toxic (ACGIH 1986/Ex. 1-3, p. 328). The acute intravenous dose of ferric chloride that is lethal to rabbits is about 7.2 mg/kg (Drinker, Warren, and Page 1935/Ex. 1-315). The ACGIH (1986/Ex. 1-3, p. 328) considers the salts to be irritants to the respiratory tract when inhaled as dusts and mists. Stewart and Faulds (1934/Ex. 1-766) described the ferric salts as skin irritants. The oral toxicities of iron salts are considered to be moderate to low, although marked gastrointestinal irritation results from ingestion (U.S. Department of Labor 1961, as cited in ACGIH 1986/Ex. 1-3, p. 328); 30 grams is the estimated fatal dose for humans (Smyth 1956/Ex. 1-759).

NIOSH was the only commenter on OSHA's proposed 8-hour TWA PEL of 1 mg/m³, measured as iron, for the soluble salts of iron. The Agency concludes that, in the absence of any limit, employees are at risk of skin and mucous membrane irritation associated with exposure to high concentrations of these salts. OSHA considers these effects to be material impairments of health and deems this risk to be significant. Therefore, OSHA is establishing a 1 mg/m³ 8-hour TWA PEL for the soluble iron salts.

ISOPROPYL ACETATE

CAS: 108-21-4; Chemical Formula: $CH_3COOCH(CH_3)_2$
H.S. No. 1224

OSHA previously had a 250-ppm 8-hour TWA limit for isopropyl acetate. The Agency proposed supplementing this limit with a 15-minute STEL of 310 ppm, based on the ACGIH (1986/Ex. 1-3) recommendation. OSHA is establishing these limits for this substance in the final rule. Isopropyl acetate is a colorless liquid and has a fruity odor.

The oral LD_{50} for rats is reported to be 6.75 g/kg; five of six rats died after a four-hour exposure to 32,000 ppm, and one of six rats died after a four-hour exposure to 16,000 ppm (Smyth, Carpenter, Weil, and Pozzani 1954/Ex. 1-400).

The primary problems in occupational exposures to isopropyl acetate are eye and mucous membrane irritation. In humans, exposure to 200 ppm isopropyl acetate for 15 minutes caused eye irritation, with nose and throat irritation occurring at higher concentrations (Silverman, Schulte, and First 1946/Ex. 1-142). NIOSH (Ex. 8-47, Table N2) notes that the majority of subjects exposed to 200 ppm in the Silverman, Schulte, and First (1946/Ex. 1-142) study experienced eye irritation and that the authors of this study recommended an 8-hour TWA of 100 ppm to prevent sensory irritation. OSHA agrees with NIOSH that this substance presents a hazard at elevated short-term levels and has accordingly added a STEL to ensure that worker exposures are maintained under good industrial hygiene control.

OSHA concludes that, in the absence of a short-term limit on exposure, the 250-ppm TWA limit alone will not protect employees from experiencing the irritant effects associated with elevated short-term exposures to isporopyl acetate. OSHA has determined that the irritant effects related to exposure to isopropyl acetate are material impairments of health. Therefore, to reduce the risk of irritation among exposed employees, the Agency is establishing a 250-ppm 8-hour TWA limit and a 310 ppm STEL for this substance.

ISOPROPYL ALCOHOL

CAS: 67-63-0; Chemical Formula: $CH_3CHOHCH_3$
H.S. No. 1225

The previous PEL for isopropyl alcohol was 400 as an 8-hour TWA. OSHA proposed adding a 15-minute STEL of 500 ppm to this TWA, based on the ACGIH recommendation, and the final rule establishes these limits. In its posthearing comment, NIOSH (Ex. 150, Comments on Isopropyl Alcohol) endorsed OSHA's proposal, stating that a STEL is necessary to reduce the risks of irritation and narcosis that can occur on short-term exposure to elevated concentrations of isopropyl alcohol. Isopropyl alcohol is a colorless, flammable liquid with a slight odor resembling that of rubbing alcohol.

Rats exposed at isopropyl alcohol concentrations of 12,000 ppm for four hours survived, but extending the duration of exposure to eight hours killed the animals (Smyth 1937-1955, as cited in ACGIH 1986/Ex. 1-3, p. 337).

Isopropyl alcohol has been demonstrated to be irritating to the eyes, nose, and throat in humans exposed for brief periods to 400 ppm (Nelson, Enge, Ross et al. 1943/Ex. 1-66); at 800 ppm, these symptoms were more intense. In addition, isopropyl alcohol has narcotic and irritative acute effects at higher concentrations. Weil and associates have reported that an excess of paranasal sinus cancers has been observed among workers manufacturing isopropyl alcohol (Weil, Smith, and Nale 1952/Ex. 1-453). However, it has been established that the cancers associated with isopropyl alcohol manufacture were caused by isopropyl oil and not by the isopropyl alcohol itself (NIOSH 1976g, as cited in ACGIH 1986/Ex. 1-3, p. 337).

No comments, other than NIOSH's, were received on this substance. The irritant effects associated with exposure to isopropyl alcohol occur at concentrations only twice as high as the 8-hour TWA limit, even when the exposure lasts only for a brief period; exposures at this level clearly cause irritation, as documented by the study by Nelson et al. (1943/Ex. 1-66).

OSHA concludes that, in the absence of a STEL, workers are at significant risk of experiencing the narcotic and irritative effects associated with short-term exposures to isopropyl alcohol above the 8-hour TWA PEL of 400 ppm. Therefore, the Agency is retaining its 400 ppm 8-hour TWA limit for isopropyl alcohol and adding a 500 ppm 15-minute STEL to substantially reduce this significant risk. OSHA has determined that the narcosis and eye and mucous membrane irritation associated with chronic and acute exposures to isopropyl alcohol constitute material impairments of health and that a STEL is needed to protect workers from experiencing these harmful effects.

n-ISOPROPYLAMINE

CAS: 75-31-0; Chemical Formula: $(CHG5)_2CHNH_2$
H.S. No. 1228

OSHA's previous limit for n-isopropylamine was 5 ppm as an 8-hour TWA. The Agency proposed retaining this TWA limit and adding a 10-ppm 15-minute STEL, based on the ACGIH recommendation. NIOSH (Ex. 8-47, Table N1; Tr. p. 3-88) concurred with this proposal, and these limits are established in the final rule. This substance is a flammable, volatile, colorless liquid that has an odor similar to that of ammonia.

The most serious effect of n-isopropylamine in laboratory animals is respiratory tract irritation, which can be severe enough to cause lung edema (Smyth 1956/Ex. 1-759). Rats survived a four-hour inhalation at 4000 ppm, but an 8000-ppm exposure resulted in fatalities (Smyth, Carpenter, and Weil 1951/Ex. 1-439). Proctor and Hughes (1978/Ex. 1-1136) have reported that the odor of n-isopropylamine becomes strong and unpleasant at the 10- to 20-ppm level; nose and throat irritation is experienced even as a result of brief exposures.

Except for NIOSH, no rulemaking participants commented on OSHA's proposal to issue a 5-ppm TWA and 15-minute STEL of 10 ppm for this substance. The Agency concludes that both a TWA and STEL are required to protect exposed workers from the significant risk of upper respiratory tract irritation that is known to occur even at brief excursions above the 8-hour PEL. The Agency considers upper respiratory tract irritation resulting from exposure to this substance to be a material impairment of health. Therefore, OSHA is revising the PEL for n-isopropylamine to 5 ppm as an 8-hour TWA and 10 ppm as a 15-minute STEL; these limits are established in the final rule.

MESITYL OXIDE

CAS: 141-79-7; Chemical Formula: $(CH_3)_2C{=}CHCOCH_3$
H.S. No. 1243

OSHA's previous limit for mesityl oxide was 25 ppm as an 8-hour TWA. The Agency proposed revising this limit to 15 ppm as an 8-hour TWA and 25 ppm as a 15-minute STEL, based on the ACGIH (1986/Ex. 1-3) recommendation. NIOSH has a 10-ppm REL for mesityl oxide. The final rule establishes a 15-ppm 8-hour TWA and a 25-ppm 15-minute STEL for mesityl oxide, which is an oily, colorless liquid with a peppermint odor.

Silverman, Schulte, and First (1946/Ex. 1-142) found that a majority of test subjects experienced eye irritation on exposure to 25 ppm mesityl oxide and nasal irritation at 50 ppm. A toxicity data sheet published by the Shell Chemical Corporation (1957, as cited in ACGIH 1986/Ex. 1-3, p. 361) confirms 25 ppm as the maximum comfort level. Smyth, Seaton, and Fischer (1942/Ex. 1-378) reported liver and kidney damage among rats and guinea pigs exposed to 100 ppm mesityl oxide for six weeks; no adverse effects were reported for animals exposed to 50 ppm. After reviewing these data, the ACGIH (1986/Ex. 1-3, p. 361) concluded that the former TLV of 25 ppm should be reduced to 15 ppm TWA and 25 ppm as a 15-minute STEL because of the greater systemic toxicity of mesityl oxide compared with that of other saturated ketones. NIOSH (1978f, as cited in ACGIH 1986/Ex. 1-3, p. 361), relying on the same data, recommended a limit of 10 ppm as a 10-hour TWA.

Studies indicate that eye irritation occurs following brief exposure to 25 ppm of mesityl oxide, and nasal irritation is experienced at the 50-ppm level. Animal studies show liver and kidney damage in experimental animals exposed to 100 ppm. NIOSH's comment (Ex. 8-47, Table N2; Tr. p. 3-86) was the only one received by the Agency on its proposal to revise the limits for mesityl oxide. NIOSH based its lower recommended limit on a belief that the eye irritation caused by exposure to mesityl oxide might be more severe than the irritation caused by exposure to the other ketones because mesityl oxide has a higher molecular weight than the lower ketones. OSHA is not persuaded by this argument because the evidence that brief exposure to 25 ppm mesityl oxide causes eye irritation is based on actual human exposures to mesityl oxide at that level; that is, NIOSH's argument would be reasonable if the 25 ppm short-term limit were being established by analogy to the effects of another (lower-molecular-weight) ketone.

After reviewing the health evidence for this substance, OSHA finds that the proposed 15-ppm TWA and 25-ppm STEL limits are protective against both the acute and chronic effects demonstrated to be caused by exposure to this substance. In the final rule, OSHA concludes that a TWA PEL of 15 ppm and a STEL of 25 ppm are necessary to protect employees both from the possible liver and kidney damage associated with chronic exposures and the eye irritation resulting from elevated short-term exposures to mesityl oxide. The Agency considers both the systemic and the irritant effects of exposure to mesityl oxide material impairments of health and functional capacity. To reduce these risks, OSHA is establishing limits for mesityl oxide of 15 ppm as an 8-hour TWA and 25 ppm as a 15-minute STEL.

METHYL 2-CYANOACRYLATE

CAS: 137-05-3; Chemical Formula: $CH_2{=}C(C{=}N)COOCH_3$
H.S. No. 1248

No previous limit existed for methyl 2-cyanoacrylate. OSHA proposed establishing a limit of 2 ppm as an 8-hour TWA and 4 ppm as a STEL, based on the ACGIH recommendation, and the final rule establishes these limits. NIOSH (Ex. 8-47, Table N1) concurred with the selection of these limits. Methyl 2-cyanoacrylate is a colorless, viscous liquid.

In a personal communication to the ACGIH TLV Committee in 1985, Eastman Kodak reported on the toxicity of methyl 2-cyanoacrylate in experimental animals. The oral LD_{50} in rats is reported to be 1.6 to 3.2 g/kg, and the dermal LD_{50} in guinea pigs is 10 ml/kg. The adverse effects reported in laboratory animals are slight irritation of the skin and corneal damage. An inhalation LC_{00} of 101 ppm has been reported in rats exposed for six hours to methyl 2-cyanoacrylate. Repeated exposures (six hours/day for five days/week) to 31.3 ppm for a total of 12 exposures caused only a slight decrease in the rate of weight gain in rats and no nasal or tracheal lesions or systemic toxicity. No changes were observed in rats similarly exposed to 3.1 ppm (Eastman Kodak 1985, as cited in ACGIH 1986/Ex. 1-3, p. 363).

In a simulated workbench exposure, McGee and co-workers reported nasal irritation in humans at 3 ppm and eye irritation at 5 ppm (McGee, Oglesby, Raleigh, and Fassett 1986/Ex. 1-424).

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There are no reports of occupational poisonings. No comments, other than NIOSH's, were received on OSHA's proposed PELs for this substance.

The report by McGee et al. (1968/Ex. 1-424) clearly establishes that employees are at risk of nasal irritation on exposure to 3 ppm or above and of eye irritation at 5 ppm or above. The Agency has determined that these adverse effects constitute material impairment of health and should be avoided in the workplace. Therefore, to substantially reduce these significant risks, OSHA is establishing a 2-ppm 8-hour TWA limit and a 4-ppm STEL for methyl 2-cyanoacrylate in the final rule.

METHYL ISOBUTYL CARBINOL

CAS: 108-11-2; Chemical Formula: $CH_3CHOHCH_2CH(CH_3)_2$
H.S. No. 1261

OSHA previously had an 8-hour TWA limit of 25 ppm, with a skin notation, for methyl isobutyl carbinol. OSHA proposed supplementing these limits with a STEL of 40 ppm, based on the ACGIH (1988/Ex. 1-3) recommended limits, and NIOSH (Ex. 8-47, Table N1) concurred with this proposal. The final rule establishes a TWA limit of 25 ppm and a STEL of 40 ppm for this substance, with a skin notation. Methyl isobutyl carbinol is a colorless, stable liquid.

In rabbits, a 24-hour skin applicatioin of 3.56 ml/kg (2.9 g/kg) was lethal to half the animals (Smyth, Carpenter, and Weil 1951/Ex. 1-439). Rats exposed by inhalation to 2000 ppm of methyl isobutyl carbinol vapor died, and the same authors report that the oral LD_{50} for rats is 2.6 g/kg (Smyth, Carpenter, and Weil 1951/Ex. 1-439).

Humans volunteers exposed to methyl isobutyl carbinol reported eye irritation upon 15-minutes' exposure to 50 ppm (Silverman, Schulte, and First 1946/Ex. 1-142). Other than NIOSH's, OSHA received no comments regarding the basis for its proposed limits for methyl isobutyl carbinol.

In view of the finding that exposure to 50 ppm can result in eye irritation in as little as 15 minutes, OSHA has determined that a risk of eye irritation exists in the absence of a limit on short-term exposure. The Agency considers the eye irritation caused by exposure to this substance to be a material impairment of health. Therefore, to reduce this risk, OSHA is establishing a 15-minute STEL of 40 ppm, while retaining the 25-ppm 8-hour TWA PEL and skin notation for this substance.

METHYL MERCAPTAN

CAS: 74-93-1; Chemical Formula: CH_3SH
H.S. No. 1263

OSHA previously had a ceiling limit of 10 ppm for methyl mercaptan. Based on the ACGIH recommendation, the Agency proposed revising this limit to an 8-hour TWA of 0.5 ppm, and OSHA is establishing this limit in the final rule. Methyl mercaptan is a flammable, water-soluble gas with a disagreeable odor like that of rotten cabbage.

Methyl mercaptan acts on the respiratory center, producing death by respiratory paralysis. DeRekowski (1893, as cited in ACGIH 1986/Ex. 1-3, p. 405) and Frankel (1927/Ex. 1-1033) have reported that the acute toxicity of methyl mercaptan is similar to but somewhat lower than that of hydrogen sulfide; however, Ljunggren and Norberg (1943/Ex. 1-916) have concluded that the two substances exhibit toxicities of the same magnitude. Pulmonary edema results from exposures to lower, less acute concentrations of methyl mercaptan (Fairchild, personal communication, as cited in ACGIH 1986/Ex. 1-3, p. 405).

Inhalation of (an unspecified concentration of) methyl mercaptan produced coma and death in one worker; acute hemolytic anemia and methemoglobinemia developed after this exposure (Schultz, Fountain, and Lynch 1970, as cited in ACGIH 1986/Ex. 1-3, p. 405). A 1918 report by Pickler (as cited by E.R. Sandmeyer in Clayton and Clayton 1981) describes the accidental exposure (for several hours) of 28 students to a concentration of methyl mercaptan estimated at 4 ppm. The individuals had headache and nausea, and one student showed some liver involvement, demonstrated by the appearance of epithelial cells, protein, and erythrocytes, in the excretion fluid. This condition subsided in six weeks (Sandmeyer 1981).

John L. Festa, Director of Chemical Control and Health Programs at the American Paper Institute, Inc. (Ex. 3-665) objected to OSHA's proposal for methyl mercaptan, stating that the basis for the ACGIH TLV, from which the OSHA proposal was derived, was not to reduce irritant effects but to limit odor intensity. He commented further that regulating substances on the basis of "unpleasant sensory stimuli . . . embarks upon a new precedent" (Ex. 3-665, p. 3). Mr. Festa reported that the odor of methyl mercaptan is relatively faint at 0.05 ppm, although the substance may be mildly irritating over long periods of exposure to concentrations of 4 to 5 ppm.

OSHA does not agree with the suggestion made by Mr. Festa that the effects associated with exposure to methyl mercaptan below 10 ppm (the previous OSHA limit) do not warrant attention. First, Mr. Festa acknowledges that prolonged exposure to 4 to 5 ppm causes irritation; as discussed earlier in this section, OSHA has determined that sensory irritation constitutes material impairment of health. Furthermore, a single inhalation exposure to 7.9 ppm has been reported to result in nauseating odor (NIOSH 1978b, as cited in ACGIH 1986/Ex. 1-3 p. 405); clearly, this effect adversely affects the performance and functional capacity of employees. OSHA is also concerned about the possible liver effects that were reported from a single exposure to approximately 4 ppm methyl mercaptan (Pickler 1918, as cited by E.R. Sandmeyer in Clayton and Clayton 1981). Although this report is dated, OSHA has found no evidence that comprehensive studies have been undertaken in humans to examine the potential for liver or other organ damage as a result of long-term exposure to low levels of methyl mercaptan. Liver and other organ defects have been reported to occur in animals exposed to 50 ppm for only 90 days. Because of these considerations, OSHA concludes that a significant risk of acute sensory effects, as well as possible organ damage, exists at the former 10-ppm ceiling, and that a 0.5-ppm limit is necessary to ensure that these significant risks are adequately reduced. NIOSH (Ex. 8-47, Table N7) recommends a ceiling limit at the same 0.5 ppm level. OSHA is revising its limit for methyl mercaptan to 0.5 ppm as an 15-hour TWA, and this limit is promulgated in today's rule.

METHYL n-AMYL KETONE

CAS: 110-43-0; Chemical Formula: $CH_3COC_6H_{11}$
H.S. No. 1264

The current OSHA limit for methyl n-amyl ketone is 100 ppm TWA. OSHA did not propose a revision to its current limit of 100 ppm, and this limit is being retained in the final rule. NIOSH (Ex. 150) agreed that the 100-ppm PEL was sufficiently protective.

Johnson et al. (1978/Ex. 1-335) found no neurologic impairment in rats and monkeys exposed to 131 ppm or 1025 ppm methyl n-amyl ketone for nine months. No gross or histopathologic changes were found (Johnson, Setzer, Lewis, and Hornung 1978/Ex. 1-335). Because of the absence of any human data indicating the concentration of methyl n-amyl ketone that produces sensory irritation, ACGIH (1986/Ex. 1-3, p. 374) believed it prudent to reduce the TLV-TWA from 100 ppm to 50 ppm. NIOSH (1978f, as cited in ACGIH 1986/Ex. 1-3, p. 374) concluded that there was no basis for revising the 100-ppm OSHA limit, since the evidence showed methyl

n-amyl ketone's irritant effects to be equivalent to those of 2-pentanone, which had a recommended limit of 150 ppm.

No neurological or histopathological effects were observed at 131 ppm. The ACGIH's 50-ppm TLV applies an additional factor of safety to this no-observed-effect level, while the NIOSH REL is based on a judgment that such a reduction is unnecessary. In the NPRM, OSHA requested additional information on the health effects of methyl n-amyl ketone; however, no information was received into the record.

OSHA notes that the current 100-ppm PEL is well below the highest level (1025 ppm) reported to be associated with any adverse effects. Because histopathological examination was conducted on the organs of the rats and monkeys tested, OSHA is confident that the existing 100-ppm limit is not likely to be associated with adverse affects and that further reducing this limit would not result in a substantial reduction in risk. Therefore, OSHA is not revising its 100-ppm TWA limit for methyl n-amyl ketone at this time.

alpha-METHYL STYRENE

CAS: 98-83-9; Chemical Formula: $C_6H_5C(CH_3)=CH_2$
H.S. No. 1287

OSHA previously had a ceiling limit of 100 ppm for alpha-methyl styrene. The Agency proposed revising this limit to 50 ppm TWA with a STEL of 100 ppm, and NIOSH (Ex. 8-47, Table N1) concurred with OSHA's proposed limits for this substance, which are established in the final rule. alpha-Methyl styrene is a polymerizable, colorless liquid.

OSHA's former ceiling limit of 100 ppm is based on data developed in 1955 by the Dow Chemical Company (as cited in ACGIH 1986/Ex. 1-3, p. 410) and by Wolf, Rowe, McCollister et al. (1956/Ex. 1-404). These data demonstrated that seven-hour-per-day, five-day-per-week exposures to 200 ppm alpha-methyl styrene for six months produced no ill effects in rats, guinea pigs, rabbits, or monkeys.

In humans, however, these authors reported that a two-minute exposure to 200 ppm caused eye irritation and complaints about this substance's unpleasant odor. OSHA received no comments, other than NIOSH's, on its proposal to revise the limit for alpha-methyl styrene.

Therefore, to ensure that workers are protected against the acute irritant effects of this substance, OSHA is establishing a 50-ppm 8-hour TWA limit and a 100-ppm 15-minute STEL in the final rule. The Agency concludes that these combined limits will substantially reduce the exposure-related risk of irritation and odor effects, which together constitute material impairments of health.

o-METHYLCYCLOHEXANONE

CAS: 583-60-8; Chemical Formula: $CH_3C_5H_9CO$
H.S. No. 1270

OSHA's former limit for o-methylcyclohexanone was 100 ppm as an 8-hour TWA, with a skin notation. The Agency proposed revising this limit to 50 ppm as a TWA and 75 ppm as a STEL, and to retain the skin notation; NIOSH (Ex. 8-47, Table N1) concurred with this proposal. These limits are established in the final rule and are consistent with the limits recommended by the ACGIH. ortho-Methylcyclohexanone is a somewhat viscous liquid with an acetone-like odor.

o-Methylcyclohexanone has both irritative and narcotic effects at relatively low concentrations. The commercial product contains a mixture of isomers; however, toxicity data describe the effects of the ortho isomer only. Gross (as cited in Lehman and Flury 1943a/Ex. 1-962) reported that 450 ppm had irritative effects on the eyes and respiratory systems of rabbits, and 2500 ppm produced narcotic effects (Gross, as cited in Lehman and Flury 1943a/Ex. 1-962). Treon et al. (1943a/Ex. 1-393) reported the oral LD_{50} to be between 1 and 1.25 g/kg for rabbits. Eye problems were observed at about 500 ppm, but exposure to 182 ppm produced no adverse effects (Treon, Crutchfield, and Kitzmiller 1943a/Ex. 1-393).

Rowe and Wolf (1963, as cited in ACGIH 1986/Ex. 1-3, p. 386) reported that concentrations of 100 ppm had no narcotic effects in humans but could cause irritation. No comments, other than NIOSH's, were received on OSHA's proposal to revise the limit for this substance.

Because a level of 100 ppm may present an effect level for irritation in humans (Rowe and Wolf 1963, as cited in ACGIH 1986/Ex. 1-3, p. 386), OSHA finds that a reduction in its 100-ppm PEL is warranted. The Agency considers the irritation caused by exposure to this substance to be a material impairment of health. Therefore, OSHA is revising its limit for o-methylcyclohexanone to 50 ppm as an 8-hour TWA and 75 ppm as a 15-minute STEL. OSHA is also retaining its skin notation for this substance.

OSMIUM TETROXIDE

CAS: 20816-12-0; Chemical Formula: OsO_4
H.S. No. 1296

OSHA previously had an 8-hour TWA limit of 0.002 mg/m³ for osmium tetroxide. Based on the ACGIH recommendation, OSHA proposed to revise this limit to 0.002 mg/m³ as a TWA and to add a STEL of 0.006 mg/m³; NIOSH (Ex. 8-47, Table N1) concurred with this proposal. The final rule establishes these limits for this substance. Osmium tetroxide is a noncombustible, colorless to pale yellow solid with a disagreeable, chlorine-like odor.

Exposure to osmium tetroxide is known to produce ocular effects and respiratory irritation. In 1933, Brunot (Ex. 1-776) reported that rabbits died from pulmonary edema four days after a 30-minute exposure to osmium tetroxide at 130 mg/m³ or higher. Visual problems (e.g., delayed lacrimation and "halo" effects) were reported by this investigator after a brief exposure to osmium tetroxide at a significantly lower concentration (Brunot 1933/Ex. 1-776). A four-hour LC_{50} value of 40 ppm has been reported in rats and mice (NIOSH 1977i/Ex. 1-1162). Toxic effects to bone marrow have been reported in guinea pigs (Hamilton and Hardy 1974a/Ex. 1-957).

Industrial experience indicates that concentrations in a precious metal refining plant ranged from 0.1 to 0.6 mg/m³; intermittent exposures produced symptoms (sometimes delayed) of lacrimation, vision disturbances, headache, conjunctivitis, and cough (McLaughlin, Milton, and Perry 1946/Ex. 1-749). Complaints of persistent and severe nose and throat irritation have been reported (Hamilton and Hardy 1974a/Ex. 1-957). Fairhall (1949d, as cited in ACGIH 1986/Ex. 1-3, p. 450) reported a human fatality resulting from inhalation exposure to OsO_4. Flury and Zernik (1931i, as cited in ACGIH 1986/Ex. 1-3, p. 450) reported that 0.001 mg/m³ is the highest concentration of osmium tetroxide that can be tolerated for six hours without harmful effects.

Except for NIOSH, no rulemaking participants commented on the proposed addition of a STEL for osmium tetroxide. The study by McLaughlin, Milton, and Perry (1946/Ex. 1-749) used a calibrated, calorimetric procedure, together with well-described case reports, to assess the dose-response relationship. OSHA finds this study superior to the report by Flury and Zernik (1931i, as cited in ACGIH 1986/Ex. 1-3, p. 450), which is more anecdotal. The McLaughlin et al. (1946/Ex. 1-749) study demonstrates serious, acute effects resulting from intermittent and short-term exposure. OSHA concludes that, in the absence of a limit on short-term exposures, the 0.002-mg/m³ 8-hour TWA PEL alone is not sufficient to protect employees from experiencing these effects, which are deemed to constitute material

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impairments of health. Therefore, to reduce the risk from short-term elevated exposures to osmium tetroxide, OSHA is establishing a 15-minute STEL of 0.006 mg/m³ to supplement the 0.002-mg/m³ TWA limit.

PARAFFIN WAX FUME

CAS: 8002-74-2; Chemical Formula: C_nH_{2n+2}; H.S. No. 1302

OSHA previously had no limit for paraffin wax fume and proposed establishing an 8-hour TWA limit of 2 mg/m³; NIOSH (Ex. 8-47, Table N1) concurred with this proposal. The final rule establishes this limit, which is the same as the limit recommended by the ACGIH. Paraffin is a white or slightly yellow, odorless solid that is derived from petroleum.

Paraffin is considered nontoxic in its solid state, but fume generated when it is in the molten state may cause discomfort and nausea (Queries and Minor Notes, *JAMA* 1938/Ex. 1-308). In the most recent report of industrial exposure effects, paraffin fume is reported to cause no discomfort in most cases when the concentration is maintained at or below 2 mg/m³, although one instance of mild discomfort was reported at concentrations between 0.6 and 1 mg/m³ (Massachusetts Division of Occupational Hygiene 1970, as cited in ACGIH 1986/Ex. 1-3, p. 455).

Dr. William Zeiler, President of the College of American Pathologists (Ex. 3-976), objected to OSHA's inclusion of paraffin wax fume in the final rule, stating that the scientific basis for the limit was lacking. Specifically, Dr. Zeiler commented that the *JAMA* article (1938/Ex. 1-308) reported "vague and nonspecific" symptoms and that the reference from the Massachusetts Division of Occupational Hygiene was unpublished. He also reported that a literature search dating back to 1965 produced no references on the toxicology of paraffin wax fume. Dr. Zeiler expressed concern that, if a final limit is promulgated for paraffin wax fume, "nonspecific complaints about the workplace environment may implicate this substance as the cause" (Ex. 3-976).

OSHA is aware that the dose-response data for paraffin wax fume are dated; nevertheless, OSHA finds it notable that two different sources (cited by ACGIH 1986/Ex. 1-3, p. 455) report acute adverse effects associated with the use of molten paraffin. OSHA also believes that promulgation of a PEL for paraffin wax fume will present little problem for pathology laboratories, since Dr. Zeiler commented that most clinical laboratories already comply with the ACGIH TLVs and that the services of certified industrial hygienists are used when new laboratories are designed or old ones are remodeled. OSHA is more concerned about workplaces in which paraffin is used in large quantities, such as the food industry, and a greater degree of exposure control is needed. To protect employees in these industries from experiencing acute adverse effects, such as discomfort and nausea, OSHA believes that a PEL for paraffin was fume is necessary. The Agency has determined that the adverse effects associated with excessive exposure to paraffin wax fume constitute material impairments of health. The limit of 2 mg/m³ has been shown to be effective in reducing this risk (ACGIH 1986/Ex. 1-3, p. 455); therefore, OSHA is establishing this limit for paraffin wax fume.

PHOSPHORIC ACID

CAS: 7664-38-2; Chemical Formula: H_3PO_4; H.S. No. 1322

OSHA's former limit for phosphoric acid was 1 mg/m³ as an 8-hour TWA. The Agency proposed adding a 15-minute STEL of 3 mg/m³ based on the ACGIH recommendation, and NIOSH (Ex. 8-47, Table N1) concurred with this proposal. In the final rule, the Agency is establishing a 1-mg/m³ TWA and a 3-mg/m³ STEL for this substance. Phosphoric acid is a colorless, odorless solid at temperatures below 21°C but becomes a viscous, clear liquid at higher temperatures.

In humans, there have been reports of respiratory irritation from exposure to phosphorus pentoxide fume at concentrations of between 3.6 and 11.3 mg/m³; concentrations of 100 mg/m³ were unendurable except to workers who had developed a tolerance to the fume over time (Rushing 1957, as cited in ACGIH 1986/Ex. 1-3, p. 483). The AIHA Hygiene Guide for phosphoric acid reports that this substance is less hazardous than either nitric or sulfuric acid (AIHA 1957/Ex. 1-709).

To protect unacclimatized workers from the risk of respiratory irritation, OSHA proposed a TWA limit of 1 mg/m³, with a STEL of 3 mg/m³, for phosphoric acid. No comments, other than NIOSH's, were received on this proposal. The Agency concludes that the combined 8-hour TWA and STEL limits are necessary to reduce this significant risk of irritation, which is considered by OSHA to be material impairment of health and which has been shown to occur at levels only slightly above those permitted by the TWA alone. Therefore, OSHA is establishing a 15-minute STEL of 3 mg/m³ to supplement its 8-hour TWA PEL of 1-mg/m³ TWA PEL for phosphoric acid.

PHOSPHORUS TRICHLORIDE

CAS: 7719-12-2; Chemical Formula: PCl_3; H.S. No. 1325

OSHA's former limit for phosphorus trichloride was 0.5 ppm as an 8-hour TWA. The Agency proposed revising this limit to 0.2 ppm as an 8-hour TWA with a STEL of 0.5 ppm; NIOSH (Ex. 8-47, Table N1) concurred with this proposal. The final rule establishes these limits, which are consistent with the limits recommended by the ACGIH. Phosphorus trichloride is a fuming, colorless, noncombustible liquid.

The primary occupational hazards associated with exposure to phosphorus trichloride are respiratory irritation and intoxication involving cough, bronchitis, pneumonia, and conjunctivitis (Henderson and Haggard 1943e/Ex. 1-1089; International Labour Office 1934b, as cited in ACGIH 1986/Ex. 1-3, p. 486; Sassi 1954/Ex. 1-831).

Early studies indicate that severe symptoms did not occur in cats and guinea pigs until concentration levels reached 50 to 90 ppm for exposures lasting one hour, although slight illness was observed at 0.7 ppm after an exposure of six hours (Butjagin 1904, as cited in ACGIH 1986/Ex. 1-3, p. 486). However, by 1934, the effects of phosphorus trichloride were considered to be 5 to 10 times as intense as those of hydrolyzed hydrochloric acid (International Labour Office 1934b, as cited in ACGIH 1986/Ex. 1-3, p. 486). More recently, Weeks, Musselman, Yevich et al. (1984, as cited in ACGIH 1986/Ex. 1-3, p. 486) reported studies in which 4-hour LC_{50} values of 104 ppm for rats and 50 ppm for guinea pigs were obtained.

OSHA received comments only from NIOSH on its proposal to establish a PEL of 0.2 ppm TWA and a STEL of 0.5 ppm for phosphorus trichloride. Because of the acutely irritating effects of this substance, the Agency concludes that both a TWA and a STEL are required to reduce the risk of respiratory and eye irritation that exists for workers exposed to this substance. OSHA considers these effects to be material impairments of health. Therefore, OSHA is revising its limit for phosphorus trichloride to 0.2 ppm as an 8-hour TWA and 0.5 ppm as a 15-minute STEL; these PELs are promulgated in the final rule.

POTASSIUM HYDROXIDE

CAS: 1310-58-3; Chemical Formula: KOH; H.S. No. 1334

OSHA had no former limit for potassium hydroxide. A ceiling limit of 2 mg/m³ was proposed by the Agency based on the ACGIH recommendation, and NIOSH (Ex. 8-47, Table N1) concurred with this proposal. OSHA has concluded that this limit is necessary to afford workers protection from irritant effects and is establishing the 2-mg/m³ ceiling limit for potassium hydroxide in the final rule. Potassium hydroxide is a white, deliquescent material that occurs in the form of pellets, sticks, lumps, or flakes.

Potassium hydroxide is corrosive to tissues. The health hazards of potassium hydroxide are similar to those of the other strong alkalies, such as sodium hydroxide. These substances gelatinize tissue on contact, causing deep, painful lesions. Dust or mist exposures may cause eye or respiratory system irritation and nasal septum lesions (Karpov 1971/Ex. 1-1115).

Mr Gary Melampy of the Independent Lubricant Manufacturers Association (ILMA) (Ex. 3-830) commented that there was no basis for establishing an occupational limit for potassium hydroxide. OSHA disagrees and notes that the irritant effects of potassium hydroxide dusts, mists, and aerosols have been documented (ACGIH 1986/Ex. 1-3, p. 495; Karpov 1971/Ex. 1-1115). Although dose-response data are lacking for this substance, it is reasonable to expect potassium hydroxide to exhibit irritant properties similar to those of sodium hydroxide, a structurally related strong alkali. In its criteria document, NIOSH (1976k/Ex. 1-985) cites a personal communication (Lewis 1974), which reported that short-term exposures (2 to 15 minutes) to 2-mg/m³ sodium hydroxide caused "noticeable" but not excessive upper respiratory tract irritation. Therefore, OSHA finds that the 2-mg/m³ ceiling limit will provide workers with an environment that minimizes respiratory tract irritation, which the Agency considers to be material impairment of health. To reduce these risks, OSHA is establishing a ceiling limit of 2 mg/m³ for potassium hydroxide.

PROPYLENE GLYCOL MONOMETHYL ETHER

CAS: 107-98-2; Chemical Formula: $CH_3OCH_2CHOHCH_3$; H.S. No. 1343

OSHA had no former limit for propylene glycol monomethyl ether (PGME). The ACGIH recommends a TWA of 100 ppm and a STEL of 150 ppm, and these were the limits proposed. NIOSH has no REL for this substance but concurred (Ex. 8-47, Table N1; Ex. 150, Comments on PGME) with OSHA's proposed limits. The final rule promulgates an 8-hour TWA of 100 ppm and a STEL of 150 ppm for PGME, which is a colorless liquid.

Propylene glycol monomethyl ether is an irritant, neurotoxin, teratogen, and nasal tumorigen (Sax and Lewis 1989, p. 2904). Exposure causes anesthesia at a level of approximately 1000 ppm and eye tearing at levels above 100 ppm; at 100 ppm, PGME also has an objectionable odor (Stewart, Baretta, Dodd, and Torkelson 1970/Ex. 1-379). Ingestion of 3 g/kg in a 35-day period caused changes in the livers and kidneys of rats, and repeated dermal applications of 7 to 10 ml/kg/day caused death in rats treated over a 90-day period (Rowe, McCollister, Spencer et al. 1954/Ex. 1-435). Sax and Lewis (1989) report that exposure to this substance causes nausea, and that inhalation has induced nasal tumors.

Unlike many other members of the glycol ethers family, PGME has been shown not to cause testicular effects at levels below 3000 ppm (NIOSH 1986/Ex. 150). However, Sax and Lewis (1989) note that PGME is an experimental teratogen. Rats exposed by inhalation to 3000 ppm for six hours on days 6 through 15 of gestation produced offspring with delayed skeletal ossification (Sax and Lewis 1989; Proctor, Hughes, and Fischman 1988).

The final rule PELs for PGME of 100 ppm TWA and 150 ppm STEL are designed to protect workers from experiencing the acute effects of exposure to PGME, which include eye and skin irritation and nausea, and the chronic effects of exposure, which include possible liver and kidney changes. Because PGME was not formerly regulated by OSHA, previous workplace exposures could attain essentially uncontrolled levels, and OSHA has determined that an 8-hour TWA of 100 ppm and a STEL of 150 ppm are necessary to protect against these significant occupational risks, which constitute material impairments of health. The Agency finds that the new limits will substantially reduce these significant risks.

ROSIN CORE SOLDER PYROLSIS PRODUCTS, AS FORMALDEHYDE

CAS: None; Chemical Formula: None; H.S. No. 1350

OSHA previously had no limit for rosin core solder pyrolysis products. Based on the ACGIH TLV, the Agency proposed an 8-hour TWA of 0.1 mg/m³ for these compounds, measured as formaldehyde. OSHA had determined that a TWA limit of 0.1 mg/m³ is necessary to prevent workers from experiencing servere irritant reactions, and the Agency is including this limit in its final rule. This limit applies to the thermal decomposition products of gum rosin soldering flux (3 to 6 percent rosin and 30 to 70 percent tin-lead solder) (Lozano and Melvin, unpublished data, as cited in ACGIH 1986/Ex. 1-3, p. 514).

A two-week exposure of guinea pigs and rats to these products at average concentrations of 0.96 mg/m³ caused reduction in rate of weight gain in male guinea pigs, abnormal liver-to-body-weight ratios in guinea pigs of both sexes, and abnormal heart-to-body-weight ratios in male rats (industrial Bio-test Lab, Inc., as cited in ACGIH 1986/Ex. 1-3, p. 514). Lungs of the animals expose in this same study were hyperemic.

In humans, slight bronchial irritation has been reported at 1 mg/m³ (Industrial Bio-test Laboratories, Inc. 1967, as cited in ACGIH 1986, p. 514). Several workers who were chronically exposed to levels as high as 0.15 mg/m³ had to be removed from exposure because of intractable upper respiratory tract irritation; when concentrations were kept below 0.1 mg/m³, such irritation was not reported (Christy 1965, as cited in ACGIH 1986/Ex. 1-3, p. 514). In a study designed to quantify dose-response levels for irritation in human volunteers, subjects were exposed for 15 minutes to these products at aldehyde concentrations (measured as formaldehyde, which is the best indirect measure of rosin pyrolysis products) of 0.04 to 0.2 mg/m³ (U.S. Public Health Service 1965, as cited in ACGIH 1986/Ex. 1-3, p. 514). Subjects detected the odor at 0.07 mg/m³, and 80 percent of subjects reported moderate to severe irritation of the eyes, nose, and throat at cencentrations of 0.12 mg/m³ or above. At levels below 0.05 mg/m³, fewer than 10 percent of subjects experienced irritation. Mucous membrane irritation occurred in 30 percent of subjects exposed at 0.07 mg/m³ (U.S. Public Health Service 1965, as cited in ACGIH 1986/Ex. 1-3, p. 514).

NIOSH (Ex. 8-47, Table N6B; Tr. p. 3-97 to 3-98) did not concur with OSHA's selection of a TWA limit of 0.1 mg/m³ and recommended a ceiling limit of 0.1 ppm for a 15-minute period. In addition, NIOSH (the only commenter to the rulemaking record) considers these thermal decomposition products to be likely candidates for a separate 6(b) rulemaking.

OSHA is establishing an 8-hour TWA limit of 0.1 mg/m³, measured as formaldehyde, for rosin core solder pyrolysis products. OSHA concludes that this limit will protect employees from the significant risk of respiratory tract irritation, which is a material impairment of health, that exists at levels above the new PEL.

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SODIUM BISULFITE

CAS: 7631-90-5; Chemical Formula: $NaHSO_3$
H.S. No. 1365

OSHA's Z tables previously included no exposure limit for sodium bisulfite. The Agency proposed to establish a limit of 5 mg/m^3 as an 8-hour TWA, and it is establishing the PEL in the final rule. NIOSH (Ex. 8-47, Table N1) agrees with the selection of this limit, which is the same as that recommended by the ACGIH. Sodium bisulfite is a white crystalline powder and has an odor like that of sulfur dioxide.

The oral LD_{50} in rats fed this substance is 2 g/kg (Dow Chemical Company 1977d, as cited in ACGIH 1986/Ex. 1-3, p. 534), and the intraperitoneal LD_{50} for rats is 115 mg/kg (Hoppe and Goble 1951/Ex. 1-400). The ACGIH reports that sodium bisulfite is an eye, skin, and mucous membrane irritant; acute exposures have resulted in mild eye and respiratory effects (ACGIH 1986/Ex. 1-3, p. 534).

One rulemaking participant, Mr. Gary Melampy of the Independent Lubricant Manufacturers Association (ILMA), remarked that OSHA's discussion of the proposed limit for sodium bisulfite in the preamble failed to demonstrate an adequate basis for the limit. OSHA notes that dose-response data to demonstrate a no-effect level are lacking. The 5-mg/m^3 limit was proposed because it represents a limit below that established for physical irritant particulates, and this limit reflects the irritant properties of sodium bisulfite. In the professional judgment of the ACGIH (1986/Ex. 1-3, p. 534), "inhalation of or contact with the dust would result in high local concentrations [of sodium bisulfite] in contact with high local concentrations of sensitive tissue." The ACGIH further states that an occupational limit below that for physical irritant particulates "seems definitely in order." OSHA concurs with this assessment.

Dr. Grace Ziem, an independent occupational physician (Ex. 46), expressed concern about the adverse effects of sodium bisulfite on sensitized individuals. Although cases of severe, and even lethal, allergic reactions to this material have been documented from the use of sodium bisulfite as a food additive, OSHA does not believe that there is sufficient information to use as a basis for an exposure limit to protect against inhalation-induced allergic reactions.

OSHA finds that exposure to this substance presents a significant risk of irritant effects at high concentrations, and that these effects constitute material impairments of health. Accordingly, to substantially reduce this risk, OSHA is establishing a 5-mg/m^3 8-hour TWA for sodium bisulfite.

SODIUM HYDROXIDE

CAS: 1310-73-2; Chemical Formula: NaOH
H.S. No. 1367

The former OSHA limit for sodium hydroxide (also known as caustic soda or lye) was 2 mg/m^3 as an 8-hour TWA. OSHA proposed a 2-mg/m^3 ceiling limit for sodium hydroxide, based on the ACGIH- and NIOSH-recommended limits. NIOSH (Ex. 8-47, Table N1) concurred with the proposed limit, and this limit is established in the final rule. Sodium hydroxide is a white, deliquescent solid.

Sodium hydroxide is a severe irritant of the eyes, mucous membranes, and skin. Exposure to sodium hydroxide in the form of a caustic dust irritates the uppper respiratory tract and may cause ulceration of the nasal passages (ACGIH 1986/Ex. 1-3, p. 535). Although inhalation of sodium hydroxide is usually of secondary importance in industrial exposures, the effects of inhaling the dust or mist vary from mild irritation of the nose, which occurs on brief exposure to 2 mg/m^3, to severe pneumonitis, which occurs at very high exposures. The greatest industrial hazard is rapid tissue destruction of the eyes or skin upon contact either with the solid or with concentrated solutions (*Chemical Hazards of the Workplace*, 2nd ed., p. 444, Proctor, Hughes, and Fischman 1988).

Contact with the eyes causes disintegration and sloughing of conjunctival and corneal epithelium, corneal opacification, marked edema, and ulceration; after 7 to 13 days, either gradual recovery begins or there is a progression to ulceration and corneal opacification. Complications of severe eye burns are symblepharon with overgrowth of the cornea by a vascularized membrane, progressive or recurrent corneal ulceration, and permanent corneal opacification (Proctor, Hughes, and Fischman 1988, p. 444). Grant (1986/Ex. 1-978) states that sodium hydroxide causes "some of the most severe, blinding injuries of the eye. Because it may be considered public enemy number one for causing chemical burns of the eye, sodium hydroxide has been the chemical caustic most extensively studied in animal and clinical investigations." Clinically, the worst features of sodium hydroxide burns of the eye are the great rapidity with which extreme damage can be done to the anterior segment of the eye and the tendency for the cornea to ulcerate and perforate or to become densely vascularized and opaque.

On the skin, solutions of 25 to 50 percent sodium hydroxide cause the sensation of irritation within about three minutes; with solutions of 4 percent, the sensation of burning does not occur until several hours later. If not removed from the skin, sodium hydroxide causes severe burns with deep ulcerations. Exposure to the dust or mist of sodium hydroxide may cause multiple small burns with temporary loss of hair (Proctor, Hughes, and Fischman 1988, p. 445). Nagao and co-workers (1972) examined skin biopsies from volunteers who had had a 1 N solution (equal to a 4-percent solution) of sodium hydroxide applied to their arms for 15 to 180 minutes. Progressive changes, beginning with dissolution of the cells in the horny layer and progressing through edema to total destruction of the epidermis, occurred within 60 minutes (Nagao, Stroud, Hamada et al. 1972).

Rats were exposed to an aerosol of 40 percent aqueous sodium hydroxide whose particles were less than 1 um in diameter. Exposures lasted for 30 minutes and were administered twice a week. The experiment was terminated after three weeks because two of the 10 rats died. Histopathological examination showed mostly normal lung tissue with foci of enlarged alveolar septae, emphysema, bronchial ulceration, and enlarged lymph adenoidal tissues (Wands 1981b, in *Patty's Industrial Hygiene and Toxicology*, 3rd rev. ed., vol. 2B, p. 3062).

OSHA received only one comment on sodium hydroxide, from NIOSH (Ex. 150, Comments on Sodium Hydroxide); NIOSH supported OSHA's proposed limit and reported that no new information on the health effects of sodium hydroxide had become available since the publication of the NIOSH criteria document (NIOSH 1976k/Ex. 1-965).

The irritant effect of sodium hydroxide and its markedly corrosive action on all body tissue can result even from brief (one minute or more) exposures to airborne concentrations above the 2-mg/m^3 level; the acute nature of these effects is evident in the studies described above. Therefore, OSHA concludes that establishing a ceiling of 2 mg/m^3 is necessary to reduce the significant risks of eye and skin burns and respiratory irritation that occur as a result of very brief exposures to the higher levels of sodium hydroxide that would be permitted with an 8-hour TWA PEL alone. OSHA considers the irritant effects resulting from exposure to sodium hydroxide material impairments of health. In the final rule, OSHA is accordingly revising its former 8-hour TWA limit for sodium hydroxide to a ceiling limit of 2 mg/m^3.

SODIUM METABISULFITE

CAS: 7681-57-4; Chemical Formula: $Na_2S_2O_5$
H.S. No. 1368

OSHA previously had no exposure limit for sodium metabisulfite. The Agency proposed a 5-mg/m^3 limit as an 8-hour TWA, based on the ACGIH recommendation, and is establishing this limit in the final rule. NIOSH (Ex. 8-47, Table N1) concurred with the selection of this limit. Sodium metabisulfite can occur either in the form of a solid or as white crystals; this substance smells like sulfur dioxide.

A two-year study at the Dow Chemical Company (1977e, as cited in ACGIH 1986/Ex. 1-3, p. 535), in which rats ingested 0.215 percent sodium metabisulfite, demonstrated no adverse effects in the rats. Other animal studies show a median lethal dose of 192 mg/kg for rabbits and 115 mg/kg for rats when sodium metabisulfite is injected intravenously (NIOSH 1973c, as cited in ACGIH 1986/Ex. 1-3, p. 535). Inhalation of sodium metabisulfite dust is irritating to the lungs, nose, and throat (ACGIH 1986/Ex. 1-3, p. 535).

Dr. Grace Ziem, an independent physician (Ex. 46), expressed concern that sensitized individuals may experience severe allergic reactions on exposure to sodium metabisulfite dust. Cases of severe, and even fatal, reactions have been documented in individuals exposed by consuming food items containing metabisulfite additive. At this time, OSHA believes there is insufficient data on oral toxicity to use as a basis to extrapolate to the airborne concentration likely to cause sensitization.

OSHA proposed an 8-hour TWA of 5 mg/m^3 for sodium metabisulfite. The agency concludes that establishing this limit is necessary to reduce the risk of skin and eye irritation associated with exposure to high concentrations of sodium metabisulfite dust. OSHA has determined that these effects constitute material impairments of health. Accordingly, OSHA is promulgating a 5-mg/m^3 limit as an 8-hour TWA for this substance.

SULFUR MONOCHLORIDE

CAS: 10025-67-9; Chemical Formula: S_2Cl_2
H.S. No. 1376

OSHA's former PEL for sulfur monochloride was 1 ppm as an 8-hour TWA. Based on the ACGIH recommendation, the Agency proposed revising this limit to 1 ppm as a ceiling limit. NIOSH (Ex. 8-47, Table N1) concurred with OSHA's proposed limit for this substance, and the final rule establishes it. Sulfur monochloride is an amber, oily, nonflammable, fuming liquid, and has a penetrating odor.

Sulfur monochloride is a primary irritant that affects the upper respiratory tract by releasing hydrochloric acid (HCl) on contact with moisture (Henderson and Haggard 1943g, as cited in ACGIH 1986/Ex. 1-3, p. 545). This same study noted that "undecomposed vapor [of sulfur monochloride] might reach the lungs, in which case it would be more toxic than an equivalent quantity of HCl." The ACGIH (1986/Ex. 1-3, p. 545) considers these data indicative of a far greater acute toxicity for sulfur monochloride than for hydrochloric acid. Animal toxicity studies revealed that a dose of 150 ppm sulfur monochloride resulted in death to mice exposed for one minute (Flury and Zernik 1931k/Ex. 1-979). Cats exposed to 60 ppm sulfur monochloride for 15 minutes all died within a few days, but concentrations of 12 ppm for 15 minutes were tolerated (Henderson and Haggard 1943g, as cited in ACGIH 1986/Ex. 1-3, p. 545).

A study by Elkins (1959g, as cited in ACGIH 1986/Ex. 1-3, p. 545) of workers in the rubber industry found that concentrations of 2 to 9 ppm sodium monochloride were mildly irritating; however, the concentrations to which these workers were exposed may have included a high proportion of hydrochloric acid. NIOSH was the only commenter on sulfur monochloride.

The Agency concludes that the former TWA PEL of 1 ppm is inadequate to protect exposed workers against the risk of primary irritation that could occur upon short-term exposure to elevated concentrations of sulfur monochloride. Since 2 ppm was reported to be an effect level for mild irritation, OSHA finds that revising its limit to 1 ppm as a ceiling limit is a reasonable and necessary action to protect workers from the significant risk associated with lung irritation, which constitutes a material impairment of health. Therefore, OSHA is establishing a ceiling limit for sulfur monochloride of 1 ppm.

SULFUR PENTAFLUORIDE

CAS: 5714-22-7; Chemical Formula: S_2F_{10}
H.S. No. 1377

The previous OSHA limit for sulfur pentafluoride was 0.025 ppm as an 8-hour TWA. OSHA proposed revising this limit to 0.01 ppm as a ceiling, and NIOSH (Ex. 8-47, Table N1) concurred with this proposal. The Agency is establishing this limit in the final rule. This limit is consistent with the ACGIH (1986/Ex. 1-3) recommended limit. Sulfur pentafluoride is a colorless gas or liquid with a sulfur-dioxide-like odor.

Sulfur pentafluoride's toxic effects include lung congestion and lesions, and pulmonary edema. In a study in which rats were exposed to sulfur pentafluoride for 16 to 18 hours, levels of 0.1 ppm caused lung irritation, 0.5 ppm resulted in severe pulmonary lesions, and 1 ppm proved fatal (Greenberg and Lester 1950/Ex. 1-590). One-hour exposures to 10 ppm sulfur pentafluoride resulted in diffuse hemorrhagic lesions in the lungs of rats, while rats exposed to 1 ppm for one hour had severe congestion of the lungs. Rats exposed for one hour to 0.1 ppm showed no effects. Subsequent examination of rats surviving the 10- and 1-ppm exposures revealed that the lungs had returned to normal after 24 hours (Greenberg and Lester 1950/Ex. 1-590). Saunders, Shoshkes, DeCarlo, and Brown (1953/Ex. 1-610) established that the LD_{50} for sulfur pentafluoride in rabbits is 5.8 mg/kg, and that death was due to fulminant pulmonary edema. According to this study, sulfur pentafluoride does not injure the columnar epithelium of the respiratory tract, and exposure is not followed by bronchopneumonia.

Other than NIOSH's submission, OSHA received no comments on its proposal to revise the sulfur pentafluoride limit to 0.01 ppm as a ceiling. The 0.01-ppm ceiling was selected on the basis of evidence showing that even brief exposures to 1 ppm caused pulmonary affects in animals and prolonged exposures to 0.1 ppm caused lung irritation in animals. OSHA concludes that this limit for sulfur pentafluoride will reduce the risks of irritation and pulmonary effects to which workers could be exposed in the absence of a ceiling limit. The Agency considers these effects material impairments of health. Therefore, OSHA is promulgating a ceiling limit for sulfur pentafluoride of 0.01 ppm.

TETRAHYDROFURAN

CAS: 109-99-9; Chemical Formula: $(C_4H_4)_2O$
H.S. No. 1387

OSHA's former PEL for tetrahydrofuran was 200 ppm as an 8-hour TWA. The Agency proposed revising this limit to 200 ppm TWA with a 15-minute STEL of 250 ppm and is establishing these limits, which are consistent with those recommended by the ACGIH, in the final rule. NIOSH (Ex. 8-47, Table N1) concurred with OSHA's proposal to add a STEL for this substance. Tetrahydrofuran is a colorless liquid with an odor like that of ether.

This proposed limit was selected on the basis of extensive data from experimental animal studies. Lehmann

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and Flury (1943c/Ex. 1–879) reported irritation of the upper respiratory tract as well as kidney and liver injury in a number of animals exposed by inhalation to more than 3000 ppm tetrahydrofuran for 20 days, eight hours daily. Aqueous solutions exceeding a concentration of 20 percent tetrahydrofuran proved irritating to the skin of rabbits. One study (Stoughton and Robbins 1938/Ex. 1–597) found that tetrahydrofuran concentrations in excess of 25,000 ppm were needed to anesthetize dogs. The anesthesia process in these animals showed a delayed induction period and poor recovery. In other studies with dogs (Zapp 1971, as cited in ACGIH 1986/Ex. 1–3, p. 564, 200 ppm tetrahydrofuran in daily six-hour inhalation exposures produced an observable effect on the pulse pressure of these animals within three to four weeks; despite an exposure of nine weeks at this dosage level followed by three weeks at nearly twice this concentration, no histopathologic changes were observed in the critical organs. Studies (Jochmann 1961/Ex. 1–1021) in which tetrahydrofuran was given orally and peritoneally to a variety of laboratory animals resulted in both liver and kidney damage; however, some of the effects observed by this author may have been caused by peroxide contamination of the tetrahydrofuran. Oettel (as cited in ACGIH 1986/Ex. 1–3, p. 564) observed no kidney or liver damage in cats, rabbits, rats, or mice exposed repeatedly by inhalation to tetrahydrofuran at concentrations of 3400 to 17,000 ppm for as long as six hours. Technicians involved in the experiment of Stoughton and Robbins (1938/Ex. 1–597, described above) experienced severe headaches when conducting these experiments.

Dr. Larry Hecker, Director of Corporate Industrial Hygiene and Toxicology for Abbott Laboratories, commented that there was no toxicological basis to justify a STEL for tetrahydrofuran (Ex. 3–678). However, OSHA believes that the severe headaches experienced by researchers conducting animal experiments (Stoughton and Robbins 1938/Ex. 1–597) are indicative of an acute effect that constitutes material impairment of health and is best avoided by establishing a short-term limit. OSHA also notes that the ACGIH (*Threshold Limit Values and Biological Exposure Indicies for 1988–1989*, ACGIH 1988b) has not proposed to delete its recommended STEL for this substance. Therefore, OSHA finds that both a 200-ppm 8-hour TWA and a 250-ppm STEL are necessary to reduce the risk of long-term systemic and acute effects associated with exposure to tetrahydrofuran and is establishing these limits in the final rule.

TETRASODIUM PYROPHOSPHATE

CAS: 7722-88-5; Chemical Formula: $Na_4P_2O_7$
H.S. No. 1369

The OSHA Z tables previously included no limit for tetrasodium pyrophosphate. OSHA proposed a PEL of 5 mg/m³ as an 8-hour TWA, and NIOSH (Ex. 8–47, Table N1) concurred with OSHA's proposed limit for this substance. This limit is established in the final rule and is consistent with the ACGIH recommendation. Tetrasodium pyrophosphate may occur as either a white powder or a crystalline substance.

Tetrasodium pyrophosphate is an alkaline dust and therefore causes irritation to the eyes and the respiratory tract (ACGIH 1986/Ex. 1–3, p. 567). For this reason, the ACGIH recommended a time-weighted average TLV of 5 mg/m³, which is one-half the value recommended for irritant dusts. NIOSH's comments was the only one submitted on OSHA's proposal to issue a 5-mg/m³ 8-hour TWA for this substance.

The Agency concludes that this previously unregulated chemical poses a significant risk of eye and respiratory tract irritation to workers potentially exposed to high concentrations. OSHA has determined that these irritant effects represent material impairments of health. Accordingly, OSHA is promulgating a 5-mg/m³ 8-hour TWA limit for tetrasodium pyrophosphate in the final rule.

THIOGLYCOLIC ACID

CAS: 68-11-1; Chemical Formula: $C_2H_4O_2S$
H.S. No. 1392

OSHA had no former PEL for thioglycolic acid. The Agency proposed a 1-ppm 8-hour TWA, with a skin notation, for this colorless liquid, which has an unpleasant odor; NIOSH (Ex. 8–47, Table N1) concurred with this proposal. The 1-ppm TWA limit and the skin notation, which are the same limits as recommended by the ACGIH, are established in the final rule.

A study by the Dow Chemical Company (1973b, as cited in ACGIH 1986/Ex. 1–3, p. 571) in which thioglycolic acid was instilled into the eyes of rabbits resulted in severe conjunctival inflammation and pain, dense opacity of the cornea, and severe inflammation of the iris. These effects had not improved 14 days after exposure and washing immediately after exposure did not modify the severity of this ocular response. A single dermal application of thioglycolic acid to rabbit skin caused necrosis within five minutes and was accompanied by hyperemia and edema. The LD_{50} for a 10-percent solution applied percutaneously was 848 mg/kg for rabbits (ACGIH 1986/Ex. 1–3); further studies by Dow (1973b, as cited in ACGIH 1986/Ex. 1–3, p. 571), in which female rats were fed a single oral dose of a 10-percent solution of thioglycolic acid, showed that this dose resulted in death at the level of 125 mg/kg. Autopsy revealed damage to the liver and gastrointestinal tract. Fassett (1963b, as cited in ACGIH 1986/Ex. 1–3, p. 571) reported that the oral LD_{50} for undiluted thioglycolic acid in rats was 50 mg/kg, and that a 10-percent solution applied to the skin of guinea pigs caused fatalities at doses of less than 5 ml/kg. Symptoms prior to death included gasping, convulsions, and weakness.

No rulemaking participants, other than NIOSH, commented on OSHA's proposal to establish a 1-ppm 8-hour TWA limit for thioglycolic acid. The evidence described above clearly demonstrates that this substance is a potent irritant; accordingly, OSHA finds that a limit on airborne exposure is necessary to protect workers from the risk of eye and skin irritation and systemic effects, which constitute material impairments of health. Therefore, OSHA is establishing a 1-ppm 8-hour TWA limit for this substance. In addition, the animal evidence shows that thioglycolic acid solutions readily penetrate the skin in lethal quantities (the dermal LD_{50} in rabbits is 848 mg/kg). Thus, OSHA finds that a skin notation is necessary to limit dermal contract and is adding this notation to its limit for thioglycolic acid.

1,2,4-TRICHLOROBENZENE

CAS: 120-82-1; Chemical Formula: $C_6H_3Cl_3$
H.S. No. 1408

OSHA formerly had no limit for 1,2,4-trichlorobenzene and proposed to establish a limit of 5 ppm as a ceiling for this substance. NIOSH (Ex. 8–47, Table N1) concurred with this proposal. The final rule establishes this limit, which is consistent with the ACGIH recommendation. 1,2,4-Trichlorobenzene is a colorless, stable liquid at room temperature, with an odor similar to that of o-dichlorobenzene.

The inhalation toxicity of 1,2,4-Trichlorobenzene was studied by Treon (1950, as cited in ACGIH 1986/Ex. 1–3, p. 593), who determined that the target organs of exposure in cats, dogs, rats, rabbits, and guinea pigs included the liver, kidneys, ganglion cells at all brain levels, and mucous membranes. Irritation of the lungs and changes in respiration were seen in animals that

later died as a result of exposure. Brown, Muir, and Thorpe (1969/Ex. 1–537) reported that 1,2,4-trichlorobenzene's single-dose oral LD_{50} is 756 mg/kg for rats and 766 mg/kg for mice. The acute percutaneous LD_{50} for rats was 6139 mg/kg. Sublethal doses administered repeatedly to guinea pigs caused liver damage; acute and short-term (15 six-hour exposures to 70 to 200 ppm) inhalation studies failed to kill these animals (Gage 1970/Ex. 1–318). In a separate study reported on by Rowe (1975, as cited in ACGIH 1986/Ex. 1–3, p. 593), 20 male rats, 4 rabbits, and 2 dogs were exposed at levels of 30 or 100 ppm, 1,2,4-trichlorobenzene for seven hours/day, five days/week, for a total of 30 exposures in 44 days. No adverse effects were detected in exposed animals belonging to 30 species as a result of exposure to 30 ppm, with the exception of an elevation of urinary porphyrins in the rats at days 15 and 30 of exposure. A second inhalation study was performed with 1,2,4-trichlorobenzene administered seven hours/day, five days/week for 26 consecutive weeks (Coate, Schoenfisch, Busey, and Lewis 1977, as cited in ACGIH 1986/Ex. 1–3, p. 593). Thirty rats, 16 rabbits, and 9 monkeys, all males were exposed at 0, 25, 50, or 100 ppm. Microscopic changes were seen in the parenchymal cells of the livers and kidneys of all rats after weeks 4 and 13 of exposure to 1,2,4-trichlorobenzene, but no adverse effects were seen in any of the other species.

In workers exposure to 1,2,4-trichlorobenzene caused dermal irritation, which may have been attributable to the defatting action of this chemical (Powers, Coate, and Lewis 1975/Ex. 1–856), and in some cases, exposure levels of 3 to 5 ppm caused eye and throat irritation (Rowe 1975, as cited in ACGIH 1986/Ex. 1–3, p. 593). NIOSH was the only rulemaking participant to submit comments on 1,2,4-trichlorobenzene.

The Agency concludes that the PPL being established today will protect workers from the risk of eye, throat, and dermal irritation associated with exposure to this substance; these adverse effects represent material impairments of health. To afford workers this protection, OSHA is promulgating a ceiling limit of 5 ppm for 1,2,4-trichlorobenzene.

TRIETHYLAMINE

CAS: 121-44-8; Chemical Formula: $(C_2H_5)_3N$
H.S. No. 1408

OSHA previously had a limit of 25 ppm TWA for triethylamine. Based on the ACGIH recommendation, the Agency proposed revising this limit to 10 ppm as a TWA and 15 ppm as a 15-minute STEL for this colorless liquid with a strong, ammonia-like odor. NIOSH (Ex. 8–47, Table N1) concurred with this proposal, and OSHA establishing these limits for triethylamine.

Exposure to triethylamine is associated with pulmonary, skin, and eye irritation and central nervous system effects. Guinea pigs exposed for 30 minutes to a concentration of 2000 ppm triethylamine survived, but four of six animals died when exposed to this level for two hours; two of six guinea pigs died during a four-hour exposure to a concentration of 1000 ppm, but all survived similar exposures at the 250- and 500-ppm levels (Carpenter, Smyth, and Shaffer 1948/Ex. 1–882). The single-dose oral LD_{50} value in rats is 0.46 g/kg (range: 0.25 to 0.85) (Smyth, Carpenter, and Weil 1951/Ex. 1–439). These investigators also reported that triethylamine readily penetrated rabbit skin on contact, with an LD_{50} value of 0.57 ml/kg (range: 0.36 to 0.90); skin irritation and eye injury were also noted from contact with the liquid. One of six rats died from an acute four-hour inhalation exposure to 1000 ppm triethylamine (Smyth, Carpenter, and Weil 1951/Ex. 1–439). Rabbits exposed repeatedly to a level of 50 ppm exhibited marked irritation of the cornea and of pulmonary tissue (Brieger and Hodes 1951/Ex. 408; Carpenter and Smyth 1946/Ex. 859). The effects of repeated triethylamine exposure correspond to those of ethylamine and dietyhylamine (Brieger and Hodes 1951/Ex. 1–408). Triethylamine was also found to inhibit monoamine oxidase activity, resulting in central nervous system stimulation (De Bruin 1976/Ex. 1–895).

OSHA received a comment on its proposal to revise the limit for triethylamine from Mr. H.K. Thompson, Corporate Industrial Hygienist for Caterpiller, Inc. (Ex. 3–349), who agreed that the 25-ppm PEL is too high, but recommended that OSHA establish a 15-ppm TWA and a 25-ppm STEL. He stated that, in his experience, where triethylamine is used as a catalyst in the making of foundry cores, 16 ppm "produces no irritation or 'halo' effect."

OSHA appreciates the suggestion made by Mr. Thompson; however, the Agency is concerned that his suggestion STEL of 25 ppm is not sufficiently protective, given that rabbits exposed repeatedly to 50 ppm exhibited marked irritation of the cornea and pulmonary tissue. OSHA judges that a somewhat greater margin of safety is called for to protect employees who may regularly be exposed to short-term elevated concentrations of triethylamine. Therefore, OSHA is establishing the limits originally proposed for triethylamine, which are 10 ppm as an 8-hour TWA and 15 ppm as a 15-minute STEL. The Agency believes that these limits are necessary to reduce the significant risk of irritation, which constitutes a material impairment of health that is associated with exposure to this substance.

VANADIUM (V_2O_5) DUST, RESPIRABLE

CAS: 1314-62-1; Chemical Formula: V_2O_5
H.S. No. 1421

The former OSHA PEL for vanadium pentoxide dust was a ceiling of 0.5 mg/m³. The Agency proposed a limit of 0.05 mg/m³ as an 8-hour TWA for the respirable dust of vanadium, as vanadium pentoxide, and is establishing this limit today in its final rule. This limit is the same as that recommended by the ACGIH. Vanadium pentoxide is a yellow to rust brown crystalline compound.

Several studies indicate that OSHA's current exposure limit is insufficient to protect exposed workers against vanadium dust's respiratory effects, which include bronchitis, emphysema, tracheitis, pulmonary edema, and bronchial pneumonia. According to Hudson (1964/Ex. 1–880), vanadium is poisonous to all animals by all routes of administration. The LD_{50} in rabbits injected intravenously was 1.5 mg/kg, and rats fed 25 ppm demonstrated toxic responses within a short time (Hudson 1964/Ex. 1–880).

Seven cases of upper respiratory tract irritation were reported in boiler cleaners exposed to concentrations ranging from 2 to 85 mg/m³ vanadium pentoxide dust (Sjöberg 1951/Ex. 1–437). Williams (1952/Ex. 1–456) reported eight cases of vanadium poisoning in workers cleaning boilers in an atmosphere ranging from 30 to 104 mg/m³. Gul'ko (1956, as cited by Hudson 1964/Ex. 1–860) observed eye and bronchial irritation in workers exposed to 0.5 to 2.2 mg/m³. A study by Lewis (1959/Ex. 1–345) indicated that workers exposed to levels of 0.2 to 0.5 mg/m³ experienced a higher incidence of respiratory symptoms than did controls. Tebrock and Machle (1968/Ex. 1–446) reported that workers exposed to average concentrations of 1.5 mg/m³ vanadium pentoxide in a mixed dust developed conjunctivitis, tracheobronchitis, and dermatitis. A single average eight-hour exposure to 0.2 mg/m³ respirable vanadium dust caused severe upper respiratory tract irritation in five human volunteers, and two other subjects exposed to a 0.1-mg/m³ concentration also developed delayed cough and an

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increase in mucous production (Zenz and Berg 1967/Ex. 1–405).

NIOSH (Ex. 8–47, Table N7; Tr. p. 3–99) recommended a ceiling limit of 0.05 mg/m³ for a 15 minute period for this substance. The Workers Institute for Safety and Health (WISH) (Ex. 116, pp. 53) supported NIOSH's recommendation.

In the final rule, OSHA is establishing a limit of 0.05 mg/m ³ as an 8-hour TWA for respirable vanadium dust, measured as vanadium pentoxide. The Agency concludes that this limit will prevent or substantially reduce the risks of eye and bronchial irritation, respiratory symptoms, conjunctivitis, and coughing seen in workers exposed at levels ranging from 0.1 to 2.2 mg/m³. OSHA considers these exposure-related effects material impairments of health.

VANADIUM (V_2O_5) FUME

CAS: 1314–62–1; Chemical Formula: V_2O_5
H.S. No. 1422

OSHA'S former PEL for vanadium pentoxide fume was 0.1 mg/m³ as a ceiling limit. The Agency proposed to revise this limit to 0.05 mg/m³ as an 8-hour TWA, based on the ACGIH recommendation. OSHA is establishing this limit in the final rule.

Vanadium pentoxide fume's chief toxic effects are manifested in the respiratory passages: bronchitis, emphysema, tracheitis, pulmonary edema, and bronchial pneumonia can result from exposure. According to Hudson (1964/Ex. 1–680), vanadium is poisonous to all animals by all routes of administration. The LD_{50} in rabbits injected intravenously is 1.5 mg/kg, and rats fed 25 ppm demonstrated toxic responses within a short time (Hudson 1964/Ex. 1–680).

Seven cases of upper respiratory tract irritation were reported in boiler cleaners exposed to concentrations of from 2 to 85 mg/m³ vanadium pentoxide fume (Sjöberg 1951/Ex. 1–437). Williams (1952/Ex. 1–456) reported eight cases of vanadium poisoning in workers cleaning boilers in an atmosphere ranging from 30 to 104 mg/m³. Gul'ko (1956, as cited by Hudson 1964/Ex. 1–680) observed eye and bronchial irritation in workers exposed to 0.5 to 2.2 mg/m³. A study by Lewis (1964/Ex. 1–345) indicated that workers exposed to levels of 0.2 to 0.5 mg/m³ experienced a higher incidence of respiratory symptoms than did controls. Tebrock and Machle (1966/Ex. 1–446) reported that workers exposed to average concentrations of 1.5 mg/m³ vanadium pentoxide in a mixed dust developed conjunctivitis, tracheobronchitis, and dermatitis. A single average eight-hour exposure to 0.2 mg/m³ respirable vanadium dust caused severe upper respiratory tract irritation in five human volunteers, and two other subjects exposed to a 0.1-mg/m³ concentration also developed delayed cough and an increase in mucous production (Zenz and Berg 1967/Ex. 1–405).

NIOSH (Ex. 8–47, Table N7) recommended a 15-minute ceiling limit of 0.05 mg/m³ for vanadium fume as vanadium pentoxide. However, OSHA is concerned about cumulative exposures below the former 0.1 mg/m³ ceiling, and the Agency concludes that the TWA limit originally proposed will protect workers from the significant risks of eye, skin, and upper respiratory tract irritation; conjunctivitis; pulmonary damage; and systemic poisoning associated with exposure to vanadium pentoxide fume at even brief excursions to higher levels. The Agency considers these irritant and systemic effects to be material impairments of health. Accordingly, OSHA is establishing a PEL of 0.05 mg/m³ as an 8-hour TWA for this substance in today's rule.

VINYL ACETATE

CAS: 108–05–4; Chemical Formula: $CH_3COOCH{=}CH_2$
H.S. No. 1424

There was no previous OSHA limit for vinyl acetate. OSHA proposed establishing a 10-ppm TWA and a 20-ppm STEL for this substance, based on the ACGIH recommendation, and the final rule establishes these limits. Vinyl acetate is a volatile liquid that polymerizes in light to a colorless, transparent mass and usually contains an inhibitor, such as hydroquinone.

The basis for the proposed limits is an epidemiologic report by Deese and Joyner (1969/Ex. 1–412) describing 15 years of industrial experience with vinyl acetate production. These authors reported that vinyl acetate is not a significant irritant at exposure levels of 5 to 10 ppm but causes cough and hoarseness at around 22 ppm. They also found no evidence of adverse chronic effects resulting from exposure to 5 to 10 ppm, as determined from medical records and examinations. While conducting air sampling for the study, the primary author (Deese) experienced hoarseness at concentrations of 4.2 to 5.7 ppm, and eye irritation at 5.7 to 6.6 ppm. Three chemical operators and one technician did not report any subjective responses at these levels. The ACGIH (1986/Ex. 1–3, p. 621) also cited a personal communication from the Mellon Institute (1956) stating that vinyl acetate concentrations of less than 5 ppm are detectable by odor, although some individuals may detect the odor at concentrations of 0.5 ppm (Mellon Institute 1956, as cited by ACGIH 1986/Ex. 1–3, p. 621).

NIOSH (1978i, as cited in ACGIH 1986/Ex. 1–3, p. 621) reviewed these data and concluded that the recommended exposure limit be designed to protect even the most sensitive individuals from sensory irritant effects. Since the lowest level reported to cause upper respiratory tract irritation was 4.2 ppm (Deese and Joyner 1969/Ex. 1–412), NIOSH recommended that workplace exposure not exceed 4 ppm measured over a 15-minute period. In its prehearing submission (Ex. 8–47, Table N2), NIOSH continued to recommend its earlier limit.

The NIOSH REL of 4 ppm (ceiling) relies on a report concerning the experience of a single individual; in contrast, the limits being established today are based on a 15-year epidemiology study that suggests that a 10-ppm TWA and a 20-ppm STEL will provide protection against the risk of irritation associated with exposure to vinyl acetate at higher levels. OSHA considers the irritation caused by exposure to vinyl acetate a material impairment of health. Therefore, the Agency is promulgating this 8-hour TWA and STEL combination as the revised limits for vinyl acetate.

VM & P NAPHTHA

CAS No. 8032–32–4; Chemical Formula: none
H.S. No. 1429

OSHA formerly had no PEL for VM & P (Varnish Makers' and Printers') naphtha. The Agency proposed to establish an 8-hour TWA of 300 ppm and a STEL of 400 ppm for this substance. NIOSH (Ex. 8–47, Table N-) concurred with these limits, which are based on the ACGIH TLVs. These limits are established in the final rule. VM & P naphtha, also known as ligroin, is a colorless, flammable liquid.

A study in which rats and beagles received inhalation doses of 500 ppm VM & P naphtha for 30 hours per week for 13 weeks resulted in no chronic or latent effects (Carpenter, Kinkead, Geary et al. 1975a/Ex. 1–302). These authors also noted that the acute toxicity of VM & P naphtha for rats and other species was four times greater than that of rubber solvent naphtha, which has a limit of 400 ppm. Carpenter and associates (1975a/Ex. 1–302) also reported on an experiment in which rats lost coordination and went into convulsions within 15 minutes during exposures to saturation concentrations at ambient room temperature. The 4-hour inhalation LC_{50} was 3400 ppm, and the acclimated rats survived 5800 ppm for six hours.

Seven human volunteers exposed to 880 ppm VM & P naphtha for 15 minutes reported upper respiratory tract, eye, and nose irritation, in addition to olfactory fatigue (ACGIH 1986/Ex. 1–3, p. 631). Elkins (1959d, as cited in ACGIH 1986/Ex. 1–3, p. 631) noted one case of a worker, exposed to levels of VM & P naphtha averaging 800 ppm, who developed unspecified chronic effects. Elkins also reported that the VM & P naphtha level producing significant irritation in human volunteers was about half as great for this form of naphtha as for rubber solvent naphtha.

The Agency concludes that the 300-ppm TWA is necessary to protect workers against the risk of possible chronic effects associated with naphtha exposure. In addition, OSHA finds that a STEL is necessary to prevent upper respiratory tract and eye irritation, which are considered by OSHA to be material impairments of health that have been demonstrated to occur on short-term exposure to 880 ppm VM & P naphtha (ACGIH 1986/Ex. 1–3, p. 631); the proposed 300-ppm TWA limit alone would permit such excursions. Therefore, OSHA is establishing both a 300-ppm 8-hour TWA and a 400-ppm STEL for VM & P naphtha in the final rule.

XYLENES, (o-, m-, AND p-ISOMERS)

CAS: 1330–20–7; Chemical Formula: $C_6H_4(CH_3)_2$
H.S. No. 1431

The previous OSHA limit for the xylenes was 100 ppm as an 8-hour TWA. Based on the ACGIH recommendation, OSHA proposed to revise this limit to a TWA of 100 ppm and a 15-minute STEL of 150 ppm. NIOSH (Ex. 8–47, Table N1) as well as the AFL–CIO (Ex. 194) concurred with these limits, and they are established in the final rule. The xylene isomers are clear, flammable liquids with an aromatic hydrocarbon odor.

Rats and rabbits exposed to a mixture of xylene isomers at a concentration of 000 ppm for eight hours daily, six days per week showed no blood abnormalities, but rabbits exposed on the same regimen at 1150 ppm for 55 days showed a decrease in red and white blood cell counts and an increase in platelet count (Fabre and Truhaut 1954, as cited in ACGIH 1986/Ex. 1–3, p. 637).

Studies of workers exposed to xylene revealed headache, fatigue, lassitude, irritability, and gastrointestinal disturbances as the most common symptoms (Gerarde 1960d/Ex. 1–738a). At unspecified exposure levels, Browning (1965b/Ex. 1–1016) also noted gastrointestinal disturbances, in addition to kidney, heart, liver, and neurological damage; blood dyscrasias, some of which resulted in death, were also reported in these workers. A study by Nelson, Enge, Ross et al. (1943/Ex. 1–66), in which human volunteers were exposed to 200 ppm xylene, found eye, nose, and throat irritation in the subjects at this level of exposure.

NIOSH developed a criteria document for xylene in 1975 (NIOSH 1975; as cited in ACGIH 1986/Ex. 1–3, p. 637), in which the work of Morley, Eccleston, Douglas, and colleagues (1970/Ex. 1–794) was discussed). These authors observed liver dysfunction and renal impairment in three workers overexposed to xylene (estimated concentration of 10,000 ppm). One of these workers died, but the others recovered slowly. Furniture polishers were reported by Matthaus (1964/Ex. 1–830) to have suffered corneal damage as a result of exposure to xylene at unknown concentrations.

One other commenter, Stanley L. Dryen of Chevron Corporation (Ex. 3–896, p. 15), objected to OSHA's issuing of a STEL, stating that there was no basis for one. OSHA disagrees and points out that a 100-ppm TWA limit alone would permit short-term exposure to several hundred ppm xylene, well above the 200-ppm level reported to be irritating as a result of short-term exposures. OSHA notes that NIOSH also recommends a short-term limit to supplement the TWA.

After reviewing this evidence, OSHA concludes that both a TWA and a STEL are necessary to prevent the risks of narcosis, blood effects, and irritant effects at the elevated levels possible at the current exposure limit. The Agency considers the effects of narcosis, irritation, and blood effects to constitute material impairments of health and functional capacity. Therefore, to reduce the risk of irritation to workers exposed to the xylenes, OSHA is establishing a 150-ppm STEL and a 100-ppm TWA for xylene isomers in the final rule.

ZINC CHLORIDE (FUME)

CAS: 7646–85–7; Chemical Formula: $ZnCl_2$
H.S. No. 1435

OSHA's former PEL for zinc chloride was 1 mg/m ³ as an 8-hour TWA. The Agency proposed a TWA of 1 mg/m ³, with a STEL of 2 mg/m ³, for this substance, based on the ACGIH recommendation. NIOSH (Ex. 8–47, Table N1) concurred with this proposal, and these limits are established in the final rule. Zinc chloride fume is white and has an acrid odor.

Zinc chloride fume is highly caustic and damages the mucous membranes of the nasopharynx and respiratory tract. Exposure to the fumes of the zinc chloride may result in a severe pneumonitis that is caused by irritation of the respiratory tract (Gafafer 1964/Ex. 1–1149). One instance in which a worker inhaled zinc chloride fumes resulted in advanced pulmonary fibrosis that ended in death (Milliken, Waugh, and Kadish 1963/Ex. 1–751), and 10 deaths and 25 nonfatal cases of pneumonitis occurred in workers caught in a tunnel when 79 smoke generators caught fire and generated zinc chloride fumes (Hunter 1955/Ex. 1–853). Other studies have shown that zinc chloride exposures cause skin ulceration (Sax 1957/Ex. 1–1095). It has also been suggested that zinc chloride exposure may have chronic effects (Hamilton and Hardy 1974b/Ex. 1–958). In an investigation of the adverse effects of zinc chloride fume exposures, Ferry (1966, as cited in ACGIH 1986/Ex. 1–3, p. 643) reported that no sensory effects occurred when 30-minute exposures were limited to 0.07 and 0.4 mg/m³; however, this researcher noted that these levels did corrode metal. Other than NIOSH's submission, no comments were received by OSHA on the proposed limits for zinc chloride fume.

OSHA concludes that the risk of damage to the eyes, skin, and respiratory tract associated with short-term exposure to zinc chloride fume, which are considered by OSHA to be material impairments of health, should be substantially reduced by establishing both a STEL and a TWA. Therefore, in the final rule, OSHA is promulgating a 1–mg/m³ TWA limit and 2–mg/m³ STEL for this substance.

Conclusions for the Group of Sensory Irritants

OSHA finds that sensory irritation poses an occupational health risk to workers exposed to these substances at the Agency's former exposure limits. Among the adverse health consequences of exposure to sensory irritants are acute breathing difficulty, eye tearing, conjunctivitis, sensitization, persistent coughing, and upper respiratory tract irritation. OSHA has determined that these effects constitute material impairments of health and functional capacity within the meaning of the Act. In addition to the pain and suffering associated with these signs and symptoms, workers experiencing irritant effects find it difficult if not impossible to concentrate on the job at hand; they therefore work less safely and less productively than nonexposed employees. Reducing exposures from levels that have been associated with these effects to levels where such consequences are substantially less

likely to occur will reduce the significant risk posed to workers at current levels. Furthermore, many of the substances in this group have been demonstrated to have adverse effects on other organ systems, including the cornea, lungs, kidney, liver, central nervous system, and gastrointestinal tract. OSHA finds that promulgation of the new or revised limits for the substances in this group will also further reduce the possibility of harm to these organ systems.

OSHA concludes that the health evidence for these substances forms a reasonable basis for establishing revised or new limits, and that establishing these limits is necessary to reduce the risk of sensory irritation effects to exposed workers. OSHA concludes that sensory irritation constitutes a material impairment of health and functional capacity.

4. Substances for Which Limits Are Based on Avoidance of Liver or Kidney Effects

Introduction

The liver or the kidneys are the primary target organs affected by toxic exposures to a number of industrial chemicals. In recognition of this target organ toxicity, OSHA is establishing new or revised limits for 17 hepato- or nephrotoxic compounds (12 hepatotoxins and five nephrotoxins). For these substances, the liver or kidney appears to be the organ most sensitive to the effects of exposure. Thus, establishing permissible exposure limits that are low enough to prevent toxicity to these target organs generally also protects other organ systems.

For seven of the 12 substances for which limits were based on liver toxicity, OSHA is lowering the PEL, and for three substances, OSHA is adding a short-term exposure limit. For two substances, OSHA is adding a PEL where none previously existed. For three kidney toxins, OSHA is establishing new PELs: in one case, it is reducing an existing TWA-PEL, and, in another case, it is reducing its current PEL and adding a STEL. The sections below discuss liver and kidney toxins separately. Table C4–1 shows these hepatotoxic substances and their former, proposed, and final rule limits, CAS, and HS numbers; Table C4–2 provides the same information for the nephrotoxins in this group.

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Table C4-1. List of Substances For Which Limits Are Based Primarily on Avoidance of Liver Toxicity

H.S. Number/ Chemical Name	CAS No.	Former PEL	Proposed PEL	Final Rule PEL*
1011 Allyl chloride	107-05-1	1 ppm TWA	1 ppm TWA 2 ppm STEL	1 ppm TWA 2 ppm STEL
1072 Carbon tetrabromide	558-13-4	--	0.1 ppm TWA 0.3 ppm STEL	0.1 ppm TWA 0.3 ppm STEL
1089 o-Chlorostyrene	2039-87-4	--	50 ppm TWA 75 ppm STEL	50 ppm TWA 75 ppm STEL
1108 Cyclohexanone	108-94-1	50 ppm TWA	25 ppm TWA, Skin	25 ppm TWA, Skin
1145 Dioxane	123-91-1	100 ppm TWA, Skin	25 ppm TWA, Skin	25 ppm TWA, Skin
1168 Ethylene dichloride	107-06-2	50 ppm TWA 100 ppm STEL (5 min/3 hrs) 200 ppm Ceiling	1 ppm TWA 2 ppm STEL	1 ppm TWA 2 ppm STEL
1205 Hydrazine	302-01-2	1 ppm TWA, Skin	0.1 ppm TWA, Skin	0.1 ppm TWA, Skin

Table C4-1. List of Substances For Which Limits Are Based Primarily on Avoidance of Liver Toxicity (continued)

H.S. Number/ Chemical Name	CAS No.	Former PEL	Proposed PEL	Final Rule PEL*
1269 Methylcyclohexanol	25639-42-3	100 ppm TWA	50 ppm TWA	50 ppm TWA
1295 Octachloro-naphthalene	2234-13-1	0.1 mg/m^3 TWA, Skin	0.1 mg/m^3 TWA 0.3 mg/m^3 STEL, Skin	0.1 mg/m^3 TWA 0.3 mg/m^3 STEL, Skin
1341 Propylene dichloride	78-87-5	75 ppm TWA	75 ppm TWA 110 ppm STEL	75 ppm TWA 110 ppm STEL
1385 1,1,2,2-Tetrachloro-ethane	79-34-5	5 ppm TWA, Skin	1 ppm TWA, Skin	1 ppm TWA, Skin
1407 1,2,3-Trichloro-propane	96-18-4	50 ppm TWA	10 ppm TWA, Skin	10 ppm TWA

* OSHA's TWA limits are for 8-hour exposures and its STELs are for 15 minutes only unless otherwise specified.

Table C4-2. List of Substances For Which Limits are Based Primarily on Avoidance of Kidney Toxicity

H.S. Number/ Chemical Name	CAS No.	Former PEL	Proposed PEL	Final Rule PEL*
1129 1,3-Dichloropropene	542-75-6	--	1 ppm TWA, Skin	1 ppm TWA, Skin
1132 Dicyclopentadiene	77-73-6	--	5 ppm TWA	5 ppm TWA
1166 Ethyl silicate	78-10-4	100 ppm TWA	10 ppm TWA	10 ppm TWA
1195 Hexachlorobutadiene	87-68-3	--	0.02 ppm TWA, Skin	0.02 ppm TWA
1203 Hexone (Methyl isobutyl ketone)	108-10-1	100 ppm TWA	50 ppm TWA 75 ppm STEL	50 ppm TWA 75 ppm STEL

* OSHA's TWA limits are for 8-hour exposures and its STELs are for 15 minutes unless otherwise specified.

BILLING CODE 4510-26-C

temperature, pure carbon tetrabromide neuropathic and narcotic effects In humans. Nelson

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Liver Toxicity

Description of the Health Effects

Although the precise mechanisms by which these compounds cause liver damage are only partly understood, the development and manifestation of liver toxicity are similar for all of them. In general, liver toxicity is a graded response (i.e., the severity of the lesion is directly proportional to the intensity/duration of exposure). Although many of the effects caused by exposure to these substances are reversible, some are not.

Liver damage is not a single entity; the manner in which it is manifested depends upon the dose, duration, and particular chemical agent involved. For example, acute exposures may cause lipid accumulation in the hepatocytes, cellular death, and hepatobiliary dysfunction. In contrast, chronic exposures may lead to cirrhotic changes and the development of neoplasms. Fatty accumulation and necrosis can be either localized or widespread, and chemically induced lesions resulting from chromic exposures can cause marked changes of the entire liver (Plaa 1986/Ex. 1–183).

Typically, the earliest and most sensitive indicators of liver toxicity are alterations in biochemical liver functions, such as changes in specific enzyme activities. These may be accompanied by changes in the morphology of specific organelles in hepatocytes. For example, relatively low doses of halogenated aliphatic hydrocarbons, such as allyl chloride, carbon tetrabromide, and ethylene dichloride, cause an increase in the activity of microsomal mixed-function oxidase enzymes. This increase is ordinarily accompanied by proliferation of the endoplasmic reticulum.

Many compounds that damage the liver, such as 1,1,2,2-tetrachloroethane, also cause an abnormal accumulation of fat, especially of triglycerides, in liver cells. In experimental animals, this effect is manifested as an accumulation of microscopic vacuoles in liver cells. In humans, however, the only grossly detectable manifestation of this effect is increased liver size, which is an indication of severe fat accumulation in the liver.

At sufficiently high doses, most substances that damage the liver cause cell death that leads to tissue necrosis or gangrene. This necrosis may initially be localized, but, at higher or more sustained exposure levels, the entire liver may be involved. Moderate to severe liver necrosis is usually accompanied by increased concentrations of marker enzymes such as glutamate-pyruvate transaminase or glutamate-oxaloacetate transaminase in the serum; the detection of these substances in the serum of exposed individuals can thus be a useful diagnostic tool.

Dose-Response Characteristics

The development of liver and other organ damage in humans and animals is progressive; it begins with subcellular changes, progresses to the cellular level, and is finally manifested as whole-organ damage. This progression is related to the intensity/duration of dose (i.e., as dose increases, cellular death becomes widespread and eventually causes liver dysfunction). The extent to which liver damage is reversible follows a similar continuum; since the liver can regenerate, minor cellular damage or transient disease states are usually reversible if exposure ceases. However, if exposure continues, the capacity of the liver to regenerate is exceeded and permanent damage results. As is the case for some chemically induced toxic effects, there appears to be a NOE level below which hepatotoxic effects do not occur.

The following paragraphs describe OSHA's findings for all of the substances in this group of hepatotoxins and discuss the record evidence and the nature of the material health impairments experienced by exposed workers.

ALLYL CHLORIDE

CAS: 107–05–1; Chemical Formula: $CH_2 = CHCH_2Cl$
H.S. No. 1011

The former OSHA PEL for allyl chloride was a 1-ppm (3-mg/m³) 8-hour TWA; the proposed PEL was also 1 ppm, with a 15-minute STEL of 2 ppm. NIOSH (Ex. 8–47, Table N1) concurred with the proposed limits. In the final rule, OSHA is establishing an 8-hour TWA limit of 1 ppm and a STEL of 2 ppm for this substance; these limits are consistent with those of the ACGIH. Allyl chloride is a colorless liquid with an unpleasant, pungent odor.

Studies of animal exposures to allyl chloride indicate that this chemical is among the most toxic of the halogenated aliphatic hydrocarbons, producing mucous membrane irritation, mild narcosis, and, at higher concentrations, histologic lesions of the lungs and kidneys (Adams, Spencer, and Irish 1940/Ex. 1–584). Even single exposures lasting only a few minutes at concentrations between 1 and 100 mg/liter (332 to 32,000 ppm) caused mucous membrane irritation in various laboratory animals; at 8-ppm concentrations for five weeks, kidney and liver damage were observed (Adams, Spencer, and Irish 1940/Ex. 1–584). Further animal studies have confirmed liver and kidney pathology in many species (Torkelson, Wolf, Oyen, and Rowe 1959/Ex. 1–891), and female rats exhibited kidney pathology after exposure to 3 ppm for six months.

Exposures of 50 to 100 ppm for five minutes in humans caused eye and nose irritation, and five-minute exposures below 25 ppm have been associated with pulmonary irritation (Shell Chemical Corp. 1974, as cited in Ex. 150). Humans exposed to concentrations of 1 to 113 ppm showed abnormal liver test results (Hausler and Lenich 1966/Ex. 1–1035).

In a posthearing comment (Ex. 150, Comments on Allyl Chloride), NIOSH reported the results of a recent National Cancer Institute monograph (Santodonato et al. 1985, as cited in Ex. 150) showing that allyl chloride is a tumor initiator in mice and a mutagen in bacterial test systems. NIOSH (Ex. 150) and Drs. Grace Ziem and Barry Castleman (Ex. 114A) discussed recent epidemiological and clinical studies from the People's Republic of China (He et al. 1985, as cited in Exs. 114A and 150), which also found toxic polyneuropathy in workers exposed to between 2.6 and 6650 mg/m³ allyl chloride for durations ranging from 2.5 months to 6 years; in contrast, workers at another facility with allyl chloride exposures below 25 mg/m³ for 1 to 4.5 years had few neurological disorders, but 50 percent showed abnormal electroneuromyographic results. Animal studies confirm this substance's neuropathic potential (Ex. 114A and Ex. 150, Comments on Allyl Chloride).

The final rule establishes an 8-hour TWA limit of 1 ppm and a STEL of 2 ppm for allyl chloride. The Agency concludes that both TWA and STEL limits are necessary to protect workers from the significant risk of kidney and liver damage and neuropathic effects which constitute material health impairments and are potentially associated with the elevated short-term exposures to ally chloride currently permitted by the 8-hour TWA alone.

CARBON TETRABROMIDE

CAS: 558–13–4; Chemical Formula: CBr_4
H.S. No. 1072

OSHA formerly had no limit for exposure to carbon tetrabromide. The proposed limits were 0.1 ppm as an 8-hour TWA and 0.3 ppm as a 15-minute STEL; the final rule establishes these limits, which are consistent with those of the ACGIH. NIOSH (Ex. 8–47, Table N1) concurred with OSHA's proposed limits for carbon tetrabromide. At room temperature, pure carbon tetrabromide is a colorless, nonflammable solid. However, samples are usually yellow-brown in color.

Carbon tetrabromide's hepatotoxic effects include both fatty infiltration and necrosis. The 0.1-ppm and 0.3-ppm TWA and STEL levels were selected based on an observed no-effect level of 0.1 ppm; this finding derives from a study in which rats were exposed to carbon tetrabromide by inhalation for seven hours per day, five days per week for six months (Torkelson and Rowe 1981a/Ex. 1–974). Dr. Grace Ziem (Ex. 46) submitted information to OSHA showing that exposure to 0.07 ppm has caused sensory irritation in rats.

The final rule establishes limits of 0.1 ppm as an 8-hour TWA and 0.3 ppm as a 15-minute STEL for carbon tetrabromide. OSHA concludes that establishing these limits for this previously unregulated chemical will protect workers against the significant risk of hepatotoxic effects, which constitute material health impairments.

o-CHLOROSTYRENE

CAS: 2039–87–4; Chemical Formula: C_8H_7Cl
H.S. No. 1089

OSHA formerly had no limit for o-chlorostyrene. The proposed limits were an 8-hour TWA of 50 ppm and a STEL of 75 ppm, and NIOSH (Ex. 8–47, Table N1) concurred with these limits. The final rule establishes a 50-ppm TWA PEL and a 75-ppm STEL, limits that are consistent with those of the ACGIH. o-Chlorostyrene is a colorless liquid at room temperature.

In an unpublished report, the Dow Chemical Company (1973a, as cited in ACGIH 1986/Ex. 1–3, p. 136) describes the results of an o-chlorostyrene inhalation study in rats, rabbits, guinea pigs, and dogs. Dow exposed the animals to an average concentration of 101 ppm for seven hours daily, five days per week, for a total of 130 exposures in 180 days. No adverse effects were observed in any species in terms of appearance, growth, behavior, mortality, hematology, BUN, alkaline phosphatase, SGPT, BSP, organ weights, or gross pathology (Dow Chemical Company 1973a, as cited in ACGIH 1986/Ex. 1–3, p. 136). Microscopic examination of animal tissue revealed a somewhat higher incidence of pathological changes in the liver and kidneys. There is evidence indicating that the warning properties of o-chlorostyrene do not permit workers to be aware of o-chlorostyrene concentrations of 100 ppm. Based on o-chlorostyrene's structural analogy to styrene, for which short-term exposure of 100 ppm have been demonstrated to produce neuropathic and narcotic effects (Stewart, Dodd, Baretta, and Schaffer 1968/Ex. 1–380), OSHA finds that a short-term limit is necessary. OSHA received no comments (other than NIOSH's) on this substance.

The final rule establishes a PEL of 50 ppm as an 8-hour TWA and a 15-minute STEL of 75 ppm for o-cholorostyrene. The Agency concludes that both of these limits will protect workers from the significant risks of liver and kidney damage, narcosis, and neuropathy to which they could potentially be exposed in the absence of any OSHA limit. OSHA finds that these health effects constitute material health impairments and that the TWA and STEL limits will substantially reduce these significant occupational risks.

CYCLOHEXANONE

CAS: 108–94–1; Chemical Formula: $C_6H_{10}O$
H.S. No. 1108

OSHA's former limit for cyclohexanone was 50 ppm as an 8-hour TWA. The Agency proposed to reduce this limit to 25 ppm and to add a skin notation for this substance. NIOSH (Ex. 8–47, Table N1) concurred with this proposed limit. The final rule establishes an 8-hour TWA PEL of 25 ppm and includes a skin notation. Both the ACGIH and NIOSH recommend a time-weighted average for cyclohexanone of 25 ppm, and the ACGIH also recommends a skin notation. Cyclohexanone is a white to pale yellow, oily liquid with an odor similar to that of acetone and peppermint.

Cyclohexanone has been studied in several experimental animal species. A concentration of 2000 ppm inhaled for four hours was lethal to one of six rats; at 4000 ppm, all of the exposed animals died. In rabbits, the dermal LD_{50} was 1000 mg/kg (Smyth, Carpenter, Weil et al. 1969/Ex. 1–442). Rabbits showed marked irritation and some corneal injury when undiluted cyclohexanone was instilled in the eye (Carpenter and Smyth 1946/Ex. 1–859). Guinea pigs exposed to 4000 ppm for six hours showed narcotic symptoms, lacrimation, salivation, depression of body temperature and heart rate, and corneal opacity (Specht, Miller, Valaer, and Sayers 1940/Ex. 1–1179). Rabbits exhibited degenerative changes of the liver and kidneys after 50 daily six-hour inhalation exposures to 190 ppm (Treon, Crutchfield, and Kitzmiller 1943b/Ex. 1–394). Exposures to 389 ppm cyclohexanone on the same regimen caused conjunctival congestion, while exposures to 3000 ppm were lethal to some of the exposed animals (Treon, Crutchfield, and Kitzmiller 1943b/Ex. 1–394).

In humans, Nelson and co-workers (1943/Ex. 1–66) reported that irritation caused by exposure to cyclohexanone was intolerable at 50 ppm; however, 25 ppm was not objectionable to most subjects in three- to five-minute exposures (Nelson, Enge, Ross et al. 1943/Ex. 1–66).

OSHA is adding a skin notation for cyclohexanone based on this substance's ability to cause systemic toxicity through dermal absorption. L.H. Hecker, Director of Corporate Industrial Hygiene and Toxicology at Abbott Laboratories, commented that, in his opinion, there was no evidence for cyclohexanone's dermal toxicity, and thus that no skin notation was necessary (Ex. 3–678). However, OSHA has determined, based on a review of the evidence for this substance, that cyclohexanone has a dermal LD_{50} of 100 mg/kg in rabbits (*Dangerous Properties of Industrial Materials*, 7th ed., p. 831, Sax and Lewis 1989). The Agency believes it appropriate to establish a skin notation for substances posing a percutaneous hazard, which OSHA is defining as any substance having a dermal LD_{50} in rabbits of 1000 mg/kg or less. Accordingly, the Agency is including a skin notation for cyclohexanone in the final rule (see section VI.C.18 for a full discussion of the Agency's policy on skin notations).

In the final rule, OSHA is establishing an 8-hour TWA for cyclohexanone of 25 ppm, with a skin notation. The Agency has determined that these limits will protect workers from the significant risks of liver and kidney damage, skin and respiratory-tract irritation, and percutaneous absorption associated with exposure to this substance. OSHA finds that skin and respiratory-tract irritation and liver and kidney damage all constitute material health impairments.

DIOXANE

CAS: 123–91–1; Chemical Formula: $O(CH_2CH_2)_2O$
H.S. No. 1145

OSHA's former PEL for dioxane was 100 ppm as an 8-hour TWA, with a skin notation. The Agency proposed a 25-ppm 8-hour TWA PEL for this substance, with retention of the skin notation; these limits, which are consistent with those of the ACGIH, are established in the final rule. NIOSH (Ex. 8–47, Table N6A) agreed with the selection of this PEL. Dioxane is a colorless liquid with an ethereal odor.

A two-year drinking water study conducted by the Dow Chemical Company (1972b, as cited in ACGIH 1986/Ex. 1–3, p. 217), in which male and female rats were given water containing

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1.0, 0.1, or 0.01 percent dioxane, showed that animals given the highest dose developed liver and nasal tumors, in addition to pathological changes in the liver and kidney. Rats in the 0.1-percent group showed renal tubular sloughing and hepatocellular degeneration but no significant increase in neoplasms. Because this study demonstrated hepato- and nephrotoxic effects at doses 10 times lower than the dose causing cancer in animals, the permissible exposure limit has been set at a level that will prevent dioxane's liver and kidney effects. A study by Torkelson et al. (1974/Ex. 1–111) in four species of animals exposed to multiple daily airborne exposures of dioxane at 50 ppm showed no gross or histopathologic organ changes; this study demonstrates that the 25-ppm level should protect against the risk of liver and kidney effects in exposed workers. Dioxane has been shown in several studies to readily penetrate the skin of humans and animals and cause liver and kidney damage (NIOSH 1977n, p. 151, as cited in ACGIH 1986/Ex. 1–3, p. 218).

NIOSH (Ex. 8–47, Table N6A; Tr. 3–96 to 3–97) concurs with OSHA's exposure limit for dioxane, but notes its cancer potential. The AFL-CIO (Ex. 194, p. A12) also urged OSHA to designate dioxane as a carcinogen, as did the International Chemical Workers Union (Tr. 9–217 to 9–218). IARC (1987) has classified dioxane as a Group 2B (possible human) carcinogen based on a finding of sufficient evidence in animals. OSHA is aware of the emerging literature on dioxane's carcinogenic potential and intends to monitor this substance in the future.

Thomas Robinson, representing Vulcan Chemicals, stated that it was "most appropriate" for OSHA to adopt a TWA limit of 25 ppm for dioxane (Ex. 3–677), and the Halogenated Solvents Industry Alliance also supported OSHA's proposed PELs.

OSHA finds that the evidence for dioxane indicates that it is a liver and kidney toxin at levels substantially lower than those at which it produces a carcinogenic response. The Agency concludes that an 8-hour TWA of 25 ppm for dioxane, with a skin notation, is necessary to protect exposed workers against the significant risks of kidney and liver damage and cancer, all material health impairments that are associated with exposure at levels above the new PELs. OSHA has determined that the 25-ppm TWA limit will substantially reduce this risk.

ETHYLENE DICHLORIDE

CAS: 107-06-2; Chemical Formula: $ClCH_2CH_2Cl$

H.S. No. 1166

The former OSHA standard for ethylene dichloride (EDC) was 50 ppm as an 8-hour TWA, with a 100-ppm STEL (maximum duration of five minutes in any three hours) and a 200-ppm ceiling; these limits were derived from limits recommended by the American National Standards Institute in 1969. In 1960, the ACGIH reduced its TLV for ethylene dichloride to 10 ppm as an 8-hour TWA. NIOSH (1978q/Ex. 1–1120 and Ex. 8–47, Table N8A) has concluded that ethylene dichloride should be considered a potential human carcinogen and has recommended a 1-ppm TWA REL and a 2-ppm 15-minute short-term limit. OSHA proposed an 8-hour TWA of 1 ppm and a STEL of 2 ppm, and the final rule establishes these limits. Ethylene dichloride is a colorless liquid with an odor typical of the chlorinated hydrocarbons.

Several studies indicate that the former OSHA PELs are insufficient to protect workers against the hepatotoxic and carcinogenic effects of exposure to EDC. A paper by Kozik (1967/Ex. 1–182) reported that workers generally exposed to ethylene dichloride at levels of 10 to 15 ppm but occasionally exposed to levels of 40 ppm experienced increased morbidity, diseases of the liver and bile ducts, and nervous system effects. In addition, Brzozowski and associates (1964/Ex. 1–63) reported abnormal changes in the blood of 50 percent of workers (8 of 16) exposed to EDC levels of 10 ppm and above (Brzozowski, Czajka, Dutkiewicz et al. 1964/Ex. 1–63).

Many commenters submitted information to the docket on ethylene dichloride (Exs. 3–624, 3–677, 3–678, 3–741, 3–674, 3–1174, 8–47, and 150). Most commenters were of the opinion that a permissible exposure limit of 10 ppm, rather than the proposed 1-ppm limit, would provide adequate protection against EDC's hepatoxic, central nervous system, and hematopoietic effects (Exs. 3–624, 3–677, 3–678, 3–741, 3–674, and 3–1174). Several of these participants also expressed concern about the feasibility of the 1-ppm limit (Exs. 3–624, 3–741, and 3–674). The comments of Richard Olson, representing the Dow Chemical Company, were typical of those of this group of commenters. According to Mr. Olson, OSHA's proposed limit was based on two outdated studies (Kozik 1967/Ex. 1–182 and Brzozowski, Czajka, Dutkiewicz et al. 1964/Ex. 1–63) that are incomplete, reflect outdated work practices, and present results that are based on effects caused by dermal as well as airborne exposures (Ex. 3–741, p. 52). The Chemical Manufacturers Association (Ex. 3–674) pointed out that the jobs being performed by the workers monitored in the Brzozowski et al. (1964/Ex. 1–63) study are no longer permitted because EPA has prohibited the use of EDC as a fumigant (Ex. 3–674).

In response to these commenters, OSHA notes that there are many studies reporting serious EDC-related effects among workers exposed to airborne concentrations in the 10- to 15-ppm range. For example, the aircraft workers in the Kozik (1957/Ex. 1–182) study (average 8-hour TWA exposures of 10 to 15 ppm) experienced increased morbidity and lost more workdays than did non-EDC-exposed workers at the same factory. These workers experienced high rates of gastrointestinal disease and liver and gallbladder diseases; these symptoms and diseases are typical EDC exposure effects. Another study (Cetnarowicz 1959) examined refinery workers exposed to EDC at levels ranging from 10 to 200 ppm and found that these workers experienced many of the same symptoms as those seen in the aircraft workers. Clinical analyses confirmed that the liver and gastrointestinal tract were the principal target organs affected by EDC exposure. Rosenbaum (1947) also reported that EDC exposures below 25 ppm (not further specified) caused functional nervous system disorders, including headache, insomnia, and fatigue, and also slowed the heartbeat rate in affected workers.

OSHA finds the evidence presented in these studies consistent, biologically plausible, and convincing. Although specific exposure levels and precise industrial hygiene measurements are not available for some of these studies, the weight of the evidence presented demonstrates that occupational exposures to EDC at levels of 10 ppm or somewhat higher (i.e., in the 14- to 15-ppm range) cause severe health effects in specific target organ systems (i.e., the liver and gastrointestinal tract). The symptoms and signs of EDC's effects have been confirmed both clinically (palpitation of enlarged livers, X-ray evidence of pyloric spasms) and by laboratory analysis (elevated urobilinogen levels, positive Takata-Ara liver function tests, negative glucose tolerance tests). Thus, OSHA finds that EDC's hepatotoxic and gastrointestinal effects clearly warrant a reduction in the PEL to levels substantially below the level (10 ppm) shown to cause toxic liver and other effects. In response to the CMA, OSHA agrees that EPA's ban has eliminated the fumigant exposures described in the Brzozowski et al. (1964/Ex. 1–63) study, which involved concomitant dermal exposures.

However, OSHA notes that the dermal LD_{50} in rabbits is in the range of 2.8 to 4.9 g/kg, indicating that EDC is not readily absorbed t hrough the skin in toxic quantities. OSHA therefore finds that, although dermal exposure undoubtedly contributed somewhat to the toxic effects seen in the workers in the Brzozowski et al. (1964/Ex. 1–63) study, airborne exposure was the predominant contributor to these effects.

Some commenters also took issue with OSHA's reference in the proposal to EDC's carcinogenicity. According to these commenters (Exs. 3–677, 3–741, and 3–674), because the NCI bioassay (1978d/Ex. 1–647) in mice and rats involved the use of corn oil as a vehicle, carcinogenic responses may have been enhanced. In addition, because EDC gavage produced greater amounts of the potentially genotoxic glutathione conjugate than did equivalent inhalation doses of EDC, these commenters believe that route of administration may play a critical role in the carcinogenicity of EDC, and thus, that occupational exposures, which are predominantly via inhalation, may not be carcinogenic.

OSHA is aware that inhalation bioassays of EDC did not produce a statistically significant increase in tumors in rats or mice. However, the NCI gavage study (1978d/Ex. 1–647) was positive in rats and mice, and intraperitoneal administration of EDC produced an elevated increase in lung adenomas in strain A mice (*Health Assessment Document (HAD) for 1,2-Dichloroethane (Ethylene Dichloride)*, EPA/600/8–84/006F, p. 1–5, EPA 1985a). Dermal application caused a statistically significant increase in benign lung tumors in mice, although this route did not cause a significant increase in skin tumors. EPA (1985a) concludes that the direct and supporting evidence for the carcinogenicity of EDC includes:

(1) Multiple tumor types in oral bioassays in two species;

(2) Suggestive evidence in two other animal bioassays;

(3) Demonstrated evidence of reactive metabolites and formation of a DNA adduct; and

(4) Evidence that EDC is also a mutagen (EPA 1985a, p. 1–5).

In posthearing comments, NIOSH (Ex. 150, Comments on Ethylene Dichloride) emphasized that the NCI bioassay (NCI 1978d/Ex. 1–647) demonstrated EDC-induced lung neoplasms and lymph system cancers in mice of both sexes, liver cancer in males, and mammary and uterine cancers in females. The AFL-CIO also emphasized EDC's carcinogenicity (Ex. 194). In rats, it produced cancers of the forestomach in males, mammary neoplasms in females, and hemangiosarcomas in animals of both sexes. NIOSH (Ex. 150, Comments on Ethylene Dichloride) concluded its comments by quoting the summary of the IARC (1979b, as cited in Ex. 150) monograph on EDC:

> There is sufficient evidence that ethylene dichloride is carcinogenic in mice and rats. In the absence of adequate data in humans, it is reasonable for practical purposes to regard ethylene dichloride as if it presented a carcinogenic risk to humans.

In regard to the technological feasibility of achieving a 1-ppm limit for EDC, the Chemical Manufacturers Association (CMA) states that

> uniform compliance with the proposed PEL will not be achieved. Manufacturing operations appear to be able to meet a 10-ppm, 8-hour TWA PEL for many routine operations. However, maintenance tasks, sampling, and loading operations will have difficulty meeting a 10-ppm PEL (Ex. 3–674, p. 3).

Both the Vinyl Institute (Ex. 3–624) and the Dow Chemical Company (Ex. 3–741) share the CMA's view on the feasibility of achieving the 1-ppm limit. However, OSHA notes that ethylene dichloride is manufactured and used in closed systems (Ex. 3–674) and that 90 percent of all EDC produced in this country is used captively by the producers themselves (84 percent of all EDC produced in the United States is used to make vinyl chloride monomer) (EPA 1985a, p. 1–1). Emissions from closed systems, which include fugitive emissions from process equipment such as pumps, seals, and flanges; emissions during process sampling; emissions during loading operations; and emissions during maintenance operations, are all readily amenable to control through the use of engineering methods or improved work practices. For example, implementation of a rigorous schedule of manual leak detection and repair, the use of sampling bombs or ventilated sampling ports, the use of loading arms for closed-hatch loading of EDC into railcars and tank trucks, installation of vapor return lines or vapor recovery systems on loading docks, and installation of improved maintenance procedures are all inexpensive and effective methods of controlling fugitive emissions from process machinery. In addition, because of the intermittent, nonroutine, and varied nature of maintenance operations, OSHA typically permits the use of respirators during the performance of maintenance tasks. OSHA is also cognizant of the potential for feasibility problems in loading and sampling operations. The Agency will consider the use of respirators for these operations on a case-by-case basis or, as appropriate, on a sector-by-sector basis. However, OSHA finds that EDC producers will generally be able to achieve the 1-ppm 8-hour TWA and the 2-ppm short-term limit by using readily available control technologies and implementing additional work practices.

The Agency concludes that an 8-hour TWA of 1 ppm and a 15-minute STEL of 2 ppm are necessary to protect workers against the significant risks of liver damage, gastrointestinal toxicity, and cancer, all material health impairments that are associated with exposure to ethylene dichloride. OSHA further concludes that the revised limits will substantially reduce these significant occupational risks.

HYDRAZINE

CAS: 302-01-2; Chemical Formula: H_2N-NH_2 H.S. No. 1205

The former OSHA limit for hydrazine was 1 ppm as an 8-hour TWA, with a skin notation. OSHA proposed an 8-hour TWA PEL of 0.1 ppm, also with a skin notation, and the final rule establishes this limit. Hydrazine is an odorless, fuming, oily liquid with an ammonia-like odor. Because of hydrazine's potential carcinogenic hazard, NIOSH (1978e/Ex. 1–263; Ex. 8–47) has recommended that workplace exposures to hydrazine not exceed 0.03 ppm, as determined by a two-hour air sample; this level represents the lowest detectable concentration over this sampling period.

A hepatotoxic response in mice and anemia and weight loss in dogs were reported to occur following a six-month exposure to 1 ppm of hydrazine for six hours per day, five days per week, or to 0.2 ppm continuously (Haun and Kinkead 1973/Ex. 1–824). The ACGIH has assigned an A2 designation (suspect human carcinogen) to hydrazine, based on a study by MacEwen, Vernot, and Haun (1979/Ex. 1–193) showing significant increases in nasal tumors in rats exposed to 1 or 5 ppm hydrazine, in thyroid adenocarcinomas in rats exposed to 5 ppm, and in lung adenomas among mice exposed to 1 ppm. NIOSH (1978e/Ex. 1–263) cites studies that demonstrate the carcinogenicity of hydrazine in rodents by a variety of dose routes. NIOSH (Ex. 8–47, Table N6B) believes that hydrazine should be labelled a potential occupational carcinogen. Based on sufficient evidence of hydrazine's carcinogenicity in animals, IARC (1987) classified hydrazine as a Group 2B (possible human) carcinogen.

The animal studies conducted by Haun and Kinkead (1973/Ex. 1–824) and by MacEwen, Vernot, and Haun (1979/

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Ex. 1–189) clearly demonstrate that exposure to hydrazine at the former 1-ppm PEL presents a significant risk of respiratory cancer, liver disease, and adverse blood effects; animals exposed to airborne concentrations at this level have exhibited all of these responses. Reported dermal LD_{50}s in rabbits and dogs were 91 and 90 mg/kg, respectively, showing that hydrazine can readily penetrate the skin and cause systemic effects.

Some commenters (Ex. 8–16, 104, Tr. 9–218; Tr. 3–309) misunderstood the classification scheme used by OSHA to group substances in the proposal and commented that, in their opinion, hydrazine should have been classified as a carcinogen rather than a hepatotoxin. However, as discussed in other sections of the preamble, OSHA did not intend this classification scheme to have regulatory implications but to facilitate generic rulemaking. OSHA's approach was to classify substances in accordance with the health effect on which the ACGIH has based its TLV. In response to the American Industrial Hygiene Association's question about a risk assessment for hydrazine, OSHA notes that, in this rulemaking, OSHA has performed risk assessments only for some of the substances classified in Section VI.C.15 of the preamble.

The Agency is establishing an 8-hour TWA PEL of 0.1 ppm, with a skin notation, for hydrazine. OSHA concludes that this limit will substantially reduce the significant risks of cancer, liver disease, and hematopoietic effects, all clearly material impairments of health, that have been demonstrated to occur in animals at exposures about the revised PEL.

METHYLCYCLOHEXANOL

CAS: 25639-42-3; Chemical Formula: $CH_3C_6H_{10}OH$
H.S. No. 1209

OSHA formerly had an 8-hour TWA limit of 100 ppm for methylcyclohexanol. The Agency proposed a limit of 50 ppm TWA for this substance, and is establishing this limit in the final rule. NIOSH (Ex. 8–47, Table N1) concurred with OSHA's proposed limits for methylcyclohexanol. Methylcyclohexanol is a colorless, viscous liquid with an aromatic odor, and usually exists as a mixture of isomers in which the meta and para forms predominate.

Exposure to methylcyclohexanol produces liver and kidney impairment, narcotic effects, and eye and respiratory irritation. Treon, Cruickfield, and Kitzmiller (1943a/Ex. 1–383) have reported the oral LD_{50} in rabbits to be between 1.25 and 2 g/kg; liver damage was observed in surviving animals. Repeated inhalation exposures to the vapor caused salivation, eye irritation, and lethargy in rabbits exposed at 500 ppm, but exposures to 230 ppm caused no observable effects. Fifty 6-hour exposures at a level of 120 ppm caused microscopic changes in the liver and kidney tissue of rabbits (Treon, Crutchfield, and Kitzmiller 1943b/Ex. 1–394).

In humans, headaches and eye and respiratory irritation have been reported to occur following prolonged exposures to high concentrations of methylcyclohexanol (Fillipi 1914, as cited in ACGIH 1986/Ex. 1–3, p. 385). Smyth (1956/Ex. 1–788) considered an exposure limit of 100 ppm to be sufficiently low to prevent narcotic effects and, perhaps, significant liver or kidney damage. OSHA received no comments (other than NIOSH's) on this substance.

The Agency is establishing an 8-hour TWA of 50 ppm for methylcyclohexanol. OSHA concludes that this limit will protect workers against the significant risks of hepatic and renal damage and narcosis, which constitute material health impairments and are associated with exposures to this substance at levels above the revised PEL. The Agency finds that the revised limit will substantially reduce these risks.

OCTACHLORONAPHTHALENE

CAS: 2234-13-1; Chemical Formula: $C_{10}Cl_8$
H.S. No. 1296

OSHA formerly had a limit of 0.1 mg/m³ TWA, with a skin notation, for octachloronaphthalene. The Agency proposed to retain the 8-hour TWA and to add a STEL of 0.3 mg/m³, also with a skin notation, for this substance, and NIOSH (Ex. 8–47, Table N1) concurred. These limits are established in the final rule. Octachloronaphthalene is a nonflammable, pale yellow, waxy solid containing 70 percent chlorine.

Inhalation toxicity data for octachloronaphthalene fumes or dust are lacking, but exposure to the chloronaphthalenes causes acne-like lesions that itch severly. Repeated exposures to the fumes of molten chlorinated naphthalenes can cause severe and sometimes fatal systemic poisoning and are especially damaging to the liver (Patty 1963g/Ex. 1–965). Ingestion studies of cattle have shown different toxicities for different naphthalenes, with toxicity increasing with the compound's degree of chlorination (Sikes, Wise, and Bridges 1962/Ex. 1–804). However, these data are controverted by another report in which octachloronaphthalene was found to be less toxic than the hexachloro derivative (Bell 1953/Ex. 1–951). This divergence in the data may be due to differing methods of administration (suspension versus solution), or may reflect the soluble form's greater capacity for absorption (ACGIH 1986/Ex. 1–3, p. 447). NIOSH was the only submitter of comments specifically relating to octachloronaphthalene.

In the final rule, OSHA is retaining the 8-hour TWA PEL of 0.1 mg/m³ and adding a STEL of 0.3 mg/m³, with a skin notation, for octachloronaphthalene. The Agency concludes that this combined limit will protect workers against the significant risks of serious liver damage and dermal lesions, which constitute material health impairments and are associated with exposure to this substance at the elevated levels permitted by an 8-hour limit alone. The skin notation is retained because of octachloronaphthalene's demonstrated ability to cause systemic toxicity by percutaneous absorption.

PROPYLENE DICHLORIDE

CAS: 78-87-5; Chemical Formula: $CH_3CHClCH_2Cl$
H.S. No. 1341

OSHA's former limit for propylene dichloride was 75 ppm as an 8-hour TWA. The proposal retained the 75-ppm TWA and added a STEL of 110 ppm, and these are the limits being promulgated in the final rule. Propylene dichloride is a colorless, flammable, mobile liquid with an odor like that of chloroform.

The primary hazards associated with exposure to propylene dichloride are inhalation-induced toxicity to liver tissue and skin and eye irritation. Repeated inhalation exposures to 1000 ppm have been reported to kill dogs (after 24 exposures), guinea pigs (after 22 exposures), and rats (in some cases after only seven exposures); however, some animals survived more than 100 seven-hour exposures. Necropsy showed severe liver damage; the hepatotoxicity of propylene dichloride appears to be greater than that of carbon tetrachloride and less than that of ethylene dichloride (Heppel, Neal, Highman, and Porterfield 1946/Ex. 1–510). Animals of these same species (rats, dogs, and guinea pigs) survived 128 to 140 seven-hour exposures to 400 ppm propylene dichloride for five days/week without histologic effects, while mice died from similar exposures; surviving mice displayed hepatomas (Heppel, Highman, and Peake 1948/Ex. 1–605). The oral LD_{50} for rats has been reported as 1.19 ml/kg (Smyth, Carpenter, Weil et al. 1969/Ex. 1–442); the acute 8-hour

inhalation LC_{50} for rats is 3000 ppm (Pozzani, Weil, and Carpenter 1959/Ex. 1–608). NIOSH (Ex. 150A, Comments on Propylene Dichloride) noted that an NTP (1986c) bioassay showed some evidence that propylene dichloride was carcinogenic in mice and caused an increased incidence of hepatocellular adenomas; NIOSH indicated (Ex. 8–47, Table N6B) that a separate 6(b) rulemaking might be appropriate for this substance. The finding of tumors was not reproduced in rats, in that female rats showed only a marginally increased incidence of mammary adenocarcinomas, and male rats showed no response. NIOSH was the only commenter on propylene dichloride.

In the final rule, OSHA is retaining the 8-hour TWA PEL for propylene dichloride of 75 ppm and adding a 15-minute STEL of 110 ppm. The Agency concludes that this combined limit will protect workers against the significant risks of serious hepatotoxic effects, which constitute material impairments of health, that are associated with exposures at the elevated levels permitted by the absence of a short-term limit. OSHA finds that the TWA and short-term PELs will act together to reduce this risk substantially.

1,1,2,2-TETRACHLOROETHANE

CAS: 79-34-5; Chemical Formula: $CHCl_2CHCl_2$
H.S. No. 1365

OSHA's former PEL for 1,1,2,2-tetrachloroethane was 5 ppm as an 8-hour TWA, with a skin notation; a 1-ppm 8-hour TWA, also with a skin notation, was the level proposed by OSHA. NIOSH considers 1,1,2,2-tetrachloroethane to be a potential carcinogen but concurred with the limit proposed (Ex. 8–47, Table N6A). The final rule establishes a PEL of 1 ppm TWA and retains the skin notation for this colorless, nonflammable, heavy, mobile liquid with a sweet, chloroform-like odor.

One study by Jeney, Bartha, Kondor, and Szendrei (1957, as cited in ACGIH 1986/Ex. 1–3, p. 561) revealed identifiably adverse effects on the liver, including hepatitis, in humans exposed to concentrations of tetrachloroethane ranging from 1.5 to 247 ppm; liver damage was still evident after exposures were reduced to 15 ppm. An animal study by Schmidt, Binnewies, Gohlke, and Rothe (1972/Ex. 1–222) found "barely detectable" fatty infiltration of the liver in rats exposed to 2 ppm tetrachloroethane for 11 months.

The ACGIH (1986/Ex. 1–3, p. 561) cites some early studies that show that tetrachloroethane penetrates human skin; one fatality has been attributed to excess skin absorption. The New Jersey Department of Public Health (Ex. 144) urged OSHA to set the PEL for this substance on the basis of EPA's IRIS data. The use of IRIS data is discussed in Section VI.A.

Based on this evidence, OSHA concludes that the former permissible exposure limit does not protect exposed workers against fatty infiltration of the liver or against more serious liver damage; these health consequences clearly constitute material health impairments and thus pose a significant occupational risk. OSHA finds that reducing the 8-hour TWA for 1,1,2,2-tetrachloroethane to 1 ppm will substantially reduce this significant risk, and in the final rule, OSHA is therefore establishing a 1 ppm 8-hour TWA, with a skin notation, for 1,1,2,2-tetrachloroethane.

1,2,3-TRICHLOROPROPANE

CAS: 96-18-4; Chemical Formula: $CH_2ClCHClCH_2Cl$
H.S. No. 1407

OSHA's former PEL for 1,2,3-trichloropropane was 50 ppm as an 8-hour TWA, and the proposed limit was a 10 ppm TWA with a skin notation. NIOSH (Ex. 8–47, Table N6A) concurred with the proposed limit but indicated that it considers this substance to be a potential human carcinogen. The final rule establishes the 10 ppm TWA but does not include a skin notation. 1,2,3-Trichloropropane is a colorless to straw-colored, combustible liquid with an odor similar to that of chloroform.

1,2,3-Trichloropropane is not irritating to intact skin; it is also not readily absorbed through the skin. The dermal LD_{50} in rabbits is 1770 mg/kg (*Dangerous Properties of Industrial Materials*, 7th ed., p. 173, Sax and Lewis 1989). However, 1,2,3-trichloropropane is highly irritating to the eyes (Smyth, Carpenter, Weil et al. 1962/Ex. 1–441). Five of six rats exposed to 1000 ppm died after four-hour exposures. Rats and guinea pigs exposed at 800, 2100, or 5000 ppm for 30 minutes showed central nervous system depression, which progressed, at the higher exposure levels, to narcosis and convulsions (Lewis 1979, as cited in ACGIH 1986/Ex. 1–3, p. 601). Several mice exposed for 20 minutes to 5000 ppm died, some as long as several days later, from liver damage. Daily 10-minute exposures at 2500 ppm for 10 days killed 7 of 10 mice (McOmie and Barnes 1949, as cited in ACGIH 1986/Ex. 1–3, p. 601). Animals exposed once for four hours to 1,2,3-trichloropropane at concentrations of 125, 340, 700, or 2150 ppm showed dose-related signs of irritation, which included, at 700 or 2150 ppm, labored respiration, inactivity, and eye and nose irritation; at autopsy, however, no organ or other damage was apparent (McOmie and Barnes 1949, as cited in ACGIH 1986/Ex. 1–3, p. 601).

Drew, Patel, and Lin (1978/Ex. 1–313) noted changes in liver enzymes after a single four-hour exposure to 500 ppm, and Russian studies indicate that morphologic changes and metabolic lesions of the liver, kidney, and lungs occurred in mice exposed continuously to 1,2,3-trichloropropane concentrations of 0.007 to 0.3 ppm (Sidorenko, Tsulaya, Bonashevskaya, and Shaipak 1979/Ex. 1–669; Sidorenko, Tsulaya, Koreneveskaya, and Bonashevskaya 1976/Ex. 1–668; Tsulaya, Bonashevskaya, Zykova et al. 1977/Ex. 1–450.

A National Toxicology Program (NTP) prechronic study, in which rats were gavaged daily with 1,2,3-trichloropropane at 8, 16, 32, 63, 125, and 250 mg/kg body weight for 120 days, showed good survival in all but the highest dose group (NTP 1983a, as cited in ACGIH 1986/Ex. 1–3, p. 602). Statistically significant changes in the liver and kidneys, as well as necrosis and irritation of the nasal passages, occurred in the 63- and 125-mg/kg dose groups. Decreases in red blood cell counts and hematocrits were also seen, even in the 16-mg/kg dose group. 1,2,3-Trichloropropane did not affect testicular weight, sperm count, or morphology. The NTP found this substance to be genetically active in three bioassays. Hardin, Bond, Sikov et al. (1981/Ex. 1–699) did not find 1,2,3-trichloropropane to be fetotoxic or teratogenic.

Human volunteers found exposure to 1,2,3-trichloropropane objectionable because of eye and upper respiratory tract irritation, and many found 50 ppm an unacceptable level for a full-shift exposure (Silverman, Schulte, and First 1946/Ex. 1–142).

The Agency has determined that 1,2,3-trichloropropane's dermal toxicity is not such as to warrant a skin notation; OSHA's reasoning in regard to skin notations is discussed in Section VI.C.16 of this preamble.

In the final rule, OSHA is establishing a 8-hour PEL of 10 ppm for 1,2,3-trichloropropane. The Agency concludes that the 10-ppm 8-hour TWA limit is necessary to protect workers against the significant risks of liver and kidney damage and eye and throat irritation, all of which constitute material health impairments that are potentially associated with exposures to this

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substance at levels above the revised PEL.

Kidney Toxicity

Introduction

Kidney damage is the basis for revising the PELs for five of the compounds in this group. These compounds, their CAS and HS numbers, and their former, proposed, and final rule PELs, are shown in Table C4–2. Three of these substances will be regulated by OSHA for the first time, and in the other two cases, the 8-hour TWA will be reduced. In one of the latter cases, a STEL will also be added.

Description of the Health Effects

The precise mechanism by which these chemicals damage the kidneys is unknown. Typically, these compounds are selectively toxic to cells in the renal tubules, perhaps because impaired transport causes the chemical to collect in these cells. In addition to its function in the excretion of wastes, the kidney plays an important role in the regulation of total body homeostasis. This organ regulates extracellular volume, controls electrolyte and acid-base balance, and forms several hormones that control systemic metabolism. Depending on their particular site of action, nephrotoxicants can interfere with hydration, the proper excretion of the body's wastes, electrolytic balance, metabolism, or the maintenance of correct acid-base balances.

Like the hepatotoxic effects previously described, the least severe lesions caused by nephrotoxic compounds are graded and reversible. The earliest changes are usually alterations in the activities of specific enzymes in the tubular cells. These changes may be accompanied by minor morphological alterations of the cells that are visible only with an electron microscope. Higher doses or more sustained exposures are required to cause cellular necrosis that might be visible with light microscopy. Because of the reserve capacity of the kidneys, a significant degree of tubular cell necrosis must occur before it is reflected by measurable alterations in kidney function. Thus, indicators of impaired renal function that can be measured in humans, such as proteinuria, glucosuria, and increased BUN, are relatively insensitive indicators of kidney damage. Other indicators of significant kidney damage include increased kidney weight, swelling of the tubular epithelium, fatty degeneration of tubular epithelium, and the presence of tubular casts in the urine.

Dose-Response Characteristics

Kidney damage, like liver damage, is progressive; only at the earlier stages are nephrotoxic effects reversible. With continued exposure, the damage becomes more extensive, until it reaches the point at which it cannot be repaired. The toxicity of the kidney-damaging chemicals included in this group also increases as dose increases. For most nephrotoxins, there appears to be a NOEL. Workplace exposures to concentrations of these substances at levels at or below the revised limits are unlikely to cause kidney effects in most workers. OSHA has determined that the nephrotoxic risks being protected against are significant at the former PELs; kidney damage constitutes a material health impairment within the meaning of the Act.

1,3-DICHLOROPROPENE

CAS: 542-75-6; CHEMICAL FORMULA: $CHCl=CH-CH_2Cl$
H.S. No. 1128

OSHA formerly had no limit for 1,3-dichloropropene. The Agency proposed an 8-hour TWA of 1 ppm, with a skin notation, for this straw-colored, clear liquid with a chloroform-like odor. NIOSH (Ex. 8–47, Table N8A) concurred with the proposed limit, which is established in the final rule. This compound occurs in two forms: cis- and trans-isomers.

In male and female rats, the acute oral LD_{50} for a 92-percent mixture of the cis- and trans-isomers of 1,3-dichloropropene were 713 and 470 mg/kg, respectively; postmortem examination showed liver and kidney damage and evidence of possible lung injury (Torkelson and Oyen 1977/Ex. 1–532). The dermal LD_{50} in rabbits for a 92-percent undiluted mixture was 504 mg/kg, but a 10-percent solution administered by gavage at a dose of 125 or 250 mg/kg was lethal to some of the animals (Torkelson and Oyen 1977/Ex. 1–532). Contact with the liquid was irritating to the eyes and skin of rabbits (Torkelson and Oyen 1977/Ex. 1–532).

Inhalation exposures to 1,3-dichloropropene vapor concentrations above 2700 ppm produced eye and nasal irritation and severe lung, nasal, kidney, and liver damage in rats (Torkelson and Oyen 1977/Ex. 1–532). Exposure to 1000 ppm caused eye and nasal irritation, lacrimation, and, if prolonged, unconsciousness; rats exposed to 1000 ppm for two hours died, but those exposed for one hour survived (Torkelson and Oyen 1977/Ex. 1–532). Guinea pigs exposed to 400 ppm for a single seven-hour period died, while rats exposed similarly survived but had obvious lung congestion (Torkelson and Oyen 1977/Ex. 1–532). Rats, rabbits, guinea pigs, and dogs were exposed seven hours/day, five days/week for six months to 1-ppm or 3-ppm concentrations of 1,3-dichloropropene (Torkelson and Oyen 1977/Ex. 1–532). No adverse effects were observed in any of the animals exposed at 1 ppm. Of the animals exposed at 3 ppm, only male rats showed adverse effects; these animals had reversible cloudy swelling of the renal tubular epithelium (Torkelson and Oyen 1977/Ex. 1–532).

In humans, acute exposures to 1,3-dichloropropene cause skin, eye, and respiratory irritation (Torkelson and Oyen 1977/Ex. 1–532). There are no data on the effects in humans of chronic exposure to this substance. NIOSH (Ex. 8–47, Table N8A; Tr. 3–96 to 3–97) concurs with the limits being established by OSHA but notes that 1,3-dichloropropene could be classified as a potential occupational carcinogen. The New Jersey Department of Public Health urged OSHA to derive a PEL for this substance based on EPA's IRIS data. The use of such data is discussed in Section VI.A.

OSHA is establishing an 8-hour TWA limit of 1 ppm, with a skin notation, for 1,3-dichloropropene. The Agency concludes that this limit will protect workers against the significant risks of eye and mucous membrane irritation and lung, kidney, and liver damage, all of which constitute material health impairments that are associated with exposure to this substance. A skin notation is established to protect against 1,3-dichloropropene's ability to cause systemic toxicity when absorbed through the skin.

DICYCLOPENTADIENE

CAS: 77–73–6; Chemical Formula: $C_{10}H_{12}$
H.S. No. 1132

OSHA had no former limit for dicyclopentadiene (DCPD); the proposed limit was a TWA of 5 ppm, and NIOSH (Ex. 8–47, Table N1) concurred with this limit. The final rule establishes a 5-ppm 8-hour TWA PEL for this substance, which is consistent with the ACGIH's limit. DCPD is a solid at room temperature and has a disagreeable odor.

The health effects associated with exposure to DCPD include mild eye, skin, and respiratory irritation, as well as renal damage and possible pulmonary damage. By the oral and intrapertioneal routes, DCPD is extremely toxic, with an oral LD_{50} value of 0.35 ml/kg and an intrapertioneal LD_{50} value of 0.31 ml/kg in rats; rat fatalities occurred within 60 minutes of exposure to an unspecified

concentration of the saturated vapor (Kinkead, Pozzani, Geary, and Carpenter 1971/Ex. 1–606). However, Gage (1970/Ex. 1–508) regards approximately 680 ppm as the 4-hour LC_{50} in rats and reports that 10 six-hour daily exposures to DCPD at a concentration of 250 ppm were survived only by three of four rats; when the animals were subjected to a concentration of 100 ppm for 15 similar exposures, all survived (Gage 1970/Ex. 1–318). Although other species were less susceptible than mice to the effects of DCPD exposure, they exhibited eye irritation, incoordination, and convulsions preceding death (Kinkead, Pozzani, Geary, and Carpenter 1971/Ex. 1–606).

Kinkead and associates (1971/Ex. 1–606) report that rats exposed repeatedly for 10 days survived concentrations of 72 or 146 ppm but succumbed at the 332-ppm level, with convulsions, lung hemorrhage, and blood in the intestines; female rats also suffered hemorrhage of the thymus. Mice similarly exposed succumbed at all three concentration levels (Kinkead, Pozzani, Geary, and Carpenter 1971/Ex. 1–606). Chronic exposures of seven hours/day for 89 days produced kidney damage and some pulmonary effects in rats exposed at levels of 35 and 74 ppm; the no-effect level for these endpoints in rats was determined to be below 19.7 ppm. Dogs exposed at concentrations of 9, 23, or 32 ppm on the same regimen exhibited only minimal effects (Kinkead, Pozzani, Geary, and Carpenter 1971/Ex. 1–606).

Human sensory response tests resulted in findings of mild eye and throat irritation within seven minutes' exposure to 1 ppm DCPD vapor, and of olfactory fatigue within 24 minutes; a 30-minute exposure to 5.5 ppm produced no olfactory fatigue (ACGIH 1986/Ex. 1–3, p 194). Subjective complaints of headache during the first two months of occupational exposure disappeared during the following three months of exposure, suggesting a developed tolerance for this substance (ACGIH 1986/Ex. 1–3, p. 194). No comments (other than NIOSH's) on this substance were received.

OSHA is establishing an 8-hour TWA PEL of 5 ppm TWA for dicyclopentadiene. The Agency concludes that this limit will protect workers against the significant risks of kidney injury, pulmonary effects, and irritation, which constitute material health impairments that are associated with workplace exposure to DCPD at levels above the new PEL.

ETHYL SILICATE

CAS: 78-10-4 Chemical Formula: $Si(OC_2H_5)_4$
H.S. No. 1166

OSHA's former permissible exposure limit for ethyl silicate was 100 ppm as an 8-hour TWA. The proposal included a limit of 10 ppm TWA for this colorless, flammable liquid with a faint odor; NIOSH (Ex. 8–47, Table N1) agreed with the selection of this limit. In the final rule, a PEL of 10 ppm is established for ethyl silicate; this limit is consistent with that of the ACGIH.

Ethyl silicate has been reported to cause both irritation and systemic toxicity. In guinea pigs and rats, a 60-minute exposure of 2000 ppm was reported as the maximal duration/concentration that did not cause serious disturbances; 500 ppm was the maximal no-effect exposure level for an exposure of several hours' duration (Smyth and Seaton 1940b/Ex. 1–376). Thirty-day exposures to 400 ppm ethyl silicate for seven hours/day caused significant mortality in rats and damage to the lungs, liver, and kidney in the surviving animals. Exposures of rats, guinea pigs, and mice to 88, 50, or 23 ppm for 90 days (seven hours/day, five days/week) resulted only in decreased kidney weights in mice exposed at the 88-ppm level (Pozzani and Carpenter 1951/Ex. 1–166). In another study, Kasper, McCord, and Fredrick (1937/Ex. 1–1155) showed that animals exposed to 164 ppm ethyl silicate for 17 eight-hour days showed less weight gain than did controls. Rowe and associates (1940/Ex. 1–359) reported that three 7-hour exposures at 1000 ppm were fatal to 4 of 10 rats; similar exposures to 500 ppm caused pronounced kidney changes and slight lung irritation. Four to 10 similar exposures at 250 ppm caused slow weight loss and some lung and renal changes; at 125 ppm, slight to moderate kidney damage was observed (Rowe, Spencer, and Bass 1948/Ex. 1–359). Smyth and Seaton (1940b/Ex. 1–376) reported that exposure to a concentration of 1200 ppm causes lacrimation in humans and that 250 ppm causes eye and nose irritation. Only NIOSH submitted comments to the rulemaking record on ethyl silicate.

OSHA is establishing a PEL for ethyl silicate of 10 ppm as an 8-hour TWA. The Agency concludes that this limit is required to protect workers from the significant risk of renal damage, which constitutes material health impairment, that is associated with exposures to this substance at concentrations above the revised PEL. OSHA finds that this reduced limit will substantially reduce this risk.

HEXACHLOROBUTADIENE

CAS: 87–68–3; Chemical Formula: $CCl_2=CCl-CCl=CCl_2$
H.S. No. 1195

OSHA had no former limit for hexachlorobutadiene (HCBD); the proposal included a PEL of 0.02 ppm and a skin notation for this substance. NIOSH (Ex. 8–47, Table N8A) supported the selection of this limit. the ACGIH recommends a TLV–TWA of 0.02 ppm with a skin notation and classifies this substance as a suspected human carcinogen (A2). The final rule establishes an 8-hour TWA of 0.02 ppm but does not include a skin notation. Hexachlorobutadiene is a heavy, clear liquid.

Hexachlorobutadiene has a moderate-to-high acute oral toxicity. The LD_{50}s reported for mice, rats, and guinea pigs are 87, 350, and 90 mg/kg, respectively (Murzakev 1963, as cited in ACGIH 1986/Ex. 1–3, p. 298). Gul'ko and co-workers (1964/Ex/ 1–1062) reported LD_{50} values of 116 mg/kg for mice and 270 mg/kg for rats (Gul'ko, Zimina, and Shroit 1964/Ex. 1–1062). The dermal LD_{50} in rabbits is 1211 kg/mg *Dangerous Properties of Industrial Materials*, 6th ed., p. 2145, Sax 1984). A single exposure of 133 to 150 ppm via inhalation has been fatal in rats when the exposure lasts for four to seven hours. All rats survived exposures at 161 ppm for 0.58 hour or 34 ppm for 3.3 hours; similar exposure of guinea pigs and cats to the same concentrations resulted in the death of most animals (Kociba, Schwetz, Keyes et al. 1977/Ex. 1–484). Another inhalation study in rats showed eye and nose irritation, respiratory difficulty, and damage to kidney tissue and the adrenal cortex after two 4-hour exposures at 250 ppm; twelve 6-hour exposures to 100 ppm caused eye and nose irritation, respiratory difficulty, weight loss, anemia in the female animals, and kidney and adrenal damage; fifteen 6-hour exposures at 25 ppm caused retarded weight gain in females, respiratory difficulty, and kidney damage; fifteen 6-hour exposures at 10 ppm caused retarded weight gain in females but no systemic injury; and fifteen 6-hour exposures at 5 ppm resulted in no adverse effects (Gage 1970/Ex. 1–318).

Reproductive studies in male and female rats demonstrated multiple toxicological effects, including kidney damage in both sexes and increased liver weight in males, at the high-dose level of 20 mg/kg/day. Dietary administration of 20, 2, or 0.2 mg/kg daily had no effect on conception percentages, gestational survival, neonatal survival, neonatal sex ratios, neonatal morphology, or neonatal body weights (except for the high-dose

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neonates) (Schwetz, Smith, Humiston et al. 1977/Ex. 1–366). Results of lifetime dietary studies suggest that the no-effect level for hexachlorobutadiene in rats is 0.2 mg/kg/day, that a clear dose-response relationship exists for HCBD-induced toxicity affecting primarily the kidney, and that carcinogenic effects (i.e., renal neoplasms) result from ingestion of 20 mg/kg/day (Kociba, Schwetz, Keyes et al. 1977/Ex. 1–494). These authors also reported that HCBD-induced neoplasms occur only at HCBD doses higher than those causing discernible renal injury. The ACGIH states that "HCBD would seem to qualify as a carcinogen of intermediate potency" (ACGIH 1988/Ex. 1–3, p. 299). NIOSH (Ex. 8–47, Table N6A) concurs with the limit being established by OSHA and notes that this substance could be classified as a potential occupational carcinogen.

OSHA is not including a skin notation in the final rule. This decision is based on the Agency's policy in the matter of skin notations (see Section VI.C.18 of the preamble for a discussion of this issue). OSHA is establishing an 8-hour TWA limit of 0.02 ppm for this hazardous substance. Assuming a 10-m^3 per day breathing volume per 8-hour workshift and a 70-kg body weight for humans, this limit corresponds to a daily hexachlorobutadiene intake of approximately 0.03 mg/kg, which is about 10 times below the observed no-effect level in rats fed hexachlorobutadiene. The Agency concludes that this 0.02-ppm limit will protect workers exposed to HCBD from the significant risks of kidney damage; eye, skin, and pulmonary irritation; and renal neoplasms, all of which constitute material health impairments that are associated with exposure to HCBD at levels above the new limit.

HEXONE (METHYL ISOBUTYL KETONE)

CAS: 108-10-1; Chemical Formula: $CH_3COCH_2CH(CH_3)_2$
H.S. No. 1203

OSHA's former 8-hour TWA limit for hexone (methyl isobutyl ketone), or MIBK, was 100 ppm. The ACGIH has established a TLV-TWA of 50 ppm and a 15-minute STEL of 75 ppm for this substance. NIOSH recommends a TWA of 50 ppm for MIBK, which is a clear liquid with a characteristic ketone odor. OSHA proposed a 50-ppm 8-hour TWA and a 75-ppm STEL, and the final rule establishes these limits. NIOSH (Ex. 8–47, Table N1) concurred with the Agency's selection of these limits.

A four-hour exposure to 4000 ppm MIBK killed all exposed rats, but a similar exposure to 2000 ppm was not fatal to these animals (Smyth, Carpenter, and Weil 1951/Ex. 1–430). Guinea pigs exposed to a MIBK concentration of 10,000 ppm immediately showed signs of irritation (Specht, Miller, Valaer, and Sayers 1940/Ex. 1–1170).

MacEwen, Vernot, and Haun (1971/Ex. 1–194) exposed rats, mice, dogs, and monkeys to 100 or 200 ppm MIBK for two weeks and noted no signs of intoxication; however, rats exposed to 100 ppm had heavier kidneys and higher kidney-to-body-weight ratios, and, at 200 ppm, livers were heavier as well. Postmortem examination revealed nephrosis of the proximal tubules.

The same authors (MacEwen, Vernot, and Haun 1971/Ex. 1–194), exposed rhesus monkeys, dogs, and rats continuously for 90 days to MIBK concentrations of 100 ppm. These authors observed no significant changes in clinical chemistry or blood test results, although the rats had heavier kidneys and livers, reversible hyaline droplet degeneration of the proximal tubules of the kidneys, and some necrosis of the tubules.

Silverman, Schulte, and First (1946/Ex. 1–142) determined that the maximum dose of MIBK tolerable to human volunteers for eight hours was 100 ppm; at 200 ppm, these subjects found the odor of MIBK objectionable and the vapor irritating. Linari and co-workers (1964/Ex. 1–1150) reported that more than half of all workers exposed to 500 ppm of MIBK for 20 to 30 minutes daily, and perhaps to 80 ppm for the remainder of the shift, experienced weakness, loss of appetite, headache, burning eyes, nausea, vomiting, and sore throat; several of these workers also reported insomnia, somnolence, heartburn, and intestinal pain. Some workers had enlarged livers and others had colitis. Clinical test results on these workers were normal (Linari, Perrelli, and Varese 1964/Ex. 1–1159).

In a follow-up study on this same group of centrifuge operation workers; Armeli and co-workers (1968/Ex. 1–1028) determined that reduction of MIBK levels (during the 15 to 30 minutes of centrifuge operation) to 100 to 105 ppm, and (for the remainder of the shift) to 50 ppm had also significantly reduced the symptomatology reported earlier by these workers. However, liver enlargement persisted in two workers, and a few workers continued to report gastrointestinal and nervous system effects (Armeli, Linari, and Martorano 1968/Ex. 1–1028).

Elkins (1959/Ex. 1–734) noted that exposure to 100 ppm during boot-waterproofing operations caused workers to develop headache and nausea; another similarly exposed group experienced only irritation at 100 ppm.

The AFL–CIO (Ex. 194) commented on MIBK. The AFL–CIO supports the limits OSHA has established for this substance in the final rule.

In the final rule, OSHA is establishing an 8-hour TWA of 50 ppm and a 15-minute STEL of 75 ppm for hexone. The Agency concludes that these limits will work together to protect workers from the significant risks of headache, nausea, and irritation, as well as the potential kidney and liver effects that constitute material health impairments that are associated with exposures to hexone above the revised PELs.

Conclusion for Both Liver and Kidney Toxins

The health effects associated with occupational exposures to the hepato- and nephrotoxins shown in Tables C4–1 and C4–2 can be acute or chronic, reversible or irreversible, temporarily disabling or threatening to life. Workers experiencing chemically induced hepatotoxic or nephrotoxic effects may have enlarged livers, high blood pressure, hormonal imbalances, and/or organ necrosis, all of which constitute material impairments of health or functional capacity within the meaning of the Act. In addition, exposure to the substances in this grouping is associated with a host of other adverse health effects, ranging from pulmonary irritation to cancer, and OSHA concludes that the new or revised limits will substantially reduce the risk of these effects as well.

5. Substances for Which Limits Are Based on Avoidance of Ocular Effects

Introduction

Five of the chemicals for which OSHA is establishing limits have the potential to cause serious ocular effects in the workplace setting. Certain chemicals in this group are also sensory irritants and have been classified separately from the other irritants only because of their ability to cause permanent damage to the corneas, lenses, or optic nerves of exposed individuals.

Table C5–1 lists these five chemicals, along with OSHA's former, proposed, and final rule PELs, and each chemical's CAS number and HS number. For N-ethyl morpholine, the former 8-hour TWA of 20 ppm has been reduced to 5 ppm; the skin notation has been retained. For methyl alcohol and naphthalene, OSHA has retained its former 8-hour TWA and added a STEL (in the case of methyl alcohol, a skin notation has been added as well). For methyl silicate, the Agency has promulgated a new 8-hour PEL, while for hydrogen sulfide, the former STEL of 20 ppm and ceiling of 50 ppm have been replaced with a 10-ppm 8-hour TWA, supplemented by a 15-ppm short-term exposure limit.

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Table C5-1. Substances for Which Limits Are Based on Avoidance of Ocular Effects

H.S. Number/ Chemical Name	CAS No.	Former OSHA PEL	Proposed PEL	Final Rule PEL*
1172 N-Ethylmorpholine	100-74-3	20 ppm TWA, Skin	5 ppm TWA, Skin	5 ppm TWA, Skin
1209 Hydrogen sulfide	7783-06-4	20 ppm STEL 50 ppm Ceiling	10 ppm TWA 15 ppm STEL	10 ppm TWA 15 ppm STEL
1252 Methyl alcohol	67-56-1	200 ppm TWA	200 ppm TWA 250 ppm STEL, Skin	200 ppm TWA 250 ppm STEL, Skin
1266 Methyl silicate	681-84-5	--	1 ppm TWA	1 ppm TWA
1282 Naphthalene	91-20-3	10 ppm TWA	10 ppm TWA 15 ppm STEL	10 ppm TWA 15 ppm STEL

* OSHA's TWA limits are for 8-hour exposures, its STELs are for 15 minutes unless otherwise specified, and its ceilings are peaks not to be exceeded for any period of time.

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Description of the Health Effects

Damage to the eye caused by exposure to the chemicals in this group can occur in the form of corneal, lens, retinal, ganglion cell layer, or optic nerve effects. Depending on the severity of the exposure, individual susceptibility, and the particular chemical and circumstances involved, this damage may be transient, temporarily disabling, or permanently blinding.

Corneal effects. The cornea and conjunctiva are the outer surfaces of the eye and are thus directly exposed to external insults. Since the cornea must maintain transparency to remain functional, scar formation after injury to the cornea can destroy visual function completely. Recent evidence suggests that the transparency of the cornea is maintained by thin inner and outer boundary layers and that the death of these layers leads to loss of transparency (Potts 1986/Ex. 1–174). The corneal epithelium (outer layer) sometimes regenerates, depending on the depth of the burn or insult and the nature of the toxicant.

Some chemicals, including methyl silicate, produce painful corneal epithelial injuries that have a delayed symptom onset. These substances can continue to cause pain and loss of corneal epithelial cells for several hours after exposure. Typically, there is no discomfort during the actual exposure, but several hours later, the eyes begin to burn, vision blurs, and conjunctival hyperemia, tearing, photophobia, and squinting occur (Grant 1988/Ex. 1–975). Possible mechanisms of action are enzyme inhibition, denaturing of other proteins, alteration of the DNA, and interference with the mitotic process; after a period of exposure, the affected cells die. Although the damaged epithelium sometimes regenerates after this type of injury, the damage can also involve the corneal stroma and endothelium, leading to scarring, vascularization, opacity, and loss of vision. The poor warning properties characteristic of these substances (i.e., their failure to cause an immediate response) make the establishment of protective exposure limits particularly important.

Exposure to the vapors of some of the substances in this group produces painless edema of the corneal epithelium, which can be accompanied by the delayed onset of visual haloes. A chemical that produces these effects is N-ethylmorpholine, a catalyst used to manufacture urethane foam. Painless edema generally occurs in workers who have been exposed for several hours to levels that do not produce discomfort during the exposure itself. The visual effect produced by such exposures consists of the appearance of colored haloes around lights, an effect that is caused by the diffraction of light through the swollen epithelial cells of the eye. Visual haloes are severely distracting and restrict activity substantially, and the mechanism underlying this effect is not well understood (Grant 1988/Ex. 1–975).

Lens effects. The lens is a transparent, avascular tissue surrounded by a thin, collagenous capsule. The major portion of the lens is composed of long, thin fibers that form closely packed, onion-like layers. Transparency is dependent on several factors: a highly ordered cellular arrangement; fiber size, shape, and uniformity; molecular structure; and regularity of fiber packing (Potts 1986/Ex. 1–174). Interference with lens metabolism, with transport across cell boundaries, or with the integrity of the lens capsule itself can cause a loss of lens transparency and lead to decreased visual acuity (Potts 1986/Ex. 1–174). All such changes in lens transparency are referred to as cataracts.

Retinal effects. The retina is a compact neural structure that is responsible for converting the ocular light image to neural impulses. Because the retina is an internal structure, it is not generally affected by exposure to dust, splashes of liquids, or vapors. However, exposure to certain internally absorbed substances, such as methyl alcohol, may cause changes or lesions in the retina, including retinal edema or hemorrhage. Exposure to a few of these substances can cause acute narrowing of the retinal arteries themselves, which can lead, in turn, to damage of the optic nerve and loss of vision.

Effects on ganglion cell layer and optic nerve. Below the retinal surface layer lies the ganglion cell layer, which is composed of the cell bodies of neurons that extend to the midbrain via the optic nerve. Ganglion cells may be damaged directly when the chemical acts on the cell bodies themselves or secondarily when the toxin destroys the optic nerve. Depending on the severity of the exposure, loss of visual acuity or vision may ensue.

Dose-Response Relationships and Ocular Effects

For most of the chemicals on this list, limits have been established on the basis of health surveys and case reports of occupationally exposed populations. These studies indicate that exposures to concentrations of these substances at levels above the NOE level cause damage or pain to the eyes of exposed workers. In some cases only limited human data are available, and evidence from animal studies or knowledge of a chemical's structural analogy to another chemical known to have ocular effects provides the basis for the exposure limit. Animal models are generally good predictors of ocular effects in humans because the eyes of rodents, especially those of guinea pigs and rabbits, closely resemble human eyes. Thus, animal studies of the effects of exposure on the eye can be relied on to predict accurately how the chemicals that produce these effects in animals will behave in workers exposed in industrial situations. For the five chemicals in this group, the available toxicologic data, the record evidence, and OSHA's final determinations as to their limits are described below.

N-ETHYLMORPHOLINE

CAS: 100–74–3; Chemical Formula: $C_6H_{13}NO$
H.S. No. 1172

OSHA's former 8-hour TWA PEL for N-ethylmorpholine was 20 ppm, with a skin notation. The proposed permissible exposure limit was 5 ppm as an 8-hour TWA, also with a skin notation, and the final rule establishes this limit and retains the skin notation, which is consistent with the limits of the ACGIH. NIOSH (Ex. 8–47, Table N1) agrees with the selection of this limit. N-Ethylmorpholine is a colorless, flammable liquid with an ammonia-like odor; this substance is a severe eye irritant.

Prolonged exposure to fairly low concentrations of this substance causes corneal edema, blue-gray vision, and colored haloes. Typically, vision becomes misty and haloes appear a few hours after workers have been exposed to the vapors for a period of hours. Distortion of vision can occur even at levels considerably lower than those that cause irritation (Mastromatteo 1965/Ex. 1–146).

Reversible corneal edema has been observed in workers exposed to 40 ppm or more of N-ethylmorpholine for several hours (Dernehl 1966a/Ex. 1–62). Workers routinely exposed to 3- to 4-ppm concentrations but never to concentrations above 11 ppm complained of haloes and foggy vision as well as drowsiness (ACGIH 1986/Ex. 1–3, p. 263). The irritant effects of N-ethylmorpholine were also seen in a controlled-exposure experiment on volunteer subjects. Ten subjects exposed for 2.5 minutes to a concentration of 100 ppm experienced irritation of the eyes, nose, and throat; those exposed for 2.5 minutes to 50 ppm experienced slight irritation; and no irritation was reported after exposure for 2.5 minutes to 25 ppm (ACGIH 1986/Ex. 1–3, p. 263). N-ethylmorpholine is also readily absorbed through the skin (Smyth, Carpenter, Weil, and Pozzani 1954/Ex. 1–440).

OSHA's former 20-ppm PEL for N-ethylmorpholine did not protect exposed workers against the occurrence of corneal edema. Because corneal edema is painless as it is developing and symptoms have a delayed onset, workers are especially likely not to be aware of the danger of exposure. This is particularly hazardous because the effects on visual function of repeatedly exposing the eyes to substances that cause corneal edema are not known. The Agency received no comments on the health effects or revised exposure limits for N-ethylmorpholine, with the exception of NIOSH's submission.

OSHA concludes that reducing the PEL to 5 ppm as an 8-hour TWA (and retaining the skin notation) is necessary to protect occupationally exposed workers from ethylmorpholine's injurious ocular effects. The new, lower PEL will reduce the significant risk of material health impairment, which is manifested as corneal edema, visual distortion, and impaired vision, that is associated with exposure to this substance at concentrations above the revised PEL.

HYDROGEN SULFIDE

CAS: 7783–06–4; Chemical Formula: H_2S
H.S. No. 1209

OSHA's former limits for hydrogen sulfide were a 20-ppm STEL (10-minute maximum duration) and a 50-ppm

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ceiling limit. The proposed and final rule for this substance are 10 ppm as an 8-hour TWA and 15 ppm as a STEL. These limits are consistent with those of the ACGIH. NIOSH has a REL for hydrogen sulfide of 10 ppm as a 10-minute ceiling. Hydrogen sulfide is a colorless, flammable gas with the odor of rotten eggs. It is widely used as an agricultural disinfectant, chemical intermediate, analytical reagent, and in the manufacture of heavy water in the utilities sector. However, occupational exposure to hydrogen sulfide occurs most frequently when it is encountered in natural oil or gas deposits or as a by-product in chemical reactions.

The 1986 ACGIH *Documentation* (Ex. 1–3, p. 318) cites several reports (Brieger 1964; Kranenburg and Kessener 1933; Masure 1950; Elkins 1950a/Ex. 1–053) of the occurrence of adverse ocular effects, including conjunctivitis, associated with exposure to 20 ppm or less of hydrogen sulfide. A study by Poda and Aiken (1966/Ex. 1–115) reports that the adoption of a voluntary limit of 10 ppm in two heavy-water plants eliminated exposure problems. An early study by Flury and Zernik (1931f, as cited in ACGIH 1986/Ex. 1–3, p. 318) reports that the conjunctivitis caused by exposure to 10 to 15 ppm of hydrogen sulfide for six hours endured for several days; however, OSHA is unaware of cases in which this substance caused irreversible eye damage. The National Institute for Occupational Safety and Health (NIOSH) relied essentially on the studies discussed above (Poda and Aiken 1966/Ex. 1–115; Flury and Zernik 1931f, as cited in ACGIH 1986/Ex. 1–3, p. 318) when recommending its limit for hydrogen sulfide of 10 ppm for 10 minutes; NIOSH (Ex. 8–47, Table N7) continues to recommend this ceiling for hydrogen sulfide (this issue is discussed further below).

OSHA received several comments related to the health effects and proposed limits for hydrogen sulfide (Exs. 3–1163, 3–216, 8–37, 8–47, 129; Tr. XI, pp. 114, 225). The Atlantic Electric Company (Ex. 3–1163) pointed out an error in the proposal, which listed the short-term exposure limit for hydrogen sulfide as 5 ppm rather than 15 ppm. The Edison Electric Institute (EEI) (Tr. XI, p. 225) explained that utility workers are exposed to hydrogen sulfide when they enter utility manholes and vaults that are located near coastal areas, where this gas seeps into underground spaces. The EEI reports that utility workers use respirators and ventilate these spaces before entering. The Montana Sulphur and Chemical Corporation (Ex. 3–216), a small-business manufacturer, handler, and shipper of hydrogen sulfide, commented that, in its opinion, "the evidence presented for significantly tightening the existing standards is not at all compelling." According to Montana Sulphur, the studies cited by OSHA in the proposal to support the revised limits of 10 ppm (TWA) and 15 ppm (STEL) for hydrogen sulfide involved concurrent exposures "to other pollutants or stressors peculiar to the incident involved" (Ex. 3–216, p. 2). In addition, Montana Sulphur objects to OSHA's reliance on a study by Poda and Aiken (1966/Ex. 1–115) showing that voluntary compliance with an internal standard of 10 ppm at a facility in the heavy-water industry eliminated complaints of eye irritation among hydrogen-sulfide-exposed workers at this facility (Ex. 3–216). Montana Sulphur and Chemical reports that, in its long experience of manufacturing and handling this "notoriously toxic" substance, it has never had a case of eye irritation that required medical treatment; it urges OSHA to promulgate a STEL for hydrogen sulfide in the range of 25 to 30 ppm rather than the proposed 15 ppm (Ex. 3–216).

OSHA appreciates this commenter's thoughtful and thorough discussion of his company's experience in dealing with hydrogen sulfide in the workplace. However, OSHA's revised 8-hour TWA for this substance is based on the best available evidence (i.e., data on a level of occupational exposure that has been shown not to produce the health effect of concern). The eye irritation protential of hydrogen sulfide at levels below 20 ppm is widely recognized; the comment from Montana Sulphur (Ex. 3–216) acknowledges that reduction of the 8-hour TWA to 10 to 12 ppm is warranted. OSHA finds that a STEL of 15 ppm is justified by reports of eye irritation caused by short-term exposures to levels below 15 ppm (ACGIH 1986/Ex. 1–3, p. 318). OSHA is also aware that conditions in industry often involve simultaneous exposures to more than one hazardous substance and that such mixed exposures may increase the severity of the effects experienced by workers. However, the Agency must establish exposure limits based on the best available evidence for each individual substance to be regulated; it cannot attempt to set different limits for substances on the basis of the enormous number of other substances with which they could potentially be associated in actual use.

OSHA also received a comment on hydrogen sulfide from NIOSH (Ex. 8–47, Table N7). NIOSH recommends a single 10-ppm 10-minute ceiling for this substance. The United Paperworkers International Union (Ex. 8–37) also recommends adoption of the NIOSH 10-minute ceiling of 10 ppm. The Agency believes that the protection provided by NIOSH's 10-ppm short-term limit is essentially equivalent to that provided by OSHA's combined TWA–STEL limits, and that the combination of a 10-ppm 8-hour TWA and a 15-ppm STEL established in the final rule will provide broader protection in workplaces characterized either by short-term or by steady-state exposures.

The New Jersey Department of Health (Ex. 144) urged OSHA to base its limits for hydrogen sulfide on EPA's IRIS data. OSHA discusses this approach and New Jersey's comment in Section VI.A of this preamble.

OSHA concludes that the former 20-ppm (10-minute) short-term limit and 50-ppm ceiling limit did not adequately protect workers against the adverse ocular effects associated with exposure to concentrations of hydrogen sulfide below 20 ppm, as reported in several studies. OSHA finds that the eye irritation and conjunctivitis associated with such exposures represent a significant risk of material health impairment to workers, who may be forced to seek medical treatment after such exposure and who may also be unable to work during the period of recovery. OSHA has accordingly established an 8-hour TWA limit for hydrogen sulfide of 10 ppm and a short-term limit of 15 ppm. These levels have been demonstrated to be effective in preventing irritation and conjunctivitis in the workplace (Poda and Aiken 1966/Ex. 1–115). The Agency finds that this dual limit will provide protection both in continuous steady-state exposure situations and in those characterized by sharp peaks and will do so more effectively than a single, short-term limit such as that recommended by NIOSH.

METHYL ALCOHOL

CAS: 67–56–1; Chemical Formula: CH_3OH
H.S. No. 1252

OSHA's former 8-hour TWA limit for methyl alcohol was 200 ppm. The proposed limits were an 8-hour TWA of 200 ppm, a STEL of 250 ppm, and a skin notation. The final rule establishes these limits, which are consistent with those of the ACGIH. NIOSH previously recommended exposure limits for this substance of 200 ppm as a TWA and 800 ppm as a STEL; however, after reviewing the health evidence for methyl alcohol, NIOSH concurs with OSHA's final rule PELs for this substance (Ex. 8–47, Table N1). Methyl alcohol is a mobile, highly polar, flammable liquid that is widely used as an industrial solvent.

As stated in the proposal (53 *FR* 21061), workers exposed to concentrations of methyl alcohol between 200 and 375 ppm experience severe recurrent headaches, and at levels between 1200 and 6300 ppm, studies by Kingsley and Hirsch (1954/Ex. 1–212) report that the visual capacities of exposed individuals are diminished. OSHA finds that a 250-ppm STEL is necessary because an 8-hour PEL of 200 ppm alone does not protect workers from exposure to short-term peaks at levels that cause eye irritation and severe, recurrent headaches in exposed workers. Although the skin LD_{50} in rabbits is 20 g/kg, OSHA is adding a skin notation for methyl alcohol in the final rule (see Section VI.C.18 for a discussion of the Agency's policy on skin notations). The Agency's reason for establishing a skin notation for methyl alcohol despite this high dermal LD_{50} in rabbits is that a dermal LD_{Lo} of 500 mg/kg has been reported for this substance in monkeys (*Dangerous Properties of Industrial Materials*, 7th ed., Sax and Lewis 1989, p. 1377).

Several commenters submitted information to the record on methyl alcohol (Exs. 150 (Comments on Methyl Alcohol), 194, 3–661, 3–902, and 3–896). The Motor Vehicle Manufacturers Association (MVMA) (Ex. 3–902) presented no substantive comment with regard to methyl alcohol; instead, the MVMA listed 41 chemicals, including methyl alcohol, that, in the opinion of the MVMA, require "more review * * * to allow OSHA and industry additional time to properly assess * * * [the technological and economic] consequences" of revising the limit. Both the Eastman Kodak Company (Ex. 3–661) and the Chevron Corporation (Ex. 3–896) submitted specific comments on OSHA's proposal to add a STEL of 250 ppm to the existing 8-hour TWA of 200 ppm. Representing Chevron, Stanley Dryden stated:

> We do not believe that the proposed 250-ppm STEL is justified by the discussion in [OSHA's] preamble (Ex. 3–896, p. 10).

According to Kodak, the study by Kingsley and Hirsch (1954/Ex. 1–212) that was cited by OSHA in support of the STEL involved exposures to a duplicating machine fluid that contained between 5 and 98 percent methyl alcohol and 2 to 9 percent of an unidentified fluid(s). Kodak is of the opinion that the severe headaches experienced by exposed employees may have been related to the unidentified components of the fluid rather than to methyl alcohol, and further that these exposures may not have been the result of short-term exposures (Ex. 3–661).

OSHA finds Chevron's and Eastman Kodak's comments unpersuasive, for several reasons. First, the measured airborne levels of methyl alcohol reported in the Kingsley and Hirsch study (1954/Ex. 1–212) ranged from 200 to 375 ppm when employees were using direct process duplicating fluids; other studies also report that exposure to methyl alcohol at these levels causes headaches (Henson 1960, as cited in ACGIH 1986/Ex. 1–3, p. 372). Thus, the effects cited in the Kingsley and Hirsch study (1954/Ex. 1–212) are biologically plausible and consistent with those reported in other studies of the effects of this substance. Second, OSHA believes that a 250-ppm STEL is needed to ensure that workers are not exposed, even for short periods, to the elevated levels that have been shown to cause these effects. NIOSH has reevaluated the toxicological evidence for a STEL for methyl alcohol and concurs with the 250-ppm limit OSHA is establishing in the final rule. According to NIOSH (Ex. 150, Comments on Methyl Alcohol):

> [T]here appears to be no justification for a ceiling of 800 ppm [the ceiling level formerly recommended by NIOSH]. It appears that data are more supportive of the OSHA and ACGIH STEL of 250 ppm * * * it seems reasonable to update the NIOSH recommended ceiling (Ex. 150).

Thus, OSHA has determined that the addition of a STEL is necessary to reduce the significant risk of disturbed vision and headaches to which workers could be and have been exposed in the absence of a limit on short-term exposures. As discussed above, NIOSH concurs with OSHA that a short-term limit of 250 ppm is appropriate for methyl alcohol; NIOSH described a recent study (Frederic et al. 1984, as cited in Ex. 150, Comments on Methyl Alcohol) that found that teachers' aides exposed to 80 to 3080 ppm of methyl alcohol while using duplicating machines experienced blurred vision, headaches, dizziness, and skin problems. The AFL–CIO (Ex. 194, p. A–12) supports the addition of a STEL and a skin notation for methyl alcohol.

The final rule promulgates an 8-hour TWA of 200 ppm, a STEL of 250 ppm, and a skin notation for methyl alcohol. OSHA concludes that the 8-hour TWA and 15-minute STEL will work together to reduce substantially the significant risk of headaches and blurred vision presented by short-term occupational exposures to methyl alcohol at concentrations above 250 ppm. The Agency finds that the headache, blurred vision, and other ocular effects associated with exposure to methyl alcohol constitute material impairments of health.

METHYL SILICATE

CAS: 681–84–5; Chemical Formula: $(CH_3O)_4Si$
H.S. No. 1266

OSHA did not formerly have a limit for methyl silicate; the Agency proposed the adoption of a 1-ppm 8-hour TWA for this substance, and NIOSH (Ex. 8–47, Table N1) concurred with this selection. The final rule establishes this limit, which is consistent with that of the ACGIH. Methyl silicate exists in the form of colorless needles.

Methyl silicate damages the cornea and is associated with a delayed onset of symptoms. In many cases of methyl silicate exposure, the eyes recover completely, but there are reports of damage to the deep layers of the cornea that caused permanent opacification and, in one worker, loss of vision in one eye (Grant 1986/Ex. 1–975). It is estimated that exposing humans to methyl silicate at concentrations of 200 to 300 ppm for 15 minutes will produce lesions, and that exposure to 1000 ppm for this period will produce injury requiring hospitalization (ACGIH 1986/Ex. 1–3, p. 409).

Rabbits exposed to 1000 ppm of methyl silicate in dry air experienced delayed eye burns (ACGIH 1986/Ex. 1–3, p. 409). Exposure of these animals to approximately 15,000 ppm for five minutes caused eye burns, but exposure to this level for four minutes caused no appreciable effect. Guinea pigs showed maximum no-effect levels of 135 ppm for 15 minutes, 90 ppm for one hour, and 20 ppm for 8 one-hour periods. The latency period for ocular changes was 16 hours for serious effects and up to three days for mild involvement (ACGIH 1986/Ex. 1–3, p. 409). Only NIOSH commented on this substance.

Because the onset of response to this toxin is delayed, because exposure in the workplace could have a duration substantially greater than that in the animal bioassays, and because of interspecies variability, it is necessary to establish a PEL considerably below the NOE level in animals to reduce the significant risk of ocular damge to employees. The Agency is therefore establishing a 1-ppm 8-hour TWA limit for methyl silicite to reduce the significant risk of severe ocular effects associated with the uncontrolled exposures formerly possible in the absence of a PEL. The Agency concludes that this limit will substantially reduce this significant risk by protecting workers from the ocular effects of methyl silicate exposure, which

constitute material impairments of health.

NAPHTHALENE

CAS: 91-20-3; Chemical Formula: $C_{10}H_8$
H.S. No. 1282

OSHA's former exposure limit for naphthalene was 10 ppm as an 8-hour TWA. The final rule retains this TWA and adds a short-term limit of 15 ppm for this substance, which occurs as a colorless to brown solid and has the odor of mothballs. The ACGIH also has a 10-ppm 8-hour TWA and a 15-ppm STEL for naphthalene. NIOSH (Ex. 8-47, Table N1) concurs with the PELs selected for this substance.

The oral LD_{50} for naphthalene in rats is 1760 mg/kg (Flury and Zernik 1931g/Ex. 1-995). In humans, the inhalation of naphthalene vapor causes headache, loss of appetite, and nausea (Flury and Zernik 1931g/Ex. 1-995; Patty 1949b, as cited in ACGIH 1986/Ex. 1-3, p. 420). These authors also report that exposure causes optical neuritis, corneal damage, and kidney injury. Eight of 21 workers exposed for five years to unspecified levels of naphthalene developed opacities of the lens of the eye (Ghetti and Mariani 1956/Ex. 1-739). Ingestion of large amounts of naphthalene causes severe hemolytic anemia and hemoglobinuria (Stokinger and Mountain 1963/Ex. 1-765). The lethal dose in humans has been reported as 50 mg/kg (NIOSH 1977l/Ex. 1-1182). Concentrations somewhat above 15 ppm are reported to cause marked eye irritation (Robbins 1951/Ex. 1-799).

Only the American Iron and Steel Institute (AISI) and NIOSH commented on naphthalene. The AISI (Exs. 129 and 188) believes that a STEL for naphthalene is not warranted by the evidence. However, the Robbins (1951/Ex. 1-799) study discussed above clearly shows that excursions to 15 ppm cause severe eye irritation, and OSHA thus finds the STEL both necessary and appropriate.

In the final rule, the Agency is retaining the 8-hour TWA of 10 ppm and adding a 15-minute STEL of 15 ppm for naphthalene. This STEL is designed to protect against the eye irritation observed in workers at elevated levels (Robbins 1951/Ex. 1-799). The Agency concludes that these limits will protect workers from the significant risks of eye irritation and serious ocular effects, which constitute material health impairments that are potentially associated with exposure to levels above the 8-hour limit.

Conclusions for This Group of Ocular Toxins

OSHA finds that promulgation of the final rule's limits for this group of chemicals, which have the potential to cause adverse ocular effects ranging from transient discomfort to permanent blindness, will substantially reduce the significant risk of visual impairment associated with occupational exposure to these substances. The toxicological basis for the final rule's limits include evidence derived from occupationally exposed workers and results obtained in animals that have been shown to be excellent predictors of human responses. The risks being protected against have serious consequences, both in terms of material impairment of health and interference with the functional capacity of those workers who are themselves exposed and the safety and well-being of these workers and their co-workers. Thus, OSHA finds that the limits established by the final rule are necessary to reduce these significant occupational risks, which constitute material health impairments of health within the meaning of the Act.

6. Substances for Which Limits Are Based on Avoidance of Respiratory Effects Introduction

Limits are being established for a total of 35 substances or materials for which exposure has been shown to cause adverse respiratory effects. The chemicals in this group cause acute pulmonary edema, alveolar damage, or chronic respiratory damage through the general mechanisms of cellular damage or fibrosis. At sufficient doses, these effects can be permanent, disabling, and life-threatening.

Some of the materials in this group are composites of naturally occurring minerals, and, for these, the Agency is establishing limits based on the most hazardous component. For several materials (coal dust, crystalline tripoli, silica, and graphite), OSHA is requiring the TWA to be measured as the respirable quartz fraction of the dust, because it is exposure to this fraction that presents the greatest risk to exposed workers.

Table C6-1 lists the 35 substances in this group, along with the former, proposed, and final rule PELs, and CAS and HS Numbers. There was no former OSHA PEL for 12 of these substances. For one substance, OSHA is establishing a ceiling limit to replace an existing 8-hour TWA, and for ten substances, a lower TWA and/or STEL are being established. In three instances, OSHA is establishing a STEL to augment its former TWA-PELs. For nine substances, OSHA is changing only the form in which the limit is being expressed.

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C6-1. Substances for Which Limits Are Based on Avoidance of Respiratory Effects

H.S. Number/ Chemical Name	CAS No.	Former PEL	Proposed PEL	Final Rule PEL*
1017 Aluminum (pyro powders)	7429-90-5	--	5 mg/m^3 TWA	5 mg/m^3 TWA
1034 Bismuth telluride (Se-doped)	1304-82-1	--	5 mg/m^3 TWA	5 mg/m^3 TWA
1080 Chlorine dioxide	10049-04-4	0.1 ppm TWA	0.1 ppm TWA 0.3 ppm STEL	0.1 ppm TWA 0.3 ppm STEL
1093 Chromium metal	7440-47-3	1 mg/m^3 TWA	0.5 mg/m^3 TWA	1 mg/m^3 TWA
1096 Coal dust, @ 5% quartz	None	2.4 mg/m^3 TWA[a]	2 mg/m^3 TWA[a]	2 mg/m^3 TWA[a]
1097 Coal dust, # 5% quartz	None	$\frac{10 \text{ mg/m}^3}{\% \text{ SiO}_2+2}$	0.1 mg/m^3 TWA[b]	0.1 mg/m^3 TWA[b]
1161 Ethyl acrylate	140-88-5	25 ppm TWA, Skin	5 ppm TWA 25 ppm STEL, Skin	5 ppm TWA 25 ppm STEL, Skin
1177 Ferrovanadium dust	12604-58-9	1 mg/m^3 TWA	1 mg/m^3 TWA 3 mg/m^3 STEL	1 mg/m^3 TWA 3 mg/m^3 STEL
1178 Fibrous glass	None	15 mg/m^3 TWA	5 mg/m^3 TWA	See text

C6-1. Substances for Which Limits Are Based on Avoidance of Respiratory Effects (continued)

H.S. Number/ Chemical Name	CAS No.	Former PEL	Proposed PEL	Final Rule PEL*
1190 Grain dust (oat, wheat, barley)	None	--	4 mg/m^3 TWA	10 mg/m^3 TWA
1191 Graphite, natural, respirable @ 1% quartz	7782-42-5	15 mppcf TWA	2.5 mg/m^3 TWA	2.5 mg/m^3 TWA
1213 Indium & compounds	7440-74-6	--	0.1 mg/m^3 TWA	0.1 mg/m^3 TWA
1215 Iron oxide (dust and fume)	1309-37-1	10 mg/m^3 TWA	10 mg/m^3 TWA	5 mg/m^3 TWA
1272 Methylene bis (4-Cyclohexyliso-cyanate)	5124-30-1	--	0.01 ppm Ceiling	0.01 ppm Ceiling
1276 Mica, respirable dust containing 1% quartz	12001-26-2	20 mppcf TWA	3 mg/m^3 TWA	3 mg/m^3 TWA
1277 Mineral wool fiber	None	15 mg/m^3 TWA	10 mg/m^3 TWA	See text
1289 Nitrogen dioxide	10102-44-0	5 ppm Ceiling	1 ppm STEL	1 ppm STEL
1300 Oxygen difluoride	7783-41-7	0.05 ppm TWA	0.05 ppm Ceiling	0.05 ppm Ceiling

C6-1. Substances for Which Limits Are Based on Avoidance of Respiratory Effects (continued)

H.S. Number/ Chemical Name	CAS No.	Former PEL	Proposed PEL	Final Rule PEL*
1301 Ozone	10028-15-6	0.1 ppm TWA	0.1 ppm TWA 0.3 ppm STEL	0.1 ppm TWA 0.3 ppm STEL
1303 Paraquat, respirable dust	4685-14-7	0.5 mg/m^3 TWA, Skin	0.1 mg/m^3 TWA, Skin	0.1 mg/m^3 TWA, Skin
1354 Silica, crystalline cristobalite (as respirable quartz dust)	14464-46-1	1/2 value calculated for quartz	0.05 mg/m^3 TWA	0.05 mg/m^3 TWA
1355 Silica, crystalline quartz, respirable	14808-60-7	10 mg/m^3 % SiO_2+2	0.1 mg/m^3 TWA	0.1 mg/m^3 TWA
1356 Silica, crystalline tridymite (as respirable quartz dust)	15468-32-3	1/2 value calculated for quartz	0.05 mg/m^3 TWA	0.05 mg/m^3 TWA
1357 Silica, crystalline tripoli (as respirable quartz dust)	1317-95-9	10 mg/m^3 % SiO_2+2	0.1 mg/m^3 TWA	0.1 mg/m^3 TWA
1358 Silica, fused	60676-86-0	10 mg/m^3 % SiO_2+2	0.1 mg/m^3 TWA	0.1 mg/m^3 TWA

C6-1. Substances for Which Limits Are Based on Avoidance of Respiratory Effects (continued)

H.S. Number/ Chemical Name	CAS No.	Former PEL	Proposed PEL	Final Rule PEL*
1363 Soapstone, total dust	None	20 mppcf TWA	6 mg/m^3 TWA	6 mg/m^3 TWA
1363A Soapstone, respirable dust	None	--	3 mg/m^3 TWA	3 mg/m^3 TWA
1375 Sulfur dioxide	7446-09-5	5 ppm TWA	2 ppm TWA 5 ppm STEL	2 ppm TWA 5 ppm STEL
1378 Sulfur tetrafluoride	7783-60-0	--	0.1 ppm Ceiling	0.1 ppm Ceiling
1381 Talc (containing no) asbestos)	14807-96-6	20 mppcf TWA	2 mg/m^3 TWA	2 mg/m^3 TWA
1395 Tin oxide	7440-31-5	--	2 mg/m^3 TWA	2 mg/m^3 TWA
1409 Trimellitic anhydride	552-30-7	--	0.005 ppm TWA	0.005 ppm TWA
1430A Wood dust, hard	None	--	1 mg/m^3 TWA	5 mg/m^3 TWA 10 mg/m^3 TWA
1403B Wood dust, soft	None	--	5 mg/m^3 TWA	5 mg/m^3 TWA 10 mg/m^3 TWA

C6-1. Substances for Which Limits Are Based on Avoidance of Respiratory Effects (continued)

H.S. Number/ Chemical Name	CAS No.	Former PEL	Proposed PEL	Final Rule PEL*
1430C Wood dust, allergenic (Western Red Cedar)	None	--	--	2.5 mg/m^3 TWA

[a] For coal dust, respirable fraction less than 5 percent SiO_2.
[b] For coal dust, respirable fraction more than 5 percent SiO_2.
* OSHA's TWA limits are for 8-hour exposures; its STELs are for 15 minutes unless otherwise specified; and its ceilings are peaks not to be exceeded for any period of time.

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Description of the Health Effects

The respiratory system is a major route of occupational exposure for toxic substances. Because of the vital nature of pulmonary function, respiratory toxicants present a serious health hazard both from acute and chronic exposures. Acute respiratory disease can be life threatening.

Chronic pulmonary disease can result from long-term exposure to respiratory toxicants and is potentially crippling because it greatly reduces the quality of life and the productivity of its victim. In addition, the onset of respiratory disease can be insidious, because it may be indicated only by the gradual development of a few nonspecific signs (Petersdorf et al., *Harrison's Principles of Internal Medicine*, 10th ed., 1983).

The difficulties of detecting irreversible respiratory effects complicate the prevention of pulmonary disease. Pulmonary function can be evaluated with a variety of tests, including measurements of the vital capacity and of the resting and forced expiratory volumes. However, certain conditions, including emphysema and fibrosis, are difficult to diagnose even with such tests. In addition, these same diseases often continue to progress even after the affected individual has recognized the problem and obtained medical assistance. Furthermore, these diseases may continue to progress even after exposure has ceased, which makes prevention even more vital.

In addition to the threat posed to the general occupational population by respiratory toxins, certain subpopulations, such as persons with impaired lung function caused by asthma, bronchitis, emphysema, and pulmonary fibrosis, are at special risk from the adverse effects of respiratory toxins. Tobacco smoking can cause or aggravate all of the respiratory conditions discussed above and can interact additively or synergistically with respiratory toxins to increase their adverse effects on the pulmonary system. For example, tobacco smoking acts additively with coal dust to diminish pulmonary function. Because tobacco smoke contains nitrogen oxides, cadmium, and ammonia, occupationally exposed workers who smoke have an additional source of exposure to these respiratory toxins.

Two general categories of lung injuries are relevant to the group of substances under consideration:

- Damage to cells lining the airways, which results in necrosis (localized areas of dead cells), increased permeability, and edema.
- Production of fibrosis, which may become massive and greatly reduce lung capacity.

Cellular damage resulting in edema and emphysema. A number of substances cause damage to cells lining the airways. This can result in increased permeability of cell membranes and subsequent edema, hemorrhage, and localized necrosis (areas of dead cells). Chronic inhalation of certain chemicals causes destruction of the alveolar septa and results in emphysema. Cellular damage may be either localized or diffuse, depending on the distribution of the toxicant in the lung.

Edema is the release of fluid into the lumen (open spaces of the airways) or alveoli. Serious edema can take several hours to develop so that, in some cases, life-threatening or even fatal exposures can take place without the individual's being aware at the time of exposure of the extent of the damage. Ozone, nitrogen dioxide, and paraquat all cause localized cellular damage leading to edema (Klaassen, Amdur, Doull et al. 1986/Ex. 1–99). Fatalities from pulmonary edema have resulted from exposures to concentrations of nitrogen dioxide of about 200 ppm (*Dangerous Properties of Industrial Materials*, 6th ed., Sax 1984). Paraquat is unusual in that it can cause delayed pulmonary damage following exposure, even when exposure occurs via routes other than inhalation (Klaassen, Amdur, Doull et al. 1986/Ex. 1–99).

Necrotic changes can reduce the functional surface area of the lung. One type of lesion often noted in persons exposed to respiratory toxins is benign granulomas, which are localized masses formed when the immune system attempts to sequester a foreign object. Depending on the extent of the damage, these masses may reduce the functional capacity of the lung. Exposure to selenium-doped bismuth telluride has been associated with the production of benign granulomas without fibrosis (Wagner, Madden, Zimber, and Stokinger 1974, as cited in ACGIH 1986/Ex. 1–3, p. 59).

Emphysema is caused by a gradual destruction of the cells of the alveolar septa, which causes a loss of elasticity in the lung. A slight degree of emphysema is present in much of the adult population and does not cause any functional impairment. As the disease progresses, however, serious and life-threatening reductions in functional capacity can occur. Once the disease has advanced to the point of serious functional impairment, it is, for the most part, irreversible (Petersdorf et al. 1983). There is evidence that a number of the substances in this group cause emphysema, including sulfur tetrafluoride (ACGIH 1986/Ex. 1–3), ozone, and nitrogen dioxide (Klaassen, Amdur, Doull et al. 1986/Ex. 1–99).

Fibrotic changes. Pulmonary fibrosis was one of the earliest recognized forms of occupational disease. Fibrosis should be distinguished from pneumoconiosis, although these terms are often used interchangeably. Pneumoconiosis is a more general term indicating the presence of a foreign substance in the lungs, as determined by radiographic (X-ray) analysis. This definition encompasses a variety of conditions and does not by itself necessarily indicate functional damage (Petersdorf et al. 1983). In contrast, fibrosis is a seriously debilitating disease. One type of fibrosis is interstitial fibrosis, which is a kind of pneumoconiosis characterized by deposition of fibrous tissue in the interstitial spaces between the alveolar membrane and the pulmonary capillary membrane. Interstitial fibrosis greatly reduces the diffusing capacity of the lung and thus causes oxygen deprivation in the body (Guyton 1981/Ex. 1–1002). Like emphysema, fibrosis is largely irreversible; it sometimes progresses even in the absence of further exposure (Petersdorf et al. 1983).

Silicosis is a form of interstitial fibrosis that is caused by exposure to respirable silica particles (Klaassen, Amdur, Doull et al. 1986/Ex. 1–99). Exposure to coal dust causes a pneumoconiosis with fibrosis that can be severely debilitating (Petersdorf et al. 1983). In addition, exposure to graphite, mica, and grain dust have all been associated with fibrosis in workers (ACGIH 1986/Ex. 1–3).

Dose-Response Relationships and Respiratory Effects

For most of the substances in this group, permissible exposure limits have been based on health surveys and case reports of occupationally exposed populations. In some cases, animal studies provide the evidence of a substance's toxicity. As is the case for most of the substances for which OSHA is establishing new, reduced, or revised limits, the dose-response curve for respiratory irritants tends to be S-shaped.

Table C6–2 presents dose-response data on the adverse pulmonary effects of representative chemicals in this group, the populations exposed, and the endpoints observed. The following discussions describe the record evidence, present OSHA's findings for all the substances on Table C6–1, and describe the nature of the risks faced by workers exposed to them.

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TABLE C6-2. Summary of Dose-Response Evidence for Adverse Respiratory Effects

H.S. Number/ Chemical Name	CAS No.	FORMER PEL	FINAL RULE PEL*	Dose-Response Data		
				Dose/Duration Associated With Observed Effects	Species	Comments
1034 Bismuth telluride (Se-Doped)	1304-82-1	—	5 mg/m^3 TWA	15 mg/m^3 1 year	Dogs Rats Rabbits	Granulomatous lesions in lungs seen after 6 months of exposure.
1096 Coal Dust, 5% quartz	None	2.4 mg/m^3 TWA	2 mg/m^3 TWA	4 mg/m^3 35 years	Humans	Calculated estimate of 10 percent probability of developing pneumoconiosis with fibrosis after 35 years of exposure to coal dust. (Quartz content not identified.)
1097 Coal Dust, ≥ 5% quartz	None	$\frac{10 \text{ mg/m}^3}{\% SiO_2+2}$	0.1 mg/m^3 TWA			
1190 Grain Dust (oat, wheat, barley)	None	—	10 mg/m^3 TWA	≥ 10 mg/m^3	Humans	Chronic bronchitis, shortness of breath, reduced pulmonary function, increased incidence of respiratory symptoms.
				≥ 10 mg/m^3	Humans	Increased incidence of respiratory symptoms.
					Humans	Fibrosis and mottling, pneumoconiosis.

TABLE C6-2. Summary of Dose-Response Evidence for Adverse Respiratory Effects (continued)

H.S. Number/ Chemical Name	CAS No.	FORMER PEL	FINAL RULE PEL*	Dose-Response Data: Dose/Duration Associated With Observed Effects	Species	Comments
1191 Graphite, natural, respirable	7782-42-5	15 mppcf TWA	2.5 mg/m^3 TWA	N/A	Humans	Anthracosilicosis, similar to that seen in coal miners.
1213 Indium & compounds	7440-74-6	--	0.1 mg/m^3 TWA	24-97 mg/m^3	Rats	Widespread alveolar edema following exposure to In_2O_2.
1276 Mica	12001-26-2	20 mppcf TWA	3 mg/m^3 TWA	N/A	Humans	Signs and symptoms resembling silicosis and pneumoconiosis in 8 of 57 workers.
1289 Nitrogen dioxide	10102-44-0	5 ppm Ceiling	1 ppm STEL	N/A	Humans	Fatal pulmonary edema.
				0.4-2.7 ppm chronic	Humans	Change in pulmonary vital capacity.
1300 Oxygen difluoride	7783-41-7	0.05 ppm TWA	0.05 ppm Ceiling	0.5 ppm two 7-hr exposures	Lab. Animals	Lethal to a wide variety of laboratory species, causing pulmonary edema and hemorrhage after several hours of exposure.

TABLE C6-2. Summary of Dose-Response Evidence for Adverse Respiratory Effects (continued)

H.S. Number/ Chemical Name	CAS No.	FORMER PEL	FINAL RULE PEL*	Dose-Response Data: Dose/Duration Associated With Observed Effects	Species	Comments
1301 Ozone	10028-15-6	0.1 ppm TWA	0.1 ppm TWA 0.3 ppm STEL	1.5 ppm 3 hrs/day	Humans	Significant reduction in pulmonary vital capacity.
				1 ppm 1 day	Mice	Damage to alveolar tissue.
1303 Paraquat, respirable dust	4685-14-7	0.5 mg/m^3 TWA, Skin	0.1 mg/m^3 TWA Skin	N/A	Humans	69 accidental deaths from pulmonary injury reported through 1972.
1354 Silica, crystalline cristobalite	14464-46-1	1/2 value for quartz	0.05 mg/m^3 TWA	0.5 mg/m^3 (as total dust) 2.5 years	Dogs	Cellular infiltration of lung and fibrotic nodules in pulmonary lymph nodes.
1355 Silica, crystalline quartz, respirable	14808-60-7	$\frac{10 \text{ mg/m}^3}{\% \text{ SiO}_2+2}$	0.1 mg/m^3 TWA	0.1 mg/m^3 chronic	Humans	Accelerated loss of pulmonary function over effects of aging alone.
1356 Silica, crystalline tridymite	15468-32-3	1/2 value for quartz	0.05 mg/m^3 TWA	N/A	Rats	Most active form of free silica when administered by intratracheal injections.

TABLE C6-2. Summary of Dose-Response Evidence for Adverse Respiratory Effects (continued)

H.S. Number/ Chemical Name	CAS No.	FORMER PEL	FINAL RULE PEL*	Dose-Response Data: Dose/Duration Associated With Observed Effects	Species	Comments
1357 Silica, crystalline tripoli	1317-95-9	$\frac{10\ mg/m^3}{\%\ SiO_2+2}$	0.1 mg/m^3 TWA	N/A	Lab. Animals	Progressive nodular fibrosis.
1375 Sulfur dioxide	7446-09-5	5 ppm TWA	2 ppm TWA 5 ppm STEL	1 ppm	Humans	Accelerated loss of pulmonary function
1378 Sulfur tetrafluoride	7783-60-0	—	0.1 ppm Ceiling	4 ppm 4 hrs/day/ 10 days	Rats	Emphysema, marked clinical signs of respiratory impairment.
1409 Trimellitic anhydride	552-30-7	—	0.005 ppm TWA		Rats	Intra-alveolar hemorrhage. (No exposure duration indicated.)

* OSHA's TWA limits are for 8-hour exposures; its STELs are for 15 minutes unless otherwise specified; and its ceilings are peaks not to be exceeded for any period of time.

N/A = Not available.

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ALUMINUM (PYRO POWDERS)

CAS: 7429-90-5; Chemical Formula: Al
H.S. No. 1017

OSHA previously had no permissible exposure limit for aluminum pyro powders. The ACGIH has an 8-hour TLV-TWA of 5 mg/m³. The proposed and final rules have a PEL of 5 mg/m³ for the aluminum pyro powders; NIOSH (Ex. 8-47, Table N1) concurs with this limit. Powders and flake aluminum are flammable and can form explosive mixtures in air.

Aluminum pyro powders have a higher reported toxicity than aluminum metal dusts (Stokinger 1981a/Ex. 1-1133). Several British studies have examined the effects of exposure to this finely flaked aluminum on workers in paints and pyrotechnics plants. Their findings revealed that pulmonary fibrosis may result from exposure to pyro powders, although epidemiologic evidence indicates that additives used to prevent oxidation and agglomeration may have contributed to the incidence and nature of the disease (Edling 1961/Ex. 1-733; Jordan 1961/Ex. 1-550; Mitchell, Manning, Molyneux, and Lane 1961/Ex. 1-504). Exposures that have previously caused lung changes in workers are presumed to have been extremely high (ACGIH 1986/Ex. 1-3, p. 22). No comments, other than NIOSH's, were received on these powders.

OSHA concludes that the permissible exposure limit of 5 mg/m³ TWA for aluminum pyro powders will prevent the significant risk of lung changes in workers exposed at the concentrations formerly permitted by the absence of an OSHA limit. The Agency has determined that these lung changes constitute material impairment of health.

BISMUTH TELLURIDE (DOPED)

CAS: 1304-82-1; Chemical Formula: Bi_2Te_3
H.S. No. 1034

OSHA had no former limit for doped bismuth telluride (Bi_2Te_3). The ACGIH has a TLV-TWA of 5 mg/m³ for Bi_2Te_3 that has been doped with selenium sulfide. The proposed PEL was 5 mg/m³ as an 8-hour TWA; NIOSH (Ex. 8-47, Table N1) concurs with this limit, and the final rule establishes it. Bismuth telluride appears as gray, hexagonal platelets; it is also available as ingots or single crystals.

Wagner, Madden, Zimber, and Stokinger (1974, as cited in ACGIH 1986/Ex. 1-3, p. 50) conducted a one-year study in which rabbits, dogs, and rats were exposed for six hours/day, five days/week to doped bismuth telluride dust (containing 60.04 mol % Bi_2Te_3 and 0.20 mol % SnTe, plus a small stoichiometric excess of Te) of 1.04 um particle diameter at a mean concentration of 15 mg/m³. Small, granulomatous lesions without fibrosis appeared in the lungs of dogs at six months. In dogs that were sacrificed four months after an eight-month exposure, the lesions had regressed, and the affected lymph nodes were without cellular reaction. Rabbits exhibited similar histologic effects, but with decreased numbers of pulmonary macrophages, no fibrous tissue proliferation, and no cellular or fibrous tissue reaction around the dust deposits in the lymph nodes. The rats showed fewer granulomas but some areas of epithelialization of the alveolar walls. As was true for the other species, the rats showed neither fibrosis nor cellular reaction in the lymph nodes, despite accumulation of the intermetallic dust (Wagner, Madden, Zimber, and Stokinger 1974, as cited in ACGIH 1986/Ex. 1-3, p. 50). Only NIOSH commented on this substance.

In the final rule, an 8-hour PEL of 5 mg/m³ TWA is established for Se-doped bismuth telluride to prevent the occurrence of the pulmonary lesions seen in experimental animals. OSHA concludes that this limit will substantially reduce the significant risk of these pulmonary effects.

CHLORINE DIOXIDE

CAS: 10049-04-4; Chemical Formula: ClO_2
H.S. No. 1080

Previously, OSHA had an 8-hour TWA limit of 0.1 ppm for chlorine dioxide. The ACGIH recommends the same time-weighted average and a 15-minute STEL of 0.3 ppm. The proposal retained the same TWA and added a 15-minute STEL of 0.3 ppm, and NIOSH (Ex. 8-47, Table N1 concurred with these limits, which are established in the final rule. Chlorine dioxide is a red-yellow gas at ordinary temperatures.

Rats exposed to 0.1-ppm concentrations of chlorine dioxide for 10 weeks at five hours daily showed no adverse effects from exposures. Other data in animals are not available (Dalhamn 1957/Ex. 1-307).

Data on human exposures indicate that marked irritation occurs on inhalation of 5 ppm (no time specified), and that one death occurred at 19 ppm (Elkins 1959b, as cited in ACGIH 1986/Ex. 1-3, p. 110). Repeated exposures in humans have been linked to bronchitis and and pronounced emphysema (Petry 1954/Ex. 1-1163). Clinical studies conducted by Gloemme and Lundgren (1975/Ex. 1-323) revealed that the majority of workers who had been exposed for five years to average concentrations of chlorine dioxide below 0.1 ppm, in combination with about 1.0 ppm chlorine, experienced eye and respiratory irritation and slight bronchitis. Some gastrointestinal irritation was also observed in these workers. Gloemme and Lundgren (1957/Ex. 1-323 attributed all of these effects to elevated short-term exposures involving excursions above the 0.1 ppm level. Ferris, Burgess, and Worcester (1967/Ex. 1-316) have shown that concentrations occasionally ranging as high as 0.25 ppm were associated with respiratory effects in workers concomitantly exposed to chlorine. The United Paperworkers International Union (UPIU) supported the development of comprehensive standards for irritant gases such as chloride dioxide.

In the final rule, OSHA is retaining the 0.1-ppm 8-hour TWA and adding a 15-minute STEL of 0.3 ppm for chlorine dioxide. The Agency concludes that both of these limits are necessary to protect workers against the significant risk of respiratory, skin, and eye irritation known to occur as a result of short-term exposures above the TWA of 0.1 ppm. OSHA has determined that these adverse effects constitute material impairment of health.

CHROMIUM, METAL

CAS: 7440-47-3; Chemical Formula: Cr
H.S. No. 1093

OSHA formerly had an 8-hour TWA of 1 mg/m³ for chromium metal. The proposed PEL was 0.5 mg/m³ NIOSH (Ex. 8-47, Table N1) concurred with the proposed limit. The ACGIH has established an 8-hour TWA of 0.5 mg/m³ for chromium, which is a steel-grey metal. In the final rule, OSHA is retaining the former 8-hour TWA PEL of 1 mg/m³ for chromium metal.

According to the ACGIH, a 0.5-mg/m³ TLV-TWA for chromium "should be adequate to prevent pulmonary disease or other toxic effects" (ACGIH 1986/Ex. 1-3, p. 139). Many commenters objected to the proposed 0.5-mg/m³ PEL for chromium metal (Exs. 3-236, 3-829, 3-902, 3-1095, 3-1123, 129, 145, and 188; Tr. pp. 11-136 to 11-137). These commenters argued that there was no health basis for lowering the PEL for chromium metal and questioned the studies described in the health effects discussion for this substance. For example, Peter Hernandez, Vice President for Employee Relations at the American Iron and Steel Institute (AISI), commented in several submissions that one of the studies (Mancuso and Hueper (1951/Ex. 1-215) relied on by OSHA, which was performed for the Indian government in 1951, found "exaggerated pulmonary markings" on the X-rays of exposed workers but failed to demonstrate that these markings constituted a health risk to these workers (Ex. 188, p. 18). The AISI also criticized the results of another study relied on by OSHA, the work of Princi et al. (1962, as cited in ACGIH 1986/Ex. 1-3, p. 139), which detected pulmonary disease in workers exposed to chromium at levels of 0.27 mg/m³ (Princi, Miller, Davis, and Cholak 1962, as cited in ACGIH 1986/Ex. 1-3, p. 139). According to the AISI, "the results of this study are highly questionable * * * because other dust and fumes besides chromium were present, including 36.7 percent silica" (Ex. 188, p. 19).

In response to these comments, OSHA has further reviewed the toxicological literature on chromium metal. The Agency finds that the metallic form of chromium, in its pure state, does not present a significant risk to exposed workers at levels below 1 mg/m³. OSHA's former 8-hour TWA PEL for this substance. This view of chromium metal's toxicity is shared by several toxicologists. For example, Proctor, Hughes, and Fischman (*Chemical Hazards of the Workplace*, 2nd ed., 1988, p. 155) state, "Chromium metal is relatively nontoxic * * * OSHA finds that the markings associated with exposure to chromium metal (which were not suggestive of alteration of the architecture of the lung) and reported in the Mancuso and Hueper (1951/Ex. 1-215) study do not present a risk of material impairment of health because they do not presage any decrement in pulmonary function or interfere with the functional capacity of exposed workers.

OSHA also agrees with the AISI that [A] major problem [in] defining the health effects which may be associated with exposure to metallic chromium is the frequent co-existence of the metallic form with both trivalent and hexavalent salts (Tr. p. 11-136).

The Princi et al. study (1962, as cited in ACGIH 1986/Ex. 1-3, p. 139) reflects the problem of confounding exposures to which the AISI alludes. In this study, ferrochrome alloy workers were exposed to several toxic contaminants simultaneously, including chromium, salts, silica, iron oxide, and chromium metal. OSHA believes it likely that exposure to the other contaminants present, which included a high percentage of silica, accounts for the development of pulmonary disease in these workers. The ACGIH (1986/Ex. 1-3, p. 139) stated, after reviewing the Mancuso and Hueper (1951/Ex. 1-215) and the Princi et al. (1962, as cited in ACGIH 1986/Ex. 1-3, p. 139) studies, that "[e]xposure to chromium metal does not give rise to pulmonary fibrosis or pneumoconiosis."

Thus, after a reanalysis of the toxicological data and the record evidence, OSHA concludes that there is no health basis for reducing the Agency's former limit of 1 mg/m³ for chromium metal. OSHA finds that the 1-mg/m³ PEL provides appropriate worker protection from the toxic effects of exposure to chromium metal.

Accordingly, in the final rule, OSHA is retaining the former 8-hour TWA limit of 1.0 mg/m³ for chromium metal. The Agency concludes that this limit protects workers against the significant risk of pulmonary effects potentially associated with exposure to the metallic form of chromium.

COAL DUST, < 5% QUARTZ

COAL DUST, > 5% QUARTZ

CAS: None; Chemical Formula: None
H.S. Nos. 1098 and 1097

OSHA's former limits for coal dust included a formula limit of 10 mg/m³/% SiO_2+2 for coal dust containing a respirable quartz fraction greater than 5 percent and a 2.4-mg/m³ limit for coal dust containing a respirable quartz fraction of less than 5 percent. The ACGIH has a TLV-TWA of 0.1 mg/m³ for the respirable quartz fraction of coal dust containing more than 5 percent quartz, and 2 mg/m³ for the respirable dust fraction of coal dust containing less than 5 percent quartz. OSHA proposed 8-hour TWA limits of 0.1 mg/m³ for the respirable quartz fraction of coal dust containing more than 5 percent quartz and 2 mg/m³ for the respirable dust fraction containing less than 5 percent quartz; the final rule establishes these limits. OSHA's proposed and final rule limits do not represent an actual change in the value of the limits for coal dust containing more than 5 percent respirable quartz; instead, they do away with the Agency's previous and cumbersome formula limit. Coal is a dark brown to black solid formed from fossilized plants.

Because OSHA is not lowering the limits for coal dust or considering the health effects evidence for these limits but is merely changing the form in which the limits are expressed, no discussion of the health evidence is included in the final rule. The Gulf Power Company (Exs. 3-938 and 3-1144) believed that OSHA was proposing to change the value of the coal dust limits rather than the form in which those limits were being expressed. In the final rule, OSHA has clarified this fact by emphasizing it in the beginning and end of this discussion. Lawrence Hecker, Corporate Director of Industrial Hygiene and Toxicology for Abbott Laboratories, requested that both Z-table entries for coal dust in the final rule specifically indicate that it is the "respirable quartz fraction" that is to be measured (Ex. 367f, p. 9). In response to this comment, OSHA has so identified the measurable fraction in the final rule's Table Z-1-A.

NIOSH (Ex. 8-47, Table N2; Tr. p. 3-86) believes that the limit for quartz-bearing coal dust should be reduced to 0.05 mg/m³ as an 8-hour TWA on the basis of the potential carcinogenicity of respirable crystalline silica. OSHA is aware of some recent studies (NIOSH 1986b; Hurley and Maclaren 1987; IARC 1987) on the health effects of exposure to coal dust, and the Agency is monitoring this literature to assess the need for a reevaluation of this limit.

In the final rule, OSHA is establishing an 8-hour TWA PEL of 0.1 mg/m³, measured as the respirable dust fraction, for coal dust having a respirable quartz fraction of more than 5 percent quartz, and an 8-hour TWA PEL of 2 mg/m³ TWA, measured as the respirable dust fraction, for coal dust having a respirable quartz fraction of less than 5 percent quartz. The Agency's previous formula limit for silica containing more than 5 percent quartz (respirable fraction) is equivalent to the 0.1-mg/m³ limit in terms of airborne concentration. Thus, the final rule's limit is intended to simplify the units used to measure and express the limit; it does not represent an actual change in the value of the limit (see discussion for crystalline silica-quartz later in this section). OSHA believes that this revision will simplify employee exposure monitoring.

ETHYL ACRYLATE

CAS: 140-88-5; Chemical Formula: $CH_2=CHCOOC_2H_5$
H.S. No. 1161

OSHA formerly had an 8-hour TWA limit for 25 ppm for ethyl acrylate, with a skin notation. The ACGIH has a TLV-TWA of 5 ppm, a TLV-STEL of 25 ppm, and a skin notation for ethyl acrylate, which is a colorless liquid. The proposed PEL was an 8-hour TWA of 5 ppm and a 15-minute STEL of 25 ppm, with a skin notation; the final rule establishes these limits.

Ethyl acrylate produces irritation of the skin, eyes, mucous membranes, gastrointestinal tract, and respiratory system (Dreisbach 1974/Ex. 1-896). The oral LD_{50} in rats fed this substance is 1020 mg/kg, and the 4-hour inhalation LC_{50} for these animals ranges between 1000 ppm and 2000 ppm. In rabbits, the dermal LD_{50} is 1790 mg/kg (Pozzani, Weil, and Carpenter 1949/Ex. 1-825), and the minimum oral LD_{50} is 280 to 420 mg/kg (Treon, Sigmon, Wright, and Kitzmiller 1949/Ex. 1-769). Animal

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studies also indicate that severe chronic effects may result from exposure to this substance. Rats exposed to levels of 70, 300, or 540 ppm of ethyl acrylate for up to 30 days showed accelerated mortality and pathologic changes in the lungs, liver, and kidneys. In those animals that developed pneumonia, renal and hepatic lesions were also seen. In a parallel study, rats, rabbits and guinea pigs who were subjected to ethyl acrylate concentrations in excess of 75 ppm for 50 seven-hour inhalation periods exhibited pulmonary edema; degenerative changes in the heart, liver, and kidneys; and death (Treon, Sigmon, Wright, and Kitzmiller 1949/Ex. 1–789). Miller et al. (1980, as cited in ACGIH 1986/Ex. 1–3, p. 240) reported that rats and mice exposed to 75 or 225 ppm, six hours per day for 30 days, developed nasal lesions and other degenerative inflammatory changes in the nasal structure. In other studies, rats and mice administered 100 or 200 mg/kg ethyl acrylate by gavage five times per week for 103 weeks developed inflammation and hyperplasia of the forestomach in addition to squamous cell carcinomas and papillomas in the same area (NTP 1983b, as cited in ACGIH 1986/Ex. 1–3, p. 240). Based on a study by Miller et al. (1980, as cited in ACGIH 1986/Ex. 1–3, p. 240), in which rats and mice exposed to 25 or 75 ppm ethyl acrylate for six hours per day, five days per week for 27 months developed lesions in the nasal cavity even at the lowest dose, the ACGIH (1986/Ex. 1–3, p. 240) concurs with the American Industrial Hygiene Association (1986/Ex. 1–1195) that a 25-ppm limit for ethyl acrylate is too high to prevent irritating effects in exposed humans.

In a study by Nemec and Bauer (1978, as cited in ACGIH 1986/Ex. 1–3, p. 240), human volunteers experienced drowsiness, headache, and nausea after prolonged inhalation exposures at 50 to 75 ppm. Opdyke (1975/Ex. 1–822) reported that the application of a 6-percent concentration of ethyl acrylate produced skin-sensitization reactions in 10 out of 24 volunteers.

NIOSH (Ex. 8–47, Table N48; Tr. pp. 3–97 to 3–98) believes that a full Section 6(b) rulemaking is needed for this potential occupational carcinogen. A comment from Basic Acrylic Monomer Manufacturers (Ex. 184) urges OSHA not to adopt values still on the ACGIH *Notice of Intended Changes*. As discussed in Section IV, OSHA is not adopting these limits.

In the final rule, OSHA is establishing an 8-hour TWA of 5 ppm and a 15-minute STEL of 25 ppm for ethyl acrylate; the skin notation is being retained. The Agency concludes that these limits will protect workers from the significant risk of severe eye, nose, and skin irritation associated with exposure to this substance at the levels permitted by OSHA's former limit. The Agency considers these adverse effects material impairments to health.

FERROVANADIUM DUST

CAS: 12604-58-9; Chemical Formula: FeV
H.S. No. 1177

OSHA formerly had a limit of 1 mg/m³ for ferrovanadium dust. The ACGIH has a TLV–TWA limit of 1 mg/m³ with a TLV-STEL of 3 mg/m³; the NIOSH-recommended exposure limit for metallic vanadium is 1 mg/mg³ as a 10-hour TWA. The proposed PEL was 1 mg/m³, with a STEL of 3 mg/m³. NIOSH (Ex. 8–47, Table N1) concurred with these limits, which are established by the final rule. Ferrovanadium dust exists as dark, odorless, solid particles.

Soviet studies in animals showed ferrovanadium dust to be less toxic than vanadium pentoxide. Roshchin (1962/Ex. 1–1166) reported that no acute intoxication occurred in animals exposed to ferrovanadium dust at concentrations as high as 10,000 mg/m³; however, serious chronic pulmonary changes were observed after short-term exposures (one hour) on alternate days for two months to concentrations in the 1000- to 2000-mg/m³ range. These pulmonary changes consisted of chronic bronchitis and chronic lung inflammation. Only NIOSH commented on this substance.

OSHA is establishing a PEL of 1 mg/m³ TWA and a STEL of 3 mg/m³ for ferrovanadium dust to reduce the significant risk of chronic pulmonary damage shown to be associated with exposures to this substance at the elevated short-term levels formerly permitted by the TWA limit alone. OSHA considers the pulmonary damage caused by exposure to ferrovanadium dust to be material impairments of health. The Agency concludes that the combined TWA limit and STEL will substantially reduce this risk.

FIBROUS GLASS

CAS: None; Chemical Formula: None
H.S. No. 1178

The Agency proposed a PEL of 5 mg/m³ (the TLV established by the ACGIH) for total fibrous glass. NIOSH (1977d/Ex. 1–281) has recommended that employee exposures to fibrous glass dust not exceed 5 mg/m³ as an 8-hour TWA (as total dust) or 3 fiber/cc for fibers greater than 10 um long.

Extensive evidence was submitted to the record regarding the proposed PEL for fibrous glass. Because of the conflicting nature of some of the evidence and the complexity of the issues raised, OSHA has not yet been able to reach a final conclusion. Therefore, OSHA is temporarily delaying a final decision regarding the establishment of a separate PEL for fibrous glass; however, OSHA will make this final decision within a reasonable period of time.

GRAIN DUST (OAT, WHEAT, AND BARLEY)

CAS: None; Chemical Formula: None
H.S. No.: 1190

A decision by the Occupational Safety and Health Review Commission (*Secretary of Labor* v. *Krause Milling Company*, OSAHRC Docket No. 78–2307, April 22, 1988) has held that there was no former OSHA PEL for grain dust. Based on the ACGIH recommendation, OSHA proposed to establish a 4-mg/m³ 8-hour TWA PEL for dust generated from wheat, oats, and barley, and NIOSH (Ex. 8–47, Table N1) supported the proposal. However, in the final rule the Agency is establishing an 8-hour TWA limit of 10 mg/m³ for these dusts. Grain dusts is a complex mixture of husk particles, cellulose hairs and spikes, starch granules, spores of fungi, insect debris, pollens, rat hair, and approximately 5 percent mineral particles. The mean particle size of the airborne dusts may be less then 5 um. A substantial amount of information was submitted to the record addressing the health evidence and feasibility of attaining a 4-mg/m³ TWA limit in the feed industry (Exs. 3–751, 3–752, 3–755, 8–55, 104, 108, 118, 180, 185, and 198; Tr. pp. 6–247 to 6–339). OSHA has carefully reviewed this evidence and has determined that an exposure limit for grain dust is necessary to reduce the significant risk of adverse respiratory effects associated with exposure to this material. OSHA's review of the health evidence, described below, shows that grain workers will experience adverse respiratory symptoms upon exposure to grain dust levels exceeding the current nuisance dust limit of 15 mg/m³ TWA; this observation was not disputed in the record. Respiratory symptoms are also prevalent among grain dust workers exposed to levels below 10 mg/m³ TWA, as total dust, although these symptoms are diminished compared with those associated with exposure to higher dust levels. Because of uncertainties in establishing a clear threshold exposure level for respiratory effects and in determining the feasibility of the proposed 4-mg/m³ limit (see Section VII, Summary Economic Impact and Regulatory Flexibility Analysis), OSHA is establishing a 10-mg/m³ limit as an 8-hour TWA for wheat, oat, and barley dust to reduce the risk of respiratory disease.

The adverse effects of inhaling grain dust have been known for at least two-and-one-half centuries, dating back to Rammazini who, in 1713, described the respiratory hazards associated with exposure to cereal grain dust. More recently, several epidemiological studies conducted over the past few decades (cited by ACGIH 1986/Ex. 1–3 and Rankin et al. 1986) have demonstrated that exposure to grain dust causes "grain fever," wheezing, chest tightness, productive cough, eye and nasal irritation, and symptoms of chronic respiratory disease. Grain dust may also induce asthmatic reactions via an allergic mechanism, particularly in individuals who are predisposed to developing allergies (i.e. atopic individuals). Thus, OSHA believes that the need for an occupational limit on exposure to grain dust is clear.

The basis for OSHA's proposed 4-mg/m³ limit was a NIOSH-sponsored study of grain workers by Rankin et al. (*Study of the Prevalence of Chronic, Non-Specific Lung Disease and Related Health Problems in the Grain Handling Industry*, DHHS (NIOSH) Pub. No. 86–117, 1986). A 1980 draft of this study by Rankin and do Pico (Ex. 1–1193) formed the basis for the ACGIH-recommended limit of 4 mg/m³ TWA. This study evaluated the health status of 310 grain handlers in Wisconsin and Minnesota. The grain handlers were selected from eight elevator companies, from state grain inspection agencies, and from longshoring companies. Health status was determined by questionnaire and by physical examination, which included an assessment of pulmonary function, immunologic evaluation, blood and urine chemistries, and chest roentgenograms. The comparison group that served as controls consisted of 239 city workers who spent the majority of their workdays outside.

From the questionnaires, Rankin et al. (1986) found that the grain handlers had a higher prevalence of respiratory symptoms than did the city workers. The prevalence of respiratory symptoms was highly significant (Rankin et al. 1986, Table 13), and was independent of smoking status. The symptoms reported by grain handlers represented both acute and chronic airways reactions (occupational asthma and chronic bronchitis). Wheezing and/or chest tightness generally started within two hours of beginning the work shift. Episodes of grain fever occurred infrequently; this was attributed by the workers to improved working conditions over the previous three years. Acute recurrent conjunctivitis and rhinitis were reported to occur among most grain workers.

Lung function tests showed that exposure to grain dust had a highly significant adverse effect on pulmonary function (Rankin et al. 1986, Table 30). There was, however, no correlation between reduced pulmonary function and job category, length of employment, or place of work. The lung function decrement observed among grain handlers was not related to smoking history alone; grain handlers who were smokers or ex-smokers showed significant declines in pulmonary function when compared to city workers who were smokers or ex-smokers.

Grain workers who reported symptoms had lower values of ventilatory function than did workers without symptoms. The prevalence of chronic bronchitis symptoms with measured airways obstruction was higher in grain workers than in controls, regardless of smoking history. Chronic bronchitis with airways obstruction was also related to length of employment. Rankin et al. (1986) concluded that these findings "suggest that chronic grain dust exposure may result in chronic obstructive pulmonary disease" (p. 26).

Rankin et al.'s (1986) study also included a work-shift study in which 248 grain workers and 192 city workers were sampled for grain dust exposure during a work shift. Symptoms occurring during the shift were recorded and pulmonary function readings were taken before and after the shift. Only 14 percent of grain workers were exposed to an 8-hour TWA level exceeding 5 mg/m³ total grain dust; 7 percent were exposed above 10 mg/m³. Rankin et al. (1986) reported that grain workers showed a significant excess of cough and expectoration during a work shift in which dust concentrations were below 5 mg/m³. At dust levels between 10 and 15 mg/m³, there was a significantly increased prevalence of wheezing and dyspnea during the shift among grain workers as compared with controls (Rankin et al. 1986, Table II–156). Workers with pre-existing airways obstruction experienced significant pre- to post-shift declines in ventilatory function at dust levels below 10 mg/m³. However, the changes observed in pre- to post-shift pulmonary function did not correlate with the presence of symptoms during the shift.

Rankin et al. (1986) also conducted a short-term (three-year) follow-up study of lung function among grain workers. Their results showed no greater declines in FEV or FVC over the three-year period than could be accounted for by age alone. However, there was a significant decline in other measures of lung function (MMF, V_{max50}, V_{max75}) among both smoking and nonsmoking grain workers. The authors concluded that, although a grain-dust-related decline in these measures was observed, the long-term effects of smoking on lung function were probably greater than those caused by grain dust.

The ACGIH (1986/Ex. 1–3) recommended the 4-mg/m³ TLV based largely on the following conclusion by Rankin et al. (1986):

> The incidence of respiratory symptoms was higher among grain workers exposed to mean total airborne dust (time-weighted average concentration) of 13.9 mg/m³ when compared to grain workers exposed to 4 mg/m³ or less. In the latter group of grain workers the incidence of symptoms was similar to that found among controls (Rankin et al. 1986, p. 51).

This conclusion by Rankin et al. (1986) was derived by correlating the incidence of respiratory symptoms with workers' subjective estimations of dust levels encountered during the work-shift study; workers who judged their dust exposures during the shift to be "more than average" were exposed to mean dust levels of 13.9±12 mg/m³ TWA and had significantly higher incidences of respiratory symptoms than did workers who judged their exposures to be "average" (mean TWA dust exposures of 4±8.6 mg/m³). From this observation, the ACGIH (1986/Ex. 1–3) interpreted 4 mg/m³ to be a no-observed-effect level.

This interpretation of Rankin et al.'s (1986) results was heavily criticized by rulemaking participants. For example, the National Grain and Feed Association (NGFA) (Ex. 8–55) argued:

> OSHA states that the study found that acute bronchial symptoms did not appear among workers exposed at or below 4 mg/m³. This figure is in fact an average estimated exposure of 4.21 ± 8.62 mg/m³ and . . . was based on workers' arbitrary interpretation[s] of 'average' exposure. The researchers grossly overstated their results by implying that a specific level of 4 mg/m³ was an absolute limit below which the incidence of symptoms among workers was similar to [that among] controls (Ex. 8–55, p. 28).

Although it is true that reliance on employees' subjective impressions of the magnitude of dust exposure during a shift is not as precise as taking quantitative samples of dust exposure, it must be emphasized that Rankin et al. (1986) did find a significant excess of respiratory symptoms among grain workers whose TWA exposures were objectively determined, by air sampling,

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to be less than or equal to 10 mg/m³ TWA; an excess incidence of wheezing and dyspnea were also reported among grain workers exposed to levels of between 10 and 15 mg/m³ TWA.

The NGFA also criticized the Rankin et al. (1988) study for failing to address potential biases in the design and administration of the health questionnaire (Ex. 8–55, p. 25). In Appendix C of its submission, the NGFA cites a discussion of questionnaire biases by Gamble and Battigelli (in *Patty's Industrial Hygiene and Toxicology*, 3rd rev. ed., vol. 1, pp. 129–32, Clayton and Clayton 1981) and states that "questionnaires provide a large source of error that must be guarded against," particularly when the questionnaire is self-administered (Ex. 8–55, Appendix C, pp. 3–4). OSHA believes that, although such biases are possible, Rankin et al. (1988) took measures to reduce such biases. First, their study population derives from many workplaces, including eight grain elevators, state grain inspection agencies, and longshoring companies; it thus appears unlikely that the overall results obtained from the questionnaires would be substantially biased as a result of employee dissatisfaction with the working conditions of a particular worksite. Second, Rankin et al. (1988) did rely on trained interviewers to review all questionnaires for completeness and to assist in the completion of a questionnaire when necessary. The use of trained interviewers, according to Gamble and Battigelli (Ex. 8–55, Appendix C, p. 3), may correct such biases. In addition, Rankin et al. (1988) found a correlation between symptoms reported on questionnaires and exposure levels, which suggests that the questionnaire results were not heavily biased.

Despite some of the criticisms of the Rankin et al. (1988) study, these authors' results are consistent with some other published studies of grain workers. Dr. Roy Buchan, Chief of the Occupational Health and Safety Section, College of Veterinary Medicine and Biomedical Sciences at Colorado State University, performed a study of the general health of 31 grain handlers (submitted as part of Ex. 3–751). A total of 204 personal TWA dust samples were taken, of which only six exceeded 10 mg/m³. Dr. Bechan found that neither age of facility, smoking history, nor past exposure to grain dust had any significant effect on symptom responses. There was a statistically significant association between grain dust exposure levels and symptom responses. The reported symptoms included nasal and throat irritation, chest discomfort, and phlegm production. Dr. Buchan concluded that, "although the association was mathematically weak but statistically significant, it would rationally be expected that symptom severity would become more pronounced as dust concentrations increase, since dust exposures in this investigation were surprisingly low (mean = 0.7 mg/m³ TWA)." In a larger study of 360 Canadian grain workers, Cotton, Graham, Li et al. (1983, submitted as part of Ex. 3–751) also reported a significant excess incidence of respiratory symptoms among grain workers despite total dust concentrations generally below 10 mg/³.

Although these studies show a consistent pattern of increased prevalence of respiratory symptoms among grain handlers exposed below 10 mg/m³, the association between low-level exposure to grain dust and the development of chronic pulmonary disease remains open to interpretation. Several studies, including Rankin et al. (1988), Chan-Yeung, Giclas, and Henson (1980/Ex. 1–474), and Broder, Corey, Davies et al. (1985, as cited in Ex. 3–751) have generally not found decrements in pulmonary function associated with long-term exposure to grain dust. In addition, chest roentgenograms have found no evidence of lung scarring of fibrosis (Rankin et al. 1988) among grain handlers. However, symptoms of chronic bronchitis have been frequently noted among grain handlers, including those who have never smoked (Rankin et al. 1988; Cotton, Graham, Li et al. 1983). According to Cottos et al. (1983, as cited in Ex. 3–751, p. 139), "The significance of the increase in chronic bronchitis and cough in workers and wheezing in nonsmoking workers in terms of eventual respiratory disability remains uncertain but the nuisance and discomfort of these symptoms for workers must also be considered."

Because of the conflicting evidence for an association between exposure to grain dust and the development of chronic lung damage, the NGFA (Exs. 8–55 and 180) and the American Feed Industry Association (AFIA) (Ex. 185) take the position that grain dust has been shown to be a nuisance dust. For example, in its posthearing brief, the AFIA stated:

> [F]eed industry workers are generally healthy, and experience no unique adverse health effects resulting from current levels of grain dust exposure. Therefore, setting a PEL for grain dust is unwarranted and unnecessary.

The studies relied on by OSHA . . . fail to show that grain dust, at current levels, is a "harmful physical agent". . . . Granted, grain dust may have *some* effect on some individuals' health; however, nothing in the record demonstrates that these effects, at typical current levels, are anything more than reversible and non-serious (Ex. 180, p. 14).

OSHA does not concur with this view. In the studies described above, as well as in others in the record, grain workers have consistently reported an excess prevalence of respiratory symptoms, including chronic bronchitis, at low levels of exposure to grain dust. OSHA believes that these symptoms, even in the absence of definitive evidence of irreversible lung damage, constitute material impairment of health and interfere with the well-being of workers. This was attested to at the informal hearing by Deborah Berkowitz, Director of Safety and Health for the Food and Allied Trades Department, AFL–CIO:

> I want to make it clear that study after study documents a very real acute hazard to grain workers. Living with chronic bronchitis is not a hazard that should go unchecked. In fact, study after study point to the possibility of very real long-term damage from chronic cumulative effects of exposure to grain dust. But even without the possibility of long-term disability, acute hazards clearly pose significant risk[s] to workers (Tr. pp. 6–306 to 6–307)

OSHA concludes that employees are placed at significant risk of respiratory symptoms, including chronic bronchitis, as a result of exposure to grain dust. It is clear that such symptoms occur at grain dust levels exceeding OSHA's former limit for dusts and particulates (15 mg/m³ TWA); in addition, workers have reported symptoms of wheezing and dyspnea upon exposure to dust levels between 10 and 15 mg/m³ TWA. Increases in respiratory symptoms have also been reported to occur among grain workers exposed generally to less than 10 mg/m³, although symptoms are diminished at these lower levels. At this time, it is difficult to identify the threshold at which adverse respiratory effects are likely to occur. This uncertainty is reflected in a posthearing submission by the NGFA (Ex. 116) in which Dr. George Bardwell of the University of Denver performed a statistical analysis of the FEV measurements reported by Chan-Yeung, Giclas, and Henson (1980/Ex. 1–474) in grain workers. Dr. Bardwell estimated that the threshold for reduced FEV is 0.41 mg/m³, with a 95-percent confidence interval of between 0 and 24.4 mg/m³.

In addition, considerable information was entered into the record addressing the technological feasibility of achieving the proposed 4-mg/m³ grain dust PEL (Exs. 3–751, 3–752, 3–753, 8–55, 108, 118, 180, 185, and 198). These data are conflicting, particularly with regard to smaller grain elevators. In light of these uncertainties, OSHA is establishing a 10-mg/m³ 8-hour TWA limit for grain dust, measured as total dust. OSHA finds that establishing this limit will substantially reduce the risk of adverse respiratory effects that occur at higher levels of exposure. OSHA has also concluded that a 10-mg/m³ TWA limit is technologically feasible (see Section VII).

The American Feed Industry Association (EX. 185) objected to OSHA's inclusion of oat and barley dust in the definition of grain dust, stating that the studies relied on by OSHA in the NPRM pertaining to oat and barley dust (Darke, Knowelden, Lacey, and Ward 1976; Cockcroft et al. 1983) were not relevant to addressing the effects of exposure to oat and barley dust at levels below 15 mg/m³. However, Rankin et al. (1988) reported in their study, which involved exposure to much lower levels of grain dust, that the types of dust most likely to bring on or aggrevate symptoms of cough and/or expectoration were durum wheat and barley, followed by spring wheat, rye, and oat. Least likely were corn, soybean, sunflower, and others. In addition, Mr. George Talley and Mr. Michael Garcia, industrial hygienists at Los Alamos National Laboratory, commented that, according to their personal experience, barley beards are more irritating than wheat dust (Ex. 3–1095). Therefore, OSHA finds that there is sufficient evidence to include oat and barley in the definition of grain dust.

At the informal hearing, Ms. Berkowitz raised the question as to whether OSHA intended to apply the grain dust limit to flour mills and bakeries (Tr. 6–310). To support this position, she submitted several reports describing asthma occurring among bakers; bakers' asthma has been attributed to flour dust exposure (Ex. 3–751). As with all other substances included in this rulemaking, OSHA intends the new limit for grain dust to apply to all workplaces, including flour mills and bakeries where there is the potential for exposure to grain dust.

In the final rule, OSHA is establishing an 8-hour TWA limit of 10 mg/m³ for grain dust, measured as total dust. Grain dusts other than oat, wheat, and barley are regulated under OSHA's generic "particulates not otherwise regulated" PEL of 15 mg/m³ (total particulate) and 5 mg/m³ (respirable fraction). The Agency concludes that this limit will substantially reduce the significant risk of acute and chronic respiratory symptoms and disease associated with exposure to grain dust at the levels formerly permitted by the absence of an OSHA limit. The Agency has determined that the respiratory effects caused by exposure to grain dust represent material impairments of health.

GRAPHITE, NATURAL

CAS: 7782–42–5; Chemical Formula: None
H.S. No. 1191

The former OSHA limit for natural graphite (total dust) was 15 million particles per cubic foot (mppcf), which is equivalent to 2.5 mg/m³ as respirable dust (assuming that respirable mass is one-half total particle mass). The proposed PEL was 2.5 mg/m³ for respirable natural graphite dust containing less than 1 percent quartz; NIOSH (Ex. 8–47, Table N1) concurred with this limit, and the final rule promulgates it. The ACGIH has a graphite TLV of 2.5 mg/m³ for respirable dust containing less than 1 percent quartz. Graphite is a mineral substance that is best known for its use as the "lead" in pencils.

Early reports established that graphite deposited in the lungs of occupationally exposed workers caused pneumoconiosis (Koopman 1924/Ex. 1–131). Subsequent research described the condition produced by exposure to graphite as anthracosilicosis, a pulmonary condition similar to that seen in coal miners, based on radiographic and histologic examinations in exposed individuals (Harding and Oliver 1949/Ex. 1–71). The fibrotic changes seen in graphite workers appear to be related to the silica content of the graphite; experimental animals that were administered graphite that did not contain silica did not develop fibrotic changes (Ray, King, and Harrison 1951/Ex. 1–46), while another study found that graphite containing only a small amount of silica produced fibrotic changes in exposed animals (Ottowicz and Paradowski 1961/Ex. 1–190). Radiologic changes were also observed among graphite mine and production workers exposed to graphite containing from 3.6 to 10 percent silica (Pendergrass, Vorwald, Mishkin et al. 1967/Ex. 1–77). OSHA received no comments on this substance except for those from NIOSH.

In the final rule, OSHA is revising its former limit of 15 mppcf to a limit of 2.5 mg/m³ for the respirable fraction of graphite containing less than 1 percent quartz; this change represents a change only in the units used to express or measure the limit, not a change in the value of the limit. OSHA is revising its limit to simplify the monitoring of employee exposures, because the use of impingers and microscopic analyses are not required to measure exposures that are expressed in mg/m³ rather than in mppcf.

INDIUM AND COMPOUNDS

CAS: 7440–74–6; Chemical Formula: In
H.S. No. 1213

There was no former OSHA limit for indium and compounds; however, the proposed and final rule PEL is 0.1 mg/m³ as an 8-hour TWA. NIOSH (Ex. 8–47, Table N1) concurred with this limit. The ACGIH recommends that exposures to indium not exceed 0.1 mg/m³ over an 8-hour shift. Indium metal is silver-white, shiny, and ductile.

Although there is no direct human evidence of the effect of indium compounds, severe effects have been produced by indium exposures in experimental animals. Rats that inhaled the sesquioxide form of indium at airborne concentrations ranging from 24 to 97 mg/m³ daily for a total of 224 hours developed widespread alveolar edema; these histologic lesions did not change over a 12-week post-exposure period (Leach, Scott, Armstrong et al. 1961, as cited in ACGIH 1986/Ex. 1–3, p. 322). Exposure of animals to indium reduces alveolar clearance and may be associated with chronic respiratory insufficiency, recurrent acute pneumonitis, and death (Jones 1960, as cited in ACGIH 1986/Ex. 1–3, p. 322). NIOSH was the only commenter on this substance.

Because of the severity of indium-induced injury and the persistence of such injuries, OSHA concludes that, in the absence of any exposure limit, exposed employees are at significant risk of developing chronic lung function impairment. The Agency is establishing an 8-hour TWA limit of 0.1 mg/m³ for indium and compounds to substantially reduce this risk.

IRON OXIDE (DUST AND FUME)

CAS: 1309–37–1; CHEMICAL FORMULA: Fe_2O_3
H.S. No. 1215

OSHA formerly had an 8-hour TWA limit of 10 mg/m³ for iron oxide fume. The ACGIH has established a limit of 5 mg/m³, measured as iron, total particulate. The proposed PEL was 5 mg/m³, and NIOSH (Ex. 8–47, Table N1) supported the proposed limit. However, the final rule retains OSHA's former limit of 10 mg/m³ for this substance. The fume of iron oxide is red-brown in color.

Animals exposed to iron oxide or to iron oxide mixed with less than 5 percent silica by inhalation or by intratracheal injection did not develop

pulmonary fibrosis (Naeslund 1940/Ex. 1–650; Harding, Grout, Durkan et al. 1950, as cited in ACGIH 1986/Ex. 1–3, p. 325). Inhalation of iron oxide dust also did not produce lung cancer in mice (Muller and Erhardt 1956/Ex. 1–648).

The evidence of iron oxide's toxicity in humans is conflicting. Drinker, Warren, and Page (1935/Ex. 1–315) concluded that exposures to iron oxide fume should be maintained below 10 mg/m³, and a U.S. Department of Labor study (1941, as cited in ACGIH 1986/Ex. 1–3, p. 325) found that exposures below 30 mg/m³ were without adverse effect. There are several studies, on the other hand, that report chest X-ray abnormalities in miners, welders, silver polishers, electrolytic iron oxide workers, foundry workers, and boiler scalers (Doig and McLaughlin 1936/Ex. 1–626; Stewart and Faulds 1934/Ex. 1–764; Doig and McLaughlin 1946/Ex. 1–627; McLaughlin, Grout, Barrie, and Harding 1945/Ex. 1–642; Davidson 1951, as cited in McLaughlin 1951/Ex. 1–727; Pendergrass and Leopold 1945/Ex. 1–653; Dunner and Hermon 1944/Ex. 1–731) exposed to iron oxide dust or fume. Some of these workers developed disabling pneumoconiosis; however, the exposures of many of these workers were mixed and in some cases included exposure to varying amounts of silica.

McLaughlin (1951/Ex. 1–727), whose opinion on the subject is widely accepted, believes that the presence of iron oxide dust or fume in the lung causes a pigmentation (termed siderosis) that is responsible for the changes seen in exposed individuals' chest X-rays. Siderosis is believed not to progress to fibrosis, and 6 to 10 years of exposure to about 15 mg/m³ iron oxide dust is required before this condition develops (Fawcett 1943/Ex. 1–736; Fleischer, Nelson, and Drinker 1945/Ex. 1–1051; Hamlin and Weber 1950/Ex. 1–698). However, no studies are available that correlate exposure levels with X-ray changes.

Dr. Stuart M. Brooks (NIOSH 1986b, p. 425) notes that "[m]ore sophisticated physiologic testing, including measurement of the lung's mechanical properties, is required to better document lung function changes that may occur following inhalation of iron-containing dusts. *In vitro* studies or animal experimentation might be helpful in determining dose-response relationships, understanding lung clearance mechanisms for iron, and elucidating any fibrogenic properties of various ferrous compounds."

Some studies have shown that workers with exposures to iron oxide and such other substances as silica, radon gas, diesel exhaust, corn oils, and the thermal decomposition products of synthetic resins (Faulds 1957/Ex. 1–635; Dreyfus 1936/Ex. 1–897; Bidstrup 1959/Ex. 1–1030; Boyd, Doll, Faulds, and Leiper 1970/Ex. 1–716; Braun, Guillerm, Pierson, and Sadoul 1960/Ex. 1–1141; Monlibert and Roubille 1980/Ex. 1–647; Jorgensen 1973/Ex. 1–1023; Muller and Erhardt 1956/Ex. 1–648; Koskela, Hernberg, Karava et al. 1976/Ex. 1–744; Gibson, Martin, and Lockington 1977/Ex. 1–1053) have a greater risk of developing lung cancer. However, OSHA agrees with the ACGIH that, "at this time, it is not generally accepted that exposure to iron oxide dust or fume causes cancer in man" (ACGIH 1986/Ex. 1–3, p. 325). Stokinger (1964/Ex. 1–672) concluded that exposure to iron oxide dust and fume *per se* was not carcinogenic.

Several industry commenters (Exs. 8–22, 3–349, 3–829, 129, and 188; Tr. XI, pp. 137–138) objected to the proposed reduction in the PEL for iron oxide on the grounds that exposure to this substance does not cause fibrosis or pulmonary impairment, but rather siderosis, which is a benign pneumoconiosis. The American Iron and Steel Institute (Ex. 129, pp. 12–13) described siderosis as "simply a description of a condition that appears on radiographs." OSHA disagrees with Mr. Hernandez' assessment of the health effects potentially associated with exposure to iron oxide because the Agency believes that any occupational exposure that causes foreign substance to lodge in body tissues is undesirable. However, the Agency concurs with NIOSH's Dr. Brooks (NIOSH 1986b, p. 425) that additional research is necessary to determine why the lung is unable to clear iron-containing dusts after inhalation.

Accordingly, OSHA finds it appropriate to retain the Agency's former PEL for iron oxide dust and fume of 10 mg/m³, measured as total particulate. The Agency concludes, based on the evidence currently available, that this limit will protect workers from developing of siderosis, a benign pneumoconiosis that occurs after many years of exposure to levels of iron oxide dust or fume in excess of 15 mg/m³, and accumulation of iron dust in the lungs associated with ferric oxide exposure.

METHYLENE BIS-(4-CYCLOHEXYLISOCYANATE)

CAS: 5124-30-1; Chemical Formula: $C_{15}H_{22}N_2O_2$
H.S. No. 1272

OSHA had no former limit for methylene bis-(4-cyclohexylisocyanate). Prior to 1988, the ACGIH had a TLV ceiling of 0.01 ppm for this alicyclic diisocyanate compound. OSHA proposed a ceiling of 0.01 ppm, and NIOSH (Ex. 8–47, Table N1) supported the proposal. The final rule establishes that limit. OSHA Notes that ACGIH adopted a new limit for this substance in 1988 of 0.005 ppm TWA. The NIOSH RELs for methylene bis-(4-cyclohexylioscyanate) are a 0.005-ppm 10-hour TWA and a 0.02-ppm 10-minute ceiling.

Methylene bis-(4-cyclohexylisocyanate) is a pulmonary, skin, and eye irritant. The oral LD_{50} in rats is 9.9 g/kg. A 5-percent solution applied to the skin of guinea pigs produced strong erythema and edema, and rabbits treated with 0.1 mg showed severe skin reactions (Younger Laboratories 1985, as cited in ACGIH 1986/Ex. 1–3, p. 392).

Rats inhaling a lethal concentration of 20 ppm for five hours exhibited marked respiratory irritation, tremors, and convulsions during exposure, and their lungs revealed severe congestion and edema after death (E.I. du Pont de Nemours and Co. Inc. 1978, as cited in ACGIH 1986/Ex. 1–3, p. 392). Repeated inhalation exposure at 0.4 ppm produced initial weight loss in rats; exposure at 1.2 ppm caused respiratory irritation and decreased growth (E.I. du Pont de Nemours and Co. Inc. 1978, as cited in ACGIH 1986/Ex. 1–3, p. 392). Guinea pigs exposed to 0.12 ppm and mice exposed to 0.65 ppm did not exhibit dermal sensitivity (Stadler and Karol 1964/Ex. 1–612). Unlike toluene diisocyanate, which is a sensory irritant, methylene bis(4-cyclohexylisocyanate) depressed respiration by producing pulmonary irritation for example, an exposed mouse showed a 50-percent decrease in respiration rate, along with lung irritation, when exposed to 3.7 ppm of this substance (Weyel and Schaffer 1985/Ex. 1–561).

Human exposures to this compound have resulted in skin sensitization but only infrequently in pulmonary sensitization (Emmett 1976/Ex. 1–552; Israeli, Smirnov, and Sculsky et al. 1981/Ex. 1–701).

NIOSH (Ex. 150, Comments on Methylene Bis-(4-Cyclohexylisocyanate)) notes that both the REL and TLV for this substance have been based on the toxicological properties of toluene diisocyanate (TDI) and that "a recent study by NTP (1986a) of chronic effects in animals has produced evidence that cancer is associated with exposure to commercial grade TDI . . . and to a TDI hydrolysis product, 2,4-TDA . . . treatment of rats and mice of both sexes by gavage to

commercial grade TDI resulted in tumor induction, primarily in the pancreas and liver in male and female rats, and in female mice. The tumorigenic responses observed in both rats and mice treated with TDI meet the criteria of the OSHA cancer policy (29 CFR 1990) for classifying a substance as a potential occupational carcinogen." NIOSH suggests that the recommended RELs (0.005 ppm TWA and 0.02 ppm 10-minute ceiling) be considered as an interim level to be applied to methylene bis-(4-cyclohexylisocyanate) until adequate testing information is available. The AFL-CIO (Ex. 194) supported OSHA's proposed ceiling limit for this substance.

OSHA believes that a ceiling limit of 0.01 ppm is as protective as a 0.005-ppm TWA; the Agency therefore is establishing a ceiling limit of 0.01 ppm for methylene bis-(4-cyclohexylisocyanate). The Agency concludes that this limit will protect workers against the significant risk of eye, skin, and pulmonary irritation potentially associated with occupational exposures to this substance at the levels formerly permitted by the absence of an OSHA limit. The Agency considers these irritant effects caused by exposure to methylene bis-(4-cyclohexylisocyanate) to be material impairments of health.

MICA

CAS: 12001-26-2; Chemical Formula: $K_2Al_4(Al_2Si_6O_{20})(OH)_4$
H.S. No. 1276

OSHA formerly had a PEL of 20 mppcf TWA for mica containing less than 1 percent crystalline silica; this limit is equivalent to a 3-mg/m³ limit. The ACGIH recommends a limit of 3 mg/m³ TWA for the respirable dust of mica containing less than 1 percent quartz. OSHA proposed, and the final rule establishes, an 8-hour TWA limit of 3 mg/m³ for the respirable dust of mica containing less than 1 percent quartz. NIOSH (Ex. 8–47, Table N1) agreed with this decision.

Mica is a colorless, odorless, nonflammable, nonfibrous, water-insoluble silicate occurring in plate form and containing less than 1 percent quartz; it includes nine different species.

The final rule establishes an 8-hour TWA limit of 3 mg/m³ for respirable mica dust containing less than 1 percent quartz; this limit corresponds to the existing 20-mppcf PEL and is in keeping with the Agency's decision to delete mppcf values in favor of respirable dust values expressed in mg/m³. The Agency has decided to express this and other similar limits as mg/m³ to facilitate employee exposure monitoring.

MINERAL WOOL FIBER

CAS: None. Chemical Formula: None
H.S. No. 1277

OSHA proposed a limit of 10 mg/m³ TWA for mineral wool fiber, measured as total particulate containing less than 1 percent quartz; this was the same limit recommended by the ACGIH (1986/Ex.1–3). NIOSH recommends a 5-mg/m³ (8-hour TWA) limit, measured as total dust, as well as a 3-fiber/cc limit for fibers greater than 10 um long.

Extensive evidence was submitted to the record regarding the proposed PEL for mineral wool. Because of the conflicting nature of some of the evidence and the complexity of the issues raised, OSHA has not yet been able to reach a final conclusion. Therefore, OSHA is temporarily delaying a final decision regarding the establishment of a separate PEL for mineral wool fiber; however, OSHA will make this final decision within a reasonable period of time.

NICKEL (SOLUBLE COMPOUNDS)

CAS: 7440-02-0; Chemical Formula: Varies
H.S. No. 1283

The former OSHA PEL for all forms of inorganic nickel (as Ni) was 1 mg/m³ TWA. Based on the ACGIH recommendation, OSHA proposed revising this limit to 0.1 mg/m³ TWA; this limit is established in the final rule. NIOSH recommends that exposure to any form of inorganic nickel be maintained at or below 0.015 mg/m³.

A variety of toxic effects results from exposure to nickel compounds. Soluble nickel salts cause contact dermatitis in sensitized individuals and eye irritation (ACGIH 1986/Ex. 1–3, p. 422). Cases of asthmatic lung disease have been reported among nickel-plating workers (EPA 1986a/Ex. 1–1132).

OSHA's proposal to lower the PEL for soluble nickel compounds to 0.1 mg/m³ was based primarily on evidence that exposure to soluble nickel at low levels and for relatively short durations causes pathological changes in the lungs of experimental animals. In addition, OSHA reviewed several animal and human studies designed to investigate the carcinogenic potential of soluble nickel compounds. Three soluble nickel compounds have been tested for their carcinogenic potential: nickel chloride, nickel sulfate, and nickel acetate. Some sparingly soluble compounds, nickel carbonate and nickel hydroxide, have also been studied.

The results of animal studies suggest that some soluble nickel compounds are potentially carcinogenic; however the data are derived predominately from injection studies and results are conflicting. Results from occupational studies on soluble nickel compounds are also conflicting and are confounded by the presence of several types of nickel compounds in the facilities studied.

In the proposal, OSHA made a preliminary finding that exposure to soluble nickel compounds presented a potential cancer mortality risk to workers. Since publication of the proposal, however, OSHA has reviewed all of the record evidence, including an additional epidemiologic study, and has determined that further analysis is necessary before any definitive findings can be made with regard to the carcinogenic potential of the soluble nickel compounds. OSHA wishes to emphasize, however, that this determination does not negate the evidence that exposure of experimental animals to low levels of soluble nickel causes pathological changes in the lung. Accordingly, OSHA is establishing the 0.1-mg/m³ TWA PEL in the final rule, as proposed, but is basing this limit on the respiratory toxicity of these compounds. OSHA's findings on the evidence on soluble nickel compounds is presented below.

Bingham, Barkley, Zerwas et al. (1972/Ex. 1–204) exposed rats by inhalation to 0.1 mg/m³ nickel chloride for 12 hours per day for two weeks. Animals showed evidence of pulmonary irritation and damage in the form of marked mucous secretion, hyperplasia, and accumulations of alveolar macrophages. Fluid obtained by lung lavage appeared very cloudy and viscous due to the presence of free alveolar cells. Rats and guinea pigs exposed daily to 1.0 mg/m³ (as Ni) nickel chloride for six months showed increased lung weight, which is an indication of pulmonary damage and hyperplasia (Clary 1977, as cited in ACGIH 1986/Ex. 1–3, p. 422); exposed rats also developed signs of interstitial fibrotic lesions. Rabbits inhaling 0.3 mg/m³ (as Ni) nickel chloride aerosol for 30 days showed a doubling in alveolar cell number and volume of alveolar epithelial cells, as well as nodular accumulation of macrophages and laminated structures (Johansson, Curstedt, Robertson, and Camner 1983/Ex. 1–273). These studies clearly show that exposure at or below the former OSHA PEL of 1.0 mg/m³ for soluble nickel, even for durations considerably less than a working lifetime, is associated with increased cell turnover and pathological changes in the lung. These pathological changes, in particular the appearance of fibrotic lesions, observed in animals exposed to low levels of soluble nickel salts indicate that lung damage has occurred

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and suggests that significant decrements in lung function may result from prolonged exposure to these low levels. Furthermore, the appearance of hyperplasia is indicative of abnormal cell growth and suggests the presence of pre-cancerous lesions.

Nickel chloride has been reported to be mutagenic in *Salmonella typhimurium* and *Cornebacterium*, but negative in *E. coli* (EPA 1986a/Ex. 1–1132). The positive studies are not considered conclusive, however, because the *S. typhimurium* report is an abstract lacking detailed data and *Cornebacterium* is not the usual species used in these tests. Amacher and Paillet (1980/Ex. 1–286) reported that nickel chloride was mutagenic in mouse lymphoma cells and demonstrated a dose-response relationship for this endpoint.

Some *in vitro* studies using soluble nickel compounds report finding chromosomal aberrations (EPA 1986a/Ex. 1–1132). These studies do not demonstrate a dose-response relationship or statistical significance, which weakens their findings. Several *in vivo* studies have failed to detect chromosomal aberrations (EPA 1986a/Ex. 1–1132). However, several *in vitro* studies on nickel sulfate and nickel chloride have reported findings of sister chromatid exchanges (EPA 1986a/Ex. 1–1132).

Some animal studies on soluble nickel compounds suggest that these compounds are carcinogenic in animals. Strain A mice receiving intraperitoneal injections of nickel acetate had an increased rate of lung adenomas and adenocarcinomas that was statistically significant in the high-dose group (Stoner, Shimkin, Troxell et al. 1976/Ex. 1–203). The animals were injected three times per week for eight weeks at 72, 180, or 360 mg/kg.

EPA (1986a/Ex. 1–1132) reported a study in which rats were given monthly intramuscular injections of 35 mg/kg nickel acetate for four to six months (Haro, Furst, and Falk 1968/Ex. 1–1022). Twenty-two percent of the treated rats developed sarcomas. Payne (1964/Ex. 1–200) observed tumor responses in rats after intramuscular implantation of 7 mg nickel acetate, nickel sulfate, nickel chloride, or nickel carbonate. Implant-site sarcomas developed in one of 35 rats exposed to nickel acetate, one of 35 rats exposed to nickel sulfate, none of 35 rats exposed to nickel chloride, and four of 35 rats exposed to nickel carbonate.

Results of other studies on nickel sulfate have been negative. Three studies used intramuscular injection in rats and reported that no tumors developed in the treated group (Gilman 1962/Ex. 1–205; Gilman 1966, as cited in EPA 1986/Ex. 1–1132; Kasprzak, Gabryel, and Jaraczewska 1983/Ex. 1–201). An ingestion study also repoted no tumors among treated rats or dogs (Ambrose, Larson, Borzelleca et al. 1976/Ex. 1–211).

Gilman (1966, as cited in EPA 1986a/Ex. 1–1132) administered 5 mg nickel hydroxide to rats by intramuscular injection in each thigh. Nineteen out of 40 injection sites developed sarcomas. Kasprzak, Gabryel, and Jaraczewska (1983/Ex. 1–201) gave rats intramuscular injections of nickel hydroxide in gel, crystalline, or colloidal form. Five out of 19 animals receiving the gel developed sarcomas (two with metastasis to the lung), three out of 20 receiving the crystalline form developed sarcomas (one with metastasis to the lung), and none of 13 rats receiving the colloid developed tumors.

Inco United States, Inc. (with its subsidiary, Inco Ltd.) (Exs. 3–915 and 167) and the Nickel Producers Environmental Research Association (NiPERA), Inc. (Ex 3–668) discussed the limitations of the animal data. For example, both of these commenters noted that soluble nickel compounds have produced tumors in animals only by injection and that the results among studies were conflicting. In the NPRM and in the discussion above, OSHA recognized many of these limitations of the data. Although it is true, as Inco pointed out (Exs. 3–915 and 167), that EPA (1986a/Ex. 1–1132) concluded that the animal data are "too limited to support any definitive judgment regarding * * * [the] carcinogenic potential [of soluble nickel compounds]" (EPA 1986a/Ex. 1–1132, p. 8–229), EPA also concluded that:

> The observation of pulmonary tumors in strain A mice from the administration of nickel acetate by intraperitoneal injections and the ability of nickel acetate to transform mammalian cells in culture and to inhibit RNA and DNA synthesis provides limited evidence for the carcinogenicity of nickel acetate and supports a concern for the carcinogenic potential of other soluble nickel compounds (EPA 1986a/Ex. 1–1132, p. 8–229).

OSHA agrees with EPA's assessment that, although some studies are suggestive of a carcinogenic effect and an ability of soluble nickel to transform cells, overall the animal data are too equivocal at this time to support any firm conclusions that soluble nickel compounds do or do not cause cancer in experimental animals.

In addition to the animal evidence described above, OSHA reviewed studies conducted on workers exposed to soluble nickel compounds. Electrolysis workers at a refinery in Kristiansand, Norway, experienced a higher lung cancer risk than employees from the same facility who worked in three other job categories, including roasting and smelting workers (Magnus, Andersen, and Hogetveit 1982/Ex. 1–241). Electrolysis workers were exposed to an aerosol composed predominantly of nickel sulfate, which was estimated to contain soluble nickel at a concentration of 0.2 mg/m³ (EPA 1986a/Ex. 1–1132); these workers also had higher plasma and urine levels of nickel than did roasting and smelting workers, who were predominately exposed to insoluble nickel subsulfides and oxides. However, exposure to nickel subsulfide and oxides may have occurred in the electrolysis buildings, and the electrolysis workers may also have worked in other process departments (Grandjean, Andersen, and Nielsen 1986/Ex 1–207). Roasting and smelting workers were exposed to an estimated average of 0.5 mg/m³ (as Ni) of roasting dust.

The standardized mortality ratios (SMRs) for lung cancer were 550 for electrolysis workers, 390 for other process workers, and 360 for roasting and smelting workers. The pattern of SMRs for nasal cancer, which is a rare form of cancer in humans, was different among these groups: 2600 for electrolysis workers, 2000 for other process workers, and 4000 for roasting and smelting workers. The results seem consistent with studies that show that roasting and smelting workers have the highest concentrations of nickel in the nasal mucosa, presumably because of the relatively larger particles resulting from roasting. Conversely, electrolysis workers, who showed a larger lung cancer risk than roasting and smelting workers, have higher plasma and urine levels of nickel, suggesting that nickel aerosolized by this process pentrates to the deep lung (EPA 1986a/Ex. 1–1132).

In the NPRM, OSHA presented quantitative estimates of the cancer risk believed to be associated with exposure to soluble nickel; these estimates were based on the Magnus at al. (1983/Ex. 1–241) study of electrolysis workers. During the rulemaking proceeding, OSHA re-evaluated the underlying exposure data and now believes that, because the electrolysis workers may have been concurrently exposed to some insoluble forms of nickel, the data from the Magnus et al. (1982/Ex. 1–241) study may not be appropriate to use to develop a quantitative estimate of the cancer risk associated with exposure to the insoluble forms on nickel.

In contrast to the study of Norwegian nickel refinery workers, a study of 4,288

refinery workers at Port Colborne, Ontario, failed to find an increased lung or nasal cancer mortality rate among electrolysis workers (Roberts et al. 1982; Roberts et al. 1984). Excess incidences of larynx and kidney cancer deaths were reported to be elevated among electrolysis workers, but the numbers of observed deaths were small (two deaths observed for each cause of death). The Roberts et al. studies did report substantially increased incidences of lung and nasal cancer deaths among sinter plant workers exposed to insoluble forms of nickel, a finding consistent with that of Magnus et al. (1982/Ex./1–241) for the Norwegian workers and with many other studies (EPA 1986a/Ex./1–1132).

The stark contrast between these two studies is difficult to explain. According to Inco (Ex./3–915, p. 5), exposures to soluble nickel at the Ontario facility, where no excess risk was found among electrolysis workers, were probably similar to those at the Norwegian facility, where cancer mortality was increased. Exposure data taken during the late 1970s at the Ontario facility (Ex./3–915, Table 1c) indicate that, in most job categories, electrolysis workers were exposed to both soluble and insoluble forms of nickel; this is evidenced by the higher reported employee sampling results for total nickel than for soluble nickel. Thus, concurrent exposure to both soluble and insoluble forms of nickel existed at both the Ontario and Norwegian facilities. The size of the cohort at the Ontario facility was approximately twice that of the Norwegian study; thus, the Ontario study has sufficient power to detect the sizable increases in the incidences of nasal and lung cancer that were reported in the Norwegian study. It is possible, as EPA (1986a/Ex./1–1132) has suggested, that quantitative or qualitative differences in the conditions of exposure between the two cohorts accounts for the discrepant results; however, no information contained in the Ontario or Norwegian reports suggest that there were substantial differences in exposure to soluble nickel. Given the magnitude of the difference in the reported cancer mortality for these two groups of electrolysis workers, it is clear that additional investigation is required to identify the risk factors that account for the different mortality patterns observed in Ontario and Norway. Therefore, OSHA concludes that, at this time, the available human data do not permit any definitive conclusion to be made linking occupational exposure to the soluble forms of nickel with an elevated cancer mortality risk in humans.

The primary impetus to revise the PEL for soluble nickel was the finding that exposure of animals for relatively short periods of time to soluble nickel aerosols at levels equal to or below the former PEL of 1 mg/m³ produced increased cellular growth and pathological changes that reflect the lung's defense against chemical insult; this finding is consistent across three animal studies conducted in several species (Bingham, Barkley, Zerwas et al. 1972/Ex./1–204; Clary 1977, as cited in ACGIH 1986/Ex./1–3, p. 422; Johansson, Curstedt, Robertson, and Camner 1983/Ex./1–273). Furthermore, these observations were made in animals that were exposed for as short a duration as two weeks and for no more than six months; thus, the consequences of continued, low-level exposure for a full lifetime are unknown. Both Inco (Exs. 3–915 and 167) and NiPERA, Inc. (Ex./3–668) agree that these studies provide an appropriate basis for establishing a 0.1-mg/m³ PEL for soluble nickel. NIOSH (Ex. 8–47, Table N6B) does not concur with the selection of this limit and believes that a full 6(b) rulemaking is appropriate for the soluble (or inorganic) compounds of nickel.

OSHA concludes that these studies, one of which demonstrated pathological and perhaps precancerous changes following exposure to 0.1 mg/m³, clearly demonstrate that exposure to the former PEL of 1.0 mg/m³ presents a significant risk to workers of lung irritation accompanied by pathological changes that may presage cancer. OSHA has determined that these effects constitute material impairments of health and functional capacity. OSHA also concludes that the final rule's reduction in the PEL will substantially reduce these significant risks. Accordingly, OSHA is establishing a revised 8-hour TWA PEL of 0.1 mg/m³ (as Ni) for the soluble nickel compounds in the final rule.

NITROGEN DIOXIDE

CAS: 10102–44–0; Chemical Formula: NO_2
H.S. No. 1289

Both the ACGIH and NIOSH have recommended occupational limits for nitrogen dioxide. The current ACGIH recommendation is for a 3-ppm TWA and a 5-ppm STEL. The NIOSH REL is 1 ppm as a 15-minute short-term limit. OSHA's former PEL was 5 ppm as a ceiling value. The Agency proposed, and the final rule establishes, a permissible exposure limit for nitrogen dioxide of 1 ppm as a 15-minute STEL. NIOSH (Ex. 8–47, Table N1) agreed with the selection of this PEL. Nitrogen dioxide is a reddish-brown gas.

The previous ACGIH TLV of 5 ppm as a ceiling concentration (the basis for the former OSHA limit) was based primarily on the animal studies of Gray, MacNamee, and Goldberg (1952/Ex.1–154), Gray, Goldberg, and Patton (1954/Ex. 1–165), and Wagner, Duncan, Wright, and Stokinger (1965/Ex. 1–102). Gray, MacNamee, and Goldberg (1952/Ex. 1–154), and Gray, Goldberg and Patton (1954/Ex. 1–165) demonstrated lung injury among rats exposed for eight or more weeks to an 8-ppm concentration of a mixture of NO_2 and nitric acid, but these authors did not see such lesions in rats exposed for six months to 4-ppm concentrations of this mixture. Wagner, Duncan, Wright, and Stokinger (1965/Ex. 1–102) reported transient, mild, acute effects but no adverse chronic effects in rats exposed to 1 ppm, 5 ppm, or 25 ppm pure NO_2 for 18 months. The ACGIH's recommendation that the 5-ppm TLV be defined as a ceiling rather than as an 8-hour TWA was based on reports that NO_2 accelerated lung tumor development among lung-tumor-susceptible mice; in the late 1960s, the ACGIH believed that a TLV-ceiling value would minimize the risk of accelerating lung tumor development.

The current ACGIH TLVs for NO_2 are a 3-ppm 8-hour TWA and a 5-ppm STEL, and they are based on human studies that indicate that normal respiratory function may be compromised at exposures below the current OSHA ceiling limit of 5 ppm NO_2. In particular, Kosmider, Ludyga, Misiewicz et al. (1972/Ex. 1–224) reported a slight reduction in vital capacity and maximum respiratory volume in 70 men exposed to 0.4- to 2.7-ppm concentrations of the oxides of nitrogen six to eight hours daily for four to six years. These authors also reported an unspecified number of cases of chronic bronchitis among men in this group. Another study by Vigdortschik, Ancheeva, Matussevistch et al. (1937/Ex. 1–49) reported possible cases of chronic bronchitis and emphysema among 127 workers generally exposed below 2.8 ppm NO_2; these workers were also believed to be exposed to sulfuric acid mist at levels sufficient to cause dental erosion.

The NIOSH REL for NO_2 of 1 ppm as a 15-minute STEL is based on the two human studies discussed above, as well as some human studies involving short-term exposure. Abe (1967/Ex. 1–98) found a 40-percent decrease in effective lung capacity among healthy adult males 30 minutes after a 10-minute

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exposure to 4- to 5-ppm NO_2. Expiratory and inspiratory maximum viscous resistance also increased by 92 percent after exposure. NIOSH (1976j/Ex. 1–265) concluded that Abe's results "document a definite and undeniable effect" at exposures approaching the former OSHA limit. A significant decrease in carbon monoxide diffusing capacity was observed by Von Nieding, Krekeler, Fuchs et al. (1973/Ex. 1–770) in healthy adults exposed to 5 ppm for 15 minutes. NIOSH also cites the work of Von Nieding, Wagner, Krekeler et al. (1971/Ex. 1–1204) and by Von Nieding and Krekeler (1971/Ex. 1–1175), who reported significant increases in airway resistance among 60 chronic bronchitis patients after a 15-minute exposure to a concentration of NO_2 as low as 1.5 ppm. NIOSH (1976j/Ex. 1–265) concluded that the specific concentration of NO_2 required to produce pulmonary changes in normal, healthy adults is unknown, but "is likely to be about the same or perhaps a slightly higher concentration than the one inducing pulmonary changes in humans with existing chronic bronchitis" (1.5 ppm). Therefore, NIOSH recommended a 1-ppm 15-minute short-term limit for nitrogen dioxide. To provide additional support for a short-term rather than a TWA limit, NIOSH cites several animal studies that indicate that the toxic effects associated with exposure to NO_2 are primarily determined by peak, and not average, concentrations of exposure.

In its postheering submission, NIOSH (Ex. 150, Comments on Nitrogen Dioxide) reported on a recent study by Mohsenin (1988, as cited in Ex. 150) in which no significant pulmonary function changes were noted among 18 healthy subjects exposed to NO_2 for one-hour periods. NIOSH (Ex. 150) noted that, in 1984, the World Health Organization, after an independent review of cross-sectional occupational health surveys, recommended a short-term occupational exposure limit of 1.8 mg/m³ (0.9 ppm) for NO_2 and 8-hour TWA limit of 0.9 mg/m³ (0.45 ppm). NIOSH also reviewed studies that suggest that NO_2 is mutagenic and is embryotoxic and teratogenic in rats.

The AFL-CIO (Ex. 194) supported OSHA's proposed limit for NO_2. However, several commenters (Exs. 3–349, 3–670, 3–739, 3–866, 3–1144, 133, and 133A) objected to OSHA's proposal to establish the NIOSH REL for NO_2 in the final rule, believing that the ACGIH TLVs of 3 ppm TWA and 5 ppm STEL were sufficiently protective. For example, David L. Van Lewen, Manager of Industrial Hygiene for BASF, referred to the Von Nieding et al. (1971/Ex. 1–1204) study as evidence that a 1-ppm short-term limit was not necessary:

> The Von Nieding study (1971/Ex. 1–1204) of chronic bronchitis patients . . . showed increased airway resistance when exposed to concentrations of nitrogen dioxide between 1.5 and 5.0 ppm. Lower concentrations had no significant effect. When this sensitive population does not show significant effects at concentrations below 1.5 ppm, it is not reasonable to set a workplace limit at a STEL of 1.0 ppm (Ex. 3–866).

Mr. Lawrence J. Ogden, representing the Interstate Natural Gas Association of America (INGAA) (Ex. 3–739), and Mr. Vincent D. Lajiness of the American Natural Resources Company (ANR) (Ex. 3–670) criticized the studies described in the NPRM, and in particular the Von Nieding et al. (1971/Ex. 1–1204) study; both rulemaking participants indicated that the data base developed by EPA to establish EPA's ambient air quality limit for NO_2 is superior. Mr. Ogden stated that

> (a) far more extensive body of studies about NO_2 health effects is available than is cited by OSHA in the proposed rulemaking. Much of this literature has been pulled together by the Environmental Protection Agency (EPA). The EPA review and assessment of scientific studies on the health effects of NO_2 exists in the EPA NO_2 Criteria Document and the Staff Memorandum, which have been provided to the record. . . .
>
> EPA's action should be addressed in the OSHA proposal because it represents a more recent evaluation than NIOSH, a far more concentrated Agency evaluation by research and regulatory personnel, and an extensive scientific peer review process. As a result of its evaluation, EPA decided in 1982 that evidence was insufficient that a short-term air standard for NO_2 was needed. This conclusion has been re-examined annually by EPA and checked against the latest health studies related to NO_2 effects (Ex. 3–739, pp. 7, 10).

Mr. Ogden also referred OSHA to the 1979 National Academy of Science's Committee on Toxicology report on the health evidence for NO_2.

The EPA staff memorandum referred to by Mr. Ogden is the 1982 Office of Air Quality Planning and Standards (OAQPS) Staff Paper on the assessment of scientific information on NO_2 (EPA/450/5–82/002, Ex. 3–2e). This document summarizes the findings expressed in EPA's *Air Quality Criteria for Oxides of Nitrogen* (EPA/600/8–82/026, Ex. 3–2f). Based on these reports, EPA issued a final rule retaining its 1971 ambient air quality standard for NO_2, which is 0.053 ppm (100 mg/m³) as averaged over a one-year period.

The EPA Staff Paper concludes that the 1971 Von Nieding et al. (Ex. 1–1204) study "provides convincing evidence that chronic bronchitics exposed to NO_2 concentrations of 1.5 ppm or greater for approximately 3 minutes experience increases in airway resistance" (Ex. 3–2e, p. 18). A number of other studies were cited by EPA in which healthy adults were exposed to NO_2 concentrations in the range of 0.5 to 2.5 ppm. Folinsbee, Horvath, Bedi, and Delehunt (1978, as cited in Ex. 3–2e) reported no significant physiological changes in healthy adults exercising for up to one hour during a two-hour exposure to 0.6 ppm NO_2. Suzuki and Ishikawa (1965, as cited in Ex. 3–2e) reported a 50-percent increase in inspiratory flow resistance in healthy adults 10 minutes after a 10-minute exposure to an NO_2 concentration between 0.7 and 2 ppm.

Small changes in pulmonary function and a slight increase in the prevalence of respiratory symptoms occurred among healthy adults exposed to 1 ppm NO_2 for two hours (Hackney, Thiede, Linn et al. 1978, as cited in Ex. 3–2e). Beil and Ulmer (1976, as cited in Ex. 3–2e) reported a statistically significant increase in airway resistance among healthy adults following exposure to 2.5 ppm NO_2 for two hours, but not following exposure to 1 ppm. Based on their review of these data, the EPA staff paper concluded:

> [T]he lowest level of NO_2 exposure that credible studies have associated with measureable impairment of pulmonary function appears to be in the range of 1.0–1.6 ppm. . . . Several CASAC members have expressed concern that a standard designed to prevent relatively small changes in pulmonary function (such as those observed in the Suzuki and Ishikawa (1965) and Von Nieding et al. (1971) studies) from occurring more than once per year would be unnecessarily stringent. The CASAC members indicated that they were more concerned about the health implications of repeated exposures to the peak concentrations observed in the two studies than the effects associated with a single exposure (Ex. 3–3e, p. 18).

EPA also reviewed research reports that have become available since publication of the EPA Criteria Document and Staff Paper, in particular the reports by Linn and Hackney (1983 and 1984) that reported finding no pulmonary effects among exercising healthy adults and asthmatics exposed to 4 ppm NO_2. EPA concluded that these studies present "mixed and conflicting results," and that a more complete assessment of these studies was not possible because "many * * * have yet to be published in the peer-reviewed scientific literature" (50 *FR* 25535/Ex. 3–2d).

Regarding EPA's decision not to issue a short-term ambient-air-quality limit for NO_2, a review of the preamble to EPA's final rule shows that EPA addressed this issue only with regard to existing *ambient* short-term levels of NO_2. EPA reported that, under its current 0.053-ppm annual average limit, the vast majority of metropolitan areas would be expected to have fewer than two days with a daily maximum hourly value of 0.2 ppm or greater (50 *FR* 25536/Ex. 3–2d). Because of the uncertainties regarding the evidence for adverse effects at NO_2 concentrations below 1 ppm, EPA concluded that the current annual average limit would "provide some measure of protection against possible short-term health and welfare effects" (50 *FR* 25537/Ex. 3–2d). It is also worth noting that, since 1971, EPA has designated a 2-ppm (one-hour average) level for NO_2 as representing a "significant harm level" requiring an emergency response. Thus, OSHA finds that EPA's recent actions and reasoning regarding a short-term ambient limit for NO_2 supports the establishment of 1 ppm as a STEL.

OSHA has also reviewed the most recent analysis of NO_2 toxicity conducted by the National Academy of Science's (NAS) Committee on Toxicology for the Department of Defense (*Emergency and Continuous Exposure Guidance Levels for Selected Airborne Contaminants*, Vol. 4, pp. 83–96, National Academy Press 1985); the earlier 1979 review was cited by Mr. Ogden of the INGAA. In its more recent review, the NAS concluded that exposures to NO_2 at levels between 0.5 and 1.5 ppm have demonstrated "little or no persistent change in pulmonary function" (NAS 1985, p. 89). The NAS Committee on Toxicology recommended short-term public emergency guidance levels (SPEGLs) for NO_2 of 1 ppm, averaged over a 60-minute period, and 0.12 ppm as an 8-hour average.

OSHA concludes that the evidence reviewed by the EPA and the NAS and the several studies referenced by EPA and NAS reaffirm the conclusion expressed by NIOSH in its 1976 criteria document (NIOSH 1976j/Ex. 1–265) that "humans with normal respiratory function may be acutely affected by exposure [to NO_2] at or below . . . [5 ppm]. Furthermore, the conditions of workers with chronic respiratory diseases, such as chronic bronchitis, may be aggravated by exposure to nitrogen dioxide at a concentration of approximately one-third of the current Federal standard" (NIOSH 1976j/Ex. 1–265, p. 117). In addition to the studies by Von Nieding et al. (1971/Ex. 1–1204) and Abe (1967/Ex. 1–98) described in the NPRM, both EPA (Ex. 3–2e) and the NAS (1985) cite a number of other published reports that show that exposure to NO_2 at concentrations below 5 ppm causes increased airway resistance in both healthy adults and chronic bronchitis; these reports include the studies of Suzuki and Ishikawa (1965), Rokaw et al. (1988), Streseman and Von Nieding (1970), and Beil and Ulmer (1976). Furthermore, these and other studies cited by EPA (Ex. 3–2e) and the NAS (1985) generally indicate that exposure to 1 ppm NO_2 is not normally associated with significant airway resistance, even among workers with already-compromised respiratory function.

Thus, OSHA concludes that the former 5-ppm ceiling limit for NO_2 is not sufficient to protect employees from experiencing increased airway resistance, and that establishing the ACGIH TLVs of 3 ppm TWA and 5 ppm STEL, as suggested by rulemaking participants (Exs. 3–349, 3–670, 3–739, 3–866, and 3–1144), would not provide sufficient protection. OSHA also concludes that the risk of increased airway resistance would be substantially reduced by promulgation of a 1-ppm short-term limit for NO_2; a short-term limit is clearly indicated for NO_2 since all of the studies cited above demonstrate that increased airway resistance is associated with exposure to NO_2 for durations of between three minutes and two hours. OSHA considers the increased airways resistance caused by exposure to NO_2 to be a material impairment of health. Therefore, to reduce the significant risk associated with short-term exposure to NO_2, the agency is establishing a 1-ppm limit, averaged over a 15-minute period, for nitrogen dioxide in the final rule.

OXYGEN DIFLUORIDE

CAS: 7783–41–7; Chemical Formula: OF_2
H.S. No. 1300

The former PEL for oxygen difluoride was 0.05 ppm as an 8-hour TWA. The ACGIH has established a limit of 0.05 ppm as a ceiling value. The revision of the TLV for oxygen difluoride from an 8-hour TWA to a ceiling value reflects the general position of the ACGIH that ceiling TLVs are more appropriate for chemicals that cause acute but not chronic health effects. OSHA proposed a permissible exposure limit of 0.05 ppm ceiling for oxygen difluoride. NIOSH (Ex. 8–47, Table N1) concurred with the selection of this limit, and it is established in the final rule. Oxygen difluoride is an unstable, colorless gas with a foul odor.

Oxygen difluoride is a substance having extremely high acute toxicity; it is an acute irritant and causes fatal pulmonary edema and hemorrhage in animals exposed to 0.5 ppm for a few hours (ACGIH 1986/Ex. 1–3). A single exposure to 0.1 ppm also had an effect on the lungs, as evidenced by development in animals of a tolerance to the acute effects of this substance after an isolated exposure. Animals acutely exposed to oxygen difluoride have also exhibited gross changes in the kidneys and internal genitalia (LaBelle, Metcalf, Suter, and Smith 1945, as cited in ACGIH 1986/Ex. 1–3, p. 452; Lester and Adams 1965/Ex. 1–963). Only NIOSH commented on this substance.

Because of the extreme acute toxicity of this compound and the effects noted at 0.1 ppm, the former TWA-PEL of 0.05 ppm was not sufficiently protective of workers; this former limit would still permit the brief periods of high exposure that have been associated with severe lung damage, which the Agency has determined represents a material impairment of health. Therefore, to reduce the significant risk of acute lung damage associated with brief excursion exposures to oxygen difluoride, OSHA is establishing a ceiling limit of 0.05 ppm for this substance.

OZONE

CAS: 10028–15–6; Chemical Formula: O_3
H.S. No. 1301

The former OSHA PEL for ozone was 0.1 ppm TWA. In the interval since this limit was adopted in 1971, the ACGIH has recommended that 15-minute short-term exposures to ozone not exceed 0.3 ppm. NIOSH has no REL for ozone. OSHA proposed, and the final rule establishes, permissible exposure limits of 0.1 ppm TWA and 0.3 ppm STEL for ozone. The Agency notes that the ACGIH has placed ozone on its *1988–89 Notice of Intended Changes* and is proposing a new TLV of 0.1 ppm as a ceiling value. Ozone is a liquid or an explosive gas.

Ozone is highly injurious and lethal in experimental animals at concentrations as low as a few parts per million (Stokinger 1957/Ex. 1–97). A study in which young mice were exposed to 1 ppm ozone for one or two days reported damage to alveolar tissue (Bils 1970/Ex. 1–58). Human populations chronically exposed to lower concentrations of ozone have been observed to have changes in lung function. In one study, human volunteers exposed to 0.5 ppm ozone for three hours per day, six days per week, for 12 weeks showed significant changes in lung function (Jaffe 1967/Ex. 1–101). Other authors reported a 20-percent reduction in timed vital capacity in persons exposed to average concentrations of ozone of 1.5 ppm (range not indicated) for two hours

(Griswold, Chambers, and Motley 1957/Ex. 1–128). Welders exposed to maximal ozone concentrations of 9 ppm were observed to have pulmonary congestion (Kleinfeld and Giel 1956/Ex. 1–120).

OSHA received a number of comments on the proposed PEL for ozone. The Edison Electric Institute (EEI) (Ex. 133A, pp. 22–23) stated that the studies by Bils (1970/Ex. 1–58), Jaffe (1967/Ex. 1–101), and Griswold et al. (1957/Ex. 1–128), cited above, do not provide substantial evidence for the proposed PEL. With regard to Bils' (1970/Ex. 1–58) finding of damaged alveolar tissue in mice exposed to a 1–ppm concentration of ozone for one or two days, EEI notes that "OSHA does not explain how these data can be translated to humans in the workplace" (Ex. 133A, p. 22). In addition, EEI is concerned that "OSHA neither critically evaluates . . . nor explains why the changes in lung function reported by [the Jaffe (1967/Ex. 1–101)] study represent a significant risk . . . ," and OSHA has not presented a substitute for a STEL of 0.3 ppm. Finally, EEI questions the relevance of the study by Griswold et al. (1957/Ex. 1–128) to the formulation of the proposed PEL (Ex. 133A, p. 23). The Agency believes that these three studies point to the short-term effect (i.e., less than eight hours) of ozone exposure; the Bils (1970/Ex. 1–58) data demonstrate that the lung is the target organ; the Jaffe (1967/Ex. 1–101) data point to an effect level of 0.5 ppm and show that a STEL of 0.3 ppm will afford protection; and the Griswold *et al.* (1957/Ex. 1–128) data provide further evidence of reduced lung function as a result of short-term, acute exposure, rather than chronic exposure.

In addition, EEI commented that "OSHA's health assessment and feasibility analysis with respect to the facilities of the electric utility industry are deficient. Thus, EEI recommends that OSHA consider explaining that its ozone proposal does not apply to that industry" (Ex. 133A, p. 22). This same concern was reflected in the submission of the second commenter, Gulf Power Company (Ex. 3–658, p. 3). In response to these comments, OSHA emphasizes that the standards established in this rulemaking are based on the evidence of adverse health effects associated with exposure to toxic substances in the workplace. These effects would be the same, regardless of industry sector, if the exposure levels were the same. If, as EEI and Gulf Power Company contend, ozone exposures in power plants pose no significant risk to workers' health because they are controlled at or below the permissible exposure limits being promulgated in this rulemaking, then the electric utility industry is already in compliance and will not be impacted by the new PELs. The Agency has determined that the scientific evidence establishes the need for a short-term limit to substantially reduce the significant risk of pulmonary dysfunction that exists as a result of acute or chronic intermittent exposure to ozone.

The Gulf Power Company also expressed its belief that the 0.3-ppm short-term limit proposed by OSHA is unsubstantiated:

> Exposing someone to 1 ppm of ozone for 15 minutes may be just as valid a ceiling limit as 0.3 ppm. . . . We think that it is arbitrary to select a value of 0.3 ppm without further study (Ex. 3–658, pp. 3–4; see also Ex. 3–1144).

The Agency notes, again, that an effect level of 0.5 ppm is demonstrated by the Jaffe (1967/Ex. 1–101) data. Further justification for a STEL of 0.3 ppm is found in Proctor, Hughes, and Fischman (*Chemical Hazards of the Workplace*, 2nd ed., 1988), who report that, "except for one report, the threshold for effects in humans appears to be between 0.2 and 0.4 ppm" (Menzel 1984, and cited in Proctor, Hughes, and Fischman 1988, p. 388). The selection of 0.3 ppm as a short-term limit was neither invalid nor arbitrary, but rather, was based on the best available scientific evidence.

NIOSH (Ex. 8–47, Table N2) believes that ozone's toxicity requires an even more stringent limit. According to NIOSH, "Ozone is a chemical capable of inducing serious adverse health effects at low exposure concentrations, tenths of a part per million. . . ." The AFL-CIO (Ex. 194) agrees with NIOSH's assessment. OSHA agrees that ozone's health effects require a protective limit, and it is for this reason that the final rule promulgates TWA and STEL limits for ozone.

In the final rule, OSHA is retaining the 8-hour TWA limit of 0.1 ppm and establishing a 15-minute STEL of 0.3 ppm for ozone based on observations that significant declines in pulmonary function can result from repeated intermittent exposures or even from a single short-term exposure (Bils 1970/Ex. 1–58; Jaffe 1967/Ex. 1–101; Griswold, Chambers and Motley 1957/Ex. 1-128). OSHA believes that, in the absence of a STEL, employees will continue to be at significant risk of material impairment in pulmonary functional capacity associated with short-term exposures that could occur if exposures are controlled only by an 8-hour TWA. Thus the Agency concludes that it is necessary to supplement the former PEL with a STEL of 0.3 ppm to substantially reduce this risk.

PARAQUAT

CAS: 4685-14-7; Chemical Formula: H.S. No. 12303

OSHA's former limit for paraquat was 0.5 mg/m³ as an 8-hour TWA, with a skin notation. The ACGIH has established a limit of 0.1 mg/m³ as an 8-hour TWA. The Agency proposed, and the final rule establishes, a permissible exposure limit of 0.1 mg/m³ TWA for this substance; the skin notation is retained. NIOSH (Ex. 8–47, Table N1) concurs. Paraquat refers to a group of compounds that are odorless, yellow solids. The principal compounds are: 1,1'-dimethyl-4,4'-bipyridinium; 1,1'-dimethyl-4,4'-bipyridinium bis (methyl sulfate); and 1,1'-dimethyl-4,4'-bipyridinium dichloride.

The Toxicity of these compounds depends on the compound's cationic moiety. Acute oral toxicity is reported as 30 mg/kg ion as cation for guinea pigs and 127 mg/kg ion for female rats, while the dermal LD_{50} in rabbits is 240 mg/kg ion (Clark 1964, as cited in ACGIH 1986/Ex. 1–3, p. 458; Clark, McElligott, and Hurst 1966/Ex. 1-503; McElligott 1965, as cited in *ACGIH* 1986/Ex. 1–3, p. 456). Paraquat can penetrate broken skin after it has broken down the skin's usual barriers (Swan 1969/Ex. 1–576; Clark, McElligott, and Hurst 1966/Ex. 1–503). By inhalation or intratracheal injection, parsquat is very toxic because of its irritant properties (Gage 1968/Ex. 1–508). Rats exposed once for six hours to a concentration of 1 mg/m³ died if the aerosol contained particles with diameters of 3 to 5 microns (Gage 1968/Ex. 1–508). Rats exposed six hours/day for three weeks to the same aerosol at 0.4 mg/m³ exhibited signs of pulmonary irritation; no effects were observed for the same exposure regimen at 0.1 mg/m³ (Gage 1968/Ex. 1–508).

When the diameter of the particles in the aerosol are not of respirable size, toxicity is greatly reduced. The 4-hour LC_{50} for rats is 0400 mg/kg, and dogs, rats, and guinea pigs tolerated three weeks of daily exposures to 100 mg/m³ without apparent pulmonary effect (although nosebleeds were observed) (Palazzolo 1965, as cited in ACGIH 1986/Ex. 1–3, p. 456).

Dietary administration, for 90 days, of doses ranging from 300 to 700 ppm showed dose-related effects ranging from pulmonary edema to intraalveolar hemorrhage and death (Kimbrough and Gaines 1970/Ex. 1–560).

Paraquat's teratogenic potency in mice is low (Bus and Gibson 1975/Ex. 1–538), although 100 ppm administered in the drinking water of pregnant rats increased postnatal mortality significantly (Bus and Gibson 1975/Ex. 1–539).

In humans, 69 accidental deaths and 81 suicides were attributed to the effects of paraquat exposure up to 1972 (Chipman Chemicals 1972, as cited in ACGIH 1986/Ex. 1–3, p. 456). Boulestreau, Ducluseau, Bui-Xuan et al. (1977/Ex. 1–536) reported 21 cases of renal insufficiency, and a spray applicator was killed when he absorbed a lethal dose of inadequately diluted paraquat through the skin (Jaroe 1978/Ex. 1–513). Workers using a 0.05- to 1-percent solution of paraquat developed skin and mucous membrane irritation but experienced no symptoms of systemic poisoning (Howard 1978/Ex. 1–512). Fugita, Suzuki, and Ochiai (1976, as cited in ACGIH 1986/Ex. 1–3, p. 456) reported five cases of reversible keratoconjunctivitis, with corneal injury, after one month of exposure to paraquat. Only NIOSH commented on paraquat.

OSHA is establishing an 8-hour TWA limit of 0.1 mg/m³ for paraquat, with a skin notation. The Agency concludes that this limit will protect workers from the significant risk of skin, eye, and pulmonary irritation observed in animals exposed to aerosols of respirable size at levels below OSHA's former PEL for paraquat. The Agency considers the irritant effects of paraquat to be material impairments of health. OSHA is retaining the skin notation for this substance because of its capacity to penetrate the skin.

SILICA, CRYSTALLINE—CRISTOBALITE

CAS: 14464-46-1; Chemical Formula: SiO_2 H.S. No. 1354

The former OSHA PEL for respirable cristobalite was one-half the value calculated from the mass formula for quartz, measured as respirable dust. This limit corresponds to a range of 0.04 to 0.05 mg/m³, measured as silica, for dusts containing 10 to 100 percent quartz. The ACGIH recommends an 8-hour TWA limit of 0.05 mg/m³, measured as respirable silica dust. Although expressed differently, the current ACGIH and former OSHA limit for cristobalite are comparable. The ACGIH's mg/m³ limit, adopted in 1985, does not reflect a re-evaluation of cristobalite's toxicity but was adopted merely to simplify the monitoring of cristobalite dust concentrations. The ACGIH limit is based on a study by Gardner (1938, as cited in ACGIH 1986/Ex. 1–3, p. 522) that was confirmed by King, Mohanty, Harrison, and Nagelschmidt (1953/Ex. 1–85). Experimental animals injected with cristobalite showed a more severe response than that produced by quartz, and the fibrosis that followed was diffuse rather than nondular. OSHA proposed, and the final rule establishes, a permissible exposure limit of 0.05 mg/m³ TWA for cristobalite, measured as respirable silica dust. Cristobalite, one of the three major forms of silicon dioxide, is transparent, tasteless, and stable at high temperatures.

The final rule replaces OSHA's former limit for cristobalite, which is expressed, as described above, with a numerically equivalent limit of 0.05 mg/m³; the Agency is establishing this time-weighted average limit to simplify employee exposure monitoring. NIOSH (Ex. 8–47, Table N6A; Tr. pp. 3–96 to 3–97) concurred with the selection of this limit but recommended that cristobalite be designated as a potential human carcinogen. OSHA's discussion of this and other rulemaking issues appears in the following entry describing the record evidence on quartz dust.

SILICA, CRYSTALLINE—QUARTZ

CAS: 14808-60-7; Chemical Formula: None H.S. No. 1355

The former OSHA limit for silica-containing dusts is a respirable dust limit expressed as the following formula:

(10 mg/m³)/(% respirable quartz + 2).

At one time, the ACGIH also expressed its silica limit in terms of this formula. However, the current ACGIH TLV is 0.1 mg/m³, measured as respirable quartz dust. OSHA proposed, and the final rule establishes, a permissible exposure limit of 0.1 mg/m³ TWA, as respirable quartz. Quartz is a colorless, odorless, noncombustible solid.

The ACGIH does not see this change in the value of its limit for occupational exposure to silica as significant; instead, the ACGIH made this change to conform its limit for this dust to its TLVs for other dusts. If the former OSHA formula is used to calculate a limit for a dust containing 100 percent quartz, the limit would be 0.098 mg/m³, a value that is not appreciably different from the ACGIH's revised limit of 0.1 mg/m³ for respirable quartz dust. For quartz dusts containing less than 100 percent free silica, the former OSHA formula would yield a limit of, for example, 0.83 mg/m³ for respirable dust containing 10 percent quartz. This result is somewhat more stringent than the ACGIH's TLV of 0.1 mg/m³. For cristobalite and tridymite, the former OSHA formula and the ACGIH limits yield approximately the same results: both are approximately one-half the limit established by these two entities for quartz dust (see the discussions below).

Occupational exposure to free silica has been known for many years to produce silicosis, a chronic, disabling lung disease characterized by the formation of silica-containing nodules of scar tissue in the lungs. Simple silicosis, in which the nodules are less than 1 cm in diameter (as measured on chest X-ray films) is generally asymptomatic but can be slowly progessive, even in the absence of continued exposure. Complicated silicosis (i.e., with nodules greater than 1 cm in diameter) is more often associated with disability and can also progress in the absence of continuing exposure.

The health basis underlying the ACGIH's limit for crystalline silica is the work of Russell et al. (1929/Ex. 1–156), which suggested that a limit of 10 mppcf would protect workers from the effects of exposure to granite dust; a study by Ayer (1969/Ex. 1–129) demonstrated that 10 mppcf of granite dust is approximately equal to 0.1 mg/m³ of respirable quartz dust (ACGIH 1986/Ex. 1–3).

NIOSH has recommended an exposure limit of 0.05 mg/m³ as respirable free silica for all crystalline forms of silica. As applied to cristobalite and tridymite, the NIOSH REL is 0.05 mg/m³, the same as the ACGIH TLV, but NIOSH's 0.05-mg/m³ REL for quartz dust is one-half the value of the ACGIH TLV for quartz dust. To support its more stringent REL for quartz dust, NIOSH cites the work of Hosey, Ashe, and Trasko (1957, as cited in ACGIH 1986/Ex. 1–3, p. 524), which reported that no new cases of silicosis occurred in workers in Vermont granite sheds who were generally exposed to 0.05 mg/m³ or less of granite dust. The recommendation was also partly based on studies by Theriault, Burgess, DiBerardinis et al. (1974/Ex. 1–94a); Theriault, Peters, and Fine (1974/Ex. 1–110); and Theriault, Peters, and Johnson (1974/Ex. 1–94b), which found that annual declines in pulmonary function and abnormal chest X-rays occurred among 192 granite shed workers exposed to an average quartz concentration of 0.05 mg/m³. NIOSH noted that the exposure estimates reported in the Theriault et al. (1974/Exs. 1–94a, 1–94b, and 1–110) studies failed to account for the higher exposures that probably occurred in the years before exposure sampling was initiated and, therefore, that the Theriault et al. (1974) exposure data may have understated average exposures to quartz. Thus, NIOSH believes that the exposures responsible for the declines in pulmonary function were actually above 0.05 mg/m³. The

ACGIH (1986/Ex. 1–3) found NIOSH's reasoning unpersuasive, citing a report by Graham, O'Grady, and Dubuc (1981/Ex. 1–172), who measured the pulmonary function of the same group of workers studied by Theriault et al. (1974/Exs. 1–94a, 1–94b, and 1–110), and found, in contrast to Theriault, that these workers experienced "an overall increase in FVC and FEV" (ACGIH 1986/Ex. 1–3).

Although OSHA did not propose a significant change in the exposure limit, there were several comments that focused on two issues: (1) the adequacy of the proposed 0.1 mg/m³ respirable quartz limit in reducing the risk of silicosis; and (2) recent evidence describing the potential carcinogenicity of silica dust.

With regard to the first issue, Dr. Philip Landrigan of the Mount Sinai School of Medicine, representing the American Public Health Association, testified as follows at the informal hearing:

> Numerous epidemiologic studies have been undertaken in this century, which have established a dose-response relationship between occupational exposure to silica dust and the development of silicosis. These studies have shown clearly that there is a positive dose-response relationship between chronic silica exposure and the development of silicosis.
>
> The most recent of these reviews which have examined that relationship is presented in the 1988 NIOSH text on occupational respiratory diseases, a most authoritative book in the field, widely read by medical scientists in this country and abroad. The data which was summarized in that chapter indicate quite clearly that the dose-response relationship between silica exposure and silicosis is present in people with lifetime exposure to silica below the current . . . standard of 100 micrograms per cubic meter. Indeed, the data suggests that the dose-response relationship extends downward even to levels of exposure below the current NIOSH recommended standard of 50 micrograms per cubic meter.
>
> And against the authoritative NIOSH review . . . OSHA has cited one short three-page article . . . [Graham et al. 1981/Ex. 1–172] to indicate that the dose-response relationship between silica and silicosis does not extend downward to below 100 micrograms per cubic meter (Tr. pp. 3–277 to 3–278).

Several commenters (Exs. 3–678, 3–733, 130, 138, 139, 147, 161, and 129) disagreed with Dr. Landrigan's assessment. For example, Frederick A. Renninger of the National Stone Association (Ex. 139) cited Dr. John Peters, the author of the chapter in the NIOSH reference referred to by Dr. Landrigan. In his chapter, Dr. Peters concluded as follows:

> All of the studies described in this section provide evidence for adverse pulmonary effects at levels of exposure above 10 mppcf or 0.1 mg/m³. Some showed that foundry workers exposed to the equivalent of 0.05 mg/m³ of quartz developed silicosis while those with less exposure did not. . . . All the Vermont findings were seen with an average exposure of around 0.05 mg/m³ of quartz. It is possible, however, that since this was the average exposure, individuals whose exposure exceeded this level accounted for the noted effects. (The "no effect" level was probably below 0.05 mg/m³, but the available data did not allow accurate determinations.) (Peters, J.M., "Silicosis." In: *Occupational Respiratory Diseases*, p. 338, J.S. Marchant, ed. DHHS (NIOSH) Pub. No. 86-102. NIOSH 1986b).

Mr. Renninger also points to the difficulty in equating impinger sampling results, which were used in the Vermont granite shed studies, to gravimetric (mg/m³) measures of respirable dust. He cited Dr. Peters as reporting that "gravimetric and impinger sampling are known to be poorly correlated" (Ex. 139, p. 5). Mr. Renninger also pointed out that the conversion between mppcf and mg/m³ measurements for silica will vary with the industry, thus adding another level of uncertainty in interpreting the health data.

OSHA's decision to propose a 0.1–mg/m³ PEL for respirable silica dust, rather than the NIOSH REL of 0.05 mg/m³, was partly based on the report by Dr. William Graham et al. (Graham, O'Grady, and Dubuc 1981/Ex. 1–172) discussed above. In a posthearing submission, Dr. Graham discussed the findings of Theriault and co-workers (1974/Exs. 1–94a, 1–94b, and 1–110), which heavily influenced the decision by NIOSH to issue a REL of 0.05 mg/m³ (Ex. 147). Dr. Graham discussed three limitations of the Theriault et al. (1974) studies. First, the X-ray films were interpreted by a single reader who was neither certified nor a chest physician; Dr. Peters points out that it is generally accepted that X-ray films must be read by three experienced readers. Second, there was no attempt to study workers hired after 1938 and exposed to low dust levels separately from workers exposed to higher dust levels prior to 1938. Third, there was a group of workers who were judged to have abnormal X-ray findings despite a reported lack of exposure to dust, which raises the question about the accuracy of interpretations.

Dr. Graham also interpreted his own findings of granite shed workers as showing that the loss in pulmonary function predicted to occur among these workers by Theriault et al. (1974/Exs. 1–94a, 1–94b, and 1–110) had, in fact, not occurred. One explanation offered by Dr. Graham is the possibility that technical difficulties arose during the Theriault et al. (1974) studies in the administration of spirometric tests, and may have resulted in spuriously low values for pulmonary function. Dr. Graham discussed a continuation of his own work in which he has found neither pulmonary function losses nor high prevalences of abnormal chest X-rays among granite shed workers who were employed after 1938–1940, when lower dust levels prevailed (Ex. 147, pp. 5–6). However, the analysis of quartz content in the dust samples collected has not yet been completed (Ex. 147, p. 8).

In addition to the evidence on the dose-response relationship for silicosis, rulemaking participants discussed at length recent data suggesting that silica may be carcinogenic (Exs. 147, 161, 194, 138, 3–1188, 3–1080, and 138; Tr. p. 3–94, Tr. p. 7–80, Tr. p. 11–104). NIOSH (Ex. 8–47, Table N6B) believes that the data on silica are such that the Agency should consider a separate 6(b) rulemaking for this substance. Dr. Frank Mirer, Director of the Health and Safety Department of the United Auto Workers, summarized the evidence on silica's potential carcinogenicity at the hearing:

> The most prominent study [on the health effects of silica exposure is] by Holland and coworkers * * * [it] provided really clear evidence that silica was carcinogenic in rats by inhalation. Non-malignant pulmonary effects were also observed. There is a considerable line of other work in rats and hamsters, in the development of both lung tumors and lymphatic tumors from exposure to silica.
>
> In epidemiology, there's ample evidence that crystalline silica is carcinogenic and that it is hazardous at levels below the proposed PEL. The IARC monograph reviewed the data available in 1988 and described a considerable body of evidence. Despite the methodological limitations pointed out by IARC, the sheer number and consistency of the findings is most persuasive (Tr. pp. 7–80 to 7–81).
>
> Studies [exist] of workers in a variety of industries where high exposure of silica-containing dusts have revealed high lung cancer risks. These results include ten positive studies among mine workers, four in ceramics and glass industries, [and] four in the foundry industry. We also bring to your attention at least four additional studies published since the IARC criteria document was completed. These, in particular, we think create an iron-clad case for the problems presented by this material (Tr. pp. 7–80 to 7–81).

In a posthearing submission by the Refractories Institute, Dr. John Craighead of the University of Vermont reviewed the human and animal data and concluded as follows:

> I find the experimental evidence in animals, suggesting a possible role of silica in the pathogenesis of bronchogenic carcinomas, to be faulty and incomplete. I also conclude that the epidemiological studies in humans provide inadequate evidence to conclude that man is at increased risk of developing carcinoma of the lung as a result of silica dust exposure. My comments in no way exclude from consideration silica as a cause of bronchogenic carcinoma, but only point out the inadequacies of the scientific information and emphasize the need for additional, carefully designed systematic studies (Ex. 161A, p. 5)

In similar attachments to the Refractories Institute's submission, Dr. Marvin Kushner, Professor of Pathology at the State University of New York at Stony Brook, pointed to the lack of similarity between the pulmonary lesions found in exposed rats and silicosis lesions in humans; he suggested that the carcinomas seen in rats may be due to a "non-specific" effect that is not a direct result of silica inducing malignant transformation (Ex. 161C). Dr. Carl Shy, Professor of Epidemiology at the University of North Carolina, reviewed the epidemiological evidence and concluded that "the role of occupational silica exposure in causing lung cancer remains undetermined" (Ex. 161D, p. 8).

OSHA believes that the issues raised above deserve a careful and thorough scientific evaluation of the literature. The evidence that silica may present a carcinogenic hazard has been developing over the past few years and is continuing to receive considerable attention by investigators. OSHA will continue to monitor with great interest emerging developments in this area. At this time, however, OSHA believes that the record evidence leaves many questions unanswered regarding the need to reduce the PEL for silica. Therefore, in the final rule, OSHA is establishing an 8-hour TWA PEL of 0.1 mg/m³ for quartz, measured as the respirable silica fraction. This limit represents no substantial change from OSHA's former formula limit, but will simplify sampling procedures, as indicated in the NPRM.

SILICA, CRYSTALLINE—TRIDYMITE

CAS: 15468-32-3; Chemical Formula: SiO_2
H.S. No. 1356

The former OSHA PEL for respirable tridymite was expressed as one-half the value of the mass formula for quartz dust. This formula corresponds to a range of 0.04 to 0.05 mg/m³, measured as silica, for dusts containing 10 to 100 percent tridymite. The Agency proposed, and the final rule establishes, a PEL of 0.05 mg/m³ TWA for tridymite. The ACGIH recommends an 8-hour TWA limit of 0.05 mg/m³, measured as silica dust. The ACGIH limit is based on a study conducted by King, Mohanty, Harrison, and Nagelschmidt (1953/Ex. 1–85) that found tridymite to be the most active of the free silica forms when injected intratracheally into rats. Tridymite is a transparent, tasteless form of free silica.

Although expressed in different units, the current ACGIH and former OSHA limits for tridymite are comparable. The ACGIH's mg/m³ limit, adopted in 1985, does not reflect a re-evaluation of tridymite's toxicity but was adopted merely to simplify the monitoring of tridymite dust concentrations. NIOSH (Ex. 8–47, Table N6A) concurs with the selection of this limit but recommends that tridymite be designated as a potential occupational carcinogen. No other comments were received on tridymite.

OSHA is replacing its former limit for tridymite, which is described above, with a numerically equivalent limit of 0.05 mg/m³, measured as respirable silica dust; the final rule establishes this change to simplify employee exposure monitoring.

SILICA, CRYSTALLINE—TRIPOLI

CAS: 1317-95-9; Chemical Formula: SiO_2
H.S. No. 1357

Tripoli is a colorless microcrystalline form of quartz. Although OSHA's Table Z–2 did not specifically indicate a limit for tripoli, OSHA formerly specified a limit for crystalline quartz based on the formula measured as total respirable dust: 10 mg/m³/%SiO_2+2. Expressed as mg/m³, this limit corresponds to a limit in the range of 0.08 to 0.1 mg/m³ for respirable dust containing from 10 to 100 percent silica. The 8-hour TWA ACGIH limit for tripoli is 0.1 mg/m³, measured as respirable silica dust. This limit was adopted by the ACGIH in 1985 to simplify the monitoring of quartz dust concentrations. Thus, this revision does not represent a re-evaluation of toxicity data for tripoli. NIOSH (Ex. 8–47, Table N6B) does not concur with the final rule's limit and recommends a separate 6(b) rulemaking for tripoli, which NIOSH considers a potential occupational carcinogen. (see section above on Crystalline Quartz for OSHA's discussion of the record evidence on the carcinogenicity of silica). No other comments were received on tripoli.

OSHA is replacing its limit for quartz, which is expressed as the formula presented above, with a numerically equivalent limit of 0.1 mg/m³ TWA as respirable silica dust; the final rule establishes this limit for tripoli.

SILICA, FUSED

CAS: 60676-86-0; Chemical Formula: SiO_2
H.S. No. 1358

Fused silica is a colorless, odorless solid that is a form of quartz. As such, it was formerly covered by OSHA's limit for quartz (Table Z–3). Exposure to fused silica has long been known to cause the fibrogenic lung disease, silicosis. OSHA's former limit for quartz dust was the formula 10 mg/m³/%SiO_2+2, measured as total respirable dust. This limit correspnde to a respirable quartz concentration ranging from 0.08 to 0.1 mg/m³ measured as free silica. The ACGIH recommends an 8-hour TWA limit of 0.1 mg/m³, measured as free silica; the ACGIH adopted this limit in 1985 to simplify the monitoring of quartz dust concentrations. Thus, this revision does not represent a re-evaluation of the toxicity data for fused silica. NIOSH (Ex. 8–47, Table N6B) does not concur with the final rule's limit and recommends a separate 6(b) rulemaking for fused silica, which NIOSH considers a potential occupational carcinogen.

OSHA is replacing its limit for fused silica, which is expressed as the formula presented above, with a numerically equivalent limit of 0.1 mg/m³ as total respirable silica dust; the Agency is establishing this limnit to simplify employee exposure monitoring.

SOAPSTONE, TOTAL DUST

SOAPSTONE, RESPIRABLE DUST

CAS: None; Chemical Formula: 3 MgO–4 SiO_2–H_2O
H.S. No. 1363 (total dust)
H.S. No. 1363A (respirable dust)

OSHA's former exposure limit for soapstone, total dust, was 20 mppcf (6 mg/m³), and the Agency had no separate limit for the respirable fraction. The ACGIH has established individual TLV–TWAs for these two forms of soapstone: 6 mg/m³ for total dust, and 3 mg/m³ for the respirable fraction, both measured as total dust or respirable dust containing less then 1 percent quartz. Because the ratio of total dust mass to the mass of the respirable fraction is 2:1 (ACGIH 1984, p. 480), the 6-mg/m³ total dust limit automatically implies a 3-mg/m³ limit for the respirable fraction. OSHA proposed, and the final rule establishes, permissible exposure limits of 6 mg/m³ TWA (total dust) and 3 mg/m³ TWA (respirable dust) for soapstone. NIOSH (Ex. 8–47, Table N1) concurred with this determination.

A study by Dreessen and DallaValle (1935/Ex. 1–588) of mill workers exposed to soapstone showed lung changes in these workers, but it is believed that the dusts involved in these exposures were actually steatite talc, which had a tremolite content of 10

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percent. Experiments by Miller and Sayers (1941/Ex. 1–305) showed no measurable toxic effects in guinea pigs injected intraperitoneally with various samples of soapstone. No comments were received on soapstone other than those submitted by NIOSH.

The final rule expresses the limit for soapstone as total dust in mg/m³, rather than mppcf, to simplify employee sampling and analysis. The total dust limit being established, 6 mg/m³, is equivalent to the previsious limit of 20 mppcf, and the new limit of 3 mg/m³ for respirable dust is actually implicit in the total dust limit.

SULFUR DIOXIDE

CAS: 7446-09-5; Chemical formula: SO_2
H.S. No. 1375

OSHA's former limit for sulfur dioxide (SO_2) was 5 ppm as an 8-hour TWA. The Agency proposed to revise this limit to 2 ppm as an 8-hour TWA and to supplement this limit with a 15-minute STEL of 5 ppm. Although NIOSH recommends a limit of 0.5 ppm for sulfur dioxide, NIOSH did concur (Ex. 8–47, Table N1) with the proposed limits. The ACGIH has a TLV–TWA of 2 ppm and a TLV–STEL of 5 ppm. In the final rule, OSHA is establishing a 2-ppm 8-hour TWA and a 5-ppm 15-minute STEL for SO_2. Sulfur dioxide is a colorless, nonflammable gas or liquid with a suffocating odor.

OSHA has studied the effects of occupational exposure to SO_2 for several years. The Agency's 5-ppm limit for this substance was established in 1971 on the basis of the 1968 ACGIH TLV–TWA. In 1975, OSHA proposed to revise this limit downward to 2 ppm and held public hearings to gather information on industrial exposures to SO_2. In response to shifting priorities within the Agency, OSHA did not promulgate a final standard at that time. The following discussion summarizes the record evidence relevant to SO_2 both from the earlier (1975–1976) record and from the record of the present rulemaking.

Workplace exposure to sulfur dioxide causes both acute and chronic effects. The chronic effects of exposure include permanent pulmonary impairment, which is caused by repeated episodes of bronchoconstriction. A number of human and animal studies demonstrate this effect (Skalpe 1964/Ex. 1–438; Smith, Peters, Reading, and Castle 1977/Ex. 1–805; Archer and Gillam 1978/Ex. 1–711; Ministry of Health (Canada) 1976/Ex. 1–1208; Lewis, Campbell, and Vaughan 1969, as cited in ACGIH 1986/Ex. 1–3, p. 542).

Kehoe, Machle, Kitzmiller, and LeBlanc (1932/Ex. 1–339) studied two groups of male refrigeration workers with long-term (average of four years) exposures to average SO_2 concentrations of 20 to 30 ppm, with a range of exposures from 10 to 70 ppm. These workers were believed to have been exposed prior to 1927 to SO_2 levels considerably higher and averaging from 50 to 100 ppm. This study showed that SO_2 exposure caused an increased incidence of nasopharyngitis, shortness of breath on exertion (dyspnea), and chronic fatigue (Kehoe, Machle, Kitzmiller, and LeBlanc 1932/Ex. 1–339).

In a study of Norwegian paperpulp mill workers, Skalpe (1964/Ex. 1–438) reported that average SO_2 concentrations were believed to range from 2 to 36 ppm. Results showed a significantly higher frequency of respiratory disease symptoms, including coughing, expectoration, and dyspnea, among workers less than 50 years of age (i.e., those with the shortest exposure). Workers older than 50, however, did not display symptomatology different from that of controls.

More recently, Smith, Peters, Reading, and Castle (1977/Ex. 1–805) studied a group of smelter workers exposed, on average, to less than 2 ppm SO_2 but concurrently exposed to respirable particulate at levels generally less than 2 mg/m³. These workers showed a decrement in forced vital capacity (FVC) and forced expiratory volume (FEV_1) of 4.8 percent when compared with controls. These authors concluded that workers exposed to SO_2 levels above 1 ppm had an accelerated loss of pulmonary function. This study has been criticised on the grounds that the control population itself may have been exposed to respiratory toxins and that other contaminants, such as iron sulfites, may have contributed to the pulmonary decrement seen in these smelter workers. On average, 60 percent more of the workers exposed to greater than 1 ppm SO_2 reported symptoms of chronic cough than did workers who were exposed to SO_2 at a concentration below 1 ppm. The prevalence of chronic sputum production was elevated for workers who had never smoked and who were exposed above 1 ppm.

Archer and Gillam (1978/Ex. 1–711) studied workers at the same smelter facility and obtained results similar to those of Smith, Peters, Reading, and Castle (1977/Ex. 1–805). Significant reductions in FVC and FEV_1 were found to be associated with chronic exposures to 0.4 to 3 ppm SO_2 (TWA) with concomitant exposure to particulate. These authors also found a corresponding increase in some symptoms of respiratory disease (chronic bronchitis) that was not attributable to smoking. Tomono and coworkers (1981, as cited in ACGIH 1986/Ex. 1–3, p. 542) found that 1.6 ppm was the lowest concentration that produced bronchoconstriction in 46 healthy male subjects.

OSHA's June 7, 1988 proposal also discussed the basis for NIOSH's recommendation of a 0.5-ppm 8-hour TWA limit for SO_2. In addition to the studies by Archer and Gillam (1977/Ex. 1–711) and Smith, Peters, Reading, and Castle (1977/Ex. 1–805) described above, NIOSH relied on a third study (Ministry of Health (Canada) 1976/Ex. 1–1208) of smelter workers exposed to SO_2 levels of 2.5 ppm for 10 or more years, which showed an increased incidence of respiratory disease in these workers. A fourth study cited by NIOSH (NIOSH 1977m, as cited in ACGIH 1986/Ex. 1–3, p. 542) reported that 10,000 workers exposed to SO_2 at levels of 0.35 ppm showed no adverse exposure-related effects.

Alarie and co-workers (1970 and 1972, as cited in ACGIH 1986/Ex. 1–3, p. 542) found that guinea pigs exposed to SO_2 by inhalation showed no decrement in pulmonary function at SO_2 levels of 5 ppm; monkeys exposed to 1.3 ppm for 78 weeks also showed no deficit (Alarie, Ulrich, Busey et al. 1970 and 1972, both as cited in ACGIH 1986/Ex. 1–3, p. 542). However, in another study, dogs exposed continuously to 5 ppm for 225 days showed increased pulmonary flow resistance and a decrease in lung compliance (Lewis, Campbell, and Vaughan 1969, as cited in ACGIH 1986/Ex. 1–3, p. 542). In addition, rats exposed to 10 ppm SO_2 daily for six weeks developed a thickening of the mucous layer that interfered with effective particle clearance (Dalhamn 1956, as cited in ACGIH 1986/Ex. 1–3, p. 542).

The acute effects of SO_2 exposure have been recognized for years in industrial settings; symptoms of acute overexposure include upper respiratory tract irritation, rhinorrhea, choking, and coughing. These symptoms are so disagreeable that most persons will not tolerate exposure for longer than 15 minutes. Within 5 to 15 minutes of the onset of exposure, workers develop temporary reflex broncho-constriction and increased airway resistance. Short-term exposure causes measurable bronchoconstriction (Frank, Amdur, Worcester, and Whittenburger 1962, as cited in ACGIH 1986/Ex. 1–3, p. 542; Weir, Stevens, and Bromberg 1972/Ex. 1–401); the ACGIH (1986/Ex. 1–3, p. 542) reports that this bronchoconstriction is dose-related and is manifested as an increase in pulmonary flow resistance.

Efforts have been made to quantify the acute no-adverse-effect level for

SO_2-induced increased airway resistance. Frank, Amdur, Worcester, and Whittenberger (1962, as cited in ACGIH 1986/Ex. 1–3, p. 542) reported that, at SO_2 concentrations of 1 ppm, one in 11 healthy subjects developed pulmonary flow resistance; at concentrations of 5 or 13 ppm, there was a 39- and 72-percent increase, respectively, in such resistance. Weir, Stevens, and Bromberg (1972/Ex. 1–401) noted a statistically significant but reversible increase in small-airway resistance and a decrease in lung compliance at a concentration of 3 ppm; however, Burton et al. (1969) reported no effects, even among smokers, at a level of 2.1 ppm.

N.R. Frank, Professor of Medicine at the University of Washington State, commented during the 1977 hearing (NIOSH 1977m) that sulfur dioxide may not by itself be hazardous to the lungs but that an aerosol of sulfur dioxide and water or SO_2 oxidized to sulfate particulate may increase the toxic potential of SO_2 (Ex. 40, Docket H–039). Dr. Frank also presented evidence showing that a single short-term exposure to very high SO_2 levels (200 to 1000 ppm) can produce lung damage (Ex. 40, Docket H–039).

In the current generic rulemaking, participants such as the American Iron and Steel Institute (AISI) (Exs. 3–1123 and 188) and the Corn Refiners Association (Exs. 8–65 and 177) raised issues similar to those raised during OSHA's 1977 rulemaking on SO_2. These included:

- Lack of evidence that long-term exposure to SO_2 causes chronic respiratory disease; and
- The potentiation of SO_2's adverse effects by the formation of sulfates or higher sulfur oxides from interactions between SO_2 and water or SO_2 and particulate matter.

Regarding the first point, the Corn Refiners Association (CRA) referred OSHA to studies and testimony on the effects of SO_2 exposure on employees in corn wet-milling from the earlier rulemaking (Ex. 66, Docket H–039). The CRA reported that the chronic respiratory disease and pulmonary impairment seen in SO_2-exposed smelter workers did not occur in corn milling plant employees (Ex. 66–1, Docket H–039). The CRA sponsored a study performed by Drs. Ferris and Essex from the Harvard School of Public Health (Ex. 66–3, Docket H–039). Fifty corn wet-milling workers involved in the early, SO_2-using stage of the wet-milling process were studied. Exposures (8-hour TWAs) in this group ranged from 0.5 to more than 5 ppm SO_2, particulates ranged from 0.0 to 0.17 mg/m³, and water-soluble sulfates ranged from 0.0 to 40.0 mg/m³. Results of this study showed that, at levels of about 3 ppm SO_2, acute symptoms such as coughing developed, but chronic, irreversible symptoms were not seen at exposure levels below 5 ppm (Ex. 66–1, Docket H–039). These authors concluded:

> Taken as a whole, the results suggest that no *significant chronic* respiratory impairments occurred at exposure levels under 5 ppm. The lack of association between the most serious symptoms of respiratory disease and exposure levels below 5 ppm also suggests that the atmosphere in question is quite distinct from that found in the *copper smelter studies* (Ex. 66–3, Docket H–039).

In addition, the studies by Smith, Peters, Reading, and Castle (1977/Ex. 1–373) and Archer and Gillam (1978/Ex. 1–711) were criticized in OSHA's earlier rulemaking for not taking into consideration the impact on the studied workers' health of the higher SO_2 levels to which these employees had been exposed in prior years. Arthur D. Little, Inc. (Ex. 95, Docket H–044) also criticized these studies, noting that their observation periods were too short to derive reliable data on chronic effects.

These criticisms and the lack of chronic effects observed in animals at levels below 5 ppm (Alarie, Ulrich, Busey et al. 1970 and 1972, as cited in ACGIH 1986/Ex. 1–3, p. 542) caused commenters to question whether chronic lung disease results from long-term exposure to SO_2 below the current 5-ppm PEL. Dr. Alarie appeared at the 1977 hearing and testified on animal studies conducted by him and others on sulfur dioxide (NIOSH 1977m, as cited in ACGIH 1986/Ex. 1–3, p. 542). He testified that, in his opinion, the long-term studies in animals support the establishment of a ceiling value for SO_2 but do not indicate that benefits would be gained by reducing the time-weighted average from 5 to 2 ppm. OSHA agrees with Dr. Alarie that a STEL is necessary to minimize high short-term exposures to SO_2; however, OSHA does not agree that no effects have been seen in animals at levels at or below 5 ppm. For example, Lewis, Campbell, and Vaughan (1969, as cited in ACGIH 1986/Ex. 1–3, p. 542) showed that beagles exposed to 5 ppm SO_2 exhibited decreased dynamic compliance and increased flow resistance. In addition, NIOSH (1974b/Ex. 1–235) has reported:

> [M]an is considered to be more sensitive than other mammals to the effects of sulfur dioxide in ranges commonly employed experimentally . . . (Ex. 1–235).

It is therefore not surprising that humans have also been shown to develop respiratory effects, including bronchoconstriction, coughing, and sputum production, at levels below 5 ppm (Smith, Peters, Reading, and Castle 1977/Ex. 1–805; Archer and Gillam 1978/Ex. 1–711; Frank, Amdur, Worcester, and Whittenburger 1962, as cited in ACGIH 1986/Ex. 1–3, p. 542; Weir, Stevens, and Bromburg 1972/Ex. 1–401).

Many rulemaking participants (Exs. 3–1123, 8–57, 66, 66A, 117, 177, and 188) were of the opinion that the lack of chronic effects demonstrated that exposure to SO_2 did not cause material impairment of health at levels below 5 ppm. For example, the Edison Electric Institute (EEI) (Ex. 133) criticized the Ferris et al. (1967/Ex. 1–316) study as being too old to be relevant. According to the EEI, the finding that the control group in the Ferris et al. (1967/Ex. 1–316) study also had an elevated incidence of disease and that there was no statistically significant difference in the extent of the respiratory disease incidence between the controls and the SO_2-exposed group invalidates this study's finding of a serious pulmonary effect in the SO_2-exposed workers. OSHA does not agree with this interpretation of the Ferris et al. (1967/Ex. 1–316) study. OSHA believes that a more accurate interpretation of the results of this study would be that both groups of workers were occupationally exposed to respiratory toxins; this is a very likely occupational scenario because the SO_2-exposed workers in this study were pulpmill workers, while those in the control group worked in a papermill, an occupational environment also recognized as hazardous.

Taken together, the evidence from all of the studies described in this subsection clearly shows that exposure to SO_2 below 5 ppm does cause respiratory symptoms, including repeated episodes of bronchoconstriction. The studies by Smith, Peters, Reading, and Castle (1977/Ex. 1–373), Archer and Gillam (1978/Ex. 1–711), and Frank, Amdur, Worcester, and Whittenberger (1962, as cited in ACGIH 1986/Ex. 1–3, p. 542) consistently demonstrate that persons exposed to concentrations of SO_2 below 5 ppm have an accelerated loss of pulmonary function and exhibit adverse pulmonary symptoms.

OSHA believes that these effects constitute material impairments of health and are significant. In addition, OSHA does not agree that these studies demonstrate the absence of chronic effects at low SO_2 exposure levels; long-term exposure to SO_2 has produced pulmonary function changes in dogs, and daily exposures of rats to 10 ppm (only twice the former PEL) for six

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weeks produced a thickened mucous layer and reduced the effectiveness of particle clearance from the trachea (Dalhamn 1956, as cited in ACGIH 1986/Ex. 1–3, p. 542).

The second point raised by commenters concerned the formation of other toxic and irritating products from the interaction between SO_2 and water or between SO_2 and particles. Some of the participants in the earlier rulemaking, such as Dr. Colucci of the Corn Refiners Association, testified that it would be more protective to identify and limit exposure to each of these by-products, rather than to regulate SO_2 alone. OSHA disagrees with this approach; since these products are all formed from sulfur dioxide, limiting exposure to SO_2 will concurrently limit exposure to these SO_2 by-products. This approach is more straightforward and easier to implement than attempting to identify the myriad decay products that may be formed in different industrial settings. Furthermore, the studies discussed above clearly establish a relationship between airborne SO_2 levels and adverse effects; no quantitative relationship on which to base a PEL has been established for the decay products of SO_2 reactions. Therefore, to reduce the significant risk of respiratory symptoms among exposed workers, OSHA finds that limiting exposure to SO_2 will be effective.

After considering all of the relevant evidence from both the 1977 and the present dockets, OSHA concludes that a TWA of 2 ppm and a STEL of 5 ppm are necessary to reduce the significant risk of adverse respiratory effects that have been demonstrated to occur in workers exposed to SO_2 above these levels. Accordingly, OSHA is establishing these limits in the final rule. The Agency finds that the coughing, increase in sputum production, and bronchoconstriction observed in workers exposed to SO_2 at the levels permitted by the former limit constitute material impairments of health and functional capacity, and must be protected against. This discussion is also a final statement of reasons for the 1977 rulemaking.

Some evidence has been submitted by the steel and nonferrous metal industries that the STEL cannot be regularly achieved with engineering and work-practice controls in specific operations in SIC 33. These involve furnace areas in nonferrous metal smelters, blast furnace operations, and the sulfur plant. There is no evidence to the contrary in the record.

OSHA will, therefore, permit more flexibility in the use of respirators for these operations. The burden of proof will not be on employers to demonstrate that compliance with engineering and work-practice controls are infeasible in a compliance action for these operations in SIC 33 as related to meeting the requirements of the STEL.

There may be a few other operations in this category, and for the TWA, where the record is unclear for SIC 33. Based on an appropriate showing pursuant to the OSH Act, OSHA would favorably consider requests for variances for specific operations in Sector 33 on methods of compliance for the STEL and for the TWA. Of course, all requests for variances or any matters will be considered based on their merits.

SULFUR TETRAFLUORIDE

CAS: 7783-60-0; Chemical Formula: SF_4
H.S. No. 1378

OSHA's former Z tables had no exposure limits for sulfur tetrafluoride. The proposed PEL was 0.1 ppm as a ceiling; NIOSH (Ex. 8–47, Table NI) concurs with this limit, and the final rule establishes it. This limit is consistent with that of the ACGIH. Sulfur tetrafluoride is a colorless, noncombustible gas.

On contact with moisture, sulfur tetrafluoride produces sulfur dioxide and hydrogen fluoride (HF) (Lester 1971, as cited in ACGIH 1986/Ex. 1–3, p. 546), and it is the release of HF that is primarily responsible for sulfur tetrafluoride's toxic effects (Zapp 1971, as cited in ACGIH 1986/Ex. 1–3, p. 546). A du Pont (1961, as cited in ACGIH 1986/Ex. 1–3, p. 546) study of rats exposed for four hours to 4 ppm sulfur tetrafluoride over a period of 10 days reported that the animals demonstrated nasal discharge, difficulty in breathing, and weakness. Autopsies of these animals revealed evidence of emphysema, but those rats surviving exposure and given a two-week rest period after exposure showed no significant pathological changes. In the same study by du Pont (1961, as cited in ACGIH 1986/Ex. 1–3, p. 546), a four-hour exposure to 20 ppm sulfur tetrafluoride proved lethal to one of two rats. In a study by Clayton (1962/Ex. 1–409), irregular breathing and signs of irritation were observed following exposures to concentrations of 20 ppm and lower; animals receiving lethal amounts of sulfur tetrafluoride showed pulmonary edema on autopsy, and those with sublethal exposures demonstrated no pathologic changes 14 days later.

In the final rule, OSHA is establishing a 0.1-ppm ceiling limit for this highly toxic gas. The Agency concludes that establishing this limit for this previously unregulated chemical will reduce the significant risk of chronic respiratory effects potentially associated with exposure to sulfur tetrafluoride at the levels permitted by the absence of any OSHA limit. OSHA considers the chronic respiratory effects caused by exposure to sulfur tetrafluoride to be material impairments of health. NIOSH was the only commenter to the rulemaking record on this substance.

TALC (CONTAINING NO ASBESTOS)

CAS: 14807-96-6; Chemical Formula: H_2O_5Si $_3^4Mg$
H.S. No. 1381

The former OSHA PEL for nonasbestiform talc was 20 million particles per cubic foot of air (mppcf) as an 8-hour TWA; when expressed as mg/m³, this is comparable to 3 mg/m³. The ACGIH has a TLV-TWA of 2 mg/m³ (15 mppcf) for talc, measured as respirable dust, and this is the limit proposed by OSHA and included in the final rule. NIOSH (Ex. 8–47, Table NI) concurred that this limit is appropriate. Talc is a fine powder that is white to gray-white in color; it is found as a mineral, and the main component is a crystalline hydrated silicate of magnesium that is usually in the form of plates but occasionally may be in the form of fibers.

The health-effects evidence for talc is complicated by the fact that talcs contain amphiboles and other minerals, in addition to platiform talc crystals; adverse health effects appear to be related to the nonplatiform content (that is, to the fiber content) of the talc in question (ACGIH 1986/Ex. 1–3, p. 550). There are conflicting views regarding the extent to which the fibrous constituents are asbestos; however, no health effects information is available that is specifically related to fibrous talc (ACGIH 1986/Ex. 1–3, p. 550).

Numerous epidemiological studies have documented the effects on workers of long-term exposures to talc. In 1942, Porro et al. (1942, as cited in Stokinger 1981b/Ex. 1–1127) published a report in which 15 cases of talc pneumoconiosis, including five postmortem examinations, showed that asbestotic bodies were almost always present in fibrotic areas of the lungs of those workers with talcosis. Siegal and colleagues (1943, as cited in Stokinger 1981b/Ex. 1–1127) noted that the incidence of advanced fibrosis in a group of 221 talc miners and millers was 14.5 percent. These workers were primarily exposed to fibrous talc, which was believed to be responsible for the pathology of the asbestos-like lung lesions. A study by McLaughlin et al. (1949, as cited in Stokinger 1981b/Ex. 1–1127) revealed that talc-induced pneumoconiosis was caused by the fibrous varieties of talc; in animal

studies by Schepers and Durkan (1955, as cited in Stokinger 1981b/Ex. 1–1127), the degree of fibrosis in the lung tissue was found to be a function of the length of the talc fibers, rather than of the composition of the talc itself. A paper by Kleinfeld, Giel, Majeranowski, and Messite (1963, as cited in Stokinger 1981b/Ex. 1–1127) reported that postmortem examinations on six talc industry workers showed that the asbestotic bodies found in the lung bronchioles or embedded in fibrous tissue were indistinguishable from the asbestos bodies seen in cases of asbestosis.

Kleinfeld, Messite, Kooyman, and Zaki (1967/Ex. 1–704) later conducted a cohort study of 220 workers who had been employed in a mine that produced talc that had a tremolite and anthophyllite content. Of the 91 deaths in this group, 10 resulted from respiratory cancer and 28 were attributed to pneumoconiosis. The proportional mortality rate from respiratory cancer was four times the expected rate. In 1974, when Kleinfeld, Messite, and Zaki (Ex. 1–705) performed a follow-up study of this group (which at that time consisted of 260 workers [108 deaths]), they found significant differences between the expected and observed mortality in the period 1950 to 1954, but not during 1960 to 1969. These investigators attributed this finding to the reduction in talc dust counts (from averages of 25 to 73 mppcf (approximately 4 to 12 mg/m³) in the years 1948 to 1965 to averages of 9 to 43 mppcf (approximately 1.5 to 6.5 mg/m³) in the period 1966 to 1969). This study also showed a decrease of greater than 50 percent in deaths due to pneumoconiosis in the 1965-to-1969 time period.

Studies by NIOSH (Dement and Zumwald 1978, as cited in ACGIH 1986/Ex. 1–3, p. 552) of 398 white male workers employed between 1947 and 1959 in the talc industries found that 74 of these men had died, and that bronchogenic cancer was the cause of death in nine men; only 3.3 deaths from this cause would have been expected. Nonmalignant respiratory disease (NMRD) exclusive of influenza, pneumonia, and tuberculosis accounted for three deaths; 1.5 would have been expected. From these data, NIOSH concluded that a significant increase in mortality due to bronchogenic cancer and NMRD had occurred as a result of occupational exposure to talc dust. NIOSH's report also included a morbidity study of 12 talc industry workers, currently employed, in which chest X-rays, lung function tests, and questionnaires were used. This study concluded that a higher prevalence of cough, phlegm, dyspnea, and irregular opacities in chest X-rays existed in these workers than in potash miners; instances of pleural thickening and calcification were greater than in coal and potash miners; and the pulmonary function of talc workers overall was reduced in comparison with that of coal and potash miners employed for the same length of time. The reductions in pulmonary function among the talc workers were dose- and duration-related.

The ACGIH (1986/Ex. 1–3, p. 552) concludes that serious health effects have been associated in the past (i.e., prior to 1945) with exposures to amphibole-containing talc. However, the ACGIH believes that the introduction of mining improvements has all but eliminated "the excess of death rates from pneumoconiosis and lung cancer" (ACGIH 1986/Ex. 1–3, p. 552).

Two recent studies of the health effects associated with talc exposures (Rubino, Scansetti, Piolatto, and Romano 1976/Ex. 1–801; Selevan, Dement, Wagoner, and Froines 1979/Ex. 1–989) are available. The Rubino, Scansetti, Piolatto, and Romano (1976/Ex. 1–801) study found that miners and millers exposed to an average of 849 to 8470 mppcf-years (miners) or 76 to 651 mppcf-years (millers) showed no increase in the number of observed (compared to expected) deaths from causes other than silicosis. These authors concluded that the disease-causing factor in these workers was silica rather than talc (Rubino, Scansetti, Piolatto, and Romano 1976/Ex. 1–801).

The Selevan, Dement, Wagoner, and Froines (1979/Ex. 1–989) study of 392 workers exposed to talc in five mines found nonmalignant respiratory deaths for millers to be almost eight times the expected rate, while miners experienced more than three times the expected mortality rate for NMRD. The ACGIH (1986/Ex. 1–3, p. 552) believes that the Selevan et al. (1979/Ex. 1–989) study is incomplete because confounding factors were not adequately identified and controlled for.

With regard to NIOSH's findings (Dement and Zumwald 1978, as cited in ACGIH 1986/Ex. 1–3, p. 552) of excess cancer deaths among talc workers, OSHA is currently reviewing the scientific and toxicological data describing the effects of exposure to the nonasbestiform varieties of mineral fibers that are found in talc deposits. OSHA is considering a separate rulemaking to address this issue.

OSHA received few comments regarding its proposed revision to the PEL for respirable talc. John W. Kelse, Corporate Industrial Hygienist for R.T. Vanderbilt, Inc. (Ex. 3–108), supported the proposed 2-mg/m³ respirable talc PEL. Mr. Kelse also recommended that OSHA revise its Table Z–3 entry for "Talc (nonasbestiform)" to "Talc (not containing asbestos)" and the entry for "Talc (fibrous)" to "Talc (containing asbestos)." These changes were suggested because of the potentially ambiguous meanings of the term "fibrous" and "asbestiform." OSHA concurs with this suggestion and has accordingly revised the respective entries in Tables Z–1–A and Z–3 in this rulemaking. In response to a suggestion by Richard Bidstrup, representing the Rubber Manufacturers Association (Ex. 173, p. 9), OSHA has also revised the entry for talc to clarify that the PEL is measured as respirable dust.

On a related issue, Mr. F.A. Renninger, Senior Vice President of the National Stone Association (Ex. 3–528), suggested that OSHA delete or clarify its current Table Z–3 entry for "Tremolite (see talc fibrous)" since it suggests that all forms of tremolite are considered to be asbestos. As Mr. Renninger points out, the applicability of OSHA's asbestos standard to the nonasbestiform varieties of tremolite, actinolite, and anthophyllite is currently under administrative stay, and OSHA is presently examining the health evidence for these mineral varieties. However, during this period of administrative stay, exposure to the nonasbestiform varieties of these minerals is covered by OSHA's comprehensive standard, which appears at 29 CFR 1910.1101. OSHA has therefore revised the entry for tremolite in Table Z–3 to refer to the standard at 29 CFR 1910.1101.

OSHA is establishing an 8-hour TWA limit of 2 mg/m³ for the respirable dust of talc containing no asbestos fibers and less than 1 percent silica. The Agency concludes that this limit will protect workers from the significant risk of nonmalignant respiratory effects associated with exposure to talc dust; OSHA considers these effects material impairments of health. According to the ACGIH (1986/Ex. 1–3), talc may, at times, occur in a fibrous form. At this time, OSHA has not made any determinations with regard to the possible health consequences resulting from exposure to talc fibers.

TIN OXIDE

CAS: 7440-31-5; Chemical Formula: SnO
H.S. No. 1395

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OSHA formerly had no exposure limit for tin oxide. The ACGIH has an exposure limit of 2 mg/m³ as an 8-hour TWA. The proposed PEL was 2 mg/m³ as an 8-hour TWA PEL; NIOSH (Ex. 8-47, Table N1) concurs, and this limit is established by the final rule. Tin oxide may be a white or yellow-brown powder.

Injection of tin dust intraperitoneally into guinea pigs resulted in a nonspecific, well-vascularized chronic granulomatous reaction (Oyanguren, Haddad, and Maass 1958/Ex. 1-652). Chronic exposure to tin oxide fume and dust results in stannosis, a form of pneumoconiosis. The fume of tin oxide is considered to be a more important source of stannosis than the dust (Dundon and Hughes 1950/Ex. 1-732), but other authorities consider the quality of the dust and the duration of exposure equally important (Robertson and Whittaker 1955/Ex. 1-987). The onset of the symptoms of stannosis may be delayed for years; the appearance of the condition is signalled by difficulty in breathing. One worker who had been exposed to unspecified tin oxide levels for 22 years was tested for stannosis and registered a vital breathing capacity 70 percent of normal and a maximal breathing capacity 61 percent of the predicted value (Spencer and Wycoff 1954/Ex. 1-611).

More than 150 cases of stannosis have been reported in the world literature (Robertson and Whittaker 1955/Ex. 1-987), and five cases were reported in the United States before 1954. No cases of massive fibrosis caused by exposure to tin oxide dust or fume have been reported (ACGIH 1986/Ex. 1-3, p. 574). Only NIOSH commented on tin oxide.

In the final rule, OSHA is establishing an 8-hour TWA of 2 mg/m³ for tin oxide dust and fume. The Agency concludes that this limit will protect workers from the significant risks of reduced pulmonary capacity and stannosis, which are considered material impairments of health, associated with exposure to this substance at the levels permitted by the absence of an OSHA limit.

TRIMELLITIC ANHYDRIDE (TMAN)

CAS: 552-30-7; Chemical Formula: $C_9H_4O_5$
H.S. No. 1409

OSHA previously had no exposure limit for trimellitic anhydride. In 1981, the ACGIH set 0.005 ppm (0.04 mg/m³) as the 8-hour TWA limit for this substance. The proposed PEL was 0.005 ppm as an 8-hour TWA, and the final rule promulgates this limit. NIOSH (Ex. 8-47, Table Ni) concurs with this limit. Trimellitic anhydride is a colorless solid.

Exposure to trimellitic anhydride (TMAN) causes irritation of the eyes, nose, skin, and pulmonary tract. NIOSH (1978n, as cited in ACGIH 1986/Ex. 1-3, p. 608) reported in a current intelligence bulletin that trimellitic anhydride should be considered an extremely toxic workplace hazard, because exposure to it can cause noncardiac pulmonary edema and immunological sensitization, as well as upper respiratory tract irritation.

Pulmonary edema has occurred in workers exposed to TMAN at unreported air concentrations; the development of pulmonary edema in these workers without upper respiratory tract irritation suggests that TMAN is a sensitizer (Rice, Jenkins, Gray, and Greenburg 1977/Ex. 1-358). Zeiss, Patterson, Pruzansky, and colleagues (1977/Ex. 1-501) described TMAN-related illnesses among a group of workers synthesizing TMAN. These authors believe there are three separate syndromes associated with TMAN exposure: rhinitis/asthma; a flu-like condition; and irritation of the upper respiratory tract. Another case of TMAN-related occupational sensitization occurred in a worker exposed during the application of an epoxy resin coating (Fawcett, Taylor, and Pepys 1977/Ex. 1-636).

At levels averaging 1.5 and 2.8 mg/m³ in two processes, NIOSH reported that employees reported eye and nose irritation, shortness of breath, coughing, nausea, headache, skin irritation, and throat irritation (NIOSH 1974c/Ex. 1-1161). Pulmonary hemorrhage and hemolytic anemia have been reported in workers exposed to TMAN at unspecified levels (Ahmad, Morgan, Patterson et al. 1979/Ex. 1-460).

Rats have shown intraalveolar hemorrhage after TMAN exposures to concentrations of 0.01 ppm (Amoco Chemical Corporation 1978, as cited in ACGIH 1986/Ex. 1-3, p. 608).

Based on this study, in the final rule OSHA is revising the PEL for trimellitic anhydride to an 8-hour TWA level of 0.005 ppm. The Agency concludes that this limit will protect workers from the severe pulmonary effects, sensitization, and skin and upper respiratory tract irritation observed in workers exposed to this extremely toxic substance. The Agency has determined that these effects constitute material impairments of health. OSHA finds that this limit will substantially reduce these significant risks, which were formerly not controlled because of the absence of any OSHA PEL.

WOOD DUST

CAS: None; Chemical Formula: None
H.S. No. 1430A (Hard Wood)
H.S. No. 1430B (Soft Wood)
H.S. No. 1430C (Western Red Cedar)

Before 1980, OSHA regulated wood dust under its nuisance dust standard of 15 mg/m³ (29 CFR 1910.1000, Table Z-3). However, in a 1985 enforcement proceeding before the Occupational Safety and HealthReview Commission, wood dust was held not to be covered by the nuisance dust standard, an inert mineral dust, and the Agency did not regulate this substance after this decision (12 OSHC 1785). Consequently, OSHA had no PEL for wood dust when this generic rulemaking was undertaken. The ACGIH has a TLV-TWA of 1 mg/m³ for hard wood dust, and a TLV-TWA of 5 mg/m³ and STEL of 10 mg/m³ for soft wood dust. OSHA proposed a 1-mg/m³ 8-hour TWA for hard wood dust and a 5-mg/m³ 8-hour TWA for soft wood dust. In the final rule, OSHA is establishing a single 8-hour TWA of 5 mg/m³ and a STEL of 10 mg/m³ for all hard wood and soft wood dusts except Western red cedar. For Western red cedar, a highly allergenic species of soft wood, the Agency is establishing an 8-hour TWA limit of 2.5 mg/m³. Wood dust is defined as any wood particles arising from the processing or handling of woods. Hard woods derive from the deciduous broad-leaved flowering species of trees, and soft woods include the coniferous species that do not shed their leaves in the winter.

Exposure to wood dust has long been associated with a variety of adverse health effects, including dermatitis, allergic respiratory effects, mucosal and nonallergic respiratory effects, and cancer. The toxicity data in animals are limited, particularly with regard to exposure to wood dust alone; there are, however, a large number of studies in humans. The discussion below first describes some of the relevant toxicological studies and then presents the record evidence on wood dust.

Animal Studies

Groups of male guinea pigs were injected intratracheally with suspensions containing 75 mg of sheesham or mango wood dust or of hemp or bagasse fibers, or 20 mg of jute fiber (Bhattacharjee, Dogra, Lal, and Zaidi 1979/Ex. 1-463; Bhattacharjee and Zaidi 1982/Ex 1-464). Animals were sacrificed serially at intervals up to 90 days after injection. Lung examination revealed that, at 90 days, Grade I fibrosis of the lungs had occurred in the guinea pigs injected with mango or jute, while those treated with sheesham or hemp had developed Grade II pulmonary fibrosis.

In another experiment involving guinea pigs, animals were exposed by inhalation to average respirable dust concentrations of 1143 mg/m³ for 30 minutes/day, 5 days/week for 24 weeks (McMichael, DiPalma, Blumenstein et al. 1983, Ex. 1-644). Histopathological examination showed lung changes, described by the authors as moderate to severe, in all exposed guinea pigs. The changes seen included an increase in septal connective tissue components and aggregation of lymphocytes; however, no pulmonary fibrosis or extensive destruction of the parenchymal tissue occurred. The authors of this study concluded that exposure to fir bark dust may cause inflammatory changes in the lung.

Two studies examined the effect of exposing Syrian golden hamsters to beech wood dust by inhalation, with or without concurrent administration of the known carcinogen diethylnitrosamine (DEN) (Wilhelmsson, Hellquist, Olofsson, and Klintenberg 1985/Ex. 1-402; Wilhelmsson, Jernudd, Ripe, and Holmberg 1985/Ex. 1-1042; Drettner, Wilhelmsson, and Lundh 1985/Ex. 1-312). In each study, the animals were divided into four separate groups. In Study I, there were 12 animals per group. Two groups were exposed to fresh beech wood dust (a hard wood dust) at a mean total dust concentration of 15 mg/m³ for six hours/day, five days/week for 36 weeks, and one of these groups was also given 1.5 mg of DEN once a week for the first 12 weeks. The third group in Study I was given the DEN doses only (positive control), and the fourth group was given no exposure at all (negative control).

In Study II, there were 24 animals in each of four groups. Two groups of animals were exposed to fresh beech wood dust at a mean total dust concentration of 30 mg/m³ for six hours/day, five days/week for 40 weeks. The positive and negative control groups were treated as in Study I.

In Study I, none of the hamsters had lung or nasal tumors or metaplasia. Four hamsters exposed to wood dust and DEN exhibited squamous cell papillomas of the trachea, as did three animals in the positive control group and one in the negative control group. No differences in organs other than the respiratory organs were seen between the treated and control groups in Study I.

In Study II, all DEN-exposed hamsters had nasal lesions ranging from hyperplasias and dysplasias to papillomas. In addition, half of all DEN-exposed hamsters developed nasal adenocarcinomas, whether or not they had also been exposed to wood dust. Half of the DEN-exposed animals also had papillomas of the larynx and trachea. In the wood-dust-exposure-only group, two of the animals had nasal lesions, one of which was an unclassifiable malignant nasal tumor and the other of which consisted of focal metaplasia with mild dysplasia. The authors concluded that exposure to wood dust did not increase the tumor incidence in DEN-exposed animals but did affect the respiratory tract of all exposed animals.

Human Studies

Dermatitis. There are a large number of case reports, epidemiological studies, and other data on the health effects of wood dust exposure in humans. Dermatitis caused by exposure to wood dusts is common, and can be caused either by chemical irritation, sensitization (allergic reaction), or both of these together. As many as 300 species of trees have been implicated in wood-caused dermatitis.

The chemicals associated with allergic reactions are generally found in the inner parts of a tree, e.g., the heartwood, and the workers most prone to these reactions are those involved in secondary wood processing (e.g., carpenters, joiners, and finishers).

The symptoms of sensitization are redness, scaling, and itching, which may progress to vesicular dermatitis and, after repeated exposures, to chronic dermatitis. The parts of the body most often affected are the hands, forearms, eyelids, face, neck, and genitals. This form of dermatitis generally appears after a few days or weeks of contact.

Allergic respiratory effects. Allergic respiratory responses are mediated by the immune system, as is also the case with allergic dermatitis. Many authors have reported cases of allergic reactions in workers exposed to wood dust (Sosman, Schlueter, Fink, and Barboriak 1969/Ex. 1-444; Greenberg 1972/Ex. 1-482; Pickering, Batten, and Pepys 1972/Ex. 1-655; Eaton 1973/Ex. 1-478; Booth, LeFoldt, and Moffitt 1976/Ex. 1-466; Chan-Yeung, Ashley, Corey et al. 1978/Ex. 1-622; Edwards, Brooks, Henderson, and Apol 1978/Ex. 1-650; Innocenti and Angotzi 1980/Ex. 1-1038; Bush and Clayton 1983/Ex. 1-469; Cartier, Chan, Malo et al. 1986/Ex. 1-472). Asthma is the most common response to wood dust exposure, and the allergic nature of such reactions has been demonstrated by the presence of IgE antibodies and positive skin reactions on patch testing. The best-studied of the allergic reactions to wood dust is Western red cedar (WRC) asthma; it is estimated that 5 percent of the workers handling this species are allergic to it. However, only one study is available that relates exposure level to ventilatory function. In that study, exposure to concentrations of 2 mg/m³ of WRC dust caused significant decreases in forced vital capacity and forced expiratory volume (Vedal, Chan-Yeung, Enarson et al. 1986/Ex. 1-397). These authors also found that exposures to concentrations above 3 mg/m³ produced eye irritation.

Mucosal and nonallergic respiratory effects. This section discusses changes in the structure and function of the nasal mucosa and respiratory tract that are caused by exposure to wood dust. These changes include nasal dryness, irritation, bleeding, and obstruction; coughing, wheezing, and sneezing; sinusitis; and prolonged colds. These symptoms have been observed even at wood dust concentrations below 4 mg/m³.

Bellion, Mattei, and Treves (1984, as cited in NIOSH 1987a/Ex. 1-1005) found that 97 of 225 workers (carpenters, sawmill workers, woodworkers) exposed from 3 to 24 years to the dust of several different hard woods showed radiologic evidence of pulmonary abnormalities. Black, Evans, Hadfield et al. (1974/Ex. 1-299) studied nine woodworkers from a woodworking factory in England. In all of these workers, mucociliary movement was markedly depressed, leading these authors to conclude that exposure to wood dust in the furniture industry for 10 years or more can impair mucociliary clearance. These findings were confirmed in a Danish study involving furniture makers (Solgaard and Andersen 1975/Ex. 1-443; Andersen, Solgaard, and Andersen 1976/Ex. 1-297; Andersen, Andersen, and Solgaard 1977/Ex. 1-296); compared with controls, the mucociliary transport rate was also significantly impaired in these woodworkers, and dose-response effects were noted.

A respiratory survey conducted by Chan-Yeung, Giclas, and Henson (1980/Ex. 1-474) in pulp and paper mill workers in British Columbia showed that workers exposed to wood dust at a mean total dust concentration of 0.5 mg/m³ had a slight but statistically significant decrease in pulmonary function values compared with controls. The authors concluded that the chemical preservatives used to treat the wood could also have been responsible for these adverse effects.

In a cross-sectional survey of 1,157 American woodworkers (both hard and soft wood), Whitehead, Ashikaga, and Vacek (1981/Ex. 1-454) found that exposure to higher (10+ mg-years/m³), as compared with lower (0 to 2 mg-

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years/m³), dust concentrations was associated with a statistically significant and higher incidence of decreased pulmonary function. However, dose-response effects were observed only for soft wood (i.e., pine) dusts. A later study by Beckman, Ashikaga, and Whitehead (1980, as cited in NIOSH 1987a/Ex. 1–1005) examined subgroups of the workers studied by Whitehead and found no correlation between years of exposure to pine wood dust and pulmonary function.

In a pilot study of 55 workers in a North Carolina hardwood furniture plant, Goldsmith (1983, as cited in NIOSH 1987a/Ex. 1–1005) found that, at mean area wood dust concentrations of 2 mg/m³ or below, peak ventilatory flow correlated significantly with cumulative person-years of exposure. Goldsmith interpreted this finding to mean that inhalation of wood dust may impair large-airway function.

A study of Italian woodworkers showed that the number of wood-dust-exposed workers who had developed anosmia (loss of smell) was significantly higher than in a control group of nonexposed workers (Innocenti, Valiani, Vessio et al. 1985/Ex. 1–1037). Amoore (1980/Ex. 1–1029) confirmed this finding in other workers exposed to hardwood dusts.

Summary of mucosal and nonallergic respiratory effects. A large number of studies have demonstrated that occupational exposure to wood dust causes both statistically significant and nonsignificant increases in respiratory symptoms at exposure levels as low as 2 mg/m³. These symptoms range from irritation to bleeding, wheezing, sinusitis, and prolonged colds. In addition, chronic wood dust exposure causes mucociliary stasis (i.e., the absence of effective clearance) in the nose and, in some workers, also causes changes in the nasal mucosa. Several studies have demonstrated decreased pulmonary function among wood-dust-exposed workers, although other studies have not confirmed these findings.

Carcinogenicity

The association between occupational exposure to wood dust and various forms of cancer has been explored in many studies and in many countries. In 1987, the International Agency for Research on Cancer (IARC) classified furniture manufacturing in Category 1 (confirmed human carcinogen) and carpentry in Category 2B (suspected human carcinogen). NIOSH (Ex. 8–47) considers both hard and soft wood dust to be potentially carcinogenic in humans; for soft wood dust, NIOSH recommends a separate 6(b) rulemaking (Ex. 8–47, Table N6B). NIOSH concurred, however, with the proposed PEL of 1 mg/m³ TWA for hard wood dust (Ex. 8–47, Table N6A).

The discussion below focuses on selected U.S. studies.

Nasal and sinus cavity cancer. The earliest U.S. study of wood dust exposure and nasal cancer was conducted by Brinton, Stone, Blot, and Fraumeni (Ex. 1–488) in 1978. These authors analyzed cancer death rates between 1950 and 1969 in 132 U.S. counties having at least 1 percent of their population employed in furniture and wood-fixture manufacturing. This study revealed that the age-adjusted mortality rate for cancer of the nasal cavity and sinuses among white males in the "furniture" counties was significantly higher than in nonfurniture counties.

In a later case-control study, these authors (Brinton, Blot, Becker et al. 1984/Ex. 1–487) analyzed cases of nasal and sinus cancers occurring in North Carolina and Virginia between 1970 and 1980. This study identified a significantly elevated risk of adenocarcinomas in males working in the furniture manufacturing industry, but no increased risk among lumber, carpentry, or construction workers. There was no significant increase in the risk of squamous cell carcinoma in workers from any other wood-related industry.

In a study sponsored by the Inter-Industry Wood Dust Task Force, Viren, Vogt, and Dixon (1982, as cited in NIOSH 1987a/Ex. 1–1005) described a death certificate case-control study of nasal cancer deaths for 1963 to 1977 in North Carolina, Mississippi, Washington, and Oregon. Findings of this study included a relative nasal cancer risk of 1.95 for industries involving lumber and wood products; however, no significant relative risk of nasal cancer was seen for workers in the furniture-manufacturing industry.

Imbus and Dyson conducted a study of nasal cancer and North Carolina furniture workers (1985, as cited in NIOSH 1987a/Ex. 1–1005). This study found: (1) that there was a statistically significant increase of nasal cancer among furniture workers; (2) that the nasal cancer rates among North Carolina furniture workers were much lower than those reported for English furniture workers; (3) that the number of nasal cancer deaths among North Carolina furniture workers decreased between 1950 and 1977; and (4) that a slight excess in nasal cancer may have existed among North Carolina furniture workers but is currently either declining or nonexistent.

At present, the National Cancer Institute is conducting a cohort mortality study of 36,022 workers employed in the wood, metal, and plastic furniture manufacturing industries (Miller et al. 1988, as cited in NIOSH 1987a/Ex. 1–1005). Results are too preliminary to be described at this time.

Summary of evidence for nasal and sinus cavity cancers. NIOSH (1987a/Ex. 1–1000) concluded that the literature clearly demonstrates an association between occupational wood dust exposure and nasal cancer. English studies first identified this link by showing a 10- to 20-times-greater incidence of nasal adenocarcinoma among woodworkers in the furniture industry than among other woodworkers and 100 times greater than in the general population. In the United States, three studies have reported a fourfold risk of nasal cancer or adenocarcinoma in furniture workers, and another study noted a similar relationship between nasal cancer and wood dust exposure. One other study failed to find such an association for furniture workers, but did find an increase among logging and timber industry workers.

Pulmonary cancer. A number of studies investigating the association between wood dust exposure and the development of lung cancer have been conducted. Milham (1974/Ex. 1–643) found a significant excess of malignant tumors of the bronchus and lung in workers who had belonged to the AFL–CIO United Brotherhood of Carpenters and Joiners of America. Only construction workers showed a statistically significant increase in lung cancer rate.

In a study of lung cancer in Florida residents, Blot, Davies, Brown et al. (1982/Ex. 1–465) found that an elevated risk of lung cancer that was statistically significant existed among workers in the lumber and wood industry and in construction; however, smoking may have been a confounding factor in these results.

Summary of evidence for pulmonary cancer. The association between lung cancer and occupational wood dust exposure is inconclusive, although several epidemiological studies have reported increases in lung cancer among wood-dust-exposed workers.

Hodgkin's disease. The data on the relationship between exposure to wood dust and the development of Hodgkin's disease are conflicting. Milham (1987/Ex. 1–750) and Milham and Hesser (1987/Ex. 1–645) concluded, on the basis of a case-cohort study of 1,549 white males dying of this disease between 1940–1953 and 1957–1964, that there was an association between Hodgkin's disease and exposure to wood dust.

Another study (Spiers 1988/Ex. 1–445) concluded that men working in the wood industries in the eastern United States were at special risk for Hodgkin's disease, and suggested that pine pollen exposure might be responsible for the increase.

A Washington State epidemiological study (Petersen and Milham 1974/Ex. 1–654) also found that woodworkers had an increased risk of Hodgkin's disease, and the work of these authors was supported by the results of another study (Grufferman, Duong, and Cole 1976/Ex. 1–484), which showed a nonsignificant increase in the relative risk for Hodgkin's disease among woodworkers.

Summary of evidence for Hodgkin's disease. Although the data are conflicting, several epidemiological studies of U.S. workers do report increases in the incidence of Hodgkin's disease among woodworkers. This excess is particularly apparent among carpenters.

Other cancers. NIOSH (1987a/Ex. 1–1005) concluded that the data on the relationship between occupational exposure to wood dust and the development of cancers other than nasal, Hodgkin's disease, or lung cancers are insufficient and inconclusive.

Record Evidence

Many participants submitted comments to the record pertaining to wood dust (see, for example, Exs. 8–34, 3–748, 3–233, 3–348, 3–362, 3–628, 3–682, 3–824, 3–836, 3–859, 3–899, 3–955, 3–1100, 3–917, 115, 127, 131, 141, 155, 168, 183, 191, 194, 3–1453, 195, 198, 189, 82, 80, and 3–911; Tr. 12, pp. 144 to 455). These commenters described their facilities and woodworking processes, employee safety and health programs, and concerns about the impact of the proposed rule's limits for wood dust on their industries. The issues raised by these participants concerned the following topics:

(1) The technological and economic feasibility of the proposed limits;

(2) The justification for a separate standard for soft wood and hard wood;

(3) The health effects evidence;

(4) The appropriate levels for the final rule's PELs; and

(5) The evidence for a separate limit for allergenic wood dusts.

The discussions below deal with each of these points in turn.

Representatives from many affected segments of the wood industry stated that achieving the proposed limits of 1 mg/m³ for hard wood and 5 mg/m³ for soft wood would be technologically or economically infeasible or extremely difficult (Exs. 8–34, 3–917, 168, 183, 191, 80, and 3–911). OSHA has determined that, at the present time, the health evidence suggests that a single PEL of 5 mg/m³ is appropriate for both hard and soft wood dust, with the exception of Western red cedar, for which a PEL of 2.5 mg/m³ is being set. These revised PELs have been determined to be feasible (see the detailed discussion of these issues in the Technological Feasibility and Economic Impact sections of this preamble).

OSHA proposed separate permissible exposure limits for soft wood (5 mg/m³) and hard wood (1 mg/m³). The Agency received comments on this topic from many participants; these commenters were unanimously opposed to the setting of separate limits for these two types of wood dust (Exs. 8–34, 3–748, 3–682, 3–859, 3–899, 3–917, 191, 198, 80G, 80L, 80N, and 3–911; Tr. XII, pp. 12–290, 12–328, and 12–331). These participants stated that there was no health basis for making a distinction between hard wood and soft wood dusts (Exs. 33–699, 3–955, 3–917, and 191; Tr. 12, pp. 326–331; Tr. 12, p. 290). According to Dr. Harold Imbus, speaking for the Inter-Industry Wood Dust Coordinating Committee (Tr. pp. 12–58, 12–60), the distinction between the two woods derived from the fact that the early studies showing an increased cancer incidence in woodworking employees involved British furniture makers, who predominantly used hard wood; this association caused investigators to attribute greater toxicity to hard wood dust.

Commenters were of the opinion that this distinction was no longer warranted by the evidence; in fact, Dr. Lawrence Whitehead, certified industrial hygienist and a professor at the University of Texas School of Public Health (Tr. p. 12–331), stated that his own work suggested that some soft wood dust exposures might actually produce stronger adverse effects than equivalent exposures to some hard wood dusts.

Other commenters reported that it is not possible to distinguish soft wood from hard wood dust except by chemical analysis (Ex. 8–34, p. 28), that most facilities in the wood industries use both hard and soft woods (Exs. 3–682, 3–859, and 3–899), and that the distinction between the two types of woods is inappropriate (Ex. 3–917). For example, Joseph Gerard, Vice President of the American Furniture Manufacturers Association (Ex. 3–917) stated:

> The distinction between hard woods and soft woods is purely botanical. Many so-called "softwoods" are actually hard (i.e., Douglas fir as a softwood is harder than the hardwood birch) and one of the softest woods in existence (balsa) is botanically a hardwood (Ex. 3–917, p. 2).

Jamie Cohen, speaking for the United Petitioners, a coalition of labor unions (Tr. 12, p. 294), believes that a bifurcated standard for the two types of dusts would place an undue burden on employers and could lead to compliance problems. The posthearing brief submitted by the United Brotherhood of Carpenters and Joiners of America (Ex. 196) reiterated these points by stating: "Given the frequent intermixture of wood types in the workplace, this [setting two separate standards] would render OSHA's compliance efforts virtually worthless" (Ex. 196, p. 7).

After a review of this record evidence, OSHA has determined that the health evidence for the toxicity of wood dust cannot be separately distinguished for soft wood and hard wood. In addition, the Agency is convinced by the many comments from wood industry employers that most operations involve both kinds of wood and are performed on the same machines and equipment and in the same facility. Thus, any controls installed to reduce exposures would of necessity need to be sufficient to reduce airborne dust levels to the lower of the two limits (i.e., to the proposed wood dust limit of 1 mg/m³). According to the Inter-Industry Wood Dust Coordinating Committee:

> [I]mposition of a limit of 1 mg/m³ for hardwood dust and 5 mg/m³ for softwood dust effectively imposes a limit of 1 mg/m³ on a large number of plants, including those where only small amounts of hardwood are used (Ex. 3–748, p. 3).

Many commenters took exception to the review of the health effects evidence for wood dust presented by OSHA in the preamble to the proposed rule. Objections were raised by the Inter-Industry Wood Dust Coordinating Committee (Exs. 8–34, 3–748, and 168), the Appalachian Hardwood Manufacturers (Ex. 3–626), the American Furniture Manufacturers Association (Exs. 3–917 and 191), the Georgia-Pacific Corporation (Exs. 3–955 and 183), the Hardwood Plywood Manufacturing Association (Ex. 3–911), and others.

These participants criticized many of the individual studies described by OSHA; some commenters found fault with several of these studies on the grounds that they involved British or other non-U.S. woodworkers (see, for example, Exs. 8–34, 191, 3–626, and 3–917), involved only a small number of subjects (see, for example, Exs. 8–34, 168, and 191), had inconsistent results

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(see, for example, Ex. 8–34), or failed to demonstrate a dose-response relationship between wood dust exposure and the health effect of concern (see, for example, Exs. 8–34, 3–628, 3–917, and 191). The Inter-Industry Wood Dust Coordinating Committee (IWDCC) stated:

[T]he observations in the European studies are not representative of conditions in U.S. workplaces, especially under modern conditions. . . .

The English and other European experience does not provide an accurate predictive model for the incidence of nasal cancer. . . . The excesses of nasal cancer observed in the European studies simply have not been observed in the United States at any time . . . (Ex. 3–748, pp. 2, 52).

OSHA agrees with the IWDCC that the *incidence* of nasal cancer seen in the United States is substantially lower than that seen in other countries, particularly in Great Britain. However, the Agency does not agree that excesses in nasal cancers, and particularly of nasal adenocarcinomas, have not been observed in American woodworkers. Several U.S. studies have reported excesses in nasal cancer risks among employees in the wood industries (Brinton, Stone, Blot, and Fraumeni 1976/Ex. 1–468; Brinton, Blot, Becker et al. 1984/Ex. 1–467; Viren, Vogt, and Dixon 1982, and Imbus and Dyson 1985, both as cited in NIOSH 1987a/Ex. 1–1005).

In response to those commenters who argued that none of the studies described by OSHA presented sufficient dose-response data to be used as a basis for establishing a limit, the Agency emphasizes that it is not relying on any single study to determine that wood dust presents a significant risk of material health impairment. Instead, OSHA is making this determination on the basis of the findings in the dozens of studies reporting on the respiratory, irritant, allergic, and carcinogenic properties of wood dust. The Agency finds the results of these studies biologically plausible and their findings reproducible and consistent. It is true that some of these studies, like all human studies, have limitations of sample size, involve confounding exposures, have exposure measurement problems, and often do not produce the kind of dose-response data that can be obtained when experimental animals are subjected to controlled laboratory conditions. What the large group of studies being relied upon by OSHA to establish the significance of the risk associated with exposure to wood dust do show is that the overall weight of evidence that such exposures are harmful and cause loss of functional capacity and material impairment of health is convincing beyond a reasonable doubt.

The industry strongly supported a single 5-mg/m³ standard for both hard wood and soft wood dusts (Exs. 8–34, 3–625, 3–682, 3–824, 3–899, 3–1160, 3–917, 168), 183, 191, 80 and attachments, and 3–911); some commenters (Exs. 3–859, 194, and 198) argued for a 1-mg/m³ limit for all wood dust, while others (Exs. 3–955, 155, and 183) were of the opinion that the nuisance dust limit of 10 mg/m³ was appropriate for wood dust. The United Petitioners (Tr. p. 12–294) strongly endorsed a 1-mg/m³ standard for wood dust of all types on the grounds that the available health evidence clearly supports this limit.

OSHA finds that the health evidence in the record as a whole does not support a PEL of 1 mg/m³ for all wood dusts. In addition, the Agency believes that a 1-mg/m³ limit would present serious problems of feasibility for affected parties (see Section VII, Summary Economic Impact and Regulatory Flexibility Analysis). The Agency also finds that the health evidence clearly indicates that occupational exposure to wood dust poses a significant risk of material health impairment at the 10-mg/m³ (or particulate) level. OSHA concludes that establishing an 8-hour PEL of 5 mg/m³ and a 15-minute STEL of 10 mg/m³ for all wood dusts (except Western red cedar) will substantially reduce this significant risk.

The final rule establishes an 8-hour TWA PEL of 2.5 mg/m³ for Western red cedar wood dust, based on its widely recognized ability to cause immune-system-mediated allergic sensitization. Evidence in the record demonstrates the seriousness of this effect. A study by Brooks, Edwards, Apol, and Edwards (1980) that was submitted by the United Petitioners (Ex. 82D) reports that

a high prevalence of occupational asthma was observed among workers exposed to WRC wood dust (Ex. 82D, p. 315).

At the hearing, Dr. Brooks described occupational asthma as follows:

[T]here are spasms of the bronchial tubes, there is reduced air flow on expiration . . . [the extent of which depends] on the extent of the exposure, and also . . . on the duration of the exposure . . . as a consequence of this sensitization and airway injury from the sensitization and the asthmatic reaction and the various biochemical and cellular changes that occur, there develops an associated process . . . the airways develop an increased sensitivity and an increased bronchospastic responsiveness to many different non-specific stimuli. So such things as cold air, dust, fumes, gases that are non-specific and wouldn't normally . . . [affect] most individuals [will affect] the individual with occupational asthma. And it's [such] hyper-reactive airways that cause individuals to continue to have disability and to continue to have symptoms once they leave the work place. . . . They develop this non-specific bronchial hyper-reactivity which may last the rest of their life (Tr. pp. 12–339 to 12–343).

Some commenters (Exs. 8–34, 183, and 191) opposed the establishment of a separate PEL for Western red cedar. These participants argued that a lower PEL "for wood dust generally would be necessary or appropriate to address allergic symptoms" (Ex. 8–34, Health Effects Comments, p. 8, footnote 6). According to the Inter-Industry Wood Dust Coordinating Committee (IIWDCC):

[P]revention of allergic reactions is best achieved by good housekeeping measures directed specifically at the allergenic species (Ex. 8–34, p. 8).

Among the work practices recommended by these commenters were maintaining clean work spaces, wearing protective clothing, and avoiding skin contact with the allergenic species (Ex. 8–34, Health Effects Comments, p. 17).

Although OSHA endorses training, good work practices, and the use of appropriate protective clothing, the Agency does not agree that a reduced PEL for Western red cedar (WRC) is unnecessary. The health effects associated with occupational exposure to WRC are too severe not to be cause for concern. In addition, there is good evidence in the record of the dose-response relationship between occupational exposure to WRC dust and woodworkers' asthma. A study by Vedal, Chan-Yeung, Enarson et al. (1986/Ex. 1–397) shows such a relationship, with asthma beginning at a WRC level of 3.4 mg/m³ and a statistically significant reduction in forced respiratory capacity noted in workers exposed to 2 mg/m³ WRC dust or more. Harold Imbus, a physician representing the IIWDCC, stated:

This study, small though it may be, tends to support dose response, and a threshold level between 2 and 3.4 mg/m³ for the protection of effects of WRC (Ex. 8–34, p. 7).

The 1980 study by Brooks, Edwards, Apol, and Edwards found a dose-related relationship between total WRC dust level and prevalence of asthma in employees in jobs with the greatest dust exposures. The Brooks et al. study found asthma in zero percent of WRC workers exposed at 0.5 mg/m³; however, at 3.56 mg/m³, this percentage rose to 5 percent.

The United Petitioners submitted a 1986 paper by Goldsmith and Shy that found that there is a clearly defined asthma syndrome produced by WRC (Ex. 3–362). OSHA finds these studies convincing evidence of WRC's allergenic potential; in addition, the Agency believes that a threshold for occupational asthma exists and lies between 2 and 3.4 mg/m³. Based on this evidence, OSHA concludes that an 8-hour PEL of 2.5 mg/m³ is necessary to protect workers from the significant and often permanent effects of immune-mediated occupational asthma associated with exposure to WRC dust at levels above this limit. Several record comments agree that a separate PEL for WRC dust is warranted and that the threshold level is as described above (see, for example, Exs. 8–34 (Imbus review, p. 6), 168, and 191; Tr. p. 12–292; Tr. pp. 12–317, 12–318, and 12–320).

Some commenters (Tr. p. 12–316) were of the opinion that many other woods, such as Douglas fir, pine, red and white oak, redwood, walnut, spruce, boxwood, cocobolo, teak, mahogany, and others, should also be designated by OSHA as allergenic in this rulemaking. However, OSHA finds that, as Dr. Imbus of the IIWDCC notes, "it is unlikely that species other than WRC are responsible for large numbers of cases of respiratory allergies" (Ex. 8–34, Imbus review, p. 6). The authors of the Goldsmith and Shy (1988) paper concur:

Other commonly used woods such as oak, birch, redwood, pine, teak, alder, and hemlock, produce pulmonary effects that are less well described than the asthma responses to Western red cedar (Ex. 3–362, p. 13).

The IIWDCC contends that, at the present time, there is "no consensus even as to which species should be considered allergenic" (Ex. 168). OSHA concludes that other species are somewhat allergenic. The evidence in the literature does not indicate that any other species is nearly as allergenic as WRC or would cause nearly as high a proportion of allergic reactions among exposed workers. However, the Agency will monitor the literature on these other potentially allergenic species so that other woods with demonstrably allergenic properties can be identified in the future.

Based on the evidence presented above, OSHA is establishing a PEL of 5 mg/m³ as an 8-hour TWA and 10 mg/m³ as a 15-minute STEL for hard and soft wood dust, with the exception of Western red cedar, for which a PEL of 2.5 mg/m³ (8-hour TWA) is being established. OSHA concludes that promulgation of these exposure limits will substantially reduce the significant risk of material impairment in the form of pulmonary dysfunction (including changes in peak flow, interference with mucociliary clearance, respiratory symptoms, and chronic effects) that is associated with exposure to wood dust at the higher levels that would be permitted in the absence of any limit.

Conclusions For All Respiratory Toxicants

As Table C8–2 and the discussions above show, limits for the respiratory toxins have been established to control employee exposures to or below the airborne concentrations of these substances that have been associated with the development of acute or chronic respiratory effects. For most of these substances, the evidence is sufficient to identify the NOE or low-effect levels that are related to these effects in humans or animals. Accordingly, OSHA concludes that maintaining employee exposures at or below these limits will greatly decrease the likelihood that employees will be at significant risk of respiratory effects when they are exposed to these substances in the workplace. Because the chronic pulmonary disease caused by exposure to toxic dusts is often incapacitating, such exposures can effectively end the working life of severely affected individuals. Less-serious pulmonary disease can result in lost workdays, both as a result of the associated symptoms themselves and as a consequence of increased susceptibility to respiratory infections. The effects of exposure to acute pulmonary toxins, such as ozone or trimellitic anhydride, range from reduced lung function to life-threatening pulmonary edema. OSHA has determined that these adverse pulmonary effects constitute material impairments of health. Lowering the Agency's former limits or establishing limits where none previously existed will substantially reduce these significant occupational risks.

7. Substances For Which Limits Are Based on Avoidance of Cardiovascular Effects

Introduction

For seven chemicals, OSHA is revising or establishing limits based on their adverse effects on the cardiovascular system. Table C7–1 lists the former, proposed, and final Z-table limits for these substances, along with their CAS numbers and HS numbers. OSHA is revising its current ceiling limits for two substances (ethylene glycol dinitrate and nitroglycerin) by replacing them with lower short-term limits. OSHA is reducing the TWA–PEL for carbon disulfide to 4 ppm and adding a STEL of 12 ppm. For one other substance (fluorotrichloromethane), OSHA is replacing its current TWA–PEL with a ceiling value; for 1,1,2-trichloro-1,2,2-trifluoroethane, OSHA is adding a STEL to its existing 8-hour TWA. The Agency is establishing new limits for two cardiovascular toxins, chloropentafluoroethane and sodium azide.

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TABLE C7-1. List of Substances for Which Limits Are Based on Avoidance of Cardiovascular Effects

H.S. Number/ Chemical Name	CAS No.	Former PEL	Proposed PEL	Final Rule PEL*
1070 Carbon disulfide	75-15-0	20 ppm TWA 30 ppm STEL (30 min) 100 ppm Ceiling	1 ppm TWA 10 ppm STEL	4 ppm TWA 12 ppm STEL, Skin
1087 Chloropentafluoroethane	76-15-3	--	1000 ppm TWA	1000 ppm TWA
1170 Ethylene glycol dinitrate	628-96-6	1 mg/m^3 Ceiling, Skin	0.1 mg/m^3 STEL (20 min)	0.1 mg/m^3 STEL, Skin
1180 Fluorotrichloromethane	75-69-4	1000 ppm TWA	1000 ppm Ceiling	1000 ppm Ceiling
1290 Nitroglycerin	55-63-0	1 mg/m^3 Ceiling, Skin	0.1 mg/m^3 STEL (20 min)	0.1 mg/m^3 STEL, Skin
1364 Sodium azide	26628-22-8	--	0.1 ppm Ceiling	0.1 ppm Ceiling, Skin
1403 1,1,2-Trichloro-1,2,2-trifluoroethane	76-13-1	1000 ppm TWA	1000 ppm TWA 1250 ppm STEL	1000 ppm TWA 1250 ppm STEL

* OSHA's TWA limits are for 8-hour exposures; its STELs are for 15 minutes unless otherwise specified; and its ceilings are peaks not to be exceeded for any period of time.

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Description of the Health Effects

Although the cardiovascular system can be adversely affected in many different ways by exposure to toxic substances, the adverse effects caused by exposure to the seven chemicals in Table C7–1 are limited to three categories: (1) cardiac sensitization; (2) vasodilation; and (3) atherosclerosis. Because these effects can have potentially disabling or life-threatening outcomes, OSHA has determined that these effects clearly constitute material impairments of health and functional capacity.

Cardiac sensitization is not mediated by the immune system and does not cause an allergic reaction. Instead, this form of sensitization occurs when a chemical "sensitizes" the heart to the effects of a class of biological compounds called sympathomimetic amines. The physiological action of sympathomimetic amines is to stimulate the heart to beat faster. The hormone adrenaline, also called epinephrine, is an example of a sympathomimetic amine. Adrenaline is normally secreted into the bloodstream when the body anticipates an increase in physical exertion, such as occurs when someone is frightened. A concentration of epinephrine equal to or higher than the no-effect level for this substance is necessary to increase the heartbeat rate in exposed individuals. The effect of a cardiac sensitizer is to lower the no-effect level so that the heartbeat rate is stimulated by a lower concentration of adrenaline. The region of the heart that becomes sensitized is the pacemaking and conduction system, which determines the rhythm and rate of the heartbeat. Unregulated or unnecessary interference with this region of the heart can result in arrhythmia, an abnormality in the rhythm or rate of the heartbeat (Levy 1985/Ex. 1–210). The clinical consequences of an arrhythmia vary among individuals, e.g., a young person with a healthy heart may not be adversely or seriously affected by an arrhythmia. However, fatal arrhythmias have occurred in healthy young people and, in older people or in individuals whose cardiovascular systems have already been compromised, arrhythmias can cause symptoms of cerebral or myocardial ischemia, shock, or congestive heart failure.

Vasodilators are compounds that cause blood vessels to expand, resulting in a decrease in blood pressure (hypotension) and a decrease in the amount of blood reaching the organs. Acute hypotension is a common cause of shock (*Harrison's Principles of Internal Medicine*, 10th ed., Petersdorf et al. 1983). Chronic hypotension may result in a number of symptoms, including lethargy, weakness, easy fatigability, and dizziness or faintness.

Atherosclerosis is a serious disease produced by a degenerative process in the arteries. Plaques containing lipids, complex carbohydrates, blood products, and calcium form on the inside walls of arteries, usually on major blood vessels. These plaques are also called atheromas; their presence makes arteries narrower. Depending on which arteries in the body contain atheromas, different clinical consequences may result; these include renal hypertension, stroke, and myocardial ischemia (inadequate circulation of blood to the myocardium) (Balazs, Hanig, and Herman 1986/Ex. 1–176). Some chemicals can enhance or accelerate the formation of atheromas and thereby encourage the development of atherosclerosis, a major cause of coronary heart disease.

Dose-Response Relationships and Cardiac Effects

For four of the chemicals in Table C7–1 (carbon disulfide, ethylene glycol dinitrate, nitroglycerin, and sodium azide), the final rule's limits are based primarily on health surveys and case reports indicating that occupationally exposed workers subjected to concentrations above a no-adverse-effect level experience these cardiovascular effects. However, human data for the other three chemicals (chloropentafluoroethane, fluorotrichloromethane, and 1,1,2-trichloro-,1,2-trifluoro-ethane) are scarce. For these chemicals, limits are based on the results of studies in laboratory animals.

Chemically induced cardiovascular disease occurs in a pattern that corresponds to a typical effect-level dose-response relationship; that is, an exposure level and exposure duration exist below which the substance appears unlikely to exert an adverse effect. Thus, the limits for substances in this group are designed to maintain exposures below this apparent no-adverse-effect level.

The following discussions describe the record evidence and OSHA's findings for some substances in this group and point to the seriousness of the cardiovascular effects associated with exposure to these substances.

CARBON DISULFIDE

CAS: 75–15–0; Chemical Formula: CS_2
H.S. No. 1070

OSHA's former limits for carbon disulfide were 20 ppm as an 8-hour TWA, a 30-minute STEL of 30 ppm, and a ceiling limit of 100 ppm that was never to be exceeded. OSHA proposed revising these limits to 1 ppm as an 8-hour TWA and 10 ppm as a 15-minute STEL, and NIOSH (Ex. 8–47, Table N1) supported these proposed limits. OSHA has evaluated all of the evidence and testimony presented in the record and has determined that a 4-ppm 8-hour TWA limit, a 12-ppm STEL, and a skin notation are necessary to reduce the risk of cardiovascular disease and reproductive effects among carbon-disulfide-exposed workers, and the Agency is establishing these limits for carbon disulfide in the final rule. The need for a lower limit is based on evidence that exposure to carbon disulfide presents risks of cardiovascular, fetotoxic, and neurological material impairment of health.

OSHA's decision to promulgate a 4-ppm limit rather than the proposed 1-ppm limit is principally based on the feasibility evidence available to OSHA (see Section VII, Technological Feasibility and Economic Impact Assessment). A skin notation has been added because there is evidence that carbon disulfide can cause systemic toxicity via the dermal route. Carbon disulfide is a clear, colorless, or faintly yellow liquid with a strong, disagreeable odor.

OSHA's proposal to reduce the limits for carbon disulfide was based on a number of human studies reviewed by the ACGIH (1986/Ex. 1–3) and NIOSH (1977b/Ex. 1–260) that suggested that exposure to carbon disulfide levels between 10 and 40 ppm was associated with an excess risk of coronary heart disease and of adverse neurological effects. These reports comprise a series of studies carried out on carbon-disulfide-exposed workers in Great Britain (Tiller, Schilling, and Morris 1968/Ex. 1–92) and Finland (Seppalainen and Tolonen 1974/Ex. 1–100; Tolonen et al. 1975/Ex. 1–392; Tolonen, Nurminen, and Hernberg 1979/Ex. 1–158). The British cohort was recently followed up by Sweetnam et al. (1987), and the Finnish workers have been followed up by Nurminen and Hernberg (1985).

The study by Tiller et al. (1968/Ex. 1–92) of British rayon workers was the first to relate exposure to carbon disulfide to the development of coronary heart disease. These authors found that, among men employed for more than 10 years in the rayon industry and followed from 1950 to 1964, those exposed to carbon disulfide had death rates from coronary heart disease more than twice the rate in other rayon workers. Thus, the Tiller et al. (1968/Ex. 1–92) study

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demonstrated that 10 years or more of exposure to carbon disulfide was associated with a significantly elevated risk of coronary disease.

The United Kingdom's threshold limit value for carbon disulfide, which had been 20 ppm in the 1960s, was subsequently reduced to 10 ppm in the 1970s. To examine the effect of this reduced limit on occupational risk, Sweetnam et al. (1987) conducted a follow-up study on the cohort first described by Tiller et al. (1966/Ex. 1–62). The health status and cause of death for 2,848 members of this cohort were ascertained up to the end of 1982. Exposure scores representing cumulative exposure to carbon disulfide were developed for each cohort member, based on an analysis of personal and area sampling results, job category, and time spent in each job category. Sweetnam et al. (1987) found the pattern of mortality similar to that found by Tiller, Schilling, and Morris (1966/Ex. 1–62): among spinner operators, who had the highest CS_2 exposures of any job category, 73 deaths from ischemic heart disease (IHD) were identified, compared with 42.5 expected deaths (SMR=172), a finding that was statistically significant. A statistically significant trend was found between cumulative exposure since first exposure and incidence of IHD mortality, which indicates a dose-related effect. A second (and perhaps most important) finding of this study was that recent (or current) exposure to carbon disulfide, as well as total cumulative exposure, were both risk factors for IHD. The authors established this association by examining the relationship between IHD mortality risk and each worker's total CS_2 exposure in the two years preceding death or the end of the study. The third result of this study was that workers with current CS_2 exposure also had significantly higher risk than workers who had ceased exposure. The dose-related relationship between increased IHD mortality risk and recent exposure to carbon disulfide suggested to the authors of this study that the effect of carbon disulfide on the cardiovascular system was direct and reversible.

Thus, the Sweetnam et al. (1987) follow-up determined that there is a relationship between the risk of IHD mortality and increased cumulative exposure to CS_2. Among workers who terminated exposure, this risk declined to non-statistically-significant levels after one year of no exposure. However, risk continued to be elevated among workers who continued to be exposed or who had not been exposure-free for a full year. OSHA interprets the findings of this important study to indicate that cumulative CS_2 dose from time of first exposure is a risk factor for IHD, and that this elevated risk continues unless exposure is terminated. That is, OSHA finds that workers who have been exposed to CS_2 in the past continue to be at increased risk as long as they are exposed to CS_2, even when their recent exposure is to lower levels (approximately 10 ppm, the current U.K. TLV).

This finding was confirmed by Nurminen and Hernberg (1985) in their follow-up study of 343 Finnish rayon workers who had been exposed to carbon disulfide for at least five years. Health status data were obtained for these workers for the period 1967 to 1982. In 1972, a preventive program had been instituted that included establishing a 10-ppm exposure limit and removing workers at high risk of coronary disease from continued exposure to carbon disulfide. Median exposure levels (largely from area samples) for the period 1975 to 1980 did not exceed 5 to 6 ppm, and third-quartile exposure levels did not exceed 10 ppm. These levels were about half those reported for the period 1967 to 1975.

Nurminen and Hernberg (1985) reported a 4.7-fold increase in IHD mortality incidence for the period 1967 to 1972, prior to the establishment of the protective measures described above. Five years after these measures were instituted, only 19 percent of the cohort continued to be exposed to carbon disulfide (compared to 53 percent of the cohort exposed in 1972). The relative risk for the first seven years of follow-up (1967 to 1974) was 3.2, compared to a relative risk of 1.0 for the last eight years (1974 to 1982). The excess risk of IHD mortality thus declined steadily throughout the follow-up period; this trend was statistically significant. The authors concluded that "* * * the cardiotoxic effects of CS_2 are reversible in the sense that the cessation of, or a radical decrease in, exposure reduces the risk of cardiovascular mortality to background levels" (Nurminen and Hernberg 1985, p. 34). Thus, the Nurminen and Hernberg (1985) study shows that reducing exposure levels below 10 ppm (combined, in their case, with a rigorous medical removal program to terminate exposure for employees who had developed signs or symptoms of coronary heart disease) can reduce the significant risk of IHD mortality to baseline levels.

In addition to NIOSH (Exs. 0–47 and 193), the AFL–CIO (Ex. 194) and Dr. James Melius, Director of the Division of Occupational Health and Environmental Epidemiology of the New York Department of Health (Ex. 152), supported OSHA's proposed 1-ppm PEL for carbon disulfide. However, several rulemaking participants criticized the studies relied on by OSHA, primarily on the grounds that the cohorts in which excess deaths from cardiovascular disease had been seen included workers who, these participants argued, were exposed for many years to levels of carbon disulfide much higher than the 10- to 40-ppm levels generally reported in these studies (Exs. 3–747, 3–1158, 8–19, 8–45, 31, 125, and 174; Tr. pp. 4–74 to 4–107). For example, Dr. Ernest Dixon, a toxicology consultant for the Inter-Industry Committee on Carbon Disulfide, testified as follows on these studies, which were also relied on by NIOSH to determine NIOSH's recommended standard:

> The NIOSH document presents a recitation of the toxic reviews, neurotoxic effects, and the various cardiovascular studies from chiefly Scandinavia, largely epidemiologic studies which attempted to determine whether or not ischemic or other cardiovascular abnormalities caused an excess of deaths among workers exposed to elevated levels of CS_2. Essentially, all of these were from the viscose manufacturing industry.
>
> Air sampling for carbon disulfide in the period prior to a decade ago was cumbersome, costly and took a long time for chemical analysis. As cited in numerous other reports, the practices of that period were to obtain area rather than personal samples. Work practices examined in the studies were such that the area sample results relied upon are believed to have significantly underestimated [both] the actual exposures and [the fact] that there were substantially higher exposures than have existed in more recent years.
>
> Accordingly, many of the workers in such studies had encountered many years of greatly higher exposure, especially for the earliest period of their exposure (Tr. p. 4–77).

In discussing the Tiller, Schilling, and Morris (1966/Ex. 1–62) study, Dr. Dixon emphasized that the coronary mortality risk of viscose production workers was not reported in this study to have been elevated, despite the fact that 17 percent of samples taken in production areas exceeded 20 ppm. However, there was a substantial excess in mortality from cardiovascular disease among spinners, where 50 percent of area samples exceeded 20 ppm (Tr. p. 4–80). In addition, Dr. Dixon pointed out that the populations studied by Vighani (1954/Ex. 1–103) and by Seppalainen and Tolonen (1974/Ex. 1–100) were likely to have been exposed during high-viscose-production periods at the time of World War II, when exposures were higher than in later periods.

As discussed above, OSHA believes that both cumulative exposure and current exposure are risk factors for IHD among CS_2-exposed workers; the Agency has also determined that excess risk continues for exposed workers as long as exposure continues. As to Dr. Dixon's point about area samples, OSHA does not agree that it is possible to infer that earlier area samples underestimate exposures. It is common industrial hygiene practice to measure problem areas in a facility to determine where additional control is needed. In addition, there is no way of determining, without actually taking both personal and area samples, whether the results of personal sampling would in fact be higher or lower than area samples taken in the same facility; whether breathing zone samples are higher or lower than area samples depends on a host of factors, including the positioning of the area sample in relation to the source of emissions, the location of the worker in relation to the same source, and the amount of time the worker spends in the vicinity of the emission source.

The Inter-Industry Committee on Carbon Disulfide submitted to the record a recent epidemiologic study by MacMahon and Monson (1988/Ex. 125). The study cohort consisted of 10,418 men employed between 1957 and 1979 in the four principal U.S. viscose rayon plants. The mortality status of the cohort was ascertained up to mid-1983. Cohort members were placed into general exposure categories according to job title; these categories were highest, intermediate, variable, least, and none. The authors found no significant increase in overall mortality in the 4,448 employees with the highest potential for CS_2 exposure compared with the mortality among 3,311 employees with no CS_2 exposure. However, there was a statistically significant excess of arteriosclerotic heart disease (ASHD) among the most heavily exposed workers (242 deaths versus 195.6 expected). No clear relationship was observed between exposure duration or latency and excess ASHD mortality; however, the data suggested that the risk was higher among employees exposed to CS_2 for 15 or more years and among employees hired prior to 1960.

In addition, MacMahon and Monson (1988/Ex. 125) found a statistically significant increase in the SMR (SMR=150) for ASHD among members of the cohort who had been exposed to CS_2 the year immediately preceding the date of death or the termination date of the study (Ex. 125, Attachment B, Table 7, p. 702); however, there was no general pattern of increased SMRs among cohort members whose time since last exposure exceeded one year. This finding is consistent with the results of the British studies, which also found an increased risk of heart disease among recently exposed employees but not among employees who had left their jobs.

The Inter-Industry Committee on Carbon Disulfide interpreted the MacMahon and Monson (1988/Ex. 125) study to mean that U.S. workers employed since 1960 were not at risk of ASHD (Tr. 4–96), and NIOSH (Ex. 193, Comments on Carbon Disulfide) noted that the study lacked exposure data. However, OSHA finds the results of the MacMahon and Monson (1988/ Ex. 125) study supportive and consistent with those of the British and Finnish studies discussed above. First, all of the studies clearly demonstrate a positive association between exposure to carbon disulfide and increased risk of mortality from heart disease. Second, studies from all three countries link the excess risk to cumulative CS_2 exposure. Third, the studies from all three countries demonstrate that significant risk can be substantially reduced or eliminated by reducing or stopping exposure, even after a considerable CS_2 dose has accumulated; both the U.S. and British studies report a significantly increased risk of death from heart disease among workers who were recently exposed. However, no increased risk was seen among workers whose exposures had ended one year or longer prior to death or the end of the study. Moreover, the Finnish study reported steady declines in heart disease mortality among workers after exposure levels were reduced to below 10 ppm and a rigorous medical screening and removal program was instituted. These findings clearly demonstrate that current or continued exposure to carbon disulfide at the levels presently encountered in these facilities is an important a risk factor for heart disease mortality as cumulative exposure.

In addition to evidence that carbon disulfide is a cardiovascular toxin, there is a substantial body of evidence that exposure to carbon disulfide presents a fetotoxic hazard and that this substance may also be a teratogen. Some of the early (pre-1977) animal data on reproductive effects were reviewed in the NIOSH (1977b/Ex. 1–260) criteria document on carbon disulfide. In its posthearing submission, NIOSH (Ex. 193) mentions two relevant reports. One by Cai and Bao (1981, as cited in Ex. 193) reported increased incidences of menstrual disturbances and of pregnancy toxemia, a potentially lethal condition, in rayon workers. These authors also presented evidence that CS_2 can cross the placental barrier and be secreted into mothers' milk. The second report cited by NIOSH (Hemminki and Niemi 1982, as cited in Ex. 193) found a significantly elevated incidence of spontaneous abortions among women employed in viscose rayon facilities in Finland; however, data on the specific CS_2 exposure levels were generally lacking.

The Rohm and Haas Company submitted a summary (Ex. 10–5) of the evidence on the reproductive toxicity of carbon disulfide to the OSHA docket; this information shows that carbon disulfide has caused fetal deaths and malformations in CS_2-exposed laboratory animals. Rohm and Haas cite a series of abstracts by Tabacova and others in which oral administration of CS_2 to female rats during gestation produced both teratogenic and fetotoxic effects. These effects were magnified in the F_2 offspring of the prenatally exposed F_1 generation, which suggests that CS_2 has a multigenerational effect that continues to cause malformations in successive generations.

Jones-Price et al. (1984, NTIS/PB84–192343) found both maternal and fetal toxicity in CD rats exposed orally to 200, 400, or 600 mg/kg/d CS_2 during days 6 through 15 of gestation. No dose-related increases in the incidence of teratogenicity were observed. In another report, Jones-Price et al. (1984, NTIS/PB84–182350) found significant dose-related increases in percent resorptions/litter, percent non-live (dead or resorbed)/litter, and percent of fetuses affected (non-live and malformed)/litter among New Zealand White rabbits exposed orally to 25, 75, or 150 mg/kg/d during days 6 through 19 of gestation. The percentage of malformed fetuses per litter increased with dose and was statistically significant at the highest dose tested.

In an inhalation study, Hardin, Bond, Sikov et al. (1981/Ex. 1–699) exposed rats and rabbits to 20 or 40 ppm CS_2 for 6.5 hours per day during days 1 through 19 (rats) or 1 through 24 (rabbits) of gestation. No embryotoxic or fetotoxic effects were noted, indicating that 40 ppm is a no-effect level for these effects in rats and rabbits. According to the analysis by Rohm and Haas, the lowest-reported-effect level (25 mg/kg/d) documented by Jones-Price et al. (1984) for rabbits corresponds to an equivalent airborne exposure of 58 ppm; this lowest-reported-effect level is in close agreement with the no-effect level

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reported by Hardin et al. (1981/Ex. 1–699) for the same species.

OSHA believes that this evidence, which shows that consistent fetotoxic and teratogenic effects are associated with exposure to carbon disulfide, warrants considerable concern. OSHA is particularly alarmed at the multigenerational effect of CS_2 exposure that has been demonstrated to occur in rats. This risk of reproductive effects, combined with the previously recognized risk of cardiovascular disease, have convinced OSHA that a substantial reduction in the PEL for carbon disulfide is clearly justified.

Several foreign governments and standards-setting organizations have already established 8-hour TWA exposure limits for carbon disulfide that range from 1 to 10 ppm. For example, NIOSH has recommended a 1-ppm TWA limit for this substance, and Rohm and Haas established an internal limit of 4 ppm as an 8-hour TWA (Ex. 10–5). Several foreign countries, including West Germany, Italy, Japan, Sweden, and Switzerland, currently have 10-ppm limits. The ACGIH has established a 10-ppm TLV for CS_2; however, the ACGIH limit does not consider any of the evidence of CS_2's fetotoxic or teratogenic effects.

Based on the evidence in the record and the toxicological literature, OSHA concludes that 4 ppm is a reasonable and prudent level at which to establish a revised 8-hour TWA PEL for carbon disulfide. This limit should provide for a substantial reduction in the significant risk both of cardiovascular disease and adverse reproductive effects associated with CS_2 exposures; clearly, these effects constitute material impairments of health and functional capacity. In addition, because of the seriousness of the effects associated with exposure to carbon disulfide, and in accordance with the policy described in Section VI.C.17 on short-term exposure limits, OSHA finds that a STEL is necessary to ensure that the 8-hour TWA limit is not exceeded during operations characterized by intermittent exposures to elevated levels of CS_2. Rohm and Haas (Ex. 10–8) has established an internal guideline of 12 ppm as a short-term limit to ensure that the 8-hour TWA limit is not exceeded, and NIOSH also recommends a short-term limit to ensure that full-shift exposures are maintained under good control. In the final rule, OSHA is accordingly establishing a 12-ppm STEL to supplement the 4-ppm TWA PEL.

OSHA's assessment of the feasibility of this limit indicates that, under normal operating conditions, a 4-ppm TWA PEL and a 12-ppm STEL are generally achievable by using engineering and work practice controls; respiratory protection may be required during certain operations in rayon and sausage-casing production, such as maintenance tasks or opening of the production lines (see Section VII). Specific operations for which OSHA will accept the use of respirators include the following:

- Opening windows and hoods to change spinerettes (in SIC 28);
- Opening windows and hoods to remove filament bundles (in SIC 28);
- Effecting product-line changes (in SIC 28);
- Unloading xanthate from the baratte (in SIC 30);
- Aligning strands in the extrusion cabinet (in SIC 30); and
- Manually puncturing casings at the extrusion nozzles in the cellulosic food casing industry (in SIC 30).

Thus, OSHA finds that the TWA and STEL limits being established in the final rule are feasible.

CHLOROPENTAFLUOROETHANE

CAS: 76–15–3; Chemical Formula: $ClCF_2CF_3$
H.S. NO. 1087

OSHA previously had no limit for chloropentafluoroethane (FC–115). The proposed PEL for this substance was 1000 ppm as an 8-hour TWA, and NIOSH (Ex. 8–47, Table N1) supported the proposal. The final rule establishes this limit. The ACGIH has a TLV–TWA of 1000 ppm for this colorless, odorless gas.

Chloropentafluoroethane is an asphyxiant at high concentrations. In dogs and rats, gastrointestinal absorption following intragastric intubation has been shown to be minimal (Terrill 1974/Ex. 1–1070; Clayton, Hood, Nick, and Waritz 1986/Ex. 1–952). Rats exposed to 800,000 ppm FC–115 with 20 percent oxygen for four hours showed no clinical or histopathologic effects (Clayton, Hood, Nick, and Waritz 1986/Ex. 1–952). Rats and guinea pigs showed no adverse clinical effects at inhalation levels of 000,000 ppm FC–115 in oxygen for two hours (Weigand 1971/Ex. 1–1102), and guinea pigs exposed to 200,000 ppm FC–115 in air for varying intervals up to two hours also exhibited no adverse signs (Breen and Wallis 1963, as cited in ACGIH 1986/Ex. 1–3, p. 133). Rats, mice, rabbits, and dogs have tolerated six-hour daily exposures of 100,000 ppm FC–115 for 90 days without adverse effects (Clayton, Hood, Nick, and Waritz 1986/Ex. 1–952), and laboratory animals have tolerated doses of 200,000 ppm for 3.5 hours daily, five days per week, for four weeks (Weigand 1971/Ex. 1–1102). FC–115's potential for cardiac sensitization caused one of 13 unanesthetized dogs to develop cardiac sensitization after exposure to 150,000 ppm intravenously (Trochimowicz, Azar, Terrill, and Mullin 1974/Ex. 1–448). Several other studies indicate that unanesthetized dogs, rats, and monkeys receiving dosages of between 100,000 ppm and 200,000 ppm may show increased blood pressure, accelerated heart rate, myocardial depression, or altered pulmonary effects under certain conditions (Belej and Aviado 1975/Ex. 1–462; Friedman, Cammarato, and Aviado 1973/Ex. 1–416; Aviado and Belej 1975/Ex. 1–616). There were no reports of mutagenic, teratogenic, or carcinogenic toxicities in these studies. The Agency received no comments addressing chloropentafluoroethane, other than those submitted by NIOSH.

OSHA is establishing an 8-hour TWA permissible exposure limit of 1000 ppm for chloropentafluoroethane. The Agency concludes that this limit will protect workers from the significant risk of cardiac effects, which constitutes material impairment of health and functional capacity, at the high levels formerly permitted by the absence of an OSHA limit.

ETHYLENE GLYCOL DINITRATE

CAS: 628–96–6; Chemical Formula: $CH_2NO_3CH_2NO_3$
H.S. No. 1170

NITROGLYCERIN

CAS: 55–63–0; Chemical Formula: $CH_2NO_3CHNO_3CH_2NO_3$
H.S. No. 1290

The former OSHA PELs for ethylene glycol dinitrate (EGDN) and nitroglycerin (NG) were ceilings of 1 mg/m^3 with skin notations. The proposed PELs for these substances were 20-minute STELs of 0.1 mg/m^3, and NIOSH (Ex. 8–47, Table N1) supported the proposal (which was based on NIOSH's recommended limits). The ACGIH (1986/Ex. 1–3) has established a TLV–TWA of 0.05 ppm (0.3 mg/m^3) for EGDN and a TLV–TWA of 0.05 ppm (0.5 mg/m^3) for NG, both with skin notations. In the final rule, OSHA is establishing 15-minute STELs of 0.1 mg/m^3 for EGDN and NG and retaining the skin notations for these substances. EGDN is a yellowish, oily, explosive liquid, and NG is a pale yellow, viscous liquid.

Most occupational exposures to EGDN actually involve mixtures of EGDN and NG. Because EGDN is 160 times more volatile than nitroglycerin and most of the mixtures of these two substances used in industry consist of 60 to 80 percent EGDN, the adverse effects associated with the inhalation of the vapors from such mixtures can be attributed primarily to EGDN.

Trainor and Jones (1966/Ex. 1–107) reported that exposure to EGDN:NG at a level of 0.7 mg/m^3 for 25 minutes was sufficient to produce decreased blood pressure and a slight headache in humans. These authors also reported that workers at a munitions plant developed headaches when exposed to EGDN:NG concentrations between 0.1 and 0.53 mg/m^3 (0.36 mg/m^3 average). Morikawa, Muraki, Ikoma et al. (1967/Ex. 1–55) found that workers in an explosives plant exposed to low concentrations of EGDN:NG (0.066 ppm (approximately 0.5 mg/m^3) was the highest average level) had a much higher incidence of abnormal pulse waves than did controls (143 out of 1,271 versus 0 out of 175). Abnormal pulse waves often indicate a clinically significant defect in the functioning of the heart and/or circulatory system (Braunwald 1978/Ex. 1–1001).

In its criteria document for NG and EGDN, NIOSH (1978b/Ex. 1–234) refers to a report of a dynamite worker who died when exposed to EGDN:NG concentrations between 0.3 and 1.4 mg/m^3, as well as to another report of two workers who died suddenly following exposure to EGDN:NG at concentrations ranging from 1.7 to 2.7 mg/m^3. NIOSH (1978b/Ex. 1–234) observed that skin absorption may have contributed significantly to the exposures causing these deaths.

OSHA received several comments on EGDN and NG (Exs. 3–661, 8–66, 121, 190, and 154). These commenters raised two issues: the technological and economic feasibility of the proposed limits, and the strength of the evidence and significance of the adverse effects associated with exposure to EGDN and NG.

In regard to the issue of technological and economic feasibility, which was raised by ICI Americas, Inc. (Ex. 154) and the Institute of Makers of Explosives (IME) (Ex. 121), OSHA has reviewed the record and has concluded that explosive manufacturers will be able to meet these limits through a combination of equipment improvements and respiratory protection. OSHA believes that, if compliance cannot be achieved via engineering controls and/or process improvements, air-supplied respirators with quick-release couplings could be used to achieve the final rule's limits. The Agency's reasoning is discussed in detail in the Technological Feasibility section of the preamble (Section VII).

On the second point addressed by commenters, the meaning of the health effects observed to occur in connection with exposure to EGDN:NG, the IME states that:

> [T]he NIOSH Criteria Document relied upon in the . . . [proposal] was based on outdated and irrelevant information. Its findings are based on exposure conditions and data that, because of industry-initiated improvements, was not reflective of the improved conditions in NG/EGDN-manufacturing plants . . . in 1978, and is not reflective of the greatly improved conditions prevailing in plants at the present time . . . industry hygiene programs . . . [have] eliminated the bulk of . . . workplace exposure[s] (Ex. 190, p. 4).

According to the IME, OSHA's proposal did not "identify any significant health risk" of EGDN:NG exposure at the former PEL; the IME asserts that "headaches are transitory phenomena which pose no significant health risk" (Ex. 190, p. 5).

OSHA does not share the IME's view of the significance of chemically induced headaches. The Agency believes that such headaches impair performance, cause pain and suffering, affect the safety of the victim and his or her co-workers, and contribute to absenteeism. In the case of EGDN:NG-induced headaches, however, headaches have a greater meaning: they are an early warning of vasodilation, an indicator of systemic toxicity. OSHA also finds the report of an EGDN:NG-induced death in an explosives manufacturing facility both convincing and troubling. The Agency continues to be persuaded by the evidence in the Trainor and Jones (1966/Ex. 1–107) study, the NIOSH criteria document (1978b/Ex. 1–234), and the Morikawa, Muraki, Ikoma et al. (1967/Ex. 1–55) study that the health effects associated with exposure to very low levels of EGDN:NG (i.e., in the range of 0.1 to 1.4 mg/m^3) are acute, may occur after brief exposures, and have been shown to be lethal.

According to NIOSH (Ex. 150, Comments on EGDN:NG), the 15-minute 0.1–mg/m^3 limits being established in the final rule will protect against "angina pectoris, other signs and symptoms of cardiac ischemia or heart damage, and against sudden death . . . since all of these . . . seem to be related to compensatory vasoconstriction induced by repeated exposure to NG or EGDN" (Ex. 150). NIOSH also reports that a preliminary study of mortality resulting from heart disease and other causes among NG workers by Reeve, Bloom, Rinsky, and Smith (1983a and 1983b, as cited in Ex. 150) suggests an association between NG exposure and cardiovascular disease mortality; at the facilities where this increase in cardiovascular disease occurred, exposures were being maintained near or below 0.02 ppm (0.2 mg/m^3) (Ex. 150).

Hypotension and headache have been observed in populations exposed to EGDN:NG at levels below 0.5 mg/m^3 for brief periods (25 minutes), and fatalities have occurred after EGDN:NG exposures at concentrations between 0.3 and 1.4 mg/m^3, in one instance, and between 1.7 and 2.7 mg/m^3, in another. OSHA's former standard was 1.0 mg/m^3; since worker deaths have occurred at or near this level, OSHA is establishing short-term limits for EGDN and NG of 0.1 mg/m^3 and retaining the skin notations for these substances in the final rule. OSHA concludes that these limits are necessary to prevent fatalities and to protect against the significant risks of vasodilation and cardiac effects associated with exposures to EGDN:NG in the workplace. The Agency has determined that the cardiovascular effects caused by EGDN:NG represent material impairments of health. Because EGDN:NG is readily absorbed through the skin and can produce systemic effects by this exposure route (Tr. pp. 9–149 to 9–150), OSHA is retaining the skin notations for both substances.

FLUOROTRICHLOROMETHANE (TRICHLOROFLUOROMETHANE)

CAS: 75–69–4; Chemical Formula: CCl_3F
H.S. No. 1180

Fluorotrichloromethane (trichlorofluoromethane), also known as FC–11, is a member of a large family of chemicals, the chlorofluorocarbons. The former OSHA PEL was an 8-hour TWA of 1000 ppm. The proposed PEL was a ceiling of 1000 ppm and NIOSH (Ex. 8–47, Table N1) supported the proposal. The final rule establishes this limit. At ordinary temperatures, FC–11 is a noncombustible, colorless liquid or gas.

Inhalation of large doses of FC–11 has caused cardiac sensitization and death in humans. Experimental mice that inhaled aerosol containing 10 percent FC–11 exhibited cardiac arrhythmias. In the same study, dogs that inhaled aerosol containing 2.5 percent FC–11 had decreased myocardial function; monkeys that inhaled an aerosol containing 5 percent FC–11 developed tachycardia and hypotension (*Drinking Water and Health*, National Research Council 1977).

Exposure to 5000 ppm FC–11 has induced cardiac sensitization and arrhythmia in dogs that were intravenously injected with epinephrine (Reinhardt, Azar, Maxfield, Smith, and Mullin 1971/Ex. 1–78). Jenkins, Jones, Coon, and Siegel (1970/Ex. 1–95) found that four species of animals (monkeys, dogs, rats, and guinea pigs) suffered no ill effects after 90 days of continuous exposure to 1000 ppm of FC–11. Other

than those submitted by NIOSH, OSHA received no comments on FC–11.

The cardiac sensitization exhibited by FC–11–exposed animals is an acute effect. OSHA's former 1000-ppm TWA PEL would permit workers to be exposed to short-term concentrations of FC–11 that are sufficiently high to sensitize the heart to sympathomimetic amines; OSHA considers this effect to be a material impairment of health. Accordingly, OSHA concludes that, at the former limit, workers are at significant risk of experiencing arrhythmia. Revising this limit to a 1000-ppm ceiling limit will substantially reduce this significant risk of cardiac sensitization.

SODIUM AZIDE

CAS: 26628–22–8; Chemical Formula: NaN_3
H.S. No. 1364

There was no former OSHA PEL for sodium azide. The proposed PELs were a ceiling of 0.1 ppm as hydrazoic acid vapor (HN_3) and a ceiling of 0.3 mg/m³ as sodium azide (NaN_3); NIOSH (Ex. 8–47, Table N1) concurred with the Agency's selection. The final rule establishes this limit. In addition, a skin notation is being added to the limit in the final rule. The ACGIH (1988/Ex. 1–3) has ceiling limits for sodium azide of 0.1 ppm (as hydrazoic acid vapor) and 0.3 mg/m³ (as NaN_3). Sodium azide is a colorless, crystalline solid.

Sodium azide is known to produce hypotension in laboratory animals and humans. An intravenous dose of 1 mg/kg was reported to lower blood pressure in cats (Graham 1949/Ex. 1–109). In the 1950s, the medicinal usefulness of sodium azide as a hypotensive agent was tested in 30 hypertensive patients. Their hypertension was reduced, but observed side effects included headaches; in addition, 20 of 30 patients developed increased sensitivity to sodium azide, necessitating a reduction in the dose (Black, Zweifach, and Speer 1954/Ex. 1–163). Hicks (1950, cited in ACGIH 1986/Ex. 1–3, p. 533) reported that repeated intraperitoneal injections of 5 to 10 mg/kg in rats caused demyelination of nerve fibers of the CNS. Alben and Fager (1972, cited in ACGIH 1986/Ex. 1–3, p. 533) showed that sodium azide formed strong complexes with hemoglobin and blocked oxygen transport in the blood.

Acute inhalation by humans of hydrazoic acid vapor (which forms when sodium azide contacts water) results in lowered blood pressure, eye irritation, bronchitis, headache, weakness, and collapse (Fairhall et al. 1943/Ex. 1–130; Graham 1949/Ex. 1–109). The exposure levels that produce these effects were not reported by these authors. Haas and Marsh (1970/Ex. 1–121) reported that exposure to concentrations of hydrazoic acid vapor as low as 0.5 ppm "cause[d] some discomfort to laboratory personnel." Dr. Hecker of Abbott Laboratories (Ex. 3–678) commented that the limit for sodium azide should include a skin notation, and Sax and Lewis (*Dangerous Properties of Industrial Materials*, 7th ed., 1989) report the dermal LD_{50} in rabbits to be 20 mg/kg, demonstrating that sodium azide readily penetrates the skin and causes systemic poisoning. Grace Ziem, an independent occupational physician, also supported a skin notation for sodium azide (Ex. 46). In the final rule, OSHA is therefore adding a skin notation for sodium azide.

Because of its hypotensive effect in humans, OSHA concludes that ceiling limits of 0.1 ppm (as HN_3) and 0.3 mg/m³ (as NaN_3) should be established for sodium azide to reduce the significant risk of cardiovascular and irritation effects posed to workers at the levels formerly permitted by the absence of an OSHA limit. The Agency considers the effects associated with exposure to sodium azide as material impairments of health. To reduce this significant risk substantially, OSHA is establishing these ceiling limits for sodium azide in the final rule. In addition, OSHA is adding a skin notation to the PEL to alert employers to the fact that sodium azide readily penetrates intact skin and that dermal exposure can contribute significantly to overall worker exposure.

1,1,2-TRICHLORO-1,2,2-TRIFLUOROETHANE

CAS: 76–13–1; Chemical Formula: CCl_2FCClF_2
H.S. No. 1403

1,1,2-Trichloro-1,2,2-trifluoroethane (FC–113) is a member of the chlorofluorocarbon family. The former OSHA PEL was an 8-hour TWA of 1000 ppm. The Agency proposed to retain this limit and to add a STEL, and NIOSH (Ex. 8–47, Table N1) concurred that these limits are appropriate. The final rule retains the 8-hour TWA of 1000 ppm and supplements it with a 1250-ppm STEL. The ACGIH has an 8-hour TLV–TWA of 1000 ppm and a 15-minute STEL of 1250 ppm for FC–113. FC–113 is a colorless, noncombustible liquid.

Cardiac sensitization following the administration of epinephrine is the most significant effect observed after exposure to FC–113. Reinhardt, Mullin, and Maxfield (1973/Ex. 1–114) observed that 10 out of 29 dogs exposed to 5000 ppm FC–113 for 5 minutes and simultaneously injected with epinephrine developed serious arrhythmias. Similar experiments, in which the dogs were exposed to 2000 to 2500 ppm of this substance for longer periods of time (from 30 minutes to 6 hours) and simultaneously administered epinephrine, resulted occasionally in arrhythmia (Aviado 1975, as cited in ACGIH 1986/Ex. 1–3, p. 603). However, when the experiment was repeated using four 6-hour exposures to 1000 ppm in conjunction with an injection of epinephrine, no arrhythmias were observed.

A study by Stopps and McLaughlin (1967/Ex. 1–122) of human volunteers revealed that exposure to 2500 ppm FC–113 for 1.5 hours resulted in impairment of psychomotor performance (described as lethargy and inability to concentrate). This effect was not observed at concentrations below 2500 ppm. Within the first one-half to one hour of exposure to 2500 ppm or more, subjects reported subjective sensations including loss of concentration, a tendency to somnolence, and a feeling of "heaviness" in the head. Dr. Lawrence Hecker of Abbott Laboratories (Ex. 3–678) commented that there was no basis for a STEL for FC–113. OSHA does not agree with Dr. Hecker's assessment because the results of the Stopps and McLaughlin (1967/Ex. 1–122) study described above demonstrate that FC–113 can induce subjective effects in humans on short-term exposure. Thus, OSHA finds that a STEL is necessary to prevent these effects. The UAW (Tr. pp. 7–67 to 7–69) and the AFL–CIO (Ex. 194) supported short-term or ceiling limits for FC–113 lower than the proposed STEL.

The evidence described above demonstrates that FC–113 can exert toxic effects at levels of exposure comparable to the levels that were formerly permitted by excursions above the former OSHA TWA limit of 1000 ppm; such levels thus pose a significant risk of cardiac sensitization to exposed workers. The Agency considers cardiac sensitization induced by FC–113 as material impairment of health and functional capacity. OSHA concludes that a STEL of 1250 ppm will provide a wider margin of safety against cardiac sensitization and will reduce the risk of impaired psychomotor performance by limiting the potentially high, short-term exposures formerly permitted by the 8-hour TWA limit alone. The final rule establishes limits of 1000 ppm TWA and 1250 ppm STEL for 1,1,2-trichloro-1,2,2-trifluoroethane to substantially reduce the significant risks associated with exposure to this substance.

Conclusions

Of all the physiological systems, the cardiovascular system is especially

vulnerable to occupational hazards because cardiovascular diseases are already so prevalent in our society. According to Levy (1985/Ex. 1–210), "an estimated 40 million Americans have some form of cardiovascular disease." The major risk factors, as revealed by epidemiology, are age, male sex, hypertension, cigarette smoking, the existence of low-density and high-density plasma lipoproteins, cholesterol, and diabetes (Levy 1985/Ex. 1–210). Many American workers exposed to the chemicals grouped on the basis of their cardiovascular effects have one or more of these risk factors and are therefore particularly susceptible to exposure to cardiovascular toxicants. Although the precise interactions among these risk factors and exposures to cardiovascular toxins are difficult to demonstrate with accuracy, few would argue that they do not occur.

OSHA concludes that the potential for cardiovascular system damage associated with exposure to these cardiac sensitizers, vasodilators, and atherosclerosis-causing substances poses a significant risk to employees in a broad range of workplaces. The effects experienced by exposed workers include arrhythmia, low blood pressure, stroke, and blockage of the flow of blood to the myocardium. OSHA has demonstrated that these effects clearly constitute material impairment of health and functional capacity. Revising or establishing exposure limits for these cardiovascular toxins will substantially reduce these significant risks.

6. Substances for Which Limits Are Based on Avoidance of Systemic Toxicity

Introduction

For a number of substances, OSHA's revised limits are based primarily on evidence that exposure is associated with general systemic toxicity. This group of substances is unique among the groupings discussed in this preamble in that no single organ system can be identified as the target of low-dose exposure to these chemicals. Instead, these substances have been shown either to affect several organ systems simultaneously or to cause a variety of nonspecific adverse signs and symptoms that are indicative of general toxicity.

The 34 substances belonging to this group and their CAS numbers, HS numbers, and former, proposed, and final rule PELs are shown in Table C6–1. OSHA is establishing exposure limits for 17 substances in this group that were not formerly regulated and retaining the former PELs for eight substances to which STELs are being added. For six substances, OSHA is lowering its former 8-hour TWA PELs. For two substances that formerly had 8-hour TWA PELs, OSHA is deleting the full shift limit and replacing it with a short-term limit or a ceiling. For one substance, OSHA is establishing an 8-hour TWA in place of a former ceiling limit.

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TABLE C8-1. Substances for Which Limits Are Based on Avoidance of Systemic Toxicity

H.S. Number/ Chemical Name	CAS No.	Former PEL	Proposed PEL	Final Rule PEL*
1005 Acetonitrile	75-05-8	40 ppm TWA	20 ppm TWA, Skin	40 ppm TWA 60 ppm STEL
1006 Acetylsalicylic acid (Aspirin)	50-78-2	--	5 mg/m^3 TWA	5 mg/m^3 TWA
1019 Aluminum (Welding fumes)	7429-90-5	--	5 mg/m^3 TWA	5 mg/m^3 TWA
1046 2-Butoxyethanol	111-76-2	50 ppm TWA, Skin	25 ppm TWA, Skin	25 ppm TWA, Skin
1052 n-Butyl glycidyl ether	2426-08-6	50 ppm TWA	25 ppm TWA	25 ppm TWA
1067 Captan	133-06-2	--	5 mg/m^3 TWA	5 mg/m^3 TWA
1088 beta-Chloroprene	126-99-8	25 ppm TWA, Skin	10 ppm TWA, Skin	10 ppm TWA, Skin
1109 Cyclohexylamine	108-91-8	--	10 ppm TWA	10 ppm TWA
1112 Cyhexatin	13121-70-5	--	5 mg/m^3 TWA	5 mg/m^3 TWA

TABLE C8-1. Substances for Which Limits Are Based on Avoidance of Systemic Toxicity (continued)

H.S. Number/ Chemical Name	CAS No.	Former PEL	Proposed PEL	Final Rule PEL*
1113 Dichlorodiphenyl-trichloroethane (DDT)	50-29-3	1 mg/m^3 TWA, Skin	1 mg/m^3 TWA, Skin	1 mg/m^3 TWA, Skin
1120 2-N-Dibutylamino-ethanol	102-81-8	--	2 ppm TWA, Skin	2 ppm TWA
1139 Diglycidyl ether	2238-07-5	0.5 ppm Ceiling	0.1 ppm TWA	0.1 ppm TWA
1159 Ethanolamine	141-43-5	3 ppm TWA	3 ppm TWA 6 ppm STEL	3 ppm TWA 6 ppm STEL
1167 Ethylene chlorohydrin	107-07-3	5 ppm TWA, Skin	1 ppm Ceiling, Skin	1 ppm Ceiling, Skin
1189 Glycidol	556-52-5	50 ppm TWA	25 ppm TWA	25 ppm TWA
1198 Hexafluoroacetone	684-16-2	--	0.1 ppm TWA, Skin	0.1 ppm TWA, Skin
1207 Hydrogen cyanide	74-90-8	10 ppm TWA, Skin	4.7 ppm Ceiling (10 min)	4.7 ppm STEL, Skin
1210 Hydrogenated terphenyls	61788-32-7	--	0.5 ppm TWA	0.5 ppm TWA

TABLE C8-1. Substances for Which Limits Are Based on Avoidance of Systemic Toxicity (continued)

H.S. Number/ Chemical Name	CAS No.	Former PEL	Proposed PEL	Final Rule PEL*
1223 2-Isopropoxyethanol	109-59-1	--	25 ppm TWA	25 ppm TWA
1227 Isopropyl glycidyl ether	4016-14-2	50 ppm TWA	50 ppm TWA 75 ppm STEL	50 ppm TWA 75 ppm STEL
1273 4,4'-Methylene bis (2-chloroaniline)	101-14-4	--	0.02 ppm TWA, Skin	0.02 ppm TWA, Skin
1317 Phenylhydrazine	100-63-0	5 ppm TWA, Skin	5 ppm TWA 10 ppm STEL, Skin	5 ppm TWA 10 ppm STEL, Skin
1318 Phenylphosphine	638-21-1	--	0.05 ppm Ceiling	0.05 ppm Ceiling
1321 Phosphine	7803-51-2	0.3 ppm TWA	0.3 ppm TWA 1 ppm STEL	0.3 ppm TWA 1 ppm STEL
1330 Piperazine dihydrochloride	142-64-3	--	5 mg/m^3 TWA	5 mg/m^3 TWA
1340 n-Propyl nitrate	627-13-4	25 ppm TWA	25 ppm TWA 40 ppm STEL	25 ppm TWA 40 ppm STEL
1366 Sodium fluoroacetate	62-74-8	0.05 mg/m^3 TWA, Skin	0.05 mg/m^3 TWA 0.15 mg/m^3 STEL, Skin	0.05 mg/m^3 TWA 0.15 mg/m^3 STEL, Skin

TABLE C8-1. Substances for Which Limits Are Based on Avoidance of Systemic Toxicity (continued)

H.S. Number/ Chemical Name	CAS No.	Former PEL	Proposed PEL	Final Rule PEL*
1412 Trimethyl benzene	25551-13-7	--	25 ppm TWA	25 ppm TWA
1416 Tungsten Compounds (insoluble)	7440-33-7	--	5 mg/m^3 TWA 10 mg/m^3 STEL	5 mg/m^3 TWA 10 mg/m^3 STEL
1417 Tungsten Compounds (soluble)	7440-33-7	--	1 mg/m^3 TWA 3 mg/m^3 STEL	1 mg/m^3 TWA 3 mg/m^3 STEL
1428 Vinylidene chloride	75-35-4	--	5 ppm TWA 20 ppm STEL	1 ppm TWA
1430 Welding fumes (Total particulate)	--	--	5 mg/m^3 TWA	5 mg/m^3 TWA
1437 Zinc oxide (Fume)	1314-13-2	5 mg/m^3 TWA	5 mg/m^3 TWA 10 mg/m^3 STEL	5 mg/m^3 TWA 10 mg/m^3 STEL
1439 Zirconium compounds	7440-67-7	5 mg/m^3 TWA	5 mg/m^3 TWA 10 mg/m^3 STEL	5 mg/m^3 TWA 10 mg/m^3 STEL

* OSHA's TWA limits are for 8-hour exposures; its STELs are for 15 minutes unless otherwise specified; and its ceilings are peaks not to be exceeded for any period of time.

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Description of the Health Effects

For each substance included in this grouping, limits have been established to protect against a variety of adverse exposure-related effects that are manifested at multiple target organ sites. In some instances, the nature of the toxic effects associated with exposure is well-defined and clearly understood (for example, CNS depression, histological organ changes, embryo-toxicity, methemoglobinemia, conjunctivitis, liver and kidney damage, testicular damage). The effects of exposure to other substances in this group, however, have been demonstrated only by such nonspecific indicators as dizziness, respiratory irritation, hematuria, chest tightness, weight loss or decreased rate of weight gain, lethargy, loss of appetite, nervousness, or gastrointestinal disturbances. Although the specificity of the systemic effect caused by exposure to the substances in this group may vary, all of these substances have been shown to be biologically active in mammalian species, to interfere significantly with biological processes, and to impair normal organ function.

Table C8–2 summarizes the toxic effects reported in humans and experimental animals that support the establishment of limits for these substances. This table shows the variety of adverse health effects that adoption of the final rule's limits will minimize or prevent. The table also shows that, for the vast majority of substances in this group, the risks of exposure have been defined in studies of humans or animals and are known to include respiratory effects, neurological effects, adverse effects on the reproductive system, organ damage, hematopoietic effects, sensitization, and mucosal irritation. All of these effects are indicative of generalized systemic effects rather than localized effects occurring at the site of chemical contact.

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TABLE C8-2. Summary of Adverse Health Effects Reported for Substances Producing General Systemic Toxicity

H.S. Number/ Chemical Name	Effects Reported in Humans	Effects Reported in Animals
1005 Acetonitrile	Tightness in chest; flushing of face	Embryotoxicity; teratogenicity at maternally toxic doses; liver, blood count changes
1006 Acetylsalicylic acid	Mucosal irritation; respiratory sensitization; internal bleeding	Teratogenicity at high doses
1019 Aluminum welding fumes	No data	Respiratory effects
1046 2-Butoxyethanol	Mild sensory irritation	Severe hemoglobinuria; lung, kidney, liver changes; hemolytic anemia; increased osmotic fragility in erythrocytes
1052 n-Butyl glycidyl ether	Dermatitis; skin sensitization	Delirium; depression
1067 Captan	Recurrent urticaria	Decreased fertility index in males; polyploid carcinoma of duodenum

TABLE C8-2. Summary of Adverse Health Effects Reported for Substances Producing General Systemic Toxicity (continued)

H.S. Number/ Chemical Name	Effects Reported in Humans	Effects Reported in Animals
1088 Chloroprene	CNS depression; lung, liver, kidney injury; conjunctivitis; necrosis of cornea; lowering of blood pressure	Minimal systemic effects
1109 Cyclohexylamine	Acute toxicity; sensitization	Mutagenic and reproductive effects
1112 Cyhexatin	No data	Microscopic changes in liver, kidneys, adrenal glands
1113 Dichlorodiphenyl-trichloroethane (DDT)	Mild poisoning	Cancer of liver, lungs, lymph system
1120 2-N-Dibutylamino-ethanol	No data	Weight loss; elevated liver- and kidney-to-body-weight ratios
1139 Diglycidyl ether	Mucosal irritation	CNS depression, clouding of cornea; respiratory irritation; hematopoietic effects

TABLE C8-2. Summary of Adverse Health Effects Reported for Substances Producing General Systemic Toxicity (continued)

H.S. Number/ Chemical Name	Effects Reported in Humans	Effects Reported in Animals
1159 Ethanolamine	No data	Pulmonary, hepatic, and renal lesions; decreased alertness; temporary weight loss
1167 Ethylene chlorohydrin	Liver and brain damage; mucosal irritation; gastrointestinal disturbances	Respiratory depression; liver and kidney damage
1189 Glycidol	No data	Pneumonitis; emphysema
1198 Hexafluoroacetone	No data	Renal dysfunction; increased lung weight; testicular damage; hematopoietic effects; fetotoxicity
1210 Hydrogenated terphenyls	No data	Decreased weight gain; liver, kidney damage; lung changes, bronchopneumonia
1207 Hydrogen cyanide	Cyanide poisoning; weakness; mucosal irritation; colic; nervousness; enlargement of thyroid	None reported

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TABLE C8-2. Summary of Adverse Health Effects Reported for Substances Producing General Systemic Toxicity (continued)

H.S. Number/ Chemical Name	Effects Reported in Humans	Effects Reported in Animals
1223 2-Isopropoxyethanol	No data	Anemia; hemoglobinuria; lung congestion
1227 Isopropyl glycidyl ether	Mucosal irritation	Reduced weight gain; hemoglobin increase; emphysematous changes in lungs; CNS depression
1273 4,4'-methylene-bis (2-chloroaniline)	Bladder cancer; hematuria	Cyanosis; methemoglobinemia; liver, lung tumors
1317 Phenylhydrazine	Skin sensitization	Anemia; irregular growth; general weakness; blood vessel tumors
1318 Phenylphosphine	No data	Mild hemolytic anemia; testicular degeneration; hind leg tremor; nausea; loss of appetite; hypersensitivity to sound and touch

TABLE C8-2. Summary of Adverse Health Effects Reported for Substances Producing General Systemic Toxicity (continued)

H.S. Number/ Chemical Name	Effects Reported in Humans	Effects Reported in Animals
1321 Phosphine	Pulmonary edema; gastrointestinal disturbances; dizziness	Respiratory irritation
1330 Piperazine dihydrochloride	Skin burns; sensitization; asthma	No data
1340 n-Propyl nitrate	No data	Cyanosis; methemoglobinemia; hypotension; respiratory depression
1366 Sodium fluoroacetate	No data	Fluctuation in growth rate; tissue changes
1412 Trimethylbenzene	Nervousness, tension, anxiety; asthmatic bronchitis; hypochromic anemia	CNS depression Lymphopenia; neutrophilia
1416 Tungsten compounds (insoluble)	No data	Gross changes in liver and spleen; lung tissue changes

TABLE C8-2. Summary of Adverse Health Effects Reported for Substances Producing General Systemic Toxicity (continued)

H.S. Number/ Chemical Name	Effects Reported in Humans	Effects Reported in Animals
1417 Tungsten compounds (soluble)	No data	Generalized cellular asphyxiation; colic; incoordination; dyspnea
1428 Vinylidene chloride	No data	Nasal irritation; liver cell degeneration; retarded weight gain; embryotoxicity; kidney adenocarcinoma
1430 Welding fumes (total particulate)	Pulmonary irritation	Pulmonary irritation
1437 Zinc oxide (fume)	Metal fume fever; gastritis	No data
1439 Zirconium compounds	No data	Toxic effects from zirconium tetrachloride due to liberation of hydrochloric acid

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Dose-Response Relationships and Systemic Effects

As Table C8-2 shows, adverse toxic reactions have been reported to occur in humans for 19 of the 34 substances in this group; thus, for more than half of these substances, it has been established conclusively that exposure is associated with adverse health effects in humans. Experimental animal data comprise the principal evidence for the toxicologic action of the remaining substances. As is the case for many substances for which limits are being established, apparent no-observed-effect levels, supplemented by the use of appropriate margins of protection, provide the basis for setting limits. The systemic effects caused by exposure to substances in this group appear to follow an NOE dose-response pattern. That is, as intensity and/or duration of exposure decreases, the severity of the effect on organ systems also decreases until a point is reached (the NOE level) where there is no detectable effect, at least at observable levels, on organ systems. No-effect exposure levels have been identified in humans and animals for several of the substances in this group; where no-effect levels have been identified (i.e., for diglycidyl ether and phenylphosphine), they have provided the primary basis for the new limits.

In instances where no-effect levels have not been reported (e.g., for n-butyl glycidyl ether, trimethylbenzene, and acetylsalicylic acid), OSHA has used safety factors and expert judgment to derive an NOE value.

The following discussions describe the record evidence and OSHA's findings for these systemic toxicants and present a summary of the material impairments of health associated with exposure to these substances.

ACETONITRILE

CAS: 75-05-8; Chemical Formula: CH_3CN
H.S. No. 1005

Acetonitrile is most widely used in industry as a specialty solvent and chemical intermediate. OSHA's former occupational exposure limit for acetonitrile was a 40-ppm 8-hour TWA. The ACGIH has a 40-ppm TLV-TWA with a 60-ppm TLV-STEL, in addition to a skin notation. OSHA proposed to reduce the former 8-hour TWA PEL to 20 ppm with a skin notation; this was the NIOSH REL, and NIOSH concurred with the proposed limit (Ex. 8-47, Table NI). However, after a thorough evaluation of the record evidence, OSHA has concluded that the ACGIH limits for this substance will provide appropriate protection against acetonitrile's systemic toxicity. Accordingly, the final rule establishes an 8-hour TWA of 40 ppm and a STEL of 60 ppm, without a skin notation, for acetonitrile.

In animal studies, acetonitrile has been found to be embryotoxic and teratogenic in rodents exposed to levels sufficiently high to cause maternal toxicity (Berteau, Levinskas, and Rodwell 1982/Ex. 1-179; Willhite 1983/Ex. 1-43). A 13-week inhalation study conducted by the National Toxicology Program (Hazleton Laboratories, Inc. 1983, as cited in ACGIH 1986/Ex. 1-3, p. 8) found pathological changes in the liver and some blood changes in mice and rats exposed to concentrations of 400 ppm acetonitrile.

The human evidence describing the toxic effects associated with exposure to acetonitrile consists of a report by Pozzani, Carpenter, Palm et al. (1959/Ex. 1-108), who exposed human subjects to acetonitrile vapor, and a case report by Amdur (1959/Ex. 1-143), who described a poisoning incident involving acetonitrile. None of three subjects exposed to 40 ppm for four hours reported any adverse responses during the exposure period, but one subject experienced tightness of the chest a few hours after termination of exposure, as well as a cooling sensation in the lungs the following day. None of the subjects had elevated blood cyanide levels; one subject showed a slightly elevated urinary thiocyanate level. Pozzani et al. (1959/Ex. 1-108) also exposed two subjects to 80 ppm and 160 ppm of acetonitrile for four hours. When exposed to 80 ppm, subjects reported no adverse response; however, at 160 ppm, one subject experienced slight flushing of the face and chest tightness a few hours after exposure (Pozzani, Carpenter, Palm et al. 1959/Ex. 1-108).

In addition to the Pozzani et al. (1959/Ex. 1-108) study, NIOSH (1978g/Ex. 1-262) cites a report by Amdur (1959/Ex. 1-143), who investigated an incident in which 16 painters became ill (with one death) after using an acetonitrile-containing material in a confined space. Amdur (1959/Ex. 1-143) reported no further incidents after adequate ventilation was installed and acetonitrile levels were maintained at about 17 ppm. NIOSH concluded that exposure to 40 ppm may have produced minimal effects and that no observable effects were produced at 17 ppm (NIOSH 1978g/Ex. 1-262, p. 97). Therefore, NIOSH recommended that exposure not exceed 20 ppm as a 10-hour TWA. Other than the comment by NIOSH (Ex. 8-47), no comments were received on this substance.

OSHA has carefully reevaluated the evidence of acetonitrile's toxicity to determine the appropriate permissible exposure limits to establish in the final rule. The Agency concludes that the evidence in humans suggests that no adverse effects are experienced at long-term exposures of 40 ppm and that a short-term limit of 60 ppm will provide protection against the facial flushing and chest tightness experienced by workers exposed for several hours to levels above these concentrations. In addition, in accordance with the policy on skin notations enunciated in Section VI.C.16, OSHA is not including a skin notation for acetonitrile in the final rule (the dermal LD_{50} in rabbits is 1250 mg/kg).

In the final rule, OSHA is therefore retaining its existing 8-hour TWA for acetonitrile and adding a STEL of 60 ppm to protect against this substance's systemic effects. The Agency concludes that these limits will prevent the significant risk of acute illness (and, in one case, death) observed in workers exposed to excessive short-term exposures of acetonitrile; the Agency finds that these health effects clearly constitute material impairments of health. In the proposal, OSHA specifically requested information on the feasibility of achieving the proposed limit; no comments were received, and OSHA accordingly assumes that the final rule's limits, which are higher than the limit proposed, are feasible.

ACETYLSALICYLIC ACID (ASPIRIN)

CAS: 50-78-2; Chemical Formula:
$CH_3COOC_6H_4COOH$
H.S. No. 1006

There was no former OSHA exposure limit for acetylsalicylic acid. The ACGIH has a TLV of 5 mg/m³ as an 8-hour TWA. The proposed PEL was 5 mg/m³ as an 8-hour TWA. NIOSH (Ex. 8-47, Table NI) concurs with this limit, and this is the limit established by the final rule. Acetylsalicylic acid is a white crystal or powder that is essentially odorless and has a slightly bitter taste.

The work of O'Brien (1968/Ex. 1-47) reports that a normal therapeutic dose of 600 mg aspirin will interfere with platelet aggregation in subjects exposed for a period of five days or more. Hart (1947/Ex. 1-137) also reported that 150 mg is the smallest oral dose of acetylsalicylic acid that will produce this effect. Unpublished data from the Dow Chemical Company (cited in ACGIH 1986/Ex. 1-3, p. 10) indicate that aspirin concentrations exceeding 100 mg/m³ are tolerated except for occasional skin irritation. However, no data are available on the long-term effects on organ systems of inhalation exposure to aspirin. Secondary sources report that aspirin is an acute irritant to

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the gastric mucosa and respiratory tract. No comments other than that by NIOSH (Ex. 8-47) were received on this substance.

In the final rule, OSHA is establishing an 8-hour TWA of 5 mg/m³ for acetylsalicylic acid. The Agency concludes that this reduced limit will protect workers from experiencing the adverse blood effects and gastric and respiratory irritation, which constitute material impairments of health that are potentially associated with exposure to this substance at the previously uncontrolled levels.

ALUMINUM (WELDING FUMES)

CAS: 7429-90-5; Chemical Formula: Al
H.S. No. 1019

OSHA formerly had no permissible exposure limit for aluminum welding fumes. The proposed PEL was 5 mg/m³, which is consistent with the ACGIH limit. The final rule promulgates an 8-hour TWA for aluminum welding fumes of 5 mg/m³, measured as aluminum. NIOSH (Ex. 8-47, Table N1) concurs with this limit.

OSHA received two comments pertaining to aluminum welding fumes. The first commenter (Ex. L3-1330) sought clarification as to whether the term "aluminum welding fumes" refers to aluminum fumes or to the gases and fumes usually associated with aluminum welding, such as ozone, nitrous gases, carbon monoxide, and carbon dioxide. The second commenter, the Specialty Steel Industry of the United States (Ex. 3-629), objected to the establishment of a permissible exposure limit for aluminum welding fumes because, in this commenter's opinion, no scientific evidence was cited in the proposal to indicate that exposure resulted in deleterious effects (Ex. 3-629, p. 6).

The PEL addresses the aluminum fume that is released in the welding process; this limit is being established to keep the total aluminum particulate concentrations low enough to prevent aluminum particle accumulation in the lungs. However, to the extent either that other toxic substances or materials are released in the welding process or that conditions are conducive to the formation of toxic gases, employers must pay attention to the permissible exposure limits for these substances as well. For example, in Appendix B of the 1987-88 *Threshold Limit Values and Biological Exposure Indices* (ACGIH 1987/Ex. 1-16), the ACGIH states that "reactive metals and alloys such as aluminum and titanium are arc-welded in a protective, inert atmosphere such as argon. These arcs create relatively little fume, but an intense radiation which can produce ozone" (ACGIH 1987/Ex. 1-16, Appendix B, p. 42). In such an instance, employers would be required to meet the ozone limits established in this rulemaking (0.1 ppm TWA and 0.3 ppm STEL) as well as the PEL for aluminum welding fumes.

The ACGIH states that "most welding, even with primitive ventilation, does not produce exposures inside the welding helmet above 5 mg/m³. That which does * * * should be controlled" (ACGIH 1987/Ex. 1-16, Appendix B, p. 43). In those rare instances where internal helmet exposures do exceed 5 mg/m³, employees are at risk from the irritant effects of hot metal fumes, which enter the lung deeply and accumulate.

Because workers exposed to arc welding fumes have previously not been protected by a permissible exposure limit, OSHA is establishing a PEL of 5 mg/m³ TWA for these fumes (measured in the breathing zone of the welder); the details of the appropriate positioning of the sampler should be determined on the basis of guidance in the *Field Operations Manual* (OSHA 1984). This is consistent with a past OSH Review Commission decision (8 OSHRC 1049). The Agency concludes that this limit will protect welders and other workers in the vicinity of the welding from experiencing the significant irritation potentially associated with inhalation of these fumes; OSHA finds the respiratory irritation caused by exposure to these fumes constitutes a material health impairment.

2-BUTOXYETHANOL

CAS: 111-76-2; Chemical Formula: $C_4H_9OCH_2CH_2OH$
H.S. No. 1046

OSHA's former permissible exposure limit for 2-butoxyethanol, one of the family of substances known as the glycol ethers, was 50 ppm as an 8-hour TWA, with a skin notation. The ACGIH has a limit of 25 ppm TWA, also with a skin notation, for this colorless liquid with a mild ether odor. The proposed PEL was 25 ppm as an 8-hour TWA, and this limit is established by the final rule. The skin notation is retained. NIOSH (Ex. 8-47, Table N1) concurs with the 25-ppm limit for 2-butoxyethanol.

2-Butoxyethanol has long been known to be toxic, with early studies indicating that a single seven-hour exposure to 700 ppm was lethal to laboratory animals (Werner, Mitchell, Miller, and von Oettingen 1943a, as cited in ACGIH 1986/Ex. 1-3, p. 71). Exposures near the lethal level caused systemic toxicity in the form of hemoglobinuria and lung, kidney, and liver changes. Carpenter, Pozzani, Weil, and associates (1956/Ex. 1-303) reported hemolytic anemia and increased fragility of the red blood cells in rats repeatedly exposed to 2-butoxyethanol at 320 ppm for five weeks. However, repeated exposure for 12 weeks at 400 ppm was only slightly injurious to dogs (Werner, Mitchell, Miller, and von Oettingen 1943b, as cited in ACGIH 1986/Ex. 1-3, p. 71).

Humans appear to be less susceptible to butoxyethanol poisoning than experimental animals. In humans, several single 8-hour exposures at levels of 200 ppm and 100 ppm caused urinary excretion of butoxyacetic acid; these subjects experienced irritation and discomfort after these exposures (Carpenter, Pozzani, Weil et al. 1956/Ex. 1-303). A recent study has confirmed that the increased erythrocyte osmotic fragility observed in rats exposed to many of the glycol ethers is a very sensitive indicator of toxicity and correlates with the development of hemoglobinuria at higher exposure levels (Moffett, Linnett, and Blair 1976, as cited in ACGIH 1986/Ex. 1-3, p. 71). These findings indicate that the no-effect level in animals is approximately 25 ppm. The ACGIH suggests that 2-butoxyethanol's toxicity may be more likely to occur as a result of skin absorption than as a consequence of inhalation (ACGIH 1986/Ex. 1-3, p. 71).

The Independent Lubricant Manufacturers (Ex. 3-830) objected to the establishment of a PEL for 2-butoxyethanol on the basis of a 25-ppm no-effect level in animals, particularly when the evidence suggests that humans may be less susceptible than animals to the effects of this substance (Ex. 3-830, p. 5). In response to this comment, OSHA notes that *Patty's Industrial Hygiene and Toxicology* (3rd rev. ed., Clayton and Clayton 1982) states that "the lowest concentration of ethylene glycol butyl ether vapor considered to be unpleasant and therefore disagreeable was 40 ppm" (Vol. 2C, p. 3939). This level is below OSHA's former PEL of 50 ppm, and the Agency thus believes that its former standard for 2-butoxyethanol was too high.

OSHA concludes that the former PEL of 50 ppm was insufficiently protective against the risk of 2-butoxyethanol's irritant, hematological, and other potential systemic effects, which constitute material health impairments. The limit of 25 ppm included in the final rule will reduce this significant risk to a level below that at which these toxic effects have been observed in animals and humans. This lower limit will also prevent the discomfort experienced by workers at exposure levels of 40 ppm. The skin notation is retained because of 2-butoxyethanol's ability to be absorbed dermally in toxic quantities (2-butoxyethanol's dermal LD_{50} in rabbits is 490 mg/kg [RTECS 1988]).

n-BUTYL GLYCIDYL ETHER

CAS: 2426-08-6; Chemical Formula:
$C_4H_9OCH_2CH(O)CH_2$
H.S. No. 1052

The former OSHA limit for n-butyl glycidyl ether was 50 ppm as an 8-hour TWA. The ACGIH-recommended TLV is 25 ppm; NIOSH has recommended that occupational exposure to n-butyl glycidyl ether not exceed 5.6 ppm as a 15-minute short-term level. The proposed PEL was 25 ppm as an 8-hour TWA, and the final rule promulgates this limit. n-Butyl glycidyl ether is a clear, colorless liquid.

OSHA's former PEL of 50 ppm, which was adopted from the ACGIH's 1968 TLV list, was based on a Dow Chemical Company report (cited in ACGIH 1986/Ex. 1-3) that showed that repeated applications of n-butyl glycidyl ether to the skin of humans caused irritation and sensitization; at the time, the ACGIH concluded that a limit of 50 ppm would prevent these irritant responses. Subsequently, the ACGIH reduced the TLV to 25 ppm, noting that the 50-ppm limit was only 13 times lower than the 8-hour LC_{50} (670 ppm) reported for this chemical in rats, and that a wider margin of protection was desirable.

The NIOSH limit of 5.6 ppm was recommended in the Institute's June 1978 criteria document on glycidyl ethers (NIOSH 1978d/Ex. 1-232). This limit was based, in large part, on mutagenic studies conducted in microbial and mammalian test systems, as well as on some evidence for other members of the glycidyl ether family showing that exposure is associated with testicular atrophy and hematopoietic abnormalities in laboratory animals. After publication of its Criteria Document, NIOSH received a confidential report prepared for the Shell Development Company by Anderson et al. (1957, as cited in ACGIH 1986/Ex. 1-3, p. 81), who had conducted a rat inhalation study. In this research, rats were exposed to 38 ppm, 75 ppm, 150 ppm, or 300 ppm n-butyl glycidyl ether for seven hours daily, five days per week for 10 weeks. Atrophic testes were found in 5 of 10 rats exposed to 300 ppm, very small testes were found in 1 of 10 rats exposed to 150 ppm, and patchy atrophy was found in the testes of 1 of 10 rats exposed to 75 ppm. No effects were observed in rats exposed at 38 ppm. Based on this additional evidence, NIOSH reaffirmed its REL for n-butyl glycidyl ether in a current intelligence bulletin (NIOSH 1978p, as cited in ACGIH 1986/Ex. 1-3, p. 81).

The Workers Institute for Safety and Health (WISH) and the AFL-CIO submitted posthearing comments on n-butyl glycidyl ether (Exs. 116, 194). These commenters opposed OSHA's proposal to adopt the ACGIH TLV for this substance on the basis of the reproductive study published in a NIOSH CIB (discussed above) which shows testicular atrophy in exposed laboratory animals. According to WISH:

> OSHA's review of this substance in the proposal attempts to state that the 25 ppm ACGIH level is protective against these reproductive effects because a no-effect level of 38 ppm was observed (Ex. 116).

WISH found this conclusion unjustifiable because of the short exposure period (10 weeks) used in the study establishing the NOEL for reproductive effects and because considerable uncertainty always surrounds no-effect-level studies. In addition, WISH pointed out that "fertility in rats is less sensitive to certain testicular effects than human fertility" and, therefore, that this animal is not the best predictor of human reproductive effects (Ex. 116). In response to these comments, OSHA wishes to clarify that the Agency did not intend to imply in the proposal that the 25-ppm limit would protect against *all* risk of possible reproductive effects. In fact, the proposal merely noted that 25 ppm was below the no-effect level for reproductive effects in rats. The Agency agrees with WISH that the use of a longer exposure period in the Anderson et al. (1957, as cited in ACGIH 1986/Ex. 1-3, p. 81) reproductive study might have established a lower NOEL.

However, based on the existing evidence for reproductive effects linked to n-butyl glycidyl ether exposure, OSHA concludes that reducing the PEL from 50 ppm to 25 ppm will substantially reduce the significant risk of these reproductive effects and will also protect workers against the irritation and sensitization effects, all of which constitute material health impairment caused by exposure to this chemical. The Agency notes that NIOSH's REL of 5.6 ppm (15-minute STEL) is based on the result of *in vitro* testing in both microbial and mammalian systems; extensive extrapolation is required to predict effects in humans on these bases. The final rule establishes a permissible exposure limit of 25 ppm TWA for n-butyl glycidyl ether.

CAPTAN

CAS: 133-06-2; Chemical Formula:
$C_9H_8Cl_3NO_2S$
H.S. No. 1067

OSHA did not formerly regulate captan. The ACGIH has a TLV-TWA of 5 mg/m³ for this substance, which is a white, crystalline, odorless solid. The proposed PEL was an 8-hour TWA of 5 mg/m³, and the final rule promulgates this limit.

Skin applications of 900 mg/kg captan produce skin irritation in experimental animals. Long-term feeding studies did not reveal adverse effects in dogs fed captan in the diet at levels of 100 mg/kg/day for 66 weeks or in rats fed 1000 mg/kg/day for two years (Martin 1971/Ex. 1-1161; Spencer 1966, as cited in ACGIH 1986/Ex. 1-3, p. 98). Male mice showed decreased fertility at levels of 50 or 100 mg/kg/day for five days (Collins 1972/Ex. 1-883).

Studies on the mutagenicity of captan indicate that the substance acts as an alkylating agent and induces chromosome rearrangements in rats and point mutations in *Neurospora crassa* (Epstein and Legator, as cited in ACGIH 1986/Ex. 1-3, p. 98). Legator and colleagues (1969, as cited in ACGIH 1986/Ex. 1-3, p. 98) reported that captan concentrations of 10 μg/ml inhibited DNA in human embryo cells, and concentrations of 1.5 μg/ml produced chromosomal aberrations in the somatic and germ cells of kangaroo rats. Animal evidence concerning the carcinogenicity of captan is contradictory, although high doses caused significant incidences of polyploid carcinoma of the duodenum and adenomatous polyps in mice (NCI 1977a, as cited in ACGIH 1986/Ex. 1-3, p. 98).

Some captan-exposed individuals experience skin irritation (Spencer 1966, as cited in ACGIH 1986/Ex. 1-3, p. 98). A case of recurrent urticaria caused by captan exposure has been reported and confirmed (Croy 1973/Ex. 1-894), and captan caused high reactivity when administered in a battery of patch tests (Rudner 1977/Ex. 1-967).

NIOSH (Ex. 8-47, Table N6A) concurs with the limit being established, but notes that captan could be classified as a potential occupational carcinogen. No other comments were received on this substance.

In the final rule, OSHA is establishing a PEL of 5 mg/m³ TWA to protect workers exposed to captan from the significant risk of exposure-related skin irritation, reproductive effects, mutagenicity, and, perhaps, carcinogenicity, all of which constitute material health impairments. The Agency concludes that this limit will substantially reduce these significant risks.

CHLOROPRENE

CAS: 126-99-8; Chemical Formula:
$CH_2{:}CClCH{:}CH_2$
H.S. No. 1068

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The former OSHA limit for beta-chloroprene was an 8-hour TWA of 25 ppm, with a skin notation. The ACGIH has a 10-ppm TLV-TWA, with a skin notation, and NIOSH (1977c/Ex. 1-277) recommended a limit of 1 ppm, measured over a 15-minute period. The proposed PEL was an 8-hour TWA of 10 ppm, and the final rule establishes this limit and retains the skin notation. NIOSH (Ex. 8-47, Table N1) concurs that this limit is appropriate. Chloroprene is a colorless, highly flammable liquid.

The ACGIH recommended a reduction in the TLV for chloroprene from 25 ppm to 10 ppm in 1981, based on a review of the world literature by Trochimowicz, who prepared the 1980 ACGIH documentation, and by Reinhardt (1980, as cited in ACGIH 1986/Ex. 1-3, p. 135). Reinhardt concluded that there was no evidence indicating that the former 25-ppm PEL was not protective, but OSHA believes the systemic effects (i.e., growth retardation) seen in rats and hamsters exposed to 30 ppm chloroprene for four weeks or to 50 ppm for a lifetime suggest that the 25-ppm PEL is not sufficiently protective.

In recommending a 1-ppm 15-minute exposure limit for chloroprene, NIOSH (1977c/Ex. 1-277) cited three reports on facilities in the Soviet Union. Katsova (1973, as cited in ACGIH 1986/Ex. 1-3, p. 135) reported finding a significant excess of chromosomal abnormalities in the blood of workers exposed to approximately 5 ppm chloroprene. Volkova, Fomenko, Bagdinov et al. (1976/Ex. 1-1025) reported similar findings in a plant where chloroprene levels ranged from 0.8 to 1.95 ppm. In the third study, Sanotskii (1976/Ex. 1-902) reported abnormal sperm morphology among workers exposed at levels of from 0.28 to 1.94 ppm; a threefold increase in the rate of spontaneous abortion among wives of these workers was also found. In addition, NIOSH (1977c/Ex. 1-277) cited a study by Davtian, Fomenko, and Andreyeva (1973/Ex. 1-1032) that reported a significant excess of embryonic mortality in female rats that were mated to male rats exposed to 1 ppm chloroprene. These investigators also found chromosomal aberrations in the bone marrow cells of exposed male rats. NIOSH (1977c/Ex. 1-277) also cited a number of reports showing chloroprene to be mutagenic in a variety of test systems. NIOSH concluded that it was prudent to reduce exposure to 1 ppm over a 15-minute period, to reduce the risk of genetic abnormalities being transmitted to subsequent generations. This exposure represents the lowest concentration that can be measured reliably over a 15-minute period.

The Workers Institute for Safety and Health (WISH) and the AFL-CIO commented on OSHA's proposed limit for chloroprene (Ex. 116; Tr. VII, pp. 130-131; Ex. 194). WISH raised questions about the adequacy of the ACGIH documentation for this substance, which is critical of the Soviet literature that served as the basis for the issuance of the first NIOSH *Current Intelligence Bulletin on Chloroprene* (1975c). OSHA notes that sizable discrepancies exist between the findings from the Russian studies and results from other studies that were undertaken to confirm the Soviet claims. Torkelson and Rowe (1981c, in *Patty's Industrial Hygiene and Toxicology*, 3rd rev. ed., Vol. 2B, Clayton and Clayton 1981) offer two possible explanations for these discrepancies:

> beta-Chloroprene is a very unstable compound, which, unless handled with extreme care, . . . [epoxidizes] and polymerizes to toxic compounds. This might explain the alleged effects in animals. Alleged effects in humans may be due to this same cause or to the use of different chemical processes which produce different types of impurities. Many other causes can be postulated, but in our opinion more credance must be given to animal studies in which the sample is known to have been handled with extreme care and to the results of experience in U.S. industry where the method of handling has been reported (Torkelson and Rowe 1981c, p. 3578).

These authors report that when the purity of the sample was carefully controlled, repeated exposures to 25 ppm or less of the vapor have caused no reproductive, teratological, or embryotoxic effects in rats: "Despite frank clinical toxicity in exposed pregnant rats, fetuses showed no teratogenic effects at beta-chloroprene levels as high as 175 ppm" (Trokelson and Rowe 1981c, pp. 3579-80).

WISH also expressed concern about the "unscientific" use by the ACGIH of uncertainty factors with regard to this substance. WISH notes that the ATSDR protocol for uncertainty factors would require a TLV of 0.05 ppm based on lowest effect level data on growth retardation (Ex. 116). (See OSHA's discussion of the use of safety factors in establishing occupational exposure limits in Section VI.A. of this preamble.)

The 1-ppm (15-minute STEL) value recommended by NIOSH is based on studies reported in the Soviet literature; in addition, this limit is set at the analytical limit of detection. OSHA's 10-ppm PEL is based on a 1981 critical review of the world literature (Trochimowicz 1980, as cited in ACGIH 1986/Ex. 1-3, p. 135) and on the observation that only mild systemic effects are observed at 30 ppm. In the final rule, OSHA is establishing an 8-hour TWA PEL of 10 ppm, with a skin notation, to substantially reduce the significant risk of reproductive and systemic effects, which constitute material health impairments that are potentially associated with exposure to chloroprene. The Agency concludes that this limit will substantially reduce this significant risk.

CYCLOHEXYLAMINE

CAS: 108-91-8; Chemical Formula: $C_6H_{13}N$
H.S. No. 1109

OSHA had no former limit for cyclohexylamine. The ACGIH has a TLV-TWA of 10 ppm. OSHA proposed an 8-hour TWA PEL of 10 ppm; NIOSH (Ex. 8-47, Table N1) concurred with the proposed limit, and the final rule promulgates this limit. Cyclohexylamine is a liquid with a strong, fishy, amine odor.

Data concerning the acute toxicity of cyclohexylamine were reported by Eastman Kodak in 1956 (ACGIH 1986/Ex. 1-3, p. 161). In rats, the oral LD_{50} of a 5-percent solution in water was between 400 and 800 mg/kg; mice fed a diet of the 1-percent aqueous solution or the undiluted amine had LD_{50}s of between 200 and 400 mg/kg. Injection of the 5-percent aqueous solution in rats produced LD_{50}s of between 5 and 25 mg/kg, while mice injected intraperitoneally with the 1-percent solution had LD_{50}s of between 5 and 10 mg/kg. In guinea pigs, the dermal LD_{50} of undiluted cyclohexylamine is reported to be between 1 and 5 ml/kg. Edema, necrosis, and eschars were reported as a consequence of these dermal exposures. In rabbits, one drop of a 50-percent solution caused complete destruction of the eye. Six-hour inhalation exposures at a vapor concentration of 12,000 ppm caused deaths in rats, but exposure to 1000 ppm caused neither toxic effects nor deaths.

Legator, Palmer, Green, and Petersen (1969/Ex. 1-498) considered cyclohexylamine to be a potential carcinogen, mutagen, or teratogen on the basis of dose-dependent chromosomal abnormalities observed in rats injected intraperitoneally with cyclohexylamine. Khera, Stolz, Gunner et al. (1971/Ex. 1-343) noted adverse effects on rat fertility, and Becker and Gibson (1970/Ex. 1-298) reported embryotoxic effects in mice intraperitoneally injected with cyclohexylamine. In contrast, Kennedy, Sanders, Weinberg et al. (1969, as cited in ACGIH 1986/Ex. 1-3, p. 161) reported no effects of exposure to

cyclohexylamine on rabbit and rat fertility, reproduction, embryogenesis, or perinatal and postnatal development.

In general, there is agreement concerning the moderate to severe toxicity of cyclohexylamine and its potential for intense skin irritation and moderate skin sensitization (Sax 1968b, as cited in ACGIH 1986/Ex. 1-3, p. 161). The chemical is well known to be pharmacologically active, having sympathomimetic activity (Barger and Dale 1910/Ex. 1-1104). However, Litchfield and Swan (1971/Ex. 1-346) report that human dietary levels of 5 g/day for seven to eight days produced no pharmacologically active levels in the tissues; furthermore, no changes were detected in blood pressure, heart rate, or electrocardiograms of exposed subjects. Chronic experimental toxicity data are lacking, but Watrous and Schulz (1950/Ex. 1-940) have reported that exposure to 4 to 10 ppm of cyclohexylamine caused no symptoms of any kind in acutely exposed workmen. No comments other than those of NIOSH (Ex. 8-47) were received on this substance.

In the final rule, OSHA is establishing an 8-hour TWA PEL of 10 ppm for cyclohexylamine. The Agency concludes that limiting workplace exposures to this previously unregulated substance to the 10-ppm level will protect workers from the significant risk of severe skin and eye irritation and sensitization, all material health impairments that are associated with exposure to cyclohexylamine. OSHA has determined that this limit will substantially reduce these significant occupational risks.

CYHEXATIN

CAS: 13121-70-5; Chemical Formula: $(C_6H_{11})_3SnOH$
H.S. No. 1112

Previously, OSHA had no limit for cyhexatin. The ACGIH has a TLV-TWA of 5 mg/m³. The proposed PEL was an 8-hour TWA of 5 mg/m³. NIOSH (Ex. 8-47) concurred with the proposed limit and this is the limit established by the final rule. At room temperature, cyhexatin exists in the form of white crystals.

Cyhexatin has oral LD_{50}s of 500, 700, and 654 mg/kg for rabbits, guinea pigs, and chickens, respectively. The intraperitoneal LD_{50} for the rat is 13 mg/kg (NIOSH 1977i/ Ex. 1-1182), and the oral LD_{50} for rats has been reported to be 190 mg/kg (ACGIH 1974, as cited in ACGIH 1986/Ex. 1-3, p. 185). Skin exposure to a 1- to 2-percent solution of cyhexatin in goats and cattle caused mild effects; sheep showed mild effects after application of a 0.5-percent solution. One of five sheep died from multiple skin applications of a 1-percent suspension (Johnson, Younger, Witzel, and Radeleff 1975/Ex. 1-336).

The toxicity of cyhexatin is considered to be moderate, although it is greater than the toxicity of most other organic tin compounds. Long-term feeding in rats produced no behavioral changes, mortality, tissue changes, or hematologic or biochemical changes in response to two years of dosing at 12 mg/kg per day; however, dosed animals were smaller than controls. After daily doses by gavage of 24 mg/kg per day for two weeks, rats showed microscopic changes in the liver, kidneys, and adrenal glands at autopsy. Six mg/kg is considered to be the no-effect level in rats, and in dogs, the no-effect feeding level is reported to be 3 mg/kg. Rats fed 4 to 6 mg/kg, and rabbits fed 3 mg/kg, showed no ill effects on indices for fertility, gestation, viability, or lactation (Dow Chemical Company 1973d, as cited in ACGIH 1986/Ex. 1-3, p. 165). No inhalation data on animals are available, and there are no human data. Other than the comment by NIOSH (Ex. 8-47), no comments were received on this substance.

In the final rule, OSHA is establishing an 8-hour TWA limit of 5 mg/m³ for cyhexatin. OSHA concludes that a PEL of 5 mg/m³ will protect workers against the significant risk of skin and respiratory irritation, as well as other possible adverse effects associated with exposure to this tin compound in the absence of a current limit. The Agency considers eye and respiratory irritation to be material health impairments within the meaning of the Act.

DICHLORODIPHENYLTRICHLOROETHANE (DDT)

CAS: 50-29-3; Chemical Formula: $C_{14}H_9Cl_5$
H.S. No. 1113

OSHA's existing limit for dichlorodiphenyltrichloroethane (DDT) is 1 mg/m³ TWA as an 8-hour TWA, with a skin notation. The ACGIH has the same 8-hour TWA limit for DDT, without a skin notation. NIOSH has a REL of 0.5 mg/m³ for DDT. The Agency proposed to retain both the skin notation for DDT and the existing 8-hour TWA limit. The final rule retains the skin notation and the Agency's 8-hour TWA PEL. DDT is a noncombustible, colorless to white powder with a slightly aromatic odor.

The U.S. Public Health Service (Neal, von Oettingen, Smith et al. 1944, as cited in ACGIH 1986, p. 168) reports that six daily exposures of one hour each to 423 mg/m³ DDT was without effect in human volunteers. Barnes (1953, as cited in ACGIH 1986, p. 168/Ex. 1-3) reported that a review of the world literature revealed no illness among workers from many countries who applied DDT as an insecticide. At chronic exposure levels of 35 mg/person/day, no adverse health effects are observed in humans, but DDT does accumulate in the fatty tissues of the body and it is possible that delayed effects might occur after many years (ACGIH 1986, p. 168/Ex. 1-3). OSHA received no comments on DDT except those from NIOSH (Ex. 8-47, Table N6B), which urged regulation of DDT as a potential occupational carcinogen. The dermal LD_{50} in rabbits is 400 mg/kg (*Dangerous Properties of Industrial Materials*, 7th ed., Sax and Lewis 1989), indicating a significant degree of percutaneous absorption that justifies the skin notation.

Based on a review of the evidence of the health effects of exposure to DDT, OSHA concludes that the existing PEL of 1.0 mg/m³ is adequate to protect workers from the significant risk of bioaccumulation of DDT in adipose tissue, which may have the potential to produce delayed ill effects in later years. The Agency finds that the existing limit, with its skin notation, provides appropriate protection against DDT's systemic effects.

2-N-DIBUTYLAMINOETHANOL

CAS: 102-81-8; Chemical Formula: $(C_4H_9)_2NCH_2CH_2OH$
H.S. No. 1120

OSHA formerly had no limit for 2-N-dibutylaminoethanol (DBAE). The ACGIH has a TLV-TWA of 2 ppm, with a skin notation, for this colorless, combustible liquid, which has a faint, amine-like odor. The proposed PEL was 2 ppm as an 8-hour TWA. NIOSH (Ex. 8-47) concurred with this limit, and this is the limit established by the final rule. The proposed skin notation is not retained in the final rule.

In rats, 2-N-dibutylaminoethanol has a single-dose oral LD_{50} of 1.7 g/kg and a corresponding intraperitoneal LD_{50} of 0.14 g/kg; these values are approximately analogous to the oral and intraperitoneal LD_{50}s for diethanolamine (Hartung and Cornish 1968/Ex. 1-328). The LD_{50} for skin absorption in rabbits is 1.68 g/kg (Smyth, Carpenter, Weil, and Pozzani 1954/Ex. 1-440). In male rats, the lowest five-week drinking water dose tolerated without weight loss was 0.13 g/kg/day. Rats that ingested a dose of 0.43 g/kg/day showed elevated kidney-to-body-weight ratios but no histologic changes at autopsy (Cornish, Dambrauskas, and Beatty 1969/Ex. 1-411). In inhalation studies of rats, 6-hour exposures at 70 ppm for five days killed one rat; the surviving rats showed a 57-percent average body weight loss, as

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well as a doubling of kidney-to-body-weight ratios, a tenfold increase in serum bilirubin, a slight increase in clotting time, and an elevated hematocrit. Inhalation of 33 ppm for one week caused a 3-percent body weight loss and a slight increase in clotting time, but no significant changes in the other variables observed. Twenty-seven weeks of exposure to 22 ppm resulted in no differences between exposed rats and controls in the variables measured (Cornish, Dambrauskas, and Beatty 1969/Ex. 1-411). 2-N-dibutylaminoethanol is a more potent inhibitor of acetylcholinesterase *in vitro* than is diethylamine (DEA) (Hartung and Cornish 1968/Ex. 1-328). NIOSH was the only commenter to the rulemaking record for DBAE.

In the final rule, OSHA is establishing an 8-hour TWA PEL of 2 ppm for 2-N-dibutylaminoethanol. The Agency concludes that this limit will protect workers from the significant risk of metabolic effects associated with inhalation exposure at the levels permitted in the absence of any OSHA limit. OSHA has determined that this substance does not present a significant risk of systemic toxicity via percutaneous absorption (2-N-dibutylaminoethanol's dermal LD_{50} in rabbits is 1.08 g/kg) and therefore, that no skin notation is required. Accordingly, the skin notation proposed for DBAE is not retained in the final rule.

DIGLYCIDYL ETHER

CAS: 2238-07-5; Chemical Formula: $C_7H_{12}O_3$
H.S. No. 1139

The former OSHA limit for diglycidyl ether (DGE) was 0.5 ppm as a ceiling concentration, and the ACGIH-recommended TLV is 0.1 ppm as an 8-hour TWA. NIOSH recommends a limit of 0.2 ppm for DGE as a 15-minute ceiling. OSHA proposed an 8-hour TWA of 0.1 ppm, and this limit is established in the final rule.

Both the previous ACGIH 0.5-ppm TLV and that organization's current TLV are based on the results of an animal study reported by Hine and Rowe (1963b, as cited in ACGIH 1986/Ex. 1-3, p. 202) in which rats were administered repeated 4-hour exposures of 20, 3, or 0.3 ppm DGE. Rats exposed to 20 ppm of DGE showed respiratory irritation, loss of body weight, decreased leukocyte count, involution of the spleen and thymus, and hemorrhagic bone marrow. Residual hematopoietic effects were observed among rats exposed to 3 ppm, and no observed effects were noted among rats exposed to 0.3 ppm, even after as many as 60 exposures. The ACGIH's previous TLV of 0.5 ppm as a ceiling value was based on the no-observed-effect level of 0.3 ppm reported in the Hine and Rowe (1963b, as cited in ACGIH 1986/Ex. 1-3, p. 202) study and on industrial experience. In 1979, the ACGIH reconsidered its limit for DGE, noting that, "in view of the seriousness of some of the effects produced [in the rat study], a TLV below the no-ill-effect level [of 0.3 ppm] would normally be adopted" (ACGIH 1980/Ex. 1-3). The ACGIH consequently revised the TLV to 0.1 ppm as an 8-hour TWA.

NIOSH concurs with this limit but notes that DGE may be a potential occupational carcinogen (Ex. 8-47), and the Workers Institute for Safety and Health (Ex. 116) objected to the establishment of a ceiling limit. No other comments were received on this substance.

In the final rule, OSHA concludes that the revised 8-hour TWA limit of 0.1 ppm will protect workers against the significant risk of hematopoietic and irritant effects, which constitute material health impairments and to which they were potentially exposed at OSHA's former PEL. The risks of DGE exposure range from respiratory irritation to bone marrow effects. The final rule's limit for DGE will reduce this risk substantially.

ETHANOLAMINE

CAS: 141-43-5; Chemical Formula: $NH_2CH_2CH_2OH$
H.S. No. 1159

OSHA formerly had an 8-hour TWA limit of 3 ppm for ethanolamine. The ACGIH has the same TWA limit, along with a 15-minute STEL of 6 ppm. OSHA proposed to retain the 8-hour TWA PEL of 3 ppm and to supplement this limit with a 6-ppm STEL; NIOSH (Ex. 8-47, Table NI) concurred with the proposed limits, and the final rule establishes them. Ethanolamine is a colorless liquid with a mild smell like that of ammonia.

The health hazards associated with exposures to ethanolamine include irritation and necrosis of the skin and central nervous system depression. The oral LD_{50} in rats is reported as 3.32 g/kg, and the intraperitoneal LD_{50} in rats is 981 mg/kg (Hartung and Cornish 1968/Ex. 1-328). The dermal toxicity of ethanolamine is considerably higher, with an LD_{50} of 1 mg/kg reported in the rabbit. Dermal application of the undiluted liquid also caused redness, swelling, and burns comparable to mild first-degree burns (Union Carbide Corporation, as cited in ACGIH 1986/Ex. 1-3, p. 235). The eye injury potential of ethanolamine is just slightly less than that of undiluted ammonia (Carpenter and Smyth 1946/Ex. 1-859). Rats fed 0.5 percent (320 mg/kg/day) ethanolamine in their food for 90 days (Smyth, Carpenter, and Weil 1951/Ex. 1-439) showed no adverse effects, but at 1.26 g/kg/day, fatalities occurred. Treon, Cleveland, Stemmer, and associates (1957/Ex. 1-1172) reported lung, liver, and kidney damage in various species exposed to high concentrations of the vapor and mist. In tests of various species, Weeks and co-workers (1960/Ex. 1-941) reported marked dermal effects from continuous exposures (24 hours/day, seven days/week, for from 24 to 90 days) at various concentrations of the vapor; at 12 to 28 ppm, dermal effects were less severe, but at 5 ppm, skin irritation was still evident. After 90 days of exposure to 5 ppm, dogs also experienced a slight and temporary weight loss as well as decreased activity and alertness (Weeks, Downing, Musselman et al. 1960/Ex. 1-941). Luck and Wilcox (1953/Ex. 1-917) demonstrated that a portion of low doses of ethanolamine is not excreted and is presumably retained in the body of cats, rats, and rabbits.

In studies of anesthetized dogs, Priddle (1954, as cited in ACGIH 1986/Ex. 1-3, p. 235) reported that sublethal doses of ethanolamine cause central nervous system stimulation, while lethal doses cause CNS depression. Ethanolamine's irritant and necrotic effects on the skin are not related to its alkalinity (Hinglais 1947/Ex. 1-909). OSHA received no comments, other than the one by NIOSH (Ex. 8-47), on this substance.

In the final rule, OSHA is establishing a PEL of 3 ppm as an 8-hour TWA and a 15-minute STEL of 6 ppm for ethanolamine. The Agency concludes that both of these limits are required to protect workers against the significant risk of irritation and neuropathic effects, which constitute material health impairments that are potentially associated with exposure to ethanolamine at levels permitted above the 8-hour TWA limit. The Agency has determined that these limits will substantially reduce this significant risk.

ETHYLENE CHLOROHYDRIN

CAS: 107-07-3; Chemical Formula: $ClCH_2CH_2OH$
H.S. No. 1167

OSHA formerly had an 8-hour TWA limit of 5 ppm, with a skin notation, for ethylene chlorohydrin. The ACGIH has a ceiling limit of 1 ppm, also with a skin notation. The proposed PEL was a ceiling of 1 ppm, with a skin notation. NIOSH (Ex. 8-47) concurred with the proposed limit, and the final rule establishes this limit and retains the skin notation. Ethylene chlorohydrin is a colorless liquid with a faint, ethereal odor.

A broad range of serious health hazards are associated with exposure to this substance; these include central nervous system effects, cardiovascular effects, liver damage, kidney damage, gastrointestinal effects, skin irritation, eye irritation, and mutagenic effects. OSHA considers that all of these effects constitute material health impairments. The oral LD_{50} for rats is 72 mg/kg, and the intraperitoneal LD_{50} in the same species is 56 mg/kg (Goldblatt and Chiesman 1944/Ex. 1-980). In guinea pigs, the intraperitoneal LD_{50} is 98 mg/kg, and the percutaneous LD_{50} is 205 mg/kg (Wahlberg and Boman 1978/Ex. 1-938).

The skin absorption rate for ethylene chlorohydrin is high; Semenova and associates (1978/Ex. 1-932) determined that the LD_{50} must be reduced to one-fifth of its original value if ethylene chlorohydrin is administered daily for 20 days (Semenova, Kazanina, Fedyanina et al. 1978/Ex. 1-932).

The inhalation toxicity of ethylene chlorohydrin is also high. Ambrose (1950/Ex. 1-888) reported that a single one-hour exposure at 7.5 ppm and repeated one-hour exposures at 2 ppm can be fatal to rats. Exposures of 15 minutes daily at concentrations of from 900 to 1000 ppm were fatal to rats within a few days (Goldblatt and Chiesman 1944/Ex. 1-980).

In subacute and chronic studies, rats have died from a daily dietary dose of 67.5 mg/kg (Oser, Morgareidge, Cox, and Careon 1975/Ex. 1-923). Semenova and associates (1960, as cited in ACGIH 1986/Ex. 1-3, p. 248) reported a four-month no-effect inhalation level of 0.0033 ppm; at 0.017 ppm, slight CNS changes and alterations in the urinary secretion of nitrogen were observed after four months. These investigators also observed increased chromosomal aberrations in bone marrow in rats exposed at the 0.22-ppm level for four months (Semenova, Kazanina, Fedyanina et al. 1980, as cited in ACGIH 1986/Ex. 1-3, p. 248).

Voogt and Vet (1989/Ex. 1-1205) tested ethylene chlorohydrin in *Klebsiella pneumoniae* and found it strongly mutagenic. This finding was confirmed by the Ames test in *Salmonella typhimurium;* ethylene chlorohydrin reacts with DNA, since it inhibits the growth of DNA-deficient bacteria (Rosenkranz and Wlodkowski 1974/Ex. 1-1201). A dose-related increase of liver protein and depletion in glutathion was observed in rats after a single dose of ethylene chlorohydrin of from 10 to 50 mg/kg (Friedman, Scalera, Balazs et al. 1977/Ex. 1-1198).

One fatal and several nonfatal cases of poisoning in industrial workers have been reported from exposure (for unspecified periods of time) to ethylene chlorohydrin at levels of between 300 and 500 ppm. An autopsy of the worker who died revealed severe damage to the liver and brain, as well as effects in other organs. The survivors experienced nausea, vomiting, and irritation of the eyes, nose, and lungs (Bush, Abrams, and Brown 1949/Ex. 1-1196). Dierker and Brown (1944/Ex. 1-1197) reported that a two-hour inhalation exposure to 300 ppm was fatal in one accidental exposure. OSHA received no comments, other than that of NIOSH (Ex. 8-47), on this substance.

In the final rule, OSHA is establishing a ceiling limit of 1 ppm for ethylene chlorohydrin and is retaining the skin notation. The Agency concludes that this limit will substantially reduce the significant risk of central nervous system and other systemic effects associated with workplace exposures at the levels permitted by the TWA limit alone. The skin notation is retained because ethylene chlorohydrin is readily absorbed through the skin.

GLYCIDOL (2,3-EPOXY-1-PROPANOL)

CAS: 556-52-5; Chemical Formula: $C_3H_6O_2$
H.S. No. 1189

Previously, OSHA had an 8-hour TWA limit of 50 ppm TWA for glycidol. The ACGIH has a limit of 25 ppm TWA for this colorless liquid. The proposed PEL was an 8-hour TWA of 25 ppm. NIOSH (Ex. 8-47) concurred with this limit, and the final rule promulgates this PEL.

Glycidol causes eye, respiratory, and pulmonary irritation. Hine and associates (1956/Ex. 1-331) conducted a study of animal toxicity caused by glycidol exposure and reported that glycidol is irritating to the lungs, with mice and rats exhibiting pneumonitis and emphysema resulting from vapor inhalation. The LC_{50} reported for mice is 450 ppm for a four-hour exposure; the 8-hour LC_{50} for rats is 580 ppm (Hine, Kodama, Wellington et al. 1956/Ex. 1-331). A single dermal application was only mildly irritating (Draize score 4.5); however, repeated daily skin applications were severely irritating after four days. One drop of pure glycidol in the rabbit eye caused severe but reversible corneal injury (Hine, Kodama, Wellington et al. 1956/Ex. 1-331). In rats, chronic exposures to 400 ppm (seven hours/day for 50 days) did not cause systemic toxicity, but eye irritation and respiratory distress were observed after the first few exposures (Hine, Kodama, Wellington et al. 1956/Ex. 1-331). A study to determine glycidol's tumorigenic potential on the skin of mice showed negative results (Van Duuren, Langseth, Goldschmidt, and Orris 1967/Ex. 1-1203). OSHA received no comments, other than that of NIOSH (Ex. 8-47), on this substance.

In the final rule, OSHA is establishing an 8-hour TWA limit of 25 ppm TWA for glycidol. The Agency concludes that this limit will protect workers against the significant risk of eye, respiratory, and pulmonary irritation potentially associated with exposures to this substance. The Agency has determined that this limit will substantially reduce these significant risks.

HEXAFLUOROACETONE

CAS: 684-16-2; Chemical Formula: C_3F_6O
H.S. No. 1198

Previously, OSHA had no limit for hexafluoroacetone. The ACGIH has a TLV-TWA of 0.1 ppm, with a skin notation, for this colorless, nonflammable, highly reactive gas. The proposed PEL was an 8-hour TWA of 0.1 ppm, with a skin notation. NIOSH (Ex. 8-47) concurred with these limits, which are established by the final rule.

Inhalation studies of hexafluoroacetone in animals have shown varied systemic toxicities, including injury to the liver, kidney, testes, thymus, and bone marrow. In rats and dogs exposed six hours/day, five days/week for 13 weeks at concentrations of about 0.1, 1.0, or 12 ppm, no effects (other than increased lung weights in dogs) were observed in either species at 0.1 ppm. However, the 12-ppm exposures produced severe effects in both species, including marked but reversible testicular damage and slight hypoplasia of the spleen, thymus, and lymph nodes (E.I. du Pont de Nemours & Co., Inc. 1971, as cited in ACGIH 1986/Ex. 1-3, p. 303). Reversible kidney damage in rats and increased lung weights in dogs occurred during the 1.0-ppm exposures. An earlier four-hour acute exposure of rats demonstrated that 300 ppm was a lethal concentration (E.I. du Pont de Nemours and Co., Inc. 1971, as cited in ACGIH 1986/Ex. 1-3, p. 303).

In rats, two-week dermal exposures of 65, 130, or 250 mg/kg resulted in numerous adverse effects, including testicular damage and corresponding changes in lipid metabolism (Kennedy, Henry, Chen, and Dashiell 1982/Ex. 1-1038). A dermal dose of 13 mg/kg produced no adverse effects in rats (Lee and Gillies 1984/Ex. 1-561). An injected dose of radiolabeled hexafluoroacetone was, for the most part, rapidly excreted in the urine in unmetabolized form; this material also did not accumulate in rat

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testes (Gillies and Rickard 1984/Ex. 1–322). Brittelli and co-workers (1979/Ex. 1–300) reported that hexafluoroacetone was fetotoxic in rats. Dermal application of 90 mg/kg/day to pregnant rats resulted in maternal toxicity. Fetal toxicity occurred at maternal doses of 25 mg/kg, and fetal size was reduced at maternal doses of 5 and 25 mg/kg; however, 1 mg/kg produced no fetal effect. Although soft-tissue damage and external abnormalities were observed, teratogenicity could not be demonstrated definitively (Brittelli, Culik, Dashiell, and Fayerweather 1979/Ex. 1–300). Other than the comment by NIOSH (Ex. 8–47), OSHA received no comments on this substance.

The final rule establishes an 8-hour TWA PEL of 0.1 ppm TWA and a skin notation for hexafluoroacetone. The Agency concludes that these limits, taken together, will protect workers from the significant risk of systemic injuries at multiple organ sites, reproductive effects, kidney damage, and fetotoxic effects, all of which constitute material health impairments that are associated with exposure to hexafluoroacetone at levels above the new PEL.

HYDROGEN CYANIDE

CAS: 74-90-8; Chemical Formula: HCN
H.S. No. 1207

The former OSHA limit for hydrogen cyanide was a 10-ppm 8-hour TWA, with a skin notation. The ACGIH has a 10-ppm ceiling limit, also with a skin notation. NIOSH (1976e/ Ex. 1–240) has recommended that workplace exposures to hydrogen cyanide not exceed 4.7 ppm (5 mg/m^3) as a 10-minute ceiling. OSHA proposed a 10-minute ceiling of 4.7 ppm for hydrogen cyanide, and the final rule establishes this limit as a 15-minute STEL. The skin notation is retained. NIOSH (Ex. 8–47, Table N1) concurs with the selection of this PEL. Hydrogen cyanide is a colorless gas at room temperature.

The ACGIH (1986/Ex. 1–3) has summarized the extensive body of human evidence on the adverse effects resulting from exposure to hydrogen cyanide. The *Documentation* notes that exposure to levels of 45 to 54 ppm hydrogen cyanide can be tolerated for one hour with no immediate or delayed effects, but that 18 to 36 ppm produces "slight" symptoms after several hours of exposure. The ACGIH also cites Grabois (1954/ Ex. 1–1150), who reported that workers in apricot kernel processing plants experienced no ill effects when exposed to hydrogen cyanide at a concentration of approximately 10 ppm.

The NIOSH recommendation of 4.7 ppm as a 10-minute ceiling limit is based largely on an epidemiologic study by El Ghawabi et al. (1975/Ex. 1–632) that showed an increase in symptoms of headache, weakness, throat irritation, vomiting, dyspnea, lacrimation, colic, and nervousness among workers exposed to cyanide for an average of 7.5 years. The 36 male workers that were studied were employed in three electroplating factories. Breathing zone samples (15 minutes in duration) were collected and ranged from 4.2 to 12.6 ppm. Cyanide levels at two of the three plants did not exceed 9.8 ppm. El Ghawabi et al. (1975/Ex. 1–632) also reported that two workers in one plant suffered from psychotic episodes; these conditions were reported to be similar to cases that occurred during the therapeutic use of thiocyanate. Mean values of urinary thiocyanate in the 36 workers correlated well with air concentrations of cyanide (El Ghawabi, Gaafar, El-Sebarti et al. 1975/Ex. 1–632).

Symptoms resulting from chronic exposure to cyanide were also reported by Radojicic (1973, as cited in NIOSH 1976e/Ex. 1–240) among workers exposed to HCN levels between 5.6 and 12.3 ppm, and by Saia, DeRosa, and Galzigna (1970, as cited in NIOSH 1976e/Ex. 1–240). NIOSH (1976e/Ex. 1–240) interpreted the significance of these studies as follows:

> Colle (1972) . . . advanced the belief that these symptoms of headache, dyspnea, epigastric burning, vertigo, tinnitus, nausea, vomiting, tremor, and precordial pain represent a true clinical entity and that they are sufficiently documented and characteristic of chronic cyanide exposure to be grouped into a true syndrome. . . .
>
> Chaumont (1980) . . . also stated that there is no clinical evidence to deny that cyanides can cause this type of occupational intoxication. He apparently found the debate on whether this intoxication is truly chronic or whether it involves repeated subacute symptoms to be semantic in nature and opted for the admission that chronic intoxication caused by HCN and the cyanide salts is a true occupational disease. . . .
>
> Thus, one might describe chronic cyanide poisoning as a slow deterioration of resistance, and, therefore, an intensified sensitivity, due to inadequate time between exposures for replacement of damaged tissues, enzyme systems and metabolic stores, the elimination of detoxication products, and the regeneration of homeostatic mechanisms (NIOSH 1976e/Ex. 1–240, pp. 90–91).

OSHA received a few comments, in addition to that made by NIOSH (Ex. 8–47), on its proposal to revise the PEL for HCN to 4.7 ppm (5 mg/m^3) as a short-term limit. Dr. Lawrence Hecker, representing Abbott Laboratories (Ex. 3–678), recommended that OSHA retain its former skin notation for HCN; OSHA's intention to do so was inadvertently omitted from the discussion of hydrogen cyanide in the NPRM. There is ample evidence that cyanide penetrates the skin in sufficient quantities to cause systemic effects (NIOSH 1976e/Ex. 1–240).

Accordingly, OSHA is retaining its skin notation for HCN in the final rule. BP America (Ex. 8–57; Tr. 9–127) urged OSHA to establish the ACGIH TLV rather than the NIOSH REL for HCN, and the New Jersey Department of Health urged use of EPA's IRIS data to set a PEL for this substance (Ex. 144). In response to these commenters, OSHA notes that the ACGIH is not, in the Agency's opinion, sufficiently protective. Use of the IRIS data is discussed in Section VI.A.

OSHA concludes that a variety of symptoms are associated with exposure to hydrogen cyanide at levels less than 10 ppm. This shows that neither the former PEL nor the ACGIH TLV is sufficiently protective. In the final rule, OSHA is therefore establishing a 4.7-ppm 15-minute STEL as the PEL. The Agency finds that the final rule's short-term limit will protect workers from the significant risk of headache, weakness, colic, and nervousness, which together constitute material impairment of health; these effects have been observed in individuals exposed at the 10-ppm level over a full working shift. OSHA concludes that this limit will substantially reduce these significant risks.

HYDROGENATED TERPHENYLS

CAS No.: 61788-32-7; Chemical Formula: None
H.S. No. 1210

Previously, OSHA did not regulate the hydrogenated terphenyls. The ACGIH has a TLV–TWA of 0.5 ppm (approximately 5 mg/m^3) TWA for these complex mixtures of ortho-, meta-, and para-terphenyls in various stages of hydrogenation. The proposed PEL was 0.5 ppm as an 8-hour TWA; NIOSH (Ex. 8–47) concurred with the proposed limit, and the final rule establishes that limit.

Acute exposure to the hydrogenated terphenyls poses a risk of potential lung, eye, and skin damage. Chronic exposure presents a risk of systemic toxicity involving injury to the liver, kidneys, and blood-forming organs, as well as possible metabolic disturbances and cancer (ACGIH 1986/Ex. 1–3, p. 311).

Early studies of unhydrogenated terphenyl isomers determined that the LD_{50} in rats is low, i.e., 1900 mg/kg for the ortho isomer, 2400 mg/kg for the meta isomer, and 10,000 mg/kg for the para isomer (Cornish, Bahor, and Ryan 1962/Ex. 1–410). Thirty-day oral

administration of 500 mg/kg/day in the diet of rats indicated possible liver and kidney damage, which was suggested by increases in the liver- and kidney-to-body-weight ratios and decreases in the rate of weight gain (Cornish, Bahor, and Ryan 1962/Ex. 1–410). Other studies have demonstrated nephrotoxicity and liver damage in rats fed 33 mg/kg or more of unirradiated terphenyl isomers (Petkau and Hoogstraaten 1965/Ex. 1–432; Young, Petkau, and Hoogstraaten 1969/Ex. 1–459). Inhalation studies showed that bronchopneumonia is associated with exposure at 88 to 358 ppm to the ortho and meta isomers, but not to the para isomer at 103 ppm (Haley, Detrick, Komesu et al. 1959/Ex. 1–326). The work of Cornish, Bahor, and Ryan (1962/Ex. 1–410) showed that none of the isomers caused skin irritation in rabbits following a 24-hour dermal application. For terphenyls that are approximately 40-percent hydrogenated, the acute oral LD_{50} in rats is reported as 17,500 mg/kg; in mice, it is 12,500 mg/kg (Adamson and Weeks 1973/Ex. 1–295). This study also demonstrated that an irradiated hydrogenated terphenyl mixture is three times more acutely toxic by ingestion than is a nonirradiated mixture. This finding was confirmed in 18-week chronic ingestion studies (Adamson, Bowden, and Wyatt 1969/Ex. 1–293); these authors found that 1200 mg/kg of an irradiated mixture was lethal to mice, while the same dose in nonirradiated form produced only an irreversible interstitial nephritis. In the same study, no effects were observed for either mixture at a dose level of 250 mg/kg.

Eight-day inhalation studies in mice showed some pathologic changes in lung tissue after 500 mg/m^3 (50 ppm) exposures to nonirradiated hydrogenated terphenyls; eight-week exposures at 2000 mg/m^3 (200 ppm) resulted in the same lung damage, as well as in some proliferation of the smooth endoplastic reticulum in the liver (Adamson, Bowden, and Wyatt 1969/Ex. 1–293; Adamson and Weeks 1973/Ex. 1–295). Carcinogenesis in mice has been reported from 8-week skin exposures to the irradiated mixture (Henderson and Weeks 1973/Ex. 1–784). The significance of the changes observed by Adamson and Furlong (1974/Ex. 1–294) in the mouse lung after eight weeks of inhalation exposure to the irradiated mixture is difficult to interpret in terms of the potential of the hydrogenated terphenyls to cause pulmonary cancer; particles were found to clear the lungs rapidly but to accumulate and clear more slowly in the intestine, kidney, and liver. No comments other than those of NIOSH (Ex. 8–47) were received on this substance.

In the final rule, OSHA is establishing a 0.5-ppm 8-hour TWA for the complex mixtures of ortho-, meta-, and para-terphenyls (either irradiated or nonirradiated) in various stages of hydrogenation. The Agency concludes that this limit will protect workers from the significant risks of eye, skin, and lung damage and of systemic toxicity to the liver, kidneys, and blood-forming organs, all material health impairments that are potentially associated with exposure to these substances at levels above the new PEL.

2-ISOPROPOXYETHANOL

CAS: 109-59-1; Chemical Formula: $(CH_3)_2CHOCH_2CH_2OH$
H.S. No. 1223

OSHA had no former limit for 2-isopropoxyethanol. The ACGIH has a TLV–TWA of 25 ppm for this mobile liquid. The proposed PEL was 25 ppm as an 8-hour TWA, and the final rule establishes this limit.

2-Isopropoxyethanol has been demonstrated to produce systemic toxicity in laboratory animals. In studies of rats, 15 six-hour exposures at 1000 ppm caused hemoglobinuria, anemia, and lung congestion, but no fatalities (Gage 1970/Ex. 1–316). At 300 ppm, Gage reported transient hemoglobin and MCHC decreases and lung congestion after 15 exposures. Exposure at the 100-ppm level produced no effect (Gage 1970/Ex. 1–316). Another study reported a significant increase in the osmotic fragility of erythrocytes in female rats after a four-hour inhalation exposure to 62 ppm, but no effect was observed at 32 ppm (Carpenter, Pozzani, Weil et al. 1956/Ex. 1–303). Studies of four species exposed at concentrations of 200, 50, or 25 ppm for six hours/day for 26 weeks resulted in hematologic changes only in rats; increased osmotic fragility of erythrocytes was marked at 200 ppm, slight at 50 ppm, and minimal at 25 ppm (Moffett, Linnett, and Blair 1978, as cited in ACGIH 1986/Ex. 1–3, p. 235).

NIOSH (Ex. 8–47) did not concur with OSHA's proposed limit of 25 ppm, noting that 25 ppm represented an effect level. Although "slight" increases in osmotic fragility were reported in animals subchronically exposed (Moffett, Linnett, and Blair 1976, as cited in ACGIH 1986/Ex. 1–3, p. 235), OSHA notes that a marked reaction did not occur until exposure was increased eightfold. Therefore, at this time, OSHA judges the 25-ppm PEL to be sufficiently protective.

OSHA is establishing an 8-hour TWA PEL of 25 ppm for 2-isopropoxyethanol in the final rule. The Agency concludes that this limit will substantially reduce the significant risk of hemolytic effects, which are material health impairments that are associated with exposure to this substance at levels above the new PEL.

ISOPROPYL GLYCIDYL ETHER

CAS: 4016-14-2; Chemical Formula: $C_6H_{12}O_2$
H.S. No. 1227

OSHA's former limit for isopropyl glycidyl ether (IGE) was 50 ppm as an 8-hour TWA. The ACGIH has an 8-hour TWA of 50 ppm and a 15-minute STEL of 75 ppm for IGE. NIOSH (Ex. 8–47, Table N7) recommends a limit of 50 ppm as a 15-minute ceiling. OSHA proposed an 8-hour TWA of 50 ppm and a 15-minute STEL of 75 ppm for IGE, and these limits are established in the final rule. IGE is a colorless, volatile liquid.

The 4-hour LC_{50} for IGE in mice was 1500 ppm and the 8-hour LC_{50} in rats was 1100 ppm (Hine, Kodama, Wellington et al. 1956/Ex. 1–331). The intragastric LD_{50}s in mice and rats were 1.30 and 4.2 g/kg, respectively; in rabbits, the dermal LD_{50} was 9.65 g/kg (Hine, Kodama, Wellington et al. 1956/Ex. 1–331). Fifty daily seven-hour exposures of rats to 400 ppm caused a reduced rate of weight gain, an increase in hemoglobin, a decrease in peritoneal fat, and, in some animals, emphysematous lungs and mottling of the liver (Hine, Kodama, Wellington et al. 1956/Ex. 1–331). Animals in this study also exhibited signs of ocular irritation and respiratory distress.

In humans, eye, nose, and upper respiratory irritation occurred in the technicians handling the animals in the Hine and co-workers (1956/Ex. 1–331) study; exposure levels were not specified. Dermatitis has also been reported in workers exposed to other glycidyl ethers during manufacture, and one such case involved IGE exposure (ACGIH 1986/Ex. 1–3, p. 340).

In the final rule, OSHA is retaining the 8-hour TWA of 50 ppm and adding a 15-minute STEL of 75 ppm for IGE. The Agency concludes that both the TWA and STEL are necessary to reduce the risk to workers of chronic organ effects, such as those demonstrated to occur in animals (Hine, Kodama, Wellington et al. 1956/Ex. 1–331), and the significant risk of eye, skin, and upper respiratory tract irritation associated with short-term IGE exposures at the levels permitted in the absence of a short-term limit. OSHA considers sensory irritation, dermatitis, and chronic organ effects to be material impairments of health.

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4,4'-METHYLENE BIS(2-CHLOROANILINE)

CAS: 101-14-4; Chemical Formula: $CH_2(C_6H_4ClNH_2)_2$
H.S. No. 1273

Previously, OSHA had no limit for 4,4-methylene bis (2-chloroaniline), or MBOCA, although in 1974, OSHA did issue a standard for MBOCA as part of the Agency's "14 Carcinogens" rulemaking; however, the reviewing court set the MBOCA standard aside on procedural grounds. The ACGIH has a limit of 0.02 ppm (0.22 mg/m³) TWA, with a skin notation, and classifies MBOCA as a suspected human carcinogen (A2). NIOSH recommends a TWA limit of 3 μg/m³ for MBOCA, which NIOSH considers a potential occupational carcinogen. OSHA proposed an 8-hour TWA of 0.02 ppm TWA for MBOCA, with a skin notation; the final rule establishes these limits. MBOCA is a tan-colored solid.

MBOCA is highly toxic, causing cyanosis, kidney irritation, methemoglobinemia, and cancer. It is similar in effect to the other aromatic amines (Hosein and van Roosmalen 1978/ Ex. 1–1054; Mastromatteo 1985/Ex. 1–146).

Steinhoff and Grundmann (1960/Ex. 1–782) demonstrated that feeding MBOCA at unspecified levels to rats on a protein-deficient diet caused a high incidence of liver cancer. Rusafield, Homburger, Boger and associates (1975/ Ex. 1–929) reported liver and lung tumors in rats fed MBOCA while on a standard diet. Dogs fed MBOCA at a dose of 100 mg/day, five days/week showed no hepatic cancer, but malignant nodules in the bladder occurred in a dog fed MBOCA for nine years (Stula et al. 1977, as cited in ACGIH 1986/Ex. 1–3, p. 392.4).

In industry, reversible hematuria has been reported among MBOCA-exposed workers, but precise concentration data are lacking (Mastromatteo 1985/Ex. 1–146). An early study of workers exposed for as long as 18 years to MBOCA showed no adverse effects, although the substance and its metabolites were detected in the urine of these subjects (Linch, O'Connor, Barnes et al. 1971/Ex. 1–791). Hosein and van Roosmalen (1978/Ex. 1–1054) reported an industrial accident in which molten MBOCA was splashed in a worker's face; urinary levels of 3.6 mg/L MBOCA, as well as protein, were detected in the urine, and the subject experienced nausea. However, this worker recovered quickly.

A recent NIOSH retrospective study involving 370 workers employed in a MBOCA-manufacturing plant evaluated the carcinogenicity of this substance, which is structurally similar to benzidine. This study found two cases of bladder cancers in very young workers (less than 30 years of age), both of whom were nonsmokers.

The Polyurethane Manufacturers Association (PMA) expressed its support for establishing a 0.02-ppm TWA for MBOCA, stating that the proposal "will significantly assist in assuring that any exposure to the chemical is appropriately controlled while imposing a regulation which can be feasibly complied with by employers" (Ex. 3–663, p. 4). In addition, the PMA indicated that, with currently applied engineering and work practice controls, MBOCA "can be used with no or very limited employee exposure" (Ex. 3–663, p. 5). The PMA also supported establishment of a PEL for MBOCA "to provide OSHA with a chemical-specific enforcement capability to deal with any isolated instances where a user of the chemical also disregards recognized industry practices and fails to reasonably control employee exposure to the chemical" (Ex. 3–663, p. 7). The PMA supported the addition of a skin notation for MBOCA, identifying dermal contact as a "principal potential route for employee exposure" (Ex. 3–663, p. 7).

NIOSH (Ex. 8–47, Table N6B) did not concur with OSHA's proposed PEL and recommended instead that the Agency undertake a separate 6(b) rulemaking for MBOCA. OSHA is aware of the two bladder cancer cases reported by NIOSH, and will continue to monitor the toxicologic evidence on MBOCA in the future to determine whether the evidence warrants a further reduction in the exposure limit. The AFL–CIO (Ex. 194) urged OSHA to promulgate ancillary limits for MBOCA; however, as discussed in Section IV.D., the Agency is not at this time promulgating such provisions because of the size and scope of this rulemaking.

In the final rule, OSHA is establishing an 8-hour TWA limit of 0.02 ppm for MBOCA, with a skin notation. The Agency concludes that this limit will protect workers against the significant risks of cyanosis, methemoglobinemia, kidney irritation, and bladder cancer, all material health impairments potentially associated with exposure to this substance. A skin notation is established to protect against the percutaneous absorption and systemic toxicity demonstrated by this substance in industrial accidents.

PHENYLHYDRAZINE

CAS: 100-63-0; Chemical Formula: $C_6H_5NHNH_2$
H.S. No. 1317

OSHA's former limit for phenylhydrazine was 5 ppm TWA as an 8-hour, with a skin notation. The ACGIH has a TLV–TWA of 5 ppm with a STEL of 10 ppm, and a skin notation. NIOSH (1978e/Ex. 1–263) recommends that workplace exposures not exceed 0.14 ppm as measured over a two-hour period. OSHA proposed to retain the PEL of 5 ppm as an 8-hour TWA and to add a STEL of 10 ppm, with a skin notation, and these limits are established in the final rule. Phenylhydrazine may be either yellow crystals or an oily liquid that darkens on exposure to air and light.

No data are available on the effects of phenylhydrazine resulting from inhalation. The ACGIH limits are based on the high acute toxicity of the compound when administered orally or subcutaneously to animals; single doses on the order of 20 mg/kg have resulted in the death of dogs within 22 days (Hesse, Franke, and Hering 1935/Ex. 1–785) and produced a marked decrease in erythrocyte count in rodents (von Oettingen and Deichmann-Greubler 1936/Ex. 1–771). Anemia and hemolysis are the characteristic responses seen in animals fed or injected with phenylhydrazine.

In its criteria document on the hydrazines, NIOSH (1978e/Ex. 1–263) reviewed four studies on the carcinogenicity of phenylhydrazine in mice. One study (Toth and Shimizu 1976/Ex. 1–675) found significant increases in blood vessel tumors. Another study (Clayson, Biancifiori, Milia, and Santilli 1966, as cited in ACGIH 1986/Ex. 1–3, p. 477) reported increased incidences of lung adenomas and adenocarcinomas. Two other studies (Roe, Grant, and Millican 1967/ Ex. 1–659; Kelly, O'Gara, Yancy et al. 1969/Ex. 1–703) were negative. NIOSH concluded that phenylhydrazine should be considered a potential human carcinogen and recommended that exposures not exceed 0.14 ppm over a two-hour sampling period, which represents the lowest level that can be detected reliably. The ACGIH (1986/Ex. 1–3) has placed phenylhydrazine on its A2 (suspected human carcinogens) list.

NIOSH (Ex. 8–47, Table N6B; Tr. 3–97 to 3–98), the Workers Institute for Safety and Health (WISH) (Ex. 116), the AFL–CIO (Ex. 194), the Oil Chemical and Atomic Workers (Tr. 9–218), and the American Industrial Hygiene Association (Ex. 8–16) were of the opinion that OSHA's proposed revision of the PEL for phenylhydrazine was not sufficiently protective. NIOSH (Ex. 8–47) indicated that phenylhydrazine may be a suitable candidate for an individual 6(b) rulemaking. Typical of the views of these commenters was the statement of

WISH (Ex. 116), which commented that the ACGIH had, at one time, considered reducing its 5-ppm TLV–TWA, and cited a 1974 study in which rabbits given intravenous injections of phenylhydrazine showed blood and liver effects. The evidence of phenylhydrazine's possible carcinogenicity was also cited by WISH as additional support for a more stringent limit. In response, OSHA notes that the Agency is also concerned about the evidence for these adverse effects of phenylhydrazine exposure and will continue to monitor and evaluate the toxicologic literature on phenylhydrazine to determine whether there is a need in the future for a further reduction in the occupational exposure limit.

However, at the present time, OSHA is retaining the 5-ppm 8-hour TWA and adding a 10-ppm STEL for phenylhydrazine; the skin notation is also retained. The Agency concludes that these two limits will work together to keep workplace exposures well controlled and will reduce the significant health risks associated with exposure to this substance. These risks include acute blood-related toxicity and may also include cancer; these effects clearly constitute material impairments of health. OSHA finds that the TWA and STEL limits established in the final rule will substantially reduce these significant risks.

PHENYLPHOSPHINE

CAS: 638-21-1; Chemical Formula: $C_6H_5PH_2$
H.S. No. 1318

OSHA had no former requirement for limiting worker exposure to phenyl phosphine; NIOSH also has no REL for this substance. The ACGIH has recommended a ceiling limit of 0.05 ppm for this solid. The proposed PEL was a ceiling of 0.05 ppm; NIOSH (Ex. 8–47, Table N1) concurred with the proposed limit, and this limit is established in the final rule.

A 90-day inhalation study conducted by the du Pont Company, in which rats and beagle dogs were exposed to average concentrations of 0.6 ppm or 2.2 ppm phenylphosphine for six hours per day, five days per week, showed that rats exposed to 2.2 ppm had significant hematologic changes and testicular degeneration (E.I. du Pont de Nemours & Co., Inc. 1970, as cited in ACGIH 1986/ Ex. 1–3, p. 479). These effects were not noted among rats exposed to 0.6 ppm, but rats exposed at the lower level did show hypersensitivity to sound and touch and mild hyperemia. The dogs tolerated the higher exposure level better than the rats in that some regeneration of testicular damage occurred in dogs during a one-month recovery period. Dogs exposed to 0.6 ppm exhibited intermittent nausea, diarrhea, lacrimation, and hind leg tremor (ACGIH 1986/Ex. 1–3). The ACGIH considered 0.6 ppm to be an NOE level for severe effects in animals and recommended a 0.05-ppm ceiling TLV to provide a tenfold safety margin to protect workers against the changes exhibited by the test animals at the 0.6-ppm level. No comments other than that from NIOSH (Ex. 8–47) were received by OSHA.

OSHA concludes that workers formerly exposed to uncontrolled levels of phenylphosphine were at significant risk of experiencing the nausea, irritation, and CNS effects found to be associated with such exposures in animals. OSHA finds that these effects constitute material health impairments. The Agency concludes that the final rule's ceiling of 0.05 ppm will reduce these significant risks substantially.

PHOSPHINE

CAS: 7803-51-2; Chemical Formula: PH_3
H.S. No. 1321

OSHA formerly had a PEL of 0.3 ppm TWA for phosphine. The ACGIH recommends a TLV–TWA of 0.3 ppm and a TLV–STEL of 1.0 ppm. The proposal retained the 8-hour TWA of 0.3 ppm and added a STEL of 1 ppm. NIOSH (Ex. 8–47) concurred with this proposal. These limits are established in the final rule. Phosphine is a colorless gas with a disagreeable, garlic-like odor.

Early studies reported that laboratory animals could tolerate phosphine in four-hour-daily exposures of 5 ppm for two months, but fatalities were observed from seven similar exposures at 10 ppm (Muller 1940/Ex. 1–919). In 1975, Waritz and Brown (Ex. 1–451) reported a 4-hour LC_{50} of 11 ppm in rats; these lethal exposures caused effects typical of respiratory irritation.

Prior to 1958, numerous cases of phosphine-related occupational poisonings and deaths were reported, including a fatality caused by pulmonary edema that was attributed to an exposure of 8 ppm for two hours daily (Harger and Spolyar 1958/Ex. 1–327). Sublethal symptoms (without chronic effects) occurred at phosphine exposures averaging 10 ppm or less, with excursions of up to 35 ppm; recorded symptoms included diarrhea, nausea, vomiting, respiratory distress, and dizziness (Jones, Jones, and Longley 1964/Ex. 1–420). The literature contains no documented reports of chronic poisoning caused by prolonged exposure to phosphine, although several authorities have asserted that this is a possibility (Henderson and Haggard 1943e/Ex. 1–1086; Fairhall 1957h, as cited in ACGIH 1986/Ex. 1–3, p. 883; Johnstone and Miller 1960/Ex. 1–1114; Patty 1963f, as cited in ACGIH 1986/Ex. 1–3, p. 883; American Industrial Hygiene Association (AIHA) 1964/Ex. 1–407).

Joel Carr, Health and Safety Research Director for the American Federation of Grain Millers Union, testified on the toxicology of and employee exposures to phosphine in grain elevators and flour mills (Ex. 8–1; Tr. pp. 7–240 to 7–259). Mr. Carr described a report of a group of industrial hygiene studies published by NIOSH (Zaebst 1986; Zaebst, Blade, Morelli-Schroth et al. 1987; Zaebst, Blade, Burroughs et al. 1988), in which applicators of phosphine were found to be exposed above the proposed TWA PEL and STEL; nonapplicator workers also become exposed while working near fumigated grain, while loading or transferring fumigated grain, or while working in elevators and mills.

Mr. Carr also cited additional health studies, including a report of chronic neurological problems following an acute episode of phosphine poisoning (Kurzbauer and Keise 1987), animal data indicating that phosphine inhibits catalase activity (Price and Walter 1987), and studies showing phosphine to be mutagenic both *in vitro* and *in vivo* (*Occupational/Environmental Pathology Review* 1988) (Tr. p. 7–246; Ex. 45A). He cited another NIOSH report (*Studies of the Prevalence of Chronic, Non-Specific Lung Disease and Related Health Problems in the Grain Handling Industry*, Rankin et al. 1988) that identified several symptoms associated with phosphine exposure, including headaches, dizziness, diarrhea, nausea, and dyspnea, as well as palpable abdomen (Tr. p. 7–247). Mr. Carr also mentioned the preliminary results of an NCI mortality study of grain workers in which elevated relative risks were found for non-Hodgkin's lymphoma (Tr. p. 7–254). Mr. Carr urged OSHA to adopt a short-term limit of 0.3 ppm, which is consistent with EPA's Maximum Concentration Limit for phosphine applicators (Tr. p. 7–250); in addition, he recommended that OSHA establish provisions for exposure and medical monitoring, training, and respiratory protection for phosphine.

OSHA appreciates the information supplied by Mr. Carr on phosphine toxicity and awaits completion of the ongoing studies discussed by him at the hearing. In response to Mr. Carr's request that OSHA establish other requirements in addition to the PEL, OSHA notes that the Agency is currently conducting rulemaking activities to develop generic standards

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for respiratory protection, medical surveillance, and exposure monitoring, but that the sole purpose of this rulemaking is to revise OSHA's outdated exposure limits.

In the final rule, OSHA is retaining the 8-hour TWA PEL for phosphine of 0.3 ppm and adding a 15-minute STEL of 1 ppm. The Agency concludes that both of these limits are required to substantially reduce the significant risk of lung damage, diarrhea, and nausea, all material health impairments associated with elevated short-term and long-term exposure to this gas.

PIPERAZINE DIHYDROCHLORIDE

CAS: 142-64-3; Chemical Formula: $C_4H_{10}N_2 \cdot 2HCl$
H.S. No. 1330

Previously, OSHA had no limit for piperazine dihydrochloride. The ACGIH recommends a TLV–TWA limit of 5 mg/m³. The proposed PEL was an 8-hour TWA of 5 mg/m³; NIOSH (Ex. 8–47) concurred with the proposed PEL, and this limit is established in the final rule. Piperazine dihydrochloride is a solid.

Piperazine dihydrochloride is a water-soluble solid with low systemic toxicity and mild irritant properties; the compound is biologically active. The oral LD_{50} for rats has been reported as 4.9 g/kg (NIOSH 1984, as cited in ACGIH 1986/Ex. 1–3, p. 491).

Eye and skin irritation have been reported as a result of human exposures to high (not further specified) levels of piperazine dihydrochloride; subjects experienced mild to moderate skin burns and sensitization. Inhalation of the dust has been associated with asthmatic reactions (Dow Chemical Company 1977h, as cited in ACGIH 1986/Ex. 1–3, p. 491). OSHA received no comments other than that from NIOSH (Ex. 8–47) on this substance.

In the final rule, OSHA is establishing a limit of 5 mg/m³ as an 8-hour TWA for piperazine dihydrochloride. The Agency concludes that this limit will reduce the significant risks of sensitization and eye and skin irritation, which constitute material health impairments and are potentially associated with exposures to this substance at levels above the new limit.

n-PROPYL NITRATE

CAS: 627-13-4; Chemical Formula: $CH_3CH_2CH_2ONO_2$
H.S. No. 1340

OSHA formerly had an 8-hour TWA limit of 25 ppm for n-propyl nitrate. The ACGIH has a 25-ppm TWA and a 15-minute STEL of 40 ppm; these limits were proposed by OSHA. NIOSH (Ex. 8–47) concurred with these proposed limits, and these limits are established in the final rule. n-Propyl nitrate is a pale yellow liquid with a sickly sweet odor.

Rats inhaling propyl nitrate vapor for four hours at a concentration of 10,000 ppm exhibited cyanosis and methemoglobinemia before they died (Hood 1953, as cited in ACGIH 1986/Ex. 1–3, p. 505). The intravenous LD_{50} in unanesthetized rabbits has been reported to be between 200 and 250 mg/kg; in anesthetized dogs and cats, intravenous doses of between 100 and 200 mg/kg were usually fatal (Murtha, Stabile, and Wills 1956/Ex. 1–649). Murtha and associates (1956/Ex. 1–649), who conducted these studies, concluded that n-propyl nitrate exerts a direct action on the vascular smooth muscle and that the ensuing cardiac effects and respiratory depression contribute to the compound's hypotensive action (Murtha, Stabile, and Wills 1956/Ex. 1–649). Inhalation trials in mice, rats, hamsters, guinea pigs, and dogs have established 4-hour LC_{50} values ranging from 9000 to 10,000 ppm for rats, 6000 to 7000 ppm for mice, and 2000 to 2500 ppm for dogs. Dogs survived repeated exposures (six hours/day, five days/week) at 280 ppm for six months, although slight clinical signs were observed during the first two weeks of exposure (Rinehart, Garbers, Greene, and Stoufer 1956/Ex. 1–524). The percutaneous toxicity of n-propyl nitrate is low but may cause inflammation and thickening of the skin after repeated exposures; these effects are sometimes transient (ACGIH 1986/Ex. 1–3, p. 505). To protect against cardiovascular and respiratory depressant effects requires both TWA and STEL limits. NIOSH (Ex. 8–47) was the only commenter to the rulemaking record for this substance.

In the final rule, OSHA is retaining the PEL of 25 ppm TWA and adding a STEL of 40 ppm for n-propyl nitrate. The Agency concludes that this combined PEL–STEL limit will protect workers against the significant risk of cyanosis, methemoglobinemia, and hypotension, all material health impairments are potentially associated with exposure to n-propyl nitrate at levels above the 8-hour TWA PEL.

SODIUM FLUOROACETATE

CAS: 62-74-8; Chemical Formula: $CH_2FCOONa$
H.S. No. 1366

The former OSHA standard for sodium fluoroacetate was 0.05 mg/m³ as an 8-hour TWA, with a skin notation. The ACGIH has established exposure limits of 0.05 mg/m³ TLV–TWA and 0.15 mg/m³ TLV–STEL, with a skin notation. The proposal retained the former 8-hour TWA PEL and added a STEL of 0.15 mg/m³, with a skin notation; NIOSH (Ex. 8–47) concurred with this proposal, and these limits are established in the final rule. The skin notation is retained. Sodium fluoroacetate is a fine white powder, which is sometimes dyed black for commercial use.

Sodium fluoroacetate causes vomiting, convulsions, and ventricular fibrillation. It is highly toxic by inhalation, ingestion, or via absorption through the skin (*Occupational Health Guidelines for Chemical Hazards*, NIOSH/OSHA 1981). The ACGIH calculated and set the threshold limit of 0.05 mg/m³ based on studies of rats indicating an oral LD_{50} of 1.7 mg/kg (Lehman 1951/Ex. 1–790). Tissue changes in rats were noted in a later study by the same author in which the animals were fed 0.25 mg sodium fluoroacetate/kg/day (Lehman 1952, as cited in ACGIH 1986/Ex. 1–3, p. 534); the equivalent level in humans would be 17 mg/person/day. A further study by Miller and Phillips (1955, as cited in ACGIH 1986/Ex. 1–3, p. 534) examined growth rates in rats fed various dosages of sodium fluoroacetate. Rats who received 10 ppm in their diet experienced a transient fluctuation in growth rate. At 20 ppm (approximately 2 mg/kg in young rats), the growth rate declined markedly the first week; the rats survived and resumed growth at the normal rate in three to four weeks. Tolerance for the chemical lasted less than two weeks, and those rats who had adjusted to sodium fluoroacetate showed a second retardation of growth when returned to a dietary level of 20 ppm after a two-week interval of eating a normal diet. Miller and Phillips (1955, as cited in ACGIH 1986/Ex. 1–3, p. 534) noted that rats conditioned to a dietary level of 20 ppm were then able to adjust to a level of 40 ppm (a dose that is greater than the single LD_{50} dose per day). The comment from NIOSH (Ex. 8–47) was the only one made to the record on sodium fluoroacetate.

In the final rule, OSHA is retaining the 8-hour TWA of 0.05 mg/m³ and adding a STEL of 0.15 mg/m³ for sodium fluoroacetate; the skin notation is also retained. The Agency concludes that the 8-hour TWA and short-term exposure limits, with a skin notation, will reduce the risk of systemic effects possible as a result of short-term exposures above the 8-hour TWA of 0.05 mg/m³.

TRIMETHYLBENZENE

CAS: 25551-13-7; Chemical Formula: $(CH_3)_3C_6H_3$
H.S. No. 1412

OSHA formerly had no exposure limit for trimethylbenzene. The ACGIH TLV for all isomers of trimethylbenzene is 25 ppm as an 8-hour TWA. The proposed PEL was 25 ppm as an 8-hour TWA; NIOSH (Ex. 8–47, Table N1) concurred with the 25-ppm TWA limit, and the final rule establishes this limit for this liquid.

A study by Battig, Grandjean, and Turrian (1957/Ex. 1–104) provides the basis for the final rule's limit; this work reports symptoms among 27 workers exposed to a solvent containing 30 percent 1,3,5-trimethylbenzene and 50 percent 1,2,3-trimethylbenzene. A "significant number" of these workers were reported to have experienced symptoms of nervousness, tension and anxiety, and asthmatic bronchitis. The peripheral blood of these workers "showed a tendency to hypochromic anemia" and a somewhat abnormal clotting ability. This group of workers had been occupationally exposed to total hydrocarbon concentrations ranging from 10 to 60 ppm for several years. The authors of the study recommended maintaining employee exposures below 35 ppm (Battig, Grandjean, and Turrian 1957/Ex. 1–104). No comments other than that from NIOSH (Ex. 8–47) were received on this substance.

In the final rule, OSHA is establishing a 25-ppm 8-hour PEL to reduce the significant risks of bronchitis and blood effects reported to occur in exposed workers.

TUNGSTEN AND COMPOUNDS (INSOLUBLE)

CAS: 7440-33-7; Chemical Formula: W
H.S. No. 1416

Previously, OSHA had no exposure limits for insoluble tungsten and its compounds. The ACGIH has established 5 mg/m³ as an 8-hour TWA and 10mg/m³ as a short-term exposure limit for these substances. NIOSH recommends a limit of 5 mg/m³ as a 10-hour TWA. The proposed PEL for this group of substances was 5 mg/m³ as an 8-hour TWA and 10 mg/m³ as a 15-minute STEL. NIOSH (Ex. 8–47) concurred with OSHA's proposed limits. The final rule promulgates a 5-mg/m³ 8-hour TWA and a 10-mg/m³ 5-minute STEL, measured as tungsten. Tungsten is a gray, hard metal.

Rats fed a diet containing 0.5 percent insoluble tungsten compounds died, and another group of rats fed 0.1 percent of these compounds suffered noticeable weight loss (Kinard and Van de Erve 1941/Ex. 1–492). Studies in rats fed tungsten at 2, 5, or 10 percent of their diet showed that females in all dose groups had a 15-percent reduction in weight gain (Kinard and Van de Erve 1943/Ex. 1–493). The intraperitoneal LD_{50} for tungsten metal powder in rats was 5 g/kg body weight; survivors showed minor liver and spleen changes at necropsy (Fredrick and Bradley 1946, as cited in ACGIH 1986/Ex. 1–3, p. 614). Studies of the tissues of guinea pigs intratracheally injected with tungsten metal and tungsten carbide revealed moderate interstitial cellular proliferation and no changes, respectively. However, Soviet studies involving similar intratracheal injections showed proliferation of the intra-alveolar septa (Kaplun and Mezentseva 1960, as cited in ACGIH 1986/Ex. 1–3, p. 614). The NIOSH criteria document for tungsten (1977h, as cited in ACGIH 1986/Ex. 1–3, p. 614) reports that Russian investigators found a 9- to 11-percent incidence of pulmonary fibrosis in workers exposed to tungsten (Kaplun and Mezentseva 1959/Ex. 1–961; and Mezentseva 1967, as cited in ACGIH 1986/Ex. 1–3, p. 614). NIOSH (1977h) recommended that the standard for tungsten and its insoluble compounds be set at 5 mg/m³ to protect against pulmonary effects.

Stokinger (in *Patty's Industrial Hygiene and Toxicology*, 3rd rev. ed., Vol. 2A, Clayton and Clayton 1981) reported on several epidemiological studies of workers in the "hard metal industry," in which tungsten carbide is machined. These studies describe a condition known as hard metal disease, which may be accompanied by pulmonary fibrosis. The disease is characterized by a moderate incidence of cough, dyspnea, and wheezing, a high incidence of minor radiological abnormalities with a few instances of marked abnormalities, and development of hypersensitivity asthma in some workers (which may be due to exposure to the cobalt that is used as a binding agent). The disease is progressive and potentially lethal. Stokinger (in *Patty's Industrial Hygiene and Toxicology*, 3rd rev. ed., Vol. 2A, Clayton and Clayton 1981, p. 1992) reported that, unlike other lung diseases produced by inorganic dust, there is no correlation between onset of symptoms, length of exposure, and the development of interstitial fibrosis. Analysis of the lung of one worker who had clinical signs and radiological changes showed the presence of large amounts of tungsten with much smaller amounts of other metals.

Mr. H.K. Thompson, Corporate Industrial Hygiene Manager for Caterpillar, Inc. (Ex. 3–349), questioned the need for a STEL for tungsten. OSHA believes that, given the potential seriousness of hard metal disease and the uncertainties regarding the relationship between exposure and response, a short-term limit for tungsten will provide additional assurance that the 8-hour TWA PEL is not exceeded. Therefore, in accordance with OSHA's policy for establishing STELs in this rulemaking (see Section IV.C.17, OSHA finds that a STEL for tungsten is necessary.

In the final rule, OSHA is establishing an 8-hour TWA of 5 mg/m³ and a STEL of 10 mg/m³ for tungsten and its insoluble compounds, measured as tungsten. The Agency concludes that these limits will substantially reduce the significant risk of pulmonary fibrosis and other lung effects, which constitute material impairments of health that are associated with exposure to this metal and its insoluble compounds at levels above the new PELs.

TUNGSTEN AND COMPOUNDS (SOLUBLE)

CAS: 7440-33-7; Chemical Formula: W
H.S. No. 1417

OSHA had no former limit for exposure to tungsten and its soluble compounds. The ACGIH limit is 1 mg/m³ TWA, with a 3-mg/m³ STEL, measured as tungsten. NIOSH recommends a 1-mg/m³ 10-hour TWA for tungsten and its soluble compounds. OSHA proposed an 8-hour TWA PEL of 1 mg/m³ and a 15-minute STEL of 3 mg/m³; NIOSH (Ex. 8–47, Table N1) concurred with the addition of a STEL to the 1-mg/m³ TWA limit. The final rule establishes limits of 1 mg/m³ as an 8-hour TWA and 3 mg/m³ as a 15-minute STEL, measured as tungsten. Tungsten is a grey, hard metal.

Animal studies have shown that the LD_{50} for soluble sodium tungstate when injected subcutaneously in rats ranges from 140 to 160 mg/kg (Kinard and Van de Erve 1940/Ex. 1–788). Soluble tungsten's lethal effects are the result of systemic poisoning that occurs as the compound is absorbed by multiple organs; this is followed by cellular asphyxiation (International Labour Office [ILO] 1934c, as cited in ACGIH 1986/Ex. 1–3, p. 614). Karantassis (1924, as cited in ACGIH 1986/Ex. 1–3, p. 614) also observed a systemic response in guinea pigs given soluble sodium tungstate or pure soluble tungsten either orally or intravenously; the animals developed anorexia, colic, trembling, and difficulty in breathing prior to death. Rats fed a diet containing 0.5 percent tungsten as soluble sodium tungstate or tungsten oxide died from this dose. Dietary doses of 0.1 percent tungsten oxide and the sodium salt caused weight loss in rats, but no deaths (Kinard and Van de Erve 1941/Ex. 1–492). Tungsten is believed to act by antagonizing the action of molybdenum (Higgins, Richert, and Westerfield 1956/Ex. 1–487). In its criteria document for

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tungsten (1977h, as cited in ACGIH 1986/Ex. 1–3, p. 614), NIOSH states that information on the effects of exposure to soluble tungsten compounds in the working population is not available. The ACGIH (1986/Ex. 1–3, p. 614) recommends a lower TLV for the soluble, as compared to the insoluble, compounds of tungsten because of the former's greater systemic toxicity. No comments other than those of NIOSH (Ex. 8–47) were received on this substance.

In the final rule, OSHA is establishing an 8-hour TWA of 1 mg/m³ and a STEL of 3 mg/m³ for tungsten and its soluble compounds, measured as tungsten. The Agency concludes that these limits will protect workers against the significant risks of systemic toxicity, anorexia, colic, incoordination, trembling, and dyspnea, all of which constitute material health impairments that are associated with exposure to these compounds at levels above the new PELs.

VINYLIDENE CHLORIDE (1,1-DICHLOROETHYLENE)

CAS: 75-35-4; Chemical Formula: $CH_2 = CCl_2$ H.S. No. 1428

Previously, OSHA's Z tables did not include a limit for vinylidene chloride (VDC). The ACGIH has established 5 ppm as an 8-hour TWA and 20 ppm as a 15-minute STEL. NIOSH and OSHA, in 1978, jointly recommended that employee exposure to VDC be reduced to the lowest feasible level on the basis of VDC's carcinogenicity (NIOSH/OSHA 1978/Ex. 1–1119). OSHA proposed a PEL of 5 ppm (8-hour TWA) and a STEL of 20 ppm. However, in response to record comments, the final rule promulgates a 1-ppm limit as an 8-hour TWA. Vinylidene chloride is a colorless liquid that polymerizes readily.

The acute oral LD_{50} for male rats is 2500 mg/kg (Jenkins, Trabulus, and Murphy 1972/Ex. 1–900). The LC_{50} for rats exposed to a single four-hour exposure of VDC vapor was reported as 6350 ppm in one study (Siegel, Jones, Coon, and Lyon 1971/Ex. 1–371) and 32,000 ppm in an earlier study (Carpenter, Smyth, and Pozzani 1949/Ex. 1–722). Liquid VDC causes transient irritation to the eyes of rats but has little effect on exposed skin if the VDC is allowed to evaporate (Torkelson and Rowe 1981b, as cited in ACGIH 1986/Ex. 1–3, p. 628).

Prendergast and co-workers (1967/Ex. 1–928) exposed rats, rabbits, guinea pigs, and monkeys eight hours/day, five days/week for six weeks to 395 mg/m³ (100 ppm); these authors saw no visible signs of toxicity while the exposure was in process, but rabbits and monkeys lost weight. These same species were exposed continuously to VDC concentrations of 5, 15, 25, or 47 ppm for 90 days; only the animals exposed to 5 ppm showed no increases in mortality (Prendergast, Jones, Jenkins, and Siegel 1967/Ex. 1–928).

Nasal irritation, liver cell degeneration, and retarded weight gain were reported in rats following 20 six-hour exposures to 500 ppm VDC (Gage 1970/Ex. 1–318); at 200 ppm, only nasal irritation occurred. Studies by Torkelson and Rowe (1981b, as cited in ACGIH 1986/Ex. 1–3, p. 628) in which rats, rabbits, guinea pigs, and dogs were exposed to 25, 50, or 100 ppm VDC for eight hours per day, five days per week for six months revealed injury of the kidneys and liver in all animals at all levels of exposure. Maltoni (1977/Ex. 1–985) and Maltoni, Cotti, Morisi, and Chieco (1977/Ex. 1–1090) conducted an evaluation of VCD's carcinogenicity in which mice, rats and hamsters were exposed to levels from 10 to 150 ppm for four hours per day, five days per week for 52 weeks, with results reported through week 98 of the study. In those mice exposed to 25 ppm VCD, 21 percent of the males and 1.5 percent of the females developed kidney adenocarcinomas; these tumors were not seen in rats exposed to amounts of VDC up to 150 ppm. Exposures of 100 or 150 ppm in rats did produce a significant increase in mammary adenocarcinomas, and this response was dose-related (Maltoni 1977/Ex. 1–985; Maltoni, Cotti, Morisi, and Chieco 1977/Ex. 1–1090). Overt toxicity and mortality occurred early in the studies after four-hour exposures at levels of 50 ppm in mice and 200 ppm in rats; hamsters exposed to 20 ppm VDC showed no increase in tumor incidence (Maltoni 1977/Ex. 1–965; Maltoni, Cotti, Morisi, and Chieco 1977/Ex. 1–1090).

A study by Murray, Nitschke, Rampy, and Schwetz (1979/Ex. 1–920) investigated the embryotoxic, fetotoxic, and teratogenic effects of inhaled and ingested VDC (in rats) and inhaled VDC (in rabbits). In the inhalation studies, rats were exposed to 20, 80, or 160 ppm VDC for seven hours per day. VDC was toxic to both the adults and their embryos at levels of 80 and 160 ppm among the rats, and at 160 ppm in rabbits. At exposure levels of 20 ppm in rats and 80 ppm in rabbits, neither maternal toxicity nor effects on embryonic or fetal development were noted. In the ingestion study with rats, drinking water containing 200 ppm VDC caused no toxic effects in either the rats or their offspring.

Two strains of rats exposed to 75 or 100 ppm VDC for five days/week, six hours/day for 12 months did not show a significant increase in tumors (Viola and Caputo 1977/Ex. 1–937). Other investigators exposed rats to 25 or 75 ppm by inhalation for six hours/day, five days/week for 18 months, or to 60, 100, or 200 ppm VDC in their drinking water for two years, and found no increase in tumor incidence in these animals (Rampy, Quast, Humiston et al. 1977, as cited in ACGIH 1986/Ex. 1–3, p. 628). In mice, VDC was not active either as a whole mouse skin carcinogen or by subcutaneous injection.

In other studies, VDC proved mutagenic in both *E. coli* and *S. typhimurium* strains (Greim, Bonse, Radwan et al. 1975/Ex. 1–904; Bartsch, Malaveille, Montesano, and Tomatis 1975/Ex. 1–889). VDC has been implicated as a tumor initiator in a carcinogenesis bioassay by Van Duuren, Goldschmidt, Loewengart et al. (1979/Ex. 1–936). Studies by Reitz, Watanabe, McKenna et al. (1980/Ex. 1–927) suggest that VCD's tumorigenicity is a result of its ability to initiate cell injury, rather than of its ability to alter the genetic material of an injured cell. However, VDC has been shown to alkylate DNA *in situ* and increase the rate of DNA repair to a small extent in mice (Norris and Reitz 1984/Ex. 134B). The actual cell injury is caused by VDC metabolites, which are highly reactive and cytotoxic (Maltoni 1977/Ex. 1–965; Hathway 1977/Ex. 1–900; Henechler and Bonse 1977/Ex. 1–908).

A cohort study of 138 VCD-exposed workers did not identify any VCD-related health effects in these workers (Ott, Fishbeck, Townsend, and Schneider 1976/Ex. 1–924). The cohort was too small to provide any evidence that VDC is not likely to be carcinogenic.

The Chemical Manufacturers Association submitted the results of an NTP gavage study of VDC in mice and rats (NTP 1982/Ex. 134B). The only observed significant increase in tumor incidence occurred in low-dose female mice; this increase was not considered to be related to VDC administration because similar effects were not observed in high-dose female mice, male mice, or rats. The NTP (1982/Ex. 134B) concluded that VDC was not carcinogenic in mice or rats exposed by gavage, but cautioned that a maximum tolerated dose had not been demonstrated and that previously reported studies had shown that carcinogenicity is associated with VDC inhalation by animals.

Based on the carcinogenicity evidence described above, NIOSH (Ex. 8–47, Table N6B) indicated that VDC is a suitable candidate for an individual 6(b) rulemaking. However, the CMA (Ex. 165) was of the opposite opinion, stating that the demonstrated lack of tumor response in most studies, coupled with evidence that VDC metabolism is species-specific, "demonstrates that VDC is unlikely to pose an oncogenic risk to humans" (Ex. 165, p. 42). CMA also objected to the statement by NIOSH and OSHA in the joint *Current Intelligence Bulletin on VDC* (NIOSH/OSHA 1976/Ex. 1–1119) that VDC be considered a potential carcinogen because of its structural similarity to vinyl chloride; the CMA considered this statement inappropriate, given the toxicity data available.

Matthew Gillen and Scott Schneider of the Workers Institute for Safety and Health (WISH) commented that the proposed 5-ppm PEL and 20-ppm STEL for VDC would not provide sufficient protection from systemic effects (Ex. 116). They pointed out that the study by Prendergast et al. (1967/Ex. 1–928) found 15 ppm to be the lowest effect level for increased mortality in animals, and that the Torkelson and Rowe (1981b, as cited in ACGIH 1986/Ex. 1–3, p. 628) study found liver and kidney injury in animals. These commenters stated that the "ACGIH TLV cannot be considered to provide adequate protection for this substance. Given this fact, OSHA should consider the NIOSH REL of 1 ppm as an interim value until further risk assessment studies can be carried out" (Ex. 116).

OSHA has re-examined the health evidence in light of the comment by WISH, and has determined that the proposed 5-ppm TWA PEL for VDC does not afford workers sufficient protection from systemic effects. Although it is questionable, in the Prendergast et al. (1967/Ex. 1–928) study, that the observed deaths at lower exposure levels were compound-related, histopathologic examination of animals exposed to 47 ppm showed treatment-related liver and kidney damage. Using an exposure regimen similar to occupational exposure (i.e., eight hours/day, five days/week), Torkelson and Rowe (1981b, as cited in ACGIH 1986/Ex. 1–3, p. 628) demonstrated kidney and liver toxicity in four species of animals after exposure to VDC levels as low as 25 ppm were administered for only six months.

OSHA believes that these studies clearly demonstrate that VDC can cause adverse liver and kidney damage at airborne concentrations as low as 25 to 50 ppm and suggest that VDC is a potential occupational carcinogen. Liver and kidney damage and cancer clearly constitute material health impairments within the meaning of the Act. Therefore, OSHA concludes that the proposed limits of 5 ppm as an 8-hour TWA and 20 ppm as a STEL will not sufficiently protect workers from the significant risk of organ damage, and that a further reduction in the PEL is warranted. Accordingly, OSHA is establishing a 1-ppm 8-hour TWA limit for vinylidene chloride in the final rule.

WELDING FUMES

CAS: None; Chemical Formula: Not available H.S. No. 1430

OSHA formerly had no limit for exposure to welding fumes, which are defined as fumes that are generated by the manual metal arc or oxy-acetylene welding of iron, mild steel, or aluminum. The ACGIH has set an 8-hour TWA of 5 mg/m³ for these welding fumes, measured as total particulate in the welder's breathing zone. OSHA proposed an 8-hour TWA of 5 mg/m³ for these fumes; this limit is established in the final rule. This limit applies to the total fume concentration generated during the welding of iron, mild steel, or aluminum; the fumes generated by the welding of stainless steel, cadmium, or lead-coated steel, or other metals such as copper, nickel, or chrome are considerably more toxic and should be kept at or below the levels required by their respective PELs. Welding fumes consist of metallic oxides generated by the heating of metal being welded, the welding rod, or its coatings.

Although these types of welding generally produce fumes consisting of aluminum, iron, or zinc oxides, other toxic gases may also be produced in large amounts (Ferry and Ginther 1952/Ex. 1–900; Ferry 1954/Ex. 1–782; Silverman 1956/Ex. 1–1169; Homer and Mohr 1957/Ex. 1–787). The welding of iron metals may give off fumes of manganese, silicate, and various organic binders. Aluminum welding may generate fumes consisting of fluorine, arsenic, copper, silicon, and beryllium (NIOSH 1975h and American Welding Society 1974, both as cited in ACGIH 1986/Ex. 1–3, p. 634). Eighteen different substances, including fluoride, manganese, silicon, titanium, and sodium and potassium silicates, have been measured in the fumes resulting from the welding of mild steel (ACGIH 1986/Ex. 1–3, p. 634).

Excessive exposure to welding fume can cause a variety of disorders, most notably metal fume fever. It has been estimated that 30 to 40 percent of all welders have experienced metal fume fever at some time (Abraham 1983, in *Environmental and Occupational Medicine*, W.N. Rom, ed., p. 146). This disorder, which results from exposure to freshly formed metal fume, results in the appearance of delayed, flu-like symptoms, including dyspnea, coughing, pains in muscles and joints, fever, and chills. Recovery usually requires one or two days of time away from work. In addition to fume fever, exposure to welding fume may damage the small airways, causing interstitial pneumonia (Abraham 1983).

Several commenters, the American Iron and Steel Institute (Exs. 129, 188), the Abbott Laboratories (Tr. 9–155 to 9–156), and the American Welding Society (Ex. 3–660), were of the opinion that OSHA's discussion of welding fumes in the NPRM was not clear with regard to whether the limit applied to exposure samples taken inside or outside of the welding helmet. OSHA wishes to clarify that welding fume is to be measured in the breathing zone of the welder; the specific details of the appropriate positioning of the sampler should be determined on the basis of guidance in the *Field Operations Manual* (OSHA 1984). This is consistent with a past OSH Review Commission decision (6 OSHRC 1049).

NIOSH (Ex. 8–47) stated at the hearing that welding fumes should be designated as a carcinogen. This view was also endorsed by Dr. James Melium, of the New York State Department of Health (Tr. p. 11–104). In response to these commenters, OSHA notes that there are few data sufficient to establish a dose-response for the fumes. Accordingly, OSHA believes it would be premature to identify these fumes as potential occupational carcinogens.

OSHA concludes that a PEL for welding fumes is needed to protect workers involved in the welding of aluminum, iron, or mild steel from the significant risk of metal fume fever and respiratory irritation associated with the generation of welding fumes. In the final rule, OSHA is establishing a TWA of 5 mg/m³ for these particular types of welding fumes, measured as total particulate inside the welder's breathing zone. The Agency finds that this limit will substantially reduce the significant risk of material health impairment to which manual metal arc or oxy-acetylene welders of iron, mild steel, or aluminum were previously exposed in the absence of any OSHA limit.

ZINC OXIDE (FUME)

CAS: 1314-13-2; Chemical Formula: ZnO H.S. No. 1437

OSHA's former exposure limit for zinc oxide fume was 5 mg/m³ as an 8-hour TWA. The ACGIH recommends a 5-mg/m³ TWA and also has a STEL of 10 mg/m³. NIOSH recommends a 5-mg/m³ 10-

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hour TWA limit with a 15-minute ceiling of 15 mg/m³. OSHA proposed to retain the 5-mg/m³ 8-hour TWA and to add a STEL of 10 mg/m³, and NIOSH (Ex. 8-47, Table NI) concurs with this proposal. The final rule establishes these limits. When heated, zinc oxide produces a white fume.

The most prevalent toxic effect of zinc oxide fume is a condition known as "metal fume fever," whose symptoms include chills, fever, muscular pain, nausea, and vomiting (Turner and Thompson 1926/Ex. 1-1124). Studies in the workplace have shown that welders exposed to zinc oxide fume at concentrations of 320 to 580 mg/m³ reported nausea, with the development of chills, shortness of breath, and severe chest pains 2 to 12 hours later. Most workers took approximately 4 days to recover, and some eventually developed pneumonia (Hammond 1944/Ex. 1-981). Other studies have reported the frequent occurrence of chills in workers exposed to zinc oxide at levels as low as 5 mg/m³ (Hickish 1963 and Wall 1970, both as cited in ACGIH 1986/Ex. 1-3, p. 645). Hammond (1944/Ex. 1-981) reported that workers exposed to 8 to 12 mg/m³ of zinc oxide fume did not suffer from metal fume fever.

Zinc oxide exposures of guinea pigs that lasted only an hour caused a drop in body temperature, followed 6 to 16 hours later by an increase above normal levels (Turner and Thompson 1926/Ex. 1-1124). The animals in the high-exposure group (2500 mg/m³ for three to four hours) died after exposure.

Early studies (Drinker, Thomson, and Finn 1927/Ex. 1-356) suggested that metal fume fever was unlikely to occur at concentrations below 15 mg/m³, but subsequent experience shows that exposures even at 5 mg/m³ can cause this syndrome (Hickish 1963 and Wall 1970, both as cited in ACGIH 1986/Ex. 1-3, p. 646).

NIOSH's criteria document (1975d, as cited in ACGIH 1986/Ex. 1-3, p. 645) reported that the development of metal fume fever was unlikely at levels as low as 5 mg/m³, but the Institute stated that exposures to the fume at this level could cause chronic respiratory effects. Dr. Lawrence Hecker, representing Abbott Laboratories (Ex. 8-678), objected to a STEL for zinc oxide fume. However, in both its criteria document (1975d) and post-hearing testimony (Ex. 150, Comments on Zinc Oxide Fume), NIOSH indicated that a short-term limit is necessary to "prevent pathological tissue changes in the lung from acute exposure." Therefore, OSHA finds that a STEL for zinc oxide fume is necessary to prevent or minimize these effects.

In the final rule, OSHA is retaining the 5-mg/m³ 8-hour TWA and adding a STEL of 10 mg/m³. The Agency concludes that both of these limits will protect workers from the significant risk of metal fume fever, which constitutes a material health impairment that is associated with acute and chronic exposure to zinc oxide fumes.

ZIRCONIUM COMPOUNDS

CAS: 7440-67-7; Chemical Formula: Zr
H.S. No. 1439

The former OSHA limit for zirconium compounds was an 8-hour TWA of 5 mg/m³, measured as zirconium. The ACGIH has established a TLV-TWA of 5 mg/m³, supplemented by a 10-mg/m³ STEL, (as Zr). The proposal retained the 8-hour TWA but added a STEL of 10 mg/m³; these limits are promulgated by the final rule. Zirconium compounds may be either bluish-black powders or grayish-white lustrous metals.

The toxic effects of inhalation exposures to zirconium compounds include the formation of granulomas, both in the lungs and on the skin. Sax (*Dangerous Properties of Industrial Materials*, 6th ed., 1984) reports cases of pulmonary granulomas in workers exposed to zirconium aerosols. In laboratory animals, oral toxicity is low (NIOSH 1972b, as cited in ACGIH 1986/Ex. 1-3, p. 647), and inhalation studies conducted for one year at levels of 2.5 mg zirconium/m³ dust and mist resulted in limited toxicity (Stokinger 1981c/Ex. 1-1134).

NIOSH (Ex. 8-47) recommended that zirconium tetrachloride should not be included among the compounds for which the proposed zirconium PEL is applied. NIOSH cites an animal study by Spiegl et al. (1958, as cited in ACGIH 1986/Ex. 1-3, p. 647), in which a 60-day exposure to zirconium tetrachloride at a concentration of 6 mg/m³ (six hours/day, five days/week) resulted in increased mortality in rats and guinea pigs and a decrease "of borderline significance" in blood hemoglobin and red blood cell levels in dogs. Given that the observed effect level for mortality of 6 mg/m³ is close to the proposed 5-mg/m³ limit, NIOSH (Ex. 8-47) stated that a separate PEL should be considered for zirconium tetrachloride.

At this time, OSHA is establishing the PELs as proposed for all zirconium compounds, including zirconium tetrachloride. There are no reports, other than the one cited by NIOSH, that indicate that exposure to zirconium compounds causes severe toxicity at levels near the proposed 5-mg/m³ TWA PEL; in addition, the toxic reaction of dogs exposed to 6 mg/m was of borderline significance.

OSHA concludes that the 5-mg/m³ TWA and 10-mg/m³ STEL limits for the zirconium compounds, measured as zirconium, will protect workers from the significant risk of pulmonary effects potentially associated with the short-term exposures permitted by the 8-hour TWA alone. The Agency has determined that these effects constitute material health impairments.

Conclusions for This Group of Systemic Toxicants

For the group of systemic toxicants shown on Table C8-1, OSHA concludes that the risks associated with occupational exposures are significant. As Table C8-2 shows, the systemic effects caused by such exposures include cancer, liver and kidney damage, testicular damage, fetal poisoning, central nervous system depression, and asthma, each of which constitutes material impairment of health within the meaning of the Act. Affected employees may experience dizziness, nausea, generalized weakness, respiratory irritation, blood in the urine, chest tightness, hives, and necrosis of the cornea. These effects represent significant impairments of health and functional capacity, and reducing the limits for these systemic toxins will substantially reduce these significant risks.

9. Substances for Which Limits Are Based on No-Observed Adverse-Effect Levels

Introduction

For a group of 23 toxic substances, OSHA is establishing limits based on evidence that these substances cause toxic responses at higher levels but have been shown not to produce adverse effects in animals or exposed populations at the permissible exposure limits being established. These substances are shown in Table C9-1, along with their CAS numbers, H.S. numbers, and former, proposed, and final rule limits. OSHA is establishing limits for 17 chemicals in this group that have not formerly been regulated by the Agency. The Agency is retaining its 8-hour TWA PEL and adding a STEL for two substances, reducing the 8-hour TWA and adding a STEL in the case of uranium (insoluble compounds), reducing the 8-hour TWA for one substance (petroleum distillates), and retaining the existing 8-hour TWA for two chemicals.

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Table C9-1. Substances for Which Limits Are Based On A No-Observed-Adverse-Effect Level

H.S. Number/ Chemical Name	CAS No.	Former PEL	Proposed PEL	Final Rule PEL*
1029 Atrazine	1912-24-9	--	5 mg/m³ TWA	5 mg/m³ TWA
1041 Bromacil	314-40-9	--	1 ppm TWA	1 ppm TWA
1056 p-tert-Butyltoluene	98-51-1	10 ppm TWA	10 ppm TWA 20 ppm STEL	10 ppm TWA 20 ppm STEL
1085 Chlorodifluoromethane	75-45-6	--	1000 ppm TWA 1250 ppm STEL	1000 ppm TWA
1090 o-Chlorotoluene	95-49-8	--	50 ppm TWA 75 ppm STEL	50 ppm TWA
1110 Cyclonite	121-82-4	--	1.5 mg/m³ TWA 3 mg/m³ STEL, Skin	1.5 mg/m³ TWA, Skin
1117 2,6-Di-tert-butyl-p-cresol	128-37 0	--	10 mg/m³ TWA	10 mg/m³ TWA
1134 Diethanolamine	111-42 2	--	3 ppm TWA	3 ppm TWA
1136 Diethyl phthalate	84-66 2	--	5 mg/m³ TWA	5 mg/m³ TWA

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Table C9-1. Substances for Which Limits Are Based On A No-Observed-Adverse-Effect Level (continued)

H.S. Number/ Chemical Name	CAS No.	Former PEL	Proposed PEL	Final Rule PEL*
1144 Dinitolmide	148-01 6	—	5 mg/m^3 TWA	5 mg/m^3 TWA
1147 Diphenylamine	122-39-4	—	10 mg/m^3 TWA	10 mg/m^3 TWA
1153 Diuron	330-54-1	—	10 mg/m^3 TWA	10 mg/m^3 TWA
1249 Methyl acetate	79-20-9	200 ppm TWA	200 ppm TWA 250 ppm STEL	200 ppm TWA 250 ppm STEL
1275 Metribuzin	21087-64-9	--	5 mg/m^3 TWA	5 mg/m^3 TWA
1297 Oil mist (mineral)	8012-95-1	5 mg/m^3 TWA	5 mg/m^3 TWA 10 mg/m^3 STEL	5 mg/m^3 TWA
1312 Petroleum distillates (naphtha)	8002-05-9	500 ppm TWA	400 ppm TWA	400 ppm TWA
1327 m-Phthalodinitrile	626-17 5	--	5 mg/m^3 TWA	5 mg/m^3 TWA
1332 Platinum, metal	7440-06-4	--	1 mg/m^3 TWA	1 mg/m^3 TWA
1346 Resorcinol	108-46-3	—	10 ppm TWA 20 ppm STEL	10 ppm TWA 20 ppm STEL

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Table C9-1. Substances for Which Limits Are Based On A No-Observed-Adverse-Effect Level (continued)

H.S. Number/ Chemical Name	CAS No.	Former PEL	Proposed PEL	Final Rule PEL*
1382 Tantalum, metal dust and oxide	7440-25-7	5 mg/m^3 TWA	5 mg/m^3 TWA 10 mg/m^3 STEL	5 mg/m^3 TWA
1410 Trimethyl phosphite	121-45-9	—	2 ppm TWA	2 ppm TWA
1415 Triphenyl amine	603-34-9	—	5 mg/m^3 TWA	5 mg/m^3 TWA
1418 Uranium (insoluble compounds)	7440-61-1	0.25 mg/m^3 TWA	0.2 mg/m^3 TWA 0.6 mg/m^3 STEL	0.2 mg/m^3 TWA 0.6 mg/m^3 STEL

* OSHA's TWA limits are for 8-hour exposures; its STELs are for 15 minutes unless otherwise specified; and its ceilings are peaks not to be exceeded for any period of time.

Description of the Health Effects

The substances included in this group cause a wide range of adverse health effects in both animals and humans. Unlike most of the other groupings described in this preamble, these toxicants do not affect the same target organ or system: some are central nervous system depressants, several are upper respiratory tract irritants, and still others have their primary effect on the heart, liver, and/or kidney.

The commonality among these otherwise diverse substances is that apparent no-observed-adverse-effect levels (NOAELs) have been defined for all of them; that is, there are data demonstrating that overt toxic effects caused by exposure to these substances at higher levels do not occur below a certain "no-observed-adverse-effect" level. Permissible exposure limits have been developed for these chemicals on the basis of these "no-observed-adverse-effect" levels. Table C9-2 shows the health effects observed in animals and observed or likely to occur in humans exposed to these substances.

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TABLE C9-2. Health Effects Associated With Substances for Which Limits are Based on No-Observed-Adverse-Effect Levels

H.S. Number/ Chemical Name	CAS No.	Health Effects Observed in Animals	Health Effects Observed/ Projected in Humans
1029 Atrazine	1912-24-9	Ataxia, dyspnea, convulsions	Systemic effects
1041 Bromacil	314-40-9	Irritation, thyroid damage	Thyroid effects, irritation
1056 p-tert-Butyl-toluene	98-51-1	CNS depression, respiratory tract irritation, liver and kidney changes	Nasal irritation, nausea, headache, weakness
1085 Chlorodifluoromethane	75-45-6	Cardiac sensitization	CNS effects, cardiac sensitization
1090 o-Chlorotoluene	95-49-8	Weakness, vasodilation, incoordination, convulsions, irritation	Neuropathic effects, irritation
1110 Cyclonite	121-82-4	Death	Nausea, vomiting, convulsions, unconsciousness, death
1117 2,6-Di-tert-butyl-p-cresol	128-37-0	Growth rate decrease, increase in liver weight	Systemic effects
1134 Diethanolamine	111-42-2	Impaired vision, skin irritation	Visual effects, irritation
1136 Diethyl phthalate	84-66-2	Polyneuritis, disturbance of balance	Pain, numbness, transient irritation, polyneuritis
1144 Dinitolmide	148-01-6	Liver changes	Hepatic effects

TABLE C9-2. Health Effects Associated With Substances for Which Limits are Based on No-Observed-Adverse-Effect Levels (continued)

H.S. Number/ Chemical Name	CAS No.	Health Effects Observed in Animals	Health Effects Observed/ Projected in Humans
1147 Diphenylamine	122-39-4	Liver, kidney, spleen changes	Tachycardia, bladder symptoms, hypertension, eczema
1153 Diuron	330-54-1	Anemia, methemoglobinemia	Anemia, methemoglobinemia
1249 Methyl acetate	79-20-9	—	Eye, mucous membrane irritation, chest tightness, narcosis, destruction of optic nerve
1275 Metribuzin	21087-64-9	CNS depression, thyroid and liver changes	Neuropathic effects, thyroid and liver damage
1297 Oil mist (mineral)	8012-95-1	Lung irritation	Lung irritation, pneumonitis, scrotal and skin cancer
1312 Petroleum distillates (naphtha)	8030-30-6	Motor incoordination, convulsions	Neuropathic effects, eye, throat irritation
1327 m-Phthalodinitrile	626-17-5	Skin irritation	Irritation, systemic effects
1332 Platinum, metal	7440-06-4	Tumorigen by implantation	—
1346 Resorcinol	108-46-3	Eye, skin irritation; mutagenicity; hemolytic effects	Irritation, systemic effects (methemoglobinemia, cyanosis)

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TABLE C9-2. Health Effects Associated With Substances for Which Limits are Based on No-Observed-Adverse-Effect Levels (continued)

H.S. Number/ Chemical Name	CAS No.	Health Effects Observed in Animals	Health Effects Observed/ Projected in Humans
1382 Tantalum, metal dust and oxide	7440-25-7	Bronchitis, pneumonitis, hyperemia	Pulmonary effects
1410 Trimethyl phosphite	121-45-9	Teratogenicity, ocular irritation	Lung, skin, eye irritation, reproductive effects
1415 Triphenyl amine	603-34-9	Skin irritation	Irritation
1418 Uranium (insoluble compounds)	7440-61-1	Kidney damage, blood disorders	Kidney damage, blood effects

BILLING CODE 4510-26-C

Dose-Response Relationships and No-Observed-Adverse-Effect Levels

The concept of setting limits based on a NOAE level assumes that there is a concentration at which repeated and prolonged exposure to a toxic substance causes no observable adverse effect in the majority of workers. A similar concept is widely used by a variety of Federal agencies, for example the Food and Drug Administration and the Environmental Protection Agency, to set contaminant tolerances, acceptable daily intake values, and other limits.

All of the limits for these substances have been set at a no-observed-adverse-effect or minimal effect level, regardless of the specific health endpoint being protected against. At least in part, the exposure limits for the 23 substances listed in Table C9-1 are based on data indicating that these limits are already being maintained in work environments and that these levels are both feasible and not likely to be associated with adverse health effects or symptoms in employees. These limits will also protect against any effects these substances cause at higher concentrations. Even at relatively low exposure concentrations, many of the substances in this group cause effects that can be severe and irreversible.

The following discussions describe OSHA's findings and the record evidence for the substances in this group and illustrate the material impairments of health faced by workers exposed to these toxicants in the workplace.

ATRAZINE

CAS: 1912-24-9; Chemical Formula: $C_8H_{14}ClN_5$
H.S. No. 1029

Formerly, OSHA had no limit for atrazine; an 8-hour TWA of mg/m³ was proposed. The final rule establishes this limit, which is consistent with that of the ACGIH. NIOSH (Ex. 8-47, Table N1) concurs with this limit for atrazine. Atrazine is a stable, white, crystalline compound.

Animal studies indicate that the oral toxicity of the s-triazine herbicides, of which atrazine is the best known, is relatively low. However, the ingestion of high doses can cause ataxia, dyspnea and convulsions in animals (ACGIH 1986/Ex. 1-3, p. 44). Rats, dogs, horses, or cattle fed dietary levels of more than 25 ppm of atrazine for extended periods did not exhibit adverse effects. The s-triazine herbicides are apparently excreted in urine and feces within relatively short periods of time (Bakke, Larson, and Price 1972/Ex. 1-950). The s-triazines appear to interfere with carbohydrate metabolism by blocking the production of sugars (Gysin 1962/Ex. 1-740; Gast 1956, as cited in ACGIH 1986/Ex. 1-3, p. 44).

There have not been reports of atrazine poisoning in exposed people (ACGIH 1986/Ex. 1-3, p. 44). Because there are no reports of human reactions to atrazine that can be correlated with airborne concentrations, the 5-mg/m³ limit was set on the basis of animal studies. Long-term feeding studies in dogs have established 3.75 mg/kg as the highest no-adverse-effect level (EPA 1979, as cited in ACGIH 1986/Ex. 1-3, p. 44). Assuming that lung absorption is less than 50 percent and applying a safety factor would yield an 8-hour TWA limit for humans of 5 mg/m³ (Zielhuis and van der Kreek 1979/Ex. 1-613).

Wayne Bellinger, Corporate Safety Director of ConAgra, Inc., objected to the establishment of permissible exposure limits on the basis of a "no-adverse-effect" level (Ex. 3-635). In support of this position, ConAgra referred to the proposed limit for atrazine; according to ConAgra, PELs should not be set "where there are no reports of human reactions that can be attributed to air concentrations" (Ex. 3-635, p. 2).

OSHA believes that ConAgra has misunderstood the phrase "no-observed-adverse-effect level" as it is used in toxicology. As discussed in the Description of the Health Effects section, above, this term simply means a level below which overt toxic effects have not been observed and above which they have. The use of a no-observed-adverse-effect level to establish "acceptable" exposure levels, intake values, etc. is common, both in the health effects literature and in public health agencies; this approach is widely used with substances that have threshold effects. In addition, it is standard toxicological practice to rely on animal data when human data are sparse or nonexistent, as is the case for atrazine. OSHA has reviewed the health effects evidence for this substance and finds the proposed rule's limit both appropriate and necessary to protect against significant workplace risk.

In the final rule, OSHA is establishing an 8-hour TWA PEL of 5 mg/m³ for atrazine. The Agency concludes that this limit will protect employees from the significant risk of neuropathic and metabolic effects, which constitute material health impairments that are likely to occur at levels above the new PEL.

BROMACIL

CAS: 314-40-9; Chemical Formula: $C_9H_{13}BrN_2O_2$
H.S. No. 1041

OSHA had no former permissible exposure limit for bromacil. The Agency proposed an 8-hour TWA PEL of 1 ppm for this substance, which is consistent with the ACGIH's TLV-TWA for bromacil. The final rule establishes a PEL of 1 ppm for this substance: NIOSH concurs with OSHA's determination of a PEL for bromacil (Ex. 8-47, Table N1). Bromacil is a white crystalline solid.

In two-year feeding studies in rats, no-observed-adverse-effect dietary concentrations were determined to be 12.55 mg/kg/day (1.25 ppm) for rats and 1250 ppm for dogs; the oral LD_{50} for male rats is 5200 mg/kg (Sherman and Kaplan 1975/Ex. 1-572). Inhalation studies in rats have shown that all rats tolerate a four-hour exposure to concentrations equivalent to 4800 mg/m³. Studies of guinea pigs showed no skin sensitization but displayed skin irritation after exposures at unspecified levels. Rabbits showed no clinical signs of toxicity when bromacil was applied to the skin at a dose of 5000 mg/kg (ACGIH 1986/Ex. 1-3, p. 64).

OSHA received a comment on the proposed limit for bromacil from ConAgra, Inc. (Ex. 3-635), which is of the opinion that bromacil's exposure effects do not warrant the establishment of a PEL. OSHA notes, however, that rats fed 1250 ppm (125 mg/kg/day) exhibited damage to the thyroid; the Agency finds that this evidence requires the establishment of a PEL at the 1-ppm level to protect workers exposed to this herbicide from experiencing this and other potentially adverse systemic effects.

OSHA is therefore establishing an 8-hour TWA permissible exposure limit for 1 ppm for bromacil. The Agency concludes that this limit protect employees against the significant risk of thyroid damage and irritation, which together constitute material health impairments that are potentially associated with exposure to bromacil at levels above the new PEL.

p-tert-BUTYLTOLUENE

CAS: 98-51-1; Chemical Formula: $(CH_3)_3C—C_6H_4CH_3$
H.S. No. 1056

OSHA formerly had an 8-hour TWA PEL of 10 ppm TWA for p-tert-butyltoluene; the Agency proposed to retain this limit and to supplement it with a 20-ppm STEL. The ACGIH has a TLV-TWA of 10 ppm and a TLV-STEL of 20 ppm for this substance. The final rule adopts a STEL of 20 ppm to supplement OSHA's 10-ppm 8-hour TWA PEL for p-tert-butyltoluene. NIOSH (Ex. 8-47, Table N1) concurs with the selection of these limits. p-tert-Butyltoluene is a

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colorless liquid with an aromatic, gasoline-like odor.

p-tert-Butyltoluene has been shown to have varying degrees of toxicity, depending on route of administration. It is slightly toxic on ingestion, and minimally toxic through skin exposure, but moderately toxic when inhaled (Hine, Ungar, Anderson et al. 1954/Ex. 1–983). Repeated exposures in animals have shown liver and kidney changes and microscopic degenerative hemorrhages in the spinal cord and brain, even at relatively low concentrations. The chief acute effects in animals are central nervous system depression and respiratory irritation; in rats exposed for one to seven hours daily over a 26-week period, 25 ppm daily appeared to be the no-observed-adverse-effect level (Gerarde 1960s, as cited in ACGIH 1986/Ex. 1–3, p. 85).

In humans, Hine, Ungar, Anderson et al. (1954/Ex. 1–983) observed nasal irritation, nausea, malaise, headache, and weakness associated with exposure to p-tert-butyltoluene at unspecified levels. These authors also noted cardiovascular effects, as well as effects on the central nervous system, the skin, and the respiratory tract. Half of the subjects exposed to p-tert-butyltoluene developed tremor and anxiety, and 25 percent of exposed individuals showed evidence of chemical contact irritation of the respiratory tract (Hine, Ungar, Anderson et al. 1954/Ex. 1–983).

OSHA is retaining its 8-hour TWA of 10 ppm and adding a STEL of 20 ppm for p-tert-butyltoluene. The Agency concludes that a STEL as well as a TWA will protect workers against the significant risks of central nervous and cardiovascular system effects, as well as those of irritation and nausea, all of which constitute material impairments to health that are potentially associated with short-term (one to seven hours) exposures to this substance at levels above the 8-hour TWA.

CHLORODIFLUOROMETHANE

CAS: 75-45-6; Chemical Formula: $CHClF_2$
H.S. No. 1068

OSHA formerly had no limit for chlorodifluoromethane (Freon 22). The Agency proposed an 8-hour TWA PEL of 1000 ppm, supplemented by a STEL of 1250 ppm. NIOSH (Ex. 8–47, Table N1) supported this proposal. The ACGIH has a TLV–TWA of 1000 ppm for this substance. In the final rule, OSHA is establishing an 8-hour TWA for chlorodifluoromethane of 1000 ppm; the Agency has decided not to establish a STEL for chlorodifluoromethane (see Section VI.C.17) for a discussion of OSHA's rationale with regard to STELs in this rulemaking).

Chlorodifluoromethane is a colorless, nearly odorless, nonflammable gas.

Exposure to very high atmospheric levels of Freon 22 causes stimulation and then depression of the central nervous system, followed by asphyxiation. Rats and guinea pigs exposed to concentrations of 75,000 to 100,000 ppm over a two-hour period exhibited excitation and disequilibrium; narcosis was observed at 200,000 ppm and mortality at 300,000 and 400,000 ppm (Weigand 1971/Ex. 1–1102). In mice, similar exposures to 320,000 ppm were the maximum tolerated, and the minimum lethal dose was 370,000 ppm (Karpov 1963, as cited in ACGIH 1986/Ex. 1–3, p. 127). In rabbits, the minimum concentration altering reflex responses was 11,000 to 20,000 ppm (Karpov 1963, as cited in ACGIH 1986/Ex. 1–3, p. 127). Studies of guinea pigs reported no fatalities as a result of exposure for two hours at 200,000 ppm, but mild clinical changes were observed at 50,000 ppm and minimal effects at 25,000 ppm (Underwriters' Laboratories, Inc. 1940, as cited in ACGIH 1986/Ex. 1/3, p. 127). Thirty-minute exposures at 500,000 ppm were lethal to guinea pigs (Booth and Bixby 1932/Ex. 1–1079). Karpov (1963, as cited in ACGIH 1986/Ex. 1–3, p. 127) also reported the results of a 10-month study of inhalation effects in rats, guinea pigs, dogs, and cats. Six-hour inhalation exposures to 14,000 ppm or 2000 ppm for five days/week were studied, and alterations in weight, endurance, blood chemistry, and pathology of the lungs, central nervous system, heart, liver, kidney, and spleen were seen at the 14,000-ppm level in rats, mice, and rabbits. At the 2000-ppm daily inhalation level, rats and mice showed no effects (Karpov 1963, as cited in ACGIH 1986/Ex. 1–3, p. 127). In dogs, cardiac sensitization was not observed at the 25,000-ppm level but did occur at the 50,000-ppm level (Reinhardt, Azar, Maxfield, Smith, and Mullin 1971/Ex. 1–78). No data have been published concerning the carcinogenicity, mutagenicity, or teratogenicity of this substance. OSHA received a few comments on Freon 22, from NIOSH (Ex. 8–47, Table N1), the American Industrial Hygiene Association, the du Pont Company (Ex. 3–660), and Dr. Grace Ziem (Ex. 46). du Pont and the AIHA stated that OSHA should not adopt limits (short-term, ceiling, or skin notations) for substances for which the ACGIH has deleted, or is on record as intending to delete, such limits (Exs. 8–16, 3–660). Discussions of OSHA's policy on STELs and skin notations in this rulemaking can be found in Sections VI.C.17 and VI.C.18, respectively. OSHA notes that cardiac sensitization does not occur in animals until levels reach 25 to 50 times the 1000–TWA limit and, therefore, a STEL that is 1.25 times that limit is unwarranted. Dr. Ziem (Ex. 46) reported that Freon 22's effects on heart rhythm have been seen at the 300-ppm level.

The Agency is establishing an 8-hour TWA limit of 1000 ppm for chlorodifluoromethane. OSHA concludes that this limit will provide protection against the CNS effects, asphyxiant effects, and cardiac sensitization effects (which together constitute material health impairments) that could occur as the result of exposure to Freon 22 at levels above the new PEL. The Agency finds that the new limit will substantially reduce these significant risks.

o-CHLOROTOLUENE

CAS: 95-49-8; Chemical Formula: C_7H_7Cl
H.S. No. 1090

Formerly, OSHA had no limit for o-chlorotoluene. The Agency proposed an 8-hour TWA of 50 ppm (consistent with the ACGIH's TLV–TWA) and a 75-ppm, STEL for this substance, a colorless liquid. NIOSH (Ex. 8–47, Table N1) supported this proposal. In the final rule, OSHA is establishing a 50-ppm 8-hour TWA for o-chlorotoluene. The Agency has decided not to establish a STEL (see Section VI.C.17 for a discussion of OSHA's rationale in regard to STELs for this rulemaking).

The oral LD_{50} in rats for o-chlorotoluene is greater than 1600 mg/kg. When the undiluted material was administered orally in doses ranging from 50 to 100 mg/kg, the animals experienced weakness and vasodilation at the higher dose levels, but all survived and were gaining weight two weeks later (ACGIH 1986/Ex. 1–3, p. 137). When the undiluted liquid was applied to the skin of guinea pigs in doses of 1 ml or 10 ml/kg for 24 hours, moderately severe skin irritation occurred at both dose levels. The guinea pigs lost weight over the two-week period following application, indicating percutaneous absorption of this substance; however, no dermal LD_{50} has been established for o-chlorotoluene. One drop of undiluted material in the eyes of rabbits produced a delayed erythema of the conjunctiva, although this effect cleared after 14 days (Ely 1971, as cited in ACGIH 1986/Ex. 1–3, p. 137). Rats exposed to an atmosphere of 21 mg/L (or about 4000 ppm) for six hours exhibited loss of coordination within 1.5 hours, prostration at 1.75 hours, and tremors at 2 hours. At 14,000 ppm, rats showed loss of coordination, vasodilation, labored respiration,

narcosis, and eye tearing. Rats exposed at 4000 and 14,000 ppm survived. At 175,000 ppm, one of three rats died (Ely 1971, as cited in ACGIH 1986/Ex. 1–3, p. 137). In another study, mice, rats, and guinea pigs were exposed to o-chlorotoluene at a concentration of about 4400 ppm. Mice showed gasping and convulsions within 30 minutes, and guinea pigs and rats exhibited gasping, hyperpnea, ataxia, and convulsions in 45 minutes. All animals were comatose within 60 minutes, and, except for two guinea pigs that continued to survive at 14 days, all of the animals died (Hazleton Laboratories, Inc. 1966, as cited in ACGIH 1986/Ex. 1–3 p. 137).

In rabbits, the 24-hour patch test resulted in moderate skin irritation; albino rabbits displayed conjunctival irritation from a single instillation of 0.1 ml of undiluted o-chlorotoluene, but no corneal damage was observed seven days later (Hazleton Laboratories, Inc. 1966, as cited in ACGIH 1986/Ex. 1–3, p. 137).

Data concerning human exposures are lacking; no cases of dermatitis or poisoning have been reported as a result of occupational exposure. Personal communications from several occupational health experts have recommended limits for o-chlorotoluene ranging from 25 to 200 ppm TWA (Hopton 1962, Mastromatteo 1971, Elkins 1972, Torkelson 1972, all as cited in ACGIH 1986/Ex. 1–3, p. 137). These limits were recommended on the basis of analogy with similar compounds, such as the chlorinated benzenes. OSHA received comments on o-chlorotoluene from NIOSH (Ex. 8–47, Table N1), the du Pont Company (Ex. 3–660), and the American Industrial Hygiene Association (Ex. 8–16). du Pont and the AIHA stated that OSHA should not adopt limits (short-term, ceiling, or skin notations) for substances for which the ACGIH has dropped or is on record as intending to drop such limits (Exs. 8–16 and 3–660). OSHA agrees with this view in many cases (see Sections VI.C.17 and VI.C.18 for discussions of OSHA's policy on STELs and skin notations in this rulemaking).

OSHA is establishing an 8-hour TWA PEL of 50 ppm for o-chlorotoluene. The Agency concludes that this limit will protect workers from the significant risks of eye and skin irritation and systemic poisoning, all material impairments of health that may occur following exposure to this substance at levels above the new PEL.

CYCLONITE

CAS: 121-82-4; Chemical Formula: $C_3H_6N_6O_6$
H.S. No. 1110

OSHA has not previously had a permissible exposure limit for cyclonite. The Agency proposed an 8-hour TWA of 1.5 mg/m³, a STEL of 3 mg/m³, and a skin notation, and NIOSH (Ex. 8–47, Table N1) concurred with the selection of these PELs. The ACGIH has an 8-hour TWA limit of 1.5 mg/m³ for this substance. In the final rule, OSHA is establishing a 1.5-mg/m³ 8-hour TWA PEL for cyclonite, with a skin notation; the Agency has decided not to establish a STEL for this substance (see Section VI.C.17 for a discussion of OSHA's rationale in regard to STELs). Cyclonite exists in the form of orthorhombic crystals.

Cyclonite, an explosive and a rat poison, has not been shown in animal studies to be acutely toxic. In industry, reports of poisonings as a result of occupational exposures to cyclonite were widespread as late as 1962 (Kaplan, Berghout, and Peczenik 1965/Ex. 1–338). Exposure causes central nervous system effects, including nausea, vomiting, convulsions, and unconsciousness. These clinical signs result from repeated gastrointestinal and respiratory exposures and from skin absorption (Sunderman et al. 1944, as cited in ACGIH 1986/Ex. 1–3, p. 162; von Oettingen, Donahue, Yagoda et al. 1949/Ex. 1–398). In an epidemiological study, Hathaway and Buck (1977/Ex. 1–418) reported that 8-hour TWA exposures ranging up to 1.57 mg/m³ and averaging 0.28 mg/m³ caused no identifiable abnormalities attributable to cyclonite exposure. The American Industrial Hygiene Association (Ex. 8–16) urged OSHA to drop the STEL for this substance.

OSHA is establishing an 8-hour TWA limit of 1.5 mg/m³ TWA and a skin notation for cyclonite. The Agency concludes that establishing these limits for this previously unregulated chemical will protect workers from the significant risk of neuropathic effects, which constitute material health impairments that are associated with inhalation or percutaneous exposure to cyclonite.

2,6-Di-tert-BUTYL-p-CRESOL

CAS: 128-37-0; Chemical Formula: $C_{15}H_{24}O$
H.S. No. 1117

OSHA previously had no limit for 2,6-di-tert-butyl-p-cresol (DBPD). The Agency proposed an 8-hour TWA of 10 mg/m³ for DBPD, and this limit is adopted in the final rule. NIOSH (Ex. 8–47, Table N1) concurred with the selection of this limit. The ACGIH has a TLV–TWA of 10 mg/m³ for this white crystalline compound, which is prepared from p-cresol and isobutylene. DBPD is widely used as a food preservative.

DBPD has a low order of toxicity; in extensive animal studies, ingestion has not been associated with toxic effects (ACGIH 1986/Ex. 1–3, p. 227). Deichmann and associates (1955/Ex. 1–505) reported oral LD_{50} values of 10.7 g/kg for guinea pigs, 1.7 and 1.97 g/kg for male and female rats, respectively, and ranges of between 0.94 and 2.1 g/kg for cats and between 2.1 and 3.2 g/kg for rabbits. One year of daily oral administration of 0.17 to 0.9 g/kg in dogs produced no effects, nor did a 24-month oral administration of 0.2, 0.5, or 0.8 percent DBPD in rats (Deichmann, Clemmer, Rakoczy, Bianchine et al. 1955/Ex. 1–505). Other studies have confirmed these overall results, although some growth rate decreases and liver weight increases were demonstrated in rats fed 0.01 to 0.5 percent DBPD, total daily diet (Brown, Johnson, and O'Halloran 1959/Ex. 1–621; Creaven, Davies, and Williams 1966/Ex. 1–547).

The estimated human intake of DBPD in the United States does not exceed a few milligrams daily (perhaps no more than 0.2 mg/kg body weight) (Gilbert and Golberg 1965/Ex. 1–902). These authors also observed that the no-effect dietary level for DBPD in rats is 25 mg/kg.

OSHA is establishing an 8-hour TWA limit of 10 mg/m³ for 2,6-di-tert-butyl-p-cresol. The Agency concludes that this limit will protect workers against the significant risk of material health impairments in the form of acute or chronic effects that may potentially be associated with occupational exposure to this substance at the levels permitted by the absence of any OSHA PEL.

DIETHANOLAMINE

CAS: 111-422-2; Chemical Formula: $HO(CH_2)_2NH(CH_2)_2OH$
H.S. No. 1134

OSHA formerly had no limit for diethanolamine. The proposed limit was 3 ppm (8-hour TWA), and this is also the limit adopted in the final rule. NIOSH (Ex. 8–47, Table N1) concurred with the selection of this limit. The ACGIH has established an 8-hour TWA limit of 3 ppm for this substance. Diethanolamine exists as a solid or a liquid at room temperature.

The oral LD_{50} of diethanolamine for both rats and guinea pigs has been reported to be about 2 g/kg (Dow Chemical Company 1977g, as cited in ACGIH 1986/Ex. 1–3, p. 197). Acute toxicity studies have shown that direct contact may impair vision and denature the skin if exposure is repeated. Dietary studies in rats showed no ill effects after 90 days of feeding at 20 mg/kg/day (Smyth, Carpenter, and Weil 1951/Ex. 1–

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439). NIOSH (Ex. 8–47, Table N1) was the only commenter on this substance.

OSHA is establishing an 8-hour PEL of 3 ppm TWA for diethanolamine. The Agency concludes that this limit will protect workers from the significant risks of eye damage and skin irritation, material health impairments that are associated with exposure to diethanolamine at levels above the new PEL.

DIETHYL PHTHALATE

CAS: 84–66–2; Chemical Formula: C_6H_4—$(COOC_2H_5)_2$
H.S. No. 1136

OSHA had no previous limit for diethyl phthalate. The proposed rule contained an 8-hour TWA exposure limit for this substance of 5 mg/m³, and this limit is adopted in the final rule. NIOSH (Ex. 8–47, Table N1) supported the Agency's determination. The ACGIH has a TLV–TWA of 5 mg/m³ for this stable, colorless, odorless, oily liquid with a bitter taste.

Diethyl phthalate exposure may cause polyneuritis and disturbance in vestibular function. By most routes of administration, this substance has low acute toxicity in laboratory animals. Oral LD_{50} values in the rat range between 9.5 and 31 g/kg (Shibko and Blumenthal 1973/Ex. 1–934); the intraperitoneal LD_{50} for the rat is 5.08 ml/kg (Singh, Lawrence, and Autian 1972/Ex. 1–438) and, for the mouse, 2.8 g/kg (Calley, Autian, and Guess 1960/Ex. 1–890). Chronic feeding studies lasting six or more weeks resulted in no-effect levels of 2.5 g/kg/day for the rat and 1.25 g/kg/day for the dog, with no specific lesions attributable to diethyl phthalate and no unusual incidence of tumors (Shibko and Blumenthal 1973/Ex. 1–934).

A study of workers exposed to a mixture of diethyl phthalate, dibutyl phthalate, and di-2-ethyl hexyl phthalate vapors in air at concentrations of 8 to 53 mg/m³ resulted in findings of no phthalates in the blood (before or after the exposure) and no peripheral polyneuritis (Raleigh, personal communication, as cited in ACGIH 1986/Ex. 1–3, p. 200). Fassett (1963a, as cited in ACGIH 1986/Ex. 1–3, p. 200) reported transient nasal and throat irritation produced by exposure to the heated vapors of diethyl phthalate, but no cumulative effects have been noted. A Russian study of workers (employed for between 0.5 and 19 years) who were exposed to several phthalate plasticizers (e.g., butyl phthalate, the higher aryl phthalates, dioctyl phthalate, and benzyl butyl phthalate), as well as the sebacates, adipates, and tri-o-cresyl phosphate at concentrations ranging from 1.7 to 66 mg/m³ reported that there were complaints of pain, numbness, and spasms in the upper and lower extremities. These complaints were related to the duration of exposure and usually began after the sixth or seventh year of employment (Milkov, Aldyreva, Popova et al. 1973/Ex. 1–646). These investigators reported polyneuritis in 32 percent of the 47 persons examined for this health effect; of 81 persons evaluated for vestibular dysfunction, 78 percent showed depression of vestibular receptors (Milkov, Aldyreva, Popova et al. 1973/Ex. 1–646).

OSHA is establishing an 8-hour TWA PEL of 5 mg/m³ for diethyl phthalate. The Agency concludes that this limit will protect workers against the significant risks of polyneuritis and vestibular dysfunction, which constitute material health impairments that are potentially associated with occupational exposure to this substance at levels above the new PEL.

DINITOLMIDE (3,5-DINITRO-O-TOLUAMIDE)

CAS: 148–01–6; Chemical Formula: $C_8H_7N_3O_5$
H.S. No. 1144

OSHA previously had no limit for dinitolmide. The proposed 8-hour TWA PEL was 5 mg/m³, and the final rule adopts this limit. NIOSH (Ex. 8–47, Table N1) agreed with the selection of this PEL. The ACGIH has an 8-hour limit of 5 mg/m³ TWA for this yellowish solid.

In rats, the oral LD_{50} for males is 500 mg/kg, and for females, 650 mg/kg; the ACGIH (1986/Ex. 1–3, p. 213) concludes that dinitolmide has moderate oral toxicity in rats. Two-year dietary studies of rats fed 62.5 ppm (or 3 mg/kg/day) dinitolmide reported no ill effects. Rats of both sexes fed 6 mg/kg/day showed slight fatty changes in the liver; female rats also exhibited slight liver weight increases. Dogs fed 10 mg/kg/day showed no effects after one year. A three-generational study of rats fed 3 or 6 mg/kg/day revealed no effects on fertility, gestation, viability, or lactation (Dow Chemical Company 1973e, as cited in ACGIH 1986/Ex. 1–3, p. 213). There are no inhalation data for dinitolmide.

OSHA is establishing an 8-hour TWA PEL for dinitolmide of 5 mg/m³. The Agency concludes that this limit will protect workers from the significant risk of material impairment in the form of the hepatic changes that are potentially associated with exposure to this substance at levels above the new PEL.

DIPHENYLAMINE

CAS: 122–39–4; Chemical Formula: $(C_6H_5)_2NH$
H.S. No. 1147

OSHA formerly had no limit for diphenylamine. The proposed PEL was 10 mg/m³, as an 8-hour TWA, and the final rule adopts this limit; NIOSH (Ex. 8–47, Table N1) has indicated its concurrence. The ACGIH recommends a TLV of 10 mg/m³ TWA. Diphenylamine exists as monoclinic crystalline leaflets that discolor when exposed to light.

Acute oral toxicity data for diphenylamine are limited. A single report describes a study in which a dietary dose of 1500 mg/kg killed 2 of 20 rats within 30 days of ingestion (Griswold, Casey, Weisburger et al. 1966/Ex. 1–483). This suggests that diphenylamine is significantly less toxic than aniline (Hamblin 1963/Ex. 1–1085). Dietary studies of rats fed 0.025, 0.1, 0.5, 1.0, or 1.5 percent diphenylamine for 228 days demonstrated nonmalignant renal cysts at the three highest doses (Thomas, Cox, and Deeds 1957/Ex. 1–873). However, rats given diphenylamine crystals encapsulated in collodion developed bladder papillomas within 125 days (Yoshida, Shimauchi, and Kin 1941, as cited in ACGIH 1986/Ex. 1–3, p. 220). Exposure to diphenylamine dust has been linked to liver, spleen, and kidney changes in experimental animals (Robert, Dervilée, and Collet 1937/Ex. 1–926).

A report of industrial diphenylamine poisoning in France described bladder symptoms, tachycardia, hypertension, and eczema (Fairhall 1957g, as cited in ACGIH 1986/Ex. 1–3, p. 220).

OSHA is establishing an 8-hour PEL of 10 mg/m³ TWA for diphenylamine. The Agency concludes that this limit will protect workers against the significant risks of liver, kidney, cardiovascular, and other systemic effects, all of which constitute material health impairments that are potentially associated with exposures to this substance at levels above the new PEL.

DIURON

CAS: 330–54–1; Chemical Formula: $C_9H_{10}Cl_2N_2O$
H.S. No. 1153

OSHA previously had no limit for diuron. The Agency proposed an 8-hour TWA PEL of 10 mg/m³ for diuron, and this limit is established by the final rule. NIOSH (Ex. 8–47), Table N1) agrees that this limit is appropriate. The ACGIH has a TLV of 10 mg/m³ TWA for this white crystalline solid.

Hodge and Associates (1967/Ex. 1–911; 1968/Ex. 1–012) have reported that diuron has a low order of acute and chronic toxicity. For male rats, the oral LD_{50} is 3400 mg/kg. In two-year feeding studies of rats and dogs, the no-effect levels were reported to be 250 and 125 ppm, respectively. A concentration of 125 ppm in the diet did not cause

reproductive or carcinogenic effects in a three-generational study of rats (Hodge, Downs, Panner et al. 1967/Ex. 1–911; Hodge, Downs, Smith et al. 1968/Ex. 1–912); 1400 ppm did not have carcinogenic effects in mice (Innes, Ulland, Valerio et al. 1969/Ex. 1–270). Skin irritation and sensitization test findings in guinea pigs have been negative (ACGIH 1986/Ex. 1–3, p. 228). However, repeated doses of this pre-emergence herbicide produced anemia in rats and methemoglobinemia after hydrolysis to dichloroaniline in the body (*Condensed Technical Information*, du Pont 1961).

OSHA is establishing an 8-hour TWA limit of 10 mg/m³ for diuron. OSHA concludes that this limit will protect workers from the significant risks potentially associated with workplace exposure to this substance at the levels permitted in the absence of any OSHA PEL. These risks include anemia and methemoglobinemia, both of which constitute material impairments of health. The final rule's 10-mg/m³ PEL will substantially reduce these risks.

METHYL ACETATE

CAS: 79–20–9; Chemical Formula: CH_3COOCH_3
H.S. No. 1249

OSHA's former 8-hour TWA limit for methyl acetate was 200 ppm; the Agency proposed to retain this limit and to add a STEL of 250 ppm. NIOSH (Ex. 8–47, Table N1) concurred with this proposal. The ACGIH has established an 8-hour TWA limit of 200 ppm and a TLV–STEL of 250 ppm. In the final rule, OSHA is establishing an 8-hour TWA of 200 ppm and a 15-minute STEL of 250 ppm. Methyl acetate is a highly volatile, colorless liquid with a pleasant odor.

Methyl acetate is mildly narcotic and is a known irritant to the mucous membranes of the eyes and respiratory passages. Occupational exposure to this substance by vapor inhalation at unreported levels resulted in inflammation of the eyes, nervous irritation, and a sensation of tightness in the chest (Duquenois and Revel 1934/Ex. 1–779; Fairhall 1957f, as cited in ACGIH 1986/Ex. 1–3, p. 367). Duquenois and Revel (1934/Ex. 1–779) suggested that, like methyl alcohol, methyl acetate may produce atrophy of the optic nerve.

Other researchers have suggested that the methanol formed by hydrolysis in the body may be responsible for the toxicity of methyl acetate and, on this basis, have recommended a limit of 250 ppm in the occupational setting (Henderson and Haggard 1943j, as cited in ACGIH 1986/Ex. 1–3, p. 367). However, Lehmann and Flury (1943d, as cited in ACGIH 1986/Ex. 1–3, p. 367) have attributed toxic effects (e.g., blood changes, weight loss, lung irritation), as well as some deaths, to chronic exposures to methyl acetate at 6600 ppm.

The ACGIH 1986/Ex. 1–3, p. 367) reports that "no cases of irritation or systemic injury have been reported from industrial exposures to methyl acetate below 200 ppm." There were no record comments on methyl acetate, except for the concurrence from NIOSH (Ex. 8–47, Table N1).

OSHA is establishing an 8-hour TWA PEL of 200 ppm TWA and a 15-minute STEL of 250 ppm for methyl acetate. The STEL is necessary to ensure that exposures do not exceed 250 ppm even for a short time because effects have been reported (ACGIH 1986/Ex. 1–3, p. 367) above 250 ppm. The Agency concludes that both of these limits will protect workers from the significant risk of narcosis, eye and skin irritation, and pulmonary irritation, all of which constitute material health impairments.

METRIBUZIN

CAS: 21087–64–9; Chemical Formula: $C_8H_{14}N_4OS$
H.S. No. 1275

OSHA has not formerly regulated exposure to metribuzin. The proposed PEL was 5 mg/m³. NIOSH (Ex. 8–47, Table N1) concurred with the proposal, and the final rule adopts this limit. The ACGIH has recommended a TLV–TWA of 5 mg/m³ for this substance. Metribuzin is a crystalline solid.

Metribuzin is a herbicide that has a low order of acute toxicity; single exposures to high concentrations produce central nervous system depression, and repeated high doses affect the thyroid and liver function (*Deutsche Forschungsgemeinschaft* 1981, as cited in ACGIH 1986/Ex. 1–3, p. 411). The oral LD_{50} in rats has been reported to be 2000 mg/kg; in cats and rabbits, the LD_{50} is as high as 500 mg/kg. A four-hour aerosol exposure at concentrations of between 860 and 892 mg/m³ was tolerated by rats and mice; no skin or eye irritation was observed in rabbits. No sensitizing effects were seen in guinea pigs, and a skin application of the 70-percent wettable powder of 1000 mg/kg per day for three weeks produced no effects in rats (*Deutsche Forschungsgemeinschaft* 1981, as cited in ACGIH 1986/Ex. 1–3, p. 411).

Inhalation studies have shown no adverse effects in rats exposed to 31 mg/m³ of the aerosol for six hours/day, five days/week during a three-week period (Bayer 1981, as cited in ACGIH 1986/Ex. 1–3, p. 411). No carcinogenic effects were observed in rats and mice fed 20, 800, or 3200 ppm for two years (Kimmerle 1982a, as cited in ACGIH 1986/Ex. 1–3, p. 411). A no-effect level of 100 ppm was observed in a two-year dietary study of rats and dogs (*Deutsche Forschungsgemeinschaft* 1981, as cited in ACGIH 1986/Ex. 1–3, p. 411); these same investigators observed no teratogenic, embryotoxic, or reproductive effects in rats or rabbits. In Chinese hamsters and mice, no mutagenic activity was observed (Siebert and Lemperle 1974/Ex. 1–609).

No human poisonings caused by metribuzin have been reported. In oral long-term studies, the highest no-observed-effect levels (NOELs) were 2.5 to 5 mg/kg per day (ACGIH 1986/Ex. 1–3, p. 411). Single and repeated patch tests in humans did not cause irritation or sensitization (*Deutsche Forschungsgemeinschaft* 1981, as cited in ACGIH 1986/Ex. 1–3, p. 411). Except for NIOSH's concurrence with this limit (Ex. 8–47, Table N1), no comments were received on metribuzin.

In the final rule, OSHA is establishing an 8-hour TWA PEL of 5 mg/m³ TWA for metribuzin. The Agency concludes that this limit will protect workers against the significant risks of metabolic and central nervous system effects, which are material impairments of health that are potentially associated with workplace exposure to metribuzin at the levels permitted by the absence of any OSHA limit.

OIL MIST (MINERAL)

CAS: 8012–95–1; Chemical formula: None
H.S. No. 1297

OHSA formerly had a limit of 5 mg/m³ as an 8-hour TWA for oil mist. The Agency proposed to retain mg/m³ as an 8-hour TWA PEL and to add 10 mg/m³ as a 15-minute STEL; however, the final rule retains the former 8-hour TWA but does not add a STEL. The ACGIH has a 5-mg/m³ TLV-TWA limit and a 10-mg/m³ TLV-STEL for oil mist (mineral), which refers to the airborne mist of petroleum-based cutting oils or of white petroleum oil; the odor of this substance is described as similar to that of burned lubrication oil.

Studies in animals have shown that repeated six-hour daily exposures to 5 mg/m³ caused no adverse effects (Wagner, Wright, and Stokinger 1964, as cited in ACGIH 1986/Ex. 1–3, p. 449). At 100 mg/m³, slight changes, including lung effects, were observed in exposed animals (Lushbaugh, Green, and Redemann 1950/Ex. 1–792). It has been suggested that heat-decomposed oil fumes are irritating to the lungs (Wagner, Dobrogorski, and Stokinger 1961/Ex. 1–773).

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OHSA received a number of comments on the proposed STEL for oil mist (Exs. 3–829, 3–830, 3–850, 3–1115, 188, and 194; Tr. pp. 7–47 to 7–53). For example, William Fladung, Manager of Environmental Control for the Timken Company, believes that the limits for oil mist presented in the proposed rule are not justified by the evidence discussed in the preamble to the proposal (Ex. 3–856). According to this commenter, "the only health effect observed in animals is 'lung irritation.' No health effect has been observed in humans" (Ex. 3–856). This view was shared by representatives of the independent Lubricant Manufacturers Association (Ex. 3–830), the Specialty Steel Industry of the United States (Ex. 3–829), and the Anti-Friction Bearing Manufacturers Association (Ex. 3–1115).

In response to these comments, OSHA has reviewed the toxicological evidence for oil mist. Proctor, Hughes, and Fischman (*Chemical Hazards of the Workplace*, 2nd ed., 1988) report a single case of lipoid pneumonitis in a worker repeatedly exposed to high concentrations of oil mist, and these authors also note that some mineral oils (i.e., those containing additives and impurities) have been linked to cancers of the skin and scrotum. NIOSH submitted comments to the record noting that certain types of oils and/or their additives may present a carcinogenic hazard (Ex. 150, Comments on Oil Mist.) The United Auto Workers and the AFL–CIO (Tr. pp. 7–47 to 7–53) urged OSHA to adopt a lower PEL on the basis of oil mist's carcinogenic effects. According to the UAW, oil mist "has been known for many years . . . [to] cause skin cancer, particularly scrotal cancer among exposed workers" (Tr. p. 7–50). The UAW also believes that oil mist exposure increases the risk of primary malignancies of the respiratory and upper digestive systems (Tr. p. 7–50). However, OSHA believes that these carcinogenic effects may be attributable to contaminants in the oil, such as polycyclic aromatic hydrocarbons and certain additives. OSHA also notes that modern refining techniques have generally eliminated these hazardous substances from mineral oils.

After a review of the record evidence, OSHA finds that the toxicological data on this substance do not support the addition of a STEL at this time. Accordingly, the final rule retains the 8-hour TWA PEL of 5 mg/m³ but does not add a 15-minute STEL of 10 mg/m³ for mineral oil mist. The Agency concludes that the existing 8-hour TWA limit will protect exposed employees against the significant risks of eye and respiratory tract irritation potentially associated with exposures to mineral oil mist. OSHA finds that these eye and lung effects constitute material impairments of health.

PETROLEUM DISTILLATES (NAPHTHA)

CAS: 8002-05-9; Chemical Formula: None
H.S. No. 1312

For petroleum distillates (naphtha), also identified as rubber solvent, OSHA proposed to reduce its former 8-hour limit of 500 ppm to 400 ppm. The final rule establishes an 8-hour TWA PEL of 400 ppm for petroleum distillates. The ACGIH has a TLV-TWA of 400 ppm, and NIOSH recommends a TWA of 87 ppm and a 15-minute ceiling of 450 ppm for these substances.

A study performed by Carpenter, Kinkead, Geary et al. (1975b/Ex. 1–53) exposed rats to between 2800 and 24,200 ppm of naphtha. Motor incoordination occurred at 5300 ppm, and convulsions and death occurred in all animals at 24,200 ppm. Animals exposed to 480 ppm for 63 days showed no signs of toxicity (Carpenter, Kinkead, Geary et al. 1975b/Ex. 1–53).

NIOSH (1977g, as cited in ACGIH 1986/Ex. 1–3, p. 516) noted that rubber solvent (naphtha) is composed primarily of C_6–C_9 alkanes and, thus, that the limit of 350 mg/m³ (85 ppm) recommended for C_6–C_9 alkanes should apply to naphtha. This recommendation presumes that all C_6–C_9 alkanes possess equivalent neurotoxicity; however, as discussed above in Section V (Summary of Commenters' Responses to NPRM Questions), OSHA has concluded that not all of the C_6–C_9 alkanes are neuropathic agents.

In establishing the 400-ppm TLV–TWA for petroleum distillates, the ACGIH relied on observations showing that slight irritation occurs in humans exposed to 430 ppm and that no signs of toxicity occur in animals exposed to 400 ppm. The NIOSH-recommended 85-ppm ceiling limit is based on the assumption that all C_6–C_9 alkanes possess equivalent neuropathic properties. As discussed above, OSHA has rejected this hypothesis and is therefore reducing the PEL for petroleum distillates to an 8-hour TWA limit of 400 ppm to protect workers against the significant risk of irritation, which constitutes a material health impairment that is associated with exposure to these substances. OSHA has determined that this limit will substantially reduce this risk.

m-PHTHALODINITRILE

CAS: 626-17-5; Chemical Formula: $C_8H_4N_2$
H.S. No. 1327

OSHA has no previous limit for m-phthalodinitrile. The proposed PEL was 5 mg/m³ as an 8-hour TWA, and this limit is established in the final rule. NIOSH (Ex. 8–47, Table N1) concurred with the selection of this PEL. The ACGIH has a TLV–TWA of 5 mg/m³ for this substance. meta-Phthalodinitrile exists in the form of needles obtained from solutions containing either water or ligroin as the solvent.

In rabbits, slight skin reactions have been reported from dermal applications of m-phthalodinitrile to intact or abraded skin for six hours/day, five days/week over a three-week period. The doses applied were 0.5, 1.0, and 2.0 g/kg; at the two higher dose levels, some changes in organ (unspecified) size, without histopathologic changes, were observed. Female rabbits exposed at the highest dose lost weight (Owen 1972, as cited in ACGIH 1986/Ex. 1–3, p. 488).

A 15-year review of industrial experience revealed no reports of adverse effects from exposure to m-phthalodinitrile (Zeller, Hofmann, Thiess, and Hey 1963, as cited in ACGIH 1986/Ex. 1–3, p. 488). Williams (1959/Ex. 1–1176) attributes this absence of exposure effects to the fact that the aromatic nitriles, of which m-phthalodinitrile is one, do not liberate cyanide in the body, as is the case with the aliphatic nitriles. No comments other than NIOSH's were received by OSHA on this substance.

OSHA is establishing an 8-hour TWA limit for m-phthalodinitrile of 5 mg/m³. The Agency concludes that this limit will protect exposed workers from the significant risk of skin irritation, a material health impairment that exists at m-phthalodinitrile levels about the new limit.

PLATINUM (METAL)

CAS: 7440-06-4; Chemical Formula: Pt
H.S. No. 1332

OSHA had no former limit for platinum metal. The proposed PEL was 1 mg/m³, and this limit is established in the final rule. NIOSH (Ex. 8–47, Table N1) agreed that this PEL is appropriate. The ACGIH has a limit of 1.0 mg/m³ TWA for platinum metal dust. Platinum is a silver-gray, lustrous, malleable, ductile precious metal.

Based on the TLV for platinum soluble salts and the absence of any severe health effects associated with exposure to the metal dust, the ACGIH recommended a TLV of 1.0 mg/m³ for platinum metal dust. This limit reflects good industrial hygiene practice and acknowledges that heavy metal dusts are more toxic than nuisance dusts (which are controlled to 10 mg/m³). No comments (other than that of NIOSH) were received.

OSHA is establishing an 8-hour TWA limit of 1.0 mg/m³ for platinum metal. The Agency concludes that this limit will protect workers against the significant risk of adverse health effects potentially associated with workplace exposures to this substance at the levels permitted by the absence of any OSHA PEL.

RESORCINOL

CAS: 108-46-3; Chemical Formula: $C_6H_4(OH)_2$
H.S. No. 1346

OSHA formerly had no limit for resorcinol. The proposed limit was an 8-hour TWA of 10 ppm and a 15-minute STEL of 20 ppm; the final rule establishes these limits. NIOSH (Ex. 8–47, Table N1) supports the selection of these PELs. The ACGIH has an 8-hour TWA limit of 10 ppm and a TLV–STEL of 20 ppm. Resorcinol occurs in the form of sweet-tasting white crystals that may turn pink on exposure to air and light or on contact with iron.

Resorcinol has been reported to be less toxic by ingestion or skin penetration than either catechol or phenol (von Oettingen 1949 and Koppers Company 1974, both as cited in ACGIH 1986/Ex. 1–3, p. 511). The oral LD_{50} in rats is 301 mg/kg (NIOSH 1977i/Ex. 1–1162). Daily six-hour exposures at 8 ppm for two weeks produced no ill effects in rats, guinea pigs, and rabbits. Acute inhalation exposures to a resorcinol-water aerosol at concentrations as high as 7800 mg/m³ for one hour and 2800 mg/m³ for eight hours caused no toxic effects in laboratory animals (Koppers Company 1974, as cited in ACGIH 1986/Ex. 1–3, p. 511).

In humans, the cutaneous application of solutions or salves containing from 3 to 25 percent of this compound may result in local hyperemia, itching, dermatitis, edema, corrosion, and the loss of the superficial layers of the skin. If these damages are severe, they may be associated with some or all of the following effects: enlargement of regional lymph glands, restlessness, methemoglobinemia, cyanosis, convulsions, tachycardia, dyspnea, and death (*Patty's Industrial Hygiene and Toxicology*, Vol. 2A, p. 2588, Clayton and Clayton, 1981). An epidemiologic study of rubber workers exposed to a hexamethylene-tetramine-resorcinol rubber system revealed no specific symptoms caused by resorcinol; the concentrations in air were less than 0.3 mg/m³. In another study, there were no reports of irritation or discomfort by workers when concentrations were 10 ppm or less for periods of at least 30 minutes (*Patty's Industrial Hygiene and Toxicology*, Vol. 2A, p. 2588, Clayton and Clayton, 1981). Dr. Grace Ziem (Ex. 46) notes that resorcinol exposure is also associated with renal and hepatic effects and with methemoglobinemia.

In the final rule, OSHA is establishing a PEL of 10 ppm TWA and a STEL of 20 ppm for resorcinol. The Agency concludes that this combined limit will protect workers against the significant risks of irritation, methemoglobinemia, and other adverse effects, all material impairments of health that are associated with exposure to this substance at levels above the new PELs.

TANTALUM (METAL DUST AND OXIDE)

CAS: 7440-25-7; Chemical Formulas: (Tantalum metal)TA; (Tantalum oxide)Ta_2O_5
H.S. No. 1382

OSHA's former PEL for tantalum is 5 mg/m³. The Agency proposed to retain this limit and to supplement it with a 15-minute STEL of 10 mg/m³, and NIOSH (Ex. 8–47, Tale N1) concurred with this proposal. The final rule retains an 8-hour TWA for tantalum metal dust and oxide but does not adopt the proposed STEL for these substances (see Section XI.C.17 for a discussion of OSHA's rationale in regard to STELs). The ACGIH has a 5-mg/m³ TWA but has recently deleted its former 15-minute STEL of 10 mg/m³. Tantalum dust is a black powder and tantalum oxide is a white, microcrystalline powder.

Animal studies by Miller, Davis, Goldman, and Wyatt (1953/Ex. 1–40) have not implicated tantalum as a cause of pneumoconiosis, although an exposure to 100 mg tantalum oxide produced "soft white circumscribed pigmented dust lesions" in the lungs of these animals (ACGIH 1986/Ex. 1–3, p. 554). Additionally, this particular study demonstrated transient bronchitis, interstitial pneumonitis, and hyperemia at the 100-mg exposure level. Tantalum oxide has been used as a dressing for burns (Olsen 1944/Ex. 1–651), and the use of tantalum gauze in surgical repair produced no long-term adverse effects (Dales and Kyle 1956/Ex. 1–587). No adverse health effects have been associated with industrial exposures to tantalum or its compounds (Cochran, Doull, Mazur, and DuBois 1950/Ex. 1–586). A single oral dose of 6500 mg/kg oxide was virtually nontoxic to rats (ACGIH 1986/Ex. 1–3, p. 554).

OSHA concludes that the existing 5-mg/m³ TWA for these compounds should be retained to protect workers from the respiratory effects of exposure, which constitute material health impairments. The final rule retains the Agency's former PEL of 5 mg/m³ for tantalum (metal dust and oxide).

TRIMETHYL PHOSPHITE

CAS: 121-45-9; Chemical Formula: $(CH_3O)_3P$
H.S. No. 1410

OSHA previously had no limit for trimethyl phosphite. The proposed PEL was an 8-hour TWA of 2 ppm and NIOSH (Ex. 8–47, Table N1) supported this proposal. The final rule establishes this limit. The ACGIH limit for this substance is a 2-ppm 8-hour TWA. Trimethyl phosphite is a colorless liquid with a pungent odor.

Trimethyl phosphite's toxic effects include lung, skin, and eye irritation. In a chronic inhalation study of rats, Levin and Gabriel (1973/Ex. 1–746) found that exposure to trimethyl phosphite at concentrations of 500 ± 75 ppm for 7.5 hours daily, five days/week for eight weeks caused an adverse effect on body weight and, at necropsy, revealed evidence of severe pulmonary and cutaneous pathology. At exposures of 600 ppm for six hours/day, five days/week for four weeks, 70 percent of the rats died, and 10 percent of those exposed even at 300 ppm on the same regimen died (Mobil Oil Corporation 1979, as cited in ACGIH 1986/Ex. 1–3, p. 609).

Rats exposed at 100 ppm showed signs of eye irritation, and at 300 to 600 ppm, mild to severe cataracts developed. At doses of 164 mg/kg, trimethyl phosphite caused gross abnormalities in the offspring of treated rats (Mobil Oil Corporation 1979, as cited in ACGIH 1986/Ex. 1–3, p. 609). Skin contact with trimethyl phosphite produced severe skin irritation in rabbits, and instillation in the eyes of rabbits caused temporary swelling and irritation but no permanent effects (Fassett 1963c/Ex. 1–1148).

In a group of 179 workers exposed to average concentrations of trimethyl phosphite of between 0.3 and 4 ppm, no ocular changes were observed (Mobil Chemical Company 1980, as cited in ACGIH 1986/Ex. 1–3, p. 609).

OSHA is establishing an 8-hour TWA PEL of 2 ppm for trimethyl phosphite. The Agency concludes that this limit will protect workers against the significant risk of eye damage, skin irritation, and upper respiratory tract irritation, all of which constitute material health impairments that are potentially associated with exposures to this substance at levels above the new PEL.

TRIPHENYL AMINE

CAS: 603-34-9; Chemical Formula: $(C_6H_5)_3N$
H.S. No. 1415

OSHA formerly had no exposure limit for triphenyl amine. The proposed PEL was 5 mg/m³ as an 8-hour TWA, and the

final rule adopts this limit. NIOSH (Ex. 8–47, Table N1) agrees with the selection of this PEL. The ACGIH has a 5-mg/m³ 8-hour TWA limit for this substance. Triphenyl amine takes the form of colorless monoclinic prisms.

Animal studies conducted by the Eastman Kodak Company (Roudabuah 1973, as cited in ACGIH 1986/Ex. 1–3, p. 612) showed an oral LD_{50} in rats of 3200 to 6400 mg/kg and an oral LD_{50} in mice of 1600 to 3200 mg/kg. The LD_{50} by intraperitoneal administration for both rodent species exceeded 6400 mg/kg. Skin and eye sensitivity tests in both rabbits and guinea pigs were essentially negative, except that application of 5 to 20 ml/kg occlusively for four hours produced slight erythema (Roudabush, 1973, as cited in ACGIH 1986/Ex. 1–3, p. 612).

OSHA is establishing a 5-mg/m³ TWA limit for triphenyl amine. The Agency concludes that this limit will protect workers against the significant risk of skin irritation, a material health impairment that is potentially associated with exposure to this substance at levels above the new PEL.

URANIUM (INSOLUBLE COMPOUNDS)

CAS: 7440–61–1; Chemical Formula: U
H.S. No. 1418

OSHA's former PEL for insoluble uranium compounds is 0.25 mg/m³. The proposed limits were 0.2 mg/m³ as an 8-hour TWA and 0.6 mg/m³ as a 15-minute STEL, based on the ACGIH recommendation. These limits are being established in the final rule. Uranium is a silver-white radioactive metal.

OSHA's former limit for the insoluble compounds of uranium was based on several early studies of uranium's toxic effects in animals; these effects included kidney damage and blood changes (Voegtlin and Hodge 1953, as cited in ACGIH 1986/Ex. 1–3, p. 617). In the intervening years, a considerable body of evidence has accumulated based on the actual occupational exposures of uranium plant workers over periods as long as 25 years. This evidence shows that, before 1950, workers were often exposed to uranium levels between 0.2 and 1.5 mg/m³, but that after 1950, only about 8 percent were exposed at 0.05 mg/m³ or above; despite these relatively high early exposures, the incidence of all diseases, whether or not linked to radiation exposure, has been no higher than is the case for workers in the general population (ACGIH 1986/Ex. 1–3, p. 617). However, there is also evidence that several workers were exposed to brief excursions during which exposure levels reached a concentration as much as five times the TLV (Wing, Heatherton, and Quigley 1963, as cited in ACGIH 1986/Ex. 1–3, p. 617).

NIOSH (Ex. 8–47, Table N8A) indicated that uranium compounds may present a carcinogenic hazard, but concurred with the proposed limits. OSHA has reviewed the scientific evidence on insoluble uranium compounds and notes the results of a five-year inhalation toxicity study of natural uranium dioxide (UO_2), which involved monkeys, dogs, and rats (Leach, Hodge, Wilson et al. 1970, as cited by H.E. Stokinger in *Patty's Industrial Hygiene and Toxicology*, 3rd rev. ed., Vol. 2A, p. 2002, Clayton and Clayton 1981). This study found that the two major sites of uranium accumulation, the lungs and tracheobronchial lymph nodes, accounted for over 90 percent of the uranium found in the body. Fibrotic changes suggestive of radiation injury were seen occasionally in the tracheobronchial lymph nodes of both dogs and monkeys, as well as in the lungs of monkeys after exposure periods longer than three years. The lung and lymph node data obtained in this study show that the animal body can accumulate sufficient uranium, from prolonged exposures to insoluble uranium dust at 5 mg/m³, to create potential radiological hazards. The lung and tracheobronchial lymph node radiation values were high enough, "in fact, to anticipate radiation hazards in these tissues from exposures at or lower than the occupational TLV (200 μg U/m³) recommended by the ACGIH . . ." (*Patty's Industrial Hygiene and Toxicology*, 3rd rev. ed., Vol. 2A, pp. 2002–2003, Clayton and Clayton 1981).

Laurence Hecker, representing Abbott Laboratories (Ex. 3–678), commented that there was no health basis for the proposed STEL for uranium. OSHA believes that the findings from the study discussed above illustrate the importance of maintaining employee TWA exposures at or below the 0.2-mg/m³ PEL. Therefore, in accordance with the policy described in Section VI.C.17, OSHA is establishing a STEL for insoluble uranium compounds to ensure that adequate process control is achieved to maintain exposure at or below the TWA PEL.

In the final rule, OSHA is establishing an 8-hour TWA PEL of 0.2 mg/m³ and a STEL of 0.6 mg/m³ for the insoluble forms of uranium. The Agency concludes that these limits are required to protect workers exposed to uranium from the significant risks of kidney or blood disorders and radiological damage potentially associated with both full-shift and excursion exposures to these compounds. The Agency considers these adverse effects material impairments of health. OSHA finds that these limits will substantially reduce these risks.

Conclusions for This Group of Substances

For the group of substances shown in Table C9–1, OSHA concludes that workplace exposures cause a broad range of adverse health consequences in exposed individuals; these effects include central nervous system depression, respiratory irritation, liver and kidney damage, cardiac sensitization, and hepatocellular cancer; OSHA considers all of these effects material impairments of health. For the substances in this group, few comments were received on the new or revised limits being proposed. In addition, NIOSH (Exs. 8–47 and 150) concurred with OSHA's proposed revisions in the great majority of cases. The Agency has determined, based on a thorough review of all of the evidence in the record, that the new or revised limits established in the final rule are necessary to reduce the significant risk of material health impairment associated with workplace exposures to systemic toxins.

10. Substances for Which Limits Are Based on Avoidance of Physical Irritation and Other Effects

Introduction

OSHA is establishing or revising the permissible exposure limits for a large group of substances that cause a variety of irritant and other adverse effects; in addition, the Agency is retaining its former generic limit of 15 mg/m³ total particulate [1] and its generic limit of 5 mg/m³ respirable particulate for several of the substances in this category. In the final rule, OSHA has separated this group of physical irritants into two groups, based on the evidence available on their toxic effects.

For 18 of these substances (one "Particulates Not Otherwise Regulated" which applies to all particulates not identified in Table Z–1–A), OSHA has retained the Agency's former 15-mg/m³ generic total particulate limit as an 8-hour TWA. Workers exposed to these 18 substances are subject to the physical-irritant effects traditionally associated with excessive particulate exposures in the workplace. These effects include eye irritation, interference with vision, upper-respiratory-tract irritation, and deposition of particulate in the eyes,

[1] Because the term particulate applies to dusts, aerosols, and mists, OSHA uses this term generically in this section to apply to all of these states of matter.

ears, nose, and mouth. OSHA believes that these effects may cause safety problems among exposed workers, who are more likely than nonexposed workers to have accidents or safety mishaps because they are distracted and physically irritated by the presence of these substances in the workplace. However, after a thorough analysis of the available literature on these 18 substances, OSHA has concluded that retention of the former total-particulate PEL of 15 mg/m³ will provide protection against the exposure effects currently known to be associated with these substances. The 18 substances for which the former 15 mg/m³ total particulate limit has been retained are shown in Table C10–1.

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TABLE C10-1. Substances for Which the Exposure Limit is Based on the Avoidance of Physical Irritation and Other Effects

H.S. Number/ Chemical Name	CAS No.	OSHA's Former Generic Total Particulate Limit*	Proposed PEL*	Final Rule PEL for Total Particulate**; Respirable Fraction
1014 alpha-Alumina	1344-28-1	15 mg/m^3 TWA	10 mg/m^3 TWA	10 mg/m^3 TWA; 5 mg/m^3 TWA
1016 Aluminum metal dust	7429-90-5	15 mg/m^3 TWA	10 mg/m^3 TWA	15 mg/m^3 TWA; 5 mg/m^3 TWA
1024 Ammonium sulfamate	7773-06-0	15 mg/m^3 TWA	10 mg/m^3 TWA	10 mg/m^3 TWA; 5 mg/m^3 TWA
1031 Barium sulfate	7727-43-7	15 mg/m^3 TWA	10 mg/m^3 TWA	10 mg/m^3 TWA; 5 mg/m^3 TWA
1032 Benomyl	17804-35-2	15 mg/m^3 TWA	10 mg/m^3 TWA	10 mg/m^3 TWA; 5 mg/m^3 TWA
1035 Bismuth telluride (undoped)	1304-82-1	15 mg/m^3 TWA	10 mg/m^3 TWA	15 mg/m^3 TWA; 5 mg/m^3 TWA
1039 Boron oxide	1303-86-2	15 mg/m^3 TWA	10 mg/m^3 TWA	10 mg/m^3 TWA; 5 mg/m^3 TWA
1057 Calcium carbonate	1317-65-3	15 mg/m^3 TWA	10 mg/m^3 TWA	15 mg/m^3 TWA; 5 mg/m^3 TWA
1061 Calcium silicate	1344-95-2	15 mg/m^3 TWA	10 mg/m^3 TWA	15 mg/m^3 TWA; 5 mg/m^3 TWA
1062 Calcium sulfate	7778-18-9	15 mg/m^3 TWA	10 mg/m^3 TWA	15 mg/m^3 TWA; 5 mg/m^3 TWA
1076 Cellulose	9004-34-6	15 mg/m^3 TWA	10 mg/m^3 TWA	15 mg/m^3 TWA; 5 mg/m^3 TWA
1082 2-Chloro-6-trichloro-methyl pyridine	1929-82-4	15 mg/m^3 TWA	10 mg/m^3 TWA	15 mg/m^3 TWA; 5 mg/m^3 TWA

TABLE C10-1. Substances for Which the Exposure Limit is Based on the Avoidance of Physical Irritation and Other Effects (continued)

H.S. Number/ Chemical Name	CAS No.	OSHA's Former Generic Total Particulate Limit*	Proposed PEL*	Final Rule PEL for Total Particulate**; Respirable Fraction
1095 Clopidol	2971-90-6	15 mg/m^3 TWA	10 mg/m^3 TWA	15 mg/m^3 TWA; 5 mg/m^3 TWA
1102 Crag herbicide (sesone)	136-78-7	15 mg/m^3 TWA	10 mg/m^3 TWA	10 mg/m^3 TWA; 5 mg/m^3 TWA
1133 Dicyclopentadienyl Iron	102-54-5	15 mg/m^3 TWA	10 mg/m^3 TWA	10 mg/m^3 TWA; 5 mg/m^3 TWA
1155 Emery	112-62-9	15 mg/m^3 TWA	10 mg/m^3 TWA	10 mg/m^3 TWA; 5 mg/m^3 TWA
1176 Ferbam	14484-64-1	15 mg/m^3 TWA	10 mg/m^3 TWA	10 mg/m^3 TWA; 5 mg/m^3 TWA
1188 Glycerin (mist)	56-81-5	15 mg/m^3 TWA	10 mg/m^3 TWA	10 mg/m^3 TWA; 5 mg/m^3 TWA
1191A Graphite, synthetic	--	15 mg/m^3 TWA	10 mg/m^3 TWA	10 mg/m^3 TWA; 5 mg/m^3 TWA
1192 Gypsum	7778-18-9	15 mg/m^3 TWA	10 mg/m^3 TWA	15 mg/m^3 TWA; 5 mg/m^3 TWA
1230 Kaolin	--	15 mg/m^3 TWA	10 mg/m^3 TWA	10 mg/m^3 TWA; 5 mg/m^3 TWA
1232 Limestone	1317-65-3	15 mg/m^3 TWA	10 mg/m^3 TWA	15 mg/m^3 TWA; 5 mg/m^3 TWA
1233 Magnesite	546-93-0	15 mg/m^3 TWA	10 mg/m^3 TWA	15 mg/m^3 TWA; 5 mg/m^3 TWA
1234 Magnesium oxide fume	1309-48-4	15 mg/m^3 TWA	10 mg/m^3 TWA	10 mg/m^3 TWA; 5 mg/m^3 TWA

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TABLE C10-1. Substances for Which the Exposure Limit is Based on the Avoidance of Physical Irritation and Other Effects (continued)

H.S. Number/ Chemical Name	CAS No.	OSHA's Former Generic Total Particulate Limit*	Proposed PEL*	Final Rule PEL for Total Particulate**; Respirable Fraction
1235 Malathion	121-75-5	15 mg/m^3 TWA, Skin	10 mg/m^3 TWA, Skin	10 mg/m^3 TWA; 5 mg/m^3 TWA, Skin
1239 Marble	1317-65-3	15 mg/m^3 TWA	10 mg/m^3 TWA	15 mg/m^3 TWA; 5 mg/m^3 TWA
1246 Methoxychlor	72-43-5	15 mg/m^3 TWA	10 mg/m^3 TWA	10 mg/m^3 TWA; 5 mg/m^3 TWA
1278 Molybdenum (insoluble compounds)	7439-98-7	15 mg/m^3 TWA	10 mg/m^3 TWA	10 mg/m^3 TWA; 5 mg/m^3 TWA
1294 Particulates (not otherwise regulated)	—	15 mg/m^3 TWA	10 mg/m^3 TWA	15 mg/m^3 TWA; 5 mg/m^3 TWA
1305 Pentaerythritol	115-77-5	15 mg/m^3 TWA	10 mg/m^3 TWA	10 mg/m^3 TWA; 5 mg/m^3 TWA
1310 Perlite	—	15 mg/m^3 TWA	10 mg/m^3 TWA	15 mg/m^3 TWA; 5 mg/m^3 TWA
1320 Picloram	1918-02-1	15 mg/m^3 TWA	10 mg/m^3 TWA 20 mg/m^3 STEL	10 mg/m^3 TWA; 5 mg/m^3 TWA
1331 Plaster of Paris	7778-18-9	15 mg/m^3 TWA	10 mg/m^3 TWA	15 mg/m^3 TWA; 5 mg/m^3 TWA
1333 Portland cement	65997-15-1	15 mg/m^3 TWA	10 mg/m^3 TWA	10 mg/m^3 TWA; 5 mg/m^3 TWA
1351 Rouge	—	15 mg/m^3 TWA	10 mg/m^3 TWA	10 mg/m^3 TWA; 5 mg/m^3 TWA

TABLE C10-1. Substances for Which the Exposure Limit is Based on the Avoidance of Physical Irritation and Other Effects (continued)

H.S. Number/ Chemical Name	CAS No.	OSHA's Former Generic Total Particulate Limit*	Proposed PEL*	Final Rule PEL for Total Particulate**; Respirable Fraction
1359 Silicon	7440-21-3	15 mg/m^3 TWA	10 mg/m^3 TWA	10 mg/m^3 TWA; 5 mg/m^3 TWA
1360 Silicon carbide	409-21-2	15 mg/m^3 TWA	10 mg/m^3 TWA	10 mg/m^3 TWA; 5 mg/m^3 TWA
1369 Starch	9005-25-8	15 mg/m^3 TWA	10 mg/m^3 TWA	15 mg/m^3 TWA; 5 mg/m^3 TWA
1374 Sucrose	57-50-1	15 mg/m^3 TWA	10 mg/m^3 TWA	15 mg/m^3 TWA; 5 mg/m^3 TWA
1383 Temephos	3383-96-8	15 mg/m^3 TWA	10 mg/m^3 TWA	10 mg/m^3 TWA; 5 mg/m^3 TWA
1391 4,4'-Thiobis (6-tert-butyl-m-cresol)	96-69-5	15 mg/m^3 TWA	10 mg/m^3 TWA	10 mg/m^3 TWA; 5 mg/m^3 TWA
1396 Titanium dioxide	13463-67-7	15 mg/m^3 TWA	10 mg/m^3 TWA	10 mg/m^3 TWA; 5 mg/m^3 TWA
1423 Vegetable oil mist	—	15 mg/m^3 TWA	10 mg/m^3 TWA	15 mg/m^3 TWA; 5 mg/m^3 TWA
1434 Zinc stearate	557-05-1	15 mg/m^3 TWA	10 mg/m^3 TWA	10 mg/m^3 TWA; 5 mg/m^3 TWA
1438 Zinc oxide	1314-13-2	15 mg/m^3 TWA	10 mg/m^3 TWA	10 mg/m^3 TWA; 5 mg/m^3 TWA

* OSHA did not propose to revise the Agency's generic 5-mg/m^3 respirable-fraction PEL for particulates and therefore did not mention the 5-mg/m^3 respirable-fraction limit in the proposed rule.

** OSHA's TWA limits are for 8-hour exposures.

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For the remaining 27 substances in this category, OSHA has reviewed the available toxicological literature and has determined that the former generic total particulate limit is not sufficiently protective. For these substances, the adverse health effects associated with exposure include, in addition to physical irritation, chronic pulmonary disease, cancer, and mutagenic, reproductive, and teratogenic effects. In the past, many of these substances were designated as "nuisance" dusts or particulates; however, recent developments in toxicology have increasingly shown that exposure to these substances has led to serious health effects. Thus, as applied to these substances, the term nuisance is a misnomer, because the hazards these substances pose in the workplace are real, widespread, and potentially serious. NIOSH shares OSHA's concern about this trend in the toxicology of particulates and has already either designated several of these substances, which were formerly considered "inert," as potential occupational carcinogens or labeled them as causing other target-organ effects. Examples of substances in this category that the recent toxicological literature has suggested may cause more serious effects are: benomyl (reproductive effects); kaolin (pulmonary fibrosis); methoxychlor (cancer); picloram (liver and kidney damage); synthetic graphite (pneumoconiosis); and titanium dioxide (cancer) (Ex. 8-47).

In addition to these diseases, toxicologists have recently expressed concern over the identification of a condition known as pulmonary alveolar proteinosis. This condition, which is apparently caused by the physical effects of particulate exposure, can be fatal if not properly diagnosed, although treatment with lung lavage is effective (NIOSH-ILO 1988). Pulmonary alveolar proteinosis has occurred in workers exposed to several particulates, including the so-called inert dusts. The onset of this condition may occur within months after first exposure to dust.

For the 27 physical irritants determined by OSHA to have identified adverse health effects in the literature, the final rule establishes an 8-hour TWA total particulate limit of 10 mg/m^3 and retains the former respirable fraction limit of 5 mg/m^3. The 10 mg/m^3 limit is consistent with the ACGIH's total particulate limit for these substances.

OSHA previously had no substance-specific limits for these 44 individual physical irritants; the Agency's former generic limit for particulates was 15 mg/m^3 as total particulate and 5 mg/m^3 as respirable particulate (see Table Z-3 of 29 CFR 1910.1000). OSHA proposed to reduce the limit for all substances falling within this category and for many specific particulates to 10 mg/m^3, measured as total particulate, to retain the 5-mg/m^3 respirable particulate limit, and to list many of these particulates individually on the Z tables. However, in the final rule, OSHA finds it appropriate to retain the former limits of 15-mg/m^3 as total particulate and 5-mg/m^3 as the respirable fraction limits for the 17 substances (and particulates not otherwise regulated) in this category for which there is little or no evidence of specific health effects. OSHA is listing these substances individually on the Z-1-A table in the final rule. As noted above, the Agency has also determined that worker protection requires that the total particulate limits for the remaining 27 substances, which have been shown to cause serious and potentially life-threatening health effects, be set at 10 mg/m^3. The 5-mg/m^3 respirable particulate limit is retained for all substances in the physical-irritant category.

There were several general comments on the substances in this category. NIOSH (Ex. 8-47) asked for clarification of the fact that OSHA did not mention in the proposal the limits for the respirable fraction of the total particulates in this category. NIOSH urged OSHA to include a respirable fraction limit because, "for substances that typically become airborne in the workplace as respirable particulates, a PEL based on the respirable fraction of the substance would be warranted" (Ex. 8-47, pp. 9-10). OSHA agrees entirely with NIOSH and wishes to clarify that its former 5-mg/m^3 limit for respirable particulate is being retained for all of the substances in this category; the preamble to the proposed rule did not discuss the respirable particulate limit specifically because the Agency did not intend to revise this component of its generic limit for particulates.

Several commenters (Exs. 3-661 and 3-726) raised the issue of the interaction between the individual listing of particulates in the Z tables and the requirements of OSHA's Hazard Communication Standard (HCS) (29 CFR 1910.1200). These commenters are concerned that particulates that were formerly considered nonhazardous under the HCS will be considered "hazardous" if OSHA lists these substances separately on the Z tables. On August 8, 1988 (53 *FR* 29822), OSHA published a proposal to modify the HCS. The coverage of nuisance particulates was specifically raised as an issue in that proposal, and the Agency will make a determination regarding that coverage in the final HCS rule.

Description of the Health Effects

The adverse exposure effects caused by the 18 substances in this group for which the 15-mg/m^3 limit is being retained include: interference with vision; deposition of these substances in the eyes, ears, nasal passages, and upper respiratory tract; and skin and corneal irritation. For the group of 27 substances for which a limit of 10 mg/m^3 is being established, the additional exposure effects include pulmonary alveolar proteinosis, reproductive effects, irreversible pulmonary effects, liver and kidney effects, systemic poisoning, and cancer. As discussed above, these latter effects are increasingly being associated with exposure to some of these substances, many of which were formerly considered biologically inert.

Thus, workers exposed to excessive airborne concentrations of any of these physical irritants may have difficulty seeing, may cough uncontrollably, may develop conjunctivitis or dermatitis, or may develop disabling or even life-threatening disease. In addition to these primary effects, workers distracted by physical-irritant effects may be more likely than nonexposed workers to have accidents and thus to endanger both themselves and others. (These adverse health effects also clearly have substantial productivity impacts.)

Many commenters opposed any reduction in the PELs for these substances on the grounds that inadequate evidence was provided to support the contention that exposure leads to material impairment of health or that a reduced limit would protect against a significant risk (see, for example, Exs. 3-1123, 3-728, 3-755, 3-887, 3-898, 3-939, 3-1012, 3-1016, and 8-22). Typical of the comments submitted on this subject are those made by the American Feed Industry Association (AFIA):

> AFIA believes an arbitrary choice by a non-government entity (i.e., the ACGIH), which is not supported by even a scintilla of scientific evidence, has very limited validity, and should not be used by OSHA as a basis for promulgating a regulation (Ex. 3-755, p. 19).

Arguing along the same lines, Peter Hernandez of the American Iron and Steel Institute stated that, in his opinion, the effects of exposure to these substances are "short-term and immaterial" (Ex. 8-22, pp. 29-30). OSHA is not persuaded by these arguments, for several reasons. First, the ACGIH represents the opinion of professional industrial hygienists with experience and expertise as to what constitutes sound industrial hygiene and public health practice. Second, practical experience has shown that even the so-called "inert" dusts represent a danger to health; the International Labour Organization states:

> [T]he biological effects of these inert dusts are of a long-term nature and are neither fibrogenic nor carcinogenic, toxic or allergenic. In excessive quantities they will overcharge the protective and scavenging mechanisms, thereby leading to respiratory disease. The extent to which any type of dust represents a health risk thus depends on exposure, which includes the nature of the dust, its concentration and the duration of exposure, as well as upon individual factors such as the general constitution and state of health of the person concerned, including the functional state of the upper respiratory tract, the lung function and its structure, the general immunological status and specific immunological reactivity, and the biochemical reactivity. All these factors will play a part in the onset of disease (ILO 1983, *Encyclopedia of Occupational Health and Safety*, Vol. I, p. 660).

In addition, the Agency notes that a particulate standard of 10 mg/m^3 or less (measured as total particulate) is the official standard in a great many countries, including Finland, Denmark, Norway, Sweden, the United Kingdom, Japan, Poland, Czechoslovakia, and the Republic of China (Cook 1987/Ex. 1-187, pp. 234-241).

In addition, as discussed above, OSHA notes with concern the trend in the toxicology of these substances, which is to find increasingly that substances formerly believed to be inert are in fact associated with serious and sometimes life-threatening effects. When exposures to the substances shown in Table C10-1 are kept under good industrial hygiene control in the workplace, OSHA believes that exposures are not likely to result in significant organic disease or irreversible toxic effects.

The following discussions describe the record evidence and OSHA's findings for the physical irritants included in this group. In addition, the health effects potentially associated with exposures to these substances are reviewed.

ALPHA-ALUMINA

CAS: 1344-28-1; Chemical Formula: Al_2O_3
H.S. No. 1014

OSHA formerly had no specific limit for alpha-alumina, although OSHA's general limit of 15 mg/m^3 total particulate (5 mg/m^3 for the respirable fraction) applied to this substance. The ACGIH has an 8-hour TWA of 10 mg/m^3, measured as total dust, for alpha-alumina. OSHA proposed an 8-hour TWA of 10 mg/m^3 for this substance, and this is the limit established by the final rule. The 5-mg/m^3 respirable-fraction limit is retained. Alpha-alumina, also called aluminum oxide, is a white powder that is widely used as an abrasive grinding material.

A study by Miller and Sayers (1941/Ex. 1-595) determined that alumina particles with diameters of less than 40 microns produced no reaction in laboratory animals. The results of a study by Stacy, King, Harrison et al. (1959/Ex. 1-761) confirmed the findings of Miller and Sayers; these authors found a-alumina to be nearly inert when injected into the lungs of rats (Stacy, King, Harrison et al. 1959/Ex. 1-761). Inhalation of fine aluminum powders at unspecified levels did not cause fibrosis in rats, guinea pigs, or hamsters (Gross, Harley, and deTreville 1973/Ex. 1-696).

In 1923, shortly after a-alumina replaced sandstone as the industrial abrasive of choice, Macklin and Middleton (1923, as cited in ACGIH 1986/Ex. 1-3, p. 21) reported that workers exposed to aluminum oxide dust using the new, synthetic abrasive had much less pulmonary disease than had workers using sandstone abrasives. Other studies (Sutherland, Meiklejohn, and Price 1937/Ex. 1-674; Meiklejohn and Posner 1957/Ex. 1-1060; Meiklejohn and Jones 1948/Ex. 1-964) reported that workers exposed to aluminum oxide dust in the chinaware industry and in aluminum production showed no evidence of pneumoconiosis. However, some early studies (Clark and Simmons 1925/Ex. 1-725; Clark 1929/Ex. 1-1048) reported that workers engaged in aluminum oxide production and exposed to dust levels generally between 50 and 100 mppcf showed X-ray evidence of pulmonary fibrosis; these workers are likely also to have been exposed to silica. Workers exposed during World War II to bauxite fumes containing both alumina and silica developed pulmonary fibrosis and emphysema; the authors believe that silica fume was involved in the development of these diseases (Shaver and Riddell 1947/Ex. 1-688). The ACGIH (1986/Ex. 1-3, p. 21) states that alpha-alumina acts as an inert material. However, NIOSH (Ex. 8-47, Table N4) reports that two studies in animals (Stacy, King, Harrison et al. 1959/Ex. 1-761; Stanton, Laynard, Tegeris et al. 1981, as cited by NIOSH in Ex. 8-47) have found that exposure to alpha-alumina is associated with the development of respiratory effects. For this reason, NIOSH does not concur with OSHA's limit for this substance, urging instead that OSHA establish a lower limit. However, OSHA believes that additional evidence is needed to support an additional reduction in the PEL for this substance. No other comments on alpha-alumina were submitted to the record.

OSHA is establishing 8-hour TWA limits of 10 mg/m^3 total particulate and 5 mg/m^3 respirable particulate for alpha-alumina, the limits being established for all physical irritants having identified health effects. The Agency concludes that these limits will protect workers from the significant risk potentially associated with exposures to alpha-aluminum dust in the workplace. OSHA finds that skin, eye, and upper respiratory irritation and other possible respiratory effects constitute material health impairments.

ALUMINUM METAL DUST

CAS: 7429-90-5; Chemical Formula: Al
H.S. No. 1016

OSHA formerly had no specific permissible exposure limit for aluminum metal dust, although the Agency's generic 15 mg/m^3 TWA limit for total particulate applied. The ACGIH has an 8-hour TWA limit of 10 mg/m^3 as total dust for this substance. OSHA proposed a PEL of 10 mg/m^3 (total particulate) and 5 mg/m^3 (respirable fraction) for aluminum metal dust; however, in the final rule, OSHA is retaining its former 15-mg/m^3 total particulate limit for this substance. In its elemental form, aluminum is a white, malleable, ductile metal.

Aluminum metal dust has been shown to present a minimal health hazard, according to results from the McIntyre Foundation's 27-year study for aluminum oxide dust (discussed in Stokinger 1981a, in *Patty's Industrial Hygiene and Toxicology*, 3rd rev. ed., Vol. 2A, pp. 1500-1503). No deleterious lung or systemic effects were observed as a result of exposure to aluminum metal dust having a particle size of 1.2 um at calculated concentrations equivalent to 2 mg/m^3 over an 8-hour workshift. Even much higher concentrations (not further specified) over 10- or 20-minute periods produced no adverse effects (ACGIH 1986/Ex. 1-3, p. 22). A comment submitted by the Reynolds Aluminum Company endorses OSHA's classification of aluminum metal dust under the general dust and particulate heading (Ex. 3-135). NIOSH (Ex. 8-47, Table N4) did not conduct an in-depth review of the health evidence for this substance.

OSHA has concluded that aluminum metal dusts are appropriately controlled by retaining the Agency's PELs of 15

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mg/m³ TWA, as total particulate, and 5 mg/m³, as the respirable fraction. OSHA has determined that these limits will provide protection against the significant risk of physical irritation.

AMMONIUM SULFAMATE

CAS 7773-06-0; Chemical Formula: $NH_4SO_3NH_4$
H.S. No. 1034

OSHA formerly regulated ammonium sulfamate under its generic limit of 15 mg/m³ as total particulate. The ACGIH has established a limit of 10 mg/m³ for this substance as an 8-hour TWA. The final rule establishes a limit of 10 mg/m³ (and 5 mg/m³ for the respirable fraction) for ammonium sulfamate, which is the limit the Agency proposed. NIOSH (Ex. 8-47, Table N4) concurs with this limit. Ammonium sulfamate is a noncombustible, white, crystalline substance.

Lehman (1951/Ex. 1-790) found oral LD_{50}s of 3900, 5700, and 3000 mg/kg in rats, mice, and quail, respectively. He also reported that no effects were noted in rats administered 10,000 ppm ammonium sulfamate in the diet for 105 days. The hazards associated with exposure to ammonium sulfamate include eye and nose irritation, interference with vision, and the danger of accidents caused by the distraction and avoidance reactions typical of workers overexposed to dusts in the workplace. Only NIOSH commented on ammonium sulfamate.

OSHA is establishing a PEL of 10 mg/m³ TWA, total particulate, and retaining the 5-mg/m³ TWA PEL for respirable particulate for ammonium sulfamate. The Agency concludes that these limits will protect workers against the significant risk of material health impairment in the form of physical and other irritation that is associated with exposure to this substance.

BARIUM SULFATE

CAS: 7727-43-7; Chemical Formula: $BaSO_4$
H.S. No. 1031

OSHA formerly had no specific limit for barium sulfate, although OSHA's generic 15-mg/m³ total particulate limit previously applied; the ACGIH has a TLV-TWA of 10 mg/m³, total dust, for this substance. The proposal included a 10-mg/m³ TWA PEL for barium sulfate (total particulate), and the final rule establishes this limit and additionally retains the 5-mg/m³ PEL for the respirable fraction. Barium sulfate is a white or yellowish, odorless, tasteless powder.

Einbrodt, Wobker, and Klippel (1972/Ex. 1-1030) exposed rats to a concentration of 40 mg/m³ for two months and concluded that barium sulfate is not toxic. As an inert dust of the noncollagenous type, however, barium sulfate has the potential to cause pneumoconiosis through tissue reactions to accumulated dust in the lung (Anonymous, *British Medical Journal* 1972, as cited in ACGIH 1986/Ex. 1-3, p. 48). Barium sulfate has not been known to cause adverse effects in industrial workers exposed over periods of several years. (Doig 1976/Ex. 1-551). NIOSH did not conduct an in-depth review of the health evidence for barium sulfate (Ex. 8-47, Table N4); no other comments on this substance were submitted to the record.

In the final rule, OSHA is establishing a 8-hour TWA PEL for barium sulfate of 10 mg/m³ (total particulate) and retaining the 5-mg/m³ 8-hour TWA (respirable particulate). The Agency concludes that these limits will protect workers against the significant risks of material health impairment in the form of eye, nose, and upper-respiratory-tract irritation and, perhaps, of pneumoconiosis that are associated with exposure to barium sulfate.

BENOMYL

CAS: 17804-35-2; Chemical Formula: $C_{14}H_{18}N_4O_3$
H.S. No. 1032

OSHA formerly regulated benomyl under its generic total particulate limit of 15 mg/m³. The ACGIH has established a total dust TLV-TWA of 10 mg/m³ for this substance. OSHA proposed a PEL of 10 mg/m³ as total particulate for benomyl, and the final rule establishes this limit and retains the Agency's existing 5-mg/m³ respirable fraction limit. Benomyl is a white crystalline solid; exposures to this substance occur in its particulate form.

Studies of rats and rabbits indicate that the oral and skin absorption LD_{50}s are greater than 10,000 mg/kg, and studies of guinea pigs show a very low risk of skin irritation. Application to the shaved intact skin of ten male guinea pigs (as aqueous suspensions containing 5, 12.5, and 25 percent benomyl) resulted in slight irritation; one of ten guinea pigs had mild erythema two days after application of the high concentration (E.I. du Pont de Nemours and Co., Inc. 1974, as cited in ACGIH 1986/Ex. 1-3, p. 49). In another study, instillation of 10 mg of dry 50-percent powder or of 0.1 ml of 10-percent suspension in mineral oil caused only temporary mild conjunctival irritation (E.I. du Pont de Nemours and Co., Inc., unpublished data, as cited in ACGIH 1986/Ex. 1-3, p. 49). NIOSH notes that benomyl exposure may cause adverse reproductive effects (Ex. 8-47, p. 12); no other comments on this substance were submitted.

In the final rule OSHA is establishing 10 mg/m³, total particulate, and 5 mg/m³, respirable particulate, for this substance as 8-hour TWA limits. The Agency concludes that these limits will protect workers from the significant risks of benomyl's effects, which include irritation and erythema, and the possibility that exposure to benomyl may cause reproductive effects. OSHA finds that these health effects constitute material impairments of health. OSHA will also continue in the future to monitor the scientific evidence on the health effects associated with exposure to benomyl to determine whether a further reduction in the PEL is warranted.

BISMUTH TELLURIDE (UNDOPED)

CAS: 1304-82-1; Chemical Formula: Bi_2Te_3
H.S. No. 1035

OSHA had no former limit for undoped bismuth telluride, although OSHA's generic total particulate limit of 15 mg/m³ formerly applied. The ACGIH has a total-dust TLV-TWA of 10 mg/m³ for the undoped form of this substance. The proposed PELs for bismuth telluride in the undoped form were 10 mg/m³ (total particulate) and 5 mg/m³ (respirable particulate); however, in the final rule, OSHA is retaining the total particulate limit of 15 mg/m³ for this substance, as well as the 5-mg/m³ respirable-fraction limit. Bismuth telluride appears as gray, hexagonal platelets; it is also available as ingots or single crystals.

An eleven-month inhalation study of dogs, rabbits, and rats exposed to pure undoped bismuth telluride dust at 15 mg/m³ showed the pulmonary responses typical of exposures to inert dusts (Wagner, Madden, Zimber, and Stokinger 1974, as cited in ACGIH 1986/Ex. 1-3, p. 59). NIOSH has not evaluated the evidence for undoped bismuth telluride in depth (Ex. 8-47, Table N4). No other comments on this substance were submitted.

OSHA is retaining its permissible exposure limits of 15 mg/m³ TWA, as total particulate, and 5 mg/m³, as the respirable fraction, for pure undoped bismuth telluride. The Agency concludes that these limits protect workers from the significant risks associated with workplace exposures to bismuth telluride.

BORON OXIDE

CAS: 1303-86-2; Chemical Formula: B_2O_3
H.S. No. 1039

OSHA formerly regulated boron oxide under its generic total particulate limit of 15 mg/m³ (5 mg/m³ for the respirable fraction), and the ACGIH recommends a total dust TLV-TWA of 10 mg/m³. The proposed total particulate PEL was 10 mg/m³, and this limit is established in the final rule; the 5-mg/m³ PEL for the respirable fraction is retained. NIOSH (Ex. 8-47, Table N4) concurs with these limits. Boron oxide occurs as either a white powder or a granular solid, and it has a bitter taste.

Animal studies indicate that eye and skin irritation were caused by the ocular instillation and the topical application, respectively, of boron oxide to the skin and eyes of rabbits. Aerosol administration at various exposure levels for varying time periods caused mild irritation and an increase in urine acidity and creatinine coefficient in dogs and rats (Wilding, Smith, Yevich, et al. 1959/Ex. 1-599). Young rats that were force-fed a 10-percent slurry to boron oxide in water for three weeks showed no growth retardation or other effects (Wilding, Smith, Yevich et at. 1959/Ex. 1-599).

Garabrant and co-workers (1984/Ex. 1-555) determined the prevalence of eye and respiratory irritation among boron oxide-exposed workers; those exposed to boron oxide concentrations ranging from 1.2 to 8.5 mg/m³ were then compared with controls. Workers exposed at an average concentration of 4.1 mg/m³ reported significant increases in productive cough; eye, nose, and throat irritation; dryness of the mouth; and sore throats (Garabrant, Bernstein, Peters, and Smith 1984/Ex. 1-555).

The ACGIH believes that a total dust TLV-TWA of 10 mg/m³ will provide protection against boron oxide's irritant effects (ACGIH 1986/Ex. 1-3). However, OSHA specifically noted in the preamble to the proposed rule that irritation of the upper respiratory tract and eyes occurs among occupationally exposed workers at levels below 10 mg/m³, and the Agency solicited additional information on the boron oxide exposure levels associated with adverse health effects in workers.

U.S. Borax (Exs. 3-744, and 8-49; Tr. pp. 9-11 to 9-120) submitted comments to the record on the health effects of exposure to the borates and boron oxide. John C. Middleton, Manager of Product Safety for U.S. Borax Research Corporation, opposed the reduction in the PEL for boron oxide from 15 mg/m³ to 10 mg/m³ on the grounds that such a reduction was not "supportable" (Tr. p. 9-112). Mr. Middleton urged OSHA to "delay action" on boron oxide until a large epidemiological study being sponsored by U.S. Borax is completed; the American Mining Congress (Ex. 3-876) supported U.S. Borax's request for a delay.

In response to these commenters, OSHA notes that boron oxide dust is not an inert substance; it causes eye and upper respiratory tract irritation as well as skin irritation. Although OSHA will follow the progress of the U.S. Borax study with great interest, the Agency does not find it appropriate to delay further in reducing the PEL for boron oxide.

Accordingly, the final rule establishes permissible exposure limits of 10 mg/m³ TWA, as total particulate, and 5 mg/m³ TWA, as the respirable fraction, for boron oxide. The Agency concludes that these limits will protect workers against the significant risk of upper-respiratory-tract and eye irritation associated with exposure to this substance. OSHA finds that these health effects constitute material impairments of health.

CALCIUM CARBONATE

CAS: 1317-65-3; Chemical Formula: $CaCO_3$
H.S. No. 1057

OSHA formerly regulated calcium carbonate under the Agency's generic 15-mg/m³ total particulate limit. The ACGIH has a TLV-TWA of 10 mg/m³ for this substance, measured as total dust. The proposed total particulate PEL was 10 mg/m³ as an 8-hour TWA; NIOSH (Ex. 8-47, Table N4) concurred with this limit. In the final rule, however, OSHA is retaining its 8-hour total particulate limit for calcium carbonate of 15 mg/m³. The Agency's former 5-mg/m³ PEL for the respirable fraction is also being retained. Calcium carbonate is an odorless, tasteless powder or crystal that is found in limestone, chalk, marble, plant ashes, bones, and shells.

Calcium carbonate is a moderate skin irritant and a severe eye irritant (*Dangerous Properties of Industrial Materials*, 7th ed., p. 677, Sax and Lewis 1989). Rabbits exposed dermally for 24 hours or ocularly for the same period developed moderate and severe irritation, respectively. The oral LD_{50} in rats is 6450 mg/kg (Sax and Lewis 1989, p. 677).

In the final rule, OSHA is retaining both the 8-hour TWA PEL of 15 mg/m³ for calcium carbonate (total particulate) and the 5-mg/m³ respirable particulate limit, to protest workers against the significant risk of physical irritation associated with exposure to calcium carbonate in the workplace.

CALCIUM SILICATE

CAS: 1344-95-2; Chemical Formula: None
H.S. No. 1061

OSHA formerly had no specific limit for calcium silicate; the Agency regulated this substance under its generic 8-hour TWA limit for particulates of 15 mg/m³ (total particulate). The ACGIH classifies calcium silicate as a nuisance dust and has an 8-hour limit of 10 mg/m³ for this white powder. The proposed total particulate PEL was 10 mg/m³; however, OSHA has determined that it is appropriate to retain the former 15-mg/m³ total particulate limit for calcium silicate. The 5-mg/m³ limit for the respirable fraction is also retained. Calcium silicate is a white powder.

There are no reported health effects in humans or animals as a result of exposure to calcium silicate. Calcium silicate is thus without long-term adverse health effects if exposures are kept under reasonable control. NIOSH (Ex. 8-47, Table N4) has not conducted an in-depth evaluation of calcium silicate, and no other comments on this substance were received.

OSHA is retaining its 8-hour TWA limits of 15 mg/m³, total particulate, and 5 mg/m³, as the respirable fraction, for calcium silicate. The Agency concludes that these limits protect workers from the significant risk of physical irritation in the workplace.

CALCIUM SULFATE

CAS: 7778-18-9; Chemical Formula: $CaSO_4$
H.S. No. 1062

OSHA formerly regulated calcium sulfate under its generic total particulate limit of 15 mg/m³. The ACGIH has a TLV-TWA of 10 mg/m³ (total dust) for this crystalline or powdery substance. OSHA proposed an 8-hour TWA PEL of 10 mg/m³ for calcium sulfate; however, the final rule retains the former limits of 15 mg/m³ (total particulate) and 5 mg/m³ (respirable fraction) for calcium sulfate.

Calcium sulfate dust is reported not to have specific irritant properties (ACGIH 1986/Ex. 1-3, p. 93). One report has indicated that no lung diseases are associated with exposure to calcium sulfate in miners (Hunter 1975, as cited in ACGIH 1986/Ex. 1-3, p. 93). Calcium sulfate appears to produce no adverse effects beyond those associated with general physical irritation. NIOSH (Ex. 8-47, Table N4) has not thoroughly evaluated the evidence for calcium sulfate; no other comments were submitted to the rulemaking record.

OSHA is retaining its 8-hour TWA permissible exposure limits for calcium sulfate of 15 mg/m³ (total particulate) and 5 mg/m³ (respirable particulate); the Agency concludes that these limits are sufficient to prevent the significant risk of eye, skin, and other physical irritation.

CELLULOSE

CAS: 9004-34-6; Chemical Formula: $(C_6H_{10}O_5)_n$
H.S. No. 1076

OSHA formerly regulated cellulose under the Agency's generic 8-hour TWA total particulate limit of 15 mg/m³. The ACGIH has a TLV-TWA of 10 mg/m³ (total dust) for this substance. The proposed total particulate PEL was 10 mg/m³ as an 8-hour TWA; however, the final rule retains the Agency's former total particulate limit of 15 mg/m³ and the 5-mg/m³ limit for the respirable fraction. Technical cellulose refers to that portion of the plant cell wall derived exclusively from glucose; it resembles cotton cellulose in its physical and chemical properties (ACGIH 1986/Ex. 1-3, p. 113).

Inhalation of cellulose dust is not irritating or toxic in exposed humans if exposures are properly controlled (Schreiber 1974/Ex. 1-1066). In industry, cellulose dust occurs in combination with other substances, such as quartz dust, wood, cotton, flax, jute, and hemp fibers, and these substances have demonstrated toxicities that are unrelated to their cellulose content (ACGIH 1986/Ex. 1-3, p. 113). NIOSH, the only commenter on cellulose dust, has not conducted an in-depth review of the health effects associated with exposure to this substance (Ex. 8-47, Table N4).

OSHA is retaining its former 8-hour TWA PELs for this substance of 15 mg/m³ (total particulate) and 5 mg/m³ (respirable particulate) for cellulose dust containing less than 1 percent quartz. The Agency concludes that these limits protect exposed workers from the significant risks of eye, skin, and other physical irritation.

2-CHLORO-6-TRICHLOROMETHYL PYRIDINE (NITRAPYRIN)

CAS: 1929-82-4; Chemical Formula: $C_6H_3Cl_4N$
H.S. No. 1082

OSHA formerly had no specific limit for nitrapyrin, although the Agency's generic total particulate limit of 15 mg/m³ TWA applied. The ACGIH has a TLV-TWA of 10 mg/m³ and a TLV-STEL of 20 mg/m³ for nitrapyrin. The proposed PEL was 10 mg/m³; however, in the final rule, OSHA is retaining its former total particulate limit of 15 mg/m³ and the respirable particulate limit of 5 mg/m³. NIOSH concurred with the proposed limit (Ex. 8-47, Table N4). Nitrapyrin is a crystalline substance.

Nitrapyrin's very low vapor pressure makes hazardous inhalation exposures unlikely. Torkelson (as cited in ACGIH 1986/Ex. 1-3, p. 423) has reported feeding dogs and rats a dosage of 15 mg/kg daily for 93 days. He observed no adverse effects in appearance, behavior, growth, food consumption, body and organ weight, mortality, or blood chemistry, and no tissue or organ changes. In the proposal, OSHA asked for comment on the need for a 20-mg/m³ 15-minute STEL for nitrapyrin. The Agency received no comments on this issue. Because OSHA has not determined that short-term exposures to nitrapyrin pose a significant risk to workers, no STEL is included in the final rule (see Section VI.C.17 for a discussion of the Agency's policies on STELs).

In the final rule, OSHA is retaining 8-hour TWA PELs of 15 mg/m³ (total particulate) and 5 mg/m³ (respirable particulate) for this dust; OSHA finds that these limits are protective against the significant risk of physical irritation.

CLOPIDOL (COYDEN)

CAS: 2971-90-6; Chemical Formula: $C_7H_7Cl_2NO$
H.S. No. 1085

OSHA formerly had no specific limit for clopidol; however, OSHA's generic total particulate limit of 15 mg/m³ TWA applied. The ACGIH has a TLV-TWA of 10 mg/m³ and a TLV-STEL of 20 mg/m³ for clopidol, which is a solid. The proposed total particulate PEL was an 8-hour TWA of 10 mg/m³; NIOSH (Ex. 8-47, Table N4) agreed that this limit is appropriate. However, in the final rule, OSHA is retaining the former 15-mg/m³ limit (total particulate) and 5-mg/m³ limit (respirable fraction), both 8-hour TWAs.

The oral LD_{50} for clopidol in rats, rabbits, and guinea pigs is greater than 8 g/kg (Dow Chemical Company 1973c, as cited in ACGIH 1986/Ex. 1-3, p. 141). Long-term (two-year) studies of rats and dogs fed at levels of 15 mg/kg and 5 mg/kg per day, respectively, showed no adverse effects. Similarly, there were no adverse effects on fertility, gestation, viability, or lactation in rats and rabbits, and no increase in teratogenicity (Dow Chemical Company 1973c, as cited in ACGIH 1986/Ex. 1-3, p. 141). The chronic toxicity of clopidol is reported to be low (ACGIH 1986/Ex 1-3, p. 141).

In the proposal, OSHA solicited comment on the need for a STEL for clopidol, but no comments were received on this issue. Because OSHA finds no evidence to suggest that short-term exposures pose a significant risk to workers, the final rule contains no STEL (see Section VI.C.17 for a discussion of the Agency's policies on STELs).

In the final rule, OSHA is retaining 8-hour TWA PELs of 15 mg/m³ (total particulate) and 5 mg/m³ (respirable particulate) for clopidol. OSHA concludes that these limits will protect workers from the significant risk of eye, skin, and other physical irritation.

CRAG HERBICIDE (SESONE)

CAS: 136-78-7; Chemical Formula: $C_9H_7Cl_2NaO_3S$
H.S. No. 1102

OSHA formerly applied a TWA limit of 15 mg/m³ for the total particulate of crag herbicide; this was the Agency's generic total particulate limit for all particulates. The ACGIH has a total-dust TLV-TWA of 10 mg/m³ for this colorless, odorless, noncombustible solid. The proposed PEL for crag herbicide was 10 mg/m³ (total particulate), and the final rule promulgates this limit; the 5-mg/m³ limit for the respirable fraction is retained. NIOSH (Ex. 8-47, Table N4) concurs with OSHA in the selection of these limits.

An early study reported an oral LD_{50} in rats of 1500 mg/kg for this herbicide (Smyth 1956/Ex. 1-750). At high concentrations, crag herbicide is a gastrointestinal irritant (NIOSH 1984, as cited in ACGIH 1986/Ex. 1-3, p. 519). Rats fed a diet containing 60 mg sesone/100 mg of diet experienced minor liver damage; when fed 20 mg sesone/100 gm of diet for two years, rats showed no adverse effects (ACGIH 1986/Ex 1-3, p. 519). In 1984, NIOSH reported the oral LD_{50} in rats to be 730 mg/kg (NIOSH 1984, as cited in ACGIH 1986/Ex 1-3, p. 519). There are no reported incidents of human poisoning associated with the use of sesone. NIOSH submitted the only comment on this substance.

OSHA is reducing the 8-hour TWA PEL for crag herbicide (total particulate) to 10 mg/m³ and retaining the 5-mg/m³ (respirable particulate) limit. OSHA concludes that these limits will protect workers from eye, skin, gastrointestinal, and other forms of irritation caused by exposure to crag herbicide.

DICYCLOPENTADIENYL IRON (FERROCENE)

CAS: 102-54-5; Chemical Formula: $C_{10}H_{10}Fe$
H.S. No. 1133

OSHA formerly regulated dicyclopentadienyl iron (ferrocene) under its generic total particulate limit of 15 mg/m³. The ACGIH has a TLV-TWA of 10 mg/m³ for this bright orange crystalline solid that smells like camphor. The proposed and final-rule PEL for dicyclopentadienyl iron is 10 mg/m³ (total particulate) as an 8-hour TWA. The 5-mg/m³ PEL for the respirable fraction is retained. NIOSH (Ex. 8-47, Table N4) supports the selection of these PELS.

Available evidence in animals suggests that dicyclopentadienyl iron has a moderate order of oral toxicity but a high order of intravenous and intraperitoneal toxicity. In mice, the oral LD_{50} has been reported as 600 mg/kg (Madinaveitia 1965/Ex. 1-862). In rats, 1000 mg/kg has been reported as the lethal dose, but subacute oral toxicity tests have shown no fatalities when 10 feedings of 200 mg/kg were given over a two-week period (E.I. du Pont de Nemours and Co., Inc. 1955, as cited in (ACGIH 1986/Ex 1-3, p. 195). Ferrocene has been found to be mutagenic in bioassays involving several species (*Dangerous Properties of Industrial Materials*, 7th ed., Sax and Lewis 1989). NIOSH was the only commenter to the rulemaking record on this substance.

In the final rule, OSHA is establishing 8-hour TWA limits of 10 mg/m³ (total particulate) and 5 mg/m³ (respirable fraction) for dicyclopentadienyl iron. The Agency concludes that these limits will substantially reduce the significant risk of material health impairments, in the form of mutagenic and other effects, that are associated with occupational exposure to this substance.

EMERY

CAS: 112-62-9; Chemical Formula: Al_2O_3
H.S. No. 1155

OSHA formerly regulated emery under the Agency's generic 15-mg/m³ total particulate limit for all particulates. The ACGIH has a limit of 10 mg/m³ TWA, total dust, for emery containing less than 1 percent quartz. The proposed total particulate PEL was 10 mg/m³ as an 8-hour TWA, and the final rule establishes this limit and retains the 5-mg/m³ PEL for the respirable fraction. Emery is impure corundum (aluminum oxide), and is found in certain mineralogical deposits.

Emery dust inhalation is believed to have contributed to a case of pneumoconiosis in France, although it is questionable whether this incident was caused by emery dust alone or by the silica impurities in the dust (*Archives des Maladies Professionelles de Medecin du Travail et de Securité Sociale* 1970, as cited in ACGIH 1986/Ex. 1-3, p. 229). Exposure to emery dust containing less than 1 percent silica produces little, if any, effect on the health of exposed workers; it does not affect the lungs or produce organic disease at commonly encountered levels (ACGIH 1986/Ex. 1-3, p. 229).

NIOSH (Ex. 8-47) notes that rats exposed to aluminum oxide developed lipoid pneumonia (Stacy, King, Harrison et al. 1959/Ex. 1-761) and that humans so exposed have reported skin and respiratory tract irritation. Based on these data, NIOSH (Ex. 8-47, Table N4) does not concur with OSHA in the establishment of this PEL for emery. No other comments on this substance were received by the Agency.

In the final rule, OSHA is establishing a PEL of 10 mg/m³ TWA, total particulate, and retaining the PEL of 5 mg/m³, respirable particulate, for emery. OSHA concludes that these limits will prevent the significant risk associated with exposures to emery in the workplace; these risks include skin and upper-respiratory-tract irritation and, perhaps, other respiratory effects, all of which constitute material health impairments.

FERBAM

CAS: 14484-64-1; Chemical Formula: $[(CH_3)_2NCS_2]_3Fe$
H.S. No. 1176

OSHA formerly applied its generic particulate limit of 15 mg/m³ as an 8-hour TWA (total particulate) to ferbam. The ACGIH has a TLV-TWA of 10 mg/m³ for this odorless black solid. OSHA proposed an 8-hour TWA total particulate PEL of 10 mg/m³ for ferbam, and this limit is established in the final rule. The 5-mg/m³ PEL for the respirable fraction is retained. NIOSH (Ex. 8-47, Table N1) concurs with these limits.

Ferbam, which is a fungicide, has been reported to have an oral LD_{50} of more than 17 mg/kg in rats, but rabbits and guinea pigs demonstrated less sensitivity to this substance (Hodge, Maynard, Downs, and Blanchet 1952/Ex. 1-861). Thirty-day dietary studies of rats showed no effect at ferbam doses of 0.01 percent, with fatalities occurring at 0.5 percent. Dogs showed no adverse effects when fed 25 mg/kg of ferbam daily for six months. Inhalation of ferbam affects the upper respiratory tract in humans, in the manner typical of airborne exposures to workplace dusts (Hodge, Maynard, Downs, and Blanchet 1952/Ex. 1-861). NIOSH submitted the only comment on ferbam.

In the final rule, OSHA is reducing the total particulate PEL for ferbam to a 10-mg/m³ 8-hour TWA; the 5-mg/m³ TWA limit for the respirable fraction is retained. The Agency concludes that this reduction is necessary to prevent the significant health and safety risks associated with workplace exposures to ferbam. These risks include skin, eye, and upper respiratory tract irritation, which together constitute material health impairments.

GLYCERIN (MIST)

CAS: 56-81-5; Chemical Formula: $CH_2OHCHOHCH_2OH$
H.S. No. 1188

OSHA formerly had no specific limit for glycerin mist, although this substance was previously regulated at 15 mg/m³ under the generic total particulate limit. The ACGIH has a TLV-TWA of 10 mg/m³ (total particulate) for glycerin. OSHA proposed a total particulate PEL of 10 mg/m³, and the final rule promulgates this limit and retains the 5-mg/m³ limit for the respirable fraction. Glycerin is an oily, hygroscopic liquid with a warm, sweet taste.

Glycerin was long considered to be nontoxic; however, there are indications that the mist may be injurious to the kidneys at very high exposure levels (Campanacci 1965/Ex. 1-1047). NIOSH (Ex. 8-47) states that, at high concentrations, exposure may cause hemolysis, hemoglobinuria, and renal failure. Ackermann, Bässler, and Wagner (1975, as cited in ACGIH 1986/Ex. 1-3, p. 286) have reported that glycerin mist is easily metabolized and excreted. In the adult human of average weight, 2 grams of glycerol can be metabolized and excreted in an 8-hour workday. At this metabolic and elimination rate, the ACGIH believes that no ill effects are likely to occur as a result of exposure at or below 10 mg/m³ as an 8-hour TWA (ACGIH 1986/Ex. 1-3, p. 286).

NIOSH, the only commenter on this substance, does not agree that the final rule's limit of 10 mg/m³ is appropriate for glycerin mist because a recent study by Wiebe and Barr (1984, as cited in Ex. 8-47) found reproductive effects in rats injected intratesticularly with glycerin mist (Ex. 8-47).

OSHA is establishing an 8-hour TWA limit of 10 mg/m³ (total particulate) and retaining the 5-mg/m³ (respirable particulate) limit for glycerin mist. The Agency concludes that these limits will provide protection against the significant risks of glycerin exposure, which include kidney damage and, perhaps, testicular effects. OSHA finds that these health effects constitute material health impairments, and the Agency intends to monitor the literature on glycerin in the future.

GRAPHITE, SYNTHETIC

CAS: None; Chemical Formula: None
H.S. No. 1191A

OSHA formerly had no specific limit for synthetic graphite, although it was covered under the Agency's generic total particulate limit. OSHA's proposed 8-hour TWA PEL for synthetic graphite was 10 mg/m³ (total particulate), and this limit is established by the final rule; the 5-mg/m³ limit for the respirable fraction is retained. The ACGIH also has a TLV-TWA limit of 10 mg/m³ for graphite as total dust. Synthetic graphite

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is a crystalline form of carbon made from the high-temperature treatment of coal or petroleum products; it has the same properties as natural graphite.

Meiklejohn reported in 1956 that synthetic graphite injected intraperitoneally in mice produced effects characteristic of those of the inert dusts (Meiklejohn 1956, as cited in ACGIH 1986/Ex. 1–3, p. 291).

In humans, exposure to natural graphite has long been associated with the development of pneumoconiosis (Koopman 1934/Ex. 1–131; Ruttner, Bovet, and Aufdermauer 1952/Ex. 1–661; Pendergrass, Vorwald, Mishkin et al. 1967/Ex. 1–77). Lister (1961/Ex. 1–422) and Lister and Wimborne (1972/Ex. 1–423) reported fibrotic changes in the lungs of a worker who had been engaged for 17 years in the production and milling of synthetic graphite. Other reports of lung injury caused by exposure to graphite have not distinguished between the form of the graphite (i.e., natural or synthetic) causing the injury; in addition, exposures to impurities, such as quartz silica, were involved in many of the reported cases (ACGIH 1986/Ex. 1–3, p. 291). NIOSH (Ex. 8–47) does not believe that it is appropriate to distinguish between the natural and synthetic forms of graphite and notes that the Lister and Wimborne (1972/Ex. 1–423) study described above suggests that synthetic graphite dust exposure "is capable of producing pneumoconiosis." NIOSH believes that a 2-mg/m³ 8-hour TWA PEL is appropriate for synthetic graphite because this is the limit set for coal dust (respirable) to protect against pneumoconiosis (Ex. 8–47). OSHA received no responses other than NIOSH's to a question raised in the proposal about synthetic graphite-related occupational disease. OSHA intends to continue to evaluate any new evidence on synthetic graphite exposures, such as the study on carbon/graphite fibers submitted by NIOSH (Zumwalde and Harmison 1980, as cited in Ex. 8–47), to determine whether further action to reduce the PEL is warranted in the future.

At present, however, OSHA is reducing the 8-hour TWA total particulate limit for synthetic graphite from 15 mg/m³ to 10 mg/m³ and retaining the 5-mg/m³ limit for the respirable fraction to protect against the significant health risks associated with graphite exposure in the workplace. OSHA concludes that these limits will substantially reduce the risks of granite-induced respiratory disease, which constitutes a material impairment of health.

GYPSUM

CAS: 7778-18-9; Chemical Formula: $CaSO_4H_2O$
H.S. No. 1192

The former OSHA limit for gypsum was an 8-hour TWA of 15 mg/m³; the ACGIH has a TLV–TWA of 10 mg/m³, measured as total particulate, for gypsum. The proposed PEL was 10 mg/m³ (total particulate). However, in the final rule, OSHA is retaining both the 8-hour TWA PEL of 15 mg/m³ (total particulate) and the 5-mg/m³ respirable particulate limit for gypsum. Gypsum is found either as colorless or white crystals.

The ACGIH (1986/Ex. 1–3) states that gypsum does not "produce significant organic disease or toxic effect when exposures are kept under reasonable control." Exposures in excess of the recommended limit may result in reduced visibility, deposits of gypsum dust in the eyes, ears, and nasal passages, and skin irritation. NIOSH, the only commenter on this substance, has not thoroughly reviewed the effects of gypsum exposure (Ex. 8–47, Table N4).

In the final rule, OSHA is retaining the Agency's limit for gypsum (total particulate) of 15 mg/m³ as an 8-hour TWA and the 5-mg/m³ limit for the respirable fraction of this substance. The Agency concludes that these limits protect workers from the significant risk of eye, skin, and other forms of physical irritation caused by gypsum exposure.

KAOLIN

CAS: None; Chemical Formula: $H_2Al_2Si_2O_8O$ H_2O
H.S. No. 1230

OSHA's former limit for kaolin was 15 mg/m³, measured as total particulate; this was the Agency's generic total particulate limit for all dusts and particulates. The ACGIH has a TLV–TWA of 10 mg/m³, measured as total dust. The Agency proposed an 8-hour TWA PEL of 10 mg/m³ for kaolin, and the final rule establishes this limit; the 5-mg/m³ limit for the respirable fraction is retained. Kaolin may be a white powder, or a white or yellow-white, earthy mass.

Exposure to excess amounts of kaolin dust may cause injury to the skin or mucous membranes (ACGIH 1986/Ex. 1–3). Although NIOSH (Ex. 8–47, Table N4) has not conducted an in-depth review of kaolin dust exposure, it notes that exposure to kaolin dust has been associated with respiratory effects (Lapenas and Gale 1983, as cited in Ex. 8–47). OSHA intends to monitor the developing toxicological literature on kaolin in the future. No other comments on this substance were received.

At this time, however, OSHA is establishing PELs of 10 mg/m³ (total particulate) and 5 mg/m³ (respirable particulate) as 8-hour TWA limits for kaolin. The Agency concludes that these limits will protect workers from the significant health risks associated with exposure to this substance. These risks include skin and mucous membrane injury, and, perhaps, irreversible respiratory effects, all of which constitute material health impairments.

LIMESTONE

CAS: 1317-65-3; Chemical Formula: $CaCO_3$
H.S. No. 1232

The former OSHA PEL for limestone was an 8-hour TWA of 15 mg/m³, measured as total particulate. The ACGIH has a 10-mg/m³ TWA for limestone (total particulate). OSHA proposed 10 mg/m³ as the 8-hour TWA PEL for total limestone particulate and 5 mg/m³ TWA for the respirable fraction; however, the final rule retains the 8-hour total particulate limit of 15 mg/m³ and the respirable particulate limit of 5 mg/m³. Limestone is rock formed by the accumulation of organic remains that consist of calcium carbonate and, less often, magnesium carbonate.

Direct contact with limestone dust at unspecified levels has been associated with the development of severe eye irritation and moderate skin irritation (*Dangerous Properties of Industrial Materials*, 7th ed., p. 677, Sax and Lewis 1989). The application of 500 mg limestone to the skin of rabbits for 24 hours produced moderate irritation, and 750 mg instilled into the eyes of rabbits caused severe irritation. The oral LD_{50} in rats is 6450 mg/kg (Sax and Lewis 1989, p. 677). The American Iron and Steel Institute (Exs. 3–1123 and 8–22) argued that limestone dust produces effects that are "short-term and immaterial" (Ex. 8–22, pp. 29–30); however, OSHA does not agree that the physical irritant effects caused by exposure to dusts and particulates are not material impairments; such irritation involves the skin, eyes, nose, upper respiratory tract and mucous membranes.

In the final rule, OSHA is retaining 8-hour TWA limits of 15 mg/m³ (total particulate) and 5 mg/m³ (respirable particulate) for limestone. The Agency concludes that these limits protect workers from the significant risk of eye and skin irritation, which may be experienced by employees exposed to limestone in the workplace.

MAGNESITE

CAS: 546-93-0; Chemical Formula: $(MgCO_3)_4$ $Mg(OH)_2$ $5H_2O$(approx)
H.S. No. 1233

OSHA's former PEL for magnesite was 15 mg/m³, measured as total particulate; this was the Agency's generic limit for all dusts and particulates. The ACGIH has a TLV–TWA of 10 mg/m³, also measured as total particulate. The proposed PELs for magnesite were 8-hour TWAs of 10 mg/m³ (total particulate) and 5 mg/m³ (respirable fraction). In the final rule, however, OSHA is retaining its former total particulate limit of 15 mg/m³ for magnesite. Magnesite occurs as a white powder.

Magnesite is considered by both OSHA and the ACGIH to be one of the dusts that "do not produce significant organic disease or toxic effect when exposures are kept under reasonable control" (ACGIH 1986/Ex. 1–3). Exposure to excess levels of magnesite in the workplace causes skin or mucous membrane irritation resulting either from contact with the magnesite itself or from the rigorous cleansing procedures necessary for removing the dust. NIOSH, the only commenter on this substance, has not substantively reviewed the effects of exposure to magnesite (Ex. 8–47, Table N4).

OSHA is retaining its 8-hour TWA PEL of 15 mg/m³ TWA for magnesite, measured as total particulate; the 5-mg/m³ TWA limit for the respirable fraction is also being retained. The Agency concludes that these limits protect workers from the significant risk of skin, mucous membrane, and other physical irritation.

MAGNESIUM OXIDE (FUME)

CAS: 1309-48-4 Chemical Formula: MgO
H.S. No. 1234

OSHA's former limit for magnesium oxide (as fume) was 15 mg/m³ as an 8-hour TWA, the Agency's generic limit for particulates. The ACGIH has a TLV–TWA limit of 10 mg/m³ for the fume of this white, odorless, very fine powder. OSHA proposed 8-hour TWA PELs of 10 mg/m³ (total particulate) and 5 mg/m³ (respirable particulate) for magnesium oxide fume, and the final rule establishes these limits.

Slight reactions (not further specified) have been reported in human subjects after exposures of less than 10 minutes to freshly generated MgO fume at concentrations of from 400 to 600 mg/m³ (Drinker, Thomson, and Finn 1927/Ex. 1–356). Animal and human studies of magnesium oxide fume exposure have shown toxicities less marked than but similar to those attributable to zinc oxide fume (Drinker and Drinker 1928/Ex. 1–314). The symptoms of exposure include those of metal fume fever (fever, chills, muscular pain, nausea, and vomiting) and leukocytosis, symptoms analogous to those caused by exposure to zinc oxide fume. NIOSH does not concur with the final rule's limit for this fume. NIOSH notes that exposure to magnesium oxide may also cause chronic respiratory disease (Ex. 8–47, p. 12); no other comments on this substance were received.

In the final rule, OSHA is setting a PEL of 10 mg/m³ TWA (total particulate) and retaining the 5-mg/m³ TWA limit for the repirable fraction of magnesium oxide fume. OSHA concludes that these limits will substantially reduce the significant risks of metal fume fever, leukocytosis, and, perhaps, chronic respiratory disease associated with exposure to magnesium oxide fume in the workplace. OSHA finds that these health effects constitute material health impairments.

MALATHION

CAS: 121-75-5; Chemical Formula: $C_{10}H_{19}O_6PS_2$
H.S. No. 1235

OSHA formerly had a 15-mg/m³ total particulate limit for malathion, with a skin notation; the ACGIH TLV for this substance is 10 mg/m³ as a TWA, also with a skin notation, and the NIOSH REL is 15 mg/m³. The proposed PEL was 10 mg/m³ (total particulate), with a skin notation. The final rule establishes a 10-mg/m³ TWA limit for total malathion particulate and includes a skin notation; the 5-mg/m³ TWA limit for the respirable fraction is retained. NIOSH (Ex. 8–47, Table N4) concurs with the selection of these limits. Malathion is a noncombustible, yellow to deep brown liquid with a skunk-like odor.

Malathion is a widely used organophosphorus insecticide having relatively low level of toxicity; some authors have determined that malathion is approximately 1/100th as toxic as parathion (Johnson, Fletcher, Nolan, and Cassaday 1952/Ex. 1–149). Rats fed malathion at a concentration of 100 ppm for two years exhibited no toxic effects (Hazleton and Holland 1953/Ex. 1–126). Several occupational and research exposures involving scientists or human volunteers produced no changes in blood cholinesterase or other effects (Rider, Mueller, Swader et al. 1969/Ex. 1–189; Hayes, Mattson, Short, and Witter 1960/Ex. 1–90; Culver, Caplan, and Batchelor 1956/Ex. 1–177). Fatalities have been reported in the Japanese and Indian literature, but these deaths have always involved extremely high doses of malathion (Chabra 1970/Ex. 1–151; Horiguchi 1973/Ex. 1–221). The symptoms of malathion overexposure include headache, lacrimation, vomiting, tremors, and convulsions.

The Agency received, in addition to NIOSH's comment, two record comments on malathion. ConAgra, Inc. (Ex. 3–635) questioned the classification of this substance as a nuisance dust "since most malathion-containing pesticides are liquids and are available over the counter for public use in retail stores" (Ex. 3–635, p. 2). OSHA points out that this health effects category includes all particulates (i.e., can include aerosols and mists generated by the handling of liquid materials).

Another commenter, Lawrence H. Hecker, Director of Corporate Industrial Hygiene and Toxicology for Abbott Laboratories, questioned the need for a skin notation for a substance with a dermal LD_{50} of 200-mg/kg or less in animal tests when there was no evidence of systemic effects in humans as a result of skin contact (Ex. 3–678, p. 3). Dr. Hecker stated that this 200-mg/kg cutoff would be consistent with OSHA's Hazard Communication Standard (29 CFR 1910.1200). OSHA agrees with Dr. Hecker that a consistent policy in regard to skin notations is appropriate but does not agree that the 200-mg/kg level is an appropriate cutoff point. The Agency finds that a dermal LD_{50} in rabbits of 1000 mg/kg is a better indicator of dermal toxicity; this is the Hazard Communication Standard's upper cutoff for a toxic, rather than highly toxic, substance administered by the dermal route (see Section VI.C.18 of this preamble for a discussion of OSHA's reasoning on this issue). In addition, OSHA believes that evidence that a substance has caused systemic toxicity in humans exposed via the dermal route sufficient reason to retain a skin notation; in the case of malathion, OSHA has received reports of exposed workers whose blood cholinesterase levels were reduced after dermal exposure to this substance. OSHA is therefore retaining the skin notation for malathion in the final rule.

In the final rule, OSHA is establishing PELs of 10 mg/m³ TWA (total particulate) and 5 mg/m³ TWA (respirable particulate) for malathion, with a skin notation. The Agency finds that exposure to malathion poses a significant risk of material health impairment in the form of cholinesterase inhibition.

MARBLE

CAS: 1317-65-3; Chemical Formula: None
H.S. No. 1239

OSHA formerly had no specific limit for marble dust, but regulated this substance under the generic total particulate limit of 15 mg/m³. The ACGIH has established an 8-hour TLV–

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TWA of 10 mg/m³ for marble dust containing less than 1 percent quartz (measured as total dust). Marble dust, a metamorphic form of calcium carbonate dust, is an odorless and tasteless powder or crystal. OSHA proposed an 8-hour TWA limit of 10 mg/m³ for marble dust as total particulate containing less than 1 percent quartz and 5 mg/m³ TWA for the respirable fraction of this dust. NIOSH (Ex. 8-47, Table N4) did not specifically evaluate the effects of marble dust exposure, and no one else commented on marble.

In the final rule, OSHA is retaining its former total particulate limit for marble of 15 mg/m³, as well as the respirable particulate limit of 5 mg/m³. OSHA finds that these limits protect exposed workers against the significant risk posed by physical-irritant properties of marble.

METHOXYCHLOR

CAS: 72-43-5; Chemical Formula: $C_{16}H_{15}Cl_3O_2$
H.S. No. 1240

OSHA formerly applied its generic 15-mg/m³ TWA limit for particulates to methoxychlor. The ACGIH recommends a limit of 10 mg/m³ TWA for this white crystalline solid. This is the limit that was proposed for the total particulate of methoxychlor, and the final rule establishes this limit; the 5-mg/m³ limit for the respirable particulate is retained. NIOSH (Ex. 8-47, Table N4) concurs with the selection of these limits.

The reported oral LD_{50} for methoxychlor in rats is 6000 mg/kg (Lehman 1954, as cited in ACGIH 1986/Ex. 1-3, p. 364). Lehman also determined that 100 ppm for two years is the lowest dietary level producing no effect in rats; this corresponds to a level of 350 mg/man/day (Lehman 1954, as cited in ACGIH, 1986/Ex. 1-3, p. 364). Results of another dietary study indicated that rats fed 200 ppm methoxychlor for two years were not affected in terms of growth or survival (Hodge, Maynard, and Blanchet 1962/Ex. 1-466). Tegeris and co-workers (1966/Ex. 1-389) reported that dogs fed 1 g/kg daily for six months showed weight loss; most animals died within nine weeks when the dietary level was increased to 2 g/kg daily (Tegeris, Earl, Smalley, and Curtis 1966/Ex. 1-389). Morgan and Hickenbottom (1978/Ex. 1-351) reported that male Holtzman rats fed 10, 40, 160, or 640 mg/kg for 24 hours showed no liver abnormalities. Extrapolating from animal data, Lehman (1954) estimated the dose levels that would produce toxic effects in humans as follows: the fatal oral dose would be 450 grams; adverse health effects would occur at 6430 mg/kg orally; and 2414 mg/kg is the level at which dermal effects would be predicted to occur (Lehman 1954, as cited in ACGIH 1986/Ex. 1-3, p. 364).

NIOSH concurs with these limits (Ex. 8-47, Table N4) but recommends that methoxychlor also be designated as a potential occupational carcinogen. However, OSHA notes that both IARC and NCI find the evidence for the carginogenicity of methoxychlor in animals to be inadqequate (*Dangerous Properties of Industrial Materials*, 7th ed., p. 1338, Sax and Lewis 1989). The Agency will continue to monitor the scientific evidence for this substance in the future. No other comments on methoxychlor were received by OSHA.

In the final rule, OSHA is reducing the existing 15-mg/m³ 8-hour TWA limit for methoxychlor to 10 mg/m³ (total particulates) and retaining the 5-mg/m³ TWA limit for the respirable fraction to reduce the significant health risks of systemic toxicity, which constitutes a material impairment of health. OSHA also notes that cancer may be an exposure effect of methoxychlor.

MOLYBDENUM (INSOLUBLE COMPOUNDS)

CAS: 7439-98-7; Chemical Formula: Insoluble compounds (as Mo)
H.S. No. 1278

OSHA formerly had a limit of 15 mg/m³ TWA for the insoluble compounds of molybdenum, which include molybdenum metal dust and the dioxide; this was the Agency's generic limit for all particulates. The ACGIH recommends a TLV-TWA of 10 mg/m³, measured as molybdenum, for these substances. The proposed PELs were 10 mg/m³ TWA (total particulate) and 5 mg/m³ (respirable particulate), measured as molybdenum, and these are the limits established in the final rule. Molybdenum is a silver-white metal or a dark gray or black powder.

Mogilvskaya (1960, as cited in ACGIH 1986/Ex. 1-3, p. 415) reported that the dust of molybdenum metal and molybdenum dioxide caused irritation of mucosal surfaces in white mice after an intensive dusting for one hour; in a similar 30-day exposure, the metal and the dioxide proved minimally poisonous.

NIOSH (Ex. 8-47, Table N4) notes that reviews of molybdenum's toxicity have been published by Browning (1961b), Friberg and Lener (1986), and Stokinger (1981d). NIOSH states that, although these reviewers generally agree that the insoluble compounds of molybdenum have a low order of toxicity, there is some evidence that respiratory effects have been caused by exposure to these compounds. NIOSH recommends that the toxicological literature on molybdenum be evaluated on a continuing basis. No other comments on this substance were received by OSHA.

OSHA is establishing PELs for the insoluble compounds of molybdenum of 10 mg/m³ TWA (total particulate) and 5 mg/m³ TWA (respirable particulate), measured as molybdenum. The Agency concludes that these limits will protect workers from the significant health risks of exposure to the insoluble compounds of molybdenum, which include eye, nose, and skin irritation, and, perhaps, chronic respiratory effects. OSHA finds that these effects constitute material health impairments.

PARTICULATES (NOT OTHERWISE REGULATED)

CAS: None; Chemical Formula: None
H.S. No. 1294

OSHA formerly covered all otherwise unregulated particulates under a single 8-hour TWA PEL of 15 mg/m³ (measured as total particulate) and 5 mg/m³ (measured as the respirable fraction). The ACGIH has a TLV-TWA of 10 mg/m³ (as total dust) for particulates having a quartz content of less than 1 percent. OSHA's proposed total particulate PEL for these physical irritants was 10 mg/m³; NIOSH (Ex. 8-47, Table N4) concurred with the proposed limit. In the final rule, OSHA is retaining its 15-mg/m³ total particulate PEL for particulates that are not specifically identified in the Z tables; OSHA is also retaining its 5-mg/m³ respirable particulate limit for these substances. The Agency has decided to retain its existing limits for particulates that are not specifically identified in the Z tables because this group of physical irritants consists of substances, both inorganic and organic, for which substance-specific toxicologic data are not available. For those physical irritants for which specific toxicologic data are available, OSHA has separately identified the substance in Table Z-1-A and has promulgated a 10-mg/m³ 8-hour TWA (measured as total particulate) and a 5-mg/m³ 8-hour TWA PEL (measured as the respirable fraction) in the final rule.

The 8-hour TWA limits of 15 mg/m³ (total particulate) and 5 mg/m³ (respirable fraction) apply to all not-otherwise-regulated particulates (i.e., to those irritants that are not specifically identified in the Z tables). For example, OSHA's limits for corn dust, a particulate not identified in the Z tables or otherwise regulated, are 15 mg/m³ (total dust) and 5 mg/m³ (respirable dust). The Agency believes that other particulates that present physical irritant hazards in the workplace should also be regulated under the final rule's generic total particulate limit of 15 mg/m³.

OSHA believes that good industrial hygiene practice requires that exposures to these particulates be controlled in the workplace to or below the 15-mg/m³ level as an 8-hour TWA to protect workers from the broad range of adverse effects associated with exposure to these substances. In the past, these particulates were often called "nuisance" or "inert" substances. These terms are misleading, however, because exposures to these substances in the workplace may cause serious and sometimes disabling effects. Further, good industrial hygiene and public health practice require that workplace exposure to particulates be maintained below the level associated with physical irritation, accidents, and respiratory effects.

Several commenters (see, for example, Exs. 3-861, 3-755, 3-1012, 3-1112, and 8-22) submitted comments on OSHA's proposed generic total particulate limit. Most of these participants argued that the proposed reduction in the 8-hour TWA PEL from 15 mg/m³ to 10 mg/m³ was unwarranted because there was, in the opinion of these commenters, no evidence of adverse health effects associated with exposure to these particulates (Exs. 3-755, 3-1012, 3-1112, and 8-22). According to Peter Hernandez of the American Iron and Steel Institute (Ex. 8-22), the effects of such exposures are "short-term and immaterial."

OSHA has responded to these commenters in the final rule by establishing a lower 8-hour TWA total-dust limit of 10 mg/m³ for all particulates having identified health effects in the toxicological literature, and retaining the former 15-mg/m³ total particulate limit for those particulates not specifically linked to health effects other than physical irritation. OSHA finds that good industrial hygiene practice demands, and prudent public health policy supports, effective workplace control over exposure to all particulates. The effects associated with overexposure to particulates in the workplace constitute material impairments of health and functional capacity and include upper respiratory tract irritation, skin injury, eye irritation, and other forms of physical irritation.

The 15-mg/m³ 8-hour TWA total particulate PEL applies to all particulates not otherwise regulated, not just to inorganic dusts. The OSHA Review Commission interpreted the Agency's former generic dust standard as applying only to mineral dusts, primarily because this limit was entered on the Z tables under the heading of "mineral dust." The ACGIH and OSHA both had intended this limit to apply to all particulates, organic and inorganic. Exposure to organic particulates at high levels also causes material health impairment, such as throat, skin, and eye irritation, upper-respiratory-tract problems, and the safety hazards caused by distraction in the workplace.

In the final rule, OSHA establishes an 8-hour TWA limit of 15 mg/m³, measured as total particulate, and retains the 5-mg/m³ limit for respirable particulates for all particulates not otherwise regulated. The Agency concludes that these limits will protect workers against the significant safety and health risks associated with exposure to excessive concentrations of these substances, which include reduced visibility, deposits in the eyes, ears, and nasal passages, throat and eye irritation, upper-respiratory-tract problems, skin injury, and other forms of physical irritation. The change in terminology from nuisance dusts to particulates not otherwise regulated clarifies OSHA's intent and also more accurately reflects the fact that exposure to all particulates at levels higher than those being established in this final rule causes material impairment of health and functional capacity in workers experiencing these exposures.

PENTAERYTHRITOL

CAS: 115-77-5; Chemical Formula: $C(CH_2OH)_4$
H.S. No. 1305

OSHA formerly had no separate limit for pentaerythritol, but this substance was regulated at 15 mg/m³ TWA, the Agency's generic total particulate limit. The ACGIH has a TLV-TWA of 10 mg/m³ for total pentaerythritol dust containing less than 1 percent quartz. The proposed PEL was 10 mg/m³ TWA (total particulate), and this is the limit established in the final rule; the Agency's 5-mg/m³ respirable particulate TWA limit is being retained.

Pentaerythritol is an odorless, white crystalline solid.

Rats exposed to pentaerythritol at 11,000 mg/m³ for six hours were reported to show no ill effects from a single exposure, and rats, dogs, and guinea pigs exposed six hours daily for 90 days also showed no effects (Keplinger and Kay 1964/Ex. 1-743). The oral LD_{50}s in guinea pigs and mice were 11.3 and 22.5 g/kg, respectively; rats survived oral doses as high as 16 g/kg. At higher doses, animals displayed diarrhea, tremors, ataxia, and loss of righting reflex (Keplinger and Kay 1964/Ex. 1-743). Daily applications of a saturated aqueous solution of technical pentaerythritol to rabbit skin produced no significant irritation; a single application of 10 g/kg aqueous paste on intact or abraded rabbit skin produced no evidence of percutaneous absorption (Keplinger and Kay 1964/Ex. 1-743; Hercules, Inc., as cited in ACGIH 1986/Ex. 1-3, p. 462). Instillation of a 50-percent aqueous suspension into the conjunctival sac of rabbits' eyes resulted in slight transient irritation (Hercules, Inc., as cited in ACGIH 1986/Ex. 1-3, p. 462).

Human volunteers are reported to have eliminated 85 percent of dietary pentaerythritol unchanged in the urine within 30 hours. A slight and transient increase in apparent blood sugar that was proportional to the ingested dose appeared in these subjects soon after administration (Berlow, Barth, and Snow 1958, as cited in ACGIH 1986/Ex. 1-3, p. 462). NIOSH (Ex. 8-47, Table N4) has not conducted an extensive review of this substance. No other comments were submitted to the record.

The final rule promulgates an 8-hour PEL of 10 mg/m³ TWA (total particulate) for pentaerythritol, and the 5-mg/m³ respirable fraction PEL is retained. The Agency concludes that these limits will protect employees from the significant risks of physical irritation potentially associated with exposure to pentaerythritol at higher levels. OSHA finds that physical irritation constitutes a material impairment of health within the meaning of the Act.

PERLITE

CAS: None; Chemical Formula: None
H.S. No. 1310

OSHA formerly regulated perlite under its generic total particulate limit of 15 mg/m³. The ACGIH has a TLV-TWA of 10 mg/m³ for perlite as total dust containing less than 1 percent quartz. The proposed PELs were 10 mg/m³ (total particulate) and 5 mg/m³ TWA (respirable particulate); however, the final rule retains the 15-mg/m³ TWA PEL for perlite as total particulate containing less than 1 percent quartz. The respirable fraction limit of 5 mg/m³ is also retained. Perlite is a natural volcanic glass; it is essentially an amorphous mineral consisting of fused sodium-potassium-aluminum silicate.

Perlite is reported to have a free-silica content varying from zero to 3 percent (Anderson, Selvig, Baur et al. 1956 and the Perlite Institute, both as cited in ACGIH 1986/Ex. 1-3, p. 467). In its processed crude and expanded forms, perlite is reported to have a measurable quartz content of 0.4 percent quartz and 0.2 percent cristobalite (Sheckler 1977, as cited in ACGIH 1986/Ex. 1-3, p. 467). There are no published reports of

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adverse physiologic effects from exposure to perlite dust. NIOSH, the only commenter on perlite, has not reviewed the evidence for this substance in depth (Ex. 8-47, Table N4).

OSHA finds that perlite is nontoxic when airborne total particulate concentrations are maintained at levels of 15 mg/m³ or below and when its quartz content is limited to a level below 1 percent crystalline silica. For these reasons, the final rule establishes an 8-hour PEL of 15 mg/m³ TWA for total perlite dust containing less than 1 percent quartz and retains the 5-mg/m³ TWA PEL for the respirable fraction of perlite dust. OSHA concludes that these limits protect workers from the significant risk of eye, skin, and other forms of physical irritation.

PICLORAM

CAS: 1918-02-1; Chemical Formula: $C_6H_3Cl_3N_2O_2$
H.S. No. 1328

OSHA formerly had no limit for picloram, but regulated it at the generic total particulate limit of 15 mg/m³ for all particulates. The ACGIH has a TLV-TWA of 10 mg/m³ and a TLV-STEL of 20 mg/m³ (both as total dust) for this white powder, which has an odor like that of chlorine; these were the limits proposed for picloram. The final rule promulgates the 10-mg/m³ TWA limit for total particulate but does not include a STEL.

Picloram has low acute oral toxicity, with LD_{50} values of 3.75 g/kg for rats, 1.5 g/kg for mice, and 2.0 g/kg for rabbits (NIOSH 1979b, as cited in ACGIH 1986/Ex. 1-3, p. 489). Two-year feeding studies showed no ill effects in albino rats and beagle dogs from ingestion of does up to and including 150 mg/kg/day (McCollister and Leng 1969, as cited in ACGIH 1986/Ex. 1-3, p. 489). At 225 mg/kg/day, rats displayed moderate liver and kidney changes and, in females, slight body weight loss after 90 days. These authors (McCollister and Leng 1969, as cited in ACGIH 1986/Ex. 1-3, p. 489) also reported no fertility, reproduction, or lactation effects in albino rats fed at levels of up to 3000 ppm (0.3 percent) in a three-generational study. Although maternal toxicity in rats was reported at dietary levels of 750 and 1000 mg/kg administered during days 6 through 15 of gestation, neither teratogenic nor neonatal effects were observed when subtoxic or maternally toxic doses of picloram were administered during organogenesis (Thomson et al. 1972, as cited in ACGIH 1986/Ex. 1-3, p. 489). The National Cancer Institute (NCI) (1977d, as cited in ACGIH 1986/Ex. 1-3, p. 489) found a dose-related increase in benign liver tumors in female rats only and concluded that "under the conditions of the bioassay, the findings are suggestive of the ability of the compound to induce benign tumors in the livers of female Osborne-Mendel rats." Based on these results, NIOSH (Ex. 8-47, Table N4) concludes that "picloram is not a nuisance particulate and is not without toxic effects." OSHA notes that picloram must therefore be added to the list of substances formerly believed to be inert but subsequently shown to be toxic. No other comments on picloram were submitted to the rulemaking record.

At the present time, however, OSHA is establishing 8-hour TWA limits of 10 mg/m³ (total particulate) and 5 mg/m³ (respirable fraction) for picloram. The final rule does not include a short-term limit; in accordance with the policy described in Section VI.C.17 for short-term limits, OSHA has reviewed the evidence and has concluded that there is no basis for establishing a STEL for picloram, as proposed. The Agency concludes that these total and respirable particulate limits will minimize the significant risk of material health impairment in the form of systemic effects, such as liver and kidney damage, that are potentially associated with exposure to this substance at higher levels. OSHA intends to monitor the health effects literature on picloram in the future.

PLASTER OF PARIS

CAS: 7778-18-9; Chemical Formula: $CaSO_4$
H.S. No. 1331

OSHA's former Z-3 table listed an 8-hour TWA exposure limit of 15 mg/m³ (total particulate) for Plaster of Paris. The ACGIH has a 10-mg/m³ TWA for Plaster of Paris, measured as total dust, and this is the limit that was proposed. The final rule retains 15 mg/m³ as the 8-hour TWA PEL for the total particulate of Plaster of Paris; the 5-mg/m³ limit for the respirable fraction is also retained. Plaster of Paris is a fine, white powder.

Where occupational exposures to Plaster of Paris have been limited, no toxic effects or organic diseases of the lungs have occurred. Exposure to excessive levels of dust in the workplace may result in reduced visibility or injury to the skin or mucous membranes from the dust itself, or in damage to the skin from the rigorous skin-cleansing procedures required to remove the dust (ACGIH 1986/Ex. 1-3). Only NIOSH commented on this substance; NIOSH stated that it had not substantively reviewed the effects of Plaster of Paris exposure (Ex. 8-47, Table N4).

OSHA is retaining both the 8-hour TWA of 15 mg/m³ (total particulate) and the 8-hour TWA PEL of 5 mg/m³ (respirable particulate) for Plaster of Paris. The Agency concludes that these limits will protect against the significant risks of skin, eye, and other forms of physical irritation.

PORTLAND CEMENT

CAS: 65997-15-1; Chemical Formula: None
H.S. No. 1333

OSHA formerly had a limit of 50 mppcf (approximately 15 mg/m³) for Portland cement containing less than 1 percent crystalline silica. The ACGIH has a TLV/TWA of 10 mg/m³ for Portland cement as total dust containing less than 1 percent quartz. The proposed PEL was 10 mg/m³, measured as total particulate, and this is the limit established in the final rule; the 5-mg/m³ respirable fraction limit is retained. Portland cement refers to a class of hydraulic cements that are odorless gray powders containing less than 1 percent crystalline silica. Portland cement is insoluble in water and contains tri- and dicalcium silicate, in addition to varying amounts of alumina, tricalcium aluminate, and iron oxide.

Intraperitoneal injection of Portland cement in guinea pigs produced an absorptive reaction, which is an effect typical of inert particulates. Portland cement is eventually eliminated from the tissue and is generally not considered harmful when ingested (Miller and Sayers 1941/Ex. 1-595).

In a study of industrial exposures, Gardner and associates (1939/Ex. 1-589) found no evidence of Portland-cement-related pneumoconiosis in 2,278 workers who had been heavily exposed to this substance for prolonged periods of time (Gardner, Durkan, Brumfiel, and Sampson 1939/Ex. 1-589). Conflicting reports of pneumoconiosis (Parmeggiani 1951, as cited in ACGIH 1986/Ex. 1-3, p. 494; Prosperi and Barsi 1957/Ex. 1-1093) are attributed to the presence of silica in the inhaled dust rather than to exposure to Portland cement itself (ACGIH 1986/Ex. 1-3, p. 494). Cement dermatitis does occur among exposed workers, however, as a consequence of the alkaline, abrasive, and hygroscopic properties of the wet cement, which cause irritation of the skin (Schwartz, Tulipan, and Birmingham 1957a/Ex. 1-1168). NIOSH, the only commenter on this substance, reported that it has not thoroughly reviewed the health effects for Portland cement (Ex. 8-47, Table N4).

OSHA is establishing 8-hour TWA PELs of 10 mg/m³ (total particulate) and 5 mg/m³ (respirable fraction) for Portland cement containing less than 1 percent quartz. The Agency concludes that these limits will protect workers against the significant risks associated with on-the-job exposures to Portland cement dust. These risks include eye, skin, and mucous membrane irritation, and may include more severe respiratory effects, all of which constitute material health impairments. In addition, revising the total particulate limit to 10 mg/m³ as an 8-hour TWA will simplify employee exposure monitoring for Portland cement, since gravimetric rather than impinger methods can then be used.

ROUGE

CAS: None; Chemical Formula: None
H.S. No. 1351

OSHA formerly had no specific limit for rouge but regulated this substance under the Agency's generic total particulate standard of 15 mg/m³ as an 8-hour TWA. The ACGIH has an 8-hour TWA limit of 10 mg/m³ for rouge as total dust containing less than 1 percent quartz, and this is the limit that was proposed. The final rule establishes 10 mg/m³ as the 8-hour TWA PEL for the total particulate of rouge and retains the 5-mg/m³ 8-hour TWA for the respirable fraction of rouge dust. Rouge is a high-grade red pigment, composed mainly of ferric oxide, that is used as a polishing agent for glass, jewelry, etc.

NIOSH (Ex. 8-47, Table N4) believes that exposure to rouge should be reduced to levels below 10 mg/m³ on the basis of evidence showing that exposure to hematite dust (ferric oxide) increased the risk of lung cancer in hematite miners. According to NIOSH, this human evidence is consistent with the results of two recent animal studies: Warshawsky, Bingham, and Niemeier (1984 as cited in Ex. 8-47), which showed that intratracheal administrations of ferric oxide and exposure to benzo(a)pyrene (BaP) "enhances the metabolic activation of BaP"; and Niemeier, Mulligan, and Rowland (1986, as cited in Ex. 8-47), who found that ferric oxide has co-carcinogenic potential. OSHA shares NIOSH's concern about rouge's carcinogenicity and intends to monitor toxicological developments closely in the future to determine whether further reduction in the PEL is warranted. No other comments on rouge were received.

In the final rule, OSHA is establishing an 8-hour TWA of 10 mg/m³ for the total particulate of rouge and is retaining 5 mg/m³ as an 8-hour TWA for the respirable fraction. OSHA concludes that these limits will protect workers from the significant health risks associated with workplace exposure to higher levels of rouge. These effects include eye, nose, and upper respiratory irritation and, perhaps, other more serious chronic diseases, all of which constitute material health impairments within the meaning of the Act.

SILICON

CAS: 7440-21-3; Chemical Formula: Si
H.S. No. 1359

OSHA's former Z tables had no specific limit for silicon; however, silicon was formerly regulated under OSHA's generic particulate limits of 15 mg/m³ TWA (total particulate) and 5 mg/m³ (respirable fraction). The ACGIH has a 10-mg/m³ 8-hour TWA for silicon, measured as total dust. The proposed total particulate PEL for silicon was 10 mg/m³ as an 8-hour TWA, and this limit is established in the final rule; the 5-mg/m³ respirable fraction limit is retained. Silicon is a black to gray, lustrous, needle-like crystal that is used in the manufacture of semiconductors.

The evidence of silicon's toxicity in animals is conflicting. An early study by McCord, Fredrick, and Stolz (1937/Ex. 1-640) reported no response in guinea pigs and rats injected intraperitoneally with silicon. A more recent study (Schepers 1971/Ex. 1-570) demonstrated pulmonary lesions in rabbits administered an intratracheal dose of 25 mg silicon dust. NIOSH (Ex. 8-47, Table N4) has not throughly reviewed the health effects evidence for silicon, and no other comments on silicon were submitted to the record.

In the final rule, OSHA is establishing an 8-hour TWA limit of 10 mg/m³ (total particulate) for silicon and retaining the 5-mg/m³ (respirable fraction) limit. The Agency concludes that these limits will reduce the significant health risks potentially associated with exposure to this substance at higher levels. These risks include eye, skin, mucous membrane and other forms of physical irritation and may include chronic respiratory effects. OSHA finds that these effects constitute material health impairments.

SILICON CARBIDE

CAS: 409-21-2; Chemical Formula: SiC
H.S. No. 1360

OSHA formerly regulated silicon carbide under its generic 15-mg/m³ total particulate limit. The ACGIH has a 10-mg/m³ 8-hour TWA limit, measured as total dust. The proposed total particulate PEL for silicon carbide was 10 mg/m³, and the final rule promulgates this limit and retains the 5-mg/m³ respirable fraction limit for silicon carbide, which is a green to blue-black irridescent crystal.

An animal study (Gardner 1923/Ex. 1-737 showed that, although exposure to silicon carbide alone produced no fibrosis of the lungs, exposure of guinea pigs infected with tuberculosis to silicon carbide (six hours/day, five days/week for one year) aggravated pulmonary tuberculosis to the extent that extensive fibrosis occurred. Guinea pigs exposed to silicon carbide dust and infected with the tubercle bacteria developed tuberculopneumoconiotic lesions (Gross, Westrick, and McNerney 1959/Ex. 1-607). Miller and Sayers (1941/Ex. 1-595) observed that silicon carbide dust administered by intraperitoneal injection to guinea pigs produced no reaction.

Bruusgaard (1949/Ex. 1-1143) found that X-rays of 10 out of 32 workers exposed to average levels of 34 mppcf of silicon carbide for 15 years or more demonstrated pulmonary changes; these 10 workers were also tuberculin-positive. Miller, Davis, Goldman, and Wyatts (1953/Ex. 1-40) described three cases of pulmonary reactions and hyperglobinemia in tungsten carbide industry workers; these authors concluded that exposure to silicon carbide was not a hazard unless the exposed workers already had pulmonary tuberculosis. NIOSH (Ex. 8-47, Table N4) has not reviewed the health effects literature for silicon carbide in depth. No other comments on this substance were submitted.

In the final rule, OSHA is establishing a 10-mg/m³ TWA total particulate limit for silicon carbide and retaining the 5-mg/m³ TWA respirable fraction limit. The Agency concludes that these limits will protect workers from the significant risk of material health impairment in the form of the physical irritation that is associated with exposure to this particulate.

STARCH

CAS: 9005-25-8; Chemical Formula: $(C_6H_{10}O_5)_n$
H.S. No. 1369

The former OSHA limit for starch was 15 mg/m³ as an 8-hour TWA, the Agency's generic limit for all particulates. The ACGIH has a TLV-TWA of 10 mg/m³ for starch as total dust that contains no asbestos and less than 1 percent crystalline silica. The proposed total particulate PEL was 10 mg/m³; however, in the final rule, OSHA is retaining a total particulate limit of 15 mg/m³ for starch. Starch is a white, odorless powder.

Exposure to high concentrations of starch dust may result in impaired vision, or may cause injury to the mucous membranes or skin. Injury may also result from the vigorous skin-cleansing procedures necessary for the

complete removal of starch (ACGIH 1986/Ex. 1–3). NIOSH, the only commenter on starch, has not substantively reviewed its health effects (Ex. 8–47, Table N4).

OSHA is retaining both the 8-hour TWA total particulate PEL of 15 mg/m³ and the 5-mg/m³ respirable particulate limit for starch. The Agency concludes that these limits will control the significant risk of eye, skin, and other physical irritation that may result from exposure to high levels of starch in the workplace.

SUCROSE

CAS: 57-50-1; Chemical Formula: $C_{12}H_{22}O_{11}$
H.S. No. 1274

The former OSHA 8-hour TWA limit for sucrose was 15 mg/m³ as total particulate, the Agency's generic limit for all particulates. The ACGIH includes sucrose in its grouping of particulates that "do not produce significant organic disease or toxic effect when exposures are kept under reasonable control" (ACGIH 1986/Ex. 1–3) and has a TLV-TWA limit of 10 mg/m³ for sucrose as total particulate containing no asbestos and less than 1 percent quartz; this is also the limit OSHA proposed for this substance. The final rule, however, retains the 15-mg/m³ total particulate and the 5-mg/m³ respirable fraction TWA limits for sucrose, which is found in the form of white crystals.

Exposure to excess levels of sucrose dust can cause skin and eye irritation, interference with vision, and distraction from the task at hand.

OSHA is retaining the 8-hour total particulate TWA of 15 mg/m³ for sucrose and is also retaining the 5-mg/m³ respirable fraction limit. The Agency concludes that these limits protect exposed workers against the significant risk of physical irritation.

TEMEPHOS

CAS: 3383-96-8; Chemical Formula: $C_{16}H_{20}O_8P_2S_3$
H.S. No. 1383

The former OSHA Z tables had no specific limit for exposure to temephos, a cholinesterase-inhibiting insecticide. Temephos was formerly regulated under OSHA's generic particulate limit of 15 mg/m³. The ACGIH limit is 10 mg/m³ (total dust) as an 8-hour TWA. The proposed PEL was 10 mg/m³ (total particulate), and this is the limit promulgated in the final rule; the 5-mg/m³ limit for the respirable fraction of temephos dust is retained. NIOSH (Ex. 8–47, Table N4) concurs with the selection of these PELs. Temephos may be a white crystalline solid or a viscous brown liquid.

In rats and mice, temephos has an acute oral LD_{50} of 400 mg/kg or greater. Various animal species tolerated doses of 10 mg/kg without clinical effect and 1 mg/kg without effect on cholinesterase activity (Gaines, Kimbrough, and Laws 1967/Ex. 1–553). Laws, Morales, Hayes, and Joseph (1967/Ex. 1–562) revealed that human volunteers consuming oral doses of temephos at levels of either 250 mg/man/day for five days or 64 mg/man/day for four weeks evidenced no detectable effects on erythrocyte or plasma cholinesterase levels. Murphy and Chaever (1972/Ex. 1–567) reported that 1 mg of temephos per liter of drinking water produces no effect. These authors found that rat liver carboxylesterases were at least 30 times more sensitive to inhibition from temephos than were rat cholinesterases. Assuming that human liver carboxylesterases are proportionately more sensitive than cholinesterases, it is estimated that significant inhibition of these carboxylesterases could occur as a result of consuming 2 liters of drinking water containing 1 mg/L of temephos. Although nonspecific liver carboxylesterase is not critical for normal physiologic function, adverse effects on this enzyme could increase the susceptibility of exposed individuals to chemicals and drugs that contain carboxylesterase linkages (ACGIH 1986/Ex. 1–3, p. 557).

The ACGIH derived its limit of 10 mg/m³ TWA for temephos from studies of malathion, which has an acute LD_{50} of 2100 mg/kg in rats, or roughly one-half that of temephos. Because humans tolerate 16 mg/day oral doses of malathion without effects on blood cholinesterase levels, the ACGIH believes the 10-mg/m³ limit is appropriate for temephos (ACGIH 1986/Ex. 1–3, p. 557).

OSHA agrees with the ACGIH's reasoning in this matter and is establishing limits in the final rule of 10 mg/m³ (total particulate) and 5 mg/m³ (respirable fraction) for temephos. The Agency concludes that these limits will protect workers from the significant risk of cholinesterase inhibition and reduction in carboxylesterase activity, which together constitute material health impairments within the meaning of the Act and are potentially associated with exposure to this substance.

4,4'-THIOBIS (6-TERT-BUTLY-n-CRESOL)

CAS: 96-69-5; Chemical Formula: $C_{22}H_{30}O_2S$
H.S. No. 1283

OSHA formerly regulated 4,4'-thiobis under the Agency's generic total particulate limit of 15 mg/m³ TWA. The ACGIH limit is 10 mg/m³ as an 8-hour TWA, the limit established by the ACGIH for all of the nuisance dusts. OSHA proposed a 10-mg/m³ total particulate TWA limit and a 5-mg/m³ respirable fraction PEL for 4,4'-thiobis, and these limits are established in the final rule. NIOSH (Ex. 8–47, Table N4) concurs with the selection of these limits. 4,4'-Thiobis is a light gray to tan powder with a slightly aromatic odor.

In a 30-day study, rats fed diets of 500 ppm 4,4'-thiobis exhibited normal weight gain; those rats fed five times this amount exhibited enlarged livers and a reduced rate of weight gain (Lefaux 1968/Ex. 1–614). In a 90-day study reported by the same author, rats fed 50 ppm showed no toxic effects, but male rats fed 500 ppm ate and grew at a slightly lower rate. No pathologic changes were observed in the 500-ppm-dosed rates. A dose of 5 g/kg of 4,4'-thiobis proved lethal to rats, with the predominant symptom being gastroenteritis. NIOSH was the only commenter on this substance.

In the final rule, OSHA is establishing exposure limits of 10 mg/m³ TWA (total particulate) and 5 mg/m³ TWA (respirable fraction) for 4,4'-thiobis. The Agency concludes that these limits will protect workers from the significant risk of material health impairment, in the form of eye, skin, and other physical irritation, which is associated with exposure to this substance.

TITANIUM DIOXIDE

CAS: 13463-67-7; Chemical Formula: TiO_2
H.S. No. 1306

OSHA's former PEL for titanium dioxide was 15 mg/m³ as an 8-hour TWA; this was the Agency's generic exposure limit for particulates. A 10-mg/m³ 8-hour TWA, measured as total dust, has been established by the ACGIH. The Agency proposed PELs of 10 mg/m³ (total particulate) and 5 mg/m³ (respirable particulate) for titanium dioxide, and these limits are established in the final rule. Titanium dioxide is a white crystalline solid.

Miller and Sayers (1961/Ex. 1–595) reported that intraperitoneal injections of titanium dioxide in guinea pigs showed a tendency to remain in the injected tissues but not to produce a proliferative response. A study by Grandjean, Turrian, and Nicod (1966/Ex. 1–638), in which rats were administered 50 mg of titanium dioxide intratracheally, showed pigmented dust deposits in the lungs. In addition, evidence of infection appeared in the alveoli of one rat and diffuse fibrosis was found in the lungs of a separate test animal. No nodule formation was observed (Grandjean, Turrian, and Nicod 1966/Ex. 1–638). Another study by

Dale (1973/Ex. 1–624) revealed thickening of the walls of the alveoli in the lungs of rabbits injected with titanium dioxide dust; however, lungs had returned to normal by three months post-treatment. Feeding studies of rats and mice at doses of 2.5 percent or 5 percent titanium dioxide for 103 weeks revealed no signs of carcinogenicity in either species (National Cancer Institute (NCI) 1979d/Ex. 1–947).

At the rulemaking hearing, NIOSH (Tr. p. 3–95) testified that exposure to this substance is associated with "a risk of cancer . . . . The incidence of tumors in animals exposed to titanium dioxide (Lee, Trochimowicz, and Reinhardt 1985) meets the . . . criteria for . . . [a] potential occupational carcinogen." Accordingly, NIOSH (Ex. 8–47, Table N4) recommends a full 6(b) rulemaking for this substance. In response to NIOSH, OSHA notes that the Agency intends to monitor the developing literature on titanium dioxide to determine whether an additional reduction in the PEL is warranted. NIOSH was the only commenter on titanium dioxide.

OSHA is establishing 8-hour TWAs of 10 mg/m³ (total particulate) and 5 mg/m³ (respirable particulate) for titanium dioxide in the final rule. OSHA concludes that the final rule's limits will protect workers from the significant health risks associated with exposure to titanium dioxide at higher levels. These risks include material impairments of health in the form of eye, skin, and other physical irritation, and, perhaps, of carcinogenicity.

VEGETABLE OIL MIST (EXCEPT CASTOR OIL, CASHEW NUT, OR SIMILAR IRRITANT OILS)

CAS: None; Formula: None
H.S. No. 1423

The former OSHA Z tables had no substance-specific limit for vegetable oil mist. The ACGIH has established a 10-mg/m³ 8-hour TWA for all nuisance particulates. The proposed PEL was 10 mg/m³ (total particulate) as an 8-hour TWA and 5 mg/m³ (respirable fraction) as an 8-hour TWA. NIOSH (Ex. 8–47, Table N4) concurs with the proposed limits. In the final rule, OSHA is establishing a 15-mg/m³ total particulate limit for vegetable oil, which is a pale yellow, oily liquid.

One commenter (Ex. 3–1080) stated that OSHA had not, in the proposal, demonstrated that vegetable oil mist presents a health and safety hazard. OSHA finds that oil mist presents the same safety and health hazards as do all of the physical irritants. Occupational exposure to vegetable oil mist is associated with a variety of health and safety hazards, including interference with vision; eye tearing, and skin and other forms of physical irritation.

OSHA is establishing 8-hour TWA limits of 15 mg/m³ (total particulate) and 5 mg/m³ (respirable particulate) for vegetable oil mist (except castor oil, cashew nut, or similar irritant oils). The Agency concludes that these limits protect exposed workers against the significant risks of physical irritation described above.

ZINC STEARATE

CAS: 557-05-1; Chemical Formula: $Zn(C_{18}H_{35}O_2)_2$
H.S. No. 1434

OSHA formerly regulated zinc stearate under its generic total particuate limit of 15 mg/m³ TWA. The proposed PEL was 10 mg/m³ (total particulate), and the final rule promulgates this limit. NIOSH (Ex. 8–47, Table N4) agrees that this PEL is appropriate. The ACGIH has established an 8-hour TWA of 10 mg/m³ for zinc stearate, measured as total dust. Zinc stearate is a white hydrophobic powder.

A report in *Folia Medica* (Volita and Noro 1957, as cited in ACGIH 1986/Ex. 1–3, p. 646) documented the case of a worker exposed to zinc stearate dust for 30 years who died from extensive fibrosis of the lungs. More recent studies have revealed incidences of pulmonary fibrosis associated with encephalopathy that stemmed directly from exposure to aluminum dust, which is frequently coated with stearic acid (*British Journal of Industrial Medicine* 1962, as cited in ACGIH 1986/Ex. 1–3, p. 646); the ACGIH (1986/Ex. 1–3, p. 646) is uncertain of the relevance of this report to zinc stearate exposures.

Observations of long-term worker exposures to this dust in the rubber industry revealed no adverse effects of exposure (B.F. Goodrich Rubber Company, private communication, as cited in the ACGIH 1986/Ex. 1–3, p. 646). NIOSH was the only commenter on zinc stearate.

OSHA is establishing a 10-mg/m³ TWA limit for this particulate (measured as total particulate) and is retaining the 5-mg/m³ TWA limit for the respirable fraction. The Agency concludes that these limits will prevent the significant health risks associated with workplace exposures to zinc stearate dust at higher levels. OSHA finds that the pulmonary effects potentially associated with exposure to zinc stearate constitute material impairments of health within the meaning of the Act.

ZINC OXIDE DUST

CAS: 1314-13-2; Chemical Formula: ZnO
H.S. No. 1438

OSHA formerly had no exposure limit specifically for zinc oxide dust. The ACGIH has a limit of 10 mg/m³ as an 8-hour TWA for zinc oxide, measured as total dust. The proposed PEL was 10 mg/m³, and this limit, measured as total particulate, is established by the final rule. Zinc oxide dust is a white or pale yellow powder.

According to Turner and Thompson (1926/Ex. 1–1124), exposure to finely divided zinc oxide dust can produce symptoms similar to those for metal fume fever. Beeckmans and Brown (1963/Ex. 1–775) reported that catalytically active zinc oxide dust is more toxic when treated with ultraviolet light. Aside from these considerations, the ACGIH considers zinc oxide dust to be a nuisance dust.

Two comments on zinc oxide were submitted to the rulemaking record (Exs. 3–673 and 3–675), but neither of these comments addressed the health effects associated with zinc oxide exposure. NIOSH does not concur with these limits; the NIOSH RELs for zinc oxide dust are 5 mg/m³ TWA (respirable fraction) and 15 mg/m³ (total dust) as 15-minute ceilings (Ex. 8–47, Table N4). NIOSH believes that exposure to zinc oxide dust causes respiratory effects and cites Gupta, Pandey, Misra, and Viswanathan (1986); Lam, Conner, Rogers et al. (1985); and NIOSH (1975d) in support of this view. OSHA will monitor developments on the toxicology of zinc oxide in the future to ensure that the PELs for this substance are protective.

In the final rule, OSHA is establishing limits of 10 mg/m³ TWA (total particulate) and 5 mg/m³ TWA (respirable particulate) for zinc oxide. The Agency concludes that these limits will protect workers from the significant risk of material health impairment in the form of physical irritation and, perhaps, of respiratory effects.

Conclusions

OSHA's generic 8-hour TWA particulate standard (29 CFR 1910.1000, Table Z–3) was adopted from the 1968 ACGIH TLV–TWA of 15 mg/m³ for total dust and 5 mg/m³ for respirable dust. At the time, the ACGIH considered the 15-mg/m³ value to be "an acceptable limit of good hygienic practice," based on the then-prevailing "lack of knowledge" of any adverse exposure-related effects at levels below this value (*Documentation of the Threshold Limit Values and Biological Exposure Indices*, ACGIH 1966/Ex. 1–13). Shortly after OSHA adopted the ACGIH's 1968 limit, the ACGIH revised its limit downward to 10

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mg/m³ for total dust and 5 mg/m³ for respirable dust. In justifying this reduction, the ACGIH noted that the lower levels would "result in appreciable improvement of working conditions in plants where the old limit of 15 mg/m³ formerly prevailed" (*Documentation of the Threshold Limit Values for Substances in Workroom Air*, 3rd ed., p. 190, ACGIH 1971).

In the final rule, OSHA has determined that it is appropriate to set a 10-mg/m³ total particulate limit for those particulates demonstrated to have, in addition to physical-irritant properties, specific adverse health effects. These substances are also being identified separately in Table Z-1-A. For the 18 substances in this section that are physical irritants but for which other health effects have not specifically been identified, OSHA is retaining the 8-hour TWA total particulate limit of 15 mg/m³. These substances are also separately identified in Table Z-1-A. For the group of Particulates not otherwise regulated (which includes all workplace particulates, both organic and inorganic) that is not separately identified in Table Z-1-A, OSHA is establishing a generic total particulate limit of 15 mg/m³. For all of the particulates in this section, the agency's former 5-mg/m³ TWA limit for the respirable fraction is being retained.

11. Substances for Which Limits Are Based on Avoidance of Odor Effects

Introduction

This category includes three substances that have a variety of toxic effects, including intolerable odors; they are grouped together in this section because their permissible exposure limits were set at levels that would prevent intolerable concentrations of these odors in the workplace. OSHA is retaining its existing 8-hour TWA limits for the three substances in this category; the Agency believes that the PELs for these substances provide adequate prevention against these odorant effects. At levels above those established by these PELs, workers are distracted from the task at hand, may be more prone to accidents, and are likely to experience considerable discomfort. OSHA is retaining its existing limits for these odorants based on the data described below, which provide information on the levels at which intolerable odor effects occur. Table C11-1 shows the substances included in this group and their former, proposed, and final rule limits, as well as their CAS and HS numbers.

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TABLE C11-1. Substances for Which Limits Are Based on Avoidance of Odor Effects

Chemical Name	CAS No.	Former OSHA PEL	Proposed PEL	Final Rule PEL*
1226 Isopropyl ether	108-20-3	500 ppm TWA	500 ppm TWA	500 ppm TWA
1314 Phenyl ether (vapor)	101-84-8	1 ppm TWA	1 ppm TWA	1 ppm TWA
1427 Vinyl toluene	25013-15-4	100 ppm TWA	100 ppm TWA	100 ppm TWA

* OSHA's TWA limits are for 8-hour exposures, and OSHA's STELs are for 15 minutes unless otherwise specified.

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Description of the Health Effects

The chemicals in this category have obnoxious odors and cannot willingly be tolerated by most workers for any period of time. Because odor detection occurs at very low concentrations for many of these chemicals, OSHA's existing permissible exposure limits were set at levels below the concentration at which the odor would become intolerable to employees.

The preamble to the proposed rule (53 *FR* 20661) asked commenters for information on the extent to which exposure to these odorant chemicals causes material impairment of health. Several commenters addressed this question (see discussion of this issue in Section V of this preamble). For example, William Prokop of the National Renderer's Association (Ex. 3–11) is of the opinion that the variability in odor threshold and response among individuals makes "the selection of a suitable limit based on odor objectionability . . . quite arbitrary." This commenter reports that "there can be a hundredfold difference in olfactory sensitivity" even within a group consisting only of 10 people (Ex. 3–11, p. 2). Because of such inter-individual variability, Mr. Prokop believes that the exposure limits should not be set on the basis of intolerable odor (Ex. 3–11). OSHA notes that it is a longstanding practice in industrial hygiene to prevent the hazards associated with obnoxious workplace odors; both the ACGIH and OSHA have had such limits for more than 20 years. In addition, the levels selected for these substances take the variability described by Mr. Prokop into account, because they are set at the level found to be unobjectionable by most exposed individuals.

According to NIOSH (Ex. 8–47):

> [T]he odors emitted by industrial chemicals often play an important role in occupational safety and health. . . . These odors may cause undue health concerns among exposed workers or may create safety hazards by distracting workers from their tasks. Strong odors in the workplace may also mask the presence of other, more toxic substances. . . . Olfactory fatigue often occurs and should be considered a functional impairment that can result in increased worker exposure . . . (Ex. 8–47, p. 41).

OSHA does not agree with NIOSH that these chemicals constitute material health impairments in situations where odor is the only adverse effect at the level of concern. OSHA's reasoning on this issue is discussed further in Section V of the preamble.

The following sections describe the record evidence on each of these chemicals and their adverse health effects in animals and humans. These effects, which range from nausea to narcosis, generally occur at levels higher than the limits for these substances; that is, the limits for these substances were set to prevent these more serious effects as well as objectionable odor effects. Because odor effects range in severity from distracting to intolerable, these limits have been set below the concentration at which the odor becomes objectionable enough to create a significant safety risk.

ISOPROPYL ETHER

CAS: 108-20-3; Chemical Formula: $(CH_3)_2CHOCH(CH_3)_2$
H.S. No. 1235

OSHA's former limit of 500 ppm (8-hour TWA) is being retained for isopropyl ether, and NIOSH (Ex. 8–47, Table N1) concurs that this limit is appropriate. The ACGIH recommends a TLV–TWA of 250 ppm and a TLV-STEL of 310 ppm for this liquid, which has a sharp, sickly sweet odor similar to that of ether.

Animal studies have shown that exposures to high concentrations of isopropyl ether cause narcosis and death (Machle, Scott, and Treon 1939/Ex. 1–348). Twenty exposures at a 1-percent vapor concentration produced intoxication and depression but no significant blood or organ weight changes. In rabbits, the minimum lethal dose has been reported to be 5 to 6.5 g/kg. The liquid is an irritant to the skin and mucous membranes and causes dermatitis on repeated exposure (Machle, Scott, and Treon 1939/Ex. 1–348).

Humans exposed for 15 minutes to isopropyl ether concentrations of 300 ppm experienced no overt irritation but complained about the objectionable odor of isopropyl ether; however, eye and nose irritation did occur as a result of five-minute exposures to 800 ppm. A 15-minute exposure to 500 ppm was not reported by volunteers to be irritating (Silverman, Schulte, and First 1946/Ex. 1–142). NIOSH was the only commenter to the record on this substance.

The final rule retains OSHA's former limit for isopropyl ether of 500 ppm as an 8-hour TWA. OSHA is retaining its former limit because the evidence suggests that, although some volunteers complained of the odor at 300 ppm, the concentration reached 800 ppm before volunteers experienced objectionable effects.

PHENYL ETHER

CAS: 101–84–8; Chemical Formula: $(C_6H_5)_2O$
H.S. No. 1314

OSHA is retaining its former 8-hour TWA limit of 1 ppm for phenylether, and NIOSH (Ex. 8–47, Table N1) supports this decision. The ACGIH recommends a TWA–TLV of 1 ppm and a 2-ppm 15-minute STEL for phenyl ether. Phenyl ether is a colorless liquid or solid with a low volatility; its vapor has a disagreeable odor.

The acute oral lethal dose is approximately 4 g/kg for rats and guinea pigs, and single doses of between 1 and 2 g/kg administered to various species have shown no liver, spleen, kidney, thyroidal, or gastrointestinal toxicities in surviving animals (Vogel, Snyder, and Schulman 1964/Ex. 1–681). Repeated inhalation studies in rats, rabbits, and dogs have shown that 20 exposures to 4.9 ppm for five days per week, seven hours per day produced no adverse effects. Eye and nasal irritation were observed in rats and rabbits exposed at 10 ppm (Hefner, Leong, Kociba, and Gehring 1975/Ex. 1–329). Skin and eye irritation have been reported only as a result of prolonged undiluted exposures. There is no evidence that skin absorption presents a health hazard (ACGIH 1986/Ex. 1–3, p. 475). The primary complaints associated with human exposures to phenyl ether vapor are of disagreeable odor and occasional nausea (Hake and Rowe 1963b, as cited in ACGIH 1986/Ex. 1–3, p. 475). NIOSH was the only commenter on this substance.

OSHA is retaining its former TWA limit of 1 ppm for phenyl ether; the Agency finds insufficient evidence to support the adoption of a STEL to complement the TWA.

VINYL TOLUENE

CAS: 25013–15–4; Chemical Formula: $CH_3C_6H_4CH=CH_2$
H.S. No. 1427

OSHA is retaining its limit of 100 ppm (8-hour TWA) for vinyl toluene. NIOSH (Ex. 8–47, Table N1) concurs with the retention of this limit. The ACGIH recommends a TWA of 50 ppm with a 100-ppm short-term exposure limit. Vinyl toluene is a colorless liquid with a strong, disagreeable odor.

Wolf, Rowe, McCollister et al. (1956/Ex. 1–404) noted fatty degeneration of the liver and an increase in kidney and liver weights in rats, guinea pigs, rabbits, and monkeys subjected to approximately 100 seven- to eight-hour exposures to vinyl toluene at 1250 ppm. Some deaths occurred among the rats in this group. Animals exposed to vinyl toluene at 600 ppm appeared normal and showed no blood or urine abnormalities, no gross or microscopic tissue changes, and no changes in growth rate or organ weight (Wolf, Rowe, McCollister et al. 1956/Ex. 1–404).

Human volunteers reported eye and nose irritation at 400 ppm and objectionable odor at 300 ppm. At 50 ppm, the odor of vinyl toluene was detectable, but no irritation was experienced and the odor was not intolerable (ACGIH 1986/Ex. 1–3, p. 630). NIOSH was the only commenter on this substance.

OSHA is retaining its 8-hour TWA limit of 100 ppm for vinyl toluene; the Agency finds that this level protects workers against the significant risk of intolerable odor and irritation caused by vinyl toluene exposures in the workplace. The Agency has found no health evidence to suggest that a short-term limit is necessary, and the final rule accordingly does not contain a STEL for vinyl toluene.

12. Substances for Which Limits are Based on Analogy to Related Substances

Introduction

OSHA is establishing limits for 73 substances on the basis of their toxicologic and structural similarities to other chemical substances that create significant risks of systemic toxicity, ocular effects, kidney or liver damage, and other similarly adverse health effects. For 46 of these substances, OSHA has not previously had Z-table limits. For an additional 11 substances, OSHA is reducing the 8-hour TWA limit, and in 13 cases, the Agency is retaining its 8-hour limit and adding a STEL to supplement the TWA. OSHA is deleting the 8-hour TWA limit and adding a ceiling in the case of acetic anhydride and deleting a ceiling limit and adding an 8-hour TWA for another substance. For one substance, OSHA proposed a reduction in the TWA PEL, but, after careful review of the scientific evidence and rulemaking record, the Agency has decided to retain the existing limit. Table C12–1 shows these substances, their CAS and HS numbers, and their former, proposed, and final rule limits.

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TABLE C12-1. Substances for Which Limits Are Based on Analogy to Related Substances

H.S. Number/ Chemical Name	CAS No.	Former PEL	Proposed PEL	Final Rule PEL*
1003 Acetic anhydride	108-24-7	5 ppm TWA	5 ppm Ceiling	5 ppm Ceiling
1009 Acrylic acid	79-10-7	—	10 ppm TWA	10 ppm TWA, Skin
1015 Aluminum (alkyls)	7429-90-5	—	2 mg/m^3 TWA	2 mg/m^3 TWA
1018 Aluminum (soluble salts)	7429-90-5	—	2 mg/m^3 TWA	2 mg/m^3 TWA
1040 Boron tribromide	10294-33-4	—	1 ppm Ceiling	1 ppm Ceiling
1043 Bromine pentafluoride	7789-30-2	—	0.1 ppm TWA	0.1 ppm TWA
1049 n-Butyl acrylate	141-32-2	—	10 ppm TWA	10 ppm TWA
1055 o-sec-Butylphenol	89-72-5	—	5 ppm TWA, Skin	5 ppm TWA, Skin
1059 Calcium hydroxide	1305-62-0	—	5 mg/m^3 TWA	5 mg/m^3 TWA
1060 Calcium oxide	1305-78-8	5 mg/m^3 TWA	2 mg/m^3 TWA	5 mg/m^3 TWA
1074 Carbonyl fluoride	353-50-4	—	2 ppm TWA 5 ppm STEL	2 ppm TWA 5 ppm STEL
1075 Catechol	120-80-9	—	5 ppm TWA	5 ppm TWA, Skin
1081 1-Chloro-1-nitro-propane	600-25-9	20 ppm TWA	2 ppm TWA	2 ppm TWA

TABLE C12-1. Substances for Which Limits Are Based on Analogy to Related Substances (continued)

H.S. Number/ Chemical Name	CAS No.	Former PEL	Proposed PEL	Final Rule PEL*
1098 Cobalt carbonyl, as Co	10210-68-1	—	0.1 mg/m^3 TWA	0.1 mg/m^3 TWA
1099 Cobalt hydrocarbonyl, as Co	16842-03-8	—	0.1 mg/m^3 TWA	0.1 mg/m^3 TWA
1118 Diazinon	333-41-5	—	0.1 mg/m^3 TWA, Skin	0.1 mg/m^3 TWA, Skin
1121 1,1-Dichloro-1-nitro-ethane	594-72-9	10 ppm Ceiling	2 ppm TWA	2 ppm TWA
1125 p-Dichlorobenzene	106-46-7	75 ppm TWA	75 ppm TWA 110 ppm STEL	75 ppm TWA 110 ppm STEL
1128 Dichloromono-Fluoromethane	75-43-4	1000 ppm TWA	10 ppm TWA	10 ppm TWA
1135 Diethyl ketone	96-22-0	—	200 ppm TWA	200 ppm TWA
1138 Diethylene triamine	111-40-0	—	1 ppm TWA, Skin	1 ppm TWA
1148 Dipropyl ketone	123-19-3	—	50 ppm TWA	50 ppm TWA
1150 Diquat	85-00-7	—	0.5 mg/m^3 TWA	0.5 mg/m^3 TWA
1152 Disulfoton	298-04-4	—	0.1 mg/m^3 TWA	0.1 mg/m^3 TWA, Skin

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TABLE C12-1. Substances for Which Limits Are Based on Analogy to Related Substances (continued)

H.S. Number/ Chemical Name	CAS No.	Former PEL	Proposed PEL	Final Rule PEL*
1154 Divinyl benzene	108-57-6	—	10 ppm TWA	10 ppm TWA
1156 Endosulfan	115-29-7	—	0.1 mg/m^3 TWA, Skin	0.1 mg/m^3 TWA, Skin
1181 Fonofos	944-22-9	—	0.1 mg/m^3 TWA, Skin	0.1 mg/m^3 TWA, Skin
1182 Formamide	75-12-7	—	20 ppm TWA 30 ppm STEL	20 ppm TWA 30 ppm STEL
1186 Germanium tetra-hydride	7782-65-2	—	0.2 ppm TWA	0.2 ppm TWA
1212 Indene	95-13-6	—	10 ppm TWA	10 ppm TWA
1214 Iodoform	75-47-8	—	0.6 ppm TWA	0.6 ppm TWA
1219 Isobutyl alcohol	78-83-1	100 ppm TWA	50 ppm TWA	50 ppm TWA
1220 Isooctyl alcohol	26952-21-6	—	50 ppm TWA, Skin	50 ppm TWA, Skin
1229 n-Isopropylaniline	768-52-5	--	2 ppm TWA, Skin	2 ppm TWA, Skin
1231 Ketene	463-51-4	0.5 ppm TWA	0.5 ppm TWA 1.5 ppm STEL	0.5 ppm TWA 1.5 ppm STEL
1244 Methacrylic acid	79-41-4	—	20 ppm TWA	20 ppm TWA, Skin

TABLE C12-1. Substances for Which Limits Are Based on Analogy to Related Substances (continued)

H.S. Number/ Chemical Name	CAS No.	Former PEL	Proposed PEL	Final Rule PEL*
1247 4-Methoxyphenol	150-76-5	—	5 mg/m^3 TWA	5 mg/m^3 TWA
1250 Methyl acetylene-propadiene mixture	—	1000 ppm TWA	1000 ppm TWA 1250 ppm STEL	1000 ppm TWA 1250 ppm STEL
1256 Methyl demeton	8022-00-2	—	0.5 mg/m^3 TWA, Skin	0.5mg/m^3 TWA, Skin
1257 Methyl ethyl ketone peroxide	1338-23-4	--	0.2 ppm Ceiling	0.7 ppm Ceiling
1258 Methyl formate	107-31-3	100 ppm TWA	100 ppm TWA 150 ppm STEL	100 ppm TWA 150 ppm STEL
1259 Methyl iodide	74-88-4	5 ppm TWA, Skin	2 ppm TWA, Skin	2 ppm TWA, Skin
1260 Methyl isoamyl ketone	110-12-3	--	50 ppm TWA	50 ppm TWA
1262 Methyl isopropyl ketone	563-80-4	--	200 ppm TWA	200 ppm TWA
1265 Methyl parathion	298-00-0	-	0.2 mg/m^3 TWA, Skin	0.2 mg/m^3 TWA Skin

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TABLE C12-1. Substances for Which Limits Are Based on Analogy to Related Substances (continued)

H.S. Number/ Chemical Name	CAS No.	Former PEL	Proposed PEL	Final Rule PEL*
1268 Methylcyclohexane	108-87-2	500 ppm TWA	400 ppm TWA	400 ppm TWA
1271 2-Methylcyclopentadienyl Mn tricarbonyl, as Mn	12108-13-3	—	0.2 mg/m^3 TWA, Skin	0.2 mg/m^3 TWA, Skin
1279 Monocrotophos	6923-22-4	—	0.25 mg/m^3 TWA	0.25 mg/m^3 TWA
1281 Morpholine	110-91-8	20 ppm TWA, Skin	20 ppm TWA 30 ppm STEL, Skin	20 ppm TWA 30 ppm STEL, Skin
1286 Nitric acid	7697-37-2	2 ppm TWA	2 ppm TWA 4 ppm STEL	2 ppm TWA 4 ppm STEL
1287 p-Nitroaniline	100-01-6	6 mg/m^3 TWA, Skin	3 mg/m^3 TWA, Skin	3 mg/m^3 TWA, Skin
1292 Nitrotoluene				
o-isomer	88-72-2;	5 ppm TWA, Skin	2 ppm TWA, Skin	2 ppm TWA, Skin
m-isomer	99-08-1;			
p-isomer	99-99-0			
1293 Nonane	111-84-2	-	200 ppm TWA	200 ppm TWA
1299 Oxalic acid	144-62-7	1 mg/m^3 TWA	1 mg/m^3 TWA 2 mg/m^3 STEL	1 mg/m^3 TWA 2 mg/m^3 STEL
1309 Perchloryl fluoride	7616-94-6	3 ppm TWA	3 ppm TWA 6 ppm STEL	3 ppm TWA 6 ppm STEL

TABLE C12-1. Substances for Which Limits Are Based on Analogy to Related Substances (continued)

H.S. Number/ Chemical Name	CAS No.	Former PEL	Proposed PEL	Final Rule PEL*
1320 Phosdrin (Mevinphos)	7786-34-7	0.1 mg/m^3 TWA, Skin	0.1 mg/m^3 TWA 0.3 mg/m^3 STEL, Skin	0.1 mg/m^3 TWA 0.3 mg/m^3 STEL, Skin
1323 Phosphorus oxychloride	10025-87-3	—	0.1 ppm TWA 0.5 ppm STEL	0.1 ppm TWA
1324 Phosphorus pentasulfide	1314-80-3	1 mg/m^3 TWA	1 mg/m^3 TWA 3 mg/m^3 STEL	1 mg/m^3 TWA 3 mg/m^3 STEL
1326 Phthalic anhydride	85-44-9	2 ppm TWA	1 ppm TWA	1 ppm TWA
1335 Propargyl alcohol	107-19-7	—	1 ppm TWA, Skin	1 ppm TWA, Skin
1336 Propionic acid	79-09-4	—	10 ppm TWA 15 ppm STEL	10 ppm TWA
1338 n-Propyl acetate	109-60-4	200 ppm TWA	200 ppm TWA 250 ppm STEL	200 ppm TWA 250 ppm STEL
1339 n-Propyl alcohol	71-23-8	200 ppm TWA	200 ppm TWA 250 ppm STEL; Skin	200 ppm TWA 250 ppm STEL
1344 Propylene oxide	75-56-9	100 ppm TWA	20 ppm TWA	20 ppm TWA

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TABLE C12-1. Substances for Which Limits Are Based on Analogy to Related Substances (continued)

H.S. Number/ Chemical Name	CAS No.	Former PEL	Proposed PEL	Final Rule PEL*
1361 Silicon tetrahydride	7803-62-5	—	5 ppm TWA	5 ppm TWA
1379 Sulfuryl fluoride	2699-79-8	5 ppm TWA	5 ppm TWA 10 ppm STEL	5 ppm TWA 10 ppm STEL
1393 Thionyl chloride	7719-09-7	—	1 ppm Ceiling	1 ppm Ceiling
1402 Tributyl phosphate	126-73-8	5 mg/m^3 TWA	2.5 mg/m^3 TWA	2.5 mg/m^3 TWA
1404 Trichloroacetic acid	76-03-9	—	1 ppm TWA	1 ppm TWA
1411 Trimethylamine	75-50-3	—	10 ppm TWA 15 ppm STEL	10 ppm TWA 15 ppm STEL
1420 n-Valeraldehyde	110-62-3	—	50 ppm TWA	50 ppm TWA
1432 m-Xylene-alpha, alpha', diamine	1477-55-0	—	0.1 mg/m^3 Ceiling, Skin	0.1 mg/m^3 Ceiling, Skin
1433 Xylidine	1300-73-8	5 ppm TWA, Skin	2 ppm TWA, Skin	2 ppm TWA, Skin

* OSHA's TWA limits are for 8-hour exposures; its STELs are for 15 minutes unless otherwise specified; and its ceilings are peaks not to be exceeded for any period of time

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Description of the Health Effects

The health effects associated with occupational exposures to the diverse group of substances shown in Table C12-1 vary widely, ranging from sensory irritation, systemic toxicity, ocular effects, and neuropathy to renal and liver damage. This variation in target organs reflects the fact that the substances in this group have not been grouped on the basis of similarity in toxic effects, target organs, or mechanism of action; instead, they are considered together because the specific limits being established for them have been set on the basis of toxic effects caused by exposure to analogous chemicals. Table C12-2 shows these substances, along with their adverse health effects and the substances with which they share structural similarities.

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TABLE C12-2. Summary of Rationale for Limits Based on Analogy to Related Substances

H.S. Number/ Chemical Name	Substance with Analogous Structure or Activity	Associated Health Effects
1003 Acetic anhydride	Acetic acid	Sensory irritation
1009 Acrylic acid	Acetic acid	Sensory irritation
1015 Aluminum (alkyls)	Welding fumes	Pulmonary irritation
1018 Aluminum (soluble salts)	Hydrogen chloride	Sensory irritation
1040 Boron tribromide	Hydrogen bromide	Sensory irritation
1043 Bromine pentafluoride	Chlorine terifluoride	Systemic injury
1048 n-Butyl acrylate	Methyl acrylate	Sensory Irritation
1055 o-sec-Butylphenol	Phenol and cresol	Respiratory, liver, and kidney effects
1059 Calcium hydroxide	Sodium hydroxide	Sensory irritation
106C Calcium oxide	Sodium hydroxide	Sensory irritation
1074 Carbonyl fluoride	Hydrolysis to hydrogen fluoride	Sensory irritation

TABLE C12-2. Summary of Rationale for Limits Based on Analogy to Related Substances (continued)

H.S. Number/ Chemical Name	Substance with Analogous Structure or Activity	Associated Health Effects
1075 Catechol	Phenol	Peripheral vaso-constriction, renal tubule degeneration
1081 1-Chloro-1-nitropropane	Nitropropane	Damage to heart muscle, liver, and kidneys
1098 Cobalt carbonyl	Nickel carbonyl	Systemic toxicity
1099 Cobalt hydrocarbonyl	Nickel carbonyl	Systemic toxicity
1118 Diazinon	Parathion	Cholinesterase inhibition
1121 1,1-Dichloro-1-nitroethane	Related compounds	Systemic toxicity
1125 p-Dichlorobenzene	o-Dichlorobenzene	Neurological effects, cataract formation
1128 Dichlorofluoromethane	Chloroform	Hepatotoxicity, cardiac sensitization
1135 Diethyl ketone	Methyl propyl ketone	Narcosis
1138 Diethylenetriamine	Ethylamine	Irritation, sensitization

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TABLE C12-2. Summary of Rationale for Limits Based on Analogy to Related Substances (continued)

H.S. Number/ Chemical Name	Substance with Analogous Structure or Activity	Associated Health Effects
1148 Dipropyl ketone	Methyl isobutyl ketone	Narcosis
1150 Diquat	Paraquat	Ocular effects
1152 Disulfoton	Parathion	Cholinesterase inhibition
1154 Divinyl benzene	Styrene	Sensory irritation
1156 Endosulfan	Aldrin, Dieldrin	Neurological effects
1181 Fonofos	Ethyl parathion	Cholinesterase inhibition
1182 Formamide	Dimethyl formamide	Testicular toxicity, teratogenicity
1186 Germanium tetrahydride	Stibine	Hemolytic effects
1212 Indene	Naphthalene	Sensory irritation
1214 Iodoform	Methyl iodide	Irritation, hepatotoxicity
1219 Isobutyl alcohol	n-Butanol	Irritation, narcosis
1220 Isooctyl alcohol	Isoamyl alcohol	Sensory irritation

TABLE C12-2. Summary of Rationale for Limits Based on Analogy to Related Substances (continued)

H.S. Number/ Chemical Name	Substance with Analogous Structure or Activity	Associated Health Effects
1229 n-Isopropylaniline	Aniline, N,N-dimethylaniline	Hemolytic effects
1231 Ketene	Phosgene	Sensory irritation
1244 Methacrylic acid	Acrylic acid	Sensory irritation
1247 4-Methoxyphenol	Hydroquinone	Ocular effects
1250 Methyl acetylene-propadiene mixture	Methyl acetylene	
1256 Methyl demeton	Demeton	Ocular effects, respiratory effects, inner ear irritation
1257 Methyl ethyl ketone peroxide	Benzoyl peroxide, hydrogen peroxide	Sensory irritation
1258 Methyl formate	Methyl acetate	Sensory irritation
1259 Methyl iodide	Methyl bromide	Central nervous system effects
1260 Methyl isoamyl ketone	Methyl isobutyl ketone	Neuropathy

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TABLE C12-2. Summary of Rationale for Limits Based on Analogy to Related Substances (continued)

H.S. Number/ Chemical Name	Substance with Analogous Structure or Activity	Associated Health Effects
1262 Methyl isopropyl ketone	Diethyl ketone, methyl propyl ketone	Narcosis, sensory irritation
1265 Methyl parathion	Parathion	Cholinesterase inhibition
1268 Methylcyclohexane	Heptane	Irritation
1271 Methylcyclopentadienyl manganese tricarbonyl	Tetraethyl lead	Central nervous system effects, chronic lung effects
1279 Monocrotophos	Parathion	Cholinesterase inhibition
1281 Morpholine	Ammonia	Kidney and liver degeneration, sensory irritation
1286 Nitric acid	Hydrogen chloride, sulfuric acid	Sensory irritation
1287 p-Nitroaniline	Aniline	Methemoglobin formation
1292 Nitrotoluene	Aniline	Methemoglobin formation
1293 Nonane	Octane	Narcosis

TABLE C12-2. Summary of Rationale for Limits Based on Analogy to Related Substances (continued)

H.S. Number/ Chemical Name	Substance with Analogous Structure or Activity	Associated Health Effects
1299 Oxalic acid	Sulfuric acid, phosphoric acid	Irritation, burns
1309 Perchloryl fluoride	Fluoride	Fluorosis
1320 Phosdrin (Mevinphos)	Parathion	Cholinesterase inhibition
1323 Phosphorus oxychloride	Phosphorous trichloride	Sensory irritation, respiratory effects
1234 Phosphorus pentasulfide	Phosphoric acid	Sensory irritation
1326 Phthalic anhydride	Tetrachlorophthalic anhydride, maleic anhydride	Sensory irritation
1335 Propargyl alcohol	Allyl alcohol	Sensory irritation
1336 Propionic acid	Acetic acid	Sensory irritation
1338 n-Propyl acetate	Isopropyl acetate, n-butyl acetate	Sensory irritation
1339 n-Propyl alcohol	Isopropyl alcohol	Sensory irritation

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TABLE C12-2. Summary of Rationale for Limits Based on Analogy to Related Substances (continued)

H.S. Number/ Chemical Name	Substance with Analogous Structure or Activity	Associated Health Effects
1344 Propylene oxide	Ethylene oxide	Central nervous system depression, sensory irritation
1361 Silicon tetrahydride	Germane, stannane	Sensory irritation
1379 Sulfuryl fluoride	Hydrogen fluoride	Fluorosis
1393 Thionyl chloride	Hydrogen chloride	Sensory irritation
1402 Tributyl phosphate	Triphenyl phosphate	Narcosis, cholinesterase inhibition
1404 Trichloroacetic acid	2,2-Dichloropropionic acid	Sensory irritation
1411 Trimethylamine	Dimethylamine	Sensory irritation
1420 n-Valeraldehyde	Saturated aliphatic aldehydes	Sensory irritation
1432 m-Xylene-alpha,alpha'-diamine	Phenylenediamine	Allergic respiratory sensitization
1433 Xylidine	Aniline	Methemoglobin formation

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The use of structural analogy is a reasonable methodology for limit-setting because of the similarities in structure and activity between each substance in this grouping and at least one other toxic substance. Industrial hygienists and toxicologists frequently use this approach when dealing with lesser-known substances either in the workplace or the laboratory. The limits for the substances in this grouping have been set based on dose-response information for other compounds that have a similar chemical structure or that are known to have a similar mechanism of action. For example, limits are being established for a number of substances that are known cholinesterase inhibitors (including diazinon, disulfoton, and monocrotophos); however, since direct dose-response data are not available for these substances specifically, OSHA has established limits that are similar to the final rule's limit for parathion, another cholinesterase inhibitor for which adequate dose-response data are available.

It is important to note that the establishment of a limit on the basis of analogy to other substances does not reflect a lack of information showing that the substance is toxic; acute animal data are available to demonstrate the toxicity of all of the substances for which limits are being established in this category, and, for several substances, there are case reports of human poisonings caused by exposure. Thus the limits established for these substances reflect much more than a theoretical consideration of chemical structure and physiologic reaction: the hazardous nature of exposure to every substance in this category has been demonstrated beyond doubt, although the precise level at which these effects will occur cannot be foretold with certainty.

The following sections describe the record evidence and OSHA's findings for the substances in this grouping. They also discuss the material health impairments likely to occur as a consequence of occupational exposure to these substances.

ACETIC ANHYDRIDE

CAS: 108-24-7; Chemical Formula: $(CH_3CO)_2O$
H.S. No. 1030

The former OSHA PEL for acetic anhydride was 5 ppm as an 8-hour TWA. The ACGIH has a TLV of 5 ppm as a ceiling, based on analogy with acetic acid's (TLV = 5 ppm ceiling) irritant potential. The proposed PEL was 5 ppm as a ceiling, and NIOSH (Ex. 8-47, Table N1) concurs with this limit, which is established by the final rule. Acetic anhydride is a colorless, mobile, strongly refractive liquid with a strong odor.

In one study, rats inhaling 1000 ppm of acetic anhydride for four hours survived, but 2000 ppm was fatal (Smyth 1956/Ex. 1-759). In human studies, eye, nose, and throat irritation has been observed, and it has been suggested that bronchial and lung injury may occur as a consequence of exposure (Henderson and Haggard 1943), as cited in ACGIH 1986/Ex. 1-3, p. 5). Skin burns and serious corneal injury have been reported in industrial settings when workers came into contact with the liquid (McLaughlin 1946/Ex. 1-641), and acetic anhydride is a marked lacrimator (Fairhall 1949b, as cited in ACGIH 1986/Ex. 1-3, p. 5).

In light of acetic anhydride's potential for acute toxicity, OSHA is replacing the former 5-ppm 8-hour TWA with a 5-ppm ceiling. The Agency concludes that this limit will protect workers from the significant risk of ocular and respiratory effects associated with high, short-term exposures to acetic anhydride at the former level. Ocular and respiratory effects constitute material impairments of health. The final rule's limit will substantially reduce these risks among industrially exposed workers.

ACRYLIC ACID

CAS: 79-10-7; Chemical Formula: $CH_2 = CHCO_2H$
H.S. No. 1009

Previously, OSHA had no permissible exposure limit for acrylic acid. The ACGIH has an 8-hour TLV-TWA of 10 ppm. The propsed PEL was 10 ppm as an 8-hour TWA, and the final rule establishes this limit and adds a skin notation. Acrylic acid is a colorless, corrosive liquid with a distinctive acrid odor.

Acrylic acid is known to polymerize explosively with amines, ammonia, oleum, and chlorosulfonic acid, and it is incompatible with strong alkalis and pure nitrogen. Occupational exposure to acrylic acid usually occurs when the chemical is used in the form of methyl, ethyl, or butyl esters in the manufacture of acrylic resins.

Data indicate that the oral LD_{50} in rats is between 0.25 and 0.5 mg/kg (Dow Chemical Company 1977f, as cited in ACGIH 1986/Ex. 1-3, p. 14), and the skin absorption LD_{50} in rabbits is 0.95 ml/kg (Smyth, Carpenter, Weil et al. 1962/Ex. 1-441). Another study indicates that rabbits given acrylic acid orally had no ill effects at a level of 0.025 mg/kg (Klimkina et al. 1969, as cited in ACGIH 1986/Ex. 1-3, p. 14), and Gage (1970/Ex. 1-318) reports that rats exposed to 80 ppm for 6 hours daily for 20 days showed no adverse effects.

Case reports indicate that acute exposures to acrylic acid in workers have caused skin burns, eye burns, and upper respiratory effects (ACGIH 1986/Ex. 1-3, p. 14). OSHA received a comment from the Basic Acrylic Monomer Manufacturers (Ex. 184) supporting the proposed 10-ppm TWA limit. The New Jersey Department of Health (Ex. 144) discussed acrylic acid in connection with the Department's recommendation that OSHA use EPA's IRIS data as the basis for limit-setting. OSHA has discussed this approach in Section VI.A of this preamble. NIOSH (Ex. 8-47, Table N2) believes that the limit being established by OSHA for acrylic acid should be lower, based on recent studies demonstrating degeneration of the nasal mucosa, changes in pulmonary function, and skin absorption (miller, Ayres, Jersey, and Mckenna 1981 and Silver, Leith, and Murphy 1981, both as cited in ACGIH 1986/Ex. 1-3, p 14.1). OSHA is aware of the recent literature on acrylic acid and will continue to monitor it in the future.

OSHA concludes that an 8-hour TWA PEL of 10 ppm and a skin notation are necessary to protect workers from the significant risk of nasal and eye irritation, which constitute material health impairments that are potentially associated with exposure to acrylic acid at levels above the new limit. The Agency has determined that this limit will substantially reduce this risk and prevent recurrences of the burns and irritation previously associated with industrial exposures to acrylic acid.

ALUMINUM (ALKYLS)

CAS: 7429-90-5
Chemical Formula: Al
H.S. No. 1015

ALUMINUM (SOLUBLE SALTS)

CAS: 7429-90-5
Chemical Formula: Al
H.S. No. 1018

OSHA formerly had no permissible exposure limits for either the soluble salts of aluminum or the aluminum alkyls. The ACGIH has an 8-hour TLV-TWA limit of 2 mg/m ^{3} for aluminum (soluble salts) and 2 mg/m^3 for the aluminum alkyls. The proposed PELs were 2 mg/m^3 for both groups of aluminum compounds. and NIOSH (Ex. 8-47, Table N1) concurred that these limits were appropriate. The final rule establishes a 2-mg/m^3 8-hour TWA PEL for the aluminum alkyls and the soluble salts of aluminum.

The ACGIH's limits for aluminum soluble salts have been set on the basis of the amount of hydrolized acid, such as hydrochloric acid or sulphuric acid, in their acid compounds. For example,

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three mols of hydrogen chloride (HCl) hydrolize from one mol of aluminum chloride; since HCl has a PEL of 5 ppm, a PEL of 2 mg/m³ for aluminum chloride (which is a soluble salt of aluminum) would provide the same degree of protection from irritation as that provided by this limit for HCl. The acute toxicity of aluminum chloride is generally representative of the toxicity of all of the soluble salts of aluminum. For the aluminum alkyls, toxicity data are sparse. However, all of the nonhalogenated alkyls decompose into aluminum oxide fume, and the halogenated alkyls are even more irritating because of acid hydrolysis.

In the final rule, OSHA is establishing an 8-hour TWA limit of 2 mg/m³, for both the soluble salts of aluminum and the aluminum alkyls. The Agency concludes that these limits will protect against the significant risk of irritation and skin burns, which constitute material health impairments that are associated with exposures at levels above the new PEL.

BORON TRIBROMIDE

CAS: 10294-33-4; Chemical Formula: BBr_3 H.S. No. 1040

OSHA formerly had no limit for exposure to boron tribromide. The ACGIH has a 1-ppm ceiling limit for boron tribromide, which is a colorless, fuming liquid that is decomposed by water and alcohol. The proposed PEL, with which NIOSH (Ex. 8-47, Table N1) concurred, was a ceiling of 1 ppm; this limit is established in the final rule.

Boron tribromide has a high potential for acute local irritation, and its potential for systemic toxicity is analogous with that of hydrogen bromide (HBr). On decomposition, one molecule of boron tribromide would be expected to produce three molecules of HBr (ACGIH 1986/Ex. 1-3, p. 62).

Animals repeatedly exposed to boron tribromide develop pneumonia, and exposure to 100 ppm caused a uniformly high mortality rate in animals from six laboratory species (Stokinger, Spiegel et al. 1953, as cited in ACGIH 1986/Ex. 1-3, p. 63). Rats, rabbits, and mice exposed at 1.5, 3.4, or 12.8 ppm boron trifluoride developed pneumonitis and dental fluorosis, although, at the lowest level tested, the evidence of pneumonitis was described as "marginal" (Torkelson, Sadek, and Rowe 1961, as cited in ACGIH 1986/Ex. 1-3, p. 63).

Based on this evidence of boron tribromide's severe pulmonary toxicity at exposure levels of 3.4 ppm, OSHA is establishing a ceiling limit of 1 ppm. The Agency concludes that this limit will protect workers from the significant risk of serious pulmonary damage, a material health impairment that is associated with exposure to this substance at levels above the new PEL.

BROMINE PENTAFLUORIDE

CAS: 7789-30-2; Chemical Formula: BrF_5 H.S. No. 1043

OSHA had no former limit for bromine pentafluoride. The ACGIH has TLV-TWA of 0.1 ppm. The proposed PEL was 0.1 ppm as an 8-hour TWA, and NIOSH (Ex. 8-47, Table N1) concurs with this limit. The final rule promulgates a 0.1-ppm 8-hour TWA PEL for bromine pentafluoride. This substance is a pale yellow liquid at temperatures below 40.3°C; above this temperature, is a colorless, pungent, corrosive gas.

Bromine pentafluoride has been shown to be acutely toxic in animals. Animals exposed to bromine pentafluoride vapor at 500 ppm exhibited immediate symptoms of gasping, swollen eyelids, clouded corneas, tearing, salivation, and acute distress; these symptoms appeared after exposure for a period as short as three minutes. Exposures to 50 ppm were fatal after 30 minutes, and chronic exposure above 3 ppm resulted in severe nephrosis (in some animals), as well as marked hepatosis and severe respiratory involvement (The Matheson Co., Inc., as cited in ACGIH 1986/Ex. 1-3, p. 66). Bromine pentafluoride is toxicologically more active than free, elemental fluorine, and its toxicity appears to be closely related to that of chlorine trifluoride (Horn and Weir 1955/Ex. 1-592; Horn and Weir 1956, as cited in ACGIH 1986/Ex. 1-3, p. 66). Chlorine trifluoride has caused severe toxicity and some fatalities in dogs and rats exposed over a period of six months to an average concentration of 1.17 ppm for six hours daily (Horn and Weir 1955/Ex. 1-592).

In the final rule, OSHA is establishing a PEL of 0.1 ppm as an 8-hour TWA to prevent the significant risk of serious systemic injury potentially associated with exposure to this substance at levels above the new limit. The Agency concludes that this limit will substantially reduce this risk of systemic toxicity, which constitutes a material impairment of health.

n-BUTYL ACRYLATE

CAS: 141-32-2; Chemical Formula: $C_7H_{12}O_2$ H.S. No. 1048

OSHA had no former limit for n-butyl acrylate. The ACGIH's Threshold Limit Value is a 10-ppm TWA. The proposed PEL, with which NIOSH (Ex. 8-47, Table N1) concurs, was 10 ppm as an 8-hour TWA, and this limit is promulgated by the final rule. n-Butyl acrylate is a colorless, flammable liquid.

n-Butyl acrylate is a skin and eye irritant and is toxic to animals. The LC_{50} for a 4-hour exposure was 1000 ppm (Carpenter, Weil, and Smith 1974/Ex. 1-304). In rabbits, the dermal LD_{50} for n-butyl acrylate is approximately 1600 mg/kg, compared with 1235 mg/kg for methyl acrylate (Smyth, Carpenter, and Weil 1951/Ex. 1-430). n-Butyl acrylate has also been found to be mildly irritating to the skin and to produce corneal necrosis in the unwashed eyes of rabbits (Holland 1974, as cited in ACGIH 1986/Ex. 1-3, p. 75).

At the rulemaking hearing, Dr. Isadore Rosenthal from Rohm and Haas was asked to submit to the docket any information on butyl acrylate that Rohm and Haas had in its possession and had not previously transmitted either to the ACGIH or to OSHA. In response, Dr. Rosenthal (Ex. 112) submitted a 1974 internal memo reporting on butyl acrylate's overall toxicity. These data report, among other things, that the dermal LD_{50} in rabbits for this substance is about 1600/ mg/kg (Ex. 112).

In the final rule, OSHA is establishing an 8-hour TWA PEL of 10 ppm for n-butyl acrylate, based on the similarity of the toxicological response of n-butyl acrylate to methyl acrylate, for which OSHA also has a 10-ppm TWA limit. The Agency concludes that this limit is necessary to reduce the significant risk of skin irritation and corneal necrosis, which constitute material health impairments.

o-sec-BUTYLPHENOL

CAS: 89-72-5; Chemical Formula: $C_2H_5(CH_3)CHC_6H_4OH$ H.S. No. 1055

OSHA had no former limit for o-sec-butylphenol. The ACGIH has a 5-ppm 8-hour TLV-TWA, with a skin notation. The proposed PEL was an 8-hour TWA of 5 ppm, with a skin notation; NIOSH (Ex. 8-47, Table N1) concurs with this limit, which is established in the final rule. o-sec-Butylphenol is a colorless liquid.

Animal studies indicate that contact with o-sec-butylphenol causes irritation of the skin, eyes, and respiratory tract, and may result in skin burns. A Dow Chemical Company study (1977l, as cited in ACGIH 1986/Ex. 1-3, p. 84) showed that the oral and skin absorption LD_{50}s for guinea pigs ranged between 0.6 and 2.4 g/kg. Prolonged contact of o-sec-butylphenol with the skin of these animals resulted in burns, whereas direct application to the eyes did not cause corneal injury. The oral LD_{50} for rats is 2700 mg/kg (*Dangerous Properties of Industrial Materials*, 6th ed., Sax 1984), and rats exposed to saturated air levels of this chemical survived for seven hours (Dow Chemical Company 1977l, as cited in ACGIH 1986/Ex. 1-3, p. 84). The intravenous LD_{50} for mice is 6 mg/kg (Sax 1984). Acute workplace exposure to o-sec-butylphenol have resulted in mild respiratory irritation and skin burns (ACGIH 1986/Ex. 1-3, p. 84).

In the final rule, OSHA is establishing an 8-hour TWA limit of 5 ppm for o-sec-butylphenol, with a skin notation. The Agency concludes that this limit is necessary to protect workers from the significant risks of eye and respiratory tract irritation and skin burns associated with exposure to this substance at the levels formerly permitted by the absence of an OSHA limit. Eye and mucous membrane irritation and skin burns constitute material health impairments within the meaning of the Act.

CALCIUM HYDROXIDE

CAS: 1305-62-0; Chemical Formula: $Ca(OH)_2$ H.S. No. 1059

OSHA formerly had no limit for calcium hydroxide; the ACGIH has a TLV-TWA of 5 mg/m³. In the proposal, the PEL was 5 mg/m³ as an 8-hour TWA, and NIOSH (Ex. 8-47, Table N1) concurred with this limit. The final rule promulgates an 8-hour TWA PEL of 5 mg/m³ for calcium hydroxide. Calcium hydroxide is a soft, white, odorless, crystalline powder with an alkaline, bitter taste.

Calcium hydroxide is a moderate to severe caustic irritant when it comes in contact with the skin, eyes, or mucous membranes of the upper respiratory tract (ACGIH 1986/EX. 1-3, p. 92; Sax and Lewis 1989, p. 682). The oral LD_{50} in rats is reported to be 7.34 g/kg (Smyth, Carpenter, Weil et al. 1969/Ex. 1-442). Industrial experience with this substance has not shown a high incidence of adverse health effects, although Sax (*Dangerous Properties of Industrial Materials*, 6th ed., 1984) reports that it is known to cause dermatitis (p. 621). Calcium hydroxide is also mutagenic (*Dangerous Properties of Industrial Materials*, 7th ed., Sax and Lewis 1989, p. 682). Calcium hydroxide has less alkalinity than the hydroxides of the alkali series, and the ACGIH has suggested that limits for exposures to calcium hydroxide should be based on its total alkalinity.

OSHA received only one comment other than NIOSH's on calcium hydroxide. The National Lime Association (NLA) (Ex. 3-890) raised several issues related to this substance. First, the NLA argues that the health evidence for calcium hydroxide does not support a PEL of 5 mg/m³ for this substance. According to the NLA, the oral toxicity study described by OSHA in the proposal has no relevance to airborne lime exposures (Ex. 3-890, p. 13). In addition, the NLA believes that calcium hydroxide should be regulated as a nuisance dust, with a PEL of 10 mg/m³. OSHA does not agree that calcium hydroxide is a biologically inert substance. The Agency agrees with Sax (1984), who reports that, "in the form of dust, it ½ calcium hydroxide ¾ is considered to be an important industrial hazard." OSHA finds that a PEL of 5 mg/m³, half that of the inert particulate limit, is appropriate for this well-known eye, skin, and upper respiratory tract irritant.

The NLA's second point is that the monitoring methods available for measuring workplace exposures to lime are inadequate to distinguish between "different compounds of calcium" because they are "element- not compound-specific" (Ex. 3-890). OSHA's decision in the final rule to establish 5-mg/m³ limits for both calcium oxide and calcium hydroxide (see the discussion below for calcium oxide) should eliminate this problem for affected employers.

In the final rule, OSHA is establishing an 8-hour TWA limit for calcium hydroxide of 5 mg/m³ to protect against the significant risk of skin, eye, and mucous membrane irritation, which are material impairments of health that are caused by exposure to this substance at levels above the new PEL. The Agency concludes that this limit will reduce these risks substantially.

CALCIUM OXIDE

CAS: 1305-78-8; Chemical Formula : CaO H.S. No. 1060

OSHA's former 8-hour TWA permissible exposure limit for calcium oxide was 5 mg/m³, and the proposal contained a revised 8-hour TWA PEL of 2 mg/m³ for this substance. NIOSH (Ex. 8-47, Table N1) concurred with this proposal. This revised limit was consistent with the ACGIH TLV for calcium oxide, which was set on the basis of analogy with sodium hydroxide, a widely recognized sensory irritant. The final rule retains OSHA's former 5-mg/m³ 8-hour TWA PEL for calcium oxide, for the reasons discussed below.

Calcium oxide (lime) is produced when limestone is calcined to drive off carbon dioxide. Calcium oxide is used as a refractory material; as a flux in steelmaking; as a binding agent in building, pulp and paper manufacture, sugar refining, and leather tanning; as the raw material for chlorinated lime bleaching powder, and as a soil treatment in agriculture (*Encyclopedia of Occupational Health and Safety*, Vol. 2, p. 1234, International Labour Office 1983).

The amount of information that has been published specifically about calcium oxide's toxicological effects in animals or humans is limited, which accounts for the ACGIH's reliance on the similarity in action between calcium oxide and sodium hydroxide in establishing a TLV of 2 mg/m³ for calcium oxide. The National Lime Association (NLA) (Ex. 3-890) and the American Iron and Steel Institute (Tr. p. 11-130 to 11-131; Ex. 168) objected to the comparison of calcium oxide's properties with those of sodium hydroxide; according to the NLA, "no qualitative or quantitative analysis is offered [in the proposal] to support the use of this analogy." OSHA's analysis of this issue is discussed below.

In direct contact with tissues, calcium oxide can result in burns and severe irritation because of its high reactivity and alkalinity. The major complaints of workers exposed to lime consist of irritation of the skin and eyes, although inflammation of the respiratory passages, ulceration and perforation of the nasal septum, and even pneumonia have been attributed to inhalation of the dust (ACGIH 1986/ Ex. 1-3, p. 92). The Pennsylvania Department of Health reported that strong nasal irritation occurred as a consequence of exposure to a mixture of calcium-oxide-containing dusts at a concentration of approximately 25 mg/m³, but that exposure to concentrations of 9 to 10 mg/m³ produced no observable irritation (Wands 1981a, in *Patty's Industrial Hygiene and Toxicology*, 3rd rev. ed., Vol. 2B, p. 3054). By comparison, exposure to airborne sodium hydroxide at a concentration of between 0.005 and 0.7 mg/m³ produced burning/redness of the nose, throat, or eyes in workers engaged in cleaning operations (Hervin and Cohen 1973/EX. 1-945, as cited in NIOSH 1976k/Ex. 1-965). Thus, the demonstrated effect level for sensory irritation caused by exposure to sodium hydroxide is below 1 mg/m³, while that for calcium oxide is above 9 mg/m³.

OSHA finds that analogy with sodium hydroxide is not an appropriate basis for establishing a PEL for calcium oxide, because there is nearly a tenfold difference in the no-effect levels for these two substances. Based on evidence that exposure to calcium oxide at levels above 9 mg/m³ may cause eye-tearing and mucous membrane irritation,

OSHA concludes that the Agency's former limit of 5 mg/m³ as an 8-hour TWA continues to be appropriate for this substance. The Agency concludes that this limit protects exposed workers from the significant risk of sensory irritation known to occur at concentrations of 9 to 10 mg/m³.

CARBONYL FLUORIDE

CAS: 353-50-4; Chemical Formula: COF_2
H.S. No. 1074

OSHA had no former limit for carbonyl fluoride. The ACGIH has an 8-hour TWA limit of 2 ppm and a 15-minute STEL of 5 ppm for this colorless and essentially odorless gas. The proposed PELs were an 8-hour TWA of 2 ppm and a 15-minute STEL of 5 ppm. NIOSH (Ex. 8–47, Table N1) concurred with these limits, and they are established in the final rule.

The 1-hour LC_{50} for rats is 360 ppm, and the 4-hour LC_{50} for the same species is 90 ppm (ACGIH 1986/Ex. 1–3, p. 111). Carbonyl fluoride hydrolyzes instantly on contact with moisture. The ACGIH (1986/Ex. 1–3, p. 14) reports that carbonyl fluoride is "about as toxic as hydrogen fluoride as a respiratory irritant gas."

Repeated exposure of animals to carbonyl fluoride is known to have metabolic effects; it inhibits the fluoride-sensitive enzyme succinic dehydrogenase via hydrolysis of carbonyl fluoride to hydrogen fluoride (Scheel, McMillan, and Phipps 1968/Ex. 1–364). Carbonyl fluoride is also a strong irritant to the eyes, skin, mucous membranes, and respiratory tract (*Dangerous Properties of Industrial Materials*, 6th ed., Sax 1984). The only comment on carbonyl fluoride came from NIOSH.

In the final rule, OSHA is establishing an 8-hour TWA limit of 2 ppm and a 15-minute 5-ppm STEL for carbonyl fluoride; these limits are based on analogy with the 3-ppm TWA limit being established for hydrogen fluoride. The Agency concludes that both a TWA and a STEL are necessary to provide protection against the significant risks of marked irritation and metabolic effects, which constitute material health impairments that are associated with exposure to carbonyl fluoride at levels above the new PELs.

CATECHOL (PYROCATECHOL)

CAS: 120-80-9; Chemical Formula: $C_6H_4(OH)_2$
H.S. No. 1075

OSHA formerly had no established limit for catechol. The ACGIH has a TLV-TWA of 5 ppm. The proposed PEL was 5 ppm as an 8-hour TWA, and NIOSH (Ex. 8–47, Table N1) concurs with this limit, which is established in the final rule. In addition, the Agency has added a skin notation for this substance, in accordance with its policy on skin designations, as discussed in Section VI.C.18. Catechol is a colorless crystalline solid that sublimes readily and thus occurs in the vapor state at room temperature.

Catechol is approximately 1.1 to 2.2 times more toxic than phenol, depending on the route of exposure (Industrial Bio-Test Laboratories 1974, as cited in ACGIH 1986/Ex. 1–3, p. 112). The oral LD_{50} in rats is 300 mg/kg, or approximately half that of phenol. Percutaneous toxicity for catechol in rabbits is 800 mg/kg, only slightly greater than the value for phenol. OSHA notes that phenol has a skin designation and that catechol's dermal LD_{50} in rabbits of 0.8 g/kg places this substance in the category of "toxic" by the percutaneous route of administration, as discussed in Section VI.C.18. In addition, the Agency is concerned by reports of central nervous system effects (i.e., convulsions) in humans as a result of skin absorption that are "more marked" than those produced by phenol (Deichmann and Keplinger 1981, in *Patty's Industrial Hygiene and Toxicology*, 3rd rev. ed., Vol. 2A, p. 2586). OSHA is therefore adding a skin notation to the final limit for catechol to protect workers from the serious CNS effects that may potentially occur from percutaneous absorption of this substance. Eye and nose irritation, as well as muscular spasms and tremor, have been observed in rats at a concentration of 2300 mg/m³ catechol, indicating that the acute respiratory toxicity of catechol is approximately one-third that of phenol (Industrial Bio-Test Laboratories 1974, as cited in ACGIH 1986/Ex. 1–3, p.112). Metabolic data indicate that the urinary elimination rate of catechol in rabbits is only 10 percent that of phenol (Williams 1959/Ex.1–1176). In mice, catechol is easily absorbed through the skin and gastrointestinal tract (Forsyth and Quesnel 1957/Ex. 1–978). Additional data document a variety of dermal, respiratory, and systemic toxicities that are closely analogous to those of phenol in their metabolic actions (Harold, Nierenstein, and Roaf 1910/Ex. 1–1111; Dietering 1938/Ex. 1–1019; Cushny et al. 1940, as cited in ACGIH 1986/Ex. 1–3, p. 112).

Exposure to catechol causes an increase in blood pressure, and, at high doses, kidney damage, eczematous dermatitis, and systemic illness (Harold, Nierenstein, and Roaf 1910/Ex. 1–1111; Dietering 1938/Ex. 1–1019; Cushny et al. 1940, as cited in ACGIH 1986/Ex. 1–3, p.112). OSHA received no comments, except for those from NIOSH, on catechol.

In the final rule, OSHA is establishing a permissible exposure limit of 5 ppm as an 8-hour TWA for this substance with a skin notation. The Agency concludes that these limits will protect workers against the significant risks of dermal, upper respiratory tract, convulsions, and central nervous system effects (i.e., convulsions), all of which constitute material impairments of health that are potentially associated with exposure to catechol at levels above the new PEL.

1-CHLORO-1-NITROPROPANE

CAS: 600-25-9; Chemical Formula: $CH_3CH_2CHClNO_2$
H.S. No. 1081

OSHA's former time-weighted average limit for 1-chloro-1-nitropropane was 20 ppm. The ACGIH has a TLV-TWA of 2 ppm for this flammable liquid (ACGIH 1986/Ex. 1–3.). The proposed PEL was 2 ppm as an 8-hour TWA, and NIOSH (8–47, table N1) concurs with this limit. The final rule promulgates a 2-ppm 8-hour TWA PEL for 1-chloro-1-nitropropane.

1-Chloro-1-nitropropane is the most acutely toxic of the fungicides known as the chloronitropropanes. In an inhalation experiment, two rabbits were exposed for six hours to a concentration of 393 ppm, after which one rabbit died; at an average concentration of 2574 ppm, both rabbits died. Guinea pigs tested under the same conditions survived these exposures. The oral LD_{50} for rabbits determined in the same study was between 50 and 100 mg/kg (Machle, Scott, Treon et al. 1945/Ex. 1–349). Other members of this family of fungicides show lesser skin and lung irritation but do have higher ingestion toxicities (Patty 1963i, as cited in ACGIH 1986/Ex. 1–3, p.132). Exposure to high concentrations of 1-chloro-1-nitropropane can cause heart muscle, liver, and kidney damage (Patty 1963i, as cited in ACGIH 1986/Ex. 1–3, p. 132). OSHA received no comments on this substance, except for those from NIOSH. The ACGIH considers chloronitropropane to be more toxic than nitropropane, for which a TLV-TWA of 25 ppm has been established.

In the final rule, OSHA is establishing an 8-hour TWA PEL of 2 ppm. The Agency concludes that this limit will protect exposed employees from the significant risk of skin and upper respiratory tract irritation and of systemic toxicity, which constitute material health impairments that are potentially associated with 1-chloro-1-nitropropane exposure at the former PEL.

COBALT CARBONYL

CAS: 10210-68-1; Chemical Formula: $Co_2(CO)_8$
H.S. No. 1098

OSHA had no former limit for cobalt carbonyl. The ACGIH has a TLV-TWA of 0.1 mg/m³ (measured as cobalt) for this substance, which is a solid that decomposes at 50°C. The proposed PEL was 0.1 mg/m³ as an 8-hour TWA, and NIOSH (Ex. 8–47, Table N1) concurs with this limit, which is established by the final rule.

Sax (*Dangerous Properties of Industrial Materials*, 6th ed., 1984) reports that cobalt carbonyl has a moderate-to-high order of toxicity by the oral route. The oral LD_{50} in mice is 377.7 mg/kg; in rats, it is 753.8 mg/kg (Spiridonova and Shabalina 1973/Ex. 1–1098). The hazards of exposure to the metal carbonyls range from relatively low (for iron pentacarbonyl) to extremely serious (for nickel carbonyl) (Stokinger 1981e, in *Patty's Industrial Hygiene and Toxicology*, 3rd rev. ed., Vol 2A, pp. 1797–1808); the greater the toxicity of the metal and the more stable and volatile the carbonyl, the more hazardous the compound. Exposure to any of the metal carbonyls causes the same symptoms of nausea, dizziness, headache, substernal pain, coughing and dyspnea (Stokinger 1981e). Evidence concerning any chronic effects of long-term exposure is lacking (ACGIH 1986/Ex. 1–3, p. 145). Only NIOSH commented on this substance.

In the final rule, OSHA establishes an 8-hour TWA PEL of 0.1 mg/m³ TWA for cobalt carbonyl to protect against the significant risk of headache, nausea, and pulmonary effects, which are material impairments of health that are associated with occupational exposure to this substance at levels above the new PEL. The Agency concludes that this limit will substantially reduce these significant risks.

COBALT HYDROCARBONYL

CAS: 16842-03-8; Chemical Formula: $HCo(CO)_4$
H.S. No. 1099

OSHA had no former limit for cobalt hydrocarbonyl. The ACGIH has a TLV-TWA of 0.1 mg/m³ (measured as cobalt) for this flammable and toxic gas. The proposed PEL was an 8-hour TWA of 0.1 mg/m³; NIOSH (Ex. 8–47, Table N1) concurs with this limit. The final rule promulgates an 8-hour TWA PEL of 0.1 mg/m³ (measured as cobalt) for cobalt hydrocarbonyl.

Cobalt hydrocarbonyl is approximately half as toxic as nickel carbonyl in terms of acute effects; in animals, it produces clinical signs and symptoms very similar to those produced by nickel carbonyl (ACGIH TLV-TWA of 0.007 mg/m³) and iron pentacarbonyl (ACGIH TLV-TWA of 0.8 mg/m³) (ACGIH 1986/Ex. 1–3, p. 145). These include headache, dizziness, and, after a delay in onset, liver, brain, and lung damage. The 30-minute LC_{50} in rats is 165 mg/kg (Palmes, Nelson, Laskin, and Kuschner 1959/Ex. 1–430). There is no evidence of chronic toxicity or of carcinogenicity.

In the final rule, OSHA establishes an 8-hour TWA limit of 0.1 mg/m³ for cobalt hydrocarbonyl. The Agency concludes that this limit will protect exposed employees from the significant risk of pulmonary, brain, and liver damage, as well as that of acute effects such as headaches and dizziness, which constitute material health impairments that are associated with exposure to levels above the new PEL.

DIAZINON

CAS: 333-41-5; Chemical Formula: $C_{12}H_{21}N_2O_3PS$
H.S. No. 1118

Previously, OSHA had no limit for diazinon. The ACGIH has a TLW-TWA of 0.1 mg/m³, with a skin notation. The proposed PEL was an 8-hour TWA of 0.1 mg/m³, with a skin notation; NIOSH concurs that these limits are appropriate (Ex. 8–47, Table N1). The final rule establishes a 0.1-mg/m³ PEL, with a skin notation, for diazinon. Pure diazinon is a colorless liquid, but the technical grade is pale yellow to dark brown in color and has a faint odor.

Gaines (1960/Ex. 1–319) reports the acute oral LD_{50} for male and female rats to be 108 and 76 mg/kg, respectively. Other reports set the acute oral LD_{50}s in rats, guinea pigs, and rabbits at 76 to 150, 240 to 320, and 130 mg/kg, respectively (Association of American Pesticide Control Officials, Inc. 1969, as cited in ACGIH 1986/Ex. 1–3, p. 172). Studies from Hazleton Laboratories (1965, as cited in ACGIH 1986/Ex. 1–3, p. 172) and Radeleff (1958/Ex. 1–434) have shown much greater susceptibility to diazinon in birds and calves, with the oral LD_{50} being less than 10 mg/kg in some instances. The dermal LD_{50} in rabbits is 400 mg/kg (RTECS 1983–84). However, susceptibility to repeated doses is relatively consistent among species, with dogs showing signs of poisoning at 9.3 mg/kg per day and rats showing complete inhibition of red blood cell cholinesterase and marked inhibition of brain cholinesterase at 50 mg/kg/day (Bruce, Howard, and Elsea 1955/Ex. 1–585). Monkeys were poisoned at 5 mg/kg/day (Woodard, Woodard, and Cronin 1968/Ex. 1–458). Chronic feeding studies in rats have shown no chronic toxicity at 10, 100, and 1000 ppm. For many mammals, diazinon is less toxic than parathion (ACGIH TLV-TWA of 0.1 mg/m³, although this is not true under some circumstances (ACGIH 1986/Ex. 1–3, p. 172).

In humans, Hays (1963/Ex. 1–982) reports that two patients were poisoned by a dermal diazinon dosage of about 1.1 mg/kg; however, Gassman (1957/Ex. 1–901) reports no ill effects from an accidental ingestion of 30 mg/kg. One man received a dose of 250 mg/kg and recovered after treatment, which included gastric lavage (Bockel 1967, as cited in ACGIH 1986/Ex. 1–3, p. 172). In tests, Geigy (1966, as cited in ACGIH 1986/Ex. 1–3, p. 172), found that a series of doses of 0.05 mg/kg/day for 28 days produced plasma cholinesterase inhibition, and it has been suggested that the no-effect level for cholinesterase inhibition in humans is 0.02 mg/kg/day. Skin absorption of diazinon occurs readily, and overexposures are associated with weakness, headache, blurred vision, salivation, sweating, nausea, vomiting, diarrhea, abdominal cramps, slurred speech, and moist rales in the lungs (ACGIH 1986/Ex. 1–3, p. 172).

In the final rule, the Agency is establishing an 8-hour TWA PEL of 0.1 mg/m³, with a skin notation, for diazinon. OSHA concludes that these limits will protect exposed workers from the significant risk of cholinesterase inhibition, weakness, headache, nausea, vomiting, as well as the other symptoms and signs of diazinon poisoning, which together constitute material health impairments that are associated with exposures at levels above the new PEL.

1,1-DICHLORO-1-NITROETHANE

CAS: 594-72-9; Chemical Formula: $CH_3CCl_2NO_2$
H.S. No. 1121

OSHA formerly had a ceiling limit of 10 ppm for 1,1-dichloro-1-nitroethane. The ACGIH has a TLV-TWA of 2 ppm for this colorless liquid. The proposed PEL was an 8-hour TWA of 2 ppm, with which NIOSH (Ex. 8–47, Table N1) concurs. The final rule establishes the 2-ppm 8-hour TWA PEL for 1,1-dichloro-1-nitroethane.

Toxicity data on 1,1-dichloro-1-nitroethane are largely derived from the 1945 studies conducted by Machle and co-workers (Ex. 1–349). These scientists reported that both rabbits and guinea pigs died from inhaling vapors at 100 ppm for six hours; at a concentration of 60 ppm, the animals survived a two-hour exposure. Four-hour inhalation exposures at 34 ppm and six-hour daily exposures at 25 ppm for a total of 204 hours also did not kill rabbits or guinea

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pigs. Skin and mucous membrane irritation were not produced at the 25-ppm exposure level. At survival concentrations, the primary targets of toxicity were the lungs, which showed edema, congestion, hemorrhage, and acute bronchitis. At lethal exposures, these investigators observed acute myocardial degeneration with interstitial edema, cloudy swelling of the liver with cellular degeneration, and tubular degeneration and interstitial edema of the kidney, as well as edema of the tufts of the glomeruli and kidney necrosis. The compound was also found to be a severe skin irritant when two applications were applied on two successive days (Machle, Scott, Treon et al. 1945/Ex. 1–349). The ACGIH (1986/Ex. 1–3, p. 186) states that dichloronitroethane is more toxic than the nonchlorinated nitroalkanes. The Workers Institute for Safety and Health (Ex. 116) questioned OSHA's selection of an 8-hour TWA rather than ceiling limit for this substance. In response, OSHA notes that the final rule's lower TWA limit is protective because the health effects of concern do not occur at the peak exposures that would be permitted by the revised 8-hour TWA PEL.

In the final rule, OSHA is establishing a PEL of 2 ppm TWA for 1,1-dichloro-1-nitroethane. The Agency concludes that this limit will protect workers against the significant risk of irritation, lung injury, and liver and kidney damage, all material health impairments that are associated with exposures at levels above the revised PEL.

p-DICHLOROBENZENE

CAS: 106-46-7; Chemical Formula: $C_6H_4Cl_2$
H.S. No. 1125

OSHA formerly had an 8-hour TWA limit of 75 ppm for p-dichlorobenzene. The ACGIH has a limit of 75 ppm TWA and a STEL of 110 ppm for this white crystalline material, which has a camphor-like odor. The ACGIH's limit recognizes that the para isomer is somewhat less toxic than the ortho isomer, for which the ACGIH has established a ceiling limit of 50 ppm. The proposed PEL retained the 75-ppm TWA limit and added a STEL of 110 ppm; the final rule establishes these limits.

In animal studies, an injection of 0.005 gram of p-dichlorobenzene in rats caused slight liver necrosis (Cameron, Thomas, Ashmore et al. 1937/Ex. 1–471). The intraperitoneal injection LD_{50} for rats has been reported as 2562 mg/kg (Zupko and Edwards 1949/Ex. 1–678). The oral LD_{50} in mice is 2950 mg/kg (Domenjoz 1946, as cited in ACGIH 1986/Ex. 1–3, p. 179); for rats, the oral LD_{50} is 2512 mg/kg (Varshavskaya 1970, as cited in ACGIH 1986/Ex. 1–3, p. 179). Rabbits fed a daily dietary exposure of 8 grams developed opacity of the lens in 3 weeks (Berliner 1939/Ex. 1–175); this finding was not confirmed, however, in repeated studies (Pike 1944/Ex. 1–656).

Reports of a human inhalation exposure to unspecified levels of p-dichlorobenzene describe swelling of the feet, ankles, and hands after day-long use of a mothproofing agent consisting of this substance (Clayton 1935/Ex. 1–306). Other reports describe cataracts caused by exposure to unspecified concentrations of the vapor of p-dichlorobenzene (Berliner 1939/Ex. 1–715). Petit and Champaix (1948, as cited in ACGIH 1986/Ex. 1–3, p. 179) report the case of a woman who experienced tingling of the hands, vertigo, and loss of weight from working for 18 months with a mixture of 90 parts p-dichlorobenzene and 10 parts hexachloroethane (airborne concentration not specified).

OSHA received three comments on p-dichlorobenzene: from NIOSH (Ex. 8–47), the Workers Institute of Safety and Health (WISH) (Ex. 116), and the Halogenated Solvents Industry Alliance (HSIA) (Ex. 186). WISH simply pointed out that the ACGIH *Documentation* (1986/Ex. 1–3) entry for this substance includes fewer, and different, references from those relied on by the Agency for Toxic Substances and Disease Registry (Ex. 116, Table 1), without further comment. The HSIA (Ex. 186, App. D) submitted a letter from EPA's Science Advisory Board to Lee Thomas, Administrator of EPA (3/9/88). The letter points out that there is a scientific hypothesis to the effect that, for many halogenated organics (including p-dichlorobenzene), the mechanism causing tumors in rats exposed to these substances may not be operative in humans (Ex. 186D). According to the HSIA, this hypothesis may have "important implications for human health risk assessment" (Ex. 186D, p. 2). On the other hand, NIOSH (Ex. 8–47, Table N6D) interprets the evidence for p-dichlorobenzene to mean that it is a potential human carcinogen that deserves full Section 6(b) rulemaking. OSHA will consider NIOSH's recommendation in light of the Agency's rulemaking priorities.

In the final rule, OSHA is retaining the 8-hour TWA PEL of 75 ppm TWA and adding a STEL of 110 ppm for p-dichlorobenzene. The Agency concludes that both a TWA and a STEL are necessary to protect workers from the significant risk of eye damage, vertigo, and neuropathic effects, which constitute material impairments of health that are associated with occupational exposure to p-dichlorobenzene at levels above the 8-hour TWA PEL.

DICHLOROMONOFLUOROMETHANE

CAS: 75-43-4; Chemical Formula: $CHCl_2F$
H.S. No. 1128

OSHA formerly had a limit of 1000 ppm TWA for dichloromonofluoromethane (FC–21). The ACGIH has a TLV–TWA of 10 ppm for this colorless gas; this limit is based on FC–21's similarity to chloroform in terms of hepatotoxic effects. The proposed PEL for FC–21 was 10 ppm, and NIOSH (Ex. 8–47, Table N1) concurs with this limit. The final rule promulgates an 8-hour TWA PEL of 10 ppm for FC–21.

FC–21 is considered more toxic than the related difluorinated methanes. The major health hazards associated with exposure to this substance are liver damage, cardiac sensitization, and narcosis. Freon-21 has a 4-hour LC_{50} of 49,900 ppm in rats (Tappan and Waritz 1964, as cited in ACGIH 1986/Ex. 1–3, p. 187). Within an hour, exposure to 100,000 ppm killed rats and guinea pigs (Weigard 1971/Ex. 1–1102); other tests with guinea pigs and mice demonstrated that concentrations of 50,000 ppm and higher cause unconsciousness or death (Nuckolls 1935, as cited in ACGIH 1986/Ex. 1–3, p. 187; Booth and Bixby 1932/Ex. 1–1079). The clinical signs of overexposure include loss of coordination, tremors, narcosis, and prostration, as well as possible lung and liver changes (Tappan and Waritz 1964, as cited in ACGIH 1986/Ex. 1–3, p. 187).

Two-week exposures of rats to 10,000 ppm for 6 hours daily caused hepatic failure or marked liver damage (Trochimowicz, Moore, and Chiu 1977/Ex. 1–34). A series of 90-day exposures of rats and dogs to concentrations of 1000 and 5000 ppm dichloromonofluoromethane resulted in bilateral hair loss, cirrhosis, and excessive mortality in rats in both exposure levels; dogs exhibited weight loss at both levels, but mild liver changes were observed only at the 5000-ppm level (Trochimowicz, Lyon, Kelly, and Chiu 1977, as cited in ACGIH 1986/Ex. 1–3, p. 187). Another uncompleted study reported liver pathology in rats repeatedly exposed for 90 days at 500 ppm, and probable liver pathology from similar exposures to 200 ppm; no hepatic effects were observed after exposure to 50 ppm (Allied Chemical Company 1978, as cited in ACGIH 1986/Ex. 1–3, p. 187).

Two of 12 dogs exposed to 10,000 ppm FC–21 plus intravenous epinephrine developed serious arrhythmia (Mullin, as cited in ACGIH 1986/Ex. 1–3, p. 187). Dogs and monkeys (anesthetized) demonstrated tachycardia and hypotension after exposure to FC–21 at levels between 50,000 and 100,000 ppm; bronchoconstriction was observed at 25,000 ppm (Aviado and Smith 1975/Ex. 1–82; Belej and Aviado 1975/Ex. 1–462). Anesthetized mice exposed to a concentration of 100,000 ppm FC–21 showed arrhythmia and cardiac sensitization to epinephrine (Aviado and Belej 1974/Ex. 1–615). Preimplantation loss has been reported in pregnant rats exposed to FC–21 at 10,000 ppm on days 6 through 15 of gestation (Belej and Aviado 1975/Ex. 1–462). OSHA received no comments other than NIOSH's on FC–21.

In the final rule, OSHA is establishing a TWA limit of 10 ppm for dichloromonofluoromethane. The Agency concludes that this limit will protect workers against the significant risks of hepatotoxic effects, cardiac sensitization, and narcosis associated with exposure to this substance. OSHA finds that these exposure-related effects constitute material impairments of health within the meaning of the Act.

DIETHYL KETONE

CAS: 96-22-0; Chemical Formula: $C_2H_5COC_2H_5$
H.S. No. 1135

Previously, OSHA had no limit for diethyl ketone. The ACGIH has a limit of 200 ppm TWA for this colorless liquid, which has an acetone-like odor. The proposed PEL was 200 ppm as an 8-hour TWA, and NIOSH (Ex. 8–47, Table N1) concurs with this limit, which is established in the final rule.

The oral LD_{50} for diethyl ketone in rats is reported to be 2.14 g/kg. Four of six rats died when exposed to diethyl ketone for four hours at 6000 ppm (Smyth, Carpenter, Weil, and Pozzani 1954/Ex. 1–440). In general, the toxicities of the methyl ketones increase with increasing molecular weight; diethyl ketone is somewhat less toxic than is methyl propyl ketone (TLV–TWA of 200 ppm) (NIOSH 1978f, as cited in ACGIH 1986/Ex. 1–3, p. 199). All of the ketones cause mucous membrane and eye and skin irritation. OSHA received no comments on diethyl ketone except those from NIOSH.

In the final rule, OSHA is establishing an 8-hour TWA PEL of 200 ppm for diethyl ketone, the same limit being proposed for methyl propyl ketone. The Agency concludes that this limit will reduce the significant risk of eye and skin irritation, which are material health impairments that are associated with exposure to diethyl ketone at levels above the new PEL.

DIETHYLENE TRIAMINE

CAS: 111-40-0; Chemical Formula: $(NH_2CH_2CH_2)_2NH$
H.S. No. 1138

Formerly, OSHA had no limit for diethylene triamine (DETA). The ACGIH has a TLV–TWA of 1 ppm, with a skin notation, for this strongly alkaline, hygroscopic, and somewhat viscous yellow liquid that smells like ammonia. The proposed PEL was 1 ppm as an 8-hour TWA, with a skin notation, and NIOSH (Ex. 8–47, Table N1) concurs with this limit. The final rule promulgates this 1-ppm 8-hour TWA for diethylene triamine; however, the skin notation is not retained (see the discussion on skin notations in Section VI.C.18 of this preamble).

The acute intraperitoneal LD_{50} values for DETA are reported to be 71 and 74 mg/kg for the mouse and rat, respectively (Hine, Kodama, Anderson et al. 1958/Ex. 1–511). In the rat, the reported oral and percutaneous LD_{50} values are the same (1080 mg/kg); the dermal LD_{50} for the rabbit is 1090 mg/kg (Smyth, Carpenter, and Weil 1949/Ex. 1–528). Exposure to 300 ppm of diethylene triamine vapor for 8 hours failed to kill any of a group of exposed rats (Savitt 1955/Ex. 1–663).

Sutton (1963/Ex. 1–1101) has reported that DETA causes severe corneal injury; solutions of 15 to 100 percent caused lasting corneal damage. If improperly controlled, the vapor and liquid cause sensitization of the respiratory tract and skin (American Industrial Hygiene Association 1960, as cited in ACGIH 1968/Ex. 1–3, p. 197). Dernehl (Ex. 1–728) demonstrated such sensitization in a study reported in 1951.

OSHA received no other comments on this substance. However, OSHA has carefully reviewed the health evidence on the percutaneous toxicity of DETA and has determined that a skin notation is not necessary for this substance (see the discussion on skin notations in Section VI.C.18). The final rule thus contains no skin notation for DETA.

In the final rule, OSHA is establishing an 8-hour TWA limit of 1 ppm for diethylene triamine. The Agency concludes that this limit will protect workers against the significant risk of skin and respiratory tract irritation and sensitization, all of which constitute material health impairments that are associated with exposure to diethylene triamine at levels above the new PEL.

DIPROPYL KETONE

CAS: 123-19-3; Chemical Formula: $(CH_3CH_2CH_2)_2CO$
H.S. No. 1148.

OSHA formerly had no limit for dipropyl ketone. The ACGIH has a TLV of 50 ppm TWA for this colorless liquid with a penetrating odor. The proposed PEL was 50 ppm as an 8-hour TWA, and NIOSH (Ex. 8–47, Table N1) concurs with this limit, which is established by the final rule.

Dipropyl ketone has a moderate oral and inhalation toxicity (*Dangerous Properties of Industrial Materials*, 6th ed., Sax 1984). In rats, the oral LD_{50} is 3.35 g/kg, and the dermal LD_{50} in rabbits is 9.5 g/kg. Tests have indicated that rats inhaling 2000 ppm for 4 hours survived, but at 4000 ppm all animals died (Carpenter, Weil, and Smyth 1974/Ex. 1–304). Methyl isobutyl ketone (MIBK) has a similar acute toxicity (ACGIH 1986/Ex. 1–3, p. 221); OSHA is establishing a 50-ppm 8-hour TWA and a 75-ppm STEL for MIBK. Only NIOSH submitted comments on dipropyl ketone.

In the final rule, OSHA is establishing an 8-hour TWA PEL of 50 ppm TWA for dipropyl ketone. The Agency concludes that this limit is necessary to protect workers from the significant risk of narcosis and irritation, both material health impairments that are associated with exposures at levels above the new PEL.

DIQUAT

CAS: 85-00-7; Chemical Formula: $C_{12}H_{12}Br_2N_2$
H.S. No. 1150

Previously, OSHA had no PEL for diquat. The ACGIH has a limit of 0.5 mg/m³ TWA for these yellow crystals. The proposed PEL was 0.5 mg/m³ as an 8-hour TWA, and NIOSH (Ex. 8–47, Table N1) concurs with this limit. The final rule establishes 0.5 mg/m³ as the 8-hour TWA PEL for diquat.

In most species, the acute oral toxicity of diquat is similar to that of paraquat and ranges from 100 to 400 mg/kg in rats, mice, rabbits, and dogs. Cows experience more severe toxic effects, with an acute oral LD_{50} or 30 mg/kg. The 24-hour percutaneous LD_{50} in rabbits is greater than 400 mg cation/kg; no skin irritation or other ill effects were demonstrated at this level (Clark and Hurst 1970/Ex. 1–135; Rowe and Wright 1985, as cited in ACGIH 1986/Ex. 1–3, p. 222). Rats fed 1000 ppm daily (about 50 mg/kg/day) for two years survived; reduced food intake and growth were the only consequences observed. At 500 ppm (about 25 mg/kg/day), the only ill effect observed was a pathologic change in the eye. A dietary level of 10 ppm (about 0.5 mg/kg/day) for two years did not induce cataract formation, but cataracts do occur at higher levels, with pathology observed at the 500-ppm level; one in four animals demonstrated complete corneal opacity in one or both lenses after six months at the 1000-ppm

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level. Cataract formation requires prolonged exposure and is not induced by single high-level exposures (ACGIH 1986/Ex. 1–3, p. 222).

Unlike paraquat, diquat does not produce lung damage in exposed humans or animals. Acute poisoning may produce nonspecific respiratory distress as well as other nonspecific signs of poisoning. In humans, accidental ingestion has produced less toxic reactions than those associated with paraquat ingestion (Orepoulos and McEvoy 1986/Ex. 1–429). OSHA received no comments, other than NIOSH's, on diquat.

In the final rule, OSHA is establishing an 8-hour PEL of 0.5 mg/m³ TWA for diquat. The Agency concludes that this limit will protect against the significant risk of ocular damage, which constitutes a material health impairment that is associated with chronic exposure at levels above the new PEL.

DISULFOTON

CAS: 298-04-4; Chemical Formula: $C_8H_{19}O_2PS_3$
H.S. No. 1152

OSHA formerly had no exposure limit for disulfoton. The ACGIH has a limit of 0.1 mg/m³ TWA for this substance. The proposed PEL for disulfoton was 0.1 mg/m³ as an 8-hour TWA; the final rule establishes this limit and adds a skin notation. Pure disulfoton is an oily, colorless liquid; the technical grade is a brown liquid.

The acute toxicity of disulfoton is very high by all laboratory-tested routes of administration. For weanling rats, the intraperitoneal LD_{50} is reported to be 5.4 mg/kg; for adult rats, it is 9.4 mg/kg (Brodeur and Dubois 1963/Ex. 1–718). The acute dermal LD_{50} is 6 mg/kg for adult female rats and 25 mg/kg for adult male rats (Gaines 1969/Ex. 1–320). The acute oral LD_{50}s for male and female rats are reported as 6.8 mg/kg and 2.3 mg/kg, respectively (Brodeur and Dubois 1964/Ex. 1–1015). Rats have demonstrated an acquired tolerance for disulfoton (Brodeur and Dubois 1964/Ex. 1–1015).

Metabolically, disulfoton is highly fat-soluble, and the compound apparently interferes with mixed-function oxidase activity in the same manner shown to be the case for parathion; with respect to median lethal doses, parathion and disulfoton are similar (Stevens et al. 1973, as cited in ACGIH 1986/Ex. 1–3, p. 228).

NIOSH (Ex. 8–47, Table N2) noted that OSHA had inadvertently omitted the skin notation for the proposed limit for disulfoton. NIOSH points out that the studies described above for this substance clearly demonstrate that disulfoton "is almost as toxic via the skin as when administered internally," and further, that the 1986 ACGIH *Documentation* (Ex. 1–3, p. 228) includes a skin notation for this substance. On the basis of these comments, OSHA is including a skin notation for disulfoton in the final rule. With the exception of NIOSH, no commenter submitted evidence to the record on disulfoton.

In the final rule, OSHA is establishing an 8-hour TWA PEL for disulfoton of 0.1 mg/m³, with a skin notation. The Agency concludes that this limit will prevent the significant risk of acute toxicity and metabolic injury, which are material impairments of health that are associated with exposures at levels above the new PEL. The skin notation is included to protect workers against the dermal toxicity that has been demonstrated in animal tests.

DIVINYL BENZENE

CAS: 108-57-6; Chemical Formula: $C_6H_4(CHCH_2)_2$
H.S. No. 1154

Previously, OSHA had no limit for divinyl benzene. The ACGIH has a TLV–TWA of 10 ppm, based on this substance's similarity to styrene. The proposed PEL was 10 ppm as an 8-hour TWA, and NIOSH (Ex. 8–47, Table N1) concurs with this limit. In the final rule, an 8-hour TWA of 10 ppm is promulgated for divinyl benzene. The commercial grade of divinyl benzene is a pale-straw-colored liquid; it contains all three isomers, but the meta isomer predominates.

The oral LD_{50} for rats is reported to be 4.1 g/kg, and an acute inhalation study showed no ill effects from a single seven-hour exposure at 351 ppm. However, repeated or prolonged contact with the liquid may cause skin burns (Dow Chemical Company 1977), as cited in ACGIH 1986/Ex. 1–3, p. 228).

Industrial experience indicates that irritation of the respiratory system, skin, and eyes can result from inhalation exposures to divinyl benzene, but there are no data concerning chronic exposures in humans. No comments, other than those of NIOSH, were received on divinyl benzene.

The final rule establishes a PEL of 10 ppm (8-hour TWA) for divinyl benzene. The Agency concludes that this limit will protect against the significant risk of irritation to the respiratory tract, eyes, and skin; such irritation constitutes a material impairment of health within the meaning of the Act.

ENDOSULFAN

CAS: 115-29-7; Chemical Formula: $C_9H_6Cl_6O_3S$
H.S. No. 1156

OSHA formerly had no permissible exposure limit for endosulfan. The ACGIH has a TLV–TWA of 0.1 mg/m³, with a skin notation. The proposed PEL was 0.1 mg/m³, as an 8-hour TWA, with a skin notation; NIOSH (Ex. 8–47, Table N1) concurs. The final rule establishes an 8-hour TWA PEL for endosulfan of 0.1 mg/m³, with a skin notation. Technical endosulfan is a tan, semi-waxy solid mixture; it may have a slight odor similar to that of sulfur dioxide.

The insecticide, endosulfan, is similar in its acute oral toxicity to the related insecticides aldrin and dieldrin (TLV–TWAs of 0.25 mg/m³), except that it is slightly more toxic than these substances in female laboratory animals. In rats, the oral LD_{50} for endosulfan is 43 mg/kg for males and 18 mg/kg for females (*Farm Chemicals Handbook* 1974/Ex. 1–1147a). The dermal LD_{50} in male and female rats are 130 mg/kg and 74 mg/kg, respectively (*Farm Chemicals Handbook* 1974/Ex. 1147a). The respiratory LC_{50} for male rats is 50 mg/kg for 4 hours of exposure (Association of American Pesticide Control Officials, Inc. 1969, as cited in ACGIH 1986/Ex. 1–3, p. 230).

In laboratory tests of chronic exposure, rats tolerated oral doses of up to 3.2 mg/kg/day for 3 months without injury (Gaines 1975, as cited in ACGIH 1986/Ex. 1–3, p. 230), and dogs tolerated doses up to 0.75 mg/kg for 1 year (Ely, MacFarlane, Galen, and Hines 1967/Ex. 1–414). A 2-year dietary level of 10 ppm (approximately 0.5 mg/kg/day) in rats was associated with a statistically insignificant decline in female survival rates and caused a reduction in testis weights in males. At 5.0 mg/kg/day, histopathologic findings showed renal tubular damage and some hydropic changes in rat livers (Czech 1958, as cited in ACGIH 1986/Ex. 1–3, p. 230).

Inhalation of endosulfan dust by humans has been associated with slight nausea, confusion, excitement, flushing, and dry mouth (State of California: Department of Industrial Relations/Ex. 1–8). Nine employees who had been working with 50-percent water-wettable endosulfan powder for only a few days had convulsions (Association of American Pesticide Control Officials, Inc. 1969, as cited in ACGIH 1986/Ex. 1–3, p. 230). With the exception of NIOSH's comments, no evidence on endosulfan was submitted to the record.

OSHA concludes that exposure to endosulfan poses a significant risk of systemic poisoning and renal and testicular damage, and the Agency therefore is establishing a PEL of 0.1 mg/m³ TWA for endosulfan, with a skin notation; these effects constitute a material impairment of health within the meaning of the Act. OSHA finds that this limit will substantially reduce the significant risk associated with exposure to this substance at the levels formerly permitted by the absence of an OSHA limit.

FONOFOS

CAS: 944-22-9; Chemical Formula: $C_{10}H_{15}OPS_2$
H.S. No. 1161

OSHA formerly had no limit for fonofos. The ACGIH has a limit of 0.1 mg/m³ TWA, with a skin notation, for this light-yellow liquid, which is similar to ethyl parathion and other cholinestase inhibitors. The proposed PEL was an 8-hour TWA of 0.1 mg/m³, with a skin notation; NIOSH (Ex. 8–47, Table N1) concurs with this limit. The final rule's PEL for fonofos is an 8-hour TWA limit of 0.1 mg/m³, with a skin notation.

In male rats, the average acute oral LD_{50} of technical fonofos has been reported to be 13.2 mg/kg (Stauffer Chemical Co. 1974, as cited in ACGIH 1986/Ex. 1–3, p. 275). For female rats, an average oral LD_{50} of 3 mg/kg has been reported (NIOSH 1974d). The acute dermal LD_{50}s reported for rats and guinea pigs are 147 and 278 mg/kg, respectively (Weir and Hazleton 1961/Ex. 1–1135). Weir and Hazleton reported that no localized eye irritation occurred when 0.1 ml of technical fonofos was instilled into rabbit eyes; however, death resulted in these animals within 24 hours after the instillation (1961/Ex. 1–1135). Dietary studies of rats lasting 105 weeks have shown 10 ppm (about 0.2 mg/kg) to be a no-effect level. Dogs fed fonofos for 14 weeks showed no-effect dietary levels of 8 ppm; no carcinogenic effects were observed. Rats showed reproductive effects at dietary levels of 10 ppm and 31.6 ppm (about 0.7 mg/kg) (Stauffer Chemical Co. 1974, as cited in ACGIH 1986/Ex. 1–3, p. 275).

There are no reports of human poisonings caused by fonofos, although it is known to be a cholinesterase inhibitor (ACGIH 1986/Ex. 1–3, p. 275). There were no comments, other than NIOSH's, on fonofos.

In the final rule, OSHA is establishing an 8-hour PEL of 0.1 mg/m³ TWA for fonofos to protect exposed workers from the significant risk of cholinesterase inhibition that is characteristic of exposure to this and other organic phosphate pesticides. OSHA considers cholinesterase inhibition a material impairment of health. A skin notation is also established, based on evidence in animals that fonofos can readily penetrate the skin and cause death. The Agency concludes that these limits will substantially reduce this significant risk.

FORMAMIDE

CAS: 75-12-7; Chemical Formula: CH_3NO
H.S. No. 1182

Previously, OSHA had no limit for formamide. The ACGIH has a TLV–TWA of 20 ppm and a TLV–STEL of 30 ppm for this clear, viscous, odorless liquid. The proposed PELs were an 8-hour TWA of 20 ppm and a 15-minute $STEL_s$ of 30 ppm, and the final rule establishes these limits.

Formamide has an LD_{50} of approximately 6 g/kg for rats (Thiersh 1962/Ex. 1–690; Zaeva, Vinogradova, Savina, and Osipenko 1969/Ex. 1–1026). Dietary administration at 1.5 g/kg for two weeks resulted in fatalities in rats; pathologic examination revealed cumulative changes characteristic of gastritis and malnutrition (E.I. du Pont de Nemours and Company, Inc., as cited in ACGIH 1986/Ex. 1–3, p. 278). Czajkowska (1981, as cited in ACGIH 1986/Ex. 1–3, p. 278) reports the dermal LD_{50} for skin absorption in rabbits as 6 g/kg. Mild and transient irritation, but no allergic skin sensitization, occurred when formamide was applied to the skin of guinea pigs (*Dangerous Properties of Industrial Materials*, 6th ed., Sax 1984; E.I. du Pont de Nemours and Company, Inc., as cited in ACIGH 1986/Ex. 1–3, p. 278). Eye irritation tests in rabbits showed only slight, temporary irritation (Carpenter and Smyth 1946/Ex. 1–303). No signs of toxicity in rats were detected in single six-hour exposures at 3900 ppm formamide dispensed as a mist, or in six-hour daily exposures for 10 days at approximately 1500 ppm formamide vapor (equivalent to air saturated with formamide at room temperature); no indications of organ damage were seen in these animals on pathologic examination (E.I. du Pont de Nemours and Company, Inc., as cited in ACGIH 1986/Ex. 1–3, p. 278).

Gross fetal malformations were not noted following dermal applications of formamide to the skin of pregnant rats; the effects that were observed were weak and were produced at overwhelming concentrations (Stula and Krauss 1977/Ex. 1–1068). The no-observed-effect level in a rabbit developmental toxicity study was 22 mg/kg orally (Merkle and Zeller 1980/Ex. 1–683).

According to the ACGIH, there are no reports of industrial poisoning by formamide (E.I. du Pont de Nemours and Company, Inc., as cited in ACGIH 1986/Ex. 1–3, p. 278).

OSHA received comments on formamide from Grace Ziem (Ex. 46) and NIOSH (Ex. 8–47, Table N2). Dr. Ziem, an occupational physician on the staff of Johns Hopkins School of Hygiene and Public Health and the University of Maryland School of Medicine, believes that OSHA should revise the PEL for formamide to 10 ppm as an 8-hour TWA based on Grant's (1986/Ex. 1–975) statement that this substance causes Grade 4 eye irritation rather than the "mild" irritation reported by du Pont (as cited in ACGIH 1986/Ex. 1–3, p. 278). Dr. Ziem also notes that the ACGIH has dropped its STEL for formamide, lowered its 8-hour TWA PEL to 10 ppm, and added a skin notation for this substance. In addition, consistent with the Agency's policy on skin notations (discussed in Section VI.C.18 of the preamble), OSHA is not adopting the skin notation at the present time. The Agency concludes that the 30-ppm STEL should be retained to ensure that workplace exposures to formamide are not permitted to exceed the 8-hour TWA by any substantial margin. NIOSH (Ex. 8–47, Table N2) does not concur with the limits proposed and points out that formamide is a testicular toxin and has been identified in mice as a teratogen. OSHA is aware of the developing literature on both formamide and dimethyl formamide, and the Agency intends to monitor toxicological developments on these chemicals closely in the future to determine whether other action is necessary.

In the final rule, OSHA is establishing a PEL of 20 ppm TWA and a STEL of 30 ppm for formamide. The Agency concludes that this limit will not only protect workers against the significant risks of eye and skin irritation, but will substantially reduce the risks of other health effects that exist as a consequence of workplace exposure to formamide at levels above the new PELs. OSHA considers sensory irritation, testicular toxicity, and teratogenicity material impairments of health within the meaning of the Act.

GERMANIUM TETRAHYDRIDE

CAS: 7782-65-2; Chemical Formula: GeH_4
H.S. No. 1186

OSHA formerly had no limit for germanium tetrahydride. The ACGIH has a TLV of 0.2 ppm TWA for this colorless gas. The proposed PEL was an 8-hour TWA of 0.2 ppm, with which NIOSH (Ex. 8–47, Table N1) concurs. In the final rule, the 0.2-ppm 8-hour TWA is established as OSHA's PEL for germanium tetrahydride.

An early study indicated that germanium tetrahydride has a toxicity between that of tin hydride and arsine (Flury and Zernik 1931e/Ex. 1–993). In this study, a rabbit survived exposure to

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100 ppm for one hour. One-hour exposures at 150 and 165 ppm caused fatalities in mice, and similar exposures involving guinea pigs resulted in sickness at the 150-ppm level and death at 165 ppm (Flury and Zernik 1931e/Ex. 1–993). On the other hand, Webster (1946/Ex. 1–399) reported that germanium tetrahydride is less toxic than both tin hydride and arsine. The effect of exposure to germanium tetrahydride is hemolysis. Data concerning chronic or subacute toxicities are not available. Based on germanium's acute toxicity, which is approximately half that of stibine, the ACGIH recommends an 8-hour TLV of 0.2 ppm TWA. OSHA received no comments, other than NIOSH's, on this substance.

In the final rule, OSHA establishes a PEL of 0.2 ppm as an 8-hour TWA for *germanium tetrahydride* to reduce the significant risk of hemolytic effects, which constitute material impairments of health that are associated with exposure to this substance at levels above the new PEL. The Agency concludes that implementation of this limit will substantially reduce this significant risk.

INDENE

CAS: 95–13–6; Chemical Formula: C_9H_8
H.S. No. 1212

OSHA had no former limit for indene. The ACGIH has a TLV–TWA of 10 ppm for this colorless liquid. The proposed PEL was 10 ppm as an 8-hour TWA, a limit with which NIOSH (Ex. 8–47, Table N1) concurs. The final rule promulgates an 8-hour TWA PEL for indene of 10 ppm.

Early inhalation studies of indene reported injury to the spleen, liver, and kidney of rats exposed to indene vapor concentrations of 800 to 900 ppm for six 7-hour periods (Cameron and Doniger 1939/Ex. 1–470). Some animals were found at necropsy to have severe necrosis of the liver with hemorrhage; kidney necrosis was also observed. No other organ damage was found and no deaths occurred as a result of these exposures (Cameron and Doniger 1939/Ex. 1–470). By analogy with the effects of exposure to other monoaromatic hydrocarbons, exposure to indene is likely to irritate the mucous membranes. In laboratory animals, chemical pneumonitis, pulmonary edema, and hemorrhage have resulted from the aspiration of indene liquid into the lung, and repeated skin contact has caused dermatitis as a result of the defatting properties of indene (Gerarde 1960b/Ex. 1–738b). In dermal studies of rats, one to eight applications of 0.1 ml to the shaved skin were reported to have no effect; three applications of 0.5 ml to guinea pig skin also produced no effect (Cameron and Doniger 1939/Ex. 1–470). The oral toxicity of indene appears to be moderate, with adult rabbits tolerating a single dose of 1 gram without signs of systemic toxicity (Gerarde 1960b/Ex. 1–738b). Subcutaneous injection of 1 gram, however, caused liver pathology and fatalities; high oral doses (2.5 ml of a 1:1 v/v mixture in olive oil) were uniformly fatal, with characteristic liver, lung, and gastrointestinal changes. Chronic administration of 3 mg/m³ indene for 105 days caused catalase inhibition and stimulation of blood cholinesterase in rats, but no effects were observed in rats exposed at 0.8 mg/m³ (Dyshinevich 1970/Ex. 1–631). No comments (other than those from NIOSH) were received on this substance.

The final rule establishes an 8-hour PEL of 10 ppm TWA for indene. OSHA concludes that this level will reduce the significant risks of irritation, pulmonary effects, and systemic toxicity which may constitute material impairments of health that are associated with exposure to levels above the new PEL.

IODOFORM

CAS: 75–47–8; Chemical Formula: CHI_3
H.S. No. 1214

OSHA had no former limit for iodoform. The ACGIH has an 8-hour TWA limit of 0.6 ppm for this yellow-green powder or crystalline solid with a pungent odor. The proposed PEL was 0.6 ppm as an 8-hour TWA; NIOSH (Ex. 8–47, Table N1) concurred with this limit, which is established by the final rule.

The subcutaneous LD_{50} for rabbits is 50 mg/kg, and the oral LD_{Lo} for iodoform in dogs is 1000 mg/kg (Kutob and Plaa 1962/Ex. 1–61). These authors also report that, on a molar basis, iodoform has an acute toxicity in mice similar to that of methyl iodide; this conclusion is based on parameters of lethality, barbiturate sleeping time, and bromsulphalein (BSP) retention time. An NCI bioassay (1978c/Ex. 1–1117) of iodoform indicates that the substance is not carcinogenic nor of high systemic toxicity, although histopathological examination of laboratory animals in this bioassay was judged by NCI to be inadequate.

No human data are available for this compound, and OSHA received no comments on this substance, other than those from NIOSH.

In the final rule, OSHA is establishing an 8-hour TWA limit of 0.6 ppm for iodoform, based on the limit being established for methyl iodide (2 ppm TWA); these limits are comparable on a molar iodine basis. OSHA concludes that this limit will protect workers from the significant risks of irritation and hepatotoxicity, both material impairments of health that are associated with exposure to iodoform. The Agency has determined that this limit will substantially reduce these significant risks.

ISOBUTYL ALCOHOL

CAS: 78–83–1; Chemical Formula: $(CH_3)_2CHCH_2OH$
H.S. No. 1219

OSHA formerly had a limit of 100 ppm as an 8-hour TWA for isobutyl alcohol. The ACGIH has a limit of 50 ppm TWA for this flammable, refractive, colorless liquid. The proposed PEL was 50 ppm as an 8-hour TWA; NIOSH (ex. 8–47, Table N1) concurs. The final rule establishes a 50 ppm 8-hour TWA PEL for isobutyl alcohol.

Limited inhalation studies have reported a somewhat higher acute toxicity for isobutyl alcohol than for n-butyl alcohol (which has a ceiling of 50 ppm) (Smyth, Carpenter, and Weil 1951/Ex. 1–439; Smyth, Carpenter, Weil, and Pozzani 1954/Ex. 1–440). A 4-hour LC_{50} of 8000 ppm has been reported in rats for isobutyl alcohol. Ingestion studies in rabbits have reported an acute oral toxicity of 3.75 g/kg for isobutyl alcohol (Smyth, Carpenter, and Weil 1951/Ex. 1–439; Smyth, Carpenter, Weil, and Pozzani 1954/Ex. 1–440). The dermal LO_{50} is 4.2 g/kg (Stokinger 1976, as cited in ACGIH 1986/Ex. 1–3, p. 331). Weese (1928/Ex. 1–1073) reported that the narcotic inhalation dose over a total of 136 hours is 6400 ppm in mice. Slight changes in the liver and kidneys were reported, but no fatalities occurred after repeated narcotizing doses (Weese 1928/Ex. 1–1073).

The effects of liquid isobutyl alcohol on the human eye appear to be comparable to those of n-butanol; no data are available on ocular exposure to the isobutyl alcohol vapor. Dermal application of isobutyl alcohol has caused slight erythema and hyperemia in humans (Schwartz and Tulipan 1939/Ex. 1–1167; Oettel 1936/Ex. 1–621).

OSHA received one comment on this substance in addition to NIOSH's; the Motor Vehicle Manufacturers Association (MVMA) (Ex. 3–902) lists isobutyl alcohol as a substance for which, in the opinion of the MVMA, rulemaking should be delayed. The MVMA provided no substantive information in support of its position.

In the final rule, OSHA is reducing the former 8-hour TWA PEL of 100 ppm to 50 ppm for isobutyl alcohol. The Agency concludes that a 50-ppm limit will reduce the significant risk of skin irritation, which is a material

impairment of health that is associated with exposure to concentrations at levels above the revised PEL.

ISOOCTYL ALCOHOL

CAS: 26952–21–6; Chemical Formula: ge $CH_3(CH_2)_5CH(C_2H_5)CH_2OH$
H.S. No. 1220

Previoulsy, OSHA had no PEL for isooctyl alcohol. The ACGIH has a TLV–TWA of 50 ppm, with a skin notation, for this colorless liquid mixture. The proposed PEL was 50 ppm, with a skin notation, and these limits are established in the final rule NIOSH (Ex. 8–47, Table N1) concurs with these limits.

The single-dose oral LD_{50}s for isooctyl alcohol reported for rats and mice are between 3.2 and 6.4 g/kg; intraperitoneal injection LD_{50}s for these species range from less than 0.4 g/kg to 1.6 g/kg (Hodge 1943/Ex. 1–700; Fassett 1951, as cited in ACGIH 1986/Ex. 1–3, p. 332). The dermal LD_{50} for the guinea pig is greater than 10 ml/kg (Fassett 1951, as cited in ACGHI 1986/Ex. 1–3, p. 332); in the rabbit, the dermal LD_{50} is 2.38 ml/kg (Smyth, Carpenter, Weil et al. 1969/Ex. 1–442). Moderate skin irritation for exposure to isooctyl alcohol has also been reported. Rats and rabbits have shown skin irritation at exposure levels ranging from 1.7 to 3.34 ml/kg (Smyth, Carpenter, Weil, et al. 1969/Ex. 1–442). Fassett (1951, as cited in ACGIH 1986/Ex. 1–3 p. 332) also reported no fatalities in rats after an 8-hour inhalation test at 235 ppm. OSHA received no comments, other than NIOSH's, on this substance.

In the final rule, OSHA is establishing an 8-hour TWA PEL of 50 ppm, with a skin notation, for isooctyl alcohol. The Agency concludes that these limits will reduce the significant risks of skin irritation, a material impairment of health that is associated with exposure to this substance at levels above the new PEL.

N-ISOPROPYLANILINE

CAS: 768–52–5; Chemical Formula: $C_6H_5NHCH(CH_3)_2$
H.S. No. 1229

OSHA formerly had no limit for N-isopropylaniline. The ACGIH recommends a TLV–TWA of 2 ppm, with a skin notation, for this liquid. The proposed PEL was 2 ppm, with a skin notation; NIOSH (Ex. 8–47, Table N1) concurs. The final rule establishes an 8-hour TWA PEL of 2 ppm, and a skin notation, for N-isopropylaniline.

The oral LD_{50} for rats exposed to N-isopropylaniline is between 0.25 and 0.5 g/kg. Slight irritation of the skin and eyes has been reported in animals as a result of direct contact with this chemical (Dow Chemical Company 1977k, as cited in ACGIH 1986/Ex. 1–3, p. 338). No other data concerning chronic toxicity or human exposure are available (ACGIH 1986/Ex. 1–3, p. 338).

Chemical analysis shows N-isopropylaniline to have toxicologic properties similar to those of its parent compound, aniline. The oral LD_{50}s for the two chemicals are approximately equal. The ACGIH has established the 2-ppm TLV–TWA for N-isopropylaniline on the basis of its structural analogy with aniline (which has a 2-ppm TLV–TWA) and N,N-dimethylaniline (which has a 5-ppm TLV–TWA and a 10-ppm STEL); exposure to these substances has been shown to cause hemolytic and central nervous system effects in animals and humans. These substances are also toxic when absorbed through the skin. OSHA received only one comment, form NIOSH, on this substance.

In the final rule, OSHA is establishing an 8-hour PEL of 2 ppm for N-isopropylaniline, with a skin notation. The Agency concludes that this limit will protect exposed workers from the significant risk of irritation and systemic and hemolytic effects, all material health impairments that are caused by inhalation, ingestion, or dermal absorption of N-isopropyl-aniline.

KETENE

CAS: 463–51–4; Chemical Formula: $CH_2=C=O$
H.S. No. 1231

OSHA's former 8-hour TWA limit for ketene was 0.5 ppm. The ACGIH has a TLV–TWA of 0.5 ppm and a TLV–STEL of 1.5 ppm for this colorless gas with a sharp, penetrating odor. The proposal retained the 8-hour TWA and added a STEL of 1.5 ppm; NIOSH (Ex. 8–47, Table N–1) concurs. The final rule retains an 8-hour TWA PEL of 0.5 ppm and adds a STEL of 1.5 ppm for ketene.

Ketene is highly irritating to the respiratory tract (Mendenhall and Stokinger 1959/Ex. 1–428), and the effects of its action are delayed (Treon, Sigmon, Kitzmiller 194/Ex. 1–769). Mendenhall and Stokinger (1959/Ex. 1–428) have reported a 10-minute LC_{50} for mice of 17 ppm. Cronic exposure at 1 ppm for six months on a schedule of six hours daily, five days per week, was tolerated by animals of several species (Mendenhall and Stokinger 1960, as cited in ACGIH 1986/Ex. 1–3, p. 341). Similar results have been reported in monkeys exposed repeatedly (55 exposures) for seven hours (Treon, Sigmon, and Kitzmiller 1949/Ex. 1–769). Evidence strongly suggests that the development of emphysema and fibrosis may occur in individuals who have developed a tolerance to the acute effects of ketene exposure (Stokinger, Wagner, and Dobrogarski 1957/Ex. 1–139. No comments other than NIOSH's were received on ketene.

In the final rule, OSHA is retaining the 8-hour TWA PEL of 0.5 ppm and adding a 15-minute STEL of 1.5 ppm for ketene. The Agency concludes that workers exposed to this highly irritating and toxic gas are at significant risk of developing respiratory irritation, pulmonary edema, and other severe pulmonary effects that constitute material health impairments. OSHA finds that a TWA and STEL are required to protect against both acute and chronic health effects. The final rule's limits will substantially reduce these risks.

METHACRYLIC ACID

CAS: 79–41–4; Chemical Formula: $CH_2=C(CH_3)COOH$
H.S. No. 1244

OSHA formerly had no limit for methacrylic acid. The ACGIH has a TLV–TWA of 20 ppm for this substance. Methacrylic acid is a liquid with an acrid, disagreeable odor. The proposed PEL was 20 ppm, and NIOSH (Ex. 8–47, Table N1) concurred that this limit is appropriate. The final rule establishes an 8-hour TWA PEL of 20 ppm for methacrylic acid, with a skin notation.

The primary toxic hazard associated with exposure to methacrylic acid is irritation, although the degree of irritation from exposure to this substance is significantly less than that from acrylic acid (ACGIH 1986/Ex. 1–3, p. 362).

Direct contact of methacrylic acid with the skin or eye can cause corrosion of the skin or blindness. In rabbits, the skin absorption LD_{50} for methacrylic acid is 0.5 to 1 g/kg (Dow Chemical Company 1977m, as cited in ACGIH 1986/Ex. 1–3, p. 362). Rats exposed by inhalation to approximately 1000 ppm methacrylic acid exhibited eye irritation (Dow Chemical Company 1977m, as cited in ACGIH 1986/Ex. 1–3, p. 362). Rats exposed to 300 ppm for six hours daily for 20 days showed slight congestion of the kidneys (Gage 1970/Ex. 1–318).

Medical reports of acute exposures (at concentrations of up to 113 ppm) in an industrial setting revealed no respiratory symptoms; however, skin responses and a severe corneal burn were reported (Dow Chemical Company 1977m, as cited in ACGIH 1986/Ex. 1–3, p. 362). Only NIOSH commented on this substance.

In the final rule, OSHA is establishing a PEL of 20 ppm as an 8-hour TWA for this substance, with a skin notation. The

Agency concludes that this limit will protect workers from the significant risk of severe eye and skin irritation, which are material health impairments that are associated with exposure to methacrylic acid at levels above the new limit. The skin notation is necessary to prevent dermal absorption and systemic toxicity.

4-METHOXYPHENOL

CAS: 150-76-5; Chemical Formula: $CH_3OC_6H_4OH$
H.S. No. 1247

Previously, OSHA had no limit for 4-methoxyphenol. The ACGIH has a TLV-TWA of 5 mg/m³ for this solid substance. The proposed PEL was 5 mg/m³; NIOSH (Ex. 8-47, Table N1) concurs with this limit. In the final rule, OSHA establishes an 8-hour TWA PEL of 5 mg/m³ for methoxyphenol.

In rats the oral LD_{50} for 4-methoxyphenol is between 1 and 2 g/kg; the skin absorption LD_{50} is reported as greater than 1 g/kg in rabbits. Results of a two-month dietary study demonstrated no ill effects at 0.1 ppm (approximately 50 mg/kg/day). Direct contact of 4-methoxyphenol with the skin or eyes causes burns or moderate corneal damage (Hodge, Sterner, Maynard, and Thomas 1949/Ex. 1-41; Dow Chemical Company 1977n, as cited in ACGIH 1986/Ex. 1-3, p. 367). Only NIOSH commented on this substance.

To reduce the risk of dermal and ocular effects resulting from exposure to 4-methoxyphenol, a compound similar in chemical structure and toxicity to hydroquinone, OSHA is establishing a permissible exposure limit of 5 mg/m³ as an 8-hour TWA. The Agency concludes that this limit will protect workers against the significant risk of dermal and skin effects potentially associated with exposures to this substance at levels above the new PEL.

METHYL ACETYLENE-PROPADIENE MIXTURE (MAPP)

CAS: None; Chemical Formula: C_3H_4 isomers
H.S. No. 1250

OSHA formerly had a standard of 1000 ppm TWA for MAPP. The ACGIH also has an 8-hour TWA limit of 1000 ppm, with a TLV-STEL of 1250 ppm. OSHA proposed to retain the 8-hour PEL of 1000 ppm and to add a STEL of 1250 ppm, and the final rule establishes these limits, with which NIOSH (Ex. 8-47, Table N1) concurs. MAPP contains 58 percent of a mixture of propadiene (a colorless, unstable gas with a strong, unpleasant odor) and methyl acetylene (a colorless gas with a sweet odor); the balance of the mixture consists of paraffinic and olefinic C_3 and C_4 hydrocarbons.

Tests of rabbits, dogs, and guinea pigs exposed to an average concentration of 5000 ppm for seven hours/day, five days/week for four months resulted in no adverse health effects except decreased lung weights. No changes at all were observed in animals exposed to 1000 ppm for four months (Dow Chemical Company 1984, as cited in ACGIH 1986/Ex. 1-3, p. 368).

On the basis of these data, which show MAPP to be a chemical mixture of low toxicity in experimental animals, the Agency is retaining its 8-hour TWA PEL of 1000 ppm and adding a STEL of 1250 ppm. The Agency concludes that both of these limits are necessary to ensure that workers are protected and that good industrial hygiene practice is maintained.

METHYL DEMETON

CAS: 8022-00-2; Chemical Formula: $(CH_3O)_2PSO(CH_2)_2SC_2H_5$
H.S. No. 1256

OSHA formerly had no limit for methyl demeton. The ACGIH has a TLV-TWA limit of 0.5 mg/m³, with a skin notation. The proposed PEL was 0.5 mg/m³, with a skin notation, and NIOSH (Ex. 8-47, Table N1) concurs. The final rule establishes an 8-hour TWA of 0.5 mg/m³, and a skin notation, for methyl demeton. Methyl demeton is an oily, colorless to pale-yellow liquid with an unpleasant odor.

Methyl demeton is reported to have an oral LD_{50} value of 40 to 65 mg/kg for the thiolo isomer and 150 to 250 mg/kg for the thiono isomer. Both isomers form sulfoxide or sulfone, with an oral LD_{50} similar to that of the parent compounds (Dubois and Pizak 1962/Ex. 1-629; Heath and Vandekar 1965, Klimmer and Plaff 1955, both as cited in ACGIH 1986/Ex. 1-3, p. 388). In solution or storage, methyl demeton may form alkyl sulfonium compounds of very high intravenous toxicity and an oral LD_{50} of 10 to 20 mg/kg. Dermal toxicity is reported to be moderate, with an LD_{50} of approximately 400 mg/kg (Heath and Vandekar 1965, as cited in ACGIH 1986/Ex. 1-3, p. 388). OSHA received only one comment, from NIOSH, on methyl demeton.

In humans, methyl demeton causes changes in intraocular pressure, and acute poisonings produce nausea, headache, dizziness, vomiting, and hyperemia of the nasal mucosa. Chronic exposure causes hyperemia of the respiratory organs and inner ear irritation (Dugel'nyy 1970; Rasuleva 1970, both as cited in ACGIH 1986/Ex. 1-3, p. 388).

OSHA is establishing an 8-hour TWA for methyl demeton of 0.5 mg/m³, with a skin notation. The Agency concludes that this limit will protect workers from the significant risk of ocular and nasal irritation, pulmonary effects, and cholinesterase inhibition, all of which constitute material impairment of health and are associated with exposure to this substance at levels above the new limit.

METHYL ETHYL KETONE PEROXIDE

CAS: 1338-23-4 Chemical Formula: $C_8H_{18}O_6$
H.S. No.: 1257

OSHA did not formerly have a limit for methyl ethyl ketone peroxide (MEKP). The Agency proposed a PEL of 0.2 ppm (1.5 mg/m³) as a ceiling for this substance to protect workers against the significant risk of eye and skin irritation, as well as kidney and liver damage; this limit is consistent with that of the ACGIH. NIOSH (Ex. 8-47, Table N1) concurred with this limit. In the final rule, OSHA has determined that the data available at the present time indicate that 0.7 ppm (approximately 5 mg/m³) is an appropriate level at which to establish a PEL, and the final rule establishes this limit. MEKP is sold commercially as a colorless liquid mixture consisting of approximately 60 percent MEKP and 40 percent diluent; the diluent is added to reduce MEKP's sensitivity to shock.

The health effects data for MEKP in animals rely primarily on a study conducted in 1958 by Floyd and Stokinger (Ex. 1-783). In a series of experiments conducted in rats, mice, and rabbits to determine the toxicity of MEKP by various routes of exposure, these investigators found that inhalation exposure for four hours to a concentration of 200 ppm was fatal to 50 percent of rats, and a four-hour exposure to 170 ppm was fatal to 50 percent of mice. Inhalation of MEKP vapors produced petechial and gross hemorrhages of the lungs in rats after four-hour exposures; liver and kidney damage was also observed (Floyd and Stokinger 1958/Ex. 1-783). Two drops of a 40-percent solution of MEKP in dimethyl phthalate caused severe damage when instilled in rabbits' eyes, but at 3 percent, a moderate, transient reaction was produced. The direct application of MEKP to closely shaved rabbit skin caused no immediate discomfort but did cause a severe delayed reaction, consisting of erythema, edema, and vesiculation within two or three days; of the four organic peroxides tested (di-t-butyl peroxide, t-butyl hydroperoxide, cumene hydroperoxide, and methyl ethyl ketone peroxide), MEKP exhibited the greatest toxicity. The maximal nonirritating strength of MEKP applied dermally was 0.6 percent. In addition, rats died or

showed marked evidence of cumulative systemic effects after either oral or intraperitoneal administration of MEKP at 20 percent of the LD_{50} level for three days/week for seven weeks (Floyd and Stokinger 1958/Ex. 1-783).

OSHA received several comments on the proposed PEL for MEKP (Exs. 8-47, 8-86, 3-902, 144, 155, 181, and 3-1172; Tr. 11-265/266). Robert Schumacher, a certified industrial hygienist representing a group of six manufacturing companies (including the U.S. Marine Corporation), stated that the proposal did not adequately demonstrate occupational risk for MEKP because it relied on the findings of a single 30-year-old study that described the results of animal experiments involving "novel and unusual" exposures (Ex. 3-1172, Attachment; Exs. 86 and 155; Tr. 11-265/266). In addition, this commenter stated that information is lacking as to what concentrations of MEKP currently exist in the workplace, how to measure MEKP in the occupational environment, and the feasibility of engineering controls to regulate exposures to MEKP (Ex. 3-1172, Attachment; Exs. 8-86 and 155). The Motor Vehicle Manufacturers Association (MVMA) (Ex. 3-902) merely listed MEKP as a substance for which rulemaking should be delayed; however, the MVMA provided no details in support of this comment. The New Jersey Department of Health (Ex. 144) suggested that the limits for MEKP should be derived based on EPA's IRIS data; the use of IRIS data is discussed above, in Section VI.A of the preamble.

In response to Mr. Schumacher and the National Marine Manufacturers Association (Exs. 8-86, 155, 3-1172, and 181; Tr. 11-265/266), OSHA notes that the study of MEKP's toxicity performed by Floyd and Stokinger (1958/Ex. 1-783) was a thorough and comprehensive bioassay involving three species (mice, rats, and rabbits) and five routes of exposure inhalation, intraperitoneal, oral, dermal, and eye contact). According to the ACGIH (1986/Ex. 1-3, p. 396), this study demonstrated that MEKP was "20- to 50-fold more acutely toxic than di-ti-butyl peroxide by all routes tested." The consequences of exposure to this substance ranged from skin and eye irritation to gross hemorrhage of the lung and liver and kidney damage; OSHA notes that these effects were observed even after short-term exposures. The Floyd and Stokinger study (1958/Ex. 1-783) demonstrated that MEKP is significantly more toxic than benzoyl peroxide (TLV-TWA of 5 mg/m³) and resembles hydrogen peroxide (TLV-TWA of 1.4 mg/m³) in terms of its potential to cause irritation on an acute basis. A study by Moskowitz and Grabois (1950, as cited in ACGIH 1986/Ex. 1-3, p. 54) showed that exposure to 12.2 mg/m³ benzoyl peroxide caused "pronounced irritation of the nose and throat" in workers; because MEKP is significantly more irritant than benzoyl peroxide, MEKP concentrations considerably below the 12 mg/m³ level can be expected to cause irritation as well.

Sax and Lewis (1989, p. 2312) report that MEKP is an experimental tumorigen and note that systemic effects in humans resulting from oral exposure include changes in the structure or function of the esophagus, nausea or vomiting, and other gastrointestinal effects. NIOSH (Ex. 8-47) has carefully reviewed the health effects information and the limits proposed for MEKP by OSHA. NIOSH concurs that a ceiling limit is appropriate for MEKP to protect against this substance's severe irritant effects (see Table N1 of Ex. 8-47).

With regard to Mr. Schumacher's comments concerning concentrations of MEKP in the workplace and available controls, the record contains several NIOSH health hazard evaluations and technical assistance surveys taht were conducted in workplaces where MEKP was used as a reaction catalyst in polyester resin operations, the same type of operation of concern to Mr. Schumacher (NIOSH Health Hazard Evaluation Determination Report Nos. HE 79-132-673; HE 76-000-068; and HE 78-003-555). At two of the three sites surveyed, all personal and area MEKP air samples were below 1.5-mg/m.³ At the third site, a total of 20 short-term samples were taken over a three-day period to determine airborne MEKP exposures during the construction of fibrous glass reinforced products utilizing the styrene-modified polyester resin sprayup process and a MEKP catalyst; eight of these short-term samples exceeded the 1.5-mg/m³ (0.2-ppm) level (NIOSH Health Hazard Evaluation Determination Report No. HE 78-003-555).

Mr. Schumacher (Ex. 155) was also of the opinion that OSHA had failed, in either the proposal or its supporting documents, to take into account the fact that a facility having multiple exposures would have to design its engineering controls to handle multiple chemicals; in the opinion of Mr. Schumacher, to control for multiple chemicals in a facility would be more expensive than controlling for a single substance. OSHA does not agree with Mr. Schumacher on either point. As discussed in Section VII of the preamble, OSHA's entire costing methodology is based on a process approach that assumes multiple chemical exposures and the use of a system of engineering controls designed to control the exposures of all employees involved in the process. OSHA believes this is a reasonable costing methodology because multiple chemicals are used at most processes. For example, in the sector of interest to Mr. Schumacher (SIC 37, Transportation Equipment), and particularly in boat-building, styrene, fiberglass, and MEKP are all used.

OSHA also conducted two site visits to MEKP-using facilities in connection with the present rulemaking (Exs. 136A and 136B). Both of the plants visited produced fiberglass boats, and personal samples were taken at both facilities for workers involved in gel-coat and lamination operations. One plant was a high-volume facility that produced approximately 24 boats per day, while the other plant produced only two to three boats per day. In the low-production facility, all MEKP sampling results for gel-coat and lamination workers were below 1.5-mg/m³ for MEKP (Ex. 136A); at the high-production facility, the single MEKP sample taken on a gel-coat operator was 3.0 mg/m³ (Ex. 136B). OSHA believes that the higher reading at the second facility is accounted for by the high rate of production at that site; controlling exposures at a high-volume facility requires the implementation of additional controls to compensate for the increase in production.

In regard to sampling and analytical methods for MEKP, OSHA notes that NIOSH has published a sampling and analytical method (PECA or 3508) for this substance and that OSHA has developed an in-house method that is available from the Agency on request; OSHA used this method without difficulty on the two site visits to MEKP-using facilities conducted for this rulemaking.

However, OSHA does find that the data in the record do not provide information that can be used to determine that 0.2 ppm (1.5 mg/m³) represents an appropriate level at which to establish the final rule PEL for MEKP. For example, the Floyd and Stokinger study reports that MEKP is "20- to 50-fold more acutely toxic than di-t-butyl peroxide by all routes tested"; however, there is no PEL or TLV for di-t-butyl peroxide for OSHA to use as a basis for the PEL. The same study notes that MEKP is significantly more toxic than benzoyl peroxide (TLV-TWA of 5 mg/m³) and resembles hydrogen peroxide in toxicity (TLV-TWA of 1.5 mg/m³) but

provides no data to suggest how this "extra" toxicity might translate into a PEL. OSHA carefully reviewed the ACGIH (1986) documentation for this substance and also could find no specific basis for a ceiling of 0.2 ppm (1.5 mg/m³).

Accordingly, OSHA has concluded that, at this time, the available data support establishing a PEL for MEKP that is at least equivalent to that for benzoyl peroxide (i.e., 5 mg/m³, which is approximately equivalent to 0.7 ppm for MEKP). Given that MEKP is reported by Floyd and Stokinger to be more irritating than benzoyl peroxide and that irritation can result from even very brief exposures to excessive concentrations of MEKP, OSHA also concludes that a ceiling limit for MEKP is necessary and appropriate. Therefore, to reduce the significant risk of irritation to workers who are exposed to MEKP at higher levels, OSHA is establishing a 0.7 ppm ceiling PEL for MEKP.

METHYL FORMATE

CAS: 107-31-3; Chemical Formula: $HCOOCH_3$
H.S. No. 1258

OSHA had a limit of 100 ppm TWA for methyl formate. The ACGIH also has an 8-hour time-weighted average of 100 ppm, with a TLV-STEL of 150 ppm. OSHA proposed to retain the 8-hour TWA of 100 ppm for methyl formate and to add a STEL of 150 ppm; NIOSH (Ex. 8-47, Table N1) concurs that these limits are appropriate. The final rule retains the 8-hour TWA of 100 ppm and adds a 15-minute STEL of 150 ppm. Methyl formate is a flammable, colorless liquid with an agreeable odor.

Methyl formate causes nose and eye irritation, vomiting, incoordination, narcosis, and death in guinea pigs exposed at high concentrations (Schrenk, Yant, Chornyak, and Patty 1938/Ex. 1-756). A 5-percent concentration was fatal in 20 to 30 minutes, a 1.5- to 2.5-percent concentration was dangerous in 30 to 60 minutes, and a 0.5-percent concentration (5000 ppm) was considered the maximum concentration tolerable for a 60-minute period without serious consequences. Lehmann and Flury (1943b/Ex. 1-963) observed that inhalation of 1.02 percent methyl formate for two to three hours caused pulmonary edema and death in cats; a concentration of 1600 ppm resulted in lung inflammation after one hour. Guinea pigs died when exposed by inhalation to 2.5 percent methyl formate (Lehmann and Flury 1943b/Ex. 1-963).

In studies of methyl formate exposure in humans, von Oettingen (1950/Ex. 1-499) reported that exposed workers showed temporary blindness, narcosis, mucous membrane irritation, and dyspnea. Fairhall (1957c/Ex. 1-1107) has reported that methyl formate is more irritating than either methyl or ethyl acetate. Only NIOSH commented on this substance.

In the final rule, OSHA is retaining the 8-hour PEL of 100 ppm TWA and adding a STEL of 150 ppm to prevent the significant risks of irritation, narcotic effects, and pulmonary damage, which constitute material health impairments that are associated with exposure to concentrations of methyl formate even for short periods (one hour or more). The basis for this limit is analogy to the toxicity of methyl acetate. The Agency concludes that these limits will substantially reduce these significant risks.

METHYL IODIDE

CAS: 74-88-4; Chemical Formula: CH_3I
H.S. No. 1259

OSHA formerly had a limit of 5 ppm TWA, with a skin notation, for methyl iodide. The ACGIH has a TLV-TWA limit of 2 ppm, with a skin notation, for methyl iodide, and classifies it as a suspected human carcinogen (A2). NIOSH recommends reducing exposure to the lowest feasible limit, and also considers this chemical a carcinogen. The proposed PEL was an 8-hour TWA PEL of 2 ppm, with a skin notation; the final rule establishes these limits. Methyl iodide is a colorless, sweet-smelling liquid that turns yellow, red, or brown when exposed to light and moisture.

Methyl iodide has been reported to have an LD_{50} in rats of 150 to 200 mg/kg; liver damage was evident after these lethal exposures (Kutob and Plaa 1962/Ex. 1-61). Fifteen-minute exposures to 3800 ppm were fatal in rats (Chambers et al. 1950, as cited in ACGIH 1986/Ex. 1-3, p. 399), and Bachem (1927/Ex. 1-1013) has reported that methyl iodide is six times as toxic in mice as methyl bromide. Inhalation studies have shown eye irritation and depressed body weight in rats as a result of 14-week exposures to 30 and 60 ppm (Blank, Nair, Roloff, and Ribelin 1984/Ex. 1-619). The same authors observed fatalities in rats within four weeks of exposure to 143 ppm; 10 ppm was reported to be a no-effect level.

In industry, fatalities have occurred from methyl iodide poisoning in chemical workers (Garland and Camps 1945/Ex. 1-1190; Appel, Galen, O'Brien, and Schoenfeldt 1975/Ex. 1-1076). However, the exposure levels associated with these fatal overexposures are not known (ACGIH 1986/Ex. 1-3, p. 399).

In tests of carcinogenicity, methyl iodide produced local sarcomas in rats injected subcutaneously and lung tumors in mice given intraperitoneal injections (Druckrey, Kruse, Preussman et al. 1970/Ex. 1-246; Poirier, Stoner, and Shimkin 1975/Ex. 1-686). These carcinogenic effects occurred at a dosage approximately equivalent to a daily 8-hour exposure to 20 or 25 ppm for an adult human (ACGIH 1986/Ex. 1-3, p. 399). OSHA received comments on methyl iodide's health effects from the American Industrial Hygiene Association (AIHA). (Ex. 8-16; Tr. 3-309) and from NIOSH (Ex. 8-47, Table N6A). The AIHA stated that "[a] number of potentially carcinogenic substances for which PEL revisions are proposed appear to have been misclassified concerning their toxic effect" (Ex. 8-16, p. 6). The AIHA includes methyl iodide in this group of substances. As discussed in the introduction to Section VI.C, OSHA did not intend the proposal's classifications to have regulatory implications; rather, both this classification and that of the final rule are intended only to reflect the health endpoint used by the ACGIH or NIOSH as the basis for selecting a particular PEL for a given substance, and to facilitate generic rulemaking. NIOSH (Ex. 8-47, Table N6A) agreed that the methyl iodide limit established by OSHA is appropriate, but pointed out that this substance could be classified as an occupational carcinogen.

In the final rule, OSHA establishes an 8-hour TWA limit of 2 ppm, with a skin notation, for methyl iodide. The Agency concludes that these limits will protect workers from the significant risk of irritation and liver and kidney damage, which are material impairments of health that are associated with exposure to methyl iodide in the workplace. The skin notation is needed to prevent dermal absorption of toxic amounts of methyl iodide.

METHYL ISOAMYL KETONE

CAS: 110-12-3; Chemical Formula: $CH_3COCH(C_2H_5)_2$
H.S. No. 1260

OSHA formerly had no limit for methyl isoamyl ketone (MIAK). The ACGIH has established an 8-hour TLV-TWA of 50 ppm. NIOSH also recommends a 50-ppm TWA limit for MIAK. The proposed PEL was 50 ppm as an 8-hour TWA, with which NIOSH (Ex. 8-47, Table N1) concurs. The final rule establishes these limits. Methyl isoamyl ketone is a colorless, clear liquid with a pleasant odor.

The oral LD_{50} value of methyl isoamyl ketone in rats is 1.67 g/kg (Smyth,

Carpenter, Weil et al. 1962/Ex. 1-441). No data relating exposure levels to specific effects in humans have been reported. However, the ACGIH (1986/Ex. 1-3, p. 400) believes that MIAK is likely to be more irritating and a more potent narcotic than is the case for methyl isobutyl ketone.

The NIOSH criteria document on the ketones (1978f, as cited in ACGIH 1986/Ex. 1-3, p. 400) states that "because methyl isoamyl ketone contains one more carbon atom than does methyl isobutyl ketone, methyl [isoamyl] ketone might produce irritation and narcosis at concentrations at least as low as those at which methyl isobutyl ketone produces these effects," and NIOSH thus recommends a 50-ppm TWA for MIAK, corresponding to NIOSH's recommendation for methyl isobutyl ketone (NIOSH 1978f, as cited in ACGIH 1986/Ex. 1-3, p. 400). NIOSH submitted the only comments on MIAK.

In the final rule, OSHA is establishing an 8-hour TWA limit of 50 ppm for methyl isoamyl ketone. The Agency concludes that this limit will protect workers against the significant risk of narcotic and irritant effects, which constitute material health impairments that are associated with exposure to MIAK at levels above the new PEL.

METHYL ISOPROPYL KETONE

CAS: 563-80-4; Chemical Formula: $(CH_3)_2CHCOCH_3$
H.S. No. 1262

OSHA formerly had no limit for methyl isopropyl ketone (MIPK). The ACGIH has a TLV-TWA of 200 ppm. The proposed PEL was 200 ppm as an 8-hour TWA; NIOSH (Ex. 8-47, Table N1) concurs, and the final rule establishes this limit. Methyl isopropyl ketone is a colorless, flammable liquid.

Animal studies have shown MIPK to have an acute toxicity somewhat greater than that of diethyl ketone and somewhat less than that of di-n-propyl ketone or methyl-n-propyl ketone (ACGIH 1986/Ex. 1-3, p. 405). Rats exposed for four hours at a concentration of 5700 ppm died (NIOSH 1977i, Ex. 1-1182). Other data concerning the inhalation toxicity of MIPK are lacking. Dr. Grace Ziem (Ex. 46) noted that respiratory irritation, headaches, and nausea have been demonstrated to occur in humans at low levels of MIPK exposure.

OSHA establishes in the final rule a limit of 200 ppm TWA for methyl isopropyl ketone. The Agency concludes that this limit will protect workers against the significant risk of irritation, a material health impairment that is associated with exposure to this ketone at levels above the new PEL.

METHYL PARATHION

CAS: 298-00-0; Chemical Formula: $C_8H_{10}NO_5PS$
H.S. No. 1265

OSHA formerly had no limit for methyl parathion. The ACGIH has a TLV-TWA of 0.2 mg/m³, with a skin notation. NIOSH also recommends a TWA of 0.2 mg/m³, and a skin notation for methyl parathion. The proposed PEL was an 8-hour TWA limit of 0.2 mg/m³, with a skin notation; NIOSH (Ex. 8-47, Table N1) concurs with these limits, and they are established in the final rule. Methyl parathion is a tan to brown liquid with a pungent odor like that of garlic.

Methyl parathion is an acetylcholinesterase inhibitor, and excessive exposure can cause sweating, salivation, diarrhea, bradycardia, bronchoconstriction, muscle fasciculations, and coma. Methyl parathion's acute oral LD_{50} for male rats is almost identical to that of parathion, (i.e., 10 to 25 mg/kg); for female rats, the LD_{50} is 24 mg/kg, or approximately one-sixth that of parathion. By the dermal route, methyl parathion is much less toxic than parathion, with an LD_{50} of 67 mg/kg in rats of both sexes (Hayes 1963/Ex. 1-982). Erythrocyte cholinesterase activity was inhibited in dogs fed methyl parathion for 12 weeks at a rate corresponding to approximately 24 mg/day; inhibition of both plasma and erythrocyte cholinesterase activity occurred at doses of 70 mg/day, without accompanying illness (Williams, Fuyat, and Fitzhugh, 1950/Ex. 1-810). Dogs fed 6 mg/day methyl parathion for 12 weeks showed no effects from such exposures (Williams, Fuyat, and Fitzhugh 1950/Ex. 1-810). Lifetime feeding studies of rats and mice fed diets containing methyl parathion concentrations of up to 40 ppm and up to 125 ppm, respectively, produced no evidence of cancer (NCI 1979a/Ex. 1-1116).

Plasma and erythrocyte cholinesterase levels did not differ by more than 20 percent in subjects exposed at 7, 7.5, 8, or 9 mg/man/day, compared with controls (Moeller and Rider 1963/Ex. 1-585). Tiess, Wegener, and Tamme (1982/Ex. 1-774) have reported a case of protracted methyl parathion poisoning resulting from both percutaneous and inhalation exposures; Dille and Smith (1964/Ex. 1-549) attribute the long-term neuropsychiatric illness of two pilots to exposure to methyl parathion and other cholinesterase-inhibiting agents. Chronic exposure to small doses of methyl parathion have not caused chromosomal effects (de Cassia Stocco, Becak, Gaeta, and Rabello-Gay 1982/Ex. 1-540). No comments other than those from NIOSH were received on methyl parathion.

In the final rule, OSHA establishes a limit of 0.2 mg/m³ TWA for methyl parathion, with a skin notation. The Agency concludes that this limit will protect workers against the significant risk of acetylcholinesterase inhibition, which constitutes a material impairment of health that is associated with workplace exposures at levels above the new PEL. The skin notation will protect workers from the significant risk of systemic toxicity associated with percutaneous absorption of this substance.

METHYLCYCLOHEXANE

CAS: 108-87-2; Chemical Formula: C_7H_{14}
H.S. No. 1268

OSHA had an 8-hour TWA limit of 500 ppm for methylcyclohexane, and the ACGIH has a limit of 400 ppm TWA for this colorless liquid. The proposed PEL was 400 ppm; NIOSH concurred that this reduction in the TWA was appropriate (Ex. 8-47, Table N1). The final rule reduces the 8-hour TWA for methylcyclohexane from 500 ppm to 400 ppm.

Lehmann and Flury (1943e, as cited in ACGIH 1986/Ex. 1-3, p. 384) indicate that the acute toxicity of methylcyclohexane is greater than that of heptane but less than that of octane. Lazarew (1929/Ex. 1-1059) found that a two-hour exposure to a concentration of 7500 to 10,000 ppm caused prostration in mice, and exposure to 10,000 to 12,500 ppm caused death. Treon, Crutchfield, and Kitzmiller (1943b/Ex. 1-394) reported that exposure to 1200 ppm had no effect in rabbits, and prolonged exposures to 370 ppm had no effect in monkeys. Methylcyclohexane's histologic effects in animals resemble those of cyclohexane; the liver and kidney are the sites affected (ACGIH 1986/Ex. 1-3, p. 384). Only NIOSH commented on methylcyclohexane.

OSHA establishes an 8-hour TWA limit of 400 ppm for methylcyclohexane in the final rule. The Agency concludes that this limit will protect workers against the significant risk of irritation, a material health impairment that is associated with exposure to methylcyclohexane at levels above the new PEL.

2-METHYLCYCLOPENTADIENYL MANGANESE TRICARBONYL

CAS: 12108-13-3; Chemical Formula: $(CH_3)C_5H_4Mn(CO)_3$
H.S. No. 1271

OSHA formerly had no limit for 2-methylcyclopentadienyl manganese tricarbonyl (Cl-2). The ACGIH has a

TLV–TWA of 0.2 mg/m³, measured as manganese, with a skin notation. The proposed PEL was 0.2 mg/m³ as an 8-hour TWA, with a skin notation; NIOSH (Ex. 8–47, Table N1) concurs. This limit, measured as manganese, is established in the final rule, along with a skin notation. Cl–2 is a dark orange liquid with a faintly pleasant odor; it is a complex organic compound containing about 25 percent manganese by weight.

2-Methylcyclopentadienyl Mn tricarbonyl is highly toxic in its concentrated form, causing adverse effects primarily on the central nervous system. It is somewhat irritating to the eyes but skin contact does not produce irritation or sensitization; however, Cl–2 is readily absorbed through the skin (ACGIH 1986/Ex. 1–3, p. 387). Animal studies indicate that Cl–2 has a toxicity similar to that of tetraethyl lead and is highly toxic by all routes of exposure (U.S. Navy Smoke Abatement Additive, as cited in ACGIH 1986/Ex. 1–3, p. 387).

The single-dose oral LD_{50} for rats is 23 or 30 mg/kg, depending on sex. The skin LD_{50} for rabbits is 1602 ± 145 mg/kg, and the 1-hour inhalation LC_{50} for rats is about 350 mg/m³ (The Ethyl Corporation, as cited in ACGIH 1986/Ex. 1–3, p. 387). Toxic exposures by all routes produce rapidly appearing symptoms of mild excitement, hyperactivity, tremors, severe clonic spasms, weakness, respiratory distress, and occasional clonic convulsions, followed by terminal coma (U.S. Navy Smoke Abatement Additive, as cited in ACGIH 1986/Ex. 1–3, p. 387).

Acute exposure causes damage to the liver, kidneys, and cerebral cortex, as well as changes in lung tissue (ACGIH 1986/Ex. 1–3, p. 387). Browning (1986/Ex. 1–1018) observed chronic bronchitis, peribronchitis, interstitial pneumonia, and lung abscesses in animals that subsequently died from long-term inhalation exposure to Cl–2; exposure to Cl–2 concentrations of approximately 12 mg/m³ for 100 days produced no deviation in weight gain patterns and no gross or microscopic changes in two dogs (Browning 1986/Ex. 1–1018). The liver and kidneys are the principal target organs associated with acute overexposures; the lungs of overexposed animals were hemorrhagic (Browning 1986/Ex. 1–1018).

In humans, skin contact should be entirely avoided. A 5- to 15-ml spill on one worker's hand and wrist was reported to have caused "thick tongue," nausea, giddiness, and headache within 3 to 5 minutes (U.S. Navy Smoke Abatement Additive, as cited in ACGIH 1986/Ex. 1–3, p. 387). NIOSH submitted the only comment on this substance.

In the final rule, OSHA establishes a PEL of 0.2 mg/m³ TWA, measured as manganese, with a skin notation, for 2-methylcyclopentadienyl manganese tricarbonyl. The Agency concludes that this limit will protect workers against the significant risk of CNS effects and systemic damage, which constitute material health impairments and are associated with exposure to Cl–2 at levels higher than the new PEL. A skin notation is established because of Cl–2's demonstrated ability to penetrate human skin rapidly and to cause systemic effects.

MONOCROTOPHOS (AZODRIN)

CAS: 6923–22–4; Chemical Formula: $C_7H_{14}NO_5P$
H.S. No. 1279

OSHA formerly had no limit for the systemic insecticide monocrotophos. The ACGIH has a TLV–TWA of 0.25 mg/m³ for this reddish-brown solid with a mild ester odor. The proposed PEL was 0.25 mg/m³ as an 8-hour TWA; NIOSH (Ex. 8–47, Table N1) concurs with this limit, which is established in the final rule.

Monocrotophos is a highly toxic, direct acting cholinesterase inhibitor that penetrates the intact skin (ACGIH 1986/Ex. 1–3, p. 416). The acute oral LD_{50} values in rats and mice range from 5.7 to 17 mg/kg in a water formulation (Brown et al. 1970, Shellenberger and Newell, both as cited in ACGIH 1986/Ex. 1–3, p. 416) and from 10 to 23 mg/kg in an oil formulation (Shellenberger and Newell, as cited in ACGIH 1986/Ex. 1–3, p. 416). These authors also report a percutaneous LD_{50} in the rabbit that ranges from 112 to 709 mg/kg, depending on the vehicle used. A two-year dietary study of rats ingesting 0, 1, 10, or 100 ppm monocrotophos revealed that both sexes in the 100 ppm group failed to gain as much weight as the controls, but autopsy showed no significant findings; plasma, erythrocyte, and brain cholinesterase decreased at the two highest dose levels but were unaffected at 1 ppm (Johnston 1966–67, as cited in ACGIH 1986/Ex. 1–3, p. 416). Another two-year feeding study in dogs administered doses of up to 16 ppm monocrotophos revealed no adverse effects at levels of 0.16 and 1.6 ppm, but serious cholinesterase reduction was observed at the 16-ppm level (Johnston 1966–67, as cited in ACGIH 1986/Ex. 1–3, p. 416). Metabolism studies in rats and goats indicate that monocrotophos is excreted rapidly in the rat and does not accumulate in the body (Bull and Lindquist 1966/Ex. 1–719; goats given labeled monocrotophos by mouth showed only traces of the material in their milk (Menzer and Casida 1965/Ex. 1–966; Potter, as cited in ACGIH 1986/Ex. 1–3, p. 416). Inhalation exposure of rats to an unknown concentration of 75 percent monocrotophos in air for one hour was not lethal; a four-hour exposure to an unknown concentration of the aerosol (0.4 and 0.75 percent) was fatal to two out of six (0.4 percent aerosol) and five out of eight rats (0.75 percent aerosol). Head-only exposure to the 0.4-percent aerosol resulted in the death of one of eight animals (Wilson, as cited in ACGIH 1986/Ex. 1–3, p. 416).

Intravenous injection of radiolabeled monocrotophos in human volunteers showed maximum excretion at 4 to 8 hours, with 67 ± 5 percent of the material in the urine; absorption of 14 ± 7 percent occurred when the radiolabeled material was applied to the forearm; 33 ± 9 percent of the applied dose was absorbed when it was covered with a vapor-proof film for 72 hours (Maibach 1970, as cited in ACGIH 1986/Ex. 1–3, p. 416). Although gauze patches attached to the clothing and skin of field workers attested to the presence of monocrotophos, no cholinesterase inhibition was observed in post-exposure examinations at three hours and at three and seven days (Maibach, as cited in ACGIH 1986/Ex. 1–3, p. 416). Only NIOSH commented on this substance.

OSHA is establishing a PEL of 0.25 mg/m³ (8-hour TWA) for monocrotophos in the final rule. The Agency concludes that this limit will protect workers against the significant risk of cholinesterase inhibition, a material impairment of health that is associated with exposure to this substance in the workplace at levels above the new PEL.

MORPHOLINE
CAS: 110–91–8; Chemical Formula: C_4H_9NO
H.S. No. 1281

OSHA had a limit of 20 ppm, with a skin notation, for morpholine. The ACGIH has a 20-ppm TWA limit and a TLV–STEL of 30 ppm, as well as a skin notation. The proposal retained the 8-hour TWA PEL of 20 ppm and added a STEL of 30 ppm; NIOSH concurs that these limits are appropriate (Ex. 8–47, Table N1), and they are established in the final rule. The skin notation is retained. Morpholine is a colorless liquid with an amine-like odor.

Exposure to morpholine produces nasal and bronchial irritation and liver and kidney impairment in animals (Shea 1939/Ex. 1–758); the substance readily penetrates the skin and is highly irritating to the eyes (Jefferson Chemical Company, Inc. 1961, as cited in ACGIH 1986/Ex. 1–3, p. 417). The single oral LD_{50} in rats is 1.05 g/kg (range: 0.95 to 1.16 g/kg), and the single skin LD_{50} for 24-hour contact is 0.5 ml/kg (Smyth, Carpenter, Weil, and Pozzani 1954/Ex. 1–440). Neither a one-hour exposure to concentrated vapor nor an 8-hour exposure to 6000 ppm was fatal in rats (Smyth, Carpenter, Weil, and Pozzani 1954/Ex. 1–440). Rats were exposed for eight hours daily to a concentration of 18,000 ppm for a total of five days; after the first day, all animals showed severely reddened thoracic walls, and one fatality (from kidney and liver congestion) occurred. A similar fatality occurred on the third day; on day 4, a third rat died, and postmortem examination revealed degeneration of the epithelial lining of the kidney tubules. Three additional deaths occurred after the exposures had ended; autopsy revealed thickened alveoli, emphysema, and liver and kidney effects (Shea 1939/Ex. 1–758).

Reporting on his own reactions to morpholine exposure at a concentration of 12,000 ppm, Shea (1939/Ex. 1–758) complained of nose irritation (after 1 minute) and coughing (after 90 seconds); in addition, when he transferred morpholine by pipette, he experienced sore throat and mucosal irritation. All symptoms disappeared after the experiment stopped (Shea 1939/Ex. 1–758). Skin contact poses a moderately high degree of hazard, which diminishes as the product is diluted with water to less than 25 percent (Jefferson Chemical Company, Inc. 1961, as cited in ACGIH 1986/Ex. 1–3, p. 417). Respiratory irritation but no chronic effects have been reported as a result of industrial exposure (Patty 1963e/Ex. 1–858). In comparison with ammonia, morpholine has a greater potential for systemic toxicity (ACGIH 1986/Ex. 1–3, p. 417).

OSHA received a comment on morpholine from Lawrence Hecker of Abbott Laboratories (Ex. 3–678). Dr. Hecker states (Ex. 3–678, p. 8) that the STEL proposed for morpholine should not be included in the final rule because the health evidence for this substance does not warrant a STEL. OSHA does not agree with Dr. Hecker; there is evidence in the record that morpholine's effects are experienced even at elevated exposures lasting only one minute (Shea 1939/Ex. 1–758). Because morpholine has a greater potential for systemic effects than does ammonia, a STEL is needed to ensure that short-term excursions substantially above the 8-hour TWA PEL do not occur.

In the final rule, OSHA is retaining the 8-hour TWA limit for morpholine of 20 ppm TWA and the skin notation, and is adding a 15-minute STEL of 30 ppm. The Agency concludes that these limits will work together to protect workers against the significant risk of eye and respiratory tract irritation, which are material impairments of health that are associated with exposures at levels above the 8-hour TWA limit. OSHA is retaining the skin notation for morpholine because of this substance's ability to be absorbed through the skin in toxic amounts.

NITRIC ACID

CAS: 7697–37–2; Chemical Formula: HNO_3
H.S. No. 1286

OSHA had an 8-hour TWA limit of 2 ppm for nitric acid. The ACGIH has the same TWA limit and a 15-minute STEL of 4 ppm, and NIOSH recommends a TWA limit of 2 ppm. The proposal retained the 8-hour TWA PEL of 2 ppm for nitric acid and added a STEL of 4 ppm; NIOSH (Ex. 8–47, Table N1) concurred with these limits, which are established in the final rule. Nitric acid is a fuming colorless or yellowish liquid.

Rats receiving a single exposure to nitric acid mist at a concentration of 63 mg/m³ exhibited no apparent adverse effects (Diggle and Gage 1954/Ex. 1–729). Chronic exposure to airborne nitric acid vapor or mist at unspecified levels was reported to cause chronic bronchitis, pneumonitis (Fairhall 1957i, as cited in ACGIH 1986/Ex. 1–3, p. 428), and tooth erosion (Lynch and Bell 1947/Ex. 1–793). Nitric acid's irritant potential is considered similar to that of other strong acids; it typically exists in conjunction with nitrogen dioxide, which is regarded as being more hazardous (ACGIH 1986/Ex. 1–3, p. 428). No comments, other than NIOSH's, were submitted on this substance.

OSHA is retaining the 8-hour TWA PEL of 2 ppm and adding a STEL of 4 ppm for nitric acid in the final rule. The Agency concludes that this combined limit will protect workers against the significant risk of irritation, chronic pulmonary disease, and dental corrosion, which together constitute a material impairment of health.

p-NITROANILINE

CAS: 100–01–6; Chemical Formula: $NO_2C_6H_4NH_2$
H.S. No. 1287

OSHA formerly had a limit of 1 ppm TWA (6 mg/m³) for p-nitroaniline (PNA), with a skin notation. The ACGIH has a limit of 3 mg/m³ TWA, with a skin notation. OSHA proposed to reduce the former 8-hour TWA of 1 ppm (equivalent to 6 mg/m³) to 3 mg/m³, and to retain the skin notation. NIOSH (Ex. 8–47, Table N1) concurred that these limits were appropriate, and they are established in the final rule. para-Nitroaniline usually exists in the form of yellow needles.

p-Nitroaniline is readily absorbed through the skin and is a strong methemoglobin-forming agent; prolonged exposure can cause liver damage (ACGIH 1986/Ex. 1–3, p. 430). Anderson (1946/Ex. 1–1049) reported several cases of PNA-poisoning among shipboard workers assigned to clean up a p-nitroaniline spill; one man with a history of liver disease became jaundiced and died, and the other exposed workers became cyanotic and complained of headache, sleepiness, weakness, and respiratory distress (Anderson 1946/Ex. 1–1049). It has also been reported that children who ingested p-nitroaniline that was contained in wax crayons subsequently became ill (Rieders and Brieger 1953/Ex. 1–798).

Several investigators (Anderson 1946/Ex. 1–1049; Gupta 1953, Fairhall 1957j, both as cited in ACGIH 1986/Ex. 1–3, p. 430; Linch 1974/Ex. 1–747) have concluded that the nitroanilines are more hazardous than aniline, and, on this basis, the ACGIH has recommended a TWA Limit for PNA that is lower than the limit for aniline (ACGIH 1986/Ex. 1–3, p. 430). Only NIOSH submitted comments on p-nitroaniline.

In the final rule, OSHA is establishing a PEL of 3 mg/m³ (8-hour TWA) for p-nitroaniline and is retaining the skin notation. The Agency concludes that this limit will protect workers against the significant risk of methemoglobinemia and liver damage, both of which constitute material health impairments that are associated with exposure to PNA at levels above 3 mg/m³. The Agency is retaining the skin notation because this substance is readily absorbed through the skin in toxic amounts.

NITROTOLUENE

CAS: 88–72–2 (o-isomer); 99–08–1 (m-isomer); 99–99–0 (p-isomer);
Chemical Formula: $CH_3C_6H_4NO_2$
H.S. No. 1292

OSHA formerly had an 8-hour TWA limit of 5 ppm, with a skin notation, for nitrotoluene. The ACGIH has a TLV-TWA of 2 ppm, also with a skin notation. The proposed PEL was 2 ppm as an 8-hour TWA, with a skin notation, and NIOSH concurred with this limit (Ex. 8–47, Table N1). The final rule establishes an 8-hour TWA PEL for nitrotoluene of 2 ppm and retains the skin notation. The ortho- and meta-isomers of nitrotoluene are yellow liquids; the para-isomer is also yellow, but exists in crystalline form.

Nitrotoluene is one of the aromatic nitrogen compounds that may cause methemoglobin formation. Linch (1974/Ex. 1–747) has studied the nitrotoluene isomers and reported that they have

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relatively low emiagenic potential; he considered nitrotoluene comparable to aniline in its toxic effects (Linch 1974/Ex. 1–747). Cases of poisoning as a result of exposure to nitrotoluene are rare (von Oettingen 1941/Ex. 1–674). Only NIOSH commented on this substance.

In the final rule, OSHA establishes an 8-hour TWA limit of 2 ppm and retains the skin notation for nitrotoluene. The Agency concludes that this limit will protect workers against the significant risk of methemoglobinemia, a material health impairment that is associated with exposure to this substance; the skin notation is retained because of nitrotoluene's capacity to penetrate the skin.

NONANE

CAS: 111-84-2; Chemical Formula: $CH_3(CH_2)_7CH_3$
H.S. No. 1293

Previously, OSHA has no limit for nonane. The ACGIH has a TLV–TWA of 200 ppm for this colorless liquid. The proposed PEL was 200 ppm; NIOSH concurs that this limit is appropriate (Ex. 8–47, Table N1). The final rule promulgates an 8-hour TWA PEL for nonane of 200 ppm.

The toxicity of nonane is approximately equal to that of VM&P naphtha. Naphtha has a 4-hour inhalation LC_{50} for rats of 3400 ppm, while nonane has an LC_{50} of 3200 ppm (Carpenter, Kinkead, Geary et al. 1975a/Ex. 1–302; Carpenter, Geary, Myers et al. 1976/Ex. 1–301). These investigators found a no-effect level of 500 ppm nonane for rats exposed six hours/day, five days/week for a 65-day period; under the same exposure conditions, a no-effect level of 500 ppm was reported for rats exposed to VM&P naphtha (Carpenter, Kinkead, Geary et al. 1975a/Ex. 1–302; Carpenter, Geary, Myers et al. 1976/Ex. 1–301). Earlier studies of octane and heptane have resulted in much higher LC_{50} values for mice, i.e., 13,500 ppm and 16,000 ppm, respectively, for 30- to 60-minute exposures (Flury and Zernik 1931/Ex. 1–094). Swann and associates (1974/Ex. 1–124) have reported similarly high LD_{50} values in mice for octane and hexane; mice died from respiratory arrest after 3 to 5 minutes of exposure to 16,000 ppm of octane or to 48,000 ppm of hexane (Swann, Kwon, and Hogan 1974/Ex. 1–124). The AFL–CIO (Ex. 194) and the United Auto Workers (Ex. 197) favor a 10 ppm PEL for all petroleum solvents and urge OSHA to consider a lower PEL.

In the final rule, OSHA establishes an 8-hour TWA limit of 200 ppm for nonane. The Agency concludes that this limit will protect workers against the significant risk of narcosis, a material impairment of health that is associated with exposure to nonane at levels above the new PEL.

OXALIC ACID

CAS: 144-62-7; Chemical Formula: $H_2C_2O_4$
H.S. No. 1299

OSHA formerly had a limit of 1 mg/m³ for oxalic acid. The ACGIH has a TLV–TWA of 1 mg/m³ and a TLV–STEL of 2 mg/m³. The proposal retained the 1-mg/m³ 8-hour TWA limit but added a STEL of 2 mg/m³; NIOSH (Ex. 8–47, Table N1) concurs with these limits. The final rule retains the 8-hour TWA PEL of 1 mg/m³ for oxalic acid and adds a STEL of 2 mg/m³. Anhydrous oxalic acid usually occurs in the form of a white powder; the dihydrate form is a colorless, odorless, crystalline substance.

Oxalic acid is known to produce severe burns of the eyes, mucous membranes, and skin (Windholz 1983d/Ex. 1–635, p. 991). There have been human fatalities from ingesting as little as 5 grams of oxalic acid. It appears that these deaths were caused by oxalic acid's ability to disturb the calcium-potassium balance in critical tissues (Klauder, Shelanski, and Gabriel 1955/Ex. 1–1067). Solutions of 5- to 10-percent oxalic acid have also been reported to irritate the skin on prolonged exposure. NIOSH was the only commenter on oxalic acid.

Because of oxalic acid's severe acute toxicity, OSHA is retaining the 8-hour TWA limit of 1 mg/m³ PEL and adding a STEL of 2 mg/m³ in the final rule. The Agency concludes that both of these limits are required to protect exposed workers from the significant risk of severe eye and skin burns and respiratory tract irritation, which are material health impairments associated with elevated short-term exposures at levels above the TWA limit.

PERCHLORYL FLUORIDE

CAS: 7616-94-6; Chemical Formula: ClO_3F
H.S. No. 1309

OSHA's former 8-hour TWA limit for perchloryl fluoride was 3 ppm. The ACGIH has a TLV–TWA of 3 ppm and a STEL of 6 ppm for this colorless gas with a sweet odor. The proposal retained the 8-hour TWA PEL of 3 ppm for perchloryl fluoride and added a STEL of 6 ppm. NIOSH (Ex. 8–47, Table N1) concurs that these limits are appropriate and they are established in the final rule.

The 4-hour LC_{50}s in rats and mice were 385 and 630 ppm, respectively. Dogs exposed for 4 hours to 220- to 450-ppm concentrations of the vapor, followed by exposure to 620 ppm for 2.5 hours, became hyperneic and cyanotic and showed increased methemoglobin. Dogs succumbing to these exposures had pigment deposition in the liver, spleen, and bone marrow; alveolar hemorrhage and collapse; and emphysema (Greene, Colbourn, Donati, and Weeks 1980, as cited in ACGIH 1986/Ex. 1–3, p. 406).

Exposure to 185 ppm for six hours/day, five days/week for seven weeks killed 18 of 20 rats, 20 of 39 mice, and all exposed guinea pigs (Greene, Colbourn, Donati, and Weeks 1980, as cited in ACGIH 1986/Ex. 1–3, p. 406). These animals had difficulty breathing, became cyanotic, and developed alveolar edema and methemoglobinemia; at autopsy, they showed fluorosis, patchy lungs, enlarged spleens, and hemosiderosis of the kidneys, spleen, and liver. When animals were exposed on a similar regimen but to a concentration of 104 ppm for six weeks, all guinea pigs but only 1 of 20 rats died (Greene, Colbourn, Donati, and Weeks 1980, as cited in ACGIH 1986/Ex. 1–3, p. 406). After a six-month exposure to 24 ppm, bone fluoride levels increased fourfold in guinea pigs, threefold in rats, and about 50 percent in dogs. Animals exposed at 24 ppm showed no signs of irritation (Greene, Colbourn, Donati, and Weeks 1980, as cited in ACGIH 1986/Ex. 1–3, p. 406). Only NIOSH commented on perchloryl fluoride.

In the final rule, OSHA is retaining the 8-hour TWA of 3 ppm and adding a STEL of 6 ppm for perchloryl fluoride. These limits are based on the fluoride content of this compound. The Agency concludes that this combined limit will protect workers from the significant risk of fluorosis and hematologic effects, which together constitute material impairments of health that are associated with exposures to perchloryl fluoride at levels above these limits.

PHOSDRIN (MEVINPHOS)

CAS: 7786-34-7; Chemical Formula: $C_7H_{13}O_6P$
H.S. No. 1320

OSHA formerly had an 8-hour TWA limit of 0.1 mg/m³, with a skin notation, for phosdrin (mevinphos). The ACGIH has a TLV–TWA of 0.01 ppm (0.1 mg/m³) and a TLV–STEL of 0.03 ppm (0.3 mg/m³), also with a skin notation. The proposal retained the 8-hour TWA of 0.1 mg/m³ and added a STEL of 0.3 mg/m³; the skin notation was retained. NIOSH (Ex. 8–47, Table N1) concurred with these limits, which are established in the final rule. Phosdrin is a colorless liquid. The commercial product is a mixture of cis- and trans-isomers that have a yellow color.

The acute oral LD_{50} of phosdrin is 4 to 8 mg/kg for male mice and 6 to 8 mg/kg for female rats (Shell Chemical Corporation 1956, as cited in ACGIH 1986/Ex. 1–3, p. 412). Phosdrin is a cholinesterase inhibitor and has been reported to cause slight plasma cholinesterase depression but no decrease in brain cholinesterase activity in rats fed 2 to 5 ppm. The compound may be absorbed dermally and by inhalation or ingestion; the action of the compound is direct and immediate (Cleveland and Treon 1961/Ex. 1–476). The dermal LD_{50} in rats has been reported to be 4.5 mg/kg (Gaines 1969/Ex. 1–320). Chronic feeding of rats demonstrated a minimal lethal dose of between 100 and 200 ppm. Cholinesterase activity decreased continually when sublethal doses were administered until a maximum reduction in RBC cholinesterase activity of 25 percent was achieved on the 27th day of the administration of 1.5 to 20 mg doses (Hueise and Federspil 1975/Ex. 1–959).

In industry, the primary hazards associated with exposure to phosdrin are absorption of phosdrin through the skin, lung, and mucous membranes, which causes liver damage (Natoff 1970/Ex. 1–966). Phosdrin intoxication is reported to occur in human, with accompanying symptoms of headache, visual distortion, weakness, cramps, diarrhea, pain, and respiratory distress. Severe exposure may cause convulsions; in one reported case, some symptoms (anxiety, depression, vertigo, and nystagmus) persisted for as long as four months (Zavon, as cited in ACGIH 1986/Ex. 1–3, p. 412). Only NIOSH commented on this substance.

In the final rule, OSHA is retaining the 8-hour TWA PEL of 0.1 mg/m³ and adding a STEL of 0.3 mg/m³ for phosdrin; the skin notation is retained. These limits are based on analogy to the toxicity of parathion. The Agency concludes that these limits will protect workers against the significant risk of cholinesterase inhibition and hepatic injury, which constitute material health impairments that result from the absorption of phosdrin through the skin and mucous membranes and from exposure by the inhalation and oral routes. OSHA finds that these limits will substantially reduce these significant risks.

PHOSPHORUS OXYCHLORIDE

CAS: 10025-87-3; Chemical Formula: $POCl_3$
H.S. No. 1323

OSHA had no former limit for phosphorus oxychloride. The ACGIH has a TLV–TWA of 0.1 ppm and a TLV-STEL of 0.5 ppm for this clear, colorless, fuming liquid, which has a pungent odor. The proposed PELs were 0.1 ppm as an 8-hour TWA and 0.5 ppm as a 15-minute STEL. NIOSH (Ex. 8–47, Table N1) concurred with these limits. The final rule establishes an 8-hour TWA of 0.1 ppm for this substance but, for the reasons discussed below, does not include a STEL for phosphorus oxychloride.

The primary hazards associated with inhalation of phosphorus oxychloride vapor are irritation of the eyes and respiratory tract, as well as narcotic effects, gastric irritation, pulmonary edema, and nephritis (International Technical Information Institute 1976/Ex. 1–837).

Weeks and associates (1964, as cited in ACGIH 1986/Ex. 1–3, p. 485) reported 4-hour LC_{50} values for phosphorus oxychloride of 48 ppm and 52 ppm for rats and guinea pigs, respectively. They also observed that ammonia vapor mediates the irritant effects of exposure to phosphorus oxychloride without significantly altering this LC_{50} value (Weeks, Downing, Musselman et al. 1964, as cited in ACGIH 1986/Ex. 1–3, p. 485).

Both chronic and acute occupational intoxication have been reported to occur among workers exposed to phosphorus oxychloride (Sassi 1954/Ex. 1–931).

The American Industrial Hygiene Association (AIHA) recommended that OSHA delete the STEL for phosphorus oxychloride (Tr. 3–307, Ex. 8–16) on the grounds that the ACGIH intends to delete this STEL. After a review of the available evidence for this substance, OSHA is not including a STEL for phosphorus oxychloride in the final rule. The Agency's reasoning on this issue is discussed in Section VI.C.17 of this preamble.

In the final rule, OSHA is establishing a PEL of 0.1 ppm (8-hour TWA) for phosphorus oxychloride, by analogy to the toxicity of phosphorus trichloride. The Agency concludes that this limit will reduce the significant risk of narcosis and systemic poisoning, which are material health impairments that are associated with acute and chronic exposure at levels above the new PEL.

PHOSPHORUS PENTASULFIDE

CAS: 1314-80-3; Chemical Formula: P_2S_5
H.S. No. 1324

OSHA formerly had a limit of 1 mg/m³ as an 8-hour TWA for phosphorus pentasulfide. The ACGIH also has a limit of 1 mg/m³ TWA but adds a 15-minute STEL of 3 mg/m³. The proposal retained the 8-hour TWA PEL of 1 mg/m³ and added a STEL of 3 mg/m³; NIOSH (Ex. 8–47, Table N1) concurs with these limits. The final rule retains the 8-hour TWA PEL of 1 mg/m³ for phosphorus pentasulfide and adds a STEL of 3 mg/m³. Phosphorus pentasulfide is a greenish-yellow crystalline mass with an odor like that of rotten eggs.

The primary hazard associated with exposure to phosphorus pentasulfide is respiratory irritation (Smyth 1956/Ex. 1–759). In the presence of moisture, phosphorus pentasulfide is rapidly hydrolyzed to phosphoric acid and hydrogen sulfide. The ACGIH (1986/Ex. 1–3, p. 485) considers phosphorus pentasulfide to be as toxic as phosphoric acid. Only NIOSH commented on this substance.

In the final rule, OSHA is retaining the 8-hour TWA PEL of 1 mg/m³ and adding a 15-minute STEL of 3 mg/m³ for phosphorus pentasulfide. The Agency concludes that both of these limits are necessary to reduce the significant risk of respiratory irritation, a material health impairment that is associated with exposure to this substance at the higher concentrations permitted in the past by the TWA alone.

PHTHALIC ANHYDRIDE

CAS: 85-44-9; Chemical Formula: $C_6H_4(CO)_2O$
H.S. No. 1326

OSHA had an 8-hour TWA limit of 2 ppm for phthalic anhydride. The ACGIH has a limit of 1 ppm TWA for phthalic anhydride, which exists in the form of white crystalline needles with a mild odor. The proposed PEL was 1 ppm as an 8-hour TWA, and NIOSH (Ex. 8–47, Table N1) concurs that this limit is appropriate. The final rule establishes an 8-hour TWA PEL of 1 ppm for phthalic anhydride.

The primary exposure hazards associated with phthalic anhydride are severe skin, eye, and respiratory irritation. The substance can also produce skin and, perhaps, pulmonary sensitization (Patty 1963i, as cited in ACGIH 1986/Ex. 1–3, p. 487). Baader (1955/Ex. 1–1139) has reported irritant effects in animals exposed to 30 mg/m³ (approximately 5 ppm) phthalic anhydride in air.

In studies of workers exposed to phthalic anhydride, symptoms of respiratory tract injury as well as bronchitis, eye irritation, and nasal bleeding have been reported. Precise exposure concentrations were not detectable by the analytic method being used, which had a limit of detection of 25 mg/m³ (i.e., of 4 ppm or lower) (Baader 1955/Ex. 1–1139; Menschick 1955/Ex. 1–1091). Other industrial acid anhydrides (e.g., tetrachlorphthalic anhydride and maleic anhydride) are considered more irritating than phthalic

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anhydride (ACGIH 1986/Ex. 1–3, p. 489). Only NIOSH commented on this substance.

OSHA is establishing an 8-hour TWA limit of 1 ppm for phthalic anhydride in the final rule. The Agency concludes that this 1-ppm limit will reduce the significant risk of respiratory irritation and skin and pulmonary sensitization, all of which constitute material impairments of health that are associated with exposure to levels above the new PEL.

PROPARGYL ALCOHOL

CAS: 107–19–7; Chemical Formula: $HC{\equiv}CCH_2OH$
H.S. No. 1335

Previously, OSHA had no limit for propargyl alcohol. The ACGIH has established an 8-hour TWA of 1 ppm, with a skin notation, for this straw-colored liquid, which smells like geraniums. The proposed PEL was an 8-hour TWA of 1 ppm, with a skin notation. NIOSH (Ex. 8–47, Table N1) concurs with this limit, which is established in the final rule.

In rats, guinea pigs, and mice, the oral LD_{50}s are 70, 60, and 50 mg/kg, respectively; the 2-hour inhalation LC_{50} in both the rat and mouse is reported to be about 850 ppm (NIOSH 1977i/Ex. 1–1182). The dermal LD_{50} in rabbits is 88 mg/kg (RTECS).

Propargyl alcohol is a primary skin irritant, but it is not a skin sensitizer (Antara Chemicals 1952, as cited in ACGIH 1986/Ex. 1–3, p. 496). The toxicity of propargyl alcohol is estimated to be equal to that of allyl alcohol (oral LD_{50} in rats of 64 mg/kg) (NIOSH 1977i/Ex. 1182). The ACGIH limit is based on the structural and toxicological similarity of propargyl alcohol to allyl alcohol (ACGIH 1986/Ex. 1–3, p. 496). Grace Ziem, an occupational physician, commented (Ex. 46) that the ACGIH *Documentation* (1986/Ex. 1–3) for propargyl alcohol neglects to mention this substance's ability to cause "degenerative changes in liver and kidneys in [an] 89-day rat study" that is cited by Rowe and McCollister (1982) in (*Patty's Industrial Hygiene and Toxicology* 1982, Vol. 2C, p. 4673) and also overlooks the fact that propargyl alcohol is a "moderate CNS depressant." OSHA agrees with Dr. Ziem that this substance has these effects which, in OSHA's opinion, point to the need for the limits being established in this final rule.

OSHA is establishing in the final rule an 8-hour TWA for propargyl alcohol of 1 ppm, with a skin notation. The Agency concludes that these limits will protect workers against the significant risk of skin and mucous membrane irritation, CNS depression, and liver and kidney damage, all of which constitute material impairments of health that are associated with exposure to this substance at levels above the new limit.

PROPIONIC ACID

CAS: 79–09–4; Chemical Formula: CH_3CH_2COOH
H.S. No. 1336

OSHA previously had no limit for propionic acid. The ACGIH has a TLV-TWA of 10 ppm for this substance; the TLV was set on the basis of analogy with acetic acid (10 ppm 8-hour TLV). The proposed PELs were 10 ppm as an 8-hour TWA and 15 ppm as a 15-minute STEL. NIOSH (Ex. 8–47, Table N1) concurred that these limits are appropriate, and the final rule establishes an 8-hour TWA of 10 ppm but does not include a STEL. Propionic acid is a colorless, oily liquid with a pungent odor.

The primary health effects associated with exposure to propionic acid are skin burns and irritation of the eyes and respiratory system. Smyth, Carpenter, Weil, and co-workers (1962/Ex. 1–441) reported that the oral LD_{50} for rats is 4.3 g/kg; NIOSH (1977i/Ex. 1–1182) stated that the intravenous LD_{50} for mice is 625 mg/kg and the skin absorption LD_{50} for rabbits is 500 mg/kg. Inhalation of the saturated vapor for eight hours caused no fatalities in rats (ACGIH 1986/Ex. 1–3, p. 498).

Acute industrial exposures to propionic acid have been reported to cause mild to moderate skin burns, eye irritation, and, in a single incident, asthmatic cough. No irritation was observed as a consequence of exposures in humans averaging below 0.25 ppm with excursions to 2.1 ppm in an eight-hour period (Dow Chemical Company 1977o, as cited in ACGIH 1986/Ex. 1–3, p. 498).

Two commenters in addition to NIOSH commented on propionic acid. The American Industrial Hygiene Association (AIHA) (Tr. 3–307) urged OSHA to delete the STEL for propionic acid on the ground that the ACGIH has put the STEL for this substance on its List of Intended Changed (ACGIH 1988). Kodak (Ex. 661) agrees with the AIHA on the issue of a STEL, noting that, in Kodak's opinion, the 15-ppm STEL "cannot be justified on either available toxicological data or . . . ½Kodak's¾ own experience." After a review of the evidence for propionic acid's short-term effects, OSHA has determined, in accordance with the STEL policy outlined in Section VI.C.17 of this preamble, that no STEL is necessary for propionic acid. Accordingly, the final rule contains no short-term limit for this substance.

In the final rule, OSHA establishes an 8-hour TWA limit of 10 ppm (8-hour TWA) for propionic acid. The Agency concludes that this limit is required to protect workers against the significant risk of eye and respiratory tract irritation, which are material impairments of health that are associated with exposure to levels above the new PEL.

n-PROPYL ACETATE

CAS: 109–60–4; Chemical Formula: $CH_3COOCH_2CH_2CH_3$
H.S. No. 1338

OSHA previously had an 8-hour TWA limit of 200 ppm for n-propyl acetate. The ACGIH also had a 200-ppm TWA limit but adds a TLV-STEL of 250 ppm. The proposal retained the 8-hour TWA PEL of 200 ppm for n-propyl acetate and added a 15-minute STEL of 250 ppm. NIOSH (Ex. 8–47, Table N1) concurs that these limits are appropriate, and they are established by the final rule. n-Propyl acetate is a pleasant-smelling liquid.

The primary health effects associated with exposure to n-propyl acetate are narcosis and eye and respiratory irritation. The five-hour narcotic concentrations for cats and mice have been reported as 9000 ppm and 6000 ppm, respectively (Flury and Wirth 1933, as cited in ACGIH 1986/Ex. 1–3, p. 500). n-Propyl acetate's narcotic action is 1.3 times that of ethyl acetate; salivation and irritation of cats' eyes occurred at 2600 ppm (Flury and Wirth 1933, as cited in ACGIH 1986/Ex. 1–3, p. 500). A four-hour exposure at 8000 ppm killed four of six rats (Smyth 1964, as cited in ACGIH 1986/Ex. 1–3, p. 500). Only NIOSH commented on n-propyl acetate.

n-Propyl acetate appears to be more toxic than isopropyl acetate or ethyl acetate but less so than n-butyl acetate (ACGIH 1986, p. 500).

In the final rule, OSHA is retaining the 8-hour TWA PEL of 200 ppm for n-propyl acetate and adding a STEL of 250 ppm. The Agency concludes that both of these limits are required to prevent the significant risk of narcosis and eye and respiratory tract irritation, which are material impairments of health that are associated with exposures to levels above the 8-hour TWA limit alone.

PROPYL ALCOHOL

CAS: 71–23–8; Chemical Formula: $CH_3CH_2CH_2OH$
H.S. No. 1339

OSHA had a limit of 200 ppm (8-hour TWA) for n-propyl alcohol. The ACGIH has the same TWA limit but adds a 250-ppm 15-minute STEL and a skin notation. The proposal retained the 200-ppm 8-hour TWA PEL and added a 15-minute STEL of 250 ppm and a skin notation. NIOSH (Ex. 8–47, Table N1) concurs that these limits are appropriate, and they are established in the final rule. The skin notation, however, is not retained (see the discussion of skin notations in Section VI.C.18 of this preamble). Propyl alcohol is a colorless liquid with an alcohol-like odor.

The primary health effect associated with exposure to propyl alcohol is mild narcosis. Propyl alcohol's toxicity is somewhat greater than that of isopropyl alcohol (Gleason, Gosselin, and Hodge 1963/Ex. 1–1034).

The inhalation LD_{50} for propyl alcohol in rats is reported as 1.9 g/kg (Smyth, Carpenter, Weil, and Pozzani 1954/Ex. 1–440). Starrek reported deep narcosis in mice inhaling the vapor at a concentration of 4100 ppm for 240 minutes and of 24,500 ppm for 60 minutes; ataxia appeared in 90 to 120 minutes at 3250 ppm (Starrek 1938/Ex. 1–872). These effects are almost twice as intense as those reported for exposure to the vapor of isopropyl alcohol. The dermal LD_{50} in rabbits is 5040 mg/kg (*Dangerous Properties of Industrial Materials*, 6th ed., Sax, 1984).

Nelson, Enge, Rose, and associates (1943/Ex. 1–66) reported mild eye, nose, and throat irritation in humans exposed at 400 ppm to the vapor of isopropyl alcohol, but no data exist on human sensory response to propyl alcohol vapor. The ACGIH (1986/Ex. 1–3, p. 500) reports that many industrial hygienists consider the vapor of propyl alcohol to be more irritating to the throat than the vapor of the isomer.

One comment, other than NIOSH's, was received on isopropyl alcohol. The Motor Vehicle Manufacturers Association (Ex. 3–902) asked that rulemaking for propyl alcohol be delayed, but did not provide any evidence in support of its position.

In the final rule, OSHA is retaining the 8-hour TWA PEL of 200 ppm and adding a STEL of 250 ppm for propyl alcohol; the skin notation is not included in the final rule because the LD_{50} in rabbits is 5040 mg/kg, well above the level determined by OSHA to require a skin notation (see Section VI.C.18 for a discussion of skin notations). The Agency concludes that these limits will protect workers against the significant risk of narcosis and irritation, both material impairments of health.

PROPYLENE OXIDE

CAS: 75–56–9; Chemical Formula: CH_3CHOCH_2
H.S. No. 1344

Previously, OSHA had an 8-hour TWA limit of 100 ppm for propylene oxide. The ACGIH has a limit of 20 ppm TLV–TWA. The proposed PEL was an 8-hour TWA of 20 ppm, and the final rule establishes this revised limit. Propylene oxide is a colorless, highly flammable, volatile, and ethereal liquid.

The health hazards associated with exposure to this substance are primary, skin, eye, and respiratory irritation, as well as central nervous system depression. The oral LD_{50} values reported for rats and guinea pigs are 930 mg/kg and 660 mg/kg, respectively. In mice, the inhalation LC_{50} has been reported to be at 1740 ppm for 4 hours. Dogs and guinea pigs exposed for 4 hours at 2000 and 4000 ppm, respectively, died (NIOSH 1977i/Ex. 1–1182). Although only some species tolerate daily exposures to 200 ppm, all species tested tolerated 100 ppm without ill effects (Rowe, Hollingsworth, Oyen et al. 1956/Ex. 1–609). Jacobson and associates (1956/Ex. 1–702) considered the toxic effects of propylene oxide to be one-half to one-third as intense as those of ethylene oxide (Jacobson, Hackley, and Feinsilver 1956/Ex. 1–702).

Corneal burns and skin necrosis, as well as respiratory and pulmonary irritation, have been reported in humans as a result of direct contact with the liquid or vapor (Patty 1963h/Ex. 1–857); central nervous system effects include ataxia, incoordination, and general depression.

OSHA received several comments on propylene oxide. Lawrence Birkner, Manager of Safety and Industrial Hygiene for ARCO Petroleum and Chemical Company (Tr. 3–229/3–245), reported that his company has an internal limit for propylene oxide of 20 ppm and that about "98 or 99 percent of . . . [ARCO's] exposures are [presently] below the current ACGIH TLVs" (Tr. 3–243).

Richard E. Sanderson, Director of the Office of Federal Activities for the EPA, commented that the discussion of propylene oxide's health effects in the proposal neglected to mention this substance's carcinogenicity or its ability to cause adverse reproductive effects (Ex. 3–746). NIOSH (Ex. 8–47, Table N8B) agrees with EPA that propylene oxide is a potential occupational carcinogen that warrants a full Section 6(b) rulemaking. NIOSH bases its inclusion on an NTP bioassay in rats and mice that demonstrates "some evidence" of carcinogenicity in rats and "clear evidence" of carcinogenicity in mice (Ex. 8–47). In response to these commenters, OSHA states that the Agency is aware of propylene oxide's serious health effects and is monitoring the literature on this substance closely.

OSHA establishes an 8-hour TWA limit of 20 ppm for propylene oxide in the final rule to protect workers against the significant risk of primary irritation and CNS depression, which constitute material health impairments that are associated with exposure to propylene oxide at levels above the revised PEL. The Agency concludes that this limit will substantially reduce these significant risks.

SILICON TETRAHYDRIDE

CAS: 7803–62–5; Chemical Formula: SiH_4
H.S. No. 1361

OSHA formerly had no limit for silicon tetrahydride. The ACGIH limit of 5 ppm as an 8-hour TWA was established in 1983. The proposed PEL was 5 ppm as an 8-hour TWA, a limit with which NIOSH concurs (Ex. 8–47, Table N1). The final rule establishes an 8-hour PEL for silicon tetrahydride of 5 ppm. Silicon tetrahydride, a colorless gas, is used in the manufacture of semiconductors.

Studies of rats exposed to silicon tetrahydride at levels of 126 ppm for one hour (Matheson Gas Products 1971, as cited in ACGIH 1986/Ex. 1–3, p. 528) and at 1400 ppm for six hours (Union Carbide Corporation 1980, as cited in ACGIH 1986/Ex. 1–3, p. 528) have failed to identify any systemic effects associated with exposure to this chemical. Sax (*Dangerous Properties of Industrial Materials*, 6th ed., 1984) lists the effects of acute exposure to silicon tetrahydride as moderate irritation of the eyes, skin, and mucous membranes.

In addition to NIOSH's comment on silicon tetrahydride, Grace Ziem, an occupational physician, stated that she believed OSHA's reference to Sax (1984) in the proposal's discussion of silicon tetrahydride's irritant effects was incorrect. However, OSHA notes that this notation was correct; Dr. Ziem did not realize that Sax (1984, p. 2394) has an entry for silicon tetrahydride under silane, a synonym.

OSHA is establishing an 8-hour TWA limit of 5 ppm for silicon tetrahydride in the final rule. The basis of this limit is analogy to the toxicity of silicon tetrahydride and other tetrahydrides. The Agency concludes that this limit will protect exposed workers from the significant risk of eye, skin, and upper respiratory tract irritation, which are material health impairments that are associated with exposure to this substance at levels above the new PEL.

SULFURYL FLUORIDE

CAS: 2699–79–8; Chemical Formula: SO_2F_2
H.S. No. 1379

The former OSHA limit for sulfuryl fluoride was 5 ppm as an 8-hour TWA. The ACGIH has a limit of 5 ppm as a TWA and adds a STEL of 10 ppm. The proposal retained the 8-hour TWA PEL of 5 ppm for sulfuryl fluoride and added a STEL of 10 ppm. NIOSH (Ex. 8–47, Table N1) concurred that these limits are appropriate, and they are established in the final rule. Sulfuryl fluoride is a colorless gas with a sulfide odor.

When selecting this limit, the ACGIH took into consideration the fact that, compared with hydrogen fluoride (TLV-TWA ceiling of 3 ppm), only a small portion of the inhaled gas is retained and converted to inorganic fluorides. In extensive animal studies conducted by the Dow Chemical Company (1962 and 1970, as cited in ACGIH 1986/Ex. 1–3, p. 546), sulfuryl fluoride was determined to exhibit one-half to one-third the acute inhalation toxicity of methyl bromide. Acute exposures of animals resulted in tremors that later developed into severe convulsions. Pulmonary edema was seen in laboratory animals after a single severe exposure. Repeated exposures of rats, guinea pigs, and mice to 20 ppm sulfuryl fluoride for seven hours per day produced both kidney and lung injury after six months. Some evidence of fluorosis was observed in the incisors of mice, but not in the teeth of the rats or guinea pigs (Dow Chemical Company 1962 and 1970, as cited in ACGIH 1986/Ex. 1–3, p. 546).

A report by Taxay (1966/Ex. 1–577) that examined an incident of workplace exposure to sulfuryl fluoride noted that abdominal pain, nausea, vomiting, and itching were the major symptoms. On the day following exposure, the serum of the affected worker tested positive for fluoride. No comment, other than NIOSH's, was submitted on this substance.

In the final rule, OSHA is retaining the 8-hour TWA limit of 5 ppm and adding a STEL of 10 ppm for sulfuryl fluoride; these limits are based on this substance's fluorine content. The Agency concludes that these limits will protect workers against the significant risks of kidney and lung injury and of fluorosis, which together constitute material health impairments that are associated with exposure to this substance at levels above the 8-hour TWA limit.

THIONYL CHLORIDE

CAS: 7719-09-7; Chemical Formula: Cl_2OS
H.S. No. 1393

OSHA's former Z tables had no limit for thionyl chloride. The ACGIH has established a ceiling limit of 1 ppm for this substance. The proposed ceiling was 1 ppm, and the final rule establishes this limit. NIOSH (Ex. 8–47, Table N1) concurs. Thionyl chloride is a colorless to pale yellow liquid with a suffocating odor.

Thionyl chloride vapors are skin, eye, and mucous membrane irritants, probably because they form sulfur dioxide and hydrogen chloride on contact with moisture (ACGIH 1986/Ex. 1–3, p. 572). An inhalation of 17.5 ppm proved lethal to cats within 20 minutes (Sax 1979/Ex. 1–666).

The ACGIH's exposure limit for thionyl chloride is based on the exposure limits for the decomposition products (hydrogen chloride and sulfur dioxide) of thionyl chloride when mixed with water. The reaction of one mole of thionyl chloride with water produces two moles of hydrogen chloride and one of sulfur dioxide, so that 1 ppm of thionyl chloride can be shown to produce a total irritant gas concentration of 3 ppm. The exposure limit for hydrogen chloride is 5 ppm as a ceiling limit; for sulfur dioxide, the limit is a TWA of 2 ppm. Thus, "the * * * ceiling limit of 1 ppm for thionyl chloride should prevent the irritant effects of its reaction products" (ACGIH 1986/Ex. 1–3, p. 572). No comments, other than NIOSH's, were received on this substance.

In the final rule, the Agency is establishing a ceiling limit of 1 ppm for thionyl chloride on the basis of analogy to the irritation potential of hydrogen chloride and sulfur dioxide. OSHA concludes that this limit will protect workers from the significant risk of irritation of the eyes, skin, and mucous membranes, which constitutes a material health impairment that is associated with exposure to this substance at levels above the new PEL.

TRIBUTYL PHOSPHATE

CAS: 126-73-8; Chemical Formula: $(C_4H_9)_3PO_4$
H.S. No. 1402

The former OSHA standard for tributyl phosphate was 5 mg/m³ as an 8-hour TWA. The ACGIH has a 2.5-mg/m³ TWA for tributyl phosphate, which is a clear, colorless, odorless liquid. The proposed PEL was an 8-hour TWA of 2.5 mg/m³; NIOSH (Ex. 8–47, Table N1) concurs that this limit is appropriate. The final rule establishes an 8-hour TWA PEL of 2.5 mg/m³ for tributyl phosphate.

Tributyl phosphate's toxicity affects the skin, mucous membranes, lungs, and central nervous system, and this substance is also a cholinesterase inhibitor.

A paper by Smyth and Carpenter (1944/Ex. 1–374) reported that contact with liquid tributyl phosphate caused severe eye injury and skin irritation when tested in rabbits. Chambers and Casida (1967/Ex. 1–306) found that mice injected with 1 g/kg tributyl phosphate intraperitoneally became paralyzed. A study by Vandekar (1957/Ex. 1–498) in which mice were given tributyl phosphate by gavage received that a dose of 80 mg/kg resulted in a one-hour period of anesthesia, and a dose of 100 mg/kg resulted in 6 to 10 minutes of anesthesia, followed by respiratory failure and death. Administered intraperitoneally to rats, tributyl phosphate inhibited cholinesterase activity and stimulated plasma beta-glucuronidase activity (Suzuki, Kikuchi, Kato et al. 1977/Ex. 1–1170). This substance did not exhibit mutagenic activity in bacterial or fruit fly assays (Hanna and Dyer 1975/Ex. 1–485).

Nausea and headache were reported by workers exposed to levels of 15 mg/m³ of tributyl phosphate (Mastromatteo 1964b, as cited in ACGIH 1986/Ex. 1–3, p. 591). No comments, other than NIOSH's, were received on this substance.

In the final rule, OSHA is reducing the 8-hour PEL from 5 mg/m³ to 2.5 mg/m³. OSHA concludes that this limit will protect workers against the significant risk of paralysis, anesthetic effects, and skin or eye irritation, all of which constitute material impairments of health that are associated with exposure to tributyl phosphate at levels above the new PEL.

TRICHLOROACETIC ACID

CAS: 76-03-9; Chemical Formula: CCl_3COOH
H.S. No. 1404

OSHA formerly had no exposure limits for trichloroacetic acid. The ACGIH has an 8-hour TWA of 1 ppm to protect against the corrosive effects of this substance. Trichloroacetic acid is a relatively strong acid that forms deliquescent crystals. The proposed PEL was 1 ppm as an 8-hour TWA, and NIOSH (Ex. 8–47, Table N1) concurs that this limit is appropriate. The final rule established a 1-ppm 8-hour TWA for trichloroacetic acid.

The Dow Chemical Company (1977p, as cited by the ACGIH 1986/Ex. 1–3, p. 592) reported that the oral LD_{50} for trichloroacetic acid in rats is 3.33 g/kg. Studies on mice conducted by NIOSH (1984, as cited in ACGIH 1986/Ex. 1–3, p. 592) established that the oral LD_{50} for this species is 4.97 g/kg, and that a 500-mg/kg dose was fatal when administered intraperitoneally.

Medical reports show mild to moderate skin and eye burns in workers exposed to unspecified levels of trichloroacetic acid; although corrosive, however, trichloroacetic acid is not readily absorbed by the skin (ACGIH 1986/Ex. 1–3, p. 592). Only NIOSH commented on this substance.

In the final rule, OSHA is establishing an 8-hour TWA limit for trichloroacetic acid of 1 ppm. This limit is based on analogy to the toxicity of 2,2-dichloropropionic acid. The Agency concludes that this limit will protect exposed workers from the significant risk of skin and eye irritation, which are material impairments of health that are associated with exposure to this substance at levels above the new PEL.

TRIMETHYLAMINE

CAS: 75-50-3; Chemical Formula: $(CH_3)_3N$
H.S. No. 1411

OSHA formerly had no exposure limit for trimethylamine. The ACGIH has a 10-ppm limit as an 8-hour TWA and a 15-ppm limit as a 15-minute STEL. The proposed PELs, with which NIOSH (Ex. 8–47, Table N1) concurs, were 10 ppm as an 8-hour TWA and 15 ppm as a 15-minute STEL. These limits are established in the final rule. Trimethylamine has a pungent, fishy odor and is a gas at room temperature.

Few toxicological data are available for trimethylamine. One study reports that the intravenous LD_{50} for this substance is 90 mg/kg in mice (Dechezlepretre, Portet, and Cheymol 1967/Ex. 1–777). The ACGIH established the TLV for trimethylamine on the basis of its chemical similarity to dimethylamine, for which the current TLV–TWA is 10 ppm. Dimethylamine is a central nervous system depressant and causes methemoglobinemia. Only NIOSH commented on trimethylamine.

OSHA is establishing an 8-hour TWA limit of 10 ppm and a STEL of 15 ppm (15 minutes) for trimethylamine. Based on analogy with dimethylamine, the Agency concludes that these limits will protect workers exposed at previously unregulated levels from the significant risk of eye, mucous membrane, and upper respiratory tract irritation, which constitute material impairments of health.

n-VALERALDEHYDE

CAS: 110-62-3; Chemical Formula: $CH_3(CH_2)_3CHO$
H.S. No. 1420

OSHA formerly had no limit for n-valeraldehyde. The ACGIH limit is 50 ppm as an 8-hour TWA for n-valeraldehyde, which is a colorless liquid. The proposed PEL was 50 ppm as an 8-hour TWA, and NIOSH (Ex. 8–47, Table N1) concurs that this limit which is established by the final rule, is appropriate.

n-Valeraldehyde's toxic effects include both skin and eye irritation. Animal studies showed n-valeraldehyde's to be severely irritating when applied to guinea pig skin and to rabbits' eyes (Fassett, as cited in ACGIH 1986/Ex. 1–3, p. 619). The dermal LD_{50} for guinea pigs exceeds 20 ml/kg (Fassett, as cited in ACGIH 1986/Ex. 1–3, p. 619).

A series of studies of the relative acute inhalation toxicity of 13 aliphatic saturated and unsaturated aldehydes in mice, guinea pigs, and rabbits showed that valeraldehyde was relatively nontoxic systemically (Salem and Cullumbine 1960/Ex. 1–360). Only NIOSH commented on this substance.

In the final rule, OSHA is establishing a 50-ppm 8-hour TWA limit for this previously unregulated chemical. The Agency concludes that this limit will protect workrs from the significant risk of severe eye and skin irritation associated with exposure to this substance at levels above the new PEL.

m-XYLENE ALPHA, ALPHA'-DIAMINE

CAS: 1477-55-0; Chemical Formula: $C_6H_4(CH_2NH_2)_2$
H.S. No. 1432

OSHA formerly had no exposure limit for this substance. The ACGIH has established a limit of 0.1 mg/m³ as a ceiling that should not be exceeded during any part of a working day, and has added a skin notation to indicate that substantial percutaneous absorption can occur through the eyes, mucous membranes, and skin. OSHA proposed a ceiling of 0.1 mg/m³ for this substance, with a skin notation, and NIOSH (Ex. 8–47, Table N1) concurs. These limits are established by the final rule. m-Xylene alpha, alpha'-diamine (MXDA) is a colorless liquid.

Animal studies have demonstrated that MXDA is strongly irritating to the skin (Haskell Laboratory 1973, Sherwin-Williams Company 1978, both as cited in ACGIH 1986/Ex. 1–3, p. 638). Research at du Pont (Haskell Laboratory 1973, as cited in ACGIH 1986/Ex. 1–3, p. 638) showed that pure MXDA was corrosive when applied to the skin of guinea pigs, and a 50-percent MXDA solution caused severe irritation in these animals. In a separate study (Sherwin-Williams Company 1978, as cited in ACGIH 1986/Ex. 1–3, p. 638), a 10-percent mixture of MXDA caused severe skin irritation and erythema in guinea pigs. Sherwin-Williams (1978, as cited in ACGIH 1986/Ex. 1–3, p. 638) also reported that rats exposed to levels of MXDA ranging from 1.74 to 6.04 mg/liter even for one hour sustained liver, kidney, and lung damage, as determined at necropsy. One study showed mild sensitization when MXDA was applied to guinea pig skin, but this effect was not observed in a second study (Sherwin-Williams Company 1978, as cited in ACGIH 1986/Ex. 1–3, p. 638). NIOSH was the sole commenter on this substance.

OSHA concludes that a ceiling limit of 0.1 mg/m³ and a skin notation are necessary to protect against the significant risk of skin irritation, percutaneous absorption of MXDA, and potential systemic effects, all of which constitute material impairments of health. The Agency has determined that these limits will substantially reduce this significant risk.

XYLIDINE

CAS: 1300-73-8; Chemical Formula: $(CH_3)_2C_6H_3NH_2$
H.S. No. 1433

OSHA's former Z tables included an exposure limit of 5 ppm as an 8-hour TWA for xylidine, with a skin notation. In 1982, the ACGIH reduced its TLV to 2 ppm as an 8-hour TWA and retained the skin notation. The proposed PEL was 2 ppm as an 8-hour TWA, and the skin notation was retained. NIOSH (Ex. 8–47, Table N1) concurs with these limits, and they are established by the final rule. Xylidine is a pale yellow to brown liquid. Commercial xylidine is a mixture of isomers.

Several studies indicate that the former OSHA PEL for xylidine is insufficient to protect workers against hepatotoxic and other adverse effects. A paper by von Oettingen, Neal, Sievers et al. (1947), as cited in ACGIH 1986/Ex. 1–3, p. 639) reported liver damage in dogs, rats, cats, and mice repeatedly exposed to 45 ppm xylidine for seven hours per day for a period of 20 to 40 weeks; these exposures also caused death in dogs cats, and mice. Treon, Sigmon, Wright et al. (1950/Ex. 1–533) noted cardiac, liver, and kidney damage in animals fatally exposed at the following doses: Cats, 17 ppm; guinea pigs, 50 ppm; and rabbits, 60 ppm; cyanosis was also observed in these animals. Only NIOSH commented on xylidine.

In the final rule, OSHA is reducing the existing 8-hour TWA to 2 ppm and retaining the skin notation for xylidine. The Agency concludes that these limits will protect workers from the significant risk of exposure-related cardiac, kidney, and liver damage, all of which constitute material health impairments.

Conclusions For This Group of Substances

Exposure to the 73 substances included in this category place workers at significant risk of material health impairment and functional incapacity.

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The adverse health consequences of exposure to these chemicals include neuropathies, skin and respiratory tract irritation, kidney and liver damage, and gastrointestinal disorders, all of which constitute material health impairments within the meaning of the Act. OSHA concludes, based on the record evidence, that the new or revised limits for these hazardous substances will substantially reduce these significant occupational risks.

13. Substances for Which Limits Are Based on Avoidance of Biochemical/ Metabolic Effects

Introduction

One basis for establishing exposure limits is the ability of many toxic substances to interfere with the normal metabolism or biochemistry of the body. A total of 28 substances for which OSHA is establishing limits fall into this group. Table C13-1 shows these substances, their former, proposed, and final rule PELs, and their CAS and HS numbers. For four of these substances, OSHA is only lowering the 8-hour TWA; for two other substances, the Agency is retaining the 8-hour limit and adding a STEL. In one instance, OSHA is reducing the TWA and adding a ceiling. In one case (terphenyls), OSHA is reducing a ceiling limit, and for 17 substances, new limits are being established. In the case of p-nitrochlorobenzene, OSHA is retaining the former limit of 1 mg/m³ as an 8-hour TWA.

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Table C13-1. Substances for Which Limits Are Based on Avoidance of Metabolic Effects

H.S. Number/ Chemical Name	CAS No.	Former PEL	Proposed PEL	Final Rule PEL[a]	Biochemical/ Metabolic Effect
1025 Aniline and homologs	62-53-3	5 ppm TWA, Skin	2 ppm TWA, Skin	2 ppm TWA, Skin	Methemoglobinemia
1058 Calcium cyanamide	156-62-7	—	0.5 mg/m^3 TWA	0.5 mg/m^3 TWA	Antabuse-like effect
1068 Carbofuran	1563-66-2	—	0.1 mg/m^3 TWA	0.1 mg/m^3 TWA	Cholinesterase inhibition
1069 Carbon dioxide	124-38-9	5,000 ppm TWA	5,000 ppm TWA 30,000 ppm STEL	10,000 ppm TWA 30,000 ppm STEL	Hyperventilation
107[1] Carbon monoxide	630-08-0	50 ppm TWA	35 ppm TWA 200 ppm Ceiling	35 ppm TWA 200 ppm Ceiling	Carboxyhemoglobinemia
1091 Chlorpyrifos	2921-88-2	—	0.2 mg/m^3 TWA 0.6 mg/m^3 STEL, Skin	0.2 mg/m^3 TWA, Skin	Cholinesterase inhibition
1103 Crufomate	299-86-5	—	5 mg/m^3 TWA 20 mg/m^3 STEL	5 mg/m^3 TWA	Cholinesterase inhibition
1104 Cyanamide	420-04-2	—	2 mg/m^3 TWA	2 mg/m^3 TWA	Antabuse-like effect
1131 Dicrotophos	141-66-2	—	0.25 mg/m^3 TWA Skin	0.25 mg/m^3 TWA, Skin	Cholinesterase inhibition

Table C13-1. Substances for Which Limits Are Based on Avoidance of Metabolic Effects (continued)

H.S. Number/ Chemical Name	CAS No.	Former PEL	Proposed PEL	Final Rule PEL*	Biochemical/ Metabolic Effect
1143 Dimethylaniline	121-69-7	5 ppm TWA, Skin	5 ppm TWA, Skin 10 ppm STEL	5 ppm TWA, Skin 10 ppm STEL	Methemoglobinemia
1146 Dioxathion	78-34-2	—	0.2 mg/m^3 TWA, Skin	0.2 mg/m^3 TWA, Skin	Cholinesterase inhibition
1151 Disulfiram (Antabuse)	97-77-8	—	2 mg/m^3 TWA	2 mg/m^3 TWA	Antabuse effects
1160 Ethion	563-12-2	—	0.4 mg/m^3 TWA, Skin	0.4 mg/m^3 TWA, Skin	Cholinesterase inhibition
1173 Fenamiphos	22224-92-6	—	0.1 mg/m^3 TWA, Skin	0.1 mg/m^3 TWA, Skin	Cholinesterase inhibition
1174 Fensulfothion	115-90-2	—	0.1 mg/m^3 TWA	0.1 mg/m^3 TWA	Cholinesterase inhibition
1175 Fenthion	55-38-9	—	0.2 mg/m^3 TWA, Skin	0.2 mg/m^3 TWA, Skin	Cholinesterase inhibition
1245 Methomyl	16752-77-5	—	2.5 mg/m^3 TWA	2.5 mg/m^3 TWA	Cholinesterase inhibition
1280 Monomethylaniline	100-61-8	2 ppm TWA, Skin	0.5 ppm TWA, Skin	0.5 ppm TWA, Skin	Methemoglobinemia

Table C13-1. Substances for Which Limits Are Based on Avoidance of Metabolic Effects (continued)

H.S. Number/ Chemical Name	CAS No.	Former PEL	Proposed PEL	Final Rule PEL*	Biochemical/ Metabolic Effect
1288 p-Nitrochlorobenzene	100-00-5	1 mg/m^3 TWA, Skin	1 mg/m^3 TWA, Skin	1 mg/m^3 TWA, Skin	Methemoglobinemia
1319 Phorate	298-02-2	—	0.05 mg/m^3 TWA 0.2 mg/m^3 STEL, Skin	0.05 mg/m^3 TWA 0.2 mg/m^3 STEL, Skin	Cholinesterase inhibition
1337 Propoxur	114-26-1	—	0.5 mg/m^3 TWA	0.5 mg/m^3 TWA	Cholinesterase inhibition
1349 Ronnel	299-84-3	15 mg/m^3 TWA	10 mg/m^3 TWA	10 mg/m^3 TWA	Cholinesterase inhibition
1380 Sulprofos	35400-43-2	—	1 mg/m^3 TWA	1 mg/m^3 TWA	Cholinesterase inhibition
1384 Terphenyls	26140-60-3	1 ppm Ceiling	0.5 ppm Ceiling	0.5 ppm Ceiling	Mitochondrial changes
1401 m-Toluidine	108-44-1	—	2 ppm TWA, Skin	2 ppm TWA, Skin	Methemoglobinemia
1413 2,4,6-Trinitrotoluene	118-96-7	1.5 mg/m^3 TWA, Skin	0.5 mg/m^3 TWA, Skin	0.5 mg/m^3 TWA, Skin	Methemoglobinemia

* OSHA's TWA limits are for 8-hour exposures; its STELs are for 15 minutes unless otherwise specified; and its ceilings are peaks not to be exceeded for any period of time.

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Description of the Health Effects

The compounds shown in Table C13–1 are further divided into the following sub-classes, based on their mechanism of action:

- Substances that are cholinesterase inhibitors;
- Substances that interferes with the oxygen-carrying capacity of blood;
- Substances with Antabuse-like effects.

The disruption of metabolic processes by toxic substances, if severe enough, results in potentially dangerous effects on the neurological, cardiovascular, and respiratory systems. The adverse health consequences caused by exposure to chemicals having cholinesterase inhibition effects range from wheezing, nausea, vomiting, and confusion to respiratory failure, coma, and death. If exposure has localized rather than systemic effects, the signs and symptoms of cholinesterase inhibition can include sweating, blurred vision, and constriction of the bronchial tubes. Substances that interfere with the ability of the blood to carry oxygen cause a broad range of symptoms, including fainting, loss of consciousness, rapid heartbeat, headache, nausea, coma, and death. Carbon monoxide (CO) is the best-known substance in this category of chemicals, and exposure to CO is common throughout industry.

The Antabuse-like effects associated with exposure to three chemicals—disulfiram, cyanamide, and calcium cyanamide—include facial flushing, nausea, and a racing heartbeat. However, these effects are manifested only if the exposed individual has ingested alcohol. The three chemicals in this subgroup cause this effect by inhibiting aldehyde dehydrogenase activity, which is involved in the biotransformation of alcohol.

For chemicals that cause systemic toxicity in animals and/or humans, the grossly observable signs and symptoms of intoxication are usually secondary to the interaction of the chemical with a molecular target. In other words, the chemical interacts with (binds with or modifies) an endogenous molecular constituent (protein, nucleic acid, lipid, etc.) in the target tissue(s). The result of the interaction is ordinarily a modification or elimination of the normal function of the specific molecular constituent which, if sufficiently severe, may lead to secondary effects within the affected cells and/or tissues. It is possible for a number of molecules to be affected by the toxic chemical without there being any overt manifestation of toxicity. In other words, there is an apparent no-effect level governing the overt manifestation of toxicity, although there are usually metabolic effects at levels below those that cause overt effects.

For chemicals for which the molecular target is known and for which methods are available to detect the altered molecular target, it is possible to use the measure of altered biochemical function as a sensitive indicator of exposure to the chemicals at levels below those that cause grossly observable signs and symptoms of poisoning. For other classes of chemicals, studies in animals and/or humans have shed light on the biochemical basis of their toxicity. For some of these classes of chemicals, it is possible to base limits of human exposure on biochemical, metabolic, or pharmacologic indicators of their interaction with molecular targets rather than on grossly visible signs and symptoms of adverse systemic effects.

Substances that are cholinesterase inhibitors. A number of organophosphate and carbamate insecticides produce acute toxicity in humans through inhibition of acetylcholinesterase at cholinergic synapses in the central and peripheral nervous systems. There are 14 substances in this group. This inhibition causes an accumulation of acetylcholine at the effector sites and elicits signs and symptoms consistent with excessive cholinergic activity. These include bronchoconstriction; increased bronchial secretions, salivation, and lacrimation; nausea; vomiting; cramps; constriction of the pupils; muscular weakness; and cardiac irregularities. If sufficiently severe, acetylcholinesterase inhibition may cause coma, irreversible CNS damage, and death.

The mechanisms by which carbamates and organophosphates inhibit acetyl-cholinesterase differ. In general, carbamates form a noncovalently bound complex with the enzyme, while most organophosphates bind covalently with the enzyme. The net result, inactivation of the enzyme, is similar for both groups. In either case, the inhibition is usually reversible. The carbamate-cholinesterase complex dissociates to regenerate the active enzyme, while cholinesterase inactivated by organophosphates is replaced by the *de novo* synthesis of active enzyme. Therefore, unless the inhibition is sufficiently severe to cause brain damage or death, the manifestations of acute toxicity are reversible, and poisoned individuals recover without sequelae. A significant proportion of endogenous cholinesterase activity may be inhibited before the overt manifestations of intoxication appear. The fraction of total cholinesterase activity that can be inhibited without there being signs and symptoms of toxicity varies from individual to individual and also appears to depend on the intensity and duration of exposure. The lack of warning signs at low levels of exposure increases the need to set exposure limits at levels that will protect those individuals who do not readily manifest the symptoms and signs of toxicity from experiencing the subclinical effects of exposure.

Substances that interfere with the oxygen-carrying capacity of the blood. Nine compounds in this section produce their immediate toxicity in humans by altering the ability of hemoglobin in the red blood cells to bind, transport, and release oxygen. Perhaps the best studied of these is carbon monoxide. Carbon monoxide binds to hemoglobin with a greater affinity than does oxygen. It also alters the dissociation characteristics for the oxygen-hemoglobin complex. The overall effect is to reduce the oxygen-carrying capacity of the blood. Also included in this overall category of compounds is a group of aromatic amines and nitro compounds that react with hemoglobin in the blood to reduce it to methemoglobin. Methemoglobin will not bind with oxygen and therefore is not an effective carrier of oxygen.

Because these compounds reduce the ability of the blood to transport oxygen, the overt signs and symptoms of acute toxicity are those of tissue anoxia, i.e., neurobehavioral disturbances, dizziness, cardiac irregularities, cyanosis, unconsciousness, and death. The severity of the symptoms is a function of the degree to which the oxygen-carrying capacity of the blood has been depleted and of the state of the exposed individual's health. In the case of carbon monoxide, individuals with pre-existing cardiovascular disease or healthy individuals engaged in physical labor may be placed at increased risk when more than 5 percent of their hemoglobin is bound to carbon monoxide.

In the cases of both carbon monoxide and the methemoglobin-forming compounds, the primary effect (i.e., formation of carboxyhemoglobin or methemoglobin) is reversible. In the absence of additional carbon monoxide exposure, carboxyhemoglobin dissociates to carbon monoxide and fully functional hemoglobin. Methemoglobin can be reoxidized to hemoglobin by endogenous mechanisms, but the major recovery mechanism is via the synthesis of new hemoglobin.

Substances with Antabuse-like effects. The ingestion of alcoholic beverages following exposure to disulfiram, cyanamide, or calcium cyanamide results in a characteristic syndrome consisting of flushing of the face, nausea, vomiting, hypotension, and increased heart rate. If exposure is particularly severe, the reaction may trigger convulsions, cardiac arrhythmias, or heart attacks and has in some cases caused death. In the vast majority of less severe cases, the reaction is fully reversible, although the symptoms are temporarily completely disabling. Disulfiram (Antabuse) is used therapeutically in the treatment of chronic alcoholism; employees who are currently being treated with disulfiram for alcoholism are therefore at particularly high risk if they are also occupationally exposed to these substances that cause Antabuse-like effects. These compounds do not cause any signs or symptoms of toxicity in the absence of alcohol ingestion unless exposure levels are far above those that trigger the alcohol-induced response.

Dose-Response Relationships and Biochemical/Metabolic Effects

Substances that are cholinesterase inhibitors. Typically, the cholinesterase inhibition potential of a compound is assessed by measuring plasma cholinesterase activity in the treated organism. Data from experiments in animals and limited data from human clinical trials indicate that the percentage of basal plasma cholinesterase activity decreases with increasing dose and that the dose-response curve is S-shaped. Because there is inter-individual variation in this relationship, the dose-response curve for a population exposed to a cholinesterase inhibitor would be expected to be much shallower in slope and to have longer tails than the dose-response curve for any single individual.

The relationship between the dose-response curve for plasma cholinesterase inhibition and the dose-response curves for more direct indicators of clinical intoxication, such as acetylcholinesterase activity in the CNS or the actual appearance of signs of intoxication, is not known. Evidence suggests that there is considerable inter-individual variability in these relationships. Some individuals may be free of the symptoms and signs of intoxication when their plasma cholinesterase levels have been inhibited by as much as 90 percent, while others may experience symptoms after only a small decrease in plasma cholinesterase activity. Because of this variability, any exposure limit should be set with this individual variability in mind.

Substances that interfere with oxygen transport. Both carboxyhemoglobin and methemoglobin formation exhibit a classical sigmoidal dose-response relationship in relation to exposure to carbon monoxide or methemoglobin-forming compounds. The loss in the oxygen-carrying capacity of the blood is a function of the intensity and duration of exposure. As stated above, the majority of healthy individuals can tolerate some reduction in the oxygen-carrying capacity of their blood without experiencing symptoms of overt toxicity. However, there is great inter-individual variability in the degree of decreased oxygen-carrying capacity that can be tolerated without apparent ill effect. Individuals with pre-existing anemia or with high carboxyhemoglobin levels as a result of other environmental exposures (e.g., smoking) may already be at or above the level at which they will display the signs or experience the symptoms of tissue anoxia. For these individuals, even a small incremental decrease in the oxygen-carrying capacity of the blood can have serious consequences.

Substances causing Antabuse-like effects. The dose-response characteristics of disulfiram, cyanamide, and calcium cyanamide follow the usual S-shaped curve. The final rule's limits for the substances in this group have been set at levels below those associated with the Antabuse effect in workers ingesting alcohol either during or after work.

The following paragraphs describe the record evidence and the Agency's findings with respect to the substances that cause metabolic disturbances. The discussions below also illustrate the risk of material health impairment associated with exposure to these substances.

ANILINE (AND HOMOLOGS)

CAS: 62-53-3; Chemical Formula: $C_6H_5NH_2$ H.S. No. 1025

The former OSHA 8-hour TWA permissible exposure limit for aniline was 5 ppm, with a skin notation. The ACGIH-recommended 8-hour TLV is a 2-ppm TWA, with a skin notation. The proposed PEL was 2 ppm as an 8-hour TWA, and this limit is established in the final rule. The skin notation is retained. Aniline, when first distilled, is an oily, colorless liquid that darkens on exposure to air.

Occupational aniline poisoning was a relatively common occurrence in earlier years (ACGIH 1986/Ex. 1–3, p. 30). The early limits for aniline were set to guard against acute toxicity manifested as cyanosis (Henderson and Haggard 1943i, as cited in ACGIH 1986/Ex. 1–3, p. 30). Cirrhosis and chronic CNS effects were also reported (Holstein 1955/Ex. 1–913; von Oettingen 1941/Ex. 1–874). Skin absorption occurs when aniline vapor contacts the skin (Dutkiewicz 1962, as cited in ACGIH 1986/Ex. 1–3, p. 30); the dermal LD_{50} in rabbits is 820 mg/kg (*Dangerous Properties of Industrial Materials*, 7th ed., Sax and Lewis 1989, p. 262).

Early studies suggested that less than full-shift exposures of 7 to 53 ppm of aniline vapor caused mild symptoms, while one-hour inhalation exposures to concentrations in the range of 100 to 160 ppm caused severe effects (Henderson and Haggard 1943i, as cited in ACGIH 1986/Ex. 1–3, p. 30). Later studies in several species of animals found no effects, other than a slight increase in methemoglobin in the blood of rats, after the animals had been exposed to aniline concentrations of 5 ppm for six months (Oberst, Hackley, and Comstock 1956/Ex. 1–685). An early NCI aniline hydrochloride cancer bioassay in Fischer 344 rats and B6C3F1 mice demonstrated carcinogenic effects, primarily in the spleens of rats, but multiple organ sites were also involved in rats fed 0.6 percent or 0.3 percent aniline hydrochloride for 103 weeks (NCI 1978a/Ex. 1–1118).

NIOSH (Ex. 8–47, Table N6A) testified (Tr. III–96/97) that aniline and its analogs are carcinogens; NIOSH concurred that the limit established by OSHA for aniline and its homologues is appropriate. However, NIOSH is of the opinion that OSHA should designate substances suspected of having carcinogenic potential as carcinogens. This issue is discussed in Section V of the preamble. OSHA received no other comments on aniline and its homologues.

OSHA has concluded that the former limit of 5 ppm is not sufficiently protective, since systemic effects have been observed in humans exposed to levels as low as 7 ppm and in animals at levels as low as 5 ppm. Accordingly, OSHA is establishing an 8-hour TWA of 2 ppm for aniline and retaining the skin notation, which will protect against percutaneous absorption. The Agency has determined that this limit will substantially reduce the significant risk of methemoglobinemia, which constitutes a material impairment of health, seen in exposed animals at the former level. The Agency intends to continue to monitor the evidence on the carcinogenicity of aniline in the future to determine whether other action is appropriate.

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CALCIUM CYANAMIDE

CAS: 156-62-7; Chemical Formula: CaNC–N
H.S. No. 1058

OSHA formerly had no limit for calcium cyanamide. The ACGIH has a TLV–TWA of 0.5 mg/m³ for this crystalline gray material. The proposed PEL was an 8-hour TWA of 0.5 mg/m³, and NIOSH (Ex. 8–47, Table N1) concurs with this limit, which is established in the final rule.

Data regarding the acute toxicity of calcium cyanamide are sparse. The oral LD_{50} in rabbits is 1400 mg/kg, and that for rats is 1000 mg/kg (Spencer 1973, as cited in ACGIH 1986/Ex. 1–3, p. 91).

Skin and eye irritation have been reported in rats and rabbits, with significant irritation occurring when 100 mg of calcium cyanamide is placed directly into the eyes of rabbits (Martin 1975, as cited in ACGIH 1986/Ex. 1–3, p. 91). Severe skin irritation developed in rabbits when a paste of this substance was applied to the shaved abdominal skin for 24 hours (Martin 1975, as cited in ACGIH 1986/Ex. 1–3, p. 91). Two of five animals died when the dose was 10 g/kg, but all survived a dose of 5 g/kg.

Most cases of industrial calcium cyanamide poisoning involve primary skin irritation or sensitizing dermatitis. Skin irritation develops in the form of an erythematous rash over the surfaces of the body that are exposed to the substance of those body surfaces irritated by clothing or perspiration. Some individuals develop a macular rash on exposure, and this may progress to the weeping stage. In addition, exposed workers may develop temporary vasomotor disturbances of the upper body, with susceptibility increasing with alcohol intake (Fassett 1963d, as cited in ACGIH 1986/Ex. 1–3, p. 91). Calcium cyanamide is used medically for its Antabuse-like effect, and the maintenance dose in adults is between 50 and 100 mg/day (Hald, Jacobsen, and Larson 1952/Ex. 1–905). No comments, other than NIOSH's, were received on this substance.

In the final rule, OSHA is establishing an 8-hour TWA PEL of 0.5 mg/m³ for calcium cyanamide. The Agency concludes that this limit will substantially reduce the significant risks of material health impairment in the form of eye and skin irritation, sensitizing dermatitis, and the occurrence of Antabuse-like effects, which were possible at the levels of exposure formerly permitted by the absence of an OSHA limit.

CARBOFURAN

CAS: 1563-66-2; Chemical Formula:
$C_{12}H_{15}NO_3$
H.S. No. 1068

Previously, OSHA had no limit for carbofuran. The ACGIH has a TLV–TWA of 0.1 mg/m³ for this white crystalline solid. The proposed PEL for carbofuran was 0.1 mg/m³ as an 8-hour TWA, and NIOSH concurred with this limit (Ex. 8–47, Table N1), which is established in the final rule.

Tobin (1970/Ex. 1–935) reports that the LC_{50} of 50-percent wettable carbofuran powder is 108 mg/m³ for male and 133 mg/m³ for female rats; a respiratory LC_{50} of 53 mg/m³ for guinea pigs exposed to the 75-percent wettable powder is also reported (Tobin 1970/Ex. 1–935). Rhesus monkeys did not display cholinesterase depression at levels equivalent to 0.56 mg/m³ of 75-percent wettable powder (Tobin 1970/Ex. 1–935). Chronic feeding studies in the rat have shown no effects at 25 ppm; in the dog, the no-effect level was 20 ppm (Gaines, unpublished data, as cited in ACGIH 1986/Ex. 1–3, p. 100). Inhibition of plasma, erythrocyte, and brain cholinesterase levels was evident at levels of 50 ppm in the diet (Tobin 1970/Ex. 1–935). Six-hour exposures at levels of 0.88 mg/m³ caused significant cholinesterase inhibition in animals (Tobin 1970/Ex. 1–935).

Workers exposed at concentrations approaching 0.1 mg/m³ have not shown any adverse effects (Tobin, personal communication to ACGIH TLV Committee, as cited in ACGIH 1986/Ex. 1–3, p. 100). No comments, other than NIOSH's, were received on carbofuran.

In the final rule, OSHA is establishing a permissible exposure limit of 0.1 mg/m³ as an 8-hour TWA for this substance to protect employees from the significant risk of cholinesterase inhibition potentially associated with exposure to this previously unregulated substance. The Agency concludes that this limit will substantially reduce this significant occupational risk of material impairment of health.

CARBON DIOXIDE

CAS: 124-38-9; Chemical Formula: CO_2
H.S. No. 1069

OSHA's former limit for carbon dioxide was 5000 ppm as an 8-hour TWA. The ACGIH has a 5000-ppm TLV–TWA with a 30,000-ppm TLV–STEL, and these were the limits proposed. NIOSH has a TWA REL of 10,000 ppm with a 10-minute 30,000-ppm ceiling limit; however, NIOSH (Ex. 8–47, Table N1) concurred that the proposed limits were appropriate. After carefully reviewing the record evidence submitted in response to OSHA's proposal for carbon dioxide, the Agency has determined that exposure limits of 10,000 ppm (8-hour TWA) and 30,000 ppm (15-minute STEL) are appropriate. Carbon dioxide is a colorless, odorless, noncombustible gas.

Both the ACGIH (1986/Ex. 1–3) and NIOSH (1976a, as cited in ACGIH 1986/Ex. 1–3, p. 102) cite studies indicating that continuous exposure to between 1.5 and 3 percent carbon dioxide (15,000 to 30,000 ppm) results in few, if any, adverse effects. However, electrolyte imbalances and other metabolic changes have been associated with prolonged exposure to 10,000 to 20,000 ppm CO_2 (Schulte 1964/Ex. 1–366; Gray 1950, as cited in ACGIH 1986/Ex. 1–3, p. 102). Increases in the rate of respiration have been observed among resting subjects exposed to 39,500 ppm for periods shorter than a day and among exercising subjects exposed to airborne concentrations below 30,000 for the same period (Sinclair et al. 1960, as cited in ACGIH 1986/Ex. 1–3, p. 102).

OSHA received comments on carbon dioxide from the American Iron and Steel Institute (AISI) (Ex. 1–1123; Tr. p. 11–24) and the Corn Refiners Association (Ex. 177), among others; both organizations listed CO_2 as a substance affecting their respective industries but did not provide further information. OSHA also received comments from the Beer Institute (Exs. 49 and 142; Tr. 8/9/88, p. 9–26) and from the Anheuser-Busch Company (Ex. 199).

The Beer Institute (Exs. 49 and 142; Tr. 8/9/88, p. 9–26) and the Brewing Industry Safety Advisory Committee submitted comments to OSHA on carbon dioxide. This industry's position is that there is no health risk to employees exposed to CO_2, even at levels between 15,000 and 20,000 ppm for an 8-hour period (Ex. 49, p. 2). In support of this position, the Beer Institute testified that the 8-hour TWA limit of 5000 ppm is "unnecessarily low and restrictive" (Ex. 49; Tr. 8/9/88, p. 9–27). The Institute also submitted a study by Riley and Bromberger-Barnea (1979/Ex. 49B) on the CO_2 exposure of brewery workers. This study monitored the full-shift exposures of these workers to CO_2 and determined that they average 1.08 percent CO_2 (10,800 ppm).

The Beer Institute testified that the beer industry "is unique relative to carbon dioxide exposure and control. * * * no other industry faces the same engineering difficulties for controlling ambient carbon dioxide as the brewing industry" (Tr. 8/9/88, p. 9–26). These commenters identified two situations where exposure to CO_2 might be a problem for cellar workers (Tr. 8/9/88, p. 9–27). The first situation occurs when excessive CO_2 builds up in the large fermentation tanks used in the beer-making process and blows an escape valve, and the second exposure situation arises when workers must enter the fermentation tanks to flush out the sludge remaining after the tank has been drained. OSHA finds that these situations involve either upset conditions (safety valve blowout) or maintenance (tank cleaning); both of these operations are considered nonroutine, and respiratory protection may be used to protect employees when these situations arise. OSHA's analysis of the technological feasibility of achieving the final rule's limits in facilities in the beer industry is presented in Section VII of this preamble.

In response to these commenters, OSHA notes that the limit to which these industry spokesmen are objecting is the CO_2 limit that has been in force since the Agency was founded in 1971. Neither the Beer Institute nor the Brewing Industry Safety Advisory Committee objects to the only change OSHA proposed in this rulemaking (i.e., the addition of a 30,000-ppm STEL for CO_2). According to Gary Nateman, Vice President of the Beer Institute (Tr. 8/9/88, pp. 9–30):

> It is appropriate in our view for OSHA to adopt the 3-percent [30,000-ppm] short-term exposure limit for carbon dioxide. There is a scientific basis for this limit and in terms of real health benefit, this is the most meaningful approach (Tr. 8/9/88, pp. 9–31).

The basis for the beer industry's objection to the retention of OSHA's 5000-ppm limit is that NIOSH recommended a higher 8-hour TWA limit of 10,000 ppm in its 1976 criteria document for carbon dioxide (NIOSH 1976a, as cited in ACGIH 1986/Ex. 1–3, p. 102).

After reviewing this evidence, OSHA is persuaded that a 10,000-ppm 8-hour TWA limit, combined with a 30,000-ppm STEL, will protect employees from the adverse effects associated with excessive exposures to CO_2. OSHA bases this conclusion on the fact that, while the evidence has not shown that prolonged exposures to 10,000-ppm are harmful, acute exposures to CO_2 concentrations in excess of 30,000-ppm have been demonstrated to cause changes in respiration rates in humans.

In the final rule, OSHA is establishing a 10,000-ppm PEL as an 8-hour TWA and a 30,000-ppm STEL to protect employees from experiencing the metabolic and respiratory changes, which constitute material health impairments, that are associated with elevated short-term CO_2 exposures. The Agency concludes that adding this limit will substantially reduce the risk associated with the high short-term exposures to CO_2 that are possible in the absence of a STEL. The former 8-hour TWA of 5000 ppm is retained.

CARBON MONOXIDE

CAS: 630-08-0; Chemical Formula: CO
H.S. No. 1071

OSHA's former limit for carbon monoxide was 50 ppm as an 8-hour TWA. The ACGIH has a TLV–TWA of 50 ppm with a TLV–STEL of 400 ppm. NIOSH (1973d/Ex. 1–237) recommends an 8-hour TWA limit of 35 ppm with a 200-ppm ceiling. The proposed PEL and ceiling were 35 ppm and 200 ppm, respectively; NIOSH (Ex. 8–47, Table N1) concurs that these limits are appropriate, and they are established in the final rule. Carbon monoxide is a flammable, colorless, practically odorless gas.

Carbon monoxide readily combines with hemoglobin to form carboxyhemoglobin (COHb). Excessive accumulations of COHb cause hypoxic stress in healthy individuals as a result of the reduced oxygen-carrying capacity of the blood. In patients with cardiovascular disease, such stress can further impair cardiovascular function. The ACGIH (1986/Ex. 1–3) cites a number of studies showing that exposure to 50 ppm TWA carbon monoxide generally results in COHb levels of 8 to 10 percent, and that such levels are not generally associated with overt signs or symptoms of health impairment in healthy individuals under nonstressful conditions. However, the ACGIH comments that a TLV of 25 ppm, which results in COHb levels of 4 percent or less, may be necessary to protect workers with cardiovascular disease, because this condition places workers at higher risk of serious cardiovascular injury (ACGIH 1986/Ex. 1–3, p. 108). The NIOSH recommendation of 35 ppm TWA is also aimed at protecting workers with chronic heart disease; NIOSH believes that such workers should not be allowed to have carboxyhemoglobin levels that approach 5 percent. The rationale for the ACGIH's recommendation of a 400-ppm TLV–STEL for CO is not entirely clear, but may be based on a study by Schulte (1964/Ex. 1–366), which stated that exposure to 10 ppm carbon monoxide for four hours is excessive.

Several commenters (Exs. 133, 188, 3–675, 3–673, L3–1330, 3–902, 3–660, 3–349, 3–1123, and 129) submitted comments on the Agency's proposed limits for carbon monoxide. Some of these commenters (Exs. 3–675 and 3–673) were concerned that the revised limits would have serious economic impacts on their industries (electric utilities, steel, and nonferrous foundries). However, OSHA has determined that it is feasible for facilities in these sectors to comply with the proposed CO limits (see Section VII of the preamble).

Many rulemaking participants questioned the health basis for lowering the former CO limit of 50 ppm as an 8-hour TWA to 35 ppm and supplementing this limit with a 200-ppm STEL (Exs. 133A, 188, 3–660, 3–349, 3–1123, and 129). These commenters pointed out that the discussion of CO's health effects in the preamble to the proposal (53 FR 21171) stated that the carboxyhemoglobin levels associated with CO exposures of 50 ppm "are not associated with toxic effects in healthy individuals." According to the American Iron and Steel Institute (Ex. 3–1123), whose remarks were typical of the views of these commenters:

> The proposed PEL should not be adopted because there is not adequate evidence that exposure to carbon monoxide at levels of 50 ppm TWA poses a significant risk to workers with heart or pulmonary disease * * * (Ex. 3–1123, p. 23).

H.K. Thompson, Corporate Industrial Hygiene Manager of Caterpillar, Inc. (Ex. 3–349), stated:

> PELs or TLVs are not set to protect individuals with chronic heart disease. In our industry we transfer people with disabilities to jobs where the risk for them is minimal (Ex. 3–349, p. 3).

In response to these commenters, OSHA quotes the ACGIH (1986/Ex. 1–3):

> Each molecule of CO combining with hemoglobin reduces the oxygen carrying capacity of the blood and exerts a finite stress on man. Thus, it may be reasoned that there is *no dose of CO* that is not without an effect on the body. Whether that effect is physiologic or harmful *depends upon the dose of CO and the state of health of the exposed individual.* The body compensates for this hypoxic stress by increasing cardiac output and blood flow to specific organs, such as the brain or the heart. When this ability to compensate is overpowered or is limited by disease, tissue injury results [emphasis added].
>
> Exposure to CO sufficient to produce COHb saturations in the 3–5% range impairs cardiovascular function in patients with cardiovascular disease and in normal subjects * * *. The primary effect of exposure to low concentrations of CO on workmen results from the hypoxic stress secondary to the reduction in the oxygen-carrying capacity of blood * * *. Workmen with significant disease, both detected and undetected, may not be able to compensate adequately and are at risk of serious injury. For such workers, a TLV of 25 ppm * * * might be necessary. Even such a concentration might be detrimental to the health of some workers who might have far advanced cardiovascular disease * * *. It would appear to the Committee that the time-

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weighted TLV of 50 ppm for carbon monoxide might also be too high under conditions of heavy labor, high temperatures, or at high elevations (ACGIH 1986/Ex. 1–3, p. 108).

Thus, the ACGIH also regards a lower limit for CO as necessary to protect workers with cardiovascular or pulmonary disease or those working under stressful conditions.

NIOSH (Ex. 150, Comments on Carbon Monoxide) submitted a substantial amount of posthearing evidence demonstrating the significant risk associated with CO exposure, particularly with respect to coronary heart disease. The following studies are particularly relevant to this issue. Atkins and Baker (1985, as cited in NIOSH/Ex. 150) report the case of two workers with preexisting coronary artery disease who died after exposure to CO at work. A study of firefighters in Los Angeles (Barnard and Weber 1979, as cited in NIOSH/Ex. 150) suggests that CO exposure during firefighting may be responsible for the high incidence of heart disease in firefighters; peak exposures during fire fighting were as high as 3000 ppm CO, with 40 percent of peak values in the 100- to 800-ppm CO range. A prevalence study by Hernberg et al. (1978, as cited in NIOSH/Ex. 150) reports a clear dose-response relationship between CO exposure and angina pectoris in foundry workers. Stern and co-workers (1981, as cited in NIOSH/Ex. 150) suggest that the slight overall excess of deaths in motor vehicle examiners caused by cardiovascular disease is attributable to chronic exposure to low levels of CO (10 to 24 ppm as an 8-hour TWA). The AFL-CIO's posthearing comment (Ex. 194) agrees that the comments submitted by NIOSH are persuasive evidence of the need to reduce the 8-hour TWA for CO.

NIOSH also submitted recent data on carbon monoxide's reproductive effects and on its neurotoxic/behavioral effects. Based on a review of all of these studies, NIOSH concludes that "[t]he new data suggest a reevaluation of the REL and strongly support the inference that there is a significant risk of material impairment to health at the * * * [former] 50-ppm PEL which will be reduced by the proposed 35-ppm PEL" (Ex. 150, Comments on Carbon Monoxide).

OSHA notes that cardiovascular disease (detected or undetected) and pulmonary impairment are widespread in the general population in this country, and that workers constitute a significant part of this general population. In addition, workers regularly encounter complex and stressful situations at work, including heat stress, jobs demanding heavy exertion, and tasks requiring both judgment and motor coordination.

The AISI (Ex. 129) submitted an article (Redmond, Emes, Mazumdar et al. 1977, "Mortality of Steelworkers Employed in Hot Jobs") to OSHA which, in the opinion of the AISI, demonstrates that steelworkers who are exposed to high heat (and ostensibly also to CO) do not have coronary heart disease. Based on this article, the AISI asks that the steel industry be exempted from the revised PEL for CO. OSHA finds the article submitted by the AISI unconvincing on the point at issue; the article is not primarily concerned with CO exposures but with heat stress and, further, does not include a large enough sample to demonstrate the absence of the effect. Moreover, OSHA is establishing limits that will apply to all of general industry; the Agency does not customarily set standards based on the particular conditions prevailing in a specific operation or industry.

However, some evidence has been submitted by the AISI (Ex. 129) to the effect that the ceiling limit cannot regularly be achieved with engineering and work practice controls in specific operations in SIC 33. These operations are: blast furnace operations, vessel blowing at basic oxygen furnaces, and sinter plant operations. There is no evidence to the contrary in the record. For these operations, OSHA will therefore permit more flexibility in the use of respirators. The burden of proof will not be on employers to demonstrate that compliance with the ceiling by means of engineering and work practice controls is infeasible in any compliance action involving these operations in SIC 33.

There may be a few other operations that fall into this same category; however, the record is unclear on this point. Based on an appropriate showing pursuant to the OSH Act, OSHA will favorably consider requests for variances for specific operations in SIC 33 involving methods of compliance for the ceiling limit. Of course, all requests for variances or any other matters will be considered based on their merits.

OSHA thus finds that the reduced 8-hour TWA of 35 ppm for carbon monoxide is needed to reduce the significant risk of serious injury that has repeatedly been demonstrated to result from overexposure to CO in a host of occupational environments. The Agency concludes that a ceiling of 200 ppm is necessary to ensure that peak CO exposures do not reach levels demonstrated to be hazardous and that overall full-shift exposures remain under good control. In the absence of a ceiling, concentrations approaching the Immediately-Dangerous-to-Life-or-Health (IDLH) level of 1500 ppm could occur.

In the final rule, OSHA is establishing an 8-hour TWA of 35 ppm and a ceiling of 200 ppm as the PELs for carbon monoxide to ensure that employee COHb levels are maintained at or below 5 percent, in order to protect those workers at greater risk because of cardiovascular or pulmonary impairment. In addition, these revised limits will protect healthy workers who must work in environments involving exertion, heat stress, or other strenuous conditions. The Agency has determined that these limits will substantially reduce the significant occupational risk associated with both chronic and peak CO exposures in the workplace. OSHA concludes that the hypoxic stress associated with overexposures to carbon monoxide clearly constitutes a material impairment of health and functional capacity.

CHLORPYRIFOS

CAS: 2921-88-2; Chemical Formula: $C_9H_{11}Cl_3NO_3PS$
H.S. No. 1091

OSHA had no former limit for chlorpyrifos. The ACGIH has a TLV-TWA of 0.2 mg/m³ and a 0.6-mg/m³ STEL, with a skin notation, for this white, crystalline solid. The proposed PELs were an 8-hour TWA of 0.2 mg/m³ and a 15-minute STEL of 0.6 mg/m³, with a skin notation; NIOSH (Ex. 8–47, Table N1) concurs with these limits. The 0.2-mg/m³ 8-hour TWA and a skin notation are established in the final rule, but the proposed STEL is not retained.

Chlorpyrifos has an acute oral LD_{50} of 135 mg/kg for female rats and 163 for male rats (Windholz 1983b, pp. 309–310, as cited in ACGIH 1986/Ex. 1–3, p. 138). Other sources have reported the acute oral LD_{50} as 82 mg/kg in rats and the dermal LD_{50} as about 2000 mg/kg for rabbits (Gray 1965/Ex. 1–1151; Gaines 1969/Ex. 1–320).

Chlorpyrifos is an active inhibitor of plasma cholinesterase but has only moderate capacity to reduce red blood cell cholinesterase or to cause cholinergic symptoms and systemic injury (ACGIH 1986/Ex. 1–3, p. 138). Particle inhalation has been shown to cause mild plasma cholinesterase depression in dogs exposed for four hours at the upper end of a 140- to 280-mg/m³ range (Spencer 1968, as cited in ACGIH 1986/Ex. 1–3, p. 138).

Dogs and rats fed 3.0 mg/kg of chlorpyrifos daily for two years showed no adverse effects (FAO/WHO (Food and Agriculture Organization/World Health Organization) 1972, as cited in

ACGIH 1986/Ex. 1–3, p. 138). Male and female rats showed no teratogenic or reproductive effects when fed 1.0 mg/kg per day (Dow Chemical Company 1972a, as cited in ACGIH 1986/Ex. 1–3, p. 138).

Workers applying chlorpyrifos as a spray were exposed to 0.5 percent chlorpyrifos emulsion and exhibited a marked decrease in plasma and red cell cholinesterase levels (Eliason, Cranmer, von Windeguth et al. 1969/Ex. 1–633). In five of seven exposed sprayers, this reduction was greater than 50 percent. However, another study showed no ill effects on cholinesterase metabolism when human volunteers were exposed to an ultra-low-volume spray (0.6 um/m³ for three to eight minutes) (Ludwig, Kilian, Dishburger, and Edwards 1970/Ex. 1–563). Human cholinesterase levels appear to be less affected by dermal exposure than do those of rabbits (ACGIH 1986/Ex. 1–3, p. 138). However, human volunteers, administered four repeated dermal doses of 25 mg/kg, applied for 12 hours each, did exhibit depressed plasma cholinesterase levels. Human subjects ingesting 0.03 mg/kg for three weeks showed no cholinesterase effects, but subjects ingesting 0.1 mg/kg demonstrated plasma cholinesterase depression (Dow Chemical Compnay 1973f, as cited in ACGIH 1986/Ex. 1–3, p. 138).

The American Industrial Hygiene Association (Ex. 8–16; Tr. III, p. 307) urged OSHA to delete the proposed 0.6-mg/m³ STEL for chlorpyrifos because the ACGIH has now deleted the STEL for this substance. OSHA has carefully reviewed the health evidence for a STEL for this substance and has determined, in accordance with the Agency's policy (see Section VI.C.17 of this preamble), that it is appropriate not to include a short-term limit in the final rule.

In the final rule, OSHA is establishing a PEL of 0.2 mg/m³ as an 8-hour TWA, with a skin notation; these limits for chlorpyrifos will protect workers against the significant risk of cholinesterase inhibition caused by exposure to this previously unregulated substance. The skin notation is included in the final rule to prevent the systemic effects that have been demonstrated to occur in humans dermally exposed to chlorpyrifos. OSHA finds that the cholinesterase inhibition and systemic effects associated with exposure to chlorpyrifos constitute material impairments of health.

CRUFOMATE

CAS: 299-86-5; Chemical Formula: $C_{12}H_{19}ClNO_3P$
H.S. No. 1103

OSHA had no former limit for crufomate. The ACGIH has a TWA-TLV of 5 mg/m³ and a STEL of 20 mg/m³ for this substance. The proposed PELs were 5 mg/m³ as an 8-hour TWA and 20 mg/m³ as a 15-minute STEL, and NIOSH (Ex. 8–47, Table N1) concurs. The final rule establishes this 8-hour TWA limit but does not establish a STEL for crufomate. Pure crufomate exists as crystals, and commercial crufomate is a yellow oil.

Crufomate actively inhibits both plasma and erythrocyte cholinesterase. A study in humans showed that ingestion of 200 mg of crufomate daily for seven days caused no apparent cholinesterase inhibition in the subjects of this controlled study; however, rats and dogs receiving higher doses (5 mg/kg/day) for two years did show this effect (McCollister, Olson, Rowe et al. 1968/Ex. 1–350).

The American Industrial Hygiene Association (AIHA) testified at the hearing that, in the AIHA's opinion, OSHA should delete any STELs that the ACGIH has either deleted or indicated that it intends to delete (Ex. 8–16, Tr. p. 3–307). OSHA agrees that such limits should be reevaluated on the basis of current health information (see the discussion in Section VI.C.17); after reviewing the evidence of crufomate's toxicity in short-term exposures, OSHA has determined that it is not appropriate to include a STEL for this substance in the final rule.

Because cholinesterase inhibition is a very sensitive indicator of exposure, OSHA concludes that the final rule's 8-hour TWA limit of 5 mg/m³ is needed to provide an appropriate margin of safety below the ingestion NOEL of 200 mg/day for humans, which corresponds approximately to an 8-hour inhalation exposure of 20 mg/m³. The Agency finds that this PEL will protect workers from the significant risk of material health impairment in the form of cholinesterase inhibition, which was possible at the previously uncontrolled levels.

CYANAMIDE

CAS: 420-04-2; Chemical Formula: $H_2NC{=}N$
H.S. No. 1104

Previously, OSHA had no limit for cyanamide. The ACGIH has a TLV-TWA of 2 mg/m³. The proposed PEL for cyanamide was 2 mg/m³ as an 8-hour TWA; NIOSH (Ex. 8–47, Table N1) concurs that this limit is appropriate. An 8-hour PEL of 2 mg/m³ is established in the final rule. Undiluted cyanamide is a deliquescent, crystalline solid.

The average oral LD_{50} for cyanamide in rats is 125 (85 to 180) mg/kg, and cyanamide has been observed to be very irritating and caustic to the skin (American Cyanamide Company Product Information Bulletin, as cited in ACGIH 1986/Ex. 1–3, p. 152). The dermal LD_{50} in rabbits is 590 mg/kg (*Dangerous Properties of Industrial Materials*, 7th ed., Sax and Lewis 1989, p. 891). Irritation occurred in the form of primary skin irritation and, following instillation into the eye, slight irritation of the conjunctival sac (American Cyanamide Company Product Information Bulletin, as cited in ACGIH 1986/Ex. 1–3, p. 152).

When cyanamide is ingested or inhaled by a person who has also consumed an alcoholic beverage, the person experiences vasodilation of the face and neck, tachycardia, tachypnea, nausea, vomiting, and hypotension. This syndrome is referred to as the Antabuse effect. Study of cyanamide's Antabuse-like effects indicate that the effect is about one-half that of an equivalent dose of tetraethylthiuram disulfide (Antabuse) and one-sixth that of tetramethyl thiuram disulfide (Hald, Jacobsen, and Larsen 1952/Ex. 1–905).

OSHA received comments on cyanamide from the American Cyanamid Company (Exs. 8–76, 3–961, and 94). Linda Dulak, Toxicology Program Manager for American Cyanamid, argued that the final rule should not promulgate limits for substances for which there are no analytical methods (Ex. 3–961, p. 13). According to Dr. Dulak:

> Without an analytical limit, the employer cannot determine whether employee exposures are being maintained below those limits * * * (Ex. 3–961, p. 13).

OSHA notes, however, that Dr. Dulak later stated (Tr. XI, p. 75) that American Cyanamid measures the airborne cyanamide level in their plants by sampling for calcium cyanamide. However, Dr. Dulak was unsure whether this method is applicable to hydrogen cyanamide. OSHA notes that a method for the sampling and analysis of cyanamide has been submitted to the docket.

According to Dr. Dulak (Ex. 3–961), OSHA also has not evaluated the technological and economic feasibility of the 2-mg/m³ limit for cyanamide. However, OSHA notes that American Cyanamid's representatives testified at the hearing (Tr. XI, p. 76) that, although the company has no internal standard for cyanamide, it controls airborne cyanamide exposures by measuring and controlling airborne levels of calcium cyanamide. According to Dr. Dulak, her company has had "no problems" controlling cyanamide exposures (Tr. XI, p. 76).

Dr. Dulak's third point is that there is no health basis for setting an inhalation limit for cyanamide (Ex. 3–961, p. 13).

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OSHA does not agree with this view and finds the evidence of cyanamide's irritant properties sufficient to warrant the establishment of an 8-hour TWA limit. Sax and Lewis (*Dangerous Properties of Industrial Materials*, 7th ed., 1989, p. 861) note that this substance is a severe eye irritant, a moderately toxic substance by skin contact, and a poison by ingestion, inhalation, and intraperitoneal injection. The ACGIH (1986/Ex. 1–3, p. 152) set its limit, which is the same as the final rule's PEL, on the basis of cyanamide's relative potential to cause irritation when compared with other irritants (ACGIH 1986/Ex. 1–3, p. 152). Thus, OSHA finds the final rule's PEL both appropriate and protective.

In the final rule, OSHA is establishing an 8-hour TWA limit of 2 mg/m³ TWA for cyanamide. The Agency concludes that this limit will protect against the significant risks or irritation and of the Antabuse syndrome in individuals who have ingested alcohol. The Agency has determined that this limit will substantially reduce these significant risks, which constitute material health impairments.

DICROTOPHOS (BIDRIN)

CAS: 141–66–2; Chemical Formula $C_8H_{16}NO_5P$
H.S. No. 1131

Previously, OSHA had no limit for dicrotophos; the ACGIH has a TLV of 0.25 mg/m³ TWA, with a skin notation, for this brown liquid with a mild ester odor. The proposed PEL was 0.25 mg/m³, with a skin notation; NIOSH (Ex. 8–47, Table N1) concurs that this limit is appropriate. The final rule establishes an 8-hour TWA of 0.25 mg/m³ and a skin notation.

Dicrotophos is a cholinesterase inhibitor (ACGIH 1986/Ex. 1–3, p. 193). The acute oral LD_{50} in rats is reported as 22 mg/kg, and the percutaneous LD_{50} in rabbits is 224 mg/kg (Stanford Research Institute 1982, as cited in ACGIH 1986/Ex. 1–3, p. 193). Another study reports the oral LD_{50} in rats as 16 to 21 mg/kg and the dermal LD_{50} in the same species as 42 mg/kg (Gaines 1969/Ex. 1–320). Two-year feeding studies in rats given 0, 1, 10, or 100 ppm dicrotophos showed no detectable effects at the 1-ppm concentration. At the higher concentrations, decreased body weights (as compared with those of controls) and cholinesterase inhibition were observed (Woodard Research Corporation 1967, as cited in ACGIH 1986/Ex. 1–3, p. 193). Dietary studies in dogs showed both plasma and erythrocyte cholinesterase inhibition at a 16-ppm concentration, but no significant ill effects at concentrations of 0, 0.16, or 1.6 ppm (Woodard Research Corporation 1967, as cited in ACGIH 1986/Ex. 1–3, p. 193). Studies of vapor inhalation in male rats have shown that transient illness occurred after a one-hour exposure to 910 mg/m³ of technical dicrotophos, and to 2830 mg/m³ or 2120 mg/m³ of 36-percent dicrotophos (Kettering Laboratories 1965, as cited in ACGIH 1986/Ex. 1–3). Dicrotophos does not cause demyelinization in chickens (Tunstall Laboratory 1965 and Kettering Laboratory 1963, both as cited in ACGIH 1986/Ex. 1–3, p. 193), and it is metabolized in a fashion similar to mono-microtophos (Menzer and Casida 1965/Ex. 1–986). Only NIOSH commented on dicrotophos.

The proposed PEL was based on the data described above and, in part, by analogy with other cholinesterase-inhibiting substances. In the final rule, OSHA is establishing an 8-hour TWA permissible exposure limit of 0.25 mg/m³, with a skin notation, for dicrotophos. The Agency concludes that this limit will protect workers from the material impairments of health, such as cholinesterase inhibition, potentially associated with inhalation, ingestion, and dermal exposure to this substance at the levels formerly permitted by the absence of a limit. OSHA has determined that these limits will substantially reduce this significant risk.

DIMETHYLANILINE

CAS: 121–69–7; Chemical Formula: $C_6H_5N(CH_3)_2$
H.S. No. 1143

OSHA's former permissible exposure limit for dimethylaniline was 5 ppm as an 8-hour TWA, with a skin notation. The ACGIH has an 8-hour TWA limit of 5 ppm, with a 15-minute STEL of 10 ppm and a skin notation. OSHA proposed to retain its 8-hour TWA PEL of 5 ppm with a skin notation and to add a STEL of 10 ppm, and NIOSH (Ex. 8–47, Table N1) concurred with these limits. The 5-ppm 8-hour TWA and skin notation are retained in the final rule, and the 10-ppm STEL is established. Dimethylaniline is a yellow to brown, oily liquid.

One of the major toxic effects of dimethylaniline exposure is methemoglobinemia, although authorities disagree concerning the level at which humans can tolerate exposure to this substance (ACGIH 1986/Ex. 1–3, p. 207).

Hamblin (1983a/Ex. 1–1084) reported that dimethylaniline is quantitatively less toxic than aniline. Dogs administered a single oral dose of 50 mg/kg exhibited methemoglobinemia, and absorption of dimethylaniline through the skin can increase the overall exposure (Hamblin 1983/Ex. 1–1085). The dermal LD_{50} in rabbits is 1770 mg/kg (*Dangerous Properties of Industrial Materials*, 7th ed., Sax and Lewis 1989, p. 1360). Mayer (1930/Ex. 1–973) reported that dimethylaniline's necrotic potential was markedly lower than that of aniline, which has a TLV–TWA of 2 ppm. However, von Oettingen (1941/Ex. 1–974) stated that dimethylaniline has a greater depressant effect on the nervous system than does aniline.

The literature on industrial experience with dimethylaniline is limited. Hamilton (1919/Ex. 1–741) reported collapse, prolonged unconsciousness, visual disturbances, and intense abdominal pain following the severe exposure of two workers. Only NIOSH commented on dimethylaniline.

In the final rule, the Agency is retaining the 8-hour TWA PEL of 5 ppm and a skin notation for dimethylaniline; a STEL of 10 ppm is also being promulgated. OSHA finds that the STEL is necessary to afford protection from the CNS depression that follows acute exposures. OSHA concludes that these limits, taken together, will provide workers with protection from the significant risks of skin absorption, methemoglobinemia, and neuropathic effects associated with exposure to this substance; the Agency finds that these effects clearly constitute material health impairments.

DIOXATHION (DELNAV)

CAS: 78–34–2; Chemical Formula: $C_{12}H_{26}O_4P_2S_4$
H.S. No. 1146

OSHA formerly had no permissible exposure limit for dioxathion. The ACGIH has a limit of 0.2 mg/m³ as an 8-hour TWA, with a skin notation. The proposed PEL was 0.2 mg/m³ as an 8-hour TWA, with a skin notation, and NIOSH (Ex. 8–47, Table N1) concurs with this limit, which is established in the final rule. Dioxathion is a nonvolatile, very stable, dark amber liquid.

The pesticide, dioxathion, contains both the cis- and trans-isomers of 2,3-p-dioxanedithiol; the cis-isomer is approximately four times as acutely toxic as the trans-isomer (ACGIH 1986/Ex. 1–3, p. 219). The oral LD_{50} values reported for rats range from 23 to 118 mg/kg (with most values in the 23- to 64-mg/kg portion of the range); in dogs, oral LD_{50}s range from 10 to 40 mg/kg. The LC_{50} in rats is 1398 mg/m³; in mice, it is 340 mg/m³ (Hercules, Inc. 1973, as cited in ACGIH 1986/Ex. 1–3, p. 219). The percutaneous LD_{50}s in rats and rabbits are reported to be 63 and 85 mg/kg, respectively (NIOSH 1983b, as cited in ACGIH 1986/Ex. 1–3, p. 219). Instillation of 0.1 ml dioxathion into the rabbit eye produces mild, transient conjunctivitis but no corneal damage (ACGIH 1986/Ex. 1–3, p. 219).

In subacute oral toxicity studies, the no-effect dose level in rats was reported to be 0.22 mg/kg/day; in dogs, a no-effect level of between 0.075 and 0.25 mg/kg/day was indicated (Frawley, Weir, Tusing et al. 1963/Ex. 1–317). The no-effect level in multigenerational studies of reproductive effects in rats was reported to be 10 ppm (Kennedy, Frawley, and Calandra 1973/Ex. 1–340).

Human volunteers who ingested 0.075mg/kg/day of dioxathion had no symptoms related to plasma or blood cholinesterase activity, while those ingesting 0.15 mg/kg/day exhibited a slight decrease in plasma cholinesterase activity (Frawley, Weir, Tusing et al. 1963/Ex. 1–317). The World Health Organization has estimated an acceptable daily intake for man of 0.0015 mg dioxathion/kg (WHO 1967, as cited in ACGIH 1986/Ex. 1–3, p. 219). Only NIOSH commented on this substance.

In the final rule, OSHA is establishing an 8-hour TWA PEL of 0.2 mg/m³ for dioxathion; the Agency is also establishing a skin notation for this substance. OSHA concludes that these limits will protect workers against the significant risk of metabolic effects associated with inhalation and oral exposure and with dermal penetration of this substance, which was formerly not regulated by OSHA. The Agency has determined that these limits will substantially reduce these significant risks; OSHA finds that the cholinesterase inhibition caused by exposure to dioxathion constitutes a material impairment of health.

DISULFIRAM

CAS: 97–77–8; Chemical Formula: $C_{10}H_{20}N_2S_4$
H.S. No. 1151

OSHA had no former limit for disulfiram. The ACGIH recommends a limit of 2 mg/m³ TWA for this crystalline solid. The proposed PEL was 2 mg/m³ as an 8-hour TWA; NIOSH concurs with this limit (Ex. 8–47, Table N1), which is established by the final rule.

Disulfiram's LD_{50} in rats is reported as 8.6 g/kg (Windholz 1983e, pp. 491–492, as cited in ACGIH 1986/Ex. 1–3, p. 225), and the oral LD_{50} for rabbits is reported to be 2.05 g/kg (Brieger 1947/Ex. 1–717). The compound is highly toxic when injected intraperitoneally, with an LD_{50} of 75 mg/kg for mice (National Technical Information Service, as cited in ACGIH 1986/Ex. 1–3, p. 225). The effects of high-dose ingestion include degenerative changes in the liver and kidneys. Very high doses can cause leukopenia and marked hypoplasia or aplasia of the bone marrow; in the most seriously afflicted animals, the blood urea nitrogen sometimes increased and the thymol turbidity test was positive (Brieger 1947/Ex. 1–717).

Adverse health effects occur in humans consuming alcohol and simultaneously exposed to disulfiram. This represents a significant concern since disulfiram, under the trade name Antabuse, is used as a medication in the treatment of chronic alcoholism. For individuals who drink alcohol and are exposed to disulfiram, the symptoms of exposure are facial vasodilation, tachycardia, tachypnea, nausea, vomiting, pallor, and hypotension. High doses of disulfiram can induce convulsions, cardiac arrhythmias, and myocardial infarction, and the compound has also been associated with polyneuropathy, peripheral neuritis, and skin eruptions (*Compendium of Pharmaceuticals and Specialties* 1988, as cited in ACGIH 1986/Ex. 1–3, p. 225). In industry, there have been reports of minimal skin irritation (Mastromatteo 1973, as cited in ACGIH 1986, p. 225) and of optic neuritis (Norton and Walsh 1972/Ex. 1–677). NIOSH submitted the only comment on this substance.

OSHA is establishing a PEL of 2 mg/m³ as an 8-hour TWA for disulfiram. The Agency concludes that this limit will protect workers against the significant risk of Antabuse-like effects associated with exposure to airborne concentrations of disulfiram in combination with alcohol consumption. OSHA has determined that this limit will substantially reduce this significant risk and that the symptoms of the Antabuse syndrome clearly constitute material impairment of health.

ETHION (NIALATE)

CAS: 563–12–2; Chemical Formula: $C_9H_{22}O_4P_2S_4$
H.S. No. 1160

OSHA formerly had no permissible exposure limit for ethion. The ACGIH has a limit of 0.4 mg/m³ TWA, with a skin notation. The proposed PEL was 0.4 mg/m³ as an 8-hour TWA, with a skin notation; NIOSH (Ex. 8–47, Table N1) concurs that these limits are appropriate, and the final rule establishes them. Pure ethion is an odorless and colorless liquid; however, technical-grade ethion has a very disagreeable odor.

Ethion is an insecticide that is used in a variety of forms, including 25-percent wettable powder, 2-, 3-, and 4-percent dust, 5-percent granules, and in several oil solutions and combinations with other chemicals. As a result, the acute toxicity values reported vary considerably.

NIOSH (1974d, as cited in ACGIH 1986/Ex. 1–3, p. 236) reports an oral LD_{50} in rats of 13 mg/kg. Other reported values for oral LD_{50}s in rats include 65 mg/kg, 96 mg/kg, and 208 mg/kg (*Farm Chemicals Handbook* 1974/Ex. 1–1147a; Association of American Pesticide Control Officials, Inc. 1968, as cited in ACGIH 1986/Ex. 1–3, p. 236; Hayes 1963/Ex. 1–982). Studies with 95 percent technical ethion report oral LD_{50}s of 87.4 ± 0.16 mg/kg for albino rats and 24.4 mg/kg for female rats (Niagara Chemical Division, FMC Corp., as cited in ACGIH 1986/Ex. 1–3, p. 236). Inhalation studies report LC_{50} values of 710 mg/m³ for female rats exposed to 25-percent wettable powder dust for one hour, and 7200 mg/m³ for male rats similarly exposed. Dermal exposure studies, employing technical ethion, report a median acute dermal lethal dose in rabbits of 915 mg/kg, demonstrating enthion's ability to penetrate skin; instillation of 0.05 ml ethion in the rabbit eye is immediately irritating but does not cause corneal scarring (Niagara Chemical Division, FMC Corp., as cited in ACGIH 1986/Ex. 1–3, p. 236). Dietary studies of rats fed 600, 1000, or 1500 ppm reported complete cholinesterase inhibition; 300 ppm in the diet produced marked cholinesterase inhibition (Association of American Pesticide Control Officials, Inc. 1969, as cited in ACGIH 1986/Ex. 1–3, p. 236).

Ethion poisonings have been reported in workers harvesting grapes and peaches (State of California Department of Industrial Relations, as cited in ACGIH 1986/Ex. 1–3, p. 236). Only NIOSH commented on ethion.

OSHA is establishing a PEL of 0.4 mg/m³ for ethion as an 8-hour TWA, with a skin notation. The Agency concludes that these limits will protect exposed workers from the significant risks of organophosphate poisoning and cholinesterase inhibition formerly permitted by the absence of any OSHA limit. The Agency notes this substance's potential for dermal absorption in laboratory animals and is establishing a skin notation to protect against the risk of systemic toxicity by this route of exposure. OSHA finds that the systemic poisoning and cholinesterase inhibition caused by overexposure to ethion constitute material health impairments.

FENAMIPHOS

CAS: 22224–92–6; Chemical Formula: $C_{13}H_{22}NO_3PS$
H.S. No. 1173

OSHA formerly had no limit for fenamiphos. The ACGIH has a TLV–

in chickens (WHO 1972, as cited in ACGIH 1986/Ex. 1–3, p. 268). Two-year feeding studies of rhesus monkeys showed plasma cholinesterase inhibition at the highest oral dose given, i.e., 0.2 mg/kg daily (Rosenblum 1980, as cited in ACGIH 1986/Ex. 1–3, p. 268).

Griffin, Roseblum, and Coulston (1979, as cited in ACGIH 1986/Ex. 1–3, p. 268) reported cholinesterase depression in humans at oral doses of 0.07 mg/kg daily for four weeks, but no effect was observed at 0.02 mg/kg. The lowest lethal dose for humans is 50 mg/kg (*Farm Chemicals Handbook* 1976/Ex. 1–1147b; NIOSH 1977j, as cited in ACGIH 1986/Ex. 1–3, p. 100).

NIOSH (Ex. 8–47, Table N2) does not concur with OSHA's limit for fenthion because a significantly increased incidence of tumors was seen in male mice exposed to fenthion (NC1 1979e, as cited in ACGIH 1986/Ex. 1–3, p. 268) and fenthion is also a mutagen, embryotoxin, and teratogen (Chen, Sirianni, and Huang 1985 and Burdeau and Singh 1973, both as cited in NIOSH/Ex. 150. Comments on Fenthion). OSHA will monitor the toxicological literature on fenthion; however, the Agency believes that the new PEL will protect exposed workers from any of the adverse effects associated with exposure to this substance. No other comments on fenthion were received.

In the final rule, OSHA is establishing an 8-hour TWA limit of 0.2 mg/m³, with a skin notation, for fenthion. The Agency concludes that these limits will protect workers against the significant risk of cholinergic effects associated with exposures to this substance at the levels formerly permitted by the absence of any OSHA limit. A skin notation is established because of evidence that fenthion is toxic when absorbed through the skin. OSHA finds that cholinesterase inhibition constitutes a material impairment of health.

METHOMYL

CAS: 16752-77-5; Chemical Formula: $C_5H_{10}N_2O_2S$
H.S. No. 1245

OSHA formerly had no limit for methomyl. The ACGIH has a TLV–TWA of 2.5 mg/m³ for this white crystalline solid with a slightly sulfurous odor. The proposed PEL for methomyl was 2.5 mg/m³ as an 8-hour TWA; NIOSH (Ex. 8–47, Table N1) concurs, and the final rule establishes this limit.

Methomyl is a cholinesterase-inhibiting insecticide. The oral LD_{50} in rats is reported to be between 25 and 40 mg/kg (Dashiell and Kennedy 1984/Ex. 1–548). Studies of dermal effects have reported no appreciable irritation or sensitization in guinea pigs. Instillation of a 10-percent solution of methomyl in propylene glycol or of the dry material into rabbit eyes caused mild conjunctivitis without corneal injury. However, marked pupillary constriction, a health effect produced commonly by cholinesterase inhibitors, was observed (E.I. du Pont de Nemours and Co., Inc., as cited in ACGIH 1986/Ex. 1–3, p. 363). The LC_{50} of unformulated methomyl as mist is 0.3 mg/L at four-hour exposures; the lethal concentration in rats exposed to a 90-percent water-soluble formulation with a particle size of less than 10 microns was approximately 0.45 mg/L.

Inhalation studies have reported no fatalities resulting from four-hour exposures to the saturated vapor. There is no clinical evidence of cumulative toxicity resulting from 10 doses of 5.1 mg/kg/day over a 14-day period (Harvey, Jelinek, and Sherman 1973/Ex. 1–486). Methomyl is rapidly metabolized and excreted in the urine, and cholinesterase inhibition is thus quickly reversed. In dogs, a dose of 20 mg/kg (one-half the lethal dose) produced symptoms of intoxication and cholinesterase inhibition that disappeared within two to four hours after cessation of exposure (E.I. du Pont de Nemours and Co., Inc. as cited in ACGIH 1986/Ex. 1–3, p. 363). No depression of cholinesterase activity could be detected in rats fed at levels of 0, 200, 400, or 800 ppm methomyl for 79 days. In dogs, 90-day and two-year feeding studies showed no effects at 0, 50, 100, or 400 ppm; however, animals fed at 1000 ppm did demonstrate toxicity. Similar studies of rats have shown kidney, liver, and spleen damage at higher feeding levels, but the no-effect level for both rats and dogs has been reported to be 100 ppm (Kaplan and Sherman 1977/Ex. 1–337). Only NIOSH submitted comments on methomyl.

In the final rule, OSHA is establishing a PEL of 2.5 mg/m³ (8-hour TWA) for methomyl. The Agency concludes that this limit will protect exposed workers against the risk of cholinesterase inhibition to which they could formerly have been exposed in the absence of any OSHA limit. The Agency has determined that this limit will substantially reduce the significant risk of cholinergic effects, which constitute material impairments of health.

MONOMETHYLANILINE

CAS: 100-61-8; Chemical Formula: $C_6H_5NH(CH_3)$
H.S. No. 1250

OSHA's former PEL for monomethylaniline (N-methyl aniline) was 2 ppm, measured as an 8-hour TWA; this limit was accompanied by a skin notation, indicating that this chemical can readily penetrate the skin. The ACGIH has a limit of 0.5 ppm TWA for monomethylaniline, also with a skin notation. OSHA proposed to reduce the 8-hour TWA PEL to 0.5 ppm and to retain the skin notation; NIOSH (Ex. 8–47, Table N1) concurs, and these limits are established by the final rule. Monomethylaniline is a colorless liquid that turns reddish-brown after standing.

Treon, Deichmann, Sigmon, and associates (1949/Ex. 1–676) found that monomethylaniline applied to the skin of laboratory animals resulted in systemic poisoning, and that the oral LD_{50} in rabbits was 280 mg/kg. A later study by Treon and associates (1950/Ex. 1–533) showed that guinea pigs, rabbits, and rats died from 130 or fewer seven-hour exposures to 7.6 ppm monomethylaniline. In the same study, a monkey survived the same number and length of exposures at 2.4 ppm, and a dog survived 50 exposures at 86 ppm. Exposed animals later developed blood changes, including methemoglobinemia and Heinz bodies (Treon, Sigmon, Wright et al. 1950/Ex. 1–533). NIOSH was the only commenter to the record on monomethylaniline.

In the final rule, OSHA is establishing a 0.5-ppm TWA limit, with a skin notation, for this substance. The Agency concludes that these limits will protect workers from the significant risk of metabolic and blood effects, such as methemoglobinemia, potentially associated with exposure to monomethylaniline. The skin notation will protect workers from the risk of systemic poisoning posed by the skin absorption of this substance. OSHA finds that the methemoglobinemia and skin irritation associated with exposure to monomethylaniline exposure constitute material health impairments.

p-NITROCHLOROBENZENE

CAS: 100-00-5; Chemical Formula: $NO_2C_6H_4Cl$
H.S. No. 1288

OSHA formerly had an 8-hour TWA limit of 1 mg/m³, with a skin notation, for p-nitrochlorobenzene (PNCB). The ACGIH's new TLV-TWA of 0.6 mg/m³ (0.1 ppm), with a skin notation for this substance was recently reduced from a TLV-TWA of 3 mg/m³ (0.5 ppm). The Agency proposed to retain its limit and the skin notation, and the final rule includes these limits. para-Nitrochlorobenzene takes the form of yellow crystals and has a sweet odor.

The primary hazards associated with exposure to PNCB include systemic toxicity to the liver, spleen, bone marrow, and kidneys, as well as

TWA of 0.1 mg/m³ for this substance, with a skin notation. The proposed PEL was 0.1 mg/m³, with a skin notation; NIOSH (Ex. 8–47, Table N1) concurs, and this limit is established in the final rule, along with a skin notation. Fenamiphos is a tan-colored, waxy solid.

Fenamiphos is a cholinesterase inhibitor that produces both central and peripheral cholinergic reactions (WHO 1975, as cited in ACGIH 1986/Ex. 1–3, p. 265). The acute oral LD_{50} values reported for fenamiphos are 2 to 19 mg/kg in rats, 22 mg/kg in mice, 56 to 100 mg/kg in guinea pigs, 10 to 17 mg/kg in rabbits, and approximately 10 mg/kg in cats and dogs. Acute dermal LD_{50} values are 72 to 154 mg/kg in rats and 178 to 225 mg/kg in rabbits. One- and four-hour exposures of rats to fenamiphos aerosols resulted in LC_{50} values of 110 to 175 mg/m³ and 91 to 100 mg/m³, respectively. Rabbits exhibited no dermal or eye irritation (WHO 1975 and Loeser and Kimmerle 1971, both as cited in ACGIH 1986/Ex. 1–3, p. 265).

Rats exposed to fenamiphos aerosol at concentrations of 0.03, 0.25, or 3.5 mg/m³ of air for three weeks exhibited no symptoms. At 3.5 mg/m³, rats showed significant depression of plasma cholinesterase; 0.25 mg/m³ was the highest no-effect concentration observed (Kimmerle 1982c, as cited in ACGIH 1986/Ex. 1–3, p. 265). Two-year feeding studies of dogs (at levels of 0.5, 1.0, and 10 ppm) and rats (at levels of 3, 10, and 30 ppm) revealed no treatment-related toxic or oncogenic effects or tissue changes at a dietary level of 10 ppm; no-observed-effect levels were 3 ppm for the rat and 1 ppm for the dog (WHO 1975, as cited in ACGIH 1986/Ex. 1–3, p. 265). Studies of rabbits and rats showed no embryotoxic or teratogenic effects, and results of a three-generation study in rats showed that fenamiphos had no effect on reproduction (WHO 1975, as cited in ACGIH 1986/Ex. 1–3, p. 265). Studies of mice have also shown no mutagenic effects, and a study of chickens demonstrated no delayed neurotoxic efforts (WHO 1975 and Loeser and Kimmerle 1971, both as cited in ACGIH 1986/Ex. 1–3, p. 265). Fenamiphos is metabolized rapidly to sulfoxide and sulfone derivatives and is excreted primarily in the urine, as demonstrated in absorption tests of the skin and the digestive and respiratory tracts of rats and cows (Waggoner and Khasawinah 1974/Ex. 1–579).

There are no reports of human poisonings caused by exposure to fenamiphos, and no quantitative data are available relating adverse health effects to measurable airborne concentrations of fenamiphos. NIOSH submitted the only comment on fenamiphos.

In the final rule, OSHA is establishing a PEL for this substance of 0.1 mg/m³ TWA to protect against the significant risk of anticholinesterase effects presented by exposure to this substance at the levels formerly permitted by the absence of an OSHA limit. A skin notation is also established based on the evidence of systemic toxicity via percutaneous absorption of fenamiphos. The Agency concludes that these limits will substantially reduce these risks; OSHA finds that cholinesterase inhibition constitutes a material impairment of health.

FENSULFOTHION (DASANIT)

CAS: 115-90-2; Chemical Formula: $C_{11}H_{17}O_4PS_2$
H.S. No. 1174

Previously, OSHA had no limit for fensulfothion. The ACGIH has a TLV–TWA of 0.1 mg/m³. The proposed PEL was 0.1 mg/m³ as an 8-hour TWA; NIOSH (Ex. 8–47, Table N1) concurs, and this limit is established by the final rule. Fensulfothion is a brown liquid at room temperature.

Fensulfothion has an acute oral LD_{50} of 4 mg/kg in male rats and 1.8 mg/kg in female rats. Aerosol inhalation studies in rats have shown LC_{50}s of 113 mg/m³ for a one-hour exposure and 29.5 mg/m³ for a four-hour exposure (Loeser and Kimmerle 1971, as cited in ACGIH 1986/Ex. 1–3, p. 266). This insecticide has been shown to have effects similar to those of the other thiophosphates, which cause cholinesterase inhibition. Dermal toxicity is high, with LD_{50} values ranging between 14 and 30 mg/kg for male rats and between 3.5 and 3.0 mg/kg for females (NIOSH 1974d, as cited in ACGIH 1986/Ex. 1–3, p. 266). Tests of mice and rabbits have shown no embryotoxic, reproductive, or mutagenic effects. The no-effect dietary level in subchronic feeding studies is reported to be 1 ppm in rats and 2 ppm in dogs. The no-effect level for cholinesterase inhibition is reported as 1 ppm in the diet for both dogs and cats (ACGIH 1986/Ex. 1–3, p. 266).

In humans, dermal studies have shown irritation without cholinesterase effects from two-hour, twice-daily applications of a 5-percent granular formulation to the forearms of three subjects. Systemic absorption through the lungs has been demonstrated after inhalation of fensulfothion aerosols (ACGIH 1986/Ex. 1–3, p. 266). No comments, other than NIOSH's, were received on this substance.

In the final rule, OSHA is establishing a PEL of 0.1 mg/m³ TWA for this previously unregulated substance to reduce the significant risks of metabolic effects and skin irritation. The Agency concludes that this limit will substantially reduce these risks, and that skin irritation and cholinesterase inhibition are material impairments of health.

FENTHION

CAS: 55-38-9; Chemical Formula: $C_{10}H_{15}O_3PS_2$
H.S. No. 1175

Previously, OSHA had no limit for fenthion. The ACGIH has a TLV–TWA of 0.2 mg/m³, with a skin notation. The proposed PEL was 0.2 mg/m³, with a skin notation, and the final rule establishes this limit and a skin notation. Fenthion is an oily, yellow- to tan-colored liquid that smells slightly like garlic.

The primary health effect associated with exposure to fenthion is plasma cholinesterase inhibition. The oral LD_{50} values for the rat and rabbit are 215 and 150 mg/kg, respectively, and the dermal LD_{50} in rats is 330 mg/kg (*Farm Chemicals Hanbook* 1976/Ex. 1–1147b; NIOSH 1977j, as cited in ACGIH 1986/Ex. 1–3, p. 268). Rats given single intramuscular injections of 5, 25, or 50 mg/kg of fenthion exhibited both enduring electroretinogram changes (ERG) and changes in cholinesterase activity; pseudocholinesterase activity in the plasma dropped to 50 percent of normal on the fourth day after injection. The retinal effects of fenthion persisted for as long as 50 days (Imai 1975/Ex. 1–910). Groups of Donryn rats fed 300 ppm fenthion daily showed symptoms of organophosphate intoxication, including nervousness, general spasms, diarrhea, salivation, and ophthalmologic effects (Kawai, Tojo, Miyazawa et al. 1976/Ex. 1–1157). The no-effect inhalation level for rats has been reported to be 1 mg/m³ for exposures to the aerosol of six hours/day, five days/week for three weeks; at a concentration of 3 mg/m³, cholinesterase inhibition was found (Thyssen 1979, as cited in ACGIH 1986/Ex. 1–3, p. 267). The four-hour inhalation LC_{50} in the rat is between 800 and 1200 mg/m³ (Thyssen 1978, as cited in ACGIH 1986/Ex. 1–3, p. 267).

No mutagenic, carcinogenic, or reproductive effects have been reported (Shirasu, Moriya, Kato et al. 1976/Ex. 1–1097; Hanna and Dyer 1975/Ex. 1–485; and WHO 1976, Food and Agriculture Organization (FAO/WHO) 1979, Oesch 1977, Simmon, Mitchell, and Jergenson 1977, and Herbold 1980, all as cited in ACGIH 1986/Ex. 1–3, p. 268). Single and repeated applications of the compound produced no delayed neurotoxic effects

methemoglobinemia and DNA damage. The Monsanto Company (1977, as cited in ACGIH 1986/Ex. 1–3, p. 432.2) reported an oral LD_{50} in rats of 530 mg/kg and a dermal LD_{50} in rabbits of greater than 3040 mg/kg; PNCB was absorbed through rabbit skin to produce methemoglobinemia (Kubota 1960, as cited in ACGIH 1986/Ex. 1–3, p. 432.2), although application to the skin or eyes did not produce irritation (Monsanto Company 1977, as cited in ACGIH 1986/Ex. 1–3, p. 432.2). Rusakov, Korotkova, and Bikbulatov (1973/Ex. 1–600) described the development of sensitization in guinea pigs after dermal application of PNCB.

A four-hour inhalation exposure of rats (heads only) showed that the lethal concentration was approximately 10.1 mg/L (E.I. du Pont de Nemours & Co., Inc. 1961, as cited in ACGIH 1986/Ex. 1–3, p. 432.2). Head-only exposures at 0.05, 0.29, or 0.64 mg/L PNCB for six hours/day, five days/week for two weeks resulted in spleen-weight increases and blood effects in all groups. In addition, there were dose-related effects in blood methemoglobin levels (i.e., decreased hemoglobin, hematocrit, and red blood cell count values). Microscopic changes in the spleen, bone marrow, and kidneys were seen in the two higher-dose groups, and both pathological degeneration of the seminiferous tubules and abnormal epididymal sperm contents were also observed in these groups (E.I. du Pont de Nemours & Co., Inc. 1964, as cited in ACGIH 1986/Ex. 1–3, p. 432.2).

The Monsanto Company (1961, as cited in ACGIH 1986/Ex. 1–3, p. 432.2) reported that a 90-day gavage administration of PNCB at daily doses of 0.3, 10, or 30 mg/kg to male and female rats produced hemolytic effects and spleen changes at all levels, kidney and liver effects at mid- to high-level doses, and hyperplasia of bone marrow and testicular atrophy at the highest dose (30 mg/kg/day). In 1965, Monsanto reported the results of another gavage study in rats. After two years of PNCB feeding at 0.1, 0.7, or 5.0 mg/kg/day, animals in the mid- and high-dose groups exhibited hemolytic effects; in addition, mid- and high-dose groups showed microscopic spleen, kidney, and liver changes and, at the highest dose, bone marrow hyperplasia and testicular atrophy (Monsanto Company 1965, as cited in ACGIH 1986/Ex. 1–3, p. 432.2).

Rats fed PNCB at doses of 0, 0.1, 0.7, or 5 mg/kg/day for up to two years showed methemoglobinemia at the two highest levels, and animals in the 5-mg/kg/day group had indications of anemia and pigment accumulation in spleen cells. No treatment-related increase in tumors was observed (Monsanto Company 1965, as cited in ACGIH 1986/Ex. 1–3, p. 432.2). In a dietary cancer bioassay, rats and mice were given PNCB at unspecified levels for two years (Weisberger, Russfield, Homburger et al. 1978/Ex. 1–535). Only mice were affected, with mice of both sexes showing an increase in vascular tumors at the highest dose and male mice showing an increase in liver tumors at the lowest dose (Weisberger, Russfield, Homburger et al. 1978/Ex. 1–535).

Maternal toxicity was seen in rats given PNCB by gavage at doses of 15 and 45 mg/kg/day on days nine through 16 of gestation; at the 45-mg/kg level, fetotoxicity and teratogenicity were also observed (Nair, Johannsen, and Schroeder 1985/Ex. 1–752). At 15 mg/kg, maternal toxicity but no fetotoxicity or teratogenic effects occurred; at the lowest dose, the only effect was a small increase in maternal spleen weight. A two-generation reproductive study resulted in a reduced mating index in rats given 0.7 or 5.0 mg/kg/day (Monsanto Company 1984, as cited in ACGIH 1986/Ex. 1–3, p. 432.2). Positive responses were observed in a mutation assay of L5178Y TK mouse lymphoma cells (both with and without metabolic activation) and in a microbial assay of *Salmonella* strain TA 1535 (in the absence of metabolic activation); however, no evidence of mutagenicity was noted in assays of three other *Salmonella* strains or in assays of Chinese hamster ovary cells, rat hepatocyte primary culture/DNA repair, or rat bone marrow cell clastogenesis (Monsanto Company 1980–1984, as cited in ACGIH 1986/Ex. 1–3, p. 432.2). PNCB produced DNA damage in the liver, kidney, and brain cells of rats after a single intraperitoneal dose of 30 to 1000 mg/kg (Cesarone, Bolognesi, and Santi 1983/Ex. 1–542) and in cultured hepatocytes at 1.5 hours after a three-hour treatment (Cesarone, Fugassa, Galle et al. 1984/Ex. 1–541).

p-Nitrochlorobenzene may be absorbed through the lungs and skin in humans to produce methemoglobinemia. Reports of industrial exposures indicate that overexposure causes cyanosis, weakness, and headache (Saita and Moreo 1958/Ex. 1–630; Renshaw and Ashcroft 1926/Ex. 1–522). In a study of workmen exposed to average concentrations of PNCB at 55, 125, or 143 ppm and to a 23-ppm concentration of a PNCB-nitrophenol mixture, the authors concluded that the mixed exposure did not produce chronic intoxication, but did cause increased methemoglobin, the appearance of Heinz bodies, headache, vertigo, and occasional eczema; these effects could not be attributed definitely either to skin absorption or to the level of PNCB in the mixture (Pacséri, Magos, and Batskor 1958/Ex. 1–521). No data are reported for the p-nitrochlorobenzene exposures only (Pacséri, Magos, and Batskor 1958/Ex. 1–521).

Only NIOSH commented on p-nitrochlorobenzene. NIOSH (Ex. 8–47, Table N6B and Tr. III, pp. 97–98) notes that this substance is a potential occupational carcinogen and that the risk remaining at the PEL is substantial; NIOSH therefore regards p-nitrochlorobenzene as a candidate for a full section 6(b) rulemaking. OSHA is aware both of the recent toxicological data on this substance and of the ACGIH's recent lowering of the TLV to 0.6 mg/m³. OSHA will carefully monitor the literature on PNCB and will revise the PEL in the future if such action is warranted.

In the final rule, OSHA is retaining its former 8-hour TWA limit of 1 mg/m³ for p-nitrochlorobenzene, with a skin notation. The Agency concludes that these limits are necessary to protect workers from the significant risks of methemoglobinemia and changes in the spleen, liver, and kidney possible at higher exposure levels. OSHA is retaining the skin notation because dermal absorption of PNCB has been shown to cause systemic effects in humans and animals. The Agency finds that methemoglobinemia and spleen, kidney, and liver damage constitute material impairments of health.

PHORATE

CAS: 298-02-2; Chemical Formula: $C_7H_{17}O_2PS_3$
H.S. No. 1319

Previously, OSHA had no limit for phorate. The ACGIH has limits of 0.05 mg/m³ as an 8-hour TWA and 0.2 mg/m³ as a STEL for phorate, with a skin notation. The proposed PELs were 0.05 mg/m³ as an 8-hour TWA PEL, with a STEL of 0.2 mg/m³ and a skin notation; NIOSH concurs with these limits (Ex. 8–47, Table N1), which are established in the final rule. Phorate is an organophosphorus cholinesterase inhibitor that takes the form of a clear liquid and is used as an insecticide.

Phorate is a highly toxic compound in animals. Rats exposed to daily doses of phorate showed effects above 0.15 mg/kg/day but no effects below this level. The no-effect level in dogs is between 0.01 and 0.05 mg/kg/day (Gaines 1960/Ex. 1–320). The dermal LD_{50} in male rats is 6.2 mg/kg and, for female rats, 25 mg/kg.

The final rule's limits of 0.05 mg/m³ as an 8-hour TWA, supplemented by a STEL of 0.2 mg/m³ and a skin notation, are based on calculations that the no-effect level in humans would lie in the range between 0.21 and 0.7 mg/day, and that use of an appropriate safety factor would suggest an 8-hour limit of 0.05 mg/m³, with a STEL of 0.2 mg/m³, to ensure against excursions greatly in excess of the TWA limit. OSHA received no comments on phorate except those from NIOSH.

OSHA finds that these limits will protect workers exposed to phorate against cholinesterase inhibition and its associated effects, which include respiratory symptoms, nausea, confusion, and vomiting. The Agency concludes that, in the absence of any OSHA limit, phorate-exposed employees were formerly at significant risk of experiencing such effects and that establishing a PEL, STEL, and skin notation will substantially reduce these risks. OSHA finds that cholinesterase inhibition and its symptoms clearly constitute material impairments of health.

PROPOXUR

CAS: 114-26-1; Chemical Formula: $C_{11}H_{15}NO_3$
H.S. No. 1337

OSHA had no former limit for propoxur. The ACGIH has established an 8-hour TLV–TWA of 0.5 mg/m³ for this white, odorless, crystalline compound. The proposed PEL was 0.5 mg/m³ as an 8-hour TWA; NIOSH (Ex. 8–47, Table N1) concurs with this limit, and the final rule establishes it.

The oral LD_{50}s in male and female rats are 83 and 86 mg/kg, respectively; for both sexes, the dermal LD_{50} is greater than 2400 mg/kg (Gaines 1969/Ex. 1–320). Dietary studies in rats at levels of 7.5 mg/kg/day for 28 days or at 800 ppm for three months produced no adverse effect (Association of American Pesticide Control Officials, Inc. 1986/Ex. 1–1011). Rats were exposed to propoxur concentrations of 5, 7, 16.7, or 31.7 mg/m³ six hours/day, five days/week for 12 weeks; animals in the high-dose group showed depressed red blood cell and brain cholinesterase levels, and plasma cholinesterase was depressed by as much as 20 to 30 percent (Association of American Pesticide Control Officials, Inc. 1986/Ex. 1–1011).

In humans, a few cases of mild propoxur poisoning have been reported among sprayers of this insecticide and among residents of propoxur-treated homes (Vandekar, Hedayat, Plestina, and Ahmady 1968/Ex. 1–679). In a study of human volunteers, a single oral dose of 1.5 mg/kg propoxur caused a depression in red blood cell cholinesterase and gastrointestinal symptoms that disappeared two hours after ingestion. Oral doses of 0.75 to 1.0 mg/kg produced no symptoms but did depress erythrocyte cholinesterase (Vandekar, Plestina, and Wilhelm 1971/Ex. 1–680). The only comment on this substance was submitted by NIOSH.

In the final rule, OSHA is establishing an 8-hour TWA of 0.5 mg/m³ for propoxur. The Agency concludes that this limit will protect workers against the significant risk of cholinesterase inhibition associated with exposure to this substance at the levels formerly permitted by the absence of any OSHA limit. OSHA finds that cholinesterase inhibition is a material health impairment.

RONNEL

CAS: 299-84-3; Chemical Formula: $(CH_3O)_2PSOC_6H_2Cl_3$
H.S. No. 1349

OSHA formerly had a limit of 15 mg/m³ TWA for ronnel. The ACGIH has a TLV–TWA of 10 mg/m³ for this white, noncumbustible powder. The proposed PEL was 10 mg/m³ as an 8-hour TWA; NIOSH (Ex. 8–47, Table N1) concurs with this limit, and it is established in the final rule.

Ronnel is an indirect cholinesterase inhibitor that affects the blood plasma rather than the red cell acetylcholinesterase (Plapp and Casida 1958a/Ex. 1–657). The acute oral LD_{50} for rats is reported as 1250 and 2630 mg/kg for males and females, respectively. The oral LD_{50} in dogs is greater than 500 mg/kg (McCollister, Oyen, and Rowe 1959/Ex. 1–594). Two-year dietary studies of rats fed up to 50 mg/kg/day showed no effect on growth rate, food consumption, survival, or hematopoesis (McCollister, Oyen, and Rowe 1959/Ex. 1–594). In a study by Gladenko and Stuk (1972, as cited in ACGIH 1986/Ex. 1–3, p. 513), albino rats developed clinical symptoms of motor irritation, tremor, increased auditory and tactile sensitivity, lacrimation, and salivation within two weeks of exposure at levels between 164 and 328 mg/kg; some animals died during the latter part of the study. At exposures below 16.4 mg/kg, no ill effects were observed (Gladenko and Stuk 1972, as cited in ACGIH 1986/Ex. 1–3, p. 513). A two-year feeding study in dogs exposed at 10 mg/kg showed no ill effects except cholinesterase depletion (Worden, Noel, and Mawdesley-Thomas 1972/Ex. 1–583).

Patch tests of 50 human subjects showed that ronnel has no skin-sensitizing potential (McCollister, Oyen, and Rowe 1959/Ex. 1–594). Only NIOSH submitted comments on this substance.

In the final rule, OSHA is establishing an 8-hour TWA limit of 10 mg/m³ for ronnel. The Agency concludes that this limit will protect workers against the significant risk of cholinergic effects associated with exposure to this substance. OSHA has determined that this limit will substantially reduce this significant risk, and that cholinesterase inhibition constitutes a material health impairment.

SULPROFOS

CAS: 35400-43-2; Chemical Formula: $C_{12}H_{19}O_2PS_3$
H.S. No. 1360

OSHA's Z tables formerly had no limit for sulprofos. The ACGIH has an exposure limit of 1 mg/m³ as an 8-hour TWA. The proposed PEL was 1 mg/m³ as an 8-hour TWA; NIOSH (Ex. 8–47, Table N1) concurred with this limit, and OSHA establishes this limit in the final rule. Sulprofos, also known as the insecticide Bolstar®, is a tan liquid.

Kimmerle (1982b, as cited in ACGIH 1986/Ex. 1–3, p. 547) conducted an extensive animal study on the effects of sulprofos. He reported that the acute toxicity of sulprofos is species-dependent; rats have an oral LD_{50} of 100 to 300 mg/kg and mice have an oral LD_{50} of 1600 to 1800 mg/kg. The reported dermal LD_{50}s are greater than 1000 ml/kg in rats and 800 to 1000 mg/kg in rabbits. In rabbits, sulprofos did not irritate the skin or eyes, and it had no dermal-sensitization effects in guinea pigs. Inhalation studies showed no fatalities in rats exposed to aerosol concentrations of up to 4130 mg/m³ of sulprofos over a period of four hours. In a three-week inhalation study in which rats were exposed to aerosol concentrations of 6, 14, or 74 mg/m³, the two highest concentrations produced cholinergic symptoms; no observable effects were seen at the lowest concentration. Two-year feeding studies by Kimmerle (1982b, as cited in ACGIH 1986/Ex. 1–3, p. 547) in dogs, rats, and mice showed that sulprofos concentrations of 150 ppm, 250 ppm, or 400 ppm were tolerated by all species, with no sulprofos-related tissue changes, signs of toxicity, or oncogenic effects. The overall NOELs were 10 ppm in dogs, 6 ppm in rats, and 2.5 ppm in mice. Kimmerle's ingestion studies in rats and rabbits dosed at levels of 3, 10, or 30 mg/kg/day of sulprofos showed no embryotoxic or teratogenic effects in these animals, and a three-generation diet study in rats also produced no adverse reproductive effects. Mutagenic studies reported by the same author in

mice were negative. Separate subacute inhalation studies also showed no effects on blood cholinesterase levels in rats exposed to 6 mg/m³ (Zielhuis and van der Kreek 1979/Ex. 1–613). There are no reported cases of poisoning in humans (ACGIH 1986/Ex. 1–3, p. 547). NIOSH was the only commenter on sulprofos.

In the final rule, OSHA is establishing an 8-hour TWA limit of 1 mg/m³ for sulprofos. The Agency concludes that this limit will protect workers from the significant risk of cholinesterase inhibition, the most sensitive indicator of exposure to this previously unregulated substance. The Agency has determined that this limit will substantially reduce this significant risk, and that cholinesterase inhibition constitutes a material impairment of health.

TERPHENYLS

CAS: 26140-60-3; Chemical Formula: $C_{18}H_{14}$
H.S. No. 1394

The former OSHA limit for the terphenyls was 1.0 ppm as a ceiling limit. The ACGIH has a 0.5-ppm ceiling limit for these substances. The proposed PEL for the terphenyls was 0.5 ppm as a ceiling; NIOSH (Ex. 8–47, Table N1) concurs with, and the final rule establishes, this limit. Terphenyls are colorless or light yellow solids and are used as coolants in nuclear reactors. Commercial preparations contain mixtures of ortho-, meta-, and para-terphenyls.

The terphenyls are primary irritants that cause eye, skin, and respiratory tract irritation. Haley, Detrick, Komesu et al. (1989/Ex. 1–328) reported that mixtures of terphenyls caused conjunctival irritation when instilled into the eyes of rabbits, and damaged guinea pig skin following intracutaneous injection. Cornish, Bahor, and Ryan (1962/Ex. 1–410) determined LD_{50} values of 1900, 2400, and greater than 10,000 mg/kg for the ortho-, meta-, and para-terphenyls, respectively. These authors also conducted 30-day feeding studies of rats involving doses of 250 or 500 mg/kg/day of the individual terphenyl isomers. Rats fed ortho-terphenyl showed elevated liver and kidney weight ratios; rats fed meta-terphenyl displayed elevated kidney weight ratios only; and rats fed para-terphenyl showed no elevation in liver or kidney weight ratios. Two studies by Petkau and Hoogstraaten (1966/Ex. 1–432) and Young, Petkau, and Hoogstraaten (1969/Ex. 1–459) have shown that the terphenyls have nephrotoxic effects and cause hepatic damage in rats fed 33 mg/kg/day. Adamson, Bowden, and Wyatt (1969/Ex. 1–293) published a study in which rats exposed to terphenyl aerosols for seven hours per day at a concentration of 50 mg/m³, (approximately 5 ppm), for a period of eight days, developed morphological changes in their pulmonary cell mitochondria; the number of vacuolated mitochondria was directly related to duration of exposure.

Weeks (1971/Ex. 1–560) and Weeks and Lentle (1970/Ex. 1–662) conducted a clinical survey of 47 workers with ongoing exposure to terphenyl coolant in a nuclear facility. The study represented 122 man-years of occupational exposure, with durations of exposure ranging from six months to seven years. The airborne concentrations of terphenyl varied, measuring 0.094 mg/m³ in general working areas and up to 0.89mg/m³ in areas with organic piping equipment. The terphenyl coolant was determined to be a primary irritant, even in those workers wearing protective clothing, because skin moistness increased dermal sensitivity to the terphenyls (Weeks 1971/Ex. 1–560; Weeks and Lentle 1970/Ex. 1–662). Testa and Masi (1984/Ex. 1–578) reported that, at concentrations above 10 mg/m³ (approximately 1 ppm, the former OSHA ceiling limit), workers reported both eye and respiratory irritation.

The Motor Vehicle Manufacturers Association (MVMA) recommended generally that OSHA delay rulemaking on a number of substances, including the terphenyls, on the grounds that the MVMA did not have sufficient time to review and evaluate the impacts of this rulemaking (Ex. 3–902). The MVMA did not provide any data or report any problems specific to the health effects or feasibility of the limit proposed for the terphenyls; instead, the MVMA merely listed these substances and many others in its submission. In response to the MVMA, OSHA notes that hundreds of commenters were able to provide detailed information to OSHA in the time allotted. In addition, no other comments were received on the subject of the terphenyls.

In the final rule, OSHA is establishing a ceiling limit of 0.5 ppm for the terphenyls. The Agency concludes that this limit will protect exposed workers against the significant risk of primary irritation of the eyes, skin, and upper respiratory tract and of mitochondrial changes potentially associated with exposure to very low airborne levels of the terphenyls. The Agency has determined that this limit will substantially reduce these significant risks and that primary irritation and metabolic effects constitute material health impairments.

m-TOLUIDINE

CAS: 108-44-1; Chemical Formula: C_7H_9N
H.S. No. 1401

m-Toluidine formerly had no OSHA permissible exposure limit. The ACGIH has a 2-ppm 8-hour TWA, with a skin notation. The proposed PEL was 2 ppm as an 8-hour TWA, with a skin notation, and the final rule establishes these limits. m-Toluidine is a light yellow liquid.

When m-toluidine was tested on the eyes and skin of rabbits, moderate to strong irritation effects resulted (NIOSH 1979b, as cited in ACGIH 1986/Ex. 1–3, p. 589). A mean maximal methemoglobinemia of 60.2 percent was reported to occur following the intravenous administration of 27 mg m-toluidine per kilogram of body weight in cats (McLean, Starmer, and Thomas 1969/Ex. 1–425). Rodent carcinogenicity studies cited by the ACGIH (1986/Ex. 1–3, p. 589) were either inconclusive or negative.

The effects in humans of exposure to m-toluidine, when it is either absorbed through the skin or delivered via inhalation, are hematuria and methemoglobinemia. Exposure to 40 ppm for 60 minutes causes severe poisoning (Goldblatt 1955/Ex. 1–417). There are no epidemiological studies of workers exposed only to m-toluidine (ACGIH 1986/Ex. 1–3, p. 589).

NIOSH does not concur with OSHA's limit (Ex. 8–47, Table N2: Tr. III, p. 88) and reports that, although the evidence for the carcinogenicity of m-toluidine is inconclusive (Weisberger, Russfield, Homburger et al. 1978/Ex. 1–535), it is important to remember that this substance is an aromatic amine, like o- and p-toluidine, both of which are carcinogenic. NIOSH commented that a lower PEL might be appropriate for this substance.

In the final rule, OSHA is establishing a 2-ppm 8-hour TWA and a skin notation for this previously unregulated chemical. The Agency concludes that this limit will protect workers from the significant risk of metabolic effects, such as hematuria and methemoglobinemia, associated with exposure to m-toluidine at the levels formerly permitted in the absence of any OSHA PEL. OSHA finds that hematuria, methemoglobinemia, and the other metabolic effects associated with exposure to m-toluidine constitute material impairments of health.

2,4,6-TRINITROTOLUENE

CAS: 118-96-7; Chemical Formula: $C_7H_5N_3O_6$
H.S. No. 1413

OSHA's former PEL for 2,4,6-trinitrotoluene (TNT) was 1.5 mg/m³ as an 8-hour TWA, with a skin notation. The ACGIH has set a TLV–TWA of 0.5 mg/m³, also with a skin notation, for this chemical. The proposed PEL was 0.5 mg/m³ as an 8-hour TWA, and the final rule establishes this limit; the skin notation is retained. NIOSH (Ex. 8–47, Table N1) agrees that this limit is appropriate. TNT occurs as yellow, needle-like crystals and is used as an explosive.

The ACGIH's limit was selected on the basis of health surveys conducted among occupationally exposed workers. Fairhall (1957e, as cited in ACGIH 1986/Ex. 1–3, p. 610) describes dermatitis, cyanosis, gastritis, acute yellow atrophy of the liver, and aplastic anemia as possible effects of exposure to TNT. According to Sollman (1957/Ex. 1–691), blood destruction, leucocytosis or leucopenia, and varying degrees of central nervous system change (probably resulting from anoxia, peripheral neuritis and muscular pains, cardiac muscular and menstrual irregularities, and urinary and renal irritation) can also occur as a consequence of TNT exposure. TNT has irritant properties and may cause sneezing, sore throat, or skin irritation (von Oettingen 1941/Ex. 1–874).

A study by Goodwin (1972/Ex. 1–556) revealed 36 cases of liver damage in a munitions plant where workers were exposed to a mean air level of 2.38 mg/m³ TNT over a period of 20 years. Another study (Morton, Ranadive, and Hathaway 1976/Ex. 1–566) found elevated levels of liver enzymes in 43 TNT shell-packers and loaders who worked where TNT exposures ranged from 0.3 to 0.8 mg/m³ over a period of five months. In 1975, Djerassi and Vitany (Ex. 1–550) published a paper describing hemolytic episodes in three TNT workers with glucose-6-phosphate dehydrogenase deficiency; although these workers were from Iraq, where G–6–PDase deficiency has a high (25 percent) frequency of occurrence, the study is also of concern for other workers having a high frequency of G–6–PDase deficiency. NIOSH was the only commenter to the record on TNT.

In the final rule, OSHA is establishing an 8-hour TWA of 0.5 mg/m³ for 2,4,6-trinitrotoluene; the skin notation is retained. The Agency concludes that this limit is necessary to protect workers against the significant risk of liver damage and hemolytic effects potentially associated with exposure to TNT. OSHA has determined that this limit will substantially reduce these significant risks and that liver damage and hemolysis constitute material health impairments.

Conclusions for the Group of Biochemical/Metabolic Toxins

For the class of toxic substances having biochemical/metabolic effects, OSHA concludes that occupational exposure presents significant risks. The effects associated with exposure to these substances (which inhibit cholinesterase activity, interfere with the blood's ability to carry oxygen, and produce Antabuse-like symptoms and signs) range from nausea, bronchoconstriction, cardiac irregularities, neurobehavioral effects, and unconsciousness to coma and death, depending on the severity of the exposure. OSHA finds that all of these symptoms and signs constitute material health impairments. Because many of these substances are relatively new on the industrial scene, OSHA previously had no limits for them. This situation meant that, in the past, occupational exposures to these substances could be essentially uncontrolled. The Agency finds that establishing or revising limits for this group of toxicants is necessary to reduce these significant occupational risks.

14. Substances for Which Limits Are Based on Avoidance of Sensitization Effects

Introduction

OSHA is establishing limits for eight substances on the basis of their ability to cause pulmonary or skin sensitization. Table C14–1 lists the former, proposed, and revised OSHA PELs and the CAS and HS numbers for these substances. For four of these substances, OSHA had no former permissible exposure limit. For two substances, OSHA has reduced its former 8-hour TWA PEL. In the case of picric acid, OSHA proposed to add a STEL to the former 8-hour TWA PEL for this substance but has determined in the final rule that no STEL is necessary. For toluene-2,4-diisocyanate, OSHA's ceiling limit has been revised to an 8-hour TWA and is supplemented with a STEL.

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Table C14-1. Substances for Which Limits Are Based on Avoidance of Sensitization

H.S. Number/ Chemical Name	CAS No.	Former PEL	Proposed PEL	Final Rule PEL*
1066 Captafol (Difolatan)	2425-06-1	—	0.1 mg/m^3 TWA, Skin	0.1 mg/m^3 TWA
1100 Cobalt metal, fume, & dust	7440-48-4	0.1 mg/m^3 TWA	0.05 mg/m^3 TWA	0.05 mg/m^3 TWA
1222 Isophorone diisocyanate	4098-71-9	—	0.005 ppm TWA 0.02 ppm Ceiling (10 minutes), Skin	0.005 ppm TWA 0.02 ppm STEL, Skin
1313 Phenothiazine	92-84-2	—	5 mg/m^3 TWA, Skin	5 mg/m^3 TWA, Skin
1315 Phenyl glycidyl ether	122-60-1	10 ppm TWA	1 ppm TWA	1 ppm TWA
1329 Picric acid	88-89-1	0.1 mg/m^3 TWA, Skin	0.1 mg/m^3 TWA 0.3 mg/m^3 STEL, Skin	0.1 mg/m^3 TWA, Skin
1373 Subtilisins (Proteolytic enzymes)	1395-21-7	—	0.06 ug/m^3 Ceiling	0.06 ug/m^3 Ceiling
1398 Toluene-2,4-diisocyanate	584-84-9	0.02 ppm Ceiling	0.005 ppm TWA 0.02 ppm STEL	0.005 ppm TWA 0.02 ppm STEL

* OSHA's TWA limits are for 8-hour exposures; its STELs are for 15 minutes unless otherwise specified; and its ceilings are peaks not to be exceeded for any period of time.

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Description of the Health Effects

A sensitization reaction, also known as an allergic reaction, is defined as an adverse response to a chemical following a previous exposure to that substance or to a structurally similar one (Klaasen, Amdur, and Doull 1986/Ex. 1–99). A person who suffers an allergic reaction to a chemical is said to have become sensitized to that substance. Sensitization is the result of an immune reaction to a substance; although the initial exposure does not generate an immediate response, the immune system "remembers" the substance and reacts strongly at the next encounter. A related phenomenon is cross-sensitization. Cross-sensitization occurs when exposure to one substance elicits a sensitization reaction, not only upon subsequent exposure to the same substance, but also upon exposure to a different substance (usually one with a similar chemical structure).

The toxic manifestations of sensitization reactions vary in both location and severity. In humans, common target organs are the skin and the eyes; typical allergic conditions in these organ systems are allergic contact dermatitis and conjunctivitis, respectively. The respiratory system can also be sensitized; the resulting pathologies include bronchitis and asthma (Dean, Murray, and Ward 1986/Ex. 1–195). These allergic reactions are mediated by the two immunoglobulins IgD or IgE. The involvement of IgD results in delayed contact dermatitis. In contrast, IgE-mediated reactions cause very severe and potentially fatal effects, such as acute asthmatic attacks, urticaria, and anaphylactic shock. The unpredictability and potential seriousness of sensitization reactions demand that exposures to sensitizing substances be carefully controlled.

Sensitivity to a chemical frequently persists throughout the lifetime of an individual; in some cases, however, sensitization disappears over time. Sensitization symptoms are not observed after exposure to the sensitizing agent (or to a structurally similar chemical) has been discontinued. Although it is possible to treat some allergies, avoidance is considered the best way, and sometimes the only way, to regain good health.

An additional cause for concern about exposure to sensitizing chemicals is recent evidence that residual respiratory symptoms may continue even after exposure is discontinued. For example, in the case of toluene-2,4-diisocyanate (TDI), Weill, Butcher, Dharmarajan et al. (1981/Ex. 1–1188) and Innocenti, Franzinelli, Sartorelli et al. (1981/Ex. 1–160) found that sensitized workers may exhibit decreased pulmonary function or chronic bronchitis for as long as three and one-half years after cessation of exposure.

Dose-Response Relationships and Sensitization Effects

Like other toxic effects, allergic reactions are dose-related; that is, in response to larger doses of the substance, increasing numbers of subjects become sensitized and the subsequent reactions become more severe. The time course of sensitization for any one individual is unpredictable. Some individuals are sensitized after only one exposure; others remain resistant to sensitization after a lifetime of exposure. Different people are generally sensitive to different substances, although some substances are more universally reactive than others, such as the active agent in poison ivy. Various parameters influence the likelihood of sensitization by a particular chemical; these include such factors as "the nature of the chemical, concentration, type of exposure, genetic susceptibility and nongenetic idiosyncrasies" (Emmett 1986/Ex. 1–226). The sensitization reactions observed in occupational settings are often the result of dermal or inhalation exposure.

For most of the substances in this group, the revised limits have been set on the basis of health surveys and reports of occupationally exposed populations. These studies indicate that exposures below a certain no-effect level generally do not result in individuals becoming sensitized. Where human data were absent or sparse, OSHA relied on animal evidence to set the revised limit. However, since chemically induced immunological sensitization in laboratory animals involves the same mechanism as in humans (that is, immune reactions in animals can be mediated by either IgD or IgE immunoglobulins), sensitization reactions in animals are generally good predictors of immune reactions in humans.

The discussions below describe the record evidence and OSHA's finding for the substances in this group. These discussions illustrate the nature of the risk confronting exposed employees and the extent to which the risk of developing immune sensitization will be reduced among workers by the promulgation of these new or revised limits.

CAPTAFOL (DIFOLATAN)

CAS: 2425-06-1; Chemical Formula: $C_{10}H_9Cl_4NO_2S$

H.S. No. 1066

OSHA formerly had no permissible exposure limit for captafol. The proposed limit for captafol was an 8-hour TWA of 0.1 mg/m^3, with a skin notation. The 0.1-mg/m^3 limit, which is consistent with that of the ACGIH, is the PEL included in this final rule; however, OSHA is not including in the final rule the skin notation proposed for this substance. NIOSH (Ex. 8–47, Table N6A) concurred with the Agency's selection of a PEL for captafol, which is a white, crystalline substance with a slight but characteristic odor.

In humans, skin irritation, skin sensitization, and respiratory sensitization have been reported in both American and Japanese studies of farmers applying captafol as a fungicide. Arimatsu (1970/Ex. 1–1010) reported that farmers using captafol have experienced acute contact dermatitis manifesting as erythematous dermatitis and phototoxic eruptions. Kahn (1975, as cited in ACGIH 1986/Ex. 1–3, p. 97) reported that workers cleaning up in an area where captafol was handled experienced skin and respiratory sensitization.

The ACGIH (1986/Ex. 1–3) reported that dermal LD_{50} for captafol is greater than 9 g/kg in rabbits, indicating that the substance is not readily absorbed through the skin. As discussed in Section VI.C.18, OSHA has determined that skin notations are appropriate only when there is evidence that indicates that dermal contact may lead to skin absorption and increase the potential for systemic poisoning. Since this is not the case for captafol, OSHA finds that a skin notation is not warranted.

A two-year study conducted by the World Health Organization (Reinhardt and Brittelli 1981/Ex. 1–1063) reported growth depression in rats at captafol dietary levels of 1500 and 5000 ppm, and histopathologic examination revealed changes in the livers and kidneys of the animals exposed at these levels. In male rats, an increase in liver-to-body-weight ratio was observed at levels of 250 ppm and higher after 12 months of captafol feeding (Reinhardt and Brittelli 1981/Ex. 1–1063). No tumors were observed in this study. However, NIOSH (Ex. 8–47, Table N6A) submitted comments on captafol showing that several newer studies demonstrated that captafol is a broad-spectrum carcinogen in mice and rats (Ito et al. 1984; EPA 1984, 1985, 1987). In 1987, the EPA cancelled the registration for captafol on the basis of

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this substance's carcinogenicity in laboratory animals; the EPA considers captafol a Category C substance, i.e., a possible human carcinogen. OSHA is aware of these recent studies on captafol's carcinogenicity and finds that they lend urgency to the establishment of a PEL for this previously unregulated substance. NIOSH's was the only comment OSHA received on this substance.

In the final rule, the Agency is establishing a permissible exposure limit for captafol of 0.1 mg/m³ as an 8-hour TWA to protect workers against the significant risk of contact dermatitis and respiratory and skin irritation and sensitization, all material impairments of health, that are associated with exposure to captafol at the levels formerly permitted by the absence of an OSHA limit. The Agency concludes that this 8-hour TWA PEL will substantially reduce these significant risks.

COBALT METAL, DUST, AND FUME (as Co)

CAS: 7440-48-4; Chemical Formula: Co
H.S. No. 1100

OSHA formerly had an 8-hour TWA limit of 0.1 mg/m³ for cobalt metal, dust, and fume. The Agency proposed an 8-hour TWA of 0.05 mg/m³ for these substances, and NOISH (Ex. 8-47, Table N1) concurred with the proposed limit. The final rule establishes an 8-hour TWA PEL of 0.05 mg/m³ for cobalt metal, dust, and fume; this limit is consistent with that of the ACGIH. Cobalt is a gray, hard, magnetic, and somewhat malleable metal.

Animal studies indicate that high intratracheal doses (10, 25, or 50 mg) of cobalt metal dust can cause obliterative bronchiolitis adenomatosis in guinea pigs (Schepers 1955/Ex. 1-365). Additional studies in animals have shown that exposure to cobalt dust or fume causes hypersensitivity reactions. Increases in serum A-2 globulin and neuraminic acid occurred in dogs and rabbits exposed by inhalation to cobalt metal, metal fume, or carbide blend; injections of cobalt chloride produced similar reactions (Stokinger and Wagner 1958/Ex. 1-381). Studies conducted in miniswine have shown that inhalation of 0.1 mg/m³ cobalt metal dust (50 percent alpha and 50 percent beta variety, with a size range of from 0.4 um to 3.6 um) has caused early (onset within three months) pulmonary disease. Wheezing, which indicates hypersensitivity, occurred in these animals during the fourth week of exposure to 0.1 or 1.0 mg/m³ for six hours/day, five days/week, for three months following a one-week sensitizing dose (Kerfoot, Fredrick, and Domeier 1975/Ex. 1-145). NIOSH (Ex. 150, Comments on Cobalt) submitted comments pointing out that cobalt and cobalt compounds have caused local, injection-site tumors in experimental animals, and the AFL-CIO (Ex. 194, Appendix A) also noted that a "potential carcinogenic effect" has been identified for cobalt.

Pulmonary disease has been reported frequently in workers exposed to cobalt in the manufacture of cemented tungsten carbide (Miller, Davis, Goldman, and Wyatts 1953/Ex. 1-40; Lundgren and Ohman 1954, as cited in ACGIH 1986/Ex. 1-3, p. 144; Lundgren and Swenson 1953/Ex. 1-616). The adverse effect of exposure is generally chronic interstitial pneumonitis. Fatalities have been reported occasionally from exposures to cobalt at concentrations of 1 to 2 mg/m³ or less (Fairhall, Castberg, Carrozzo, and Brinton 1947/Ex. 1-954; Fairhall, Keenan, and Brinton 1949/Ex. 1-479). An increase in serum A-2 globulin fraction was reported in the case of a welder exposed to fumes containing cobalt; the welder had a history of exertional dyspnea and an abnormal chext X-ray (Siegesmund, Funahashi, and Pintar 1974/Ex. 1-372). Schwartz, Tulipan, and Birmingham (1957c, as cited in ACGIH 1986/Ex. 1-3, p. 144) reported that allergic dermatitis has been caused by contact with cobalt and its compounds. Dr. Michael Silverstein, representing the UAW, commented in testimony (Tr. pp. 7-44 to 7-46) that OSHA should develop ancillary provisions, such as those for medical surveillance and personal protective equipment, to protect exposed workers against skin contact with cobalt. However, as discussed earlier in this preamble, OSHA is currently developing generic standards to address these and other protective measures.

In studies undertaken by the Michigan Department of Health (1946-1964, as cited in ACGIH 1986/Ex. 1-3, p. 144), it was demonstrated that, in the period between 1946 and 1964, improved control measures had successfully reduced cobalt metal dust and fume levels from 14.42 mg/m³ to levels below 0.1 mg/m³; no new cases of systemic toxicity or dermatitis have since been associated with cobalt exposure in these facilities. The Pennsylvania Department of Health demonstrated that concentrations could be controlled easily to 0.07 mg/m³; without controls, concentrations were about 0.5 mg/m³ (ACGIH 1986/Ex. 1-3, p. 144).

In posthearing comments, NIOSH (Ex. 150, Comments on Cobalt) reported the findings of two recent epidemiological studies in cobalt-exposed workers. A cohort mortality study by Mur et al. (1987, as cited in Ex. 150) found a statistically significant increase in lung cancer mortality in cobalt and sodium workers in an electrochemical plant. NIOSH noted that this study had several limitations: The small number of lung cancer cases observed; ascertainment problems; no smoking data; and no exposure data. A recent study of hard metal workers in Great Britain (Kusaka et al. 1986, as cited in Ex. 150) found occupationally induced asthma in cobalt-exposed workers, some of whom had average exposure levels below 0.05 mg/m³. NIOSH (Ex. 150, Comments on Cobalt) also noted that this study had several limitations: the small number of workers with asthma; incomplete occupational histories for some cases; and failure to ascertain confounding exposures.

NIOSH also noted that the PEL of 0.05 mg/m³ may not protect all workers against the development of cobalt-induced asthma (Ex. 150, Comments on Cobalt). Both the UAW (Tr. 7-44/7-46) and Dr. James Melinus of the New York State Department of Public Heath (Tr. 11-108) commented that pulmonary disease and ischemic heart disease may be associated with exposures to cobalt at levels of 0.08 mg/m³ and, perhaps, to levels somewhat below. OSHA notes that the studies pointed to by these commenters involve confounding exposures to tungsten, cement, and other hazardous alloys and have other methodological limitations as well.

In the final rule, the Agency is revising its 8-hour TWA limit for cobalt metal, dust, and fumes from 0.1 mg/m³ to 0.05 mg/m³. The Agency concludes that this limit will reduce the significant risk of material impairment of health posed by respiratory disease and pulmonary sensitization, which have been demonstrated to occur at higher levels of exposure. OSHA notes that the very recent literature is suggestive of effects even below this level; the Agency intends to continue to monitor the literature on cobalt in the future.

ISOPHORONE DIISOCYANATE

CAS: 4098-71-9; Chemical Formula: $C_{12}H_{18}N_2O_2$
H.S. No. 1222

OSHA previously had no limit for isophorone diisocyanate (IPDI). The Agency proposed an 8-hour TWA of 0.005 ppm for this substance, with a 10-minute short-term limit of 0.02 ppm and a skin notation; these limits are consistent with NIOSH's recommended limits for all isocyanates, and on Table N1 of Exhibit 8-47, NIOSH indicated its concurrence with the selection of this PEL. The ACGIH has established an 8-hour TWA of 0.01 ppm and a skin notation for IPDI. In the final rule, OSHA is establishing an 8-hour TWA of 0.005 ppm for isophorone diisocyanate, with a 15-minute STEL of 0.02 ppm and a skin notation.

To date, there is little direct information on the health effects associated with exposure to this particular isocyanate. However, diisocyanates, in general, cause irritation of the respiratory tract, decreases in pulmonary function, and sensitization. The ACGIH (1986/Ex. 1-3, p. 334) cited two reports in which workers exposed to isophorone diisocyanate suffered asthma or dyspnea; neither of these reports contained quantitative exposure data (Clarke and Aldons 1981/Ex. 1-475; Tyrer 1979/Ex. 1-396). The ACGIH (1986/Ex. 1-3, p. 334) recommended that the 0.01-ppm TLV-TWA established for 2,4-toluene diisocyanate (TDI) be applied to isophorone diisocyanate until information specific to IPDI becomes available; however, the ACGIH (1986/Ex. 1-3, p. 334) did not agree that the 0.02-ppm TLV-STEL established by the ACGIH for toluene diisocyanate should also apply to IPDI. In its criteria document on isocyanates, NIOSH (1978c/Ex. 1-259) used similar reasoning to reach the conclusion that, on a molar basis, all of the diisocyanates would react in a manner similar to that of TDI. NIOSH thus recommended that the limits established for TDI (0.005 ppm TWA and 0.02 ppm as a 10-minute short-term limit) be applied to all diisocyanates. In support of the recommended short-term exposure limit for all diisocyanates, NIOSH (1978c/Ex. 1-259) cited a study reporting that 12 workers in an automobile plant had developed severe respiratory symptoms after exposure to 0.03 to 0.07 ppm TDI for one week.

NIOSH (Ex. 150, Comments on Isophorone Diisocyanate) reported that IARC has recently (1986) published results of a positive carcinogenesis bioassay involving TDI that found TDI-induced tumors in both rats and mice. In response to IARC's determination that the evidence in animals is sufficient to classify TDI as a carcinogen in animals, NIOSH is developing a Current Intelligence Bulletin on TDI. OSHA received no comments suggesting that feasibility is a problem at the revised limits, although the proposal specifically requested additional feasibility information from the public. OSHA received several comments on IPDI (Exs. 116, 144, 194). The Workers Institute for Safety and Health (WISH) argued that OSHA should regulate all six of the isocyanates, rather than the three being regulated in this rulemaking, because employers would otherwise tend to substitute the unregulated members of the isocyanate family for those that are regulated, and the unregulated substances might in fact prove as hazardous as the regulated isocyanates (Ex. 116, p. 34). In response to WISH, OSHA notes that the scale and scope of the present rulemaking demanded that OSHA adopt certain methods of selecting substances to include in this rulemaking (see the discussion in the preamble section on "Boundaries to Regulation"); the Agency believes that the isocyanates included in the present rulemaking are those for which the health evidence is adequate to serve as a basis for limit-setting. The AFL-CIO (Ex. 194) commented along the same lines as WISH, but in addition was of the opinion that the proposed 8-hour TWA PEL was not necessary. OSHA does not agree, believing instead that the 8-hour TWA limit will provide additional protection and is appropriate in workplace exposure situations characterized by steady-state exposures. The New Jersey Department of Public Health (Ex. 144) recommended the use of EPA's IRIS data base to set a limit for IPDI; the appropriateness of the IRIS data for limit-setting is discussed in Section VI.A. of the preamble.

OSHA is establishing a 0.005-ppm 8-hour TWA, a 0.02-ppm 15-minute short-term limit, and a skin notation for IPDI. The short-term limit of 0.02 ppm is designed to prevent the severe irritation effects associated with exposure to the diisocyanates even in nonsensitized workers, and the skin notation will prevent dermal absorption of this substance. The Agency has established a 15-minute, rather than a 10-minute, short-term limit for isophorone diisocyanate because OSHA has decided, as a matter of policy, to conform all of its revised short-term limits (5, 10, 15, or 20 minutes) to a duration of 15 minutes. The Agency finds that the TWA and STEL limits will both protect nonsensitized workers against IPDI's sensitizing effects and minimize asthmatic reactions among sensitized workers. OSHA concludes that these revised limits will reduce the significant risk of material health impairment (i.e., immune-system-mediated pulmonary sensitization, which is associated with isocyanate exposure. In addition, the Agency also finds that these limits are feasible. OSHA will continue to monitor the toxicological literature on all of the isocyanates in the future.

PHENOTHIAZINE

CAS: 92-84-2; Chemical Formula: $S(C_6H_4)_2NH$
H.S. No. 1313

OSHA previously had no occupational exposure limit for phenothiazine. The Agency proposed an 8-hour TWA PEL of 5 mg/m³ for this substance, with a skin notation; the final rule establishes this limit and a skin notation, which are consistent with the recommendations of the ACGIH. NIOSH (Ex. 8-47, Table N1) concurred with OSHA's proposed limit for phenothiazine.

OSHA is basing the PEL for phenothiazine primarily on the findings of a study by Mawhinney and Rakow (1968, as cited in ACGIH 1986/Ex. 1-3, p. 472) that showed that exposure to 15 to 48 mg/m³ of phenothiazine was associated with skin sensitization but not with other acute systemic effects. Symptoms of sensitization in workers included burning and itching of the skin. Accompanying these sensitization reactions were pinkish-red-colored hair and brown fingernails. Phenothiazine has been reported to cause photosensitization of the skin, and intense irritation and itching of the skin have been associated with inhalation of phenothiazine spray (ACGIH 1986/Ex. 1-3, p. 472).

In the final rule, OSHA is establishing an 8-hour TWA PEL of 5 mg/m³, with a skin notation; this limit is below the exposure range that has been shown to cause sensitization reactions in workers. OSHA concludes that the uncontrolled occupational exposures to phenothiazine that were possible in the absence of an OSHA limit pose a significant risk of sensitization, which is a material impairment of health. Accordingly, the Agency is establishing an exposure limit that will substantially reduce this significant risk.

PHENYL GLYCIDYL ETHER

CAS: 122-60-1; Chemical Formula $C_6H_5OCH_2CHOCH_2$
H.S. No. 1315

OSHA's former 8-hour TWA limit for phenyl glycidyl ether (PGE) was 10 ppm. The Agency proposed a TWA of 1 ppm for this substance, which is consistent with the ACGIH's limit for PGE. NIOSH recommends a 15-minute ceiling limit of 1 ppm for phenyl glycidyl ether, which is a colorless liquid. In the final rule, OSHA establishes an 8-hour TWA PEL of 1 ppm for phenyl glycidyl ether.

Exposure to PGE causes systemic effects and irritation. Studies by Hine, Kodama, Wellington, and colleagues (1956/Ex. 1-331) showed pulmonary inflammation and liver changes in some of the rats exposed to 100 ppm for seven hours daily for 50 days; respiratory

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distress and minimal eye irritation were also observed in the exposed animals. Intragastric LD_{50} values of 1.40 g/kg for mice and 3.85 g/kg for rats were also reported. Animals displayed central nervous system (CNS) depression, and death was caused by respiratory paralysis; in the survivors, these CNS effects were transient. The percutaneous LD_{50} reported for rabbits was 2.99 g/kg. Other studies have reported a single-dose oral LD_{50} of 4.26 g/kg, although exposure for 8 hours to the near-saturated vapor was not lethal (Smyth, Carpenter, Weil, and Pozzani 1954/Ex. 1–440). Terrill and Lee (1977/Ex. 1–390) reported kidney, liver, spleen, thymus, and testicular changes in rats exposed to phenyl glycidyl ether at 29 ppm for four hours daily, five days/week for two weeks. At concentrations of 12 or 5 ppm, these authors observed no effects other than hair loss after exposures of six hours/day, five days/week for nine weeks; however, after 18 weeks, 10 percent of male and 25 percent of female rats exhibited alopecia (hair loss). These health effects were believed by the authors to reflect direct irritation of the skin rather than systemic absorption (Terrill and Lee 1977/Ex. 1–390).

Reports of workers using or handling phenyl glycidyl ether have described moderate skin irritation on prolonged or repeated contact. In addition, several cases of skin sensitization have been reported (ACGIH 1986/Ex. 1–3, p. 476).

NIOSH (1978d/Ex. 1–232) notes that glycidyl ethers are biologically reactive compounds because of the presence of the epoxide group; these compounds have also been shown to cause cytotoxic effects and to the mutagenic in short-term bioassays. Terrill and Lee (1977/Ex. 1–390) exposed rats repeatedly to 1 ppm PGE and observed no effects, although skin damage was observed at 5 ppm. Inconclusive evidence of testicular degeneration was reported in some of the rats exposed to levels as low as 1.75 ppm (Haskell Laboratory reports, as cited in NIOSH 1978d/Ex. 1–232, p. 114). At 10 ppm, five day/week exposures for 10 weeks caused respiratory tract irritation and early signs of liver necrosis in rats (Hine, Kodama, Wellington et al. 1956/Ex. 1–331).

OSHA received only one comment on this substance. NIOSH (Ex. 8–47, Table N6B) does not concur with OSHA's establishment of a PEL of 1 ppm for PGE; NIOSH recommends that this limit be expressed as a 15-minute short-term limit. The Agency concludes that the evidence indicates that repeated, prolonged exposures to PGE have been responsible for the adverse exposure effects observed and, therefore, that an 8-hour TWA PEL is more appropriate for this substance than a ceiling limit or STEL.

In the final rule, the Agency is reducing the 8-hour TWA PEL for phenyl glycidyl ether to 1 ppm. OSHA concludes that this limit will protect workers from the significant risk of skin sensitization, skin and respiratory tract irritation, testicular damage, and liver necrosis (all of which are material impairments of health) that are potentially associated with exposure to concentrations at the former PGE limit of 10 ppm. OSHA finds that the revised limit will substantially reduce these significant risks.

PICRIC ACID

CAS: 88–89–1; Chemical Formula: $HOC_6H_2(NO_2)_3$
H.S. No. 1329

OSHA's former limit for picric acid was 0.1 mg/m³ as an 8-hour TWA, with a skin notation. The Agency proposed to retain the 0.1-mg/m³ TWA limit and skin notation and to add a 15-minute STEL of 0.3 mg/m³ for this substance. NIOSH (Ex. 8–47, Table N1) concurred with the proposal. In the final rule, the Agency has retained the 8-hour TWA of 0.1 mg/m³ and a skin notation, but has determined that the evidence is insufficient to establish the 15-minute short-term exposure limit of 0.3 mg/m³ proposed by the Agency for this substance.

Picric acid occurs as colorless to pale yellow, odorless, intensely bitter crystals. Picric acid and its salts are toxic by ingestion, skin contact, or inhalation, and these substances also have skin-sensitization potential (Schwartz 1944/Ex. 1–367). Available reports concerning human exposures describe edema, papules, vesicles, and desquamations of the face, mouth, and nose (Sunderman, Weidman, and Batson 1945/Ex. 1–383). The symptoms of systemic poisoning following skin absorption include headache, vertigo, vomiting, nausea, diarrhea, and skin and conjunctival discoloration, as well as discoloration of urine and albuminuria; high-dose exposures caused destruction of erythrocytes and produced gastroenteritis, hemorrhagic nephritis, and acute hepatitis (Sunderman, Weidman, and Batson 1945/Ex. 1–383). Occupational exposure to ammonium picrate dust at concentrations of 0.0068 to 0.1947 mg/m³ caused dermatitis only in those workers who were least exposed; the ACGIH believes that this suggests that desensitization or adaptation occurs with repeated exposure (ACGIH 1986/Ex. 1–3, p. 490). Except for the concurrence of NIOSH (Ex. 8–47, Table N1), no comments related to picric acid were submitted to the record. Since the time of OSHA's proposal, the ACGIH has decided to delete its TLV–STEL for picric acid (*Threshold Limit Values and Biological Exposure Indices for 1988–1989*, ACGIH 1988b). OSHA has re-examined the evidence described above and has determined that the 0.1-mg/m³ TWA limit alone is sufficient to protect employees from the significant risk of contact dermatitis associated with exposure to picric acid (OSHA's general policies for establishing short-term limits are described in Section VI.C.17). Therefore, OSHA is not including a STEL for picric acid in the final rule.

In the final rule, OSHA is retaining an 8-hour TWA of 0.1 mg/m³ and a skin notation for picric acid. The Agency concludes that these limits will protect workers against the dermatitis and sensitization associated with occupational exposures to picric acid. OSHA finds that both dermatitis and sensitization are material impairments of health.

SUBTILISINS

CAS: 1395–21–7; Chemical Formula: None
H.S. No. 1373

OSHA did not formerly have an occupational exposure limit for the subtilisins; the ACGIH has established a ceiling limit of 0.06 ug/m³ for these substances. OSHA proposed a 0.06-ug/m³ ceiling for the subtilisins, and the final rule establishes this limit. NIOSH (Ex. 8–47, Table N1) agreed with the selection of this PEL. The subtilisins are proteolytic bacterial enzymes (produced by various *Bacillus* species) that are used primarily in laundry detergents but also in contact lens cleaners, film processing, and the food industry. They are considered a threat to occupational health because they cause immune-system-mediated bronchoconstriction and respiratory symptoms in addition to primary irritation of the skin and respiratory tract (ACGIH 1986/Ex. 1–3, p. 540; Pepys, Hargreave, Longbottom, and Faux 1969/Ex. 1–568).

A report by the California Department of Public Health (1969, as cited in ACGIH 1986/Ex. 1–3, p. 540) showed that several workers were hospitalized after exposure to subtilisins in a detergent formulation plant where the "safe limit" for subtilisins was set at 0.12 ug/m³. There is no information on whether this limit was exceeded in this episode or what other conditions prevailed. In addition to NIOSH's comment, OSHA received several other comments on the proposed limit for the subtilisins (Exs. 8–70, 3–684, 137, 164, and 98–13; Tr. p. 3–304; Tr. pp. 10–162 to 10–190). Most of these commenters were of the opinion that OSHA should not establish an exposure limit for the subtilisins because there is currently no method available to monitor workplace exposures to these substances. In addition, these commenters submitted information to the record on the subtilisins' health effects to supplement the data base relied on by OSHA in the proposed rule.

Typical of these comments was the submittal of Beth Concoby and Alice Caddow on behalf of Genencor, Inc., a manufacturer of subtilisins:

> Genencor concurs with OSHA that the PEL's should be reviewed on a periodic basis and updated as new valid scientific information becomes available. However, * * * ½i¾n the proposed standard OSHA is planning to adopt an exposure limit for subtilisins which does not currently have a validated sampling and analytical method for personal sampling * * *. There is also additional health data available that needs to be considered in promulgating an appropriate PEL for subtilisins (Ex. 3–684, pp. 1, 4).

The Enzyme Technical Association (Exs. 8–70, 164, 137, and 98–13; Tr. pp. 10–102 to 10–190) specifically objected to the Agency's use of an early study on the subtilisins; OSHA has responded to this comment by carefully reviewing the recent toxicological literature on the subtilisins, including several new health studies submitted by these participants. These studies document the respiratory toxicity and sensitization potential of the subtilisins. For example, a study by Juniper and Roberts (1984, as cited in Exs. 8–70 and 3–684) reports that 3.7 percent of exposed workers experienced dose-related sensitization symptoms (enzyme asthma, or EA) on exposure to enzyme detergent powders. Symptoms included sweating, headache, pain in the chest, influenza-like symptoms, cough, breathlessness, and wheezing "sufficient at times to incapacitate the patient completely" (Juniper and Roberts 1984, p. 128, as cited in Exs. 8–70 and 3–684). This study also reports that the "prime initiating cause of episodes of EA in otherwise asymptomatic subjects was undoubtedly dust level 'peaks' rather than a low but continuous exposure" (Juniper and Roberts 1984, p. 131, as cited in Exs. 8–70 and 3–684).

In response to the objections of commenters (Exs. 8–70 and 3–684) that no sampling and analytical method exists for the subtilisins, OSHA notes that several such methods have been published (Fulwiler 1971; Fulwiler, Abbot, and Darcy 1972; Bruce, Dunn, Brotherton et al. 1976). The American Industrial Hygiene Association (Tr. p. 3–304) was in favor of keeping the subtilisins in this rulemaking and submitted a sampling and analytical method for these substances. Thus, OSHA finds that there is no issue of monitoring feasibility for this group of enzymes.

Another study in monkeys (Coate, Busey, Schoenfisch, and Newmann 1978, as cited in Exs. 8–70 and 3–684) reports the effects of exposing animals 6 hours/day, 5 days/week for 6 months to atmospheres containing synthetic detergent dust at 1, 10, or 100 mg/m³ together with enzyme dust at 0.001, 0.01, 0.1, or 1 mg/m³. Exposures to 10 or 100 mg/m³ detergent dust together with 0.01 or 1 mg/m³ enzyme dust produced gross signs of respiratory distress, pulmonary histopathological effects, and pulmonary function impairment (Coate et al. 1978, as cited in Exs. 8–70 and 3–684).

These studies and others (McMurrain 1970; Medical Research Council 1976; Zachariae, Hoegh-Thomsen, Witmeur, and Wide 1981; Thorne Hillebrand, Magreni et al. 1986; Weill, Waggenspack, DeRouen, and Ziskind 1974, all as cited in Exs. 8–70 and 3–684) demonstrate convincingly the need for an exposure limit for the subtilisins. One study (Thorne, Hillebrand, Magreni et al. 1986, as cited in Exs. 8–70 and 3–684) reports that, in guinea pigs, the no-observed-effect level for pulmonary sensitization induced by exposure to the subtilisins for 15 minutes/day for 5 consecutive days was between 0.0063 and 0.041 mg/m³. Animals exposed on the same regimen at higher levels developed enzyme asthma (Thorne, Hillebrand, Magreni et al. 1986, as cited in Exs. 8–70 and 3–684). Recent evidence also demonstrates that the manufacturers of these enzymes have been able to control the dust exposures of their employees to levels "considerably lower than the proposed * * * TLV * * * recommendation ½ of a ceiling of 0.06 ug/m³ ¾" (McMurrain 1970, as cited in Ex. 3–684). These reductions in exposure have occurred as a result of a program of strict environmental controls and the adoption of a prilling process that encapsulates the enzymes to reduce enzyme-laden dust.

OSHA is establishing a ceiling limit of 0.06 ug/m ³ for the subtilisins; the evidence described above indicates that a ceiling limit of 0.06 ug/m³ for the subtilisins is necessary to reduce the significant risks of respiratory sensitization, skin irritation, and respiratory effects among members of the exposed worker population; OSHA finds that all of these exposure-related health effects constitute material impairments of health. Recent studies (described above) show that this limit is being achieved at the present time. OSHA concludes that this limit will substantially reduce these significant risks.

TOLUENE-2, 4-DIISOCYANATE

CAS: 584–84–9; Chemical Formula: $CH_3C_6H_3(NCO)_2$
H.S. No. 1398

The former OSHA limit for toluene-2, 4-diisocyanate (TDI) was a ceiling of 0.02 ppm. OSHA's proposed and final rule limits for TDI are 0.005 ppm as an 8-hour TWA and 0.02 ppm as a 15-minute STEL. The ACGIH (1988/Ex. 1–3, p. 584) and NIOSH (Ex. 8–47, Table N1) both recommend a TWA of 0.005 ppm and a STEL of 0.02 ppm for TDI.

TDI is one of the most frequently encountered occupational sensitizers, and it is also a known cross-sensitizer. The revised limit is based on human data showing that workers can develop sensitization reactions at exposure levels below the 0.02-ppm level. Elkins and colleagues (1962/Ex. 1–138) reviewed the incidence of TDI intoxication in 14 plants in Massachusetts between 1957 and 1962. In eleven instances of TDI intoxication, the average concentration of TDI was 0.015 ppm, and in nine cases the average concentration was below 0.01 ppm. In all plants where the average levels were above 0.01 ppm, TDI had caused respiratory problems. TDI-related respiratory problems were not observed when the average concentration of TDI was maintained below 0.007 ppm (Elkins, McCarl, Brugsch, and Fahy 1962/Ex. 1–138).

Williamson conducted two TDI studies (1964 and 1965, as cited in ACGIH 1986/Ex. 1–3, p. 584) that revealed a 5-percent sensitization rate in 99 workers exposed for 18 months to average levels of TDI below 0.02 ppm. The author believed that accidental spills accounted for the high sensitization rate. Williamson also found that six sensitized workers out of 18 exposed to concentrations of TDI below 0.02 ppm for 14 months showed marked decreases in lung function (Williamson 1964 and 1965, as cited in ACGIH 1986/Ex. 1–3, p. 584).

A NOEL (no-observed-effect level) for TDI has been documented. In 1975, Roper and Cromer (Ex. 1–147) failed to observe any symptoms of respiratory illness or changes in pulmonary function in nine employees working in a plant where breathing zone samples showed TDI concentrations of 0.001 to 0.002 ppm.

Wegman and colleagues (1974/Ex. 1–112; 1977/Ex. 1–171; 1982/Ex. 1–133) observed a dose-response relationship between exposure and long-term decline

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in lung function as documented by test results among TDI-exposed employees. Only for those workers exposed to less than 0.002 ppm TDI were the results of lung function tests normal (Wegman, Pagnotto, Fine, and Peters 1974/ Ex. 1-112; Wegman, Peters, Pagnotto, and Fine 1977/Ex. 1-171; Wegman, Musk, Main, and Pagnotto 1982/Ex. 1-133).

Several commenters submitted comments on TDI. NIOSH (Tr. 3-66, 97) and the United Auto Workers (Tr. 7-38 to 7-44) urged OSHA to designate TDI as a carcinogen, while the Dow Chemical Company (Ex. 106A) argued that TDI should not be so designated. As discussed in the preamble section entitled "Boundaries to Regulation," OSHA is not specifically designating substances as carcinogens; many other organizations, such as the International Agency for Research on Cancer, the ACGIH, NIOSH, etc. do so. The Workers Institute for Safety and Health (Ex. 106) urged OSHA to regulate all six of the isocyanates, rather than the three included in this rulemaking, on the grounds that employees would switch to the unregulated isocyanates, which might present as great a hazard as the regulated ones. In response to WISH, OSHA notes that the scale and scope of the present rulemaking required that OSHA make decisions on substances to be included to facilitate the process; the selection process is described in the preamble section entitled "Boundaries to Regualtion."

The Agency concludes that the evidence clearly demonstrates that workers are at significant risk of pulmonary sensitization reactions at the former PEL, as evidenced by declines in pulmonary function observed among workers exposed below this level. OSHA has determined that establishing a 0.005-ppm TWA with a 0.02-ppm STEL will substantially reduce this significant risk. The Agency notes that effects have been observed at levels somewhat below the final rule's PEL; OSHA will therefore continue to monitor the toxicological literature on this substance carefully in the future.

Conclusions for This Group of Sensitizing Toxicants

For the eight sensitizing agents included in this category of substances, OSHA concludes that there are significant occupational risks associated with exposure. The effects caused by such exposures are mediated by the immune system and include skin sensitization, substantial decrements in lung function, bronchoconstriction, asthma, and severe skin irritation, all of which constitute material impairments of health and functional capacity. Reducing or establishing exposure limits for these toxic substances will substantially reduce these significant workplace risks.

15. Substances for Which Limits Are Based on Avoidance of Cancer

Introduction

This group comprises 16 substances for which the ACGIH or NIOSH has recommended new or revised limits based on evidence that occupational exposure may be associated with an increased cancer risk. Table C15-1 lists the former OSHA permissible exposure levels (PELs), the proposed PELs, the PELs established in the final rule, and the CAS and HS numbers for these substances. OSHA is proposing to revise existing TWA and/or STEL limits for six substances, retain a PEL for four substances currently listed on Table Z-2, and add limits for four substances not currently listed on OSHA's Z tables. For one previously unregulated substance, chromyl chloride, OSHA has concluded that a separate 6(b) rulemaking is appropriate. For one substance OSHA is not establishing an exposure limit at this time.

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TABLE C15-1. Substances for Which Limits Are Based on Avoidance of Cancer

H.S. Number/ Chemical Name	CAS No.	Former PEL	Proposed PEL	Final Rule PEL*
1008 Acrylamide	79-06-1	0.3 mg/m^3 TWA, Skin	0.03 mg/m^3 TWA, Skin	0.03 mg/m^3 TWA, Skin
1020 Amitrole (3-Amino-1,2,4-triazole)	61-82-5	--	0.2 mg/m^3 TWA,	0.2 mg/m^3 TWA,
1028 Asphalt fumes	8052-42-4	--	5 mg/m^3 TWA	See text
1033 Beryllium & compounds	7440-41-7	0.002 mg/m^3 TWA 0.005 mg/m^3 STEL (30 min) 0.025 mg/m^3 Ceiling	0.002 mg/m^3 TWA 0.005 mg/m^3 STEL (30 min) 0.025 mg/m^3 Ceiling	0.002 mg/m^3 TWA 0.005 mg/m^3 STEL (30 min) 0.025 mg/m^3 Ceiling
1073 Carbon tetrachloride	56-23-5	10 ppm TWA 25 ppm STEL (5 min/4 hr) 200 ppm Ceiling	2 ppm STEL (60 min)	2 ppm TWA
1086 Chloroform	67-66-3	50 ppm Ceiling	2 ppm STEL (60 min)	2 ppm TWA

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TABLE C15-1. Substances for Which Limits Are Based on Avoidance of Cancer (continued)

H.S. Number/ Chemical Name	CAS No.	Former PEL*	Proposed PEL	Final Rule PEL
1092 Chromic acid & chromates	Varies with Compound	0.1 mg/m^3 (as CrO_3) Ceiling	0.1 mg/m^3 (as CrO_3) Ceiling	0.1 mg/m^3 (as CrO_3) Ceiling
1094 Chromyl chloride	14977-61-8	--	--	--
1142 Dimethyl sulfate	77-78-1	1 ppm TWA, Skin	0.1 ppm TWA, Skin	0.1 ppm TWA, Skin
1291 2-Nitropropane	79-46-9	25 ppm TWA	10 ppm TWA	10 ppm TWA
1308 Perchloroethylene	127-18-4	100 ppm TWA 200 ppm STEL (5 min/3 hr) 300 ppm Ceiling	50 ppm TWA 200 ppm STEL	25 ppm TWA
1399 o-Toluidine	95-53-4	5 ppm TWA, Skin	2 ppm TWA, Skin	5 ppm TWA, Skin
1400 p-Toluidine	106-49-0	--	2 ppm TWA, Skin	2 ppm TWA, Skin
1425 Vinyl bromide	593-60-2	--	5 ppm TWA	5 ppm TWA
1426 Vinyl cyclohexene dioxide	106-87-6	--	10 ppm TWA, Skin	10 ppm TWA, Skin

TABLE C15-1. Substances for Which Limits Are Based on Avoidance of Cancer (continued)

H.S. Number/ Chemical Name	CAS No.	Former PEL*	Proposed PEL	Final Rule PEL
1436 Zinc chromates $(CrVI)^{++}$	Varies with compound	0.1 mg/m^3 (as CrO_3) Ceiling	0.1 mg/m^3 TWA (as CrO_3) Ceiling	0.1 mg/m^3 (as CrO_3) Ceiling

* OSHA's TWA limits are for 8-hour exposures; its STELs are for 15-minutes unless otherwise specified; and its ceilings are peaks not to be exceeded for any period of time.

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The following discussion addresses some general aspects of carcinogenicity, together with the methodology used by OSHA in previous rulemakings to assess carcinogenic hazards. Two representative substances are reviewed in terms of their effects, dose-response considerations, and quantitative risk assessments to evaluate the decrease in risk of developing cancer that is expected after revising or establishing PELs for these substances. In this section, quantitative risk models that are widely accepted by the scientific community are used as a means of estimating cancer risks. The multistage model, which is the model primarily used by OSHA, is preferred over other models because it is based on a more plausible biological mechanism of cancer than the other models.

Description of the Health Effects

Cancer is a life-threatening and particularly insidious disease that is brought about by the invasion of organ systems by abnormal tissue growth. The abnormal issue is comprised of cells that have been altered in such a way as to cause unrestricted cell growth. As this unrestricted growth progresses, the abnormal tissue begins to interfere with the vital functions of normal organ systems. In the absence of medical intervention, most forms of cancer are ultimately lethal. In some instances (e.g., colon cancer, breast cancer), life can be prolonged through chemotherapy, radiation treatment, surgery, or some combination of these; however, the quality of life of the victims of cancer is usually severely affected. In other instances, such as lung cancer, there is little hope of survival, even when aggressive treatment strategies are employed. In past rulemakings on occupational carcinogens (see, for example, Benzene, Ethylene Oxide, Asbestos, and Formaldehyde), OSHA has held that malignant disease constitutes material impairment of health and functional capacity.

An increased risk of developing cancer has been associated with occupational or environmental exposure to a number of chemical substances. The development of chemically induced cancer in humans and animals is a complex and multistep process that is not completely understood. It is currently believed that the mechanism by which cancer develops requires at least two stages: initiation and promotion. Initiation occurs when chemicals interact either directly or indirectly with DNA to cause a heritable mutation. Alterations in DNA structure may cause an incorrect reading of the DNA sequence during replication and result in more altered cells, which may eventually be expressed as a tumor. There is a correlation between substances that are mutagenic in *in vitro* test systems and their ability to cause cancer. Although genotoxic assays are not capable of predicting carcinogenic potential with certainty, such assays are useful for the preliminary identification of substances that may have the potential to cause cancer.

The second stage in the carcinogenic process is promotion. Promotion is considered to be the likely mechanism of action when there is no evidence that a substance interacts with genetic material (e.g., when *in vitro* mutagenicity assays are negative). Peroxisome proliferation, immunosuppression, and hormonal alterations are examples of promotional events; these events facilitate the unrestricted multiplication of initiated cells, leading to the development of cancer. When a substance or its metabolite possesses both initiation and promotion capabilities, it is considered to be a complete carcinogen (i.e., exposure to the substance alone is sufficient to cause cancer). Examples of such substances that OSHA has recently regulated include asbestos, benzene, ethylene oxide, and formaldehyde.

In all of OSHA's past rulemakings for carcinogens, the Agency has used a weight-of-evidence approach to assess the carcinogenic potential of chemical substances. This approach involves examining all available human epidemiologic studies, clinical and case studies, animal studies, mutagenicity studies, and metabolic studies, combined with a quantitative assessment of cancer risk, to make determinations regarding the potential that occupational exposure to a substance increases the risk of cancer. OSHA relies most heavily on epidemiologic studies of worker populations and well-conducted animal bioassays to make these determinations. OSHA's overall approach to promulgating regulations for carcinogens has been upheld in a number of court decisions.

The following discussion summarizes how epidemiologic and animal studies are used to assess cancer risk.

Epidemiology studies. Epidemiological studies that include detailed exposure data provide the best evidence for describing a causal relationship between exposure to a substance and the onset of cancer in humans. Epidemiologic evidence has been relied on heavily in OSHA's decisions to promulgate standards for the carcinogens benzene, asbestos, and arsenic. At a minimum, positive epidemiologic studies provide qualitative proof of a causal relationship between exposure to a substance and the development of cancer. A general lack of quantitative exposure data and the long latencies between onset of exposure and appearance of disease may make it difficult to derive quantitative dose-response relationships from epidemiological studies. However, the ability of such studies to link exposures to carcinogens to cancer in humans outweighs these limitations.

Because of the long latency periods associated with chemically induced cancer in humans, these studies cannot be used to detect disease until after irreparable harm has been done. To protect workers or other human populations, therefore, it is necessary to assess the risk of such effects before they occur. The data used for this purpose derive from animal bioassays; these data are used to predict potential human responses and to infer a causal relationship between exposure to a substance and the onset of disease.

Animal data. Animal studies frequently provide the best dose-response data for chemically induced cancer. When relying on such studies, assumptions must be made in order to extrapolate from animal bioassay data to humans; the most important of these are that physiologic, pharmacokinetic, and biochemical parameters are similar between mammalian species. To the extent that adequate metabolic data are available, such data may be used to refine the extrapolation from animals to humans. Despite the need to make such assumptions, it is widely accepted that animals are acceptable surrogates for estimating potential cancer risks in humans. This confidence derives from the observation, after many years of conducting bioassay studies, that there appears to be a reasonable concordance between carcinogenic effects in animals and these effects in humans.

Dose-Response and Quantitative Assessment of Risk

Unlike other chemically induced toxic effects discussed in this preamble, a large body of scientific knowledge has accumulated regarding the mechanisms by which carcinogens act and the quantitative relationship between dose and biological response. As a result of these investigations, several mathematical approaches have been developed that permit estimates to be made of the cancer risk that is associated with exposure to low doses of carcinogenic substances.

Since the dominant view of the carcinogenic process holds that most cancer initiators cause irreversible damage to DNA, there is reason to assume that the dose-response of most carcinogens will follow a linear, nonthreshold relationship. The Office of Science and Technology Policy (OSTP 1985/Ex. 1–1128) recommends the use of models that incorporate low-dose linearity when the data are limited and uncertainty exists regarding the mechanisms of carcinogenic action. In conducting risk assessments for prior rulemakings, OSHA has generally relied on the linearized multistage model.

The multistage model used to assess cancer risks associated with exposure to substances in this group is GLOBAL83, a model developed by K.S. Crump and colleagues. If P(d) represents the lifetime risk of cancer at dose d, and A(d) is the extra risk over the background rate at dose d, then the multistage model has the following form:

$$A(d)=1-\exp[-(q_1d+q_2d^2+\ldots+q_kd^k)]$$

where:

$q_i>0$

$i=1,2,3,\ldots,k$

and $A(d)=[P(d-P(0)]/[1-P(0)]$

For a unique set of q_i, this function will adequately describe (or fit) the experimentally derived data. How well the model describes the data may be mathematically determined by what are termed goodness-of-fit tests. Once the model is fit to the data, the maximum likelihood estimate (MLE) and the 95-percent upper-confidence limit (UCL) of A(d) are calculated using the 95-percent upper-confidence limit on parameter q_1 (q_1^*). The MLE is the point estimate of A(d), and is therefore considered the best estimate of extra risk at dose d.

Dr. Nathan J. Karch, President of Karch Associates and an expert in risk assessment, testified on the appropriateness of using the linearized multistage model to estimate occupational cancer risk:

> The multistage model and the program upon which it is based [GLOBAL83] involves a number of assumptions that are considered unlikely to underestimate risk. At lower doses, the risk is assumed to be linear in dose, and no threshold is assumed to exist * * *. The risk was assumed to be independent of background rates of cancer * * *.
>
> I recognize with growing knowledge of the complexity of various possible mechanisms for cancer induction, that several aspects of the model have come under increasing investigation * * *. Despite what may appear to be conservative assumptions in the use of animal data with the multistage model * * * the multistage model is not likely to be overly conservative at most of the exposures contemplated by this rulemaking. Since the proposed PELs are similar to experimental doses in animals in many cases, the risk estimates from the multistage model tend to be less conservative unless [the PELs] are very high in relation to experimental doses. Moreover, at high doses the risk estimates produced by GLOBAL are similar to those generated by the other commonly used models (Tr. p. 13–50).

OSHA asked Dr. Karch to evaluate the scientific literature on the substances in this group to determine whether the data for each substance were suitable for estimating quantitative cancer risk using the multistage model. Dr. Karch found the data to be suitable for the following substances: acrylamide, amitrole, carbon tetrachloride, chloroform, styrene, o-toluidine, p-toluidine, and vinyl bromide (Ex. 85– Tr. pp. 13–50). (Dr. Karch also found the data adequate to perform quantitative assessments for nickel sulfide roasting and beryllium compounds; these assessments were not included in OSHA's NPRM since no revision of the PELs for these materials was proposed). For the remaining substances examined by Dr. Karch, the data were judged to be unsuitable for use with the multistage model, and, as such, it was impossible to estimate quantitative cancer risk associated with exposure to these substances.

An analysis that we perform[ed on] extrapolations from annual data using the multistage model in previous OSHA rulemakings on benzene, ethylene oxide and formaldehyde disclosed that the best, meaning maximum likelihood estimates, from the multistage model were similar and not above the range of estimates from epidemiologic data available * * * [on] workers (Tr. pp. 13–5 to 13–53).

For those substances for which data were suitable for estimating quantitative cancer risks, OSHA relied on these estimates, in part, for making its significant risk findings. OSHA has discussed its approach for making significant risk determinations in a number of rulemakings dealing with carcinogens. This approach has been upheld by several courts of appeals. Although not discussed in detail here, the same methodology is being followed in this rulemaking. (See Arsenic, 48 *FR* 1816, 1901–1902 (Jan. 14, 1983), upheld *ASARCO* v. *OSHA*, 746 F.2d 483 (9th Cir., 1984); Benzene, 52 *FR* 34507 (September 11, 1987); Ethylene Oxide, 49 *FR* 25763 (June 22, 1984), *Public Citizen* v. *Tyson*, 796 F.2d 1479 (D.C. Cir., 1986); Asbestos, 51 *FR* 22646 (June 20, 1986), *Building and Construction Trades* v. *Brock*, 838 F.2d 1258 (D.C. Cir., 1988).)

The Supreme Court, in its *Benzene* decision, indicated when a reasonable person might consider a risk significant and take steps to decrease it. The Court stated:

> It is the Agency's responsibility to determine in the first instance what it considers to be a "significant" risk. Some risks are plainly acceptable and others are plainly unacceptable. If, for example, the odds are one in a billion that a person will die from cancer by taking a drink of chlorinated water, the risk clearly could not be considered significant. On the other hand, if the odds are one in a thousand that regular inhalation of gasoline vapors that are 2% benzene will be fatal a reasonable person might well consider the risk significant and take the appropriate steps to decrease or eliminate it. (*I.U.D.* v. *A.P.I.*, 448 U.S. at 655).
>
> The Court stated that "while the Agency must support its findings that a certain level of risk exists with substantial evidence, we recognize that its determination that a particular level of risk is 'significant' will be based largely on policy considerations." The Court added that the significant risk determination required by the OSH Act is "not a mathematical straitjacket," and that "OSHA is not required to support its findings with anything approaching scientific certainty." The Court ruled that "a reviewing court [is] to give OSHA some leeway where its findings must be made on the frontiers of scientific knowledge [and that * * *] the Agency is free to use conservative assumptions in interpreting the data with respect to carcinogens, risking error on the side of overprotection rather than underprotection" (448 U.S. at 655, 656).

As part of the overall significant risk determination, OSHA considers a number of factors. These include the type of the risk presented, the quality of the underlying data, the reasonableness of the risk assessments, the statistical significance of the findings and the significance of risk (see, for example, Arsenic, 48 FR 1864, January 14, 1983).

OSHA pointed out that guidance for the Agency in evaluating significant risk is provided by an examination of occupational risk rates and legislative intent. For example, in the high-risk occupations of firefighting, and mining and quarrying, the average risk of death from all causes of occupational injury or an acute occupationally related illness from a lifetime of employment (45 years) is 27.45 and 20.16 per 1,000 employees respectively. Typical occupational risk of death in occupations of average risk are 2.7 per 1,000 for all service employment. Typical lifetime occupational risks of death in occupations of relatively low risk are 0.48 per 1,000 in electric equipment and 0.07 per 1,000 in retail clothing. These rates are derived from 1979 and 1980 Bureau of Labor Statistics data from employers with 11 or more employees adjusted to 45 years of employment for 46 weeks per year.

Congress passed the Occupational Safety and Health Act of 1970 because of a determination that occupational safety and health risks were too high. Based on this it is clear that Congress gave OSHA authority to reduce risks of average or above average magnitude when feasible. Further the Supreme Court stated that "if the odds are

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one in a thousand that regular inhalation of gasoline vapors that are 2% benzene will be fatal a reasonable person might well take the appropriate steps to decrease or eliminate it" (448 U.S. at 650).

In this final rule, OSHA is using the general approach and guidance described above for making significant risk determinations for carcinogens.

The following sections discuss the carcinogenicity evidence for the chemicals listed in Table C15-1. A brief discussion of the data and a quantitative risk assessment (where appropriate) are included to demonstrate the reduction in cancer risk that could result from lowering the current OSHA PELs or establishing new limits for these potential carcinogens.

ACRYLAMIDE

CAS: 79-06-1; Chemical Formula: $CH_2=CHCONH_2$
H.S. No. 1008

The former OSHA 8-hour TWA permissible exposure limit for acrylamide was 0.3 mg/m³, with a skin notation, and the Agency proposed a revised PEL of 0.03 mg/m³, with a skin notation, for this substance, based on evidence of its carcinogenicity in animals. NIOSH (Ex. 8-47, Table N8A) concurs that these limits are appropriate for acrylamide. The ACGIH recommends a TLV of 0.03 mg/m³ for this substance (ACGIH 1988/Ex. 1-3, p. 12). The final rule promulgates an 8-hour TWA PEL of 0.03 mg/m³, with a skin notation, for acrylamide.

Acrylamide is a white solid and is widely used as a reactive monomer or intermediate in organic synthesis, and polyacrylamide is a polymer that is used in the manufacture of a host of products, including adhesives, mining chemicals, fibers, pharmaceuticals, animal feed, paper sizing, molded parts, textiles, and coagulant aids (American Cyanamid Company, Ex. 94; ACGIH 1986/Ex. 1-3, p. 12). Chronic exposure to acrylamide has been associated with neurotoxic effects in animals and humans; in cats, the no-effect dose level for neurotoxic effects ranges from 0.3 to 1.0 mg/kg/day (ACGIH 1986/Ex. 1-3, p. 12). Neuropathic effects caused by exposure to acrylamide are dose-related and have been seen in rats, cats, and monkeys. Observed effects in humans included muscular weakening, ataxia, incoordination, tremors, and hallucinations. Acrylamide can be absorbed through the skin in sufficient quantities to be systemically toxic; the dermal LDLo in rabbits is 1000 mg/kg (RTECS 1988).

Tests on the mutagenicity of acrylamide have produced conflicting results (ACGIH 1986/Ex. 1-3, p. 12). However, acrylamide is associated with reproductive effects; based on a drinking water study by Smith, Zenick, Preston et al. (1986/Ex. 1-1123), OSHA concluded that acrylamide causes dominant lethality in the male rat (53 FR 21191).

Two studies are available that demonstrate the carcinogenicity of acrylamide: Johnson, Gorzinsky, Bodner et al. (1986/Ex. 1-825) and Bull, Robinson, Laurie et al. (1984/Ex. 1-252). OSHA described both of these studies in the preamble to the proposed rule (53 FR 21191); they are briefly summarized here. In the Bull et al. (1984/Ex. 1-252) study, acrylamide was tested as a skin tumor initiator in female Sencar mice; 12-o-tetradecanoylphorbol-13-acetate (TPA) was used as a promoter. The authors administered six doses ranging from 0 to 50 mg/kg body weight over a two-week period. A dose-related increase in tumor incidence was observed for all routes of exposure tested, including topical, gastric intubation, and intraperitoneal injection. The same authors (Bull, Robinson, Laurie et al. 1986/Ex. 1-252) noted a dose-related increase in lung adenomas in A/J mice administered acrylamide either by gastric intubation or intraperitoneal injection.

The second study was performed by Johnson et al. (1986/Ex. 1-825) on male and female Fischer 344 rats given 0 to 2.0 mg/kg/day acrylamide in drinking water for a period of two years. During the last four months of this study, mortality from cancer was observed at a statistically significant rate in rats exposed at the highest dose level; in addition, tumor incidence increased in animals of both sexes in the highest dose group. In females, tumors of the mammary gland, central nervous system thyroid gland, oral tissues, uterus, and clitoral gland were seen, while males developed tumors of the central nervous system, thyroid, adrenal gland, and scrotum (Johnson, Gorzinsky, Bodner et al. 1986/Ex. 1-825). Peripheral nerve degeneration was also seen in female rats exposed at the 2-mg/kg/day level (ACGIH 1986/Ex. 1-3, p. 13).

OSHA received comments on the proposed limit for acrylamide from NIOSH and from one other rulemaking participant. Linda Dulak, Toxicology Program Manager for the American Cyanamid Company, submitted a detailed critique of OSHA's discussion (53 FR 21191) of acrylamide's carcinogenicity (Ex. 94). According to Dr. Dulak: (1) The Johnson et al. (1986/Ex. 1-825) study described above is "inconclusive" with regard to acrylamide's carcinogenicity; (2) the Bull et al. (1984/Ex. 1-252) study demonstrates only that acrylamide is not a "complete" carcinogen; (3) OSHA has not demonstrated that the risk of exposure to acrylamide at the former PEL of 0.3 mg/m³ is significant; and (4) OSHA has not demonstrated that it is feasible, either technologically or economically, to achieve the proposed 0.03-mg/m³ limit (Ex. 94). The paragraphs below discuss each of these points in turn.

Dr. Dulak believes that the results of the Johnson et al. (1986/Ex. 1-825) study should be regarded as "inconclusive" because (1) the presence of a vital infection in the animals of all dose groups "complicates the evaluation of the data"; (2) the highest dose administered was toxic to female rats; and (3) there were high background incidences of tumors among the controls (Ex. 94, p. 6). In addition, American Cyanamid states that the Bull et al. (1984/Ex. 1-252) study demonstrates only that acrylamide is not a complete carcinogen because animals administered acrylamide alone did not develop skin tumors (Ex. 94, p. 8). Dr. Dulak reported that American Cyanamid is currently conducting a second carcinogencity study designed to clarify the questions that arose during the Johnson et al. (1986/Ex. 1-825) study, and preliminary review suggests that these results will differ significantly from those of the early study (Ex. 94, pp. 6-8). Dr. Dulak notes that the ACGIH is planning to review the expanded toxicological data base for acrylamide in the fall of 1988 and that the Food and Drug Administration and the Science Advisory Board of EPA are preparing to review the second American Cyanamid study when it becomes available (Exs. 3-961 and 8-76; Ex. 94, pp. 2-3). OSHA's response to Dr. Dulak's comments follows.

First, as regards the Bull et al. (1984/Ex. 1-252) study, prudent public-health policy dictates that all carcinogens, rather than only complete carcinogens, be regulated to levels that will provide worker protection. Second, OSHA notes that the authors of the Bull et al. (1984/Ex. 1-252) study are of the opinion that the potency of acrylamide as a tumor initiator is equal to that of ethyl carbamate, a widely recognized tumorigen (Klaasen, Amdur, and Doull 1986/Ex. 1-99, p. 123); in addition, these authors demonstrated that mice of a different strain (ie., A/J mice) developed lung adenomas when given acrylamide by gastric intubation or intraperitoneal injection. Third, OSHA finds the Bull et al. (1984/Ex. 1-252) study, which showed a dose-related increase in skin tumors in one strain of mouse by three

different routes of exposure and the development of lung tumors in another strain of mouse by two routes of administration, convincing evidence of acrylamide's carcinogenicity. OSHA looks forward to reviewing both the results of American Cyanamid's second study and the ACGIH TLV Committee's comments on acrylamide when these become available. However, the risk demonstrated by OSHA's risk assessment for acrylamide indicates that delaying regulatory action until additional research has been done would be inappropriate; further, it is the Agency's experience that research results are often not published for several years and that the deliberations of the ACGIH Committee are often time-consuming. OSHA finds it inappropriate to delay action when the best available evidence at present indicates a significant risk at the former PEL. Further, OSHA notes that the ACGIH was sufficiently persuaded of acrylamide's carcinogenicity by the findings of the Bull et al. (1984/Ex. 1-252) and Johnson et al. (1986/Ex. 1-825) studies to assign this substance an A2 (suspected human carcinogen) designation. The International Agency for Research on Cancer (IARC) was also convinced by the evidence presented in these studies; IARC judged that the evidence for the carcinogenicity of acrylamide in animals was sufficient (IARC 1986). However, in light of the ongoing research being conducted by American Cyanamid, OSHA will consider new evidence as it becomes available and will revise its limit if this action appears to be warranted.

In response to Dr. Dulak's third point (that, in American Cyanamid's view, OSHA has not demonstrated that risk at the former PEL of 0.3 mg/m³ is significant), OSHA points to the results of the Agency's quantitative risk assessment, which show that the maximum likelihood estimate of the risk at the former PEL of 0.3 mg/m³ is 10 cancer deaths per 1,000 workers exposed at that level over their working lifetimes (Table C15-1).

TABLE C15-2. Multistage Model Estimates of Cancer Risk Associated with Working Lifetime Exposure to Acrylamide

Exposure level	Excess cancer deaths per 1,000 workers	
	MLE	UCL
0.3 mg/m³[a]	10	45
0.03 mg/m³[b]	1	5

[a] Former OSHA PEL.
[b] Final Rule PEL.
MLE = Maximum likelihood estimate of risk.
UCL = 95-percent upper-confidence limit on maximum likelihood estimate of risk.

American Cyanamid believes that both the recent epidemiological findings of Sobel, Bond, Parsons, and Brenner (1986, as cited in Ex. 94) in a cohort mortality study of Dow Chemical Company acrylamide-exposed workers and additional results from a more recent mortality study (Collins et al. 1987/Ex. 3-961) of American Cyanamid's workers show that "acrylamide is not carcinogenic to people" (Ex. 94, pp. 9-10).

Dr. Dulak discussed the Collins et al. study (1987/Ex. 3-961, Appendix V) at length in posthearing comment:

> It was determined that the study was large enough to detect the increased risk of cancer which OSHA has indicated would occur at present exposure limits. These findings, therefore, indicate that OSHA has overestimated the risk of cancer among acrylamide workers at the present PEL (Ex. 94, p. 9).

OSHA does not agree that its quantitative risk assessment is inconsistent with the findings of the Collins et al. (1987) study. These investigators reported that the average cumulative exposures (defined as mg/m³-years, the product of airborne concentration and duration of exposure) for each of the four subcohort plants included in the study ranged from 0.07 to 1.54 mg/m³-years, with an overall average of 1.0 mg/m³-years. This cumulative exposure corresponds to a 45-year exposure to 0.02 mg/m³; at this level of exposure, OSHA's risk assessment shows that the excess lifetime cancer risk is less than one death per 1,000 workers. Thus, at the levels and durations of exposure experienced by the cohort studied by Collins et al. (1987), OSHA's risk assessment suggests that only one or two exposure-related excess cancer deaths would be expected among the 2,293 exposed employees; clearly, such a small excess cancer death rate, which represents an increase of only 3 percent over background rates for all neoplasms,

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would not have been detected by this study. OSHA finds that the results presented by Collins et al. (1987) are not inconsistent with the results of OSHA's quantitative risk assessment. OSHA therefore reaffirms in this final rule that it is appropriate to treat acrylamide as a potential occupational carcinogen.

In response to American Cyanamid's final point, which relates to the technological and economic feasibility of achieving the final rule's 0.03-mg/m³ 8-hour TWA level, OSHA notes the following. First, with very few exceptions, the Agency's final Regulatory Impact Assessment (Section VII) has determined that the controls necessary to achieve compliance with the limits proposed in this rulemaking are both technologically and economically feasible. This is clearly the case for firms, such as American Cyanamid, in the Chemical Manufacturing sector, SIC 28. Second, the EPA (1986b) study submitted by American Cyanamid (Ex. 94), entitled *Assessment of Airborne Exposure and Dermal Contact to Acrylamide During Chemical Grouting Operations*, showed that most worker exposures were consistently below the 0.03-mg/m³ level at the present time. Third, a NIOSH study (Hills and Greife 1980, as cited in Ex. 94) of facilities engaged in acrylamide monomer manufacturing reported considerable variability in exposure levels between the four plants surveyed; the observed variability was due in part to differences in housekeeping practices, age and maintenance of equipment, and use of engineering controls and natural dilution ventilation. NIOSH recommended that both frequent washing of the production area and ventilation be used to reduce airborne exposures to acrylamide. OSHA believes that it is technologically feasible for affected facilities to achieve compliance with the level promulgated by this final rule (see the Technological Feasibility section of this preamble). The Agency is therefore setting a revised 8-hour TWA exposure limit of 0.03 mg/m³ for acrylamide, with a skin notation, based on the significant risk of cancer posed to workers exposed to this substance in the workplace. OSHA concludes that this effect represents a material impairment of health and functional capacity, and the Agency concludes that the 0.03-mg/m³ PEL will substantially reduce this significant occupational risk.

AMITROLE

CAS: 61-82-5; Chemical Formula: $C_2H_4N_4$; H.S. No. 1020

OSHA had no former PEL for amitrole; the Agency proposed a TWA limit of 0.2 mg/m³, which is also the limit recommended by the ACGIH (1988/Ex. 1-3, p. 25) on the basis of positive carcinogenicity studies conducted in rats and mice. OSHA is establishing these limits in the final rule. NIOSH recommends a 10-hour TWA of 0.3 mg/m³ for amitrole, which is a crystalline solid; however, NIOSH specifically concurred with the limit for this substance being established by the final rule (Ex. 8-47, Table N6A). Amitrole is used as a herbicide and plant growth regulator.

Amitrole is a potent antithyroid agent and has been shown to cause tumors, particularly of the thyroid and pituitary glands, in experimental animals (ACGIH 1988/Ex. 1-3, p. 25). Its tumor-producing activity is thought to be related to its goitrogenic effects, which cause an increase in thyroid-stimulating hormone (TSH). Other antithyroid agents that cause TSH stimulation, such as propylthiouracil, have also been shown to produce thyroid tumors (Guyton 1981/Ex. 1-1002). Amitrole has not been shown to be mutagenic in the Ames bacterial mutation assay, a dominant lethal test in male mice, or in assays that measure recessive sex-linked lethal mutations in *Drosophila melanogaster* (ACGIH 1986/Ex. 1-3, p. 25).

An excess incidence of tumors has been reported to occur among pesticide workers exposed to amitrole alone or in combination with phenoxy herbicides. Although these studies indicate the possible association of increased tumor incidence with exposure to amitrole, confounding factors, such as smoking and concurrent exposure to other pesticides, complicate the interpretation of these data.

The Swedish National Board of Occupational Safety and Health ordered an epidemiological evaluation to assess the incidence of cancer among railroad workers exposed to herbicides (Axelson and Sundell 1974/Ex. 1-812). Amitrole was among the pesticides utilized by these workers. Cohorts were separated into groups according to whether they were exposed to amitrole and combinations of other herbicides, phenoxy acids and combinations of other herbicides, or other herbicides alone. A statistically significant increase in the incidence of total tumors and lung tumors was found among workers exposed to amitrole and combinations of other herbicides. Smoking frequency among members of this group was reported to be similar to the frequency of smoking in the general Swedish population.

In a 1980 follow-up to the Axelson and Sundell (1974/Ex. 1-812) study, Axelson and co-workers (Ex. 1-242) combined data from the earlier study with data on workers exposed from 1972 to 1978. Cohorts were divided into the following exposure groups: amitrole alone, phenoxy acids alone, and amitrole and phenoxy acids combined. The reanalyzed data did not show a statistically significant increase in cancer incidence among the workers exposed to amitrole alone; however, the incidence of tumors among workers exposed to amitrole and phenoxy acids together was significantly increased (Axelson, Sundell, Andersson et al. 1980/Ex. 1-242).

Amitrole has been found to be carcinogenic in laboratory animals following dietary exposure to relatively high doses. Attempts to induce tumors by dermal application and subcutaneous injection have been unsuccessful. Studies investigating the carcinogenic potential of amitrole in laboratory animals are reviewed below.

The effects of lifetime exposure to amitrole were investigated in rats, mice, and hamsters fed diets containing 1, 10, or 100 ppm amitrole (Steinhoff, Weber, Mohr, and Boehme 1983/Ex. 1-208). There was a significant increase in the incidence of thyroid tumors in male and female rats and in the incidence of pituitary tumors in female rats exposed to 100 ppm. An excess incidence of tumors was not found in male or female rats exposed to 1 or 10 ppm. The results of this experiment are presented in Table C15-3. Tumor induction was not observed in male or female mice or hamsters. Another study reported negative results for rats fed diets containing 10, 50, or 100 ppm amitrole (Jukes and Schaffer 1960/Ex. 1-213).

Dermal applications of 0.1 or 10 mg of amitrole produced no increased incidence of tumors in mice (IARC 1982a/Ex. 1-1112).

In contrast to the negative results obtained in mice following lifetime dietary exposure to 1, 10, or 100 ppm amitrole (Steinhoff, Weber, Mohr, and Boehme 1983/Ex. 1-208), positive results were observed in male and female mice following dietary exposure to higher levels (2192 ppm) of amitrole for one year (Innes, Ulland, Valerio et al. 1969/Ex. 1-270). Carcinomas of the thyroid were observed in 89 percent (64/72) of the exposed animals (tumor incidence in controls was not reported).

TABLE C15-3. Incidence of Rat Thyroid and Pituitary Tumors Associated With Ingestion of Amitrole

Tumor Site	Concentration in diet (ppm)			
	0	1	10	100
Thyroid (Male)				
- Benign	5/75	9/75	4/75	45/75*
- Malignant	3/75	0/75	3/75	18/75*
Thyroid (Female)				
- Benign	7/75	12/75	8/75	44/75*
- Malignant	0/75	1/75	4/75	28/75*
Pituitary (Female)				
- Benign	14/75	20/75	15/75	36/75*
- Malignant	1/75	2/75	4/75	5/75

* p 0.001, Fisher Exact Test.

Positive results were also observed in mice exposed to 1 percent (10,000 ppm) amitrole in the diet in a lifetime study (exposure for four weeks followed by one week with no exposure) (Feinstein, Fry, and Staffeld 1978a/Ex. 1-281). Liver tumors developed in 100 percent of the exposed mice; however, the incidence of tumors in unexposed controls was not reported. A small number of thyroid tumors was also reported. The authors hypothesized that the reason more thyroid tumors were not seen was because the animals died of the high toxic doses before such tumors were expressed.

Chronic dietary administration of amitrole in dogs (10, 50, 100, or 500 ppm) and in rainbow trout (1200 or 4800 ppm) did not result in the development of tumors (IARC 1982a/Ex. 1-1112), but these experiments were not long enough to allow for evaluation of the carcinogenicity of the chemical.

Risk estimate for amitrole. The study by Steinhoff et al. (1983/Ex. 1-208) provides sufficient information to estimate quantitatively the excess cancer risk associated with exposure to amitrole in the workplace. The linearized multistage model was chosen to estimate risk. The incidence of malignant thyroid tumors in female rats was used because these tumors demonstrate a clear monotonic response. Female rats were assumed to weigh 250 g and to consume 25 g of food per day. Human risks were estimated at exposure levels corresponding to the proposed PEL of 0.2 mg/m³, as well as for exposure levels of 0.4 mg/m³ and 1.0 mg/m³. OSHA has revised the risk estimates presented in the NPRM on amitrole to correct an overestimate in the calculation of lifetime dose (Ex. 110). The revised excess estimated cancer risk, in terms of excess deaths per 1,000 employees is shown in Table C15-4.

TABLE C15-4. Multistage Model Estimates of Cancer Risk Associated With Working Lifetime Exposure to Amitrole

Exposure Level	Excess Cancer Deaths per 1,000 Workers	
	MLE	UCL
0.2 mg/m^3[a]	2.7	3.5
0.4 mg/m^3	5.3	7.0
1.0 mg/m^3	13	17

[a] Final rule PEL.
MLE = Maximum likelihood estimate of risk.
UCL = 95-percent upper-confidence limit on maximum likelihood estimate of risk.

Exposure to 0.2 mg/m^3 of amitrole for an occupational lifetime (45 years) is associated with an estimated 3 excess cancer deaths per 1,000 employees (0.3 percent). This rate is based on the maximum likelihood estimate (MLE). The 95-percent upper-bound estimate of risk corresponding to this dose is about 4 excess cancer deaths per 1,000 workers. By comparison, the maximum likelihood estimates of risk for lifetime exposure to 0.4 mg/m^3 or 1.0 mg/m^3 are 5 or 13 excess deaths per 1,000 employees, respectively.

NIOSH (Ex. 8-47, Table N6A) concurred with OSHA's 0.2-mg/m^3 TWA limit for amitrole. Two other rulemaking participants commented on OSHA's assessment (Ex. 3-894; Tr. pp. 3-13 to 3-14). The American Industrial Health Council (AIHC) (Ex. 3-894) urged OSHA to use a different risk assessment procedure for amitrole that incorporates information on the mechanism by which amitrole induces thyroid tumors:

> Where, as in the case of amitrole, the data indicate that the tumors in the experimental animals are in endocrine sensitive tissue and the mechanism is a secondary hormonal action, a risk assessment procedure incorporating these mechanistic data should be used (Ex. 3-894, p. I-6).

The AIHC cites a draft EPA report on thyroid follicular cell carcinogenesis (EPA/625/3-88/014A, EPA 1988), which indicates that the steps leading to thyroid follicular cell tumors are expected to show a threshold effect. The AIHC also cites an FDA report (*General Principles for Evaluating the Safety of Compounds Used in Food-Producing Animals*, issued in conjunction with 52 FR 49572, FDA 1988), in which FDA concludes that, for the group of "endogenous sex steroids that have been adequately tested," the oncogenic response is related to overstimulation of the hormonal system and no cancer hazard is perceived to exist if the hormonal system is not overstimulated (Ex. 3-894, p. I-6).

Dr. Isadore Rosenthal, Corporate Director for Safety and Health at the Rohm and Haas Company, also testified on the mechanism of amitrole's carcinogenicity:

> There is much scientific evidence on threshold effects in regard to the generation of thyroid cancers by goiterogenic agents. In fact, the EPA has proposed using a new threshold risk assessment method for evaluating thyroid carcinogens (Tr. pp. 3-13 to 3-14).

OSHA recognizes the possibility that a threshold effect level may exist for the development of tumors induced by this special class of substances that act on endocrine-sensitive tissues. OSHA notes that EPA's preliminary findings and proposed threshold risk assessment model are still under review by the Science Advisory Board, and the Agency eagerly awaits EPA's final conclusions on this issue. OSHA points out, however, that amitrole has produced liver tumors in mice (Innes, Ulland, Valerio et al. 1969/Ex. 1-270; Feinstein, Fry, and Staffeld 1978a/Ex. 1-281) and, in one instance (Feinstein, Fry, and Staffeld 1978a/Ex. 1-281), the liver tumors appeared at an earlier age and at a higher incidence than did thyroid tumors. It is not clear from the present data that the mechanism for the development of these liver tumors is the same as that for thyroid tumors. OSHA also notes that the proposed 0.2-mg/m^3 PEL is, according to the ACGIH's calculations, only a factor of 10 lower than the demonstrated effect level for amitrole-induced effects of thyroid function; even assuming that amitrole-induced carcinogenesis follows a dose-threshold pattern, use of a tenfold safety margin when the risk involved is related to a disease as serious as cancer cannot be viewed as unreasonable.

Occupational exposure to amitrole has been shown to be associated with an increased incidence of thyroid and pituitary tumors in experimental animals. Although human studies have not demonstrated conclusively that amitrole is carcinogenic, the studies by Axelson and Sundell (1974/Ex. 1-812) and Axelson, Sundell, Andersson et al. (1980/Ex. 1-242) provide evidence that amitrole may increase the risk of cancer among exposed workers. The Agency concludes that the adverse effects resulting from exposure to amitrole constitute material impairment of health and functional capacity. OSHA's risk assessment, based on the animal data, shows that this significant excess cancer risk can be substantially reduced for employees who are currently exposed above the final rule's 0.2-mg/m^3 limit. Therefore, OSHA is establishing a 0.2-mg/m^3 TWA exposure limit for amitrole.

ASPHALT FUMES

CAS: 8052-42-4; Chemical formula: None
H.S. No. 1028

OSHA proposed an 8-hour TWA PEL of 5 mg/m^3 for asphalt fume. The ACGIH has a TLV-TWA of 5 mg/m^3, and NIOSH recommends a ceiling (15 minutes) of 5 mg/m^3 for asphalt fumes.

Extensive evidence was submitted to the record regarding the proposed PEL for asphalt fume. Because of the conflicting nature of some of the evidence and the complexity of the issues raised, OSHA has not yet been able to reach a final conclusion. Therefore, OSHA is temporarily delaying a final decision regarding the establishment of a separate PEL for asphalt fume; however, OSHA will make this final decision in a reasonable period of time.

BERYLLIUM AND COMPOUNDS

CAS No.: 7440-41-7
H.S. No. 1033

OSHA's current limits for beryllium are 0.002 mg/m^3 as an 8-hour TWA, 0.005 mg/m^3 as a 30-minute STEL, and 0.025 mg/m^3 as a ceiling. OSHA is retaining these limits in the final rule. The ACGIH has a TLV-TWA for beryllium of 0.002 mg/m^3. NIOSH (1977c; Baier 1977b/Ex. 1-831) recommends a ceiling limit of 0.5 ug/m^3 (0.0005 mg/m^3). Beryllium is a hard, brittle, gray-white metal.

The ACGIH recommendation is based on human evidence describing nonmalignant respiratory disease and berylliosis associated with exposure to beryllium. Because of the uncertainty regarding the concentrations of beryllium necessary to produce chronic respiratory disease, and because of the serious nature of the disease, the ACGIH set a TLV-TWA of 0.002 mg/m^3.

At the time of publication of NIOSH's criteria document on beryllium (NIOSH 1972a, as cited in ACGIH 1986/Ex. 1-3, p. 56), NIOSH judged the evidence on beryllium-related cancer to be equivocal. In testimony at OSHA's 1977 hearing on a standard for beryllium, however, NIOSH presented additional epidemiologic and animal evidence indicating that beryllium is carcinogenic. In particular, NIOSH (1977c; Baier 1977b/Ex. 1-831) cited the studies of Bayliss and Wagoner (1977) and Mancuso (1977), which showed significant increases in bronchogenic cancer among beryllium-exposed workers. NIOSH therefore recommended at the 1977 hearing that exposure to beryllium not exceed the reliable limit of detection of 0.5 ug/m^3 (NIOSH 1977c; Baier 1977b/Ex. 1-831).

George M. Talley and Michael C. Garcia, Industrial Hygienists for the Los Alamos National Laboratory (Ex. 3-1085), commented that beryllium should not be included in the group of potential carcinogens in this rulemaking because OSHA is not revising its limits for beryllium on the basis of carcinogenicity. As discussed in other sections of this preamble, OSHA's classification of substances in this preamble is not meant to have regulatory implications but to facilitate generic rulemaking. OSHA also notes, as do Mr. Talley and Mr. Garcia, that the ACGIH has designated beryllium as a potential (A2) human carcinogen.

Representatives of the International Chemical Workers Union (Tr. p. 9-217) and the AFL-CIO (Ex. 194) urged OSHA to issue a standard for beryllium based on the NIOSH REL. As explained in the proposal and in Section III of this preamble, however, OSHA has used its priority-setting authority to focus this rulemaking on substances selected for inclusion on the basis of certain decision rules. Beryllium is a substance with an extensive rulemaking history, in that OSHA has previously issued an NPRM and developed an extensive record for beryllium. The Agency determined that, because of this extensive prior history, beryllium presents issues that are too complex for a decision at this time.

The ACGIH TLV of 0.002 mg/m^3 (TWA) was judged in the NPRM to be less stringent than OSHA's existing PELs. NIOSH (Ex. 8-47, Table N6B) did not concur with OSHA's proposal to retain the existing PELs. As OSHA explained in the NPRM, the NIOSH REL is based on analytical and sampling limits of detection, an approach to limit-setting that does not necessarily satisfy OSHA's requirements regarding significant risk and feasibility. In the final rule, OSHA is retaining the Agency's PELs of 0.002 mg/m^3 TWA, 0.005 mg/m^3 as a 30-minute STEL, and 0.025 mg/m^3 as a ceiling for beryllium and compounds.

CARBON TETRACHLORIDE

CAS: 56-23-5; Chemical Formula: CCl_4
H.S. No. 1073

The current OSHA PELs for carbon tetrachloride are 10 ppm as an 8-hour TWA, 25 ppm as a STEL not to be exceeded for more than five minutes every four hours, and 200 ppm as a ceiling. OSHA proposed to revise these limits to a single limit of 2 ppm measured over 60 minutes, based on the NIOSH (1975a/Ex. 1-186) REL. The ACGIH has established a 5-ppm 8-hour TWA limit, with a skin notation, for this substance. Carbon tetrachloride is classified as a probable human carcinogen by EPA (Group B2) and IARC (Group 2B), and as a suspected human carcinogen by the ACGIH (Category A2), based on positive carcinogenicity studies in rats, mice, and hamsters. In the final rule, OSHA is establishing a 2-ppm 8-hour TWA limit for carbon tetrachloride. Carbon tetrachloride is a heavy, mobile liquid with a sweet odor.

In humans, there have been three case reports of liver tumors developing after carbon tetrachloride exposure (Tracy and Sherlock 1966/Ex. 1-152; Johnstone 1948/Ex. 1-817; Simler, Maurer, and Mandard 1964/Ex. 1-225). In each case, the patient has been acutely overexposed to carbon tetracholoride, leading to nausea, stomach pains, and signs of severe liver damage.

Blair, Decoufle, and Grauman (1979/Ex. 1-150) studied causes of death in 330 laundry and dry cleaning workers potentially exposed to carbon tetrachloride, as well as to trichloroethylene and tetrachloroethylene. Causes of death based on death certificates were compared to the age, sex, race, and cause-specific distribution of U.S. deaths from the same time period. The proportionate mortality ratio (PMR) for all malignant neoplasms was 128, which was statistically significant, indicating that the study group had a 28-percent higher proportion of total deaths due to cancer compared with the U.S. general population. The excess cancer deaths were due to liver, lung, and cervical cancer and leukemia. Although the excess lung and cervical cancer may reflect socioeconomic differences among these workers, the excess liver cancer seen in this study is consistent with findings in animal studies on carbon tetrachloride.

In animals, carbon tetrachloride has produced hepatocellular carcinomas in all species evaluated (rats, mice, and hamsters). Male rats were given 47 or 94 mg/kg carbon tetrachloride and females were given 80 or 150 mg/kg by gavage for 78 weeks (NCI 1976a/Ex. 1-119; NCI 1976b/Ex. 1-168; NCI 1977b/Ex. 1-169). The incidence of hepatocellular carcinomas was increased in animals exposed to carbon tetrachloride as compared with pooled colony controls but was statistically significant only for low-dose females. The lower incidence of carcinomas in female rats at the high dose (1/49) compared to the low dose (4/49) was attributed by the authors to the increased lethality that occurred among these rats before tumors could be expressed.

In this same study, mice of both sexes received 1250 or 2500 mg/kg carbon tetrachloride by gavage. Hepatocellular carcinomas were found in 49/49 low-dose and 47/48 high-dose males (compared with 5/77 in the control males) and in 40/40 low-dose and 43/45

high-dose females (compared with 1/80 in the control females) (NCI 1976a/Ex. 1–119; NCI 1976b/Ex. 1–168; NCI 1977b/Ex. 1–169).

Edwards, Heston, and Dalton (1942/Ex. 1–68) administered carbon tetrachloride by gavage (64 mg/mouse administered 46 times over four months) to a mouse strain known to have a low incidence of spontaneous hepatomas. The incidence of hepatomas was 52 percent (28/54) for males and 32 percent (6/19) for females. Previous hepatoma incidence data for untreated mice of this strain were 2/71 for males and 0/81 for females. Carbon tetrachloride administered by gavage has also been shown to produce neoplastic changes in the livers of four additional strains of mice (Andervont 1956/Ex. 1–61; Edwards 1941/ Ex. 1–66; Eschenbrenner and Miller 1943/Ex. 1–113).

Della Porta, Terracini, and Shubik (1961/Ex. 1–136) gave weekly gavage treatments of 10 to 20 ug to hamsters for 30 weeks, and the animals were observed for an additional 25 weeks. All 10 hamsters dying or killed between weeks 43 and 55 had liver cell carcinomas, in comparison with 0/254 in historical controls.

Risk estimate for carbon tetrachloride. Three data sets have sufficient dose-response information to allow quantitative risk estimation: the rat and mouse bioassay data (NCI 1976a/Ex. 1–119; NCI 1976b/Ex. 1–168; NCI 1977b/Ex. 1–169) and the Edwards, Heston, and Dalton (1942/Ex. 1–68) mouse data. To increase sample sizes, the data were pooled for male and female animals in each of the three studies. (In the NPRM, OSHA erroneously indicated that four data sets were pooled; see Ex. 110.) The estimated risk presented in Table C15–5 is the geometric mean of the risk calculated from each of the three data sets.

TABLE C15–5. Multistage Model Estimates of Cancer Risk Associated with Working Lifetime Exposure to Carbon Tetrachloride

Exposure Level	Excess Cancer Deaths per 1,000 Workers	
	MLE	UCL
2 ppm[a]	3.7	5.2
5 ppm[b]	9.2	13.0
10 ppm[c]	17.9	26.0

[a] Revised OSHA PEL.
[b] ACGIH TLV.
[c] Former OSHA TWA PEL.
MLE = Maximum likelihood estimate of risk.
UCL = 95-percent upper-confidence limit on the maximum likelihood estimate of risk.

Inhalation risk was calculated assuming an air intake of 20 m^3 per 24-hour day and a 40-percent absorption rate for humans (EPA 1984a/Ex. 1–1130). All four studies suggest that a common biological mechanism, cell death and regeneration, occurs and leads to the development of the same tumor type.

Table C15–5 presents the estimates of lifetime human risk from carbon tetrachloride exposure, calculated by the linearized multistage model (GLOBAL83), at the final rule's 2-ppm limit, the ACGIH limit of 5 ppm, and the former 10-ppm OSHA PEL. Both the maximum likelihood estimates (MLE) and the (95-percent upper-confidence limits of human risk are given, as well as the corresponding expected number of excess cancer deaths per 1,000 workers exposed over a working lifetime.

Based on this risk estimate, the MLE at the former OSHA limit of 10 ppm is 17.9 excess deaths per 1,000 exposed workers, clearly indicating that a significant cancer risk exists at the former PEL.

Risk at the current ACGIH limit of 5 ppm is estimated to be 9.2 excess deaths per 1,000 workers exposed over their working lifetimes. At the final rule's limit of 2 ppm, residual risk continues to be significant, according to the Supreme Court's guidance in the *Benzene* decision and the analysis presented in the introduction to this section; the risk predicted at 2 ppm is 3.7 excess deaths per 1,000 workers exposed over their working lifetimes. However, risk at the 2-ppm limit is substantially reduced compared with risk at the former OSHA PEL of 10 ppm. The estimate shows that approximately 14 cancer deaths per 1,000 workers would potentially be avoided over a lifetime by reducing the limit to 2 ppm.

Both NIOSH (Ex. 193) and the AFL–CIO (Ex. 194) supported OSHA's proposed 2-ppm 60-minute ceiling PEL and believed that carbon tetrachloride should be designated as a potential carcinogen. The Dow Chemical Company (Ex. 3–741), however, stated that, for a number of reasons, it believes that the cancer risk from exposure to carbon tetrachloride has been overestimated. First, Dow argues that carbon tetrachloride enhances the occurrence of naturally forming liver tumors by causing increased cell death and turnover. Because clear threshold effect levels have been demonstrated for liver toxicity, Dow believes that a threshold-type response would be expected for carcinogenic effects "since liver toxicity appears to be a precursor to carcinogenic activity" (Ex. 3–741, p. 34). The Halogenated Solvents Industry Alliance (Ex. 8–69) also expressed the opinion that OSHA overstated the potential cancer risk by using a linear, threshold model. Dow (Ex. 3–741) concludes that a level of 50 ppm (the threshold for liver toxicity observed in six-month inhalation studies in monkeys) represents the threshold concentration for human toxicity and carcinogenicity from exposure to carbon tetrachloride.

In support of its position, Dow included a review of toxicity data by J.M. Norris of Dow Chemical (Ex. 3–741, Appendix A). Mr. Norris cites studies that suggest that species sensitivity to liver toxicity is related to cytochrome P–450 content in liver and that rodents have greater unit P–450 activity and are more sensitive to carbon tetrachloride-induced liver toxicity than are Rhesus monkeys. Since the unit P–450 activity of Rhesus monkeys is comparable to that of humans, Mr. Norris concludes that "the monkey may be the appropriate animal for extrapolation to man" (Ex. 3–741, Appendix A, p. 10).

After reviewing the evidence presented by Mr. Norris, OSHA is unpersuaded that the 50-ppm no-effect level observed in monkeys should be used to establish a PEL to protect workers from the significant cancer risk associated with exposure to carbon tetrachloride. The monkey data cited by Dow and Mr. Norris are results from a study of only six months' duration, and only one or two monkeys were tested at dose levels near the no-observed-effect level. Mr. Norris acknowledged that these limitations warrant the use of a safety factor to derive an adequate exposure limit; applying an appropriate safety factor to the 50-ppm NOEL would yield a PEL no higher, and perhaps well below, the final rule's 2-ppm limit, given the seriousness of the toxicologic endpoint (carcinogenicity). OSHA concludes that the approach it has used to assess cancer risk (i.e., combining data from several animal studies to estimate risk with a widely used dose-response model) provides better information on which to base a revised PEL than do the results of a single short-term, small-sample animal study.

Based on the evidence presented above and the quantitative estimates of carbon tetrachloride-related cancer risk, OSHA concludes that occupational exposure to carbon tetrachloride at the former 10-ppm PEL presents a significant risk of cancer to workers (13.9 cancer deaths per 1,000 workers). OSHA's risk assessment shows that reducing this limit to 2 ppm will substantially reduce this risk (3.7 deaths per 1,000 workers). The Agency concludes that cancer represents a material impairment of health and functional capacity. Accordingly, OSHA is revising its limits for carbon tetrachloride to a single limit of 2 ppm; however, in the final rule, OSHA is establishing this limit as an 8-hour TWA. OSHA has determined that a TWA limit is more appropriate for carbon tetrachloride since low-level exposure to carbon tetrachloride presents a chronic, rather than an acute, health hazard. OSHA also believes that establishing a TWA limit will simplify the development of compliance and exposure monitoring strategies for employers, since an 8-hour TWA limit is more conventional than a 60-minute limit. Therefore, in the final rule, OSHA is establishing a 2-ppm 8-hour TWA PEL for carbon tetrachloride.

CHLOROFORM

CAS: 67–66–3; Chemical Formula: $CHCl_3$ H.S. No. 1066

The former OSHA PEL for chloroform was 50 ppm as a ceiling limit. OSHA proposed to revise this limit to 2 ppm, measured over a 60-minute period. This limit was based on the NIOSH (1977p, as cited in ACGIH 1986/Ex. 1–3, p. 130) REL, and NIOSH (Ex. 8–47, Table N6A) has indicated its concurrence with the proposed limit. In the final rule, OSHA is establishing a 2-ppm limit for chloroform, but is expressing this PEL as an 8-hour TWA limit. The ACGIH has established a TLV–TWA of 10 ppm and assigned chloroform an A2 designation. Chloroform is a clear, colorless, nonflammable, volatile liquid with a pleasant odor.

Chloroform is considered by the ACGIH, the United States Environmental Protection Agency (EPA), and the International Agency for Research on Cancer (IARC) as a probable carcinogen in humans. Chloroform is given an overall weight-of-evidence classification of B2 by the EPA and a classification of 2B by IARC. These classifications are based on these organization's determination that there is sufficient evidence for the carcinogenicity of chloroform in animals and insufficient evidence in humans. The following discussion is based on information from the EPA *Health Assessment Document for Chloroform* (EPA 1984f/Ex.1–216)./

It is currently believed that the carcinogenicity of chloroform results from the formation of reactive metabolites, such as phosgene, that bind to cellular macromolecules. Although there is some evidence to suggest that chloroform is weakly mutagenic, the results of most mutagenicity tests are negative.

In humans, there are no epidemiological studies that evaluate populations exposed only to chloroform, although there are several studies that examine populations exposed to chloroform in chlorinated drinking water. However, because chloroform is not the only potential carcinogen present in chlorinated water, the epidemiological data are considered inadequate to use as the basis for a quantitative risk assessment. Thus, a causal relationship between cancer and chloroform exposure cannot be determined based on epidemiological studies alone, although these studies can be used to provide general support for findings in animal studies.

A case-controlled study indicated a significant association between colon cancer and exposure to chlorinated drinking water contaminated with organic material (Young, Kanarek, and Tsiatis 1981/Ex. 1–118). Significant positive associations were also found for chloroform levels in drinking water and the incidence of morality due to cancer of the bladder, rectum, and large intestine (Hogan, Chi, Hoel, and Mitchell 1979/Ex. 1–159). Similar results also have been found by others (Cantor, Hoover, Mason, and McCabe 1978/Ex.1–50; and Gottlieb, Carr, and Morris 1981/Ex. 1–72). However, although these studies suggest an association between exposure to chloroform and an increased risk of cancer, a definite causal relationship between the development of colon and bladder cancer and exposure to chloroform cannot be determined solely from these studies.

In animals, several long-term studies provide strong evidence for the carcinogenic activity of chloroform. Chloroform has been shown to produce statistically significant increases in renal epithelial tumors in male rats and hepatocelluluar carcinomas in several strains of mice. The carcinogenic activity of chloroform in these studies is specific to the kidney and liver.

The carinogenic activity of chloroform was investigated in rates exposed to chloroform by gavage for 78 weeks (NCI 1976a/Ex. 1–119). Male rats were administered doses of 90 or 180 mg/kg/day, and female rats were administered doses of 100 or 200 mg/kg/day. A statistically significant dose-related increase in renal epithelial tumors was observed in treated male rats compared with untreated, matched controls; these tumors were described as carcinomas and adenomas. No increase in the incidence of tumors was observed in chloroform-treated female rats.

In this same study, the carcinogenicity of chloroform was evaluated in mice exposed chronically to chloroform by gavage (NCI 1976a/Ex. 1–119). Male mice were exposed to doses of 138 or 277 mg/kg/day and females to 238 or 477 mg/kg/day for 78 weeks. There were significant dose-related increases in the incidence of hepatocellular carcinomas in chloroform-treated male and female mice. The increase of tumors in male mice for low and high doses was 36 percent and 98 percent, respectively. For female mice, the increases were 80 percent for the low dose and 95 percent for the high dose of chloroform.

The carcinogenic potential of chloroform in mice was further investigated in two additional studies (Roe, Palmer, and Worden 1979/Ex. 1–106; Jorgenson, Meierhenry, Rushbrook et al. 1985/Ex. 1–117). Doses of 17, 60, or 100 mg/kg/day were administered to four different strains of male and female mice (C57BL, CBA, CF/1, and ICI) by gavage for 80 weeks (Roe, Palmer, and Worden 1979/Ex.1–108). The incidence of kidney tumors, described as hypernephromas, was significantly elevated in the ICI strains. Moderate to severe renal changes were observed in the male mice of the other strains, but no significant increase in renal tumors was reported. Tumors were not observed in female mice.

The carcinogenicity of chloroform administered in drinking water was investigated in male rats and female mice (Jorgenson, Meierhenry, Rushbrook et al. 1985/Ex. 1–117). Animals were treated with drinking water containing chloroform concentrations of 200, 400, 900, or 1800 mg/L for 104 weeks. There was a marked increase in the number of kidney tumors (described as tubular cell adenomas and adenocarcinomas) in rats. However, the incidence of tumors in female mice was not signficantly increased.

Risk estimate for chloroform. The Jorgenson et al. (1985/Ex. 1–117) rat

study, which demonstrated a statistically significant increase in the incidence of renal tumors in male rats, was the data set used for the quantitative risk estimation. (In the NPRM, OSHA inadvertently identified the NCI (1976a/Ex. 1–119) study as forming the basis for risk assessment; see Ex. 110.) Although there are no data concerning the carcinogenicity of chloroform following inhalation exposure, the risk from inhaled chloroform is considered to be equivalent to the risk from ingested chloroform. The linearized multistage, one hit, and Weibull models were used. The maximum likelihood estimates of excess cancers over an occupational lifetime for a population of 1,000 and the 95-percent upper-bound estimates are summarized in Table C15/6. The Weibull model is similar to the logit and probit models. However, by using only one data set, the logit, probit, and multihit models failed to converge.

Table C15-6. Multistage Model Estimates of Cancer Risk Associated with Working Lifetime Exposure to Chloroform

Exposure Level	Excess Cancer Deaths Per 1,000 Workers	
	MLE	UCL
Multistage		
2 ppm[a]	0.27	1.80
10 ppm[b]	1.90	9.00
50 ppm[c]	22.40	46.10
One Hit		
2 ppm[a]	1.40	2.20
10 ppm[b]	7.00	11.10
50 ppm[c]	34.50	54.20
Weibull		
2 ppm[a]	0.11	0.60
10 ppm[b]	1.60	6.30
50 ppm[c]	24.50	51.30

[a] Final rule PEL.
[b] ACGIH TLV.
[c] Former OSHA PEL.
MLE = Maximum likelihood estimate of risk.
UCL = 95-percent upper-confidence limit on the maximum likelihood estimate of risk.

The results of the data analysis presented here are similar to the results of other models described by the EPA (1984f/Ex. 1–216) for chloroform. These three models clearly demonstrate, based on the MLE estimates, that a significant cancer risk exists at the former PEL of 50 ppm. The risks estimated to exist at the former PEL are of the same order of magnitude as the risks determined by OSHA to be associated with other carcinogens that OSHA has regulated (e.g., benzene, ethylene oxide). Some commenters (Exs. 3–685, 3–741, 3–958, 8–80, and L3–1262) stated that OSHA's risk assessment approach for chloroform overstated the risk by not accounting for certain aspects of the mechanism by which chloroform induces cancer. Dow Chemical (Ex. 3–741, p. 45), Hoffmann-LaRoche (Ex. L3–1262), and the American Paper Institute (Ex. 3–685) presented evidence that the mouse liver tumors resulting from chloroform exposure arise secondarily to organ toxicity, which is a threshold phenomenon. As such, they argue that the use of linearized, non-threshold model will overstate cancer risk. Theodore J. Berger, Assistant Vice President and Director of Corporate Environmental and Safety Affairs at Hoffmann-LaRoche, pointed out that the ACIGH TLV of 10 ppm for chloroform was based on this consideration, and that the 10-ppm level was one-fifth the level at which organ injury has been observed (in rats).

On the issue of the carcinogenic mechanism of chloroform, rulemaking participants (Exs. 3–685, 3–341, and L3–1262) and the EPA (1984f/Ex. 1–216) cite evidence that suggest that increased cell death brought about by the formation of reactive metabolities may be one mechanism by which chloroform has caused cancer in animals, particularly in the liver. The EPA (1984f/Ex. 1–216) also cites evidence that chloroform metabolites may deplete glutahione, which results in less effective cellular detoxification. In addition, a genotoxic mechanism cannot be entirely ruled out, although the data are equivocal; chloroform has produced positive results in the micronucleus test and host-mediated mutagenicity assay in the mouse; mutations in yeast; abnormal sperm morphology in mice; and sister chromatid exchange in human lymphocytes and mouse marrow (EPA 1984f/Ex. 1–216).

Richard Bull commented on EPA's 1984 *Health Assessment Document on Chloroform* (1984f/Ex. 1–216) on behalf of the American Paper Institute (Ex. 3–685, Appedix B). Although Dr. Bull concluded that chloroform produces liver tumors in mice by causing organ toxicity and cell damage, he also states that this mechanism did not necessarily explain the kidney tumors observed in rats:

> [T]here is strong evidence that chloroform acts by producing cell damage in the already initiated liver of B6C3F1 mice. There is a similar case to the made in terms of renal tumors in ICI mice. A less convincing case can be made in the Osborne-Mendel rat, since there is no data to indicate a relationship between renal damage and carcinogenic response in this strain. In addition, there is no evidence that there are spontaneously initiated cells in the kidney of this strain of rat. The Jorgenson et al. (1985/Ex.1–117) study indicated that the spontaneous rate for renal tubular adenomas and adenocarcinomas was 4/301 animals or slightly more than 1 percent (Ex. 3–685, Appendix B, p. 8).

Dr. Bull also stated that an "an acceptable conservative approach [for assessing cancer risk for chloroform] would be to utilize the multistage model on the development of renal tumors in the rat because the case has yet to be made that nongenotoxic mechanisms may have been involved in the induction of these tumors * * *" (Ex. 3–685, Appendix B; Ex. 1–0000, p. 8). Thus, based on the evidence presented by EPA (1984f/Ex. 1–216) and the comments on EPA's document by Dr. Bull, OSHA concludes that its use of the Jorgenson et al. (1985/Ex. 1–117) rat kidney data and multistage model is a reasonable approach for estimating the risk of cancer associated with exposure to chloroform. Furthermore, OSHA concludes that, even if one were to accept both that chloroform increases cancer risk via a cell-death mechanism, and that a threshold does for this effect exists, the 10-ppm TLV recommended by the ACIGH provides an inadequate margin (fivefold) of protection against this life-threatening disease.

Dow Chemical Company (Ex. 3–741) and the American Paper Institute (Ex. 3–685) also commented that, because humans metabolize chloroform to a lesser degree than do rodents, quantitative risk assessments should consider such differences. Dow submitted a discussion (Ex. 3–958) of the preliminary results of an assessment based on the use of a physiologically based pharmacokinetic model (PB–PK) similar to that developed by Andersen et al. (1987) for methylene chloride. In this assessment, the researchers reported that the estimated cancer risk for chloroform was one to two orders of magnitude lower than the risks estimated using the multistage model. However, since this work is currently underway, details of the assessment are not available.

Dow Chemical also applied EPA's (1984f/Ex. 1–216) approach to the rat data from the Jorgenson et al. (1985/Ex. 1–117) study (Ex. 3–741, pp. 45–47). This approach uses metabolic data to express the active dose in units of average mg metabolite produced per day per liter of tissue; this method contrasts with OSHA's approach of using applied dose for the risk assessment. Dow's MLE estimate of lifetime occupational cancer risk associated with exposure to 2 ppm is 0.17 deaths per 1,000 workers (upper-confidence limit of 0.46/1,000), based on the amount of chloroform metabolized per unit volume of kidney tissue. The estimate based on chloroform metabolism in the liver is 0.27/1,000 (upper-confidence limit of 0.74/1,000). OSHA does not believe that these estimates, which account for interspecies differences in chloroform metabolism, are substantially different from OSHA's estimates, which are based on the use of applied dose; Dow's MLE estimate based on metabolism in the kidney is not quite half of OSHA's MLE estimate, and Dow's MLE estimate based on liver metabolism is the same as OSHA's. These findings give OSHA greater confidence in the estimates of chloroform-related cancer risk presented in Table C15–6 above.

The AFL–CIO (Ex. 194) supported OSHA's proposed PEL for chloroform. However, the New Jersey Department of Public Health (Ex. 144) urged OSHA to set a limit for chloroform based on EPA's IRIS data. The use of such an approach for setting exposure limits is discussed in Section VI.A of the preamble.

Based on the evidence presented above, OSHA concludes that a significant risk of cancer, which OSHA considers a material impairment of health and functional capacity, exists at the former PEL of 50 ppm, with estimated risks ranging from 22 to 34 excess deaths per 1,000 workers. The Supreme Court indicates that a reasonable person "might well consider a risk of 1.0 per 1,000 significant, and take steps to decrease or eliminate that risk" (*I.U.D.* v. *A.P.I.*, 448 U.S. 655) (see the discussion in Section VI.A of this preamble). Based on OSHA's risk assessment, significant risk of cancer remains at the ACGIH TLV of 10 ppm (1.6 deaths per 1,000 workers). OSHA also finds that revising the PEL to 2 ppm will substantially reduce this risk by from 96 to 99 percent. Therefore, OSHA is establishing a 2-ppm limit as the PEL for chloroform. However, in the final rule, OSHA is establishing this limit as an 8-hour TWA limit, rather than a 60-minute limit as proposed. OSHA has determined that a TWA limit is more appropriate for chloroform since low-level exposure to chloroform presents a chronic, rather than acute, health hazard. OSHA also believes that establishing a TWA limit will simplify the development of compliance and exposure-monitoring strategies for employers, since an 8-hour TWA limit is more conventional than a 60-minute limit. Therefore, in the final rule, OSHA is establishing a 2-ppm 8-hour TWA PEL for chloroform.

CHROMIC ACID, CHROMATES; ZINC CHROMATES

CAS: Varies with compound
H.S. No. 1092; 1430

The current OSHA limit for chromic acid and chromates is a ceiling limit of 0.1 mg/m³ measured as CrO_3. The Agency did not propose to revise this limit. The ACGIH has established a TLV–TWA of 0.05 mg/m³ as Cr(VI) for both the soluble and insoluble forms of chromate (except zinc chromate), and has designated insoluble chromates as confirmed human carcinogens (A1). (It should be noted that the 0.05-mg/m³ limit, expressed as Cr(VI), approximates 0.01 mg/m³ measured as CrO.) NIOSH (1975b/Ex. 1–258) has recommended that exposure to the noncarcinogenic

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forms of chromium (VI) be limited to 0.025 mg Cr(VI)/m³ as a 10-hour TWA and 0.05 mg Cr(VI)/m³ as a 15-minute ceiling. For the carcinogenic (i.e., insoluble) forms of chromium (VI), NIOSH recommends a 10-hour TWA limit of 0.001 mg Cr(VI)/m³.

The ACGIH recommendation for both soluble (noncarcinogenic) and insoluble (carcinogenic) forms of Cr(VI) is based largely on reports by Bloomfield and Blum (1928/Ex. 1–822) and by the Federal Security Agency of the U.S. Public Health Service (Federal Security Agency 1953, as cited in ACGIH 1986/Ex. 1–3, p. 140) that demonstrate nasal irritation and some evidence of liver enlargement and kidney dysfunction among chromate workers exposed to 0.08 to 0.07 mg Cr(VI)/m³. The ACGIH also cites a report by Mancuso and Hueper (1951/Ex. 1–215) of excess lung cancer among chromate workers exposed to 0.01 to 0.15 mg/m³ soluble chromate and 0.1 to 0.58 mg/m³ insoluble chromate. Animal data cited by the ACGIH indicate that insoluble chromate salts were likely to have been responsible for the increased incidence of cancer seen in the Mancuso and Hueper (1951/Ex. 1–215) study. The ACGIH (1986/Ex. 1–3) concluded that the 0.05-mg/m³ TLV–TWA would protect workers from chromium-induced nasal irritation and possible liver or kidney damage, and, in the case of the insoluble chromates, would provide an adequate margin of safety from respiratory cancer.

NIOSH (1975a/Ex. 1–165) cited several studies showing inflammation and ulceration of the nasal cavity at short-term exposure levels greater than 0.1 mg CrO_3/m³. In its criteria document on chromic acid (NIOSH 1973e/Ex. 1–204), NIOSH recommended that the current OSHA ceiling limit (0.1 mg CrO_3/m³) be supplemented with a 0.05-mg CrO_3/m³ 10-hour TWA limit. In its criteria document on chromium (VI), NIOSH (1975b/Ex. 1–258) reaffirmed these limits but extended their application to all forms of noncarcinogenic chromate. Thus, the 0.1-mg CrO_3/m³ ceiling limit corresponds to a 0.05-mg Cr(VI)/m³ ceiling limit, and the 0.05-mg CrO_3/m³ TWA limit corresponds to a 0.025-mg Cr(VI)/m³ TWA. For the carcinogenic (insoluble) forms of Cr(VI), NIOSH recommends the lowest detectable level, which is 0.001 mg Cr(VI)/m³ as a 10-hour TWA.

Zinc chromate is an insoluble, carcinogenic form of chromate. Accordingly, the current OSHA limit for chromic acid and chromates applies, as does the NIOSH limit of 0.001 mg/m³ for carcinogenic chromates. The ACGIH (1986/Ex. 1–3) reviewed several small epidemiologic studies of zinc chromate workers, all of which reported excesses of lung cancer. Because of the consistency of this evidence, the ACGIH (1986/Ex. 1–3) classified zinc chromate as a confirmed human carcinogen (A1) and reduced the TLV to 0.05 mg Cr(VI)m³. xxx

Evaluation of the alternate recommendations is complicated by the different valence states of chromium compounds, the different methods of measurement (CrO_3 or Cr(VI)), and differences in defining these substances that present a cancer hazard (soluble vs. insoluble or valence state). The 0.05-ppm TWA–TLV is less restrictive than the current 0.05-ppm ceiling limit (as Cr(VI)), and would not be considered a revised PEL. In the NPRM, OSHA proposed that the existing PEL of 0.1 mg/m³ (measured as CrO_3) be maintained. In the NPRM OSHA stated that it would consider whether to place these substances on its regulatory agenda for future consideration for section 6(b) rulemaking, rather than making any changes as part of this rulemaking. NIOSH (Ex. 8–47, Table N6B) concurred that the chromates should be part of a separate 6(b) rulemaking, and both the AFL–CIO (Ex. 194) and the UAW (Tr pp. 7–65 to 7–67) agreed that a comprehensive standard would be appropriate for chromates. No other comments were received on this issue. Therefore, because of the complexities of the scientific issues regarding the carcinogenicity of the various forms of chromates, OSHA is not at this time revising its current PEL for chromic acid or chromates, but will continue to evaluate the need for a separate 6(b) rulemaking for these substances.

CHROMYL CHLORIDE

CAS: 14977–61–8; Chemical Formula: CrO_2Cl_2
H.S. No. 1094

There is no existing OSHA PEL for chromyl chloride. The ACGIH recommended that a TWA of 0.025 ppm be established, based on this substance's carcinogenic potential (ACGIH 1986/Ex. 1–3, p. 141). The evidence in humans is considered sufficient for the carcinogenicity of chromium and chromium compounds, and these have been given a Group 1 classification by the International Agency for Research on Cancer (IARC). As discussed above in connection with chromic acid, chromates, and zinc chromates, the chromium compounds present several important issues that require detailed analysis and can most appropriately be handled in an individual section 6(b) rulemaking. NIOSH concurred with this approach (Ex. 8–47, Table N6B), and no other comments on chromyl chloride were received. OSHA intends to commence work on this rulemaking as priorities permit.

DIMETHYL SULFATE

CAS: 77–78–1; Chemical Formula: $(CH_3)_2SO_4$
H.S. No. 1142

OSHA's former limit for dimethyl sulfate was 1 ppm TWA, with a skin notation. The ACGIH considers this substance a suspected human carcinogen and has given it a classification of A2 (ACGIH 1986/Ex. 1–3, p. 212). The ACGIH's TLV–TWA for this substance is 0.1 ppm with a skin notation. OSHA proposed, and the final rule establishes, a 0.1-ppm TWA PEL, with a skin notation, for dimethyl sulfate, which is an oily, colorless liquid with a faint, onion-like odor. NIOSH (Ex. 8–47, Table N6A) concurs with the selection of this limit and considers dimethyl sulfate to be a potential human carcinogen.

Dimethyl sulfate is commonly used in the manufacture of many organic chemicals. It has been shown to be carcinogenic in rats by inhalation exposure, subcutaneous injection, and prenatal exposure. The rat is the only animal species in which the carcinogensis of dimethyl sulfate has been tested (IARC 1982c, as cited in ACGIH 1986/Ex. 1–3, Appendix A).

The carcinogenic activity of dimethyl sulfate was investigated in male rats chronically exposed to subcutaneous injections of 8 or 16 mg/kg body weight per week (Druckrey, Preussman, Nashed, and Ivanovic 1966/Ex. 1–245). Local sarcomas with metastases to the lung and regional lymph nodes were observed at both dose levels. A single subcutaneous injection of dimethyl sulfate (50 mg/kg) also produced local sarcomas with metastases to the lung (Druckrey, Kruse, Preussman et al. 1970/Ex. 1–246). However, tumors did not develop following chronic weekly intravenous injections of dimethyl sulfate (2 or 4 mg/kg) (Druckrey, Kruse, Preussman et al. 1970/Ex. 1–246). Control data were not reported for either of these studies.

The carcinogenic potential of dimethyl sulfate exposure by inhalation was also evaluated in male rats (Druckrey, Kruse, Preussman et al 1970/Ex. 1–246). Animals were exposed to approximately 3 or 10 ppm dimethyl sulfate for one hour per day, five times weekly, for 130 days. Malignant tumors developed in 15 percent (3/20) of the rats exposed at 3 ppm and in 18 percent (5/27) of the rats exposed at 10 ppm.

Pregnant rats were exposed to a single intravenous injection of dimethyl sulfate (20 mg/kg body weight) on day 15 of gestation and the incidence of malignant tumors in the offspring was investigated for one year. Tumors were reported in 7/59 of the offspring. However, the incidence of tumors in the control group was not indicated. The results of this study are complicated because several rats died (number of deaths not specified) from the acute toxic effects of dimethyl sulfate, and the incidence of tumors in the control group was not reported.

There is little information available regarding the carcinogenicity of dimethyl sulfate in humans. A case study of workers exposed to dimethyl sulfate reported that three workers developed bronchial cancer (Druckrey, Preussman, Nashed, and Ivanovic 1966/Ex. 1–245). However, an epidemiological study by the E.I. du Pont de Nemours Company (1975, as cited in ACGIH 1986/Ex. 1–3, p. 213) demonstrated no increase in the incidence of respiratory cancer among workers exposed to dimethyl sulfate.

OSHA considered the possibility of performing a quantitative risk assessment for dimethyl sulfate and concluded that the studies described above did not have sufficient dose-response data to provide an adequate basis for such a risk assessment (see Ex. 85). Dimethyl sulfate induces malignant tumors in animals both by inhalation and ingestion, and there is thus sufficient evidence in animals to predict that workers exposed to dimethyl sulfate are at significant risk of developing cancer, which OSHA considers to be a material impairment of health; exposures at levels only three times the former PEL (1 ppm) resulted in a significant number of tumors. No comments, other than those from NIOSH were received on dimethyl sulfate. OSHA concludes that reducing the former limit to 0.1 ppm as an 8-hour TWA with a skin notation will substantially reduce the significant risk of cancer mortality associated with exposure to dimethyl sulfate.

2-NITROPROPANE

CAS: 79–46–9; Chemical Formula: $CH_3CH(NO_2)CH_3$
H.S. No. 1291

OSHA's former limit for 2-nitropropane (2-NP) was 25 ppm; OSHA proposed a limit of 10 ppm as an 8-hour TWA, and the final rule establishes this limit. The ACGIH classifies 2-nitropropane as a suspected human carcinogen (A2). NIOSH recommends that 2-nitropropane exposure be reduced to the lowest feasible limit. 2-Nitropropane is used as a chemical intermediate, a solvent, and a component in paint, ink, and varnishes (Fiala, Czenniak, Castonguay et al. 1987/Ex. 1–248). 2-Nitropropane is a colorless liquid.

In rats and chimpanzees, 2-NP is metabolized by microsomal enzymes in the liver to acetone, low levels of isopropanol, and nitrite (Mueller, Coulston, and Korte 1983/Ex. 1–247). Methemoglobin formation is associated with the metabolism of nitropropane and has been reported in cats exposed to 280 ppm of 2-NP for seven hours. Sensitivity to the toxic effects of 2-NP in animals varies by species (Dequidt, Vasseur, and Potencier 1972/Ex. 1–813; ACGIH 1986/Ex. 1–3, p. 441).

The mechanisms of carcinogenicity of 2-NP are thought to involve the release of nitrite and the formation of a reactive azoxy intermediate that can react with cellular macromolecules (Williams and Weisburger 1986/Ex. 1–65).

In mutagenicity tests, 2-NP increased the frequency of mutations in all strains of *Salmonella typhimurium* with and without metabolic activation. Positive mutagenicity results were reported in *Salmonella typhimurium* strains TA100, TA1535, and TA98 by Lofroth, Nilsson, and Anderson (1981, as cited in ACGIH 1986/Ex. 1–3, p. 441) and Speck, Meyer, Zeiger, and Rosenkranz (1982/Ex. 1–290). 2-NP was not shown to be mutagenic in the mouse micronucleus test (Hite and Skaggs 1979/Ex. 1–280).

Acute exposures to 2-NP from occupational accidents have been reported to cause severe liver toxicity and subsequent death in humans (ACGIH 1986/Ex. 1–3, p. 441). However, the available epidemiology data on the chronic health effects of occupational exposure to 2-NP do not contain sufficient dose-response data to use as a basis for quantitative risk estimation. An unpublished retrospective mortality study of 1,481 potentially exposed workers from a nitropropane production plant found no increase in liver cancer or liver disease mortality. However, lack of exposure data, the small number of workers with long exposures (greater than 15 years), and a short latency period make interpretation of the results of this study difficult (Miller and Temple 1979, and Bolender 1983, both as cited in ACGIH 1986/Ex. 1–3, p. 441).

There are two studies that report high incidences of liver tumors in male rats exposed to 2-NP by gavage and inhalation. Fiala et al. (1987/Ex. 1–248) administered, by gavage, 1 mmol/kg body weight (approximately 27 mg per treatment per 300-gram rat) of 2-NP in a 10-percent aqueous Emulphor EL–620 vehicle to male Sprague-Dawley rats three times weekly for 16 weeks. Dosing was discontinued after 16 weeks because of excessive mortality in the treated rats. Seventy-seven weeks from the first treatment, the surviving rats were sacrificed and subjected to necropsy. All (100 percent) of the treated rats examined had developed hepatocarcinomas (Fiala, Czenniak, Castonguay et al. 1987/Ex. 1–248).

The results of the Fiala et al. (1987/Ex. 1–248) study support the earlier positive results reported by Lewis, Ulrich, and Busey (1979/Ex. 1–826). In the Lewis et al. (1979/Ex. 1–826) study, male Sprague-Dawley rats and male New Zealand White rabbits were exposed via inhalation to 27 ppm or 207 ppm of 2-NP for seven hours/day, five days/week for six months. At the end of six months, all 10 rats in the high-dose group exhibited hepatocellular carcinomas and neoplastic nodules. No exposure-related lesions were seen in the rats exposed to 27 ppm, and no exposure-related lesions were observed in any of the rabbits.

One high-dose and two low-dose studies reported negative results for rats exposed to 2-NP vapors. Griffin, Benitz, Coulston, and Rosenblum (1978/Ex. 1–243) reported no hepatic carcinomas in male and female rats exposed to 200 ppm of 2-NP by inhalation using a protocol similar to that described by Lewis et al. (1979/Ex. 1–826). Although no hepatic carcinomas were observed, the following effects (generally occurring more extensively in males) were seen: Increased liver weights (both sexes); hepatic nodules; hepatocellular necrosis; and peripheral compression.

Two low-dose studies (Griffin, Coulston, and Stein 1980/Ex. 1–268; Griffin, Stein, and Coulston 1981/Ex. 1–279) also produced negative results. Male and female Sprague-Dawley rats were exposed by inhalation to 25 ppm of 2-NP for seven hours/day, five days/week for 22 months. No pathological changes associated with exposure to 2-NP were seen.

Although the results of both the Lewis et al. (1979/Ex. 1–826) and the Fiala et al. (1987/Ex. 1–248) studies show statistically significant increases in liver carcinomas, neither study provides sufficient dose-response information to use as a basis to quantify the excess cancer risk to humans exposed to 2-NP. Both studies were terminated before the natural lifetime expectancy of the controls, so it is not possible to determine a background incidence of cancer risk. No historical information is provided on tumor incidence for these animals.

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2-Nitropropane produced a high incidence of liver tumors in male rats by two routes of administration: inhalation and ingestion. Its ability to cause mutations in *Salmonella typhimurium* further supports the premise that 2-NP is a potential human carcinogen. OSHA considered whether to perform a quantitative risk assessment on 2-NP, and concludes that the studies described above do not contain sufficient dose-response data to use as the basis for quantitative risk estimation using standardized risk assessment models. However, two studies (Fiala, Czenniak, Castonguay et al. 1987/Ex. 1–248; Lewis, Ulrich, and Busey 1979/Ex. 1–828) demonstrate that exposure to 2-NP, either by gavage or inhalation, produced hepatocarcinomas in rats. In addition, this substance produced positive results in two mutagenic assays (Lofroth, Nilsson, and Andersson 1981, as cited in ACGIH 1986/Ex. 1–3, p. 441; Speck, Meyer, Zeiger, and Rosenkranz 1982/Ex. 1–230). NIOSH (Ex. 8–47, Table N6B) was of the opinion that this evidence warranted a separate 6(b) rulemaking.

OSHA is establishing an 8-hour PEL for 2-NP of 10 ppm. The Agency concludes that a reduction in the PEL is necessary to protect exposed workers from the significant risk of cancer potentially associated with exposure to 2-NP at the former PEL. The Agency has also concluded that the effects associated with exposure to 2-NP constitute material impairments of health.

PERCHLOROETHYLENE (TETRACHLOROETHYLENE)

CAS: 127–18–4; Chemical Formula: CCl_2–CCl_2 H.S. No. 1306

OSHA's former permissible exposure limits for perchloroethylene (tetrachloroethylene) were 100 ppm as an 8-hour TWA, 200 ppm as a STEL not to be exceeded for more than five minutes in any three-hour period, and 300 ppm as a ceiling. On the basis of the chemical's narcotic effects in humans, the Agency proposed a revised PEL of 50 ppm TWA and a 15-minute STEL of 200 ppm for perchloroethylene; these are the limits recommended by the ACGIH (ACGIH 1988/Ex. 1–3, p. 464). NIOSH (Ex. 8–47, Table N6B) did not concur with the proposed limits and recommended that exposures be maintained at the lowest feasible limit and that this chemical be classified as a potential occupational carcinogen. OSHA has evaluated the health evidence for this substance and has determined that a further reduction in the PEL to 25 ppm as a TWA is warranted, and the Agency is establishing this limit in the final rule.

Perchloroethylene is a clear, colorless, nonflammable liquid with an ethereal odor.

Perchloroethylene is widely used as a solvent in the dry cleaning industry and in industrial degreasing operations. The narcotic effects associated with exposure to high levels of this chemical are well documented. A worker exposed to an estimated concentration of 1470 ppm perchloroethylene and Stoddard solvent for 3.5 hours lost consciousness (Stewart, Erley, Schaffer, and Gay 1961/Ex. 1–807). The most comprehensive studies of the effects of prolonged exposure to perchloroethylene vapors on human volunteers were conducted by Stewart and colleagues (Stewart, Hake, LeBrun et al. 1974/Ex. 1–970; Stewart, Hake, Wu et al. 1977/Ex. 1–971); these investigators concluded that prolonged exposure to 200 ppm results in early signs of CNS depression, while no response was elicited in men or women exposed repeatedly to 100 ppm for seven hours/day, except that performance on the Flanagan coordination test was significantly decreased in some exposed subjects (Stewart, Hake, Wu et al. 1977/Ex. 1–971, p. 28).

Based on these findings, the Agency concluded that its former PEL permitted workers to be exposed to a significant risk of CNS effects. In addition to examining the evidence for the chemical's narcotic effects, OSHA has reviewed a number of studies on the carcinogenicity of perchloroethylene. These investigations are summarized below.

In a 1977 gavage bioassay for carcinogenicity, perchloroethylene proved to be a liver carcinogen in mice but not in rats (NCI 1977c, as cited in ACGIH 1986/Ex. 1–3, p. 464). In 1986, the NTP conducted an inhalation bioassay of perchloroethylene (NTP 1986b/Ex. 8–31, Appendix 4), in which groups of 50 male and 50 female F344/N rats and B6C3F1 mice were exposed to perchloroethylene for six hours/day, five days/week, for two years. The exposure concentrations were 0, 200, or 400 ppm for rats and 0, 100, or 200 ppm for mice. Male and female rats exposed to either 200 or 400 ppm developed statistically significant increases in mononuclear cell leukemias. According to the NTP report (NTP 1986b/Ex. 8–31, Appendix 4), the increased incidences of leukemias were responsible for the early deaths observed in male and female rats exposed to perchloroethylene. At autopsy, most of the leukemias were determined to be in an advanced and probably fatal stage. Because of the effect of the leukemias on the early mortality of the exposed rats, a life-table analysis was used to test for the statistical significance of the findings; this analysis revealed that the increased incidence of leukemia was statistically significant in both low- and high-dose male rats and in low-dose female rats, and was marginally significant ($p = 0.053$) in high-dose female rats.

Male rats also developed a significant increase in renal tubular cell adenomas and carcinomas. Perchloroethylene induced a significantly increased incidence of hepatocellular carcinomas at both dose levels in mice of both sexes. The NTP Peer Review Panel concluded that there was "clear evidence of carcinogenicity of tetrachloroethylene" (perchloroethylene) in male rats and in male and female mice, and "some evidence" in female rats (Ex. 8–31, Appendix 4; Ex. 1–0000, p. 11).

In addition, a number of human studies were submitted to the rulemaking record that implicate perchloroethylene as a potential carcinogen (Ex. 8–31). Among these was a study by Brown and Kaplan (1987/Ex. 8–31, Appendix 6), which reported a statistically significant elevation in urinary tract cancer deaths among 1,660 dry cleaning workers exposed to perchloroethylene and other petroleum solvents. However, a subcohort of workers who used perchloroethylene as the primary solvent showed no increase in bladder cancer mortality. Brown and Kaplan concluded that "confounding exposure to petroleum solvents complicates any conclusions regarding the association between * * * [perchloroethylene] and cancer of the urinary tract" (Brown and Kaplan 1987/Ex. 8–31, Appendix 6, p. 540).

Katz and Jowett (1981/Ex. 8–31, Appendix 9) studied the mortality pattern of 671 female dry cleaning workers for the period 1963 through 1977. Elevated incidences of cancers of the kidney and genitals were reported, along with a smaller excess of bladder and skin cancers and lymphosarcomas. The authors concluded that, although results obtained with the methodology used (proportionate mortality ratios) require careful interpretation, "this study raises the possibility that exposure to dry cleaning fluids may increase the risk of certain cancers" (Katz and Jowett 1981/Ex. 8–31, Appendix 9, p. 510). The dry cleaning fluids used by members of the cohort included carbon tetrachloride, trichloroethylene, and perchloroethylene.

Steinhagen et al. (1983/Ex. 8–31, Appendix 8) reported a significant excess of liver cancer among male workers in the laundry and dry cleaning industry in New Jersey. This study was a retrospective case-control study. The liver cancer cases were concentrated among individuals who processed clothes and were exposed to chemicals. The report did not identify the solvents in use (Steinhagen, Slade, Altman, and Bill 1983/Ex. 8–31, Appendix 8).

Duh and Asal (1984/Ex. 8–31, Appendix 7) examined the mortality experience of 440 dry cleaning workers in Oklahoma for the period 1975 through 1981. Elevated standardized mortality odds ratios (SMORs) were found for both lung cancer (SMOR=1.7) and kidney cancer (SMOR=3.8) (Duh and Asal 1984/Ex. 8–31, Appendix 7).

Eric Frumin of the Amalgamated Clothing and Textile Workers Union (ACTWU) submitted a quantitative risk assessment conducted by Dr. Dale Hattis of the Center for Technology Policy and Industrial Development at the Massachusetts Institute of Technology (Hattis 1986/Ex. 8–31, Appendix 11–A). This work was conducted in 1986 for the National Institute for Environmental Health Sciences. Dr. Hattis used a pharmacokinetic model that incorporated species-specific rates of formation for the metabolites of perchlorethylene. Using the rat leukemia and mouse liver tumor data from the NTP (1986b/Ex. 8–31, Appendix 4) bioassay, Dr. Hattis obtained a "best estimate" of the lifetime cancer risk (for workers exposed at the former 100-ppm OSHA limit for 45 years to perchloroethylene) of 45 deaths per 1,000 workers. The plausible upper limit at this level of exposure was 650 per 1,000 workers. The best-estimate lifetime risks associated with 45 years of exposure to 50 or 10 ppm of perchloroethylene were 25 and 6.4 deaths per 1,000 workers, respectively (the upper-confidence limits were 420 and 110 deaths per 1,000 workers, respectively). The ACTWU asserted that the studies reviewed above provide "overwhelming" evidence that perchloroethylene is a potential human carcinogen, and urged OSHA to establish a PEL lower than the proposed 50-ppm limit.

In its posthearing comments, the Halogenated Solvents Industry Alliance (HSIA) (Ex. 186) discussed several aspects of the data on perchlorethylene to support its contention that perchloroethylene should not be considered a probable human carcinogen. Specifically, the HSIA pointed out the following:

- Brown and Kaplan (1987/Ex. 8–31, Appendix 6) found no increased evidence of cancer among a subcohort of workers exposed only to perchloroethylene and not to other dry cleaning solvents.
- Both EPA and IARC have determined the human evidence on the carcinogenicity of perchloroethylene to be "inadequate."
- The National Research Council of the National Academy of Sciences concluded that the results of the NCI gavage study (NCI 1977c) should be interpreted with caution because of the large doses administered, early mortality of the treated animals, and observed nephrotoxicity.
- Regarding the NTP inhalation bioassay (NTP 1986b), the EPA Science Advisory Board (SAB) determined that the incidence of rat leukemia was not related to perchloroethylene exposure, and that the development of male rat kidney tumors was brought about by a mechanism unique to male rats.
- The EPA SAB stated that the mouse liver tumors observed in both the gavage (NCI 1977c) and inhalation (NTP 1986b) bioassays arose as a result of perchloroethylene-induced peroxisomal proliferation, a mechanism specific to rodents.

OSHA does not agree with the HSIA's interpretation of the meaning of the points raised by this group. First, the authors of the Brown and Kaplan (1987/Ex. 8–31, Appendix 6) study themselves pointed to the difficulty of establishing a definitive link between a particular solvent and an increased incidence of cancer in workers in the dry cleaning industry. For example, in the case of the group exposed to perchloroethylene only, the number of workers in the cohort was so small that even two or three exposure-related deaths in the perchloroethylene-only group would have caused a drastic swing in the SMR for bladder cancer in this subcohort. Thus, OSHA does not find that this study demonstrates the noncarcinogenicity of perchloroethylene.

As to the HSIA's second point, that neither the EPA nor IARC found the evidence for the carcinogenicity of perchloroethylene in humans adequate, OSHA notes that such evidence exists only for a handful of carcinogens (e.g., asbestos, benzene, vinyl chloride, arsenic), and that the overwhelming number of substances recognized as posing carcinogenic risks to workers have been determined to be carcinogenic on the basis of results in animals only. OSHA also believes that the regulation of many substances that have been designated as potential human carcinogens on the basis of clear evidence of their carcinogenicity in animals has undoubtedly contributed to the lack of evidence in humans by preventing overexposures to these substances in the workplace, and thus preventing cancer among these workers. Therefore, OSHA believes it appropriate and prudent to reduce workplace exposures to substances that have caused cancer in animals, especially when the animal studies are well-designed and carefully conducted bioassays.

The HSIA's third point, that the NCI gavage bioassay (NCI 1977c) has limitations, is irrelevant in the context of this discussion because OSHA is not relying on this bioassay to establish an appropriate limit for perchloroethylene.

The fourth point raised by the HSIA was that the Science Advisory Board of the EPA has questioned the relevance for human cancer risk of some of the tumors seen in the NTP (1986b/Ex. 8–31, Appendix 4) inhalation bioassay. OSHA believes that an explanation of the nature of the SAB's concern will demonstrate that an interpretation of the meaning of these data is a matter of professional judgment on which expert scientists themselves can differ. The SAB noted that there is some uncertainty regarding the significance of the leukemias observed in the perchloroethylene-exposed rats in the NTP (1986b/Ex. 8–31, Appendix 4) inhalation bioassay becasue the control rats in *another* NTP bioassay (NTP 1986c, the bioassay for methylene chloride) showed the same incidence of leukemias as the perchloroethylene-exposed rats (Ex. 186, pp. 6–7). However, OSHA points out that the independent peer review panel appointed by the NTP to evaluate the strength of the evidence for the carcinogenicity of perchloroethylene also considered the appropriateness of including the rat leukemia data when weighing the evidence for the carcinogenicity of perchloroethylene; the NTP panel concluded that the NTP (1986b/Ex. 8–31, Appendix 4) bioassay presented "clear evidence" of perchloroethylene's carcinogenicity in male rats (Ex. 8–31, Appendix 4, pp. 14–15). Thus, different scientists or groups of experts may interpret the same data differently; in this case, OSHA is not prepared to dismiss out-of-hand the leukemia data, given that leukemia contributed significantly to excess mortality in the perchloroethylene-exposed groups (NTP 1986b/Ex. 8–31, Appendix 4). The HSIA also questioned the relevance of the kidney tumors in male rats found in the NTP (1986b) bioassay. OSHA agrees with the SAB that these tumors may not be good predictors of human risk; however, the Hattis (1986/Ex. 8–31, Appendix 11–A) risk assessment did not

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use the rat kidney tumor data, and, in addition, OSHA is not relying on these findings to set the final rule's limit for perchloroethylene.

On the HSIA's fifth point, the significance of rat liver tumors as predictors of human cancer risk, OSHA notes that the SAB did not believe it appropriate to disregard the findings in the recent NTP (1988b/Ex. 8–31, Appendix 4) bioassay of perchloroethylene-dose-related increases in the incidence of liver tumors in mice. In a letter dated to EPA Administrator Lee Thomas in March 1988 (Ex. 188D), the SAB concluded:

> The Board's consensus on the significance of mouse liver tumors is that mechanistic explanations are not sufficiently well developed and validated at this time to change EPA's present approach expressed in its risk assessment guidelines for carcinogenicity. It concludes that the generation of mouse liver tumors by chemicals is an important predictor of potential risks to humans (Ex. 188D, p. 2).

Based on the expert opinion of the NTP Peer Review panel and the EPA SAB, OSHA finds that the NCI (1988b/Ex. 8–31, Appendix 4) inhalation bioassay rat leukemia and mouse liver tumor data, which form the basis for the perchloroethylene quantitative risk assessment performed by Dr. Hattis (1988/Ex. 8–31, Appendix 11–A), should be regarded at this time as being relevant to the determination of potential human cancer risk from exposure to perchloroethylene in the workplace. The use of the rat leukemia data for the risk assessment may, however, add additional uncertainty to the risk estimates.

When EPA's Science Advisory Board considered perchloroethylene in January of 1987 (Ex./188C), it designated this substance as a Category C substance (i.e., a possible human carcinogen). However, in a letter to EPA Administrator Lee Thomas in March of 1988 (Ex. 188D), the SAB concluded that the overall weight of evidence for perchloroethylene "lies on the continuum between categories B2 [probable human carcinogen] and C." The SAB also stated that

> the distinction between the B2 and C categories can be an arbitrary distinction on a continuum of weight of evidence. The "black-white interpretation" * * * is indeed troubling * * *. A substance classified as [Category] C * * * for which human exposure is high may represent a much greater potential threat to human health [than substances classified as Category B2, B1, or A].
>
> EPA and other agencies * * * may, therefore, wish to take steps to reduce high exposures to substances in the C category whenever there appears to be a potentially significant threat to human health * * *. Indoor exposures to perchloroethylene, such as might be found in dry cleaning establishments not using the equivalent of good industrial hygiene practices, could merit action under this criteria. So might high levels of exposure to other solvents * * * that have been considered by the public as "safe" in the absence of sufficient evidence of carcinogenicity in animals. In many instances, this appearance of safety results from not yet having the results from well-designed bioassays such as those conducted by the National Toxicology Program.

OSHA agrees with the SAB that perchloroethylene is a substance that meets several of the criteria regarded by the SAB as meriting regulatory action. First, current exposures to perchloroethylene are high, often reaching the levels permitted by OSHA's existing PEL of 100 ppm. Second, several hundred thousand employees are regularly exposed to this widely used solvent. Third, the Hattis (1988/Ex. 8–31, Appendix 11–A) quantitative risk assessment suggests that a high cancer risk may be associated with exposure to perchloroethylene at OSHA's former or proposed PELs, indicating that exposures should be reduced to levels below the proposed 50-ppm level. Finally, the evidence for the carcinogenicity of perchloroethylene, which is briefly summarized below, is convincing.

The NTP (1988b/Ex. 8–31, Appendix 4) has concluded that perchloroethylene is carcinogenic by inhalation in both rats and mice. Based predominantly on the animal data, NIOSH has also concluded that perchoroethylene is a potential human carcinogen; NIOSH judged the evidence for perchloroethylene's carcinogenicity sufficient to warrant a separate 6(b) rulemaking (Ex. 8–47, Table N6B). In 1987, the International Agency for Research on Cancer (IARC) also classified perchloroethylene as a Category 2B carcinogen (i.e., a substance for which the evidence in animals is sufficient). The EPA's SAB has determined that perchloroethylene is a Category C carcinogen (i.e., a possible human carcinogen, and a carcinogen in animals). In addition, a number of human studies suggest elevated cancer risks, particularly of the kidney and bladder, among workers exposed to perchloroethylene and other solvents in dry cleaning facilities. Based on a review of all of the available evidence on perchloroethylene, including the testimony and briefs submitted by the parties, OSHA has determined that perchloroethylene is a potential human carcinogen that presents a significant risk of material health impairment to workers exposed to it in their places of work. This view was shared by several parties commenting in the record, including the Amalgamated Clothing and Textile Workers Union (Ex. 192), the AFL–CIO (Ex. 194), the American Public Health Association (Ex. 151), and NIOSH (Ex. 8–47).

The risk assessment conducted by Hattis (1988/Ex. 8–31, Appendix 11–A) estimates that there is an excess lifetime cancer mortality risk of 45 deaths per 1,000 workers exposed for 45 years to the current 100-ppm TWA PEL. Clearly, this high risk of mortality represents a significant risk. At the proposed level of 50 ppm, Dr. Hattis estimated the excess lifetime risk to be 27 deaths per 1,000 workers. OSHA concludes that this assessment and the underlying evidence clearly indicate that a further reduction in the PEL is necessary.

OSHA's analysis of the technological feasibility of reducing perchloroethylene exposures in affected industries, particularly in the dry cleaning industry, demonstrates that a PEL of 25 ppm is achievable using engineering and work practice controls; however, OSHA does not believe that information in the record at the present time demonstrates that it is feasible to reduce exposures to lower levels (see Section VII). In the dry cleaning industry, newer equipment, such as dry-to-dry dry cleaning machines, can achieve 25 ppm with engineering and work practice controls. This is true of smaller as well as larger operations.

The industry is gradually replacing older equipment with newer equipment, and a significant percentage of operations, including smaller operations, have installed such equipment. According to the industry, dry cleaning equipment is replaced at approximately 10-year intervals.

OSHA is providing a four-year phase-in period for the industry to come into compliance with the new levels through the use of engineering controls. Accordingly, OSHA believes that both smaller and larger dry cleaning operations can achieve the new 25–ppm TWA level in the ordinary course of the equipment replacement schedule. Consequently, the economic impact of the change to new equipment would not be great even for smaller operations.

In addition, use of older equipment in good condition results in employee exposure levels not much above the new 25-ppm PEL. Industry estimates indicate that levels of approximately 40 ppm can be attained. During the four-year interval noted in this regulation, reasonably priced retrofits for older equipment may be developed that can be used to achieve the 25-ppm PEL.

OSHA is, of course, sympathetic to the circumstances of small businesses. If, after three years following publication of this regulation, it appears that there will be significant economic impacts for small dry cleaning operations attempting to convert to new equipment or retrofit within the four years permitted by the standard, OSHA will consider extending the period for smaller dry cleaning operations to achieve compliance using engineering and work practice controls. If that situation develops, OSHA believes that a trade association petition bringing the facts to OSHA's attention would be appropriate. OSHA would, at that time, evaluate the available information and make a decision based on all the information obtainable.

OSHA is establishing in the final rule a revised 8-hour TWA PEL of 25 ppm for perchloroethylene. OSHA concludes that the revised limit will substantially reduce the significant risk of material impairment of health presented by exposure to this substance at the Agency's former PEL of 100 ppm.

o-TOLUIDINE

CAS: 95–53–4; Chemical Formula $CH_3C_6H_4NH_2$

H.S. No. 1399

OSHA's former 8-hour TWA for o-toluidine was 5 ppm, with a skin notation. OSHA proposed to revise this limit to 2 ppm as an 8-hour TWA, with a skin notation. NIOSH (Ex. 8–47, Table N6A) concurs with the selection of this limit and notes that o-toluidine meets the OSHA definition of a potential human carcinogen. The ACGIH identifies o-toluidine as a suspected human carcinogen and has accordingly placed it in the A2 category (ACGIH 1986/Ex. 1–3, p. 586). The International Agency for Research on Cancer (IARC 1982b, as cited in ACGIH 1986/Ex. 1–3, p. 586) classifies o-toluidine as a probable carcinogen (category 2A) based on sufficient evidence of its carcinogenicity in rats and mice following oral administration (IARC 1982b, as cited in ACGIH 1986/Ex. 1–3, p. 586). IARC judged the evidence inadequate to establish o-toluidine's carcinogenicity in humans. In the final rule, OSHA has determined that it is appropriate to retain both the existing 5-ppm exposure limit and the skin notation for this substance. o-Toluidine is a light yellow liquid that rapidly darkens on exposure to air and light.

o-Toluidine is mutagenic in short-term tests, inducing sister chromatid exchanges and unscheduled DNA synthesis in mammalian cells in *in vitro* and chromosomal anomalies in yeast. o-Toluidine was negative in the micronucleus test in mice *in vivo*, but induced cell transformations in the BHK (baby hamster kidney) assay. IARC considers these data to be sufficient evidence of o-toluidine's activity in short-term tests (IARC 1982b, as cited in ACGIH 1986/Ex. 1–3, p. 586).

There are a number of studies that report an excess of bladder tumors in dyestuff workers exposed to o-toluidine and other chemicals; however, there are no studies that examine a population of workers exposed to o-toluidine alone. Workers exposed to toluene, o-nitrotoluene, o-toluidine, and 4,4-methylene bis (2-methylaniline) in manufacturing were observed to have an excess of bladder tumors. However, the concurrent exposures of these workers to these other potential carcinogens make these data inappropriate for use in the quantitative assessment of o-toluidine's carcinogenic risk in human populations. A few reports of bladder tumors in persons exposed primarily to o-toluidine have been reported, but insufficient follow-up time and incomplete data have prevented the establishment of a clear quantitative association between o-toluidine exposure and cancer in humans. For this reason, IARC considers the data from human studies inadequate to establish an association between exposure to o-toluidine and cancer (IARC 1982b, as cited in ACGIH 1986/Ex. 1–3, p. 586).

o-Toluidine has been determined to be carcinogenic in rats and mice following oral administration. In rats, statistically significant increases in subcutaneous fibromas, fibrosarcomas, and cancers of the urinary bladder have been reported. Studies in mice have resulted in statistically significant increases in hemangiosarcomas and hepatocellular carcinomas.

The National Cancer Institute (NCI 1979c, as cited in ACGIH 1986/Ex. 1–3, p. 586) conducted long-term carcinogenicity studies with o-toluidine in rats and mice. Both of these studies were positive for carcinogenicity. The mouse study used groups of 50 female and 50 male B6C3F1 mice fed o-toluidine hydrochloride in the diet at levels of 1000 ppm or 3000 ppm for 102 to 103 weeks. There was no excess mortality in the tested animals. At the 3000-ppm dose level, there was a statistically significant increase in hemangiosarcomas at all sites in males and a statistically significant increase in hepatocellular carcinomas and adenomas in females.

The National Cancer Institute also conducted a two-year feeding study with 50 male and 50 female Fischer 344 rats. There was a dose-related trend in mortality (which was not caused by cancer); all the males in the high-dose group died by 100 weeks. However, the females at both dose levels were observed to have significant increases in transitional-cell carcinomas or papillomas of the urinary bladder, and the high-dose females developed fibroadenomas of the mammary gland. The males at both dose levels showed significant increases in fibromas of the subcutaneous tissue and mesotheliomas in multiple organs (NCI 1979c, as cited in ACGIH 1986/Ex. 1–3, p. 586). The high mortality in the males complicates the interpretation of these latter findings.

Weisburger, Russfield, Homburger et al. (1978/Ex. 1–535) reported positive findings for o-toluidine in long-term feeding studies in rats and mice. The study in rats was conducted with two groups of 25 male CD rats fed o-toluidine in the diet via one of two regimens: 8000 ppm for three months and then 4000 ppm for an additional 15 months; or 16,000 ppm for three months and then 8000 ppm for an additional 15 months. Statistically significant increases in the incidence of subcutaneous fibromas and fibrosarcomas were observed in both dose groups. In addition, there was a nonstatistically significant increase in the incidence of transitional-cell carcinomas of the urinary bladder in these animals.

Weisburger, Russfield, Homburger et al. (1978/Ex. 1–535) also reported the results of a long-term study in mice. Groups of 25 males and 25 female CD–1 mice were fed diets containing o-toluidine at two dose levels: 16,000 ppm for three months and then 8000 ppm for an additional 15 months; or 32,000 ppm for three months and then 8000 ppm for an additional 15 months. There was a statistically significant, dose-related increase in the incidences of vascular tumors (hemangiosarcomas and hemangiomas of the abdominal viscera) in both sexes of treated mice, compared with results in control mice.

Risk estimate for o-toluidine. Four of these carcinogenicity studies of o-toluidine have yielded sufficient and adequate data for quantitative risk estimation: the two NCI studies (NCI 1979c, as cited in ACGIH 1986/Ex. 1–3, p. 586) and the two Weisburger et al. (1978/Ex. 1–535) studies. OSHA has used the NCI (1979c) study in rats as the basis for its quantitative risk assessment because it provides the most appropriate data. Table C15–7 presents the Maximum Likelihood Estimates (MLEs) of excess deaths per 1,000 employees

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predicted to result from exposure to o-toluidine at the current OSHA PEL of 5 ppm and at the proposed PEL of 2 ppm. These data were calculated using a multistage model, GLOBAL83.

TABLE C15-7. Multistage Model Estimates of Cancer Risk Associated with Working Lifetime Exposure to o-Toluidine

Exposure Level	Excess Cancer Deaths per 1,000 Workers	
	MLE	UCL
5 ppm[a]	0.137	1.6
2 ppm[b]	0.055	0.64

[a] Former OSHA PEL.
[b] Final rule PEL.
MLE = Maximum likelihood estimate of risk.
UCL = Upper-bound (95-percent) confidence limit on maximum likelihood estimate of risk.

Table C15-7 shows an excess MLE estimate of risk of 1.4 per 10,000 workers exposed over their working lifetimes at the current PEL. This risk would be reduced to 0.5 per 10,000 exposed workers after promulgation of the final rule's limit of 2 ppm. This level of risk is lower than the levels OSHA has regulated for some carcinogens, such as ethylene oxide, arsenic, and benzene. George M. Talley and Michael C. Garcia, Industrial Hygienists for the Los Alamos National Laboratory, commented that OSHA's risk assessment does not support a reduction in the PEL for o-toluidine (Ex. 3-1085).

Lawrence Hecker of Abbott Laboratories (Tr. pp. 9-149) commented that OSHA's skin notation for o-toluidine is not supported by the available evidence. As described in Section VI.C.18 of the preamble regarding OSHA's general policy for establishing skin notations in this rulemaking, OSHA has determined that removal of an existing skin notation is not warranted unless human data are available that demonstrate the absence of a significant health risk from dermal contact with the hazardous substance in question. No such data exist for o-toluidine; therefore, OSHA is retaining the skin notation for o-toluidine in the final rule.

OSHA has concluded that further reduction in the exposure limit for o-toluidine would require a detailed analysis of the levels at which significant risk is eliminated. Both because of the scope of this rulemaking and because there were few comments on this issue, OSHA has not directed its limited resources to conduct a detailed analysis of this issue at this time. Accordingly, OSHA has concluded that it is appropriate to retain both the existing 5-ppm PEL and the skin notation for o-toluidine in this proceeding. OSHA is not making any final determination on either the general policy issue or what its conclusion might be in a single-substance rulemaking involving extensive public comment and detailed analysis.

p-TOLUIDINE

CAS: 106-49-0; Chemical Formula: $CH_3C_6H_4NH_2$
H.S. No. 1400

OSHA had no former PEL for p-toluidine. OSHA proposed establishing a 2-ppm PEL, with a skin notation, and these limits are established in the final rule. The ACGIH considers this substance a suspected human carcinogen and has given it a classification of A2 (ACGIH 1986/Ex. 1-3). p-Toluidine is a white solid.

One study investigates the carcinogenic potential of lifetime exposure to p-toluidine in experimental animals (Weisburger, Russfield, Homburger et al. 1978/Ex. 1-535). Male and female mice were exposed to p-toluidine in the diet for a total of 18 months. During the first six months of the experiment, mice were exposed to 1000 or 2000 mg p-toluidine/kg diet. As a result of the weight loss that occurred in mice exposed to the 2000 mg/kg diet dose, the concentrations of p-toluidine were reduced to 500 and 1000 mg/kg diet during the last 12 months of exposure. The rate of food consumption by the animals was not reported and was assumed to be 3 g/day. Thus, the average doses of p-toluidine received during the 18-month exposure were calculated to be 80 and 160 mg/kg body weight per day (Weisburger, Russfield, Homburger et al. 1978/Ex. 1-535).

For both the low and high dietary doses of p-toluidine, a significant increase in the incidence of hepatomas was observed. The incidence of tumors in the control, 80, and 160 mg/kg/day groups were 3/36, 10/38, and 12/35, respectively. The same study (Weisburger, Russfield, Homburger et al. 1978/Ex. 1-535) showed negative results in male rats exposed to two doses of p-toluidine in the diet for 18 months (1000- and 2000-mg/kg diet).

Risk estimate for p-toluidine. To assess the quantitative risk of p-toluidine's carcinogenicity, OSHA used the Weisburger et al. (1978/Ex. 1-535) data which, despite some limitations (e.g., changes in dose levels during the experiment and the absence of data concerning the amount of food animals consumed during the exposure period), were considered adequate for risk assessment purposes.

The maximum likelihood estimates (MLE) of excess cancers per 1,000 workers over an occupational lifetime and the 95-percent upper-bound estimates were obtained by using a linearized multistage model (GLOBAL83). These values are summarized in Table C15-8. This table shows the number of cancer deaths potentially associated with working lifetime exposure to 20, 5, or 2 ppm p-toluidine.

TABLE C15-8. Multistage Model Estimates of Cancer Risk Associated with Working Lifetime Exposure to p-Toluidine

Exposure Level	Excess Cancer Deaths per 1,000 Workers	
	MLE	UCL
2 ppm[a]	12	19
5 ppm	29	46
20 ppm	112	172

[a] Proposed OSHA PEL.
MLE = Maximum likelihood estimate of risk.
UCL = Upper-bound (95-percent) confidence limit on maximum likelihood estimate of risk.

OSHA concludes, as Table C15-8 shows, that workers exposed to p-toluidine, which was formerly not regulated by OSHA, are at significant risk of development hepatomas; an effect that the Agency considers a material impairment of health. For example, the MLE at 20 ppm is 112 excess cancer deaths per 1,000 workers exposed over a working lifetime. Promulgating a PEL of 2 ppm will substantially reduce this significant risk. According to this scenario, a 90-percent reduction in excess cancer deaths will be achieved by establishing the 2-ppm limit. The risks existing at the former uncontrolled level are clearly significant. NIOSH (Ex. 8-47, Table N6B) judged the evidence on p-toluidine sufficient to warrant a separate 6(b) rulemaking. OSHA is establishing an 8-hour TWA limit of 2 ppm for p-toluidine in the final rule; a skin notation is included to protect against percutaneous absorption of this substance.

VINYL BROMIDE

CAS: 593-60-2; Chemical Formula: C_2H_3Br
H.S. No. 1025

OSHA had no former PEL for vinyl bromide. Based on the ACGIH recommendation, OSHA proposed a 5-ppm TWA PEL; this limit is established in the final rule. NIOSH has no REL for vinyl bromide. The ACGIH places vinyl bromide on its A2 list of industrial substances suspected of having carcinogenic potential in humans. Vinyl bromide is a colorless gas with a characteristic odor and is used as an intermediate in organic synthesis and in the manufacture of polymers, copolymers, and flame retardants. Its principal use is as a flame retardant.

Henschler and Hoos (1982/Ex. 1-816) believe that vinyl bromide undergoes the same mechanism of biotransformation as its structural analog, vinyl chloride, a recognized human carcinogen that has been regulated by OSHA in a section 6(b) rulemaking. The microsomal oxidation of vinyl bromide leads to epoxide formation, which results, in turn, in the formation of a reactive intermediate. This intermediate has that potential to form covalent bonds with DNA to produce a mutagenic response. Vinyl bromide has been reported to be mutagenic in *Salmonella typhimurium*

and *tradescantia* (IARC 1979a/Ex. 1–1125; NIOSH/OSHA 1978/Ex. 1–1119).

No epidemiological studies have been conducted on populations exposed to vinyl bromide. Benya, Busey, Dorato, and Berteau (1982/Ex. 1–244) reported a positive carcinogenic response in an inhalation study of rats exposed to vinyl bromide vapor; this study is important because inhalation is a major mode of occupational exposure. The results of the Van Duuren (1977/Ex. 1–284) study were equivocal (described below), in that female Swiss albino mice were exposed dermally or by subcutaneous injection either to vinyl bromide in acetone or to polymerized vinyl bromide in an aqueous latex solution.

Benya et al. (1982/Ex. 1–244) exposed male and female Sprague-Dawley rats to 0, 9.7, 52, 247, or 1235 ppm vinyl bromide by inhalation for six hours daily, five days per week, for two years. The incidence of angiosarcomas, primarily of the liver, was found to be statistically significant in all dose groups tested except controls. It should be noted that a closely related chemical analog, vinyl chloride, also causes liver angiosarcoma in humans and animals. The combined incidences of hepatic angiosarcomas in the treated male and female rats were 1/288, 17/240, 86/240, 122/240, and 84/240 for their respective dose levels. One female rat in the control group developed an hepatic angiosarcoma. Table C15–9 summarizes the incidence of angiosarcoma in control and treated rats.

TABLE C15-9. Incidence of Angiosarcomas in Control and Vinyl-Bromide-Exposed Rats

		Males			Females		
Group	Exposure level (ppm)	No. of animals	No. with angio-sarcoma	p	No. of animals	No. with angio-sarcoma	p
1	Control	144	0	--	144	1	--
2	10	120	7	<0.025	120	10	<0.01
3	50	120	36	<0.001	120	50	<0.001
4	250	120	61	<0.001	120	61	<0.001
5	1250	120	43	<0.001	120	41	<0.001

Source: Benya, Busey, Dorato, and Berteau (1982/Ex. 1-244)

Van Duuren (1977/Ex. 1–284) injected a group of female ICR/Ha Swiss mice once weekly for 48 weeks with 0.05 ml of commerical polymerized vinyl bromide aqueous latex suspension; the animals were observed for 420 days. Nineteen of the 30 mice developed sarcomas at the site of injection. Animals in a positive control group that had been injected with b-propriolactone (0.3 mg/.05 ml trioctanoin) developed 18 sarcomas and three squamous cell carcinomas (in 30 mice). No tumors developed in untreated controls or in controls injected with trioctanoin, an organic solvent, alone (Van Duuren 1977/Ex. 1–284).

In another injection study by the same author, a group of female IRC/Ha Swiss mice were treated with 25 mg vinyl bromide per animal in 0.05 ml trioctanoin once weekly for 48 weeks. The mice were observed for 420 days. One control group was given a weekly injection of trioctanoin alone and the other control group was untreated. No local tumors were seen in any of the test groups, although pathological examination of the animals appears to have been incomplete (Van Duuren 1977/Ex. 1–284).

Application of vinyl bromide to the skin of female ICR/Ha Swiss mice at a dose of 15 mg per animal administered in 0.1 ml of acetone three times weekly for 420 days resulted in no tumors. When this solution was applied once and was followed by an application of phorbol myristyl acetate (PMA) three times weekly, one of 30 mice developed a skin papilloma at 412 days, one control treated with PMA developed a tumor after 44 days, and no untreated controls developed tumors (Van Duuren 1977/Ex. 1–284).

In another dermal study, a dose of 0.1 ml of polymerized vinyl bromide in an aqueous latex suspension was applied three times weekly to the skin of female ICR/Ha Swiss mice for 420 days. No skin tumors developed. When this solution was applied once, followed by an application of PMA three times weekly, one of 30 mice developed a skin tumor at 175 days. No untreated controls developed skin tumors (Van Duuren 1977/Ex. 1–284).

Risk estimate for vinyl bromide. The Benya et al. (1982/Ex. 1–244) study was a well-designed and -conducted study

that yielded sufficient information for quantitative risk estimation. The route of administration used in the study, inhalation, is directly applicable to occupational exposure, and the incidence of hepatic angiosarcoma was significant. Angiosarcoma is a rare and malignant neoplasm that has a very low background incidence in animals and humans. Therefore, its appearance in the exposed rats supports the premise that vinyl bromide is potentially carcinogenic in humans. Also, it is the same tumor that is associated with the exposure of workers and animals to vinyl chloride, a recognized human carcinogen and a compound whose structure is similar to that of vinyl bromide.

To estimate excess cancer risk over background incidence for a chemical, experimental data (experimental doses and corresponding responses) are used to define various parameters of an assumed response model. At low doses, the slope of this dose-response curve is referred to as q_1. The 95-percent upper-bound confidence limit for this slope is referred to as q_1^* or the chemical's potency. q_1 and q_1^* are then used to determine the respective maximum likelihood estimate (MLE) of risk and the 95-percent upper-bound confidence limit (UCL) on risk associated with a given lifetime occupational exposure. A nonthreshold, linearized multistage model (GLOBAL83) was chosen to estimate the risk potentially associated with exposure to vinyl bromide because the scientific rationale for this model is biologically the most plausible. Additionally, the choice of a nonthreshold model is consistent with current methodologies when positive mutagenicity data are available (*Guidelines for Carcinogenic Risk Assessment*, EPA 1984d).

Since both male and female rats responded equally to vinyl bromide treatment, data from the two groups were combined by calculating the geometric means of the risk estimates derived from the male and female response data (Anderson 1983/Ex. 1–1009). The high-dose data for each test group were dropped, since their inclusion makes the dose-response curve nonmonotonic and precludes proper fitting of the linearized multistage risk model (EPA 1984d).

Since cancer risk modeling assumes lifetime exposure, adjustments were made to fit the animal data to this criterion. The adjustments made for the data in the Benya et al. (1982/Ex. 1–244) study were: multiplying dose by 5/7 to adjust for days of exposure per week and by 6/24 to adjust for hours of exposure per day. These adjusted doses were then changed to human equivalent doses.

Three hypothetical occupational exposure limits, 5 ppm, 20 ppm, and 250 ppm, were used to calculate the maximum likelihood estimates of risk of developing angiosarcoma of the liver. Five ppm has been the ACGIH limit since 1978. Twenty ppm was chosen as an intermediate exposure level, and 250 ppm was the ACGIH TLV before the ACGIH reduced it in 1978. These occupational dose levels were also adjusted for lifetime exposure. The adjustments made were: multiplying dose by 5/7 to adjust for days worked per week, by 5⁰/52 to adjust for vacation time, by 8/24 to adjust for hours of exposure per day, and by 45/50 to adjust for work years per lifetime.

Because inhalation is the primary route of exposure to vinyl bromide in occupational settings, the occupational dose was calculated assuming that air intake in humans is 20 m^3 per 24-hour day (Anderson 1983/Ex. 1–1009). The fraction of vinyl bromide absorbed was assumed to be 100 percent, because no absorption rate data were available for vinyl bromide. Because the log p (lipid solubility) value for vinyl bromide (1.52) is similar to that for vinyl chloride (1.38), OSHA assumed that the absorption rates of these two compounds would also be similar. The absorption rate for vinyl chloride used in risk estimations is assumed to be 100 percent (IRIS 1988).

The MLE shown in Table C15–10 for an occupational exposure to 250 ppm of vinyl bromide is 870 excess deaths per 1,000 workers. According to the linearized multistage risk model, 870 of 1,000 workers exposed over their working lifetimes to vinyl bromide at 250 ppm are at risk of developing angiosarcoma. The MLE for an occupational exposure to 5 ppm of vinyl bromide is 0.04; this indicates that, at the proposed PEL, 40 workers per 1,000 exposed to this substance over their occupational lifetimes are at risk of developing angiosarcoma.

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TABLE C15-10. Multistage Model Estimates of Cancer Risk Associated with Lifetime Exposure to Vinyl Bromide

Exposure Level	Excess Cancer Deaths per 1,000 Workers	
	MLE[a]	UCL[a]
5 ppm[b]	40	48
20 ppm[c]	155	180
250 ppm[d]	870	930

[a] Geometric mean of male and female rats.
[b] Final rule PEL.
[c] Intermediate exposure level.
[d] ACGIH limit before 1978.
MLE = Maximum likelihood estimate of risk.
UCL = 95-percent upper-confidence limit on maximum likelihood estimate on risk.

NIOSH (Ex. 8-47, Table N6B) believes that the limit for vinyl bromide should be determined in a full section 6(b) rulemaking. The International Chemical Workers Union (Tr. p. 216) and the Workers Institute for Safety and Health (Ex. 116) were both of the opinion that the residual cancer risk remaining at the proposed 5-ppm PEL is excessive, and that a further reduction in the PEL is warranted. OSHA agrees with these commenters that significant risk has not been eliminated at the 5-ppm level. However, as explained in Section III of this preamble, the broad scope of this rulemaking prevented the Agency from making detailed analyses of risk and feasibility for alternative PELs. As priorities indicate and resources permit in the future, OSHA may consider the need for a further reduction in the PEL for vinyl bromide.

Table C15-10 shows that workers exposed to this substance, which was formerly not regulated by OSHA, are clearly at significant risk of developing hepatic angiosarcomas, the same rare type of tumor associated with exposure to vinyl chloride, a structurally similar substance. OSHA determined in its prior rulemaking on vinyl chloride that this disease constitutes a material impairment of health and functional capacity. Promulgating a PEL of 5 ppm will not eliminate this significant risk, because, as Table C15-10 shows, the MLE estimate of residual risk at 5 ppm is 40 excess deaths per 1,000 exposed workers. Thus, residual risk at 5 ppm is clearly significant. At the present time, OSHA concludes that establishing a PEL of 5 ppm TWA will substantially reduce the significant risk of cancer potentially associated with exposure at the uncontrolled levels formerly permitted in the absence of an OSHA limit for this substance.

VINYL CYCLOHEXENE DIOXIDE

CAS: 106-87-6; Chemical Formula: $C_8H_{12}O_2$; H.S. No. 1428

OSHA had no former PEL for vinyl cyclohexene dioxide (VCD). OSHA proposed establishing a 10-ppm TWA PEL, with a skin notation, for VCD, and this limit is established in the final rule. NIOSH (Ex. 8-47, Table N6A) agrees that this limit is appropriate and notes its determination that VCD is a potential human carcinogen. The ACGIH classifies VCD as a suspected human carcinogen (A2). Vinyl cyclohexene dioxide is a colorless liquid used as a chemical intermediate and as a monomer in the manufacture of polyglycols containing unreacted epoxy groups (Hine, Rowe, White, Darmer, and Youngblood 1961/Ex. 1-876). It is also used as a reactive diluent for other diepoxides and certain epoxy resins (IARC 1976).

Turchi, Bonatti, Citti et al. (1981/Ex. 1-282) assayed the mutagenicity of VCD and several other epoxides using the TA100 strain of *S. typhimurium* and V79 Chinese hamster cells; these authors also investigated the alkylating properties of these chemicals. VCD tested positive in both the *S. typhimurium* test (point mutation) and the V79 Chinese hamster cell test (both point mutation and chromosome aberration), and had an intermediate alkylating capacity relative to other epoxide compounds tested.

There are no data concerning the adverse health effects of VCD in humans. There are no reports as a result of industrial experience that reveal carcinogenic effects in workers caused by VCD exposure (ACGIH 1986/Ex. 1-3).

Four studies have reported the development of skin tumors in mice exposed dermally to VCD (Hendry, Homer, and Rose 1951/Ex. 1-250; Kotin and Falk 1963/Ex. 1-287; Weil, Condra, Haun, and Streigel 1963/Ex. 1-257; and Van Duuren, Nelson, Orris, Palmes, and Schmitt 1963/Ex. 1-288). The study of Van Duuren et al. (1963/Ex. 1-288) included controls and is thus particularly well suited for an evaluation of VCD's carcinogenic potential.

These authors painted 30 male Swiss ICR/Ha mice with 0.1 ml of a 10-percent solution of VCD in benzene three times per week (approximately 100 mg of solution per application). Two negative controls were used; one set of 150 mice was treated with benzene alone and another set of 207 mice was not treated with anything. Fourteen of the 30 VCD-treated mice developed skin tumors after an undefined length of time (mean survival time was 328 days). The incidences of skin tumors in the controls were 11/150 and 13/207 for the benzene-treated and untreated mice, respectively. The incidence of skin tumors in the VCD-treated mice was significantly greater than the incidence observed in either of the controls (Van Duuren, Nelson, Orris, Palmes, and Schmitt 1963/Ex. 1-288).

The study of Van Duuren et al. (1963/Ex. 1-288) demonstrates the carcinogenicity of VCD in experimental animals. OSHA considered the possibility of conducting a quantitative risk assessment for VCD, and the Agency concluded that the dose-response data in this study are unsuitable for quantitative risk assessment purposes because the VCD was administered in a solution of benzene, which is itself regulated as a carcinogen and classified as such by several authorities (IARC, NTP, NIOSH, and ACGIH). Even though the Van Duuren et al. (1963/Ex. 1-288) study included a control for the independent carcinogenic effects of benzene, the possibility of a synergistic or additive effect of benzene on VCD cannot be completely ruled out.

Vinyl cyclohexene dioxide has been shown to be carcinogenic by dermal application in mice, and four studies have confirmed these effects. Based on these animal studies showing VCD's carcinogenicity, OSHA concludes that exposed employees are at significant risk of cancer potentially associated with exposure to VCD at the uncontrolled levels formerly permitted by the absence of an OSHA limit. The Agency considers this effect a material impairment of health. No comments, other than NIOSH's, were received pertaining to VCD. The Agency concludes that promulgation of a 10-ppm 8-hour-TWA PEL, with a skin notation, will substantially reduce the significant occupational risk confronting VCD-exposed employees.

Conclusions for This Group of Substances

The Supreme Court in *I.U.D.* v. *A.P.I.* (*supra*, the *Benzene* decision) gave OSHA directions as to its decisional process; that case involved a carcinogen. OSHA is using the Supreme Court's guidance within the context of this present broader rulemaking. OSHA is also using the approach it has taken in the regulation of arsenic, benzene, EtO, asbestos, and formaldehyde; this approach has been upheld in the Courts of Appeals (see the introduction to this section). In the current rulemaking, OSHA has considered or performed quantitative risk assessments for each of the 17 chemicals discussed in this section; when less detailed dose-response data were available, OSHA performed qualitative appraisals of the significance of the risk. The risk assessments follow the approach OSHA has used in prior rulemakings for carcinogens, a process that has repeatedly been upheld by the courts. The risk assessment review process in this broader rulemaking has necessarily been more limited than is the case for single-substance rulemakings.

OSHA conducted its significant risk analyses using the principles suggested by the Supreme Court and adopted in its carcinogen rulemakings subsequent to *I.U.D.* v. *A.P.I.* OSHA has established new or revised exposure limits based on these analyses when they demonstrated that significant risk existed at the former PEL.

In some cases, it was not possible for OSHA to conduct quantitative estimates of cancer risk at the level of detail the Agency has formerly used. In these cases, OSHA believes that it has adequately justified the limits established in the final rule; without this latitude, the Agency would indeed be in the "mathematical straitjacket" alluded to by the Court in the *Benzene* decision.

In sum, where OSHA has concluded that there was sufficient evidence of potential carcinogenicity to meet the Agency's legal requirements, the Agency has established an exposure level based on the potential risk of occupational cancer. OSHA detemined in several prior rulemakings that this disease constitutes a material impairment of health and functional capacity. In the future, depending on priorities and resources, OSHA will further review the data to determine whether a second-stage rulemaking based on carcinogenicity is appropriate for some of the chemicals where a significant cancer risk appears to remain at the limits promulgated today.

Overall, OSHA believes its analyses of the new or revised limits for carcinogenic chemicals meet the Agency's legal requirements. Accordingly, OSHA concludes that these limits will lead to substantial reductions in the significant risk currently confronting workers exposed to these substances.

16. Substances for Which Current ACGIH TLVs Are Less Stringent Than Existing OSHA PELs

Introduction

As discussed in Section IV.D of this preamble, OSHA used either the ACGIH or NIOSH limits as a starting point in this rulemaking. There are 14 substances for which the ACGIH has increased its recommended TLVs since the time that OSHA adopted the 1968 TLVs under the authority of section 6(a) of the Act. These substances are listed in Table C16-1, along with their former, proposed, and final rule PELs, CAS numbers, and HS numbers. Evaluating the protectiveness and appropriateness of exposure limits that are less stringent than their former Z-table limits represents a special case in this rulemaking. OSHA has previously stated (see 50 FR 51120, December 13, 1985) the principles to be followed before the Agency raises an exposure limit. This issue is discussed below.

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TABLE C16-1. Substances for Which the ACGIH's Limits Were Higher Than the Former OSHA PELs

H.S. Number/ Chemical Name	CAS No.	Current PEL	ACGIH TLV**	Final Rule PEL*
1063 Camphor (synthetic)	76-22-2	2 mg/m^3 TWA	2 ppm TWA (12 mg/m^3 TWA) 3 ppm STEL (18 mg/m^3)	2 mg/m^3 TWA
1101 Copper fume (as Cu)	7440-50-8	0.1 mg/m^3 TWA	0.2 mg/m^3 TWA	0.1 mg/m^3 TWA
1126 1,1-Dichloroethane	75-34-3	100 ppm TWA	200 ppm TWA 250 ppm STEL	100 ppm TWA
1179 Fluorine	7782-41-4	0.1 ppm TWA	1 ppm TWA 2 ppm STEL	0.1 ppm TWA
1197 Hexachloroethane	67-72-1	1 ppm TWA, Skin	10 ppm TWA	1 ppm TWA, Skin
1284 Nickel carbonyl (as Ni)	13463-39-3	0.001 ppm TWA	0.05 ppm TWA	0.001 ppm TWA
1347 Rhodium (as Rh), metal fume and insoluble salts	7440-16-6	0.1 mg/^{3} TWA	1 mg/m^3 TWA	0.1 mg/m^3 TWA
1348 Rhodium (as Rh), soluble salts	7440-16-6	0.001 mg/m^3 TWA	0.01 mg/m^3 TWA	0.001 mg/m^3 TWA

TABLE C16-1. Substances for Which the ACGIH's Limits Were Higher Than the Former OSHA PELs

H.S. Number/ Chemical Name	CAS No.	Current PEL	ACGIH TLV**	Final Rule PEL*
1352 Silica, amorphous-diatomaceous earth (containing less than 1 percent crystalline silica)	68855-54-9	20 mppcf TWA (6 mg/m^3)	10 mg/m^3 TWA	6 mg/m^3 TWA
1353 Silica, amorphous-precipitate and gel	None	20 mppcf TWA (6 mg/m^3)	10 mg/m^3 TWA	6 mg/m^3 TWA
1362 Silver (as Ag), metal dust and fume	7440-22-4	0.01 mg/m^3 TWA	0.1 mg/m^3 TWA	0.01 mg/m^3 TWA
1386 Tetraethyl lead (as Pb)	78-00-2	0.075 mg/m^3 TWA, Skin	0.1 mg/m^3 TWA, Skin	0.075 mg/m^3 TWA, Skin
1388 Tetramethyl lead (as Pb)	75-74-1	0.075 mg/m^3 TWA, Skin	0.15 mg/m^3 TWA, Skin	0.075 mg/m^3 TWA, Skin
1419 Uranium (as U), soluble compounds	7440-61-1	0.05 mg/m^3 TWA	0.2 mg.m^3 TWA 0.6 mg/m^3 STEL	0.05 mg/m^3 TWA

* OSHA's TWA limits are for 8-hour exposures; its STELs are for 15 minutes unless otherwise specified; and its ceilings are peaks not to be exceeded for any period of time.

** The ACGIH TWA-TLV is for an 8-hour exposure; its STELs are 15-minute limits not to be exceeded more than 4 times per day with a minimum of 60 minutes between successive STEL exposures; and its ceilings are peaks not to be exceeded for any period of time.

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In 1978, OSHA issued a cotton dust standard; this standard did not go into effect in any of the nontextile industries. However, although the new standard's PEL for cotton dust did not apply in these segments, the cotton dust limit on Table Z-1 continued to apply to them. In 1983, OSHA determined that it would better effectuate the purposes of the Act to exclude the knitting and other nontextile industries from coverage by the Z-table limit for cotton dust. In revoking the Z-table limit, OSHA stated:

> When it [the Agency] proposes to eliminate a class [of operations or industry sectors] from either a 6(a) or 6(b) standard on health grounds, the evidence must affirmatively indicate that significant risk is unlikely to exist for that class at exposures likely to exist after the standard has been eliminated * * * OSHA must be able to support with substantial evidence any change it is propounding (50 FR 51120 *et seq.*, December 13, 1985).

Accordingly, the Agency must be able to show that exposed workers will not be placed at increased risk of the health effects at issue even *after* the limit in question has been raised or revoked. In conformance with this interpretation, OSHA has carefully examined the bases underlying the adoption of increased exposure limits by the ACGIH. After reviewing the available data for these substances, OSHA has made a determination that adequate evidence does not exist to increase the permissible exposure limits for any of these substances. For the 14 substances in this group, OSHA finds that the available toxicological data are insufficient to meet the increased burden of proof appropriate when the raising of an exposure limit is under consideration. For these substances, OSHA is therefore not revising its PELs at this time.

The following discussion summarizes OSHA's analyses and findings for each of the 14 substances in this group.

CAMPHOR (SYNTHETIC)

CAS: 76-22-2; Chemical Formula: $C_{10}H_{16}O$
H.S. No. 1063

In the NPRM (53 FR 21029), OSHA inadvertently indicated that its current limit for synthetic camphor is 2 ppm as an 8-hour TWA; however, the limit previously listed in 29 CFR 1910.1000, Table Z-1 (which is shown on Table Z-1-A of this final rule) was 2 mg/m³, or approximately 0.3 ppm. The ACGIH TLVs for camphor are a 2-ppm (12-mg/m³) TWA with a 3-ppm (18-mg/m³) STEL. This misrepresentation of the Agency's existing limit made the ACGIH limits appear more protective by comparison, and thus OSHA erroneously proposed to revise the PEL upward, an action that would constitute a relaxing of the current 2-mg/m³ TWA PEL. Consequently, OSHA has reconsidered its discussion of the evidence on synthetic camphor. In the final rule, OSHA is retaining its 2-mg/m³ (0.3-ppm) TWA PEL; NIOSH's comments (Ex. 8-47) on the proposal support this decision. Synthetic camphor is a colorless or white crystalline substance with an aromatic odor.

Synthetic camphor is known to cause severe injuries in animals exposed for prolonged periods by inhalation to a level of 6 mg/m³. Exposure may cause convulsions, congestion, changes in the gastrointestinal tract, and damage to the kidneys and brain (Flury and Zernik 1931b/Ex. 1-996). Animal bioassays showed that camphor was not carcinogenic in rats injected subcutaneously; however, when the cancer promoter, croton oil, was concurrently applied to the skin of mice, 2 of 110 treated mice developed carcinomas (Graffi, Vlamynck, Hoffman, and Schultz 1953/Ex. 1-903).

In humans, there are reports of industrial exposure to camphor that resulted in coma, dyspnea, and headache; one fatality from inhalation of the vapor has been noted (Flury and Zernik 1931b/Ex. 1-996).

The basis for ACGIH adopting the 2-ppm TLV-TWA and 3-ppm TLV-STEL is a report by Gronka, Bobkoski, Tomchick and Rakow (1969/Ex. 1-1043), which evaluated airborne exposures and the health status of six employees in a synthetic-camphor-processing plant. The authors reported that exposure for up to 10 months did not produce eye or nasal irritation if concentrations of camphor were maintained at or below 2 ppm. The investigators recommended that the former TLV of 2 mg/m³ be revised to 2 ppm (12 mg/m³).

The health status of the six employees was determined before the plant installed local ventilation and improved handling procedures; at that time, camphor concentrations ranged from 24 to 43 mg/m³. Four of the six employees examined showed inflammation of the nose and throat, and one reported having occasional numbness in the fingers. After process improvements were installed, only two of the employees were still working in the camphor-processing area; the remaining four had been away from direct contact with camphor.

OSHA concludes that the results of this study provide an inadequate basis for increasing the 2-mg/m³ PEL to 12 mg/m³ (2 ppm). The small number of employees examined by Gronka et al. (1969/Ex. 1-1043) and the lack of comprehensive medical examinations after exposures declined to 2 ppm provide no assurance that long-term exposure to 2 ppm is not associated with adverse health effects. In addition, the animal study conducted by Flury and Zernik (1931b/Ex. 1-996) demonstrated severe effects in animals exposed for prolonged periods to a level one-half that found in the plant studied by Gronka et al. (1969/Ex. 1-1043). Therefore, OSHA concludes that establishing the 2-ppm (12-mg/m³) limit is unwarranted, and the Agency is retaining its 2-mg/m³ (0.3-ppm) limit for synthetic camphor in the final rule. No comments, other than those made by NIOSH, were submitted to the record.

COPPER (FUME)

CAS: 7440-50-8; Chemical Formula: Cu
H.S. No. 1101

The current OSHA limit for copper fume is 0.1 mg/m³ as an 8-hour TWA. Since OSHA adopted this limit in 1971, the ACGIH has increased the recommended TLV to 0.2 mg/m³ as an 8-hour TWA. The ACGIH's previously recommended TLV of 0.1 mg/m³ was based on a personal communication (Whitman 1957 and 1962, as cited in ACGIH 1986/Ex. 1-3, p. 146) that reported that the taste perception of welders was altered when they were exposed to copper fume at levels ranging from 1 to 3 mg/m³ for short periods but that exposure to from 0.02 to 0.4 mg/m³ did not cause such complaints (ACGIH 1966/Ex. 1-13). At the time, the ACGIH judged the 0.1-mg/m³ TLV to be "sufficiently low to provide freedom from irritation from the fume by a reasonable margin" (ACGIH 1966/Ex. 1-13). NIOSH (Ex. 8-47, Table N1) concurs that OSHA's 0.1=mg/m³ limit is appropriate. Copper is a reddish-colored metal.

In 1972, the ACGIH received a personal communication from a member of the U.K. Industrial Hygiene Unit, Her Majesty's Factory Inspectorate (Luxon 1972, as cited in ACGIH 1986/Ex. 1-3, p. 146) reporting that employees exposed to copper fume at levels up to 0.4 mg/m³ during welding and copper metal refining operations experienced no ill effects from exposure. Based on this additional evidence, the ACGIH increased its TLV for copper fume to 0.2 mg/m³ in 1975.

Commenters to the docket urged OSHA to revise the PEL for copper fume to the ACGIH limit. BP America (Ex. 8-57; Tr. pp. 9-126 to 9-127) argued that the Agency should increase its PEL even though the only basis for doing so was a personal communication to the ACGIH TLV Committee. In response to these commenters, OSHA reiterates the

position described in the introduction to this section (i.e., that the Agency must demonstrate that exposed workers will not be placed at increased risk even *after* the limit has been raised). Because the personal communication on which the ACGIH has based its increased limit cannot be examined to determine information of this type, OSHA cannot consider raising the limit at this time.

OSHA concludes that the evidence cited by the ACGIH (1986/Ex. 1-3) in support of the increase in its TLV-TWA for copper fume is not sufficient to support an increase in OSHA's PEL for this substance. OSHA reasons that the ACGIH's action was based largely on a personal communication, which makes it impossible for the Agency to evaluate the evidence appropriately.

1,1-DICHLOROETHANE

CAS: 75-34-3; Chemical Formula: CH_3CHCl_2
H.R. No. 1128

The current OSHA limit for 1,1-dichloroethane, which is a hepatotoxin, is 100 ppm TWA. The ACGIH TLV-TWA is 200 ppm, with a 250-ppm STEL; NIOSH has no REL for this substance. The previous ACGIH TLV of 100 ppm was based on the observation that 1,1-dichlorethane has an acute toxicity approximately half that of carbon tetrachloride and a chronic toxicity somewhat less than that of carbon tetrachloride (for which a TLV of 10 ppm had been set). In 1973, the ACGIH adopted the higher 200-ppm TLV based on unpublished data from the Dow Chemical Company (AIHA 1971, as cited in ACGIH 1986/Ex. 1-3, p. 184) showing that rats, rabbits, guinea pigs, and dogs exhibited no gross or microscopic organ pathology after exposure to 500 or 1000 ppm of 1,1-dichloroethane for six months. The ACGIH cited no human data in support of its increase in the TLV. NIOSH (Ex. 8-47, Table N1) concurs that OSHA's 100-ppm 8-hour TWA is appropriate. OSHA received no other comments on 1,1-dichloroethane.

Because no human toxicity data are available for 1,1-dichloroethane and because the Dow data are unpublished and thus not available for scrutiny, OSHA concludes that the evidence for this substance is insufficient to warrant increasing the PEL at this time.

FLUORINE

CAS: 7782-41-4; Chemical Formula: F
H.S. No. 1179

OSHA's current PEL for fluorine is 0.1 ppm; NIOSH has no REL for fluorine. In 1973, the ACGIH revised its TLV to 1 ppm and, subsequent to that change, adopted a TLV-STEL of 2 ppm. OSHA proposed these ACGIH limits of 1 ppm TWA and 2 ppm STEL; however, the final rule retains the Agency's existing 0.1-ppm TWA limit. Fluorine is a pale yellow gas with a pungent irritating odor.

The ACGIH's previous 0.1-ppm TLV, which was adopted by OSHA in 1971, was based on a 30-day inhalation study in rats and dogs (Stokinger 1949b, as cited in ACGIH 1986/Ex. 1-3, p. 274) in which no consistent pulmonary, renal, or blood effects were observed following exposure to 0.5 ppm. The ACGIH believed that a TLV of 0.1 ppm would "provide a working environment of probable safety from the effects of F_2" (ACGIH 1966/Ex. 1-13). Subsequently, the ACGIH reviewed a seven-year study (Lyon 1962/Ex. 1-639) of 61 workers exposed to fluorine concentrations "far in excess of 0.1 ppm" (ACGIH 1986/Ex. 1-3, p. 2274), which reported a lack of significant medical findings. This evidence, along with more recent animal evidence (Keplinger and Suissa 1968/Ex. 1-342) suggesting that animals were not as sensitive to fluorine as was reported by Stokinger (1949b, as cited in ACGIH 1966/Ex. 1-3, p. 274), led the ACGIH to increase its TLV to 1 ppm. The STEL of 2 ppm was supported by a study (Ricca 1970/Ex. 1-357) in which human volunteers repeatedly exposed to 10 ppm reported only slight irritation.

NIOSH (Ex. 8-47, Table N2) submitted extensive comments to the record criticizing the ACGIH's reasoning in raising the limit for fluorine. NIOSH concluded:

> [T]here is no data existing to support raising the limit. The Lyon (1962/Ex. 1-639) study is severely limited and a review of the actual paper indicates [that] it has far less value than reported in the ACGIH documentation. All the animal data is, in fact, consistent with the original exposure data on which the 0.1-ppm level was based (Ex. 8-47, p. 3).

OSHA agrees with NIOSH and has determined that it is not appropriate, as had originally been proposed by the Agency, to increase the limit for fluorine at this time. OSHA concludes that the human and animal evidence is inadequate to support an increase in the 8-hour TWA for this substance from 0.1 ppm to 1 ppm. OSHA is therefore retaining its PEL of 0.1 ppm as an 8-hour TWA.

HEXACHLOROETHANE

CAS: 67-72-1; Chemical Formula: CCl_3CCl_3
H.S. No. 1197

OSHA's current PEL for hexachloroethane is a 1-ppm TWA, with a skin notation, which was adopted from the 1968 ACGIH TLV. The NIOSH REL for this substance is the lowest feasible level, based on hexachloroethane's potential carcinogenicity. Hexachloroethane is a nonflammable white solid.

The basis for the 1-ppm TLV was to prevent the "serious injury potential to several organ systems" shown by animal studies (ACGIH 1986/Ex. 1-3, p. 301). Subsequently, the ACGIH revised its TLV upward to 10 ppm based, in part, on a study by Weeks, Angerhofer, Bishop et al. (1979/Ex. 1-400) that reported no adverse effects among several animal species exposed daily to 15- or 48-ppm concentrations of hexachloroethane. The ACGIH also cited an NCI study (NCI 1978b/Ex. 1-949), in which "extremely heavy dosages . . . administered continuously for a long period of time" resulted in the development of hepatocellular tumors in mice but not in rats. The 10-ppm TLV was further supported by a personal communication of a TLV Committee member who reported that no ill effects occurred among workers "who handled the material with few precautions" during World War II (ACGIH 1986/Ex. 1-3, p. 301). No exposure data were supplied to support this personal communication.

In 1978, NIOSH reviewed the results of an NCI (1978b/Ex. 1-949) bioassay in which hexachloroethane was administered by gavage to mice and rats. Both male and female mice exhibited an excess incidence of hepatocellular carcinoma, but rats did not. NCI concluded that early mortality may have obscured detection of a carcinogenic effect in rats (NCI 1978b/Ex. 1-949). Toxic kidney damage was also found in mice and rats treated with hexachloroethane. Based on this evidence, NIOSH (*Chloroethanes: Review of Toxicity*, Current Intelligence Bulletin 27, NIOSH 1978r) has recommended that exposure to hexachloroethane be maintained at the lowest detectable level.

Several participants (Exs. 3-678, 116, 144, and 194; Tr. pp. 9-149, 9-218) commented on hexachloroethane. The New Jersey Department of Health (Ex. 144) discussed the use of ERA's IRIS system to determine limits (OSHA's discussion of this approach is presented in Section V1.A of this preamble). The Workers Institute of Safety and Health (WISH) (Ex. 116; Tr. p. 9-218) and the AFL-CIO (Ex. 194) stated that the ACGIH's increase in the limit for hexachloroethane reflects an inappropriate use of safety factors; WISH was also of the opinion that OSHA should have performed a quantitative risk assessment for hexachloroethane. In response to WISH, OSHA notes: (1) That the Agency is no. following the ACGIH's move to a higher

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limit for hexachloroethane; and (2) that OSHA performed risk assessments only for those substances classified in the carcinogen section of this preamble.

Lawrence Hecker, Corporate Director of Industrial Hygiene and Toxicology for Abbott Laboratories (Ex. 3-678; Tr. p. 9-1149) stated that the skin notation should not be retained for hexachloroethane because this material is not systematically toxic via dermal absorption. However, in accordance with the Agency's policy on skin notations (see Section VI.C.18 of this preamble), OSHA is retaining a skin notation for hexachloroethane in the final rule.

OSHA concludes that the evidence relied on by the ACGIH is not adequate to support raising the PEL at this time. The human evidence cited by the ACGIH is anecdotal and lacks the exposure data necessary to permit OSHA to assess whether significant risk is absent (and likely to remain so) at the 10-ppm exposure level. In addition, OSHA is concerned, as is NIOSH (Ex. 8-47, Table N6A), about the development of tumors in hexachloroethane-exposed mice demonstrated in the NCI (1978b/Ex. 1-949) study. OSHA therefore retains its PEL of 1 ppm TWA, with a skin notation, and concludes that increasing the PEL for hexachloroethane would increase the significant risk of cancer potentially associated with exposure to this substance.

NICKEL CARBONYL

CAS: 13463-39-3; Chemical Formula: Ni(CO)$_4$; H.S. No. 1284

The current OSHA PEL and the NIOSH recommended limit for nickel carbonyl is 0.001 ppm TWA, as Ni. Nickel carbonyl is a gaseous compound at ordinary pressure or a colorless, highly volatile liquid, with a musty odor. In 1976, the ACGIH increased its TLV for nickel carbonyl from 0.001 to 0.05 ppm. The ACGIH's former 0.001-ppm TLV was based primarily on the high incidence of nasal and lung cancer among workers exposed to nickel carbonyl during work in nickel refinery operations. In addition, the ACGIH cited evidence (Sunderman, West, and Kincaid 1959/Ex. 1-384) that rats exposed to nickel carbonyl developed lung tumors that metastasized to the kidneys. At the time, the ACGIH (1966/Ex. 1-13) noted that these tumors were not of a type generally associated with exposure to environmental agents.

In its 1976 documentation for the 0.05-ppm TLV for nickel carbonyl, the ACGIH cited the work of Doll, Morgan, and Speizer (1970/Ex. 1-821), who evaluated the exposures of nickel refinery workers in whom cancers had been found. Doll and associates (1970/Ex. 1-821) found that there had been no exposures to nickel carbonyl in the facility, and this finding led the ACGIH to conclude that nickel carbonyl was not the causative agent of the cancers reported among the refinery workers in the earlier studies it had relied on to set the 0.001-ppm TLV. A report that no excess nasal or lung tumors had occurred among workers exposed over a 50-year period in a nickel refinery in Wales (Renzoni, personal communication, 1975, as cited in *Documentation of the Threshold Limit Values for Substances in Workroom Air*, 3rd ed., ACGIH 1976) appeared to the ACHIH to corroborate Doll et al.'s (1970/Ex. 1-821) results. The ACGIH concluded that the TLV for nickel carbonyl should be raised based on the acute, systemic effects of this substance, and that carcinogenicity was not an appropriate basis for limit-setting (ACGIH 1976). In the 1986 *Documentation* for the 0.05-ppm TLV for nickel carbonyl, the ACGIH (Ex. 1-3) concluded that, "although the evidence that nickel carbonyl is carcinogenic to humans is inconclusive, this recommended TLV (i.e., one set at 0.05 ppm) is also adequate to minimize any potential carcinogenic effects" (ACGIH 1986/Ex. 1-3, p. 424).

OSHA received comments on nickel carbonyl from NIOSH (Ex. 8-47, Table N6A) and from Inco United States, Inc. and Inco Limited (Exs. 3-615 and 167). Inco urged OSHA to adjust the PEL for nickel carbonyl to 0.05 ppm and also stated that the limit for this substance should not be enforced until an adequate sampling and analytical method has been developed. On this issue of the health basis for an increase in the PEL, OSHA notes that Inco, like the ACGIH (1986/Ex. 1-3), believes that it is appropriate to increase this limit on the sole basis of results of negative epidemiological studies and a personal communication attesting to the absence of a "significant positive association with risk" in a Welsh refinery. However, as described in the introduction to this section, OSHA must meet a more stringent test before raising a limit. In addition, the interpretation of negative studies in humans is complicated by a host of factors (see Section V1.A of this preamble).

As to Inco's second point, OSHA notes that it has an in-house sampling and analytical method for nickel carbonyl that is available from the Agency on request. In addition, the limit for nickel carbonyl at issue is the limit that was assigned to this substance in 1971, at the time the Agency was established. OSHA is not required to perform feasibility analyses on its existing limits, and the Agency is unaware of any unusual compliance difficulties with this substance.

NIOSH (Ex. 8-47, Table N6A) concurs that retention of OSHA's limit is appropriate because NIOSH regards nickel carbonyl as a potential occupational carcinogen. Thus, OSHA finds the evidence discussed by the ACGIH insufficient to warrant an increase in the limit; some of this evidence is in the form of a personal communication. The Agency concludes that increasing the limit for this substance would increase the significant risk for exposed workers. In the final rule, OSHA is therefore retaining the existing PEL for nickel carbonyl of 0.001 ppm as an 8-hour TWA.

RHODIUM COMPOUNDS (METAL FUME, SOLUBLE AND INSOLUBLE SALTS)

CAS: 7440-16-6; Chemical Formula: Rh; H.S. No. 1347; 1348

The current OSHA PEL for rhodium metal fume and insoluble salts is 0.1 mg/m^3 as Rh; the current PEL for soluble rhodium compounds is 0.001 mg/m^3 as Rh. Rhodium is a silvery white, hard, ductile, and malleable metal. The ACGIH recommends a 1-mg/m^3 TLV for rhodium metal and insoluble salts and a 0.01-mg/m^3 TLV for soluble rhodium salts. The current OSHA PELs for rhodium compounds (i.e., the 1968 ACGIH TLVs) were based on the then-existing TLVs for platinum because of concern that exposure to rhodium might be associated with respiratory sensitization effects. This concern was prevalent because rhodium belongs to the platinum family of metals and because the toxicologic data on rhodium that were formerly available were "meager" (ACGIH 1986/Ex. 1-13).

The ACGIH's decision to increase the TLVs for rhodium compounds was based primarily on a personal communication to the TLV Committee (Johnson, Matthey and Co., Ltd. 1981b, as cited in ACGIH 1986/Ex. 1-3, p. 512). This communication indicated that, in a major precious metals refinery, "procedures which were abandoned for the refining of platinum because of cases of sensitization have been carried out for a year with analogous rhodium compounds without any problems" (ACGIH 1986/Ex. 1-3, p. 512). In addition, the ACGIH noted that none of the substances in the platinum group was known to produce respiratory effects similar to those of platinum. The ACGIH reported that rhodium exhibited "slight" carcinogenic activity in mice (ACGIH 1986/Ex. 1-3). After considering all of this evidence, the ACGIH judged the previous TLVs to be inappropriate and increased them tenfold.

NIOSH (Ex. 8-47, Table N1) concurs that OSHA should retain its PELs for

these substances. No other comments on rhodium were received. OSHA concludes that the evidence adduced by the ACGIH is not sufficient to meet the standard of proof the Agency must achieve before it can raise an exposure limit. This conclusion is based on that fact that the ACGIH relied heavily on a personal communication when making its decision, and no exposure or other data are available to support the ACGIH's action. Thus OSHA is unable to adequately evaluate the toxicologic evidence pertaining to the rhodium compounds and retains the existing PELs for rhodium metal fume and insoluble salts (0.1 mg/m^3 TWA) and rhodium soluble salts (0.001 mg/m^3 TWA).

SILICA, AMORPHOUS—DIATOMACEOUS EARTH

CAS: 68855-54-9; Chemical Formula: SiO_2; H.S. No. 1352

OSHA's current limit for amorphous silica is 20 mppcf, which is equivalent to 6 mg/m^3 TWA (ACGIH 1984), measured as total dust. The ACGIH has established a limit for this dust (measured as total dust) of 10 mg/m^3 (8-hour TLV-TWA). Amorphous silica (diatomaceous earth) is composed of the skeletons of prehistoric plants known as diatoms. These skeletons are largely noncrystalline, although diatomaceous earth can contain varying amounts of crystalline quartz, which has led, in the opinion of the ACGIH (1986/Ex. 1-3, p. 520), to conflicting results in studies of the pulmonary effects of exposure to this colorless to gray, odorless powder.

Cooper and Cralley (1958-Ex. 1-1145) reported "doubtful" linear-nodular changes in the lungs of workers exposed only to amorphous (noncrystalline) silica for five years or more. Other studies (Vigliani and Mottura 1948/Ex. 1-534; Gardner 1942, as cited in ACGIH 1986/Ex. 1-3, p. 520) either found mild silicosis only or no evidence of serious lung pathology in diatomite workers. Kovalevich (1957, as cited in ACGIH 1986/Ex. 1-3, p. 520) reported silicosis in diatomite workers, but intratracheal instillation of diatomaceous earth dust in animals caused evidence of fibrosis (Gardner 1942, as cited in ACGIH 1986/Ex. 1-3, p. 520) and silicosis (Kovalevich 1957, as cited in ACGIH 1986/Ex. 1-3, p. 520). Another study (Tebbens and Beard 1957/Ex. 1-531) exposed guinea pigs to this substance at an average concentration of 60 mg/m^3 for 37 to 50 weeks and found both accumulations of dust-laden macrophages and alveolar epithelialization but no fibrosis.

In setting its limit for diatomaceous earth, the ACGIH (1966/Ex. 1-3, p. 520) assumed that this substance itself is either "weakly fibrogenic or nonfibrogenic," and thus that those studies discussed above that report adverse pulmonary effects actually involved exposure to diatomaceous earth having an unmeasured but significant crystalline quartz content. Based on this reasoning, the ACGIH considers amorphous silica (diatomaceous earth) to have low biological activity.

OSHA received few comments on its proposal to retain the 6-mg/m^3 PEL for diatomaceous earth. The Synthetic Amorphous Silica and Silicates Industry Association (SASSI) (Ex. 1-630) requested that OSHA revise its entry for "silica, amorphous, diatomaceous earth" to "silica, crystalline, diatomaceous earth" to reflect the fact that diatomaceous earth frequently contains crystalline silica. OSHA intends the PEL for crystalline quartz of 0.1 mg/m^3 to apply to diatomaceous earth containing more than 1 percent crystalline silica. For clarification, OSHA has added the designation "containing less than 1 percent crystalline silica" to the entry for diatomaceous earth on Table Z-1-A of the final rule, for which the 6-mg/m^3 limit is applicable.

SASSI also suggested that the crystalline silica PEL apply to any silicates containing more than 0.1 percent, rather than 1 percent, crystalline silica because of recent concerns regarding the potential carcinogenicity of silica. As discussed in the section on crystalline silica (see Section VI.C.6), OSHA has not made a final determination on the carcinogenicity of silica; therefore, at this time, OSHA will apply the limits for silicates to those materials containing less than 1 percent silica.

NIOSH (Ex. 8-47) concurred with the 6-mg/m^3 TWA PEL for diatomaceous earth, provided the silica content does not exceed 1 percent. Chevron Corporation (Ex. 3-896) also agreed with OSHA's proposal. Both Chevron (Ex. 3-896) and SASSI (Ex. 3-630) agreed that the former mppcf limit should be revised to a limit expressed as mg/m^3, since the use of mppcf units is outdated.

OSHA is retaining an 8-hour TWA of 6 mg/m^3 (equivalent to 20 mppcf) for this form of silica. OSHA finds that the health evidence for this substance is not sufficiently persuasive to permit an increase in the limit at the present time. The Agency is revising the units in which its permissible exposure limit for diatomaceous earth is expressed; this change is being made to facilitate the accurate monitoring of employee exposures and does not represent a change in the value of the limit.

SILICA, AMORPHOUS, PRECIPITATED AND GEL

CAS: None; Chemical Formula: SiO_2; H.S. No. 1353

OSHA currently has a limit of 20 mppcf (which is equivalent to a limit of 6 mg/m^3) for amorphous silica. The ACGIH recommends a TLV-TWA of 10 mg/m^3 measured as total dust containing less than 1 percent quartz. OSHA is retaining the current PEL in the final rule but is expressing this limit in milligrams per cubic meter; NIOSH (Ex. 8-47, Table N1) concurs with the Agency's decision. There are numerous methods of producing precipitated silica; those that apply heat to siliceous products produce airborne dusts that are less toxic than quartz dust because the particles are generally sheathed in a molecular layer of amorphous silica (ACGIH 1986/Ex. 1-3, p. 521).

Studies of laboratory animals have shown no fibrosis after intratracheal and intraperitoneal injection of precipitated silica or silica gel (Klosterkotter 1954/Ex. 1-1150; Klosterkotter 1958/Ex. 1-1039). Schepers and colleagues reported in 1957 that rats exposed for one year and guinea pigs and rabbits exposed for two years to a concentration of 126 mg/m^3 of precipitated amorphous silica displayed no pulmonary fibrosis; the effects of exposure were limited to macrophage accumulations and mild proliferation of reticulin fibers (Schepers, Durkan, Delahant et al. 1957/Ex. 1-755).

In a study of human exposures to precipitated amorphous silica, Wilson and associates reported no ill effects in 165 workers exposed for an average of 8.6 years (Wilson, Stevens, Lovejoy et al. 1981/Ex. 1-1177).

The ACGIH considers the precipitated and gel forms of amorphous silica to have low biological activity, based on the evidence discussed above. PPG Industries (Ex. 3-1158) commented that an unpublished NIOSH study (Groth, Kommineni, Stettler et al. 1979, as cited by H.E. Stokinger in *Patty's Industrial Hygiene and Toxicology*, 3rd rev. ed., Vol. 2B, pp. 3011-3014) showed that rats, guinea pigs, and monkeys developed accumulations of macrophages in the lungs following exposure to precipitated silica. In addition, the presence of collagen was seen in "very few" monkeys; by comparison, collagen was not seen in any animal exposed to silica gel but was seen in significant amounts in monkeys exposed to fumed silica. PPG remarked that the findings in animals exposed to precipitated silica showed "no evidence for effects * * * which are inconsistent with the ACGIH

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criteria for nuisance particulates" (Ex. 3-1156). PPG urged OSHA to adopt a 10-mg/m³ PEL for precipitated silica based on this observation. SASSI (Ex. 3-630) also requested that OSHA adopt either a 10-mg/m³ total dust limit or a 5-mg/m³ respirable dust limit for precipitated silica, based on the recommendation of ASTM's E34.16 Committee.

After reviewing these comments, OSHA concludes that the available evidence does not meet the criteria described earlier in this section for determining that an increase in the present PEL is warranted. OSHA notes that, in the study cited by PPG, there was collagen formation only in a few animals exposed to precipitated silica. Furthermore, the report by Wilson et al. (1981/Ex. 1-1177) involved only a relatively small number of employees who had been exposed for fewer than 10 years. Accordingly, OSHA is retaining its current PEL of 6 mg/m³ (equivalent to 20 mppcf) at the present time. However, to facilitate the accurate monitoring of employee exposures, the Agency is changing the units in which its permissible exposure limit for amorphous silica is expressed.

SILVER (METAL DUST AND FUME)

CAS: 7440-22-4; Chemical Formula: Ag
H.S. No. 1362

The current OSHA standard for silver metal and soluble compounds (including the metal dust and fume) is 0.01 mg/m³, as Ag. NIOSH has no REL for this substance, but the ACGIH has established a 0.1-mg/m³ TLV for silver metal dust and fume. NIOSH concurs with OSHA's decision not to increase the limit for silver (Ex. 8-47). Silver is a hard, brilliant, white, ductile, malleable metal.

The previous TLV of 0.01 mg/m³, which was established for all forms of silver, was designed to protect workers against developing argyria. This condition arises from the accumulation of silver in the body and results in an unsightly, widespread blue-grey discoloration of the skin that can persist for long periods of time. The skin of exposed workers may also become black and have a metallic luster. Argyria may manifest in the conjunctiva of the eye, which may be affected sufficiently to cause lens and visual disturbances.

In arriving at the previous TLV of 0.01 mg/m³ for silver, the ACGIH relied on a publication by Pillsbury and Hill (1939, as cited in ACGIH 1988/Ex. 1-3, p. 529), which stated that an accumulated intake of from 1 to 5 grams of silver would lead to generalized argyria. Assuming a 20-year exposure duration, a 10-m³/day respiratory volume, and a 50-percent body retention, the ACGIH estimated that exposure to 0.05 mg/m³ was sufficient to cause argyria. The former TLV of 0.01 mg/m³ thus appeared to incorporate a safety factor to account for the uncertainties involved in using this approach to develop a TLV. The ACGIH's current TLV of 0.1 mg/m³ for silver metal dust and fume was determined in a similar fashion, except that the ACGIH assumed a lower percent retention and apparently did not incorporate a safety margin (ACGIH 1986/Ex. 1-3).

OSHA received several comments on its proposal to retain the existing limit for silver (Ex. 8-47, 8-57, 3-676, 46, and 105; Tr. pp. 9-126 to 9-127). The American Mining Congress (Ex. 3-676) stated that argyria, the blue-grey discoloration of the skin caused by exposure to silver, is caused only by exposure to the soluble silver salts and not by metallic silver. BP America, a company that operates a silver smelting and refining operation in Utah, is also of the opinion that OSHA should increase its limit for silver (metal, dust, and fumes) because, although argyria "can be cosmetically unpleasant, it is not known to result in any adverse health consequences" (Ex. 8-57).

OSHA responds to these commenters as follows. First, OSHA does not agree that having one's skin discolored, on a semipermanent basis, is a "minor" effect. On the contrary, OSHA believes that argyria causes emotional stress, acute personal discomfort, and feelings of insecurity, all of which are symptoms of severe psychological distress.

In addition, although the American Mining Congress is certain that only the soluble forms cause argyria, OSHA notes that Wolf Wagner, Manager of Industrial Hygiene for BP America, expressed uncertainty on this point at the hearing; he reported that argyria is "most likely due to a soluble silver rather than an insoluble silver" (Ex. 8-57; Tr. pp. 9-126 to 9-127). OSHA agrees that considerable uncertainty surrounds the issues of the causative agents of argyria and the specific level at which this effect occurs. As the ACGIH (1986/Ex. 1-3, p. 529) reports:

> The concentration of silver in the air which will result in generalized argyria is not known with certainty.

Thus, OSHA concludes that the evidence needed to raise the limit for silver is lacking. OSHA is therefore retaining its former limit for silver (metal, dust, and fume) of 0.01 mg/m³ as an 8-hour TWA.

TETRAETHYL LEAD (TEL)

CAS: 78-00-2; Chemical Formula: $(C_2H_5)_4Pb$
H.S. No. 1386

OSHA's current 8-hour limit for tetraethyl lead is 0.075 mg/m³, measured as lead, with a skin notation; NIOSH has no REL for this substance. The ACGIH is now recommending that worker exposure to TEL not exceed 0.1 mg/m³ TWA; the ACGIH also recommends a skin notation. Tetraethyl lead is a colorless liquid, which may be dyed red, orange, or blue, and has a slightly musty odor.

The previous TLV of 0.075 mg/m³ was based almost exclusively on a personal communication from the Medical Department of the Ethyl Corporation, which stated that a level of 0.075 mg/m³ "is a good guideline for an allowable air concentration of TEL" (ACGIH 1966/Ex. 1-13). The ACGIH documentation for the 0.075-mg/m³ TLV also pointed out that the ability of tetraethyl lead to penetrate the skin "makes reliance on the airborne concentration impractical in many situations," and that urinary lead levels are a more reliable indicator of exposure than blood lead levels (ACGIH 1966/Ex. 1-13).

In its documentation for the 0.1-mg/m³ TLV, the ACGIH (1988/Ex. 1-3, p. 563) again cited the communication from the Ethyl Corporation. In addition, the organization cited a personal communication from Linch (1958, as cited in ACGIH 1986/Ex. 1-3, p. 563), who reported that an improved analytical procedure for measuring airborne concentrations of tetraethyl lead had been used to determine the relationship between airborne tetraethyl lead levels and urinary lead levels. He reported that urinary lead concentration was not significantly elevated "above a high normal" value (0.15 mg/L) when the airborne TEL level was 121 μg/m³ (ACGIH 1986/Ex. 1-3, p. 563). As a result of this communication, the ACGIH adopted a revised TLV of 0.1 mg/m³ in 1970.

NIOSH (Ex. 8-47, Table N1) concurs that OSHA should retain its existing limit for TEL; no other comments on this substance were submitted.

OSHA does not find the evidence presented by the ACGIH to be sufficiently comprehensive or detailed to permit significant risk to be ruled out at the 0.1-ppm level. The Agency is also reluctant to increase the PEL for TEL in light of this substance's ability to be absorbed percutaneously. OSHA is therefore retaining the existing PEL of 0.075 mg/m³, measured as Pb and with a skin notation, for tetraethyl lead.

TETRAMETHYL LEAD (TML)

CAS: 75-74-1; Chemical Formula: $(CH_3)_4Pb$
H.S. No. 1388

The current OSHA limit for tetramethyl lead (TML) is 0.075 mg/m³ TWA, with a skin notation, while the ACGIH has recommended a TLV of 0.15 mg/m³, measured as Pb and with a skin notation. There is no NIOSH REL for TML. Tetraethyl lead is a colorless liquid, which may be dyed blue, orange, or red; it has a slight musty odor.

In establishing the previous TLV of 0.15 mg/m³, the ACGIH cited the work of de Treville, Wheeler, and Sterling (1962/Ex. 1-310), who reported that tetramethyl lead is about three times more volatile than tetraethyl lead and thus results in airborne TML levels that are about three times higher than those for TEL. Despite the heavier TML exposure of employees, urinary lead levels were not significantly different from the urinary lead levels of employees exposed to TEL. The ACGIH concluded that a 0.075-mg/m³ TLV for TML, identical to the TLV recommended at the time for TEL, should furnish an adequate margin of safety. The revised TLV of 0.15 mg/m³ was based on a personal communication by Linch (1966, as cited in ACGIH 1986/Ex. 1-3, p. 563), who reported that exposure to 0.179 mg/m³ tetramethyl lead was not associated with a significant increase in urinary lead levels.

NIOSH concurs (Ex. 8-47, Table N1) that the retention of the Agency's 0.075-mg/m³ limit is appropriate, and no other comments on TML were received. Based on the same reasoning as that described above in connection with tetraethyl lead, OSHA is not increasing its existing TWA limit for TML; the skin notation for TML is also retained.

URANIUM (SOLUBLE COMPOUNDS)

CAS: 7440-61-1; Chemical Formula: U
H.S. No. 1419

The current OSHA limit for soluble uranium compounds is 0.05 mg/m³ TWA, measured as uranium. NIOSH has no REL for soluble uranium compounds. Since 1968, the ACGIH has increased its TLV for soluble uranium from 0.05 mg/m³ to 0.2 mg/m³, with a 0.6-mg/m³ STEL. The previous TLV of 0.05 mg/m³ was based on animal studies relating exposure level and duration to the resulting tissue concentration of uranium and on other chronic animal studies showing the kidney to be the most sensitive target organ. In 1968, the ACGIH's *List of Intended Changes* included a TLV of 0.2 mg/m³ for all forms of uranium, and this value was dropped by the ACGIH in 1969. The basis for adopting the 0.2-mg/m³ TLV for soluble uranium compounds was a study by Wing, Heatherton, and Quigley (1963, as cited in ACGIH 1986/Ex. p. 617) reporting no adverse effects from radiation exposure over a 25-year period. Although no data were discussed in the ACGIH (1986/Ex. 1-3) *Documentation* regarding typical exposure levels at the plants studied, the documentation does mention that seven accidental, brief exposures to soluble uranium compounds at levels two- to fivefold the former TLV of 0.05 mg/m³ did not result in physiologic changes or significant body burden.

Allied Signal, Inc. (Ex. 3-1084) is of the opinion that OSHA's limit for the soluble compounds of uranium is "unrealistically low based on NRC (Nuclear Regulatory Commission) and industry experience." This company states that the fact that soluble uranium "exits the body quite rapidly" means that it does not produce radiation-induced cancer. OSHA finds that this evidence is not sufficiently detailed to use as a basis for raising its limit for these compounds, and NIOSH (Ex. 8-47, Table N1) concurs.

OSHA does not find this evidence adequate to meet the Agency's more stringent standard of proof for relaxing an existing exposure limit. In addition, OSHA notes that the 25-year period of observation in the Wing et al. (1963, as cited in ACGIH 1986/Ex. 1-3, p. 617) study is not long enough to rule out the occurrence of some forms of radiation-induced cancer and, further, that the power of this study to detect health effects occurring in a small percentage of the population was very limited. OSHA is accordingly not raising its current PEL for the soluble uranium compounds.

17. Substances for Which OSHA is Establishing Short-Term Exposure Limits

Introduction

OSHA is establishing a short-term exposure limit (STEL) for a total of 116 substances; these substances are listed in Table C17-1.

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Table C17-1. Substances for Which OSHA is Establishing STELs to Supplement TWA Limits

H.S. Number/ Chemical Name	CAS No.	Final Rule STEL
1001 Acetaldehyde	75-07-0	150 ppm
1004 Acetone	67-64-1	1000 ppm
1005 Acetonitrile	75-05-8	60 ppm
1007 Acrolein	107-02-8	0.3 ppm
1010 Allyl alcohol	107-18-6	4 ppm
1011 Allyl chloride	107-05-1	2 ppm
1012 Allyl glycidyl ether (AGE)	106-92-3	10 ppm
1013 Allyl propyl disulfide	2179-59-1	3 ppm
1022 Ammonium chloride fume	12125-02-9	20 mg/m^3
1042 Bromine	7726-95-6	0.3 ppm
1045 2-Butanone (MEK)	78-93-3	300 ppm
1047 n-Butyl acetate	123-86-4	200 ppm
1050 tert-Butyl alcohol	75-65-0	150 ppm
1056 p-tert-Butyltoluene	98-51-1	20 ppm
1064 Caprolactam Dust	105-60-2	3 mg/m^3
1065 Caprolactam Vapor	105-60-2	40 mg/m^3
1069 Carbon dioxide	124-38-9	30,000 ppm
1070 Carbon disulfide	75-15-0	12 ppm
1072 Carbon tetrabromide	558-13-4	0.3 ppm
1074 Carbonyl fluoride	353-50-4	5 ppm
1078 Chlorinated camphene	8001-35-2	1 mg/m^3
1079 Chlorine	7782-50-5	1 ppm
1080 Chlorine dioxide	10049-04-4	0.3 ppm
1089 o-Chlorostyrene	2039-87-4	75 ppm
1114 Decaborane	17702-41-9	0.15 ppm
1116 Di-sec-octyl-phthalate	117-81-7	10 mg/m^3
1119 Dibutyl phosphate	107-66-4	2 ppm
1122 1,3-Dichloro-5,5-dimethylhydantoin	118-52-5	0.4 mg/m^3
1125 p-Dichlorobenzene	106-46-7	110 ppm
1127 Dichloroethyl ether	111-44-4	10 ppm
1137 Diethylamine	109-89-7	25 ppm
1143 Dimethylaniline	121-69-7	10 ppm
1149 Dipropylene glycol methyl ether	34590-94-8	150 ppm
1159 Ethanolamine	141-43-5	6 ppm
1161 Ethyl acrylate	140-88-5	25 ppm
1162 Ethyl benzene	100-41-4	125 ppm
1163 Ethyl bromide	74-96-4	250 ppm
1164 Ethyl ether	60-29-7	500 ppm

Table C17-1. Substances for Which OSHA is Establishing STELs To Supplement TWA Limits (continued)

H.S. Number/ Chemical Name	CAS No.	Final Rule STEL
1168 Ethylene dichloride	107-06-2	2 ppm
1177 Ferrovanadium dust	12604-58-9	3 mg/m^3
1182 Formamide	75-12-7	30 ppm
1184 Furfuryl alcohol	98-00-0	15 ppm
1185 Gasoline	8006-61-9	500 ppm
1194 n-Heptane	142-82-5	500 ppm
1201 Hexane isomers	Varies	1000 ppm
1203 Hexone (Methyl isobutyl ketone)	108-10-1	75 ppm
1208 Hydrogen fluoride	7664-39-3	6 ppm
1209 Hydrogen sulfide	7783-06-4	15 ppm
1216 Iron pentacarbonyl	13463-40-6	0.2 ppm
1218 Isoamyl alcohol	123-51-3	125 ppm
1222 Isophorone diisocyanate	4098-71-9	0.02 ppm
1224 Isopropyl acetate	108-21-4	310 ppm
1225 Isopropyl alcohol	67-63-0	500 ppm
1227 Isopropyl glycidyl ether	4016-14-2	75 ppm
1228 Isopropylamine	75-31-0	10 ppm
1231 Ketene	463-51-4	1.5 ppm
1236A Manganese fume	7439-96-5	3 mg/m^3
1242 Mercury (organo), alkyl compounds	7439-97-6	0.03 mg/m
1243 Mesityl oxide	141-79-7	25 ppm
1248 Methyl 2-cyanoacrylate	137-05-3	4 ppm
1249 Methyl acetate	79-20-9	250 ppm
1250 Methyl acetylene/ propadiene mixture	None	1250 ppm
1252 Methyl alcohol	67-56-1	250 ppm
1254 Methyl chloride	74-87-3	100 ppm
1255 Methyl chloroform (1,1,1-trichloroethane)	71-55-6	450 ppm
1258 Methyl formate	107-31-3	150 ppm
1261 Methyl isobutyl carbinol	108-11-2	40 ppm
1267 alpha-Methyl styrene	98-83-9	100 ppm
1270 o-Methylcyclohexanone	583-60-8	75 ppm
1281 Morpholine	110-91-8	30 ppm
1282 Naphthalene	91-20-3	15 ppm
1286 Nitric acid	7697-37-2	4 ppm
1295 Octachloronaphthalene	2234-13-1	0.3 mg/m^3
1296 Octane	111-65-9	375 ppm
1298 Osmium tetroxide	20816-12-0	0.006 mg/m^3
1299 Oxalic acid	144-62-7	2 mg/m^3

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Table C17-1. Substances for Which OSHA is Establishing STELs To Supplement TWA Limits (continued)

H.S. Number/ Chemical Name	CAS No.	Final Rule STEL
1301 Ozone	10028-15-6	0.3 ppm
1304 Pentaborane	19624-22-7	0.015 ppm
1306 Pentane	109-66-0	750 ppm
1307 2-Pentanone (Methyl propyl ketone)	107-87-9	250 ppm
1309 Perchloryl fluoride	7616-94-6	6 ppm
1317 Phenylhydrazine	100-63-0	10 ppm
1319 Phorate (Thimet)	298-02-2	0.2 mg/m^3
1320 Phosdrin (Mevinphos)	7786-34-7	0.3 mg/m^3
1321 Phosphine	7803-51-2	1 ppm
1322 Phosphoric acid	7664-38-2	3 mg/m^3
1324 Phosphorus pentasulfide	1314-80-3	3 mg/m^3
1325 Phosphorus trichloride	7719-12-2	0.5 ppm
1338 n-Propyl acetate	109-60-4	250 ppm
1339 Propyl alcohol	71-23-8	250 ppm
1340 n-Propyl nitrate	627-13-4	40 ppm
1341 Propylene dichloride	78-87-5	110 ppm
1343 Propylene glycol monomethyl ether	107-98-2	150 ppm
1346 Resorcinol	108-46-3	20 ppm
1366 Sodium fluoroacetate	62-74-8	0.15 mg/m^3
1372 Styrene (Phenylethylene)	100-42-5	100 ppm
1375 Sulfur dioxide	7446-09-5	5 ppm
1379 Sulfuryl fluoride	2699-79-8	10 ppm
1387 Tetrahydrofuran	109-99-9	250 ppm
1397 Toluene	108-88-3	150 ppm
1398 Toluene-2,4-diisocyanate	584-84-9	0.02 ppm
1403 1,1,2-Trichloro-1,2,2-trifluoroethane	76-13-1	1250 ppm
1406 Trichloroethylene	79-01-6	200 ppm
1408 Triethylamine	121-44-8	15 ppm
1411 Trimethylamine	75-50-3	15 ppm
1416 Tungsten & compounds (insoluble)	7440-33-7	10 mg/m^3
1417 Tungsten & compounds (soluble)	7440-33-7	3 mg/m^3
1418 Uranium (insoluble compounds)	7440-61-1	0.6 mg/m^3
1424 Vinyl acetate	108-05-4	20 ppm
1429 VM&P Naphtha	8032-32-4	400 ppm

Table C17-1. Substances for Which OSHA is Establishing STELs To Supplement TWA Limits (continued)

H.S. Number/ Chemical Name	CAS No.	Final Rule STEL
1430a, Wood dust 1430b all soft and hard-woods except Western red cedar	None	10 mg/m^3
1431 Xylene (o,m,p-isomers)	1330-20-7	150 ppm
1435 Zinc chloride fume	7646-85-7	2 mg/m^3
1437 Zinc oxide fume	1314-13-2	10 mg/m^3
1435 Zirconium compounds	7440-67-7	10 mg/m^3

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When OSHA adopted the ACGIH TLVs in 1971, the ACGIH had not established the short-term TLV category; as a consequence, none of the substances on OSHA's Z-1 table have STELs. (Some of the substances on OSHA's current Z-2 tables, whose limits derive from standards established by the American National Standards Institute rather than the ACGIH, have "acceptable ceiling concentrations" that act, in effect, as short-term exposure limits.)

The ACGIH defines a STEL as

> a 15-minute time-weighted average exposure which should not be exceeded at any time during a work day even if the eight-hour time-weighted average is within the TLV. Exposures at the STEL should not be longer than 15 minutes and should not be repeated more than four times per day. There should be at least 60 minutes between successive exposures at the STEL. An averaging period other than 15 minutes may be recommended when this is warranted by observed biological effects (ACGIH 1987/Ex. 1-16).

Basis Under Which ACGIH Established STELs

The ACGIH establishes STELs for substances that cause a wide variety of acute effects; these effects include irritation, narcosis, lung damage, systemic effects, and organic poisoning. The ACGIH first considered adding STELs to the TLV-TWAs for some substances in 1971 when it appointed a subcommittee to study the appropriateness of adding such exposure limits to its TLV list.

In 1973, this subcommittee recommended that the ACGIH establish STELs as a third category (along with TLV-TWAs and TLV-ceilings) of exposure limits. The STEL was defined as the maximum concentration to which workers can be exposed continuously *for a period of up to 15 minutes* without suffering from

1. Intolerable irritation,
2. Chronic or irreversible tissue change, or
3. Narcosis of sufficient degree to increase accident proneness, impair self-rescue, or materially reduce work efficiency (*Supplemental Documentation to the Fourth Edition of the Documentation of the Threshold Limit Values*, ACGIH 1984).

The ACGIH stipulated that no more than four such excursions per day were permissible, with at least 60 minutes between exposure periods, and that the daily TLV-TWA could not be exceeded.

In 1974, the ACGIH agreed by consensus that 425 of the 520 compounds in its 1973 list should have STELs assigned to them, but these were not in fact published until 1976, when "Tentative Values" for STELs were listed in the organization's annual booklet. The 1987-1988 ACGIH TLV booklet states that the TLV-STEL is "the concentration to which workers can be exposed continuously for a short period of time without suffering from (1) irritation, (2) chronic or irreversible tissue damage, or (3) narcosis of sufficient degree to increase the likelihood of accidental injury, impair self-rescue or materially reduce work efficiency . . . provided that the daily TLV-TWA is not exceeded."

In 1982, the ACGIH qualified the conditions under which STELs are recommended to "only [those situations] where toxic effects have been reported from high short-term exposures in either humans or animals." Since that time, the ACGIH has re-examined the toxicological data and subsequently deleted the STELs for 297 substances because of insufficient evidence that adverse effects result from acute exposures. The most recent (1988-1989) edition of the *Threshold Limit Values and Biological Exposure Indices* (ACGIH 1988b) proposes deletion of the short-term limit for an additional 18 substances. The ACGIH has stressed that STELs are set on physiological grounds rather than in response to sampling and analytical limitations (ACGIH 1984).

Separate from the STEL category, the ACGIH in the 1970s established a fourth limit, a general "excursion factor" that should always be observed implicitly but is not specifically assigned to each chemical. The "excursion limit" recommended by the ACGIH is defined as follows:

> Short-term exposures should exceed three times the TLV-TWA for no more than a total of 30 minutes during a work day and under no circumstances should they exceed five times the TLV-TWA, provided that the TLV-TWA is not exceeded (ACGIH 1987).

The basis for this excursion limit is that any process having emissions that display a variability greater than would be permitted by this excursion factor is not under good industrial hygiene control, and the ACGIH believes that, in such cases, efforts should be made to restore control (ACGIH 1986x). Where a specific STEL exists for a substance, the specific STEL takes precedence over the general excursion limit (ACGIH 1987). Thus *all* ACGIH TLV-TWAs have implicit excursion limits, but only a few substances (i.e., those for which specific toxicological evidence indicates that a STEL is necessary) have explicit STELs.

Basis for Short-Term Limits Being Promulgated by OSHA

The STELs being promulgated by OSHA in this rulemaking, which parallel those STELs remaining in the ACGIH's most recent list (ACGIH 1987-1988) are thus limits for substances where there is toxicological evidence of recognized acute effects resulting from short-term exposure. The health effects associated with short-term exposures for some of these substances are shown in Table C17-2.

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TABLE C17-2. Health Effects Supporting Final Rule STELs

H.S. Number/ Chemical Name	Final Rule STEL	Health Effects
1001 Acetaldehyde	150 ppm	Eye irritation; narcosis; potential injury to respiratory tract
1004 Acetone	1000 ppm	Eye, nose, and throat irritation; narcosis
1005 Acetonitrile	60 ppm	Nausea; headache; convulsions
1007 Acrolein	0.3 ppm	Irritation; lung edema
1010 Allyl alcohol	4 ppm	Irritation
1011 Allyl chloride	2 ppm	Mucous membrane irritation
1012 Allyl glycidyl ether (AGE)	10 ppm	Irritation
1013 Allyl propyl disulfide	3 ppm	Irritation; lacrimation
1022 Ammonium chloride fume	20 mg/m^3	Irritation
1042 Bromine	0.3 ppm	Respiratory tract irritation
1045 2-Butanone (MEK)	300 ppm	Eye and nose irritation
1047 n-Butyl acetate	200 ppm	Throat irritation
1050 tert-Butyl alcohol	150 ppm	Narcosis
1056 p-tert-Butyltoluene	20 ppm	Eye, nose, and throat irritation
1064 Caprolactam dust	3 mg/m^3	Irritation

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TABLE C17-2. Health Effects Supporting Final Rule STELs (continued)

H.S. Number/ Chemical Name	Final Rule STEL	Health Effects
1065 Caprolactam vapor	40 mg/m^3	Irritation
1069 Carbon dioxide	30,000 ppm	Central nervous system effects; asphyxiation
1072 Carbon tetrabromide	0.3 ppm	Upper respiratory tract irritation; injury to lungs, liver, and kidney
1074 Carbonyl fluoride	5 ppm	Respiratory irritation
1079 Chlorine	1 ppm	Eye, mucous membrane, skin, and pulmonary irritation
1080 Chlorine dioxide	0.3 ppm	Irritation
1089 o-Chlorostyrene	75 ppm	Dizziness; nausea; headache
1114 Decaborane	0.15 ppm	Hyperexcitability; narcosis
1119 Dibutyl phosphate	2 ppm	Irritation to respiratory tract; headaches
1122 1,3-Dichloro-5,-5-dimethylhydantoin	0.4 mg/m^3	Respiratory irritation
1125 p-Dichlorobenzene	110 ppm	Acute poisoning
1127 Dichloroethyl ether	10 ppm	Upper respiratory tract and eye irritation

TABLE C17-2. Health Effects Supporting Final Rule STELs (continued)

H.S. Number/ Chemical Name	Final Rule STEL	Health Effects
1137 Diethylamine	25 ppm	Acute toxicity characterized by strong local irritation
1143 Dimethylaniline	10 ppm	Methemoglobinemia; CNS depression
1149 Dipropylene glycol methyl ether	150 ppm	Eye, nose, and throat irritation; central nervous system impairment
1159 Ethanolamine	6 ppm	Pulmonary irritation
1161 Ethyl acrylate	25 ppm	Irritation
1162 Ethyl benzene	125 ppm	Skin and eye irritation
1163 Ethyl bromide	250 ppm	Narcosis
1164 Ethyl ether	500 ppm	Narcosis; nasal irritation
1168 Ethylene dichloride	2 ppm	Central nervous system effects
1177 Ferrovanadium dust	3 mg/m^3	Eye and respiratory irritation
1184 Furfuryl alcohol	15 ppm	Eye irritation
1185 Gasoline	500 ppm	Narcosis; irritation
1194 n-Heptane	500 ppm	Narcosis; respiratory irritation

TABLE C17-2. Health Effects Supporting Final Rule STELs (continued)

H.S. Number/ Chemical Name	Final Rule STEL	Health Effects
1201 Hexane isomers	1000 ppm	Narcotic symptoms; eye and throat irritation; slight nausea, headache
1203 Hexone (MIBK)	75 ppm	Irritant effects
1208 Hydrogen fluoride	6 ppm	Eye and respiratory irritation
1209 Hydrogen sulfide	15 ppm	Eye irritation
1216 Iron pentacarbonyl	0.2 ppm	Headaches; dizziness
1218 Isoamyl alcohol	125 ppm	Respiratory and eye irritation
1222 Isophorone diisocyanate	0.02 ppm	Respiratory effects and sensitization; pulmonary irritation
1224 Isopropyl acetate	310 ppm	Eye and respiratory irritation
1225 Isopropyl alcohol	500 ppm	Narcotic effects and irritation
1227 Isopropyl glycidyl ether	75 ppm	Respiratory tract and eye irritation
1228 Isopropylamine	10 ppm	Respiratory irritation

TABLE C17-2. Health Effects Supporting Final Rule STELs (continued)

H.S. Number/ Chemical Name	Final Rule STEL	Health Effects
1231 Ketene	1.5 ppm	Respiratory irritation
1236A Manganese fume	3 mg/m^3	Central nervous system effects
1242 Mercury, (organo) alkyl compounds	0.03 mg/m^3	Central nervous system effects; irritation
1243 Mesityl oxide	25 ppm	Eye and mucous membrane irrita- tion, breathing difficulty, head- ache and vertigo
1248 Methyl 2-cyanoacrylate	4 ppm	Nasal and eye irritation
1249 Methyl acetate	250 ppm	Ocular and nervous disturbances; eye, mucous membrane, upper and lower respiratory tract irritation
1252 Methyl alcohol	250 ppm	Recurrent headaches; diminution of vision
1254 Methyl chloride	100 ppm	Narcosis
1255 Methyl chloroform (1,1,1-trichloroethane)	450 ppm	Anesthesia
1258 Methyl formate	150 ppm	Visual disturbances (temporary blindness); narcotic symptoms, mucous membrane irritation; dyspnea
1261 Methyl isobutyl carbinol	40 ppm	Eye irritation

TABLE C17-2. Health Effects Supporting Final Rule STELs (continued)

H.S. Number/ Chemical Name	Final Rule STEL	Health Effects
1267 alpha-Methyl styrene	100 ppm	Eye irritation
1270 o-Methylcyclohexanone	75 ppm	Eye and respiratory irritation
1281 Morpholine	30 ppm	Irritation and harmful effects to eyes and vision
1282 Naphthalene	15 ppm	Ocular effects
1286 Nitric acid	4 ppm	Respiratory irritation
1296 Octane	375 ppm	Acute effects on nervous system
1298 Osmium tetroxide	0.006 mg/m^3	Irritation; conjunctivitis
1299 Oxalic acid	2 mg/m^3	Severe local burns to eyes, mucous membranes, and skin
1301 Ozone	0.3 ppm	Pulmonary congestion; eye, nose, and throat irritation
1304 Pentaborane	0.015 ppm	Central nervous system effects
1306 Pentane	750 ppm	Narcotic and irritative effects

TABLE C17-2. Health Effects Supporting Final Rule STELs (continued)

H.S. Number/ Chemical Name	Final Rule STEL	Health Effects
1307 2-Pentanone (MPK)	250 ppm	Narcotic effects; irritation
1309 Perchloryl fluoride	6 ppm	Respiratory irritation; fluorosis
1317 Phenylhydrazine	10 ppm	Sensitization effects
1319 Phorate (Thimet)	0.2 mg/m^3	Cholinesterase inhibition
1320 Phosdrin (Mevinphos)	0.3 mg/m^3	Cholinesterase inhibition
1321 Phosphine	1 ppm	Pulmonary irritation
1322 Phosphoric acid	3 mg/m^3	Respiratory irritation
1324 Phosphorus pentasulfide	3 mg/m^3	Respiratory irritation
1325 Phosphorus trichloride	0.5 ppm	Respiratory irritation
1338 n-Propyl acetate	250 ppm	Irritation; narcosis
1339 Propyl alcohol	250 ppm	Possible deep narcosis
1340 n-Propyl nitrate	40 ppm	Irritation; headache, nausea
1341 Propylene dichloride	110 ppm	Eye irritation; central nervous system effects

TABLE C17-2. Health Effects Supporting Final Rule STELs (continued)

H.S. Number/ Chemical Name	Final Rule STEL	Health Effects
1408 Triethylamine	15 ppm	Acute irritation of eyes, mucous membranes, and lungs
1411 Trimethylamine	15 ppm	Irritation
1424 Vinyl acetate	20 ppm	Irritation
1428 Vinylidene chloride	20 ppm	Overt toxicity
1430a Wood dust 1430b All soft and hardwoods, except Western red cedar	10 mg/m^3	Respiratory effects
1431 Xylene (o,m,p-isomers)	150 ppm	Narcosis, irritant effects
1435 Zinc chloride (fume)	2 mg/m^3	Respiratory irritation
1437 Zinc oxide fume	10 mg/m^3	Metal fume fever

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TABLE C17-2. Health Effects Supporting Final Rule STELs (continued)

H.S. Number/ Chemical Name	Final Rule STEL	Health Effects
1343 Propylene glycol monomethyl ether	150 ppm	Eye irritation
1346 Resorcinol	20 ppm	Eye and skin irritation
1366 Sodium Fluoroacetate	0.15 mg/m	Metabolic inhibition
1372 Styrene, monomer	100 ppm	Tremors with subsequent severe convulsions; pulmonary edema may follow severe single exposure
1375 Sulfur dioxide	5 ppm	Respiratory effects
1379 Sulfuryl fluoride	10 ppm	Central nervous system effects; pulmonary irritation
1387 Tetrahydrofuran	250 ppm	Narcotic and irritative effects
1397 Toluene	150 ppm	Impairment of coordination, momentary memory loss, anorexia
1398 Toluene-2,4-diisocyanate	0.02 ppm	Sensitization effects
1403 1,1,2-Trichloro-1,2,2-tri-fluoroethane	1250 ppm	Impairment of psychomotor performance
1406 Trichloroethylene	200 ppm	Narcosis

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OSHA received comments on the issue of STELs from many rulemaking participants (Exs. 3–217, 3–623, 3–678, 3–868, 3–901, 3–902, 3–904, 3–905, 3–1008, 3–1012, 3–1053, 3–1057, 3–1099, and 3–1246; Tr. p. 3–333; Tr. pp. 10–12 to 10–14; Tr. p. 11–231), who expressed the opinion that STELs and ceiling limits should only be established when a toxicologic basis exists that demonstrates the need for a short-term limit. Many of these rulemaking participants urged OSHA not to establish STELs for substances in this rulemaking, in view of the fact that the ACGIH is still evaluating the basis for its TLV–STELs and recently deleted the TLV–STELs for a number of substances.

NIOSH (Ex. 8–47) also discussed the basis under which short-term limits (called "ceilings" by NIOSH) are appropriate:

> Ceiling values are intended to minimize toxic effects related to the peak exposure. Ceiling values are necessary when there are immediate acute responses to an air contaminant independent of the total daily dose or when chronic effects are dose-rate response related. Ceiling values are also used to minimize the total daily dose when there is intermittent occupational exposure, e.g., ethylene oxide (Ex. 8–47).

The Workers' Institute for Safety and Health (WISH) had a similar view of the need for short-term limits, and expressed the belief that OSHA should adopt some guidelines for decisionmaking in this area (Ex. 116).

In the final rule, OSHA finds that the STELs and ceilings being established reflect the concerns of rulemaking participants that short-term limits be promulgated when a toxicologic basis exists for the short-term limit. In general, OSHA is establishing STELs or ceiling limits when the toxicologic evidence for a particular substance indicates that the 8-hour TWA PEL alone would be insufficient to protect employees from experiencing adverse effects related to short-term exposure to elevated concentrations of that substance. In making these determinations, OSHA has considered the record evidence on specific short-term limits that were proposed (see discussions for individual substances).

In addition, for substances for which the ACGIH has recently proposed deleting STELs (ACGIH 1988b), OSHA has reevaluated the toxicologic basis for the STELs proposed in the NPRM. Both as a result of this analysis and in response to the record evidence on specific substances, OSHA is not establishing short-term limits, as originally proposed, for the following substances:

Acetic acid
sec-Butyl alcohol
Camphor (synthetic)
2-Chloro-6-trichloromethyl pyridine
Chlorodifluoromethane
o-Chlorotoluene
Chlorpyrifos
Clopidol
Crufomate
Cyclonite
Fluorine
Oil mist
Perchloroethylene
Phosphorus oxychloride
Picloram
Picric acid
Propionic acid
Tantalum
Vinylidene chloride
Zinc stearate

For the remaining substances for which STELs or ceiling limits were proposed, OSHA has determined that the toxicologic evidence demonstrates that a short-term limit is necessary to provide employee protection that would not otherwise be provided by an 8-hour TWA limit alone.

WISH (Ex. 116, p. 20) suggested that OSHA adopt a "generic STEL" applicable to all substances regulated by OSHA, similar to the general excursion limit recommended by the ACGIH. Another commenter, the Chemical Manufacturers Association (CMA) (Tr. pp. 10–12 to 10–16), was not in favor of such a provision because in CMA's view, a general excursion limit relates to statistical variability in sampling data rather than to toxicological factors.

In the final rule, OSHA has not established a general excursion limit that applies to all regulated substances. However, there are workplace situations where OSHA believes that worker protection requires the implementation of a STEL. For example, OSHA believes that the severity of the health effect caused by exposure and the pattern of exposure prevalent in operations involving a given substance are both factors that should be considered when determining whether a short-term limit is appropriate. OSHA concludes that, in these instances, promulgating a STEL is a necessary and appropriate measure for ensuring that workplace conditions will be maintained under a sufficient degree of control to ensure that workers are protected from experiencing serious exposure-related health effects.

18. Substances for Which OSHA Is Adding Skin Designations

For 49 substances included in this rulemaking, OSHA is adding skin designations in recognition of the capacity of these substances to be absorbed through the skin in sufficient quantities to cause systemic toxicity. Table C18–1 shows all of the substances for which the Agency is establishing skin notations.

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TABLE C18-1. List of Substances for Which OSHA Is Adding a Skin Designation

H.S. Number/ Chemical Name	CAS No.
1009 Acrylic acid	79-10-7
1051 n-Butyl alcohol	71-36-3
1055 o-sec-Butylphenol	89-72-5
1070 Carbon disulfide	75-15-0
1075 Catechol	120-80-9
1084 o-Chlorobenzylidene malononitrile	2698-41-1
1091 Chlorpyrifos	2921-88-2
1107 Cyclohexanol	108-93-0
1108 Cyclohexanone	108-94-1
1110 Cyclonite	121-82-4
1118 Diazinon	333-41-5
1129 1,3-Dichloropropene	542-75-6
1131 Dicrotophos (Bidrin)	141-66-2
1141 Dimethyl 1,2-dibromo-2,2-dichloroethyl phosphate	300-76-5
1146 Dioxathion (Delnav)	78-34-2
1152 Disulfoton	298-04-4
1156 Endosulfan	115-29-7
1160 Ethion (Nialate)	563-12-2
1173 Fenamiphos	22224-92-6
1175 Fenthion	55-38-9
1181 Fonofos	944-22-9
1184 Furfuryl alcohol	98-00-0

TABLE C18-1. List of Substances for Which OSHA Is Adding a Skin Designation (continued)

H.S. Number/ Chemical Name	CAS No.
1198 Hexafluoroacetone	684-16-2
1211 2-Hydroxypropyl acrylate	999-61-1
1220 Isooctyl alcohol	26952-21-6
1222 Isophorone diisocyanate	4098-71-9
1229 N-Isopropylaniline	768-52-5
1237 Manganese cyclopentadienyl tricarbonyl	12079-65-1
1240 Mercury (aryl and inorganic compounds)	7439-97-6
1241 Mercury (vapor)	7439-97-6
1242 Mercury (organic), alkyl compounds	7439-97-6
1244 Methacrylic acid	79-41-4
1251 Methyl acrylonitrile	126-98-7
1252 Methyl alcohol	67-56-1
1256 Methyl demeton	8022-00-2
1265 Methyl parathion	298-00-0
1271 Methylcyclopentadienyl manganese tricarbonyl	12108-13-3
1273 4,4'-Methylene bis(2-chloroaniline)	101-14-4
1313 Phenothiazine	92-84-2
1319 Phorate (Thimet)	298-02-2
1335 Propargyl alcohol	107-19-7
1364 Sodium azide	26628-22-8
1392 Thioglycolic acid	68-11-1
1394 Tin (organic compounds)	7440-31-5
1400 p-Toluidine	106-49-0

TABLE C18-1. List of Substances for Which OSHA Is Adding a Skin Designation (continued)

H.S. Number/ Chemical Name	CAS No.
1401 m-Toluidine	108-44-1
1414 Triorthocresyl phosphate	78-30-8
1426 Vinyl cyclohexene dioxide	106-87-6
1432 m-Xylene-alpha,alpha'-diamine	1477-55-0

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The ACGIH began to include skin designations for the chemicals in its list for the first time in 1961 (Stokinger 1982/Ex. 1–698). At that time, the organization stated that:

> This notation is to be interpreted simply as an indicator that skin absorption may contribute to the overall intake from exposure in addition to that from inhalation. It refers mainly to absorption from liquid contamination (Stokinger 1982/Ex. 1–698).

The ACGIH has expanded on its reasoning since the 1960s, and the preface to the most recent *Threshold Limit Values and Biological Exposure Indices for 1987–1988* (ACGIH 1987/Ex. 1–16) explains that the skin designation is designed to call attention to the need for "appropriate measures for the prevention of cutaneous absorption so that the threshold limit is not invalidated" (ACGIH 1987/Ex. 1–16, p. 7). Thus, a skin notation warns that exposure via the cutaneous route, including absorption through the eyes or mucous membranes by either inhalation or direct contact, may contribute substantially to an employee's overall exposure and cause systemic toxicity.

The ACGIH has a policy of using a dermal LD_{50} of 2 g/kg as a general cutoff for determining when to classify a substance as sufficiently absorbable to present a hazard via the percutaneous route; that is, substances having a single-dose dermal LD_{50} of less than 2 g/kg receive a skin notation, while those with dermal LD_{50}s above this cutoff do not (ACGIH 1986/Ex. 1–3, p. 332). The *Documentation* (ACGIH 1986/Ex. 1–3) contains no cutoff value for chronic dermal exposures (i.e., for toxicity resulting from repeated applications of substances to the skin).

OSHA proposed to include as paragraph 3(2) of the standard the following language regarding the use of skin notations:

> (2). An employee's skin exposure to materials listed in the Table Z–4 with an "S" Notation shall be limited through the use of gloves, coveralls, goggles, or other appropriate personal protection equipment or method necessary to prevent possible skin absorption.

The NPRM explained further that a skin designation is employed "where the substance may be absorbed through the skin" or "where skin contact could damage or irritate the skin." In addition, the NPRM mentioned that both engineering controls and work practices may be used to limit skin exposure, but that the hierarchy of controls, i.e., a preference for engineering controls, would not be enforced in the case of skin notations.

A number or rulemaking participants (Exs. 3–44, 3–64, 3–661, 3–673, 3–683, 3–677, 3–691, 3–1008, and 3–1063; Tr. 8/1/88, pp. 304–305, 337; Tr. 8/9/88, pp. 136, 148) objected to the skin notation language contained in the Summary and Explanation section (Section VII) of the NPRM and urged OSHA to enunciate a clear and consistent policy on the use of the skin designations. According to Dr. Lawrence Hecker of Abbott Laboratories:

> In industrial hygiene practice, the use of the skin notation, as recommended by the ACGIH, long ago became a widely used indicator of chemicals for which skin absorption represents a significant route of entry for systemic effects. In general, the term has not been used to denote irritants or other materials that have their primary effects on the skin itself. Abbott Laboratories agrees with and advocates this philosophy.
>
> We recommend that the use of the skin notation be restricted to chemicals for which the skin is a significant route of entry by at least one of the following two criteria: 1. the material is highly toxic with a dermal LD_{50} value based on animal tests of 200 milligrams per kilogram or less. . . . 2. The material has exhibited clear systemic effects in people as the result of skin contact (Ex. 3–678, pp. 2–3).

The American Industrial Hygiene Association (Tr. 8/9/88, p. 148) believes that OSHA's regulatory language should stipulate that protection against skin absorption should be achieved by the "use of engineering controls and work practices, where practicable, and shall be supplemented, where necessary, by the use of suitable gloves, coveralls, goggles, or other appropriate personal protective equipment." The Eastman Kodak Company (Ex. 3–661, p. 3) states that:

> The proposed wording contains the phrase "necessary to prevent possible skin absorption," which may be interpreted as permitting no skin contact or absorption. This is more limiting than equivalent provisions in Part 1910 for control of airborne exposure and may be infeasible or impractical in many cases. OSHA should change the phrase to "necessary to minimize skin contact" or "necessary to minimize skin absorption."

In response to these comments, the Agency has developed new language for paragraph (e)(3)(ii) of § 1910.1000, which reads as follows:

> An employee's skin exposure to substances listed in Table Z–1–A with the designation "Skin" following the substance name shall be *prevented or reduced to the extent possible* through the use of gloves, coveralls, goggles, or other appropriate personal protective equipment, *engineering controls or work practices* (emphasis added).

OSHA is not requiring that engineering controls be used preferentially to protect against skin absorption; the Agency notes that this decision is consistent with 29 CFR 1910.132 and 1910.134, which require the use of engineering controls and work practices in preference to personal protective equipment only when inhalation is the route of entry.

OSHA agrees with Dr. Hecker and several other commenters that dermal irritation alone should not warrant a skin designation; instead, OSHA believes that skin designations should be used only in instances where a substance can be percutaneously absorbed in quantities sufficient to cause systemic poisoning. However, the Agency has determined that more protective policy than that advocated by Dr. Hecker should be used to decide when a skin designation is appropriate. In this rulemaking, OSHA's decision logic for establishing skin notations derives from the Agency's Hazard Communication Standard (29 CFR 1910.1200). Appendix A of that regulation defines, in measurable terms, the possible health effects that may occur in the workplace as a result of chemical exposures. These definitions set forth quantitative guidelines for determining if chemicals are "highly toxic" or merely "toxic" by the dermal route of exposure. A chemical is considered *highly toxic* via skin absorption if

> . . . [it] has a median lethal dose (LD_{50}) of 200 milligrams or less per kilogram of body weight when administered by continuous contact for 24 hours (or less if death occurs within 24 hours) with the bare skin of albino rabbits weighing between two and three kilograms each.

It is considered *toxic* via skin absorption if

> . . . [it] has a median lethal dose (LD_{50}) of more than 200 milligrams per kilogram but not more than 1,000 milligrams per kilogram of body weight when administered by continuous contact for 24 hours (or less if death occurs within 24 hours) with the bare skin of albino rabbits weighing between two and three kilograms each.

Accordingly, OSHA has determined that a skin notation is necessary for substances that have median lethal dose (LD_{50}) values in rabbits on single-dose applications of less than 1000 mg/kg. In addition, in very rare cases where available data (for any species) indicate that dermal contact results in a systemic dose that is equivalent to or greater than the dose that would be permitted by the PEL via inhalation, OSHA believes that a skin designation is warranted. In addition to this animal evidence, OSHA believes that the availability of human data demonstrating that systemic injury has occurred as a result of skin absorption is sufficient evidence that a skin notation is warranted.

OSHA has followed these guidelines in establishing skin designations in this rulemaking. As a consequence, the skin designations proposed in the NPRM for eight substances have been deleted in the final rule because the Agency found in its subsequent review of the record that the substances failed to meet the requisite animal and/or human criteria, thus demonstrating an absence of significant risk as a result of percutaneous absorption:

Allyl glycidyl ether;
Captafol;
2-N-Dibutylaminoethanol;
Diethylene triamine;
Hexachlorobutadiene;
Propyl alcohol;
1,2-Propylene glycol dinitrate; and
1,2,3-Trichloropropane.

The evidence that OSHA finds acceptable in humans is, of course, impossible to quantify in terms of laboratory measurements. For example, much of the information on the dermal toxicity of substances in humans is anecdotal and derives from accidental poisonings. Nevertheless, OSHA believes that such evidence should constitute a sufficient basis for the establishment of a skin designation.

In addition, OSHA has added skin designations to a number of substances where none were originally proposed if commenters submitted evidence to the record that supported these additions. These substances are:

Acrylic acid;
Carbon disulfide;
Catechol;
Disulfoton;
Isophorone diisocyanate;
Mercury (aryl and inorganic);
Methacrylic acid; and
Sodium azide.

Substances for which the ACGIH Has Deleted the Skin Notation

For four substances, the ACGIH has deleted the skin notations that appeared in the 1986 edition of the *Documentation* and that were subsequently adopted by OSHA under the Section 6(a) mechanism in 1971. Table C18–2 shows these chemicals

TABLE C18-2. List of Substances for Which the ACGIH Has Deleted the Skin Notation

H.S. Number/ Chemical Name	CAS No.
1113 DDT	50-29-3
1149 Dipropylene glycol methyl ether	34590-94-8
1197 Hexachloroethane	67-72-1
1303 Paraquat, respirable dust	4685-14-7

OSHA is retaining the skin notations for these four substances (DDT, dipropylene glycol methyl ether, hexachloroethane, and paraquat). The Agency believes that deletion of these designations would consititute an increase in the level of exposure permitted and would thus decrease the extent of worker protection provided by OSHA. In accordance with principles established by OSHA (see the preamble for the final revisions to the cotton dust standard, 50 *FR* 51120 *et seq.*), the Agency must demonstrate, on the basis of human data, that deleting these skin designations, which were established under the 6(a) mechanism, will not pose a significant risk to exposed workers. The discussion below describes the ACGIH's reasons for recommending deletion of these notations.

The evidence on which the ACGIH based its decision to delete skin notations for the four chemicals in question is primarily animal evidence. For DDT and hexachloroethane, the ACGIH deleted the skin designation based on the relatively low dermal toxicity demonstrated by these substances in animal studies. OSHA concludes, however, that the absence of significant risk to humans via dermal absorption has not been sufficiently shown for either DDT or hexachloroethane. In the case of the latter substance, there are no human data with which to demonstrate an absence of risk, and to decrease the

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amount of protection provided by the existing limit would not be appropriate.

For the two remaining substances in this group, paraquat and dipropylene glycol methyl ether (DPGME), the skin notation was deleted because the ACGIH believes that the substance does not, in the case of paraquat, "penetrate the unbroken or uninjured skin" or believes, as in the case of DPGME, that the substance is "practically nontoxic . . . by the dermal route for rabbits" (ACGIH 1988/Ex. 1–3). However, OSHA notes that at high doses paraquat does "injure and break down dermal barriers" and gain entry to the body. The *Documentation* records the case of a 44-year-old man who died of respiratory insufficiency after he was poisoned by the percutaneous absorption of an acutely toxic quantity of undiluted paraquat (ACGIH 1988/Ex. 1–3). Therefore OSHA is retaining the skin notation for paraquat.

In addition, the Agency notes that DPGME, applied essentially according to the method prescribed by Draize et al., was absorbed in sufficient quantities through rabbit skin to result in transient narcosis (*Patty's Industrial Hygiene and Toxicology*, Vol. 2C, p. 3980, Clayton and Clayton 1982). However, topical administration of only 10 mg/kg DPGME five times per week for 13 weeks to shaved rabbit skin caused six deaths among seven animals (*Chemical Hazards of the Workplace*, 2nd ed., p. 221, Proctor, Hughes, and Fischman 1988). In light of this evidence, OSHA believes that deleting the skin notation for DPGME would be inappropriate, since the absence of significant risk in humans cannot be clearly demonstrated. Consequently, OSHA is retaining the skin notation for this substance.

In accordance with the principles stated in the cotton dust preamble (50 *FR* 51120), OSHA does not find the evidence adduced by the ACGIH sufficient to provide a basis for the deletion of the skin notations for this group of four substances. The Agency concludes that deleting the skin notation from the limits for DDT, dipropylene glycol methyl ether, hexachloroethane, and paraquat will not ensure that workers are protected against the significant risk potentially posed by percutaneous absorption of these substances.

D. References

OSHA will publish in the Federal Register in the near future a reference list that includes all of the additional references cited in this preamble. This list will supplement the reference list that appeared in the June 7 notice of proposed rulemaking (NPRM).

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Note.—Supplements 2 through 4 are available in the OSHA Docket Office, Room N2634, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, (202) 523–7894

B. Introduction and Executive Summary

Introduction

The Occupational Safety and Health Administration (OSHA) is amending its existing air contaminant standards at 29 CFR 1910.1000, Tables Z–1, Z–2, and Z–3. The amendments provide more protective permissible exposure limits (PELS) for about 230 substances, and set new exposure limits for 165 substances currently not regulated by OSHA. The PELs include time-weighted average limits, short term exposure limits, ceiling limits, and, in some cases, skin designations. No changes are being made to the PELs for 30 substances.

Background. Congress enacted the Occupational Safety and Health Act of 1970 (the Act) to achieve several goals, one of which was to protect workers from occupational health hazards. Congress acknowledged the role of occupational exposure in the development of diseases, and addressed in the Act the need to quickly establish minimum health standards to control exposure to hazardous substances. To accomplish Congress' intent, OSHA adopted initial exposure limits for approximately 430 chemicals. Four hundred of these exposure limits were based on the recommendations of the American Conference of Governmental Industrial Hygienists (ACGIH), and 21 were from the American Standards Association (now called the American National Standards Institute). The list of exposure limits was to be updated, improved, and expanded as new

knowledge and techniques were developed. To date OSHA has promulgated extensive health standards for only 24 individual chemicals. The rulemaking under consideration here would set exposure limits for about 430 chemicals based on the 1987–88 Threshold Limit Values of the ACGIH, and recommendations of the National Institute for Occupational Safety and Health (NIOSH) of the U.S. Department of Health and Human Services.

The OSH Act requires the Agency to consider the feasibility of proposed and final standards. Executive Order 12291 (46 FR 13197) requires that a regulatory analysis be conducted for any rule having major economic consequences on the national economy, individual industries, geographical regions, or levels of government. The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) similarly requires OSHA to consider the impact of the proposed and final regulations on small entities. This analysis covers these requirements.

Approach. Because this rulemaking involves about 430 chemicals, OSHA has prepared the regulatory impact analysis in two phases. Phase I involved the use of a number of secondary data bases to collect information on the chemicals to be regulated and the industries in which they are used. These data bases provided information on the toxicity and health effects of exposure to the chemicals, and current information on engineering controls in use and emergency response procedures. Two data bases provided information on employee exposures. The 1982 National Occupational Exposure Survey (NOES) was based on a sample of about 4,500 businesses. The data base developed from this survey contains an estimate of the number of persons occupationally exposed to hazardous substances by Standard Industrial Classification (SIC). The second data base was OSHA's Integrated Management Information System (IMIS). The IMIS contains the results of air samples taken since 1979 by OSHA industrial hygienists in the course of compliance inspections. Both the NOES and IMIS data bases provided valuable information on the nature and extent of employee exposures to the substances to be regulated; however, they did not provide complete information on all substances. Supplementary information was obtained from industrial hygienists and engineers. These experts identified exposure controls in use and the number and size of plants most likely to be affected by this rulemaking. These sources have provided OSHA with a substantial body of information on chemical use, exposures and controls.

Phase II of the data collection effort involved a sampling survey of about 5,700 firms in industries where chemical exposures were believed to pose potential problems. The survey, conducted during the first part of 1988, gathered data on chemicals, processes, exposures and controls currently in use. These additional data have permitted OSHA to refine the Phase I preliminary estimates of technical and economic feasibility. In addition, site visits to 90 firms were conducted to verify the data collected on chemicals, processes, controls, and employee exposures.

OSHA has used contractors to assist in these data collection efforts. Three contractors have supplied expert knowledge on the industries affected and the engineering controls needed to reach the proposed exposure levels. These contractors are Kearney/Centaur Division of A.T. Kearney, Meridian Research, and CONSAD. Fu Associates provided data base management support during all phases of the project. Washington Consulting Group designed the sample for the surveyed firms and KCA Research conducted the telephone interviews of these firms.

Employee Exposure and Benefits

Revising OSHA's Z-Table limits for hazardous substances is expected to result in reduced risk of chemically-related disease among exposed employees. Exposure to substances included in the rulemaking has been associated with a variety of adverse health effects, including impairment of organ system functions, mucous membrane irritation, neuropathy, narcosis, allergic sensitization, respiratory disease, cardiovascular disease, and cancer.

Using data from OSHA's IMIS system and information collected from the survey of about 5,700 establishments, OSHA estimates that over 21 million employees are potentially exposed to hazardous substances in the workplace. OSHA also estimates that over four and one-half million employees are currently exposed above the proposed exposure limits for these substances. Table B–1 summarizes OSHA's estimates of the number of workers currently at risk of adverse health effects. OSHA estimates that promulgation of the final rule's exposure limits will result in a potential reduction of over 55,000 work-related illness cases per year, over 23,000 lost-workday illness cases per year, and almost 520,000 lost workdays due to illness per year. OSHA's estimate is that industry compliance with the final rule's exposure limits will result in a reduction of an average of 663 fatalities annually that are caused by exposure to substances that cause cancer, respiratory disease, cardiovascular disease, or liver or kidney disease.

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TABLE B-1

Estimated Number of Workers Potentially at Risk of Experiencing Adverse Effects, by Type of Adverse Effect*

ADVERSE HEALTH EFFECT	NO. OF WORKERS POTENTIALLY EXPOSED TO SUBSTANCES ASSOCIATED WITH EFFECT, MINIMUM ESTIMATE	NO. OF WORKERS POTENTIALLY EXPOSED TO SUBSTANCES ASSOCIATED WITH EFFECT, MAXIMUM ESTIMATE	NO. OF WORKERS EXPOSED ABOVE FINAL LIMITS FOR SUBSTANCES, MINIMUM ESTIMATE	NO. OF WORKERS EXPOSED ABOVE FINAL LIMITS FOR SUBSTANCES, MAXIMUM ESTIMATE
PHYSICAL IRRITANT EFFECTS	3,375,472	3,889,261	222,191	222,191
ODOR EFFECTS	519,318	521,938	3,597	3,597
SYSTEMIC TOXICITY	4,305,578	5,038,573	457,104	490,282
MUCOUS MEMBRANE IRRITATION	10,730,691	14,906,090	789,461	1,141,133
METABOLIC INTERFERENCES	4,015,702	4,205,530	1,233,413	1,241,564
LIVER/KIDNEY DISEASE	3,292,993	3,808,226	536,945	546,429
OCULAR DISTURBANCES	2,482,449	2,569,950	83,272	110,560
RESPIRATORY DISEASE	4,231,235	4,782,280	1,405,501	1,568,579
CARDIOVASCULAR DISEASE	166,077	166,868	44,403	44,403
NEUROPATHY	2,212,358	2,463,583	379,974	401,576
NARCOSIS	6,966,024	10,520,982	941,472	1,073,711
CANCER	1,712,799	1,851,342	465,013	520,650
ALLERGIC SENSITIZATION	2,545,551	2,648,973	305,955	305,955

* Double counting of employees simultaneously exposed to more than one substance in different adverse health effects categories prevents the summation of workers exposed to all adverse health effects in this table.

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Nonregulatory Alternatives

OSHA believes that there are no nonregulatory alternatives that adequately protect most workers from the adverse health effects associated with exposure to the chemicals under consideration. OSHA believes that the tort liability laws and Workers' Compensation do not provide adequate worker protection due to market imperfections. Some employers have not complied with the standards recommended by professional organizations. The deleterious health effects resulting from continued high levels of exposure to hazardous substances require a regulatory solution, and the OSH Act requires the Agency to protect workers' health.

Technological Feasibility

Consistent with OSHA regulations and policy, engineering controls and work practices are preferred over personal protective equipment to control employee exposures to airborne contaminants.

Engineering controls involve the use of a local exhaust ventilation, general ventilation, isolation of the worker and enclosure of the source of emissions, process modifications, equipment modifications, and substitution of non-hazardous or less hazardous chemicals. These methods may be used alone or in combination, depending upon the industrial processes involved. These controls are widely used and will effectively control exposures either by themselves, or coupled with changes in work practices.

Perhaps the most widely used technique for controlling chemical exposure is the use of ventilation. General ventilation uses the movement of air within the general work space to displace or dilute the contaminant with fresh outside air. General ventilation may not be the preferred control method, however, due to the large volumes of air movement required. Local exhaust ventilation uses much smaller volume of air and controls emissions at the point or source from which contaminants are generated.

Isolation involves placing a physical barrier between the hazardous operation and the worker. Many modern, automated manufacturing processes are now fully enclosed in ventilated cabinets. The effectiveness of such a control technique depends on the frequency with which the workers have to enter the enclosure during normal operations. In other situations, the worker, rather than the process or machine, can be placed in an enclosure having a controlled atmosphere. Many processes which involve potential chemical exposures are operated remotely by operators from air-conditioned booths isolated from the hazardous materials.

Substitution refers to the replacement of a toxic chemical in a particular process or work area with another, less toxic or non-toxic product. Properly applied, substitution can be a very effective control technique. However, care must be taken to ensure that the proposed substitute performs in a similar manner to the product being replaced. In addition, it is essential that the substitute be carefully evaluated to ensure that in controlling one hazard, another different hazard is not inadvertently introduced. The substitute must also be compatible with existing manufacturing equipment and processes.

The success of these engineering control techniques will depend on the physical properties of the chemicals and emissions encountered (boiling point, vapor pressure, etc.) and the process operating conditions. In some cases, particularly with cleaning solvents, substitution may provide the quickest and most effective means of reducing exposure. In other situations, a major effort may be required to alter processes or install or expand local or general dilution ventilation.

OSHA has found that engineering controls and improved work practices are available to reduce exposure levels to the new levels in almost all circumstances. Standard controls have been adapted in numerous situations to solve situation-specific problems in all of the industry sectors affected. Detailed industry-specific illustrations of this point are presented in the Technological Feasibility Chapter of this Feasibility and Regulatory Analysis. OSHA does recognize, however, that in some circumstances, respiratory protection may be necessary to complement engineering controls and that respiratory protection may also be necessary to achieve compliance in some specific operations in some industries.

Costs of Compliance

Costs of compliance with the proposed rulemaking would result from industry actions to lower workers' chemical exposures to the levels promulgated in the final rule. The 1988 sample survey of almost 5,700 firms was drawn from a universe of over one million firms potentially affected by the rule. Table B-5 at the end of this section presents a list of industries included in the analysis.

Survey respondents verified the number of work stations and workers related to each process, the process location and configuration, the controls already in place, and potential chemical exposures above new proposed levels. Process controls in place were compared to a list of control designs needed to limit exposures to the new, lower levels. Where the required controls were not reported to be in place, a compliance cost per work station was assigned. Process control costs were summed per establishment and certain maintenance workers were assigned a respirator cost. Costs for the surveyed establishments were then weighted (by SIC and size) to represent compliance costs for the universe of affected plants.

The survey found that over 900,000 establishments (of the 1,101,669 establishments covered by the survey) reported using the chemicals being regulated. Of this number, 131,005 would incur some costs to comply with the new limits. The total estimated annualized capital plus annual operating costs are $787.98 million. Table B-2 presents the annual cost by industry sector and the average per plant annual cost for large and small (fewer than 20 employees) plants.

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TABLE B-2

AVERAGE PER PLANT ANNUAL COSTS AND NUMBERS OF AFFECTED PLANTS (a)

SIC (b)	SIC DESCRIPTION	ANNUAL COST	TOTAL # OF PLANTS	# OF AFFECTED PLANTS	% AFFECTED	AVERAGE COST PER AFFED PLANT	AVERAGE COST PER LARGE AFFED PLANT	AVERAGE COST PER SMALL AFFED PLANT
20	FOOD PROD. (c)	$33,443,100	39,000	4,052	10.39%	$6,000	$13,000	$3,600
21	TOBACCO (c)	$19,700	200	3	1.50%	$6,600	$6,600	$0
22	TEXT. MILL (c)	$29,478,400	11,000	2,705	25.00%	$10,700	$21,400	$3,700
23	APPAREL PROD. (c)	$31,744,200	35,000	6,179	20.57%	$5,100	$11,500	$2,000
24	LUMBER & WOOD	$56,720,000	27,100	10,427	40.00%	$5,100	$4,200	$2,700
25	FURNITURE	$21,073,000	12,700	5,068	40.00%	$4,200	$12,400	$1,800
26	PAPER PROD.	$20,900,700	7,000	3,010	50.00%	$8,000	$15,200	$000
27	PRINTING & PUB.	$33,754,500	60,300	3,507	6.00%	$9,400	$6,200	$10,600
28	CHEMICAL PROD.	$55,454,700	16,400	3,067	18.31%	$11,000	$16,200	$5,400
29	PETRO. REFINING	$23,656,000	2,300	300	13.25%	$77,400	$109,600	$700
30	RUBBER & PLASTICS	$111,000,400	15,100	3,562	26.22%	$21,200	$27,000	$35,100
31	LEATHER PROD.	$2,414,700	2,300	300	13.46%	$8,000	$10,400	$6,400
32	STONE & CLAY	$22,457,000	15,900	3,267	22.00%	$6,900	$12,200	$3,400
33	PRIM. METAL	$70,937,000	8,000	2,411	30.00%	$29,400	$41,900	$6,200
34	FAB. METALS	$39,419,700	37,300	4,597	14.56%	$8,600	$15,000	$3,800
35	MACHINERY	$45,206,000	64,400	8,091	10.56%	$7,000	$14,600	$3,000
36	ELEC. MACH.	$20,657,500	21,000	2,359	10.92%	$7,000	$14,500	$3,000
37	TRANS. EQUIP.	$49,792,400	13,000	4,999	36.56%	$10,000	$11,000	$6,000
38	INSTRUMENTS	$9,603,300	12,000	1,200	10.71%	$7,000	$14,500	$3,000
39	MISC. MANF.	$15,042,000	25,300	2,640	10.47%	$7,000	$14,600	$3,000
40	R.R. TRANS.	$1,000,400	400	90	20.00%	$11,700	$11,700	$0
45	AIR TRANS.	$3,740,500	5,300	330	5.79%	$11,700	$11,700	$0
47	TRANS. SERV.	$3,700,400	26,200	334	1.24%	$11,700	$11,700	$0
49	ELEC. GAS. SAN.	$20,000,300	15,000	3,405	22.34%	$10,900	$17,000	$3,600
50	WHOLESALE TRADE	$2,995,300	5,000	001	13.75%	$3,405	$6,200	$2,900
51	WHOLESALE, NON-DUR	$14,215,000	33,000	4,436	13.00%	$3,400	$6,200	$2,900
55	AUTO DEALERS	$13,730,300	140,000	24,047	14.99%	$360	$2,000	$300
72	PERSONAL SERV.	$10,072,100	99,300	5,217	5.47%	$2,200	$6,000	$1,000
73	BUSINESS SERV.	$2,422,100	12,100	000	6.61%	$2,200	$0,300	$1,500
75	AUTO REPAIR	$6,143,500	91,300	8,351	9.13%	$600	$3,500	$300
76	MISC. REPAIR SERV.	$2,000,000	15,100	1,143	11.50%	$2,400	$12,400	$2,100
80	HEALTH SERV. (c)	$4,430,400	232,000	1,150	0.52%	$3,000	$12,500	$2,100
TOTAL		$707,002,000	1,101,000	131,005	11.00%	$6,000	$13,000	$3,100

Source: U.S. Department of Labor, Occupational Safety and Health Administration, Office of Regulatory Analysis.

(a) Costs were calculated by annualizing the capital cost over the projected life of the equipment (10 years) using a 10 percent cost of capital and adding an annual operating and maintenance cost estimated at 10 percent of the capital cost.

(b) Industry sectors not identified in this table include industries with no major cost impact expected, the construction industry, which will be the subject of a separate regulatory analysis, and industries such as mining, over which OSHA has no jurisdiction.

(c) Costs in these sectors were based on expert judgement and secondary data collection.

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Among all industry sectors the average annual cost per affected establishment will be $6,000.

Economic Impact

OSHA prepared two estimates of the economic effects of this regulation on potentially affected firms. The two estimates were based upon No Cost-Passthrough ("worst case") and Total Cost-Passthrough ("best case") scenarios.

In the first scenario it was assumed that all compliance costs would be absorbed by firms in the form of reduced profits. Table B-3 contains a summary of this "worst case" analysis. Under this scenario, the estimated average percent reduction in profits for all affected firms was less than one percent. The estimated reduction in profit of 2.3 percent for SIC 30 Rubber and Plastics was the highest among all industries.

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TABLE B-3

ECONOMIC EFFECTS: NO-COST PASSTHROUGH SCENARIO[1]

SIC	Industry	Annual Costs[2] ($ millions)	Total Sales[3] ($ millions)	R.o.R. on Sales (%)[4]	Pre-Reg Profits ($ m)	Post-Reg Profits ($ m)	% Change in Profits
20	FOOD PROD.	13.49	353,780.38	1.9	8,008.04	7,986.29	- 0.2715
21	TOBACCO	0.02	74,030.13	5.3	3,923.60	3,923.59	- 0.0003
22	TEXT. MILL	29.46	60,735.22	2.7	1,765.42	1,747.59	- 1.0100
23	APPAREL PROD.	31.74	74,474.65	2.8	1,813.22	1,793.56	- 1.0845
24	LUMBER & WOOD	56.72	57,994.48	3.9	1,974.51	1,931.92	- 2.1574
25	FURNITURE	21.08	37,648.27	3.5	1,411.02	1,398.82	- 0.8645
26	PAPER PROD.	11.00	103,694.14	3.7	3,770.20	3,761.12	- 0.4519
27	PRINTING & PUB.	13.75	134,830.21	4.8	6,471.85	6,444.77	- 0.4185
28	CHEMICAL PROD.	35.45	272,759.67	3.7	11,738.80	11,717.79	- 0.1790
29	PETRO. REFINING	23.69	196,400.57	2.7	4,964.85	4,952.04	- 0.2579
30	RUBBER & PLASTICS	111.09	86,538.58	4.3	3,423.75	3,343.76	- 2.3361
31	LEATHER PROD.	2.41	15,449.56	2.6	401.69	400.03	- 0.4127
32	STONE & CLAY	22.46	46,094.04	4.1	1,954.99	1,940.97	- 0.7170
33	PRIMARY METALS	70.96	112,564.26	3.3	3,714.62	3,674.83	- 1.0712
34	FAB. METALS	39.42	150,146.41	4.0	6,005.86	5,981.33	- 0.4084
35	MACHINERY	45.21	345,144.89	5.1	17,602.39	17,573.57	- 0.1637
36	ELEC. MACH.	20.67	245,982.70	5.0	12,299.14	12,286.86	- 0.0998
37	TRANS. EQUIP.	49.79	365,427.20	3.9	14,520.25	14,485.24	- 0.2411
38	INSTRUMENTS	9.63	83,359.57	4.9	3,373.36	3,367.32	- 0.1763
39	MISC. MANUF.	15.84	41,870.30	4.4	1,788.56	1,778.14	- 0.5825
40	R.R. TRANS.	1.08	43,869.14	10.0	3,969.62	3,969.04	- 0.0147
45	AIR TRANS.	3.74	109,538.08	3.6	3,251.40	3,249.38	- 0.0621
47	TRANS. SERVICES	3.79	12,254.96	2.7	582.18	580.13	- 0.3515
49	ELEC., GAS & SAN.	38.01	300,254.83	7.0	21,017.84	20,994.71	- 0.1100
50	WHOLESALE TRADE[5]	3.00	13,853.52	2.0	277.07	274.56	- 0.9048
51	WHOLESALE, NON-DUR	14.22	113,848.20	1.5	1,726.26	1,718.59	- 0.4447
55	AUTO DEALERS	13.55	341,574.50	1.9	6,489.92	6,480.69	- 0.1422
72	PERSONAL SERV.	10.87	24,270.74	7.3	1,771.76	1,763.60	- 0.4606
73	BUSINESS SERV.	2.42	22,165.94	6.6	1,462.95	1,460.94	- 0.1375
75	AUTO REPAIR	6.14	45,750.92	5.1	2,492.19	2,488.29	- 0.1563
76	MISC. REPAIR SERV.	2.81	2,665.52	5.5	146.40	144.36	- 1.5298
80	HEALTH SERVICES	4.44	170,234.25	4.5	7,807.72	7,804.54	- 0.0406

Source: U.S. Department of Labor, Occupational Safety and Health Administration, Office of Regulatory Analysis.

Notes:
1. All values in 1985 dollars.
2. Reproduced from Table C-1.
3. Dun and Bradstreet, Dun's Marketing Identifiers (DMI) Database.
4. Rate of Return on Sales, Dun and Bradstreet, Industry Norms Database.
5. Consists of SIC 5093 (scrap and waste materials) only.

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In the second scenario it was assumed that all compliance costs would be passed on to the consumer in the form of higher prices. The potential price increase for an industry sector at the two-digit SIC level was estimated by dividing the sector's compliance cost by its total sales. In this scenario, there would be little impact on market prices; none of the estimated price increases exceeded one-half of one percent (see Table B-4).

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Table 8-4

ECONOMIC EFFECTS: TOTAL-COST PASSTHROUGH

SIC	Industry	Annual Costs ($ millions)	Total Sales ($ millions)	Costs as a Percent of Sales
20	FOOD PROD.	33.49	353,780.38	0.0095
21	TOBACCO	0.02	74,030.13	0.0000
22	TEXT. MILL	29.48	60,735.22	0.0485
23	APPAREL PROD.	31.74	74,474.65	0.0426
24	LUMBER & WOOD	56.63	57,994.48	0.0978
25	FURNITURE	26.28	37,648.28	0.0560
26	PAPER PROD.	33.00	103,694.14	0.0299
27	PRINTING & PUB	34.39	134,830.21	0.0250
28	CHEMICAL PROD.	38.87	272,759.67	0.0130
29	PETRO. REFINING	23.91	196,400.57	0.0121
30	RUBBER & PLASTICS	121.93	86,538.58	0.1284
31	LEATHER PRODUCTS	2.66	15,449.56	0.0156
32	STONE & CLAY	25.83	46,094.04	0.0487
33	PRIM. METALS	78.24	112,564.26	0.0630
34	FAB. METALS	53.51	150,146.41	0.0263
35	MACHINERY	50.00	345,144.89	0.0131
36	ELEC. MACH.	23.30	245,982.70	0.0084
37	TRANS. EQUIP.	49.79	365,427.20	0.0136
38	INSTRUMENTS	10.75	83,359.57	0.0116
39	MISC. MANUF.	17.29	41,870.30	0.0378
40	R.R. TRANS.	1.09	43,869.14	0.0025
45	AIR TRANS.	3.76	109,538.08	0.0034
47	TRANS. SERVICES	3.81	12,254.96	0.0309
49	ELEC., GAS & SAN.	37.83	300,254.83	0.0127
50	WHOLESALE TRADE[1]	3.13	13,853.52	0.0216
51	WHOLESALE, NON-DUR.	14.80	113,848.20	0.0125
55	AUTO DEALERS	22.72	341,574.50	0.0040
72	PERSONAL SERVICES	10.87	24,270.74	0.0448
73	BUSINESS SERVICES	2.42	22,165.94	0.0109
75	AUTO REPAIRS	10.25	45,750.92	0.0134
76	MISC. REPAIR SERV.	4.86	2,665.52	0.1054
80	HEALTH SERVICES	4.44	170,234.25	0.0026

Source: U.S. Department of Labor, Occupational Safety and Health Administration, Office of Regulatory Analysis.
Notes: 1. Consists of SIC 5093 (scrap and waste materials) only.

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Based on this analysis, OSHA concludes that the final standard is economically feasible for each sector. The impact on prices is slight and, even in the worst cases, the reductions in profitability are small.

Regulatory Flexibility Analysis

In accordance with the Regulatory Flexibility Act (Pub. L. 96-353, 94 Stat. 1164) [5 U.S.C. 601 et seq.], OSHA has made a preliminary assessment of how this rulemaking will affect large and small establishments. The results of this preliminary assessment indicate that some small establishments may experience some adverse impact. The smaller profit margins of some small establishments may make it difficult for them to absorb increases in compliance costs. An important ameliorating factor for each affected firm will be its ability to pass through additional costs to the consumer. The ability of individual firms to do this will be dependent upon product demand elasticities. It is expected that all impacted firms will be able to pass through some portion of their increased costs.

Environmental Impact

The standard has been reviewed in accordance with the requirements of the National Environmental Policy Act of 1969 (NEPA), the Council on Environmental Quality NEPA regulations, and the Department of Labor's NEPA compliance procedures and is not anticipated to have significant impact on the external environment.

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TABLE B-5

SIC GROUPS COVERED IN THE OSHA ANALYSIS

Division D. Manufacturing	
	Major Group 20. Food and kindred products
	Major Group 21. Tobacco manufactures
	Major Group 22. Textile mill products
	Major Group 23. Apparel and other finished products, made from fabrics and similar materials
	Major Group 24. Lumber and wood products, except furniture
	Major Group 25. Furniture
	Major Group 26. Paper and allied products
	Major Group 27. Printing, publishing, and allied industries
	Major Group 28. Chemicals and allied products
	Major Group 29. Petroleum refining and related industries
	Major Group 30. Rubber and miscellaneous plastics products
	Major Group 31. Leather and leather products
	Major Group 32. Stone, clay, glass, and concrete products
	Major Group 33. Primary metal industries
	Major Group 34. Fabricated metal products, except machinery and transportation equipment
	Major Group 35. Machinery, except electrical
	Major Group 36. Electrical and electronic machinery, equipment, and supplies
	Major Group 37. Transportation equipment
	Major Group 38. Measuring, analyzing, and controlling instruments; photographic, medical and optical goods; watches and clocks
	Major Group 39. Miscellaneous manufacturing industries
Division E. Transportation, Communications, Electric, Gas, and Sanitary Services	
	Major Group 40. Railroad transportation
	Major Group 45. Transportation by air
	Major Group 47. Transportation services
	Major Group 49. Electric, gas, and sanitary services

TABLE B-5

SIC GROUPS COVERED IN THE OSHA ANALYSIS
(CONTINUED)

Division F. Wholesale Trade	
	Major Group 50. Wholesale trade - durable goods
	Major Group 51. Wholesale trade - nondurable goods
Division G. Retail Trade	
	Major Group 55. Automotive dealers and gasoline service stations
Division I. Services	
	Major Group 72. Personal services
	Major Group 73. Business services
	Major Group 75. Automotive repair, services, and garages
	Major Group 76. Miscellaneous repair services
	Major Group 80. Health services

Source: U.S. Department of Labor, OSHA, Office of Regulatory Analysis, as derived from Standard Industrial Classification Manual 1972, Executive Office of the President -- Office of Management and Budget.

The listing excludes the construction industry (SICs 15, 16, and 17) which will be the subject of a separate regulatory analysis.

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C. Survey of Affected Industries

Chemicals and other hazardous substances are present to some degree in all industries. However, some industry sectors use chemicals more extensively than others and have controls in place which do not always reduce workers' exposures below permissible exposure levels. This chapter presents an overview of those industries which OSHA believes may experience costs and benefits as a result of this rulemaking. In order to estimate and quantify the potential impact of the rule, a sample survey of about 5,700 establishments was conducted during the first part of 1988. The results of the survey provided the basis for the cost and benefit estimates presented in this Feasibility and Regulatory Analyses.

Table C–1 at the end of this chapter shows establishment and employment data for the industries where OSHA expects costs and benefits. In order to determine which industries to include in the sample survey, OSHA relied primarily on two data sources: 1) the NIOSH National Occupational Exposure Survey (NOES) of 1982 and supplementary information from the NIOSH 1972 survey; and 2) data in the OSHA Integrated Management Information System (IMIS). The 1982 NOES data base contains a sample of the number of persons exposed by substance and industry from almost 4,500 businesses in 98 different geographic areas in the United States. OSHA's IMIS contains the results of exposure samples taken since 1979 by industrial hygienists during the course of compliance inspections. Using these two data bases, industries which are likely to use the substances in this rulemaking at levels which might exceed the proposed exposure limits were identified.

As a check on this list of industries, OSHA contracted with about one dozen industrial hygienists and chemical engineers to review the list. Based on their professional knowledge, these experts verified the industries with potential exposure problems. The final list of industries selected for the sample survey included over 30 two-, three-, and four-digit SICs where it is believed that chemical exposures potentially exceed the new or revised levels.

Industry sectors not included in the survey are those where OSHA believes there is little potential chemical exposure or where existing exposures are well controlled. Industries which were not surveyed for these reasons included finance, real estate, insurance and most service and retail trade sectors. The construction industry was also excluded and will be the subject of a separate rulemaking action. Industries such as mining and certain transportation sectors were not included since other agencies have safety and health enforcement jurisdiction. Certain industry sectors including textile, apparel, food and tobacco products are expected to incur some costs as a result of this rulemaking, but these were not included in the sample survey. The reasons for not including these sectors in the survey were restraints on the sample size, relatively low hazardous substance exposure levels, and the availability of adequate information on the engineering controls currently in use in these industries.

Industrial hygienists and engineers under contract to OSHA also identified the processes used in the industries surveyed, and the chemicals used in those processes. Expected levels of exposure and the number of employees potentially exposed were estimated. The list of processes and chemicals determined to be in common use in each industry sector was subsequently verified in the sample survey.

Establishments to be surveyed were selected based on a statistical sample of all establishments in the surveyed industry sectors. For each SIC, establishments were selected from four size categories.

(a) 0–19 employees
(b) 20–99 employees
(c) 100–249 employees
(d) 250 or more employees

This permitted analysis of the effects of the rulemaking by establishment employment size.

About 5,000 completed responses were required to obtain statistically valid results. The field survey was conducted by KCA Research using Computer-Assisted Telephone Interviewing (CATI). Trained interviewers requested data from each establishment regarding production employment, chemical usage, and exposure guidelines in use. Respondents were asked to verify the presence or absence of chemicals and processes believed to be found in establishments in their industry, and were asked to volunteer information on other chemicals not included on the interviewers' "prompt" list of chemicals in use. For each chemical present, the respondent was asked about amounts used, employee exposure levels, and processes where used. For each process, the respondent was asked questions concerning its configuration, frequency of use, and the types of controls and personal protective equipment in use. This information was used to develop the estimates of costs and benefits presented in this RIA.

Supplement 1 contains a technical summary of the survey and Supplement 4 contains tabulations of the survey results. (Survey results include some responses from SIC 44—Water Transportation and SIC 46—Pipelines. These were included prior to a determination that the SICs included industries not within the scope of this rulemaking, or where other agencies have jurisdiction.) The results generally corroborated the preliminary assessments of potential industry exposures and overexposure to chemicals and provided a general picture of workers' exposure in these industries. In the sample of about 5,700 firms, over one-half reported chemicals being used in the workplace. Most of the firms which reported no chemical usage were small administrative or distribution units of multi-plant companies. Among the firms surveyed which use chemicals, almost one-third use specific exposure standards as targets for maintaining workers' exposure. The OSHA PELs are used by 59 percent of firms with specific exposure standards, ACGIH TLVs are used by 22 percent and the NIOSH RELs by one percent. Table C–2 shows the distribution of adopted exposure standards by surveyed industry groups. Over one-third of all firms reported that they have a hazard communication training program; however, less than one-half of the firms using chemicals reported having a hazard communication program (see Table C–3).

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NUMBER OF FIRMS WITH CHEMICALS USING SPECIFIC EXPOSURE STANDARDS

CELL		OSHA PEL'S	HIGH REL'S	ACGIH TLV'S	OTHER	NIOSH	DON'T KNOW/ REFUSED	TOTAL
CELL 1	SIC= 213	1,135	215	387	1,169	6,238	387	10,157
CELL 2	SIC= 249	262	19	16	55	437	28	796
CELL 3	SIC= 25	832	9	32	326	1,762	169	3,082
CELL 4	SIC= 27	2,264	11	465	1,477	3,848	0	8,341
CELL 5	SIC= 281	11,888	322	176	51	1,273	256	15,466
CELL 6	SIC= 282	9,705	354	2,267	7,109	26,888	3,038	45,727
CELL 7	SIC= 283	263	0	245	35	264	2	1,609
CELL 8	SIC= 284	4,655	147	106	53	125	2	838
CELL 9	SIC= 285	720	22	106	84	282	2	815
CELL 10	SIC= 286	318	14	272	23	89	2	885
CELL 11	SIC= 287	980	0	240	135	112	1	1,577
CELL 12	SIC= 289	228	2	210	115	188	2	1,425
CELL 13	SIC= 291	155	22	188	143	368	0	1,676
CELL 14	SIC= 295	107	2	525	2	488	2	1,617
CELL 15	SIC= 299	2,155	2	27	11	45	2	285
CELL 16	SIC= 301	281	14	45	1	97	1	439
CELL 17	SIC= 306	23	2	0	291	2,117	188	2,621
CELL 18	SIC= 308	2,666	100	1,575	27	282	2	4,252
CELL 19	SIC= 311	6,672	31	1,575	0	532	0	8,810
CELL 20	SIC= 313-319	10,340	348	25	25	5,615	135	16,488
CELL 21	SIC= 323	283	0	714	11	1,153	1,575	3,736
CELL 22	SIC= 324	778	48	641	151	6,184	2,437	10,249
CELL 23	SIC= 325	2,313	18	2,162	242	25,726	72	30,534
CELL 24	SIC= 326	4,888	0	4,568	2,878	213	0	12,547
CELL 25	SIC= 327	35,341	0	287	0	210	0	35,838
CELL 26	SIC= 329	15,412	0	28	138	1,969	0	17,547
CELL 27	SIC= 331	18,613	0	718	766	9,377	20,943	50,417
CELL 28	SIC= 332	2,082	0	2,188	82	58,838	8,713	71,825
CELL 29	SIC= 333	49,838	0	29,674	5,251	15,288	2,564	102,615
CELL 30	SIC= 334	4,024	0	5,348	262	2,872	8,877	21,383
CELL 31	SIC= 335	146,425	1,987	4,768	510	54,871	0	208,561
CELL 32	SIC= 336			911	0	5,960		7,871
CELL 33	SIC= 339							
CELL 34	SIC= 35							
CELL 35	SIC= 36							
CELL 36	SIC= 37							
CELL 37	SIC= 38							
CELL 38	SIC= 39							
CELL 39	SIC= 203							
CELL 40	SIC= 204							
CELL 41	SIC= 205							
CELL 42	SIC= 207							
CELL 43	SIC= 208							
CELL 44	SIC= 209							
CELL 45	SIC= 22							
CELL 46	SIC= 23							
CELL 47	SIC= 24							
CELL 48	SIC= 261-264							
CELL 49	SIC= 265							
CELL 50	SIC= 267							
CELL 51	SIC= 271							
CELL 52	SIC= 272							
CELL 53	SIC= 273							
CELL 54	SIC= 275							
CELL 55	SIC= 276							
CELL 56	SIC= 277							
CELL 57	SIC= 279							
CELL 58	SIC= 281							
CELL 59	SIC= 282							
CELL 60	SIC= 283							
CELL 61	SIC= 284							
CELL 62	SIC= 285							
CELL 63	SIC= 286							
CELL 64	SIC= 287							
CELL 65	SIC= 289							
CELL 66	SIC= 291							
CELL 67	SIC= 295							
CELL 68	SIC= 299							
CELL 69	SIC= 301							
CELL 70	SIC= 306							
CELL 71	SIC= 308							
CELL 72	SIC= 311							
CELL 73	SIC= 313-319							
CELL 74	SIC= 323							
CELL 75	SIC= 324							
CELL 76	SIC= 325							
CELL 77	SIC= 326							
CELL 78	SIC= 327							
CELL 79	SIC= 329							
CELL 80	SIC= 331							
CELL 81	SIC= 332							
CELL 82	SIC= 333							
CELL 83	SIC= 334							
CELL 84	SIC= 335							
CELL 85	SIC= 336							
CELL 86	SIC= 339							
CELL 87	SIC= 35							
CELL 88	SIC= 36							
CELL 89	SIC= 37							
CELL 90	SIC= 38							
CELL 91	SIC= 39							
CELL 92	SIC= 203,5153,5161,3191,3198							
CELL 93	SIC= 35,75							
CELL 94	SIC= 72,73							
CELL 95	SIC= 7641,7692							
CELL 96	SIC= 80							
CELL 97	SIC= 87							
TOTAL		146,425	1,987	60,728	29,476	208,131	57,742	548,285

Table C-3

FIRMS WITH CHEMICALS REPORTING HAZARD COMMUNICATIONS TRAINING (Q61) (WEIGHTED)

CELL	TRAINING PROGRAM	NO TRAINING PROGRAM	DON'T KNOW REFUSED	TOTAL
CELL 1 SIC'S 243	4,478	5,310	349	10,137
CELL 2 SIC'S 245	651	76	28	754
CELL 3 SIC'S 249	1,282	2,080	20	3,382
CELL 4 SIC'S 25	3,110	5,246	5	8,361
CELL 5 SIC'S 26	2,906	374	210	3,490
CELL 6 SIC'S 27	19,543	26,214	0	45,757
CELL 7 SIC'S 281	1,193	81	24	1,298
CELL 8 SIC'S 282	673	156	0	830
CELL 9 SIC'S 283	752	155	5	913
CELL 10 SIC'S 284	1,044	232	8	1,285
CELL 11 SIC'S 285	1,175	177	24	1,377
CELL 12 SIC'S 286	595	136	11	742
CELL 13 SIC'S 287	925	3	2	929
CELL 14 SIC'S 289	1,802	166	2	1,970
CELL 15 SIC'S 291	326	16	4	347
CELL 16 SIC'S 295	317	100	0	417
CELL 17 SIC'S 299	205	74	6	285
CELL 18 SIC'S 307	4,578	1,701	0	6,280
CELL 19 SIC'S 301-306	2,069	55	5	2,128
CELL 20 SIC'S 3111	68	26	0	94
CELL 21 SIC'S 313-319	418	703	186	1,306
CELL 22 SIC'S 32	6,322	4,894	92	11,308
CELL 23 SIC'S 33	4,364	925	18	5,297
CELL 24 SIC'S 34	12,136	7,226	24	19,386
CELL 25 SIC'S 35,36,38,39	29,929	25,527	2,037	57,492
CELL 26 SIC'S 48,44,45,47	793	22	0	815
CELL 27 SIC'S 46	226	0	0	226
CELL 28 SIC'S 49	4,193	1,612	0	5,805
CELL 30 SIC'S 5093,5153,5161,5191,5198	8,231	3,789	4	12,024
CELL 31 SIC'S 55,75	57,277	112,035	0	169,312
CELL 32 SIC'S 72,73	25,332	26,857	0	52,189
CELL 33 SIC'S 7641,7692	2,791	5,955	217	8,963
CELL 34 SIC'S 88	25,583	66,579	4,040	94,202
CELL 99 SIC'S 37	7,631	3,633	0	11,263
TOTAL	230,839	302,135	7,311	540,285

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Some commenters objected to the use of the telephone survey method in lieu of written responses [see, for example, Exs. 3–750, 3–677 and 3–747]. They stated that the questions were too diverse and complex to be answered by a single person, and that the use of the CATI techniques necessitated simplified responses to questions.

As preparation for the survey, OSHA sent a letter to each potential respondent approximately two weeks in advance of the initial phone contact. The letter described the nature of the project, the topics to be covered by the survey and a response card to be returned to the survey contractor listing the name of the person best able to answer the questions. When requested, a copy of the survey questionnaire was provided. With this advance preparation, OSHA believes that respondents were able to accurately and completely answer the questions. While all firms were encouraged to complete the survey over the telephone so that the responses could be entered on the computer during the interview, some firms refused to do so and also failed to return the written survey forms. Overall, the survey achieved a 60 percent completion ratio (the ratio of completed questionnaires to total sample cases drawn, both in and out of scope). OSHA believes that the use of the CATI technique greatly improved the response rate to the survey. Previous OSHA surveys have had completion ratios as low as 30 percent.

To reduce the burden on respondents, process and chemical lists were used to prompt respondents. Two commenters [Ex. 3–625, Ex. 3–750] stated that the lists were incomplete and thereby biased the final data. However, one of these [Ex. 3–750] correctly stated that ". . . responders were also asked to volunteer additional processes or chemicals present in their plants." Since respondents did indeed volunteer "Other" chemicals, OSHA believes that the use of the prompt "Other" improved the final data instead of biasing it. The Inter-Industry Wood Dust Coordinating Committee commented that the survey did not include wood dust and processes specifically related to wood dust exposure, as prompts [Ex. 3–750]. However, respondents replied, in many instances, that there was exposure to "nuisance particulates". OSHA used these responses as surrogates for responses on wood dust. However, the Agency concluded that the costs in the Preliminary Regulatory Impact Analysis understated "the extent of new controls that would be needed in order to comply with the proposed wood dust standard" [Ex. 38A]. In SICs 24 and 25, the number of work stations where wood dust is found, the percent of work stations which would be out of compliance with the proposed levels, and unit costs for controlling exposure were revised to supplement the survey results, and the recalculated costs of compliance were provided to interested parties and entered into the docket [Ex. 38A].

Commenters also objected to the inclusion of non-production facilities in the survey [Ex. 3–1196, Ex. 3–677, Tr. 8/15/88, p. 105]. The sample survey was designed to represent the universe of facilities in each SIC. There are always a certain number of facilities in each SIC which are headquarters, distribution centers, or sales offices. Where workers at these facilities have no exposure to chemicals, there is no cost to control exposure and no benefits to accrue from lowered exposure levels. Inclusion of these facilities is statistically correct in order to represent that portion of the facilities in an SIC which would incur no cost.

The survey sample was statistically designed to include a higher proportion of larger establishments (20 or more employees) because of the wider variation in costs expected for large firms to comply. The American Mining Congress [Ex. 3–976] expressed concern about "the underrepresentation of small companies" in SICs 32 and 33, while the American Iron and Steel Institute [Ex. 3–1123] commented that average costs for large firms are not representative of costs for large steel facilities in SIC 33. OSHA believes that the generic nature of this rulemaking allows a greater latitude in grouping industries in order to estimate "average" costs, and that the higher proportion of large firms surveyed has provided a more valid estimate of the average costs. Small firms were not underrepresented. Rather, firms in the large size classes were "oversampled" using accepted statistical techniques.

Based on the survey, OSHA estimates that over 60 percent of production workers in most of the industries surveyed are potentially exposed to chemicals and about 10–15 percent of these would be overexposed at the levels proposed in this rulemaking. Chapter D presents OSHA's estimates of the benefits occurring from a reduction in the number of employees exposed to these chemicals.

The industry profiles that follow present economic information on industry sectors expected to be affected by the rulemaking. Most but not all of these industries were included in the samply survey. Table C–1, presented at the end of the chapter, contains employment and establishment data for each industry profiled. The number of establishments in that table was produced from 1985 Dun and Bradstreet data, to be consistent with the employment and economic impact data used in this chapter and in Chapter H.

Table C–4 shows the number of establishments estimated from the 1988 sample survey as compared to the number in the 1986–87 Dun and Bradstreet (D & B) file from which the sample was selected. In general, the estimated number of establishments from the survey is lower than the number in the original D & B file. Survey telephone contracts found that some sampled firms were either out of business, out of the scope of the survey (wrong SIC), or listed more than once on the file.

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Table C-4

ESTABLISHMENT COUNTS FROM SAMPLE ESTIMATES AND ORIGINAL DUN & BRADSTREET

ESTIMATION CELLS	SAMPLE UNITS	ORIGINAL NUMBER ESTAB.'S D&B FILE	NUMBER OF ESTAB.'S FROM CNTY BUS. PTRNS	NUMBER OF ESTAB.'S FROM BLS 202	SURVEY ESTIMATED NUMBER OF ESTAB.	PERCENT CHANGE FROM ORIG. D&B TO SAMPLE	PERCENT CHANGE FROM CNTY BUS. PTRNS TO SAMPLE	PERCENT CHANGE FROM BLS 202 TO SAMPLE
CELL 1 SIC'S 243	160	13486	8810	8333	12150	-10%	87%	46%
CELL 2 SIC'S 246	74	1512	1101	1114	1098	-27%	-0%	-1%
CELL 3 SIC'S 248	116	5364	3682	3638	4868	-9%	32%	34%
CELL 4 SIC'S 25	154	16129	10812	10041	13004	-21%	18%	29%
CELL 5 SIC'S 26	309	8228	6324	6731	7022	-15%	11%	4%
CELL 6 SIC'S 27	234	78345	56137	57828	60283	-23%	7%	4%
CELL 7 SIC'S 281	155	2797	1342	1445	2013	-28%	50%	39%
CELL 8 SIC'S 282	123	1863	848	845	1380	-12%	113%	63%
CELL 9 SIC'S 283	176	2298	1277	1407	1740	-24%	36%	24%
CELL 10 SIC'S 284	137	4202	2375	2359	3656	-13%	54%	55%
CELL 11 SIC'S 285	104	1789	1433	1418	1683	-5%	18%	19%
CELL 12 SIC'S 286	124	1389	918	1028	1224	-13%	33%	19%
CELL 13 SIC'S 287	71	1752	1028	1377	1421	-19%	38%	3%
CELL 14 SIC'S 289	110	3733	2724	2367	3299	-12%	21%	39%
CELL 15 SIC'S 291	122	1055	442	796	722	-32%	63%	-9%
CELL 16 SIC'S 295	88	1160	1294	917	960	-17%	-26%	5%
CELL 17 SIC'S 299	73	735	581	461	628	-15%	8%	36%
CELL 18 SIC'S 307	80	13076	12112	11762	12316	-11%	2%	5%
CELL 19 SIC'S 301-306	158	3187	1857	1884	2778	-13%	50%	47%
CELL 20 SIC'S 3111	22	454	379	346	338	-26%	-11%	-2%
CELL 21 SIC'S 313-319	59	3262	2083	2081	1987	-39%	-4%	-5%
CELL 22 SIC'S 32	127	20103	16159	15704	15920	-21%	-1%	1%
CELL 23 SIC'S 33	360	9827	8821	7152	8028	-18%	16%	12%
CELL 24 SIC'S 34	325	44328	35380	34208	37315	-16%	5%	9%
CELL 25 SIC'S 35,36,38,39	395	160950	92313	92707	123385	-23%	34%	33%
CELL 26 SIC'S 40,44,45,47	82	52277	-- --	-- --	42025	-20%	-- --	-- --
CELL 27 SIC'S 48	63	624	605	963	577	-8%	-5%	-38%
CELL 28 SIC'S 49	368	18430	17725	18019	15812	-14%	-11%	-1%
CELL 30 SIC'S 5083,5153,5161,5191,5198	418	48144	47142	51437	38371	-20%	-16%	-23%
CELL 31 SIC'S 55,75	97	307117	328578	300397	257267	-16%	-22%	-14%
CELL 32 SIC'S 72,73	203	148035	-- --	-- --	107685	-26%	-- --	-- --
CELL 33 SIC'S 7641,7692	107	18389	10162	13514	15095	-18%	49%	12%
CELL 34 SIC'S 80	407	281380	380223	377887	222843	-15%	-43%	-41%
CELL 99 SIC'S 37	102	14958	9498	11438	13617	-9%	43%	19%

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It is possible to compare these survey establishment counts by comparing them to two alternative governmental sources: 1985 County Business Patterns from the U.S. Department of Commerce and 1987 ES–202 data from the Bureau of Labor Statistics (BLS), U.S. Department of Labor. Table C–4 also provides these governmental establishment counts.

In general, these two databases showed fewer establishments than either the survey or the D & B file. Some of these differences are due to the way an "establishment" is defined. D & B may split one establishment at a particular address into several establishments based on the various activities performed there; ES–202 and County Business Patterns may categorize the same establishment as one unit. Also, many state and federally-run establishments are included in the D & B file in the SIC related to their primary activity, rather than as governmental units, which would be the ES–202 and County Business Pattern classification.

There is no concensus among experts as to which source provides the most accurate establishment counts. Based on this comparison and other quality checks, OSHA believes that the survey has provided a sound basis for estimating the economic impact of this rulemaking.

SIC 20—Food and Kindred Products

This major industry group includes establishments that manufacture or process food and beverages for human consumption as well as certain related products such as ice, chewing gum, vegetable and animal fats and oils, and prepared animal feeds [1, pp. 59 to 69]. This industry group was not included in the sample survey. Rather, industry data, costs and economic impact were estimated by experts familiar with this industry sector.

Employment and establishment data are shown in Table C–1. The total 1985 value of SIC 20 shipments ($301.6 billion) was 13 percent of the value of all manufacturing industry shipments; this represented the largest share of any two-digit manufacturing industry. The most important industry within SIC 20 is meat products, accounting for 22 percent of the value of shipments, followed by beverages and dairy products, accounting for 14 percent each [2, Vol 1:8].

In 1985, 1.6 million workers in over 29,000 establishments were employed in SIC 20. About 70 percent of these are production workers [Table C–1]. Employment has declined since 1979. The largest employer is the meat products industry, with 23 percent of the workforce in 1986, followed by preserved fruits and vegetables (15 percent) and beverages (13 percent). Meat and miscellaneous food products both experienced 1986 employment levels slightly above the 1979 peak [5]. The largest number of food products establishments are in the manufacturing or processing of miscellaneous foods and meat products (17 percent and 16 percent, respectively).

Establishments in SIC 20 are similar in size to those in the manufacturing industry as a whole, although there is a smaller concentration of very large establishments. Mean establishment size is 55 workers.

Most recent growth by large food processors has been through business acquisitions rather than internal expansion. The food and beverage sector is becoming more concentrated and efficient. In most food industries for which data are available, concentration is moderate, with the largest four firms having a 30 percent share of sales. Exceptions can be found in cereal breakfast foods, where the four-firm concentration ratio is just over 75 percent, and in soft drinks, where it is 86 percent [3, pp. 33–1 to 39–39].

In the next few years, most food and beverage producers will benefit from increases in disposable income, favorable trends in consumer purchasing patterns, and continued low commodity prices. Decreased operating costs and expenses have resulted in a 6 percent increase in (revenue) income in 1985–86 for large food and beverage processors, despite sales gains of only a little more than 1 percent [3, p. 39–1].

In 1985, the median rate of return on assets in the food and kindred products industry was 5.1 percent; this was the third lowest for the 20 two-digit manufacturing industry group. The highest rates of return were registered by the cookie and cracker industry and the blended and prepared flour industry (11.8 percent and 11.1 percent, respectively), followed by the flavoring extracts industry (9.2 percent). At the other extreme, the wine and brandy industry registered a −0.9 percent rate of return on assets in 1985, with an average rate of under 0.1 percent for the 1984–86 period. The cheese and rice milling industries also have relatively low rates or return on assets (2.2 percent) [6].

OSHA received docket comments pertaining to several four-digit SICs (2011, 2013, 2016, 2017, and 2074) falling within the Food and Kindred Products industrial classification. Most comments addressed the use of three substances included in this rulemaking—carbon disulfide, ammonia, and chlorine—in the meat products sector (SIC 2013).

Commenters noted that firms in SIC 2013 produce hot dogs, luncheon meats, and boneless hams; production of these processed meats uses 3.6 billion pounds of meat and 0.9 billion pounds of poultry annually. Ten percent of all meat production goes into the production of processed meats; for some meats, the share is larger: 83 percent of all ham is processed into boneless hams [Exs. 3–421, 3–898]. Most of the meat used in processed meat is trimmings, which are not suitable for use in other meats. An estimated 65 percent of all processed meats are dependent on cellulosic materials for their manufacture [Ex. 3–421]. The production of casings of this type involves the use of carbon disulfide, and, according to commenters, achieving the proposed limit of 1 ppm for this substance would have created issues of technological and economic feasibility (discussed in greater detail in the Technological Feasibility chapter, below). In the final rule, the limits for carbon disulfide are 4 ppm as an 8-hour TWA and 12 ppm as a STEL; these limits should ameliorate any feasibility problems. In addition, the final rule has increased PEL and STEL limits for both ammonia (35 ppm STEL only) and chlorine (0.5 ppm TWA, 1.0 ppm STEL) which should further reduce the economic impact on this industry sector.

OSHA received many comments addressing the proposed 4-mg/m^3 TWA limit for grain dust (wheat, oats, and barley) in facilities classified in SIC 204, Grain Mill Products [Exs. 3–63, 3–110, 3–237, 3–299, 3–405, 3–752, and 3–755]. Comments were received from the owners of flour mills, rice mills, and feed mills. The National Feed and Grain Association (NFGA) [Ex. 3–752] estimated that the number of feed mills that use wheat, oats, or barley to produce feed is 1,260 facilities, or about 14 percent of all feed mills. The NFGA arrived at this estimate by assuming that feed mills use oats, wheat, and barley in proportion to the total U.S. usage of these grains as compared with the usage of other feed grains [Ex. 3–752]. (Estimates of the number of feed mills is difficult because feed mills are often classified in other industrial classifications if the major portion of their sales is generated by non-feed-mill activities, such as grain elevator operations or sales of farm supplies.) The NFGA characterized its estimate of 1,260 potentially affected feed mills as "conservative" [Ex. 3–752]. Commenters to the record from the Grain Mill Products segment of SIC 20 stated unanimously that achievement of the

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proposed 4 mg/m³ limit for grain dust was not feasible in affected grain mills [Exs. 3–63, 3–110, 3–237, 3–239, 3–405, 3–752, and 3–756]. This issue is discussed further in the Technological Feasibility chapter. Because OSHA has revised the PEL for grain dust to 10 mg/m³ in the final rule, most of the problems with technological feasibility raised by these commenters are likely to have been mitigated.

A comment to the record [Ex. 3–1060] from the National Cotton Council of America [NCCA] stated that cottonseed oil mills [SIC 2074] will be adversely impacted by the proposed rule. These mills process cottonseed and its various components for use in animal feed, edible oil, and cellulose products; their concerns are with the proposed limits for n-hexane and hexane insomers, vegetable oil mist, and grain dust. According to the NCCA, there are 50 operating cottonseed mills in the United States, and most of these are small, rural businesses without in-house industrial hygiene capabilitiy. The NCCA anticipates that its members will have difficulty measuring the proposed levels for these substances [Ex. 3–1060, p. 1]. The NCCA's comments are discussed in greater detail in Chapter F, Technological Feasibility.

SIC 21—Tobacco Manufactures

Establishments in the tobacco manufactures industry produce cigarettes (SIC 211), cigars (SIC 212), chewing and smoking tobacco, and snuff (SIC 213), or they engage in tobacco stemming and redrying (SIC 214) [1, p. 70]. The major worker exposures in these industries are to particulates not otherwise regulated during the initial handling of tobacco and to chemicals that have been used to treat the tobacco. This industry was not included in the sample survey.

Data on employment and establishments for SIC 21 are shown in Table C–1. In 1985, the value of tobacco manufacturing shipments was $18.5 billion, slightly more than 0.8 percent of the value of shipments for all manufacturing [2, Vol. 1:8]. SIC 21 has less than 0.3 percent of the total employment or establishments in manufacturing [7, pp. 10, 15]. Three-quarters of the employees in this industry are production workers. The cigarette industry is the most important component of SIC 21, accounting for more than 80 percent of the value of shipments [2, Vol. 1:8] and 70 pecent of employment for this sector, but only 9 percent of establishments [7, p. 15].

Establishments in SIC 21 are large, with a mean size of 296 employees, compared to 55 for all manufacturing. More than half of the establishments in this two-digit SIC have fewer than 20 employees [Table C–1]; and more than 17 percent have 250 or more employees. The cigarette industry is especially highly concentrated, with a mean establishment size of 2,430 employees. Eleven establishments in the cigarette industry employ 1,000 or more workers, and 99.8 percent of all cigarette manufacturing employees work in these large establishments. Mean establishment sizes in other tobacco industries range from 60 to 135 employees [7, pp. 10, 15]. Employment in the tobacco products industry has declined every year since 1978 [except in 1981], with a total decline in employment of more than 23 percent over the last decade [5].

Most tobacco firms remain profitable because input costs have been relatively stable and prices have increased faster than consumption has declined. The major tobacco companies are continuing to reduce their vulnerability through mergers and diversification [3, pp. 40–1 to 40–7]. Thus, profitability in the tobacco manufactures industry is good. The 1985 median rate of return on assets (7.7 percent) was the fifth highest median rate of return on assets among firms in the 20 manufacturing industry groups [6].

OSHA received no comments or testimony on the tobacco manufacturing sector in the course of this rulemaking.

SIC 22—Textile Mill Products

SIC 22 includes those establishments that perform any of the following six operations: (1) Preparation of fiber and subsequent manufacturing of yarn, thread, braids, twine and cordage; (2) manufacturing broadwoven fabrics, narrow woven fabrics, knit fabrics, and carpets and rugs from yarn; (3) dyeing and finishing fiber, yarn, fabrics and knit apparel; (4) coating, waterproofing, or otherwise treating fabrics; (5) the integrated manufacturing of knit apparel and other finished articles from yarn; and (6) the manufacture of felt goods, lace goods, nonwoven fabrics, and miscellaneous textiles [1, p. 85].

According to the Department of Commerce, in 1988, shipments for the textile industry increased 4 percent. The value of shipments in 1985 ($53.2 billion) has increased 6 percent since 1981. Employment, however, remained on a long-term downward trend, although the 1986 drop was marginal. An upward trend in output and relatively high operating rates helped to keep the drop in employment to a minimum. Also, average hours worked, which increased in the second half of 1985, continued to rise in 1986 [3, p. 41–1].

Table C–1 presents data on the number of establishments and employment in SIC 22. Similar to other manufacturing industries, the mean establishment size in SIC 22 was 64 employees. Between 1981 and 1985, SIC 22 experienced a 15 percent decrease in employment. In 1985, almost 86 percent of the total number of employees were production workers [5]. The median rate of return on assets in the textile mill products industry was 5.6 percent in 1985 [6].

No commenters provided additional information on this industry, and it was not included in the 1988 sample survey.

SIC 23—Apparel and Other Products

SIC 23 is referred to as the "cutting-up and needle trades," and includes establishments producing clothing and fabricating products by cutting and sewing purchased woven or knet textile fabrics and related materials. These materials may include leather, rubberized fabrics, plastics, and furs. In addition, establishments that manufacture clothing by cutting and joining materials are included [1, p. 97].

SIC 23 includes three types of apparel establishments: (1) The regular or inside factories, which perform the usual manufacturing functions within their own plant; (2) contract factories, which manufacture apparel from materials owned by others; and (3) apparel jobbers, which buy raw materials, design and prepare samples, arrange for the manufacture of clothing from their materials, and sell the finished product [1, p. 97]. According to U.S. Department of Commerce estimates, the 1987 value of shipments for SIC 23 experienced a growth rate of 5 percent over 1986 values [4, p. 45–1].

Between 1980 and 1985, SIC 23 was among the top ten SICs to experience the greatest employment decline. Due to large inventories at both retail and wholesale levels, and low consumer demand, there were decreases in both shipments and employment in 1985. In several geographic areas, plants were forced to close. The drop in employment has been attributed to the recent rise of imports into the U.S. market and to improvements in industry efficiency through streamlined operations and increased productivity [3, p. 42–2].

The apparel industry is a major employer of women and minorities, employing more than 8 percent of the manufacturing workforce in plants. Due to intense competition in the industry, profits and wages are lower in this industry than in most other manufacturing industries. The price of labor is the single most important cost component in the industry, which accounts for the sensitivity that employment levels have to industry growth levels. Production workers make up 85 percent of the apparel work force. Typically, as inventory levels grow, production slows down and employment drops [3, p. 42–2].

In 1986, current-dollar shipments in the apparel industry expanded in value by 3 percent. An increase in consumer demand was the major factor contributing to the upturn. Output levels began to regain former levels of output, and the falling rate of employment of about 1 percent was well below the 3.1 percent annual rate of decline during the 1980–1986 period [3, p. 42–2].

Table C–1 presents employment and establishment data for SIC 23 for 1985. During the period of 1981 through 1985, SIC 23 experienced a 10 percent decrease in employment. Almost 84 percent of the total number of employees were production workers [5]. In 1985, the median rate of return on assets in this SIC was 6.3 percent [6]. This sector was not included in the sample survey. Beginning with SIC 24—Lumber and Wood Products, all the remaining major manufacturing SIC groups were included in the 1988 survey unless otherwise noted in the text.

SIC 24—Lumber and Wood Products

This industry produces logs, pickets and fences, mining timbers, railroad ties, poles and pulpwood. SIC 24 includes establishments that cut timber and pulpwood, merchant sawmills, lath mills, shingle mills, cooperage stock mills, planing mills, and plywood mills and veneer mills engaged in producing lumber and wood basic materials; and establishments that manufacture finished articles made entirely or mainly of wood or related materials [1, p. 107]. According to U.S. Department of Commerce estimates, the logging industry's timber harvest in 1987 was an estimated $9.1 billion, compared with $6.8 billion in 1986. [4, p. 5–2].

The Department of Commerce reports that a strong expansion of the market for wood products took place in 1985 due to gains in housing and nonresidential construction activities. Although domestic demand for softwood lumber was strong, Canadian imports displaced American products and contributed to an oversupply, depressing prices. These lower prices lowered U.S. lumber producer profit margins and induced industrywide efforts to restrict imports of lower priced Canadian softwood lumber. In addition to the oversupply, accelerated harvesting to avoid pest damage forced inventories to go up and prices to fall further [3, p. 4–1].

In 1986, similar trends continued in the domestic market for wood products. This was due to a 6 percent rise in housing starts, continued growth in home remodeling and renovation, and strong demand from furniture markets and other end users. However, lower-priced softwood lumber imports from Canada continued to squeeze profits in 1986 [3, p. 4–1].

The Canadian softwood lumber prices brought about a trade agreement on December 30, 1986 between the United States and Canada, in which Canada agreed to set a 15 percent export tax on its softwood lumber. Canadian softwood lumber prices in the United States have risen 3 to 4 percent and imports have decreased about 3 to 4 percent. Since the agreement, Canada's market share has dropped from 33 percent to 28 percent. U.S. company earnings have increased despite a drop in housing starts. It is expected that the trade agreement will keep Canadian softwood prices up and continue to aid the domestic softwood lumber market [6].

Table C–1 presents employment and establishment data for SIC 24 for 1985, as well as for the three individual three-digit industry groups which were surveyed. In 1985, the mean establishment size in SIC 24 was 19 employees, significantly smaller than the average size in other manufacturing sectors. The median rate of return on assets in the SIC was 7.3 percent [6].

The National Kitchen Cabinet Association stated that the Dun and Bradstreet sampling frame used for the survey seriously underestimated the number of establishments [Ex. 60L]. Dun and Bradstreet estimated the number of establishments in SIC 24 as 36,710 [6]. The Department of Commerce in the 1985 County Business Patterns estimated the number to be 32,205 [7]. In making cost estimates for the Inter-Industry Wood Dust Coordinating Committee, National Economic Research Associates (NERA) assumed that there were only 26,485 establishments (using the 1982 Census of Manufacturers) [Ex. 3–748]. Thus, OSHA believes that the Dun and Bradstreet data used for the survey do not underestimate the total number of establishments.

Additionally, OSHA does not differ significantly from NERA on the total number of employees in SIC 24. OSHA used the Labstat Database of the U.S. Department of Labor to conclude that 697,000 persons were employed in 1985 [5]. NERA estimated that the industry employed 691,656 workers in 1986. Thus it appears that NERA accepts OSHA's estimate relating to the number of employees.

SIC 242—Sawmills and Planing Mills

This SIC includes sawmills and planing mills, hardwood dimension and flooring mills, and special product sawmills. The U.S. Department of Commerce reported that in 1985, SIC 242 employed 26 percent of all employees and represented 21 percent of all establishments in SIC 24 [7]. The value of shipments from 1981 to 1985 rose 10 percent in SIC 2421 and 45 percent in SIC 2426 [4]. The Department of Commerce also reported that employment declined 14 percent in sawmills and rose 3 percent in hardwood dimension and flooring over the same time period. Production workers represent 87 percent of all employees in this industry. Special product sawmills (SIC 249) include facilities that produce shakes and shingles; approximately 290 firms use Western red cedar [9].

Firms in this sector were not included in the 1988 sample survey. OSHA relied on Dun and Bradstreet data to estimate the number of establishments in SIC 242. The National Dimension Manufacturers Association quoted the 1982 Census of Manufactures by stating that 780 establishments were in SIC 2426, of which 306 had 20 or more employees [Ex. 3–1160]. The Department of Commerce stated that there were 714 establishments in 1984, of which 320 had 20 or more employees [7]. Similarly the Census of Manufactures estimated the employment at 29,100 workers in 1987, while County Business Patterns estimated 26,841 in 1984. The difference in these estimates appears to be minor and largely associated with the difference in time and methods of data collection.

SIC 243—Millwork, Veneer and Plywood

This SIC includes establishments that manufacture fabricated wood millwork, covered with materials such as metal and plastics. According to the U.S. Department of Commerce, the value of shipments for SIC 243 was $16.7 billion in 1985, which represents 31 percent of the value of shipments for SIC 24 [3]. The value of shipments in SIC 243 increased 27 percent since 1981. In 1985, the number of employees in SIC 243 was about 37 percent of SIC 24. The number of employees in SIC 243 increased by 16 percent from 1981 to 1985 [5]. Average hourly earnings dropped about 17 percent during that same time period. The number of establishments in SIC 243 in 1985 was about 38 percent of all establishments in SIC 24 [5].

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In SIC 243, the 1988 survey identified more than twice as many small firms (fewer than 20 production workers) as large firms. In the small firms, maintenance work is performed for the most part by production workers. By contrast, in large firms, maintenance work is predominantly performed by dedicated maintenance workers.

The manufacturers classified in SIC 243 usually have one to three basic processes, with potential exposure to one to three substances. Thirty-nine percent of these processes involve exposure to chemicals or substances on an intermittent short-term basis (up to 30 minutes) with large firms tending to have more long-term exposures. Twenty-nine percent of the firms in this SIC reported the adoption of internal exposure standards. Of these small firms with internal exposure standards, most have adopted OSHA PELs. Nearly 71 percent of the large firms with standards reported using the OSHA PELs; the balance indicated that they rely on ACGIH TLVs or other standards. Employee monitoring had been performed at 17 percent of the processes.

The survey found that about 29 percent of the processes in SIC 243 are totally enclosed and 8 percent are located outdoors. Local exhaust ventilation is used most frequently to control exposures at processes not enclosed. Nearly 72 percent of the firms with chemical exposures have respirators for employee use, with a higher percentage of small firms reporting the presence of respirators than large firms. The combined data on exposure levels and methods of exposure control indicate that many plants which are estimated to incur some cost of compliance have overexposures in all processes at that plant.

Survey respondents in SIC 243 identified the presence of 35 different substances in SIC 243. Particulates not otherwise regulated were estimated to occur most frequently at a total of 8,956 processes. Particulates not otherwise regulated were identified in bleaching, coating/spraying/finishing/layup, cutting/sawing/planing, drying/baking, gluing/hot pressing, sanding/polishing/grinding, and metal working (rolling, milling, shaping). The final rule does not change the existing limit on these particulates. Wood dust exposures occur in cutting/sawing/planing and sanding/polishing/grinding.

SIC 244—Wood Containers

This SIC represents manufacturers of wood containers, including wood pallets and skids. The pallet industry is the third largest consumer of lumber in the United States, after the construction and furniture industries (Ex. 3-1125). According to the U.S. Department of Commerce, more than 70 percent of the establishments in SIC 244 employ 20 or fewer people [7]. SIC 244 accounts for 6 percent of the establishments and employment in SIC 24. The total value of shipments in pallets and skids in 1987 was $1.3 billion, thus continuing the industry's third year of economic expansion (4, p. 3-6). The number of establishments producing pallets and skids rose more than 67 percent from 1982 to 1986 [2, p. 4-16]. The National Wooden Pallet and Container Association (NWPCA) quoted the U.S. Forest Service's 1985 estimate of 2,340 firms in SIC 244 (Ex. 3-699). The 1984 County Business Patterns estimated 2,103 establishments [7]. The number of employees quoted by the NWPCA was 44,600, somewhat higher than Labstat's estimate of 40,300. However, County Business Patterns estimated 38,478. Labstat estimated 40,500 employees in this industry in 1986 [5]. Hourly earnings of employees in pallets and skids rose 3 percent in 1988 to $8.32. This SIC was not included in the 1987 survey.

SIC 245—Wood Buildings and Mobile Homes

This SIC includes manufacturers of wood buildings and mobile homes. The 1985 value of shipments for SIC 245 ($6.0 billion) represented 11 percent of the total value of shipments for SIC 24 [3]. The value of shipments in SIC 245 increased 6 percent from 1981 to 1985. In 1985, the number of employees in SIC 245 was 10.5 percent of SIC 24. Almost 77 percent of these employees are production workers. The number of establishments in SIC 245 in 1985 was 4.4 percent of all establishments in SIC 24 [5].

In SIC 245, the survey identified about as many small firms (fewer than 20 production workers) as large firms. In the small firms, maintenance work is generally performed by production workers. In large firms maintenance work is mostly performed by dedicated maintenance workers.

The manufacturers classified in SIC 245 usually have one to three basic processes, with potential exposure to one to three substances. Thirty percent of these processes involve exposure to these chemicals or substances on an intermittent short-term basis (up to 30 minutes) with large firms tending to have more long-term exposures. Almost thirty-seven percent of the firms in this SIC reported the adoption of internal exposure standards. Among small firms with internal exposure standards, most have adopted OSHA PELs. Nearly 67 percent of the large firms with standards reported using the OSHA PELs; the balance indicated that they rely on ACGIH TLVs. Employee monitoring had been performed at 49 percent of the processes.

The survey found that about 18 percent of the processes are totally enclosed and 76 percent are located outdoors. Local exhaust ventilation is used most frequently to control exposures at processes not enclosed. Nearly 78 percent of the firms with chemical exposures have respirators for employee use, with a higher percentage of large firms reporting the presence of respirators than small firms. The combined data on exposure levels and methods of exposure control indicate that many plants which are estimated to incur some cost of compliance have overexposures in all processes at that plant.

Survey respondents in SIC 245 identified the presence of 10 different substances. Particulates not otherwise regulated were estimated to occur the most frequently at a total of 703 processes. The final rule retains the existing limit for these particulars. Toluene, the second most frequently used chemical, was identified in coating/spraying/finishing/layup, gluing/hot pressing, and sanding/polishing/grinding. Wood dust occurs in cutting/sawing/planing and sanding/polishing/grinding operations.

SIC 249—Miscellaneous Wood Products

This SIC covers miscellaneous wood products, and includes four four-digit SICs. SIC 249 represented 12 percent of the value of shipments for SIC 24 in 1985 [4]. The value of shipments in SIC 249 ($6.6 billion) increased almost 24 percent over 1981. In 1985, the number of employees in SIC 249 was about 15 percent of SIC 24. From 1981 to 1985, the number of employees in SIC 249 decreased by 4 percent. The number of establishments in SIC 249 in 1985 was about 14 percent of all establishments in SIC 24 [5].

SIC 2491 includes establishments that treat wood, sawed or planed in other establishments, with creosote or other preservatives to prevent decay and to protect against fire and insects. This industry also includes facilities that cut, treat, and sell poles, posts, and pilings. The Department of Commerce reports that during 1985 there was increased use of treated wood for home improvement projects, such as new decks and all-weather wood foundations. The market for railroad ties in 1985 was strong, as railroads replaced worn out ties. In 1986, however, sales of railroad ties declined. About 30 percent of total treated wood shipments are lumber and plywood [3, p. 4-14]. The Department of Commerce estimated that in 1986, the value of shipments in this industry increased by 7 percent [4, p. 5-15]. SIC 2491 represents 23 percent of the value of shipments for SIC 249. Employment rose in 1986 by 2.7 percent [3, p. 4-14]. The number of employees in SIC 2491 was almost 16 percent of SIC 249 and SIC 2491 represents almost 11 percent of all establishments in SIC 249 [6].

In SIC 249, the survey identified three times as many small firms (fewer than 20 production workers) as large firms. In the small firms, maintenance work is performed for the most part by production workers or a dedicated maintenance staff. Large firms primarily use dedicated maintenance workers to perform maintenance duties.

The manufacturers classified in SIC 249 usually have one to four basic processes, with potential exposure to one of four substances. Thirty-four percent of the processes in this SIC involve exposure to these chemicals or substances on an intermittent short-term basis (up to 30 minutes), with large firms tending to have more long-term exposures. Forty-three percent of the firms in this SIC reported the adoption of internal exposure standards. Of these, most small firms have adopted OSHA PELs. Nearly 63 percent of the large firms with standards reported using the OSHA PELs; the balance indicated that they rely on ACGIH TLVs. Employee monitoring had been performed at 11 percent of the processes.

The survey found that about 22 percent of the processes are totally enclosed and 11 percent are located outdoors. Local exhaust ventilation is used most frequently to control exposures at processes not enclosed. Roughly 48 percent of the firms with chemical exposures have respirators for employee use, with a higher percentage of large firms reporting the presence of respirators than small firms. The combined data on exposure levels and methods of exposure control indicate that many plants which are estimated to incur some cost of compliance have overexposures in all processes at that plant.

Survey respondents identified the presence of 25 different substances in SIC 249. Particulates not otherwise regulated were estimated to occur most frequently at a total of 1,678 processes. Particulates were identified in coating/spraying/finishing/layup, cutting/sawing/planing, drying/baking, gluing/hot pressing, sanding/polishing/grinding, stamping/shaping/molding/pressing, and assembly. Wood dust exposures occur in cutting/sawing/planing and sanding/polishing/grinding.

SIC 25—Furniture and Fixtures

Manufacturers of household, office, public building, and restaurant furniture and office and store fixtures are included in SIC 25 [1, p. 114]. The U.S. Department of Commerce states that producers of furniture and fixtures recently have benefited from lower real interest rates, a reduction in the value of the dollar versus other major currencies, and changes in the tax laws [3]. In addition, the U.S. furniture industry is undergoing consolidation; big firms are becoming larger and accounting for a greater share of the market. The remaining smaller firms are finding it more difficult to compete, given the rapid increase in low-priced imports. Moreover, new manufacturing technologies require large capital investments and large volume, neither of which are readily available to small firms [3, p. 44-2].

For the industry, the value of shipments in 1985 increased by 31 percent over the level in 1981. In household furniture, the value of shipments for 1987 increased an estimated 7 percent following a growth of 5.4 percent in 1986 [4, p. 47-2]. Although furniture manufacturers anticipate stronger demand in the future, these manufacturers remain uncertain as to the duration and extent of increased demand. Therefore, rather than hiring additional workers, producers have increased the average number of hours worked by current employees. This trend was evident in the wood and metal furniture plants, where average overtime hours increased 16 percent and 24 percent, respectively, in the first half of 1988 [3, p. 44-21].

Table C-1 presents employment and establishment data for SIC 25 for 1985. Almost 80 percent of the total number of employees working in SIC 25 were production workers and the median rate of return on assets in the furniture industry was 7.3 percent in 1985.

In SIC 25, the survey detected twice as many small firms (fewer than 20 production workers) as large firms. In small firms, maintenance work is performed for the most part by production workers, whereas large firms primarily use dedicated maintenance workers.

The manufacturers classified in SIC 25 usually have one to four basic processes, with potential exposure to as many as six substances. Twenty-four percent of these processes involve exposure to these chemicals or substances on an intermittent short term basis (up to 30 minutes), with large firms tending to have more long-term exposures. Fifty-four percent of the firms in this SIC reported the adoption of internal exposure standards. Among small firms with internal exposure standards, most use the OSHA PELs. About 66 percent of the large firms with standards reported using the OSHA PELs; the remainder indicated that they rely on ACGIH TLVs. Employee monitoring had been performed at 19 percent of the processes.

The survey found that about 25 percent of the processes are totally enclosed and 3 percent are located outdoors. Local exhaust ventilation is used most frequently to control exposures at processes not enclosed. Nearly 78 percent of the firms with exposures provide respirators for employee use, with a higher percentage of small firms reporting the presence of respirators than large firms. The combined data on exposure levels and methods of exposure control indicate that many plants which are estimated to incur some cost of compliance do not have overexposures in all processes at that plant.

Survey respondents identified the presence of 36 different substances in SIC 25. Particulates not otherwise regulated were estimated to occur most frequently at a total of 3,433 processes. Toluene, the second most frequently used chemical, was identified at processes in coating/spraying/finishing/layup, drying/baking, gluing/hot pressing, drilling/boring and sanding/polishing/grinding. Wood dust exposures occur in cutting/sawing/planing, drilling/boring, and sanding/polishing/grinding.

SIC 26—Paper and Allied Products

Establishments in this industry process fiber from trees, wastepaper, and other fibrous materials, into end products that are used by both consumers and industry [1, p. 100]. Based on U.S. Department of Commerce estimates, the paper and allied products industry experienced an increase of 16 percent in the value of shipments from 1981 to 1985, and over 10 percent between 1985 and 1986 [3]. Net profits for 27 paper industry firms were reported to have averaged nearly 60 percent higher in the first six months of 1987 than in the first half of 1986 [4, p. 6-1].

The industry's overall demand patterns are closely linked to rates of change in GNP. In 1985, for example, real growth for the industry was judged to be flat, trailing that of the GNP. The

The newspaper industry has improved its performance after several years of slow growth. The value of shipments for SIC 271 was $29.2 billion in 1988. Total employment rose an estimated 2.2 percent in 1988 to 420,000 employees, but production employment remained virtually unchanged at 151,900 employees. Sales revenues increased by 6.9 percent, from $14.8 billion in 1986 to $16.2 billion in 1987. Advertising revenues rose slightly, but most of this gain was due to rate increases and growth in classified ad volume. Total net worth increased by 14.2 percent from 1986 to 1987 [10].

The periodical industry has experienced moderate growth in both advertising receipts and circulation. Advertising revenue increased about 4 percent in 1987, while circulation revenues increased slightly due to the increase in subscriptions for consumer magazines. There was another large increase in the number of new publications entering the market; over 250 new periodicals were published in 1987 [3, p. 29–6]. The value of shipments of the periodical industry was $15.7 billion in 1986, an increase of 3.1 percent over the 1985 figure of $15.2 billion. The total number of employees in the periodical industry increased in 1988 (98,100 employees), while the number of production workers decreased (14,200 employees). The periodical industry has the lowest ratio of production workers to total employees (14.5 percent) within SIC 27.

The commercial printing industry (SIC 275) has been very profitable over the last decade. The 1987 value of shipments ($40.9 billion) increased 7.5 percent over the 1986 value of shipments ($38.0 billion). Between 1980 and 1985, the value of shipments increased by 11.5 percent compounded annually. Total employment and production employment have also been increasing substantially from 1986 to 1987 (3.7 percent and 2.7 percent, respectively). The outlook for this industry is steady growth [3, pp. 29–12 to 29–14].

Both book publishing and printing showed strong gains over the last several years. Value of shipments and total employment increased by 5.5 percent and 0.7 percent, respectively, from 1985 to 1986. Spurred by the increase in school enrollment, sales of textbooks were projected to reach 29 percent of total industry sales in 1988. Book printing usually follows the path of book publishing, increasing substantially when book publishing has a strong year [3, pp. 29–9 to 29–13].

Miscellaneous publishing and printing consists of newsletters, catalogs, directories, greeting cards, and business forms. This industry has seen steady gains due in part to the success of mail-order catalogs, telephone directories, and newsletters [3, pp. 29–13 to 29–19].

In this SIC, the survey identified six times as many small firms (fewer than 20 production workers) as large firms. In the small firms, approximately two-thirds of maintenance work is performed by production workers. Outside contractors do approximately one-fourth of maintenance work, and maintenance staff and other sources make up the remainder. Large firms divide maintenance work about equally between a dedicated maintenance staff, production workers, and outside contractors.

The manufacturers classified in this SIC usually have one to three basic processes, with potential exposure to as many as six chemicals. Employees are exposed to these chemicals on an intermittent short term basis (up to 30 minutes) or continuously (up to 8 hours per day) with large firms tending to have more long-term exposures. Small firms generally have no internal exposure standards; when they do, the OSHA PELs are followed about fifteen percent of the time. Over one-half of large firms reported using the OSHA PELs; the balance indicated that they have no standards or they rely on ACGIH TLVs or NIOSH RELs. Air monitoring data were provided for about one-tenth of the processes found in all plants, and for about one-third of the processes found in large firms.

The survey found that about two-thirds of the processes are totally enclosed and less than one percent are located outdoors. Local exhaust ventilation and general dilution are used most frequently to control exposures at processes not enclosed or outdoors. In less than five percent of the firms with chemical exposures, production workers use respirators with a higher percentage of large firms using respirators than small firms.

Survey respondents identified isopropyl alcohol, stoddard solvent, and methyl alcohol among the chemicals most prevalent in this SIC. These are used in lithographic printing and platemaking and letterpress printing which were the processes most frequently listed by respondents. Toluene, xylene, and trichloroethylene were also identified in the survey. A large commercial printer, R.R. Donnelly and Sons, confirmed the presence of toluene in press operations and expressed concern over the ability to meet the proposed levels, especially during cleaning [Ex. 3–916].

SIC 28—Chemicals and Allied Products

SIC 28 includes establishments that produce basic chemicals, and establishments that manufacture products using chemical processes. There are three general classes of products: (1) basic chemicals, such as acids, alkalies, salts, and organic chemicals; (2) chemical products to be used in further manufacturing, such as synthetic fibers, plastics materials, dry colors, and pigments; and (3) finished chemical products to be used for consumption, such as drugs, cosmetics, and soaps; or to be used as materials or supplies in other industries, such as paints, fertilizers, and explosives [1, p. 132].

The chemical and allied products industries have experienced small but steady growth over the recent past. Total shipments by the chemical industry increased approximately 3.1 percent in 1987, following a 3.5 percent gain in 1986 [3]. Chemical prices have been stable since 1982, due to steady or declining energy costs. Like many other U.S. industries, various sectors within the chemical industry are undergoing structural changes, such as mergers, plant closings, sale of plants, and other adjustments. This industry employs approximately 5 percent of all industry workers, but more than 10 percent of all U.S. scientists and engineers. SIC 28 experienced a 6 percent decline in employment between 1981 and 1985. In 1985, 55.4 percent of the total number of employees in SIC 28 were production workers. The value of shipments increased 8.9 percent during the 1981 to 1985 time period. The median rate of return on assets in the chemical industry was 6.3 percent [6].

Within SIC 28, there are eight, three-digit SICs, which are described below.

SIC 281—Industrial Inorganic Chemicals

This SIC includes establishments that manufacture basic industrial inorganic chemicals. SIC 281 represented 10.3 percent of the value of shipments of SIC 28 in 1985 [2]. The value of shipments increased 12.9 percent since 1981, and employment declined by 12 percent. Production workers equaled almost 51 percent of all workers. The number of establishments in SIC 281 was 14.5 percent of all establishments in SIC 28 [Table C–1].

SIC 281 is subdivided into four groups. Examples of the products of each four-digit SIC are given below.

SIC 2812 Products—Chlorine, soda ash, caustic potash, caustic soda, washing soda, and sodium bicarbonate

largest fluctuations in the industry's shipments have occurred in products geared specifically for commercial-industrial use, which are tied to the annual rate of business activity [3, p. 5–1].

Table C–1 presents employment and establishment data for SIC 26 for 1985. From 1981 to 1985, employment declined by approximately 2 percent. Almost 76 percent of the total number of employees were production workers [5]. In 1985, the median rate of return on assets was 7.4 percent [6].

Within SIC 26, there are six, three-digit SIC groups. SIC 261 includes manufacturers of pulp from wood or other materials. The Department of Commerce reports that U.S. market pulp prices dropped nearly 10 percent in the first six months of 1985. By the end of 1985, however, producers' pulp mill inventories had dropped, helping to stabilize pulp prices. About one-fourth of all market pulp companies either shut down some of their mills in 1985 or curtailed production to reduce the oversupply in the market. In 1986, the industry experienced increased productivity, higher prices and improved worldwide demand. For SIC 261, the value of shipments in 1987 increased by 2.7 percent over 1986. SIC 261 represents 3.5 percent of the value of shipments for SIC 26 [3, p. 5–2].

SIC 262 includes manufacturers of paper from wood pulp and other fiber pulp, and manufacturers of converted paper products. SIC 263 includes manufacturers of paperboard. SIC 262 represents 11 percent of the value of shipments for SIC 26. The value of shipments decreased by 3.6 percent. The number of employees in SIC 263 was less than 1 percent of SIC 26 [5].

SIC 264 includes manufacturers of coated or laminated flexible materials used for packaging purposes. In this sector, the value of shipments, which represents 36 percent of the value of shipments for SIC 26, increased by 17 percent during the same period. The number of employees in SIC 264 was 34 percent of SIC 26 [5]. SIC 265 includes manufacturers of setup paperboard boxes from purchased paperboard. Corrugated boxes have taken the place of wooden shipping containers, pallets, and metal drums in the U.S. packaging market in recent years [3, p. 5–6]. Similarly, consumption of folding boxes continued steadily in 1985. This pattern continued in 1986 with shipments of corrugated boxes increasing 5.5 percent and 3 percent for folding boxes. Several important nondurable end users of folding cartons, such as producers of beverages, dry food, textiles, sporting goods and toys, hardware, candy, and cosmetics, showed significant declines in real growth in 1985, while the market for boxed paper goods either grew slightly or remained fairly level [3, p. 5–9].

Manufacturers of sanitary food containers, such as paperboard milk cartons and paper serving and eating utensils, are also included in SIC 265. This industry has been strongly influenced by the shift to plastic containers. Having experienced two successive years of decline, the industry increased the value of shipments by 2 percent in 1986. Since 1983, the most rapid growth area within the sanitary food container industry has been aseptic packaging. This is specially treated paperboard combined with plastic film and aluminum foil.

The value of shipments for SIC 265 increased by 16 percent from 1981 to 1985. This three-digit SIC represents 24 percent of the value of shipments for all of SIC 26. In 1985, the number of employees in SIC 265 was 29 percent of SIC 26 [5]. SIC 266 includes manufacturers of building paper and building board from wood pulp and other fibrous materials. Trends in employment and value of shipments have followed overall trends in SIC 26.

In SIC 26, the survey identified half as many small firms (fewer than 20 production workers) as large firms. In small firms, maintenance work is performed largely by production workers, although some firms use outside contractors. Large firms generally use a separate maintenance staff to perform maintenance duties.

The manufacturers classified in SIC 26 usually have one to six basic processes, with potential exposure to as many as seven chemicals or substances. Twenty-nine percent of these processes involve exposure to these chemicals or substances on an intermittent short-term basis (up to 30 minutes), with large firms tending to have more long-term exposures. Firms in this SIC are equally divided between those adopting no internal exposure standards and those adopting OSHA PELs. Among small firms with internal exposure standards, all have adopted OSHA PELs. Nearly 81 percent of the large firms with standards reported adopting the OSHA PELs; the balance indicated that they rely on ACGIH TLVs. Employee monitoring had been performed at 36 percent of the processes.

The survey found that about 25 percent of the processes are totally enclosed and 4 percent are located outdoors. Local exhaust ventilation is used most frequently to control exposures at processes not enclosed. Approximately 42 percent of the firms with chemical exposures have respirators for employee use, with a higher percentage of small firms reporting the presence of respirators than large firms. The combined data on exposure levels and methods of exposure control indicate that many plants which are estimated to incur some cost of compliance have overexposures in all processes at that plant.

Survey respondents indentified the presence of 46 different chemicals or substances in SIC 26. Particulate not otherwise classified occurred the most frequently at a total of 1,753 process. Cellulose was identified at 664 processes. The final rule retains the existing limits for both particulates not otherwise regulated and cellulose. Wood dust exposures occurred in cutting/sawing/planing.

SIC 27—Printing, Publishing, and Allied Industries

This industry is divided into a publishing sector, a printing sector and a sector of related services. The publishing sector includes newspaper publishing (SIC 271), periodical publishing (SIC 272), book publishing (SIC 2731), miscellaneous publishing (SIC 274) and greeting card publishing (SIC 277). The printing sector includes commercial printing (SIC 275), book printing (SIC 2732), and printing trade services (SIC 279). The related services sector includes manifold business forms (SIC 276) and blankbooks and bookbinding (SIC 278) [1, pp. 106–110].

There were approximately 84,279 establishments in the printing and publishing business in 1985. The majority of these firms (84.1 percent) had fewer than 20 employees, and the mean establishment size was 17 employees. The firms in SIC 27 had 1.4 million employees and 789,000 production workers [Table C–1]. According to the U.S. Department of Commerce, the value of shipments for all printing and publishing establishments in 1986 ($118.6 billion) was 5.2 percent of the value of shipments for all manufacturing industries. Most of the value of shipments in SIC 27 is from the commercial printing sector (32.1 percent) [4]. In 1985, the median rate of return on assets was 8.2 percent for the printing and publishing industry [6].

Foreign trade has not been a major concern for this industry in the past, but imports are beginning to increase at a steady rate. The respective values of imports and exports were very close in 1987, with $1.8 billion in imports and $1.5 billion in exports [3, p. 29–2].

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SIC 2813 Products—Oxygen, acetylene, argon, carbon dioxide, and hydrogen.
SIC 2816 Products—Color pigments, iron colors, iron oxide, lead oxide pigments, mineral colors, titanium pigments, and zinc oxide pigments.
SIC 2819 Products—Sulfuric, hydrochloric, and hydrofluoric acids.

In SIC 281, the survey identified three times as many small firms (fewer than 20 production workers) as large firms. In the small firms, maintenance work is performed for the most part by production workers, although some firms employ dedicated maintenance workers. Large firms predominantly employ workers specifically for maintenance duties.

The manufacturers classified in this SIC usually have one to two basic processes, with potential exposure to as many as six substances. Fifty-two percent of these processes involve exposure to chemicals or substances on an intermittent short-term basis (up to 30 minutes), with large firms tending to have longer-term exposures. Most firms in SIC 281 reported the adoption of OSHA PELs as their internal standards. Employee monitoring had been performed at 67 percent of the processes. The survey found that about 32 percent of the processes are located outdoors. Local exhaust ventilation is used most frequently to control exposures at processes not enclosed. About 24 percent of the firms with chemical exposures have respirators for employee use, with a higher percentage of small firms reporting the presence of respirators than large firms. The combined data on exposure levels and methods of exposure control indicate that most plants which are estimated to incur some cost of compliance do not have overexposures in all processes at that plant.

Survey respondents identified the presence of 58 different substances in SIC 281. Carbon dioxide was estimated to occur the most frequently at a total of 292 processes. Carbon dioxide was identified in recovery/reprocessing, packaging/bagging, loading/offloading/receiving/handling, process inspection, reaction/fermentation, and separation. Another common substance, sodium hydroxide, was identified in boilers.

SIC 282—Plastics Materials and Synthetics

This SIC includes manufacturers of plastics materials and synthetic resins, synthetic rubbers, and cellulosic and other manmade fibers. Plastics make up a variety of products which are used in diverse markets. Packaging and construction account for over 50 percent of consumption, with the remainder going into the transportation, electronics, and medical industries [3]. SIC 282 represents almost 17 percent of the value of shipments of SIC 28. The value of shipments in SIC 282 increased 9.2 percent over the period 1981 to 1985 [2]. Industry shipments of plastics in 1986 gained 6.3 percent as volume rose in response to slightly increased demand for materials. However, declining prices of plastic materials held shipments to a 2 percent increase [3, p. 14–1].

Table C–1 gives employment and establishment data for this segment. The number of employees in SIC 282 in 1985 was almost 16 percent of SIC 28 and the number of establishments was 8 percent of all establishments in that SIC. In 1985, employment in SIC 282 declined by 12 percent, and production workers equaled 66.5 percent of all workers [5].

SIC 282 is subdivided into four groups. Examples of the products from each of these four-digit SICs are given below.

SIC 2821 Products—Cellulose plastics materials, phenolic and other tar acid resins, acrylic resins, polyethylene resins, coumarone-indene and petroleum polymer resins, and casein plastics.
SIC 2822 Products—Copolymers of butadiene and styrene, or butadiene and acrylonitrile, and polybutadienes.
SIC 2823 Products—Cellulose, rayon, and triacetate fibers.
SIC 2824 Products—Fibers of acrylic, acrylonitrile, polyvinyl ester, and nylon.

In SIC 282, the survey identified twice as many small firms (fewer than 20 production workers) as large firms. In small firms, maintenance work is either performed by production workers or dedicated maintenance workers. Large firms primarily employ workers specifically for maintenance duties.

The manufacturers classified in SIC 282 usually have one to six basic processes, with numerous firms having exposures to as many as six different substances. Forty-five percent of these processes involve exposure to these chemicals or substances on an intermittant short-term basis (up to 30 minutes), with large firms tending to have more short-term exposures. Most firms in this SIC have adopted OSHA PELs as their internal standards. Of the small firms with internal exposure standards, most have adopted OSHA PELs or ACGIH TLVs. About 49 percent of large firms reported using OSHA PELs, with 36 percent reporting the adoption of ACGIH TLVs.

The survey found that about 33 percent of the processes are totally enclosed and 24 percent are located outdoors. Local exhaust ventilation is used most frequently to control exposures at processes not enclosed. More than 28 percent of the firms with chemical exposures have respirators, with an equal percentage of small and large firms reporting the availability of respirators for employee use. The combined data on exposure levels and methods of exposure control indicate that many plants which are estimated to have some cost of compliance have overexposures in some, but not all, processes in the plant.

Survey respondents identified the presence of 53 different substances in SIC 282. Styrene was estimated to occur the most frequently at a total of 209 processes. Styrene was identified in recovery/reprocessing/reclamation, drying/baking, separation, blending/mixing/formulating, packaging/bagging, extrusion, crushing/grinding/calcining, loading/offloading/receiving/handling, and reaction/fermentation. Another common substance in SIC 282 was isopropyl alcohol, which occurred in eight different processes.

SIC 283—Drugs

This group includes establishments that manufacture, fabricate, or process medicinal chemicals and pharmaceutical products. The value of shipments in SIC 283 has increased 40 percent from 1981 to 1985 [2]. SIC 283 represents 16 percent of the value of shipments of SIC 28 and almost 20 percent of the number of employees. The U.S. Department of Commerce estimated that the pharmaceutical industry experienced a 6.3 percent increase in the value of shipments in 1986. However, after adjusting for price changes, this growth rate was closer to 1.8 percent. Productivity also increased in 1986, growing by approximately 2.6 percent [3, p. 17–1].

As seen in Table C–1, the number of establishments in SIC 283 was almost 12 percent of all establishments in SIC 28. Employment increased by 3 percent since 1981, and production workers equaled approximately 46 percent of all workers in SIC 283. Agar, vitamins, antibiotics, vaccines, and viruses are examples of the products of this SIC.

In SIC 283, the survey identified three times as many small firms (fewer than 20 production workers) as large firms. In the small firms, maintenance work is generally performed by either dedicated maintenance workers or by general production workers. In large firms, most maintenance work is performed by workers specifically employed for maintenance duties.

The manufacturers classified in SIC 283 usually have one to five basic processes, with potential exposure to one to three substances. Fifty percent of all employees are exposed to these chemicals or substances on an intermittent basis (up to 30 minutes), with small firms tending to have more long-term exposures. Among small firms with exposure standards, most have adopted OSHA PELs. Among large firms, a significant percentage have adopted ACGIH TLVs, although most still rely on OSHA PELs. Employee monitoring had been performed at 34 percent of the processes.

The survey found that about 53 percent of the processes are totally enclosed and 4 percent are located outdoors. Local exhaust ventilation is used most frequently to control exposures at processes not enclosed. In 21 percent of the firms with chemical exposures, respirators were available for employee use, with a higher percentage of large firms reporting the presence of respirators than small firms. The combined data on exposure levels and methods of exposure control indicate that very few plants which are estimated to incur some cost of compliance have overexposures at all processes in that plant.

Survey respondents identified the presence of 40 different substances in SIC 283. Isopropyl alcohol was estimated to occur the most frequently at a total of 577 processes. Isopropyl alcohol was identified in boilers, coating/spraying/finishing/layup, drying/baking, blending/mixing/formulating, packaging/bagging, loading/offloading/receiving/handling, reaction/fermentation, and separation.

SIC 284—Soaps, Cleaners, and Toilet Goods

This SIC includes manufacturers of detergents, emulsifiers, cosmetics, and producers of glycerin. SIC 284 represents 15 percent of the value of shipments of SIC 28 [3]. The value of shipments in SIC 284 increased 20 percent from 1981 to 1985 [2]. In 1986, the value of shipments was estimated at $31 billion, which represents about a 4 percent increase over 1985 values [3, p. 18–1].

The number of employees in this SIC was almost 15 percent of SIC 28 and the number of establishments was almost 22 percent. In 1985, employment in SIC 284 had increased by 1 percent since 1981, and production workers equaled approximately 63 percent of all workers in SIC 284 [5].

There are four subgroups within SIC 284. Examples of the products produced by each four-digit SIC are given below.

SIC 2841 Products—Soap, synthetic organic detergents, inorganic alkaline detergents, and crude and refined glycerin from vegetable and animal fats and oils.
SIC 2842 Products—Household, institutional, and industrial plant disinfectants, nonpersonal deodorants, dry cleaning preparations, household bleaches, and other sanitation products.
SIC 2843 Products—Textile and leather finishing agents, soluble oil and greases.
SIC 2844 Products—Perfumes, cosmetics, home permanent kits, shampoos, shaving products, and talcum powder.

In SIC 284, the survey identified twice as many small firms (fewer than 20 production workers) as large firms. Maintenance work in small firms is basically performed by production workers, while dedicated maintenance workers and in some firms production workers, handle this task in large firms.

The manufacturers classified in SIC 284 usually have one to three basic processes, with potential exposure to one to eight substances. Fifty percent of all employees are exposed to these chemicals or substances on an intermittent basis (up to 30 minutes), with large firms tending to have more long-term exposures. Most firms in this SIC have adopted OSHA PELs. Employee monitoring had been performed at 26 percent of the processes.

The survey found that roughly 38 percent of the processes are totally enclosed and 9 percent are located outdoors. Local exhaust ventilation is used most frequently to control exposures at processes not enclosed. Nearly 44 percent of the firms with chemical exposures have respirators for employee use, with a higher percentage of large firms reporting the presence of respirators than small firms. The combined data on exposure levels and methods of control indicate that very few plants which are estimated to incur some cost of compliance have overexposures at all processes at that plant.

Survey respondents identified the presence of 52 different substances in SIC 284. Sodium hydroxide was estimated to occur most frequently at a total of 452 processes. Sodium hydroxide was identified in drying/baking, blending/mixing/formulating, packaging/bagging, loading/offloading/receiving/handling, reaction/fermentation, and separation.

SIC 285—Paints and Allied Products

This SIC includes manufacturers of paints and allied paint products such as varnishes, shellacs, and paint removers. The paint industry grew by about 5.3 percent in 1986, compared to 1985's decline of 2.9 percent [3, p. 15–1]. Estimated shipments for 1986 were $11.1 billion, of which architectural coatings accounted for about 41 percent, followed by product coatings (35 percent) and specialty products (24 percent) [3, p. 15–2].

SIC 285 represents about 6 percent of the value of shipments of SIC 28. The value of shipments increased almost 26 percent from 1981 to 1985 [2]. The number of employees in SIC 285 was 6 percent of SIC 28 and the number of establishments was 9 percent.

In SIC 285, the survey identified three-fourths as many small firms (fewer than 20 production workers) as large firms. In small firms, maintenance work is either performed by production workers or dedicated maintenance workers. Large firms predominantly use workers dedicated to maintenance duties.

The manufacturers classified in SIC 285 usually have one to five basic processes, with numerous firms having potential exposures to as many as seven different substances. About 40 percent of the employees are exposed to these chemicals or substances on an intermittent short-term basis (up to 30 minutes), with large firms tending to have longer-term exposures. Most firms in this SIC have adopted OSHA PELs or ACGIH TLVs as their internal standard; about 58 percent of the firms reported using OSHA PELs and 19 percent reported the adoption of ACGIH TLVs.

The survey found that about 34 percent of the processes are totally enclosed and 11 percent are located outdoors. Local exhaust ventilation is used most frequently to control exposures at processes not enclosed. About 17 percent of the firms with chemical exposures have respirators for employee use, with a higher percentage of large firms reporting the presence of respirators. The combined data on exposure levels and methods of exposure control indicate that most plants which are estimated to incur some cost of compliance have overexposures in some, but not all, processes at that plant.

Survey respondents identified the presence of 39 different substances in SIC 285. Stoddard solvent was estima ed to occur most frequently at a total of 941 processes. Stoddard solvent was identified in recovery/reprocessing/reclamation, coating/spraying/

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finishing/layup, drying/baking, blending/mixing/formulating, packaging/bagging, crushing/grinding/calcining, loading/offloading/receiving/handling, reaction/fermentation, and separation. Another common substance in this SIC was ethylene glycol, which occurred in seven processes.

SIC 286—Industrial Organic Chemicals

This SIC includes manufacturers of a variety of industrial organic chemicals. Industry shipments of organic chemicals increased approximately 2 percent over 1985, which was the same level of growth experienced in the previous year [3]. In 1985, the value of shipments for SIC 286 was $41.8 million, representing 21 percent of the value of shipments of SIC 28 [2]. The number of employees in SIC 286 was almost 11 percent of SIC 28 and the number of establishments was approximately 7 percent. Employment in SIC 286 increased by 10 percent, and production workers equaled 51 percent of all workers [Table C–1].

There are three subgroups in SIC 286. Examples of products for each four-digit SIC are given below.

SIC 2861 Products—Hardwood and softwood distillation products, wood and gum naval stores, charcoal, natural dyestuffs and natural tanning materials.
SIC 2865 Products—Toluene, benzene, synthetic organic dyes and pigments.
SIC 2869 Products—Alcohols, caprolactam, and ethylene glycol.

In SIC 286, the survey identified three-fourths as many small firms (fewer than 20 production workers) as large firms. Small firms primarily use production workers to perform maintenance tasks. Large firms, on the other hand, primarily use dedicated maintenance workers to perform maintenance duties. Some small and large firms use outside contractors.

The manufacturers classified in this SIC usually have two to four basic processes, with potential exposure to as many as six substances. Fifty-six percent of the employees are exposed to these chemicals or substances on an intermittent short-term basis (up to 30 minutes), with large firms tending to have longer-term exposure. Most firms in SIC 286 have adopted OSHA PELs or ACGIH TLVs as their internal standards. Employee monitoring had been performed at 78 percent of the processes.

The survey found that about 34 percent of the processes are totally enclosed and that nearly 38 percent of the processes are located outdoors. Local exhaust ventilation is used most frequently to control exposures at processes not enclosed. Roughly 34 percent of the firms with chemical exposures have respirators for employee use, with a higher percentage of large firms reporting the presence of respirators than small firms. The combined data on exposure levels and methods of exposure control indicate that very few plants which are estimated to incur some cost of compliance have overexposures in all processes at that plant.

Survey respondents identified the presence of 57 different substances in SIC 286. Particulates not otherwise regulated and ethylene glycol were estimated to occur most frequently at a total of 222 and 184 processes, respectively. OSHA has retained the existing limit for particulates not otherwise regulated.

SIC 287—Agricultural Chemicals

This SIC includes establishments that manufacture agricultural chemicals and pesticides. According to the U.S. Department of Commerce, the 1985 value of shipments of SIC 287 ($14.8 billion) represents 7.5 percent of the value of shipments of SIC 28 [2]. The value of shipments in SIC 287 decreased 9.6 percent from 1981 to 1985. Employment in SIC 287 represented 5 percent of SIC 28, but has declined by 10 percent since 1981. The number of establishments in SIC 287 was approximately 9 percent of all establishments in SIC 28 and production workers account for approximately 62 percent of total employment [Table C–1].

SIC 2873 includes manufacturers of nitrogenous and mixed fertilizers. The value of shipments of nitrogenous fertilizers in 1986 was $2.82 billion, a decrease over 1985 shipments [3, p. 13–1].

SIC 2874 includes manufacturers of phosphatic fertilizers, such as phosphoric acid, made from phosphate rock. The value of shipments of phosphatic fertilizers in 1986 was $3.71 billion, which represents a decrease over 1985 shipments [3, p. 13–3]. Ammonia and phosphoric acid are two substances with potential exposure problems that are produced and/or used in SIC 2874.

SIC 2875 includes establishments that mix fertilizers from purchased fertilizer materials. SIC 2879 includes formulators and preparers of ready-to-use agricultural and household pest control chemicals, such as fungicides, insecticides, and herbicides.

In SIC 287, the survey detected more than twice as many small firms (fewer than 20 production workers) as large firms. In small firms, maintenance work is mostly performed by production workers or dedicated maintenance workers. Large firms primarily employ workers specifically for maintenance duties, although some large firms use outside contractors.

The manufacturers classified in SIC 287 usually have two to four basic processes, with numerous firms having potential exposures to as many as five different substances. Thirty-three percent of the processes involve exposure to these chemicals or substances on an intermittent short-term basis (up to 30 minutes), with large firms tending to have longer-term exposures. Thirty-nine percent of the firms in this SIC reported the adoption of an internal exposure standard. Twenty-three percent of the small firms reported the adoption of an internal exposure standard. Nearly 45 percent of the large firms with standards reported using the OSHA PELs; the remainder indicated that they use ACGIH TLVs. The survey found that about 43 percent of the processes are totally enclosed and about 37 percent are located outdoors. Local exhaust ventilation is used most frequently to control exposures at processes not enclosed. About 42 percent of the firms with chemical exposures have respirators for employee use, with a higher percentage of small firms than large firms reporting the presence of respirators. The combined data on exposure levels and methods of exposure control indicate that most plants which are estimated to incur some cost of compliance do not have overexposures at all processes in that plant.

Survey respondents identified the presence of 32 different substances. Ammonia and particulates not otherwise regulated were estimated to occur the most frequently in a total of 344 and 334 processes, respectively. Ammonia was identified in drying/baking, blending/mixing/formulating, packaging/bagging, crushing/grinding/calcining, loading/offloading/receiving/handling, reaction/fermentation, and separation.

SIC 289—Miscellaneous Chemical Products

This group includes manufacturers of miscellaneous chemical products. For 1985, SIC 289 represented 7 percent ($14.8 billion) of the value of shipments of SIC 28 [2]. From 1981 to 1985, the value of shipments in SIC 289 increased 18.3 percent. The number of employees in SIC 289 was almost 10 percent of SIC 28 and has remained unchanged since 1981. The number of establishments in SIC 289 was approximately 19 percent of all establishments in SIC 28. Production workers equalled approximately 62 percent of all workers [Table C–1].

SIC 2891 includes manufacturers of industrial and household adhesives and sealants. Industry shipments for adhesives and sealants in 1986 amounted to $4.2 billion, of which about 60 percent were by synthetic resins and rubber-based adhesives; 20 percent by sealant and caulking compounds; and the remaining 20 percent by natural-based adhesives and miscellaneous compounds [3, p. 15–3].

SIC 2892 includes manufacturers of explosives, such as TNT (trinitrotoluene). Ethylene glycol dinitrate is one of the products of this SIC which may have potential exposure problems.

SIC 2893 includes manufacturers of printing ink and SIC 2895 includes manufacturers of carbon black. SIC 2899 includes manufacturers of miscellaneous chemical products, not elsewhere classified. Among these three SICs, ethylene glycol, nitrotoluene, hexylene glycol, trimellitic anhydride, and coal dust are all substances with suspected exposure problems that are either produced or used in these sectors.

In SIC 289, the survey identified less than half as many small firms (fewer than 20 production workers) as large firms. In the small firms, maintenance work is performed largely by production workers, whereas large firms primarily rely on a separate maintenance staff.

The manufacturers classified in SIC 289 usually have one to four basic processes, with potential exposure to one to five substances. Forty-seven percent of all employees are exposed to these chemicals or substances on an intermittent basis (up to 30 minutes), with large firms tending to have more long-term exposures. Sixty-five percent of the firms in this SIC reported the adoption of internal exposure standards. Roughly 48 percent of the small firms and 36 percent of the large firms with standards have adopted OSHA PELs. Employee monitoring had been performed at 67 percent of the processes.

The survey found that nearly 29 percent of the processes are totally enclosed and 12 percent are located outdoors. Local exhaust ventilation is used most frequently to control exposures at processes not enclosed. Almost 28 percent of the firms with chemical exposures have respirators for employee use, with a higher percentage of large firms reporting the presence of respirators than small firms. The combined data on exposure levels and methods of exposure control indicate that very few plants which are estimated to incur some cost of compliance have overexposures at all processes in that plant.

Survey respondents identified the presence of 50 different substances in SIC 289. Toluene was estimated to occur the most frequently at a total of 661 processes. Toluene was identified in packaging/bagging, blending/mixing/formulating, crushing/grinding/calcining, loading/offloading/receiving/handling, and reaction/fermentation.

SIC 29—Petroleum and Related Industries

This industry is divided into petroleum refiners and producers of other related products. Petroleum refineries (SIC 2911) produce fuels (such as gasoline, kerosene, and distillate and residual fuel oils) as well as lubricants and chemical feedstocks. These products are produced through straight distillation of crude oil, redistillation of unfinished petroleum derivatives, cracking, or other processes. Other producers in this sector manufacture asphalt and tar products for paving and roofing (SIC 295) and other lubricating oils, greases, and petroleum and coal products (SIC 299) [1, pp. 127–128].

The 1985 value of shipments for SIC 29 ($179.1 billion) was 7.9 percent of the value of shipments for all manufacturing industries. Petroleum refining dominates SIC 29, accounting for 94 percent of this sector's value of shipments [3, pp. 10–8 to 10–14].

The number and size distribution of establishments in SIC 29 are shown in Table C–1, as is total employment. Relative to value of output, SIC 29 has few establishments and low employment, accounting for less than 1 percent of all manufacturing establishments and employment [7, pp.10, 30].

About 40 percent of the establishments in SIC 29 are petroleum refineries [10], which are large and extremely capital intensive. Production is highly automated; enclosed processes are used throughout. Mean employment size is 105 employees. By contrast, plants in the other industries within SIC 29 are relatively small and less capital intensive, and processes are generally not automated. Mean establishment size in the rest of SIC 29 is 19 employees.

The real value of petroleum product shipments, consumption of petroleum products, petroleum refining capacity, and employment in SIC 29 all peaked between 1977 and 1981. There has been an upturn since 1985, resulting principally from a sharp decline in crude oil prices in the first half of 1986, which stimulated demand for refinery products [3, pp. 10–1 and 10–2]. Demand for petroleum products is expected to grow only slightly in the short run. In the past, trends have been strongly influenced by sharp fluctuations in the price of crude oil [3, pp. 10–3 and 10–4]. In general, low prices for crude oil translate into increased activity for domestic refineries.

The profitability of firms in SIC 29 is low. The median 1985 rate of return on assets (4.4 percent) is the second lowest median return on assets among all 20 two-digit manufacturing industries [6].

Docket comments pertaining to this industry were concerned exclusively with one regulated substance, asphalt. Asphalt is manufactured in petroleum refineries (SIC 2911) and is used to make paving materials (SIC 2951) and roofing materials (SIC 2952). Many commenters [see, for example, Exs. 3–162; 3–420B; 3–895; 3–240; 3–658; 8–5, 581, 3–493B; 3–294; 3–64; 3–22; 3–74; 3–354; 3–900; Tr. 8/9/88, pp. 9–63, 9–65, 9–66, 9–79] provided information on asphalt paving manufacturing, employee exposures, potential costs, and possible impacts; other asphalt applications were not commented on in docket submissions.

Information submitted by firms and trade groups concerned with the manufacture and application of hot-mix asphalt indicated that the manufacture of asphalt paving material falls within SIC 2951, while the activity of paving falls within SIC 1611, Street and Highway Construction. Because the scope of this rulemaking is restricted exclusively to general industry, OSHA has determined that it is most appropriate at this time to defer regulation of asphalt fumes until the Agency has had sufficient time to address the complex health issues associated with this substance and to analyze the impact on the construction industry of establishing a PEL for this substance.

In SIC 29, three out of four firms identified by the survey were small firms (firms with fewer than 20 production workers). In about half of the small firms, maintenance work is performed by production workers; the remainder of small firms employ maintenance workers more often than they use outside contractors for maintenance. Large firms most commonly have a dedicated maintenance staff.

Most employee exposures are intermittent and short-term (up to 30 minutes); of the remaining employee exposures, most are for durations of from 4 to 8 hours (for large firms), or of 1 to 8 hours (for small firms). A slight majority of small firms use some internal exposure standards; most of those that do use internal exposure

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standards report using OSHA PELs or ACGIH TLVs. Almost 95 percent of larger firms report using internal exposure standards; of these, most report using OSHA PELs, and about one-quarter reported using ACGIH TLVs. Air monitoring data were collected for over half of the processes in large plants, but for less than one-fourth of the processes in small plants.

The survey found that about 30 percent of the processes are totally enclosed and almost two-thirds of plant processes are located outdoors. Production workers use respirators in over 25 percent of processes for firms reporting chemical exposures; however, small firms report a lower percentage of respirator use than do large firms.

Survey respondents identified the presence of 68 different substances in SIC 29. Toluene was estimated to occur the most frequently at a total of 175 processes; trichloroethylene was estimated to occur at a total of 162 processes. Toluene was identified in batch process/coke production and removal, blending/mixing/formulating, and process inspection. Trichloroethylene was identified in blending/mixing/formulating, drying/baking, loading/offloading and measurement.

SIC 30—Rubber and Miscellaneous Plastics Products Industry

This industry sector consists of establishments that manufacture a variety of products from plastic resins and from natural, synthetic, and reclaimed rubber. Although plastic products account for the largest share of the value of shipments of this industry group, the industry also manufactures a variety of rubber products, including tires, inner tubes, footwear, and belting [1, pp. 129–132]. The value of shipments for 1985 was $71.3 billion. This industry is dominated by the miscellaneous plastic products sector (SIC 307 until 1987 and now SIC 308), which accounts for 81 percent of the establishments, 66 percent of the value of shipments, and 70 percent of the employment for the entire industry group [10]. The tire and inner tube (SIC 301) sector and the miscellaneous rubber products (SIC 306) sector are the other major components of this industry.

Similar processes are used in manufacturing plastic and rubber products, with the nature and form of the final product determining the process more than the product's components. A product's components, however, determine the types of chemical exposures employees experience. Examples of particularly serious types of exposures are those to the foaming agents that are used in the production of foam rubber or plastic foams and to the styrene used to produce polystyrene or in lamination processes.

As shown in Table C-1, this industry sector is characterized by relatively small establishments; 61 percent of establishments have fewer than 20 employees, with an average of 43 employees per establishment. Employment in this industry grew by 7 percent between 1981 and 1985, with growth in the tire and inner tube and miscellaneous plastics product sectors outpacing declines in other sectors [4]. Firms in this industry have above-average profits for manufacturing industries, with a 7.7 percent median rate of return on assets compared with a 7.0 percent median for all manufacturing firms [6].

The only comments received by OSHA that were related to SIC 30, Rubber and Miscellaneous Plastics, concerned the Agency's proposed 50-ppm TWA and 100-ppm STEL limits for styrene [See, for example, Ex. 3-742; Tr. 8/8/88, pp. 95, 177, 178, 180]. Styrene is used in this sector to make a variety of rubber and plastic products, including polyester resins, polystyrene, and a widely used form of artificial rubber. Commenters stated that a small number of the facilities in this sector, i.e., those using styrene resins in open-mold processes, would encounter technological problems in attempting to comply with the proposed styrene limits [Ex. 3-742, pp. 34–36; Tr. 8/3/88, p. 5–85]. This issue is addressed in Chapter F—Technological Feasibility.

Open-mold processes were described by these commenters as operations in which the styrene resin is applied directly to the surface of a mold (generally by means of a spray gun) and is then rolled by hand to build up successive layers of reinforced plastic. When the objects being molded are large, as is the case with boats or underground storage tanks, commenters explained that it is more difficult to position and use local exhaust ventilation effectively [Ex. 3-742, p. 48]. Although most open-mold processes in this sector are involved in the manufacture of plastic bathroom fixtures (showers, tubs, hot tubs, and spas), makers of underground storage tanks and cultured marble products also rely on the open-molding process.

The Styrene Information and Research Council estimates that 255 facilities in this sector use this process to produce bathroom fixtures [Ex. 3-742, p. 105], and the Cultured Marble Institute estimates that a total of 1062 facilities, employing 17,000 workers, manufacture cultured marble products [Tr. 8/3/88, pp. 5-77, 5-177, 5-180]. These firms, like other styrene-using firms in this SIC code, are generally small, privately held firms. The Cultured Marble Institute characterized the typical open-mold-process firm in this sector as a company that employs 17 persons and has annual sales of less than $1 million. The issues of technological feasibility that pertain to users of this process in SIC 30 are discussed in detail in the Technological Feasibility chapter, below.

In this SIC, over 60 percent of the firms identified by the survey were small firms (firms having fewer than 20 production workers.) In the small firms, maintenance work is most commonly performed by production workers, although about one-quarter of small firms use outside contractors for maintenance work, and one in seven has a dedicated maintenance staff. Over two-thirds of large firms have dedicated maintenance staff; the remaining large firms use production workers for maintenance more often than they use outside contractors.

Most firms reported using from one to four processes. In SIC 307 (miscellaneous plastics manufactuing), most firms reported using from one to three chemicals, with styrene the most prevalent; however, in rubber manufacturing (SICs 301 to 306), almost half of the firms reported using 6 to 10 chemicals. Most employee exposures in small firms are intermittent and short-term (up to 30 minutes), and there are very few exposures for 4 hours or more. In large firms, by contrast, the majority of chemical exposures are for 4 to 8 hours a day. In this SIC, most small firms have internal exposure standards; the majority of these reported using ACGIH TLVs. Large firms most commonly use OSHA PELs, but many use ACGIH TLVs or have no internal exposure standards. Air monitoring data were provided for about 40 percent of large firms and for approximately 13 percent of small firms.

The survey found that about 37 percent of the processes are totally enclosed, and that very few processes are located outdoors. In one-third of the firms with chemical exposures, production workers use respirators.

Survey respondents identified the presence of 75 different substances in SIC 30. Ethylene glycol was estimated to occur the most frequently at a total of 1,889 processes, including assembly, blending/mixing/formulating, calendaring/winding and coating/spraying. Methyl chloroform was estimated to occur in 1,652 processes including blending/mixing/formulating, coating/spraying, and cutting/sawing/planing.

SIC 31—Leather and Leather Products

The leather and leather products industry (SIC 31) consists of several sectors such as leather tanning (SIC 311), boot and shoe cut stock (SIC 313), non-rubber footwear (SIC 314), and luggage and leather goods (SICs 315–319), [1, pp. 133–135]. Shipments of leather products increased in 1987, while employment in the leather industry has been declining steadily over the past several years [3, p. 46–1].

Data on the number of establishments and employment for 1985 are shown in Table C-1. In 1985, there were approximately 3,960 establishments engaged in the production of leather and leather products. Over 94 percent of these establishments employed fewer than 20 workers. The largest employer is the non-rubber footwear industry, with 58 percent of the workforce in 1986. Production workers make up 84 percent of the total workforce in SIC 31.

According to the U.S. Department of Commerce, the 1988 value of shipments for leather and leather products ($7.8 billion) was down 8.8 percent from 1985. The total represents 0.4 percent of the value of shipments for all manufacturing industries. Non-rubber footwear (SIC 314) makes up most of the value of shipments in this industry, with 51 percent of the total value [2]. The median return on assets in 1985 for the leather and leather product industry was 6.3 percent [6].

The number of establishments in the leather tanning and finishing industry (SIC 311) has decreased by over 248 establishments, from 384 establishments in 1982 to 136 establishments in 1987. Employment has also decreased significantly while shipments increased to $2.0 billion in 1987 from $1.7 billion in 1986. Since the leather tanning industry is highly dependent on the demand from the non-rubber footwear industry, it is not likely that the situation will improve in the near future [3, pp. 46–1 and 46–2].

The non-rubber footwear industry (SIC 314) had a small increase in the value of shipments in 1987 ($4.1 billion), while total employment and the number of production workers declined 3.0 percent and 2.9 percent, respectively. This industry has suffered substantially since 1981 when an import restraint agreement with South Korea and Taiwan expired. Since then, import's share of the domestic market has increased to over 81 percent in 1987, to an estimated 226 million pairs [3, pp. 46–5 to 46–10].

The miscellaneous luggage and leather goods industry (SICs 315–319) saw improvements in production, employment, and shipments in 1987, reversing a past trend. Shipments were expected to increase 3.9 percent in 1987 to $1.9 billion. The estimated number of production workers also increased in 1987, to 27,200 employees from 27,000 employees in 1986. Imports reached over 52 percent of the domestic market in 1986 [3, pp. 46–10 to 46–14].

In this SIC, the survey identified almost twice as many small firms (fewer than 20 production workers) as large firms. In the small firms, a large share of maintenance work is performed by production workers, although one-fifth of the firms use outside contractors and one-fifth of the firms employ maintenance staffs. Large firms have a dedicated maintenance staff that performs most of the maintenance work, while production workers and outside contractors do the rest of the maintenance work.

The manufacturers classified in this SIC usually have one to three basic processes, with potential exposure to seven to eight chemicals. Employees are exposed to these chemicals on an intermitten short term basis (up to 30 minutes) or continuously (up to 8 hours per day) with large firms tending to have more long-term exposures. Small firms generally have no internal exposure standards. Around one-half of large firms reported using the OSHA PELs; the balance indicated that they have no standards. Air monitoring data was being done at about one-half of the processes found in large plants.

The survey found that over forty percent of the processes are totally enclosed and less than one percent are located outdoors. Local exhaust ventilation is used most frequently to control exposures at processes not enclosed or outdoors. In one-tenth of the firms with chemical exposures, production workers use respirators, with a higher percentage of large firms using respirators than small firms. The combined data on exposure levels and methods of exposure control indicate that overexposure is not occurring at many processes in this SIC.

Survey respondents identified the presence of 42 different substances in SIC 31. N-hexane was estimated to occur the most frequently at a total of 426 processes, primarily gluing/hot pressing. Toluene was estimated to occur at a total of 319 processes including cleaning, coating/spraying, gluing/hot pressing, and stamping/shaping.

SIC 32—Stone, Clay, and Glass Products

This industry is made up of products such as cement (SIC 324), concrete (SIC 327), pottery (SIC 326), stone (SIC 328), glass (SICs 321–323), and structural clay products (SIC 325). Since these products are primarily used as construction materials, the industry is heavily dependent on the amount of new construction activity in a given year.

There were 21,054 establishments in the stone, clay and glass industry (SIC 32) in 1985. Most of these firms (73.7 percent) employed fewer than 20 workers in 1985. The mean establishment size was 28 employees. Total employment was 514,000 in 1986, a decrease of 1.1 percent over the 1985 total employment figure of 520,000 [7]. Production employment also declined from 1985 to 1986.

In 1986, the value of shipments in SIC 32 ($57.3 billion) increased 3.9 percent over the 1985 figure. The total value was 2.5 percent of the value of shipments for all manufacturing industries. The value of shipments is evenly distributed over the entire industry, except for the concrete sector (SIC 327) with 36.4 percent of shipment [2]. The median rate of return on assets for SIC 32 was 6.5 percent in 1985 [6].

The concrete industry (SIC 327) experienced a small decline in shipments in 1987 after considerable improvement in production, employment, and demand over the past years. The demand for concrete has increased substantially since 1982, when shipments were 23 percent below their current figure. Future demand for concrete depends mainly on non-residential building construction activity [3, pp. 2–7 to 2–8].

The cement industry (SIC 324) experienced a decline in the value of shipments, from $4.1 billion in 1986 to $3.9 billion in 1987, a decrease of 3.3 percent. Consumption of cement also declined in 1987 by 1 percent, the first annual decline since 1982. However, industry shipments were more than 26 percent higher than the 1982 low point of 65 million tons. Total employment was 19,500 in 1987. Production employment (14,500 employees in 1987) represented approximately 74 percent of the workforce [3, pp. 2–4 to 2–6].

The glass industry (SICs 321–323) has experienced steady growth over the past two years, mainly in production and shipments. The value of shipments for the glass industry increased from $13.9 billion in 1985 to $14.6 billion in 1986. New product introductions have allowed the glass industry to make substantial gains in winning market

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share. Total employment and production employment declined for the glass industry (SICs 321–323) in 1988, but SIC 323 (products of purchased glass) did have increased in both total employment and production employment. The outlook for continued growth for the glass industry is good [3, pp. 2–8 to 2–12].

Shipments of structural clay products and pottery (SICs 325–326) have increased substantially over the past few years, from 5.1 billion bricks in 1982 to 7.4 billion bricks in 1988. The 1988 value of shipments for SICs 325–326 was $4.9 billion, an increase of 4.3 percent from 1985. The outlook for the industry is for slow growth in the near future [3, pp. 2–12 to 2–13].

The stone industry (SIC 328) had an increase of 1.3 percent in the value of shipments in 1988. Total employment and production employment stayed virtually the same [2].

In SIC 32, the survey identified over three times as many small firms (fewer than 20 production workers) as large firms. In the small firms, over three-fourths of maintenance work is performed by production workers, although some firms to employ a maintenance staff. Large firms use a dedicated maintenance staff for approximately two-thirds of the maintenance work, while one-fourth use production workers. The remainder of firms use outside contractors.

The manufacturers classified in this SIC usually have one to three basic processes, with potential exposures to as many as eight chemicals. Employees are exposed to these chemicals on an intermittent short term basis (up to 30 minutes) or continuously (up to 8 hours per day), with large firms tending to have more long-term exposures. Small firms generally have no internal exposure standards; when they do, the OSHA PELs are followed about seventy percent of the time. Approximately one-half of large firms reported using the OSHA PELs; the balance indicated that they have no standards or they rely on ACGIH TLVs. Air monitoring data were provided for over one-half of the processes found in large plants.

The survey found that about one-third of the processes are totally enclosed and around one-fifth are located outdoors. Local exhaust ventilation and respirators are used most frequently to control exposures at processes not enclosed or outdoors. In almost one-half of the firms with chemical exposures, production workers use respirators, with a higher percentage of large firms using respirators than small firms. The combined data on exposure level and methods of exposure control indicate that overexposure is not occurring at many processes in this industry.

Survey respondents in this SIC identified blending/mixing/formulating, chipping/grinding, drilling/cutting/flame-jet lancing, polishing (surface) grinding, cutting/sawing/planing, casting, batch making, and bonding as the processes used most often. Chemicals that were present in these processes included: acetone, ammonia, calcium oxide, furfuryl alcohol, graphite, magnesium oxide fume, and silica. The National Lime Association commented on the presence of calcium hydroxide and calcium oxide in this industry [Ex. 3–690].

SIC 33–Primary Metal Industries

The primary metal industry (SIC 33) is divided into two different sectors: nonferrous metals and foundries (SICs 333–336) and ferrous metals and foundries (SICs 331–332) [1, pp. 145–152]. This includes the basic iron and steel industry, and the metals industry. Both sectors have been hurt in the recent past by a decline in domestic consumption and the growing number of imports into the United States. The future for these industries, however, looks brighter due to an increase in orders, slowing imports, and a decrease in capacity [10]. These industries have had increases in prices, shipments, and profits in 1987 and 1988, helped by the fall in the value of the dollar.

As seen in Table C–1, the number of establishments in SIC 33 in 1985 totaled 10,101. The majority of these firms (55.3 percent) had fewer than 20 employees in 1985. Total employment (806,000 employees in 1985) and production employment (612,000 in 1985) have declined over the last several years, while the average hourly wage of production workers ($12.76 in 1988) has increased by 1.5 percent from 1985 to 1988 [7]. The mean establishment size was 80 employees in 1985. However, according to the American Iron and Steel Institute (AISI), integrated steel mills are typically much larger, averaging 625 workers [Ex. 3–1123, p. 14].

Production in the steel mill products industry has declined over the past few years, from 92.5 million tons in 1984 to 83.0 million tons in 1987, a decline of 10.3 percent [3, p. 20–1]. The 1988 value of shipments ($105.6 billion) in SIC 33 was 4.7 percent of the value of shipments for all manufacturing industries [2]. The median rate of return on assets in 1985 was 5.5 percent for the primary metal industry [6].

In 1987, the industry had its first profitable year since 1982. The industry has cut costs of production while prices have remained steady. In 1988, the industry experienced additional improvement; production was up 15 percent and shipments up 12 percent. Prices and profits rose considerably during the year, and the outlook for 1989 is good [11].

The import situation has also improved for the domestic steel industry, due in part to the falling value of the dollar against major competitors such as Japan and Europe. Imports have been declining since their peak of 26.2 million tons in 1984. Imports as a percent of domestic consumption fell to 22 percent in 1987, down from a peak of 26.4 percent in 1984. Exports reached 1.1 million tons in 1987 [3, pp. 20–1 to 20–9]. Exports during 1988 rose about 50 percent over the previous year.

The ferrous castings industry (SIC 332) has shown a poor performance over the past few years, but is starting to improve. The value of shipments for SIC 332 has increased, from $10.3 billion in 1986 to $10.8 billion in 1987. The value of shipments for SIC 332 is forecast to increase 5.2 percent in 1988, although this trend is not likely to continue in the future. Total employment and the number of production workers have also begun to increase, by 2.3 percent and 1.9 percent, respectively, from 1986 to 1987 [3, pp. 20–8 to 20–7].

Primary nonferrous metals can be classified in four categories: aluminum, zinc, lead, and copper. Aluminum industry shipments have increased steadily in the past few years, with an 11.3 percent increase in 1987. Shipments are projected to continue rising through 1992 [3, pp. 21–8 to 21–11]. Prices during the last several years have continued to increase, from 53¢/pound in the last quarter of 1986 to 83¢/pound at the end of 1987 and $1.12/pound by the end of 1988 [12, 13].

The zinc industry should have steady growth over the next few years, due mainly to an increase in consumption. The price of zinc has risen from 38¢/pound in 1986 to 42.5¢/pound in 1987. Domestic consumption increased to 1,014 million metric tons in 1987. The value of shipments increased by 1.4 percent in 1987, and is expected to increase by another 1.6 percent in 1988. Total employment and the number of production workers has remained steady for the past several years [3, pp. 21–14 to 21–16].

Consumption of primary lead products increased slightly over 3 percent in 1987–88 owing to increases in the replacement battery market. Automotive products account for about 70 percent of all demand for lead. Changes in recycling patterns due to EPA RCRA regulations may increase demand for primary lead in the near future. The market in general has been growing at a steady 1 percent per year [3, pp. 21–8 to 21–8 and 14]. Prices have risen in recent months to 42¢/pound [12] from 36.9¢ in 1987. ASARCO, one of two primary lead producers in the U.S., is considering adopting London Metal Exchange prices in lieu of its own pricing [4].

The copper industry has been undergoing restructuring to remain competitive in the world market. Currently, there are seven operating copper smelters, compared to fourteen in 1970. This restructuring has forced the industry to decrease capacity and reduce employment [3, pp. 21–11 to 21–14]. The price of copper has increased from 66.1¢/pound in 1986 to 75.0¢/pound in 1987 due to a decline in inventories [3, pp. 21–11 to 21–14]. Current 1988 cash prices for copper have risen to $1.64/pound [12]. The Peruvian copper fields are estimated to need an additional 30 days to return to full production following the recent 54 day strike by miners [15] This should allow the industry to turn a profit for the first time in several years. The copper smelting industry is likely to be impacted by the proposed revision to the PEL for sulfur dioxide.

In SIC 33, the survey identified slightly more small firms (fewer than 20 production workers) than large firms. Maintenance work in the small firm is done primarily by production workers although some firms use a dedicated maintenance staff. Large firms generally have maintenance work performed by the maintenance staff, with the remainder of firms using production workers and outside contractors.

The manufacturers classified in this SIC who reported chemical or process use usually have one to four basic processes, with potential exposure to one to four chemicals. Employees are exposed to these chemicals on an intermittent short term basis (up to 30 minutes) or continuously (up to 8 hours per day), with large firms tending to have more long-term exposures. Small firms generally have some internal exposure standards; when they do, the OSHA PELs are followed about three-fourths of the time. Over one-half of large firms reported using the OSHA PELs; the balance indicated that they have no standards or they rely on ACGIH TLVs. Air monitoring data were provided for approximately two-thirds of the processes found in large plants.

The survey found that about one-fourth of the processes are totally enclosed and less than 3 percent are located outdoors. Local exhaust ventilation and respirators are used most frequently to control exposures at processes not enclosed or outdoors. In almost one-half of the firms with chemical exposures, production workers use respirators, with a higher percentage of large firms using respirators than small firms. The combined data on exposure levels and methods of exposure control indicate that overexposure may occur at less than one-tenth of processes in small firms and at about one-fifth of the process in large firms.

Survey respondents in SIC 33 identified metal melting/pouring/casting as the process most frequently used, with exposure to aluminum metals, carbon monoxide, and copper fume reported most frequently. The American Cast Metals Association confirmed the presence of most of the chemicals surveyed [Exs. 3–673 and 3–675]. The American Iron and Steel Institute also commented on several of the chemicals identified in the survey [See, for example, Ex. 3–1123].

SIC 34—Fabricated Metal Products

The fabricated metal products industry (SIC 34) can be broken down into nine categories: metal cans and shipping containers (SIC 341); cutlery and hand tools (SIC 342); heating equipment (SIC 343); fabricated structural metal products (SIC 344); screw machine products, bolts, and washers (SIC 345); forgings and stampings (SIC 346); plating and coating (SIC 347); small arms and ordnance (SIC 348); and miscellaneous wire and fabricated products (SIC 349). SIC 34 excludes machinery and transportation equipment [1, pp. 153–166].

The total number of establishments in the fabricated metal products industry in 1985 was 46,322. The majority of these firms (67.0 percent) have fewer than 20 employees, a change of 0.2 percent since 1984. Total employment in this industry has reached 1.5 million employees, an increase of 0.1 percent since 1984 [7].

The 1988 value of shipments for SIC 34 ($138.0 billion) represents a 1.1 percent decrease over 1985. This was 6.1 percent of the value of shipments for all manufacturing industries [2]. The median return on assets for the fabricated metal products industry in 1985 was 7.1 percent [2].

Metal can (SIC 3411) shipments have been increasing steadily in the past few years, from 104.7 billion units in 1986 to 109.3 billion units in 1987, an increase of over 4.4 percent. This was due mainly to the increase in soft drink and beer cans being shipped. The value of shipments has also increased, with a compound annual increase of 2.9 percent from 1980 to 1985. Total employment in the metal cans industry has remained steady, with a slight increase expected in 1987. The number of production workers has increased slightly, with an increase of 0.3 percent from 1986 to 1987. Exports of metal cans have decreased substantially since 1984 when they reached an all-time high of $56.5 million. Since that time they have decreased to $36.2 million in 1987 [3, pp. 7–1 to 7.4].

The fabricated structural metal industry (SIC 3441) produces structural metal components used primarily in the construction industry. Shipments of fabricated structural metal decreased slightly, from $9.0 billion in 1986 to $8.9 billion in 1987. Total employment decreased slightly in 1987 [3, pp. 2–3 to 2–5].

The value of shipments in the screw machine products, bolts, and washers industry (SIC 345) decreased slightly from 1986 to 1987, from $7.8 billion to $7.9 billion. Total employment increased from 94,000 in 1986 to 94,400 in 1987. Since the automotive industry is the major customer for this industry, stable automotive sales are the key to economic health for this industry sector [3, pp. 26–1 to 26–6].

In SIC 34, the survey identified over twice as many small firms (fewer than 20 production workers) as large firms. In the small firms, about one-half of the firms have maintenance work performed by production workers, the remaining firms using maintenance workers or outside contractors. Large firms generally employ a maintenance staff to do the majority of maintenance work, although some firms use production workers and outside contractors.

The manufacturers classified in this SIC usually have one to three basic processes, with potential exposure to one to four chemicals. Employees are exposed to these chemicals on an intermittent short term basis (up to 30 minutes) or continuously (up to 8 hours per day) with large firms tending to have more long-term exposures. Small firms generally have no internal exposure standards; when they do, the OSHA PELs are followed about one-half of the time. Over one-half of large firms reported using the OSHA PELs; the balance indicated that they have no standards or they rely on ACGIH TLVs. Air monitoring data were provided for about one-half of the processes found in large plants.

The survey found that about one-fourth of the processes are totally enclosed and around one-fifth are located outdoors. Local exhaust ventilation and respirators are used most frequently to control exposures at processes not enclosed or outdoors. In

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over one-half of the firms with chemical exposures, production workers use respirators, with a higher percentage of large firms using respirators than small firms. The combined data on exposure levels and methods of exposure control indicate that overexposure is not occurring at any processes in small firms and at less than one-tenth of the processes in large firms.

Survey respondents in this SIC identified casting/painting, welding/soldering, polishing (surface)/grinding, and degreasing, as the processes most frequently used. Welding fumes, iron oxide, and isopropyl alcohol were the chemicals identified most often in the survey. OSHA has retained the existing limit for iron oxide. No comments were received relative to processes and chemicals in this SIC.

SIC 35—Non-Electrical Machinery

The non-electrical machinery industry (SIC 35) is made up of several different sectors: engines and turbines (SIC 351); farm and garden machinery (SIC 352); construction and related machinery (SIC 353); metal working machinery (SIC 354); special industry machinery (SIC 355); general industrial machinery (SIC 356); computer and office equipment (SIC 357); refrigeration and service industry machinery (SIC 358); and miscellaneous machinery and equipment (SIC 359) [1, pp. 167–183].

As seen in Table C–1, the number of establishments in 1985 totaled 77,748. The majority of these (77.1 percent) had fewer than 20 employees in 1985. Total employment and production employment have decreased over the last several years. The 1988 value of shipment ($206.5 billion) in SIC 35 was 9.2 percent of the value of shipments for all manufacturing industries [2]. In 1985, the median rate of return on assets for SIC 35 was 7.5 percent [6].

The 1988 value of shipments for engines and turbines (SIC 351) was $14.1 billion, a decrease of 5.5 percent of the 1985 value of shipments ($14.9 billion). Both total employment and production employment decreased from 1985 to 1988, by 8.8 percent and 9.3 percent, respectively. Major expansions of electrical power generation capacity and hence, turbine manufacture have been curtailed in recent years as cogeneration facilities are now providing additional power. Smaller units for these same cogeneration facilities have provided some additional sales [6]. The largest sector of SIC 351 is internal combustion engines, n.e.c., with 77 percent of the value of shipments in 1988.

The farm and garden machinery industry has experienced some improvement in 1987. While the value of shipments for lawn and garden equipment increased in 1987, the value of shipments for farm machinery and equipment ($7.0 billion) declined to their lowest level since 1973. Total employment, which exceeded 125,000 in 1981, dropped to around 67,000 in 1987. Production employment, which makes up approximately two-thirds of the work force, has also been declining since 1979. The prospects for lawn and garden equipment appear much better, with steady increases in the value of shipments since 1981. The 1987 value of shipments for lawn and garden equipment ($3.7 billion) was 4.2 percent greater than the 1986 value of shipments ($3.5 billion) [2]. This industry had a compound annual increase of 8.9 percent from 1980 to 1985 in value of shipments. Total employment and production employment have remained fairly steady, with compound annual increases of 1.9 percent and 3.8 percent, respectively [3, pp. 25–1 to 25–3].

The construction and related machinery industry (SIC 353) has experienced a decline in recent years. The value of shipments for SIC 353 declined by 6.2 percent, from $27.7 billion in 1985 to $25.9 billion in 1986. Both total employment and production employment fell from 1985 to 1986, by 8.7 percent and 11.7 percent, respectively [2]. The decline of the dollar value of shipments must be viewed against a background of reorganization and price cutting by American manufacturers resulting in leaner, more efficient organizations that can make a profit at lower levels of sales. Significant market share has been regained [17]. Construction machinery makes up the largest share of this industry, with approximately half of the total value of shipments.

The machine tool industry has had a major improvement in orders, and profits during 1988. "Orders for all of 1988 climbed to about $3.5 billion, up 66% from the $2.1 billion range for both 1986 and 1987" [18]. The 1988 value of shipments for metal working machinery (SIC 354) was $20.5 billion, an increase of 3.2 percent over 1985. Although shipments increased in this industry in 1988, both total employment and production employment fell during the same time period [2]. This is a reflection of the downsizing and modernizing that has been undertaken in this industry. In the future, moderate sales improvements showed a positive impact on earnings [19]. The largest sector within the metal-working industry is special dies, tools, jigs, and fixtures, with 38 percent of the value of shipments and 43 percent of the total workforce.

Special industry machinery (SIC 355) has experienced stable growth in the past, and this trend is likely to continue into the future. Industry shipments increased approximately one percent, from $14.8 billion in 1985 to $14.9 billion in 1988. Special industry machinery, n.e.c. (SIC 3559) is the largest sector within this industry, with 41.9 percent of the total value of shipments in 1988. Both total employment and production employment have been falling, by 8.0 percent and 7.5 percent, respectively, from 1985 to 1988. Production employees make up approximately 57.0 percent of the total workforce.

The 1988 value of shipments for general industrial machinery, SIC 356, ($24.8 billion) fell from the 1985 value of shipments ($25.3 billion) by an estimated 2.4 percent. Employment and industry shipments are divided fairly evenly over the entire industry, with pumps and pumping equipment (SIC 3561) and general industrial machinery, n.e.c. (SIC 3569) being the largest sectors. Total employment declined by 4.1 percent, while the number of production workers fell by 5.8 percent [4].

The computer industry (SIC 357) has had stable demand for its products in the U.S. market during 1986 and 1987. The value of shipments of office and computing machines (SIC 357) decreased from $62.2 billion in 1985 to $58.8 billion in 1988, a decline of 5.5 percent reflecting strong price competition. Electronic computing equipment (SIC 3573) is the largest segment, with 89 percent of the value of shipments. Total employment and the number of production workers have declined since 1985 by 10.8 percent and 12.7 percent, respectively. Imported computer equipment has made significant inroads into the domestic market, due mainly to the standardization of products and the fall in the price of computer equipment [3, pp. 30–1 to 30–11]. The dollar value of 1988 shipments is ahead of 1987 shipments [20].

The refrigeration and service machinery industry (SIC 358) had an annual rate of growth of 0.9 percent from 1985 to 1988, attributable to the increase in new residential construction. While total employment and the number of production workers have increased, imports have also been steadily increasing [3, pp. 22–9 to 22–11].

It appears that the general industrial machinery industry (SIC 35) could be affected by several of the proposed revisions. The following substances are used or generated by this industry: carbon dioxide, chlorine, chromium metal, fibrous glass dust, furfuryl

alcohol, iron oxide, manganese fumes, nitrogen dioxide, oil mist, sulfur dioxide, 1,1,2-trichloro-1,2,2-trifluorethane, triethylamine, tungsten, welding fumes, wood dust and asphalt fumes. The majority of comments from the general industrial machinery industry deal with the appropriateness of the PELs rather than technical or economic feasibility.

The Association of Reproduction Materials Manufacturers (ARMM) commented on their opposition to the proposed revision for ammonia based on health effects and the inappropriateness of adopting ACGIH standards. ARMM is a trade group with 47 company members who supply materials and equipment to over 5,000 commerical blueprinters [Ex. 8–29].

The International Institute of Ammonia Refrigeration opposed the proposed standard for ammonia based on health effects and economic feasibility. In the final rule, only a STEL of 35 ppm has been set for this substance.

In this SIC, the survey identified over four times as many small firms (fewer than 20 production workers) as large firms. In the small firms, maintenance work is performed in large part by production workers, although some firms employ dedicated maintenance staffs or use outside contractors. Large firms have the majority of maintenance work performed by a dedicated maintenance staff, with some use of production workers or outside contractors.

The manufacturers classified in this SIC usually have from one to four basic processes, with potential exposure to one to four chemicals. Employees in SIC 35 are exposed to these chemicals for varying amounts of time from intermittent short term periods (up to 30 minutes) to continuously (up to 8 hours per day), with small firms having more intermittent short term exposures and large firms tending to have more long-term exposures. Small firms generally have no internal exposure standards; when they do, the OSHA PELs are followed about one-third of the time. Over one-half of large firms reported using the OSHA PELs; the balance indicated that they have no standards or they rely on ACGIH TLVs. Air monitoring data were provided for about one-half of the processes found in large plants.

The survey found that about one-fifth of the processes are totally enclosed and 5 percent are located outdoors. Local exhaust ventilation, general dilution ventilation and respirators are used most frequently to control exposures at processes not enclosed or outdoors. In over one-half of the firms with chemical exposures, production workers use respirators, with large firms and small firms using respirators at about the same rate.

Survey respondents in this SIC identified polishing (surface)/grinding, coating/painting, and soldering as the processes which occur most frequently. Chemicals that were present most often were welding fumes, oil mist, and stoddard solvent. Comments from Caterpillar Incorporated and John Deere and Co. confirmed the presence of several of the survey chemicals in SIC 35 such as chromium metal, iron oxide, oil mist, welding fumes, and 1,1,2-trichloro-1,2,2-trifluorethane [Ex. 3–349]. In the final rule, OSHA has not revised the existing limits for chromium metal, iron oxide and oil mist.

SIC 36—Electric and Electronic Equipment

This industry is made up of several distinct sectors: electric distributing equipment (SIC 361); electrical industrial apparatus (SIC 362; household appliances (SIC 363); electrical lighting and wiring equipment (SIC 364); radio and TV receiving equipment and communication equipment (SIC 365–366); electronic components and accessories (SIC 367); and miscellaneous electronic equipment (SIC 369) [1, pp. 194–195].

In 1985, the electric and electronic equipment industry employed about 2.2 million workers. The majority of the firms had fewer than 20 employees. The value of shipments for all electric and electronic equipment establishments in 1986 was $196.2 billion. This was 8.7 percent of the value of shipments for all manufacturing industries. Most of the value of shipments in SIC 36 is from the communication equipment sector ($67.4 billion or 34.4 percent) [2]. The median return on assets for the electric and electronic equipment industry was 7.9 percent in 1985 [6].

The electric distributing equipment industry (SIC 361) had mixed performance during 1987. While the value of shipments increased for switchgear by 0.5 percent, the value of shipments for transformers decreased by 6.6 percent from 1986 to 1987. Total employment and the number of production workers has remained fairly steady since the early 1980's [3, p. 28–4].

Motors and industrial controls (SIC 362) have had stable sales during the last several years. Future growth is dependent upon the economy in general and construction growth for any sizable increases in sales. Motors have significant import pressure; several domestic manufacturers have manufacturing facilities in Mexico. Industrial controls are expected to grow by 2.5 percent [3, pp. 28–1 to 28–3].

The household appliance industry (SIC 363) has had a steady increase in shipments since the early 1980's, from $16.8 billion in 1986 to $17.7 billion in 1987, an increase of 5.7 percent. The industry is optimistic about its future, due mainly to increased residential construction and an anticipated increase in disposable income. Imports have not been a substantial factor in this industry (exports have not increased either). Total employment and the number of production workers declined from 1980 to 1985 by 4.4 percent and 4.3 percent, respectively. This decline in employment is due to the recent number of acquisitions within the industry and the need to cut costs of production. In 1987, total employment and production employment increased slightly [3, pp. 47–8 to 47–11].

The value of shipments for the electrical lighting and wiring industry (SIC 364) has been increasing steadily over the last decade, from 11,321 in 1980 to 15,806 in 1985, an increase of 39.6 percent. However, total employment and the number of production workers have decreased slightly. Performance in this industry is related, in part, to activity in the construction industry. Since the electrical lighting and wiring industry depends on both residential and non-residential construction, it is able to withstand a slowdown in one sector as long as the other sector is still active [3, pp. 4–1 to 4–4].

The consumer electronics and communication equipment industry (SICs 365–366) has had mixed performance in the past. The communication equipment industry has performed well, while the consumer electronics industry has not performed as well, due to import competition. Overall, the value of industry shipments has remained fairly stable, with shipments increasing in the communication equipment industry and shipments decreasing in the consumer electronic industry. Total employment and the number of production workers also follow this pattern, decreasing for consumer electronics and increasing for communication [3, pp. 31–1 to 31–8 and 32–1 to 32–6 and 47–7].

The electronic components and accessories industry (SIC 367) is expected to show record growth over the next few years. Industry shipments were up 8.3 percent, from $43.9 billion in 1986 to $47.5 billion in 1987. This was due, in part, to the strong performance of the defense electronics industry. The number of production workers and total employment have remained fairly

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steady in 1986 and 1987. Imports are still increasing, but may be slowed due to the fall in the value of the dollar [2, pp. 32–1 to 32–4].

In SIC 36, the survey estimated that almost 70 percent of the firms are small firms (fewer than 20 production workers). Maintenance work is usually performed by production workers in the small firms and a dedicated maintenance staff for the large firms.

The manufacturers classified in this SIC usually have one to three processes, with potential exposure to one to six chemicals. Employees are exposed to these chemicals on an intermittent short term basis (up to 30 minutes) or continuously (up to 8 hours per day), with large firms tending to have more long-term exposures. Small firms generally have no internal exposure standards; when they do, the OSHA PELs are followed three-fourths of the time. Almost two-thirds of large firms reported using the OSHA PELs; the balance indicated that they use the ACGIH TLVs most frequently. Air monitoring data were provided for almost one-half of the processes found in large plants.

The survey found that less than one-fifth of the processes were totally enclosed and less than one percent located outdoors. General dilution and local exhaust ventilation are used about equally to control exposures at processes not enclosed or outdoors. In about one-quarter of the firms with chemical exposures, production workers use respirators, with a higher percentage of large firms using respirators than small firms. The combined data on exposure levels and methods of exposure indicate that overexposures may occur only in some processes in this industry.

Survey respondents in this SIC identified coating/painting, polishing (surface)/grinding, processing, and degreasing as the processes which occur most frequently, and tin, stoddard solvent, and zinc oxide as the chemicals most frequently used. No comments addressed the processes or chemicals in this SIC.

SIC 37—Transportation Equipment

This industry sector includes establishments engaged in manufacturing equipment for land, sea, air, or space transportation and includes manufacturers of parts and accessories as well as complete vehicles.

The major subdivisions within this sector are motor vehicles and motor vehicle equipment (SIC 371), aircraft and parts (SIC 372), ship and boat building and repair (SIC 373), railroad equipment (SIC 374), motorcycles, bicycles and parts (SIC 375), guided missiles, space vehicles and parts (SIC 376), and miscellaneous transportation equipment (SIC 379). Establishments in the miscellaneous subdivision manufacture a broad range of products (e.g., from tanks to wheelbarrows) [1, pp. 198–201]. Because the manufacture of transportation equipment involves a wide range of industrial processes, establishments in this sector often include or involve foundries, electroplating operators, various types of hot metal work, welding, laminating, plastic molding, and painting and coating. Workers may be exposed to many chemicals used in these processes.

Although the transportation equipment industry includes both very small and very large establishments, it has an unusual number of very large establishments employing thousands of employees. These very large establishments are most likely to be found in plants that produce final equipment on a mass-production basis (e.g., automobile plants, aircraft plants, tank assembly lines). However, as shown in Table C–1, 66 percent of all establishments have fewer than 20 employees.

The prosperity of the industry fluctuates with business cycles and with the value of the dollar. Employment in this industry declined between 1981 and 1982 but had recovered to the 1981 level by 1984 and had increased another 4 percent by 1985 [2].

The record contains comments from businesses which use styrene in open-molding processes to produce reinforced plastics products such as fiberglass boats, fiberglass car and truck bodies, and transportation equipment parts [Ex. 3–742, pp. 34–38; Tr. 8/3/88, pp. 5–65, 5–119]. Commenters noted that controlling employee exposures during the open molding of large components (e.g., boat hulls and decks, recreational vehicles) is made costly and difficult by the large sizes and bulky configurations of these products [Ex. 3–742, p. 48].

The open-mold process in this sector is similar to that in other reinforced plastics industries in that it involves the use of a styrene resin to make a mold, followed by the application of a fiberglass-styrene-catalyst mixture with a spray or "chopper" gun, followed by manual rolling of the recently applied surface. Workers bend over the mold to perform the layup operation, which requires rolling with a short- or long-handled roller. The roller, spray gun, and other tools used in this process all require repeated cleaning with acetone in order to operate smoothly, and the workers themselves use acetone at frequent intervals to clean the styrene resin from their skin.

The Styrene Information and Research Council (SIRC) estimates that there are 625 reinforced plastic boatmakers in this sector that produce boats under 30 feet in length, and 125 facilities that manufacture larger boats [Ex. 3–742, p. 105]. These boatmakers are estimated to employ about 32,000 production workers. However, SIRC estimates that no more than 20 percent of these employees engage in open molding or work in portions of these facilities where such molding in being done [Tr. 8/3/88, p. 5–100].

Most boat builders are small firms, and many are family-owned enterprises with only one facility. Because the purchase of a recreational boat is a discretionary expense, the industry is relatively price-sensitive. For example, Jeff Napier, president of the National Marine Manufacturers Association, stated that the price elasticity of boat sales was approximately 2, i.e., every 1-percent increase in price results in a 2-percent decline in sales [Tr. 8/3/88, pp. 5–168, 5–169]. The boat building industry is currently undergoing expansion and is enjoying relatively high profits [Tr. 8/10/88, pp. 10–144, 10–145]. Boat building is a labor-intensive industry, and firms in this sector argue that automation is not an option, since many recreational boats are custom designed [Tr. 8/10/88, pp. 10–144, 10–145].

In this SIC, the survey identified twice as many small firms (fewer than 20 production workers) as large firms. In the small firms, maintenance work is performed for the most part by production workers, although some firms use outside contractors or have a dedicated maintenance staff. Large firms divide maintenance work about equally between a dedicated maintenance staff and production workers.

The manufacturers classified in this SIC usually have two to four basic processes, with potential exposure to one to six chemicals being most common, though some firms report using up to ten chemicals. Employees are exposed to these chemicals on an intermittent short-term basis (up to 30 minutes) or continuously (up to 8 hours per day) with large firms tending to have more long-term exposures. The majority of small firms use the OSHA PELs. Over 60 percent of large firms reported using the OSHA PELs; the balance had no standards. Air monitoring data was being done for about one-half of the processes found in large plants.

The survey found that about 40 percent of the processes are totally enclosed and between 5 and 10 percent

are located outdoors. Local exhaust ventilation and respirators are used most frequently to control exposures at processes not enclosed or outdoors. In over 70 percent of the firms with chemical exposures, production workers use respirators, with a higher percentage of small firms using respirators than large firms. The combined data on exposure levels and methods of exposure control indicate that overexposures may occur at all processes in small firms and at about one-half of the processes in large firms.

Survey respondents identified the presence of 68 different substances in SIC 37. Welding fumes was estimated to occur the most frequently at a total of 3,506 processes, toluene at 3,191, and styrene at 2,541. Welding fumes were identified in machining/grinding, welding/brazing, coating/spraying, and materials manufacture/fabrication. Toluene was identified in adhesive binding, assembly, coating/spraying and cutting/sawing. Styrene was identified in injection molding, coating/spraying, sanding and assembly.

SIC 38—Measuring, Analyzing and Controlling Instruments

SIC 38 includes manufacturers of instruments used to measure, test, analyze and control. It also includes optical instruments and lenses; surveying and drafting instruments; hydrological, hydrographic, meteorological, and geophysical equipment; search, detection, navigation, and guidance systems and equipment; surgical, medical, and dental instruments, equipment, and supplies; and watches and clocks [1, p. 243].

The industries in this SIC rely heavily on research and development activities (R&D) of other industries for sales of their products. According to the U.S. Department of Commerce, increases in research and development expenditures by industry and government in 1986 caused increases in sales of scientific and industrial instruments [2]. High tech firms, which represent a large portion of SIC 38's product market, are the largest investors in research and development, where R&D expenditures are measured as a percentage of gross sales. Firms producing semiconductors, computers and related equipment, office equipment, and software, among others, were major sources of R&D funds in 1986. The pharmaceutical and chemical industries also have relied on R&D to a large extent. In addition, the decline in the price of oil, which raises profits by lowering production costs, is expected to further stimulate R&D expenditures by the chemical industry [3, p. 33–1].

Similarly, government outlays for R&D increased in 1986 by more than 9 percent in current dollars. Most of the R&D expenditures, however, were for defense-related research. In addition, the National Aeronautics and Space Administration (NASA) is expected to invest in new instrumentation for the redesign of the space shuttle and other rocket systems [3, p. 33–4].

According to the U.S. Department of Commerce, the value of shipments in 1985 ($61 billion) increased almost 28 percent since 1981 [2]. Between 1981 and 1985, SIC 38 experienced a 1 percent loss in employment [3]. Of all employees working in SIC 38, 54.4 percent were production workers [5]. In 1985, the median rate of return on assets in this SIC was 7.3 percent [6].

From 1981 to 1985, the value of shipments for SICs 383 and 384 experienced growth, rising 60 and 54.3 percent, respectively. SIC 383 comprises 8 percent of the total value of shipments in SIC 38, while SIC 384 represents 23 percent. In contrast, SIC 387 experienced a drop of 36 percent in the value of shipments, representing only 1.5 percent of the total value of shipments in SIC 38 [6].

In SIC 38, the survey identified nearly twice as many small firms (fewer than 20 production workers) as large firms. In both small and large firms, maintenance work is performed predominantly by workers specifically employed to handle maintenance duties.

The manufacturers classified in this SIC usually have two to six basic processes, with potential exposures to as many as six substances. Fourteen percent of the processes involve exposure to these chemicals or substances on a short-term basis (up to 30 minutes), with small firms tending to have shorter-term exposures. Fifty percent of the firms in SIC 38 have reported the adoption of internal monitoring standards. Of those firms with standards, the most frequently reported were OSHA PELs. Employee monitoring had been performed at 32 percent of the processes. The survey found that about 49 percent of the processes are totally enclosed and 10 percent of the processes are located outdoors. Local exhaust ventilation is used most frequently to control exposures at processes not enclosed. Nearly 45 percent of the firms with chemical exposures have respirators for employee use, with a higher percentage of small firms reporting the presence of respirators than large firms. The combined data on exposure levels and methods of exposure control indicate that many plants which are estimated to incur some cost of compliance have overexposures in all processes at that plant.

Survey respondents identified the presence of 30 different substances in SIC 38. Isopropyl alcohol was estimated to occur the most frequently at a total of 2,294 processes. Isopropyl alcohol was identified in blending/mixing/formulating, adhesive binding, recovery/reprocessing/reclamation, drying/baking, packaging/bagging, extrusion, loading/offloading/receiving/handling, reaction/fermentation, boilers, coating/spraying/finishing/layup, separation, and crushing/grinding/calcining.

SIC 39—Miscellaneous Manufacturing Industries

Miscellaneous industries included in SIC 39 reflect a diverse group of producers. Most of the industries in SIC 39 produce discretionary durable consumer goods, some of which are luxury goods. Establishments that cannot be grouped together at the three-digit level are included in SIC 399. At the three-digit level, miscellaneous manufacturing industries include producers of jewelry, silverware, and plated ware (SIC 391); musical instruments (SIC 393); toys and sporting goods (SIC 394); pens, pencils, office and art supplies (SIC 394); and costume jewelry and notions (SIC 396). A sixth category, miscellaneous manufactures (SIC 399), includes producers of brooms and brushes, signs and advertising displays, burial caskets, hard surface floor coverings, and manufacturing industries "not elsewhere classified" [1, pp. 211–218].

The number of establishments and employment in SIC 39 are shown in Table C–1. Nearly three-quarters (72 percent) of these employees are production workers.

Establishments in SIC 39 are generally smaller than those in manufacturing as a whole, with higher proportions of employees concentrated in small establishments. The mean size of establishments is 11 employees, with 85 percent of establishments having fewer than 20 employees, compared with less than 65 percent for manufacturing establishments as a whole. Relatively few establishments in SIC 39 have 100 or more employees [7].

Miscellaneous manufactures (SIC 399) has the largest share (more than one-third) of the value of shipments for SIC 39 ($28.5 billion in 1985) [2, Vol. 1: 8, 22, 24]. Substantial import competition, however, poses a threat to various subsectors. Imports account for nearly 60 percent of the new supply of sporting and athletic goods and between one-

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quarter and three-eighths of new supply in many other industries. The recent decline of the dollar has tended to halt or reverse import penetration [3, pp. 45–2 to 45–11; 46–10 to 46–13]; however, domestic production in SIC 39 will be affected by the trend among doll and toy manufactures to move offshore [3, pp. 45–2 to 45–11; 46–10 to 46–12].

In terms of profitability, the majority of industries in SIC 39 are more profitable than most manufacturing industries. The median 1985 rate of return on assets (8.0 percent) is the second highest median return on assets of all two-digit manufacturing industries. Median rates of return for four-digit industries within this sector range from 3.4 percent to 9.5 percent [6].

In this SIC, the survey found that small firms (fewer than 20 production workers) comprise 85 percent of the total number of firms. In the small firms, maintenance work is performed for the most part by production workers, where large firms have a dedicated maintenance staff.

The manufacturers classified in this SIC usually have two or three basic processes, with potential exposure to two chemicals. Employees in small firms are exposed to these chemicals about equally either on a short-term intermittent basis (up to 30 minutes) or continuously (up to 8 hours per day) with somewhat fewer employees exposed for periods between these two extremes. Large firms have more long-term exposures. Small firms generally either have no internal exposure standards, or use the OSHA PELs, with some using the ACGIH TLVs. About one-half of the large firms use the OSHA PELs; most of the balance indicated that they have no standards. Air monitoring data were provided for one-fifth of the processes found in small firms, and over one-third in large firms.

The survey found that about one-quarter of the processes are totally enclosed and 20 percent are located outdoors. Local exhaust ventilation is used most frequently to control exposures at processes not enclosed or outdoors. In almost one-half of the firms with chemical exposures, production workers use respirators, with a higher percentage of large firms using respirators than small firms. The combined data on exposure levels and methods of exposure control indicate that most firms will have no processes where overexposures may occur.

Survey respondents in this SIC identified gluing/hot pressing, coating/spraying/finishing/layup, and cutting/sawing/planing as the processes most frequently used. Stoddard solvent, toluene, particulates not otherwise regulated and styrene are the substances encountered most often.

The Casket Manufacturers Association of America (CMAA) [Ex. 8–78], representing firms in SIC 3995, Burial Caskets, submitted information to the docket describing the manufacturing processes and material used by facilities in this four-digit sector. According to the CMAA, the primary materials of construction of caskets are hardwood, metal, and cloth-covered board. Firms in the hardwood segment of this industry expressed concern that the proposed limit for hardwood of 1 mg/m³ would require the installation of controls and the imposition of compliance costs. (OSHA notes that the final rule's PEL for hardwood dust is 5 mg/m³.) The CMAA reports that there are about 20 companies that assemble hardwood caskets; two of these firms account for more than half of the total unit volume of production [Ex. 8–78]. Most firms in this segment have less than $5 million in annual sales, although larger firms have $15 million in sales annually [Ex. 8–78]. According to Robert Morris Associates' financial data for SIC 3995, after-tax profits in this sector are $7,900,000.

No comments representing firms in SIC codes other than 3995 submitted industry profile information to the docket; however, the sporting goods manufacturers (SIC 3949) submitted cost and feasibility data to OSHA, and these data are discussed in the Technological Feasibility and Costs of Compliance chapters, below.

SIC 40—Railroad Transportation

SIC 40 includes establishments that provide line-haul railroad transportation, and switching and terminal establishments. General authority for the working conditions at railroad operations is vested in the Federal Railroad Administration. For the most part, OSHA's standards apply only to off-track operations such as shops and servicing areas. The U.S. Department of Commerce estimates that in 1987, there were 23 individual Class I railroads (those with operating revenues of $88.5 million or more in 1988 dollars), which accounted for over 90 percent of the freight tonnage handled by the railroad industry [4]. The industry also includes about 480 smaller carriers, including shortlines and switching and terminal companies. The 1987 operating revenue for the railroad industry was estimated at $28.5 billion, representing a gain of 1.1 percent over 1986. Revenue ton-miles were estimated as 930 billion, which represents more than a 7 percent rate of growth [3, pp. 55–6]. Between 1980 and 1985, the industries in SIC 40 experienced a serious economic decline, as indicated by the fact that SIC 40 was the second slowest growing SIC (behind SIC 10, metal mining), and third highest in terms of employment losses behind SIC 33, primary metals and SIC 35, heavy machinery). During this period, employment declined by approximately 27 percent [3, pp. 13–14]. The median rate of return on assets in 1985 was 4.4 percent [6].

In SIC 40, establishments generally employ dedicated maintenance workers or hire an outside firm to perform maintenance functions. The establishments in this SIC generally have one or two basic processes with potential exposure to two or three substances. Over 80 percent of the processes involve exposure to these chemicals or substances on an intermittent short-term basis (up to 30 minutes). Fifty percent of the establishments in SIC 40 have reported the adoption of an internal exposure standards. Among those establishments with internal standards, most use the ACGIH TLVs.

The survey found that none of the interviewed establishments had totally enclosed processes, but 85 percent were located outdoors. Of those establishments with ventilation systems, all were locally exhausted. None of the respondents reported having respirators available in processes. The combined data on exposure levels and methods of exposure control indicate that many establishments which are estimated to incur some cost of compliance have overexposures in all processes at that establishment.

Survey respondents identified the presence of 10 different substances in SIC 40. Methyl alcohol was estimated to occur the most frequently at a total of 36 processes. Methyl alcohol was identified in maintenance activities. In addition, welding fumes occurred frequently in maintenance and welding activities.

SIC 42—Motor Freight Transportation and Warehousing

Grain elevators are classified in three different two-digit SIC codes: SIC 20, Food and Kindred Products; SIC 42, Motor Freight Transportation and Warehousing; and SIC 51, Wholesale Trade. Elevators falling within SIC 42 are those whose primary income derives from the storage of grain. Rulemaking participants who commented on the feasibility of achieving OSHA's proposed limit for grain dust in grain elevators did not designate SIC codes in their comments. The issue of grain dust exposure in grain elevators is discussed in connection with SIC 51, below. This SIC was not included in the 1988 survey.

SIC 45—Air Transportation

This SIC includes establishments that provide domestic and foreign transportation by aid and also those that operate airports and flying fields and provide terminal services. The Federal Aviation Administration (FAA), U.S. Department of Transportation, enforces rules and regulations governing the safety and health of flight and cabin crew of aircraft in flight. In general, the FAA also has jurisdiction over airline maintenance and ground/support personnel. According to the U.S. Department of Commerce, the U.S. airline industry consists of approximately 200 individual commercial air carriers operating over 4,400 aircraft and employing over 435,000 people [3]. In 1988, the industry served 418 million passengers and operated 7.4 billion freight and express cargo ton-miles. Nine major carriers account for 90 percent of all revenue passenger miles. (The U.S. Department of Commerce defines a major carrier as having annual revenues exceeding $1 billion, in 1982 dollars.) The remaining passenger revenue is shared by 16 carriers classified as nationals (each with annual revenues between $75 million and $1 billion in 1982 dollars), which account for about 12 percent, and by the regionals/commuters, which account for 4 percent. The U.S. Department of Commerce estimated the 1987 operating revenue for the airline industry as $55.6 billion, representing an annual growth rate of about 10 percent [3]. Revenue passenger miles were estimated as 435 billion, which represents a 3 perecent rate of growth [4, pp. 59–1]. In 1985, the median rate of return on assets in this sector was 4.3 percent [6].

In SIC 45, establishments generally employ dedicated maintenance workers to perform maintenance functions. The establishments in this SIC have up to five processes and as many as eight substances. Almost 60 percent of the processes involve potential exposure to these chemcials or subetances on an intermittent short-term basis (up to 30 minutes). Fifty percent of the establishments in SIC 45 have reported the adoption of internal exposure standards. Among those establishments with internal standards, most use OSHA PELs.

The survey found that one third of the interviewed establishments had totally enclosed processes, but more than 65 percent were located outdoors. Of those establishments with ventilation systems, all were locally exhausted. More than 15 percent of the respondents reported having respirators for employee use. The combined data on exposure levels and methods of exposure control indicate that many establishments which are estimated to incur some cost of compliance have overexposures in all processes in the plant.

Survey respondents in SIC 45 identified 10 different substances. Ethylene glycol was estimated to occur the most frequently at 22 processes.

SIC 47—Transportation Services

SIC 47 includes establishments that furnish services related to transportation. Activities classified in SIC 47 include freight forwarding, arranging transportation for passengers and freight, renting railroad cars, inspection and weighing services; and freight car loading [1, pp. 280–281]. According to the U.S. Department of Commerce, between 1980 and 1985, SIC 47 was the third-fastest growing industry group, behind SIC 62 (Securities) and SIC 73 (Business Services) [3, pp. 13–14]. Between 1981 and 1985, SIC 47 experienced a 31 percent increase in employment. Table C–1 presents employment and establishment data for SIC 47. The median return on assets in this SIC was 7.1 percent [6].

In SIC 47, the survey identified more than eight times as many small firms (fewer than 20 production workers) as large firms. In the small firms maintenance work is predominantly performed by outside contractors. However in large firms a high percentage of maintenance work is performed by production workers.

The establishments classified in SIC 47 usually have one to four basic processes, with potential exposure to one to four substances. Ninety-four percent of the processes involve exposure to these chemicals or substances on an intermittent short-term basis (up to 30 minutes). Fifty percent of the firms in this SIC reported the adoption of an internal exposure standard. Of those large firms with exposure standards, most rely on OSHA PELs. Among small firms with exposure standards, most have adopted ACGIH TLVs. Internal monitoring had been performed at 50 percent of the processes.

The survey found that local exhaust ventilation is used most frequently to control exposures at processes not enclosed. Nearly 50 percent of the processes with chemical exposures have respirators for employee use, with a higher percentage of large firms reporting the presence of respirators than small firms. The combined data on exposure levels and methods of exposure control indicate that many establishments which are estimated to incur some cost of compliance have overexposures at all processes at that establishment.

Survey respondents identified the presence of 5 different substances in SIC 47. Exposure to gasoline was estimated to occur most frequently at a total of 206 processes. Gasoline was identified in loading/offloading/receiving/handling.

SIC 49—Electric, Gas and Sanitary Services

SIC 49 includes establishments that generate, transmit, and/or distribute electricity, gas, or steam. These establishments may be combinations of any of these services, but also may include other types of services, such as transportation, communications, refrigeration and pipelines for natural gas. Water and irrigation systems, and sanitary systems that collect and dispose of garbage, sewage, and other wastes, also are included in this SIC [1, p. 284].

In recent years the utilities covered in SIC 49 have been affected by ongoing changes in regulations regarding utility rates and competition. Some industrial customers have begun producing their own energy and utilities are now competing for customers outside their service areas. This competition has forced structural change and diversification. Utilities have been forced to upgrade their overall efficiency. With declining interest rates, regulators have been decreasing the allowed rate of return for utilities. This, too, has led to intensified pressures on competition [21, p. 56]. The Federal Energy Regulatory Commission is currently considering whether to allow utilities to open their power lines to other competing utilities. Users would be given the choice of suppliers. With the decreasing rate of return and the increasing competition, utilities have stepped up efficiency in order to offset the impending drop in their profit margins [22, p. 48].

Many of the industries in SICs 4911, 4931, 4932, and 4939 are represented by the national trade association, Edison Electric Institute (EEI). Ninety-seven percent of all customers serviced by the investor-owned segment of the industry purchase electricity from EEI members. Members generate 76 percent of the country's electricity [Ex. 3–831].

Table C–1 presents employment and establishment data for SIC 49 for 1985. Between 1981 and 1985, SIC 49 experienced a 6 percent growth in employment. In 1985, almost 80 percent of all employees were production

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workers [2]. The median return on assets was 4.0 percent [6].

Within this SIC, there are seven three-digit SICs, including establishments that generate, transmit, or distribute electrical energy for sale and that operate crude petroleum and natural gas field properties; establishments that transmit and/or store natural gas for sale; establishments that provide electric or gas services in combination with other services, only if one service does not constitute 95 percent or more of revenues; establishments that distribute water for sale for domestic, commercial, and industrial use; establishments that collect and dispose of wastes conducted through a sewer system, including such treatment processes as may be provided; establishments that produce and/or distribute steam and heated or cooled air for sale; and establishments that operate water supply systems for the purpose of irrigation [1, pp. 284–286].

In SIC 49, the survey identified nearly twice as many small firms (fewer than 20 production workers) as large firms. In small firms, maintenance work is predominantly performed by production workers, although some firms also use dedicated maintenance workers or outside contractors. Large firms mainly employ workers specifically for maintenance duties.

The manufacturers classified in SIC 49 usually have one to four basic processes, with numerous firms having potential exposures to as many as six different substances. Fifty-five percent of the processes involve exposure to these chemicals or substances on an intermittent short-term basis (up to 30 minutes), with small firms tending to have more long-term exposures. Most firms in this SIC have adopted OSHA PELs as their internal standard. Of the large firms with internal exposure standards, most have adopted OSHA PELs or ACGIH TLVs. However, 52 percent of small firms reported having an internal exposure standard. Employee monitoring had been performed at 16 percent of the processes.

The survey found that about 25 percent of the processes are totally enclosed and 70 percent are located outdoors. Local exhaust and general ventilation are used frequently to control chemical exposures at processes. Nearly 45 percent of the firms with chemical exposures have respirators for employee use, with a higher percentage of large firms than small firms reporting the presence of respirators. The combined data on exposure levels and methods of exposure control indicate that many plants which are estimated to incur some cost of compliance do not have overexposures in all processes at that plant.

Survey respondents identified the presence of 47 different substances in SIC 49. Chlorine was estimated to occur most frequently at a total of 2,196 processes. Chlorine was identified in boilers, water treatment, handling spills/leaks, incineration, maintenance activities, use of chemical additives, use of disinfectants and solvents, and water purification.

SIC 50 and SIC 51—Wholesale Trade

The wholesale trade sector includes establishments engaged in the wholesale selling of merchandise to retailers; industrial, commercial, institutional, farm, or business users, or to other wholesalers or firms that act as agents or brokers in the wholesale buying or selling of merchandise. Wholesale trade is divided into trade in durable goods (SIC 50) and in nondurable goods (SIC 51). This analysis focuses only on a few of the wholesale trade industries (e.g., dealers in scrap and waste materials, SIC 5093; grain, SIC 5191; and paints, varnishes, and supplies, SIC 5198 [1, pp. 24, 250, 255–257].

Wholesale trade sales ($1,375 billion in 1985) were fairly equally divided between durable goods and nondurable goods—46 percent and 54 percent, respectively [3, p. 58–7]. Of the approximately 425,000 establishments in wholesale trade, about five-eighths were in durable goods, and three-eighths were in nondurable goods. The specific four-digit industries studied for this analysis include about 11 percent of all wholesale trade establishments [2, pp. 59, 62, 64–65].

Table C–1 shows employment data at the four-digit level. Somewhat less than 60 percent of total employment in wholesale trade is in durable goods, while a little more than 40 percent is in nondurable goods. The specific four-digit industries being analyzed here account for less than 9 percent of all employment in wholesale trade [7].

OSHA received no comments relating to SIC 50, Wholesale Trade, Durable Goods. However, in SIC 51, Wholesale Trade, Non-Durable Goods, OSHA received several comments.

A large number of SIC 51 commenters submitted data and testimony directed at OSHA's proposed 4-mg/m^3 TWA exposure limit for grain dust [see, for example, Exs. 3–47, 3–58, 3–59, 3–65, 3–110, 3–331, 3–347, 3–387, 3–466, 3–667, and 3–732]. Several of these commenters provided estimates of the number of grain elevators potentially affected by the proposed limit, which pertains only to wheat, oat, and barley dusts. (Elevators used exclusively for storage are classified in SIC 4221; those used principally for grain cleaning and preparation fall within SIC 0723; and elevators that are used primarily in wholesale marketing operations are classified in SIC 5153, Wholesale Trade, Grain and Field Beans.)

The National Grain and Feed Association (NGFA) estimates that approximately 87 percent of U.S. grain elevators handle oats, wheat, or barley, based on USDA records for 1985 that show that this percentage of government-grain-storing elevators reported handling and storing grains of these types [Ex. 3–752]; this yields an estimated total of 12,158 grain elevators that are potentially affected by the proposed grain dust limit. The NGFA estimates that approximately 49,063 full-time equivalent employees work in these elevators [Ex. 3–752].

According to the NGFA, many of the smaller grain elevators have relatively low profits:

> A January 1987 survey and analysis by [the] U.S. Department of Agriculture on cooperative grain elevators (Financial Profile of Cooperatives Handling Grain: First Handlers, $1 Million to $4.9 Million in Sales. USDA, ACS Report No. 58, January 1987) indicates the average annual profits for small elevator facilities is only $30,272. This report indicated that 24.6 percent of these facilities currently have negative profits and another 23.1 percent have profits of only $25,000 or less [Ex. 3–752, pp. 19–20].

In these SICs 19 out of 20 firms identified by the survey were small firms (fewer than 20 production workers). In the small firms, maintenance work is usually performed by production workers, but over 40 percent of all small firms use either outside contractors or have a dedicated maintenance staff. Large firms normally have a dedicated maintenance staff, but over one-quarter use production workers for maintenance and some use outside contractors.

Of those firms providing chemical or process information, the majority used from one to three chemicals in one or two processes. However, some firms reported using up to 10 chemicals. Over half of all exposures are short-term (up to 30 minutes), with the remaining exposures varying in length from 1 to 8 hours. The majority of small firms have internal exposure standards; most of these use OSHA PELs, but some use ACGIH TLVs. Almost 90 percent of large firms reported using internal exposure standards, and were about equally divided between those using OSHA PELs and those using ACGIH TLVs. Air monitoring was being done for approximately one-fifth of the processes found in large plants.

The survey found that less than 20 percent of the processes are totally enclosed and that over 50 percent of the processes are located outdoors. In almost 40 percent of the firms with chemical exposures, production workers use respirators, with large firms reporting a higher percentage of use than small firms.

Survey respondents identified the presence of 80 chemicals in SICs 50 and 51. Grain dust was estimated to occur the most frequently at a total of 3,426 processes, including drying, packaging/repackaging, receiving and shipping, sorting and grinding.

SIC 55—Automotive Dealers and Service Stations

This industry sector includes retailers of transportation equipment for personal use (new and used automobiles) as well as recreational vehicles (boats, motor homes, and dune buggies); sellers of automobile parts and accessories; and gasoline stations. Although this industry does not include establishments whose primary business is automotive repair, it does include repair operations that are part of automobile dealerships or service stations. Only those retail outlets that earn more than 50 percent of their revenues from gasoline or lubrication oil sales are included. Many car washes and convenience stores that sell gasoline are excluded, as are traditional full-service gas stations that earn more than 50 percent of their revenues from such activities as repairs, towing, or the sale of auto accessories [1, pp. 265–266]. According to one estimate, this sector includes only 55 percent of all retail motor fuel outlets [23, pp. 6–13]. Although many employees are involved in selling, some are exposed to chemicals during painting or stripping or as a result of the indoor operation of engines or the use of solvents.

As shown in Table C–1, most establishments are relatively small (80 percent have fewer than 20 employees). Only in one sector, new and used automobile dealerships, do more than half of the establishments have more than 19 employees [10]. Even in this sector, however, 90 percent of the establishments have fewer than 100 employees [5]. Although the typical operation is relatively small, total employment is substantial because of the large number of establishments. New and used automobile dealerships account for 48 percent of total employment, gasoline service stations for 31 percent, and automobile and home supply stores for 16 percent.

Although many firms own only a single establishment, large firms own a significant portion of all establishments, which are operated as chains under leasing or franchising agreements.

The profitability of firms in SIC 55 is below the national average, with a median return on assets of 5.9 percent in 1986; however, this rate of return improved in 1986 as gasoline prices declined and new car sales increased [6].

In the survey, the analysis of SIC 55 was combined with SIC 75, automobile sales and service. The results for the two sectors combined will be reported here. In these two SICs, 19 out of 20 firms identified by the survey were small firms (fewer than 20 production workers). About two-thirds of the small firms use production workers to perform maintenance work. Over 70 percent of large firms have a dedicated maintenance staff; the remaining large firms are about equally divided between the use of outside contractors and the use of production employees for maintenance.

Of the firms reporting chemical or process use, most use from one to five chemicals in one to four processes, but 10 percent report using up to 10 chemicals. Employees are most commonly subject only to short-term exposures (up to 30 minutes) with less than one-fourth of firms reporting exposures of from 4 to 8 hours' duration. In these sectors, a majority of small firms have internal exposure standards. Those that use internal exposure standards are evenly divided between the use of OSHA PELs and the use of ACGIH TLVs. Almost 90 percent of large firms reported using internal exposure standards, usually OSHA PELs. Air monitoring data was being done for less than 10 percent of the processes found in large plants.

The survey found that approximately 10 percent of processes are totally enclosed and that less than 20 percent are located outdoors. In over 40 percent of firms with chemical exposures, production workers use respirators, with large firms having a higher percentage of use than small firms.

Survey respondents in SICs 55 and 75 identified the presence of 40 different substances. Carbon monoxide was estimated to occur the most frequently at a total of 109,093 processes, including cleaning, confined space exposure and maintenance activities. Gasoline was estimated to occur at 24,548 processes and toluene at 23,629.

SIC 72—Personal Services and SIC 73—Business Services

The personal services industry consists primarily of consumer services. SIC 721, laundry, cleaning and garment services has the highest potential for overexposure to chemicals. Other segments of SIC 72 include photographic studios (SIC 722); beauty shops, barber shops and shoe repair (SIC 723–725); and funeral service and crematories (SIC 726) [1, pp. 298–300].

As seen in Table C–1, the number of establishments in 1985 totaled 161,004. Almost all of these (96.9 percent) had fewer than 20 employees in 1985. The mean establishment size was 7 employees. The largest single segment of this industry is SIC 7231, beauty shops, which totaled 53,165 firms in 1986 [7]. Total employment (1,056,000 employees in 1985) has increased over the last several years. In 1986, the value of sales was $39.4 billion in the personal services industry, a 6.6 percent increase over 1985 [7]. The median rate of return on assets for the personal services industry was 10.5 percent in 1985 [6].

The dry cleaning industry is likely to be affected by the final rule's PEL for perchloroethylene. According to the 1982 Census of Service Industries, there were 13,049 dry cleaning plants in the U.S. that used perchloroethylene, with total employment of 89,896 workers.

The Amalgamated Clothing and Textile Workers Union (ACTWU) commented on the health risks associated with exposure to perchloroethylene. They also commented on the feasibility of reducing the exposure of perchloroethylene to substantially less than the 50 ppm proposed standard. (OSHA notes that, in the final rule, the PEL for perchloroethylene has been reduced to 25 ppm.) The International Fabricare Institute (IFI) supported the proposed revision of the PEL for perchloroethylene to 50 ppm. They stated that approximately 84 percent of the dry cleaning industry uses dry-to-dry equipment, and that over the past four years about 95 percent of all new equipment sold has been dry-to-dry equipment. The exposure to perchloroethylene is substantially greater when using transfer equipment versus dry-to-dry equipment [Ex. 8–31]. In 1982 there were 6,738 dry-to-dry machines compared to 12,929 dry-to-dry machines in 1988 [Ex. 3–671].

The business services industry (SIC 73) consists of several different sectors. Among the sectors included are mailing, reproduction, and commercial art and photography (SIC 733); building cleaning

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and maintenance services [SIC 734]; and miscellaneous business services [SIC 739], such as photofinishing laboratories and commercial testing laboratories [1, pp. 301–306].

The number of establishments in the business services industry in 1985 totaled 382,626. Almost all of these (90.3 percent) had fewer than 20 employees in 1985. The mean establishment size was 12 workers. Total employment (4,457,000 employees in 1985) has increased over the last several years (4,057,000 employees in 1984) [4]. In 1985, the value of sales was $198.7 billion in the business services industry, a 9.2 percent increase over 1985 [7]. The median rate of return on assets in SIC 73 was 11.1 percent in 1985 [6].

In these SICs, the survey identified over 20 times as many small firms (fewer than 20 production workers) as large firms. In the small firms, maintenance work is performed for the most part by production workers, although some firms use outside contractors and some firms employ maintenance staffs. Large firms divide maintenance work about equally between a dedicated maintenance staff, production workers, and outside contractors.

Employees are exposed to chemicals on an intermittent short term basis (up to 30 minutes) or continuously (up to 8 hours per day), with small firms tending to have more short-term and long-term exposures. Small firms generally have no internal exposure standards; when they do, the OSHA PELs are followed about one-half of the time. Over three-fourths of large firms reported using the OSHA PELs; the balance indicated that they have no standards or they rely on ACGIH TLVs. Air monitoring was being conducted at about one-tenth of the process found in large plants.

The survey found that about one-fourth of the processes are totally enclosed and less than 1 percent are located outdoors. Local exhaust ventilation and general dilution are used most frequently to control exposures at processes not enclosed or outdoors. In one-tenth of the firms with chemical exposures, production workers use respirators, with a higher percentage of large firms using respirators than small firms. The combined data on exposure levels and methods of exposure control indicate that overexposure is not occurring at any processes in small firms and at less than one percent of the processes in large firms.

Survey respondents in this SIC identified eight major processes: permanents, dry cleaning, manicure/pedicure, coloring/dyeing, embalming, washing, exterminating, and photofinishing. Chemicals that were present in these processes included: acetic acid, acetone, calcium hydroxide, chlorine, chlorpyrifos, diazinon, ethylene glycol, glutaraldehyde, iron oxide, isopropyl alcohol, methyl alcohol, methyl chloroform, perchloroethylene, naphtha, sodium hydroxide, toluene, trichloroethylene, xylene, and titanium dioxide.

SIC 75—Automotive Repair, Services, and Garages

This sector includes establishments that provide automotive repair, rental, leasing, and parking services to the general public, but excludes gasoline stations (SIC 55) and repair shops that are part of automobile dealerships or that service commercial fleets [1, p. 309]. Employees may be exposed to engine emissions in parking garages or repair shops, to a variety of chemical solvents (particularly in painting and stripping), and to dust from body work.

Eighty-five percent of the establishments are automotive repair shops, which is the sector most likely to have significant chemical exposure, and they employ 61 percent of all industry workers [10]. As shown in Table C–1, SIC 75 is dominated by businesses employing fewer than 20 workers (97 percent), with a median return on assets of 9.2 percent in 1985. The profitability of automotive repair and service firms is high, although it varies by size and industry sector. Small firms (under $100,000 in assets) had returns of 18.3 percent in 1985, while large businesses (over $1,000,000) had returns of 3.9 percent. Paint shops (SIC 7535) were the most profitable type of operation, while parking lots (SIC 7323) and parking structures (SIC 7525) registered significantly lower rates of return [6].

No rulemaking participants submitted comments on this sector, and the results of the survey are reported under SIC 55.

SIC 76—Miscellaneous Repair

This industry group includes a wide variety of repair services, differentiated by object repaired and processes used. Industries of particular concern include reupholstery and furniture repair (SIC 7641) and welding (SIC 7692) [1, pp. 312–314]. Reupholstery and furniture repair workers may be exposed to wood dust during wood working, and to solvents; welders may be exposed to fumes.

Nineteen percent of the 56,000 industry establishments in SIC 76 are in SIC 7641 and SIC 7692. These two industries account for approximately 14 percent of all SIC 76 employment [7, pp. 81–82].

The industry is made up almost entirely of very small firms, and the sector has extremely low concentration. Mean business size is 5.5 employees: more than 95 percent of all establishments have fewer than 20 employees, and 65 percent of all workers are employed by establishments of this size. Only 0.2 percent of all miscellaneous repair establishments (with about 6 percent of total employment) have 100 or more employees, and only 17 establishments have 250 or more. The four-digit industries of concern are even more completely dominated by small establishments, with a mean size of 4.6 employees in SIC 7641 and 3.4 employees in SIC 7692 [7, pp. 81–82].

Despite a slight decline in 1981 and 1982, employment in SIC 76 has grown fairly steadily, increasing by 23 percent between 1979 and 1984 and by 7 percent between 1984 and 1986.

Miscellaneous repair firms have high profit rates. The median 1985 rate of return on assets in SIC 76 was 10.0 percent. This rate of return was higher than that of any two-digit manufacturing industry. The median rates of return on assets in SIC 7641 and SIC 7692 are over 11 percent [6].

In this SIC, over 99 of 100 firms identified by the survey were small firms (fewer than 20 production workers). In the small firms, maintenance work is normally performed by production workers, with some use of dedicated maintenance workers or use of outside contractors. In the large firms, maintenance work is performed by either dedicated maintenance staff, production employees, or outside contractors, with a dedicated maintenance staff being the most common.

Most firms reporting process or chemical use report using one to four chemicals in one to three processes. For small firms, short-term exposures (up to 30 minutes) are the most common, with the remaining exposures ranging from 1 to 8 hours in length. In large firms, most exposures are for longer than one hour. Over three-quarters of large firms in this sector report using internal exposure standards; over 55 percent reported using OSHA PELs. A majority of small firms reported having internal exposure standards; more use OSHA PELs than use ACGIH TLVs. Air monitoring data had been collected for 20 percent of the processes found in large plants.

The survey found that just over one-quarter of the processes are totally enclosed and that one-quarter are located outdoors. In over 50 percent of the firms with chemical exposures, production workers use respirators; large firms use respirators more commonly than do small firms.

Welding fumes were identified most frequently by respondents in SIC 76 in some 4,040 welding and brazing processes.

No rulemaking participants submitted comments on this sector.

SIC 80—Health Services

The health services industry encompasses a broad range of medical, surgical, and other health services, both public and commercially owned. These services are provided by a variety of practitioners (e.g., physicians, dentists, osteopathic physicians, chiropractors, optometrists) at a variety of facilities (e.g., hospitals, nursing facilities, outpatient care facilities, medical laboratories) [1, pp. 321–323].

Total expenditures on health care and medical services ($425 billion in 1985) are very large, with 40 percent of this amount going to hospital care and 20 percent to physicians' services. Expenditures on nursing home care, drugs and medical sundries, and dentists' services each accounted for 6 to 8 percent of all health and medical services expenditures [3, p. 54–1].

Data on health care establishments are shown in Table C–1. Although the number of health service establishments (313,000) is very large, 65 percent of these are offices of licensed practitioners. No other three-digit sector within the health services industry accounts for more than 4 percent of health service establishments.

Total health services employment is very large (6.3 million), with hospitals accounting for almost half (i.e., 48 percent) of this workforce. Because of their large numbers, practitioners' offices are next in percentage of workforce employed (24 percent), followed by nursing and personal care homes (18 percent). Mean establishment sizes range from six or fewer employees in practitioners' offices to 250 or more employees in hospitals. The overall mean size of establishments in this industry is 20 employees, with more than 91 percent of these establishments having fewer than 20 employees, and approximately 22 percent of all SIC 80 employees working in establishments of this size. SIC 80 facilities with more than 250 employees employ more than 50 percent of the workforce in this sector [7; 5].

The health and medical services industry has been expanding rapidly for more than a decade. A variety of factors have caused this increase, including the expansion of the elderly population and improved treatment for many illnesses. In addition, between 1985 and 1986, the price for most medical services rose between 6 and 9 percent, compared with 1.5 percent increase in consumer prices. The implementation of Medicare's prospective payment system is also causing major changes in the health care industry [3, pp. 54–1, 2].

Hospital care costs have been a major target of cost-cutting measures, resulting in a decline in hospital admissions, a shortening of hospital stays, and substantial industry restructuring, including increased mergers and acquisitions by large chains, vertical integration, diversification of services offered, expanded professional peer review, and more businesslike operations. Major investor-owned nursing home chains also have experienced rapid expansion and acquisition [3, pp. 54–1, 2].

For SIC 80 as a whole, the growth rate in expenditures averaged 12.6 percent per year from 1979 to 1984 and more than 9 percent for the next 3 years [3, p. 54–1]. Employment grew by 31 percent between 1979 and 1986, rising by 2 to 5 percent in each year [5]. The growth picture is fairly consistent across three-digit industries, although expenditures on "other professional services" have shown the most rapid growth of any health service (16.3 percent annually from 1979 to 1984). Expansion has been especially rapid in health maintenance organizations and home health care, both of which have the potential for reducing health costs and substituting, to some degree, for hospital care [3, pp. 54–1 to 54–4].

The median rate of return on assets in health services (5.0 percent in 1985) is relatively low compared with that in manufacturing industries, and hospitals have somewhat lower median rates of return than is the case for health services as a whole. Several "Offices" industries, on the other hand, have median rates of return higher than 13 percent. Medical and dental laboratories have median rates of return that are above the median for two-digit manufacturing industries [6].

In this SIC, nine out of ten firms identified by the survey were small firms (fewer than 20 production workers). The majority of small firms employ outside contractors for maintenance work. The majority of large firms use dedicated maintenance workers.

Of those firms reporting chemical or process use, over half report using one or two chemicals in one or two processes. In this SIC, most employee exposures are for less than 30 minutes in length; one-fourth of large firms report employee exposures of from 4 to 8 hours in duration. Approximately half of all small firms have no internal exposure standards and approximately half report using OSHA PELs. Over 60 percent of large firms report using OSHA PELs, with only a limited number reporting use of ACGIH TLVs. Large firms provided air monitoring data for slightly over one-third of all processes found in their plants.

The survey found that almost 50 percent of all processes are totally enclosed and that almost none are outdoors. One-quarter of all firms report using respirators, with large firms having somewhat greater respirator use than small firms.

Survey respondent identified the presence of 73 different substances in SIC 80. Isopropyl alcohol was estimated to occur the most frequently at a total of 38,575 processes, including administration of anesthesia, laboratory procedures, making of dental appliances and sterilization. Aryl and inorganic compounds of mercury were estimated to occur in a total of 25,197 processes, including preparation of dental amalgams and X-ray film processing.

No testimony or comments submitted to the docket pertained to the health industry.

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TABLE C - 1

Industries With Potential Hazardous Exposures,
Number of Establishments and Employment
(1985)

SIC	Description	Establishments[a] Total Number	Percent Large[b]	Small[c]	Employment[d] Total (1,000)	Production Workers (1,000)
20	FOOD AND KINDRED PRODUCTS	29,043	37.14	62.86	1,603	1,118
21	TOBACCO MANUFACTURES	216	46.76	53.24	64	48
22	TEXTILE MILL PRODUCTS	11,023	39.40	60.60	702	607
23	APPAREL PRODUCTS	30,032	33.33	66.67	1,121	945
24	LUMBER & WOOD PRODUCTS, EXCEPT FURNITURE	36,710	19.73	80.27	697	584
242	SAWMILLS, PLANING MILLS	6,390	68.95	31.05	195	172
243	MILLWORK, VENEER & PLYWOOD	13,921	17.87	82.13	288	190
244	WOOD CONTAINERS	2,701	78.08	21.92	41	35
245	BUILDING & MOBILE HOMES	1,618	40.05	59.95	72	56
249	MISCELLANEOUS WOOD PRODUCTS	5,666	18.73	81.27	77	64
25	FURNITURE AND FIXTURES	16,791	27.16	72.84	494	394
26	PAPER AND ALLIED PRODUCTS	8,750	53.86	46.14	678	512
27	PRINTING, PUBLISHING & ALLIED INDUSTRIES	84,279	15.87	84.13	1,428	789
28	CHEMICAL AND ALLIED PRODUCTS	20,823	32.59	67.41	1,044	578
281	INDUSTRIAL INORGANIC CHEMICALS	3,024	35.42	64.58	142	72
282	PLASTICS & SYNTHETICS	1,666	51.50	48.50	172	114
283	DRUGS	2,454	37.82	62.18	206	95
284	SOAP, CLEANERS, & COSMETICS	4,498	24.59	75.41	148	94
285	PAINTS, VARNISHES, LACQUERS	1,680	36.54	63.46	64	31
286	INDUSTRIAL ORGANIC CHEMICALS	1,528	34.88	65.12	160	82
287	AGRICULTURAL CHEMICALS	1,843	23.77	76.23	59	37
289	MISCELLANEOUS CHEMICAL PRODUCTS	3,930	29.64	70.36	94	54
29	PETROLEUM REFINING & RELATED INDUSTRIES	3,334	28.40	71.60	179	109
291	PETROLEUM REFINING	1,332	33.18	66.82	141	82
295	PAVING & ROOFING MATERIALS	1,222	23.81	76.19	26	20
299	MISCELLANEOUS PETROLEUM & COAL PRODUCTS	780	27.44	72.56	-	-
30	RUBBER & PLASTICS PRODUCTS	18,002	38.85	61.15	786	607
307	MISCELLANEOUS PLASTIC PRODUCTS	14,638	39.62	60.38	550	435

[a] Dun and Bradstreet

[b] 20 or more employees

[c] Fewer than 20 employees

[d] Labstat, U.S. Department of Labor (Database)

TABLE C - 1

Industries With Potential Hazardous Exposures,
Number of Establishments and Employment
(1985)
(continued)

SIC	Description	Establishments[a] Total Number	Percent Large[b]	Small[c]	Employment[d] Total (1,000)	Production Workers (1,000)
31	LEATHER AND LEATHER PRODUCTS	3,940	29.85	70.15	165	137
311	LEATHER TANNING & FINISHING	480	35.42	64.58	15	12
32	STONE, CLAY, GLASS, & CONCRETE PRODUCTS	21,054	26.26	73.74	588	451
33	PRIMARY METAL INDUSTRIES	10,101	44.75	55.25	808	612
34	FABRICATED METAL PRODUCTS	46,322	32.96	67.04	1,465	1,084
35	MACHINERY, EXCEPT ELECTRICAL	77,748	22.90	77.10	2,174	1,307
36	ELECTRICAL & ELECTRONIC MACHINERY, EQUIPMENT & SUPPLIES	28,478	37.64	62.36	2,197	1,300
37	TRANSPORTATION EQUIPMENT	16,132	31.58	68.42	1,980	1,257
38	INSTRUMENTS	16,814	29.42	70.58	720	391
39	MISCELLANEOUS MANUFACTURING INDUSTRIES	32,212	15.82	84.18	367	264
40	RAILROAD TRANSPORTATION	2,645	27.30	72.70	359	-
45	TRANSPORTATION BY AIR	11,832	19.46	80.54	522	-
47	TRANSPORTATION SERVICES	35,626	7.56	92.44	276	-
49	ELECTRICAL GAS, & SANITARY SERVICES	21,115	25.71	74.29	915	729
5093	SCRAP & WASTE MATERIALS	7,556	12.61	87.39	92	-
5153	GRAIN	7,523	5.84	94.16	-	-
5161	CHEMICALS & ALLIED PRODUCTS	13,045	8.51	91.49	-	-
5191	FARM SUPPLIES	20,392	4.55	95.45	151	-
5198	PAINTS, VARNISHES, & SUPPLIES	4,033	6.89	93.11	-	-
55	AUTO DEALERS & SERVICE STATIONS	189,214	9.77	90.23	1,890	1,886
72	PERSONAL SERVICES	161,004	3.13	96.87	1,056	-
73	BUSINESS SERVICES	382,626	9.46	90.54	4,457	3,863
75	AUTO REPAIR, SERVICES, & GARAGES	149,260	2.64	97.36	731	614
7641	REUPHOLSTERY & FURNITURE REPAIR	10,655	0.92	99.08	-	-
7692	WELDING REPAIR	9,413	2.21	97.79	-	-
80	HEALTH SERVICES	313,076	8.71	91.29	6,299	5,607

Source: U. S. Department of Labor Occupational Safety and Health Administration, Office of Regulatory Analysis.

[a] Dun and Bradstreet

[b] Labstat, U.S. Department of Labor (Database)

[c] 20 or more employees

[d] Fewer than 20 employees

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D. Employee Exposures and Benefits

Employee exposures to the substances included in the scope of this rulemaking are associated with a wide variety of acute and chronic conditions and illnesses. These include sensory irritation, narcosis, organ system dysfunction, chronic respiratory disease, neurological impairment, allergic sensitization, and cancer. Since OSHA's adoption of existing Federal and consensus standard limits in 1971, toxicologic evidence has become available that shows that adverse health effects can occur as a consequence of exposure to many of the substances listed in OSHA's Z tables, and that such health effects occur even when exposures are maintained at the current Z-table limits. In addition, many substances that have come into widespread use or been introduced since 1971 have been shown to be potentially hazardous in the workplace environment. OSHA thus believes that reducing worker exposures to such substances by lowering existing exposure limits or by adding limits for previously unregulated substances will result in a significantly reduced risk of illness to workers.

This chapter describes both the methodology used to identify workers potentially exposed to the hazardous substances included in this rulemaking and the expected benefits to those workers resulting from lowering permissible exposure levels. An important existing data base for identifying employees potentially exposed to hazardous substances was OSHA's Integrated Management Information System (IMIS). The IMIS data were used to project expected benefits resulting from lowering permissible exposure levels of the substances being regulated.

The IMIS data base, however, was incomplete, and its information on some hazardous chemicals may be out of date. For example, IMIS contained research information on about 160 substances among the approximately 430 substances covered by the final rule. While the IMIS data base contains the results for over 100,000 samples of substances currently regulated by OSHA , no plant-specific information was available for about 200 of the substances included in this rulemaking but currently not being regulated by OSHA. To both correct this data gap and obtain additional information on employee exposures, a nationwide survey was begun in January 1988, which was designed to collect worker exposure data from about 5,700 establishments nationwide in industries that are believed to be affected by this rulemaking. The survey results include industry-sector-specific data on the extent of employee exposures to hazardous materials and, unlike the IMIS data, provide specific information on the industrial processes in which these substances are used. While the sample survey confirmed potential exposures for many of the 160 chemicals in the IMIS data base, it identified potential exposure problems for about 62 additional substances subject to this rulemaking. Thus, the benefit estimates in this section are based upon employee exposures to 212 of the 428 substances being regulated.

To assess the benefits of revising OSHA's Z tables, OSHA relied on both the survey and IMIS data. The IMIS data were combined with raw survey data to estimate the extent to which employees are currently exposed to substances included in this rulemaking. From this analysis, OSHA estimated the reduction in illness cases and disease-related fatalities associated with reducing exposure limits for these substances.

Description of Data Sources Used

To assess the quantitative benefits associated with this rulemaking, the following data were used:

- The exposure limits for substances included in the rulemaking;
- Employee exposure data for these substances;
- Employment data by four-digit SIC code for the base year 1985;
- Annual illness and lost workday rates for the base year 1985; and
- Health effects information on the substances included in the rulemaking.

Employee exposure data for about 160 substances were obtained from OSHA's Integrated Management Information System (IMIS). This data base contains exposure measurements obtained by OSHA compliance officers during the conduct of thousands of health inspections. For each facility inspected, the IMIS file includes information on the number of employees at the facility, results of employee air monitoring for specific substances, and the number of employees potentially exposed to each substance monitored. To perform the benefits assessment, a summary IMIS file was created that contained the following information:

- A list of substances for which personal 8-hour TWA samples were taken, by four-digit SIC and facility inspected;
- The number of workers potentially exposed to each substance monitored, by four-digit SIC and facility;
- The number of employees at each facility inspected;
- The total number of personal 8-hour TWA samples obtained for each substance, by four-digit SIC and facility; and

- The number of samples taken at each facility that showed concentrations exceeding OSHA's limits.

Only those substances for which OSHA is reducing an existing 8-hour TWA limit or adding a new 8-hour TWA limit were included in the analysis. A total of approximately 37,500 personal air sample results for about 160 substances were appropriate for use in this analysis. This analysis does not estimate the benefits associated with reducing current ceiling limits or adding new short-term exposure limits (STELs), either because the data obtained from the IMIS did not include information on sample duration for ceiling or peak measurements, or because OSHA was not able to relate the IMIS data on ceiling or peak measurements to the final short-term or ceiling limits.

In addition to relying on the IMIS exposure data, OSHA completed a major telephone interview survey of about 5,700 workplaces that are potentially affected by the revision of OSHA's Z tables. Data from this survey provide information on substances that are used in a variety of industrial processes at the facilities surveyed, on the number of workers involved in those processes, and on whether personal exposure measurements taken at the processes exceeded OSHA, ACGIH, or NIOSH limits.

Employment data by four-digit SIC code were obtained from three data sources. For each four-digit SIC represented in the IMIS file, OSHA first relied on 1985 data from the BLS LABSTAT data base [1]. Where data were unavailable from this source at the four-digit SIC level, OSHA relied on Dun & Bradstreet's *Market Identifiers* file for 1985 [2]. Data from 1985 *County Business Patterns* [3] were used to obtain employment data for four-digit SIC groups not represented in either the LABSTAT or the Dun & Bradstreet file.

Data on illness and lost workday rates were obtained from the 1985 LABSTAT file for all industries (at the three- and four-digit level) represented in the IMIS file. These data included rates per 100 employees for total illness cases, lost-workday illness cases, and total number of lost workdays.

Estimates of the Number of Potentially Exposed Employees

Estimates of the number of employees potentially exposed to the substances included in this analysis were derived from the IMIS data, OSHA's survey data, and employment data bases. To conduct the analysis, OSHA used the IMIS and survey data separately to derive independent estimates of the number of workers potentially exposed and the number of workers exposed above the limits for each substance. The estimates derived from these two data sources were then combined to yield an overall assessment of the extent of employee exposure, by four digit SIC, to substances included in this rulemaking. The following sections described how each of the data bases was used to develop estimates of employee exposures, and how these estimates were then combined.

Estimates Derived From OSHA's IMIS Data Base. For each facility inspected, the IMIS contained information on the number of employees at the facility and the number of employees observed to be potentially exposed to each substance for which personal air samples were collected. For each substance sampled within an industry (at the four-digit level), the estimated number of employees potentially exposed to that substance in the industry was determined by the following formula:

$$\sum \frac{P_f}{E_f} * W = P$$

where

P_f = number of employees observed to be potentially exposed to the substance at a facility;

E_f = total number of employees at the facility;

W = number of production workers in the industry in 1985; and

P = estimated number of employees potentially exposed to the substance in the industry.

The estimated number of workers currently exposed above the limits for each substance was calculated using the following formula:

$$\sum \frac{S_f}{T_f} * P = Z$$

where

S_f = number of samples that exceeded the limit for the substance at all facilities in an industry sector;

T_f = total number of personal samples taken for the substance at all facilities in the industry sector;

P = estimated number of employees potentially exposed to the substance in the industry sector; and

$$\sum \frac{X_f}{T_f} * W = P$$

where

X_f = number of employees at the facility who are involved in processes using a given substance;

T_f = total production workforce at the facility;

W = the number of production workers in the industry sector in 1985; and

P = estimated number of employees potentially exposed to the substance in the industry sector.

Z = estimated number of workers in the industry sector currently exposed above the limits for the substance.

Estimates Derived From OSHA's Survey Data. Facilities participating in OSHA's telephone survey provided the following information that was useful for estimating the extent of employee exposures to chemical substances:

- The facility's four-digit SIC code;
- The total number of production employees at the facility;
- The number of employees involved in each process used at the facility;
- The substances used or present in each process;
- The exposure limits used as internal targets or goals at the facility (i.e., OSHA's current limits, ACGIH limits, NIOSH limits, or "Other" limits such as those from material safety data sheets or insurance carriers); and
- Whether employee exposures exceeded the targeted limits for each process/chemical combination present at the facility.

To estimate the number of employees potentially exposed to a given substance in a four-digit SIC industry group, OSHA assumed that all employees who are involved with processes in which the substance is used or present are potentially exposed. Thus, the formula for estimating the number of employees who are potentially exposed to a substance in a given industry sector is

To estimate the number of employees currently exposed above the final limits, OSHA relied on survey responses that indicated whether exposure measurements associated with a process exceeded the facility's internal exposure limits. OSHA interpreted the survey responses as follows.

- OSHA assumed that none of the potentially exposed employees are currently exposed above the limit for any substance associated with a process if

(1) The revised limit is an ACGIH TLV and respondents indicated that

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exposure measurements did not exceed ACGIH, NIOSH, or some "other" set of limits, or

(2) The revised limit is a NIOSH REL and respondents indicated that exposure measurements did not exceed NIOSH limits.

• OSHA assumed that all of the potentially exposed employees are currently exposed above the limits for all substances associated with a process if

(1) The revised limit is an ACGIH TLV and respondents indicated that exposure measurements did exceed OSHA, ACGIH, or some "other" set of limits, or

(2) The revised limit is a NIOSH REL and respondents indicated that exposure measurements did exceed OSHA, ACGIH, NIOSH, or some "other" set of limits.

The number of overexposed workers were then summed for each substance across all facilities that responded to the survey in the four-digit SIC industry group. In instances where the survey data yielded no information on whether employees are or are not exposed above the final rule limit for a substance, and no exposure data were available from IMIS on that substance, the number of workers exposed above the final rule limit for that substance is unknown (this is indicated in Supplement 2 by a blank space). Since it is likely that in some of these cases there are employees exposed above the final rule limits, OSHA believes that it has not necessarily accounted for all employees who are exposed above the final rule limits for the 212 substances included in this analysis. Thus, OSHA believes that the number of overexposed employees may be understated.

Since the publication of the PRIA, OSHA has identified the chemical composition of several generic and trade-name substances noted as being in use by survey respondents. The estimates of potential benefits presented in this final RIA include employees exposures to substances contained in these generic and trade-name products.

Approach for Combining Estimates Derived from the IMIS Data and Survey Data. To obtain an overall estimate of the extent of employee exposures to substances used in each four-digit SIC industry group, OSHA combined the estimates derived separately from the IMIS and survey data. Table D-1 illustrates how these estimates were combined to yield an overall estimate of the extent of employe exposures in SIC 2851. Where estimates for a given substance could be derived from one data set but not the other, the combined assessment uses the available estimates without adjustment. Where estimates could be derived from both data sets for the same substance, the combined assessment is based on the average of the available estimates; this approach has the effect of giving equal weight to estimates derived from either the IMIS or survey data.

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Table D-1. Analysis of Employee Exposures in SIC 2851 Derived From IMIS Data, Survey Data, and Both IMIS and Survey Data Combined

SIC 2851 Paints and Allied Products	Assessment from IMIS		Assessment from Survey		Combined Assessment	
Name	Workers Potentially Exposed	Workers Above Limits	Workers Potentially Exposed	Workers Above Limits	Workers Potentially Exposed	Workers Above Limits
ACETONE	2,875	0	63,553	0	33,214	0
ALPHA-ALUMINA	1,286	0			1,286	0
AMMONIA			14,041	0	14,041	0
BUTOXYETHANOL	2,121	0			2,121	0
N-BUTYL ACETATE			70,204	0	70,204	0
BUTYL ACRYLATE	13,302	0	61,336	0	37,319	0
N-BUTYL ALCOHOL			44,339	14,189	44,339	14,189
N-BUTYL GLYCIDYL ETHER	28,030	0			28,030	0
CARBON MONOXIDE	672	672			672	672
CARBON TETRACHLORIDE	5,912	0			5,912	0
COBALT AS CO	4,604	0			4,604	0
CYCLOHEXANONE	6,821	0			6,821	0
DIISOBUTYL KETONE	4,434	0			4,434	0
ETHYL ACRYLATE			73,899	0	73,899	0
ETHYLENE GLYCOL			46,556	17,691	46,556	17,691
ETHYLENE GLYCOL DINITRATE			70,204	0	70,204	0
FURFURAL	2,956	0			2,956	0
HEPTANE	5,454	0			5,454	0
HEXAFLUOROACETONE	41,383	41,383			41,383	41,383
HEXANE	4,678	0			4,678	0
2-HEXANONE	6,547	727	52,468	20,058	29,508	14,747
HEXONE	7,131	319			7,131	319
ISOBUTYL ALCOHOL	10,996	0			10,996	0
ISOPHORONE			42,122	16,007	42,122	16,007
ISOPROPYL ALCOHOL			28,082	0	28,082	0
KAOLIN, TOTAL DUST			69,465	0	69,465	0
MAGNESIUM OXIDE FUME, AS MG	10,560	0			10,560	0
METHYL CHLOROFORM (1,1,1-TRICHLOROETHANE)			73,899	0	73,899	0
METHYL ETHYL KETONE PEROXIDE			25,126	0	25,126	0
MOLYBDENUM, INSOLUBLE COMPOUNDS AS MO	11,853	0			11,853	0
PERCHLOROETHYLENE	1,973	0			1,973	0
PETROLEUM DISTILLATES, RUBBER SOLVENT	7,805	0	68,726	0	38,306	
PHTHALIC ANHYDRIDE	4,427	0			4,427	0

Table D-1. Analysis of Employee Exposures in SIC 2851 Derived From IMIS Data, Survey Data, and Both IMIS and Survey Data Combined (continued)

SIC 2851 Paints and Allied Products	Assessment from IMIS		Assessment from Survey		Combined Assessment	
Name	Workers Potentially Exposed	Workers Above Limits	Workers Potentially Exposed	Workers Above Limits	Workers Potentially Exposed	Workers Above Limits
PROPYL ALCOHOL			26,604	0	26,604	0
SODIUM HYDROXIDE			29,560	0	29,560	0
STODDARD SOLVENT	6,961	194	42,861	18,430	24,911	9,312
STYRENE	1,508	0	31,038	13,967	16,273	6,983
TALC (NON-ASBESTIFORM)			5,912	0	5,912	0
TIN METAL AND OXIDE	1,286	0			1,286	0
TITANIUM DIOXIDE	2,668	0	29,560	29,560	16,114	14,780
TOLUENE	7,538	187	25,865	0	16,701	94
TOLUENE-2,4-DIISOCYANATE			17,736	0	17,736	0
TRIBUTYL PHOSPHATE	244	0			244	0
TRICHLOROETHYLENE	3,695	0			3,695	0
TRIETHYLAMINE	244	0			244	0
TRIMELLITIC ANHYDRIDE	1,626	813	28,082	0	14,854	407
TRIMETHYL BENZENE	8,099	0			8,099	0
VINYL ACETATE	13,302	0	30,299	0	21,800	0
VM & P NAPHTHA	25,909	0			25,909	0
WOOD DUST	88,679	73,896			88,679	73,896
XYLENE (O,M,P-ISOMERS)			20,692	0	20,692	0
ZINC OXIDE (FUME)			57,641	0	57,641	0

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Estimates of both the number of employees potentially exposed and the number exposed above the limits are presented, by substance and four-digit SIC code, in Supplement 2. This supplement also identifies, by four-digit SIC code, substances that are judged to present potential exposure problems but for which no IMIS or survey data were available.

Aggregate estimates of the number of employees potentially exposed or exposed above the final limits to any substance considered in the analysis are presented by two-digit SIC code in Table D-2. Because an employee may be exposed to more than one substance in a given industry, aggregate estimates of the size of the exposed population are presented as minimum and maximum estimates. Maximum estimates of the size of the exposed population assume that no employee is exposed to more than one substance; minimum estimates assume the greatest possible extent of multiple-chemical exposure. For example, if 200 employees are estimated to be exposed to acetone and 300 employees are estimated to be exposed to toluene in a given industry, a minimum of 300 employees is estimated to be exposed to both substances in the industry, and maximum of 500 employees is estimated to be exposed to either substance in the industry.

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Table D-2

TABLE D-2. Number of Workers Exposed and Number of Workers for Whom Risk is Reduced, by 2-Digit SIC

SIC Code	Number of Production Workers	No. Workers Potentially Exposed, Minimum Estimate	No. Workers Potentially Exposed, Maximum Estimate	No Workers Exposed Above Limits, Minimum Estimate	No. Workers Exposed Above Limits, Maximum Estimate	No. Workers With Reduced Risk, (80% Risk Reduction)	No. Workers With Reduced Risk, (90% Risk Reduction)	No. Workers With Reduced Risk, (95% Risk Reduction)
20	978,126	130,431	163,211	85,097	91,363	70,584	79,407	83,819
22	461,701	147,121	178,071	12,501	12,684	10,074	11,333	11,963
23	581,733	83,337	148,661	12,364	13,860	10,490	11,801	12,456
24	571,195	325,616	410,618	102,189	133,484	94,269	106,053	111,945
25	497,030	189,875	435,912	68,961	88,742	63,081	70,966	74,909
26	667,082	337,138	529,422	64,957	82,604	59,024	66,402	70,091
27	1,255,639	1,088,136	1,194,491	117,056	129,403	98,584	110,907	117,068
28	867,659	820,699	862,707	336,379	457,433	317,525	357,215	377,061
29	178,202	177,071	178,202	135,036	135,036	108,029	121,532	128,284
30	817,652	608,461	810,617	152,668	528,822	272,596	306,671	323,708
31	165,086	47,401	96,642	1,182	8,967	6,460	7,267	7,671
32	581,740	279,657	430,016	32,404	45,923	31,331	35,247	37,205
33	754,180	382,962	688,325	161,573	280,691	176,906	199,019	210,075
34	1,197,681	445,143	1,005,075	125,015	191,870	126,754	142,598	150,520
35	1,513,419	705,075	1,213,624	122,931	159,542	112,989	127,113	134,175
36	1,421,373	764,578	1,027,410	206,952	251,456	183,363	206,284	217,744
37	1,270,731	703,707	968,832	78,976	161,816	96,317	108,356	114,376
38	635,519	387,077	477,259	25,701	25,943	20,658	23,240	24,531
39	396,813	224,118	292,568	54,683	95,354	60,015	67,517	71,268

Table D-2 continued

TABLE D-2. Number of Workers Exposed and Number of Workers for Whom Risk is Reduced, by 2-Digit SIC (Continued)

SIC Code	Number of Production Workers	No. Workers Potentially Exposed, Minimum Estimate	No. Workers Potentially Exposed, Maximum Estimate	No Workers Exposed Above Limits, Minimum Estimate	No. Workers Exposed Above Limits, Maximum Estimate	No. Workers With Reduced Risk, (80% Risk Reduction)	No. Workers With Reduced Risk, (90% Risk Reduction)	No. Workers With Reduced Risk, (95% Risk Reduction)
40	191,556	174,308	177,545	1,953	1,953	1,562	1,758	1,855
45	400,511	127,357	148,199	0	0	0	0	0
47	94,421	27,723	27,926	326	326	261	293	310
49	788,144	764,824	774,685	394,767	394,767	315,814	355,290	375,029
[illegible]	2,687,033	466,280	838,602	147,896	151,612	122,203	137,479	145,116
[illegible]	998,179	580,637	693,822	236,986	245,720	192,882	216,993	229,048
[illegible]	1,501,969	1,024,565	1,501,969	624,493	818,599	577,231	649,391	685,469
[illegible]	141,954	587,265	646,222	12,941	11,299	60,096	67,608	71,364
[illegible]	3,872,633	1,869,333	2,164,155	349,261	511,836	344,439	387,494	409,021
75	621,563	457,031	592,454	53,966	55,348	43,726	49,191	51,924
76	331,435	230,403	246,725	71,046	121,570	77,366	87,037	91,873
80	6,193,016	3,552,114	6,008,369	28,465	43,369	28,734	32,325	34,121
	33,235,635	17,709,443	24,932,336	3,885,525	5,322,892	3,683,369	4,143,787	4,373,999

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Employees exposed above the final limits are considered to be "at risk" of adverse health effects. It should be noted that this presentation shows risk reduction in employee-equivalent terms; while all (100 percent) of the workers currently exposed above the new limits would benefit from reduced risk, the new lower limits would not eliminate all chemical exposure risk. An estimated five, ten, or twenty percent residual risk equivalent would remain at the new lower limits. Although not quantified, all employees currently exposed to hazardous substances at or below the recommended new levels would experience this residual risk. To obtain an approximation of risk reduction at the revised exposure levels, OSHA estimated that 95, 90, or 80 percent of the workers currently exposed above the limits (i.e., the midpoint between the minimum and maximum estimates) will benefits from reduced risk after their exposures are lowered to or below the final limits. The results of this analysis are also presented by two-digit SIC codes in Table D–2.

The American Iron and Steel Institute (AISI) [Ex. 72] objected to the approach used by OSHA to obtain the combined assessment. The AISI illustrated this point with the following example:

> [T]he approach used by OSHA in obtaining [exposure estimates] . . . is not logical. If exposures to a substance are indicated in both the IMIS and survey results, the two numbers are averaged. If only one set reports exposures, then that set is used independently. Under this approach, the combined assessment for steelworkers exposed above the proposed standard for titanium dioxide is listed as 34,510 (the figure derived from OSHA's IMIS data alone) because no data was identified in this category in OSHA's telephone survey. It is not clear why the survey does not report data on titanium dioxide because according to OSHA the chemicals in the survey were "selected on the basis of . . . known exposure problems. . . ." If the survey had determined there were zero workers overexposed, then the combined assessment would have been reduced to 27,255—that is, 54,510 divided by 2 [Ex. 72, p. 11].

OSHA believes that it has designed an approach that makes optimum use of all of the exposure data available to the Agency. By using the averaging method described above, neither the survey data nor the IMIS data are given greater weight. OSHA realizes, as AISI points out, that the estimate of the number of employees exposed to a given chemical in a given industry sector is sensitive because OSHA's methodology uses an averaging approach. However, OSHA believes that the alternative, i.e., reliance on one data set as opposed to the other, is more disadvantageous because a vast amount of exposure information would have been ignored in the analysis. In addition, OSHA believes that making full use of both the IMIS and survey data minimizes any biases that may be inherent in the information contained in either data set alone. Furthermore, OSHA believes that, by determining maximum and minimum estimates of numbers of exposed employees, uncertainties in the analysis are appropriately recognized.

Some commenters [Exs. 3–600, 8–10, 8–31, and 8–32; Tr. 4–257] provided alternative estimates of the number of employees exposed and overexposed to specific chemicals in specific industries. For example, Dr. Boyd of the Styrene Information Research Council (SIRC) reports that, in the reinforced plastics industry segment, 30,000 workers are potentially exposed to styrene [Ex. 8–32, p.1], a figure smaller than that estimated by OSHA. Eric Frumin, Director of Occupational Safety and Health for the Amalgamated Clothing and Textile Workers Union (ACTWU), reports that OSHA's estimates severely understate the number of workers potentially exposed to perchloroethylene in the dry cleaning industry [Ex. 8–31, pp. 21–23]. OSHA evaluated each of these commenter's estimates to determine whether OSHA's aggregate benefits estimates of exposed workers needed to be revised to reflect this new record evidence. Because OSHA received comparatively few data on the number of employees exposed, when compared with the number of industry sectors and substances covered in this analysis, OSHA has determined that incorporating the estimates provided by commenters would not substantially alter OSHA's aggregate estimate of the benefits associated with revising the air contaminant limits.

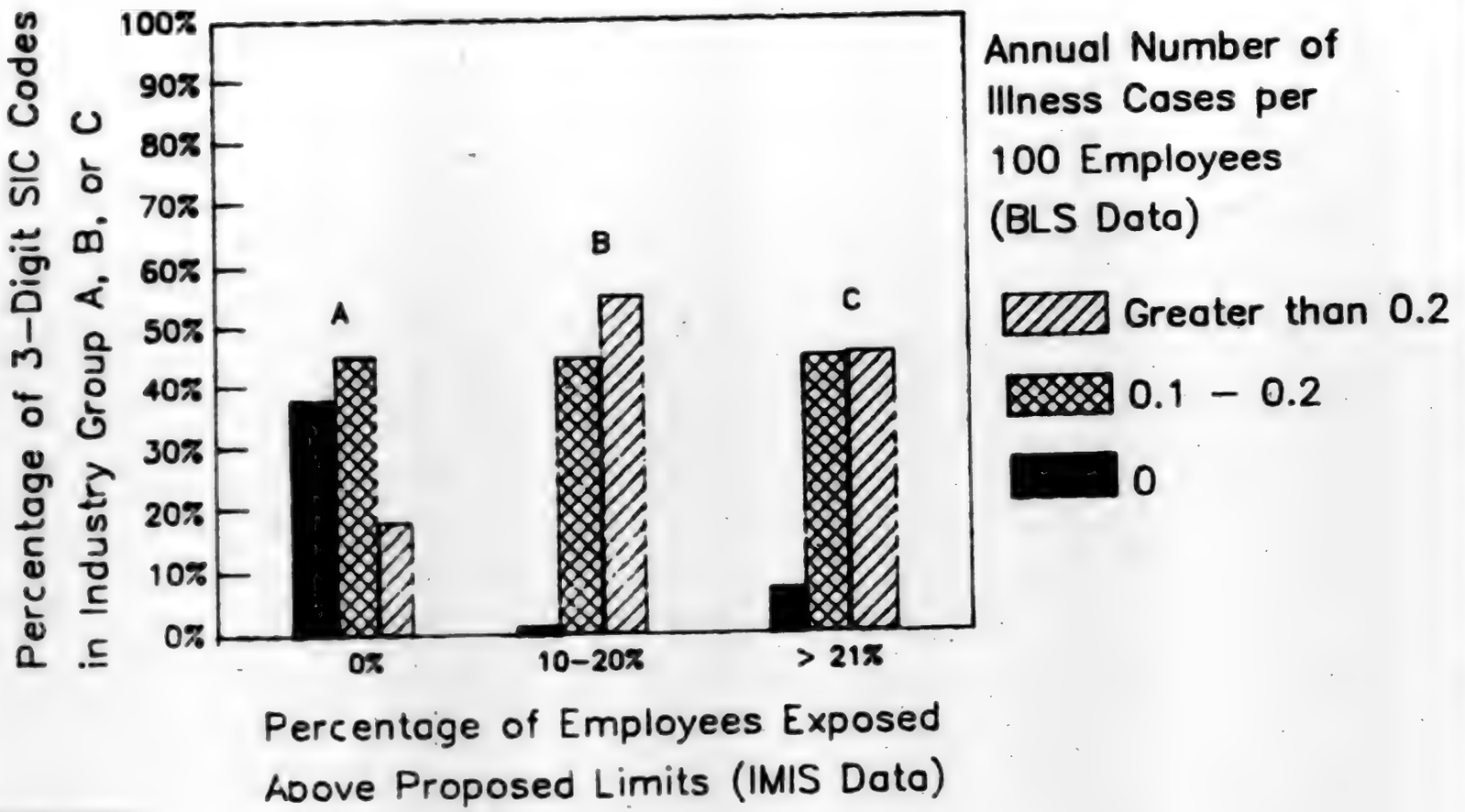
Estimates of the Reduction in Illness Cases and Lost Workdays

The BLS LABSTAT data base contains illness and lost-workday rates by SIC code. These rates are expressed as the annual number of illness cases or number of lost workdays per 100 full-time-equivalent employees. Reducing employee exposures to hazardous substances to a level below that associated with adverse health effects will result in a decrease in the number of illness cases and lost workdays.

To assess the impact on illness and lost-workday rates of reducing employee exposures, OSHA first examined the relationship between the percentage of workers estimated to be exposed above the final exposure limits for the 160 substances represented in the IMIS data base and current illness and lost-workday rates. This analysis was conducted at the three-digit SIC code level because of the lack of illness-rate data for some of the four-digit SIC code groups. The results of this analysis are presented graphically in Figure D–1. Among three-digit industries for which OSHA has found that no employees are currently exposed above the final limits, total illness case rates reported by the BLS for the same industry group are usually less than 0.2 cases per 100 employees per year, and frequently are reported to be zero. In contrast, where OSHA has found that an industry group has more than 10 percent of its workforce exposed above the final limits, total illness case rates above 0.2 case per 100 employees are frequently reported. In few instances does an industry group having 10 percent or more of its workforce exposed above the final limits report a total illness case rate of zero. Among three-digit SIC code industry groups for which OSHA has not found employee exposures above the final limits, 36 percent of the groups reported an illness rate of zero, 43 percent reported an illness rate of 0.1 to 0.2 case per 100 employees, and only 19 percent of the industry groups reported an illness rate greater than 0.2 case per 100 employees (but none above 0.5 case per 100 employees). Given this distribution of illness rates across these particular industry groups, it is concluded that industry groups in which employee exposures have been controlled to or below the final limits will have an illness rate approximating 0.1 case per 100 employees. It is believed that total illness cases at the three-digit level will be reduced to no more than 0.1 case per 100 employees after exposures are reduced to or below the final limits.

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Figure D-1. Relationship Between Employee Exposures to Hazardous Substances and Industry Illness Rates



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OSHA performed a similar analysis that also indicates that the rate of lost-workday illness cases will decline to a base rate of 0.05 cases per 100 employees and the annual rate of lost workdays will decline to 1 case per 100 employees after employee exposures are reduced to or below the final limits.

OSHA estimated the number of illness cases and lost workdays potentially avoided annually by applying current rates to the estimated number of production workers per three-digit SIC group; this yielded an estimate of the annual number of illness cases and lost workdays reported by each three-digit SIC code industry group. It was assumed that these industries would experience illness rates of 0.1 cases per 100 employees, 0.05 lost-workday illness cases per 100 employees, and 1 lost workday per 100 employees per year. Using this approach, OSHA estimated that promulgation of the final limits will potentially avoid 55,365 illness cases per year, 23,346 lost-workday illness cases per year, and 519,421 lost workdays caused by illnesses per year.

The movement to a 0.1 illness rate is presented as a best estimate supported by OSHA's interpretation of the relationship between chemical exposure levels and current industry illness rates. It may be argued, however, that if a 0.1 illness rate were achieved, the reduction in illnesses could not be credited exclusively to OSHA's rulemaking initiative, since some portion of the current BLS illness rate is made up of illnesses associated with exposures to hazardous agents or physical stress (e.g., radiation, noise, ergonomic stress).

While no claim is made that this rulemaking action will reduce illnesses related to these causes, OSHA believes that the benefit estimates related to this final rule of over 55,000 illnesses, over 23,300 lost-workday illnesses, and over 519,000 lost workdays avoided each year are reasonable. This is based on the finding that company records, upon which the BLS data are based, rarely show chronic illnesses caused by exposures to toxic substances [4, 6]. The potential level of underreported illnesses in the BLS series is illustrated in a recent report by Landrigan and Markowitz [6]. Using California physicians' reports of occupational illnesses, these author's estimated an occupational illness rate among New York State employees that was more than twice the BLS illness rate [6].

Mr. Frank T. Ryan, Vice President of the Rubber Manufacturers Association (RMA), addressed OSHA's use of the illness rate data, commenting that

> there may be confounding factors, such as exposure to other substances, work practices, and especially non-occupational considerations, which affect the illness and lost workday rates. . . . Because this fundamental issue is not addressed in the calculations, the RIA does not derive meaningful illness or lost workday data [Ex. 3-677, p. 22].

Similarly, Peter Hernandez, Vice President for Employee Relations of the American Iron and Steel Institute (AISI), commented that the PRIA provided no basis for the assumption that including non-chemical-related illnesses in the calculation was offset by the underreporting of illnesses in the BLS statistic [Ex. 72].

Landrigan and Markowitz [6] provided a breakout of illness causes in the 1984 BLS statistics. They reported that about 30 percent of all illnesses were caused by trauma or exposure to physical agents. As described above, they also reported that illness cases may be underreported by as much as a factor of 2. This was also reported in a recent article by Suruda and Emmett [9]. Therefore, the extent to which illness cases are underreported far outweighs the proportion of illness cases not attributed to chemical exposures. As such, OSHA believes that inclusion of non-chemically related illnesses in the assessment does not result in an overestimate of the annual number of illness cases avoided by the final rule.

Mr. Hernandez of the AISI also suggested that OSHA's estimates for the illness rates are overestimated because they include dermatitis cases. He noted that:

> Because dermatitis is among the most common reported illnesses and is not associated with the employee airborne exposures, we believe OSHA's reliance on Bureau of Labor Statistic data overstates the benefits [Ex. 72, p. 13].

Although it is true that many of the reported cases of occupational illnesses are skin disorders, OSHA believes that reducing employee airborne exposures will contribute to a reduction in the number of cases of dermatitis. As a general rule, workplaces that have many cases of dermatitis are also more likely to use poor work practices and to be lacking in engineering controls; such facilities will have higher airborne exposures. On the other hand, a well-engineered facility with low airborne exposures generally also controls its employees' dermal exposures, and therefore has few, if any, cases of dermatitis. Therefore, OSHA believes that promulgation of these exposure limits for air contaminants will encourage the use of improved work practices, which will, in turn, reduce the incidence of dermatitis.

Estimates of the Number of Employees Potentially at Risk by Type of Hazard

In addition to estimating the number of employees exposed to the substances included in this analysis, OSHA also estimated the number of employees who are at risk of experiencing particular types of adverse health effects. To conduct this analysis, each substance included in the rulemaking was assigned to a health hazard category; these assignments were based on the primary health effects that provided the impetus for reducing a previous limit or establishing a new limit for a particular substance. (The assignment of substances to health effect categories is described in detail in Section VI–C of the preamble.) It should be noted that, in some instances, substances included in this rulemaking were grouped together in the preamble according to some basis other than a particular health effect; for example, several substances were grouped together because the ACGIH-recommended limits were derived based on the structural analogy of the grouped substances with that of other substances. For the benefits analysis described here, these substances were reclassified according to the primary health effect associated with exposure to the analogous chemical.

The number of employees estimated to be exposed to substances causing a particular health effect in an industry group was calculated by summing the number of employees exposed to all substances causing the same effect. Aggregate estimates across all affected industry sectors are presented in Table D–3. This table provides estimates of employees potentially exposed to substances in each health group, as well as estimates of employees exposed above the final limits for substances in each health group. Employees are frequently at risk from a variety of adverse health effects as a result of concurrent exposure to more than one toxic substance. Thus, the total number of employees considered to be at risk from any type of illness (as estimated in Table D–3) cannot be summed because the sum would result in doublecounting.

TABLE D-3. Estimated Number of Workers Potentially at Risk of Experiencing Adverse Effects, by Type of Adverse Effect*

ADVERSE HEALTH EFFECT	NO. OF WORKERS POTENTIALLY EXPOSED TO SUBSTANCES ASSOCIATED WITH EFFECT, MINIMUM ESTIMATE	NO. OF WORKERS POTENTIALLY EXPOSED TO SUBSTANCES ASSOCIATED WITH EFFECT, MAXIMUM ESTIMATE	NO. OF WORKERS EXPOSED ABOVE FINAL LIMITS FOR SUBSTANCES, MINIMUM ESTIMATE	NO. OF WORKERS EXPOSED ABOVE FINAL LIMITS FOR SUBSTANCES, MAXIMUM ESTIMATE
PHYSICAL IRRITANT EFFECTS	3,375,472	3,889,261	222,191	222,191
ODOR EFFECTS	519,318	521,938	3,597	3,597
SYSTEMIC TOXICITY	4,305,578	5,038,573	457,104	490,282
MUCOUS MEMBRANE IRRITATION	10,730,691	14,906,090	789,461	1,141,133
METABOLIC INTERFERENCES	4,015,702	4,205,530	1,233,413	1,241,564
LIVER/KIDNEY DISEASE	3,292,993	3,806,226	536,945	546,429
OCULAR DISTURBANCES	2,482,449	2,569,950	83,272	110,560
RESPIRATORY DISEASE	4,231,235	4,702,280	1,405,501	1,568,579
CARDIOVASCULAR DISEASE	166,077	166,868	44,403	44,403
NEUROPATHY	2,212,358	2,463,583	379,974	401,576
NARCOSIS	6,966,024	10,520,982	941,472	1,013,717
CANCER	1,712,799	1,851,342	465,013	528,650
ALLERGIC SENSITIZATION	2,545,551	2,648,973	305,955	305,955

* Double counting of employees simultaneously exposed to more than one substance in different adverse health effects categories prevents the summation of workers exposed to all adverse health effects in this table.

Estimates of the Number of Illness-Related Fatalities Avoided

As discussed in the preceding section, OSHA has estimated the number of employees currently at risk of experiencing a variety of adverse health effects brought about by overexposures to the substance included in this rulemaking. Many of these adverse effects, in particular, cancer, cardiovascular effects, chronic respiratory disease, and chronic liver and kidney damage, result in lethal outcomes. OSHA also believes that employees who are excessively exposed to substances causing systemic organ damage, neurological impairment, or metabolic effects (i.e., cardiovascular disease through excessive formation of methemoglobin or carboxyhemoglobin, and neurological impairment through cholinesterase inhibition) are at excess risk of incurring a fatal condition.

To estimate the number of fatalities associated with excessive exposure to the 212 substances included in this analysis, OSHA relied on standard U.S. mortality rates and on published estimates of the proportion of fatalities that are believed to be associated with occupational illnesses. These data allowed OSHA to calculate cause-specific mortality rates that are attributable to occupational illnesses (i.e., mortality rates that represent the excess risk of mortality from occupational disease). OSHA then applied these occupationally related mortality rates to its estimates of the number of employees exposed to the substances of concern at levels above the final limits. OSHA's methodology and estimates are presented in Table D–4, and are described in detail below.

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TABLE D-4. Estimated Annual Number of Fatalities Caused By Occupational Illness Among Workers Currently Exposed Above Final Limits, Using Alternative Assumptions

Cause of Death	U.S. Annual Death Rate Per 100,000 Residents (1985), by Cause[a]	Total Number of Deaths Per Year in U.S., by Cause[b]	Number of Deaths Attributed to Occupational Illnesses, by Cause	Annual Death Rate Per 100,000 Attributed to Occupational Illnesses	Number of Workers Exposed Above Final Limits	Annual Number of Fatalities Among This Group of Workers
Cancer	193.3	461,404	23,074[c]	27.7	496,832[f]	138
Chronic Pulmonary Disease	31.3	74,726	2,242[d] 747[e]	2.7 0.9	1,487,040[g]	40 13
Chronic Liver Disease	11.2	26,739	802[d] 267[e]	1.0 0.3	541,687[h] 541,687[h]	5 2
Cardiovascular, Neurological, and Renal	418.5	999,121	29,974[d] 9,991[e]	35.9 12.0	2,146,360[i]	771 258
TOTAL, All Causes						411-954

[a] Source: National Center for Health Statistics [5, Table 11].
[b] Based on a total residential population in 1985 of 238,740,000. [1, p. 18].
[c] Assumes 5 percent of all cancer deaths are of occupational origin (Landrigan and Markowitz, 1987).
[d] Assumes 3 percent of all deaths are of occupational origin (Landrigan and Markowitz, 1987).
[e] Assumes 1 percent of all deaths are of occupational origin (Landrigan and Markowitz, 1987).
[f] From table D-3, midpoint estimate of number of workers exposed above final limits for potential carcinogens.
[g] From table D-3, midpoint estimate of number of workers exposed above final limits for respiratory toxins.
[h] From table D-3, midpoint estimate of number of workers exposed above final limits for liver toxins.
[i] From table D-3, midpoint estimate of number of workers exposed above final limits for systemic toxins, metabolic toxins, cardiovascular toxins, and neuropathic agents.

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Estimate of the Number of Cancer Fatalities. The U.S. National Center for Health Statistics has published cause-specific U.S. mortality rates for 1985 (the most recent data available) [5]. This source reported that the annual U.S. cancer death rate in 1985 was 193.3 per 100,000 residents. Based on a total resident U.S. population of 238,740,000 in 1985 [7, p. 18], the number of cancer deaths that occurred in 1985 was 461,484. Landrigan and Markowitz [8] reviewed several published estimates of the percentage of cancer deaths that are attributable to occupational related disease; these estimates range from less than 5 percent to 33 percent of all cancer deaths. Landrigan and Markowitz believe that, as a best estimate, 10 percent of all cancer deaths have an occupational origin.

Several commenters (Exs. 3–527 and 3–877) expressed the opinion that OSHA had overestimated the number of occupationally induced cancers that would be prevented by promulgation of the final rule's limits. Specifically, they criticized the study by Landrigan and Markowitz, who estimated that 5 to 33 percent of cancer deaths and 1 to 3 percent of all deaths have occupational origins. To support this argument, Mr. Ryan, of the RMA, cited the Doll-Peto study, which stated:

> On present knowledge, it is impossible to make any precise estimate of the proportion of the cancers today that are attributable to hazards at work . . . and none of the estimates that have been made are claimed to be anything more than informed guesses. . . .
>
> . . . Until objective, nationally representative studies are undertaken, a more realistic assessment of the role of occupational hazards can probably be obtained by considering each type of cancer separately and estimating for each type the possible contribution of occupation.
>
> . . . The proportion of cancer deaths that we have tentatively attributed to occupational causes is, therefore, about 17,000 out of 400,000; i.e., about 4 percent of all U.S. cancer deaths (Ex. 3–877, pp. 23–24).

At the informal hearing, Dr. Landrigan testified that his estimate that 10 percent of all cancers are occupationally induced is reasonable:

> [T]he Doll-Peto estimate is low, for several reasons. First of all, they did not include in their estimate cancers which occurred in people over the age of 65.
>
> Many occupational cancers don't develop in people until 20, 30, or even 40 years after exposure has occurred. Therefore, to cut off attribution of cancer to occupational exposure at age 65 almost certainly reduces the proportion of all cancers which can be attributed to occupation.
>
> Another factor . . . which . . . diminishes the accuracy of the Doll-Peto estimate is that they excluded from consideration certain categories of cancer.
>
> I think that 10 percent is a reasonable middle-of-the-road estimate. If you like arithmetic manipulation, then that figure is the geometric mean . . . between the Doll-Peto estimate of 4 percent and the old Califano estimate of 38 percent (Tr. p. 3–285).

OSHA believes that Dr. Landrigan's assessment of the Doll and Peto study is reasonable. Given the wide range in published estimates of the proportion of cancers that are occupationally related (4 to 33 percent), OSHA used alternative estimates of five and ten percent in the PRIA; the assessment for this rule is based on the five percent estimate of all cancer deaths being occupationally related. Use of the five percent estimate is consistent with OSHA's recent benefits analysis for the Hazard Communication standard.

Using an occupational cancer death estimate of 5 percent and applying it to the estimated number of cancer deaths in 1985, OSHA estimates that 23,074 occupationally related cancer deaths occurred in the United States in that year (Table D–4).

As the next step, OSHA estimated the overall cancer death rate, both among the population that is occupationally exposed to chemicals and among the remainder of the population. In 1985, there were an average of 108,856,000 persons employed [10, p. 8]. However, 25,469,200 of these were employed in industries or occupations in which there is a low risk of exposure to toxic substances, such as finance, insurance, real estate, and private households [10, pp. 30, 84–88]. The remaining 83,386,800 persons are considered to be occupationally exposed to chemicals in varying degrees. Many would have only intermittent exposures at very low levels. Assuming that 5 percent of all cancer deaths are of occupational origin, OSHA calculated the annual cancer death rate attributed to occupational exposure by dividing the number of cancer deaths attributable to occupational illness by the population exposed, and multiplying that figure by 100,000. OSHA estimates that the annual cancer mortality rate attributable to occupational exposure to toxic substances is 27.7 per 100,000. OSHA then estimated that there are 496,832 workers currently exposed above the final limits to the potential carcinogens included in this rulemaking for which data were available. Applying the work-related cancer death rates to this population, OSHA estimates that 138 cancer fatalities occur each year among these workers, and that these fatalities will be prevented by the final rule.

In arriving at this estimate, two important offsetting arguments were considered. Because some of these workers may also be exposed to occupational carcinogens that are not covered in this rulemaking (such as asbestos or benzene), the number of occupational cancer deaths attributed to the substances included in this rulemaking may be overestimated. Offsetting this potential overestimate is the fact that the excess mortality rate of 27.7 per 100,000 workers was developed on the basis of occupational exposures among all workers. However, the excess mortality rate experienced among workers with high average exposures to hazardous chemicals typically runs at least two to three times higher than the national average rate. In consideration of this, OSHA believes that any overestimate of cancer fatalities avoided attributed to regulated chemicals not covered under this rulemaking is offset by the use of a mortality rate that understates the true excess mortality rate among workers with very high exposures to toxic chemicals. (Additional comments on excess mortality rate estimates are included in the final section of this chapter.)

An alternative analysis of the reduction in cancer mortality was conducted using OSHA's quantitative risk assessments for the potential human carcinogens included in this rulemaking (the results of OSHA's risk assessments are presented in the preamble to the final rule). This analysis is presented in Table D–5. Using available data from the combined IMIS and 1988 survey, OSHA found that employees are currently exposed above the final limits to four of the 17 potential carcinogens listed (acrylamide, carbon tetrachloride, chloroform, and perchloroethylene). Applying quantitative risk estimates to the estimated number of workers currently overexposed to these four substances only, OSHA estimates that compliance with the final limits will avoid 11,519 cancer fatalities over the working lifetime of the population (i.e., 45 years). The average annual reduction in the number of cancer fatalities avoided over 45 years is estimated to be 256.

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TABLE D-5. Estimates of Cancer Deaths Potentially Avoided, Based on Quantitative Risk Assessments, Over 45 Years

Substance	Number of Workers Above Final Limit	Estimated Number of Cancer Deaths	Estimated Number of Cancer Deaths Avoided
Acrylamide	7,896	79	71
Carbon Tetrachloride	97,134	1,739	1,380
Chloroform	123,950	2,776	2,743
Perchloro-ethylene	267,821	12,052	7,325
TOTAL, 45 years		16,646	11,519
ANNUAL		370	256

[a] Risk assessments are presented in Section IV-C-15 of the preamble. The assessment for perchloroethylene is based on risk estimates developed by Dr. Dale Hattis (Ex. 8-31, App. 11-A).

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As noted, although OSHA has evaluated the cancer risk for 17 potential carcinogens, there were IMIS data, survey data, and quantitative risk assessments (all of which are necessary for benefits analysis) for only four of these. Lack of IMIS or survey data means that the substance has not been sampled by an OSHA compliance officer or that none of the survey participants indicated that the substance was used at their facilities. This does not mean that no workers are currently exposed to these substances. Lacking a basis for estimating the extent of employee exposure, OSHA could not estimate the extent of reduction in cancer deaths attributable to the reduction in exposure limits for these substances. To the extent that employee exposure to these carcinogens is reduced, further reductions in the number of cancer deaths will occur.

Estimated Reduction in Occupational Deaths from Causes Other than Cancer. As shown in Table D-4, OSHA also estimated the number of occupationally related fatalities that are expected to occur annually among employees exposed to substances associated with adverse health effects other than cancer. To perform this analysis, OSHA relied on an estimate made by Landrigan and Markowitz [7] that between 1 and 3 percent of all nonmalignant disease is of occupational origin. Using the 1- and 3-percent figures as alternative assumptions and using the same methodology as that described above for cancer deaths, Table D-4 shows the following:

—Between 13 and 40 deaths caused by respiratory disease are estimated to occur each year among workers exposed to respiratory toxins covered in this rulemaking;

—Between 2 and 5 deaths are estimated to occur each year among workers exposed to liver toxins covered in this rulemaking; and

—Between 256 and 771 deaths are estimated to occur each year among workers exposed to systemic toxins, cardiovascular toxins, metabolic toxins, and neurological toxins covered in this rulemaking.

Summing these estimates, OSHA believes that between 411 and 954 non-cancer-related occupational fatalities occur each year. The same offsetting considerations discussed in the analysis of the cancer fatalities avoided under this rule also apply here. While some substances are being controlled by activity outside of this rulemaking, any overestimation effect is balanced by an underestimate of the real excess mortality rate for workers with high exposure levels to the chemicals under consideration.

The Chemical Manufacturers Association (CMA) (Ex. 3-527) stated that OSHA made the assumption that reducing exposures will eliminate *all* cancer fatalities that are estimated to occur from exposure to carcinogens included in the rulemaking. They argue that this is inconsistent with OSHA's statement in the preamble that

there is reason to assume that the dose-response of most carcinogens will follow a linear, non-threshold relationship (Preamble 21190. Col. 3) [Ex. 3-527, p. 42].

OSHA's approach, based on estimating excess death rates (Table D-4), did assume that all cancers caused by exposure to the four substances would be avoided; however, changing this assumption would not have a major impact on the estimated total number of fatalities avoided. For example, if it is assumed that only half of the estimated number of cancer fatalities would be avoided (a conservative assumption, given that most PELs are being reduced by more than a factor of 5), then the estimated annual number of cancer fatalities avoided would be 69 rather than 138. The estimated total annual number of avoidable deaths from all causes would range from 324 to 885. This estimate is only about 7 to 17 percent less than the estimate of 411 to 954 avoidable deaths reported in the Table D-4. Since cancer fatalities avoided represent only a part of the benefits to be achieved through this rulemaking, changing the assumption on cancers avoided will not result in a substantial change to the total number of avoidable fatalities attributable to revising the PELs. Furthermore, OSHA's alternative approach, which relies on the quantitative estimates of risk, identified a larger number of cancers avoided each year (256). This latter method takes into account the presence of residual risk at the revised PELs.

AISI (Ex. 188, p. 43) also argued that OSHA overstated benefits estimates presented in the PRIA because the effect of the Hazard Communication standard was not considered. In that rulemaking, OSHA determined that the hazard communication standard could reduce occupation-related cancers by 20 percent. If the beneficial effects of the Hazard Communication standard are considered in assessing the benefits associated with revising the PELS on Table Z, the maximum effect would be to reduce OSHA's estimate of cancer fatalities avoided by 20 percent (i.e., from 138 to 115).

In sum, the combined estimate for the number of cancer and noncancer deaths potentially avoided each year by compliance with the new limits is between 411 and 954 or an average of 683 fatalities avoided each year. OSHA considers these to be reasonable estimates of the benefits associated with revising the PELs on Table Z.

Additional Comments and an Alternative Method for Estimating Excess Mortality Rates. The analysis described above to estimate the number of fatalities that are potentially preventable relies on published estimates of the proportion of all U.S. fatalities that are believed to result from occupational illnesses. These estimates were used with U.S. cause-specific mortality rate figures to estimate the excess mortality rate among all U.S. workers, by cause of death (shown in Table D-4).

In making these excess mortality rate estimates, OSHA applied the excess number of fatalities across the entire U.S. working population. Implicit in this approach is an assumption that all workers are at some risk of fatality from all causes of death. In fact, only a portion of the workforce is at risk of fatality from each type of occupational illness. Deaths will occur only among workers who are potentially exposed to carcinogens; no excess deaths will occur among workers who are not so exposed. Similarly, not all workers are at risk of dying from occupationally related cardiovascular illnesses; only some portion of the workforce are at excess risk, and all fatalities resulting from occupationally related cardiovascular disease will occur among this subset of workers. Because OSHA's excess mortality rate estimates presented earlier were derived by applying the estimated number of work-related fatalities across the entire U.S. workforce, excess mortality rate figures are likely to be substantially understated.

To assess the magnitude of this bias, OSHA conducted an alternative analysis to estimate the number of work-related fatalities that are expected to occur among workers exposed above the final limits. This alternative assessment relied on judgments regarding the general increase in mortality rates that are frequently observed in epidemiologic studies that demonstrate a causal relationship between exposure to toxic substances and excess disease mortality. The alternative assessment is presented in Table D-6.

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TABLE D-6

Alternative Assessment of Number of Fatalities Expected to Occur Among Workers Currently Exposed Above Final Limits

Cause of Death	U.S. Cause-Specific Mortality Rate, Per 100,000 Residents[a] (1985)	Estimated Excess Mortality Rate Per 100,000 Workers at Risk From Hazard	Number of Workers Exposed Above Final Limits	Annual Number of Fatalities Among This Group of Workers
Cancer	193.3	193.3[b]	496,832[c]	960
Chronic Pulmonary Disease	31.3	9.4[d]	1,487,040[c]	140
Chronic Liver Disease	11.2	3.3[d]	541,687[c]	18
Cardiovascular,	418.5	125.6[d]	2,146,360[c]	2,696
TOTAL				3,814

[a] Source: National Center for Health Statistics [5, Table 11].

[b] Assumes that overall cancer mortality rate among workers at risk is twice the U.S. rate (i.e., a 100-percent excess rate).

[c] From Table D-4.

[d] Assumes that overall disease mortality rate among workers at risk is 1.3 times the U S. rate (i.e., a 30-percent excess risk).

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The overall U.S. cancer mortality rate for 1985 is 193.3 deaths per 100,000 residents (Table D-6). Typically, when causal relationships between exposure and excess lung cancer mortality are found in epidemiologic investigations, the exposed cohort frequently shows a cancer mortality rate of 1.1 to 10 times higher than the general population. For cancers that are more rare than lung cancer, mortality rates among working populations may be 50 times higher than for the general population. An alternative estimate of the number of cancer fatalities expected to occur among the estimated 499,716 workers exposed above the final limits for the potential carcinogens could be developed based on the assumption that the overall cancer fatality rate among these workers is twice that of the U.S. population (i.e., 386.6 per 100,000 workers versus 193.3 per 100,000 residents). The *excess* cancer mortality rate among these workers is therefore assumed to be 193.3 per 100,000 workers (386.6 minus 193.3). Applying this estimated excess cancer mortality rate to the 496,832 workers exposed above the final limits yields an estimated 960 cancer deaths occurring annually that are attributable to occupational exposure. For example, Duh and Asal [Ex. 8-31, App. 7] reported excess lung cancer death rates for drycleaning workers of 1.7 times expected death rates, as well as kidney cancer death rates of 3.8 times expected rates. Similarly, EPA [Ex. 1-1132] reported standard mortality ratios for lung cancer of generally between one and ten for nickel refinery workers. This same approach could be used for estimating non-cancer-related fatalities assuming that the overall fatality rate among workers at risk from these illnesses is 1.3 times the corresponding U.S. mortality rate (mortality rates of 1.1 to 1.5 are frequently observed in epidemiologic studies demonstrating causal relationships between exposure and excess fatalities). This amounts to an *excess* mortality rate of 30 percent above the overall U.S. rate. Applying these excess mortality rate figures to the estimated worker populations exposed above the final limits, OSHA estimates that, among these workers, 140 deaths occur annually due to chronic pulmonary disease, 18 deaths occur annually due to liver disease, and 2,696 deaths occur annually due to cardiovascular, neurological, and renal diseases. In total, including cancer, OSHA estimates that 3,814 work-related fatalities (including those from cancer) may be occurring each year among employees who are exposed above the limits to the hazardous substances included in this rulemaking.

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E. Assessment of Nonregulatory Alternatives

Introduction

The declared purpose of the Occupational Safety and Health (OSH) Act of 1970 is ". . . to assure so far as possible every working man and woman in the Nation safe and healthful working conditions and to preserve our human resources. . . ." Thus, the Act requires the Secretary of Labor, when promulgating occupational safety and health standards for toxic materials or harmful physical agents, to set the standard ". . . that most adequately assures, to the extent feasible, on the basis of the best available evidence, that no employee will suffer material impairment of health or functional capacity. . . ." It is on the basis of this congressional directive that OSHA has initiated regulatory actions to reduce the adverse health effects associated with occupational exposure to hazardous substances.

Market Failure

Economic theory suggests that the need for government regulation is greatly reduced where private markets work efficiently and effectively to allocate health and safety resources. The theory typically assumes perfectly competitive labor markets where workers, having perfect knowledge of job risks and being perfectly mobile among jobs, command wage premiums that fully compensate for any risk of future harm. Thus, theoretically, the costs of occupational injury and illness are borne initially by the firms responsible for the hazardous workplace conditions and, ultimately, by the consumers who pay higher prices for the final goods and services produced by these firms. With all costs internalized, private employers have an incentive to reduce hazards wherever the cost of hazard abatement is less than the cost of the expected injury or illness. The resultant level of safety and health is considered "efficient" in the sense that it minimizes the sum of the costs of hazard prevention and of injury or illness. Perfectly competitive labor markets, however, do not exist for many industrial markets. OSHA, therefore, believes that it must take appropriate actions to provide greater health protection for workers exposed to toxic substances.

Evidence indicates that market forces have not been effective in reducing excessive occupational exposure to hazardous substances, thereby contributing to the consequent development of occupational diseases. In spite of the danger associated with the inhalation or other exposure to hazardous substances, the social costs of production have not been internalized, in part, because of market imperfections and the existence of externalities. Consequently, the amount of protection that the private market will offer to workers differs from the socially desired level.

First, evidence on occupational health hazards in general suggests that in the absence of immediate or clear-cut danger, employees and employers have little incentive to seek or provide information on the potential long-term effects of exposure. Employers faced with potentially high compensatory payments may, in fact, have a disincentive to provide information to employees. When relevant information is provided, however, employers and employees might still find informed decisionmaking a difficult task, especially where long latency periods precede the development of chronic disabling disease. Moreover, if signs and symptoms are nonspecific—that is, if an illness could be job-related or could have other causes—employees and employers may not link disease with such occupational exposure.

Second, even if workers were fully informed of the health risks associated

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with exposure to hazardous substances, many face limited employment options. Nontransferability of occupational skills and high national unemployment rates sharply reduce a worker's expectation of obtaining alternative employment quickly or easily. A worker employed in a foundry, for example, could find it difficult to apply occupational skills to a new job in searching for a safer workplace.

In many regions of the country, the practical choice for workers is not between a safe job and a better paying but more hazardous position, but simply between employment and unemployment at the prevailing rates of pay and risk. In addition to the fear of substantial income loss from prolonged periods of unemployment, the high costs of relocation, the reluctance to break family and community ties, and the growth of institutional factors such as pension plans and seniority rights serve to elevate the cost of job transfer. Thus, especially where wages are more responsive to the demands of more mobile workers who tend to be younger and perhaps less aware of job risks, hazard premiums for the average worker will not fully compensate. Where this is the case, labor market negotiations are unlikely to reflect accurately the value that workers place on health.

In addition to the market imperfections, externalities occur if employers and employees settle for an inefficiency low level of protection from hazardous substances. For the competitive market to function efficiently, only workers and their employers should be affected by the level of safety and health provided in market transactions. In the case of occupational safety and health, however, society shares part of the financial burden of occupationally induced diseases, including the costs of premature death, chronic illness, and disability. Those individuals who suffer from occupationally related illness are cared for and compensated by society through taxpayer support of social programs, including welfare, Social Security, and Medicare. These combined factors of labor market imperfections and the existence of externalities contribute to the failure of the market to supply healthful working conditions in industries where hazardous substances exist.

Tort Liability

The use of liability under tort law is one nonregulatory alternative that has been increasingly used in litigation concerning occupationally related illnesses. Prosser [1] describes a tort, in part, as a "civil wrong, other than a breach of contract, for which the court will provide a remedy in the form of an action for damages," although he says that "a really satisfactory definition has yet to be found."

If the tort system applies, it would allow a worker whose health has been adversely affected by occupational exposure to a hazardous substance to sue and recover damages from the employer. Thus, if the tort system is effectively applied, it might shift the liability of direct costs of occupational disease from the worker to the firm under certain specific circumstances.

With very limited exceptions, however, the tort system is not a viable alternative in dealings between employees and their employers. All states have legislation providing that Workers' Compensation is either the exclusive or principal remedy available to employees against their employers. Thus, under tort law, workers with an occupational disease caused by exposure to a hazardous substance can only file a product liability suit against a third party manufacturer (e.g., Johns Manville), processor, distributor, sales firm, installer, agency, or contractor. It is often difficult, however, to demonstrate a direct link between an exposure to a hazardous substance and the illness.

In order to pursue litigation successfully, there must be specific knowledge of the magnitude and duration of a worker's exposure to a hazardous substance, as well as the causal link between the disease and the occupational exposure. Usually, it is extremely difficult to isolate the role of occupational exposures in causing the disease, especially if workers are exposed to many toxic substances. This difficulty is further compounded by the long latency periods that are frequently involved. In addition, the liable party must be identifiable, but workers may have several employers over a working lifetime. The burden of proof that an occupational exposure to a hazardous substance occurred, that a specific employer is the liable party, and that the exposure level was significant may prohibit the individual from initiating the suit.

The costs associated with producing information and with litigation itself may be quite substantial. First, information is a public good, which means that once produced it can be transmitted inexpensively to any number of individuals without diminishing the quality or quantity of the information. It is therefore, difficult to control distribution once the information is produced. A producer of information may find that information produced at great expense can be acquired freely by potential customers, and that consequently, the market for the information has virtually disappeared. As a result, public goods are typically underproduced relative to what is considered economically efficient. This general undersupply of information adversely affects workers' awareness of the cause of their illness and thus reduces the likelihood that they will pursue tort liability suits.

Second, legal proceedings impose costs on both plaintiffs and defendants. In deciding whether to sue, the tort victim must be sure that the size of the claim will be large enough to cover legal expenses. In effect, the plaintiff is likely to face substantial transaction costs in the form of a contingency fee, commonly 33 percent, plus additional legal expenses. The accused firm must also pay for its defense.

The majority of occupational disease tort activity has involved workers exposed to asbestos. To date, approximately 100,000 individual plaintiffs have filed asbestos lawsuits in the country. These employees avoided the exclusive remedy of Worker's Compensation by suing suppliers of asbestos instead of employers. A report prepared by the Research Triangle Institute entitled, *Tort Liability and Worker Health: An Examination of the Economic, Legal, and Scientific Issues Surrounding the Occupational Disease Protection Afforded by Tort Law* [2], contains some data pertaining to legal costs and the size of awards. One investigator, for example, found that an average ratio of legal costs to proceeds was 37 percent for a sample of cases. The data, however, do not separate legal fees paid by the defendants and plaintiffs.

Insurance and liability costs are not borne in full by the specific employer responsible for the risk involved. For firms that are insured, the premium determination process is such that premiums only partially reflect changes in risk associated with changes in exposure to hazardous substances. This lack of complete adjustment is the so-called "moral hazard problem," which is the risk that arises from the possible dishonesty or imprudence of the insured. As the insured firm has paid an insurance company to assume some of the risks, that firm has less reason to exercise the diligence necessary to avoid losses. Transfer of risk is a fundamental source of imperfection in markets.*

* For a general discussion of moral hazard as a source of market failure, see Arrow [4] and Spence and Zechhauser [5]. For applications of this concept to employee health and safety, see Chelius [6], Rea [7], and Conrad and General Research Corporation [8, Section 5.1].

Continued

For firms that self-insure or carry liability insurance with a large deductible, the costs of a single claim may be fully borne by the firm. Very small firms, and large firms with a large number of claims, however, may fail to meet the full costs by declaring bankruptcy. For example, the Johns Manville Corporation** declared bankruptcy to avoid massive claims associated with asbestos-related disease. Although the firm experienced a sharp decline in the value of its stock, it is still in business, while its obligation to pay asbestos-related claims is in considerable doubt. Other asbestos producers, including U.N.R. Industries, Inc. and Amatex Corporation, have followed the example of the Manville Corporation by filing for bankruptcy [9], further reducing the chances that their workers or others who contract asbestos-related diseases will collect Worker's Compensation or tort liability awards

Workers' Compensation

The Workers' Compensation system is a result of the perceived inadequacies in liability or insurance systems to compel employers to prevent occupational disease or compensate workers fully for their losses. The system was designed to internalize some of the social costs of production, but in reality, it has fallen short of compensating workers adequately for occupationally related disease. Thus, society shares the burden of occupationally related adverse health effects, premature mortality, excess morbidity, and disability through taxpayer support of social programs such as welfare, Social Security disability payments, and Medicare.

Compensation tends to be inadequate, especially in permanent disability cases, in view of the expiration of benefit entitlements and the failure to adjust benefits for changes in a worker's expected earnings over time. As of January 1987, 8 states still restricted permanent disability benefits either by specifying a maximum number of weeks for which benefits could be paid or by imposing a ceiling on dollar payments [10].

** Johns Manville Corporation, formerly the world's largest asbestos manufacturer, filed for Chapter XI protection under the Federal Bankruptcy Law in August 1982. The company was financially solvent when it filed for bankruptcy but estimated that it would ultimately face a cost of more than $2 billion to settle 52,000 asbestos-related claims. In the meantime, the company's assets have been frozen and successful plaintiffs cannot collect awards [9].

At present, time and dollar restrictions on benefit payments are even more prevalent in the area of survivor benefits. The duration of survivor benefits is often restricted to 10 years, and dollar maximums on survivor payments range from $7,000 to $60,000. In addition, it should be noted that if the employee dies quickly from the occupational illness and has no dependents, the employer need pay only nominal damages under Workers' Compensation (i.e., a $1,000 death benefit).

Finally, in spite of current statutory protection, disability from occupational diseases represents a continuing, complex problem for Workers' Compensation programs. Occupational diseases may take years to develop, and more than one causal agent may be involved in their onset. Consequently, disabilities resulting from occupationally induced illness often are less clearly defined than those from occupationally induced injury. As a result, Workers' Compensation is often a weak remedy in the case of occupational disease. For example, as recently as April 1983, the U.S. Supreme Court refused to hear an occupational disease case (*Richard D. Bunker* v. *National Gypsum Co.*) involving a worker who was diagnosed as having asbestosis 23 years after the expiration of the 3-year time limit allowed by Indiana law for filing a compensation claim [11]. Indeed, there is some evidence indicating that the great majority of occupationally induced illnesses are never reported or compensated [12].

The insurance premiums paid by a firm under the Workers' Compensation system are generally not experience rated—that is, they do not reflect the individual firm's job safety and health record. About 80 percent of all firms are ineligible for experience rating because of their small size. Such firms are class rated, and rate reductions are granted only if the experience of the entire class improves. Even when firms have an experience rating, the premiums paid may not accurately reflect the true economic losses. Segregation of loss experience into classes is somewhat arbitrary, and an individual firm may be classified with other firms that have substantially different normal accident rates. An experience rating is generally based on the benefits paid to workers, not on the firm's safety record. Thus, employers may have a greater incentive to reduce premiums by contesting claims than by initiating safety measures.

In summary, the Workers' Compensation system suffers from several defects that seriously reduce its effectiveness in providing incentives for firms to create safe and healthful workplaces. The scheduled benefits are significantly less than the actual losses to the injured workers, and recovery is often very difficult in the case of occupational diseases. Thus, the existence of a Workers' Compensation system limits an employer's liability significantly below the actual costs of the injury. In addition, premiums for individual firms are unlikely to be specifically related to that firms's risk environment. The firm, therefore, does not receive the proper "signals" and consequently fails to invest sufficient resources in reducing workplace injuries and illnesses. The economic costs not borne by the employer are borne by the employee or, as is often the case, by society through public insurance and welfare programs.

Standards of Other Organizations

Traditionally, representatives of professional organizations have collectively developed voluntary guidelines to assist members in maintaining safe and healthful working conditions for their employees. These guidelines are widely disseminated among members of the organizations and, at times, have been adopted as guidelines by organizations beyond the initiating one as well as by industry groups. In some cases they have become the *de facto* industry standard. Three professional organizations have developed voluntary guidelines in the form of exposure limits for chemical substances: The American National Standards Institute (ANSI); the American Industrial Hygiene Association (AIHA); and the American Conference of Governmental Industrial Hygienists (ACGIH). ANSI has withdrawn its earlier hazardous substance standards and has stated it does not intend to publish any others. The AIHA has a rather limited list of recommended limits. However, the ACGIH has published an extensive list of threshold limit values (TLVs) for many years. The ACGIH is recognized throughout the world for its members' expertise and contribution to industrial hygiene.

In May 1971, OSHA adopted as Federal health standards the exposure limits recommended by ANSI and ACGIH for 425 chemicals. Since that time, advances in scientific knowledge have demonstrated that those limits are not always adequate to protect employee health. Consequently, the ACGIH, the professional organization which continues to develop TLVs, has

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changed its recommendations yearly to reflect later information. However, adherence to the TLVs developed after 1971 is purely voluntary. Except for imminent hazards, there is no sanction for failure to comply with the limits and many employers have not adopted practices which would control employee exposure to these new levels.

In addition to professional organizations, international bodies such as the European Economic Community, the International Labor Organization, and the World Health Organization have recommended exposure limits for some hazardous substances. While these limits may not be as widely known in the United States as those of U.S. professional organizations, they are made available to the industrial hygiene community through professional journals and meetings. Within the U.S., the National Institute for Occupational Safety and Health (NIOSH) of the Department of Health and Human Services has published recommended exposure limits (RELs) for a number of chemicals. These are publicized through NIOSH Current Intelligence Bulletins and other publications which are widely disseminated.

Although the ACGIH TLVs and the NIOSH RELs are widely recognized by health professionals and employers alike, OSHA has found that some employers are not complying voluntarily with the newer TLVs, the RELs, or the standards of other bodies. Chapter D discussed OSHA's estimates of the extent of exposures in excess of the TLVs, and the adverse health effects resulting from such exposure. OSHA believes that significant numbers of employees are exposed to chemicals at levels exceeding those recommended by other organizations, and that OSHA cannot rely on employers to comply voluntarily with the recommendations. Therefore, OSHA concluded that this nonregulatory alternative is not generating the optimal level of occupational health.

Conclusion

OSHA believes that there are no nonregulatory alternatives that adequately protect workers from the adverse health effects associated with exposure to the chemicals regulated in this rulemaking. OSHA believes that tort liability laws and Workers' Compensation do not provide adequate worker protection due to market imperfections. Some employers have not complied with the standards recommended by professional organizations. The deleterious health effects resulting from continued high levels of exposure to hazardous substances require a regulatory solution.

The National Grain and Feed Association (NGFA) has disagreed with OSHA's conclusion that this rule is necessitated by a situation of market failure [Ex. 180A]. NGFA claims that OSHA "ultimately rejects each of the alternatives because of what it characterizes as imperfections in the ability of each of the alternatives to meet fully that alternative's theoretical objectives." OSHA is not implying that nonregulatory alternatives are complete failures, but that they are not total successes. That they are partial failures is precisely the situation that creates the need for OSHA. Because OSHA cannot write and enforce a unique set of regulations for each facility, the regulations must be written and enforced on an industry-wide basis. This does not imply that all firms have failed to adopt guidelines, but that some have and that workers at these firms are potentially at risk.

The rules will not impact on those entities which have already adopted the voluntary guidelines of ACGIH and NIOSH. What the rule will do is compel those firms that have done little voluntarily, to act. Furthermore, firms which comply voluntarily can be at a competitive disadvantage in the short run. When some firms don't comply with voluntary standards, the pressure not to comply increases on all firms. When all firms must comply with a regulation, none should be at a competitive advantage or disadvantage as a direct result of the regulation.

NGFA also states that although none of the nonregulatory alternatives are perfect, imperfection is not justification for "dismissing that alternative as a failure," and that "the relevant question is whether or not these alternatives—on the whole—promote workplace safety, and to what extent they do so." OSHA fully agrees with these statements. Certainly the alternatives, when followed, do promote workplace safety, but the extent to which they do so may not be sufficient. The 1988 sample survey showed that, among firms where there are chemical exposures, 20 percent would not be in compliance with the new standards and less than 15 percent of firms making or using hazardous substances, did exposure monitoring. OSHA believes these facts reflect the market's failure to better control exposures to hazardous substances.

The situation of imperfect information is also questioned by NGFA. They cite the availability of information from various sources (news media, labor unions, local public interest organizations, plaintiffs' attorneys), stating "all of whom—for their own reasons—aggressively spread the word about substances that may present occupational health risks." The comments and testimony received for this rulemaking present an ideal example of the problems of information. First, the information is often presented in a selective manner precisely because the presenters are working "for their own reasons." The NGFA maintained in the hearing that there are no substantive hazardous exposure problems at grain elevators and has sued OSHA to try to prevent the hazard communication standard from informing their workers of any risk. Yet grain dust has been known to cause disease since at least 1713 and most, if not all, impartial expert organizations have concluded it does cause disease. Second, the sheer volume of information in some cases is overwhelming. Third, the highly technical nature of much information makes analysis extremely difficult, except for the specialist. For example, the industrial structure of grain handling is segmented among several major industry categories (SICs). Information from one subcategory can be inadvertently misrepresented to apply to all grain handling facilities. The combination of these factors can make analysis of information, even when it is available, very difficult or inconclusive.

NGFA asserts that the tort system provides better recourse for employees than OSHA admits. As just discussed, the tort system provides only an imperfect remedy. The employees' damages are restricted under Workers' Compensation and it is difficult to prove causation. The only possible defendant is the supplier, not the employer. This does not encourage employers to take precautions. The greatest problem with the tort system is that torts are a retroactive remedy, after illness or death, whereas OSHA has a responsibility to assure, to the extent feasible, that no employee will suffer material impairment of health or functional capacity prospectively. Although the threat of a tort may help to prevent health damage to employees, it remains more a form of compensation for injuries suffered than a preventive measure.

NGFA contends that, "A profit-maximizing employer certainly will incorporate those additional costs (insurance, hiring, training, goodwill) in its consideration of necessary safety measures." OSHA agrees that, in the ideal, employers and manufacturers would provide a high level of safety and health protection to their employees. This is not, however, reflected everywhere in reality. Long-term implications of safety and health problems are often ignored or underestimated in the pursuit of short-term profits.

OSHA, therefore, does no agree with the NGFA's arguments and continues to believe that there are no nonregulatory alternatives that adequately protect workers from the adverse health effects associated with exposure to the chemicals regulated in this final standard.

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F. Technological Feasibility

Feasibility Determination

This chapter presents a technological feasibility analysis of industry's ability to meet OSHA's proposed permissible exposure limits (PELs) for a wide range of occupational health hazards. These PELs would include limits on airborne concentrations of substances, and in some instances, direct contact of the skin with the substance.

The control of workplace exposures to toxic chemicals involves combining a variety of standard techniques to solve a situation-specific problem. OSHA believes that existing engineering controls are available to reduce exposure levels to the new levels.

In reviewing the comments and hearing testimony on the technological feasibility of achieving the PELs and other limits, OSHA has found that for the overwhelming majority of situations where air contaminants are encountered by workers, compliance can be achieved by applying known engineering control methods and work practice improvements. It is recognized, however, that in some circumstances, respiratory protection may be necessary.

Types of Controls

In general, three basic types of controls may be employed to reduce employee exposures:

- Engineering controls
- Work practices and administrative reforms
- Personal protective equipment

Consistent with OSHA regulations and policy, this chapter examines the feasibility of engineering controls and work practices to control employee exposure, in preference to personal protective equipment.

Engineering Controls. Engineering controls involve the use of local exhaust ventilation, general ventilation isolation of the worker and enclosure of the source of emissions process modifications equipment modifications and substitution of non-hazardous chemicals. These methods may be used alone or in combination of any two or more controls depending upon the needs of a specific situation. Variations in situations usually result from the type of process being used and the number of chemicals in the air. However, these controls are considered standard techniques which will effectively control these variables either by themselves, or coupled with changes in work practices.

Ventilation. Perhaps the most widely used technique for controlling chemical exposures is the use of ventilation. General ventilation uses the movement of air within the general work space to displace or dilute the contaminant with fresh outside air. General ventilation is not typically the preferred control method in most operations due to the large volumes of air movement required. Local exhaust ventilation uses much smaller volumes of air, exhausted from the point at which contaminants are generated to remove the contaminant at the source.

Isolation. Isolation involves placing a physical barrier between the hazardous operation and the worker. Many modern, automated manufacturing processes are now fully enclosed in ventilated cabinets. The effectiveness of such a control technique depends on the frequency with which the workers have to enter the enclosure during normal operations. In other situations, rather than placing the process or machine in an enclosure, the worker may be put into a controlled atmosphere enclosure. Many processes which involve potential chemical exposures are operated remotely by operators in air conditioned booths.

Substitution. Substitution refers to the replacement of a toxic chemical in a particular process or work area with another, less toxic product. Properly applied, substitution can be a very effective control technique. However, care must be taken to ensure that the proposed substitute performs in a similar manner to the product being replaced. In addition, it is essential that the substitute be carefully evaluated to ensure that in controlling one hazard, another different hazard is not inadvertently introduced. The substitute must also be compatible with existing manufacturing equipment and processes.

The success of these techniques will depend on the physical properties of the chemicals and emissions encountered (boiling point, vapor pressure, etc.) and the process operating conditions (temperature, pressure, etc.). In some cases, particularly with cleaning solvents, substitution may provide the quickest and most effective means of reducing exposure. In other situations where particular physical or chemical properties are required, major effort may be required to alter processes or install or expand local or general dilution ventilation. The extent to which engineering controls may be effectively used will vary from industry to industry, as well as plant to plant within an industry.

Work Practices and Administrative Reforms. Work practice controls include housekeeping procedures, material handling or transfer procedures, leak

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detection programs, training and personal hygiene. In many cases, it is possible to bring about substantial reductions in employee exposures by applying work practice controls.

Personal Protective Equipment. Where it is impractical to apply engineering or work practice controls, or where their application will not consistently reduce employee exposures below the proposed PELs, personal protective equipment such as respirators, may be used to prevent and reduce exposures.

Industry Engineering Controls

To determine whether engineering controls and work practices can reduce employee exposures to the proposed PELs, OSHA, through its contractors, examined typical work processes found in a cross section of industries. Using this list, industry experts identified which major processes had potential hazardous exposures and may require additional engineering controls or different work practices in order to achieve the proposed PELs. To assess whether these would be feasible for the processes within the industry group, records maintained by OSHA and NIOSH were searched to identify examples of the successful application of controls to these processes. Based upon the judgments of the industry experts, a determination was made as to the probable feasibility of achieving the proposed PELs. A list of the processes and control measures is set out in Table V-4 at the end of this chapter.

This chapter presents examples of feasible methods of controlling exposure to hazardous substances encountered in processes used in the SICs for which costs and benefits have been identified. Unit costs for these or similar controls were used as the basis for the cost projections in Chapter V. In addition, this chapter summarizes the docket entries regarding technological feasibility.

Information from commenters to the docket or statements at the hearings indicate that for the vast majority of firms, the proposed PELs can be met using engineering controls alone. In the few isolated cases it is recognized that respiratory protection must be added to engineering controls to assure worker safety.

SIC 20—Food and Kindred Products

A major air contaminant in the food processing industry is carbon dioxide (CO_2). A milk products plant (SIC 2023) controlled carbon dioxide exposures by using a hood which fully enclosed the chiller-conveyor line and exhausted air from the system to an exterior baghouse. Carbon dioxide levels resulting from the use of dry ice were controlled at a meat packing plant (SICs 2011 and 2013) by a stainless steel exhaust hood. Similarly, a poultry dressing plant controlled carbon dioxide emissions by using a slotted hood exhaust ventilation system. A food processing plant (SIC 202) controlled carbon dioxide exposure by increasing the number of air changes in the packaging room.

OSHA is adopting a limit of 10,000 ppm as an 8-hour TWA for CO_2 and is supplementing this limit with a 15-minute STEL of 30,000 ppm. The Beer Institute [Ex. 49, 142, Tr. 8/9/88, p. 9–26] and the Brewing Industry Safety Advisory Committee submitted comments to OSHA on carbon dioxide. The industry argued at the public hearing and in docket submittals that the 8-hour TWA limit of 5,000 ppm for CO_2 was "unnecessarily low and restrictive" [Ex. 49, Tr. 8/9/88, p. 9–27]. According to the Beer Institute, the brewing industry "is unique relative to carbon dioxide exposure and control . . . no other industry faces the same engineering difficulties for controlling ambient carbon dioxide as the brewing industry" [Tr. 8/9/88]. No details explaining these difficulties were provided by these commenters.

Monitoring data taken on employees in one brewery, together with a description of the operations that cause the most exposures, are contained in a study of cellar workers [Riley and Bromberger—Barnes, 1979]. The data include samples taken over 14 eight-hour shifts. Eight-hour TWA exposures ranged from 0.5 percent (5,000 ppm) to 1.41 percent (14,100 ppm), with a mean of 1.08 percent (10,800 ppm). Data on "maximum acute exposure" were also provided. The period of maximum acute exposure ranged from 2 minutes to 240 minutes. Of the 14 samples, three exceeded a 3-percent (30,000 ppm) 15-minute STEL.

Exposures result from a build-up of CO_2 in large fermentation tanks during the beer fermentation process. These tanks are sealed systems; the CO_2 is normally piped away. Two circumstances were identified by commenters as causing CO_2 exposures. First, if excessive pressure builds up, an escape valve blows. The concentration of CO_2 in the vicinity of such a blow-out was measured at 60 percent (600,000 ppm), although the level in the area fell to 12 percent (12,000 ppm) within a few minutes. Such blow-outs are reportedly rare. The second, and routine source of CO_2 exposure is the opening of tank doors and the entry of workers into the tank to flush out sludge that remains after the tank has been drained. After opening the doors which are near the floor and open onto the central corridor, the cellar worker leaves the area until most of the CO_2 has been ventilated. The principal exposures to CO_2 in the beer industry thus involve either upset conditions (a blow-out) or maintenance activities (entry into the tank to clean it). For both of these circumstances, OSHA routinely permits the use of respiratory protection. Exposures in the corridor (resulting from the opening of tank doors) could be further controlled by the work practice of cracking the door and waiting longer before reentering the area or by adding local exhaust ventilation to capture the CO_2 escaping from the doors.

OSHA notes that commenters from the brewing industry supported the Agency's proposed STEL for CO_2 of 30,000 ppm [Tr. 8/9/88, p. 9–31], and advocated an 8-hour TWA of 10,000 ppm. In adopting 10,000 ppm as the 8-hour TWA and adding a 15-minute STEL of 30,000 ppm, the Agency believes that feasibility problems in this industry sector will be alleviated.

Grain dust exposures in this sector occur during grain handling operations in facilities that mill grain either for human use, e.g., flour mills and rice mills or, more commonly, for animal use, e.g., feed mills [Ex. 3–752, p. 10]. There is general agreement that the highest exposures in all types of grain-handling facilities occur during grain receiving operations [Ex. 3–752; Tr. 8/10/88, p. 10–46]; the grain receiving process is the same, regardless of the type of facility in which it occurs. OSHA proposed a level of 4 mg/m³ for grain dust; because of feasibility considerations, the final standard is 10 mg/m³.

Many commenters stated that a PEL of 4 mg/m³ was not achievable, particularly in older mills [Exs. 3–63, 3–110, 3–237, 3–299, 3–405, 3–752, 3–755; Tr. 8/10/88, pp. 10–45/10–48; 10–50/10–54; 10–55/10–60; 10–61/10–70]. Industry representatives stated that current employee exposures to grain dust in mills often exceeded the proposed limit [Tr. 8/10/88, pp. 10–63, 10–46; Ex. 180]. For example, David Bossman, representing the American Feed Industry Association (AFIA), reported that "just over half [of 69 samples taken in 10 mills by the AFIA] exceed the proposed PEL. The average exposure was 10.9 milligrams per cubic meter" [Tr. 8/10/88, p. 10–46]. Mr. Bossman also stated that exposures in the bulk receiving areas of all 10 mills sampled exceeded 4 mg/m³ and averaged 12.9 mg/m³ [Tr. 8/10/88, p. 10–46].

According to a 1984 study by the T.E. Stivers Organization, 15 of 20

representative mills visited "had no dust control systems at all, and [the remaining] five had some dust control systems, but [these were] not comprehensive in scope" [Tr. 8/10/88, p. 10–63]. According to Gary Winsett, President of Winsett Engineering, Inc., an independent engineering firm that specializes in the feed, grain, and related agribusiness industries: "three separate control systems would be required in the main work areas of each mill" to bring 13 of the 20 mills included in this 20-mill survey down to the 4 mg/m³ level of control, and six of these 13 mills would require "relatively extensive dust control systems in the receiving areas" to achieve the 4 mg/m³ limit [Tr. 8/10/88, p. 10–63]. In cases where such controls are in place, however, Mr. Winsett reported that exposures had been reduced considerably [Tr. 8/10/88, p. 10–62]. In older mills, retrofitting has been successful in reducing grain dust exposure levels. For example, John Wolgemuth, Corporate Safety and Loss Control Manager for Agway, a farm supply and food marketing cooperative owned by 102,000 farmer-members, described the results achieved in one mill in which additional exhaust hoses had been installed. According to Mr. Wolgemuth, levels were reduced from above 15 mg/m³ to below the 10 mg/m³ level by retrofitting [Tr. 8/10/88, pp. 10–50/10–51].

In an effort to obtain information on conditions in small, rural mills, OSHA reviewed the docket developed in connection with the Agency's recent grain-handling standard [Docket H–0117]. A study performed by Dr. Buchan of Colorado State University reported that, in eight small grain elevators and feed mills in his state, 10 percent of exposure samples were above the 4 mg/m³ proposed limit (Attachment 1, Ex. 3–751, Docket H–0117).

There are a variety of dust controls in use in grain mills at the present time. Dust collection systems, including pneumatic dust controls, are the most widely available and useful methods of controlling grain dust in mills in which dust is a problem [Ex. 3–752, p. 17; Tr. 8/10/88, p. 10–62]. A dust collector typically consists of a motor-driven fan, which creates the air flow necessary to capture dust particles and carry them through duct work to a dust collector. These aspiration systems are an "effective method of controlling dust emissions. Aspiration of the leg consists of a flow of air across the entire boot, which entrains the liberated dust and carries it up the up-leg to take-off points" (52 *FR* 49502, December 31, 1987). Depending on baseline levels of exposure, several collectors may be needed in a mill.

A second method of controlling dust that is becoming widely used is the application of oil mist to the grain to minimize dust generation. This oil mist, which consists of mineral oil, vegetable oil or some combination of the two, is normally applied when the grain is received at the mill. Ralph Mourer, testifying for the AFIA, stated that oil suppression of dust is a promising control that he has just installed in his feed mills. Although he has not yet had much experience with the system, he noted "people I've talked [to] and discussed the system with are very pleased" [Tr. 8/10/88, p. 10–78]. In an earlier study of grain handling facilities for OSHA, however, Arthur D. Little Inc. noted that there are some limitations to the use of this method:

> Mineral oil is not approved for use as an additive on food grades of grain by the U.S. Food and Drug Administration. Vegetable oil may be an allowed additive, but its use can cause the grain to adhere into masses in cold climates. Further, there is concern that the oil will become rancid or create a commercially objectionable odor (Docket H–0117, ADL, p. VI–34).

Scott Bjornsom from Hunter Grain in North Dakota also reported that oil suppression cannot be used for malting barley "because of the absorption with the water in the malt process" [Tr. 8/10/88, p. 10–85]. Despite some limitations on its use, oil suppression appears to be an effective control.

A third control method that can be used in facilities with high dust exposures is the use of vacuum systems in place of manual sweeping or compressed air blowing during clean-up operations. A Canadian study [Farant and Moore, "Dust Exposures in the Canadian Grain Industry," *American Industrial Hygiene Journal*, March 1978] of grain elevators found that many very high exposures to grain dust were a result of dust raised during housekeeping operations that involved brooms or blowers [Page 193, Attachment to Ex. 3–751, Docket H–0117]; this study concluded that "the use of in-plant vacuum systems would reduce these exposures." Representatives of the AIFA reported that mills have switched to vacuum systems to control their employees' exposures during clean-up [Tr. 8/10/88, p. 10–78].

Industry representatives also described the filtration systems that are being installed on aspiration systems in feed mills; these systems are being installed in many areas of mills, expecially in the loading and unloading areas, where the highest exposures to grain dust occur [Tr. 8/10/88, p. 10–73]. In the past, unfiltered cyclones were in widespread use in feed mills [Tr. 8/10/88, p. 10–84].

To deal with the problem of grain dust in older mills, many owners are replacing the old-fashioned wooden legs with "good, tight, enclosed steel legs . . . [and in] old facilities . . . [that had] open grain drag conveyors . . . the conveying systems that used to be open have lids on them . . . to keep the dust where it belongs" [Tr. 8/10/88, p. 10–80]. Enclosure of this type is a standard and recommended industrial hygiene practice in all dusty environments.

OSHA notes that much of the control and exposure data relied on by AFIA representatives at the hearing, such as the 1984 Stivers study of the representative group of 20 feed mills, predates the promulgation of OHHA's grain handling facility standard; the Agency believes that many facilities in this sector are in the process of replacing outdated equipment, retrofitting existing equipment, and "tightening up all connections" throughout the mill [Tr. 8/10/88, pp. 10–82/10–83]. This is confirmed by industry representatives, who reported that these efforts are being undertaken in response to the OSHA standard, their insurance companies' suggestions, and industry concerns about dust levels [Tr. 8/10/88, p. 10–73]; according to industry representatives, these controls have reduced fire risks [Tr. 8/10/88, p. 10–74], improved productivity and quality, and led to better working conditions [Tr. 8/10/88, p. 10–81].

OSHA's review of all of the evidence in the record indicates that 10 mg/m³ is a feasible limit in the grain and feed mill sector. The final rule includes this PEL as an 8-hour TWA; the Agency finds that the health evidence (see Section XIC of the preamble to the final rule) demonstrates a significant risk of material health impairment above this level. OSHA finds that feed mill employers will be able to achieve the 10 mg/m³ limit in cases where exposures remain above 10 mg/m³ [see [Tr. 8/10/88, p. 10–46] or where older mills are involved [see Tr. 8/10/88, p. 10–63] using any of a variety of controls; oil mist suppression in feed mills, aspiration systems (with or without filtration), enclosure of open conveyors and other grain-handling equipment, and the use of vacuuming in lieu of blowing or sweeping during cleanup. For some mills that are close to this limit at the present time, OSHA believes that the general "tightening up" described by Mr.

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Wohlgemuth [Tr. 8/10/88, pp. 10–82 to 10–83] will be sufficient.

The International Institute of Ammonia Refrigeration (IIAR) argued that the proposed levels for ammonia (25 ppm TWA, 35 ppm STEL) would be viewed as a nuisance because most people cannot detect the odor of ammonia at 35 ppm. As such, employees would neglect proper control measures [Ex. 113]. David G. Kramer of Kahn's and Company [Ex. 113] stated that "No one in our plants is exposed to continuous exposure to 35 ppm ammonia concentrations".

One control approach for ammonia gas encountered in poultry processing (SICs 2016 and 2017) required the appropriate placement of cut-off valves to freezer coils and the use of an alarm detection system to monitor ambient air conditions.

Ammonia-based refrigeration systems are commonly used in the meat products industry. Commenters expressed concern that "ammonia based refrigeration systems . . . are subject to occasional leaks which may result in short-term high level exposures" [Exs. 3–807, 3–750]. The situation referred to by these commenters is an intermittent maintenance or upset condition, for which OSHA permits the use of respirators. In addition, a representative of the Food and Allied Services Trade Department of the AFL–CIO stated that two companies, Wilson Foods and Morrell, evacuate the workplaces if ammonia levels reach 25 ppm as a ceiling [Tr. 8/4/88, p. 311]. In addition, a representative of the Food and Allied Services Trade Department of the AFL–CIO stated that two companies, Wilson Foods and Morrell, evacuate the workplace if ammonia levels reach 25 ppm as a ceiling [Tr. 8/4/88, p. 311]. OSHA concludes that there is no issue of technical feasibility in regard to the proposed STEL of 35 ppm for ammonia and the 35 ppm STEL is retained in the final rule.

Chlorine is used extensively as an antibacterial agent in meat products plants to comply with USDA sanitation and microbiological contamination requirements. Commenters did not raise the issue of technical feasibility in regard to the proposed chlorine standard itself. Commenters did, however, express concern that a 0.5 ppm STEL for chlorine may be too stringent to allow compliance with USDA regulations [Exs. 3–756, 3–807], although no data to support this concern were provided. Responding to these concerns, OSHA has established a 0.5 ppm PEL and 1 ppm STEL for chlorine in the final rule.

Carbon disulfide itself is not used in the meat products industry, although it is a key solvent used in the manufacture of cellulosic food casings, which are used in the manufacture of processed meats. Suppliers of cellulosic food casings stated that a carbon disulfide standard of 1 ppm cannot be met in the production of such casings [Exs. 3–421, 3–633, and 3–696]; if this were the case, according to these commenters, domestic supplies of cellulosic casings would cease. Foreign supplies would gradually penetrate and supply the market for cellulosic food casings [Tr. 8/2/88, pp. 4–208, and 4–261]. OSHA concludes that there is no apparent issue of technical feasibility of the proposed carbon disulfide standard in SIC 20. However, the TWA for this substance has been increased to 4 ppm, in part, in consideration of the potential industrial displacement effect.

The National Cotton Council of America (NCCA) submitted a comment to the effect that the approximately 50 cotton mills in SIC 2074 would be adversely affected by the proposed limit for n-hexane and other hexane isomers, vegetable oil mist, and grain dust [Ex. 3–1080]. NCCA stated that its members would have difficulty measuring airborne concentrations of these substances because cottonseed mills are small, rural business without in-house industrial hygiene capability. OSHA notes, however, that methods are readily available to measure these airborne contaminants; an appendix to the final rule contains information on appropriate sampling methods for these substances. The Agency has responded to industry concerns by dropping its proposed 10 mg/m³ STEL for oil mist but retaining the 5 mg/mg³ TWA.

Sulfur dioxide (SO_2) exposures in the wet corn milling industry as a result from soaking of cleaned corn kernels in large vats (known as steep vats) for 30 to 50 hours. The purpose of the steeping process is to soften the corn in preparation for further grinding, screening, and centrifugal operations. This steeping process takes place in a dilute sulfur dioxide solution (sulfurous acid) [Tr. 8/15/88, pp. 9–10]. Worker exposures occur when sulfur dioxide is released from solution in the steeping tanks. The principal controls available to reduce exposures to sulfur dioxide are local exhaust ventilation, the use of isolated control rooms, process enclosure achieved by the use of closed stainless steel tanks, enclosed screening systems, and general automation [Tr. 8/15/88, pp. 8–77 to 8–78].

Exposure data for this segment of SIC 20 are sparse, except for data from a study conducted by the CRA in five of its member plants in 1977 in connection with the Agency's earlier SO_2 rulemaking. Eight-hour TWA samples were taken on 213 workers exposed to SO_2 in wet corn milling and on a group of 344 non-SO_2-exposed workers from other parts of the plant [Ex. 65, Tab 9]. [The "background" SO_2 level even for the controls, however, was determined to be 0.33 ppm (8-hour TWA).] The median exposure in the SO_2 group was 2 ppm; 15 percent of all workers were exposed above 5 ppm. No STEL measurements were taken. Exposures (8-hour TWAs) ranged from 0.1 to 10.8 ppm. According to industry sources, these results "represent worst-case" exposures because they were obtained during the winter months, when the plants' windows and doors were closed [Ex. 65, Tab 9, p. 7]. More recent exposure data, described at the hearing as "non-systematic" and variable in "sampling efforts, methods and results," were summarized as follows:

> While many plants report 1987–88 personal sampling results in the range of 2 ppm, even plants in that category are not below 2 ppm consistently, and a large number of employees are still exposed in the range of 4 to 5 ppm.

Industry representatives at the hearing indicated that opening the doors and windows even when there was only a 5-mph breeze outside increased the effectiveness of in-plant ventilation by a factor of five [Ex. 65, Attach. D, pp. 2382–2387]. In addition, testimony indicates that the higher 8-hour TWA readings and those above 10 ppm were caused by "emergencies," "pipes breaking, or the process getting out of control, the tank . . . [overflowing] as a pump seal breaks, or something of that sort" [Ex. 65, Attach. D, pp. 2314, 2315, 2319]. Testimony also indicates that many of the sampling results reported above were taken on maintenance workers, who are personnel dedicated to maintenance functions [Tr. 8/8/88, p. 8–85].

Industry representatives reported that major improvements in SO_2 exposures could be achieved:

> Plants vary widely in age, the degree of natural ventilation available, the degree to which their process is entirely closed, the location and source of the sulfur dioxide they use in steeping, the amount of local exhaust equipment already in place, the extent to which control rooms isolate the operator from the process, and various other factors [Ex. 65, Attach. F, pp. 35, 37].

Some equipment, such as the "steeps" or soaking tanks, are more than 40 years old; some of these tanks are still the wooden staved steeps of years ago [Ex. 65, Attach. D, p. 2324]. One company has milling plants that range from 30 to 97 years in age [Ex. 65, Attach. D, p. 2324]. Spokesmen reported that the industry's efforts to modernize plants has not resulted in appreciably lower employee SO_2 exposures because improvements in engineering controls, i.e., ventilation, have not kept up with increased production [Ex. 65, Tab 13, p. 7]. An OSHA-sponsored study performed by JRB Associates for the previous SO_2 rulemaking found that plants in this sector could achieve the 2-ppm TWA and 5-ppm STEL with the expenditure of a relatively small amount of money [Ex. 65, Attach. D, pp. 2322–2324].

There are no sampling data in the record relating to the 5-ppm STEL for SO_2, because the CRA-sponsored exposure survey undertaken in 1977 contained no STEL sampling results. The recent record [Ex. 65, Tab 13, p. 7] states simply that:

> Short term exposures, especially for maintenance job functions, can be considerably higher than 4 to 5 ppm [Ex. 65, Tab 13, p. 7].

OSHA notes, however that the wet corn milling process is a steady-state process:

> The process . . . is rather level as far as the [SO_2] concentration is concerned with the exception of emergencies, pipes breaking, or the process getting out of control . . . (Ex. 65, Attach. D, p. 2314–2315) . . . [except] for maintenance emergency problems, the exposure to sulfur dioxide in the process is fairly constant.

OSHA finds that the 2-ppm 8-hour TWA and the 5 ppm 15-minute STEL for sulfur dioxide are technologically feasible in the wet corn-milling process.

(1) In 1977, 50 percent of all SO_2-exposed employees had exposures at or below 2 ppm; because the sampling results for dedicated maintenance employees are contained in these numbers, the actual percentage is greater than 50 percent for non-maintenance workers;

(2) Most of the sampling results from the high end of the 0.8 to 10.8 ppm range of exposures cited by the CRA occurred during process upset or maintenance operations;

(3) The 1977 CRA sampling results were "worst case," so the number of overexposed employees is overstated; respirators are permitted in these operations;

(4) Because most exposures are already below 2 ppm, little in the way of additional control will be needed (note that opening the windows increased the efficiency of ventilation by a factor of 5, indicating that additional make-up air would do the same);

(5) STEL exposures are not a problem because the wet milling process, except when it is not being adequately controlled, is characterized, according to industry representatives, by relatively constant, non-fluctuating ambient concentrations of SO_2. Because most exposures are already below 2 ppm and the overwhelming majority are now at or below 5 ppm, the STEL has essentially been achieved in this sector. That is, in a steady-state exposure environment where 8-hour TWA exposures are below 5 ppm, 5 ppm STEL exposures are not a problem. In wet corn milling, short-term exposures are a problem only in maintenance and emergency operations; in both cases, respirators are both permitted and encouraged by OSHA.

(6) Where exposures are above 2 ppm, they are only slightly above 2 ppm. Minor upgrades in ventilation and some modernization of the oldest equipment will reduce exposures below 2 ppm.

SIC 21—Tobacco Products

Tobacco dust and residual pesticide dusts created during cutting and shredding operations have been reduced through the use of local exhaust ventilation. This has also been used to control emissions of ethyl alcohol-based chemical flavorings during blending operations.

There were no comments submitted to the docket for this sector.

SIC 22—Textile Mill Products

Textiles are dyed at various stages in their manufacture, including unspun fibers, unwoven yarn, and finished fabric. Workers who prepare fabrics from unspun fibers are of particular concern, since they could be potentially exposed to dyes contained on dusts generated during manufacture. In addition, some dyes possess much poorer fastness to wet treatment than do others; persons who launder such clothing are potentially exposed to the dyes. Stringent control measures and work practices can prevent such exposure.

Several generally acceptable practices for the control of hazardous materials can be used wherever there is the potential for exposure. For example, pressure failure alarms for closed systems and exhaust ventilation can rapidly indicate a system failure that might result in the release of substantial quantities of dyes. Continuous flow indicators, such as water or oil manometers properly mounted at the juncture of a fume hood and duct throat and marked to indicate acceptable airflow, will give a readily observable indication of decreased efficiency in the ventilation system for the hood. Wet methods, vacuum cleaning, or other methods that do not lead to redispersion of settled dust should be used for plant maintenance and sanitation. Dry sweeping or blowing with compressed air should be prohibited.

Evidence presented in the docket suggest that controls necessary to meet the proposed standards have already been installed at many facilities. The American Textile Manufacturers Institute, Inc. (ATMI), representing 65 percent of the industry's manufacturing capacity, reported that "member companies generally try to meet the ACGIH TLVs for both those chemicals which are regulated by PELs and those which are not. Because the ACGIH TLVs are annually reviewed and revised, ATMI's member companies believe compliance with these voluntary standards has led to safer and healthier workplaces for their employees" [Ex. 3–434].

The National Cotton Council of America [Ex. 3–1080] reported that "Textile manufacturers generally try to use the existing ACGIH TLVs as guidelines for good practice to provide a safer and healthier workplace for their employees." Their comments state that some of the levels are difficult to attain, but are said to be feasible.

SIC 23—Apparel

Chemical exposures in the apparel industry occur principally as a result of three exposure sources: spot cleaning, dry cleaning and contact with treated fabrics.

Spot cleaning and dry cleaning operations exposures to perchloroethylene can be controlled with the use of local exhaust ventilation and general ventilation. Work practice improvements help reduce solvent exposure during transfer operations. Routine scheduled maintenance can be used to detect and control leaks from door gaskets and seals. Contact dermatitis is reduced through the use of disposable gloves and adherence to a personal hygiene program.

A detailed discussion of perchloroethylene is presented in SIC 72.

SIC 24—Lumber and Wood

The primary worker exposure in the lumber and wood industry is wood dust. For the operation of large equipment (e.g. in debarking and sawmill activities), the operator can be placed in an enclosed control booth, or in the case of moving equipment (e.g. cherry pickers, loaders and cranes), the operator can be located in an enclosed cab. In both cases, air would be filtered and conditioned. In the case of felting or matting process lines, or such equipment as belt sanders, the equipment can be enclosed or hooded and vented to a baghouse. For smaller equipment, such as variety saws, tenoners, and dovetailers, hoods or various types of negative pressure (or combinations of positive and negative pressure) local ventilation devices can be used to

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control wood dust. In the case of hand-held sanders, a vacuum system can sometimes be applied to the process. Some other wood dust generating equipment can also be enclosed (e.g. planers), but this is generally done for noise control.

The technical feasibility of a 5 mg/m³ PEL for wood dust was challenged, indirectly, by only one commenter to the record. The American Furniture Manufacturers Association [Ex. 3-917], after speaking of the general technical feasibility of the proposed standard and the difficulty of controlling wood dust around some machines, stated: "Other machines are so complicated (such as multiple spindle boring machines and multiple spindle carvers) that no effective collection system has yet been defined." OSHA disagrees and concludes that exposures on these machines can be controlled. Included in the documentation of the site visits conducted for this rulemaking [Ex. 11] is at least one case of a multiple head boring machine which was equipped with local exhaust ventilation and a multiple spindle "trim, bore and dowel" machine also equipped with local exhaust ventilation. TWA exposures to wood dust for the operators of these machines were 1.0 and 0.4 mg/m³ respectively.

Vast numbers of commenters expressed their support for a 5 mg/m³ PEL for wood dust without any question of technological feasibility. A few examples follow. Appalachian Hardwood Manufacturers, Inc. [Ex. 3-626] stated that, although they felt it would be expensive, "To bring all our mills into compliance with a five milligram per cubic meter standard would be technically feasible." Monadnock Forest Products, Inc. [Ex. 127, Attachment C and Tr. 8/12/88, p. 210] states that "5 mg/m³ is technically feasible but due to cost it should be phased in over a number of years." The National Dimension Manufacturers Association [Ex. 3-1160] commented: "Achievement of a 5 mg/m³ permissible exposure limit [for wood dust] is believed to be technically feasible. . . ." Others at the hearings supporting the adoption of the 5 mg/m³ level included David Smith of Willamette Industries [Tr. 8/12/88, p. 369] and Charles Carey of Ross Associates [Tr. 8/12/88, p. 411]. Whirlpool Corporation [Ex. 3-824] provided exposure data for a sanding work station, before and after the installation of control equipment. Exposures before the ventilation equipment was installed ranged from 13.0 to 29.6 mg/m³. With the equipment in place, exposures ranged from 0.88 to 3.16 mg/m³.

Two surveys cited by Mr. Scott Schneider of the Workers' Institute for Safety and Heath [Tr. 8/15/88, p. 6 and Ex. 115, Attachment A] also support the feasibility of the 5 mg/m³ PEL. A 1986 OSHA Health Response Team survey showed that "two thirds of the personal samples were below two milligrams per cubic meter and over 40 percent were below one." Twelve of the 23 plants in a 1985 survey by Haliday Associates in Ontario, Canada, had no exposures over five milligrams per cubic meter and two of the plants, one of which was a furniture plant, had no exposures above one milligram per cubic meter.

Exposure data from the Clayton Environmental Consultants' study for the Inter-Industry Wood Dust Coordinating Committee was cited by Mr. Michael Coffman at the informal public hearings [Tr. 8/12/88, p. 99]. Mr. Coffman stated: "Within SIC code 24, we collected a total of 676 dust measurements. Eight percent of these were found to exceed five milligrams per cubic meter; 30 percent exceeded one milligram per cubic meter. Within SIC Code 25, 107 total dust measurements were collected. Fifteen percent of these exceeded five milligrams per cubic meter, 40 percent exceeding one milligram per cubic meter. Within SIC Code 26, a total of 19 measurements were collected, five percent exceeding both one and five milligrams per cubic meter."

Exposure data presented by machine type in the Clayton study [Ex. 127A], and shown below in Table F-1, provide clear evidence that the 5 mg/m³ level can be attained for many machines by using local exhaust ventilation. These data demonstrate that exposures of operators at these machines can be uniformly controlled. Table F-2 presents data showing the effectiveness of ventilation and air-conditioned booths for other machines.

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Table F-1

EXPOSURES TO WOOD DUST FOR MACHINES
EQUIPPED WITH LOCAL EXHAUST VENTILATION

Machine	Number of Exposure Measurements: Total	Above 5 mg/m³
Bandsaw-finish	7	1
Cut-off saw	33	1
Gang rip saw	15	2
Rip saw	22	0
Variety saw	15	1
Belt sander	41	3
Hand-held sanders	8	
Molder	17	0
Planer	16	2
Router	4	0
Shaper	9	1
Tenoner	22	5

Table F-2

EXPOSURES TO WOOD DUST FOR MACHINES
WITHOUT CONTROLS OR WHERE OPERATOR IS ISOLATED
IN AIR-CONDITIONED BOOTH

Machine	Number of Exposure Measurements: Total	Above 5 mg/m³	Controls
Drilling and Boring	7	1	No controls
Sorter/Stacker	12	1	No controls
Chipper	12	1	No controls
Dryer	7	0	No controls
Veneer Clipper	4	0	No controls
Hot Press	5	0	A/C booth
End Loader	6	0	A/C booth
Felter	3	0	A/C booth
	5	0	Ventilation
	4	1	No controls
Bandsaw-Sawmill	8	0	A/C booth
	4	1	Ventilators
	10	2	No controls

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A number of commenters also estimated what their costs of compliance would be if a 5 mg/m³ standard were adopted (specific examples are addressed in Chapter G). Estimating the costs implies the technical feasibility of meeting the standard. All of the foregoing is evidence that control of wood dust at or below 5 mg/m³ is technologically feasible.

Washington State has adopted exposure limits of 2.5 mg/m³ for western red cedar and 5 mg/m³ for other woods. According to Mr. Stephen Cant of the Occupational Health Program for the State of Washington, ". . . in our process of adopting this specific wood dust standard the industry presented absolutely no comment in terms of concerns regarding the limits" [Tr. 7/29/88, p. 102]. Mr. Cant also states: ". . . Industry has been comfortable with [these] limits in the northwest. We find that they can, in fact, in most cases comply with those limits. . . . ."

A study conducted by the University of Washington Department of Environmental Health [Ex. 127H] provides recommendations on achieving the 2.5 mg per cubic meter level, as well as some exposure data. The report notes that average exposures for shake saw operators in the mills surveyed were 1.63 mg/m³. The range of exposures for other mill workers (splittermen, deck hands and packers) ranged from 0.22 to 2.7 mg/m³. Shingle saw operators were the only workers routinely exposed at levels above the 2.5 mg/m³ limit, with average exposures of 3.84 mg/m³. From this study: "The Washington exposure levels can be compared to levels in Canadian sawmills after ten years of a Canadian regulatory limit of 2.5 mg/m³. Cedar dust levels were studied in Canadian sawmills in 1985 by a researcher named Vedal. Total dust exposure in observed Canadian mills ranged from undetectable to 6.0 mg/m³ averaged over an 8-hour work day, with an average dust exposure of 0.21 mg/m³. Only 10 percent of workers were exposed to more than 1.0 mg/m³, and of these only 3.9 percent had exposures greater than 2.0 mg/m³ TWA." Included in the University of Washington report are a number of specific designs for local ventilation, baffles for shake and shingle saws and general recommendations on housecleaning.

SIC 25—Furniture

The feasibility of the standard for wood dust in this SIC is discussed in conjunction with SIC 24, above.

A review of processes in the metal office furniture manufacturing sector (SIC 2522), shows that air contaminants from the coating process have been controlled. Prefabricated sheet components for file cabinets are prewashed and coated with polyester or acrylic on a high speed conveyor line. The application process includes manual spraying of cabinets with airless atomizing sprayers and electrostatic spray guns on reciprocators. Manual spraying operations are performed in downdraft booths. Filtered fresh air is supplied through the open top of the booths and removed at the bottom through a water curtain by exhaust fans mounted on the roof of the booth. Spray headers in exhaust plenums clear paint mist from the air stream. Automatic spray booths contain electrostatic spray guns and side draft ventilation. Furthermore, organic solvent vapors in the paint mixing and storage room are controlled by equipping each drum with a heavy barrel cover, an integral agitator, sealed pipe openings, and a closeable access line.

Masco Corporation [Ex. 3-682]: "Methodologies for control of solvents from finishes in the woodworking industry are limited. . . . OSHA therefore has presented no feasible methodology for the woodworking component of the furniture industry to control solvent or potential gaseous air toxics." OSHA concludes that control is feasible. The control for such potential exposures is, in almost all applications of lacquers, varnishes, sealers and stains, a form of local exhaust ventilation control commonly referred to as a spray booth.

Spray booths are in wide use in the furniture industry and were seen in use at several of the plants on the site visits conducted for this rulemaking analysis [Ex. 11]. In each case the exposures were far below the PELs, and in several cases the solvent levels were not detectable.

A NIOSH study [TA 79-047-825] recommends that the exhaust opening in a painting room should be located as close to the painting operation as possible to take advantage of spot ventilation. The exhaust opening location should be such that overspray is directed into the opening. The exhaust outlet should be placed so that all the air used for ventilation passes through the zone of contamination. The air flow should direct all contaminants away from the painter's breathing zone and into the exhaust outlet.

Most welding in furniture manufacturing occurs in a fixed location where exposures to the various components of welding fumes can best be controlled with adequate local ventilation. Numerous manufacturers have available local exhaust systems and source collection/filtration systems that will control welding fumes. These systems typically consist of a fan and either a fixed hood or a jointed, flexible arm, up to fifteen feet in length, at the end of which is a small hood. The flexible arm allows the exhaust system to cover a large work area. Such systems operate at air volumes of 400 to 1000 cfm and can be exhausted to an existing centralized ventilation system, to the vicinity of general shop ventilation (e.g., a roof fan) or directly to the outside. A wide variety of off-the-shelf local exhaust systems and collection filtration systems are available, including portable models. Custom ventilation systems can also be installed.

SIC 26—Paper and Allied Products

Pulp mills occur primarily in SIC 2611, but can also be present as part of the operations in SICs 2621 and 2631. High control costs could potentially be incurred because of the larger quantities of chemicals used in breaking down pulp to form cellulose and the reactions that occur in the digesting process between these chemicals and the substances contained in the wood fiber. Large quantities of chemicals such as chlorine and sodium hydroxide are also used in the bleaching operations. The digesting and bleaching operations are also very extensive. Large quantities of pulp are generally produced from wood in these mills either for captive use or for shipment to paper and paperboard mills. The type of controls that would be used include ventilation, enclosure and/or process change, but less likely the latter. Various engineering controls have been used by the paper mill industry to prevent the mixing of toxic chemicals in sewer lines. Tanks containing the hazardous chemicals have been isolated and surrounded by dikes. Discharge lines have been re-routed to prevent accidental mixing. OSHA believes that feasible controls are available.

Wood dust can be generated in some processes in pulp mills in SICs 2011, 2621, and 2631. Workers may be exposed to wood dust from debarking and chipping operations, as well as in the wood yard. Exposures to equipment operators in the wood yard can be controlled by installing enclosed, air-conditioned cabs on the equipment. Debarker operators are frequently protected by isolution in air-conditioned booths. Exposure data for debarkers included in the Clayton study of the Inter-Industry Wood Dust Coordinating Committee show only 2 of 21 measurements above the 5 mg/m³ level. Data for chippers, also from the Clayton

study, suggest that controls are rarely needed for chippers: Only one of the 13 exposure measurements for chippers that had no controls in place was in excess of 5 mg/m³. Based on all of the above, OSHA concludes that controls are feasible for this industry.

SIC 27—Printing and Publishing

The technological feasibility for the proposed standards for toluene was challenged by R.R. Donnelley and Sons (Ex. 3-916). "Donnelley believes that compliance with the proposed 150 ppm ceiling will be infeasible during certain press operations and especially during cleaning." Donnelley further state that "if the 100 ppm standard is achieved at great cost through general ventilation improvements, compliance with the 150 ppm 15-minute ceiling would be impossible without the use of local ventilation or respirators." The main concern of this discussion becomes apparent by the following remarks. "If, as proposed by the regulation, respirators cannot be used six months after the effective date of the regulation, local ventilation is the only option. Given the number of presses in service at Donnelley's plants . . . the proposed 150 ppm ceiling will require, at a minimum, a maze of ventilation equipment which can be expected to cost millions of dollars." These statements reflect the costliness of achieving the proposed standards for toluene in this firm but acknowledge that engineering controls are feasible. The commenter apparently misunderstood the discussion (Federal Register, Vol. 3, 6/7/88, pp. 21241, 2), on the proposed length of time for firms to achieve compliance under the hierarchy of controls. OSHA also believes that there are substitute solvents available such as ethanol, ethyl acetate or nitroethane that could be used in cleaning operations or water-based inks not requiring major solvent use that could enable printing firms to achieve compliance with the final PELs. In addition, OSHA believes that engineering controls in the form of local exhaust ventilation are technologically feasible for press applications in the printing industry.

Site visits and monitoring were conducted to two printing establishments (Ex. 11—Firms 14, 45). One was a letterpress and lithographic operation and the other was a "quick-print" shop. In neither case were there overexposures to any of the following chemicals in use: Antimony and compounds, dipropylene glycol methyl ether, ethylene glycol vapor, hexane isomers (other than n-hexane), n-hexane, naphtha, potassium hydroxide, propylene glycol monomethyl ether, sodium hydroxide, stoddard solvent (mineral spirits), tetrachloroethylene, and inorganic tin compounds (except oxides).

SIC 28—Chemicals and Allied Products

In its research on technological feasibility, OSHA found the following examples of controls currently in use:

- The plastic materials and resins manufacturing sector (SIC 2821) used a tank with a hinged cover and fixed ductwork as an exhaust when dumping dye and additives into hot methanol.
- Dust exposure during the bag opening operation in paint manufacturing (SIC 2851) was controlled by modifying the hood to increase dust capture. Likewise, a new dust collection system (collection hoods) with increased capture velocity was installed for use in the bagging and packaging of pesticides (SIC 287).
- Pharmaceutical manufacturers (SIC 2824) addressed the problem of nuisance dust particles by fitting vacuum crescents and elephant trunks on poin.' sources, by fitting chutes with covers, and by placing vacuum attachments on receiving drum covers. Additionally, monitoring was performed from an outside room.
- In order to reduce employee exposure to sulfur dioxide while producing sulfur dioxide gas (SIC 2819), sample collection units were enclosed and attached to a fume collection system. Sample waste was recycled to prevent open exposure in process areas. Electronic spent acid interface detectors were installed to eliminate the need for employee visual inspection of intermittently pulled samples.
- To control TDI exposure in urethane foam manufacturing (SIC 2822), the bun conveyor was enclosed and exhausted. Employee exposure was limited to the startup and finish procedures when installing and removing bun support. A mechanism was designed to support the bun, which eliminated the need for it to be done manually.

In addition, OSHA looked at controls used in paint manufacturing processes. The production of paints (SIC 2851) is a batch procedure which involves the following steps: prebatching, mixing, dispersing, tinting and shading, filling, and storage or shipping. When prebatching or mixing, an employee will slit a bag of dry pigment with a knife and either scoop out the contents for weighing or dump the pigment into the mixer. In some cases, pigments are received in a slurry form and are piped directly into the mixer. Solvents and other raw materials are added into the mixer. Once combined, the mixture is in a paste or slurry form. This mixture is then thoroughly dispersed in a roller, ball, or sand mill or a high-speed disperser all of which are generally closed processes. The paste is transferred to a storage tank where thinning or other agents are added. The paint is later drawn off, filtered and packaged in cans or drums. Airborne dust exposures to components in dry pigments occur during the prebatching and mixing operations when the bags of pigments are opened and dumped. Exposure to chemicals in dry pigments can also occur from pigment spillage and empty bag flattening and disposal. Once the batch is in solution in the mixer, there are no further dust emission points. Exposure to solvents can occur during addition of these ingredients to the mixing tanks, during any leaks or spills, and during packaging.

Local exhaust ventilation would be used to control exposures to dusts and fumes in the paint production processes. Pigment dust exposures at the dumping station can be controlled with the use of a vented enclosure kept under negative pressure by a ventilation system. Empty bags would be manually ejected through a side opening into a large plastic disposal bag to mimimize dust generation during bag flattening and disposal.

Exposures to solvents would be minimized with the use of portable hoods attached to flexible ductwork. These ventilation hoods could be placed over the liquid dumping process and also the packaging operation if the percentage and volatility of the solvents would result in exposures.

Observations and judgments proffered by various chemical industry representatives and associations indicate general compliance with the PELs. Such statements indicating widespread compliance demonstrate the existence of available and practicable control methods for a number of chemicals and processes.

Technological feasibility in SIC 28 for most of the proposed PELs is not challenged in the record. Comments received from ARCO [Ex. 3-740] state: "In general, the petrochemical industry has been using the ACGIH TLVs as the primary workplace exposure guideline for years." This statement implies that most of the PELs are not only feasible but are currently being met.

Dr. Isadore Rosenthal has stated on behalf of Rohm and Haas Company that "experience and data tell us that it is feasible for our company to achieve the ACGIH TLV workplace exposures. This takes time to accomplish, however, and

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therefore a phased in approach to controls is necessary. The period of time in which a firm has to achieve exposure controls should begin only after OSHA has certified a feasible analytical method" for determination of exposure [Tr. 8/1/88, pp. 15–16].

The Polyurethane Manufacturers Association [PMA], in expressing support for the proposed PEL for 4,4'-methylene bis(2-chloroaniline), also discussed the feasibility of achieving the proposed level of control [Ex. 3–683]. PMA stated that ". . . the various control technologies and personal protective equipment for these various situations [where exposures occur] is recognized in the industry. . . ." Representatives of the PMA also testified that they believe the industry can comply [Tr. 8/9/88, pp. 83 and 91].

Feasibility of controlling exposures to talc dust was indicated by the remarks of the R.T. Vanderbilt Company [Ex. 3–108]: "We would agree with the ACGIH that dust control has all but eliminated the excess death rates in the talc industry. We also support the 2 mg/m³ respirable talc dust standard." Vanderbilt apparently foresees no difficulty in controlling talc dust at the new PEL.

The feasibility of the proposed 50 ppm PEL for styrene was asserted by the Dow Chemical Company in its comments to the record [Ex. 3–741]: "Dow manufactures styrene and uses styrene in several processes including the manufacture of styrene polymers and polyester resins. These operations can be controlled to reduce exposures below the proposed PEL of 50 ppm and, in fact, most Dow operations already operate at less than 50 ppm."

The Halogenated Solvents Industry Alliance (HSIA) expressed some concern about the feasibility of the proposed 2 ppm 60-minute STEL for carbon tetrachloride [Exs. 3–673, 8–86, 186], but did not identify specific areas where compliance might be infeasible. HSIA also stated "Since carbon tetrachloride is generally used as a process solvent or raw material, workplace exposures are quite low, generally, we believe, below the ACGIH TLV of 5 ppm." Dow Chemical identified specific tasks and operations such as sampling, loading and unloading, and maintenance where they felt that compliance might be difficult or impossible [Ex. 3–741].

Similar concerns were raised about the feasibility of the proposed 2 ppm STEL for chloroform. HSIA anticipated "that non-chemical industry users. . . would find a 2-ppm limit infeasible in some cases" [Ex. 3–673, 8–86, 186]. The only tasks or processes specifically mentioned in the record as potential problem areas for carbon tetrachloride and chloroform are sampling, loading and unloading, and maintenance [Dow Chemical Company, Ex. 3–741]. These three tasks were named by Dow as problem areas for ethylene dichloride, as well.

Hoffman-LaRoche Corporation stated that ". . . one of the most significant problems associated with the use of chloroform is its high vapor pressure which makes it extremely difficult to contain during processing. Although compliance with the ACGIH TLV of 10 ppm would be difficult to achieve, the proposed NIOSH REL of 2 ppm would, in our opinion, be technologically infeasible" [Ex. 3–748].

Chloroform is manufactured in a gas phase reaction at temperatures ranging from 350 to 750 °C. The major use of chloroform, production of chlorofluoromethanes, also involves reactions carried out at elevated temperatures and pressures. These reactions must be performed in a completely closed system, so routine exposures should be minimal. Given the nature of the production process and the primary use of chloroform, together with the absence of comments from other manufacturers regarding exposures during processing, OSHA concludes that the 2 ppm PEL is technologically feasible.

OSHA recognizes that brief exposure levels of over 2 ppm can be encountered during loading and unloading operations of carbon tetrachloride and chloroform. However, OSHA concludes that the 8-hour TWA PELs of 2 ppm for chloroform and carbon tetrachloride are feasible. Reduction of emissions from tank car and tank wagon openings can be achieved with the use of engineering controls such as vapor recovery systems. Workers should be exposed only for extremely brief periods when attaching or disconnecting lines during loading or unloading operations. Training in and use of proper work practices, in conjunction with proper maintenance or replacement of valves and couplings can reduce both levels and duration of exposures.

The laboratory analysis of samples should be performed under a hood. Overexposures during the collection of samples can be prevented by the installation of sampling boxes if adjustments in work practices are insufficient. Because OSHA allows the use of respirators to prevent overexposures during maintenance activities, feasibility of engineering controls is not a problem for these intermittent activities.

The Vinyl Institute [Ex. 3–624] asserted that modifications would be required to the tank farm vent controls in "a typical EDC/VCM [ethylene dichloride/vinyl chloride monomer] plant . . . to comply with the proposed regulation for EDC." OSHA concludes that significant exposures will not occur under ordinary conditions in a tank farm because workers are not normally stationed there. The Vinyl Institute also asserted that increased down time of plants would be necessary to clean process equipment of EDC before maintenance work could be performed on that equipment. Because OSHA allows the use of personal protective equipment for maintenance activities, no additional down time or problem of feasibility from this standpoint should be encountered.

The Dow Chemical Company [Ex. 3–741] and the Chemical Manufacturers Association [Ex. 3–874] asserted that the 1 ppm TWA for ethylene dichloride may not be feasible in maintenance, sampling, and loading. OSHA believes that there are engineering controls which can control exposures at these specific operations. However, if engineering and work practice controls cannot reduce exposures to the new PEL, respirators would be allowed.

The feasibility of controlling exposures to carbon disulfide in rayon manufacturing was questioned by the North American Rayon Corporation [Ex. 3–415] and the Inter-Industry Committee on Carbon Disulfide [Ex. 3–174]. The overexposures are said to occur only when "the windows and hoods are raised to allow access to the machine." The three tasks for which opening the hoods are necessary are for changing spinerettes, for removing filament bundles and to meet product line changes [BASF Corporation, Fibers Division, Exs. 3–674, 125]. BASF claims that in these areas, ambient workroom air cannot be reduced to 1 ppm as a TWA or 10 ppm as a STEL [Ex. 125]. Rayburn H. Dean, BASF Group Vice President, stated that at other times and in all other areas of the plant, exposures are below 1 ppm, although he refused to provide monitoring data on the grounds that it is proprietary [Tr. 8/2/88, pp. 157–159]. Mr. Dean also explaind that, referring to the cutting area, "We have some TV monitoring there so that fewer people are in that area. When they are, we have installed this special air conditioned room that you made reference to earlier, down in the spinning room" [Tr. 8/2/88, p. 151]. Manufacturers already have "NIOSH approved respirators that must be used" any time there is a short-term excursion above 20 ppm. [Tr. 8/2/88, p. 136]. "The respirator is the only control available in these three routine operations, to prevent consistent and repeated exposure of the workers to carbon disulfide" [Ex. 125]. OSHA realizes the complexity of this process situation and concludes that the use of respirators during the three aforementioned situations will permit the highest level of protection to workers.

Dow Chemical [Ex. 3–741] and the Halogenated Solvents Industry Alliance [Ex. 3–873] questioned the feasibility of the proposed trichloroethylene (TCE) PEL of 25 ppm in degreasing operations. OSHA concludes that exposures in degreasing can be controlled at the final level of 50 ppm and that exposure data support this position. Both commenters provided information which indicated that, in 1974, 37 percent of open-top degreasers using TCE could maintain 25 ppm and a European estimate from 1980 stated that 50 percent of open-top degreasers and 60–65 percent of closed degreasers could meet a 25 ppm standard. OSHA believes that a considerable amount of overexposure in degreasing is due to inadequate engineering controls or insufficient attention paid to the problem of solvent "carryout." The addition of controls such as chillers, lip exhaust, drying tunnels and covers will reduce personal and ambient exposure levels.

Control of chlorine exposures to the proposed 0.5 ppm ceiling was expected by Dow Chemical Company [Ex. 3–741] to require increased use of respirators by employees engaged in some tasks. Referring to the current PEL of a 1 ppm ceiling, Dow stated: "We have been able to achieve this degree of control in our Cl_2 plants and in the majority of our normal work situations so that respiratory protection is needed only in a limited number of short-term situations." Only one area where these situations occur was mentioned: magnesium production. A NIOSH Health Hazard Evaluation [No. 75–113–249] found a median exposure level of 0.16 ppm for 19 operators's breathing zone samples in a magnesium extraction and chlorination operation. A second NIOSH report [No. 79–40–1381] found a median of 0.2 ppm for 54 samples taken at a chlorine production facility. Only 17 percent of these samples exceeded 0.5 ppm. OSHA concludes that these studies, and the fact that technological infeasibility was not claimed for any specific operations, indicate technological feasibility of a 0.5 ppm TWA PEL and 1.0 ppm STEL for chlorine and that few, if any, additional measures will be necessary to meet these limits.

The manufacturers of cellulose acetate, Tennessee Eastman and Hoechst-Celanese, asserted that the proposed PEL of 250 ppm for acetone is not technologically feasible by means of engineering controls [Exs. 128, 149, 8–54]. Four employee categories were specifically identified in testimony as situations where compliance by engineering controls would be infeasible: filtration workers, dope operators, spinning machine operators and doffers, and parts washing.

While the manufacturers stressed the importance of using acetone as the process solvent, substitute solvents, such as ethyl acetate, could be found for parts washing. In activities such as parts washing, the solvent cannot affect fiber quality, but need only dissolve the cellulose acetate.

Filtration workers at a Kingsport, Tennessee plant dress four or five presses each twelve hour work day [Tr. 8/4/88, p. 142]. According to Mr. Joseph Morton of Tennessee Eastman, "Each press dressing requires about 45 minutes to remove dirty filter media and 45 minutes to apply clean filter media." Assuming that exposures are significant only during the removal of dirty filter media, this would amount to three to four hours of exposure per 12-hour shift. Mr. Morton also observes that "exposure levels of filtration workers frequently are in the range of 500 to 700 parts per million" [Tr. 8/4/88, p. 142]. Exposure monitoring data submitted by the Chemical Manufacturers Association Ketones Program Panel showed filtration workers exposed across a wide range of levels: Four of the 25 samples were in the range 500–750 ppm, 12 of the 25 were 250–500 ppm, and the remaining 9 were below 250 ppm. These data clearly suggest that exposure of filtration workers can be controlled at levels below 750 ppm. Because these samples were taken for the same job title at the same facility, they suggest that the wide range of exposures are due to work practices rather than differences in controls or tasks.

According to the testimony of Mr. Morton, the dope operators are exposed to acetone for about four hours per shift. The primary responsibility of dope operators is to wash the filter cloths in acetone. This exposure generally results in 8-hour TWA levels of 250 to 500 ppm [Tr. 8/4/88, p. 145]. The possibility of using ethyl acetate in place of acetone should be considered for this function, also. Monitoring results provided by the CMA show that most dope operators at the facility where the samples were taken are exposed at levels below 250 ppm. Eleven of the 17 samples were less than 250 ppm and 4 were between 250 and 500 ppm. Again, these samples were taken for the same job at the same facility, suggesting that differences in work practices provide a primary reason for the different levels of exposures. OSHA concludes that improvement to the existing engineering controls and careful attention to work practices would be sufficient to protect the dope operators from overexposure to acetone.

Spinning machine workers can be looked at in three groups: Doffers, acetate yarn spinning machine operators, and tow spinning machine operators. Five 8-hour TWA exposure measurements for doffers were provided by the CMA. Four were in the range 250–500 ppm and one was over 500 ppm. Only one of the 20 samples for yarn spinning machine operators was under 250 ppm. The remaining 19 were between 250 and 750 ppm. Exposure measurements for tow spinning machine operators were split evenly below 250 ppm (26 of 50 samples) and in excess of 250 ppm. Both Tennessee Eastman and Hoechst-Celanese stated that additional engineering controls are not feasible to further protect these operators. Additional local ventilation would cause the fibers to become entangled and complete enclosure would prevent necessary access to the equipment, as well as allowing the possibility of unsafe levels of acetone to build up in the enclosed areas. ". . .The proposed PEL of 250 ppm [for acetone] is neither technologically nor economically feasible" according to the Chemical Manufacturers Association Ketones Programs Panel (the "Panel") [Ex. 98–15].

Based on the evidence submitted OSHA concludes that a PEL of 750 ppm for acetone is not only technically feasible, but is currently being met.

The technological feasibility of the proposed 0.1 mg/m³ ceiling limit for exposures to nitroglycerin (NG) and ethylene glycol dinitrate (EGDN) is disputed by the Institute of Makers of Explosives (IME) [Ex. 3–749 and Ex. 190]. In this document, the Institute stated: "Reducing workplace levels of NG and EGDN to the proposed ceiling . . . through the application of administrative controls, engineering controls and/or personal protective equipment *is not feasible*" (IME's emphasis).

A number of arguments are presented to support this position. First, "Administrative controls (limiting the duration of a worker's exposure) are

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applicable for reducing . . . time-weighted averages, but not to the exposure levels based on short-term exposure limits or ceiling limits." Engineering controls are considered infeasible primarily because of safety concerns, such as the collection of explosive materials in local exhaust ventilation ductwork and the dangers of enclosing equipment. IME stated that general ductwork dilution ventilation has been effective in meeting the current 0.2 ppm ceiling limits for NG and EGDN. An attempt has been made to estimate the cost and feasibility of engineering controls, but it was concluded that ". . . the system had a less than 50% probability of successfully attaining a level of 0.01 ppm (0.1 mg/m³)."

On the feasibility of using personal protective equipment to comply with the proposed standards, IME contended that "Air purifying respirators are not generally suitable for use in NG/EGDN-containing atmospheres, and at least one manufacturer, Mine Safety Appliances, specifically warns against their use in such atmospheres." [Ex. 3-749]. NIOSH does not approve the use of canister or cartridge respirators for NG/EGDN because the odor threshold is above the PEL. This means that a worker could be overexposed while wearing a respirator and not be aware of it.

A self-contained breathing apparatus is not considered useable for long-term use because of its weight. Thus, air-line respirators are the single remaining alternative means of achieving compliance. However, the IME contended: "Air-line respirators are not feasible because the air lines restrict employee movement, thereby compromising several areas of operations safety as well as the ease of evacuation in the event of emergencies. In addition, lines trailing behind workers would hinder compliance with the long-standing industry standards for reducing to a minimum level all foreign items which might be accidentally introduced to the production equipment and product." [Ex. 3-749] No studies could be found concerning safety aspects of air line respirators. The lack of studies, complaints, or incidents involving safety problems with air lines despite very common and widespread use, leads to a conclusion that there are no significant problems.

The IME concluded that ". . . airborne concentrations of NG/EGDN have already been reduced to the practical minimum. Industry hygienists have concluded that reducing airborne concentrations would not decrease worker exposure and any further reductions must be accomplished through the implementation of improved personal hygiene and other workplace practices. The . . . industry cannot undergo further reductions without dramatically altering the manufacturing process. . . ."

OSHA recognizes the unique difficulties which arise from attempts to control exposures in the explosives industry, but does believe that the final limits can be met through a combination of equipment improvements and respiratory protection. The Institute of Makers of Explosives leaves open the possibility that exposures might be further reduced by process and/or equipment improvements. If compliance cannot be achieved via engineering controls or process improvements, then air-supplied respirators could be employed. Quick-release couplings on the air lines would eliminate problems relating to ease of evacuation in emergencies.

American Cyanamid Company suggested that the proposed standard of 0.03 mg/m³ for acrylamide is not technologically feasible. To support this position, Cyanamid reports that "NIOSH surveyed the acrylamide monomer manufacturing facilities recently and found that exposure levels were above the 0.03 mg/m³ level in all facilities" [Ex. 3-981 and Tr. 8/11/88, p. 57]. While exposures above the proposed level may have been found at all of Cyanamid's facilities, all of the personal exposure readings at one of the four facilities surveyed were less than 0.012 mg/m³. All of the area samples at two of the four facilities were less than 0.15 mg/m³. The conclusions of the NIOSH Hazard Study are that exposure levels were most dependent on the facility or location where the employee works rather than his job duties and that the primary difference in exposure levels between facilities was due to the background acrylamide air level (see *Applied Industrial Hygiene*, Vol. 1, No. 3, September 1986, "Evaluation of Occupational Acrylamide Exposures," Bruce Hills and A.L. Grieke, ACGIH, Cincinnati, pp. 148-152). The plant at which the highest exposure levels were measured, the only facility which manufactured dry acrylamide, has since closed. The range of personal exposure measurements at the remaining three facilities was 0.001-0.132 milligrams per cubic meter. Based on the data and conclusions of the NIOSH field studies described in the Hazard Evaluation, OSHA concludes that the PEL for acrylamide of 0.03 mg/m³ is technologically feasible.

U.S. Borax submitted information regarding expenditures they have made on environmental controls to reduce exposures to borates. Since 1970, they have spent $7.5 million at the Boron, California, facility. Although some of these expenses have been related to the mining operation under the jurisdiction of the Mine Safety and Health Administration [MSHA], the remainder are related to operations which are of concern to OSHA. The range of dust levels in the fusing department has been reduced to 0.63-50.54 mg/m³ and in the shipping department to 0.25-15.56 mg/m³ [Ex. 3-744]. It is not clear whether further reductions could be achieved, and U.S. Borax does not address this issue. Part of U.S. Borax' efforts to control dust related to paving some areas to reduce background dust levels. This effort has apparently been at least partially successful, as evidenced by the minimum values in the range of exposures presented above. It appears that the 10 mg/m³ PEL level for borates should/might be achievable under most circumstances. Further reduction in borate dust levels might be achieved through the installation of additional engineering controls such as dust collection systems for bagging and packaging, additional dust collection systems at critical release points and further reduction of background dust levels. If additional reductions do not achieve the required levels, the use of respirators will be necessary to protect workers.

SIC 29—Petroleum Refining

In order to assure the quality of petroleum products and determine quality of waste streams, petroleum refiners must sample their process streams periodically. As with maintenance, workers that sample process streams are at risk of being in close contact with a variety of chemicals. Controls for this operation involve sampling boxes that vent gases and vapors away from the operator and/or shield the operator from accidentally splashed or spilled material.

Process stream samples are taken to the laboratory to determine if their qualities lie within acceptable limits. As laboratory workers perform analyses, they can be exposed to various organic and inorganic chemicals if appropriate engineering controls are not in place or if proper procedures are not used. Exposure controls include exhaust fans and laboratory ventilation hoods. In general, this industry has extensive control technology in place for the primary processing equipment. Closed

processes with few exposed workers are predominant due to the requirements of process operation at elevated temperatures and pressures.

SIC 30—Miscellaneous Plastic Products

The Styrene Information and Research Council (SIRC) identified open-molding processes (i.e., processes in which styrene, frequently in combination with fibrous glass, is sprayed or rolled into a mold manually) as the type of process most likely to have difficulty meeting the proposed PEL for styrene [Ex. 3-742, p. 3 and Tr. 8/3/88, p. 5-64]. In SIC 3079, open-molding processes were identified as being used in the production of underground storage tanks, lavatory castings, tubs and spas, and cultured marble products [Ex. 3-742, p. 195 and Tr. 8/3/88, p. 5-181]. Other products that are made using open-molding processes include bridges for military vessels, [Tr. 8/3/88, p. 5-188], planters [Ex. 3-742, Attachment 2, p. 15], benches [Tr. 8/3/88, p. 5-195], and chimney stacks [Tr. 8/3/88, p. 5-186].

Worker exposures to styrene occur principally in two process steps in the open-molding process: gel-coating and lamination [Ex. 3-742, Attachment 2, pp. 17-19 and Tr. 8/3/88, pp. 5-131 to 5-133]. Gel-coat is a pigmented resin of polyester resin-based paint. The application of gel-coat is similar to the application of paint and is normally done using an air atomizer or airless spraygun. Lamination may be applied using either hand layup or hand sprayup. In hand layup, workers place a layer of fiberglass matting directly onto the mold and secure the fiberglass with a layer of resin, which is normally applied with rollers or brushes. In the sprayup process, a chopper gun chops fiberglass roving into pieces and sprays resin at the same time, so the two converge and are sprayed onto the mold simultaneously.

The most extensive data source on exposures to styrene in this industry sector is a study conducted by the State of California's Division of Occupational Safety and Health (DOSH) [Ex. 3-742, Attachment 2]. This study reported the results of an in-depth industrial hygiene survey of styrene and other hazardous workplace exposures in the fiberglass/reinforced plastics industry. A total of 141 workplaces were inspected, and 379 of the 2800 workers employed in these workplaces were sampled over a full workshift [Ex. 3-742, Attachment 2]. The report also recommends the best control measures to minimize hazardous exposures; the focus of the study was on large open-mold sprayup/layup operations, because earlier research had shown that these open-molding operations had the highest exposures of all operations in these workplaces [Ex. 3-742, Attachment 2]. Styrene exposures (8-hour TWAs) at these processes ranged from 0.2 to 288 ppm; the 8-hour TWA arithmetic mean and the median for these sample results were 43.0 ppm and 34.0 ppm, respectively [Ex. 3-742, Attachment 2].

In a comparison of worker exposure levels by industry, the California OSHA study showed that the geometric mean exposure levels were highest in tub/shower manufacturing facilities (53.6 ppm), followed by camper manufacturing facilities (41.0 ppm), spa manufacturing facilities (25.8 ppm), miscellaneous manufacturing facilities (22.0 ppm), and tank manufacturing facilities (12.7 ppm). Operations ranked according to percentage of styrene exposures above 100 ppm as an 8-hour TWA (the former OSHA limit) were: tub/shower manufacturing (19 percent); spa manufacturing (11 percent); camper manufacturing (6 perceat); miscellaneous plastics manufacturing (4 percent); and boat and tank manufacturing (none).

The industrial hygienists who conducted this study initially believed that working on large molds, such as those involved in making boats (see discussion for SIC 37) or tanks, would result in the highest styrene exposure levels, because the mold almost surrounds the worker, making a kind of confined space. Workers engaged in boat and tank manufacturing, however, had the lowest overall exposure levels, while workers in the tub/shower and spa manufacturing sectors had more workers exposed above 100 ppm. A partial explanation for these differences in styrene exposure levels in various industry sectors is caused by differences in work production rates according to California OSHA. In boat manufacturing, for example, sprayup operations are performed at a slow and intermittent rate while tub/shower manufacturing is conducted at an assembly-line pace [Ex. 3-742, Attachment 2]. Industry representatives also believe that production volume plays a large role in determining styrene exposure levels. Jack Winnick, general manager of Gold Shield Fiberglass in Fontana, California, testified that plants in Western Europe can achieve much lower PELs than can plants in the United States because "[t]he volume of resin throughput and products produced is a mere fraction of the throughput in U.S. facilities . . ." [Tr. 8/3/88, p. 5-114].

California OSHA found, however, that the factor determining whether or not 50 ppm TWA is currently being reached in facilities producing reinforced plastics products is the degree to which effective controls have been implemented. The California OSHA researchers and Diane Factor of the AFL-CIO both reported that, in all cases where companies had implemented effective control measures, employee styrene exposure levels were below 50 ppm [Ex. 3-742, Attachment 2, and Tr. 8/4/88, p. 6-64].

There is some question regarding the representativeness of the California studies of conditions found elsewhere in the nation. First, SIRC notes that winter climates in the northern-tier states may present additional problems in achieving the proposed PELs [Ex. 181A, p. 38]. Furthermore, the findings of the California study were qualified by its authors as follows:

> This study was conducted in a CAL/OSHA compliance mode. This represents two problems: (1) industrial hygienists do not have the luxury of making frequent visits to any one site, and (2) employees have an understandable desire to minimize actual exposures by various means . . . in order to avoid CAL/OSHA citations and fines [Ex. 3-742, Attachment 2, p. 31].

OSHA appreciates the critiques of the CAL/OSHA study. OSHA found that employers would need to employ a flexible compliance strategy during manual layup/sprayup operations to achieve the proposed limits in boat-building facilities (see Technological Feasibility discussion for SIC 37). The California study indicates that employee exposures to styrene during manual layup/sprayup operations in facilities in SIC 30 are even higher than those for boat-building facilities. Thus, there is uncertainty about the technical feasibility of achieving the 50-ppm TWA and 100-ppm STEL limits exclusively by implementing engineering and work practice controls during manual layup/sprayup operations in SIC 30. Respirators as well as engineering and work practice controls may be necessary to achieve these limits in some operations. OSHA concludes, however, that for most operations in SIC 30 where styrene is used, the revised TWA and STEL limits are technologicaly feasible.

Daniel Boyd, representing the SIRC, also commented that the mixtures formula described in 1910.1000(d)(2)(i) would necessitate reducing employee exposures to well below 50 ppm. He stated that:

> Since the reinforced plastics environment consists of a number of chemical constituents, the allowed exposure to these various chemicals must be calculated through the mixture formula. . . . OSHA's application

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of the mixture formula will require limits well below 50 ppm for styrene and [the proposed PEL of] 250 ppm for acetone [Tr. 8/3/88, p. 5–97].

The SIRC thus argued that, with the mixtures formula, "OSHA has proposed a rule [for styrene] that would impose an exposure level lower than it has accounted for in its feasibility analysis" [Ex. 181A, p. 44].

OSHA does not agree with the SIRC that the mixtures formula requirement will have a substantial impact on the ability of employers to comply with the 50 ppm PEL for styrene. Traditionally, OSHA does not apply the mixtures formula in most cases where multiple exposures occur. According to OSHA's *Field Operations Manual (FOM)*:

> The use of . . . [the mixtures formula] requires that the exposures have an additive effect on the same body organ or system. Caution must be used in applying the additive formula, and prior consultation with the Regional Administrator is required [OSHA FOM, Chapter IV, Section 6(e)(i)].

Thus, in the case of styrene and acetone, which are both used in the reinforced plastics industry, OSHA does not believe that the mixture formula rule specified in paragraph (d)(2)(i) of the final rule would necessarily apply, because styrene is principally a narcotic agent that acts on the central nervous system and acetone is primarily an irritant that acts on the eyes and respiratory passages at concentrations at or below the final PEL. These substances therefore cannot be considered as having an additive effect. Consequently, OSHA has based its feasibility assessment for styrene and acetone in the reinforced plastics industry on the availability of the engineering and work practice controls necessary to achieve the PELs for these substances individually.

Carbon disulfide is a solvent used in the production of cellulosic food casings. It is reacted with cellulose to make xanthate and is slowly released during subsequent steps of production. The process currently used is the only known process for producing cellulosic food casing, and carbon disulfide is the only known solvent for this process [Ex. 8–45].

The feasibility of controlling exposures to carbon disulfide in the manufacturing of cellulosic food casings was questioned by representatives of the producers of these products, Viskase Corporation and Teepak, Incorporated [Exs. 33, 162, 3–753, 8–19, 8–45, Tr. 8/2/88, pp. 4–201–217]. These commenters noted that, in three specific operations, it is necessary to open the machinery to perform manual operations, (unloading the baratte, aligning strands in the cabinet, and manual puncturing of the casings). When unloading the baratte, manual raking is required because of the light and sticky characteristics of xanthate, the parent compound. Operator access is required to keep the strands of product properly aligned within the extrusion apparatus (or "cabinet"). Manual puncturing of the casings is required downstream of the extrusion nozzles [Ex. 8–45]. Personnel performing all three of these operations must open the process machinery while performing these tasks; currently, personnel wear air-supplied hoods to protect against the carbon disulfide excursions above 20 ppm associated with the operations [Tr. 8/2/88, p. 4–228]. Operator access is essential to assure casing quality [Ex. 162]. An engineering study conducted in one of Viskase's plants concluded that "it is highly unlikely that the 1 ppm [level] could be obtained at [these] three * * * routine operator tasks," even if "the most extreme measure that can be visualized as an effort to reduce the concentration" was employed [Ex. 8–45]. Teepak stated that "no one * * * has developed a system or knows of any engineering controls that . . . [are] capable of reducing CS_2 levels in the casing industry to the 1 ppm level proposed by OSHA," adding that Teepak had recently redesigned and rebuilt much of its plant using the best available technology [Ex. 162]. Commenters repeatedly stressed [Exs. 33, 162, Tr. 8/2/88, pp. 4–201 to 4–217] that feasibility was a problem only for these manual operations; thus, OSHA concludes that the use of respirators as well as engineering controls and work practices, may be necessary for unloading xanthate from the baratte, aligning strands in the extrusion cabinet, and manual puncturing of casings at the extrusion nozzles unless OSHA can demonstrate that engineering controls and work practices alone can achieve the PEL at the 8-hour TWA limit for carbon disulfide.

The Polyurethane Manufacturers Association (PMA) stated that the 0.02 ppm PEL for 4,4'-methylene bis (2-chloroaniline) (MBOCA) is technologically feasible and is already being achieved in many facilities [Ex. 3–683]. MBOCA is used as a fixative in producing castable polyurethane. The chemical is no longer produced in this country, but is still widely used to produce castable polyurethane products. PMA [Ex. 3–683] also stated that no substitute for MBOCA has been found that matches its physical properties and processing characteristics at a competitive price.

According to PMA, worker exposures to MBOCA occur chiefly during transfer operations. PMA stated that "once the melted MBOCA is mixed with prepolymer, there is no risk of employee exposure to MBOCA" [Ex. 3–683]. The industry has developed a number of methods to control employee exposure to MBOCA during transfer operations, including the use of isolated rooms, laboratory hoods or glove boxes, and vacuum transfer systems that carry MBOCA from drums to the melters in closed, automated systems. PMA also stated that "based upon considerable workplace monitoring [conducted] since the 1970s, it is apparent that an employer who observes the recognized industry practices for the use of MBOCA and who monitors the results . . . will feasibly comply with the proposed TWA level [of 0.02 ppm]" [Ex. 3–683]. Therefore, OSHA concludes, based on the proven effectiveness of currently available technology that a PEL of 0.02 ppm for MBOCA is technologically feasible.

SIC 31.—Leather and Leather Products

During a site visit performed by OSHA to a shoe production facility [Ex. 11—Firm 7], an overexposure to 2-butanone at the outer sole cementing operation was found. A small exhaust system used at the operation had inadequate air movement to reduce exposure. The exposure exceeded the current PEL of 200 ppm, as well as the proposed STEL of 300 ppm. The length of the exposure was 3.5 hours. The total cost for local exhaust ventilation to the five affected work stations, as estimated by Clayton Environmental Consultants, would be $20,000. This cost figure is based upon a flanged 4 foot by 12 foot exhaust hood with a capture velocity of 100 feet per minute (fpm). The flow rate is estimated to be 775 cubic feet per minute (cfm) per work station. By employing these control measures, worker exposures to 2-butanone, as well as to solvents in general, will be reduced.

The site visit firms did not have toluene overexposure. In general, toluene exposures can be decreased by revising standard work practices to reduce the contact time between leather and toluene.

SIC 32—Stone, Clay and Glass Products

In batch mixing of raw materials for glass production (SICs 321 and 322), OSHA found that drysweeping and/or the use of compressed air for cleaning may contribute substantially to the employees overall exposures. By

substituting vacuum cleaning systems, worker exposure can be reduced.

The Brick Institute of America (BIA) stated that limited success has been achieved by member companies in controlling clay and shale dust exposures. Despite the companies' efforts, employees are still required to wear respirators in some areas of the plants. Although local exhaust ventilation has been installed at work station, the nature of the job requires workers to leave the area of their work station. Furthermore, the moisture content of the raw materials "creates substantial maintenance problems for the control equipment." The BIA concludes ". . . it simply is not possible to reduce dust levels any further using known technology" [Ex. 130].

OSHA conducted site visits to manufacturers of both cement blocks [Ex. 11—Firms 2, 4] and a manufacturer of unglazed floor tiles [Ex. 11—Firm 12]. These firms have processes analogous to brick manufacture. No overexposures were found. In addition to good housekeeping measures, one of the principle means of controlling dust exposure was the use of wet materials. Dry material hoppers were located outside the building or in locations above the work floor. Mixers were generally fully automated. Workers who were required to work inside the mixer (after proper lockout procedures) using pneumatic hammers to remove hardened materials, used local exhaust tubes, and wore respirators. OSHA concludes it is technologically feasible to control dust exposure in this industry.

SIC 33—Primary Metals Industries

The American Iron and Steel Institute [Exs. 3–1123, 72, 129, 169] stated that the proposed PELs were not technologically feasible if retrofitting were required, and that most operations produce intermittent exposures where respiratory protection equipment is more appropriate. The AISI provided no support for their statement that retrofitting is not technologically feasible, merely stating that some controls can only be installed when a plant is built or modernized. However, they provided several examples of the cost of such retrofits, stating that the costs rendered the retrofits infeasible. This, however, does not support a finding that the technology does not exist to control the exposures.

During site visits, OSHA observed a wide variety of controls in place in this industry. How effective these controls are cannot be known for certain. When AISI agreed to assist OSHA in arranging site visits in this industry, they stipulated that the OSHA contractors could collect no air samples during the site visits. AISI submitted exposure data for different operations, but provided only the lowest and highest values for each chemical in each operation [Ex. 129]. When ranges are used, it is not possible to discern where most samples fall to assess potential feasibility. Where the highest value for a chemical is at or below the new PEL, the new PEL is clearly feasible. This is true in a number of cases, and demonstrates that controls are available which will maintain exposures below the new PEL for those chemicals. The exposure data does indicate that the STEL for sulfur dioxide cannot be regularly achieved with engineering and work practice controls in blast furnace operations and at sulfur plants. In addition, there is some evidence that the ceiling limit for carbon monoxide cannot be regularly achieved with engineering and work practice controls at blast furnace operations, vessel blowing, basic oxygen furnaces, and sinter plants. There is no evidence to the contrary in the record for these two substances. OSHA, therefore, will permit flexibility in the use of respirators for these operations. The burden of proof will not be on the employer to demonstrate that compliance with engineering and work practice controls are infeasible in a compliance action for exposure to the STEL for sulfur dioxide and the ceiling for carbon monoxide at these operations.

AISI also provided a list of occupations and the related duties where exposures are intermittent. Many of these would be considered cleaning and maintenance [Ex. 72]. Where exposures are brief and intermittent, or where they are related to cleaning and maintenance, respiratory protection may be the appropriate control technology in accord with OSHA's traditional policies.

SIC 331—Basic Steel Products

OSHA, through its contractors, has conducted site visits of various operations associated with steel manufacturing. During these visits, OSHA observed that engineering controls were in use. Due to a pre-visit stipulation of the American Iron and Steel Institute, OSHA was not able to monitor exposures at any of these operations.

In a site visit to a sintering plant, OSHA observed the application of a hood and local exhaust at the end of the sintering conveyor, a transfer point for sintered material. Also, at the same plant, local exhaust piping on the pug mills and the sinter air cooler was in place. The emissions from these sources were directed to a centralized baghouse [Ex. 129—Firm 28].

At hot strip production facilities [Ex. 129—Firms 29, 31], workers controlling the rolling process were positioned in air conditioned control stations or pulpits. Workers engaged in the coiling and marking area were provided with dilution ventilation.

At Basic Oxygen Furnace (BOF) facilities [Ex. 129—Firms 37, 38] emissions generated during desulfurization, deslagging and oxygen injection were vented to an electrostatic precipitator and/or baghouse. BOFs also emit carbon monoxide as a byproduct. Some BOF processes use this as a means of controlling the metallurgical reaction. This is controlled through the exhaust system. Continuous CO monitors are used to alert workers to peak or emergency conditions.

During a visit to an electric arc furnace operation [Ex. 129—Firm 30], emission control equipment was an integral part of the furnace's rotating roof. Contaminant generation during this operation was vented to an electrostatic precipitator. The building in which this process was conducted had been modified to incorporate roof level hoods and ducts that carried escaping contaminants to a centralized baghouse.

At a coke oven gas processing facility [Ex. 129—Firm 32], operations were carried out in enclosed vessels or process equipment (similar to those found in chemical processing facilities) that provide protection from continuous direct exposure. OSHA believes that compliance with the proposed PELs can be achieved since exposures are primarily the result of fugitive emissions and operational upsets.

At a blast furnace operation [Ex. 129—Firm 27] which was visited, the firm indicated its concern over the proposed PELs for carbon monoxide, sulfur dioxide, and calcium oxide. (Iron oxides were also generated in these operations but it was not clear that exposures to iron oxide were problematic. The final rule retains the existing limit for iron oxide). Blast furnaces operate under positive pressure and extremely rigorous conditions. These conditions do have a severe effect on the refractory lining of the furnace wall. Over time contaminant release, particularly carbon monoxide, will occur. Thus blast furnaces of older design or furnaces reaching the end of their life cycle will tend to have greater emissions of air contaminants. During the tapping of the furnace, workers are exposed to iron oxides, carbon monoxide, sulfur dioxide, and calcium oxide as hot metal pours into the

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transfer car via runners on the floor. In one site, these runners were covered to reduce emissions.

Workers typically move between areas of high exposure in the manufacturing area, and areas of low exposure in air-conditioned or heated control rooms or "shanties." Exposures are intermittent. Processes at which they work also have episodic periods of air contaminant emission. This dual variability suggests that respiratory protection may be needed to control worker exposure to such metallurgical air contaminants as carbon monoxide, sulfur dioxide, iron oxide, and calcium oxide.

SIC 332—Iron and Steel Foundries

OSHA conducted a site visit to a gray iron foundry [Ex. 11—Firm 13] engaged in the manufacturing of gray and ductile iron castings. Exposure samples were taken in the grinding process. The result of the sampling disclosed an exposure level of 39.0 mg/m³ TWA for iron oxide which is above both the current and final PEL of 10 mg/m³ TWA.

Clayton Environmental Consultants recommended a number of actions that can be taken to reduce iron oxide dust levels. A mechanical shakeout and automatic sand handling system complete with dust collection can be implemented to substantially reduce dust levels. The mechanical shakeout would consist of a 16 square foot enclosure in which the molds and castings can be manipulated and then brought back out for further processing. The existing muller hood should be maintained or upgraded to produce 900 CFM of local exhaust ventilation. It was also recommended that dust collection and make-up air systems would be needed to replace exhausted air. For this purpose, make-up air should be ducted for release near the work station and workers should be provided with movable diffusers or a means of controlling airflow at the work station. The purchase of a rider-type sweeper was also recommended as a means to control dust levels.

Clayton also recommended controls to reduce grinding exposures. Local exhaust ventilation can be installed on pedestal grinders. Grinders of this type should be exhausted at 1,000 CFM assuming 16 inch wheel diameters. For hand-held grinders, a 2 foot by 3 foot ventilated table/bench is the recommended control. A 200 CFM/foot² of grinding bench area exhaust rate is the estimated requirement for this application.

Additional controls applicable to foundries were found during OSHA's review of this industry. These controls either individually or in combination should generally control exposures to the final PELs.

- The arc air process in steel foundries (SICs 3324, 3325) was used during the processing of steel castings to control fumes. In order to ventilate the arc air booths, fumes were exhausted through the back of the booth and fresh air was supplied from above and behind the operator.
- Steel foundries (SICs 3324, 3325) used an overhead canopy hood during the induction melting of steel to control fumes. The hood consisted of sheet metal barriers extending down from the roof to the top of the hot metal ladle monorail. Thermal drafts carried the fumes upward into the hood where they were exhausted by ventilators. Mancooler fans behind the workers pushed some fumes under the hood.
- Emissions during the oxy-acetylene torch cutoff of risers from steel castings was encountered in iron and steel foundries (SIC 332). Castings were cut in a specially designed booth with a rear exhaust flow and a frontal air supply flow. Air pressure from the cutting nozzle of the torch was directed toward the rear exhaust port for effective dust and fume control.
- Fume control of a sandwich-type innoculation in iron foundries (SICs 3321, 3322) was achieved through the use of a commercially available canopy hood. The fume-laden air was exhausted through mobile duct work and cleaned by a fabric collector before being discharged into the surrounding environment. The hood tilted with the furnace so that it always was directly over the ladle for fume capture.
- Fume, dust, and gas control from the melting of iron (SICs 3321, 3322) in an arc furnace was achieved by the installation of a hood. The exhausts collected by the hood were filtered by cloth filters before being released into the external environment.
- Control of dust and gas emissions from phenolic urethane cold box core-making in iron foundries (SIC 3321, 3322) included local exhaust ventilation which provided negative pressure at the core box. Parting line gaskets, blow seals, and stripper pin o-rings were regularly maintained for emission control. Exhaust outlets captured excessive dust.
- In an iron foundry (SICs 3321, 3322), hot combustion gases were exhausted and flowed through an after burner, cooled, and then passed through a dust collector. Tapping emissions were captured by a canopy hood. General ventilation was provided by mancooler fans.

The UAW [Ex. 197] listed additional feasible control measures in foundry and other metallurgical operations. These include:

(a) adequate make-up air;

(b) supplied air islands for operator stations (laminar flow, down draft make up air supply units);

(c) tempered (cooled) make up air to reduce the need for high velocity air for heat stress relief;

(d) process arrangement to remove loose sand from castings after shakeout before they are finished;

(e) maintenance of enclosures and exhaust volume for sand handling equipment to prevent emission of dust;

(f) reduction of silica burn-in on castings to reduce exposures at cleaning and finishing operations;

(g) use of wet methods.

SIC 333/334—Primary and Secondary Non-Ferrous Metals

In its review of technological feasibility in the non-ferrous metals industry, OSHA identified the following examples of engineering control and work practice measures:

- Control of emissions from aluminum ore handling and storage (SIC 3334) was addressed with an unloader which uses movable vacuum nozzles to remove alumina and coke from barges. The ore was moved on an enclosed conveyor which was equipped with air exhaust hoods at loading and transfer points. The operator can be situated in an air conditioned cab.
- Reduction of alumina dust emissions during ship unloading (SIC 3334) was achieved by automating and controlling operations from an enclosed control booth. Furthermore, mixing operations were hooded and exhausted.
- During anode rodding in prebake plants during primary aluminum production (SIC 3334), spent butt remover, butt crushers, cast iron remover, and shot cleaner were exhausted to a bag filter dust collector. Use of induction furnaces and exhaust hooding reduced metal fume exposure during melting. Hoods and slotted hoods were also used. The operator can maintain controls from an enclosed console.
- Control of air emissions during potline operations of aluminum smelters (SIC 3334) was achieved through the use of potroom ventilation and automated processes such as the use of hooding which consists of curved and ribbed shields, the employment of a dual draft system, and an exhaust system which leads to a dry scrubber. Other control methods included hooding with rigid air-operated doors which exhausted the emissions through air takeoffs to an expanding duct exhaust manifold which, in turn, was exhausted by a fan. Furthermore, computer-controlled systems existed which could automatically perform production functions without requiring workers to open pots or hood shields above pots.
- The mercury cell process may be used in aluminum smeltering (SIC 3334) to produce chlorine gas from brine water. To reduce chlorine gas exposure as a result of this production, the diameter of the brine header was increased to accommodate the gas phase above the liquid phase; the number of cells in the system was increased; the pH of the brine was adjusted; the compressor controls were modified to accommodate surges in pressure; inlet box covers were replaced with better covers; and the brine feed nozzle flange was modified.
- Several engineering controls have been recommended for copper smelting locations (SICs 3331, 3341). A preventive maintenance program can be developed and implemented to insure that ventilation and conveyor systems are operating properly. Dead beds can be installed in chutes to break the fall of material and reduce the level of dust generated. Pneumatic aerators can be installed to eliminate the need for manual air lancing in bins and chutes. Industrial vacuum systems can be used.
- Collection hoods can be installed at each conveyor transfer point at copper smelter sites (SICs 3331, 3341) to control copper particulate. Primary copper smelting conveyor skirting can be properly adjusted, and fingers installed at discharge points. Inspection doors should not be left open, and the lunchroom/breakroom should be located outside of the reclaim building. General measures throughout copper smelting plants (SICs 3331, 3341) to control copper dust emissions included: using local exhaust ventilation for localized sources, and general exhaust ventilation for areas with unidentifiable sources; enclosing conveyor belts and transfer points; enclosing the air conveying system for the transfer of flue dusts; enclosing workers' operating vehicles; installing secondary hoods on converters; prohibiting the blowing out of converters while on stack; performing preventive maintenance on balloon flues; not allowing converters to remain rolled out for extended periods of time; and providing cleaning rooms with filtered, tempered, positive pressure air. When hauling slag from the metal smelting operation, slag can be granulated after skimming with high velocity water; a chemical dust suppression system can be used when crushing any cooled slag; and the slag crew can ride downwind from fumes. Further engineering controls include constructing pulpits for operators; close-coupling the ventilation system to the Larry car; using dead beds in calcine loading; enclosing a portion of the building to block wind; and vacuuming the superstructure of the Larry car and any spills.
- Controls used to decrease exposures to arsenic, dust and sulfur dioxide at primary copper and lead smelters (SICs 3331, 3332) included upgrading the present ventilation systems; operating electric furnaces at negative pressure; eliminating air lancing as a method of removing concentrates from receiving hoppers; using pneumatic aerators or belt wipes; using wet techniques in storage; reclaiming concentrates; and improving general housekeeping.
- Exposures to lead, cadmium, and arsenic at lead and copper smelters (SICs 3331, 3332) were reduced by the replacement of old sintering machines with ones equipped with dust and fume controls and by placing a cover over the charge hole when slag was not being charged into the reverberatory furnace.
- Use of a multipurpose crane with an enclosed cab reduced operator exposures to air emissions at carbon bake plants (SIC 3334). The cab was supplied with filtered conditioned air. The crane was equipped with a vacuum system which could aspirate cake from ovens and separate fines.
- Controls for exposure to soluble platinum salts in precious metal refining (SIC 3339) included local exhaust ventilation used in jaw crusher and recovery sampling, maintenance of a closed system in refinery through use of glove box filters, the use of borohydrate solution to wash down spills and reduce salts to insoluble platinum metal, and mandatory showers and daily clothing changes.
- Controls for the primary non-ferrous metals industry (SIC 333) included local exhaust ventilation systems; general dilution ventilation; covers, hoods and exhaust systems for belts, material handling and transfer systems; enclosure and exhaust of sinter machine area; local exhaust and dilution ventilation for the reverberatory and refinery areas.
- The reduction of exposures to inert cadmium and silver dust during a ball mill operation was accomplished by building and equipment process changes such as local exhaust ventilation, hood enclosure of process or worker, and air cleaning equipment.
- In the secondary smelting and refining of non-ferrous metals (SIC 334), particulate emissions from a dross mill were reduced by making modifications to the dust collection system and to air volumes drawn through the baghouse. Engineering controls used include increasing fan efficiency through the use of sheaves and belts, installing water sprays on crusher infeeds, running new pipe to localized dust areas, installing additional cleanout ports, and replacing the top of the baghouse.
- Employee exposure to nuisance dust from zinc smelters (SIC 3333) was controlled by replacing the dross handling operation with a dross mill. The crusher was replaced with a rotating mixer, thus eliminating fugitive dust from this part of the process.

Asarco, Inc., questioned the technological feasibility of achieving the proposed PELs for sulfur dioxide. In its written statement to the docket [Tr. 8/15/88, pp. 120–124], Asarco provided several examples of the nature of engineering controls that have been installed at its plants. "Asarco's copper smelter in Hayden, Arizona, has been modernized with the installation of an Inco flash smelting furnace, as well as the installation of control devices, such as secondary converter hoods. Additional controls, including secondary converter hoods with an air current design have also been installed in Asarco's copper smelter at El Paso, Texas." Asarco maintains "despite these controls, however, SO_2 concentrations for a number of job classifications at Asarco's copper smelters exceed or may exceed the proposed TWA of 2 ppm. Morever, it appears that most smelter jobs in molten areas would frequently exceed the proposed STEL of 5 ppm, because of the episodic nature of smelting operations. Asarco is not aware of any combination of engineering and work practice controls that can feasibly reduce exposures to the levels required by the standard."

Magma Copper Company, in written testimony [Tr. 8/12/88] has also expressed concern on [Ex. 3–91, pp. 92–105] the achievement of the proposed standards for SO_2. Magma is in the process of installing new emission controls at its smelter at a cost of $132,000,000. The elements of this retrofit include "a new state of the art Outokumpu flash furnace obviating three existing reverberatory furnaces. The retrofit has also an improved converter gas handling system as well as a new secondary gas collection system. The smelter has local ventilation to all areas that have historically been sources of SO_2 emissions, and as such, the smelter

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should have limited problems with fugitive emissions. . . ." "Additionally, the converters have two separate local ventilation systems. The primary system collects the highest concentration of SO_2 and supplies an acid plant. The secondary local ventilation system collects gases during some phases of the converter roll out operation." Magma has stated that the flash furnace "was placed on line in July of this year" and "start-up is estimated to be completed with normal operations in place by November 1, 1988. Therefore, a comprehensive survey of our new engineering control system is not feasible at present." However, Magma has estimated from past data and "for various configurations" that the 5 ppm STEL "is not likely to be met."

Asarco has also submitted as an attachment to its written statement a portion of its 1977 post-hearing brief that discusses the problems of SO_2 control. In it, Asarco refers to the report "Environmental Conditions in U.S. Copper Smelters" by Willian L. Wagner of NIOSH as evidence of the need to use respirators. Quoting from the report, Asarco cites, "In most smelters the use of respirators is essential on charge floors of reverberating furnaces, in the green feed galleries, tripper decks above these furnaces or any areas above these furnaces. In these areas, the SO_2 concentrations varied from non-detectable levels to many hundreds of parts per million. . . ." In addition, Asarco also relies on the testimony of Mr. Wagner at the 1977 hearings in which he addressed the then-proposed "ceiling limit" of 10 ppm, "for most parts of the smelter." "There are a number of areas where you could get concentrations of sulfur dioxide for periods of time greater than 10 parts per million." According to Mr. Wagner, concentrations exceeding 10 ppm could easily last 15 to 20 min.

As this discussion indicates, there are many engineering and work practice controls available to reduce exposure to SO_2 and the other contaminants present. They will frequently be able to control exposure to 2 ppm. However, for some operations, feasible engineering controls may not be available. OSHA will accept the use of respirators in conjunction with engineering controls unless OSHA can demonstrate that engineering controls and work practices alone can achieve the 2 ppm PEL.

Brief peak exposures will occur over 5 ppm in several areas of a lead or copper smelter. Good work practices will curtail many of these. However, respirators may be appropriate in smelters along with other controls to control peak exposures unless OSHA can demonstrate that engineering controls and work practices alone can achieve a 5 ppm STEL.

SIS 336—Non-Ferrous Foundries

Fumes were controlled during the casting of bronze in foundries (SIC 3362) through the use of enclosing hoods. A mobile hood exhausted the ladle at all hot metal transfer points. Flexible ducting connected the hood to a traveling exhaust carriage.

SIC 339—Miscellaneous Primary Metals Products

Manufacturers improved dust control using closed screw conveyors in the transport and manufacture of iron powder (SIC 3399). Open conveyor belts were changed to a closed screw conveyor system. Duct work was totally replaced. Local exhaust was provided for the rotary screens. New baghouses and electrostatic precipitators were also installed. OSHA visited a manufacturer of metal alloy powders [Ex. 145, Attachment A]. Although overexposures to the current PELs were not found, a reduction to the new PELs would result in overexposures. To reduce cobalt dust exposures below the 0.05 mg/m^3 level, additional monitoring should be conducted to verify the need for engineering controls. The following measures were recommended and determined to be necessary: (1) Use of an exhausted booth for developmental screening, (2) routing air discharged from the dust collector associated with the vortex classifer to the outdoors or into the plant's main dust collection system, (3) providing exhaust ducts to be connected to atomizer drums during cleanout periods, and (4) discontinue the practice of dry-sweeping the floors and either acquire a vacuum sweeper truck or use the central vacuum system more extensively.

SIC 34—Fabricated Metal Products

Control of copper dust at a cookware manufacturing plant (SIC 3469) was addressed by unclogging the ventilation system, repositioning cooling fans, and instituting weekly ventilation system inspection and maintenance programs.

A plating shop (SIC 3471) uses extensive local exhaust ventilation to control worker exposure. Each part to be plated undergoes some surface pretreatment. This can consist of shot-peening, abrasive blasting, degreasing, wax or tape masking and other treatments. Parts are manually placed into the tank using an overhead hoist for large parts.

The tanks are set on top of concrete ducts. The floors of the shop and the aisles between the tanks are reinforced concrete, however the area around the perimeter of the tank is open to the basement and covered by steel grating. The ducts are connected to a fan on the roof of the building.

The largest of the hard chrome tanks, holding over 1000 gallons of plating solution, has a two sided lateral exhaust ventilation system. The slot on each side consists of a series of seven slots. The slots are set back from the edge of the tank but an overhanging hood extends to the edge of the tank. A second tank has both a two sided slot ventilation system and a cover. This two piece cover is hinged to a ventilation manifold and extends beyond the front and rear edges of the tank.

Arc welding is performed in many SICs as an auxiliary process and in several industries such as fabricated structural metals (SIC 3441), as the principal process requiring engineering control. During the welding process, temperatures are sufficiently high to vaporize some of the base material of the electrode and produce large quantities of fumes containing the elements in the electrode and the base metal. Thus welders and other workers in the vicinity are exposed to mixtures of fume-sized particulates and both irritant and toxic gases which in combination may have additive or synergistic physiological effects.

Differences in worker exposure are attributable to a variety of factors including type of welding helmet worn, position of the welding operator, the work environment, arc time, and the availability and performance of ventilation equipment. Arc time varies greatly due to differences in work schedules, set up times, and the sizes, shapes and types of tasks. Tasks can vary from short-term repairs conducted irregularly to full time production welding.

During arc time the fume is generated within or close to the worker's breathing zone. Background fume concentrations could also be significant if a large number of welders are working or the work is being performed in a relatively confined space.

Because of the numerous factors that can influence exposure levels during welding, three different types of controls can be used for various welding situations. The controls include: (1) Local exhaust ventilation for welding in shops; (2) ambient air cleaning devices to minimize background fume concentrations; and (3) a portable blower for use in confined areas.

Local exhaust ventilation configurations include: a welding bench with a backdraft hood for small to medium work pieces; a fixed close-capture hood placed at the back of a work rest table; a portable close-capture system including electrostatic precipitator; or an exhaust hose incorporated into the structure of the welding gun.

Ambient air cleaning devices are designed to lower background welding fumes which escape collection by the local exhaust system. The ambient air cleaner is expected to surpass general dilution ventilation systems in terms of both fume removal and cost.

A portable blower system works by exhausting fumes from a confined space through a large flexible tube.

No commenter questioned technological feasibility for this industry.

SIC 35—Machinery

In addition to techniques for weld fume control mentioned above, in the manufacture of pumps, employee exposure to welding fumes was controlled (SIC 3561) through the use of an air lux fume eliminator.

In the milling of tungsten carbide tools (SIC 354), the placement of local exhaust ventilation controlled cobalt exposures during the transfer of carbide.

Oil mist is used in the SIC during the manufacturing of parts on screw machines or other machine parts. There is a wide assortment of engineering and work practice controls to reduce exposure to oil mist [Tr. 8/5/88, p. 7–53]. Since OSHA is retaining the existing PEL of oil mist, OSHA concludes that the PEL is technologically feasible.

In farm equipment manufacturing and repair (SIC 3523), paint mist was controlled through sophisticated application techniques as applied to downdraft spray booths. The use of heated paint in the painting of hay stack wagons allowed the airless atomization to take place at relatively low paint pressures. This resulted in low droplet velocity with little rebound.

In the manufacture of machinery, degreasing operations using refined petroleum solvents are prevalent. The AFL–CIO [Ex. 194] and UAW [Ex 197] noted additional feasible measures for control of exposure to refined petroleum solvents (RPS) such as VMP naptha:

(1) Spray application of liquids containing RPS should be permitted only in exhaust ventilated enclosures such as spray booths.

(2) Articles coated with liquids containing RPS should be kept in containers equipped with local exhaust ventilation to prevent evaporation of RPS into work room air.

(3) Equipment for bulk transfer of RPS should be equipped with vapor capture systems.

(4) Exhaust ventilation should not recirculate RPS vapors into workroom air.

(5) Cleaning of floors with RPS should not be permitted.

(6) Where spray booths are cleaned with RPS, ventilation should be maintained during cleaning.

(7) Quantities of RPS used and surface area coated with RPS containing liquids should be kept to a minimum.

(8) Splashing of RPS containing liquids or creating of puddles on floor or other surfaces should not be permitted.

(9) Open surface tanks containing RPS should be equipped with covers and local exhaust ventilation. Covers should be closed when not in use. Special attention should be paid to preventing forced expulsion of vapors during addition of materials and entrainment of vapors when articles are added to or removed from open surface tanks.

(10) Open buckets of RPS should not be permitted. Containers for RPS should be equipped with self closing covers. Rags or other material soaking in RPS should be kept in closed containers.

(11) Procedures for response to spills and leaks, including criteria for evacuation of personnel not essential to safe cleanup, should be devised.

(12) Skin contact should be prevented by redesign of operations to eliminate dipping of hand into RPS containing liquids, minimizing splashing or mist contact and wetting of skin and clothing. Gloves and impervious clothing should be supplied where wetting of skin and clothing can't be prevented.

No commenters challenged the technological feasibility of meeting the proposed PELs in this industry.

SIC 36—Electric and Electronic Equipment

Electric lamp manufacturers (SIC 3641) have reduced mercury vapor in lighting plants. Glass pellets used as starters for fluorescent lamps were flame sealed after mercury had been injected into them. Overhead suction velocity of the exhaust system was increased to reduce mercury overexposure. Also, as a special vacuum cleaner was employed to clean the turntable.

The use of styrene for open mold fiberglass operations in the manufacture of household refrigeration equipment (SIC 3632) is similar to the use in SIC 37—Transportation Equipment. Thus, respirators may be required to augment engineering controls during manual layup/sprayup operations, as discussed in SIC 37, below.

Technological feasibility was not addressed by commenters to the docket in this sector.

SIC 37—Transportation Equipment

The Styrene Information Research Council (SIRC) identified manual layup and sprayup processes as operations in this sector that would not be able to meet either the 50-ppm PEL or the 100-ppm ceiling that the Agency has proposed as limits for styrene [Exs. 187, 3–742; Tr. 3/6/80, p. 5–04]. The open-molding process is primarily used in this sector to make fiberglass boats and fiberglass car and truck bodies (especially bodies for recreational vehicles). The feasibility issue that is raised relates to production operations that involve the spraying of large volumes of resin containing styrene on large surfaces where volatilization occurs [Ex. 198, Tr. 8/3/88, p. 5–95].

The single most extensive data source on exposures to styrene is a study conducted by the State of California's Division of Occupational Safety and Health (DOSH) [Ex. 3–742, Attachment 2]. This study reported the results of an in-depth industrial hygiene survey of styrene and other hazardous exposures in the fiberglass/reinforced plastics industry. A total of 141 workplaces were inspected, and 379 of the 2,600 workers employed in these workplaces were sampled over a full workshift [Ex. 3–742, Attachment 2]. The report also recommended the best control measures to minimize hazardous exposures; the focus of the study was on large open-mold sprayup/layup operations because earlier research had shown that these open-molding operations had the highest exposures of all operations in these workplaces [Ex. 3–742, Attachment 2]. Styrene exposures (8-hour TWAs) at these processes ranged from 0.2 to 288 ppm. The overall arithmetic and geometric means for these sample results were 43.0 ppm and 34.0 ppm, respectively [Ex. 3–742, Attachment 2], but exposures in some industries and for some processes were substantially higher.

The range of exposures in boat-building facilities was found to be 3.4 to 90.8 ppm (92 workers sampled); for workers in the recreational vehicle (camper) segment, this range was 7.3 to 130.3 ppm (48 workers sampled). Because few firms in the recreational vehicle and boat-building segments of this industry had adequate and effective ventilation controls, the California study concluded "that feasible engineering controls exist to reduce exposures to levels recommended by ACGIH and NIOSH of [a] 50-ppm TWA and [a] 100-

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ppm excursion limit for styrene" [Ex. 3-742, Attachment 2, p. 39].

During the course of this rulemaking, OSHA conducted site visits to two boat-making facilities that use the open-mold process to build fiberglass boats [Exs. M-20, M-21]. These two sites were characterized by the industry as a facility that used traditional ventilation to control chemical exposures, and a facility that represented the "best available technology." In both facilities, both the full-shift and the excursion exposures of the gel-coat operators were below the proposed levels. However, the layup and sprayup processes in the traditional facility were conducted in an open area that was ventilated only with general dilution ventilation. In this plant, lamination employees' styrene exposures ranged from 61.9 to 341.5 ppm as 8-hour TWAs and from 98.7 to 311.0 ppm as 15-minute STELs [Ex. M-21]. In the "best available technology" facility, three-sided booths were used for the lamination operations. Here the lamination employees' exposures ranged from 39.7 to 93.8 ppm as 8-hour TWAs, with only one in three exposures below 60 ppm, and from 64.0 to 199.0 ppm as 15-minute STELs [Ex. M-20]. The additional control measures that are available, such as increasing the face velocity of exhaust equipment, may not enable this facility to reduce the exposures of its lamination workers from their current levels (ranging between 39.7 to 93.8 ppm) to levels within the proposed limits without interfering substantially with the correct consistency of the resin.

The extensive exposure and control data reported in the California study indicate that current styrene exposures are within, or can be controlled to, the Agency's proposed limits in some industries and occupations. These data, together with OSHA's on-site observations, are considerably less certain when it comes to the feasibility of the proposed limits for the large-volume open-mold processes necessary to produce boats and campers (as well as other large molded products in other industries).

The California data [Ex. 3-742, Attach. 2] and the OSHA data [Exs. M-20, M-21] showed somewhat different patterns of exposure. Whereas all industry and occupational subgroups of the California data had at least a substantial minority of exposures below 50 ppm, only one exposure observation for lamination in either facility visited by OSHA was below 60 ppm. The maximum 8-hour TWA for boat building observed in the California study was 80.8 ppm, and the large-mold boat manufacturers were described as having low average exposures [Ex. 3-742, Attachment 2]. At the facilities visited by OSHA, on the other hand, the maximum exposure was 341.5 ppm.

The large-scale open-mold processes were described in the California study as "intermittent," and the authors attributed the lower-than-expected styrene exposures to this characteristic [Ex. 3-742, Attachment 2]. SIRC notes that additional feasibility problems may arise in extreme environments, and that northern-tier states, where many boat builders are located, have winter climates that are quite different from that of California [Ex. 181A, p. 38]. A report submitted to the docket by the Wisconsin Department of Industry (Ex. HSP) concludes that many of the existing boat-building plants in Wisconsin will be physically unable to accommodate the complex controls needed to reduce employee exposures to styrene to below the 50-ppm TWA and the 100-ppm STEL (Ex. HSP). Since the plants visited by OSHA were in the Midwest, regional differences may help to explain the discrepant findings.

The authors of the Cal/OSHA study qualified their findings as follows:

> This study was conducted in a CAL/OSHA compliance mode: This represents two problems: (1) industrial hygienists do not have the luxury of making frequent visits to any one site, and (2) employees have an understandable desire to minimize actual exposures by various means . . . in order to avoid CAL/OSHA citations and fines [Ex. 3-742, Attachment 2, p. 31].

The California study notes that these factors may well have contributed to the relatively low mean exposures found in the study. However, OSHA notes that industrial hygienists were present in the plants long enough to demonstrate that high exposures can be controlled.

OSHA concludes that, in many operations within SIC 37, the proposed limits for styrene are feasible with the use of engineering and work practice controls. However, the record evidence demonstrates considerable uncertainty about the technical feasibility of achieving the 50 ppm TWA and 100 ppm STEL exclusively by means of engineering controls and work practices during manual sprayup/layup operations in this sector. Accordingly, OSHA concludes that the use of respirators as well as engineering and work practice controls may be necessary to achieve these limits in these manual operations, unless OSHA can demonstrate that engineering and work practice controls alone can achieve the PEL.

OSHA also received some comments regarding the feasibility of achieving the proposed 0.2 ppm PEL for MEKP in boat manufacturing facilities. Robert Schumacker, a certified industrial hygienist representing a group of six manufacturing companies (including the U.S. Marine Corporation), stated that information is lacking as to what concentrations of MEKP currently exist in the workplace, how to measure MEKP in the occupational environment, and the feasibility of engineering controls for reducing exposure to MEKP [Ex. 3-1172, Attachment; Exs. 8-86, 151]. The National Marine Manufacturers Association [Ex. 181] expressed similar opinions.

OSHA believes that the record contains substantial information demonstrating that the final rule's PEL of 0.7 ppm for MEKP is technologically feasible in boat manufacturing facilities. The record contains several NIOSH health hazard evaluations and technical assistance surveys conducted in workplaces where MEKP was used as a reaction catalyst in operations similar to those in boat building, including manual layup and sprayup operations (NIOSH: HE-79-132-673; TA-76-66; and HE-78-3-555). At three sites surveyed, all personal and area samples were below the proposed 0.7 ppm level. The NMMA [Ex. 181] reviewed these and other NIOSH reports (NIOSH: HE-79-092-629; HE-79-012-809) and noted that NIOSH recommended a number of engineering methods to reduce employee exposures to MEKP. These methods, which were supported by NMMA, included:

—Preventive maintenance on a scheduled basis for cleaning and changing filters on spray booths;
—Improvements in general dilution ventilation;
—Release of residual pressure from an MEKP container through the spray gun under local ventilation rather than through the pop-off valve.

OSHA also conducted two site visits to boat-building facilities in which MEKP was used [Exs. 136B]. One plant was a high-volume facility that produced 24 boats per day, while the other plant produced two to three boats per day. At both of these facilities, MEKP samples taken on gel coat and lamination workers were below the final rule's 0.7 ppm limit.

In regard to sampling and analytical methods for MEKP, OSHA notes that NIOSH has published a method (PECA or 3508) for this substance, and OSHA has developed an in-house method that is available from the Agency on request; the OSHA method was used successfully on the two site visits to MEKP-using facilities conducted for this rulemaking. Therefore, based on the information contained in the record and summarized above, OSHA finds that the 0.7 ppm PEL for MEKP is technologically feasible in transportation facilities.

SIC 38—Instruments

Many fluxing agents are used in soldering and brazing operations during instrument manufacture. In most cases, these fluxes give off acid or alkali fumes when heated that can irritate the skin. Conducting soldering and brazing operations in well-ventilated areas and use of protective clothing and gloves is recommended.

For many soldering and brazing operations, general dilution ventilation will control fumes and vapors; that is, enough fresh air is added to the contaminated air that hazardous concentrations do not develop.

Local exhaust ventilation is the most effective means of control for airborne contaminants produced by the soldering or brazing process. Local exhaust ventilation can be provided by several types of equipment: freely movable hoods, fixed enclosures (booths), and down-draft benches.

A freely movable hood consists of a movable hood attached to a fan. The fan draws air from the work space and exhausts it outdoors, either directly or through a dust collection system. The hoods are normally constructed so that they can be moved into place by the solderer. The air handling system should move air at least 100 feet per minute across the soldering site at even the most remote point from the exhaust opening. It is important that the exhaust hood be placed as near as possible to the work being done. As such, the proper functioning of a freely movable hood is dependent upon good work practices of the solderer.

In some instances soldering or brazing operations carried out in a fixed location can be provided with a fixed enclosure. This is a structure built around the soldering or brazing operation which has a top and at least two sides. A means for drawing air through the work area is provided so that the work space is flushed continuously with fresh air.

Within such an enclosure, work should be arranged and conducted in such a way that the fresh air enters the enclosure through the worker's breathing zone and then through the work space in which the contaminants are produced. For most fixed enclosure, the air should move at least 100 feet per minute across the entrance to the enclosure.

A third type of level exhaust ventilation system is the down-draft bench or table. The soldering or brazing is performed on a bench or table which has an open grid as the work surface. Air is drawn downward through the grid, into the duct work, and then exhausted.

The Health Industry Manufacturers Association (HIMA) expressed support for "the phased-in period of compliance, which would allow the use of engineering controls, work practices, and respirators for a period of four years while employers evaluate and reduce/eliminate potential exposures to these substances in the workplace" [Ex. 3-910]. They raised no technological feasibility issue.

SIC 39—Miscellaneous Manufacturing

In the manufacture of hard surface floor coverings (SIC 3996), processes include pre-weighing and blending raw materials, followed by mixing and gelling of the composition in internal batch mixers of the Banbury type or by continuous mixing operations carried out in mixers of the extruder type.

Potential worker exposures may result from dusts of the raw materials as they are handled (automatically or manually) prior to and during charging of the mixer. Fumes and dusts can emanate from leaks on the mixer and from hot, freshly mixed material as it is discharged.

The types of exposures depend on the substances used. Applicable exposure controls include local exhaust ventilation at the mixer doors and over conveyor transfer points. The use of good working practices is extremely effective in controlling exposures during the opening of the mixers and the pouring of materials.

OSHA received one comment related to the issue of technological feasibility in the Sporting and Athletic Goods sector (SIC 3949). Robert Sigler, president of S.R. Smith, Inc., a manufacturer of diving boards, stands, and other reinforced plastics accessories for swimming pools, commented that his plant "will face severe economic hardship and possible closure" if the proposed 50 ppm limit for styrene is retained. Mr. Sigler believes this would be the case because "the entire layout of our manufacturing area and the entire ventilation system would have to be completely stripped and replaced" [Ex. 3-380].

OSHA has evaluated the technological feasibility of achieving compliance with a 50 ppm limit for styrene in reinforced plastics operations in several sectors (recreational boat manufacture, cultured marble tubs and showers, and underground storage tanks). Manufacture of fiberglass burial vaults (SIC 3995) is similar to these also. There is a considerable similarity among these various reinforced plastics operations: all involve the use of a styrene resin that is reinforced with fiberglass and applied by "chopper gun" and all involve manual layup and rolling. Thus, although the size and shape of the piece being built may vary, the exposure problems encountered by operators in these facilities are similar in nature. OSHA has determined that employers whose employees perform manual layup and rollup in reinforced plastics operations may need to use a combination of engineering controls, work practices and personal protective equipment to achieve the proposed styrene limit. OSHA's reasoning on this issue can be found in the previous discussion, under SIC 37, Transportation Equipment, and SIC 30, Rubber and Plastic Products.

The Casket Manufacturers Association of America (CMAA) submitted information to the record on the technological feasibility of achieving compliance with the Agency's proposed hardwood dust standard of 1 mg/m³ [Ex. 8-78]. The CMAA reported that finishing operations, particularly machine and hand sanding of "white" wood caskets, often are associated with dust "levels 3-5 times higher than those in the furniture industry. . ." [Ex. 8-78]. In support of this position, the CMAA submitted two sets of exposure results: 9 results from samples taken specifically for this rulemaking, and 24 sample results described as "historical" and drawn from a variety of sources [Ex. 8-78].

Results from the CMAA's recent analysis ranged from 0.8 to 72 mg/m³; however sampling times ranged from 90 minutes to 390 minutes. Seven of these nine recent samples showed results below 5 mg/m³. Results from the historical set of samples ranged from 0.42 to 29 mg/m³; sampling periods were even shorter than those for the recent set, ranging from 55 to 133 minutes [Ex. 8-78].

The data provided by the CMAA are not adequate to draw firm conclusions about the feasibility of achieving compliance with a 5 mg/m³ standard for hardwood dust in the hardwood casket manufacturing segment. For example, these data cannot be used to evaluate employees' full-shift exposures because they do not represent 8-hour sampling periods. In addition, no job descriptions or task analyses are presented, and thus no deductions can be drawn about exposures for the unsampled portion of the day. In addition, no details are provided about the specific type of

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wood involved in casket making, beyond stating that it is a hardwood.

However, OSHA believes that the final rule's 5 mg/m³ PEL for wood dust is already being achieved in hardwood casket making. The Agency's reasoning is as follows. First, OSHA believes that the results gathered by the CMAA for this rulemaking are more representative than the historical sampling data because they are more recent and generally involved longer sampling periods. Second, OSHA believes that these results reflect wood dust levels during hand or machine finishing operations because it is these operations that the CMAA is concerned about from the technological feasibility perspective. Third, an analysis of these recent results shows that, even using the worst-case assumption that employee exposures continue at the reported levels for the entire work shift (a highly unlikely exposure scenario), 7 out of 9 results would be below 5 mg/m³ as 8-hour TWAs. For example, the median 8-hour TWA exposure level for this group of samples under this worst-case scenario would be 2.34 mg/m³.

For these reasons, OSHA finds that hardwood casket manufacturers are already achieving the final rule's PEL of 5 mg/m³ in almost all cases, even in their dustiest operations (hand and machine finishing). Because Western red cedar is not used to make caskets, the Agency concludes that no casket makers will be affected by the final rule's 2.5 mg/m³ PEL for this allergenic wood dust. Thus OSHA finds no technological reasons for casket manufacturers to have difficulty complying with the final PEL for wood dust.

SIC 42—Motor Freight Transportation and Warehousing

Grain elevators whose primary income derives from the storage of grain are classified in SIC 42. Employees working in these elevators, have the same kinds of exposures as workers in other types of elevators, which are classified in SIC 51. OSHA's reasoning on the technological feasibility of achieving the proposed grain dust limit in all grain elevators is discussed fully in the technological feasibility section for SIC 51, below.

SICs 40, 45, 47—Transportation

Cleaning and coating operations are conducted in rail (SIC 40), and air transport industries (SIC 45), as well as in transportation services (SIC 47). These operations require the application of cleaning agents and/or the sandblasting of particles prior to the application of paints or coating. Spraying processes are required for the application of both the cleaning agents and the paints and coatings.

Rail car applications, for example, are generally performed within a large facility, part of which is established as a spray room. The cars are rolled into an enclosed spray area. In manual spray painting rooms, the operator is required to enter and move about the enclosure during spraying. Automatic spray rooms (or booths) are similar but the pressurized spray guns are automatically operated.

Three major spray techniques are used to apply cleaning agents, coatings or paints. These are: compressed air spraying (low-pressure spraying); airless spraying (high-pressure spraying); and electrostatic spraying. The compressed air spray gun atomizes a stream of liquid by impaction with a jet of air. Atomization may take place inside or external to the gun. The air stream and paint droplets intersect the prepared surface. The airless spray gun atomizes the liquid by forcing it through a small orifice under high pressure. The resulting particulate cloud is impelled by the pressure-created momentum toward the surface. Electrostatic spray equipment is based upon the attractive force between two oppositely charged objects. The liquid is atomized by compressed air, airless, or electrostatic techniques. The particles are given either positive or negative charge and the conductive surface to be sprayed is grounded. In general, electrostatic spray techniques result in the lowest exposure levels, followed by airless and then compressed air spraying.

In enclosed spray rooms, particulates enter the operator's breathing zone due to backspray. Exhaust ventilation to control exposure can be designed using down draft or a multiple sidedraft system. Worker positioning in relation to the spray plume is also critical in minimizing exposures. These include minimized line pressure, changing and cleaning of filter banks, enclosure integrity and ventilation maintenance. Personal protective equipment is also generally worn to insure the worker protection.

The industry representatives did not challenge the technological feasibility of the proposed PEL's. However, the Air Transport Association did object to the six month compliance period established by OSHA because of the unique character of the industry and the time required to establish proper controls [Ex. 3–1122]. OSHA recognizes this difficulty but believes that the six month/five year phase in period for complying with this rule, addresses this objection.

SIC 49—Electric, Gas, and Sanitary Services

Coal-fed power plants present the potential for exposure to coal dust as well as a number of other substances. Coal dust exposures potentially occur in the area where coal is fed into the furnaces. The coal is generally fed into large hoppers off conveyors. Conveyors are filled by front-end loaders from the coal storage area. The operators of the front-end loaders are protected from coal dust exposure with the use of closed, air-conditioned cabs which provide purified breathing air.

Evidence was presented by the Edison Electric Institute regarding technological feasibility during intermittent exposures. Dr. Louis Hosek, representing EEI, argued that "Many intermittent exposures occur in situations where engineering controls are likely to be substantially less feasible, both technologically and economically, than respirators, personal protective equipment, and work practices" [Tr. 8/11/88, pp. 228, 229].

This would clearly be the case in the tasks of cleaning the boilers and precipitators at electric power plants. Installing engineering controls to reduce exposures inside boilers would not be feasible. A power plant visited for this rulemaking had installed deluge systems for the precipitators to wash down as much fly ash as possible before workers could enter the area for cleaning or maintenance. Workers had to wear protective clothing and respirators when they cleaned the precipitator areas even after the wash system was employed [Ex. 11]. These tasks are occasional, performed maybe four times each year as the opportunity arises when the boilers are shut down. The crews used to perform the cleaning are as large as is practical so that the duration of the operation will be minimized. This is a maintenance situation where engineering controls would not feasibly achieve the exposure level and supplementary respiratory use is appropriate under OSHA's traditional policies.

The Edison Electric Institute questioned whether OSHA had found that compliance with the PEL for ozone was technologically feasible in the electric utility industry [Ex. 133, Tr. 8/11/88, pp. 232–233]. However, the Gulf Power Company, an electric utility, stated that, "Normal operating procedures would prevent exposure exceeding 0.3 ppm, since most operations occur in well ventilated

environments" [Exs. 3–938, 3–1144]. Therefore, OSHA concludes that the PEL for ozone is feasible.

SICs 50 and 51—Wholesale Trade

Some firms in this classification receive liquid chemicals in bulk quantities from a tank truck, store them and then redistribute them in smaller containers. Solvents, for example, emit considerable vapor when poured from one container to another or when a container is being filled, displacing the air in it. Pouring and filling operations are often enclosed to minimize vapor losses (this helps to reduce product loss as well as prevent exposures). In addition, secondary vapor recovery is often incorporated, whereby vapors emitted at the transfer points are captured and returned through a separate circuit to the storage tank from which the volatile liquid is being removed.

Grain dust exposures in this sector occur during grain handling operations in wholesale grain elevators. The majority of commenters on the technological feasibility of the proposed 4 mg/m³ PEL for grain dust (oats, wheat, and barley) maintained that this limit is not being met currently and cannot be met with available engineering controls [Exs. 8–55, 3–77, 3–201, 3–343, 3–347, 3–498, 3–1119, and 3–1196]. Typical of these comments is one from the Union Equity Coop Exchange, which stated that "over $9 million has been spent to install dust collection equipment in the facilities Union Equity currently operates. Thousands of dollars are spent monthly to maintain and operate this equipment. Many of these systems are state-of-the-art design for functional operation. None of these systems would allow any of our facilities to meet the proposed 4 mg/m³ exposure level" [Ex. 3–343, p. 2]. Edward X. Junia, Esq., representing the Andersons Management Corporation, was more specific: "there are certain operations in every grain-handling facility where there are no technically feasible engineering controls to reach such a level. The regular unloading and cleaning of storage bins/buildings and the housekeeping activities required under other OSHA standards are two areas where compliance through engineering methods is virtually impossible" [Ex. 3–77, p. 2].

OSHA does not agree that no controls are available to handle employee grain exposures during these operations. For example, in-plant vacuum systems (Farant and Moore, "Dust Exposures in the Canadian Grain Industry," *AIHAJ* 1978, pp. 177–193) would reduce exposures during housekeeping and maintenance; this control method should be used in lieu of manual sweeping or compressed air cleaning, two housekeeping methods that are still widely used in grain elevators (Ex. 3–751, Attachment, Docket H–0117).

Employers owning elevators that are operated in connection with feed mills (SIC 20) have found that the use of aspirators with filtration systems is highly effective in controlling grain dust during loading and unloading operations in receiving areas (Tr. 8/10/88, p. 10–73). To deal with the problem of grain dust in older mills, owners are replacing old-fashioned wooden legs with "good, tight, enclosed steel legs . . . old facilities . . . that had open grain drag conveyors . . . have been replaced in many cases with enclosed-type conveyors . . . the conveying systems that used to be open have lids on them . . . to keep the dust where it belongs" (Tr. 8/10/88, p. 10–80). Such enclosure is recommended by industrial hygienists whenever workers must work in dusty environments.

For some facilities, oil suppression of dust may be a useful control measure. An oil mist, which consists of mineral oil, vegetable oil, or some combination of the two, is normally applied when the grain is received at the mill. Ralph Mourer, testifying for the American Feed Industry Association, stated that oil suppression of dust is a promising control that he has just installed in his feed mills. Although he has not yet had much experience with the system, he noted: "[P]eople I've talked [to] and discussed the system with are very pleased" [Tr. 8/10/88, p. 10–78]. In an earlier study of grain-handling facilities for OSHA, however, Arthur D. Little, Inc., noted that there are some limitations to this process:

> Mineral oil is not approved for use as an additive on food grades of grain by the U.S. Food and Drug Administration. Vegetable oil may be an allowed additive, but its use can cause the grain to adhere into masses in cold climates. Further, there is concern that the oil will become rancid or create a commercially objectionable odor" (Docket H–0117, ADL, p. VI–34).

Scott Bjornsom from Hunter Grain in North Dakota also reported that oil suppression cannot be used for malting barley "because of the absorption with the water in the malt process" [Tr. 8/10/88, p. 10–85]. Despite some limitations on its use in elevators, oil suppression appears to be an effective control for many elevators.

OSHA notes that the grain dust exposures of employees working in grain elevators classified in SIC 51 are sometimes below the 10 mg/m³ (the grain dust limit in the final rule) at the present time. A recent NIOSH study reports that only five percent of samples in the mills surveyed exceeded 10 mg/m³ (Rankin et al. 1986), and a NIOSH Health Hazard Evaluation from a Cargill elevator showed many sampling results that were below 10 mg/m³ or only slightly above this level (NIOSH HHE 76–13–316). These exposure levels are being achieved despite the fact that most grain elevators do not now have pneumatic dust control systems (RIA for the Grain Handling standard).

After considering the comments received on the proposed level, the controls available to reduce exposures and the impact on certain segments of the industry, OSHA has set the PEL for grain dust at 10 mg/m³.

OSHA believes that the controls described above, which are being installed in many elevators at the present time in response to the recent promulgation of OSHA's grain-handling standard, the recommendations of insurers, and the industry's concern for worker safety and health [Tr. 8/10/88, p. 10–73], are capable of achieving the 10 mg/m³ limit in those facilities and operations that are not now achieving this level. Industry representatives have reported that these systems have several additional benefits for employers; they improve productivity, have a positive effect on the quality of the grain, and create a better working environment [Tr. 8/10/88, pp. 10–60 and 10–81]. Thus, OSHA concludes that a variety of control strategies are available to employers operating grain elevators and these controls are installed in many elevators at the present time. The Agency finds that implementation of these controls will achieve the final rule's grain dust limit of 10 mg/m³ in those elevators and areas that have not already achieved this level.

SIC 72—Personal Services

To control dry cleaning emissions (SICs 7216, 7217), louvered wall fans and grilled ducts were installed to provide ventilation. Ceiling exhaust fans provided general ventilation. Natural ventilation was provided by through doors in the production area and by louvered panels along walls in the plant. Forced ventilation was provided by ceiling mounted exhaust fans and evaporative coolers. A local exhaust system with a standard single floor pickup exhausted air through a carbon absorption unit to the outside. Gaskets in machinery doors and ductwork needed routine maintenance to prevent deterioration. Various cleaning machines, pressure filter extractors and dryers were used. Dryers and drying

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cabinets were provided with local exhaust ventilation.

In addition to the controls mentioned above, information has been reported by the Amalgamated Clothing and Textile Workers Union (ACTWU) which indicates that exposure to perchloroethylene is reduced when using the unitary dry-to-dry equipment (10.7 ppm for operator) as opposed to transfer-type dual washer/dryer equipment (58.4 ppm for operator) [Tr. 8/5/88, pp. 139–186]. ACTWU estimated that over 100,000 workers are exposed to perchloroethylene on a routine basis in the apparel cleaning industry. According to the 1982 Census of Service Industries, there were 13,049 dry cleaning plants in the U.S. that used perchloroethylene, with total employment of 89,896 workers. ACTWU calculated that approximately two-thirds of these workers are exposed in plants using transfer equipment, and one-third of these workers are exposed to perchloroethylene in plants using dry-to-dry equipment [Ex. 8–31]. The ACTWU also commented on the feasibility of reducing the exposure of perchloroethylene to substantially less than the 50 ppm proposed standard. Mitchell Brathwaite, an industrial hygienist representing the ACTWU, stated that OSHA "could reasonably propose a much lower PEL. . . . For instance, NIOSH reported that [the] mean exposure for 80 percent of [the] plant[s] study [studied] were below 50 ppm. In fact, machine operators in these plants had mean exposures of 22 ppm" [Tr. 8/5/88, p. 190].

NIOSH determined that "the 'combination washer/dryer' machines significantly reduce worker exposure to perchloroethylene when compared to exposures for separate or 'scanter' equipment" [Ex. 150]. Mr. Brathwaite further cited that based on NIOSH data (the Ludwig study) and Mount Sinai Hospital's Division of Occupational Safety and Health Data, "exposures could be reduced below ten ppm" in the dry cleaning industry with the utilization of the dry-to-dry equipment [Tr. 8/5/88, pp. 203–204].

The International Fabricare Institute (IFI) supported the proposed revision of the PEL for perchloroethylene at 50 ppm. They stated that approximately 64 percent of the dry cleaning industry uses dry-to-dry equipment, and that over the past four years about 95 percent of all new equipment sold has been dry-to-dry equipment [Ex. 3–671]. This indicates a continuing increase from 1982 when 35 percent of the firms had dry transfer machines. Based on this trend and the belief that all machines purchased in the future will be of the dry transfer type, all equipment in the dry cleaning industry will be dry-to-dry equipment. This will be accomplished through the normal replacement cycle. The ACTWU [Exs. 153G, 192] reports that the machinery census in Michigan for the period 1963–1986 indicates "there was a 34% increase in dry-to-dry machines, and an 11% decrease in transfer machines during this period. These data demonstrate vividly that replacement of transfer equipment with dry-to-dry equipment is not only technically feasible, but is indeed the economic choice of employers."

According to the testimony of Mr. William Fisher, vice president of IFI, the ambient perchloroethylene concentration in the cleaning area of a dry cleaning shop is approximately 20 to 30 ppm. The concentration decreases to approximately 10 to 15 ppm in the finishing area (at a range of approximately 15 to 20 feet from the cleaning area) to 1 to 3 ppm at the counter. "There can be some variations in those numbers. However, Ludwig's study from NIOSH indicated the same numbers as did the Westinghouse Behavioral Research Center study * * *" [Tr. 8/5/88, p. 281]. The actual concentration to which a person would be exposed is dependent upon the ambient environmental conditions and the ventilation characteristics.

Ludwig addressed the issue of engineering controls in dry cleaning facilities:

> The dryer is a closed system while in operation and the PCE-laden air leaving the dryer is passed over a water-cooled condenser for solvent recovery before the air is reheated and recirculated through the tumbler. . . . The processing equipment, whether a combination unit or separate washers and dryers, has interlock systems which insure that there is exhaust ventilation pulling air into the machines and out through ducting whenever the doors are opened. The recommended air velocity in through the loading door is an average of 100 feet per minute across the entire door opening.
>
> An activated charcoal adsorber is often added to the control scheme to remove PCE from the air exhausted from the washer during loading and transfer, and the dryer tumbler when the textiles are being aerated (deodorized), from the air intakes in the processing area, and from the vents of the muck cookers or stills. . . . The collection efficiency of the activated charcoal is extremely high (greater than 99%) up until breakthrough; however, if the adsorber becomes saturated, all PCE collected by the ventilation system will pass directly through the charcoal. It is for this reason that the adsorber should be vented to the outside of the building.
>
> Local exhaust ventilation in the processing area is also ducted to the adsorber. Ideally, the air intakes are between the level of the equipment doors and the worker's breathing zone. However, due to the mistaken notion that since PCE vapors are heavier than air they collect on the floor, most local exhaust intakes are at floor level; PCE vapors are likely to be found in high concentrations near the floor only if there has been a spill. Along with reducing PCE levels in the processing area, the use of local exhaust when ducted to the adsorber tends to cool the charcoal bed, thereby increasing its adsorption efficiency. Another type of ventilation utilized in some facilities is a low velocity fan 7' to 9' above the floor directed toward the center of the processing area. This concept, when combined with general room ventilation in which the fan is located on the wall or ceiling behind the dry cleaning area, results in reduced employee exposures not only to PCE but also to heat and humidity. A complete room air change every 5 minutes is recommended. Engineering controls such as exhaust ventilation of process equipment vented to a charcoal adsorber, local exhaust in the dry cleaning area, fans, and general room ventilation all contribute to lower ambient PCE concentrations. Also important is an active maintenance program. Typical sources of PCE vapor leaks are the button trap and the doors of the washer, dryer, cooker, or dryer lint trap. Most of these localized leaks are avoided by replacing door gaskets and adjusting the springs and hinges on the doors. Improperly seated air-inlet dampers on the dryer (used during aeration) and ducting are other potential sources of PCE emissions [Ex. 8–31, Appendix 13].

Data compiled by NIOSH, the dry cleaning industry, the ACTWU, and independent investigators demonstrates that virtually all employers can achieve exposure limits lower than the 50 ppm originally proposed by OSHA by using existing, readily available control technology. OSHA concludes, therefore, that a 25 ppm standard for perchloroethylene is feasible.

SIC 73—Business Services

Blueprinting and photocopying firms (SIC 7332) control ammonia fumes from blueprint duplication machines through use of local exhaust ventilation. The exhaust system is often built into large, high volume machines. Improvements in work practices control exposures during transfer.

The blueprint reproduction process uses ammonia to develop the image on the finished reproduction. Some machines are designed to contain the ammonia and its vapors; others are vented to the outside atmosphere. However, the odor of ammonia is present around the machines, especially where copies exit the machine and are trimmed [Tr. 8/5/88, p. 216, p. 228, p. 236]. Mr. Lucas Seeman, representing the Association of Reproduction Materials Manufacturers, discussed a survey

conducted in 1975–1976 of 75 blueprinting materials installations to determine levels of ammonia exposure found during blueprint reproduction. This survey found that, "the dominant part of this group was well under 25 ppm." Mr. Seeman stated that higher levels might occur "at the export end of some of the machines where the paper is coming out" [Tr. 8/5/88, pp. 226, 229]. OSHA concludes that local exhaust would be sufficient to bring these "export end" work stations into compliance with a 35 ppm STEL.

SIC 55,75—Automotive Repair Shops, Dealers

Exposure to carbon monoxide presents the major hazard in these industries. To control this in automobile engine reconditioning lines (SIC 7538), exhaust fans and flexible ducts which extend directly over the engines have been installed. OSHA received no comments on the proposed rule from this sector.

SIC 76—Miscellaneous Repair Services

Many repair services involve welding. In addition to techniques suggested in the discussion on welding and brazing in SICs 34 and 38, another control technique for welding fumes in SIC 7692 uses a "smoke exhaust" welding gun which captures and removes fumes. These guns have some limitations and are applicable to continuous or semicontinuous flux core or metal inert gas welding operations. Crossdraft airflow has also been suggested. The use of a portable fan is not recommended. OSHA concludes that it is feasible to control exposures to the final levels.

There were no docket comments on any aspect of this rulemaking for this sector.

SIC 80—Health Services

Many medical and dental practitioners perform surgery in outpatient clinics and private offices outfitted for the procedure. Air contamination in an operating room may consist of waste anesthetic, the propellants of different sprays, scrubbing agents, cleansing agents, ethylmethacrylate (released from surgical cement) and the possible decomposition products of the volatile or gaseous agents. The magnitude of gas flow, type of flow circuit and scavenging of waste gases significantly influence the levels of waste gases in the room air. Exposures are usually controlled by general dilution ventilation. Some clinics and offices, which are specifically designed for surgical use, may have local exhaust systems installed.

Glutaraldehyde is used in a limited number of applications, rather than as a general disinfectant. Specific applications include use as a disinfecting agent for respiratory therapy equipment, bronchoscopes, physical therapy whirlpool tubs, surgical instruments, anesthesia equipment parts, x-ray table-tops, dialyzers and dialysis treatment equipment. Presently there are no safer disinfectants which are as effective as glutaraldehyde.

Based on NIOSH Health Hazard Evaluations [1], OSHA concludes that the proposed ceiling limit for glutaraldehyde of 0.8 mg/m³ (0.2 ppm) is technologically feasible. NIOSH states that those facilities and areas where exposures are below 0.2 ppm achieve these levels through the use of ventilation. NIOSH has found that through a combination of work practice improvements and engineering controls, levels below 0.2 ppm can be achieved. Specific recommendations include using increased dilution ventilation in whirlpool rooms and x-ray rooms, along with the careful application of the glutaraldehyde with a long-handled brush, rather than a spray applicator. NIOSH also recommends the construction of a workstation (similar to a lab hood) for cleaning surgical instruments and equipment parts.

OSHA received no comments on the impact of the proposed rule on facilities in this sector.

Personal Protective Equipment

In the operations and processes included in Table F–4 reductions in exposure limits can be achieved through engineering controls and work practice modifications. However, certain generic work activities are more problematical and may require the use of personal protection equipment. OSHA recognizes in 29 CFR 1910.1000(e), that respiratory protection can be an important adjunct to engineering controls. Because of specific task and process considerations, it may sometimes be necessary to augment engineering controls with the use of respiratory protection.

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Table F-3

INDUSTRIES AND PROCESSES WHERE SKIN PROTECTION HAS BEEN ADDED

SIC #	Chemical Name	Process Name
20	CAPTAFOL (DIFOLATAN)	Food Storage and Preservation
25	N-BUTYL ALCOHOL	Coating
26	METHYL ALCOHOL	Chemical Recovery
27	CYCLOHEXANONE	Plate cleaning
	FURFURYL ALCOHOL	Plate cleaning
	HYDROGEN CYANIDE	Plate making/Engraving
	METHYL ALCOHOL	Plate cleaning
28	N-BUTYL ALCOHOL	Blending, Packaging
	DIAZINON	Blending, Packaging
	METHYL ALCOHOL	Blending, Packaging
	METHYL PARATHION	Blending, Packaging
30	N-BUTYL ALCOHOL	Finishing, Trimming,Painting
31	DDT	Defestation/Disinfestion
	HYDROGEN CYANIDE	Beamhouse
	METHYL ALCOHOL	Finishing/Degreasing
	TRIORTHOCRESYL PHOSPHATE	Finishing/Degreasing
32	METHYL ALCOHOL	Batch preparation
	THALLIUM (SOLUBLE)	Batch preparation
	TIN	Float Process
33	HYDROGEN CYANIDE	Coremaking
34	N-BUTYL ALCOHOL	Coating/Painting
35	N-BUTYL ALCOHOL	Coating/Painting
	HYDROGEN CYANIDE	Soldering/Brazing
36	N-BUTYL ALCOHOL	Coating/Painting
	HYDROGEN CYANIDE	Soldering/Brazing
	MERCURY	Soldering/Brazing
	METHYL ALCOHOL	Cleaning
38	MERCURY	Handling of meaurement liquids
		Preparation of Special Tubes
		Assembling
	METHYL ALCOHOL	Blending/Packaging
39	N-BUTYL ALCOHOL	Painting, Coating

Table F-3

INDUSTRIES AND PROCESSES WHERE SKIN PROTECTION HAS BEEN ADDED

45	N-BUTYL ALCOHOL	Cleaning/Spraying
	METHYL ALCOHOL	Cleaning/Spraying
55	N-BUTYL ALCOHOL	Painting/ Coating
72	MERCURY	Embalming
	METHYL ALCOHOL	Embalming
73	DIAZINON	Exterminating
	DIOXATHION	Exterminating
	PHENOTHIAZINE	Exterminating
75	N-BUTYL ALCOHOL	Painting/ Coating
80	N-BUTYL ALCOHOL	Disinfectant and solvent use
	MERCURY	Preparation of amalgams
	SODIUM AZIDE	Laboratory analysis

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Table F-4

PROCESSES TO BE CONTROLLED

SIC 20 -- Food Products	
Refrigeration/charging	Local ventilation: a hood exhausted to a baghouse, appropriate placement of cutoff values to freezer coils, an alarm detection system
Dry ice manufacture and use	Local ventilation: slotted hood exhaust system, adjustment of the number of air changes
Food storage and preservation	Local ventilation: slotted hood exhaust system, adjustment of the number of air changes
Grain elevators	Local ventilation, enclosure of the Boerner divider
SIC 21 -- Tobacco	Local ventilation
Cutting and shredding	
Flavor additive blending	
SIC 22 -- Textile Mills (except 2294)	Local ventilation, pressure failure alarms for closed systems, continuous flow indicators to indicate acceptable airflow
Wet methods, vacuum cleaning	
Weaving (SICs 2251,2295,2299 only)	
Dying/curing	
Coating/finishing	
Cutting	
Printing	
Spinning (SICs 228, 2299)	
Bonding (SIC 2295)	
SIC 2294 -- Processed Waste	Local ventilation, pressure failure alarms for closed systems, continuous flow indicators to indicate acceptable airflow

Table F-4

PROCESSES TO BE CONTROLLED
(continued)

Wet methods, vacuum cleaning	
Processing of textile mill waste and fiber	
Fiber recovery from clippings and rags	
SIC 23 -- Apparel Products	
Bonding	Local ventilation, general ventilation
Dying	
Cleaning	
SIC 24 -- Lumber and Wood Products	Local ventilation: hoods or various types of negative pressure (or combinations of positive and negative pressure) devices; enclosed or hooded equipment vented to a baghouse, industrial vacuum system; enclosures: booth or cab supplied with filtered conditioned air
Drying/baking	
Coating/spraying/finishing	
Sanding/grinding/polishing	
Spraying/coating preservatives (SIC 2491 only)	
Cutting/sawing/planning	
Adhesive binding	
Gluing/hot pressing	
SIC 25 -- Furniture and Fixtures	
Gluing/hot pressing	Local ventilation
Coating/spraying/finishing	Local ventilation: downdraft spray booths, side draft ventilation; airless atomizing sprayers, electrostatic spray

Table F-4

PROCESSES TO BE CONTROLLED
(continued)

Spraying/coating preservatives	Local ventilation: downdraft spray booths, side draft ventilation; airless atomizing sprayers, electrostatic spray guns on reciprocators; drums equipped with heavy barrel covers, an internal agitator, closeable access lines
Grinding	Local ventilation
Sanding/polishing	Local ventilation
Deburring	Local ventilation
Cutting/sawing/planing	Local ventilation
Layup/sprayup/coating	Local ventilation
Baking/drying	Local ventilation
Drilling/boring	Local ventilation

SIC 26 -- Paper and Allied Products

SIC 261 -- Pulp Mills

Digester	Enclosure, local ventilation
Pulp screening/washing	Ventilation and air purification in control rooms
Chemical recovery	Local ventilation
Bleaching	Ventilation and air purification in control rooms
Boilers	Local ventilation
Water treatment	Local ventilation, enclosure: storage of chemicals isolated and surrounded by dikes, rerouting of discharge lines

Table F-4

PROCESSES TO BE CONTROLLED
(continued)

Recovery/reprocess/reclamation	Local ventilation, enclosure: storage of chemicals isolated and surrounded by dikes, rerouting of discharge lines

SICs 262, 263 -- Paper and Paperboard Mills

Wet end	Local ventilation, enclosure: air-conditioned cabs or booths
Press section	
Drying	
Size press and coaters	
Calendars and winders	

SIC 264, 265, 266 -- Paperboard Products and Building Paper

Mixing/blending (SIC 2641 only)	Local ventilation
Coating/finishing	Local ventilation
Gluing	Local ventilation
Drying	Local ventilation
Cutting/sawing/planing	Local ventilation
Packaging	Local ventilation with partial enclosure
Shredding/waste processing	Enclosure, local ventilation
Stamping/shaping/molding/pressing	Ventilation and air purification in control rooms

SIC 27 -- Printing and Publishing — Local ventilation

Printing process and plate cleaning
Platemaking
- Photoengraving
- Gravure
- Lithographic (Offset)

Table F-4

PROCESSES TO BE CONTROLLED
(continued)

Screen stencil	
Letterpress	
Flexographic	
Intaglio	
Adhesive binding	
Mono or linotype setting	
Film processing	
SIC 28 -- Chemicals and Allied Products	
Reaction/fermentation	Local ventilation: enclosing and exhausting equipment, fitting vacuum crescents and elephant trunks on paint sources, fitting chutes with covers, placing vacuum attachments on receiving drum covers, using fixed ductwork as an exhaust, installing electronic-spent acid interface detectors; equipping vessels with hinged covers
Separation (many types)	Local ventilation
Crushing/grinding	Local ventilation
Loading/offloading	Local ventilation with partial enclosure: vapor recovery systems
Drying/baking	Local ventilation
Packaging/bagging	Local ventilation with partial enclosure: dust collection hoods
Reaction/fermentation	Local ventilation
Coatings/spraying	Local ventilation: portable hoods attached to flexible ductwork; enclosure: vented enclosures kept under negative pressure by a ventilation system

Table F-4

PROCESSES TO BE CONTROLLED
(continued)

Blending/mixing/formulating	Local ventilation: enclosing and exhausting equipment, modification of hoods, fitting vacuum crescents and elephant trunks on paint sources, fitting chutes with covers, placing vacuum attachments on receiving drum covers, using fixed ductwork as an exhaust, installing electronic-spent acid interface detectors; equipping vessels with hinged covers
Impregnation	Local ventilation
Extrusion	Local ventilation
Recovery/reprocess/reclamation	Enclosure, local ventilation
SIC 29 -- Petroleum Refining	
Coke production	Worker enclosure, scrubber, computer control instrumentation, hardware modifications
Blending/mixing	Local ventilation
SIC 2911 -- Petroleum Refining	
Loading and unloading	Local ventilation with partial enclosure
Sampling	Local ventilation with partial enclosure: sampling boxes that vent gases and vapors away from operator and/or shield the operator from accidently splashed or spilled material

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Table F-4

PROCESSES TO BE CONTROLLED
(continued)

Process inspection and supervision	Local ventilation with partial enclosure
Quality control analysis	Local ventilation with partial enclosure: exhaust fans and ventilation hoods
Waste water treatment	Enclosure, local ventilation
Batch process coke production and removal	Worker enclosure, scrubber, computer control instrumentation, hardware modifications
SIC 2951 — Paving Mixtures	
Materials receiving and handling	Local ventilation with partial enclosure
Measurement	Local ventilation
Drying/baking	Local ventilation
Mixing (Continuous/Batch)	Local ventilation
SIC 299 — Miscellaneous Petroleum and Coal Products	
Materials receiving and handling	Local ventilation with partial enclosure
Blending/mixing	Local ventilation
Reprocessing or reclamation	Enclosure, local ventilation
Packing and loading	Local ventilation with partial enclosure
Adhesive binding	Local ventilation

Table F-4

PROCESSES TO BE CONTROLLED
(continued)

SIC 30 — Rubber and Miscellaneous Plastics Products	Local ventilation: hoods, automated batching systems, use of rubber bins rather than screw conveyors, substitution of chemicals
SIC 301 — Tires and Inner Tubes	
Materials receiving and initial handling	Local ventilation with partial enclosure
Compounding and mixing	Local ventilation: hoods; automated batching systems, use of rubber bins rather than screw conveyors, substitution of chemicals
Vulcanization or curing	Local ventilation
Calendering and milling	Local ventilation
Solvent mixing and distribution	Local ventilation
Tire building	Local ventilation
Reblending/remixing	Local ventilation
Coating/spraying	Local ventilation
Stamping/shaping/molding/pressing	Local ventilation

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Table F-4

PROCESSES TO BE CONTROLLED
(continued)

SIC 306 -- Fabricated Rubber Products

Materials receiving and initial handling	Local ventilation with partial enclosure
Blending, compounding, and mixing	Local ventilation: hoods, automated batching systems, use of rubber bins rather than screw conveyors, substitution of chemicals
Extrusion	Local ventilation
Coating/spraying	Local ventilation
Calendering and milling	Local ventilation
Vulcanization or curing	Local ventilation
Finishing, trimming, and painting	Local ventilation

SIC 307 -- Miscellaneous Plastic Products

Material handling	Local ventilation enclosure
Blending, mixing and compounding	Local ventilation: hoods, automated batching systems, use of rubber bins rather than screw conveyors, substitution of chemicals
Calendering	Local ventilation
Molding and mold cleaning	Local ventilation
Assembly (including lamination, gluing, etc.)	Local ventilation
Foam processing	Local ventilation
Finishing, trimming, and painting	Local ventilation
Coating/spraying	Local ventilation

SIC 31 -- Leather and Leather Products (except SIC 311)

Gluing and cementing	Local ventilation Work practice changes

Table F-4

PROCESSES TO BE CONTROLLED
(continued)

SIC 311 -- Leather Tanning and Finishing

Preservation	General ventilation
Defestation and disinfection	General ventilation
Beamhouse	Local ventilation
Tanning	Local ventilation
Splitting and shaving	General ventilation
Neutralizing	Local ventilation
Retanning	Local ventilation
Coloring or dyeing	General ventilation
Fat liquoring	General ventilation
Drying	Local ventilation
Finishing (includes degreasing)	Local ventilation

SIC 32 -- Stone, Clay, and Glass Products

SICs 321, 322, 323 -- Glass

Batching	Local ventilation: industrial vacuums system/work practice changes
Melting	Local ventilation
Plate process (SIC 3211 only)	Enclosure
Sheet process (SIC 3211 only)	Enclosure
Float process (Sic 3211 only)	Local ventilation
Molding and blowing	Enclosure
Annealing	Local ventilation
Coating and etching	Local ventilation

SICs 324, 327 -- Cement, Concrete, Gypsum, Plaster

Gypsum, Plaster	
Crusher, grinder and sizing	Local ventilatin: local exhaust tubes, use of wet materials, industrial vacuum sytems
Blending	
Calcining kiln	

Table F-4

PROCESSES TO BE CONTROLLED
(continued)

SIC 33 -- Primary Metal Industries

SIC 331 -- Basic Steel Products

Coke Manufacture	Worker enclosure, scrubber, computer control instrumentation, hardware modification, enclosed vessels and process equipment
Ore Handling	Local ventilation
Blast furnace operation (including furnance charging BOF, ladle repair)	Local ventilation; vented to an electrostatic precipitator and/or baghouse, covering of runners; replacing older blast furnances; filtered air for work enclosure
Melting, pouring (electric arc or induction) (including electrode production/baking)	Local ventilation: roof-level hoods and ducts, ventilation to an electrostatic precipitator or baghouse
Hot shaping of metal (including rolling mill, metal extrusion, wire drawing, forging press)	Local ventilation
Annealing, quench and temper	Local ventilation
Pickling	Local ventilation
Hot dip galvanizing	Local ventilation
Cold rolling mill	Local ventilation
Abrasive blasting	Local ventilation
Grinding/polishing	Local ventilation
Degreasing	Local ventilation
Sintering	Local ventilation: hoods and sinter air cooler directed to a baghouse
Hot strip	General dilution ventilation enclosure: air-conditioned control stations

Table F-4

PROCESSES TO BE CONTROLLED
(continued)

SIC 325, 326 -- Clay, Pottery

Crushing, grinding, calcining	Local ventilation: local exhaust tubes, use of wet materials, industrial vacuum systems
Slip house (blending)	
Forming and shaping	
Biscuit firing	
Glaze application	
Gloss firing	
Decoration	

SIC 328 -- Stone

Drilling, cutting, flame-jet lancing	Local ventilation
Chipping and grindig	
Surface polishing	

SIC 329 -- Abrasives

Crusher, grinding, sizing	Local ventilation
Calcining (abrasives)	Local ventilation
Bonding	Local ventilation
Melting (Cupola furnace) and raw material handling	Local ventilation
Fiber forming (steam jet process, Powell process, Downey process, dry spinning)	Enclosure
Blowing/molding	Enclosure

Table F-4

PROCESSES TO BE CONTROLLED
(continued)

SIC 332 — Iron and Steel Foundries	
Melting (electric arc or cupola (including electrode production and baking, charging and ladle repair)	Local ventilation: overhead canopy hoods, ventilation of arc air booths, mancooler fans enclosed crane operator cabs
Metal (sand) casting (or pouring)	Local ventilation
Investment casting	Local ventilation
Annealing, quench and temper	Local ventilation
Abrasive blasting	Local ventilation
Finishing (including: torch cutting grinding/polishing)	Local ventilation
Degreasing	Local ventilation
Shakeout	Local ventilation
Coremaking	Local ventilation: to provide negative pressure at the core box
Moldmaking	Local ventilation
Sand reclamation	Local ventilation, mechanical shakeout and automatic sand handling complete with dust collection, make-up air systems
SIC 333 — Primary Nonferrous Metals	
Ore handling	Local ventilation: covers hoods, and exhaust systems for belts, material handling, and transfer systems, enclosing and exhausting equipment; enclosed air-conditioned control booth; computer controlled systems; movable nozzles; wet techniques in storage; general dilution ventilation; replacing the dross handling operation with a dross mill
Melting (electric arc or induction) including electrode production/baking, charging ladle repair, demagging (for Alum.plants only)	Local ventilation: slotted hoods, secondary converter system; induction furnaces; enclosed consoles; operating electric furnaces of negative pressure

Table F-4

PROCESSES TO BE CONTROLLED
(continued)

Metal pouring	Local ventilation: hooding with air-operated doors, a dual draft system, an exhaust system vented to a dry scrubber;
Hot shaping (including rolling mill, forging, wire drawing)	Local ventilation
Annealing, quench and temper	Local ventilation
Degreasing	Local ventilation
SIC 334 — Secondary Nonferrous Metals	
Melting (electric are or induction) including electrode production/baking, charging ladle repair, demagging (for Alum. plants only)]	Local ventilation: slotted hoods, secondary converter hoods, converter gas handling system, induction furnaces; enclosed consoles; operating electric furnaces at negative pressure
Metal casting or pouring	Local ventilation
Forging press (SIC 334, only)	Local ventilation
Torch cutting	Local ventilation
Raw materials preparation (SIC 334, only) [including metal preheat borings dryer) scrap shredder, slag recovery]	Local ventilation: industrial vacuum systems, pneumatic aerators, use of deadbeds, eliminate air lancing.
Degreasing	Local ventilation
SIC 335 — Nonferrous Rolling and Drawing	
Hot shaping (including rolling mill, wire drawing, metal extrusion)	Local ventilation
SIC 336 — Nonferrous Foundries	
Melting (electric arc or induction) (including electrode production/baking, charging, ladle repair)	Local ventilation

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Table F-4

PROCESSES TO BE CONTROLLED
(continued)

Metal (sand) casting (or pouring)	Local ventilation: hooded enclosures, flexible ducting connecting a mobile hood to a traveling exhaust carriage
Investment casting	Local ventilation
Annealing, quench and tempter	Local ventilation
Pickling	Local ventilation
Abrasive blasting	Local ventilation
Grinding/polishing	Local ventilation
Degreasing	Local ventilation
Shakeout	Local ventilation
Coremaking	Local ventilation
Moldmaking	Local ventilation
Sand reclamation	Local ventilation

SIC 339 -- Miscellaneous Primary Metal Products

Sintering	Enclosure; local ventilation: use of closed screw conveyors, baghouse, and electrostatic precipitators
Strip annealing	Local ventilation: use of closed screw conveyors, baghouses, and electrostatic precipitators
Bimetal production	Local ventilation: use of closed screw conveyors, baghouse, and electrostatic precipitators

SIC 34 -- Fabricated Metal Products

Electroplating	Local ventilation

SIC 341, 342, 343, 348 -- Cans, Cutlery, Hand Tools Heating Equipment Ordnance

Pressing	Local ventilation
Acid washing	Local ventilation
Degreasing	Local ventilation

Table F-4

PROCESSES TO BE CONTROLLED
(continued)

Painting and coating	Local ventilation
Electroplating	Local ventilation
Welding	Local ventilation: a welding bench with a backdraft hood, a fixed close-capture hood placed at the back of the work table, a portable close-capture system including an electrostatic precipitator, an, exhaust hose incorporated into the structure of the welding gun; ambient air cleaning devices; a portable blower for use in confined areas
Grinding/polishing	Local ventilation
Abrasive blasting	Local ventilation
Hot shaping (including: rolling mill, wire drawing, metal extrusion)	Local ventilation

SIC 344 -- Structural Products

Painting and Coating	Local ventilation
Welding	Local ventilation; welding bench with a backdraft hood, a fixed close-capture hood placed at the back of the work table, a portable close-capture system including an electrostatic precipitator, an, exhaust hose

Table F-4

PROCESSES TO BE CONTROLLED
(continued)

	incorporated into the structure of the welding gun; ambient air cleaning devices; a portable blower for use in confined areas
Grinding/polishing	Local ventilation
Abrasive blasting	Local ventilation
Acid washing	Local ventilation
SIC 345, 347 -- Screw Machine Products	
Coating and engraving	Local ventilation
Coating (enamels, lacquers, varnishes) (SIC 347 only)	Local ventilation
Hot dip galvanizing (SIC 347 only)	Local ventilation: two-sided lateral exhaust system, two-sided slot ventilation system, a cover which is hinged to a ventilation manifold
Engraving and etching (SIC 347 only)	Local ventilation
Degreasing	Local ventilation
Grinding/polishing	Local ventilation
Hot shaping (SIC 345 only)	Local ventilation
Acid washing	Local ventilation
SIC 346 -- Iron and Steel Forgings	Local ventilation
Hot shaping	
Acid washing	
Pressing	
SIC 35 -- Machinery	Local ventilation
Pressing	Local ventilation
Acid washing	Local ventilation
Degreasing	Local ventilation

Table F-4

PROCESSES TO BE CONTROLLED
(continued)

Painting and coating	Local ventilation: downdraft spray booths
Electroplating	Local ventilation
Grinding/polishing	Local ventilation
Abrasive blasting	Local ventilation
Welding	Local ventilation; welding bench with a backdraft hood, a fixed close-capture hood placed at the back of the work table, a portable close-capture system including an electrostatic precipitator, an, exhaust hose incorporated into the structure of the welding gun; ambient air cleaning devices; a portable blower for use in confined areas; an air lux fume eliminator
Hot shaping (including: rolling mill, wire drawing, metal extrusion	Local ventilation
Soldering (SIC 357, only)	Local ventilation
Refrigerant charging (SIC 358, only)	Local ventilation
SIC 36 -- Electric and Electronic Equipment	Local ventilation
Cleaning	
SICs 361, 362, 363 -- Transmission Distribution; Industrial Household	Local ventilation
Pressing	
Acid washing	
Degreasing	
Painting and coating	

Table F-4

PROCESSES TO BE CONTROLLED
(continued)

Regrigerant cooling	
Electroplating	
Grinding/polishing	
Abrasive blasting	
Molding	
Soldering	
Epoxy coating	
SIC 364 -- Lighting and Wiring	**Local ventilation**
Wire drawing	Local ventilation
Patenting	Local ventilation
Descaling	Local ventilation
Coating	Local ventilation
Extrusion	Local ventilation
Cleaning	Local ventilation
Coil production	Local ventilation
Coating and drawing	Local ventilation
Gas filling	Local ventilation: increase overhead suction velocity, industrial vaccum systems
Glass blowing	Local ventilation
Soldering	Local ventilation
Glassmaking	Local ventilation
SIC 365, 367, -- Radio, TV: Communications; Electronics	**Local ventilation**
Semiconductor-photoresist stripping	
Semiconductor-chemical etchants	
Semiconductor-diffusion and ion implant	
PC-boards-etching	
PC-boards-soldering	
Mixing of cermanic powders	

Table F-4

PROCESSES TO BE CONTROLLED
(continued)

SIC 369 -- Miscellaneous Electrical	**Local ventilation**
Ingredients grinding	
Mixing	
Casting	
Assembly	
SIC 37 -- Transportation Equipment	**Local ventilation**
Metal melting	Local ventilation
Metal pouring	Local ventilation
Hot metal working (rolling, shaping or drawing)	Local ventilation
Metal machining or grinding	Local ventilation: hoods, exhaust fans, "upblast" roof ventilator fans to change airflow
Welding or brazing	Local ventilation; a four sided enclosure with electrostatic precipitator ventilation
Solvent or vapor degreasing	Local ventilation
Painting or coating	Local ventilation: enclosed booths, three-sided booths for lamination
Degreasing/cleaning	Local ventilation
Electroplating or electrical discharge manchinery	Local ventilation
SIC 38 -- Instruments	**Local ventilation**
Forming/fabricating of metal	Local ventilation
Welding	Local ventilation
Injection molding	Local ventilation
Handling of measurment and testing liquids, gases, materials	Local ventilation
Quality control testing	Local ventilation
Foaming, packaging	Local ventilation
Coating, painting	Local ventilation
Sterilization	Local ventilation
Film and pring papermaking and coating (SIC 3861 only)	Local ventilation

Table F-4

PROCESSES TO BE CONTROLLED
(continued)

SIC 39 -- Miscellaneous Manufacturing Industries	
Roughing milling or sawing	Local ventilation
Sanding	Local ventilation
Gluing	Local ventilation
Finishing or staining	Local ventilation
Welding, casting, brazing	Local ventilation
Hot metal work	Local ventilation
Mono or linotype setting	Local ventilation
Abrasive blasting	Local ventilation
Degreasing	Local ventilation
Electroplating	Local ventilation
Machining	Local ventilation
Blending, mixing or compounding	Local ventilation
Molding or mold cleaning	Ventilation and air purification in control rooms
Foam processing	Local ventilation
Painting/cooling	Local ventilation
Metal melting and pouring	Local ventilation
Pressing	Local ventilation
Stamping/shaping/molding/pressing	Ventilation and air purification in control rooms
Cutting/sawing/planning	Local ventilation
Lacquering/enameling	Local ventilation
Bristle/fiber cleaning	General ventilation
Metal plating	Local ventilation
Engraving/etching	Local ventilation
Acid washing	Local ventilation
Hot dip galvanizing	Local ventilation
welding, degreasing, metal working sand blasting	
Engine fueling	General ventilation
Handling spills, leaks	Local ventilation
SIC 45 -- Transportation by Air	
Loading/offloading	Local ventilation
Maintenance-related activities:	Local ventilation: spray room
Cleaning/coating/spraying welding, degreasing, metal working, sand blasting	

Table F-4

PROCESSES TO BE CONTROLLED
(continued)

Engine fueling	General ventilation
Handling spills, leaks	Local ventilation
Fuel preparation	Local ventilation with partial enclosure
Deicing	Local ventilation
Refueling	General ventilation
Painting/coating	Local ventilation
SIC 47 -- Transportation Services	
Loading/offloading (SIC 4742 only)	Local ventilation with partial enclosure
Maintenance related activities	Local ventilation: spray room
Engine fueling and fumes	General ventilation
Handling spills, leaks	Local ventilation
Special care of lading service	General ventilation
SIC 49 -- Electric, Gas, and Sanitary Services	
Maintenance related activities	Local ventilation
Boiler furnace feed	Enclosure, local ventilation
Stripping of chemicals	Local ventilation
Collection/transport	Respirators
Engine fueling	General ventilation
Odorant addition	Local ventilation
Condensate collection	Local ventilation
Incineration (SIC 4953, only)	Local ventilation
Detoxification (SIC 4953, only)	Local ventilation
Recycling, reclamation (SIC 4953 only)	Enclosure, local ventilation
Chemical preparation/application	Local ventilation
Sampling of pipelines	Local ventilation with partial enclosure
Water purification	Enclosure, local ventilation
Water treatment	Enclosure, local ventilation

Table F-4

PROCESSES TO BE CONTROLLED
(continued)

SIC 50 and 51 (except 5093) -- Wholesale Trade	
Material handling, shipping and receiving	Local ventilation with partial enclosure, secondary vapor recovery
Material packing or repacking	Local ventilation
Grain elevators	Local ventilation
SIC 5093 -- Scrap and Waste Materials	
Assembling and collecting scrap and waste materials	Respirators
Breaking up waste materials	Enclosure, local ventilation
Sorting scrap and waste materials	Enclosure, local ventilation
Baling or compacting	Enclosure, local ventilation
SIC 72 -- Personal Services	
Washing (SIC 721 only)	General ventilation
Dry cleaning (SIC 721 only)	Local ventilation: equipment change; exhaust ventilation of process equipment vented to charcoal adsorber, louvered wall fans and grilled ducts, louvered wall panels, evaporative coolers; general ventilation: ceiling exhaust fans
Manicure/pedicures (SICs 723 and 724 only	General ventilation
Permanents (SICs 723 and 724 only)	General ventilation
Coloring (SICs 723 and 724 only)	General ventilation
Embalming (SIC 726 only)	General ventilation
SIC 73 -- Business Services	Local ventilation
Blueprint copying (SIC 733 only)	
Exterminating (SIC 734 only)	
Photofinishing (SIC 739 only)	

Table F-4

PROCESSES TO BE CONTROLLED
(continued)

SIC 55 75 -- Automotive Repair Shops, Dealers	
Confined space - exhaust fume	General ventilation: exhaust fnas and flexible ducts
Welding	Local ventilation
Paint stripping	Local ventilation
Cleaning with solvents	Local ventilation
Painting/coating	Local ventilation
Other solvent use	Local ventilation
SIC 76 -- Miscellaneous Repair Services	Local ventilation
Welding or brazing	Local ventilation: "smoke exhaust" welding gun, crossdraft airflow
Paint stripping	Local ventilation
Sanding or grinding	Local ventilation
Gluing	Local ventilation
Painting, coating or lacquering	Local ventilation
Other solvent use	Local ventilation
SIC 80 -- Health Services	Local ventilation, general dilution ventilation
Administration of anesthesia	Local ventilation
Preparation of dental amalgams and alloys	Local ventilation
Laboratory procedures such as tissue staining	Local ventilation
X-ray film processing	Local ventilation
Use of disinfectants, solvents	Local ventilation, respirators
Making of dental appliances	Local ventilation

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Exterminating: Exposure of pesticide applicators cannot be controlled through engineering controls because their work does not take place in a fixed place of employment, but rather at a customer's facility. Personal protective equipment and/or work practice controls would therefore be required. EPA has jurisdiction in most situations.

Welding: In certain situations, such as in confined spaces, or where the welder must be positioned directly above the fume plume, welders cannot be sufficiently protected by local exhaust ventilation. Personal protective equipment would be required.

In addition to these general industry operations, certain industry specific situations have been identified where the use of respirators is recognized as an important complement to other control measures. These situations include the following:

- During exposure to carbon disulfide in the cellulosic food casings industry.
- During exposure to carbon disulfide while changing spinerettes, removing filament bundles and making product line changes in the manufacture of rayon fibers.
- During episodic emissions of sulfur dioxide in the smelting of copper.
- During manual layup/sprayup operations using styrene.
- During episodic emissions or intermittent worker exposures of such fumes as carbon monoxide or sulfur dioxide from blast furnaces or BOF.

In addition to the above examples, a number of the substances included in this rulemaking carry the designation "Skin." This refers to potential exposure though the skin. Table F–3 presents a list of chemicals for which skin protection would be required. Employees exposed to substances with the "Skin" notation would be required to wear protective equipment, including gloves, long sleeved shirts and coveralls.

Products are commercially available to adequately protect workers from dermal exposure. In some cases the permeability of currently used materials may be inadequate and firms will have to change the specific product now used to one offering greater protection.

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Examples of these are:

Maintenance Activities in all SIC codes. In certain cases, it may be more difficult to control exposures of plant maintenance personnel by using engineering controls. These maintenance employees may work in areas not normally covered by engineering controls or in situations where engineering controls must be shutdown. Respiratory protection is therefore sometimes the appropriate control technology.

Painting and Coating Activities in all SIC codes. Although production spray painting operations are performed in exhausted paint booths, the painting of many larger non-production items, such as construction equipment and heavy machinery, requires that the operator enter the booth. The booth is then primarily a control to prevent migration of the paint spray into other areas of the plant. In these circumstances it is usually necessary to provide respiratory protection to the workers painting.

C. Costs of Compliance

Costs of compliance result from the purchase, installation, operation and maintenance of equipment to maintain workers' exposures at or below the levels specified in the final standard. Costs are related to the engineering controls and personal protective equipment needed for specific processes which involve the use of hazardous substances. Given the large number of substances being regulated, the cost assessment was required to examine a large number of processes over many industry segments. The approach needed to be generic in scope and specific in detail. OSHA has reviewed this approach and the resulting cost analysis and incorporated extensive public testimony and voluminous docket submissions. The Agency concludes that the costs presented in this chapter accurately reflect industries' requirements for compliance.

Existing data sources and expert judgment were initially used to sort the approximately 450 substances being regulated, by industry and by process within industry segments. Given the large number of substances being regulated, a process of orientation rather than a chemical-specific focus was recommended, since prescribed engineering controls can address worker exposure problems to several chemicals, involving the same general process, simultaneously. The approach has proven to be efficient analytically and reduces the problem of double counting the costs of similar or the same engineering controls for separate chemicals involved in the same process or operation.

OSHA had a large amount of exposure data in its Integrated Management Information System (IMIS) and from NIOSH and other sources. But to improve the available information on the use of substances, OSHA decided to engage in a nationwide field survey of affected establishments. This survey, involving about 5,700 establishments in both manufacturing and non-manufacturing sectors, has provided valuable information on chemical usage by industry process and potential worker exposures to these chemicals. Supplement 1 contains a description of the sample survey design and a statistical evaluation of the data collected.

In order to maximize the efficiency of this nationwide sample survey and limit the number of required sample observations per SIC category, a considerable effort was made to verify chemical by industry usage from existing data sources and to make best estimates of where likely or potential worker exposure problems (and consequently engineering costs) existed. For the purposes of the statistical survey being conducted, the larger the suspected potential exposure/cost problem in a particular industry sector, the more important it was to insure a large enough sample of firms in that sector so as to reduce the standard error of the cost estimates.

The following sections of this chapter outline the methodology adopted to identify:

- Chemicals by their industrial usage and employee exposures
- Processes involving known or suspected chemical exposures and control costs
- Industry costs for the controls needed to reduce industry exposure levels.

Linking Hazardous Substances by Industry Use and Employee Exposure

Figure C–1 presents a flow chart of the methodology used for identifying chemicals by industry use and employee exposure. The first step in the methodology was an analysis of the chemicals for which OSHA proposes new exposure limits. The 1982 NIOSH National Occupational Exposure Survey (NOES) and the OSHA IMIS data files were searched to determine the potential for worker exposure to each of the chemicals on the proposed list. The objective of this analysis was to create a subset of chemicals which are known to be present in specific industries at exposure levels above the proposed limits. These chemicals would then be considered to generate potential compliance costs within a specific industry sector.

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METHODOLOGY FOR IDENTIFYING CHEMICALS WITH POTENTIAL COST IN EACH 4-DIGIT SIC

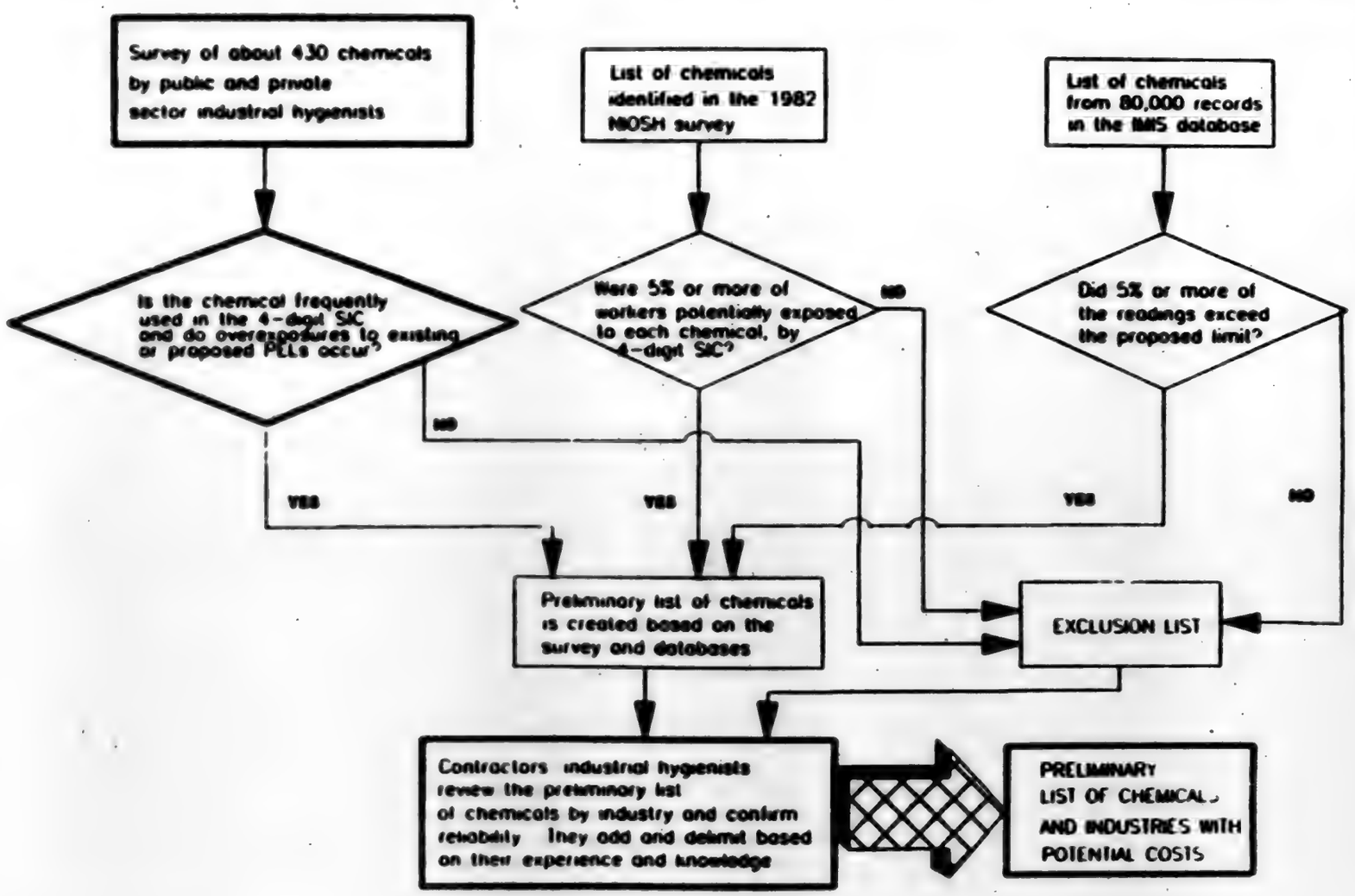


Figure G-1

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The 1982 NIOSH National Occupational Exposure Survey (NOES) data (supplemented by results from NIOSH's 1972 survey) provided an estimate of the number of workers potentially exposed to a specific chemical in a four-digit SIC. OSHA divided this estimate by the total number of employees in an industry segment to get a percentage of workers potentially exposed to that chemical. If 5 percent or more of the workers were potentially exposed, that chemical was considered to present a potential cost within the four-digit SIC. For example, in SIC 3011, Tires and Innertubes Manufacturing, 1,532 persons were potentially at risk of exposure to n-hexane at the sample of plants included in the NOES database. This represented 21.9 percent of all workers sampled in the four-digit industry sector and this chemical would have a potential cost impact depending upon current exposure levels.

From the OSHA IMIS data, the severity of exposure within a four-digit SIC was estimated. OSHA compared the total number of monitored readings for each chemical with the number of readings which exceeded the proposed limits and calculated the percentage of all sample monitor readings which were above the proposed limits. If there were no readings which exceeded the proposed limits, the chemical was not considered to have a compliance cost within the four-digit SIC. If 5 percent or more of the readings exceeded the proposed limits, then the chemical was identified as having a potential compliance cost within the four-digit SIC. For example, in SIC 2641, Paper Coating and Glazing, 22 samples were taken for n-hexane. Thirteen of these, or 59 percent, were above the proposed standard for n-hexane. This chemical, therefore, was believed to have a potential cost impact and questions regarding its use were included in the field survey. Chemicals with non-compliance percentages between zero and 5 percent were evaluated individually by industrial hygienists to determine whether or not specific survey questions needed to be asked about their industrial usage.

In addition to the IMIS and NOES databases, a survey of about one dozen industrial hygienists was conducted. The purpose of this survey was to identify any additional hazardous substances or industry sectors not identified in the IMIS or NOES databases with potential exposure problems at new recommended levels. For example, in SIC 2891, Adhesives and Sealants Manufacturing, the surveyed industrial hygienists reported that n-hexane overexposures could exist under the proposed standard. (Overexposures in SIC 2891 were not previously identified in the IMIS or NOES databases.)

The information from all sources was combined to compile a preliminary list of substances with potential compliance costs by four-digit SIC classification. To further refine the list of chemicals, a second group of six industrial hygienists, using personal industry knowledge and the information gathered from the survey of the initial group of industrial hygienists, reviewed once again the chemicals which appeared in the NOES and IMIS datasets. They also made chemical by industry use linkages when particular chemicals were known to be present in certain SICs, but had not been identified in the NOES and IMIS databases.

Upon completion of the two-tier industrial hygienist review, a list of chemicals believed to be present at exposure levels above the proposed standard, within specific four-digit SIC industry sectors was finalized. This list identified those industry segments where potential compliance costs would be incurred to achieve the proposed standards. The presence of the identified chemicals was confirmed by survey respondents. The method used during the survey listed likely chemicals and asked for any other chemicals present.

Industrial Processes and Control Costs

The number of industrial processes, exposure levels, and exposure controls in place varies greatly within industry segments. In order to efficiently structure the statistical sample of surveyed firms, it was necessary to make a best estimate of which industry segments were likely to experience compliance costs. As noted above, the survey was designed to limit the standard error for potential high cost industry sectors. To concentrate the survey on the potential high cost sectors, a process orientation was adopted which supplemented and refined the chemical use information. The validity of this approach was confirmed in the review of docket materials. The vast majority of submissions that addressed industry costs linked process operations with compliance cost. Industry sectors having few processes and chemicals and low potential exposure levels (and consequently low potential compliance costs) were included in OSHA's secondary data collection and evaluated by experts, but not included in the sample survey.

A team of engineers and industrial hygienists analyzed each four-digit SIC to assess the process in which worker exposure to listed chemicals occur. Examples of industrial processes included grinding, mixing, spraying, degreasing, separation, bagging and loading. A list of potential cost chemicals and related processes was then developed to identify potentially high impact (cost) industries. The presence of the identified processes was confirmed by survey respondents. The method used during the survey listed likely processes and asked for other processes ongoing at the establishment. In general, an industry segment with a relatively large number of processes using chemicals with suspected high exposure levels was sampled at the three-digit industry level. Industries with fewer processes and low chemical exposures were sampled at the two-digit level. (See Supplement 1 for a more detailed explanation of the survey design.)

Approximately 5,700 respondents in the survey were asked to verify the chemicals used, manufactured or generated by process within their establishment. Thus, chemicals were linked to specific processes, process controls and workers exposed at the process in the surveyed industries. Control methods and costs were then assigned for each process where employee exposures would exceed the proposed PELs.

Controls were assigned to protect workers exposed to all chemicals in total at a process. The controls were designed and costed to lower exposure to the chemical(s) with the greatest change in the permissible exposure limit (PEL). It was the judgment of the experts involved that by assigning controls for the "major" chemicals, exposures for all other chemicals would be controlled. Chemicals and/or processes not included in the proposed standard (e.g., those covered by separate 6(b) rulemaking) were excluded from the survey. Examples of chemicals not included in the survey are asbestos, formaldehyde and benzene.

Survey information collected from each respondent included:

- Type of processes at the establishment;
- Type and amount of chemical used, manufactured, or generated in each process;
- Number of work stations and workers related to the process;
- Potential chemical exposure above the proposed standards (monitoring data, recorded overexposures) at the process;

- Process location (indoors/outdoors), and configuration (size, full enclosure, partial enclosure);
- Ventilation or other controls in place; and
- Economic and other characteristics of the plant.

A computer algorithm was developed to assess survey data to determine if potential worker overexposure and therefore compliance costs occur for each process at an establishment. Figure G–2 presents a general diagram of the computer logic adopted for use in the survey. The logic assesses potential overexposures on the basis of: actual reported monitoring data; statements that overexposures occur; and the particular process location, configuration, type and amount of chemical use and existing controls in place.

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COMPUTER LOGIC FOR DERIVING INDUSTRY COST OF COMPLIANCE

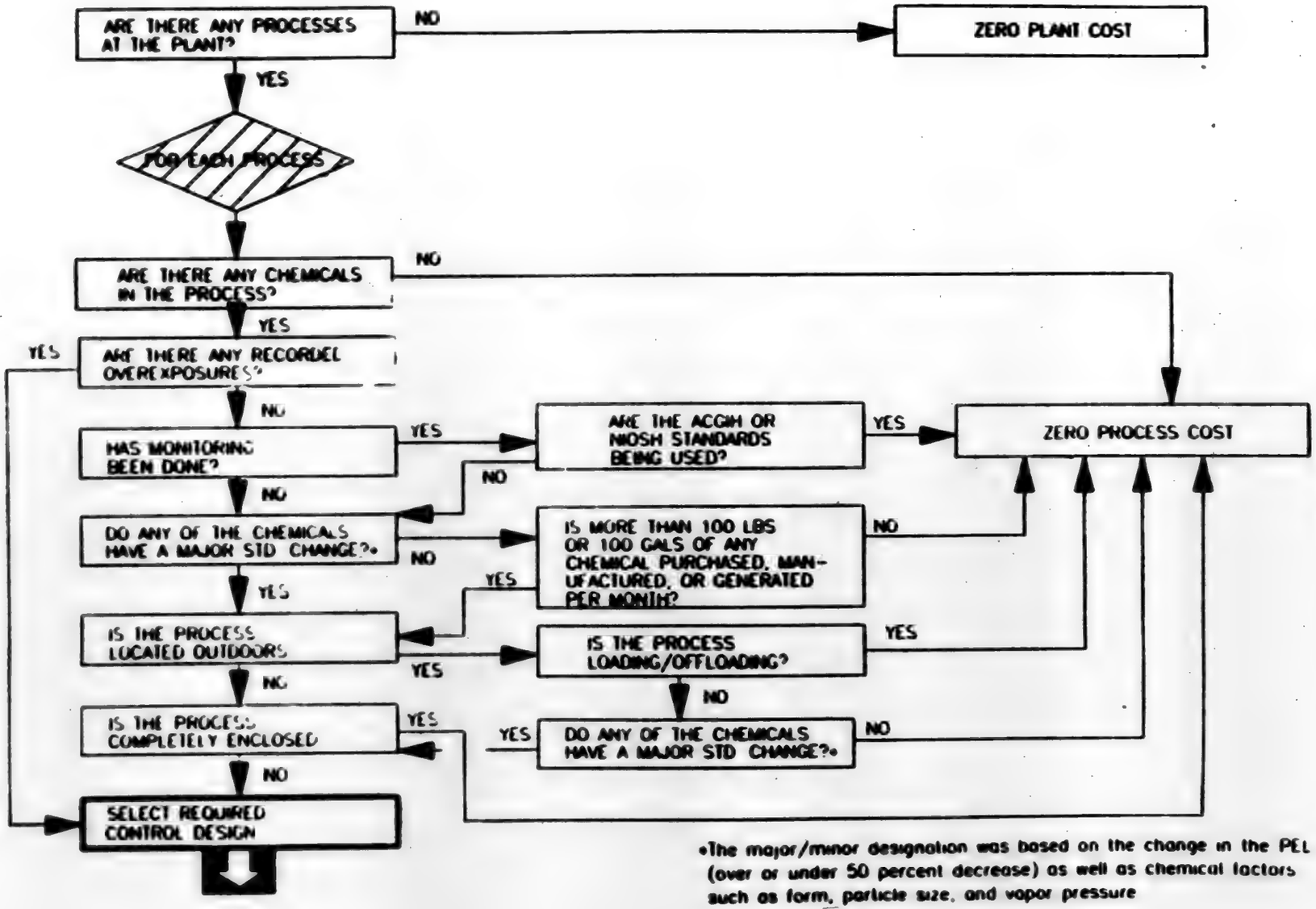
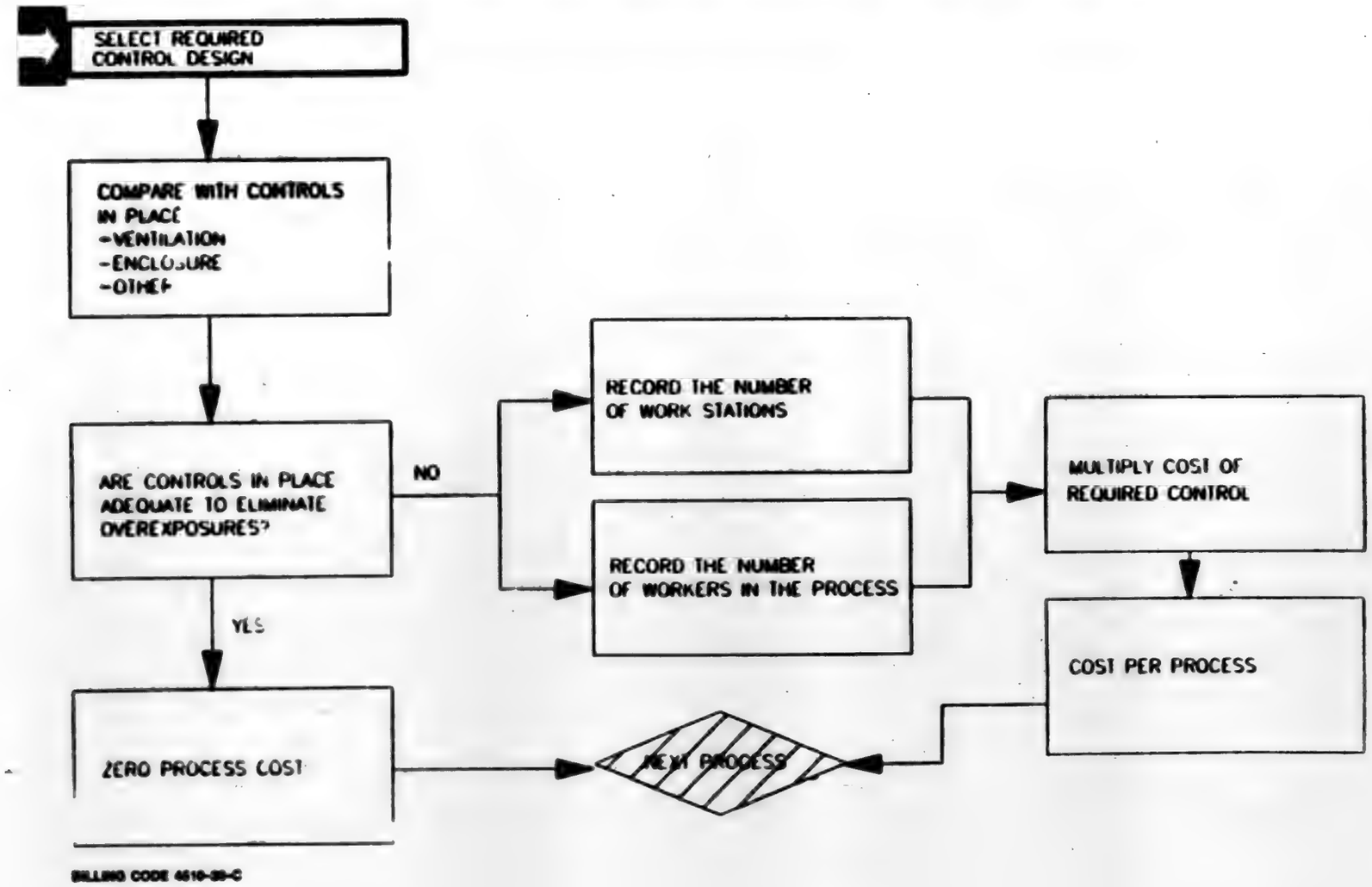


FIGURE G-2

•The major/minor designation was based on the change in the PEL (over or under 50 percent decrease) as well as chemical factors such as form, particle size, and vapor pressure

COMPUTER LOGIC FOR DERIVING INDUSTRY COST OF COMPLIANCE



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FIGURE G-2
(continued)

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When a respondent provided actual monitoring data for a process that indicated chemical exposures above the proposed standard, compliance costs were assigned to that process on the basis of prescribed controls for the given process. Where no monitoring data or reports of overexposure were available, the computer algorithm logic examined process and chemical characteristics to determine if workers at the process were potentially exposed to chemicals at levels over the proposed standard. The logic assessed the controls reported to be in place at the process and compared them with a list of controls thought necessary to control exposures in that process within the industry. When the required controls were reported to be in place, no compliance cost was assigned. When the required controls were not reported to be in place, a compliance cost per work station was assigned.

The computer algorithm determined that some processes within plants had no overexposures and consequently no compliance costs. Zero compliance costs resulted where no processes and/or chemicals were reported to occur at the establishment. Zero compliance costs also resulted when the respondent had monitored a process using ACGIH or NIOSH standards and found no overexposures. When only very small quantities of chemicals were present in a process, none of which had a "major" proposed exposure limit changes, no overexposure was determined and zero compliance costs were assigned. The major/minor designation was based on the proposed change in the PEL (over or under a 50 percent decrease) as well as chemical characteristics such as form, particle size, and vapor pressure.

Process configurations and location also were indications of compliance. Processes which were reported as completely enclosed with no worker entry were assumed to be in compliance with the proposed standard (have no compliance cost). Outdoor loading/offloading processes or other outdoor/processes with no chemicals with "major" proposed exposure limit changes were assumed not to require control equipment and costs. Zero compliance costs were also assessed where processes which required control equipment reported that the prescribed equipment was currently in place.

An example of a process which was assigned a cost of compliance to install engineering controls is a coating and spraying process in SIC 2511, Wood Household Furniture. The survey respondent reported that toluene, n-butyl alcohol and xylene were used in this operation. The proposed standard for toluene reduces the existing PEL by 50 percent. This reduction is considered to require concerted exposure control and is considered a "major" proposed exposure limit change. Because workers were involved in the process and the process was reported to be neither located outdoors nor fully enclosed, controls were assumed to be necessary to insure compliance with the proposed standard. The control required for controlling exposures at this process was determined to be local ventilation. The type of local ventilation prescribed in this case is a spray booth at an estimated cost of $3,070 annually per work station. Because the respondent reported no local ventilation, the cost was assigned for the eight work stations reported, resulting in a total estimated annual cost of $24,560 for this process at this site.

Expert engineering and industrial hygiene judgment was used to determine which of the various controls would be necessary to control for exposures by process in the affected industries. Engineering controls identified included exhaust ventilation (local and general), process enclosure, and process change. Some of all of these will be required by affected plants for compliance with the proposed exposure levels. In addition, personal protective equipment such as respirators will be needed for intermittent maintenance activities where engineering controls are not feasible.

The engineers and industrial hygienists classified the approximately 180 specific processes identified in the survey into about 30 process groups for the purpose of assessing required controls and estimating costs. These process groupings were based on similarities in the processes and levels and types of exposures resulting from the processes. Factors used to group processes include the chemicals generally involved in the process, type and usual configuration of the equipment, usual workstation design, level and route of exposure, industry group where the process exists and worker tasks in relation to the equipment and exposure route. The process similarities translated into likenesses in required controls such as type of ventilation hood, booth or enclosure, air flow rates, duct configuration and type and size of filters or scrubbers. Organizations presenting process data to the docket that varied from that derived by OSHA are referenced in the specific industry descriptions in this chapter. The compliance cost framework is presented in Table G–1. This table presents the process groups, the industries where the processes were identified, the general classification of controls specified and work station unit costs for the required controls assigned.

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TABLE G-1.
COMPLIANCE COST FRAMEWORK AND WORK STATION UNIT COSTS

PROCESS GROUP (1)	INDUSTRY GROUP (SICs)	REQUIRED CONTROL CONFIGURATION (2)	ANNUAL COST PER WORK STATION
Leather Processing, major	31	Local Ventilation	$ 2,510
Leather Processing, minor	31	General Ventilation	$ 720
Electrical & Electronics Manufacture	36	Local Ventilation	$ 2,520
Printing Processes, minor	27, 38, 75, 80	Local Ventilation	$ 1,260
Printing Processes, major	27, 39	Local Ventilation	$ 1,380
Glass Processing, major	32	Local Ventilation	$ 3,890
Glass Processing, minor	32, 36	Enclosure	$ 90
Resource Recovery & Water Treatment, major	28, 29, 33, 49	Enclosure & Local Ventilation	$ 21,900
Resource Recovery & Water Treatment, major	26	Enclosure & Local Ventilation	$ 14,000
Resource Recovery & Water Treatment, minor	26, 29, 49, 50	Enclosure & Local Ventilation	$ 14,000
Foundry Operations, major	33	Local Ventilation	$ 2,520
Foundry operations, minor	33, 39	Local Ventilation	$ 1,820
Grinding, Blasting, & Metalworking, major	25, 33, 36, 39	Local Ventilation	$ 7,200
Metalworking & Welding	All SICs	Local Ventilation	$ 1,140
Coke Ovens	29 (3)	Enclosures, Local Ventilation & Air Purifiers	$150,000

1 The "major" and "minor" designation of process groups refers to the level of the exposure change and consequently the extent of required control configuration costs within a given control and process configuration. For example, leather processing is the general process group and processes within that group are classified based on whether the employee exposure control requires major or minor control costs

2 The specific required control configuration cost was estimated including all necessary components, such as ductwork, fans, hoods, baghouses, etc.

3 Coke ovens in SIC 33 are not included as they are covered by OSHA's Coke Oven Standard.

TABLE G-1 (Cont.)
COMPLIANCE COST FRAMEWORK AND WORK STATION UNIT COSTS

PROCESS GROUP	INDUSTRY GROUP (SICs)	REQUIRED CONTROL CONFIGURATION	ANNUAL COST PER WORK STATION
Paper Manufacturing, major	26, 30, 39	Ventilation & Air Purification in Control Rooms	$ 2,900
Paper Manufacturing, minor	All SICs	Local Ventilation	$ 180
High Temperature Drying	All SICs	Local Ventilation	$ 4,740
Layup	3632,3715,3732 3792,3995	Local Ventilation	$ 16,550
Coating, Spraying, & Adhesive Application	All SICs	Local Ventilation	$ 3,070
Chemical Handling & Formulation	All SICs	Local Ventilation	$ 1,760
Material Handling & Inspection, major	All SICs	Local Ventilation & Partial Enclosure	$ 1,120
Material Handling & Inspection, minor	All SICs	General Ventilation	$ 560
Cleaning & General Solvent Use, major	All SICs	Local Ventilation	$ 2,410
Cleaning & General Solvent Use, minor	All SICs	Local Ventilation	$ 710
Waste Collection & Transport	4953, 5093	Respirators (4)	$520 per worker
Painting, Maintenance	All SICs	Respirators (4)	$520 per worker
Welding, Maintenance	All SICs	Respirators (4)	$520 per worker

4 Use of respirators is considered the only feasible control for these processes due to their intermittent performance and because they are generally not performed at a fixed site.

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TABLE G-1. (Cont.)
COMPLIANCE COST FRAMEWORK AND WORK STATION UNIT COSTS

PROCESS GROUP	INDUSTRY GROUP (SICs)	REQUIRED CONTROL CONFIGURATION	ANNUAL COST PER WORK STATION
Sanding & Drilling/Boring	24, 25	Local Ventilation	$ 2,200
Cutting, Sawing & Planing	24, 25	Local Ventilation	$ 1,900
Zero Cost Processes:			
Laundering	72		
Edgelaing	72		
Permanents	72		
Anesthesia	80		

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The development of unit costs for each control configuration required the development of "model" control designs. Model control configurations were selected to provide exposure control at "typical" process/work stations within the specified process group. This costing approach (model" configurations for "typical" work stations) required the differentiation of some process groupings as major or minor. The major/minor differentiation addresses the expected level of control required.

The control designs were developed by engineers based on their experience in industry and extensive secondary research on operations and exposure situations in each industry sector. This research included an examination of industry and industrial hygiene journals, engineering process reports, and texts. Included in the detailed cost calculations for the control configurations were costs for enclosure construction, baffles, fans, ductwork, filters, scrubbers, baghouses, and all other equipment required for exposure control. All of the costs were developed on a per work station basis so that an average size did not need to be estimated for the process. Investment costs were assigned to each control design on the basis of engineering handbooks and supplier catalogs. Investment costs were annualized over the projected life of equipment (10 years) using a 10 percent cost of capital and adding annual operating and maintenance costs estimated at 10 percent of the capital cost. Respirator costs for use by maintenance workers for intermittent activities were considered annual costs and include the respirator purchase as well as an estimated year's worth of cartridges and canisters.

Process control costs were summed per establishment and any maintenance worker respirator costs were included. A total annualized capital cost and annual operating cost was developed for each establishment. Costs for the survey establishment were then weighted (by SIC and size) to represent compliance costs for the universe of affected plants.

The United Auto Workers (UAW) International Union contended that the OSHA analysis "establishes a far outer bound" for the costs of compliance for several reasons [Ex. 197]. Two reasons claimed by the UAW are that the survey failed to account for the current state of control of process units and that not all process units would require the full application of the control schemes specified in the OSHA analysis. These potential problems were explicitly considered in developing the estimation method and the method was designed to minimize the effects of these factors. Questions in the survey *did* ask about the controls in place for every process. But the mere presence of controls does not assure the ability to achieve proposed levels. OSHA believes that the assignment of full control costs to uncontrolled processes, although not always necessary, is approximately offset by not costing, in all situations, the upgrading of insufficient control systems already in place.

The UAW also contended that "OSHA has refused to collect readily available exposure data which would have supported the feasibility of much lower PELs." On the contrary, OSHA solicited exposure data in two ways, as well as searching for data from public agencies. In addition to asking for data in the public hearings and for submission to the docket, every survey respondent was asked to provide exposure data. In addition, data in OSHA's IMIS database, in NIOSH reports and in journal articles were used.

The fourth point made by the UAW to support its position that costs were overestimated is that "The ongoing replacement of plant and equipment has not been accounted for." OSHA did consider this factor where information was available which allowed a quantitative assessment of the effect it would have on compliance, such as in dry cleaning, although it could not be considered in all areas of industry.

Finally, the UAW disapproves of the method by which unit costs were estimated, claiming that OSHA's approach "degrades the value of the analysis by obstructing generalization. In addition, past cost estimates have been sensitive to a per cfm cost of ventilation. The present evaluation fails to present such a cost." Estimation of costs on a per cfm basis was avoided because OSHA felt that better estimates could be made by estimating more detailed unit costs. Rather than having only one per cfm cost, the OSHA analysis uses 30 control scheme costs which are able to take into account different characteristics of both the process equipment and the chemicals being controlled. OSHA believes that this method creates the ability to estimate costs much more accurately than a per cfm estimate would allow across the broad spectrum of industries and processes which this rule affects. The per cfm basis of cost estimation was not used because it would require much *broader* assumptions about average characteristics of control systems such as ductwork, baghouses, etc. OSHA views its method as an improvement on the previous methods because this method requires fewer generalizations and assumptions and allows the inclusion of more information in estimating costs.

Compliance Costs by Industry Sector

Following the methodology described in the preceding section of this chapter, annual compliance costs were estimated by industry sector. The costs presented for the surveyed industries are based on the data collected from the about 5,700 respondents. (For industries not included in the survey, expert judgment and secondary sources were used for estimating costs.) Table F–4 (shown at the end of the chapter) presents the detailed breakdown of compliance costs for each industry sector included in the survey. The table illustrates the processes reported in the survey, the number of work stations by process, and the number of work stations determined to require the addition of compliance controls. The process and work station frequencies are weighted to reflect the total universe of affected plants.

A small percentage of respondents (less than 5 percent) actually provided monitoring data during the survey. However, based on information from the survey, it was determined that about 86 percent of all establishments in the surveyed industries (74 percent of those with hazardous substances) have no exposures in excess of the final standard and will not incur any costs to comply with the standard. This conclusion was derived by comparing controls in place with controls deemed necessary to reduce exposures to the regulated limits. Thus a cost was assigned if the existing ventilation system was estimated to be insufficient to control these chemicals at the new levels. About 22 percent of establishments with hazardous substances will incur costs to provide engineering controls for processes within the plant. About 4 percent of the establishments with hazardous substances will be required to provide personal protective equipment only for maintenance workers whose intermittent operations cannot be controlled with engineering controls.

Table G–2 presents the total annualized capital and annual operating cost for compliance with the standard by industry. As shown, annual compliance costs are estimated to total $788 million. Upon review and incorporation of all docket materials, OSHA believes that these costs are fully representative of costs of compliance with the standard. These costs represent

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an estimate of compliance costs for large and small plants affected by the exposure limit changes. Industries with some anticipated cost impact are identified below. Included in the industry description are data provided to OSHA during testimony at the public hearing and in the docket submissions.

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TABLE G-2

ANNUAL OPERATING AND ANNUALIZED CAPITAL COST OF COMPLIANCE BY INDUSTRIAL SECTOR (a)

SIC (b)	SIC DESCRIPTION	LARGE PLANTS	SMALL PLANTS	ANNUAL COST
20	FOOD PROD. (c)	$21,704,100	$11,789,000	$33,493,100
21	TOBACCO (c)	$19,700	$0	$19,700
22	TEXT. MILL (c)	$23,308,400	$6,170,000	$29,478,400
23	APPAREL PROD. (c)	$23,604,300	$8,139,900	$31,744,200
24	LUMBER & WOOD	$18,112,100	$38,608,700	$56,720,800
25	FURNITURE	$18,440,900	$2,634,900	$21,075,800
26	PAPER PROD.	$29,807,900	$1,190,800	$30,998,700
27	PRINTING & PUB.	$5,186,400	$28,568,100	$33,754,500
28	CHEMICAL PROD.	$28,793,500	$6,661,200	$35,454,700
29	PETRO. REFINING	$23,635,000	$51,000	$23,686,000
30	RUBBER & PLASTICS	$46,605,200	$64,488,200	$111,093,400
31	LEATHER PROD.	$1,272,700	$1,142,000	$2,414,700
32	STONE & CLAY	$15,704,300	$6,753,500	$22,457,800
33	PRIM. METAL	$65,691,400	$5,266,200	$70,957,600
34	FAB. METALS	$28,964,500	$10,455,200	$39,419,700
35	MACHINERY	$30,994,600	$14,212,000	$45,206,600
36	ELEC. MACH.	$17,060,100	$3,607,400	$20,667,500
37	TRANS. EQUIP.	$23,577,900	$26,214,500 (c)	$49,792,400
38	INSTRUMENTS	$7,227,700	$2,405,800	$9,633,500
39	MISC. MANUF.	$9,829,300	$6,013,300	$15,842,600
40	R.R. TRANS.	$1,083,400	$0	$1,083,400
45	AIR TRANS.	$3,740,500	$0	$3,740,500
47	TRANS. SERV.	$3,789,400	$0	$3,789,400
49	ELEC. GAS. SAN.	$32,355,100	$5,654,200	$38,009,300
50	WHOLESALE TRADE	$1,306,700	$1,688,600	$2,995,300
51	WHOLESALE, NON-DUR	$2,854,900	$11,360,900	$14,215,800
55	AUTO DEALERS	$7,382,200	$6,168,300	$13,550,500
72	PERSONAL SRV.	$3,487,100	$7,385,000	$10,872,100
73	BUSINESS SRV.	$1,596,100	$826,000	$2,422,100
75	AUTO REPAIR	$4,280,100	$1,863,400	$6,143,500
76	MISC. REPAIR SRV.	$469,700	$2,340,200	$2,809,900
80	HEALTH SERV. (c)	$2,413,000	$2,026,400	$4,439,400
TOTAL		$504,298,200	$283,684,700	$787,982,900

Source: U.S. Department of Labor, Occupational Safety and Health Administration, Office of Regulatory Analysis.

(a) Costs were calculated by annualizing the capital cost over the projected life of the equipment (10 years) using a 10 percent cost of capital and adding an annual operating and maintenance cost estimated at 10 percent of the capital cost.

(b) Industry sectors not identified in this table include industries with no major cost impact expected, the construction industry, which will be the subject of a separate regulatory analysis, and industries such as mining, over which OSHA has no jurisdiction.

(c) Costs in these sectors were based on expert judgement and secondary data collection.

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In addition to review of submitted materials, OSHA also undertook a site visit survey of about 90 plants to examine and compare data collected by telephone and in the field. Various statistical tests were performed on the telephone survey and site visit data to detect biases in the cost algorithm (Supplement 1). These analyses tested the hypothesis that the telephone survey did not systematically differ from the site visits in the number of estimated firms out of compliance and the actual cost assigned to those firms. Using a 95 percent confidence interval, these tests revealed no aggregate bias in the assignment of costs by the telephone survey as compared to the site visits.

Food and Kindred Products (SIC 20). Costs are projected for a large number of establishments in this sector. The prepared feeds and feed ingredients, not elsewhere classified (SIC 2048), are estimated to account for a large percentage of the $33.5 million annual costs in SIC 20. Controls may be necessary for dust exposures and chemical fumigants.

Two commenters provided detailed cost estimates for firms to achieve the Agency's proposed grain dust limit of 4 mg/m³: the National Grain and Feed Association (NGFA) [Ex. 3-752] and the National Feed Industry Association (NFIA) [Tr. 8/10/88, pp. 10-61—10-69].

The National Grain and Feed Association provided alternative cost estimates for feed mills and for flour mills. These estimates were based on the following assumptions:

1. All affected facilities will need pneumatic dust control systems and do not now have them;

2. Only 13 percent of food mills handle wheat, oats, or barley, and thus only 13 percent will be affected by the grain dust limits; and

3. The costs of pneumatic dust control systems are the same as those estimated by Booz Allen in a 1984 study conducted for OSHA in connection with the Agency's grain handling standard (these costs were inflated by 15 percent to convert them from 1984 to 1988 dollars).

Using these assumptions, the NGFA concluded that the capital costs of compliance for all feed mills would be $213 million and for all flour mills would be $61 million [Ex. 3-752]. If these costs are annualized using OSHA's interest-rate and life-of-equipment assumptions, annualized costs for feed mills (using a 10-percent operating cost figure) would be $56 million per year, and annualized costs for flour mills would be $21 million per year. Average annualized costs per affected feed mill would be $44,000 per year and per affected flour mill, $225,000 per year.

The NFIA also provided estimates of the total costs of compliance for feed mills. The NFIA's costs were based on an evaluation of 20 existing feed mills; the NFIA, therefore, only attributed costs for pneumatic dust control systems to facilities that do not now have them. Thus, the NFIA study attempts to take into account baseline controls; it reported that 5 of these 20 mills had some level of dust control in place. The NFIA estimated that the capital costs of compliance for all feed mills would be $664.5 million [Tr. 8/10/88, pp. 10-61—10-69]. If OSHA's interest rate and life-of-equipment assumptions are used and operating costs are assumed to be 10 percent of capital costs, annualized costs for all feed mills would be $175 million per year. Average annualized costs per affected feed mill would be $22,000 per year.

OSHA's Preliminary Regulatory Impact Analysis (PRIA), published with the proposed rule, estimated costs for all facilities in SIC 20 to comply with the proposed PELs; the grain dust portion of this overall cost was based on the assumption that affected facilities would have to meet a 4-mg/m³ PEL for grain dust. Based on health effects and economic feasibility considerations, the Agency has changed the grain dust levels to 10 mg/m³ TWA. OSHA's analysis shows that the great majority of employee exposures are at or below 10 mg/m³, and thus, few additional controls will be needed to achieve the final rule's limit of 10 mg/m³. OSHA believes that the cost estimates for this sector are conservative and probably overstate the costs that affected employers will be required to expend to achieve the 10 mg/m³ limit.

Several comments were received from employers in SIC 201, Meat Products, who were concerned that the proposed limit of 1 ppm for carbon disulfide would force the manufacturers of the cellulosic casings that are made in facilities classified in SIC 3089, Miscellaneous Plastics, to go out of business [Exs. 3-421, 3-659, 3-697; Tr. 8/2/88, pp. 4-209, 4-281]. In the opinion of these concerned meat packers and processors, the impact of the carbon disulfide limit on firms in SIC 3089 would be so great that all domestic supplies of the cellulosic casings needed by the meat packers and processors would disappear. These commenters were particularly concerned because there are no substitutes for cellulosic food casings except natural casings, which can only be used for cooked sausage and cannot be used with automatic machinery [Ex. 3-697].

The costs anticipated by the meat packers and processors were presented in a study conducted by Wharton Economic Forecasting Associates (WEFA) [Ex. 3-659]. WEFA forecast a loss of 12,000 to 20,000 jobs in meat processing and 12,000 to 16,000 jobs in meat packing, and also projected an 8 and 16 percent reduction in the price paid to farmers for cattle and hogs, respectively [Ex. 3-659].

WEFA based its forecast on the following assumption: that processed meats dependent on cellulosic casings would disappear from the marketplace altogether [Ex. 3-659]. OSHA finds this scenario unlikely, since the cost impacts in SIC 3089 are likely to be greatly reduced because the Agency has established a 4 ppm limit, rather than the proposed 1 ppm limit, for carbon disulfide in the final rule. Domestic production of casings should not cease or be diarupted in a major way.

OSHA concludes that the concerns of the meat packers and processors in SIC 201 have been addressed and their supplies of cellulosic food casings should not be disrupted.

The National Cotton Council of America [Ex. 3-1080] expressed the concerns of its members over the difficulty small, rural cottonseed mills would have in sampling their employees' exposures to hexane and grain dust. As discussed above in the section on Technological Feasibility for SIC 20, OSHA determined that sampling and analytical methods are available for these contaminants and that consultant industrial hygienists can be employed by mill owners on an as-needed basis. OSHA is aware that the services of competent and experienced industrial hygienists can be obtained for fees beginning at $300 per day and that laboratory fees for analysis range from $20 to $40 per sample, depending on the substance being analyzed. OSHA does not believe that costs of this magnitude will have a significant impact on cottonseed mills.

Although carbon dioxide exposures in the beer industry were described as "unique" [Tr. 8/9/88], the principal sources of exposure are blow-outs of safety valves, opening of tank doors, and entry into tanks for cleaning. For both blow-outs (an upset condition) and tank entry (a maintenance operation), OSHA permits the use of respiratory protection to meet the PEL. Exposures resulting from opening tank doors can be reduced by implementing the work practice of cracking the door and remaining out of the area for a few minutes to allow the CO_2 to dissipate. Since the final rule establishes an 8-hour TWA of 10,000 ppm, rather than the 5,000 ppm proposed, OSHA concludes

that the cost estimates presented in the PRIA for SIC 20 do not need to be revised and include all potential costs of compliance for breweries.

The Corn Refiners Association (CRA) estimates that the wet corn milling industry would incur $24,097,000 in capital costs, with annual operating costs of $6,244,000 million, to meet the proposed 2- and 5-ppm SO_2 standard. Of this, CRA estimates that $12,809,000 in capital costs and $3,266,000 in operating costs would be incurred to meet the 5-ppm STEL, and $11,288,000 in capital costs and $2,878,000 in operating costs would be incurred to meet the 2-ppm PEL [Ex. 65, Tab 13, pp. 7-8].

OSHA notes that 47 percent of CRA's estimated costs are attributed to meeting a STEL. However, the record indicates that short-term excursions do not typically occur during normal operations; instead, they occur during maintenance activities and in emergency conditions. In these situations, the standard practice in the industry is to use respiratory protection [Tr. 8/8/88, p. 8-60], as would be permitted by OSHA.

Furthermore, OSHA's technological feasibility assessment shows that the 2-ppm TWA and 5-ppm STEL can be achieved in all routine operations in this sector with the addition of a small amount of make-up air (or by opening the windows in warmer months). Employers in this sector also need to reduce the number of process upsets and maintenance problems in their plants by instituting manual leak detection programs, improving maintenance, replacing pump seals before they leak, and phasing out outdated process equipment. Evidence in the record reports that the volume of production and sales has risen so quickly that control equipment has been unable to keep pace [Ex. 65, Tab 13, p. 7]; this sector should therefore not have difficulty absorbing the negligible costs associated with the minimal control procedures needed for this sector to achieve compliance with the final rule's limits for SO_2.

CRA notes that its estimates of costs constitutes 18.3 percent of OSHA's total cost estimate for all chemicals in all parts of SIC 20. OSHA notes that, generally, within a 2-digit SIC industry group, most industry sectors are estimated to incur minimal costs to comply with the final rule, and a few industry sectors will incur higher costs. Thus, even assuming that CRA's estimated costs are accurate, OSHA's aggregate estimate for SIC 20 are not necessarily substantially understated. Thus, OSHA concludes that the cost estimates presented in the PRIA for SIC 20 do not need to be revised based on the record evidence pertaining to the potential costs of compliance for wet corn milling.

Tobacco Manufactures (SIC 21). The lowest cost of compliance in the manufacturing sector is expected to occur in SIC 21, Tobacco Manufacturers, ($20,000). It is estimated that very few plants will incur costs in the tobacco manufacturing industry.

Textile Mill Products (SIC 22) and Apparel and Other Finished Products (SIC 23). These sectors have a large number of establishments which may incur compliance costs. The apparel industry is estimated to incur about $31.7 million in annual compliance costs. Many of the affected establishments in SIC 23 may require controls for cleaning solvents such as perchloroethylene. The $29.5 million annual costs in the textile industry are estimated to result from control of exposures to solvents, dyes and other substances. No differing cost estimates in opposition to OSHA's cost calculations were presented in the docket or testimony.

Lumber and Wood Products (SIC 24). The annual costs of compliance in the lumber and wood products industry are estimated to total $56.7 million. The compliance costs for this sector primarily reflect the cost of controls required to lower exposures of wood dust to 5 mg/m³ (2.5 mg/m³ for Western red cedar wood). The survey indicated that sanding and other "dusty" processes would require controls to lower wood dust exposure. The large number of establishments that must engineer ventilation systems for wood dust control account for the substantial proportion of compliance costs to be incurred by small establishments in this sector.

OSHA's estimates in the preliminary analysis were based on a standard of 5 mg/m³ for softwood and 1 mg/m³ for hardwood, using survey responses for particulates not otherwise regulated as a surrogate for wood dust.

In determining the total cost of compliance for wood dust at the final PEL of 5 mg/m³ (2.5 mg/m³ for Western red cedar), OSHA carefully considered data presented in to the record by National Economic Research Associates (NERA), Clayton Environmental Consultants, the Workers' Institute for Safety and Health (WISH), the Holliday report, and numerous other government, union, and industry respondents [Exs. 3-748, 8-127, 8-196, Tr. 8/18/88, p. 13-5, etc.]. Researchers from Clayton Environmental Consultants and NERA, on behalf of the Inter-Industry Wood Dust Coordinating Committee, performed a study on the impacts of the proposed air contaminants rule on SICs 24 and 25 [Exs. 3-748, 8-127]. NERA concluded that it would cost firms in SICs 24 and 25 $266 million annually for a 5 mg/m³ standard for all woods. Under a 1 mg/m³ standard for all wood dust, NERA estimated that costs would exceed $1.9 billion annually and under the proposed standard of 5 mg/m³ for softwood and 1 mg/m³ for hardwood, annual compliance costs would be approximately $1.5 billion. NERA's estimate of $1.5 billion was more than four times higher than OSHA's August 1st estimate of $341 million annually for a 5 mg/m³ softwood standard, 1 mg/m³ hardwood standard [Ex. 38a]. Mark Berkman, repesenting NERA, testified that the cost discrepancies between the OSHA study and their estimates were due to the differences in unit costs and in the number of work stations out of compliance in SICs 24 and 25 [Tr. 8-12-88, p. 107, 111].

OSHA determined that annual unit costs of compliance per work station of $1,900 for cutting/sawing/planing, $2,200 for sanding/polishing and grinding, and $2,200 for drilling/boring are the best estimates currently available to comply with the final standard. These unit costs are not significantly different from the unit costs presented in the Clayton study. (The unit cost presented by NERA in one case does not accurately reflect the findings of Clayton Environmental Consultants. Apparently the cost applied to the "belt sander" in the NERA study was derived for "sander, belt (widebelt)" in the Clayton study. However, the cost developed for "sander, edge" would have been more appropriate. "Edge sander" was never identified in the NERA survey. The cost for the widebelt sander is $50,800, while that for the edge sander is $12,900. The capital cost for control on a belt sander developed for OSHA was $8,000.)

In analyzing NERA's methodology, there were significant differences between OSHA's estimates of costs and work stations when compared to NERA's. NERA's methodology begins by surveying "industry experts" (via the Inter-Industry Wood Dust Coordinating Committee) to derive the number of machines in typical small and large establishments. In a number of industries, these experts estimated that there would be many more machines than total employees. For example in SIC 2426, NERA's survey respondents estimated that there would be 32 machines in a "typical" small plant (fewer than 20 total employees). NERA's next step was to multiply the number of machines in a typical plant by the percentage of machines out of

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compliance from the Clayton study. This revealed an estimated number of machines out of compliance in a typical plant at the four-digit level for small and large firms. This estimate of machines out of compliance was then multiplied by the per machine unit cost to arrive at an average cost per typical plant. Finally, this number was multiplied by the number of plants reported in the 1982 Census of Manufactures for each four-digit SIC in order to arrive at an aggregate cost.

OSHA believes that its methodology for deriving total work stations is more accurate. OSHA used a telephone survey which requested information about work stations specifically at the plants being interviewed. However, NERA sent surveys to "industry experts" who were asked to describe a "typical plant". NERA never explains the number or identity of respondents in its survey. However, it is important to note that NERA received no responses in numerous four-digit SICs (large plants in SICs 2428, 2491, 2515, 2517, 2519, 2531, and 2541 and small plants in SICs 2436, 2451, 2452, 2491, 2512, 2515, 2517, 2531, and 2541). For industries with no response rate, a weighted average cost was used as a surrogate. In the case of SIC 25, 10 of the 19 size and industry categories were derived by using surrogates. Thus non-surveyed industries such as mattresses and bedsprings were estimated to have the same costs and work stations out of compliance as surveyed industries with high wood-dust-generating processes such as wood and upholstered furniture. The cost surrogate used for these 10 categories in SIC 25 is the third highest per plant cost, despite the fact that it was derived without specific exposure data by Clayton or estimates of machines used in a typical plant for these specific four-digit SICs. OSHA concludes that such extrapolation is based on less comprehensive data than the 1986 telephone survey. This widespread use of surrogates partly explains why total work stations has been overestimated by NERA.

Additionally, OSHA concludes that NERA's survey estimates of total machines is high, and therefore the number of machines out of compliance is overestimated. Including those four-digit SICs where surrogates are used (and therefore total estimated number of machines is implied), NERA assumed a total of approximately 600,000 machines in SICs 24 and 25. This estimate is roughly equivalent to the number of employees in these two SICs. The statement by NERA that ". . . workers (or work stations, assuming one worker per work station)" [Ex. 3-748, p. 13] implies that NERA does not find it unreasonable that 600,000 wood-dust-generating machines are used continually by every worker in SICs 24 and 25. OSHA concludes that its estimate of 308,000 total work stations (200,000 wood-dust-generating work stations) as derived from the 1988 telephone survey, is a more accurate estimate. OSHA's site visits and survey indicate that there are far fewer work stations than workers in SICs 24 and 25. One cause for this difference is the amount of shift work performed, thus allowing one work station to be used by two or three workers in a single day. Another cause for this difference is the number of technical, clerical, managerial, and maintenance staff, many of whom do not work consistently around machines which generate substances regulated under this rulemaking. Thus OSHA has determined that its estimate of total work stations is an accurate assessment for firms in SICs 24 and 25.

Next, it was necessary for OSHA to derive the percentage of wood-dust-generating processes (sanding/polishing/grinding, cutting/sawing planing, and drilling/boring) out of compliance with the final standard in SICs 24, 25, and 26. OSHA combined its monitoring data from site visits with Clayton's samples to estimate that 16 percent of the wood-dust-generating work stations (including those involving Western red cedar) would be out of compliance with the final standard. This percentage seems to be reasonably close to the 13.5 percent figure for 5 mg/m³ from the OSHA Health Response Team Survey referenced by Scott Schneider of the Workers' Institute for Safety Health (WISH) [Tr. 8/15/88, p. 13–5].

Since a 2.5 mg/m³ standard was established for Western red cedar, OSHA performed a separate analysis on compliance cost for this substance. OSHA believes that there are approximately 280 firms involved in the production of shakes and shingles with Western red cedar in SIC 2429 [U.S. Department of Commerce, Office of the Census]. Studies on Western Red Cedar asthma [Ex. 82D, Captain James]. Edwards, Jr.] indicate that approximately 90 percent of these firms operate in Washington State, where the permissible exposure limit is currently 2.5 mg/m³. Data presented by Stephen Cant of the Washington Department of Labor & Industry indicated that "they can, in fact, in most cases, comply with those limits, and that there are studies that support, certainly I think, the 2.5 limit as regards allergenic wood dust with respect to Western red cedar." [Tr. 7/29/88, p. 3–103]. However, studies performed by the University of Washington in 1987 indicate that "Labor and industries inspectors found a large number of mills out of compliance with the new regulatory standards." [Ex. 127-H] OSHA assumed that compliance with the wood dust standard relative to Western red cedar in the shakes and shingles industry would not be significantly different from compliance with the overall wood dust standard. OSHA concluded that 16 percent of the work stations would be out of compliance with the final standard in the shakes and shingles industry.

To derive the cost for wood dust in SIC 24, OSHA estimated that 142,000 of the 215,000 total work stations are wood-dust-generating, and that 1,500 involve Western red cedar. Sixteen percent, or 23,000, of the wood-dust-generating work stations were determined to exceed the final standard (249 for Western red cedar). Wood dust thus accounted for $45 million of the $56 million in SIC 24. For reasons explained above concerning the total number of work stations and work stations affected, OSHA concludes that NERA's estimate of $137.1 million for a 5 mg/m³ standard is an overestimate.

In addition to wood dust, controls for exposures to solvents, wood preservatives, and other chemicals in coating processes are estimated to result in compliance costs in SIC 24. Overall, about 68 percent of all establishments in SIC 24 are estimated to incur compliance costs. OSHA thus concluded that the annual operating and annualized capital cost to comply with all standards would be $58.6 million in SIC 24.

Furniture and Fixtures (SIC 25). Annual costs of compliance in the furniture and fixtures industry are estimated to total $21.1 million. Costs to control wood dust exposures at 5 mg/m³ wood (2.5 mg/m³ for Western red cedar) during sanding, cutting, drilling, and other dusty processes are the major components of compliance costs in this sector. Establishments would also incur costs for control of exposures to coatings and solvents. The survey indicated that the furniture sectors which include metal working (SICs 2514, 2515, 2522, 2542, 2591 and 2599) would also require controls for welding fumes and various metal particulates resulting from grinding and other processes. OSHA believes that local exhaust ventilation will reduce exposures to permissible levels during welding operations.

OSHA again believes that NERA overestimated the costs and the number of work stations used in its cost estimations for SIC 25. An explanation of cost differences is provided in SIC 24. OSHA calculated 69,000 total work stations (57,000 at wood-dust-generating work stations) in the furniture industry, based on responses provided by the telephone survey. NERA's estimate of work stations, which relied heavily on surrogates, resulted in a significant overestimate of the number of total work stations and work stations out of compliance with the OSHA standard. This overestimation of the total number of work stations distorted NERA's cost estimates for SIC 25 ($128.9 million for a 5mg/m³ standard).

To derive the cost to control wood dust exposures in SIC 25, OSHA estimated from the 1988 telephone survey that 57,000 of the 69,000 total work stations would be wood-dust-generating. Sixteen percent, or 9,000, of the wood-dust-generating work stations were expected to exceed the final standard. Wood dust thus accounted for $19 million of the compliance cost in SIC 25. OSHA believes that its total cost estimate of $21.1 million is an accurate estimate of the actual cost of compliance for this sector.

Paper and Allied Products (SIC 26). Annual costs in the paper and allied products industry are estimated to be $31.0 million. Much of the estimated costs in SIC 26 will be associated with the cost of controls in large pulp mills and associated operations. Pulp mills are operated separately (those listed in SIC 2611) or as part of paper or paperboard mills (SIC 2621 and SIC 2631 respectively). Some of the cost of compliance in these operations would result from controlling the large quantities of chemicals used in breaking down the pulp to form cellulose and the reactions that occur in the digesting process. The digesting and bleaching operations require ventilation or enclosure.

A portion of the costs associated with SIC 26 relate to controlling exposures to wood dust levels at 5 mg/m³ for wood dust (2.5 mg/m³ for Western red cedar). Data presented on wood dust exposures by Clayton were derived from only 2 site visits in SIC 26. NERA presented no cost estimates for this industry. Thus OSHA retained its estimate that sixteen percent of all wood-dust-generating work stations would be out of compliance with the final standard in SIC 26. Data from the 1988 sample survey indicated that the total cost for this SIC would amount to an annual operating and annualized capital cost of compliance of approximately $31.0 million.

Printing and Allied Industries (SIC 27). Compliance costs in the printing industry sector (an estimated $33.6 billion) would result from ventilation requirements to control exposures to cleaning solvents and ink spray generated within the printing process. A very large number of small establishments are involved in printing and over 3,100 of them would be affected by the revised standards. The survey indicated that a large number of small establishments currently lack exposure controls and provision of these controls accounts for the high control costs in this sector. However, OSHA's field visits in this sector [Ex. 8–11] indicated that the unit costs initially estimated for printing processes were somewhat high. The final cost estimate was adjusted to reflect the information collected during the field site visits.

Chemicals and Allied Products (SIC 28). Annual compliance costs in SIC 28 are estimated to total $35.5 million. Over 35 percent of the costs in SIC 28 are estimated to occur in Paints and Allied Products Manufacturing (SIC 2851). The survey indicated that a large proportion of plants will require additional controls for a number of processes found in paint and paint products manufacturing. There are many chemicals in this industry segment which present exposure problems in a variety of both wet and dry processes, including reaction, separation, crushing, mixing, drying and bagging.

According to U.S. Borax, the average annual operating costs for environmental controls at Borax in SIC 2819, Industrial Inorganic Chemicals (NEC), is considerably higher than OSHA had predicted for a large plant. As an example, OSHA estimated operating costs of $18,000 per year for large plants in SIC 28. U.S. Borax estimated an average operating cost of $37,600 per year. [Tr. 8/9/88, 9–113.] It is not clear from the testimony or from submissions to the docket [Ex. 3–744] which of the costs listed by Borax are associated with the mining and initial processing of the ore. These processes fall under the jurisdiction of the Mine Safety and Health Administration. OSHA believes a significant portion of these costs estimated by Borax are associated with the mining operation rather than downstream activities. After reviewing the rulemaking record, OSHA increased the TWA for all borates to 10 mg/m³ and adjusted plant costs downward to reflect the change.

Industry group SIC 282, Plastics Materials, Synthetic Resins and Synthetic Rubber accounts for about 22 percent of compliance costs in this sector. Compliance costs are related to ventilation and other requirements to control exposures to carbon disulfide, acetone and other emissions in the manufacture of rayon, cellulose acetate fibers and other plastics materials and synthetic rubber. The Vinyl Institute contended that a number of the processes found in member companies would have to be modified at an estimated capital expense of $10–25 million. The additional annual expense to maintain the required level of compliance was estimated by the Institute to be $4–5 million. The industry-wide estimated initial capital expense was estimated to be $160–400 million and annual expenses $60–80 million [Ex. 3–624]. The cost estimates submitted by the Vinyl Institute included tank farm vent controls which OSHA, as explained in Chapter F (Technological Feasibility), concludes would not be necessary. The remaining areas identified by the Institute are loading/unloading operations and process sewer systems. While the costs are not presented in a disaggregated form, OSHA believes that the costs to bring these two areas into compliance would be only a fraction of the Institute's total cost estimate and OSHA's estimated costs are more accurate. OSHA also notes that the final limits for several chemicals of interest to the Vinyl Institute (acetone, carbon disulfide) are less stringent than those proposed, which should mitigate cost problems for affected firms.

In SIC 2823, Cellulosic Manmade Fibers, the Inter-Industry Committee on Carbon Disulfide asserts that "the cost of making even small improvements below the 20 ppm limit is significant—$16.6 million." These costs would be for preventing the escape of carbon disulfide into the work area (process enclosures) and for increased ventilation [Ex. 3–747, p. 82]. As explained in the discussion of technological feasibility, OSHA believes that the evidence indicates the problem to be much less severe than is suggested above, and that most exposures are of short duration. The industry can comply with the final carbon disulfide standard of 4 ppm by using respirators in a limited number of designated processes (see Chapter F, Technological Feasibility) and adjusting work practices to control exposures. Costs for this subsector are reflected in the total estimate for SIC 28. Also in SIC 2823, the manufacturers of cellulose acetate claim that compliance with the acetone standard is not economically feasible at

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the three existing facilities. Tennessee Eastman estimated that costs of compliance with the proposed standard of 250 ppm for acetone to be $11.2 million annually in its facility [Ex. 3-745]. Mr. Vernon G. Knight of Hoechst Celanese, estimated that the costs of compliance for its two facilities would total $40.2 million in capital costs [Ex. 3-745]. OSHA does not believe that costs of this magnitude will be incurred. OSHA has revised its original proposal of 250 ppm for acetone. OSHA believes that a 750 ppm TWA and 1000 ppm STEL is economically and technologically feasible, and the costs for this sector have been reduced to reflect this change.

For SIC 2892, Explosives, the Institute of Makers of Explosives mentions "a study conducted in one nitroglycerin/ethylene glycol dinitrate (NG/EGDN) manufacturing facility in which the concept of reducing workplace concentrations to a 0.01 ppm (0.1 mg/m³) level was examined." This study indicated that the costs of engineering controls at this facility would exceed $4 million (1979 dollars) in capital costs to achieve the proposed standard for NG/EGDN [Ex. 3-749, 190]. OSHA believes that the principal cost for SIC 2892 would be for air line respirators and this cost is included in the total cost estimated for SIC 28.

Petroleum Refining and Related Products (SIC 29). Although only 13 percent of all facilities in SIC 29 are expected to be affected, nearly 25 percent of the large refineries will incur costs. Of those firms with more than 100 employees, almost 59 percent incurred some cost. Approximately 90 percent of the $23.7 million annual costs in SIC 29 are expected to be incurred by facilities in SIC 2911, Petroleum Refining. Most of these costs will be related to water treatment processes and sampling/quality control tasks because of a lack of controls in place in these two areas. In general, however, this industry has extensive control technology in place for the primary processing equipment. Closed processes with few exposed workers are predominant due to the requirements of process operation at elevated temperatures and pressures.

Costs in SIC 2951, Paving and Roofing Materials, arise mainly from smaller blending and formulating operations which usually involve few employees. Packaging and loading/offloading processes account for the majority of costs in SIC 299, Miscellaneous Products of Petroleum and Coal. The remainder of costs in SIC 299 are attributable to the blending and formulating of lubricating oils and greases.

Rubber and Miscellaneous Plastics Products (SIC 30). Annual costs of compliance in this industry sector are estimated to total about $111.1 million. Controls were required for processes such as molding and vulcanizing. Worker exposure to chemical vapors require the addition of local ventilation to many processes. The miscellaneous plastic products industry (SIC 3079) accounts for over 20 percent of the annual costs in this sector. The costs in SIC 3079 result from the high proportion of small plants in this sector which will incur costs of compliance. Controls are required in SIC 3079 for many crushing and grinding operations used to prepare plastic material for hot processes.

The Styrene Information and Research Council (SIRC) presented estimates of the costs SIRC believes will be required to control styrene exposures to a TWA of 50 ppm in selected segments of the miscellaneous plastics industry [Exs. 3-742, 34A, Tr. 8/3/88, pp. 117-130]. These costs estimates were developed for SIRC by Arthur D. Little, Inc. (ADL) and represent a partial update of a large study done by ADL in 1980 on the costs and technical feasibility of styrene control. This updated study estimated costs for the tub/shower, lavatory, hot tub/spa, and resin-applied-at-press segments. All of these segments are classified in SIC 308, Miscellaneous Plastic Manufacturing. ADL estimated that total capital costs for these segments to comply with an 8-hour TWA of 50 ppm for styrene would be $1.169 billion and that operating costs would be $204.6 million per year [Ex. 34A, Table 2]. Using OSHA's interest rate and life-of-equipment assumptions, the annualized costs for this sector, using these capital and operating costs, would be $395 million per year, a value in excess of the PRIA's total estimated costs of $75 million per year for all of SIC 30. ADL estimated that 19,230 employees in these segments are exposed to styrene at levels above 50 ppm; according to ADL, there are a total of 48,885 employees in these segments at 1550 plants [Ex. 34A, Table 1].

OSHA finds several difficulties with the ADL study. First, ADL used the exposure data from its 1980 study for SIRC as the basis for estimating what controls (and therefore costs) would be involved in achieving compliance; these exposure data showed considerably higher exposure levels (with one exception) than more recent data, e.g., the Cal/OSHA study of styrene exposures in this industry. ADL did use the Cal/OSHA data in one case (for the tub/shower segment), the only instance in which the Cal/OSHA exposure data were actually *higher* than the 1980 ADL data. Thus, ADL relied on the highest exposure data as a cost baseline, even when more recent data were available, and only used recent data when they were higher than the outdated data. This factor would contribute significantly to an overestimate of costs, especially since representatives of SIRC reported at the hearing that conditions in the industry have improved considerably in the last 10 years [Tr. 8/4/88, p. 5-94].

Second, compared with other sources (SIRC's prehearing submittal, the Cal/OSHA study), ADL estimates that many more workers are overexposed to styrene in these reinforced plastics industry segments. For example, ADL [Table 10, Ex. 34A] estimates that 20 percent of the workforce in the reinforced plastics segments of concern is overexposed to styrene, while the Cal/OSHA stydy [Ex. 3-742, Attach. 2, p. 30] reports that only 22 percent of the gel coat/lamination workers (who constitute approximately 36 percent of this work force) are overexposed. Thus, ADL used an inflated estimate of the number of overexposed workers in these segments; this factor also contributes substantially to an overestimation of costs.

Third, ADL seriously underestimates the existing level of baseline control in these segments. For example, ADL assumes that facilities have no controls in place. However, as the Cal/OSHA study, SIRC testimony, and OSHA's site visits show, this is not the case. At the time of ADL's 1980 study, spray booths may have been nonexistent in these facilities, but that is clearly not the case today.

Fourth, ADL underestimates the effectiveness of the methods available to control exposure. For example, the Cal/OSHA study found that many facilities with only minimal levels of control were routinely achieving the 50-ppm limit and that others that were exceeding 50 ppm could achieve compliance by adopting minor engineering improvements, implementing better/maintenance procedures, and instituting improved work practices [Ex. 3-742, Attach. 2, pp. 20, 29-33]. Dr. Daniel Boyd, speaking for SIRC, testified to the effectiveness of improved work practices (training workers to leave the spray booth when not involved in sprayup/layup operations, to position themselves properly during spray operations, etc.). Based on his experience, Dr. Boyd estimated that work practices alone could reduce employees' 8-hour exposures to styrene by 50 percent [Tr. 8/2/88, p. 5-106].

Fifth, ADL ignored control approaches based on substitution, preferring instead to estimate that major revamping of ventilation systems and installation of local exhaust ventilation would be necessary in all facilities. OSHA is aware that other materials cannot be substituted for styrene in all applications; however a costing methodology that relies exclusively on engineering controls ignores the movement in this sector away from styrene and high-emitting resins. A series of methodological problems, which compound each other, seriously undermines the usefulness of the ADL study. The Agency believes it more appropriate to rely on OSHA's industrywide survey as a source of data and to use the cost algorithm as a method of evaluating costs in these sectors. OSHA therefore concludes that the costs reported in the PRIA for SIC 30 are representative and reliable estimates.

The limit of 4 ppm for carbon disulfide may not be achievable with engineering controls in some operations performed during the manufacture of cellulosic food casings (SIC 308). These operations include unloading xanthate from the baratte, aligning of casing strands in the extrusion cabinet, and puncturing casings at the extrusion nozzle. Air-supplied hoods are currently used by workers performing these operations, and OSHA finds that respirators are likely to continue to be needed in these three processes, which require the opening of process machinery. Because employers will be permitted to use respirators to achieve compliance during these three operations, OSHA concludes that the cost estimates presented in the PRIA for SIC 30 accurately reflect costs for this industry.

Leather and Leather Products (SIC 31). One of the lowest costs of compliance in the manufacturing sectors is expected to occur in SIC 31, Leather and Leather Products ($2.4 million). In the leather and leather products industry sector, most of the affected establishments produce manufactured leather goods. The costs in this SIC are predominantly derived from gluing operations.

Stone, Clay, Glass and Concrete Product Manufacturing (SIC 32). The stone, clay, glass and concrete product industry is estimated to incur compliance costs of about $22.5 million. A major part of the annual costs in this industry segment may occur in the concrete, gypsum and plaster products (SIC 327) industries. According to the survey, controls in this sector are primarily expected to control silica generated during large scale crushing, grinding and sizing operations.

Primary Metal Manufacturing (SIC 33). The annual costs of compliance in primary metal manufacturing are estimated to total $71.0 million. The costs of compliance for this sector are heavily weighted by the cost of controls required in large establishments in this segment. Blast furnace establishments and primary foundries have large numbers of hot processes which require controls. Control of emissions from these hot metal processes to the proposed levels will require large increases in the volume of air being moved through the ventilation systems. Additional costs will be incurred to increase capacities of scrubbers and baghouses to remove the contaminants from the air.

The $71.0 million estimate includes engineering controls for processes where none are currently in use, as well as additional control of some already controlled proecesses. The controls for which costs have been estimated are sufficient for essentially all of the facilities in this sector. However, this estimate may somewhat underestimate the compliance costs because it does not take into account the additional costs at a small number of very large facilities where these engineering controls may not be sufficient. This situation arises in SIC 3312 at the blast furnaces and basic oxygen furnaces (BOFs) in the few (about 15) remaining integrated steel mills, which operate on a substantially larger scale than the other facilities in this sector. It is the scale of these approximately 15 operations (which account for about 80 percent of domestic steel production) which requires more extensive controls than other facilities in this sector.

Because engineering controls alone are likely to be insufficient to consistently control exposures to the proposed PELs around the blast furnaces and BOFs at the integrated mills, OSHA anticipates that respirators will be needed in addition to the engineering controls. Engineering controls could possibly be installed to fully meet the proposed exposure levels, but the cost would likely be prohibitive, about $10 million per facility. The estimated cost of $71.0 million for this sector takes into account engineering controls such as improved air purification in control rooms and purified air showers at some work stations. These improvements would help to control exposures, but might not always be sufficient to meet the new standards. Thus, OSHA has also included an annual cost of $7.41 million for respirators at the integrated mills (included in the $71 million total estimate).

Fabricated Metal Products Manufacturing (SIC 34). Plating and coating establishments (SIC 347) and miscellaneous fabricated products (SIC 349) would account for a major portion of the $39.4 million annual costs in SIC 34. Worker exposures in this industry sector result from chemicals used in plating processes, solvents and coatings, metals and dusts. The survey indicated that ventilation systems are not now present at many of the processes with chemical exposure.

Machinery Except Electrical (SIC 35) and Electrical Machinery (SIC 36). The machinery manufacturing sectors together are estimated to incur total annual compliance costs of $85.9 million. Machinery except electrical accounts for $45.2 million of this total. The electrical machinery sector is estimated to require $20.7 million in annual compliance costs. Controls in these sectors would be required for exposures to metals, solvents and welding fumes.

Transportation Equipment Manufacturing (SIC 37). Annual costs of compliance for SIC 37 are estimated at $49.8 million. Costs in the truck and car body and motor vehicle parts sectors (SICs 3711, 3713, 3714) would account for a large percentage of the costs in SIC 37. Controls may be needed in order to control exposures to heavy metals, solvents, welding fumes and a large variety of other chemicals at large scale hot processes. Additionally, costs in small plants in this sector will include compliance activities to control exposures to styrene and other chemicals in small boat construction, as well as trailer and recreational vehicle insulation.

The Styrene Information Research Council (SIRC) presented the results of a study by Arthur D. Little, Inc. (ADL) of the costs of meeting a 50-ppm, 8-hour TWA for styrene in the boat-building industry [Exs. 3-742; 34A; Tr. 8/3/88, pp. 5-117 to 5-130]. The ADL study concluded that capital costs for boat builders would be $714.3 million and operating costs would be $132.1 million per year [Ex. 34A, Table 2]. If these costs are annualized using OSHA's interest and life-of-equipment assumptions, annualized costs for firms in this sector would be $249.2 million per year. OSHA's PRIA estimated a total annualized cost for all of SIC 37 (which includes many other segments in addition to boat-building) of $47 million per year (53 FR 21736). There is thus a substantial disagreement between ADL's chemical- and industry-specific

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estimate and OSHA's estimate for the entire sector.

OSHA believes that ADL's estimates grossly overestimate costs for controlling styrene in the boat-building sector. For example, ADL estimates that 50 percent of all workers in this sector are exposed to styrene levels of greater than 50 ppm as 8-hour TWA's. However, Daniel Boyd, testifying for SIRC, estimated that not more than 20 percent of employees engaged in boat building are directly exposed to styrene in the gel-coat and lamination processes; according to Dr. Boyd, the remainder of employees work in assembly and shipping and have little direct exposure to styrene [Tr. 8/3/88, p. 5–100]. OSHA's site visits to boat-building facilities in this sector [Exs. 136A, 136B] confirm that no more than 20 percent of employees in boat building facilities work in jobs having direct exposure to styrene.

ADL also chose to use 1980 exposure data to construct an exposure baseline for costs in this segment. OSHA finds that extensive exposure and control data collected in the Cal/OSHA study [Ex. 3–742, Attach. 2] superior to the 1980 ADL data because they are more recent, more extensive, specifically related to control measures (both engineering and work practice), and reflect good industrial hygiene practice (ADL, for example, calculates 8-hour TWAs on the basis of 1- or 2-hour samples, while Cal/OSHA uses appropriate sampling techniques). The Cal/OSHA study determined that the mean 8-hour TWA exposure for gel-coat and lamination workers (who are the most heavily styrene-exposed employees) were generally lower than reported by ADL.

In addition to overestimating both exposure levels and the number of workers overexposed, the ADL study [Ex. 33–742, Attach. 9, pp. 1–5] assumes that an extensive system of engineering controls and work practices would be required to achieve exposures of 50 ppm or less, i.e., ADL assumes a very low (or nonexistent) baseline level of control. However, both the Cal/OSHA study and OSHA's site visits [Exs. 136A, 136B] show that most gel-coat application is being done today in a spray booth [Ex. 3–742, Attach. 2, p. 20], and that many gel-coat operators have 8-hour TWA exposures of less than 50 ppm.

Further, based on the Agency's feasibility assessment for manual layup and sprayup operations within SIC 37, OSHA is permitting respirators to be used during these operations to achieve the revised limits for styrene. Thus, it is unlikely that employers will incur substantial costs to implement engineering controls for manual layup and sprayup operations.

Finally, ADL did not consider the impact of substitution of lower-emitting styrene resins or of other, less hazardous substances in lieu of styrene on worker exposures. OSHA therefore concludes that the costs reflected in the PRIA for SIC 37, which are based on data from the survey and estimates developed by the cost of algorithm, are an accurate representation of costs to firms in this sector.

Instruments Manufacturing (SIC 38). Annual control costs in SIC 38 are estimated to total $2.6 million. Exposures in this sector are to a large number of chemicals used within instruments and to various metals and solvents.

Miscellaneous Manufacturing (SIC 39). This industry accounts for a wide range of products, processes and chemical exposures. About half of the establishments that would incur the $15.8 million annual cost in the industry are believed to be included in SIC 3999, miscellaneous manufacturing not elsewhere classified.

The Casket Manufacturers Association of America (CMAA) commented that achievement of the proposed hardwood dust limit of 1 mg/m³ would impose prohibitive costs on casket manufacturers [Ex. 8–78]. The CMAA presented estimates of the costs it anticipates as a result of the proposed limit; these costs were derived by estimating per-machine ventilation costs, multiplying this estimate by the number of machines per plant, and then multiplying by 18 plants [Ex. 8–78]. The CMAA estimated costs from a zero (no control) baseline and from an incremental baseline [Ex. 8–78]. Because the use of a zero-cost baseline is not appropriate when estimating potential compliance costs, OSHA has focused on the CMAA's incremental costs. According to the CMAA, total costs for 18 companies to achieve a 1 mg/m³ limit for hardwood dust would be $1.32 million, or $73,000 per plant.

OSHA believes that the CMAA has seriously overestimated compliance costs. First, the final rule has adopted a 5 mg/m³ limit for wood dust (the 2.5 mg/m³ Western red cedar dust limit does not affect casket manufacturers because they do not use this wood). Second, the CMAA estimates assume that all machines in all facilities will need local exhaust ventilation, when in fact only a few machines would need to be engineered since only hand- and machine-finishing operations present an exposure problem, according to the CMAA [Ex. 8–87]. Finally, the recent exposure data collected and submitted by the CMAA show that, even under a worst-case scenario, seven of nine sample results were below the 5 mg/m³ limit (see detailed discussion for SIC 30 in the Technological Feasibility section of the preamble). These exposure results demonstrate that most employees and operations are already below the final rule's 5 mg/m³ limit and will therefore incur no costs.

Thus OSHA finds that the costs projected by the CMAA are unlikely to be incurred by hardwood casket manufacturers. The Agency's PRIA cost estimates for SIC 39 appear to be accurate and take into account costs of the magnitude likely to be encountered by these manufacturers.

One comment was received from a participant concerned about the costs of achieving the proposed limit for styrene in the manufacturing of diving boards, a business that is classified in SIC 3949, Sporting and Athletic Goods (nec). This commenter [Ex. 3–380] was of the opinion that the equipment changes and plant restructuring required to comply with the proposed limit would require a complete shut-down of affected facilities, and that this closure would result in such a substantial loss of revenue that economic feasibility would become an issue [Ex. 3–380].

In response, OSHA notes that a review of the record evidence has shown that the great majority of all exposure samples and reinforced plastics facilities potentially affected by the revised standard are already achieving compliance with this limit or are very close to doing so (see discussion of Technological Feasibility for SICs 30 and 37). In those few cases where compliance is not presently being achieved, OSHA has determined that improved work practices, such as having employees leave the booth when not engaged in manual layup operations and having them stand downwind, and making minor adjustments in ventilation will achieve the final rule's PEL. Thus OSHA finds that the cost impacts projected by this commenter [Ex. 3–380] are not likely to be incurred by diving board manufacturers.

Transportation and Utilities (SICs 40, 45, 47, and 49). The transportation and utilities sectors (SICs 40, 45, 47, and 49) include a large number of establishments. However, operations at Railroad (SIC 40), and Air Transport establishments (SIC 45) are subject to regulation by other Federal agencies in addition to OSHA. Consequently, the number of establishments which would incur costs to comply with the final standard are limited. For railroads, OSHA's standards normally apply to

off-track operations. The estimated cost of compliance for SIC 40 is $1.1 million, while the cost for SIC 45 is $3.7 million.

Transportation Services Sector (SIC 47). The $3.8 million annual costs in SIC 47 will primarily be incurred in SIC 4789, transportation services not elsewhere classified. This sector includes establishments which provide incidental services such as cleaning railroad ballast and other rail car maintenance.

Electric, Gas and Sanitary Service Utilities (SIC 49). Annual costs in the utilities sectors are estimated to total $38.0 million. Costs would result from installation and improvement of controls necessary for activities such as boiler/furnace feed preparation in electric services, odorant addition by natural gas companies and water treatment and purification of water supplies.

Edison Electric Institute (EEI) estimates that in electric utility operations where exposures are intermittent in nature and limited in duration, engineering controls to reduce exposure would likely cost one to two million dollars per generating unit [Ex. 3–831]. However, intermittent activities such as boiler and precipitator cleaning would not require the installation of engineering controls, so these costs would not be incurred. During these intermittent activities, workers do have the option of wearing respirators. OSHA's cost estimate for SIC 49 does reflect costs to control exposures to coal dust generated in material handling operations.

The remaining cost estimate from EEI is $12–40 million per unit to modify the approximately 428 positive pressure boilers currently operating in the United States. EEI contends that if electric utilities lost their flexibility in using personal protective equipment to meet the proposed PELs, the boilers would have to be modified to reduce potential leaks of nitrogen dioxide and sulfur dioxide [Ex. 3–831]. OSHA believes that in most cases where overexposures might occur, they could be corrected by general ventilation or directed blowers and by correcting the most severe emission points. The prediction for such radical and costly modifications of power generating equipment does not appear to be well grounded.

The Interstate Natural Gas Association of America (INGAA) stated that costs to control "exposure to emissions from combustion sources that are ducted to ambient air" would be prohibitively costly [Ex. 3–739]. However, INGAA did not provide any specific explanations as to possible errors in OSHA's cost analysis. Thus OSHA did not have any additional evidence with which to compare its costs. After reviewing its methodology and survey data, OSHA concludes that the costs of compliance for the natural gas industry were adequately represented.

Wholesale Trade (SICs 50, 51). Costs in the wholesale trade sectors (SICs 50, 51), are estimated to total about $17.2 million annually. A large percentage of the total number of establishments which would incur costs to comply with the final rule are in SIC 5093, Scrap and Waste Materials, wholesale.

Several of the commenters who submitted data and information on the technological feasibility of achieving the Agency's proposed grain dust standard of 4 mg/m³ in SIC 5153, Wholesale Trade and Grain and Field Beans, also expressed concern about the costs of compliance OSHA estimated for this sector in the PRIA. The PRIA estimated that approximately 10 percent of the grain elevators classified in SIC 5153 would incur costs to meet the proposed 4 mg/m³ PEL and that the average per-elevator annualized costs would be $6,000 per year (Ex. 33). OSHA's estimates were based on data derived from the survey and calculated using the cost algorithm.

The National Grain and Feed Association (NGFA) presented a different estimate of the compliance costs that owners of grain elevators in this SIC category would incur [Ex. 3–752] to reach the proposed 4 mg/m³ PEL. To derive its estimates, the NGFA used the following assumptions:

(1) All grain elevators processing wheat, oats, or barley will need pneumatic dust control systems and do not now have them;

(2) Eighty-seven percent of all grain elevators process wheat, oats, or barley;

(3) The costs of pneumatic dust control systems are those estimated by Booz Allen in a study done for OSHA in connection with the Agency's grain handling standard (inflated by 15 percent to convert them from 1984 to 1988 dollars).

Using these assumptions, the NGFA estimated total capital costs for all affected grain elevators at $1.9 billion. If these costs are annualized using OSHA's interest and life-of-capital-equipment assumptions and including an operating cost component calculated at 10 percent of capital costs, annualized costs would be $500 million per year, most of which reflect costs for country elevators. If the NGFA's estimated capital costs are used as a starting point, the average annualized per-elevator cost would be $41,125.

OSHA finds that the NGFA's estimates seriously overstate potential compliance costs for two principal reasons:

(1) OSHA has determined, as described for SIC 51 in the Technological Feasibility section of the preamble, that the PEL established in the final rule will be 10 mg/m³, rather than the proposed PEL of 4 mg/m³;

(2) The NGFA overestimates the number of grain elevators potentially affected by the new standard.

OSHA believes that no more than 10 percent, rather than the 87 percent projected by the NGFA, of all SIC 51 grain elevators will incur costs to achieve the 10 mg/m³ PEL, because most elevators are already achieving this level. Data in the record show that:

(1) Only 5 percent of 109 8-hour TWA samples taken in grain elevators in one study were above 10 mg/m³ [Rankin et al. 1986];

(2) Fewer than 5 percent of 203 8-hour TWA samples from grain handling facilities characterized as "small" were above 10 mg/m³ [Ex. 3–751, Attach. 2 and Fig. 1, Docket H–0117];

(3) Only 12 percent of all total dust samples taken at 6 elevators in 3 states were above 10 mg/m³ [Ex. 3–751, Attach., Docket H–0117]; and

(4) Only 6 percent of the employee full-shift exposures taken by NIOSH in a grain elevator were above 10 mg/m³ [NIOSH HHE 76–13–316].

These data confirm that no more than 10 percent of all SIC 5153 elevators will be affected by the final standard. Further, these data make it clear that controls will be needed only in those instances and areas where the 10 mg/m³ is not already being achieved, and that the complete, facility-wide installation of pneumatic control systems envisioned by the NGFA to meet a 4 mg/m³ PEL will rarely, if ever, be required. OSHA has not reduced the compliance costs included in the PRIA for this sector despite the increase in the PEL from 4 to 10 mg/m³; as such, costs are believed to be conservative and may overstate actual expenditures needed to comply with the new level.

Auto Dealers (SIC 55). The only retail trade sector expected to incur compliance costs, Auto Dealers (SIC 55) is estimated to incur $13.6 million annually. These costs result from the potentially large number of motor vehicle dealers (SIC 5511) which may incur compliance costs to control exposures to paints, coatings and solvents during vehicle spray and coating operations. The costs result from the installation of paint spray booths.

Service Sectors (SICs 72, 73, 75, 76, and 80). The service sectors, SICs 72, 73, 75, 76 and 80 are estimated to total

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about $20.7 in annual compliance costs. The major costs in these sectors would result from potential compliance activities in SIC 721, laundry, cleaning and garment services. Establishments in SIC 721 would incur annual operating and annualized capital costs to control exposures for dry cleaning operations.

Because the limit for perchloroethylene was lowered from the proposed level of 50 ppm to 25 ppm, the engineering control designed for dry cleaning was reevaluated. OSHA reevaluated the control design used to project cost in the preliminary regulatory impact analysis. The air flow rate to control exposures at 25 ppm was increased, resulting in a unit cost increase of $910, making the revised unit cost $2,410. OSHA is aware of the improvements in dry cleaning equipment, particularly the increasing use of dry-to-dry machines. Based on information provided by the International Fabricare Institute and the Amalgamated Clothing and Textile Workers Union regarding replacement rates for drycleaning machines, OSHA believes that virtually all machines in use will be dry-to-dry by 1992 [Ex. 3-671]. The average perchloroethylene exposure associated with dry-to-dry machines is 23.9 ppm. Thus, it is anticipated that the PEL will be met largely by the normal rate of retirement of existing equipment.

Additional costs in the service sectors may result from control of solvent chemicals in SIC 734, Building Services, control of welding fumes at Welding Repair operations (SIC 7692), control of solvent and photographic chemicals in Mailing, Reproduction, Commerical Art, Photography and Stenographic Services (SIC 733), and local ventilation for exposure control in SIC 8071, Medical Laboratories.

Per Plant Average Costs

Table G-3 presents the estimated average per plant annual cost of compliance by industry sector. Costs shown in this Table are calculated only for those establishments in a sector which would incur costs. Average per plant annual operating and annualized capital costs for all affected establishments across industry sectors are estimated at $6,000. The per plant cost for large plants is $13,000 and for small plants with fewer than 20 employees, $3,100.

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TABLE G-3

AVERAGE PER PLANT ANNUAL COSTS AND NUMBERS OF AFFECTED PLANTS (a)

SIC (b)	SIC DESCRIPTION	ANNUAL COST	TOTAL # OF PLANTS	# OF AFFECTED PLANTS	% AFFECTED	AVERAGE COST PER AFFTED PLANT	AVERAGE COST PER LARGE AFFTED PLANT	AVERAGE COST PER SMALL AFFTED PLANT
20	FOOD PROD. (c)	$33,493,100	29,000	4,932	16.98%	$6,800	$13,000	$3,600
21	TOBACCO (c)	$19,700	200	3	1.39%	$6,600	$6,600	$0
22	TEXT. MILL (c)	$29,478,400	11,000	2,765	25.08%	$10,700	$21,400	$3,700
23	APPAREL PROD. (c)	$31,744,200	30,000	6,179	20.57%	$5,100	$11,500	$2,000
24	LUMBER & WOOD	$56,720,800	27,100	18,427	68.00%	$3,100	$4,200	$2,700
25	FURNITURE	$21,075,800	12,700	5,062	40.00%	$4,200	$12,400	$1,800
26	PAPER PROD.	$30,998,700	7,000	3,518	50.00%	$8,800	$15,200	$800
27	PRINTING & PUB.	$33,754,500	60,300	3,597	6.00%	$9,400	$6,200	$10,600
28	CHEMICAL PROD.	$35,454,700	16,400	3,007	18.31%	$11,800	$16,200	$5,400
29	PETRO. REFINING	$23,686,000	2,300	306	13.25%	$77,400	$109,600	$700
30	RUBBER & PLASTICS	$111,095,400	15,100	3,562	26.22%	$31,200	$27,000	$35,100
31	LEATHER PROD.	$2,414,700	2,300	300	13.46%	$8,000	$10,400	$6,400
32	STONE & CLAY	$22,457,800	15,900	3,267	22.80%	$6,900	$12,200	$3,400
33	PRIM. METAL	$70,957,600	8,000	2,411	30.03%	$29,400	$41,900	$6,200
34	FAB. METALS	$39,419,700	37,300	4,597	14.50%	$8,600	$15,800	$3,800
35	MACHINERY	$45,206,600	64,400	6,801	10.56%	$7,800	$14,600	$3,000
36	ELEC. MACH.	$20,667,500	21,600	2,359	10.92%	$7,800	$14,500	$3,000
37	TRANS. EQUIP.	$49,792,400	13,600	4,979	36.56%	$10,000	$11,800	$8,800
38	INSTRUMENTS	$9,633,500	12,000	1,289	10.76%	$7,800	$14,500	$3,000
39	MISC. MANUF.	$15,842,600	25,300	2,649	10.47%	$7,800	$14,600	$3,000
40	R.R. TRANS.	$1,083,600	400	93	20.86%	$11,700	$11,700	$0
45	AIR TRANS.	$3,740,500	5,500	320	5.79%	$11,700	$11,700	$0
47	TRANS. SERV.	$3,789,600	26,200	324	1.24%	$11,700	$11,700	$0
49	ELEC. GAS. SAN.	$38,009,300	15,800	3,485	22.24%	$10,900	$17,000	$3,600
50	WHOLESALE TRADE	$2,995,300	5,800	801	13.78%	$3,400	$6,200	$2,900
51	WHOLESALE, NON-DUR	$14,215,800	33,600	4,436	13.22%	$3,400	$6,200	$2,900
55	AUTO DEALERS	$13,550,500	165,800	24,847	14.99%	$360	$2,000	$300
72	PERSONAL SRV.	$10,872,100	95,500	5,217	5.47%	$2,200	$6,000	$1,000
73	BUSINESS SRV.	$2,422,100	12,100	800	6.61%	$2,200	$8,300	$1,500
75	AUTO REPAIR	$6,143,500	91,500	8,351	9.13%	$600	$3,500	$300
76	MISC. REPAIR SRV.	$2,809,900	15,100	1,163	11.56%	$2,400	$12,400	$2,100
80	HEALTH SERV. (c)	$4,439,400	222,800	1,158	0.52%	$3,800	$12,500	$2,100
TOTAL		$787,982,900	1,101,600	131,005	11.89%	$6,000	$13,000	$3,100

Source: U.S. Department of Labor, Occupational Safety and Health Administration, Office of Regulatory Analysis.

(a) Costs were calculated by annualizing the capital cost over the projected life of the equipment (10 years) using a 10 percent cost of capital and adding an annual operating and maintenance cost estimated at 10 percent of the capital cost.

(b) Industry sectors not identified in this table include industries with no major cost impact expected, the construction industry, which will be the subject of a separate regulatory analysis, and industries such as mining, over which OSHA has no jurisdiction.

(c) Costs in these sectors were based on expert judgement and secondary data collection.

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The highest costs on an average per plant basis are expected to occur in SIC 29. Averge per plant costs for large plants in SIC 29 may total $109,600 in annual operating and annualized captial costs. Per plant costs in SIC 29 are substantially higher than those in the next highest industry, SIC 30, Rubber and Plastics. The $31,200 per plant costs in this industry result from above average compliance costs estimated for exposure control in molding and vulcanizing in large plants and crushing and grinding operations in small plants.

Although small establishments account for about 73 percent of the 131,005 affected establishments, compliance costs for small establishments are expected to account for only 30 percent of total industry compliance costs.

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TABLE G-4
DESCRIPTIVE INFORMATION ON PROCESSES AND RELATED COSTS

SIC 24 = LUMBER AND WOOD

PROCESS	FREQUENCY OF PROCESS	TOTAL WORK STATIONS	COSTED WORK STATIONS	UNIT COST	TOTAL COST FOR PROCESS
ABRASIVE BLASTING	206	6	0	$7,200	$0
ADHESIVE BINDING	2	4	4	$3,070	$12,116
ASSEMBLY	237	3,867	172	$1,140	$185,170
BARON PROCESS COKE PRODUCTION/REMOVAL	53	0	0	$0	$0
BLEACHING	53	264	264	$3,900	$765,762
BOILERS	57	5	0	$160	$0
CALENDARING/WINDING	2	4	0	$180	$0
CLEANING	206	0	0	$710	$0
COATING/SPRAYING/FINISHING/LAYUP	5,048	22,501	1,775	$3,070	$6,448,216
CRUSHING/GRINDING/CALCINING	2	0	0	$4,740	$0
CUTTING/SAWING/PLANING	21,535	98,814	15,455	$1,505	$25,270,686
DRYING/BAKING	1,085	2,534	184	$4,745	$968,878
GLUEING/HOT PRESSING	9,070	36,453	1,182	$3,070	$3,626,740
LOADING/OFFLOADING/RECEIVING/HANDLING	2	88	0	$1,120	$0
METAL WORKING (ROLLING, MILLING, SHAPING)	2	197	0	$5,145	$0
OTHER	473	13,789	0	$1,145	$0
PLANE CLEANING	42	77	0	$710	$0
POLISHING (SURFACE)/GRINDING	7	21	0	$1,140	$0
PULP SCREENING/WASHING	2	22	22	$2,900	$53,542
REBLENDING/REMIXING	2	22	0	$1,140	$0
RECOVERY/REPROCESSING/RECLAMATION	2	4	0	$21,900	$0
SANDING/POLISHING/GRINDING	7,574	45,225	7,236	$2,200	$15,919,200
SEPARATION	2	4	0	$1,120	$0
STAMPING/SHAPING/MOLDING/PRESSING	9	53	0	$2,900	$0
WELDING/SOLDERING	2	4	0	$1,140	$0
ZZSUBTOTAL	46,864	211,734	26,294	$71,450	$56,262,684
ZZMAINTENANCE	18,116	2,743	148	$520	$457,965
ZZTOTAL	64,780	214,477	26,442	$71,970	$56,720,649

TABLE G-4 (CONT.)
DESCRIPTIVE INFORMATION ON PROCESSES AND RELATED COSTS

SIC 25 = FURNITURE

PROCESS	FREQUENCY OF PROCESS	TOTAL WORK STATIONS	COSTED WORK STATIONS	UNIT COST	TOTAL COST FOR PROCESS
ADHESIVE BINDING	5	5	0	$3,070	$0
ASSEMBLY	218	489	0	$1,140	$0
COATING/SPRAYING/FINISHING/LAYUP	5117	13183	685	$3,070	$2,102,014
CUTTING/SAWING/PLANING	8021	20068	4480	$1,800	$8,676,469
DEBURRING	229	457	0	$7,200	$0
DRILLING/BORING	1040	1197	192	$2,200	$421,344
DRYING/BAKING	704	1588	0	$4,740	$0
GLUEING/HOT PRESSING	5432	10629	0	$3,070	$0
LOADING/OFFLOADING/RECEIVING/HANDLING	14	180	14	$1,120	$15,641
MACHINING/GRINDING/WELDING/BRAZING	51	771	0	$1,140	$0
OTHER	96	1169	0	$1,120	$0
PACKAGING/BAGGING	65	94	0	$1,120	$0
SANDING/POLISHING/GRINDING	7639	29053	4480	$2,200	$9,874,304
STAMPING/SHAPING/BOLDING/PRESSING	99	718	0	$2,900	$0
WELDING/SOLDERING	51	514	0	$1,140	$0
ZSUBTOTAL	28439	87252	9839		$20,887,872
ZZMAINTENANCE	12804	945	361	$520	$187,885
ZZTOTAL	41243	88197	10200		$21,075,557

TABLE G-4 (CONT.)
DESCRIPTIVE INFORMATION ON PROCESSES AND RELATED COSTS

SIC 26 = PAPER PRODUCTS

PROCESS	FREQUENCY OF PROCESS	TOTAL WORK STATIONS	COSTED WORK STATIONS	UNIT COST	TOTAL COST FOR PROCESS
ADHESIVE BINDING	37	7	7	$3,070	$28,810
BLEACHING	38	150	73	$2,900	$211,326
BLENDING/MIXING/FORMULATING	136	363	0	$3,070	$0
BOILERS	38	119	11	$160	$2,023
CALENDARING/WINDING	213	739	136	$180	$24,548
COATING/SPRAYING/FINISHING/LAYUP	555	2883	141	$2,870	$423,631
CRUSHING/GRINDING/CALCINING	2	5	0	$4,740	$0
CUTTING/SAWING/PLANING	1699	9504	1525	$1,800	$2,889,215
DIGESTER	29	138	9	$14,000	$126,535
DON'T KNOW	755	0	0		$0
DRYING/BAKING	1328	9052	305	$4,740	$1,445,975
EXTRUSION	71	140	2	$1,140	$2,575
FLEXOGRAPHIC PRINTING	2	43	0	$1,300	$0
FOAM PROCESSING	69	1716	0	$1,340	$0
GLUEING/HOT PRESSING	1663	8084	873	$3,070	$2,679,276
LINOTYPE SETTING	2	5	0	$1,300	$0
LITHOGRAPHIC PRINTING	7	23	0	$1,300	$0
LOADING/OFFLOADING/RECEIVING/HANDLING	5	9	0	$1,120	$0
OTHER	254	1248	0	$80	$0
PACKAGING/BAGGING	1660	12651	1452	$1,120	$1,625,905
PRESS SECTION	346	962	136	$180	$24,482
PRINTING	715	3666	946	$1,300	$1,305,873
PULP SCREENING/WASHING	38	237	133	$2,800	$265,612
RECOVERY/REPROCESSING/RECLAMATION	38	81	25	$14,000	$262,402
SHEET PROCESS	2	7	0	$80	$0
SHREDDING/WASTE PROCESSING	1347	4309	1190	$14,000	$16,724,340
SIZE PRESS/COATERS	366	990	611	$180	$109,980
STAMPING/SHAPING/BOLDERG/PRESSING	46	132	11	$2,800	$32,763
WATER TREATMENT	67	122	74	$14,000	$1,021,880
WET END	233	753	182	$180	$32,682
ZSUBTOTAL	11671	86370	7847		$29,512,844
ZZMAINTENANCE	7022	3357	2858	$520	$4,405,791
ZZTOTAL	98893	61727	10705		$30,958,335

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TABLE G-4 (CONT.)
DESCRIPTIVE INFORMATION ON PROCESSES AND RELATED COSTS

SIC 27 - PRINTING AND ALLIED INDUSTRIES

PROCESS	FREQUENCY OF PROCESS	TOTAL WORK STATIONS	COSTED WORK STATIONS	UNIT COST	TOTAL COST FOR PROCESS
ADHESIVE BINDING	6667	8109	197	$3,070	$604,003
BLENDING/MIXING/FORMULATING	39	197	0	$4,740	$0
BOILERS	20	20	0	$180	$0
CALENDARING/WINDING	113	678	0	$180	$0
CLEANING	1602	9629	9629	$710	$6,835,424
CUTTING/SAWING/PLANNING	38	383	0	$180	$0
DEGREASING	20	20	0	$710	$0
DRILLING/CUTTING/FLAME-JET LANCING	18	111	111	$1,140	$126,499
DRYING/BAKING	39	39	0	$4,740	$0
FILM PROCESSING	2116	4184	0	$1,240	$0
GRAVURE PLATEMAKING	361	1106	0	$1,380	$0
GRAVURE PRINTING	22	328	0	$1,380	$0
INJECTION MOLDING	20	316	0	$1,140	$0
LETTERPRESS PRINTING	7526	18729	0	$1,380	$0
LINOTYPE SETTING	9372	12643	20	$1,380	$27,180
LITHOGRAPHIC PLATEMAKING	17757	22189	99	$1,380	$136,716
LITHOGRAPHIC PRINTING	27040	87525	17640	$1,380	$24,204,521
MATERIALS MANUFACTURE/FABRICATION	20	236	0	$1,140	$0
METAL PLATING	20	138	0	$710	$0
MONO OR LINOTYPE SETTING	6367	9629	0	$1,380	$0
OTHER	3984	4900	0	$1,140	$0
PHOTOENGRAVING	418	1132	0	$1,380	$0
PHOTOENGRAVING PLATEMAKING	113	0	0	$1,380	$0
PHOTOGRAVURE	1860	5415	678	$1,380	$826,090
PLATE CLEANING	113	0	0	$710	$0
PLATE MAKING	268	764	0	$1,380	$0
PRINTING	3687	6081	0	$1,380	$0
SANDING/POLISHING/GRINDING	20	20	0	$2,200	$0
SCREEN PRINTING	304	1306	0	$1,380	$0
SCREEN STENCIL PLATEMAKING	133	585	0	$1,380	$0
SEMICONDUCTOR PHOTORESIST	20	413	0	$710	$0
STAMPING/SHAPING/MOLDING/PRESSING	18	148	148	$2,900	$429,653
STRIPPING/PAINT REMOVING	113	452	0	$1,140	$0
ZSUBTOTAL	88114	198311	28421		$33,300,466
ZZMAINTENANCE	60282	19919	678	$570	3454 341
ZZTOTAL	148396	218230	29099		$33,754,507

TABLE G-4 (CONT.)
DESCRIPTIVE INFORMATION ON PROCESSES AND RELATED COSTS

SIC 28 - CHEMICALS AND ALLIED PRODUCTS

PROCESS	FREQUENCY OF PROCESS	TOTAL WORK STATIONS	COSTED WORK STATIONS	UNIT COST	TOTAL COST FOR PROCESS
ADHESIVE BINDING	104	219	0	$3,070	$0
ASSEMBLY	6	714	0	$1,140	$0
BLENDING/MIXING/FORMULATING	7640	36776	1986	$3,070	$6,104,570
BLOWING/MOLDING	2	6	0	$180	$0
BOILERS	7	89	0	$180	$0
CALCINING KILN	3	5	0	$4,740	$0
CALENDARING/WINDING	8	604	604	$180	$108,707
CLEANING	71	471	26	$710	$18,119
COATING/SPRAYING/FINISHING/LAYUP	137	570	15	$3,070	$47,818
CRUSHING/GRINDING/CALCINING	1196	5740	542	$4,740	$2,570,110
CUTTING/SAWING/PLANNING	80	148	0	$180	$0
DIGESTER	45	360	0	$14,000	$0
DRYING/BAKING	1204	3455	230	$4,740	$1,088,607
EXTRUSION	222	1460	123	$1,140	$140,758
GLUEING/HOT PRESSING	2	9	0	$3,070	$0
IMPREGNATION	53	153	0	$1,140	$0
INJECTION MOLDING	2	28	0	$1,140	$0
LITHOGRAPHIC PRINTING	6	6	0	$1,380	$0
LOADING/OFFLOADING/RECEIVING/HANDLING	5100	14631	2065	$1,120	$2,312,937
MATERIALS MANUFACTURE/FABRICATION	7	35	0	$1,140	$0
MEASUREMENT	11	33	0	$1,120	$0
MONOTYPESETTING	25	25	0	$1,380	$0
OTHER	152	5899	0	$1,120	$0
OTHER	3	15	0	$890	$0
OTHER	251	392	0	$890	$0
OTHER	3	0	0	$710	$0
PACKAGING/BAGGING	5137	23614	4538	$1,120	$5,082,081
PACKAGING/REPACKAGING	29	29	0	$710	$0
PRINTING	2	14	0	$1,380	$0
PROCESS INSP/SUPERVISION/QUAL CONTROL	39	80	0	$1,120	$0
PULP SCREENING/WASHING	6	538	0	$2,900	$0
REACTION/FERMENTATION	1680	7889	3855	$1,120	$4,317,769
RECOVERY/REPROCESSING/RECLAMATION	628	1113	429	$21,900	$9,402,121
SAMPLING	2	0	0	$1,120	$0
SANDING/POLISHING/GRINDING	36	69	0	$2,200	$0
SEPARATION	1521	6026	2269	$1,120	$2,541,828
STAMPING/SHAPING/MOLDING/PRESSING	45	169	20	$2,900	$58,846
STERILIZATION	8	8	6	$710	$4,225
VULCANIZATION/CURING	36	380	0	$890	$0
WATER TREATMENT	13	38	37	$14,000	$511,930
ZSUBTOTAL	26539	111911	16748		$34,310,426
ZZMAINTENANCE	16426	3952	497	$520	$1,144,315
ZZTOTAL	42965	115863	17245		$35,454,741

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TABLE G-4 (CONT.)
DESCRIPTIVE INFORMATION ON PROCESSES AND RELATED COSTS

SIC 29 = PETROLEUM REFINING AND RELATED PRODUCTS

PROCESS	FREQUENCY OF PROCESS	TOTAL WORK STATIONS	COSTED WORK STATIONS	UNIT COST	TOTAL COST FOR PROCESS
ADHESIVE BINDING	0	16	0	$3,070	$0
BATCH PROCESS COKE PRODUCTION/REMOVAL	47	208	15	$180,000	$2,281,338
BLENDING/MIXING/FORMULATING	949	2004	23	$4,740	$107,389
CALCINING KILN	2	11	0	$4,740	$0
CALENDARING/WINDING	11	13	0	$180	$0
COATING/SPRAYING/FINISHING/LAYUP	24	38	0	$3,070	$0
CUTTING/SAWING/PLANNING	12	14	2	$180	$382
DRYING/BAKING	108	178	0	$4,740	$0
FELTING	2	2	0	$3,070	$0
IMPREGNATION	6	8	0	$3,070	$0
LOADING/OFFLOADING/RECEIVING/HANDLING	748	4068	278	$1,120	$311,093
MEASUREMENT	112	787	0	$1,120	$0
OTHER	2	4	0		$0
OTHER	11	48	0	$1,120	$0
OTHER	2	9	0	$4,740	$0
OTHER	0	0	0	$4,740	$0
OTHER	48	116	0	$4,740	$0
PACKAGING/BAGGING	342	931	83	$1,120	$92,457
PRESS SECTION	2	2	0	$180	$0
PROCESS INSP/SUPERVISION/QUAL CONTROL	216	2298	1441	$1,120	$1,614,469
REACTION/FERMENTATION	37	206	72	$1,120	$80,102
RECOVERY/REPROCESSING/RECLAMATION	25	54	0	$21,900	$0
SAMPLING	267	5790	3065	$1,120	$3,433,000
SAMPLING OF PIPE LINES	16	16	0	$1,120	$0
SANDING/POLISHING/GRINDING	2	7	0	$2,200	$0
SEPARATION	61	73	28	$1,120	$30,813
WATER TREATMENT	218	1648	1103	$14,000	$15,440,626
WELDING/SOLDERING	2	0	0	$1,140	$0
ZSUBTOTAL	2863	18538	6108		$23,392,277
ZZMAINTENANCE	2315	875	318	$520	$293,765
ZZTOTAL	5298	19412	6427		$23,686,042

TABLE G-4 (CONT.)
DESCRIPTIVE INFORMATION ON PROCESSES AND RELATED COSTS

SIC 31 = LEATHER AND LEATHER PRODUCTS

PROCESS	FREQUENCY OF PROCESS	TOTAL WORK STATIONS	COSTED WORK STATIONS	UNIT COST	TOTAL COST FOR PROCESS
ASSEMBLY	196	770	0	$1,140	$u
BEAMHOUSE	29	171	0	$2,510	$0
BLENDING/MIXING/FORMULATING	12	35	35	$3,070	$61,419
CALENDARING/WINDING	12	47	47	$180	$8,375
CLEANING	22	111	30	$710	$21,070
COATING/SPRAYING/FINISHING/LAYUP	204	547	0	$3,070	$0
COLORING/DYEING	44	420	0	$0	$0
CUTTING/SAWING/PLANNING	59	232	0	$180	$0
DEGREASING	12	91	0	$710	$0
EXTRUSION	12	105	0	$1,140	$0
FAT LIQUORING	27	201	0	$720	$0
FINISHING	66	148	0	$1,820	$0
GLUEING/HOT PRESSING	1,059	5,540	736	$3,070	$2,258,853
INJECTION MOLDING	10	69	0	$1,140	$0
LOADING/OFFLOADING/RECEIVING/HANDLING	35	54	0	$1,120	$0
OTHER	12	931	0	$1,120	$0
PACKAGING/BAGGING	35	35	0	$1,120	$0
PRESERVATION/DEFESTATION/DISINFECTION	34	58	41	$720	$29,466
SPLITTING/SHAVING	22	77	0	$720	$0
STAMPING/SHAPING/MOLDING/PRESSING	22	241	0	$2,900	$0
TANNING/RETANNING	51	158	10	$2,510	$25,867
ZSUBTOTAL	1,971	10,120	999		$2,652,183
ZZMAINTENANCE	2,326	0	0	$520	$0,646
ZZTOTAL	4,297	10,120	999		$2,414,718

TABLE G-4 (CONT.)
DESCRIPTIVE INFORMATION ON PROCESSES AND RELATED COSTS

SIC 32 - STONE, CLAY, GLASS AND CONCRETE PRODUCT MANUFACTURING

PROCESS	FREQUENCY OF PROCESS	TOTAL WORK STATIONS	COSTED WORK STATIONS	UNIT COST	TOTAL COST FOR PROCESS
ANNEALING/QUENCH/TEMPER	92	641	0	$710	$0
ASSEMBLY	30	201	0	$1,140	$0
BATCH MAKING	1,206	1,362	0	$4,740	$0
BISCUIT FIRING	110	110	0	$4,740	$0
BLENDING/MIXING/FORMULATING	4,006	22,404	284	$4,740	$1,346,904
BLOWING/MOLDING	112	1,672	544	$90	$48,537
BONDING	1,157	3,463	2,200	$3,070	$5,753,534
CALCINING KILN	139	241	11	$4,748	$64,329
CALENDARING/WINDING	11	92	0	$160	$0
CASTING	1,319	1,756	382	$3,080	$1,484,401
CHIPPING GRINDING	1,466	2,108	275	$1,140	$313,322
COATING/ETCHING	226	648	11	$3,070	$35,182
COATING/SPRAYING/FINISHING/LAYUP	298	1,812	82	$3,070	$261,257
COLD ROLLING MILL	92	183	0	$1,820	$0
CRUSHING/GRINDING/CALCINING	800	2,033	1,168	$4,740	$5,530,080
CUTTING/SAWING/PLANING	1,340	2,618	1,269	$180	$228,375
DECORATION	133	810	11	$710	$8,136
DRILLING/BORING	18	79	73	$2,200	$158,801
DRILLING/CUTTING/FLAME-JET LANCING	1,466	2,474	0	$1,140	$0
DRYING/BAKING	341	636	54	$4,740	$257 739
EXTRUSION	183	880	0	$1,140	$0
FIBER FORMING	30	138	0	$80	$0
FINISHING	110	1,824	1,924	$1,820	$3,501,622
GLAZE APPLICATION	187	278	81	$3,070	$278,220
GLOSS FIRING	164	200	36	$4,740	$171,835
IMPREGNATION	11	118	0	$1,140	$0
INJECTION MOLDING	11	138	0	$1,140	$0
LOADING/OFFLOADING/RECEIVING/HANDLING	341	658	23	$1,120	$25,670
MACHINING/GRINDING/WELDING/BRAZING	110	1,134	0	$1,140	$0
MATERIALS MANUFACTURE/FABRICATION	18	0	0	$1,140	$0
MELTING	249	1,286	36	$3,850	$141,013
METAL MELTING/POURING/CASTING	11	92	0	$1,820	$0
METAL PLATING	30	229	0	$710	$0
MOLDMAKING	11	57	0	$2,520	$0
OTHER	110	182	0	$00	$0
PACKAGING/BAGGING	352	958	23	$1 120	$25 670
PACKAGING/REPACKAGING	11	23	0	$1,820	$0
POLISHING (SURFACE)/GRINDING	1,466	1,833	0	$1,140	$0
SANDING/POLISHING/GRINDING	18	0	0	$2,200	$0
SCREEN PRINTING	238	695	0	$1,380	$0
SCREEN STENCIL PLATEMAKING	18	36	0	$1,380	$0
SIZING	157	573	127	$4,740	$601,392
SLIP HOUSE (BLENDING)	341	341	0	$1,140	$0
STAMPING/SHAPING/MOLDING/PRESSING	82	749	138	$2,900	$398,807
VULCANIZATION/CURING	11	57	0	$90	$0
WELDING/SOLDERING	201	788	403	$1,140	$459,089
ZSUBTOTAL	16,843	57,897	10,863		$22,112,897
ZZMAINTENANCE	15,920	8,620	344	$570	$344,948
ZZTOTAL	34,763	66,518	11,207		$22,457,846

TABLE G-4 (CONT.)
DESCRIPTIVE INFORMATION ON PROCESSES AND RELATED COSTS

SIC 33 - PRIMARY METAL MANUFACTURING

PROCESS	FREQUENCY OF PROCESS	TOTAL WORK STATIONS	COSTED WORK STATIONS	UNIT COST	TOTAL COST FOR PROCESS
ABRASIVE BLASTING	1804	4874	940	$7,200	$4,036,395
ACID WASHING	78	103	0	$710	$0
ANNEALING/QUENCH/TEMPER	1381	7106	1318	$710	$633,430
BLENDING/MIXING/FORMULATING	12	12	0	$3,070	$0
CALCINING KILN	10	10	10	$4,740	$46,159
CLEANING	18	18	0	$710	$0
COATING & BAKING	207	368	0	$7,200	$0
COATING/SPRAYING/FINISHING/LAYUP	31	283	0	$3,070	$0
COKE MANUFACTURE	22	36	0	$0	$0
COLD ROLLING MILL	403	2620	301	$1,820	$712,091
COLORING/DYEING	18	37	0	$0	$0
CORE MAKING	945	3456	945	$2,520	$2,380,445
COSTING/PAINTING	192	628	0	$3,070	$0
DEGREASING	320	483	41	$710	$28,830
DEHASING	28	48	24	$1,140	$27,164
ELECTRO PRODUCTION	37	100	80	$1,820	$80,888
ELECTROPLATE/ELECTRCAL DISCHRGE MACHING	109	5737	0	$710	$0
EXTRUSION	10	38	0	$1,140	$0
EXTRUSION COATING	236	1325	297	$7,200	$2,138,242
FINISHING	748	5746	666	$1,820	$1,193,680
FORGING PRESS	10	0	0	$1,820	$0
GLUEING/HOT PRESSING	84	168	0	$3,070	$0
HOT DIP GALVANIZING	12	12	0	$710	$0
HOT METAL WORKING	28	112	18	$7,200	$140,348
HOT SHAPING	342	1003	108	$2,520	$274,998
IMPREGNATION	180	728	150	$1,140	$171,637
MACHINING/GRINDING/WELDING/BRAZING	808	1478	306	$1,140	$347,508
MAINTENANCE ACTIVITIES	12	26	0	$7,200	$0
MELTING	77	102	0	$3,080	$0
METAL CASTING	1209	6848	686	$2,520	$1,727,898
METAL MELTING/POURING/CASTING	3622	14024	2767	$1,820	$5,036,591
METAL WORKING (ROLLING, MILLING, SHAPING	74	145	0	$1,140	$0
MOLDMAKING	556	2170	145	$2,520	$365 710
ORE HANDLING	110	19631	19589	$1,820	$35,651,199
OTHER	89	387	0	$4,740	$0
PC BOARDS SOLDERING	25	62	50	$1,140	$56 721
PICKELING	357	749	5	$710	$3,743

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TABLE G-4 (CONT.)
DESCRIPTIVE INFORMATION ON PROCESSES AND RELATED COSTS

POLISHING (SURFACE)/GRINDING	1532	4834	1668	$1,140	$1,801,789
POURING	606	3288	131	$1,820	$239,227
PRESSING	38	1362	0	$3,070	$0
RAW MATERIALS PREPARATION	118	230	0	$2,820	$0
SAMPLING	12	148	0	$1,120	$0
SAND RECLAMATION	118	182	0	$2,820	$0
SANDING	47	47	0	$1,140	$0
SEPARATION	28	138	203	$1,120	$226,914
SHAKEOUT	832	3337	468	$2,820	$1,179,773
SINTERING	186	412	86	$21,000	$1,866,686
SOLDERING	47	94	0	$1,140	$0
STAMPING/SHAPING/WELDING/PRESSING	102	636	0	$2,800	$0
STRIP ANNEALING	94	930	468	$1,820	$884,187
TORCH CUTTING	131	734	58	$2,820	$160,483
WELDING/BRAZING	66	214	141	$1,140	$186,606
WELDING/SOLDERING	266	666	237	$1,140	$270,505
WIRE DRAWING	177	1917	299	$1,160	$329,715
ZSUBTOTAL	18863	98477	31863		$62,631,948
ZZMAINTENANCE	64224	84448	1784	$820	$8,426,687
ZZTOTAL	28111	106293	33648		$70,957,606

TABLE G-4 (CONT.)
DESCRIPTIVE INFORMATION ON PROCESSES AND RELATED COSTS

SIC 34 = FABRICATED METAL PRODUCTS MANUFACTURING

PROCESS	FREQUENCY OF PROCESS	TOTAL WORK STATIONS	COSTED WORK STATIONS	UNIT COST	TOTAL COST FOR PROCESS
ABRASIVE BLASTING	3623	3967	138	$7,200	$883,370
ACID WASHING	1175	2678	0	$710	$0
ANNEALING/QUENCH/TEMPER	809	859	0	$710	$0
ASSEMBLY	1109	7018	618	$1,140	$784,382
BISCUIT FIRING	34	0	0	$4,740	$0
BLENDING/MIXING/FORMULATING	178	1069	0	$2,200	$0
COATING & BAKING	177	148	0	$7,200	$0
COATING/SPRAYING/FINISHING/LAYUP	1119	940	0	$3,070	$0
COLD ROLLING MILL	144	2290	0	$1,820	$0
COOLING/QUENCHING	12164	22825	1411	$3,070	$4,332,862
CUTTING/SAWING/PLASMING	422	2139	0	$180	$0
DEBURRING	129	271	247	$7,200	$1,779,493
DEGREASING	6315	16464	86	$710	$39,364
DRILLING/BORING	406	406	0	$2,200	$0
DRILLING/CUTTING/FLAME-JET LANCING	24	97	0	$1,140	$0
ELECTROD PRODUCTION	89	89	0	$1,820	$0
ELECTROPLATE/ELECTRICAL DISCHARGE MACHING	3103	10617	1505	$710	$1,068,543
ENGRAVING/ETCHING	406	812	0	$710	$0
EXTRUSION COATING	62	510	0	$7,200	$0
FINISHING	501	968	0	$1,820	$0
FORGING PRESS	16	463	463	$1,820	$843,406
HOT DIP GALVANIZING	466	5871	83	$710	$58,804
HOT METAL WORKING	88	891	0	$7,200	$0
HOT SHAPING	240	826	0	$2,820	$0
LITHOGRAPHIC PRINTING	16	124	124	$1,380	$170,634
LOADING/OFFLOADING/RECEIVING/HANDLING	88	366	0	$1,120	$0
MACHINING/GRINDING/WELDING/BRAZING	5051	39045	1218	$1,140	$1,389,145
MAKING OF DENTAL APPLIANCES	16	463	0	$1,140	$0
METAL MELTING/POURING/CASTING	16	46	0	$1,820	$0
METAL WORKING (ROLLING, MELLING, SHAPING	1463	6551	3656	$1,140	$4,167,440
MOLDMAKING	89	267	0	$2,820	$0
OTHER	502	1691	0	$4,740	$0
PACKAGING/BAGGING	178	624	0	$1,120	$0
PICKELING	64	112	0	$710	$0
POLISHING (SURFACE)/GRINDING	8500	23186	2192	$1,140	$2,498,617
PRESSING	2294	15729	0	$3,070	$0
PROCESS INSP/SUPERVISION/QUAL CONTROL	446	1280	121	$1,120	$135,641

TABLE G-4 (CONT.)
DESCRIPTIVE INFORMATION ON PROCESSES AND RELATED COSTS

SICs 38,36,38,39 = MACHINERY, INSTRUMENTS, AND MISC. MANUFACTURING

PROCESS	FREQUENCY OF PROCESS	TOTAL WORK STATIONS	COSTED WORK STATIONS	UNIT COST	TOTAL COST FOR PROCESS
ABRASIVE BLASTING	12663	13589	407	$7,200	$2,928,486
ACID WASHING	2809	2809	0	$710	$0
ASSEMBLY	5841	64324	5064	$1,140	$6,762,056
BLENDING/MIXING/FORMULATING	1573	11016	731	$3,070	$2,243,006
BRISTLE/FIBER CLEANING/RECEIVING	49	49	0	$1,140	$0
CLEANING	2015	3071	0	$710	$0
COATING/SPRAYING/FINISHING/LAYUP	7470	10843	1162	$3,070	$3,567,133
COIL PRODUCTION	49	49	0	$2,520	$0
CORE MAKING	203	1627	0	$2,520	$0
COSTING/PAINTING	20660	45906	2052	$3,070	$6,300,780
CRUSHING/GRINDING/CALCINING	214	1906	0	$4,740	$0
CUTTING/SAWING/PLANING	6902	25679	1017	$160	$163,030
DEGREASING	17186	26737	1927	$710	$1,367,926
DRILLING/BORING	2886	26868	2034	$2,200	$4,474,080
DRYING/BAKING	49	98	0	$4,740	$0
ELECTROPLATE/ELECTRICAL DISCHRGE MACHING	877	877	0	$710	$0
EPOXY COATING	456	407	0	$3,070	$0
EXTRUSION COATING	203	813	0	$7,200	$0
FILM & PRINT PAPER MAKING	49	196	0	$1,240	$0
FINISHING	81	101	0	$1,620	$0
FOAM PROCESSING	61	61	61	$1,140	$69,828
GLASSMAKING	203	203	0	$80	$0
GLUEING/HOT PRESSING	6672	12260	4871	$3,070	$14,953,587
HOT SHAPING	27	27	0	$2,520	$0
INJECTION MOLDING	1763	9317	0	$1,140	$0
LOADING/OFFLOADING/RECEIVING/HANDLING	1272	2014	0	$1,120	$0
MACHINING/GRINDING/WELDING/BRAZING	6176	65357	959	$1,140	$1,092,764
MATERIALS MANUFACTURE/FABRICATION	3090	29519	6799	$1,140	$7,750,921
METAL MELTING/POURING/CASTING	1321	3862	1419	$1,820	$2,582,353
METAL WORKING (ROLLING, MILLING, SHAPING	2876	6710	0	$1,140	$0
MOLDMAKING	375	3708	2361	$2,520	$5,949,315
MONO OR LINOTYPE SETTING	110	110	0	$1,380	$0
ORE HANDLING	203	203	0	$1,620	$0
OTHER	1301	15739	0	$90	$0
PACKAGING/BAGGING	1740	5971	203	$1,120	$227,171
PAINTING/COATING	49	0	0	$3,070	$0
PC BOARDS - ETCHING	486	645	110	$2,520	$277,652

TABLE G-4 (CONT.)
DESCRIPTIVE INFORMATION ON PROCESSES AND RELATED COSTS

REACTION/FERMENTATION	16	48	0	$1,120	$0
RECEIVING/SHIPPING	89	386	0	$1,120	$0
SANDING/POLISHING/GRINDING	89	89	0	$2,200	$0
SOLDERING	24	87	0	$1,140	$0
STAMPING/SHAPING/MOLDING/PRESSING	1343	18751	1235	$2,900	$3,583,702
TORCH CUTTING	89	891	0	$2,520	$0
WATER TREATMENT	24	24	24	$14,000	$336,003
WELDING/SOLDERING	11788	46739	13266	$1,140	$15,111,834
WIRE DRAWING	347	2906	0	$1,140	$0
SUBTOTAL	64803	238074	26368		$37,224,040
MAINTENANCE	37315	13302	1690	9520	$2,196,648
TOTAL	102218	248377	28068		$39,419,685

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TABLE G-4 (CONT.)
DESCRIPTIVE INFORMATION ON PROCESSES AND RELATED COSTS

PC BOARDS - SOLDERING	1370	1484	0	$1,140	$0
PHOTOPINISHING	262	990	0	$1,240	$0
PICKLING	301	884	0	$710	$0
PLATE PROCESS	266	1446	0	$80	$0
POLISHING (SURFACE)/GRINDING	31073	100881	1726	$1,140	$1,988,642
POTTING	1136	2990	0	$2,830	$0
PRESSING	8818	36807	3182	$3,070	$9,770,029
PRINTING	360	1268	0	$1,380	$0
PROCESS INSP/SUPERVISION/QUAL CONTROL	1463	6363	0	$1,120	$0
REACTION/FERMENTATION	486	2132	0	$1,120	$0
RECEIVING/SHIPPING	61	61	0	$1,120	$0
REFRIGERANT CHARGING	203	0	0	$2,520	$0
SAMPLING	48	488	0	$1,130	$0
SANDING	3629	4830	0	$1,140	$0
SANDING/POLISHING/GRINDING	1475	5134	0	$2,300	$0
SCREEN PRINTING	314	382	61	$1,380	$84,526
SEMICONDUCTOR PHOTORESIST	382	282	0	$2,520	$0
SEMICONDUCTOR PHOTORESIST STRIPPING	171	235	0	$2,520	$0
SEMICONDUCTOR WAFER CLEANING	343	1029	0	$2,520	$0
SEMICONDUCTOR-CHEMICAL ETCHENTS	171	233	0	$2,520	$0
SEMICONDUCTOR-DIFFUSION & ION IMPLANT	48	7338	0	$2,520	$0
SEPARATION	48	48	0	$1,120	$0
SOLDERING	22801	98171	9730	$1,140	$11,092,750
STAMPING/SHAPING/MOLDING/PRESSING	3236	17434	1807	$2,900	$4,660,122
STERILIZATION	1480	867	0	$710	$0
WELDING/BRAZING	1153	2318	0	$1,140	$0
WELDING/SOLDERING	13000	62084	2024	$1,140	$2,307,300
ZSUBTOTAL	205154	768838	40490		$69,616,064
ZZMAINTENANCE	123388	28313	3338	$520	$1,735,608
ZZTOTAL	328619	790963	62837		$91,360,672

TABLE G-4 (CONT.)
DESCRIPTIVE INFORMATION ON PROCESSES AND RELATED COSTS

SICs 40,45,47 = TRANSPORTATION

PROCESS	FREQUENCY OF PROCESS	TOTAL WORK STATIONS	COSTED WORK STATIONS	UNIT COST	TOTAL COST FOR PROCESS
ASSEMBLY	7	372	0	$1,140	$0
CLEANING	213	213	0	$710	$0
DEICING	15	30		$2,410	$0
ENGINE FUELING/OPERATION	272	4,361	7	$560	$4,161
HANDLING SPILLS/LEAKS	58	58	0	$0	$0
LOADING/OFFLOADING/RECEIVING/HANDLING	471	39,011	7	$1,120	$8,322
MACHINING/GRINDING/WELDING/BRAZING	7	0	0	$1,140	$0
MAINTENANCE ACTIVITIES	362	401	0	$0	$0
PAINTING/COATING	15	7	0	$3,070	$0
RECEIVING/SHIPPING	242	2,586	2,558	$1,120	$2,864,591
REFUELING	22	171	22	$560	$12,483
SPECIAL CARE OF LADING SERVICES	36	29	0	$560	$0
WELDING/BRAZING	242	455	0	$1,140	$0
ZSUBTOTAL	1,953	47,694	2,595		$2,889,558
ZZMAINTENANCE	42,025	1,403	132	$520	$5,723,634
ZZTOTAL	43,978	49,097	2,727		$8,613,193

TABLE G-4 (CONT.)
DESCRIPTIVE INFORMATION ON PROCESSES AND RELATED COSTS

SIC 49 = ELECTRIC, GAS, AND SANITARY SERVICE UTILITIES

PROCESS	FREQUENCY OF PROCESS	TOTAL WORK STATIONS	COSTED WORK STATIONS	UNIT COST	TOTAL COST FOR PROCESS
ASSEMBLY	8	3	0	$1,140	$0
BOILER/FURNACE PREP/OPERATION	830	1,340	368	$710	$262,310
BREAKING UP WASTE	68	136	0	$14,000	$0
CHEMICAL PREPARATION/APPLICATION	72	72	0	$14,000	$0
CLEANING	14	0	0	$710	$0
COLLECTION/TRANSPORT	834	10,416	8,111	$820	$8,403,203
CONDENSATE COLLECTION	181	917	884	$820	$1,027,885
DETOXIFICATION	6	15	3	$2,410	$8,034
ENGINE FUELING/OPERATION	1,022	2,124	130	$880	$72,878
HANDLING SPILLS/LEAKS	756	2,906	0	$0	$0
INCINERATION	14	66	0	$14,000	$0
LAB PROCEDURES: TISSUE STAINING & FIXING	3	3	0	$0	$0
LOADING/OFFLOADING/RECEIVING/HANDLING	14	28	0	$1,120	$0
MAINTENANCE ACTIVITIES	4,781	18,387	0	$0	$0
ODORANT ADDITION	384	1,334	1,170	$0	$2,059,194
OTHER	167	348	0	$1,120	$0
PAINTING/COATING	58	90	0	$3,070	$0
PRINTING	3	15	0	$1,380	$0
PROCESS INSP/SUPERVISION/QUAL CONTROL	99	498	68	$1,120	$75,713
PUMP STATION FUELING/ENGINE FUELS	65	68	65	$860	$36,338
RECEIVING/SHIPPING	3	5	0	$1,120	$0
RECYCLING/RECLAMATION	44	47	14	$21,900	$310,010
SAMPLING	70	230	0	$1,120	$0
SAMPLING OF PIPE LINES	395	1,474	1,474	$1,120	$1,651,346
USE OF CHEMICAL ADDITIVES	1,148	4,382	0	$1,120	$0
USE OF DISINFECTANTS & SOLVENTS	228	228	0	$2,410	$0
VENTING	14	1,380	0	$0	$0
WATER PURIFICATION	840	1,251	0	$14,000	$0
WATER TREATMENT	665	2,167	82	$14,000	$1,281,486
WELDING	111	212	5	$1,140	$5,708
WELDING/BRAZING	162	239	0	$1,140	$0
WOOD PRESERVATION	65	0	0	$3,070	$0
ZSUBTOTAL	12,200	50,171	10,083		$15,151,877
ZZMAINTENANCE	15,812	11,066	1,345	$520	$22,817,441
ZZTOTAL	28,012	61,236	11,428		$38,009,318

TABLE G-4 (CONT.)
DESCRIPTIVE INFORMATION ON PROCESSES AND RELATED COSTS

SIC 50,51 = WHOLESALE TRADE

PROCESS	FREQUENCY OF PROCESS	TOTAL WORK STATIONS	COSTED WORK STATIONS	UNIT COST	TOTAL COST FOR PROCESS
BALING/COMPACTING	217	295	80	$14,000	$838,812
BLENDING/MIXING/FORMULATING	2,264	4,048	954	$4,740	$1,844,592
BREAKING UP WASTE	38	109	0	$14,000	$0
CHEMICAL PREPARATION/APPLICATION	664	1,664	182	$14,000	$321,174
CHIPPING GRINDING	8	60	0	$1,140	$0
COATING/SPRAYING/FINISHING/LAYUP	457	1,066	913	$3,070	$2,804,276
COLLECTING	518	4,687	0	$820	$0
CRUSHING/GRINDING/CALCINING	30	30	0	$4,740	$0
DRILLING/CUTTING/FLAME-JET LANCING	4	11	0	$1,140	$0
DRYING/BAKING	34	131	0	$4,740	$0
MAINTENANCE ACTIVITIES	4	15	0	$520	$0
METAL MELTING/POURING/CASTING	4	11	0	$1,820	$0
OTHER	67	116	0	$1,140	$0
PACKAGING/REPACKAGING	3,144	5,071	1,752	$1,780	$3,084,385
PESTICIDE PREPARATION/APPLICATION	30	0	0	$520	$0
POLISHING (SURFACE)/GRINDING	30	30	0	$1,140	$0
PROCESS INSP/SUPERVISION/QUAL CONTROL	4	85	0	$1,120	$0
REACTION/FERMENTATION	8	15	0	$1,120	$0
RECEIVING/SHIPPING	8,725	13,696	5,864	$1,120	$7,470,731
RECYCLING/RECLAMATION	4	4	4	$21,900	$82,794
SAMPLING	152	152	0	$1,120	$0
SANDING/POLISHING/GRINDING	152	304	0	$2,200	$0
SORTING	794	1,472	30	$14,000	$419,406
WASHING	152	152	0	$0	$0
WELDING	4	11	0	$1,140	$0
ZSUBTOTAL	17,626	33,237	10,759		$16,866,172
ZZMAINTENANCE	38,371	800	19	$520	$344,858
ZZTOTAL	55,897	34,037	10,778		$17,211,030

TABLE G-4 (CONT.)
DESCRIPTIVE INFORMATION ON PROCESSES AND RELATED COSTS

SIC 55,75 - AUTO DEALERS AND REPAIR

PROCESS	FREQUENCY OF PROCESS	TOTAL WORK STATIONS	COSTED WORK STATIONS	UNIT COST	TOTAL COST FOR PROCESS
ASSEMBLY	9	66	0	$1,140	$0
CLEANING	83012	342202	2456	$710	$1,746,426
COATING/SPRAYING/FINISHING/LAYUP	3	0	0	$3,070	$0
CONFINED SPACE EXPOSURE TO EXHAUST FUME	57023	224767	23623	$80	$1,889,840
COSTING/PAINTING	23623	0	0	$3,070	$0
FLOAT PROCESS	3	0	0	$80	$0
MACHINING/GRINDING/WELDING/BRAZING	3	47	0	$1,140	$0
MAINTENANCE ACTIVITIES	48006	188380	0	$80	$0
MATERIALS MANUFACTURE/FABRICATION	3	3	0	$1,140	$0
OTHER	11811	0	0	$80	$0
OTHER SOLVENT USE	14582	60837	0	$710	$0
PAINT STRIPPING	14726	41509	96	$710	$68,068
PAINTING/COATING	32097	127988	0	$3,070	$0
PUMP STATION FUELING/ENGINE FUMES	23623	94491	0	$80	$0
REACTION/FERMENTATION	11811	0	0	$2,500	$0
RECEIVING/SHIPPING	70	211	0	$1,120	$0
REFRIGERANT CHARGING	11811	0	0	$3,070	$0
STAMPING/SHAPING/MOLDING/PRESSING	3	22	0	$2,500	$0
TORCH CUTTING	11811	0	0	$2,520	$0
WELDING	48004	164157	7061	$1,140	$8,072,636
ZSUBTOTAL	302665	1201729	33258		$11,775,030
ZZMAINTENANCE	267267	79073	3400	$520	$7,910,216
ZZTOTAL	849852	1277801	36658		$19,684,065

TABLE G-4 (CONT.)
DESCRIPTIVE INFORMATION ON PROCESSES AND RELATED COSTS

SIC 76 - MISCELLANEOUS REPAIR SERVICE

PROCESS	FREQUENCY OF PROCESS	TOTAL WORK STATIONS	COSTED WORK STATIONS	UNIT COST	TOTAL COST FOR PROCESS
CLEANING	2	4	0	$710	$0
GLUEING/HOT PRESSING	3,882	4,837	16	$3,070	$48,168
OTHER	13	13	0	$2,200	$0
PAINT STRIPPING	2,348	2,920	0	$710	$0
PAINTING/COATING	2,381	2,482	0	$3,070	$0
SANDING/POLISHING/GRINDING	3,876	6,151	0	$2,200	$0
WELDING/BRAZING	4,063	7,830	2,120	$1,140	$2,417,367
ZSUBTOTAL	16,663	24,145	2,836		$2,465,535
ZZMAINTENANCE	15,085	4,260	509	$520	$344,257
ZZTOTAL	31,747	28,405	3,345		$2,809,793

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References

1. Dun and Bradstreet, Inc., 1985 Count of Establishments. (Database)

H. Economic Impact, Regulatory Flexibility Analysis and Environmental Impact Assessment

Economic Impact

The economic impacts discussed in this chapter have been estimated following an analysis of data collected through a nationwide sample survey of about 5,700 establishments. Two alternative polar assumptions were used in this analysis.

- *Perfectly Elastic Demand or Zero Cost-Passthrough:* All compliance costs are absorbed by the firm in the form of reduced profits. This assumption is the "worst case" scenario, where the maximum reduction in pre-tax profits to the firm (and industry) results.
- *Perfectly Inelastic Demand or Total Cost-Passthrough:* All compliance costs are passed on to the consumer sector in the form of higher prices. From the perspective of the firm, this is the "best case" scenario. The resulting price increase would be the maximum theoretically possible.

Two points should be noted. First, for the majority of industry sectors, neither assumed market structure would be accurate. In practice, the impacts will almost always produce a price increase smaller than the inelastic demand projection and a reduction in profits smaller than that predicted under perfectly elastic demand conditions. Second, increased firm productivity would mitigate any adverse economic effects of the final standard. Productivity effects would be related to reduced worker illness, absence and turnover. In addition, knowledge of improved workplace health conditions could result in higher workforce morale and productivity. The firm would enjoy lower employee training costs (due to the reduced turnover rate) and lower medical benefit and worker compensation claims. Overall productivity increases would be realized by firms that use a relatively fixed-factor production process (i.e., low elasticities of substitution between labor and other factors of production). It is difficult to estimate the magnitude of these productivity and cost reducing effects. Any estimated economic costs of compliance would have to be adjusted downward to reflect these effects. Since data were not available to make any offset estimates, the economic effects of the standard identified in this chapter are overstated.

In addition, OSHA is allowing a phase-in period, up to five years, for engineering controls. Respirator use will be allowed during this period. Economic costs presented in this chapter will be overstated to the extent that capital expenditures are delayed during the phase-in period.

For this analysis, OSHA used a percentage reduction in profits approach to obtain estimates of the short-run economic impacts under the assumption of perfect demand elasticity. These estimates were obtained by using the following formula:

$$\text{Percentage Reduction} = \frac{\text{New Profits} - \text{Old Profits}}{\text{Old Profits}}$$

where:
New Profits = (Old Pre-tax Profits − Compliance Costs) × (1 − Old Profits = (Return on Sales)*(Total Sales).

These calculations were performed at the two-digit SIC level for firms in large and small size-class stratifications (above and below 20 employees). The data used to obtain these estimates was based on Dun and Bradstreet company files [1;2].

The potential impact on prices was used to estimate the market consequences under the second assumption of inelastic demand. Total sales values for 1985 were used, the year for which the compliance costs were estimated. (Total sales represent the totality of production that leaves the establishment, whether it is sold to customers or sent to a parent company in a captive transaction. For industries in the service and trade sectors, total sales data were also used. The rate of return percentage for each industry sector corrected and transformed gross sales data into more accurate and relevant industry profit estimates.)

For a given firm-size class, the potential price increase was estimated by dividing the total estimated compliance costs for a firm by the sales of that firm. These estimated price effects were then compared to recent industry price series. The intent of this comparison was to evaluate the impact of the compliance cost-generated price increase in light of recent industry price increase experience.

In this scenario, the potential for international trade implications of the standard was explored. It is anticipated that any international trade effects will not be significant given the small value of domestically produced goods and services which are exported (about seven percent of GDP). Also, the U.S. dollar has recently experienced a sharp decline in value relative to the yen and European Currencies. Between February 1985 and December 1987, the trade-weighted value of the U.S. dollar fell 46 percent [3]. This depreciation will likely overwhelm any potential adverse international economic effect of the standard.

In Tables H–1 and H–2, the estimated domestic economic impacts are reported for the two polar methodologies. To derive the percentage change in profits and the costs as a percent of sales, industry sales and rate of return (R.o.R) on sales data were obtained from Dun and Bradstreet. The total sales data are the best estimates for industry sectors potentially impacted by the rule.

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TABLE H-1

ECONOMIC EFFECTS: NO-COST PASSTHROUGH SCENARIO[1]

SIC	Industry	Annual Costs[2] ($ millions)	Total Sales[3] ($ millions)	R.o.R. on Sales (%)[4]	Pre-Reg Profits ($ m)	Post-Reg Profits ($ m)	% Change in Profits
20	FOOD PROD.	33.49	353,780.38	1.9	8,000.04	7,986.29	- 0.2715
21	TOBACCO	0.02	74,030.13	5.3	3,923.60	3,923.59	- 0.0003
22	TEXT. MILL	29.48	60,735.22	2.7	1,765.42	1,747.59	- 1.0100
23	APPAREL PROD.	31.74	74,674.65	2.8	1,813.22	1,793.56	- 1.0845
24	LUMBER & WOOD	56.72	57,994.48	3.9	1,974.51	1,931.92	- 2.1574
25	FURNITURE	21.08	37,648.27	3.5	1,411.02	1,398.82	- 0.8645
26	PAPER PROD.	31.00	103,694.14	3.7	3,778.20	3,761.12	- 0.4519
27	PRINTING & PUB.	33.75	134,830.21	4.8	6,471.85	6,444.77	- 0.4185
28	CHEMICAL PROD.	35.45	272,759.67	3.7	11,738.80	11,717.79	- 0.1790
29	PETRO. REFINING	23.69	196,400.57	2.7	4,964.85	4,952.04	- 0.2579
30	RUBBER & PLASTICS	111.09	86,538.58	4.3	3,423.75	3,343.76	2.3361
31	LEATHER PROD.	2.41	15,449.56	2.6	401.69	400.03	- 0.4127
32	STONE & CLAY	22.66	46,094.04	4.1	1,954.99	1,940.97	- 0.7170
33	PRIMARY METALS	70.96	112,564.26	3.3	3,714.62	3,674.83	- 1.0712
34	FAB. METALS	39.42	150,146.41	4.0	6,005.86	5,981.33	- 0.4084
35	MACHINERY	45.21	345,144.89	5.1	17,602.39	17,573.57	- 0.1637
36	ELEC. MCH.	20.67	245,982.70	5.0	12,299.14	12,286.86	- 0.0998
37	TRANS. EQUIP.	49.79	365,427.20	3.9	14,520.25	14,485.24	- 0.2411
38	INSTRUMENTS	9.63	83,359.57	4.9	3,373.26	3,367.32	- 0.1763
39	MISC. MANUF.	15.84	41,870.30	4.4	1,788.56	1,778.14	- 0.5825
40	R.R. TRANS.	1.08	43,869.14	10.0	3,969.62	3,969.04	- 0.0147
45	AIR TRANS.	3.74	109,538.08	3.6	3,251.40	3,249.38	- 0.0621
47	TRANS. SERVICES	3.79	12,254.96	2.7	582.18	580.13	- 0.3515
49	ELEC., GAS & SAN.	30.01	300,254.83	7.0	21,017.84	20,994.71	- 0.1100
50	WHOLESALE TRADE[5]	3.00	13,853.52	2.0	277.07	274.56	- 0.9048
51	WHOLESALE, NON-DUR	14.22	113,848.20	1.5	1,726.26	1,718.59	- 0.4447
55	AUTO DEALERS	13.55	341,574.50	1.9	6,489.92	6,480.69	- 0.1422
72	PERSONAL SERV.	10.87	24,270.74	7.3	1,771.76	1,763.60	- 0.4606
73	BUSINESS SERV.	2.42	22,165.94	6.6	1,462.95	1,460.94	- 0.1375
75	AUTO REPAIR	6.14	45,750.92	5.1	2,492.19	2,488.29	- 0.1563
76	MISC. REPAIR SERV.	2.81	2,665.52	5.5	146.60	144.36	- 1.5298
80	HEALTH SERVICES	4.44	170,234.25	4.5	7,807.72	7,804.54	- 0.0406

Source: U.S. Department of Labor, Occupational Safety and Health Administration, Office of Regulatory Analysis.

Notes:
1. All values in 1985 dollars.
2. Reproduced from Table G-1.
3. Dun and Bradstreet, Dun's Marketing Identifiers (DMI) Database.
4. Rate of Return on Sales, Dun and Bradstreet, Industry Norms Database.
5. Consists of SIC 5093 (scrap and waste materials) only.

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TABLE H-2

ECONOMIC EFFECTS: TOTAL-COST PASSTHROUGH

SIC	Industry	Annual Costs ($ millions)	Total Sales ($ millions)	Costs as a Percent of Sales
20	FOOD PROD.	33.49	353,780.38	0.0095
21	TOBACCO	0.02	74,030.13	0.0000
22	TEXT. MILL	29.48	60,735.22	0.0485
23	APPAREL PROD.	31.74	74,474.65	0.0426
24	LUMBER & WOOD	56.63	57,994.48	0.0978
25	FURNITURE	26.28	37,648.28	0.0560
26	PAPER PROD.	33.00	103,694.14	0.0299
27	PRINTING & PUB	34.39	134,830.21	0.0250
28	CHEMICAL PROD.	38.87	272,759.67	0.0130
29	PETRO. REFINING	23.91	196,400.57	0.0121
30	RUBBER & PLASTICS	121.93	86,538.58	0.1284
31	LEATHER PRODUCTS	2.66	15,449.56	0.0156
32	STONE & CLAY	25.83	46,094.04	0.0487
33	PRIM. METALS	78.24	112,564.26	0.0630
34	FAB. METALS	53.51	150,146.41	0.0263
35	MACHINERY	50.00	345,144.89	0.0131
36	ELEC. MACH.	23.30	245,982.70	0.0084
37	TRANS. EQUIP.	49.79	365,427.20	0.0136
38	INSTRUMENTS	10.75	83,359.57	0.0116
39	MISC. MANUF.	17.29	41,870.30	0.0378
40	R.R. TRANS.	1.09	43,869.14	0.0025
45	AIR TRANS.	3.76	109,538.08	0.0034
47	TRANS. SERVICES	3.81	12,254.96	0.0309
49	ELEC., GAS & SAN.	37.89	300,254.83	0.0127
50	WHOLESALE TRADE[1]	3.13	13,853.52	0.0216
51	WHOLESALE, NON-DUR.	14.80	113,848.20	0.0125
55	AUTO DEALERS	22.72	341,574.50	0.0040
72	PERSONAL SERVICES	10.87	24,270.74	0.0448
73	BUSINESS SERVICES	2.42	22,165.94	0.0109
75	AUTO REPAIRS	10.25	45,750.92	0.0134
76	MISC. REPAIR SERV.	4.86	2,665.52	0.1054
80	HEALTH SERVICES	4.44	170,234.25	0.0026

Source: U.S. Department of Labor, Occupational Safety and Health Administration, Office of Regulatory Analysis.
Notes: 1. Consists of SIC 5093 (scrap and waste materials) only.

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Dun and Bradstreet provided OSHA with this information. The R.o.R. on sales were obtained from summary statistics found in the Dun and Bradstreet Industry Norms Database.

Industry Effects. The estimated economic impact of the rule for firms potentially affected is summarized in Table H-1. These estimates represent the maximum industry impact within a market scenario where none of the costs can be passed onto consumers, and there is no productivity offset to costs.

Data in Table H-1 indicate that the rule will not have a significant impact on profits in most industry sectors. The estimated average change in profits is less than one percent; this amount of profit reduction should not represent a significant economic burden.

The most adversely affected industry sector is SIC 30, Rubber and Plastics, with an estimated 2.3 percent reduction in profits. The only other industry with an impact greater than 2 percent is SIC 24, Lumber and Wood (2.2 percent). However, even in the worst case, OSHA believes the standard is economically feasible. In reality, the reduction in profits will be less because part of the costs will be passed on to consumers, and because profitability in these industries since 1985 (the year for which the cost impact was estimated) has improved [9].

Consumer effects were estimated using a "full cost passthrough" scenario. As demonstrated by the estimates summarized in Table H-2, the impacts on market prices will not be significant. No price increase would exceed one-half of one percent. Changes of this magnitude are within general price movements recorded by producer price and other price indices.

During the public hearing and comment period OSHA received comments concerning the economic impact of the standard. Comments were primarily concerned with the following industries and substances.

SIC 20: The meat packing and processing industries (SICs 2011 and 2013) expressed concern over the impact a carbon disulfide PEL of 1 ppm would have on the cellulosic casings industry (SIC 3079). Industry representatives in all three of these SICs believe that if OSHA sets a PEL which is economically difficult to meet, domestic production of the meat casings will dramatically decrease [Ex. 3-659; 3-756; 3-757; 3-898][*]. Although foreign markets already supply casings to the U.S. meat industry, this industry believes that foreign markets will not be able to absorb a dramatic change in demand for casings [Ex. 3-898; 3-897; 3-756].

OSHA has decided to increase the PEL for carbon disulfide from the proposed limit of 1 ppm to a standard of 4 ppm. Compliance with a 4 ppm PEL will be easier for casing manufacturers. OSHA believes that domestic production will be unaffected by a carbon disulfide PEL of 4 ppm, particularly since respirators may be used in difficult to control operations.

SIC 23: See SIC 72.

SICs 24 and 25: The wood and furniture industries argued that to comply with the proposed PEL of 5 mg/m³ for softwood and 1 mg/m³ for hardwood, the majority of establishments will have to engineer to 1 mg/m³ for all wood dust since most establishments process both soft and hard wood. Most commenters concluded that they, as well as most members of their industry, would go out of business if they had to control wood dust exposures to 1 mg/m³.

Several industry organizations submitted comments and information concerning the potential economic impact of these PELs on their industry [Ex. 3-628; 3-627; 3-748; 3-899; 3-951; 3-627]. The U.S. Small Business Administration (SBA) believes "it is likely that the wood dust PELs of 1 mg/m³ for hard wood dust and 5 mg/m³ for soft wood dust are not economically feasible for small facilities with fewer than 20 employees," and that a "5 mg/m³ standard . . . may be more economically feasible for affected industries" [Ex. 3-951]. This recommendation was supported by many comments from industry [Ex. 3-627; 3-768; 3-750; 3-917].

OSHA's final rule establishes a 5 mg/m³ PEL for all wood dust except Western red cedar, for which a 2.5 mg/m³ limit is established. OSHA believes that the 2.5 mg/m³ standard for this allergenic wood is feasible since 90% of the firms using Western red cedar are located in the state of Washington which has already adopted a 2.5 mg/m³ PEL.

OSHA's estimated costs for compliance with the final PELs are significantly lower than those corresponding to the proposed PELs of 1 and 5 mg/m³. The economic impact of the standard on these wood processing industries reflects this decrease in cost. These reduced costs amount to 2% of profits. (The actual effects on profits will be even less since some costs will be passed on to consumers.)

Industries in SIC 24 had strong domestic and foreign markets in 1987. Price increases averaged 5% over 1986. As a result of increasing prices, demand, and output, profits increased for firms in this industry. The 1988 U.S. Industrial Outlook predicted a 41% growth (in constant dollars) of shipments of wood products in 1988. These recent developments indicate that the economic impact of complying with a 5 mg/m³ PEL for wood dust will be less than the impact presented in Table H-1 [9].

In addition, furniture product shipments in SIC 251 increased 4.5% in 1987 (constant dollars) [9]. This will make it easier for firms in this SIC to absorb the costs imposed by this rule, and the economic impact will actually be less than that estimated by OSHA.

SIC 30: Establishments in SIC 308 submitted comments and information concerning OSHA's proposed standard of 50 ppm for styrene. The Styrene Information Research Council (SIRC) submitted cost and impact estimates of the proposed PEL on SIC 30 and SIC 37 [Ex. 3-742]. OSHA has examined this information and, based on reasons outlined in the cost chapter of this document (Chpt. G), has determined that the survey performed for this rulemaking provides the most accurate and up-to-date information on employee exposures and cost of controls. The costs OSHA estimates are less than .44% of profits and are economically feasible. In addition, the value of shipments of rubber and plastics products have been increasing since 1985 (for which costs and impacts were estimated), and growth in shipments is projected to be 2% in 1988 [9]. Increased profitability should offset the economic consequences of compliance.

Comments were received from the manufacturers of cellulosic casings (SIC 3079) concerning OSHA's proposed PEL of 1 ppm for carbon disulfide. There are three companies which currently produce these casings. A study of engineering controls required to comply with this PEL, as well as the costs of these controls, was submitted by industry [Ex. 8-45]. This study indicated high costs to control to 1 ppm. OSHA has subsequently adopted a 4 ppm PEL for the final rule. OSHA concludes that industry can comply with this level. (According to docket evidence, at least one company already operates at 10 ppm or less [Ex. 3-945].) The costs are clearly feasible.

SIC 33: Representatives of the American Iron and Steel Institute

[*] All Exhibit [Ex.] numbers refer to the material in Docket H-020, the official record of this rulemaking. References to the transcripts of the public hearings, available in the docket, are identified as "Tr." followed by the date of the hearing and the page numbers of the transcript.

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indicated in their comments that because of the "fragile financial condition" of the industry, capital investment for equipment such as engineering controls has been limited [Ex. 72, pg. 32]. Representatives expressed concern over the costs to comply with proposed OSHA PELs for several different substances and the economic impact on competition with foreign steel producers [Ex. 72, pg. 3, and pp. 33–34]. Although the dollar has recently depreciated in value relative to the yen and European currencies, depreciation of the dollar relative to the value of currencies of steel-producing countries has been gradual [9]. It is likely that the dollar's depreciation will not be as beneficial to the steel industry as it will for other industries. However, exports of steel-intensive products (excluding motor vehicles) has increased due to the dollar's depreciation (by June of 1987, the volume of exports was 24% over the 1986 level) [9]. Although the steel industry is not growing rapidly, it is certainly not experiencing the downturn of the early 1980's, and the impact of compliance costs should not be as detrimental as the industry predicted [Ex. 72].

In addition, the PELs for iron oxide and aluminum metal dust, two substances which constituted a significant part of the costs estimated for this industry in the 1987 proposal, will not be changed from the OSHA standard currently in effect. OSHA recognizes the special feasibility problems of complying with the proposed PELs for hazardous substance exposures in the steel industry, and is allowing the use of respirators in operations where carbon monoxide and sodium dioxide are present. These changes will substantially decrease costs to the industry, and hence will lessen the economic impact.

SIC 37: Styrene exposures in the manual layup/sprayup operations in the boat building industry are difficult to control through engineering methods due to the nature of the operation and small space within which the styrene is applied [Ex. 3-742]. Evidence submitted to the docket suggests typical exposures in this industry are below 50 ppm except in the layup/sprayup operation [Ex. 3-742]. OSHA is permitting respirator use in these operations in this industry in view of special compliance problems. The costs are low (.36%) in relation to profits. OSHA concludes there will be no adverse economic impact on the industry.

SIC 51: Concern was expressed by the National Grain and Feed Association (NGFA) on behalf of the grain elevator operators/grain handlers in SIC 5153 and the National Cotton Council regarding the feasibility of the proposed PEL of 4 mg/m^3 for grain dust [Ex. 3-752 and Ex. 3-1080]. For the final rule, OSHA has established a PEL of 10 mg/m^3. Most employee exposures are at or below 10 mg/m^3. (see Chapt. G, pg. 19).

OSHA's assessment of the economic impact of the proposal by two-digit SIC was criticized as being too general an approach for estimating the economic consequences of the rule on industry subsectors [Ex. 3-752]. The economic impact of the standard is based on the costs presented above in Chapter G. These costs are based on an industry survey conducted by OSHA for this rulemaking which gathered data at the four digit level. However, the survey was designed to be statistically meaningful at the cell level (two or three digit SIC level). There would be more uncertainty at the four digit level. Much four digit data were in the record and OSHA developed more when requested by participants. As discussed above, OSHA concludes that its cost estimate for SIC 51 (which includes many grain elevators) is accurate. The costs demonstrate economic feasibility even if all costs were borne by SIC 5153 (grain elevators).

SIC 72: In the proposed standard, OSHA indicated an intention to change the PEL for perchloroethylene to 50 ppm. Employees are exposed to this chemical during a wet-to-dry industrial process used in the dry cleaning, laundry, and garment sector [SIC 721]. Comments received from the International Fabricare Institute indicated that by 1992, almost all machines used by dry cleaners will be dry-to-dry, a process which has reduced exposures to perchloroethylene [Ex. 3-671]. OSHA believes that industry can comply with a lower PEL of 25 ppm within the four year phase-in period through the normal course of capital replacement as dry-to-dry process equipment is substituted for wet-to-dry process equipment.

OSHA is sympathetic to the circumstances of the number of small businesses in this SIC. OSHA has stated in the Preamble discussion that a phase-in period, up to five years, will be allowed for engineering controls. If it appears that there will be a significant economic difficulty for small dry cleaning operations to convert to new equipment or to retrofit within the time period permitted by the Standard, OSHA will consider extending the phase-in period for firms in this industry.

Regulatory Flexibility Analysis

In accordance with the Regulatory Flexibility Act (P.L. 96-353, 94 Stat. 1164 [5 U.S.C. 601 et seq.]), OSHA has assessed the impact of the rulemaking on large and small establishments. For this assessment, large establishments are defined as those with 20 or more employees and small establishments as those with 19 or fewer employees. The results of this assessment are summarized in Table H-3.

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TABLE H-3

ECONOMIC IMPACTS BY ESTABLISHMENT SIZE

SIC	Industry	Percentage Change in Profits Large	Small
20	FOOD PROD.	- 0.1526	- 3.0770
21	TOBACCO	- 0.0003	0.0000
22	TEXT. MILL	- 0.7442	- 7.0804
23	APPAREL PROD.	- 0.7916	- 3.4067
24	LUMBER & WOOD	- 0.5895	-10.4061
25	FURNITURE	- 0.7701	- 1.8987
26	PAPER PRODUCTS	- 0.4440	- 0.6384
27	PRINTING & PUB.	- 0.0536	- 1.9402
28	CHEMICAL PROD.	- 0.1390	- 0.9853
29	PETRO. REFINING	- 0.2619	- 0.0458
30	RUBBER & PLASTICS	- 0.7788	-28.5020
31	LEATHER PROD.	- 0.1838	- 3.4971
32	STONE & CLAY	- 0.5564	- 1.2857
33	PRIMARY METALS	- 1.0084	- 2.1953
34	FAB. METALS	- 0.2889	- 1.5027
35	MACHINERY	- 0.0988	- 1.8448
36	ELEC. MACH.	- 0.0766	- 1.1400
37	TRANS. EQUIP.	- 0.0883	-21.2970
38	INSTRUMENTS	- 0.1201	- 1.6686
39	MISC. MANUF.	- 0.3489	- 1.9125
40	R.R. TRANS.	n/a	n/a
45	AIR TRANS.	n/a	n/a
47	TRANS. SERVICES	n/a	n/a
49	ELEC., GAS & SAN.	n/a	n/a
50	WHOLESALE, TRADE[1]	- 0.6786	- 1.2044
51	WHOLESALE, NON-DUR	- 0.1638	- 0.7812
55	AUTO DEALERS	- 0.0948	- 0.2293
72	PERSONAL SERV.	- 0.2395	- 0.6369
73	BUSINESS SERV.	- 0.1374	- 0.1376
75	AUTO REPAIR	- 0.4836	- 0.0786
76	MISC. REPAIR SERV.	- 0.6105	- 1.8934
80	HEALTH SERVICES	- 0.0736	- 0.0295

Source: U.S. Department of Labor, Occupational Safety and Health Administration, Office of Regulatory Analysis.

Notes: 1. Consists of SIC 5093 (scrap and waste materials) only.

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Industry sales and profit estimates were based on data from Dun and Bradstreet and the Department of Commerce 1982 Census of Manufactures [5], Wholesalers [6], Retailers [7] and Services [8]. Sales and profit data for selected transportation sector industries (SIC 40, 45, 47 and 49) were not available for use in this assessment.

The information summarized in Table H-3 indicates that with three exceptions small firms will not have important adverse impacts.

Data for small establishments in SIC 24 (Lumber and Wood), SIC 30 (Rubber and Plastics), and SIC 37 (Transportation Equipment Manufacturers), show the potential for more significant changes in profits. In the case of SIC 24, many small businessmen and their representatives testified and supported the final standard. This suggests that the impact will be manageable.

It should be noted that these negative effects result in part from the extreme assumption of perfectly elastic demand. An important ameliorating factor for each firm will be its ability to pass through additional costs to the consumer. The ability of individual firms to do this will be dependent upon product demand elasticities. It is expected that most impacted firms will be able to pass through some portion of their increased costs.

Environmental Impact Assessment

This assessment has been prepared in accordance with provisions of the National Environmental Policy Act (NEPA) (42 U.S.C. 4325 et seq.) as well as the regulations of the Council on Environmental Quality (40 CFR Part 1500), and DOL-NEPA Compliance Procedures (29 CFR Part 11).

OSHA has reviewed the standard and the information contained in the secondary data bases, as well, as the information submitted by the contractors' industry experts and submissions by the public to the record during the course of this rulemaking, and has concluded that no significant environmental impacts are likely to occur as a result of this action.

Two environments may be affected by an OSHA regulatory action: (1) The workplace environment; and (2) the general human environment external to the workplace, including impacts on air and water pollution, solid waste, energy, and land use. Usually OSHA regulations have their most significant impacts on the workplace environment since this environment is under the Agency's jurisdiction. Lower and new PELs will benefit the workplace environment because they will reduce worker exposure to toxic substances.

In most cases, the effects of previous OSHA regulations on the external environment have been negligible because of their limited scope and application. Similarly, there is no evidence to indicate that there would be any significant adverse impacts to the external environment as a result of this standard. As with other OSHA regulations in the past, however, there may be a potential benefit to the environment. The potential benefits and other impacts are briefly summarized here.

Air Pollution. Because of the nature of the emission standards of the Environmental Protection Agency (EPA) (40 CFR Part 61), many industry operations already use engineering controls to reduce the amount of emissions to the atmosphere. This practice is not expected to change as a result of the rule. OSHA anticipates that controls already in place will continue to operate effectively in reducing emissions under the revised standard. Fourteen of the chemicals addressed in this standard have been recognized by EPA as air pollutants. These are listed below:

- Beryllium
- Carbon Monoxide
- Epichlorohydrin
- Ethylene dichloride
- Hexachlorocyclopentadiene
- Mercury
- Methyl chloroform
- Nitrogen dioxide
- Ozone
- Perchloroethylene
- Sulfur dioxide
- Toluene
- Trichloroethylene

Water Pollution. EPA regulates over 100 of the chemicals addressed in this standard under the Clean Water Act of 1977 (33 USC 1251 et seq.). EPA's effluent limitation guidelines (40 CFR Part 427) include (1) standards of performance for all new point sources within specified categories and (2) pretreatment standards for new plants discharging to municipal sewer systems. These limitations would serve to prevent the discharge of effluents into the environment without prior treatment. Moreover, the Federal Water Pollution Control Act Amendments of 1972 required that wastewater effluents be treated by the best practicable technology (BPT) by December 31, 1977 and that the best available technology (BAT) economically achievable be used by December 31, 1983. The EPA effluent limitations establish the degree of effluent quality necessary to meet the BPT and BAT requirements. The BAT and pretreatment standards would essentially mean no discharge of process wastewater to navigable waters and no discharge of incompatible pollutants. These requirements will not change as the result of this proposal and where they continue to be met, effluent quality will not be altered.

Solid Waste Disposal. It does not appear that there would be any significant change in present waste disposal practices for over 80 chemicals addressed by this rule, or in the maintenance of waste disposal sites. EPA's national emissions standards will continue to provide for the control and maintenance of active and inactive disposal sites and require no visible emissions from these sites.

Energy And Land Use. The implementation of required engineering controls could result in an increase in total energy requirements or costs for general industry. This would be particularly true where controls are not in place. Where general exhaust ventilation is used, there is the expense of heating or cooling the replacement air brought in from the outside. These costs, plus the cost of vacuuming, where necessary, have been included in the annual costs estimated in Chapter G. In terms of land use, OSHA does not project any significant impact on land use plans, policies or controls. OSHA does not anticipate any significant impact on the short term uses of man's environment or upon the maintenance of long-term productivity.

Other Impacts. The standard could also have other impacts that may affect the external environment. The standard could encourage the further use, research, and development of suitable substitutes for hazardous chemicals. This, in turn, would result in a positive environmental effect because fewer hazardous chemicals would be used, emitted to the air, discharged as wastewater effluent, or disposed of as solid waste. The magnitude or probability of these impacts, however, is impossible to quantify.

Overall, the projected impacts of the standard on the external environment are not expected to be significant in view of EPA's regulation of air emissions, water effluents, and solid waste disposal methods.

Summary

Based on the data summarized in Tables H-1 and H-2 and historical information, and information submitted by the public during this rulemaking procedure, OSHA has concluded that the economic impacts of the standard are clearly feasible for industry sectors and subsectors. However, the estimates indicate that some small establishments in SICs 24, 30, and 37 may experience a greater impact than larger entities. The rule is not expected to have an adverse effect on the environment.

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Supplement 1—Technical Description of the Sample Survey

1. Introduction

This appendix contains a description of the statistical methodology employed to design and implement the PEL survey. The following topics will be discussed:

- Survey objectives;
- Sampling frame selection;
- Stratification;
- Sample size determination;
- Estimation procedures;
- Data collection method;
- Variance estimation;
- Treatment of non-sampling errors; and
- Survey instrument.

2. Survey Objectives

Surveys are frequently designed to produce a set of estimates at a predefined level of accuracy. This requires defining the set of quantities to be estimated and specifying their levels of accuracy. Since many variables may ultimately be estimated from the survey, and since no single design can be optimal for all estimates simultaneously, it is customary to define the most important variables for estimation. For this survey, the following variables were identified as those motivating the survey design:

- Cost to industry of the proposed set of new permissible exposure limits (as a group);
- Number of workers potentially exposed to toxic substances; and
- Number of workers affected by the proposed regulations.

Statistical theory dictates that responses be concentrated both in groups which have the highest variability with respect to these variables and in groups representing the majority of establishments in the population. No hard information relating to the variability of the variables mentioned above by industry sector or other relevant breakdown was available at the outset of the survey. Hence, the variability in the number of employees was used as a variability measure. Consistent with the notion that the variability of numbers exposed as well as the variability of cost required to remedy an overexposure are highest in the largest companies, the sample was designed to include a higher proportion of larger establishments.

The sample was drawn so as to insure that the relative standard errors (RSE) estimates (the ratio of the sample standard error to the mean) was within predetermined bounds. The relative standard error is a measure of the accuracy of each estimate. A relative standard error of 5 percent means that the standard error of the estimate is equal to 5 percent of that estimate. This can be interpreted as saying that the estimate is within two standard errors or 10 percent of the true value with 95 percent probability. Since risks were judged to be different in different sectors, OSHA selected a 5 percent relative standard error in the industries using the most chemicals, 7.5 percent in industries with moderate use of chemicals and 10 percent in the service sectors. A table of design specifications is included in Section A.5 below.

3. Sampling Frame Selection

The Dun and Bradstreet (D&B) listing was chosen for the PEL survey sampling frame (a listing of establishments from which sample units are selected). This is a nationally based list, containing establishment names as well as each establishment's address, telephone number, SIC code, and number of employees. The Dun and Bradstreet database is regularly refined (every six months) thus minimizing the probability of obtaining out of business or out of scope (e.g., wrong SIC code) establishments when using the frame. The D&B is a commercial listing and its use does not violate any confidentiality requirement associated with other frames available to particular agencies in the government.

4. Stratification

Thirty-four groupings of industries (estimation cells) were chosen to be examined for the PEL study. The cell definitions were determined by grouping together industry sectors defined by Standard Industrial Classifications (SICs) which share similar processes and procedures. The cell definitions used for the PEL survey are given in TABLE 1-1.

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TABLE 1-1

Definitions of Estimation Cells

Cell Number	SIC Codes Included	Description
1	243	Millwork,Veneer,Plywood
2	245	Wood Bldgs & Mobile Homes
3	249	Misc. Wood Products
4	25	Furniture
5	26	Paper Products
6	27	Printing & Publishing
7	281	Indust. Inorganic Chems
8	282	Plastics & Syn. Resins
9	283	Drugs
10	284	Soaps, Detergents & Cleaning
11	285	Paints, Varnishes, Lacquers
12	286	Indust. Organic Chems
13	287	Agricultural Chemicals
14	289	Misc. Chemical Products
15	291	Petroleum Refining
16	295	Paving & Roofing Materials
17	299	Misc. Petroleum Products
18	308	Misc. Plastic Products
19	30 (not 308)	Plastics & Rubber
20	311	Leather Tanning
21	31 (not 311)	Leather & Leather Products
22	32	Stone & Clay

TABLE 1-1, cont'd

Definitions of Estimation Cells

Cell Number	SIC Codes Included	Description
23	33	Primary Metals
24	34	Fabricated Metals
25	35	Machinery
	36	Electrical Machinery
	38	Instruments
	39	Misc. Manufacturing
26	40	R.R. Transportation
	44	Water Transportation
	45	Air Transportation
	47	Transportation Services
27	46	Pipelines
28	49	Electrical,Gas & Sanitary
30	5093	Misc. Durable Goods
	5153	Grain
	5161	Chemicals & Allied Products
	5191	Misc. Farm Supplies
	5198	Misc. Paints, Varnishes
31	55	Auto Dealers
	75	Auto Repair
32	7211	Power Laundries, Family & Commercial
	7213	Linen Supply
	7215	Coin-operated Laundries & Cleaning

TABLE 1-1, cont'd

Definitions of Estimation Cells

Cell Number	SIC Codes Included	Description
32 cont.	7216	Drycleaning Plants, except Rug
	7218	Industrial Launderers
	7219	Laundry & Garment Services, nec
	7221	Photographic Studios, Portrait
	7231	Beauty Shops
	7241	Barber Shops
	7251	Shoe Repair & Shoeshine Parlors
	7261	Funeral Service & Crematories
	7299	Miscellaneous Services, nec
	7332	Blueprinting & Photocopying Services
	7342	Disinfecting & Pest Control Services
	7395	Photofinishing Laboratories
33	7641	Furniture Repair
	7692	Welding Repair
34	80	Health Services
99	37	Transportation Equipment

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For each estimation cell, units on the Dun and Bradstreet sampling frame were classified into one of the four size classes listed below:

Size:	Number of employees
1	1 to 19.
2	20 to 99.
3	100 to 249.
4	250 and above.

For each size class stratum within a cell, the establishments on the frame were further identified by their four digit SIC classification (within the two or three digit sample cell). A separate systematic sample was then selected in each estimation cell/size class stratum. This procedure was accomplished by first selecting one case at random in the size class from the first K units on the frame—where K is the reciprocal of the sampling fraction—and then selecting every Kth unit in the stratum thereafter. Note, from the size class definitions that establishments having zero employees were not included in this survey. Such units were assumed to be out of the scope of the survey.

5. Sample Size Determination and Allocation Within Strata

The total number of establishments selected from the Dun and Bradstreet sampling frame was determined using two stages. The first stage was to compute the target number of respondents for each estimation cell using the standard sample size formula. The required specifying a target relative standard error (RSE) for the cell estimates. The RSE's for this survey were set at the following levels:

Relative standard error (percent)

SIC range:	
24 through 29	5.0
30 through 39	7.5
40 through 80	10.0

The units were then allocated to size classes within the estimation cells using Neyman allocation. This method allocates based on the number of establishments in each stratum and on the stratum variability in the key design variable (in this case employment). Size class strata having a large number of establishments on the frame or a high variability in employment (as defined by the population variance) received a greater number of sample units than other strata in the sample. Because the larger size classes often have a high variability in employment, this allocation resulted in "oversampling" the larger size classes in a cell. The required number of cases for each stratum are shown in TABLE 1–2 in the column labeled "Target Number of Respondents."

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TABLE 1-2

Number of Firms, Required Sample Sizes, Calls Made and Completes

SIC GROUPS	Size	Total Plants	Target Number Respondents	Total Cases Called	Number Completed May 1988
243	1-19	10,986	39	78	41
	20-99	1,995	32	64	40
	100-249	346	12	24	15
	>250	147	48	98	64
	Total	13,474	131	264	160
245	1-19	864	15	25	9
	20-99	385	15	40	26
	100-249	220	17	45	19
	>250	43	30	43	20
	Total	1,512	77	153	74
249	1-19	4,301	37	74	43
	20-99	888	35	70	45
	100-249	129	11	22	12
	>250	44	12	24	15
	Total	5,362	95	190	115
25	1-19	11,505	20	40	21
	20-99	3,254	26	52	34
	100-249	858	13	26	13
	>250	449	73	146	86
	Total	16,066	132	264	154
26	1-19	3,485	20	44	13
	20-99	2,830	30	62	34
	100-249	1,307	30	54	34
	>250	576	184	384	227
	Total	8,198	264	544	308
27	1-19	64,922	45	60	30
	20-99	10,656	34	122	77
	100-249	1,850	12	126	87
	>250	869	88	50	40
	Total	78,297	179	358	234
281	1-19	1,721	20	52	25
	20-99	735	20	52	33
	100-249	189	20	52	29
	>250	157	96	157	68
	Total	2,802	156	313	155

TABLE 1-2, cont'd

SIC GROUPS	Size	Total Plants	Target Number Respondents	Total Cases Called	Number Completed May 1988
282	1-19	700	20	40	25
	20-99	499	20	40	25
	100-249	184	20	40	21
	>250	175	58	116	52
	Total	1,558	118	236	123
283	1-19	1,289	25	50	28
	20-99	544	25	50	30
	100-249	179	25	50	26
	>250	205	92	184	92
	Total	2,217	167	334	176
284	1-19	3,065	20	40	23
	20-99	767	20	40	31
	100-249	184	20	40	22
	>250	155	70	140	61
	Total	4,171	130	260	137
285	1-19	1,092	20	50	36
	20-99	549	15	40	20
	100-249	100	10	30	15
	>250	45	37	45	33
	Total	1,786	82	165	104
286	1-19	860	20	54	28
	20-99	346	15	44	29
	100-249	95	15	44	28
	>250	92	50	62	39
	Total	1,393	100	204	124
287	1-19	1,306	8	31	14
	20-99	338	9	33	19
	100-249	57	4	23	17
	>250	43	44	44	21
	Total	1,744	65	131	71
289	1-19	2,562	16	38	26
	20-99	918	23	52	31
	100-249	162	9	24	15
	>250	85	51	85	38
	Total	3,727	99	199	110

TABLE 1-2 , cont'd

SIC GROUPS	Size	Total Plants	Target Number Respondents	Total Cases Called	Number Completed May 1988
291	1-19	606	20	50	23
	20-99	227	20	50	23
	100-249	85	20	50	28
	>250	130	59	90	48
	Total	1,048	119	240	122
295	1-19	862	21	46	27
	20-99	237	26	56	38
	100-249	45	10	24	20
	>250	9	8	9	3
	Total	1,153	65	135	88
299	1-19	516	15	32	24
	20-99	186	22	46	35
	100-249	23	4	11	11
	>250	5	5	5	3
	Total	730	46	94	73
308	1-19	8,062	16	32	18
	20-99	4,249	13	26	22
	100-249	1,162	7	14	17
	>250	388	18	36	23
	Total	13,861	54	108	80
30 (not 308)	1-19	1,983	25	50	31
	20-99	722	25	50	33
	100-249	239	25	50	33
	>250	234	48	96	61
	Total	3,178	123	246	158
311	1-19	283	5	24	3
	20-99	125	9	21	11
	100-249	29	4	16	3
	>250	16	5	10	5
	Total	453	23	71	22
31 (not 311)	1-19	2,232	8	16	6
	20-99	610	13	26	20
	100-249	220	13	26	16
	>250	176	13	26	17
	Total	3,238	47	94	59

TABLE 1-2, cont'd

SIC GROUPS	Size	Total Plants	Target Number Respondents	Total Cases Called	Number Completed May 1988
32	1-19	14,499	15	28	10
	20-99	4,207	34	62	40
	100-249	873	35	64	44
	>250	448	29	53	33
	Total	20,027	113	207	127
33	1-19	4,983	67	201	81
	20-99	2,803	67	201	139
	100-249	1,006	42	126	86
	>250	711	25	75	54
	Total	9,503	201	603	360
34	1-19	29,005	62	113	56
	20-99	11,849	110	200	117
	100-249	2,394	86	157	86
	>250	1,080	62	113	66
	Total	44,328	320	583	325
35,36, 38,39	1-19	117,005	100	200	90
	20-99	30,820	126	188	123
	100-249	7,468	93	137	98
	>250	5,657	80	133	84
	Total	160,950	399	658	395
40,44, & 45	1-19	45,323	20	37	20
	20-99	5,612	20	37	15
	100-249	799	20	37	15
	>250	533	50	91	32
	Total	52,267	110	202	82
46	1-19	439	15	28	20
	20-99	162	15	28	21
	100-249	18	8	18	16
	>250	5	5	5	6
	Total	624	43	79	63
49	1-19	12,982	40	73	47
	20-99	4,046	40	73	57
	100-249	844	40	73	58
	>250	558	150	273	206
	Total	18,430	270	492	368

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TABLE 1-2, cont'd

SIC GROUPS	Size	Total Plants	Target Number Respondents	Total Cases Called	Number Completed May 1988
50 & 51*	1-19	45,422	200	364	233
	20-99	3,464	65	142	106
	100-249	205	30	79	48
	>250	57	57	57	31
	Total	49,148	352	642	418
55 & 75	1-19	284,632	10	30	20
	20-99	20,846	10	30	23
	100-249	1,523	10	30	18
	>250	116	20	60	31
	Total	307,117	50	150	92
72 & 73**	1-19	139,889	120	240	119
	20-99	5,511	30	60	33
	100-249	527	20	40	28
	>250	108	25	50	23
	Total	146,035	195	390	203
7641 & 7692	1-19	18,098	60	110	67
	20-99	289	20	48	32
	100-249	12	10	9	8
	>250	1	1	1	0
	Total	18,400	91	168	107
80	1-19	233,984	50	91	50
	20-99	17,174	30	55	34
	100-249	6,310	30	55	39
	>250	3,912	220	400	279
	Total	261,380	330	601	402
37	1-19	9,863	10	19	5
	20-99	2,997	10	19	12
	100-249	1,026	10	19	13
	>250	1,072	70	128	72
	Total	14,958	100	185	102

* Refers to SIC Codes: 5093, 5193, 5161, 5191, 5198
** Specifically Sic Codes: 7211,7213,7215,7216,7218,7231, 7241,7251,7261,7299,7732,7342, and 7395

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The number of units actually selected from the D&B frame in each stratum was based on the number of completed cases required for the stratum and on the expected response rate. Almost all sample surveys, especially voluntary surveys, select some number of cases which do not result in a completed interview. In some instances, these will be establishments which have gone out of business, are duplicate cases, or are companies not in the SIC category shown on the frame. Such cases are "Out of Scope." Other establishments, though in scope, refuse to participate or are not reached in the sampling protocol, defined here as a total of five telephone attempts. Experience on surveys similar to the PEL survey indicated that a completion ratio of 50–60% was expected for this survey (the ratio of completed questionnaires to total cases which must be drawn—both in and out of scope). However, to be safe, a larger number of cases were selected and held in reserve from the D&B frame so that, if additional sample units needed to be included to reach the target sample sizes, the cases could be easily obtained.

In fact, for the vast majority of cells, a 60 percent completion ratio was realized. The total number of establishments called in each of the sample strata are shown in TABLE 1–2 in the column labeled "Total Cases Called." In general, this number is equal to the target sample divided by 0.60. The number of completed survey responses is shown in TABLE 1–2.

6. Data Collection Methodology

The data collection method chosen for the survey was Computer Assisted Telephone Interviewing (CATI). In this method the interviewer talks to the respondent on the telephone while sitting in front of a computer screen. Each question to be asked appears on the screen in the proper sequence. CATI systems allow for the responses to be examined during the data collection process. Answers that are out of the possible range of responses or which are not consistent with other answers received earlier in the questionnaire can be immediately identified. Another advantage is that it frees the interviewer from using a hard copy questionnaire which requires skipping manually to different parts of the questionnaire based upon the responses. Finally, this method saves resources by creating a machine readable record of the responses at the conclusion of the interview, thereby eliminating the need for keypunching.

7. Establishment Count Comparison

Comparison of the survey establishment count is designed to put into relief both consistencies and inconsistencies between the sample results compared with other existing databases. Table II–4 of the RIA compares the estimated number of establishments from the sample survey with the Dun and Bradstreet (D&B) establishment list (the sample frame), the establishment count from County Business Patterns (CBP) and the establishment count from the Bureau of Labor Statistics ES–202 file. In general, the survey produced establishment estimates in between the higher D&B counts and the lower CBP and ES–202 establishment numbers.

8. Variance Estimation

As with any sample survey, quantification of sampling error of estimates is an important function. Errors are quantified by computing the standard error of each estimate produced from the survey. Under certain assumptions, the standard error can be used to make probability statements about estimates. For example, an interval approximately equal to two standard errors on either side of an estimate is a 95 percent confidence interval. Such an interval indicates the expected range into which the estimate would fall 95 percent of the time, were the survey to be replicated many times.

A replication technique was used to determine standard errors for the PEL survey. Such techniques involve resampling the sample data multiple times to calculate its variability. A replication method was chosen because of two characteristics of the survey. First, some of the estimates which were planned to be produced are nonlinear, such as the benchmarked estimates described above. Second, nonresponse adjustment was used to modify the final weights. In both of these situations, replication-type variance estimators are particularly useful.

The PEL survey was designed using employment as a variability measure. The survey results are consistent with this design; those estimates more closely related to employment had lower relative standard errors. Hence, the RSE for the survey estimate for the total number of production workers over all industries was three percent, for the total number of workers potentially exposed, four percent overall, and for the total number of workers overexposed, six percent overall.

Compared to these estimates, the final cost estimates had considerably higher RSE's. This stems from the fact that many establishments were assigned a zero cost, while others in the same stratum were often assigned a very large cost. This "all or none" characteristic of the costing algorithm resulted in an increased RSE for this variable. Even so, for all industries combined, the overall RSE for cost was 11 percent.

9. Treatment of Non-Sampling Errors

An important component to any survey effort is the treatment of nonsampling errors. Examples of such errors are:

- Nonresponse bias—error introduced because some selected respondents either do not respond at all (unit nonresponse) or do not respond to a particular question (item nonresponse);
- Response bias—error introduced due to the way questions are phrased or the way respondents interpret what is being asked (this also includes error due to deliberate misrepresentation of the answers to questions by respondents).

In the PEL survey, the nonresponse problem was dealt with using two standard methodologies. For unit nonresponse, a mean imputation procedure was used. This procedure assumes that there is no fundamental difference between respondents and nonrespondents and, therefore, usable cases can be reweighted to represent the entire universe. For item nonresponse, an imputation scheme which uses related cases in the respondent group to estimate the missing data was used.

The situation for response bias was handled by obtaining information from site visits. OSHA conducted 90 site visits in a cross section of industries. A portion of these visits were performed on establishments which were also in the telephone survey. Data on key variables collected during the telephone survey were compared with information obtained from the site visits. This analysis can be found in Supplement 3.

9.1. Unit nonresponse adjustment

To adjust the sample for those cases selected from the D&B frame which where called but were out of scope (OOS), out of business (OOB), or in scope but unwilling to participate in the survey, the following approach was used.

- All solicited sample units were assigned a response code based on the following categories:

Code and Description

03 Non-working telephone number
04 Incorrect SIC—out of scope
05 Out of Business (OOB)
06 Not a business or wrong business
07 Duplicate record

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08 Could not reach respondent after five attempts
09 Communication barrier
10 Initial refusal
11 Mid-interview refusal (did not answer initial chemical and process questions)
12 Completed interview (completed both initial chemical and process questions)
13 Other nonresponse.

• All units having a response code equal to 08, 09, 10, 11, 12, or 13 were classified as viable sample units (in scope, in business). Sample units having a response code equal to 12 were classified as both viable and usable. A nonresponse adjustment weight was assigned to each usable record in the database, based on the ratio of viable to usable sample units in the record's cell and size stratum:

$$WNRF_{ij} = \frac{\sum_{k=1}^{n_i} I(V_k)}{\sum_{k=1}^{n_i} I(U_k)}$$

where:
i = number of estimation cell
j = number of the size class
$I(V_k) = 1$ if the kth sample unit is viable,
= 0 otherwise;
$I(U_k) = 1$ if the kth sample unit is usable,
= 0 otherwise.

The use of this weight is equivalent to performing a mean imputation for item nonresponse.

The response rate may be defined as the number of usable cases divided by the number of viables, and the completion rate as the number of usables divided by the total number of cases contacted. Using these definitions, the response and completion rates were as follows:

Response rate = 68.7%
Completion rate = 80.0%

9.2. Item nonresponse adjustment/imputation

Often survey respondents do not know the answers to some questions or refuse to answer particular questions. In such cases, it is possible to fill in missing values using an imputation scheme. The idea is to use information from both the respondent (answers to other questions which they did supply) and information from other respondents (those answering the missing question) in order to estimate a reasonable response to the missing datum.

The imputation method chosen for the PEL survey is a hybrid method which combines the concepts of a mean imputation and a "hot-deck" imputation. A mean imputation method replaces the missing values on a certain question with the mean value from those respondents answering that question. A hot deck method attempts to find a respondent who matches the respondent having a missing value (in terms of other survey characteristics) and uses the value of the "twin" to replace the missing value. The method used here is a hybrid in the sense that it employs a mean imputation, but only over a small segment of the population which obviously matches the respondent having a missing value.

In particular, the procedure examines three or four digit SIC subgroups within the estimation cell by size class. The mean values of the responses to a particular question of interest in such sample subgroupings were used to impute the missing values in that grouping. In the case of categorical variables (for example, YES/NO questions), a randomization scheme was used randomly supplied the appropriate set of responses to missing questions based on a probability distribution determined from those who responded.

It should be noted that the values which were placed on the database were not intended to be estimates of the missing responses. Rather, they are meant to be substitute responses which allow the case to be used in the generation of survey estimates. In the aggregate, estimates produced using imputed data make sense for use in aggregate estimates, but may not be useful for the individual establishment. Care was taken in the imputation program to be sure that imputed responses were consistent with other answers for the establishment of interest. Original responses to all questions were retained on the sample record and all responses representing imputed values were identified.

One set of questions which was not imputed for was whether monitoring for the presence of certain toxic chemicals was done at the establishment. The data collected produced an estimate, for those establishments where chemicals or processes were found, that 15.8 percent did monitoring, 71.9 percent did not do monitoring, and 12.3 percent of respondents did not know or refused to answer the question. Of those establishments that did monitor, 25.0 percent provided the requested data.

10. Survey Instrument

As mentioned earlier, data collection for PEL survey was accomplished by Computer Assisted Telephone Interviewing. Prior to calling, a letter was sent to each selected establishment. This letter is shown in Exhibit 1–1. Also, a hard copy version of the PEL questionnaire is given in Exhibit 1–2.

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EXHIBIT 1—1

U.S. Department of Labor
Assistant Secretary for
Occupational Safety and Health
Washington, DC 20210

SIC Code 3479
Metal Coating & Allied Serv.
OMB Approval No. 1218-0142

February 25, 1988

Mr. John Q. Sample
Chairman
Anycompany
123 Sample St.
Anytown, US 12345

Dear Mr. Sample:

The Occupational Safety and Health Administration (OSHA) of the U.S. Department of Labor is required by law to set permissible exposure limits for chemical substances in the workplace. Current exposure limits were set 17 years ago using values established by the American Conference of Governmental Industrial Hygienists (ACGIH) and the American National Standards Institute (ANSI).

OSHA has begun a process for revising out-of-date permissible exposure limits. To ensure that any new exposure limits take into account actual workplace conditions, we are conducting a voluntary survey of U.S. business establishments. Included will be questions about specific processes which we believe are performed in your industry and a limited (no more than 10 per process) list of chemicals which we believe are involved in those processes. Your facility was selected to be included in the study.

Decisions regarding new permissible exposure limits will be improved significantly if we have input from as many firms as possible. The interview will take about 30 minutes. Names of responding firms will not be associated with their answers, and all data will be treated as confidential by our contractor.

Please help us expedite the survey process by returning to us, within one week, the enclosed postage paid card with the name and phone number of the person in your organization our contract interviewer should contact. If this card is not received, a representative of our contractor, KCA Research, Inc., will call your office directly to conduct the interview or be directed to the company official designated by you.

Enclosed is a list of the topic areas for the survey. This may help in preparing for the interview.

We appreciate your cooperation and look forward to receiving the information we need from your designated representative.

Sincerely,

John A. Pendergrass
Assistant Secretary for OSHA

Enclosure

EXHIBIT 1-1
(cont.)

TOPICS COVERED BY SURVEY

I. GENERAL FIRM CHARACTERISTICS

- Primary activity at this location
- Approximate numbers of production & maintenance workers
- Number of shifts per day and length of shift

II. IDENTIFICATION OF GENERAL PROCESSES PERFORMED BY FIRM

- Chemicals used in specific processes or operations and estimated quantities involved
- Approximate number of work stations or assembly lines used and number of workers at each
- Description of process engineering controls such as ventilation and enclosures
- Estimated frequency of process or operation performance
- Description of personal protective equipment used, including respirators, eye, face, and skin protection
- Information regarding exposure monitoring

EXHIBIT 1-2

_____, we are conducting a survey on behalf of OSHA to assess the current practices of all types of businesses in the handling of toxic and hazardous chemicals. A letter was sent to you informing you of this survey.

1. Did you receive our letter?

1 = Yes
2 = No

If answer "Yes", begin next paragraph with "As you know,"
If answer " No ", begin next paragraph with "I'm sorry. Let me summarize what the letter said about the survey".

We are interested in understanding all significant operations or processes in your firm that generate dust, mist, fumes, gases or vapor that your employees might potentially encounter. Of course, all responses and trade or technological secrets will be kept strictly confidential and no company-specific information will be released to OSHA.

2. Should I direct my questions to you, or is there someone else in the firm who you feel would be better qualified to answer?

1 = Yes, this person will answer survey
2 = No, call: Name_____
Title _____
Phone _____
C = Call back (Set up time for recontact)
R = Refused to answer (Terminate interview)
D = Don't Know/ No Response

Let me begin by asking some general questions about your facility

3. Our records show your firm to be engaged in _____.? Is this correct? (Interviewer will read title or brief description for this SIC code.)

1 = Yes
2 = No, our function here is _____
C
R
D

EXHIBIT 1-2
(cont.)

4. How many production workers do you have at this location?

1 = _____ production workers
C = Call back
R = Refused to answer
D = Don't know

5. How many maintenance workers (for example: painters, welders & cleaning staff) do you employ?

1 = _____ maintenance workers
2 = Production workers do maintenance functions
3 = None, only clerical, managerial, or sales personnel
C
R
D

5a. Of these maintenance workers, how many do painting as their primary work activity?

1 = _____ do painting as primary activity
2 = None
C
R
D

5b. Of these maintenance workers, how many do welding as their primary work activity?

1 = _____ do welding as primary activity
2 = None
C
R
D

6. How many shifts per day (24 hr. period) do you have at this location?

1 = _____shifts/24 hr.
C
R
D

EXHIBIT 1-2
(cont.)

I now want to ask you some questions about chemicals which we believe are common among firms in your industry. [These chemicals would be selected on the basis of large volume usage, known toxicity, or known exposure problems in excess of permissable limits as identified from NOES or IMIS or from industry expert opinion].

7. Which of the following chemicals are used, processed, or emitted at your facility?

Chemical A 1=Yes 2=No C R D

[The interviewer will read chemical list specified for this 4-digit SIC If "Don't Know" (D) is the response, the interviewer will then attempt to clarify the question by reading a list of common synonyms for the chemical. The subsequent answer can then be reassessed as "Yes" or "No".

8. Are there any other chemicals in major use in your operations that I did not list?

1 = Yes (Skip to #8 and add to list)
2 = No
C
R
D

9. What is the approximate quantity of chemical A that your facility purchases each week or month?

1 = _____ lbs. per week purchased
2 = _____ gals. per week purchased
3 = _____ lbs. per month purchased
4 = _____ gals. per month purchased
C
R
D

Repeat Question #9 until all identified chemicals are quantified.

EXHIBIT 1-2
(cont.)

10. Have exposure limits been adopted by your firm for these chemicals?

1 = Yes
2 = No
C
R
D
(Skip to #12)

11. What exposure limits have been adopted?

1 = OSHA PEL's
2 = NIOSH REL's
3 = ACGIH TLV's
4 = Other _____
C
R
D

The next questions are about processes/operations which we believe are common among firms in your industry

12. Are any of the following processes/operations performed in your facility?

Operation #1 1=Yes 2=No C R D

[Interviewer would read list of up to 6 processes or operations specified for this 4-digit SIC code. This list would be identified from secondary data sources and industry experts. If information regarding relevant processes was not available or sufficient, then this question would be rephrased to elicit process/operation identification from the respondent].

13. Are there any other processes/operations at your facility that I did not list?

1 = Yes (Skip to #12 and add to list)
2 = No
C
R
D

EXHIBIT 1-2
(cont.)

For each identified process/operation, ask questions 14 - 26

14. In Process/Operation 1:

Is Chemical A used? 1=Yes 2=No C R D

REPEAT UNTIL ALL IDENTIFIED CHEMICALS HAVE BEEN ASKED ABOUT USAGE IN THIS PROCESS

15. How many work stations (or assembly lines) are involved in this process/operation?

1 = _____ work stations
2 = _____ assembly lines
C
R
D

16. On average, how many workers are directly involved in this process/operation at each work station (or assembly line)?

1 = _____ workers/work station
2 = _____ workers/assembly line
C
R
D

17. Of these workers, what percent work exclusively at this process/operation?

1 = 100% (Go to #18)
2 = _____%
C
R
D
(Go to #18)

17a. For those workers who do not work exclusively at this process/operation, in what other processes/operations are they also employed?

1 = _____ _____
C
R
D

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EXHIBIT 1-2
(cont.)

18. Is this process/operation a completely enclosed activity?

1 = Yes (Skip to #14)
2 = No
C
R
D

19. Is this process/operation located outdoors?

1 = Yes (Skip to #21)
2 = No
C
R
D

20. Is this process/operation ventilated?

1 = Yes
2 = No
C
R
D
(Skip to # 21)

20a. What is the type of ventilation?

1 = Local exhaust 1 = Yes 2 = No C R D
2 = General dilution
3 = Natural ventilation
4 = Other (specify type)
_____

21. How often is this process/operation performed during each shift?

1 = Continuously over entire shift, every shift
2 = Daily (specify #/day) _____
3 = Weekly (specify #/week) _____
4 = Monthly (specify #/month) _____
5 = Yearly (specify #/year) _____
6 = Other (specify #/period) _____
C
R
D

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EXHIBIT 1-2
(cont.)

22. Are respirators routinely used by workers?

1 = Yes
2 = No
C
R
D
(Skip to # 23)

22a. What type of respirator?

1 = Single use
2 = Half-mask cartridge
3 = Half-mask canister
4 = Full-face cartridge
5 = Full-face canister
6 = Powered air purifying respirator
7 = Air supplied respirator
8 = Self-contained breathing apparatus
9 = Escape respirator
10= Other _____
C
R
D

23. Do you provide maintenance workers who have exposure to this process with respirators?

1 = Yes
2 = No
C
R
D

24. Is skin, face, or eye protection used?

1 = Yes
2 = No
C
R
D
(Skip to #25)

24a. What type(s) of skin, face, or eye protection?

1 = Long sleeve shirt
2 = Coverall
3 = Apron
4 = Gloves
5 = Chemical Protective Clothing
6 = Goggles
7 = Face Shield
8 = Other _____
C
R
D

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EXHIBIT 1-2
(cont.)

25. Do you have a hazard communications training program for these workers?

1 = Yes
2 = No
C
R
D

26. Has environmental monitoring been done at or near this process/operation?

1 = Yes
2 = No
C
R
D
(Skip to # 14 until all processes surveyed)

26a. Has this monitoring been designed to evaluate control of:

1 = potential short term (< 15 min.) exposures? (STEL)
2 = potential 15 minute - 4 hour exposures?
3 = potential 4 - 8 hour exposures? (TWA)
C
R
D

26b. During this monitoring, were any chemicals found to be in excess of your adopted exposure guidelines?

1 = Yes
2 = No
C
R
D
(Skip to #27)

26c. Which chemical(s) were found to exceed adopted guidelines?

1 = _____
C
R
D
(Skip to #27)

26d. What activity, work process or operation do you feel is most responsible for the exposures above your adopted guidelines?

1 = _____
2 = Not able to specify
C
R
D

EXHIBIT 1-2
(cont.)

27. Can you give us your monitoring data for Process 1?

1 = Yes
2 = No
C
R
D
(Skip to #14)

27a. What is the name of the first (next) chemical for which you have monitoring data?

1 = _____
C
R
D

27b. Is the data based on actual monitoring readings or is it estimated?

1 = Actual
2 = Estimated
C
R
D

27c. Is the data for the work area or for the person (worker)?

1 = Area
2 = Person
C
R
D

27d. Is the data recorded for the individual worker or the work process?

1 = Worker
2 = Process
C
R
D

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EXHIBIT 1-2
(cont.)

27f. Is the unit of measurement parts per million or milligrams per cubic meter?

1 = PPM
2 = Mg/M3
C
R
D

27g. What is the exposure data for this chemical

1 = _____
C
R
D

27h. Do you have exposure estimates for other chemicals used in this process?

1 = Yes (Skip to 27a)
2 = No
C
R (Skip to #14 until all processes surveyed)
D

28. What do you estimate to be the market value of plant and equipment at your facility?

1 = Less than $50,000
2 = $50,000 - $500,000
3 = $501,000 - $1,000,000
4 = $1 to $5 million
5 = $5 to 50 million
6 = More than $50 million
C
R
D

29. Can you estimate the annual value of shipments from your facility?

1 = Less than $50,000
2 = $50,000 - $500,000
3 = $500,000 - $1,000,000
4 = $ 1 - 5 million
5 = $ 5 - 50 million
6 = More than $50 million
C
R
D

Thank you for cooperating with us in our survey.

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VIII. Summary and Explanation of the Standard

A. Scope and Selection of PELs

On the basis of all evidence, OSHA has concluded that the TLVs published by the ACGIH constitute the best available starting point for determining the substances included in this Rulemaking. Thus, the boundaries of the substances to be considered in this standard were established to include all of the substances included in the 1987–88 ACGIH TLV listing. There was widespread support for OSHA's selection of these substances for regulation which increased the Agency's confidence that the substances selected for this generic rulemaking are both necessary and appropriate. See also the discussion in Section I.D. of the Proposal and IV. D. of this preamble.

NIOSH (Ex. 8–47) additionally recommended as a potential source the Nordic Expert Group for Documentation of Occupational Exposure Limits. NIOSH stated:

> No single source should be expected to stand alone as a comprehensive list of candidates for regulation. OSHA should construct its own comprehensive list by drawing information from all available sources (Ex. 8–47, p. 20).

OSHA agrees with NIOSH in general, although it determined that it was necessary to select a single, comprehensive list as the starting point for consideration for regulation.

As described in the Proposal, the Agency used both the NIOSH RELs and ACGIH TLVs as starting points for establishing PEL's, and then carefully reviewed all of the literature, comments and testimony submitted in the course of this rulemaking. After careful review and evaluation of this body of information on any given substance and in conformance with Agency policy and statutory requirements, OSHA then determined the appropriate PEL or PELs for each substance.

U.V. Henderson, Jr., Director of Environmental Affairs for the Texaco Company, endorsed OSHA's choice of regulatory candidates by stating: "No substances are included in the listings which should be excluded from the rulemaking" (Ex. 3–683). In this regard, NIOSH also expressed support for the inclusion of the proposed substances but urged OSHA to take further action "immediately upon completion of this rulemaking . . . to establish PELs for all substances that are excluded from this rulemaking" and for which NIOSH has made a recommendation to OSHA (Ex. 8–47, p. 19). NIOSH stated that OSHA should initiate "consolidated rulemaking . . . to adopt all NIOSH RELs pending (the initiation of) chemical-specific Section 6(b) rulemaking . . ." (Ex. 8–47, p. 17). In the future OSHA will review those RELs for which there are not PELs. Based on that analysis, other priorities and resources, OSHA will determine the need to develop PELs for these substances.

For its discussion of health effects, OSHA grouped substances on the basis of the TLV documentation. The substances were divided into fifteen generic health effects groups. These were: neuropathic effects, narcotic effects, sensory irritants, liver and kidney effects, ocular effects, adverse respiratory effects, cardiovascular effects, systemic effects, no observed effects, physical irritants and other effects, odor and taste effects, analogy, biochemical and metabolic effects, sensitizers, and carcinogenic effects. The OSHA analysis also considered three special categories concerned with: change only to the STEL; change regarding skin designation in the TLV; and situations where the TLV is greater than the existing PEL.

OSHA is establishing these new limits for general industry only at this time. In the future, consideration will be given to applying these limits to construction, maritime and agriculture. To attempt to consider these sectors in this rulemaking would have delayed this important process. See also the discussion in Section IV. F. of this Preamble.

B. Start-Up Schedule

OSHA intends that the effective date of the new exposure limits shall be March 1, 1989, in conformance with provisions set forth in Section 6(b)(4) of the OSH Act.

In addition, OSHA has set forth start-up dates for most of its health standards acknowledging that it takes time for employers to evaluate exposures as well as to purchase, install and make operable equipment to control such exposures.

In the case of this standard, OSHA has considered the need for start-up dates to allow sufficient time to take into account the fact that many employers will have to evaluate and make operable controls for several different chemicals. This will undoubtedly require more time than would be necessary for only one chemical.

OSHA believes that September 1, 1989, is a reasonable time by which to evaluate exposures and come into compliance with any reasonable combination of engineering, work practice and respirator control methods. OSHA standards generally have had a period of approximately this length or shorter to come into compliance with an exposure limit with any reasonable combination of controls. See for example, the benzene standard, 29 CFR 1910.1028 (m)(2), 52 FR 34460, 34507 (September 11, 1987) and the formaldehyde standard, 29 CFR 1910.1048 (p)(2)(iv), 52 FR 46168, 46298 (December 4, 1987). OSHA experience has indicated that the six-month period following the effective date is appropriate and sufficient to come into compliance with any reasonable combination of controls.

The proposed rule (53 FR 20960 et seq.) suggested six months from the publication date of the final regulation as a reasonable time for employers to evaluate the exposures of their employees and to come into compliance using any combination of respirators, work practices and engineering controls. Several commenters, such as the Texaco Company (Ex. 3–683) and the Synthetic Organic Chemical Manufacturers Association (SOCMA) (Ex. 3–691), indicated that such an approach was appropriate. The Kerr McGee Corporation (Ex. 3–623) was more specific in its comments and contended that the initial 6-month period should be extended to a 24-month period to allow industry sufficient time to monitor and develop the necessary control measures. The American Paper Institute (Ex. 3–685) was also of the opinion that an initial 6-month compliance period would be too short. OSHA believes that the September 1, 1989, date is adequate based on all of the comments received and OSHA's past experience.

OSHA has generally provided a more extended period to come into compliance using the hierarchy of controls contained in 29 CFR 1910.1000 (e), with its preference for engineering and work practice controls. It takes more time, in general, to plan, purchase equipment, install and make operational engineering controls than to implement other types of control strategies. Examples of representative start-up periods include: 1 to 10 years (depending upon the sector) for the lead standard, 29 CFR 1910.1025 (e); 4 years for the cotton dust standard, 29 CFR 1910.1043 (m); 2 years for the benzene standard, 29 CFR 1910.1028 (m)(2)(ii); and 14 months for the formaldehyde standard, 29 CFR 1910.1048 (p)(2)(v). These dates have varied depending upon OSHA estimates of the difficulties involved. OSHA's experience has been that generally the times for these standards have been sufficient.

In the Proposal, OSHA also estimated that all employers, including those who

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would have to control exposures for several different chemicals, could achieve compliance within four years using the hierarchy of controls specified in 29 CFR 1910.1000 (e) (i.e., engineering controls, work practices, and if these are not feasible, personal protective equipment). Regarding the four-year engineering controls implementation date schedule, OSHA received a number of comments. Generally industry supported the four-year period. NIOSH (Ex. 8–47) suggested that two years was a reasonable time for compliance, and a number of unions supported that period. The Fibre Box Association, however, recommended ten years (Ex. 3–623).

In testimony July 15, 1988, related to the experience of the Washington State Occupational Safety and Health Administration with respect to updating permissible exposure limits, Stephen M. Cant stated (Ex. 20):

> Washington's PELs became effective thirty days after adoption and did not include a lengthy phase-in for engineering controls. No protests, no complaints, and no observable difficulties have been encountered; however, use of good judgment is always critical to successful enforcement. Engineering controls are not always feasible, although significant improvement, if not total control, is often obtained. In practical terms, longer interim times between implementation and full engineering control tends to occur with lowered PELs and in some cases respirators provide the only control or are used in combination with engineering.

OSHA has evaluated the data from various industries regarding the time needed to come into compliance with the hierarchy of controls set forth in 1910.1000 (e), and has determined that it is feasible for employers in nearly all operations to achieve compliance using engineering controls by December 31, 1992. OSHA's experience is that for substances of normal difficulty, one to two years is sufficient. The longer approximately four-year period takes into account that some employers will have to control several substances and also considers those few substances where compliance may take greater efforts for some employers. Because of the large number of employers and types of industry OSHA covers, OSHA does not believe a very short period similar to that used by the State of Washington would be feasible. For a very small number of specific operations (involving 4 substances—carbon monoxide, carbon disulfide, sulfur dioxide and styrene—which are discussed in this preamble in Section VII.), OSHA has indicated that employers may use any combination of controls and that the burden of proof that the final rule's limits can be achieved in these designated operations using engineering controls will rest with the Secretary of Labor, rather than the employer.

Since OSHA is in the process of reviewing regulations relating to the hierarchy of controls, it asked in the Proposal whether the phase-in period should be based on the final decisions in that rulemaking. Most of those who commented supported fixed dates. The Dow Chemical Company (Ex. 3–741) urged the Agency not to wait to set a start-up date for this rule. A few companies (Exs. 3–669 and 3–527) suggested that the Agency delay the coming-into-compliance period until after publication of any new regulations on this subject; these commenters cited costs of compliance as a major concern.

OSHA concludes that fixed compliance dates are, in general, more appropriate. The times set are reasonable. The additional protection for many workers is a very important goal. Only a small number of participants supported the alternate approach. However, OSHA is setting forth the possibility of a one-year extension as discussed below.

OSHA did not raise the issue of methods of compliance in this rulemaking. The exposure limits required after the Transitional Period, are to be achieved with the then current hierarchy of controls set forth in 29 CFR 1910.1000 (e).

In a separate Rulemaking OSHA will be requesting public comment on methods of compliance shortly. The results of that review may lead to change or no change in the OSHA hierarchy of controls as set forth in 29 CFR 1910.1000 (e).

As discussed, OSHA has concluded that 4 years is a reasonable period for coming into compliance with the new exposure limit through the methods of compliance set forth in 29 CFR 1910.1000 (e) with its preference for engineering and work practice controls. If, however, the rulemaking on methods of compliance has not been completed and published in the **Federal Register** by December 31, 1991, either with a determination to modify or not to modify, then some added flexibility is appropriate.

Accordingly para. 1910.1000 (f)(2)(ii) provides that if the methods of compliance rulemaking is completed by December 31, 1991, then compliance with paragraph (e) to lower exposures to the new limits is to be achieved by December 31, 1992. If, however, the methods of compliance rulemaking is not completed by December 31, 1991, then compliance with paragraph (e) to the new limits is to be achieved by December 31, 1993.

OSHA proposed that in the Transitional Period, the existing exposure limits are to be achieved with the hierarchy of controls specified in 1910.1000 (e). That has been the requirement since 1971. Participants did not object to this provision. OSHA is maintaining this provision in the final standard. Between September 1, 1989, and December 31, 1992, the existing limits from Tables Z-1 (which have been placed in the Transitional Limits Columns of Table Z-1-A), Z-2, and Z-3 are to be achieved by the hierarchy of controls specified in 1910.1000 (e). This is a protective approach and no evidence has been presented to contradict it.

C. Analytical Methods

In the proposal, OSHA included an appendix of analytic methods. It requested comments on those methods and on other methods, OSHA identified seven substances for which it was not aware of acceptable analytical methods. OSHA requested comments on how it should handle substances with no analytical method. It suggested that one approach was to issue a new limit but stay enforcement until a new method was developed.

OSHA received few comments on the methods it proposed, alternate methods, or the approach to be followed for those few substances where OSHA was not aware of a practical method. Both NIOSH (Ex. 8–47) and the Los Alamos National Laboratory (Ex. 3–741) expressed concern about promulgating limits for substances without existing or adequate sampling and analytical methods, i.e., substances requiring special attention because of the lack or inadequacy of methods to measure them in airborne concentrations (53 Fr 20978). For the substances identified by OSHA as lacking an available method, Los Alamos representatives stated that rulemaking "should be delayed until adequate and validated procedures are developed" (Ex. 3–1095). NIOSH agreed with OSHA that substances without existing or adequate sampling and analytical methods should receive special attention (Ex. 8–47). According to NIOSH, "it is important that NIOSH and OSHA work together on a method development scheme that will allow the appropriate validated methods to be developed in a prioritized fashion . . ."; however, NIOSH was not in favor of delaying the implementation date of the final rule because of sampling and analytical deficiencies (Ex. 8–47).

OSHA has reviewed the few comments and the methods identified. OSHA concludes that, for all but the seven substances identified below, there is an adequate sampling and analytic method for enforcement purposes.

For a few of the substances where OSHA believes there are adequate methods, NIOSH points out that there has not been extensive inter-laboratory cross checking. This procedure (which is known by the technical term "validation") does improve analytic techniques but is not necessary for typical enforcement purposes.

Therefore, OSHA finds that it is appropriate to adopt PELs for all of those substances identified in the Appendix of Section XI as having available in-house sampling and analytical methods. Copies of information on these methods have been submitted to the docket for this rulemaking (Ex. 12) and are available to all parties. Industry and union participants have not criticized these techniques.

In the Proposal, OSHA identified seven substances as not having adequate sampling and analytic techniques for enforcement. OSHA subsequently was informed of reasonable techniques for two of these. However, it also determined that two other substances with inadequate sampling methods were not listed in the Proposal. The list of seven substances now includes aluminum alkyls, ethylidene norbornene, hexafluoracetone, mercury [alkyl compounds], oxygen difluoride, phenylphosphine and sulfur pentafluoride).

OSHA believes it is appropriate to adopt PELs but stay enforcement of these PELs until adequate sampling and analytical methods are available. At such time OSHA will publish in the **Federal Register** its determination that such methods exist (together with a copy of the method), and indicate the proposed effective date for enforcement of the PEL for the substance in question.

OSHA notes the overwhelming success of the private sector and the joint efforts of NIOSH and OSHA to develop sampling and analytical methods in this area in the past. In 1971, at the time of the promulgation of OSHA's original Z-Tables, sampling and analytical methods were available for only a few of the hundreds of substances on these Tables. In the intervening years, NIOSH, OSHA and the private sector have developed and tested hundreds of methods and have made these available to the industrial hygiene community in several volumes of documented methods (*OSHA Analytical Methods Manual* and *NIOSH Manual of Analytical Methods*). OSHA is confident that the two agencies and the private sector will work together to develop rapidly methods for these substances.

D. Content of Standard

The present 29 CFR 1910.1000 contains three Tables and 5 paragraphs. The Tables Z-1, Z-2 and Z-3 express exposure limits for approximately 450 substances in various formats. Paragraph (a) states how Table Z-1 is to be complied with, paragraph (b) how Z-2 is to be complied with and paragraph (c) how Table Z-3 is to be complied with.

Paragraph (d) states the rule to be followed if there are exposures to more than one substance covered by the standard. Paragraph (e) states the hierarchy of controls to be followed in achieving the limit.

In OSHA's Proposal, it opened the rulemaking only to the appropriate exposure limits for 280 substances already included in Tables Z-1, Z-2, and Z-3 and 168 substances with no prior exposure limits. OSHA did not open any substantive issues as to Paragraphs 1910.1000 (a) through (e), or as to the approximately 169 substances in Tables Z-1, Z-2, and Z-3 for which OSHA did not propose to consider changes. However, the need for format changes was recognized since there would be the need to integrate conveniently for the public both the old and new exposure limits.

OSHA proposed a new Table Z-4 which included all of the 428 substances which OSHA proposed to consider for new exposure limits. A new paragraph (d) was proposed to indicate how Table Z-4 was to be complied with including Time-Weighted average (TWA), short term exposure limits (STEL), ceiling limits and skin designations. The provisions of proposed paragraph (d) were opened for public comment. The other paragraphs were proposed only for format changes so that the new limits could be incorporated without confusion. The existing paragraph (d) was redesignated paragraph (f).

There were a number of recommendations by the public on how the exposure limits could be formatted so they would be more convenient for the public to use. OSHA has carefully considered how to present the exposure limits in a manner most convenient for the public. The format of this final standard and Tables reflects that effort.

OSHA is deleting Table Z-1 and inserting Table Z-1-A. (The change in nomenclature is designed to avoid confusion between the two Tables). For the convenience of the public, Table Z-1-A includes every substance regulated by OSHA in subpart Z.

Therefore, Table Z-1-A includes all new substances regulated for the first time in this rulemaking, all substances regulated before in Tables Z-1, Z-2, and Z-3 for which OSHA is promulgating new exposure limits and also those substances regulated before in Tables Z-1, Z-2, and Z-3 for which OSHA considered changing exposure limits but concluded that the exposure limit should remain unchanged. All of these exposure limts were substantively considered and were at issue in the rulemaking. They have been issued or reissued as section 6(b) standards.

Secondly, Table Z-1-A includes several groups of substances which were not considered for change or opened for comment in this rulemaking. They have been placed in Table Z-1-A for the convenience of the public and reformatted but no substantive changes have been made. These include 169 substances which had been located in Tables Z-1, Z-2 and Z-3 which OSHA did not propose to consider changes for and which are carried over substantively unchanged.

For some of those substances located before in Tables Z-2 and Z-3, the format of presentation could not fit into the columns of Table Z-1-A. In that case Table Z-1-A references the fact that those substances' limits appear in Table Z-2 or Z-3.

These substances which were not opened for rulemaking and which appeared before in Tables Z-1, Z-2, or Z-3 can be identified by having identical limits in both the Transitional Limits Columns and the Final Rule Limits Columns of Table Z-1-A. The identical nature of both limits may require examination of a cross reference to Table Z-2 or Z-3. All of these substances were originally issued as Section 6(a) standards.

Also listed in Table Z-1-A are all substances which have individual standards in Sections 1910.1001 through 1910.1048. In those cases the exposure limit is not listed in Table Z-1-A, but there is a cross reference to the section where the complete standard for that substance is located.

There are also three substances (benzene, cotton dust and formaldehyde) which have single substance standards in 1910.1001 through 1910.1048, for which exposure limits in Tables Z-1 or Z-2 were retained for certain sectors, operations or circumstances not covered by the single substance standard. These limits are either presented directly in Table Z-1-A, or are cross referenced to Table Z-2. An explanatory note indicates where these situations apply.

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Through these formatting changes, all substances regulated in Subpart Z are listed in alphabetical order in Table Z-1-A. Also included (where possible) is a CAS number to help identify each substance. This formatting will facilitate the use of these Z Tables.

As discussed above, there will be a transition period. Until September 1, 1989, the existing limits of Tables Z-1, Z-2 and Z-3 continue to apply. These are presented, or cross referenced in the Transitional Limits columns of Table Z-1-A. The methods of compliance hierarchy, as set forth in Sec. 1910.1000(e) applies to these limits. For substances where there has been no change in limits, the methods of compliance specified in para. 1910.1000(e) have been applicable to achieve the limit specified since 1971 and will remain applicable without gap into future unless subsequently amended. The September 1, 1989, and December 30, 1992, dates do not affect the methods of compliance or exposure limit for substances whose exposure limits have not been changed. Substances which fit into the unchanged limits category can be recognized because the limits specified in both Transitional Limits column and Final Rule Limits columns are the same.

Between September 1, 1989, and December 31, 1992, two limits will be applicable for substances which had an OSHA limit and for which OSHA changed the limits in this Rulemaking. The methods of compliance hierarchy set forth in 1910.1000(e) will apply to the limits noted in the Transitional Limits columns. The additional protection to achieve the more protective limits noted in the Final Rule Limits columns can be achieved using any reasonable control methods as set forth in para. (f)(2)(ii).

An example may assist in explaining this requirement. Chemical A has a limit of 100 ppm in the Transitional Limits columns and 50 ppm in the Final Rule Limits columns. Between September 1, 1989, and December 30, 1992, 100 ppm must be achieved with the hierarchy of controls specified in Para. 1910.1000(e) with its preference for feasible engineering and work practice controls. During this period, the additional protection from 100 ppm down to 50 ppm must be achieved by any reasonable combination of engineering controls, work practices and personal protective equipment as specified in para. 1910.1000(f)(2)(i).

After December 30, 1992, the methods of compliance specified in para. 1910.1000(e) shall apply to the limits specified in the Final Rule Limits column for all substances with changed limits. The limits specified in the Transitional Limits column shall no longer be applicable.

New substances not previously regulated by OSHA have their exposure limits appear only in the Final Rule Limits columns. For those substances, the methods of compliance specified in para. 1910.1000(f)(2)(i) apply between September 1, 1989, and December 30, 1992, to achieve the airborne exposure limits specified. After December 30, 1992, the methods of compliance specified in para. 1910.1000(e) apply.

If no final rule has been published in the Federal Register by December 31, 1991, amending or determining not to amend paragraph (e) of this section, then the permissible limits specified in the Final Rule Limits columns of Table Z-1-A shall be achieved by the methods of compliance specified by paragraph (e) of this section effective December 31, 1993, and paragraph (f)(2)(i) of this section shall remain in effect through December 30, 1993.

As discussed above, some substances are listed in the Transitional Limits or Final Rule Limits columns by cross reference to Table Z-2 or Z-3. Those substances are considered to be in the Transitional Limits columns or Final Rule Limits columns just the same as if the exposure limits were presented in these columns. Consequently, the methods of compliance apply the same, whether the exposure limit is listed directly or listed by cross reference to Table Z-2 or Z-3.

The operational language for Table Z-1 is in 29 CFR 1910.1000(a) (1989), for Z-2 is in 1910.1000(b) and Z-3 in 1910.1000(c). The language of each was not identical because they had different historical sources. It is and has always been OSHA's interpretation that the language, though slightly different, had the same meaning.

In this rulemaking the Table Z-1 has been integrated into the Transitional Limits columns of Table Z-1-A. The operational language that had been in 29 CFR 1910.1000(a) (1989) becomes paras. 1910.1000(a) (1) and (2). Paragraphs 1910.1000 (b) and (c) are carried over. Some word changes are necessary to these paragraphs to integrate Table Z-1-A into the regulatory framework and to cover the transitional period. These are just formal changes and no substantive changes in the regulations are intended by the formal changes in the language of paras. 1910.1000 (a)(1), (a)(2), (b) and (c).

Paragraphs 1910.1000 (a)(3), (a)(4) and (a)(5) are new. Necessary explanation of them is given below.

Paragraph 1910.1000(d) contains the computation formulas when employees are exposed to more than one toxic substance at the same time and 1910.1000(e) is the hierarchy of controls. OSHA did not open the issue of whether substantive changes should be made to these paragraphs in the proposal. A few comments were received recommending substantive changes. OSHA has not considered them in this proceeding. This rulemaking is sufficiently broad so that resources were not available to consider those recommendations and, of course, no notice was given that OSHA was considering changes to these paragraphs. Accordingly there are no substantive changes to these paragraphs and that was not an issue in the rulemaking. No changes at all are made to para. (e). It is reprinted unchanged for the convenience of the public.

OSHA is making only format changes to para. (d). Those are needed to incorporate Table Z-1-A. They also make clear OSHA's existing position that para. (d) applies to all of Subpart Z. See 53 FR 21241. The names of chemicals in the example are changed to A, B, and C since the exposure limits for the named chemicals have been changed. This should prevent confusion. All of para. (d) is reprinted for the convenience of the public. It should be noted that paragraph (d) had been proposed to be redesignated as paragraph (f) in the Proposal. In the final rule that has not been necessary because of the change in format.

In addition, since OSHA is proposing no changes to Part 1917, Marine Terminals, which references the existing Z-1, Z-2 and Z-3 Tables, the limits shown in the Transitional Limits columns of Table Z-1-A or the limits columns of Z-2 and Z-3 will remain in effect for Marine Terminals. (OSHA in a follow-up rulemaking will consider adoption of new limits for the Construction and Maritime Industries.)

For some substances, OSHA proposed using the 10-hour TWA given in the NIOSH RELs as a new PEL. It should be noted that NIOSH generally refers in its criteria documents to airborne concentrations of a substance as a "time-weighted average (TWA) exposure for up to a 10-hour work shift in a 40-hour work week." OSHA has concluded that this is equivalent to the OSHA definition of an 8-hour work shift for a 40-hour work week. OSHA received limited comments regarding this question. NIOSH (Ex. 8-47) provided the most detailed response explaining the history of the 10-hour TWA and why the same TWA REL was intended to be applied to 8-hour and 10-hour work days in a 40-hour work week. NIOSH explained that the 10-hour REL originated during the energy crisis of the

1970s, when many employers began to use 10-hour/4-day work schedules to conserve energy (Ex. 8-47, p. 25). Thus, the 40-hour work week rather than the length of a workday is, in NIOSH's view, the important time element in the (concentration) X (time) equation: any given REL can be applied to either four 10-hour days or five 8-hour days without being exceeded. NIOSH supports OSHA's proposal to apply 10-hour NIOSH RELs to 8-hour days by stating:

> The action proposed by OSHA in this rulemaking relative to these RELs is consistent with that original intent (Ex. 8-47, p. 26).

In this final rule, OSHA is therefore applying certain values derived from 10-hour NIOSH RELs as 8-hour TWA PELs.

NIOSH REL ceiling values are based on time intervals which range from instantaneous to 120 minutes. OSHA asked in the Proposal whether, for convenience of enforcement fewer time limits could be used. There were a few comments which gave support to this possibility. After consideration of the record, OSHA has concluded that PELs based on REL ceilings of 10, 15 and 20 minutes shall be made 15-minute STEL's in order to achieve greater uniformity and simplicity in the standard. However, OSHA has decided that the 30-minute, 60-minute and 120-minute ceilings, if adopted, shall remain as specified since those times are so different.

The ceiling limits in Table Z-1-A are consistent with the ACGIH definition. If instantaneous measuring devices are available, then the ceiling limit shall not be exceeded in an instantaneous measurement. If instantaneous measuring devices are not available, then the exposure is to be measured over a 15-minute period. Therefore, some of the ceiling limits are equivalent to STELs.

OSHA proposed PELs for some substances where the basis for the proposal also included a carcinogenicity designation (e.g., TLV with an A1 or A2 designation; REL with a Ca designation). OSHA asked in the Proposal whether such chemicals should have a cancer designation included in the table. Some commenters (Exs. 3-741 and 3-891) indicated that OSHA's Hazard Communication Standard already requires employers to inform employees about the carcinogenic hazards of any substances listed as carcinogens by IARC or NTP. According to these respondents, identification of substances as carcinogens in the Z-Tables would therefore be duplicative and could cause confusion (Ex. 3-891). Other commenters (Exc. 3-593, 3-1095, 8-16 and 8-47) favored the addition of a cancer designation to carcinogenic substances included in the Z Tables. For examples, the American Industrial Hygiene Association (AIHA) stated:

> AIHA would support the inclusion of a designation on carcinogenicity . . . provided that such designation reflects the weight of evidence for carcinogenic effects . . . . (Ex. 8-10, p. 14).

NIOSH (Ex. 8-47) concurred in recommending the inclusion of such a designation in the final rule's Z-Tables.

OSHA has carefully reviewed the record evidence on this issue and has investigated the various evaluative criteria used by scientific and regulatory bodies to determine the classification of a substance as a carcinogen. The Agency notes that each organization has a different system and that the criteria used rarely coincide. Thus, the ACGIH uses two designations, A1 and A2, to reflect the strength of the evidence for a substance's carcinogenicity while the EPA has 5 classifications that represent different kinds of evidence. OSHA believes that the inclusion of a cancer designation on the Z-Tables would further complicate this already complex situation by adding yet another classification system to those already in use. OSHA is also concerned that adding cancer designation to the Z-Table limits would require frequent updating and revision as additional substances are identified as carcinogens in the future. Therefore, OSHA has determined not to add a cancer designation to the Tables.

Paragraphs 1910.1000 (a)(3), (a)(4) and (a)(5) are new. Paragraph (a)(3) requires an employer to maintain an employee's exposure below the Time Weighted Average (TWA), Short Term Exposure Limit (STEL) and/or Ceiling specified in the Final Rule Limits Columns of Table Z-1-A. Paragraph (a)(5) defines those limits. The language of these two paragraphs is consistent with OSHA past practices and good industrial hygiene. The record of this rulemaking supports the approach taken to the language. OSHA intends this language to be interpreted consistent with similar language in 1910.1000 (a)(1), (a)(2), (b) and (c).

Paragraph (a)(4) puts limits on skin exposure. It states:

> *Skin Designation.* To prevent or reduce skin absorption, an employee's skin exposure to substances listed in Table Z-1-A with an X in the skin column under the Final Rule Limits column shall be prevented or reduced to the extent necessary under the circumstances through the use of gloves, coveralls, goggles or other appropriate personal protective equipment, engineering controls or work practices.

This reflects both format and substantive changes from the language proposed. This preamble discussion also reflects a substantive change from the discussion in the proposal. The substantive changes are in response to many comments in the record.

The ACGIH gave skin designation to substances which could be absorbed through the skin. The proposal preamble stated that the skin notation was used to indicate both substances absorbed through the skin and those which might cause skin irritation. There was much public comment pointing out that the underlying documentation considered only skin absorption and not skin irritation. It also pointed out that the two concepts should not be confused because a substance that could be absorbed might not irritate, and conversely.

OSHA agrees with these comments and their reasoning. Accordingly a skin designation for the final rule is only given to a substance which may be absorbed through the skin.

The use of skin designation does not indicate that the substance may irritate the skin. Similarly, lack of a skin designation does not mean that the substance will not irritate the skin.

The purpose of having the skin designation is to prevent the same toxic effects that the chemical causes through inhalation. The inhalation limit is based on keeping exposure below the limit which will create a significant risk of material impairment of health. If skin absorption is possible, an employee might be below the inhalation limit; however, the additional body burden through skin absorption may create the material impairment which the limit attempts to reduce.

The revised language permits compliance with personal protective equipment such as gloves, goggles and coveralls, engineering controls or work practices. No specific hierarchy is stated. An employer must take appropriate actions to prevent routine or regular exposures. However, except when there is the reasonable possibility of slight, a severe reaction through absorption, the methods need not be such as to prevent the possibility of slight infrequent exposure. This language reflects comments in the record that preventing the possibility of exposure is not always necessary to prevent material impairment of health.

Many existing substances have a skin designation which is indicated in the Transitional Limits columns. Para. (f)(2)(iii) states that they shall remain in effect until August 31, 1989. The skin designations in the Final Rule Limits

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columns take effect on September 1, 1989. This is sufficient time for employers to institute control practices.

Para. (f)(3)(iii) states that if any of the revised limits are stayed then the limits existing prior to this final rule remain effective until the stay is lifted. If a revised limit is vacated, then the limit existing prior to this final rule remains effective.

Para. (f)(4) stays the enforcement of PELs for seven substances for which OSHA is not aware of a practical sampling and analytic technique as of November 10, 1988, the close of the record. When a suitable method becomes available OSHA will publish a notice in the Federal Register notifying the public of the method and setting a date ending the stay.

E. State Plan Applicability

The 25 states with their own OSHA-approved occupational safety and health plans must adopt a comparable standard within six months of the publication date of this final standard. These States include: Alaska, Arizona, California, Connecticut, (for State and local government employees only), Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, New York, (for state and local government employees only), North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Virgin Islands, Washington, Wyoming. Until such time as a State Standard is promulgated, Federal OSHA will provide interim enforcement assistance, as appropriate.

List of Subjects in 29 CFR Part 1910

Air contaminants, Occupational safety and health, Permissible exposure limits, Health, Risk assessment.

IX. Authority: This document has been prepared under the direction of John A. Pendergrass, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Pursuant to Section 6 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655), Section 4 of the Administrative Procedures Act (5 U.S.C. 553), 29 CFR Part 1911 and Secretary of Labor's Order 9-83 (48 FR 35736), it is proposed to amend 29 CFR Part 1910 by revising § 1910.1000 as set forth below.

Signed at Washington, DC, this 11th day of January 1989.

John A. Pendergrass,

Assistant Secretary of Labor.

X. Standard

OSHA is amending Part 1910 of Title 29 of the Code of Federal Regulations as follows:

PART 1910 [AMENDED]

1. The authority citation for Subpart Z of Part 1910 is revised to read as follows:

Authority: Secs. 6, 8, Occupational Safety and Health Act, 29 U.S.C. 655, 657; Secretary of Labor's Orders 12-71 [36 FR 8754], 8-76 [41 FR 25059], or 9-83 [48 FR 35736] as applicable; and 29 CFR Part 1911.

All of Subpart Z issued under Sec 6(b) of the Occupational Safety and Health Act, 29 U.S.C. 655(b) except those substances listed in the Final Rule Limits columns of Table Z-1-A, which have identical limits listed in the Transitional Limits columns of Table Z-1-A, Table Z-2 or Table Z-3. The latter were issued under Sec. 6(a) [5 U.S.C. 655 (a)].

Section 1910.1000, the Transitional Limits columns of Table Z-1-A, Table Z-2 and Table Z-3 also issued under 5 U.S.C. 553. Section 1910.1000, Tables Z-1-A, Z-2 and Z-3 not issued under 29 CFR 1911 except for the arsenic, benzene, cotton dust, and formaldehyde listings.

Section 1910.1001 also issued under Sec. 107 of Contract Work Hours and Safety Standards Act, 40 U.S.C. 333.

Section 1910.1002 not issued under 29 U.S.C. 655 or 29 CFR Part 1911; also issued under 5 U.S.C. 553.

Sections 1910.1003 through 1910.1018 also issued under 29 U.S.C. 653.

Section 1910.1028 also issued under 29 U.S.C. 653 and 5 U.S.C. 553.

Section 1910.1029 also issued under 29 U.S.C. 653.

Section 1910.1043 also issued under 5 U.S.C. 551 et seq.

Sections 1910.1045 and 1910.1047 also issued under 29 U.S.C. 653.

Section 1910.1048 also issued under 29 U.S.C. 653.

Sections 1910.1200, 1910.1499 and 1910.1500 also issued under 5 U.S.C. 553.

2. Section 1910.1000 is amended by revising the introductory text and paragraphs (a) through (d), republishing paragraph (e), adding a new paragraph (f), removing Table Z-1 and adding Table Z-1-A, and republishing Tables Z-2 and Z-3. As revised, § 1910.1000 reads as follows:

§ 1910.1000 Air contaminants.

An employee's exposure to any substance listed in Tables Z-1-A, Z-2 or Z-3 of this section shall be limited in accordance with the requirements of the following paragraphs of this section.

(a) *Table Z-1-A*—(1) *Substances in Transitional Limits Columns with limits preceded by "C"—Ceiling Values.* An employee's exposure to any substance in Table Z-1-A under the Transitional Limits columns, the exposure limit of which is preceded by a "C", shall at no time exceed the exposure limit given for that substance in Table Z-1-A under the Transitional Limits columns.

(2) *Other Substances in Transitional Limits Columns—8-hour Time Weighted Average.* An employee's exposure to any substance in Table Z-1-A under the Transitional Limits columns, the exposure limit of which is not preceded by a "C", shall not exceed the 8-hour Time Weighted Average given for that substance in Table Z-1-A under the Transitional Limits columns in any 8-hour work shift of a 40-hour work week.

(3) *Final Rule Limits Columns.* An employee's exposure to any substance listed in Table Z-1-A shall not exceed the Time Weighted Average (TWA), Short Term Exposure Limit (STEL) and Ceiling Limit specified for that substance in Table Z-1-A under the Revised Limits columns.

(4) *Skin Designation.* To prevent or reduce skin absorption, an employee's skin exposure to substances listed in Table Z-1-A with an "X" in one or both of the Skin Designation columns following the substance name shall be prevented or reduced to the extent necessary in the circumstances through the use of gloves, coveralls, goggles, or other appropriate personal protective equipment, engineering controls or work practices.

(5) *Definitions.* The following definitions are applicable to the Final Rule Limits columns of Table Z-1-A:

(i) Time weighted average (TWA) is the employee's average airborne exposure in any 8-hour work shift of a 40-hour work week which shall not be exceeded.

(ii) Short term exposure limit (STEL) is the employee's 15-minute time weighted average exposure which shall not be exceeded at any time during a work day unless another time limit is specified in a parenthetical notation below the limit. If another time period is specified, the time weighted average exposure over that time period shall not be exceeded at any time during the working day.

(iii) Ceiling is the employee's exposure which shall not be exceeded during any part of the work day. If instantaneous monitoring is not feasible, then the ceiling shall be assessed as a 15-minute time weighted average exposure which shall not be exceeded at any time over a working day.

(6) *Additional Definition.* The terms "substance", "air contaminant," and "material" are equivalent in meaning for 29 CFR 1910.1000.

(b) *Table Z-2.* Table Z-2 is applicable for the transitional period and to the extent set forth in paragraph (f) of this section.

(1) *8-hour time weighted averages.* An employee's exposure to any material listed in table Z-2, in any 8-hour work shift of a 40-hour work week, shall not exceed the 8-hour time weighted average limit given for that material in Table Z-2.

(2) *Acceptable ceiling concentrations.* An employee's exposure to a material listed in table Z-2 shall not exceed at any time during an 8-hour shift the acceptable ceiling concentration limit given for the material in the table, except for a time period, and up to a concentration not exceeding the maximum duration and concentration allowed in the column under "acceptable maximum peak above the ceiling concentration for an 8-hour shift."

(3) *Example.* During an 8-hour work shift, an employee may be exposed to a concentration of Substance A (with a 10 ppm TWA, 25 ppm ceiling and 50 ppm peak) above 25 ppm (but never above 50 ppm) only for a maximum period of 10 minutes. Such exposure must be compensated for by exposures to concentrations less than 10 ppm so that the cumulative exposure for the entire 8-hour work shift does not exceed a weighted average of 10 ppm.

(c) *Table Z-3.* Table Z-3 is applicable for the transitional period and to the extent set forth in paragraph (f) of this section. An employee's exposure to any substance listed in Table Z-3 in any 8-hour work shift of a 40-hour work week shall not exceed the 8-hour time weighted average limit given for that substance in the table.

(d) *Computation formulae.* The computation formula which shall apply to employee exposure to more than one substance for which 8-hour time weighted averages are listed in subpart Z of 29 CFR Part 1910 in order to determine whether an employee is exposed over the regulatory limit is as follows:

(1)(i) The cumulative exposure for an 8-hour work shift shall be computed as follows:

$$E=(C_aT_a+C_bT_b+\ldots C_nT_n)\div 8$$

Where:

E is the equivalent exposure for the working shift.

C is the concentration during any period of time T where the concentration remains constant.

T is the duration in hours of the exposure at the concentration C.

The value of E shall not exceed the 8-hour time weighted average specified in Subpart Z or 29 CFR Part 1910 for the material involved.

(ii) To illustrate the formula prescribed in paragraph (d)(1)(i) of this section, assume that Substance A has an 8-hour time weighted average limit of 100 ppm noted in Table Z-1-A. Assume that an employee is subject to the following exposure:

Two hours exposure at 150 p/m
Two hours exposure at 75 p/m
Four hours exposure at 50 p/m

Substituting this information in the formula, we have

$$(2\times 150+2\times 75+4\times 50)\div 8=81.25\ p/m$$

Since 81.25 ppm is less than 100 p.p.m., the 8-hour time weighted average limit, the exposure is acceptable.

(2)(i) In case of a mixture of air contaminants an employer shall compute the equivalent exposure as follows:

$$E_m=(C_1\div L_1+C_2\div L_2)+\ldots(C_n\div L_n)$$

Where:

E_m is the equivalent exposure for the mixture.

C is the concentration of a particular contaminant.

L is the exposure limit for that substance specified in Subpart Z of 29 CFR Part 1910.

The value of E_m shall not exceed unity (1).

(ii) To illustrate the formula prescribed in paragraph (d)(2)(i) of this section, consider the following exposures:

Substance	Actual concentration of 8 hour exposure (ppm)	8 hr. TWA PEL (ppm) 8
B	500	1000
C	45	200
D	40	200

Substituting in the formula, we have:

$Em=500\div 1,000+45\div 200+40\div 200$

$Em=0.500+0.225+0.200$

$Em=0.925$

Since Em is less than unity (1), the exposure combination is within acceptable limits.

(e) To achieve compliance with paragraphs (a) through (d) of this section, administrative or engineering controls must first be determined and implemented whenever feasible. When such controls are not feasible to achieve full compliance, protective equipment or any other protective measures shall be used to keep the exposure of employees to air contaminants within the limits prescribed in this section. Any equipment and/or technical measures used for this purpose must be approved for each particular use by a competent industrial hygienist or other technically qualified person. Whenever respirators are used, their use shall comply with § 1910.134.

(f) *Effective dates, start-up dates and transitional provisions*—(1) *Effective date.* The effective date for the permissible exposure limits specified in the Final Rule Limits columns of Table Z-1-A is March 1, 1989.

(2) *Start-up dates.* (i) The permissible exposure limits specified in the Final Rule Limits columns of Table Z-1-A shall be achieved by any reasonable combination of engineering controls, work practices and personal protective equipment effective September 1, 1989, through December 30, 1992.

(ii)(A) The permissible exposure limits specified in the Final Rule Limits columns of Table Z-1-A shall be achieved by the method of compliance specified in paragraph (e) of this section effective December 31, 1992, if by December 31, 1991 a final rule has been published in the Federal Register amending or determining not to amend paragraph (e) of this section.

(B) If no final rule has been published in the Federal Register by December 31, 1991, amending or determining not to amend paragraph (e) of this section, then the permissible limits specified in the Final Rule Limits columns of Table Z-1-A shall be achieved by the methods of compliance specified by paragraph (e) of this section effective December 31, 1993, and paragraph (f)(2)(i) of this section shall remain in effect through December 30, 1993.

(iii) The skin designations in the Final Rule Limits columns become effective September 1, 1989. The skin designations in the Transitional Limits columns are in effect from March 1, 1989, through August 31, 1989.

(3) *Transitional provisions.* (i) The permissible exposure limits specified in the Transitional Limits columns of Table Z-1-A, Table Z-2 and Table Z-3 shall continue to be achieved by the methods of compliance specified in paragraph (e) of this section through December 30, 1992. If paragraph (f)(2)(ii)(B) of this section takes effect, this provision is extended through December 30, 1993.

(ii) The permissible exposure limits specified in the Transitional Limits columns of Table Z-1-A, Z-2 and Z-3 shall be applicable to the extent cross referenced in 29 CFR Parts 1915, 1917 and 1918.

(iii) If any new or amended provisions or new or revised limits for any substance or substances are either administratively stayed or judicially stayed or vacated, then the existing provisions or limits for those substances specified in the Transitional Limits columns of Table Z-1-A, Table Z-2 or

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Table Z-3 shall remain in effect until such stay is lifted, or indefinitely, if the limit is vacated.

(4) Enforcement of the limits are indefinitely stayed for: aluminum alkyls; ethylidene norbornene; hexafluoroacetone; mercury (alkyl compounds); oxygen difluoride; phenylphosphine; and sulfur pentafluoride; until OSHA publishes in the Federal Register a notice that a sampling and analytical technique is available.

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TABLE Z-1-A. Limits for Air Contaminants

Substance	CAS No.	Transitional Limits PEL[a] ppm[a]	Transitional Limits PEL[a] mg/m³[b]	Transitional Limits PEL[a] Skin Designation	Final Rule Limits[aa] TWA ppm[a]	TWA mg/m³[b]	STEL[c] ppm[a]	STEL[c] mg/m³[b]	CEILING ppm[a]	CEILING mg/m³[b]	CEILING Skin Designation
Acetaldehyde	75-07-0	200	360	-	100	180	150	270	-	-	-
Acetic acid	64-19-7	10	25	-	10	25	-	-	-	-	-
Acetic anhydride	108-24-7	5	20	-	-	-	-	-	5	20	-
Acetone	67-64-1	1000	2400	-	750	1800	1000	2400	-	-	-
Acetonitrile	75-05-8	40	70	-	40	70	60	105	-	-	-
2-Acetylaminofluorene; see 1910.1014	53-96-3										
Acetylene dichloride; see 1,2-Dichloroethylene											
Acetylene tetrabromide	79-27-6	1	14	-	1	14	-	-	-	-	-
Acetylsalicylic acid (Aspirin)	50-78-2	-	-	-	-	5	-	-	-	-	-
Acrolein	107-02-8	0.1	0.25	-	0.1	0.25	0.3	0.8	-	-	-
Acrylamide	79-06-1	-	0.3	X	-	0.03	-	-	-	-	X
Acrylic acid	79-10-7	-	-	-	10	30	-	-	-	-	X
Acrylonitrile; see 1910.1045	107-13-1										
Aldrin	309-00-2	-	0.25	X	-	0.25	-	-	-	-	X
Allyl alcohol	107-18-6	2	5	X	2	5	4	10	-	-	X
Allyl chloride	107-05-1	1	3	-	1	3	2	6	-	-	-
Allyl glycidyl ether (AGE)	106-92-3	(C)10	(C)45	-	5	22	10	44	-	-	-
Allyl propyl disulfide	2179-59-1	2	12	-	2	12	3	18	-	-	-
alpha-Alumina Total dust Respirable fraction	1344-28-1	- -	15 5	-	-	10 5	-	-	-	-	-

TABLE Z-1-A. Limits For Air Contaminants

Substance	CAS No.	Transitional Limits PEL[a] ppm[b]	Transitional Limits PEL[a] mg/m³[b]	Skin Designation	Final Rule Limits[**] TWA ppm[b]	TWA mg/m³[b]	STEL[c] ppm[b]	STEL[c] mg/m³[b]	CEILING ppm[b]	CEILING mg/m³[b]	Skin Designation
Aluminum (as Al)	7429-90-5										
Metal											
Total dust		-	15	-	-	15	-	-	-	-	-
Respirable fraction		-	5	-	-	5	-	-	-	-	-
Pyro powders		-	-	-	-	5	-	-	-	-	-
Welding fumes[***]		-	-	-	-	5	-	-	-	-	-
Soluble salts		-	-	-	-	2	-	-	-	-	-
Alkyls		-	-	-	-	2	-	-	-	-	-
4-Aminodiphenyl; see 1910.1011	92-67-1										
2-Aminoethanol; see Ethanolamine											
2-Aminopyridine	504-29-0	0.5	2	-	0.5	2	-	-	-	-	-
Amitrole	61-82-5	-	-	-	-	0.2	-	-	-	-	-
Ammonia	7664-41-7	50	35	-	-	-	25	27	-	-	-
Ammonium chloride fume	12125-02-9	-	-	-	-	10	-	20	-	-	-
Ammonium sulfamate	7773-06-0										
Total dust		-	15	-	-	10	-	-	-	-	-
Respirable fraction		-	5	-	-	5	-	-	-	-	-
n-Amyl acetate	628-63-7	100	525	-	100	525	-	-	-	-	-
sec-Amyl acetate	626-38-0	125	650	-	125	650	-	-	-	-	-
Aniline and homologs	62-53-3	5	19	X	2	8	-	-	-	-	X
Anisidine (o-,p-isomers)	29191-52-4	-	0.5	-	-	0.5	-	-	-	-	-
Antimony and compounds (as Sb)	7440-36-0	-	0.5	-	-	0.5	-	-	-	-	-
ANTU (Alpha naphthyl-thiourea)	86-88-4	-	0.3	-	-	0.3	-	-	-	-	-
Arsenic, organic compounds (as As)	7440-38-2	-	0.5	-	-	0.5	-	-	-	-	-
Arsenic, inorganic compounds (as As); see 1910.1018	Varies with compound				See 1910.1018(a) for applications excluded						

TABLE Z-1-A. Limits For Air Contaminants

Substance	CAS No.	Transitional Limits PEL[a] ppm[b]	Transitional Limits PEL[a] mg/m³[b]	Skin Designation	Final Rule Limits[**] TWA ppm[b]	TWA mg/m³[b]	STEL[c] ppm[b]	STEL[c] mg/m³[b]	CEILING ppm[b]	CEILING mg/m³[b]	Skin Designation
Arsine	7784-42-1	0.05	0.2	-	0.05	0.2	-	-	-	-	-
Asbestos; see 1910.1001	Varies										
Atrazine	1912-24-9	-	-	-	-	5	-	-	-	-	-
Azinphos-methyl	86-50-0	-	0.2	X	-	0.2	-	-	-	-	X
Barium, soluble compounds (as Ba)	7440-39-3	-	0.5	-	-	0.5	-	-	-	-	-
Barium sulfate	7727-43-7										
Total dust		-	15	-	-	10	-	-	-	-	-
Respirable fraction		-	5	-	-	5	-	-	-	-	-
Benomyl	17804-35-2										
Total dust		-	15	-	-	10	-	-	-	-	-
Respirable fraction		-	5	-	-	5	-	-	-	-	-
Benzene; see 1910.1028	71-43-2	See Table Z-2 for the limits applicable in the operations or sectors excluded in 1910.1028[d]									
Benzidine; see 1910.1010	92-87-5										
p-Benzoquinone; see Quinone											
Benzo(a)pyrene; see Coal tar pitch volatiles											
Benzoyl peroxide	94-36-0	-	5	-	-	5	-	-	-	-	-
Benzyl chloride	100-44-7	1	5	-	1	5	-	-	-	-	-
Beryllium and beryllium compounds (as Be)	7440-41-7	See Table Z-2			0.002	-	0.005 (30 min)	-	0.025	-	-
Biphenyl; see Diphenyl											
Bismuth telluride, Undoped	1304-82-1										
Total dust		-	15	-	-	15	-	-	-	-	-
Respirable fraction		-	5	-	-	5	-	-	-	-	-
Bismuth telluride, Se-doped		-	-	-	-	5	-	-	-	-	-

TABLE Z-1-A. Limits for Air Contaminants

Substance	CAS No.	Transitional Limits PEL[a] ppm[b]	Transitional Limits PEL[a] mg/m³[b]	Skin Designation	Final Rule Limits** TWA ppm[b]	Final Rule Limits** TWA mg/m³[b]	Final Rule Limits** STEL[c] ppm[b]	Final Rule Limits** STEL[c] mg/m³[b]	Final Rule Limits** CEILING ppm[b]	Final Rule Limits** CEILING mg/m³[b]	Skin Designation
Butylamine	109-73-9	(C)5	(C)15	X	–	–	–	–	5	15	X
tert-Butyl chromate (as CrO_3)	1189-85-1	–	(C)0.1	X	–	–	–	–	–	0.1	X
n-Butyl glycidyl ether (BGE)	2426-08-6	50	270	–	25	135	–	–	–	–	–
n-Butyl lactate	138-22-7	–	–	–	5	25	–	–	–	–	–
Butyl mercaptan	109-79-5	10	35	–	0.5	1.5	–	–	–	–	–
o-sec-Butylphenol	89-72-5	–	–	–	5	30	–	–	–	–	X
p-tert-Butyltoluene	98-51-1	10	60	–	10	60	20	120	–	–	–
Cadmium fume (as Cd)	7440-43-9		See Table Z-2			In process of 6(b) rulemaking					
Cadmium dust (as Cd)	7440-43-9		See Table Z-2			In process of 6(b) rulemaking					
Calcium carbonate	1317-65-3										
Total dust		–	15	–	–	15	–	–	–	–	–
Respirable fraction		–	5	–	–	5	–	–	–	–	–
Calcium cyanamide	156-62-7	–	–	–	–	0.5	–	–	–	–	–
Calcium hydroxide	1305-62-0	–	–	–	–	5	–	–	–	–	–
Calcium oxide	1305-78-8	–	5	–	–	5	–	–	–	–	–
Calcium silicate	1344-95-2										
Total dust		–	15	–	–	15	–	–	–	–	–
Respirable fraction		–	5	–	–	5	–	–	–	–	–
Calcium sulfate	7778-18-9										
Total dust		–	15	–	–	15	–	–	–	–	–
Respirable fraction		–	5	–	–	5	–	–	–	–	–
Camphor, synthetic	76-22-2	–	2	–	–	2	–	–	–	–	–
Caprolactam	105-60-2										
Dust		–	–	–	–	1	–	3	–	–	–
Vapor		–	–	–	5	20	10	40	–	–	–
Captafol (Difolatan®)	2425-06-1	–	–	–	–	0.1	–	–	–	–	–
Captan	133-06-2	–	–	–	–	5	–	–	–	–	–

TABLE Z-1-A. Limits for Air Contaminants

Substance	CAS No.	Transitional Limits PEL[a] ppm[b]	Transitional Limits PEL[a] mg/m³[b]	Skin Designation	Final Rule Limits** TWA ppm[b]	Final Rule Limits** TWA mg/m³[b]	Final Rule Limits** STEL[c] ppm[b]	Final Rule Limits** STEL[c] mg/m³[b]	Final Rule Limits** CEILING ppm[b]	Final Rule Limits** CEILING mg/m³[b]	Skin Designation
Borates, tetra, sodium salts											
Anhydrous	1330-43-4	–	–	–	–	10	–	–	–	–	–
Decahydrate	1303-96-4	–	–	–	–	10	–	–	–	–	–
Pentahydrate	12179-04-3	–	–	–	–	10	–	–	–	–	–
Boron oxide	1303-86-2										
Total dust		–	15	–	–	10	–	–	–	–	–
Respirable fraction		–	5	–	–	5	–	–	–	–	–
Boron tribromide	10294-33-4	–	–	–	–	–	–	–	1	10	–
Boron trifluoride	7637-07-2	(C)1	(C)3	–	–	–	–	–	1	3	–
Bromacil	314-40-9	–	–	–	1	10	–	–	–	–	–
Bromine	7726-95-6	0.1	0.7	–	0.1	0.7	0.3	2	–	–	–
Bromine pentafluoride	7789-30-2	–	–	–	0.1	0.7	–	–	–	–	–
Bromoform	75-25-2	0.5	5	X	0.5	5	–	–	–	–	X
Butadiene (1,3-Butadiene)	106-99-0	1000	2200	–		In process of 6(b) rulemaking					
Butane	106-97-8	–	–	–	800	1900	–	–	–	–	–
Butanethiol; see Butyl mercaptan											
2-Butanone (Methyl ethyl ketone)	78-93-3	200	590	–	200	590	300	885	–	–	–
2-Butoxyethanol	111-76-2	50	240	X	25	120	–	–	–	–	X
n-Butyl acetate	123-86-4	150	710	–	150	710	200	950	–	–	–
sec-Butyl acetate	105-46-4	200	950	–	200	950	–	–	–	–	–
tert-Butyl acetate	540-88-5	200	950	–	200	950	–	–	–	–	–
Butyl acrylate	141-32-2	–	–	–	10	55	–	–	–	–	–
n-Butyl alcohol	71-36-3	100	300	–	–	–	–	–	50	150	X
sec-Butyl alcohol	78-92-2	150	450	–	100	305	–	–	–	–	–
tert-Butyl alcohol	75-65-0	100	300	–	100	300	150	450	–	–	–

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TABLE Z-1-A. Limits for Air Contaminants

Substance	CAS No.	Transitional Limits PEL[a] ppm	Transitional Limits PEL[a] mg/m³[b]	Skin Designation	Final Rule Limits[**] TWA ppm	TWA mg/m³[b]	STEL[c] ppm	STEL mg/m³[b]	CEILING ppm	CEILING mg/m³[b]	Skin Designation
Carbaryl (Sevin®)	63-25-2	-	5	-	-	5	-	-	-	-	-
Carbofuran (Furadan®)	1563-66-2	-	-	-	-	0.1	-	-	-	-	-
Carbon black	1333-86-4	-	3.5	-	-	3.5	-	-	-	-	-
Carbon dioxide	124-38-9	5000	9000	-	10,000	18,000	30,000	54,000	-	-	-
Carbon disulfide	75-15-0		See Table Z-2		4	12	12	36	-	-	X
Carbon monoxide	630-08-0	50	55	-	35	40	-	-	200	229	-
Carbon tetrabromide	558-13-4	-	-	-	0.1	1.4	0.3	4	-	-	-
Carbon tetrachloride	56-23-5		See Table Z-2		2	12.6	-	-	-	-	-
Carbonyl fluoride	353-50-4	-	-	-	2	5	5	15	-	-	-
Catechol (Pyrocatechol)	120-80-9	-	-	-	5	20	-	-	-	-	X
Cellulose	9004-34-6										
Total dust		-	15	-	-	15	-	-	-	-	-
Respirable fraction		-	5	-	-	5	-	-	-	-	-
Cesium hydroxide	21351-79-1	-	-	-	-	2	-	-	-	-	-
Chlordane	57-74-9	-	0.5	X	-	0.5	-	-	-	-	X
Chlorinated camphene	8001-35-2	-	0.5	X	-	0.5	-	1	-	-	X
Chlorinated diphenyl oxide	55720-99-5	-	0.5	-	-	0.5	-	-	-	-	-
Chlorine	7782-50-5	(C)1	(C)3	-	0.5	1.5	1	3	-	-	-
Chlorine dioxide	10049-04-4	0.1	0.3	-	0.1	0.3	0.3	0.9	-	-	-
Chlorine trifluoride	7790-91-2	(C)0.1	(C)0.4	-	-	-	-	-	0.1	0.4	-
Chloroacetaldehyde	107-20-0	(C)1	(C)3	-	-	-	-	-	1	3	-
α-Chloroacetophenone (Phenacyl chloride)	532-27-4	0.05	0.3	-	0.05	0.3	-	-	-	-	-
Chloroacetyl chloride	79-04-9	-	-	-	0.05	0.2	-	-	-	-	-
Chlorobenzene	108-90-7	75	350	-	75	350	-	-	-	-	-

TABLE Z-1-A. Limits For Air Contaminants

Substance	CAS No.	Transitional Limits PEL[a] ppm	Transitional Limits PEL[a] mg/m³[b]	Skin Designation	Final Rule Limits[**] TWA ppm	TWA mg/m³[b]	STEL[c] ppm	STEL mg/m³[b]	CEILING ppm	CEILING mg/m³[b]	Skin Designation
o-Chlorobenzylidene malononitrile	2698-41-1	0.05	0.4	-	-	-	-	-	0.05	0.4	X
Chlorobromomethane	74-97-5	200	1050	-	200	1050	-	-	-	-	-
2-Chloro-1,3-butadiene; see b-Chloroprene											
Chlorodifluoromethane	75-45-6	-	-	-	1000	3500	-	-	-	-	-
Chlorodiphenyl (42% Chlorine) (PCB)	53469-21-9	-	1	X	-	1	-	-	-	-	X
Chlorodiphenyl (54% Chlorine) (PCB)	11097-69-1	-	0.5	X	-	0.5	-	-	-	-	X
1-Chloro,2,3-epoxypropane; see Epichlorohydrin											
2-Chloroethanol; see Ethylene chlorohydrin											
Chloroethylene; see Vinyl chloride											
Chloroform (Trichloromethane)	67-66-3	(C)50	(C)240	-	2	9.78	-	-	-	-	-
bis(Chloromethyl) ether; see 1910.1008	542-88-1										
Chloromethyl methyl ether; see 1910.1006	107-30-2										
1-Chloro-1-nitropropane	600-25-9	20	100	-	2	10	-	-	-	-	-
Chloropentafluoroethane	76-15-3	-	-	-	1000	6320	-	-	-	-	-
Chloropicrin	76-06-2	0.1	0.7	-	0.1	0.7	-	-	-	-	-
beta-Chloroprene	126-99-8	25	90	X	10	35	-	-	-	-	X
o-Chlorostyrene	2039-87-4	-	-	-	50	285	75	430	-	-	-
o-Chlorotoluene	95-49-8	-	-	-	50	250	-	-	-	-	-

TABLE Z-1-A. Limits for Air Contaminants

Substance	CAS No.	Transitional Limits PEL[a] ppm[b]	Transitional Limits PEL[a] mg/m³[b]	Transitional Limits PEL[a] Skin Designation	Final Rule Limits[aa] TWA ppm[b]	Final Rule Limits[aa] TWA mg/m³[b]	Final Rule Limits[aa] STEL[c] ppm[b]	Final Rule Limits[aa] STEL[c] mg/m³[b]	Final Rule Limits[aa] CEILING ppm[b]	Final Rule Limits[aa] CEILING mg/m³[b]	Final Rule Limits[aa] Skin Designation
2-Chloro-6-trichloromethyl pyridine	1929-82-4										
Total dust		-	15	-	-	15	-	-	-	-	-
Respirable fraction		-	5	-	-	5	-	-	-	-	-
Chlorpyrifos	2921-88-2	-	-	-	-	0.2	-	-	-	-	X
Chromic acid and chromates (as CrO_3)	Varies with compound		See Table Z-2		-	-	-	-	0.1	-	-
Chromium (II) compounds (as Cr)	Varies with compound	-	0.5	-	-	0.5	-	-	-	-	-
Chromium (III) compounds (as Cr)	Varies with compound	-	0.5	-	-	0.5	-	-	-	-	-
Chromium metal (as Cr)	7440-47-3	-	1	-	-	1	-	-	-	-	-
Chrysene; see Coal tar pitch volatiles	218-01-9										
Clopidol	2971-90-6										
Total dust		-	15	-	-	15	-	-	-	-	-
Respirable fraction		-	5	-	-	5	-	-	-	-	-
Coal dust (less than 5% SiO_2), Respirable quartz fraction	—		See Table Z-3			2	-	-	-	-	-
Coal dust (greater than or equal to 5% SiO_2), Respirable quartz fraction	—		See Table Z-3			0.1	-	-	-	-	-
Coal tar pitch volatiles (benzene soluble fraction), anthracene, BaP, phenanthrene, acridine, chrysene, pyrene	8007-45-2	-	0.2	-	-	0.2	-	-	-	-	-
Cobalt metal, dust, and fume (as Co)	7440-48-4	-	0.1	-	-	0.05	-	-	-	-	-

TABLE Z-1-A. Limits for Air Contaminants

Substance	CAS No.	Transitional Limits PEL[a] ppm[b]	Transitional Limits PEL[a] mg/m³[b]	Transitional Limits PEL[a] Skin Designation	Final Rule Limits[aa] TWA ppm[b]	Final Rule Limits[aa] TWA mg/m³[b]	Final Rule Limits[aa] STEL[c] ppm[b]	Final Rule Limits[aa] STEL[c] mg/m³[b]	Final Rule Limits[aa] CEILING ppm[b]	Final Rule Limits[aa] CEILING mg/m³[b]	Final Rule Limits[aa] Skin Designation
Cobalt carbonyl (as Co)	10210-68-1	-	-	-	-	0.1	-	-	-	-	-
Cobalt hydrocarbonyl (as Co)	16842-03-8	-	-	-	-	0.1	-	-	-	-	-
Coke oven emissions; see 1910.1029	—										
Copper	7440-50-8										
Fume (as Cu)		-	0.1	-	-	0.1	-	-	-	-	-
Dusts and mists (as Cu)		-	1	-	-	1	-	-	-	-	-
Cotton dust (raw),	—	1	-		1	-	-	-	-	-	-
This 8-hour TWA applies to respirable dust as measured by a vertical elutriator cotton dust sampler or equivalent instrument. The time-weighted average applies to the cotton waste processing operations of waste recycling (sorting, blending, cleaning, and willowing) and garnetting. See also 1910.1043 for cotton dust limits applicable to other sectors.											
Crag herbicide (Sesone)	136-78-7										
Total dust		-	15	-	-	10	-	-	-	-	-
Respirable fraction		-	5	-	-	5	-	-	-	-	-
Cresol, all isomers	1319-77-3; 95-48-7; 108-39-4; 106-44-5	5	22	X	5	22	-	-	-	-	X
Crotonaldehyde	123-73-9; 4170-30-3	2	6	-	2	6	-	-	-	-	-
Crufomate	299-86-5	-	-	-	-	5	-	-	-	-	-
Cumene	98-82-8	50	245	X	50	245	-	-	-	-	X
Cyanamide	420-04-2	-	-	-	-	2	-	-	-	-	-
Cyanides (as CN)	151-50-8	-	5	-	-	5	-	-	-	-	-
Cyanogen	460-19-5	-	-	-	10	20	-	-	-	-	-
Cyanogen chloride	506-77-4	-	-	-	-	-	-	-	0.3	0.6	-
Cyclohexane	110-82-7	300	1050	-	300	1050	-	-	-	-	-
Cyclohexanol	108-93-0	50	200	-	50	200	-	-	-	-	X

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TABLE Z-1-A. Limits for Air Contaminants

Substance	CAS No.	Transitional Limits PEL[a] ppm	Transitional Limits PEL[a] mg/m³[b]	Skin Designation	Final Rule Limits[20] TWA ppm	TWA mg/m³[b]	STEL[c] ppm	STEL[c] mg/m³[b]	CEILING ppm	CEILING mg/m³[b]	Skin Designation
Cyclohexanone	108-94-1	50	200	-	25	100	-	-	-	-	-
Cyclohexene	110-83-8	300	1015	-	300	1015	-	-	-	-	-
Cyclohexylamine	108-91-8	-	-	-	10	40	-	-	-	-	-
Cyclonite	121-82-4	-	-	-	-	1.5	-	-	-	-	S
Cyclopentadiene	542-92-7	75	200	-	75	200	-	-	-	-	-
Cyclopentane	287-92-3	-	-	-	600	1720	-	-	-	-	-
Cyhexatin	13121-70-5	-	-	-	-	5	-	-	-	-	-
2,4-D (Dichlorophenoxyacetic acid)	94-75-7	-	10	-	-	10	-	-	-	-	-
Decaborane	17702-41-9	0.05	0.3	S	0.05	0.3	0.15	0.9	-	-	S
Demeton (Systox®)	8065-48-3	-	0.1	S	-	0.1	-	-	-	-	S
Dichlorodiphenyltrichloroethane (DDT)	50-29-3	-	1	S	-	1	-	-	-	-	S
Dichlorvos (DDVP)	62-73-7	-	1	S	-	1	-	-	-	-	S
Diacetone alcohol (4-Hydroxy-4-methyl-2-pentanone)	123-42-2	50	240	-	50	240	-	-	-	-	-
1,2-Dichloroethane; see Ethylene dichloride											
Dieldrin	333-41-5	-	-	-	-	0.1	-	-	-	-	S
Diisobutyl ketone	108-83-8	50	290	-	25	150	-	-	-	-	-
Diisopropylamine	108-18-9	5	20	S	5	20	15	60	-	-	S
Dimethoate	60-51-5	-	-	-	-	1	-	-	-	-	S
Dimethoxymethane; see Methylal											
Dimethylacetamide	127-19-5	10	35	S	10	35	-	-	-	-	S
Dimethylamine	124-40-3	10	18	-	10	18	-	-	-	-	-
Dimethylaminobenzene; see Xylidine											
Dimethylaminoethanol	108-01-0	10	35	S	10	35	-	-	-	-	S
Dimethylaminopropionitrile	1738-25-6	-	-	-	-	1	-	-	-	-	S
Dimethylaniline (N,N-Dimethylaniline)	121-69-7	5	25	S	5	25	10	50	-	-	S
Dimethylbenzene; see Xylene											
Dimethylbenzidine	119-93-7	-	-	-	-	0.02	-	-	-	-	S
Dimethylcarbamoyl chloride	79-44-7	-	-	-	-	0.06	-	-	-	-	S
Dimethylformamide	68-12-2	10	30	S	10	30	-	-	-	-	S
1,1-Dimethylhydrazine	57-14-7	0.5	1	S	0.5	1	-	-	-	-	S
Dimethylphthalate	131-11-3	-	5	-	-	5	-	-	-	-	-
Dimethyl sulfate	77-78-1	1	5	S	0.1	0.5	-	-	-	-	S
Dinitrobenzene (all isomers)	25154-54-5	1	6	S	1	6	-	-	-	-	S
Dinitro-o-cresol	534-52-1	-	0.2	S	-	0.2	-	-	-	-	S
Dinitrotoluene	25321-14-6	1.5	5	S	0.2	1.5	-	-	-	-	S
Dioxane (Diethylene dioxide)	123-91-1	100	360	S	25	90	-	-	-	-	S
Dioxolane	646-06-0	200	725	-	20	75	-	-	-	-	-
Diphenyl	92-52-4	0.2	1.5	-	0.2	1.5	-	-	-	-	-
Diphenylamine	122-39-4	-	10	-	-	10	-	-	-	-	-
Diphenylmethane diisocyanate; see Methylene bisphenyl isocyanate											
Dipropylene glycol methyl ether	34590-94-8	100	600	S	100	600	150	900	-	-	S
Dipropyl ketone	123-19-3	50	235	-	50	235	-	-	-	-	-
Diquat	85-00-7	-	0.5	-	-	0.5	-	-	-	-	-
Disulfiram	97-77-8	-	2	-	-	2	-	-	-	-	-
Disulfoton	298-04-4	-	0.1	S	-	0.1	-	-	-	-	S
2,6-Di-tert-butyl-p-cresol	128-37-0	-	10	-	-	10	-	-	-	-	-
Divinyl benzene	1321-74-0	10	50	-	10	50	-	-	-	-	-
Dodecyl mercaptan	112-55-0	-	-	-	-	-	-	-	0.1	0.8	-
Emery	12415-34-8	-	10	-	-	10	-	-	-	-	-
Endosulfan	115-29-7	-	0.1	S	-	0.1	-	-	-	-	S
Endrin	72-20-8	-	0.1	S	-	0.1	-	-	-	-	S
Epichlorohydrin	106-89-8	5	19	S	2	8	-	-	-	-	S
EPN	2104-64-5	-	0.5	S	-	0.5	-	-	-	-	S
1,2-Epoxybutane	106-88-7	20	59	-	20	59	-	-	-	-	-
2,3-Epoxy-1-propanol; see Glycidol											
Ethanethiol; see Ethyl mercaptan											
Ethanolamine	141-43-5	3	6	-	3	6	6	15	-	-	-
2-Ethoxyethanol	110-80-5	200	740	S	5	18	-	-	-	-	S
2-Ethoxyethyl acetate	111-15-9	100	540	S	5	27	-	-	-	-	S
Ethyl acetate	141-78-6	400	1400	-	400	1400	-	-	-	-	-
Ethyl acrylate	140-88-5	25	100	S	5	20	15	60	-	-	S
Ethyl alcohol (Ethanol)	64-17-5	1000	1900	-	1000	1900	-	-	-	-	-
Ethylamine	75-04-7	25	45	-	10	18	-	-	-	-	-
Ethyl amyl ketone (5-Methyl-3-heptanone)	541-85-5	25	130	-	25	130	-	-	-	-	-
Ethyl benzene	100-41-4	100	435	-	100	435	125	545	-	-	-
Ethyl bromide	74-96-4	200	890	-	200	890	-	-	-	-	-
Ethyl butyl ketone (3-Heptanone)	106-35-4	50	230	-	50	230	-	-	-	-	-
Ethyl chloride	75-00-3	1000	2600	-	1000	2600	-	-	-	-	-
Ethyl ether	60-29-7	400	1200	-	400	1200	500	1500	-	-	-
Ethyl formate	109-94-4	100	300	-	100	300	150	450	-	-	-
Ethylidene chloride; see 1,1-Dichloroethane											
Ethyl mercaptan	75-08-1	10	25	-	10	25	-	-	-	-	-
Ethyl silicate	78-10-4	100	850	-	10	85	-	-	-	-	-
Fenamiphos	22224-92-6	-	-	-	-	0.1	-	-	-	-	S
Fensulfothion	115-90-2	-	-	-	-	0.1	-	-	-	-	S
Fenthion	55-38-9	-	-	-	-	0.2	-	-	-	-	S
Ferbam	14484-64-1	-	15	-	-	15	-	-	-	-	-
Ferrocene	102-54-5	-	-	-	-	10	-	-	-	-	-
Fluoride as dust	16984-48-8	-	2.5	-	-	2.5	-	-	-	-	-
Fluorine	7782-41-4	0.1	0.2	-	0.1	0.2	-	-	-	-	-
Fluorotrichloromethane; see Trichlorofluoromethane											
Formaldehyde	50-00-0	3	4	-	1	1.5	2	3	-	-	-
Formamide	75-12-7	20	30	-	20	30	30	45	-	-	-
Formic acid	64-18-6	5	9	-	5	9	-	-	-	-	-
Furfural	98-01-1	5	20	S	2	8	-	-	-	-	S
Furfuryl alcohol	98-00-0	50	200	-	50	200	75	300	-	-	-
Gasoline	8006-61-9	300	900	-	300	900	500	1500	-	-	-
Glutaraldehyde	111-30-8	-	-	-	-	-	-	-	0.2	0.8	-
Glycerin (mist)	56-81-5	-	10	-	-	10	-	-	-	-	-
Glycidol (2,3-Epoxy-1-propanol)	556-52-5	50	150	-	25	75	-	-	-	-	-
Glycol monoethyl ether; see 2-Ethoxyethanol											
Graphite (natural)	7782-42-5	-	15	-	-	15	-	-	-	-	-
Grain dust (oat, wheat, barley)		-	10	-	-	10	-	-	-	-	-
Guthion; see Azinphos methyl											
Gypsum	13397-24-5	-	15	-	-	15	-	-	-	-	-
Hafnium	7440-58-6	-	0.5	-	-	0.5	-	-	-	-	-
Heptachlor	76-44-8	-	0.5	S	-	0.5	-	-	-	-	S
Heptane (n-Heptane)	142-82-5	400	1600	-	400	1600	500	2000	-	-	-
2-Heptanone (Methyl n-amyl ketone)	110-43-0	100	465	-	50	233	-	-	-	-	-
3-Heptanone; see Ethyl butyl ketone											
Hexachloroacetone	116-16-5	10	100	-	1	10	-	-	-	-	-
Hexachlorobutadiene	87-68-3	0.02	0.24	S	0.02	0.24	-	-	-	-	S
Hexachlorocyclohexane	608-73-1	-	0.5	S	-	0.5	-	-	-	-	S
Hexachlorocyclopentadiene	77-47-4	0.01	0.1	-	0.01	0.1	-	-	-	-	-
Hexachloroethane	67-72-1	1	10	S	1	10	-	-	-	-	S
Hexachloronaphthalene	1335-87-1	-	0.2	S	-	0.2	-	-	-	-	S
Hexachlorophene	70-30-4	-	2	-	-	2	-	-	-	-	-
Hexachloropropene	1888-71-7	0.02	0.21	-	0.02	0.21	-	-	-	-	-
Hexafluoroacetone	684-16-2	0.1	0.7	S	0.1	0.7	-	-	-	-	S
Hexahydrobenzene; see Cyclohexane											
Hexahydrophenol; see Cyclohexanol											
Hexahydrotoluene; see Methylcyclohexane											
Hexamethylene diisocyanate	822-06-0	-	-	-	-	-	-	-	0.02	0.14	-
Hexamethylene glycol	107-41-5	-	-	-	-	-	-	-	25	125	-
Hexamethylene-1,6-dibromide	629-03-8	-	-	-	-	-	-	-	0.1	1	-
Hexamethylphosphoramide	680-31-9	-	-	-	-	0.04	-	-	-	-	S
Hexane (n-Hexane)	110-54-3	500	1800	-	50	180	-	-	-	-	-
2-Hexanone (Methyl n-butyl ketone)	591-78-6	100	410	S	5	20	-	-	-	-	S
Hexone (Methyl isobutyl ketone)	108-10-1	100	410	-	50	205	75	300	-	-	-
sec-Hexyl acetate	108-84-9	50	300	-	50	300	-	-	-	-	-
Hydrazine	302-01-2	1	1.3	S	0.1	0.13	-	-	-	-	S
Hydrogen	1333-74-0	-	-	-	-	-	-	-	-	-	-
Hydrogen bromide	10035-10-6	-	-	-	-	-	-	-	3	10	-
Hydrogen chloride	7647-01-0	-	-	-	-	-	-	-	5	7	-
Hydrogen cyanide	74-90-8	10	11	S	4.7	5	-	-	-	-	S
Hydrogen fluoride	7664-39-3	3	2.5	-	3	2.5	-	-	-	-	-
Hydrogen peroxide	7722-84-1	1	1.4	-	1	1.4	-	-	-	-	-
Hydrogen selenide	7783-07-5	0.05	0.2	-	0.05	0.2	-	-	-	-	-
Hydrogen sulfide	7783-06-4	10	14	-	10	14	15	21	-	-	-
Hydroquinone	123-31-9	-	2	-	-	2	-	-	-	-	-
2-Hydroxyethyl acrylate	818-61-1	0.5	2.4	S	0.5	2.4	-	-	-	-	S
Indene	95-13-6	10	45	-	10	45	-	-	-	-	-
Indium and compounds, as In	7440-74-6	-	0.1	-	-	0.1	-	-	-	-	-
Iodine	7553-56-2	0.1	1	-	0.1	1	-	-	-	-	-
Iodoform	75-47-8	10	160	-	0.6	10	-	-	-	-	-
Iron oxide fume	1309-37-1	-	10	-	-	10	-	-	-	-	-
Iron pentacarbonyl	13463-40-6	0.1	0.8	-	0.1	0.8	-	-	-	-	-
Iron salts, soluble, as Fe		-	1	-	-	1	-	-	-	-	-
Isoamyl acetate	123-92-2	100	525	-	100	525	150	787	-	-	-
Isoamyl alcohol (Isopentyl alcohol)	123-51-3	100	360	-	100	360	125	450	-	-	-
Isobutyl acetate	110-19-0	150	700	-	150	700	-	-	-	-	-
Isobutyl alcohol	78-83-1	100	300	-	50	150	-	-	-	-	-
Isobutyl nitrite	542-56-3	25	100	-	1	4	-	-	-	-	-
Isooctyl alcohol	26952-21-6	50	270	-	50	270	-	-	-	-	-
Isophorone	78-59-1	25	140	-	4	23	-	-	-	-	-
Isopentyl alcohol; see Isoamyl alcohol											
Isophorone diisocyanate	4098-71-9	-	-	-	-	-	-	-	0.02	0.18	-
Isopropyl acetate	108-21-4	250	950	-	250	950	310	1185	-	-	-
Isopropyl alcohol	67-63-0	400	980	-	400	980	500	1225	-	-	-
Isopropylamine	75-31-0	5	12	-	5	12	10	24	-	-	-
Isopropyl ether	108-20-3	250	1050	-	250	1050	310	1300	-	-	-
Isopropyl glycidyl ether (IGE)	4016-14-2	50	240	-	50	240	-	-	-	-	-
Kaolin	1332-58-7	-	10	-	-	10	-	-	-	-	-
Kerosene	8008-20-6	100	525	-	100	525	-	-	-	-	-
Ketene	463-51-4	0.5	0.9	-	0.5	0.9	1.5	2.5	-	-	-
Lead, inorganic fume and dust, as Pb	7439-92-1	-	0.05	-	-	0.05	-	-	-	-	-
Limestone	1317-65-3	-	15	-	-	15	-	-	-	-	-
Lindane	58-89-9	-	0.5	S	-	0.5	-	-	-	-	S
Lithium hydride	7580-67-8	-	0.025	-	-	0.025	-	-	-	-	-
Magnesite	546-93-0	-	15	-	-	15	-	-	-	-	-
Magnesium oxide fume	1309-48-4	-	15	-	-	10	-	-	-	-	-
Malathion	121-75-5	-	10	-	-	10	-	-	-	-	-
Maleic anhydride	108-31-6	0.25	1	-	0.25	1	-	-	-	-	-
Manganese and compounds, as Mn	7439-96-5	-	5	-	-	1	-	3	-	-	-
Manganese cyclopentadienyl tricarbonyl, as Mn	12079-65-1	-	0.1	S	-	0.1	-	-	-	-	S
Marble	1317-65-3	-	15	-	-	15	-	-	-	-	-
Mercaptoacetic acid	68-11-1	1	4	S	1	4	-	-	-	-	S
Mercaptobenzothiazole	149-30-4	-	-	-	-	-	-	-	0.2	1.3	-
Mercaptodimethur	2032-65-7	-	1	S	-	1	-	-	-	-	S
Mercaptopropionic acid	79-42-5	10	44	S	10	44	-	-	-	-	S
Mercaptopropionic acid, 2-Methoxybutyl ester	4254-57-9	25	165	S	25	165	-	-	-	-	S
Mercaptopropionic acid, 2-Methoxyethyl ester	2885-57-9	25	135	S	25	135	-	-	-	-	S
Mercaptopropionic acid, 2-Methoxypropyl ester	4254-58-0	25	165	S	25	165	-	-	-	-	S
Mercaptopropionic acid, 2-Octyl ester	7659-86-1	25	220	S	25	220	-	-	-	-	S
Mercaptopropionic acid, Butyl ester	7719-44-2	25	165	S	25	165	-	-	-	-	S
Mercaptopropionic acid, Isooctyl ester	30374-01-4	25	220	S	25	220	-	-	-	-	S
Mercaptopropionic acid, Methyl ester	2935-90-2	25	135	S	25	135	-	-	-	-	S
Mercaptopropionic acid, Octyl ester	7659-86-1	25	220	S	25	220	-	-	-	-	S
Mercaptopropionic acid, Tridecyl ester	30374-03-6	25	275	S	25	275	-	-	-	-	S
Mercaptosuccinic acid	70-49-5	1	6	S	1	6	-	-	-	-	S
Mercury, alkyl compounds, as Hg		-	0.01	S	-	0.01	-	-	-	-	S
Mercury, aryl compounds, as Hg		-	0.1	S	-	0.1	-	-	-	-	S
Mercury, inorganic, as Hg	7439-97-6	-	0.1	S	-	0.1	-	-	-	-	S
Mesityl oxide	141-79-7	25	100	-	15	60	-	-	-	-	-
Methacrylic acid	79-41-4	20	70	-	20	70	-	-	-	-	-
Methacrylonitrile	126-98-7	1	3	S	1	3	-	-	-	-	S
Methacrylonitrile, 2-Methyl-5-ethyl-pyridine	104-90-5	-	-	-	-	-	-	-	0.05	0.3	-
Methacrylonitrile, Methyl methacrylate monomer	80-62-6	100	410	-	50	205	125	510	-	-	-
Methacrylonitrile, Methyl styrene (all isomers)	25013-15-4	100	480	-	50	240	100	480	-	-	-
Methacrylonitrile, Methylal	109-87-5	1000	3100	-	1000	3100	-	-	-	-	-
Methacrylonitrile, Methyl alcohol (Methanol)	67-56-1	200	260	S	200	260	250	325	-	-	S
Methacrylonitrile, Methyl amyl alcohol; see Methyl isobutyl carbinol											
Methacrylonitrile, Methyl n-amyl ketone; see 2-Heptanone											
Methacrylonitrile, Methyl bromide	74-83-9	20	80	S	5	20	-	-	-	-	S
Methacrylonitrile, Methyl butyl ketone; see 2-Hexanone											
Methacrylonitrile, Methyl cellosolve; see 2-Methoxyethanol											
Methacrylonitrile, Methyl cellosolve acetate; see 2-Methoxyethyl acetate											
Methacrylonitrile, Methyl chloride	74-87-3	100	210	-	50	100	100	210	-	-	-
Methacrylonitrile, Methyl chloroform; see 1,1,1-Trichloroethane											
Methacrylonitrile, Methyl cyclohexane	108-87-2	500	2000	-	400	1600	-	-	-	-	-
Methacrylonitrile, Methyl cyclohexanol	25639-42-3	100	470	-	100	470	-	-	-	-	-
Methacrylonitrile, Methyl cyclohexanone	583-60-8	100	460	S	50	230	-	-	-	-	S
Methacrylonitrile, Methyl demeton	8022-00-2	-	0.5	S	-	0.5	-	-	-	-	S
Methacrylonitrile, Methyl ethyl ketone (MEK)	78-93-3	200	590	-	200	590	300	885	-	-	-
Methacrylonitrile, Methyl ethyl ketone peroxide	1338-23-4	-	-	-	-	-	-	-	0.2	1.5	-
Methacrylonitrile, Methyl formate	107-31-3	100	250	-	100	250	150	375	-	-	-
Methacrylonitrile, Methyl hydrazine	60-34-4	0.2	0.35	S	0.2	0.35	-	-	-	-	S
Methacrylonitrile, Methyl iodide	74-88-4	5	28	S	2	10	-	-	-	-	S
Methacrylonitrile, Methyl isoamyl ketone	110-12-3	100	475	-	50	240	-	-	-	-	-
Methacrylonitrile, Methyl isobutyl carbinol	108-11-2	25	100	S	25	100	40	165	-	-	S
Methacrylonitrile, Methyl isobutyl ketone; see Hexone											
Methacrylonitrile, Methyl isocyanate	624-83-9	0.02	0.05	S	0.02	0.05	-	-	-	-	S
Methacrylonitrile, Methyl isopropyl ketone	563-80-4	200	705	-	200	705	-	-	-	-	-
Methacrylonitrile, Methyl mercaptan	74-93-1	10	20	-	0.5	1	-	-	-	-	-
Methacrylonitrile, Methyl methacrylate monomer; see Methacrylonitrile, Methyl											
Methacrylonitrile, Methyl n-amyl ketone; see 2-Heptanone											
Methacrylonitrile, Methyl n-butyl ketone; see 2-Hexanone											
Methacrylonitrile, Methyl n-propyl ketone; see 2-Pentanone											
Methacrylonitrile, Methyl propyl ketone; see 2-Pentanone											
Methacrylonitrile, Methyl silicate	681-84-5	5	30	-	5	30	-	-	-	-	-
Methacrylonitrile, Methyl styrene (all isomers); see Methacrylonitrile, Methyl											
Methacrylonitrile, Methylal; see Methacrylonitrile, Methyl											
Methacrylonitrile, Methyl alcohol; see Methacrylonitrile, Methyl											
Methacrylonitrile, Methyl amyl alcohol; see Methacrylonitrile, Methyl											
Methacrylonitrile, Methyl n-amyl ketone; see 2-Heptanone											
Methacrylonitrile, Methyl bromide; see Methacrylonitrile, Methyl											
Methacrylonitrile, Methyl butyl ketone; see 2-Hexanone											
Methacrylonitrile, Methyl cellosolve; see 2-Methoxyethanol											
Methacrylonitrile, Methyl cellosolve acetate; see 2-Methoxyethyl acetate											
Methacrylonitrile, Methyl chloride; see Methacrylonitrile, Methyl											
Methacrylonitrile, Methyl chloroform; see 1,1,1-Trichloroethane											
Methacrylonitrile, Methyl cyclohexane; see Methacrylonitrile, Methyl											
Methacrylonitrile, Methyl cyclohexanol; see Methacrylonitrile, Methyl											
Methacrylonitrile, Methyl cyclohexanone; see Methacrylonitrile, Methyl											
Methacrylonitrile, Methyl demeton; see Methacrylonitrile, Methyl											
Methacrylonitrile, Methyl ethyl ketone (MEK); see Methacrylonitrile, Methyl											
Methacrylonitrile, Methyl ethyl ketone peroxide; see Methacrylonitrile, Methyl											
Methacrylonitrile, Methyl formate; see Methacrylonitrile, Methyl											
Methacrylonitrile, Methyl hydrazine; see Methacrylonitrile, Methyl											
Methacrylonitrile, Methyl iodide; see Methacrylonitrile, Methyl											
Methacrylonitrile, Methyl isoamyl ketone; see Methacrylonitrile, Methyl											
Methacrylonitrile, Methyl isobutyl carbinol; see Methacrylonitrile, Methyl											
Methacrylonitrile, Methyl isobutyl ketone; see Hexone											
Methacrylonitrile, Methyl isocyanate; see Methacrylonitrile, Methyl											
Methacrylonitrile, Methyl isopropyl ketone; see Methacrylonitrile, Methyl											
Methacrylonitrile, Methyl mercaptan; see Methacrylonitrile, Methyl											
Methacrylonitrile, Methyl methacrylate monomer; see Methacrylonitrile, Methyl											
Methacrylonitrile, Methyl n-amyl ketone; see 2-Heptanone											
Methacrylonitrile, Methyl n-butyl ketone; see 2-Hexanone											
Methacrylonitrile, Methyl n-propyl ketone; see 2-Pentanone											
Methacrylonitrile, Methyl propyl ketone; see 2-Pentanone											
Methacrylonitrile, Methyl silicate; see Methacrylonitrile, Methyl										

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TABLE Z-1-A. Limits for Air Contaminants

Substance	CAS No.	Transitional Limits PEL[a] ppm[b]	Transitional Limits PEL[a] mg/m³[b]	Skin Designation	Final Rule Limits[as] TWA ppm[b]	Final Rule Limits[as] TWA mg/m³[b]	Final Rule Limits[as] STEL[c] ppm[b]	Final Rule Limits[as] STEL[c] mg/m³[b]	Final Rule Limits[as] CEILING ppm[b]	Final Rule Limits[as] CEILING mg/m³[b]	Final Rule Limits[as] Skin Designation
Dicyclopentadienyl iron total dust	102-54-5	-	15	-	-	10	-	-	-	-	-
Dicyclopentadienyl iron respirable fraction		-	5	-	-	5	-	-	-	-	-
Dieldrin	60-57-1	-	0.25	X	-	0.25	-	-	-	-	X
Diethanolamine	111-42-2	-	-	-	3	15	-	-	-	-	-
Diethylamine	109-89-7	25	75	-	10	30	25	75	-	-	-
2-Diethylaminoethanol	100-37-8	10	50	X	10	50	-	-	-	-	X
Diethylene triamine	111-40-0	-	-	-	1	4	-	-	-	-	-
Diethyl ether; see Ethyl ether											
Diethyl ketone	96-22-0	-	-	-	200	705	-	-	-	-	-
Diethyl phthalate	84-66-2	-	-	-	-	5	-	-	-	-	-
Difluorodibromomethane	75-61-6	100	860	-	100	860	-	-	-	-	-
Diglycidyl ether (DGE)	2238-07-5	(C)0.5	(C)2.8	-	0.1	0.5	-	-	-	-	-
Dihydroxybenzene; see Hydroquinone											
Diisobutyl ketone	108-83-8	50	290	-	25	150	-	-	-	-	-
Diisopropylamine	108-18-9	5	20	X	5	20	-	-	-	-	X
4-Dimethylaminoazobenzene; see 1910.1015	60-11-7										
Dimethoxymethane; see Methylal											
Dimethyl acetamide	127-19-5	10	35	X	10	35	-	-	-	-	X
Dimethylamine	124-40-3	10	10	-	10	10	-	-	-	-	-
Dimethylaminobenzene; see Xylidine											

TABLE Z-1-A. Limits For Air Contaminants

Substance	CAS No.	Transitional Limits PEL[a] ppm[b]	Transitional Limits PEL[a] mg/m³[b]	Skin Designation	Final Rule Limits[as] TWA ppm[b]	Final Rule Limits[as] TWA mg/m³[b]	Final Rule Limits[as] STEL[c] ppm[b]	Final Rule Limits[as] STEL[c] mg/m³[b]	Final Rule Limits[as] CEILING ppm[b]	Final Rule Limits[as] CEILING mg/m³[b]	Final Rule Limits[as] Skin Designation
Dimethylaniline (N-Dimethyl-aniline)	121-69-7	5	25	X	5	25	10	50	-	-	X
Dimethylbenzene; see Xylene											
Dimethyl-1,2-dibromo-2,2-dichloroethyl phosphate	300-76-5	-	3	-	-	3	-	-	-	-	X
Dimethylformamide	68-12-2	10	30	X	10	30	-	-	-	-	X
2,6-Dimethyl-4-heptanone; see Diisobutyl ketone											
1,1-Dimethylhydrazine	57-14-7	0.5	1	X	0.5	1	-	-	-	-	X
Dimethylphthalate	131-11-3	-	5	-	-	5	-	-	-	-	-
Dimethyl sulfate	77-78-1	1	5	X	0.1	0.5	-	-	-	-	X
Dinitolmide (3,5-Dinitro-o-toluamide)	148-01-6	-	-	-	-	5	-	-	-	-	-
Dinitrobenzene (all isomers)	528-29-0 99-65-0 100-25-4	-	1	X	-	1	-	-	-	-	X
Dinitro-o-cresol	534-52-1	-	0.2	X	-	0.2	-	-	-	-	X
Dinitrotoluene	121-14-2	-	1.5	X	-	1.5	-	-	-	-	X
Dioxane (Diethylene dioxide)	123-91-1	100	360	X	25	90	-	-	-	-	X
Dioxathion (Delnav)	78-34-2	-	-	-	-	0.2	-	-	-	-	X
Diphenyl (Biphenyl)	92-52-4	0.2	1	-	0.2	1	-	-	-	-	-
Diphenylamine	122-39-4	-	-	-	-	10	-	-	-	-	-
Diphenylmethane diisocyanate; see Methylene bisphenyl isocyanate											
Dipropylene glycol methyl ether	34590-94-8	600	600	X	100	600	150	900	-	-	-

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TABLE Z-1-A. Limits for Air Contaminants

Substance	CAS No.	Transitional Limits PEL[a] ppm	Transitional Limits PEL[a] mg/m³[b]	Transitional Limits Skin Designation	Final Rule Limits[**] TWA ppm	TWA mg/m³[b]	STEL[c] ppm	STEL[c] mg/m³[b]	CEILING ppm	CEILING mg/m³[b]	Skin Designation
Dipropyl ketone	123-19-3	-	-	-	50	235	-	-	-	-	-
Diquat	85-00-7	-	-	-	-	0.5	-	-	-	-	-
Di-sec octyl phthalate (Di-2-ethylhexyl-phthalate)	117-81-7	-	5	-	-	5	-	10	-	-	-
Disulfiram	97-77-8	-	-	-	-	2	-	-	-	-	-
Disulfoton	298-04-4	-	-	-	-	0.1	-	-	-	-	X
2,6-Di-tert-butyl-p-cresol	128-37-0	-	-	-	-	10	-	-	-	-	-
Diuron	330-54-1	-	-	-	-	10	-	-	-	-	-
Divinyl benzene	108-57-6	-	-	-	10	50	-	-	-	-	-
Emery Total dust Respirable fraction	112-62-9	- -	15 5	-	- -	10 5	- -	- -	- -	- -	-
Endosulfan	115-29-7	-	-	-	-	0.1	-	-	-	-	X
Endrin	72-20-8	-	0.1	X	-	0.1	-	-	-	-	X
Epichlorohydrin	106-89-8	5	19	X	2	8	-	-	-	-	X
EPN	2104-64-5	-	0.5	X	-	0.5	-	-	-	-	X
1,2-Epoxypropane; see Propylene oxide											
2,3-Epoxy-1-propanol; see Glycidol											
Ethanethiol; see Ethyl mercaptan											
Ethanolamine	141-43-5	3	6	-	3	8	6	15	-	-	-
Ethion	563-12-2	-	-	-	-	0.4	-	-	-	-	X
2-Ethoxyethanol	110-80-5	200	740	X	In process of 6(b) rulemaking						
2-Ethoxyethyl acetate (Cellosolve acetate)	111-15-9	100	540	X	In process of 6(b) rulemaking						

TABLE Z-1-A. Limits for Air Contaminants

Substance	CAS No.	Transitional Limits PEL[a] ppm	Transitional Limits PEL[a] mg/m³[b]	Transitional Limits Skin Designation	Final Rule Limits[**] TWA ppm	TWA mg/m³[b]	STEL[c] ppm	STEL[c] mg/m³[b]	CEILING ppm	CEILING mg/m³[b]	Skin Designation
Ethyl acetate	141-78-6	400	1400	-	400	1400	-	-	-	-	-
Ethyl acrylate	140-88-5	25	100	X	5	20	25	100	-	-	X
Ethyl alcohol (Ethanol)	64-17-5	1000	1900	-	1000	1900	-	-	-	-	-
Ethylamine	75-04-7	10	18	-	10	18	-	-	-	-	-
Ethyl amyl ketone (5-Methyl-3-heptanone)	541-85-5	25	130	-	25	130	-	-	-	-	-
Ethyl benzene	100-41-4	100	435	-	100	435	125	545	-	-	-
Ethyl bromide	74-96-4	200	890	-	200	890	250	1110	-	-	-
Ethyl butyl ketone (3-Heptanone)	106-35-4	50	230	-	50	230	-	-	-	-	-
Ethyl chloride	75-00-3	1000	2600	-	1000	2600	-	-	-	-	-
Ethyl ether	60-29-7	400	1200	-	400	1200	500	1500	-	-	-
Ethyl formate	109-94-4	100	300	-	100	300	-	-	-	-	-
Ethyl mercaptan	75-08-1	(C)10	(C)25	-	0.5	1	-	-	-	-	-
Ethyl silicate	78-10-4	100	850	-	10	85	-	-	-	-	-
Ethylene chlorohydrin	107-07-3	5	16	X	-	-	-	-	1	3	X
Ethylenediamine	107-15-3	10	25	-	10	25	-	-	-	-	-
Ethylene dibromide	106-93-4	See Table Z-2			In process of 6(b) rulemaking						
Ethylene dichloride	107-06-2	See Table Z-2			1	4	2	8	-	-	-
Ethylene glycol	107-21-1	-	-	-	-	-	-	-	50	125	-
Ethylene glycol dinitrate	628-96-6	(C)0.2	(C)1	X	-	-	-	0.1	-	-	X
Ethylene glycol methyl acetate; see Methyl cellosolve acetate											
Ethylenimine; see 1910.1012	151-56-4										

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TABLE Z-1-A. Limits For Air Contaminants

Substance	CAS No.	Transitional Limits PEL[a] ppm[b]	Transitional Limits PEL[a] mg/m³[b]	Transitional Limits Skin Designation	Final Rule Limits[20] TWA ppm[b]	Final Rule Limits[20] TWA mg/m³[b]	Final Rule Limits[20] STEL[c] ppm[b]	Final Rule Limits[20] STEL[c] mg/m³[b]	Final Rule Limits[20] CEILING ppm[b]	Final Rule Limits[20] CEILING mg/m³[b]	Final Rule Limits[20] Skin Designation
Ethylene oxide; see 1910.1047	75-21-8	See 1910.1047(a)(2) for operations excluded									
Ethylidene chloride; see 1,1-Dichloroethane											
Ethylidene norbornene	16219-75-3	-	-	-	-	-	-	-	5	25	-
N-Ethylmorpholine	100-74-3	20	94	X	5	23	-	-	-	-	X
Fenamiphos	22224-92-6	-	-	-	-	0.1	-	-	-	-	X
Fenitrothion (Sumithion)	122-14-5	-	-	-	-	0.2	-	-	-	-	-
Fenthion	55-38-9	-	-	-	-	0.2	-	-	-	-	X
Ferbam Total dust Respirable fraction	14484-64-1	- -	15 5	- -	- -	10 5	- -	- -	- -	- -	- -
Ferrovanadium dust	12604-58-9	-	1	-	-	1	-	3	-	-	-
Fluorides (as F)	Varies with compound	See Table Z-2			2.5	-	-	-	-	-	-
Fluorine	7782-41-4	0.1	0.2	-	0.1	0.2	-	-	-	-	-
Fluorotrichloromethane (Trichlorofluoromethane)	75-69-4	1000	5600	-	-	-	-	-	1000	5600	-
Formaldehyde	50-00-0	See Table Z-2 for operations or sectors excluded or for which Vinyl(s) is(are) stayed.			-	0.1	-	-	-	-	X
Formamide	75-12-7	-	-	-	20	30	30	45	-	-	-
Formic acid	64-18-6	5	9	-	5	9	-	-	-	-	-
Furfural	98-01-1	5	20	X	2	8	-	-	-	-	X
Furfuryl alcohol	98-00-0	50	200	-	10	40	15	60	-	-	X
Gasoline	8006-61-9	-	-	-	300	900	500	1500	-	-	-
Germanium tetrahydride	7782-65-2	-	-	-	0.2	0.6	-	-	-	-	-

TABLE Z-1-A. Limits For Air Contaminants

Substance	CAS No.	Transitional Limits PEL[a] ppm[b]	Transitional Limits PEL[a] mg/m³[b]	Transitional Limits Skin Designation	Final Rule Limits[20] TWA ppm[b]	Final Rule Limits[20] TWA mg/m³[b]	Final Rule Limits[20] STEL[c] ppm[b]	Final Rule Limits[20] STEL[c] mg/m³[b]	Final Rule Limits[20] CEILING ppm[b]	Final Rule Limits[20] CEILING mg/m³[b]	Final Rule Limits[20] Skin Designation
Glutaraldehyde	111-30-8	-	-	-	-	-	-	-	0.2	0.8	
Glycerin (mist) Total dust Respirable fraction	56-81-5	- -	15 5	- -	- -	10 5	- -	- -	- -	- -	
Glycidol	556-52-5	50	150	-	25	75	-	-	-	-	-
Glycol monoethyl ether; see 2-Ethoxyethanol											
Grain dust (oat, wheat, barley)	—	-	-	-	-	10	-	-	-	-	-
Graphite, natural respirable dust	7782-42-5	See Table Z-3			-	2.5	-	-	-	-	-
Graphite, synthetic Total dust Respirable fraction	—	- -	15 5	- -	- -	10 5	- -	- -	- -	- -	- -
Guthion®; see Azinphos methyl											
Gypsum Total dust Respirable fraction	7778-18-9	- -	15 5	- -	- -	15 5	- -	- -	- -	- -	- -
Hafnium	7440-58-6	-	0.5	-	-	0.5	-	-	-	-	-
Heptachlor	76-44-8	-	0.5	X	-	0.5	-	-	-	-	X
Heptane (n-Heptane)	142-82-5	500	2000	-	400	1600	500	2000	-	-	-
Hexachlorobutadiene	87-68-3	-	-	-	0.02	0.24	-	-	-	-	-
Hexachlorocyclopentadiene	77-47-4	-	-	-	0.01	0.1	-	-	-	-	-
Hexachloroethane	67-72-1	1	10	X	1	10	-	-	-	-	X
Hexachloronaphthalene	1335-87-1	-	0.2	X	-	0.2	-	-	-	-	X
Hexafluoroacetone	684-16-2	-	-	-	0.1	0.7	-	-	-	-	X
n-Hexane	110-54-3	500	1800	-	50	180	-	-	-	-	-
Hexane isomers	Varies with compound	-	-	-	500	1800	1000	3600	-	-	-

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TABLE Z-1-A. Limits For Air Contaminants

Substance	CAS No.	Transitional Limits PEL* ppm	Transitional Limits PEL* mg/m³ [b]	Skin Designation	Final Rule Limits** TWA ppm	TWA mg/m³ [b]	STEL [c] ppm	STEL mg/m³ [b]	CEILING ppm	CEILING mg/m³ [b]	Skin Designation
3-Hexanone (Ethyl n-butyl ketone)	589-78-6	100	410	-	5	20	-	-	-	-	-
Hexone (Methyl isobutyl ketone)	108-10-1	100	410	-	50	205	75	300	-	-	-
sec-Hexyl acetate	108-84-9	50	300	-	50	300	-	-	-	-	-
Hexylene glycol	107-41-5	-	-	-	-	-	-	-	25	125	-
Hydrazine	302-01-2	1	1.3	X	0.1	0.1	-	-	-	-	X
Hydrogenated terphenyls	61788-32-7	-	-	-	0.5	5	-	-	-	-	-
Hydrogen bromide	10035-10-6	3	10	-	-	-	-	-	3	10	-
Hydrogen chloride	7647-01-0	(C)5	(C)7	-	-	-	-	-	5	7	-
Hydrogen cyanide	74-90-8	10	11	X	-	-	4.7	5			X
Hydrogen fluoride (as F)	7664-39-3	See Table Z-2		-	3	-	6	-	-	-	-
Hydrogen peroxide	7722-84-1	1	1.4	-	1	1.4	-	-	-	-	-
Hydrogen selenide (as Se)	7783-07-5	0.05	0.2	-	0.05	0.2	-	-	-	-	-
Hydrogen sulfide	7783-06-4	See Table Z-2		-	10	14	15	21	-	-	-
Hydroquinone	123-31-9	-	2	-	-	2	-	-	-	-	-
2-Hydroxypropyl acrylate	999-61-1	-	-	-	0.5	3	-	-	-	-	X
Indene	95-13-6	-	-	-	10	45	-	-	-	-	-
Indium and compounds (as In)	7440-74-6	-	-	-	-	0.1	-	-	-	-	-
Iodine	7553-56-2	(C)0.1	(C)1	-	-	-	-	-	0.1	1	-
Iodoform	75-47-8	-	-	-	0.6	10	-	-	-	-	-
Iron oxide dust and fume (as Fe) total particulate	1309-37-1	-	10	-	-	10	-	-	-	-	-

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Substance	CAS No.	Transitional Limits PEL* ppm	Transitional Limits PEL* mg/m³ [b]	Skin Designation	Final Rule Limits** TWA ppm	TWA mg/m³ [b]	STEL [c] ppm	STEL mg/m³ [b]	CEILING ppm	CEILING mg/m³ [b]	Skin Designation
Iron pentacarbonyl (as Fe)	13463-40-6	-	-	-	0.1	0.8	0.2	1.6	-	-	-
Iron salts (soluble) (as Fe)	Varies with compound	-	-	-	-	1	-	-	-	-	-
Isoamyl acetate	123-92-2	100	525	-	100	525	-	-	-	-	-
Isoamyl alcohol (primary and secondary)	123-51-3	100	360	-	100	360	125	450	-	-	-
Isobutyl acetate	110-19-0	150	700	-	150	700	-	-	-	-	-
Isobutyl alcohol	78-83-1	100	300	-	50	150	-	-	-	-	-
Isooctyl alcohol	26952-21-6	-	-	-	50	270	-	-	-	-	X
Isophorone	78-59-1	25	140	-	4	23	-	-	-	-	-
Isophorone diisocyanate	4098-71-9	-	-	-	0.005	-	0.02	-	-	-	X
2-Isopropoxyethanol	109-59-1	-	-	-	25	105	-	-	-	-	-
Isopropyl acetate	108-21-4	250	950	-	250	950	310	1185	-	-	-
Isopropyl alcohol	67-63-0	400	980	-	400	980	500	1225	-	-	-
Isopropylamine	75-31-0	5	12	-	5	12	10	24	-	-	-
N-Isopropylaniline	768-52-5	-	-	-	2	10	-	-	-	-	X
Isopropyl ether	108-20-3	500	2100	-	500	2100	-	-	-	-	-
Isopropyl glycidyl ether (IGE)	4016-14-2	50	240	-	50	240	75	360	-	-	-
Kaolin total dust respirable fraction	—	-	15	-	-	10	-	-	-	-	-
		-	5	-	-	5	-	-	-	-	-
Ketene	463-51-4	0.5	0.9	-	0.5	0.9	1.5	3	-	-	-
Lead inorganic (as Pb); see 1910.1025	7439-92-1	For independent battery breaking, non-ferrous foundries, secondary copper, lead pigments, lead chemical, ship building, stevedoring, and brass and bronze ingot manufacturing, paragraph (e)(1) is under court remand									

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TABLE Z-1-A. Limits For Air Contaminants

Substance	CAS No.	Transitional Limits PEL[a] ppm	Transitional Limits PEL[a] mg/m³[b]	Skin Designation	Final Rule Limits[**] TWA ppm	TWA mg/m³[b]	STEL[c] ppm	STEL[c] mg/m³[b]	CEILING ppm	CEILING mg/m³[b]	Skin Designation
Limestone	1317-65-3										
Total dust		-	15	-	-	15	-	-	-	-	-
Respirable fraction		-	5	-	-	5	-	-	-	-	-
Lindane	58-89-9	-	0.5	X	-	0.5	-	-	-	-	X
Lithium hydride	7580-67-8	-	0.025	-	-	0.025	-	-	-	-	-
L.P.G. (Liquefied petroleum gas)	68476-85-7	1000	1800	-	1000	1800	-	-	-	-	-
Magnesite	546-93-0										
Total dust		-	15	-	-	15	-	-	-	-	-
Respirable fraction		-	5	-	-	5	-	-	-	-	-
Magnesium oxide fume	1309-48-4										
Total dust		-	15	-	-	10	-	-	-	-	-
Respirable fraction		-	5	-	-	5	-	-	-	-	-
Malathion	121-75-5										
Total dust		-	15	X	-	10	-	-	-	-	X
Respirable fraction		-	5	X	-	5	-	-	-	-	X
Maleic anhydride	108-31-6	0.25	1		0.25	1	-	-	-	-	-
Manganese compounds (as Mn)	7439-96-5	-	(C)5	-	-	-	-	-	-	5	-
Manganese fume (as Mn)	7439-96-5	-	(C)5	-	-	1	-	3	-	-	-
Manganese cyclopentadienyl tricarbonyl (as Mn)	12079-65-1	-	-	-	-	0.1	-	-	-	-	X
Manganese tetroxide (as Mn)	1317-35-7	-	-	-	-	1	-	-	-	-	-
Marble	1317-65-3										
Total dust		-	15	-	-	15	-	-	-	-	-
Respirable fraction		-	5	-	-	5	-	-	-	-	-
Mercury (aryl and inorganic)(as Hg)	7439-97-6	See Table Z-2		-	-	-	-	-	-	0.1	X
Mercury (organo) alkyl compounds (as Hg)	7439-97-6	See Table Z-2		-	-	0.01	-	0.03	-	-	X
Mercury (vapor) (as Hg)	7439-97-6	See Table Z-2		-	-	0.05	-	-	-	-	X

TABLE Z-1-A. Limits For Air Contaminants

Substance	CAS No.	Transitional Limits REL[a] ppm	Transitional Limits REL[a] mg/m³[b]	Skin Designation	Final Rule Limits[**] TWA ppm	TWA mg/m³[b]	STEL[c] ppm	STEL[c] mg/m³[b]	CEILING ppm	CEILING mg/m³[b]	Skin Designation
Methyl oxide	141-78-7	25	100	-	15	60	25	100	-	-	-
Methacrylic acid	79-41-4	-	-	-	20	70	-	-	-	-	X
Methanethiol; see Methyl mercaptan											
Methazyl (Lannate)	16752-77-5	-	-	-	-	2.5	-	-	-	-	-
Methoxychlor	72-43-5										
Total dust		-	15	-	-	10	-	-	-	-	-
Respirable fraction		-	5	-	-	5	-	-	-	-	-
2-Methoxyethanol; see Methyl cellosolve											
4-Methoxyphenol	150-76-5	-	-	-	-	5	-	-	-	-	-
Methyl acetate	79-20-9	200	610	-	200	610	250	760	-	-	-
Methyl acetylene (Propyne)	74-99-7	1000	1650	-	1000	1650	-	-	-	-	-
Methyl acetylene-propadiene mixture (MAPP)	—	1000	1800	-	1000	1800	1250	2250	-	-	-
Methyl acrylate	96-33-3	10	35	X	10	35	-	-	-	-	X
Methylacrylonitrile	126-98-7	-	-	-	1	3	-	-	-	-	X
Methylal (Dimethoxymethane)	109-87-5	1000	3100	-	1000	3100	-	-	-	-	-
Methyl alcohol	67-56-1	200	260	-	200	260	250	310	-	-	X
Methylamine	74-89-5	10	12	-	10	12	-	-	-	-	-
Methyl amyl alcohol; see Methyl isobutyl carbinol											
Methyl n-amyl ketone	110-43-0	100	465	-	100	465	-	-	-	-	-
Methyl bromide	74-83-9	(C)20	(C)80	X	5	20	-	-	-	-	X

TABLE Z-1-A. Limits For Air Contaminants

Substance	CAS No.	Transitional Limits PEL[a] ppm[a]	Transitional Limits PEL[a] mg/m³[b]	Skin Designation	Final Rule Limits[aa] TWA ppm[a]	TWA mg/m³[b]	STEL[c] ppm[a]	STEL[c] mg/m³[b]	CEILING ppm[a]	CEILING mg/m³[b]	Skin Designation
Methyl butyl ketone; see 2-Hexanone											
Methyl cellosolve (2-Methoxyethanol)	109-86-4	25	80	X	In process of 6(b) rulemaking						
Methyl cellosolve acetate (2-Methoxyethyl acetate)	110-49-6	25	120	X	In process of 6(b) rulemaking						
Methyl chloride	74-87-3	See Table Z-2			50	105	100	205	-	-	-
Methyl chloroform (1,1,1-Trichloroethane)	71-55-6	350	1900	-	350	1900	450	2450	-	-	-
Methyl 2-cyanoacrylate	137-05-3	-	-	-	2	8	4	16	-	-	-
Methylcyclohexane	108-87-2	500	2000	-	400	1600	-	-	-	-	-
Methylcyclohexanol	25639-42-3[d]	100	470	-	50	235	-	-	-	-	-
o-Methylcyclohexanone	583-60-8	100	460	X	50	230	75	345	-	-	X
Methylcyclopentadienyl manganese tricarbonyl (as Mn)	12108-13-3	-	-	-	-	0.2	-	-	-	-	X
Methyl decalin	91-17-8	-	-	-	-	0.5	-	-	-	-	X
4,4'-Methylene bis (2-chloroaniline) (MBOCA)	101-14-4	-	-	-	0.02	0.22	-	-	-	-	-
Methylene bis(4-cyclohexylisocyanate)	5124-30-1	-	-	-	-	-	-	-	0.01	0.11	-
Methylene chloride	75-09-2	See Table Z-2			In process of 6(b) rulemaking						
Methyl ethyl ketone (MEK); see 2-Butanone											
Methyl ethyl ketone peroxide (MEKP)	1338-23-4	-	-	-	-	-	-	-	0.7	5	
Methyl formate	107-31-3	100	250	-	100	250	150	375	-	-	-

TABLE Z-1-A. Limits For Air Contaminants

Substance	CAS No.	Transitional Limits PEL[a] ppm[a]	Transitional Limits PEL[a] mg/m³[b]	Skin Designation	Final Rule Limits[aa] TWA ppm[a]	TWA mg/m³[b]	STEL[c] ppm[a]	STEL[c] mg/m³[b]	CEILING ppm[a]	CEILING mg/m³[b]	Skin Designation
Methyl hydrazine (Monomethyl hydrazine)	60-34-4	(C)0.2	(C)0.35	X	-	-	-	-	0.2	0.35	X
Methyl iodide	74-88-4	5	28	X	2	10	-	-	-	-	X
Methyl isoamyl ketone	110-12-3	-	-	-	50	240	-	-	-	-	-
Methyl isobutyl carbinol	108-11-2	25	100	X	25	100	40	165	-	-	X
Methyl isobutyl ketone; see Hexone											
Methyl isocyanate	624-83-9	0.02	0.05	X	0.02	0.05	-	-	-	-	X
Methyl isopropyl ketone	563-80-4	-	-	-	200	705	-	-	-	-	-
Methyl mercaptan	74-93-1	(C)10	(C)20	-	0.5	1	-	-	-	-	-
Methyl methacrylate	80-62-6	100	410		100	410	-	-	-	-	
Methyl parathion	298-00-0	-	-	-	-	0.2	-	-	-	-	X
Methyl propyl ketone; see 2-Pentanone											
Methyl silicate	681-84-5	-	-	-	1	6	-	-	-	-	-
alpha-Methyl styrene	98-83-9	(C)100	(C)480	-	50	240	100	485	-	-	-
Methylene bisphenyl isocyanate (MDI)	101-68-8	(C)0.02	(C)0.2	-	-	-	-	-	0.02	0.2	-
Metribuzin	21087-64-9	-	-	-	-	5	-	-	-	-	-
Mica; see Silicates											
Molybdenum (as Mo)	7439-98-7										
Soluble compounds		-	5	-	-	5	-	-	-	-	-
Insoluble compounds											
Total dust		-	15	-	-	10	-	-	-	-	-
Respirable fraction		-	5	-	-	5	-	-	-	-	-
Monocrotophos (Azodrin®)	6923-22-4	-	-	-	-	0.25	-	-	-	-	-
Monomethyl aniline	100-61-8	2	9	X	0.5	2	-	-	-	-	X

TABLE Z-1-A. Limits For Air Contaminants

Substance	CAS No.	Transitional Limits PEL[a] ppm[b]	Transitional Limits PEL[a] mg/m³[b]	Skin Designation	Final Rule Limits[**] TWA ppm[b]	TWA mg/m³[b]	STEL[c] ppm[b]	STEL[c] mg/m³[b]	CEILING ppm[b]	CEILING mg/m³[b]	Skin Designation
Morpholine	110-91-8	20	70	X	20	70	30	105	-	-	X
Naphtha (Coal tar)	8030-30-6	100	400	-	100	400	-	-	-	-	-
Naphthalene	91-20-3	10	50	-	10	50	15	75	-	-	-
alpha-Naphthylamine; see 1910.1004	134-32-7										
beta-Naphthylamine; see 1910.1009	91-59-8										
Nickel carbonyl (as Ni)	13463-39-3	0.001	0.007	-	0.001	0.007	-	-	-	-	-
Nickel, metal and insoluble compounds (as Ni)	7440-02-0	-	1	-	-	1	-	-	-	-	-
Nickel, soluble compounds (as Ni)	7440-02-0	-	1	-	-	0.1	-	-	-	-	-
Nicotine	54-11-5	-	0.5	X	-	0.5	-	-	-	-	X
Nitric acid	7697-37-2	2	5	-	2	5	4	10	-	-	-
Nitric oxide	10102-43-9	25	30	-	25	30	-	-	-	-	-
p-Nitroaniline	100-01-6	1	6	X	-	3	-	-	-	-	X
Nitrobenzene	98-95-3	1	5	X	1	5	-	-	-	-	X
p-Nitrochlorobenzene	100-00-5	-	1	X	-	1	-	-	-	-	X
4-Nitrodiphenyl; see 1910.1003	92-93-3										
Nitroethane	79-24-3	100	310	-	100	310	-	-	-	-	-
Nitrogen dioxide	10102-44-0	(C)5	(C)9	-	-	-	1	1.8	-	-	-
Nitrogen trifluoride	7783-54-2	10	29	-	10	29	-	-	-	-	-
Nitroglycerin	55-63-0	(C)0.2	(C)1	X	-	-	-	0.1	-	-	X
Nitromethane	75-52-5	100	250	-	100	250	-	-	-	-	-
1-Nitropropane	108-03-2	25	90	-	25	90	-	-	-	-	-

TABLE Z-1-A. Limits For Air Contaminants

Substance	CAS No.	Transitional Limits PEL[a] ppm[b]	Transitional Limits PEL[a] mg/m³[b]	Skin Designation	Final Rule Limits[**] TWA ppm[b]	TWA mg/m³[b]	STEL[c] ppm[b]	STEL[c] mg/m³[b]	CEILING ppm[b]	CEILING mg/m³[b]	Skin Designation
2-Nitropropane	79-46-9	25	90	-	10	25	-	-	-	-	-
N-Nitrosodimethylamine; see 1910.1016	62-75-9										
Nitrotoluene o-isomer m-isomer p-isomer	88-72-2; 99-08-1; 99-99-0	5	30	X	2	11	-	-	-	-	X
Nitrotrichloromethane; see Chloropicrin											
Nonane	111-84-2	-	-	-	200	1050	-	-	-	-	-
Octachloronaphthalene	2234-13-1	-	0.1	X	-	0.1	-	0.3	-	-	X
Octane	111-65-9	500	2350	-	300	1450	375	1800	-	-	-
Oil mist, mineral	8012-95-1	-	5	-	-	5	-	-	-	-	-
Osmium tetroxide (as Os)	20816-12-0	-	0.002	-	0.0002	0.002	0.0006	0.006	-	-	-
Oxalic acid	144-62-7	-	1	-	-	1	-	2	-	-	-
Oxygen difluoride	7783-41-7	0.05	0.1	-	-	-	-	-	0.05	0.1	-
Ozone	10028-15-6	0.1	0.2	-	0.1	0.2	0.3	0.6	-	-	-
Paraffin wax fume	8002-74-2	-	-	-	-	2	-	-	-	-	-
Parquat, respirable dust	4685-14-7	-	0.5	X	-	0.1	-	-	-	-	X
Parathion	56-38-2	-	0.1	X	-	0.1	-	-	-	-	X
Particulates not otherwise regulated Total dust Respirable fraction	— — —	- -	15 5	- -	- -	15 5	- -	- -	- -	- -	- -
Pentaborane	19624-22-7	0.005	0.01	-	0.005	0.01	0.015	0.03	-	-	-
Pentachloronaphthalene	1321-64-8	-	0.5	X	-	0.5	-	-	-	-	X
Pentachlorophenol	87-86-5	-	0.5	X	-	0.5	-	-	-	-	X
Pentaerythritol Total dust Respirable fraction	115-77-5	- -	15 5	- -	- -	10 5	- -	- -	- -	- -	

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TABLE Z-1-A. Limits For Air Contaminants

Substance	CAS No.	Transitional Limits PEL[a] ppm[a]	Transitional Limits PEL[a] mg/m³[b]	Skin Designation	Final Rule Limits** TWA ppm[a]	TWA mg/m³[b]	STEL[c] ppm[a]	STEL[c] mg/m³[b]	CEILING ppm[a]	CEILING mg/m³[b]	Skin Designation
Pentane	109-66-0	1000	2950	-	600	1800	750	2250	-	-	-
2-Pentanone (Methyl propyl ketone)	107-87-9	200	700	-	200	700	250	875	-	-	-
Perchloroethylene (Tetrachloroethylene)	127-18-4	See Table Z-2			25	170	-	-	-	-	-
Perchloromethyl mercaptan	594-42-3	0.1	0.8	-	0.1	0.8	-	-	-	-	-
Perchloryl fluoride	7616-94-6	3	13.5	-	3	14	6	28	-	-	-
Perlite Total dust Respirable fraction	—	- -	15 5	- -	- -	15 5	- -	- -	- -	- -	- -
Petroleum distillates (Naphtha)	8002-05-9	500	2000	-	400	1600	-	-	-	-	-
Phenol	108-95-2	5	19	X	5	19	-	-	-	-	X
Phenothiazine	92-84-2	-	-	-	-	5	-	-	-	-	X
p-Phenylene diamine	106-50-3	-	0.1	X	-	0.1	-	-	-	-	X
Phenyl ether, vapor	101-84-8	1	7	-	1	7	-	-	-	-	-
Phenyl ether-biphenyl mixture, vapor	—	1	7	-	1	7	-	-	-	-	-
Phenylethylene; see Styrene											
Phenyl glycidyl ether (PGE)	122-60-1	10	60	-	1	6	-	-	-	-	-
Phenylhydrazine	100-63-0	5	22	X	5	20	10	45	-	-	X
Phenyl mercaptan	108-98-5	-	-	-	0.5	2	-	-	-	-	-
Phenylphosphine	638-21-1	-	-	-	-	-	-	-	0.05	0.25	-
Phorate	298-02-2	-	-	-	-	0.05	-	0.2	-	-	X
Phosdrin (Mevinphos[d])	7786-34-7	-	0.1	X	0.01	0.1	0.03	0.3	-	-	X

TABLE Z-1-A. Limits For Air Contaminants

Substance	CAS No.	Transitional Limits PEL[a] ppm[a]	Transitional Limits PEL[a] mg/m³[b]	Skin Designation	Final Rule Limits** TWA ppm[a]	TWA mg/m³[b]	STEL[c] ppm[a]	STEL[c] mg/m³[b]	CEILING ppm[a]	CEILING mg/m³[b]	Skin Designation
Phosgene (Carbonyl chloride)	75-44-5	0.1	0.4	-	0.1	0.4	-	-	-	-	-
Phosphine	7803-51-2	0.3	0.4	-	0.3	0.4	1	1	-	-	-
Phosphoric acid	7664-38-2	-	1	-	-	1	-	3	-	-	-
Phosphorus (yellow)	7723-14-0	-	0.1	-	-	0.1	-	-	-	-	-
Phosphorus oxychloride	10025-87-3	-	-	-	0.1	0.6	-	-	-	-	-
Phosphorus pentachloride	10026-13-8	-	1	-	-	1	-	-	-	-	-
Phosphorus pentasulfide	1314-80-3	-	1	-	-	1	-	3	-	-	-
Phosphorus trichloride	7719-12-2	0.5	3	-	0.2	1.5	0.5	3	-	-	-
Phthalic anhydride	85-44-9	2	12	-	1	6	-	-	-	-	-
m-Phthalodinitrile	626-17-5	-	-	-	-	5	-	-	-	-	-
Picloram Total dust Respirable fraction	1918-02-1	- -	15 5	- -	- -	10 5	- -	- -	- -	- -	- -
Picric acid	88-89-1	-	0.1	X	-	0.1	-	-	-	-	X
Piperazine dihydrochloride	142-64-3	-	-	-	-	5	-	-	-	-	-
Pindone (2-Pivalyl-1,3-indandione)	83-26-1	-	0.1	-	-	0.1	-	-	-	-	-
Plaster of Paris Total dust Respirable fraction	7778-18-9	- -	15 5	- -	- -	15 5	- -	- -	- -	- -	- -
Platinum (as Pt) Metal Soluble salts	7440-06-4	- -	- 0.002	- -	- -	1 0.002	- -	- -	- -	- -	- -
Portland cement Total dust Respirable fraction	65997-15-1		See Table Z-3 See Table Z-3		- -	10 5	- -	- -	- -	- -	- -

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TABLE Z-1-A. Limits For Air Contaminants

Substance	CAS No.	Transitional Limits PEL[a] ppm[d]	Transitional Limits PEL[a] mg/m³[b]	Skin Designation	Final Rule Limits[**] TWA ppm[d]	TWA mg/m³[b]	STEL[c] ppm[d]	STEL[c] mg/m³[b]	CEILING ppm[d]	CEILING mg/m³[b]	Skin Designation
Potassium hydroxide	1310-58-3	-	-	-	-	-	-	-	-	2	-
Propane	74-98-6	1000	1800	-	1000	1800	-	-	-	-	-
Propargyl alcohol	107-19-7	-	-	-	1	2	-	-	-	-	X
beta-Propiolactone; see 1910.1013	57-57-8										
Propionic acid	79-09-4	-	-	-	10	30	-	-	-	-	-
Propionic (Oxygen)	116-25-1	-	-	-	-	0.5	-	-	-	-	-
n-Propyl acetate	109-60-4	200	840	-	200	840	250	1050	-	-	-
n-Propyl alcohol	71-23-8	200	500	-	200	500	250	625	-	-	-
n-Propyl nitrate	627-13-4	25	110	-	25	105	40	170	-	-	-
Propylene dichloride	78-87-5	75	350	-	75	250	110	510	-	-	-
Propylene glycol dinitrate	6423-43-4	-	-	-	0.05	0.3	-	-	-	-	-
Propylene glycol monomethyl ether	107-98-2	-	-	-	100	360	150	540	-	-	-
Propylene imine	75-55-8	2	5	X	2	5	-	-	-	-	X
Propylene oxide	75-56-9	100	240	-	20	50	-	-	-	-	-
Propyne; see Methyl acetylene											
Pyrethrum	8003-34-7	-	5	-	-	5	-	-	-	-	-
Pyridine	110-86-1	5	15	-	5	15	-	-	-	-	-
Quinone	106-51-4	0.1	0.4	-	0.1	0.4	-	-	-	-	-
Rosin-core	108-46-3	-	-	-	10	45	20	90	-	-	-
Rhodium (as Rh), metal fume and insoluble compounds	7440-16-6	-	0.1	-	-	0.1	-	-	-	-	-
Rhodium (as Rh), soluble compounds	7440-16-6	-	0.001	-	-	0.001	-	-	-	-	-

TABLE Z-1-A. Limits For Air Contaminants

Substance	CAS No.	Transitional Limits PEL[a] ppm[d]	Transitional Limits PEL[a] mg/m³[b]	Skin Designation	Final Rule Limits[**] TWA ppm[d]	TWA mg/m³[b]	STEL[c] ppm[d]	STEL[c] mg/m³[b]	CEILING ppm[d]	CEILING mg/m³[b]	Skin Designation
Rosin	299-86-5	-	15	-	-	10	-	-	-	-	-
Rosin core solder pyrolysis products, as formaldehyde	—	-	-	-	-	0.1	-	-	-	-	-
Rotenone	83-79-4	-	5	-	-	5	-	-	-	-	-
Rouge Total dust Respirable fraction	—	- -	15 5	- -	- -	10 5	- -	- -	- -	- -	- -
Selenium compounds (as Se)	7782-49-2	-	0.2	-	-	0.2	-	-	-	-	-
Selenium hexafluoride (as Se)	7783-79-1	0.05	0.4	-	0.05	0.4	-	-	-	-	-
Silica, amorphous, precipitated and gel	— [f]	See Table Z-3			-	6	-	-	-	-	-
Silica, amorphous, diatomaceous earth, containing less than 1% crystalline silica	61790-53-2	See Table Z-3			-	6	-	-	-	-	-
Silica, crystalline cristobalite (as quartz), respirable dust	14464-46-1	See Table Z-3			-	0.05	-	-	-	-	-
Silica, crystalline quartz (as quartz), respirable dust	14808-60-7	See Table Z-3			-	0.1	-	-	-	-	-
Silica, crystalline tripoli (as quartz), respirable dust	1317-95-9	See Table Z-3			-	0.1	-	-	-	-	-
Silica, crystalline tridymite (as quartz), respirable dust	15468-32-3	See Table Z-3			-	0.05	-	-	-	-	-
Silica, fused, respirable dust	60676-86-0	See Table Z-3			-	0.1	-	-	-	-	-

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TABLE Z-1-A. Limits For Air Contaminants

Substance	CAS No.	Transitional Limits PEL* ppm[a]	Transitional Limits PEL* mg/m³[b]	Transitional Limits PEL* Skin Designation	Final Rule Limits** TWA ppm[a]	Final Rule Limits** TWA mg/m³[b]	Final Rule Limits** STEL[c] ppm[a]	Final Rule Limits** STEL[c] mg/m³[b]	Final Rule Limits** CEILING ppm[a]	Final Rule Limits** CEILING mg/m³[b]	Final Rule Limits** Skin Designation
Silicates (less than 1% crystalline silica)											
Mica (respirable dust)	12001-26-2	See Table Z-3			-	3	-	-	-	-	-
Soapstone, total dust	—	See Table Z-3			-	6	-	-	-	-	-
Soapstone, respirable dust	—	See Table Z-3			-	3	-	-	-	-	-
Talc (containing asbestos): use asbestos limit	—	See Table Z-3			See 29 CFR 1910.1001						
Talc (containing no asbestos), respirable dust	14807-96-6	See Table Z-3			-	2	-	-	-	-	-
Tremolite		See Table Z-3			See 29 CFR 1910.1101						
Silicon	7440-21-3										
Total dust		-	15	-	-	10	-	-	-	-	-
Respirable fraction		-	5	-	-	5	-	-	-	-	-
Silicon carbide	409-21-2										
Total dust		-	15	-	-	10	-	-	-	-	-
Respirable fraction		-	5	-	-	5	-	-	-	-	-
Silicon tetrahydride	7803-62-5	-	-	-	5	7	-	-	-	-	-
Silver, metal											
dust and fume (as Ag)	7440-22-4	-	0.01	-	-	0.01	-	-	-	-	-
Soapstone; see Silicates											
Sodium azide	26628-22-8										
(as NH_3)		-	-	-	-	-	-	-	0.1	-	X
(as NaN_3)		-	-	-	-	-	-	-	-	0.3	X
Sodium bisulfite	7631-90-5	-	-	-	-	5	-	-	-	-	-
Sodium fluoroacetate	62-74-8	-	0.05	X	-	0.05	-	0.15	-	-	X
Sodium hydroxide	1310-73-2	-	2	-	-	-	-	-	-	2	-
Sodium metabisulfite	7681-57-4	-	-	-	-	5	-	-	-	-	-
Starch	9005-25-8										
Total dust		-	15	-	-	15	-	-	-	-	-
Respirable fraction		-	5	-	-	5	-	-	-	-	-
Stibine	7803-52-3	0.1	0.5	-	0.1	0.5	-	-	-	-	-
Stoddard solvent	8052-41-3	500	2900	-	100	525	-	-	-	-	-
Strychnine	57-24-9	-	0.15	-	-	0.15	-	-	-	-	-
Styrene	100-42-5		See Table Z-2		50	215	100	425	-	-	-

TABLE Z-1-A. Limits For Air Contaminants

Substance	CAS No.	Transitional Limits PEL* ppm[a]	Transitional Limits PEL* mg/m³[b]	Transitional Limits PEL* Skin Designation	Final Rule Limits** TWA ppm[a]	Final Rule Limits** TWA mg/m³[b]	Final Rule Limits** STEL[c] ppm[a]	Final Rule Limits** STEL[c] mg/m³[b]	Final Rule Limits** CEILING ppm[a]	Final Rule Limits** CEILING mg/m³[b]	Final Rule Limits** Skin Designation
Subtilisins (Proteolytic enzymes)	1395-21-7	-	-	-	-	-	-	-	-	0.00006	-
Sucrose	57-50-1										
Total dust		-	15	-	-	15	-	-	-	-	-
Respirable fraction		-	5	-	-	5	-	-	-	-	-
Sulfur dioxide	7446-09-5	5	13	-	2	5	5	10	-	-	-
Sulfur hexafluoride	2551-62-4	1000	6000	-	1000	6000	-	-	-	-	-
Sulfuric acid	7664-93-9	-	1	-	-	1	-	-	-	-	-
Sulfur monochloride	10025-67-9	1	6	-	-	-	-	-	1	6	-
Sulfur pentafluoride	5714-22-7	0.025	0.25	-	-	-	-	-	0.01	0.1	-
Sulfur tetrafluoride	7783-60-0	-	-	-	-	-	-	-	0.1	0.4	-
Sulfuryl fluoride	2699-79-8	5	20	-	5	20	10	40	-	-	-
Sulprofos	35400-43-2	-	-	-	-	1	-	-	-	-	-
Systox[8], see Demeton											
2,4,5-T	93-76-5	-	10	-	-	10	-	-	-	-	-
Talc; see Silicates											
Tantalum, metal and oxide dust	7440-25-7	-	5	-	-	5	-	-	-	-	-
TEDP (Sulfotep)	3689-24-5	-	0.2	X	-	0.2	-	-	-	-	X
Tellurium and compounds (as Te)	13494-80-9	-	0.1	-	-	0.1	-	-	-	-	-
Tellurium hexafluoride (as Te)	7783-80-4	0.02	0.2	-	0.02	0.2	-	-	-	-	-
Temephos	3383-96-8										
Total dust		-	15	-	-	10	-	-	-	-	-
Respirable fraction		-	5	-	-	5	-	-	-	-	-
TEPP	107-49-3	-	0.05	X	-	0.05	-	-	-	-	X
Terphenyls	26140-60-3	(C)1	(C)9	-	-	-	-	-	0.5	5	-
1,1,1,2-Tetrachloro-2,2-difluoroethane	76-11-9	500	4170	-	500	4170	-	-	-	-	-

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TABLE Z-1-A. Limits For Air Contaminants

Substance	CAS No.	Transitional Limits PEL[a] ppm[a]	Transitional Limits PEL[a] mg/m³[b]	Skin Designation	Final Rule Limits[aa] TWA ppm[a]	TWA mg/m³[b]	STEL[c] ppm[a]	STEL[c] mg/m³[b]	CEILING ppm[a]	CEILING mg/m³[b]	Skin Designation
1,1,2,2-Tetrachloro-1,2-difluoroethane	76-12-0	500	4170	-	500	4170	-	-	-	-	-
1,1,2,2-Tetrachloroethane	79-34-5	5	35	X	1	7	-	-	-	-	X
Tetrachloroethylene; see Perchloroethylene											
Tetrachloromethane; see Carbon tetrachloride											
Tetrachloronaphthalene	1335-88-2	-	2	X	-	2	-	-	-	-	X
Tetraethyl lead (as Pb)	78-00-2	-	0.075	X	-	0.075	-	-	-	-	X
Tetrahydrofuran	109-99-9	200	590	-	200	590	250	735	-	-	-
Tetramethyl lead, (as Pb)	75-74-1	-	0.075	X	-	0.075	-	-	-	-	X
Tetramethyl succinonitrile	3333-52-6	0.5	3	X	0.5	3	-	-	-	-	X
Tetranitromethane	509-14-8	1	8	-	1	8	-	-	-	-	-
Tetrasodium pyrophosphate	7722-88-5	-	-	-	-	5	-	-	-	-	-
Tetryl (2,4,6-Trinitrophenyl-methyl-nitramine)	479-45-8	-	1.5	X	-	0.1	-	-	-	-	X
Thallium, soluble compounds (as Tl)	7440-28-0	-	0.1	X	-	0.1	-	-	-	-	X
4,4'-Thiobis(6-tert, Butyl-m-cresol) total dust	96-69-5	-	15	-	-	10	-	-	-	-	-
Respirable fraction		-	5	-	-	5	-	-	-	-	-
Thioglycolic acid	68-11-1	-	-	-	1	4	-	-	-	-	X
Thionyl chloride	7719-09-7	-	-	-	-	-	-	-	1	5	-
Thiram	137-26-8	-	5		-	5	-	-	-	-	-
Tin, inorganic compounds (except oxides) (as Sn)	7440-31-5	-	2	-	-	2	-	-	-	-	-
Tin, organic compounds (as Sn)	7440-31-5	-	0.1	-	-	0.1	-	-	-	-	X

TABLE Z-1-A. Limits For Air Contaminants

Substance	CAS No.	Transitional Limits PEL[a] ppm[a]	Transitional Limits PEL[a] mg/m³[b]	Skin Designation	Final Rule Limits[aa] TWA ppm[a]	TWA mg/m³[b]	STEL[c] ppm[a]	STEL[c] mg/m³[b]	CEILING ppm[a]	CEILING mg/m³[b]	Skin Designation
Tin oxide (as Sn)	7440-31-5	-	-	-	-	2	-	-	-	-	-
Titanium dioxide	13463-67-7										
Total dust		-	15	-	-	10	-	-	-	-	-
Respirable fraction		-	5	-	-	5	-	-	-	-	-
Toluene	108-88-3	See Table Z-2			100	375	150	560	-	-	-
Toluene-2,4-diisocyanate (TDI)	584-84-9	(C)0.02	(C)0.14	-	0.005	0.04	0.02	0.15	-	-	-
m-Toluidine	108-44-1	-	-	-	2	9	-	-	-	-	X
o-Toluidine	95-53-4	5	22	X	5	22	-	-	-	-	X
p-Toluidine	106-49-0	-	-	-	2	9	-	-	-	-	X
Toxaphene; see Chlorinated camphene											
Tremolite; see Silicates											
Tributyl phosphate	126-73-8	-	5	-	0.2	2.5	-	-	-	-	-
Trichloroacetic acid	76-03-9	-	-	-	1	7	-	-	-	-	-
1,2,4-Trichlorobenzene	120-82-1	-	-	-	-	-	-	-	5	40	-
1,1,1-Trichloroethane; see Methyl chloroform											
1,1,2-Trichloroethane	79-00-5	10	45	X	10	45	-	-	-	-	X
Trichloroethylene	79-01-6	See Table Z-2			50	270	200	1080	-	-	-
Trichloromethane; see Chloroform											
Trichloronaphthalene	1321-65-9	-	5	X	-	5	-	-	-	-	X
1,2,3-Trichloropropane	96-18-4	50	300	-	10	60	-	-	-	-	-
1,1,2-Trichloro-1,2,2-trifluoroethane	76-13-1	1000	7600	-	1000	7600	1250	9500	-	-	-
Triethylamine	121-44-8	25	100	-	10	40	15	60	-	-	-
Trifluorobromomethane	75-63-8	1000	6100	-	1000	6100	-	-	-	-	-
Trimellitic anhydride	552-30-7	-	-	-	0.005	0.04	-	-	-	-	-

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TABLE Z-1-A. Limits For Air Contaminants

Substance	CAS No.	Transitional Limits PEL* ppm[a]	Transitional Limits PEL* mg/m³[b]	Transitional Limits PEL* Skin Designation	Final Rule Limits** TWA ppm[a]	Final Rule Limits** TWA mg/m³[b]	Final Rule Limits** STEL[c] ppm[a]	Final Rule Limits** STEL[c] mg/m³[b]	Final Rule Limits** CEILING ppm[a]	Final Rule Limits** CEILING mg/m³[b]	Final Rule Limits** Skin Designation
Trimethylamine	75-50-3	-	-	-	10	24	15	36	-	-	-
Trimethyl benzene	25551-13-7	-	-	-	25	125	-	-	-	-	-
Trimethyl phosphite	121-45-9	-	-	-	2	10	-	-	-	-	-
2,4,6-Trinitrophenyl; see Picric acid											
2,4,6-Trinitrophenylmethyl nitramine; see Tetryl											
2,4,6-Trinitrotoluene (TNT)	118-96-7	-	1.5	X	-	0.5	-	-	-	-	X
Triorthocresyl phosphate	78-30-8	-	0.1	-	-	0.1	-	-	-	-	X
Triphenyl amine	603-34-9	-	-	-	-	5	-	-	-	-	-
Triphenyl phosphate	115-86-6	-	3	-	-	3	-	-	-	-	-
Tungsten (as W)	7440-33-7										
Insoluble compounds		-	-	-	-	5	-	10	-	-	-
Soluble compounds		-	-	-	-	1	-	3	-	-	-
Turpentine	8006-64-2	100	560	-	100	560	-	-	-	-	-
Uranium (as U)	7440-61-1										
Soluble compounds		-	0.05	-	-	0.05	-	-	-	-	-
Insoluble compounds		-	0.25	-	-	0.2	-	0.6	-	-	-
n-Valeraldehyde	110-62-3	-	-	-	50	175	-	-	-	-	-
Vanadium	1314-62-1										
Respirable dust (as V_2O_5)		—	(C)0.5	-	-	0.05	-	-	-	-	-
Fume (as V_2O_5)		—	(C)0.1	-	-	0.05	-	-	-	-	-
Vegetable oil mist	—										
Total dust		-	15	-	-	15	-	-	-	-	-
Respirable fraction		-	5	-	-	5	-	-	-	-	-
Vinyl acetate	108-05-4	-	-	-	10	30	20	60	-	-	-
Vinyl benzene; see Styrene											
Vinyl bromide	593-60-2	-	-	-	5	20	-	-	-	-	-
Vinyl chloride; see 1910.1017	75-01-4										

TABLE Z-1-A. Limits For Air Contaminants

Substance	CAS No.	Transitional Limits PEL* ppm[a]	Transitional Limits PEL* mg/m³[b]	Transitional Limits PEL* Skin Designation	Final Rule Limits** TWA ppm[a]	Final Rule Limits** TWA mg/m³[b]	Final Rule Limits** STEL[c] ppm[a]	Final Rule Limits** STEL[c] mg/m³[b]	Final Rule Limits** CEILING ppm[a]	Final Rule Limits** CEILING mg/m³[b]	Final Rule Limits** Skin Designation
Vinylcyanide; see Acrylonitrile											
Vinyl cyclohexene dioxide	106-87-6	-	-	-	10	60	-	-	-	-	X
Vinylidene chloride (1,1-Dichloroethylene)	75-35-4	-	-	-	1	4	-	-	-	-	-
Vinyl toluene	25013-15-4	100	480	-	100	480	-	-	-	-	-
VM & P Naphtha	8032-32-4	-	-	-	300	1350	400	1800	-	-	-
Warfarin	81-81-2	-	0.1	-	-	0.1	-	-	-	-	-
Welding fumes (total particulate)****	—	-	-	-	-	5	-	-	-	-	-
Wood dust, all soft and hard woods, except Western red cedar	—	-	-	-	-	5	-	10	-	-	-
Wood dust, Western red cedar	—	-	-	-	-	2.5	-	-	-	-	-
Xylenes (o-, m-, p-isomers)	1330-20-7	100	435	-	100	435	150	655	-	-	-
m-Xylene alpha, alpha - diamine	1477-55-0	-	-	-	-	-	-	-	-	0.1	X
Xylidine	1300-73-8	5	25	X	2	10	-	-	-	-	X
Yttrium	7440-65-5	-	1	-	-	1	-	-	-	-	-
Zinc chloride Fume	7646-85-7	-	1	-	-	1	-	2	-	-	-
Zinc chromate (as CrO_3)	Varies with Compound		See Table Z-2		-	-	-	-	-	0.1	-
Zinc oxide Fume	1314-13-2	-	5	-	-	5	-	10	-	-	-
Zinc oxide	1314-13-2										
Total dust		-	15	-	-	10	-	-	-	-	-
Respirable fraction		-	5	-	-	5	-	-	-	-	-
Zinc stearate	557-05-1										
Total dust		-	15	-	-	10	-	-	-	-	-
Respirable fraction		-	5	-	-	5	-	-	-	-	-

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TABLE Z-1-A. Limits for Air Contaminants

Substance	CAS No.	Transitional Limits PEL* ppm	Transitional Limits PEL* mg/m³ [b]	Skin Designation	Final Rule Limits** TWA ppm	TWA mg/m³ [b]	STEL [c] ppm	STEL mg/m³ [b]	CEILING ppm	CEILING mg/m³ [b]	Skin Designation
Zirconium compounds (as Zr)	7440-67	-	5	-	-	5		10	-	-	-

* The transitional PELs are 8-hour TWAs unless otherwise noted; a (C) designation denotes a ceiling limit.
** Unless otherwise noted, employers in General Industry (i.e., those covered by 29 CFR 1910) may use any combination of controls to achieve these limits for a period not to exceed 4 years from the effective date of this standard; for employers operating Marine Terminals (i.e., those covered by 29 CFR 1918), any combination of controls may be used until further notice.
*** As determined from breathing-zone air samples.
[a] Parts of vapor or gas per million parts of contaminated air by volume at 25°C and 760 torr.
[b] Approximate milligrams of substance per cubic meter of air.
[c] Duration is for 15 minutes, unless otherwise noted.
[d] The final benzene standard in 1910.1028 applies to all occupational exposures to benzene except some subsegments of industry where exposures are consistently under the action level (i.e., distribution and sale of fuels, sealed containers and pipelines, coke production, oil and gas drilling and production, natural gas processing, and the percentage exclusion for liquid mixtures); for the excepted subsegments, the benzene limits in Table Z-2 apply.

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TABLE Z-2

Material	8-hour time-weighted average	Acceptable ceiling concentration	Acceptable maximum peak above the acceptable ceiling concentration for an 8-hour shift: Concentration	Acceptable maximum peak above the acceptable ceiling concentration for an 8-hour shift: Maximum duration
Benzene (Z37.40–1969) [1]	10 ppm	25 ppm	50 ppm	10 minutes.
Beryllium and Beryllium compounds (Z37.29–1970)	2 μg/m³ [2]	5 μg/m³ [2]	25 μg/m³ [2]	30 minutes.
Cadmium fume (Z37.5–1970)	0.1 mg/m³ [2]	0.3 mg/m³ [2]		
Cadmium dust (Z37.5–1970)	0.2 mg/m³ [2]	0.6 mg/m³ [2]		
Carbon disulfide (Z37.3–1968)	20 ppm	30 ppm	100 ppm	30 minutes.
Carbon Tetrachloride (Z37.17–1967)	10 ppm	25 ppm	200 ppm	5 minutes in any 4 hours.
Chromic acid and chromates (Z37.7–1971)		1 mg/10 m³ [2]		
Ethylene dibromide (Z37.31–1970)	20 ppm	30 ppm	50 ppm	5 minutes.
Ethylene dichloride (Z37.21–1969)	50 ppm	100 ppm	200 ppm	5 minutes in any 3 hours.
Formaldehyde (Z37.16–1967) [2]	3 ppm	5 ppm	10 ppm	30 minutes.
Hydrogen fluoride (Z37.28–1969)	3 ppm			
Hydrogen sulfide (Z37.2–1966)		20 ppm	50 ppm	10 minutes once only if no other measurable exposure occurs.
Fluoride as dust (Z37.28–1969)	2.5 mg/m³ [2]			
Mercury (Z37.8–1971)		1 mg/10 m³ [2]		
Methyl chloride (Z37.18–1969)	100 ppm	200 ppm	300 ppm	5 minutes in any 3 hours.
Methylene chloride (Z37.23–1969)	500 ppm	1,000 ppm	2,000 ppm	5 minutes in any 2 hours.
Organo (alkyl) mercury (Z37.30–1969)	0.01 mg/m³ [2]	0.04 mg/m³ [2]		
Styrene (Z37.15–1969)	100 ppm	200 ppm	600 ppm	5 minutes in any 3 hours.
Tetrachloroethylene (Z37.22–1967)	100 ppm	200 ppm	300 ppm	5 minutes in any 3 hours.
Toluene (Z37.12–1967)	200 ppm	300 ppm	500 ppm	10 minutes.
Trichloroethylene (Z37.19–1967)	100 ppm	200 ppm	300 ppm	5 minutes in any 2 hours.

[1] This standard applies to the industry segments exempt from the 1 ppm 8-hour TWA and 5 ppm STEL of the benzene standard at 1910.1028. This standard also applies to any industry for which 1910.1028 is stayed or otherwise not in effect.
[2] This standard applies to any industry for which 1910.1046 is stayed or otherwise not in effect.

TABLE Z-3

Substance	mppcf*	mg/m³
SILICA:		
CRYSTALLINE		
QUARTZ (RESPIRABLE)*	250†	10 mg/m³**
QUARTZ (TOTAL DUST)*	%SiO₂+5	%SiO₂+2 30 mg/m³
CRISTOBALITE*: Use ½ the value calculated from the count or mass formulae for quartz		%SiO₂+2
TRIDYMITE*: Use ½ the value calculated from the formulae for quartz		
AMORPHOUS, including natural diatomaceous earth*	20	80 mg/m³
SILICATES (less than 1% crystalline silica):		%SiO₂
Mica*	20	
Soapstone*	20	
Talc (not containing asbestos)*	20*	
Talc (containing asbestos). Use asbestos limit		
Tremolite (see 29 CFR 1910.1101)		
Portland cement*	50	
GRAPHITE (NATURAL)*	15	
COAL DUST (respirable fraction less than 5% SiO_2)*		2.4 mg/m³ or 10 mg/m³
For more than 5% SiO_2*		%SiO₂+2
INERT OR NUISANCE DUST:		
Respirable fraction*	15	5 mg/m³
Total dust*	50	15 mg/m³

Note.—Conversion factors—mmpcf × 35.3 = million particles per cubic meter = particles per c.c.
*Substances that are in Table Z-4 in this proposal.
†Millions of particles per cubic foot of air, based on impinger samples counted by light-field techniques.
‡The percentage of crystalline silica in the formula is the amount determined from airborne samples, except in those instances in which other methods have been shown to be applicable.
**Both concentration and percent quartz for the application of this limit are to be determined from the fraction passing a size-selector with the following characteristics:

Aerodynamic diameter (unit density sphere)	Percent passing selector	Aerodynamic diameter (unit density sphere)	Percent passing selector
2	90	3.5	50
2.5	75	5.0	25

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Aerodynamic diameter (unit density sphere)	Percent passing selector
10	0

*Containing less than 1% quartz; if 1% quartz, use quartz limit.
The measurements under this note refer to the use of an AEC (now NRC) instrument. The respirable fraction of coal dust is determined with an MRE; the figure corresponding to that of 2.4 mg/m³ in the table for coal dust is 4.5 mg/m³.

Editorial note: This Appendix will not appear in the Code of Federal Regulations.

XI. Appendix—Sampling and Analytical Methods

The sampling and analytical methods for the substances listed in Section II of this preamble are categorized into three groups: (1) Fully Validated Methods, (2) Other Methods, and (3) No Methods. These methods are indicated in the tables in this Appendix. The first table details fully validated methods, other methods, substances for which there are no identified methods, and detection limits. The second table identifies the most recent NIOSH Analytical methods.

A. Fully Validated Methods

Fully Validated methods were developed by either NIOSH or OSHA. The criteria used in validating these procedures were developed independently by each agency. There are some differences in validation protocol, but in general similar testing procedures were followed. These methods are widely accepted by the scientific community.

B. Other Methods

Methods in this category have not been subjected to all of the testing procedures required of fully validated methods. Some of these procedures have been taken directly from scientific literature and may not have been used by OSHA. Some are methods that were validated for a specific analyte and OSHA believes are applicable for similar analytes. OSHA has reviewed these methods and has concluded that they are of adequate quality to be used for assessing exposures and for enforcement.

C. No Methods

These analytes do not have an adequate sampling method available at OSHA, nor has an appropriate method been found in the available scientific literature.

D. Detection Limits

The values listed under Detection Limits are the lowest air concentrations that can be monitored, based on recommended sample air volumes. Detection limits for the OSHA validated methods are determined during the evaluation. The detection limits listed for the in-house methods are the estimates of OSHA.

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H.S. NO.	ANALYTE	VALIDATED METHOD	OTHER METHOD	NO METHOD	DET LIMIT[1]	COMMENTS
1001.	Acetaldehyde	OSHA 68	—	—	0.58 ppm	
1002.	Acetic Acid	OSHA-NIOSH 1603	—	—	6 ppb	DL based on 240 L air vol
1003.	Acetic Anhydride	NIOSH 3506	—	—	5 mg/m^3	DL based on 100 L air vol
1004.	Acetone	OSHA 69	—	—	0.3 ppm	
1005.	Acetonitrile	NIOSH 1606	—	—	1 ppm	
1006.	Acetylsalicylic Acid (Aspirin)	—	In-house[2]	—	2 ug/m^3	DL based on 120 L air vol
1007.	Acrolein	OSHA 52	—	—	2.7 ppb	
1008.	Acrylamide	OSHA 21	—	—	1.3 ppb	
1009.	Acrylic Acid	OSHA 28	—	—	0.014 ppb	
1010.	Allyl Alcohol	NIOSH 1402	—	—	0.5 ppm	
1011.	Allyl Chloride	NIOSH 1000	—	—	0.2 ppm	
1012.	Allyl Glycidyl Ether (AGE)	NIOSH 5346	—	—	0.1 ppm	
1013.	Allyl Propyl Disulfide	—	In-house	—	0.16 ppm	
1014.	alpha-Alumina	GRAVIMETRIC	—	—	0.02 mg/m^3	Same as nuisance particulate TLV
1015.	Aluminum					
1016.	Metal & oxide- \					
1017.	Pyro powders- \					/ DL based on 480 L air vol
1018.	Soluble Salts- >	GRAV & In-house	—	—	0.1 mg/m^3	< Method does not differentiate
1019.	Welding Fumes- _/					\ different forms of Al.
—	Alkyls-	—	—	XXXX		
1020.	Amitrole (3-Amino-1,2,4-triazole)	—	In-house	—	0.004 mg/m^3	DL based on 60 L air vol
1021.	Ammonia	OSHA ID188, ID164	—	—	1 ppm	DL based on 24 L air vol
1022.	Ammonium Chloride (fume)	GRAVIMETRIC	—	—	0.02 mg/m^3	Same as nuisance particulate TLV
1024.	Ammonium Sulfamate (Ammate)	GRAVIMETRIC	—	—	0.02 mg/m^3	Same as nuisance particulate TLV
1025.	Aniline	NIOSH 2002	—	—	0.05 ppm	
—	ANTU (alpha-Naphthyl-Thiourea)	NIOSH 5276	—	—	0.01 mg/m^3	DL based on 480 L air vol
—	Arsenic	OSHA ID105	—	—	0.0005 mg/m^3	DL based on 480 L air vol
1028.	Asphalt (Petroleum) Fumes	—	OSHA 58	—	0.006 mg/m^3	Benzene soluble portion

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H.S. NO.	ANALYTE	VALIDATED METHOD	OTHER METHOD	NO METHOD	DET LIMIT[1]	COMMENTS
1029.	Atrazine	—	In-house	—	0.05 mg/M^3	DL based on 120 L air vol
—	Azinphos-Methyl	—	In-house	—	0.01 mg/M^3	DL based on 300 L air vol
1031.	Barium Sulfate	GRAVIMETRIC	—	—	0.02 mg/M^3	Same as nuisance particulate TLV
1032.	Benomyl	—	In-house	—	0.03 mg/M^3	DL based on 60 L air vol
1033.	Beryllium & Compounds-	OSHA ID125G	—	—	0.04 ug/M^3	DL based on 480 L air vol
1034.	Bismuth Telluride (Selenium doped)	—	In-house	—	0.02 mg/M^3	DL based on 480 L air vol
1035.	Bismuth Telluride (Undoped)	GRAVIMETRIC	—	—	0.02 mg/M^3	Same as nuisance particulate TLV
—	Borates, Tetra, Sodium Salts					
1036.	Anhydrous-					
1037.	Decahydrate-	—	In-house	—	0.01 mg/M^3	DL based on 480 L air vol. Method is for total Boron and does not differentiate different forms of Boron.
1038.	Pentahydrate-					
1039.	Boron Oxide	GRAVIMETRIC	—	—	0.02 mg/sample	Same as nuisance particulate TLV
1040.	Boron Tribromide	—	In-house	—	0.01 mg/M^3	Based on total Br^- & 15 L air vol
1041.	Bromacil	—	In-house	—	0.1 mg/M^3	DL based on 50 L air vol
1042.	Bromine	OSHA ID108	—	—	0.09 ppm	DL based on 30 L air vol
1043.	Bromine Pentafluoride	—	In-house	—	0.01 mg/M^3	Based on total Br^- & 48 L air vol
1044.	Butane	—	In-house	—	1 ppm	DL based on 10 L air vol
1045.	2-Butanone (MEK)	OSHA 16	—	—	1.5 ppm	
1046.	2-Butoxy Ethanol	NIOSH 1403	—	—	0.02 ppm	DL based on 10 L air vol
1047.	n-Butyl Acetate	NIOSH 1450	—	—	0.04 ppm	DL based on 10 L air vol
1048.	Butyl Acrylate	—	In-house	—	0.3 ppm	DL based on 3 L air vol
1049.	sec-Butyl Alcohol	NIOSH 1401	—	—	0.5 ppm	DL based on 10 L air vol
1050.	tert-Butyl Alcohol	NIOSH 1400	—	—	0.5 ppm	DL based on 10 L air vol
1051.	n-Butyl Alcohol	NIOSH 1401	—	—	0.5 ppm	DL based on 10 L air vol
1052.	n-Butyl Glycidyl ether (BGE)	NIOSH SB1	—	—	0.5 ppm	DL based on 10 L air vol
1053.	n-Butyl Lactate	—	OSHA 7	—	0.2 ppm	Adapt OSHA method to this compound
1054.	Butyl Mercaptan	NIOSH S350	—	—	0.2 ppm	DL based on 10 L air vol
1055.	o-sec-Butylphenol	—	In-house	—	0.1 ppm	DL based on 10 L air vol
1056.	p-tert-Butyltoluene	NIOSH 1501	—	—	0.1 ppm	DL based on 10 L air vol

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U.S. NO.	ANALYTE	VALIDATED METHOD	OTHER METHOD	NO METHOD	DET LIMIT[1]	COMMENTS
1057.	Calcium Carbonate (Limestone, Marble)	GRAVIMETRIC	—	—	0.02 mg/Sample	Same as nuisance particulate TLV
1058.	Calcium Cyanamide	—	In-house	—	0.02 mg/M^3	DL based on sol. Ca & 480 L air vol
1059.	Calcium Hydroxide	—	OSHA ID121	—	0.002 mg/M^3	DL based on total Ca
1060.	Calcium Oxide	—	OSHA ID121	—	0.002 mg/M^3	DL based on total Ca
1061.	Calcium Silicate, Total Dust-	GRAVIMETRIC	—	—	0.02 mg/M^3	Same as nuisance particulate TLV
1062.	Calcium Sulfate	GRAVIMETRIC	—	—	0.02 mg/M^3	Same as nuisance particulate TLV
1063.	Camphor, Synthetic	NIOSH 1301	—	—	0.5 ppm	DL based on 10 L air vol
1064.	Caprolactam (Vapor & Aerosol)	—	In-house	—	0.007 mg/M^3	DL based on 100 L air vol
1065.	Caprolactam (Vapor only)	—	In-house	—	0.01 mg/M^3	DL based on 100 L air vol
1066.	Captafol (Difolatan)	—	In-house	—	0.02 mg/M^3	DL based on 120 L air vol
1067.	Captan	—	In-house	—	0.02 mg/M^3	DL based on 60 L air vol
1068.	Carbofuran (Furadan)	—	In-house	—	0.02 mg/M^3	DL based on 300 L air vol
1069.	Carbon Dioxide	OSHA ID172	—	—	500 ppm	
1070.	Carbon Disulfide	OSHA-NIOSH 1600	—	—	0.1 ppm	DL based on 5 L air vol
1071.	Carbon Monoxide	—	Field Test	—	0.5 ppm	Use direct reading instrument
1072.	Carbon Tetrabromide	—	In-house	—	0.01 ppm	DL based on 10 L air vol
1073.	Carbon Tetrachloride (Tetrachloromethane)	NIOSH 1003	—	—	0.1 ppm	DL based on 15 L air vol
1074.	Carbonyl Fluoride	—	In-house	—	0.2 mg/M^3	Based on total F^- & 240 L air vol
1075.	Catechol (Pyrocatechol)	—	OSHA 32	—	0.5 ppm	Adapt OSHA method to this compound
1076.	Cellulose (paper fiber)	GRAVIMETRIC	—	—	0.02 mg/M^3	Same as nuisance particulate TLV
1077.	Cesium Hydroxide	—	In-house	—	0.02 mg/M^3	DL based on Total Cs & 480 L air vol
1078.	Chlorinated Camphene (Toxaphene)	NIOSH S67	—	—	0.05 mg/M^3	DL based on 15 L air vol
1079.	Chlorine	OSHA ID101	—	—	0.13 ppm	
1080.	Chlorine Dioxide	—	In-house	—	0.05 ppm	DL based on 29 L air vol

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H.S. NO.	ANALYTE	VALIDATED METHOD	OTHER METHOD	NO METHOD	DET LIMIT[1]	COMMENTS
1081.	1-Chloro-1-Nitropropane	NIOSH S211	—	—	0.5 ppm	
1082.	2-Chloro-6-Trichloro-Methyl Pyridine (Nitrapyrin)	—	In-house	—	0.08 mg/M^3	DL based on 60 L air vol
1083.	Chloroacetyl Chloride	—	In-house	—	0.05 ppm	DL based on 10 L air vol
1084.	o-Chlorobenzylidene-Malononitrile	—	NIOSH 304	—	0.003 mg/M^3	DL based on 90 L air vol
1085.	Chlorodifluoromethane	—	NIOSH 1020	—	1 ppm	Adapt NIOSH method to this compound
1086.	Chloroform	OSHA 5	—	—	0.11 ppm	
1087.	Chloropentafluoroethane	—	NIOSH 1020	—	1 ppm	Adapt NIOSH method to this compound
1088.	beta-Chloroprene	NIOSH 1002	—	—	0.5 ppm	
1089.	o-Chlorostyrene	—	NIOSH 1003	—	0.5 ppm	Adapt NIOSH method to this compound
1090.	o-Chlorotoluene	—	NIOSH 1003	—	0.5 ppm	Adapt NIOSH method to this compound
1091.	Chlorpyrifos (Dursban)	OSHA 62	—	—	0.23 ppb	DL based on 480 L air vol
1092.	Chromic Acid & Chromates	OSHA ID103	—	—	<0.4 ug/M^3 as Cr^{+6}.	DL based on 480 L air vol
1093.	Chromium, metal	ID121, ID125G	—	—	2 ug/M^3	DL based on 480 L air vol
1094.	Chromyl Chloride	—	In-house	—	0.01 mg/M^3	Based on Cr^{+6} & 240 L air vol
1095.	Clopidol (Coyden)	—	In-house	—	0.08 mg/M^3	DL based on 60 L air vol
1096.	Coal Dust (<5% Quartz)	GRAV & ID142	—	—	0.02 mg/M^3	Quartz analysis using 400 L air vol
1097.	Coal Dust (>5% Quartz)	GRAV & ID142	—	—	0.02 mg/M^3	Quartz analysis using 400 L air vol
1098.	Cobalt Carbonyl, as Co	—	In-house	—	0.002 mg/M^3	Based on total Co & 480 L air vol
1099.	Cobalt Hydrocarbonyl, as Co	—	In-house	—	0.002 mg/M^3	Based on total Co & 480 L air vol
1100.	Cobalt, as Co (Metal Dust & Fume)	ID121, ID125G	—	—	2 ug/M^3	DL based on 480 L air vol
1101.	Copper, Fume-	ID121, ID125G	—	—	2 ug/M^3	DL based on 480 L air vol
1102.	Crag Herbicide (Sesone)	NIOSH S356	—	—	1.5 mg/M^3	DL based on 90 L air vol
1103.	Crufomate	—	In-house	—	0.03 mg/M^3	DL based on 60 L air vol
1104.	Cyanamide	—	In-house			
1105.	Cyanogen	—	In-house	—	0.08 ppm	DL based on 10 L air vol
1106.	Cyanogen Chloride	—	In-house	—	0.05 ppm	DL based on 10 L air vol
1107.	Cyclohexanol	NIOSH 1402	—	—	0.5 ppm	DL based on 10 L air vol
1108.	Cyclohexanone	OSHA 1	—	—	0.05 ppm	

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S. NO.	ANALYTE	VALIDATED METHOD	OTHER METHOD	NO METHOD	DET LIMIT[1]	COMMENTS
1109.	Cyclohexylamine	—	In-house	—	0.5 ppm	DL based on 10 L air vol
1110.	Cyclonite (RDX)	—	In-house	—	0.08 mg/m^3	DL based on 80 L air vol
1111.	Cyclopentane	—	NIOSH 1500	—	0.5 ppm	Adapt NIOSH method to this compound
1112.	Cythesatin	—	In-house	—	0.01 mg/m^3	Solvent extract, Sn anal & 480 L air vol
1113.	DDT (Dichlorodiphenyl-trichloroethane)	NIOSH S274	—	—	0.01 mg/m^3	DL based on 90 L air vol
1114.	Decaborane	—	In-house	—	0.002 mg/m^3	Hot H_2O extract, B anal & 480 L air vol
—	Demeton (Systox)	NIOSH 5514	—	—	0.006 mg/m^3	DL based on 480 L air vol
1116.	Di-sec-Octyl Phthalate	—	In-house	—	0.01 mg/m^3	DL based on 100 L air vol
1117.	2,6-Di-tert-Butyl-p-Cresol	—	NIOSH 226	—	0.5 ppm	
1118.	Diazinon	OSHA 62	—	—	0.24 ppb	DL based on 480 L air vol
1119.	Dibutyl Phosphate	—	NIOSH 5017	—	0.3 mg/m^3	DL based on 250 L air vol
1120.	2-N-Dibutylaminoethanol	—	OSHA-NIOSH 2007	—	0.5 ppm	
1121.	1,1-Dichloro-1-Nitroethane	NIOSH 1601	—	—	0.5 ppm	
1122.	1,3-Dichloro-5,5-Dimethylhydantoin	—	In-house	—	0.2 mg/mL	Field anal by Chemiluminescence
1123.	Dichloroacetylene	—	NIOSH 1003	—	0.05 ppm	Adapt NIOSH method to this compound
—	o-Dichlorobenzene	NIOSH 1003	—	—	0.5 ppm	
1125.	p-Dichlorobenzene	NIOSH 1003	—	—	0.5 ppm	
1126.	1,1-Dichloroethane	NIOSH 1003	—	—	0.5 ppm	
1127.	Dichloroethyl Ether	NIOSH 1004	—	—	1 ppm	
1128.	Dichlorofluoromethane	NIOSH 2516	—	—	1 ppm	
1129.	1,3-Dichloropropene	—	NIOSH 1003	—	0.5 ppm	Adapt NIOSH method to this compound
1130.	2,2-Dichloropropionic Acid	—	In-house	—	0.5 ppm	DL based on 10 L air vol
1131.	Dicrotophos (Bidrin)	—	In-house	—	0.01 mg/m^3	DL based on 240 L air vol
1132.	Dicyclopentadiene	—	In-house	—	0.04 ppm	DL based on 10 L air vol
1133.	Dicyclopentadienyl Iron	—	ID121, ID125	—		
1134.	Diethanolamine	—	In-house	—	0.05 ppm	DL based on 10 L air vol
1135.	Diethyl Ketone	—	In-house	—	0.5 ppm	DL based on 10 L air vol
1136.	Diethyl Phthalate	—	In-house	—	0.07 mg/m^3	DL based on 180 L air vol
1137.	Diethylamine	OSHA 41	—	—	0.053 ppm	
1138.	Diethylenetriamine	OSHA 60	—	—	4 ppb	

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H.S. NO.	ANALYTE	VALIDATED METHOD	OTHER METHOD	ND METHOD	DET LIMIT[1]	COMMENTS
1139.	Diglycidyl Ether (DGE)	—	—	—	—	Not present in air - Sample for Epichlorohydrin & Bisphenol A
1140.	Diisobutyl Ketone	NIOSH 1300	—	—	0.5 mg/M^3	
1141.	Dimethyl-1,2-Dibromo-2,2-Dichloroethyl Phosphate	—	In-house	—	0.01 mg/M^3	DL based on 480 L air vol
1142.	Dimethyl Sulfate	—	OSHA-NIOSH 301	—	0.1 mg/M^3	DL based on 20 L air vol
1143.	Dimethylaniline (N,N-Dimethylaniline)	NIOSH 2002	—	—	0.003 ppm	DL based on 20 L air vol
1144.	Dinitolmide (3,5-Dinitro-o-Toluamide)	—	In-house	—	0.05 mg/M^3	DL based on 240 L air vol
1145.	Dioxane (Diethylene Dioxide)	NIOSH 1602	—	—	0.5 ppm	
1146.	Dioxathion (Delnav)	—	In-house	—	0.03 mg/M^3	DL based on 10 L air vol
1147.	Diphenylamine	OSHA 22	—	—	1 ug/M^3	
1148.	Dipropyl Ketone	—	OSHA 7	—	0.5 ppm	Adapt OSHA method to this compound
1149.	Dipropylene Glycol Methyl Ether	NIOSH S69	—	—	0.5 ppm	DL based on 10 L air vol
1150.	Diquat	—	In-house	—	2.8 mg/M^3	DL based on 100 L air vol
1151.	Disulfiram	—	In-house	—	0.02 mg/M^3	DL based on 25 L air vol
1152.	Disulfoton (Disyston)	—	In-house	—	0.002 mg/M^3	DL based on 480 L air vol
1153.	Diuron	—	In-house	—	0.03 mg/M^3	DL based on 60 L air vol
1154.	Divinyl Benzene	—	OSHA 9	—	0.5 ppm	Adapt OSHA method to this compound
1155.	Emery	GRAVIMETRIC	—	—	0.02 mg/M^3	Same as nuisance particulate TLV
1156.	Endosulfan	—	In-house	—	3.4 ug/M^3	DL based on 60 L air vol
1158.	Epichlorohydrin	NIOSH 1010	—	—	0.1 ppm	DL based on 20 L air vol
1159.	Ethanolamine	—	In-house	—	0.08 ppm	DL based on 10 L air vol
1160.	Ethion (Nialate)	—	In-house	—	0.01 mg/M^3	DL based on 240 L air vol
1161.	Ethyl Acrylate	NIOSH 1450	—	—	0.5 ppm	
1162.	Ethyl Benzene	NIOSH 1501	—	—	0.05 ppm	DL based on 10 L air vol
1163.	Ethyl Bromide	NIOSH 1011	—	—	0.5 ppm	
1164.	Ethyl Ether	NIOSH 1610	—	—	0.5 ppm	
1165.	Ethyl Mercaptan	—	In-house	—	0.1 ppm	DL based on 20 L air vol

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H.S. NO.	ANALYTE	VALIDATED METHOD	OTHER METHOD	NO METHOD	DET LIMIT[1]	COMMENTS
1166.	Ethyl Silicate	NIOSH S264	—	—	0.5 ppm	
1167.	Ethylene Chlorohydrin	NIOSH 2513	—	—	0.1 ppm	
1168.	Ethylene Dichloride (1,2-Dichloroethane)	OSHA 3	—	—	0.05 ppm	
1169.	Ethylene Glycol	—	NIOSH 5500	—	0.8 ppm	
1170.	Ethylene Glycol Dinitrate	OSHA 43	—	—	2 ppb	DL based on 15 L air vol
1171.	Ethylidene Norbornene	—	—	XXXX		
1172.	N-Ethylmorpholine	NIOSH S146	—	—	0.1 ppm	
1173.	Fensulphos	—	In-house	—	0.004 mg/M^3	DL based on 480 L air vol
1174.	Fensulfothion (Dasanit)	—	In-house	—	0.02 mg/M^3	DL based on 200 L air vol
1175.	Fenthion (Tiguvon)	—	In-house	—	0.004 mg/M^3	DL based on 480 L air vol
1176.	Ferbam	—	In-house	—	0.08 mg/M^3	DL based on 60 L air vol
1177.	Ferrovanadium Dust	ID121, ID125G	—	—	2 ug/M^3	DL based on Fe or V & 480 L air vol
1178.	Fibrous Glass Dust	GRAVIMETRIC	—	—	0.02 mg/M^3	Same as nuisance particulate TLV
1179.	Fluorine	—	In-house	—	0.1 mg/M^3	As F^-, DL based on 240 L air vol
1180.	Fluorotrichloromethane	NIOSH 1006	—	—	1 ppm	DL based on 3 L air vol
1181.	Fonofos (Dyfonate)	—	In-house	—	0.004 mg/M^3	DL based on 480 L air vol
1182.	Formamide	—	In-house	—	0.5 ppm	DL based on 10 L air vol
1183.	Furfural	OSHA 72	—	—	0.1 ppm	DL based on 10 L air vol
1184.	Furfuryl Alcohol	NIOSH 5365	—	—	0.5 ppm	
1185.	Gasoline	—	In-house	—	0.9 mg/M^3	DL based on 10 L air vol
1186.	Germanium Tetrahydride	—	In-house	—	0.001 mg/M^3	As Ge by (HGA AAS) & 240 L air vol
1187.	Glutaraldehyde	OSHA 64	—	—	4.4 ppb	
1188.	Glycerin (Mist)	GRAVIMETRIC	—	—	0.02 mg/M^3	Same as nuisance particulate TLV
1189.	Glycidol (2,3-Epoxy-1-Propanol)	NIOSH 1608	—	—	1 ppm	DL based on 10 L air vol
1190.	Grain Dust (oat, wheat, barley)	GRAVIMETRIC	—	—	0.02 mg/M^3	
1191.	Graphite (Natural, respirable)	GRAV & ID142	—	—	0.02 mg/M^3	
1191A.	Graphite (Synthetic)	GRAVIMETRIC	—	—	0.02 MG/M^3	Same as nuisance particulate TLV
1192.	Gypsum, Total Dust-	GRAVIMETRIC	—	—	0.02 mg/M^3	Same as nuisance particulate TLV

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S. NO.	ANALYTE	VALIDATED METHOD	OTHER METHOD	NO METHOD	DET LIMIT[1]	COMMENTS
1194.	n-Heptane	NIOSH 1500	—	—	0.2 ppm	
1195.	Hexachlorobutadiene	NIOSH 307	—	—	0.2 ppm	DL based on 100 L air vol
1196.	Hexachlorocyclopentadiene	—	NIOSH 2518	—	1 ppb	
1197.	Hexachloroethane	NIOSH 1003	—	—	0.5 ppm	DL based on 10 L air vol
1198.	Hexafluoroacetone	—	—	XXXX		
1200.	n-Hexane	NIOSH 1500	—	—	0.05 ppm	
1201.	Hexane Isomers	—	NIOSH 1500	—	0.5 ppm	Adapt NIOSH method to this compound
1202.	2-Hexanone	NIOSH 1300	—	—	0.5 ppm	
1203.	Hexone (Methyl Isobutyl Ketone)	NIOSH 1300	—	—	0.05 ppm	DL based on 10 L air vol
1204.	Hexylene Glycol	—	In-house	—	0.5 ppm	DL based on 10 L air vol
1205.	Hydrazine	OSHA 20	—	—	1.2 ppb	
1206.	Hydrogen Bromide	—	In-house	—	0.6 ppb	DL based on 96 L air vol
1207.	Hydrogen Cyanide	OSHA ID120	—	—	0.03 ppm	DL based on 90 L air vol
1208.	Hydrogen Fluoride	—	In-house	—	0.1 ppm	DL based on 240 L air vol
1209.	Hydrogen Sulfide	OSHA ID141	—	—	0.9 ppm	DL based on 2 L air vol
1210.	Hydrogenated Terphenyls	—	NIOSH 5021	—	0.1 mg/m^3	Adapt NIOSH method to this compound
1211.	2-Hydroxypropyl Acrylate	—	NIOSH 543	—	1 ppm	Adapt NIOSH method to this compound
1212.	Indene	—	In-house	—	0.01 ppm	DL based on 10 L air vol
1213.	Indium & Compounds	—	In-house	—	0.02 mg/m^3	As In. DL based on 480 L air vol
1214.	Iodoform	—	In-house	—	0.01 ppm	DL based on 10 L air vol
1215.	Iron Oxide, (Dust & Fume)	ID121, ID125G	—	—	3 ug/m^3	As Fe_2O_3. DL based on 480 L air vol
1216.	Iron Pentacarbonyl (as Fe)	—	COLORIMETRIC	—	0.04 mg/m^3	DL based on 240 L air vol
1217.	Iron Salts, Soluble, as Fe-	OSHA ID121	—	—	2 ug/m^3	As Fe water soluble. DL based on 480 L
1218.	Isoamyl Alcohol	NIOSH 1402	—	—	0.5 ppm	
1219.	Isobutyl Alcohol	NIOSH 1401	—	—	0.03 ppm	
1220.	Isooctyl Alcohol	—	NIOSH 1400	—	0.5 ppm	Adapt NIOSH method to this compound
1221.	Isophorone	NIOSH 2508	—	—	0.07 ppm	DL based on 12 L air vol
1222.	Isophorone Diisocyanate	—	OSHA 42	—	0.02 mg/m^3	DL based on 15 L air vol
1223.	2-Isopropoxyethanol	—	OSHA 53	—	0.5 ppm	Adapt OSHA method to this compound
1224.	Isopropyl Acetate	NIOSH 550	—	—	0.5 ppm	

SAMPLING AND ANALYTICAL METHODS

H.S. NO.	ANALYTE	VALIDATED METHOD	OTHER METHOD	NO METHOD	DET LIMIT[1]	COMMENTS
1225.	Isopropyl Alcohol	NIOSH 1400	—	—	0.2 ppm	
1226.	Isopropyl Ether	NIOSH S368	—	—	0.5 ppm	
1227.	Isopropyl Glycidyl Ether (IGE)	NIOSH S77	—	—	0.5 ppm	
1228.	Isopropylamine	NIOSH S147	—	—	0.5 ppm	
1229.	N-Isopropylaniline	—	NIOSH 2002	—	0.5 ppm	Adapt NIOSH method to this compound
1230.	Kaolin, Total Dust	GRAVIMETRIC	—	—	0.02 mg/M^3	Same as nuisance particulate TLV
1231.	Ketene	NIOSH S92	—	—	0.2 mg/M^3	DL based on 50 L air vol
1232.	Limestone, Total Dust	GRAVIMETRIC	—	—	0.02 mg/M^3	Same as nuisance particulate TLV
1233.	Magnesite, Total Dust	GRAVIMETRIC	—	—	0.02 mg/M^3	Same as nuisance particulate TLV
1234.	Magnesium Oxide fume	OSHA ID121	—	—	4 ug/M^3	As total Mg, DL based on 480 L air vol
1235.	Malathion	OSHA 62	—	—	2.2 ppb	DL based on 60 L air vol
—	Manganese, as Mn					
—	Dust & Compounds-	ID121, ID125G	—	—	0.07 mg/M^3 \	As Mn, Method does not distinguish
1236A.	Fume-	ID121, ID125G	—	—	0.004 mg/M^3 /	fume from dust.
1237.	Manganese Cyclopentadienyl Tricarbonyl, as Mn-	—	In-house	—	0.004 mg/M^3	Total Mn by AAS, 240 L air vol
1238.	Manganese Tetroxide	ID121, ID125G	—	—	0.004 mg/M^3	DL based on total Mn & 30 L air vol
1239.	Marble, Total Dust	GRAVIMETRIC	—	—	0.02 mg/M^3	Same as nuisance particulate TLV
—	Mercury, as Hg					
1240.	Aryl & Inorganic Compounds-	—	In-house	—	0.001 mg/M^3	DL based on 15 L air vol
1241.	Vapor-	—	In-house	—	0.001 mg/M^3	DL based on 15 L air vol
1242.	Alkyl Compounds-	—	—	XXXX		
1243.	Mesityl Oxide	NIOSH 1301	—	—	0.5 ppm	
1244.	Methacrylic Acid	—	In-house	—	0.03 ppm	DL based on 20 L air vol
1245.	Methomyl (Lannate)	—	In-house	—	0.03 mg/M^3	DL based on 60 L air vol & OVS-2 Sampler
1246.	Methoxychlor	—	OSHA-NIOSH S371	—	0.5 mg/M^3	DL based on 100 L air vol
1247.	4-Methoxyphenol	—	OSHA 32	—	0.5 ppm	Use OSHA method for Cresol
1248.	Methyl-2-Cyanoacrylate	OSHA 55	—	—	0.01 ppm	
1249.	Methyl Acetate	NIOSH S42	—	—	0.5 ppm	
1250.	Methyl Acetylene/Propadiene Mixture (MAPP)-	—	In-house	—	2.5 ppm	DL based on 5 L air vol

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E.S. NO.	ANALYTE	VALIDATED METHOD	OTHER METHOD	NO METHOD	DET LIMIT[1]	COMMENTS
1251.	Methyl Acrylonitrile	—	OSHA 37	—	0.1 ppm	Adapt OSHA method to this compound
1252.	Methyl Alcohol	OSHA-NIOSH 2000	—	—	1.5 ppm	
1253.	Methyl Bromide	NIOSH 2520	—	—	0.5 ppm	
1254.	Methyl Chloride	NIOSH 1001	—	—	0.5 ppm	DL based on 10 L air vol
1255.	Methyl Chloroform (1,1,1-Trichloroethane)	OSHA 14	—	—	0.07 ppm	
1256.	Methyl Demeton	—	In-house	—	0.03 mg/M^3	DL based on 60 L air vol
1257.	Methyl Ethyl Ketone Peroxide	—	In-house	—	0.05 mg/M^3	DL based on 15 L air vol
1258.	Methyl Formate	NIOSH S291	—	—	1 ppm	DL based on 10 L air vol
1259.	Methyl Iodide	NIOSH 1014	—	—	0.5 ppm	
1260.	Methyl Isoamyl Ketone	—	In-house	—	0.5 ppm	DL based on 10 L air vol
1261.	Methyl Isobutyl Carbinol (Methyl Amyl Alcohol)	NIOSH 1402	—	—	0.5 ppm	
1262.	Methyl Isopropyl Ketone	—	OSHA 7	—	0.5 ppm	Adapt OSHA method to this compound
1263.	Methyl Mercaptan (Methanethiol)	OSHA 26	—	—	0.03 ppm	
1264.	Methyl-(n-amyl) Ketone	NIOSH 1301	—	—	0.5 ppm	
1265.	Methyl Parathion	—	In-house	—	0.002 mg/M^3	DL based on 480 L air vol
1266.	Methyl Silicate	—	NIOSH S264	—	0.5 ppm	Adapt NIOSH method to this compound
1267.	alpha-Methyl Styrene	NIOSH 1501	—	—	1 ppm	
1268.	Methylcyclohexane	NIOSH 1500	—	—	0.5 ppm	
1269.	Methylcyclohexanol	NIOSH S374	—	—	0.5 ppm	
1270.	o-Methylcyclohexanone	NIOSH 2521	—	—	0.5 ppm	
1271.	Methylcyclopentadienyl -Mn-Tricarbonyl, as Mn-	—	In-house	—	0.004 mg/M^3	Total Mn by AAS, & 240 L air vol
1272.	Methylene Bis (4-Cyclo-hexylisocyanate)	—	In-house	—	0.02 mg/M^3	DL based on 15 L air vol
1273.	4,4'-Methylene-Bis-(2-Chloroaniline)	OSHA 71	—	—	3.6 ug/M^3	DL based on 100 L air vol
—	Methylene Bisphenyl Isocyanate (MDI)	OSHA 47	—	—	2.6 ug/M^3	DL based on 15 L air vol

SAMPLING AND ANALYTICAL METHODS

H.S. NO.	ANALYTE	VALIDATED METHOD	OTHER METHOD	NO METHOD	DET LIMIT[1]	COMMENTS
1275.	Metribuzin	—	In-house	—	0.1 mg/M^3	DL based on 120 L air vol
1276.	Mica	GRAV & ID142	In-house	—	0.02 mg/M^3	Regulated as Quartz if >1% Quartz, 400 L
1277.	Mineral Wool Fiber	GRAVIMETRIC	—	—	0.02 mg/M^3	Same as nuisance particulate TLV
1278.	Molybdenum Insoluble Compounds, as Mo-	ID121, ID125G	—	—	4 ug/M^3	as Mo, DL based on 480 L air vol
1279.	Monocrotophos	—	In-house	—	0.01 mg/M^3	DL based on 240 L air vol
1280.	Monomethyl Aniline	NIOSH S153	—	—	0.1 ppm	
1281.	Morpholine	NIOSH S150	—	—	0.5 ppm	
1282.	Naphthalene	OSHA 35	—	—	80 ppb	
1283.	Nickel Soluble Compounds as Ni-	ID121, ID125G	—	—	4 ug/M3	As Ni, DL based on 480 L air vol
1284.	Nickel Carbonyl	—	In-house	—	0.002 mg/M^3	Based on total Ni & 240 L air vol
1286.	Nitric Acid	OSHA ID127	OSHA ID165SG	—	0.5 ppb	DL based on 96 L air vol
1287.	p-Nitroaniline	NIOSH S7	—	—	0.5 ppm	
1288.	p-Nitrochlorobenzene	NIOSH 2005	—	—	0.1 ppm	
1289.	Nitrogen Dioxide	OSHA ID182	—	—	0.2 ppm	DL based on 3 L air vol
1290.	Nitroglycerin (NG)	OSHA 43	—	—	2 ppb	DL based on 15 L air vol
1291.	2-Nitropropane	OSHA 46	—	—	0.025 ppm	
1292.	Nitrotoluene	NIOSH 2005	—	—	0.1 ppm	
1293.	Nonane	—	NIOSH 1500	—	0.2 ppm	Adapt NIOSH method to this compound
1294.	Nuisance Particulates, Total Dust-	GRAVIMETRIC	—	—	0.02 mg/M^3	Same as nuisance particulate TLV
1295.	Octachloronaphthalene	NIOSH S97	—	—	0.05 mg/M^3	
1296.	Octane	NIOSH 1500	—	—	0.5 ppm	
1297.	Oil Mist, (Mineral)	GRAV & In-house	—	—	0.1 mg/M^3	DL varies based on oil & 480 L air vol
1298.	Osmium Tetroxide	—	In-house	—	0.002 mg/M^3	Neutron Activation Analysis, Total Os
1299.	Oxalic Acid	—	In-house	—	0.02 mg/M^3	DL based on 480 L air vol
1300.	Oxygen Difluoride	—	—	XXXX		
1301.	Ozone	—	In-house	—	0.01 ppm	Chemiluminescence, direct read
1302.	Paraffin Wax fume	—	In-house	—	0.5 mg/M^3	DL based on 120 L air vol

SAMPLING AND ANALYTICAL METHODS

H.S. NO.	ANALYTE	VALIDATED METHOD	OTHER METHOD	NO METHOD	DET LIMIT[1]	COMMENTS
1303.	Paraquat, Respirable Dust-	NIOSH 5003	—	—	0.1 mg/M^3	DL based on 90 L air vol
1304.	Pentaborane	—	In-house	—	0.01 mg/M^3	Based on B & 240 L air vol
1305.	Pentaerythritol, Total Dust-	GRAVIMETRIC	—	—	0.02 mg/M^3	Same as nuisance particulate TLV
1306.	Pentane	NIOSH 1500	—	—	0.5 ppm	DL based on 10 L air vol
1307.	2-Pentanone (Methyl Propyl Ketone)	NIOSH 1300	—	—	0.5 ppm	DL based on 10 L air vol
1308.	Perchloroethylene (Tetrachloroethylene)	NIOSH 1003	—	—	0.05 ppm	DL based on 10 L air vol
1309.	Perchloryl Fluoride	—	In-house	—	0.6 mg/M^3	Based on F^- & 240 L air vol
1310.	Perlite	GRAVIMETRIC	—	—	0.02 mg/M^3	Same as nuisance particulate TLV
1312.	Petroleum Distillates (Naphtha)	OSHA 48	—	—	<260 mg/M^3	DL based on 3 L air vol
1313.	Phenothiazine	—	In-house	—	0.1 mg/M^3	DL based on 240 L air vol
1314.	Phenyl Ether (Vapor)	NIOSH S72	—	—	0.1 ppm	
1315.	Phenyl Glycidyl Ether	NIOSH S74	—	—	0.1 ppm	
1316.	Phenylmercaptan	—	OSHA 26	—	0.1 ppm	Adapt OSHA method to this compound
1317.	Phenylhydrazine	NIOSH S160	—	—	5 mg/M^3	DL based on 120 L air vol
1318.	Phenylphosphine	—	—	XXXX		
1319.	Phorate (Thimet)	—	In-house	—	0.003 mg/M^3	DL based on 480 L air vol
1320.	Phosdrin (Mevinphos)	NIOSH 2503	—	—	0.001 mg/M^3	DL based on 240 L air vol
1321.	Phosphine	OSHA ID180	—	—	0.015 ppm	DL based on 36 L air vol
1322.	Phosphoric Acid	OSHA ID111	OSHA ID165SG	—	0.01 mg/M^3	DL based on 480 L air vol
1323.	Phosphorus Oxychloride	—	In-house	—	0.002 mg/M^3	DL based on PO_4^{-3} & 240 L air vol
1324.	Phosphorus Pentasulfide	—	In-house	—	0.02 mg/M^3	DL based on 60 L air vol
1325.	Phosphorus Trichloride	—	NIOSH 6402	—	1.1 mg/M^3	DL based on 24 L air vol
1326.	Phthalic Anhydride	—	In-house	—	0.38 mg/M^3	DL based on 27 L air vol
1327.	o-Phthalodinitrile	—	OSHA 37	—	0.5 mg/M^3	Adapt OSHA method to this compound
1328.	Picloram (Tordon)	—	In-house	—	0.03 mg/M^3	DL based on 60 L air vol
1329.	Picric Acid (2,4,6-Trinitrophenol)	NIOSH S228	—	—	0.04 mg/M^3	DL based on 180 L air vol

SAMPLING AND ANALYTICAL METHODS

H.S. NO.	ANALYTE	VALIDATED METHOD	OTHER METHOD	NO METHOD	DET LIMIT[1]	COMMENTS
1330.	Piperazine Dihydrochloride	—	In-house	—	1 ppm	DL based on 10 L air vol
1331.	Plaster of Paris Total Dust-	GRAVIMETRIC	—	—	0.02 mg/M^3	Same as nuisance particulate TLV
1332.	Platinum, metal-	—	In-house	—	0.2 ug/M^3	DL based on 480 L air vol
1333.	Portland Cement	GRAV & ID142	—	—	0.02 mg/M^3	Use Quartz std if >1% Quartz
1334.	Potassium Hydroxide	—	OSHA ID121	—	0.03 mg/M^3	Bases on water soluble K^+ & 480 L air
1335.	Propargyl Alcohol	—	NIOSH 1400	—	0.1 ppm	Adapt NIOSH method to this compound
1336.	Propionic Acid	—	In-house	—	0.03 ppm	DL based on 10 L air vol
1337.	Propoxur (Baygon)	—	In-house	—	0.003 mg/M^3	DL based on 60 L air vol
1338.	n-Propyl Acetate	NIOSH 1450	—	—	0.5 ppm	DL based on 10 L air vol
1339.	Propyl Alcohol	NIOSH 1401	—	—	0.5 ppm	
1340.	n-Propyl Nitrate	NIOSH S227	—	—	1 ppm	
1341.	Propylene Dichloride	NIOSH 1003	—	—	0.5 ppm	
1342.	1,2-Propylene Glycol Dinitrate	—	OSHA 43	—	0.2 mg/M^3	Use OSHA 43 for EGDN, & 15 L air vol
1343.	Propylene Glycol Monomethyl Ether	—	OSHA 53	—	0.5 ppm	Adapt OSHA method to this compound
1344.	Propylene Oxide	NIOSH 1612	—	—	0.1 ppm	
—	Pyridine	NIOSH 1613	—	—	0.5 ppm	
1346.	Resorcinol	—	In-house	—	0.02 mg/M^3	DL based on 120 L air vol
—	Rhodium, metal-	—	In-house	—	0.1 ug/M^3	DL based on 480 L air vol
1347.	Insoluble Compounds as Rh-	—	In-house	—	0.1 ug/M^3	DL based on 480 L air vol
1348.	Soluble Compounds as Rh-	—	In-house	—	0.1 ug/M^3	DL based on 480 L air vol
1349.	Ronnel	NIOSH S299	—	—	0.002 mg/M^3	DL based on 120 L air vol
1350.	Rosin Core Solder- (Pyrolysis Products, as Formaldehyde)-	OSHA 52	In-house	—	—	/Sample for Formaldehyde (OSHA 52) and < Abietic Acid (OSHA In-house) as per \ Chemical Information File
1351.	Rouge, (Total Dust)	GRAVIMETRIC	—	—	0.02 mg/M^3	Same as nuisance particulate TLV

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H.S. NO.	ANALYTE	VALIDATED METHOD	OTHER METHOD	NO METHOD	DET LIMIT[1]	COMMENTS
1352.	Silica - Amorphous \ Diatomaceous Earth \ (Uncalcined)- >	GRAV & ID142	—	—	0.02 mg/m^3	If >1% Quartz, use Quartz standard
1353.	Percipitated Silica- /					
—	Silica Gel- /					
—	Silica - Crystalline					
1354.	Cristobalite-	OSHA ID142	—	—	0.05 mg/m^3	DL based on 816 L air vol
1355.	Quartz-	OSHA ID142	—	—	0.02 mg/m^3	DL based on 480 L air vol
1356.	Tridymite-	OSHA ID142	—	—	0.05 mg/m^3	
1357.	Tripoli-	OSHA ID142	—	—	0.02 mg/m^3	Quartz analysis
1358.	Silica, Fused-	OSHA ID142	—	—	0.02 mg/m^3	If >1% Quartz, use Quartz standard
1359.	Silicon	GRAVIMETRIC	—	—	0.02 mg/m^3	Same as nuisance particulate TLV
1360.	Silicon Carbide	GRAVIMETRIC	—	—	0.02 mg/m^3	Same as nuisance particulate TLV
1361.	Silicon Tetrahydride (Silane)	—	In-house	—	0.002 mg/m^3	DL based on Si anal & 240 L air vol
1362.	Silver metal-	OSHA ID121	—	—	0.5 ug/m^3	DL based on 480 L air vol
	Soluble Compounds as Ag	OSHA ID121	—	—	0.5 ug/m^3	DL based on 480 L air vol
1363.	Soapstone, Respirable & Total-	GRAV & ID142	—	—	0.02 mg/m^3	If >1% Quartz, use Quartz standard
1364.	Sodium Azide	—	In-house	—	0.06 mg/m^3	DL based on 15 L air vol
1365.	Sodium Bisulfite	—	In-house	—	0.04 mg/m^3	Based on Na & 480 L air vol
1366.	Sodium Fluoroacetate	—	In-house	—	0.04 mg/m^3	Based on Na & 480 L air vol
1367.	Sodium Hydroxide	—	OSHA ID121	—	0.04 mg/m^3	Based on Na & 480 L air vol
1368.	Sodium Metabisulfite	—	In-house	—	0.04 mg/m^3	Based on Na & 480 L air vol
1369.	Starch, Total Dust	GRAVIMETRIC	—	—	0.02 mg/m^3	Same as nuisance particulate TLV
1371.	Stoddard Solvent	OSHA 48	—	—	<260 mg/m^3	DL based on 3 L air vol
1372.	Styrene, Monomer	OSHA 9	—	—	3.1 ppm	
1373.	Subtilisins (Proteolytic Enzymes)	—	In-house	—	10 pg/m^3	DL based on 15 m^3 air vol
1374.	Sucrose, Total Dust	GRAVIMETRIC	—	—	0.02 mg/m^3	Same as nuisance particulate TLV
1375.	Sulfur Dioxide	OSHA ID107	—	—	0.07 mg/m^3	DL based on 24 L air vol
1376.	Sulfur Monochloride	—	In-house	—	0.01 mg/m^3	Based on Cl^- & 15 L air vol

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H.S. NO.	ANALYTE	VALIDATED METHOD	OTHER METHOD	NO METHOD	DET LIMIT[1]	COMMENTS
1377.	Sulfur Pentafluoride	—	—	XXXX		
1378.	Sulfur Tetrafluoride	—	In-house	—	0.05 mg/M^3	Based on F^- & 15 L air vol
1379.	Sulfuryl Fluoride	—	Field test	—	0.1 ppm	Miran 1A & 1B: MIN. Detectable Conc. = 0.1 ppm at 11.5 um
1380.	Sulprofos	—	In-house	—	0.03 mg/M^3	DL based on 60 L air vol
1381.	Talc (non-Asbestiform)	GRAVIMETRIC	—	—	0.02 mg/M^3	Same as nuisance particulate TLV
1382.	Tantalum, Metal & Oxide Dust-	GRAVIMETRIC	—	—	0.02 mg/M^3	Same as nuisance particulate TLV
1383.	Temephos	—	In-house	—	0.02 mg/M^3	DL based on 60 L air vol
1384.	Terphenyls	NIOSH 5021	—	—	0.1 ppm	
1385.	1,1,2,2-Tetrachloroethane	NIOSH 1019	—	—	0.1 ppm	
1386.	Tetraethyl Lead (as Pb)	—	In-house	—	0.004 mg/M^3	DL based on 240 L air vol & total Pb
1387.	Tetrahydrofuran	NIOSH 1609	—	—	1 ppm	
1388.	Tetramethyl Lead (as Pb)	—	In-house	—	0.004 mg/M^3	DL based on 240 L air vol & total Pb
1389.	Tetrasodium Pyrophosphate	—	In-house	—	0.02 mg/M^3	Based on Na & 480 L air vol
—	Thallium, Soluble Compounds-	—	OSHA ID121	—	0.03 mg/M^3	DL based on 480 L air vol
1391.	4,4'-Thio-bis(6-tert-Butyl-m-Cresol)	—	In-house	—	0.04 mg/M^3	DL based on 120 L air vol
1392.	Thioglycolic Acid	—	In-house	—	0.07 ppm	DL based on 10 L air vol
1393.	Thionyl Chloride	—	In-house	—	0.01 mg/M^3	Based on Cl^- & 15 L air vol
—	Tin					
1394.	Organic Compounds, as Sn-	—	In-house	—	0.01 mg/M^3	Only Org-Sn's listed in Chem Info File
1395.	Oxide-	—	In-house	—	0.03 mg/M^3	DL based on 480 L air vol
1396.	Titanium Dioxide	GRAVIMETRIC	—	—	0.02 mg/M^3	Same as nuisance particulate TLV
1397.	Toluene	NIOSH 4000	—	—	0.02 ppm	DL based on 10 L air vol
1398.	Toluene-2,4-Diisocyanate (TDI)	OSHA 42	—	—	0.36 ppb	DL based on 15 L air vol
1399.	o-Toluidine	OSHA 73	—	—	0.1 ppm	
1400.	p-Toluidine	OSHA 73	—	—	0.1 ppm	
1401.	m-Toluidine	OSHA 73	—	—	0.1 ppm	

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H.S. NO.	ANALYTE	VALIDATED METHOD	OTHER METHOD	NO METHOD	DET LIMIT[1]	COMMENTS
1402.	Tributyl Phosphate	OSHA-NIOSH S208	—	—	0.5 mg/m^3	DL based on 100 L air vol
1403.	1,1,2-Trichloro-1,2,2-Trifluoroethane	NIOSH 1020	—	—	1.4 ppm	DL based on 1.5 L air vol
1404.	Trichloroacetic Acid	—	NIOSH 1603	—	0.1 ppm	Adapt NIOSH method to this compound
1405.	1,2,4-Trichlorobenzene	—	NIOSH 5517	—	0.5 ppm	DL based on 10 L air vol
1406.	Trichloroethylene	NIOSH 1022, 3701	—	—	0.2 ppm	DL based on 3 L air vol
1407.	1,2,3-Trichloropropane	NIOSH 1003	—	—	0.5 ppm	DL based on 10 L air vol
1408.	Triethylamine	NIOSH S152	—	—	0.5 ppm	
1409.	Trimellitic Anhydride	—	In-house	—	0.001 mg/m^3	DL based on 480 L air vol
1410.	Trimethyl Phosphite	—	In-house	—	0.5 ppm	DL based on 120 L air vol
1411.	Trimethylamine	—	In-house	—	0.5 ppm	DL based on 10 L air vol
1412.	Trimethylbenzene	—	In-house	—	0.02 ppm	DL based on 10 L air vol
1413.	2,4,6-Trinitrotoluene (TNT)	OSHA 44	—	—	0.021 mg/m^3	
1414.	Triorthocresyl Phosphate	OSHA-NIOSH S209	—	—	0.01 mg/m^3	DL based on 100 L air vol
1415.	Triphenylamine	—	In-house	—	0.5 ppm	DL based on 10 L air vol
—	Tungsten, as W					
1416.	Insoluble Compounds-	—	In-house	—	0.002 mg/m^3	480 L & Neutron Activation Analysis
1417.	Soluble Compounds-	—	In-house	—	0.002 mg/m^3	480 L & Neutron Activation Analysis
—	Uranium					
1418.	Insoluble Compounds-	—	In-house	—	0.8 ug/m^3	DL based on 480 L air vol
1419.	Soluble Compounds-	—	OSHA ID170SG	—	0.8 ug/m^3	DL based on 480 L air vol
1420.	N-Valeraldehyde	—	OSHA 68	—	1 ppm	Adapt OSHA method to this compound
1421.	Vanadium, as (V_2O_5)					
1421.	Respirable Dust-	OSHA ID125G	OSHA ID185	—	0.004 mg/m^3	Based on total V analysis & 480 L
1422	Fume-	OSHA ID125G	OSHA ID185	—	0.004 mg/m^3	Based on total V analysis & 480 L
1423.	Vegetable Oil Mis:	GRAVIMETRIC	—	—	—	Same as nuisance particulate TLV
1424.	Vinyl Acetate	OSHA 51	—	—	0.01 ppm	
1425.	Vinyl Bromide	OSHA 8	—	—	0.2 ppm	
1426.	Vinyl Cyclohexene Dioxide	—	In-house	—	0.5 ppm	DL based on 10 L air vol
1427.	Vinyl Toluene	NIOSH 1501	—	—	0.5 ppm	
1428.	Vinylidene Chloride	OSHA 19	—	—	0.05 ppm	

SAMPLING AND ANALYTICAL METHODS

H.S. NO.	ANALYTE	VALIDATED METHOD	OTHER METHOD	NO METHOD	DET LIMIT[1]	COMMENTS
1429.	VM&P Naphtha	OSHA 48	—	—	<260 mg/M^3	DL based on 3 L air vol
1430.	Welding Fumes (Total Particulate)	GRAV & ID125G	—	—	—	See Det. Lim. for specific metals
1430A.	Wood Dust	GRAVIMETRIC	—	—	0.02 mg/M^3	
1431.	Xylene (o-,m-,p-isomers)	NIOSH 1501	—	—	0.02 ppm	DL based on 12 L air vol
1432.	m-Xylene-alpha,alpha'-Diamine	—	In-house	—	0.1 ppm	DL based on 10 L air vol
1433.	Xylidine	NIOSH 2002	—	—	2.5 mg/M^3	DL based on 20 L air vol
1434.	Zinc Stearate	—	OSHA ID121	—	0.003 mg/M^3	Based on 2h & 480 L air vol
1435.	Zinc Chloride fume	—	OSHA ID121	—	0.006 mg/M^3	Based on 2h & 480 L air vol
1436.	Zinc Chromates, as (CrVI)-	OSHA ID103	—	—	0.4 ug/M^3	As Cr^{+6}. DL based on 480 L air vol
—	Zinc Oxide					
1437.	Fume-	GRAV & ID121,			0.003 mg/M^3	Total Zn. Does not differentiate fume & dust
1438.	Dust-	ID125G	ID143	—	0.003 mg/M^3	
1439.	Zirconium Compounds	GRAV & ID121	—	—	1 mg/M^3	DL based on 480 L air vol

1. Detection Limits (DL) are approximate values based on the analytical procedures recommended air volume or the air volume cited in the "comments" section.

2. "In-house" refers to analytical methods used by OSHA that have not been fully validated by either NIOSH or OSHA. These procedures have been developed by OSHA or were taken from the literature. Some literature methods may not have been used by OSHA as yet.

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1005	Acetonitrile	NIOSH 1606	
1007	Acrolein	NIOSH 2501	
1010	Allyl alcohol	NIOSH 1402	
1011	Allyl chloride	NIOSH 1000	
1012	Allyl glycidyl ether (AGE)	NIOSH S346	
1021	Ammonia	NIOSH 6701	
1024	Ammonium Sulfamate (Amate)	NIOSH S348	
1025	Aniline	NIOSH 2002	
----	ANTU (Alpha-Naphthyl Thiourea)	NIOSH S276	
----	Arsenic	NIOSH 7900	
1033	Beryllium & compounds	NIOSH 7102	
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1046	2-Butoxy ethanol	NIOSH 1403	
1047	n-Butyl acetate	NIOSH 1450	
1049	sec-Butyl alcohol	NIOSH 1401	
1050	tert-Butyl alcohol	NIOSH 1400	
1051	n-Butyl alcohol	NIOSH 1401	
1052	n-Butyl glycidyl ether (BGE)	NIOSH S81	
1054	Butyl mercaptan	NIOSH S350	
1056	p-tert-Butyltoluene	NIOSH 1501	
1057	Calcium carbonate (Limestone, Marble)	NIOSH 500, 600	
1059	Calcium hydroxide	NIOSH 7020	
1060	Calcium oxide	NIOSH 7020	
1062	Calcium Sulfate (Plaster of Paris)	NIOSH 500, 600	
1063	Camphor, synthetic	NIOSH 1301	
1069	Carbon Dioxide	NIOSH 5249	
1070	Carbon Disulfide	NIOSH 1600	
1071	Carbon Monoxide	NIOSH S340	
1073	Carbon Tetrachloride (Tetrachloromethane)	NIOSH 1003	
1076	Cellulose (paper fiber)	NIOSH 500, 600	
1078	Chlorinated Camphene (Toxaphene)	NIOSH S67	
1081	1-Chloro-1-nitropropane	NIOSH S211	
1084	o-Chlorobenzylidene Malononitrile		NIOSH 304

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1087	Chloropentafluoroethane		NIOSH 1020
1088	beta-Chloroprene	NIOSH 1002	
1089	o-Chlorostyrene		NIOSH 1003
1090	o-Chlorotoluene		NIOSH 1003
1092	Chromic Acid & Chromates	NIOSH 7600	
1093	Chromium, metal	NIOSH 7024, 7300	
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1108	Cyclohexanone	NIOSH 1300	
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----	Demeton (Systox)	NIOSH 5514	
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1125	p-Dichlorobenzene	NIOSH 1003	
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1127	Dichloroethyl Ether	NIOSH 1004	
1128	Dichlorofluoromethane	NIOSH 2516	
1129	1,3-Dichloropropene		NIOSH 1003
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1142	Dimethyl Sulfate		NIOSH 301
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1145	Dioxane (Diethylene Dioxide)	NIOSH 1602	
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1166	Ethyl Silicate	NIOSH S264	
1167	Ethylene Chlorohydrin	NIOSH 2513	

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1172	N-Ethylmorpholine	NIOSH S146	
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1184	Furfuryl Alcohol	NIOSH S365	
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1196	Hexachlorocyclopentadiene		NIOSH 308
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1201	Hexane Isomers		NIOSH 1500
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1205	Hydrazine	NIOSH 3503	
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1210	Hydrogenated Terphenyls		NIOSH 5021
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1220	Isooctyl Alcohol		NIOSH 1400
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1225	Isopropyl Alcohol	NIOSH 1400	
1226	Isopropyl Ether	NIOSH S368	
1227	Isopropyl Glycidyl Ether (IGE)	NIOSH S77	
1228	Isopropylamine	NIOSH S147	
1229	N-Isopropylaniline		NIOSH 2002
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1253	Methyl Bromide	NIOSH 2520	
1254	Methyl Chloride	NIOSH 1001	
1255	Methyl Chloroform (1,1,1-Trichloroethane)	NIOSH 1003	
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1294	Nuisance Particulates, Total dust-	NIOSH 500, 600	
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1315	Phenyl Glycidyl Ether (PGE)	NIOSH 574	
1317	Phenylhydrazine	NIOSH S160	
1320	Phosdrin (Mevinphos)	NIOSH 2503	
1322	Phosphoric Acid	NIOSH 7903	
1325	Phosphorus Trichloride		NIOSH 305
1329	Picric Acid (2,4,6-Trinitrophenol)	NIOSH S228	
1331	Plaster of Paris Total Dust-	NIOSH 500, 600	
1335	Propargyl Alcohol		NIOSH S65
1338	n-Propyl Acetate	NIOSH 1450	
1339	Propyl Alcohol	NIOSH 1401	
1340	n-Propyl Nitrate	NIOSH S227	
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1344	Propylene Oxide	NIOSH 1612	
----	Pyridine	NIOSH 1613	
1351	Rouge, Total Dust-	NIOSH 500, 600	
1352	Silica - Amorphous \ Diatomaceous earth \ (uncalcined)- > Percipitated silica- / Silica gel- /		NIOSH 7501
----	Silica - Crystalline		
1354	Cristobalite	NIOSH 7500	
1355	Quartz	NIOSH 7500	
1356	Tridymite-	NIOSH 7500	
1357	Tripoli-	NIOSH 7500	
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1399	o-Toluidine	NIOSH 2002	
1400	p-Toluidine		NIOSH 2002
1401	m-Toluidine		NIOSH 2002
1402	Tributyl Phosphate	NIOSH S208	
1403	1,1,2-Trichloro-1,2,2-Trifluoroethane	NIOSH 1020	
1404	Trichloroacetic Acid		NIOSH 1603
1405	1,2,4 Trichlorobenzene		NIOSH 5517
1406	Trichloroethylene	NIOSH 1022, 3701	
1407	1,2,3-Trichloropropane	NIOSH 1033	
1408	Triethylamine	NIOSH S152	
1414	Triorthocresyl Phosphate	NIOSH S209	
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1416	Insoluble compounds-	NIOSH 7074	
1417	Soluble compounds-	NIOSH 7074	
1421	Vanadium, as (V_2O_5) Respirable dust-		NIOSH 7504
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1424	Vinyl Acetate	NIOSH 278	
1425	Vinyl Bromide	NIOSH 1009	
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1429	VM&P Naphtha	NIOSH 1550	
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1431	Xylene (o-,m-,p-isomers)	NIOSH 1501	
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Federal Register
Vol. 54, No. 13
Monday, January 23, 1989

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 213

Excepted Schedules

AGENCY: Office of Personnel Management.

ACTION: Final regulations.

SUMMARY: The Office of Personnel Management (OPM) is amending its regulations to eliminate the requirement for agreements between agencies and OPM in employing persons with mental retardation. The change is intended to improve the use of this appointing authority by eliminating a requirement not specifically required in law.

EFFECTIVE DATE: February 22, 1989.

FOR FURTHER INFORMATION CONTACT: Patricia Paige, (202) 632-6801.

SUPPLEMENTARY INFORMATION: On August 17, 1988, OPM published (at 53 CFR 31012) proposed regulations to amend 5 CFR Part 213 to eliminate the requirement that agencies execute a written agreement with OPM before making appointments under § 213.3102 (t). We received comments from one Federal agency and one Federal employees' union. Key aspects of the proposal are summarized below along with a discussion of the recommendations and OPM's decision.

Key Provision

—Amends 5 CFR 213.3102(t) to delete the requirement for a written agreement between the Office of Personnel Management and a Federal agency prior to using this authority.

Comments Received

—One Federal agency approved the proposed amendment as published.

—A Federal employees' union recommended that the words "may qualify" be changed to read "shall qualify" in the sentence "Upon completion of 2 years of satisfactory service under this authority, the employee may qualify for conversion to competitive status under the provisions of Executive Order 12125 and implementing regulations issued by the Office." The union feels that, without this change, otherwise qualified employees who have served satisfactorily for two years and deserve to be converted by the agency may not be. OPM does not concur with this recommendation for the following reasons: (1) This would not be in accordance with its policy of providing agencies with maximum flexibility in using this appointing authority. (2) Executive Order 12125 specifically states "may be converted" instead of "shall be converted," and (3) FPM guidance provides protection for the employee by specifying that there should be substantial justification for not recommending conversion of an employee who meets the minimum service requirement and who has demonstrated successful job performance.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined by section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant impact on a substantial number of small entities because they affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 213

Government agencies, Employees.

U.S. Office of Personnel Management.

Constance Horner,

Director.

Accordingly, OPM amends Part 213 of Title 5, Code of Federal Regulations, as follows:

PART 213—EXCEPTED SERVICE

1. The authority citation for Part 213 continues to read as follows:

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., p. 218; Section 213.101 also issued under 5 U.S.C. 2103; Section 213.102 also issued under 5 U.S.C. 1104, Pub. L. 95–454, sec 3(5); Section 213.3102 also issued under 5 U.S.C. 3301, 3302 (E.O. 12364, 47 FR 22931), 3307, 8377(h) and 8457.

2. In § 213.3102, paragraph (t) is revised to read as follows:

§ 213.3102 Entire executive civil service.

* * * * * *

(t) Positions when filled by mentally retarded persons in accordance with the guidance in Federal Personnel Manual Chapter 306. Upon completion of 2 years of satisfactory service under this authority, the employee may qualify for conversion to competitive status under the provisions of Executive Order 12125 and implementing instructions issued by the Office.

* * * * * *

[FR Doc. 89-1361 Filed 1-19-89; 8:45 am]

BILLING CODE 6325-01-M

5 CFR Parts 430 and 534

Pay and Performance Under the Senior Executive Service

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations on Senior Executive Service (SES) pay and performance. The regulations establish requirements necessary to apply consistently and equitably the SES pay provisions of the Civil Service Reform Act of 1978, as amended. In particular, the regulations focus on setting individual basic pay under the SES and implementing the statutory provisions on aggregate compensation. They attempt to provide as much flexibility to agencies as possible under the statutory provisions while providing adequate protections for career appointees. The regulations also permit more flexibility on the part of agencies in operating their SES performance appraisal systems by revising the requirements on the number of SES summary rating levels and the ending date of the SES performance appraisal period.

EFFECTIVE DATE: February 22, 1989.

FOR FURTHER INFORMATION CONTACT: Neal Harwood, (202) 632-4486.

SUPPLEMENTARY INFORMATION: On August 8, 1988, OPM published proposed regulations (53 FR 29884) on pay and performance under the SES. The comment period, which was 60 days

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from the date of publication, ended on October 7, 1988. Comments were received from 10 agencies. Comments are summarized below, along with any changes in, or clarifications of, the proposed regulations.

Performance Appraisal for the Senior Executive Service (Part 430, Subpart C)

Two changes to current regulations were included in the proposed regulations. There was no opposition expressed in the comments to either change, and they have both been incorporated in the final regulations.

The first change amends § 430.304(g) to allow agencies to have a three, four, or five summary rating-level system, rather than requiring five levels. (The first three levels under any system must be those established by 5 U.S.C. 4314(a), i.e., unsatisfactory, minimally satisfactory, and fully successful.) As with all significant changes in performance plans, and in accordance with 5 U.S.C. 4312(c)(1) and Subpart A of Part 430, an agency must submit any revision in the number of rating levels in its performance appraisal plan to OPM for review and determination on compliance with law and applicable regulation. Submissions should be sent to the Assistant Director for Pay and Performance Management, Room 7H30.

The second change amends § 430.305(a) to allow agencies to end their SES performance appraisal period at any time, rather than requiring it to end between June 30 and September 30. If an agency changes the end date of its appraisal period, it is not necessary to obtain the prior approval of OPM, but the agency should notify OPM of the change when it is made. The notification should explain how the agency will handle the transition from the old to the new period. For example, if the end date is changed from September 30 to December 31, the agency should state whether the time from October through December will be added to the old period or the new period during the transition, or will be rated separately.

Pay Under the Senior Executive Service (Part 534, Subpart D)

(a) Setting individual basic pay.

The proposed regulations at § 534.401 provided procedures for implementing 5 U.S.C. 5383(c), under which pay for SES members may be adjusted only once in a 12-month period by an appointing authority.

One agency asked whether the 12-month waiting period for a pay adjustment applies when an executive is reassigned between organizations which are in the same agency, but under different appointing authorities. § 534.401(c)(1) has been revised to clarify that the waiting period applies to any pay adjustment in the same agency, so that pay may not be adjusted upon the reassignment unless 12 months have elapsed since the last adjustment.

Under proposed § 534.401(d), pay could be set at any rate upon transfer between agencies, since a new appointing authority is involved. One agency commented that it was not clear whether the 12-month waiting period for a pay adjustment is continuous or starts over if the gaining agency sets an individual's pay at the same level as the losing agency. A new 12-month waiting period begins only if there is a change in the ES rate upon the transfer (e.g., from ES-3 to ES-4). Otherwise, the 12-month waiting period is considered to begin at the time of the last adjustment in the losing agency. The regulations have been clarified on this point.

Under proposed § 534.401(e)(1), if there was a break in SES service of more than 30 days, pay could be set at any rate upon reappointment to the SES; and under proposed § 534.401(c)(1)(iii), a new 12-month waiting period for a pay adjustment was required following the reappointment action, no matter at which rate the pay was set.

One agency suggested requiring a 12-month break in service before allowing pay to be set at any rate upon reappointment, on the basis that an executive might be willing to take even a 30-day break just to be able to get a higher pay rate. We believe 30 days is a sufficient break. It is each agency's responsibility to assure that the break, whatever the length, is not solely for the purpose of avoiding the 12-month waiting period between pay rate changes.

Two agencies argued that if the reappointment was at the same rate the executive previously held, the 12-month waiting period should begin as of the time of the executive's last pay adjustment, not the date of the reappointment action. The agencies said that this would increase flexibility by allowing an agency to reappoint the executive at a higher pay level immediately (starting a new 12-month waiting period) or to reappoint the executive at the same pay level and wait to see how the executive performs before deciding whether to increase the pay level (without having to wait a full 12 months).

We agree that some additional flexibility is appropriate.

Section 534.401(c)(1)(iii) has been revised to provide that a new 12-month waiting period for a pay change starts upon reappointment only if the executive's new ES rate is different from the former rate or if the break in SES service exceeds 12 months. Otherwise, the waiting period begins on the date of the last previous adjustment preceding the reappointment. For example, if an executive received an ES-3 rate on March 1, 1988, left the SES on July 1, 1988, and was reappointed to the SES as an ES-3 on October 1, 1988, the executive would be eligible for a change in pay on March 1, 1989. If the executive was reappointed to the SES as an ES-4, however, on October 1, 1988, the executive would not be eligible for a change in pay until October 1, 1989.

Proposed § 534.401(e)(1) did not specifically state how pay would be set upon reappointment if there had been a break in service of 30 days or less. It has been clarified to state that in this situation, pay may be set at any ES rate if the individual's last ES pay adjustment was more than 12 months earlier. If the last ES pay adjustment was less than 12 months earlier, pay must be set at the former rate. It may then be changed after 12 months have elapsed from the last adjustment.

Section 534.401(f) continued the restriction currently in § 534.402 that the ES rate of an executive who converted to the SES under Subpart C of Part 317 may not be reduced below "the basic payable salary" for the executive immediately before the conversion. One agency asked whether "basic payable salary" means the actual dollar amount received immediately before conversion, or the current salary level of the grade and step occupied immediately before conversion. The term means the former, i.e., the actual dollar amount received immediately before conversion. (b) Aggregate compensation.

Proposed § 534.402 defined an individual's aggregate compensation (basic pay, performance awards, Presidential rank awards, and physicians comparability allowances) and provided, in accordance with 5 U.S.C. 5383(b), that such compensation for a fiscal year may not exceed the pay rate in effect at the end of the fiscal year for level I of the Executive Schedule. The proposed regulations also explained how any amount exceeding the level I ceiling was to be paid later, including situations where an individual transferred to another agency, separated from the Federal service, or died. No comments were received on these provisions, and they have been incorporated in the final regulations as proposed.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under Section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it deals with the SES employees of the Federal Government.

List of Subjects

5 CFR Part 430

Administrative practice and procedure, Government employees.

5 CFR Part 534

Government employees, Wages.

U.S. Office of Personnel Management.
Constance Horner,
Director.

Accordingly, OPM is amending 5 CFR Part 430 and 5 CFR Part 534 as follows:

PART 430—PERFORMANCE MANAGEMENT

1. The authority citation for Part 430 continues to read as follows:

Authority: 5 U.S.C. chapters 43, 45, 53, and 54.

2. Section 430.304(g) is revised to read as follows:

§ 430.304 SES performance appraisal systems.

* * * * *

(g) Each SES appraisal system shall provide for at least three and not more than five summary rating levels. The rating levels must include an "Unsatisfactory" level, a "Minimally Satisfactory" level, and a "Fully Successful" level. Agencies may also establish up to two levels which are above "Fully Successful." For purposes of this subpart, "Unsatisfactory" is referred to as level 1, "Minimally Satisfactory" is level 2, and "Fully Sucessful" is level 3. A level one level above "Fully Successful" is level 4, and a level two levels above "Fully Successful" is level 5.

* * * * *

3. Section 430.305(a)(1) is revised to read as follows:

§ 430.305 Appraisal of performance.

(a) *Appraisal period.* (1) Each agency appraisal system shall establish an official appraisal period for which a rating of record shall be prepared. Employees shall be given a rating of record at least annually. Systems shall provide for preparing a summary rating when an executive changes positions during the appraisal period, if the executive has served for the minimum appraisal period in the position from which he/she has changed; agency SES Performance Management Plan(s) must describe how these ratings will be taken into consideration in deriving the next rating of record. A summary rating prepared when an executive changes positions during the appraisal period shall not be considered an initial rating.

* * * * *

PART 534—PAY UNDER OTHER SYSTEMS

1. The authority citation for Part 534 is revised as set forth below:

Authority: 5 U.S.C. 1104, 5351, 5352, 5353, 5361, 5383, 5384, 5385, and 5541.

2. Sections 534.401 and 534.402 of Subpart D are revised to read as follows:

Subpart D—Pay Under the Senior Executive Service

§ 534.401 Definitions and setting individual basic pay.

(a) *Definitions.* In this subpart—

"Agency" means an executive agency or military department, as defined by 5 U.S.C. 105 and 102.

"ES rate" means one of the five or more rates of basic pay established by the President under 5 U.S.C. 5382 for the Senior Executive Service.

"Senior executive" means a member of the Senior Executive Service (SES).

(b) *Setting pay upon initial appointment.* An appointing authority may set the pay of a new appointee into the SES at any ES rate.

(c) *Adjusting pay while in the SES.* (1) The pay of a senior executive may not be adjusted by an agency more than once in any 12-month period. A pay adjustment includes:

(i) The assignment of an ES rate upon initial appointment to the SES;

(ii) The change from one ES rate to another while employed in the SES; or

(iii) The assignment of an ES rate upon reappointment to the SES following a break in SES service if the new ES rate is different from the executive's former rate or if the break in service exceeds 12 months.

(2) An appointing authority may raise the pay for a senior executive any number of ES rates at the time of an adjustment.

(3) An appointing authority may lower the pay for a senior executive only one rate at the time of an adjustment. A career senior executive must be provided a 15-day written notice before a pay reduction.

(d) *Setting pay upon transfer.* An appointing authority may set the pay of a senior executive transferring from another agency at any ES rate. If the pay is set at the same rate the executive had in his or her former agency, the action is not considered a pay adjustment for purposes of paragraph (c) of this section

(e) *Setting pay following a break in SES service.* (1) General.

(i) An appointing authority may set the pay of a former senior executive at any ES rate upon reappointment to the SES if:

(A) There has been a break in SES service of more than 30 days;

(B) There has been a break in SES service of 30 days or less, but the executive's last ES pay adjustment was more than 12 months earlier; or

(C) The reappointment is in a different agency.

(ii) Otherwise, pay must be set at the executive's former ES rate and may not be adjusted until 12 months from the last SES pay adjustment, in accordance with paragraph (c) of this section.

(2) Reinstatement from a Presidential appointment requiring Senate confirmation. If a former career senior executive elected, under 5 CFR 317.801(b), to remain subject to SES pay provisions while serving under a Presidential appointment, pay may be adjusted upon reinstatement to the SES only if 12 months have elapsed since the last SES pay adjustment, in accordance with paragraph (c) of this section. If the former senior executive did not elect to remain subject to the SES pay provisions while serving under the Presidential appointment, pay may be set at any ES rate upon reinstatement.

(f) *Restrictions on reducing the pay of senior executives who converted under Subpart C of Part 317 of this chapter.* The ES rate of a senior executive who entered the SES under the conversion provisions of Subpart C of Part 317 of this chapter cannot be reduced, during such executive's appointment in the SES, below the basic payable salary for that individual immediately before converting to the SES.

§ 534.402 Aggregate compensation.

(a) *Definition.* "Aggregate compensation" consists of basic pay, performance awards, Presidential rank awards, and physicians comparability allowances.

(b) *Limitation on aggregate compensation.* No senior executive may receive in any fiscal year aggregate compensation that will exceed the payable rate in effect for Level I of the Executive Schedule as of the end of the fiscal year.

(c) *Payment of amount exceeding limitation on aggregate compensation.*

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(1) Any excess amount that cannot be paid to a senior executive during a fiscal year because of the limitation under paragraph (b) of this section will be paid to that individual in a lump sum at the beginning of the following fiscal year, even if the individual is no longer in the SES. The amount so paid will then be considered part of the aggregate compensation for the new fiscal year.

(2) If a senior executive transfers to a different Federal agency or leaves the Federal service, the agency responsible for making the payment is the agency that employed the executive at the time the excess amount was created.

(3) The only exceptions to waiting until the following fiscal year to make the payment of the excess amount are as follows:

(i) If a senior executive dies, payment of the entire excess amount will be made immediately as part of the settlement of accounts, in accordance with 5 U.S.C. 5582.

(ii) If a senior executive separates from the Federal service, payment will be made following a 30-day break in service. The executive shall be paid any excess amount that would not bring aggregate compensation for the fiscal year above the Level I salary rate anticipated to be in effect on the last day of the fiscal year. Any additional excess amount shall be paid at the beginning of the next fiscal year. If the executive is reemployed in the Federal service during the same fiscal year as separation, any previous payment of an excess amount shall be considered part of that year's aggregate compensation for applying the Level I limitation for the remainder of the fiscal year.

[FR Doc. 89-1362 Filed 1-19-89; 8:45 am]
BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 215, 220, and 235

[Amdt. Nos. 36, 56, and 16]

Minor Amendments; Child Nutrition Programs

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule makes several technical amendments to the regulations governing the operation of the Special Milk Program, 7 CFR Part 215; the School Breakfast Program, 7 CFR Part 220; and State Administrative Expense Funds, 7 CFR Part 235. This rule (1) revises the definitions of "child" and "school" to make them consistent with the definitions in the National School Lunch Program regulations; (2) adds an additional reference to the Uniform Federal Assistance regulations (7 CFR Part 3015) into the Special Milk and School Breakfast Program regulations and adds the definition of "7 CFR Part 3015" to those regulations; (3) revises the provision regarding food substitutions in the School Breakfast Program to make it consistent with the National School Lunch Program; (4) consolidates the Office of Management and Budget control numbers for reporting and recordkeeping requirements for the School Breakfast Program regulations; (5) corrects the addresses for two Food and Nutrition Service Regional Offices; and (6) removes the reference to a tuition limitation for private schools from the regulations pertaining to State administrative expense funds. These revisions are intended to establish consistency throughout the school nutrition programs and remove obsolete provisions.

EFFECTIVE DATE: January 23, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Eadie, Chief, Policy and Program Development Branch, Child Nutrition Division, FNS, USDA, Alexandria, Virginia 22302, (703) 756-3620.

SUPPLEMENTARY INFORMATION:

Classification

This document makes technical changes and corrections, and imposes no new requirements. Further, the definitions of "child" and "school" have already been submitted for public comment. Therefore, the Department has determined, in accordance with 5 U.S.C. 553(b) and 553(d) that prior notice and comment are unnecessary, and that good cause exists for making the rule effective upon publication.

This final rule has been reviewed under Executive Order 12291 and has been classified as not major because it does not meet any of the three criteria identified under the Executive Order. This action will not have an annual effect on the economy of $100 million or more, nor will it result in major increases in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions. Furthermore, it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule has also been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601-612). The Administrator of the Food and Nutrition Service has certified that this rule will not have a significant adverse economic impact on a substantial number of small entities.

The Special Milk Program, School Breakfast Program, and State Administrative Expense Funds are listed in the Catalog of Federal Domestic Assistance under 10.556, 10.553, and 10.560, respectively. The programs are subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V, 48 FR 29112, June 24, 1983.)

No new collection or recordkeeping requirements are included which require Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3520). The programs being amended are approved by OMB under the following control numbers: Special Milk Program, 0584-0005; School Breakfast Program, 0584-0012; and State Administrative Expense Funds, 0584-0319.

Background

On August 2, 1988, the Department published a complete rewrite of the National School Lunch Program regulations, 7 CFR Part 210, at 53 FR 29144. To ensure consistency among school nutrition program regulations, the definitions of "child" and "school" stated in the rewrite of the National School Lunch Program regulations are being adopted in this rule for all the school nutrition programs. These revisions are intended to provide consistent definitions for identical terms in all the school nutrition programs. No changes are intended in the practical application of these terms. The Department also is removing the definition "Long-term care facility" from § 220.2 since that term is defined in the definition of "school." Several paragraphs containing regulatory citations which reference the definition of "school" are also being amended to coincide with the revised definition.

In § 220.8(f), a technical amendment is being made to conform with § 210.10(i)(1) in the rewrite of the National School Lunch Program regulations, 7 CFR Part 210. This revision pertains to food substitutions for handicapped and nonhandicapped students, and implements the requirements of the Department's nondiscrimination regulations (7 CFR Part 15b) published in the Federal Register on June 11, 1982 (47 FR 25470). This revision is intended to provide uniformity between the school meal programs. Under this provision, schools must make substitutions in foods for students who are considered handicapped under 7 CFR Part 15b and whose handicap restricts their diet. Substitutions are to be made on a case-by-case basis only when supported by a statement of the need for substitutions that includes recommended alternate foods. In the case of a handicapped student, the statement must be signed by a physician, and in the case of a nonhandicapped student, by a recognized medical authority. For a further discussion of this provision, the reader may refer to the rewrite of the National School Lunch Program regulations referred to above.

The Department is also revising §§ 215.13, 220.15 and 235.8 of the regulations for the Special Milk Program, School Breakfast Program and State Administrative Expense Funds, respectively, to add references to the Department's Uniform Federal Assistance regulations (7 CFR Part 3015) and is adding a definition for "7 CFR Part 3015" to those regulations. Part 3015 implements: (1) OMB Circulars A-102 and A-110, which standardize the administration of grants and cooperative agreements; (2) OMB Circulars A-87, A-21 and A-122, which specify the principles for determining allowable costs; (3) OMB Guidance on Implementation of the Federal Grant and Cooperative Agreement Act of 1977; and (4) OMB Circular A-128, which establishes audit requirements pursuant to the Single Audit Act of 1984. A definition of 7 CFR Part 3015 and references to Part 3015 were also included in the rewrite of the National School Lunch Program regulations, Part 210. This revision is technical in nature and imposes no new requirements because 7 CFR Part 3015 is currently binding on recipients and subrecipients.

Sections 215.16 and 220.20, *Program information*, which provides the addresses of the Regional Offices for the Food And Nutrition Service, are being updated. In addition, a new § 220.21 is being added to Part 220 to display OMB control numbers. The Paperwork Reduction Act of 1980 and OMB regulations to control paperwork burdens on the public require OMB approval of any regulations that impose a collection/recordkeeping burden on the public. This rule amends the regulations to display in chart form all OMB control numbers. A similar amendment for other Child Nutrition Program was published on December 31, 1985 (50 FR 53258).

On August 13, 1987, at 52 FR 30127, the Department amended the regulations for the school meal and milk programs to eliminate the tuition limitation that previously prohibited some private schools from participating in the Child Nutrition Program. The elimination of the tuition limitation was required by Pub. L. 100-71. At that time, however, the Department inadvertently neglected to amend 7 CFR Part 235, State Administrative Expense Funds, to make a corresponding change in that part. Therefore this rule amends § 235.2 *Definitions* to: (1) Remove the reference to a tuition limitation from the definition of "School" and revise the definition to make it consistent with Part 210; and (2) delete the definitions "Tuition" and "Special needs children", since they are no longer needed. The term "special needs children" was used only within the definition of "tuition."

List of Subjects

7 CFR Part 215

Food assistance programs, Special Milk Program, Grant programs—social programs, Nutrition, Children, Milk, Reporting and recordkeeping requirements.

7 CFR Part 220

Food assistance programs, School Breakfast Program, Grant programs—social programs, Nutrition, Children, Reporting and recordkeeping requirements.

7 CFR Part 235

Food assistance programs, National School Lunch Program, School Breakfast Program, Special Milk Program, Grants administration, Intergovernmental relations, Reporting and recordkeeping requirements, Administrative practice and procedure.

Accordingly, Parts 215, 220, and 235 are amended as follows:

PART 215—SPECIAL MILK PROGRAM

1. The authority citation for Part 215 continues to read as follows:

Authority: Secs. 3, 10; 80 Stat. 885, 889, as amended (42 U.S.C. 1772, 1779).

2. In § 215.2:

a. Paragraph (e-1) is amended by removing the regulatory citation "§ 215.2(v) (2) and (3)" and adding in its place the regulatory citation "§ 215.2(v) (3) and (4)" and by adding "and (2)" after the regulatory citation "§ 215.2(v)(1)";

b. Paragraph (v) is revised in its entirety; and

c. Paragraph (x-1) is redesignated (x-2) and a new paragraph (x-1) is added.

The revision and addition read as follows:

§ 215.2 Definitions.

* * * * *

(v) "School" means: (1) An educational unit of high school grade or under, recognized as part of the educational system in the State and operating under public or nonprofit private ownership in a single building or complex of buildings; (2) any public or nonprofit private classes of preprimary grade when they are conducted in the aforementioned schools; (3) any public or nonprofit private residential child care institution, or distinct part of such institution, which operates principally for the care of children, and, if private, is licensed to provide residential child care services under the appropriate licensing code by the State or a subordinate level of government, *except for* residential summer camps which participate in the Summer Food Service Program for Children, Job Corps centers funded by the Department of Labor, and private foster homes. The term "residential child care institutions" includes, but is not limited to: Homes for the mentally, emotionally or physically impaired, and unmarried mothers and their infants; group homes; halfway houses; orphanages; temporary shelters for abused children and for runaway children; long-term care facilities for chronically ill children; and juvenile detention centers. A long-term care facility is a hospital, skilled nursing facility, intermediate care facility, or distinct part thereof, which is intended for the care of children confined for 30 days or more; or (4) with respect to the Commonwealth of Puerto Rico, nonprofit child care centers certified as such by the Governor of Puerto Rico.

* * * * *

(x-1) "7 CFR Part 3015" means the Uniform Federal Assistance Regulations published by the Department to implement Office of Management and Budget Circulars A-21, A-87, A-102, A-110, A-122, and A-128; the Single Audit Act of 1984 (31 U.S.C. 7501 *et seq.*); and Executive Order 12372.

Note.—OMB Circulars, referred to in this definition, are available from the EOP Publications, New Executive Office Building, 726 Jackson Place NW., Room 2200, Washington, DC 20503.

* * * * *

3. In § 215.3:

a. Paragraph (b) is amended by removing the regulatory citation "§ 215.2(v)(2) or § 215.2(v)(3)" and

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adding in its place the regulating citation "§ 215.2(v)(3) or § 215.2(v)(4)"; and

b. Paragraph (c) is amended by removing "or § 215.2(v)(2)" and adding ", § 215.2(v)(2) or § 215.2(v)(3)" in its place.

4. In § 215.13, paragraph (a)(1) is amended by revising the first sentence to read as follows:

§ 215.13 Management evaluations and audits.

(a)(1) The State agency shall ensure that all organizations within the State that administer or participate in the Program covered by this part comply with the audit requirements of 7 CFR Part 3015. * * *

* * * * *

5. In § 215.16, paragraphs (a) and (g) are amended by revising the addresses to read as follows:

§ 215.16 Program information.

(a) * * * Northeast Regional Office, FNS, U.S. Department of Agriculture, 10 Causeway Street, Room 501, Boston, Massachusetts 02222–1065.

* * * * *

(g) * * * Mountain Plains Regional Office, FNS, U.S. Department of Agriculture, 1244 Speer Boulevard, Suite 903, Denver, Colorado 80204.

PART 220—SCHOOL BREAKFAST PROGRAM

1. The authority citation for Part 220 continues to read as follows:

Authority: Secs. 4 and 10, 80 Stat. 885, 889 (42 U.S.C. 1773, 1779).

2. In § 220.2:

a. Paragraphs (c) and (u) are revised;

b. Paragraph (m) is removed and reserved;

c. A new paragraph (x–1) is added; and

d. Paragraph (z) is amended by removing the regulatory citation "§ 220.2(u)(2)" and adding in its place the regulatory citation "§220.2(u)(3)."

The revisions read as follows:

§ 220.2 Definitions.

* * * * *

(c) "Child" means: (1) A student of high school grade or under as determined by the State educational agency, who is enrolled in an educational unit of high school grade or under as described in paragraphs (1) and (2) of the definition of "School", including students who are mentally or physically handicapped as defined by the State and who are participating in a school program established for the mentally or physically handicapped; or (2) a person under 21 chronological years of age who is enrolled in an institution or center as described in paragraphs (3) and (4) of the definition of "School".

* * * * *

(u) "School" means: (1) An educational unit of high school grade or under, recognized as part of the educational system in the State and operating under public or nonprofit private ownership in a single building or complex of buildings; (2) any public or nonprofit private classes of preprimary grade when they are conducted in the aforementioned schools; (3) any public or nonprofit private residential child care institution, or distinct part of such institution, which operates principally for the care of children, and, if private, is licensed to provide residential child care services under the appropriate licensing code by the State or a subordinate level of government, *except for* residential summer camps which participate in the Summer Food Service Program for Children, Job Corps centers funded by the Department of Labor, and private foster homes. The term "residential child care institutions" includes, but is not limited to: Homes for the mentally, emotionally or physically impaired, and unmarried mothers and their infants; group homes; halfway houses; orphanages; temporary shelters for abused children and for runaway children; long-term care facilities for chronically ill children; and juvenile detention centers. A long-term care facility is a hospital, skilled nursing facility, intermediate care facility, or distinct part thereof, which is intended for the care of children confined for 30 days or more; or (4) with respect to the Commonwealth of Puerto Rico, nonprofit child care centers certified as such by the Governor of Puerto Rico.

* * * * *

(x–1) "7 CFR Part 3015" means the Uniform Federal Assistance Regulations published by the Department to implement Office of Management and Budget Circulars A–21, A–87, A–102, A–110, A–122, and A–128; the Single Audit Act of 1984 (31 U.S.C. 7501 *et seq.*); and Executive Order 12372.

Note.—OMB Circulars, referred to in this definition, are available from the EOP Publications, New Executive Office Building, 726 Jackson Place NW., Room 2200, Washington, DC 20503.

* * * * *

3. In § 220.3:

a. Paragraph (b) is amended by removing the regulatory citation "§ 220.2 (u)(1) and (u)(3)" and adding in its place "§ 220.2 (u)(1), (u)(2) and (u)(4)"; and

b. Paragraph (c) is amended by removing the regulatory citation "§ 220.2(u)(2)" and adding in its place "§ 220.2(u)(3)."

4. In § 220.8, paragraph (f) is revised to read as follows:

§ 220.8 Requirements for breakfast.

* * * * *

(f) Schools shall make substitutions in foods listed in this section for students who are considered handicapped under 7 CFR Part 15b and whose handicap restricts their diet. Schools may also make substitutions for nonhandicapped students who are unable to consume the regular breakfast because of medical or other special dietary needs. Substitutions shall be made on a case-by-case basis only when supported by a statement of the need for substitutions that includes recommended alternate foods, unless otherwise exempted by FNS. Such statement shall, in the case of a handicapped student, be signed by a physician or, in the case of a nonhandicapped student, by a recognized medical authority.

* * * * *

5. In § 220.15, paragraph (a)(1) is amended by revising the first sentence to read as follows:

§ 220.15 Management evaluations and audits.

(a)(1) The State agency shall ensure that all organizations within the State that administer or participate in the program covered by this part comply with the audit requirements of 7 CFR Part 3015. * * *

* * * * *

6. In § 220.20, paragraphs (f) and (g) are amended by revising the addresses to read as follows:

§ 220.20 Program information.

(f) * * * Northeast Regional Office, FNS, U.S. Department of Agriculture, 10 Causeway Street, Room 501, Boston, Massachusetts 02222–1065.

(g) * * * Mountain Plains Regional Office, FNS, U.S. Department of Agriculture, 1244 Speer Boulevard, Suite 903, Denver, Colorado 80204.

7. In Part 220, add a new § 220.21 to read as follows:

§ 220.21 Information collection/recordkeeping—OMB assigned control numbers.

7 CFR section where requirements are described	Current OMB control number
220.3(e)	0584-0027
220.5	0584-0012
220.7(a)–(e)	0584-0329
	0584-0012
	0584-0026
220.8(f)	0584-0012
220.9(a)	0584-0012

7 CFR section where requirements are described	Current OMB control number
220.11 (a), (b), (e)	0584-0012 0584-0002 0584-0341
220.12(b)	0584-0012
220.13 (a–1)–(c), (f)	0584-0026 0584-0002 0584-0341
220.14(d)	0584-0012
220.15	0584-0012

PART 235—STATE ADMINISTRATIVE EXPENSE FUNDS

1. The authority citation for Part 235 continues to read as follows:

Authority: Secs. 7 and 10, Pub. L. 89-642, 80 Stat. 888, 889 (42 U.S.C. 1776, 1779).

2. In § 235.2,

a. Paragraph (o) is revised in its entirety;

b. A new paragraph (q–1) is added; and

c. Paragraph (u), including subparagraphs (1) and (2), and paragraph (v) are removed.

The revision and addition read as follows:

§ 235.2 Definitions.

* * * * *

(o) "School" means: (1) An educational unit of high school grade or under, recognized as part of the educational system in the State and operating under public or nonprofit private ownership in a single building or complex of buildings; (2) any public or nonprofit private classes of preprimary grade when they are conducted in the aforementioned schools; (3) any public or nonprofit private residential child care institution, or distinct part of such institution, which operates principally for the care of children, and, if private, is licensed to provide residential child care services under the appropriate licensing code by the State or a subordinate level of government, *except for* residential summer camps which participate in the Summer Food Service Program for Children, Job Corps centers funded by the Department of Labor, and private foster homes. The term "residential child care institutions" includes, but is not limited to: homes for the mentally, emotionally or physically impaired, and unmarried mothers and their infants; group homes; halfway houses; orphanages; temporary shelters for abused children and for runaway children; long-term care facilities for chronically ill children; and junvenile detention centers. A long-term care facility is a hospital, skilled nursing facility, intermediate care facility, or distinct part thereof, which is intended for the care of children confined for 30 days or more; or (4) with respect to the Commonwealth of Puerto Rico, nonprofit child care centers certified as such by the Governor of Puerto Rico.

* * * * *

(q–1) "7 CFR Part 3015" means the Uniform Federal Assistance Regulations published by the Department to implement Office of Management and Budget Circulars A–21, A–87, A–102, A–110, A–122, and A–128; the Single Audit Act of 1984 (31 U.S.C. 7501 *et seq.*); and Executive Order 12372.

Note.—OMB Circulars, referred to in this definition, are available from the EOP Publications, New Executive Office Building, 726 Jackson Place NW., Room 2200, Washington, DC 20503.

* * * * *

3. In § 235.4, paragraph (b)(2) is amended by adding "and (o)(2)" after the regulatory citation "§ 235.2(o)(1)" and by removing the regulatory citation "§ 235.2(o)(2)" and adding in its place "§ 235.2(o)(3)."

4. In § 235.8, the second sentence in paragraph (a) is amended by removing "OMB Circular A–102" and adding in its place "7 CFR Part 3015."

Anna Kondratas,

Administrator.

Date: January 13, 1989.

[FR Doc. 89-1293 Filed 1-19-89; 8:45 am]

BILLING CODE 3410-30-M

Federal Crop Insurance Corporation

7 CFR Part 411

[Docket No. 6555S]

Grape Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Notice of extension of sales closing date.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) herewith gives notice of the extension of the sales closing date for accepting applications for grape crop insurance in California, effective for the 1989 crop year only. This action is necessary because of alteration of unit determinations not contemplated earlier. This action will allow insureds and applicants for insurance an opportunity to review these determinations with regard to their insurance plans. The intended effect of this notice is to advise all interested parties of the extension of the sales closing date and to comply with the provisions of the grape crop insurance regulations with respect to the Manager's authority to extend sales closing dates.

EFFECTIVE DATE: January 23, 1989.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: The closing date for accepting applications for crop insurance on grapes in California is January 31. Because of certain alterations made in unit guidelines resulting in the need for insureds and applicants for insurance to understand these guidelines thoroughly, FCIC is extending the sales closing date in all California counties where grape crop insurance is offered

Under the provisions of 7 CFR 411.7(b), the sales closing date for accepting applications may be extended by placing the extended date on file in the service office and by publishing a notice in the **Federal Register** upon determination that no adverse selectivity will result from such an extension. If adverse conditions develop during such period FCIC will immediately discontinue acceptance of applications.

Accordingly, pursuant to the authority contained in 7 CFR 411.7(b), the Federal Crop Insurance Corporation herewith gives notice that the sales closing date for accepting applications for grape crop insurance in all counties in California where such insurance is otherwise authorized to be offered, is hereby extended through the close of business on February 28, 1989, effective for the 1989 crop year only.

Authority: 7 U.S.C. 1506, 1516.

Done in Washington, DC, on January 13, 1989.

David W. Gabriel,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 89-1316 Filed 1-19-89; 8:45 am]

BILLING CODE 3410-08-M

Agricultural Stabilization and Conservation Service

Commodity Credit Corporation

7 CFR Part 1413

Farm Marketing Quotas, Acreage Allotments, and Production Adjustment; Feed Grain, Rice, Upland and Extra Long Staple Cotton, Wheat, and Related Programs

AGENCY: Commodity Credit Corporation ("CCC"), and Agricultural Stabilization

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and Conservation Service ("ASCS"), USDA.

ACTION: Interim rule and request for comments.

SUMMARY: Section 103(h) of the Agricultural Act of 1949, as amended (the 1949 Act), sets forth the criteria to be used to determine whether a type of cotton is extra long staple (ELS) cotton. For purposes of administering Commodity Credit Corporation (CCC) price support and production adjustment programs, all types of cotton which do not meet the definition of ELS cotton have historically been considered to be upland cotton. Due to changing market demands, changes in cotton varieties and due to changing ginning practices, it has been determined that the regulations set forth at 7 CFR Part 1413 which define the terms "ELS" "cotton" and "upland cotton" should be redefined to more accurately reflect current cotton planting and marketing conditions.

EFFECTIVE DATE: January 23, 1989. Comments must be received on or before February 22, 1989 in order to be assured of consideration.

ADDRESSES: Submit Comments to: Director, Cotton, Grain, and Rice Price Support Division, Agricultural Stabilization and Conservation Service, USDA, P.O. Box 2415, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Raymond K. Aldrich, Program Specialist, Cotton, Grain, and Rice Price Support Division, ASCS, P.O. Box 2415, Washington, DC 20013, (202) 447-8828.

SUPPLEMENTARY INFORMATION: This interim rule has been reviewed under USDA procedures implementing Executive Order 12291 and Departmental Regulation 1512-1 and has been classified "not major". It has been determined that this rule will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local governments, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

It has been determined that Regulatory Impact Analyses are not required for the changes being made by this interim rule.

The titles and numbers of the Federal assistance programs to which this interim rule applies are: Cotton Production Stabilization—10.052; as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this interim rule since neither the Agricultural Stabilization and Conservation Service ("ASCS") nor the Commodity Credit Corporation ("CCC") is required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Based on an environmental impact analysis, it has been determined that the changes made herein to the regulations found at 7 CFR Part 1413 will not have a significant impact on the environment and that an environmental impact statement is not required.

A draft environment impact statement pertaining to agricultural acreage adjustment programs has been prepared. Further information is available from Phillip Yasnowsky, Program Analysis Division, ASCS, USDA, P.O. Box 2415, Washington, DC 20013; (202) 447-7887.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

The Office of Management and Budget has approved the information collection requirements contained in these regulations under the provisions of 44 U.S.C. Chapter 35 and OMB Numbers 0560-0030, 0560-0071, 0560-0091, and 0560-0050 have been assigned.

Producers are in the process of planning for the 1989 crop year and, in some cases, applying fertilizer, herbicides, and undertaking other planting activities. Therefore, in order to assure that producers are provided timely notice of the changes made by this interim rule, this interim rule will become effective upon the date of publication in the Federal Register.

Discussion of Changes

The Extra Long Staple Cotton Act of 1983 amended the 1949 Act to provide, effective with the 1986 crop of ELS cotton, that for purposes of the ELS cotton price support and production adjustment program, ELS cotton is "cotton which is produced from pure strain varieties of the Barbadense species or any hybrid thereof, or other similar types of extra long staple cotton, designated by the Secretary, having characteristics needed for various end uses for which American upland cotton is not suitable and grown in irrigated cotton-growing regions of the United States designated by the Secretary or other areas designated by the Secretary as suitable for the production of such varieties or types and which is ginned on a roller type gin or, if authorized by the Secretary, ginned on another type gin for experimental purposes." For purposes of such programs, cotton not meeting this definition of ELS cotton has historically been considered to be upland cotton.

Due to lower foreign production of ELS cotton and an increase in demand for finer and stronger count yarns which utilize ELS cotton, ELS cotton production in the United States has increased from 80,000 bales in 1981 to 367,000 bales in 1988. During this same time, there has not been an increase upward demand trend for U.S. produced upland cotton. As a result of this increased ELS cotton demand, market prices for certain varieties which are generally considered to be ELS cotton have increased from an average of 80.9 cents per pound during the 1986 marketing year to 1.04 cents per pound during the 1987 marketing year. Upland cotton prices, however, have not increased at such a rate. Accordingly, the payment rate used in making ELS cotton deficiency payments has decreased while upland cotton deficiency payment rates have generally remained at or near the maximum level. Some producers have been planting varieties of cotton in nondesignated ELS cotton counties and ginning the production on either a roller-type or a saw-type gin. Since this cotton, by definition, has been considered upland cotton, if such producers of these varieties are participating in the upland cotton acreage reduction program, they must keep within the permitted acreage established for the farm for upland cotton the total planted acreage of traditional upland cotton varieties and varieties of cotton which could be considered as ELS cotton but for the fact that the county had not been designated as an ELS production county. Therefore, these producers are eligible for upland cotton deficiency payments and at the same time they may receive the higher market price for the ELS-type cotton. Further, since ELS cotton varieties tend to have lower yields, these producers have continued to receive deficiency payments which are calculated based upon traditional upland cotton variety yields although the yield for the farm does not accurately reflect the true productivity of the farm when ELS cotton varieties are actually planted.

In order to provide for the administration of CCC price support and production adjustment programs which more accurately reflect existing production and marketing practices, for purposes of such program administration upland cotton is being redefined to mean planted cotton or stub cotton which is produced from other than pure strain varieties of the Barbadense species, any hybrid thereof, or any other variety of cotton in which one or more of these varieties predominate.

ELS cotton will continue to be defined as any of the following varieties of cotton which is ginned on a roller gin and is grown in counties specified by CCC: American-Pima; Sea Island; Sealand; all other varieties of the Barbadense species of cotton and any hybrid thereof; and any other variety of cotton in which one or more of these varieties predominate.

Accordingly, effective for 1988 and subsequent years, for CCC price support and production adjustment program purposes, 7 CFR 1413.3(g) provides that "cotton" means "ELS cotton" and "upland cotton" meeting the definitions as specified in 7 CFR 1413.3 (n) and (y), respectively, and excludes cotton not meeting such definitions.

An annual review of counties designated or suitable for the production of ELS cotton will be conducted. Counties in which ELS cotton is currently being grown and for which a roller-type gin is available will be designated or redesignated, as appropriate, and a listing of such counties will be published annually in the Federal Register. Additional counties may be designated by CCC during the year as deemed appropriate.

List of Subjects 7 CFR Part 1413

Feed grain, Rice, Upland and extra long staple cotton, Wheat, and Related programs.

Interim Rule

Accordingly, the regulations found at Part 1413 of Chapter XIV of Title 7 of the Code of Federal Regulations are amended as follows:

PART 1413—[AMENDED]

1. The authority citation for 7 CFR Part 1413 continues to read as follows:

Authority: Secs. 101A, 103A, 105C, 107C, 107D, 107E, 109, 113, 401, 403, 503, 504, 505, 506, 507, 508, and 509 of the Agricultural Act of 1949, as amended; 99 Stat. 1419, as amended 1407, as amended, 1365, as amended, 1444, 1383, as amended, 1448; 91 Stat. 950, as amended, 93 Stat. 1054, as amended, 99 Stat. 1461, 1461, as amended, 1462, 1463, 1463, 1464, 1464 (7 U.S.C. 1441-1, 1444-1, 1444b, 1445b-2, 1445b-3, 1445b-4, 1445d, 1445h, 1421, 1423, and 1461 through 1469); sec. 1001 of the Food Security Act of 1985, as amended, 99 Stat. 1444 (7 U.S.C. 1308); Sec. 1001 of the Food and Agriculture Act of 1977, as amended, 91 Stat. 950, as amended (7 U.S.C. 1309); Sec. 1009 of the Food Security Act of 1985, 99 Stat. 1453 (7 U.S.C. 1308a).

2. Section 1413.3 is amended by using paragraphs (g), (n), and (y) to read as follows:

§ 1413.3 Definitions.

* * * * *

(g) *"Cotton"* means upland cotton and ELS cotton meeting the definitions set forth in paragraphs (n) and (y) of this section, respectively, and excludes cotton not meeting such definitions.

* * * * *

(n) *"Extra Long Staple (ELS) cotton"*

(1) Extra long staple cotton means any of the following varieties of cotton which is ginned on a roller gin and is grown in counties specified by CCC: American-Pima; Sea Island; Sealand; all other varieties of the Barbadense species of cotton and any hybrid thereof; and any other variety of cotton in which one or more of these varieties predominate.

(2) An annual review of counties designated as suitable for the production of ELS cotton will be conducted. Counties in which ELS cotton is currently being grown and for which a roller-type gin is available will be designated or redesignated, as appropriate, and a listing of such counties will be published annually in the Federal Register. Additional counties may be designated by CCC during the year as deemed appropriate.

* * * * *

(y) *"Upland cotton"* means planted and stub cotton which is produced from other than pure strain varieties of the Barbadense species, any hybrid thereof, or any other variety of cotton in which one or more of these varieties predominate.

Signed at Washington, DC on January 13, 1989.

Milt Hertz,

Administrator, Agricultural Stabilization and Conservation Service, and Executive Vice President, Commodity Credit Corporation.

[FR Doc. 89-1324 Filed 1-19-89; 8:45 am]

BILLING CODE 3410-05-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 100

[INS Number: 1137-89]

Statement of Organization; Ports of Entry for Aliens Arriving by Vessel or by Land Transportation

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule designates Dover, Delaware and Red Hook, St. Thomas, Virgin Islands as "Class A" ports of entry, and further identifies both facilities as ports of entry for all aliens. In addition, Coral Bay, St. John, Virgin Islands is designated as a "Class B" port of entry for aliens who at the time of applying for admission are lawfully in possession of valid alien registration receipt cards, or valid nonresident alien border-crossing identification cards, or are admissible without documents under the documentation waivers contained in 8 CFR Part 212. With the increasing number of vessels arriving at these three locations, it is necessary that each be designated a port of entry, to be regularly staffed by inspectors of the United States Immigration and Naturalization Service.

EFFECTIVE DATE: January 23, 1989.

FOR FURTHER INFORMATION CONTACT: Dwight S. Faulkner, Assistant Chief Inspector, Immigration and Naturalization Service, 425 I Street, NW., Room 7123, Washington, DC 20536. Telephone: (202) 633-3995.

SUPPLEMENTARY INFORMATION: Under the present Service organization Philadelphia, Pennsylvania is one port of entry which includes, among others, the port facilities at Delaware City, Lewes, New Castle, and Wilmington, Del. and at Chester, Essington, Fort Mifflin, Marcus Hook, and Morrisville, Pa. During FY 88, 1,351 passengers and 11,749 crewmen were inspected at Dover, Del. by officers of the Immigration and Naturalization Service. Currently, these inspections are conducted by officers whose duty post is Philadelphia which is located 100 miles away. The port of Dover will be open daily from 8:00 a.m. to 12 midnight, thus providing a more efficient management of personnel and resources.

The designation of ports of entry at Red Hook and Coral Bay will facilitate the inspection of private sailing vessels entering from the British Virgin Islands and will allow for the inspection of

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cruise ships at the Red Hook Dock. At the present time, it takes a vessel intending to stop at Coral Bay an extra day of sailing to comply with the Immigration and Nationality Act, as they must proceed to the port of entry at Charlotte Amalie for inspection. With the increase in cruise ship traffic, an inspection port at Red Hook will increase the island's desirability as a cruise ship port.

Compliance with 5 U.S.C. 553 as to notice of proposed rulemaking and delayed effective date is unnecessary because this rule relates to agency management.

In accordance with 5 U.S.C. 605(b) the Commissioner of Immigration and Naturalization certifies that this final rule will not have significant economic impact on a substantial number of small entities. This is not a major rule within the meaning of section 1(b) of E.O. 12291, nor does this rule have federalism implications warranting the preparation of a Federal Assessment in accordance with E.O. 12612.

List of Subjects in 8 CFR Part 100

Administrative Practice and Procedure, Organization and functions (Government agencies).

Accordingly, Chapter I, Part 100 of Title 8 of the Code of Federal Regulations is amended as follows:

PART 100—STATEMENT OF ORGANIZATION

1. The authority citation for Part 100 continues to read as follows:

Authority: Sec. 103 of the Immigration and Nationality Act; 8 U.S.C. 1103.

2. In § 100.4(c)(2) districts No. 4 and 27 are revised as follows:

§ 100.4 Field Service.

* * * * *

(c) * * *

(2) * * *

District No. 4—Philadelphia, PA.

Class A

Dover, Del.
Erie, Pa.
Philadelphia, Pa. (the port of Philadelphia includes, among others, the port facilities at Delaware City, Lewes, New Castle, and Wilmington, Del.; and at Chester, Kessington, Fort Mifflin, Marcus Hook, and Morrisville, Pa.)

* * * * *

District No. 27—San Juan, P.R.

Class A

Aguadilla, P.R.
Ensenada, P.R.
*Christiansted, St. Croix, V.I.
Frederikated, St. Croix, V.I.
Fajardo, P.R.
Humacao, P.R.
Jobos, P.R.
Mayagues, P.R.
*Ponce, P.R.
San Juan, P.R.
*Cruz Bay, St. John, V.I.
*Charlotte Amalie, St. Thomas, V.I.
Red Hook, St. Thomas, V.I.

Class B

Coral Bay, St. John, V.I.

* * * * *

Dated: January 10, 1989.

Richard E. Norton,

Associate Commissioner Examinations, Immigration and Naturalization Service.

[FR Doc. 89-1345 Filed 1-19-89; 8:45 am]

BILLING CODE 4410-10-M

FARM CREDIT ADMINISTRATION

12 CFR Parts 611, 612, 618 and 620

Organization; Personnel Administration; General Provisions; Disclosure to Shareholders

AGENCY: Farm Credit Administration.

ACTION: Final rule; correction.

SUMMARY: The Farm Credit Administration (FCA) is correcting errors that appeared in the final rule which amended the regulation relating to mergers and reorganizations. The final rule appeared in the **Federal Register** on December 15, 1988 (53 FR 50381).

EFFECTIVE DATE: These regulations shall become effective after the expiration of 30 days from publication during which either or both Houses of Congress are in session. Notice of effective date will be published.

FOR FURTHER INFORMATION CONTACT:

James F. Thies, Assistant Chief, Financial Analysis and Standards Division, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090, (703) 883-4475.

or

Gary L. Norton, Senior Attorney, Office of General Counsel, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090, (703) 883-4020, TDD (703) 883-4444.

SUPPLEMENTARY INFORMATION: In publishing the final rule in the **Federal Register**, three errors were inadvertently made.

PART 611—ORGANIZATION

1. On page 50392, third column, the word "director" was omitted and the word "or" was misspelled in § 611.310(c). Paragraph (c) is corrected to read as follows:

Subpart C—Election of Directors

§ 611.310 Eligibility for membership on bank and association boards and subsequent employment.

* * * * *

(c) No bank director shall, within 1 year after the date when he or she ceases to be a member of the board, serve as a salaried director, officer or employee of such bank, or any association with which the bank has a discount or agency relationship.

* * * * *

2. On page 50397, third column, a grammatical error was made in first sentence of § 611.1195(b). Paragraph (b) is corrected to read as follows:

Subpart O—Special Reconsideration of Mergers

§ 611.1195 Stockholder vote.

* * * * *

(b) In the case of a petition to withdraw from the existing association, ballots shall be sent to each stockholder of the existing association who would be a stockholder of one of a separate association. The petition, as it applies to each such separate association, shall be approved, by stockholders who vote in person or by proxy, if agreed to by a majority of the stockholders who would be served by the separate association.

* * * * *

PART 612—PERSONNEL ADMINISTRATION

2. On page 50399, second column, a typographical error was made in the authority citation. The authority citation for Part 618 is corrected to read as follows:

Authority: Secs. 1.5, 1.11, 1.12, 2.2, 2.4, 2.5, 2.12, 3.1, 3.7, 4.12, 4.13A, 4.25, 4.29, 5.9, 5.10, 5.17; 12 U.S.C. 2013, 2019, 2030, 2073, 2075, 2076, 2093, 2122, 2128, 2183, 2200, 2211, 2218, 2243, 2244, 2252.

Date: January 13, 1989.

David A. Hill,

Secretary, Farm Credit Administration Board.

[FR Doc. 89-1380 Filed 1-19-89; 8:45 am]

BILLING CODE 6705-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 25

[Docket No. NM-32; Special Conditions No. 25-ANM-25]

Special Conditions: Boeing 747-400, Lightning and Radio Frequency (RF) Energy Protection

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the Boeing Model 747-400 airplane. This airplane will have novel or unusual design features associated with a number of high technology avionic systems including cathode ray tube engine and flight information displays, full authority digital engine controls, and electrical flap actuator systems. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for the protection from the effects of lightning and the susceptibility to external radio frequency (RF) energy sources. This notice contains safety standards which the Administrator finds necessary to ensure that critical and essential functions of systems in the 747-400 are maintained.

EFFECTIVE DATE: December 21, 1988.

FOR FURTHER INFORMATION CONTACT: Gene Vandermolen, Flight Test and Systems Branch, ANM-111, Transport Airplane Directorate, Aircraft Certification Service, FAA, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168, telephone (206) 431-2157.

SUPPLEMENTARY INFORMATION:

Background

On May 17, 1985, the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124-2207, submitted an application to amend Type Certificate A28WE to include the Boeing Model 747-400 series airplane. This airplane is a derivative version of the existing Model 747-300 series airplane. The 747-400 will be delivered with PW4056, CF6-80C2, or RB211-524G engines with full authority digital engine controls. Maximum takeoff gross weight will be increased to 870,000 lbs. Cockpit controls will be simplified and automated for operation by a crew of two. Appropriate hydraulics, avionics, pneumatic, and environment control system changes will be made. An optional fuel tank is being offered in the horizontal tail section. Scheduled completion date for certification is December 1988.

Lightning Protection

The Boeing Model 747-400 airplane will be certificated with a number of high technology avionic systems including cathode ray displays of engine and flight instruments, full authority digital engine controls, and electrical flap actuator systems. These electronic systems may be vulnerable to lightning induced transients (indirect effects) that could be generated by a lightning strike to, or in the vicinity of, the airplane.

These systems, which may be designed to perform critical as well as essential functions, may be susceptible to disruption to both command/response signals and the operational mode logic as a result of electrical and magnetic interference. To ensure that a level of safety is achieved equivalent to that of existing aircraft, a special condition is being proposed which requires that the critical and essential system functions be designed and installed to preclude component damage and interruption of function due to the indirect effects of lightning. To provide a means of compliance with this special condition, a clarification of the threat for lightning is needed.

Discussion

The following "threat definition" is adopted to be used in demonstrating compliance with the lightning protection special condition. It is based on SAE Report AE4L-87-3.

The lightning current waveforms (Components A, D, and H) defined below, along with the voltage waveforms in Advisory Circular (AC) 20-53A, will provide a consistent and reasonable standard which is acceptable for use in evaluating the effects of lightning on the airplane. These waveforms depict threats that are external to the airplane. How these threats affect the airplane and its systems depend upon the systems' installation configuration, materials, shielding, airplane geometry, etc. Therefore, tests (including tests on the completed airplane or an adequate simulation) and/or verified analysis need to be conducted in order to obtain the resultant internal threat to the installed systems. These systems may then be evaluated with this internal threat in order to determine their susceptability to upset and malfunction.

To evaluate the induced effects to these systems, three considerations are required:

1. *First Return Stroke:* (Severe Strike—Component A, or Restrike—Component D). This external threat needs to be evaluated to obtain the resultant internal threat and to verify that the level of the induced currents and voltages is sufficiently below the equipment "hardness" level;

2. *Multiple Stroke Flash:* (½ Component D). A lightning strike is often composed of a number of successive strokes, referred to as a multiple-stroke. Although multiple strokes are not necessarily a salient factor in a damage assessment, they can be the primary factor in a system upset analysis. Multiple strokes can induce a sequence of transients over an extended period of time. While a single event upset of input/output signals may not affect system performance, multiple signal upsets over an extended period of time (2 seconds) may affect the systems under consideration. Repetitive pulse testing and/or analysis needs to be carried out in response to the multiple stroke environment to demonstrate that the system response meets the safety objective. This external multiple stroke environment consists of 24 pulses and is described as a single Component A followed by 23 randomly spaced restrikes of ½ magnitude of Component D (peak amplitude of 50,000 amps), all within 2 seconds. An analysis or test needs to be accomplished in order to obtain the resultant internal threat environment for the system under evaluation; and

3. *Multiple Burst:* (Component H). In-flight data-gathering projects have shown bursts of multiple, low amplitude, fast rates of rise, short duration pulses accompanying the airplane lightning strike process. While insufficient energy exists in these pulses to cause direct (physical damage) effects, it is possible that indirect effects resulting from this environment may cause upset to some digital processing systems.

The representation of this interference environment is a repetition of low amplitude, high peak rate of rise, double exponential pulses which represent the multiple bursts of current pulses observed in these flight data gathering projects. This component is intended for an analytical (or test) assessment of functional upset of the system. Again, it is required that this component be translated into an internal environmental threat in order to be used. This "Multiple Burst" consists of 24 random sets of 20 strokes within a period of 2 seconds. Each set of 20 strokes is made up of 20 "Multiple Burst" waveforms randomly distributed within a period of one millisecond. The individual "Multiple Burst" waveform is defined below.

The following current waveforms constitute the "Severe Strike" (Component A), "Restrike" (Component D), "Multiple Stroke" (½ Component D), and the "Multiple Burst" (Component H). These components are defined by the following double exponential equation:

$$I(t) = I_o(e^{-at} - e^{-bt})$$

where:
t = time in seconds,
I = current in amperes, and

		Severe strike (component A)	Restrike (component D)	Multiple stroke (½ component D)	MultipleBurst (component H)
I_o, amp	=	218,810	109,405	54,703	10,572
a, sec $^{-1}$	=	11,354	22,708	22,708	187,191
b, sec $^{-1}$	=	647,265	1,294,530	1,294,530	19,105,100
This equation produces the following characteristics:					
I_{max} and	=	200 KA	100 KA	50 KA	10 KA
(di/dt)$_{max}$ (amp/sec)	=	1.4×10 ^{11} @t=0+sec	1.4×10 ^{11} @t=0+sec	0.7×10 ^{11} @t=0+sec	2.0×10 ^{11} @t=0+sec
di/dt (amp/sec)	=	1.0×10 ^{11} @t=.5 us	1.0×10 ^{11} @t=.25 us	0.5×10 ^{11} @t=.25 us	
Action integral (amp ^{2} sec)	=	2.0×10 ^{6}	0.25×10 ^{6}	.0625×10 ^{6}	

Protection From Unwanted Effects of Radio Frequency (RF) Energy

Airplane designs which utilize metal skins and mechanical command and control means have traditionally been shown to be immune from the effects of RF energy from ground-based transmitters. With the trend toward increased power levels from these sources, plus the advent of space and satellite communications, coupled with electronic command and control of the airplane, the immunity of the airplane to RF energy must be established. No universally accepted guidance to define the maximum energy level in which civilian airplane system installations must be capable of operating safely has been established.

It is not possible to precisely define the RF energy to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for RF energy, and coupling to cockpit installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing RF emitters, an adequate level of protection exists when compliance with the RF special condition is shown with paragraph 1 or 2 below:

1. A minimum RF threat of 100 volts per meter average electric field strength from 10 KHz to 20 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. An RF threat external to the airframe of the following field strengths for the frequency ranges indicated.

Frequency	Average (V/m)	Peak (V/m)
10 KHz–3 MHz	100	100
3 MHz–30 MHz	1,000	1,000
30 MHz–100 MHz	100	100
100 MHz–200 MHz	200	3,000
200 MHz–1 GHz	2,000	6,000
1 GHz–2 GHz	2,000	14,000
2 GHz–6 GHz	800	14,000
6 GHz–10 GHz	2,000	14,000
10 GHz–40 GHz	1,000	8,000

To establish the values in paragraph 2 above, an analysis was performed using a model of U.S. airspace and the Electromagnetic Compatibility Analysis Center (ECAC) data base, which contains the characteristics of all U.S. emitters. This analysis assumed a minimum separation distance between the airplane and emitters as follows: in the airport environment, 250 ft. for fixed emitters and 50 ft. for mobile emitters; for the air-to-air environment, 50 ft. from interceptor aircraft and 500 ft. from non-interceptor aircraft; for the ground-to-air environment, 500 ft.; and for the ship-to-air environment, 1,000 ft. The results of this analysis were then combined with the results of a study of emitters in European countries. The above values are therefore believed to represent the worst case external threat levels to which an airplane would be exposed in the operating environment.

Discussion of Comments

Notice of Proposed Special Conditions No. SC–88–6–NM for the Boeing Model 747–400 was published in the **Federal Register** on September 23, 1988 (53 FR 36990). Comments were received from five commenters. Two of the commenters have no objection to the proposed special conditions as written.

Lightning Protection

One commenter disagrees that the 747–400 has novel or unusual design features associated with the displays, engine controls, and flap actuation systems.

The FAA disagrees with this comment and has determined that there are novel or unusual design features associated with the systems mentioned. In addition, the existing lightning protection rules are not considered adequate for advanced technology systems that perform essential and critical functions. Under the provisions of §§ 21.16 and 21.101(b)(2), special conditions are used to establish a level of safety equal to that established by reference in the original type certificate.

One commenter objects to the sentence on carbon brakes in the background section, and suggests that this system falls into the context of the fourth sentence of the notice.

The FAA has deleted that sentence from the paragraph in the background section of these final special conditions.

One commenter suggests that the lightning threat, as defined in the notice, applies to all new aircraft.

The FAA agrees with this comment and is applying similar special conditions to all new transport category airplanes in a uniform manner.

Two commenters object to the reference to the direct effects of lightning in the notice, and think that § 25.581 adequately covers the direct effects.

The FAA concurs and has removed reference to direct effects from these final special conditions.

Two commenters do not think that existing FAA rules or current practice suggests that recovery of function after a lightning encounter is a necessary condition.

The reason that the FAA has determined that essential functions must be recoverable after the lightning encounter is to minimize the possibility of total loss of function in the event of multiple strikes. Rulemaking is underway to add these requirements to the regulations.

One commenter proposes that the lightning protection special condition for critical functions be rewritten to replace the words "are not affected" with "shall not prevent the continued safe flight and landing of the airplane."

The FAA disagrees with this comment. The proposed revision would allow degradation of systems performing critical functions as long as the airplane could continue flying and land safely. A second lightning strike could cause the function to be completely lost. The FAA considers this unacceptable.

One commenter does not consider the multiple stroke and multiple burst test waveforms to be realistic.

The FAA has depended on the SAE AE–4L Committee to define reasonable test waveforms and test techniques. The multiple stroke and multiple burst waveforms are examples that came from that committee and the FAA concurs with the committee's conclusion that these waveforms are realistic. Regardless of the precise definition of the waveforms, what is important is that each system must be demonstrated to be free of upset or failure due to multiple stroke and multiple burst for the entire spectrum of frequencies and voltages associated with lightning.

Protection from Unwanted Effects of RF Energy

Two commenters do not consider that a special condition for RF protection is necessary or reasonable at this time because the threat has not been precisely defined, and one commenter proposed that the lightning protection special condition for essential functions be cancelled to be consistent with the requirements for RF protection.

The FAA considers RF protection requirements are necessary at the present time because of aircraft accidents in the military attributed to interference from RF sources, and because airplanes are using more electronic systems to perform critical functions. Lightning is a well defined threat and has been studied for years. Therefore, it must be considered for both critical and essential systems. Since a clear definition of the RF threat does not exist, the FAA has made the decision that essential systems need not be addressed. However, because of the nature of critical failures, RF must be addressed for critical functions. Thus an interim threat has been defined for critical systems. The economic impact caused by applying RF protection requirements to essential systems is not justified at this time.

One commenter proposes a rewrite of the RF protection special condition to replace the words "are not adversely affected" with "shall not prevent the continued safe flight and landing of the airplane."

The FAA disagrees with this comment. The wording proposed by the commenter for the special condition would allow performance degradation of systems performing critical functions, or loss of an engine, due to RF exposure as long as the airplane could continue to fly and land safely. The FAA does not agree that this is a satisfactory level of safety for airplanes operating in an environment where they may be exposed to high energy RF emissions. The intent of the special condition is to ensure that systems performing critical functions are not adversely affected by RF energy. Because the word "adversely" is difficult to define quantitatively, it is removed from the final special condition. The determination of whether a critical system is adversely affected must be made on a case-by-case basis. An example of an acceptable condition would be a case where a computer input is perturbed by RF spurious signals, but the output signal remains within the design tolerances with the result that the system affected is able to continue in its selected mode of operation unaffected by the perturbation. It is not permissible that exposure to electromagnetic radiation could result in a large system upset. Pilot intervention to restore the system following an upset is not an acceptable means to restore that system to its normal state of operation.

One commenter does not consider the proposed methods of compliance with the RF protection requirements to be practical. Alternate methods of testing are suggested.

The FAA will consider the alternate methods of testing that are suggested by the commenter, in addition to the work that the SAE AE–4R committee is doing in this area.

Type Certification Basis

The type certification (TC) basis for the Boeing Model 747–400 series airplane is proposed to be Part 36 of the Federal Aviation Regulations (FAR); Special Federal Aviation Regulation (SFAR) No. 27–6; and Part 25 of the FAR, amended by Amendments 25–1 through 25–59, except that the applicable amendment numbers for the following section are those indicated as follows: Section 25.571 through Amendment 25–9; §§ 25.251; 25.305, 25.607, 25.657, and 25.683 through Amendment 25–22; § 25.1401 through Amendment 25–26; §§ 25.787 and 25.812 through Amendment 25–31; § 25.675 through Amendment 25–37; § 25.1438 through Amendment 25–40; §§ 25.107, 25.109, and 25.149 through Amendment 25–41; §§ 25.331, 25.351, 25.789, and 25.809 through Amendment 25–45; § 25.772 through Amendment 25–46; and § 25.785 through Amendment 25–50 and §§ 25.365 and 25.783 through Amendment 25–53. As proposed, the requirements of the following sections do not apply to this type design because the original certification basis, which did not include these sections, has been determined to be adequate: Sections 25.631, 25.832, 25.858, and 25.1529. The TC basis includes special conditions, exemptions, and equivalent safety findings which are part of the model 747–300 series certification basis. These exceptions, existing exemptions and the noise and environmental requirements are not pertinent to these special conditions. Special conditions concerning flight deck electronic displays, overhead crew rest accommodations, and the reliability of electronic engine controls and thrust management systems are also being considered.

After careful review of the comments noted above, the FAA has determined that air safety and the public interest require adoption of the special conditions as proposed. Special conditions, as appropriate, are issued in accordance with § 11.49 of the FAR after public notice, as required by §§ 11.28 and 11.29(b), effective October 14, 1980, and become part of the type certification basis in accordance with § 21.101.

Under standard practice, the effective date of these final special conditions would be 30 days after publication in the **Federal Register**. As the intended type certification date for the Boeing Model 747–400 is December 1988, the FAA finds that good cause exists to make these special conditions effective upon issuance.

Conclusion

This action affects only certain design novel or unusual features on one model series of airplanes. It is not a rule of general applicability and affects only the manufacturer who applied to the FAA for approval of these features on the airplane.

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List of Subjects in 14 CFR Parts 21 and 25

Air transportation, Aircraft, Aviation safety, Safety.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the Boeing Model 747–400 series airplane.

1. The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2), 42 U.S.C. 1857f–10, 4321 et seq.; E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

2. *Lightning Protection.* Each electronic system which performs critical functions must be designed and installed to ensure that the operation and operational capabilities of these critical functions are not affected when the airplane is exposed to lightning.

Each essential function of new or modified electronic systems or installations must be protected to ensure that the essential function can be recovered after the airplane has been exposed to lightning.

For the purpose of these special conditions, the following definitions apply:

Critical Functions. Functions whose failure would contribute to or cause a failure condition which would prevent the continued safe flight and landing of the airplane.

Essential Functions. Functions whose failure would contribute to or cause a failure condition which would significantly impact the safety of the airplane or the ability of the flightcrew to cope with adverse operating conditions.

3. *Protection from Unwanted Effects of Radio Frequency (RF) Energy.* The airplane attitude information displayed by the Integrated Display System, the Electrical Flap Actuator System, and the Full Authority Digital Engine Control System must be designed and installed to ensure that the operation and operational capabilities of these critical functions are not affected when the airplane is exposed to high energy RF fields.

Issued in Seattle, Washington, on December 21, 1988.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89–1300 Filed 1–19–89; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

23 CFR Part 655

[FHWA Docket Nos. 87–21 and 88–16]

RIN 2125–AA37

National Standards for Traffic Control Devices; Manual on Uniform Traffic Control Devices

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final amendments to the Manual on Uniform Traffic Control Devices (MUTCD); comments requested on editorial amendments.

SUMMARY: This document contains notice of amendments to the MUTCD which are being adopted by the FHWA for inclusion therein. The MUTCD is incorporated by reference in 23 CFR Part 655, Subpart F and recognized as the national standard for traffic control devices on all public roads. The amendments affect various parts of the MUTCD and are intended to expedite traffic, improve safety and provide a more uniform application of highway signs, signals, and markings.

DATES: Effective January 23, 1989. Comments on the editorial amendment must be received on or before February 22, 1989.

ADDRESS: Submit signed, written comments on the editorial change to Docket No. 88–16, to the Federal Highway Administration, Room 4232, HCC–10, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address between 8:30 a.m. and 3:30 p.m. ET, Monday through Friday. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Philip O. Russell, Office of Traffic Operations, (202) 366–2194, or Mr. Michael J. Laska, Office of Chief Counsel, (202) 366–1383, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday, except legal holidays. For 30 days following the publication of this rule, the referenced materials will be available for inspection and copying at the above address.

SUPPLEMENTARY INFORMATION: The MUTCD is available for inspection and copying as prescribed in 49 CFR Part 7, Appendix D. It may be purchased for $44.00 from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, Stock No. 950–036–00000–1. The purchase of a MUTCD includes a subscription service for adopted revisions.

This document contains the dispositions of proposals for changes in the MUTCD which were received or originated by the FHWA. Previous **Federal Register** actions regarding requests are listed in the following table:

BILLING CODE 4910–22–M

Item	Request No.	Title	Published in Federal Register FHWA Docket No.
		Final Rulings.	
1	I-8 (Chng.)	Responsibility for Maintaining Traffic Control Devices	Docket No. 87-21 (53 FR 2233, January 27, 1988).
2	II-119 (Chng.)	Standard Sign to Implement Mandatory Seat Belt Laws	Docket No. 87-21 (53 FR 2233, January 27, 1988).
3	II-161 (Chng.)	LOGO Signing - Number of LOGO's on Sign Panels	Docket No. 87-21 (53 FR 2233, January 27, 1988).
4	III-35 (Chng.)	Warrants for Centerline Pavement Markings	Docket No. 87-21 (53 FR 2233, January 27, 1988).
5	III-40 (Chng.)	Lane Lines in Cloverleaf Interchanges	Docket No. 87-21 (53 FR 2233, January 27, 1988).
6	IV- 85 (Chng.)	Revision of Warrant 7, System Warrant	Docket No. 87-21 (53 FR 2233, January 27, 1988).
7	VI- 56 (Chng.)	Work Zone Lane Shift Tapers	Docket No. 87-21 (53 FR 2233, January 27, 1988).
8	VI- 57 (Chng.)	Temporary Pavement Markings in Construction and Maintenance Areas	Docket No. 87-21 (53 FR 2233, January 27, 1988).
9	VI- 59 (Chng.)	Section 6G-6, Control of Traffic	Docket No. 87-21 (53 FR 2233, January 27, 1988).
10	VI- 60 (Chng.)	Color and Design of Work Zone Vests	Docket No. 87-21 (53 FR 2233, January 27, 1988).
		Editorial Change.	
11	IV-92 (Chng.)	Provisions for Pedestrians	Not Previously Published in Federal Register.

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Those commenters that opposed the

therefore, the results and conclusions

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Advance copies of the text changes to the MUTCD for all of the adopted requests will be distributed to everyone currently appearing on the FHWA Federal Register mailing list for MUTCD matters. Those wishing to receive an advance copy of the text changes or to be added to this mailing list should write to the Federal Highway Administration, Office of Traffic Operations, HTO-21, 400 Seventh Street, SW., Washington, DC 20590.

Discussion of Requests

These amendments are being processed in accordance with the rulemaking procedure of the Administrative Procedure Act (5 U.S.C. 553) and the Department of Transportation's regulatory policies and procedures.

Each request is assigned an identification number which indicates, by Roman numeral, the primary organizational part of the MUTCD affected and, by Arabic numeral, the order in which the request was received.

The FHWA has reviewed the comments received in response to the notices and the other information relating to the MUTCD and these proposals. The FHWA is acting on the following requests for change to the MUTCD. Each action and its basis is summarized below:

(1) Request I-8(C)—Responsibility for Maintaining Traffic Control Devices

The National Transportation Safety Board (NTSB) investigated an accident where traffic control devices had been removed by an agent of a highway agency. The missing traffic control devices may have had a direct bearing on the cause of the accident and on the severity of the accident. The NTSB has requested that responsibility for maintaining traffic control devices be clarified in the MUTCD.

The FHWA proposed to amend the first sentence of Section 1A-3 to read, "The responsibility for the installation, operation and effective maintenance of traffic control devices rests with the governmental body or official having jurisdiction."

There were 28 commenters that had reviewed the FHWA's proposal. Fifteen State DOT's, one county, one city, and 5 others favored some improvement of the wording in Section 1A-3. Several of the commenters felt that it was not necessary to insert the words "installation, operation and effective maintenance", as this is repetitive of requirements found in Section 1A-2.

The FHWA has determined that the final text will read: "The responsibility for the design, placement, operation and maintenance of traffic control devices rests with the governmental body or official having jurisdiction."

The amendment imposes no additional costs on highway agencies; therefore, no implementation period is proposed.

(2) Request II-118(C)—Standard Sign to Implement Mandatory Seat Belt Laws

The National Association of Governor's Highway Safety Representatives has requested that a standard sign be developed and adopted for use by States having mandatory safety seat belt laws. Because of the variations that exist among the seat belt laws of the several States, it is not possible to adopt a standard sign. However, it does appear to be practical to develop and adopt a standard symbol that can be used on regulatory signs that notify vehicle occupants of mandatory seat belt laws.

The FHWA has reviewed and evaluated many existing and proposed symbol designs. The FHWA proposed to amend the MUTCD to require that the standard symbol be used, if a State determines that a seat belt symbol is to be shown on the regulatory signs that implement its safety seat belt laws. The FHWA also solicited comments on both the concept of using a standard symbol for this purpose and on the details of the proposed symbol. The FHWA used the comments received regarding the details of the proposed symbol to guide its final design.

Thirty-three commenters addressed the docket, including the National Highway Traffic Safety Administration (NHTSA). Thirty of the commenters favored adoption of a standard symbol, however four of these did not feel that the symbol should be mandatory.

The NHTSA submitted three shoulder/lap combination symbols and requested that they be tested, along with other designs. The symbol preferred by NHTSA is the seat belt warning symbol required by NHTSA Federal Motor Vehicle Safety Standard No. 101 (49 CFR 571.101). Manufacturers are required to use this symbol; consequently, it appears on motor vehicle instrument panels every time the ignition is switched on and should already be familiar to many motorists.

The symbol shown below was tested with three others for driver's reaction time to the symbols, meaning and action responses to the signs, and preference among the signs. Data were collected in Alabama and Washington, DC. The symbol was found to perform satisfactorily. The FHWA has selected this symbol. The symbol must be used, if a State determines that a seat belt symbol is to be shown on the regulatory signs used to implement its mandatory safety seat belt laws.



Seat Belt Symbol R16-1

This amendment may have some financial impact in those States that have already installed signs for mandatory safety seat belt laws. To offset these costs, a compliance date of December 31, 1995 is established.

(3) Request II-161(C)—LOGO Signing—Number of LOGO's on Sign Panels

The rules and regulations for Specific Service (LOGO) Signing were transferred from 23 CFR Part 655, Subpart C and incorporated into the MUTCD by Final Rule, FHWA Docket No. 83-28 (50 FR 10003, March 13, 1985). There are now over 30 States using LOGO signs on some or all of their rural freeway systems. Since the initial installations of LOGO signs in 1988, the number of LOGOs on a sign panel has been limited to six for GAS and four each for FOOD, LODGING, and CAMPING. More than 30 States now have experience with LOGOs and LOGO programs. With regard to the number of logos allowed per panel, the FHWA proposed to change the "shall" conditions to "should" conditions. In addition, this amendment would allow the background of the LOGO to be other than blue, at each State's discretion; the paragraph discussing LOGO signing on ramps would be clarified; and several minor editorial changes would be made.

Of the 33 commenters that reviewed this amendment, 18 States, the National Committee on Uniform Traffic Control Devices (NCUTCD), and 6 others opposed its adoption. Of the 18 States who opposed: 8 indicated that they prefer or would support a mandatory limit of six LOGO's for all services, and 10 States indicated that they want to keep the current mandatory limit of six LOGOs for GAS and four LOGOs each for FOOD, LODGING, AND CAMPING. The NCUTCD also supports the latter position.

Those commenters that opposed the amendment had specific, well founded reasons for not changing the standard.

The FHWA strongly believes that the number of LOGOs should be limited to six LOGOs for GAS and four LOGOs each for FOOD, LODGING, AND CAMPING. The FHWA also recognizes that the individual States are directly responsible for the operation and safety of their transportation facilities, and for the control of outdoor advertising. Each State is also responsible for its own economic development. The flexibility afforded by the revised standard will allow the individual States to manage the implementation of these diverse programs.

Because changes to existing or future LOGO signing with regard to the number of LOGOs that will be used on each panel will be at each State's discretion, no implementation period is necessary.

(4) Request III-35(C)—Warrants for Center Line Pavement Markings

The FHWA had been petitioned to initiate rulemaking to establish warrants for center line pavement markings.

The FHWA proposed to amend the fifth paragraph of Section 3B-1 to read as follows:

"Center lines shall be placed on all paved roadway surface that will retain pavement markings under the following conditions:

1. In rural districts on all two-way roadways 18 feet or more in width when the prevailing off-peak 85 percentile speed or posted speed limit, whichever, is higher, is 35 MPH or greater.

2. In residence or business districts on all through highways with an ADT of 50 or greater, and on other streets where the ADT is 500 or greater"

The FHWA received about 200 comments concerning this proposal. The majority of the comments were from cities and counties. The commenters expressed concern about one or more of the following:

a. Markings would be required on many, if not all, highways and streets;

b. Pavement edge damage would increase significantly on narrow pavements because drivers of heavy vehicles would drive closer to the edge of pavements to avoid straddling or driving on the center line;

c. The incidence of sideswipe accidents and other accidents with parked vehicles would increase because the drivers of the moving vehicles would drive closer to the parked vehicles to keep to the right of the center line;

d. For the most part, the Pavement Marking Demonstration program involved rural highway projects; therefore, the results and conclusions reached from the analysis of the program may not be transferable to urban streets and highways;

e. The installation and maintenance of center line pavement markings would be a major expense;

f. National criteria and engineering judgment, as currently provided for in the MUTCD, are the best standards to assure that markings are installed and maintained in a cost-effective manner.

Because of the legitimate concerns raised by a multitude of commenters, the FHWA finds that it is not appropriate to set national standards for center line markings at this time. In denying this request it must be understood that the FHWA firmly believes that some minimum standards for center lines should be established. Therefore, the FHWA will consider alternative actions which may be necessary to better determine standards that are responsive to the motorists' needs and to the concerns expressed in the docket comments.

(5) Request III-49(C)—Lane Lines in Cloverleaf Interchanges

A private citizen has pointed out a need to illustrate the desirable pavement marking pattern to be used to separate the mainline from a cloverleaf's combined acceleration/deceleration lane. The FHWA proposed the addition of a figure to Section 3B-11 that will show the typical installation of these pavement markings.

There are many tasks to be accomplished by the drivers in the weaving section between cloverleaf ramps. Defining the lane line throughout the entire length of the combined acceleration/deceleration lane, with standard skip stripe markings, is desirable so that drivers can better determine their lateral position.

It is possible to design a more complex set of coded pavement markings to inform the drivers of their longitudinal position within the weaving area. Because of the high degree of pavement marking wear that occurs in weaving areas, the FHWA finds that it is not practical to attempt to maintain such a system in the field.

Of the 28 commenters who reviewed this amendment, all but 4 concurred with the FHWA. Those opposed and several who concurred felt that there will be cases, unusually long combination lanes, when the marked line should be terminated with a dotted line. The FHWA acknowledges that these special situations will occur. The addition of a figure showing the typical pavement marking treatment will not preclude the use of other pavement markings for special situations.

This amendment adds a figure that clarifies an existing provision of the MUTCD. No implementation period is needed.

(6) Request IV-85(C)—Revision to Warrant 7, Systems Warrant

The Systems Warrant (existing Warrant 7) is intended to provide for signalization along collector and arterial routes in order to establish traffic platoons and to encourage the traffic platoons to flow in progression. Typically, the warrant is applicable in outlying, developing areas of nonuniform density; where the distance between major signalized intersections is so great that the platoons break up into low-density streams. Through the application of this warrant, the total number of signals can sometimes be reduced and the traffic progression significantly improved within the highway (street) system.

The NCUTCD reviewed the warrant and recommended the following revisions to remedy minor deficiencies and to make the warrant more representative of current traffic characteristics:

1. Increase the required volume of existing or immediately projected traffic entering the intersection to 1,000 vehicles (now 800) during the peak hour of a typical weekday or for each of any 5 hours of a Saturday and/or Sunday.

2. For the peak hour criteria (5 year projected traffic volumes based on an engineering study) one or more of the volume based warrants would be met.

3. The existing version of the warrant lists five characteristics of a major route and stipulates that a route, to be considered major in applying the warrant, must have one or more of these characteristics. It was recommended that characteristic (2) (Connects areas of principal traffic generation) be deleted as it is subject to varying definitions and it is already covered in the other characteristics. It was also recommended that characteristic (4) (Surface street freeway or expressway ramp terminals) be deleted as it is covered in the other characteristics.

Of the 32 responses that were received, 18 concurred with comments, 12 concurred with no comment, and 2 did not concur.

The State of Florida stated that a traffic signal installation should not be warranted on future (projected) traffic volumes and that traffic signals should not be installed until they can be justified on the basis of the existing conditions. The State of Oregon

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disagreed with the proposed 1,000 vehicles during the peak hour on a typical day as the proper threshold. They believe that 800 vehicles per hour is the proper volume to warrant a traffic signal.

The FHWA finds that because the System Warrant primarily addresses developing areas, and traffic volumes typically take some time to develop after the completion of a project, basing the need on a 5-year projection is appropriate. Further, the intent of the MUTCD is clear throughout, that finding a signal that is "warranted" is not in itself justification for a signal, see IV-6(C). Funding and other priority considerations would also impact when a signal is to be installed.

The FHWA amends Section 4C-9 (Warrant 7, Systems Warrant) to provide for these changes. The amendment provides a more realistic warrant and does not impose additional costs on State and local highway agencies. No compliance date is needed to implement this change.

(7) Request VI-56(C)—Work Zone Land Shift Tapers

The NCUTCD requested that Part VI of the MUTCD be amended by adding length standards for work zone lane shift tapers. Most manuals and other publications do not differentiate between the length of taper required for different taper applications. Often the same taper length is recommended for a merge application and for a lane shift application. The NCUTCD also found that there is no standard use of terms for describing the various taper applications.

The FHWA proposed to adopt the recommendations of the NCUTCD. Section 6C-2 would be separated into two separate sections. The first would address the length of tapers and would include the following table. The second section would include the channelization issues that are currently presented in Section 6C-2.

TABLE VI-2.—TAPER LENGTH CRITERIA FOR WORK ZONES

Type of taper	Taper length
Upstream tapers:	
Merging taper	L minimum
Shifting taper	½ L minimum
Shoulder taper	⅓ L minimum
Two-way traffic taper	100 feet maximum
Downstream tapers (use is optional).	100 feet/lane
Formulas for L	
Speed Limit	**Formula**
40 MPH or less	$L = WS^2/60$
45 MPH or greater	L = WxS

L = Taper length in feet.
W = Width of offset in feet.
S = Posted speed or off-peak 85 percentile speed in MPH.

In addition, Figures 6-5, 6-6, and 6-7 would be revised to reflect the above changes.

All but two of the 27 commenters agreed with the proposal. Several suggestions were received for improving or clarifying some provisions of the proposal. These suggestions will be accommodated in the final text to the extent possible.

This amendment will impose some additional costs on State and local highway agencies; therefore, a compliance date of January 23, 1989 is established for this amendment.

(8) Request VI-57(C)—Temporary Pavement Markings in Construction and Maintenance Areas

Request VI-3 as published in the MUTCD implemented requirements for minimum pavement marking treatments for traffic control in work zones. That revision provided for minimum stripe-to-gap ratios, allowed raised pavement markers, and other changes.

Change VI-57 would further amend Section 6D to clarify and provide further guidance. Section 6D-1 would be revised to provide further guidance for the use of permanent pavement markings in accordance with Sections 3B, 7C, 6B-4, and 6C on any permanent pavement surfaces and final lifts as well as on temporary pavements, detours, runarounds, or interim lifts open to traffic and when the project work is suspended for the winter of other extended periods of time.

Section 6D-3, Exception Number 1 would be revised to further describe temporary lanes and center lines. Also, the provisions for the use of signs rather than pavement markings in short-term operations would be extended to apply to low-volume roadways.

Section 6D-3 would be further revised to include a recommendation that each highway agency should have a policy that will, within the scope of this section, provide more detailed criteria and describe the conditions where temporary pavement markings will be used. This policy would include, but not be limited to, criteria, definitions of extended periods of time and a traffic volume threshold for low-volume roads.

The changes were proposed to clarify the amendments made by the final rule on March 9, 1987, at 52 FR 7126, provide more guidance for pavement markings on permanent pavement surfaces and interim or temporary pavements open to traffic for extended periods of time, and allow flexibility for the use of signs rather than pavement markings for low-volume roads.

The proposal also stated that it is the policy of the FHWA that full standards for pavement markings are desirable for all pavements and the minimums should be used only when full standards are not practical or possible.

The FHWA received 29 comments concerning this proposal. Twelve States, the NCUTCD, and six other concurred that improvements were desirable. The most prominent suggestion was to replace the term "temporary pavement markings" with "short-term pavement marking" and to define "short-term" as a time period not to exceed two weeks.

Most of the commenters who opposed the proposal and several of those who concurred that improvements were desirable objected to the pavement marking stripe and gap length standards that were adopted in the final rule on March 9, 1987. These commenters requested that research be conducted to determine the standards for pavement marking stripe and gap lengths.

Most of the concerns expressed by the NCUTCD have been accommodated in the amendment or will be considered for further research; however, at this time the FHWA does not agree that the detail of requested research is desirable and feasible.

The final rule of March 9, 1987, at 52 FR 7126, has a compliance date of December 31, 1988. This amendment adds some flexibility to the provisions adopted in that final rule. Therefore, the same compliance date of December 31, 1988 is established for this amendment.

(9) Request VI-59(C)—Section 6G-6, Control of Traffic

The NCUTCD requested that the sentence, "The use of traffic control signs should be discouraged." be deleted from the first paragraph of MUTCD Section 6G-6. The NCUTCD requested this change because the sentence is potentially misleading. While the objective on freeways is to keep traffic in a free-flowing condition as much as possible, this sentence, taken out of context, could be easily misinterpreted and is misleading to those responsible for traffic control on freeways. The statement has little value in this section.

All of the 24 commenters indicated that Section 6G-6 needed clarification. Two commenters offered suggestions for additional text. The other commenters agreed that the deletion was sufficient.

This amendment, to delete the sentence, will impose no additional costs on highway agencies; therefore, it is proposed that the change would become effective upon the issuance of a final rule. No implementation period is required.

(10) Request VI-60(C)—Color and Design of Work Zone Vests

Section 6F-3 of MUTCD includes the following provision: "The use of orange clothing such as a vest, shirt, or jacket shall be required for flaggers. For nighttime conditions, similar outside garments shall be reflectorized." The MUTCD does not include provisions that would describe or provide details on the color, design, or extent of the retroreflection. The FHWA has interpreted Section 6F-3 to mean that only orange colored retroreflective material will satisfy the standard. In practice, vests have had a variety of designs, patterns, and colors for the retroreflective portion of the vests. Accordingly, it was proposed to amend Section 6F-3 by adding two sentences to the end of the second paragraph to read as follows: "The retroreflective material shall be either orange, white, or yellow. The design of the retroreflective portions including stripe width, extent, design and type of material shall be determined by the contracting agency, or purchaser of the vest."

The term "reflection" as used throughout Section 6F-3 would be changed to "retroreflection."

Of the 26 who commented on this proposal, only four opposed adding standards for the color of vest retroreflective materials to the MUTCD at this time. Many commenters suggested that silver be included. Several others requested that lime-yellow, bright yellow green, and fluorescent colors be allowed.

The MUTCD recognizes silver as a white material, and recognizes fluorescent red-orange and yellow-orange as acceptable substitutes for orange. The final text will include silver and the two fluorescent oranges. As proposed, the design of the retroreflective portions of the flagger vest will be determined by the contracting agency or purchaser of the vest.

This amendment will have little or no financial impact on State and local agencies. No implementation period is needed.

Discussion of Editorial Changes

In accordance with the procedures published in FHWA Docket 83-18 (48 FR 30145, June 30, 1983), the FHWA invites comments to FHWA Docket 88-16 on the following editorial change (Request IV-92(C)—Provisions for Pedestrians):

The FHWA is making the following editorial change to the MUTCD. The change and its basis are summarized below.

This editorial revision to the MUTCD imposes no additional costs on State and local highway agencies; therefore, no compliance dates are needed for its implementation.

(11) Request IV-92(C)—Provisions for Pedestrians

Minimum traffic signal requirements for pedestrians are presently included in provisions found in Section 4C-12, 4D-6, and 4D-7 of the MUTCD. Minimum traffic signal requirements for pedestrians are also discussed in IV-60(Intr.)—Traffic Signals at T-Intersections. These various requirements are applicable to all traffic signals, not just pedestrian signals. These minimum traffic signal requirements for pedestrians do not always receive proper attention by practitioners because of the fragmented manner in which the provisions are provided.

This revision provides coverage of the provisions in two sections (4B-28 and 4B-29) and eliminates certain redundancies. This change will facilitate the understanding of, and attention to, provisions for pedestrians at traffic signals.

A new Section 4B—28, Provisions for Pedestrians is added that reflects IV-60(Intr.)—Traffic Signals at T-Intersections; Section 4C-12 and the first paragraph of Section 4D-7 (as revised by IV-59). The new Section 4B-28 reads:

4B-28 Provisions for Pedestrians

The design and operation of traffic control signals must take into consideration the needs of pedestrians as well as vehicular traffic. Where minimum numbers of pedestrian movements regularly occur:

1. Signal indications must be visible to pedestrians.

This can be accomplished for a given pedestrian movement by:

a. Provision of pedestrian signal indications, or

b. A R.Y.G. signal face for an adjacent vehicular movement visible to pedestrians, or

c. Vehicular indications for conflicting movements that can be conveniently viewed by pedestrians, and from which pedestrians can readily and accurately deduce when they have the right-of-way.

2. There must be an opportunity to cross without excessive delay. Pedestrian actuation shall be installed at traffic control signals where the signal operation does not otherwise provide this opportunity.

3. Pedestrians should be provided with sufficient time to cross the roadway. This may be accomplished by adjusting the signal operation and timing to automatically provide this assurance or via pedestrian actuation.

Where it is desired to prohibit certain pedestrian movements at a traffic control signal, a sign NO PEDESTRIAN CROSSING (2B-36) may be used.

Other changes are:

1. Delete Section 4C-12.

2. Add a new Section 4B-29, Pedestrian Detectors, and move the text of present Section 4D-6 to the new Section 4B-29.

3. Replace the present text of 4D-6, Detectors with "See Section 4B-29, Pedestrian Detectors".

4. Add to Item 3 of the "SHALL" warrants for pedestrian signals in Section 4D-3 "(See Section 4B-28)".

5. Delete the first paragraph of Section 4D-7 (as revised by IV-59).

Appropriate changes will be made to Part VII of the MUTCD to reflect these revisions.

In consideration of the foregoing and under the authority of 23 U.S.C. 109(d), 315, and 402(a), and the delegation of authority in 49 CFR 1.48(b), the Federal Highway Administration hereby adopts the Manual on Uniform Traffic Control Devices as amended herein.

Regulatory Impact

The Federal Highway Administration (FHWA) has determined that this document contains neither a major rule under Executive Order 12291 nor a significant regulation under the regulatory policies and procedures of the Department of Transportation. As stated herein, the economic impact of these amendments is so minimal as not to require preparation of a full regulatory evaluation. For the same reasons and under the criteria of the Regulatory Flexibility Act, the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities.

Since the editorial amendment contained in this document is technical in nature, the FHWA finds good cause to make the editorial amendment final without the opportunity for comment under the Administrative Procedure Act. However, interested parties may comment on the editorial amendment by

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December 19, 1988, and such comments will be placed in FHWA Docket 88-16 and considered. For the same reasons, opportunity for prior comment is not required under the regulatory policies and procedures of the Department of Transportation.

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Incorporation by Reference

The MUTCD has been incorporated by reference in 23 CFR Part 655 under the provisions of 5 U.S.C. 552(a) and 1 CFR Part 51 and approved by the Director of the Federal Register as of April 1, 1988. The MUTCD was last revised on March 16, 1988 (53 FR 8620). The MUTCD citation included in 23 CFR 655.601(a) is amended to reflect the amendments contained in this document.

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 655

Design standards, Grant programs—transportation, Highways and roads, Signs, Traffic regulations, Incorporation by reference.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: January 10, 1989.

Robert E. Farris,

Federal Highway Administrator, Federal Highway Administration.

The FHWA hereby amends Chapter I of Title 23, Part 655, Code of Federal Regulations, as set forth below.

PART 655—TRAFFIC OPERATIONS

1. The authority citation for 23 CFR Part 655, Subpart F continues to read as follows:

Authority: 23 U.S.C. Sections 109 (d), 114(a), 217, 315, 402(a), 23 CFR 1.32, and 49 CFR 1.48(b).

2. In § 655.601, the first sentence of paragraph (a) is revised to read as follows:

§ 655.601 Purpose.

* * * * *

(a) Manual on Uniform Traffic Control Devices for Streets and Highways, FHWA, 1978, as of January 1980. * * *

* * * * *

[FR Doc. 89-1096 Filed 1-19-89; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8240]

Limitation of Foreign Tax Credit for Foreign Oil and Gas Taxes

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary Income Tax Regulations relating to the amendments made to the Internal Revenue Code by the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA). The amendments require that foreign oil and gas extraction income and losses from all foreign countries be aggregated before computing the limit on creditability of foreign taxes. The amendments also repeal the separate application of the foreign tax credit limitation to taxes on foreign oil related income. The text of the temporary regulations set forth in this document also serves as the text of the proposed regulations cross-referenced in the notice of proposed rulemaking in the Proposed Rules section of this issue of the **Federal Register**.

DATES: The amendments are effective for taxable years beginning after December 31, 1982, except as follows. The special rule provided at § 1.907(c)-2T(d)(7) with respect to allocation of earnings and profits or deficits that arise in taxable years beginning after December 31, 1986, is effective after that date. The special rules provided for determination of FORI and FOGEI tax with respect to dividends received and amounts includible in gross income under section 951(a) in taxable years beginning after December 31, 1986, at § 1.907(c)-3(T) (b)(1) and (c), respectively, are effective after December 31, 1986.

FOR FURTHER INFORMATION CONTACT: Richard L. Chewning of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224 (Attention: CC:CORP:T:R (INTL-152-88)) (202-566-6384, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains temporary Income Tax Regulations (26 CFR Part 1) under section 907 of the Internal Revenue Code. These amendments conform the regulations to changes made to section 907 by section 211 (96 Stat. 448) of TEFRA.

Need for Temporary Regulations

The proper application of changes made to section 907 by TEFRA is dependent upon the Internal Revenue Service's detailed specifications of the manner in which those changes will be administered. These regulations are necessary to provide taxpayers with immediate guidance with regard to their taxable years that remain open under the statute of limitations. Therefore, good cause is found to dispense with the notice and public procedure requirements of 5 U.S.C. 553(b) and the delayed effective date requirement of 5 U.S.C. 553(d).

Explanation of Provisions

The amount allowed as a foreign tax credit under section 901 for foreign taxes paid with respect to foreign oil and gas extraction income (FOGEI) is limited by section 907(a). The amount of the foreign tax credit cannot exceed the amount of FOGEI multiplied by, in the case of a corporation, the highest corporate tax rate or, in the case of an individual, the individual's average tax rate.

Changes Made by TEFRA

Since enactment of section 907 by the Tax Reduction Act of 1975, in computing the FOGEI limitation of section 907(a), pre-TEFRA section 907(c)(4) provided that net operating losses relating to extraction of minerals from oil or gas wells arising in one foreign country did not offset FOGEI arising in other foreign countries. This per-country loss rule was repealed by TEFRA; thus, for taxable years beginning after December 31, 1982, FOGEI and foreign oil extraction losses from all foreign countries are aggregated before computing the limitation of section 907(a). Section 907(c)(4), amended by TEFRA, provides for the recapture of overall foreign oil extraction losses for years preceding the limitation year, but beginning after December 31, 1982, against limitation year FOGEI before application of

section 907(a). Foreign taxes in excess of the section 907(a) limitation, under section 907(f), as amended by TEFRA, may be carried back for two years and forward for five years. Under old section 907(f), the carryback-carryover tax amount could not exceed 2% of FOGEI for the limitation year. This 2% limitation was eliminated by TEFRA.

Prior to TEFRA, after section 907(a) limited creditable FOGEI taxes to a certain percentage of FOGEI, the creditability of those taxes, together with taxes on foreign oil related income (FORI), were subject to the further limitation of pre-TEFRA section 907(b). That section provided that the section 904 limitation on foreign tax credits would be applied separately with respect to FORI, which prior to TEFRA included FOGEI. This separate application of the section 904 limitation for FORI was repealed by section 211 of TEFRA for taxable years beginning after December 31, 1982.

New section 907(b) was added by TEFRA in order to neutralize the consequence of the shifting by some foreign countries of the tax burden from taxes on FOGEI, creditability of which would be limited by section 907(a), to taxes on FORI. New section 907(b) limits creditable FORI taxes, which do not include FOGEI taxes, to the amount that would have been imposed by the foreign country on income that is neither FORI nor FOGEI if, under foreign law, FORI taxes in excess of this limitation were treated as a deductible expense. For United States tax purposes, FORI taxes in excess of the section 907(b) limitation are deductible as business expenses.

New section 907(e), as added by TEFRA, provides transitional rules applicable to unused taxes carried from a year beginning before January 1, 1983, to a year beginning after December 31, 1982 (the effective date of the TEFRA changes), and to unused taxes carried back from a year beginning after December 31, 1982, to a year beginning before January 1, 1983.

Section 212 of TEFRA added certain foreign base company oil related income as an additional item to the category of foreign base company income under the subpart F provisions of sections 951 through 964. See section 954 (a)(5) and (g)(1). These regulations define this FORI for purposes of section 954 (a)(5) and (g)(1).

Section 907 Regulations

The regulations under section 907 consist of two sets: the set of regulations proposed by this notice dealing with taxable years beginning after December 31, 1982, and the set published as T.D. 7961 (49 FR 26208) dealing with taxable years beginning before January 1, 1983 (1984 Treasury Decision). This latter set of regulations was supplemented by T.D. 8160 (52 FR 33930) published in the **Federal Register** on September 9, 1987 (1987 Treasury Decision) which contained definitions of interest on working capital, exchange gain or loss, directly related services and lease or license of related property. Many of the provisions of the regulations contained in these temporary regulations are substantially similar to provisions of the regulations contained in the 1984 and 1987 Treasury Decisions because they deal with provisions in section 907 that were not affected by TEFRA. Thus, §§ 1.907(c)-1T, 1.907(c)-2T, and 1.907(c)-3T are very similar to §§ 1.907(c)-1A, 1.907(c)-2A and 1.907(c)-3A, respectively, and § 1.907(d)-1T is virtually identical to § 1.907(d)-1A. The treatment by the temporary regulations of two matters, the carryover of foreign oil extraction losses and the new limitation on FORI taxes in section 907(b), are explained below in more detail.

Carryover of Foreign Oil Extraction Losses

New section 907(c)(4) requires that a foreign oil extraction loss incurred in one year be carried over and offset against FOGEI of a later year. This rule operates only for purposes of determining FOGEI under section 907(a) and thus operates independently of the rule of section 904(f) dealing with overall foreign losses. Taxes imposed on FOGEI retain their character as FOGEI taxes even though FOGEI is reduced by a loss carryover. Therefore, they may be carried back and forward to other taxable years under section 907(f).

Limitation on FORI Taxes

Section 907(b), as amended, places a limitation on the amount of creditable FORI tax if the FORI tax is excessive. In § 1.907(b)-1T(a), the temporary regulations provide that non-dual capacity taxpayers and dual capacity taxpayers that use the facts and circumstances method of § 1.901-2A(c)(2) to determine their creditable taxes and specific economic benefits must apply the safe harbor formula of § 1.901-2A(e)(1) to the FORI tax payments made to the foreign country to determine the amount of FORI tax that is creditable under section 907(b). Section 907(b) does not apply, however, if the safe harbor formula has already been applied to the tax paid by a dual capacity taxpayer under section 901. These temporary regulations provide examples showing the interaction of sections 901 and 907(b).

Treatment of Income from Sale of Stock

In light of the Supreme Court decision in *Arkansas Best* v. *Commissioner*, 108 S. Ct. 971 (1988), the temporary regulations provide that for both pre-TEFRA and post-TEFRA years, stock of any corporation will not be treated as an asset used by a person in section 907(c) activities. Therefore, income (or loss) from the sale of stock will never be FOGEI or FORI.

Special Analyses

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. A general notice of proposed rulemaking is not required by 5 U.S.C. 553 for temporary regulations. Therefore, these rules do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6) and a Regulatory Flexibility Analysis is not required.

Drafting Information

The principal author of these regulations is Richard L. Chewning of the Office of Associated Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service. Other personnel from offices of the Internal Revenue Service and Treasury Department participated in developing these regulations.

List of Subjects in 26 CFR 1.861 through 1.997-1

Income taxes, Corporate deductions, Aliens, Exports, DISC, Foreign investment in U.S., Foreign tax credit, FSC, Sources of income, United States investments abroad.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Part 1 is amended as follows:

PART 1—[AMENDED]

Paragraph 1. The authority for Part 1 is amended by adding a new citation to read as follows:

Authority: 26 U.S.C. 7805. * * * Section 1.907(b)-1T is also issued under 26 U.S.C. 907 (b). * * *

§ 1.907-0 [Redesignated as § 1.907(a)-0A]

Par. 2. Section 1.907-0 is redesignated as § 1.907(a)-0A and the heading is revised to read "§ 1.907(a)-0A Introduction (for taxable years beginning before January 1, 1983).".

Par. 3. Sections 1.907(a)-1, 1.907(b)-1, 1.907(b)-2, 1.907(c)-1, 1.907(c)-2, 1.907(c)-3, 1.907(d)-1, 1.907(e)-1 and

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1.907(f)–1 are redesignated by adding an "A" at the end of each regulation section number and by deleting the period at the end of each section heading and adding "(for taxable years beginning before January 1, 1983).".

Par. 4. The following center heading is inserted immediately preceding the caption to § 1.907(a)–0A:

Regulations Applicable to Taxable Years Beginning Before January 1, 1983

Par. 5. Paragraphs (a) through (j) of § 1.907(a)–0A are redesignated as paragraphs (b) through (k), respectively, and a new paragraph (a) is added.

§ 1.907(a)–0A Introduction (for taxable years beginning before January 1, 1983).

(a) *Effective dates.* [Reserved] For guidance, see § 1.907(a)–0AT.

* * * * *

Par. 6. A new § 1.907(a)–0AT is added immediately after § 1.907(a)–0A to read as follows:

§ 1.907(a)–0AT Introduction (for taxable years beginning before January 1, 1983) (Temporary regulations).

(a) *Effective dates.* The provisions of §§ 1.907(a)–0A through 1.907(f)–1A apply to taxable years beginning before January 1, 1983, and all references in these regulations to section 907 are to section 907 as it existed prior to the amendments made by section 211 of the Tax Equity and Fiscal Responsibility Act of 1982 (96 Stat. 446). For provisions that apply to taxable years beginning after December 31, 1982, see §§ 1.907(a)–0T through 1.907(f)–1T.

(b) through (k) [Reserved]

Par. 7. Section 1.907(c)–1A is amended as follows:

1. By removing the last sentence of paragraph (d)(1), and

2. By revising paragraph (d)(3).

§ 1.907(c)–1A Definitions relating to FORI and FOGEI (for taxable years beginning before January 1, 1983).

* * * * *

(d) *Assets used in a trade or business.*

* * * * *

(3) *Stock.* [Reserved] For guidance, see § 1.907(c)–1AT (d)(3).

* * * * *

Par. 8. A new § 1907(c)–1AT is added immediately after § 1.907(c)–1A to read as follows:

§ 1.907(c)–1AT Definitions relating to FORI and FOGEI (for taxable years beginning before January 1, 1983) (Temporary regulations).

(a) through (c) [Reserved]

(d) *Assets used in a trade or business.*

(1) and (2) [Reserved]

(3) *Stock.* Stock of any corporation (whether foreign or domestic) will not be treated as an asset used by a person in section 907(c) activities. This provision applies to taxable years beginning after December 31, 1974, and beginning before January 1, 1983.

(d)(4) through (h) [Reserved]

Par. 9. There is added immediately preceding the new center heading above § 1.907(a)–0A the following new § 1.907–0, a new center heading and new §§ 1.907 (a)–0T through 1.907(f)–1T:

§ 1.907–0 Outline of regulation provisions for section 907.

This section lists the paragraphs contained in §§ 1.907(a)–0T through 1.907(f)–1A.

Regulations Applicable to Taxable Years Beginning After December 31, 1982

§ 1.907(a)–0T Introduction (for taxable years beginning after December 31, 1982) (Temporary regulations).

(a) Effective dates.
(b) Key terms.
(c) FOGEI tax limitation.
(d) Reduction of creditable FORI taxes.
(e) FOGEI and FORI.
(f) Posted prices.
(g) Transitional rules.
(h) Section 907(f) carrybacks and carryovers.
(i) Statutes covered.

§ 1.907(a)–1T Reduction in taxes paid on FOGEI (for taxable years beginning after December 31, 1982) (Temporary regulations).

(a) Amount of reduction.
(b) Foreign taxes paid or accrued.
(1) Foreign taxes.
(2) Foreign taxes paid or accrued.
(c) Limitation level.
(1) In general.
(2) Limitation percentage for corporations.
(3) Limitation percentage for individuals.
(4) Losses.
(5) Priority.
(d) Illustrations.
(e) Effect on other provisions.
(1) Deduction denied.
(2) Reduction inapplicable.
(3) Section 78 dividend.
(f) Section 904 limitation.

§ 1.907(b)–1T Reduction of creditable FORI taxes (for taxable years beginning after December 31, 1982) (Temporary regulations).

(a) In general.
(b) Amount of income, war profits, or excess profits tax.
(1) Dual capacity taxpayer.
(2) Non-dual capacity taxpayer.
(c) Amount that is not income, war profits, or excess profits tax.
(d) Examples.

§ 1.907(c)–1T Definitions relating to FOGEI and FORI (for taxable years beginning after December 31, 1982) (Temporary regulations).

(a) Scope.
(b) FOGEI.
(1) General rule.
(2) Amount.
(3) Other circumstances.
(4) Income directly related to extraction.
(5) Income not included.
(6) Fair market value.
(7) Economic interest.
(c) Carryover of foreign oil extraction losses.
(1) In general.
(2) Reduction.
(3) Foreign oil extraction loss defined.
(4) Affiliated groups.
(5) FOGEI taxes.
(6) Examples.
(d) FORI.
(1) In general.
(2) Transportation.
(3) Distribution or sale.
(4) Processing.
(5) Primary product from oil.
(6) Primary product from gas.
(7) Directly related income.
(e) Assets used in a trade or business.
(1) In general.
(2) Section 907(c) activities.
(3) Stock.
(4) Losses on sale of stock.
(5) Character of gain or loss.
(6) Allocation of amount realized.
(7) Interest.
(f) Terms and items common to FORI and FOGEI.
(1) Minerals.
(2) Taxable income.
(3) Interest on working capital.
(4) Exchange gain or loss.
(5) Allocation.
(6) Facts and circumstances.
(g) Directly related income.
(1) In general.
(2) Directly related services.
(3) Leases and licenses.
(4) Related person.
(5) Gross income.
(h) Coordination with other provisions.
(1) Certain adjustments.
(2) Section 901(f).

§ 1.907(c)–2T Section 907(c)(3) items (for taxable years beginning after December 31, 1982) (Temporary regulations).

(a) Scope.
(b) Dividend.
(1) Section 1248.
(2) Section 78 dividend.
(c) Taxes deemed paid.
(1) Voting stock test.
(2) Dividends and interest.
(3) Amounts included under section 951(a).
(d) Amount attributable to certain items.
(1) Certain dividends.
(2) Interest received from certain foreign corporations.
(3) Dividends from domestic corporation.
(4) Amounts with respect to which taxes are deemed paid under section 960(a).
(5) Section 78 dividend.
(6) Special rule.
(7) Deficits.
(8) Illustrations.
(e) Dividends, interest, and other amounts from sources within a possession.
(f) Income from partnerships, trusts, etc.

§ 1.907(c)–3T FOGEI and FORI taxes (for taxable years beginning after December 31, 1982) (Temporary regulations).

(a) Tax characterization, allocation and apportionment.
(1) Scope.

(2) Three classes of income.
(3) More than one class in a foreign tax base.
(4) Allocation of tax within a base.
(5) Modified gross income.
(6) Allocation of tax credits.
(7) Withholding taxes.
(b) Dividends.
(1) In general.
(2) Section 78 dividend.
(c) Includible amounts under section 951(a).
(d) Partnerships.
(e) Illustrations.

§ 1.907(d)–1T Disregard of posted prices for purposes of chapter 1 of the Code (for taxable years beginning after December 31, 1982) (Temporary regulations).

(a) In general.
(1) Scope.
(2) Initial computation requirement.
(3) Burden of proof.
(4) Related parties.
(b) Adjustments.
(c) Definitions.
(1) Foreign government.
(2) Minerals.
(3) Posted price.
(4) Other pricing arrangement.
(5) Fair market value.

§ 1.907(e)–1T Transitional rules (for amounts carried between a taxable year beginning before January 1, 1983, and a taxable year beginning after December 31, 1982) (Temporary regulations).

(a) General rule.
(b) Rules for carryover of FORI and pre-TEFRA non-FORI taxes.
(c) Examples.

§ 1.907(f)–1T Carryback and carryover of credits disallowed by section 907(a) (for amounts carried between taxable years that each begin after December 31, 1982) (Temporary regulations).

(a) In general.
(b) Unused FOGEI.
(1) In general.
(2) Year of origin.
(c) Tax deemed paid or accrued.
(d) Excess extraction limitation.
(e) Excess general section 904 limitation.
(f) Section 907(f) priority.
(g) Cross-reference.
(h) Example.

Regulations Applicable to Taxable Years Beginning Before January 1, 1983

§ 1.907(a)–0A Introduction (for taxable years beginning before January 1, 1983).

(a) Key terms.
(b) FOGEI tax limitation.
(c) Section 904 limitation.
(d) FOGEI and FORI.
(e) Posted prices.
(f) Transitional rules.
(g) Section 907(f) carrybacks and carryovers.
(h) Cross-references.
(i) Statutes covered.
(j) Pre-TEFRA Code references.

§ 1.907(a)–0AT Introduction (for taxable years beginning before January 1, 1983) (Temporary regulations).

(a) Effective dates.

§ 1.907(a)–1A Reduction in taxes paid on FOGEI (for taxable years beginning before January 1, 1983).

(a) Amount of reduction.
(b) Foreign taxes paid or accrued.
(1) Foreign taxes.
(2) Foreign taxes paid or accrued.
(c) Limitation level.
(1) In general.
(2) Limitation percentage for corporations.
(4) Losses.
(5) Priority.
(d) Illustrations.
(e) Effect on other provisions.
(1) Deduction denied.
(2) Reduction inapplicable.
(3) Section 78 dividend.

§ 1.907(b)–1A Application of section 904 limitation with respect to FORI (for taxable years beginning before January 1, 1983).

(a) In general.
(b) Overall limitation.
(c) FORI taxes.

§ 1.907(b)–2A FORI tax carryovers and carrybacks (for taxable years beginning before January 1, 1983).

(a) Modifications in use of § 1.904–2.
(b) Unused foreign tax.
(1) General rule.
(2) Per-country limitation year.
(c) Tax deemed paid or accrued with respect to FORI.
(d) Excess FORI limitation.
(1) When overall limitation applies.
(2) Per-country limitation year.
(e) Cross-reference.
(f) Separation of limitation.
(1) General rule.
(2) Special rules.
(g) Illustrations.

§ 1.907(c)–1A Definitions relating to FORI and FOGEI (for taxable years beginning before January 1, 1983).

(a) Scope.
(b) Extraction income.
(1) General rule.
(2) Amount.
(3) Other circumstances.
(4) Income directly related to extraction.
(5) Income not included.
(6) Fair market value.
(7) Economic interest.
(c) Other FORI.
(1) In general.
(2) Transportation.
(3) Distribution or sale.
(4) Processing.
(5) Primary product from oil.
(6) Primary product from gas.
(7) Directly related income.
(d) Assets used in a trade or business.
(1) In general.
(2) Section 907(c) activities.
(3) Stock.
(4) Losses on sale of stock.
(5) Character of gain or loss.
(6) Allocation of amount realized.
(7) Interest.
(e) Terms and items common to other FORI and FOGEI.
(1) Minerals.
(2) Taxable income.
(3) Interest on working capital.
(4) Exchange gain or loss.
(5) Allocation.
(6) Facts and circumstances.
(f) Directly related income.
(1) In general.
(2) Directly related services.
(3) Leases and licenses.
(4) Related person.
(5) Gross income.
(g) Certain net operating losses.
(1) In general.
(2) Passive income.
(3) Source rule.
(h) Coordination with other provisions.
(1) Certain adjustments.
(2) Section 901(f).

§ 1.907(c)–1AT Definitions relating to FORI and FOGEI (for taxable years beginning before January 1, 1983) (Temporary regulations).

§ 1.907(c)–2A Section 907(c)(3) items (for taxable years beginning before January 1, 1983).

(a) Scope.
(b) Dividend.
(1) Section 1248 dividend.
(2) Section 78 dividend.
(c) Taxes deemed paid.
(1) Voting stock test.
(2) Dividends and interest.
(3) Amounts included under section 951(a).
(d) Amount attributable to certain items.
(1) Certain dividends.
(2) Interest received from certain foreign corporations.
(3) Dividends from domestic corporations.
(4) Amounts with respect to which taxes are deemed paid under section 960(a).
(5) Section 78 dividend.
(6) Special rule.
(7) Deficits.
(8) Illustrations.
(e) Dividends, interest, and other amounts from sources within a possession.
(f) Income from partnerships, trusts, etc.

§ 1.907(c)–3A FOGEI and FORI taxes (for taxable years beginning before January 1, 1983).

(a) Tax allocation.
(1) Scope.
(2) Three classes of income.
(3) More than one class in a foreign tax base.
(4) Allocation of tax within a base.
(5) Modified gross income.
(6) Allocation of tax credits.
(7) Coordination with regulations under section 901.
(8) Withholding taxes.
(b) Dividends.
(1) In general.
(2) Section 78 dividend.
(c) Includible amounts under section 951(a).
(d) Partnerships.
(e) Illustrations.

§ 1.907(d)–1A Disregard of posted prices for purposes of chapter 1 of the Code (for taxable years beginning before January 1, 1983).

(a) In general.
(1) Scope.
(2) Initial computation requirement.
(3) Burden of proof.

(4) Related parties.
(b) Adjustments.
(c) Definitions.
(1) Foreign government.
(2) Minerals.
(3) Posted price.
(4) Other pricing arrangement.
(5) Fair market value.

§ 1.907(a)–1A Transitional rules for section 904 carrybacks and carryovers (for taxable years beginning before January 1, 1983).

(a) Carryovers from taxable years ending before January 1, 1975.
(1) In general.
(2) Sections 901(e) and 907(a).
(3) General rule for division of unused foreign tax.
(4) Computation.
(5) Illustrations.
(b) Transitional rules for carryovers from per-country limitation years ending before January 1, 1976.
(1) In general.
(2) Pro rata reduction of carryovers.
(3) Illustrations.
(c) Transitional rules for carryback from taxable years ending after December 31, 1974.
(1) In general.
(2) Applicable principles.

§ 1.907(f)–1A Carryback and carryover of credits disallowed by section 907(a) (for taxable years beginning before January 1, 1983).

(a) In general.
(b) Unused foreign extraction tax.
(1) In general.
(2) Limit.
(3) Year of origin.
(c) Tax deemed paid or accrued.
(d) Excess extraction limitation.
(e) Excess oil related limitation.
(f) Limitation percentage in certain excess limitation years.
(g) Section 907(f) priority.
(h) Per-country limitation.
(i) Cross-reference.
(j) Illustration.

Regulations Applicable to Taxable Years Beginning After December 31, 1982

§ 1.907(a)–0T Introduction (for taxable years beginning after December 31, 1982) (Temporary regulations).

(a) *Effective dates.* The provisions of §§ 1.907(a)–0T through § 1.907(f)–1T apply to taxable years beginning after December 31, 1982. For provisions that apply to taxable years beginning before January 1, 1983, see §§ 1.907(a)–0A through 1.907(f)–1A, 1.907(a)–0AT and 1.907(c)–1AT.

(b) *Key terms.* For purposes of the regulations under section 907—

(1) "FOGEI" means foreign oil and gas extraction income.

(2) "FORI" means foreign oil related income.

(3) "FOGEI taxes" mean foreign oil and gas extraction taxes as defined in section 907(c)(5)

(4) "FORI taxes" mean foreign taxes on foreign oil related income. See § 1.907(c)–3T.

(c) *FOGEI tax limitation.* Section 907(a) limits the foreign tax credit for taxes paid or accrued on FOGEI. See § 1.907(a)–1T.

(d) *Reduction of creditable FORI taxes.* Section 907(b) recharacterizes FORI taxes as non-creditable deductible expenses to the extent that the foreign law imposing the FORI taxes is structured, or in fact operates, so that the amount of tax imposed with respect to FORI will be materially greater, over a reasonable period of time, than the amount generally imposed on income that is neither FOGEI nor FORI. See § 1.907(b)–1T.

(e) *FOGEI and FORI.* FOGEI includes the taxable income from the extraction of minerals from oil or gas wells by a taxpayer (or another person) and from the sale or exchange of assets used in the extraction business. FORI is a broader category of income than FOGEI. FORI includes taxable income from the activities of processing oil and gas into their primary products, transporting or distributing oil and gas and their primary products, and from the disposition of assets used in these activities. For this purpose, a disposition includes only a sale or exchange. FOGEI and FORI may also include taxable income from the performance of related services or from the lease of related property and certain dividends, interest, or amounts described in section 951(a). See §§ 1.907(c)–1T through 1.907(c)–3T.

(f) *Posted prices.* Certain sales prices are disregarded when computing FOGEI for purposes of chapter 1 of the Code. See § 1.907(d)–1T.

(g) *Transitional rules.* Section 907(e) provides rules for the carryover of unused FOGEI taxes from taxable years beginning before January 1, 1983, and carryback of FOGEI taxes arising in taxable years beginning after December 31, 1982. See § 1.907(e)–1T.

(h) *Section 907(f) carrybacks and carryovers.* FOGEI taxes disallowed under section 907(a) may be carried back or forward to other taxable years. These FOGEI taxes may be absorbed in another taxable year to the extent of the lesser of the separate excess extraction limitation or the excess limitation in the general limitation category (section 904(d)(1)(I)) for the carryback or carryover year. See § 1.907(f)–1T.

(i) *Statutes covered.* The regulations under section 907 are issued as a result of the enactment of section 601 by the Tax Reduction Act of 1975, of section 1035 by the Tax Reform Act of 1976, of section 301(b)(14) of the Revenue Act of 1978, and of section 211 of the Tax Equity and Fiscal Responsibility Act of 1982.

§ 1.907(a)–1T Reduction in taxes paid on FOGEI (for taxable years beginning after December 31, 1982) (Temporary regulations).

(a) *Amount of reduction.* FOGEI taxes are reduced by the amount by which they exceed a limitation level (as defined in paragraph (c) of this section).

(b) *Foreign taxes paid or accrued.* For purposes of the regulations under section 907—

(1) *Foreign taxes.* The term "foreign taxes" means income, war profits, or excess profits taxes of foreign countries or possessions of the United States otherwise creditable under section 901 (including those creditable by reason of section 903).

(2) *Foreign taxes paid or accrued.* The terms "foreign taxes paid or accrued," "FOGEI taxes paid or accrued," and "FORI taxes paid or accrued" include foreign taxes deemed paid under sections 902 and 960. Unless otherwise expressly provided, these terms do not include foreign taxes deemed paid by reason of sections 904(c) and 907(f).

(c) *Limitation level*—(1) *In general.* The limitation level is FOGEI for the taxable year multiplied by the limitation percentage for that year.

(2) *Limitation percentage for corporations.* A corporation's limitation percentage is the highest rate of tax specified in section 11(b) for the particular year.

(3) *Limitation percentage for individuals.* Section 907(a)(2)(B) provides that the limitation percentage for individual taxpayers is the effective rate of tax for those taxpayers. The effective rate of tax is computed by dividing the entire tax, before the credit under section 901(a) is taken, by the taxpayer's entire taxable income.

(4) *Losses.* (i) For purposes of determining whether income is FOGEI, a taxpayer's FOGEI will be recharacterized as foreign source non-FOGEI to the extent that FOGEI losses for preceding taxable years beginning after December 31, 1982, exceed the amount of FOGEI already recharacterized. See § 1.907(c)-1T(c). However, taxes that were paid or accrued on the recharacterized FOGEI will remain FOGEI taxes.

(ii) Taxes paid or accrued by a person to a foreign country may be FOGEI taxes even though that person has under U.S. law a net operating loss from sources within that country.

(iii) For purposes of determining whether income is FOGEI, a taxpayer's income will be treated as income from

sources outside the United States even though all or a portion of that income may be resourced as income from sources with the United States under section 904(f)(1) and (4).

(5) *Priority.* (i) Section 907(a) applies before section 908, relating to reduction of credit for participation in or cooperation with an international boycott.

(ii) Section 901(f) (relating to certain payments with respect to oil and gas not considered as taxes) applies before section 907.

(d) *Illustrations.* Paragraphs (a) through (c) of this section are illustrated by the following examples.

Example (1). M, a U.S. corporation, uses the accrual method of accounting and the calendar year as its taxable year. For 1984, M has $20,000 of FOGEI, derived from operations in foreign countries X and Y, and has accrued $11,500 of foreign taxes with respect to FOGEI. The highest tax rate specified in section 11(b) for M's 1984 taxable year is 46 percent. Pursuant to section 907(a), M's FOGEI taxes limitation level for 1984 is $9,200 (46% × $20,000). The foreign taxes in excess of this limitation level ($2,300) may be carried back or forward. See section 907(f) and § 1.907(f)-1T and section 907(e) and § 1.907(e)-1T.

Example (2). The facts are the same in *Example* (1) except that M is a partnership owned equally by U.S. citizens A and B who each file as unmarried individuals and do not itemize deductions. Pursuant to section 905(a), A and B have elected to credit foreign taxes in the year accrued. The total foreign taxes accrued by A and B with respect to their distributive shares of M's FOGEI is $11,500 ($5,750 accrued by A and $5,750 accrued by B). A and B have no other FOGEI. A's only taxable income for 1984 is his 50% distributive share ($10,000) of M's FOGEI and A has a preliminary U.S. tax liability of $1,079. B has $112,130 of taxable income for 1984 (including his 50% distributive share ($10,000) of M's FOGEI) and has a preliminary U.S. tax liability of $44,000. Pursuant to section 907(a), A's FOGEI taxes limitation level for 1984 is $1,079 (($1,079/$10,000) × $10,000)) and B's FOGEI taxes limitation level for 1984 is $3,924 (($44,000/$112,130) × $10,000)).

(e) *Effect on other provisions*—(1) *Deduction denied.* If a credit is claimed under section 901, no deduction under section 164(a)(3) is allowed for the amount of the FOGEI taxes that exceed a taxpayer's limitation level for the taxable year. See section 275(a)(4)(A). Thus, FOGEI taxes disallowed under section 907(a) are not added to the cost or inventory amount of oil or gas.

(2) *Reduction inapplicable.* The reduction under section 907(a) does not apply to a taxpayer that deducts foreign taxes and does not claim the benefits of section 901 for a taxable year.

(3) *Section 78 dividend.* The reduction under section 907(a) has no effect on the amount of foreign taxes that are treated as dividends under section 78.

(f) *Section 904 limitation.* FOGEI taxes as reduced under section 907(a) are creditable only to the extent permitted by the general limitation of section 904(d)(1)(I).

§ 1.907(b)–1T Reduction of creditable FORI taxes (for taxable years beginning after December 31, 1982) (Temporary regulations).

(a) *In general.* If the foreign law imposing a FORI tax (as defined in § 1.907(c)–3T) is either structured in a manner, or operates in a manner, so that the amount of tax imposed on FORI is generally materially greater than the tax imposed by the foreign law on income that is neither FORI nor FOGEI ("described manner"), section 907(b) provides a special rule which limits the amount of FORI taxes paid or accrued by a person to a foreign country which will be considered income, war profits, or excess profits taxes. Section 907(b) will apply to a person regardless of whether that person is a dual capacity taxpayer as defined in § 1.901–2(a)(2)(ii)(A). (In general, a dual capacity taxpayer is a person who pays an amount to a foreign country part of which is attributable to an income tax and the remainder of which is a payment for a specific economic benefit derived from that country.) Foreign law imposing a tax on FORI will be considered either to be structured in or to operate in the described manner if any of the tax imposed on FORI is considered not be an income, war profits or excess profits tax under paragraph (b) of this section.

(b) *Amount of income, war profits, or excess profits tax*—(1) *Dual capacity taxpayer.* If for a taxable year a dual capacity taxpayer has applied the safe harbor formula of § 1.901–2A(e) to determine the portion of a FORI tax paid or accrued during the year that is a payment of tax rather than a payment for a specific economic benefit, section 907(b) shall not apply. However, if the dual capacity taxpayer has used the facts and circumstances method of § 1.901–2A(c)(2) to establish the portion of the FORI tax that is a payment of tax rather than a payment for a specific economic benefit, the safe harbor formula of § 1.901–2A(e) will be applied to the portion of the payment determined to be a tax under the facts and circumstances method to determine whether section 907(b) will further reduce that amount.

(2) *Non-dual capacity taxpayer.* With regard to non-dual capacity taxpayers, the portion of the FORI tax that is considered an income, war profits, or excess profits tax is determined by applying the safe harbor formula of § 1.901–2A(e) with respect to the person's foreign oil related income (as determined under foreign law pursuant to the provisions of paragraph (e)(2) of that section).

(c) *Amount that is not income, war profits, or excess profits tax.* The difference between the amount of FORI tax and the amount determined pursuant to paragraph (b) of this section is considered a tax that is not an income, war profits, or excess profits tax. This amount will be treated as a business expense deduction.

(d) *Examples.* The provisions of this section may be illustrated by the following examples:

Example (1)—(i) *Facts.* X, a U.S. corporation that uses the accrual method of accounting and the calendar year as its taxable year, extracts oil in foreign country FC, transports it via pipeline to a refinery located in FC, and sells it to Y, an unrelated corporation that operates the refinery. X is a dual capacity taxpayer as defined in § 1.901–2(a)(2)(ii)(A). The only income X has that is taxed by FC is its income from the sale of oil to Y. FC imposes a generally applicable tax at the rate of 45% on the net income derived by foreign corporations from a trade or business carried on in FC. That tax is an income tax within the meaning of section 901. Taxable FOGEI and taxable FORI are determined under foreign law which, for purposes of this example, is assumed to be the same as United States law. X is subject to this generally applicable tax except that it is subject to a 60%, rather than a 45%, rate. For 1985, assume the following additional facts:

X's total gross income from sales to Y	1,000
Gross income attributable to extraction (FOGEI)	700
Gross income attributable to transportation (FORI)	300
Deductions incurred deriving FOGEI	525
Deductions incurred deriving FORI	225
Taxable FOGEI under FC law	175
Taxable FORI under FC law	75
Accrued tax to FC (under FC law) (.60×(1000−750))	150

(ii) *Computation of section 901 tax without regard to section 907(b).* Because X is a dual capacity taxpayer, it is subject to the rules of § 1.901–2A. X has chosen to establish the amount of its payment to FC that is tax by using the facts and circumstances method of § 1.901–2A(c)(2). Under this method, X claims that 110 of the 150 is paid to FC is tax. The remainder (40) is considered an amount paid in exchange for a specific economic benefit X is receiving from FC.

(iii) *Determination of FORI tax accrued in 1985.* For purposes of this example it is assumed that the 40 determined in subdivision (ii) to be paid in exchange for a specific economic benefit relates only to X's FOGEI activities. Therefore, of the total payment to FC of 150, the part that is FORI tax for United States purposes is determined by the following equation:

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FORI tax for United States purposes = (Total tax) × (Taxable FORI under FC law/ total taxable income under FC law)

Accordingly, for 1985, FORI tax for U.S. purposes is 45, computed as follows:

45 = (150) × (75/250).

(iv) *Application of section 907(b).* Pursuant to paragraph (b) of this section, the portion of FORI tax for U.S. purposes for 1985 (45) that will be considered an income tax for purposes of section 901 after application of section 907(b) is determined by applying the safe harbor formula of § 1.901–2A(e), as follows:

(A − B − C) × D/(1–D)

A = Gross income attributable to FORI = 300

B = Deductions incurred deriving FORI = 225

C = FORI tax for U.S. purposes = 45

D = Generally applicable tax rate = 45%

24.55 = (300 − 225 − 45) × .45/(1 − .45)

The remainder (20.45) is not an income tax and is deductible, for U.S. tax purposes, as a business expense.

Example (2).—(i) *Facts.* Y, a U.S. corporation that uses the accrual method of accounting and the calendar year as its taxable year, operates the refinery mentioned in *Example* (1). Y is not receiving a specific economic benefit from FC. Since § 1.901–2(a)(2)(ii)(E), relating to the indirect receipt of a specific economic benefit, does not apply to Y, Y is not a dual capacity taxpayer with respect to FC. The only income Y has that is taxed by FC is its income from the sale of refined oil. All of this income is FORI as defined in section 907(c)(2)(A). Y is subject to the generally applicable tax mentioned in *Example* (1) except that Y is subject to a 50%, rather than a 45%, rate. For 1985, Y has accrued tax to FC of 25 based on the following additional facts:

Y's gross receipts—sales of refined oil	1,200
Cost of purchases of oil	1,000
Expenses from refining operations	150
Taxable income	50
Accrued tax	25

(ii) *Computation of section 901 tax without regard to section 907(b).* Because Y is not a dual capacity taxpayer, it is not subject to the rules of § 1.901–2A. Thus, none of the tax accrued to FC(25) is paid in exchange for a specific economic benefit. Therefore, the entire 25 is creditable under section 901 if section 907(b) does not apply.

(iii) *Determination of FORI tax accrued in 1985.* All of the tax accrued to FC was accrued with respect to processing income described in section 907(c)(2)(A), and, thus, all of it is FORI tax.

(iv) *Application of section 907(b).* Pursuant to paragraph (b) of this section, the portion of FORI tax accrued by Y for 1985 that will be considered an income tax for purposes of section 901 after application of section 907(b) is determined by applying the safe harbor formula in § 1.901–2A(e), as follows:

(A − B − C) × D/(1 − D)

A = Gross income attributable to FORI = 1,200

B = Deductions incurred deriving FORI = 1,150

C = FORI tax for U.S. purposes = 25

D = Generally applicable tax rate = 45%

20.45 = (1,200 − 1,150 − 25) × .45/(1 − .45)

Accordingly, 20.45 is an income tax and the remainder (4.55) is not an income tax and is deductible, for U.S. tax purposes, as a business expense.

§ 1.907(c)–1T Definitions relating to FOGEI and FORI (for taxable years beginning after December 31, 1982 (Temporary regulations).

(a) *Scope.* This section explains the meaning to be given certain terms and items in section 907(c) (1), (2), and (4). See also § 1.907 (a)–oT (b) for further definitions.

(b) *FOGEI.*—(1) *General rule.* Under section 907(c)(1), FOGEI means taxable income (or loss) derived from sources outside the United States and its possessions from the extraction (by the taxpayer or any other person) of minerals from oil or gas wells located outside the United States and its possessions or from the sale or exchange of assets used by the taxpayer in extraction of those minerals. Extraction of minerals from oil or gas wells will result in gross income from extraction in every case in which that person has an economic interest in the minerals in place. For other circumstances in which gross income from extraction may arise, see paragraph (b)(3) of this section. For determination of the amount of gross income from extraction, see paragraph (b)(2) of this section. For definition of the phrase "assets used by the taxpayer in the trade or business" and for rules relating to that type of FOGEI, see paragraph (e)(1) of this section. The term "minerals" is defined in paragraph (f)(1) of this section. For determination of taxable income, see paragraph (f)(2) of this section. FOGEI includes, in addition, items listed in section 907(c)(3) (relating to dividends, interest, partnership distributions, etc.) and explained in § 1.907(c)-2T. For the reduction of what would otherwise be FOGEI by losses incurred in a prior year, see section 907(c)(4) and paragraph (c) of this section.

(2) *Amount.* The gross income from extraction is determined by reference to the fair market value of the minerals in the immediate vicinity of the well. Fair market value is determined under paragraph (b)(6) of this section.

(3) *Other circumstances.* Gross income from extraction or the sale or exchange of assets described in section 907(c)(1)(B) includes income from any arrangement, or a combination of arrangements or transactions, to the extent the income is in substance attributable to the extraction of minerals or such a sale or exchange. For instance, a person may have gross income from such a sale or exchange if the person purchased minerals from a foreign government at a discount and the discount reflects an arm's-length amount in consideration for the government's nationalization of assets that person owned and used in the extraction of minerals.

(4) *Income directly related to extraction.* Gross income from extraction includes directly related income under paragraph (g) of this section.

(5) *Income not included.* FOGEI as otherwise determined under this paragraph (b), nevertheless, does not include income to the extent attributable to marketing, distributing, processing or transporting minerals or primary products. Income from the purchase and sale of minerals is not ordinarily FOGEI. If the foreign taxes paid or accrued in connection with income from a purchase and sale are not creditable by reason of section 901(f), that income is not FOGEI. A taxpayer to whom section 901(f) applies is not a producer.

(6) *Fair market value.* For purposes of this paragraph (b), the fair market value of oil or gas in the immediate vicinity of the well depends on all of the facts and circumstances as they exist relative to a party in any particular case. The facts and circumstances that may be taken into account include, but are not limited to, the following—

(i) The facts and circumstances pertaining to an independent market value (if any) in the immediate vicinity of the well,

(ii) The facts and circumstances pertaining to the relationships between the taxpayer and the foreign government. If an independent fair market value in the immediate vicinity of the well cannot be determined but fair market value at the port, or a similar point, in the foreign country can be determined (port price), an analysis of the arrangements between the taxpayer and the foreign government that retains a share of production could be evidence of the appropriate, arm's-length difference between the port price and the field price, and

(iii) The other facts and circumstances pertaining to any difference in the producing country between the field and port prices.

(7) *Economic interest.* For purposes of this paragraph (b), the term "economic interest" means an economic interest as defined in § 1.611-1(b)(1), whether or not a deduction for depletion is allowable under section 611.

(c) *Carryover of foreign oil extraction losses.*—(1) *In general.* Pursuant to section 907(c)(4), the determination of FOGEI for a particular taxable year takes into account a foreign oil extraction loss incurred in prior taxable years beginning after December 31, 1982. There is no time limitation on this carryover of foreign oil extraction losses. Section 907(c)(4) does not provide for any carryback of these losses. Section 907(c)(4) operates solely for purposes of determining FOGEI and thus operates independently of section 904(f).

(2) *Reduction.* That portion of the income of the taxpayer for the taxable year which but for this paragraph (c) would be treated as FOGEI is reduced (but not below zero) by the excess of—

(i) The aggregate amount of foreign oil extraction losses for preceding taxable years beginning after December 31, 1982, over

(ii) The aggregate amount of reductions under this paragraph (c) for preceding taxable years beginning after December 31, 1982.

(3) *Foreign oil extraction loss defined.*—(i) *In general.* For purposes of this paragraph (c), the term "foreign oil extraction loss" means the amount by which the gross income for the taxable year that is taken into account in determining FOGEI for that year is exceeded by the sum of the deductions properly allocated and apportioned to that gross income (as determined under paragraph (f)(2) of this section). A person can have a foreign oil extraction loss for a taxable year even if the person has not chosen the benefits of section 901 for that year.

(ii) *Items not taken into account.* For purposes of subdivision (i) of this paragraph, the following items are not taken into account—

(A) The net operating loss deduction allowable for the taxable year under section 172(a),

(B) Any foreign expropriation loss (as defined in section 172(h)) for the taxable year, and

(C) Any loss for the taxable year which arises from fire, storm, shipwreck, or other casualty, or from theft.

A loss mentioned in subdivision (ii) (B) or (C) of this paragraph is taken into account, however, to the extent compensation (for instance by insurance) for the loss is included in gross income.

(4) *Affiliated groups.* The foreign oil extraction loss of an affiliated group of corporations (within the meaning of section 1504(a)) that files a consolidated return is determined on a group basis. If the group does not have a foreign oil extraction loss, the foreign oil extraction loss of a member of that group will not reduce on a separate basis that member's FOGEI for a later taxable year.

(5) *FOGEI taxes.* If FOGEI is reduced pursuant to this paragraph (c) (and thereby recharacterized as non-FOGEI income), any foreign taxes imposed on the FOGEI that is recharacterized as other income retain their character as FOGEI taxes. See section 907(c)(5).

(6) *Examples.* The provisions of this paragraph (c) may be illustrated by the following examples.

Example (1).—(i) *Facts.* X, a U.S. corporation using the accrual method of accounting and the calendar year as its taxable year, is engaged in extraction activities in three foreign countries. X has only the following combined foreign tax items for the three countries (prior to the application of this paragraph (c)) for 1983, 1984, and 1985:

	1983	1984	1985
FOGEI	($700)	$100	$450
FOGEI taxes	10	60	200
Net operating loss deduction	(200)	0	0
Foreign oil extraction loss allowable after adjustment for paragraph (c)(3)(ii) amounts	(500)	0	0

(ii) *1983.* Because X's FOGEI for 1983 is a loss of $700, X's section 907(a) limitation for 1983 is $0 (.45×$0). Thus, none of the FOGEI taxes paid or accrued in 1983 ($10) can be credited in 1983. They can, however, be carried back pursuant to the provisions of section 907(e)(2) and § 1.907(e)–1T and carried forward pursuant to the provisions of section 907(f) and § 1.907(f)–1T.

(iii) *1984.* X's FOGEI for 1984, prior to the application of this paragraph (c), is $100. X has a foreign oil extraction loss for 1983 of $(500). This loss must be applied against X's preliminary FOGEI of $100 for 1984. Thus, X's FOGEI for 1984 is $0 and X has $400 (500−$100) of foreign oil extraction loss from 1983 to be carried to 1985. Because X's FOGEI for 1984 is $0, its section 907(a) limitation is $0 (.46×$0). Therefore, none of the FOGEI taxes paid or accrued in 1984 ($60) can be credited in 1984. They can, however, be carried back to 1982 pursuant to the provisions of section 907(e)(2) and § 1.907(e)–1T and carried forward pursuant to the provisions of section 907(f) and § 1.907(f)–1T.

(iv) *1985.* X's FOGEI for 1985, prior to the application of this paragraph (c), is $450. X's remaining foreign oil extraction loss carryover from 1983 is $400 and this must be applied against X's preliminary FOGEI of $450 for 1985. Thus, X's FOGEI for 1984 is $50 ($450−$400). X's section 907(a) limitation is $23 (.46×$50). Therefore, $23 of the FOGEI taxes paid or accrued in 1985 can be credited in 1985, subject to the general limitation of section 904(d)(1)(E). The excess of FOGEI taxes, $177 ($200–$23), can be carried forward pursuant to the provisions of section 907(f) and § 1.907(f)–1T.

Example (2).—(i) *Facts.* The facts are the same as in *Example* (1) except that X's paragraph (c)(3)(ii) items for 1983 allocable to FOGEI are $(800) instead of $(200). FOGEI remains a loss of $700. Thus, X does not have a foreign oil extraction loss for 1983 because it has $100 of FOGEI when its paragraph (c)(3)(ii) items are not taken into account ($(700)+$800).

(ii) *1983.* The results are the same as in *Example* (1).

(iii) *1984.* Although X had a FOGEI loss of $(700) in 1983, there is not a loss that can be carried forward after adjustment for paragraph (c)(3)(ii) items. Thus, X's FOGEI for 1984 is not reduced by the 1983 loss. X's section 907(a) limitation for 1984 is $46 (.46×$100). Therefore, $46 of the FOGEI taxes paid or accrued in 1984 can be credited in 1984, subject to the general limitation of section 904(d)(1)(E). The excess of $14 ($60–$46) can be carried back to 1982 pursuant to the provisions of section 907(e)(2) and § 1.907(e)–1T and carried forward pursuant to the provisions of section 907(f) and § 1.907(f)–1T.

(iv) *1985.* Since there is no foreign oil extraction loss for either 1983 or 1984 to be applied in 1985, X's FOGEI for 1985 is $450. Thus, its section 907(a) limitation for 1985 is $207 (.46×$450) and all of its FOGEI taxes paid or accrued in 1985 ($200) can be credited in 1985, subject to the general limitation of section 904(d)(1)(E). FOGEI taxes in the amount of $10 from 1983 and $14 from 1984 may be carried forward to 1985 if they have not been used in carryback years. However, because the excess section 907(a) limitation for 1985 is only $7, that is the maximum potential FOGEI taxes that may be used in 1985.

Example (3).—(i) *Facts.* Y, a U.S. corporation using the accrual method of accounting and the calendar year as its taxable year, is engaged in extraction activities in three foreign countries. Y's only foreign taxable income is income subject to the general limitation of section 904(d)(1)(E) and Y has no paragraph (c)(3)(ii) items. Y has the following foreign tax items for 1983 and 1984:

	1983	1984
FOGEI	$ (400)	$ 300
Other foreign taxable income	250	200
U.S. taxable income	1,000	1,100
Worldwide taxable income	850	1,600
FOGEI taxes	10	180
Foreign oil extraction loss	(400)	0

(ii) *1983.*—(A) *Section 907 (a) limitation.* Because Y's FOGEI for 1983 is a loss of $(400), Y's section 907(a) limitation for 1983 is $0. Thus, none of the FOGEI taxes paid or accrued in 1983 ($10) can be credited in 1983. They can, however, be carried back pursuant to the provisions of section 907(e)(2) and § 1.907(e)–1T and carried forward pursuant to the provisions of section 907(f) and § 1.907(f)–1T.

(B) *Section 904 (d) fraction.* Y has a foreign loss of $(150) ($(400) + $250) for 1983. Thus,

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its fraction for purposes of determining its general limitation of section 904(d)(1)(E) is $0/$650.

(iii) *1984*—(A) *Section 907(a) limitation.* Y's foreign oil extraction loss for 1983 is $(400). Applying this loss to its preliminary FOGEI for 1984 ($300) eliminates all of Y's FOGEI for 1984. Because Y's FOGEI for 1984 is $0, its section 907(a) limitation is also $0. Thus, none of the FOGEI taxes paid or accrued in 1984 ($180) can be credited in 1984. They can, however, be carried back to 1982 pursuant to the provisions of section 907(e)(2) and § 1.907(e)–1T and carried forward pursuant to the provisions of section 907(f) and § 1.907(f)–1T. Y has a remaining foreign oil extraction loss of $(100) from 1983 to be carried to 1985.

(B) *Section 904(d) fraction.* Y's preliminary foreign taxable income for purposes of determining its general limitation of section 904(d)(1)(E) is $500 ($300 + $200). However, Y has an overall foreign loss from 1983 of $(150) ($(400) + $250) and thus, pursuant to section 904 (f), Y must recharacterize $150 (lesser of $150 or 50% of $300) of its 1984 foreign taxable income as U.S. taxable income. Thus, Y's fraction for purposes of determining its general limitation of section 904(d)(1)(E) for 1984 is $350/$1,000.

(d) *FORI*—(1) *In general.* Section 907(c)(2) defines FORI to include taxable income from the processing of oil and gas into their primary products, from the transportation or distribution and sale of oil and gas and their primary products, from the disposition of assets used in these activities and from the performance of any other related service. FORI may also include, under section 907(c)(3), certain dividends, interest, or amounts described in section 951(a). This paragraph (d) defines certain terms and items applicable to FORI.

(2) *Transportation.* Gross income from transportation of minerals or primary products ("gross transportation income") is gross income arising from carrying minerals or primary products between two places (including time or voyage charter hires) by any means of transportation, such as a vessel, pipeline, truck, railroad, or aircraft. Except for directly related income under paragraphs (d)(7) and (g) of this section, gross transportation income does not include gross income received by a lessor from a bareboat charter hire of a means of transportation, certain other rental income, or income from the performance of certain services.

(3) *Distribution or sale.* The term "distribution or sale" means the sale or exchange of minerals or primary products to processors, users who purchase, store, or use in bulk quantities, other persons for further distribution, retailers, or consumers. Gross income from distribution or sale includes interest income attributable to the distribution of minerals or primary products on credit.

(4) *Processing.* The term "processing" means the destructive distillation, or a process similar in effect to destructive distillation, of crude oil and the processing of natural gas into their primary products including processes used to remove pollutants from crude oil or natural gas.

(5) *Primary product from oil.* The term "primary product" (in the case of oil) means all products derived from the processing of crude oil, including volatile products, light oils (such as motor fuel and kerosene), distillates (such as naphtha), lubricating oils, greases and waxes, and residues (such as fuel oil).

(6) *Primary product from gas.* The term "primary product" (in the case of gas) means all gas and associated hydrocarbon components from gas wells or oil wells, whether recovered at the lease or upon further processing, including natural gas, condensates, liquefied petroleum gases (such as ethane, propane, and butane), and liquid products (such as natural gasoline).

(7) *Directly related income.* FORI also includes directly related income under paragraph (g) of this section.

(e) *Assets used in a trade or business*—(1) *In general.* The term "assets used by the taxpayer in the trade or business" in section 907(c)(1)(B) and (2)(D) means property primarily used in one or more of the trades or businesses that are section 907(c) activities. For purposes of this paragraph (e), assets used in a trade or business are assets described in section 1231(b) (applied without regard to any holding period or the character of the asset as being subject to the allowance for depreciation under section 167).

(2) *Section 907(c) activities.* Section 907(c) activities are those described in section 907(c)(1)(A) (for FOGEI) or (c)(2)(A) through (C) (for FORI). If an asset is used primarily in one or more section 907(c) activities, then the entire gain (or loss) will be considered attributable to those activities. For example, if a person uses a service station primarily to distribute primary products from oil, then all of the gain (or loss) on the sale of the station is FORI even though the person uses the station to distribute products that are not primary products (such as tires or batteries). If an asset is not primarily used in one or more section 907(c) activities, then the entire gain or loss will not be FOGEI or FORI.

(3) *Stock.* Stock of any corporation (whether foreign or domestic) will not be treated as an asset used by a person in section 907(c) activities.

(4) *Losses on sale of stock.* If, under § 1.861–8(e)(7), a loss on the sale, exchange, or disposition of stock is considered a deduction which is definitely related and allocable to FOGEI or FORI, then notwithstanding § 1.861–8 (e)(7) and paragraph (f)(2) of this section, this loss shall be allocated and apportioned to the same class of income that would have been produced if there were capital gain from the sale, exchange or disposition.

(5) *Character of gain or loss.* Except in the case of stock, gain or loss from the sale, exchange or disposition of assets used in the trade or business may be FORI or FOGEI to the extent taken into account in computing taxable income for the taxable year, whether or not the gain or loss is ordinary income or ordinary loss.

(6) *Allocation of amount realized.* The amount realized from the sale, exchange or disposition of several assets in one transaction is allocated among them in proportion to their respective fair market values. This allocation is made under the principles set forth in § 1.1245–1(a)(5) (relating to allocation between section 1245 property and non-section 1245 property).

(7) *Interest.* Gross income from the sale, exchange or disposition of an asset used in a section 907(c) activity includes interest income from such a sale, exchange or disposition.

(f) *Terms and items common to FORI and FOGEI*—(1) *Minerals.* The term "minerals" means hydrocarbon minerals extracted from oil and gas wells, including crude oil or natural gas (as defined in section 613A(e)). The term includes incidental impurities from these wells, such as sulphur, nitrogen, or helium. The term does not include hydrocarbon minerals derived from shale oil or tar sands.

(2) *Taxable income.* Deductions to be taken into account in computing taxable income or net operating loss attributable to FOGEI or FORI are determined under the principles of § 1.861–8. For an exception with regard to losses, see paragraph (e)(4) of this section.

(3) *Interest on working capital.* FORI and FOGEI may include interest on bank deposits or on any other temporary investment which is not in excess of funds reasonably necessary to meet the working capital requirements and the specifically anticipated business needs of the person that is engaged in the conduct of the activities described in section 907(c) (1) or (2).

(4) *Exchange gain or loss.* Exchange gain (and loss) may be FORI and FOGEI.

(5) *Allocation.* Interest income and exchange gain (or loss) described, respectively, in paragraph (f) (3) and (4) of this section are allocated among

FORI, FOGEI, and any other class of income relevant for purposes of the foreign tax credit limitations under any reasonable method which is consistently applied from year to year.

(6) *Facts and circumstances.* Income not described elsewhere in this section may be FOGEI or FORI if, under the facts and circumstances in the particular case, the income is in substance directly attributable to the activities described in section 907(c) (1) or (2). For example, assume that a producer in the North Sea suffers a casualty caused by an explosion, fire, and resulting destruction of a drilling platform. Insurance proceeds received for the platform's destruction in excess of the producer's basis is extraction income if the excess constitutes income from sources outside the United States. In addition, income from an insurance policy for business interruption may be extraction income to the extent the payments under the policy are geared directly to the loss of income from production and are treated as income from sources outside the United States. Also, if an oil company's oil concession or assets used in extraction activities described in section 907(c)(1)(A) and located outside the United States are nationalized or expropriated by a foreign government, or instrumentality thereof, income derived from that nationalization or expropriation (including interest on the income paid pursuant to the nationalization or expropriation) is FOGEI. Likewise, if a company's assets used in the activities described in section 907(c)(2) (A) through (C) and located outside the United States are nationalized or expropriated by a foreign government, or instrumentality thereof, income (including interest on the income paid pursuant to the nationalization or expropriation) derived from the nationalization or expropriation will be FORI. Nationalization or expropriation is deemed to be a sale or exchange for purposes of section 907(c)(1)(B) and a disposition for purposes of section 907(c)(2)(D). In further example, assume that an oil company has an exclusive right to buy all the oil in country X from Y, an instrumentality of the foreign sovereign which owns all of the oil in X. The oil company does not have an economic interest in any oil in country X. Y has a temporary cash-flow problem and demands that the oil company make advance deposits for the purpose of oil not yet delivered. In return, Y grants the oil company a discount on the price of the oil when delivered. Income represented by the discount on the later disposition of the oil is FORI described in section 907(c)(2)(C). The result would be the same if Y credited the oil company with interest on the advance deposits, which had to be used to purchase oil (the interest income would be FORI).

(g) *Directly related income*—(1) *In general.* Section 907(c)(2)(E) and this paragraph (g) include in FORI, and this paragraph (g) includes in FOGEI, income from the performance of directly related services (as defined in paragraph (g)(2) of this section). This paragraph (g) also includes in FORI and FOGEI income from the lease or license of related property (as defined in paragraph (g)(3) of this section). Section 907(c)(2)(E) with regard to FORI and this paragraph (g) with regard to both FORI and FOGEI do not apply to a person if—

(i) Neither that person nor a related person (as defined in paragraph (g)(4) of this section) has FOGEI described in paragraph (b) of this section (other than paragraph (b)(4) thereof relating to directly related income) or FORI described in paragraph (d) of this section (other than paragraph (d)(7) thereof relating to directly related income), or

(ii) Less than 50 percent of that person's gross income from sources outside the United States which is related exclusively to the performance of services and from the lease or license of property described in paragraph (g)(2) and (3) of this section, respectively, is attributable to services performed for (or on behalf of), leases to, or licenses with, related persons, but

(iii) Subdivision (ii) of this paragraph (g)(1) will not apply to a person if 50 percent or more of that person's total gross income from sources outside the United States is FOGEI and FORI (as both are described in subdivision (i) of this paragraph (g)(1)).

A person described in subdivision (i) or (ii) of this paragraph will, however, have directly related services income which is FOGEI if the income is so classified by reason of the income based on output test set forth in paragraph (g)(2)(i)(B) of this section.

(2) *Directly related services*—(i) *FOGEI.* (A) Income from directly related services will be FOGEI, as that term is defined in paragraph (b) (1) and (3) of this section, if those services are directly related to the active conduct of extraction (including exploration) of minerals from oil and gas wells. Paragraph (b)(1) of this section provides that, in order to have extraction income, a person must have an economic interest in the minerals in place. However, paragraph (b)(3) of this section recognizes that income arising from "other circumstances" is extraction income if that income is in substance attributable to the extraction of minerals.

(B) An example of "other circumstances" under paragraph (b)(3) of this section is the "income based on output test." This income based on output test provides that, if the amount of compensation paid or credited to a person for services is dependent on the amount of minerals discovered or extracted, the income of the person from the performance of the services will be directly related services income which is FOGEI. This test will apply whether or not the person performing the services has, or had, an economic interest in the minerals discovered or extracted.

(ii) *FORI.* With regard to the determination of directly related services income which is FORI, directly related services are those services directly related to the active conduct of the operations described in section 907(c)(2) (A) through (C). Those services include, for example, services performed in relation to the distribution of minerals or primary products or in connection with the operation of a refinery, or the types of services described in § 1.954–6(d) (other than paragraph (d)(4) thereof) which relate to foreign base company shipping income.

(iii) *Recipient of the services.* Directly related services described in paragraph (g)(2) (i) and (ii) of this section may be performed for any person without regard to whether that person is a related person.

(iv) *Excluded services*—(A) *FOGEI.* Directly related services which produce FOGEI do not include insurance, accounting or managerial services.

(B) *FORI.* Directly related services income which produce FORI do not, generally, include insurance, accounting or managerial services. These services will, however, produce FORI if they are performed by the person performing the operations described in section 907(c)(2) (A) through (C). For these purposes, insurance income which is FORI means taxable income as defined in section 832(a).

(3) *Leases and licenses.* A lease or license of related property is the lease or license of assets used (or held for use) by the lessor, licensor, or another person (including the lessee or a sublessee) in the active conduct of the activities described in section 907 (c)(1)(A) or (c)(2) (A) through (C). The leases or licenses described in this paragraph (g)(3) include, for example, a lease of a means of transportation under a bareboat charter hire, of drilling equipment used in extraction

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operations, or the license of a patent, know-how, or similar intangible property used in extracting, transporting, distributing or processing minerals or primary products. This paragraph (g)(3) applies without regard to whether the parties are related persons.

(4) *Related person.* A person will be treated as a related person for purposes of this paragraph (g) if (i) that person would be so treated within the meaning of section 954(d)(3) (as applied by substituting the word "corporation" for the word "controlled foreign corporation") or (ii) that person is a partnership or partner described in section 707(b)(1).

(5) *Gross income.* A foreign corporation shall be treated as a domestic corporation for the purpose of applying the gross-income rules in paragraph (g)(1) (ii) and (iii) of this section.

(h) *Coordination with other provisions*—(1) *Certain adjustments.* The character of income as FOGEI or FORI is determined before making any adjustment under section 482 or section 907(d). For example, assume that X and Y are related parties, Y's only income is from the sale of oil that Y purchased from X, and FOGEI from X is diverted to Y through an arrangement described in paragraph (b)(3) of this section. Accordingly, Y has FOGEI. If under section 482 the Commissioner reallocates the FOGEI from Y to X, then Y's remaining income represents only a profit from distributing the oil, and thus is FORI. If the foreign taxes paid by Y on this income are otherwise creditable under section 901, the foreign taxes that are not refunded to Y retain their characterization as FOGEI taxes.

(2) *Section 901(f).* Section 901(f) (relating to certain payments with respect to oil and gas not considered as taxes) applies before section 907. Taxes disallowed by section 901(f) are added to the cost or inventory amount of oil or gas.

§ 1.907(c)-2T Section 907(c)(3) items (for taxable years beginning after December 31, 1982) (Temporary regulations).

(a) *Scope.* This section provides rules relating to certain items listed in section 907(c)(3). The rules of this section are expressed in terms of FORI but apply for determining FOGEI by substituting "FOGEI" for "FORI" whenever appropriate. FOGEI does not include interest described in section 907(c)(3)(A) or dividends described in section 907(c)(3)(B).

(b) *Dividend*—(1) *Section 1248 dividend.* A section 1248 dividend is a dividend described in section 907(c)(3)(A). Except as otherwise provided in this paragraph (b)(1) or in § 1.907(c)-1T(e)(3), gain (or loss) from the disposition of stock in any corporation is not FOGEI or FORI.

(2) *Section 78 dividend.* A section 78 dividend is FORI to the extent it arises from a dividend described in section 907(c)(3)(A), or an amount described in section 907(c)(3)(C).

(c) *Taxes deemed paid*—(1) *Voting stock test.* Items described in section 907(c)(3) (A) or (C) are FORI only if a deemed-paid-tax test is met under the criteria of section 902 or 960. The purpose of this test is to require minimum direct or indirect ownership by a domestic corporation in the voting stock of a foreign corporation as a prerequisite for the item to qualify as FORI in the hands of the domestic corporation. The test is whether a domestic corporation would be deemed to pay any taxes of a foreign corporation when a dividend or an amount described in section 907(c)(3) (A) or (C), respectively, is included in the domestic corporation's gross income. In the case of interest described in section 907(c)(3)(A), the test is whether any taxes would be deemed paid if there were a hypothetical dividend.

(2) *Dividends and interest.* For purposes of section 907(c)(3)(A), a domestic corporation is deemed under section 902 to pay taxes in respect of dividends and interest received from a foreign corporation if the following condition is met: the domestic corporation would be deemed under section 902 to pay taxes in respect of dividends received from the foreign corporation whether or not the foreign corporation—

(i) Actually pays or is deemed to pay taxes, or

(ii) In the case of interest, actually pays dividends.

This paragraph (c)(2) also applies to dividends received by a foreign corporation from a second-tier or third-tier foreign corporation (as defined in § 1.902-1(a) (3)(i) and (4), respectively). In the case of interest received by a foreign corporation from another foreign corporation, this paragraph (c)(2) applies if the taxes of both foreign corporations would be deemed paid under section 902 (a) or (b) for purposes of applying section 902(a) to the same taxpayer which is a domestic corporation. In the case of interest received by any corporation (whether foreign or domestic), all members of an affiliated group filing a consolidated return will be treated as the same taxpayer under section 907(c)(3)(A) if the foreign taxes of the payor and (if the recipient is a foreign corporation) the foreign taxes of the recipient would be deemed paid under section 902 by at least one member. The term "member" is defined in § 1.1502-1(b). Thus, for example, assume that P owns all of the stock of D1 and D2 and P, D1, and D2 are members of an affiliated group filing a consolidated return. Assume further that D1 owns all of the stock of F1 and D2 owns all of the stock of F2, where F1 and F2 are foreign corporations. Interest paid by F1 to P, D2, or F2 may be FORI.

(3) *Amounts included under section 951(a).* For purposes of section 907(c)(3)(C), a domestic corporation is deemed under section 960 to pay taxes in respect of a foreign corporation, whether or not the foreign corporation actually pays taxes on the amounts included in gross income under section 951(a).

(d) *Amount attributable to certain items*—(1) *Certain dividends*—(i) *General rule.* The portion of a dividend described in section 907(c)(3)(A) that is FORI equals—

Amount of dividend x a/b

a = FORI accumulated profits in excess of FORI taxes paid or accrued, and

b = Total accumulated profits in excess of total foreign taxes paid or accrued.

This paragraph (d)(1)(i) applies even though the FORI accumulated profits arose in a taxable year of a foreign corporation beginning before January 1, 1983. Determination of the FORI amount of dividends under this paragraph (d)(1)(i) must be made separately for FORI accumulated profits and total accumulated profits that arose in taxable years beginning before January 1, 1987, and for FORI accumulated profits and total accumulated profits that arose in taxable years beginning after December 31, 1986. Dividends are deemed to be paid first out of FORI and total accumulated profits that arose in taxable years beginning after December 31, 1986. With regard to FORI accumulated profits and total accumulated profits that arose in taxable years beginning after December 31, 1986, the portion of a dividend that is FORI equals—

Amount of dividend x a/b

a = Post-1986 undistributed FORI earnings determined under the principles of section 902(c)(1), and

b = Post-1986 undistributed earnings determined under the principles of section 902(c)(1).

(ii) *Cross-references.* See § 1.902-1(g) for the determination of a foreign corporation's earnings and profits and of those out of which a dividend is paid.

See § 1.1248-2 or 1.1248-3 for the determination of the earnings and profits attributable to the sale or exchange of stock in certain foreign corporations.

(2) *Interest received from certain foreign corporations.* Interest described in section 907(c)(3)(A) is FORI to the extent the correaponding interest expense of the paying corporation is properly allocable and apportionable to the gross income of the paying corporation that would be FORI were that corporation a domestic corporation. This allocation and apportionment is made in a manner consistent with the rules of section 954(b)(5) and § 1.861-8(e)(2).

(3) *Dividends from domestic corporation.* A dividend from a corporation described in section 907(c)(3)(B) that is FORI is determined under the principles of paragraph (d)(1)(i) of this section with respect to its current earnings and profits under section 316(a)(2) or its accumulated earnings and profits under section 316(a)(1), as the case may be.

(4) *Amounts with respect to which taxes are deemed paid under section 960(a)*—(i) *Portion attributable to FORI.* The portion of an amount described in section 907(c)(3)(C) that is FORI equals:

Amount described in section 907(c)(3)(C) times FORI earnings and profits divided by total earnings and profits.

For taxable years ending after January 23, 1989, the facts and circumstances will be used to determine what part of the amount of the section 907(c)(3)(C) amount is directly attributable to FOGEI, FORI and other income.

(ii) *Earnings and profits.* Total earnings and profits are those of the foreign corporation for a taxable year under section 964 and the regulations under that section.

(5) *Section 78 dividend.* The portion of a section 78 dividend that will be considered FORI will equal the amount of taxes deemed paid under either section 902(a) or section 960(a)(1) with respect to the dividend to the extent the taxes deemed paid are FORI taxes under § 1.907(c)-3T (b) or (c). See § 1.907(c)-3T(a)(1).

(6) *Special rule.* (i) No item in the formula described in paragraph (d)(1)(i) of this section includes amounts excluded from the gross income of a United States shareholder under section 959(a)(1).

(ii) With respect to a foreign corporation, earnings and profits in the formula described in paragraph (d)(4)(i) of this section do not include amounts excluded under section 959(b) from its gross income.

(7) *Deficits.* In a taxable year, a deficit in earnings and profits in a separate category under section 904(d) (including a deficit in another separate category that is allocated under sections 902 and 960 pursuant to Notice 88-71, 1988-27 I.R.B. 17, to the first separate category) that is not attributable to FOGEI or FORI is to be allocated ratably between, and reduce, FOGEI earnings and profits and FORI earnings and profits within the first separate category. However, any deficit in earnings and profits within a separate category for the taxable year attributable either to FOGEI or FORI is to be allocated first to FORI or FOGEI (as the case may be) earnings and profits within a separate category before the deficit is allocated in that taxable year to earnings and profits that are not attributable to FORI and FOGEI, within the same separate category. Any deficit in FORI or FOGEI earnings and profits remaining after allocation within the first separate category will be allocated on a pro rata basis to other separate categories and will be allocated within those separate categories, first, to earnings and profits attributable to FORI or FOGEI depending on to which type of earnings and profits the deficit is attributable, second, to earnings and profits attributable to FORI and FOGEI, and, third, to other earnings and profits. For taxable years beginning before January 1, 1987, any deficit in FORI or FOGEI earnings and profits remaining after allocation within the first separate category will be allocated against earnings and profits attributable to United States source income and then to other separate categories pursuant to the preceding sentence. FORI earnings and profits are the earnings and profits attributable to FORI as defined in section 907(c) (2) and (3). FOGEI earnings and profits are the earnings and profits attributable to FOGEI as defined in section 907(c)(1)(3).

(8) *Illustrations.* The application of this paragraph (d) is illustrated by the following examples.

Example (1). X, a domestic corporation, owns all of the stock of Y, a foreign corporation organized in country S. Y owns all of the stock of Z, a foreign corporation also organized in country S. Each corporation uses the calendar year as its taxable year. In 1983, Z has $150 of FOGEI earnings and profits and $250 of earnings and profits other than FOGEI or FORI. Assume that Z paid no taxes to S and X must include $100 in its gross income under section 951(a) with respect to Z. Under paragraph (d)(4)(i) of this section, $37.50 of the amount described in section 951(a) is FOGEI ($100×$150/$400). The remaining $62.50 of the section 951(a) amount represents other income.

Example (2). Assume the same facts as in *Example* (1) except that the taxable year in question is 1988. In addition, under the facts and circumstances, it is determined that of the $100 section 951(a) amount included in X's gross income, $30 is directly attributable to Z's FOGEI activity, $60 is directly attributable to Z's FORI activity and $10 is directly attributable to Z's other activity. Accordingly, under paragraph (d)(4)(i), $30 will be FOGEI and $60 will be FORI to X.

Example (3). (i) Assume the same facts as in *Example* (1). Assume further that, in 1983, Z distributes its entire earnings and profits ($400) to Y, which consists of a dividend of $300 and a section 959(a)(1) distribution of $100. Y has no other earnings and profits during 1983. Assume that the dividend and distribution are not foreign personal holding company income under section 954(c). Y pays no taxes to S. In 1983, Y distributes its entire earnings and profits to X.

(ii) Under paragraphs (c)(2) and (d)(1)(i) of this section, Y has FOGEI of $112.50, *i.e.*, the amount of the dividend received by Y ($300) multiplied by the fraction described in paragraph (d)(1)(i). The numerator of the fraction is Z's FOGEI accumulated profits in excess of the FOGEI taxes paid ($112.50) and the denominator is Z's total accumulated profits in excess of total foreign taxes paid ($400) minus the amount excluded from Y's gross income under section 959(a)(1) ($100). The rule of paragraph (d)(6)(ii) of this section does not apply since X does not include any amount in its gross income under section 951(a) with respect to Y. If Y paid taxes to S, this paragraph (9d) would apply to characterize those taxes as FOGEI taxes or other taxes. See § 1.907(c)-3T(a)(8) and *Example* 2(iii) under § 1.907(c)-eT(e).

(iii) The distribution from Y to X is a dividend to the extent of $300, *i.e.*, the amount of the distribution ($400) minus the amount excluded from X's gross income under section 959(a)(1) ($100). Under paragraphs (d)(1)(i) and (6)(i) of this section, $112.50 of the dividend is FOGEI, *i.e.*, the amount of the dividend ($300) multiplied by a fraction. The numerator of the fraction is $112.50, *i.e.*, the FOGEI accumulated profits of Y in excess of FOGEI taxes paid ($150) minus the FOGEI accumulated profits of Y in excess of FOGEI taxes paid excluded from X's gross income under section 959(a)(1) ($37.50). The denominator of the fraction is $300, *i.e.*, the total accumulated profits of Y in excess of taxes paid ($400) minus the amount excluded from X's gross income under section 959(a)(1) ($100).

Example (4). Assume the same facts as in *Example* (1) with the following modifications: In 1983, Z's only earnings and profits are FORI earnings and profits which are included in X's gross income under section 951(a). Z distributes its entire earnings and profits to Y. In 1983, Y has total earnings and profits of $100 without regard to the dividend from Z, $60 of which are FORI earnings and profits. Y also has $40 which is included in X's gross income under section 951(a). Under paragraph (d)(6)(ii) of this section, the dividend from Z is disregarded for purposes of applying paragraph (d)(4)(i) of this section to the $40 included in X's gross income under section 951(a) with respect to Y. Accordingly, $24 of the amount described in section 951(a)

is FORI ($40 × $90/$100). Had these circumstances existed in 1988, and if the $40 included in X's gross income under section 951(a) was directly attributable to FORI activity, all of that income would be FORI to X.

(e) *Dividends, interest, and other amounts from sources within a possession.* FORI includes the items listed in section 907(c)(3) (A) and (C) to the extent attributable to FORI of a corporation that is created or organized in or under the laws of a possession of the United States.

(f) *Income from partnerships, trusts, etc.* FORI and FOGEI include a person's distributive share (determined under the principles of section 704) of the income of any partnership and amounts included in income under subchapter J of chapter 1 of the Code (relating to the taxation of trusts, estates, and beneficiaries) to the extent the income and amounts are attributable to FORI and FOGEI.

§ 1.907(c)–ST FOGEI and FORI taxes (for taxable years beginning after December 31, 1982) (Temporary regulations).

(a) *Tax characterization, allocation and apportionment*—(1) *Scope.* Paragraphs (a) (2) through (6) of this section provides rules for the characterization, allocation, and apportionment of the income taxes (other than withholding taxes) paid or accrued to a foreign country among FOGEI, FORI, and other income relevant for purposes of sections 907 and 904. Some of the rules in this section are expressed in terms of FOGEI taxes but they apply to FORI taxes by substituting "FORI taxes" for "FOGEI taxes" whenever appropriate. For the treatment of withholding taxes, see paragraph (a)(6) of this section. FOGEI taxes are determined without any reduction under section 907(a). In addition, determination of FOGEI taxes will not be affected by recharacterization of FOGEI by section 907(c)(4). See § 1.907(c)–1T(c)(5). Foreign taxes will not be characterized as creditable FORI taxes if section 907(b) and § 1.907(b)–1T apply.

(2) *Three classes of income.* There are three classes of income: FOGEI, FORI, and other income.

(3) *More than one class in a foreign tax base.* If more than one class of income is taxed under one tax base under the law of a foreign country, the amount of pre-credit foreign tax for each base must be determined. This amount is the foreign taxes paid or accrued to that country for the base as increased by the tax credits (if any) which reduced those taxes and were allowed in the country for that tax. More than one class of income is taxed under the same base, if, under a foreign country's law, deductions from one class of income may reduce the income of any other class and the classes are subject to foreign tax at the same rates.

(4) *Allocation of tax within a base.* If more than one class of income is taxed under the same base under a foreign country's law, the pre-credit foreign tax for the base is apportioned to each class of income in proportion to the income of each class. Tax credits are then allocated (under paragraph (a)(6) of this section) to the apportioned pre-credit tax. Income of a class is the excess of modified gross income for a class over the deductions allowed under foreign law for, and which are attributable to, that class.

(5) *Modified gross income.* Modified gross income is not necessarily the same as gross income as defined for purposes of chapter 1 of the Internal Revenue Code. Modified gross income is determined with reference to the foreign tax base for gross income (or its equivalent). However, the characterization of the base as a particular class of income is governed by general principles of U.S. tax law. Thus, for example—

(i) Gross income from extraction is the fair market value of oil or gas in the immediate vicinity of the well (as determined under § 1.907(c)–1T(b)(6) (without any deductions)).

(ii) Whether cost of goods sold (or any other deduction) is a deduction from modified gross income and the amount of such a deduction is determined under foreign law.

(iii) Modified gross income includes items that are part of the foreign tax base even though they are not gross income under U.S. law so long as the foreign taxes paid on the base constitute creditable taxes under section 901 (including taxes described in section 903). For example, if a foreign country imposes a tax (creditable under section 901) on a tax base that includes in small part a percentage of the value of a company's oil reserves in place, modified gross income from extraction includes such a percentage of value solely for purposes of making the tax allocation in paragraph (a)(4) of this section.

(iv) Modified gross income from extraction is increased for purposes of this paragraph (a)(5) by the entire excess of the posted price over fair market value if the foreign country uses a posted price system or other pricing arrangement described in section 907(d) in imposing its income tax.

(v) Modified gross income from FORI is that income attributable to the activities in section 907(c)(2) (A) through (C) and (E).

(vi) Modified gross income for any class may not include gross income that is not subject to taxation by the foreign country.

(6) *Allocation of tax credits.* The foreign taxes paid or accrued on a particular class of income equals the pre-credit tax on the class reduced (but not below zero) by the credits allowed under foreign law against the foreign tax on the particular class. Any tax credit attributable to a class that is not allocated to that class is allocated to the other class in the base or, if there are three classes in the base, is apportioned ratably among the taxes paid or accrued on the other two classes (as reduced in accordance with the preceding sentence).

(7) *Withholding taxes.* Paragraph (a) (2) through (6) of this section does not apply to withholding taxes imposed by a foreign country. FOGEI taxes may include withholding taxes imposed with respect to a distribution from a corporation. The portion of the total withholding taxes on a distribution that constitutes FOGEI taxes is determined by the portion of the distribution that is FOGEI. In addition, FOGEI taxes may include taxes imposed on a distribution described in section 959(a)(1) or on amounts described in section 959(b). The portion of the total withholding taxes imposed on a distribution described in section 959(a)(1) or on amounts described in section 959(b) is determined by reference to the portion of the amount included in gross income under section 951(a) that was FOGEI.

(b) *Dividends*—(1) *In general.* FOGEI taxes deemed paid with respect to a dividend equal the total taxes deemed paid with respect to the dividend multiplied by the fraction:

FOGEI taxes paid or accrued by the payor
Total foreign taxes paid or accrued by the payor.

With regard to dividends received in taxable years beginning after December 31, 1986, FOGEI taxes deemed paid with respect to a dividend equal the total taxes deemed paid with respect to the portion of the dividend within a separate category multiplied by the fraction:

Post-1986 FOGEI taxes as determined under the principles of section 902(c)(2) that are allocable to that separate category
Post-1986 foreign income taxes as determined under the principles of section 902(c)(2) that are allocable to that separate category.

This paragraph (b) applies to a dividend described in section 907(c)(3)(A) (including a section 1248 dividend) with reference to the particular taxable year or years of those accumulated profits out of which a dividend is paid. Determination of FOGEI taxes under this paragraph (b) must be made separately (i) for FOGEI taxes paid on FOGEI accumulated profits and total taxes paid on accumulated profits that arose in taxable years beginning before January 1, 1987, and (ii) for FOGEI taxes paid on FOGEI accumulated profits and total taxes paid on accumulated profits that arose in taxable years beginning after December 31, 1986. For purposes of these determinations, dividends are deemed to be paid first out of FOGEI and total accumulated profits that arose in taxable years beginning after December 31, 1986. See § 1.997(c)–2T (d)(1)(i). See section 960(a)(3) and § 1.960–2 relating to distributions that are treated as dividends for purposes of section 902.

(2) *Section 78 dividend.* There are no FOGEI taxes with respect to section 78 dividends.

(c) *Includible amounts under section 951(a).* FOGEI taxes deemed paid with respect to an amount includible in gross income under section 951(a) equal the total taxes deemed paid with respect to that amount multiplied by the fraction:

FOGEI taxes paid or accrued by the foreign corporation
Total foreign taxes paid or accrued by the foreign corporation.

With regard to an amount includible in gross income under section 951(a) in taxable years beginning after December 31, 1986, FOGEI taxes deemed paid with respect to that amount equal the total taxes deemed paid with respect to that amount within a separate category multiplied by the fraction:

Post-1986 FOGEI taxes as determined under the principles of section 902(c)(2) that are allocable to that separate category
Post-1986 foreign income taxes as determined under the principles of section 902(c)(2) that are allocable to that separate category.

Taxes in this fraction include only those foreign taxes that may be deemed paid under section 960(a) by reason of such inclusion. See §§ 1.960–1(c)(3) and 1.960–2(c).

(d) *Partnerships.* A partner's distributive share of the partnership's FOGEI taxes is determined under the principles of section 704.

(e) *Illustrations.* The application of this section may be illustrated by the following examples.

Example (1). X, a domestic corporation, owns all of the stock of Y, a foreign corporation organized in country S. Y owns all of the stock of Z, a foreign corporation organized in country T. Each corporation used the calendar year as its taxable year. In 1983, X includes in its gross income an amount described in section 951(a) with respect to Z. Assume that the taxes deemed paid under section 902(a) by X by reason of such an inclusion is $70. Assume further that Z paid total taxes of $120, $80 of which is FOGEI tax. Under paragraph (c) of this section, the FOGEI tax deemed paid is $46.67 (*i.e.*, $70 x $80/$120). This $46.67 is also FOGEI under § 1.907(c)–2T(d)(5) because it must be included in X's gross income under section 78.

Example (2). (i) Assume the same facts as in *Example* (1). Assume further that in 1983, Z distributes its entire earnings and profits to Y. Y has no earnings and profits during 1983 other than this dividend. Y paid a tax of $50 to S. Assume that Y is deemed under section 902(b)(1) to pay $50 of the tax paid by Z which was not deemed paid by X under section 960(a)(1) in 1983. In 1983, Y distributes its entire earnings and profits to X. Assume that X is deemed under section 902(a) to pay $100 of the taxes actually paid, and deemed paid, by Y.

(ii) Paragraph (b)(1) of this section applies to characterize the $50 tax of Z that Y is deemed to pay under section 902(b)(1). Y is deemed to pay $33.33 of FOGEI tax, *i.e.*, the amount of the tax deemed paid by Y ($50) multiplied by a fraction. The numerator of the fraction is the amount of Z's FOGEI tax ($80) and the denominator is the total taxes paid by Z ($120).

(iii) Under paragraph (a)(6) of this section, a portion of the $50 tax actually paid by Y on the earnings and profits received from Z is FOGEI tax. The amount of tax actually paid by Y that is FOGEI tax depends on the amount of the distribution from Z that is FOGEI (see § 1.907(c)–2T(d)(1)(i) and *Example* (2) (ii) under § 1.907(c)–2T(d)(6)). This result does not depend upon whether a portion of the distribution from Z is described in section 959(b) and it follows even though a portion of Y's earnings and profits will be excluded from X's gross income under section 959(a)(1) when distributed by Y. Assume that $12.50 of the $50 tax actually paid by Y is FOGEI tax.

(iv) Under paragraph (b)(1) of this section, X is deemed to pay $45.83 of FOGEI tax by reason of the distribution from Y. This amount is determined by multiplying the total taxes deemed paid by X by reason of such distribution ($100) by a fraction. The numerator of the fraction is the FOGEI tax paid, and deemed paid, by Y ($45.83, *i.e.*, $33.33 under subdivision (ii) of this example plus $12.50 under subdivision (iii) of this example). The denominator of the fraction is the total taxes paid, and deemed paid, by Y ($100). This $45.83 is FOGEI under § 1.907(c)–2T(d)(5) because it is included in X's gross income as a section 78 dividend.

Example (3). (i) X, a domestic corporation, has a concession with foreign country Y that gives it the exclusive right to extract and export the crude oil and natural gas owned by Y. The concession agreement and location of the oil and gas wells mandate that X construct a system of pipelines to transport the minerals that are extracted to a port where they are loaded onto tankers for export. X owns the transportation facilities. Y has an income tax system under which income from mineral operations is subject to a 50 percent tax rate. The taxation by Y of the mineral operations is a separate tax base under paragraph (a)(3) of this section. Under this system, Y imposes the tax at the port prior to export and it establishes a posted price of $12 per barrel. Y also collects royalties of $1.44 per barrel (*i.e.*, 12 percent of this posted price) which is deductible in computing the petroleum tax. Y also allows X deductible lifting costs of $.20 per barrel and deductible transporting costs of $.80 per barrel. Y does not allow any credits against the mineral tax. Assume that X does not have any income in Y other than the mineral income. (In 1983, X extracts, transports, and exports 10,000,000 barrels of crude oil, but for convenience, all computations are in terms of one barrel). X pays foreign taxes of $4.78 per barrel, computed as follows:

Sales		$12.00
Royalties	$1.44	
Lifting	.20	
Transporting	.80	
	2.44	(2.44)
Income base		9.56
Tax rate (percent)		.50
Tax		4.78

Assume that these taxes are creditable taxes under section 901, that the fair market value of the oil at the port is $10 per barrel, and that under § 1.907(c)–1T(b)(6) fair market value in the immediate vicinity of the oil wells is $9 per barrel. Thus, at the port, the excess of posted price ($12) over fair market value ($10) is $2.

(ii) The $4.78 foreign tax paid to Y is allocated to FOGEI and FORI in accordance with the rules in paragraph (a) (2) through (5) of this section.

(iii) Under paragraph (a)(3) of this section, FOGEI and FORI are subject to foreign taxation under one tax base. This foreign tax is allocated between FOGEI tax and FORI tax in accordance with paragraph (a) (4) and (5) of this section.

(iv) The modified gross income for FOGEI is $11, *i.e.*, fair market value in the immediate vicinity of the well ($9) plus the excess at the port of posted price over fair market value

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($2). The modified gross income for FORI is $1, *i.e.*, value added to the oil beyond the wellhead which is part of Y's tax base ($10–$9).

(v) The royalty deductions are all directly attributable to FOGEI.

(vi) Under paragraph (a)(4) of this section, the income of each class is determined as follows:

	FOGEI	FORI
Modified gross income	$11.00	$1.00
Deductions:		
Royalties	1.44	0
Lifting	.20	0
Transporting	0	.80
Total	1.64	.80
Net income	9.36	.20

(vii) Under paragraph (a)(4) of this section, the total tax paid to Y is allocated to FOGEI and FORI in proportion to the income in each class. The calculation is as follows:

FOGEI tax = $4.76 × $9.36/$9.56 = $4.66
FORI tax = $4.76 × $0.20/$9.56 = $0.10

Thus, for the 10,000,000 barrels, the FOGEI tax is $46,800,000 and the FORI tax is $1,000,000.

(viii) The allocation under paragraph (a)(4) of this section, rather than the direct application of stated foreign tax rates to foreign-law taxable income in each class of income (which would produce the same results in the facts of this example), is necessary when a foreign country taxes more than one class of income under a progressive rate structure. See *Example* (4) in this paragraph (e).

Example (4). Assume the same facts as in *Example* (3) except that Y's tax is imposed at 40 percent for the first $20,000,000 of income and at 60 percent for all other income. The foreign taxes are allocated under paragraph (a)(4) of this section between FOGEI and FORI in the same manner as in subdivisions (vi) and (vii) of *Example* (3), as follows:

(1) Taxable income		$95,000,000
(2) Tax:		
(a) 40% of $20,000,000	$8,000,000	
(b) 60% of $75,000,000	45,360,000	
(c) Total tax		53,360,000
(3) FOGEI tax (line 2(c) × $9.36/$9.56)		52,243,680
(4) FORI tax (line 2 (c) × $0.20/$9.56)		1,116,320

Example (5). Assume the same facts as in *Example* (3). Assume further that X refines the crude oil into primary products prior to export and Y imposes its tax on the basis of crude oil equivalences of $12 per barrel, rather than the value of the primary products, to establish port prices. Assume that this arrangement is a pricing arrangement described in section 907(d). Thus, Y does not tax the refinery income. The results are the same as in *Example* (3) even if $12 per barrel is equal to, more than, or less than, the value of the primary products at the port. See paragraph (a)(5)(vi) of this section.

§ 1.907(d)–1T Disregard of posted prices for purposes of chapter 1 of the Code (for taxable years beginning after December 31, 1982) (Temporary regulations).

(a) *In general*—(1) *Scope.* Section 907(d) applies if a person has FOGEI from the—

(i) Acquisition (other than from a foreign government) or

(ii) Disposition of minerals at a posted price that differs from the fair market value at the time of the transaction. Also, if a seller (other than a foreign government) derives FOGEI upon a disposition described in the preceding sentence, section 907(d) applies to the acquisition by the purchaser whether or not the purchaser has FOGEI. Thus, section 907(d) may apply in determining a person's FORI.

(2) *Initial computation requirement.* If section 907(d) applies to any person, income on the transaction as initially reflected on the person's return shall be computed as if the transaction were effected at fair market value. This requirement applies the first time a person has taxable income derived from either the transaction or an item (such as a dividend described in section 907(c)(3)(A)) determined with reference to that income.

(3) *Burden of proof.* The taxpayer must be able to demonstrate the transaction as it actually occurred and the basis for reporting the transaction under the principles of paragraph (a)(2) of this section.

(4) *Related parties.* Section 907(d) (as a rule of characterization) applies whether or not the parties to the transaction are related. Thus, the excess of the posted price over the fair market value may never be taken into account in determining a person's FOGEI under section 907(a) but may be taken into account in determining a person's FORI.

(b) *Adjustments.* If a taxpayer does not comply with the initial requirement of paragraph (a)(2) of this section, adjustments under section 907(d) may be made only by the Commissioner in the same manner that section 482 is administered. Correlative and similar adjustments consistent with the substantive and procedural principles of section 482 and § 1.482–1(d) apply. However, section 907(d) is not a limitation on section 482. If a taxpayer disposing of minerals at a posted price does comply with the initial computation requirement of this section, adjustments and correlative and similar adjustments consistent with the substantive and procedural aspects of section 482 and § 1.482–1(d) shall apply, whether made on the return by the taxpayer or on a later audit. This paragraph (b) does not apply to an actual sale or exchange of minerals made between persons with respect to whom adjustments under section 482 would never apply (but see paragraph (a)(4) of this section).

(c) *Definitions.* For purposes of this section—

(1) *Foreign government.* The term "foreign government" means only the integral parts or controlled entities of a foreign sovereign and political subdivisions of a foreign country.

(2) *Minerals.* The term "minerals" has the same meaning as in § 1.907(c)–1T(f)(1).

(3) *Posted price.* The term "posted price" means the price set by, or at the direction of, a foreign government (i) to calculate income for purposes of its tax or (ii) at which minerals must be sold.

(4) *Other pricing arrangement.* The term "other pricing arrangement" in section 907(d) means a pricing arrangement having the effect of a posted price.

(5) *Fair market value.* The term "fair market value", whether or not at the port prior to export, is determined in the same way that the wellhead price is determined under § 1.907(c)–1T(b)(6).

§ 1.907(e)–1T Transitional rules (for amounts carried between a taxable year beginning before January 1, 1983, and a taxable year beginning after December 31, 1982) (Temporary regulations).

(a) *General Rule.* Section 907(e)(1) provides rules for carryovers of FOGEI and FORI taxes from taxable years beginning before January 1, 1983 (the general effective date of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA)), to taxable years beginning after December 31, 1982. Section 907(e)(2) provides for carrybacks of those taxes from taxable years beginning after December 31, 1982, to taxable years beginning before January 1, 1983. Both the carryover and carryback amounts shall not exceed the lesser of the amount deemed paid or accrued which would have been deemed paid or accrued under the carryback and carryover rules of section 907(f) and § 1.907(f)–1T (covering carryback and carryover of taxes that both begin after December 31, 1982) or the amount which would have been deemed paid or accrued if—

(1) Pre-TEFRA section 907(b) (which provided for a separate section 904 limitation for FORI taxes),

(2) Pre-TEFRA section 907(f) (which limited the carryback and carryover of FOGEI taxes to 2% of FOGEI for the year of origin), and

(3) Pre-TEFRA section 904(f)(4) (which dealt with the determination of foreign oil related loss if section 907 applied) had remained in effect for taxable years beginning after December 31, 1982.

(b) *Rules for carryover of FORI and pre-TEFRA non-FORI taxes*—(1) Under this section, in general—

(i) The amount of unused pre-TEFRA FORI taxes that may be carried forward to any carryover year may not exceed the excess section 907(b) limitation, as in effect prior to the general effective date of TEFRA, for that carryover year;

(ii) The amount of unused pre-TEFRA, non-FORI taxes that may be carried forward to any carryover year may not exceed the excess section 904(d) general limitation, as in effect before the general effective date of TEFRA for that carryover year; and

(iii) The total of the amounts carried forward under subdivisions (i) and (ii) of this paragraph (b)(1) to any carryover year may not exceed the excess section 904(d) general limitation, as in effect after the general effective data of TEFRA, for that carryover year.

(2) The amount of unused pre-TEFRA FORI taxes that may be carried forward to any succeeding carryover year is the total of those taxes, less the amount of those taxes deemed accrued in the carryover year after reduction in accordance with paragraph (b)(1)(i) of this section (if applicable).

(3) The amount of unused pre-TEFRA, non-FORI taxes that may be carried forward to any succeeding carryover year is the total of those taxes, less the amount of those taxes deemed accrued in the carryover year after reduction in accordance with paragraph (b)(1)(ii) of this section (if applicable).

(c) *Examples.* The provisions of section 907(e)(1) may be illustrated by the following examples. For purposes of these examples, assume the following:

(1) The corporation's preliminary U.S. tax liability is computed at an effective rate of 46%;

(2) A term modified by "old" refers to the meaning the term had prior to the general effective date of TEFRA;

(3) The only foreign source income which the corporation had prior to 1983 is old FORI (which included FOGEI and other FORI) and old section 904(d)(1)(C) income (*i.e.*, income other than interest, DISC dividends and FORI); and

(4) The only foreign source income the corporation had during 1983 and 1984 was section 904(d)(1)(C) income (*i.e.*, income other than interest and DISC dividends) as applicable during those years.

Example (1)—(i) *Facts.* X, a calendar year U.S. corporation organized on January 1, 1982, uses the accrual method of accounting. For 1982, X had the following relevant tax items:

	1982
FOGEI	$500
FOGEI taxes	265
Section 907(a) limitation (46% × $500)	230
Unused FOGEI tax	35
Old section 907(f)(1) limitation (2% × $500)	10
Unused old section 907(b) limitation FORI taxes (not including unused FOGEI taxes)	63
Unused old section 904(d)(1)(C) taxes	20

X's tax items for 1983 and 1984 under the Code provisions applicable to those years were as follows:

TABLE I

	1983	1984
(a) FOGEI	$1,000	$1,200
(b) FORI	400	350
(c) Other foreign taxable income	122	250
(d) Total taxable income (domestic and foreign)	2,000	2,500
(e) FOGEI taxes	750	500
(f) FORI taxes	140	62
(g) Other foreign taxes	50	31
(h) Section 907(a) limitation (46% × (a))	460	552
(i) Total creditable foreign taxes (after section 907(a) limitation excluding carryovers)	650 ((f) + (g) + (h))	593 ((e) + (f) + (g))
(j) Preliminary U.S. tax (46% × (d))	920	1,150
(k) Section 904(d) overall limitation ((j) × (a) + (b) + (c) + (d))	700	828
(l) Excess FOGEI taxes (or excess limitation) ((e) – (h))	290	(52)
(m) Excess section 904(d) taxes (or excess limitation) ((i) – (k))	(50)	(235)

X's foreign tax items for 1983 and 1984, had old sections 907 (b) and (f) and 904(f)(4) applied, would have been as follows:

TABLE II

	1983	1984
(a) FOGEI	$1,000	$1,200
(b) Old FORI (less FOGEI)	400	350
(c) Other foreign taxable income	122	250
(d) Total taxable income (domestic and foreign)	2,000	2,500
(e) FOGEI taxes	750	500
(f) Old FORI taxes (less (e))	140	62
(g) Other foreign taxes	50	31
(h) Section 907(a) limitation (46% × (a))	460	552
(i) Old FORI taxes (after section 907(a) limitation excluding carryovers)	600	562

TABLE II—Continued

	1983	1984
(j) Old section 904(d)(1)(C) taxes ((g))	50	31
(k) Preliminary U.S. tax (46% × (d))	920	1,150
(l) Old FORI section 907(b) limitation ((k) × (a) + (b) ÷ (d))	644	713
(m) Old section 904(d)(1)(C) limitation ((k) × (c) ÷ (d))	56	115
(n) Excess FOGEI taxes (or excess limitation) ((e) – (h))	290	(52)
(o) Excess old FORI taxes (or excess limitation) ((i) – (l))	(44)	(151)
(p) Excess old section 904(d)(1)(C) taxes (or excess limitation) ((j) – (m))	(6)	(84)

(ii) *Carryover from 1982 to 1983*—(A) *Unused FOGEI taxes.* X has $35 of unused FOGEI taxes available for carryover from 1982. Pursuant to section 907(f)(3)(A), X must determine its section 907(f) FOGEI tax carryover (taking into account the section 907(e) transition rules) from 1982 to 1983 before it determines its section 904(c) general foreign tax carryover. In determining the carryover from 1982 to 1983, section 907(e)(1) requires that the old section 907(f)(1) limitation be applied. Under the old section 907(f)(1), FOGEI taxes in excess of the section 907(a) limitation could only be carried over to succeeding years in an amount equal to 2% of the FOGEI ($10 in this example) in the year of origin. See § 1.907(f)–1A(b)(2). The $10 is not deemed accrued, however, in 1983 because FOGEI taxes paid or accrued in 1983 ($750) exceed the section 907(a) limitation ($460) for 1983 (Table I, 1983, line (1)).

(B) *Unused FORI taxes.* X has $63 of unused old section 907(b) limitation FORI taxes available for carryover from 1982. Pursuant to section 907(e)(1), the amount of unused FORI taxes that may be carried over from 1982 to 1983 may not exceed the excess old section 907(b) limitation for 1983. Since the excess 1983 old section 907(b) limitation is $44 (Table II, 1983, line (o)), only that amount of the $63 of total unused 1982 FORI taxes (not including unused FOGEI taxes) may be carried over and deemed accrued in 1983. Therefore, X has unused 1982 old section 907(b) limitation FORI taxes (not including unused FOGEI taxes) in the amount of $19 ($63 less $44) available for carryover to 1984.

(C) *Unused other foreign taxes.* X has $20 of unused old section 904(d)(1)(C) taxes available for carryover from 1982. However, only $6 may be deemed accrued in 1983 since for 1983 the excess old section 904(d)(1)(C) limitation was only $6 (Table II, 1983, line (p)). Therefore, X has unused 1982 old section 904(d)(1)(C) taxes in the amount of $14 ($20 less $6) available for carryover to 1984.

(iii) *Carryover from 1982 to 1984*—(A) *Unused FOGEI taxes.* The unused FOGEI tax

carryover from 1982 of $10 will be deemed accrued in 1984 since the limitations of both old and new section 907(f)(2) do not limit the deemed accrual. The $10 amount is not as great as the lesser of the excess extraction limitation under new section 907(f)(2)(A), $32 (Table I, 1984, line (l)) and the excess overall limitation under new section 907(f)(2)(B), $235 (Table I, 1984, line (m)). Likewise, the $10 amount is not as great as the lesser of the excess extraction limitation under old section 907(f)(2)(A), $52 (Table II, 1984, line (n)) and the excess oil related limitation under old section 907(f)(2)(B), $151 (Table II, 1984, line (o)).

(B) *Unused FORI taxes.* The $29 of 1982 unused old section 907(b) limitation FORI taxes (including $10 of unused FOGEI taxes) are deemed accrued in 1984 since they do not exceed the excess old section 907(b) limitation for 1984, $151 (Table II, 1984, line (o)).

(C) *Unused other foreign taxes.* X's $14 of unused 1982 old section 904(d)(1)(C) taxes are deemed accrued in 1984 since they do not exceed the old section 904(d)(1)(C) limitation, $94 (Table II, 1984, line (p)).

Example (2).—(i) *Facts.* Assume the same facts as in *Example* (1) except that X's other foreign taxable income for 1983, line (c) in both tables in *Example* (1), is $46. It is assumed that total taxable income remains the same as in *Example* (1).

(ii) *Carryover from 1982 to 1983.*—(A) *Unused FOGEI taxes.* Same result as in *Example* (1). None of the $10 of unused FOGEI taxes carried over from 1982 may be deemed accrued in 1983.

(B) *Unused FORI and other foreign taxes.* The old excess section 907(b) limitation for 1983 remains at $44 (Table II, 1983, line (o)). There is, however, no old excess section 904(d)(1)(C) limitation for 1983 (Table II, 1983, line (p)). The tentative carryovers are therefore $44 of FORI taxes and $0 of section 904(d)(1)(C) taxes. In addition, the excess section 904(d) overall limitation (Table I, 1983, line (m)) is now only $15. Accordingly, under paragraph (b)(1)(D) of this section, the maximum amount of FORI taxes and old section 904(d)(1)(C) taxes that may be carried forward to 1983 is $15.

Therefore, $15 of the $63 of total unused 1982 FORI taxes (not including unused FOGEI taxes) may be carried over from 1982 and deemed accrued in 1983. X has unused 1982 old section 907 (b) limitation FORI taxes (not including unused FOGEI taxes) in the amount of $48 available for carryover to 1984. X need not reduce the unused 1982 FORI taxes by the amount ($44) which would have been deemed accrued had the old excess section 907 (b) limitation applied.

Example (3).—(i) *Facts.* Y, a U.S. corporation organized on January 1, 1982, uses the accrual method of accounting and the calendar year as its taxable year. For 1982, Y had the following tax items:

TABLE I

(a) FOGEI	$900
(b) Old FORI (less FOGEI)	250
(c) Other foreign taxable income	200
(d) World wide taxable income	2,050
(e) FOGEI taxes	300
(f) Old FORI taxes (less (e))	130
(g) Other foreign taxes	170
(h) Section 907(a) limitation (46% x (a))	414
(i) Old FORI taxes (after section 907 (a) limitation) (lesser of (e) or (h) plus (f))	430
(j) Old section 904(d)(1)(C) taxes ((g))	170
(k) Preliminary U.S. tax (46% x (d))	943
(l) Old FORI section 907(b) limitation ((k) x (a) ÷ (b) ÷ (d))	529
(m) Old section 904(d)(1)(C) limitation ((k) x (c) ÷ (d))	92
(n) Excess FOGEI taxes (or excess limitation) ((e) − (h))	(114)
(o) Excess old FORI taxes (or excess limitation) ((i) − (1))	(99)
(p) Excess old section 904 (d)(1)(C) taxes (or excess limitation) ((j) − (m))	78

Y's tax items for 1983 and 1984 under the Code provisions applies to those years were as follows:

TABLE II

	1983	1984
(a) FOGEI	$1,000	$1,200
(b) FORI	300	450
(c) Other foreign taxable income (loss)	200	150
(d) Total taxable income (domestic and foreign)	2,200	2,500
(e) FOGEI taxes	400	750
(f) FORI taxes	180	290
(g) Other foreign taxes	60	90
(h) Section 907(a) limitation (46% x (a))	460	552
(i) Total creditable foreign taxes (after section 907(a) limitation excluding carryovers)	640 ((e) + (f) + (g))	932 ((f) + (g) + (h))
(j) Preliminary U.S. tax (46% x (d))	1,012	1,150
(k) Section 904(d) overall limitation ((j) x (a) ÷ (b) ÷ (c) ÷ (d))	690	826
(l) Excess FOGEI taxes (or excess limitation) ((e) − (h))	(60)	198
(m) Excess section 904 taxes (or excess limitation) ((i) − (k))	(50)	104

Y's foreign tax items for 1983 and 1984, had old sections 907 (b) and (f) and 904(f)(4) applied, would have been as follows:

TABLE III

	1983	1984
(a) FOGEI	$1,000	$1,200
(b) Old FORI (less FOGEI)	300	450
(c) Other foreign taxable income	200	150
(d) Total taxable income (domestic and foreign)	2,200	2,500
(e) FOGEI taxes	400	750
(f) Old FORI taxes (less (e))	180	290
(g) Other foreign taxes	60	90
(h) Section 907 (a) limitation (46% x (a))	460	552
(i) Old FORI taxes (after section 907(a) limitation excluding carryovers)	560 ((f) + (e))	842 ((f) + (h))
(j) Old section 904(d)(1)(C) taxes ((g))	60	90
(k) Preliminary U.S. tax (46% x (d))	1,012	1,150
(l) Old FORI section 907(b) limitation ((k) x (a) ÷ (b) ÷ (d))	598	759
(m) Old section 904(d)(1)(C) limitation ((k) x (c) ÷ (d))	92	69
(n) Excess FOGEI taxes (or excess limitation) ((e) − (h))	(60)	198
(o) Excess old FORI taxes (or excess limitation) ((l) − (1))	(18)	83
(p) Excess old section 904(d)(1)(C) taxes (or excess limitation) ((j) − (m))	(32)	21

(ii) *Carryover from 1982 to 1983.*—(A) *Unused FOGEI taxes.* For 1982, Y has no unused FOGEI taxes (Table I, 1982, line (n)) since FOGEI taxes paid, $300 (Table I, 1982, line (e)) is less than the section 907(a) limitation, $414 (Table I, 1982, line (h)).

(B) *Unused FORI taxes.* For 1982, Y has no unused old FORI taxes (Table I, 1982, line (o)) since the old FORI section 907(b) limitation, $529 (Table I, 1982, line (l)) exceeds old FORI taxes for 1982, $430 (Table I, 1982, line (i)).

(C) *Unused other foreign taxes.* For 1982, Y has $78 of unused old section 904(d)(1)(C) taxes (Table I, 1982, line (p)). The unused old section 904(d)(1)(C) taxes from 1982 are deemed accrued in 1983 only to the extent of the excess old section 904(d)(1)(C) limitation for 1983, $32 (Table III, 1983, line (p)). Thus, $32 of the unused old section 904(d)(1)(C) taxes for 1982 are deemed accrued in 1983 and $46 are available for carryover to 1984.

(iii) *Carryback of unused FOGEI taxes from 1984 to 1982.* Y has $198 of unused FOGEI taxes for 1984 (Table II, 1984, line (l)). These taxes are deemed accrued in 1982 only to the extent they would have been deemed accrued in 1982 had old section 907(f) remained in effect for 1984. Under old section 907(f), Y's carryback of unused FOGEI taxes would have been limited to $24, 2% of its FOGEI for 1984. All of the $24 is deemed accrued in 1982 because Y's excess section 907(a) limitation for 1982 is $114 (Table I, line (n)) and its excess old FORI section 907(b) limitation for 1982 is $89 (Table I, line (o)).

(iv) *Carryback of unused section 904(d)(1)(C) taxes from 1984 to 1982.* Y has $104 of unused section 904(d)(1)(C) taxes for 1984 (Table II, 1984, line (m)). Those taxes may be carried from 1984 to 1982 but only to the extent of the amount of unused old FORI taxes and unused old section 904(d)(1)(C) taxes from 1984 that would have been deemed accrued in 1982 had old sections 907 (b) and (f) and 904(f)(4) remained in effect for 1984. The amount of unused old FORI taxes from 1984, $83 (Table III, 1984, line (o)), that would have been deemed accrued in 1982 is $75, the excess old FORI section 907(b) limitation for 1982, $89 (Table I, line (o)) less $24 of carryback of unused FOGEI taxes from subdivision (iii) above. Unused FOGEI taxes

carried back to an excess limitation year are applied before unused other old FORI taxes. See § 1.907(b)–2A(d)(1)(ii). Although Y has $21 of unused old section 904(d)(1)(C) taxes for 1984 (Table III, 1984, line (p)) none are deemed accrued in 1982 because there is no excess old section 904(d)(1)(C) limitation for 1982 (Table I, line (p)). Thus, only $75 of the $104 of unused section 904(d)(1)(C) taxes from 1984 are deemed accrued in 1982.

§ 1.907(f)–1T Carryback and carryover of credits disallowed by section 907(a) (for amounts carried between taxable years that each begin after December 31, 1982) (Temporary regulations).

(a) *In general.* If a taxpayer chooses the benefits of section 901, any unused FOGEI tax paid or accrued in a taxable year beginning after December 31, 1982, may be carried to the taxable years specified in section 907(f) under the carryback and carryover principles of this section and § 1.904–2(b). See section 907(e) and § 1.907(e)–1T for transitional rules that apply to unused FOGEI taxes carried back or forward between a taxable year beginning before January 1, 1983, and a taxable year beginning after December 31, 1982.

(b) *Unused FOGEI tax.*—(1) *In general.* The "unused FOGEI tax" for purposes of this section is the excess of the FOGEI taxes for a taxable year (year of origin) over that year's limitation level (as defined in § 1.907(a)–1T(b)).

(2) *Year of origin.* The term "year of origin" in the regulations under section 904 corresponds to the term "unused credit year" under section 907(f).

(c) *Tax deemed paid or accrued.* The unused FOGEI tax from a year of origin that may be deemed paid or accrued under section 907(f) in any preceding or succeeding taxable year ("excess limitation year") may not exceed the lesser of—

(1) The excess extraction limitation for the excess limitation year, or

(2) The excess general section 904 limitation for the excess limitation year.

(d) *Excess extraction limitation.* Under section 907(f)(2)(A), the "excess extraction limitation" for an excess limitation year is the amount by which that year's section 907(a) extraction limitation exceeds the sum of—

(1) The FOGEI taxes paid or accrued, and

(2) The FOGEI taxes deemed paid or accrued in the year by reason of a section 907(f) carryback or carryover from preceding years of origin.

(e) *Excess general section 904 limitation.* Under section 907(f)(2)(B), the "excess general section 904 limitation" for an excess limitation year is the amount by which that year's section 904 general limitation exceeds the sum of—

(1) The general limitation taxes paid or accrued (or deemed to have been paid under section 902 or 960) to all foreign countries and possessions of the United States during the taxable year,

(2) The general limitation taxes deemed paid or accrued in such taxable year under section 904(c) and which are attributable to taxable years preceding the unused credit year, plus

(3) The FOGEI taxes deemed paid or accrued in that year by reason of a section 907(f) carryover (or carryback) from preceding years of origin.

(f) *Section 907(f) priority.* If a taxable year is a year of origin under both section 907(f) and section 904(c), section 907(f) applies first. See section 907(f)(3)(A).

(g) *Cross-reference.* In computing the carryback and carryover of disallowed credits under section 907(f), the principles of § 1.904–2 (d), (e), and (f) apply.

(h) *Example.* The following example illustrates the application of section 907(f).

Example. X, a U.S. corporation organized on January 1, 1983, uses the accrual method of accounting and the calendar year as its taxable year. X's only income is income which is not subject to a separate tax limitation under section 904(d). X's preliminary U.S. tax liability indicates an effective rate of 46% for taxable years 1983–1985. X has the following foreign tax items for 1983–1985:

EXAMPLE

	1983	1984	1985
1. FOGEI	$15,000	$20,000	$10,000
2. FOGEI taxes	7,500	9,200	4,200
3. Other foreign taxable income	8,000	5,000	10,000
4. Other foreign taxes	3,200	2,000	3,000
5. (a) Section 907(a) limitation (.46 × Line 1)	6,900	9,200	4,600
(b) General section 904 limitation (.46 × (line 1 plus line 3))	10,580	11,500	9,200
6. (a) Unused FOGEI taxes (excess of line 2 over line 5(a))	600	0	0
(b) Unused general limitation taxes (excess of line 4 plus lesser of line 2 or line 5(a) over line 5(b))	0	0	0
7. (a) FOGEI taxes from years preceding 1983 deemed accrued under section 907(f)	0	0	0
(b) Section 904 general limitation taxes from years preceding 1983 deemed accrued under section 904(c)	0	0	400
8. (a) Excess section 907(a) limitation (excess of line 5(a) over sum of line 2 and line 7(a))	480	300	2,000
(b) Excess section 904 general limitation (excess of line 5(b) over sum of line 4, lesser of line 2 and line 5(a), and line 7(b))	0	0	400
9. Limit on FOGEI taxes that will be deemed accrued under section 907(f) (lesser of line 8(a) and line 8(b))			

X has unused 1983 FOGEI taxes of $600. Since the excess section 907(a) limitation for 1984 is zero, the unused FOGEI taxes are carried to 1985. Of the $600 carryover, $400 is deemed accrued in 1985 and the balance of $200 is carried to following years (but not to a year after 1988). After the carryover from 1983 to 1985, the excess section 904 general limitation for 1985 (line 8(b)) is reduced by $400 to $1,600 to reflect the amount of 1983 FOGEI taxes deemed accrued in 1985 under section 907(f).

Par. 10. A new center heading is added to precede §1.911–1 to read as follows:

Earned Income of Citizens or Residents of United States

Lawrence B. Gibbs,
Commissioner of Internal Revenue.

Approved: September 15, 1988.

O. Donaldson Chapoton,
Assistant Secretary of the Treasury.

[FR Doc. 89–449 Filed 1–19–89; 8:45 am]
BILLING CODE 4830–01–M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

29 CFR Part 2702

Regulations Implementing the Freedom of Information Reform Act of 1986

AGENCY: Federal Mine Safety and Health Review Commission.

ACTION: Final rule.

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SUMMARY: This rule adopts, with minor stylistic changes, an interim rule that revised the Commission's regulations concerning fees and fee waivers for processing Freedom of Information Act requests in accordance with the standards required by the Freedom of Information Reform Act of 1986.

EFFECTIVE DATE: Final rule effective January 23, 1989.

FOR FURTHER INFORMATION CONTACT: L. Joseph Ferrara, General Counsel, Office of the General Counsel, 1730 K Street, NW, 6th Floor, Washington, DC 20006, telephone: 202-653-5610 (202-566-2673 for TDD Relay). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: The Freedom of Information Reform Act of 1986, Pub. L. 99-570, sections 1801-1804, 100 Stat. 3207, 3207-48 (1986) (FOIA Reform Act), amended the Freedom of Information Act, 5 U.S.C. 552 (FOIA), and established a new fee structure for fees generally as well as for certain categories of requests. In addition, a revised statutory standard governing the waiver of FOIA fees was established.

On January 12, 1988 the Commission published at 53 FR 737 through 739 an interim rule effective February 11, 1988, revising the Commission's regulations at 29 CFR Part 2702 concerning fees and fee waivers for processing FOIA requests in accordance with the standards required by the FOIA Reform Act. The interim rule revised 29 CFR 2702.5 and added new §§ 2702.6 through 2702.8. Comments were requested.

The Commission has found that the interim regulations have operated effectively since they became operative more the eleven months ago. No comments were received in response to the January 12, 1988 notice. Accordingly, with minor stylistic changes, the interim rule amending 29 CFR Part 2702, which was published at 53 FR 737 through 739 on January 12, 1988, is adopted as a final rule.

List of Subjects in 29 CFR Part 2702

Freedom of information.

Accordingly, 29 CFR Part 2702 is amended as follows:

1. The authority citation for Part 2702 continues to read as follows:

Authority: 5 U.S.C. 552(a)(4)(A)

2. Section 2702.5 is revised to read as follows:

§ 2702.5 Fees applicable—categories of requesters.

(a) When documents are requested for commercial use, requesters will be assessed the full direct costs of searching for, reviewing for release, and duplicating the records sought.

(b) When records are being requested by educational or noncommercial scientific institutions whose purpose is scholarly or scientific research, and not for commercial use, the requester will be assessed only for the cost of duplicating the records sought, but no charge will be made for the first 100 paper pages reproduced.

(c) When records are being requested by representatives of the news media, the requester will be assessed only for the cost of duplicating the records sought, but no charge will be made for the first 100 paper pages reproduced.

(d) For any other request not described in paragraphs (a) through (c) of this section, the requester will be assessed the full direct costs of searching for and duplicating the records sought, except that the first two hours of manual search time and the first 100 paper pages of reproduction shall be furnished without charge.

(e) For purposes of paragraphs (b) through (d) of this section, whenever it reasonably appears that a requester of records or a group of requesters is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, such requests will be aggregated and fees assessed accordingly.

3. Sections 2702.6 through 2702.8 are revised to read as follows:

§ 2702.6 Fee schedule.

(a) *Search fee.* The fee for searching for information and records shall be $10 per hour for clerical time and $20 per hour for professional time. Fees for searches of computerized records shall be the actual cost to the Commission but shall not exceed $300 per hour. This fee includes machine time and that of the operator and clerical personnel. The fee for computer printouts shall be $.40 per page. If search charges are likely to exceed $25, the requester shall be notified of the estimated amount of fees, unless the requester has indicated in advance his willingness to pay fees as high as those anticipated. Time spent on unsuccessful searches shall be fully charged.

(b) *Review fee.* The review fee shall be charged for the initial examination by the Executive Director of documents located in response to a request in order to determine if it may be withheld from disclosure, and for the deletion of portions that are exempt from disclosure, but shall not be charged for review by the Chairman or the Commissioners. *See* § 2702.3. The review fee is $30 per hour.

(c) *Duplicating fee.* The copy fee for each page of paper up to 8½" X 14" shall be $.15 per copy per page. Any private sector services required will be assessed at the charge to the Commission. If duplication charges are likely to exceed $25, the requester shall be notified of the estimated amount of fees, unless the requester has indicated in advance his willingness to pay fees as high as those anticipated.

§ 2702.7 No fees; waiver or reduction of fees.

(a) No fees shall be charged to any requester, including commercial use requesters, if the anticipated cost of processing and collecting the fee would be equal to or greater than the fee itself. Accordingly, the Commission has determined that fees of less than $10 shall be waived.

(b) Documents shall be furnished without any charge or at a charge reduced below the fees otherwise applicable if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

(1) The following six factors will be employed in determining when such fees shall be waived or reduced:

(i) The subject of the request: Whether the subject of the requested records concerns "the operations or activities of the government";

(ii) The informative value of the information to be disclosed: Whether the disclosure is "likely to contribute" to an understanding of government operations or activities;

(iii) The contribution to an understanding of the subject by the general public likely to result from disclosure: Whether disclosure of the requested information will contribute to "public understanding";

(iv) The significance of contribution to public understanding: Whether the disclosure is likely to contribute "significantly" to public understanding of government operations or activities;

(v) The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so

(vi) The primary interest in disclosure: Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is "primarily in the commerical interest of the requester."

(2) The Executive Director, upon request, shall determine whether a waiver or reduction of fees is warranted. Requests shall be made concurrently with requests for information under § 2702.3. Appeals of adverse decisions may be made to the Chairman within 5 working days. Determination of appeals will be made by the Chairman within 10 working days of receipt.

§ 2702.8 Advance payment of fees; interest; debt collection procedures.

(a) Advance payment of fees generally will not be required. However, an advance payment (before work is commenced or continued on a request) may be required if the charges are likely to exceed $250.

(b) Requesters who have previously failed to pay a fee charged in timely fashion (i.e., within 30 days of the date of billing) may be required first to pay that amount plus any applicable interest (or demonstrate that the fee has been paid) and then make an advance payment of the full amount of the estimated fee before the new or pending request is processed.

(c) Interest charges may be assessed on any unpaid bill starting on the 31st day following the day on which the billing was sent at the rate presecribed in 31 U.S.C. 3717 and will accrue from the date of billing.

(d) The Debt Collection Act of 1982, Pub. L. 97-365, including disclosure to consumer credit reporting agencies and the use of collection agencies will be utilized to encourage payment where appropriate.

Dated: January 12, 1989.

Ford B. Ford,

Chairman, Federal Mine Safety and Health Review Commission.

[FR Doc. 89-1286 Filed 1-19-89; 8:45 am]

BILLING CODE 6735-01-M

DEPARTMENT OF THE TREASURY

31 CFR Part 103

Amendment to the Bank Secrecy Act Regulations Relating to Domestic Currency Transactions

AGENCY: Departmental Offices, Department of the Treasury.

ACTION: Final rule.

SUMMARY: Two amendments are being made to the Bank Secrecy Act regulations, 31 CFR Part 103. The first amendment to 31 CFR 103.27 clarifies that a person conducting currency transactions for another person must report on the Currency Transaction Report (Form 4789, the "CTR") the name of the person on whose behalf the transaction was conducted. The second amendment adds a definition of "structuring" to the anti-structuring provision of 31 CFR 103.53, which prohibits a person from structuring or assisting in structuring, or attempting to structure or assist in structuring, any transaction with one or more domestic financial institutions for the purpose of evading the reporting requirements.

DATE: These amendments are effective on or before February 22, 1989.

ADDRESS: Amy G. Rudnick, Director, Office of Financial Enforcement, Office of the Assistant Secretary (Enforcement), Department of the Treasury, Room 4320, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

FOR FURTHER INFORMATION CONTACT: Kathleen A. Scott, Attorney Advisor, Office of the Assistant General Counsel (Enforcement), (202) 566-9947.

SUPPLEMENTARY INFORMATION:

Notice of Proposed Rulemaking

The Bank Secrecy Act, Pub. L. No. 91-508 (codified at 12 U.S.C. 1829b, 12 U.S.C. 1951 *et seq.*, and 31 U.S.C. 5311-5324), authorizes the Secretary of the Treasury to require financial institutions to keep records and file reports that the Secretary determines have a high degree of usefulness in criminal, tax, or regulatory matters. Pursuant to 31 U.S.C. 5313 and the regulations thereunder, financial institutions are required to file Currency Transaction Reports with Treasury on transactions in currency in excess of $10,000 "by, through or to such financial institutions." 31 CFR 103.22(a).

Two amendments were proposed to the Bank Secrecy Act regulations on June 21, 1988 (53 FR 23289). The first amendment proposed would clarify what is meant by the phrase in 31 CFR 103.27 that a financial institution shall verify the identification of "any person or entity for whose or which *account*" a transaction reportable under § 103.22 is to be effected. (Emphasis added). Two cases (*United States* v. *Murphy*, 809 F.2d 1427 (9th Cir. 1987) and *United States* v. *Gimbel*, 632 F. Supp. 713 (E.D. Wis. 1984)), have held that the Bank Secrecy Act regulations and the Currency Transaction Report do not require that the name of the person for whom the transaction is being carried out be disclosed by the person conducting the transaction. Treasury's use of the term "account" in the phrase "for whose or which account" in 31 CFR 103.27 was not meant to identify a customer account relationship with a financial institution, but always has been interpreted by Treasury to be synonymous with "on behalf of," as required by the Bank Secrecy Act itself, 31 U.S.C. 5313. Section 5313 states that "a participant acting for another person shall make the report as agent or bailee of the person and identify the person for whom the transaction is being made." Many currency transactions never involve any sort of customer bank account at all (*e.g.*, purchasing money orders with cash).

Although no other courts have adopted the holdings of *Murphy* and *Gimbel*, in order to clarify any lingering ambiguity in § 103.27, and to conform the regulation more closely to the statute, Treasury proposed to change the phrase "for whose or which account" to "on whose behalf." This change makes clear that the financial institution must obtain the identity of and other required information about the person for whom the currency transaction was conducted. This was not intended to be, and indeed is not, a new requirement; financial institutions should have been obtaining this information all along, and placing it in Part II of Form 4789, the Currency Transaction Report (CTR).

The second proposal dealt with the "anti-structuring" provision, 31 U.S.C. 5324, added by the Money Laundering Control Act, Subtitle H of the Anti-Drug Abuse Act of 1986, Pub. L. 99-570 (October 27, 1986). Section 5324 prohibits any person from structuring or assisting in structuring, or attempting to structure or assist in structuring, transactions "for the purpose of evading" the currency transaction reporting requirements, and also prohibits a person, for the same purpose, from causing or attempting to cause a financial institution to fail to file a CTR or to file a CTR that contains a material omission or misstatement of fact. The enactment of section 5324 clarified that all currency transaction structuring schemes designed to evade the reporting requirements are unlawful, regardless of whether the $10,000 threshold is met at a single financial institution on a single day. *See* H.R. Rep. No. 746, 99th Cong., 2d Sess. 18-20 (1986); S. Rep. No. 433, 99th Cong., 2d Sess. 21-22 (1986).

Since the structuring provision was enacted, there has been some concern by financial institutions that neither the statute itself nor the regulation gives a formal definition of "structure" or "structuring," although the only court to consider the question ruled that the absence of a definition for the term "structuring" does not render the statute unconstitutionally vague. *U.S.* v. *Scanio*, No. CR 88-64T (W.D.N.Y. Sept. 22, 1988.) Treasury has received many inquiries since this provision was passed into law in 1986 as to exactly what the term

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"structuring" means. In response to these requests, Treasury proposed for inclusion in the Bank Secrecy Act regulations a definition of "structure" or "structuring," after consultation with the Internal Revenue Service, the Department of Justice and the other Bank Secrecy Act regulatory agencies. The proposed definition provided that a person structures a transaction if:

(1) Acting alone, or in conjunction with, or on behalf of, other persons;
(2) He conducts, attempts to conduct or assists in conducting;
(3) One or more transactions in currency;
(4) In any amount;
(5) At one or more financial institutions;
(6) On one or more days;
(7) In any manner;
(8) For the purpose of evading the reporting requirements of 31 CFR 103.22.

The phrase "in any manner" is defined to include, but is not limited to, all schemes involving the breaking down of sums of currency larger than $10,000 into sums, including sums at or below $10,000, or through the conducting of a series of related currency transactions, including transactions at or below $10,000, at one financial institution or multiple financial institutions on one or more days. The definition also states that "[t]he transaction or transactions need not exceed the $10,000 reporting threshold at any single financial institution on any single day in order to constitute structuring within the meaning of this definition." This makes it clear that structuring is not limited to multiple transactions conducted on the same day at a single financial institution.

Discussion of Comments

Forty comments were received in response to the Notice of Proposed Rulemaking. Many of the comments were negative, but the issues the comments focused on indicated a need for clarification of the responsibilities under these amendments, rather than a need to change the proposals themselves.

Proposed Amendment to § 103.27

New Obligations

There was much confusion on the part of the commenters on this particular proposal. On an initial note, many seemed to feel that a new obligation was being proposed.

In response to these comments, Treasury stresses at the outset that this amendment does not impose a new obligation upon any financial institution; it merely clarifies the regulation to state more clearly the statutory requirement that "a participant acting for another person shall make the report as agent or bailee of the person and identify the person for whom the transaction is being made." 31 U.S.C. 5313. Treasury always has intended, and consistently has stated, that the phrase "of any person or entity for whose or which account such transaction is to be effected" refers to all transactions conducted by one person for another, *i.e.*, as an agent or bailee, not just those that are run through accounts. Many transactions conducted on behalf of others never involve an account at all. Part II of the CTR also clearly states that the financial institution must identify the individual or organization for whom a transaction is conducted. Therefore, this should not be seen as a new obligation for financial institutions, but a clarification of an existing one.

Beneficial Owner

Many questioned the use of the term "beneficial owner" and whether that meant, for example, that transactions on behalf of corporations would need to have the stockholders of the corporation listed in Part II of the CTR.

In Part II of the CTR, the financial institution identifies the individual or organization on whose behalf the transaction was conducted. The definition of "person" for purposes of the Bank Secrecy Act regulations, 31 CFR 103.11(l), should be consulted for guidance:

> An individual, a corporation, a partnership, a trust or estate, a joint stock company, an association, a syndicate, joint venture, or other unincorporated organization or group, and all entities cognizable as legal personalities.

Thus, if a currency transaction in excess of $10,000 is being conducted for a corporation, only the information on the corporation itself is needed for Part II of the CTR, and there is no need to determine the names of the stockholders in order to complete the CTR. In order to be consistent with the regulations, the CTR is being revised to reference the term "person."

The term "beneficial owner" was used in the Notice as merely another term to designate the person on whose behalf the transaction was conducted.

Knowledge Requirement

Many commenters questioned how a financial institution was to gain knowledge of whether a person is doing the transaction for someone else. Some commenters wondered if Treasury was imposing a positive duty to inquire of every customer if the transaction was being conducted on behalf of someone else.

The Bank Secrecy Act requires financial institutions to file complete and accurate CTR's. Section 5313 clearly requires the financial institution to ascertain the real party in interest where an agency relationship exists. Asking the customer clearly is one way of obtaining the information needed to complete the CTR. Treasury currently is considering future regulatory and administrative action to require tellers to inquire of each of their customers for the information needed to complete the CTR, if that information cannot otherwise be obtained from customer records. In the meantime, Treasury recommends that tellers ask their customers for the information they need to complete the CTR, if they do not already have that information in customer records, and to ask each customer for each transaction if he is conducting the transaction on behalf of someone else, as that information is unique to each transaction and will not appear on a customer's signature card or other records.

In addition, as Treasury has consistently stated in the past, "knowledge" clearly also includes the concept of "willful blindness" articulated in the case of *United States* v. *Jewell*, 532 F.2d 697 (9th Cir.), *cert. denied*, 426 U.S. 951 (1976). This concept applies to a person who has deliberately avoided positive knowledge. As the court stated in the *Jewell* case, "if a person has his suspicions aroused but then deliberately omits to make further inquiries because he wishes to remain in ignorance, he is deemed to have knowledge." Thus, if a financial institution suspects that someone may be either conducting currency transactions or having them conducted on his behalf, in amounts totaling more than $10,000, but deliberately refuses to ask questions because it wants to remain ignorant, and therefore "innocent," the financial institution will be deemed to have knowledge for purposes of assessing liability under the Bank Secrecy Act.

Practicalities of Compliance

Many comments raised questions of the practicalities of complying with the requirement. Some pointed out that this information could not be obtained if the deposit was made by use of an automated teller machine or a night depository, or handled by a courier. Some commenters asked whether they could rely on the information given to them by the person conducting the transaction and/or the information in the file on the person on whose behalf the transaction was being conducted. Several commenters inquired what they should do if a customer either refuses to give the needed information or does not have the information to give. Treasury notes that these questions are not unique to this amendment and have been raised before with respect to the various requirements of the Bank Secrecy Act generally.

In response to these comments, Treasury notes that a financial institution may rely on the information contained in its records if the customer conducting the currency transaction does so on behalf of a person on whom the financial institution has records. Financial institutions also may rely on the information given to them by someone conducting a currency transaction on behalf of another unless the financial institution has knowledge that the information is incorrect. If the transaction is conducted by use of an automated teller machine or a night depository, or by a courier and the information on the person on whose behalf the transaction was conducted is fragmentary, then the CTR should be filled out as completely as possible, using the information accompanying the transaction and filling in what can be obtained from customer records at the financial institution. The CTR has a block to check to indicate that the transaction was conducted through a night depository, automatic teller machine, or armored car service, all of which could account for an incomplete CTR.

In transactions conducted by a courier, the information concerning the courier is placed in Part I of the CTR, and the information on the person on whose behalf the transaction is being conducted (for example, a deposit to a corporation's checking account) goes in Part II. If the courier is conducting currency transactions for more than one person, which either separately or together aggregate to more than $10,000, then the information concerning the additional persons on whose behalf the transactions are being done is entered on the back of the CTR or on an addendum to the CTR.

Several commenters raised the question of whether a financial institution must refuse a transaction if the person conducting the transaction cannot provide needed information on the person on whose behalf the transaction is being conducted, and the financial institution does not have account records on that person to supply the required information. The Bank Secrecy Act neither requires nor prohibits a financial institution to refuse a currency transaction when the financial institution cannot obtain the information necessary to complete the CTR. However, under the Act and the regulations, financial institutions are responsible for filing complete and accurate CTR's. Section 103.28 of the regulations specifically requires that all information on the CTR be furnished. The Act and regulations further provide for both criminal and civil sanctions for willful violation of any provision of the regulations. Thus, failure to obtain complete information could result in criminal and/or civil liability for financial institutions.

Examples

Finally, many commenters asked for examples of what the amendment means. While Treasury cannot compile an exhaustive list of the various ways that a person can conduct a transaction for another, listed below are several simple examples the illustrate various ways of performing transactions for others and the financial institution's corresponding Bank Secrecy Act responsibilities. While for consistency purposes, all the financial institutions listed in the examples are banks, these examples generally are applicable to other financial institutions.

—Mary Jones walks into the bank, and deposits $15,000 into her personal checking account. If she is conducting the transaction for herself, the amendment is not relevant, because Part II of the CTR does not need to be completed.

—John Stevens comes into the bank and deposits $18,000 into Mary Jones' savings account. Because this currency transaction may be on behalf of another person, Treasury recommends that the bank ask Mr. Stevens if he is conducting the transaction on behalf of another. If John Stevens is performing the transaction on behalf of someone other than himself, the identification information on him would be placed in Part I of the CTR (which asks for information concerning the person conducting the transaction with the financial institution) and the information on the person on whose behalf the transaction was conducted is placed in Part II of the CTR (which asks for information concerning the person on whose behalf the transaction was conducted).

—Wiliam Evans comes into the bank and deposits $15,000, representing fees paid to a law firm partnership, of which he is a member, into the law firm partnership's operating account. The information on Mr. Evans would go in Part I of the CTR, while the information on the law firm partnership itself (a "person" under § 103.11(1)) would go in Part II. The bank does not list all the law firm partnership's partners in Part II.

—Mr. Evans comes in the next day and deposits $25,000 into three of the law firm partnership's trust accounts on behalf of three of the law firm partnership's clients. The bank accounts are clearly labeled as trust accounts. The financial institution should list the information on Mr. Evans in Part I of the CTR, and the information on each of the law firm partnership's clients in Part II of the CTR, because the money is theirs, not the law firm partnership's. In addition, the new CTR form, which is expected to be available in January 1989, will require the information on the law firm partnership itself also to be listed in Part II, on the back of the CTR.

—Angela Brown, the manager of Lee's Bakery, presents a check made payable to cash and drawn on the bakery's account. Because the customer conducting the transaction is not the same as the name of the account holder, the bank should inquire of Ms. Brown if she is cashing the check on the bakery's behalf. If she is cashing the check on the bakery's behalf, the information on the bakery would be placed in Part II, and the information on Ms. Brown would be placed in Part I.

—Monica Roberts, a courier, comes into the bank and deposits $50,000 into the Sunshine Corporation checking account. Treasury recommends that the bank ask the courier whether she is acting on behalf of Sunshine Corporation. The information on the courier goes in Part I. The information on the person on whose behalf the courier is making the deposit, whether obtained from the courier or the bank's records, goes in Part II. (A corporation is considered a person under § 103.11(1). The bank would not list all of the corporation's stockholders.)

—Jim Green comes into the bank with $25,000 in cash and purchases a bank check with himself named as payee. In order to ensure an accurate CTR, Treasury recommends that the bank ask the customer for whom the transaction is being conducted. If Mr. Green is conducting the transaction for himself, the bank will not fill out Part II. If he is conducting it on behalf of another, the bank must complete Part II with the information on the person on whose behalf the transaction is being conducted.

—Jim Green comes into the bank with $30,000 in currency and purchases a bank check with Susan Smith listed as the payee. Because Mr. Green may be performing this transaction for someone other than himself, Treasury recommends that the bank ask Mr. Green if he is conducting the transaction on behalf of another. If he is conducting the transaction on behalf of another, the information on Mr. Green is placed in Part I and the information on the person on whose behalf the transaction is being conducted is placed in Part II.

—Susan Smith comes into the bank and purchases bearer money orders with $25,000 in cash. The bank has knowledge that she is a frequent customer and often carries large amounts of money to buy bearer money orders. When asked, she give her occupation as "unemployed." Because this currency transaction may be on behalf of another person, Treasury recommends that the bank ask Susan Smith if she is conducting the transaction on behalf of another.

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Proposed Structuring Definition

Most of the comments on the proposed structuring definition centered around perceived additional duties on the part of financial institutions, and whether Treasury could give additional guidance on the question of "assisting" in structuring.

Additional Duties

Some financial institutions were concerned that this amendment would place additional responsibilities upon financial institutions to track currency transactions that take place over more than one business day to ascertain whether there has been structuring, just as they are currently required to aggregate currency transactions of which they are aware that take place during the same business day to determine whether the reporting threshold under § 103.22 had been reached.

In response to these comments, Treasury notes that this amendment places no new additional duties upon financial institutions; it merely codifies the existing interpretation of structuring. The amendment also imposes no additional recordkeeping or tracking responsibilities. There is no need to set up separate tracking systems to detect currency transactions that aggregate to more than $10,000 over more than one business day because financial institutions are required to file CTR's only when a currency transaction is conducted which exceeds $10,000 on one business day.

If the financial institution suspects, either because of the personal knowledge of its employees or because of its computer or other recordkeeping system, that structuring is taking place, the financial institution should check its records to ascertain whether currency transactions have taken place that must be reported pursuant to 31 CFR 103.22(a), and should report its suspicion that structuring has taken place to the local office of the Internal Revenue Service's Criminal Investigation Division. *See* BSA Administrative Ruling 88-1, June 22, 1988, published at 53 FR 40062, 40064 (October 13, 1988).

Any information provided to the IRS should be given within the confines of section 1103(c) of the Right to Financial Privacy Act, 12 U.S.C. 3401-3422. Section 1103(c) of that Act permits a financial institution to notify a government authority of certain information relevant to a possible violation of any statute or regulation. Such information may consist of the names of any individuals or corporate entities involved in the suspicious transactions; account numbers; home and business addresses; social security numbers; type of account; interest paid on account; location of the branch or office where the suspicious transaction occurred; a specification of the offense that the financial institution believes has been committed; and a description of the activities giving rise to the bank's suspicion. S. Rep. 99-433, 99th Cong., 2d Sess., 15-16.

Additionally, a financial institution many be required, by the Federal regulatory agency that supervises it, to submit a criminal referral form. Thus, a financial institution should check with its regulatory agency to determine whether a referral form should be submitted.

Assisting in Structuring

Another point that some commenters raised, not directly related to the definition of "structuring," was that some financial institutions were concerned that there were no guidelines to help the financial institution in determining what "assisting" in structuring meant, and that they would be subject to penalties if a financial institution merely explained the structuring prohibition to its customers.

In response, Treasury emphasizes that the structuring activity must be for the purpose of evading the reporting requirements of § 103.22. Thus, before a financial institution may be held liable, either criminally or civilly, for assisting a customer in structuring transactions, the financial institution must have knowledge that its customer is attempting to circumvent the § 103.22 reporting requirement and the financial institution must assist, that is, aid or help, the customer in that attempt. If a customer disguises multiple cash transactions at a financial institution, without the complicity of any officer or employee of the institution, and the financial institution after diligent use of its manual or automated aggregation systems (or any other means) has no knowledge that these transactions were by or on behalf of the same customer, the financial institution has not knowingly and willfully violated the "assisting in structuring" provision of the Bank Secrecy Act. However, if a financial institution suspects a customer of structuring, perhaps because of repeated transactions just under $10,000, but refuses to investigate further because it wants to remain in ignorance, the financial institution may be deemed to have knowledge of structuring by virtue of its "willful blindness." *See United States* v. *Jewell*, 532 F.2d 697 (9th Cir.), *cert. denied*, 426 U.S. 951 (1976).

Although the term "assist in structuring" encompasses a wide range of actions that no single definition can fully address, a distinction can be drawn between merely explaining the requirements of this particular law, which is permissible, and advising the customer how to evade those requirements, which clearly would be a violation of the Bank Secrecy Act. For example, a bank employee, in response to a customer's questions, explained that all same business-day cash transactions in excess of $10,000 had to be reported to the government, that any transaction of less than $10,000 need not be reported, and that structuring of transactions to evade the reporting requirement is illegal. By merely explaining the law to the customer, the bank has not assisted the customer in structuring the transaction. Moreover, if the customer then decided to deposit only $9,000, the bank is not required to file a report under § 103.22. A financial institution is required to file a report only if a single currency transaction, or aggregated multiple currency transactions of which the financial institution has knowledge, exeeds $10,000 during a single business day. However, if in that latter example, there were circumstances leading the financial institution to believe that the customer was structuring his transactions to avoid the filing of a CTR, then it should report that fact to the local Internal Revenue Service Criminal Investigation Division, along with the information, noted above, which is permissible to disclose under the Right to Financial Privacy Act. *See* BSA Administrative Ruling 88-1, June 22, 1988.

Examples

Finally, some commenters asked for some examples of structuring. While the following examples are by no means exhaustive, the following acts are characteristic of persons who are seeking to structure transactions to avoid the reporting requirements of § 103.22:

—The person, after being informed that the institution intends to file a report on the transaction, seeks to take back part of the currency in order to reduce the amount of the transaction to $10,000 or less.

—The person conducts multiple transactions

—Each involving less than $10,000, but totaling more than $10,00—over the course of several consecutive or near-consecutive days (*e.g.*, Monday, Wednesday, and Friday), whether at the same financial institution, different branches of the same institution, or different institutions.

—Two or more persons enter a financial institution together and separately make cash purchases of instruments such as cashier's checks that individually do not exceed $10,000, but that total more than $10,000, from different tellers in the same institution.

—A customer makes a $9,000 deposit at 1:58 p.m. and a second deposit of $9,000 at 2:01 p.m. when the bank's business day changes at 2 p.m.

—A customer comes into the bank on Monday, Tuesday, Wednesday and Thursday, and each time deposits $8,000 into his checking account. On Friday, the customer comes in and orders that the $32,000 he deposited over the course of those four days be wire-transferred out of the country.

Conclusion

After consideration of all the comments submitted, Treasury is adopting the amendments as proposed, without change. The Authority paragraph is also revised to reflect the proper statutory references, to include the recent amendments made to the Bank Secrecy Act by the Anti-Drug Abuse Act of 1988, Pub. L. 100-690, November 18, 1988.

Executive Order 12291

This final rule is not a major rule for purposes of Executive Order 12291. It is not anticipated to have an annual effect on the economy of $100 million or more. It will not result in a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions. It will not have any significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or foreign markets. A Regulatory Impact Analysis therefore is not required.

Regulatory Flexibility Act

It is hereby certified under section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, that this final rule will not have a significant economic impact on a substantial number of small entities.

Drafting Information

The principal author of this document is the Office of the Assistant General Counsel (Enforcement). However, personnel from other offices participated in its development.

List of Subjects in 31 CFR Part 103

Authority delegations (Government agencies), Banks and banking, Currency, Foreign banking, Investigations, Law enforcement, Reporting and recordkeeping requirements, Taxes.

Amendment

For the reasons set forth above, 31 CFR Part 103 is amended as set forth below:

PART 103—FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FOREIGN TRANSACTIONS

1. The authority citation for Part 103 is revised to read as follows:

Authority: Pub. L. 91-508, Title I, 84 Stat. 1114 (12 U.S.C. 1730d, 1829b and 1951-1959); and the Currency and Foreign Transactions Reporting Act, Pub. L. 91-508, Title II, 84 Stat. 1118, as amended (31 U.S.C. 5311-5326).

§ 103.27 [Amended]

2. The first sentence of § 103.27 is amended by removing "for whose or which account" and adding in its place "on whose behalf".

3. Section 103.11 is amended by redesignating paragraphs (n), (o), (p), (q) and (r) as (o), (p), (q), (r) and (s) respectively, and by adding a new paragraph (n) to read as follows:

§ 103.11 Meaning of terms.

* * * * *

(n) *Structure (structuring).* For purposes of section 103.53, a person structures a transaction if that person, acting alone, or in conjunction with, or on behalf of, other persons, conducts or attempts to conduct one or more transactions in currency, in any amount, at one or more financial institutions, on one or more days, in any manner, for the purpose of evading the reporting requirements under section 103.22 of this Part. "In any manner" includes, but is not limited to, the breaking down of a single sum of currency exceeding $10,000 into smaller sums, including sums at or below $10,000, or the conduct of a transaction, or series of currency transactions, including transactions at or below $10,000. The transaction or transactions need not exceed the $10,000 reporting threshold at any single financial institution on any single day in order to constitute structuring within the meaning of this definition.

* * * * *

§ 103.53 [Amended]

4. Section 103.53 is amended by adding "(as that term is defined in § 103.11(n) of this Part)" after the word "Structure" in paragraph (c).

Dated: December 21, 1988.

Salvatore R. Martoche,

Assistant Secretary (Enforcement).

[FR Doc. 89-1344 Filed 1-19-89; 8:45 am]

BILLING CODE 4810-25-M

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Part 203

[ER 500-1-1]

Emergency Employment of Army and Other Resources, Natural Disaster Procedures

AGENCY: Army Corps of Engineers, DoD.

ACTION: Final rule.

SUMMARY: These changes amend the regulation dated December 21, 1983, and provide revised procedures for the Corps of Engineers in conducting certain emergency activities pursuant to Public Law (Pub L.) 84-99.

This action provides minor modifications to clarify previous rules on Corps of Engineers emergency operations activities in support of state and local flood fight efforts. The amended rules implement procedures for assistance under the expanded authority provided by section 917, Pub. L. 99-662, amendment to Pub. L. 84-99. Notice of these amendments, inviting public comments was published as an Interim Final Rule in the Federal Register on February 2, 1988. No public comments were received.

EFFECTIVE DATE: January 23, 1989.

ADDRESS: For further information write to: HQUSACE (CECW-OE-D), Washington, DC 20314-1000.

FOR FURTHER INFORMATION CONTACT: Mr. Gary M. Campbell, (202) 272-0251.

SUPPLEMENTARY INFORMATION: The Corps of Engineers has authority under Pub. L. 84-99 to supplement state and local flood fight activities. However, prior to November 17, 1986, there was no authority to continue supplemental assistance in response to life and improved property threatening situations after flood waters had receded. Section 917, Pub. L. 99-662 expanded the authority to include activities that are necessary to protect life and improved property from a threat resulting from a major flood or coastal storm. The amendment established the basis for requesting assistance, time limitation on providing assistance, and types of potential assistance.

Note: The U.S. Army Corps of Engineers has determined that this regulation is not a major rule under Executive Order 12291. I certify that under the criteria of the Regulatory Flexibility Act that this Final Rule will not have a significant impact on a substantial number of small entities.

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List of Subjects in 33 CFR Part 203

Disaster assistance, flood assistance, and drought assistance.

For the reasons set forth in the preamble, 33 CFR Part 203 is amended as follows:

PART 203—EMERGENCY EMPLOYMENT OF ARMY AND OTHER RESOURCES, NATURAL DISASTER PROCEDURES

1. The authority citation for 33 CFR Part 203 continues to read as follows:

Authority: Pub. L. 84-99, 69 Stat. 186; U.S.C 701n.

2. Sections 203.12 and 203.13(b) are revised to read as follows:

§ 203.12 Authority.

Flood and coastal storm emergencies (33 U.S.C. 701n (69 Stat. 186) (Pub. L. 84-99). An emergency fund is authorized to be expended at the discretion of the Chief of Engineers for: flood emergency preparation; flood fighting and rescue operations; repair or restoration of flood control works threatened, damaged, or destroyed by flood; emergency protection of federally authorized hurricane or shore protection projects damaged or destroyed by wind, wave, or water of other than an ordinary nature. The law, as amended, includes provision of emergency supplies of clean water when a contaminated source threatens the public health and welfare of a locality and activites necessary to protect life and improved property from a threat resulting from a major flood or coastal storm. The law, as amended, authorizes the Secretary of the Army to construct wells and to transport water within areas he determines to be drought-distressed.

§ 203.13 Non-Federal interests responsibilities.

* * * * *

(b) *Emergency operations.* During emergency operations, including flood response (flood fight and rescue operations) and post flood response, non-Federal interests must commit available resources to include: manpower, supplies, equipment, and funds.

Requests for Corps assistance will be in writing from the Governor or his/her authorized representative. Non-Federal interests must furnish formal written assurances of local cooperation which are detailed in Subpart G of this regulation. Following a flood response, it is a non-Federal responsibility to remove expedient flood control structures installed by the Corps under Pub. L. 84-99.

* * * * *

3. Subpart C consisting of §§ 203.31 and 203.32 are revised to read as follows:

§ 203.31 Authorities.

This authority applies to flood response and post flood response activities. Flood response activities include flood fighting, rescue operations, and protection of Corps constructed hurricane and shore protection projects. Flood fighting measures are applicable to any flood control structure (Federal, state, local, and private) where assistance in supplemental to state and local efforts. Corps assistance is not appropriate to protect flood control structures constructed and/or maintained by other Federal agencies where those agencies have emergency authority.

(a) *Flood response.* Corps assistance in support of other Federal agencies or state and local interests may include the following: technical advice and assistance; loaning of flood fight supplies, e.g., sandbags, polyethylene sheeting, lumber, stone; loaning of Corps-owned equipment; hiring of equipment and operators for flood fight operations; emergency contracting.

(b) *Post flood response.* Corps divisions/districts are provided authority to furnish assistance for a period not to exceed 10 days in response to a Governor's request. This assistance may include the following: Provision of technical advice and assistance; clearing of drainage channels, bridge openings, or structures blocked by debris deposited during a flood event; removal of debris blockages of critical water supply intakes, sewer outfalls, etc.; removal of minimum debris necessary to reopen critical transportation routes; temporary construction to restore critical transportation routes or public services/facilities; other assistance required to prevent imminent loss of life or public property.

§ 203.32 Policy.

During or immediately following a flood or coastal storm, emergency operations may be undertaken by the Corps to supplement state and local activities. Corps assistance is limited to the preservation of life and improved property, i.e., residential/commercial developments and public facilities/services. Direct assistance to individual homeowners or businesses is not permitted. Assistance will be temporary, meet the immediate threat, and is not intended to provide permanent solutions. All Corps activities will be coordinated with the State Office of Emergency Services or equivalent. Reimbursement of state or local emergency costs is not authorized. The assurances required for the provision of Corps assistance apply only to the work performed under Pub. L. 84-99 and will not prevent state or local governments from receiving other Federal assistance.

(a) *Flood response.* Request for Corps assistance will be in writing from the Governor or his/her authorized representative. When time does not permit a written request, a verbal request from either a responsible state or local official will be accepted followed by a written confirmation from the state. Corps assistance may include operational control of flood response activities, if requested by the responsible state official. However, legal responsibility remains with state and local officials. Corps assistance will be terminated when the flood waters recede below bankfull. Removal of ice jams is a local responsibility; however, Corps technical advice and assistance, as well as assistance with flood fight operations can be provided to supplement state and local efforts. The Corps will normally not perform ice jam blasting operations.

(b) *Post flood response.* A written request from the Governor to the district or operating division commander is required to receive Corps assistance. Corps assistance will be limited to major flood or coastal storm disasters resulting in life threatening situations. The Governor's request should include: verification that the Federal Emergency Management Agency (FEMA) has been requested to initiate Preliminary Damage Assessments (PDA); statement that assistance required is beyond the State's capability; specific damage locations; extent of Corps assistance required to supplement state and local efforts. The Governor's request should be transmitted concurrently with the request to FEMA for PDA. Corps assistance is limited to 10 days following receipt of the Governor's written request or on assumption of activities by State and local interests, whichever is earlier. After a Governor's request has triggered the 10-day period, subsequent request(s) for additional assistance resulting from the same flood or coastal storm event will not extend the 10-day period or trigger a new 10-day period. The Corps will deny a Governor's request if it is received subsequent to a Presidential declaration or denial. Shoreline or beach erosion damage reduction/prevention will not be undertaken unless there is an immediate threat to life or critical public facilities.

(c) *Loan or issue of supplies and equipment.* Issuance of Government owned equipment or materials to non-Federal interests is authorized only in actual emergencies. Providing Government supplies is authorized only after local resources have been fully committed. Equipment which is loaned should be returned to the Corps immediately after the flood operation ceases in a fully maintained condition. Expendable supplies such as sandbags will be replaced in kind or paid for by local interests to the extent considered feasible and practicable by the division or district commander. All unused expendable supplies will be returned to the Corps when the operation is terminated.

Dated: December 12, 1988.

Approved.

Robert W. Page,

Assistant Secretary of the Army (Civil Works).

[FR Doc. 89-884 Filed 1-19-89; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF EDUCATION

34 CFR Part 707

Regional Educational Laboratories

AGENCY: Department of Education.

ACTION: Final regulations; technical amendments.

SUMMARY: The Secretary amends the Regional Educational Laboratories Program final regulations to add the Northern Mariana Islands as an eligible recipient of laboratory services. This amendment is needed to correct the omission of the Northern Mariana Islands from the Regional Educational Laboratories Region 10. The Northern Mariana Islands are a commonwealth of the United States and are eligible to receive services under the Regional Educational Laboratories Program.

EFFECTIVE DATE: The regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Helen O'Leary, Office of Research, Office of Educational Research and Improvement, U.S. Department of Education, 555 New Jersey Avenue NW., Suite 610, Washington, DC 20208-5573. Telephone number: (202) 357-6247.

SUPPLEMENTARY INFORMATION: The Regional Educational Laboratories Program provides financial assistance to regional educational laboratories established by public agencies or private nonprofit institutions. Each laboratory, under the sole guidance of a regionally representative governing board, serves the education needs of a specific geographic region of the Nation. Final regulations for the Regional Educational Laboratories and Research and Development Centers Programs were published on August 15, 1988 (53 FR 30790). The Northern Mariana Islands were not listed in § 707.2(a)(10) of the regulations. A technical amendment corrects that omission. A citation in § 707.1 is also corrected.

It is the policy of the Secretary in accordance with section 431(b)(2)(A) of the General Education Provisions Act, to request comment on proposed regulations of the Department. However, these amendments to the regulations correct an omission and a citation, are technical in nature, and do not change the applicable law. In consideration of these factors, the Secretary has determined that notice and public comment are unnecessary and contrary to the public interest and, for good cause, waives proposed rulemaking under 5 U.S.C. 553(b)(B).

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major regulations because they do not meet the criteria for major regulations established in that Order.

Regulatory Flexibility Act Certification

The Secretary certifies that these regulations will not have a significant economic impact on a substantial number of small entities. These regulations are technical in nature and nonsubstantive.

Paperwork Reduction Act of 1980

These proposed regulations have been examined under the Paperwork Reduction Act of 1980 and have been found to contain no information collection requirements.

Assessment of Education Impact

The Secretary has determined that regulations in this document would not require transmission of information that is being gathered or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 707

Colleges and universities, Education, Educational research, Grant programs—education, Local educational agencies, Nonprofit organizations, Northern Mariana Islands, Reporting and recordkeeping requirements, State educational agencies.

Dated: January 9, 1989.

Lauro F. Cavazos,

Secretary of Education.

(Catalog of Federal Domestic Assistance Number: 84.117—Regional Educational Laboratories and Research and Development Centers Programs)

The Secretary amends Title 34 of the Code of Federal Regulations by amending Part 707 as follows:

PART 707—REGIONAL EDUCATIONAL LABORATORIES

1. The authority citation for Part 707 continues to read as follows:

Authority: 20 U.S.C. 1221e, unless otherwise noted.

§ 707.1 [Amended]

2. In § 707.1, "706.5" is removed and "706.4" is added in its place.

§ 707.2 [Amended]

3. In § 707.2, paragraph (a)(10) is amended by adding "the Northern Mariana Islands," after "Hawaii,".

[FR Doc. 89-1420 Filed 1-19-89; 8:45 am]

BILLING CODE 4000-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3495-7]

Approval and Promulgation of Implementation Plans for Pennsylvania; Philadelphia Stack Height Regulation SIP

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA hereby approves a revision to the Philadelphia portion of the Pennsylvania State Implementation Plan (SIP) which incorporates the EPA's Good Engineering Practice (GEP) stack height regulations by reference. The Philadelphia Air Management Services (AMS) revised its regulations following EPA's promulgation of the revised stack height rules on July 8, 1986 (50 FR 27892). Pennsylvania submitted the revision for approval on June 20, 1986.

EFFECTIVE DATE: February 22, 1989.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal

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business hours at the following locations:

U.S. Environmental Protection Agency, Region III, Air Management Division, 841 Chestnut Building, Philadelphia, PA 19107, Attn: Esther Steinberg (3AM11).

Pennsylvania Department of Environmental Resources, Bureau of Air Quality Control, Fulton Bank Building, Third & Locust Streets, Harrisburg, PA 17120, Attn: Ralph Scanlan.

Philadelphia Department of Public Health, Air Management Services, 500 South Broad Street, Philadelphia, PA 19146, Attn: Robert Ostrowski.

Public Information Reference Unit, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Denis M. Lohman at the EPA, Region III address shown above on telephone (215) 597–8375.

SUPPLEMENTARY INFORMATION:

Background

Section 123 of the Clean Air Act requires EPA to promulgate rules to assure that the degree of emission limitation required for the control of any air pollutant under an applicable SIP is not affected by stack heights exceeding good engineering practice (GEP) height or by any other dispersion technique.

The EPA originally promulgated regulations to implement Section 123 requirements on February 8, 1982 (47 FR 5864). Those regulations were challenged by the Sierra Club Legal Defense Fund, Inc., the Natural Resources Defense Council, Inc., and the Commonwealth of Pennsylvania. Subsequently, on October 11, 1983, the U.S. Court of Appeals for the D.C. Circuit remanded portions of the regulations for reconsideration, reversing two portions and upholding certain other [*Sierra Club v. EPA*, 719 F. 2d 436 (1983)]. The EPA proposed revisions to the stack height rules on November 9, 1984 (49 FR 44878). The EPA promulgated final revisions to the rules on July 8, 1985 (50 FR 27892). The final rules contain changes made in response to comments submitted on the proposal.

Pursuant to section 406(d)(2) of the Clean Air Act, the July 8, 1985 Notice required all States to review and revise, as necessary, their SIP's to include provisions that limit stack height credits and dispersion techniques in conformance with revised rule.

Pennsylvania approved and submitted the proposed revision for Philadelphia on June 2, 1986. Pennsylvania's revision amends Air Management Regulation I, (Section XI. Compliance with Federal Regulations), incorporating by reference Part 51 in its entirety, and requires the Philadelphia Department of Public Health to implement the provisions contained therein, including any future additions and amendments to the referenced Parts of 40 CFR.

These rules apply to all new sources and modifications in Philadelphia, Pennsylvania as required in 40 CFR 51.164 as well as existing sources as required in 40 CFR 51.118. This means that this rule applies to all sources that were constructed, reconstructed, or modified subsequent to December 31, 1970.

Solicitation of Public Comment

The Philadelphia Air Pollution Control Board conducted a public hearing on the, then proposed, regulation on December 13, 1983. No public comment was presented before the Board or submitted to AMS.

In a **Federal Register** Notice (52 FR 23465) published June 22, 1987, EPA proposed to approve the GEP revisions, and a 30 day public comment period was announced. No public comments were received regarding the proposed approval of the regulation amendment.

Stack Height Remand

The EPA's stack height regulations were challenged in *NRDC v. Thomas*, 838 F.2d 1224 (D.C. Cir. 1988). On January 22, 1988, the U.S. Court of Appeals for the D.C. Circuit issued its decision affirming the regulations in large part, but remanding three provisions to the EPA for reconsideration. These are:

1. Grandfathering pre-October 11, 1983, within-formula stack height increases from demonstration requirements [40 CFR 51.100(kk)(2)];
2. Dispersion credit for sources originally designed and constructed with merged or multiflue stacks [40 CFR 51.100(hh)(2)(i)(A)]; and
3. Grandfathering pre-1979 use of the refined H+1.5L formula [40 CFR 51.100(ii)(2)].

Although the EPA generally approves Philadelphia's stack height rules on the grounds that they satisfy 40 CFR Part 51, the EPA also provides notice that this action may be subject to modification when EPA completes rulemaking to respond to the decision in *NRDC v. Thomas*, 838 F.2d 1224 (D.C. Cir. 1988). If the EPA's response to the *NRDC* remand modifies the July 8, 1985, regulations, the EPA will notify the State of Pennsylvania and Philadelphia that its rules must be changed to comport with the EPA's modified requirements. This may result in revised emission limitations or may affect other actions taken by Philadelphia source owners or operators.

Final Action

EPA has reviewed the revisions to the AMS regulations and has determined that they are consistent with the regulation for GEP stack height and dispersion techniques as revised on July 8, 1985. Therefore, EPA is approving the revision. The GEP stack height regulations of 40 CFR Part 51 are incorporated into section XI of the AMS's Air Management Regulation I in the Pennsylvania SIP.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 24, 1989. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Reporting and recordkeeping requirements, Sulfur dioxide.

Note: Incorporation by reference of the State Implementation Plan for the State of Pennsylvania was approved by the Director of the Federal Register on July 1, 1982.

Date: December 15, 1988.

Lee M. Thomas,

Administrator.

40 CFR Part 52, Subpart NN, is amended as follows:

PART 52—[AMENDED]

Subpart NN—Pennsylvania

Authority: 42 U.S.C. 7401–7642.

Section 52.2020 is amended by adding paragraph (c)(70) to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(70) Revisions to the Philadelphia Regulations incorporating stack height regulations, submitted by Pennsylvania on June 2, 1986.

(i) *Incorporation by reference.* (A) Amendment to Philadelphia, Pennsylvania, Air Management Regulation I, Section XI, "Compliance with Federal Regulations", effective on March 27, 1986.

[FR Doc. 89–1432 Filed 1–19–89; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 52

[FRL–3496–3; TN–073]

Approval and Promulgation of Implementation Plans for Tennessee; Avco Aerostructures/Textron Bubble

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Tennessee for the Metropolitan Health Department of Nashville and Davidson County. The SIP revision would provide for the Avco Aerostructures/Textron (AVCO) facility in Nashville, Tennessee (Davidson County) to achieve compliance with the applicable volatile organic compound (VOC) reasonably available control technology (RACT) regulations by averaging or "bubbling" of emissions within the facility. The bubble is consistent with current Agency policy.

DATES: This action will become effective on February 22, 1989.

ADDRESSES: Copies of the material submitted by Tennessee may be examined during normal business hours at the following locations:

Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland Street NE., Atlanta, Georgia 30365.

Tennessee Air Pollution Control Board, 4th Floor, Customs House, 701 Broadway, Nashville, Tennessee 37219.

Metropolitan Health Department, Bureau of Pollution Control, 311—23rd Avenue, North, Nashville, Tennessee 37203.

Public Information Reference Unit, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Kay T. Prince, Air Programs Branch, EPA Region IV, at the above address and telephone number (404) 347–2864 or FTS 257–2864.

SUPPLEMENTARY INFORMATION: The Avco facility in Nashville contains nineteen spray booths where miscellaneous aircraft and aerospace parts are coated. Such operations are generally covered by Section 7–20 of the Metropolitan Health Department Pollution Control Division's VOC regulations. Regulation No. 7, Section 7–20 established the following VOC emission limitations for aerospace coatings:

Topcoatings—5.0 lbs/gal coating applied
Temporary Topcoatings—2.1 lbs/gal coating applied
Strippers—3.3 lbs/gal coating applied
Primers—2.9 lbs/gal coating applied
Fuel Tank and space vehicle coatings are exempt from the requirements of Regulation No. 7, Section 7–20.

On February 25, 1988, the State of Tennessee, through the Department of Health and Environment, officially submitted a source-specific SIP revision prepared by the Metropolitan Health Department for the Avco facility. The revision was adopted by the Metropolitan Board on February 9, 1988, and by the Tennessee Air Pollution Control Board on February 17, 1988. Although high solids coatings have successfully been used on aircraft wings supplied to Avco's civilian customers, the United States Air Force refuses to accept these coatings, thus causing the need for a bubble. The SIP revision would permit Avco to average or "bubble" VOC emissions from the nineteen spray booths in lieu of achieving compliance with Regulation 7–20, Section 7 on a line-by-line basis. This would allow Avco to compensate for continued use of non-complying coatings on certain days at some of their spray booths by surpassing the emission reduction requirements applicable to other coatings used on those same days, with the result that total daily emissions from the facility as a whole do not exceed the original limits.

For a more detailed discussion please refer to the September 6, 1988, **Federal Register** (53 FR 34786). Further details pertaining to this Avco bubble are contained in the Technical Support Document which is available at the EPA Region IV office.

When Avco and the State of Tennessee began serious discussions with EPA about the bubble during 1986, Nashville was classified as a nonattainment area with an approved attainment demonstration. As the discussions concerning the bubble continued into 1987, it became apparent that the area could be reclassified as a nonattainment area needing but lacking an approved attainment demonstration. Accordingly, the State and Avco agreed to restructure the bubble by using the lowest of actual, SIP-allowable, or RACT-allowable emissions as a baseline and adding the 20% progress requirement. The State formally submitted the bubble to EPA in February 1988, after EPA issued the Final Emissions Trading Policy Statement (ETPS) and after EPA stated in the November 24, 1987, **Federal Register** notice describing the Proposed Ozone Strategy that a SIP call would be issued for the area, but before EPA issued the SIP call on May 26, 1988.

As noted above, at the time Tennessee first began serious discussions with EPA about the bubble during 1986, Nashville was classified as a nonattainment area with an approved attainment demonstration ("NAWAD"); but currently, since it received the SIP call, Nashville is classified as a nonattainment area lacking an approved attainment demonstration ("NALAD"). Under the ETPS, EPA policy for approving bubbles differs depending on whether the bubble is a NAWAD or a NALAD.

A bubble in a NAWAD is approvable if the baseline is consistent with the assumptions used in the approved SIP, and the bubble does not interfere with attainment of the ozone NAAQS. (51 FR 43838, col. 3.)

A bubble in a NALAD is approvable only if it meets the following three requirements (51 FR 43839–40):

(i) The baseline must be calculated using the lower of actual, SIP-allowable, or Reasonably Available Control Technology (RACT)-allowable values for each baseline factor, determined as of the date the source submitted the bubble application to the state.

(ii) The bubble must produce a reduction of at least 20% in the emissions remaining after application of the baseline specified above.

(iii) The state must provide assurances that the proposed trade will be consistent with its efforts to attain the ambient standard. The ETPS sets out five representations that the state must make.

EPA believes that these NALAD policy elements are necessary to insure that the bubble will not interfere with attainment as expeditiously as practical, as required under 42 U.S.C. 7410(a)(2) and 7502.

Because the ETPS is a policy statement, it does not set out requirements that apply with equal force in all circumstances. Beyond this, the actions proposed in today's notice are consistent with the principles of grandfathering that the Court of Appeals for the District of Columbia Circuit has applied when an agency changes policy requirements, but seeks to apply the former to certain actions pending before the agency at the time of the policy change. Under these principles, the agency may apply the former policy when: (i) The new policy represents an abrupt departure from well-established practice; (ii) affected parties have relied on the old policy; (iii) the new policy imposes a large burden on those affected; and (iv) there is no strong statutory interest in applying the new policy generally. (*Sierra Club v. EPA*,

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719 F.2d 436 (D.C. Cir. 1982), *cert. den.* 468 U.S. 1204 (1984).)

Although Nashville is currently classified as a NALAD, EPA is proposing to approve the Avco bubble without requiring the State to provide the assurances found in the ETPS that are generally applicable to bubbles in area classified as a NALAD. This result is consistent with both (i) the notion that the ETPS does not set out inflexible requirements; and (ii) grandfathering principles. Specifically, EPA believes that because Avco and the source initiated discussions with EPA concerning the bubble before the area's conversion to a NALAD came clearly into the picture, and because the bubble was submitted before EPA formally issued the SIP call, it is fair to conclude that the State and Avco relied on the area's classification as a NAWAD, and that the conversion to a NALAD represented a significant change. Further, the fact that the bubble employs the lowest of actual, SIP-allowable, or RACT-allowable emissions as a baseline, with 20% progress and adequately adheres to the statutory requirement that the bubble not interfere with attainment as expeditiously as practicable; state assurances are not as essential as they would be if the bubble did not meet the strict baseline and progress tests. Since requiring the state assurances would impose some burden on the State, and because the statutory interest is protected by virtue of the bubble's satisfaction of the baseline and progress requirements, EPA believes it appropriate not to apply the state assurances requirement to the Avco bubble.

On September 8, 1988 (53 FR 34788), EPA proposed to approve the bubble for Avco Aerostructures/Textron in Nashville, Tennessee. Approval of this bubble was contingent upon the County's revising the permit to say that this requirement applies to Booths 7 and 9 and EPA cannot take final action until the permit is revised. The permit has been revised and submitted to EPA. The public was invited to submit written comments on the proposed action. However, no comments were received.

Final Action: EPA is approving the revision to the Nashville and Davidson County portion of the Tennessee SIP. The Avco bubble is consistent with EPA's Emissions Trading Policy Statement.

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Note: Incorporation by reference of the State Implementation Plan for the State of Tennessee was approved by the Director of the Federal Register on July 1, 1982.

Date: December 14, 1988.

Lee M. Thomas,

Administrator.

Part 52 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

Subpart RR—Tennessee

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.2220 is amended by adding paragraph (c)(87) to read as follows:

§ 52.2220 Identification of plan.

* * * * *

(c) * * *

(87) A certificate of alternate control of volatile organic compound emissions for Avco Aerostructures/Textron was submitted to EPA on February 25, 1988, by the State of Tennessee for the Metropolitan Health Department of Nashville and Davidson County.

(i) *Incorporation by reference.* (A) Letter of February 25, 1988, from the State of Tennessee Air Pollution Control Board.

(B) Certificate of alternate control of volatile organic compound (VOC) emissions for Avco Aerostructures/Textron, adopted by the Metropolitan Board of Health on February 9, 1988.

(C) Avco Aerostructures/Textron operating permit numbers 42–3, 42–4, 42–5, 42–6, 42–7, 42–8, 42–9, 42–10, 42–18, 42–19.

[FR Doc. 89–1431 Filed 1–19–89; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 220

Temporary Relocation Assistance

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: This rule establishes the Federal Emergency Management Agency (FEMA) regulations for the Temporary Relocation Program under Executive Order 12580. "Temporary Relocation" is provided to individuals threatened by a hazardous materials incident, and not otherwise provided for as part of a hazardous materials response action taken under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, (CERCLA) *as amended*, 42 U.S.C. 9001, *et seq.*

This regulation provides for consistent implementation of the program whether administered directly by FEMA or the states.

EFFECTIVE DATE: This rule is effective February 22, 1989.

FOR FURTHER INFORMATION CONTACT: Karen Forbes, Superfund and Relocation Assistance Branch, Federal Emergency Management Agency, Room 710, 500 "C" Street, SW., Washington, DC 20472, (202) 646–3805.

SUPPLEMENTARY INFORMATION: On June 10, 1988, FEMA published a proposed rule relating to temporary relocation assistance at 51 FR 20995. Seven comments were received. One commenter stated that the proposed definitions of "evacuation" and "transient accommodations" imply that the costs of transient accommodations in the context of evacuations will not be eligible for reimbursement. The commenter also stated that reimbursement to individuals, local governments, and states for costs they incur during an evacuation should be eligible.

"Evacuation" means the emergency relocation of threatened individuals from an area. Evacuation activities are carried out by State and local governments pursuant to their public health and safety responsibilities. Evacuation costs incurred by individuals and State and local governments will not be eligible for reimbursement under these regulations because evacuation activities are uniquely State and local governmental responsibilities. However, section 123(a) of the Superfund Amendments and Authorization Act of 1986, Pub. L. 99–499 (SARA) states: "Any general purpose unit of local government for a political subdivision which is affected by a release or threatened release at any facility may apply to the President for reimbursement under this section." Executive Order 12580 delegates the responsibility for implementation of section 123 to EPA and is therefore not addressed by FEMA.

"Transient accommodations" means hotels, motels, or similar

accommodations which are used to assist eligible applicants who require temporary housing for a short period of time—usually up to 30 days. When it is determined by the lead agency that temporary relocation assistance is needed only for a short period of time, transient accommodations are used. Transient accommodation expenses will be reimbursed pursuant to these regulations.

At the time these proposed regulations were published in 1988, the Superfund Amendments and Reauthorization Act of 1986 had not been enacted, and Executive Order 12580 has not been issued by the President. The previous Executive Order 12316 had delegated the responsibility for determining the need for temporary relocation to FEMA. FEMA had found it necessary to redelegate this responsibility to the Environmental Protection Agency (EPA). Executive Order 12580 makes it unnecessary for FEMA to redelegate this responsibility to EPA, because that Executive Order delegates the responsibility directly to the EPA.

The lead agency notifies FEMA of the need to provide temporary relocation assistance. An interagency agreement (IAG) is signed by the lead agency and FEMA. In addition to EPA, the lead agency may be United States Coast Guard (USCG), Department of Defense (DOD), Department of Energy (DOE), Department of Interior (DOI), or other federal agencies. The IAG provides funds to FEMA to provide temporary relocation assistance, outlines the scope of work, and identifies eligible applicants for temporary relocation assistance.

One commenter requested that a definition of "occupancy" be included. The definition of an "occupant" is already addressed in the regulation. Therefore, further clarification is unnecessary.

Comments were received regarding how much FEMA will pay when the applicant elects to share accommodations with family and friends. Sharing of accommodations with family and friends is an appropriate method of assistance under transit accommodations. This type of assistance must be chosen by the applicant. FEMA has updated its Temporary Relocation Assistance Manual, which outlines the procedures for providing a subsistence payment to eligible applicants placed in transient accommodations. The subsistence payment provides funds for food and incidentals which are beyond or in addition to the living costs that the applicant would have incurred in their normal living arrangement. When FEMA administers the program, the payment will be based on FEMA Manual 6200.1, Travel Regulations.

A commenter asked if the moving of mobile homes to commercial parks and back to the original sites as part of a temporary relocation response action would be an eligible expense. The commenter felt that this could be accomplished at a lower cost than could other forms of temporary housing. However, moving mobile homes in a temporary relocation cannot be addressed as general policy for several reasons: (1) The appropriate agency would have to determine if the mobile home was contaminated; (2) while some states classify mobile homes as real property, others classify mobile homes as personal property (and moving real property in a temporary relocation is not an eligible category of assistance); and (3) additional mobile home sites may not be available nearby, and the construction of new sites would be very costly and unnecessary for a temporary relocation project. For these reasons, the mobile home issue will continue to be evaluated on a case-by-case basis. However, under certain circumstances such costs might be eligible.

A commenter asked for a definition of "basic minimum costs" for utilities and whether these include gas or electricity in the winter to keep plumbing from freezing. "Basic minimum costs" is not an accepted phrase in the temporary relocation assistance program. In temporary relocation, FEMA refers to "essential utilities." "Essential utilities" are defined as gas, electricity, oil, water, sewer, and telephone. Costs for "essential utilities" at the primary residence, during the period of temporary relocation, may be authorized since these costs are in addition to the cost for utilities at the temporary residence.

Costs for utilities at the temporary residence are the responsibility of the occupant. If cost effective, winterization costs may be paid as an alternative to, or in conjunction with, the utility subsidy. For example, at one relocation site, the plumbing was drained and winterized to prevent damage to plumbing fixtures. The degree of winterization is not defined, as it would vary with different sections of the country. When evaluating the different methods of winterization, cost effectiveness is an important consideration.

A commenter stated that the use of a home located in the floodplain is not an issue in temporary relocation. In the temporary relocation program, FEMA has exempted temporary relocation assistance from the requirements of Floodplain Management and Protection of Wetlands, 44 CFR Part 9. However, every effort shall be made to place families in existing resources within communities participating in the National Flood Insurance Program. Acquiring the appropriate flood insurance coverage is the responsibility of the homeowner.

The same commenter felt that site security is the responsibility of the EPA. The FEMA/EPA Memorandum of Understanding (MOU) is currently being revised and will state that site security is the EPA's responsibility.

Two sections have been added to this final rule. Section 220.5, Site Specific Plan, requires the FEMA Regional Office to submit a relocation plan as outlined under State Administration of Temporary Relocation Assistance, § 220.18. The second addition, Cost Sharing, § 220.17, identifies the need for State cost sharing during a remedial action and references 44 CFR Part 222, "Cost Share Eligibility Criteria for Permanent and Temporary Relocation."

The general intent of FEMA's Superfund temporary relocation assistance program is to provide temporary relocation assistance to individuals who have been identified by the EPA as living in a hazardous substance affected area, and who should be temporarily relocated to protect their health and safety during EPA's cleanup operations. Assistance covers reasonable living expenses which are additional to expenses incurred prior to displacement. The method of taking applications may vary among relocation sites. Potential relocatees generally will be personally notified by the administering entity. However, in larger operations, availability of assistance may be announced through the media.

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this final rule under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501, *et seq.* and has assigned OMB control numbers 3067–0156, 3067–0168 and 3067–0184.

Environmental considerations

Based on an environmental assessment, FEMA has determined that there will be no significant impact on the environment caused by implementation of this regulation. An Environmental Impact Statement will not be prepared.

Regulatory Flexibility Act

The Agency has determined that this rule is not a major rule under Executive

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Order 12291, and I certify that the rule will not have a significant impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act. Hence, no regulatory impact analyses have been prepared.

Federalism Assessment

I certify that this proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment pursuant to Executive Order 12612.

List of Subjects in 44 CFR Part 220

Relocation assistance, Grants administration, Hazardous substances, Superfund.

Accordingly, Subchapter D of Chapter I of Title 44, Code of Federal Regulations is amended by adding a new Part 220, as follows:

PART 220—TEMPORARY RELOCATION ASSISTANCE

Sec.
220.1 Purpose.
220.2 Definitions.
220.3 Program intent.
220.4 Duplication of Benefits.
220.5 Site Specific Plan.
220.6 Applications.
220.7 Eligibility Criteria.
220.8 Eligible categories of assistance.
220.9 Ineligible categories.
220.10 Site security.
220.11 Fair market rent guidelines.
220.12 Transfer of occupants.
220.13 Personal property acquisition.
220.14 Floodplain management guidelines.
220.15 Effective date of assistance.
220.16 Termination of assistance.
220.17 Cost sharing.
220.18 State administration of temporary relocation assistance.
220.19 Reports.

Authority: 42 U.S.C. 9601 *et seq.*; E.O. 12580, 3 CFR Part 1987, Comp., p. 193.

§ 220.1 Purpose.

This regulation prescribes the policies to be followed by the Federal Emergency Management Agency (FEMA) or any State or local government when implementing Temporary Relocation Assistance under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), *as amended*, 42 U.S.C. 9601, *et seq.*, also known as Superfund.

§ 220.2 Definitions.

"Cost Share" means the portion of the allowable project cost which is not derived from Federal assistance.

"Evacuation" means the emergency relocation of threatened individuals from an area. This activity is normally carried out by the State as part of its public health and safety responsibility.

"Fair market rent" means a reasonable amount to pay in the local area for the size and type of accommodations provided. (The formula is provided in § 220.11of this part.)

"Household" means the residents of the pre-incident residence who are offered Temporary Relocation Assistance. It includes any authorized additions during the temporary housing period, such as children, spouses, or part-time residents who were not present at the time of the announcement, but who are expected to return during the temporary housing period.

"Occupant" means an eligible applicant residing in temporary housing.

"Primary residence" means the dwelling where the applicant normally resides during the major portion of the calendar year, or a dwelling which is required because of proximity to employment.

"Transient accommodations" means hotels, motels or other similar accommodations which are utilized to assist eligible applicants who require temporary housing for only a short period of time, or who require such assistance pending provision of another temporary housing resource. Transient accommodations may be provided for up to 30 days unless this period is extended by the FEMA Regional Director or official designee.

§ 220.3 Program intent.

Temporary Relocation Assistance is provided to eligible individuals, identified by EPA, who are displaced from their primary residence in connection with a hazardous substance response action, to relocate for their own health and safety, and/or to allow the EPA, or its agents to conduct clean-up activities. It is not intended to totally compensate these individuals for all expenses and losses associated with contamination of the site on which they reside. Assistance covers reasonable living expenses that are additional to the living expenses which existed prior to the relocation. Applicants are eligible only for categories of assistance where additional expenses are actually incurred. Nine categories of eligible assistance, designed to pay costs directly related to the temporary relocation program include: (a) Temporary housing in locally available private rentals; (b) subsistence payments for individuals placed in transient accommodations; (c) furniture assistance when individuals are placed in unfurnished temporary housing, or when the furniture at the permanent residence is contaminated; (d) transportation of household goods to temporary and back to permanent residence; (e) utility subsidy covering the costs for primary residence; (f) utility connection costs at the temporary housing residence; (g) kennel costs; (h) personal property purchase or decontamination costs; and (i) other expenses directly related to the relocation. The establishment of these categories of assistance does not prohibit advance of funds or establishment of fixed funding rates for certain categories of assistance, when it is determined to be appropriate and cost-effective.

§ 220.4 Duplication of benefits.

FEMA has determined that Temporary Relocation Assistance shall not be provided to an applicant if such assistance or its equivalent is received from any other source. This also prohibits duplication of benefits by receipt of temporary relocation assistance, and permanent relocation under CERCLA, or any disaster assistance. If any State or local government or volunteer agency is providing assistance for the same purpose as temporary relocation assistance, temporary relocation assistance under CERCLA, *as amended*, shall not begin until such other assistance is terminated. In the instance of insured applicants, assistance shall not be provided if insurance proceeds are available, unless there is a delay by the insurer in determining whether the proceeds will be available; there is ample reason to believe that payment of the proceeds may be significantly delayed; such proceeds have been exhausted; or, the proceeds are insufficient to provide the full cost of relocation benefits. Prior to provision of assistance, the insured applicant shall agree to repay FEMA from insurance proceeds he/she receives for additional living expenses, an amount equivalent to the assistance provided, or that portion of insurance proceeds, whichever is less.

§ 220.5 Site specific plan.

Each FEMA regional office must prepare a site specific Temporary Relocation Plan to be approved by the Regional Director or his or her official designee. The approved plan shall be submitted to the Assistant Associate Director, Disaster Assistance Programs (DAP), for review within seven days of signing an IAG with EPA. The Assistant Associate Director, DAP, or official designee, assumes Regional Director responsibilities when Headquarters is implementing temporary relocation. The requirements of the plan are outlined in § 220.18.

§ 220.6 Applications.

Applications for Superfund Temporary Relocation Assistance under CERCLA, as amended, shall be accepted throughout the relocation period identified by EPA. Members of each household shall be included on a single application. Household members shall be provided a safe, sanitary and secure residence.

(Approved by the Office of Management and Budget under OMB Control Number 3067-0168)

§ 220.7 Eligibility criteria.

Temporary Relocation Assistance may be made available to those individuals displaced from this primary residence as a result of a determination by EPA that relocation is necessary. Temporary Relocation Assistance for a particular site shall be available only in the area identified by EPA through property addressed, site map or names of families.

§ 220.8 Eligible categories of assistance.

The following categories of assistance may be provided, based on individual needs:

(a) *Temporary housing.* This may include locally availble private rentals (houses and apartments), including hotels/motels (transient or other accommodations). Sharing of accommodations with family and friends is an allowable form of assistance only when an eligible applicant elects it as his/her form of assistance. FEMA will pay fair market value for existing resources in accordance with the criteria in § 220.11 of this part. When authorized by the FEMA Regional Director, security deposits may be paid. Pet fees/deposits are authorized. All deposits must be recovered from the owner/agent or occupant, before or at the time that assistance is terminated. Cleaning fees and laundry fees at the temporary housing residence are the responsibility of the occupant(s).

(b) *Subsistence payment.* A daily allotment may be provided to cover additional costs such as food and laundry expenses, when individuals are placed in hotels/motels or other transient accommodations. Allotment shall be based on the Federal per diem rate, when FEMA administers the program.

(c) *Furniture assistance.* When it is impractical to move furniture to the temporary housing or when EPA has determined that furniture is contaminated, essential furniture may be provided to eligible occupants of unfurnished temporary housing. Furniture items are provided on a loan basis for the duration of the temporary relocation. Items provided shall be of average construction and quality. Luxury items shall not be provided. Furniture rental assistance may be handled by direct reimbursement, or advancement of funds. Receipts must be provided by the applicant. Items are to be provided in accordance with family size and needs, and include:

1 Sofa
1 Living room chair
1 Coffee table
2 End tables
2 Table lamps
1 Dining table
[1] Dining chairs
1 Range
1 Refrigerator
[1] Double bed (Mattress, box springs, frame)
[1] Single bed (Mattress, box springs, frame)
[1] Crib w/mattress
[1] Bunk bed set
1 Night table (per bedroom)
1 Table lamp (per bedroom)
[1] Chest of drawers
1 Television (Maximum 19")

[1] One per person.

(d) *Expenses for transportation of household goods.* This shall include the reasonable cost of moving to temporary housing and back to the primary residence or to another permanent residence. It shall also include one move to a permanent residence when the individuals displaced decide to forego a move to temporary housing and move to permanent housing instead.

(e) *Utility subsidy.* Costs for essential utilities at the primary residence, only during the period of temporary housing, may be authorized since these costs are additional to utility costs at the temporary housing resource, which are the responsibility of the occupant. Payment for essential utilities shall include gas, electricity, oil, water, sewer, and telephone. If cost effective, winterization costs may be paid as an alternative or in conjunction with the utility subsidy. this must be approved by the FEMA Regional Director or his/her representative. When permanent relocation is also authorized, utilities at the unoccupied primary residence should be disconnected, when practical, eliminating the need for utility subsidy.

(f) *Utility connection costs.* If the costs of connecting and/or disconnecting utilities cannot be waived by utility companies, the costs for connecting or disconnecting the essential utilities at the temporary housing residence shall be paid. Also, if cost effective when compared to utilities subsidy, reconnection costs shall be paid at the primary residence.

(g) *Kennel costs.* When necessary, payment of actual reasonable kennel and pasturing costs shall be authorized.

(h) *Personal property.* Contaminated personal property shall be decontaminated or acquired by FEMA or its agent when EPA specifically determines the need for decontamination or acquisition as part of temporary relocation. Only reasonable actual expenditures shall be paid for decontamination of property, excluding applicant labor.

(i) *Other expenses directly related to relocation.* When appropriate, the Regional Director may recommend that such other expenses directly related to the temporary relocation become eligible. This request must be approved by the Assistant Associate Director, Disaster Assistance Programs.

§ 220.9 Ineligible categories.

The following items shall *not* be eligible for payment under Temporary Relocation Assistance:

(a) Rental payments or mortgage payments for homes owned by the eligible applicant;

(b) Business losses. This does not prohibit use of a temporary housing residence for a home business. However, additional costs necessitated by the operation of a home business are not authorized;

(c) Personal transportation costs;

(d) Insurance premiums for the temporary housing unit and the primary residence; and

(e) Cleaning fees and laundry fees at the temporary relocation residence.

§ 220.10 Site security.

The EPA is responsible for site security.

§ 220.11 Fair market rent guidelines.

At each site, fair market rent guidelines for each size residence shall be established by averaging the cost of available residences per bedroom size for each locality where temporary housing will be provided. Where privately owned mobile homes are to be used, a separate guideline shall also be developed. Guidelines for hotel, motel and other short-term resources shall be developed only when there is a substantial variance in price among the available supply. The purpose of these fair market rent guidelines is to prevent development of an inflated rental market resulting from the incident and to insure cost-effectiveness. These guidelines reflect the desired maximum payment. Use of resources more costly

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Those occupants will be notified by telephone or personal conversation as to the exact date of termination of assistance. If occupying FEMA-leased housing, occupants shall be required to leave within 24 hours from the time of the conversation regarding termination.

(2) *Filing of appeal.* If the occupant desires to dispute the termination of temporary housing assistance, upon receipt of the written notice specified in paragraph (b)(1) of this section, he/she shall present the appeal in writing to the appropriate FEMA office in person or by mail within 5 business days. The appeal must be signed by the occupant and state the reasons why the assistance or occupancy should not be terminated. If a hearing is desired, the appeal should so state.

(3) *Response to appeal.* If a hearing pursuant to paragraph (b)(2) of this section has not been requested, the occupant will be deemed to have waived the right to a hearing. Under such circumstances, the appropriate FEMA official shall deliver or mail a written response to the occupant within 5 business days after the receipt of the appeal.

(4) *Request for a hearing.* If the occupant requests a hearing pursuant to paragraph (b)(2) of this section, FEMA shall schedule a hearing date within 10 days from the receipt of the appeal, at a time and place reasonably convenient to the occupant, who shall be notified promptly thereof in writing. The notice of hearing shall specify the procedure governing the hearing.

(5) *Hearing*— (i) *Hearing officer.* The hearing shall be conducted by a Hearing Officer who shall be designated by the FEMA Regional Director, and who shall not have been involved with the decision to terminate the occupant's temporary housing assistance, nor be a subordinate of any individual who was so involved.

(ii) *Due process.* The occupant shall be afforded a fair hearing and provided the basic safeguards of due process, including cross-examination of the responsible official(s), access to the documents on which FEMA is relying, the right to counsel at his/her expense, the right to present evidence, and the right to a written decision.

(iii) *Failure to appear.* If an occupant fails to appear at a hearing, the Hearing Officer may make a determination that the occupant has waived his/her right to a hearing, or may, for good cause shown, postpone the hearing for no more than 5 business days.

(iv) *Proof.* At the hearing, the occupant must first attempt to establish that continued assistance is appropriate; thereafter, FEMA must sustain the burden of proof in justifying that the termination is appropriate. The occupant shall have the right to present evidence and arguments in support of his/her complaint, to disprove evidence relied on by FEMA, and to confront in a reasonable manner and cross-examine all witnesses on whose testimony or information FEMA relies. The hearing shall be conducted by the Hearing Officer and any evidence pertinent to the facts and issues raised may be received without regard to its admissibility under rules of evidence employed in formal judicial proceedings.

(6) *Decision.* The decision of the Hearing Officer shall be based solely upon applicable Federal and State law, and FEMA regulations and requirements promulgated thereunder. The Hearing Officer shall prepare a written decision setting forth a statement of findings and conclusions together with the reasons therefore, concerning all material issues raised by the complainant within five business days after the hearing. The decision of the Hearing Officer shall be binding on FEMA which shall take all actions necessary to carry out the decision or refrain from any actions prohibited by the decision, unless the FEMA Regional Director determines and notifies the complainant in writing within 30 days, or such additional time as FEMA may for good cause allow, that the decision of the Hearing Officer is not supportable.

(i) If the determination is to evict, the decision shall include a notice to the occupant that he/she must vacate the premises within three days of receipt of the written notice or on the termination, as required in paragraph (b) of this section, whichever is later. If the occupant does not quit the premises, appropriate action shall be taken and, if suit is brought, the occupant may be required to pay court costs and attorney fees.

(ii) If the determination is to terminate financial assistance, such assistance shall be terminated in accordance with the original notice given pursuant to paragraph (b)(1) of this section. If the occupant is required to give a specific number of days notice to the landlord which exceeds the number of days in the termination notice, the Regional Director, may approve the payment of rent for this period of time if requested by the occupant.

§ 220.17 Cost sharing.

State cost sharing, during a temporary relocation, will be required when the temporary relocation is determined to be a remedial action. The cost sharing policies are outlined in the Superfund Cost Share Eligibility Criteria for Permanent and Temporary Relocation. 44 CFR Part 222.

§ 220.18 State administration of temporary relocation assistance.

When administering this program, the State must comply with FEMA regulations and policies. The State shall maintain adequate documentation to enable analysis of the program in accordance with regulations, manuals, handbooks and guidance.

(a) *Site specific plan.* When it is agreed that a State will adminster all or part of temporary relocation activity, the State must submit a site-specific Temporary Relocation Assistance Plan for approval by the Regional Director or official designee within seven days of the signing of the FEMA/State Cooperative Agreement. This plan shall include the items listed below, as appropriate:

(1) Budget and estimated outlay schedule, and allocation advice;

(2) Time frames within which tasks will be completed;

(3) Assignment of relocation responsibilities to State and/or local officials or agencies;

(4) Method for notifying affected residents and taking applications;

(5) Method for developing fair market rent guidelines;

(6) Requirement for transient accommodations;

(7) Amount of food subsidy and the method for development of same;

(8) Policy for paying utility subsidy and/or connection costs;

(9) Method for providing site security;

(10) Method for payment for acquisition of contaminated personal property, when required by FEMA;

(11) Termination procedures;

(12) Contracting procedures;

(13) Quality control procedures;

(14) Documentation and control system provisions; and

(15) Arrangements for program review.

(Approved by the Office of Management and Budget under OMB Control Number 3067–0156)

(b) *Authorized costs.* All expenditures associated with administering the relocation activity are authorized if in compliance with this part, applicable FEMA/State Cooperative Agreements, OMB Circular A–87 Revised, Costs Principles for State and Local Governments (46 FR 9548), OMB Circular A–102 Revised and FEMA regulations on Uniform Administrative Requirements for Grants and Cooperative Agreements (44 CFR Part 13), and other FEMA regulations, as applicable.

than the guidelines may be authorized by the FEMA Regional Director or official designee for full payment only when other existing resources are not available. When less than 10 families are being relocated, fair market rent guidelines may be established by a less time-consuming means, e.g., using an estimate provided by real estate agencies or conducting a sampling instead of a comprehensive survey.

§ 220.12 Transfer of occupants.

(a) *Transfers requested by occupants.* Occupants who request to transfer from one temporary housing unit to another, solely for their own convenience or for reasons necessitated through their fault, shall be responsible for all expenses associated with the move, including any increase in temporary housing rent.

(b) *Transfers for other reasons.* If FEMA initiates a transfer or if a transfer is necessitated for reasons which are not the fault of an occupant, all essential costs of the move shall be paid by FEMA. Such transfers shall be conducted in a manner that will cause minimum inconvenience to the occupants.

§ 220.13 Personal property acquisition.

Personal property identified by EPA as contaminated and unable to undergo a successful process of decontamination will be purchased. Such purchase will be contingent upon authorization in the site-specific interagency agreement. Possession or ownership of the acquired personal property shall pass directly to EPA from the seller. The acquisition of personal property shall be conducted along the following lines:

(a) An inventory of eligible personal property shall be prepared to include the manufacturer's name, model number and other information which might assist in establishing the quality and value of the property to be acquired.

(b) Payment shall be made for replacement value of similar items. With regard to valuable antiques, owners shall be paid whatever benefits they would have received if this loss had been exclusively covered by their homeowners insurance policy. If they do not have homeowners insurance for personal property, owners shall be paid the cost of replacement with an item of similar quality with the same functional use.

(c) An appraisal shall be required in all instances.

(d) Based on the appraisal, FEMA shall present the initial offer to acquire to the temporary relocation applicant. The offer to acquire shall be in writing and will include a list of items to be purchased. The total value of the listed items will be presented in the offer.

(e) A written sales contract shall specify what is being purchased and the terms and conditions of the sale, as well as the responsibilities of the seller.

(f) When negotiations fail, after a reasonable effort by both parties, an individual who disputes the amount of the offer to acquire shall have the right to submit a written appeal to the Regional Director. The Regional Director shall make a final decision concerning the offer to acquire within 10 business days from receipt of the written appeal. The decision of the Regional Director is final.

(g) FEMA may not move an applicant's contaminated furniture to the temporary relocation residence.

(h) FEMA shall not be responsible for management and/or disposition of the acquired property.

§ 220.14 Floodplain management guidelines.

FEMA has determined that placement of families in existing resources under Temporary Relocation Assistance is exempt from the floodplain management requirements of Part 9 in 44 CFR 9.5(c)(14), Floodplain Management and Protection of Wetlands. However, efforts shall be made to use existing resources outside of the floodplain when possible and families shall be notified in writing when they are referred by FEMA to existing resources which are in the floodplain. Referrals shall not be made to existing resources in the floodplain within communities which are not participating in the National Flood Insurance Program.

§ 220.15 Effective date of assistance.

The effective date of assistance is the date the applicant obtains his/her own authorized accommodations or the date FEMA provides other relocation assistance. Temporary Relocation Assistance may be provided as of the date identified by EPA in the FEMA/EPA Interagency Agreement.

§ 220.16 Termination of assistance.

Termination of temporary housing may be initiated with a 30-day written notice, after which the occupant shall be liable for such additional charges as are deemed appropriate by the Regional Director including, but not limited to, the fair market rental for the temporary housing residence. Termination may be in the form of eviction from temporary housing (if FEMA leased the housing) or termination of financial assistance (if cash payment is made to the occupant).

(a) *Grounds for termination.* Temporary housing (including transient accommodations) may be terminated for reasons, including, but not limited to, the following:

(1) A determination has been made by EPA that the residence from which the occupant was displaced is now available for occupancy.

(2) FEMA has determined that the temporary housing occupant has failed to comply with the terms of the lease or reimbursement agreement.

(3) An offer for permanent acquisition of the housing from which the individual has been displaced has been made (and the time period for temporary housing allocated by FEMA's permanent relocation plan for the specific location involved has passed). This includes an offer of relocation assistance, if appropriate.

(4) The temporary housing occupant has failed to take due care of the temporary dwelling.

(5) FEMA has determined that temporary housing was obtained through misrepresentation or fraud.

(6) The temporary housing occupant has failed to pay utilities or other charges, responsibility for which has been assigned by the lease or reimbursement agreement.

(7) FEMA has determined that the temporary housing occupant has permanently relocated to a new location.

(b) *Termination procedures.* These procedures shall be utilized in all instances, except when a State is administering the Temporary Relocation Assistance Program. States shall be subject to their own procedures provided they afford the occupant(s) due process safeguards described in paragraph (b)(5)(iv) of this section.

(1) *Notification of occupants.* Written notice shall be given by FEMA (or the entity designated to administer the program) to the occupant(s) at least 30 days prior to the proposed termination of assistance. This notice shall specify: The reasons for termination of assistance/occupancy; the date of termination, which shall not be less than 30 days after receipt of the notice; the administrative procedure available to the occupant(s) if he/she wishes to dispute the action; and the occupant's liability after the termination date for additional charges.

Exception: Where the temporary housing occupants have been informed in writing, prior to receiving assistance from FEMA that the duration of the temporary housing assistance will be 30 days or less, there is no requirement for a written notice. The notice of the limited duration of such assistance or occupancy will also serve as notice of termination of the assistance for occupancy.

BEST COPY AVAILABLE

(c) *Federal monitoring and oversight.* The Regional Director shall monitor State-administered activities since he/she remains responsible for the delivery of Temporary Relocation Assistance. In addition, policy guidance and interpretations to meet specific needs of an incident shall be provided through the oversight function. As determined necessary by FEMA, monitoring and oversight functions shall include on-site program reviews.

(d) *Technical assistance.* The Regional Director shall provide technical assistance as necessary to support State-administered operations through training, policies and regulations and through the use of personnel for technical assistance to the State or local staff.

(e) *Audits.* The State shall conduct a program review of each operation. All site-specific activities are subject to Federal audit.

§ 220.19 Reports.

The Associate Director for State and Local Programs and Support and the Regional Director may require from field operations such reports, plans and evaluations as they deem necessary to carry out their responsibilities under these regulations.

Date: January 11, 1989.

Grant C. Peterson,

Associate Director, State and Local Programs and Support.

[FR Doc. 89-1197 Filed 1-19-89; 8:45 am]

BILLING CODE 6718-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 6

[CGD 88-070]

Editorial Changes Reflecting Recent Coast Guard Reorganization; Correction

AGENCY: Coast Guard, DOT.

ACTION: Final rule; correction.

SUMMARY: The Coast Guard is correcting an error to an amendatory instruction which appears in rule document 88-070 (FR Doc. 88-20180) published on Wednesday, September 7, 1988 at 53 FR 34532.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Don M. Wrye, Office of Chief Counsel, (202) 267-1534.

In rule document 88-070 beginning on page 34532 in the issue of Wednesday, September 7, 1988, make the following correction:

PART 6—[AMENDED]

1. Amendatory instruction 11 of rule document 88-070, (FR Doc. 88-20180), on page 34533 of the issue dated Wednesday, September 7, 1988, is revised to read as follows:

11. In the heading and in paragraphs (a), (b), and (d) of § 6.08, the words "Sea Transportation Service" are removed, and the words "Sealift Command" are added in their place.

Dated: January 13, 1989.

Joseph E. Vorbach,

Rear Admiral, U.S. Coast Guard.

[FR Doc. 89-1411 Filed 1-19-89; 8:45 am]

BILLING CODE 4910-14-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 0

Editorial Amendment of List of Office of Management and Budget Approved Information Collection Requirements

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action amends the Commission's list of Office of Management and Budget approved information collection requirements contained in the Commission's Rules.

This action is necessary to comply with the Paperwork Reduction Act, which requires that agencies display a current control number assigned by the Director of the Office of Management and Budget for each agency information collection requirement.

This action will provide the public with a current list of information collection requirements in the Commission's Rules which have OMB approval.

EFFECTIVE DATE: January 23, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Jerry Cowden, Office of Managing Director, (202) 632-7513.

SUPPLEMENTARY INFORMATION:

Order

Adopted: January 4, 1989.
Released: January 17, 1989.

1. Section 3507(f) of the Paperwork Reduction Act of 1980, as amended, 44 U.S.C. 3507(f), requires agencies to display a current control number assigned by the Director of the Office of Management and Budget ("OMB") for each agency information collection requirement.

2. Section 0.408 of the Commission's Rules displays the OMB control numbers assigned to the Commission's information collection requirements. OMB control numbers assigned to Commission forms are not listed in this section since those numbers appear on the forms.

3. This Order amends § 0.408 to remove listings of information collections which the Commission has eliminated or to add listings of new information collections which OMB has approved.

4. Authority for this action is contained in section 4(i) of the Communications Act of 1934 (47 U.S.C. 154(i)), as amended, and § 0.231(d) of the Commission's Rules. Since this amendment is editorial in nature, the public notice, procedure, and effective date provisions of 5 U.S.C. 553 do not apply.

5. Accordingly, IT IS ORDERED, THAT § 0.408 of the rules is AMENDED in accordance with the attached appendix, effective on the date of publication in the **Federal Register**.

6. Persons having questions on this matter should contact Jerry Cowden at (202) 632-7513.

Federal Communications Commission.

Edward J. Minkel,

Managing Director.

Appendix

Part 0 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 0—COMMISSION ORGANIZATION

1. The authority citation for Part 0 continues to read:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted.

§ 0.408 [Amended]

2. In 47 CFR 0.408, paragraph (b) is amended by removing footnote 2 and the following rule sections and their corresponding OMB control numbers:

Rule section No.	*OMB control No.*
87.35(e)	3060-0197
87.95	3060-0198
87.127	3060-0201
87.153	3060-0202
90.356	3060-0237
90.362	3060-0238
94.27(b)	3060-0312

3. In 47 CFR 0.408, paragraph (b) is amended by adding the following rule sections and their corresponding OMB control numbers:

Rule section No.	*OMB control No.*
1.729-1.734	3060-0411
76.33	3060-0418
76.94	3060-0419
76.155	3060-0419
76.157	3060-0419
76.159	3060-0419
80.227	3060-0099
87.31	3060-0197
87.37	3060-0202
87.103	3060-0192
94.27(a)(6)	3060-0312

[FR Doc. 89-1368 Filed 1-19-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-410; RM 5428, 5469, 5686, 5792]

Radio Broadcasting Services; Columbia, Eldon, Centralia, Mountain Grove and Cabool, MO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 224C2 for Channel 224A at Eldon, Missouri and modifies the license of Station KLDN (FM) to specify operation on the higher class co-channel, as requested by Southwest Communications Inc. The community could be provided with its first wide coverage area FM service. The station's current transmitter site meets the Commission's minimum separation requirements, at coordinates 38-20-27 and 92-35-33. In order to facilitate the change Channel 251A was substituted for Channel 292A at Cabool, Missouri, and the license of Station KVVC (FM) was modified to specify operation on the new channel. KVVC's current transmitter site meets the Commission's minimum distance separation requirements, at coordinates 37-07-58 and 92-08-04. Channel 293A was also substituted for Channel 224A at Mountain Grove, Missouri, and the license of Station KRFI was modified to specify operation on the new channel. KRFI's current transmitter site meets the Commission's minimum distance separation requirements, at coordinates 37-08-07 and 92-14-59. With this action, this proceeding is terminated.

EFFECTIVE DATE: February 27, 1989.

FOR FURTHER INFORMATION CONTACT: Arthur Scrutchins, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88-410, adopted November 30, 1988, and released January 12, 1989.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154,303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended, under Missouri, by removing Channel 224A and adding Channel 224C2 at Eldon; removing Channel 292A and adding Channel 251A at Cabool; removing Channels 224A and adding 293A at Mountain Grove.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-1369 Filed 1-19-89; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 675

Foreign Fishing, Groundfish for the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of catch monitoring.

SUMMARY: NOAA announces that it will closely monitor incidental catches of Tanner crab (*Chionoecetes bairdi*), red king crab (*Paralithodes camtschatica*), and Pacific halibut (*Hippoglossus stenolepis*) (prohibited species) in fisheries for groundfish in the Bering Sea and Aleutian Islands (BSAI) area. Incidental catch of prohibited species must be minimized and must be returned immediately to the sea with a minimum of injury, unless retention is authorized by other applicable law. Further control on incidental catch of prohibited species in the BSAI area is anticipated for the 1989 fishing year through subsequent regulatory action which may include closed areas and prohibited species catch (PSC) limits. If such regulatory action occurs, any area closure or other constraint imposed on groundfish fisheries due to attainment of a PSC limit or portion thereof may be based on the accounting of prohibited species catch from the beginning of the 1989 fishing year.

This notice informs participants in the BSAI area groundfish fisheries that bycatch control regulations that are anticipated to be effective later in 1989 will be implemented by taking into account bycatches of the identified crab and halibut species since the beginning of 1989. The intended effect of this notice is to encourage groundfish fishermen to avoid, to the maximum extent possible, bycatches of prohibited species (the identified species of crabs and halibut in particular).

FOR FURTHER INFORMATION CONTACT: Jay J.C. Ginter (Fishery Management Biologist, NMFS), 907-586-7229.

SUPPLEMENTARY INFORMATION:

List of Subjects

50 CFR Part 611

Fisheries, Foreign relations, Reporting and recordkeeping requirements.

50 CFR Part 675

Fisheries, Reporting and recordkeeping requirements.

Dated: January 13, 1989.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89-1422 Filed 1-19-89; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 54, No. 13
Monday, January 23, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 401

[Amendment No. 42; Doc. No. 5753S]

General Crop Insurance Regulations; Corn Endorsement

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the General Crop Insurance Regulations (7 CFR Part 401), effective for the 1990 and succeeding crop years, by revising and reissuing § 401.111, Corn Endorsement. The intended effect of this rule is to: (1) Provided that, if the silage option is in effect, insurance ends September 30 even if the crop is "put to another use" and harvested later; (2) require written notice from the insured before consent is given to put the crop to another use; and (3) clarify the unit of measure (bushels or tons) which is to be used under bushel guarantee or tonnage guarantee for loss adjustment purpose.

DATE: Written comments, data, and opinions on this proposed rule must be submitted not later than February 22, 1989, to be sure of consideration.

ADDRESS: Written comments on this proposed rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is April 1, 1992.

John Marshall, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons and will not have a significant impact on a substantial number of small entities.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

In revising and reissuing the Corn Endorsement, FCIC proposes to make changes in the provisions for insuring corn as follows:

1. Section 4—Provides that if the silage option is in effect, insurance ends September 30 even if the crop is "put to another use" and harvested later.

2. Section 6—Require written notice from the insured before we will give consent to put the crop to another use.

3. Section 7—Language is clarified as to which unit of measure (bushels or tons) will be used in various situations and the use of a conversion factor.

FCIC is soliciting public comment on this proposed rule for 30 days following publication in the **Federal Register**. Written comments received pursuant to this proposed rule will be available for public inspection and copying in the Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250, during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 401

Crop insurance, Corn endorsement.

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation proposes to amend the General Crop Insurance Regulations (7 CFR Part 401), to be effective for the 1990 and succeeding crop years, as follows:

PART 401—[AMENDED]

1. The authority citation for 7 CFR Part 401 continues to read as follows:

Authority: 7 U.S.C. 1506, 1516.

2. 7 CFR Part 401 is amended to revise § 401.111, Corn Endorsement, effective for the 1990 and Succeeding Crop Years, to read as follows:

§ 401.111 Corn Endorsement.

The provisions of the Corn Crop Insurance Endorsement for the 1990 and subsequent crop years are as follows:

Federal Crop Insurance Corporation

Corn Endorsement

1. Insured Corn

a. (The crop insured will be field corn ("corn") planted for harvest as grain (or silage if a corn silage option is obtained).

b. In addition to the crop not insurable under section 2 of the general crop insurance policy, we do not insure any corn:

(1) on which the corn was destroyed or put to another use for the purpose of conforming with any other program administered by the United States Department of Agriculture; or

(2) unless the acreage is planted in rows far enough apart to permit mechanical cultivation.

c. If the actuarial table for the county provides only a grain guarantee, the corn silage option is not available.

d. If the actuarial table for the county provides for both a grain and silage guarantee, all corn acreage will be insured under the provisions of this endorsement, unless you complete the corn silage option, which provides that all corn acreage will be insured under the provisions of the corn silage option.

e. If the actuarial table for the county provides a "silage only guarantee," coverage is only available with the completion of the silage option.

f. A late planting agreement will be available for corn.

2. Causes of Loss

The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

a. Adverse weather conditions;
b. Fire;
c. Insects;
d. Plant disease;
e. Wildlife;
f. Earthquake;
g. Volcanic eruption; or
h. If applicable, failure of the irrigation water supply due to an unavoidable cause occurring after the beginning of planting;

unless those causes are excepted, excluded, or limited by the actuarial table or section 9 of the general crop insurance policy.

3. Annual Premium

a. The annual premium amount is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share at the time of planting.

b. If you are eligible for a premium reduction in excess of 5 percent based on your insurance experience through the 1983 crop year under the terms of the experience table contained in the corn policy for the 1984 crop year, you will continue to receive the benefit of the reduction subject to the following conditions:

(1) No premium reduction will be retained after the 1990 crop year;

(2) The premium reduction will not increase because of favorable experience;

(3) The premium reduction will decrease because of unfavorable experience in accordance with the terms of the policy in effect for the 1985 crop year;

4. Insurance Period

The calendar date for the end of the insurance period is the date immediately following planting as follows:

The calendar date for the end of the insurance period is the date immediately following planting as follows:

a. Val Verde, Edwards, Kerr, Kendall, Bexar, Wilson, Karnes, Goliad, Victoria, and Jackson Counties, Texas, and all Texas Counties lying south thereof—September 30;

b. Clark, Cowlitz, Grays Harbor, Island, Jefferson, King, Kitsap, Lewis, Pierce, Skagit, Snohomish, Thurston, Wahkiakum, and Whatcom counties, Washington—October 31;

c. All other counties where our acturial table shows:

(1) Only a silage guarantee; or

(2) Both a grain and a silage guarantee on any acreage if:

(i) The silage option is in effect or

(ii) The corn is harvested for silage—September 30;

d. All other counties and states—December 10.

5. Unit Division

Corn acreage that would otherwise be one unit, as defined in section 17 of the general crop insurance policy, may be divided into more than one unit if you agree to pay an additional premium if required by the actuarial table and if for each proposed unit you maintain written verifiable records of planted acreage and harvested production for at least the previous crop year. Production reports by unit based on those records should be filed as early as possible but must be filed no later than the date required by subsection 4.d. of the general crop insurance policy and either;

a. Acreage planted to the insured corn crop is located in separate, legally identifiable sections (except in Florida) or, in the absence of section descriptions (and in Florida) the land is identified by separate ASCS Farm Serial Numbers, provided:

(1) The boundaries of the section or ASCS Farm Serial Number are clearly identified, and the insured acreage can be easily determined; and

(2) The corn is planted in such a manner that the planting pattern does not continue into an adjacent section or ASCS Farm Serial Number; or

b. Acreage planted to the insured corn is located in a single section or ASCS Farm Serial Number and consists of acreage on which both irrigated and nonirrigated practices are carried out, provided:

(1) Corn planted on the irrigated acreage does not continue into nonirrigated acreage inb the same rows or planting pattern (Nonirrigated corners of a center pivot irrigation system planted to insured corn are part of the irrigated unit without regard to planting pattern. The production from the total unit, both irrigated and nonirrigated, is combined to determine your yield unit for the purpose of determining the guarantee for the unit.); and

(2) Planting, fertilizing, and harvesting are carried out in accordance with recognized good irrigated and nonirrigated farming practices for the area.

If you have a loss on any unit, production records for all harvested units must be provided. Production that is commingled between optional units will cause those units to be combined.

6. Notice of Damage or Loss

a. For purposes of section 8 of the general crop insurance policy the representative sample of the unharvested crop must be at least 10 feet wide and the entire length of the field.

b. In addition to the notices required by section 8.a. of the General policy, you must give us written notice if:

(1) You want our consent to harvest corn reported as grain for silage or;

(2) You want our consent to harvest corn reported as silage for grain. If timely notice is not given so we can appraise such corn and it is harvested in a manner not shown on the acreage report, it will be considered to have been destroyed without consent.

7. Claim for Indemnity

a. An indemnity may be determined for each unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting therefore the total production to be counted.

(3) Multiplying this product by the applicable price election; and

(4) Multiplying this result by your share.

b. When the actuarial table provides a bushel guarantee only, all indemnity calculations will be in bushels.

c. When the actuarial table provides a bushel and tonnage guarantee, all indemnity calculations will be in bushels. If you have an approved corn silage option, all indemnity calculations will be in tons.

d. When the actuarial table provides a tonnage guarantee, and a corn silage option is in effect, all indemnity calculations will be on a tonnage basis.

e. The total production (bushels) to be counted for a unit will include:

(1) Production determination in bushels when the actuarial table provides a bushel guarantee only, or a bushel and tonnage guarantee (unless you have an approved Corn Silage Option) and may be adjusted for moisture or quality as follows:

(a) Mature grain which otherwise is not eligible for quality adjustment will be reduced .12 percent for each .1 percentage point of moisture in exces of 15.5 through 30.0 percent and .2 percent for each .1 percentage point of moisture from 30.1 through 40.0 percent; or

(b) Mature grain which, due to insurable causes, has moisture over 40 percent; test weight below 49 pounds per bushel; or kernel damage more than 10 percent as determined by a grain grader licensed by the Federal Grain Inspection Service or licensed under the United States Warehouse Act, will be adjusted by:

(i) Dividing the value per bushel of such corn by the price per bushel of U.S. No. 2 corn at 15.5% moisture; and

(ii) Multipying the result by the number of bushels of such corn.

The applicable price for No. 2 corn will be the local market price on the earlier of the day the loss is adjusted or the day such corn was sold.

(2) All appraised production which will include:

(a) Unharvested production on harvested acreage and potential production lost due to uninsured causes and failure to follow recognized good corn farming practices;

(b) Not less than the guarantee for any acreage which is abandoned or put to another use without our prior written consent or damaged solely by an uninsured cause; and

(c) Appraised production on unharvested acreage; and

(d) Appraised production on insured acreage for which we have given written consent to be put to another use unless such acreage is:

(i) Not put to another use before harvest of corn becomes general in the county and reappraised by us;

(ii) Further damaged by an insured cause and reappraised by us; or

(iii) Harvested.

(3) Where a conversion factor is shown on the actuarial table, indemnity calculations for any acreage of corn reported as grain and harvested as silage will be converted to a bushel basis.

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e. A replanting payment is available under this endorsement if we determine it is practical to replant on a unit and our appraisal does not exceed 90 percent of the guarantee. The replanting payment will not exceed 8 bushels multiplied by the price election, multiplied by your share. When the crop is replanted by a broadcast method, the liability under this endorsement will be reduced by the amount of the replant payment.

8. Cancellation and Termination Dates

State and county	Cancellation and termination dates
Val Verde, Edwards, Kerr, Kendall, Bexar, Wilson, Karnes, Goliad, Victoria, and Jackson Counties, Texas, and all Texas counties lying south thereof.	February 15.
Alabama; Arizona; Arkansas; California; Florida; Georgia; Louisiana; Mississippi; Nevada; North Carolina; South Carolina; and El Paso, Hudspeth, Culberson, Reeves, Loving, Winkler, Ector, Upton, Reagan, Sterling, Coke, Tom Green, Concho, McCulloch, San Saba, Mills, Hamilton, Bosque, Johnson, Tarrant, Wise, Cooke Counties, Texas, and all Texas Counties lying south and east thereof to and including Terrell, Crockett, Sutton, Kimble, Gillespie, Blanco, Comal, Guadalupe, Gonzales, De Witt, Lavaca, Colorado, Wharton, and Matagorda Counties, Texas.	March 31.
All other Texas counties and other states.	April 15.

9. Contract Changes

Contract changes will be available at your service office by December 31 preceding the cancellation date for counties with an April 15 cancellation date and by November 30 preceding the cancellation date for all other counties.

10. Meaning of Terms

a. "Harvest" of corn on the unit means completion of combining and/or picking the corn for grain or the chopping of corn for silage purposes as applicable.

b. "Replanting" means performing the cultural practice necessary to replant insured acreage to corn.

c. "Silage" means corn harvested by severing the stalk from the land and chopping the stalk and the ear for the purpose of livestock feed.

d. "Section" is a unit of measure under the rectangular survey system describing a tract of land generally one mile square, usually containing approximately 640 acres.

Done in Washington, DC, on January 11, 1989.

David W. Gabriel,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 89-1318 Filed 1-19-89; 8:45 am]

BILLING CODE 3410-08-M

7 CFR Part 401

[Amdt. No. 16; Doc. No. 5955S]

General Crop Insurance Regulations; Cranberry Endorsement

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the General Crop Insurance Regulations (7 CFR Part 401), effective for the 1990 and succeeding crop years, by adding a new section, 7 CFR 401.127, the Cranberry Endorsement. The intended effect of this rule is to provide the provisions of crop insurance protection on cranberries in an endorsement to the general crop insurance policy.

Comment Date: Written comments, data, and opinions on this proposed rule should be received not later than March 24, 1989, to be sure of consideration.

ADDRESS: Written comments on this proposed rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is established as April 1, 1992.

John Marshall, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons and will not have a significant economic impact on a substantial number of small entities.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

FCIC proposes to add to the General Crop Insurance Regulations (7 CFR Part 401), a new section to be known as 7 CFR 401.127, the Cranberry Endorsement, effective for the 1990 and succeeding crop years, to provide the provisions for insuring cranberries.

FCIC is soliciting public comment on this proposed rule for 60 days following publication in the **Federal Register**. Written comment should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250.

All written comments received pursuant to this proposed rule will be available for public inspection and copying in the Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250, during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 401

Crop Insurance; Cranberry Endorsement.

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation proposes to amend the General Crop Insurance Regulations (7 CFR Part 401), effective for the 1990 and succeeding crop years, as follows:

1. The authority citation for 7 CFR Part 401 continues to read as follows:

Authority: 7 U.S.C. 1506, 1516.

2. 7 CFR Part 401 is amended to add a new section to be known as 7 CFR 401.127, Cranberry Endorsement, effective for the 1990 and Succeeding Crop Years, to read as follows:

§ 401.127 Cranberry Endorsement.

The provisions of the Cranberry Crop Insurance Endorsement for the 1990 and subsequent crop years are as follows:

Federal Crop Insurance Corporation
Cranberry Endorsement

1. *Insured Crop.*

a. The crop insured will be cranberries which are grown for processing or fresh market.

b. Except by written agreement between you and us or unless provided by the actuarial table, we do not insure any acreage:

(1) Unless at least four growing seasons have elapsed between the date the vines were set out and the date insurance attaches;

(2) With less than 90 percent of a stand of bearing vines based on the original planting pattern; or

(3) That is being renovated and not being used to produce a full crop for the current year.

2. *Causes of Loss.*

a. The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

(1) Adverse weather conditions;
(2) Fire;
(3) Wildlife;
(4) Earthquake;
(5) Volcanic eruption;
(6) Insects;
(7) Plant disease;
(8) If applicable, failure of the irrigation water supply due to an unavoidable cause occurring after insurance attaches; or
(9) Failure or breakdown of irrigation equipment or facilities due to direct damage to the irrigation equipment or facilities from an insurable cause of loss if the cranberry crop is damaged by freezing temperatures within 72 hours of such equipment or facilities failure and the equipment or facilities could not have been made operational or replaced within the above 72-hour time period;

unless those causes are excepted, excluded, or limited by the actuarial table or section 9 of the general crop insurance policy.

b. We do not insure against any loss caused by the failure or breakdown of irrigation equipment or facilities except as provided in section 2.1.(9) above.

3. *Annual Premium.*

The annual premium amount is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share on the date insurance attaches.

4. *Insurance Period.*

a. In lieu of section 7 of the general crop insurance policy, insurance attaches for each crop year on November 21, if an application has been accepted by that date, and ends at the earliest of:

(1) Total destruction of the cranberry crop;
(2) The date harvest would normally start on the unit on any acreage which will not be harvested;
(3) Harvest of the cranberry crop;
(4) Final adjustment of a loss; or
(5) November 20 of the crop year.

b. If you purchase any insurable acreage of cranberries on or before January 5 of any crop year, insurance will be considered to have attached to such acreage at the beginning of the insurance period provided we have inspected and accepted such acreage in writing. If you sell any acreage of cranberries on or before January 5 of any crop year, insurance will not be considered to have attached to such acreage for that crop year.

5. *Unit Division.*

Cranberry acreage that would otherwise be one unit, as defined in section 17 of the general crop insurance policy, may be divided into more than one unit if you agree to pay an additional premium if required by the actuarial table and if for each proposed unit:

a. You maintain written verifiable records of acreage and harvested production for at least the previous crop year and production reports based on those records are timely filed to obtain an insurance guarantee; and

b. The acreage planted to insured cranberries in the county is located on non-contiguous land.

If you have a loss on any unit, production records for all harvested units must be provided. Production that is commingled between optional units will cause those units to be combined.

6. *Notice of Damage or Loss.*

In addition to section 8 of the general crop insurance policy, in case of damage or probable loss:

a. You must give us written notice of the loss or probable loss including the dates of damage immediately, if probable loss is determined within 15 days prior to or during harvest.

b. If you are going to claim an indemnity on any unit, you must give us notice not later than 72 hours after the earliest of:

(1) Total destruction of the cranberries on the unit;
(2) Discontinuance of harvest of any acreage on the unit; or
(3) The date harvest would normally start in the area if any acreage on the unit is not to be harvested.

c. Unless notice has been given under section b. avove, and in addition to the other notices required by this section, if you are going to claim an indemnity on any unit, you must give us written notice not later than 10 days after the earlier of:

(1) Harvest of the unit; or
(2) November 20 of the crop year.

7. *Claim for Indemnity.*

a. In addition to section 9 of the general crop insurance policy, we will not pay any indemnity unless you authorize us, in writing, to examine and obtain any records pertaining to the production and marketing of the insured cranberries.

b. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the production guarantee;
(2) Subtracting from that result the total production of cranberries to be counted (see subsection 7.c.);
(3) Multiplying the remainder by the price election; and
(4) Multiplying this result by your share.

c. The total production (in barrels) to be counted for a unit will include all harvested and appraised production.

(1) Cranberry production which, due to insurable causes, is determined not to meet quality requirements of the receiving handler, would not meet those requirements if properly handled, and has a value of less than 75 percent of the market price for cranberries meeting the minimum requirements will be adjusted by:

(a) Dividing the value per barrel of such cranberrries by the market price per barrel for cranberries meeting the minimum requirements; and

(b) Multiplying the result by the number of barrels of such cranberries.

(2) Appraised production to be counted will include:

(a) Potential production lost due to uninsured causes and failure to follow recognized good cranberry farming practices;

(b) Not less than the guarantee for any acreage which is abandoned, damaged solely by an uninsured cause or destroyed by you without our consent; and

(c) Any unharvested production.

(3) Any appraisal we have made on insured acreage will be considered production to count unless such acreage is:

(a) Not harvested before the harvest of cranberries becomes general in the county and reappraised by us;

(b) Further damaged by an insured cause and reappraised by us; or

(c) Harvested.

(4) We may determine the amount of production of any unharvested cranberries on the basis of field appraisals conducted after the end of the insurance period.

8. *Cancellation and Termination Date.*

The cancellation and termination date is November 20.

9. *Contract Changes.*

All contract changes will be available at your service office by August 31 preceding the cancellation date.

10. *Meaning of Terms.*

a. *"Barrel"* means 100 pounds of cranberries.

b. *"Direct damage"* means actual physical damage to the equipment or facilities which is the direct result of an insurable cause of loss.

c. *"Harvest"* means picking of the cranberries from the vines for the purpose of removal from the land.

d. *"Irrigation equipment, facilities, and water supply"* means the supply of water and the mechanical and constructed equipment and facilities used to deliver the water to the cranberry crop so as to prevent damage due to drought or freeze.

e. *"Non-contiguous land"* means land which is not touching at any point. Land that is separated only by a public or private right-of-way will be considered contiguous.

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Done in Washington, DC, on January 11, 1989.

David W. Gabriel,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 89-1428 Filed 1-19-89; 8:45 am]

BILLING CODE 3410-08-M

7 CFR Part 401

[Amdt. 44; Docket No. 57606]

General Crop Insurance Regulations; Florida Citrus Endorsement

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the General Crop Insurance Regulations (7 CFR Part 401), effective for the 1990 and succeeding crop years, by adding a new section, 7 CFR 401.143, Florida Citrus Endorsement. The intended effect of this rule is to provide the regulations containing the provisions of crop insurance protection on Florida citrus as an endorsement to the general crop insurance policy.

DATES: Written comments, data, and opinions on this proposed rule must be submitted not later than February 22, 1989, to be sure of consideration.

ADDRESS: Written comments on this proposed rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC, 20250.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is established as April 1, 1993.

John Marshall, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) an annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons and will not have a significant economic impact on a substantial number of small entities.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

FCIC herewith proposes to add to the General Crop Insurance Regulations (7 CFR Part 401), a new section to be known as 7 CFR 401.143, the Florida Citrus Endorsement, effective for the 1990 and succeeding crop years, to provide the provisions for insuring citrus in Florida.

Upon publication of 7 CFR 401.143 as a final rule, the provisions for insuring citrus contained therein will supersede those provisions contained in 7 CFR Part 410, the Florida Citrus Crop Insurance Regulations, effective with the beginning of the 1990 crop year. The present policy contained in 7 CFR Part 410 will be terminated at the end of the 1989 crop year and later removed and reserved. FCIC will propose to amend the title of 7 CFR Part 410 by separate document so that the provisions therein are effective only through the 1989 crop year.

Minor editorial changes have been made to improve compatibility with the new general crop insurance policy. These changes do not affect meaning or intent of the provisions. In adding the new Florida Citrus Endorsement to 7 CFR Part 401, FCIC proposes to make changes in the provisions for insuring citrus as follows:

1. Section 2—Add language to specifically state that we do not insure against inability to market fruit as a direct result of quarantine, boycott, or refusal of any entity to accept production unless the fruit has actual physical damage due to an insured cause. This change is standard in most policies.

2. Section 3—Add language requiring an annual acreage report. Language previously included in the policy required only a periodic acreage report. The general crop insurance policy requires an annual acreage report. An annual report will insure more accurate reporting of year to year changes in acreage, unit structure, etc.

3. Section 5—The premium adjustment table is removed from the policy. Provisions are included to continue premium reduction for 5 years subject to the conditions outlined in this section.

4. Section 7—Unit division provisions are included in the endorsement with language indicating that an additional premium may be required for unit division by noncontiguous land.

5. Section 9—Modify language to count as 100% damaged any citrus that is on the ground due to freeze and not picked up and marketed. This change was made because in the case of severe freeze it is inequitable to count the fruit 90% damaged when 100% of the fruit is lost.

6. Section 12—Add a definition of "noncontiguous land."

FCIC is soliciting public comment on this proposed rule for 30 days following publication in the **Federal Register**. Written comments received pursuant to this proposed rule will be available for public inspection and copying in the Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC, 20250, during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 401

Crop insurance, Florida citrus.

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation proposes to amend the General Crop Insurance Regulations (7 CFR Part 401), proposed to be effective for the 1990 and succeeding crop years, as follows:

PART 401—[AMENDED]

1. The authority citation for 7 CFR Part 401 continues to read as follows:

Authority: 7 U.S.C. 1506, 1516.

2. 7 CFR Part 401 is amended to add a new section to be known as 7 CFR 401.143, Florida Citrus Endorsement, effective for the 1990 and Succeeding Crop Years, to read as follows:

§ 401.143 Florida Citrus Endorsement.

The provisions of the Florida Citrus Endorsement for the 1990 and subsequent crop years are as follows:

Federal Crop Insurance Corporation

Florida Citrus Endorsement

1. Insured Crop

a. The crop insured will be any of the following citrus types you elect:
Type I Early and mid-season oranges;
Type II Late oranges;
Type III Grapefruit for which freeze damage will be adjusted on a juice basis for white grapefruit and on a fresh-fruit basis for pink and red grapefruit;
Type IV Navel oranges, tangelos and tangerines;
Type V Murcott Honey Oranges (also known as Honey Tangerines) and Temple Oranges;
Type VI Lemons; or
Type VII Grapefruit for which freeze damage will be adjusted on a fresh basis for all grapefruit.

If you insure grapefruit, you must insure all of your grapefruit under a single type designation (type III or type VII). "Meyer Lemons" and oranges commonly known as "Sour Oranges" or "Clementines" will not be included in any of the insurable types of citrus.

b. In addition to the citrus not insurable in section 2 of the general crop insurance policy, we do not insure any citrus:

(1) which cannot be expected to mature each crop year within the normal maturity period for the type;

(2) produced by trees that have not reached the tenth growing season after being set out, unless otherwise provided in the actuarial table or we agree to insure such citrus in writing;

(3) of the Robinson tangerine variety, for any crop year in which you have elected to exclude such tangerine from insurance (you must elect this exclusion prior to April 30 preceding the crop year for which the exclusion is to become effective);

c. Upon our approval, you may elect to insure or exclude from insurance for any crop year any insurable acreage in any unit which has a potential of less than 100 boxes per acre. If you:

(1) Elect to insure such acreage, we will increase the potential to 100 boxes per acre when determining the amount of loss;

(2) Elect to exclude such acreage, we will disregard the acreage for all purposes related to this contract; or

(3) Do not elect to insure or exclude such acreage:

(a) We will disregard the acreage if the production is less then 100 boxes per acre; or

(b) If the production from such acreage is 100 or more boxes per acre, we will determine the percent of damage on all of the insurable acreage for the unit, but will not allow the percent of damage for the unit to be increased by including such acreage.

d. We may exclude from insurance or limit the amount of insurance on any acreage which was not insured the previous crop year.

2. Causes of Loss

a. The insurance provided is against unavoidable loss of production resulting from the following causes occurring the insurance period:

(1) Fire;
(2) Freeze;
(3) Hail;
(4) Hurricane; or
(5) Tornado;

Unless those causes are excepted, excluded, or limited by the actuarial table or section 9 of the general crop insurance policy.

b. In addition to the causes of loss not insured against in section 1 of the general crop insurance policy, we will not insure against any loss of production due to:

(1) Any damage to the blossoms or trees;

(2) Fire, if weeds and other forms of undergrowth have not been controlled or tree pruning debris has not been removed from the grove;

(3) Inability to market the fruit as a direct result of quarantine, boycott, or refusal of any entity to accept production unless production has actual physical damage due to a cause specified in subsection 2.a.

3. Report of Acreage, Share, Type, and Practice (Acreage Report)

a. In addition to the information required in section 3 of the general crop insurance policy you must;

(1) Report the crop type; and

(2) Designate separately any acreage that is excluded under section 1 of this endorsement.

b. The date by which you must annually submit the acreage report is April 30.

4. Production Reporting

Production potential for each unit is determined during loss adjustment. Therefore, subsection 4.d. of the general crop insurance policy is not applicable to this endorsement. Production history is not required.

5. Annual Premium

a. The annual premium amount is computed by multiplying the amount of insurance times the premium rate, times the insured acreage, times your share at the time insurance attaches.

b. If you are eligible for a premium reduction in excess of 5 percent based on your insuring experience through the 1988 crop year under the terms of the experience table contained in the citrus policy for the 1989 crop year, you will continue to receive the benefit of the reduction subject to the following conditions:

(1) No premium reduction will be retained after the 1994 crop year;

(2) The premium reduction will not increase because of favorable experience;

(3) The premium reduction will decrease because of unfavorable experience in accordance with the terms of the policy in effect for the 1989 crop year;

(4) Once the loss ratio exceeds .80, no further premium reduction will apply; and

(5) Participation must be continuous.

6. Insurance period

a. The calendar date on which insurance attaches is May 1 for each crop year, except that for the first crop year, if the application is accepted by us after April 20, insurance will attach on the tenth day after the application is received in the service office.

b. The end of the insurance period is the date of the calendar year following the year of normal bloom as follows:

(1) January 31 for tangerines and navel oranges;

(2) April 30 for lemons, tangelos, early and mid-season oranges; and

(3) June 30 for late oranges, grapefruit, Temple and Murcott Honey Oranges.

7. Unit division

a. Citrus acreage that would otherwise be one unit, as defined in section 17 of the general crop insurance policy, may be divided by citrus type.

b. Citrus acreage that would otherwise be one unit as defined in section 17 of the general crop insurance policy and subsection 7.a. above may be divided into more than one unit, if you agree to pay additional premium if required by the actuarial table and if, for each proposed unit:

(1) You maintain written, verifiable records of acreage and harvested production for at least the previous crop year; and

(2) Acreage planted to insured citrus is located in separate, legally identifiable sections, provided:

(a) The boundaries of the sections are clearly identified and the insured acreage is easily determined; and

(b) The trees are planted in such a manner that the planting pattern does not continue into the adjacent section; or

(3) The acreage of insured citrus is located on noncontiguous land. If you have a loss on any unit, production records for all harvested units must be provided. Production that is commingled between optional units will cause those units to be combined.

8. Notice of damage or loss

In addition to the notices required in the general crop insurance policy and in case of damage or probable loss:

a. You must give us written notice of the date and cause of damage; and

b. If an indemnity is to be claimed on any unit you must give us notice by the calendar date for the end of the insurance period if harvest will not begin by that date.

9. Claim for indemnity

a. The indemnity will be determined on each unit by:

(1) Computing the average percent of damage to the citrus which (without regard to any percent of damage arrived at through prior inspections) will be the ratio of the number of boxes of citrus considered damaged from an insured cause to the potential rounded to the nearest tenth (.1) of a percent. Citrus will be considered undamaged potential if it is:

(a) Or could be marketed as fresh fruit;

(b) Harvested prior to an inspection by us; or

(c) Harvested within 7 days after a freeze;

(2) Multiplying the result in excess of 10 percent (e.g., 45%—10%=35% payable) times the amount of insurance for the unit is determined by multiplying the insured acreage on the unit times the applicable amount of insurance per acre); and

(3) Multiplying this product by your share.

b. Pink and red grapefruit of citrus Type III and citrus of Types IV, V, and VII which are seriously damaged by freeze (as determined

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by a fresh-fruit cut of a representative sample of fruit in the unit, in accordance with the applicable provisions of the Florida Citrus Code), and are not or could not be marketed as fresh fruit will be considered damaged to the following extent:

(1) If 15-percent or less of the fruit in a sample shows serious freeze damage, the fruit will be considered undamaged; or

(2) If 16 percent or more of the fruit in a sample shows serious freeze damage, the fruit will be considered 80 percent damaged, except that:

(a) For tangerines of citrus Type IV, damage in excess of 80 percent will be the actual percent of damaged fruit; and

(b) For other applicable varieties, if we determine that the juice loss in the fruit exceeds 80 percent, the amount so determined will be considered the percent of damage.

c. Notwithstanding the provisions of subsection 8.b., as to any pink and red grapefruit of Type III and citrus of Types IV, V, and VII in any unit which is mechanically separated (using the specific gravity "floatation" method) into undamaged and freeze-damaged fruit, the amount of damage will be the actual percent of freeze-damaged fruit not to exceed 50 percent and will not be affected by subsequent fresh-fruit marketing. The 50 percent limitation on freeze-damaged fruit, mechanically separated, will not apply to tangerines of citrus Type IV.

d. Any citrus of Types I, II, and VI and white grapefruit of Type III which is damaged by freeze, but may be processed by canning or processing plants, will be considered as marketable for juice. The percent of damage will be determined by relating the juice content of the damaged fruit as determined by test house analysis to:

(1) The average juice content based on acceptable records, furnished by you, showing the juice content of fruit produced on the unit for the three previous crop years; or

(2) If acceptable records are not furnished, the juice content for that type fruit established by the actuarial table.

e. Any citrus on the ground which is not picked up and marketed will be considered totally lost if the damage was due to an insured cause.

f. Any citrus which is unmarketable either as fresh fruit or for juice because it is immature, unwholesome, decomposed, adulterated, or otherwise unfit for human consumption due to an insured cause will be considered totally lost.

g. Pink and red grapefruit of citrus Type III and citrus of Types IV, V, and VII which are marketable as fresh fruit due to serious damage from hail as defined in United States Standards for grades of Florida fruit will be considered totally lost.

10. Cancellation and Termination Dates

The cancellation date is April 30 of the calendar year in which the crop normally blooms. The termination date is April 30 of the calendar year following the year of normal bloom.

11. Contract Changes

The date by which contract changes will be available in your service office is the April 15 immediately preceding the cancellation date.

12. Meaning of Terms

a. *"Box"* means a standard field box as prescribed in the Florida Citrus Code.

b. *"Crop year"* means the period beginning May 1 and extending through June 30 of the following year and will be designated by the calendar year in which the insurance period ends.

c. *"Harvest"* means the severance of citrus fruit from the tree either by pulling, picking, or severing by mechnical or chemical means or picking up the marketable fruit from the ground.

d. *"Noncontiguous land"* means any land owned by you and rented by you for cash, a fixed commodity payment or any consideration other than a share in the insured crop, whose boundaries do not touch at any point. Land which is separated by a public or private right-of-way, waterway or irrigation canal will be considered to be touching (contiguous).

e. *"Potential"* means production:

(1) Which would have been produced had damage not concurred and includes citrus which:

(a) Was picked before damage occurred;

(b) Remained on the tree after damage occurred;

(c) Was lost from an insured cause; and

(d) Was lost from an uninsured cause.

(2) The potential will not include:

(a) Citrus lost before insurance attaches for any crop year;

(b) Citrus lost by normal dropping; or

(c) Any tangerines which normally would not, by the end of the insurance period for tangerines, meet the 210 pack size (2 and 9/16 inch minimum diameter) under United States Standards.

Done in Washington, DC, on January 11, 1989.

David W. Gabriel,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 89-1429 Filed 1-19-89; 8:45 am]

BILLING CODE 3410-08-M

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7 CFR Part 401

[Amdt. No. 46; Doc. No. 6790S]

General Crop Insurance Regulations; Forage Seeding Endorsement

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the General Crop Insurance Regulations (7 CFR Part 401), effective for the 1990 and succeeding crop years, by adding a new section, 7 CFR 401.145, to be known as the Forage Seeding Endorsement. The intended effect of this rule is to provide the regulations containing the provisions of crop insurance protection on forage crops in an endorsement to the general crop insurance policy.

DATES: Written comments, data, and opinions on this proposed rule must be submitted not later than February 22, 1989, to be sure of consideration.

ADDRESS: Written comments on this proposed rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is April 1, 1993.

John Marshall, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons and will not have a significant economic impact on a substantial number of small entities.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

FCIC herewith proposes to add to the General Crop Insurance Regulations (7 CFR Part 401), a new section to be known as 7 CFR 401.145, the Forage Seeding Endorsement, effective for the 1990 and succeeding crop years, to provide the provisions for insuring forage crops.

Upon publication of 7 CFR 401.145 as a final rule, the provisions for insuring forage crops contained therein will supersede those provisions contained in 7 CFR Part 414, the Forage Seeding Crop Insurance Regulations, effective with the beginning of the 1990 crop year. The present policy contained in 7 CFR Part 414 will be terminated at the end of the 1989 crop year and later removed and reserved. FCIC will propose to amend the title of 7 CFR Part 414 by separate document so that the provisions therein are effective only through the 1989 crop year.

Minor editorial changes have been made to improve compatibility with the new general crop insurance policy. These changes do not affect the meaning or intent of the provisions. In adding the new Forage Seeding Endorsement to 7 CFR Part 401, FCIC proposes to make changes in the provisions for insuring forage crops as follows:

1. Section 3—Remove the Premium Adjustment Table and add a provision providing for good insurance experience discount to the endorsement.

2. Section 6—Include unit division guidelines in the endorsement with language providing that an additional premium may be required for guideline unit division. Provide that nonirrigated corners of a center pivot irrigation system are part of the irrigated unit.

3. Section 7—Provide that insurance begins and ends on an individual unit or partial unit basis.

4. Section 8—Provide a cancellation and termination date of July 31 for New Hampshire, Pennsylvania, and Vermont.

5. Section 11—Add definitions of "Crop Year", "Forage", "Harvest", and "Reseed".

FCIC is soliciting public comment on this proposed rule for 30 days following publication in the **Federal Register**. Written comments received pursuant to this proposed rule will be available for public inspection and copying in the Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250, during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 401

General Crop Insurance Regulations; Forage Seeding.

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation proposes to amend the General Crop Insurance Regulations (7 CFR Part 401), proposed to be effective for the 1990 and succeeding crop years, as follows:

1. The authority citation for 7 CFR Part 401 continues to read as follows:

Authority: 7 U.S.C. 1506, 1516.

2. 7 CFR Part 401 is amended to add a new section to be known as 7 CFR Part 401.145 Forage Seeding Endorsement, effective for the 1990 and succeeding crop years, to read as follows:

§ 401.145 Forage Seeding Endorsement

The provsions of the Forage Seeding Endorsement for the 1990 and subsequent crop years are as follows:

Federal Crop Insurance Corporation

Forage Seeding Endorsement

1. Insured Crop

a. The crop insured will be forage seeded (or reseeded the calendar year following seeding) to establish a stand of forage intended for harvest as livestock feed.

b. In addition to the acreage specified as not insurable in section 2 of the general crop insurance policy, we do not insure any acreage seeded with another crop, unless specifically allowed by the actuarial table.

2. Causes of Loss

The insuracne provided is against unavoidable loss of or failure to establish a stand of forage resulting from the following causes occurring within the insurance period:

a. Adverse weather conditions;
b. Fire;
c. Insects;
d. Plant disease;
e. Wildlife;
f. Earthquake;
g. Volcanic eruption; or
h. If applicable, failure of the irrigation water supply due to an unavoidable cause occurring after the beginning of seeding; unless those causes are excepted, excluded, or limited by the actuarial table or section 9 of the general crop insurance policy.

3. Annual Premium

a. The annual premium amount is computed by multiplying the amount of insurance per acre times the premium rate, times the insured acreage, times your share at the time of seeding.

b. If you are eligible for a premium reduction in excess of 5 percent based on your insurance experience through the 1988 crop year under the terms of the experience table contained in the forage seeding policy in effect for the 1989 crop year, you will continue to receive the benefit of that reduction subject to the following conditions:

(1) The premium reduction factor will not increase because of favorable experience;

(2) The premium reduction factor will decrease because of unfavorable experience in accordance with the terms of the policy in effect for the 1989 crop year;

(3) Once the loss ratio exceeds .80, no further premium reduction will apply;

(4) No premium reduction will be retained after the 1992 crop year.

(5) Participation must be continuous.

4. Insurance Period

The calendar date for the end of the insurance period is May 21 following the calendar year of seeding for spring-seeded forage or October 15 following the calendar year of seeding for fall-seeded forage.

5. Notice of Damage of Loss

In addition to the notices required in section 6 of the general crop insurance policy, you must give us written notice before you reseed the acreage in the spring if you will claim a reseeding payment.

6. Unit Division

a. In lieu of the unit definition in subsection 17.q. of the general crop insurance policy, a unit will be all insurable acreage of either fall-seeded or spring-seeded forage in the county on the date of seeding:

(1) In which you have a 100 percent share; or

(2) Which is owned and operated by another entity on a share basis. Land rented for cash, a fixed commodity payment, or any other consideration other than a share in the forage crop on such land will be considered as owned by the lessee. Units will be determined when the acreage is reported but may be adjusted to reflect the actual unit structure when adjusting a loss except that no further unit division will be allowed at loss adjustment time. We may consider any acreage and share thereof reported by or for your spouse or child or any member of your household to be your bona fide share or the bona fide share of any other person having an interest therein.

b. Forage seeding acreage that would otherwise be one unit, as defined in section 6.a. above, may be divided into more than one unit if you agree to pay additional premium if provided for by the actuarial table and either:

(1) Acreage planted to the insured forage seeding crop is located in separate, legally identifiable sections or, in the absence of section descriptions the land is identified by separate ASCS Farm Serial Numbers, provided:

(a) The boundaries of the section or ASCS Farm Serial Numbers are clearly identified, and the insured acreage can be easily determined; and

(b) The forage seeding crop is planted in such a manner that the planting pattern does not continue into an adjacent section or ASCS Farm Serial Number; or

(2) The acreage planted to the insured forage crop hereunder is located in a single section or ASCS Farm Serial Number and consists of acreage on which both irrigation and non-irrigation practices are carried out, provided:

(a) Forage seeded on the irrigated acreage does not continue into nonirrigated acreage in the same rows or planting pattern (Nonirrigated corners of a center pivot irrigation system planted to insurable forage are part of the irrigated unit); and

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(b) Planting, fertilizing, and harvesting are carried out in accordance with recognized good irrigation and non-irrigation farming practices as applicable for the area.

7. Claim for Indemnity

a. In accordance with the provisions in section 9.c. of the general crop insurance policy, the indemnity will be determined on each unit by:

(1) Subtracting from 90% of the insured acreage the total amount of insured acreage with an established stand;

(2) If this amount is greater than zero, multiplying this amount by the amount of insurance per acre; and

(3) Multiplying this result by your share.

b. The acres with an established stand will include:

(1) Acreage which has at least 75 percent of a normal stand as defined by the actuarial table;

(2) Acreage abandoned or put to another use without our prior written consent;

(3) Acreage damaged solely by an uninsured cause; or

(4) Acreage which is harvested and not reseeded.

c. The amount of indemnity on any spring-seeded acreage determined in accordance with section 7.a. will be reduced 80 percent if we determine that your forage stand is less than 75 percent but more than 55 percent of a normal stand.

d. A reseeding payment will be made on any insured fall-seeded acreage with less than a 75 percent normal stand, on which we have given written consent to reseed and which is reseeded in the next succeeding spring by the final spring-seeding date. The amount of the reseeding payment will be the actual cost of reseeding but may not exceed 50 percent of the amount of indemnity determined in accordance with section 7.a.

8. Cancellation and Termination

The cancellation and termination dates are:

State	Cancellation and termination dates
New Hampshire, New York, Pennsylvania, Vermont	July 31
All other states	April 15

9. Contract Changes

The date by which contract changes will be available in your service office is December 31 for counties with an April 15 cancellation date and April 30 for all other counties.

10. Production Reporting

The production reporting provision contained in section 4 of the general crop insurance policy will not be applicable to this endorsement.

11. Meaning of Terms

a. "*Crop year*" means the period within which the seeding is or normally would become established and will be designated by the calendar year in which the seeding is made for spring-seeded acreage and the next succeeding calendar year for fall-seeded acreage.

b. "*Forage*" means grasses, legumes, or other vegetation grown singly or in combination, as specified on the actuarial table, for the purpose of producing livestock feed.

c. "*Harvest*" means the first severance of the forage plant from the land for the intended use as livestock feed.

d. "*Normal stand*" is defined in the actuarial table.

e. "*Reseed*" means the mechanical incorporation of seed into the soil at not less than 50 percent of the original seeding rate.

Done in Washington, DC, on January 11, 1989.

David W. Gabriel,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 89-1430 Filed 1-19-89; 8:45 am]

BILLING CODE 3410-08-M

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7 CFR Part 401

[Amendment No. 19; Doc. No. 6420S]

General Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the General Crop Insurance Regulations (7 CFR Part 401), effective for the 1989 and succeeding crop years, by: (1) Deleting a subsection which provides that insurance is not available on land located between any body of water and a primary flood control structure; (2) amending another subsection to clarify that acreage on which a crop has not been planted and harvested in at least one of the three previous crop years is insurable if that land has been in a soil conserving legume or is considered "cropland" by the Agricultural Stabilization and Conservation Service (ASCS); and (3) providing a definition for "cropland." The intended effect of this rule is to equalize the insurance offer on land described in (1) above since flood risk is many times included in the rating formula and establishing a specific cause of loss on such land is often difficult, and to clarify that land planted in a soil conserving legume as being the same land ASCS recognizes as cropland.

Comment Date: Written comments, data, and opinions on this proposed rule must be submitted by not later than March 24, 1989, to be sure of consideration.

ADDRESS: Written comments on this proposed rule should be sent to Peter F. Cole, Secretary, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is established as April 1, 1992.

John Marshall, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons and will not have a significant impact on a substantial number of small entities.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

FCIC proposes to amend the General Crop Insurance Regulations (7 CFR Part 401), effective for the 1989 and succeeding crop years, to make the insurance offer available on land described as being between a body of water and a primary flood control structure, since flood risk is many times included in the rating formula, and establishing a specific cause of loss on such land is often difficult and to clarify that, for insurance purposes, land planted in a soil conserving legume is considered the same land ASCS recognizes as cropland.

On Thursday, July 30, 1987, FCIC published a final rule in the **Federal Register** at 52 FR 28443, to provide the provisions of crop insurance protection in a General Crop Insurance Policy (7 CFR Part 401).

In order to provide all insureds with the same degree of insurance protection, FCIC herein proposes to (1) delete subsection 1.b.(5)(52 FR 28448), which provides that insurance is not available on land located between any body of water and a primary flood control structure, because establishing a specific cause of loss on such land is often difficult; (2) amend subsection 2.e.(11)(52 FR 28448), to clarify that acreage on which a crop has not been planted and harvested in at least one of the three previous crop years is insurable if that land has been in a soil conserving legume or is considered "cropland" by the Agricultural Stabilization and Conservation Service (ASCS) because ASCS uses cropland acres as a basis for program payments and it is inappropriate for FCIC to deny insurance on land recognized by ASCS for program payment purposes; and (3) to provide a definition for "cropland" in subsection 17 of the policy.

The public is invited to submit written comments on this proposed rule for 60 days after its publication in the **Federal Register**. Written comments should be sent to Peter F. Cole, Secretary, Federal Crop Insurance Corporation, Office of the Manager, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC.

All written comments received pursuant to this notice of proposed rulemaking will be available for public inspection and copying at the above address during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 401

General crop insurance regulations.

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation proposes to amend the General Crop Insurance Regulations (7 CFR Part 401), proposed to be effective for the 1989 and succeeding crop years, as follows:

PART 401—[AMENDED]

1. The authority citation for 7 CFR Part 401 continues to read as follows:

Authority: 7 U.S.C. 1505, 1516.

§ 401.8 [Amended]

2. 7 CFR 401. 8(d), subsection 1.b., is amended by deleting clause (5) and re-numbering clauses (6) through (9) as (5) through (8), respectively.

3. 7 CFR 401.8(d), subsection 2.e., clause (11), is amended to read as follows:

2. Crop, acreage, and share insured.

* * * * *

(e) * * *

(11) On which a crop has not been planted and harvested in at least one of the three previous crop years unless it is determined the acreage has been in a soil conserving legume or the acreage meets the definition of Agricultural Stabilization and Conservation Service (ASCS) "cropland" acreage; or

4. 7 CFR 401.8(d), subsection 17 is amended by re-numbering present paragraphs f. through s. as g. through t. respectively and by inserting a new paragraph f. to read as follows:

17. Meaning of Terms.

* * * * *

f. "Cropland" means any acreage considered by ASCS for program payment purposes.

Done in Washington, DC, on January 11, 1989.

David W. Gabriel,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 89-1317 Filed 1-19-89; 8:45 am]

BILLING CODE 3410-08-M

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7 CFR Part 401

[Amt. No. 38 Docket No. 5997S]

General Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Notice of additional proposed rulemaking and extended comment period.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) herewith gives notice of additional proposed rulemaking and extension of comment period with respect to a proposed amendment to the General Crop Insurance Regulations (7 CFR Part 401), effective for the 1989 and succeeding crop years, to include provisions for a Late Planting Agreement Option (7 CFR 401.107) applicable to certain crops under the provisions of the Late Planting Agreement Option Regulations. The intended effect of this rule is to include additional crops among those listed in the Late Planting Agreement Option as being eligible for that option, and to clarify the availability of the option.

DATE: Written comments, data, and opinions on this additional proposed rulemaking must be submitted not later than February 22, 1989, to be sure of consideration.

ADDRESS: Written comments on this additional proposed rulemaking should be sent to Peter F. Cole, Secretary, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is established as April 1, 1992.

John Marshall, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) an annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons and will not have a significant impact on a substantial number of small entities.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of

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the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

On Thursday, July 30, 1987, FCIC published a final rule in the **Federal Register** at 52FR 28443, issuing a new Part 401 to 7 CFR, Title IV. Included in this rule is 7 CFR 401.107, titled the Late Planting Agreement Option, published at 52 FR 28457.

The Late Planting Agreement Option becomes effective when elected by producers on the crop insurance endoresements listed under 7 CFR 401.107 which are eligible for that option in the option regulations.

FCIC studies indicated that the crops listed below would benefit from the option. The use of the option benefits the insured by allowing coverage to be obtained after the normal crop planting period.

On Thursday, August 4, 1988, FCIC published a notice of proposed rulemaking in the **Federal Register** at 53 FR 29340, proposing to include provisions for a Late Planting Agreement Option (7 CFR 401.107) on the following additional crop insurance endorsements in the Late Planting Agreement Option Regulations:

7 CFR

401.116 Flaxseed Endorsement
401.123 Safflower Endorsement
401.124 Sunflower Endorsement
401.100 Hybrid Sorghum Endorsement
401.116 Canning and Processing Bean Endorsement

Upon further review of the rule, FCIC has determined that certain crops eligible for Late Planting Agreement under the provisions of 7 CFR Part 400, Subpart A, which have been recently converted to endorsements under the General Crop Insurance Policy, were inadvertently omitted from the rule published at 53 FR 29340.

These crop insurance endorsements should be included in the rule and are as follows:

7 CFR

401.111 Corn (Grain) Endorsement
401.113 Grain Sorghum Endorsement
401.114 Canning and Processing Tomato Endorsement
401.117 Soybean Endorsement
401.118 Canning and Processing Tomato Endorsement
401.119 Cotton Endorsement
401.120 Rice Endorsement

In addition, the statement of availability of the Late Planting Agreement Option, found at Paragraph (e) of 7 CFR 401.107 in the proposed rule (53 FR 29340) should be clarified to more clearly define the limitations on the availability of the option. Presently, the paragraph states that the option will be available in all counties in which the Corporation offers insurance on these crops unless prohibited by the actuarial table in certain counties on fall-planted crops.

Other instruments which may also indicate limitations include the crop endorsement any option to the endorsement. Therefore, FCIC proposes to clarify the availability of the Late Planting Agreement Option by amending § 401.107(e) for this purpose.

FCIC is soliciting public comment on these proposed additional rulemaking changes for 30 days. All written comments received pursuant to this rule will be available for public inspection and copying in Room 4090, South Building, U.S. Department of Agriculture, Washington, DC, during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 401

General crop insurance regulations.

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation proposes to further amend the General Crop Insurance Regulations (7 CFR Part 401), proposed to be effective for the 1989 and succeeding crop years, in the following instances:

PART 401—[AMENDED]

1. The authority citation for 7 CFR Part 401 continues to read as follows:

Authority: 7 U.S.C. 1506, 1516.

2. 7 CFR 401.107—Late Planting Agreement Option, paragraph (e) is revised to read as follows:

§ 401.107 Late Planting Agreement Option.

* * * * *

(e) *Applicability to crops insured.* The provisions of this section will be applicable to the provisions for insuring crops under the following FCIC endorsements:

401.101 Wheat Endorsement.
401.103 Barley Endorsement.
401.105 Oat Endorsement.
401.106 Rye Endorsement.
401.109 Hybrid Sorghum Seed Endorsement.
401.111 Corn Endorsement.
401.113 Grain Sorghum Endorsement.
401.114 Canning and Processing Tomato Endorsement.
401.116 Flaxseed Endorsement.
401.117 Soybean Endorsement.
401.118 Canning and Processing Bean Endorsement.
401.119 Cotton Endorsement.
401.120 Rice Endorsement.
401.123 Safflower Endorsement.
401.124 Sunflower Endorsement.
401.126 Onion Endorsement.

The Late Planting Agreement Option will be available in all counties in which the Corporation offers insurance on these crops unless limited by the actuarial table, crop endorsement, or crop endorsement option.

* * * * *

Done in Washington, DC, on January 11, 1989.

David W. Gabriel,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 89-1426 Filed 1-19-89; 8:45 am]

BILLING CODE 3410-08-M

Federal Grain Inspection Service

7 CFR Part 800

Shiplot Inspection Plan (Cu-Sum)

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Grain Inspection Service (FGIS) proposes to revise the current shiplot inspection plan (Cu-Sum) and proposes to revise §§ 800.86, 800.129, and 800.139 of the regulations under the United States Grain Standards Act to include regulations concerning the inspection of shiplot, unit train, and lash barge grain in single lots and to organize the sections into a more logical order, clarify and remove unnecessary language, and remove provisions that are no longer needed. FGIS uses a statistically based sampling and inspection plan to determine the quality of grain exported from the United States. A study was initiated in 1986 to evaluate the relationship between the use of the Cu-Sum Plan and its effect on determining the quality of export grain. Based on the results of this study, FGIS is proposing to revise the Cu-Sum Plan and invites comments on the changes.

DATE: Comments must be submitted on or before March 24, 1989.

ADDRESS: Comments must be submitted in writing to Lewis Lebakken Jr., Resources Management Division, USDA, FGIS, Room 0628 South Building, P.O. Box 96454, Washington, DC, 20090-6454. Telemail users may respond to [IRSTAFF/FGIS/USDA] telemail; telex users may respond to Lewis Lebakken Jr., TLX: 7007351, ANS: FGIS UC; and telecopy users may send responses to the automatic telecopier at (202) 447-4628.

All comments received will be made available for public inspection at Room 0628 South Building, 1400 Independence Avenue SW., Washington, DC 20250, during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken Jr., address as above, telephone (202) 475-3428.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This proposed rule has been issued in conformance with Executive Order 12291 and Departmental Regulation 1512-1. This action has been classified as nonmajor because it does not meet the criteria for a major rule established in the Order.

Regulatory Flexibility Act Certification

W. Kirk Miller, Administrator, FGIS, has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because most users of the official inspection and weighing services and those entities that perform these services do not meet the requirements for small entities.

Background

Since 1916, the United States Department of Agriculture (USDA) has established Official U.S. Standards for Grain. The standards and the inspection system serve the needs of the grain market by providing both the buyer and seller with a common language to describe grain quality through an impartial inspection process.

Determining the quality of large export grain shipments represents a difficult challenge for an inspection system. During the early years of U.S. grain exports, the quality of export shipments was determined after loading based on a single composite sample. As the size of export shipments increased, a need developed to determine grain quality during loading. In response, inspectors initially graded samples representing sublots (a portion of the entire shipment) but continued to determine the average quality for the export shipment on a single composite sample. Later, the average quality of the shipment was based on the average of the sublot results.

At first, no restrictions were placed on individual; sublot results. Quality could vary between sublots provided the average quality of the entire lot met contract requirements. By 1961, a process was developed to control quality fluctuations within export shipments. The process became known as the 10 Percent Plan because it allowed, based on sublot results, no more than 10 percent of the export shipment to be inferior by one grade in quality in comparison to the certificated grade.

With any inspection plan, inspection results are subject to variability caused by sampling limitations, equipment capabilities, and inspector performance. To minimze these variabilities and maintain an impartial inspection process, USDA developed a statistically based acceptance inspection plan in 1969 which later became known as Plan A. This plan compared individual factor results to contract and grade limits through the use of: (1) Absolute limits, (2) progressive loading limits, and (3) block limits. These limits allowed some fluctuation in quality results to compensate for the inherent variability associated with grain inspection. The absolute limit established an allowance beyond the grade factor limit. A sublot was considered inferior quality and designated a material portion if a sublot factor resulted exceeded the absolute limit. The progressive loading limit restricted the total number of inferior quality sublots for the entire vessel. The block limit restricted the number of consecutive sublots inferior in quality for the same factor. A "block" consisted of three or more consecutive sublots that exceed the same grade factor limit but did not exceed the absolute limit. All sublots in the block were considered a material portion when a block limit violation occurred. In addition, whenever a material portion was caused by exceeding the progressive loading limits or block limits, the next five sublots loaded after the material portion designated had to be within grade on the factor that caused the material portion designation.

Plan A also incorporated "second pick" procedure. When a sublot factor result exceeded the grade factor limit or the absolute limit, a second portion was analyzed. The average of the two analyses was used as the sublot factor result to determine if any loading limits were exceeded. Review inspections (reinspection, appeal inspection, and Board appeal inspection) were available for an entire lot or individual material portion sublots. To obtain a review inspection before a vessel was completed loaded, shippers could call a "cutoff" which designated the end of a lot. All sublots making up the lot could then be reviewed and the results certificated. Grain loaded after the "cutoff" represented another lot and was inspected and certificated separately. Material portion sublots were separately certificated even if the subsequent review inspection results were within the grade limit.

After several years of development and field testing, Plan A was implemented as an FGIS instruction on September 25, 1974, for use at shipping bin elevators. Shipping bin elevators have grain bins in which grain may be temporarily held after official sampling until the official inspection results are available. Elevators without shipping bins are commonly referred to as direct loading elevators because they do not have the capability of holding grain after official sampling while the inspector determines the quality. The 10 Percent Plan was implemented as a FGIS instruction on October 29, 1974, as an interim procedure for use at direct loading elevators which chose not to use Plan A. The 10 Percent Plan was scheduled to expire on November 1, 1975; however, the plan was extended at the grain industry's request. Both the 10 Percent Plan and Plan A were used for export grain shipments between 1974 and 1980.

A 1977 report prepared by the USDA Office of the Inspector General cited many problems associated with shiploading and recommended that FGIS develop one plan that was applicable to all elevators. A review was conducted to evaluate the 10 Percent Plan, Plan A, and alternate inspection plans. FGIS developed a Cumulative Sum (Cu-Sum) Plan in 1979 to replace both inspection plans. The Cu-Sum Plan was designed to simplify the process of inspecting, provide the shipper with final sublot quality results, and to be applicable at all export facilities. After a year of field tests, the Cu-Sum Plan was implemented as an FGIS instruction in Book III of the Grain Inspection Handbook on May 1, 1980.

The Cu-Sum Plan is an online acceptance sampling plan that provides continuous quality information. The plan establishes statistically based fctor tolerances (breakpoints) for accepting occasional portions of a lot when, due to known sampling, equipment, and inspection variations, inspection results exceed the grade limit. The individual sublot factor results are compared to the grade limit and the cumulative sum of the differences is monitored and applied to the acceptance tolerance. For example, if the grade limit for foreign material is 2.0 percent and the sublot foreign material result is 2.2 percent, the difference for the sublot is +0.2. The difference for each sublot by factor is added together during loading to derive what is known as the Cu-Sum. If the next sublot had a +0.1 difference, the Cu-Sum would be +0.3 (the sum of

0.2+0.1). Negative values are also added to the Cu-Sum but the overall Cu-Sum value cannot go below zero. If a factor's Cu-Sum value exceeds the breakpoint, the grain represented by the sublot is considered inferior quality and designated a material portion. If in the above example the breakpoint for foreign material was +0.4 and the next sublot had 2.3 percent foreign material, the Cu-Sum would be +0.6 thus exceeding the breakpoint and causing a material portion which is rejected by the plan. The certificated quality of the lot is the combined average of all sublots accepted under the plan. A material portion is certificated separately from sublots accepted under the plan.

The Cu-Sum Plan allows review inspections of material portion sublots as well as lots. One sublot within a material portion sequence (a series of sublots that lead to a sublot exceeding the breakpoint) may be reviewed under the plan. The reviewed sublot is certificated as part of the entire lot if the review inspection results are within the acceptable tolerance.

After nearly 6 years of use, FGIS contracted with an independent, third-party statistician, Dr. William H. Woodall, Department of Statistics, University of Southwestern Louisiana, to evaluate the Cu-Sum Plan. The statistician was selected because of the individual's expertise in the field of quality control and familiarity with Cu-Sum inspection techniques.

The study was designated to evaluate the relationship between the use of the Cu-Sum Plan, its effect on determining the quality of exported grain, and to identify possible improvements to the plan. To accomplish this, the statistician reviewed the present shiploading plan; reviewed sampling and equipment variability and its relationship to the inspection tolerance; reviewed the original statistical assumptions of the Cu-Sum Plan and determined if these assumptions are still valid; determined if the inspection plan statistically measures grain quality during loading; reviewed the effect of reinspections and appeal inspections on the plan's statistical performance; reviewed and compared grain quality between shipping bin and direct loading facilities; evaluated maximum size limitations of sublots, components, and subsamples; evaluated the use of Cu-Sum enhancement schemes as discussed in current industrial statistics literature; and reviewed the effect on the statistical performance when various changes are made in the design of the Cu-Sum procedure.

Four reports were prepared by the statistician: (1) A preliminary report, (2) a Grain Inspection Monitoring System (GIMS) data report, (3) a sublot data report, and (4) a final report. The preliminary report briefly described the Cu-Sum Plan and how the plan operates. It also explained the statistical background of the plan and discussed how the presence of sampling variability is a basic justification for inspection plans that allow some inspection results slightly over the grade limit to be accepted by the plan. The report also included a discussion on the over all performance of the inspection plan and contained tentative recommendations which were further addressed as part of the final report.

The second report entitled "GIMS Data Report: Standard Deviations of Factor Results" provided an estimation of factor standard deviations for corn, wheat, and soybeans. The estimates were based on 2 years (1984 and 1985) of Grain Inspection Monitoring System data for grain which was exported and sampled with a diverter-type mechanical sampler. The GIMS data for each factor was grouped by grade before calculating the factor standard deviation. The standard deviations for individual factors are an important part of the Cu-Sum Plan because these estimates are used to calculate the factor breakpoints which appear in Tables 1 through 3 in the section discussing breakpoints. The factor breakpoint is derived by multiplying the factor standard deviation by 1.645.

The third report entitled "Analysis of Sublot Data for Exported Soybeans (1984–85)" provided information regarding the current use of the Cu-Sum Plan. The review involved 1,066 export lots of soybeans having 21,610 sublots. The report identified the number of sublots, the number of sublots with at least one factor result below grade, the number of material portion sublots caused by sublots exceeding a breakpoint, the actual effects of the reinspection and appeal inspection process, and the number of sublots returned from shipping bins at the request of the elevator (house returns). Additionally, the review compared shipping bin elevators to direct loading elevators. The report concluded: (1) The proportion of sublots below grade is higher for shipping bin elevators (30.9 percent) than for direct loading elevators (19.7 percent), (2) the proportion of material portion sublots is higher for shipping bin elevators (8.6 percent) than for direct loading elevators (1.2 percent, (3) the proportion of material portion designations removed through the review inspection process (reinspection, appeal and Board appeal inspection) is higher for direct loading elevators (74.8 percent) than for shipping bin elevators (47.3 percent), and (4) the overall percentage of house returns is higher for shipping bin elevators (1.5 percent) than for direct loading elevators (0.0 percent). Several other points were also noted in this report. They were: (1) Foreign material was the factor most often below grade, (2) there was no evidence of any Board appeals on the shiplogs for grading factors, (3) of the 202 house returns, 16 were apparently for high foreign material even though the sublots were not designated as material portions while the remainder of the house returns appear to have been due to low foreign material, and (4) 77 percent of all soybean sublots were exported through elevators in the gulf region.

The final report included recommendations to improve the effectiveness of the Cu-Sum Plan. The specific recommendations are: (1) Retain the basic Cu-Sum procedure but average review inspection results unless a material error is present and use a reference value smaller than the grade limit to regain the effectiveness of the original Cu-Sum Plan; (2) use an absolute limit equal to the breakpoint less the starting value; (3) revise the Cu-Sum breakpoints based on new estimates of factor result variability; and (4) improve the accuracy of the USDA rounding procedure.

FGIS already addressed the fourth recommendation by implementing revised rounding procedures on June 30, 1987, which are more generally accepted mathematical rounding procedures. The rounding procedures appear in § 810.104. of the Official U.S. Standards for Grain (7 CFR 810.104).

Based on these recommendations and all other available information, FGIS proposes several changes to improve the Cu-Sum Plan, which include: (1) Revising and updating the breakpoints for grading factors based on new estimates of standard deviation, (2) revising the review inspection procedures under the plan, (3) redefining material portions, (4) including protein determinations as part of the Cu-Sum Plan, and (5) offering optional component sample inspections.

Breakpoints

The tolerances used in the Cu-Sum Plan are based on a factor's standard deviation measurement. Standard deviation is a statistical measurement which indicates variability. In the case of the inspection plan, it is a measurement of inspection variability caused by sampling limitations, equipment capabilities, and inspector performance. The original Cu-Sum Plan breakpoints were based on factor standard deviations derived from the Plan A absolute limits. Additional inspection information has been collected since the Cu-Sum Plan was implemented. This data is an excellent source of information for estimating standard deviations because original inspection results are directly compared to monitoring results.

FGIS reviewed GIMS inspection results to determine the standard deviations for factors expressed numerically. The sample data represented export samples obtained by diverter-type mechanical samplers during fiscal years 1985, 1986, and 1987. The review was limited to wheat, corn, and soybeans because these grains represent approximately 92 percent of the total exported grain. Revised breakpoints have been calculated from these new estimates of standard deviation and are included in Tables 1–3. FGIS also proposes to periodically review inspection information collected by GIMS and revise breakpoints accordingly.

TABLE 1.—CURRENT AND PROPOSED WHEAT BREAKPOINTS

[Wheat Grading Factors]

U.S. Grade	Test weight per bushel		Heat damaged kernels		Damaged kernels (total)		Foreign material		Shrunken and broken kernels		Defects		Contrasting classes		Wheat of other classes	
	Current	Proposed	Current	Proposed	Current	Proposed	Current	Proposed	Current	Proposed	Current	Proposed	Current	Proposed	Current	Proposed
No. 1	0.3	0.3	0.1	0.2	0.9	1.0	0.3	0.2	0.6	0.2	1.3	0.7	0.5	0.7	1.9	1.6
No. 2	0.3	0.3	0.1	0.2	0.9	1.5	0.3	0.3	0.6	0.4	1.3	0.9	0.7	1.0	1.9	2.1
No. 3	0.3	0.3	0.3	0.3	1.0	1.9	0.3	0.5	0.6	0.5	1.3	1.2	0.9	1.3	3.2	2.9
No. 4	0.3	0.3	0.4	0.4	1.3	2.3	0.4	0.6	1.3	0.6	1.9	1.4	1.5	2.3	3.2	2.9
No. 5	0.3	0.3	0.6	0.7	1.9	2.7	0.6	0.7	1.9	0.7	1.9	1.5	1.5	2.3	3.2	2.9

[1] Moisture: Current—0.3; Proposed—0.3.

TABLE 2.—CURRENT AND PROPOSED CORN BREAKPOINTS

[Corn grading factors]

U.S. grade	Test weight per bushel		Heat damaged kernels		Damaged kernels (total)		Broken corn and foreign material	
	Current	Proposed	Current	Proposed	Current	Proposed	Current	Proposed
No. 1	0.3	0.4	0.1	0.1	0.9	1.0	0.5	0.2
No. 2	0.3	0.4	0.3	0.2	1.0	1.3	0.5	0.3
No. 3	0.3	0.4	0.4	0.3	1.3	1.5	0.6	0.3
No. 4	0.3	0.4	0.5	0.5	1.4	1.8	0.8	0.4
No. 5	0.3	0.4	0.9	0.9	1.8	2.1	0.8	0.4

Moisture: Current—0.5; Proposed—0.4.

TABLE 3.—CURRENT AND PROPOSED SOYBEAN BREAKPOINTS

[Soybean grading factors]

U.S. Grade	Test weight per bushel		Heat damaged kernels		Damaged kernels (total)		Foreign material		Splits		Soybeans of other colors	
	Current	Proposed	Current	Proposed	Current	Proposed	Current	Proposed	Current	Proposed	Current	Proposed
No. 1	0.3	0.4	0.3	0.2	0.8	0.8	0.5	0.2	2.8	1.6	0.5	0.7
No 2	0.3	0.4	0.4	0.3	0.9	0.9	0.5	0.3	3.2	2.2	0.8	1.0
No. 3	0.3	0.4	0.5	0.5	1.1	1.2	0.8	0.4	3.6	2.5	1.1	1.6
No. 4	0.3	0.4	0.9	0.9	1.4	1.5	0.8	0.5	3.7	2.7	1.5	2.3

Moisture: Current—0.5; Proposed—0.2.

Review Inspections

Three review inspections (reinspection, appeal inspection, and Board appeal inspection) are options an applicant for inspection may use under the current procedures if the original and subsequent review inspection results are not accepted by the Cu-Sum Plan. The review inspection result, under current procedures, replaces the previous inspection result.

A 1983 FGIS reinspection and appeal program study concluded that while the practice of replacing previous inspection results implies greater confidence in the review inspection measurements, the practice also biases the results because most changes are small and merely reflect natural and unavoidable sampling differences. The review inspection process allows the applicant to request a reinspection, an appeal inspection, and a Board appeal inspection. Thus, if an applicant only questions unfavorable results, the review process can create biased factor measurements. This differs from correcting definite grading errors caused by arithmetic mistakes, failure to interpret the standards correctly, or equipment malfunctions. The statistician evaluating the Cu-Sum Plan agreed with this conclusion and added that the current review inspection process is not statistically sound and provides for a less effective Cu-Sum Plan.

As discussed previously, Plan A employed a "second pick" procedure for sublot results exceeding the grade limit. The "second pick" procedure may create a biased factor measurement if it were requested only for unfavorable results.

However, the effect would be minimized because the second analysis was averaged with the initial analysis. The current Cu-Sum Plan permits multiple reviews and no averaging which may magnify the bias. FGIS considered eliminating the review inspection option for sublot inspections to correct any adverse influence review inspections may have on the plan. FGIS concluded that a modified review inspection process for sublots that would minimize any adverse influences would be in the best interest of the grain industry. Therefore, FGIS proposes to: (1) Average review inspection results with the original results unless a material error is detected, (2) limit the number of field review inspections (reinspection or appeal inspection) to one, and (3) limit review inspection requests to sublots designated as a material portion or the entire lot.

The effectiveness of the Cu-Sum Plan would improve when original and review inspection results for sublots are averaged because the average sublot result more accurately identifies the true quality of the grain. This improvement in performance may be attributed to reduced variability due to an increase in the sample size to make the determination. FGIS further proposes to replace original inspection results with review inspection results if a material error is detected. A material error is defined as a two standard deviation change in inspection results when review inspection results are compared to original inspection results.

The procedure for implementing the averaging proposal is based on the factor breakpoint value for the quality intended to be loaded. The breakpoint value, as noted earlier, is derived from the standard deviation of the test. Therefore, the use of breakpoints in determining when sample results are averaged is statistically sound. Table 4 identifies the two standard deviation measurement range for averaging review inspections with the inspection being reviewed.

TABLE 4.—TWO STANDARD DEVIATION RANGE FOR AVERAGING REVIEW INSPECTION RESULTS

Sample breakpoint	Two standard deviation range
0.1	±0.1
0.2	±0.2
0.3	±0.4
0.4	±0.5
0.5	±0.7
0.6	±0.8
0.7	±0.9

TABLE 4.—TWO STANDARD DEVIATION RANGE FOR AVERAGING REVIEW INSPECTION RESULTS—Continued

Sample breakpoint	Two standard deviation range
0.8	±1.1
0.9	±1.3
1.0	±1.4
1.1	±1.5
1.2	±1.6
1.3	±1.8
1.4	±1.9
1.5	±2.1
1.6	±2.2
1.7	±2.4
1.8	±2.5
1.9	±2.6
2.0	±2.8
2.1	±2.9
2.2	±3.1
2.3	±3.2
2.4	±3.3
2.5	±3.5
2.6	±3.6
2.7	±3.8
2.8	±3.9
2.9	±4.1
3.0	±4.2

The following is an example of how the averaging rule would be applied. A contract specifies U.S. No. 2 Yellow soybeans. The foreign material grade limit for U.S. No. 2 Yellow soybeans is 2.0 percent. The breakpoint for the U.S. No. 2 grade limit is 0.3 (Table 3). If a sublot is designated as a material portion due to 2.5 percent foreign material on the original inspection, Table 4 indicates a review inspection of this sublot is averaged with the original result if the review inspection result is 2.1 percent to 2.9 percent (plus or minus 0.4 percent from 2.5 percent). A review inspection result of 2.0 percent or less foreign material or 3.0 percent or more foreign material is not averaged with the original inspection result but replaces the original inspection result. The reviewed sublot result, whether it is an average result or a replacement result, is entered on the inspection log and a new Cu-Sum value is calculated to determine acceptance.

FGIS proposes to limit the number of field review inspections for sublots to improve the effectiveness of the inspection plan. Each additional review inspection may increase the probability of accepting inferior quality grain. Therefore, limiting the applicant to one field review inspection will either detect a material error or confirm the original inspection. Board appeal inspections will continue to be available. It is proposed that in the absence of a material error, Board appeal inspection results would be averaged with the average of the original and field review results to obtain a final inspection result for the sample. Board appeal results would replace the average of the previous two results if there is a material error detected during the inspection. This will be determined by comparing the Board appeal result to the average of the original/field review result provided a material error was not detected by the field review. If the original inspection result is replaced by a review inspection result because of a material error, then the Board appeal result is compared to the field review result. Factors which are not expressed numerically, e.g., odor, will be replaced by the determination made during the last review inspection.

FGIS also proposes to limit review inspections to only those sublots designated as material portions. This allows the shipper to confirm the quality or determine if a material error exists. Material portions are discussed in the next section.

Applicants may request a reinspection, an appeal inspection or Board appeal inspection of the entire lot. When a reinspection, appeal inspection or a Board appeal inspection of the entire lot is requested, results will not be averaged with the previous inspection results because the entire lot (sublots within and outside of Cu-Sum allowances) is reviewed.

Material Portions

The current inspection plan designates the sublot causing the Cu-Sum to exceed a breakpoint or a single sublot in the material portion sequence as a material portion (unacceptable quality). A material portion sequence under the current plan is a series of consecutive sublots having positive Cu-Sum values. The sequence begins when the breakpoint value is exceeded and extends back to where the last Cu-Sum value was zero or to the last sublot Cu-Sum value exceeding the breakpoint limit for that factor.

The following example illustrates the current material portion sequence definition. A vessel is loaded to meet a U.S. No. 2 Yellow soybean contract specification. The foreign material grade limit is 2.0 percent with a 0.5 breakpoint value and a 0.2 starting value. The sublot foreign material results and Cu-Sum values are:

Sublot No.	Foreign material	
	Grade limit	Cu-Sum value
	2.0	0.5/0.2
1	2.1	0.3
2	1.9	0.2

Sublot No.	Foreign material	
	Grade limit	Cu-Sum value
3	1.7	0.0
4	2.2	0.2
5	2.0	0.2
6	2.1	0.3
7	2.3	0.6

In the above example, sublot numbers 4, 5, 6, and 7 make up the material portion sequence under the current definition because they have Cu-Sum values greater than zero. Under the current plan, any one sublot in this material portion sequence may be designated as the material portion.

According to the Cu-Sum concept, whenever the Cu-Sum value begins to exceed zero, it is a warning that quality may be drifting from an acceptable level. Those responsible for product quality have the opportunity to check operations for any problems and take corrective measures before quality deficiencies occur. If quality remains constant and is of an acceptable quality, the Cu-Sum value should move back to zero. However, if the Cu-Sum value exceeds the breakpoint, then there was a quality problem causing the positive Cu-Sum; and all of the product back to the start of the material portion sequence should be considered inferior or unacceptable.

As currently defined, a material portion sequence may have one or more sublots within the contracted grade limit having a Cu-Sum value greater than zero. FGIS proposes to redefine the material portion to include the sublot exceeding the breakpoint plus all previously consecutive sublots exceeding the same contracted grade factor limit. The material portion will extend back to, but will not include, the last sublot loaded within the contracted grade factor limit. The proposed change will reject the entire material portion, requiring separate certification or removal from the lot. In the earlier example, sublot numbers 6 and 7 would be considered a material portion under the proposed changes because both sublots exceeded the contracted grade limit for foreign material and they were loaded consecutively when sublot number 7 exceeded the breakpoint. Sublot number 5 is not considered part of the material portion because the foreign material inspection result is within contract specifications.

Applicants may request a review inspection of the entire material portion as part of the review inspection process within the plan or review the entire lot.

Protein

Protein testing results for wheat are currently evaluated and certificated for quality and uniformity using the Protein Uniformity Inspection Plan (PUIP) which appears in the FGIS instructions as part of Book V of the Grain Inspection Handbook. PUIP is an inspection plan applied independently from the Cu-Sum Plan. There are two requirements for uniformity under PUIP: (1) Sublot results cannot exceed the absolute limit (0.5 percent inferior to the contract specifications) and (2) the difference between the highest and lowest sublot results must not exceed 1.0 percent protein. A material portion exists if either requirements is exceeded.

When shiplot grain is inspected for both grade and protein, the two plans (Cu-Sum and PUIP) are applied concurrently; and grade and protein results are issued on the same certificate. When either grade or protein is inferior to the contract specifications, the material portion designation encompasses both grade and protein results, regardless of whether grade or protein or both are the cause of the material portion.

FGIS proposes to discontinue the PUIP and include protein testing under the Cu-Sum Plan. This would provide for a single inspection plan for all factors. A review of protein data indicates the applicable protein breakpoint would be 0.5 with a starting value of 0.2.

Sales contracts identify protein specifications as either a mimimum or maximum protein limit or an average (or ordinary) protein. The Cu-Sum Plan will be applied differently depending on which contract specification is used. When a minimum or maximum protein limit is specified, FGIS proposes the Cu-Sum Plan be applied to determine Cu-Sum values and compare these values to the breakpoint. If a contract specifies both a minimum and a maximum protein limit (specific range), FGIS proposes the Cu-Sum Plan be applied to both the minimum and maximum limits. Cu-Sum Plan tolerances are not applied when an average protein is specified in the sales contract.

Due to the unique protein requirements or many processed products, protein uniformity is considered important inspection information. FGIS, therefore, proposes range limits be applied whenever protein testing services are required. These limits are to be applies concurrently with the breakpoint limit. FGIS proposes a 1.0 percentage point range limit for protein unless a specific range is established by the contract.

When a minimum or maximum protein limit is declared, Cu-Sum values are determined and compared to the breakpoint value during loading. All sublots accepted by the inspection plan are combined and certificated as one lot. Sublots designated as material portions are separately certificted. After accepted sublots are combined to form the single lot, official personnel will determine if the 1.0 percentage point range limit was exceeded during loading. This is determined by comparing the lowest and highest protein sublot results for the lot. If the range limit is exceeded, a special statement will be shown on the inspection certificate which indicates the actual range (lowest and highest protein results). This statement better describes the uniformity of the combined sublots in a single lot. Material portion sublots due to protein may be combined if the sublots are of like numerical grade and their protein results are within 1.0 percentage point range. Their combined quality will be the average of their factor results.

Cu-Sum tolerances are not applied if a specific protein limit is not declared in the contract. The certified quality of the shipment is the average of all sublot results. A special statement indicating the acutal protein range of the shipment will be shown on the inspection certificate if the difference between the lowest and highest protein results of the lot exceed the 1.0 percentage point range limit.

Optional Component Sample Inspections

During the loading of shiplots, samples are continuously drawn and portions of a sublot (component sample) are visually examined for insect infestation and to detect extreme variations in quality. Component samples represent a minimum of 10,000 bushels. Component samples are examined to determine whether any factor exceeds that contracted grade limit for the shiplot by more than one numerical grade. If all factors in the component sample are within the "one grade" limit, inspection personnel combine the samples and grade them sublot. If any factor in a component sample appears to be more than one grade inferior in quality, the component sample is analyzed for that factor. The gain represented by the component sample is declared a material portion when the factor result of the component sample exceeds the contracted limit by more than one numerical grade.

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Upon request under the current plan, a special factor analysis may be provided on each component sample if inspection personnel are given sufficient advance notice. This analysis is currently limited to a single mechanically determined factor. The component sample results are entered on the inspection log then averaged to determine the sublot result for that factor.

FGIS reviewed this procedure and determined that the averaging of component sample results provides a better estimate of sublot quality because the sample size for the factor determination is increased due to the number of analyses made for that factor. In turn, inspection variability caused by sampling, inspection equipment, and inspector performance is reduced.

FGIS proposes to provide, upon request, component inspection analysis under the following conditions: (1) A minimum of three component samples must comprise the sublot, (2) sublots sizes may be increased to a maximum of 120,000 bushels based on the loading characteristic of the elevator and the size of the shiplot, (3) reduced factor breakpoints will be implemented based on the number of components in the sublot (Table 5), (4) component sample inspections will be limited to critical grading factors (factors which usually determine grade or contract compliance), and (5) component sample results will be required to be within the "one grade" limit.

TABLE 5.—BREAKPOINTS FOR COMPONENT SAMPLE ANALYSIS

Regular sublot breakpoint	Sublot breakpoints based on number of component samples—		
	Three components	Four components	Five components
0.1	0.1	0.1	0.0
0.2	0.1	0.1	0.1
0.3	0.2	0.2	0.1
0.4	0.2	0.2	0.2
0.5	0.3	0.3	0.2
0.6	0.3	0.3	0.3
0.7	0.4	0.4	0.3
0.8	0.5	0.4	0.4
0.9	0.5	0.5	0.4
1.0	0.6	0.5	0.4
1.1	0.6	0.6	0.5
1.2	0.7	0.6	0.5
1.3	0.8	0.7	0.6
1.4	0.8	0.7	0.6
1.5	0.9	0.8	0.7
1.6	0.9	0.8	0.7
1.7	1.0	0.9	0.8
1.8	1.0	0.9	0.8
1.9	1.1	1.0	0.9
2.0	1.2	1.0	0.9
2.1	1.2	1.1	0.9
2.2	1.3	1.1	1.0
2.3	1.3	1.2	1.0
2.4	1.4	1.2	1.1
2.5	1.4	1.3	1.1

TABLE 5.—BREAKPOINTS FOR COMPONENT SAMPLE ANALYSIS—Continued

Regular sublot breakpoint	Sublot breakpoints based on number of component samples—		
	Three components	Four components	Five components
2.6	1.5	1.3	1.2
2.7	1.6	1.4	1.2
2.8	1.6	1.4	1.3
2.9	1.7	1.5	1.3
3.0	1.7	1.5	1.3

Table 5 indicates how the breakpoints are reduced in size based on the number of component samples analyzed within a sublot. Table 3 identifies the proposed breakpoint for foreign material for U.S. No. 2 Yellow soybeans as 0.3. Under the component inspection system, the sublot breakpoint for foreign material is 0.2, 0.2, and 0.1 for sublots having three component samples, four component samples, and five component samples, respectively. The average sublot results for the component sample analysis is applied to the appropriate breakpoint to determine acceptance under the inspection plan.

Economic Impact Analysis

FGIS requested that the Economic Research Service, USDA, (ERS) conduct an economic impact analysis of the proposed changes to the shiplot inspection plan. A stratified, random sample of wheat, corn, and soybean export lots loaded during fiscal year 1987 was used to complete the analysis. The final report published by ERS estimates the proposed changes to the shiplot inspection plan could result in costs for the U.S. wheat, corn, and soybean industries from $15.5 million to $65.6 million, depending on how quickly the industries adapt to the proposed changes. Costs of improving grain quality, recycling, and unloading were estimated in selected scenarios with regard to the industries' response to the proposed changes.

The ERS report estimates the proposed changes could cost the industries approximately $15.5 million if the industries quickly improve their grain quality to maintain their current frequency of material portion occurrence (scenario No. 1). The ERS report further estimates the proposed changes could cost the industries approximately $24.4 million under a transition scenario (scenario No. 2) if the frequency of material portion occurrences doubled after improving grain quality and the rejected sublots were unloaded from ships or recycled from shipping bins. The ERS report also estimates, as the worst possible case (scenario No. 3), the proposed changes could cost industry approximately $65.6 million if the industries did not improve their grain quality over the current level. Additionally, the ERS study indicated higher quality U.S. export grain and oilseeds resulting from the proposed changes to the inspection plan could bring benefits which could offset or even outweigh the costs of improving grain quality. The benefit of improving wheat protein under the proposed plan is estimated at $5.2 million, compared to the estimated $4.1 million cost of improving the quality factor.

The specific economic impact for the three grains analyzed using the three different scenarios was estimated at $4.6, $4.9, and $19.7 million for wheat; $3.5, $10.1, and $31.1 million for corn; and $7.4, $9.5, and $34.8 million for soybeans.

Summary

The overriding concern with the current Cu-Sum Plan, as determined by the statistician and confirmed by USDA statisticians, is that there is a much higher probability that interior quality grain will be accepted under the plan than good quality being rejected. Consequently, the plan provides the buyer with only limited protection against receiving inferior quality grain while assuring the shipper a limited amount of acceptable quality grain is rejected. The proposed changes are directed at balancing, and to the extent possible, minimizing the probabilities of acceptance and rejection around the grade limit between buyer and seller. FGIS believes that these revisions will improve the statistical performance of the plan and ensure that the plan is a more unbiased, neutral inspection process.

Copies of the ERS report, "Economic Impacts of Changes in the Shiplot Inspection Plan Proposed by the Federal Grain Inspection Service", are available from FGIS upon request.

Regulatory Revisions

FGIS proposes to revise the regulations regarding the inspection of shiplot grain. The proposed revisions include adding certain provisions concerning the inspection plan and establishing in the regulations procedures for review inspection services for sublots inspected as part of the inspection plan. The revisions would specify that the regulations apply to inspection of shiplot, unit train, and lash barge grain in single lots. FGIS further proposes to revise §§ 800.86, 800.129, and 800.139 to organize them into a more

logical order, clarify and remove unnecessary language, and remove provisions that are no longer needed.

Specifically, the following changes are proposed:

1. Renaming § 800.86 to include the terms "unit train" and "lash barge" because they are inspected, at times, using the statistical sampling and inspection plan.

2. Renaming § 800.86(c) *Inspection procedure; general,* to *Inspection procedures.* Paragraph (c) is further subdivided into (1) *General information,* (2) *Tolerances,* (3) *Grain accepted by the inspection plan,* (4) *Grain rejected by the inspection plan,* and (5) *Reinspection service and appeal inspection service.* Tolerances would be placed in the tables in a format that would include information from the Official United States Standards for Grain (7 CFR Part 810). This format would enhance the understanding, clarity, and use of the regulations. The general information paragraph contains the same provisions. The grain accepted by the inspection plan paragraph is similar to the current provisions outlined in § 800.86(f), *Grain uniform in quality.* The information is being moved to the inspection procedures paragraph because it follows a more logical order. Following the same reasoning, the grain rejected by the inspection plan paragraph is similar to the current provisions outlined in § 800.86(g), *Grain not uniform in quality.* The proposed paragraph regarding grain rejected by the inspection plan includes the applicant's options when sublots are designated material portions. The reinspection service and appeal inspection service paragraph establishes the provisions for limiting the review inspection to one field review and averaging review inspection results with original inspection results. The current paragraph (i), *Reinspection service and appeal inspection service on a shiplot* is deleted and replaced with the revised paragraph under paragraph (c).

3. Moving provisions of § 800.86(d), *Weighted or mathematical average,* to the new § 800.86(c)(3).

4. Revising §§ 800.129(a)(1), *Results of sublots,* and 800.139(b), *Result of sublots,* to include provisions for averaging review inspection results with original inspection results.

List of Subjects in 7 CFR Part 800

Administrative practice and procedure, Export, Grain.

For the reasons set out in the preamble, 7 CFR Part 800 is proposed to be amended as follows:

PART 800—(AMENDED)

1. The authority citation for Part 800 continues to read as follows:

Authority: Pub. L. 94-582, 90 Stat. 2867, as amended, (7 U.S.C. 71 *et seq.*)

2. Section 800.86 is revised to read as follows:

§ 800.86 Inspection of shiplot, unit train, and lash barge grain in single lots.

(a) *General.* Official inspection for grade of bulk or sacked grain aboard, or being loaded aboard, or being unloaded from a ship, unit train, or lash barges as a single lot shall be performed according to the provisions of this section and procedures prescribed in the instructions.

(b) *Application procedure.* Applications for the official inspection of shiplot, unit train, and lash barges as a single lot shall:

(1) Be filed in advance of loading or unloading;

(2) Show the estimated quantity of grain to be certificated;

(3) Show the contract grade and official criteria if applicable; and

(4) Identify the carrier and stowage area into which the grain is being loaded, or from which the grain is being unloaded, or in which the grain is at rest.

(c) *Inspection procedures*—(1) *General information.* Shiplot, unit train, and lash barge grain officially inspected as a single lot shall be sampled in a reasonably continuous operation. Representative samples shall be obtained from the grain offered for inspection and inspected and graded in accordance with a statistical acceptance sampling and inspection plan according to the provisions of this section and procedures prescribed in the instructions.

(2) *Tolerances.* The probability of accepting or rejecting portions of the lot during loading or unloading is dependent on inspection results obtained from preceding portions and the applied breakpoints and procedures. Breakpoints shall be periodically reviewed and revised based on new estimates of inspection variability. Tables 1 through 24 list the breakpoint for all grains.

TABLE 1.—GRADE LIMITS AND BREAKPOINTS FOR SIX-ROWED MALTING BARLEY AND SIX-ROWED BLUE MALTING BARLEY

Grade	Minimum limits of—						Maximum limits of—									
	Test weight per bushel (pounds)		Suitable malting type (percent)		Sound barley [1] (percent)		Damaged kernels [1] (percent)		Foreign material (percent)		Other grains (percent)		Skinned and broken kernels (percent)		Thin barley (percent)	
	GL	BP	GL	BP	GL	BP	GL	BP	GL	BP	GL	BP	GL	BP	GL	BP
U.S. No. 1	47.0	−0.5	95.0	−1.3	97.0	−1.0	2.0	0.8	1.0	0.4	2.0	0.6	4.0	1.1	7.0	0.6
U.S. No. 2	45.0	−0.5	95.0	−1.3	94.0	−1.4	3.0	0.9	2.0	0.4	3.0	0.9	6.0	1.4	10.0	0.9
U.S. No. 3	43.0	−0.5	95.0	−1.3	90.0	−1.6	4.0	1.1	3.0	0.4	5.0	1.3	8.0	1.5	15.0	0.9

[1] Injured-by-frost kernels and injured-by-mold kernels are not considered damaged kernels or scored against sound barley.

Note: Six-rowed barley that meets the requirements of U.S. No. 1 to U.S. No. 3, inclusive, for the subclasses Six-rowed Malting Barley and Six-rowed Blue Malting Barley is classified and graded according to the requirements in this section. Otherwise, it will be graded according to the requirements in § 810.206.

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TABLE 2.—GRADE LIMITS AND BREAKPOINTS FOR TWO-ROWED MALTING BARLEY

Grade	Minimum limits of—						Maximum limits of—							
	Test weight per bushel (pounds)		Suitable malting types (percent)		Sound barley [1] (percent)		Wild oats (percent)		Foreign material (percent)		Skinned and broken kernels (percent)		Thin barley (percent)	
	GL	BP	GL	BP	GL	BP	GL	BP	GL	BP	GL	BP	GL	BP
U.S. No. 1 Choice	50.0	−0.5	97.0	1.0	98.0	0.8	1.0	0.6	0.5	0.1	5.0	1.3	5.0	0.4
U.S. No. 1	48.0	−0.5	97.0	1.0	98.0	0.8	1.0	0.6	0.5	0.1	7.0	1.3	7.0	0.5
U.S. No. 2	48.0	−0.5	95.0	1.3	96.0	1.1	2.0	0.8	1.0	0.4	10.0	1.8	10.0	0.9
U.S. No. 3	48.0	−0.5	95.0	1.3	93.0	1.1	3.0	0.9	2.0	0.4	10.0	1.8	10.0	0.9

[1] Injured-by-frost kernels and injured-by-mold kernels are not considered damaged kernels or scored against sound barley.

Note: Two-rowed barley that meets the requirements of U.S. No. 1 Choice to U.S. No. 3, inclusive, for the subclass Two-rowed Malting Barley is classified and graded according to the requirements in this section. Otherwise, it will be graded according to the requirements in § 810.206.

TABLE 3.—GRADE LIMITS AND BREAKPOINTS FOR SIX-ROWED BARLEY, TWO-ROWED BARLEY, AND BARLEY

Grade	Minimum limits of—				Maximum limits of—									
	Test weight per bushel (pounds)		Sound barley (percent)		Damaged kernels [1] (percent)		Heat-damaged kernels (percent)		Foreign material (percent)		Broken kernels (percent)		Thin barley (percent)	
	GL	BP	GL	BP	GL	BP	GL	BP	GL	BP	GL	BP	GL	BP
U.S. No. 1	47.0	−0.5	97.0	−1.1	2.0	0.8	0.2	0.1	1.0	0.4	4.0	1.0	10.0	0.9
U.S. No. 2	45.0	−0.5	94.0	−1.4	4.0	1.0	0.3	0.1	2.0	0.4	8.0	1.5	15.0	0.9
U.S. No. 3	43.0	−0.5	90.0	−1.6	6.0	1.4	0.5	0.2	3.0	0.5	12.0	1.8	25.0	1.3
U.S. No. 4 [2]	40.0	−0.5	85.0	−2.2	8.0	1.5	1.0	0.5	4.0	0.5	16.0	1.8	35.0	1.9
U.S. No. 5	36.0	−0.5	75.0	−2.2	10.0	1.8	3.0	0.6	5.0	0.6	26.0	2.4	75.0	2.5

[1] Includes heat-damaged kernels. Injured-by-frost kernels and injured-by-mold kernels are not considered damaged kernels.
[2] Barley that is badly stained or materially weathered shall be graded not higher than U.S. No. 4.

TABLE 4.—BREAKPOINTS FOR BARLEY SPECIAL GRADES AND FACTORS

Special grade or factor	Grade limit	Breakpoint
Dockage	0.99 or above	0.47
Two-rowed barley	Not more than 10% of Six-rowed in Two-rowed.	1.8
Six-rowed barley	Not more than 10% of Two-rowed in Six-rowed.	1.8
Malting (Blue Aleurone Layers).	Not less than 90%	−1.3
Malting (White Aleurone Layers).	Not less than 90%	−1.3
Smutty	More than 0.2%	0.06
Garlicky	3 or more in 500 grams.	2½
Ergoty	More than 0.10%	0.13
Infested	Same as instruction	0
Blighted	More than 4.0%	1.1
Injured-by-frost kernels.	More than 1.9%	0.1
Injured-by-heat kernels.	More than 0.2%	0.04
Frost-damaged kernels.	More than 0.4%	0.05
Heat-damaged kernels.	More than 0.1%	0.1
Other grains	Not more than 25.0%.	2.4
Moisture	As specified by contract or load order grade.	0.5

TABLE 5.—GRADE LIMITS AND BREAKPOINTS FOR CORN

Grade	Minimum test weight per bushel (pounds)		Maximum limits of—					
			Heat-damaged kernels (percent) [1]		Total (percent) [1]		Broken corn and foreign material (percent)	
	GL	BP	GL	BP	GL	BP	GL	BP
U.S. No. 1	56.0	−0.4	0.1	0.1	3.0	1.0	2.0	0.2
U.S. No. 2	54.0	−0.4	0.2	0.2	5.0	1.3	3.0	0.3
U.S. No. 3	52.0	−0.4	0.5	0.3	7.0	1.5	4.0	0.3
U.S. No. 4	49.0	−0.4	1.0	0.5	10.0	1.8	5.0	0.4
U.S. No. 5	46.0	−0.4	3.0	0.9	15.0	2.1	7.0	0.4

[1] Damaged kernels.

TABLE 6.—BREAKPOINTS FOR CORN SPECIAL GRADES AND FACTORS

Special grade or factor	Grade limit	Breakpoint
Flint	95% or more of flint corn.	1.0.
Flint and Dent	More than 5%, but less than 95% if flint corn.	1.0 or −1.0.
Infested	Same as instruction.	0.
Corn of other colors:		
White	2.0%	0.8.
Yellow	5.0%	1.0.
Waxy	95.0%	3.0.
High BCFM	As specified by contract or load order grade.	10% of the load order grade.
Moisture	As specified by contract or load order grade.	0.4

TABLE 7.—GRADE LIMITS AND BREAKPOINTS FOR FLAXSEED

Grade	Minimum test weight per bushel (pounds)		Maximum limits of—			
			Heat-damaged flaxseed (percent)		Total (percent)	
	GL	BP	GL	BP	GL	BP
U.S. No. 1	49.0	−0.1	0.2	0.1	10.0	0.9

TABLE 7.—GRADE LIMITS AND BREAKPOINTS FOR FLAXSEED—Continued

Grade	Minimum test weight per bushel (pounds)		Maximum limits of—			
			Heat-damaged flaxseed (percent)		Total (percent)	
	GL	BP	GL	BP	GL	BP
U.S. No. 2	47.0	−0.1	0.5	0.1	15.0	1.1

TABLE 8.—BREAKPOINTS FOR FLAXSEED SPECIAL GRADES AND FACTORS

Special grade or factor	Grade limit	Breakpoint
Moisture	As specified by load order or contract grade.	0.4
Dockage	0.99% or above	0.32

TABLE 9.—GRADE LIMITS AND BREAKPOINTS FOR MIXED GRAIN

Grade	Maximum limits of—					
	Moisture (percent)	Damaged kernels				
		Total (percent)		Heat-damaged (percent)		
		GL	BP	GL	BP	
U.S. mixed grain	16.0	15.0	0.6	3.0	0.4	

NOTE: There is no tolerance for U.S. Sample grade Mixed Grain.

TABLE 10.—BREAKPOINTS FOR MIXED GRAIN SPECIAL GRADES AND FACTORS

Special grade or factor	Grade limit	Breakpoint
Smutty	More than 14 in 250 grams (wheat, rye, or triticale predominates).	0.6
	More than 0.2% (all other mixtures).	0.05
Ergoty	More than 0.10%	0.13
Garlicky	2 or more per 1,000 grams (wheat, rye, or triticale predominates).	1
	4 or more per 500 grams (all other mixtures).	2
Infested	Same as instruction.	0
Blighted	More than 4.0% (barley predominates).	1.1
Treated	Same as instruction.	0
Moisture	As specified by contract or load order grade.	0.5

TABLE 11.—GRADE LIMITS AND BREAKPOINTS FOR OATS

Grade	Minimum limits of—				Maximum limits of—					
	Test weight per bushel (pounds)		Sound Oats (Percent)		Heat-damaged kernels (Percent)		Foreign material (Percent)		Wild Oats (Percent)	
	GL	BP	GL	BP	GL	BP	GL	BP	GL	BP
U.S. No. 1	36.0	−0.5	97.0	−0.8	0.1	0.1	2.0	0.4	2.0	0.6
U.S. No. 2	33.0	−0.5	94.0	−1.2	0.3	0.4	3.0	0.4	3.0	0.8
U.S. No. 3 [1]	30.0	−0.5	90.0	−1.4	1.0	0.5	4.0	0.5	5.0	1.1
U.S. No. 4 [2]	27.0	−0.5	80.0	−1.9	3.0	0.8	5.0	0.5	10.0	1.4

[1] Oats that are Slightly Weathered shall be graded not higher than U.S. No. 3.
[2] Oats that are Badly Stained or Materially Weathered shall be graded not higher than U.S. No. 4.

TABLE 12.—BREAKPOINTS FOR OATS SPECIAL GRADES AND FACTORS

Special grade or factors	Grade limit	Breakpoint
Heavy	38.0 pounds or more.	−0.5
Extra Heavy	40.0 pounds or more.	−0.5
Moisture	As specified by contract or load order grade.	0.5
Thin	More than 20.0 percent.	0.5
Smutty	More than 0.2 percent.	0.05
Ergoty	More than 0.10 percent.	0.10
Garlicky	4 or more in 500 grams.	2½
Infested	Same as instruction.	0
Bleached	Same as instruction.	0

TABLE 13.—GRADE LIMITS AND BREAKPOINTS FOR RYE

Grade	Minimum test weight per bushel (pounds)		Maximum limits of—									
			Foreign material				Damaged kernels				Thin Rye (percent)	
			Foreign matter other than wheat (percent)		Total (percent)		Heat-damaged (percent)		Total (percent)			
	GL	BP	GL	BP	GL	BP	GL	BP	GL	BP	GL	BP
U.S. No. 1	56.0	−0.5	1.0	0.4	3.0	0.6	0.2	0.1	2.0	−0.6	10.0	0.6
U.S. No. 2	54.0	−0.5	2.0	0.5	6.0	1.1	0.2	0.1	4.0	−1.1	15.0	0.6
U.S. No. 3	52.0	−0.5	4.0	0.6	10.0	1.4	0.5	0.4	7.0	−1.4	25.0	0.9
U.S. No. 4	49.0	−0.5	6.0	0.6	10.0	1.4	3.0	0.6	15.0	−2.0		

TABLE 14.—BREAKPOINTS FOR RYE SPECIAL GRADES AND FACTORS

Special grade or factor	Grade limit	Breakpoint
Moisture	As specified by contract or load order grade.	0.3
Light Garlicky	2 or more per 1,000 grams.	1⅓
Garlicky	More than 6 per 1,000 grams.	7⅓

TABLE 14.—BREAKPOINTS FOR RYE SPECIAL GRADES AND FACTORS—Continued

Special grade or factor	Grade limit	Breakpoint
Ergoty	More than 0.30%	0.1
Plump	Not more than 5.0% through 0.064 × ¾ sieve.	0.5
Light Smutty	More than 14 per 250 grams.	6

TABLE 14.—BREAKPOINTS FOR RYE SPECIAL GRADES AND FACTORS—Continued

Special grade or factor	Grade limit	Breakpoint
Smutty	More than 30 per 250 grams.	10
Infested	Same as instruction	0
Dockage	0.99% or above	0.32

TABLE 15.—GRADE LIMITS AND BREAKPOINTS FOR SORGHUM

Grade	Minimum test weight per bushel (pounds)		Maximum limits of—					
			Heat-damaged (percent)		Total (percent)		Broken kernels, foreign material, and other grains (percent)	
	GL	BP	GL	BP	GL	BP	GL	BP
U.S. No. 1	57.0	−0.4	0.2	0.1	2.0	1.1	4.0	0.8
U.S. No. 2	55.0	−0.4	0.5	0.4	5.0	1.8	8.0	0.8
U.S. No. 3 [1]	53.0	−0.4	1.0	0.5	10.0	2.3	12.0	1.3
U.S. No. 4	51.0	−0.4	3.0	0.8	15.0	2.8	15.0	1.5

[1] Damaged kernels.
[2] Sorghum which is distinctly discolored shall be graded not higher than U.S. No. 3.

TABLE 16.—BREAKPOINTS FOR SORGHUM SPECIAL GRADES AND FACTORS

Special grade or factors	Grade limit	Breakpoint
Class:		
Brown	Not less than 90 percent	−1.9
Yellow	Not less than 90 percent	−1.9
White	Not less than 98.0 percent	−0.9
Smutty	20 or more in 100 grams	8
Infested	Same as instruction	0
Dockage	0.99 percent and above	.32
Moisture	As specified by contract or load order grade	0.5

TABLE 17.—GRADE LIMITS AND BREAKPOINTS FOR SOYBEANS

Grade	Minimum test weight per bushel (pounds)		Maximum limits of—									
			Damaged kernels				Foreign material (percent)		Splits (percent)		Soybeans of other colors (percent)	
			Heat damaged (percent)		Total (percent)							
	GL	BP	GL	BP	GL	BP	GL	BP	GL	BP	GL	BP
U.S. No. 1	56.0	−0.4	0.2	0.2	2.0	0.8	1.0	0.2	10.0	1.6	1.0	0.7
U.S. No. 2	54.0	−0.4	0.5	0.3	3.0	0.9	2.0	0.3	20.0	2.2	2.0	1.0
U.S. No. 3 [1]	52.0	−0.4	1.0	0.5	5.0	1.2	3.0	0.4	30.0	2.5	5.0	1.6
U.S. No. 4 [2]	49.0	−0.4	3.0	0.9	8.0	1.5	5.0	0.5	40.0	2.7	10.0	2.3

[1] Soybeans which are purple mottled or stained shall be graded not higher than U.S. No. 3.
[2] Soybeans which are materially weathered shall be graded not higher than U.S. 4.

TABLE 18.—BREAKPOINTS FOR SOYBEAN SPECIAL GRADES AND FACTORS

Special grade or factor	Grade limit	Breakpoint
Garlicky	5 or more per 1,000 grams	2
Infested	Same as instruction	0
Soybeans of other colors	10.0%	2.3
Moisture	As specified by contract or load order grade	0.2

TABLE 19.—GRADE LIMITS AND BREAKPOINTS FOR SUNFLOWER SEED

Grade	Minimum test weight per bushel (pounds)		Maximum limits of—					
			Heat-damaged (percent)		Total (percent)		Dehulled seed (percent)	
	GL	BP	GL	BP	GL	BP	GL	BP
U.S. No. 1	25.0	−0.5	0.5	0.4	5.0	1.3	5.0	1.3
U.S. No. 2	25.0	−0.5	1.0	0.6	10.0	1.8	5.0	1.3

TABLE 20.—BREAKPOINTS FOR SUNFLOWER SEED SPECIAL GRADES AND FACTORS

Special grade or factor	Grade limit	Breakpoint
Moisture	As specified by contract or load order grade	0.5
Foreign Material	Less than 1.25	0.27
	1.26 and above	0.59
Admixture	As specified by contract or load order grade	0.6

TABLE 21—GRADE LIMITS AND BREAKPOINTS FOR TRITICALE

Grade	Minimum test weight per bushel (pounds)		Maximum limits of—											
			Heat-damaged (percent)		Total [1] (percent)		Material other than wheat or rye (percent)		Total [2] (percent)		Shrunken and broken kernels (percent)		Defects [3] (percent)	
	GL	BP	GL	BP	GL	BP	GL	BP	GL	BP	GL	BP	GL	BP
U.S. No. 1	48.0	−0.5	0.2	0.1	2.0	0.8	1.0	0.4	2.0	0.6	5.0	0.8	5.0	1.3
U.S. No. 2	45.0	−0.5	0.2	0.1	4.0	1.1	2.0	0.5	4.0	0.9	8.0	0.8	8.0	1.3
U.S. No. 3	43.0	−0.5	0.5	0.4	8.0	1.5	3.0	0.6	7.0	1.2	12.0	1.6	12.0	2.3
U.S. No. 4	41.0	−0.5	3.0	0.8	15.0	2.0	4.0	0.8	10.0	1.4	20.0	2.3	20.0	2.3

[1] Includes heat-damaged kernels.
[2] Includes material other than wheat or rye.
[3] Defects include damaged kernels (total), foreign material (total), and shrunken and broken kernels. The sum of these three factors may not exceed the limit for defects for each numerical grade.

TABLE 22.—BREAKPOINTS FOR TRITICALE SPECIAL GRADES AND FACTORS

Special grade or factor	Grade limit	Breakpoint
Garlicky	2 or more per 1,000 grams.	1⅓
Ergoty	More than 0.1 percent.	0.1
Smutty	More than 14 per 250 grams.	6

TABLE 22.—BREAKPOINTS FOR TRITICALE SPECIAL GRADES AND FACTORS—Continued

Special grade or factor	Grade limit	Breakpoint
Infested	Same as instruction	0
Dockage	0.99 percent or above.	0.32

TABLE 22.—BREAKPOINTS FOR TRITICALE SPECIAL GRADES AND FACTORS—Continued

Special grade or factor	Grade limit	Breakpoint
Moisture	As specified by contract or load order grade.	0.5

TABLE 23.—GRADE LIMITS AND BREAKPOINTS FOR WHEAT

Grade	Minimum limits of (test weight per bushel)—				Maximum limits of—													
	Hard Red Spring wheat or White Club wheat [1] (pounds)		All other classes and subclasses (pounds)		Damaged kernels				Foreign material (percent)		Shrunken and broken kernels (percent)		Defects [3] (percent)		Wheat of other classes [4]			
					Heat-damaged kernels (percent)		Total [2] (percent)								Contrasting classes (percent)		Total [5] (percent)	
	GL	BP	GL	BP	GL	BP	GL	BP	GL	BP	GL	BP	GL	BP	GL	BP	GL	BP
U.S. No. 1	58.0	−0.3	60.0	−0.3	0.2	0.2	2.0	1.0	0.5	0.2	3.0	0.3	3.0	0.7	1.0	0.7	3.0	1.6
U.S. No. 2	57.0	−0.3	58.0	−0.3	0.2	0.2	4.0	1.5	1.0	0.3	5.0	0.4	5.0	0.9	2.0	1.0	5.0	2.1
U.S. No. 3	55.0	−0.3	56.0	−0.3	0.5	0.3	7.0	1.9	2.0	0.5	8.0	0.5	8.0	1.2	3.0	1.3	10.0	2.9
U.S. No. 4	53.0	−0.3	54.0	−0.3	1.0	0.4	10.0	2.3	3.0	0.6	12.0	0.6	12.0	1.4	10.0	2.3	10.0	2.9
U.S. No. 5	50.0	−0.3	51.0	−0.3	3.0	0.7	15.0	2.7	5.0	0.7	20.0	0.7	20.0	1.5	10.0	2.3	10.0	2.9

[1] These requirements also apply when Hard Red Spring or White Club wheat predominate in a sample of Mixed wheat.
[2] Includes heat-damaged kernels.
[3] Defects include damaged kernels (total), foreign material, and shrunken and broken kernels. The sum of these three factors may not exceed the limit for defects for each numerical grade.
[4] Unclassed wheat of any grade may contain not more than 10.0 percent of wheat of other classes.
[5] Includes contrasting classes.

TABLE 24.—BREAKPOINTS FOR WHEAT SPECIAL GRADES AND FACTORS

Other factors	Grade limit	Breakpoint
Moisture	As specified by contract or load order grade.	0.3
Garlicky	More than 2 per 1,000 grams.	1½
Light Smutty	More than 14 smut balls per 250 grams.	6
Smutty	More than 30 smut balls per 250 grams.	10
Weevily	Same as instruction	0
Ergoty	More than 0.30 percent.	0.19
Treated	Same as instruction	0
Dockage	As specified by contract or load order grade.	0.20
Protein	As specified by contract or load order grade.	0.5
Class—subclass:		
Hard Red—ONS	75 percent or more DHV.	−5.0
Spring—NS	25 percent or more DHV but less than 75 percent DHV.	−5.0
Durum:		
HADU	75 percent or more HVAC.	−5.0
ADU	60 percent or more HVAC but less than 75 percent of HVAC.	−5.0
White:		
HDWH	75 percent or more hard kernels and not more than 10 percent WHCB.	−5.0 2.0
SWH	Not more than 10 percent WHCB and less than 75 percent hard kernels.	2.0 5.0
WHCB	Not more than 10 percent DWH.	2.0
WWH	More than 10 percent WHCB and more than 10 percent DWH.	−3.0 −3.0

(3) *Grain accepted by the inspection plan.* Grain which is offered for inspection as part of a single lot and accepted by a statistical acceptance sampling and inspection plan according to the provisions of this section and procedures prescribed in the instructions shall be certificated as a single lot provided it was sampled in a reasonably continuous operation. Official factor and official criteria information shown on the certificate shall be based on the weighted or mathematical averages of the analysis of sublots.

(4) *Grain rejected by the inspection plan.* When grain which is offered for inspection as part of a single lot is rejected by the plan or is not sampled in a reasonably continuous operation, the grain in each portion shall be certificated separately. If any portion of grain is not accepted by the plan and designated a material portion, the applicant shall be promptly notified and have the option of:

(i) Removing the material portion from the carrier; or

(ii) Requesting the material portion be separately certificated; or

(iii) Requesting either a reinspection or an appeal inspection of the material portion; or

(iv) Requesting a reinspection service and/or an appeal inspection service on the entire lot.

(5) *Reinspection service and appeal inspection service.* A reinspection or an appeal inspection may be requested on a material portion. A Board appeal inspection may also be requested on a material portion after the reinspection or appeal inspection. A reinspection, an appeal inspection, and a Board appeal inspection may be requested on the total sublots in the lot.

(i) *Material portions.* A material portion designated by the plan may be reinspected or appeal inspected once in the field, but not both, and once at the Board of Appeals and Review. The reinspection or appeal inspection result shall, unless a material error is found, be averaged with the original inspection determination. The Board appeal inspection result shall, unless a material error is found, be averaged with the previous inspection result. The inspection plan tolerances shall be reapplied to the material portion grain to determine acceptance or rejection. If a material error is found, the reinspection or appeal inspection result shall replace the original inspection result or the Board appeal result shall replace the previous inspection result. For purposes of this section, a material error is defined as results differing by more than two standard deviations. Acceptance or rejection of that portion of grain shall be based on the reinspection or appeal inspection and on the Board appeal inspection result alone when a material error is found.

(ii) *Entire lot.* The applicant may request a reinspection service, an appeal inspection service, and a Board appeal inspection service on the entire lot. Inspection results for these services shall replace the previous inspection results. The tolerances shall be reapplied to all portions of the entire lot to determine acceptance or rejection.

(d) *Infested grain*—(1) *Available options.* If grain or any portion of grain in a single shiplot, unit train, or lash barge lot is found to be infested, according to the provisions of the Official U.S. Standards for Grain, the applicant shall be promptly notified and have the option of:

(i) Unloading the portion of infested grain from the lot and an additional

amount of other grain in common stowage with the infested grain; or

(ii) When applicable, completing the loading and treating all infested grain in the lot; or

(iii) When applicable, treating the infested grain for the purpose of destroying the insects, subject to subsequent examination by official personnel; or

(iv) Continue loading without treating the infested grain, in which case all of the infested grain in the lot and all grain in common stowage areas with the infested grain will be officially certificated as infested according to the provisions of the Official U.S. Standards for Grain.

(2) *Exception.* If infested grain is loaded into common stowage with a lot, or a portion of a lot, which has not been officially certificated as being infested, the applicant loading the infested grain may not use the option in paragraph (d)(1)(i) of this section.

(3) *With treatment.* If infested grain is treated with a fumigant in accordance with the instructions and the treatment is witnessed by official personnel, the official sampling, inspection, grading, and certification of the lot shall continue as though the infested condition did not exist.

(e) *Special certification procedures*—(1) *Rejected grain.* When grain is rejected by the inspection plan under paragraph (c)(4) of this section, the official inspection certificate for each different portion of different quality shall show:

(i) A statement that the grain has been loaded with grain of other quality;

(ii) The grade, location, or other identification and approximate quantity of grain in the portions; and

(iii) Other information required by the regulations and the instructions.

The requirement of paragraph (e)(1)(i) of this section does not apply to grain that is inspected as it is unloaded from the carrier or to portions loaded in separate carriers or stowage space.

(2) *Common stowage.*—(i) *Without separation.* When bulk grain is offered for official inspection as it is loaded aboard a ship and is loaded without separation in a stowage area with other grain or another commodity, the official inspection certficate for the grain in each lot shall show the kind, the grade, if known, and the location of the other grain, or the kind and location of the other commodity in the adjacent lots.

(ii) *With separation.* When separations are laid between lots, the official inspection certificates shall show the kind of material used in the separations and the locations of the separations in relation to each lot.

(iii) *Exception.* The common stowage requirements of this paragraph are not applicable to the first lot in a stowage area unless a second lot is loaded, in whole or in part, in the stowage area prior to issuing the official inspection certificate for the first lot.

(3) *Protein.* A special statement indicating the actual protein range of a lot shall be shown on the official inspection certificate if the difference between the lowest and highest protein determinations for the lot exceeds 1.0 percent when protein is officially determined and a specific range limit is not established by the contract grade.

(4) *Part lot.* If part of a lot of grain in an inbound carrier is unloaded and part is left in the carrier, the unloaded grain shall be officially inspected and certificated in accordance with the provisions of § 800.84(g).

(5) *Official mark.* If the grain in a single lot is officially inspected for grade as it is being loaded, upon request, the following official mark shall be shown on the inspection certificate: "Loaded under continuous official inspection."

3. Section 800.129(a)(1) is revised to read as follows:

§ 800.129 Certificating reinspection and review of weighing results.

(a) * * *

(1) *Results of material portion sublots.* When results of a reinspection on a material portion do not detect a material error, they shall be averaged with the original inspection results. For purposes of this section, a material error is defined as results differing by more than two standard deviations. The averaged inspection results shall replace the original inspection results recorded on the official inspection log. Reinspection results shall replace the original inspection results recorded on the official inspection log if a material error is detected. No certificates will be issued unless requested by the applicant or deemed necessary by official personnel.

* * * * *

4. Section 800.135(a) is revised to read as follows

§ 800.135 Who may request appeal inspection services.

(a) *General.* Any interested person may request appeal inspection or Board appeal inspection services, except as provided for in § 800.86(c)(5). When more than one interested person requests an appeal inspection or Board appeal inspection service, the first person to file is the applicant of record. Only one appeal inspection may be obtained from any original inspection or reinspection service. Only one Board appeal inspection may be obtained from an appeal inspection. Board appeal inspections will be performed on the basis of the official file sample. Board appeal inspections are not available on stowage examination services.

* * * * *

5. Section 800.139(b) is revised to read as follows:

§ 800.139 Certificating appeal inspections.

* * * * *

(b) *Results of material portion sublots.* When results of an appeal inspection performed by a field office or the Board of Appeals and Review on a material portion do not detect a material error, they shall be averaged with the previous inspection results recorded on the official inspection log for the identified sample. For purposes of this section, a material error is defined as results differing by more than two standard deviations. The appeal or Board appeal inspection result shall replace the previous inspection results recorded on the offficial inspection log for the identified sample if a material error is detected. No certificate will be issued unless requested by the applicant or deemed necessary by inspection personnel.

* * * * *

Dated: December 28, 1988.

W. Kirk Miller,

Administrator.

[FR Doc. 89-1194 Filed 1-19-89; 8:45 am]

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FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Reg. Z; Docket No. R-0655]

Truth in Lending; Home Equity Disclosure and Substantive Rules

AGENCY: Board of Governor of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board is publishing for comment a proposal to amend Regulation Z (Truth in Lending). The proposal implements provisions of the Home Equity Loan Consumer Protection Act of 1988, which requires creditors to provide consumers with more information for open-end credit plans secured by the consumer's dwelling, and imposes substantive limitations on these plans. Creditors would have to provide information at the time an application is provided to the consumer, including information about the payment terms,

fees imposed under the plan, and, for variable-rate plans, information about the index and a fifteen-year history of changes in the index values. Creditors would be required to provide consumers with a brochure prepared by the Board (or one substantially similar) describing home equity plans. The proposal also imposes duties on third parties who provide applications to consumers and modifies the rules relating to advertisements for home equity plans.

In addition to these disclosure requirements, the proposal would amend Regulation Z to implement new substantive limitations imposed by the statute. The regulation would limit a creditor's right to terminate a plan and accelerate any outstanding balance, or to change the terms of a plan after it has been opened, as well as limit the type of index that can be used for variable-rate plans.

DATES: Comments must be received on or before March 21, 1989.

ADDRESSES: Comments should refer to Docket No. R-0655 and be mailed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551. They may be delivered to Room B-2222 of the Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays or to the guard station in the Eccles Building Courtyard on 20th Street NW. (between Constitution Avenue and C Street NW.) any time. Comments will be available for inspection in the Freedom of Information Office, Room B-1122 of the Eccles Building between 9:00 a.m. and 5:00 p.m. weekdays.

FOR FURTHER INFORMATION CONTACT: Sharon Bowman, Leonard Chanin or Thomas Noto, Staff Attorneys, or Mike Bylsma, Senior Attorney, Division of Consumer and Community Affairs, at (202) 452-3667 or 452-2412; for the hearing impaired only, contact Earnestine Hill or Dorothea Thompson, Telecommunications Device for the Deaf, at (202) 452-3544, Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

(1) Background

In December 1987 the Board proposed amendments to Regulation Z to change the existing disclosure requirements for home equity lines of credit secured by the consumer's principal dwelling (52 FR 48702). The proposal would have (1) required disclosures to be given at the time an application form is provided to the consumer (or before the consumer, pays a nonrefundable fee, if that occurs earlier); (2) required that the disclosures be segregated from other information; and (3) increased the number of required disclosures. Subsequently, the Home Equity Loan Consumer Protection Act was enacted on November 23, 1988 (Pub. L. No. 100-709). The law superseded the Board's proposal. While both the Board's 1987 proposal and the statute address many of the same disclosure and advertising issues, the statute also places substantive limitations on how home equity plans operate.

The statute, which requires the Board to issue regulations, provides that the statutory provisions and rules adopted by the Board shall apply to open-end credit plans entered into five months after the promulgation of final regulations. The Board is proposing amendments for comment, and expects to adopt final regulations in May 1989. Compliance with the law would be mandatory around October 1989.

Under Truth in Lending and Regulation Z, creditors offering open-end credit are currently required to provide consumers with a limited amount of information prior to the first transaction under the plan. The disclosures must reflect the features of the specific plan. Creditors must disclose the information clearly and conspicuously, but are permitted to integrate the disclosures into the contractual agreement.

The statute and proposed amendments to the regulation leave in place the existing disclosure requirements. They would add, however, two requirements to this framework. First, as is the case for closed-end adjustable-rate mortgages that are secured by the consumer's principal dwelling and have a term over one year (see § 226.19(b) of Regulation Z), creditors generally would be required to provide detailed disclosures about their home equity plans when an application is provided to the consumer. Second, creditors would be required to provide the information again, along with the current disclosures, prior to the first transaction under the plan.

The Board is publishing proposed sample disclosure forms to assist creditors in preparing their plan disclosures. The Board expects to publish along with the final regulation tables of values for commonly used indices for home equity plans.

(2) Proposed Amendments to Regulation Z

The Home Equity Loan Consumer Protection Act is quite detailed and, for the most part, the proposed amendments mirror the statutory requirements. The proposed amendments to Regulation Z would incorporate the disclosure provisions into a new § 226.5b of the regulation and into existing § 226.6. (A new § 226.5a has been proposed recently by the Board to implement the Fair Credit and Charge Card Disclosure Act. See 53 FR 51785, December 23, 1988.) Modifications would be made to the advertising rules contained in § 226.16, and technical amendments would be made to §§ 226.1 and 226.5.

(i) Coverage

The proposed amendments to Regulation Z would apply to all open-end credit plans secured by the consumer's dwelling, as set forth in § 226.5b. Thus, the rules apply not only to plans secured by the consumer's principal dwelling, but also to those secured by second or vacation homes.

(ii) Format of Disclosures

Unlike existing Truth in Lending requirements for closed-end and other types of open-end credit, the proposed amendments would not require that the disclosures provided at the time of application be in a form the consumer can keep. (See footnote 8 accompanying § 226.5(a).) Thus, under the proposal, although the disclosures would have to be in writing, creditors would be permitted to place the first set of disclosures on the application form the consumer returns to the creditor to apply for the plan.

Section 226.5b(a) of the proposal would require most of the disclosures to be grouped together and "segregated" from unrelated information provided to the consumer in connection with the application. The brochure and the variable rate information could be provided either separately from or with the other disclosures. Under the proposal, greater flexibility would be permitted in complying with the segregation standard than currently exists for closed-end credit. Disclosures for home equity plans tend to be less concise and more narrative in form than those for closed-end credit. Therefore, the Board proposes to apply a more liberal standard that would permit information that explains or expands on the required disclosures to be included. Information on other aspects of the plan that is not related to the required disclosures, such as underwriting criteria, however, would not be permitted to be interspersed with the disclosures. Such information, of course, could be provided as long as it is separated from the required disclosures.

The segregation standard would not apply to the second set of disclosures provided by the creditor prior to the first transaction under the plan. The additional disclosures would be given with the information currently required under Regulation Z, which is not required to be segregated from other information. These disclosures could be combined and could be integrated into the contract. Like the disclosures currently required, the additional disclosures would have to be in a form the consumer can keep.

In the first set of disclosures, § 226.5(a)(2) of the proposal provides that certain items would be further highlighted by requiring them to precede the other disclosures. Consumers would be notified that (1) they should keep a copy of the disclosures; (2) they have a right to obtain a refund of fees if any terms change and they decide not to enter into the contract as a result; (3) they risk the loss of the dwelling in the event of default; and (4) a creditor may terminate a plan or suspend future advances under certain circumstances.

Creditors would state all aspects of their plans in the first set of disclosures. For example, if a creditor offers several payment options, all options would have to be set forth. Furthermore, if any aspects of a plan are linked together—for example, if the consumer can obtain only certain payment options in conjunction with plans of certain lengths—the creditor must clearly disclose the relation among those plan features. As an alternative to the combined disclosure method, the Board proposes to permit creditors to create separate disclosure documents where features may vary. Creditors pursuing this latter alternative would have to include a statement in the early disclosures that the consumer should "ask about" the creditor's other home equity programs. Creditors would have to provide disclosures in response to any such request.

(iii) Timing of Disclosures

Section 226.5b(b) would require the disclosures and a brochure to be given to consumers at the time an application is provided. In the case of applications contained in magazines or taken by telephone or through third parties, footnote 10a would allow the creditor to mail or deliver the disclosures and brochure to the consumer within three business days of receipt of the application.

In addition to providing these disclosures early in the application process, the statute and § 226.6(e) would require creditors to provide all of the disclosures again along with the disclosures currently required for open-end credit, to the extent they are not duplicative. Creditors also would disclose a list of the conditions that permit the creditor to terminate the plan, freeze or reduce the credit limit, and implement modifications to the original terms. (This requirement could be met by providing a separate list or by identifying the provisions in the contract which contain such conditions.) The disclosures would be provided prior to the first transaction under the plan, in accordance with the existing rule in § 226.5(b). (See the discussion below concerning the specific requirements for this second set of disclosures.)

(iv) Duties of Third Parties

In addition to requiring creditors to provide disclosures to consumers at an earlier time, § 226.5b(c) of the proposal amendments also would impose a duty on third parties who provide applications to consumers. The statute requires that a third party, such as a loan broker, that provides a consumer with an application also must give a brochure and disclosures. The statute recognizes, however, that in some circumstances third parties may not be able to provide disclosures since specific information about the plan terms may be unavailable.

The Board believes that requiring both a third party and a creditor to provide the consumer with identical information about the same plan may result in unnecessary duplication. Under § 226.5b(c) of the proposal, therefore, a third party would be required to provide disclosures only if that party has the disclosures for a creditor's particular home equity plan in its possession. Third parties would not have an affirmative duty to obtain such disclosures about a creditor's programs, or to create a set of disclosures based on what the third party knows about a creditor's program. If, however, a creditor supplies disclosures to a third party along with its application form, the third party would have to give the consumer the disclosures. In all cases, consumers will be provided disclosures by the creditor within three days after the creditor receives the application. While consumer shopping might be enhanced if third parties provided the disclosures at the earlier time, consumers will still be able to shop for credit since neither a creditor nor any other party is permitted to collect a nonrefundable fee until three days after disclosures have been received by the consumer.

Although the duty of third parties to provide the disclosures may arise infrequently, the proposal would require third parties to give the home equity brochure at the time an application is given to the consumer. Because providing the brochure is not linked to the availability of information from a creditor about its specific plan, the Board believes third parties would have access to the brochure, and, thus, be able to provide it with the application. (See the discussion below concerning the responsibility of the creditor if the third party has already given the consumer a brochure.)

(v) Content of Disclosures

Section 226.5b(d) of the proposal lists the information that would be given to consumers when they apply for home equity plans. As is the case with existing Truth in Lending disclosure rules, the information would be provided only to the extent applicable; thus, for example, if negative amortization cannot occur in a program, no mention of it need be made. Because the disclosures need not be in a form the consumer can keep, the consumer would be advised to retain a copy of the disclosures. Creditors would include a statement of any time by which an application must be submitted to obtain specific terms disclosed. If creditors choose not to "guarantee" all or some of the terms, they would provide a statement of the terms that may change prior to opening the plan. Creditors also would have to notify the consumer of the right to refund of all fees paid in connection with the application if any disclosed terms (other than a variable rate) change prior to opening the plan, and as a result the consumer chooses not to enter into the plan. Creditors would have to disclose the fact that a security interest is being taken in the consumer's dwelling and that the consumer may lose the home in the event of default.

(A) Possible Actions by Creditor

Under § 226.5b(d)(4) of the proposal, a statement must be provided that, under certain circumstances, a creditor may terminate the plan and accelerate any outstanding balance, prohibit additional advances or reduce the credit limit or, as set forth in the initial agreement, implement modifications to the original terms. In light of § 226.5b(f)(3)(i) of the proposal, which would permit such modifications if they are explicitly provided for in the contract, the Board is proposing to add this last condition to the disclosure. A creditor would be required to state if fees may be imposed if the account is terminated. Consumers would be notified that they can receive, upon request, a list of the conditions that permit the creditor to terminate the plan, prohibit additional advances or reduce the credit limit, and implement modifications during the term of the plan. Upon receiving a request from a consumer, creditors would be required

to provide this information in writing in a form the consumer can keep. (See § 226.5b(g) of the proposal.)

Although the statute calls only for a disclosure of the right to receive upon request the list of conditions, the Board proposes in § 226.5b(d)(4)(iii) to permit creditors to provide the actual list with the early disclosures in lieu of that statement. The Board believes this flexibility may help consumers compare home equity lines, and may assist creditors by reducing the circumstances in which consumers will request that this information be provided. Creditors would be permitted to provide this list with the segregated disclosures or apart from those disclosures. Section 226.6(e) would provide that the list of these conditions also would have to be given with the disclosures currently required for open-end credit. (This requirement could be met by identifying the provisions in the contract which contain such conditions.)

(B) Payment Terms

Under § 226.5b(d)(5) of the proposal, creditors would be required to describe the payment terms of the plan, including the length of the draw period and any repayment period. (The combined length of the draw period and any repayment period would not have to be stated.) If the terms are indefinite, creditors would state that fact. All payment options under the plan would be stated, including any different payment terms that may exist during the draw period or during any repayment period, as well as any differences that may apply within either period. If the plan permits the consumer to convert any of the loan balance to a fixed term loan, this information would be provided in the disclosures. How the minimum periodic payment is determined, the frequency of payments, and whether making only the minimum payments would not repay any or all of the principal balance during the draw and repayment periods would be set forth. The proposed regulation also calls for a disclosure if a balloon payment is required under the plan—to give consumers an accurate picture of their payment obligations. An explanation of the balance computation method would not have to be provided.

Creditors would disclose an example, based on an assumed $10,000 outstanding balance and a recent annual percentage rate (APR), showing the minimum periodic payment and any balloon payment, and the time it would take to pay off the balance if the consumer made only those payments. Footnote 10c of the proposal would provide that, for fixed rate plans, a recent APR is one that has been in effect under the plan within the twelve months prior to the date the disclosures are provided to the consumer. For variable rate plans, a recent APR would be the most recent rate provided in the historical table, or a more recent rate.

(C) Annual Percentage Rate

Section 226.5b(d)(6) of the proposal provides that, for fixed-rate plans, a recent APR would have to be provided. Consumers would be told that the APR does not include costs other than interest.

(D) Fees Imposed By the Creditor and By Third Parties

Under § 226.5b(d)(7) of the proposal, creditors would have to provide a description and the amount of charges required to open and use the account and a statement of when the consumer must pay the charges. These charges could be stated as an estimated dollar amount for each fee, or as a percentage of a hypothetical amount of credit. These fees include application fees, points, annual fees, and transaction fees. Under § 226.5b(d)(8) of the proposal, an estimate of fees imposed by third parties stated as a single dollar amount or a range (and a statement that the consumer may request more specific information about such fees from the creditor) also would be provided.

(E) Other Provisions

Under § 226.5b(d)(9), a statement if the plan has a negative amortization—which will reduce the consumer's equity in the dwelling—most be provided. Section 226.5b(d)(10) would require creditors to state any limitations on the number of extensions or amount of credit that can be obtained during any time period and any minimum draw or minimum outstanding balance requirement stated as dollar amount or as a percentage. Section 226.5(d)(11) would require that consumers be told to consult a tax advisor regarding the deductibility of interest and charges under the plan.

(vi) Variable-Rate Disclosures

Section 226.5b(d)(12) of the proposal would require creditors to provide information about the variable-rate feature contained in a plan. Many of these disclosures closely parallel the disclosures currently required for closed-end variable-rate transactions secured by a consumer's principal dwelling. The Board is proposing to add a few additional variable-rate disclosures to those required by the statute. These minor additions would help make the home equity rules and the rules for closed-end ARMs more uniform, and thus make compliance easier for creditors. Furthermore, these additional disclosures would provide consumers with more complete information about the variable-rate feature of home equity lines.

(A) Index and APR

Creditors would be required to state that the APR may change and that the payment or term may change due to the fact that the APR is variable. The frequency of changes in the APR would be provided. Creditors would have to identify the index used to determine rate adjustments and a source of information about the index. Creditors would have to describe how the corresponding APR will be determined (for example, by stating that a margin is added to the index value). If the initial rate is discounted, a disclosure of that fact as well as the disclosure forms could be preprinted and rate information may not be accurate, consumers would be told to "ask about" the current index value, margin, and APR. Rules relating to changes in the index value and resulting changes in the APR would be set forth. This provision would require an explanation, for example, of a preferred-rate provision, where the rate will increase upon the occurrence of some event, such as an employee leaving the creditor's employ. Similarly, an explanation would have to be given if the plan permits the consumer to convert from a variable rate plan to a fixed rate.

(B) Rate and Payment Limitations

Any annual rate caps must be stated and, if there are no such limits, that fact must be stated. The maximum rate that may be imposed under each payment option under the plan also would be provided. This rate could be stated as a specific rate (for example, 18%), or as a percentage above an initial rate (for example, 5% above the initial rate). In either circumstance creditors could use a range in expressing the maximum rate in the early disclosures. In addition, creditors would have to show, if the maximum rate were in effect, the minimum periodic payment based on a $10,000 outstanding balance. (If a range is used, the highest rate in the range should be used for this disclosure.) Finally, any payment limitations would be provided.

(C) Historical Table

A 15-year historical table, based on an assumed $10,000 extension of credit and showing how the APRs and payments would have been affected by the index value changes under the plan, would be provided. If the values for an index have not been available for 15 years, creditors would need only go back as far as the values have been available in giving the history and may start the example at the year for which values are first available. The history would reflect the method of choosing values for each plan. For instance, if an average of index values is used, averages would be used in the history, but if a single index value is used, a single index value would be shown. The creditor would assume one date within a year (or one period, if an average is used) on which to base the history of index values for each loan plan. The creditor could choose to use index values as of any date or period as long as the index value as of this date or period is used for each year in the index history. Only one index value per year need be shown, even if the plan provides for adjustments to the APR or payment more than once a year. In such cases, the creditor would assume that the index rate remained constant for the full year for the purpose of calculating the annual percentage rate and payment. Updating will be necessary only once each year to reflect the most recent year's index value. To assist creditors in constructing histories of certain common indices, the Board expects to include tables of index values when the final rule is published. In its final regulation, the Board expects to publish rate information for the prime rate published in the Wall Street Journal, the average prime rate published in the Federal Reserve Bulletin, and United States Treasury securities adjusted to constant maturities of 90 days and 6 months. The Board requests that commenters provide the names of any other indices for which it would be useful to have rate histories.

The payment figures in the example must reflect all significant loan program terms. For example, features such as rate and payment caps, a discounted APR, negative amortization, and interest carryover would be taken into account by creditors in calculating the payment figures. One payment per year would be shown in the table, even though payments may vary during a year. (The calculations, however, should be based on the actual payment computation formula.) Balloon payments need not be reflected in the table.

Because disclosures will be given early, creditors would need to assume a value for the margin in order to do the calculations for the example. Creditors would select a margin that they used during the preceding six months and disclose on the form that the margin is one that they have used recently. The margin selected may be used until a creditor updates the disclosure form to reflect the most recent 15 years of index values. Similarly, if the home equity plan has a discounted initial rate, creditors also will be permitted to assume an amount by which the initial rate will be discounted—which is representative of the amount of a discount used by the creditor during the preceding six months—and disclose on the form that the initial rate has been discounted.

In setting forth payment information, both the draw and any repayment period would be illustrated in the table. In providing this information, creditors would assume that the $10,000 balance is reduced according to the terms of the plan. To minimize compliance costs, the Board proposes to permit the use of a representative term within a range of a five-year period in setting forth the draw and repayment information in the table. For example, if a creditor offers plans with a five-year draw period, and repayment periods ranging from six to fifteen years, the creditor would use the actual length of the draw period. In figuring the repayment period for the table, the creditor could use any term from six to ten years (for example, eight years), and any term from eleven to fifteen years (for example, thirteen years). If different payment options are available during either period, payments under each option would have to be shown.

(D) Other Information

Consumers would be informed that rate information will be provided with the periodic statement.

Sample home equity disclosure forms that show how the proposed requirements might be met are provided in proposed Appendix G.

(vii) Later Disclosures

As discussed earlier, § 226.6(e) would require creditors to provide the disclosures set forth in § 226.5b(d) a second time along with the disclosures would be provided prior to the first transaction under the plan, in accordance with the existing rule in § 226.5(b), and could be integrated into the contract.

(A) Duplicative Information

Information that duplicates the current disclosures need not be provided. For example, because § 226.6(a)(4) and (b) require the disclosure of any finance and "other" charges, respectively, creditors would not have to disclose fees imposed by the creditor (see proposed § 226.(d)(7)) or fees imposed by third parties (see proposed § 226.5b(d)(8)).

(B) Inapplicable Information

Creditors need not provide information that is inapplicable. For example, because § 226.5(a)(1) requires that the disclosures be in a form the consumer may keep, creditors would not make the statement in proposed § 226.5b(d)(1) that consumers should make a copy of the disclosures. Similarly, because proposed § 226.6(e)(2) would require creditors to disclose the conditions under which the creditor may, for example, terminate the plan and require payment of the outstanding balance in full in a single payment upon termination, creditors need not disclose that the consumer may receive, upon request, this information, as required by proposed § 226.5b(d)(4).

(C) Current Information

Creditors would be required to provide current information about aspects of the plan that may vary among consumers. For example, if the creditor offers a variety of payment options and the consumer chooses one option (and the others are unavailable), the specific payment terms selected would have to be disclosed. Similarly, if the first set of disclosures stated the maximum APR that could be imposed (for variable-rate plans) as a range, the later disclosures would have to reflect the specific rate cap.

(D) Historical Information

Creditors could provide the same historical information about the program that was given in the first set of disclosures. For example, the historical table provided in the earlier disclosures would not have to be modified for the later disclosures to reflect more recent margins or discounts, since the table is intended to show historical rate fluctuations and their effects on payments (and need only be updated once a year).

(viii) Consumer Brochure

Section 226.5b(e) would require creditors and third parties providing applications to furnish consumers with a brochure prepared by the Board describing home equity plans, or a brochure that provides substantially similar information. As required by the statute, the brochure will describe home equity plans, including the potential advantages and disadvantages. The brochure also will provide guidance on how to compare home equity plans with closed-end credit. The Board envisions that any substitutes must be, at a

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minimum, comparable in substance and comprehensiveness, recognizing that some lenders' brochures may contain more detailed descriptions of their particular home equity programs than contained in the Board's brochure. The Board is currently preparing a brochure and will have it available when the regulation is issued in final form.

The proposal would mirror the statute in requiring third parties to provide consumers with the brochure if an application is given to the consumer. The Board believes, however, that requiring a second brochure to be given by the creditor in such circumstances is unnecessary. Therefore, the Board believes that the creditor's duty to provide the brochure would be met if the third party provides the brochure to the consumer. This will avoid duplication. The creditor would have a duty, however, to ensure that the third party has provided the brochure if the creditor chooses not to give the consumer the brochure.

(ix) Right of Rescission—Material Disclosures

The Board is soliciting comment on whether it should amend footnote 36, accompanying § 226.15(a)(3) of the regulation, to provide that the payment information required under proposed § 226.5b(d)(5) (i) and (ii) that is given at the time an account is opened be treated as "material disclosures" for purposes of the right of rescission (§ 226.15). Section 226.15(a)(3) states that the consumer may exercise the right of rescission until midnight of the third business day following the opening of the plan, delivery of the notice of the right to rescind, or delivery of all "material disclosures," whichever occurs last. Footnote 36 of the regulation currently defines material disclosures to include the method of determining the finance charge and the balance upon which a finance charge will be imposed, the annual percentage rate, and the amount or method of determining the amount of any membership or participation fee that may be imposed as part of the plan. Including such payment information in the definition of "material disclosures" would be consistent with the material disclosure definition in the closed-end credit rescission provisions.

(x) Advertising Requirements

Under the open-end advertising rules in § 226.16, any reference to an item required to be disclosed under § 226.6 requires the disclosure of cost information such as the APR, any membership or participation fee, and any minimum, fixed, transaction, or activity charge. Under current rules, a creditor may refer to a payment term in an advertisement for open-end credit without having to make additional disclosures about other material terms. Furthermore, only items stated affirmatively require further information. Under § 226.16(d)(1) of the proposed regulation, any reference to a payment term in a home equity advertisement would "trigger" further disclosures, including loan fees, estimates of other fees that may be imposed, and, for variable-rate plans, the maximum rate that may be imposed under the plan. Proposed § 226.16(d)(3) provides that, if such an advertisement states a payment amount, it would have to state, if applicable, that the plan contains a balloon payment. Furthermore, if any of the "triggers" is stated affirmatively *or* negatively, further disclosures must be given. For example, if a creditor states "no annual fee" in an advertisement, additional information must be provided.

In addition, § 226.16(d)(2) of the proposal provides that if an advertisement states a "discounted" APR it must state in equal prominence the APR derived by use of the fully-indexed value. Creditors would be prohibited by § 226.16(d)(5) from referring to home equity plans as "free money" or using similarly misleading terms. Finally, if an advertisement states that any interest under the plan may be tax deductible, the advertisement must not be misleading about such deductibility. (See § 226.16(d)(4).) For example, an advertisement referring to deductibility might include a statement that the consumer should consult a tax advisor regarding the deductibility of interest.

(xi) Substantive Limitations

The act imposes three substantive limitations on the way home equity plans can be structured. In some provisions the statute speaks in terms of creditor actions. In other provisions the statute speaks in terms of what may be contained in the credit contract. Under § 226.5b(f) of the Board's proposal, the substantive limitations would apply to both actions creditors may take and the provisions that may be contained in contracts. These limitations also would apply to assignees and holders.

[A] Index For Variable-Rate Plans

Under § 226.5b(f)(1) of the proposal, a creditor may change the APR after the plan is opened only if the change is based on an index outside the creditor's control and the index value is available to the public. This provision would prohibit a creditor from using its own prime rate or simply retaining the right to change rates at its discretion. A creditor would be permitted to use the Wall Street Journal prime rate, for example, or any other index not within the creditor's control.

[B] Termination

Under the statute and proposed § 226.5b(f)(2), creditors are prohibited from terminating an account and accelerating payment of the outstanding balance prior to the scheduled expiration of the plan. The act, however, provides three exceptions to the rule. First, a creditor may terminate the plan if there has been fraud or material misrepresentation by the consumer in connection with the plan. Second, a creditor may terminate the plan if the consumer has failed to meet the repayment terms of the agreement. This provision would permit termination only if the consumer fails to actually make payments. A creditor could not terminate a plan if, for example, the consumer, in error, sends a payment to the wrong location, such as a branch rather than the main office of the creditor. Finally, a creditor is permitted to terminate the plan if the consumer acts or fails to act in a way that adversely affects the creditor's security interest. This provision would permit termination, for example, if the consumer transferred title to the property without the permission of the creditor or if the consumer failed to maintain required insurance on the dwelling.

If any of these three events occurs, a creditor may also be able to take action short of terminating an account and accelerating payment of the outstanding balance. These three events would likely constitute circumstances that would permit a creditor to prohibit additional extensions of creditor or reduce the credit limit. (See the later discussion of the ability of a creditor to change the terms due to default and other events.)

Creditors would not be permitted to specify in their contracts other events that would permit terminating an account and accelerating payment of the outstanding balance. Thus, for example, a contract could not provide that the account will be terminated and the balance accelerated if a judgment is filed against the consumer.

(C) Change of Terms

Section 226.5b(f)(3), which implements the third substantive limitation, provides that a creditor may not unilaterally change the terms under the plan after the account has been opened. There are, however, several exceptions to this rule.

(1) Events provided for in the contract. The legislative history makes clear that a creditor was not meant to be prohibited from implementing specific changes set forth in the contract that are contemplated on the occurrence of a specific event; this exception has been incorporated in proposed § 226.5b(f)(3)(i). Both the triggering event and the resulting modification must be stated with specificity. For example, in an employee loan program, the contract could provide that a specified higher rate will apply if the borrower's employment ends. Similarly, a creditor would be permitted to suspend additional extensions of credit if the maximum APR is reached, as long as this is expressly provided for in the agreement. A creditor using this provision could only suspend advances for the period the APR would exceed the rate cap, and would have to permit further advances if the applicable rate drops to or below the cap, if that occurs during the draw period set forth in the initial agreement. The Board solicits comment on whether other examples should be provided such as permitting contracts to provide for a replacement index in the event the original index in a variable-rate plan becomes unavailable.

While the Board proposes to permit creditors to specify in the initial agreement specific changes that are contemplated on the occurrence of specific events, there are two limitations on the provisions that could be set forth in the contract. First, under the regulation, creditors would not be permitted to include a general provision in the agreement permitting them to change any or all of the terms of the plan. For example, creditors could not include "boilerplate" language in the agreement stating that they reserve the right to change the payment obligations under the plan. Second, creditors would not be permitted to include in the initial agreement any events which the regulation expressly addresses. For example, the statute and § 226.5b(f)(3)(iii) of the regulation provide that a creditor may prohibit additional extensions of credit or reduce the credit limit during any period in which the value of the dwelling that secures the plan declines significantly below the property's appraised value. Because the statute expressly provides for this situation, and specifically sets forth what action the creditor may take if it arises, the contract may not authorize the creditor to take more sweeping action. For example, a creditor could not permanently refuse to make further advances if the value of the property declines significantly below the property's appraised value, since the statute provides that further advances can be prohibited only during the period in which the value of the property remains significantly below the appraised value. Similarly, a contract may not authorize the creditor to take any additional action beyond prohibiting further advances or reducing the credit limit when the creditor reasonably believes that the consumer will be unable to fulfill the repayment obligations due to a material change in the consumer's financial circumstances—since this condition also is set forth in the statute. The Board believes permitting creditors to expand on the exceptions set forth in the statute would be inconsistent with the intent of the legislation.

(2) Changes made by mutual written agreement. The statute and the proposed amendments to the regulation prohibit *unilateral* changes. The Board proposes to permit creditors to change the terms after a plan is opened provided the consumer expressly agrees in writing to the change. Thus, for example, under footnote 10d to § 226.5b(f)(3), a consumer and a creditor could agree to extend the period during which advances can be obtained, or could agree to change the repayment terms from, for example, interest-only payments to payments that reduce the principal balance. Under the proposal, creditors would not be permitted to assume consent because the consumer uses an account (even if that implies acceptance under state law). The Board believes this will carry out the Congressional intent to limit changes after a plan is opened, yet accommodate the need for adjustments agreed to by both parties to the contract.

(3) Insignificant changes. The statute and § 226.5b(f)(3) of the proposal provide another exception to the general prohibition against changing terms, for changes to "insignificant terms." This is intended to address operational problems, such as changing the address of the creditor for purposes of sending payments. This exception would not permit a creditor to unilaterally change a term such as a fee charged for late payments.

(4) Substitution of index. Section 226.5b(f)(3)(ii) of the proposal also provides that the creditor may change the index and margin used under the plan if the original index becomes unavailable, as long as historical fluctuations in the two indices were substantially similar, and as long as the new index and margin would have resulted in a rate similar to the rate that was in effect at the time the original index became unavailable.

(5) Beneficial changes. Creditors also would be permitted under proposed § 226.5b(f)(3)(iv) to make any changes that "unequivocally benefit" the consumer as long as the change is beneficial for the entire term of the agreement. A creditor would not be able to change the payment obligations of the plan in reliance on this exception. For example, reducing the amount of the minimum payment may not be unequivocally beneficial since it may result in less principal being repaid over the term of the plan and may result in a higher total amount of finance charges. While this exception is narrow, as noted above, a consumer and creditor would be permitted to change the terms of the plan by mutual written agreement.

(6) Changes due to default and other events. Section 226.5b(f)(3)(iii) of the proposal incorporates the statutory provisions that provide that a creditor may prohibit additional extensions of credit or reduce the credit limit in four circumstances. First, a creditor may take such action if the value of the dwelling that secures the plan declines significantly below the property's appraised value for purposes of the plan. Second, a creditor may prohibit additional extensions of credit or reduce the credit line if the creditor reasonably believes the consumer will be unable to fulfill the repayment obligations under the plan due to a material change in the consumer's financial circumstances. Two conditions must be met for a creditor to use this exception. First, there must be a "material change" in the consumer's financial circumstances. For example, a significant decrease in the consumer's income would meet this part of the requirement. Second, as a result of this change, the creditor must have a reasonable belief, based on some evidence (such as failure to pay other debts), that the consumer will be unable to fulfill the payment obligations of the plan.

The third exception permits a creditor to prohibit additional extensions of credit or reduce the credit line if the consumer is in default of any material obligations under the agreement. (Sections 226.5b(d)(4) and 226.6(e)(2) require that the creditor provide or make available a list of the conditions that would permit prohibiting additional extensions of credit or reducing the credit line.) The final exception permits a creditor to prohibit additional advances or reduce the credit line because action by a governmental body either (a) precludes the creditor from imposing the agreed-upon APR (for

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example, enactment of a lower state rate ceiling after the plan has been entered into), or (b) adversely affects the priority of the creditor's security interest to the extent that the value of the security is less than 120 percent of the amount of the credit line (for example, through imposition of a tax lien).

Under the proposed regulation, creditors are permitted to prohibit additional extensions of credit or reduce the credit limit only as long as any of these four circumstances exist. Thus, for example, if the creditor limits the ability of the consumer to obtain further advances due to a significant decline in the value of the dwelling, and during the length of the draw period the value of the property subsequently increases, the creditor would have to reinstate credit drawing privileges. Similarly, a creditor may reduce the credit limit only during the period any of the circumstances exists.

(D) Refund of Fees

Section 226.5b(g) of the proposal imposes a duty on a creditor to refund all fees paid by the consumer in connection with an application if any term disclosed (other than a variable rate) changes between the time disclosures are provided to the consumer and the plan is opened, and if, as a result of the change, the consumer decides to not enter into the plan. This rule applies to any fees paid in connection with the plan, such as credit report fees and appraisal fees, whether paid directly to the creditor or to third parties. This right is distinct from the existing right of rescission under § 226.15, which begins only when a plan secured by the consumer's principal dwelling is actually opened.

(E) Imposition of Fees

Finally, under § 226.5b(h) of the proposal, neither the creditor nor any other party may impose a nonrefundable fee in conjunction with an application until three business days after the disclosures and brochure have been provided to the consumer. If disclosures are mailed to the consumer, footnote 10a of the regulation provides that a fee cannot be collected until six business days after the mailing. If a refundable fee is collected prior to the consumer receiving the disclosures, the fee would have to be refunded to the consumer if the consumer decides not to enter into the agreement.

(xii) Effective Date

The statute provides that the act and regulations shall apply to: (1) Any agreement to open a plan which is entered into five months after the regulations become final; and (2) any application to open a plan which is distributed by or received by a creditor five months after regulations become final. Under this requirement, creditors would have to provide the first set of disclosures to consumers if an application is received after the effective date of the regulations, even if the application was provided to the consumer prior to the effective date of the rule. The Board plans to provide a rule in the supplemental information to the final amendments allowing creditors to provide the first set of disclosures to consumers within three days of receipt of the application in such cases.

(xiii) Disclosure Samples and Model Clauses

In connection with the other revisions, the Board is proposing to revise Appendix G of the regulation to incorporate disclosure samples (G–17A and G–17B), and model clauses (G–18) to assist creditors in preparing disclosures.

(A) Disclosure Samples

Form G–17A illustrates a variable-rate plan with 10-year draw period followed by a 5-year repayment period. The payments are based on a percentage of the outstanding balance so that, independent of rate changes, payments will vary each month during the plan. Consequently, payments are stated as a range in the minimum payment example. In the historical table, which illustrates both the draw and the repayment periods, only one payment per year is reflected and the fact that payments would have varied during each year is stated. All calculations, however, are conducted using the actual payment computation formula. The Board specifically solicits comment on whether this treatment is appropriate for such payment arrangements.

Form G–17B illustrates a variable-rate plan with interest-only payments during the draw period followed by a repayment period, the length of which depends on the size of the outstanding balance. The consumer is permitted to select between two payment arrangements—monthly or quarterly payments—during the draw period. Accordingly, the payment disclosures and examples illustrate such payment option. In addition, by including two payment columns, the form illustrates how one historical table can be used to disclose multiple payment options.

(B) Model Clauses

Appendix G–18 contains a number of model clauses that may be used in preparing disclosures. Information that must be inserted is indicated by italicized language within parentheses. Alternative language is set forth in brackets and separated by a slash. Disclosures that may not be applicable to a given plan are set forth in brackets.

(3) Economic Impact Statement

The Board's Division of Research and Statistics has prepared an economic impact statement on the proposed revisions to Regulation Z. A copy of the analysis may be obtained from Publications Services, Board of Governors of the Federal Reserve System, Washington, DC, 20551, at (202) 452–3245.

List of Subjects in 12 CFR Part 226

Advertising, Banks, banking, Consumer protection, Credit, Federal Reserve System, Finance, Penalties, Rate limitations, Truth in Lending.

(4) Text of Proposed Revisions

Certain conventions have been used to highlight the proposed revisions. New language is shown inside arrows. Pursuant to authority granted in section 105 of the Truth in Lending Act (15 U.S.C. 1604 as amended), the Board proposes to amend Regulation Z (12 CFR Part 226).

1. The authority citation for Part 226 continues to read:

Authority: Sec. 105, Truth in Lending Act, as amended by sec. 605, Pub. L. No. 96–221, 94 Stat 170 (15 U.S.C. 1604 et seq.); section 1204(c), Competitive Banking Equality Act, Pub. L. No. 100–86, 101 Stat. 552.

2. Regulation Z (12 CFR Part 226) is proposed to be amended by adding a sentence to the end of paragraph (b) of § 226.1 (the first sentence is republished), by adding paragraph (3), § 226.1(c), by revising the second sentence of paragraph (2) to § 226.1(d) (the first sentence is republished), by revising footnote 8, by adding paragraph (4) to § 226.5(a) (a) introductory text is republished) by adding paragraph (4) to § 226.5(b), by adding § 226.5b, by adding paragraph (e) to § 226.6, and by adding paragraph (d) to § 226.10.

Subpart A—General

§ 226.1 Authority, purpose, coverage, organization, enforcement and liability.

(b) *Purpose.* The purpose of this regulation is to promote the informed use of consumer credit by requiring disclosures about its terms and cost. * * * ►In addition, the regulation requires a maximum interest rate to be stated in variable-rate contracts secured by the consumer's dwelling, and imposes limitations on home equity

plans that are subject to the requirements of § 226.5b.◄

(c) *Coverage.* * * *

►(3) In addition, certain requirements of § 226.5b apply to persons who are not creditors but who provide applications for home equity plans to consumers.◄

(d) *Organization.* * * *

(2) Subpart B contains the rules for open-end credit. It requires that initial disclosures and periodic statements be provided►, as well as additional disclosures for home equity plans subject to the requirements of § 226.5b◄.* * *

* * * * *

Subpart B—Open-End Credit

§ 226.5—General disclosure requirements.

(a) *Form of disclosures.* (1) The creditor shall make the disclosures required by this subpart clearly and conspicuously in writing,[7] in a form that the consumer may keep.[8]

* * * * *

►(4) For rules governing the form of disclosures for home equity plans, see § 226.5b(a).◄

(b) *Time of disclosures.* * * *

►(4) *Home equity plans.* Disclosures for home equity plans shall be made in accordance with § 226.5b(b).◄

►§ 226.5b Requirements for home equity plans.

The requirements of this section apply to open-end credit plans secured by the consumer's dwelling.

(a) *Form of disclosures*—(1) *General.* The disclosures required by § 226.5b(d) shall be made clearly and conspicuously and shall be grouped together and segregated from all other unrelated information. The disclosures may be provided on the application form or on a separate form. The variable-rate information required in paragraph (d)(12) of this section, as well as the disclosure provided for under paragraph (d)(4)(iii) of this section, may be provided separately from the other required disclosures.

(2) *Precedence of certain disclosures.* The disclosures required by paragraphs (d)(1) through (4)(ii) of this section shall precede the other required disclosures.

(b) *Time of disclosures.* The disclosures and brochure required by paragraphs (d) and (e) of this section shall be provided at the time an application is provided to the consumer.[10a] (See § 226.6(a) for additional disclosures to be provided later.)

(c) *Duties of third parties.* Persons other than the creditor who provide applications to consumers for home equity plans must provide the brochure required under paragraph (e) of this section at the time an application is provided. If such persons have the disclosures for a creditor's home equity plan, they also shall provide the disclosures at such time.

(d) *Content of disclosures.* The creditor shall provide the following disclosures, as applicable:

(1) *Retention of information.* A statement that the consumer should make or otherwise retain a copy of the disclosures.

(2) *Conditions for disclosed terms.* (i) A statement of the time by which the consumer must submit an application to obtain specific terms disclosed and an identification of any disclosed term that is subject to change prior to opening the plan.

(ii) A statement that, if a disclosed term changes (other than a change due to a variable-rate feature) prior to opening the plan and the consumer therefore elects not to open the plan, the consumer may receive a refund of all fees paid in connection with the application.

(3) *Security interest and risk to home.* A statement that the creditor will acquire a security interest in the consumer's dwelling and that loss of the dwelling may occur in the event of default.

(4) *Possible actions by creditor.* (i) A statement that the creditor, under certain conditions, may terminate the plan and require payment of the outstanding balance in full in a single payment upon termination, and that fees may be imposed upon termination; that the creditor may prohibit additional extensions of credit or reduce the credit limit under certain conditions; and that the creditor, as specified in the initial agreement, may modify certain terms of the plan.

(ii) A statement that the consumer may receive, upon request, information about the conditions under which such actions may occur.

(iii) In lieu of the disclosure required under paragraph (d)(4)(ii) of this section, a statement of such conditions.

(5) *Payment terms.* The payment terms of the plan, including:

(i) The length of the plan.

(ii) An explanation of how the minimum periodic payment will be determined and the timing of the payments. If paying only the minimum periodic payments will not repay any of the principal or will repay less than the outstanding balance, a statement of this fact, as well as a statement of any balloon payment that will result.[10b]

(iii) An example, based on a $10,000 outstanding balance and a recent annual percentage rate,[10c] showing the minimum periodic payment, any balloon payment, and the time it would take to repay the $10,000 outstanding balance if the consumer made only those payments and obtained no additional extensions of credit.

If different payment terms may apply to the period during which the consumer may obtain additional extensions of credit and the period during which the consumer must repay the outstanding balance without obtaining additional extensions of credit, or if different payment terms may apply within either period, the disclosures shall reflect the different payment terms.

(6) *Annual percentage rate.* For fixed rate plans, a recent annual percentage rate [10c] imposed under the plan and a statement that the rate does not include costs other than interest.

(7) *Fees imposed by creditor.* An itemization of any fees imposed by the creditor to open, use, or maintain the plan, stated as a dollar amount or percentage, and when such fees are payable.

(8) *Fees imposed by third parties.* An estimate, stated as a single dollar amount or range, of any fees that may be imposed by persons other than the creditor, as well as a statement that the consumer may request from the creditor a good faith itemization of such fees.

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[7] The disclosure required by § 226.9(d) when a Finance charge is imposed at the time of a transaction need not be written.

[8] The ►home equity disclosures required under § 226.5b(d), the◄ alternative summary billing rights statement provided for in § 226.9(a)(2), and the disclosures made under § 226.10(b) about payment requirements need not be in a form that the consumer can keep.

[10a] The disclosures and the brochure may be delivered or placed in the mail not later than three business days following receipt of a consumer's application in the case of applications contained in magazines or other publications, or when the application reaches the creditor by telephone or through an intermediary agent or broker.

[10b] A balloon payment results if paying the minimum periodic payments will not fully amortize the outstanding balance by a specified date, and the consumer will be required to repay the entire outstanding balance at such time.

[10c] For purposes of this section, an annual percentage rate is the annual percentage rate as determined under § 226.14(b). For fixed rate plans, a recent annual percentage rate is a rate that has been in effect under the plan within the twelve months preceding the date the disclosures are provided to the consumer. For variable rate plans, a recent annual percentage rate is the most recent rate provided in the historical table or a rate that has been in effect under the plan since the date of the most recent rate in the table.

(9) *Negative amortization.* A statement that negative amortization may occur and that negative amortization increases the principal balance and reduces the consumer's equity in the dwelling.

(10) *Transaction requirements.* Any limitations on the number of extensions of credit and the amount of credit that may be obtained during any time period, as well as any minimum outstanding balance and minimum draw requirements, stated as dollar amounts or percentages.

(11) *Tax implications.* A statement that the consumer should consult a tax advisor regarding the deductibility of interest and charges under the plan.

(12) *Disclosures for variable-rate plans.* In a variable-rate plan, the following disclosures:

(i) The fact that the annual percentage rate, payment, or term may change due to the variable-rate feature.

(ii) A statement that the annual percentage rate does not include costs other than interest.

(iii) The index used in making rate adjustments and a source of information about the index.

(iv) An explanation of how the annual percentage rate will be determined, including an explanation of how the index is adjusted, such as by the addition of a margin.

(v) A statement that the consumer should ask about the current index value, margin, and annual percentage rate.

(vi) A statement that the initial annual percentage rate is not based on the index and margin used to make later rate adjustments, and the period of time such initial rate will be in effect.

(vii) The frequency of changes in the annual percentage rate.

(viii) Any rules relating to changes in the index value and resulting changes in the annual percentage rate and payment amount, including, for example, an explanation of payment limitations and interest rate carryover.

(ix) A statement of the maximum amount that the annual percentage rate may change in any one-year period (or a statement that no such limitation exists), as well as a statement of the maximum annual percentage rate that may be imposed under each payment option.

(x) The minimum periodic payment required when the maximum annual percentage rate for each payment option is in effect for a $10,000 outstanding balance, and a statement of the earliest date the maximum rate may be imposed.

(xi) An historical table, based on a $10,000 extension of credit, illustrating how annual percentage rates and payments would have been affected by index value changes implemented according to the terms of the plan. The historical table shall be based on the most recent 15 years of index values (selected for the same time period each year) and shall reflect all significant plan terms, such as rate discounts, rate and payment limitations, rate carryover, and negative amortization, that would have been affected by the index movement during the period.

(xii) A statement that rate information will be provided on or with each periodic statement.

(e) *Brochure.* The home equity brochure published by the Board or any brochure that provides substantially similar information shall be provided.

(f) *Limitations on home equity plans.* No creditor may, by contract or otherwise:

(1) Change the annual percentage rate unless:

(i) Such change is based on an index that is not under the creditor's control; and

(ii) Such index is available to the general public.

(2) Terminate a plan and demand repayment of the entire outstanding balance in advance of the original term unless:

(i) There has been fraud or material misrepresentation by the consumer in connection with the plan;

(ii) The consumer has failed to meet the repayment terms of the agreement for any outstanding balance; or

(iii) Any action or inaction by the consumer has adversely affected the creditor's security for the plan.

(3) Change any term [10d] (other than an insignificant term), except that a creditor may:

(i) Provide in the initial agreement that specified changes will occur if a specific event takes place (for example, that the annual percentage rate will increase a certain amount if the consumer leaves the creditor's employment or that further extensions of credit will not be made if the maximum annual percentage rate is reached).

(ii) Change the index and margin used under the plan if the original index is no longer available, the new index has an historical movement substantially similar to that of the original index, and the new index and margin would have resulted in an interest rate substantially similar to the rate in effect at the time the original index became unavailable.

(iii) Prohibit additional extensions of credit or reduce the credit limit applicable to an agreement during any period in which:

(A) The value of the dwelling that secures the plan declines significantly below the property's appraised value for purposes of the plan;

(B) The creditor reasonably believes that the consumer will be unable to fulfill the repayment obligations under the plan because of a material change in the consumer's financial circumstances;

(C) The consumer is in default of any material obligation under the agreement;

(D) The creditor is precluded by government action from imposing the annual percentage rate provided for in the agreement; or

(E) The priority of the creditor's security interest is adversely affected by government action to the extent that the value of the security interest is less than 120 percent of the credit line.

(iv) Make any change that will unequivocally benefit the consumer throughout the remainder of the plan.

(g) *Disclosure required upon request.* A creditor shall provide, at the consumer's request, a statement of the conditions under which the creditor may take the actions described in paragraph (d)(4)(i) of this section.

(h) *Refund to consumer.* A creditor shall refund all fees paid by the consumer to anyone in connection with an application if any term required to be disclosed under paragraph (d) of this section changes (other than a change due to a variable-rate feature) before the plan is opened and, as a result, the consumer elects not to open the plan.

(i) *Imposition of nonrefundable fees.* Neither a creditor nor any other person may impose a nonrefundable fee in connection with an application until three business days after the consumer receives the disclosures and brochure required under this section.[10e]

§ 226.6 Initial disclosure statement.

* * * * *

►(e) *Home equity plan information.* (1) The disclosures required under § 226.5b(d), to the extent they are not duplicative.

(2) A statement of the conditions under which the creditor may take the actions described in § 226.5b(d)(4)(i).◄

* * * * *

§ 226.16 Advertising.

* * * * *

►(d) *Additional requirements for home equity plans.*—(1) *Advertisement of terms that require additional disclosures.* If any of the terms required to be disclosed under § 226.6(a) or (b) or the payment terms of the plan are set forth, affirmatively or negatively, in an advertisement for a home equity plan subject to the requirements of § 226.5b, the advertisement shall also clearly and conspicuously set forth the following:

(i) Any loan fee that is a percentage of the credit limit under the plan and an estimate of any other fees imposed for opening the plan, stated as a single dollar amount or a reasonable range.

(ii) Any periodic rate used to compute the finance charge, expressed as an annual percentage rate as determined under § 226.14(b).

(iii) The maximum annual percentage rate that may be imposed in a variable-rate plan.

(2) *Discounted and premium rates.* If an advertisement states an initial annual percentage rate that is not based on the index and margin used to make later rate adjustments in a variable-rate plan, the advertisement also shall state the period of time such rate will be in effect, and, with equal prominence to the initial rate, a reasonably current annual percentage rate that would have been in effect using the index and margin.

(3) *Balloon payment.* If an advertisement contains a statement about any minimum periodic payment, the advertisement also shall state, if applicable, that a balloon payment[10b] will result.

(4) *Tax implications.* An advertisement that states that any interest expense incurred under the home equity plan is or may be tax deductible may not be misleading in this regard.

(5) *Misleading terms.* An advertisement may not refer to a home equity plan as "free money" or contain a similarly misleading term.◄

* * * * *

3. Appendix G is amended by adding G–17A, G–17B, and G–18.

Appendix G—Open-End Model Forms And Clauses

* * * * *

►G–17A Home Equity Sample.
G–17B Home Equity Sample.
G–18 Home Equity Model Clauses.◄

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►*G—17A Home Equity Sample*

IMPORTANT TERMS OF OUR HOME EQUITY LINE OF CREDIT

This disclosure contains important information about our Home Equity Line of Credit. You should read it carefully and keep a copy for your records.

Availability of Terms: To obtain the terms described below, you must submit your application before April 1, 1989.

If any of these terms changes (other than the annual percentage rate) and you decide, as a result, to not enter into an agreement with us, you are entitled to a refund of any fees that you paid in connection with your application.

Security Interest: We will take a mortage in your home. You could lose your home if you don't meet the obligations in your agreement with us.

Possible Actions: Under certain circumstances, we can (1) terminate your account and require you to pay us the entire outstanding balance in one payment and also charge you certain fees, (2) refuse to make additional extensions of credit, and (3) reduce your credit limit.

Upon request, we will provide you with more specific information about when we can take these actions.

Minimum Payment Requirements: You can obtain credit advances for 10 years (the "draw period"). During the draw period, payments will be due monthly. Your minimum monthly payment will equal the greater of 1/360th of the outstanding balance plus the finance charges that have accrued on the outstanding balance, or $100.

After the draw period ends, you will no longer be able to obtain credit advances and must pay the outstanding balance on your account over 5 years (the "repayment period"). During the repayment period, payments will be due monthly. Your minimum monthly payment will equal all payments past due, plus 1/60th of the balance that was outstanding at the end of the draw period plus the finance charges that have accrued on the remaining balance.

Minimum Payment Example: If you made only the minimum monthly payment and took no other credit advances, it would take 15 years to pay off a credit advance of $10,000 at an ANNUAL PERCENTAGE RATE of 12.00%. During that period, you would make 120 monthly payments varying between $127.78 and $100.00 followed by 60 monthly payments varying between $187.08 and $118.08.

Fees and Charges: In order to open and maintain an account, you must pay certain fees and charges. The following fees must be paid to us:

Application fee: $150 (due at application)
Points: 1% of credit limit (due when account opened)
Annual maintenance fee: $75 (due each year)

You also must pay certain fees to third parties such as appraisers, credit reporting firms, and government agencies. These fees generally total between $500 and $900. Upon request, we will provide you with an itemization of the fees you will have to pay to third parties.

Minimum Draw and Balance Requirements: The minimum credit advance that you can receive is $500. You must maintain an account balance of at least $100.

Tax Deductibility: You should consult a tax advisor regarding the deductibility of interest and charges under the plan.

Variable-Rate Feature: The plan has a variable-rate feature, and the annual percentage rate and the minimum monthly payment can change as a result. The annual percentage rate does not include costs other than interest.

The annual percentage rate is based on the value of an index. The index is the monthly average prime rate charged by banks and is published in the *Federal Reserve Bulletin.* To determine the annual percentage rate that will apply to your account, we add a margin to the value of the index.

Ask us for the current index value, margin and annual percentage rate. After you open an account, rate information will be provided on periodic statements that we send you.

Rate Changes: The annual percentage rate can change monthly. There is no limit on the amount by which the rate can change during any one-year period. The maximum ANNUAL PERCENTAGE RATE that can apply during the plan is 18%.

Maximum Rate and Payment Examples: If you had an outstanding balance of $10,000 at the beginning of the draw period, the minimum monthly payment at the maximum ANNUAL PERCENTAGE RATE of 18% would be $177.78. This annual percentage rate could be reached during the first month of the draw period.

If you had an outstanding balance of $10,000 at the beginning of the repayment period, the minimum monthly payment at the maximum ANNUAL PERCENTAGE RATE of 18% would be $316.67. This annual percentage rate could be reached during the first month of the repayment period.

Variable-Rate Example: The following table shows how the annual percentage rate and the minimum monthly payments for a single $10,000 credit advance would have changed based on changes in the index over the last 15 years. The index values are from September of each year. While only one payment amount per year is shown, payments would have varied slightly during each year.

The table assumes that no additional credit advances were taken and that only the minimum payment was made each month. It does not necessarily indicate how the index or your payments would change in the future.

Year	Percentage—			Minimum monthly payment
	Index	Margin	Annual rate	
1974	12.00	2	14.00	$144.44
1975	7.88	2	9.88	$106.50
1976	7.00	2	9.00	$100.00

[10d] The creditor may implement changes during the plan if a specific written agreement is made with the consumer at that time.

[10e] If the disclosures and brochure are mailed to the consumer, the consumer is considered to have received them three business days after they have been mailed.◄

Year	Percentage—			Minimum monthly payment
	Index	Margin	Annual rate	
1977	7.13	2	9.13	$100.00
1978	9.41	2	11.41	$105.47
1979	12.90	2	14.90	$126.16
1980	12.23	2	14.23	$117.53
1981	20.06	2	[1] 18.00	$138.07
1982	13.50	2	15.50	$117.89
1983	11.00	2	13.00	$100.00
1984	12.97	2	14.97	$203.81
1985	9.50	2	11.50	$170.18
1986	7.50	2	9.50	$149.78
1987	8.70	2	10.70	$141.50
1988	10.00	2	12.00	$130.55

[1] This rate reflects the 18 percent maximum rate limitation.

G-17B Home Equity Sample

IMPORTANT TERMS OF OUR HOME EQUITY LINE OF CREDIT

This disclosure contains important information about our Home Equity Line of Credit. You should read it carefully and keep a copy for your records.

Availability of Terms: All of the terms described below are subject to change.

If any of these terms changes (other than the annual percentage rate) and you decide, as a result, to not enter into an agreement with us, you are entitled to a refund of any fees that you paid in connection with your application.

Security Interest: We will take a mortgage in your home. You could lose your home if you don't meet the obligations in your agreement with us.

Possible Actions: Under certain circumstances, we can (1) terminate your account and require you to pay us the entire outstanding balance in one payment and also charge you certain fees, (2) refuse to make additional extensions of credit, (3) reduce your credit limit, and (4) make specific changes that are set forth in your agreement with us.

Upon request, we will provide you with more specific information about when we can take these actions.

Minimum Payment Requirements: You can obtain credit advances for 15 years (the "draw period"). When you open your account, you can choose to make either monthly or quarterly payments during the draw period. If you choose the monthly payment option, your monthly payment will equal the finance charges that accrued during the preceding month. If you choose the quarterly payment option, your quarterly payment will equal the finance charges that accrued during the preceding quarter. Under either option, if the accrued finance charges are less than $50, the minimum payment will equal $50 or the account balance, whichever is less. Balances of less than $50 must be paid in full.

Under either the monthly or quarterly payment option, the minimum payment during the draw period will not reduce the principal that is outstanding on your account.

After the draw period ends, you will no longer be able to obtain credit advances and must repay the outstanding balance on your account (the "repayment period"). The length of the repayment period will depend on the balance outstanding on your account at the beginning of it. During the repayment period, payments will be due monthly and will equal 3% of the then outstanding balance (including finance charges) on your account or $100, whichever is greater.

Minimum Payment Examples: If you made only the minimum payment and took no other credit advances, it would take 22 years and 11 months to pay off a credit advance of $10,000 at an ANNUAL PERCENTAGE RATE of 12.00%. Under the monthly payment option, you would make 180 monthly payments of $100.00 followed by 94 monthly payments varying between $303.00 and $100.00 and a final payment of $30.27. Under the quarterly payment option, you would make 60 quarterly payments of $303.01 followed by 94 monthly payments varying between $303.00 and $100.00 and a final payment of $30.27.

Fees and Charges: In order to open and maintain an account, you must pay certain fees and charges. The following fees must be paid to us:

Application fee: $100 (due at application)
Points: 1% of credit limit (due when account opened)
Annual maintenance fee: $75 (due each year)

You also must pay certain fees to third parties such as appraisers, credit reporting firms, and government agencies. These fees generally total between $500 and $800. Upon request, we will provide you with an itemization of the fees you will have to pay to third parties.

Minimum Draw Requirement: The minimum credit advance that you can receive is $300.

Tax Deductibility: You should consult a tax advisor regarding the deductibility of interest and charges under the plan.

Variable-Rate Feature: The plan has a variable-rate features, and the annual percentage rate and the minimum monthly payment can change as a result. The annual percentage rate does not include costs other than interest.

The annual percentage rate is based on the value of an index. The index is the monthly average prime rate charged by banks and is published in the *Federal Reserve Bulletin*. To determine the annual percentage rate that will apply to your account, we add a margin to the value of the index.

Ask us for the current index value, margin and annual percentage rate. After you open an account, rate information will be provided on periodic statements that we send you.

Rate Changes: The annual percentage rate can change monthly. There is no limit on the amount by which the rate can change during any one-year period. The maximum ANNUAL PERCENTAGE RATE that can apply during the plan is 18%.

Maximum Rate and Payment Examples: Under the monthly payment option, if you had an outstanding balance of $10,000 at the beginning of the draw period, the minimum monthly payment at the maximum ANNUAL PERCENTAGE RATE of 18% would be $150.00. Under the quarterly payment option, the minimum quarterly payment would be $456.78. This annual percentage rate could be reached during the first month of the draw period.

If you had an outstanding balance of $10,000 at the beginning of the repayment period, the minimum monthly payment at the maximum ANNUAL PERCENTAGE RATE of 18% would be $304.50. This annual percentage rate could be reached during the first month of the repayment period.

Variable-Rate Example: The following table shows how the annual percentage rate and payments for a single $10,000 credit advance would have changed based on changes in the index over the last 15 years. The index values are from September of each year.

The table assumes that no additional credit advances were taken and that only the minimum payment was made. It does not necessarily indicate how the index or your payments would change in the future.

Year	Percentage—			Minimum payment—	
	Index	Margin	Annual rate	Monthly	Quarterly
1974	12.00	2	14.00	$116.67	$354.10
1975	7.88	2	9.88	$82.33	$249.04
1976	7.00	2	9.00	$75.00	$226.69
1977	7.13	2	9.13	$76.08	$229.99
1978	9.41	2	11.41	$95.08	$287.97
1979	12.90	2	14.90	$124.17	$377.14
1980	12.23	2	14.23	$118.58	$359.99
1981	20.06	2	[1] 18.00	$150.00	$456.78
1982	13.50	2	15.50	$129.17	$392.53
1983	11.00	2	13.00	$108.33	$328.53
1984	12.97	2	14.97	$124.75	$378.94
1985	9.50	2	11.50	$95.83	$290.26
1986	7.50	2	9.50	$79.17	$239.39
1987	8.70	2	10.70	$89.17	$269.89
1988	10.00	2	12.00	$100.00	$303.01

[1] This rate reflects the 18-percent maximum rate limitation.

G-18 Home Equity Model Clauses

Retention of Information: This disclosure contains important information about our Home Equity Line of Credit. You should read it carefully and keep a copy for your records.

Availability of Terms: To obtain the terms described below, you must submit your application before (*date*). However the (*description of terms*) are subject to change.

If any of these terms changes [(other than the annual percentage rate)] and you therefore decide to not enter into an agreement with us, you need not do so. You will then be entitled to a refund of any fees that you paid in connection with your application.

Security Interest: We will take a [security interest in/mortgage on] your home. You could lose your home if you don't meet the obligations in your agreement with us.

Possible Actions: Under certain circumstances, we can (1) terminate your account and require you to pay us the entire outstanding balance in one payment [, and also charge you certain fees], (2) refuse to make additional extensions of credit, (3) reduce your credit limit [, and (4) make specific changes that are set forth in your agreement with us].

[Upon request, we will provide you with more specific information about when we can take these actions./We can take these actions under the following circumstances: (*when actions may be taken*).]

Minimum Payment Requirements: The length of the [draw period/repayment period] is (*length*). Payments will be due (*frequency*). Your minimum payment will equal (*how payment determined*).

The minimum payment will not repay the balance that is outstanding on your account by (*time*). You will then be required to pay the entire balance in a single payment.

Minimum Payment Example: If you made only the minimum monthly payment and took no other credit advances, it would take (*length of time*) to pay off a credit advance of $10,000 at an ANNUAL PERCENTAGE RATE of (*recent rate*). During that period, you would make (*number*) (*frequency*) payments of $____.

Fees and Charges: To open and maintain an account, you must pay certain fees and charges. The following fees must be paid to us:

(*Description of fee*) [$____/____% of _____]
(*When payable*)
(*Description of fee*) [$____/____% of _____]
(*When payable*)

You also must pay certain fees to third parties such as appraisers, credit reporting firms, and government agencies. These fees generally total [$____/____% of _____]. Upon request, we will provide you with an itemization of the fees you will have to pay to third parties.

Minimum Draw and Balance Requirements: The minimum credit advance that you can receive is $____. You must maintain an account balance of at least $____.

Negative Amortization: Under some circumstances, negative amortization may occur. Negative amortization will increase the amount that you owe us and reduce your equity in your home.

Tax Deductibility: You should consult a tax advisor regarding the deductibility of interest and charges for the plan.

Variable-Rate Feature: The plan has a variable-rate feature and the annual percentage rate and the [minimum payment/term of the plan] can change as a result. The annual percentage rate does not include costs other than interest.

The annual percentage rate is based on the value of an index. The index is the (*identification of index*) and is published in (*source of information*). To determine the annual percentage rate that will apply to your account, we add a margin to the value of the index.

Ask us for the current index value, margin and annual percentage rate. After you open an account, rate information will be provided on periodic statements that we send you.

[The initial annual percentage rate is not based on the index and margin used for later rate adjustments. The initial rate will be in effect for (*period*).]

Rate Changes: The annual percentage rate can change (*frequency*). [The rate cannot increase by more than ____ percentage points in any one year period./There is no limit on the amount by which the rate can change in any one year period.] [The maximum ANNUAL PERCENTAGE RATE that can apply during the plan is ____%./The ANNUAL PERCENTAGE RATE cannot increase by more than ____ percentage points above the initial rate during the plan.]

Maximum Rate and Payment Examples: If you had an outstanding balance of $10,000, the minimum payment at the maximum ANNUAL PERCENTAGE RATE of ____% would be $____. This annual percentage rate could be reached (*when maximum rate could be reached*).

Variable-Rate Example: The following table shows how the annual percentage rate and the minimum payments for a single $10,000 credit advance would have changed based on changes in the index over the last 15 years. The index values are from (*when values are measured*).

The table assumes that no additional credit advances were taken and that only the minimum payment was made. It does not necessarily indicate how the index or your payments would change in the future.

Year	Percentage—			Minimum payment
	Index	Margin	Annual rate	
1974				
1975				
1976				
1977				
1978				
1979				

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Year	Percentage— Index	Margin	Annual rate	Minimum payment
1980				
1981				
1982				
1983				
1984				
1985				
1986				
1987				
1988				

By order of the Board of Governors of the Federal Reserve System, January 11, 1989.
William W. Wiles,
Secretary of the Board.
[FR Doc. 89-1080 Filed 1-19-89; 8:45 am]
BILLING CODE 6210-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 88-AGL-28]

Proposed Control Zone Alterations—Ann Arbor, MI, and Detroit Willow Run Airport, MI

AGENCY: Federal Aviation Administration (FAA), DOT.
ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the Detroit Willow Run Airport, MI, and Ann Arbor, MI, control zones to accommodate existing Standard Instrument Approach Procedures (SIAPs) to Willow Run Airport, Detroit, MI, and Ann Arbor Municipal Airport, Ann Arbor, MI, respectively. It will also eliminate all references to the Willow Run Very High Frequency Omnidirectional Range Station (VOR) in the legal descriptions.

DATE: Comments must be received on or before February 28, 1989.

ADDRESSES: Send Comments on the proposal in tripilicate to: Federal Aviation Administration, Regional Counsel, AGL-7, Attn: Rules Docket No. 88-AGL-28, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Harold G. Hale, Air Traffic Division, Airspace Branch, AGL-520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-7360.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in tripilicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 88-AGL-28." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice maybe changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of Regional Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2, which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to modify the control zone airspace for Detroit Willow Run Airport, MI, and Ann Arbor, MI.

The legal descriptions for both control zones are being modified to exclude references to the Willow Run VOR and to accommodate existing approaches to Willow Run Airport, Detroit, MI, and Ann Arbor Municipal Airport, Ann Arbor, MI, respectively. The modification to the Detroit Willow Run Airport control zone eliminates a portion of the southwest control zone extension which overlies the Ann Arbor, MI control zone. That portion of airspace will be returned to a noncontrolled status and the Ann Arbor, MI, control zone will be redescribed without the words "excluding that portion which overlies the Detroit Willow Run Airport, MI, Control Zone."

The decommissioning of the Detroit Willow Run VOR made it necessary to modify these two control zones. The facility decommissioning was circularized to the aviation public under Airspace Case Number 87-AGL-71-NR.

Aeronautical maps and charts will reflect the defined areas which will enable other aircraft to circumnavigate the area in order to comply with applicable visual flight rule requirements.

Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1345(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

Detroit Willow Run Airport, MI [Revised]

Within a 5-mile radius of Willow Run Airport (lat. 42°14'16"N., long. 83°31'50"W.), within 2 miles each side of the Willow Run Airport ILS localizer SW course, extending from the 5-mile radius zone to the OM, excluding the portion subtended by a chord drawn between the points of the INT of the 5-mile radius zone with the Detroit Metropolitan Wayne County Airport, MI, control zone.

Ann Arbor, MI [Revised]

Within a 5-mile radius of the Ann Arbor Municipal Airport (lat. 42°13'22"N., long. 83°44'40"W.) This control zone is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Issued in Des Plaines, Illinois, on January 9, 1989.

Teddy W. Burcham,
Manager, Air Traffic Division.
[FR Doc. 89-1301 Filed 1-19-89; 8:45 am]
BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 88-AGL-30]

Proposed Transition Area Establishment—Hawley, MN

AGENCY: Federal Aviation Administration (FAA), DOT.
ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish the Hawley, MN, transition area to accommodate a new VOR/DME-A Standard Instrument Approach Procedure (SIAP) to Hawley Municipal Airport, Hawley, MN. The intended effect of this action is to ensure segregation of the aircraft using approach procedures in instrument conditions in controlled airspace.

DATE: Comments must be received on or before February 24, 1989.

ADDRESS: Send comments on the proposal in triplicate to: Federal Aviation Administration, Regional Counsel, AGL-7, Attn: Rules Docket No. 88-AGL-30, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Harold G. Hale, Air Traffic Division, Airspace Branch, AGL-520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-7360.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 88-AGL-30". The postcard will be date/time stamped and returned to the commenter. All communications received before the specifed closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of Regional Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2, which describes the applications procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish a transition area airspace near Hawley, MN.

The development of a new VOR/DME-A SIAP requires that the FAA designate airspace to insure that the procedure will be contained within controlled airspace. The minimum descent altitude for this procedure may be established below the floor of the 700-foot controlled airspace.

Aeronautical maps and charts will reflect the defined areas which will enable other aircraft to circumnavigate the area in order to comply with applicable visual flight rule requirements.

Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It,

BEST COPY AVAILABLE

therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Hawley, MN [New]

That airspace extending upward from 700 feet above the surface within a 5 mile radius of the Hawley Municipal Airport (lat. 46°53'02"N., long. 96°21'02"W.) within 3.5 miles each side of the 246° bearing from the airport extending from the 5 mile radius to 6 miles southwest of the airport, excluding that portion which overlies the Fargo, ND, transition area.

Issued in Des Plaines, Illinois, on January 5, 1989.

Teddy W. Burcham,

Manager, Air Traffic Division.

[FR Doc. 89-1302 Filed 1-19-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 88-AGL-29]

Proposed Transition Area Establishment—Spearfish, SD

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish the Spearfish, SD, transition area to accommodate a new NDB-A Standard Instrument Procedure (SIAP) to Black Hills-Clyde Ice Field Airport, Spearfish, SD. The intended effect of this action is to ensure segregation of the aircraft using approach procedures in instrument conditions in controlled airspace.

DATE: Comments must be received on or before February 28, 1989.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Regional Counsel, AGL-7, Attn: Rules Docket No. 88-AGL-29, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Harold G. Hale, Air Traffic Division, Airspace Branch, AGL-520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-7360.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 88-AGL-29". The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of Regional Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2, which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CER Part 71) to establish a transition area airspace near Spearfish, SD.

The development of a new NDB-A SIAP requires that the FAA designate airspace to insure that the procedure will be contained within controlled airspace. The minimum descent altitude for this procedure may be established below the floor of the 700-foot controlled airspace.

Aeronautical maps and charts will reflect the defined areas which will enable other aircraft to circumnavigate the area in order to comply with applicable visual flight rule requirements.

Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial

number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Spearfish, SD [New]

That airspace extending upward from 700 feet above the surface within a 9.5-mile radius of the Black Hills-Cyde Ice Field Airport (lat. 44°29'00"N., long. 103°47'00"W.).

Issued in Des Plaines, Illinois, on January 9, 1989.

Teddy W. Burcham,

Manager, Air Traffic Division.

[FR Doc. 89-1304 Filed 1-19-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 93

[Docket No. 25758; Notice No. 88-18]

High Density Traffic Airports; Slot Allocation and Transfer Methods; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking; Correction.

SUMMARY: FAA is correcting an error in the Notice number and errors in "For Further Information Contact." In FR Doc. 89-410, published Tuesday, January 10, 1989, on page 831, please change NPRM 88-17 to read Notice No. 88-18 and "For Further Information Contact" should read as follows, David L. Bennett, Office of Chief Council, AGC-230, (202) 267-3491.

FOR FURTHER INFORMATION CONTACT: Mr. David L. Bennett, (202) 267-3491.

Michael D. Triplett,

Legal Technician, Program Management Staff AGC-10.

[FR Doc. 89-1298 Filed 1-19-89; 8:45 am]

BILLING CODE 4910-13-M

INTERNATIONAL TRADE COMMISSION

19 CFR Part 201

Procedures Relating to Assessment of Fees and Waiving of Fees Under the Freedom of Information Act and Requests for Information in Cases to Which Commission Is Not a Party

AGENCY: International Trade Commission.

ACTION: Notice of proposed rulemaking and request for comments.

SUMMARY: This notice sets forth proposed rules which the U.S. International Trade Commission is considering adopting relating to: (1) Assessment of fees and waiving of fees under the Freedom of Information Act (5 U.S.C. 552), and (2) requests for information in cases or matters in which the Commission is not a party. The proposed rules, if adopted, would amend 201.20 (relating to fees) and 201.21 (relating to availability of specific records). These proposed fee waiver rules supersede proposed rules published on June 5, 1987 (52 FR 21317).

The proposed rules with respect to fees under the Freedom of Information Act (5 U.S.C. 552) reflect the new fee provisions of the Freedom of Information Reform Act of 1986 (Pub. L. No 99-570, section 1803) and conform to the Uniform Freedom of Information Act Fee Schedule and Guidelines promulgated by the Office of Management and Budget (52 FR 10011, March 27, 1987). These proposed rules also contain procedures and guidelines for determining when such fees should be waived or reduced. The proposed rules parallel rules on fees and waivers of fees promulgated by the U.S. Department of Justice (*see* 28 CFR Part 16). The recommended charges in proposed rule 201.20(b)(1)(ii) for document searches follow such guidelines. They reflect distinctions between lower grade clerical/professional and higher grade professional/managerial staff costs. They are based on projected January 1989 salary levels for GS-8, step 1, and GS-12, step 1, respectively, as calculated by the Commission's Finance Division, which the Commission estimates are the average staff grades in each of these two categories of personnel likely to be doing such searches. The fees for computer searches (§ 201.20(b)(1)(iii)) and review (§ 201.20(b)(3)) are also based on salary level GS-12, step 1, which the Commission estimates is the average staff grade of personnel likely to be doing such computer searches or review.

The proposed rules governing requests for information in cases or matters to which the Commission is not a party specify the Commission's procedures with respect to such requests. The proposed rules are intended to prevent the harm that may result from inappropriate disclosure of nonpublic information or inappropriate allocation of Commission resources.

DATES: Comments must be received not later than thirty (30) days from the date that this notice appears in the **Federal Register**.

ADDRESS: Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436.

FOR FURTHER INFORMATION CONTACT: William W. Gearhart, Esq., Assistant General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202-252-1091.

SUPPLEMENTARY INFORMATION: None of the proposed amendments constitutes a "major rule" within the meaning of Executive Order No. 12291 (Improving Government Regulations). The requirements of the Regulatory Flexibility Act, 5 U.S.C. 605(b), do not apply.

List of Subjects in 19 CFR Part 210

Administrative practice and procedure, Freedom of information, Investigations.

PART 201—[AMENDED]

1. The authority citation for Part 201 is revised to read as follows:

Authority: 5 U.S.C. 552, 552a, 552b(g), 553; 19 U.S.C. 1335; 31 U.S.C. 9701.

2. Section 201.20 is revised to read as follows:

§ 201.20 Fees.

(a) *In general.* Fees pursuant to 5 U.S.C. 552 shall be assessed according to the schedule contained in paragraph (b) of this section for services rendered by agency personnel in responding to and processing requests for records under this subpart. All fees so assessed shall be charged to the requester, except where the charging of fees is limited under paragraph (c) of this section or where a waiver or reduction of fees is granted under paragraph (d) of this section. The Secretary will collect all applicable fees. Requesters shall pay fees by check or money order made payable to the Treasury of the United States.

(b) *Charges.* In responding to requests under this subpart, the following fees shall be assessed, unless a waiver or

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reduction of fees has been granted pursuant to paragraph (d) of this section:

(1) *Search.* (i) No search fee shall be assessed with respect to requests by educational institutions, noncommercial scientific institutions, and representatives of the news media as defined in paragraphs (j) (6), (7), and (8) of this section, respectively. Search fees shall be assessed with respect to all other requests, subject to the limitations of paragraph (c) of this section. The Secretary may assess fees for time spent searching even if agency personnel fail to locate any respective record or where records located are subsequently determined to be entirely exempt from disclosure.

(ii) For each quarter hour spent by agency personnel in salary grades GS–2 through GS–10 in searching for and retrieving a requested record, the fee shall be $3.00. When the time of agency personnel in salary grades GS–11 and above is required, the fee shall be $5.00 for each quarter hour of search and retrieval time spent by such personnel.

(iii) For computer searches of records, which may be undertaken through the use of existing programming, requester shall be charged the actual direct costs of conducting the search, although certain requesters (as defined in paragraph (c)(2) of this section) shall be entitled to the cost equivalent of two hours on manual search time without charge. These direct costs shall include the cost of operating a central processing unit for that portion of operating time that is directly attributable to searching for records responsive to a request, as well as the costs of operator/programmer salary apportionable to the search (at no more than $5.00 per quarter hour of time so spent). Agency personnel are not required to alter or develop programming to conduct a search.

(2) *Duplication.* Duplication fees shall be assessed with respect to all requesters, subject to the limitations of paragraph (c) of this section. For a paper photocopy of a record (no more than one copy of which need be supplied), the fee shall be $0.10 per page. For copies produced by computer, such as tapes or printouts, the Secretary shall charge the actual direct costs, including operator time, of producing the copy. For other methods of duplication, the Secretary shall charge the actual direct costs of duplicating a record.

(3) *Review.* (i) Review fees shall be assessed with respect to only those requesters who seek records for a commercial use, as defined in paragraph (j) (5) of this section. For each quarter hour spent by agency personnel in reviewing a requested record for possible disclosure, the fee shall be $5.00.

(ii) Review fees shall be assessed only for the initial record review, i.e., all of the review undertaken when a component analyzes the applicability of a particular exemption to a particular record or record portion at the initial request level. No charge shall be assessed for review at the administrative appeal level of an exemption already applied. However, records or record portions withheld pursuant to an exemption that is subsequently determined not to apply may be reviewed again to determine the applicability of other exemptions not previously considered. The costs of such a subsequent review are properly assessable, particularly where that review is made necessary by a change of circumstances.

(c) *Limitations on charging fees.* (1) No search or review fee shall be charged for a quarter-hour period unless more than half of that period is required for search or review.

(2) Except for requesters seeking records for a commerical use (as defined in paragraph (j)(5) of this section), the Secretary shall provide without charge—

(i) The first 100 pages of duplication (or its cost equivalent), and

(ii) The first two hours of search (or its cost equivalent).

(3) Whenever a total fee calculated under paragraph (b) of this section is $25.00 or less, no fee shall be charged.

(4) The provisions of paragraphs (c) (2) and (3) of this section work together. For requesters other than those seeking records for a commercial use, no fee shall be charged unless the cost of search is in excess of two hours plus the cost of duplication in excess of 100 pages exceeds $25.00.

(d) *Waiver or reduction of fees.* (1) Records responsive to a request under 5 U.S.C. 552 shall be furnished without charge or at a charge reduced below that established under paragraph (b) of this section where the Secretary determines, based upon information provided by a requester in support of a fee waiver request or otherwise made known to the Secretary that disclosure of the requested information is in the public interest, because it is likely to contribute significantly to public understanding of the operations or activities of the Government and is not primarily in the commercial interest of the requester. Requests for a waiver or reduction of fees shall be considered on a case-by-case basis.

(2) In order to determine whether the first fee waiver requirement is met—i.e., that disclosure of the requested information is in the public interest because it is likely to contributed significantly to public understanding of the operations or activities of the government—the Secretary shall considered the following four factors in sequence:

(i) *The subject of the request: Whether the subject of the requested records concerns "the operations or activities of the government."* The subject matter of the requested records, in the context of the request, must specifically concern identifiable operations or activities of the federal government—with a connection that is direct and clear, not remote or attenuated. Furthermore, the records must be sought for their informative value with respect to those government operations or activities; a request for access to records for their intrinsic informational content alone will not satisfy this threshold consideration.

(ii) *The informative value of the information to be disclosed: Whether the disclosure is "likely to contribute; to an understanding of government operations or activities.* The disclosable portions of the requested records must be meaningfully informative on specific government operations or activities in order to hold potential for contributing to increased public understanding of those operations and activities. The disclosure of information that already is in the public domain, in either a duplicative or a substantially identical form, would not be likely to contribute to such understanding, as nothing new would be added to the public record.

(iii) *The contribution of an understanding of the subject by the public likely to result from disclosure: Whether disclosure of the requested information will contribute to "public understanding."* The disclosure must contribute to the understanding of the public at large, as opposed to the individual understanding of the requester or a narrow segment of interested persons. A requester's identity and qualifications—e.g., expertise in the subject area and ability and intention to effectively convey information to the general public—shall be considered. It will be presumed that a representative of the news media (as defined in paragraph (j)(6) of this section who has access to the means of public dissemination readily will be able to satisfy this consideration. Requests from libraries or other record repositories (or requesters who intend merely to disseminate information to such institutions) shall be analyzed, like those of other requesters, to identify a particular person who represents that he

actually will use the requested information in scholarly or other analytic work and then disseminate it to the general public.

(iv) *The significance of the contribution to public understanding: Whether the disclosure is likely to contribute "significantly" to public understanding of government operations or activities.* The public's understanding of the subject matter in question, as compared to the level of public understanding existing prior to the disclosure, must be likely to be enhanced by the disclosure to a significant extent. The Secretary shall not make separate judgments as to whether information, even though it in fact would contribute significantly to public understanding of the operations or activities of the operations or activities of the government, is "important" enough to be made public.

(3) In order to determine whether the second fee waiver requirement is met—i.e., that disclosure of the requested information is not primarily in the commercial interest of the requester—the Secretary shall consider the following two factors in sequence:

(i) *The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclosure.* The Secretary shall consider all commercial interests of the requester (with reference to the definition of "commercial use" in paragraph (j)(5) of this section), or any person on whose behalf the requester may be acting, but shall consider only those interests which would be furthered by the requested disclosure. In assessing the magnitude of identified commercial interests, consideration shall be given to the role that such FOIA-disclosed information plays with respect to those commercial interests, as well as to the extent to which FOIA disclosures serve those interests overall. Requesters shall be given a reasonable opportunity in the administrative process to provide information bearing upon this consideration.

(ii) *The primary interest in disclosure: Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is "primarily in the commercial interest of the requester."* A fee waiver or reduction is warranted only where, once the "public interest" standard set out in paragraph (d)(2) of this section is satisfied, that public interest can fairly be regarded as greater in magnitude than that of the requester's commercial interest in disclosure. The Secretary shall ordinarily presume that, where a news media requester has satisfied the "public interest" standard, that will be the interest primarily served by disclosure to that requester. Disclosure to data brokers or others who compile and market government information for direct economic return shall not be presumed to primarily serve the "public interest."

(4) Where only a portion of the requested records satisfies both of the requirements for a waiver or reduction of fees under this paragraph, a waiver or reduction shall be granted only as to that portion.

(5) Requests for the waiver or reduction of fees shall address each of the factors listed in paragraphs (d)(2) and (3) of this section, as they apply to each record request.

(e) *Notice of anticipated fees in excess of $25.00.* Where the Secretary determines or estimates that the fees to be assessed under this section may amount to more than $25.00, he shall notify the requester as soon as practicable of the actual or estimated amount of the fees, unless the requester has indicated in advance his willingness to pay fees as high as those anticipated. (If only a portion of the fee can be estimated readily, the Secretary shall advise the requester that the estimated fee may be only a portion of the total fee.) In cases where a requester has been notified that actual or estimated fees may amount to more than $25.00, the request will be deemed not to have been received until the requester has agreed to pay the anticipated total fee. A notice to the requester pursuant to this paragraph shall offer him the opportunity to confer with agency personnel in order to reformulate his request to meet his needs at the lower cost.

(f) *Aggregating requests.* Where the Secretary reasonably believes that a requester or a group of requesters acting in concert is attempting to divide a request into a series of requests for the purpose of evading the assessment of fees, the Secretary may aggregate any such requests and charge accordingly. The Secretary may presume that multiple requests of such type made within a 30-day period have been made in order to evade fees. Where requests are separated by a longer period, the Secretary shall aggregate them only where there exists a reasonable basis for determining that said aggregation is warranted, e.g., where the requests involve clearly related matters. Multiple requests involving unrelated matters shall not be aggregated.

(g) *Advance payments.* (1) Where the Secretary estimates that a total fee to be assessed under this section is likely to exceed $250.00, the Secretary may require the requester to make an advance payment of an amount up to the entire estimated fee before beginning to process the request, except where the Secretary receives a satisfactory assurance of full payment from a requester with a history of prompt payment.

(2) Where a requester has previously failed to pay a records access fee within 30 days of the date of billing, the Secretary may require the requester to pay the full amount owed, plus any applicable interest (as provided for in paragraph (h) of this section), and to make an advance payment of the full amount of any estimated fee before he begins to process a new request or continues to process a pending request from that requester.

(3) For requests other than those described in paragraphs (g)(1) and (2) of this section, the Secretary shall not require the requester to make an advance payment, i.e., a payment made before work is commenced or continued on a request. Payment owed on work already completed is not an advance payment.

(4) Where the Secretary acts under paragraph (g)(1) or (2) of this section, the administrative time limits described in subsection (a)(6) of the FOIA for the processing of an initial request or an appeal, plus permissible extensions of these time limits, shall be deemed not to begin to run until the Secretary has received payment of the assessed fee.

(h) *Charging interest.* The Secretary may assess interest charges on an unpaid bill starting on the 31st day following the day on which the bill was sent to the requester. Once a fee payment has been received by the Secretary, even if not processed, the accrual of interest shall be stayed. Interest charges shall be assessed at the rate prescribed in section 3717 of title 31 U.S.C. and shall accrue from the date of the billing. The Secretary shall follow the provisions of the Debt Collection Act of 1982, Pub. L. 97–265 (Oct. 25, 1982), and its implementing procedures, including the use of consumer reporting agencies, collection agencies, and offset.

(i) *Other statutes specifically providing for fees.* (1) The fee schedule of this section does not apply with respect to the charging of fees under a statute specifically providing for setting the level of fees for particular types of records—i.e., any statute that specifically requires a government entity such as the Government Printing Office or the National Technical Information Service, to set and collect fees for particular types of records—in order to:

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(i) Serve both the general public and private sector organizations by conveniently making available government information;

(ii) Ensure that groups and individuals pay the cost of publications and other services that are for their special use so that these costs are not borne by the general taxpaying public;

(iii) Operate an information-dissemination activity on a self-sustaining basis to the maximum extent possible; or

(iv) Return revenue to the Treasury for defraying, wholly or in part, appropriate funds used to pay the costs of disseminating government information.

(3) Where records responsive to requests are maintained for distribution for agencies operating statutorily based fee schedule programs, the Secretary shall inform requesters of the steps necessary to obtain records from those sources.

(j) *Definitions.* For the purpose of this section:

(1) The term "direct costs" means those expenditures which the agency actually incurs in searching for the duplicating (and, in the case of commercial use requesters, reviewing) records to respond to a FOIA request. Direct costs include, for example the salary of the employee performing the work (the basic rate of pay for the employee plus 16 percent of that rate to cover benefits) and the cost of operating duplicating machinery. Not included in direct costs are overhead expenses such as costs of space and heating or lighting of the facility in which the records are stored.

(2) The term "search" includes all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents. The Secretary shall ensure, however, that searches are undertaken in the most efficient and least expensive manner reasonably possible; thus, for example, the Secretary shall not engage in line-by-line search where merely duplicating an entire document would be quicker and less expensive.

(3) The term "duplication refers to the process of making a copy of a record necessary to respond to a FOIA request. Such copies can take the form of payer copy, microform, audio-visual materials, or machine-readable documentation (e.g., magnetic tape or disk), among others. The copy provided shall be in a form that is reasonably usable by requesters.

(4) The term "review" refers to the process of examining a record located in response to a request in order to determine whether any portion of it is permitted to be withheld. It also includes processing any record for disclosure, e.g., doing all that is necessary to excise it and otherwise prepare it for release, although review costs shall be recoverable even where there ultimately is no disclosure of a record. Review time does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(5) The term "commercial use" in the context of a request refers to a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made, which can include furthering those interests through litigation. The Secretary shall determine, as well as reasonably possible, the use to which a requester will put the records requested. Where the circumstances of a request suggest that the requester will put the records sought to a commercial use, either because of the nature of the request itself or because the Secretary otherwise has reasonable cause to doubt a requester's stated use, the Secretary shall provide the requester a reasonable opportunity to submit further clarification.

(6) The term "educational institution" refers to a preschool, a public or private elementary or secondary school, an institution of undergraduate higher education, an institution of graduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research. To be eligible for inclusion in this category, a requester must show that the request is being made as authorized by and under the auspices of a qualifying institution and that the records are not sought for a commercial use but are sought in furtherance of scholarly research.

(7) The term "noncommercial scientific institution" refers to an institution that is not operated on a "commercial" basis as that term is referenced in paragraph (j)(5) of this section, and which is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry. To be eligible for inclusion in this category, a requester must show that the request is being made as authorized by and under the auspices of a qualifying institution and that the records are not sought for a commercial use but are sought in furtherance of scientific research.

(8) The term "representative of the news media" refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large and publishers of periodicals (but only in those instances where they can qualify as disseminators of "news" who make their products available for purchases or subscription by the general public. For "freelance" journalists to be regarded as working for a news organization, they must demonstrate a solid basis for expecting publication through that organization; a publication contract would be the clearest proof, but the Secretary shall also look to the past publication record of a requester in making this determination. To be eligible for inclusion in this category, a requester also must not be seeking the requested records for a commercial use. In this regard, a request for records supporting the news dissemination function of the requester shall not be considered to be for a commercial use.

(k) *Charges for other services and materials.* Apart from the other provisions of this section, where the Secretary elects, as a matter of administrative discretion, to comply with a request for a special service or materials, such as certifying that records are true copies or sending them other than by ordinary mail, the actual direct costs of providing the service or materials shall be charged.

3. Section 201.21 is amended by adding paragraph (c) to read as follows:

§ 201.21 Availability of specific records.

* * * * *

(c) *Information requested in cases or matters to which the Commission is not a party.* (1) The procedure specified in this section will apply to all demands directed to Commission employees for the production of documents or for testimony that relates in any way to the employees' official duties. These procedures will also apply to demands directed to former employees if the demands seek nonpublic materials or information acquired during Commission employment. The provisions of paragraph (c)(2) of this section will also apply to demands directed to the agency. For purposes of this section, the term "demand" means any request, order or subpoena for testimony or production of documents; the term, "subpoena" means any compulsory process in a case or matter to which the Commission is not a party;

the term "nonpublic" includes any material or information which, under § 201.21(b), is exempt from availability for public inspection and copying; the term "employee" means any current or former officer or employee of the Commission; the term "documents" means all records, papers or official files, including without limitation, official letters, telegrams, memoranda, reports, studies, calendar and diary entries, graphs, notes, charts, tabulations, data analysis, statistical or information accumulations, records of meetings and conversations, film impressions, magnetic tapes, and sound or mechanical reproductions; the term "case or matter" means any civil proceeding before a court of law, administrative board, hearing officer, or other body conducting a legal or administrative proceeding in which the Commission is not a named party.

(2) Prior to or simultaneously with a demand to a Commission employee for the production of documents or for testimony concerning matters relating to official duties, the party seeking such production or testimony must serve upon the General Counsel of the Commission an affidavit, or if that is not feasible, then a statement which sets forth the title of the case, the forum, the party's interest in the case, the reasons for the request, and a showing that the desired testimony or documents are not reasonably available from any other source. Where testimony is sought, the party must also provide a summary of the testimony desired, the intended use of the testimony, and show that Commission records could not be provided and used instead of the requested testimony. A subpoena for testimony from a Commission employee concerning official matters or for the production of documents shall be served in accordance with Rule 45 of the Federal Rules of Civil Procedure and a copy of the subpoena shall be sent to the General Counsel.

(3) Any employee or former employee who is served with a subpoena or other demand shall promptly advise the General Counsel of the service of the subpoena or other demand, the nature of the documents or information sought, and all relevant facts and circumstances.

(4) Absent written authorization from the Chairman of the Commission ("Chairman"), the employee shall respectfully decline to produce the requested documents, to testify, or to otherwise disclose requested information. If a court rules that the demand must be complied with despite the absence of such written authorization, the employe upon whom the demand is made shall respectfully refuse to comply based upon these regulations and *Touhy* v. *Ragan*, 340 U.S. 462 (1951).

(5) The Chairman will consider and act upon subpoena under this section with due regard for statutory restrictions, the Commission's rules and the public interest, taking into account such factors as the need to conserve employee's time for conducting official business, the need to prevent the expenditure of the United States government's time and money for private purposes, the need to maintain impartiality between private litigants in cases where no substantial governmental interest is involved, and the relevant legal standards for determining whether justification exits for the disclosure of nonpublic information and documents. If the Chairman determines that the subpoena documents or information are protected by a privilege or that the Commission has a duty in law or equity to protect such documents or information from disclosure, the General Counsel shall move the court to quash the subpoena or for other appropriate action.

(6) The General Counsel may consult or negotiate with counsel or the party seeking testimony or documents to refine and limit the demand so that compliance is less burdensome, or obtain information necessary to make the determination described in paragraph (c)(5) of this section. Failure of the counsel or party seeking the testimony or documents to cooperate in good faith to enable the General Counsel to make an informed recommendation to the Chairman under paragraph (c)(5) of this section may serve as the basis for a determination not to comply with the demand.

(7) Permission to testify will, in all cases, be limited to the information set forth in the affidavit as described in paragraph (c)(2) of this section, or to such portions thereof as the Chairman deems proper.

(8) If the Chairman authorizes the testimony of an employee, then the General Counsel shall arrange for the taking of the testimony by methods that are least disruptive of the official duties of the employee. Testimony may, for example, be provided by affidavits, answers to interrogatories, written depositions, or depositions transcribed, recorded, or preserved by any other means allowable by law. Costs of providing testimony, including transcripts, wil be borne by the party requesting the testimony. Such costs shall also include reimbursing the Commission for the usual and ordinary expenses attendant upon the employee's absence from his or her official duties in connection with the case or matter, including the employee's salary and applicable overhead charges and any necessary travel expenses.

(9) The Secretary in consultation with the General Counsel is further authorized to charge reasonable fees to parties demanding documents or information. Such fees, calculated to reimburse the government for the expense of responding to such demand, may include the costs of time expended by Commission employees to process and respond to the demand, attorney time for reviewing the demand and for related legal work in connection with the demand, and expenses generated by equipment used to search for, produce and copy the responsive information. In general, such fees will be assessed at the rates and in the manner specified in § 201.20 of this part.

(10) This section does not affect the rights and procedures governing the public access to official documents pursuant to the Freedom of Information Act or the Privacy Act.

(11) This section is intended to provide instructions to Commission employees and does not create any right or benefit, substantive or procedural, enforceable by any party against the Commission.

Issued: January 11, 1989.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 89-1253 Filed 1-19-89; 8:45 am]

BILLING CODE 7020-02-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[INTL-152-86]

Limitation of Foreign Tax Credit for Foreign Oil and Gas Taxes

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: This document contains proposed Income Tax Regulations relating to the amendments made to the Internal Revenue Code by the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA). The amendments require that foreign oil and gas extraction

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income and losses from all foreign countries be aggregated before computing the limit on creditability of foreign taxes. The amendments also repeal the separate application of the foreign tax credit limitation to taxes on foreign oil related income. In the Rules and Regulations portion of this **Federal Register**, the Internal Revenue Service is issuing temporary regulations relating to these matters. The text of those temporary regulations also serves as the comment document for this proposed rulemaking.

DATES: Written comments and requests for a public hearing must be delivered or mailed by April 24, 1989. The amendments are proposed to be effective, generally, for taxable years beginning after December 31, 1982.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue (Attention: CC:CORP:T:R, INTL–152–86), Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Richard L. Chewning of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington DC 20224 (Attention: CC:CORP:T:R (INTL–152–86)) (202–566–6384, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations published in the Rules and Regulations portion of this issue of the **Federal Register** and new §§ 1.907 (a)-0AT, 1.907 (c)-1AT, 1.907 (a)-0T through 1.907 (f)-1T. The final regulations that are proposed to be based on the temporary regulations would amend 26 CFR Part 1 to conform the regulations to changes made to section 907 by section 211 (96 Stat. 446) of TEFRA. For the text of the temporary regulations, see T.D. 8240 published in the Rules and Regulations portion of this issue of the **Federal Register**.

Special Analyses

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. Although this document is a notice of proposed rulemaking that solicits public comments, the notice and public procedure requirements of 5 U.S.C. 553 do not apply because it has been determined that these proposed regulations are interpretative. Therefore, an initial Regulatory Flexibility Analysis is not required by the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

Comments and Requests for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably a signed original and seven copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request by any person who has submitted written comments on the proposed rules. Notice of the time and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Richard L. Chewning of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service. Other personnel from offices of the Internal Revenue Service and Treasury Department participated in developing these regulations.

List of Subjects in 26 CFR 1.861 through 1.997–1

Income taxes, Corporate deductions, Aliens, Exports, DISC, Foreign investment in U.S., Foreign tax credit, FSC, Sources of income, United States investments abroad.

Proposed Amendments to the Regulations

The temporary regulations T.D. 8240, published in the Rules and Regulations portion of this issue of the **Federal Register** are hereby also proposed as final regulations under section 907 of the Internal Revenue Code of 1986.

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

[FR Doc. 89–450 Filed 1–19–89; 8:45 am]

BILLING CODE 4830–01–M

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26 CFR Parts 1, 501, 504, 505, 506, 507, 511, 512, 518, 519, and 602

[INTL–952–86]

Allocation and Apportionment of Interest Expense and Certain Other Expenses; Public Hearing on Proposed Regulations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed regulations relating to allocation of apportionment of interest expense and certain other expenses for purposes of the foreign tax credit rules and certain other international tax provisions.

DATES: The public hearing will be held on Tuesday, February 21, 1989, beginning at 10:00 a.m. Outlines of oral comments must be delivered on or mailed by Tuesday, February 7, 1989.

ADDRESS: The public hearing will be held in the I.R.S. Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. The requests to speak and outlines of oral comments should be submitted to the Commissioner of Internal Revenue, Attn: CC:CORP:T:R (IL–952–86), Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Angela D. Wilburn of the Regulations Unit, Assistant Chief Counsel (Corporate), Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224, telephone 202–566–3935, (not a toll-free call).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under sections 861(b), 863(a), 863(b) and 864(e) of the Internal Revenue Code of 1986. The proposed regulations appeared in the **Federal Register** for Wednesday, September 14, 1988, at page 35525 (53 FR 35525).

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR Part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit not later than Tuesday, February 7, 1989, an outline of the oral comments/testimony to be presented at the hearing and the time they wish to devote to each subject.

Each speaker will be limited to 10 minutes for an oral presentation exclusive of the time consumed by questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the speakers. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue.

Cynthia E. Grigsby,

Acting Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 89–1337 Filed 1–19–89; 8:45 am]

BILLING CODE 4830–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–3507–3]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Notice of proposed rulemaking; extension of the public comment period.

SUMMARY: On November 3, 1988 (53 FR 44401), USEPA proposed rulemaking on a revision to the Illinois State Implementation Plan (SIP) for Ozone. The revision pertains to an alternative control strategy (or bubble) for the General Electric Major Appliance Business Group (GE) plant located in Cook County, Illinois. USEPA's action is based upon a revision request which was submitted by the State. USEPA proposed to disapprove the bubble because it failed to satisfy the baseline and progress requirements of the December 4, 1986, Emissions Trading Policy Statement (51 FR 43814). Further, the bubble is not consistent with USEPA policy on transfer efficiency credit.

At the request of the State of Illinois, the public comment period was extended until January 2, 1989, to allow the State additional time to develop comments on the complex issues presented in the proposed rulemaking.

DATE: Comments were accepted if received on or before January 2, 1989.

ADDRESSES: Comments were submitted to: Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch, Region V, U.S. Environmental Protection Agency (5AR–26), 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Randolph O. Cano, (312) 886–6036.

Dated: January 11, 1989.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 89–1358 Filed 1–19–89; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 52

[FRL–3507–7]

Proposed Disapproval of Air Quality Implementation Plan Revision, Louisiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to disapprove a State Implementation Plan (SIP) revision request submitted by the State of Louisiana on September 3, 1987. The revision, as requested, consists of an order by the Louisiana Department of Environmental Quality approving a compliance demonstration submitted by General Motors Corporation (GM). That demonstration purports to show that the topcoat operation of a light duty truck assembly facility in Shreveport, Louisiana complies with Louisiana Air Quality Regulation (LAQR) 22.9.2(f) through "equivalency," primarily on the basis of improved transfer efficiency. The emission rate which GM claims to have achieved is not, however, equivalent to the requirements of the regulation as applied to GM's facility. Indeed, the transfer efficiency GM now claims is far lower than it indicated in obtaining a 1977 determination of lowest achievable emission rate (LAER) for the topcoat operation. GM's demonstration is also deficient in using yearly averaging to show compliance with an instantaneous standard and estimates instead of actual values determined from performance testing.

DATE: Comments must be received on or before February 22, 1989.

ADDRESS: Written comments should be addressed to Mr. Thomas Diggs, Chief (6T–AN), SIP/NSR Section, Air Programs Branch, EPA Region VI, 1445 Ross Avenue, Dallas, Texas 75202–2733. Documents relevant to this action are available for public inspection during normal business hours at the same address and at the offices of the Louisiana Department of Environmental Quality, 625 North 4th Street, Baton Rouge, Louisiana 70804. Anyone wishing to examine those documents should make an appointment with the appropriate office at least 24 hours before the examination.

FOR FURTHER INFORMATION CONTACT: Mr. Gregg Guthrie, SIP/NSR Section (6T–AN), Air Programs Branch, EPA Region VI, 1445 Ross Avenue, Dallas, Texas 75202–2733; Telephone (214) 655–7214 or FTS 255–7214. Reference File SIP 1–2–2–25.

SUPPLEMENTARY INFORMATION: In May 1977, EPA issued a control technique guideline (CTG) entitled "Control of Volatile Organic Emissions from Existing Stationary Sources—Volume II: Surface Coating of Cans, Coils, Paper, Fabrics, Automobiles, and Light Duty Trucks," (EPA–450/2–77–008). That guideline discussed various types of industrial coatings processes, identified reasonably available control technologies (RACT) for reducing volatile organic compound (VOC) emissions from existing sources and provided sample regulatory language for states to use in imposing emission limitations based on those technologies.

Generally, the CTG for automobiles and light duty trucks recommended the use of low solvent coatings for reducing VOC emissions from existing coatings lines. In relevant part, it found that a waterborne topcoat process, in which solids (resins and pigments) were mixed with a limited amount of organic solvents and a larger amount of water, resulted in reduced topcoat VOC emissions when compared to conventional solvent-borne coatings. The CTG thus recommended that states base VOC RACT level emission limits on the waterborne topcoat process, which was then used in GM auto assembly plants in Southgate and Van Nuys, California. The CTG concluded that automobile topcoat operations could generally be required to use coatings containing no more than 2.8 pounds of VOC per gallon of coating (less water) or obtain equivalent VOC reductions by other means, e.g., capture and destruction of VOC through incineration.

After EPA issued the 1977 CTG and a number of states had adopted RACT level control requirements based on its recommendations, topcoat technology development took a new direction in the American auto industry. Instead of reducing VOC emissions through conversion to waterborne topcoats, the industry focused its attention on trying to achieve equivalent emission reductions by developing "higher solids" solvent-borne topcoats. Higher solids solvent-borne topcoats contain more solids and less VOC than conventional solvent-borne topcoats, but more VOC than waterborne topcoats. Because solvent-borne coatings could be more efficiently applied than waterborne coatings, much industry interest was centered on the degree to which improved transfer efficiency (TE)[1] could

[1] TE is the ratio between consumed solids, i.e., solids passing through the application equipment, and applied solids, i.e., solids that remain on the coated object. The difference between applied and consumed solids is known as "overspray." At 60%

Continued

offset or eliminate emissions which would otherwise occur from using solvent-borne topcoats. Auto manufacturers maintained that they would emit no more VOC to the atmosphere using high solids solvent-borne topcoats applied at higher TE than they would using the waterborne topcoats forming the basis for typical RACT regulations.

Responding to this issue, Richard G. Rhoads, Director of EPA's Control Program Development Division, issued memoranda on October 6, 1978, May 24, 1979, July 3, 1979, and May 5, 1980. In essence, those memoranda set forth methods for mathematically converting a typical RACT standard expressed in pounds of VOC per gallon of coating (less water), to a RACT "solids consumed" standard under which the effects of add-on controls could be evaluated, and to a "solids applied" standard with which the effect of improved TE could also be evaluated. Although the methods recommended by the Rhoads memoranda were based on sound technical reasoning, their application required a higher degree of sophistication than the basic RACT regulations recommended by the CTG. Protracted negotiations between industry and EPA representatives eventually resulted in the development of mutually satisfactory regulatory formats and methods for determining the variables required for calculating VOC emissions of specific sources.[2]

While these national policies on controlling emissions from existing auto and truck assembly plants were evolving, the somewhat convoluted chain of events leading to today's proposal began. In 1977, the same year EPA issued the CTG, GM submitted a permit application to the State of Louisiana, seeking approval of its plans to construct and operate a new light duty truck assembly plant in Shreveport, Louisiana. Because monitoring data indicated Shreveport a nonattainment area for ozone, EPA's Emissions Offset Interpretive Ruling, published at 41 FR 55524 (December 21, 1976), required that GM obtain offsetting VOC reductions from existing facilities in the area and comply with the lowest achievable emission rate (LAER) for VOC.

At the time, GM maintained that the topcoat operation of its proposed plant would achieve LAER because it would use the same type of waterborne coatings recommended by the CTG. Using emissions data from a truck assembly plant in Fremont, California (which used conventional solvent-borne coatings) and adjusting it for the reduced VOC content of the waterborne coatings it intended to use in Shreveport and operational differences between the facilities, GM calculated its hourly and yearly VOC emissions from the proposed topcoat operation (as well as other plant processes), thus quantifying the required offsets. After review of those calculations and after GM obtained offsetting emission reductions totalling 3,726 tons per year, EPA approved Louisiana's issuance of GM's preconstruction permit. See 43 FR 36114 (August 15, 1978); 44 FR 15704 (March 15, 1979).

Subsequently, the State adopted Louisiana Air Quality Regulation (LAQR) 22.9.2, which EPA approved as part of the SIP at 47 FR 53412 (October 29, 1981). Although LAQR 22.9.2 purported to limit VOC emissions from all "new and existing" automobile and light duty truck assembly surface coating operations, GM's plant was the only such source in Louisiana and thus the only one to which the regulation applied. The part of the regulation here relevant, LAQR 22.9.2(f), required that GM use coatings containing less than 2.8 pounds of VOC per gallon of coating (less water) in its topcoat application area, flashoff area, and oven. Because GM had already committed to using such coatings to obtain its preconstruction approval, the regulation imposed no significant new requirements on its topcoat operation, but provided a supplementary means of enforcing EPA's LAER determination.

By the time it completed constructing the Shreveport facility, GM had abandoned its plans to use waterborne topcoats therein. On June 10, 1981, GM requested that the State determine the solvent-borne coatings it now wished to use in the plant's topcoat operation equivalent (with respect to VOC emissions) to the waterborne coatings on which its LAER permit and LAQR 22.9.2(f) were based because they would be applied at greater TE. On July 17, 1981, Louisiana initially denied GM's request because "the documentation provided is insufficient to properly understand your proposal." Later meetings and correspondence apparently clarified the issue for the State, however, because it granted GM's request to use solvent-borne coatings on March 5, 1982. Louisiana did not, however, amend GM's permit, revise LAQR 22.9.2(f), or otherwise seek EPA approval of its action.

On January 16, 1986, EPA issued a notice to GM, in relevant part identifying a violation of LAQR 22.9.2(f) in the major spray booths of the Shreveport facility's topcoat area. In response, GM submitted a new equivalency demonstration to the Louisiana Department of Environmental Quality (LDEQ) on June 25, 1986, requesting that it be approved and submitted to EPA as a SIP revision request. In the course of Louisiana's administrative proceedings, EPA reviewed GM's demonstration and submitted adverse comments on its sufficiency, along with Agency guidance on issues for consideration, to LDEQ. LDEQ issued a final order in the matter on August 28, 1987, which the Governor of Louisiana submitted to EPA as a requested SIP revision on September 3, 1987.

The order LDEQ adopted is not a regulation, variance, or compliance order, and is probably considered an interpretive order by the State. The singular nature of the order renders discussion of its deficiencies difficult, but the remainder of today's notice sets forth EPA's primary concerns.

LDEQ's order recites findings of fact, then "orders" that:

> Compliance with Section 22.9.2(f) of the Louisiana Air Quality Regulations has been and is allowed through equivalency with 15.1 pounds of VOC per gallon of solids applied which is the equivalent emission rate of 2.8 pounds of VOC per gallon standard.

In arriving at this conclusion, LDEQ performed the conversion calculations suggested by the Rhoads memoranda, using a baseline TE of 30%. The Rhoads memoranda provide guidance for converting RACT limitations which were adopted for application to existing but previously unregulated facilities. In suggesting that an assumed 30% baseline TE be used in conversions, the Rhoads memoranda reflect EPA's 1979 decision that such existing facilities would achieve about 30% TE if they began using waterborne coatings. The basis for that estimate was performance testing of GM's Van Nuys and Southgate, California auto assembly plants.

In converting a standard applicable to GM's Shreveport facility, the use of the generally applicable 30% RACT baseline TE is inappropriate, however, GM's topcoat facility was not an existing unregulated facility when Louisiana adopted LAQR 22.9.2(f). It was already required to use waterborne coatings by its LAER permit and had presumably designed its topcoat operation to use them. Under such circumstances, it makes little sense to assume the facility would have achieved no better TE than older facilities which were retrofitted for using waterborne coatings. Indeed, a GM topcoat operation designed for waterborne coatings in Oklahoma City, Oklahoma achieved a TE of at least 37% using waterborne coatings from 1979 to 1985.[3]

Moreover, in 1977, GM successfully objected to EPA basing its LAER determination on data from its Van Nuys plant, explaining that fundamental differences between the configurations of trucks and autos and the processes used for coating them made comparison of the two plants inappropriate. Thus, use of the Van Nuys plant data was, at GM's behest, affirmatively excluded from consideration in determining LAER for its topcoat operation. Because LAQR 22.9.2(f) was apparently adopted as a method of enforcing that determination, it would be anomalous indeed for EPA to now approve the State's use of the Van Nuys data (albeit indirectly) as the presumptive basis for the regulation. Yet, at GM's behest, that is exactly what Louisiana has done in its conversion of LAQR 22.9.2(f), ignoring the regulatory history associated with GM's facility and emission limits.

Under the circumstances underlying GM's current emission limits, EPA believes the State should have examined GM's applications for preconstruction approval to determine an appropriate baseline TE for use in its conversion calculations. Although GM did not specifically identify TE in those applications, the performance it predicted for its topcoat operation is possible only at 77% TE. Using that figure as the TE baseline in the appropriate conversion calculations results in a finding that 2.8 pounds of VOC per gallon of coating consumed (less water) is equivalent to 5.9 pounds of VOC per gallon of solids applied. The alternate compliance target which LDEQ set through its order is thus far too lenient. This is not the only deficiency in the requested SIP revision.

Although it describes no method for demonstrating compliance with the defectively lenient "equivalent" limitation, LDEQ's order states as a finding of fact that:

> Respondent [GM] provided a demonstration that its paint usage results in an emission of 14.7 pounds of VOC per gallon of solids applied which is less than 15.1 equivalency level.

Apparently, the State intended to approve GM's demonstration without adopting independent criteria under which it could be judged. In essence, LDEQ has attempted to adopt GM's demonstration methods through incorporation by reference, a procedure failing to provide objective replicable standards for future compliance demonstrations. Under the Rhoads' memoranda, which the State purportedly used in developing its order, such ad hoc actions are unapprovable.

GM's methods do not, moreover, even demonstrate compliance with the standard of LDEQ's order, i.e., "15.1 pounds of VOC gallon of solids applied." According to the information provided in connection with its compliance demonstration, more than 15.1 pounds of VOC are emitted each time GM applies a gallon of the solids contained in the metallic coatings used in its topcoat operation. GM's demonstration obscures this fact by averaging VOC emissions from two fundamentally different types of coatings, i.e., solid colors and metallics, over a year to provide an "actual" value for their VOC emissions. LAQR 22.9.2(f), however, imposes an "instantaneous" limitation, i.e., it requires that GM never use coatings containing more than 2.8 pounds of VOC per gallon. Although averaging is per se inconsistent with instantaneous compliance, emission reductions obtained through TE increases can not be quantified or considered on an instantaneous basis. They must be calculated over some period of time. Through its order, however, LDEQ implies that averaging "has been and is allowed" to demonstrate compliance with the instantaneous standard of LAQR 22.9.2(f). Clearly, something has been added through "interpretation."

The stringency of any numerical emission limitation is affected by the length of time over which compliance is calculated. Increasing the length of an averaging period for demonstrating compliance renders any given numerical limitation less stringent. In recognition of this relationship between averaging time and stringency, applicable EPA policy limits compliance averaging time under VOC coatings standards to one day, thus protecting the short term National Ambient Air Quality Standard (NAAQS) for ozone.[4] Hence, even had Louisiana amended LAQR 22.9.2(f) instead of issuing an interpretive order, EPA would not have approved the use of yearly averaging in compliance demonstrations. The interpretation given the existing regulation by the State simply renders it incapable of protecting the ozone NAAQS.

Another technical deficiency of GM's demonstration is its use of estimated values in calculating the average TE of its topcoat operation. Although estimates based on actual experience at representative facilities may suffice for developing emission limitations, they have no place in demonstrating compliance with those limitations; performance testing is required. Simply put, compliance demonstrations must demonstrate actual, not estimated, compliance.

This is not to say that GM's estimates are of no interest. If accurate, they indicate GM's topcoat operation is achieving an average TE of only 46%, far lower than the 77% TE reflected by its applications for preconstruction approval. It appears that GM lacks a factual basis for its claim of compliance through improved TE. Indeed, if TE is considered a relevant factor in determining GM's compliance with LAQR 22.9.2(f), the record suggests that GM's topcoat operation is incapable of meeting its emisison limits at its current production rate using its current coating processes. In contrast to the conditions it indicated to obtain preconstruction approval, GM's topcoat operation uses coatings with higher VOC content applied in a thicker coat at the same production rate at much lower TE. The relatively modest emission reduction GM claims as an incineration credit is simply insufficient to offset the cumulative effect of those factors.

EPA believes the root of GM's current compliance problems lies in faulty assumptions contained in their application for preconstruction approvals for the Shreveport plant. When it prepared its permit application and supplied EPA with information for determining LAER, GM apparently assumed that waterborne and solvent-borne coatings could be applied at the same TE. Indeed, an attachment to the Rhoads memorandum of July 3, 1979, suggests GM made the same assumption in providing EPA with information in connection with the Agency's development of the 1977 CTG.

TE, for example, 90% of all solids consumed are applied and 40% are overspray. The higher the TE, the less coating it takes to cover an object of a given surface area at a given film thickness.

[2] These methods are now embodied in a June 10, 1988 document entitled "Protocol for Determining the Daily VOC Emission Rate of Automobile and Light-Duty Truck Topcoat Operations." Although that protocol, which was issued after the Louisiana actions under review occurred, is not relevant to today's proposal, it may prove helpful in the ultimate resolution of compliance problems GM now faces.

[3] Although the Oklahoma City plant exemplifies the difference between the performance of facilities initially designed for waterborne coatings and those retrofitted for such use, EPA is not suggesting that Louisiana should have used 37% as the baseline TE for its conversion calculations.

[4] If the production requirements of a specific industrial source render daily averaging infeasible, EPA may allow longer averaging periods. In such instances, however, EPA would require the imposition of other measures protecting the NAAQS, e.g., lower numerical limits or daily emission caps.

In the instant matter, correction of this decade old error may require reconsideration of the 1977 LAER determination and, if necessary, corresponding adjustments to permit, offsets, and LAQR 22.9.2(f). That would be a more realistic approach to the compliance problems GM faces than the demonstration LDEQ approved and submitted EPA as a requested SIP revision. EPA now proposes to disapprove the State's request.

Regulatory Flexibility

The SIP revision requested by Louisiana involves a single large entity, i.e., General Motors Corporation. Moreover, EPA's proposed disapproval of the requested revision does not impose any new regulatory requirements on General Motors. I thus certify that EPA's proposed disapproval will not have a significant economic impact on a substantial number of small entities.

Executive Order 12291

Under Executive Order 12291, this action is not "Major." It has been submitted to the Office of Management and Budget for review.

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7642.

Date: June 2, 1988.

Robert E. Layton, Jr.,

Regional Administrator.

Note: This document was received by the Office of the Federal Register January 17, 1989.

[FR Doc. 89–1359 Filed 1–19–89; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

42 CFR Part 1001

Medicare and Medicaid Programs; Fraud and Abuse OIG Anti-Kickback Provisions

AGENCY: Office of the Secretary, HHS, Office of Inspector General (OIG).

ACTION: Proposed rule.

SUMMARY: These proposed regulations are designed to implement section 14 of Pub. L. 100–93, the Medicare and Medicaid Patient and Program Protection Act of 1987, by specifying various payment practices which, although potentially capable of inducing referrals of business under Medicare, would not be considered kickbacks for purposes of criminal prosecution or civil remedies.

DATE: To assure consideration, public comments must be mailed and delivered to the address provided below by March 24, 1989.

ADDRESSES: Address comments in writing to: Office of Inspector General, Department of Health and Human Services, Attention: LRR–17–P, Room 5246, 330 Independence Avenue, SW., Washington, DC 20201.

If you prefer, you may deliver your comments to Room 5551, 330 Independence Avenue, SW., Washington, DC. In commenting, please refer to file code LRR–17–P.

Comments will be available for public inspection beginning approximately two weeks after publication in Room 5551, 330 Independence Avenue, SW., Washington, DC on Monday through Friday of each week from 9:00 a.m. to 5:00 p.m., (202) 472–5270.

FOR FURTHER INFORMATION CONTACT:

Harvey Yampolsky, Office of the General Counsel, (202) 472–5335

Joel Schaer, Office of Inspector General, (202) 472–5270.

For paperwork reduction and information collection requirements: Allison Herron, Office of Management and Budget, (202) 395–7316.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1128B(b) of the Social Security Act, previously codified at sections 1877 and 1909, provides criminal penalties for individuals or entities that knowingly and willfully offer, pay, solicit or receive remuneration in order to induce business reimbursed under the Medicare or State health care programs. The offense is classified as a felony, and is punishable by fines of up to $25,000 and imprisonment for up to 5 years.

This provision is extremely broad. The types of remuneration covered specifically include kickbacks, bribes, and rebates made directly or indirectly, overtly or covertly, or in cash or in kind. In addition, prohibited conduct includes not only remuneration intended to induce referrals of patients, but remuneration also intended to induce the purchasing, leasing, ordering, or arranging for any good, facility, service, or item paid by Medicare or State health care programs.

The leading case regarding this statute illustrates its broad scope. In *United States* v. *Greber*, 760 F.2d 68 (3d Cir.), *cert. denied*, 474 U.S. 988, 106 S.Ct. 396 (1985), the Third Circuit Court of Appeals was asked to examine the nature of payments between a medical diagnostic company, providing holter monitor services, and physicians. The company billed Medicare for the monitoring service it performed, and forwarded 40 percent of those payments (up to $65 per patient) to the referring physician.

The defendant in this case alleged that these payments were merely "interpretation fees" paid to the referring physicians for their initial consultation and for explaining the test results to the patients. *Id.* at 70. The court, however, declined to examine whether there might have been a legitimate purpose behind those payments, concluding: "if one purpose of the payment is to induce future referrals, the medicare statute has been violated." *Id.* at 69.

Since the statute on its face is so broad, and the court has recognized its full breadth, concern has arisen among a number of health care providers that many relatively innocuous, or even beneficial, commercial arrangements are technically covered by the statute and are, therefore, subject to criminal prosecution.

Public Law 100–93

Public Law 100–93, the Medicare and Medicaid Patient and Program Protection Act of 1987, added two new provisions addressing the anti-kickback statute. Section 2 specifically provided new authority to the Office of Inspector General (OIG) to exclude a person or entity from participation in the Medicare and State health care programs if it is determined that the party is engaged in a prohibited remuneration scheme. This new sanction authority is intended to provide an alternative civil remedy, short of criminal prosecution, that will be a more effective way of regulating abusive business practices than is the case under criminal law.

In addition, section 14 of Pub.L. 100–93 requires the promulgation of regulations specifying those payment practices that will not be subject to criminal prosecution under section 1128B of the Act and that will not provide a basis for exclusion from the Medicare program or from the State health care programs under section 1128(b)(7). This section reflects the generally accepted view that the language proscribing remuneration that induces referrals is so broadly written as to encompass many harmless or efficient arrangements as well.

In accordance with the stipulation of Pub.L. 100–93, these proposed regulations have been developed in consultation with the Department of Justice.

Notice of Intent

The legislative history of section 14 of Pub.L. 100–93 indicates that Congress expected the Department of Health and Human Services to consult with affected provider, practitioner, supplier and beneficiary representatives before promulgating regulations. In order to most effectively address issues related to this provision, we published a notice of intent to develop regulations (52 FR 38794, October 21, 1987) soliciting comments from interested parties prior to developing proposed regulations. As a result of that notice, the OIG received a total of 137 timely comments, recommendations and suggestions on generic criteria that can be applied to particular types of business arrangements in order to determine if such arrangements are inappropriate for civil or criminal sanctions.

II. Provisions of the Proposed Rule

We are proposing to amend 42 CFR Part 1001 by adding a new § 1001.952 to set forth those specific payment practices that would not be treated as a criminal offense under section 1128B of the Act and would not serve as the basis for an exclusion from the Medicare and State health care programs. Before we discuss the various payment practices that we are proposing to exempt, we will clarify the effect of not having a particular business arrangement exempted, and we invite public comments on the issues of continuing guidance, notice to beneficiaries, and preferred provider organizations.

Business Arrangements Not Exempt

We are aware that it is the unique position physicians occupy in the medical marketplace that has led to the examination of their relationship with varying business arrangements. It is the physician who controls access to a large array of medical items and services in order for third party reimbursement to be available. This is a highly competitive market that is constantly expanding with new drugs, medical devices and tests. While this competitive marketplace is important, it is necessary for the fiscal integrity of the Medicare and Medicaid programs to assure that physicians exercise sound, objective medical judgment when controlling admittance to this market. We have attempted in these proposed regulations to permit physicians to freely engage in business practices and arrangements that encourage competition, innovation and economy. However, we have added criteria to each "safe harbor" in order to reduce the potential for abuse.

In order for a business arrangement to comply with one of the exemptions set forth below, each provision of that exemption must be met. If, however, the business arrangement involves several payments, for example, rental of both space and equipment, then each payment will be analyzed to determine if all the provisions of each applicable exemption have been fulfilled. Thus, fully complying with one exemption may not grant that individual or entity complete immunity under the statute.

Several commenters responding to our notice of intent have asked that we clarify what it means if a particular business arrangement does not fully comply with each element of a particular exemption. In many instances, the failure to comply fully with one of the exemptions will be of no consequence because the arrangement does not fall within the proscriptions of the statute at all. However, where individuals and entities have entered into arrangements that are covered by the statute, where they have chosen not to fully comply with one of the exemptions proposed in these regulations, they would risk scrutiny by the OIG and may be subject to civil or criminal enforcement action.

Continuing Guidance

Congress intended that the regulations set forth on "safe harbors" be an evolving rule that would be periodically updated to reflect changing business practices and technologies. In the House Committee Report accompanying Pub.L. 100–93, the Committee stated that it "believes that a mechanism for periodic public input is necessary to ensure that the regulations remain relevant in light of changes in health care delivery and payment and to ensure that published interpretations of the law are not impeding legitimate and beneficial activities. Accordingly, the Committee expects that the Secretary will formally reevaluate the anti-kickback regulations on a periodic basis and, in doing so, will solicit public comments at the outset of the review process."

We, therefore, invite public comments on how we can best achieve the twin goals of keeping the industry aware of our views of particular business practices, and assuring that our regulations remain current with new developments. Comments should address how affected parties can make their questions or views known on a continuing or regular basis, and how the Department can best respond to such concerns.

Notice to Beneficiaries

We considered including in several of the proposed "safe harbors" a requirement that a person notify each Medicare beneficiary or Medicaid State health care program of the financial relationship that exists and any person to whom he or she refers the beneficiary for items or services. This requirement may serve to provide an additional safeguard against the abuse for which there is always some potential when such financial relationships exist. Furthermore, it reiterates the ethical responsibility of physicians as reflected in the Current Opinions of the Council on Ethical and Judicial Affairs of the American Medical Association, and it is a duty imposed by some State statutes as well.

However, such notice requirements may be unduly burdensome compared with the potential benefits to health care consumers. We therefore have not included the requirement in the ownership and financial relationship safe harbors at this time. However, we invite public comments on this issue.

Preferred Provider Organizations

We are aware that there are an increasing variety of arrangements among providers grouped under the generic headings "preferred provider organizations" (PPOs) or "managed care." Unlike HMOs, PPOs and managed care arrangements do not have a single unique identifying structure or concept. In addition, unlike HMOs, there is no single entity that is recognized as the "provider." For these reasons, there is no safe harbor specifically delineated for these arrangements. Rather, we believe that the safe harbors we have designated would cover many relationships in preferred provider and managed care networks. Furthermore, the anti-kickback statute would not apply to participants in PPOs where the discounts and financial relationships are obviously not designed to improperly induce referrals. However, we invite comments from the public regarding additional safe harbors that would provide further assurance to PPOs.

Relationship to Other Laws

The safe harbors being proposed in these regulations are only for purposes of the Federal Medicare and Medicaid anti-kickback statute. They would not provide immunity from civil or criminal

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prosecution or other sanctions under any other Federal or State laws. For example, a particular arrangement permissible under a safe harbor may violate a law administered by the Federal Trade Commission or the Securities and Exchange Commission (SEC), or may run afoul of a State law that is applied by the State in a stricter fashion than the Federal law.

Proposed Safe Harbors

Set forth below is a description of the various payment practices that we are proposing to exempt and the rationale for their inclusion in this proposed rulemaking.

A. Investment Interests

As written, the anti-kickback provision applicable to the Medicare and State health care programs is so broad that it could be interpreted literally, for example, to prohibit a physician from receiving dividend payments from a large publicly traded pharmaceutical company if he or she prescribed one of the company's products for a Medicaid patient, knowing that ordering that product would increase his or her dividend payment.

We do not believe that Congress intended to bar all forms of investment or ownership by referral sources in health providers. This conclusion is based on the fact that there are other provisions of Medicare law that pertain specifically to physician-owned home health agencies. Obviously, these provisions would make little sense if the kickback provision prohibited, *per se*, referrals by physicians to entities in which they had any investment interest.

To reflect this view that Congress did not intend to absolutely bar any investment by physicians in other health care entities, we have included a "safe harbor" for investment interests in large public corporations. We have done this to assure that the companies are sufficiently large enough so that the return on investment is, at most, tangentially related to any referrals of items or services made by a shareholder, for example, the prescribing of a drug by an investing physician. This "safe harbor" describes a minimum number of shareholders and a minimun amount of assets the company must have in order to qualify under this exempiton. We have adopted the same bright line employed by the SEC. The SEC applies these same standards to determine which companies are required to register with it, regardless of whether they are traded on a national securities exchange (15 U.S.C. 78/(g) and 17 CFR 240.12g–1). We believe this bright line will be useful to health care providers as it sets forth a standard for permissible investments under this "safe harbor" that can be easily determined.

On the other hand, many commenters have described to us situations where health care entities sell limited partnership interests at nominal cost solely to investors who are in a position to make referrals to the entity, and where the profit distribution in the first year, and each year thereafter, is substantially in excess of the original investment. Competitors of these entities complain of losing a significant share of the market to an entity that establishes a limited partnership with physicians in the service area. We have been urged not to include a "safe harbor" for such practices.

Therefore, under the proposed rule, referrals by physicians to entities in which they have any kind of investment interest (other than in large corporations available to the general public), such as limited partnerships, would be subject to prosecution under the same circumstances as they have been until now under section 1128B of the Social Security Act.

However, we are considering crafting an additional exemption to the anti-kickback statute for certain limited partnerships and managing partnership interests that operate according to standards we would prescribe to assure minimum risk of abuse. Accordingly, we are interested in receiving comments suggesting what those standards should be. This "safe harbor" might include: (1) Investment in an entity such as a limited partnership where a bona fide opportunity to invest is made on an equal basis to people in a position to make referrals as well as others, where there are no requirements to make referrals, where there has been disclosure to a referred patient, and where payments are not related to referrals; and (2) managing partnership interests where there is a disclosure to a referred patient, and where payments are not related to referrals.

B. Space Rental

The anti-kickback statute is so broadly written that it could be interpreted to cover rental payments where one party is in a position to make referrals to the other party, even if there is no explicit or implicit understanding regarding referrals. While many rental arrangements are legitimate, we have been informed of many situations where rental payments were simply a device used to mask the real nature of the payments, that is, to induce referrals.

Some examples of these kinds of arrangements are where: (1) A health care entity rents space at a rate above market value from a physician by the hour—with the space being used solely to provide care or services to patients referred by the physician—and the hours per week, and thus the payments, varying in direct relationship to the number of referrals; (2) a physician rents space to a health care entity at a rate above what the market would ordinarily bear, but the entity agrees to the high rent because of an understanding that the physician will refer his or her patients to that entity; or (3) a physician rents space to a health care entity on a month-to-month lease, with the rent varying each month based on the number of referrals from the physician in the preceding month. These arrangements obviously fall within the scope of the anti-kickback law, and provide the potential to abuse the Medicare and State health care programs.

Typically, the abusive arrangements involve rental payments either substantially in excess or below the fair market value of the rental space. The Ninth Circuit Court of Appeals, in *United States v. Lipkis*, 770 F.2d 1447 (9th Cir. 1985), emphasized the importance of determining fair market value when assessing the legitimacy of payments between parties who are in a position to make referrals. In *Lipkis*, a medical management company providing services to a physician group entered into an arrangement with a laboratory where the laboratory returned 20 percent of its revenues obtained from the physician group's referrals back to the management company. The defendant alleged that these payments were fair compensation for "specimen collection and handling services." *Id.* at 1449. The court rejected this defense, concluding: "The fair market value of these services was substantially less than the [amount paid], and there is no question that [the laboratory] was paying for referrals as well as the described services." *Ibid.* Accordingly, one fundamental principle is whether the payment is based on fair market value, regardless of whether the payment is for space rental, equipment rental, personal services, or management contracts.

We have, therefore, crafted an exemption to the anti-kickback law in these proposed regulations for rental arrangements that would require certain standards and safeguards in order to limit the opportunity for abusive relationships that are intended to induce referrals. Proposed § 1001.952(b), Rent, specifically would establish "safe harbors" in cases of rental agreements where: (1) In instances when access is for periodic intervals, those intervals are set in advance in the lease, rather than allowed to vary week-to-week on the basis of the number of referred patients to be served at the premises; (2) the lease is for at least one year so it cannot be readjusted every month based on the number of referrals; and (3) the charges reflect fair market value.

C. Equipment Rental

Diagnostic and other items of medical equipment are sometimes rented rather than purchased. Obviously, there is no *per se* violation of the anti-kickback statute solely because the owner of the equipment refers a patient to the entity who is paying the individual rent for the equipment. However, we have had situations brought to our attention where payment for the use of the equipment, just like rent for space, is simply a vehicle to provide reimbursement for referrals.

For example, we have had described to us arrangements where a provider rents equipment from a hospital and reimburses the hospital on an hourly basis each time he or she uses the equipment. Under this type of arrangement, the hosptial knows it will be paid a fee by the provider each time it refers a patient to the provider for services requiring the use of the equipment. In another case, an ophthalmologist may rent diagnostic equipment to an optometrist at a rate significantly below the usual market rate. In this instance, there is an understanding between the parties that the rate will be adjusted periodically depending on the referral rate of patients from the optometrist to the ophthalmologist. The reduction in the rental charge, which becomes larger as the number of referrals increase, could obviously be construed as the offer of remuneration in order to induce referrals.

We have, therefore, provided in § 1001.952(c), a "safe harbor" for equipment rentals similar to those applied to real estate rental discussed above, along with the appropriate conditions and safeguards to limit the potential for abuse.

D. Personal Services/Management Contracts

Medical practitioners and providers often have agreements to perform services for each other on a mutually beneficial basis.

Sometimes these agreements call for the party requiring the service to pay a fixed amount or hourly rate to the party performing the service. In other instances, both parties may be allegedly contributing some service or benefit to a so-called "joint venture," and taking compensation in the form of a share of the profits generated by the venture. In still other situations, a party may perform a service acting in the capacity of agent for a company. For example, the agent may perform management services for the company, or handle certain billing and collection services.

None of these arrangements is *per se* illegal solely because referrals between the parties, or to the joint venture, occur. However, if the nature of the agreement is such that payments are intended to induce referrals, or there is an implicit or explicit arrangement where the amount of the payment varies with the volume of referral, the anti-kickback law would apply.

Examples of abusive arrangements that would fall into this category are where: (1) An orthopedist is under contract with a physical therapist to provide billing services for patients he or she refers for the service, thereby receiving compensation in an amount that varies directly with the volume of the referrals; (2) a hospital-employed respiratory therapist is paid by a supplier for servicing home oxygen equipment, but only in cases where the therapist is the source of the patient referral; and (3) a hospital stores and delivers medical equipment to discharged patients on behalf of a supplier and is compensated through a disproportionate share of the net profits of the supplier, although the hospital's only other "service" to the joint venture is the referral of the discharged patients. The variations on these examples are virtually limitless.

We have established in § 1001.952(d) a "safe harbor" for joint ventures and other arrangements involving payments for personal services or management contracts, but only if certain standards are met and safeguards are present to limit the opportunity to provide financial incentives in exchange for referrals. This exemption includes the determination of whether services are paid at fair market value, and is predicated on the same type of standards and qualifications as set forth in the exemption for space and equipment rental.

E. Sale of Practice

It has been brought to our attention that another approach sometimes employed by hospitals to assure a referral of business is to buy, or appear to buy, a physician's practice. Unlike the traditional sale of a practice by a retiring physician to another physician, in these cases the physician continues to practice on the staff of the hospital. Thus, the hospital is able to assure that it will be the provider of both physician services and any hospital services required by any of the physician's patients. The physician's patients, in most cases, may be totally unaware that the physician has "sold" his or her practice to the hospital. Further, such sales often involve much higher rates of compensation that would be the case if a retiring physician sold a comparable practice to another physician. The additional compensation in these instances reflects the value of the referrals.

Another approach in the sale of a practice is for the hospital to pay a practicing physician a monthly fee to keep alive its so-called "option" to purchase his or her practice. We have been advised that in these situations neither party intends for the hospital to ever exercise its option, but that the payments are for referrals and will continue only so long as the physician meets his or her monthly quota of referrals.

We are also aware of practices between practitioners such as optometrists and ophthalmologists whereby the ophthalomologist "buys" the optometrist's practice, but the optometrist keeps practicing, only now substantially salaried by the ophthalmologist. The only purpose of this sale was to lock up referrals.

The "safe harbor" we are proposing in § 1001.952(f) would exist for the sale of physician practices when occurring as the result of retirement or some other event that removes the physician from the practice of medicine or from the service area in whch he or she was practicing, but not when the sale is for the purpose of obtaining an ongoing source of patient referrals.

F. Referral Services

Professional societies and other consumer-oriented groups often operate referral services, with a fee sometimes paid to cover the costs of such a service. Because such a service fee could be construed as a payment in order to obtain a referral, we have concluded that it is appropriate to establish a specific "safe harbor" for this type of practice. The proposed regulations at §1001.952(g). Referral services, provides standards and safeguards to assure that the "safe harbor" is not abused by persons who would attempt to operate exclusive or selective referral services for which they would impose high participation fees.

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G. Warranties

We believe that it is in the public interest to have companies offer warranties as an inducement to the consumer to purchase a product. Section 1001.952(h) reflects this belief and provides a "safe harbor" for such purposes. We are aware, however, that some companies, such as some pacemaker manufacturers, offer so-called "warranties" on *other* manufacturers' products. The reason this occurs is that the Medicare program will reimburse the full costs of a replacement product. As a result, if a patient has no out-of-pocket expenses, he or she can easily be persuaded to make use of another manufacturer's product, and the manufacturer can, in turn, look to the Medicare program for reimbursement. These so-called warranties do not meet the Federal Trade Commission definition of warranty, and these regulations would not provide a "safe harbor" for such warranties.

H. Waiver of Deductibles for Inpatient Hospital Care

With the advent of the prospective payment system in 1984 for reimbursing hospitals for inpatient care, some hospitals have advertised the routine waiver of Medicare coinsurance and deductible amounts as a means of attracting patients to their facilities. Because the Federal anti-kickback statute does not distinguish between categories of individuals who are prohibited from receiving something of value as an inducement to arrange for care from a particular provider, as a technical matter, the statute prohibits hospitals from engaging in this kind of practice.

This discrepancy between the technical prohibition on waivers of deductibles and the practices of some hospitals resulted in many comments. Commenters requested policies ranging from complete prohibition to permitting widespread use of waivers.

At this time, we have not included a "safe harbor" for waiving deductibles for inpatient hospital care in this proposed rule. However, we solicit comments on defining a waiver of deductible "safe harbor" that would be limited to inpatient hospital care, include only the deductible amount, be available to all Medicare beneficiaries without regard to diagnosis or length of stay, and assure that any costs to the hospital of waiving the deductible would not be passed on to any Federal program as a bad debt or in any other way. With respect to other situations where deductibles or copayments are routinely waived (such as Part B deductibles and copayments), we believe the anti-kickback statute is clearly violated.

I. Discounts, Employees and Group Purchasing Organizations

The "safe harbors" relating to discounts, employees and group purchasing organizations are specifically required under section 1128B of the Act. The proposed regulations, at § 1001.952(i), (j), and (k), respectively, set forth guidance on the scope of these exemptions.

1. *Discounts.* The proposed discount exemption we are proposing is intended to meet the legislative intent of encouraging price competition that benefits the Medicare and Medicaid programs.

The exemption applies to individuals and entities, including providers, who solicit or receive price reductions, and to individuals and entities who offer or pay them. However, while the exemption places certain requirements on individuals or entities who solicit or receive the discount, we are not proposing any requirements on the individuals or entities offering or paying it in order for them to qualify for the exemption. In addition, the exemption also applies regardless whether the discount is offered for bulk purchases, prompt payment or other purposes, and whether the buyer buys directly from the seller or through a group purchasing organization.

This proposed discount exemption closely follows the statutory language, limiting its application to reductions in the amount a seller charges in a specific transaction for a good or service to a buyer. We are specifically requiring that the discount be itemized and appear clearly on the invoice or statement. This discount may take the form of a direct and explicit reduction in price, or of an indirect reduction that results from the offer of an extra quantity of the item purchased "at no extra charge." This exemption specifically does not apply to remuneration in the form of other things of value, such as rebates of cash, other free goods or services, redeemable coupons, or credit towards the future purchases of other goods or services. It also does not apply to any reductions in price offered to beneficiaries, such as routine reductions or waiver of coinsurance and deductible amounts owed by program beneficiaries, unless permitted under these regulations for inpatient hospital care.

We have proposed to limit the scope of this exemption because we have become aware of numerous practices whereby practitioners and providers have been offered a variety of things of value, which are not legitimate "discounts," in return for referrals of Medicare or State health care program business. Such forms of remuneration include, among other things, trips, computers or computer terminals, coupons, cash rebates, or in kind offers, such as the inclusion of one free item when one hundred are purchased. We believe that these practices should not qualify for the discount exemption because many of them are subject to abuse and because their benefits cannot be realized by the Medicare and Medicaid programs.

In addition, we believe that it would not be feasible to enforce the requirements of the exemption if remuneration other than price discounts were permitted here. Such an enforcement effort would require the Department to know the precise amount and value of these other goods or services and then be able to apportion that value to each claim or request for payment. It would be very easy for providers seeking to evade enforcement to conceal or undervalue some part of these goods or services. However, we are interested in receiving comments on the prevalence of such arrangements and mechanisms that could be used to recognize other cash or inkind discounts where the benefits can be realized by the Medicare and Medicaid programs.

For the purposes of qualifying for this discount exemption, we have divided providers, practitioners, and suppliers into three categories, depending on how they are reimbursed under the programs: (1) Payments based on reasonable cost, acquisition cost, and prospectively determined payment amounts, such PPS payments to hospitals, the composite rate paid to providers of maintenance renal dialysis services, or payments made *exclusively* on a fee schedule; (2) payments based in whole or in part on charges; and (3) payments based on a capitated risk sharing basis under section 1876 of the Act or on a similar basis.

With respect to the first category, cost-based or PPS paid providers, the exemption merely requires the individual or entity to report the discount. Of course, we expect that the *full* amount of the discount to be reported. For the most part, this would be accomplished through the cost report.

For example, the reasonable cost rules at 42 CFR 413.98 specify how to report discounts. In other cases, such as with payments based on acquisition costs, the discount could alternatively be reported on the claim or request for payment.

With respect to the second category, those paid in whole or in part on the basis of charges, the exemption applies only if the discount is reported, and the actual charge is reduced by *the full amount* of the discount.

This second discount exemption applies to all individuals or entities that are reimbursed based on the lesser of actual charges or fee schedule amounts. We are aware of many situations, particularly in the case of laboratory-to-laboratory discounts offered by one clinical diagnostic laboratory to another, where fee schedule amounts are being paid by Medicare but if the discount were properly reported and fully reflected, the actual charge would be reduced to below the fee schedule amount.

With respect to the third category, we are proposing not to impose any requirements or risk sharing health maintenance organizations or competitive medical plans paid on a capitated basis under section 1876 of the Act or on a similar basis. Since we do not perceive any circumstance where the Medicare or State health care programs will benefit from any price reductions obtained by these entities, we see no purpose in imposing any requirements on them to comply with this exemption.

2. Employees.

This statutory exemption permits an employer to pay an employee in whatever manner he or she chooses for having that employee assist in the solicitation of Medicare or State health care program business. The proposed exemption follows the statute in that it applies only to bona fide employee-employer relationships. We have decided to adopt the definition of employee from the Internal Revenue Service set forth in 26 U.S.C. 3121(d)(2).

In response to the October 21, 1987 request for comments, many commenters suggested that we broaden the exemption to apply to independent contractors paid on a commission basis. We have declined to adopt this approach because we are aware of many examples of abusive practices by sales personnel who are paid as independent contractors and who are not under appropriate supervision. We believe that if individuals and entities desire to pay a salesperson on the basis of the amount of business they generate, then to be exempt from civil or criminal prosecution, they should make these salespersons employees where they can and should exert appropriate supervision for the individual's acts.

3. Group purchasing organizations.

This exemption applies to payments made by a vendor of goods or services to a person authorized to act as a group purchasing organization (GPO) for a number of individuals or entities who are furnishing Medicare or State health care program services. The exemption closely follows the statute, and requires a written agreement between the GPO and the individual or entity that specifies the amount the GPO will be paid. Where the entity is a provider, the exemption requires the GPO to disclose in writing to the provider at least annually the amounts received from each vendor with respect to purchases made on behalf of that provider. Providers must make such disclosures available to the Department upon request, but we are not proposing at this time to require that these disclosures be submitted on a routine basis. In addition, we are not proposing more specific requirements as to the content of the disclosure. At this time, we have concluded that the purposes of this statutory exemption are fulfilled with these limited disclosure requirements. Of course, providers and GPOs remain free to supplement these requirements as they see fit.

III. Regulatory Impact Statement

A. Introduction

Executive Order 12291 requires us to prepare and publish an initial regulatory impact analysis for any proposed regulation that meets one of the Executive Order criteria for a "major rule," that is, that would be likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individuals, industries, Federal, State, or local government agencies or geographic regions; or, (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. In addition, we generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (5 U.S.C. 601 through 6712), unless the Secretary certifies that a proposed regulation would not have a significant economic impact on a substantial number of small entities.

B. Impact on Providers and Practitioners

The provision providing new authority to the OIG to exclude a person or entity from Medicare and State health care programs if engaged in a prohibited remuneration scheme would ensure that the Department could seek action against those practicing in such prohibited schemes short of criminal prosecution. This provision, is a result of the statute and not this proposed rule. In addition, this proposed rule attempts to specify various business and payment practices that would not be considered a kickback for purposes of criminal or civil remedies. The regulations serve to clarify departmental policy as to the legality of various commercial arrangements. We believe that the great majority of providers and practitioners do not engage in illegal remuneration schemes, and that the aggregate economic impact of this provision should, in effect, be minimal, affecting only those who have chosen to interpret the kickback statute broadly and who have engaged in prohibited payment schemes in violation of the statutory intent.

C. Conclusion

For these reasons, we have determined that a regulatory impact analysis is not required. Further we have determined, and the Secretary certifies, that this proposed rule would not have a significant economic impact on a number of small business entities. Therefore, we have not prepared a regulatory flexibility analysis.

IV. Paperwork Reduction Act

Section 1001.952 of this proposed rule contains information collection requirements. As required by the Paperwork Reduction Act of 1980 (44 U.S.C. 3504), we have submitted a copy of this proposed rule to the Executive Office of Management and Budget (EOMB) for its review of these requirements. Other organizations and individuals desiring to submit comments on the information collection requirements should follow the instructions in the ADDRESS section of this preamble.

V. Response to Comments

Because of the large number of comments we normally receive on proposed regulations, we cannot acknowledge or respond to them individually. However, in preparing the final rule, we will consider all comments received timely and respond to the major issues in the preamble to that rule.

List of Subjects in 42 CFR Part 1001

Administrative practice and procedure, Fraud, Health facilities, Health professions, Medicare.

42 CFR Chapter V, Part 1001 would be amended as set forth below:

PART 1001—PROGRAM INTEGRITY: MEDICARE

1. The authority citation for Part 1001 would be revised to read as follows:

Authority: Secs. 1102, 1128, 1128B, 1842(j), 1842(k), 1862(d), 1862(e), 1866(b)(2) (D), (E), and (F), and 1871 of the Social Security Act (42 U.S.C. 1302, 1320a–7, 1320a–7b, 1395u(j), 1395u(k), 1395y(d), 1395y(e), 1395cc(b)(2) (D), (E), and (F), and 1395hh), unless otherwise noted.

2. A new Subpart E is added to Part 1001 to read as follows:

Subpart E—Permissive Exclusions

Sec.
1001.951 Fraud, kickbacks and other prohibited activities.
1001.952 Exceptions.

Subpart E—Permissive Exclusions

§ 1001.951 Fraud, kickbacks and other prohibited activities.

The OIG may exclude any individual or entity that it determines has committed an act described in section 1128B of the Social Security Act, subject to the exceptions set forth in § 1001.952.

§ 1001.952 Exceptions.

The following payment practices shall not be treated as a criminal offense under section 1128B of the Act and shall not serve as the basis for an exclusion.

(a) *Investment interests.* As used in section 1128B of the Act, "remuneration" does not include any payment that is a return, such as a dividend, capital gains distribution, or interest income, from an investment obtained for fair market value in the investment securities (including shares in a corporation, bonds, debentures, notes, or other debt instruments) of a corporation that, at the end of the corporation's fiscal year preceding the purchase of the securities, had—

(1) Total assets exceeding $5,000,000, and

(2) A class of equity security held of record by at least 500 persons.

(b) *Space rental.* As used in section 1128B of the Act, "remuneration" does not including payments made by a lessee to a lessor for the use of premises, as long as—

(1) The lease agreement is set out in writing and signed by the parties;

(2) The lease specifies the premises covered by the lease;

(3) If the lease is intended to provide the lessee with access to the premises for periodic intervals of time, rather than on a full-time basis for the term of the lease, the lease specifies exactly the schedule of such intervals their precise length, their periodicity, and the exact rent for such intervals;

(4) The term of the lease is for not less than one year; and

(5) The rental charge is consistent with fair market value in arms-length transactions and is not determined in a manner that takes into account the volume or value of any referrals of business between the parties reimbursed under Medicare or Medicaid.

For purposes of this section, the term "fair market value" means the value of the rental property for general commercial purposes (not taking account of its intended use), but shall not be adjusted to reflect the additional value the prospective lessee or lessor would attribute to the property as a result of its proximity or convenience to the lessor where the lessor is a potential source of patient referrals to the lessee.

(c) *Equipment rental.* As used in section 1128B of the Act, "remuneration" does not include payments made by a lessee of equipment to the owner ("lessor") of the equipment for the use of the equipment, as long as—

(1) The lease agreement is set out in writing and signed by the parties;

(2) The lease specifies the equipment covered by the lease;

(3) If the lease is intended to provide the lessee with use of the equipment for periodic intervals of time rather than on a full-time basis for the term of the lease, the lease specifies exactly the schedule of such intervals, their precise length, their periodicity, and the exact rent for such intervals;

(4) The term of the lease is for not less than one year; and

(5) The rental charge is consistent with fair market value in arms-length transactions and is not determined in a manner that takes into account the volume or value of any referrals of business between the parties reimbursed under Medicare or Medicaid.

For purposes of this section, the term "fair market value" means the value of the equipment when obtained from a manufacturer or professional distributor, but shall not be adjusted to reflect the additional value the prospective lessee or lessor would attribute to the equipment as a result of its proximity or convenience to the lessor where the lessor is a potential source of patient referrals to the lessee.

(d) *Personal services and management contracts.* As used in section 1128B of the Act, "remuneration" does not include payments made by a principal to an agent as compensation for the services of the agent, as long as—

(1) The agency agreement is set out in writing and signed by the parties;

(2) The agency agreement specifies the services to be provided by the agent;

(3) If the agency agreement is intended to provide for the services of the agent on a periodic, sporadic or part-time basis, rather than on a full-time basis for the term of the agreement, the agreement specifies exactly the schedule of such intervals, their precise length, their periodicity, and the exact charge for such intervals;

(4) The term of the agreement is for not less than one year; and

(5) The aggregate compensation paid to the agent over the term of the agreement is set in advance, is consistent with fair market value in arms-length transactions and is not determined in a manner that takes into account the volume or value of any referrals of business between the parties that is reimbursed under Medicare or any State health care program.

For purposes of this section, an agent of a principal is any person, other than a bona fide employee, who has an agreement to perform services for, or on behalf of, the principal.

(e) *Sale of practice.* As used in section 1128B of the Act, "remuneration" does not include payments made to a practitioner by another practitioner where one practitioner is selling his or her practice to another practitioner, as long as—

(1) The period from the date of any agreement pertaining to the sale to the completion of the sale is not more than one year; and

(2) The practitioner who is selling his or her practice will not be in a professional position to make referrals to the purchasing practitioner after one year from the date of the agreement.

(f) *Referral services.* As used in section 1128B of the Act, "remuneration" does not include payments by a physician to an entity which offers to the public that it will refer a person to a physician for medical services, as long as—

(1) The entity does not exclude any qualified physician from participation in the referral service;

(2) Any fee for participation in the referral service is charged equally to all physicians and is reasonably related to the cost of operating the referral service;

(3) The entity imposes no requirements on the manner in which the physician provides services to a referred person, except that the entity may require that these services be furnished free of charge or at reduced charge to the patient; and

(4) The entity makes a disclosure to each person referred as to—

(i) The manner in which it selects a physician for the person,

(ii) The nature of the relationship between the entity and the physicians to whom it makes referrals, and

(iii) The nature of any restrictions that would exclude a physician from the pool of physicians to whom referrals are made.

(g) *Warranties.* As used in section 1128B of the Act, "remuneration" does not include payments by a manufacturer or supplier of an item to the purchaser of the item as compensation for any loss sustained by the purchaser due to the failure of the item to operate as intended, as long as the payment—

(1) Is made in accordance with a written affirmation made in connection with the original sale of the item by the supplier to the purchaser, with such affirmation relating to the nature of the material or workmanship and affirming or promising that such material or workmanship is defect-free or will meet a specified level of performance over a specified period of time; and,

(2) Is reasonably related to the economic loss that would otherwise be sustained by the purchaser, including, but not limited to—

(i) either a refund of the purchase price or the repair or replacement of the defective item, and

(ii) reimbursement of any costs associated with replacing the product.

(h) *Discounts.* (1) As used in section 1128B of the Act, a discount is a reduction in the amount a seller charges for a good or service to a buyer (who buys either directly or through a contract with a group purchasing organization) that appears on the invoice or statement. Discounts do not include rebates of cash, other kinds of free goods or services, redeemable coupons, credit towards the future purchase of any goods or services, routine reductions or waivers of any coinsurance or deductible amount owed by program beneficiaries for other than inpatient hospital services, or other remuneration in cash or in kind.

(2) A reduction in a seller's charge is considered a discount as long as an individual or entity that solicits or receives such discount—

(i) On an item or service for which payment is made on the basis of a reasonable cost, acquisition cost, or prospectively determined payment amounts (such as prospective payments system payments to hospitals, or the composite rate paid to providers of maintenance renal dialysis services), fully and accurately reports the discount in the applicable cost reporting mechanism or claim for payment filed with the Department, a State agency or one of their agents;

(ii) On an item or service for which payment is made in whole or in part on the basis of charges—

(A) Fully and accurately reports the discount in the applicable claim for payment filed with the Department, a State agency, or one of their agents, and

(B) Reduces the charge to the program or the beneficiary by the full amount of the discount; or

(iii) Is a health maintenance organization or competitive medical plan paid for by Medicare as a risk contractor under the Tax Equity and Fiscal Responsibility Act of 1982, as authorized under section 1876 of the Act, or by a Medicaid State agency on a similar basis.

(i) *Employees.* As used in section 1128B of the Act, "remuneration" does not include any amount paid by an employer to an employee, who has a bona fide employment relationship with the employer, for employment in the provision of covered items or services. For purposes of this section, the term "employee" has the same meaning as it does for purposes of 26 U.S.C. 3121(d)(2).

(j) *Group purchasing organizations.* As used in section 1128B of the Act, "remuneration" does not include payments by a vendor of goods or services to a person authorized to act as a purchasing agent for a group of individuals or entities who are furnishing services reimbursed by Medicare or Medicaid, as long as—

(1) The purchasing agent has a written agreement with each individual or entity in the group that specifies the amount the agent will be paid by each vendor (where such amount may be a fixed sum or a fixed percentage of the value of purchases made from the vendor by the members of the group under the contract between the vendor and the purchasing agent); and

(2) In the case of an entity that is a provider of services, the agent discloses in writing to the entity at least annually, and to the Secretary upon request, the amount received from each vendor with respect to purchases made by or on behalf of the entity.

Dated: January 12, 1989.

R.P. Kusserow,

Inspector General, Department of Health and Human Services.

Approved: January 13, 1989.

Otis R. Bowen,

Secretary.

[FR Doc. 89–1275 Filed 1–17–89; 10:59 am]

BILLING CODE 4150–04–M

DEPARTMENT OF THE INTERIOR

43 CFR Part 11

Natural Resource Damage Assessments

AGENCY: Department of the Interior.

ACTION: Notice of response to comments.

SUMMARY: This Notice responds to the comments received by the Department of the Interior (the Department) on the Advance Notice of Proposed Rulemaking (ANPRM) published on May 3, 1988 (53 FR 15714), concerning the statutory two-year review of the natural resource damage assessment regulations. Section 301(c)(3) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended, requires that regulations promulgated under section 301(c) be reviewed and revised, as appropriate, every two years. The final rule establishing the general assessment process and the type B procedures was published on August 1, 1986 (51 FR 21674). Therefore, the Department published the ANPRM of May 3, 1988, requesting information based specifically on experience with application of the general administrative process and the type B assessment procedures. The Department also requested information drawn from any new technology not available when the regulations were developed. Only four comments were received in response to the ANPRM. Based on its review of the comments received, the Department has determined that it would not be appropriate to revise these regulations at this time. This Notice presents the Department's response to those comments.

ADDRESS: Office of Environmental Project Review, Room 4239, ATTN: NRDA Regulations; Department of the Interior, 1801 C Street, NW., Washington, DC 20240 (Regular business hours 7:45 a.m. to 4:15 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: David Rosenberger or Linda Burlington (202) 343–1301.

SUPPLEMENTARY INFORMATION:

I. Background

Section 301(c) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. 9601 et seq., requires the promulgation of regulations for the assessment of damages for injury to, destruction of, or loss of natural resources resulting from a

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discharge of oil or a release of a hazardous substance for the purposes of CERCLA and section 311(f) (4) and (5) of the Clean Water Act (CWA), 33 U.S.C. 1251 et seq. (also known as the Federal Water Pollution Control Act). Section 301(c)(3) states that the regulations shall be reviewed and revised as appropriate every two years

On August 1, 1986 (51 FR 27674), the Department published a final rule that provides the general process for conducting natural resource damage assessments, and the alternative methodologies for conducting assessments in individual cases otherwise known as the "type B" procedures. A notice was issued on November 16, 1987 (52 FR 43763), announcing the availability of five final type B technical information documents that were prepared in conjunction with the development of the type B assessment procedures. On March 20, 1987 (52 FR 9042), the Department published a final rule that contains standard procedures for simplified assessments, known as the "type A" procedures. On February 22, 1988 (53 FR 5166), the Department published a final rule to amend 43 CFR Part 11 to conform with amendments to CERCLA brought about by the Superfund Amendments and Reauthorization Act of 1986 (SARA). Finally, on March 25, 1988, the Department published technical corrections to the NRDAM/CME (53 FR 9769). These rules together, codified at 43 CFR Part 11, comprise the natural resource damage assessment regulations called for by section 301(c) of CERCLA. Natural resource damage assessments performed by Federal or State trustees in accordance with these regulations are provided the legal evidentiary states of a rebuttable presumption in an administrative or judicial proceeding, as provided by section 107(f)(2)(C) of CERCLA.

In order to carry out the statutory requirement that the natural resource damage assessment regulations be reviewed and revised as appropriate every two years, the Department published an Advance Notice of Proposed Rulemaking (ANPRM) to begin the biennial review of the general assessment process and the type B procedures on May 3, 1988 (53 FR 15714). The ANPRM sought public comment reflecting experience with the general assessment process and the type B procedures contained in the August 1, 1986, regulations. The type A procedures were developed later and the Department will begin the review of the type A procedures at a later date.

In the ANPRM of May 3, 1988, the Department asked for information based specifically on experience with application of the general administrative process and the type B assessment procedures. Since section 301(c) of CERCLA states that the regulations shall identify the "best available" procedures, the Department also requested information drawn from any new technology not available when the regulations were developed. Comments were asked to focus on all Subparts of 43 CFR Part 11 except Subpart D and §§ 11.31 and 11.33 of Subpart C, which pertain to the type A procedures.

Suggestions were solicited for possible revision of the regulations where experience has shown a different approach that may be adopted or where procedures not incorporated in the regulations have since been sufficiently developed to be included. Comments were asked to address the following questions: (1) Where and how have the assessment process and the type B procedures been applied, for example, geographical location, environmental setting, etc.?; (2) How effective was the assessment process in these applications?; (3) In what type of situation has the assessment process been used, for example, in settlement negotiations, court actions, etc.?; (4) What are recommendations for modification of the assessment process and the type B procedures based on the applications mentioned above?; and (5) How effective has the process been pertaining to restorations and the ability to apply funds recovered towards planned restoration activities?

The Department also asked for any relevant information not available at the time the type B procedures were developed. Section 301(c) of CERCLA states that such regulations shall identify the "best available" procedures to determine damages to natural resources. In order to ensure that the type B procedures are the "best available" procedures, the Department wanted to know of any new methodologies or protocols that might be incorporated into the type B procedures. For example, new methodologies or technical information might exist in such areas as defining injuries to the resources and determining the extent of and compensation for the injury.

The Department stated in the ANPRM that it would, upon review of the comments received, determine the need for revisions to the general assessment process or to the type B procedures. The comment period for that ANPRM closed July 5, 1988.

II. Response to Comments

Only four comments to the ANPRM were received by the Department. Not only was the ANPRM published in the **Federal Register**, but copies were sent to over 900 names on the Department's mailing list compiled since the first ANPRM concerning the regulations, in January of 1983. A general view expressed in the comments was that there has been, as yet, no experience with the regulations. Two of the commenters recommended that the Department not make significant revisions to the rule at this time. They stated that there has been little practical experience with rule and there is, as yet, no new information to be considered. One of these two commenters suggested that, instead of significantly revising the regulations, the Department should: (1) initiate an educational effort for the existing rule; (2) require prompt identification of trustees to expedite trustee action; (3) amend the regulations to call for earlier notification and involvement of potentially responsible parties (PRPs); and (4) identify specific coordination points within the National Contingency Plan (NCP) response actions. The other comment stated that the Department should eliminate the use of contingent valuation methodology from the regulations, or to incorporate into the rule procedural safeguards for its use.

The Department agrees with the general suggestion that the Department initiate education of natural resource trustees and the general public as to the natural resource damage assessment regulations. The Department is proceeding at this time with the development of an outreach program. The effort will assist in facilitating consistent understanding and application of the regulations among all parties; and help to improve coordination and expedited actions with other aspects of response and cleanup measures.

The Department does not agree with the specific comment that the regulations should be amended at this time to make procedural changes to the administrative process contained within the rule. As was noted by this and other commenters, there has been little practical experience to date with the application of the rule. Making procedural changes based solely on a few isolated experiences should not be considered as representative of a general trend or reflective of widespread difficulties in proceeding through the assessment process.

The Department notes that section 104(b)(2) of CERCLA requires that Federal and State natural resource trustees be given prompt notification and requires coordination of assessments, investigations and planning that may be occurring under section 104 of CERCLA. The proposed changes to the NCP would highlight this requirement. The Department is also aware that the respective state governors are now designating their natural resource trustees to the Environmental Protection Agency (EPA), as required by section 107(f)(2)(B) of CERCLA, which will further understanding of the preassessment process. The Department has been working with the EPA on the issue of timely notification of trustees. Section 11.20(c) of the Department's rule already provides instructions to the natural resource trustees to assist, as needed, in identifying other natural resource trustees whose resources may be affected as a result of shared responsibility for the resource and who should be notified. Further, § 11.32(a)(1) of the rule requires coordination of natural resource trustees prior to the development of the Assessment Plan. Guidance is also provided within that section on the selection of a lead authorized official from among the respective trustees participating in the assessment. The Department considers that these provisions of the rule, in conjunction with the requirements of CERCLA, are sufficient until wider experience indicates changes are needed.

The rule at § 11.32(a)(2) requires formal identification and involvement of the potentially responsible party in the development of a natural resource damage assessment plan. The Department recognizes that in many instances the potentially responsible party may be known to the natural resource trustee prior to the development of an Assessment Plan. As was stated in the preamble to the final rule (51 FR 27700), however, prior to the formulation of the assessment plan, decisions on proceeding with an assessment are generally based on questions of jurisdiction, statutory authority and internal agency authority, and on the severity of the potential for natural resource injury. It is, therefore, inappropriate to require specific identification and involvement of the PRP during the time that these internal issues are being resolved.

The Department has not defined, in the natural resource damage assessment rule, specific coordination points within the EPA's NCP response actions. The Department considers that the provisions of the natural resource damage assessment process, as appropriate, with that of the NCP.

The second commenter stated that the Department should eliminate the use of contingent valuation methodology from the regulations, or should incorporate into the rule procedural safeguards for its use. The Department's response is that there are procedural safeguards present in the rule pertaining not just to the use of contingent valuation techniques, but to the entire damage assessment process. The guidance found in § 11.84, the provisions for public (and PRP) review and input to the process and the relevant technical information document all provide guidance for applying the contingent valuation methodologies. Since all these safeguards are already present in the rule, and lacking wider experience with the use of these provisions, there is no need to revise the rule.

The third commenter stated that the regulations are unworkable because they fail to adequately value natural resource damages. The commenter recommended that the regulations be significantly modified to conform with the revisions suggested in the commenter's legal brief filed in *State of Ohio* v. *Department of the Interior*.

The Department's reply is that the issues raised are currently before the U.S. Court of Appeals for the District of Columbia Circuit, as provided for in section 113 of CERCLA, and will be resolved by that court. The legal review of the rules is currently on-going. Since the issues raised by the commenter pertain to legal interpretations of CERCLA, it is appropriate that the resolution of these differing interpretations be resolved by the court. The regulations are valid, final regulations that are in effect for natural resource damage assessments.

The fourth commenter stated that he had not had any experience to date with the rules and, thus, had no comments to offer at this time. The commenter indicated that should he gain experience with the rules, he would be pleased to share his insights with the Department.

III. Conclusion

Based on review of the comments received on the ANPRM of May 3, 1988, the Department has determined that it is not appropriate to revise the general assessment process and the type B procedures at this time. Information received through these comments shows that there has been too little experience to warrant revisions to either the general damage assessment process or the type B procedures. Also, no new information or new technologies in this area have been brought to the attention of the Department to justify revising the regulations.

Dated: January 13, 1989.

Bruce Blanchard,

Director, Office of Environmental Project Review.

[FR Doc. 89-1291 Filed 1-19-89; 8:45 am]
BILLING CODE 4310-RG-M

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Notices

Federal Register
Vol. 54, No. 13
Monday, January 23, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Counties Designated as Suitable for Growing Extra Long Staple Cotton

AGENCY: Commodity Credit Corporation.

ACTION: Notice of Counties Designated as Suitable for Growing Extra Long Staple Cotton During Marketing Year 1989.

SUMMARY: In accordance with 7 CFR 1413.3(n), the following counties have been designated as suitable for growing extra long staple cotton during marketing year 1989:

Arizona: Cochise, Gila, Graham, Greenlee, Maricopa, Mohave, Pima, Pinal, Santa Cruz, Yavapai, and Yuma. (La Paz County was created from Yuma County as a result of an action of the Arizona State legislature and is approved for ELS.)
California: Imperial and Riverside.
Florida: Alachua, Hamilton, Jefferson, Madison, Marion, Suwannee, and Union.
Georgia: Berrien and Cook.
New Mexico: Chaves, Dona Ana, Eddy, Hildalgo, Luna, Otero, and Sierra.
Texas: Brewster, Culberson, El Paso, Hudspeth, Jeff Davis, Loving, Pecos, Presidio, Reeves and Uvalde.

Before March 31, 1989, as deemed appropriate by the Commodity Credit Corporation, additional counties may be designated as suitable for growing extra long staple cotton during marketing year 1989.

Authority: Sec. 103(h) of the Agricultural Act of 1949, as amended, 97 Stat. 494, as amended, (7 U.S.C. 1444(h)).

FOR FURTHER INFORMATION CONTACT: Charles V. Cunningham, Leader, Fibers Group, Commodity Analysis Division, USDA–ASCS, Room 3758 South Building, P.O. Box 2415, Washington, DC 20013 or call (202) 447–7954.

Signed at Washington, DC, January 6, 1989.

Milton Hertz,
Executive Vice President, Commodity Credit Corporation.

[FR Doc. 89–1326 Filed 1–19–89; 8:45 am]
BILLING CODE 3410–05–M

Forest Service

Last Chance Compartment Timber Sale(s); Plumas National Forest, Plumas County, CA; Intent To Prepare an Environmental Impact Statement

The Department of Agriculture, Forest Service will prepare an environmental impact statement for a proposed timber sale(s) within the Last Chance Compartment, Ward Management Area No. 30 of the Greenville Ranger District.

The Plumas National Forest Land and Resource Management Plan has been prepared. This Plan directs that timber be managed on a regulated basis on lands classified as capable, available and suitable for scheduled timber production. The proposed timber sale project is included in The Plumas Timber Harvest Schedule for Fiscal Year 1991. The harvest objective for the project(s) is 12 million board feet.

Some initial scoping and analysis have been completed on this project. Comments received during the original scoping will be retained and considered in the analysis.

Federal, State and local agencies; potential purchasers; and other individuals or organizations who may be interested in or affected by the decision will be invited to participate in the scoping process. This scoping process will include:

1. Identification of potential issues.
2. Identification of issues to be analyzed in depth.
3. Elimination of insignificant issues or those which have been covered by a previous environmental review.
4. Determination of potential cooperating agencies and assignment of responsibilities.

The Fish and Wildlife Service, Department of Interior, will be invited to participate as a cooperating agency to evaluate potential impacts on threatened and endangered species habitat if any such species are found to exist in the potential timber sale(s) area.

The District Ranger will hold a public meeting at the Town Hall, Greenville, CA at 1 p.m., Saturday, February 18, 1989. Mary J. Coulombe, Forest Supervisor, Plumas National Forest, Quincy, California is the responsible official.

The analysis is expected to take about 1–2 months to complete. The Draft Environmental Impact Statement should be available for public review by May 1989. The Final Environmental Impact Statement should be available for public review by November 1989.

Written comments and suggestions concerning the scoping or analysis should be sent to Michael R. Williams, District Ranger, Greenville Ranger District, P.O. Box 329, Greenville, CA 95947.

Questions about the proposed action and Environmental Impact Statement should be directed to Conrad P. Nussbaumer, Sale Planning Forester, Greenville Ranger District, phone (916) 284–7126 extension 250.

Dated: January 12, 1989.

Mary J. Coulombe,
Forest Supervisor.

[FR Doc. 89–1343 Filed 1–19–89; 8:45 am]
BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census
Title: Survey of Income and Program Participation, 1988 Panel Wave 5
Form Number: SIPP–8500 Wave 5 Questionnaire, SIPP–85/7803 Reminder Card, and SIPP 85–7805(L) Introductory Letter
Agency Approval Number: 0607–0595
Type of Request: Revision
Burden: 12,180 hours
Number of Respondents: 24,360
Avg Hours Per Response: 30 minutes
Needs and Uses: This survey provides statistics not previously available for the Executive and Legislative Branches, such as multiple recipiency of benefits of major government programs and monthly program participation to support policy analyses. The data requirements include income, employment and household composition, taxes, assets, in-kind income, and related subjects to estimate the effects of Executive and Legislative decisions.
Affected Public: Individuals or households
Frequency: One time only
Respondent's Obligation: Voluntary
OMB Desk Officer: Francine Picoult, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room H6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Francine Picoult, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: January 13, 1989.

Edward Michals,
Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 89–1298 Filed 1–19–89; 8:45 am]
BILLING CODE 3510–07–M

International Trade Administration

[A–588–028]

Roller Chain, Other Than Bicycle, From Japan; Final Results of Antidumping Duty Administrative Review and Intent To Revoke in Part

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review and intent to revoke in part.

SUMMARY: On November 1, 1988, the Department of Commerce published the preliminary results of its administrative review of the antidumping finding on roller chain, other than bicycle, from Japan. The review covers Tsubakimoto, a manufacturer/exporter of this merchandise to the United States, and the period April 1, 1986 through March 31, 1987.

We gave interested parties an opportunity to comment on the preliminary results. Based on our analysis of the comments received and the correction of certain clerical errors, we have changed the margin from that presented in our preliminary results of review to a *de minimis* amount. We intend to revoke the antidumping finding with respect to Tsubakimoto.

EFFECTIVE DATE: January 23, 1989.

FOR FURTHER INFORMATION CONTACT: Edward F. Haley or Robert J. Marenick, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–5255.

SUPPLEMENTARY INFORMATION:

Background

On November 1, 1988, the Department of Commerce (the Department") published in the Federal Register (53 FR [illegible]) the preliminary results of its [illegible] review of the [illegible] finding on roller chain, [illegible] bicycle, from Japan (38 FR [illegible] April 12, 1973). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by this review are shipments of roller chain, other than bicycle, from Japan. The term "roller chain, other than bicycle," as used in this review includes chain, with or without attachments, whether or not plated or coated, and whether or not manufactured to American or British standards, which is used for power transmission and/or conveyance. Such chain consists of a series of alternately-assembled roller links and pin links in which the pins articulate inside the bushings and the rollers are free to turn on the bushings. Pins and bushings are press fit in their respective link plates. Chain may be single strand, having one row of roller links, or multiple strand, having more than one row of roller links. The center plates are located between the strands of roller links. Such chain may be either single or double pitch and may be used as power transmission or conveyor chain.

This review also covers leaf chain, which consists of a series of link plates alternately assembled with pins in such a way that the joint is free to articulate between adjoining pitches. This review further covers chain model numbers 25 and 35. Roller chain, other than bicycle, is currently classifiable under various Harmonized Tariff Schedule item numbers from 7315.11.00 through 7616.90.00. HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers Tsubakimoto Chain Co. ("Tsubakimoto"), a manufacturer/exporter of Japanese roller chain, other than bicycle, to the United States, and the period April 1, 1986 through March 31, 1987.

Analysis of Comments Received

We invited interested parties to comment on the preliminary results. We received comments from the petitioner, the American Chain Association ("the ACA"), and Tsubakimoto. We have made adjustments for certain clerical errors. Other claimed clerical errors are discussed below.

Comment 1: Tsubakimoto argues that the Department erroneously excluded from the review approximately 500 exporter's sales price ("ESP") sales where merchandise was shipped by U.S. Tsubaki, Inc. ("UST") prior to the review period but invoiced to the customer during the period of review. ESP sales were reported on the basis of invoice date, usually only a day or two after shipment date. The invoice date is the date on which all terms of sale are reduced to a single document and booked on UST's financial records. Also, the Department did not notify the respondent that it would be using sales based on shipping date rather than invoice date until October 1988, when it was too late to supply data based on date of shipment.

Department's Position: We consider the date of sale to be the date on which the terms of sale are fixed. In this case, we view the shipping date as more indicative of this date than the invoice date, which was usually later than the date of shipment, occasionally by more than a week. We accepted the date of invoice as the date of sale until verification. At that time, we learned that the date of purchase was not recorded because most orders were taken by phone and shipping documents were prepared the same or next day, noting the merchandise, price, quantity, and payment terms. At verification the Department informed UST that we would likely use the date of shipment as the date of sale, but UST presented no new data based on date of shipment prior to the preliminary results of review. It is the Department's practice not to accept new information after the preliminary determination.

Comment 2: Tsubakimoto, citing *Timken Co.* v. *United States*, 673 F. Supp. 495 (CIT 1987), contends that the Department incorrectly deducted credit expense, a direct selling expense, from ESP. Respondent maintains that the Department's practice of deducting direct selling expenses from U.S. price as a means of making a circumstance of sale adjustment pursuant to section 772 of the Tariff Act is contrary to the holding in *Timken*, which requires the Department to make adjustments for

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direct selling expenses to the foreign market value.

Department's Position: Deducting these expenses from the U.S. selling price is consistent with section 772(e) of the Tariff Act which requires the Department to reduce ESP for "expenses generally incurred by and for the account of the exporter in selling identical or substantially identical merchandise * * *" Furthermore, *Timken* has been remanded to the Department and is not yet final. The Department will continue to deduct direct selling expenses from both the U.S. and home market prices in ESP situations, pending a final determination of this issue in the courts.

Comment 3: Tsubakimoto contends that the Department erred in failing to make any adjustments to accommodate the rapid appreciation of the Japanese yen. Respondent states that in fair value investigations the Department may depart from its practice of using exchange rates in effect on the date of sale, citing 19 CFR 353.56(b), and claims that the same principle of fairness should apply in this review.

Department's Position: We disagree. 19 CFR 353.56(b) is a special rule for *fair value* investigations which allows us to compensate for price differences resulting from sustained changes or temporary fluctuations in prevailing exchange rates. No provision is made for this adjustment in section 751 administrative reviews. *See Potassium Permanganate from Spain* (53 FR 21504, June 8, 1988).

Comment 4: Tsubakimoto requests that the Department issue a final revocation should the final results of this administrative review result in no or *de minimis* margins.

Department's Position: The Department has been ordered by the CIT not to revoke the finding with respect to Tsubakimoto until the matter has been decided by the Court (*UST Inc. and Tsubakimoto Chain Company* v. *United States*, Court No. 88-08-00993, Order dated February 4, 1988). We are not issuing a final revocation by this notice. This notice only contains an intent to revoke.

Comment 5: The ACA argues that sales to related parties were included in the calculation of foreign market value, contrary to 19 CFR 353.22(b). Tsubakimoto had not demonstrated that related-party transactions were made at prices comparable to those charged to unrelated customers. Although the ACA formally raised this issue with the Department on May 4, 1988, the matter was not addressed during the subsequent Tsubakimoto verification. Furthermore, even if the Department uses related party sales, it should not allow deductions for discounts and rebates in calculating foreign market value because these adjustments are intracorporate transfers of funds.

Department's Position: At verification we determined that sales to related parties were made on the same basis and at comparable gross prices as sales to unrelated parties. In addition, we verified that discounts and rebates were granted equally to related and unrelated distributors. In this and previous reviews of Tsubakimoto the Department found no price discrimination based on relationship. We have supplemented our verification report to cover this area more thoroughly.

Comment 6: The ACA claims that the Department should have made a level-of-trade adjustment to U.S. price because all home market sales were to distributors, while substantial numbers of U.S. sales, particularly purchase price sales, were made to end-users. The petitioner argues that end-user sales would have to be made at higher prices than prices to distributors in the home market, and that an adjustment, in compliance with 19 CFR 353.19, is necessary. The ACA further argues that the Department should make the adjustment by reducing prices to end-users in the U.S. in the amount of "Discount C." This discount is granted to certain home market distributors who perform sales office functions for Tsubakimoto in areas where Tsubakimoto has no sales office. The petitioner claims that Discount C is representative of selling expenses Tsubakimoto would have incurred in Japan in selling directly to end-users rather than through distributors.

Department's Position: We disagree. A level-of-trade adjustment is an amount added to or subtracted from home market prices (19 CFR 353.13 and 353.19), not an adjustment to U.S. prices as suggested by the petitioner. The purpose of the adjustment is to create an "apples-to-apples" comparison of the United States price to foreign market value by adjusting the home market price at one level of trade to represent what the price would have been in the home market at a different level of trade.

Assuming that Discount C represents additional expense Tsubakimoto would have incurred in selling to end-users in Japan, and an adjustment for level of trade is warranted, it would have to be made by increasing the prices to the distributors by the amount of Discount C. This argument however, was not made by the ACA. Moreover, we have no basis to assume that Discount C represents expenses Tsubakimoto would have incurred in selling to end-users because Discount C was granted to distributors in the home market selling to other distributors. Thus, the discount is not relevant to any sales which might have been made to end-users. Lacking relevance, it cannot be used to quantify a level-of-trade adjustment.

The ACA presents no cogent argument that sales to end-users would differ from those to distributors. In light of the absence of any evidence that a difference in level of trade affects the prices, and the absence of any relevant information quantifying the cost differences in selling to different levels of trade in the same market, no adjustment is justified.

Comment 7: The petitioner claims the Department made no adjustment for technical service on U.S. sales and that technical service was not included as a cost in calculating constructed value.

Department's Position: We disagree. On U.S. sales, the Department included technical service as part of UST's selling and administrative expenses. Technical service was also included in constructed value.

Comment 8: The ACA objects to the allocation of foreign inland freight on the basis of sales value rather than on weight and/or volume. They claim this overstates home market freight costs, which are much higher than foreign inland freight costs for shipments to the United States.

DOC Position: We have accepted Tsubakimoto's allocation of foreign inland freight expenses by value rather than by weight, consistent with our practice in previous administrative reviews of Tsubakimoto, because freight costs were incurred in ways not related to weight and/or volume. Most domestic deliveries are made by chartered trucks or contract trucks. Chartered truck fees are based on distance and the number of trips a truck makes. Contract truck fees are per day, whether a truck is used or not.

Both chartered and contract trucks carry a mixture of Tsubakimoto products, including those not of the same class or kind as covered roller chain. U.S. foreign inland freight costs were less than home-market freight costs because the U.S. product was shipped in containers over a short distance to the port, compared to non-containerized longer distance domestic shipments.

Comment 9: The petitioner states that the constructed values of chain purchased from companies related to Tsubakimoto represent only the cost of acquiring chain and do not reflect Tsubakimoto's SG&A expenses, profit, and packing costs. The ACA also claims an unexplained discrepancy in the reported number of related firms producing chain for Tsubakimoto, saying Tsubakimoto reported three in its questionnaire response but only two were noted at verification.

DOC Position: We disagree. The verification report and calculations provided to the ACA show that in calculating constructed value we used Tsubakimoto's actual SG&A expenses, the statutory minimum profit of eight percent, and added back Tsubakimoto's U.S. packing costs. There was no discrepancy in the number of related firms selling to Tsubakimoto. Three related firms sold made-to-order roller chain to Tsubakimoto, but we selected only two for verification.

Comment 10: The Petitioner is concerned that the reported figure for inventory carrying costs does not reflect imputed interest costs between the date of shipment from Japan and the date of receipt by UST and claims that ESP inventory carrying costs should be increased accordingly.

DOC Position: Inventory carrying costs used were verified and do reflect interest expense from date of shipment to date of receipt. We have supplemented our verification report to reflect this fact.

Comment 11: The ACA objects to the correction of "clerical errors" made by Tsubakimoto based on Tsubakimoto's submission of documentation after verification and the preliminary results of this review.

DOC Position: We consider new information submitted by Tsubakimoto subsequent to verification and the preliminary results to be untimely. Therefore, we have not allowed the recalculation of certain constructed values based on new documents showing mathematical errors made by Tsubakimoto in its questionnaire response. We will not allow respondents to selectively amend their responses to their advantage after verification unless the errors are so obvious they can be corrected without additional information. Tsubakimoto had ample time between the submission of their response on February 22, 1988 and the verification in May 1988 to correct any errors.

Comment 12: The petitioner objects to the Department's adjusting constructed value for packing and inland freight costs because constructed value should already include U.S. packing and should not include inland freight.

DOC Position: In their response, Tsubakimoto presented constructed values that included inland freight and home market packing. Constructed value should include U.S. packing but not inland freight. Therefore, we deducted inland freight and home market packing and added U.S. packing which was not included in the original submission. Failure to do so would have resulted in an erroneous constructed value.

Final Results of Review and Intent to Revoke in Part: Based on our analysis of the comments received and the corrrection of certain clerical errors, we determine that a weighted-average dumping margin of 0.47 percent *ad valorem* exists for Tsubakimoto during the period April 1, 1986 through March 31, 1987. The Department considers any rate less than 0.5 percent *ad valorem* to be *de minimis*.

For the reasons set forth in the tentative determination to revoke in part (48 FR 39673, September 1, 1983), and because *de minimis* margins were found in this review, we are satisfied that there is no likelihood of resumption of sales at less than fair value by Tsubakimoto. Accordingly, we intend to revoke in part the antidumping finding on roller chain, other than bicycle, from Japan. If this partial revocation becomes final it will apply to all unliquidated entries of this merchandise manufactured and exported by Tsubakmoto and entered, or withdrawn from warehouse, for consumption on or after September 1, 1983, the date of our tentative determination to revoke with respect to this firm, pending further order of the CIT.

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. Individual differences beween United States price and foreign market value may vary from the percentage stated above. The Department will issue appraisement instructions directly to the Customs Service.

Further, since the margin for Tsubakimoto is *de minimis*, the Department will not require a cash deposit for this firm, in accordance with section 751(a)(1) of the Tariff Act. For any shipments from the remaining known manufacturers and/or exporters not covered by this review, a cash deposit shall be required at the rates published in the final results of the last administrative review for each of those firms. For any shipments from a new exporter, whose first shipments occurred after March 31, 1987 and who is unrelated to Tsubakimoto or any previously reviewed firm, no cash deposit shall be required. These deposit requirements are effective for all shipments of Japanese roller chain, other than bicycle, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until publication of the final results of the next administrative review.

This administrative review, intent to review, intent to revoke in part, and notice are in accordance with section 751(a)(1) and (c) of the Tariff Act (19 U.S.C. 1675(a)(1) and (c)) and 19 CFR 353.53a and 353.54.

Jan W. Mares,

Assistant Secretary for Import Administration.

Date: January 17, 1989.

[FR Doc. 89-1302 Filed 1-18-89; 9:56 am]

BILLING CODE 3510-DS-M

COMMISSION OF FINE ARTS

Meeting

The Commission of Fine Arts' next scheduled meeting is Thursday, 23rd February 1989 at 10:00 a.m. at the Commission's offices at 708 Jackson Place NW., Washington, DC 20006 to discuss various projects affecting the appearance of Washington, DC, including buildings, memorials, parks, etc.; also matters of design referred by other agencies of the government. Handicapped persons should call the offices (566-1066) for details concerning access to meetings.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Mr. Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address or call the above number.

Dated in Washington, DC, 13th January 1989.

Charles H. Atherton,

Secretary.

[FR Doc. 89-131 Filed 1-19-89; 8:45 am]

BILLING CODE 6330-01-M

CONSUMER PRODUCT SAFETY COMMISSION

Request for Extension of Approval of Information Collection Requirements; Requirements for Electrically Operated Toys

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35), the Consumer Product Safety Commission has submitted a request to the Office of Management and Budget for an extension of approval

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through December 31, 1991, of its approval of information collection requirements in 16 CFR Part 1505. That rule requires manufacturers and importers of certain electrical toys and other children's products to provide warning and identification labeling and to establish and maintain a quality assurance program. In addition, manufacturers and importers must make, keep, and maintain for three years records of sales and distribution, material and production specifications, a description of the quality assurance program, and the results of all inspections and tests conducted.

The purposes of these reporting requirements are to reduce risks to children of electrocution, electric shock, electrical burns, and thermal burns associated with electrical toys and children's products, and to help determine the extent to which manufacturers and importers are complying with requirements of 16 CFR Part 1505.

Additional Information About the Requested Extension of Approval of Requirements for Collection of Information

Agency Address: Consumer Product Safety Commission, Washington, DC 20207.

Title of Information Collection: Requirements for Electrically Operated Toys or Other Electrically Operated Articles Intended for Use by Children, 16 CFR 1505.4(a)(3).

Type of Request: Extension of approval.

Frequency of Collection: Recordkeeping, plus occasional reporting at the request of the Commission's compliance staff.

General Description of Respondents: Manufacturers and importers of electrically operated toys and children's articles.

Estimated Number of Respondents: 40.

Estimated Average Number of Hours per Respondent per Year: 200—160 hours testing; 40 hours recordkeeping.

Estimated Number of Hours for All Respondents per Year: 8,000.

Comments: Comments about this request for extension of approval of information collection requirements should be addressed to Pamela Barr, Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; telephone (202) 395–7340. Copies of the request for extension of approval of information collection requirements are available from Francine Shacter, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 492–6416.

This is not a proposal to which 44 U.S.C. 3504(h) is applicable.

Dated: January 13, 1989.

Sadye E. Dunn,

Consumer Product Safety Commission.

[FR Doc. 89-1349 Filed 1-19-89; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an information collection requirement concerning Drug-Free Workplace. Because of the statutory deadline for implementation of the Drug-Free Workplace Act of 1988, and the fact that the information collection being requested follows statutory language, we have requested that OMB/OIRA take action to permit publication of a rule on January 31, 1989.

ADDRESS: Send comments to Ms. Eyvette Flynn, FAR Desk Officer, Room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Loeb, Office of Federal Acquisition and Regulatory Policy, (202) 523–3847.

SUPPLEMENTARY INFORMATION:

a. Purpose

Pub. L. 100-690, the Drug-Free Workplace Act of 1988, mandates that: (1) Government contract employees notify their employer of any criminal drug statute conviction for a violation occurring in the workplace; and (2) Government contractors after receiving notice of such conviction, must notify the Government contracting officer. These requirements are effective as of March 18, 1989.

The information provided to the Government will be used to determine contractor compliance with the statutory requirements to maintain a drug-free workplace.

b. Annual Reporting Burden

The annual reporting burden is estimated as follows: Respondents, *600;* responses per respondent, *1;* total annual responses, *600;* hours per response, *.17;* and total response burden hours, *102.*

c. Annual Recordkeeping Burden

The annual recordkeeping burden is estimated as follows: Recordkeepers, *600;* hours per recordkeeper, *.5;* and total recordkeeping burden hours, *300.*

Obtaining Copies of Proposals: Requester may obtain copies from General Services Administration, FAR Secretariat (VRS), Room 4041, Washington, DC 20405, telephone (202) 523–4755. Please cite OMB Control No. 9000–00XX, Drug-Free Workplace.

Dated: January 12, 1989.

Margaret A. Willis,

FAR Secretariat.

[FR Doc. 89-1305 Filed 1-19-89; 8:45 am]

BILLING CODE 6820-61-M

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve a revision of a currently approved information collection concerning termination settlement proposal forms (Standard Forms 1435–1440).

ADDRESS: Send comments to Ms. Eyvette Flynn, FAR Desk Officer, Room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Klein, Office of Federal Acquisition and Regulatory Policy, (202) 523–3775.

SUPPLEMENTARY INFORMATION:

a. Purpose

The termination settlement proposal forms (Standard Forms 1435 through 1440) provide a standardized format for listing essential cost and inventory information needed to support the terminated contractor's negotiation position. Submission of the information assures that a contractor will be fairly reimbursed upon settlement of the terminated contract.

b. Annual reporting burden

The annual reporting burden is estimated as follows: Respondents, *600;* responses per respondent, *1;* total annual responses, *600;* preparation hours per response, *2.5;* and total reporting burden hours, *1,500.*

Obtaining Copies of Proposal

Requester may obtain copies from General Services Administration, FAR Secretariat (VRS), Room 4041, Washington, DC 20405, telephone (202) 523–4755. Please cite OMB Control No. 9000–0012, Termination settlement proposal forms.

Dated: January 11, 1989.

Margaret A. Willis,

FAR Secretariat.

[FR Doc. 89-1306 Filed 1-19-89; 8:45 am]

BILLING CODE 6820-61-M

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to approve an information collection requirement concerning Prompt Payment.

ADDRESS: Send comments to Ms. Eyvette Flynn, FAR Desk Officer, Room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. Jeremy Olson, Office of Federal Acquisition and Regulatory Policy, (202) 523–3781.

SUPPLEMENTARY INFORMATION:

a. *Purpose.* Part 32 of the Federal Acquisition Regulation (FAR) and the clause at FAR 52.232–5, Payments Under Fixed-Price Construction Contracts, require that contractors under fixed-price construction contracts certify, for every progress payment request, that payments to subcontractors/suppliers have been made from previous payments received under the contract and timely payments will be made from the proceeds of the payment covered by the certification, and that this payment request does not include any amount which the contractor intends to withhold from a subcontractor/supplier. Part 32 of the FAR and the clause at 52.232–27, Prompt Payment for Construction Contracts, further require that contractors on construction contracts:

(a) Notify subcontractors/suppliers of any amounts to be withheld, and furnish a copy of the notification to the contracting officer;

(b) Pay interest to subcontractors/suppliers if payment is not made by 7 days after receipt of payment from the Government, or within 7 days after correction of previously identified deficiencies;

(c) Pay interest to the Government if amounts are withheld from subcontractors/suppliers after the Government has paid the contractor the amounts subsequently withheld, or if the Government has inadvertently paid the contractor for nonconforming performance; and

(d) Include a payment clause in each subcontract which obligates the contractor to pay the subcontractor for satisfactory performance under its subcontract not later than 7 days after such amounts are paid to the contractor, include an interest penalty clause which obligates the contractor to pay the subcontractor an interest penalty if payments are not made in a timely manner, and include a clause requiring each subcontractor to include these clauses in each of its subcontracts and to require each of its subcontractors to include similar clauses in their subcontracts.

These requirements are imposed by Pub. L. 100–496, the Prompt Payment Act Amendments of 1988.

Contracting officers will be notified if the contractor withholds amounts from subcontractors/suppliers after the Government has already paid the contractor the amounts withheld. The contracting officer must then charge the contractor interest on the amounts withheld from subcontractors/suppliers. Federal agencies could not comply with the requirements of the law if this information were not collected.

b. *Annual reporting burden:* The annual reporting burden is estimated as follows: Respondents, *4,000;* responses per respondent, *3;* total annual responses, *12,000;* hours per response, *.33;* and total response burden hours, *4,000.*

c. *Annual recordkeeping burden:* The annual recordkeeping burden is estimated as follows: Recordkeepers, *20,000;* hours per recordkeeper, *18;* and total recordkeeping burden hours, *360,000.*

Obtaining Copies of Proposals: Requester may obtain copies from General Services Administration, FAR Secretariat (VRS), Room 4041, Washington, DC 20405, telephone (202) 523–4755. Please cite OMB Control No. 9000–00XX, Prompt Payment.

Dated: January 13, 1989.

Margaret A. Willis,

FAR Secretariat.

[FR Doc. 89-1342 Filed 1-19-89; 8:45 am]

BILLING CODE 6820-61-M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: Individual MCJROTC Instructor Evaluation Summary Report, NAVMC 10942, and OMB Control Number: 0703–0016.

Type of Request: Extension.

Average Burden Hours/Minutes per Response: .30 minutes.

Frequency of Response: Annually.

Number of Respondents: 178.

Annual Burden Hours: 89.

Annual Responses: 178.

Needs and Uses: The purpose of the report is to commit to writing and evaluation of the overall performance of duty of the Senior Marine Instructors who are charged with the responsibility of implementing the Marine Corps Junior Reserve Officer's Training Corps (MCJROTC).

Affected Public: Individuals.

Frequency: Annually.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Dr. Timothy Sprehe.

Written comments and recommendations on the proposed information collection should be sent to Dr. Timothy Sprehe at the Office of Mangement and Budget, Desk Officer.

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Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Pearl Rascoe-Harrison.

A copy of the information collection proposed may be obtained from Ms. Rascoe-Harrison, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202-4302, telephone (202) 746-0933.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

January 13, 1989.

[FR Doc. 89-1327 Filed 1-19-89; 8:45 am]

BILLING CODE 3810-01-M

Office of the Secretary

Defense Science Board Task Force on Competitive Strategies; Advisory Committee Meeting

AGENCY: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board Task Force on Competitive Strategies will meet in closed session on February 7, 1989 at the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will periodically review the application of competitive strategies to the selection of technologies, weapons, and support systems, including C3 for emphasis by the Department of Defense.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. 92-463, as amended (5 U.S.C. App. II, (1982)), it has been determined that this DSB Task Force meeting, concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly this meeting will be closed to the public.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

January 13, 1989.

[FR Doc. 89-1328 Filed 1-19-89; 8:45 am]

BILLING CODE 3810-01-M

Office of the Secretary of Defense

Defense Science Board Task Force on Follow-on Forces Attack (FOFA); Cancellation of Meeting

ACTION: Cancellation of meeting.

SUMMARY: The meeting notice for the Defense Science Board Task Force on Follow-on Forces Attack (FOFA) scheduled for January 11, 1989 as published in the Federal Register (Vol. 53, No. 226, Page 48927, Monday, December 12, 1988, FR Doc. 88-28360) has been cancelled.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

January 13, 1989.

Defense Wage Committee; Closed Meetings

Pursuant to the provisions of section 10 of Pub. L. 92-463, the Federal Advisory Committee Act, notice is hereby given that a meeting of the Department of Defense Wage Committee will be held on Tuesday, February 7, 1989; Tuesday, February 14, 1989; Tuesday, February 21, 1989; and Tuesday, February 28, 1989 at 10:00 a.m. in Room 1E801, The Pentagon, Washington, DC.

The Committee's primary responsibility is to consider and submit recommendations to the Assistant Secretary of Defense (Force Management and Personnel) concerning all matters involved in the development and authorization of wage schedules for federal prevailing rate employees pursuant to Pub. L. 92-392. At this meeting, the Committee will consider wage survey specifications, wage survey data, local wage survey committee reports and recommendations, and wage schedules derived therefrom.

Under the provisions of section 10(d) of Pub. L. 92-463, meetings may be closed to the public when they are "concerned with matters listed in 5 U.S.C. 552b." Two of the matters so listed are those "related solely to the internal personnel rules and practices of an agency," (5 U.S.C. 552b.(c)(2)), and those involving "trade secrets and commercial or financial information obtained from a person and privileged or confidential" (5 U.S.C. 552b.(c)(4)).

Accordingly, the Deputy Assistant Secretary of Defense (Civilian Personnel Policy) hereby determines that all portions of the meeting will be closed to the public because the matters considered are related to the internal rules and practices of the Department of Defense (5 U.S.C. 552b.(c)(2)), and the detailed wage data considered by the Committee during its meetings have been obtained from officials of private establishments with a guarantee that the data will be held in confidence (5 U.S.C. 552b(c)(4)).

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Additional information concerning this meeting may be obtained by writing the Chairman, Department of Defense Wage Committee, Room 3D264, The Pentagon, Washington, DC 20301.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

January 13, 1989.

[FR Doc. 89-1330 Filed 1-19-89; 8:45 am]

BILLING CODE 3810-01-M

Department of The Air Force

Air Force Institute of Technology Board of Visitors, a Subcommittee of the Air University Board of Visitors; Meeting

The Air Force Institute of Technology Board of Visitors, a Subcommittee of the Air University Board of Visitors, will hold an open meeting on March 31, 1989 at 10:00 a.m., in the Commandant's Conference Room (ten seats available), Building 125, Room 2020, Wright-Patterson Air Force Base, Ohio.

The purpose of the meeting is to give the Subcommittee the opportunity to present to the Commandant, Air Force Institute of Technology, a report of findings and recommendations concerning the Institute's educational programs. The findings of the Subcommittee will also be reported to the Commander, Air University, at the next regularly scheduled meeting of the Air University Board of Visitors.

For further information on this meeting, contact Major Ann Lisa Piercy-Pont, Chief, Evaluation and Technology Branch, Directorate of Operations and Plans, Air Force Institute of Technology, (513) 255-5760 or 5480.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 89-1391 Filed 1-19-89; 8:45 am]

BILLING CODE 3910-01-M

Department of the Air Force

USAF Scientific Advisory Board; Meeting

January 17, 1989.

The USAF Scientific Advisory Board Ad Hoc Committee on Munitions Effectiveness will meet on February 7-8, 1989, from 8:00 a.m. to 5:00 p.m. at the Picatinny Arsenal, NJ, 07806-5000.

The purposes of this meeting are to assess the changes in the threat over the past ten years and to study how to take full advantage of potential technology improvements in the development and manufacturing of munitions. This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697-4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 89-1388 Filed 1-19-89; 8:45 am]

BILLING CODE 3910-01-M

USAF Scientific Advisory Board; Meeting

January 13, 1989.

The USAF Scientific Advisory Board Ad Hoc Committee on Conventional Munitions will meet on February 22-24, 1989 at the Armament Division, Eglin AFB Florida and at AFSOC Hulburt Field Florida.

The purpose of this meeting is to gather information on requirements and technological advances in conventional munitions. This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information contact the Scientific Advisory Board Secretariat at (202) 697-4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 89-1389 Filed 1-19-89 8:45 am]

BILLING CODE 3910-01-M

USAF Scientific Advisory Board; Meeting

January 13, 1989.

The USAF Scientific Advisory Board Ad Hoc Committee on Hypersonic Test Facilities will meet on February 16-17, 1989, from 8:00 a.m. to 5:00 p.m., at ANSER, Washington DC.

The purpose of this meeting is to review the status of the study's final report. This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697-4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 89-1390 Filed 1-19-89; 8:45 am]

BILLING CODE 3910-01-M

Department of the Army

Army Science Board Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: February 8-9, 1989.

Time: 0800-1700 hours each day.

Place: Arlington, Virginia.

Agenda: The Army Science Board Ad Hoc Subgroup on Human Dimensions in Army Safety will conduct its fifth meeting at Arlington, VA. The panel will receive briefings and hold discussions with personnel from OSHA, the Army Materiel Command, and a civilian industrial/manufacturing firm. A review of past actions of the panel as well as current and planned issues and meetings will be discussed. These meetings will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039/7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 89-1421 Filed 1-19-89; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF ENERGY

Proposed Finding of No Significant Impact; SP-100 GES Test Site; Hanford Site, Richland, WA; Extension of Review Period

AGENCY: Department of Energy.

ACTION: Proposed finding of no significant impact; extension of review period.

SUMMARY: On December 15, 1988, the Department of Energy published in the Federal Register (53 FR 50444) a proposed finding of no significant impact (FONSI) for the proposed ground test of a prototype SP-100 nuclear reactor. The Federal Register publication marked the beginning of a 30-day period, during which the proposed FONSI and supporting environmental assessment are made available for public review. DOE has decided to extend the public review period until February 3, 1989. Comments received after February 3, 1989, will be considered to the extent possible.

Written comments and questions should be directed to Earl Wahlquist, Director, Office of Defense Energy Projects, U.S. Department of Energy, 1990 Germantown Road, Germantown, MD 20545, (301) 353-3321.

Issued at Washington, DC, January 12, 1989.

Ernest C. Baynard III,

Assistant Secretary, Environment, Safety and Health.

[FR Doc. 89-1413 Filed 1-19-89; 8:45 am]

BILLING CODE 6450-01-M

Morgantown Energy Technology Center; Financial Assistance Award (Grant)

AGENCY: U.S. Department of Energy (DOE), Morgantown Energy Technology Center.

ACTION: Notice of noncompetitive financial assistance application for a grant.

SUMMARY: Based upon a determination pursuant to 10 CFR 600.7(b)(2)(i)(D), the DOE, Morgantown Energy Technology Center (METC), publishes notice of its plans to award a 60 month Grant to the National Academy of Sciences (NAS) National Research Council of 2101 Constitution Avenue, Washington, DC 20418. The total federal assistance for the first budget period is expected to be $279,938. The pending award is based on acceptance of an application for a research program, whose purpose is the initation of the National Research Council (NRC)/Morgantown Energy Technology Center (METC) Resident Research Associateship Program. The DOE is charged to conduct R&D on energy and to enhance the reservoir of talent in the U.S. which is trained to deal with energy problems. The specific mission of METC is to develop new fossil energy technology and to increase the availability of people who can help solve fossil energy problems. The proposed program will address both the R&D and the educational components of these goals. The NAS will establish and administer a Research Associateship Program at METC through which postdoctoral and senior research associates will be selected for participation in METC research programs. This program will enhance the ability of METC staff by association with such highly qualified individuals and it will enhance technology transfer and education in fossil energy problems when the Associates relocate into industrial and university assignments following their associateship experience.

FOR FURTHER INFORMATION CONTACT: Mark L. Estel, U.S. Department of Energy, Morgantown Energy Technology

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Center, P.O. Box 880, Morgantown, WV 26507-0880, 304/291-4085.
Louis L. Calaway,
Director, Acquisition and Assistance Division.

Date: January 11, 1989.
[FR Doc. 89-1412 Filed 1-19-89; 8:45 am]
BILLING CODE 6450-01-M

Office of Nuclear Energy; Low-Level Radioactive Waste; DOE Policies and Procedures Regarding The January 1, 1990, Milestone, and Eligibility of States and Compacts for Surcharge Rebates

AGENCY: Office of Nuclear Energy, DOE.

ACTION: Notice of DOE policies and procedures regarding the January 1, 1990, milestone and eligibility of States and compacts for surcharge rebates.

SUMMARY: The Low-Level Radioactive Waste Policy Amendments Act of 1985 establishes milestones for the development of new disposal facilities in compact regions and States that do not currently have operating disposal facilities. These non-sited regions and nonmember States must meet the milestones in order to receive rebates of a portion of disposal surcharges paid by their low-level waste generators to the three States with operating disposal sites. Twenty-five percent of the applicable surcharges are transferred by the States with disposal sites to the Department of Energy (DOE) and held in an escrow account. Following each milestone, DOE disburses the funds to non-sited compacts and nonmember States that have met the milestone.

This Notice discusses issues which may affect DOE's determinations of eligibility for surcharge rebates following the third milestone in the Act, which occurs January 1, 1990, and the procedures by which surcharge rebates will be administered.

The information collections contained in these procedures are covered under the Paperwork Reduction Act of 1980, as amended, and are approved by the Office of Management and Budget (OMB) under OMB control number 1910-0900.

EFFECTIVE DATE: January 23, 1989.

FOR FURTHER INFORMATION CONTACT: William F. Newberry, Low-Level Waste Program Manager, Division of Waste Treatment Projects (NE-24), Office of Nuclear Energy, Washington, DC 20545.

SUPPLEMENTARY INFORMATION:

Background

The Low-Level Radioactive Waste Policy Amendments Act of 1985 (Pub. L. 99-240) (the Act) sets forth milestones at section 5(e)(1) for the development of new low-level radioactive waste disposal facilities in non-sited compact regions and nonmember States. Non-sited compact regions and nonmember States that are in compliance with a milestone receive a rebate of 25 percent of surcharges paid by generators in their compact regions or States for disposal of waste at the three commercially operated disposal facilities in Nevada, South Carolina and Washington. Non-sited compacts and nonmember States that are not in compliance with a milestone forfeit their potential rebate to the sited State(s) in which the waste was disposed. As trustee for the escrow account in which the surcharges are deposited, DOE is required to determine whether each State and compact is eligible to receive a rebate of surcharge funds that have accrued in the account.

Non-sited compact regions and nonmember States must meet the requirements of section 5(e)(1)(C) of the Act in order to be found in compliance with the January 1, 1990, milestone. Section 5(e)(1)(C) of the Act states:

"By January 1, 1990—

(i) a complete application (as determined by the Nuclear Regulatory Commission or the appropriate agency of an agreement State) shall be filed for a license to operate a low-level radioactive waste disposal facility within each non-sited compact region or within each non-member State; or

(ii) the Governor * * * of any state that is not a member of a compact region in compliance with clause (i), or has not complied with such clause by its own actions, shall provide a written certification to the Nuclear Regulatory Commission, that such State will be capable of providing for, and will provide for, the storage, disposal, or management of any low-level radioactive waste generated within such State and requiring disposal after December 31, 1992, and include a description of the actions that will be taken to ensure that such capacity exists."

This notice discusses issues in several areas which may affect DOE's determinations of eligibility for surcharge rebates following the third milestone in the Act, which occurs January 1, 1990, and the procedures by which surcharge rebates will be administered. The Act also assigns the Nuclear Regulatory Commission (NRC) responsibilities under the January 1, 1990, milestone. The NRC plans to announce its policies and procedures in a forthcoming **Federal Register** notice. Additional information about the NRC's policies, procedures and guidance with respect to the milestone can be obtained from Mr. George Pangburn, Project Manager, Operations Branch, Division of Low-Level Waste Management and Decommissioning, Office of Nuclear Materials Safety and Safeguards, U.S. Nuclear Regulatory Commission, Mail Stop 5-E-4, Washington, DC 20555.

Complete License Applications

The Act assigns the NRC (or applicable agreement State agencies) the responsibility for determining whether license applications are "complete," for purposes of milestone compliance evaluations. DOE will accept as documentation of a compact or nonmember State's compliance with the milestone a statement to that effect signed by the NRC or agreement State agency official authorized to issue disposal site operating licenses on behalf of the agency. The statements should verify that the license application was filed with the agency by January 1, 1990, and that the application has been determined by the agency to be complete. In the event that the disposal facility for which the application is submitted will not provide for the disposal of all the low-level waste for which the State or compact is responsible under section (3)(a) of the Act, then the statement should identify the waste that will be excluded. The State or compact should describe its plans for the disposal, storage or management of such waste by means of a Governor's certification, as discussed below. The statements may be sent to the name and address indicated in the Contact section of this Notice, or may be delivered by another means agreeable to DOE and the agency.

Governor's Certifications

The Act requires that Governors' certifications be provided to the NRC by January 1, 1990. The NRC, in turn, is required to (1) transmit the certifications to Congress, and (2) publish the certifications in the **Federal Register**.

The Act does not describe elements that must be included in Governors' certifications, as it did for the January 1, 1988, milestone. However, the Report of the Committee on Interior and Insular Affairs of the House of Representatives emphasizes that Congress expected such certifications to "show with reasonable certainty that the State will be capable of providing for disposal or some alternative means of managing the waste after January 1, 1993." (House Report 99-314, Part I, p. 31). The Report also provides some examples of the types of actions that may be described in the plans that accompany the Governors' certifications. The Report states, "The Governor might show that some alternate to disposal technology will be provided by the state, such as

interim storage facilities, or that disposal will be provided through an arrangement with another compact or state that has operating disposal capacity or which has provided acceptable assurance that disposal or other facilities will be available in a timely manner. The intent of the committee is not to require states and compacts each to have demonstrated by this date they will have provided for disposal of the waste generated in the state or region but to assure the committee and the Congress that when interim access is terminated low-level waste generated within each state will not constitute an involuntary burden either on the other states or on the Federal government or any Federal agency." (p. 31)

The NRC has elaborated upon this guidance by suggesting specific information that should be contained in Governors' certifications. This guidance will be provided in the NRC's **Federal Register** Notice on the milestone.

DOE will accept as documentation of a State's compliance with the milestone a statement signed by an NRC official authorized to verify NRC's official receipt of such correspondence. The statement should verify that a certification, as described in the Act, signed by the Governor of the State, was filed with the NRC by January 1, 1990. The statement should indicate that the Governors' certification provides for the storage, disposal or management of any low-level radioactive waste for which the State is responsible under section 3(a) of the Act. In the event that a license application is filed in accordance with the procedures described above for a facility for disposal of part of the waste for which the State or compact is responsible, then the Governors' certification need only describe plans for storage, disposal or management of the portion of waste that will be excluded from the disposal site. The statement may be sent to the address indicated in the Contact section of this Notice or may be delivered by another means agreeable to DOE and NRC.

Timely Surcharge Payments

The Act requires that DOE issue surcharge rebates to eligible non-sited States and compacts within 30 days of each milestone. DOE will encourage the NRC and applicable agreement State agencies to officially notify DOE as soon as possible after they receive the documentation called for in the Act. However, because DOE does not have administrative control over the processes by which these agencies formally notify DOE of receipt of the applicable documentation, DOE cannot ensure that such notifications will be made in time to permit surcharge rebates within 30 days of the milestone.

DOE will continue to work with the sited States to effect timely and regular transmittal of surcharge funds into the escrow account, and will contact the appropriate sited State officials to encourage expeditious or accelerated transmittal to the escrow account of the last monthly surcharge payment for the milestone period. However, because each of the sited States uses its own specific procedures for collecting and transmitting surcharge funds to the escrow account, DOE cannot ensure that all surcharge funds applicable to the January 1, 1990, milestone, will be deposited in time to permit DOE to issue rebates within 30 days of the milestone.

Compact Eligibility for Surcharges

The Governors' certification option calls for actions to be taken by each State, even where the State is a member of a compact. However, section 5(e)(1) of the Act designates each compact as the entity responsible for complying with the milestone, and section 5(d)(2)(D)(ii) directs DOE to issue surcharge rebates to the compact authority. DOE will determine that a compact is eligible for a surcharge rebate if a complete license application has been submitted for a facility in its host State for disposal of all waste for which the compact is responsible under section 3(a) of the Act, or if all of the member States of the compact have submitted Governors' certifications in accordance with the Act. In the event that a license application is submitted for a facility for disposal of part of the waste for which the compact States are responsible under section 3(a) of the Act, then each of the member States should submit Governors' certifications describing plans for the storage, disposal or management of the portion of waste that will be excluded from the disposal site.

Disposal Agreements as an Alternative Method of Milestone Compliance

The Act provides that under certain conditions a non-sited State that has entered into an agreement with a sited compact for disposal of its waste may be considered to be in compliance with the milestones. Section 5(e)(1)(F) states:

"Any State may, subject to all applicable provisions, if any, of any applicable compact, enter into an agreement with the compact commission of a region in which a regional disposal facility is located to provide for the disposal of all low-level radioactive waste generated within such State, and, by virtue of such agreement, may, with the approval of the State in which the regional disposal facility is located, be deemed to be in compliance with subparagraphs (A), (B), (C), and (D)." (Subparagraphs (A), (B), (C), and (D) refer to the July 1, 1986; January 1, 1988; January 1, 1990; and January 1, 1992, milestones, respectively.)

The provision indicates that a State that enters into such an agreement "may" be deemed to be in compliance with the milestones. DOE agrees with the Report of the Senate Committee on Energy and Natural Resources that "the appropriateness of any such agreement is a matter to be settled by the parties to the agreements themselves." (Senate Report 99-199, p. 13). Therefore, a valid disposal agreement, as described in the Act, in effect on January 1, 1990, may be submitted to DOE as the basis for compliance with the milestone.

The Act does not set a time period during which disposal access must be provided under such agreements. Agreements may provide for disposal of waste from a State during the interim access period, January 1, 1986 through December 31, 1992, or may provide for disposal of the State's waste after the end of interim access. While the goal of the Act is to ensure access to disposal capacity after 1992, the Report of the Senate Committee on Energy and Natural Resources suggests that a disposal access agreement could be used as a "safety valve" to provide access to disposal capacity "for a nonsited State that is concerned that it may not, for whatever reason, be in compliance with one or more of the milestones." (Senate Report 99-199, p. 14) DOE will not set a time period during which disposal must be provided under such agreements as a condition for eligibility for surcharge rebates.

Copies of disposal agreements as described in section 5(e)(1)(F) as evidence of compliance with the milestone should be sent to the address in the Contact section of this Notice, or transmitted by another means agreeable to the submitting State and DOE. Agreements should contain or be accompanied by a statement by the Governor of the State in which the disposal facility is located, or Governor's designee, indicating the State's approval of the agreement.

Federalism

Executive Order 12612, 52 FR 41685 (October 30, 1987) requires that regulations, rules, legislation, and any other policy action be reviewed for any substantial direct effects on States, on the relationship between the national government and the States, or on the

distribution of powers and responsibilities among various levels of government. If there are sufficient substantial direct effects, then the Executive Order requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action.

Today's notice deals with interpretation of statutory language DOE will apply in order to determine State eligibility for rebates of surcharges that have been paid by waste generators pursuant to Federal law as a prerequisite for access to existing waste disposal facilities. The notice also deals with the administrative procedures that DOE will use in making the surcharge rebates. While today's notice will have direct effects on States, the rebate amounts are not significant in comparison with the State budgets, and the interpretations and procedures do not infringe on the institutional interests or traditional functions of States in our Federal system. Rather than coercing compliance with a Federally dictated plan, the rebates promote State and regional initiatives in developing new low-level radioactive waste disposal facilities.

John E. Baublitz,

Acting Director, Office of Remedial Action and Waste Technology, Office of Nuclear Energy.

[FR Doc. 89-1419 Filed 1-19-89; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

Final Consent Order With Tesoro Petroleum Corp.

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Final action on proposed consent order.

SUMMARY: The Department of Energy (DOE) has determined that a proposed Consent Order with Tesoro Petroleum Corporation (Tesoro), which was published for comment in 53 FR 48710 (December 2, 1988), shall be made final. The Consent Order resolves matters relating to Tesoro's compliance with the federal petroleum price regulations for the period January 1, 1973, through January 27, 1981. To resolve these matters, Tesoro will pay a total of $48,500,000, plus interest on any unpaid balances over a period of six years.

FOR FURTHER INFORMATION CONTACT: Dorothy Hamid, Office of Enforcement Litigation, Economic Regulatory Administration, RG-32, U.S. Department of Energy, Washington, DC 20585, (202) 586-6167

SUPPLEMENTARY INFORMATION:

I. Introduction
II. Comments
III. Analysis of Comments
IV. Decision

I. Introduction

On December 2, 1988, the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) published Notice in the **Federal Register**, Vol. 53 at page 48710 ("Notice"), announcing the execution of a proposed Consent Order between DOE and Tesoro which would resolve matters relating to Tesoro's compliance with federal petroleum price regulations for the period January 1, 1973, through January 27, 1981. 53 FR 48710 (December 2, 1988). The Consent Order requires Tesoro to pay a total of $48,500,000, plus interest on any unpaid balances, over a period of six years. Under the terms of the Consent Order, Tesoro will pay $25 million ($25,000,000) to DOE within thirty (30) days after the effective date of the Consent Order. Beginning one year after the date the initial payment becomes due and payable, Tesoro shall make six equal annual installments to the DOE of five million one hundred seventy-seven thousand eight hundred fifty dollars and ninety-five cents ($5,177,850.95), constituting an additional principal sum of twenty-three million five hundred thousand dollars ($23,500,000), plus interest calculated at the rate of 8.61 percent per annum. After the initial payment is made, ERA will petition the DOE's Office of Hearings and Appeals (OHA) pursuant to 10 CFR Part 205, Subpart V ("Subpart V"), for appropriate distribution of the monies paid.

The December 2, 1988 Notice provided in detail the bases for ERA's preliminary veiw that the settlement is favorable to the government and in the public interest. The Notice solicited written comments from the public relating to the terms and conditions of the settlement and whether the settlement should be made final. The Notice also announced a public hearing for the purpose of receiving oral presentations on the settlement. The hearing was held on January 4, 1989, at the headquarters of DOE in Washington, DC.

II. Comments

ERA received two written comments, and oral presentations were made at the January 4, 1989, public hearing by the two individuals who had submitted the written comments. All of the written and oral comments were considered in making the decision as to whether the proposed Consent Order should be made final.

The written and oral comments addressed two principal subject categories. Written and oral comments on behalf of certain unspecified utilities, transporters and manufacturers (hereinafter collectively referred to as "end users") addressed both the adequacy of the settlement amount and ERA's view regarding attribution of $2 million of the settlement amount to the refined product issues with the remainder attributed to the crude oil issues. The written and oral comments on behalf of the Petroleum Marketers Association of America, an unspecified several dozen resellers and retailers, and F. O. Fletcher, Inc., dba Fletcher Oil Company (hereinafter collectively referred to as "PMAA"), principally addressed ERA's view regarding attribution of the settlement proceeds.

III. Analysis of Comments

A. Adequacy of Settlement Amount

The representative of certain utilities, transporters and manufacturers argued that there was no apparent justification for the settlement amount, implicitly suggesting that the settlement amount of $48.5 milliot was too low. The commenter mentioned one of ERA's considerations in settlement, the fact that Tesoro, by specific contractual provisions, had passed through $10.8 million of its post-entitlements costs to a large utility. The end users claimed that the disposition of Tesoro's alleged overcharges should not excuse its alleged violations, citing to a recent determination by OHA in a formal Remedial Order issued to Cities Service Oil and Gas Corporation, (OHA Case No. HRO-0285, September 30, 1988).

Although ERA agrees that contractual passthrough provisions which are directly related to a refiner's post-entitlements costs should not constitute a legal defense to alleged violations, the Agency has historically treated such factors as relevant offsets and the extent of potential harm to others as appropriate considerations in the course of determining a fair measure of restitution to be effected through settlement.[1] Demonstrable, direct passthrough or non-retention of benefit is an equally valid consideration in the context of settlement. Moreover, notwithstanding any initial litigation success, one should nevertheless take into account the litigation risks associated with such arguments in other *fora, i.e.*, the Federal Energy Regulatory Commission ("FERC"), and the federal courts.[2] The end users do not address or assess such other considerations as the early litigation stage of ERA's principal entitlements claim against Tesoro, the uncertainties associated with protracted litigation, or the time and expense required to fully litigate every issue in order to obtain a recovery. As stated in the notice, ERA viewed all of these matters worthy of consideration and concluded that they do affect the appropriate and reasonable settlement amount. Nothing has been proffered by the end users which would reasonably support a change in that view.

[1] See, *e.g.*, Notice of Proposed Consent Order with Texaco Inc., 53 FR 15108 (April 27, 1988).

The representative for the end users also dismissed as vague ERA's references to the inherent litigation risks in the cases, but failed to articulate any rationale for assuming there are no risks. No other commenters expressed any objections to the reasonableness of the overall settlement amount.

B. Distribution of Refunds

The December 2, 1988, Notice indicated ERA's preliminary view that approximately $2 million of the $48.5 million principal amount of the proposed Consent Order were attributable to alleged refined product pricing violations, and the remainder to crude oil issues. If ERA's view were accepted by OHA, funds attributed to crude oil issues would be distributed by OHA in accordance with the provisions of the Final Settlement Agreement in the Stripper Well case, *In re: The Department of Energy Stripper Well Exemption Litigation*, M.D.L. 378 (D. Kan.) (*Stripper Well Agreement*) and the Petroleum Overcharge Distribution and Restitution Act of 1986. Amounts attributed to refined product issues would be distributed to purchasers of Tesoro's refined petroleum products who may have been harmed by the alleged regulatory violations.

The end users argued that although a minor matter, ERA's "evident intent" to allocate $2 million of the $48.5 million settlement amount to refined product issues is not justified, and any such allocation would be excessive. The PMAA argued that ERA's assessment was not appropriate, and any such allocation was too low because Fletcher Oil Company ("Fletcher") believed Tesoro has used an excessive May 15, 1973, price in its product sales to Fletcher during the period of price controls. According to PMAA, the sum of the differentials for the volumes Fletcher purchased from Tesoro during the price control period amounted to $565,000; consequently, PMAA argues, with interest value, Fletcher should be entitled to $1.5 million of the $2 million ERA estimated to be product-related, and that the $2 million is therefore insufficient. PMAA's arguments are misplaced.

PMAA fails to recognize several factors relevant to a settlement of compliance issues identified by ERA. Most fundamentally, any settlement is by definition a compromise and, therefore, will seldom result in recovery of the full amount sought in litigation.

Second, several decisions by the FERC involving similar issues would indicate that even if it is found that a seller used an erroneous May 15, 1973 sale price, the amount of the error is not the appropriate measure of remedy;[3] instead, an entire recalculation of permissible prices would be required, taking into account allowable banks or underrecoveries, cost allocations and permissible reallocations for the various product groups, to determine the amount, if any, of overcharges caused by the May 15, 1973 price error. Numerous new questions or issues, including offset arguments, may arise in the process of litigating such a wholesale recalculation, and the Agency's governmental intereat in enforcing regulatory compliance with an eye toward reasonable administrative economy would militate against a course of expending more resources than the amounts reasonably thought to be at stake.[4] Such considerations are entirely consistent with the provisions of the Economic Stabilization Act of 1970 in this area; ERA's enforcement authority is largely derived from section 209 of that Act, whereas the Act establishes in section 210 the coordinate right of private action.

Finally, while ERA had various reasons for not initiating an enforcement action related to the particular transactions between Tesoro and Fletcher, and accordingly could not plausibly bargain for additional consideration in settlement of Tesoro's potential section 209 liability, the settlement, as explained in the Notice and as stated in the Consent Order itself, resolves all of ERA's compliance disputes with Tesoro. Therefore, all purchasers of Tesoro's covered products would ordinarily be entitled to claim a refund in proceedings conducted by OHA pursuant to Subpart V. However, the amount of any award (based on proof of harm suffered), as well as the total amount available for Tesoro's refined product purchasers, are ultimately subject to OHA's determinations.

In contrast to the PMAA's arguments that insufficient monies had been designated for refined product purchasers, the end users argued that a $2 million attribution already represents a greater percentage of the settlement than the proportion of Tesoro's potential liability resulting from issues related to refined product sales. Accordingly, argued the end users, on a proportionate basis, refined product issues should receive an attribution of $1.4 million rather than the $2 million proposed by ERA. In his oral arguments, counsel for the end users argued that any claim by Fletcher should be precluded entirely. He argued that the notice of the proposed Consent Order explained that ERA's preliminary determination of a reasonable settlement amount was based on $137 million of refund claims which did not include the specific issues asserted by Fletcher. That amount, as described in the December 2, 1988 Notice, comprised Tesoro's total potential liability for the cases initiated by ERA. However, as discussed above, that fact should not preclude Fletcher from claiming a refund.

ERA agrees, however, that this issue is a relatively minor matter inasmuch as attribution of the settlement proceeds has nothing to do with the reasonableness of the settlement amount, and whatever ERA's view, it is not a binding determination.

ERA's view regarding attribution of portions of the settlement monies to refined product and crude oil transactions was the result of consideration of the amounts recoverable in litigation, the various litigation risks associated with the different cases, and the linkage of certain refined product issues which would distinctly alter dollar liability amounts. In any event, the OHA will decide the proration of the distribution.

[2] See *Exxon Company, USA*, 12 DOE ¶ 83,026 (1985), *vacated and remanded*, 35 FERC ¶ 61,033 (1986); *Texaco Inc.*, 14 DOE ¶ 83,034 (1986), *affirmed, vacated, and remanded*, 39 FERC ¶ 61,339 (1987); *Texaco Inc.*, 14 DOE ¶ 83,047, *affirmed, vacated, and remanded*, 39 FERC ¶ 61,087 (1987).

[3] The potential success or failure in litigation of passthrough arguments may be significantly affected when, as in the *Tesoro* entitlements case, the passthrough is direct and is a substantial portion of the remedial amount sought.

[4] These considerations have influenced and are consistent with ERA's frequently used approach of conducting sample audits designed to identify relatively significant or broad issues of regulatory compliance.

V. Decision

Upon considertaion of all of the comments, and based upon the reasons as set forth above and in the Notice of proposed Consent Order, ERA has determined to effect the Consent Order as proposed.

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By this notice, and pursuant to 10 CFR 205.199J, the proposed Consent Order between Tesoro and DOE executed on November 23, 1988, is made a final order of the Department of Energy, effective on the date of publication of this notice in the Federal Register.

Issued in Washington, DC, on January 13, 1989.

Milton C. Lorenz,

Chief Counsel, Office of Enforcement Litigation, Economic Regulatory Administration.

[FR Doc. 89-1414 Filed 1-19-89; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 89-74-NG]

Nicholson & Associates, Inc.; Application To Import and Export Natural Gas From and to Canada

AGENCY: Department of Energy, Economic Regulatory Administration.

ACTION: Notice of Application for Blanket Authorization to Import and Export Natural Gas from and to Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on December 14, 1988, of an application filed by Nicholson & Associates, Inc. (Nicholson), for blanket authorization to import up to 146 Bcf of natural gas from Canada and to export up to 36.5 Bcf of natural gas from the United States to Canada over a two-year period beginning on the date of first delivery.

The company intends to utilize existing pipeline facilities for the transportation of the volumes to be imported or exported and to submit quarterly reports detailing each transaction.

The application is filed with the ERA pursuant to section 3 of the Natural Gas Act and DOE Delegation Order No. 0204-1111. Protests, motions to intervene, notices of intervention and written comments are invited.

DATE: Protests, motions to intervene, or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed no later than February 22, 1989.

FOR FURTHER INFORMATION CONTACT:

John Boyd, Natural Gas Division, Economic Regulatory Administration, U.S. Department of Energy, Forrestal Building, Room 3F-070, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-4523.

Diana Stubbs, Natural Gas and Mining Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6667.

SUPPLEMENTARY INFORMATION:

Nicholson, a Washington state corporation with its principal place of business in Kirkland, Washington, has a broad corporate charter which includes the authority to market natural gas. The company proposes to import natural gas from various suppliers and to resell such gas on a non-discriminatory basis to purchasers, including local distributors and end users. It proposes to export gas obtained from various domestic suppliers and resell such gas to local gas distributors and end users in Canada. Nicholson would act either on its own behalf or as a broker or agent on behalf of a supplier or purchaser.

All of the contracts for the import or export of natural gas would involve short-term or spot transactions. The terms of each contract including price, duration, volume, renegotiation, price adjustment provisions and take-or-pay, if any, will be freely negotiated. The short-term contracts will reflect and be responsive to current conditions of the natural gas market.

In support of its application, Nicholson asserts that the blanket import authority requested would allow it to import natural gas for short-term sales under market responsive terms and conditions which will assure both the competitiveness of the import and the need for the gas imported. The short-term nature of the sales will minimize domestic reliance on imported gas. In addition, Nicholson tends to purchase gas from a number of sources and would have sufficient flexibility to substitute supplies should one source become unavailable. With regard to gas to be exported, Nicholson maintains that there is no current domestic need for the volumes proposed. Some of the gas to be exported may be Canadian gas, the importation of which is covered by said application. The short-term or spot nature of the export sales and the market-responsive gas sales contracts provide assurances that domestic purchasers of gas may bid and purchase the natural gas.

The decision on the application for import authority will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). In reviewing natural gas export applications, the ERA considers the domestic need for the gas to be exported, and any other issue determined by the Administrator to be appropriate in a particular case. Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines for the requested import authority, and on the domestic need for gas the applicant proposes to export. As noted above, the applicant asserts that import and export arrangements transacted under the requested authority will be competitive, and that there is no current need for domestic gas that would be exported under the proposed short-term arrangements. Parties opposing the arrangement bear the burden of overcoming these assertions.

Nicholson requests that an authorization be granted on an expedited basis. An ERA decision on Nicholson's request for expedited treatment will not be made until all responses to this notice have been received and evaluated.

All parties should be aware that if the ERA approves this requested blanket import/export it will permit the import or export of the gas at any existing point of entry and through any existing transmission system.

NEPA Compliance

On August 9, 1988, the DOE published in the Federal Register (53 FR 29934) a notice of proposed amendments to its guidelines for compliance with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, effective on an interim basis upon publication. In the notice, the DOE proposed to amend the agency's NEPA guidelines to add to its list of categorical exclusions the approval or disapproval of an import/export authorization for natural gas in cases not involving new construction. Application of the categorical exclusion in any particular case raises a rebuttable presumption that the ERA's action is not a major Federal action under NEPA. Unless the ERA receives comments indicating the presumption does not or should not apply in this case, no further NEPA review will be conducted by the DOE.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions to intervene, notice of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590.

Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room 3F-070 RG-23 Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585. They must be filed no later than 4:30 p.m. e.s.t., February 22, 1989.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Nicholson's application is available for inspection and copying in the Natural Gas Division Docket Room, 3F-056 at the above address. The docket room is open between the hours of 8:00 a.m., and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, January 4, 1989.

Constance L. Buckley,

Acting Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 89-1415 Filed 1-19-89; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA C&E 89-04; Certification Notice 29]

Notice of Filing of Certification of Compliance; Coal Capability of New Electric Powerplants; Power Resources Inc.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of Filing.

SUMMARY: Title II of the Powerplant and Industrial Fuel Use Act of 1978, as amended ("FUA" or "the Act") (42 U.S.C. 8301 *et seq*), provides that no new electric powerplant may be constructed or operated as a base load powerplant without the capability to use coal or another alternate fuel as a primary energy source (section 201(a), 42 U.S.C. 8311 (a), Supp. V. 1987). In order to meet the requirement of coal capability, the owner or operator of any new electric powerplant to be operated as a base load powerplant proposing to use natural gas or petroleum as its primary energy source may certify, pursuant to section 201(d), to the Secretary of Energy prior to construction, or prior to operation as to base load powerplant, that such powerplant has the capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) as of the date it is filed with the Secretary. The Secretary is required to publish in the Federal Register a notice reciting that the certification has been filed. One owner and operator of a proposed new electric base load powerplant has filed a self certification in accordance with section 201(d).

Further information is provided in the SUPPLEMENTARY INFORMATION section below.

SUPPLEMENTARY INFORMATION: .

The following company has filed a self certification:

Name	Date received	Type of facility	Megawatt capacity	Location
Power Resources, Inc., Houston, TX	12-30-88	Topping cycle	58.35	Big Spring, TX

Amendments to the FUA on May 21, 1987, (Public Law 100-42) altered the general prohibitions to include only new electric base load powerplants and to provide for the self certification procedure.

Issued in Washington, DC on January 11, 1989.

Constance L. Buckley,

Acting Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 89-1416 Filed 1-19-89; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA C&E 89-05; Certification Notice 30]

Notice of Filing of Certification of Compliance: Coal Capability of New Electric Powerplants; Indeck Energy Services

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of Filing.

SUMMARY: Title II of the Powerplant and Industrial Fuel Use Act of 1978, as amended ("FUA" or "the Act") (42 U.S.C. 8301 *et seq*), provides that no new electric powerplant may be constructed or operated as a base load powerplant without the capability to use coal or another alternate fuel as a primary energy source (section 201(a), 42 U.S.C. 8311 (a), Supp. V. 1987). In order to meet the requirement of coal capability, the owner or operator of any new electric powerplant to be operated as a base load powerplant proposing to use natural gas or petroleum as its primary energy source may certify, pursuant to section 201(d), to the Secretary of Energy prior to construction, or prior to operation as to base load powerplant, that such powerplant has the capability

to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) as of the date it is filed with the Secretary. The Secretary is required to publish in the Federal Register a notice reciting that the certification has been filed. One owner and operator of two proposed new electric base load powerplants has filed a self certification in accordance with section 201(d).

Further information is provided in the SUPPLEMENTARY INFORMATION section below.

SUPPLEMENTARY INFORMATION:

The following company has filed two self certifications:

Name	Date received	Type of facility	Megawatt capacity	Location
Indeck Energy Services, Inc., Wheeling, IL	01-09-89	Combined cycle cogen	55	Silver Springs, NY
Indeck Energy Services, Inc., Wheeling, IL	01-09-89	Combined cycle cogen	53.4	Tonawanda, NY

Amendments to the FUA on May 21, 1987, (Public Law 100-42) altered the general prohibitions to include only new electric base load powerplants and to provide for the self certification procedure.

Issued in Washington, DC on January 12, 1989.

Constance L. Buckley,

Acting Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 89-1417 Filed 1-19-89; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER82-774-001, et al.]

Nantahala Power and Light Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. Nantahala Power and Light Company

[Docket No. ER82-774-001, ER82-774-008]

January 12, 1989.

Take notice that on December 23, 1988, Nantahala Power and Light Company (Nantahala) tendered for filing its compliance filing in compliance with the Commission's order dated November 23, 1988.

Comment date: January 20, 1989, in accordance with Standard Paragraph E at the end of this notice.

2. Oroville Energy, Inc.

[Docket No. QF88-110-000]

January 12, 1989.

On December 30, 1988, Oroville Energy, Inc. (Applicant) of 305-111th Avenue, NE., Bellevue, Washington, 98004, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at 2723 South Fifth Avenue, Oroville, California. The facility will consist of eight Waukesha Model 7042 GSI engine generators. Applicant states that, the thermal output of the facility, in the form of hot engine jacket water, will be used in a brine processing facility to evaporate, concentrate and crystalize salts out of oil and gas well production brine and to treat other aqueous waste streams produced in the area. The primary energy source for the facility will be natural gas. The electric power production capacity of the facility will be 7.5 MW. Construction of the facility is expected to begin in February 1989.

Comment date: Thirty days from publication in the Federal Register, in accordance with Standard Paragraph E at the end of this notice.

3. Alpha Joshua, Inc.

[Docket No. QF88-365-001]

January 13, 1989.

On January 3, 1989, Beta Joshua, Inc. (Applicant), of 665 West Avenue J, Lancaster, California 93534 submitted for filing an application for recertification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in Kern County, California, to the west of the town of Mojave. The original application was filed on May 4, 1988 and was granted on September 30, 1988; 44 FERC ¶ 61,442 (1988). The recertification is requested due to change in ownership structure to 30 MW. The facility which includes 13.76% undivided interest in a 46 mile of 230 KV transmission line will now be jointly developed and constructed by SeaWest Industries Inc. (SeaWest) and Toyo Construction Company (TCC). TCC is a wholly-owned California subsidiary of Toyo Menka Kaisha, Ltd., a Japanese Trading Company.

Comment date: Thirty days from publication in the Federal Register, in accordance with Standard Paragraph E at the end of this notice.

4. Beta Willow, Inc.

[Docket No. QF88-366-001]

January 13, 1989.

On January 3, 1989, Beta Joshua, Inc. (Applicant), of 665 West Avenue J, Lancaster, California 93534 submitted for filing an application for recertification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in Kern County, California, to the west of the town of Mojave. The original application was filed on May 4, 1988 and was granted on September 30, 1988; 44 FERC ¶ 61,442 (1988). The recertification is requested due to change in ownership structure to 30 MW. The facility which includes 13.76% undivided interest in a 46 mile of 230 KV transmission line will now be jointly developed and constructed by SeaWest Industries Inc. (SeaWest) and Toyo Construction Company (TCC). TCC is a wholly-owned California subsidiary of Toyo Menka Kaisha, Ltd., a Japanese Trading Company.

Comment date: Thirty days from publication in the Federal Register, in accordance with Standard Paragraph E at the end of this notice.

5. Beta Joshua, Inc.

[Docket No. QF88-370-001]

January 13, 1989.

On January 3, 1989, Beta Joshua, Inc. (Applicant), of 665 West Avenue J, Lancaster, California 93534 submitted for filing an application for recertification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in Kern County, California, to the west of the town of Mojave. The original application was filed on May 4, 1988 and was granted on September 30, 1988; 44 FERC ¶ 61,442 (1988). The recertification is requested due to change in ownership structure and increase in electric power production capacity from 18 MW to 25 MW. The facility which includes 11.01% undivided interest in a 46 mile of 230 KV transmission line will now be jointly developed and constructed by SeaWest Industries Inc. (SeaWest) and Toyo Construction Company (TCC). TCC is a wholly-owned California subsidiary of Toyo Menka Kaishal, Ltd., a Japanese Trading Company.

Comment date: Thirty days from publication in the Federal Register, in accordance with Standard Paragraph E at the end of this notice.

6. Southern California Edison Company

[Docket No. ER88-148-000]

January 13, 1989.

Take notice that on December 27, 1988, Southern California Edison Company (Edison) tendered for filing a notice of extension of rates for the purchase of Replacement Capacity by the Cities of Anaheim, Azusa, Banning, Colton, Riverside, and Vernon, California (Cities) from Edison under the provision of the following rate schedules:

Entity	Rate schedule FERC No.
1. City of Anaheim	95,208
2. City of Azusa	144,209
3. City of Banning	145,210
4. City of Colton	146,211
5. City of Riverside	94,212
6. City of Vernon	154

Copies of this filing were served upon the Public Utilities Commission of the State of California and the Cities of Anaheim, Azusa, Banning, Colton, Riverside, and Vernon, California.

Comment date: January 30, 1989, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-1332 Filed 1-19-89; 8:45 am]

BILLING CODE 6717-01-M

[Project Nos. 803-014, et al.]

Hydroelectric Applications; Pacific Gas & Electric Company, et al.; Applications Filed with the Commission

Take notice that the following hydroelectric applications have been filed with the Federal Energy Regulatory Commission and are available for public inspection:

1 a. *Type of Application:* Amendment of License.

b. *Project No.:* 803-014.

c. *Date Filed:* December 24, 1985.

d. *Applicant:* Pacific Gas and Electric Company.

e. *Name of Project:* DeSabla-Centerville Water Power Project.

f. *Location:* On Butte Creek and West Branch Feather River, in Butte County, California.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. R.J. Strub, Manager, Hydro Generation, Pacific Gas and Electric Company, One California Street, Room F-759, San Francisco, CA 94106, (415) 972-9320.

i. *FERC Contact:* Mr. William Roy-Harrison, (202) 376-9830.

j. *Comment Date:* February 17, 1989.

k. *Description of Project:* The amendment of license as originally proposed, and noticed on May 8, 1986, consisted of adding a penstock and a 4.2 MW generating unit at the existing DeSabla Powerhouse and replacing the penstock and the existing Centerville Powerhouse. However, now the applicant wants authorization only for replacing the existing Centerville Powerhouse and replacing the existing generating units with a new more efficient 8.5 MW generating unit.

l. This notice also consists of the following standard paragraphs: B, C, and D1.

2 a. *Type of Application:* Amendment of License.

b. *Project No.:* 2157-031.

c. *Date Filed:* October 14, 1988.

d. *Applicant:* Snohomish County PUD No. 1.

e. *Name of Project:* Henry M. Jackson Hydroelectric Project.

f. *Location:* Snohomish County, Washington.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* J.D. Maner, 2320 California Street, Everett, Washington, 98201, (206) 258-8211.

i. *FERC Contact:* Robert Crowley, (202) 376-9053.

j. *Comment Date:* February 14, 1989.

k. *Description of Project:* The licensee proposes to change the rule curve for the Spada Lake reservoir to provide additional flood control storage per article 57 of the license.

l. This notice also consists of the following standard paragraphs: B, C, and D2.

3 a. *Type of Application:* Minor License.

b. *Project No.:* 8283-004.

c. *Date Filed:* October 13, 1988.

d. *Applicant:* Summit Hydropower.

e. *Name of Project:* Falls Mill Dams Hydropower Project.

f. *Location:* On the Yantic River near Norwich, New London County, Connecticut.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. Duncan Broatch, P.O. Box 122, Putnam, CT 06260, (203) 928-2002.

i. *FERC Contact:* Ed Lee, (202) 376-5780.

j. *Comment Date:* March 3, 1989.

k. *Description of Project:* The proposed run-of-river project would consist of: (a) Two existing dams and reservoirs, approximately 600 feet apart with a connecting 6-foot-diameter penstock, and consisting of an upper dam approximately 12-foot-high and 103-foot-long with a 4-acre upper reservoir as well as a lower by-pass dam approximately 12-foot-high and 140-foot-long with a 2-acre reservoir; (b) a new 25-foot-wide and 25-foot-long concrete powerhouse housing a single 1-MW generating unit located and connected by a 300-foot-long penstock downstream from the lower by-pass dam; (c) a new 50-foot-long underground conduit connecting the powerhouse switchgear to the transformer; and (d) appurtenant facilities. The project site is primarily owned by the City of Norwich, Connecticut. The applicant estimates that the average annual generation would be 4.3 kWh.

l. *Purpose of Project:* All project energy will be sold to a local utility company.

m. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

4 a. *Type of Application:* Transfer of License.

b. *Project No.:* 5361-005.

c. *Date Filed:* December 15, 1988.

d. *Applicant:* Olsen Power Project, Inc. (Licensee) and Olsen Power Partners (Transferee).

e. *Name of Project:* Olsen Water Power Project.

f. *Location:* On Old Crow Creek, a tributary of the Sacramento River partially on land administered by the Bureau of Land Management in Shasta County, California.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. Wayne L. Rogers, 410 Severn Avenue, Suite 313, Annapolis, MD 21403.

i. *FERC Contact:* Ms. Julie Bernt, (202) 376-1936.

j. *Comment Date:* February 27, 1989.

k. *Description of Project:* On April 7, 1987, a major license was issued to Olsen Power Project, Inc. for the construction, operation and maintenance of the Olsen Water Power Project No. 5361. It is proposed to transfer the license to Olsen Power Partners. The purpose of the proposed license transfer is to facilitate the financing of this project.

The licensee certifies that it has fully complied with the terms and conditions of its license and obligates itself to pay all annual charges accrued under the license to the date of the transfer. The transferee accepts all the terms and conditions of the license and agrees to be bound thereby to the same extent as though it were the original licensee.

l. The notice also consists of the following standard paragraphs: B and C.

5 a. *Type of Filing:* Preliminary Permit.

b. *Project No.:* 10065-000.

c. *Date Filed:* September 23, 1988.

d. *Applicant:* Pacific Water and Power, Inc.

e. *Name of Project:* Savage Dam.

f. *Location:* At the existing Savage Dam in San Diego County, California.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. Robert R. Doelle, P.O. Box 6022, Stanford, CA 94305, (408) 778-5608.

i. *FERC Contact:* Mr. William Roy-Harrison, (202) 376-9830.

j. *Comment Date:* March 20, 1989.

k. *Description of Project:* The proposed project would consist of: (1) An existing 140-foot-high, 750-foot-long Savage Dam; (2) an existing reservoir with a gross storage capacity of 49,510 acre feet, and a surface area of 1,110 acres; (3) an existing 5- to 7-foot-diameter, 3,000- to 5,000-foot-long penstock, (4) one to three powerhouses containing generating units with a total rated capacity of 2,605 kW; and (5) a transmission line. The applicant estimates a 17,520 MWh average annual energy production.

l. *Purpose of Project:* Power would be sold to a local utility.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

6 a. *Type of Filing:* Preliminary Permit.

b. *Project No.:* 10066-000.

c. *Date Filed:* September 26, 1988.

d. *Applicant:* Pacific Water and Power, Inc.

e. *Name of Project:* San Vincente Reservoir/Dam.

f. *Location:* At the existing San Vincente Dam in San Diego County, California.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. Robert R. Doelle, P.O. Box 6022, Stanford, CA 94305, (408) 778-5608.

i. *FERC Contact:* Mr. William Roy-Harrison, (202) 376-9830.

j. *Comment Date:* March 20, 1989.

k. *Description of Project:* The proposed project would consist of: (1) An existing 203-foot-high, 940-foot-long San Vincente Dam; (2) an existing reservoir with a gross storage capacity of 90,230 acre feet, and a surface area of 1,060 acres; (3) an existing 7- to 13-foot-diameter, 3,000- to 5,000-foot-long penstock, (4) two powerhouses, containing generating units, with a total rated capacity of 5,439 kW; and (5) a transmission line. The applicant estimates a 47,645 MWh average annual energy production.

l. *Purpose of Project:* Power would be sold to a local utility.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

7 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 10092-000.

c. *Date Filed:* November 4, 1988.

d. *Applicant:* Robert A. Davis III.

e. *Name of Project:* Yellow Creek.

f. *Location:* On Yellow Creek near Dawsonville, Dawson County, Georgia.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Robert A. Davis III, 255 Ashley Circle North, Martinez, GA 30907, (404) 863-2171.

i. *FERC Contact:* Mary Nowak, (202) 376-9834.

j. *Comment Date:* March 3, 1989.

k. *Description of Project:* The project would consist of the following facilities: (1) A proposed reconstructed reinforced concrete dam 5 feet to 8 feet high at the center of a stream; (2) a proposed reservoir with a surface elevation of approximately 1,085 feet mean sea level and a surface area of ¼ acre; (3) a proposed 2,500-foot-long by 18-inch-diameter penstock; (4) a proposed powerhouse with a turbine-generator unit having a total installed capacity of 275 kilowatts; (5) a proposed 2½-mile, 3-phase transmission line; and (6) appurtenant facilities. The applicant estimates that the average annual generation would be 2,148,320 kilowatthours. The dam would be owned by Robert A. Davis III. The applicant estimates that the cost of the studies under permit would be no more than $8,000.00.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

8 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 10700-000.

c. *Date Filed:* December 1, 1988.

d. *Applicant:* City of Vernon, California.

e. *Name of Project:* Bear Butte Pumped Storage.

f. *Location:* On Big Creek and Huntington Lake, within Sierra National Forest in Fresno County, California, Township 6 South, Ranges 25 and 26 East.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* David B. Brearly, City Attorney, City of Vernon, Hacienda Professional Plaza, 2440 S. Hacienda Blvd. # 223, Hacienda, Heights, CA 91745, (818) 336-3408.

i. *FERC Contact:* Mr. James Hunter, (202) 376-1943.

j. *Comment Date:* March 3, 1989.

k. *Description of Project:* The proposed project would consist of: (1) A 290-foot-high concrete gravity type dam with an overall crest length of 2,620 feet; (2) a reservoir with a 26,000-acre-foot capacity at normal pool elevation 8,186 feet; (3) a 7,600-foot-long, 15-foot-diameter underground penstock; (4) an underground powerhouse/pumping facility containing a turbine/pumping unit with a capacity of 120 MW and an average annual output of 170 GWH; (5) a 14,300-foot-long tailrace tunnel; (6) an inlet/outlet at elevation 6,680, beneath the surface of Huntington Lake; (7) a 5,600-foot-long access tunnel; and (8) a 23,400-foot-long, 230-KV transmission line connecting to Southern California Edison's existing Big Creek No. 1 Swithyard. The estimated cost of permit activities is $1,000,000.

l. *Purpose of Project.* Project power would be used to serve the applicant's and other municipal electric utility service areas.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

9 a. *Type of Filing:* Preliminary Permit.

b. *Project No.:* 10703-000.

c. *Date Filed:* December 7, 1988.

d. *Applicant:* City of Centralia, Washington.

e. *Name of Project:* Yelm Hydroelectric Project.

f. *Location:* On the Nisqually River near the town of Yelm, in Thurston and Lewis Counties, Washington.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Robert E. Gatton, CH2M Hill Northwest, Inc., P.O. Box 91500, Seattle, WA 98009-2050, (206) 453-5000.

i. *FERC Contact:* Thomas Dean, (202) 376-9562.

j. *Comment Date:* March 20, 1989.

k. *Description of Application:* The existing project consists of: (1) A 20-foot-high concrete diversion dam with a crest elevation of 334.5 feet national geodetic vertical datum (NGVD); (2) a 7-acre diversion pool with a normal maximum water surface elevation of 336 feet NGVD; (3) a 105-foot-long, 8-foot-wide fishway; (4) a 9.1-mile-long earthen power canal; (5) two 84-inch-diameter, 416-foot-long penstocks leading to; (6) a powerhouse containing two 3-MW and one 6-MW generating units with a combined capacity of 12 MW; (7) a 160-foot-long tailrace discharging to the Nisqually River; and (8) a 26.1-mile-long, 69-kV transmission line.

The applicant states that the average annual energy production is 74.9 GWh. The approximate cost of the studies under the permit would be $300,000.

l. *Purpose of Project:* All of the power generated at this project is used in the applicant's power system.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

10 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 10705-000

c. *Date Filed:* December 9, 1988.

d. *Applicant:* Alpyn Creek Development Corporation.

e. *Name of Project:* Huntersfield.

f. *Location:* Near Schoharie Creek in the Towns of Prattsville and Roxbury, Greene and Delaware Counties, New York.

g. *Filed Pursuant to :* Federal Power Act 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact: Mr. David Willett, 140 John James Audubon Parkway, Amherst, NY 14228-1180, (716) 689-3737.*

i. *FERC Contact:* Charles T. Raabe, (202) 376-9778.

j. *Comment Date:* March 10, 1989.

k. *Description of Project:*

The proposed "closed system" hydroelectric pumped storage project would consist of: (1) an 18,000-foot-long, 130-foot-high, earthfill upper dike enclosing; (2) a 14,000 acre-foot upper reservoir having a 400 acre surface area at maximum water surface elevation 2,000 feet MSL; (3) a series of underground concrete and steel lined shafts, tunnels, and manifolds connecting the upper reservoir, powerhouse, and lower reservoir; (4) an underground powerhouse containing four—250-MW reversible Francis—type pump/turbines operated at an 815-foot gross average head and connected to four motor/generators; (5) an access tunnel; (6) an 18,000-foot-long, 100-foot-high, earthfill lower dike enclosing; (7) an 14,000 acre-foot lower reservoir having a 200 acre surface area at maximum water surface elevation 1,220 feet MSL; (8) a switchyard and maintenance building; (9) a 345-kV transmission line to the existing Leeds Substation or a 230-kV transmission line to the existing Delhi Substation; and (10) appurtenant facilities.

The proposal would have an installed pumping/generating capacity of 1,000-MW and would provide up to 10-hours of daily generation at peak capacity. Power consumed/generated would be purchased/sold to utilities within the New York Power Pool. Applicant estimates that the cost of the studies under the permit and preparation of an FERC licenses application would be $1,500,000.

1. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

11 a. *Type of Filing:* Major License (Less than 5-MW).

b. *Project No.:* 9656-002.

c. *Date Filed:* December 31, 1986.

d. *Applicant:* Marble Creek Hydro, Inc.

e. *Name of Project:* Marble Creek Project.

f. *Location:* On Marble Creek, in Shoshone County, Idaho occupying U.S. lands within the St. Joe National Forest and lands administered by the Bureau of Land Management. (Township 45 North Range 3 East Boise Meridian).

g. *Filed Pursuant to :* Federal Power Act 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* James R. Morris, Vice President, Marble Creek Hydro, Inc. P.O. Box 1016, Lewiston, ID 83501, (208) 799-1723.

i. *FERC Contact:* Thomas Dean, (202) 376-5962.

j. *Comment Date:* March 13, 1989.

k. *Description of Project.* The proposed project would consist of: (1) An 8-foot-high, 60-foot-long rock and concrete diversion structure at elevation 2,322 feet msl; (2) a 30-foot-long by 15-foot wide gate house with 36-inch-diameter pipe for sluicing sediment; (3) an 84-inch-diameter, 3,000-foot-long buried steel penstock leading to; (4) a 40-foot-wide by 150-foot-long powerhouse containing two generating units rated at 2,000 kilowatt (kW) and 1,200 kW with a combined installed capacity of 3,200 kW; (5) a tailrace; (6) a 2.2-mile-long, 24-kV transmission line; and (7) appurtenant facilities.

The applicant estimates the average annual energy production to be 10 GWh.

l. *Purpose of Project:* Applicant intends to sell the power generated from the proposed facility to the Washington Water Power Company.

m. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

Standard Paragraphs

A3. Development Application—Any qualified development applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or

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before the specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a development application (specify which type of application), and be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protests, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Dean Shumway, Director, Division of Project Review, Federal Energy Regulatory Commission, Room 203–RB, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D1. Agency Comments—States, agencies established pursuant to federal law that have the authority to prepare a comprehensive plan for improving, developing, and conserving a waterway affected by the project, federal and state agencies exercising administration over fish and wildlife, flood control, navigation, irrigation, recreation, cultural or other relevant resources of the state in which the project is located, and affected Indian tribes are requested to provide comments and recommendations for terms and conditions pursuant to the Federal Power Act as amended by the Electric Consumer Protection Act of 1986, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. No. 88–29, and other applicable statutes. Recommended terms and conditions must be based on supporting technical data filed with the Commission along with the recommendations, in order to comply with the requirement in section 313(b) of the Federal Power Act, 16 U.S.C. 8251(b), that Commission findings as to facts must be supported by substantial evidence.

All other federal, state, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the statutes listed above. No other formal requests will be made. Responses should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the applicant. If an agency does not respond to the Commission within the time set for filing, it will be presumed to have no comments. One copy of an agency's response must also be sent to the Applicant's representatives.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtain by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: January 13, 1989, Washington, DC.

Lois D. Cashell,

Secretary.

[FR Doc. 89–1331 Filed 1–19–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP89–548–000, et al.]

Northwest Pipeline Co., et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Northwest Pipeline Company

[Docket No. CP89–555–000]

January 12, 1989.

Take notice that on January 9, 1989, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP89–216–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under its blanket certificate issued in Docket No. CP85–578–000 pursuant to section 7 of the Natural Gas Act for Harrah's Tahoe (Harrah), all as more fully set forth in the request on file with the Commission and open to public inspection.

Northwest proposes to transport natural gas for Harrah on an interruptible basis, pursuant to a transportation agreement dated October 28, 1988. Northwest explains that service commenced November 17, 1988, under § 284.223(a) of the Commission's Regulations, as reported on December 16, 1988, in Docket No. ST89–1316–000. Northwest further explains that the peak day quantity would be 720 NMBtu, the average daily quantity would be 450 MMBtu, and that the annual quantity would be 160,000 MMBtu. Northwest explains that it would receive natural gas from various sources in Wyoming, Colorado, Utah and Washington and would redeliver the gas for Harrah's account to Paiute Pipeline Company in Owyhee County, Idaho.

Comment date: February 27, 1989, in accordance with Standard Paragraph G at the end of this notice.

2. United Gas Pipe Line Company

[Docket No. CP89–548–000]

January 12, 1989.

Take notice that on January 6, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas, 77251–1478, filed in Docket No. CP89–548–000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act for permission and approval to abandon firm sales service to Westvaco Corporation (Westvaco), under the certificate issued in Docket No. CP82–430–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

United proposes to abandon firm sales service on its system to Westvaco at the Tall Oil Plant near DeRidder, Beauregard Parish, Louisiana. United states that Westvaco has consented to the proposed abandonment. United further states that it would leave the facilities associated with the proposed abandonment in place to provide either transportation or sales service at some future time.

Comment date: February 27, 1989, in accordance with Standard Paragraph G at the end of this notice.

3. Trunkline Gas Company

[Docket No. CP89–587–000]

January 12, 1989.

Take notice that on January 10, 1989, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas, 77251–1642, filed in Docket No. CP89–587–000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to provide transportation service on behalf of ANR Gathering Company (ANR), a shipper and marketer of natural gas, under its blanket certificate issued in Docket No. CP86–568–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Trunkline requests authorization to transport, on an interruptible basis, up to a maximum of 209,000 dt of natural gas per day for ANR from receipt points located in the states of Illinois, Louisiana, Tennessee and Texas. Trunkline will then transport and redeliver the gas to Columbia Gulf Company in St. Mary Parish, Louisiana. The ultimate end users are identified as Anchor Glass Corporation, City of Charlottesville, Virginia, City of Richmond, Consolidated Edison Company of New York Inc., Public Service Electric & Gas Company and Southern Gas Company. Trunkline anticipates transporting, on an average day 100,000 dt and an annual volume of 36,500,000 dt.

Trunkline states that the transportation of natural gas for ANR commenced December 1, 1988, as reported in Docket No. ST89–1479–000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations.

Comment date: February 27, 1989, in accordance with Standard Paragraph G at the end of this notice.

4. United Gas Pipe Line Company

[Docket No. CP89–537–000]

January 12, 1989.

Take notice that on January 5, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas, 77251–1478, filed in Docket No. CP89–537–000, a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under its blanket certificate issued in Docket No. CP86–6–000, pursuant to section 7 of the Natural Gas Act for EnTrade Corporation (EnTrade), a marketer, all as more fully set forth in the request on file with the Commission and open to public inspection.

United proposes to transport up to a maximum of 77,250 MMBtu of natural gas per day for EnTrade from the existing interconnection between United and Sea Robin Pipeline Company near Erath, Vermilion Parish, Louisiana, to various delivery points also in the state of Louisiana. United anticipates transporting up to 77,250 MMBtu on a peak day and average day, 28,196,250 MMBtu annually for EnTrade. United explains that service commenced December 4, 1988, under § 284.223(a) of the Commission's Regulations, as reported in Docket Nos. ST89–1301.

Comment date: February 27, 1989, in accordance with Standard Paragraph G at the end of this notice.

5. Natural Gas Pipeline Company of America

[Docket No. CP89–563–000]

January 12, 1989.

Take notice that on January 9, 1989, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP89–563–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for EP Operating Company (EP), a producer, under the blanket certificate issued in Docket No. CP86–582–000, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Natural states that pursuant to a transportation agreement dated November 2, 1988, under its Rate Schedule ITS, it proposes to transport for EP up to 10,000 MMBtu per day equivalent of natural gas (plus any additional volumes accepted pursuant to the overrun provisions of Natural's Rate Schedule ITS). Natural states that it would receive the gas at existing receipt points in Oklahoma and that it would transport and deliver the gas for EP's account at an interconnection with Lone Star Gas Company in Wise County, Texas.

Natural advises that service under § 284.223(a) commenced November 8, 1988, as reported in Docket No. ST89–1641. Natural further advises that it would transport 6,500 MMBtu on an average day and 2,372,500 MMBtu annually.

Comment date: February 27, 1989, in accordance with Standard Paragraph G at the end of this notice.

6. Natural Gas Pipeline Company of America

[Docket No. CP89–509–000]

January 12, 1989.

Take notice that on January 9, 1989, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP89–509–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Rangeline Corporation (Rangeline), a marketer, under the blanket certificate issued in Docket No. CP86–582–000, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Natural states that pursuant to a transportation agreement dated October 13, 1988, as amended, under its Rate Schedule ITS, it proposes to transport for Rangeline up to 500,000 MMBtu per day equivalent of natural gas (plus any additional volumes accepted pursuant to the overrun provisions of Natural's Rate Schedule ITS). Natural states that it would receive the gas at existing receipt points in Illinois, Texas, Oklahoma, Kansas, Arkansas, Iowa, Louisiana and offshore Louisiana, and that it would transport and deliver the gas in Michigan, Illinois, Kansas, Texas and Iowa.

Natural advises that service under § 284.223(a) commenced November 8, 1988, as reported in Docket No. ST89–1637. Natural further advises that it would transport 50,000 MMBtu on an average day and 18,250,000 MMBtu annually.

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Comment date: February 27, 1989, in accordance with Standard Paragraph G at the end of this notice.

7. Moraine Pipeline Company

[Docket No. CP89-545-000]

January 12, 1989.

Take notice that on January 6, 1989, Moraine Pipeline Company (Moraine) 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP89-545-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) and the Natural Gas Policy Act (18 CFR 284.223) for authorization to transport natural gas for National Energy Systems, Inc. (NES), a marketer of natural gas, under Moraine's blanket certificate issued in Docket No. CP86-492-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with Commission and open to public inspection.

Moraine proposes to transport on an interruptible basis up to 50,000 MMBtu of natural gas equivalent per day, plus additional quantities of overrun gas, on behalf of NES pursuant to a transportation agreement dated October 17, 1988, between Moraine and NES. Moraine would receive gas at an existing point of receipt in Lake County, Illinois and redeliver equivalent volumes at an existing delivery point in Kenosha County, Wisconsin.

Moraine further states that the estimated average daily and annual quantities would be 125 MMBtu and 45,625 MMBtu, respectively. Service under § 284.223(a) commenced on November 22, 1988, as reported in Docket No. ST89-1614-000, it is stated.

Comment date: February 27, 1989, in accordance with Standard Paragraph G at the end of this notice.

8. Tennessee Gas Pipeline Company

[Docket No. CP89-564-000]

January 12, 1989.

Take notice that on January 10, 1989, Tennessee Gas Pipeline Company, (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP89-564-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide a transportation service for Cornerstone Production Corporation (Cornerstone), a marketer, under the blanket certificate issued in Docket No. CP87-115-000 on June 18, 1987, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Tennessee states that pursuant to a transportation agreement dated November 23, 1988, as amended on December 19, 1988, under its Rate Schedule IT, it proposes to transport up to 60,000 dekatherms (dt) per day equivalent of natural gas for Cornerstone. Tennessee states that it would transport the gas from receipt points located offshore Louisiana and in Louisiana and delivery such gas for Cornerstone's account to (1) Columbia Gulf Transmission Corporation at Egan B, Acadia Parish, Louisiana; (2) Florida Gas Company at (a) Carnes, Stone County, Mississippi, (b) Vinton, Calcasieu Parish, Louisiana; and (c) Southwest Jefferson Isle, Vermilion County, Louisiana; and (3) Zapata Gathering in Starr County, Texas.

Tennessee advises that service under § 284.223(a) commenced December 1, 1988, as reported in Docket No. ST89-1390 (filed December 20, 1988). Tennessee further advises that it would transport 60,000 dt on an average day and 21,900,000 dt annually.

Comment date: February 27, 1989, in accordance with standard Paragraph G at the end of this notice.

9. ANR Pipeline Company

[Docket No. CP89-579-000]

January 13, 1989.

Take notice that on January 10, 1989, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP89-579-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to provide transportation service on behalf of Entrade Corporation (Entrade), a marketer of natural gas, under ANR's blanket certificate issued in Docket No. CP88-532-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

ANR requests authorization to transport, on an interruptible basis, up to a maximum of 20,000 dekatherms of natural gas per day for Entrade from receipt points located in Oklahoma, Texas, Offshore Texas, Kansas, Louisiana, Offshore Louisiana, Kentucky, Indiana, Ohio, Wisconsin, Michigan and Illinois, to a delivery point located in Allegan County, Michigan. ANR anticipates transporting an annual volume of 7,300,000 dekatherms.

ANR states that the transportation of natural gas for Entrade commenced October 18, 1988, as reported in Docket No. ST89-794-000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations and the blanket certificate issued to ANR in Docket No. CP88-532-000.

Comment date: February 27, 1989, in accordance with standard Paragraph G at the end of this notice.

10. Tennessee Gas Pipeline Company

[Docket No. CP89-582-000]

January 13, 1989.

Take notice that on January 10, 1989, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP89-582-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide transportation service for Ultramar Oil and Gas, Limited (Ultramar), a producer, under the blanket certificate issued in Docket No. CP87-115-000 on June 18, 1987, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Tennessee states that pursuant to a transportation agreement dated November 7, 1988, under its Rate Schedule IT, it proposes to transport up to 4,030 dekatherms (dt) per day equivalent of natural gas Ultramar for a point of receipt listed in Exhibit "A" of the agreement to a delivery point also listed in Exhibit "A". Tennessee states that it would receive the gas at an existing point on its system located in Cameron Parish, Louisiana, and that it would deliver the gas for Ultramar's account to Southern Natural Gas Company in St. Mary Parish, Louisiana. Tennessee further states that the ultimate delivery point is located in the state of Alabama.

Tennessee advises that service under §284.223(a) commenced November 22, 1988, as reported in Docket No. ST89-1204 (filed December 9, 1988). Tennessee further advises that it would transport 4,030 dt on an average day and 484,320 dt annually.

Comment date: February 27, 1989, in accordance with standard Paragraph G at the end of this notice.

11. Panhandle Eastern Pipe Line Company

[Docket No. CP89-590-000]

January 13, 1989.

Take notice that on January 10, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-590-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Amgas, Inc. (Amgas), a marketer, under the blanket certificate issued in Docket No. CP86-585-000 on November 20, 1987, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Panhandle states that pursuant to a transportation agreement dated November 2, 1988, under its Rate Schedule PT, it proposes to transport up to 1,600 dekatherms (dt) per day equivalent of natural gas Amgas from points of receipt listed in Exhibit "A" of the agreement to delivery points also listed in Exhibit "A", which transportation service may involve interconnections between Panhandle and various transporters. Panhandle states that it would receive the gas at various existing points on its system in Texas, Oklahoma, Kansas, Colorado, Wyoming, and Illinois, and that it would transport and redeliver the gas, less fuel used and unaccounted for line loss, for Amgas' account to Central Illinois Light Company in Sangamon County, Illinois.

Panhandle advises that service under §284.223(a) commenced December 1, 1988, as reported in Docket No. ST89-1512. Panhandle further advises that it would transport 600 dt on an average day and 292,000 dt annually.

Comment date: February 27, 1989, in accordance with standard Paragraph G at the end of this notice.

12. Panhandle Eastern Pipe Line Company

[Docket No. CP89-588-000]

January 13, 1989.

Take notice that on January 10, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-588-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Amgas, Inc. (Amgas), a marketer, under the blanket certificate issued in Docket No. CP86-585-000 on November 20, 1987, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Panhandle states that pursuant to a transportation agreement dated November 2, 1988, under its Rate Schedule PT, it proposes to transport up to 105 dekatherms (dt) per day equivalent of natural gas for Amgas from points of receipt listed in Exhibit "A" of the agreement to delivery points also listed in Exhibit "A", which transportation service may involve interconnections between Panhandle and various transporters. Panhandle states that it would receive the gas at various existing points on its system in Texas, Oklahoma, Kansas, Colorado, Wyoming, and Illinois, and that it would transport and redeliver the gas, less fuel used and unaccounted for line loss, for Amgas' account to Central Illinois Light Company in Tazewell, Edgar, Moultrie, Douglas, Vermilion, Logan, Champaign, Sangamon, Peoria, and Knox Counties, Illinois.

Panhandle advises that service under § 284.223(a) commenced on December 1, 1988, as reported in Docket No. ST89-1515. Panhandle further advises that it would transport 35 dt on an average day and 12,775 dt annually.

Comment date: February 27, 1989, in accordance with Standard Paragraph G at the end of this notice.

13. Northwest Pipeline Corporation

[Docket No. CP89-568-000]

January 13, 1989.

Take notice that on January 9, 1989, Northwest Pipeline Corporation, (Northwest) 295 Chipeta Way, Salt Lake City, Utah 84108 filed in Docket No. CP89-568-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of High Sierra Casino Hotel (High Sierra), under its blanket authorization issued in Docket No. CP86-578-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northwest would perform the proposed interruptible transportation service for High Sierra, an end user of natural gas, pursuant to a transportation agreement dated October 25, 1988, under its Rate Schedule TI-1. The term of the transportation agreement is from date of execution until October 25, 1989, and year to year thereafter, subject to termination upon 30 days written notice by either party. Northwest proposes to transport on a peak day up to 450 MMBtu; on an average day up to 250 MMBtu; and on an annual basis 80,000 MMBtu for High Sierra. Northwest proposes to receive the subject gas from various exiting points of receipt located in Washington, Oregon Colorado, Wyoming, and Utah for transportation to the Reno Lateral delivery point to Paiute Pipeline Company located in Owyhee County, Idaho. It is stated that the natural gas transported under the transportation agreement may be received on behalf of Northwest by any local distribution company or affiliate of Northwest which has an appropriate contractural arrangement with Northwest. Northwest alleges that High Sierra has entered into a service agreement with Southwest Gas Corporation, a local distribution company. Northwest avers that no new facilities nor expansion of existing facilities are required to provide the proposed service.

It is explained that the proposed service is currently being performed pursuant to the 120-day self implementing provisions of § 284.223(a)(1) of the Commission's Regulations. Northwest commenced such self-implementing service on November 22, 1988, as reported in Docket No. ST89-1319-000.

Comment date: February 27, 1989, in accordance with Standard Paragraph G at the end of this notice.

14. Williams Natural Gas Company

[Docket Nos. CP89-527-000, CP89-550-000]

January 13, 1989.

Take notice that on January 3, 1989, and January 6, 1989, Williams Natural Gas Company (Williams), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket Nos. CP89-527-000 and CP89-550-000,[1] requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under its blanket certificate issued in Docket No. CP86-631-000 pursuant to section 7 of the Natural Gas Act for Utilicorp United, Inc. d/b/a Missouri Public Service (Utilicorp), and Diamond Shamrock Natural Gas Marketing Company (Diamond Shamrock), all as more fully set forth in the requests on file with the Commission and open to public inspection.

Williams proposes to transport up to a maximum of 3,697 MMBtu of natural gas per day for Utilicorp and up to 63,200 MMBtu of natural gas per day for Diamond Shamrock, from various receipt points in Kansas, Missouri, Oklahoma, Texas and Wyoming to various delivery points on Williams' pipeline system located in Kansas and Missouri and Oklahoma. Williams anticipates transporting up to 3,697 MMBtu on a peak day and average day; 1,349,405 MMBtu annually for Utilicorp; and up to 63,200 MMBtu on a peak day, 50,000 MMBtu on an average day and 23,068,000 MMBtu annually for Diamond Shamrock. Williams explains that service commenced November 1, 1988,

[1] These dockets are not consolidated.

and November 16, 1988, respectively, under § 284.223(a) of the Commission's Regulations, as reported in Docket Nos. ST89-1153-000 and ST89-1377-000, respectively.

Comment date: February 27, 1989, in accordance with Standard Paragraph G at the end of this notice.

15. Natural Gas Pipeline Company of America

[Docket No. CP89-564-000]

January 13, 1989.

Take notice that on January 9, 1989, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP89-564-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations (18 CFR 157.205 and 284.223) for authorization to transport, on an interruptible basis, for Mitchell Energy Corporation (Mitchell), a producer of natural gas, under Natural's blanket certificate issued in Docket No. CP86-582-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open for public inspection.

Natural states that, pursuant to the interruptible transportation service agreement dated September 20, 1988 (#IGP-1433), Natural is obligated to accept for transportation, on an interruptible basis, no more than 200 MMBtu per day of natural gas. Consistent with Natural's Rate Schedule ITS, however, it is stated that Mitchell may request, and Natural may agree to accept, additional quantities as overrun gas. Natural states that the quantity anticipated to be transported for Mitchell on an average day is 200 MMBtu, with the annual quantity expected to be 73,000 MMBtu. It is stated that the receipt point and the delivery point are located in Texas. It is further stated that Natural commenced the transportation of natural gas for Mitchell on November 4, 1988, for a 120-day period pursuant to § 284.223(a)(1), as reported in Docket No. ST89-1642. Natural states that no facilities are to be constructed by Natural regarding the transportation proposed and that it is not aware of any agency relationship under which a local distribution company or an affiliate of Mitchell is to receive natural gas on behalf of Mitchell.

Comment date: February 27, 1989, in accordance with Standard Paragraph G at the end of this notice.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 89-1407 Filed 1-19-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. G-4579-001, et al.]

OXY USA Inc., et al.; Applications for Certificates, Abandonment of Service and Amendment of Certificates [1]

January 17, 1989

Take notice that each of the Applicants listed herein has filed an application pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce, to abandon service or to amend certificates as described herein, all as more fully described in the respective applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before February 1, 1989, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,

Secretary.

Docket No. and dated filed	Applicant	Purchaser and location	Description
G-4579-001, C, 12-23-88	OXY U.S.A. Inc., P.O. Box 300, Tulsa, OK 74102.	Colorado Interstate Gas Co., Greenwood Field, Morton County, KS.	New lease acquired for acreage previously dedicated by Texaco Inc. in Docket No. G-8067.
G-10546-001, B, 12-19-88	Tenneco Oil Co., P.O. Box 2511, Houston, TX 77252.	Colorado Interstate Gas Co., Mocane Field, Beaver County, OK.	Assigned certain interests to Spess Oil Co. 10-29-86, PNG Operating Co. 12-2-86, Donald C. Slawson Oil Producers 3-11-87, J-Brex Co. 4-27-88, Maple Properties Corp., Mesa Operating Limited Partnership and Cabot Petroleum Corp. 5-24-88.
CI63-459-004, D, 12-14-88	Chevron U.S.A. Inc., P.O. Box 3725, Houston, TX 77253-3725.	ANR Pipeline Co., Oakdale North Field, Woods County, OK.	Assigned certain interests 10-21-88, to Plains Resource Inc.
CI64-1075-000, E, 12-19-88	Fina Oil and Chemical Co., P.O. Box 2159, Dallas, TX 75221.	Tennessee Gas Pipeline Co., Heyser Field, Calhoun County, TX.	Acreage acquired 1-1-88 from Tenneco Oil Co.
CI66-310-001, D, 12-14-88	Chevron U.S.A. Inc.	Tennessee Gas Pipeline Co., Welch Field, Jefferson Davis Parish, LA.	Assigned certain acreage 9-1-87, to Empire Land Corp.
CI68-821-005, E, 12-19-88	Fina Oil and Chemical Co.	Tennessee Gas Pipeline Co., Heyser Field, Calhoun County, TX.	Acreage acquired 1-1-88 from Tenneco Oil Co.

Docket No. and dated filed	Applicant	Purchaser and location	Description
CI80-206-003, D, 12-23-88	Tenneco Oil Co.	El Paso Natural Gas Co., Cheyenne NW Field, Roger Mills County, OK.	Assigned certain acreage 9-10-86 to Foran Oil Co.
CI86-180-000 (CI79-132), D, 12-15-88.	Tenneco Oil Co.	ANR Pipeline Co., NW Anthon Field, *et al.*, Custer and Roger Mills Counties, OK, and Roberts County, TX.	Assigned certain interests to Inexco Oil Co. 6-12-80, and Maple Properties Corp.5-2-88.
CI88-183-000 (CI66-80), D, 12-19-88.	ARCO Oil and Gas Co., Division of Atlantic Richfield Co., P.O. Box 2819, Dallas, TX 75221.	Northwest Pipeline Corp., Piceance Creek Field, Rio Blanco, CO.	Assigned 1-1-87, to Hondo Oil & Gas Co.
CI88-184-000 (CI68-672), D, 12-19-88.	ARCO Oil and Gas Co., Division of Atlantic Richfield Co.	Northwest Pipeline Corp., Piceance Creek Field, Rio Blanco, CO.	Assigned 1-1-87, to Hondo Oil & Gas Co.
CI89-185-000 (CI64-1067), B, 12-19-88.	Tenneco Oil Co.	Texas Eastern Transmission Corp., Bethany-Longstreet Field, DeSoto Parish, LA.	Ceased to produce in 1974.
CI89-186-000 (CI64-1027 and CI64-1030), B, 12-19-88.	Tenneco Oil Co.	Arkla Energy Resources, a division of Arkla, Inc., Haynesville Field, Claiborne Parish, LA.	Lease surrendered 10-85; other interests assigned to MacMillan Petroleum Co. 7-1-84, Equity Oil Co. 9-1-87, and B.R. Eubanks, M.D. 11-1-84.
CI89-189-000, A, 12-19-88	Union Oil Co. of CA, P.O. Box 7600, Los Angeles, CA 90051.	El Paso Natural Gas Co., Ignacio Blanco Field, La Plata County, CO.	Application for certificate to cover sale previously covered by the operator, Sohio Petroleum Co.
CI89-192-000 (CI67-270), F, 12-22-88.	Mesa Operating Limited Partnership, P.O. Box 2009, Amarillo, TX 79189.	ANR Pipeline Co., Laverne/Dobie Springs NW Field, Harper County, OK.	Acreage acquired 10-1-88 from Chevron U.S.A. Inc.
CI89-193-000 (G-16030), F, 12-22-88.	Mesa Operating Limited Partnership.	Panhandle Pipe Line Co., Forgan Field, Beaver County, OK.	Acreage acquired 10-1-88 from Chevron U.S.A. Inc.
CI89-195-000, A, 12-23-88	Union Oil Co. of CA	El Paso Natural Gas Co., Langlie Mattix Field, Lea County, NM.	Application for certificate to cover sale previously covered by the operator, Union Texas Petroleum Corp.
CI89-197-000, E, 12-27-88	Helmerich & Payne, Inc., 1579 East 21st St., Tulsa, OK 74114.	Arkla Energy Resources, a division of Arkla, Inc., South Ashland Field, Coal and Pittsburg Counties, OK.	Acreage acquired 2-1-87 from Anderman Oils Limited, *et al.*
CI89-198-000 (G-4326), F, 12-27-88.	Mesa Operating Limited Partnership.	Panhandle Eastern Pipe Line Co., Keyes Field, Cimarron County, OK.	Acreage acquired 12-1-87 from Tenneco Oil Co.
CI89-199-000 (CI79-436), F, 12-27-88.	Mesa Operating Limited Partnership.	Phillips Petroleum Co., Texas Hugoton Field, Sherman County, TX.	Acreage acquired 6-1-86 and 12-1-87 from Tenneco Oil Co.
CI89-200-000 (CI88-190-000), F, 12-27-88.	Amoco Production Co., P.O. Box 50879, New Orleans, LA 70150.	Northern Natural Gas Co., Division of Enron Corp., Ship Shoal Block 84, Offshore Louisiana.	Acreage acquired 7-1-88 from Enron Oil & Gas Co.
CI89-201-000, E, 12-27-88	ARCO Oil and Gas Co., Division of Atlantic Richfield Co..	Arkla Energy Resources, a division of Arkla, Inc., Wilburton Field, Latimer County, OK.	Acreage acquired 10-1-87 from BFO Energy, Inc.
CI89-202-000, E, 12-28-88	Kerr-McGee Corp., P.O. Box 25861, Oklahoma City, OK 73125.	El Paso Natural Gas Co., Spraberry Trend Field, Upton County, TX. Transcontinental Gas Pipe Line Corp., Cooke Field, LaSalle County, TX. Panhandle Eastern Pipe Line Co., Hugoton Field, Stephens County, KS. CNG Transmission Corp., Boone Mountain Field, Clearfield County, PA. Texas Eastern Transmission Corp., Delale Charco Field, Brooks County, TX.	Acreage acquired 1-1-88 from Benedum-Trees Oil Co.
CI89-203-000, F, 1-3-89	Samedan Oil Corp., P.O. Box 909, Ardmore, OK 73402.	Western Gas Processors, Ltd., Spotted Horse Field, Campbell County, WY.	Acreage acquired 12-1-86 from Texas Eastern Skyline Oil Co.
CI89-206-000 (CI85-56), B, 1-3-89.	Tenneco Oil Co.	Texas Gas Transmission Corp., Lisbon Field, Claiborne Parish, LA.	Wells plugged and abandoned and acreage released or held by production from non-dedicated sources.
CI89-207-000 (CI74-673), B, 1-3-89.	Tenneco Oil Co.	Tennessee Gas Pipeline Co., San Ramon Field, Hidalgo County, TX.	Well plugged and leases surrendered.
CI89-208-000 (G-10143), D, 1-3-89.	ARCO Oil and Gas Co., Division of Atlantic Richfield Co..	Tennessee Gas Pipeline Co., West Delta Block 84, Offshore Louisiana.	Acreage assigned 9-8-88 to S. Parish Oil Co., Inc.
CI89-215-000, F, 12-23-88	Mesa Operating Limited Partnership.	ANR Pipeline Co., Quinlan NW. Field, Woodward County, OK.	Acreage acquired 10-1-88 from Chevron U.S.A. Inc.

Filing Code: A—Initial Service, B—Abandonment, C—Amendment to add acreage, D—Amendment to delete acreage, E—Total Succession, F—Partial Succession.

[FR Doc. 89-1404 Filed 1-19-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-2-61-000]

Bayou Interstate Pipeline System; Proposed Change in Rates

January 12, 1989.

Take notice that on January 9, 1989, Bayou Interstate Pipeline System (Bayou) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, (Tariff) Ninth Revised Sheet No. 4 to be effective February 1, 1989.

Bayou states that the proposed tariff sheet is filed pursuant to the Purchased Gas Cost Adjustment provisions contained in Section 15 of Bayou's tariff. A copy of this filing is being mailed to Bayou's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211. All such motions or protests must be filed on or before January 23, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-1333 Filed 1-19-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP82-71-026 et al.]

Northern Natural Gas Co., et al.; Filing of Pipeline Refund Reports and Refund Plans

January 13, 1989.

Take notice that the pipelines listed in the Appendix hereto have submitted to the Commission for filing proposed refund reports. The date of filing and docket number are also shown on the Appendix.

Any person wishing to do so may submit comments in writing concerning the subject refund reports. All such comments should be filed with the Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, DC 20426, on or before February 6, 1989. Copies of the respective filings are on file with the Commission and available for public inspection.

Lois D. Cashell,

Secretary.

Appendix

Filing date	Company	Docket No.
11/8/88	Northern Natural Gas Co.	RP82-71-026
11/14/88	Transcontinental Gas Pipe Line Co.	RP87-7-043
11/15/88	Columbia Gas Transmission Corp.	RP73-65-029
11/23/88	Kentucky West Virginia Gas Co.	RP86-52-012
12/13/88	Jupiter Energy Corp.	RP86-80-003
12/16/88	Trunkline Gas Pipe Line Co.	RP87-15-025
12/22/88	National Fuel Gas Supply Corp.	TA85-1-16-007
12/23/88	Northwest Pipeline Co.	RP82-56-022
12/30/88	El Paso Natural Gas Co.	RP85-59-027

[FR Doc. 89-1334 Filed 1-19-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM89-3-7-000]

Southern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

January 12, 1989.

Take notice that on January 4, 1989, Southern Natural Gas Company (Southern) tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Sixth Revised Volume No. 1:

Third Revised Sheet No. 4B.1
Third Revised Sheet No. 4B.2
Third Revised Sheet No. 4B.3

The tariff sheets are proposed to be effective January 1, 1989.

Southern states that the proposed tariff sheets are being submitted in compliance with Ordering Paragraph (C) of the Commission's August 31, 1988 order in Docket No. RP88-229-000, in which Southern was authorized to flow through the take-or-pay buy-out and buy-down charges allocated to it by United Gas Pipeline Company to its firm sales customers. The aforesaid tariff sheets reflect the allocation of $535,220.00 in additional take-or-pay buy-out and buy-down charges assigned to Southern by United in its November 30, 1988 filing in Docket Nos. RP88-27-000 and RP88-264-000.

Southern states that copies of the filing were mailed to all of Southern's jurisdictional purchasers and interested state commissions as well as all parties to this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All motions or protests should be filed on or before January 23, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-1335 Filed 1-19-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EC88-2-000]

Utah Power & Light Co., PacifiCorp, and PC/UP&L Merging Corp.; Filing

January 13, 1989.

Take notice that on January 6, 1989 Utah Power & Light Company, PacifiCorp, and PC/UP&L Merging Corp., in accordance with the Commission's Opinion No. 318, dated October 25, 1988, filed their Announcement of Remaining Existing Capacity (Announcement) available to Qualifying Entities for firm transmission service as provided for in Opinion No. 318. On January 9, 1989 Utah Power & Light Company and PacifiCorp were merged with and into PC/UP&L Merging Corp. whose name was simultaneously changed to PacifiCorp (the Company).

Within 90 days of this notice, those seeking status as Qualifying Entities must file with the Company, as provided for in the Announcement, all executed contracts which they have negotiated for firm capacity and energy which would utilize the Remaining Existing Capacity.

Any person desiring to be heard or to protest said filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. All such comments should be filed on or before January 31, 1989. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-1336 Filed 1-19-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-51-000]

United Gas Pipe Line Co.; Proposed Changes in FERC Gas Tariff

January 17, 1989.

Take notice that United Gas Pipe Line Company (United), on January 10, 1989, tendered for filing proposed changes in its FERC Gas Tariff, Volume No. 1. The proposed changes would revise United's Tariff to reflect revised Demand-1 and Damand-2 Billing Determinants for one of United's firm sales Rate Schedule PL Customers, Miesissippi River Transmission Corporation (MRT). The filing of these tariff sheets is necessary to reflect a sales service agreement between United and MRT which has been implemented under the abandonment procedures of the Commission's Order No. 490 *et al.* United requests, subject to the limitations described below, that these tariff sheets be made effective as of December 1, 1988.

United states that under Order No. 490, *et al.*, United and MRT abandoned sales service obligations as necessary to implement a new sales service agreement. Specifically, the Commission certificated sales service by United to MRT with a maximum daily quantity (MDQ) of 524,000 Mcf per day in Docket Nos. G-232, CP70-278, and RP84-67. The sales service agreement for service of 524,000 Mcf per day contained an expiration date of November 1, 1988; however, United and MRT signed a new sales service agreement with an MDQ of 50,000 Mcf per day effective November 1, 1988. A copy of this new service agreement is attached to the filing. In addition, MRT has nominated each month Demand-2 Billing Determinants of 50,000 Mcf times the number of days in the month.

United states that while the revised service agreement with MRT will serve to inform the Commission of the contractual basis for United's current sales relationship with MRT, the billing determinant revisions requested in the instant filing have already been reflected in United's currently effective rates. United has pending in Docket No. RP88-92-000 a general rate increase filing which became effective, subject to refund, on October 1, 1988. On November 4, 1988, United filed an Interim Settlement Agreement (Interim Settlement) in that proceeding which provided for an immediate, limited term rate reduction for United's customers and which was subsequently approved by the Commission.[1] That Interim Settlement for MRT reflects, effective November 1, 1988, the same MDQ and Demand-1 and Demand-2 Billing Determinants as are reflected in the instant filing (*i.e.*, MDQ of 50,000 Mcf, Demand-1 of 50,000 Mcf per day, Demand-2 of 50,000 Mcf times the number of days in each month).

United states that on November 28, 1988, it filed a Base Stipulation and Agreement (Base Settlement) which will supersede the Interim Settlement if approved by the Commission and accepted by United. The Base Settlement, which is currently awaiting a decision on certification, reflects for MRT the same MDQ and Demand-1 and Demand-2 Billing Determinants as are reflected in both the instant filing and the Interim Settlement. Thus, both United's currently effective Interim Settlement rates, as well as its Base Settlement rates, already reflect the abandonment of MRT's 524,000 Mcf per day contract down to a level of 50,000 Mcf per day, and if the Base Settlement is approved, United's rates will continue to appropriately reflect this level of sales service to MRT.

United states that under the Interim Settlement, however, United has the right to recommence charging its motion rates in Docket No. RP88-92-000 if the Base Settlement is either not certified or is rejected or withdrawn. 45 FERC ¶ 61,259 at 61,811 (1988). The RP88-92-000 motion rates do *not* reflect MRT's revised sales service level but, rather, continue to reflect the now abandoned contract demand level of 524,000 Mcf per day. Consequently, in the event the RP88-92-000 Base Settlement is not certified or approved and United exercises its right to recommence charging and collecting its motion rates, then it is necessary that United's tariff sheets reflect the lower MDQ and Demand-2 Monthly Billing Determinants for MRT. Therefore, United Requests approval of Tariff Sheet Nos. 99-A and 99-B.6 effective December 1, 1988.[2] These tariff sheets revise MRT's MDQ and Demand-1 Billing Determinants to 50,000 Mcf per day and MRT's Demand-2 Monthly Billing Determinants to 50,000 Mcf times the number of days in each month, effective December 1, 1988. If the Commission does not permit the attached Tariff Sheet Nos. 99-A and 99-B.6 to become effective December 1, 1988 as requested, United requests the authority to waive the annual unauthorized penalty in Section 25 of its FERC Gas Tariff as it applies to MRT beginning December 1, 1988, and ending on the effective date of the tariff sheet that effects the immediate changes requested.

Copies of the filing were served upon the company's jurisdictional customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before January 24, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89-1405 Filed 1-19-89; 8:45 am]

BILLING CODE 6717-01-M

[1] 45 FERC ¶ 61,230 (Nov. 22, 1988).

[2] An effective date of November 1, 1988 is not requested for herein because the tariff sheets made effective November 1, 1988 under the Interim Settlement already reflect MRT's MDQ and D-2 Monthly Billing Determinants based on 50,000 Mcf per day. On November 23, 1988, United sought to effectuate these revisions in a compliance filing in Docket No. RP88-203. By letter order, the Director, Office of Pipeline and Producer Regulations rejected this portion of that filing without prejudice to United refiling its requests with the appropriate filing fee.

[Docket No. TQ89-1-23-001]

Eastern Shore Natural Gas Co.; Proposed Changes in FERC Gas Tariff

January 13, 1989

Take notice that Eastern Shore Natural Gas Company (ESNG) tendered for filing on January 9, 1989 certain substitute revised tariff sheets included in Appendix A attached to the filing. The purpose of this filing is to amend ESNG's Quarterly Purchased Gas Adjustment (PGA) filing in Docket No. TQ89-1-23-000, and filed on December 30, 1988, to (1) reflect the revised rates of its pipeline suppliers, Transcontinental Gas Pipe Line Corporation and Columbia Gas Transmission Corporation, as filed by the respective pipelines on December 30, 1988 and proposed to be effective on February 1, 1989 and (2) revise the costs associated with its conversion from Transco's Rate Schedule CD to Rate Schedule FT. The substitute tariff sheets are proposed to be effective February 1, 1989.

ESNG states that such tariff sheets are being filed pursuant to § 154.308 of the Commission's regulations and Sections

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21.2 and 21.4 of the General Terms and Conditions of ESNG's FERC Gas Tariff to reflect changes in ESNG's jurisdictional rates. The sales rates set forth thereon reflect a decrease of $0.0733 per dt in the Commodity Charge; and increase of $0.4259 per dt in the Demand Charge 1; and a decrease of $0.0573 per dt in the Demand Charge 2 all as measured against ESNG's previously scheduled PGA filing in Docket No. TA89-1-23-000 as filed on September 2, 1988 and approved to be effective November 1, 1988. As measured against ESNG's currently effective sales rates as filed on November 30, 1988 in Docket No. TF89-2-23-000 and approved to be effective December 1, 1988 the sales rates filed hereon reflect a decrease of $0.0413 per dt in the Commodity Charge; and increase of $0.7885 per dt in the Demand Charge 1; and a decrease of $0.512 per dt in the Demand Charge 2.

ESNG states that copies of the filing have been served upon its jurisdictional customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 and Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before January 24, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-1406 Filed 1-19-89; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures for disbursement of $20,407,551 (plus accrued interest) obtained as a result of a Consent Order which the DOE entered into with Shell Oil Company (Case No. KEF-0093). The fund will be available to customers who purchased refined petroleum products from Shell during the period March 6, 1973 through January 27, 1981.

DATE AND ADDRESS: Applications for Refund of a portion of the consent order fund must be filed in duplicate and postmarked no later than November 30, 1989. Applications should be addressed to: Shell Oil Company Refund Proceeding, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585. All applications should conspicuously display a reference to Case No. RF315.

FOR FURTHER INFORMATION CONTACT: Jon Leyens, Staff Analyst, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-2383.

SUPPLEMENTARY INFORMATION: In accordance with the procedural regulations of the Department of Energy, 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The Decision and Order relates to a Consent Order entered into by the DOE and Shell Oil Company. The Consent Order settled possible violations of the Mandatory Petroleum Price and Allocation Regulations with respect to the firm's operations during the period January 1, 1973 through January 27, 1981. On December 10, 1987, the Office of Hearings and Appeals issued a Proposed Decision and Order which tentatively established refund procedures and solicited comments from interested parties concerning the proper disposition of the consent order fund. 52 FR 47967 (December 17, 1987).

As the Decision and Order indicates, Applications for Refund from the portion of the Shell consent order fund available for distribution to purchasers of Shell refined products may now be filed. All Applicants must be postmarked by November 30, 1989. Applications will be accepted from customers who purchased refined petroleum products from Shell during the period March 6, 1973 through January 27, 1981. The specific information required in an Application for Refund is set forth in the Decision and Order.

Date: January 13, 1989.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order of the Department of Energy

January 13, 1989.

Name of Firm: Shell Oil Company

Date of Filing: April 29, 1987

Case Number: KEF-0093

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement procedures for the distribution of funds obtained by the DOE as a result of the agency's enforcement of the Mandatory Petroleum Price and Allocation Regulations. *See* 10 CFR Part 205, Subpart V. On April 29, 1987, the ERA filed a Petition for the Implementation of Special Refund Procedures in connection with a Consent Order that it entered into with Shell Oil Company (Shell).

I. Background

Shell is a major integrated refiner which produced and sold crude oil and a full range of refined petroleum products during the period of federal price controls. The firm was therefore subject to the Mandatory Petroleum Price Regulations set forth at 6 CFR Part 150 and 10 CFR Parts 210, 211, and 212. During the period of federal controls, the ERA conducted an extensive audit of Shell's operations and, as a result of the audit, alleged that Shell had violated certain applicable DOE price and allocation regulations in its sales of crude oil and refined petroleum products. Settlement discussions were held, and on March 26, 1987, the ERA and Shell finalized a Consent Order (Consent Order No. RSHA00001Z) that resolved disputes regarding Shell's crude oil and refined petroleum product operations during the period January 1, 1973 through January 27, 1981 (consent order period). Pursuant to the terms of the Consent Order, Shell remitted a total of $183,667,955.78 (the consent order fund) [1] into an interest-bearing escrow account, for ultimate distribution by the DOE through Subpart V.

[1] This amount consists of the principal consent order amount of $160,000,000 plus $3,667,955.78 in interest which accrued prior to Shell's payment to the DOE. For accounting purposes, the interest remitted by Shell has been considered as additional principal and has been divided proportionately between the crude oil and refined product pools discussed below.

On December 10, 1987, the OHA issued a Proposed Decision and Order (PD&O) setting forth a tentative plan for the distribution of the Shell consent order funds. Because the Consent Order resolves alleged violations involving both sales of crude oil and refined products, we proposed to divide the consent order fund into two pools. This Decision and Order establishes procedures for distributing the portion of those funds attributable to alleged refined product violations, consisting of $20,407,550.64 plus accrued interest.[2]

In order to give notice to all potentially affected parties, a copy of the PD&O was published in the Federal Register and comments regarding the proposed refund procedures were solicited. 52 FR 47967 (December 17, 1987). Two interested parties, the Petroleum Marketers Association of America (PMAA) and Energy Refunds, Inc., submitted comments concerning the proposed procedures for the distribution of the Shell consent order funds pertaining to alleged refined product violations. In this Decision and Order, we will address those comments and adopt final procedures for the distribution of the Shell refined product funds.

II. Final Refund Procedures

The procedural regulations of the DOE set forth general guidelines to be used by OHA in formulating and implementing a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations in which the DOE is unable to identify readily those persons who may have been injured by the alleged regulatory violations or to determine the amount of such injuries. A more detailed discussion of Subpart V and the authority of OHA to fashion procedures to distribute refunds is set forth in the cases of *Office of Enforcement*, 9 DOE ¶ 82,508 (1981); and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (*Vickers*).

Pursuant to the goals of the Subpart V regulations, we will attempt to provide refunds to claimants who demonstrate that they were injured by Shell's alleged regulatory violations in its sales of refined petroleum products during the January 1, 1973 through January 27, 1981 consent order period.[3] Residual funds in the Shell escrow account will be distributed in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA), 15 U.S.C. 4501 *et seq.*, 1 Fed. Energy Guidelines ¶ 11,702.

A. Calculation of Refund Amounts

The first step in the refund process is the calcualtion of an applicant's potential refund. To accomplish this, we will presume that the alleged overcharges were spread evenly over all of Shell's sales of refined petroleum products during the consent order period. Under this volumetric presumption, a claimant's potential refund generally will be computed by multiplying the number of gallons of covered products that it purchased from Shell by a volumetric factor of $0.000228 per gallon.[4] we derived this figure by dividing the $20,407,550.64 received from Shell and allocated to the refined product pool by the 90,334,236,000 gallons of refined products subject to price and allocation controls that Shell sold during the consent order period. In addition, successful claimants will receive proportionate shares of the interest that has accrued on the Shell escrow account.[5]

We generally require claimants to submit monthly purchase schedules in order to establish their total purchase volumes from a consent order firm. In its comments, the PMAA suggests that, instead, we allow all refund applicants to submit yearly schedules of their purchase volumes of Shell covered products. We are not persuaded that this would be appropriate. An annual schedule can mask certain factors, such as seasonal purchase patterns, which help us to ascertain the accuracy of an applicant's submission. Therefore, we will accept annual purchase volume data only if it is accompanied by adequate supporting documentation, such as a computer printout of purchases from Shell provided by OHA.

As in previous cases, only claims for at least $15 in principal will be processed. This minimum has been adopted in refined product refund proceedings because the cost of processing claims for refunds of less than $15 outweighs the benefits of restitution in those instances. *See, e.g., Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985).

B. Determination of Injury

Once a claimant's potential refund has been calculated, we must determine whether the claimant was injured by its purchases from Shell, *i.e.*, whether it was forced to absorb the alleged overcharges. Based on our experience in numerous Subpart V proceedings, we will adopt certain presumptions concerning injury in this case. The use of presumptions in refund cases is specifically authorized by DOE procedural regulations. 10 CFR 205.282(e). An applicant that is not covered by one of these presumptions must demonstrate injury in accordance with the non-presumption procedures outlined in the latter part of this Decision.

1. *Presumptions Concerning Injury.* The presumptions we will adopt in this case are designed to allow claimants to participate in the refund process without incurring inordinate expense, and to enable OHA to consider the refund applications in the most efficient way possible. We will presume that end-users of Shell covered products, certain types of regulated firms, and cooperatives were injured by their purchases from Shell. In addition, we will adopt presumptions regarding small and mid-level claims submitted by

[2] We recognize that we may receive claims based upon Shell's alleged violation of the DOE allocation regulations. *See* 10 CFR Part 211. We will evaluate such claims by referring to the standards set forth in Decisions such as Office of Special Counsel, 10 DOE ¶ 85,048 at 88,220 (1982) (Amoco), and OKC Corp./Town & Country Markets, Inc., 12 DOE ¶ 85,094 (1984). Under these standards an allocation claimant must: (1) demonstrate the existence of a supplier/purchaser relationship with the consent order firm and the likelihood that the consent order firm failed to furnish petroleum products that it was obliged to supply to the claimant under 10 CFR Part 211; (2) provide evidence that it had contemporaneously notified the DOE or otherwise sought redress for the alleged allocation violation; and (3) establish that it was injured and document the extent of the injury. The remainder of this Decision concerns only the filing of claims involving Shell's alleged pricing violations.

[3] The final procedures for disbursing the Shell crude oil refund pool, consisting of $163,260,405.14 plus accrued interest, were set forth in Shell Oil Company, 17 DOE ¶ 85,204 (1988).

[4] Although the Shell consent order covers the period January 1, 1973 through January 27, 1981, applicants may file claims for volumes purchased only while the product in question was subject to federal price controls. Therefore, claimants may apply for refunds based on purchases made from Shell between March 6, 1973 and the date of decontrol for each particular product. Below is a list of regualted petroleum products and the dates on which they were decontrolled:

Product	Decontrol date
Motor Gasoline, Propane	Jan. 28, 1981.
Butane and Natural Gasoline	Jan. 1, 1980.
Aviation Gas and Jet fuel	Feb. 26, 1979.
Naphtha-Based Jet Fuel	Oct. 1, 1976.
Naphthas	Sept. 1, 1976.
Benzene, Toluene	Sept. 1, 1976.
Diesel Fuel, Kerosene	July 1, 1976.
No. 1 and No. 2 Heating Oil	July 1, 1976.
Residual Fuel	June 1, 1976.
Ethane and Asphalt	Apr. 1, 1974.

[5] Because we realize that the impact on an individual claimant may have been greater than its potential refund calculated using the volumetric methodology, a claimant may submit evidence detailing the specific alleged overcharge that it sustained in order to be eligible for a larger refund. *See* Standard Oil Co. (Indiana)/Army and Air Force Exchange Service, 12 DOE ¶ 85,015 (1984).

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refiners, resellers and retailers. Finally, we will presume that refiners, resellers and retailers that made spot purchases of Shell products, as well as those who sold Shell products on consignment, were not injured by their purchases. Each of these presumptions is discussed below, along with the rationale underlying its use.

a. *End-Users.* First, in accordance with prior Subpart V proceedings, we will presume that end-users of Shell products were injured by the firm's alleged overcharges. Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the consent order period, and were not required to keep records which justified selling price increases by reference to cost increases. Consequently, analysis of the impact of the alleged overcharges on the final prices of goods and services produced by members of this group would be beyond the scope of a special refund proceeding. *See Marion Corporation,* 12 DOE ¶ 85,014 (1984) and cases cited therein. Therefore, end-users need only document their purchase volumes of Shell covered products to demonstrate that they were injured by the alleged overcharges.

b. *Regulated Firms and Cooperatives.* Second, public utilities, agricultural cooperatives, and other firms whose prices are regulated by government agencies or cooperative agreements do not have to submit detailed proof of injury. Such firms would have routinely passed through price increases, including overcharges, to their customers. Likewise, their customers would share the benefits of cost decreases resulting from refunds. *See, e.g., Office of Special Counsel,* 9 DOE ¶ 82,538 (1982) (*Tenneco*); *Office of Special Counsel,* 9 DOE ¶ 82,545 at 85,244 (1982) (*Pennzoil*). Such firms applying for refunds should certify that they will pass through any refund received to their customers and should explain how they will alert the appropriate regulatory body or membership group to monies received. Purchases that cooperatives subsequently resold to nonmembers will generally not be covered by this presumption.

c. *Refiner, Reseller and Retailer Small Claims.* Third, we will presume that a firm that resold Shell products and whose volumetric share of the consent order fund is $5,000 or less, excluding accrued interest, was injured by Shell's alleged overcharges. A refiner, reseller, or retailer seeking a refund under this small claims presumption will not be required to submit evidence of injury beyond documentation of its purchase volumes of covered products from Shell during the consent order period. *See Texas Oil & Gas Corp.,* 12 DOE ¶ 85,069 at 88,210 (1984). As we have noted in numerous prior proceedings, there may be considerable expense involved in gathering the types of data necessary to support a detailed claim of injury; in some cases, that expense might possibly exceed the expected refund. Consequently, failure to allow simplified application procedures for small claims could deprive injured parties of their opportunity to obtain a refund. Furthermore, use of the small claims presumption is desirable in that it allows OHA to process efficiently the large number of routine refund claims expected. Refiners, resellers and retailers of Shell products that are seeking full volumetric refunds in excess of $5,000 must follow the injury demonstration procedures that are outlined below in Section 2.[8]

d. *Refiner, Reseller and Retailer Mid-Level Claims.* Fourth, we will adopt a mid-level presumption of injury under which a refiner, reseller, or retailer whose volumetric share exceeds $5,000 may elect to receive as its refund the larger of $5,000 or 40% of its allocable share up to $50,000 in lieu of making a detailed showing of injury.[9] The use of this presumption is based on detailed marketing analyses that we conducted in prior special refund proceedings, which indicated that mid-level claimants likely absorbed 40 percent of any overcharges that they allegedly incurred. *See Gulf Oil Corp.,* 16 DOE ¶ 85,381 (1987) (*Gulf II*).[10] As with the small claims presumption, an applicant that chooses to rely on the mid-level presumption will be required only to document its purchase volumes of Shell covered products in order to demonstrate that it was injured by Shell's alleged overcharges.[11]

e. *Spot Purchasers.* We will also presume that refiners, resellers, and retailers that were spot purchasers of a Shell covered product, *i.e.*, made only sporadic, discretionary purchases, were not injured by their purchases. Consequently, they generally will be ineligible for refunds. The basis for this presumption is that a spot purchaser tended to have considerable discretion as to where and when to make a purchase, and therefore would not have made a purchase unless it was able to recover the full amount of its purchase price, including any alleged overcharges, from its customers. *See Vickers* at 85,398–97.

Citing *Tresler Oil Company/Swifty Oil Company,* 16 DOE ¶ 85,659 (1987) (*Swifty*), Energy Refunds suggests that we allow spot purchasers to receive 20% of their full volumetric shares without demonstrating injury. There is nothing in *Swifty,* however, to support such a suggestion,[12] and Energy Refunds has not provided any other reasoning that would support its position. Consequently, we will adopt the presumption of non-injury for spot purchasers outlined in the PD&O. In past proceedings, however, a spot purchaser has been able to rebut this presumption by demonstrating that its base period supply obligation limited its discretion in making the purchases and that it resold the product at a loss that was not subsequently recouped. *See, e.g., Saber Energy, Inc./Mobil Oil Corp.,* 14 DOE ¶ 85,170 (1986).

f. *Consignees.* Finally, we will presume that consignees of Shell covered products were not injured by the firm's alleged pricing violations. *See, e.g., Jay Oil Co.,* 16 DOE ¶ 85,147 (1987). A consignee agent generally sold products pursuant to an agreement whereby its supplier established the prices to be charged by the consignee and compensated the consignee with a fixed commission based upon the volume of products that it sold. A consignee may rebut the presumption of non-injury by demonstrating that its sales volumes and corresponding commission revenues declined due to the alleged uncompetitiveness of Shell's pricing practices. *See Gulf Oil Corp./C.F. Canter Oil Co.,* 13 DOE ¶ 85,388 at 88,963 (1986).

2. *Non-Presumption Demonstration of Injury.* A refiner, reseller or retailer whose allocable share is in excess of $5,000 that does not elect to receive a refund under either the small claims or 40 percent mid-level presumptions will be required to demonstrate its injury. There are two aspects to such a demonstration. First, a firm generally is required to provide a monthly schedule of its banks of unrecouped increased product costs for each covered product that it purchased from Shell during the consent order period.[13] Cost banks for a product should cover the period November 1, 1973 through the product's price decontrol date.[14] If a firm no longer has records of contemporaneously calculated cost banks for a particular product, it may approximate those banks by submitting the following information regarding its purchases of that product from all of its suppliers:

(1) The weighted average gross profit margin that the firm received for the product on May 15, 1973;

(2) a monthly schedule of the weighted average gross profit margins that it received for the product during the period, November 1, 1973 through the product's price decontrol date; and

(3) a monthly schedule of the firm's purchase or sales volumes of the product during the period November 1, 1973 through the product's price decontrol date.[15]

The existence of banks of unrecouped increased product costs that exceed an applicant's potential refund is only the first part of an injury demonstration. A firm must also show that market conditions forced it to absorb the alleged overcharges. We will infer this to be true if the prices the applicant paid Shell were higher than average market prices for the product concerned at the same level of distribution.[16] Accordingly, a claimant attempting to demonstrate injury should submit a monthly schedule of the weighted average prices that it paid Shell for each covered product that it purchased between March 6, 1973 and the product's decontrol date.

C. General Refund Application Requirements

Pursuant to 10 CFR 205.283, we will now accept Applications for Refund from individuals and firms that purchased refined petroleum products sold by Shell between March 6, 1973 and the date of decontrol for the products. No "class claims" on behalf of groups of applicants will be permitted. There is no specific application form that must be used. However, a suggested format for filing a Shell Refund Application is set forth in the Appendix to this Decision. All applicatons for Refund should include the following information:

(1) A conspicuous reference to Case Number RF315 and the name and address of the applicant during the period for which the claim is filed, as well as the name to whom the refund check should be made out and the address to which the check should be sent;

(2) The name, title, address and telephone number of a person who may be contacted by OHA for additional information concerning the Application;

(3) The manner in which the applicant used the Shell products, *i.e.*, whether it was a reseller, retailer, consignee, end-user, etc.;

(4) For each covered product, a monthly schedule of purchases from Shell during the period March 6, 1973 through the product's decontrol date. *See supra* note 4. If an applicant received a computer printout of its Shell purchases from OHA, it may submit that printout in lieu of monthly purchase volume schedules. If the applicant was an indirect purchaser it must also submit the name of its immediate supplier and indicate why it believes the covered product was originally sold by Shell;

(5) All relevant material necessary to support its claim in accordance with the injury presumptions and requirements outlined above;

(6) If the applicant was or is in any way affiliated with Shell, an explanation of the nature of the affiliation;

(7) A statement as to whether there has been a change in ownership of the entity that purchased the Shell refined petroleum products during or since the consent order period. If there was such a change, the applicant must submit a copy of the sales agreement, as well as provide the names and addresses of the previous or subsequent owners;

(8) A statement as to whether the applicant is or has been involved in any DOE enforcement proceedings or private actions filed under Section 210 of the Economic Stabilization Act. If these actions have been concluded, the applicant should furnish a copy of any final order issued in the matter. If the action is still in progress, the applicant should briefly describe the action and its current status. The applicant must inform OHA of any change in status while its Application for Refund is pending. *See* 10 CFR 205.9(d);

(9) A statement as to whether the applicant has received a refund, from any source, for the alleged overcharges identified in the ERA audits underlying this proceeding;

(10) A statement as to whether the applicant or a related firm has filed any other Applicants for Refund in this proceeding;

(11) A statement as to whether the claimant or a related firm has authorized any other individual(s) to file an Application for Refund on the claimant's behalf in the Shell proceeding; and

(12) The following statement signed by the applicant or a responsible official of the business or organization claiming the refund: "I swear [or affirm] that the information submitted is true and accurate to the best of my knowledge and belief." *See* 10 CFR 205.283(c).

Applications for Refund should be sent to: Shell Refund Proceeding, Case No. RF315, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

All applications must be filed in duplicate and must be postmarked by November 30, 1989. A copy of each application will be available for public inspection in the Public Reference Room of the Office of Hearings and Appeals. Any applicant that believes that its application contains confidential information must submit two additional copies of its application from which the confidential information has been deleted, together with a statemen'

[8] If an applicant with a claim greater than $5,000 attempts to make a detailed showing of injury in support of a full volumetric refund but, instead, demonstrates that it was injured by less than $5,000, it will receive a refund equal to the amount of demonstrated injury and not a refund at the $5,000 small claims threshold level. *See, e.g.,* Union Texas Petroleum Corp./Arrow Enterprises, Inc., 18 DOE ¶ DOE 85,087 (1988).

[9] A claimant with purchases of 55,304,300 gallons or less that wishes to rely on an injury presumption can receive a larger refund by limiting its claim to the $5,000 small claims threshold than by utilizing the mid-level presumption. If 40 percent of a claimant's volumetric share exceeds $50,000, *i.e.*, if the claimant purchased more than 553,102,877 gallons of Shell covered products, the claimant may choose to limit its claim to $50,000.

[10] The PMAA and Energy Refunds have suggested that we adopt higher presumptive levels of injury for middle distillates and natural gas liquids as we did in Getty Oil Co., 15 DOE ¶ 85,064 (1986) (Getty). The different absorption fractions that we adopted in Getty, however, were based strictly on Getty's pricing data. Getty at 88,117. They are not relevant to the present proceeding. Furthermore, the use of a single average absorption fraction simplifies the refund procedures for the benefits of both the claimants and the DOE. Therefore, we will not adopt the higher presumption levels suggested for these products. *See* Gulf II at 88,737.

[11] A mid-level claimant may elect not to receive a refund based upon this presumption and may instead attempt to show that it is eligible for a refund equal to its full volumetric share by making a detailed showing of injury using the criteria set forth later in this Decision. The 40 percent presumption, however, will not be available to claimants who submit a detailed injury showing which leads us to conclude that they are eligible for a refund of less than 40 percent of their volumetric share.

[12] In Swifty, the applicant was granted a refund on its purchases that were made under a long-term contract with the consent order firm, but was denied a refund on its spot purchases.

[13] Claimants who have relied upon their banked costs in order to be eligible to receive refunds in other special refund proceedings should subtract those refunds from the cumulative banked costs submitted in this proceeding. *See* Husky Oil Co./Metro Oil Products, Inc., 16 DOE ¶ 85,090 at 88, 179 (1987).

[14] Retailers and resellers of motor gasoline were required to maintain cost bank data only until July 15, 1979 and April 30, 1980, respectively. Therefore, in showing injury with respect to their purchases of motor gasoline, such claimants will not be required to submit cost bank material all the way up to the January 28, 1981 decontrol date of motor gasoline.

[15] For motor gasoline, retailers and resellers have to submit the information detailed in Parts (2) and (3) only through July 15, 1979 and April 30, 1980, respectively. *See supra* note 12.

[16] We generally obtain average market price information from Platt's Oil Price handbook and Oilmanac (Platt's). If price data for a particular product is not available in Platt's, the burden of supplying alternative information will be on the claimant.

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specifying why the information is confidential.

It Is Therefore Ordered That:

(1) Applications for Refund from the funds remitted to the Department of Energy by Shell Oil Company pursuant to the Consent Order finalized on March 20, 1987 may now be filed.

(2) All applications must be postmarked by November 30, 1989.

Date: January 13, 1989.

George B. Breznay,

Director, Office of Hearings and Appeals.

BILLING CODE 6450-01-M

Suggested format for Application for Shell Oil Company Refund – RF 315

RF 315 -

DOE use only

1. Name of Applicant Firm during refund period (3/73-1/81): _____

Address during refund period: _____

_____

_____

2. To whom should refund check be payable? _____

Address to which check should be sent: _____

_____

_____

Contact Person: _____

Telephone No.: ( ) _____

3. Type of Applicant:

Gas Station_____ Consignee Agent_____ Petroleum Jobber_____ Public Utility_____ Cooperative_____

Consumer_____ (please specify business use) Other_____ (please specify)

4. (a) Total gallonage for which refund is requested: _____ (Enter total gallons here)

(b) Product(s) (e.g., gasoline, propane): _____

(c) Source of your gallonage information: _____

(If estimates, explain method on separate sheet.)

5. If you are a petroleum marketer (refiner, reseller, or retailer) and you purchased more than 22,126,106 gallons of Shell products, do you elect to rely on the relevant petroleum marketer injury presumption (See Question & Answer 4)? If you are an end-user (consumer), check "Not Applicable" below

Yes ☐ No ☐ Not Applicable (end-users check here) ☐

If you do not elect the relevant petroleum marketer injury presumption, or if you are requesting a refund greater than $50,000, attach the required "injury" showing. (See the Decision & Order for details on the injury showing required.)

(Check One)

6. Was the product you bought Shell-branded? Yes ❑ No ❑

7. Were you supplied by Shell directly? Yes ❑ No ❑

If yes, please provide Shell customer number here_____. If no, (i)attach an explanation of why you believe the product was sold by Shell and (ii)include the name and address of the person or firm from which you purchased the product.

8. Is (was) your business owned all or in part by Shell? If yes, please explain. Yes ❑ No ❑

9. Have you been a party or are you currently a party in a DOE enforcement action or private Section 210 action? (See Q & A No. 7) If yes, please attach an explanation. Yes ❑ No ❑

10. Have you or a related firm filed any other application for refund involving any Shell product in this proceeding? If yes, attach an explanation. Yes ❑ No ❑

11. Have you or a related firm authorized any individual(s) other than those identified on this form to file an application on your behalf in this Shell refund proceeding? If yes, attach an explanation. Yes ❑ No ❑

12. Were you a Shell consignee agent? (See Q & A No. 8) Yes ❑ No ❑
If yes, attach information sufficient to rebut the presumption of non-injury for consignees (See Decision for details.)

13. Did ownership of your firm change during or since the refund period? Yes ❑ No ❑
If you answered yes, please provide an explanation that includes the names and addresses of any previous or subsequent owners and submit a copy of the purchase and sales agreement.

I swear (or affirm) that the information contained in this application and its attachments is true and correct to the best of my knowledge and belief. I understand that anyone who is convicted of providing false information to the federal government may be subject to a jail sentence, a fine, or both, pursuant to 18 U.S.C. 1001. I understand that the information contained in this application is subject to public disclosure. I have enclosed a duplicate of this entire application which will be placed in the OHA Public Reference Room.

_____ Date

_____ Signature of Applicant

_____ Title

SCHEDULE OF PURCHASES

Note: You do not need to complete this page if you attach the Shell Purchase Volume Schedule provided by the Office of Hearings and Appeals

RF 315

Name of Applicant: _____

MONTHLY PURCHASE VOLUMES OF _____
(PRODUCT)

	1973	1974	1975	1976	1977	1978	1979	1980	1981
January	•••••••	____	____	____	____	____	____	____	____
February	•••••••	____	____	____	____	____	____	____	•••••••
March	____	____	____	____	____	____	____	____	•••••••
April	____	____	____	____	____	____	____	____	•••••••
May	____	____	____	____	____	____	____	____	•••••••
June	____	____	____	____	____	____	____	____	•••••••
July	____	____	____	____	____	____	____	____	•••••••
August	____	____	____	____	____	____	____	____	•••••••
September	____	____	____	____	____	____	____	____	•••••••
October	____	____	____	____	____	____	____	____	•••••••
November	____	____	____	____	____	____	____	____	•••••••
December	____	____	____	____	____	____	____	____	•••••••
Yearly Total	____	____	____	____	____	____	____	____	____

TOTAL FOR THIS PRODUCT: _____ GALLONS

Claims for less than $15.00 will not be processed (64,160 gallons total purchases).

✔ **Do not include any purchases of product on or after that product's date of decontrol. (See below for decontrol dates)**

Product	Date Decontrolled	Product	Date Decontrolled
Motor Gasoline, Propane	January 28, 1981	Benzene and Toluene	September 1, 1976
Butane and Natural Gasoline	January 1, 1980	Diesel Fuel, Kerosene	July 1, 1976
Aviation Gas and Jet Fuel	February 26, 1979	No. 1 and No. 2 Heating Oil	July 1, 1976
Naphtha-Based Jet Fuel	October 1, 1976	Residual Fuel	June 1, 1976
Naphthas	September 1, 1976	Ethane and Asphalt	April 1, 1974

[FR Doc. 89-1418 Filed 1-19-89; 8:45 am]
BILLING CODE 6450-01-C

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ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-3507-9]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared January 2, 1989 through January 6, 1989 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382–5074.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 22, 1988 (53 FR 13318).

Draft EISs

ERP No. DS–AFS–L65101–OR, Rating EC2, Deschutes National Forest, Land and Resource Management Plan, Additional Alternative and Specific Management Requirements Analysis, Implementation, Klamath, Deschutes, Jefferson and Lake Counties, OR.

Summary:

EPA is concerned that the No Charge Alternative does not include specific standards and guidelines for water quality protection.

ERP No. DR–COE–E32070–MS, Rating LO, Gulfport Harbor Deep Draft Navigation Project, Channel Improvements, Implementation, Garrison County, MS.

Summary:

EPA has no significant environmental objections to the proposed project.

Dated: January 17, 1989.

William E. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 89–1354 Filed 1–19–89; 8:45 am]

BILLING CODE 6560–50–M

[SWH–FRL–3507–8]

Petition for Case-By-Case Extension of the Effective Date of the Land Disposal Restrictions on Certain Spent Solvent Hazardous Wastes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of petition.

SUMMARY: EPA is proposing to grant E.I. du Pont de Nemours and Co., Inc. (Du Pont) Chambers Works plant's request for an extension of the November 8, 1988, effective date of the land disposal restrictions applicable to hazardous solvent-containing sludges having less than 1% total F001–F005 solvent constituents. This action responds to a petition submitted under 40 CFR 268.5 which allows any person to request the Administrator to grant, on a case-by-case basis, an extension of the applicable effective date based on a showing that adequate alternative treatment, recovery, or disposal capacity for the petitioner's waste cannot reasonably be made available by the effective date due to circumstances beyond the person's control and that the petitioner has entered into a binding contractual commitment to construct or otherwise provide such capacity. If this proposed action is finalized, Du Pont can continue to dispose its primary and secondary spent solvent hazardous sludges in a minimum technology landfill at the Chambers Works plant until one year from the publication date of the final notice but not later than November 8, 1990, without being subject to the restrictions applicable to such wastes.

DATE: Comments on this notice must be received on or before February 22, 1989.

ADDRESS: The public must send an original and two copies of their comments to EPA RCRA Docket (S–2121), Office of Solid Waste (OS–333), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Place the Docket Number F–89–PCCN–FFFFF on your comments. The OSW docket is located at EPA RCRA Docket (Sub-basement), 401 M Street, SW., Washington, DC 20460. The docket is open from 9:00 to 4:00, Monday through Friday, except for Federal holidays. The public must make an appointment to review docket materials. Call (202) 475–9327 for appointments. The public may copy a maximum of 50 pages from any regulatory document at no cost. Additional copies cost $0.20 per page.

FOR FURTHER INFORMATION CONTACT: For general information contract RCRA Hotline, Office of Solid Waste (OS–300), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (800) 424–9346 (toll-free) or (202) 382–3000 locally.

For information on specific aspects of this notice contact Lisa E. Faeth, Office of Solid Waste (OS–333), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382–4770.

SUPPLEMENTARY INFORMATION:

I. Background

A. Congressional Mandate

Congress enacted the Hazardous and Solid Waste Amendments (HSWA) of 1984 to amend the Resource Conservation and Recovery Act (RCRA). HSWA imposes additional responsibilities on persons managing hazardous wastes. Sections 3004(d) through (g) prohibit the land disposal of certain hazardous wastes by specified dated in order to protect both human health and the environment for as long as the wastes remain hazardous. In particular, section 3004(e) prohibits the land disposal of F001–F005 solvent-containing hazardous wastes effective 24 months after the enactment of HSWA, section 3004(d) prohibits the land disposal of liquid hazardous wastes having a pH of less than or equal to two effective 32 months after the enactment of HSWA, and section 3004(g) prohibits the land disposal of at least one-third of all listed hazardous wastes (which includes K044 and K046 wastes) effective 45 months after the enactment of HSWA.

Under section 3004(m), wastes which meet treatment standards established by EPA are no longer prohibited from land disposal. These standards must substantially diminish the toxicity of the waste or substantially reduce the likelihood of migration of hazardous constituents from the waste so that threats to human health and the environment are minimized. EPA has interpreted this provision to call for standards developed based on the performance of the best demonstrated available technology.

Congress recognized that adequate alternative treatment, recovery, or disposal capacity which is protective of human health and the environment may not be available by the applicable statutory effective dates and authorized EPA to set effective date variances based on the earliest dates that such capactity will be available. Section 3004(h)(2) thus allows the Agency to grant national variances from the statutory effective dates, not to exceed two years. Hazardous solvent-containing sluges having less than 1% total F001–F005 solvent constituents at the point of initial generation were the subject of a two-year national capacity variance. The variance expired November 8, 1988. Under section 3004(h)(3), EPA can grant case-by-case extensions of the statutory deadlines for up to one year beyond the applicable deadlines. These extensions are renewable once for up to one additional year.

On November 7, 1986, EPA published a final rule (51 FR 40572) establishing the regulatory framework to implement the land disposal restrictions program and promulgated regulations enacting the first phase of the program as well as the procedures for submitting case-by-case extension petitions.

B. Demonstrations Evaluated During Petition Review

Case-by-case extension petitions must satisfy the requirements outlined in 40 CFR 268.5. The applicant must demonstrate that adequate alternative treatment, recovery, or disposal capacity will not be available by the applicable effective date of the land disposal restrictions by showing that he has made a good-faith effort to locate and contract with facilities nationwide to manage his waste. This demonstration also requires that the petitioner investigate the availability of adequate alternative on-site capacity for his waste (40 CFR 268.5(a)(1)). The applicant must show that he has entered into a binding contractual commitment to construct or otherwise provide adequate alternative treatment, recovery, or disposal capacity for all his waste, but due to circumstances beyond his control this capacity cannot reasonably be made available by the applicable effective date of the land disposal restictions (40 CFR 268.5(a)(2), (3), and (4)). The petitioner must submit a schedule showing the progress which will be made towards completing the project to provide adequate alternate capacity by including dates for obtaining required operating and construction permits and dates for completing key phases of the project (40 CFR 268.5(a)(5)). The applicant also is required to show that he has arranged for sufficient capacity to manage the entire quantity of waste which is the subject of his petition during the requested extension period and to document in his application the location of all sites at which the waste will be managed (40 CFR 268.5(a)(6)). During an extension period the restricted waste can be managed in a surface impoundment or landfill provided the unit meets the applicable minimum technology (RCRA section 3004(o)) requirements of 40 CFR 268.5(h)(2) which pertain to ground water monitoring and the installation of two or more liners and leachate collection systems (40 CFR 268.5(a)(7)).

After an applicant has been granted a case-by-case extension, the applicant is required to keep EPA informed of the progress being made towards obtaining adequate alternative treatment, recovery, or disposal capacity. Any change in the demonstrations made in the petition must be immediately reportd to the Agency (40 CFR 268.5(f)). Progress reports also have to be submitted which describe the progress being made towards obtaining adequate alternative capacity, identify any delay or possible delay in developing the capacity, and describe the mitigating actions being taken in response to the event (40 CFR 268.5(g)).

II. Petition

Du Pont has petitioned EPA to grant an extension of the November 8, 1988, effective date of the land disposal restrictions applicable to certain spent solvent hazardous wastes, namely wastewater treatment sludges derived from treatment of spent solvents, managed at its Chambers Works plant on the Delaware River estuary in southern New Jersey. Prior to November 8, 1988, sludges from the Chambers Works facility, other Du Pont plants, and commercial facilities were disposed in an on-site landfill which meets the minimum technology requirements of section 3004(O) of RCRA. Du Pont has indicated that, as of the November 8, 1988, effective date of the land disposal restrictions, it stopped receipt of F001–F005 wastes from outside sources. Du Pont is presently modifying the wastewater treatment plant (WWTP) at the facility. The company will restore and upgrade a presently unused carbon regeneration furnace to treat spent solvent-containing sludge to levels below the treatment standards. EPA is proposing to grant an extension of the effective date of the restrictions to one year from the publication date of the final notice but not later than November 8, 1990, for the sludge. Du Pont's petition request and supporting documentation are available in the public docket for this rulemaking. Interested persons are invited to submit written data, criticisms, or opinions on the petition. All comments will be considered by EPA and addesssed in a **Federal Register** notice stating the Agency's final decision to grant or deny the petition. A summary of the Du Pont petition, Petition Number 006, follows below.

A. Petition Summary

1. Waste Treatment Operations as of November 8, 1988

The Du Pont facility manufactures over 750 finished products which are primarily organic chemicals. The facility treats the wastewaters from these processes, wastewaters and other wastes from off-site Du Pont facilities, as well as wastewaters from commercial (i.e. non-Du Pont) sources. Prior to November 8, 1988, approximately 85% of the wastewaters manifested to treatment facilities in New Jersey were treated at the Chambers Works facility. Wastewaters from Chambers Works, other Du Pont plants, and commercial facilities, as well as ground water and landfill leachate pumped pursuant to a state compliance order, comprised the influent to the primary treatment step of the WWTP prior to November 8, 1988. Du Pont has informed EPA that it stopped accepting F001–F005 wastes from outside sources as of November 8, 1988. The flow does contain *de minimis* levels of F001–F005 constituents from Chambers Works which Du Pont claims are not listed hazardous wastes under 40 CFR 261.3(a)(2)(iv), and it does contain ground water and leachate which carry the EPA hazardous waste numbers of the wastes disposed in the landfill in accordance with 40 CFR 261.3(c)(2).[1] The wastewaters have an average pH of 1.5 to 2.0 (prohibited wastes under HSWA section 3004(d)) and presently include K044 and K046 wastewaters all of which are prohibited from land disposal unless they meet the treatment standards in 40 CFR 268.41 and 40 CFR 268.43. An unlimited surface impoundment located before the headworks of the treatment system provides overflow/surge capacity for plant wastes not subject to the land disposal restrictions.

The primary treatment step of the WWTP is neutralization using lime. After treatment in the primary neutralization tank the resulting solids are flocculated and settled in the clarification system and then removed and processed through filter presses. Du Pont asserts that the wastewater treatment sludge from primary treatment meets the treatment standards for nonexplosive K046 wastes and is no longer corrosive. However, the sludge does not meet the treatment standards for F001–F005 wastes. Since Du Pont believes that the on-site spent solvent waste streams are exempt from regulation under 40 CFR 261.3(a)(2)(iv), if spent solvent wastes from outside sources are diverted the sludge will not have to meet the treatment standards for F001–F005 wastes. However, if the state and the EPA regional office find that Du Pont is not entitled to the claimed exemption the sludge will have to meet the relevant treatment

[1] Ground water and leachate contaminated with first-third wastes are currently covered by a court ordered stay of the August 8, 1988, land disposal restrictions.

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standards. The wastewater treatment effluent from primary treatment complies with the prohibition on land disposal of liquid hazardous wastes having a pH of less than or equal to two. This wastewater stream also contains K044; however, this waste is not explosive and, therefore, meets the applicable treatment standards.

The secondary treatment step of the WWTP consists of powdered activated carbon treatment (PACT) of the flow from the primary clarification system. In aeration tanks, biological organisms break down the organics in the stream to CO_2–H_2O. Powdered activated carbon is added to the aerators and allows adsorption of complex organic compounds. Air provides oxygen and suspends the mixed liquor suspended solids, a mix of approximately 50/50 biomass and activated carbon. Flow from the aeration tanks is divided between parallel clarifiers in which the PACT flocculant settles and is pumped back to the aeration tanks. A portion of the flocculant is purged to maintain a constant mixed liquor suspended solids level in aeration. Wasted flocculant is returned to the primary neutralization tank. The flocculant, secondary sludge, does not meet the treatment standards for F001–F005 wastes and is combined with the primary sludge prior to disposal in the minimum technology landfill. The combined primary and secondary sludges are the subject of Du Pont's petition. Effluent from the secondary clarifiers is commingled with non-contact cooling water in piping and discharged to the Delaware River estuary in accordance with a National Pollutant Discharge Elimination System (NPDES) permit.

2. Interim Waste Treatment Operations

EPA is proposing to grant Du Pont an extension of the effective date of the land disposal restrictions for sludges having less than 1% total F001–F005 solvent constituents on condition that the facility further explore and implement, if practicable, certain interim waste treatment operating conditions. These modifications are expected to take one year to complete. First, Du Pont is to segregate both off-site Du Pont and commercial spent solvent waste streams so that spent solvents from off-site Du Pont and commercial sources will not be introduced into the primary treatment step and thus will not contaminate the primary sludge. These wastewaters are to be introduced directly into the secondary treatment aeration tanks after the pH is adjusted to meet the pH in the aerators. The primary sludge is to continue to be disposed in the facility's minimum technology landfill. If the state and the EPA regional office determine that the sludge is not exempt from regulation, the primary sludge may not continue to be disposed in the minimum technology landfill, unless the relevant treatment standards are met. The portion of the flocculant from the clarifiers which is not pumped back to the aeration tanks (the secondary sludge) is not to be returned to the primary neutralization tank. This flocculant is to be filtered and the resulting filter cake sent off-site for incineration to meet the treatment standards for F001–F005 wastes. The secondary sludge will be treated off-site until Du Pont's furnace is operational. Effluent from the secondary clarifiers is to be commingled with non-contact cooling water in pipes and discharged directly to the Delaware River estuary subject to NPDES permit limits.

3. Future Waste Treatment Operations

Du Pont will further modify the current wastewater treatment system by improving and reactivating a carbon regeneration furnace which allows on-site treatment to regenerate carbon from wasted PACT flocculant and to incinerate the flocculant so that the incinerator residue meets the treatment standards for this F001–F005 solvent-containing waste. Restoration and modification of the multi-hearth furnace will include adding two new hearth levels to the existing furnace to provide increased system flexibility and improved operating control. A new waste-flocculant storage tank, new pumps, in-line grinder, and piping will transfer wasted flocculant to the carbon regeneration furnace. New belt filters, installed above the furnace, will remove solids from the wasted flocculant (water will be returned to the WWTP). The exhaust gas leaving the furnace will be oxidized in a new afterburner/quencher and scrubbed in a new high-efficiency scrubber before discharge to the atmosphere through an existing stack. Regenerated carbon will be returned to the aeration tanks used for PACT biotreatment. Secondary solids from the carbon regeneration furnace, which Du Pont believes will meet the treatment standards, for F001–F005 wastes, will be washed with HCl and HF in a settling tank, filtered, and then disposed in the secure landfill. Scrubber water will be recirculated. The non-minimum technology surface impoundment will be closed and replaced by tanks.

B. Petitioner's Demonstrations

Du Pont's application for an extension of the effective date of the land disposal restrictions applicable to its spent solvent primary and secondary sludges must include a showing that it has made a good-faith effort on a nationwide basis to locate and contract for adequate alternative treatment, recovery, or disposal capacity off-site or to establish such capacity on-site by the effective date of the restrictions. Du Pont specified that approximately 94,900 tons per year (wet weight basis) of its wastewater treatment sludge (i.e. the combined sludges from primary and secondary treatment) require treatment. The solids are mainly calcium salts, magnesium salts, and silica compounds contaminated with heavy metals and organic compounds. Du Pont has submitted data to EPA which shows that the wastewater treatment sludge meets the treatment standards for metals but not for spent solvents. Therefore, the search for treatment capacity focused on the availability of incineration.

1. Incineration Capacity for Residues from Current Wastewater Treatment Operations

Du Pont asked ten incineration facilities located throughout the nation whether they could treat the waste. Of these ten, only two facilities indicated they could accept the waste. Rollins Environmental Services, Inc., in Deer Park, Texas, initially indicated that they had capacity to treat all of Du Pont's wastewater treatment sludge in a slagging kiln and a rotary reactor, with principal reliance on the new rotary reactor. However, Du Pont questions whether the rotary reactor can adequately incinerate the extremely large quantity of sludge—an estimated 250 tons per day—generated by the Chambers Works facility. Du Pont claims that the radically different design and operation of the rotary reactor may not meet the treatment standards for the organic constituents. Specifically, Du Pont asserts that since this reactor recirculates hot sand, the high lime and solids content of the waste may lead to sand recirculation problems and incomplete burn out of organic contaminants. Hence, Du Pont maintains that Rollins does not have treatment capacity for all of the waste. However, Rollins claims their rotary reactor can meet the treatment standards and there is capacity for all of the waste. EPA believes that Du Pont must support its claim with results from a trial burn.

Ross Environmental Services, Inc., in Grafton, Ohio, and LWD, Inc., in Clay, Kentucky, initially indicated that they have capacity for a small portion of the waste. However, further examination determined that these firms are not currently permitted to incinerate this sludge, which carries the EPA hazardous waste numbers of the wastes disposed in the landfill in accordance with 40 CFR 261.3(c)(2). Even if the firms were permitted to incinerate this sludge, the little capacity available at the facilities, 20,570 tons per year (wet weight basis) combined capacity, would not be sufficient to accommodate Du Pont's sludge.

2. Incineration Capacity for Residues from Interim Wastewater Treatment Operations

If Du Pont is granted an extension, it will be conditioned on the further exploration and implementation, if practicable, of the interim wastewater treatment operating conditions. The interim operations are estimated to result in the generation of 21,900 tons per year (wet weight basis) of secondary sludge for off-site incineration. At least one facility, Rollins, is believed to have capacity to treat this waste. EPA is requiring Du Pont to show, over the one year period of this extension, that the company is making a good-faith effort to complete necessary reconfigurations within the facility and to locate and contract for adequate incineration capacity to treat the secondary sludge.

3. Transport of Residues from Current Wastewater Treatment Operations

Assuming that adequate alternative off-site treatment capacity at Rollins is available Du Pont would have to transport the restricted waste to the facility by railcar or truck. Neither Rollins nor Du Point currently has a system to load and unload railcar shipments. Du Pont estimated that it would take more than 18 months to provide such a system. Furthermore, a minimum of 130 railcars, specially lined and covered, would be needed to ship the large volume of primary and secondary sludges. Du Pont determined that implementing the option to transport the combined primary and secondary sludges by truck would take a minimum of nine months. The company claims that in excess of 150 dumpster pans with waterproof lining, 130 flat bed trailers, and four hydraulic loading and unloading devices would be needed with procurement of the materials handling equipment alone taking in excess of six months. EPA believes that this assessment of the amount of transport capacity needed and the time necessary to provide this capacity are reasonable estimates. Hence, EPA is currently of the opinion that Du Pont is unable to locate and contract for adequate alternative incineration capacity off-site for its primary and secondary sludges.

4. Transport of Residues from Interim Wastewater Treatment Operations

If Du Pont is successful in contracting for sufficient alternative off-site treatment capacity for residues from its interim wastewater treatment operations, the necessary transport acquisitions will be made as part of the interim operations.

5. Other Treatment Capacity

The only other on-site treatment capacity Du Pont has been considering is stabilization, which has been evaluated since August, 1987. To date stabilization has not been demonstrated to be an effective technolgy for treatment of organic wastes. Therefore, EPA is of the view that the company is unable to establish adequate alternative on-site treatment capacity.

In addition to demonstrating that a good-faith effort has been made to establish or locate and contract for adequate alternative capacity to manage its waste by the effective date, Du Pont must show that it has entered into a binding contractual commitment to construct or otherwise provide such capacity. All design and construction work needed to upgrade the WWTP is being done internally. The non-minimum technology surface impoundment located before the headworks of the wastewater treatment system is currently being replaced by tanks. Du Pont's petition includes commitments for that replacement in excess of $4 million to provide material, labor, equipment, tools, facilities, supplies, and services not available at Du Pont. Design of the carbon regeneration furnace upgrade and segregation system for spent solvent wastes from outside sources is also under way. These modifications are expected to cost $15 to $16 million. Du Pont's extension request shows that its 1987 capital budget approves $30 million to be authorized in each of the years 1989 and 1990 for necessary improvements required by the land disposal restrictions program. Specific projects utilizing these funds will be authorized no later than January, 1989. EPA is currently of the opinion that Du Pont has demonstrated that it has satisfied the requirement that it has entered into a binding contractual commitment to upgrade the WWTP.

Du Pont was also required to demonstrate that the proposed on-site waste segregation and upgrade of the carbon regeneration furnace could not be implemented by the effective date of the restrictions due to reasons beyond its control. Du Pont has submitted information which indicates that changes to the WWTP have been under way since 1984. Open ditches are being replaced with an overhead pumped conveyance system and tanks, and the surface impoundment is being replaced with tanks. The company did, therefore, initiate activities at an early date to phase out dependence on land disposal in anticipation of future regulations restricting the land disposal of hazardous wastes. However, Du Pont found that due to complicated multiple-production operations and the very large volume of waste treated, it has taken considerable time to devise alternatives, to evaluate their ability to meet all applicable restrictions (including those imposed under Federal and State air and water pollution control programs), to establish priorities for projects with respect to multiple regulatory requirements, and to integrate projects to modify the WWTP.

Du Pont believes that the primary sludge is exempt from regulation under 40 CFR 261.3(a)(2)(iv) once the off-site spent solvent waste streams are segregated and diverted directly to the secondary treatment step. Du Pont supports its claim that the capacity of the modified WWTP will be sufficient to manage all the secondary sludge by comparing the volume of secondary sludge the company expects to generate with the design requirements of the carbon regeneration furnace. Du Pont claims that the furnace is sized to treat up to 40 tons per day of secondary sludge which is generated at an average rate of 10 to 15 tons per day (dry weight basis). The furnace is oversized to accommodate any future increases in waste volume.

The schedule for upgrading the WWTP submitted with the application spans a 75-month period from August, 1984, to October, 1990. Upgrades to the WWTP began in August, 1984, when Du Pont reached agreement with the New Jersey Department of Environmental Protection (NJDEP) on final terms and conditions of an Administrative Consent Order for eliminating all unlined process wastewater ditches and surface impoundments associated with the WWTP. The schedule shows that between August, 1988, and August, 1989 (the expiration date of the air permit for the carbon regeneration furnace), Du Pont will reapply for its air permit by submitting an application for revisions to the permit and it is anticipated that NJDEP will grant Du Pont the revised permit and all building and construction permits will be issued. Milestone dates for completion of the various activities to upgrade the WWTP are also given.

Du Pont states in its application that there is adequate capacity to manage its

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restricted waste during the extension period in the on-site landfill which meets the minimum technology requirements of 40 CFR 268.5(h)(2). The company included in its application a map documenting the location of the minimum technology landfill. The entire quantity of restricted primary and secondary sludge generated during the proposed extension, approximately 60,000 yd ^{3} per year, can be disposed in the landfill. The landfill is divided into four areas. Area 1 was closed in late 1978. Areas 2 and 3 are currently accepting wastes, and the remaining 378,000 yd ^{3} of capacity is sufficient to manage the waste over the next five years. Construction of Area 4 which started in late 1987 will provide additional capacity. Since upgrading the WWTP is expected to take two years, there is adequate capacity to manage the restricted waste in Areas 2 and 3. The landfill is in compliance with the provisions of 40 CFR 268.5(h)(2), stipulating that the unit meet HSWA section 3004(o) requirements relating to ground water monitoring and the installation of two or more liners and leachate collection systems.

C. EPA's Proposed Action

For the reasons discussed above it appears that Du Pont's demonstrations have satisfied all the requirements for a case-by-case extension of the effective date of the land disposal restrictions applicable to sludges having less than 1% total F001–F005 solvent constituents provided the company pursues the interim plan to segregate wastewater streams and to incinerate secondary sludge off-site. Therefore, EPA is proposing to grant an extension of the November 8, 1988, effective date of the restrictions on hazardous solvent-containing sludge having less than 1% total F001–F005 solvent constituents. If the extension is granted, the primary and secondary sludge, which would not be prohibited from land disposal, could be disposed in the landfill over a one-year period starting from the publication date of the final notice but not later than November 8, 1990, while the interim plan is being implemented.

If Du Pont obtains a case-by-case extension, it would have to submit a progress report six months after the date the extension is granted addressing the progress being made to modify their furnace. In addition, EPA is requesting monthly progress reports addressing implementation of the interim plan. The Agency must also be notified of any change in the conditions specified in the petition. The extension remains in effect unless Du Pont fails to make a good-faith effort to meet the schedule for completion, the Agency denies or revokes any required permit, conditions certified in the application change, or Du Pont violates any laws or regulations implemented by EPA.

(Sections 1006, 2002(a), 3001, and 3004 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6921, and 6924))

Dated: January 11, 1989.

Jeffery D. Denit,

Deputy Director.

[FR Doc. 89–1366 Filed 1–19–89; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3507–6]

Resource Conservation and Recovery Act; RCRA Docket Information Center: Relocation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of move and of closing of RCRA Docket during the move.

SUMMARY: The Resource Conservation and Recovery Act Docket will move from LG–100 to M2427 of EPA Headquarters, 401 M Street SW., Washington, DC 20460. The RCRA Docket will be closed from January 30, 1989 through February 3, 1989. Closing the Docket during the move will facilitate the moving of the Docket's collection and ensure the integrity of the regulatory dockets. This move will allow the Docket to provide improved services to its patrons.

As of January 11, 1989, we identified that the following actions will be undergoing the public comment period during the time of the Docket's closing:

FR No.	Docket ID No.	Title	Closure date
53FR53282	F–88–WPWP–FFFFF	Listing of Wood Preservatives	2/28/89
53FR53330	F–88–WPDP–FFFFF	Tentative Denial of American Petition	2/28/89
54FR1056	F–88–LD10–FFFFF	Second Third Scheduled Wastes	2/27/89

The Docket staff will receive written comments during this time; however, the dockets will not be available for viewing.

FOR FURTHER INFORMATION CONTACT: RCRA Docket Information Center (OS–305) 401 M Street SW., Washington, DC 20460, (202/475–9327).

Date: January 12, 1989.

Sylvia K. Lowrance,

Director, Office of Solid Waste.

[FR Doc. 89–1365 Filed 1–19–89; 8:45 am]

BILLING CODE 6560–50–M

[OPP–36167; FRL–3507–2]

Publication of Addenda on Data Reporting to Pesticide Assessment Guidelines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Availability.

SUMMARY: Addenda to the Pesticide Assessment Guidelines for certain studies have been finalized and are now available to the public from the National Technical Information Service (NTIS). The studies involved are: Acute and Subchronic Inhalation Toxicity Testing; General Metabolism; Metabolism (Qualitative Nature of the Residue); Food Animals; and Residues in Meat, Milk, Poultry and Eggs; Livestock Feeding Studies. The addenda supersede paragraphs in the Guidelines on data reporting and provide a format for the preparation of study reports by those submitting data to EPA. While these Guidelines are not mandatory at this time, data submitters are strongly encouraged to follow the format so that reports will be consistent, thereby increasing the efficiency of pesticide registration and other regulatory activities.

ADDRESS: Guidelines can be ordered from: National Technical Information Service, Attn: Order Desk, 5285 Port Royal Road, Springfield, VA 22161, (703–487–4650).

FOR FURTHER INFORMATION CONTACT: Elizabeth M.K. Leovey, Hazard Evaluation Division (TS–769C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Office location and telephone number: Room 703B, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, (703–557–2162).

SUPPLEMENTARY INFORMATION: The specific addenda, with NTIS order number and price, currently available from NTIS are as follows.

Document title	NTIS accession No.	EPA document No.	Hardcopy [1] price
Pesticide Assessment Guidelines, Subdivision F, Hazard Evaluation: Human and Domestic Animals. Series 81–3 and 82–4, Acute and Subchronic Inhalation Toxicity Testing, Adendum 6 on Data Reporting.	PB89–124077	540/09–89–007	$13.95
Pesticide Assessment Guidelines, Subdivision F, Hazard Evaluation: Human and Domestic Animals. Series 85–1, General Metabolism, Addendum 7 on Data Reporting.	PB89–124085	540/09–89–008	$13.95
Pesticide Assessment Guidelines, Subdivision O, Hazard Evaluation: Residue Chemistry. Series 171–4(a)(3), Metabolism (Qualitative Nature of the Residue): Food Animals, Addendum 7 on Data Reporting.	PB89–124598	540/09–89–009	$12.95
Pesticide Assessment Guidelines, Subdivision O, Hazard Evaluation: Residue Chemistry. Series 171–4(c)(3), Residues in Meat, Milk, Poultry, and Eggs: Livestock Feeding Studies, Addendum 8 on Data Reporting.	PB89–124606	540/09–89–010	$12.95

[1] Also available in microfiche at $6.95 each.

This is the fifth set of Data Reporting Guidelines published by the Agency. Publication of the previous sets were announced in the **Federal Register** of November 26, 1986 (51 FR 42931); September 23, 1987 (52 FR 35766); January 28, 1988 (53 FR 2535); April 13, 1988 (53 FR 12186); and June 1, 1988 (53 FR 20011). These documents were reviewed by the U.S. Department of Agriculture, the Food and Drug Administration, and other organizations within EPA. They underwent public comment announced in the **Federal Register** of March 25, 1987 (52 FR 9536), and May 25, 1988 (53 FR 18898). The documents were revised to reflect consideration of these comments and the public comments were addressed in the documents.

Order may be placed by mail or telephone. All orders should specify whether the document is requested in hard copy or microfiche form since prices vary for hard copy but are a consistent $6.95 for the microfiche. There is an additional $3.00 handling charge for each order. Payment may be made by charging against an NTIS deposit account; charging to VISA, MasterCard, or American Express, or by check or money order. In all orders, the document title, NTIS order number of the document, desired form of the document (microfiche or hard copy), and the price must be stated.

Data Reporting Guidelines for the remaining major studies in the Pesticide Assessment Guidelines will also be published. Publication will be announced in the **Federal Register**.

Dated: January 10, 1989.

William L. Burnam,

Acting Director, Health Effects Division, Office of Pesticide Programs.

[FR Doc. 89–1363 Filed 1–19–89; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to the Office of Management and Budget for Review

January 11, 1989.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, 44 U.S.C. 3507.

Copies of this submission may be purchased from the Commission's duplicating contractor, International Transcription Service, 2100 M Street NW., Suite 140, Washington, DC 20037, or telephone (202) 857–3815. Persons wishing to comment on an information collection should contact Eyvette Flynn, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, telephone (202) 395–3785. Copies of these comments should also be sent to the Commission. For further information contact Doris Benz, Federal Communications Commission, telephone (202) 632–7513.

OMB No.: 3060–0095.

Title: Annual Employment Report—Cable Television.

Form No.: FCC 395–A.

Action: Revision.

Respondents: Business (including small business).

Frequency of Response: Annually.

Estimated Annual Burden: 2,965 Responses, one hour and twenty minutes each.

Needs and Uses: Filing is required of cable television licensees with six or more employees. The data is used to assess compliance with the Commission's EEO requirements, and to enforce such compliance.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89–1371 Filed 1–19–89; 8:45 am]

BILLING CODE 6712–01–M

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

January 12, 1989.

The Federal Communications Commission has submitted the following information collection requirement to the Office of Management and Budget for review and clearance under the paperwork Reduction Act, as amended (44 U.S.C. 3501 *et seq.*).

Copies of the submission may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037. For further information on this submission contact Jerry Cowden, Federal Communications Commission, (202) 632–7513. Persons wishing to comment on this information collection should contact Eyvette Flynn, Office of Management and Budget Room 3235

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NEOB. Washington, DC 20503, (202) 395-3785.

OMB Number: 3060-0004.

Title: Environmental Information Collection Requirements: Section 1.1307, 1.1308, and 1.1311.

Action: Revision.

Respondents: Individuals, state or local governments, businesses (including small businesses), and non-profit institutions.

Frequency of Response: On occasion.

Estimated Annual Burden: 1,254 responses; 2,633 total hours; avg. 2.1 hours each.

Needs and Uses: In fulfilling its obligation under the National Environmental Policy Act, the Commission collects environmental information from applicants whose proposals to construct or modify communications facilities may have a significant environmental impact.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89-1372 Filed 1-19-89; 8:45 am]

BILLING CODE 6712-01-M

[Report No. 1765]

Petitions for Reconsideration and Clarification of Actions in Rule Making Proceedings

January 11, 1989.

Petitions for reconsideration and clarification have been filed in the Commission rule making proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street NW., Washington, DC, or may be purchased from the Commission's copy contractor International Transcription Service (202-857-3800). Oppositions to these petitions must be filed February 8, 1989. See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of § 73.202(b) Table of Allotments, FM Broadcast Stations. (Melbourne, Florida) Number of petitions received: 1.

Subject: Automated Reporting Requirements for Certain Class A and Tier 1 Telephone Companies (Parts 31, 43, 67 and 69 of the FCC's Rules). (CC Docket No. 86-182) Number of petitions received: 1.

Subject: Amendment of § 73.202(b) of the Commission's Rules, FM Table of Allotments. (Broken Arrow and Bixby, Oklahoma, Coffeyville, Kansas) (MM Docket No. 87-475, RM's 5905 and 6209) Number of petitions received: 3.

Subject: Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Arizona City, Arizona) (MM Docket No. 87-543, RM-5817) Number of petitions received: 1.

Subject: Amendment of Part 22 of the Commission's Rules to Revise Certain Filing Procedures for the Mobile Services Division Applications and to Eliminate Form 430. (CC Docket No. 88-161) Number of petitions received: 8.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89-1373 Filed 1-19-89; 8:45 am]

BILLING CODE 6712-01-M

[DA 89-43]

Advisory Committee on Advanced Television Service Steering Committee

January 18, 1989.

A meeting of the Steering Committee of the Advisory Committee on Advanced Television Service will be held on: January 24, 1989, 4:00 p.m., National Association of Broadcasters Building, 1771 N Street Northwest, McCollough Room, Washington, DC.

The agenda for the meeting will consist of:

1. Introduction
2. Approval of the last meeting's minutes
3. Discussion of draft report on U.S. "competitiveness"
4. Progress reports of the three subcommittees
5. Development of testing plans
6. Planning for the Second Interm Report to the FCC
7. Report on budget and funding
8. Date and location of next Steering Committee meeting
9. Other business
10. Adjournment

All interested persons are invited to attend. The fifteen (15) day prior notice regularly given for such meetings is not possible in this instance because the primary purpose of meeting at this time is to review a draft of a status report on U.S. "competitiveness" implications of advanced television which is due to the House Subcommittee on Telecommunications and Finance by February 1, 1989. In order to provide maximum notice to the interested public, we will contact by telephone those members of the public who attended either of the last two Steering Committee meetings (as reflected in the minutes of those meetings) to inform them of this meeting.

Interested parties may submit written statements at this meeting. Oral statements and discussion will be permitted under the direction of the Steering Committee Chairman.

Any questions regarding this meeting should be directed to Richard E. Wiley at (202) 429-7010 or David R. Siddall at (202) 632-7792.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89-1405 Filed 1-19-89; 8:45 am]

BILLING CODE 6712-01-M

Applications for Consolidated Hearing; Mary Karen Dodd et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

I.

Applicant, city and State	File No.	MM Docket No.
A. Mary Karen Dodd; Claremore, OK.	BPH-871119MG	88-568
B. Educational Broadcasting Corp.; Claremore, OK.	BPED-871216MB	
C. Pamela Kay Warren; Claremore, OK.	BPH-871216MH	
D. Fred M. Weinberg; Claremore, OK.	BPH-871216MJ	

Issue Heading and Applicants

1. Comparative, A,B,C,D
2. Ultimate, A,B,C,D

II.

Applicant, city and State	File No.	MM Docket No.
A. A.P. Walker, Jr.; Panama City, FL.	BPH-870824MS	88-559
B. Ladies III Broadcasting, Inc.; Panama City, FL.	BPH-870824MV	
C. Voice of The Gulf Limited Partnership; Panama City, FL.	BPH-870824MU	
D. Beach Broadcasting; Panama City, FL.	BPH-870824MF	
E. Shell Island Broadcast Associates; Panama City, FL.	BPH-870821MC (previously dismissed)	
F. C.C. Broadcasting Ltd.; Panama City, FL.	BPH-870824MW (dismissed herein	

Issue Heading and Applicants

1. Air Hazard, C,D
2. Comparative, A-D
3. Ultimate, A-D

III.

Applicant, city and State	File No.	MM Docket No.
A. William L. Knowles; Yellowstone, MT.	BPH-851114MS	88-569
B. Mountain River Broadcasting, Inc.; Yellowstone, MT.	BPH-851115NT	

Issue Heading and Applicant(s)

1. Environmental Impact, B
2. Comparative, A,B
3. Ultimate, A,B

IV.

Applicant, city and State	File No.	MM Docket No.
A. Boyce Dooley; Trion, GA.	BPH-871021MA	88-580
B. Safe Broadcasting Corp.; Trion, GA.	BPH-871022MC	
C. Tri-State Broadcasting Co.; Trion, GA.	BPH-871023MJ	
D. Lynn S. Gwyn; Trion, GA.	BPH-871023MM	
E. Kay W. Abbott and John W. Abbott, d/b/a Faith Broadcasting; Trion GA.	BPH-871023MR	

Issue Heading and Applicants

1. Cross Interest, D
2. Comparative, A-E
3. Ultimate, A-E

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issues in question applies to that particular applicant.

3. If there is any non-standardized issue in this proceeding, the full text of the issue and the applicants to which it applies are set forth in an Appendix to this notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037. (Telephone (202) 857-3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 89-1374 Filed 1-19-89; 8:45 am]

BILLING CODE 6712-01-M

Applications for Consolidated Hearing; Don Werliger et al.

1. The Commission has before it the following mutually exclusive applications for a new AM station.

I.

Applicant, city and State	File No.	MM Docket No.
A. Don Werlinger; Las Vegas, NV.	BP-870331AD	88-562
B. Don H. Barden; Las Vegas, NV.	BP-870929AK	
C. Larry L. Cummings; Sun City-Youngtown, AZ.	BP-870929AM	
D. Peter D. Gurechis d/b/a Cave Creek Broadcasting Co; Cave Creek, AZ.	BP-810929AP	
E. Stephen E. Brisker d/b/a Tucson Radio; Tucson, AZ.	BP-870929AO	

Issue Heading and Applicant(s)

1. Air Hazard, A
2. City Coverage, B
3. 307(b), All Applicants
4. Contingent Comparative, All Applicants
5. Ultimate, All Applicants

II.

Applicant, city and State	File No.	MM Docket No.
A. Western Indian Ministries, Inc.; Tse Bonito, NM.	BP-870929AN	88-557
B. Mesa Broadcasting Co.; Orchard Mesa, CO.	BP-880326AG	

Issue Heading and Applicant(s)

1. 307(b), All Applicants
2. Contingent Comparative, All Applicants
3. Ultimate, All Applicants

III.

Applicant, city and State	File No.	MM Docket No.
A. La Voz Broadcasting Co., Inc.; Santa Fe, NM.	BP-880713AF	88-560
B. Radio Property Ventures; Arvada, Co.	BP-880428AA	

Issue Heading and Applicant(s)

1. City Coverage, A
2. 307(b), All Applicants
3. Contingent Comparative, All Applicants
4. Ultimate, All Applicants

IV.

Applicant, city and State	File No.	MM Docket No.
A. Spann Communications; Surry, VA.	BP-880922AF	88-561
B. David H. Moran d/b/a Kitty Hawk Radio; Kitty Hawk, NC.	BP-870601AB	
C. Ultimate High Fidelity; Claremont, VA.	BP-870601AE	
D. David H. Moran d/b/a Midlothian Radio; Midlothian, VA.	BP-870601AC	Dismissed.

Issue Heading and Applicant(s)

1. (See Appendix), A
2. (See Appendix), A
3. 307(b), All Applicants
4. Contingent Comparative, All Applicants
5. Ultimate, All Applicants

2 Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing is a consolidated proceeding upon the issues whose heading are set forth below. The text of each of these issues has been standaradized and set forth in its entirety under the corresponding heading at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue an the applicant(s) to which it applies are set forth in an Appendix to this notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037. (Telephone No. (202) 857-3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

Appendix

1. To determine whether Pervis Spann, as a principal of Midway Broadcasting Company, misrepresented in an application for a new

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broadcast station at Maywood-Chicago, Illinois, the identity of its consulting engineer, and in light of the evidence adduced, whether A (Spann Communications) possesses the basic qualifications to be a Commission licensee.

2. To determine whether Pervis Spann paid Daryl Williams to sign a false affidavit which Minority Broadcasting of the Midwest, Inc. filed with the Commission in a proceeding involving mutually exclusive proposals for a Memphis, Tennessee, broadcast station and in light of the evidence adduced, whether A (Spann Communications) possesses the basic qualifications to be a Commission licensee.

[FR Doc. 89-1375 Filed 1-19-89; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 207-011228.

Title: American Auto Carriers/Autoship Joint Service Agreement ("Joint Service").

Parties: American Auto Carriers, Inc. Autoship, Inc.

Synopsis: The proposed Agreement would permit the parties to form a joint cargo service employing U.S.-flag roll-on roll-off type vessels owned or operated by the parties and contributed to the Joint Service by the parties in the trades between U.S. Atlantic ports from Maine to Key West and foreign ports in Europe, the United Kingdom, Eire, and islands of the Atlantic (including intermediate ports but not in U.S. domestic trade).

By order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: January 17, 1989.

[FR Doc. 89-1381 Filed 1-19-89; 8:45 am]

BILLING CODE 6730-01-M

GENERAL SERVICES ADMINISTRATION

Federal Supply Service; Consortium of Federal, Academic, and Industry Logistics Experts; Meeting

Notice is hereby given that the Consortium of Federal, Academic, and Industry Logistics Experts will meet February 1, 1989, from 10:00 am to 12:00 noon in Crystal Mall Building 4, Room 1129, Arlington, Virginia. The purpose of the meeting is to provide a forum for exchange on logistics issues among member civilian agencies.

The agenda for this meeting will include an update on the fiscal year 1989 agenda topics and a presentation on the Physical Distribution and Materials Management Program at Penn State University.

The meeting will be open to the public.

For further information contact Mr. William B. Foote, Assistant Commissioner for Customer Service and Marketing, GSA/FSS, Washington, DC 20406, telephone (703) 557-7970.

Dated: January 13, 1989.

Donald C.J. Gray,

Commissioner, Federal Supply Service, GSA.

[FR Doc. 89-1303 Filed 1-17-89; 11:30 am]

BILLING CODE 6820-24-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Statement of Organization, Functions and Delegations of Authority

Part A, Office of the Secretary, of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services is amended to reflect the current organization within the Office of the Assistant Secretary for Management and Budget. Specifically, Chapter AM, HHS Management and Budget Office, as last amended at 53 FR 25543, dated July 7, 1988, is being reprinted in its entirety. In addition, Chapter AMN, as last amended at 53 FR 51587, dated December 22, 1988, should have reflected the deletion of paragraphs a. through j., under the Office of Financial Policy. Also delete Chapter AM, HHS Management and Budget Office, in its entirety and replace with the following:

AM.00 Mission. The mission of the HHS Management and Budget Office is to provide advice and guidance to the Secretary on administrative and financial management, excluding personnel management, and to provide for the direction and coordination of these activities throughout the Department on a day-to-day basis.

AM.10 Organization. The HHS Management and Budget Office, headed by the Assistant Secretary for Management and Budget who reports to the Secretary, consists of the following organizations:

The Immediate Office of the Assistant Secretary for Management and Budget (AM);
Office of Management and Acquisition (AME);
Office of Budget (AML);
Office of Information Resources Management (AMM);
Office of Finance (AMN);

AM.20 Functions

A. The Immediate Office of the Assistant Secretary for Management and Budget (AM) provides executive direction, leadership and guidance to the ASMB components. The Assistant Secretary for Management and Budget is the principal adviser to the Secretary on all aspects of administrative and financial management. By delegation from the Secretary, the incumbent exercises the full Departmentwide authority of the Secretary in the assigned areas of responsibility.

B. The Office of Management and Acquisition (AME) provides Departementwide policy leadership and advises senior HHS officials on management issues related to reorganizations, delegations of authority, postal management, real property, space management, occupational safety and health, and emergency preparedness; administers reports clearance, records management, equal employment opportunity, telecommunications, and space management programs for the Office of the Secretary; manages and operates the HHS Fitness Center; provides administrative and facilities management services to HHS components in the Southwest Washington D.C. area complex which include mail, property management, supplies, facilities maintenance, physical security, reprographics, and other office services; provides Departmental leadership in the areas of procurement, discretionary grants, and logistics through policy development, oversight and training; manages the Department's Small and Disadvantaged Business Utilization Program; and awards and administers contracts in support of the Office of the Secretary.

C. The Office of Budget (AML) oversees preparation of the Departmental budget estimates and forecasts resources required to support programs and activities of the Department; analyzes budgetary and financial management implications of new or proposed legislation, programs or activities; appraises programs, activities and operations in terms of the policies, goals, and objectives of the Department; operates the HHS integrated funding system; recommends and administers policies and procedures for allocation and control of employment ceilings. Through studies, analyses and other survey methods, assesses the management processes and structures of the Department to ensure cost-effective and efficient practices. With particular reference to the Office of the Secretary (OS), is responsible for the overall formulation, presentation, and execution of the OS budget; serves as the focal point for OS budget operations, providing assistance in the development of budget policy and the management of positions and financial resources for the OS.

D. The Office of Information Resources Management (AMM) advises the Secretary and the Assistant Secretary for Management and Budget on issues and policies pertaining to the utilization of information resources, and establishes IRM control mechanisms and administers the Department's IRM strategic plan; guides and oversees the development of information systems and communication networks; develops strategies and frameworks for regional information systems; formulates and coordinates the Department's policies on the creation, processing, handling, storage, dissemination and disposition of information; guides and oversees the Department's printing management programs; provides and supports automated data processing and communications equipment and administrative application systems for the Office of the Secretary; and develops and supports Decision Support Systems for top-level Departmental managers.

E. The Office of Finance (AMN) advises the Secretary on all aspects of financial management; directs, oversees and coordinates financial management activities across the Department; provides leadership and coordination in the development of HHS financial systems, including their design, development and modification; serves as Departmental liaison with GAO, OMB, Treasury and other federal agencies on financial matters; manages the Department's Financial Integrity Act Program; maintains Departmental finance and accounting standards; resolves monetary audit findings and findings involving deficiencies in grantee/contractor accounting and management systems; directs the regional review and negotiation of cost allocation plans and indirect cost rates; formulates audit resolution policy, cost principles, and other policies for determining and reimbursing costs of grantee/contractor organizations and serves as Departmental liaison with OMB and other Federal agencies in these areas; recommends and implements Departmental budget execution policies and procedures and serves as the focal point for dealing with OMB on these matters. In addition, manages the Department-wide Payment Management System which pays all of the Department's grants and provides service to other Departments; and manages the day-to-day finance and accounting activities of the Office of the Secretary/Office of Human Development Services.

Date: January 12, 1989.

S. Anthony McCann,

Assistant Secretary for Management and Budget.

[FR Doc. 89-1244 Filed 1-19-89; 8:45 am]

BILLING CODE 4150-04-M

Alcohol, Drug Abuse, and Mental Health Administration

Research Demonstration Program To Reduce the Spread of AIDS by Improving Treatment for Drug Abuse

AGENCY: National Institute on Drug Abuse, Alcohol, Drug Abuse, and Mental Health Administration, HHS.

ACTION: Notice of request for applications.

Purpose: This announcement requests applications for research demonstration projects to improve the effectiveness of drug abuse treatment as an AIDS prevention strategy. Statutory authority for these grant awards is section 301 of the Public Health Service Act (42 U.S.C. 241). Funds will be available under this announcement for (1) establishing treatment research units and (2) for supporting individual and collaborative demonstration research projects. In both cases, funds may be requested to pay for treatment services as well as research costs.

The aim of the grant program is to demonstrate that improvements in drug abuse treatment result in greater decreases in AIDS-risk behaviors than treatment as usual. Toward this goal, applicants are expected to design carefully controlled studies to demonstrate the effectiveness of improvements in existing treatment strategies, or the efficacy of new treatment strategies. Funding will be restricted to the treatment of drug abuse typically associated with HIV transmission. This includes intravenous drug abuse (optiate and/or other drugs) as well as types of drug abuse frequently involving unprotected sex in exchange for drugs or money to purchase drugs—i.e., prostitution or the "sex for crack" phenomenon.

Background

AIDS is a serious medical disorder caused by the Human Immunodeficiency Virus (HIV). One of the principal modes of transmission of HIV is needle sharing by intravenous drug abusers. By recent estimate, 31% of all AIDS cases involve intravenous drug use, which is the second most common means of transmission of the virus. Drug abusers may be particularly susceptible to HIV infection due to the suppressive effects of some abused drugs on the immune system. While most intravenous drug abusers inject heroin, intravenous use of such nonopiate drugs as amphetamines and cocaine occurs as well.

In addition to needle sharing, some intravenous and non-intravenous drug users frequently engage in unprotected sexual activity, which may result in HIV infection of themselves or their sexual partners. Of particular public health concern are drug users who engage in unprotected sex for drugs, or for money to maintain a drug habit.

Both IV drug abusers and non-IV users who engage in risky sexual practices have the potential for spreading the virus into the heterosexual population. Approximately 80 percent of all HIV infection cases attributed to heterosexual transmission have been attributed to sexual contact with intravenous drug abusers. In addition, drug abuse is a major contributing factor in the perinatal transmission of HIV, with over two-thirds of perinatal cases of AIDS occurring in children born to intravenous drug abusers or their sexual partners.

While drug abuse treatment is widely regarded as an effective AIDS prevention strategy, a number of problems exist with current treatment approaches. These problems include unacceptably high client dropout rates and rates of illicit drug use during treatment, as well as relapse rates following treatment. Overcoming these problems is expected to make drug abuse treatment an even more effective AIDS prevention strategy. In addition to resolving problems with existing treatment approaches, new and

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improved treatment approaches must also be developed.

The National Institute on Drug Abuse (NIDA) has a strong commitment to help curb the spread of HIV among drug abusers and from drug abusers to their sexual partners and children. An essential part of NIDA's efforts in this area is the development of more effective treatments for drug abusers, so that those presently at risk for HIV infection have better treatment available. NIDA is interested in supporting treatment research demonstration projects directed at eliminating or reducing drug use (and other behaviors which place individuals at risk for HIV infection) by increasing treatment program effectiveness.

Description of Program

Applications for grants under this announcement must focus on correcting deficiencies in existing treatment approaches and/or developing new treatment approaches. Outcome must be tailored toward reducing drug use, needle sharing and other behaviors that place an individual at risk for HIV infection. The interventions can be pharmacological or nonpharmacological, and may be based in a variety of settings (e.g., hospitals, residential programs, outpatient programs, correctional settings, etc.). Investigation in all types of treatment modalities is encouraged (including methadone maintenance, detoxification, drug-free outpatient, and therapeutic community or inpatient programs), as well as programs that seek to mainstream drug abuse treatment into the primary health care system.

Applicants are expected to establish new treatment slots with the money requested, in support of their research objectives. While applicants may request funds for HIV seropositivity testing and counseling, the focus of the demonstration program is on reducing risk behaviors and HIV testing is not required.

Treatment Research Units

One type of award possible under this announcement is to establish facilities for conducting controlled studies of treatment effectiveness. Treatment Research Units (TRUs) are expected to be fully staffed and operational clinical research components, in which established investigators in the treatment research field are provided with resources for designing and conducting studies on treatment effectiveness. Funding for TRUs will include costs for both clinical and research activities, including patient care costs and staff to recruit subjects, provide followup, etc. In addition to providing the resources necessary for establishing and operating a fully-equipped treatment research unit, TRUs are intended to provide qualified investigators with maximum flexibility in using such facilities to address treatment research issues. Thus, while the overall plan for establishing a TRU will be subject to IRG review, selection and approval of research studies to be conducted within each TRU will follow review and recommendation by an outside Scientific Advisory Group, which will be appointed by each facility.

Each TRU may be tailored to the specific research interests of the treatment investigator(s), and be organized around a research theme or set of general research objectives. For example, one TRU may involve a residential drug-free treatment program and study factors related to dropout from treatment, while another TRU may involve a methadone maintenance program and study factors related to illicit drug use during treatment. Still another facility may focus on the development of new pharmacological treatments for drug abuse. While the major focus of TRUs must be on improving treatment effectiveness, individual projects may address clinical factors that contribute to poor treatment performance or to relapse following treatment.

Each application for a TRU must include plans for establishing and operating the TRU, as well as a general overview of an expected 5-year research plan. The research plan should provide a statement of research directions and types of projects to be conducted in the TRU. Detailed research protocols are not required as part of the application, but applicants should include descriptions of general research methods that are expected to be employed, types of treatment to be evaluated, and characteristics of patient populations to be involved in the research. Applications must also include plans for establishing and operating the Scientific Advisory Group (including types of expertise needed, criteria and process for selection of members, plans for operation of the Group, and its relationship to the TRU), establishing linkages with the treatment community, protection of human subjects, and information dissemination. Applicants should specify how the effects of treatment improvement on high-risk behaviors for HIV transmission will be assessed. Applicants should provide adequate information regarding available facilities and staff, so that the IRG process may adequately review the applicant's capability and the feasibility of the plans to establish the TRU. Because their focus will differ, each program is expected to have unique staffing needs, which must be addressed in the grant application. All TRUs are expected to create new treatment capacity, and none of the funds provided under this announcement can be used to replace funding for existing treatment slots (although it is permissible to add staff to a facility containing both previously existing and new treatment slots). Up to $10 million will be available to fund 5 or more TRUs (i.e., average cost $2 million/grant) under this category.

Research Demonstration Projects

The second type of award possible under this announcement is for individual or collaborative demonstration research projects. The purpose of these projects is to implement and test promising treatment strategies that have not been widely used. In planning these projects, investigators are expected to use the most rigorous methodology consistent with the purposes of the research. It is expected that sound methodologies will be employed in all research activities. Thus, an investigator may wish to demonstrate the effectiveness of dosing schedule in methadone maintenance programs by randomly assigning subjects to fixed dose vs. flexible dose schedules, while another investigator may wish to demonstrate the effectiveness of treatment regimens by randomly assigning subjects to two types of treatment programs. However, it is recognized that experimental designs involving random assignment of subjects to treatments and double blind strategies may not be appropriate for all circumstances. In such cases, other types of controls may be used, including single-subject experimental designs, case controls, regression-discontinuity designs, etc. Applicants having access to a large number of programs are encouraged to conduct collaborative studies.

Research demonstration projects are expected to include the creation of new treatment slots. In designing research demonstration projects, the crucial importance of a sound evaluation plan and qualified research staff cannot be over-emphasized. Many agencies providing treatment services have a research department, but those who do not may wish to enter into collaboration with well-qualified researchers. All applications must address issues of project feasibility, implementation of the intervention, study design, sampling procedure, instrumentation and measurement, data collection, tracking of clients, followup, and data analysis, as appropriate.

- Applicants should specify how the effects of treatment on high-risk behaviors for HIV transmission will be assessed.
- In collaborative arrangements, organizational lines of control and arrangements for cooperation by treatment programs and agencies must be clearly specified.
- The application should also include an information dissemination plan, to assure that research findings are communicated to the treatment field in a timely, efficient fashion.
- Applicants should provide adequate information regarding available facilities and staff, as well as plans to acquire new staff.
- Evidence that programs have been involved in research data collection may be useful in supporting an application.

While the costs of individual grants may differ widely, it is expected that 20 grants will be funded in this category, at an *average* cost of $1 million each.

Allowable Costs

For both Treatment Research Units and individual or collaborative research demonstration projects, funds may be expended on bed/slot costs, rental and operation of facilities, approved renovation and modification of facilities (subject to limits and conditions specified in Public Health Service grant policy), equipment costs, hiring and training of staff, program management, coordination of health and social services, and other costs normally allowable under existing Public Health Service grants policy. No funds from these research demonstrations grants may be used for new construction or to replace funding for existing treatment slots. Applicants are advised to request budgetary funds for two round trips to Washington, DC each year (2 days per trip) to confer with project officers and review findings.

Inclusion of Women and Minorities in Study Populations

ADAMHA urges applicants for grants to give added attention, where feasible and appropriate, to the inclusion of women and minorities in study populations for research on clinical studies of treatment and treatment outcomes. If women and minorities are not included in a given study, a clear rationale for their exclusion must be provided. Investigators are reminded that merely including arbitrary numbers of women and minority group participants in a given study is insufficient to guarantee generalization of results.

Protection of Human Subjects

Grants funded under this RFA are subject to the requirements of 45 CFR Part 46, Protection of Human Subjects. These regulations are available from the Office for Protection from Research Risks, National Institutes of Health, Bethesda, MD 20892. Telephone: (301) 496-7041.

Because of the expedited schedule for review and award of these grants, certifications of Institutional Review Board (IRB) approval should accompany applications for TRUs and individual/collaborative demonstration projects. It is recognized that some or all of the specific research studies to be conducted by a TRU may not have been developed at the time the application is submitted. However, IRBs should review the overall plan for the TRU, e.g., patient recruitment plans, types of treatment proposed, methodology, and study populations. To the extent that specific studies are described in the application, these also must be reviewed and approved by the IRB prior to submission of the application. For specific studies, IRB review and approval must be obtained and documentation submitted to NIDA prior to involvement of human subjects in specific research studies conducted by TRUs.

In addition, all applicants are advised to obtain from their IRB, a copy of the "Guidance for Institutional Review Boards for AIDS Studies," which was disseminated from the Office for Protection from Research Risks (OPRR) on December 16, 1984. If a copy is not available locally, one may be obtained from OPRR, Building 31, Room 4B09, National Institutes of Health, Bethesda, MD 20892, or by telephone on (301) 496-7005. This office may be contacted for advice on how to deal with difficult human subjects protections issues in AIDS research.

Progress Reports and Final Report Requirements

At 6-month intervals, grantees must provide reports describing their progress, problems encountered in implementing their TRU or project plan, proposed strategies for resolving such problems, and data on modalities in which treatment is provided, number of new treatment slots created, utilization of slots, retention rates, and number of clients or patients treated within each modality.

In addition, TRUs must provide descriptions of all projects and copies of all protocols at the time they are approved by the Scientific Advisory Group and before they are initiated. TRUs must provide copies of research findings (and resulting publications) from each project conducted in the TRU.

At the end of the period of support for demonstration projects grants, 3 copies of a final report should be submitted to NIDA within 90 days. This final report should include a complete description of the intervention provided, number and characteristics of clients served, and research findings. Also, as appropriate, the final report should include a description of collaborative arrangements, special materials (such as therapy manuals) developed in implementing the intervention, implications for reducing the spread of HIV infection among drug abusers, etc.

Application Procedure

Eligibility

Treatment Research Units. Applications for Treatment Research Units may be submitted by public or private for profit or nonprofit organizations such as universities, colleges, hospitals, units of State or local governments, and eligible agencies of the Federal Government. Organizations headed by women and minority staff are encouraged to apply.

Individual or Collaborative Projects. Applications for individual or collaborative research treatment demonstrations may be submitted by public or private nonprofit or profit-making community organizations such as universities, colleges, hospitals, laboratories, units of State or local governments, and eligible agencies of the Federal Government. The term "community" refers to geographic service areas, and may include States as well as metropolitan areas and rural districts. Organizations headed by women and minority staff are encouraged to apply.

Application Process

State and local government agencies may use form PHS-5161 (revised 3/86). All other applicants should use the standard PHS-398 (revised 9/86) research grant application form. "AIDS Research: "Research Demonstration Program to Reduce the Spread of AIDS by Improving Treatment for Drug Abuse" should be typed in Item # 2 on the face page of the application. Separate applications are required for TRUs and demonstration project grants.

Application kits containing the necessary forms and instructions may be obtained from business offices or offices of sponsored research at most universities, colleges, medical schools,

and other major research facilities. If such a source is not available, the following office may be contacted for the necessary application material:

Grants Management Branch, National Institute on Drug Abuse, 5600 Fishers Lane, Room 10-25, Rockville, Maryland 20857, (301) 443-6710

The narrative portion of the application (sections A-D of the PHS 398), including tables and charts should not exceed 20 pages. Those exceeding this page limitation may be rejected by the Division of Research Grants, NIH. The signed original and 23 permanent legible copies of the complete application should be sent to:

AIDS Coordinator, Division of Research Grants, NIH, Westwood Bldg., Room 9, 5333 Westbard Avenue, Bethesda, Maryland 20892.

Applicants are strongly advised to contact the Deputy Chief, Treatment Research Branch, NIDA, prior to submitting applications to discuss the nature and extent of their project plans. Further information and consultation on program requirements can be obtained from:

Frank Tims, Ph.D., Deputy Chief, Treatment Research Branch, Division of Clinical Research, National Institute on Drug Abuse, 5600 Fishers Lane, Room 10A-30, Rockville, Maryland 20857. Telephone: (301) 443-4060

Letter of Intent

Prospective applicants are asked to submit, by February 8, a letter of intent that includes a descriptive title and a short abstract of the proposed research demonstration, the name and address of the principal investigator, and the names of other key personnel (if available), and the number of this Request for Applications (DA 89-01).

Although a letter of intent is not required, is not binding, and does not enter into the review of subsequent applications, the information which it contains is extremely helpful in planning for the review of applications. It allows NIDA staff to estimate the potential review workload, and to avoid possible conflict of interest in the review.

The letter of intent should be sent to:

Kursheed Asghar, Ph.D., Chief, Extramural Policy and Project Review Branch, Office of Science, National Institute on Drug Abuse, Parklawn Building, Room 10-42, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-2755.

Intergovernmental Review

The intergovernmental review requirements of Executive Order 12372, as implemented through DHHS regulations at 45 CFR Part 100, are applicable to this program. Through this process, States, in consultation with local governments, are provided the opportunity to review and comment on applications for Federal financial assistance. Applicants should contact the State's Single Point of Contact (SPOC) as early as possible to determine the applicable procedure. A current listing of SPOCs will be enclosed with the application kit. SPOC comments should be forwarded to: Chief, Office of Extramural Policy and Project Review, Office of Science, NIDA, 5600 Fishers Lane, Room 10-42, Rockville, Maryland 20857, by May 8, 1989.

Review Process

Applications received under this RFA will be reviewed for scientific merit by an Initial Review Group (IRG), consisting primarily of non-Federal technical and scientific experts. However, applications that are incomplete for review or non-responsive to this RFA will be screened out by NIDA staff upon receipt and returned to the applicants without further consideration.

Those applications which are complete and responsive may be subjected to a triage by an IRG to determine whether they are competitive relative to other applications received in response to this RFA. NIDA will withdraw from further review those applications judged to be noncompetitive and notify the applicant and institutional business official. Those applications judged to be competitive will be further evaluated for scientific/technical merit by an IRG convened for this purpose.

Depending on the number of applications reaching the final peer review for scientific merit, the summary statement prepared may reflect the use of a structured critique. This term refers to a format used to reduce the amount of written material submitted by the Initial Review Group members in preparing their evaluations, while maintaining the requirement for thoroughness in review by focusing on the major strengths and weaknesses of each application reviewed.

Notification of the review outcome will be sent to the applicant after the initial review. Applications will receive a second-level review by the National Advisory Council on Drug Abuse which may be based on policy as well as scientific merit considerations.

Application Receipt and Review Schedule

Applications received under this RFA will be reviewed under the accelerated special applications process (ASAP) provisions established for AIDS research. The deadlines and award dates shown below have been established by Division of Research Grants, NIH.

Receipt of Applications	Initial review	Advisory council review	Awards to be made by
Mar. 8, 1989	May-June 1989	Aug. 1989	Sept. 8, 1989

Applications under this RFA not received by the March 8, 1989 deadline cannot be accepted. Late applications will be returned to the applicants without further consideration.

Review Criteria—Treatment Research Units

Criteria for merit review of applications for Treatment Research Units will include the following:

- Scientific, clinical, and technical merit;
- Institutional commitment of adequate space and other resources necessary for the establishing of a unit to support high-quality research on the treatment of drug abuse;
- Experience and demonstrated ability of the applicant institution to establish and operate health care and research facilities of the highest quality;
- Organizational arrangements of the TRU within the applicant institution, including lines of administrative authority and control, evidence of administrative support and institutional commitment to the unit;
- Qualifications and experience of the scientific and clinic directors and clinical and research staff, including previous peer-reviewed research project support;
- Soundness of the plan for the establishment and operation of clinical and research activities within the TRU;
- Availability of a sufficient research client population;
- Appropriateness and adequacy of plans for establishment and operation of an outside Scientific Advisory Group to review and approve research plans and protocols, including provisions to ensure the selection of scientists with appropriate expertise and to ensure the adoption of high standards of excellence for review of protocols;
- Establishment of appropriate review criteria for use by the Scientific Advisory Group;
- Potential of the proposed facility to provide new and programmatically relevant knowledge regarding the efficacy and/or efficiency of specific interventions for treatment of drug abusers;
- Adequacy of provisions for assessment of treatment outcome, and impact of treatment on HIV;
- Adequacy of information dissemination plan;
- The appropriateness of budget estimates; and
- Adequacy of provisions for the protection of human subjects.

Award Criteria—Treatment Research Units

Funding to establish TRUs will be limited to institutions with organizational capability to establish, operate, and maintain a high-quality treatment research facility. The institution must also be willing to provide administrative management of the external review of research protocols to be conducted within the facility, and to provide administrative support and a strong commitment to the goals and objectives of the TRU. TRU applications recommended for approval by the National Advisory Council on Drug Abuse will be considered for funding on the basis of:

- Overall scientific, clinical, and technical merit of the proposed TRU, determined by peer review;
- Potential contributions to reducing the spread of HIV infection through investigation of more effective treatments for drug abusers;
- Appropriateness of budget estimates;
- National priorities in the drug abuse treatment field;
- Adequacy of protection of human subjects;
- Geographic and/or program balance;
- Comments received from the State Single Point of Contact; and
- Availability of funds.

Review Criteria—Individual or Collaborative Projects

Criteria for merit review of applications for individual and collaborative research demonstration projects will include the following:

- Scientific, clinical, and technical merit of the application;
- Potential of the proposed project to provide new knowledge regarding the efficacy and/or efficiency of specific interventions for treatment of drug abusers;
- Potential contribution of the project to curtailing the spread of HIV infection among drug abusers and/or their sexual partners and/or their offspring.
- Adequacy of provisions for assessment of treatment outcome, and potential impact of treatment improvement on the spread of HIV infection;
- Adequacy of information dissemination plan;
- Qualifications and experience of the principal investigator, clinic director, clinical staff, and other key personnel;
- Availability of adequate facilities, other resources, and collaborative arrangements necessary for the treatment demonstration; and
- Adequacy of provisions for the protection of human subjects.

Award Criteria—Individual or Collaborative Projects

Applications recommended for approval by the National Advisory Council on Drug Abuse will be considered for funding on the basis of:

- Overall scientific, clinical, and technical merit of the proposed treatment expansion, determined by peer review;
- Potential contributions of the research area to reducing the spread of HIV infection through development of more effective treatments for drug abusers;
- Appropriateness of budget estimates;
- National priorities in the drug abuse treatment field;
- Program balance;
- Adequacy of provisions for the protection of human subjects;
- Comments received from the State Single Point of Contact; and
- Availability of funds.

Terms and Conditions of Support

Grant funds may be used for expenses clearly related and necessary to establish and operate TRUs, and to conduct treatment demonstration projects, including both direct costs which can be specifically identified with the project and allowable indirect costs of the institution. These costs must be justified in terms of research objectives, methods, and designs which promise to yield generalizable knowledge and/or make a significant contribution to theoretical concepts.

Grants must be administered in accordance with the *PHS Grants Policy Statement* (DHHS Publication No. (OASH) 82-50-000 GPO-017-020-00002-7 (rev.) January 1, 1987, available for $4.50 from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402). Title 42 of the Code of Federal Regulations (CFR), Part 52, "Grants for Research Projects," is applicable to these awards. While references to other applicable regulations may be found in the aforementioned reference, special attention is called to 42 CFR Part 2, "Confidentiality of Alcohol and Drug Abuse Patient Records."

Period of Support

Support will be provided for a period of up to five years (renewable for subsequent periods) subject to continued availability of funds and progress achieved.

Joseph R. Leone,

Associate Administrator for Management, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 89-1310 Filed 1-19-89; 8:45 am]

BILLING CODE 4160-20-M

Food and Drug Administration

Consumer Participation; Open Meetings

AGENCY: Food and Drug Administration, HHS

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following district consumer meetings:

Orlando District Office, chaired by Douglas D. Tolen, District Director. The topic to be discussed is food safety.

DATE: Thursday, January 26, 1989, 1:30 p.m. to 3 p.m.

ADDRESS: Auditorium Sunshine Center, Office on Aging, 330 Fifth St., North, St. Petersburg, FL 33701.

FOR FURTHER INFORMATION CONTACT: Lynne Isaacs, Consumer Affairs Officer, Food and Drug Administration, 7200 Lake Ellenor Dr., Orlando, FL 32809, 407-855-0900.

New Orleans District Office, chaired by Robert O. Bartz, District Director. The topic to be discussed is health fraud.

DATE: Thursday, February 16, 1989, 8:30 a.m. to 3:30 p.m.

ADDRESS: Holiday Inn, Magnolia Rms. 1 and 2, 2375 North State St., Jackson, MS 39202.

FOR FURTHER INFORMATION CONTACT: Barbara Loyd, Consumer Affairs Officer, Food and Drug Administration, 4298 Elysian Fields Ave., New Orleans, LA 70122, 504–589–2420.

SUPPLEMENTARY INFORMATION: The purpose of the Orlando District Office meeting is to encourage dialogue between consumers and FDA officials, to identify and set priorities for current and future health concerns, to enhance relationships between local consumers and FDA's district offices, and to contribute to the agency's consumer education programs.

The purpose of the New Orleans District Office meeting is to educate and inform the public of matters pertaining to consumer fraud and quackery, to enhance relationships between local consumers and FDA's district offices, and to contribute to the agency's consumer education programs.

Dated: January 13, 1989.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 89–1295 Filed 1–19–89; 8:45 am]

BILLING CODE 4160–01–M

National Institutes of Health

Programs for Support of Minorities in Biomedical Research; Meeting

Notice is hereby given that the National Institutes of Health (NIH) will hold the first of a series of five regional public meetings to be conducted under the auspices of the Office of the Director, NIH, on "Programs for Support of Minorities in Biomedical Research." The purpose of the meetings is two-fold:

(1) To provide current information concerning the activities of the NIH by describing in broad terms existing programs offered by NIH, and

(2) To solicit through public testimony the views of biomedical researchers, university faculty and administrators, representatives of professional societies, and other interested parties regarding the nature and scope of programs to attract and support minorities in biomedical research.

The first meeting will be held on Wednesday, March 8, 1989, from 8:30 a.m. to 5:00 p.m. at Jackson State University, Jackson, Mississippi. Subsequent meetings will be held in Bethesda, Maryland (April 20), Atlanta, Georgia (Early Summer), Phoenix, Arizona (Late Summer), and Anchorage, Alaska (Early Fall). Notice of the exact time and location of additional meetings will be published later.

Following presentations by senior NIH staff, a panel composed of NIH program administrators will spend the remainder of the day receiving testimony from public witnesses. Each witness will be limited to a maximum of ten minutes. Attendance and the number of presentations will be limited to the time and space available. Consequently, all individuals wishing to attend or to present a statement at this public meeting should notify, in writing, William H. Pitlick, Ph.D., Executive Secretary, National Institutes of Health, Shannon Building, Room 250, Bethesda, Maryland 20892. Those planning to make a presentation should file a one-page summary of their remarks with Dr. Pitlick by February 17, 1989; a copy of the full text should be submitted for the record at the time of the meeting. Additional information may be obtained by calling Ms. Loretta Beuchert, Office of Extramural Programs, National Institutes of Health, at (301) 496–9743.

January 12, 1989.

William F. Raub,

Acting Director, National Institutes of Health.

[FR Doc. 89–1297 Filed 1–19–89; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Housing

[Docket No. N–89–1921]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act.

ADDRESS: Interested persons may submit comments regarding the paperwork request. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755–6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). It is also requested that OMB complete its review within seven days.

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Date: January 11, 1989.

Thomas T. Demery,

Assistant Secretary for Housing.

Proposal: Survey of Tenants in Certain Properties with HUD-Held and Foreclosed Mortgages.

Office: Housing.

Description of the Need for the Information and its Proposed Use: This information will help the Department to determine how many units must be made available for low- and moderate-income tenants after a mortgage is assigned to HUD. This data collection effort is required by section 181 of the 1987 Housing and Community Development Act, as amended.

Form Number: HUD–9934, 9934A, and 9934B.

Respondents: Individuals of Households, Businesses or Other For-Profit, and Small Businesses or Organizations.

Frequency of Submission: On Occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
One-Time Burden in 1989 for Currently HUD-Held Inventory							
Project Owners:							
(HUD–9934)	724		1		4		2,896
(HUD–9934A)	724		1		.25		181
(HUD–9934B)	724		1		1.5		1,086
Subtotal							4,163
Tenants: (HUD–9934)	86,913		1		.066		5,736
Total							9,899
Annual Burden for Mortgages Newly Assigned to HUD or Foreclosed							
Project Owners:							
(HUD–9934)	85 [1]		1		4		340
(HUD–9934A)	85		1		1.5		128
(HUD–9934B)	85		1		.25		21
Subtotal							489
Tenants: (HUD–9934)	8,058		1		.066		597
Total							1,086

[1] Assuming 75 assignments and 10 foreclosures per year.

Total Estimated Burden Hours: 10,985.

Status: New.

Contact: James J. Tashnik, HUD (202) 426–3944, John Allison, OMB, (202) 395–6880.

Date: January 11, 1989.

[FR Doc. 89–1376 Filed 1–19–89; 8:45 am]

BILLING CODE 4210–01–M

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N–89–1917; FR–2606]

Notice of Excess and Surplus Federal Buildings and Real Property Determined by HUD to be Suitable for Use for Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies excess and surplus Federal property determined by HUD to be suitable for possible use for facilities to assist the homeless.

DATE: January 23, 1989.

ADDRESS: For further information, contact Morris Bourne, Director, Transitional Housing Development Staff, Room 9140, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 755–9075; TDD number for the hearing- and speech-impaired (202) 426–0015. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988, court order in *National Coalition for the Homeless* v. *Veterans Administration*, D.C.D.C. No. 88–2503–OG, HUD is publishing this Notice identifying Federal buildings and real property in the current excess and surplus inventory of the General Services Administration (GSA) that HUD has determined to be suitable for use for facilities to assist the homeless. HUD published the first Notice on January 9, 1989 (54 FR 667).

Suitability determinations are based on information provided by GSA. The determinations are classified as suitable buildings or as suitable vacant land. Each determination is subject to the property's being used in compliance with applicable Federal, state, and local requirements. Buildings and land found suitable are identified even though they may be currently occupied or in use. The issue of availability will be addressed by GSA or the Department of Health and Human Services (HHS). Detailed information about the property may be obtained from James Folliard ((202) 535–7052) or Richard Stinson ((202) 535–7067), Federal Property Resources Services, GSA, 18th and F Streets NW., Washington, DC 20405. (These are not toll-free numbers). (Please refer to the GSA identification number given with each identified property.)

Public bodies and private nonprofit organizations wishing to apply for use of a property published with this Notice should submit a written expression of interest and a request for the necessary application forms, within 30 days from the date of this publication, to Judy Breitman, Division of Health Facilities Planning, Public Health Services, HHS, Room 17A–10 Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857; telephone (303) 443–2265. (This is not a toll-free telephone number.)

Dated: January 17, 1989.

James E. Schoenberger,

General Deputy, Assistant Secretary for Housing—Federal Housing Commissioner.

Suitable Buildings

9–D–AK–0589D
Clear Air Force Station
Clear, AK

7–I–AR–415–Q
Hot Springs National Park, AR
1205 Whittington
416 Pullman
1730 East Blacksnake Rd.
904 Mount Valley
98 Shore Dr.
101 Ullman
106 Hudson Dr.

7–I–AR–415–R
Hot Springs National Park, AR
1706 East Grand
146 East Border
210 Earhart
515 Pullman
103 Ollie
609 Bower
119 Clinton
120 Mimosa
110 Sleepy Valley

2–B–IL–662
Carbondale Mining Technology Center
Rt. 2, Universal Match Rd.
Carterville, IL

1–G–MA–786
Portion, GSA Depot
Arsenal St., Bldgs. 234, 235, 236
Watertown, MA

7–D–MO–488
Army Reserve Center
1451 East Pythian St.
Springfield, MO

7–I–NM–543
Indian Dormitory
8th & Popular Sts.
Magdalena, NM

9-U-NV-461-A
FAA Housing Lot 6, Victoria St.
Tonopah, NV
2-I-NY-786
Fire Island Natl. Seashore
Houdeck House, 162 West Ave.,
Patchogue, NY
Kessler House, Blue Point Beach, Fire
Island, NY
9-U-OR-600-A
Point Adams Remote Site
Hecata St. & Pacific Dr.
Hammond, OR
I-G-RI-490
GSA Depot, Bldgs. W-9 and A-66
Davisville Road
West Davisville, RI
7-GR(3)-TX-548Y
Portion, Former Ft. Walters
Lee Road
Mineral Wells, TX

Suitable Land

9-U-CA-1004
Portion, USCG Training Center
599 Lomales Rd.
Petaluma, CA
2-D-MA-704-B
Portion, Ft. Devens Training Annex
Diagonal Rd. & Hudson Rd.
Sudbury/Hudson, MA

[FR Doc. 89-1378 Filed 1-19-89; 8:45 am]
BILLING CODE 4210-67-M

[Docket No. N-89-1912; FR-2004]

Mortgage and Loan Insurance Programs Under the National Housing Act—Debenture Interest Rates

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, (HUD).

ACTION: Notice of change in debenture interest rates.

SUMMARY: This notice announces changes in the interest rates to be paid on debentures issued with respect to a loan or mortgage insured by the Federal Housing Commissioner under the provisions of the National Housing Act (the "Act"). The interest rate for debentures issued under section 221(g)(4) of the Act during the six-month period beginning January 1, 1989, is 8⅝ percent. The interest rate for debentures issued under any other provision of the Act is the rate in effect on the date that the commitment to insure the loan or mortgage was issued, or the date that the loan or mortgage was endorsed (or initially endorsed if there are two or more endorsements) for insurance, whichever rate is higher. The interest rate for debentures issued under these other provisions with respect to a loan or mortgage committed or endorsed during the six-month period beginning January 1, 1989, is 9¼ percent.

FOR FURTHER INFORMATION CONTACT: James B. Mitchell, Financial Policy Division, Room 9132, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Telephone (202) 426-4325 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Section 224 of the National Housing Act (24 U.S.C. 1715o) provides that debentures issued under the Act with respect to an insured loan or mortgage (except for debentures issued pursuant to section 221(g)(4) of the Act) will bear interest at the rate in effect on the date the commitment to insure the loan or mortgage was issued, or the date the loan or mortgage was endorsed (or initially endorsed if there are two or more endorsements) for insurance, whichever rate is higher. This provision is implemented in HUD's regulations at 24 CFR 203.405, 203.479, 2067.250(e)(6), and 220.630. Each of these regulatory provisions states that the applicable rates of interest will be published twice each year as a notice in the **Federal Register**.

Section 224 further provides that the interest rate on these debentures will be set from time to time by the Secretary of HUD, with the approval of the Secretary of the Treasury, in an amount not in excess of the interest rate determined by the Secretary of the Treasury pursuant to formula set out in the statute.

The Secretary of the Treasury (1) has determined, in accordance with the provisions of section 224, that the statutory maximum interest rate for the period beginning January 1, 1989, is 9¼ percent and (2) has approved the establishment of the debenture interest rate by the Secretary of HUD at 9¼ percent for the six-month period beginning January 1, 1989. This interest rate will be the rate borne by debentures issued with respect to any insured loan or mortgage (except for debentures issued pursuant to section 221(g)(4)) with an insurance commitment or endorsement date (as applicable) within the first six months of 1989.

For convenience of reference, HUD is publishing the following chart of debenture interest rates applicable to mortgages committed or endorsed since January 1, 1980:

Effective rate (percent):	On or after	Prior to
9½	Jan. 1, 1980	July 1, 1980.
9¼	July 1, 1980	Jan. 1, 1981.
11¾	Jan. 1, 1981	July 1, 1981.
12¼	July 1, 1981	Jan. 1, 1982.
12⅛	Jan. 1, 1982	Jan. 1, 1983.
10¼	Jan. 1, 1983	July 1, 1983.
10⅜	July 1, 1983	Jan. 1, 1984.
11½	Jan. 1, 1984	July 1, 1984.
13⅜	July 1, 1984	Jan. 1, 1985.
11⅜	Jan 1, 1985	July 1, 1985.
11½	July 1, 1985	Jan. 1, 1986.
10¼	Jan. 1, 1986	July 1, 1986.
8¼	July 1, 1986	Jan 1, 1987.
8	Jan. 1, 1987	July 1, 1987.
9	July 1, 1987	Jan. 1, 1988.
9⅛	Jan. 1, 1988	July 1, 1988.
9⅛	July 1, 1988	Jan. 1, 1989.
9¼	Jan. 1, 1989	

Section 221(g)(4) of the Act provides that debentures issued pursuant to that paragraph (with respect to the assignment of an insured mortgage to the Secretary) will bear interest at the "going Federal rate" in effect at the time the debentures are issued. The term "going Federal rate", as used in that paragraph, is defined to mean the interest rate that the Secretary of the Treasury determines, pursuant to a formula set out in the statute, for the six-month periods of January through June and July through December of each year. Section 221(g)(4) is implemented in the HUD regulations at 24 CFR 221.790.

The Secretary of the Treasury has determined that the interest rate to be borne by debentures issued pursuant to section 221(g)(4) during the six-month period beginning January 1, 1989, is 8⅝ percent.

HUD expects to publish its next notice of change in debenture interest rates in July 1989.

The subject matter of this notice falls within the categorical exclusion from HUD's environmental clearance procedures set forth in 24 CFR 50.20(1). For that reason, no environmental finding has been prepared for this notice.

(Authority: Secs. 211, 221, 224, National Housing Act, 12 U.S.C. 1715b, 1715l, 1715o; sec. 7(d), Department of HUD Act, 42 U.S.C. 3535(d)).

Dated: January 5, 1989.

Thomas T. Demery,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 89-1379 Filed 1-19-89; 8:45 am]
BILLING CODE 4210-27-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Klamath River Basin Fisheries Task Force and Klamath Fishery Management Council Meetings

AGENCY: Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of open meetings.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces meetings of the Klamath River Basin Fisheries Task Force and the Klamath Fishery Management Council, both established under the authority of the Klamath River Basin Fishery Resources Restoration Act (16 U.S.C. 460ss et seq.). The meetings are open to the public.

DATES: The Management Council will meet from 9:00 a.m. to 4:00 p.m., Wednesday, February 1, 1989, and from 8:00 a.m. to 1:00 p.m., Thursday, February 2, 1989. The Task Force will meet from 1:00 p.m. to 5:00 p.m., on Thursday, February 9, 1989, and from 8:00 a.m. to 12:30 p.m., Friday, February 10, 1989.

Place: Both the Task Force and the Management Council meetings will be held at the Red Lion Inn, 1929 4th Street, Eureka, California.

FOR FURTHER INFORMATION CONTACT: Dr. Ronald A. Iverson, Project Leader, U.S. Fish and Wildlife Service, 1312 Fairlane Road, Yreka, California 96097, telephone (916) 842-5763.

SUPPLEMENTARY INFORMATION: For background information on the Task Force and Management Council, please refer to the notice of their initial meetings that appeared in the **Federal Register** on July 8, 1987 (52 FR 25639).

The Management Council will consider reports from technical staff on aspects of the 1988 salmon run, including harvests of various fisheries, spawning escapements to the Klamath River Basin, and fishery law enforcement. Development of Council recommendations for management of 1989 salmon fisheries will be initiated. Options for revising the Klamath River Salmon Management Long-Term Harvest Sharing Agreement will be reviewed. Reports will be provided by the Bureau of Reclamation on the outlook for Central Valley Project operations in 1989, and on the status of an environmental impact statement for water marketing.

The Task Force will review the status of Fiscal Year 1989 projects of the Klamath Fishery Restoration Program, and will begin developing a work plan for Fiscal Year 1990. Other topics will include guidelines for non-Federal contributions to the Restoration program, socioeconomic considerations in harvest allocation, and the salmon egg-taking program at the Bogus Creek weir.

Dated: January 6, 1989.

David L. McMullen,

Acting Regional Director, U.S. Fish and Wildlife Service.

[FR Doc. 89-1311 Filed 1-19-89; 8:45 am]
BILLING CODE 4310-55-M

Bureau of Land Management

[UT-060-09-4320-12]

Environmental Assessment; Wilderness Study Areas, Utah

January 13, 1989.

AGENCY: Bureau of Land Management, Moab, Utah, Interior.

ACTION: Notice of a 30-day comment period on a draft environmental assessment that analyzes the impact of a proposed change of livestock grazing within two wilderness study areas.

SUMMARY: A draft environmental assessment has been prepared in response to an application for a permanent change of kind of livestock grazing from cattle to cattle and sheep in the McKay Flat Allotment. The allotment, which is located in the San Rafael Swell, contains portions of the Muddy Creek Wilderness Study Area (UT-060-007) and the Crack Canyon Wilderness Study Area (UT-060-028A). If the action proposed were to be implemented, the Bureau of Land Management would annually authorize grazing of 1,500 sheep from November 15 to March 15 and 197 cattle from November 1 to April 15. Portions of the allotment contain crucial desert bighorn sheep habitat and a wild horse herd area.

Interested parties may comment upon this environmental assessment for a period of 30 days from the date of publication of this notice. Comments should be addressed to James Dryden, Bureau of Land Management, San Rafael Resource Area, 900 North 700 East, Price, Utah 84501.

FOR FURTHER INFORMATION CONTACT: David Orr, BLM Range Conservationist at the above address or telephone (801) 637-4584.

Gene Nodine,

District Manager.

[FR Doc. 89-1423 Filed 1-19-89; 8:45 am]
BILLING CODE 4310-DQ-M

[CA-010-09-4410-10]

Intent To Amend the Benton-Owens Valley Management Framework Plan; Bakersfield District, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: Pursuant to 43 CFR 1610.2(c), notice is hereby given that the Bishop Resource Area, Bakersfield District, California, will prepare an amendment to the Benton-Owens Valley Management Framework Plan (MFP). The amendment is necessary to provide restrictions and management direction on 4,040 acres of land administered by the Bureau of Land Management within the Mammoth/June lake Airport Planning Area in Mono County.

SUPPLEMENTARY INFORMATION: The MFP was approved in 1982 and covers 507,181 acres of land administered by the Bureau of Land Management in Mono and Inyo Counties. It and the Bodie-Coleville MFP, which covers the northern third of the Bishop Resource Area, will be replaced by the Bishop Resource Management Plan (RMP) which is in the early stages of development (see 53 FR 24153, June 27, 1988 for Notice of Intent). The airport amendment is needed to provide a basis for certain minor restrictions on geothermal and other possible developments on BLM land in the vicinity of the airport and to establish the airport as the primary land use for that area. It will be incorporated in the Bishop RMP which is expected to be approved in late 1990, about a year and a half after this amendment is approved.

The environmental document for this amendment will be the final Environmental Impact Report and Environmental Analysis for the Mammoth/June lake Airport Land Use Plan. This document was issued in October 1986, by the Mono County Airport Land Use Commission and the Inyo National Forest and incorporates extensive comments by the Bishop Resource Area. Copies of this document, an explanatory letter, and the proposed amendment will be available for review in February 1989. Following a 30-day review period the District Manager will sign a Finding of No Significant Impact (if appropriate) and give public notice of the amendment. Following review by the governor, it is anticipated the amendment will be signed by the BLM State Director in May 1989.

No issues outside the scope of the environmental docuement to be adopted are anticipated. Issues relevant to this

amendment include impacts on potential geothermal development and other activities on land administered by the Bureau of Land Management.

Disciplines represented on the interdisciplinary team that produced the environmental document that will be adopted include planning, wildlife, archaeology, botany, and noise impact analysis. Numerous organizations and agencies (including BLM) were also consulted. Planning, wildlife, and geology are represented on the team preparing the amendment.

FOR FURTHER INFORMATION CONTACT: James S. Morrison, Area Manager, Bureau of Land Management, Bishop Resource Area, 787 N. Main Street, Suite P, Bishop, CA 93514; (619) 872-4881. Documents relevant to this planning effort area available for public review at the same address.

Dated: January 13, 1989.

Robert D. Rheiner, Jr.,

District Manager.

[FR Doc. 89-1314 Filed 1-19-89; 8:45 am]

BILLING CODE 4310-40-M

[CO-030-09-4322-10]

Montrose District Grazing Advisory Board Meeting

AGENCY: Bureau lf Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given in accordance with 43 CFR Part 1784, that a meeting of the Montrose District Grazing Advisory Board will be held on February 22, 1989 in Dolores, Colorado.

DATE: A meeting is scheduled February 22, 1989.

FOR FURTHER INFORMATION CONTACT: Debbie Pietrzak, Bureau of Land Management, 2465 South Townsend, Montrose, CO 81401; telephone (303) 249-7791.

SUPPLEMENTARY INFORMATION: The Board will convene at 10:00 a.m. on February 22, 1989, in the multi-purpose room of the Anasazi Heritage Center near Dolores, Colorado. Agenda items will include: minutes of the previous meeting, public presentations and requests, new Board project proposals, updates on current issues, and arrangements for the next meeting. The meeting will adjourn at 4:30 p.m.

The meeting is open to the public. Anyone wishing to make an oral statement must notify the District Manager at the above address prior to the meeting date. Depending on the number of persons wishing to make oral statements, a per person time limit may be established by the District Manager.

Minutes of the Board meeting will be maintained in the District Office and be available for public inspection and reproduction (during regular business hours) within thirty (30) days following the meeting.

Dated: January 11, 1989.

Alan L. Kesterke,

District Manager.

[FR Doc. 89-1315 Filed 1-19-89; 8:45 am]

BILLING CODE 4310-JB-M

[AZ-020-09-4212-13; A-22439]

Exchange of Public and Private Lands in Mohave County; AZ

January 11, 1989.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Exchange of Land.

SUMMARY: This action informs the public of the completion of an exchange between the United States and First American Title Insurance Agency of Mohave, Inc., an Arizona Corporation, as Trustee under Trust No. 5993. The United States transferred 640 acres in Mohave County and First American Title Insurance Agency of Mohave conveyed 3,554.72 acres, also in Mohave County.

FOR FURTHER INFORMATION CONTACT: John Gaudio, Arizona State Office, P.O. Box 16563, Phoenix, Arizona 85011, (602) 241-5534.

SUPPLEMENTARY INFORMATION: On December 30, 1988, the Bureau of Land Management transferred the following described land by Patent No. 02-89-0013, pursuant to the Federal Land Policy and Management Act of October 21, 1976:

Gila and Salt River Meridian

T. 21 N., R. 21 W.,
Sec. 16, all.

The area described comprises 640 acres in Mohave County.

In exchange the surface in the following described land was conveyed to the United States:

Gila and Salt River Meridian

T. 14 N., R. 13 W.,
Sec. 5, lots 1 to 4, incl. S½N½, N½SW¼, SW¼SW¼, E½SE¼SW¼, SE¼.
T. 15 N., R. 12 W.,
Sec. 13, all;
Sec. 15, N½, N½SW¼, E½SE¼SW¼, SE¼.
T. 18 N., R. 13 W.,
Sec. 11, W½, W½SE¼;
Sec. 19, lots 1 and 2, NE¼, E½NW¼;
Sec. 31, lots 1 to 4, incl., E½, E½W½.
T. 18 N., R. 14 W.,
Sec. 13, W½NE¼, E½W½, SE¼.

The area described comprises 3,554.72 acres in Mohave County.

The purpose of this notice is to inform the public and interested State and local government officials of the exchange of public and private land.

The surface of the land conveyed to the United States in this exchange will be administered by the Bureau of Land Management. The mineral estate in the reconveyed land remains out of Federal ownership.

John T. Mezes,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 89-1307 Filed 1-19-89; 8:45 am]

BILLING CODE 4310-32-M

[NV-930-09-4212-11; N-41952]

Realty Action; Lease or Sale of Public Land for Recreation and Public Purposes; Douglas County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action classifying public land.

SUMMARY: The following described 10 acres of public land have been examined and identified as suitable to be classified for lease or sale under the Recreation and Public Purposes Act, as amended (43 U.S.C. 869, *et seq.*):

Mount Diablo Meridian, Nevada

T. 11 N., R. 21 E.,
Sec. 17, W½W½NW¼NW¼.

A 5-year lease with the option to renew or to purchase upon substantial development will be offered to Douglas County. The 10 acres of land would be used for expansion of the China Spring Youth Camp for juvenile offenders. It would be used for the Camp director and staff quarters, expansion of the existing vegetable gardens and development of livestock corrals and animal pens.

The land is not required for federal purposes. Classification and issuance of a lease is consistent with Bureau planning for this area and would be in the public interest.

The lease and/or patent, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior.

Detailed information concerning this action is available for review at the Bureau of Land Management Carson City District Office.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all forms of appropriation under the public land laws, including location under the general mining laws, but not the Recreation and Public Purposes Act, the mineral leasing laws, and material sales. The segregative effect will terminate as specified in an opening order to be published in the **Federal Register**.

For a period of 45 days from the date of publication of this Notice in the **Federal Register**, interested parties may submit comments to the District Manager, 1535 Hot Springs Road, Suite 300, Carson City, Nevada 89706. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification of the land described in this notice will become effective 60 days from the date of publication in the **Federal Register**.

James W. Elliot,

District Manager.

Date: January 13, 1989

[FR Doc. 89-1346 Filed 1-19-89; 8:45 am]

BILLING CODE 4310-HC-M

[NV-930-09-4212-11; N-41575]

Realty Action; Lease/Conveyance for Recreation and Public Purposes; Elko County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action; classification of Federal lands for lease/conveyance for recreation and public purposes.

SUMMARY: The following described lands have been examined and found suitable for classification and lease with the option to acquire title after development, under the Recreation and Public Purposes Act (R&PP) of June 14, 1926, as amended (43 U.S.C. 869 *et. seq.*). The lands will not be offered for lease until at least 60 days after the date of publication of this Notice in the **Federal Register**.

Mount Diablo Meridian, Nevada

T. 32 N., R. 55 E.
Sec. 26, NE¼, N½SE¼
Containing 240.00 acres.

These lands are hereby classified for public purpose use as a recreation area. The State of Nevada, Division of State Lands has made application for, and intends to use these public lands within the South Fork State Recreation Area to enhance wildlife and recreation. Development will include an interpretive trail, scenic overlooks, and an interpretive archaeological site.

The lease/patent, when issued, will be subject to the provisions of the R&PP Act, applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. All minerals.

2. A right-of-way thereon for ditches and canals constructed by the authority of the United States; Act of August 30, 1890 (26 Stat. 391; 43 U.S.C. 945).

The State of Nevada will be required to accept the lease/patent subject to existing grazing use of 10 AUMs held by Ed Tomera currently under grazing authorization number 1591. The rights of Ed Tomera to graze domestic livestock on the land according to the conditions and terms of grazing authorization number 1591 shall cease on July 13, 1990. The State of Nevada is entitled to receive annual grazing fees from Ed Tomera in an amount not to exceed that which would be authorized under Federal grazing fees published annually in the **Federal Register**.

The Recreation and Public Purposes Act, as amended by section 212 of the Federal Land Policy and Management Act of 1976, provides for conveyance of public lands without monetary consideration to governmental entities for recreational purposes. Therefore, the subject lands would be initially leased and after development, patented, for no monetary consideration to the State of Nevada.

The land is not required for any Federal purpose. The lease is consistent with the Bureau's planning for the area.

Upon publication of the Notice of Realty Action in the **Federal Register**, the subject lands will be segregated from appropriation under any other public land law, including locations under the mining laws.

Detailed information concerning this action is available for review at the Elko District Office, Bureau of Land Management. For a period of 45 days from the date of publication of this Notice in the **Federal Register**, interested parties may submit comments to District Manager, Elko District Office of the Bureau of Land Management, 3900 E. Idaho St., Elko, Nevada 89801. Any adverse comments will be evaluated by the District Manager and forwarded to the Nevada State Director, Bureau of Land Management, who may sustain, vacate or modify this realty action. In the absence of any objections, on the 60th day from the date of this publication in the **Federal Register**, this realty action will become the final determination of the Department of the Interior.

Date: January 11, 1989.

Rodney Harris,

District Manager.

[FR Doc. 89-1347 Filed 1-19-89; 8:45 am]

BILLING CODE 4310-HC-M

[OR-943-09-4214-11; GP9-092; OR-44047]

Conveyance of Public Lands; Oregon; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice corrects the heading, the last sentence in the summary, deletes the last paragraph and adds two paragraphs in the Conveyance of Public Land; Oregon published in the **Federal Register** on December 22, 1988.

EFFECTIVE DATE: January 23, 1989.

FOR FURTHER INFORMATION CONTACT: Champ Vaughan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, 503-231-6905.

SUPPLEMENTARY INFORMATION: In FR Doc. 88-29410, published at page 51595 in the issue of December 22, 1988, make the following corrections:

The heading is corrected to read "Conveyance of Public Lands: Order Providing for Opening of Land; Oregon.

The last sentence in the summary is hereby corrected to read "The 154.79 acres of reconveyed land will not be opened to surface entry and mining because the land has been proposed for designation as an outstanding research natural area. This action will open the reconveyed land to mineral leasing."

The last paragraph is hereby deleted and the following two paragraphs are added:

The land will not be opened to operation of the public land laws, including the mining laws because it has been proposed for designation as an outstanding research natural area.

At 8:30 a.m., on February 27, 1989, the land will be open to applications and offers under the mineral leasing laws.

B. LaVelle Black,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 89-1424 Filed 1-19-89; 8:45 am]

BILLING CODE 4310-33-M

[AK-932-09-4214-10; A-061696]

Conformance to Survey; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This Notice provides official publication of the surveyed description for a portion of Air Navigation Site (ANS) Withdrawal No. 178. The plat of survey was officially filed in the Alaska State Office, Bureau of Land Management, Anchorage, Alaska, September 26, 1988. United States Survey No. 9454, containing 25.83 acres, represents the land that was previously described as follows:

Seward Meridian, Alaska

Tps. 58 S., Rs. 58 and 59 W., unsurveyed
Commencing at a point at mean sea level of Cold Bay at approximately latitude 55°14' N. and longitude 162°43' W.,
Thence, west 3,000 feet more or less to a point;
Thence, south 12,000 feet to a point;
Thence, S. 24° 57' 30" E. 4,600 feet to a point;
Thence, east 4,500 feet to the true point of beginning of this description;
Thence, N. 48° E. 2,121.3 feet to a point;
Thence, south 1,500 feet to a point, being the Southeast corner of ANS No. 178;
Thence, west 1,500 feet to the point of beginning.

The tract as described contains approximately 25.82 acres.

ADDRESS: Inquiries about this land should be sent to the Alaska State Office, Bureau of Land Management, 222 W. 7th Ave., No. 13, Anchorage, Alaska 99513-7599.

FOR FURTHER INFORMATION CONTACT: Sandra C. Thomas, BLM Alaska State Office, 907-271-3342.

Sue A. Wolf,
Chief, Branch of Land Resources.
[FR Doc. 89-1312 Filed 1-19-89; 8:45 am]
BILLING CODE 4310-JA-M

[CO-930-09-4214-10; C-49195]

Proposed Withdrawal; Scheduled Public Meeting; Colorado; Correction

January 13, 1989.

SUMMARY: The Notice of Proposed Withdrawal; Scheduled Public Meeting, published on Thursday, December 22, 1988, in **Federal Register** Volume 53, No. 246, page 51597, is hereby corrected as follows:

In column three under Sixth Principal Meridian, Arapaho National Forest, T. 7 S., R. 78 W. (Protraction Diagram No. 9, Accepted April 20, 1985), the line reading "Sec. 7, NW¼, fractional E½NW¼," is corrected to read "Sec. 7, NE¼, fractional E½NW¼,".

John E. Hodgins,
Acting Chief, Branch of Realty Programs.
[FR Doc. 89-1308 Filed 1-19-89; 8:45 am]
BILLING CODE 4310-JB-M

Minerals Management Service

Environmental Documents Prepared for Proposed Oil and Gas Operations on the Alaska Outer Continental Shelf

AGENCY: Minerals Management Service (MMS), Department of the Interior.

ACTION: Notice of the availability of environmental documents prepared for Outer Continental Shelf (OCS) minerals exploration proposals on the Alaska OCS.

SUMMARY: The MMS, in accordance with Federal regulations (40 CFR 1501.4 and 1506.6) that implement the National Environmental Policy Act (NEPA), announces the availability of NEPA-related Environmental Assessments (EA's) and Findings of no Significant Impact (FONSI's) prepared by the MMS for oil and gas exploration activities proposed on the Alaska OCS. This listing includes all proposals for which FONSI's were prepared by the Alaska OCS in the 3-month period preceding this Notice.

Proposal

Amoco proposes to permanently abandon Sandpiper Island, an artificial gravel island. The island is located in the Beaufort Sea on Sale 71, Leases OCS-Y 0370 and 0371, about 15 miles northwest of Prudhoe Bay. The remaining work associated with the proposal consists of aerial monitoring/inspection of the island area, and would be conducted during the open-water period for 5 years. Any loose slope-protection material discovered during these inspections would be picked up. Also, a report will be furnished to MMS concerning the condition of the island area.

Location

Lease	*Block(s)*
OCS-Y 0370	433, 434
OCS-Y 0371	433

Environmental Assessment

EA No. AK 88-04

FONSI Date

October 28, 1988.

Proposal

Chevron proposes to drill, evaluate, test, and abandon one exploratory well in the Beaufort Sea from December 1988 to May 1989. The proposed action would occur on State of Alaska Lease ADL-312835 (the Karluk Prospect) in Stefanson Sound near the Boulder Patch area, about 3.5 miles southwest of Karluk Island. Although in State waters, the drilling may enter a Federal lease (OCS-Y 0194) if the bore hole drifts to the west or southwest (which is the reason EA 88-05 was prepared). The proposed drilling would occur from a spray-ice island (to be called King Ice Island) in 24 feet of water. An ice road would be constructed from the Endicott Causeway to the ice island (passing through State waters and the disputed Federal/State zone). Both the island and the road would be constructed from mid-December to mid-January. The proposed action would use existing onshore support facilities in Prudhoe Bay. The well would be plugged and abandoned in April or May 1989 and the site cleaned up and abandoned by mid- to late May 1989.

Location

Lease
ADL-312835 (Karluk Prospect)

Environmental Assessment

EA No. AK 88-05

FONSI Date

November 30, 1988.

FOR FURTHER INFORMATION CONTACT: Persons interested in reviewing environmental documents for the proposals listed above or obtaining information about EA's and FONSI's prepared for activities on the Alaska OCS are encouraged to contact the MMS office in the Alaska OCS Region.

The FONSIs and associated EA's are available for public inspection between the hours of 7:45 a.m. and 4:30 p.m., Monday through Friday at: Minerals Management Service, Alaska OCS Region, Library, 949 East 36th Avenue, Room 502, Anchorage, Alaska 99508-4302, phone: (907) 261-4435.

SUPPLEMENTARY INFORMATION: The MMS prepares EA's and FONSI's for proposals which relate to exploration for oil and gas resources on the Alaska OCS. The EA's examine the potential environmental effects of activities described in the proposals and present MMS conclusions regarding the significance of those effects. The EA is used as a basis for determining whether or not approval of the proposals constitutes major Federal actions that significantly affect the quality of the human environment in the sense of NEPA 102(2)(C). A FONSI is prepared in those instances where MMS finds that approval will not result in significant effects on the quality of the human environment. The FONSI briefly presents the basis for that finding and includes a summary or copy of the EA.

This Notice constitutes the public Notice of Availability of environmental documents required under the NEPA regulations.

Date: January 11, 1989.
Alan D. Powers,
Regional Director, Alaska OCS Region.
[FR Doc. 89-1321 Filed 1-19-89; 8:45 am]
BILLING CODE 4310-MR-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-290 (Sub-No.62)]

Southern Railway Co.; Abandonment Between Jacksonville and Piedmont in Calhoun County, AL; Findings

The Commission has issued a certificate authorizing the Southern Railway Company to abandon its 14-mile rail line between Jacksonville (milepost 48.00-N) and Piedmont (milepost 34.00-N) in Calhoun County, AL. The abandonment certificate will become effective 30 days after this publication unless the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB-OFA." Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR Part 1152.

Noreta R. McGee,
Secretary.
[FR Doc. 89-1478 Filed 1-19-89; 8:45 am]
BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act and Other Statutes; Jagiella

In accordance with Departmental policy, notice is hereby given that a proposed consent decree in *United States of America* v. *Jagiella*, Civil Action No. 87 C 1406, was lodged with the United States District Court for the Northern District of Illinois. The first amended complaint filed by the United States in this action asserts claims against twenty-three parties under section 107 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9607, for recovery of response costs incurred by the United States in connection with two removal actions previously conducted at a drum and pail reconditioning facility known as the Calumet Container site, which spans the Illinois-Indiana border. The total response costs incurred by the United States to date in connection with the Calumet Container site, excluding pre-judgment interest, are approximately $567,000.

Under the proposed decree, nineteen settling defendants would be required to pay $380,000 to the United States within sixty days after entry of the decree by the court. The proposed decree a covenant by the United States, effective upon settling defendants' payment of $380,000, not to assert further claims against settling defendants for response costs that were incurred at the Calumet Container site prior to entry of the decree. The proposed decree reserves the rights of the United States to assert claims against settling defendants for matters not expressly resolved by the decree, including claims for injunctive relief or natural resource damages or claims for recovery of any response costs incurred at the Calumet Container site after entry of the decree.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC and should refer to the *United States* v. *Jagiella*, D.J. Ref. No. 90-11-3-193.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Northern District of Illinois, 219 South Dearborn Street, Chicago, Illinois, and at the Office of Regional Counsel, United States Environmental Protection Agency, Region V, 111 West Jackson Street, Third Floor, Chicago, Illinois 60604. Copies of the proposed Consent Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division, U.S. Department of Justice, Room 1748, Ninth Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the U.S. Department of Justice. In requesting a copy, please enclose a check in the amount of $3.30 (ten cents per page reproduction cost) payable to the Treasurer of the United States.

Roger Marzulla,
Assistant Attorney General, Land and Natural Resources Division.
[FR Doc. 89-1319 Filed 1-19-89; 8:45 am]
BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to Clean Air Act; Washington

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on January 10, 1989 a proposed Consent Decree in *United States* v. *State of Washington, et al.*, Civil Action No. C88-552R was lodged with the United States District Court for the Western District of Washington. The proposed Consent Decree concerns Defendant's alleged violations of the regulations pertaining to asbestos removal. The proposed Consent Decree requires the defendant to comply with all regulations applicable to asbestos removal, demolition and renovation, and to pay a civil penalty of $12,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *State of Washington, et al*, D. J. Ref. 90-5-2-1-1163.

The proposed Consent Decree may be examined at the office of the United States Attorney, Western District of Washington, 3600 Seafirst 5th Avenue Plaza, 800 Fifth Avenue, Seattle, Washington 98104 at the Region X Office of the Environmental Protection Agency, 1200 Sixth Avenue, SO-125, Seattle, Washington 98101. Copies of the Consent Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice.

Roger J. Marzulla,
Assistant Attorney General, Land and Natural Resources Division.
[FR Doc. 89-1320 Filed 1-19-89; 8:45 am]
BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review

As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue NW., Room N-1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 3208, Washington, DC 20503 (Telephone (202) 395-6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

Revision

Occupational and Safety and Health Administration
Fatality/Catastrophe Reporting
1218-0007; Form OSHA-36 (F) and (S)
State and local governments; farms; businesses or other for profit; non-profit institutions; small businesses or organizations
2,927 responses; 732 hours; 15 minutes per response; 2 forms
All workplace fatalities and catastrophes must be reported so that OSHA can schedule an inspection to investigate. Such reporting is required by law.

Extension

Departmental Management
National SAS Farmworker Survey (Seasonal Agricultural Services)
Individuals or households; farms; Businesses or other for-profit; 3,700 respondents; 3,700 total hours; 1 hour per response; 2 forms
The Immigration and Nationality Act (INA) as amended by the Immigration Reform and Control Act (IRCA) requires the DOL and the USDA to estimate the departure rate from Seasonal Agricultural Services (SAS) agriculture and to analyze information about wages, working conditions and recruitment practices. This survey will gather data necessary to make these estimates and carry out these analyses.

Extension

Mine Safety and Health Administration
Mine Operator Dust Data Card
1219-0011
Bimonthly
Businesses and other for profit; small businesses or organizations
2,500 respondents; 38 responses per respondent; 1.016 hours per response; 96,520 total burden hours
Approximately 50 percent of coal mine operators are required to collect and submit respirable dust samples to MSHA for analysis. Pertinent information associated with identifying and analyzing these samples is submitted on the dust data card that accompanies the samples.

Extension

Employment and Training Administration
Work Application/Job Order Recordkeeping
1205-0001; Recordkeeping only
State or local governments
52 recordkeepers; 416 total hours; 8 hrs. per recordkeeper
Request is only for retention of information on work applications and job orders.

Extension

Employment Standards Administration
Application for a Farm Labor Contractor Employee Certificate of Registration
1215-0037; WH-512
Annually
Individuals or households; farms; businesses or other for-profit; small businesses or organizations
2,000 respondents; 1,000 total hours; .5 hours per response; 1 form.
The Migrant and Seasonal Agricultural Protection Act provides that no individual may perform farm labor contracting activities without a certificate of registration. Form WH-512 is an application form which provides the Department of Labor with the information necessary to issue a certificate specifying the farm labor contracting activities authorized.

Signed at Washington, DC this 17th day of January, 1989.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 89-1394 Filed 1-19-89; 8:45 am]

BILLING CODE 4510-26-M

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 2, 1989.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 2, 1989.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street NW., Washington, DC 20213.

Signed at Washington, DC this 3rd day of January 1989.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/workers/firm—	Location	Date received	Date of petition	Petition No.	Articles produced
Allied Amphenol Corp. (workers)	York, PA	1/3/89	11/30/88	22,310	Machinery.
Bassetrette (ACTWU)	Hamilton, AL	1/3/89	12/1/88	22,311	Ladies Robes.
Casco Belton, Inc. (ACTWU)	Lewiston, ME	1/3/89	12/13/88	22,312	Electric.
Coastal Oil & Gas Corporation (workers)	Midland, TX	1/3/89	11/30/88	22,313	Oil and Gas.
Crescent Petroleum (company)	Corpus Christi, TX	11/18/88	9/26/88	22,314	Crude Oil.
Dameon Oil Corp., NCC (workers)	Yatesboro, PA	11/18/88	11/19/88	22,315	Oil and Gas.
Eagleline Corp. Exploration (company)	Pleasantville, PA	1/3/89	12/16/88	22,316	Crude Oil.
Explosives Technologies (workers)	Morris, IL	1/3/88	11/28/88	22,317	Explosives.
Filkin Petroleum Corp. (company)	Oklahoma City, OK	11/18/88	10/3/88	22,318	Oil and Gas.
Florsheim Company (ACTWU)	Herman, MO	1/3/89	12/12/88	22,319	Men's Shoes.
General Motors Corp., BOC Leeds (UAW)	Kansas City, MO	1/3/89	12/9/88	22,320	J Cars.
General Motors Corp., CPC Lakewood (UAW)	Atlanta, GA	1/3/89	12/9/88	22,321	B Cars.
Ieelin Preparation (UMWA)	Indiana, PA	1/3/89	12/12/88	22,322	Coal.
Jimco Electric (company)	Big Spring, TX	1/3/89	12/12/88	22,323	Oil Field Services.
Lee Company (UGWA)	Lenexa, KS	1/3/89	12/1/88	22,324	Denim Jeans/Jackets.
Lexington Products (workers)	Lexington, MS	1/3/89	12/13/88	22,325	Wire Harnesses.
Louisiana Land and Exploration (workers)	Houston, TX	1/3/89	12/9/88	22,326	Oil and Gas.
Manhattan Industries (company)	Glen Rock, NJ	1/3/89	12/5/88	22,327	Sportswear.
Petroleum Equipment (company)	Brownwood, TX	1/3/89	11/15/88	22,328	Oil field products.
Professional Geophysics (workers)	New Orleans, LA	1/3/89	12/14/88	22,329	Seismic Data.
Reynolds Energy (company)	San Angelo, TX	1/3/89	11/30/88	22,330	Oil Well Service.
S&P Manufacturing (ILGWU)	Andover, MA	1/3/89	12/12/88	22,331	Car Seat Covers.
Standard-Putnam (workers)	Tilton, NH	1/3/89	12/9/88	22,332	Sportswear.
Sunbelt Mining (workers)	Farmington, NM	1/3/89	12/11/88	22,333	Heavy Equipment.
Texas Apparel Co. (ACTWU)	Carrizo Springs, TX	1/3/89	12/1/88	22,334	Men's Jeans.
Troytown Shirt Corp. (ACTWU)	Cohoes, NY	1/3/89	12/1/88	22,335	Shirts and Blouses.
Vatco (ILGWU)	Andover, MA	1/3/89	12/12/88	22,336	Car Seat Covers.
Victory Energy Development Co. (company)	Indiana, PA	11/18/88	11/1/88	22,337	Oil and Gas.
Williams Exploration (workers)	Tulsa, OK	1/3/89	11/19/88	22,338	Oil and Gas.
Zenith Drilling (company)	Wichita, KS	1/3/89	12/10/88	22,339	Operates Drilling Rigs.

[FR Doc. 89-1395 Filed 1-19-89; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-21, 323]

Amerada Hess Corp. Onshore Exploration, Denver, CO; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on October 17, 1988 in response to a worker petition which was filed on behalf of workers of the Onshore Exploration segment of Amerada Hess Corporation, Denver, Colorado.

The retroactive provisions of section 1421(a)(1)(B) of the Omnibus Trade and Competitiveness Act of 1988 do not apply to workers who are engaged in the production of crude oil or refined petroleum products if such workers were eligible to be certified for benefits under the Trade Act prior to the implementation of the retroactive provisions.

All workers were separated from the Denver operation more than one year prior to the date of the petition. Section 223 of the Act specifies that no certification may apply to any worker whose last separation occurred more than one year before the date of the petition. Consequently further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC this 30th day of December 1988.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 89-1396 Filed 1-19-89; 8:45 am]

BILLING CODE 4510-30-M

Trade Adjustment Assistance for Workers; Financial Process for Revised Program

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of General Administration Letter No. 4-89.

SUMMARY: The Department of Labor publishes this notice and General Administration Letter (GAL) No. 4-89 to inform States and cooperating State agencies of the publication of the financial policies and procedures for the revised Trade Adjustment Assistance Program, except Trade Readjustment Allowances, and of the 30-day period for commenting on these policies and procedures.

FOR FURTHER INFORMATION CONTACT: Jim Giuliano, Employment and Training Administration, Office of the Comptroller, Washington, DC 20210.

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(202) 535-8767; this is not a toll free telephone number. Comments should be received within 30 days of this notice. All comments should be submitted to the above individual.

SUPPLEMENTARY INFORMATION: On August 23, 1988 the President signed into law the "Omnibus Trade and Competitiveness Act of 1988." Part 3—Trade Adjustment Assistance, of Subtitle D of Title I of the Act concerns trade adjustment assistance for workers and firms.

The Department of Labor has issued operating instructions to the States and State agencies concerning trade adjustment assistance for workers. General Administration Letter (GAL) Nos. 7-88 and Change 1 to 7-88, Training and Employment Information Notice (TEIN) Nos. 6-88 and Change 1 to 6-88, and a proposed rule amending the regulations at 20 CFR Part 617 have been published in the **Federal Register.**

The purpose of the GAL published with this notice is to transmit the national financial policies and procedures with which these trade adjustment assistance activities will be administered.

For this reason, GAL No. 4-89 is published below, together with Training and Employment Information Notice No. 17-88.

Signed at Washington, DC, on January 11, 1989.

Roberts T. Jones,

Assistant Secretary of Labor.

BILLING CODE 4510-30-M

U.S. Department of Labor Employment and Training Administration Washington, D.C. 20210	CLASSIFICATION TAA
	CORRESPONDENCE SYMBOL TSCS
	DATE January 9, 1989

DIRECTIVE : GENERAL ADMINISTRATION LETTER NO. 4-89

TO : ALL STATE EMPLOYMENT SECURITY AGENCIES

FROM : DONALD J. KULICK
Administrator
Office of Regional Management

SUBJECT : Financial Process for the Revised Trade Adjustment Assistance (TAA) Program

1. Purpose. To provide information and guidance on the financial process for the revised TAA program activities with the exception of Trade Readjustment Allowances (TRA).

2. References. The Trade Act of 1974, as amended; the Governor/Secretary of Labor Agreement; OMB Circular A-87; 20 CFR Part 617, as amended; and 29 CFR Parts 96, 97, and 98.

3. Background. The Omnibus Trade and Competitiveness Act (OTCA) of 1988 was signed by the President on August 23, 1988. Title I, Subtitle D, Part 3 of OTCA, amended Chapter 2 of Title II of the Trade Act of 1974, Trade Adjustment Assistance for Workers (TAA) Program. As a result of the OTCA amendments and other regulatory changes, several revisions must be made to the financial operation of the TAA program. The most significant changes include:

- o Placing a time limit on the expenditure of funds;
- o Providing advanced funding rather than requiring supplemental budget requests for each instance of need; and
- o Establishing procedures to recapture and redistribute funds among the States.

4. Annual Financial Cooperative Agreement. In order to comply with the provisions of the revised OMB Circular A-102 and the common administrative regulations at 29 CFR Part 97, the revised TAA program will operate under an annual TAA Financial Cooperative Agreement (Attachment). The funding period for this

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annual agreement will be up to three years--the current fiscal year plus the two subsequent fiscal years. Upon a request from the State and concurrence by DOL, the term of this agreement may be extended from one to six months.

The terms and conditions of all prior year TAA grants, agreements, or other vehicles remain in effect for the next two fiscal years, i.e. through September 30, 1990. During this two-year period, States may obligate and expend all prior year funds which remain available. States should obligate and expend all prior year TAA funds before utilizing FY 1989 program funds.

5. Funding. The TAA funding process will consist of quarterly advances to States and supplemental requests for additional funds when the quarterly advances have been committed. This approach of providing funds ensures that States have funds available to provide TAA services on a timely and as needed basis and that States are not accumulating excess, uncommitted fund balances.

Training is an entitlement until such time as the Secretary, pursuant to Section 236(c)(1)(B) of the Trade Act announces that the demand for training is at a level that, if continued, would exceed the $80 million cap for training established in the law. At that time, the law provides that the balance of funds for training be apportioned among the States for the remainder of the fiscal year. States will be notified if and when this occurs.

a. Quarterly Advance. A quarterly advance of program funds will be made to enable States to immediately approve training, job search allowances, and job relocation allowances for certified, eligible workers. For FY 1989, these advances will be based initially on the number of workers in the State receiving TRA in relation to the total number of TRA claimants nationally. The formula factors for future years' quarterly advances are not yet finalized. In addition, each State will receive an amount for administrative costs which will be equal to 15 percent of the program funds advanced to the State. Many States will require funds in addition to the amount provided in these quarterly advances. To obtain additional TAA funds during a quarter, the States must submit a supplemental request for such funds. Adjustments may be made during a quarter to reduce the total amount of funds advanced based on reports submitted for the previous quarter.

b. Supplemental Fund Request. All requests for additional funds shall be for training, job search allowances, and job relocation allowances only. When a request is approved by ETA, an amount equal to 15 percent of the approved program funds will be added automatically for administrative costs. The State shall submit a request for additional funds which includes:

- o A Financial Report containing cumulative financial information as of the most recent month and a narrative justification. This justification should include:
  - The number of workers already approved but not currently receiving Job Search/Relocation allowances or training;
  - The number of additional workers expected to apply and be approved for training, job search allowances, and/or job relocation allowances for the next three months;
  - A description of the conditions which give rise to the particular supplemental fund request;
  - A discussion of the types of training and number of workers currently being funded; and
  - The level of activity expected beyond the three-month period for which this request is made.
- o Certification of this request must be signed by the Governor's official TAA program designee.

All requests for additional funds should be submitted to the Regional Office at least 30 calendar days prior to the date on which the available funds are expected to be exhausted. The request should include the estimated amounts required for each of the three program activities, listed individually, and should be prepared on the basis of projected need covering the next, full three-month period. This request should not include estimates for administration. To the extent that funds are available, States will be provided funds to meet the projected requirements. Adjustments to the next quarter's advance may also be made.

If the funds requested appear to be excessive based on previous usage and other available information including the number of workers certified, then the total funds requested for the three-month period may not be provided pending further review. The Regional Office will be responsible for reviewing, monitoring, and substantiating the information contained in the justification. States should ensure that realistic requests are submitted and that an explanation is provided for any request which is larger than prior experience would indicate.

Similarly, should the Secretary determine that the total amount available may not be adequate to finance nationwide activities over the next three months, it may be necessary to issue reduced

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amounts covering a shorter time period. This situation is possible in FY 1989 since the amount presently appropriated is less than estimated requirements.

c. Federal Obligation of Funds. The level of TAA funds provided to States is subject to the availability of appropriated funds. Obligational authority will be issued to States which separately identifies funds available for program activities and for administration. The transfer of funds from program activities to administration is not authorized. However, funds designated for administration may be transferred to program activities if not used for administration.

d. Expenditure of Funds. All TAA funds must be expended by the State in accordance with the provisions of the annual TAA Financial Cooperative Agreement. Any expenditure of funds which does not comply with these provisions will be subject to disallowance.

e. Recapture of funds. The entitlement nature of the TAA program, plus the statutory limitation on the amount of funds which may be expended on training, requires the Department to institute procedures which ensure that States are funded equitably and that the $80 million training cap is not exceeded. Therefore, in addition to the possible actions on supplemental requests for funds discussed previously, the following procedures will be used in the event it becomes necessary to recapture funds not immediately needed by a State and provide them to another State with an immediate need. In general, funds will be recaptured if it is determined that: 1) the National Office reserve is insufficient to meet State requests for additional funds or 2) excess uncommitted funds exist in individual States.

a. Financial Reports will be reviewed regularly to determine whether excess funds remain uncommitted by each State. The determination of what constitutes excess funds will be based primarily on the obligations and commitments incurred to date plus any other program information available, such as approved and pending petitions. Quarterly adjustments to advances will be made based on this review.

b. The recapture of administrative funds will only be considered when the level of program funds recaptured exceeds $200,000. In no case will administrative funds be recaptured which will result in a State being over-obligated in this category.

c. Prior to withdrawing any funds, the State will be notified and provided with an opportunity for comment. This process will require prompt State response.

7. Financial Reporting.

a. States must submit a Financial Report to the Regional Office on a quarterly basis until such time as all funds have been expended or the term of the agreement has expired. Quarterly reports are due 30 days following the end of the quarter. Should the determination be made that available funds will be exhausted nationally before the end of the year, more frequent reporting may be required.

b. A final Financial Report must be submitted 90 days following either the expenditure of all obligational authority or the expiration of the annual TAA Financial Cooperative Agreement, whichever comes first.

c. An updated Financial Report must be included as part of any State request for additional funds.

8. Federal Register Publication. A copy of this General Administration Letter is being published in the Federal Register.

9. State Action. States should ensure that the designated TAA program operating agency is promptly informed of this policy guidance.

10. Inquiries. Inquiries should be directed to the appropriate Regional Office.

11. Attachment.

TAA Financial Cooperative Agreement (to be transmitted under separate cover.)

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U.S. Department of Labor Employment and Training Administration Washington, D.C. 20210	CLASSIFICATION TAA
	CORRESPONDENCE SYMBOL TSCS
	DATE January 9, 1989

TRAINING AND EMPLOYMENT INFORMATION NOTICE NO. 17-88

TO : ALL STATE JTPA LIAISONS
STATE WAGNER-PEYSER ADMINISTERING AGENCIES
WORKER ADJUSTMENT LIAISONS

FROM : ROBERT T. JONES
Assistant Secretary of Labor

SUBJECT : Financial Policy for the Revised Trade Adjustment Assistance (TAA) Program

1. Purpose. To transmit information on the financial policy for the revised TAA program.

2. Background. As a result of the Omnibus Trade and Competitiveness Act (OTCA) of 1988 amending the Trade Act and the issuance of other regulatory changes, several revisions to the financial operation of the TAA program were required. The most significant changes include:

- o Placing a time limit on the expenditure of funds;
- o Providing advanced funding rather than requiring supplemental budget requests for each instance of need; and
- o Establishing procedures to recapture and redistribute funds among the States.

The details regarding these changes were recently published in the attached General Administration Letter (GAL) No. 4-89 and in the Federal Register.

3. Action. The attached information should be provided to appropriate staff as soon as possible.

4. Inquiries. Inquiries should be directed to the appropriate Regional Office.

5. Attachment. GAL NO. 4-89

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[FR Doc. 89-1303 Filed 1-19-89; 8:45 am]
BILLING CODE 4510-30-C

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the Federal Register, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administraton, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue NW., Room S-3504, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the Federal Register are in parentheses following the decisions being modified.

Volume I

Massachusetts:
MA89-3 (Jan. 6, 1989) ..... pp. 403-410.
New York:
NY89-1 (Jan. 6, 1989) ..... p. 680.
NY89-2 (Jan. 6, 1989) ..... pp. 684-688.
NY89-3 (Jan. 6, 1989) ..... pp. 702-703.
NY89-4 (Jan. 6, 1989) ..... pp. 710-711, 713.
NY89-5 (Jan. 6, 1989) ..... pp. 718, 720.
NY89-6 (Jan. 6, 1989) ..... pp. 728-735.
NY89-7 (Jan. 6, 1989) ..... pp. 738, 742.
NY89-8 (Jan. 6, 1989) ..... p. 758.
NY89-10 (Jan. 6, 1989) ..... pp. 770-773.
NY89-11 (Jan. 6, 1989) ..... pp. 782, 784.
NY89-12 (Jan. 6, 1989) ..... p. 790.
NY89-13 (Jan. 6, 1989) ..... pp. 800-801.
NY89-14 (Jan. 6, 1989) ..... p. 808.
NY89-15 (Jan. 6, 1989) ..... pp. 813-814.
NY89-17 (Jan. 6, 1989) ..... pp. 818, 820.
NY89-18 (Jan. 6, 1989) ..... pp. 828-830.
NY89-18 (Jan. 6, 1989) ..... pp. 828-830.
Tennessee:
TN89-1 (Jan. N6, 1989) ..... pp. 1078-1079.

Volume II

Iowa:
IA89-1 (Jan. 6, 1989) ..... p. 22.
IA89-2 (Jan. 6, 1989) ..... p. 28.
IA89-6 (Jan. 6, 1989) ..... p. 52.
Illinois:
IL89-19 (Jan. 6, 1989) ..... p. 240.
Missouri:
MO89-5 (Jan. 6, 1989) ..... p. 670.
MO89-6 (Jan. 6, 1989) ..... p. 676.

Volume III

Arizona:
AZ89-2 (Jan. 6, 1989) ..... p. 19.
Colorado:
CO89-1 (Jan. 6, 1989) ..... p. 100.
CO89-2 (Jan. 6, 1989) ..... p. 116.
CO89-4 (Jan. 6, 1989) ..... p. 125.
Washington:
WA89-1 (Jan. 6, 1989) ..... pp. 364-365 pp. 369, 374.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. (202) 783-3238

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 13th day of January 1989.

Robert V. Setera,

Acting Director, Division of Wage Determinations.

[FR Doc. 89-1243 Filed 1-19-89; 8:45 am]
BILLING CODE 4510-27-M

Mine Safety and Health Administration

[Docket No. M-89-1-C]

B. and B. Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

B. and B. Coal Company, 225 Main Street Joliett, Tremont, Pennsylvania 17981 has filed a petition to modify the application of 30 CFR 75.1405 (automatic couplers) to its Rock Ridge Slope (I.D. No. 36-07175) located in Schuylkill County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that track haulage cars be equipped with automatic couplers.

2. Petitioner states that installation of automatic couplers on the track haulage cars would result in a diminution of safety to the miners affected due to the sharp radius curves in the track, the undulating pitch of the slopes, the different types of small lightweight cars, and the systems of haulage.

3. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before February 22, 1989. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: January 13, 1989.

[FR Doc. 89-1397 Filed 1-19-89; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-89-245-C]

Centralia Mines, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Centralia Mines, Inc., R.D. 2, Box 201, Shamokin, Pennsylvania 17872 has filed a petition to modify the application of 30 CFR 75.301 (air quality, quantity, and velocity) to its No. 1 Slope (I.D. No. 36-07835) located in Northumberland County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that the minimum quantity of air reaching the last open crosscut in any pair or set of developing entries and the last open crosscut in any pair or set of rooms be 9,000 cubic feet a minute, and the minimum quantity of air reaching the intake end of a pillar line be 9,000 cubic feet a minute. The minimum quantity of air in any coal mine reaching each working face shall be 3,000 cubic feet a minute.

2. Air sample analysis history reveals that harmful quantities of methane are nonexistent in the mine. Ignition, explosion, and mine fire history are nonexistent for the mine. There is no history of harmful quantities of carbon monoxide and other noxious or poisonous gases.

3. Mine dust sampling programs have revealed extremely low concentrations of respirable dust.

4. Extremely high velocities in small cross sectional areas of airways and manways required in friable Anthracite veins for control purposes, particularly in steeply pitching mines, present a very dangerous flying object hazard to the miners and cause extremely uncomfortable damp and cold conditions in the mine.

5. As an alternate method, petitioner proposes that:

a. The minimum quantity of air reaching each working face be 1,500 cubic feet per minute;

b. The minimum quantity of air reaching the last open crosscut in any pair or set of developing entries be 5,000 cubic feet a minute; and

c. The minimum quantity of air reaching the intake end of a pillar line be 3,000 cubic feet a minute, and/or whatever additional quantity of air that may be required in any of these areas to maintain a safe and healthful mine atmosphere.

6. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before February 22, 1989. Copies of the petition are available for inspection at that address.

Date: January 12, 1989.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89-1398 Filed 1-19-89; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-88-243-C]

L&W Coal Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

L&W Coal Company, Inc., R.D. No. 2, Box 201, Shamokin, Pennsylvania 17872 has filed a petition to modify the application of 30 CFR 75.1400 (hoisting equipment; general) to its No. 2 Slope (I.D. No. 36-07171) located in Northumberland County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirements that cages, platforms or other devices which are used to transport persons in shafts and slopes be equipped with safety catches or other approved devices that act quickly and effectively in an emergency.

2. Petitioner states that no such safety catch or device is available for the steeply pitching and undulating slopes with numerous curves and knuckles present in the main haulage slopes of this anthracite mine.

3. Petitioner further believes that if "makeshift" safety devices were installed they would be activated on knuckles and curves when no emergency existed and cause a tumbling effect on the conveyance.

4. As an alternate method, petitoner proposes to operate the man cage or steel gunboat with secondary safety connections securely fastened around the gunboat and to the hoisting rope, above the main connecting device. The hoisting ropes would have a factor of safety in excess of the design factor as determined by the formula specified in the American National Standard for Wire Rope for Mines.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All

comments must be postmarked or received in that office on or before February 22, 1989. Copies of the petition are available for inspection at that address.

Date: January 12, 1989.

Patricia W. Silvey,

Director Office of Standards, Regulations and Variances.

[FR Doc. 89-1399 Filed 1-19-89; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-88-247-C]

New Era Coal Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

New Era Coal Company, Inc., 29501 Mayo Trail, Catlettsburg, Kentucky 41129 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its No. 1 Mine (I.D. No. 15-10753) located in Pike County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follow:

1. The petition concerns the requirement that the idled area of the mine be examined in its entirety on a weekly basis.

2. Due to rock falls and a large quantity of water, the idled area of the mine cannot be safely traveled. To restore one entry to a safe travelable condition would expose miners to hazardous working conditions.

3. As an alternate method, petitioner proposes to establish four evaluation points where a certified person would examine the water level and the quantity and quality of air used to ventilate the idled area. These examinations would be made on a weekly basis and the results recorded in a Weekly Examinations for Hazardous Conditions Book.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before February 22, 1989. Copies of the petition are available for inspection at that address.

Date: January 13, 1989.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89-1400 Filed 1-19-89; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-88-241-C]

Rhen Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Rhen Coal Company, R.D. No. 3, Box 21, Pine Grove, Pennsylvania 17963 has filed a petition to modify the application of 30 CFR 75.1714 (self-contained self-rescuers) to its Skidmore Slope (I.D. No. 36-08031) located in Schuylkill County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that each operator make available to each person who goes underground a self-contained self-rescue device approved by the secretary which is adequate to protect such persons for one hour or longer.

2. The mine is always damp to wet. There is a small pump located at the foot of the slope.

3. Petitioner states that the distance from the mine portal to the actual working face is less than 2,000 feet. The mine can be evacuated in less than 15 minutes.

4. Petitioner states that the devices are too heavy, bulky, and cumbersome to be worn while working or in the narrow confines of the slope gun boat which serves as a mantrip at the mine.

5. Sections of the mine are subjected to freezing temperatures making constant availability of the devices questionable. In addition, the wet mine conditions make it difficult to locate a suitable dry storage location for the self-rescuers.

6. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before February 22, 1989. Copies of the petition are available for inspection at that address.

Date: January 13, 1989.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89-1401 Filed 1-19-89; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-88-242-C]

Rhen Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Rhen Coal Company, R.D. 3, Box 21, Pine Grove, Pennsylvania 17963 has filed a petition to modify the application of 30 CFR 75.1400 (hoisting equipment; general) to its Skidmore Slope (I.D. No. 36-08031) located in Schuylkill County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cages, platforms or other devices which are used to transport persons in shafts and slopes be equipped with safety catches or other approved devices that act quickly and effectively in an emergency.

2. Petitioner states that no such safety catch or device is available for the steeply pitching and undulating slopes with numerus curves and knuckles present in the main haulage slopes of this anthracite mine.

3. Petitioner further believes that if "makeshift" safety devices were installed they would be activated in knuckles and curves when no emergency existed and cause a tumbling effect on the conveyance.

4. As an alternate method, petitioner proposes to operate the man cage or steel gunboat with secondary safety connections securely fastened around the gunboat and to the hoisting rope, above the main connecting device. The hoisting ropes would have a factor of safety in excess of the design factor as determined by the formula specified in the American National Standard for Wire Rope for Mines.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or

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received in that office on or before February 22, 1989. Copies of the petition are available for inspection at that address.

Date: January 12, 1989.

Patricia W. Silvey,

Director Office of Standards, Regulations and Variances.

[FR Doc. 89-1402 Filed 1-19-89; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-89-23S-C]

Jim Walter Resources, Inc., Petition for Modification of Application of Mandatory Safety Standard

Jim Walter Resources, Inc., P.O. Box C-79, Birmingham, Alabama 35283 has filed a petition to modify the application of 30 CFR 75.1002 (location of trolley wires, trolley feeder wires, high-voltage cables and transformers) to its No. 3 Mine (I.D. No. 01-00758) located in Jefferson County, Alabama. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that trolley wires and trolley feeder wires, high-voltage cables and transformers not be located inby the last open crosscut and be kept at least 150 feet from pillar workings.

2. Petitioner proposes to install a second high-voltage longwall utilizing a.c. high-voltage (2300 v) cables in or inby the last open crosscut with specific equipment and conditions as outlined in the petition.

3. In addition, petitioner proposes that—

(a) The cables to be used would be a SHD-GC 5KV MSHA approved jacketed cable. These cables provide as safe a protection against potential for an ignition source as medium-voltage cables of the same type construction and better protection than low-voltage cables of non-shielded construction;

(b) The use of higher voltage motors results in lower current flows, thereby reducing the heating effect on the cable;

(c) A sensitive ground fault and lockout protection circuit would be provided to detect, trip and lockout any cable with a ground fault current of 60 milliamperes. Therefore, this application of high-voltage cables is safer than that of medium-voltage cables under similar faulted conditions;

(d) Compared to a 995 volt system, a 2300 volt system requires smaller current flows to power motors of similar horsepower ratings. Consequently, greater cable insulation protection is provided in the high-voltage system; and

(e) All high-voltage cables supplying all prime movers located inby the last open crosscut are deenergized at any time this equipment is not in operation. This provides added protection through reduced exposure time.

4. Petition states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before February 22, 1989. Copies of the petition are available for inspection at that address.

Date: January 12, 1989.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89-1403 Filed 1-19-89; 8:45 am]

BILLING CODE 4510-43-M

NUCLEAR REGULATORY COMMISSION

Meeting To Review Valve Tests

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of public meeting.

SUMMARY: Tests were conducted to determine whether isolation valves in a specific high energy BWR pipe that penetrates containment will close against high flows in the event of a pipe break outside containment. The pipe system and environment that was simulated in the tests is the Reactor Water Cleanup (RWCU) line. The NRC licensing office has determined this to be a significant safety issue which has been identified as Generic Issue (GI) 87, "Failure of HPCI Steam Line Without Isolation." Although other pipes are also included as part of GI-87, the tests to date have concentrated on the RWCU line only. The results of these tests have been presented to the NRC staff and to representatives of valve and actuator manufacturers of equipment typically used in GI-87 related pipe lines. A meeting is planned for February 1, 1989, from 8:30 a.m. to 6:00 p.m. at the Crowne Plaza Holiday Inn at 1750 Rockville Pike, Maryland 20852, Phone (301) 468-1100. The Crowne Plaza is located near the Twinbrook Metro Station. In this meeting, the Idaho National Engineering Laboratory (INEL) will present the significant results of those tests so that the staff can make a determination that the research performed for the NRC is acceptable for demonstrating the performance of valves and diagnostic equipment and to develop the basis for focusing subsequent research that will be needed to resolve the issue. The meeting topics are listed below. Persons wishing to make statements on any of these topics should notify the contact listed below and submit a written request including the desired statement at least one week in advance of the meeting. The statement should be no longer than 3 minutes.

FOR FURTHER INFORMATION CONTACT: Gerald H. Weidenhamer, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, 5650 Nicholson Lane South (217B), Rockville, Maryland 20852, Telephone: (301) 492-3839, Facsimile: (301) 443-7804, or (301) 443-7836, Verification: (301) 492-3607.

Meeting Topics

1. Introduction & Agenda
2. Purpose and Format of Meeting
3. Meeting Goals, Potential Problems and Questions
4. Significant Test Results
5. Discussion of Potential Problems and Questions
6. Status of Industry Action to Remedy MOV Performance and Reliability Problems
7. Question, Statements and Comments from Floor (Time Permitting)
8. Meeting Wrap-up.

Dated at Rockville, Maryland this 12th day of January, 1989.

For the Nuclear Regulatory Commission.

Milton Vaglas,

Chief, Electrical & Mechanical Engineering Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 89-1357 Filed 1-19-89; 8:45 am]

BILLING CODE 7590-01-M

Bi-Weekly Notice; Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations; Correction

On December 14, 1988, the Federal Register published the Bi-Weekly Notice of Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations. On page 50339, for the Browns Ferry Nuclear Plant, Unit 1 (application dated October 27, 1987—TS 235), the Amendment Nos. read, "158, 155, 130." The correct Amendment Nos. should have been "159, 155, 130."

Dated at Rockville, Maryland this 13th day of January 1989.

Suzanne C. Black,

Assistant Director for Projects, TVA Projects Division, Office of Nuclear Reactor Regulation.

[FR Doc. 89-1351 Filed 1-19-89; 8:45 am]

BILLING CODE 7590-01-M

Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued a revision to a guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

Revision 1 to Regulatory Guide 10.9, "Guide for the Preparation of Applications for Licenses for the Use of Self-Contained Dry Source-Storage Gamma Irradiators," provides guidance on the type of information needed by the NRC staff in evaluating license applications for the use of self-contained dry source-storage gamma irradiators.

Comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time. Written comments may be submitted to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Regulatory guides are available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Copies of issued guides may be purchased from the Government Printing Office at the current GPO price. Information on current GPO prices may be obtained by contacting the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013-7082, telephone (202)275-2060 or (202)275-2171. Issued guides may also be purchased from the National Technical Information Service on a standing order basis. Details on this service may be obtained by writing NTIS, 5285 Port Royal Road, Springfield, VA 22161.

(5 U.S.C 552(a))

Dated at Rockville, Maryland this 11th day of January 1989.

For the Nuclear Regulatory Commission.

Eric S. Beckjord,

Director, Office of Nuclear Regulatory Research.

[FR Doc. 89-1356 Filed 1-19-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-309]

Maine Yankee Atomic Power Co.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-36 issued to Maine Yankee Atomic Power Company (the licensee), for operation of the Maine Yankee Atomic Power Station in Lincoln County, Maine.

The proposed amendment would modify the Technical Specifications to reflect current knowledge of the Reactor Pressure Vessel (RPV) fast neutron fluences (E greater than 1.0 Mev.) and material properties. The proposed amendment would also incorporate revised 10 CFR Part 50 Appendix G limits. Included are changes for:

- Revised fluence projections which reflect results of measurements and flux reduction achieved in refueling cycle 8.
- Revised damage predictions which reflect the results of measurements and the application of Regulatory Guide (R.G.) 1.99, Revision 2.
- Revised Pressure-Temperature (P/T) limits developed following the requirements of 10 CFR Part 50 Appendix G.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By February 21, 1989, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rule of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene, which must include a list of the contentions that are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public

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Document Room, the Gelman Building, 2120 L Street NW., Washington DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-800-325-6000 (in Missouri 1-800-342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Richard H. Wessman, Project Directorate I-3: (petitioner's name and telephone number); (date petition was mailed); (plant name); and (publication date and page number of this **Federal Register** notice). A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to J.A. Ritsher, Ropes & Gray, 255 Franklin Street, Boston, Massachusetts 02210, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated December 2, 1988, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555, and at the Local Public Document Room, Wiscasset Library, High Street, P.O. Box 367, Wiscasset, Maine 04579.

Dated at Rockville, Maryland, this 13th day of January 1989.

For the Nuclear Regulatory Commission.

Richard H. Wessman,

Director, Project Directorate I-3, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 89-1350 Filed 1-19-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-133]

Pacific Gas and Electric Co., Humboldt Bay Power Plant Unit No. 3; Exemption

I

Pacific Gas and Electric Company (the licensee) is the holder of Facility License No. DPR-7, which authorizes possession but not operation of Humboldt Bay Power Plant, Unit No. 3 (Humboldt Bay Unit 3). The license provides, among other things, that it is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect. The facility consists of a permanently shut down boiling water reactor and stored spent fuel located at the licensee's site in Humboldt County, California.

II

Section 70.51(d) of the Commission's regulations requires a licensee authorized to possess special nuclear material to conduct a physical inventory of all such materials at intervals not to exceed 12 months. The licensee is requesting an exemption from the annual physical inventory.

Pursuant to 10 CFR 70.14 the Commission may grant exemptions from the requirements of the regulations which are authorized by law, will not endanger life or property or the common defense and security, and are otherwise in the public interest.

III

Humboldt Bay Unit 3 has been shut down since July 2, 1976. In 1983, the licensee decided to decommission Humboldt Bay Unit 3 and subsequently submitted a Proposed Decommission Plan, Proposed Technical Specifications (TS) and an Environmental Report. The licensee proposed (1) to amend License No. DPR-7 to possess-but-not-operate status; (2) to delete certain license conditions related to seismic modifications required before the NRC would authorize a return to power operation; (3) to revise the TS to reflect the possess-but-not-operate status; (4) to decommission Humboldt Bay Unit 3 in accordance with the plan included with the submittal; and (5) to extend License No. DPR-7 for 15 additional years, to November 9, 2015, to be consistent with the Decommissioning Plan.

On July 16, 1985 License No. DPR-7 was amended to possess-but-not-operate status. On July 19, 1988 License No. DPR-7 was amended to approve the decommissioning plan and the balance of Items 1 through 5 above.

On June 6, 1988 as revised July 19 and September 13, 1988 the licensee submitted a request for an exemption from the requirement for an annual inventory of the spent fuel on the basis of additional conditions and commensurate requirements.

Based on a review of the licensee's request the NRC staff finds that the following conditions and commensurate requirements support granting the requested exemption:

(1) A cover is installed over the spent fuel pool. Tamper-indicating seals are installed on the cover.

(2) Seal number and integrity shall be verified every 12 months.

(3) A physical inventory of all spent fuel shall be conducted whenever a seal has been found to be compromised. A physical inventory of all spent fuel shall be conducted after an authorized opening of the cover if the time since the last inventory is in excess of 12 months.

(4) A physical inventory of all spent fuel will also be conducted after an authorized removal of the spent fuel pool cover if the time period since the last inventory is less than 12 months unless:

(a) The entry into the refueling building while the cover was removed was made by at least two authorized individuals who attest in writing that no spent fuel was removed from the pool while they were in the refueling building; or

(b) While the cover was removed and in the absence of at least two authorized individuals in the refueling building, the alarms, cameras and other detection devices that make up the security system were OPERABLE and maintained in accordance with the security plan.

Based on the foregoing, and in accordance with 10 CFR 70.14 the staff concludes that the exemption from the requirements of 10 CFR 70.51(d) as discussed above, is authorized by law, will not endanger life or property or the common defense and security, and is otherwise in the public interest.

Accordingly, the Commission hereby grants Pacific Gas and Electric Company an exemption from the requirement of 10 CFR 70.51(d) for the conduct of an annual inventory of spent fuel at Humboldt Bay Unit 3 provided the licensee satisfies the conditions set forth in Items 1 through 4 above.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this Exemption will have no significant impact on the environment (54FR878 on January 10, 1989).

This exemption is effective upon issuance.

For the Nuclear Regulatory Commission.

Gary M. Holahan,

Acting Director, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

Dated at Rockville, Maryland this 13th day of January 1989.

[FR Doc. 89-1352 Filed 1-19-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-206]

Southern California Edison Co. and San Diego Gas and Electric Co., San Onofre Nuclear Generating Station, Unit No. 1; Consideration of Issuance of Amendment to Provisional Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Provisional Operating License No. DPR-13 issued to Southern California Edison Company, *et al.* (the licensee), for operation of San Onofre Nuclear Generating Station, Unit No. 1, located in San Diego County, California. The request for amendment was submitted by letter dated January 11, 1989.

The proposed amendment would revise Appendix A Technical Specifications 2.1, "REACTOR CORE—Limiting Combination of Power, Pressure, and Temperature," 3.5.2, "Control Group Insertion Limits", 3.11, "Continuous Power Distribution Monitoring", 3.3.3, "Refueling Water Storage Tank" 4.1.1 "Operational Safety Items", and 4.2.1, "Safety Injection and Containment Spray System Periodic Testing" to allow San Onofre Unit 1 to be operated as described in the forthcoming report, "Reload Safety Evaluation, San Onofre Nuclear Generating Station, Unit 1, Cycle 10."

The Reload Safety Evaluation for Cycle 10 is currently underway. The technical specification changes identified above represent the expected scope of specifications impacted by the reload safety evaluation. Additional information and the actual values and setpoints will be provided when available as a supplement to the amendment request.

The reload safety evaluation is being performed to support plant operation at a reduced reactor coolant temperature with up to 20% of the steam generator tubes plugged. Recent steam generator tube inspections have resulted in steam generator plugging levels beyond the 15% value assumed in the existing safety analysis. Reanalysis to provide for the higher plugging levels (20%) is therefore required and is now underway.

In addition, the licensee has reanalyzed the reactor coolant pump shaft break event to require a revised reactor protection setpoint to account for operation at a reduced reactor coolant temperature.

Finally, the main steam line break event has been reanalyzed to model the injection of borated water through a single injection path and to permit a reduced concentration of boric acid in the injection lines.

Prior to issuance proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By February 22, 1989, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject provisional operating license, and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commision or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene must set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to George W. Knighton: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel—White Flint, U.S. Nuclear Regulatory Commission,

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Washington, DC 20555, and to Charles R. Kocher, Assistant General Counsel, and James Beoletto, Esq., Southern California Edison Company, P.O. Box 800, Rosemead, California 91770, attorneys for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714 (a)(1)(i)–(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room 2120 L Street NW., Washington, DC, and at the General Library, University of California, P.O. Box 19557, Irvine, California 92713.

Dated at Rockville, Maryland, this 13th day of January, 1989.

For the Nuclear Regulatory Commission.

George W. Knighton,

Project Director, Project Directorate V, Division of Reactor Projects—III, IV, V and Special Projects.

[FR Doc. 89-1353 Filed 1-19-89; 8:45 am]

BILLING CODE 7590-01-M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Columbia River Basin Fish and Wildlife Program; Proposed Amendments

AGENCY: Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of extension of comment period on proposed long-term spill amendments to the Columbia River Basin Fish and Wildlife Program.

SUMMARY: On November 23, 1988, pursuant to the Pacific Electric Power Planning and Conservation Act (the Northwest Power Act, 16 U.S.C. 839, et seq.) the Pacific Northwest Electric Power and Conservation Planning Council (Council) issued notices of proposed amendments to the Columbia River Basin Fish and Wildlife Program (program). The proposed amendments dealt with the subject of fish spills at the federal dams on the mainstem Columbia and Snake Rivers, except Bonneville Dam, to provide improved survival for anadromous fish at the dams. The Council set December 28, 1988 as the deadline for written comment. On January 12, 1989, the Council determined to defer action on the proposed amendments, to set a special Council meeting to consider the proposed amendments on January 25, 1989, and to extend the period for written comment.

Extension of Period for Written Comment

Any additional written comments must be received in the Council's central office, 851 SW. Sixth Avenue, Suite 1100, Portland, Oregon, 97204, by 5 p.m. Pacific time on January 23, 1989. Comments should be submitted to Dulcy Maher, Director of Public Involvement, at this address. Comments should be clearly marked "Spill Comments."

After the close of written comment, the Council may hold consultations with interested parties to clarify points made in written comment. Consultations may be held up to the time of the Council's final action in this rulemaking.

For a Full Copy of the Proposed Amendments, or for Further Information: Contact Judi Hertz at 851 SW. Sixth Avenue, Suite 1100, Portland, Oregon, 97204, or at (503) 222–5161, toll free 1–800–222–3355 in Idaho, Montana, and Washington or 1–800–452–2324 in Oregon.

Edward Sheets,

Executive Director.

[FR Doc. 89-1325 Filed 1-19-89; 8:45 am]

BILLING CODE 0000-00-M

PROSPECTIVE PAYMENT ASSESSMENT COMMISSION

Meetings

Notice is hereby given of meetings of the Prospective Payment Assessment Commission on Tuesday, January 31, 1989 at 9:30 a.m. and Wednesday, February 1, 1989 at 8:30 a.m. The meetings will be held in the Diplomat Room of the Omni Shoreham Hotel, 2500 Calvert Street, NW., Washington, DC.

All meetings are open to the public.

Donald A. Young,

Executive Director.

[FR Doc. 89-1367 Filed 1-19-89; 8:45 am]

BILLING CODE 6820-BW-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-26458; File No. SR-NASD-88-10]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change To Amend the NASD's Rules of Fair Practice To Permit Indeterminate Compensation in Connection With the Sale of Direct Participation Programs

On August 10, 1987, the National Association of Securities Dealers, Inc. ("NASD") submitted a second amendment to a proposed rule change pursuant to Section 19(b) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] to amend Appendix F to Article III, Section 34 of the NASD's Rules of Fair Practice, to allow for the receipt by broker-dealers of indeterminate compensation in connection with the sale of direct participation programs ("DPPs").[3] The purpose of the proposed rule change is to permit members engaging in a public offering of DPPs, to exchange a portion of their front-end compensation for a right to receive a back-end revenue participation.

Subsection 5(b)(5) of Appendix F currently prohibits any NASD member or person associated with a member from receiving indeterminate compensation in connection with the public offering of a DPP.[4] The proposed

[1] *See* 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b–4 (1988).

[3] The proposed rule change was filed on May 14, 1984, and amended on October 15, 1984. Notice of the original filing, as amended, was given by Securities Exchange Act Release No. 21468, November 5, 1984, and by publication in the Federal Register, 49 FR 44908, November 13, 1984. The Commission received one comment letter that supported the proposed rule change. *See* letter from Bill F. Carter, President, International Association for Financial Planning, to George A. Fitzsimmons, Secretary, SEC, dated September 6, 1984. On November 15, 1984, the Commission staff submitted a letter to the NASD requesting further explanation of certain aspects of the original rule change. The NASD submitted a response to the Commission's letter on July 27, 1987, and an amendment to the proposed rule change on August 10, 1987. *See* letter from Stuart J. Kaswell, Branch Chief, SEC, to Frank J. Formica, Vice president, NASD, dated November 15, 1984, and letter from Frank J. Formica to Katherine A. England, Branch Chief, SEC, dated July 27, 1987.

[4] "Indeterminate compensation" refers to any item of compensation which is on-going in nature and for which a value cannot be determined at the time of the offering, including a percentage of the general partner's management fee, profit sharing arrangement, an overriding royalty interest, a net profits interest, a percentage of revenues and similar on-going compensation with an indeterminate dollar value.

rule change would permit a member to receive a back-end indeterminate interest in program distributions as compensation for distribution of a DPP if four conditions are satisfied: (1) Continuing compensation only is received after each investor in the DPP has received his cash distributions from the DPP aggregating an amount equal to his cash investment plus a 6% cumulative annual return on his adjusted investment; (2) the continuing compensation is calculated as a percentage of program cash distributions; (3) the amount of continuing compensation does not exceed 3% for each one percent that front-end retail and wholesale cash commissions fall below 9%. Also, there is a 12% ceiling on the amount of continuing compensation that a member may receive; and (4) if any portion of continuing compensation is derived from the limited partners' interest in the program cash distributions, the percentage of continuing compensation shall be no greater than the percentage of program cash distributions to which the limited partners are entitled at the time of payment.

Proposed section 5(b)(5)(iii) establishes a 9% base from which the reduction in front-end compensation must be calculated [5] and is intended to assure that members that choose to receive continuing compensation actually reduce the amount of front-end fees charged.[6] A member, therefore, is entitled to receive 3% continuing compensation, calculated as a percentage of program cash distributions, for each 1% reduction in front-end compensation it takes, calculated from the 9% base.[7] The 12% ceiling on program cash distributions is intended to assure consistency in the structure of public DPPs in order to prevent widely differing compensation levels from outweighting relevant suitability standards, and to prevent undue discrimination against smaller broker-dealers that may not be able to bear the costs of distribution in exchange for deferred compensation. The three-for-one trade-off reflects the time value of the deferred compensation and the risk assumed by the broker-dealer. The provisions of paragraph (iv) prevent the limited partners from bearing the entire cost of a member's deferred compensation.

The NASD believes that the proposed rule change will substantially benefit public investors in several ways. First, because the broker-dealer is deferring some of its compensation, more capital will be invested in the project at the beginning of the program and investors may receive a better return on their investment. Second, broker-dealers will have an incentive to perform their due diligence obligations more thoroughly and remain informed of the DPP's performance because their compensation partially depends on the DPP's success. Notice of the amended proposed rule change together with the terms of substance of the proposed rule change was provided by the issuance of a Commission release (Securities Exchange Act Release No. 26192, October 18, 1988) and by publication in the Federal Register (53 FR 41431, October 21, 1988).

The Commission received two comment letters on the proposed rule change.[8] The commentators generally support the proposed rule change but express specific concerns. One of the commentators argues that the proposal, as amended, is not beneficial enough to brokers. The commentator recommends that payment of continuing compensation not be contingent upon payment of a preferred return of 6% to investors. The commentator expresses concern over the inordinate period of time that could lapse before the broker would benefit form the arrangement because of the extended life of DPPs and the fact that asset liquidations generally do not occur until the DPPs have ended. The commentator suggests, as an alternative to the proposal, that the General Partner, regardless of its affiliation, be required to make payments from its ongoing compensation to the broker-dealer who sold the DPP in question; thus, contemplated compensation would be paid from the General Partner's compensation rather than the Limited Partnership.

The second commentator argues that creating a "fixed formula" for all DPPs is unduly restrictive and that the rule, as proposed and amended, does not contemplate various types of DPPs with varying risk profiles, member firm involvement and structures. The commentator suggests that the NASD permit indeterminate compensation if: (1) Adequate disclosure of the member firm's participation is set forth in the prospectus and (2) the issue is approved for lsiting on a national securities exchange, or (3) the issue complies with the relevant industry guidelines promulgated by the North American Securities Administrators Association ("NASAA").[9]

In response to the comment letters, the NASD first notes that this proposal provides an alternative method of structuring compensation in connection with the sale of DPPs; broker-dealers may continue to receive their compensation up-front.[10] The NASD drafted the proposed rule change in a manner that would ensure that broker-dealers only do well if investors are receiving at least some returns from their investments. Moreover, the 6% cumulative annual return, chosen as a prerequisite to the receipt by broker-dealers of continuing compensation, was adopted in response to concerns of NASAA. NASAA argued that some recognition of present value should be made in computing investors' return on capital.[11]

Second, in response to the commentator's suggestion that the General Partner make payments, the NASD has stated that this recommendation would be too difficult to oversee and enforce, and would not necessarily guarantee a bona-fide relinquishment of front-end compensation by the member. Third, the NASD has represented that a "fixed formula" is necessary in this context; drafting a rule that separately addressed all the different types of DPPs with their varying risk profiles, member firm involvement and structures, would be difficult and present enforcement problems. In addition, the NASD, pursuant to its Corporate Financing Interpretation, reviews the fairness and reasonableness of the underwriting arrangements in connection with the distribution of securities; this cannot be done with the disclosure above.[12]

[5] Members normally are permitted maximum front-end compensation of 10% pursuant to Appendix F.

[6] In the NASD's experience, the majority of DPP offerings have included underwriting compensation of at least 9% to 10%.

[7] The NASD clarifies in its rule filing that the term "continuing compensation" is viewed as a percentage of cash distributions from the operation or dissolution of the program. Thus, a member may receive continuing compensation from the operations, from the sale of program assets, and from dissolution of the program. *See* 53 FR 41431.

[8] *See* letter from Robert G. Brunton, Vice President and Associate General Counsel, Prudential-Bache Securities, Inc., and Christopher L. Davis, President, Investment Partnership Association to Jonathan G. Katz, Secretary, SEC, dated November 17, 1988, and December 19, 1988.

[9] We note that NASD members must disclose all underwriting compensation and comply with relevant industry guidelines irrespective of this proposed rule change.

[10] Telephone conversation between Suzanne Rothwell, Associate General Counsel, NASD, and Katherine England, Branch Chief, SEC, and Arian Colachis, SEC, December 16, 1988.

[11] *See* Securities Exchange Act Release No. 26192, 53 FR at 41432.

[12] *See* Interpretation of the Board of Governors, Review of Corporate Financing, ¶ 2151.02.

The Commission carefully has considered the comment letters and believes that the NASD adequately has addressed the concerns expressed by the commentators. The Commission finds that the NASD has designed an alternative means of receiving compensation in connection with the sale of DPPs, which adequately takes into account competing concerns of the broker-dealer community and the investing community, and achieves a correct balance. Accordingly, the Commission believes it is appropriate for the NASD to require that all investors receive cash distributions from the DPP equal to 100% of their cash investment plus the 6% return, prior to the member's receipt of the indeterminate compensation.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD, and in particular the requirements of section 15A and the rules and regulations thereunder. The NASD has requested that the proposed rule change become effective February 1, 1989.[10] Specifically, the NASD states: "DPPs currently on file with the NASD Corporate Financing Department as of February 1, 1989 (which have not received an opinion of 'no objections' to the underwriting terms and arrangements) and DPPs subsequently filed on or after February 1, 1989 with the NASD Corporate Financing Department for review may include an underwriting arrangement that complies with the new indeterminate compensation provision of Appendix F. In addition, any DPP offering that has previously received an opinion of 'no objections' from the NASD Corporate Financing Department, may be resubmitted on or after February 1, 1989 for review of revised underwriting terms which include an indeterminate compensation arrangement, so long as the SEC or state regulatory authority (if an intrastate offering) has not declared the offering effective."

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is approved, effective February 1, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

[10] See letter from Suzanne E. Rothwell, Associate General Counsel, NASD, to Katherine England, Branch Chief, SEC, dated December 20, 1988.

Dated: January 13, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-1408 Filed 1-19-89; 8:45 am]

BILLING CODE 8010-01-M

[File No. 500-1]

Chase Medical Group, Inc.; Order of Suspension of Trading

January 16, 1989.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Chase Medical Group, Inc. (1) because of questions concerning unusual market activity in those securities, (2) because of questions concerning an accumulation of over fifty (50) percent of the company's outstanding securities by a broker-dealer, and certain of its customers and the resulting potential impact on the market for Chase Medical's securities and (3) because of the failure of several of these people to make payments to a broker-dealer in connection with the acquisition and maintenance of such securities as requested.

The Commission is of the opinion that the public interest and the protection of invetors require a suspension of trading in the securities of the above listed company.

Therefore, it is ordered, pursuant to section 12(k) of the Securities Exchange Act of 1934, that trading in the above listed company, is suspended for the period from 11:00 a.m. EST, January 16, 1989 through 11:59 p.m. EST, on January 25, 1989.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-1322 Filed 1-19-89; 8:45 am]

BILLING CODE 8010-01-M

[File No. 500-1]

Fun Foods, Inc.; Order of Suspension of Trading

January 17, 1989.

It appears to the Securities and Exchange Commission that there is a lack of adequate current information concerning the securities of Fun Foods, Inc., and that questions have been raised about the adequacy and accuracy of publicly disseminated information concerning the financial condition of the company, its current management, among other things, the identity of current officers and directors, and the location of its corporate headquarters.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of Fun Foods, Inc.

Therefore, it is ordered, pursuant to section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of Fun Foods, Inc., over-the-counter or otherwise, is suspended for the period from 9:30 a.m. EST, January 17, 1989 through 11:59 p.m. EST, on January 26, 1989.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-1323 Filed 1-19-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-16755; 811-3643]

World of Technology, Inc.; Application for Deregistration

January 13, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "1940 Act").

Applicant: World of Technology, Inc.

Relevant 1940 Act Section: Section 8(f).

Summary of Application: Applicant seeks an order declaring that it has ceased to be an investment company under the 1940 Act.

Filing Dates: The application on Form N-8F was filed on September 1, 1988, and amended on October 21, 1988. A supplemental letter was filed January 9, 1989.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on February 6, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESS: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicant, 6312 S. Fiddler's Green Circle, Suite 100N, Englewood, Colorado 80111.

FOR FURTHER INFORMATION CONTACT: Legal Technician Patricia Copeland (202) 272-3009, or Branch Chief Karen Skidmore, (202) 272-3023 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. Applicant is a Colorado corporation and open-end diversified management investment company under the 1940 Act. On December 16, 1982, Applicant filed a Notification of Registration pursuant to section 8(a) of the 1940 Act on Form N-8A. On the same date, Applicant filed a registration statement under the Securities Act of 1933 and the 1940 Act on Form N-1A which was declared effective on April 28, 1983, and the initial public offering commenced shortly thereafter.

2. On January 13, 1988, the board of directors of the Applicant approved and adopted an Agreement and Plan of Reorganization (the "Plan") under which all of the net assets of the Applicant would be transferred to the Technology Portfolio of Financial Strategic Portfolios, Inc. ("FSP"), a registered management investment company, in exchange for shares of the Technology Portfolio. In determining to recommend to shareholders that the Fund be merged into the Technology Portfolio of FSP, the board of directors of the Fund, including a majority of the independent directors, concluded that the proposed reorganization would be in the best interests of shareholders of the Fund because it would (1) permit shareholders of the fund to pursue substantially the same investment objective in a larger and more economically viable fund; (2) reduce the advisory fee payable by the Fund from 1.00% of average net assets to 0.75% of average net assets; and (3) reduce the expense ratio of the combined funds by spreading fixed costs over a larger asset base. Applicant's shareholders approved the Plan at a special meeting held on May 12, 1988.

3. Pursuant to the Plan, FSP delivered to Applicant 386,881.48 shares of common stock, $.01 par value, of the Technology Portfolio ("Technology Portfolio Shares") in exchange for all of the net assets of the Applicant, which assets had a value of $4,003,971.93. The Technology Portfolio Shares were then distributed to shareholders of the Applicant. Each shareholder of the Applicant received that number of full and fractional Technology Portfolio Shares equal in value on May 12, 1988, to the value of such shareholder's shares of the Applicant. The net asset values per share of the Technology Portfolio Shares and shares of the Applicant were $10.3493 and $9.5743, respectively, on May 12, 1988. Accordingly, shareholders of the Applicant received .925 Technology Portfolio Share for each share of the Applicant held on May 12, 1988. Following implementation of the Plan on May 12, 1988, Applicant had no shareholders.

4. The expenses applicable to the exchange, consisting of accounting, printing, administrative and certain legal expenses were allocated equally between the parties to the exchange, with Applicant's share being $6,061. No brokerage commissions were paid in connection with the Plan.

5. Applicant currently has no assets and no liabilities. Applicant is not a party to any current or pending litigation or administrative proceeding. Applicant is not engaged, and does not propose to engage in any business activities other than those necessary for winding-up of its affairs.

6. Applicant will file a Statement of Intent to Dissolve and Articles of Dissolution with the Secretary of State of the State of Colorado.

7. Applicant represents that all of its required N-SAR filings have been made and it will file its Form N-SAR for the period ended August 31, 1988. If a Form N-SAR is required for any period from August 31, 1988, through the date the Applicant is deregistered, such form will be filed promptly after the earlier of the due date of the form or the issurance of the requested order.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-1409 Filed 1-19-89; 8:45 am]

BILLING CODE 8010-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Implementation of Modifications in Specialty Steel Import Relief

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: This notice revises or establishes for certain countries quota allocations currently applicable to imports of certain stainless steel bar and rod and alloy tool steel. This notice makes modifications in the Harmonized Tariff Schedule of the United States (HTS) to implement these changes.

EFFECTIVE DATE: January 20, 1989.

FOR FURTHER INFORMATION CONTACT: Robert Cassidy, Office of the United States Trade Representative, (202) 395-6160.

SUPPLEMENTARY INFORMATION: Presidential Proclamation 5679 of July 16, 1987 (58 FR 27308) provided for the temporary imposition of increased tariffs and quantitative restrictions on certain stainless steel and alloy tool steel imported into the United States, pursuant to section 203 of the Trade Act of 1974. Proclamation 5679 authorizes the U.S. Trade Representative to take such actions and perform such functions for the United States as may be necessary to administer and implement the relief, including negotiating orderly marketing agreements and allocating quota quantities on a country-by-country basis. The U.S. Trade Representative is also authorized to make modifications in the HTS headnote of items proclaimed by the President in order to implement such actions.

Accordingly, the U.S. Trade Representative has determined that the following modifications be applied to subheadings 9903.72.12, 9903.72.14, 9903.72.22, 9903.72.24, 9903.72.32 and 9903.72.34 of Subchapter III, chapter 99 of the HTS.

Add quota quantities for "Hungary" and replace those for "Other" in subheadings 9903.72.12 and 9903.72.14 as follows:

Item	Articles	Quota Quantity (in kilograms)	
		If entered during the restraint period:	
		July 20 through January 19	January 20 through July 19
9903.72.12	Hungary	n/a	28,123
	Other, except as provided in U.S. note 4(g)(ii) to this subchapter	107,956	76,204
9903.72.14	Hungary	11,794	3/
	Other, except as provided in U.S. note 4(g)(ii) to this subchapter	32,659	3/

Add quota quantities for "Hungary" and replace those for "Austria" and "Other" in subheadings 9903.72.22 and 9903.72.24 as follows:

Item	Articles	Quota Quantity (in kilograms)	
		If entered during the restraint period:	
		July 20 through January 19	January 20 through July 19
9903.72.22	Austria	48,988	90,719
	Hungary	n/a	56,246
	Other, except as provided in U.S. note 4(g)(ii) to this subchapter	129,729	29,937
9903.72.24	Austria	9,979	3/
	Hungary	23,587	3/
	Other, except as provided for in U.S. note 4(g)(ii) to this subchapter	39,917	3/

Add quota quantities for "Hungary" and "Argentina" and replace the quota quantity and line item for "Other" in subheadings 9903.72.32 and 9903.72.34 as follows:

Item	Articles	Quota Quantity (in kilograms)	
		If entered during the restraint period:	
		July 20 through January 19	January 20 through July 19
9903.72.32	Argentina	n/a	36,288
	Hungary	n/a	63,504
	Other, except as provided in U.S. note 4(g)(iii) to this subchapter	148,780	48,081
9903.72.34	Argentina	13,608	3/
	Hungary	27,216	3/
	Other, except as provided in U.S. note 4(g)(iii) to this subchapter	20,865	3/

I have determined that the above changes in the import relief are appropriate to carry out the authority granted by the President to the United States Trade Representative and the obligations of the United States, with due consideration to the interests of the domestic producers of such specialty steel. This action is subject to further modifications.

Clayton Yeutter,

United States Trade Representative.

[FR Doc. 89-1461 Filed 1-18-89; 11:27 am]

BILLING CODE 3190-01-M

Implementation of the Accelerated Tariff Elimination Provision in the United States-Canada Free Trade Agreement

AGENCY: Office of the U.S. Trade Representative.

ACTION: Notice of a procedure to implement the accelerated tariff elimination provision for products covered by Annexes 401.2 and 401.7 of the United States-Canada Free Trade Agreement (FTA).

SUMMARY: Section 201(b) of the United States-Canada Free Trade Agreement (FTA) Implementation Act of 1988 ("FTA Implementation Act") grants the President, subject to the consultation and layover requirements of section 103 of the FTA Implementation Act, the authority to proclaim such acceleration as the United States and Canada may agree to regarding the staging of any duty treatment set forth in Annexes 401.2 and 401.7 of the FTA. This publication gives notice of a procedure by which persons or entities may request the acceleration of tariff elimination in Article 401(5) of the FTA under the authority of section 201 of the FTA Implementation Act.

SUPPLEMENTARY INFORMATION: Requests for additional information regarding the implementation of the FTA accelerated tariff elimination provision should be directed to Rick Ruzicka, Director for Tariff Negotiations, Office of North American Affairs, Office of the United States Trade Representative, Room 501, 600 17th Street NW., Washington, DC 20506; telephone (202) 395-5863.

Background

The FTA entered into force on January 1, 1989. Annex 401.2 of the FTA establishes three principal timetables for the staged elimination of tariffs on all dutiable products in the United States and Canadian tariff schedules. These timetables are: (1) Immediate elimination of tariffs upon implementation of the FTA; (2) elimination in five equal annual cuts of 20 percent per year resulting in duty free treatment by January 1, 1993; and (3) elimination in ten equal annual cuts of 10 percent per year resulting in duty free treatment by January 1, 1998.

Article 401(5) of the FTA provides that at the request of either government, the two Parties are to undertake consultation to consider agreeing to accelerate the elimination of the duties on specific products in the tariff schedule of each Party (for example, by agreeing to reduce the staging period from 10 years to 5 years). Section 201(b) of the FTA Implementation Act grants the President, subject to certain consultation and layover requirements, the authority to proclaim any such agreed acceleration of the elimination of a U.S. duty. The Statement of Administrative Action approved by the Congress in the FTA Implementation Act, provides that the Administration will consider requests from interested private sector groups as a matter of priority in implementing the authority of section 201(b). The deadline for the submission of such requests is February 21 in 1989 and January 1 in subsequent years.

USTR will review the requests and decide which shall be accepted for consideration for consultations with the Canadian Government. In addition, the United States and Canadian Governments will exchange their respective list of requests for accelerated tariff elimination in order to facilitate the coordination of the consultations to be held under Article 401(5). Pursuant to section 103 of the

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FTA Implementation Act, USTR will seek advice from the appropriate advisory committees established under Section 135 of the Trade Act of 1974 and from the U.S. International Trade Commission regarding accelerated tariff eliminations under consideration. The views of interested Parties may also be sought, as appropriate, by means of Trade Policy Staff Committee hearings. Following these consultations and pursuant to Section 103 of the FTA Implementation Act, USTR will submit reports with respect to proposed tariff accelerations still under consideration to the Committee on Ways and Means of the House of Representatives and to the Committee on Finance of the Senate. These reports will indicate the accelerated tariff eliminations proposed to be proclaimed, the reasons therefor, and the advice received pursuant to section 103 on these proposed accelerations. During the mandated 60 day layover period following the submission of these reports, USTR will consult with these Committees regarding the proposed accelerated tariff eliminations.

At the conclusion of the layover period, the President may proclaim those accelerations of duty elimination that have been agreed with Canada and for which the consultation and layover provisions of Section 103 have been followed.

It is anticipated that this procedure will be implemented on an annual basis until 1997 with requests to be submitted by January 1 of each year.

2. Information To Be Included in Requests for Accelerated Tariff Elimination

Each request should include the following information:

A. General Information

(1) Requestor's name, organization, address, individual in the organization to be contacted concerning the request, telephone number and date of request.

B. Product Information

(2) Product on which accelerated duty elimination is requested and whether the request pertains to the United States or Canadian import duty or both.

(3) Tariff subheading numbers at the eight-digit level in the United States and/or Canadian Harmonized System ("HS") tariff schedules in which the product is classified and the product description of the subheadings.

(4) Whether the request is for all products covered by a tariff subheading listed in number 3, or only the product identified in number 2 above.

C. Information Regarding the Tariff Elimination Staging

(5) Current staging of the tariff elimination contained in Annex 401.2 of the FTA for each product or tariff subheading.

(6) Requested accelerated staging of the tariff elimination.

(7) Reasons for requesting accelerated tariff elimination.

D. Statistical Information

(To be provided to the extent available. Business confidential material should be so marked so that special handling may be provided.)

(8) Requestor's exports to and/or imports from Canada for each product in the most recent three-year period for which data are available.

(9) Requestor's projected exports and/or imports for the product if tariff elimination is accelerated as requested.

(10) Value (in dollars) of requestor's U.S. and/or Canadian production for the most recent three year period for each product.

(11) Requestor's percentage share of U.S. and/or Canadian production for the most recent three years.

(12) Names and addresses of known U.S. manufacturers of the products in question.

3. Instructions for Submitting Requests

Requests should be type-written and submitted in 10 copies to: Rick Ruzicka, Director for Tariff Negotiations, Office of North American Affairs, Office of the U.S. Trade Representative, Room 501, 600 17th Street NW., Washington, DC 20506. Requests must be received by February 21 in 1990, to ensure consideration under the above procedures and by January 1 in subsequent years.

Peter O. Murphy,

Special Negotiator for U.S.-Canada Trade and Investment.

[FR Doc. 89-1338 Filed 1-19-89; 8:45 am]

BILLING CODE 3190-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Order 89-1-24]

Fitness Determination of Aero Freight, Inc.

AGENCY: Department of Transportation.

ACTION: Notice of commuter air carrier fitness determination; Order to show cause.

SUMMARY: The Department of Transportation is proposing to find Aero Freight, Inc., fit, willing, and able to provide commuter air service under section 419(d)(2) of the Federal Aviation Act.

Responses: All interested persons wishing to respond to the Department of Transportation's tentative fitness determination should file their responses with the Air Carrier Fitness Division, P-56, Department of Transportation, 400 Seventh Street, SW., Room 6420, Washington, DC 20590, and serve them on all persons listed in Attachment A to the order. Responses shall be filed no later than February 1, 1989.

FOR FURTHER INFORMATION CONTACT: Mrs. Kathy Lusby Cooperstein, Air Carrier Fitness Division (P-56, Room 6420), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-9721.

Dated: January 17, 1989.

Gregory S. Dole,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 89-1383 Filed 1-19-89; 8:45 am]

BILLING CODE 4910-62-M

[Order 89-1-23; Dockets 45904 and 45905]

Applications of TEM Enterprises, Inc. d/b/a Casino Express for Certificate of Authority

AGENCY: Department of Transportation.

ACTION: Notice of order to show cause.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue orders finding TEM Enterprises, Inc. d/b/a Casino Express fit and awarding it certificates of public convenience and necessity to engage in domestic and foreign charter air transportation of persons and property.

DATES: Persons wishing to file objections should do so no later than February 1, 1989.

ADDRESSES: Objections and answers to objections should be filed in Dockets 45904 and 45905 and addressed to the Documentary Services Division (C-55, Room 4107), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590 and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Mrs. Kathy Lusby Cooperstein, Air Carrier Fitness Division (P-56, Room 6420), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-9721.

Dated: January 17, 1989.

Gregory S. Dole,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 89-1384 Filed 1-19-89; 8:45 am]

BILLING CODE 4910-62-M

Coast Guard

[CGD 89-002]

Meeting of the Subcommittee on Coal Transportation, Chemical Transportation Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: The Subcommittee on Coal Transportation of the Chemical Transportation Advisory Committee (CTAC) will hold a meeting on Monday, February 27, 1989 and Tuesday, February 28, 1989 in Room 6200, Department of Transportation, Nassif Building, 400 Seventh Street SW., Washington, DC. The Subcommittee is considering requirements for the safe transportation of coal in ships and barges. The meeting on Monday is scheduled to begin at 12:30 p.m. and end at 5:00 p.m. This meeting will be used by the working groups on Coal Categorization, Equipment and Procedures, and Responsibilities of Masters, Shippers and Terminal Operators, to develop recommendations to be presented to the Subcommittee on Tuesday. The Meeting on Tuesday is scheduled to run from 9:30 a.m. until 5:00 p.m.

Attendance is open to the public. Members of the public may present oral statements at the meeting. Persons wishing to present oral statements should notify the Executive Director of CTAC no later than the day before the meeting. Any member of the public may present a written statement to the Subcommittee at any time.

FOR FURTHER INFORMATION CONTACT: Mrs. D. Anderson or Mr. F. Wybenga, U.S. Coast Guard Headquarters (G-MTH-1), 2100 Second Street, SW., Washington, DC 20593, (202) 267-1217.

Dated: January 11, 1989.

J.D. Sipes,

Rear Admiral, U.S. Coast Guard; Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 89-1367 Filed 1-19-89; 8:45 am]

BILLING CODE 4910-14-M

National Highway Traffic Safety Administration

[Docket No. 1F89-01; Notice 1]

Receipt of Petition for Determination of Inconsequential Noncompliance; Cooper Tire & Rubber Co.

Cooper Tire & Rubber Company (Cooper) of Findlay, Ohio, has petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) for an apparent noncompliance with 49 CFR 571.119, Federal Motor Vehicle Safety Standard (FMVSS) No. 119, "New Pneumatic Tires for Vehicles Other Than Passenger Cars", on the basis that it is inconsequential as it relates to motor vehicle safety.

This Notice of receipt of a petition is published under Section 157 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1417) and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Paragraph S6.5(d) of FMVSS No. 119 requires that tires be labeled with single and dual maximum load ratings. Cooper manufactured 208 tires between the 47th and 48th production weeks of 1988 that do not comply with paragraph S6.5(d).

These tires are labeled with the incorrect single and dual maximum loads. They are identified by the DOT Nos. UPORCLJ478 and UPORCLJ488.

The tires were labeled as follows:
Maximum load single, 1080 kg—2335 lbs.
Maximum load dual, 975 kg—2150 lbs.

The correct labeling is:
Maximum laod single, 1190 kg—2623 lbs.
Maximum load dual, 1080 kg—2381 lbs.

Cooper believes its noncompliance to be "inconsequential because the maximum load appearing on the tires is understated and the tires actually are capable of carrying the prescribed maximum loads."

Interested persons are invited to submit written data, view and arguments on the petition of Cooper Tire & Rubber Company, described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street SW., Washington, DC, 20590. It is requested but not required that five copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date, will also be filed and will be considered to the extent possible. When the petition is granted or denied, the Notice will be published in the Federal Register pursuant to the authority indicated below.

Comment closing date: February 22, 1989.

(Authority: Sec. 102, Pub. L. 93-492, 88 Stat. 1470 (15 U.S.C. 1417); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on: January 17, 1989.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 89-1385 Filed 1-19-89; 8:45 am]

BILLING CODE 4910-59-M

Research and Special Programs Administration

[Docket No. IRA-46]

Chemical Waste Transportation Council; Application for Inconsistency Ruling Concerning City of Montevallo, AL; Ordinance on Hazardous Waste Transportation

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Public notice and invitation to comment.

SUMMARY: The Chemical Waste Transportation Council (CWTC) has applied for an administrative ruling determining whether sections 7-40 through 7-50 of the City of Montevallo, Alabama Code are inconsistent with the Hazardous Materials Transportation Act (HMTA) and the Hazardous Materials Regulations (HMR) issued thereunder and, therefore, preempted under section 112(a) of the HMTA.

DATES: Comments received on or before March 10, 1989, and rebuttal comments received on or before April 28, 1989, will be considered before an administrative ruling is issued by the Director of the Office of Hazardous Materials Transportation. Rebuttal comments may discuss only those issues raised by comments received during the initial comment period and may not discuss new issues.

ADDRESSES: The application and any comment received may be reviewed in the Dockets Unit, Research and Special Programs Administration, Room 8421, Nassif Building, 400 7th Street SW., Washington, DC 20590. Comments and rebuttal comments on the application may be submitted to the Dockets Unit at the above address, and should include the Docket Number, IRA-46. Three copies are requested. A copy of each comment and rebuttal comment must also be sent to Suellen Pirages, Director, Chemical Waste Transportation

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Council, Suite 1000, 1730 Rhode Island Avenue NW., Washington, DC 20036, and to Mayor Ralph W. Sears, City Hall, 53 S. Main Street, Montevallo, Alabama 35115, and that fact certified to at the time comment is submitted to the Dockets Unit. (The following format is suggested: "I hereby certify that copies of this comment have been sent to Ms. Pireges and Mayor Sears at the addresses specified in the Federal Register.")

FOR FURTHER INFORMATION CONTACT: Edward H. Bonekemper, III, Senior Attorney, Office of the Chief Counsel, Research and Special Programs Administration, 400 7th Street SW., Washington, DC 20590, telephone 202-366-4362.

SUPPLEMENTARY INFORMATION:

1. Background

The HMTA (49 App. U.S.C. 1801 et seq.) at section 112(a) (49 App. U.S.C. 1811(a)) expressly preempts "any requirement, of a State or political subdivision thereof, which is inconsistent with any requirement" of the HMTA or the HMR issued thereunder.

Procedural regulations implementing section 112(a) of the HMTA and providing for the issuance of inconsistency rulings are codified at 49 CFR 107.201 through 107.211. An inconsistency ruling is an advisory administrative opinion as to the relationship between a state or political subdivision requirement and a requirement of the HMTA or HMR. Section 107.209(c) sets forth the following factors which are considered in determining whether a state or local requirement is inconsistent:

(1) Whether compliance with both the state or local requirement and the HMTA or HMR is possible (the "dual compliance" test); and

(2) The extent to which the state or local requirement is an obstacle to the accomplishment and execution of the HMTA and the HMR (the "obstacle" test).

Inconsistency rulings do not address issues of preemption under the Commerce Clause of the Constitution or under statutes other than the HMTA.

In issuing its advisory inconsistency rulings concerning preemption under the HMTA, OHMT is guided by the principles enunciated in Executive Order 12612 entitled "Federalism" (52 FR 41685, Oct. 30, 1987). Section 4(a) of that Executive Order authorizes preemption of state laws only when the statute contains an express preemption provision, there is other firm and palpable evidence of Congressional intent to preempt, or the exercise of state authority directly conflicts with the exercise of Federal authority. The HMTA, of course, contains an express preemption provision, which OHMT has implemented through regulations and interpreted in a long series of inconsistency rulings beginning in 1978.

2. The Application for Inconsistency Ruling

On January 3, 1989, the CWTC applied for an inconsistency ruling concerning sections 7-40 through 7-50 of the Code of the City of Montevallo, Alabama. Those sections are reproduced in Appendix A to this Notice.

CWTC stated that it is a council of the National Solid Wastes Management Association. It also stated that several of its commercial firm members have operations in Alabama and transport hazardous waste by truck and rail from its point of generation to its "management destination." Specifically, CWTC stated that some of its members go through Montevallo, Alabama, to service small waste generating customers in the vicinity.

CWTC provided the following summary of the City Code provisions it is challenging:

The City of Montevallo Code requires the driver and his employer of a motor vehicle carrying hazardous waste within the corporate limits of the City to notify the Montevallo Police Department by telephone prior to 8:00 a.m. on the day that the hazardous waste will be transported through the City (section 7-47(a)). The notification must include the number of vehicles expected; the approximate time, within one hour, of arrival at the City limits; and the road on which the vehicle will arrive. Upon arrival at the City limits, the motor vehicle must travel on designated routes (section 7-42), is limited to 30 miles per hour (section 7-43), is not allowed to follow within 150 feet of any other vehicle except if following a police vehicle (section 7-44), is prohibited from operating from 6:30 a.m. to 8:30 a.m. and from 2:00 p.m. to 3:30 p.m. (section 7-45)), and is prohibited from operating when the temperature is below 35 °F and when rain or other precipitation has occurred within two hours of arrival (seoction 7-46(a)). This is a partial listing of the City requirements. A full text of the City Code is attached for your review.

CWTC contended in its application that its affected members will not be able to comply with both the City Code provisions and the HMTA and the HMR. In addition, it alleged that the City's requirements pose obstacles to the accomplishment and execution of the HMTA and the HMR.

In its application, CWTC advanced several arguments against the consistency of the City's requirements. First, citing Inconsistency Ruling No. IR-2, 45 FR 71881 (Oct. 30, 1980), *correction* 45 FR 76838 (Nov. 20, 1980), and IR-3, 46 FR 16918 (Mar. 20, 1981), *appeal* 47 FR 18457 (Apr. 29, 1982), it argued that sections 7-43, 7-44, 7-45 and 7-46(a) are inconsistent because they would cause transportation delays.

Second, citing IR-23, 53 FR 16840 (May 11, 1988), CWTC argued that the routing requirements of section 7-42 are inconsistent because they discriminate against hazardous materials which happen to be in a waste form and were not (according to the City Attorney, CWTC claims) based on a complete safety analysis or preceded by consultations with all affected jurisdictions—but instead allegedly were imposed in an effort to thwart the siting of a hazardous waste incinerator.

Third, citing IR-6, 48 FR 760 (Jan. 6, 1983), CWTC contended that advance notice requirements such as those in section 7-47(a) generally are inconsistent.

3. Public Comment

Comments should be limited to the issue of whether the requirements of sections 7-40 through 7-50 of the City of Montevallo, Alabama, are inconsistent with the HMTA or the HMR. They should specifically address the "dual compliance" and "obstacle" tests described above under "Background."

Persons intending to comment on the application should examine the complete application in the RSPA Dockets Branch, Appendix A to this Notice, and the procedures governing the Department's consideration of applications for inconsistency rulings (49 CFR 107.201-107.211).

Alan I. Roberts,

Director, Office of Hazardous Materials Transportation.

Issued in Washington, DC on January 13, 1989.

Appendix A—Montevallo City of Code of 1982

Section 7-40: The Montevallo City Council finds that the transportation of hazardous wastes on the streets of the City of Montevallo poses a danger to the physical welfare of the citizens, property, and waters of the City of Montevallo; and to minimize this danger adopts section 7-41 to section 7-50.

Section 7-41: Definitions: For the purposes of section 7-40 to section 7-49 the following terms shall mean:

(a) "Waste" means "solid waste" under regulations promulgated by the United States Environmental Protection Agency and codified at 40 CFR 261.2. 40 CFR 261.2 is incorporated by reference herein.

(b) "Hazardous waste" means a waste or combination of wastes, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible, or incapacitating reversible illness, or pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of or otherwise managed, and includes:

(1) The meaning assigned that term in regulations promulgated by the United States Environmental Protection Agency and codified at 40 CFR 261.3. 40 CFR 261.3 is incorporated herein by reference. All lists in 40 CFR Part 261, Subpart D, and the Appendices to Part 261 are also expressly incorporated by reference.

(2) The term "high-level waste," as defined by the United States nuclear regulatory commission and Article II(d) of the Southeast Interstate Low-Level Radioactive Waste Management Compact.

(3) The term "low-level radioactive waste" as defined in Article 11(f) of the Southeast Interstate Low-Level Radioactive Waste Management Compact.

(4) The term "transuranic waste" as determined by the regulations of the United States nuclear regulatory commission.

(5) Spent nuclear fuel or by-product material as defined in section 11e(2) of the Atomic Energy Act of 1954.

(6) Any substance on the Alabama substance list, promulgated by the Alabama Department of Environmental Management, acting through the environmental management commission pursuant to section 22-33-4 of the 1975 Alabama Code.

(7) Any substance or mixture containing polychlorinated biphenyls ("PCBs") at greater than one tenth of one percent concentration when such substance or mixture is not intended for beneficial use or reuse.

(8) "Source material," including uranium, thorium, and any other material determined to be source material by the United States nuclear regulatory commission.

(9) "Special nuclear material," including plutonium, uranium 233, uranium enriched in the isotope 233 or in the isotope 235, any material artificially enriched by any of the foregoing, and any other material determined to be special nuclear material by the United States nuclear regulatory commission.

(c) "Storage" means the holding of hazardous waste for a temporary period, at the end of which the hazardous waste is treated, disposed of, moved, or stored elsewhere.

Section 7-42: Many of the streets of Montevallo being narrow and bending and not generally designed to accommodate heavy or constant truck traffic, the City Council hereby designates the following streets for transportation by truck or other vehicle of hazardous waste:

(i) Alabama 25

(ii) Alabama 119

(iii) Alabama 155

(b) All other streets are barred to any vehicle carrying hazardous waste, except by order of the Montevallo Police Department.

Section 7-43: Motor vehicles carrying hazardous waste within the City of Montevallo are hereby limited to 30 miles per hour (mph).

Section 7-44: No hazardous waste-carrying vehicle shall follow within 150 feet of any other vehicle when within the City limits, *provided,* that this section shall not apply to vehicles following state, county, or city police vehicles.

Section 7-45: Vehicles carrying hazardous waste shall not operate from 6:30 to 8:30 a.m. or from 2 to 3:30 p.m.

Section 7-46: (a) No vehicle carrying hazardous wastes may operate when the temperatures are below 35 °F (2 °C) and rain or other precipitation has occurred within the last two hours.

(b) No vehicle carrying hazardous wastes may be operated during any officially-designated hurricane or tornado watch.

(c) All vehicles carrying hazardous waste in the City of Montevallo shall operate with their headlights on at all times.

(d) All vehicles carrying hazardous waste in the City of Montevallo shall be equipped with citizens band radios, and shall monitor Channel 9.

Section 7-47: The driver, and his employer, of any vehicle carrying hazardous waste who proposes to transport hazardous wastes into or through the City of Montevallo shall:

(a) Notify the Montevallo Police Department by telephone prior to 8:00 am on the day that any such driver or employer expects to transport hazardous waste through the City of Montevallo. If more than one vehicle is expected, the employer shall state in one call the expected number. The approximate time(s) of arrival at the city limits, within one hour, shall be given. The road(s) on which the vehicle(s) will arrive shall be given and may not be changed without one hour's further notification.

(b) Mark or placard each vehicle in accordance with the requirements of the United States Department of Transportation.

Section 7-48: (a) Each vehicle shall carry and have available for inspection the manifest required for transportation of hazardous wastes under the Resource Conservation and Recovery Act, or federal or state regulations implementing that Act. Such manifest shall be presented upon request of any Montevallo police officer.

(b) Each driver of any vehicle shall immediately report any accident or collision involving his vehicle to the Montevallo police via his two-way CB radio.

(c) Every driver shall carry in his possession a valid driver's license and evidence of liability insurance covering the consequences of cargo spills.

Section 7-49: The storage of hazardous waste within the City of Montevallo is prohibited, except that materials defined as hazardous waste may be used for education or research in an accredited school or University, except that such materials may be used for industrial processes in industries operating within the city before the enactment of this ordinance, except that dry cleaning establishments and gasoline stations may continue their normal activities, and except by special permission of the city. The disposal of hazardous waste within the City of Montevallo is entirely prohibited.

Section 7-50: Section 7-40 to Section 7-49 are subject to, and meant to complement, federal and state legislation and regulations.

[FR Doc. 89-1386 Filed 1-19-89; 8:45 am]

BILLING CODE 4910-19-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[Delegation Order No. 244]

Delegation of Authority; Taxpayer Ombudsman and Problem Resolution Officers

AGENCY: Internal Revenue Service.

ACTION: Delegation of authority.

SUMMARY: The Commissioner of Internal Revenue Service delegates to the Taxpayer Ombudsman and Problem Resolution Officers the authority to substantiate taxpayer credits, to approve replacement checks and to abate certain penalties. The text of the delegation order appears below.

EFFECTIVE DATE: January 24, 1989.

FOR FURTHER INFORMATION CONTACT: James Hughes, C:PRP, Room 1023, 1111

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Constitution Avenue, NW., Washington, DC 20224. Telephone: (202) 566-4946 (not a toll-free telephone number).

Damon O. Holmes,

Taxpayer Ombudsman.

Effective Date: January 24, 1989.

Authority of the Taxpayer Ombudsman and Problem Resolution Officers To Approve Replacement Checks, to Substantiate Credits, and To Abate Penalties

Pursuant to the authority vested in the Commissioner of Internal Revenue by Treasury Order No. 150-10, authority is hereby delegated to the Taxpayer Ombudsman and to Problem Resolution Officers (PROs) as follows:

1. To approve replacement checks for lost or stolen refunds without a credit balance on an account where hardship or unreasonable delay exists.

2. To substantiate credits to taxpayer accounts on those Problem Resolution Program (PRP) cases where a taxpayer furnishes proof of payment but the Service cannot locate the payment within a reasonable period of time.

3. To abate for reasonable cause Form W-4 civil penalties assessed per IRC Sec. 6682.

4. To abate for reasonable cause all automatically assessed penalties.

The above authorities shall be exercised only after compliance with all requirements of existing procedures for review.

The authority delegated herein may not be redelegated.

To the extent that the authority previously exercised consistent with this order may require ratification, it is hereby approved and ratified.

Approved:

Michael J. Murphy,

Senior Deputy Commissioner.

Date: January 4, 1989.

[FR Doc. 89-1240 Filed 1-19-89; 8:45 am]

BILLING CODE 4830-01-M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 13
Monday, January 23, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

BLACKSTONE RIVER VALLEY NATIONAL HERITAGE CORRIDOR

Meeting

Notice is hereby given in accordance with section 552b of Title 5, United States Code, that a meeting of the Blackstone River Valley National Heritage Corridor Commission will be held on Saturday, January 28, 1989.

The Commission was established pursuant to Pub. L. 99-647. The purpose of the Commission is to assist federal, state and local authorities in the development and implementation of an integrated resource management plan for those lands and waters within the Corridor.

The meeting will convene at 12:00 noon at the Lincoln Public Library, Old River Road, Lincoln, Rhode Island, for the following reasons:

1. Executive Director Selection Subcommittee status report and recommendation of a candidate for permanent Executive Director, followed by discussion and resolution by the Commission.

2. Public Information and Education Subcommittee status report of the logo development.

3. Agenda for a Commission status report to the Massachusetts and Rhode Island Congressional delegations.

4. Status report of the Treasurer on the status of funds.

5. Status report of the Ad Hoc Subcommittee on headquarters site selection.

It is anticipated that about twenty people will be able to attend the session, in addition to the Commission members.

Interested persons may make oral or written presentations to the Commission or file written statements. Such requests should be made prior to the meeting to: Lawrence D. Gall, Interim Executive Director, Blackstone River Valley National Heritage Corridor Commission, P.O. Box 34, Uxbridge, MA 01569, Telephone (508) 278-2143.

Further information concerning this meeting may be obtained from Lawrence Gall, Interim Executive Director of the Commission at the address below.

Lawrence D. Gall,

Interim Executive Director, Blackstone River Valley National Heritage Corridor Commission.

[FR Doc. 89-1502 Filed 1-18-89; 3:50 pm]

BILLING CODE 4310-70-M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: 2:00 p.m. (Eastern Time) Monday, January 30, 1989.

PLACE: Clarence M. Mitchell, Jr., Conference Room, No. 200-C on the Second Floor of the Columbia Plaza Office Building, 2401 "E" Street, NW., Washington, DC 20507.

STATUS: Part of the Meeting will be Open to the Public and Part will be Closed to the Public.

MATTERS TO BE CONSIDERED:

Open Session

1. Announcement of Notation Vote(s).

2. Notice of Proposed Rulemaking Concerning ADEA Statute of Limitations Tolling for Private Litigants.

3. Regulations Implementing Section 504 of the Rehabilitation Act in the Commission's Federally Conducted Programs: Final Rule.

Closed Session

Litigation Authorization: General Counsel Recommendations.

Note.—Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission meetings in the Federal Register, the Commission also provides a recorded announcement a full week in advance on future Commission sessions. Please telephone (202) 634-6748 at any time for information on these meetings.

CONTACT PERSON FOR MORE INFORMATION: Frances M. Hart, Executive Officer on (202) 634-6748.

Date: January 18, 1989.

Frances M. Hart,

Executive Officer, Executive Secretariat.

This Notice Issued January 18, 1989.

[FR Doc. 89-1452 Filed 1-18-89; 12:30 pm]

BILLING CODE 6750-06-M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, January 25, 1989.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Request by the General Accounting Office for Board comment on a draft report regarding competitive fairness in the check collection system.

2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Date: January 18, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89-1453 Filed 1-18-89; 12:32 pm]

BILLING CODE 6210-01-M

LEGAL SERVICES CORPORATION TASK FORCE ON CLIENT BOARD MEMBER TRAINING MEETING

TIME AND DATE: The Task Force on Client Board Member Training will meet on January 26, 1989. The meeting will commence at 2:00 p.m. and continue until 5:00 p.m.

PLACE: The Washington Marriott Hotel, West End Ballroom A, 1221 22nd Street NW., Washington, DC 20037.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED: 1. Client Board Member Training.

Discussion and Public Comment to follow.

CONTACT PERSON FOR MORE INFORMATION: Maureen R. Bozell, Executive Office, (202) 863-1839.

DATE ISSUED: January 18, 1989.

Maureen R. Bozell,

Secretary.

[FR Doc. 89-1516 Filed 1-18-89; 3:50 pm]

BILLING CODE 7050-01-M

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LEGAL SERVICES CORPORATION AUDIT AND APPROPRIATIONS COMMITTEE MEETING

TIME AND DATE: The meeting will be held on Friday, January 27, 1989, commencing at 9:00 a.m. and continuing until 11:00 a.m.

PLACE: The Washington Marriott Hotel, West End Ballroom A, 1221 22nd Street NW., Washington, DC 20037.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Agenda.
2. Approval of Minutes—December 10, 1988.
3. Presentation of the Corporation's Audit Report.
4. Presentation of the Final Consolidated Operating Budget for FY 1988.
5. Allocation of FY 1988 Carryover Funds.
6. Discussion of the Corporation's FY 1989 Consolidated Operating Budget.
7. Review of Monthly Expenditures.

Discussion and Public Comments follow each item.

CONTACT PERSON FOR MORE INFORMATION: Maureen R. Bozell, Executive Office, (202) 863–1839.

DATE ISSUED: January 18, 1989.

Maureen R. Bozell,
Secretary.

[FR Doc. 89–1517 Filed 1–19–89; 3:50 pm]

BILLING CODE 7050-01-M

LEGAL SERVICES CORPORATION BOARD OF DIRECTORS MEETING

TIME AND DATE: The Board of Directors will be held on January 27, 1989. The meeting will commence at 11:00 a.m., or immediately following the previous meeting, and continue until 5:00 p.m., with an luncheon recess from 12:30 p.m. until 1:30 p.m.

PLACE: The Washington Marriott Hotel, West End Ballroom A, 1221 22nd Street NW., Washington, DC 20037.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Agenda.
2. Approval of Minutes—December 10, 1988.
3. Report from the President.
4. Report from the Audit and Appropriations Committee, Ratification of the Corporation's Consolidated Operating Budget.
5. Report from the Operations and Regulations Committee on Considerations of Part 1626, Restrictions on Legal Assistance to Aliens; and Part 1609, Fee Generating Cases.
6. Report from the Task Force on Client Board Member Training.

Discussion and Public Comment follow each item.

CONTACT PERSON FOR MORE INFORMATION: Maureen R. Bozell, Executive Office, (202) 863–1839.

DATE ISSUED: January 18, 1989.

Maureen R. Bozell,
Secretary.

[FR Doc. 89–1518 Filed 1–19–89; 3:50 pm]

BILLING CODE 7050-01-M

NATIONAL CREDIT UNION ADMINISTRATION

Notice of Previously Held Emergency Meeting

TIME AND DATE: 10:05 a.m., Wednesday, January 18, 1989.

PLACE: 1776 G Street NW., Filene Board Room, 7th Floor, Washington, DC 2045.

STATUS: Closed.

MATTER CONSIDERED:

1. Administrative Action under section 206 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii), and (9)(B).

The Board voted unanimously that Agency business required that a meeting be held with less than the usual seven days advance notice.

The Board voted unanimously to close the meeting under exemptions (8), (9)(A)(ii), and (9)(B). Deputy General Counsel James Engel certified that the meeting could be closed under those exemptions.

FOR MORE INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (202) 682–9600.

Becky Baker,
Secretary of the Board.

[FR Doc. 89–1509 Filed 1–18–89; 3:50 pm]

BILLING CODE 7535-01-M

SECURITIES AND EXCHANGE COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: [54 FR 887 January 10, 1989].

STATUS: Closed meeting.

PLACE: 450 Fifth Street NW., Washington, DC.

DATE PREVIOUSLY ANNOUNCED: Wednesday, January 4, 1989.

CHANGES IN THE MEETING: Additional meeting.

The following item was considered at a closed meeting scheduled on Wednesday, January 11, 1989, at 5:00 p.m.: Litigation matter.

Commissioner Grundfest, as duty officer, determined that Commission business required the above change.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Alden Adkins at (202) 272–2000.

Jonathan G. Katz,
Secretary.

January 13, 1989

[FR Doc. 89–1410 Filed 1–17–89; 4:32 pm]

BILLING CODE 8010-01-M

Corrections

Federal Register
Vol. 54, No. 13
Monday, January 23, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 799

[OPTS-42092A; FRL-3503-7]

Testing Consent Order on Alkyl Phthalates

Correction

In rule document 89-299 beginning on page 618 in the issue of Monday, January 9, 1989, make the following corrections:

1. On page 620, in the fourth column of the table, the first entry should read "January 9, 1989".

2. On page 621, in the fourth column of the table, the 1st entry should read "January 9, 1989"; and the 2nd through the 12th entries should read "Do".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 799

[OPTS-42071B; FRL-3502-6]

Testing Consent Order for Octamethylcyclotetrasiloxane

Correction

In rule document 89-296 beginning on page 618 in the issue of Tuesday, January 10, 1989, make the following corrections:

On page 621, in the fourth column of the table, the first and second entries should read "January 10, 1989".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-180795; FRL 3491-1]

Emergency Exemptions

Correction

In notice document 88-28644 beginning on page 50289 in the issue of Wednesday, December 14, 1988, make the following corrections:

1. On page 50289, in the 2nd column, under **SUMMARY**, in the 17th line, "time" should read "timing".

2. On page 50290, in the first column, in the second line from the bottom, "methol" should read "menthol".

BILLING CODE 1505-01-D

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federal register

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Part II

Environmental Protection Agency

40 CFR Parts 260, 261, 262, 264, 265, 268 and 270
Hazardous Waste Management System; Testing and Monitoring Activities; Proposed Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260, 261, 262, 264, 265, 268 and 270

[FRL-3394-4]

Hazardous Waste Management System; Testing and Monitoring Activities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is today proposing to revise certain testing methods that are approved or required under Subtitle C of the Resource Conservation and Recovery Act (RCRA). EPA is also proposing to add several new testing methods that can be used to comply with the requirements of Subtitle C of RCRA. These new and revised methods are found in the Third Edition of "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," SW-846 and the first update package to this Third Edition of SW-846. The Agency is also proposing to make specified Quality Control (QC) procedures mandatory for all testing conducted under the hazardous waste regulations of RCRA. These Quality Control procedures are also found in the Third edition of SW-846. Some modifications have also been made to Chapter One of the manual to provide clarification of definitions. The modified sections of Chapter One are found in the first update package to the Third Edition of SW-846, which is also being proposed in today's rule. The revisions to Chapter One contained in this first update package are given in Appendix A of this proposed rule. The appendix has been added to this proposed rule in order to provide the public with the specific language that will be substituted for the language currently found in Chapter One of the SW-846 manual. Today's action is necessary to provide better and more complete analytical test methods for RCRA-related testing and to document the quality of the data gathered for complying with the RCRA hazardous waste regulations. This proposed rule will provide more reliable analytical data and promote consistency in the analytical test methods used for compliance with RCRA and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

DATE: Comments on this proposed rule must be submitted on or before March 9, 1989.

ADDRESS: The public should submit an original and two copies of their comments on this proposed rule to: Docket Number F-89-WTMP-FFFFF, EPA RCRA Docket, OS-305 (Room SE-305), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Please place Docket number on all comments. The EPA RCRA Docket is located in the sub-basement at the above address and is open from 9:00 a.m. to 4:00 p.m., Monday through Friday, except Federal holidays. The public must make an appointment to review docket materials by calling (202) 475-9327. The public may copy 100 pages of material from any one regulatory docket at no cost; additional copies cost $0.15 per page.

Copies of the Third Edition of SW-846 and of the proposed first update to the Third Edition are available from the Government Printing office, Superintendent of Documents, Washington, DC 20402, (202) 783-3238. The document number is 955-001-00000-1 and the cost is $110.00 for the four-volume set plus updates. Update packages will be automatically mailed to all subscribers. Non-subscribers may order the proposed first update package by calling the RCRA Hotline at (800) 424-9346 (toll free) or (202) 382-3000, or by writing the Communications and Training Section, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. The requester must specify the appropriate document title, document number and "First Update Package."

Copies of the Second Edition of SW-846 are available from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161, (703) 487-4600. The document number is PB87-120-291 and the cost is $40.95 for paper copies and $13.50 for microfiche.

FOR FURTHER INFORMATION CONTACT: For general information contact the RCRA Hotline at (800) 424-9346 (toll free) or (202) 382-3000. For information on the technical aspects of this proposed rule contact Charles Sellers, Office of Solid Waste, OS-331, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382-3282.

SUPPLEMENTARY INFORMATION:

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I. Background

On October 1, 1984 (49 FR 33786-33812), EPA proposed several changes to the RCRA hazardous waste regulations. These proposed changes included the following elements:

(1) Addition of new methods to SW-846.

(2) Mandatory adherence to the procedures and methods in SW-846 for all RCRA testing.

(3) Elimination of requirements to test for certain compounds when conducting ground water monitoring.

(4) Use of screening tests when monitoring ground water for hazardous constituents.

(5) Use of the Hierarchical Analysis Procedure for ground water screening.

Many comments were received on the proposal. The Agency evaluated these comments and, as a result, decided not to promulgate the October 1, 1984, proposal. Instead, the Agency revised SW-846 to incorporate many of the suggestions made in the comments and undertook other actions to address changes to the ground water monitoring regulations. On March 16, 1987, EPA announced the availability of the Third Edition of SW-846 in the **Federal Register** (50 FR 6072). The Third Edition contains 72 methods that are new to SW-846. Of these, 43 will be finalized in a soon to be released rulemaking and will be acceptable for use, where required in 40 CFR Parts 260 through 270, in conjunction with, or in addition to, the Second Edition of SW-846 as amended by Updates I and II. These 43 methods were first proposed in the 1984 Notice of Proposed Rulemaking (NPRM), and are not being reproposed in today's rulemaking. However, of the remaining methods, 28 methods not previously proposed for RCRA testing are being proposed, and one other method is being reproposed by the Agency in today's rulemaking.

Upon review and following comments and questions received from the public, it was determined that several errors existed in the manual. Comments also indicated the need to provide additional and improved analytical test methods for RCRA-related testing. To alleviate confusion arising from errors or confusing language in the test methods, an update package with revisions and clarifications was deemed necessary. Thus, the Agency is also proposing the use of the first update package to the Third Edition, along with the Third Edition in today's rulemaking. The first update package contains revisions to methods in the Third Edition, as well as 14 methods that are new to SW-846. Of these, four will be finalized in a soon to be released rulemaking and will be acceptable for use, where required in 40 CFR Parts 260 through 270, in conjunction with, or in addition to, the Second Edition of SW-846 as amended by Updates I and II. These four methods were first proposed in the 1984 NPRM, and are not being reproposed in today's rulemaking. However, the remaining ten methods not previously proposed for RCRA testing, are being proposed by the Agency in today's rulemaking.

Promulgation of this proposal will allow the use of the Third Edition as revised by the first update package for all testing for which the Second Edition methods are mandated by current RCRA regulations (see PROPOSAL, Regulatory Status of the Third Edition) and will mandate certain Quality Control procedures detailed in Chapter One of the Third Edition and revised in the first update.

II. Proposal

A. Methods Substitutions

The Agency is today proposing to replace the SW-846 Second Edition methods with the versions contained in the Third Edition and the first update package. These replacements will allow the Third Edition as revised by the first update to be used for all RCRA testing. The Agency is making this substitution because it believes that the Third Edition and first update methods are improvements on those in the Second Edition. (See the Background Document included in the docket to this proposal for a specific discussion of these changes and why they are improvements.)

B. Methods Format

Comments on the October 1, 1984, **Federal Register** proposal also indicated that the Second Edition method formats were inconsistent and difficult to follow. The Agency agreed with these comments and made changes accordingly. The methods were reviewed by a work group composed of technical experts from within EPA and state hazardous waste testing programs. One of the aims of their efforts was to edit the text for technical clarity. The method formats were revised and standardized into the following format:

1.0 Scope and Application.
2.0 Summary.
3.0 Interferences.
4.0 Apparatus and Materials.
5.0 Reagents.
6.0 Sample Collection, Preservation, and Handling.
7.0 Procedure.
8.0 Quality Control.
9.0 Method Performance.
10.0 References.

Section 9.0, Method Performance, is new to the Manual. It contains available method precision and accuracy data. Such data are not available for all methods; however, the Agency is continuing its data gathering effort and will provide the data as they become available in future updates.

Comments also noted that detailed procedures and instrument calibration procedures were not consistent between the EPA solid waste management programs (i.e., RCRA and CERCLA), even when essentially identical methods were used. The Office of Solid Waste (OSW), therefore, worked with the CERCLA program to make the methods used in the two programs as consistent as possible. Particularly, OSW changed standards and surrogates, calibration procedures, and gas chromatographic (GC) analysis conditions of the gas chromatographic/mass spectrometric (GC/MS) methods.

In order to save space and eliminate duplication of information, each group of methods that applies to a specific class of analytes or concerns a general analytical technique (e.g., atomic absorption spectroscopy) is preceded by a general method that contains common information and analytical guidance. Thus, information is not repeated in the detailed directions for each analyte.

The comments also contained many requests for additional guidance on method selection. EPA responded by including a new chapter in the Third Edition. This chapter, "Choosing the Correct Procedure," aids the analyst in choosing appropriate methods for samples based on sample matrix, properties to be measured, and the regulations requiring the analysis. For example, an analysis scheme is presented for determining Appendix IX analytes in ground water. It give advice on suitable, cost-effective SW-846 methods for the volatile and semi-volatile organic analytes, taking into account the sample matrix and the regulatory requirements.

C. Regulatory Status of The Third Edition

The hazardous waste regulations under Subtitle C of RCRA require that specific testing methods described in the Second Edition of SW-846 be employed for certain applications. The following sections of 40 CFR require the use of SW-846 methods:

(1) Section 260.22(d)(1)(i)—Submission of data in support of petitions to exclude a waste produced at a particular facility.

(2) Section 261.22(a)—Evaluation of wastes against the Corrosivity Characteristic.

(3) Section 261.24(a)—Evaluation of wastes against the Extraction Procedure Toxicity Characteristic.

(4) Sections 264.314(a) and 265.314(d)—Evaluation of wastes to determine if free liquid is a component of the waste.

(5) Section 270.62(b)(2)(i)(C)—Analysis of wastes prior to conducting a trial burn in support of an application for a hazardous waste incineration permit.

The Agency is today proposing to replace the Second Edition methods with the Third Edition methods as revised by the first update package to the Third Edition for the reasons discussed previously (see PROPOSAL, Methods Substitutions).

D. Quality Control

EPA is today proposing to make selected Quality Control (QC) procedures in Chapter One of SW-846 (specifically Sections 1.2 and 1.3 and procedures referenced therein) mandatory for all RCRA testing. Chapter One has been modified in order to provide consistency and clarification of definitions within the regulatory community as well as the SW-846 manual. These modifications are contained in the first update to the Third Edition, also proposed in today's rule and are republished in Appendix A of this **Federal Register** Notice.

Appendix A has been added to this proposed rule in order to provide the public with the specific language that will be substituted for the language found in Chapter One of the Third Edition of the SW-846 manual. Additional information regarding the rationale for the first update's revisions to Chapter One proposed in today's rule and published in Appendix A of this **Federal Register** notice, is included in the docket to this proposed rule. These QC procedures are proposed to be mandatory for all chemical analyses required under RCRA regulations codified in 40 CFR Parts 260, 261, 262, 264, 265, 268, and 270 regardless of whether or not SW-846 analytical methods are used. Thus, the QC procedures are proposed to be mandatory for required RCRA analyses under these Parts when SW-846 analytical methods are used, whether or

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not use of these methods are mandatory under the applicable RCRA regulations and where a method other than an SW-846 method is used. The Agency thus intends to document the quality of data generated to determine compliance with the RCRA hazardous waste regulations.

EPA is proposing to mandate the QC procedures which are contained in Section 1.2, (which discusses field and analytical laboratory QC), and Section 1.3 (which discusses method detection limits), as well as the procedures referenced in these two sections.

The other sections of Chapter One (1.1 Introduction, 1.4 Data Reporting, 1.5 Quality Control Documentation, and 1.6 References) do not contain QC procedures. They are included for completeness but are offered only as guidance. Many of the proposed mandated QC procedures listed in Section 1.2 and 1.3 are described more fully in Section 8.0 of the applicable SW-846 method located in later chapters of the manual. For example, while instrument calibration is mandated in Section 1.2.2.3.2, the diversity of calibration techniques which are peculiar to specific instruments and procedures, precludes the incorporation of all the calibration techniques described in the different methods set forth in Chapters Three through Eight and Ten of SW-846. Therefore, the reader is referred by Sections 1.2 and 1.3 to the applicable QC procedures contained in Section 8.0 of the applicable RCRA test method in these chapters of SW-846. These referenced procedures found in Section 8.0 of each test method shall also be mandatory when an SW-846 method is used. When an SW-846 method is not used, the referenced procedures located in Section 8.0 of the methods shall, of course, not be mandatory. QC sections in Chapter One, other than Sections 1.2 and 1.3 and those in other parts of the manual are offered only as guidance.

The Agency's philosophy is that a QC program must begin at the inception of a project, continue through collection and storage of samples, include all phases of chemical analyses, and extend through the interpretation and compilation of data results. Two basic concepts used in a QC program are to: (1) Control errors, and (2) verify that the entire analytical method is operating within acceptable performance limits. Use of qualified personnel, reliable and well-maintained equipment, appropriate calibrations and standards, and close supervision of all operations are important components of the QC system.

Some aspects of such a QC program are to: (1) Use matrix spikes and surrogates to provide a means for generating accurate analytical data of documented quality to determine that the required sensitivity is being achieved; (2) use duplicates to indicate the existence of gross errors; (3) use field QC to show that the sample is free from contamination errors introduced in sampling and handling; (4) use standard curves and check samples to indicate proper instrument calibration; and (5) use detection and quantification limit criteria to show that the method detection limit was adequate to detect analytes at or below a regulatory threshold and assist in the identification of possible sources of error and laboratory problems. A quality-control program can be divided into two main categories: (1) Field Quality Control and (2) Laboratory Quality Control.

1. Field Quality Control

It is the intention of the Agency to mandate the QC procedures in Section 1.2.1 of SW-846 in order to eliminate improper sampling and handling techniques and, thus, minimize potential errors that could skew data results. Areas of concern in field QC include sampling techniques; documentation of pre-field, field, and post-field activities; and generation of QC samples such as field duplicate samples (taken from the same sampling point in the field), trip blanks, field blanks and equipment blanks. Quality control in these areas is necessary to document that sampling equipment is properly calibrated, containers are appropriately prepared, representative samples are taken, and proper shipping procedures are followed.

This section of SW-846 mandates that documentation of compliance with the requirements for field activities be maintained and made available upon request.

2. Analytical Laboratory Quality Control

Section 1.2.2 discusses analytical laboratory QC procedures. The QC procedures described are intended to be applied to all chemical analytical procedures. The purpose of laboratory QC is to provide information about the quality of the data as they are being produced. Data quality is usually expressed in terms of accuracy, precision, and detection limit of the analytical method. Accuracy is a measurement of the closeness of an individual measurement, or an average of a number of measurements to the true value. Accuracy is generally represented as percent recovery.

Precision is defined as a measure of reproducibility among individual measurements of the same analyte under specified conditions. Instrument and overall method precision are often expressed as the coefficient of variation, standard deviation, percent difference, and/or relative standard deviation. The sections on precision are currently included in the interest of completeness. The Agency is not seeking to mandate the determination of precision in this rulemaking since significant precision data cannot be obtained from the analysis of one replicate or duplicate as proposed here. The Agency is soliciting comment on appropriate ways to determine method precision in the sample matrix, especially when the number of samples in the batch is limited.

More accurate results may be obtained by instituting a QC program which demands that the degree of variability of all operating parameters that are under the control of the analyst be kept within the control limits. However, the QC system does not ensure this. Results from QC procedures are used to document data quality, to verify that the analytical system is working well on a given matrix/analyte combination, to indicate whether instruments are operating properly, and to indicate when additional sample cleanup or other corrections need to be made. The QC data are indicators, but themselves do not change the quality of the analytical data.

Table 1 contains analytical QC requirements and their frequency of application. It also clarifies some of the terms used in Sections 1.2 and 1.3 of Chapter One. The QC requirements in Table 1 will produce qualitative and quantitative information about the generated data. If the QC data indicate that any aspect of the system is out of control, measures must be taken to bring it back into control. The Agency is considering including the use of control charts in the QC requirements and invites comments.

Standard curves covering the analytical range of interest for calibrating analytical instruments are required to define the linear calibration range which can be used for environmental sample analyses.

GC/MS Quality Control presents slightly expanded method-specific requirements that are necessary to guarantee proper determination and identification of the analytes. This involves special instrument tuning, verification of retention times, mass spectral correlation with an authentic standard of a particular analyte, and the use of surrogates. These QC procedures are found in the individual methods.

All QC data must be recorded and maintained by the laboratory for later verification and must be available upon request for a period of 3 years from the date the data are reported.

TABLE 1—QC REQUIREMENTS AND FREQUENCY OF APPLICATION

QC Parameter	Frequency	Comments
Matrix spikes	One per analytical batch per matrix or every 20 samples, whichever is greater.	
Replicates (See Figure 1).	One per analytical batch per matrix or every 20 samples, whichever is greater.	Replicate samples are separate aliquots taken from the same sample container in the laboratory and analyzed independently. Evaluation of replicate data can indicate the existence of gross errors in the analysis. In cases where aliquoting is impossible (i.e., volatiles), duplicate samples must be taken for replicate analysis.
Blanks	One per analytical batch per matrix or every 20 samples, whichever is greater.	
Field duplicates (See Figure 1).	One per analytical batch per matrix or every 20 samples, whichever is greater.	Field duplicate samples are two separate samples taken from the same sampling point in the field (i.e., in separate containers and analyzed independently). Evaluation of duplicate data can indicate the existence of gross errors in the sampling technique.
Check standard	One per analytical batch or every 20 samples, whichever is greater.	
Surrogates	Add prescribed surrogates to every blank, standard, sample and QC sample.	Only for volatile and semi-volatile organics and pesticides.
Column check sample.	One per batch of adsorbent	Applies to adsorbent chromatography and back extractions of organic compounds.
Column check sample blank.	One per batch of adsorbent	Applies to adsorbent chromatography and back extractions of organic compounds.
Standard curves.	Refer to specific method for necessary periodic calibration	As prescribed by specific methods.
GC/MS instrument performance check.	Initial 5-point calibration is to be verified with a single point calibration once every 12 hrs of instrument operation and if the sensitivity and linearity criteria are not met, a new 5-point initial calibration must be generated.	Performed to meet tuning criteria of the instrument as specified in the GC/MS methods. Organic analytes shall be checked with a 4-bromofluorobenzene (BFB) for determination of volatiles and with decafluorotriphenylphosphine (DFTPP) for determination of semi-volatiles.

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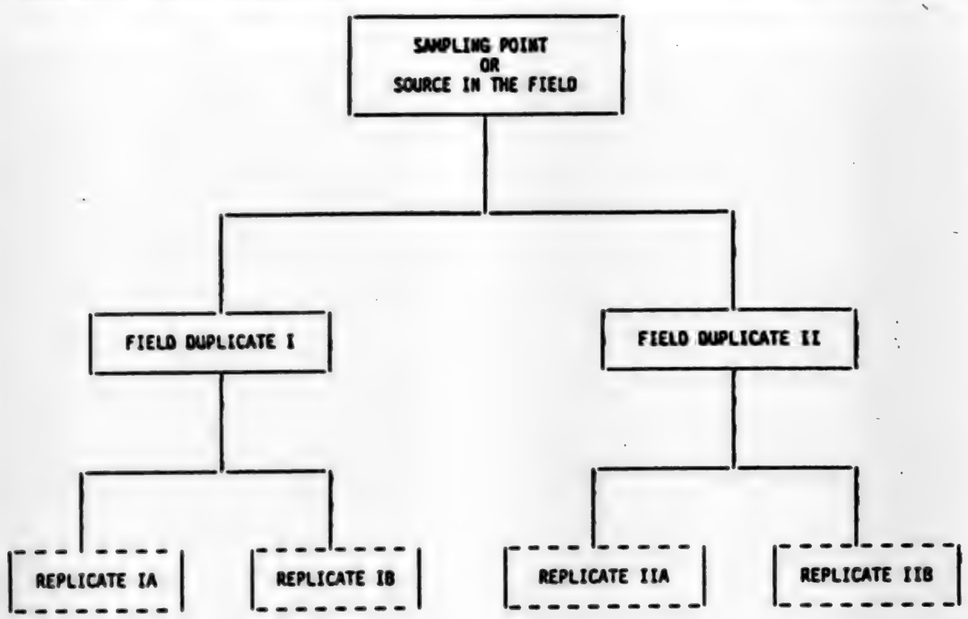


Figure 1. Sampling Chart for Field Duplicates and Replicates.

_____ Collected in the field

_ _ _ _ _ _ Analyzed in the laboratory

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When the analytical data are used to demonstrate compliance with a regulation, Data Quality Objective, or other study objective, any and all values reported as less than a specified regulatory threshold must be verified. If no regulatory threshold is mandated for the analyte of interest, any and all values reported as less than the method detection limit must be verified. The analyst must demonstrate the method's ability to detect the analyte of concern in the sample matrix. This is accomplished using a "clean" sample; for example, tint base would be a suitable "clean" representative matrix when testing paint waste; or upgradient ground water (from the same aquifer) could be a suitable "clean" representative matrix when testing monitoring well samples.

E. Methods Inclusion and Exclusion

The majority of the methods proposed for addition to SW-846 on October 1, 1984, are included in the Third Edition of SW-846. Some proposed methods and some methods in the Second Edition are not included because problems were encountered during their evaluation. Data generated by the public and by EPA demonstrated that the methods could not be used in their published form for the purpose stated in the method. These methods are listed in Table 2. More detailed information can be found in the technical support document, which is located in the EPA RCRA Docket F-89-WTMP-FFFFF.

TABLE 2.—METHODS NOT INCLUDED IN THE THIRD EDITION OF SW-846

Method	Title	Comments
1120	Electrochemical Corrosion	Method not equivalent to reference method.
3560	Reverse Phase Cartridge Extraction	Lack of sufficient data on column pre-treatment and conditioning, elution sequences, elution volumes, and the effect of the loading of organic compounds on the column to permit method to be adequately defined.
7551	Osmium (AA, Furnace Technique)	EPA study indicates accuracy problems.
8320	Miscellaneous Compounds by HPLC	No supporting data on effectiveness of cleanup procedures and HPLC to determine the analytes. Questionable precision and accuracy.
8330	Thiourea	No supporting data on effectiveness of cleanup procedures and HPLC to determine the analytes. Questionable precision and accuracy.
8410, 8411	Formaldehyde, Basic and Acidic Medium	Too susceptible to interferences for application to ground water and solid waste matrices.
8600	Heirarchical Analysis Protocol	Method not sensitive enough for its intended purpose.
8610	Total Aromatics by Ultraviolet Spectroscopy	Method not sensitive enough for its intended purpose.
8620	Total Nitrogen-Phosphorous Gas Chromatographable Compounds.	Method not sensitive enough for its intended purpose.
8630	Derivatization Procedure for Appendix VIII Compounds	Method not sensitive enough for its intended purpose.
9011	Photodegradable Cyanides	Uncertain how test and results relate to the environment and the regulations.
9037	Sulfate, Gravimetric	Precision and sensitivity not adequate. Interference-prone and therefore not appropriate for environmental assay.

The methods described in SW-846 are not mandatory for all testing under RCRA. Currently, only §§ 260.22(d)(1)(i), 261.22(a), 261.24(a), 264.314(c), 265.314(d), and 270.62(b)(2)(i)(C) of 40 CFR require use of SW-846 methods. The proposed Third Edition will not alter the current testing requirements.

The Third Edition contains 72 methods that are new to SW-846 and are listed in Table 3. Of these, 43 will be finalized in a soon to be released rulemaking, and will be acceptable for use, where required in 40 CFR Parts 260 through 270, in conjunction with, or in addition to, the Second Edition of SW-846 as amended by Updates I and II. Data generated by the public and by EPA for the 43 methods have demonstrated that the method precision and accuracy are adequate for the purpose stated. Although listed in Table 3, the Agency is not reproposing these 43 methods in today's rule. These methods are listed in Table 3 solely to notify the public that these methods are appearing for the first time in the Third Edition of SW-846. The Agency is today proposing the remaining 29 methods found in Table 3 for public comment. Of these 29 methods, some were extracted and reformatted from earlier methods. For example, some of the organic procedures in the Second Edition were made up of several methods (i.e., separation/extraction, cleanup, and determinative methods). Several of these procedures were divided and the component methods given individual numbers. Thus, these methods listed in Table 3 are not new to SW-846, but are simply appearing independently under a new number. Finally, one method, Method 9090, is being reproposed. This method was extensively revised since it was first proposed on October 1, 1984. The Agency seeks comment on this revised version and, therefore, decided to repropose this method rather than to finalize it.

TABLE 3.—NEW METHODS INCLUDED IN THE THIRD EDITION OF SW-846

Method	Title	Comments
0010 *	Modified Method 5 Sampling Train	Stack sampling method for semi-volatile compounds.
0020 *	Source Assessment Sampling System	Stack sampling method for semi-volatile compounds.
0030 *	Volatile Organic Sampling Train	Stack sampling method for organic compounds.
1320*	Multiple Extraction Procedure	Extraction procedure used for delisting wastes that are stabilized, encapsulated, or chemically fixed.
1330*	Extraction Procedure for Oily Wastes	Extraction procedures for removal of oil or grease that may interfere with the EP test.
3005	Acid Digestion of Waters for Total Recoverable or Dissolved Metals for Analysis by Flame Atomic Absorption or ICP Spectroscopy.	Provides digestion technique for dissolved metals in a water matrix.
3500	Organic Extraction and Sample Preparation	Serves as an introduction to 35XX series methods dealing with quantitative extraction of volatile and semivolatile organic compounds from various sample matrices.

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TABLE 3.—NEW METHODS INCLUDED IN THE THIRD EDITION OF SW-846—Continued

Method	Title	Comments
3580	Waste Dilution	Solvent dilution procedure for nonaqueous waste samples nonaqueous waste samples prior to cleanup and/or analysis.
3600	Cleanup	Serves as an introduction to 3600X series methods which diminish or eliminate extraneous materials from the waste sample.
3610*	Alumina Column Cleanup	Separation of analytes of a narrow polarity range from interfering peaks of a different polarity.
3611*	Alumina Column Cleanup and Separation of Petroleum Wastes	Provides a cleanup technique for oily matrices. Proposed as Method 3570.
3620*	Florisil Column Cleanup	Separation of analytes of a narrow polarity range from interfering peaks of a different polarity.
3630*	Silica Gel Cleanup	Separation of analytes of a narrow polarity range from interfering peaks of a different polarity.
3640*	Gel-Permeation Cleanup	Separation of high molecular weight material from sample analytes.
3650*	Acid-Base Partition Cleanup	Separation of base/neutral organic extractable fraction from the acid organic extractable fraction.
3660	Sulfur Cleanup	Elimination of sulfur (which may cause peaks) from sample extracts.
3810	Headspace	Formerly Second Edition Method 5020. It is now approved only as a screening technique because of problems with precision and accuracy.
3820	Hexadecane Extraction and Screening of Purgeable Organics	Qualitative screening procedure for use with purge-and-trap GC or GC/MS.
5040*	Protocol for Analysis of Sorbent Cartridges from Volatile Organic Sampling Train.	Provides quantitative analysis method following VOST collection. Proposed as Method 3720.
6010*	Inductively Coupled Plasma Atomic Emission Spectroscopy	General method for multiple element determination.
7000	Atomic Absorption Methods	Serves as an introduction to 7000X series methods dealing with quantitative analysis of metals.
7020	Aluminum (AA, Direct Aspiration)	Flame AA method.
7090*	Beryllium (AA, Direct Aspiration)	Flame AA method.
7091*	Beryllium (AA, Furnace Technique)	Graphite furnace AA method.
7140	Calcium (AA, Direct Aspiration)	Flame AA method.
7195*	Chromium, Hexavalent (Differential Pulse Polarography)	Differential pulse polarography method.
7200	Cobalt (AA, Direct Aspiration)	Flame AA method.
7201	Cobalt (AA, Furnace Technique)	Graphite furnace AA method.
7210*	Copper (AA, Direct Aspiration)	Flame AA method.
7380*	Iron (AA, Direct Aspiration)	Flame AA method.
7450	Magnesium (AA, Direct Aspiration)	Flame AA method.
7460*	Manganese (AA, Direct Aspiration)	Flame AA method.
7480	Molybdenum (AA, Direct Aspiration)	Flame AA method.
7481	Molybdenum (AA, Furnace Technique)	Graphite furnace AA method.
7550	Osmium (AA, Direct Aspiration)	Flame AA method.
7610	Potassium (AA, Direct Aspiration)	Flame AA method.
7770*	Sodium (AA, Direct Aspiration)	Flame AA method.
7840*	Thallium (AA, Direct Aspiration)	Flame AA method.
7841*	Thallium (AA, Furnace Technique)	Graphite furnace AA method.
7870	Tin (AA, Direct Aspiration)	Flame AA method.
7910*	Vanadium (AA, Direct Aspiration)	Flame AA method.
7911*	Vanadium (AA, Furnace Technique)	Graphite furnace AA method.
7950*	Zinc (AA, Direct Aspiration)	Flame AA method.
8000	Gas Chromatography	Serves as an introduction to 8000X series methods dealing with quantitative analysis of organic analytes.
8280	The Analysis of Polychlorinated Dibenzo-p-dioxins and Polychlorinated Dibenzofurans.	Determination of tetra-penta-, hepta-, hexa-, and octachlorinated dibenzo-p-dioxins (PCDDs) and dibenzofurans (PCDFs) in chemical wastes.
9012	Total and Amenable Cyanides	Automated quantitative analytical method.
9022*	Total Organic Halides (TOX) by Neutron Activation Analysis	Neutron activation adds alternate analytical technique.
9035*	Sulfate	Automated chloranilate colorimetric method.
9036*	Sulfate	Automated methylthymol blue, autoanalyzer II colorimetric method.
9038*	Sulfate	Turbidimetric method.
9041	pH Paper Method	Paper method adds alternate analytical technique.
9045	Soil pH	Analytical technique to determine pH in solid matrices.
9050	Specific Conductance	Analytical technique to determine conductivity.
9060*	Total Organic Carbon	Infrared determination of carbon dioxide.
9065*	Phenolics	Manual 4-AAP with distillation spectrophotometric method.
9066*	Phenolics	Automated 4-AAP with distillation spectrophotometric method.
9067*	Phenolics	MBTH with distillation spectrophotometric method.
9070*	Total Recoverable Oil and Grease	Total oil and grease for liquids. Gravimetric, separatory funnel extraction.
9071*	Oil and Grease Extraction Method for Sludge Samples	Total oil and grease for solids.
9080*	Cation-Exchange Capacity of Soils	Soil liner evaluation using ammonium acetate.
9081*	Cation-Exchange Capacity of Soils	Soil liner evaluation using sodium acetate.
9090*	Compatibility Test for Wastes and Membrane Liners	Liner compatability test for flexible membrane liners.
9100*	Saturated Hydraulic Conductivity, Saturated Leachate Conductivity, and Intrinsic Permeability.	General methods for hydraulic conductivity and liner permeability.
9131*	Coliform	Multiple tube fermentation technique.
9132*	Coliform	Membrane filter technique.
9200*	Nitrate	Brucine colorimetric method.
9250*	Chloride	Automated ferricyanide autoanalyzer I colorimetric method.
9251*	Chloride	Automated ferricyanide autoanalyzer II colorimetric method.
9252*	Chloride	Mercuric nitrate titrimetric method.
9310*	Gross Alpha and Beta	General radioactivity method.
9315*	Alpha-Emitting Radium Isotopes	Total radium method.
9320*	Radium-228	Radium 228 method.

* These methods will be finalized in a soon to be released rulemaking and, thus, are not being proposed in today's rule. They are, however, new to the Third Edition of SW-846.
[1] These methods were formerly sections within the 8000 method series in the Second Edition of SW-846.
[2] This method was formerly Method 3530 in the Second Edition of SW-846.
[3] This method is being reproposed due to extensive revision since it was first proposed on October, 1, 1984

Information on method precision, accuracy and a more detailed explanation of the Agency's rationale for the deletions and inclusions listed in Tables 2 and 3 can be found in the Technical Support Document, which is located in the EPA RCRA Docket F-89-WTMP-FFFFF.

Guidance methods issued by EPA on July 12, 1985, for the determination of reactive cyanides and sulfides in wastes have been included in the Third Edition for the convenience of persons evaluating wastes. These methods may be used for assessing whether a waste is a reactive waste by reason of toxic gas generation (reactivity), pending development and proposal of more accurate tests.

Table 4 summarizes the revisions included in the first update for the Third Edition of the methods manual and proposed today for public comment. These revised methods are being issued to subscribers in the first update package. More detailed information on these changes can be found in the Technical Support Document available in the RCRA docket.

TABLE 4.—REVISIONS INCLUDED IN UPDATE I, SW-846, THIRD EDITION

Method	Indication of change	Reason for change
Chapter 1	Partial revision	Clarification of the definitions.
Chapter 2	do	Change in TOX holding time; clarification on other analytes, and additions and deletions to analyte lists.
Chapter 4	do	Change in soil/sediment and concentrated waste holding time.
Chapter 7	do	Revision and clarification of reactive cyanide procedure.
1310—EP TOX Test Method	do	Addition of reference to Chapter 7.
1330—Extraction Procedure for Oily Wastes	do	Revision to procedure and calculation formula.
3005—Acid Digestion of Waters for Total Recoverable or Dissolved Metals for Analysis by FLAA or ICP.	do	Revision to list of applicable metals; clarification of appropriate determinative procedure.
3010—Acid Digestion of Aqueous Samples and Extracts for Total Metals for Analysis by FLAA or ICP.	do	Revision to list of applicable metals; clarification of procedure.
3020—Acid Digestion of Aqueous Samples and Extracts for Total Metals for Analysis by GFAA.	do	Revision to list of applicable methods.
3050—Acid Digestion of Sediments, Sludges, and Soils	do	Do.
3510—Separatory Funnel Liquid-Liquid Extraction	do	Clarification in procedure.
3520—Continuous Liquid-Liquid Extraction	do	Clarification in procedure.
3540—Soxhlet Extraction	do	Clarification specifies cycles/hr.
3600—Cleanup	do	Clarification in procedure.
3650—Acid-Base Partition Cleanup	Total Revision	Clarification in procedure; addition of Table of Analytes.
5030—Purge-and-Trap	Partial Revision	Clarification of method; additional solvents for waste; correction of errors.
6010—Inductively Coupled Plasma Atomic Emission Spectroscopy	Total Revision	Deletion of non-applicable steps; addition of metals.
7000—Atomic Absorption Methods	Partial Revision	Revision of list of applicable metals; clarification of procedure.
7061—Arsenic (AA, Gaseous Hydride)	do	Revision of quality control procedures.
7196—Chromium, Hexavalent (Colorimetric)	do	Revision of calibration standard and spike concentration.
7760—Silver (AA, Direct Aspiration)	Total Revision	Clarification on the use of cyanogen iodide.
8000—Gas Chromatography	Partial Revision	Revision of calculation formula.
8010—Halogenated Volatile Organics	do	Deletion of analytes from Table 1; clarification in procedure.
8015—Non-halogenated Volatile Organics	do	Deletion of analytes from Table 1.
8030—Acrolein, Acrylonitrile, Acetonitrile	do	Revision to stock standard preparation.
8040—Phenols	do	POL[1] listed for all matrices.
8120—Chlorinated Hydrocarbons	do	Deletion of analytes from Table 1.
8150—Chlorinated Herbicides	do	Addition of waste preparation step; addition of operational parameters; correction of errors.
8240—GC/MS for Volatile Organics	do	Addition of other operational parameters; additional solvents for waste; correction of errors.
8250—GC/MS for Semivolatile Organics: Packed Column Technique.	do	Text correction in matrix spikes.
8270—GC/MS for Semivolatile Organics: Capillary Column	do	Addition of other operational parameters; correction of errors.
9010—Total and Amenable Cyanide	Total Revision	Alternative determinative procedure; additional performance data.
9030—Acid-Soluble and Acid-Insoluble Sulfides	do	Addition of semi-quantitative method for acid insoluble sulfides; additional performance data.
9090—Compatibility Test for Wastes and Membrane Liners	Partial Revision	Clarification of procedure.

[1] Practical Quantitation Limit.

The first update to the Third Edition contains 14 methods that are new to SW-846 and are listed in Table 5. Of these, four will be finalized in a soon to be released rulemaking, and will be acceptable for use, where required in 40 CFR Parts 260 through 270, in conjunction with, or in addition to, the Second Edition of SW-846 as amended by Updates I and II. Although listed in Table 5, the Agency is not reproposing these four methods in today's rule. These methods are listed in Table 5 solely to notify the public that these methods are appearing for the first time in the Third Edition of SW-846. The Agency is today proposing the remaining ten methods found in Table 5 for public comment. These new methods are being issued to subscribers in the first update package. More detailed information on these new methods can be found in the Technical Support Document available in the RCRA docket.

TABLE 5.—NEW METHODS INCLUDED IN UPDATE I, SW–846, THIRD EDITION

Method	Reason for inclusion
**7061—Barium (AA, furnace technique)	Provides lower detection limit and analytical flexibility.
*7211—Copper (AA, furnace technique)	Provides lower detection limit and analytical flexibility.
*7381—Iron (AA, furnace technique)	Provides lower detection limit and analytical flexibility.
7430—Lithium (AA, direct aspiration)	No previous determinative method; needed to support incineration regulations.
*7461—Manganese (AA, furnace technique)	Provides lower detection limit and analytical flexibility.
**7761—Silver (AA, furnace technique)	Provides lower detection limit and analytical flexibility.
7780—Strontium (AA, direct aspiration)	No previous determinative method.
*7951—Zinc (AA, furnace technique)	Provides lower detection limit and analytical flexibility.
8011—1,2-Dibromoethane and 1,2-Dibromo-3-chloropropane in Water by Microextraction and Gas Chromatography.	Determines compounds not listed in any other SW–846 method.
8021—Volatiles in Water by Purge and Trap Capillary Column GC with PID and ELCD in Series.	Offers lower detection limit and improved resolution; allows concurrent analysis of aromatics and halocarbons.
8070—Nitrosamines	No previous determinative method.
8110—Haloethers	No previous determinative method.
8141—Organophosphorus Pesticides	Capillary column technique; additional performance data for soil samples.
8260—GC/MS for Volatile Organics: Capillary Column Technique	Determines volatile organics using GC/MS capillary (as opposed to packed) column technique.
9021—Purgeable Organic Halides	Provides quick screening procedure; eliminates need for carbon adsorption.
9031—Extractable Sulfides	Includes additional matrices.

*These methods will be finalized in a soon to be released rulemaking. They are, however, being submitted to subscribers for the first time in this update.
**These methods were finalized in the Second Edition of SW–846. They were inadvertently omitted from the Third Edition and are not being proposed as new.

III. State Authority

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. (See 40 CFR Part 271 for the standards and requirements for authorization.) Following authorization, EPA retains enforcement authority under sections 3008, 7003 and 3013 of RCRA, although authorized States have primary enforcement responsibility.

Prior to the Hazardous and Solid Waste Amendments of 1984 (HSWA), a State with final authorization administered its hazardous waste program entirely in lieu of EPA administering the Federal program in that State. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities in the State which the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obliged to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by the HSWA take effect in authorized States at the same time that they take effect in nonauthorized States. EPA is directed to carry out those requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, the HSWA applies in authorized States in the interim.

B. Effect on State Authorizations

Today's rule proposes standards that would not be effective in authorized States since the requirements would not be imposed pursuant to the Hazardous and Solid Waste Amendments of 1984. Thus, the requirements will be applicable only in those States that do not have interim of final authorization. In authorized States, the requirements will not be applicable until the State revises its program to adopt equivalent requirements under State law.

40 CFR 271.21(e)(2) requires that States that have final authorization must modify their programs to reflect Federal program changes and must subsequently submit the modifications to EPA for approval. The deadline by which the State must modify its program to adopt this proposed regulation will be determined by the date of promulgation of the final rule in accordance with § 271.21(e). These deadlines can be extended in certain cases (40 CFR 271.21(e)(3)). Once EPA approves the modification, the State requirements become Subtitle C RCRA requirements.

States with authorized RCRA programs may already have requirements similar to those in today's rule. These State regulations have not been assessed against the Federal regulations being proposed today to determine whether they meet the tests for authorization. Thus, a State is not authorized to carry out these requirements in lieu of EPA until the State program modification is submitted to EPA and approved. Of course, States with existing standards may continue to administer and enforce their standards as a matter of State law.

States that submit their official application for final authorization less than 12 months after the effective date of these standards are not required to include standards equivalent to these standards in their application. However, the State must modify its program by the deadlines set forth in § 271.21(e). States that submit official applications for final authorization 12 months after the effective date of those standards must include standards equivalent to these standards in their application. 40 CFR 271.3 sets forth the requirements a State must meet when submitting its final authorization application.

IV. Economic and Regulatory Impacts

A. Regulatory Impact Analysis

Under Executive Order 12291, EPA must determine whether a regulation is "Major" and, therefore, subject to the requirement of a Regulatory Impact Analysis. The total additional annualized cost for substituting the Second Edition of SW–846 with the Third Edition of SW–846 and for mandating specified Quality Control procedures for all testing conducted under the hazardous waste identification and management regulation of RCRA has been conservatively estimated at $60 million, which is well below the $100 million that constitutes a major regulation. EPA has also determined that this proposed rule will not cause a major increase in prices, and will not have a significant adverse effect on competition or the ability of U.S. enterprises to compete with foreign enterprises. Increased costs could result from the minimal additional quality control compliance and recordkeeping involved in implementing this proposed rule. Since the procedures mandated by these rules are those already performed by reputable laboratories, few laboratories are likely to be significantly impacted by this rule. Detailed information on the costs of the proposal and a brief regulatory impact analysis can be found in the background document located in EPA RCRA Docket F–89–WTMP–FFFFF.

B. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601–612, Pub. L. 96–354, September 19, 1980), whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis (RFA) that describes the impact of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required, however, if the head of the agency certifies that the rule will have a significant impact on a substantial number of small entities.

This rule will not require the purchase of new instruments or equipment. The proposed Quality Control is basic and the Agency believes that most laboratories have already implemented the use of these QC procedures. The regulation requires no new reports beyond those now required. The analytical techniques approved here can either be handled by small facilities, or are widely available by contract at a reasonable price. EPA is certifying that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities (as defined by the RFA). Thus, the proposed regulation does not require a RFA. Therefore, in accordance with 5 U.S.C. 605(b), I hereby certify that this rule will not have a significant adverse economic impact on a substantial number of small facilities.

C. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request document has been prepared by EPA (ICR No. 1465) and a copy may be obtained from Richard Westlund, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, or by calling (202) 382–2745.

Public reporting burden for this collection of information is estimated to average 0.5 hour per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

List of Subjects in 40 CFR Parts 260, 261, 262, 264, 265, 268, and 270

Chemical, physical and biological treatment, General facility standards, Ground water monitoring, Hazardous waste, Hazardous waste incinerator permits, Incinerators, Intergovernmental regulations, Interim status standards for owners and operators of hazardous waste treatment facilities, Landfills, Land treatment, Reporting and recordkeeping requirements, Storage and disposal facilities, Surface impoundment, Thermal treatment, Waste piles, Waste treatment and disposal.

Dated: December 14, 1988.

Lee M. Thomas,

Administrator.

For the reasons set out in the preamble, it is proposed that Chapter I of Title 40 of the Code of Federal Regulations be amended as follows:

PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

The authority citation for Part 260 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921 through 6927, 6930, 6934, 6935, 6937, 6938, 6939, and 6974.

Subpart A—General

2. Section 260.1 is amended by adding (c) to read as follows

§ 260.1 Purpose, scope and applicability.

* * * * *

(c) In all cases, the sampling and analytical determinations performed to meet the requirements of Part 260 must comply with the quality control procedures specified in Sections 1.2 and 1.3, and, where an SW–846 method is used, the additional procedures set forth in Section 8.0 of the methods contained in Chapters Three through Eight and Ten which are referenced therein, of Chapter One of "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", EPA Publication SW–846, as incorporated by reference in § 260.11. These quality control procedures must be followed when using any SW–846 method, whether mandatory or not mandatory, and when using any other analytical method.

Subpart B—Definitions

3. Section 260.11 is amended by revising the fourth reference in paragraph (a) to read as follows:

§ 260.11 References

(a) * * * "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", EPA Publication SW–846, Third Edition, 1987, as amended by Update I. This document is available as document number 955–001–00000–1 from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783–3238, on a subscription basis. Future updates will automatically be mailed to the subscriber.

* * * * *

Subpart C—Rulemaking Petitions

4. Section 260.22 is amended by adding paragraph (a)(3) to read as follows:

§ 260.22 Petitions to amend Part 261 to exclude a waste produced at a particular facility.

(a) * * *

(3) Information submitted under paragraphs (a) (1) and (2) of this section must be based on appropriate test methods prescribed in Appendix III of Part 261. The test methods must follow the quality control procedures specified in Sections 1.2 and 1.3, and procedures set forth in Section 8.0 of the methods contained in Chapters Three through Eight and Ten which are referenced therein, of Chapter One of "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", EPA Publication SW–846, as incorporated by reference in § 260.11. The testing and quality control requirements of this section also apply to § 260.22 (b), (c), (d), and (e) below.

* * * * *

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PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

5. The authority citation for Part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, and 6922.

Subpart A—General

6. Section 261.1 is amended by adding paragraph (d) to read as follows:

§ 261.1 Purpose and scope.

* * * * *

(d) In all cases, the sampling and analytical determinations performed to meet the requirements of Part 261 must comply with the quality control procedures specified in Section 1.2 and 1.3 and, when an SW–846 method is used, those procedures set forth in Section 8.0 of the methods contained in Chapters Three through Eight and Ten which are referenced therein, of Chapter One of "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", EPA Publication SW–846, as incorporated by reference in § 260.11. These quality control procedures must be followed when using any SW–846 method, whether mandatory or not mandatory, and when using any other analytical methods.

Appendices

7. Appendix III of Part 261 is revised to read as follows:

Appendix III—Chemical Analysis Test Methods

Tables 1, 2, and 3 specify the appropriate analytical procedures described in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", incorporated by reference in § 260.11 that shall be used to determine whether a sample contains a given Appendix VII or VIII toxic constituent.

Table 1 identifies each Appendix VII or VIII organic constituent along with the approved measurement method. Table 2 identifies the corresponding methods for inorganic species. Table 3 summarizes the contents of SW–846 and supplies the specific section and method number for sampling and analysis methods.

Prior to final sampling and analysis method selection, the analyst should consult the specific section or method described in SW–846 for additional guidance on which of the approved methods should be employed for a specific sample analysis situation. In all cases, the sampling and analytical determinations must comply with quality control procedures specified in Sections 1.2 and 1.3, and those procedures set forth in Section 8.0 of the methods contained in Chapters Three through Eight and Ten which are referenced therein, of Chapter One of "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", EPA Publication SW–846, incorporated by reference in § 260.11.

These quality control procedures must be followed when using any SW–846 method, whether mandatory or not mandatory, and when using any other analytical method.

TABLE 1.—ANALYSIS METHODS FOR ORGANIC CHEMICALS CONTAINED IN SW–846

Compound	Method(s)
Acetonitrile	8030, 8240
Acetophenone	8250, 8270
Acrolein	8030, 8240
Acrylamide	8015
Acrylonitrile	8030, 8240
Aldrin	8080, 8250, 8270
4-Aminobiphenyl	8250, 8270
Aniline	8250, 8270
Benzal chloride	8120
Benzene	8020, 8021, 8240, 8260
Benzidine	8250, 8270
Benzo(b)fluoranthene	8100, 8250, 8270, 8310
Benz(a)anthracene	8100, 8250, 8270, 8310
Benzo(j)fluoranthene	8100
Benzo(a)pyrene	8100, 8250, 8270, 8310
Benzotrichloride	8120
Benzyl chloride	8010, 8120, 8240
Bis(2-chloroethoxy)methane	8010, 8110, 8250, 8270
Bis(2-chloroethyl)ether	8110, 8250, 8270
Bis(2-chloroisopropyl)ether	8010, 8110, 8250, 8270
Bis(2-ethylhexyl)phthalate	8060, 8250, 8270
Bromoform	8010, 8021, 8240, 8260
4-Bromophenyl phenyl ether	8110, 8250, 8270
Butyl benzyl phthalate	8250, 8270
Carbon disulfide	8240
Carbon tetrachloride	8010, 8021, 8240, 8260
Chlordane	8060, 8250, 8270
Chlorinated biphenyls	8080
Chlorinated dibenzo-p-dioxins	8280
Chlorinated dibenzofurans	8280
4-Chloroaniline	8250, 8270
Chlorobenzene	8010, 8020, 8021, 8240, 8260
2-Chloroethyl vinyl ether	8010, 8240
Chloroform	8010, 8021, 8240, 8260
Chloromethane	8010, 8021, 8240, 8260
Chloromethylmethyl ether	8010
2-Chloronaphthalene	8120, 8250, 8270
2-Chlorophenol	8040, 8250, 8270
Chrysene	8100, 8250, 8270, 8310
Cresote [1]	8100, 8250, 8270
Cresol(s)	8040
Cresylic acid(s)	8040, 8250, 8270
2,4-D	8150
4,4'-DDD	8080, 8250, 8270
4,4'-DDE	8080, 8250, 8270
4,4'-DDT	8080, 8250, 8270
Dibenz(a,h)acridine	8100
Dibenz(a,j)acridine	8100, 8250, 8270
Dibenz(a,h)anthracene	8100, 8250, 8270, 8310
7H-Dibenzo(c,g)carbazole	8100
Dibenzo(a,e)pyrene	8100, 8270
Dibenzo(a,h) pyrene	8100
Dibenzo(a,i)pyrene	8100
Di-n-butylphthalate	8060, 8250, 8270
Dichlorobenzene(s)	8010, 8020, 8021, 8120, 8220, 8250, 8260
3,3'-Dichlorobenzidine	8250, 8270

TABLE 1.—ANALYSIS METHODS FOR ORGANIC CHEMICALS CONTAINED IN SW–846—Continued

Compound	Method(s)
Dichlorodifluoromethane	8010, 8021, 8240, 8260
Dichloroethane(s)	8010, 8021, 8240, 8260
1,1-Dichloroethylene	8010
1,2-Dichloroethylene	8010, 8240
Dichloromethane	8010
2,4-Dichlorophenol	8040, 8250, 8270
2,6-Dichlorophenol	8040, 8250, 8270
1,2-Dichloropropane	8010, 8021, 8240, 8260
trans-1,3-Dichloropropylene	8010
Dichloropropene(s)	8240
Dieldrin	8080, 8250, 8270
Diethyl phthalate	8060, 8250, 8270
4-Dimethylaminoazobenzene	8250, 8270
7,12-Dimethylbenz(a)anthracene	8250, 8270
alpha,alpha-Dimethylphenethylamine	8250, 8270
2,4-Dimethylphenol	8040, 8250, 8270
Dimethyl phthalate	8060, 8250, 8270
Dinitrobenzene(s)	8090, 8270
2,4-Dinitrophenol	8040, 8250, 8270
2,4-Dinitrotoluene	8090, 8250, 8270
2,6-Dinitrotoluene	8090, 8250, 8270
Dinoseb	8150, 8260
Di-n-octylphthalate	8060
Diphenylamine	8250, 8270
1,2-Diphenylhydrazine	8250, 8270
Disulfoton	8140, 8270
Endosulfan(i & II)	8080, 8250, 8270
Endrin	8080, 8250, 8270
Ethyl ether	8015
Endrin metabolites	8080, 8250, 8270
Ethyl methanesulfonate	8250, 8270
Fluoranthene	8100, 8250, 8270, 8310
Heptachlor	8080, 8250, 8270
Heptachlor epoxide	8080, 8250, 8270
Hexachlorobenzene	8120, 8250, 8270
Hexachlorobutadiene	8021, 8120, 8250, 8260, 8270
Hexachlorocyclopentadiene	8210, 8250, 8270
Hexachloroethane	8120, 8250, 8270
Indeno(1,2,3-cd)pyrene	8100, 8250, 8270, 8310
Lindane	8080
Maleic anhydride	8250, 8270
Methoxychlor	8080, 8250, 8270
3-Methylcholanthrene	8100, 8250, 8270
Methyl ethyl ketone	8015
Methyl isobutyl ketone	8015, 8240
Methylmethanesulfonate	8250, 8270
Naphthalene	8021, 8100, 8250, 8270, 8310
Naphthoquinone	8090, 8270
1-Naphthylamine	8250, 8270
2-Naphthylamine	8250, 8270
4-Nitroaniline	8250, 8270
Nitrobenzene	8090, 8250, 8270
4-Nitrophenol	8040, 8250, 8270
N-Nitrosodibutylamine	8250, 8270
N-Nitrosodimethylamine	8250, 8270
N-Nitrosopiperidine	8250, 8270
Paraldehyde (trimer of acetaldehyde)	8015
Parathion	8140, 8141, 8270
Pentachlorobenzene	8250, 8270
Pentachloronitrobenzene	8250, 8270
Pentachlorophenol	8040, 8250, 8270
Phenacetin	8250, 8270
Phenol	8040, 8250, 8270
Phorate	8140, 8141
Phthalic anhydride	8270
2-Picoline	8340, 8250, 8270
Pronamide	8250, 8270

TABLE 1.—ANALYSIS METHODS FOR ORGANIC CHEMICALS CONTAINED IN SW–846—Continued

Compound	Method(s)
Tetrachlorobenzene(s)	8120, 8250, 8270
Tetrachloroethane(s)	8010, 8021, 8240, 8260
Tetrachloroethane	8010, 8021, 8240, 8260
Tetrachlorophenol	8040, 8250, 8270
Toluene	8020, 8021, 8240, 8260
Toxaphene	8080, 8250, 8270
1,2,4-Trichlorobenzene	8021, 8120, 8250, 8260, 8270
Trichloroethane(s)	8010, 8021, 8240
Trichloroethene	8010, 8021, 8240
Trichlorofluoromethane	8010, 8021, 8240
Trichlorophenol(s)	8040, 8250, 8270
Trichloropropane	8010, 8021, 8240
Vinyl chloride	8010, 8021, 8240, 8260
Xylene(s)	8020, 8021, 8240, 8260

[1] Analyze for phenanthrene and carbazole; if these are present in a ratio between 1.4:1 and 5:1 creosote should be considered present.

TABLE 2—ANALYSIS METHODS FOR INORGANIC CHEMICALS AND MISCELLANEOUS GROUPS OF ANALYTES CONTAINED IN SW–846

Compound	Method(s)
Aluminum	6010, 7020
Antimony	6010, 7040, 7041
Arsenic	6010, 7060, 7061
Barium	6010, 7080, 7081
Beryllium	6010, 7090, 7091
Cadmium	6010, 7130, 7131
Calcium	6010, 7140
Chromium	6010, 7190, 7191
Chromium, Hexavalent	7195, 7196, 7197, 7198
Cobalt	6010, 7200, 7201
Copper	6010, 7210, 7211
Iron	6010, 7380, 7381
Lead	6010, 7420, 7421
Lithium	6010, 7430
Magnesium	6010, 7450
Manganese	6010, 7460, 7461
Mercury	7470, 7471
Molybdenum	6010, 7480, 7481
Nickel	6010, 7520
Osmium	7550
Phosphorus	6010
Potassium	6010, 7610
Selenium	6010, 7740, 7741
Silver	6010, 7760, 7761
Sodium	6010, 7770
Strontium	6010, 7780
Thallium	6010, 7840, 7841
Tin	7870
Vanadium	6010, 7910, 7911
Zinc	6010, 7950, 7951
Cyanide	9010, 9012
Total Organic Halogen	9020, 9022
Purgeable Organic Halides	9021
Sulfide	9030, 9031
Sulfate	9035, 9036, 9038
Total Organic Carbon	9060
Phenolics	9065, 9066, 9067
Oil and Grease	9070, 9071
Total Coliform	9131, 9132
Nitrate	9200
Chloride	9250, 9251, 9252

TABLE 2—ANALYSIS METHODS FOR INORGANIC CHEMICALS AND MISCELLANEOUS GROUPS OF ANALYTES CONTAINED IN SW–846—Continued

Compound	Method(s)
Gross Alpha and Gross Beta	9310
Alpha-Emitting Radium Isotopes	9315
Radium-228	9320

TABLE 3.—SAMPLING AND ANALYSIS METHODS CONTAINED IN SW–846

Title	Chapter No.	Method No.
Quality control	1.0	
Introduction	1.1	
Quality control	1.2	
Method detection limit	1.3	
Data reporting	1.4	
Quality control documentation	1.5	
References	1.6	
Choosing the correct procedure	2.0	
Purpose	2.1	
Required information	2.2	
Implementing the guidance	2.3	
Characteristics	2.4	
Ground water	2.5	
References	2.6	
Metallic analytes	3.0	
Sampling considerations	3.1	
Sample preparation methods	3.2	
Acid digestion of waters for total recoverable or dissolved metals for analysis by flame AAS or ICP	3.2	3005
Acid digestion of aqueous samples and extracts for total metals for analysis by flame AAS or ICP	3.2	3010
Acid digestion of aqueous samples and extracts for total metals for analysis by furnace AAS	3.2	3020
Dissolution procedure for oils, greases, or waxes	3.2	3040
Acid digestion of sediments, sludges and soils	3.2	3050
Methods for the determination of metals	3.3	
Inductively coupled plasma atomic emission spectroscopy	3.3	6010
Atomic absorption methods	3.3	7000

TABLE 3.—SAMPLING AND ANALYSIS METHODS CONTAINED IN SW–846—Continued

Title	Chapter No.	Method No.
Aluminum, flame AAS	3.3	7020
Antimony, flame AAS	3.3	7040
Antimony, furnace AAS	3.3	7041
Arsenic, furnace AAS	3.3	7060
Arsenic, gaseous hydride AAS	3.3	7061
Barium, flame AAS	3.3	7080
Barium, furnace AAS	3.3	7081
Beryllium, flame AAS	3.3	7090
Beryllium, furnace AAS	3.3	7091
Cadmium, flame AAS	3.3	7130
Cadmium, furnace AAS	3.3	7131
Calcium, flame AAS	3.3	7140
Chromium, flame AAS	3.3	7190
Chromium, furnace AAS	3.3	7191
Chromium, hexavalent, coprecipitation	3.3	7195
Chromium, hexavalent, colorimetric	3.3	7196
Chromium, hexavalent, chelation/ extraction	3.3	7197
Chromium, hexavalent, differential pulse polerography	3.3	7198
Cobalt, flame AAS	3.3	7200
Cobalt, furnace AAS	3.3	7201
Copper, flame AAS	3.3	7210
Copper, furnace AAS	3.3	7211
Iron, flame AAS	3.3	7380
Iron, furnace AAS	3.3	7381
Lead, flame AAS	3.3	7420
Lead, furnace AAS	3.3	7421
Magnesium, flame AAS	3.3	7450
Manganese, flame AAS	3.3	7460
Manganese, furnace AAS	3.3	7461
Mercury in liquid waste, manual cold vapor technique	3.3	7470
Mercury in solid or semisolid waste, manual cold-vapor technique	3.3	7471
Molybdenum, flame AAS	3.3	7480
Molybdenum, furnace AAS	3.3	7481
Nickel, flame AAS	3.3	7520
Osmium, flame AAS	3.3	7550
Potassium, flame AAS	3.3	7610
Selenium, furnace AAS	3.3	7740

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TABLE 3.—SAMPLING AND ANALYSIS METHODS CONTAINED IN SW-846—Continued

Title	Chapter No.	Method No.
Selenium, gaseous hydride AAS	3.3	7741
Silver, flame AAS	3.3	7760
Silver, furnace AAS	3.3	7761
Sodium, flame AAS	3.3	7770
Thallium, flame AAS	3.3	7840
Thallium, furnace AAS	3.3	7841
Tin, flame AAS	3.3	7870
Vanadium, flame AAS	3.3	7910
Vanadium, furnace AAS	3.3	7911
Zinc, flame AAS	3.3	7950
Zinc, furnace AAS	3.3	7951
Organic analytes	4.0	
Sampling considerations	4.1	
Sample preparation methods	4.2	
Extraction and preparations	4.2.1	
Organic extraction and sample preparation	4.2.1	3500
Separatory funnel liquid-liquid extraction	4.2.1	3510
Continuous liquid-liquid extraction	4.2.1	3520
Soxhlet extraction	4.2.1	3540
Ultrasonic extraction	4.2.1	3550
Waste dilution	4.2.1	3580
Purge-and-trap	4.2.1	5030
Protocol for analysis of sorbent cartridges from VOST	4.2.1	5040
Cleanup	4.2.2	
Cleanup	4.2.2	3600
Alumina column cleanup	4.2.2	3610
Alumina column cleanup and separation of petroleum wastes	4.2.2	3611
Florisil column cleanup	4.2.2	3620
Silica gel cleanup	4.2.2	3630
Gel-permeation cleanup	4.2.2	3640
Acid-base partition cleanup	4.2.2	3650
Sulfur cleanup	4.2.3	3660
Determination of organic analytes	4.3	
Gas chromatographic methods	4.3.1	
Gas chromatography	4.3.1	8000
Halogenated volatile organics	4.3.1	8010
EDB and DBCP	4.3.1	8011
Nonhalogenated volatile organics	4.3.1	8015
Aromatic volatile organics	4.3.1	8020

TABLE 3.—SAMPLING AND ANALYSIS METHODS CONTAINED IN SW-846—Continued

Title	Chapter No.	Method No.
Volatile organic compounds in water by purge-and-trap capillary column GC with PID and electrolytic conductivity detector in series	4.3.1	8021
Acrolein, acrylonitrile, acetonitrile	4.3.1	8030
Phenols	4.3.1	8040
Phthalate esters	4.3.1	8060
Nitrosamines	4.3.1	8070
Organochlorine pesticides and PCBs as aroclors	4.3.1	8080
Nitroaromatics and cyclic ketones	4.3.1	8090
Polynuclear aromatic hydrocarbons	4.3.1	8100
Haloethers	4.3.1	8110
Chlorinated hydrocarbons	4.3.1	8120
Organophosphorous pesticides	4.3.1	8140
Organophosphorous pesticides: capillary column	4.3.1	8141
Chlorinated herbicides	4.3.1	8150
Gas chromatographic/mass spectroscopic methods	4.3.2	
GC/MS volatiles	4.3.2	8240
GC/MS semivolatiles, packed column	4.3.2	8250
GC/MS for volatiles capillary column	4.3.2	8260
GC/MS semivolatiles, capillary column	4.3.2	8270
Analysis of chlorinated dioxins and dibenzofurans	4.3.2	8280
High performance liquid chromatographic methods (HPLC)	4.3.3	
Polynuclear aromatic hydrocarbons	4.3.3	8310
Miscellaneous screening methods	4.4	
Headspace	4.4	3810

TABLE 3.—SAMPLING AND ANALYSIS METHODS CONTAINED IN SW-846—Continued

Title	Chapter No.	Method No.
Hexadecane extraction and screening of purgeable organics	4.4	3820
Miscellaneous test methods	5.0	
Total and amenable cyanide (colorimetric, manual)	5.0	9010
Total and amenable cyanide (colorimetric, automated)	5.0	9012
Total organic halides (TOX)	5.0	9020
Purgeable organic halides (POX)	5.0	9021
Total organic halides (TOX) by neutron activation analysis	5.0	9022
Acid-soluble and acid-insoluble sulfides	5.0	9030
Extractable sulfides	5.0	9031
Sulfate (colorimetric automated, chloranilate)	5.0	9035
Sulfate, (colorimetric automated, methylthymol blue, AA II)	5.0	9036
Sulfate, (turbidimetric)	5.0	9038
Total organic carbon	5.0	9060
Phenolics (spectrophotometric, manual 4-AAP)	5.0	9065
Phenolics (colorimetric automated, 4-AAP)	5.0	9066
Phenolics (spectrophotometric, MBTH)	5.0	9067
Total recoverable oil and grease (gravimetric, separatory funnel extraction)	5.0	9070
Oil and grease extraction method for sludge samples	5.0	9071
Total coliform: multiple tube fermentation	5.0	9131
Total coliform: membrane filter	5.0	9132
Nitrate	5.0	9200
Chloride (colorimetric automated, ferricyanide AAI)	5.0	9250
Chloride (colorimetric automated, ferricyanide AAII)	5.0	9251
Chloride (titrimetric, mercuric nitrate)	5.0	9252
Properties	6.0	
Multiple extraction procedure	6.0	1320
Extraction procedure for oily wastes	6.0	1330
pH electrometric measurement	6.0	9040
pH paper method	6.0	9041
Soil pH	6.0	9045
Specific conductance	6.0	9050
Cation-exchange capacity of soils (ammonium acetate)	6.0	9080
Cation-exchange capacity of soils (sodium acetate)	6.0	9081
Compatibility test for wastes and membrane liners	6.0	9090
Paint filter liquids test	6.0	9095
Saturated hydraulic conductivity, saturated leachate conductivity, and intrinsic permeability	6.0	9100
Gross alpha and gross beta	6.0	9310
Alpha-emitting radium isotopes	6.0	9315
Radium-226	6.0	9320
Introduction and regulatory definitions	7.0	
Ignitability	7.1	
Corrosivity	7.3	
Reactivity	7.3	
Test method to determine hydrogen cyanide released from wastes	7.3	
Test method to determine hydrogen sulfide released from wastes	7.3	
Extraction procedure toxicity	7.4	
Methods for determining characteristics	8.0	
Ignitability	8.1	
Pensky-Martens closed-cup method	8.1	1010
Setaflash closed-cup method	8.1	1020
Corrosivity	8.2	
Corrosivity toward steel	8.2	1110
Reactivity	8.3	
Toxicity	8.4	
Extraction procedure (EP) toxicity test method and structural integrity test	8.4	1310
Sampling plan	9.0	
Design and development	9.1	
Implementation	9.2	
Sampling methods	10.0	
Modified method 5 sampling train, appendix A and B	10.0	0010
Source assessment sampling system (SASS)	10.0	0020
Volatile organic sampling train	10.0	0030

TABLE 3.—SAMPLING AND ANALYSIS METHODS CONTAINED IN SW-846—Continued

Title	Chapter No.	Method No.
Ground water monitoring	11.0	
Background and objectives	11.1	
Relationship to the regulations and to other documents	11.2	
Revisions and additions	11.3	
Acceptable designs and practices	11.4	
Unacceptable designs and practices	11.5	
Land treatment monitoring	12.0	
Background	12.1	
Treatment zone	12.2	
Regulatory definition	12.3	
Monitoring and sampling strategy	12.4	
Analysis	12.5	
References and bibliography	12.6	
Incineration	13.0	
Introduction	13.1	
Regulatory definition	13.2	
Waste characterization strategy	13.3	
Stack-gas effluent characterization strategy	13.4	
Additional effluent characterization strategy	13.5	
Selection of specific sampling and analysis methods	13.6	
References	13.7	

Subpart C—Characteristics of Hazardous Waste

8. Section 261.22 is amended by revising paragraphs (a)(1) and (2) to read as follows:

§ 261.22 Characteristic of corrosivity.

(a) * * *

(1) It is aqueous and has a pH less than or equal to 2 or greater than or equal to 12.5, as determined by a pH meter using either an EPA test method or an equivalent test method approved by the Administrator under the procedures set forth in §§ 260.20 and 260.21. The EPA test method for pH is specified in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", EPA Publication SW-846, as incorporated by reference in § 260.11. In all cases, the sampling and analytical determinations must comply with the quality control procedures specified in Sections 1.2 and 1.3, and where an SW-846 method is used, those procedures set forth in Section 8.0 of the methods contained in Chapters Three through Eight and Ten which are referenced therein, of Chapter One of SW-846.

(2) It is a liquid and corrodes steel (SAE 1020) at a rate greater than 6.35 mm (0.250 inch) per year at a test temperature of 55° C (130° F) as determined by the test method specified in NACE (National Association of Corrosion Engineers) Standard TM-01-69 as standardized in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", EPA Publication SW-846, as incorporated by reference in § 260.11, or an equivalent test method approved by the Administrator under the procedures set forth in §§ 260.20 and 260.21. In all cases, the sampling and analytical determinations must comply with the quality control procedures specified in Sections 1.2 and 1.3, and, where an SW-846 method is used, those procedures set forth in Section 8.0 of the methods contained in Chapters Three through Eight and Ten which are referenced therein, of Chapter One of SW-846.

* * * * *

9. Section 261.24 is amended by revising paragraph (a) to read as follows:

§ 261.24 Characteristic of EP toxicity.

(a) A solid waste exhibits the characteristic of EP toxicity if, using the test methods and procedures described in Appendix II or equivalent methods approved by the Administrator under the procedures set forth in §§ 260.20 and 260.21, the extract from a representative sample of the waste contains any of the contaminants listed in Table 1 at a concentration equal to or greater than the respective value given in that table. Where the waste contains less than 0.5 percent filterable solids, the waste itself, after filtering, is considered to be the extract for the purposes of this section. In all cases, the determinations must comply with the quality control procedures specified in Sections 1.2 and 1.3, and, where an SW-846 method is used, those procedures set forth in Section 8.0 of the methods contained in Chapters Three through Eight and Ten which are referenced therein, of Chapter One of "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", EPA Publication SW-846 as incorporated by reference in § 260.11.

* * * * *

PART 262—STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

10. The authority citation for Part 262 continues to read as follows:

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Authority: 42 U.S.C. 6905, 6912, 6922, 6923, 6924, 6925, and 6937.

Subpart A—General

11. Section 262.11 is amended by adding paragraph (e) to read as follows:

§ 262.11 Hazardous waste determination.

* * * * *

(e) In all cases, the sampling and analytical determinations performed to meet the requirements of Part 262 must comply with the quality control procedures specified in Sections 1.2 and 1.3, and, where the SW-846 methods are used, those procedures set forth in Section 8.0 of the methods contained in Chapters Three through Eight and Ten which are referenced therein, of Chapter One of "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", EPA Publication SW-846, as incorporated by reference in § 260.11. These quality control requirements must be followed when using any SW-846 method, whether mandatory or not mandatory, and when using any other analytical method.

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

12. The authority citation for Part 264 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, and 6925.

Subpart A—General

13. Section 264.1 is amended by adding (i) to read as follows:

§ 264.1 Purpose, scope, and applicability.

* * * * *

(i) In all cases, the sampling and analytical determinations performed to meet the requirements of Part 264 must comply with the quality control procedures specified in Section 1.2 and 1.3, and, where SW-846 methods are used, those procedures set forth in Section 8.0 of the methods contained in Chapters Three through Eight and Ten which are referenced therein, of Chapter One of "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", EPA Publication SW-846, as incorporated by reference in § 260.11. These quality control procedures must be followed when using any SW-846 method, whether mandatory or not mandatory, and when using any other analytical method.

Subpart N—Landfills

14. Section 264.314 is amended by revising paragraph (c) to read as follows:

§ 264.314 Special requirements for bulk and containerized liquids.

* * * * *

(c) To demonstrate the absence or presence of free liquids in either a containerized or a bulk waste, the following test must be used: Method 9095 (Paint Filter Liquids Test) as described in "Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods", EPA Publication SW-846, as incorporated by reference in § 260.11. The sampling and analytical determinations performed to demonstrate the absence or presence of free liquids in a containerized or bulk waste must comply with the appropriate quality control procedures specified in Section 1.2, and those procedures set forth in Section 8.0 of Method 9095 referenced therein, of Chapter One of "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", EPA Publication SW-846, as incorporated by reference in § 260.11

* * * * *

PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

15. The authority citation for Part 265 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, 6925, and 6935.

Subpart A—General

16. Section 265.1 is amended by adding paragraph (f) to read as follows:

§ 265.1 Purpose, scope, and applicability.

* * * * *

(f) In all cases, the sampling and analytical determinations performed to meet the requirements of Part 265 must comply with the quality control procedures specified in Sections 1.2 and 1.3, and, where SW-846 methods are used, those procedures set forth in Section 8.0 of the methods contained in Chapters Three through Eight and Ten which are referenced therein, of Chapter One of "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", EPA Publication SW-846, as incorporated by reference in § 260.11. These quality control procedures must be followed when using any SW-846 method, whether mandatory or not mandatory, and when using any other analytical method.

Subpart N—Landfills

17. Section 265.314 is amended by revising paragraph (d) to read as follows:

§ 265.314 Special requirements for bulk and containerized liquids.

* * * * *

(d) To demonstrate the absence or presence of free liquids in either a containerized or a bulk waste, the following text must be used: Method 9095 (Paint Filter Liquids Test) as described in "Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods", EPA Publication SW-846, as incorporated by reference in § 260.11. The sampling and analytical determinations performed to demonstrate the absence or presence of free liquids in a containerized or bulk waste must comply with the appropriate quality control procedures specified in Section 1.2, and those procedures set forth in Section 8.0 of Method 9095 referenced therein, of Chapter One of "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", EPA Publication SW-846, as incorporated by reference in § 260.11.

* * * * *

PART 268—LAND DISPOSAL RESTRICTIONS

18. The authority citation for Part 268 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921 and 6924.

Subpart A—General

19. Section 268.1 is amended by adding paragraph (e) to read as follows:

§ 268.1 Purpose, scope and applicability.

* * * * *

(e) In all cases, the sampling and analytical determinations performed to meet the requirements of Part 268 must comply with the quality control procedures specfied in Sections 1.2 and 1.3, and those additional procedures set forth in Section 8.0 of the methods contained in Chapters Three through Eight and Ten which are referenced therein, of Chapter One of "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", EPA Publication SW-846, as incorporated by reference in § 260.11. These quality control procedures must be followed when using any SW-846 method, whether mandatory or not mandatory, and when using any other analytical method.

* * * * *

PART 270—EPA ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM

20. The authority citation for Part 270 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912, 6925, 6927, 6939, and 6974.

Subpart A—General Information

21. Section 270.1 is amended by adding paragraph (d) to read as follows:

§ 270.1 Purpose and scope of these regulations.

* * * * *

(d) In all cases, the sampling and analytical determinations performed to meet the requirements of Part 270 must comply with the quality control procedures specified in Sections 1.2 and 1.3, and those procedures set forth in Section 8.0 of the methods contained in Chapters Three through Eight and Ten which are referenced therein, of Chapter One of "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", EPA Publication SW-846, as incorporated by reference in § 270.6. These quality control procedures must be followed when using any SW-846 method, whether mandatory or not mandatory, and when using any other analytical method.

22. Section 270.6 is amended by revising the first reference in paragraph (a) to read as follows:

§ 270.6 References.

(a) * * * "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", EPA Publication SW-846, Third Edition, 1987, as amended by Update I. This document is available as document number 955-001-00000-1 from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238, on a subscription basis. Future updates will automatically be mailed to the subscriber.

* * * * *

Subpart F—Special Forms of Permits

23. Section 270.62 is amended by revising paragraph (b)(2)(i)(C) to read as follows:

§ 270.62 Hazardous waste incinerator permits.

* * * * *

(b) * * *
(2) * * *
(i) * * *

(C) An identification of any hazardous organic constituents listed in Part 261, Appendix VIII of this chapter, which are present in the waste to be burned, except that the applicant need not analyze for constituents listed in Part 261, Appendix VIII, of this chapter which would reasonably not be expected to be found in the waste. The constituents excluded from analysis must be identified, and the basis for the exclusion stated. The waste analysis must rely on analytical techniques specified in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", EPA Publication SW-846, as incorporated by reference in § 270.6, or their equivalent. In all cases, the sampling and analytical determinations performed to meet the requirements of this Part must comply with the quality control procedures specified in Sections 1.2 and 1.3, and, where an SW-846 method is used, those procedures set forth in Section 8.0 of the methods contained in Chapters Three through Eight and Ten which are referenced therein, of Chapter One of "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", EPA Publication SW-846, as incorporated by reference in § 270.6. These quality control procedures must be followed when using any SW-846 method, whether mandatory or not mandatory, and when using any other analytical method.

* * * * *

Editorial Note: This appendix will not appear in the Code of Federal Regulations.

Appendix A—Chapter One Changes in SW-846, Third Edition

Page No. in Chapter One

1. ONE-7—In section 1.1.8, revise the definition of ACCURACY to read as follows:

Accuracy is the nearness of a measurement or the mean (x) of a set of measurements to the true value. Accuracy is assessed by means of reference samples and percent recoveries.

2. ONE-7—Add this sentence after the last sentence in the present definition of ANALYTICAL BATCH:

Analytical batch: "" * * * Samples in each batch should be of similar composition (e.g. ground water, sludge, ash, etc.)

3. ONE-7—Replace present definition for BLANK with the following: Blanks:

ONE-7—*Calibration blank:* Usually an organic or aqueous solution that is as free of analyte as possible and prepared with the same volume of chemical reagents used in the preparation of the calibration standards and diluted to the appropriate volume with the same solvent (water or organic) used in the preparation of the calibration standard. The calibration blank is used to give the null reading for the instrument response versus concentration calibration curve. One calibration blank should be analyzed with each analytical batch or every 20 samples, whichever is greater.

ONE-8—*Equipment blank:* Usually an organic or aqueous solution that is as free of analyte as possible and is tranported to the site, opened in the field, and poured over or through the sample collection device, collected in a sample container, and returned to the laboratory. This serves as a check on sampling device cleanliness. One equipment blank should be analyzed with each analytical batch or every 20 samples, whichever is greater.

ONE-8—*Field blank:* Usually an organic or aqueous solution that is as free of analyte as possible and is transferred from one vessel to another at the sampling site and preserved with the appropriate reagents. This serves as a check on reagent and environmental contamination. One field blank should be analyzed with each analytical batch or every 20 samples, whichever is greater.

ONE-8—*Reagent blank:* Usually an organic or aqueous solution that is as free of analyte as possible and contains all the reagents in the same volume as used in the processing of the samples. The reagent blank must be carried through the complete sample preparation procedure and contains the same reagent concentrations in the final solution as in the sample solution used for analysis. The reagent blank is used to correct for possible contamination resulting from the preparation or processing of the sample. One reagent blank should be prepared for every analytical batch or for every 20 samples, whichever is greater.

ONE-8—*Trip blank:* Usually an organic or aqueous solution that is as free of analyte as possible and is transported to the sampling site and returned to the laboratory without being opened. This serves as a check on sample contamination originating from sample transport, shipping, and from the site conditions. One trip blank should be analyzed with each analytical batch or every 20 samples, whichever is greater.

4. ONE-8—Delete CALIBRATION CHECK and insert the following:

Check standard: A material of known composition that is analyzed concurrently with test samples to evaluate a measurement process. An analytical standard that is analyzed to verify the calibration of the analytical system. One check standard should be analyzed with each analytical batch or every 20 samples, whichever is greater.

5. ONE-8—Add the definition of MATRIX SPIKE as follows:

Matrix spike: A *matrix spike* is employed to provide a measure of accuracy for the method used in a given matrix. A matrix spike analysis is performed by adding a predetermined quantity of stock solutions of certain analytes to a sample matrix prior to sample extraction/digestion and analysis. The concentration of the spike should be at the regulatory standard level or the PQL for the method. When the concentration of the analyte in the sample is greater than 0.1%, no spike of the analyte is necessary.

6. ONE-8—Delete MQL and insert the following:

MDL: The method detection limit (MDL) is defined as the minimum concentration of a substance that can be measured and reported with 99% confidence that the analyte concentration is greater than zero and is

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determined from analysis of a sample in a given matrix containing the analyte.

7. ONE–9—Revise the definition of PRECISION to read as follows:

Precision is the agreement between a set of replicate measurements without assumption or knowledge of the true value. Precision is assessed by means of duplicate/replicate sample analysis.

8. ONE–9—Add the heading SAMPLES, with the following definitions:

ONE–9—Delete MATRIX SPIKE/DUPLICATE ANALYSIS and insert the following:

Duplicate samples: Duplicate samples are two separate samples taken from the same source (i.e. in separate containers and analyzed independently).

ONE–10—Delete CHECK SAMPLE and insert the following:

Quality control reference sample: A sample prepared from an independent standard at a concentration other than that used for calibration, but within the calibration range. An independent standard is defined as a standard composed of the analyte(s) of interest from a different source than that used in the preparation of standards for use in the standard curve. A quality control reference sample is intended as an independent check of technique, methodology, and standards and should be run with every analytical batch or every 20 samples, whichever is greater. This is applicable to all organic and inorganic analyses.

ONE–10—Replace the definition of REPLICATE SAMPLE with the following:

Replicate Samples: Replicate samples are two aliquots taken from the same sample container and analyzed independently. In cases where aliquoting is impossible, as in the case of volatiles, duplicate samples must be taken for replicate analysis.

9. ONE–10—Replace the definition of STANDARD CURVE with the following:

Standard curve: A *standard curve* is a curve which plots concentrations of known analyte standards versus the instrument response to the analyte. Calibration standards are prepared by diluting the stock analyte solution in graduated amounts which cover the expected range of the samples being analyzed. Standards should be prepared at the frequency specified in the appropriate section. The calibration standards must be prepared using the same type of acid or solvent and at the same concentration as will result in the samples following sample preparation. This is applicable to organic and inorganic chemical analyses.

10. ONE–10—Replace the definition of SURROGATE with the following:

Surrogate: Surrogates are organic compounds which are similar to analytes of interest in chemical composition, extraction, and chromatography, but which are not normally found in environmental samples. These compounds are spiked into all blanks, calibration and check standards, samples (including duplicates and QC reference samples) and spiked samples prior to analysis. Percent recoveries are calculated for each surrogate.

11. ONE–11—Replace the definition of WATER with the following:

Water: Any reference to water in a Chapter or Method refers to ASTM Type II reagent water (unless otherwise specified) which is free of contaminants that may interfere with the analytical test in question.

12. ONE–11—In section 1.2.1, revise FIELD QUALITY CONTROL to read as follows:

1.2.1 *Field Quality Control* "* * * Quality Assurance Project Plan (QAPP) shall include as appropriate:"

13. ONE–11—In section 1.2.2 revise *Analytical Quality Control* by deleting the last sentence in the second paragraph:

"The frequencies of these procedures shall be as stated below or at least one with each analytical batch."

14. ONE–12—Replace section 1.2.2.1.1 with the folowing:

1.2.2.1.1 *Matrix Spiked Sample:* A matrix spiked sample shall be analyzed with every analytical batch or every 20 samples, whichever is greater. The sample shall be spiked with the analyte(s) of interest (see the appropriate method). The sample to be spiked should be typical or representative of the batch. Ideally, it should be an intermediate between the cleanest and the most contaminated samples based on the best information available. It is recommended that the spike be made in a replicate of the field duplicate samples. This is applicable to all organic or inorganic chemical analyses.

15. ONE–12—Add section 1.2.2.1.2 to read as follows:

Field Duplicate Samples shall be analyzed with every analytical batch or every 20 samples, whichever is greater. This procedure is applicable to all organic and inorganic chemical analyses.

16. ONE–12—Add the following sentence to the discussion under section 1.2.2.1.4, FIELD SAMPLES/SURROGATE COMPOUNDS, delete the term "Field Samples" from the heading, and replace check sample with the following:

1.2.2.1.4 *Surrogate Compounds:*

"* * * evaluation of analytical quality then will rely on the quality control embodied in the quality control reference sample and spiked and duplicate samples. This is applicable to organic analyses only."

17. ONE–12—In section 1.2.2.1.5, the term CHECK SAMPLE has been changed to QUALITY CONTROL REFERENCE SAMPLE and the definition rewritten as follows:

1.2.2.1.5 *Quality Control Reference Sample:* A *quality control reference sample* is a sample prepared from an independent standard at a concentration other than that used for calibration, but within the calibration range. An independent standard is defined as a standard composed of the analytes of interest from a different source than that used in the preparation of standards for use in the standard curve. A quality control reference sample is intended as an independent check of technique, methodology, and standards and should be run with every analytical batch or every 20 samples, whichever is greater. This is applicable to all organic and inorganic analyses.

18. ONE–13—Insert section 1.2.2.1.6, CHECK STANDARD, to read as follows:

1.2.2.1.6 *Check Standard:* A standard of known concentration prepared by the analyst to monitor and verify instrument performance on a daily basis.

19. ONE–13—In section 1.2.2.2, add the following sentence at the end of the discussion on CLEAN-UPS:

"This is applicable to organic analyses only."

20. ONE–13—In section 1.2.2.2.1, add the following sentence at the end of the discussion on *Column check Sample:*

"This is applicable to organic analyses only."

21. ONE–13—In section 1.2.2.2.2, remove "sample" from the heading for COLUMN CHECK SAMPLE BLANK, delete the present discussion, and insert the following:

1.2.2.2.2 *Column Check Blank:* "* * * The *column check blank* shall be run after activating or deactivating a batch of adsorbent. This is applicable to organic analyses only."

22. ONE–13—In section 1.2.2.3.1, add the following sentence to INSTRUMENT ADJUSTMENT: TUNING, ALIGNMENT, ETC. and alter the heading as follows:

1.2.2.3.1 *Instrument Adjustment, Tuning, and Alignment:* "* * * *appropriate procedures. This is applicable to all organic and inorganic analyses."*

23. ONE–14—In section 1.2.2.3.2, revise CALIBRATION to read as follows:

"* * * procedures employed. Methods 6010, 7000, and 8000 as well as the appropriate analytical procedure * * *"

24. ONE–14—In section 1.2.2.3.3, revise ADDITIONAL QC REQUIREMENTS FOR INORGANIC ANALYSIS to read as follows:

"Standard curves derived from data consisting of one calibration blank and three concentrations * * *"

25. ONE–16—In section 1.3, rvise METHOD DETECTION LIMIT to read as follows:

For operational purposes, when it is necessary to determine the method detection limit in the sample matrix, the MDL defined in One–9 shall be determined by multiplying by 7 the standard deviation obtained from the triplicate analyses of a matrix spike containing the analyte of interest at a concentration three to five times the estimated MDL.

- Determine the estimated MDL as follows:
- Obtain the concentration value that corresponds to:
- a) an instrument signal/noise ratio within the range of 2.5 to 5.0, or
- b) the region of the standard curve where there is a significant change in sensitivity, i.e., a break in the slope of the standard curve.
- Determine the variance (S^2) for each analyte as follows:

$$S^2 = 1/(n-1)\left[\sum_{i=1}^{n} X_i^2 - 1/n\left(\sum_{i=1}^{n} X_i\right)^2\right]$$

- Determine the standard deviation (S) for each analyte as follows: $S = (S^2)^{1/2}$
- Determine the MDL for each analyte as follows: $MDL = t_{(n-1,\ 1-\alpha=0.99)}(S)$ where $t_{(n-1,\ 1-\alpha=0.99)} = 6.965$ for three replicates as determined from the table of student's t values at the 99 percent level.

26. ONE–16—Revise section 1.5 QUALITY CONTROL DOCUMENTATION to read as follows:

"* * * This package can be obtained from * * *"

[FR Doc. 89–1 Filed 1–19–89; 8:45 am]
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Part III

Department of Housing and Urban Development

Office of the Secretary
Office of the Assistant Secretary for Fair Housing and Equal Opportunity

24 CFR Part 14 et al.
Implementation of the Fair Housing Amendments Act of 1988; Final Rule

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

24 CFR Parts 14, 100, 103, 104, 105, 108, 109, 110, 115, and 121

[Docket No. R-89-1425; FR-2668]

Implementation of the Fair Housing Amendments Act of 1988

AGENCY: Office of the Secretary and Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Final rule.

SUMMARY: HUD is adopting regulations to implement the changes made in Title VIII of the Civil Rights Act of 1968 by the Fair Housing Amendments Act of 1988, which was enacted September 13, 1988 and will become effective on March 12, 1989. Title VIII has prohibited discrimination in the sale, rental, and financing of dwellings based on color, religion, sex, or national origin. The Fair Housing Amendments Act expands the coverage of Title VIII to prohibit discriminatory housing practices based on handicap and familial status, establishes an administrative and judicial enforcement mechanism for cases where discriminatory housing practices cannot be resolved informally, and provides for monetary penalties in cases where housing discrimination is found. The Fair Housing Amendments Act also establishes design and construction requirements for certain new multifamily dwellings for first occupancy on or after March 13, 1991 (30 months after the date of enactment) and an exemption from the prohibitions against discrimination on the basis of familial status for certain housing for older persons.

This final rule adopts new regulations describing the nature of conduct made unlawful with respect to the sale, rental and financing of dwellings or in the provision of services and facilities in connection therewith (24 CFR Part 100); establishing procedures for the investigation of complaints of discriminatory housing practices (24 CFR 103); and establishing procedures for administrative proceedings involving discriminatory housing practices (24 CFR Part 104).

HUD is also revising existing regulations issued under Title VIII to reflect the expanded coverage of Title VIII. In addition, HUD is amending the regulations providing for the recognition of substantially equivalent state and local fair housing laws (24 CFR Part 115) to provide for the new certification procedure established by the Fair Housing Amendments Act.

DATE: This rule will become effective on March 12, 1989. The incorporation by reference of the American National Standard for buildings and facilities providing accessibility and usability for physically handicapped people [ANSI A117.1-1986] is approved by the Director of the Federal Register as of March 12, 1989.

FOR FURTHER INFORMATION CONTACT: Harry L. Carey ((202) 755-5570, Office of the General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-0500. (The telephone number set forth above is not a toll-free number.) The toll-free TDD number is 1-800-543-8294.

This rule will be available in braille and on tape for persons with vision impairments in the Office of the Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, at the above location.

SUPPLEMENTARY INFORMATION: The information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980. The OMB control number, when assigned, will be announced in a separate notice in the Federal Register. The public reporting burden for each of these collections of information is estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burdens is provided under the preamble heading, *Other Matters*. Send comments regarding these burden estimates or any other aspect of these collections of information, including suggestions for reducing this burden, to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street, SW., Room 10276, Washington, DC 20410; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Background

Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601-3619) made it unlawful to discriminate in any aspect relating to the sale, rental or financing of dwellings or in the provision of brokerage services or facilities in connection with the sale or rental of a dwelling because of race, color, religion, sex, or national origin. Under the provisions of Title VIII, persons who believed that they had been subjected to, or were about to be subjected to, a discriminatory housing practice could file a complaint with the Secretary of Housing and Urban Development. Title VIII required the Department of Housing and Urban Development to investigate each complaint and, where the Department determined to resolve the matters raised in a complaint, to engage in informal efforts to conciliate the issues in the complaint.

However, where these informal efforts to conciliate a case were unsuccessful, Title VIII did not provide the Secretary with any administrative mechanism for redressing acts of discrimination against an individual. In addition, while the Secretary could refer a case involving a pattern or practice of discrimination to the Attorney General for the initiation of a civil action, Federal courts did not award individual relief to the victims of discrimination in such cases.

The Fair Housing Amendments Act of 1988 (Pub. L. 100-430, approved September 13, 1988) was enacted to strengthen the administrative enforcement provision of Title VIII, to add prohibitions against discrimination in housing on the basis of handicap and familial status, and to provide for the award of monetary damages where discriminatory housing practices are found. The amended law, referred to as the Fair Housing Act, will become effective on March 12, 1989.

The provisions in the Fair Housing Act describing the nature of conduct which constitutes a discriminatory housing practice have been revised to extend the protections of the Fair Housing Act to persons with handicaps and to families with children. In this respect, sections 804, 805, and 806 of the Fair Housing Act prohibit discrimination in any activities relating to the sale or rental of dwellings, in the availability of residential real estate-related transactions, or in the provision of services and facilities in connection therewith because of race, color, religion, sex, handicap, familial status, or national origin.

The Fair Housing Act also specifically makes it unlawful to refuse to permit, at the expense of the handicapped person, reasonable modifications to existing premises occupied or to be occupied by such a person if such modifications are necessary to afford such person full enjoyment of the premises (section 804(f)(3)(A)). With respect to rental housing, the Fair Housing Act provides that a landlord may, where reasonable, condition permission for a modification

on the renter's agreeing to restore the interior of the premises to the condition that existed before the modification, reasonalbe wear and tear excepted. The Act also makes it unlawful to refuse to make reasonable accommodations in rules, policies, practices, or services to afford a handicapped person equal opportunity to use and enjoy a dwelling.

Further, the Fair Housing Act makes it unlawful to design and construct certain multifamily dwellings for first occupancy after March 13, 1991, in a manner that makes them inaccessible to persons with handicaps. All premises within such dwelling also are specifically required to contain several features of adaptive design so that the dwelling is readily accessible to and usable by persons with handicaps.

With respect to the new protection for families with children, the Fair Housing Act prohibits discrimination because of familial status (generally, the presence of children under 18 in a family) in the sale or rental of housing. However, the act provides an exemption from this prohibition for housing which qualifies as "housing for older persons".

Section 805 of the Fair Housing Act, as revised, prohibits discrimination related to "residential real estate-related transactions" rather than merely referring to "financing". In addition, the definition of the term residential real estate-related transaction specifically indicates that the Fair Housing Act applies to the selling, brokering and appraising of dwelling and to secondary mortgage market activities with respect to securities affected or supported by dwellings, as well as to the making and purchasing of loans and other financial assistance for dwellings. The Act, however, does not prohibit a person engaged in the business of furnishing appraisals from taking into consideration factors other than race, color, religion, national origin, sex, handicap, or familial status.

Section 810 of the Fair Housing Act provides that any person who believes that he or she has been, or will be, subjected to a discriminatory housing practice because of race, color, religion, sex, handicap, familial status, or national origin may file a complaint with the Secretary of Housing and Urban Development. The section also authorizes the Secretary of Housing and Urban Development to file complaint on the Secretary's own initiative and to investigate housing practices in order to determine whether a complaint should be filed. Complaints must be filed not later than one year after an alleged discriminatory housing practice has occurred or terminated.

Upon the filing of a complaint, the Secretary is required to notify any respondent named in the complaint of the acceptance of the complaint and the discriminatory housing practice alleged in the complaint. The respondent may file, not later than 10 days after receipt of the notice of a complaint, an answer to the complaint. The Secretary is required to make an investigation of the alleged discriminatory housing practice and to complete the investigation within 100 days after the filing of the complaint, unless it is impracticable to do so.

At the end of each investigation, the Secretary is required to prepare a final investigation report. Under section 810(d), the final investigation report will be available to an aggrieved person or a respondent, upon request, at any time after the investigation is complete.

Section 810(b) of the Act directs the Secretary, to the extent feasible, to engage in efforts to conciliate the matters raised in the complaint at any time after the filing of the complaint.

Section 810(e) of the Act empowers the Secretary to authorize the Attorney General to file a civil action seeking appropriate preliminary or temporary relief pending final disposition of a complaint if, at any time after the filing of such complaint, the Secretary concludes that such action is necessary to carry out the purposes of the Act.

Whenever a complaint alleges a discriminatory housing practice within a State or locality which has a Fair Housing law or ordinance which has been certified by the Secretary as being substantially equivalent to the Fair Housing Act, the Secretary must refer the complaint to the agency administering such law or ordinance before taking any action with respect to the complaint. Except with the consent of a certified agency, or in other limited situations such as where a complaint is not being processed in a timely fashion or the State or local law or ordinance is found no longer to be substantially equivalent, the Secretary may not take any further action with respect to complaints referred to such agencies.

Section 810(f) of the Act permits the Secretary to certify an agency only where the Secretary determines that the rights protected by the agency, the procedures followed by the agency, the remedies available to the agency, and the availability of judicial review of the agency's actions are substantially equivalent to those created in the Fair Housing Act.

This section also provides that agencies which the Secretary has determined administer State and local fair housing laws which provide rights and remedies for discriminatory housing practices that were substantially equivalent to those contained in Title VIII of the Civil Rights Act of 1968, or agencies which had been recognized for interim referral of complaints under Title VIII, will be considered certified for a period not to exceed 48 months for the purpose of referring complaints under the Fair Housing Act with respect to matters for which they had been certified on the day before the date of enactment of the Fair Housing Act (*i.e.*, September 12, 1988).

Section 810(g) of the Act requires the Secretary, in cases where the matters raised in a complaint cannot be resolved by conciliation, to determine, based upon the facts, whether reasonable cause exists to believe a discriminatory housing practice has occurred or is about to occur. Such a finding must be made by the Secretary within 100 days after the filing of a complaint or within 100 days after the Secretary has commenced action on a complaint which had been referred to a certified agency, unless it is impracticable to do so. Where the Secretary makes a determination that reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, the Secretary must immediately issue a charge on behalf of the aggrieved person commencing a formal administrative proceeding before an administrative law judge.

Section 812(a) of the Act provides any complainant, aggrieved person, or respondent with an opportunity to elect not to proceed before an administrative law judge but to move the case to an appropriate Federal district court. Such an election must be made within 20 days after the receipt of the service upon such person of the charge filed by the Secretary. Upon notification that a person has elected to proceed to Federal district court, the Secretary will authorize the Attorney General to file a civil action on behalf of the aggrieved person. An action authorized by the Secretary must be brought within 30 days after the election is made.

Where no election is made, the case will be heard by an administrative law judge. Under section 812(c) of the Act, the Federal Rules of Evidence will apply to the presentation of evidence in the same manner that they apply to evidence presented in a civil action in Federal district court. Section 812(g) requires the administrative law judge to issue findings of fact and conclusions of law within 60 days after the end of a hearing.

Where the administrative law judge finds that a respondent has engaged in a

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discriminatory housing practice, the Fair Housing Act provides for the issuance of an order for such relief as is appropriate, which may include actual damages and injunctive or other equitable relief. In order to vindicate the public interest, the order of an administrative law judge may assess a civil penalty against the respondent.

The decision of the administrative law judge can be reviewed by the Secretary. However, this review must be completed within 30 days after the decision is issued. Any final agency decision on the issue of discrimination is subject to review on appeal by the United States Courts of Appeals.

The Fair Housing Amendments Act directs the Secretary of Housing and Urban Development to issue regulations implementing the Fair Housing Act. Section 13 of the Fair Housing Amendments Act provides that "[i]n consultation with other appropriate Federal agencies, the Secretary shall, not later than the 180th day after the enactment of this Act, issue rules to implement title VIII as amended by this Act." That section also required the Secretary to give notice and opportunity for comment with respect to such rules.

On November 7, 1988, the Department published in the **Federal Register** (53 FR 44992) a proposed rule to provide the interpretation of the Secretary of Housing and Urban Development on the scope of the coverage provided and the nature of activities made unlawful by the Fair Housing Act. The proposed rule also contained the procedures which would be applicable to the receipt and processing of complaints and the initiation and conduct of formal enforcement proceedings.

Specifically, the Department proposed to add the three new parts to Subtitle B of Title 24 of the Code of Federal Regulations. The new Part 100 described the conduct made unlawful under the Fair Housing Act. The new Part 103 set forth the procedures for the receipt, investigation and conciliation of complaints and for the issuance of charges commencing formal administrative proceedings. The new Part 104 established rules for the conduct of administrative hearings before administrative law judges and provided rules of discovery in connection with such administrative proceedings.

It was further proposed that the existing departmental regulations authorizing the Secretary to collect racial, sex and ethnic data in departmental programs, located at 24 CFR Part 100, be redesignated as 24 CFR Part 121. These regulations were revised in the proposal to reflect the additional data requirements for HUD programs to meet the Department's responsibility to provide reports to Congress and to make available to the public data on persons eligible to participate and who are participating in HUD programs.

The proposed rule also made revisions in four existing departmental regulations implementing the Fair Housing Act to reflect the expansion of the coverage of the law to include handicap and familial status. Those regulations are: Fair Housing Administrative Meetings under Title VIII of the Civil Rights Act of 1968 (24 CFR Part 108), Fair Housing Advertising (24 CFR Part 109), Fair Housing Poster (24 CFR Part 110) and Certification of Substantially Equivalent Agencies (24 CFR Part 115).

The proposal provided a 30-day period for the submission of comments by the public, ending December 7, 1988. The Department received 6,425 public comments on the proposed rule by the end of the comment period. In addition, a substantial number of comments were received by the Department after the December 7 deadline. Even though those comments were not timely filed, they were reviewed to assure that any major issues raised were adequately addressed in comments that were received by the deadline.

Despite the extraordinary number of comments submitted (there were several thousand comments just from mobile home owners and operators of mobile home parks), each of the timely comments was read, and a list of all significant issues raised by those comments was compiled. All these issues were considered in the development of this rule.

In addition to consideration of public comments, HUD staff members met with representatives of several major interest groups who requested an opportunity to elaborate on the views expressed in their written comments. These staff members (with responsibility for the development of this rule) met with representatives of the National Apartment Association, the Society of Real Estate Appraisers, the American Institute of Real Estate Appraisers, the National Association of Home Builders, the Western Mobile Home Association, the Leadership Conference on Civil Rights, National Association for the Advancement of Colored People, NAACP Legal Defense Fund, Children's Defense Fund, American Civil Liberties Union, Mental Health Law Project, and representatives of various other Fair Housing Organizations. In each instance, the organization or organizations presented views identical to or consistent with positions taken in previously submitted written comments. A record of each meeting was made, including the names of persons attending, the date, and a brief summary of the issues discussed. These meeting records appear in the Department's public comment file. The staff members also met with staff of the Senate Judiciary Committee.

Part 100—Discriminatory Conduct Under the Fair Housing Act

Part 100 is a new part titled "Discriminatory Conduct Under The Fair Housing Act". The new Part 100:

—Indicates the conduct which is made unlawful under the Fair Housing Act;
—Includes guidance as to the responsibility of persons to permit reasonable modifications to dwellings and to make reasonable accommodations to rules and practices for persons with handicaps and further provides information as to the design and construction requirements applicable to certain new construction multifamily housing for first occupancy after March 13, 1991; and
—Describes the requirements which must be met for housing to be exempted from the prohibitions against discrimination based on familial status because it qualifies as housing for older persons.

The comments received with respect to Subparts A, B, and C of Part 100 raised several issues of general importance.

Standard for Proving a Violation

The proposed rulemaking indicated that the descriptions of unlawful conduct contained in this part generally mirrored the language of the statutory prohibitions against discrimination under the Fair Housing Act. The proposed rule indicated that the specific prohibitions in each section of the regulations were amplified by examples of unlawful conduct provided in those sections. The preamble to the proposed rule stated that many of the practices so identified have been the subject of court decisions since the passage of Title VIII of the Civil Rights Act of 1968. The preamble further stated that other examples reflect the interpretation of HUD based on its experience since 1968 in the investigation of complaints of discriminatory housing practices. In addition, the preamble cautioned that the illustrations in Part 100 were only examples of the types of conduct made unlawful under the Fair Housing Act.

Although the Department viewed the illustrations of conduct unlawful under the Fair Housing Act in Part 100 to be descriptive of the types of conduct

prohibited, several commenters suggested that, in some instances, the illustrations could be read to suggest that the Department was using them to establish the legal standards for determining liability in the adjudication of matters under the Fair Housing Act.

Specifically, these commenters asserted that four illustrations in the proposed rule were susceptible to misinterpretation. With regard to §§ 100.70(c)(3), 100.75(c)(3) and 100.80(b)(3), they asserted that the use of the phrases "in order to discourage", "in order to deny" and "in order to preclude" could be viewed as limiting the types of activities which would constitute unlawful conduct. Similarly, these commenters asserted that, in § 170.70(d)(1), the phrase "to encourage, permit or reward" could also imply that intentional discriminatory conduct was necessary to establish that a discriminatory housing practice occurred. While the Department believes that the cited illustrations do not in any way imply the standard for determining the liability of persons, these regulations are not designed to resolve the question of whether intent is or is not required to show a violation and in order to assure that there will be no confusion as to the scope of Part 100, the illustrations in § 100.70(c)(3), 100.75(c)(3) and 100.80(b)(3) have been revised. The illustration in § 100.70(d)(1) has been deleted from the final rule for the reasons discussed in the following section of this preamble.

Affirmative Fair Housing Activities

Several commenters suggested that the proposed rule did not address affirmative efforts by localities to further the achievement of the goal of fair housing through the implementation of programs to promote integrated housing. Several commenters, including fair housing groups, persons and organizations involved in promoting fair housing and a number of local governments, interpreted certain illustrations of conduct made unlawful in the proposed rule as prohibiting the use of governmentally approved programs designed to promote greater housing opportunities for persons.

On the other hand, a comment from an association representing persons involved in the sale and rental of dwellings urged that the proposed rule be revised to make it clear that such practices are prohibited by the Fair Housing Act.

The Department does not believe that the proposed rule could be interpreted to make affirmative marketing programs, designed to make available information which broadens housing choices for persons, a violation of the Fair Housing Act.

The Department of Housing and Urban Development, shortly after the enactment of Title VIII of the Civil Rights Act of 1968, published regulations designed to promote greater opportunities for persons to participate in its housing programs. These Affirmative Fair Housing Marketing Regulations (24 CFR 200.600) implement the Department's policy of assuring that persons of similar income levels in a housing market area have a like range of housing choices available to them, regardless of race, color, religion, sex, or national origin.

The regulation provides for the development and implementation of an affirmative fair housing marketing plan. As part of this plan, participants in HUD housing programs must carry out an affirmative program to attract buyers or tenants, regardless of sex, of all minority and majority groups to the housing. In addition, the Department requires program participants to identify any groups of persons who are not likely to be aware of the available housing and to undertake special marketing efforts designed to make such persons aware of the available housing and their ability to obtain it on a nondiscriminatory basis.

Nothing in the amendments to the Fair Housing Act or their legislative history would support a conclusion that Congress sought to make choice-broadening activities, such as the Department's Affirmative Fair Housing Marketing Program, unlawful discriminatory housing practices.

Beyond these activities, both groups of commenters recommended that the final rule should indicate whether other practices designed to promote integrated housing patterns are permissible under the Fair Housing Act. Generally, these "pro-integrative" programs involve practices which are designed and operated to provide incentives for persons to make housing choices in a manner which results in the furtherance of integrated housing patterns.

The issue of programs designed to promote integrated housing patterns was considered by the Congress in connection with an amendment to the Fair Housing Amendments Act offered in the House which would have made it unlawful to use any preferences in the provision of any dwelling based on race, color, religion, gender or national origin. Before the amendment was defeated, Congressman Don Edwards, one of the chief sponsors of the Fair Housing Amendments Act, agreed to hold hearings on the subject of pro-integrative programs. (See 134 Cong. Rec. H4903 (daily ed. June 29, 1988).)

Very recently, on December 12, 1988, the House Committee on the Judiciary Subcommittee on Civil and Constitutional Rights held oversight hearings on Fair Housing. In this hearing, the subcommittee heard testimony concerning the issues raised in pro-integration efforts. In fact, much of the testimony involved activities which are the same as or similar to those referred to in the comments on the proposed rule.

In view of the legislative history concerning pro-integration programs and the Congressional action in this area, the Department has determined that it would not be appropriate to address the issue of pro-integration programs in this final rule.

Commenters pointed to several of the illustrations in the proposed rule which they believed could be read as indicating that the Department would view pro-integration activities as constituting unlawful conduct.

The Department believes that the illustrations contained in the proposed rule accurately reflect the types of activities which, when they result in choice limitations, would constitute unlawful conduct. However, in order to assure that the Department's rule implementing the Fair Housing Act does not impact on the consideration of the scope of permissible affirmative activities to promote integration, the Department has removed the illustrations that the commenters asserted could be construed as impacting either positively or negatively on the Congressional evaluation. Specifically, the illustrations in §§ 100.60(b)(5), 100.65(b)(2), 100.70(c)(1), 100.70(d)(1) and (2), 100.120(b)(1), (3), (4), (5), 6, and (7), 100.130(b)(1) and (4) and 100.135(d)(1), (2), and (3) have been removed. Further, the Department has rejected comments suggesting changes in § 100.70(a), and the addition of new illustrations in §§ 100.70(c), 100.75(c), 100.130(c), and 100.135(d) to indicate that pro-integration practices are unlawful.

In addition, several commenters requested that the provisions of the proposed rule regarding unlawful advertising practices in §100.50(b)(4) be revised. The language in this section has been changed to mirrow the language contained in section 804(c) of the Fair Housing Act relating to unlawful advertising with respect to the sale or rental of a dwelling.

Protection of New Covered Classes

In the preamble to the proposed rule, the Department indicated that it interpreted the protections afforded to

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handicapped persons and families with children in the same manner as the protections provided to others under the Fair Housing Act. A number of commenters suggested that it was unreasonable to assume that Congress intended to provide the same protections to the new classes of persons afforded protection under the amendments. One commenter supported this position by suggesting that it would be more appropriate to utilize standards developed under the Equal Protection Clause of the Fourteenth Amendment to the Constitution in determining the nature of the protections provided to handicapped persons and families with children. This commenter indicated that, under such a standard, classifications based on race and sex would stand on a different footing from classifications based on handicap and familial status, and that differential treatment of the handicapped or families with children in some particular contexts could be justified by a rational relationship to legitimate interests, even where similar differential treatment based on race or sex could not be justified.

While it is true that the Congress, in enacting Title VIII of the Civil Rights Act of 1968, sought to assure that persons would be accorded equal protection of the law, the Constitutional underpinnings of the law are also rooted in the Commerce Clause.

In a memorandum on the constitutionality of the Fair Housing Law, the Department of Justice set forth the support in the Commerce Clause for the legislation, stating:

"Discrimination in housing affects this interstate commerce in several ways. The confinement of Negroes and other minority groups to older homes in ghettoes restricts the number of new homes which are built and consequently reduces the amount of building materials and residential financing which moves across state lines. Negroes, especially those in the professions or in business, are less likely to change their place of residence to another state when housing discrimination would force them to move their families into ghettoes. The result is both to reduce the interstate movement of individuals and to hinder the efficient allocation of labor among the interstate components of the economy.

"The Commerce Clause grants Congress plenary power to protect interstate commerce from adverse effects such as these. The power is not restricted to goods or persons in transit. It extends to all activities which affect interstate commerce, even if the goods or persons engaged in the activities are not then, or may never be, traveling in commerce. The power exists even when the effects upon which it is based are minor, or when taken individually, they would be insignificant. It is sufficient if the effects, taken as a whole, are present in measureable amounts. And it does not matter that when Congress exercises its power under the Commerce Clause, its motives are not solely to protect commerce. It can as validly act for moral reasons." (footnotes omitted) 114 Cong. Rec. 2530–2537. (February 7, 1968)

The Department believes that the legislative history of the Fair Housing Act and the development of fair housing law after the protections of that law were extended in 1974 to prohibit discrimination because of sex (Congress amended sections 804, 805, and 806 by adding sex to the classes of persons protected under Title VIII, see section 808(b)(1) of the Housing and Community Development Act of 1974, Pub. L. 93–383) support the position that persons with handicaps and families with children must be provided the same protections as other classes of persons.

Increased Liability

A significant number of commenters asserted that providing protections to persons with handicaps and families with children would restrict their ability to establish reasonable rules relating to the availability and the use of facilities provided in connection with dwellings. These commenters also suggested that a regulation requiring full access of handicapped persons and children to all facilities provided in connection with dwellings, and requiring the rental of dwellings on upper floors of a high-rise building, would result in increased tort liability.

The Department does not believe that, in enacting the Fair Housing Amendments Act, the Congress sought to limit the ability of landlords or other property managers to develop and implement reasonable rules and regulations relating to the use of facilities associated with dwellings for the health and safety of persons. However, there is no support for concluding that it is permissible to exclude handicapped persons or families with children from dwellings on upper floors of a high-rise, based on the assertion that such dwellings per se present a health or safety risk to such persons. Further, to permit such a practice would render meaningless the provisions of the law requiring that all dwellings in buildings consisting of 4 or more units and having one or more elevators be accessible to and usable by handicapped persons.

A number of commenters also urged the Department, in its final rule, to provide that a high-rise building could be exempted from the familial status provisions of the Act if it were certified that the high-rise building did not provide a safe and healthy living environment for children. In support of this type of exemption, several commenters pointed to language contained in Section 201 of the Housing and Community Development Act of 1977 which directed that the Secretary of HUD "prohibit high-rise elevator projects for families with children unless there is no practicable alternative." (See section 8(c)(1) of the Housing Act of 1937 (42 USC 1437f(c)(1)).). There is nothing in the Fair Housing Act to indicate that Congress in any way sought to limit the ability of families with children to obtain dwellings in a building other than those specifically exempted under the Act. Further, the department does not believe that the language in the Housing and Community Development Act of 1977, requiring HUD approval of the use of high-rise projects for providing housing for families with children would support a provision in this final rule which would provide an exemption from coverage of the Fair Housing Act for such buildings. As a result, these comments have not been adopted.

However, there is nothing in the provisions of the Fair Housing Amendments Act or its legislative history that indicates that Congress sought to impose any new liability on the owners and managers of housing. This interpretation is supported by a colloquy between Senator Specter and Senator Kennedy regarding the issue of liability:

Mr. Specter. It is my understanding that, as a result of this bill, a property owner does not assume a greater degree of vicarious liability as a result of injuries that may be caused by the tenants in the expanded categories of protected classes established under this bill. I believe it would be useful for the manager to confirm that it is not the intent of Congress that property owners will incur greater vicarious tort liability as a result of this statute because of the physical or mental characteristics of the tenants covered by this bill.

Mr. Kennedy. The Senator is correct. Congress does not intend to alter vicarious or secondary State tort law through the provisions of this bill. There is no objective evidence to link concerns about increased liability with any of the protected classes, and none should be assumed. Thus, we are stating, as a matter of clarification, that there is no relationship between this bill and existing State vicarious and secondary liability tort laws. 134 Cong. Rec. S10549 (daily ed. Aug. 2, 1988).

Subpart A—General

Section 100.1 Authority.

The Fair Housing Amendments Act authorizes the Secretary of Housing and Urban Development to issue regulations implementing the provisions of the Fair Housing Act (42 U.S.C. 3600–3620). The regulations contained in Part 100 are being issued under the Secretary's authority for the administration and enforcement of the Fair Housing Act.

Section 100.5 Scope.

The Fair Housing Act provides, within constitutional limitations, for fair housing throughout the United States. It provides that no person shall, on the basis of race, color, religion, sex, handicap, familial status, or national origin, be subjected to discrimination in the sale, rental or advertising for sale or rental of dwellings, in the provision of brokerage services, or in residential real estate-related transactions. Section 100.5(a) and (b) indicates that this part provides guidance as to the Department's interpretation of the coverage of the Fair Housing Act regarding discrimination related to the sale or rental of dwellings, the provision of services in connection therewith, and the availability of real estate-related transactions.

Section 100.10 Exemptions.

The Fair Housing Act exempts certain types of housing from the coverage of the law. Section 807 of the Fair Housing Act provides that, under certain circumstances, religious organizations and private clubs may limit the sale, rental or occupancy of housing, owned or operated for other than a commercial purpose, to their members. Section 807 also provides that nothing in the provisions regarding familial status applies to housing for older persons. Section 803 of the Fair Housing Act provides that nothing in the Fair Housing Act, other than the prohibitions against discriminatory advertising, applies to the sale or rental by an owner of certain single family houses without the use of a real estate broker or to the rental of rooms in dwellings containing living quarters occupied by no more than four families, provided that the owner actually occupies one of the units. Section 100.10 of this part reflects these exemptions to the coverage of the law.

Section 100.10(a)(3) states that nothing in this regulation limits the applicability of any reasonable local, State or Federal restrictions on the maximum number of occupants permitted to occupy a dwelling unit. This paragraph incorporates into the regulation the revisions to section 807 of the Fair Housing Act contained in section 6(d) of the Fair Housing Amendments Act of 1988. That provision is intended to allow reasonable governmental limitations on occupancy to continue as long as they are applied to all occupants, and do not operate to discriminate on the basis of race, color, religion, sex, handicap, familial status, or national origin. H.R. Rep. No. 711, 100th Congress, 2d Sess. 31 (1988) ("House Report"). No changes have been made in this section of the regulations.

A number of commenters indicated that the proposed rule did not adequately address the question of what occupancy standards, if any, can be used by persons in connection with the sale and rental of dwellings. Many of these commenters, generally persons involved in the rental of dwellings and associations representing owners and managers of rental dwellings, recommended that the final rule include a HUD-developed occupancy standard, and state that in the absence of a State or local occupancy code, owners or managers complying with the HUD standard would be considered to be in compliance with the Fair Housing Act with respect to the treatment of families with children. In the alternative, several commenters recommended that HUD indicate in the final rule that owners and managers of rental housing would be in compliance with the Fair Housing Act if they developed and implemented occupancy standards which are no less stringent than occupancy guidelines currently used in connection with HUD-assisted housing programs.

While the statutory provision providing exemptions to the Fair Housing Act states that nothing in the law limits the applicability of any reasonable Federal restrictions regarding the maximum number of occupants, there is no support in the statute or its legislative history which indicates any intent on the part of Congress to provide for the development of a national occupancy code. This interpretation is consistent with Congressional reliance on and encouragement for States and localities to become active participants in the effort to promote achievement of the goal of Fair Housing. Further, while the Department has developed occupancy guidelines for use by participants in HUD housing programs, these guidelines are designed to apply to the types and sizes of dwellings in HUD programs and they may not be reasonable for dwellings with more available space and other dwelling configurations than those found in HUD-assisted housing.

On the other hand, there is no basis to conclude that Congress intended that an owner or manager of dwellings would be unable in any way to restrict the number of occupants who could reside in a dwelling. Thus, the Department believes that in appropriate circumstances, owners and managers may develop and implement reasonable occupancy requirements based on factors such as the number and size of sleeping areas or bedrooms and the overall size of the dwelling unit. In this regard, it must be noted that, in connection with a complaint alleging discrimination on the basis of familial status, the Department will carefully examine any such nongovernmental restriction to determine whether it operates unreasonably to limit or exclude families with children.

Several commenters requested advice regarding the application of the Fair Housing Act to the sale of condominium and cooperative units and mobile homes by private persons.

As indicated in the proposed rule, the prohibitions against discrimination apply to all types of dwellings, including condominiums, cooperatives and mobile homes. Thus, discrimination in the sale or rental of such dwellings would be unlawful. However the Fair Housing Act provides a limited exemption for the sale of certain single family houses, and § 100.10(c) describes this statutory exemption. Specifically, this section indicates that the Fair Housing Act exempts from the provisions prohibiting discrimination any single family house sold by an owner, subject to certain conditions: the owner may not own or have an interest in more than three such houses at any one time; in the case of the sale of a single family house in which the owner was not the most recent occupant prior to its sale, the owner may not have made any other such sale within the preceding twenty-four months; and the unit must be sold or rented without the use of a real estate broker or agent, and without the use of any discriminatory advertisement.

Thus, the sale of a single family house, including the sale of a condominium or cooperative unit or a mobile home, by an owner would not be covered by the provisions of the Fair Housing Act, provided that the limitations in § 100.10(c) are met. However, it must be noted that the exemption in this section applies only to the *owner* of such a dwelling, and that the cooperative or condominium or mobile home park would be prohibited from engaging in any discriminatory conduct with respect to the dwelling notwithstanding the fact

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that the conduct of the owner was not covered.

Section 100.20 Definitions.

Section 100.20 provides definitions to be used for terms in Part 100. The definition of the term "dwelling" in the proposed rule stated that the term include mobile home parks, condominiums and cooperatives. A number of comments aruged that cooperatives, condominiums and mobile homes are not "dwellings" within the meaning of the statutory definition of the term. The Department disagrees. The statutory definition of a dwelling is "any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof." This definition is clearly broad enough to cover each of the types of dwellings enumerated in the proposed rule: mobile home parks, trailer courts, condominiums, cooperatives, and time-sharing properties. Several commenters suggested that the definitions of the terms "dwelling" and "person" should be expanded to provide some illustrations, particularly in the areas relating to handicap and familiar status.

Other commenters recommended that the final rule should contain the same definitions as those provided in the Fair Housing Act. These commenters indicated that the addition of certain types of persons, or certain examples of dwellings, could be viewed as indicating a restriction not contemplated in the law.

The Department has determined that, on balance, the need to leave open the extent and scope of the terms defined in the Fair Housing Act outweighs the need to provide comprehensive examples in connection with this rulemaking. As a result, the definitions of the terms "dwelling" and "person" have been revised to read as set forth in the statute.

A number of commenters objected to the inclusion of the phrase "is about to occur" in the definition of the term "aggrieved person". These commenters suggested that the addition of this phrase was inappropriate in that it would make unlawful acts that have not occurred.

The definition of the term "aggrieved person", as any person who claims to have been injured by a discriminatory housing practice, or who believes that he or she will be injured by a discriminatory housing practice that is about to occur, is statutory and has not been changed in the final rule. The phrase "is about to occur" applies to a number of situations in which it is clear to a person that, if he or she takes an action, he or she will be subjected to a discriminatory act which will result in an injury. In such cases, the Fair Housing Act does not require these persons to expose themselves to the injury involved with the actual act of discrimination before filing a comlaint.

A number of commeters suggested that the definition of aggrieved person be expanded to incorporate into the text of the rule the statement in the preamble to the proposed rule that an "aggrieved person includes a fair housing organization as well as a tester or other person who seeks information about the availability of dwellings to determine whether discriminatory housing practices are occurring." In addition, several commenters suggested that references to providers of group homes for handicapped persons also be added to the definition.

As indicated above, the Department has determined that the definitions in these regulations which are terms defined in the Fair Housing Act should contain the statutory language. However, the Department has consistently interpreted the provisions of the fair housing law to permit the filing of a complaint by any person or organization which alleges that a discrimintory housing practice has occurred or is about to occur and which will result in an injury to them.

The proposed rule defined the "broker" or "agent" as any person authorized to perform an action on behalf of another person regarding any matter related to the sale or rental of dwellings, including offers, solicitations or contracts, and the administration of matters regarding such offers, solicitations or contracts or any real estate-related transactions. Several commenters pointed out that the Fair Housing Act did not contain a definition of these terms. These commenters also pointed out that the specific definition of these terms, for the purpose of this regulation, could result in a limitation on the types of persons who would be considered as brokers or agents in connection with any other aspect of a housing transaction.

The Department did not intend, in the proposed rule, to establish a universal definition of the terms "broker" or "agent." However the Department believes that since these terms appear in numerous places throughout the rule, guidance is necessary with respect to the scope of persons who are considered to be brokers and agents, particularly when such persons are involved in the sale or rental of dwellings. Therefore, a definition of the terms "broker" or "agent" has been retained in the final rule. In order to avoid confusion as to whether persons otherwise involved in housing transactions are acting as brokers or agents, the definition has been revised to provide that a broker or agent "includes" rather than "means" persons described in the definition.

Several persons indicated that the term "person in the business of selling or renting dwellings", which was included as a defined term in the proposed rule, was never used in the text of the rule. These commenters suggested that the definition of this term be deleted. These commenters are in error, since the term appears in the exemption for the sale or rental of a single family house by an owner, in § 100.10(c)(i)(ii). The definition, which is taken from section 803(c) of the Fair Housing Act, has been retained in the final rule.

The remaining definitions in the proposed rule have not been changed in the final rule.

Subpart B—Discriminatory Housing Practices

Section 100.50 Real estate practices prohibited.

Section 100.50 of the rule states that Subpart B provides the Department's interpretation of the conduct made unlawful under section 804 and section 806 of the Fair Housing Act. In general, these provisions describe conduct made unlawful with regard to any aspect related to the sale, rental, or advertising of dwellings and to the provisions of brokerage services and facilities in connection with the sale or rental of dwellings.

Section 100.50(b) describes the specific conduct made unlawful in relation to the sale or rental of dwellings. The conduct described in this section forms the basis for the subsequent sections in Subpart B. Each of the subsequent sections provides illustrations of the scope and applicability of the rule to specific sales, rental and brokerage activities.

While the illustrations are set forth under the section of Subpart B which is most applicable to the discriminatory conduct described, § 100.50 indicates that an action described in one section can constitute a violation under other sections as well. In addition, the illustrations of discriminatory conduct in this subpart are only examples of discriminatory conduct that violates the Fair Housing Act and are not intended to limit the scope of discrimination in

housing made unlawful under the Fair Housing Act.

With the exception of the revision of § 100.50(b)(4), which was discussed earlier in this preamble, no changes have been made in the text of § 100.50.

Section 100.60 Unlawful refusal to sell or rent or to negotiate for the sale or rental.

Section 100.60 describes the actions which constitutes a refusal to sell or rent a dwelling when a *bona fide* offer is made or a refusal to negotiate with persons for the sale or rental of a dwelling and which are unlawful when they are taken because of race, color, religion, sex, handicap, familiar status, or national origin.

As discussed earlier, the illustration contained in § 100.60 (b) (5) has been removed, and the subsequent illustration has been renumbered accordingly. No other changes have been made in this section of the final rule.

Section 100.65 Discrimination in terms, conditions and privileges and in services and facilities.

Section 100.65 provides that differences in the treatment of persons in connection with the provision of services and facilities or in the terms or conditions relating to the sale or rental of a dwelling because of race, color, religion, sex, handicap, familial status, or national origin constitute discriminatory housing practices.

The illustrations in § 100.65(b) indicate that the coverage of this section extends beyond restrictions or differences in a lease or sales contract and the provision of different levels of maintenance. This section provides that denials of, or limitations on the use of privileges, services or facilities, relating to the sale or rental of a dwelling because of race, color, religion, sex, handicap, familial status, or national origin are also discriminatory housing practices.

In order to indicate the broad range of conduct which would constitute different terms and conditions, the department has added another illustration to this section (§ 100.65(b)(5)) indicating that denying or limiting services or facilities to persons based on a person failing or refusing to grant sexual favors can constitute a discriminatory housing practice.

A large number of comments received from persons owning or managing rental housing and associations representing such persons disagreed with the Department's interpretation of the Fair Housing Act as precluding different security deposit require nents for persons with handicaps and families with children. These comments generally took the position that mobility impaired persons in wheelchairs and small children would cause more damage to the interior of dwellings, thus justifying the need for additional security to cover the exposure of the owner or manager to make needed repairs when units occupied by such persons are vacated. Since the Department has determined that in enacting the Fair Housing Act, Congress sought to provide the same protections to persons with handicaps and families with children as were made available to other classes of protected persons, no change in the illustration in § 100.65(a)(1) has been made.

A number of commenters indicated that they customarily provided for reduced security deposits for elderly persons renting units and asked whether continuing such practice would place them in violation of the Fair Housing Act. As long as such a policy is based solely on age, is available to persons if there are children in the family, and is not otherwise operated in a manner that results in the exclusion of families with children, such a practice would not be unlawful.

Another commenter indicated that charges for the provision of water, electricity, refuse collection and other services have have been based on the number of persons who occupy a dwelling and asked whether such a policy would be permissible. In order to determine whether such a policy is permissible, it would be necessary to understand more fully why it was implemented and how it actually operates. Further, since policies such as this would require review on a case by case basis, the Department has determined that addressing this issue in the final rule would not be appropriate.

As discussed earlier in the preamble, the illustration in § 100.65(b)(2) has been removed, pending Congressional review of pro-integration programs.

Section 100.70 Other prohibited sale and rental conduct.

Section 100.70 provides that restricting or attempting to restrict the housing choices of persons, or engaging in any conduct relating to the sale or rental of a dwelling that otherwise makes unavailable or denies dwellings, because of race, color, religion, sex, handicap, familial status, or national origin, is a discriminatory housing practice.

Section 100.70(c) describes actions which result in limitations of housing choice that would violate the Fair Housing Act. These practices, which are commonly referred to as "steering," include practices designed to discourage persons from seeking housing in a particular community, neighborhood, or development because of race, color, religion, sex, handicap, familial status, or national origin.

The illustrations in § 100.70(c)(1), (d)(1) and (d)(2) of the proposed rule have been removed in response to comments regarding Congressional activity in the area of affirmative action to promote integrated housing. In addition, it should be pointed out that the Department did not intend in the illustration in § 100.70(d)(2) of the proposed rule to imply that language or sign interpreters were required with respect to transactions involving a person who can not speak English or who has a hearing or vision impairment. The remaining illustrations in the section have been renumbered.

In the preamble discussion of § 100.70 in the proposed rule, it was stated, as an example, that a private developer's market-based decision to include only efficiency apartments in a new development would not violate the Fair Housing Act even though, "as a practical matter, such housing would be unavailable to families with children." A commenter pointed out that it would be possible for a single parent and child to live in an efficiency or one bedroom apartment, and that the example was not illustrative of a situation in which housing would be unavailable to families with children. The Department agrees with the commenter's assertion. However, even though the example may have been flawed, the Department wishes to reiterate that it does not interpret the Fair Housing Act as precluding the construction of apartment buildings with small units.

In order to clarify that an unlawful refusal to deal with brokers and agents includes a refusal based on the race, color, religion, sex, handicap, familial status, or national origin of the broker or agent as well as the race, color, religion, sex, handicap, familial status, or national origin of one or more of their clients the illustration in § 100.70(d)(2) has been revised.

A number of commenters suggested that the proposed rule did not address specifically situations in which families are discouraged from obtaining housing because of the presence or possible presence of children. As discussed earlier in this preamble, the illustrations provided in the final rule are intended to described discriminatory housing practices generally and are not intended to be exhaustive descriptions of all conduct made unlawful under the Fair

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Housing Act. For this reason, the department has determined not to add a separate illustration with respect to steering conduct based on familial status. Further, the illustrations in § 100.70(c) (2) and (3) indicate conduct designed to discourage persons from obtaining a dwelling by exaggerating drawbacks or by communicating that certain persons are incompatible with existing residents is unlawful. The department believes that these illustrations make it clear that representing that certain housing would not be appropriate for, or would not be available to families with children would be prohibited under the Act.

Several commenters also noted that the proposed rule did not address discriminatory local land use, health and safety, and zoning rules that eliminate community housing opportunities. As indicated in the preamble discussion relating to Subpart D of this rule, the department has determined not to publish rules regarding issues relating to local government exercise of police powers in the areas of land use and zoning. However, as discussed in the preamble to the proposed rule, discrimination in the provision of those services and facilities which are prerequisites to obtaining dwellings, including refusals to provide municipal services or adequate property or hazard insurance because of race, color, religion, sex, handicap, familial status or national origin render housing unavailable in violation of the Fair Housing Act. In order to indicate that the refusal to provide, or the provision of different municipal services or facilities and property or hazard insurance for dwellings because of race, color, religion, sex, handicap, or national origin can constitute a violation of "the otherwise make unavailable or deny" provisions in the Act, the language in § 100.70(d) has been revised and a new illustration (§ 100.70(d)(4)) has been added. In addition, the illustration relating to discriminatory advertisements in § 100.70(d)(6) of the proposed rule has been removed, since such practices are more appropriate to the conduct made unlawful under § 100.75 of the rule.

Section 100.75 Discriminatory advertisements, statements, and notices.

Although the Fair Housing Advertising Regulations (24 CFR Part 109) apply to all advertising for dwellings, the Department believes that it is appropriate, in connection with regulations describing prohibited conduct related to the sale or rental of housing, to include additional guidance as to prohibited conduct regarding this specific area. Section 100.75 describes prohibited conduct related to advertisements, notices and statements by persons engaged in the sale or rental of housing or in the printing and publishing of such advertisements, notices and statements.

No comments raised substantial issues regarding this provision, and it has been included in the final rule as it was proposed.

Section 100.80 Discriminatory representations on the availability of dwellings.

Section 100.80 states that the provision of inaccurate or untrue information about the availability of dwellings for sale or rent because of race, color, religion, sex, handicap, familial status, or national origin constitutes a violation of the Fair Housing Act. A person who receives the inaccurate or untrue information need not be an actual seeker of housing in order to be the victim of a discriminatory housing practice under this section.

A number of commenters requested that the final rule specifically indicate that the provision of inaccurate information to "testers" because of race, color, religion, sex, handicap, familial status, or national origin is unlawful under the Fair Housing Act. These commenters also recommended that the final rule should state that "testers" who are provided inaccurate information are persons aggrieved by a discriminatory housing practice who may file a complaint with the Secretary.

In response to these comments, an additional illustration has been added to this section which indicates that the provision of false or inaccurate information regarding the availability of dwellings to any person, including testers, because of race, color, religion, sex, handicap, familial status, or national origin would be unlawful under the Fair Housing Act.

Section 100.85 Blockbusting.

Blockbusting consists of any effort, for profit, to induce or attempt to induce a person to sell or rent a dwelling by representations regarding the entry into a neighborhood of a person or persons of a particular race, color, religion, sex, handicap, familial status, or national origin, or with a handicap. Proposed § 100.85(b) stated that it was not necessary that there be in fact a profit realized as a result of blockbusting, as long as the availability of profit was a factor involved in the blockbusting activity. A number of commenters indicated that the term "blockbusting" was archaic and could be misread as meaning only efforts to get people to move out of a block. In addition, these commenters suggested that the language "as long as the availability of profit was a factor" would be confusing, since most law in the area has focused on whether a profit-oriented business is involved as well as whether the actions were taken for profit.

The description of the conduct made unlawful under § 100.85 follows the statutory prohibitions against discrimination under section 804(e) of the Fair Housing Act. These practices have generally been referred to as blockbusting, and the term appears in the statute. The specific activities made unlawful under section 804(e) would not be limited merely because of the use of the term "blockbusting". Therefore, the Department has determined that, while another more current term also may aptly describe the type of activities covered by this section (e.g. panic selling and panic buying), changing the terminology in this area could result in substantial confusion as to whether the change in accepted terminology implied any change in the coverage of the provision. In addition, the Department believes that the language in the proposed rule regarding profit as a factor in unlawful blockbusting activities accurately describes the breadth of activities covered.

Because the illustration in § 100.85(c)(3) could be misinterpreted as implying that blockbusting activity involving uninvited solicitations for listings would violate the Act only if different or more intensive solicitation activity were involved, this illustration has been removed in the final rule. However, in order to make clear that such practices can constitute discriminatory housing practices, the illustration in § 100.85(c)(1) has been revised to include a specific reference to uninvited solicitation for listings which would constitute a violation of the Act.

Section 100.90 Discrimination in the provision of brokerage services.

Section 100.90 reflects the prohibition in the Fair Housing Act against denying any person access to, or membership or participation in, any multiple listing service, real estate brokers' organization or facility relating to the business of selling or renting dwellings on account of race, color, religion, sex, handicap, familial status, or national origin. This section also states that it is unlawful to discriminate against any person in the terms or conditions of such access, membership or participation because of race, color, religion, sex, handicap,

familial status, or national origin. Several commenters requested that the Department provide an additional example of unlawful conduct relating to restrictions on access to service through area limitations. In response to these commenters, a new illustration describing unlawful discrimination in establishing geographic boundaries or office or residence requirements because of race, color, religion, sex, handicap, familial status, or national origin has been added to this section.

Subpart C—Discrimination in Residential Real Estate-Related Transactions

Section 100.110 Discriminatory practices in residential real estate-related transactions.

Section 100.110 indicates the general prohibition against discrimination in the availability of, or in the terms or conditions imposed in, any residential real estate-related transaction because of race, color, religion, sex, handicap, familial status, or national origin. The prohibitions against discrimination in Subpart C apply to any person or other entity whose business includes engaging in residential real estate-related transactions.

Several commenters recommended that the statement of general prohibition against discrimination in residential real-estate related transactions incorporate by reference, into the Fair Housing Act regulations, the regulatory implementation of the Equal Credit Opportunity Act by Federal financial regulatory agencies.

The Equal Credit Opportunity Act (15 U.S.C. 1691) makes it unlawful, in part, to discriminate against persons on the basis of race, color, religion, sex, national origin, marital status or age in any aspect related to a credit transaction.

The Equal Credit Opportunity Act provides for administrative enforcement by specified Federal financial regulatory agencies and empowers the Federal Trade Commission to provide for overall enforcement of the Act.

HUD has no enforcement authority under the Equal Credit Opportunity Act and no enforcement responsibility with respect to implementing regulations published by the Federal financial regulatory agencies under the Equal Credit Opportunity Act. As a result, the inclusion of such regulations in this section by reference would have no legal effect. This comment has been rejected.

Section 100.115 Residential real estate-related transactions.

This section incorporates into Part 100 the definition of the term "residential real estate-related transaction" contained in section 6(c) of the Fair Housing Amendments Act of 1988.

Section 100.120 Discrimination in the making of loans and in the provision of other financial assistance.

Section 100.120 states that it is unlawful for a person or entity engaged in residential real estate-related transactions to discriminate against persons because of race, color, religion sex, handicap, familial status, or national origin in making available loans or other financial assistance relating to dwellings. The prohibitions against discrimination in the making of loans and in the provision of other financial assistance reflects the language relating to discrimination in the financing of housing under Title VIII of the Civil Rights Act of 1968.

In connection with the development of § 100.120, the Department has been guided by its experience in connection with the past administration and enforcement of Title VIII. Since the definition of the term "residential real estate-related transactions" covers loans and other financial assistance which are secured by residential real estate, the defininition expands the types of financing transactions which were previously covered by the nondiscrimination requirements of Title VIII. However, there is nothing in the legislative history of the Fair Housing Amendments Act of 1988 to indicate that the Congress intended that loans and other assistance secured by a dwelling be treated any differently than loans for the purchase, construction, improvement, repair, or maintenance of a dwelling. Thus, this section applies equally to both types of loans.

As discussed earlier in this preamble, the illustrations of the application of this section that were contained in § 100.120(b)(1), (3), (4), (5), (6), and (7) of the proposed rule have been removed, pending Congressional action on the issue of pro-integration activities.

Section 100.125 Discrimination in the purchasing of loans.

The principal change in the nature of the conduct made unlawful regarding loans and other assistance with respect to dwellings is the inclusion of activities relating to the purchase of such loans. In prohibiting discrimination in the purchasing of loans, Congress extended the coverage of the Fair Housing Act to conduct in the secondary mortgage market. However, the House Report on the Fair Housing Amendments Act of 1988 states, with regard to this expanded coverage, "The Committee does not intend that those purchasing mortgage loans be precluded from taking into consideration factors justified by business necessity (including requirements of Federal law) which relate to the financial security of the transaction or the protection against default or diminution in the value of the property." House Report at 30.

Section 100.125 sets forth the new coverage of secondary mortgage market activities under the Fair Housing Act. Since the protections provided under this section are new, the illustrations of discriminatory housing practices in this section focus on general areas of unlawful conduct under the Act. In this respect, the illustrations indicate that conduct made unlawful with regard to secondary mortgage market activities includes actions taken with respect to the purchase and pooling of mortgage loans as well as with respect to the terms and conditions of the sale of securities issued on the basis of such loans.

Commenters on this section were in general agreement with the overall content of the provisions in the proposed rule but recommended that certain language in the House Report, which they pointed out was also used by Senator Kennedy in a colloquy with Senator Sasser on the floor of the Senate, see 134 Cong. Rec. S10549 (daily ed. Aug. 2, 1988), be included in the text of the rule. Since there is a clear indication of congressional intent with respect to transactions involving the purchasing of loans, language relating to factors justified by business necessity have been added. Thus, this provision would not preclude considerations employed in normal and prudent transactions provided that no such factor may in any way relate to race, color, religion, sex, handicap, familial status or national origin.

One commenter representing mortgage bankers indicated that the term "purchasing" of housing loans in the mortgage banking business could involve a number of different and unrelated types of activities. This commenter described mortgage loan activities engaged in by mortgage bankers as involving the originating, selling and servicing of mortgages. This commenter pointed out that, in mortgage banking, the term "purchasing" has been used loosely to describe the purchase of rights to service mortgages. In this process, the equitable interest in the loan remains unaffected but the legal

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title to the loan and the right to service the loan and retain servicing fees has been purchased. Based on this description, the commenter indicated its belief that such transactions would be outside the coverage of the Fair Housing Act because such transactions did not involve any financing decision by the purchaser (since the loan had been closed prior to the purchase of servicing rights) and suggested that the final rule define the term "purchase" in a manner to exclude such transactions from the Fair Housing Act.

Section 805 of the Civil Rights Act of 1968 made it unlawful "to deny a loan or other financial assistance to a person applying therefor * * * or to discriminate against him in the fixing of the amount, interest rate, duration, or other terms or conditions of such loan or other financial assistance * * *."

In amending this section of the Fair Housing Act, Congress revised the thrust of the prohibitions covered under Section 805 to protect persons from discrimination in residential real estate-related transactions which were defined to include "the purchasing of loans * * * secured by residential real estate."

Under the Fair Housing Act, the nature of discriminatory conduct no longer can be limited to matters relating to the actual provision of financing. Further, the fact that the interest transferred in the servicing transaction involves only the legal title to the loans would not be a basis for concluding that there has not been a residential real estate-related transaction. For these reasons the recommendation in the comment has not been adopted in the final rule.

Section 100.130 Discrimination in the terms and conditions for making available loans or other financial assistance.

Section 100.130 states that it is unlawful to impose different terms or conditions for the availability of a loan or other financial assistance for a dwelling or which is, or will be secured by a dwelling because of race, color, religion, sex, handicap, familial status, or national origin.

As discussed earlier in the preamble, the illustrations proposed in § 100.130(b) (1) and (4) have been removed from the final rule in order to avoid anticipating the results of ongoing congressional analysis of issues relating to pro-integrative programs. Other illustrations and the general provision regarding discriminatory conduct under this section were not the subject of significant comment and have been retained in the final rule.

A substantial number of commenters had significant concerns relating to the issue of "redlining" as it was discussed in the preamble to the proposed rule. Much of the concern relating to this discussion focused on the statement that financial transactions in many cases involve "legitimate business judgments and complex financial, economic and social issues and problems". Many of the commenters asserted that this statement could be read to indicate that proof of actual intent to discriminate would be required in order to establish unlawful redlining under the Fair Housing Act. Other commenters indicated that the quoted language could be read as creating other considerations beyond those necessary in the business of making a decision on a loan (i.e., economic and social issues and problems) which have not been traditionally evaluated in the investigation of fair housing complaints and which are not relevant to the making of loans.

The Department agrees with the commenters that economic and social issues and problems are not relevant in connection with the review and analysis of cases under the Fair Housing Act. However, the Department does not believe that the reference to legitimate business judgments implies that proof of intent to discriminate is or is not required in redlining cases. The language in the preamble was intended to indicate that, in the decision to provide loans or other financial assistance, a lender may consider factors justified by business necessity, provided that such factors are unrelated to race, color, religion, sex, handicap, familial status, or national origin. This articulation is consistent with the preamble discussion relating to the purchasing of loans and the revised text of § 100.125 of the final rule.

Several commenters urged that the prohibition against redlining be included in the rule text. However, in view of the removal of the illustrations in § 100.130(1) (b) and (4), the Department has determined that it would not be appropriate to add such an illustration.

Section 100.135 Unlawful practices in the selling, brokering, or appraising of residential real property.

The prohibitions against discrimination because of race, color, religion, sex, handicap, familial status, or national origin in connection with residential real estate-related transactions apply to the selling, brokering and appraising of residential real property. Section 100.135(a) of the proposed rule stated that it is unlawful for any person whose business includes engaging in the selling, brokering or appraising of residential real property to discriminate against any person in making available such services, or in the terms or conditions of such services, because of race, color, religion, sex, handicap, familial status, or national origin. Paragraph (a) of the final rule has been revised for the sake of clarity. It states that it is unlawful for any person or other entity whose business includes engaging in the selling, brokering or appraising of residential real property to discriminate against any person in making available such services or in the performance of such services because of race, color, religion, sex, handicap, familial status or national origin.

For the purpose of this rule, the term "appraisal" means an estimate or opinion of the value of a specified residential real property made in a commercial context in connection with the sale, rental, financing or refinancing of a dwelling or with any other residential real estate-related transaction, whether the appraisal is oral or written, or transmitted formally or informally.

The Fair Housing Act provides a specific exemption related to appraisals, stating that nothing in the Act prohibits a person in the business of furnishing appraisals of real property to take into consideration factors other than race, color, religion, sex, handicap, familial status, or national origin. However, the Department indicated in the preamble to the proposed rule its position that consideration of any factor because of race, color, religion, sex, handicap, familial status, or national origin *does* constitute a discriminatory housing practice.

Two professional organizations representing appraisers agreed with the description of the coverage of appraisal practices but suggested that the language used in the illustrations could be read as precluding, in certain instances, the use of observable, verifiable data that affect the market value of property in a particular area, such as the proximity of certain facilities or services. In this respect, they suggested that the illustrations in this section should be revised to reflect more clearly the fact that appraisers can consider any factors other than race, color, religion, sex, handicap, familial status, or national origin in the appraisal of residential real property.

The illustrations in § 100.135(d) (1), (2), and (3) have been removed in the final rule, pending the result of congressional action with respect to the issue of pro-integrative activities, and since the regulation incorporates the

statutory language on the use of other factors. In addition, paragraph (d) has been shortened and revised so that it will not inadvertently prohibit appraisers from considering factors which may lawfully be considered. Paragraph (d) of the final rule states that practices which are unlawful under §100.135 include, but are not limited to, using an appraisal of residential real property in connection with the sale, rental, or financing of any dwelling where the person knows or reasonably should know that the appraisal improperly takes into consideration race, color, religion, sex, handicap, familial status or national origin. The word "improperly" was added so that it will be absolutely clear that an appraisal may, for example, consider an adaptable physical environment as a positive factor in estimating the value of residential real property. However, the Department wishes to stress that it would not be proper or lawful, for example, to consider factors such as race, sex or national origin in appraising residential real property.

These commenters also indicated that the use of the term "commercial context" in §100.135(b) would lead to confusion within the appraisal industry as to the type of structures to which the nondiscrimination requirements in the Fair Housing Act apply.

The use of the term "commercial context" in the regulation was intended to indicate that the situations covered were directly related to conduct of the business of appraising and were not intended to diminish the rights of persons with respect to their private rights under the First Amendment. To avoid the possibility of confusion in this area, the word "business" has been substituted for "commercial" in this section.

Subpart D—Prohibitions Against Discrimination Because of Handicap

Section 100.200 Purpose.

Section 100.200 is unchanged from the proposed rule. It explains that the purpose of Subpart D is to effectuate the provisions concerning handicap in the Fair Housing Amendments Act of 1988. No comments were received on § 100.200.

Section 100.201 Definitions.

Section 100.201 proposed definitions to be used for terms used only in Subpart D. The definitions in Subpart A also apply to Subpart D. Substantial comments were received on the definitions in the proposed rule that are discussed below. The other definitions have not been modified.

An editorial change has been made to the final definition of "accessible". The proposed rule stated that a public or common use area that complies with the appropriate requirements of ANSI A117.1 or another standard that affords handicapped persons access essentially equivalent to or greater than that required by ANSI A117.1 is "accessible". The final rule states more simply that a public or common use area that complies with the appropriate requirements of ANSI A117.1–1986 or a comparable standard is "accessible". The final sentence of the definitions of "accessible route" and "building entrance on an accessible route" have also been changed for the sake of consistency.

"ANSI A117.1" means the American National Standard for buildings and facilities providing accessibility and usability for physically handicapped people. The American National Standards Institute, Inc. (ANSI) is a private, national organization that publishes standards on a wide variety of subjects. The Secretariat that developed the 1986 edition of the ANSI standard was composed of the National Easter Seal Society, the President's Committee on Employment of the Handicapped, and HUD. The current version of these standards was published in 1986 and is referred to as "ANSI A117.1–1986".

The preamble of the proposed rule explained that whenever ANSI A117.1 is used in Subpart D, the reference is to the most recently published edition of ANSI A117.1 as of the date bids for construction of a particular building are solicited. A number of commenters suggested that this statement should appear in the text of the regulation. Other commenters objected that an "open-ended" reference to future ANSI standards represents an unlawful delegation of the Department's rulemaking authority. According to these commenters, HUD should refer to a specific edition of the AMSI standards in its rule and should incorporate future editions only through rulemaking proceedings. Because of this concern the definition of ANSI A117.1 in the final rule is defined as the 1986 edition of ANSI ("ANSI A117.1–1986."). The Department intends to propose to amend the definition of ANSI as future editions of ANSI are published.

"Building" means a structure, facility or the portion thereof that contains or serves one or more dwelling units. For example, a structure that serves one or more dwelling units includes a structure containing recreational facilities for residents of an apartment complex. A substantial number of comments were received on this definition as it applies to townhouses. The application of Subpart D to townhouses is discussed in connection with the definition of the term "covered multifamily dwellings". The definition of "building" has not been changed from the proposed rule.

"Common use areas" means rooms, spaces or elements inside or outside a building that are made available for the use of residents of a building or the guests thereof. The proposed rule cited as examples of common areas hallways, lounges, lobbies, laundry rooms, refuse rooms and passageways among and between buildings. A number of commenters suggested that mailrooms and recreational areas be added to this list. Other commenters, including the National Apartment Association, argued that the definition should not include "public amenities" such as swimming pools, jacuzzis, hot tubs, saunas or exercise facilities. They suggest that the legislative history is silent with respect to such facilities.

The definition of common use areas in the rule is a close adaptation of the definition of the term "common use" in ANSI A117.1–1986. Since the Act makes specific reference to ANSI, the Department believes that Congress intended that the ANSI definition apply. Furthermore, the House Report states that the Act's requirement that the public and common use portions of covered multifamily dwellings be readily accessible to and usable by handicapped persons "means that hallways, lounges, lobbies, passageways among and between buildings and other common areas *and facilities* not contain barriers to entrance and use by handicapped persons." House Report at 26 (emphasis supplied). Mailrooms and recreational areas can fairly be read as falling within this description. Therefore, these two additional examples have been added to the list of common use areas because they fall within the definition. The list in the final rule is illustrative and not exclusive. In this regard, the Department notes that the House Report states that the Act does not require that all entrances to public and common use areas be made accessible to handicapped persons. Rather, the Act requires that "one regular entrance to such areas be accessible to handicapped persons for the same purpose for which it is used by others." *Id.* Further, the Act does not require that amenities be installed. "The intent of the language is that only if such amenities are provided, then they must be readily accessible to and usable by handicapped persons." *Id.*

A "covered multifamily dwelling" means buildings consisting of 4 or more

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dwelling units if such buildings have one or more elevators; and ground floor dwelling units in other buildings consisting of 4 or more dwelling units. The preamble of the proposed rule explained that a single structure consisting of 5 two-story townhouses is not a "covered multifamily dwelling" if the units do not have elevators, because the entire dwelling unit is not on the ground floor. In contrast, a single-story townhouse is a covered multifamily dwelling. A number of commenters agreed with this interpretation; some reasoned that townhouses are not multifamily buildings because each unit typically has a separate outside entrance.

Other commenters objected to this interpretation, arguing that townhouses are covered because Congress intended that there be a broad interpretation of the Act. They believe that Congress intended to exempt otherwise covered dwellings from accessibility requirements only if *no* part of the dwelling unit touched the ground floor. These commenters cited in support of their position a statement made by Senator Kennedy during the Senate debate on the Act, in which he referred to the need to make the ground floor of multi-level housing accessible so that friends and relatives with mobility impairments can visit. Specifically, Senator Kennedy stated as follows: "This legislation does not affect the single-family home. What we are talking about is the multifamily dwelling with four or more units. You only have to meet these very simple [accessibility] requirements if you actually have an elevator, or, if you do not have an elevator, only the bottom floor *unit* is covered." 134 Cong. Rec. S. 10538 (daily ed. August 2, 1988) (emphasis added). Senator Kennedy's later reference to the importance of making units accessible so that friends and relatives can visit was in response to Senator Humphrey's proposal to limit the scope of the Act's accessibility requirements to 20 percent of the units. *Id.* The Department believes that the Senate debate referenced by these commenters supports its interpretation because Senator Kennedy spoke of "bottom floor units." The first floor of a multi-story townhouse is not a bottom floor unit because the entire unit is not on the bottom or ground floor.

Most significantly, the accessibility requirements of the Act itself extend only to "ground floor units" in buildings without elevators. The commenters' position would require reading "ground floor units" as "ground floor *portions of* units." The Act also requires that all premises within covered multifamily dwellings have an accessible route into and through the dwelling. A "covered" townhouse of more than one story would in most cases require an elevator in order to provide an accessible route throughout. This result would make the Act's distinction between buildings with elevators and buildings without elevators meaningless. Beyond this, the House Report (at p. 25) makes it clear that the Act was not intended to require the installation of elevators.

For these reasons the Department continues to believe that townhouses consisting of more than one story are covered only if they have elevators and if there are four or more such townhouses. Accordingly, the definition of "covered multifamily dwellings" in the final rule is unchanged from the proposed rule.

"Dwelling unit" was defined in the proposed rule as "any building, structure or portion thereof, which is occupied as, or designed or intended for occupancy as, a residence by one person or family." 53 FR 45029 (November 7, 1988). A significant number of comments, including comments submitted by Senators Kennedy and Specter and Representative Edwards, were concerned that the phrase "one person or family" would be too restrictive in that individuals with handicaps may require a personal attendant to live with them, or may find it beneficial to live with another individual, who is or is not also handicapped. For example, an individual with a disability may live with an attendant who is not a member of his or her family. Other commenters were concerned that the definition of "dwelling unit" is too similar to the definition of "dwelling" in § 100.20. They found the similarity confusing. In order to accommodate these concerns the definition of "dwelling unit" has been revised substantially in the final rule. The final rule defines "dwelling unit" as "a single unit of residence for a family or one or more persons." The definition in the final rule also contains a more comprehensive list of examples of dwelling units in order to further clarify the types of units that may be covered. Examples of dwelling units include a single family home and an apartment unit within an apartment building. In other types of dwellings (as defined in § 100.20) in which sleeping accommodations are provided but toileting or cooking facilities are shared by occupants of more than one room or portion of the dwelling, rooms in which people sleep are "dwelling units". For example, dormitory rooms and sleeping accommodations intended for occupancy as a residence in shelters for homeless persons are "dwelling units".

"First occupancy" means a building that has never before been used for any purpose. This definition is unchanged from the proposed rule. A number of commenters stated that HUD should state explicitly that substantial rehabilitation is not covered. The Department believes that the definition clearly excludes a substantially rehabilitated building because one could not reasonably argue that such a building "has never before been used for any purpose."

"Ground floor" means any floor of a building with a building entrance on an accessible route. A building may have more than one ground floor. This definition was the subject of considerable public comment. Many commenters interpreted the proposed rule as *requiring* that covered buildings have more than one ground floor. This is not what the Department proposed. Section 100.205(a) requires that covered multifamily dwellings for first occupancy after March 13, 1991, be designed and constructed to have *at least one* building entrance on an accessible route unless it is impractical to do so because of the terrain or unusual characteristics of the site. The regulation does not require that any building have *more* than one ground floor; a covered building with one building entrance on an accessible route (*i.e.*, ground floor) satisfies the requirements of the regulation with regard to accessibility to the building. However, if a covered building in fact has more than one floor with a building entrance on an accessible route, then the rule requires that the units on *each* floor with an accessible building entrance satisfy the Act's accessibility requirements.

Other commenters correctly interpreted the proposed rule as requiring that there be one building entrance on an accessible route but nonetheless argued that *even if* a particular building, because of the terrain, has accessible entrances to more than one floor, the units on only one such floor should be required to meet the Act's accessibility requirements. The Department does not believe that Congress intended to exempt from the Act's accessibility requirements dwelling units that are on a floor of a building that can be entered through a building entrance on an accessible route. If a building does not have an elevator, then all of the units on accessible floors must meet the Act's accessibility requirements.

Definition of "Handicap". The term "handicap" means, with respect to a person, a physical or mental impairment which substantially limits one or more of such person's major life activities; a record of having such an impairment; or being regarded as having such an impairment. However, this term does not include current, illegal use of or addiction to a controlled substance. The term also does not include an individual solely because that individual is a transvestite. Paragraphs (a), (b), (c) and (d) of the definition clarify the key phrases in the definition: "physical or mental impairment"; "major life activities"; "has a record of such an impairment"; and "is regarded as having an impairment".

A substantial number of comments were received on the definition of "handicap" in the proposed rule. They fall generally into two different groups.

One group of commenters, including the National Association of Homebuilders and the National Association of Realtors, requested that paragraphs (a), (b), (c) and (d) of the definition in the proposed rule be deleted. These commenters are concerned that these paragraphs broaden the definition of handicap "far beyond" the intent of Congress as expressed in the plain language of the statute. Moreover, they are concerned that the definition of handicap is so broad that housing providers will be powerless to exclude handicapped persons with a tendency toward antisocial or dangerous behavior.

With the exception of current, illegal use of or an addiction to a controlled substance, the definition of "handicap" in the Act is very similar to the definition of the term "individual with handicaps" in the Rehabilitation Act of 1973. 29 U.S.C. 706. Congress intended that the definition of "handicap" in the Fair Housing Amendments Act be interpreted in a manner that is consistent with regulations interpreting the meaning of the similar provision found in section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794. House Report at 22; 134 Cong. Rec. S10492 (daily ed. August 1, 1988) (statement of Sen. Chafee); 134 Cong. Rec. H4689 (daily ed. June 23, 1988) (statement of Rep. Pelosi); 134 Cong. Rec. H4612 (daily ed. June 22, 1988) (statement of Rep. Schroeder).

Section 504 of the Rehabilitation Act prohibits discrimination against otherwise qualified individuals with handicaps in programs or activities receiving federal financial assistance as well as in federally conducted programs and activities. The Department of Justice's section 504 coordination regulation for federally assisted programs is at 28 CFR Part 41. HUD's section 504 regulation for federally assisted programs is at 24 CFR Part 8. Paragraphs (a), (b), (c) and (d) of the definition of "handicap" closely follow the definitions of these key phrases used in regulations interpreting section 504. In light of the clear legislative history indicating that Congress intended that the definition of "handicap" be fully as broad as that provided by the Rehabilitation Act, the Department does not believe that it would be appropriate to delete paragraphs (a), (b), (c) and (d) from the definition.

Some of the commenters who requested this change appear erroneously to assume that a housing provider must admit any person who has a handicap as defined in the rule. This is not the case. Just because an applicant for housing has a handicap does not preclude a housing provider from lawfully rejecting that particular applicant. For example, alcoholism is considered a "physical or mental impairment" and therefore alcoholics frequently will fall within the definition of "handicap". However, the fact that alcoholism may be a handicap does not mean that housing providers must ignore this condition in determining whether an applicant for housing is qualified. On the contrary, a housing provider may hold an alcoholic to the same standard of performance and behavior (*e.g.*, tenant selection criteria) to which it holds others, even if any unsatisfactory performance or behavior is related to the applicant's alcoholism. In other words, while an alcoholic may not be rejected by a housing provider because of his or her alcoholism, the behaviorial manifestations of the condition may be taken into consideration in determining whether or not he or she is qualified.

Thus, a housing provider may judge handicapped persons on the same basis it judges all other applicants and residents. A housing provider may consider for *all* applicants, including handicapped applicants, such concerns as past rental history, violations of rules and laws, a history of disruptive, abusive, or dangerous behavior. However, a housing provider may not treat handicapped applicants or tenants less favorably than other applicants or tenants. For example, a housing provider may not presume that applicants with handicaps are less likely to be qualified than applicants without handicaps.

Another group of commenters asked HUD to clarify that persons who are infected with the Human Immunodeficiency Virus ("HIV" or "AIDS virus") are understood to be persons with a "handicap" protected by the Act. The legislative history of the Act contains numerous statements that HIV-infected individuals are covered by the Act. *See* House Report at 22, n. 55; 134 Cong. Rec. H4922 (daily ed. June 20, 1988) (statement of Rep. Owens); 134 Cong. Rec. at H4221 (daily ed. June 28, 1988) (statement of Rep. Waxman); 134 Cong. Rec. H4612 (daily ed. June 22, 1988) (statement of Rep. Schroeder); 134 Cong. Rec. H4613 (daily ed. June 22, 1988) (statement of Rep. Coelho); 134 Cong. Rec. H4689 (daily ed. June 23, 1988) (statement of Rep. Pelosi). In addition, the Office of Legal Counsel of the U.S. Department of Justice issued an opinion dated September 17, 1988 concluding that section 504 of the Rehabilitation Act of 1973 protects symptomatic and asymptomatic HIV-infected individuals against discrimination in any covered program or activity on the basis of any actual, past or perceived effect of HIV infection that substantially limits any major life activity, so long as the HIV-infected individual is "otherwise qualified" to participate in the program or activity, as determined under the "otherwise qualified" standard set forth by the U.S. Supreme Court in *School Board of Nassau County v. Arline*, 107 S. Ct. 1123 (1987) (*Arline*). This opinion is significant because, as previously noted, the legislative history of the Fair Housing Amendments Act makes it clear that Congress intended the same definition of the term handicap that applies under section 504 to apply to the Fair Housing Act. In light of these authorities, the Department has added "Human Immunodeficiency Virus infection" to the illustrative list of "physical or mental impairments" in the final rule's definition of handicap.

"Interior" means the spaces, parts, components or elements of an individual dwelling unit. The comments received relative to this definition are discussed in connection with comments received on § 100.203 of the proposed rule relating to modifications of existing premises. The definition of "interior" has not been changed from the proposed rule.

"Premises" means the interior or exterior spaces, parts, components or elements of a building or a dwelling unit, including individual dwelling units and the public and common use areas of a building. The comments received relative to this definition are discussed in connection with the comments received on § 100.203 of the proposed rule relating to modifications of existing premises. The definition has not been changed from the proposed rule.

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whether an applicant for a dwelling is a current illegal abuser of or addict to a controlled substance. The definition of "handicap" in the Fair Housing Amendments Act does not include current, illegal use of or addiction to a controlled substance. *See* House Report at 30. Paragraph (c)(4) was not the subject of substantial comment and is unchanged from the proposed rule.

Paragraph (c)(5) provides that paragraph (c) does not prohibit inquiring whether an applicant has been convicted of the illegal manufacture or distribution of a controlled substance. Section 807(b)(4) of the Fair Housing Act states that nothing in the Act prohibits conduct against a person because such person has been convicted by any court of competent jurisdiction of the illegal manufacture or distribution of a controlled substance. Paragraph (c)(5) was not the subject of substantial comment and is unchanged from the proposed rule.

Paragraph (d) restates new section 804(f)(9) of the Fair Housing Act which provides that nothing in section 804(f) requires that a dwelling be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others. This paragraph was criticized by organizations representing disabled persons because it simply repeats the statutory language and provides no guidance concerning its proper implementation. Furthermore, the placement of the language contained in paragraph (d) was questioned, in that it follows a list of questions that housing providers are permitted to ask to determine the qualifications of applicants. These commenters fear that the absence of any detail beyond the statutory language might suggest that a housing provider need not follow any objective method for determing that an applicant "would constitute a direct threat to the health or safety of other individuals." At the same time, these commenters recognized that the preamble of the proposed rule contained considerable explanation of paragraph (d). 53 FR 45001–02 (November 7, 1988). The preamble discussion was considered by these commenters to be consistent with the intent of the statute. A number of commenters suggested that the preamble language be incorporated in the rule.

On the other hand, organizations representing housing providers are concerned that property owners or managers will not be able to determine whether or not an applicant poses a threat to the safety of others without substantial amounts of information and that they ultimately will be subject to increased liability. They ask that the regulations be revised expressly to permit a property owner or manager to inquire into a prospective tenant's "history of antisocial behavior or tendencies." Alternatively, it was suggested that HUD promulgate a regulation that absolves a property owner or manager of liability for any injury caused by reason of a condition of a person with a handicap.

The Department does not believe that it is necessary or appropriate to incorporate detailed preamble language discussing the Supreme Court decision in *School Board of Nassau County v. Arline*, 107 S Ct. 1123 (1987), into the regulation. This is especially true since the case law in this area continues to develop at a relatively rapid pace. However, the Department wishes to stress that it will interpret and enforce paragraph (d) consistent with the discussion in the preamble of the proposed rule and envolving case law.

The Department also does not believe that it would be appropriate to revise § 100.202 expressly to permit inquiries into "antisocial" behavior or "tendencies." Language such as this might well be seen as creating or permitting a presumption that individuals with handicaps generally pose a greater threat to the health or safety of others than do individuals without handicaps. Such a presumption is unwarranted and would run counter to the intent and purpose of the Act. House Report at 28. Likewise, a regulatory provision stating that housing provides shall not be liable for personal injury or property damages caused by reason of another person's handicap could also be seen as creating a presumption that persons with handicaps are more likely to pose a threat to persons or property that are other persons and would run counter to the intent of the Act, since Congress made no such presumption. For example, the House Committee on the Judiciary stated that it did not "foresee that the tenancy of any individual with handicaps would pose any risk, much less a significant risk, to the health or safety of others by the status of being handicapped * * *." *Id.*

For these reasons, § 100.202 is unchanged from the proposed rule.

Section 100.203 Reasonable modifications of existing premises.

Paragraph (a) implements section 804(f)(3)(A) of the Fair Housing Act, as amended. Under paragraph (a), it is illegal to refuse to permit a tenant with disabilities to make reasonable modifications, at his or her expense, of existing premises if the proposed modifications are necessary for the full enjoyment of the premises. In the case of a rental, the landlord may, where it is reasonable to do so, condition permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted.

Paragraph (a) allows reasonable modifications at the expense of the individual with handicaps to existing "premises". "Premises" is defined in § 100.201 to mean the interior or exterior parts, components or elements of a building or a dwelling unit, including the public and common use areas of a building. Thus, an individual with handicaps would be able, at his or her own expense, to make reasonable accommodations to lobbies, main entrances of apartment buildings, laundry rooms and other common and public use areas necessary to the full enjoyment of the premises. The Department proposed to define the term "premises" to encompass the public and common use areas because it appears that this is what Congress intended. The Act allows reasonable modifications of "existing premises" if necessary to afford the handicapped person full enjoyment of the premises. If the laundry room is not accessible, for example, a person with a mobility impairment will not have "full enjoyment" of the premises. "interior" is defined as the spaces, parts, components or elements of an individual dwelling unit.

Restoration of Modifications to Public and Common Use Areas. The Department specifically invited public comment on the definitions of the terms "premises" and "interior", especially in light of the fact that section 15 of the Fair Housing Amendments Act provides that, in the case of a rental, the landlord may, where it is reasonable to do so, condition permission for a modification on the renter agreeing to restore the *interior* of the premises to the condition that existed before the modification, reasonable wear and tear excepted.

Many of the comments received on this question were in agreement with the Department's definitions of these terms. For example, the American Institute of Architects stated that since the types of modifications made to the public and common use areas of a building's interior are on the order of those made to the exterior of the building, it would not be reasonable for the landlord to require the tenant to restore such

Section 100.202 General prohibitions against discrimination because of handicap.

Section 100.202 contains the general prohibitions against discrimination because of handicap and serves as the analytical foundation for the remaining sections of the subpart. The remaining sections of Subpart D explain in greater detail what conduct is discriminatory. Thus, whenever a person has violated any of the subsequent sections of Subpart D, that person has also violated § 100.202.

Paragraph (a) is unchanged from the proposed rule. It restates the Fair Housing Amendments Act's mandate of nondiscrimination in the sale or rental of dwellings. Under paragraph (a), it is unlawful to discriminate against any person in the sale or rental of, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap of that buyer or renter, a person residing in or intending to reside in that dwelling after it is so sold, rented, or made unavailable, or any person associated with that buyer or renter.

Paragraph (b) is also unchanged from the proposed rule. It restates that Act's ban of discrimination in the terms, conditions, or privileges of the sale or rental of a dwelling. Paragraph (b) makes it unlawful to discriminate against any person in the terms, conditions, or privileges of the sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling because of a handicap of that buyer or renter, a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available, or any person associated with that person.

Land Use and Zoning Rules and Practices. The thrust of the public comments received on the general prohibitions in paragraphs (a) and (b) is that the rule does not address explicitly discriminatory local land use, health and safety, and zoning rules that "eliminate" community housing opportunities for persons with disabilities. These commenters ask that the Department add to the regulation a prohibition on rules and practices which establish unique requirements for housing for persons with disabilities and which create barriers to the development of such housing. These commenters correctly point out that the House Report discusses such matters in considerable detail. Specifically, the House Report states that the prohibition against discrimination against those with handicaps was intended to apply to zoning decisions and practices: "The Act is intended to prohibit the application of special restrictive covenants, and conditional or special use permits that have the effect of limiting the ability of such individuals to live in the residence of their choice in the community." House Report at 24.

The Department does not believe that it would be appropriate to address the issue in these regulations. This concern is heightened since, under section 810(g)(2)(C) of the Fair Housing Act, as amended, if the Secretary determines that a matter involves the legality of any State or local zoning or other land use law or ordinance, the Secretary shall immediately refer the matter to the Attorney General for appropriate action under section 814 of the Fair Housing Act. Since the Secretary has no power to issue a charge of discrimination in matters involving zoning or other land use law, the Department believes that it is inappropriate to address this specific issue in these regulations. However, it should be noted that failing or refusing to provide municipal services for dwellings or providing such services differently because of race, color, religion, sex, handicap, familial status or national origin is a violation of § 100.70(c)(6) of these regulations.

Applicant Selection Inquiries. Paragraph (c) is an adaptation of the "pre-employment inquiries" provision in the section 504 regulations; it prohibits inquiries to determine whether an applicant for a dwelling, a person intending to reside in that dwelling after it is sold, rented or made available, or any person associated with that person has a handicap or to make inquiry as to the nature or severity of a handicap of such person.

Paragraph (c) also states that it does not prohibit five types of inquiries, provided these inquiries are made of all applicants, whether or not they have handicaps. Paragraph (c) resulted in considerable public comment.

Paragraph (c)(1) clarifies that a housing provider may inquire into an applicant's ability to meet the requirements of ownership or tenancy. Commenters generally considered this particular inquiry helpful in providing guidance to both housing providers and housing applicants.

Paragraph (c)(2) states that paragraph (c) does not prohibit inquiry to determine whether an applicant is qualified for a dwelling that is available only to persons with handicaps or to persons with a particular type of handicap. Paragraph (c)(3) provides that paragraph (c) does not prohibit an inquiry to determine whether an applicant for a dwelling is qualified for a priority available to persons with handicaps or to persons with a particular type of handicap. These two inquiries where criticized by organizations representing persons with disabilities, including the Consortium for Citizens with Developmental Disabilities. These commenters fear that such inquiries will be abused by housing providers as a means of impermissibly inquiring about the extent or severity of a disability. Nonetheless, some of these commenters recognized that the ability to make these inquiries often is necessary to determine eligibility for government housing programs; for example, some Federal and State housing is designed for, and occupied by, persons with handicaps. Only persons with handicaps are eligible to live in such dwellings. Beyond this, as the Department explained in the proposed rule, the Fair Housing Amendments Act does not prohibit the exclusion of non-handicapped persons from dwellings. A privately owned unsubsidized housing facility may lawfully restrict occupancy to persons with handicaps. The owner or operator of such a housing facility must therefore be permitted to inquire of applicants to determine whether they have a handicap for the purpose of determining eligibility.

A housing provider may also choose to offer some or all of its units to persons with handicaps on a priority basis and may inquire whether applicants qualify for such a priority. For example, a housing provider may offer accessible units to persons with mobility impairments on a priority basis and may ask applicants whether they have a mobility impairment which would qualify them for such a priority but may not in such circumstances ask applicants whether they have other types of impairments.

After carefully considering the comments received the Department continues to believe that the inquiries permitted by paragraphs (c) (2) and (3) are consistent with the Act and that the benefits of permitting these inquiries outweigh the potential for abuse, because the circumstances in which such inquiries can be made are carefully circumscribed. A dwelling must either be available only to persons with handicaps or to persons with a particular type of handicap or the dwelling must genuinely be available on a priority basis to persons with a handicap or to persons with a particular type of handicap. Otherwise, such an inquiry cannot be made.

Paragraph (c)(4) provides that paragraph (c) does not prohibit inquiring

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modifications to the preexisting condition.

Other commenters argued that public and common use areas should not be excluded from the restoration requirement, suggesting that the interpretation proposed by the Department will have the effect of forcing owners to take a narrow view of what constitutes a reasonable modification of a public or common use area.

After careful consideration, the Department continues to believe that the proposed rule's treatment of these issues is faithful to the statute. As the Department stated in the preamble of the proposed rule, reasonable modifications to public and common use areas will not detract significantly from the public and common use areas modified, and may be of benefit to other persons with and without handicaps.

Some commenters complained that the proposed rule did not discuss how a landlord's responsibilities under § 100.204 to make reasonable accommodations mesh with § 100.203. These commenters note that § 100.204 applies to services, and interpreted the proposed rule as assuming, for example, that if a laundry room is inaccessible, the only option open to the tenant is to pay for physical modifications necessary to make the room accessible. One commenter requested that the Department clarify that if the tenant chooses to ask a friend to do his or her laundry in the laundry room, the landlord must accommodate this situation by waiving any rule that prohibits non-tenants from gaining access to the laundry room. The Department agrees that this is the sort of accommodation required by § 100.204.

"Security Deposits." The final sentence of paragraph (a) of the proposed rule stated that a landlord may not increase for handicapped persons any customarily required security deposit for the purpose of securing payment for modifications. The Department invited public comment on this question as well, 53 FR 45003 (November 7, 1988), and received substantial comments on both sides of this issue.

A number of commenters stated their belief that a prohibition on an increased security deposit for handicapped persons who make modifications at their own expense is required by the Fair Housing Act. They point out that section 804(f)(2) of the Act makes it unlawful to discriminate in the terms, conditions, or privileges of the rental of a dwelling because of handicap and state that such deposits should not be necessary and would create an undue burden on persons with handicaps not intended by the Act.

On the other side of this issue, commenters speaking from the standpoint of housing providers urged the Department to provide that a landlord may require a reasonable additional security deposit to secure a renter's agreement to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted. These commenters point out that such a deposit is particularly necessary in case of the occupant's death, or abandonment of the unit without any notice. The National Association of Homebuilders stated that it is standard practice to require additional security deposits as a condition of a housing provider's granting permission for modifications to be made to a dwelling unit. These commenters argue that deposits are necessary so that all tenants, handicapped and non-handicapped alike, are treated equally and fairly.

Upon further consideration of this question, the Department has come to the view that this is not truly a question relating to a traditional security deposit. Security deposits are generally paid at the time a tenant moves in. A tenant with handicaps may request a landlord's permission to make modifications at any time. For example, a tenant may become disabled during his or her tenancy and then ask for permission to make modifications. At this point the tenant has already paid any customarily required security deposit. Further, the Department agrees that there is no basis for requiring that handicapped persons pay a higher customarily required security deposit than is paid by non-handicapped persons. However, the Department is mindful of the financial exposure of a landlord who may be required to permit a tenant to make extensive modifications to the interior of a dwelling unit that can reasonably be expected to interfere with the landlord's or the next tenant's use and enjoyment of the premises. The Department believes that there are specific instances where it would be reasonable for a landlord to condition permission for making modifications on the tenant paying into an interest bearing escrow account a reasonable amount of money to ensure that funds will be available to pay for those restorations that the tenant is legally required to make at the end of the tenancy. Accordingly, paragraph (a) of § 100.203 has been revised to reflect this view.

The third sentence of paragraph (a) continues to state that the landlord may not increase, for handicapped persons, any customarily required security deposit. A new fourth sentence states that, where it is reasonable to do so, the landlord may negotiate as part of a restoration agreement a provision requiring that the tenant pay into an interest bearing escrow account, over a reasonable time period, a reasonable amount of money not to exceed the cost of restoring the modifications. The interest in any such account shall accrue to the benefit of the tenant.

The language added to paragraph (a) balances the interests of a handicapped person seeking to make modifications to a dwelling unit so that he or she will be able to live in the unit with the interests of the landlord in assuring that all required restorations are made at the end of the tenancy at the expense of the tenant. The new language makes it clear that escrow payments may be negotiated only where it is reasonable to do so. Thus, a landlord may not routinely require that escrow payments be made. Rather, the landlord must make a case-by-case determination based upon such factors as the extent and nature of the proposed modifications, the expected duration of the lease, the credit and tenancy history of the individual tenant, and other information that may bear on the risk to the landlord that the premises will not be restored. It can be expected that generally a tenant making extensive modifications to a unit at his or her own expense will plan to live in that unit for more than a brief period of time. Both the amount and terms of the escrow payment are subject to negotiation between the landlord and the tenant. For example, if the proposed modifications which are subject to restoration are minor and the tenant has a good credit history or otherwise can provide reasonable assurances that he or she will be able to ensure that the restorations are carried out, then it would not be reasonable for the landlord to require any payment. On the other hand, if the tenant wishes to make extensive modifications that must be restored and has only a "fair" credit history, or other factors suggest that the tenant would not be able to ensure that the restorations are carried out, then it might be reasonable for a landlord to require a payment. Of course, the landlord may not require that the total amount to be paid exceed the reasonable cost of restoring the modifications that must be restored at the end of the tenancy. The Department expects that frequently a smaller amount will suffice to protect the interests of the landlord. Furthermore, landlords may not assume that persons with handicaps are less creditworthy

than persons without handicaps. Just because the facts warrant requiring *a payment* does not mean that the landlord may reasonably require that the full restoration costs be paid before the modifications are even made.

If a person with handicaps seeking to make modifications believes that a landlord is unreasonably withholding permission to make the requested modifications or has required an unreasonable escrow payment he or she may file a complaint with HUD.

The Department wishes to stress that the Fair Housing Act does not require a tenant to restore all modifications. For example, as example (2) in paragraph (b) makes clear, if a handicapped tenant seeks a landlord's permission to widen a doorway for a wheelchair to pass, it is unlawful for the landlord to refuse to permit the applicant to make the modification. Further, the landlord may not, in usual circumstances, condition permission for the modification on the applicant paying for the doorway to be narrowed at the end of the lease because a wider doorway will not interfere with the landlord's or the next tenant's use and enjoyment of the premises. However, if a tenant seeks, for example, to lower the kitchen cabinets to a height suitable for a person in a wheelchair, the landlord may condition permission on the tenant agreeing to restore the cabinets to their original height and, if it is reasonable to do so considering the financial resources and credit-worthiness of the tenant, may seek a reasonable escrow deposit. At the end of the lease the landlord may require that the tenant restore the cabinets to their original height unless the next occupant prefers that the cabinets remain where they are. If the next occupant does not wish that the modification be restored then the landlord must promptly return the tenant's escrow deposit, if any, in full. The landlord, in such a situation, may, where it is reasonable to do so, require that the new tenant establish a new interest bearing escrow account.

Comments from housing providers also asked that the rule state that housing providers have an "absolute right" to reject any proposed modifications if they are unreasonable and that the housing provider should have the authority to select or approve the party making the modifications. These commenters point out that prior approval is necessary so that the housing provider can be assured of quality workmanship done in accordance with local building code specifications.

Paragraph (a) makes it plain that the applicant or tenant must seek the landlord's approval before making modifications. A landlord, of course, is entitled to know what the proposed modifications are as well as reasonable assurances from the tenant that any required building permits will be obtained and that the work will be performed in a workmanlike manner. In order to address these concerns the Department has added a new paragraph (b) to § 100.204. It states that a landlord may condition permission for a modification on the renter providing a reasonable description of the proposed modifications as well as reasonable assurances that the work will be performed in a workmanlike manner and that any required building permits will be obtained. The description may be oral or written depending on the extent and nature of the proposed modifications. The Department does not believe it would not be possible, as some commenters suggested, to spell out a detailed approval procedure that would be applicable in all instances. What is reasonable will vary with the extent, location and nature of the modifications a particular tenant wishes to make. Some requested modifications will be simple and the approval process in such instances should be straightforward (e.g., installation of grab bars in a bathroom that already has the requisite blocking). Other requested modifications to the interior of a unit or public or common use area will be more complex. In such instances, the landlord may withhold permission until the tenant has described in reasonable detail the modifications to be made and identified to the landlord a responsible party to perform the work in question. However, since the tenant is paying for the modification, the landlord may not specify that only one particular contractor make the modifications. The modifications may be accomplished by any party reasonably able to complete the work in a workmanlike manner.

Paragraph (c) contains two examples that illustrate the application of paragraph (a). Some commenters felt the examples in paragraph (c) (paragraph (b) of the proposed rule) "raise more questions than they answer." These examples are intended to be illustrative and not exhaustive. The Department continues to believe that the regulation is clearer with these examples than without them. Therefore, they have been retained unchanged from the proposed rule.

Section 100.204 Reasonable accommodations.

Section 100.204 implements section 804(f)(3)(B) of the Fair Housing Act which makes it unlawful to refuse to make reasonable accommodations in rules, policies, practices, or services if necessary to afford a person with handicaps equal opportunity to use and enjoy a dwelling. The concept of "reasonable accommodation" is also used in regulations and case law interpreting section 504 of the Rehabilitation Act of 1973. *See*, 28 CFR 41.53; 24 CFR 8.11 and 8.33; *Southeastern Community College v. Davis*, 442 U.S. 397 (1979); *Alexander v. Choate*, 469 U.S. 287 (1985).

The principal comments received on this section discuss the relationship between §§ 100.204 and 100.203 relating to reasonable modifications of existing premises. These comments were discussed in connection with § 100.203.

Paragraph (a) closely follows the statutory language and is unchanged from the proposed rule. It states that it is unlawful for any person to refuse to make reasonable accommodations in rules, policies, practices or services, when such accommodations may be necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling unit, including public and common use areas. A number of commenters were concerned that this language could be interpreted as requiring that housing providers provide a broad range of services to persons with handicaps that the housing provider does not normally provide as part of its housing. The Department wishes to stress that a housing provider is not required to provide supportive services, *e.g.*, counseling, medical, or social services that fall outside the scope of the services that the housing provider offers to residents. A housing provider is required to make modifications in order to enable a qualified applicant with handicaps to live in the housing, but is not required to offer housing of a fundamentally different nature. The test is whether, with appropriate modifications, the applicant can live in the housing that the housing provider offers; not whether the applicant could benefit from some other type of housing that the housing provider does not offer.

Paragraph (b) illustrates the application of paragraph (a) with two examples of reasonable accommodations. No substantial comments were received on these examples and they remain as they were proposed.

Section 100.205 Design and construction requirements.

Section 100.205 implements section 804(f)(3)(C) of the Fair Housing Act which places accessibility requirements

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on "covered multifamily dwellings" designed and built for first occupancy 30 months after enactment.

The term "covered multifamily dwellings" means buildings consisting of 4 or more dwelling units if the building has one or more elevators, and "ground floor" dwelling units in other buildings consisting of 4 or more dwelling units. The ground floor is any floor of a building with a building entrance on an accessible route. A building may have more than one ground floor. A "building" is a structure, facility or the portion thereof that contains one or more dwelling units.

Unusual Terrain or Site Characteristics. Paragraph (a) of the proposed rule provided that "covered multifamily dwellings" for first occupancy after March 13, 1991 be designed and constructed to have at least one building entrance on an accessible route unless it is impractical to do so because of the terrain or unusual characteristics of the site. Paragraph (a) was the subject of considerable public comment.

Some commenters objected to the portion of paragraph (a) that exempts buildings from having an accessible building entrance where it is impractical to provide such an entrance because of the terrain or unusual characteristics of the site. These commenters argue that the statute contains an "absolute" requirement that "covered multifamily dwellings" for first occupancy after March 13, 1991 be made accessible. They believe that paragraph (a) introduces an exception not found in the Act.

Other commenters did not altogether object to an "impracticality" standard but considered the standard of "impracticality" proposed by the Department to be too broad. These commenters feel that the "impracticality" standard in paragraph (a) allows designers and builders to use their own standards and claim that because it is "impractical" to do so, they need not make their buildings accessible. In the view of these commenters, this "loophole" was not intended by Congress; they suggest that HUD establish a more specific standard. Some commenters stated that, where feasible, grading be made mandatory. Other commenters urged that the "impracticality" exemption accrue to dwellings where the *only* access is stairs which are higher than 10 feet. At this point they argue it is impractical for a ramp to be built.

Representative Barney Frank of Massachusetts submitted a comment stating his belief that the word "impractical" could be more of a loophole than was intended by Congress. Mr. Frank suggested tightening the standard by modifying the word "impractical" with adverbs such as "highly" or "extremely". Mr. Frank also stressed that it ought to be made clear that only unusual physical characteristics of the site would justify the invocation of the tighter standard of impracticality he suggested.

Other commenters argued for a broader standard than the one proposed by the Department. They did not interpret the proposed standard as relating in any way to the economic impact of designing and constructing a building on a particular site to have an accessible building entrance. These commenters argued that the Department should consider the economic impact of requiring at least one building entrance on an accessible route and not only whether access is physically impractical. These commenters noted that if the cost of providing an accessible entrance is too great, the project may become economically infeasible. They pointed out that Congress was sensitive to the impact of the Act's requirements on housing affordability. For example, the Act's accessibility provisions "carefully facilitate the ability of tenants with handicaps to enjoy full use of their homes without imposing unreasonable requirements on homebuilders, landlords and non-handicapped tenants." House Report at 27. These commenters suggest that economic loss beyond a *de minimis* amount is in many cases a viable and fair determinant of the impracticality of providing an accessible entrance.

Congress did not intend to impose an absolute standard that all covered multifamily dwelling units be made accessible without regard to the impracticality of doing so. Even though the statute itself does not contain an impracticality standard the legislative history makes it clear that Congress "was sensitive to the possibility that certain natural terrain may pose unique building problems." House Report at 27. For example, the House Report explicitly recognizes that in some locales it is common to construct housing on stilts because of flooding problems. A requirement that housing on such sites have an accessible entrance on an accessible route may be tantamount to prohibiting the construction of covered multifamily housing on such sites. This is not what Congress intended. The House Report further states that the "Committee does not intend to require that the accessibility requirements of this Act override the need to protect the physical integrity of multifamily housing that may be built on such sites." *Id.*

Further, the Department does not believe that it would be appropriate to constrain designers by adopting a highly specific building accessibility standard, as suggested by some commenters. For example, some commenters suggested that the rule state that, where feasible, grading be mandatory. A developer is required by paragraph (a) to design and construct one building entrance on an accessible route unless it is impractical to do so because of the terrain or unusual characteristics of the site. As a practical matter, it may sometimes be necessary to provide grading for persons in wheelchairs so that the requirements of paragraph (a) will be met and in many cases it will be the least expensive means of doing so. However, in other instances, it may be possible to design and construct an accessible building entrance in some other fashion. Designers are free to use any reasonable design that obtains the required result. The Department does not believe that Congress intended to dictate the method a designer must use to provide an accessible entrance. Innovative designs that are accessible to handicapped persons should be encouraged.

Since the statute itself does not contain an exemption, the Department feels constrained to follow closely the intent of Congress on this issue as expressed in the Act's legislative history. The discussion in the House Report on this issue is of "unique building problems" along the order of examples (1) and (2) in paragraph (b). The impracticality standard in paragraph (a), however, does not go so far as to require that it be "impossible" to design and construct a building entrance on an accessible route, because the Department does not believe that Congress intended that the standard be limited to such extreme instances.

On balance, and after carefully considering the various comments received on this issue, the Department believes that, based upon specific language in the House Report, Congress intended to apply the test the Department proposed for determining when the burdens of providing an accessible entrance are too great. Only when the terrain or unusual site characteristics make it impractical to design and construct an accessible building entrance at a particular site did Congress consider the burdens of providing such an entrance to be unreasonable. Since the standard in paragraph (a) already takes into account the burdens of making a building

accessible, the Department does not believe that it would be faithful to the statute to revise the standard to refer to an open-ended "economic impracticality" standard unrelated to the sorts of unusual site problems Congress expressly considered relevant.

Determining "First Occupancy" After March 13, 1991. A number of commenters stated that while the proposed rule properly limits the Act's design and construction requirements to covered multifamily housing for first occupancy after March 13, 1991, it fails to indicate how it will be determined whether covered multifamily housing is "for first occupancy after March 13, 1991." These commenters are concerned that coverage of the design and construction requirements *must* be determinable at the beginning of planning and development, arguing that it is unreasonable to base this determination on the actual date of first occupancy since this date may be affected by a variety of unexpected and uncontrollable events occurring during the lengthy planning and development process. In order to accommodate these legitimate concerns on the part of the building industry, the Department has added a sentence to paragraph (a). It states that, for purposes of § 100.205, covered multifamily dwellings shall be deemed to be designed and constructed for first occupancy *on or before* March 13, 1991 if they are occupied by that date or if the *last* building permit or renewal thereof for the covered multifamily dwellings is issued by a State, County or local government on or before January 13, 1990. In other words, if a developer obtains a building permit on or before January 13, 1990 (which is not renewed after that date) and completes construction under that permit, the building in question need not comply with the accessibility requirements of § 100.205. Thus, a developer will not be penalized if a strike or Act of God prevents occupancy by a certain time. The date of January 13, 1990 was selected because it is fourteen months before March 13, 1991. Fourteen months represents a reasonable median construction time for multifamily housing projects of all sizes based upon data contained in the "Marshall Valuation Service." The Department considered adopting different construction times for different sized projects but ultimately found this approach cumbersome from an administrative and enforcement standpoint. The Department chose the issuance of a building permit as the appropriate point in the process, since such permits are issued in writing by governmental authorities. Such a standard has the advantage of being clear and objective. In addition, any project that actually achieves first occupancy before March 13, 1991 will be judged to have met this standard even if the last building permit or renewal thereof was issued after January 13, 1990.

Accessibility Guidelines. Paragraph (b) contains three examples that illustrate the application of paragraph (a). Some commenters stated that the examples illustrating the application of paragraph (a) may reduce noncompliance at the extremes but do not satisfactorily indicate what constitutes sufficient compliance in most day-to-day situations. The Department does not believe that it is feasible to publish more specific guidance at this time. However, the Department will endeavor to provide as much additional guidance as possible in the accessibility guidelines HUD plans to develop. Many commenters expressed a desire to have an opportunity to comment on these guidelines. HUD intends to publish these guidelines in the Federal Register for full public comment as soon as they are ready.

The only change made to these three examples is a minor change to example (1). In the proposed rule example (1) related to a developer who planned to construct six townhouses on a site with hilly terrain. Some commenters were confused by the reference to townhouses, in view of the Department's interpretation that four or more townhouses are not covered multifamily dwellings unless the entire unit is on the ground floor or unless the townhouses have an elevator. In order to avoid this confusion, the reference to townhouses has been deleted. Instead, the example refers simply to six units of covered multifamily dwelling units. The purpose of the example is to explicate site impracticality because of hilly terrain.

Example (3), which describes an instance where building accessibility can be achieved only at the cost of a 4.7 percent density loss, was the subject of criticism by builders. They argued that a 4.7 percent density loss may render a project economically infeasible. Even though this may well be the case in some situations, the Department does not believe, in light of the discussion above, that Congress necessarily intended that a reduction of five units in a 105-unit building would be sufficient to exempt that building from the accessibility requirements of the Act. A more stringent standard was intended. (However, this example was not intended to mean that *any* loss of density, no matter how great, would be insufficient to establish site impracticality.)

Paragraph (c) requires that all covered multifamily dwellings for first occupancy after March 13, 1991 with a building entrance on an accessible route satisfy certain accessibility requirements set forth in paragraph (c). Paragraphs (c) (1) and (2) set forth the specific accessibility requirements for covered multifamily dwellings for first occupancy after March 13, 1991 with a building entrance on an accessible route. Many commenters complained that the guidance provided in paragraph (c) is inadequate. Some commenters made highly detailed suggestions that the Department will carefully consider as it develops accessibility guidelines to help builders understand and comply with the specific accessibility requirements of the Fair Housing Act. The guidelines would, of course, not be mandatory. Rather, they would provide technical assistance to persons who must comply with paragraph (c). Until these guidelines are published for public comment, designers and builders may be guided by the requirements of ANSI in meeting the specific accessibility requirements of the Act.

Paragraph (d) provides two examples that illustrate the application of paragraph (c). These examples were not the subject of substantial public comment and are unchanged from the proposed rule.

Paragraph (e) states that compliance with the appropriate requirements of ANSI A117.1 suffices to satisfy the requirements of paragraph (c)(3). Paragraph (e) implements section 804(f)(4) of the Fair Housing Act. This section does not require that designers and builders follow ANSI A117.1 exclusively. However, if designers and builders do follow ANSI A117.1, then they will have satisfied the requirements of paragraph (c)(3). House Report at 27. Paragraph (e) was not the subject of substantial public comment, closely follows the statutory language and is unchanged from the proposed rule.

Paragraphs (f) and (g) implement the provisions of the Fair Housing Amendments Act designed to encourage enforcement, by the States and local governments, of the provisions of the Act regarding adaptability and accessibility requirements for newly constructed multifamily dwellings. 134 Cong. Rec. S10456 (daily ed. August 1, 1988) (Memorandum of Senators Kennedy and Specter Regarding Their Substitute Amendment).

Paragraph (f) states that compliance with a duly enacted law of a State or

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unit of general local government that includes the requirements of paragraphs (a) and (c) satisfies the requirements of paragraphs (a) and (c). Paragraph (f) was not the subject of substantial public comment and is unchanged from the proposed rule.

Paragraph (g)(1) was not the subject of substantial public comment and is unchanged from the proposed rule. It declares that it is the policy of HUD to encourage States and units of local government to include in their existing procedures for the review and approval of newly constructed covered multifamily dwellings, determinations as to whether the design and construction of such dwellings are consistent with paragraphs (a) and (c).

Paragraph (g)(2) states that a State or unit of general local government may review and approve newly constructed multifamily dwellings for the purpose of making determinations as to whether the requirements of paragraphs (a) and (c) are met. Paragraph (g)(2) was not the subject of substantial public comment and is unchanged from the proposed rule.

Determinations of Compliance by State or Local Agencies. Paragraph (h), which is unchanged from the proposed rule, states that determinations of compliance or noncompliance by a State or a unit of general local government under paragraph (f) or (g) are not conclusive in enforcement proceedings under the Fair Housing Act. Some commenters argued that this paragraph should be revised to state that determinations by State and local governments will be given substantial weight. These comments concede that neither the statute nor its legislative history indicates the weight to be given to such determinations. The Department believes it would be inappropriate to accord particular "weight" to determinations made by a wide variety of State and local government agencies involving a new civil rights law, without first having the benefit of some experience reviewing the accuracy of the determinations made by State and local authorities under the Fair Housing Act.

Paragraph (i) states that subpart D does not invalidate or limit any law of a State or political subdivision of a State that requires dwellings to be designed and constructed in a manner that affords handicapped persons greater access than is required by this subpart. Paragraph (i) was not the subject of substantial public comment. It is unchanged from the proposed rule.

Subpart E—Housing for Older Persons

The Fair Housing Act prohibits discrimination because of familial status. However, the Act exempts "housing for older persons" from the prohibitions against discrimination because of familial status. The purpose of the prohibitions against discrimination because of familial status and the housing for older persons exemption is to protect families with children from discrimination in housing, without unfairly limiting housing choices for elderly persons. 134 Cong. Rec. S10465–66 (daily ed. August 1, 1988) (statement of Sen. Karnes). The statutory definition of "housing for older persons" comprises three categories of housing: (1) Housing provided under any State or Federal program that the Secretary of HUD determines is specifically designed and operated to assist elderly persons; (2) housing intended for, and solely occupied by, persons 62 years of age or older; and (3) housing intended for, and solely occupied by, at least one person 55 years of age or older per unit, provided that various criteria are met.

Mobile Home Parks. The Department received thousands of comments relating to the housing for older persons exemption. A significant portion of these comments came from people who live in mobile home parks which are currently restricted to adults. These commenters point out that mobile home park living is unique. Mobile home park residents typically own their own homes but rent the space. Frequently, there is relatively little space between homes. Many of these commenters state that they prefer to live in an all-adult atmosphere and that if children are admitted there will in most cases be no place for them to play. Furthermore, many commenters made it plain that they do not want or need special services or facilities. Rather, they want mobile home parks to provide an environment where they can be with others of their age group, while at the same time remaining independent and self-sufficient.

Some commenters asked that mobile home parks be exempted outright from the Fair Housing Act. Mobile home parks are covered by the Fair Housing Act. The Fair Housing Act makes it unlawful to refuse to sell or rent a "dwelling" because of race, color, religion, sex, handicap, familial status, or national origin. The statutory definition of "dwelling" includes vacant land which is offered for sale or lease for the construction or location thereon of a structure. In addition, the legislative history of the Fair Housing Amendments Act indicates that Congress intended that mobile home parks would be covered by the Act, and specifically by the familial status provisions. *See* 134 Cong. Rec. S10551 (daily ed. Aug. 2, 1988) (colloquy between Sens. Wilson and Specter). Thus, the Department has no basis for exempting mobile home parks from the prohibition of discrimination against families with children.

Other commenters asked HUD to create an additional exemption for "over 40" or for "all-adult" mobile home parks. There is nothing in the Fair Housing Amendments Act or its legislative history to indicate that Congress intended that mobile home parks be afforded a housing for older persons exemption that is broader than the exemption that applies to other types of housing (*e.g.*, apartments and condominiums). To the contrary, the legislative history indicates that "mobile home parks ar eligible for the same exemptions as are other communities under the 'housing for older persons' provisions * * *" of the Act. *Id.* Therefore, mobile home parks are subject to the same rules that apply to other types of housing. More specific comments received on this subpart will be discussed in connection with the exemption for "55 or over" housing.

"Dual Purpose Housing Facilities." A number of commenters raised the question of whether it is permissible to operate a "dual purpose" housing facility. In a "dual purpose" housing facility specified units or sections would be designated for older persons and other units or sections would be open to everyone. For example, one commenter representing the intereats of mobile home park owners suggested that regulations be promulgated to permit the operation of "dual purpose" properties, so that certain sections or units are not restricted to persons of a certain age and others are designated for housing for older persons. This commenter stated that the proposed rule did not address this question. However, this issue was addressed in the proposed rule. Section 100.70(c)(5) of the proposed rule (53 FR 45025, November 7, 1988) stated that it is unlawful to assign "any person to a particular section of a community, neighborhood or development or to a particular floor of a building because of * * * familial status * * *." This same prohibition appears as § 100.70(c)(4) of the final rule. As the Department explained in connection with public comments received on subpart A, the legislative history of the Fair Housing Act and the development of fair housing law after the protections of the Fair Housing Act were extended in 1974 to prohibit discrimination because of sex support the position that persons with handicaps and families with children are entitled to the same protections as other classes of persons. For example, "dual housing" facilities segregated by race, color or religion clearly would violate the Fair Housing Act. Similarly, the Department believes that it is unlawful for a housing facility to segregate because of familial status.

Section 100.300 Purpose.

Section 100.300 explains that the purpose of subpart E is to effectuate the housing for older persons exemption in the Fair Housing Amendments Act. This section was not the subject of public comment and is unchanged from the proposed rule.

Section 100.301 Housing for Older Persons Exemption.

Section 100.301 provides the analytical framework for subpart E. Paragraph (a) implements the second sentence of section 807(b)(1) of the Fair Housing Act, as amended. It states that the prohibitions against discrimination because of familial status in this part do not apply to housing which satisfies the requirements of §§ 100.302 (*"State and Federal Elderly Housing Programs"*), 100.303 (*"62 or Over Housing"*), or 100.304 (*"55 or Over Housing"*). Paragraph (a) was not the subject of public comment and is unchanged from the proposed rule.

Paragraph (b) states that nothing in this part limits the applicability of any reasonable local, State, or Federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling. Paragraph (b) implements the first sentence of section 807(b)(1) of the Fair Housing Act. Many jurisdictions limit the number of occupants per unit based on a minimum number of square feet in the unit or the sleeping areas of the unit; HUD also issues occupancy guidelines in its assisted housing programs. Reasonable limitations do not violate the Fair Housing Act as long as they apply equally to all occupants. A substantial number of comments were received asking that the Department adopt occupancy restrictions that housing providers can apply in jurisdictions that do not have governmentally-adopted occupancy restrictions, and in jurisdictions where the governmentally-adopted restrictions are tantamount to no restrictions. There comments are discussed in the preamble discussion relating to Subpart A.

Section 100.302 State and Federal Elderly Housing Programs.

Section 100.302 implements section 807(b)(2)(a) of the Fair Housing Act. Section 100.302 exempts housing provided under any Federal or State program that the Secretary determines is specifically designed and operated to assist elderly persons, as defined in the State or Federal program from the prohibitions against discrimination because of familial status in this part. Section 100.302 was not the subject of substantial public comment and is unchanged from the proposed rule. It should be noted that the eligibility requirements for housing for elderly persons in HUD-assisted and insured programs differ from the requirements in §§ 100.303 and 100.304. State or Federal definitions are not superseded by those established in this Part for other housing.

Section 100.303 62 or Over Housing.

Section 100.303 implements § 807(f)(2)(B) of the Act. It exempts from the prohibitions against discrimination because of familial status housing intended for, and solely occupied by, persons 62 years of age or older.

Transition Provision. Paragraph (a)(1) contains a transition provision to ensure that the interests of current residents of housing that excludes children will not be unduly disturbed by the Fair Housing Act. 134 Cong. Rec. S10456 (daily ed. August 1, 1988) (Memorandum of Sens. Kennedy and Specter Regarding Their Substitute Amendment). It provides that housing satisfies the requirements of § 103.303 even though there were persons residing in such housing on September 13, 1988 who are under 62 years or age, *Provided* That all new occupants thereafter are persons 62 years of age or older.

Section 6(d) of the Fair Housing Amendments Act provides that housing shall not fail to meet the requirements for housing for older persons by reason of "persons residing in such housing *as of the date of enactment of this Act* [*i.e.*, September 13, 1988]" who do not meet the age requirements of the housing for older persons exemption, provided that all new occupants meet the age requirements of the housing for older persons exemption. Section 13(a) of the Act provides that "[t]his Act and the Amendments made by this Act shall take effect on the 180th day beginning after the date of enactment of this Act." The date described in section 13(a) is March 12, 1989. Several commenters questioned whether the appropriate date for the transition provision in § 100.303(a)(1) is September 13, 1988 or March 12, 1989.

In the preamble of the proposed rule the Department explained that if section 6(d) of the Act is applied literally, then housing providers, in order to avail themselves of this transition provision, had to begin filling units in accordance with the age requirements of the housing for older persons exemption on September 13, 1988, which is before the effective date of the Act. The proposed rule adopted this interpretation, but in view of the consequences of such a determination, invited public comment on the question. Comments were received on both sides of the issue.

One group of commenters argued that the transition rule should become effective on March 12, 1989 instead of September 13, 1988 as proposed by the Department. Some of these commenters conceded that the proposed rule followed the plain meaning of the statute, but argued that this is a case where adherence to the statute's plain language will frustrate Congress' intent to provide a workable transition rule that ensures that the interests of current residents of housing that excludes children will not be unduly disturbed by passage of the bill. 134 Cong. Rec. S10456 (daily ed. August 1, 1988) (Memorandum of Sens. Kennedy and Specter Regarding Their Substitute Amendment). These commenters also stated that a March 12, 1989 transition date would be fairer.

A different group of commenters agreed with the Department's interpretation of the transition provision that appeared in the proposed rule as consistent with the plain meaning of the Act and Congressional intent. These commenters agreed with the Department's statement in the preamble of the proposed rule that the general language in section 13(a) was not intended to render the more specific language in section 6(d) a nullity. Moreover, under the interpretation of the Act in the proposed rule there is no inconsistency between sections 6(d) and 13(a) of the Fair Housing Act. The Act will take effect on March 12, 1989 and, by its terms, the housing for older persons exemption will be satisfied even though, on September 13, 1988, there were persons in the housing facility who did not meet the age requirements, provided that all new occupants after September 13, 1988 meet the age requirements. Some commenters added that under fundamental principles of statutory construction the more specific language of the Act prevails over more general language covering the same subject. *See e.g., Ginsberg & Sons. v.*

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Popkin, 285 U.S. 204, 208 (1932) ("General language of a statutory provision, although broad enough to include it, will not be held to apply to a matter specifically dealt with in another part of the same enactment."). Therefore, these commenters concluded that the more general language in section 13(a) describing the effective date of the Act as a whole should not be interpreted to delete the specific language in section 6(d) defining the appropriate date for the transition provision.

After carefully considering the comments received on this question, the Department has determined not to modify its interpretation of the transition provision that was included in the proposed rule because it appears that this is what Congress intended. The transition provision in section 805(b)(3) of the statute relating to persons residing in a housing facility who do not meet the age restrictions for housing for older persons is expressly limited to "persons residing in such housing as of the date of enactment of this Act." The same date (September 13, 1988) is, for the same reasons, referenced in §100.304(d)(1) ("*55 or Over Housing*").

In addition, some commenters proposed that the rule state that a mobile home park may change its age requirements to either family, 55 or over or 62 or over, at any time—arguing that such a provision would be consistent with the legislative intent of the Act to stop discrimination against families with children but to allow for distinct housing opportunities for older persons. As previously explained, the Department sees no legal basis for providing special treatment or exceptions for mobile home parks in light of the legislative history to the contrary. Furthermore, the transition provision in section 807(b)(3)(A) makes specific reference to the date of enactment. In light of this temporal limitation in the statute the Department does not believe it would be faithful to the statute to create in this rule a procedure permitting a housing provider to change its age requirements at any time in order to exclude families with children.

A related issue raised by some commenters is the relationship between the Act and various State laws that regulate existing relationships between landlords and tenants. For example, under the California Mobilehome Residency Law, a rule or regulation of a mobile home park may be amended at any time with the consent of a homeowner, or without his or her consent upon written notice to him or her of not less than six months. California Civil Code § 798.25 (1982 & Supp. 1988). These commenters pointed out that this and other notice requirements made it very difficult, and in some cases, impossible for mobile home park owners to avail themselves of the transition provision in section 807(b)(3)(A) of the Act. On October 21, 1988 the General Counsel of HUD, J. Michael Dorsey, issued a legal opinion on this question. In that opinion, Mr. Dorsey concludes that the Fair Housing Act does not preempt or supersede § 798.25 of the California Civil Code since there is no language in the Fair Housing Act, as amended, or its legislative history to support a conclusion that the Act was intended to invalidate or limit any State law, unless that State law requires or permits a discriminatory housing practice. 42 U.S.C. 3616 (as redesignated by the Act). Section 798.25 of the California Civil Code neither requires nor permits a discriminatory housing practice; it simply sets forth a procedure that a mobile home park must follow in order to change a rule or regulation. In addition, the comments submitted by Senators Kennedy and Specter and Representative Don Edwards state as follows:

> Since enactment of the 1986 Amendments to the Fair Housing Act, many mobile home parks have changed their status from an eighteen and older "adult" park, which is allowed under existing California law, but prohibited by the Fair Housing Amendments Act to a "housing for older persons" park in order to qualify for an exemption under the Act. Many of these parks have claimed that the Act preempts California law, and thus six months' notice of a change in policy is not required. This is an incorrect interpretation of the Act. It was not the intent of Congress to preempt this notice requirement, and the regulations should so specify. (Footnotes omitted.)

Paragraph (a)(2) states that housing satisfies the requirements of §100.303 even though there are unoccupied units (at any time), provided that such units are reserved for occupancy by persons 62 years of age or over. Paragraph (a)(2) was not the subject of substantial comment and is unchanged from the proposed rule.

A new paragraph (a)(3) has been added to the final rule. It states that housing satisfies the requirements of § 100.303 even though there are units occupied by employees of the housing (and their family members residing in the same unit) who are under 62 years of age provided they perform substantial duties directly related to the management or maintenance of the housing. This paragraph was added by the Department in recognition of the fact that it is common for a manager of a housing facility or maintenance worker to reside in one of the units. Frequently, such arrangements benefit the residents of the housing facility. The Department does not believe that Congress intended for a housing owner to lose its "62 or over" exemption simply because the manager of the facility or a maintenance worker resides there. However, the Department wishes to stress that any employees who live at the housing facility must perform substantial duties directly related to the management or maintenance of the housing in question. For example, if the employee works primarily at a different housing facility, then that employee does not satisfy the requirements of paragraph (b)(3) and the housing facility where that employee lives will not qualify for the "62 or over" exemption.

Paragraph (b) contains two examples that illustrate the application of paragraph (a). These examples were not the subject of substantial comment and are unchanged from the proposed rule.

Section 100.304 55 or Over Housing.

Section 100.304 implements section 807(b)(2)(C) of the Fair Housing Act, which exempts housing intended and operated for occupancy by at least one person 55 years of age or over per unit that satisfy certain criteria. This section of the proposed rule was the subject of many public comments. As an initial matter, a number of commenters asked that the Department clarify the meaning of the phrase "housing intended and operated for occupancy *by at least one person* 55 years of age or older, per unit * * *" in paragraph (a).

Specifically, these commenters asked that HUD address the issue of the age of any other person occupying the unit along with a person 55 years of age or older per unit. A housing provider may use any non-discriminatory method of qualifying for the exemption that comports with applicable State and local laws. Since the Fair Housing Amendments Act does not prohibit discrimination because of age, nothing in the Act prohibits a housing provider seeking to qualify for the exemption for "55 or over" housing from setting age restrictions that are *more* stringent than those set forth in the Act. Thus, a housing provider *may*, for example, require that *all* residents be 55 years of age or older, provided that such a rule is consistent with applicable State and local laws. The other comments on § 100.304 fall within four areas.

First, some commenters stated that § 100.304(c)(1) should state that all units, upon initial occupancy, must be occupied by at least one person 55 years of age or older. Under the Act, the exemption for housing for persons 55 years of age or older requires, among other things, that 80 percent of the dwellings have at least one resident who is 55 years of age or older *and* that the housing complex adhere to policies demonstrating an intent to provide housing to persons of that age group. Section 807(b)(2)(C). The Children's Defense Fund and other commenters state that Congress' purpose in permitting up to 20 percent of the units to be occupied solely by persons under the age of 55 was to prevent disruption of the lives of surviving spouses and cohabitants under age 55, when the over 55 member of a household dies or otherwise leaves the unit. *See* 134 Cong. Rec. H 6498 (daily ed. August 8, 1988) (statement of Representative Edwards); House Report at 31. Specifically, these commenters argue that the "55 or over" exemption was not meant to permit the owner of housing for older persons to "set aside" 20 percent of its units for *incoming* households (as opposed to surviving spouses or companions). These commenters feel that such a "set aside" is inconsistent with the exemption's requirement that the owner or manager demonstrate an intent to provide housing for persons 55 years of age or older.

These commenters correctly point out that statements in the legislative history discuss the need to permit up to 20 percent of the units to be occupied by persons all of whom are under 55 years old in 55 or over housing in order to accommodate persons such as surviving spouses under the age of 55 and nurses and other personnel to care for the elderly 134 Cong. Rec. H 6498 (daily ed. August 8, 1988) (statement of Representative Edwards); House Report at 31. However, the Department does not believe that the examples that appear in the legislative history were intended to be exhaustive. Particularly, the Department is not of the view that these units for persons under 55 years of age cannot be occupied by *incoming* households (as opposed to surviving spouses or companions). Indeed, some incoming households may be persons under 55 related in some way to residents who are over 55 years old. For example, an elderly owner of a condominium might die and leave the condominum to a relative who is under 55 years old. If the 20 percent of the units available to persons under 55 years old were not open to incoming households then the recipient of the legacy would be in the anomalous situation of not being able to live in a condominium he or she owns. Further, the Department does not believe that the proposed rule can fairly be characterized as establishing a 20 percent "set-aside" for persons under 55 years of age. In order to be assured of preserving the exemption, an owner of "55 or over" housing will not, as a practical matter, be able to sell or rent a full 20 percent of the units to incoming persons, all of whom are under 55 years of age, because if the owner does so he or she will risk losing the exemption if some of the over-55 occupants die with surviving spouses who are under 55 years old. In this regard, a number of commenters expressed concern about the last sentence of example 1A in paragraph (e). This sentence indicates that a housing provider could rent a unit to persons (John and Mary in the example) all of whom are under 55 years old even if doing so would reduce the percentage of units occupied by at least one person 55 years of age or older to just a fraction above 80 percent. Although the housing provider in fact could rent to John and Mary without losing the "55 or over" exemption the Department agrees that doing so is not advisable under the circumstances described in the example. Since the owner would be just a fraction above the 80 percent minimum required to maintain the "55 or over" exemption, renting to John and Mary could lead to the owner losing the exemption if some of the over-55 occupants die with surviving spouses who are under 55. In order to avoid any confusion, therefore, the last sentence of example 1A in paragraph (e) of the proposed rule has been deleted in the final rule.

Beyond this, the owner must take care to publish and adhere to policies and procedures which demonstrate an intent to provide housing for persons 55 years of age or older. For example, this requirement would preclude an owner or manager from marketing 80 percent of the units for persons 55 years of age or older and marketing the remaining 20 percent in a radically different way (*e.g.*, young adults). The policies and procedures for the housing facility *as a whole* must demonstrate an intent to provide housing for persons 55 years of age or older. "In essence, this means that the housing in question must in its marketing to the public and in its internal operations, hold itself out as housing for persons aged 55 or older." 134 Cong. Rec. S10456 (Memorandum of Senators Kennedy and Specter Regarding Their Substitute Amendment). Accordingly, the Department has determined not to revise paragraph (d)(2).

The second major issue relating to 55 or over housing concerns paragraph (c)(1), which requires that at least 80% of the units in the housing facility be occupied by at least one person 55 years of age or older unit *except that* a newly constructed housing facility for first occupancy after March 12, 1989 need not comply with paragraph (c)(1) of this section until 25% of the units in the facility are occupied. The exception for partially occupied newly constructed housing facilities was proposed by HUD to deal with the practical problem of filling units in a new and unoccupied housing facility in a reasonable manner, consistent with the "55 or over" exemption. For example, it would be unreasonable for a large newly constructed housing facility that intends to qualify for the exemption to lose its right to claim the exemption simply because the first unit happens to be filled with persons all of whom are under 55 years of age. However, once a certain percentage of units has been filled the housing facility can reasonably be expected to comply with the percentage requirement in paragraph (c)(1). Thus, the Department proposed to require that a housing facility comply with the 80% requirement in paragraph (c)(1) once 25% of the units in the housing facility have been filled and invited comment on the question of whether the 25% point is too high or too low.

The National Association of Homebuilders, among other commenters, felt this percentage was too low to make a meaningful assessment of a particular housing facility. The National Multi Housing Council argued that a building should be eligible for the "55 and Over" exemption during initial occupancy so long as not more than 20 percent of the total units are occupied by non-qualifying residents. The Council argues that marketing and market conditions will vary widely throughout the country and suggest that it is unnecessary for HUD to attempt to fix a universal demarcation point on this subject. The Council proposes that the final rule permit an owner to sell or rent the first 20 percent of the units to non-qualifying occupants, if he or she wishes.

On the other hand, the Children's Defense Fund and the Leadership Conference on Civil Rights, among other commenters, objected to paragraph (c)(1) since the 25 percent point referenced in the proposed regulation is not contained in the Act or its legislative history. These commenters further argue that this 25 percent point of reference be deleted because it stems from what they

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regard as an incorrect interpretation of the 55 or over exemption. In other words, if the 20 percent of the units for non-qualifying households were restricted to surviving spouses, nurses and companions there would be no need for the 25 percent point of reference for initial occupancy.

Since the Department has not adopted the narrow interpretation of the 20 percent limitation urged by some commenters, the Department continues to believe that the regulation must contain some point of reference so that everyone concerned will know how to calculate whether a housing facility has complied with the 80 percent requirement during initial occupancy. However, the Department does not believe it would be consistent with the intent of the statute to permit an owner or manager seeking to qualify for the "55 or Over" exemption to sell or rent the first 20 percent of the units to persons all of whom are under 55 years of age. Filling so many units with non-qualifying persons might create an impression that the housing is not intended for older persons. Further, the owner would not have any leeway to provide for units occupied by under 55 surviving spouses and nurses or companions. For these reasons, the Department has retained paragraph (c)(1) as it was proposed.

In addition, as in § 100.303(a)(3), a new paragraph (d)(3) has been added to § 100.304 of the final rule. It states that housing satisfies the requirements of this section even though there are units occupied by employees of the housing (and family members residing in the same unit) who are under 55 years of age provided they perform substantial duties directly related to the management or maintenance of the housing. Thus, as in § 100.303, units occupied by employees of the housing who do not meet the age threshold are not considered in determining a project's eligibility as housing for older persons.

"Significant Facilities and Services". Third, the Department received a great many comments asking for clarification of the phrase "significant facilities and services designed to meet the physical or social needs of older persons." A large number of commenters viewed the definition in proposed paragraph (b)(1) as requiring facilities and services on the order of what one might expect to find in a facility for severely disabled elderly persons who are not able to care for themselves. Other commenters want to qualify for the "55 or Over" exemption and want to know precisely what services and facilities must be provided in order to qualify for the exemption.

Paragraph (b)(1) of the proposed rule stated that "significant facilities and services specifically designed to meet the physical or social needs of older persons" include an accessible physical environment, congregate dining facilities, social and recreational programs, emergency and preventive health care or programs, continuing education, welfare, information and counseling, recreational, homemaker, outside maintenance and referral services, transportation to facilitate access to social services, and services designed to encourage and assist residents to use the services and facilities available to them. The list of significant facilities and services designed to meet the physical or social needs of older persons in the proposed rule is drawn from section 202(f) of the Housing Act of 1959, 12 U.S.C. § 1701q, listing examples of facilities and services for older persons. The House Report (at p. 32) relies heavily upon the listing in section 202(f) of the Housing Act of 1959 in its discussion of such facilities. In addition, the proposed rule made it clear that the housing facility need not have all of these features to qualify for the exemption.

Based upon the reaction hundreds of commenters had to the proposed definition of "significant facilities and services designed to meet the physical or social needs of older persons" it appears that the presence early on in the definition of "congregate dining facilities" and an "accessible physical environment" may have created an impression that only housing for older persons who are not capable of living independently would satisfy the requirements of paragraph (b)(1). The Department wishes to stress that a housing facility may have significant facilities and services designed to meet the physical *or* social needs of older persons and still provide housing for active older persons who live very independently. A housing facility, for example, need *not* necessarily have congregate dining facilities or an accessible physical environment in order to qualify. In fact, many of the facilities and services on the list can readily be associated with active older persons. These include social and recreational programs, preventive health care, information and counseling, recreational services, and transportation to facilitate access to social services. Moreover, the list of services on this list was not intended to be exclusive. As a result of this reaction, the Department has reordered the list of services and facilities in the final rule. In addition, "welfare" has been deleted from the list because it appears only to have relevance in the context of governmental programs for elderly persons which are covered by § 100.301.

The facilities and services designed to meet the physical or social needs of older persons must be "significant" in order to satisfy paragraph (b)(1). It is not possible for the Department to define precisely what services and facilities must be present before they are considered "significant." The services and facilities will necessarily vary based on the geographic location and the needs of the residents. However, it is clear, for example, that the installation of a ramp at the front entrance of a housing facility would not constitute a "significant" facility designed to meet the physical needs of older persons. Similarly, the provision of minor amenities—such as putting a couch in a laundry room and labeling it a recreation center—would not constitute a "significant" facility designed to meet the social needs of older persons. House Report at 32.

"Important Housing Opportunities for Older Persons". Some commenters suggested that the Department establish a "precertification" procedure which would enable housing providers to seek HUD certification that a housing facility has "significant facilities and services designed to meet the physical or social needs of older persons" or that the housing facility satisfies the requirements of paragraph (b)(2). One commenter representing the interests of mobile home park owners argued that such a procedure would prevent many lawsuits and "frivolous" administrative complaints of discrimination from being filed. The Department does not believe at this early stage of the enforcement of the Fair Housing Amendments Act that there is a reasonable basis to conclude that many "frivolous" complaints will be filed unless a "pre-certification" procedure is established. Further, the Department does not believe that it has sufficient resources to support such a procedure. However, if experience with enforcement of the exemption for "55 or over" housing shows that such a procedure would be cost-effective the Department will consider adding a "pre-certification" procedure in the future.

The fourth area of major public comment concerns paragraph (b)(2) of the proposed rule. A housing facility may qualify for the "55 or over" exemption even if it does not satisfy the requirements of paragraph (b)(1). Under paragraph (b)(2), a housing facility that does not provide significant facilities

and services specifically designed to meet the physical or social needs of older persons may nonetheless qualify for the "55 or over" exemption. Such a housing facility must demonstrate that it is not practicable for it to provide significant facilities and services designed to meet the physical or social needs of older persons, and must also demonstrate that the housing facility is necessary to provide important housing opportunities for older persons.

The proposed rule contained eight factors, among others, that the Department proposed to consider in determining whether a housing facility satisfies the requirements of paragraph (b)(2). Paragraph (b)(2) was criticized by many commenters for not being sufficiently precise. These commenters state that listing eight factors is not sufficient, especially since the proposed rule did not state how many (or how few) of the factors must be fulfilled in order to obtain a waiver of the requirement of providing significant services and facilities.

Further, some commenters cited legislative history which they believe is helpful in construing the exception. Senator Kennedy stated that the exception was intended "to be narrowly used only when it can be demonstrated that the costs of providing the facilities and services would result in depriving low- and moderate-income persons of needed and desired housing. Independent and objective evidence must be provided to establish impracticability." 134 Cong. Rec. S10549 (daily ed. August 2, 1988) (statement of Sen. Kennedy). Representative Edwards explained that § 807(b)(2)(C)(i) was "not intended to provide a broad exemption * * *." 134 Cong. Rec. H6490 (daily ed. August 8, 1988) (statement of Representative Edwards). Mr. Edwards went on to explain the impracticability test as follows:

> The fact that the facilities and services are expensive to provide is not alone sufficient to meet the standard of impracticability. This standard cannot be satisfied only by estimates of increased costs, business inefficiency or loss of profit. Independent and objective evidence must be provided to establish impracticability. Mere opinion that the provision of such facilities and services is impracticable is not sufficient.

Id.

With regard to the requirement that the housing qualify as an "important housing opportunity for older persons" Representative Edwards stated that it must be shown that "[a]ffordable housing for older persons of low or moderate incomes must not be otherwise available in the community." *Id.*

The Department agrees that additional guidance is needed and the Department has been guided by this legislative history in revising paragraph (b)(2) to provide for a somewhat more precise definition of this exception. The first sentence of paragraph (b)(2), which mirrors the statute, is unchanged from the proposed rule. The following sentence explicates this statutory test in a manner that is consistent with the legislative history regarding this exception. It states that an owner or manager, in order to satisfy the requirements of paragraph (b)(2), must demonstrate through credible and objective evidence that the provision of significant facilities and services designed to meet the physical or social needs of older persons would result in depriving older persons in the relevant geographic area of needed and desired housing. The Department believes that the revised standard is both clearer and consistent with the intent of Congress.

The eight factors in the proposed rule have been reduced to seven factors in the final rule. Specifically, the first and second factors that appeared in the proposed rule have been consolidated and clarified in the final rule. The seven relevant factors in the final rule are as follows:

(i) Whether the owner or manager of the housing facility has endeavored to provide significant facilities and services designed to meet the physical or social needs of older persons either by the owner or some other entity. Demonstrating that such services and facilities are more expensive to provide is not alone sufficient to demonstrate that the provision of such services is not practicable. The preceding sentence relating to the cost of providing significant services and facilities is based on the legislative history. *See* 134 Cong. Rec. H6490 (daily ed. August 8, 1988) (statement of Representative Edwards) ("The fact that the facilities and service [sic] are expensive to provide is not alone sufficient to meet the standard of impracticability.")

(ii) The amount of rent charged, if the dwellings are offered for rent. The price of the dwellings, if they are offered for sale.

(iii) The income range of the residents of the housing facility.

(iv) The demand for housing for older persons in the relevant geographic area.

(v) The range of housing choices for older persons within the relevant geographic area.

(vi) The availability of other similarly priced housing for older persons in the relevant geographic area. If similarly priced housing for older persons with significant facilities and services is reasonably available in the relevant geographic area, then the housing facility does not meet the requirements of paragraph (b)(2). The second sentence is new and has been added to clarify the appropriate application of this factor.

(vii) The vacancy rate of the housing facility.

Subpart F—Interference, Coercion or Intimidation

Section 100.400 Prohibited interference, coercion or intimidation.

Subpart F provides the interpretation of the Department as to the conduct which constitutes a discriminatory housing practice under section 818 of the Fair Housing Act.

Section 100.400(b) states that it is unlawful to coerce, intimidate, threaten or interfere with any person in the exercise or enjoyment of, or on account of that person having exercised or enjoyed, or on account of that person having aided or encouraged any person in the exercise or enjoyment of, any right granted or protected by Part 100. Such conduct can also involve harassment of persons because of race, color, religion, sex, handicap, familial status, or national origin.

The illustrations in this section also indicate that a broad range of activities can constitute a discriminatory housing practice. Threatening or intimidating actions include acts against the possessions of persons, such as damage to automobiles or vandalism, which limit a person's ability to have full enjoyment of a dwelling. In addition, the protections against discrimination reach any person, including persons selling or renting dwellings and persons engaged in activities promoting fair housing. Further, persons who are not involved in any aspect of the sale or rental of a dwelling are nonetheless prohibited from engaging in conduct to coerce, intimidate, threaten or interfere with persons in connection with protected activities, or from retaliating against any person involved in any way in a proceeding under the Fair Housing Act.

Part 103—Fair Housing Complaint Processing

Enforcement responsibility within HUD

Generally, the proposed regulations placed the responsibility for the reasonable cause determination and the prosecutorial functions with the General Counsel, while retaining the investigation and conciliation functions with the Assistant Secretary for Fair Housing and Equal Opportunity.

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Several commenters urged that the Department modify the rule to leave all aspects of Fair Housing enforcement responsibility with the Assistant Secretary for Fair Housing and Equal Opportunity. Among other arguments, the experience of the Assistant Secretary in administering the several civil rights-related responsibilities of HUD was cited—particularly the twenty years of experience in administering the Fair Housing Act itself. In addition, commenters pointed out that the Civil Rights Act of 1968 provided for the creation of a new HUD assistant secretary position—clearly intended to serve as the lead official for civil rights responsibilities of the Department.

The Department agrees with the commenters that full utilization of the Assistant Secretary's experience must be assured, and that the original Fair Housing Act indeed intended that there be appointed an assistant secretary specializing in civil rights concerns. Had the proposed rule suggested removal of the responsibilities of the Assistant Secretary for Fair Housing and Equal Opportunity and the awarding of those responsibilities to the General Counsel, the above-summarized arguments would be well-taken. No such proposal has been made, however. Under the enforcement scheme set out in the proposed rule, the responsibilities of the Assistant Secretary as they relate to Fair Housing enforcement have been retained. The Assistant Secretary continues to have full responsibility for complaint intake, investigations, conciliations and for all related communications with the parties concerning their procedural rights and obligations. Quite clearly, given the greatly increased enforcement authority provided by the Fair Housing Amendments Act and the addition of important newly protected classes, the responsibilities of the Assistant Secretary have been augmented greatly.

It proves too much, however, to argue that the creation of a new assistant secretary's position in the 1988 Act somehow implies a duty in the Secretary to delegate subsequently enacted authority to that single officer. First, we note that the 1988 statute creating the new assistant secretary did not provide for administration or judicial enforcement of the Act, but only for the investigation and attempted conciliation of complaints. More importantly, both the 1988 Act and the 1988 Amendments Act refer, in *all* their substantive provisions, to responsibilities of the *Secretary* of Housing and Urban Development. Nothing in either Act purports to require the Secretary to delegate this responsibility to any particular officer or officers. It is clear, then, that an argument that the Secretary is legally bound to delegate his authority in a particular manner cannot be supported.

Commenters also argued that as a matter of policy, the delegation to the General Counsel is inappropriate. Commenters noted that the Assistant Secretary for Fair Housing and Equal Opportunity does not share responsibility with any other office of the Department relative to the Assistant Secretary's exercise of authority under other civil rights statutes. These commenters are correct—up to a point—although they ignore the fact of HUD General Counsel participation in any and all matters involving civil rights and equal opportunity at the stage where the Department becomes involved in formal enforcement, either through the initiation of administrative enforcement proceedings or the referral of matters to the Department of Justice for the initiation of civil actions.

Given the clear intention of the amended Act that a HUD reasonable cause determination will create a virtual certainty of litigation, either in an administrative tribunal or in a Federal District Court, it is not only rational and sensible but consistent with current delegations of authority in the area of civil rights to provide that responsibility for such determinations be in the hands of the Department's legal officer. Similarly, the delegation of authority to the General Counsel to conduct hearings before administrative law judges under the Fair Housing Act seems to the Department not only to be a rational decision, but a rather obvious one. Such a division of responsibility is consistent with the practice of other agencies whose administrative processes make a separation of functions necessary or desirable.

One commenter noted that proposed § 109.16(a) provided that the Assistant Secretary is to make reasonable cause determinations in advertising cases. The proposed rule intended to delegate all responsibility for reasonable cause determinations to the General Counsel. This section has been revised.

Under the final rule, the General Counsel is delegated the responsibility for making the reasonable cause determination and for prosecuting administrative cases under the 1988 Amendments. One commenter noted that the General Counsel also has the responsibility to defend against charges that HUD has violated the Fair Housing Act. While the number of such cases may be small, the commenter argued that proposed procedures cast suspicion on the impartiality of the General Counsel in such matters. In the rare instances that complaints involving such circumstances are filed, the Secretary will delegate the General Counsel's responsibility for the reasonable cause determination and, where an administrative proceeding is conducted, HUD's prosecuting duties to another qualified employee of the Department. Since such circumstances will rarely, if ever, occur, the text of the rule has not been revised to reflect this eventuality.

The division of responsibility in the final rule has been modified slightly to transfer certain duties from the General Counsel to the Assistant Secretary. These include: (1) The ability to elect to have the claims asserted in a charge decided in a civil action where HUD is the complainant (§§ 103.410 and 104.410); (2) the duty to notify the aggrieved person and the respondent when a reasonable cause determination can not be made within described time periods (§ 104.400(c)); and (3) the duty to notify Federal, State and local licensing and regulatory agencies under § 104.935(a). In addition, the final rule has been revised to require the notification of the Assistant Secretary at certain points during the administrative proceeding (see e.g. §§ 104.700(a), 104.910(d), 104.920 and 104.930(d)).

Statutory limitations on HUD's complaint processing authority.

In several instances, commenters suggested revisions to the proposed rules that cannot be adopted because they conflict with statutory limitations contained in the Fair Housing Act. The statutorily impermissable proposals included:

1. Some commenters argued that the rules should require complainants to file their complaint within 60 days of the date that an alleged discriminatory practice has occurred or terminated. Section 810(a)(1)(A)(i) of the Act permit complainants to submit complaints not later than one year after an alleged discriminatory housing practice has occurred or terminated. (See Subpart A.)

2. Commenters argued that respondents should have from 20 to 30 days to respond to the complaint. Section 810(a)(1)(B)(iii) of the Act provides that each respondent may file an answer to the complaint not later than 10 days from the date of receipt of the notice. (See §§ 103.50(b)(3) and 103.55.)

3. Commenters argued that the final rule should not permit the referral of cases to agencies until they are found to be substantially equivalent under the new law, or should be revised to permit the complainant to choose whether to permit the referral under such circumstances. Under section 810(f)(4), each agency certified for the purposes of Title VIII on the day before the enactment date must be considered certified with respect to those matters for which the agency was certified on that date. The transition period is 40 months from the date of enactment. Under section 810(f)(1), HUD is required to make these referrals. (See Part 115)

4. Several commenters urged HUD to retain the existing practice of making a threshold determination to resolve based on facts developed in the investigation before commencing conciliation. Such procedures would be contrary to section 810(b)(1) which requires HUD to engage in conciliation with respect to the complaint, to the extent feasible, during the period *beginning with the filing of the complaint and ending with the filing of the charge or dismissal by HUD.*

5. Commenters objected to § 103.330(b) which permits the nondisclosure of conciliation agreements, where the aggrieved person and the respondent request the nondisclosure and the Assistant Secretary determines that disclosure is not required to further any purpose of the Fair Housing Act. Under section 810(b)(4), nondisclosure is permitted under such circumstances.

6. Commenters objected to the requirement for the public disclosure of complaints dismissed based on a finding of no probable cause. Section 810(g)(3) requires public disclosure.

Subpart A—Purpose and Definitions

Section 103.1 Purpose and applicability.

Applicability. Except for complaints involving allegations of discriminatory housing practices occurring before and continuing after the effective date of the 1988 Amendments (March 12, 1989), the proposed rule provided that:

—Complaints alleging discriminatory housing practices that occurred before the effective date of the 1988 Amendments are governed by the procedures in Part 105.

—Complaints alleging discriminatory housing practices that occur on or after the effective date of the 1988 Amendments are governed by the procedures in Part 103.

For complaints alleging violations that occur before and continue after March 12, 1989, the proposed rule provided:

—Complaints filed after March 12, 1989 would be processed under Part 103.

—Complaints filed before March 12, 1989 would continue to be processed under Part 105; however, the Department would provide the complainant with a reasonable opportunity to elect to have the complaint processed under Part 103 in lieu of the Part 105 procedures.

Commenters argued that the final rules must be revised to provide retroactive application of the Act's new remedies and enforcement procedures to all complaints pending on March 12, 1989, including those that do not involve continuing violations. Other commenters argued that the regulations should not apply to any complaints filed under part 105 prior to March 12, 1989.

HUD has reviewed its determination regarding the applicability of the 1988 Amendments. Upon reconsideration, HUD believes that the proposed rules unduly restrict the cases to which the new remedies under the 1988 Amendments will be applied. It is clear that Congress did not intend the Act to receive the restricted application proposed by HUD. Significantly, the plain language of section 815 places no limitation upon its applicability, but rather provides: "This Act and the amendments made by this Act shall take effect on the 180th day beginning after the date of enactment of the Act." At no point does the Act suggest that its provisions should receive less than the broadest application of the effective date provision.

The general rule of statutory construction is that remedial and procedural legislation not affecting vested rights must be applied to any claim cognizable under the prior law that is pending on the effective date or that is filed thereafter. *Bradley v. Richmond School Board*, 416 U.S. 696 715–16 (1974). While it is true that statutes that affect substantive rights ordinarily may not be applied retroactively, *United States v. Security Industrial Bank*, 459 U.S. 70, 79 (1982), this principle has no applicability here. The 1988 Amendments (except as to discriminatory housing practices involving handicap and familial status) do not create new legal duties or responsibilities. Rather, they merely provide a new process by which aggrieved persons may enforce existing rights protected under Title VIII. *I.e.*, The 1988 Amendments create new procedures for the filing, investigation and conciliation of complaints concerning discriminatory housing practices and strengthen the remedies available to victims of housing discrimination by providing for administrative hearings, and by increasing the availability of civil penalties, attorney's fees, etc. Because the new remedies and enforcement procedures do not affect vested rights, retroactive application is entirely appropriate, unless a manifest injustice would result. *See, e.g., Bradley, supra.* (increased availability of attorney's fees); *Friel v. Cessna Aircraft Co.*, 751 F.2d 1037 (9th Cir. 1985) (extension of limitations period); *Montana Power Co., v. Federal Power Comm.*, 445 F.2d 739 (D.C. Cir. 1970) (change in tribunal); and *Grummitt v. Sturgeon Bay Winter Sports Club*, 354 F.2d 564 (7th Cir. 1965 (change in procedure)).

To bring the final rule into conformance with the Act and the well-settled law, Parts 103 and 105 have been revised. Under the final rule, Part 103 will be applicable to all complaints alleging discriminatory housing practices on account of race, color, religion, sex or national origin pending on March 12, 1989 or filed thereafter; and to all complaints alleging discriminatory housing practices on account of handicap or familial status occurring on or after March 12, 1989. Part 105 will have no continuing validity and will be removed.

One commenter asked for clarification whether complaints that allege discriminatory housing practices involving handicap and familial status that occur before March 12, 1989 and will continue after that date may be filed prior to March 12, 1989. Discriminatory housing practices involving handicap or familial status do not violate the Act until March 12, 1989. Since it will be impossible to predict whether an individual will continue a previous practice after the practice becomes a violation of the Act, HUD will not accept any complaints alleging such discrimination filed before March 12, 1989. To ensure that complainants are aware of their right to file if the practice continues, the rejection will be accompanied by an explanation of the complainant's right to refile after March 12, 1989.

Applicability of Part 103 to State and local agencies. Several commenters sought clarification concerning the applicability of various requirements in Part 103 (and Part 104) to complaints filed with or referred to State and local agencies. Part 103 contains the procedures for the investigation and conciliation by HUD of complaints filed under section 810 of the Act and Part 104 contains the rules of practice and procedure applied by HUD's ALJs in administrative proceedings adjudicating charges issued under Part 103. These parts do not, by themselves, impose any requirements on the processing of complaints at the State or local level. Part 115, on the other hand, sets forth the criteria for HUD's certification that a

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State or local law is substantially equivalent, and its requirements parallel many of the requirements contained in Parts 103 and 104.

Some commenters urged language specifically stating that certain provisions (e.g., HUD procedures for the investigation of complaints) are not binding on State and local agencys. HUD believes that §§ 103.1, 104.10 and 115.1 clearly state the applicability of the parts and that further clarification is unnecessary.

Complaint processing and Section 504. Proposed § 103.1(c) provided that HUD will conduct investigations and conciliations in accordance with section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794). One commenter argued that this paragraph should only apply when a complaint involves an allegation of discrimination that is based on handicap. The proposed section was designed to provide for the reasonable accommodation of persons with disabilities who are participants in the fair housing complaint process. The provisions of this section were not intended to be limited to complaints involving allegations of discrimination based on handicap. This section has been clarified in the final rule.

Section 103.9 Definitions.

In addition to revisions of aggrieved person, dwelling unit and person discussed in the comments to Part 100 above, comments on the definitions of personal service and receipt of notice were received.

One commenter argued that HUD should delete these proposed definitions and incorporate requirements for personal service and for receipt of service contained in the Federal Rules of Civil Procedure. Another commenter urged HUD to abandon certified mail as a permissible means of service on non-agency participants because service may be frustrated by an addressee's refusal to claim. HUD's current rules provide for the service of documents by certified mail or through personal service. (see § 105.18). These methods have not, as yet, presented significant practical difficulties in the processing of complaints and have been retained in the final rule.

Subpart B—Complaints

Section 103.10 Submission of information.

Proposed § 103.10 contains provisions governing the submission of information concerning alleged discriminatory housing practices and notes that, if the submitted information warrants, HUD may concurrently initiate compliance reviews under other civil rights authorities. In response to commenters, the Age Discrimination Act of 1975 has been added to the list of civil rights authorities in this section and §103.5, and minor editorial change has been made for clarity.

Section 103.15 Who may file complaints.

Section § 103.15 permits any aggrieved person or the Assistant Secretary to file a complaint. One commenter noted that individuals who are subject to housing discrimination are likely to be low-income persons who cannot read, write, or express themselves articulately. The commenter suggested that § 103.15 be amended to require HUD personnel to provide full and comprehensive assistance throughout the complaint process, including assignment of an attorney. Similar revisions were requested for §§ 103.10(a), 103.30(b), 103.300(b), and 104.10(b). Section 103.15 also provides that a complaint may be filed with the assistance of an authorized representative of an aggrieved person, including any organization acting on behalf of an aggrieved person. One commenter would modify this provision to require HUD to notify the authorized representative acting on behalf of the aggrieved person, concerning the status of cases.

The Department agrees that it is vital that HUD provide full assistance to persons who wish to file a complaint and that HUD continue to provide assistance throughout the complaint processing procedure. Accordingly, the Department intends to pursue its current practice of providing appropriate assistance to such persons. In addition, HUD will, at the request of a complainant, provide information concerning the status of the complaint to an authorized representative in the same manner as such notification is provided to complainants. While the Department intends to provide such information, HUD does not believe that it is necessary to codify these policies in the regulations.

Section 103.20 Persons against whom complaints may be filed.

Under proposed § 103.20(a), a complaint may be filed against any person alleged to be engaged, to have engaged, or to be about to engage in a discriminatory housing practice. Commenters urged the deletion of language permitting complaints against respondents that are "about to engage" in a discriminatory housing practice. The cited language is a necessary adjunct to the definition of aggrieved person found in the statute ("Aggrieved person means any person who * * * believes that such person will be injured by a discriminatory housing practice that is about to occur.") The cited regulatory provision is retained.

Proposed § 103.20(b) provides that a complaint may also be filed against any person who directs or controls or has the right to direct or control, the conduct of another person with respect to any aspect of the sale, rental, advertising, or financing of dwellings or the provision of brokerage services relating to the sale or rental of dwelling, if that other person, acting within the scope of his or her authority as employee or agent of the directing or controlling person, is engaged, has engaged or is about to engage in a discriminatory housing practice.

Commenters argued that the definition of agency relationships described in this paragraph is confusing, may be too narrow, and does not correspond to the standards established by case law. Other commenters suggested that this provision could be improved by the provision of examples drawn from case law and that problems concerning this section could be remedied by the deletion of the language "within the scope of his or her authority".

Paragraph (b) expands on the general provisions contained in § 103.20(a). This provision reflects HUD's current rules governing the types of persons against whom complaints may be filed (see § 105.13(b)). This Part 105 regulation was adopted in the final rule issued June 27, 1980 (53 FR 24184). In that rule, HUD explained that the provision was based on judicial precedent to the effect that persons involved in the sale, rental or financing of dwellings have a nondelegable duty to assure that all conduct relating to any aspect of the sale, rental or financing of dwellings complies with the Fair Housing Act and that a person who supervises, directs or employs other persons can be legally responsible for actions of such other persons which violate the Fair Housing Act. See *U.S. v. Youritan Construction Co.*, 370 F.Supp. 643 (N.D. Calif. 1973), modified as to relief and affirmed, 509 F.2d 623 (9th Cir. 1975); *Northside Realty v. U.S.*, 605 F.2d 1348 (5th Cir. 1979); *Marr v. Rife*, 503 F.2d 735 (6th Cir. 1974); *U.S. v. Northside Realty*, 474 F.2d 1164 (5th Cir. 1973); *Moore v. Townsend*, 525 F.2d 482 (7th Cir. 1975); *Johnson v. Jerry Pals, Real Estate*, 485 F.2d 528 (7th Cir. 1973); *Dillion v. AFBIC Development Corp.*, 420 F.Supp. 572 (S.D. Ala. 1976); and *U.S. v. Real Estate Development Corp.*, 347 F.Supp. 776 (N.D. Miss. 1972). Commenters on that rule asserted that the judicial decisions did not establish a rule of liability without fault as the proposed rule (published October 16, 1984 (49 FR 40528)) suggested; and that the decided cases focused only on the liability of a broker for conduct of his or her salespersons, but did not manage absolute liability on the mere basis to direct or control without reference to instructions, policies, compliance programs, and other actions of the principal. In response to these comments, HUD announced that it was not its intent to impose absolute liability on any principal, but rather to follow the existing case law of the liability of the principal. As a result of this discussion, the language "acting within his or her authority" was added. The commenters on the proposed rule implementing the 1988 Amendments have presented no argument that convinces the Department that its current analysis of the case law on this point is incorrect.

Section 103.25 Where to file complaints.

Section 103.25 permits aggrieved persons to provide information to be contained in a complaint by telephone to HUD Regional and Field Offices. While some commenters have argued for the deletion of this procedure, HUD does not believe that the filing of complaints should be limited in the manner the commenters suggest. The final rule continues HUD's practice of reducing information provided by telephone to writing on the complaint form and sending the form to the aggrieved person for signature and affirmation.

A substantially equivalent agency complained that HUD's proposed procedures do not recognize that State and local agencies may have their own filing procedures and complaint formats. The agency argued that HUD's regulations should state that complaints may be filed with such agencies in accordance with their filing procedures and that complaints submitted on the agency forms will be accepted if they meet the requirements of § 103.30(c). These requirements are contained in the regulation at §§ 103.25(a)(3) and 103.30(b). The regulation is unchanged on this point.

Section 103.30 Form and content of the complaint.

In response to a commenter, §§ 103.30(a) and 103.55(a) have been amended to delete the requirement that complaints and answers must be attested to before a notary public or a duly authorized representative of the Assistant Secretary. This attestation burden is unnecessary. Section 810(a)(1)(D) requires only that complaints and answers be under oath and affirmation. Under 24 U.S.C. 1746, the oath and affirmation requirement is satisfied if the complainant (or respondent) signs the following statement: "I declare under penalty of perjury that the foregoing is true and correct."

Section 103.42 Amendment of complaint.

Section 103.42 has been revised to clarify that complaints may be reasonably and fairly amended at any time and that the list of circumstances under which complaints may be amended is illustrative only.

Sections 103.45 Service of notice on aggrieved person and 103.50 Notification of respondent; joinder of additional or substitute respondents.

Section 810(a)(1)(B)(i) of the Act requires the Secretary to serve notice upon the aggrieved person acknowledging the filing of a complaint and advising the person of the time limits and choice of forums provided under Title VIII. Section 810(a)(1)(B)(ii) of the Act requires the Secretary to serve a notice on the respondent within 10 days of the filing of the complaint (or within 10 days of the identification of a substitute or additional respondent). This notice must identify the alleged discriminatory housing practice and advise the respondent of the procedural rights and obligations of respondents under Title VIII, and include a copy of the complaint. These sections are implemented at §§ 103.45 and 103.50 respectively.

Commenters emphasized the importance of the notice to aggrieved persons and respondents and suggested various additions to and modifications of the proposed regulations. The suggested changes included the addition of a requirement for the service of copies of Title VIII, applicable regulations and forms, and revisions of the description of the procedural rights and obligations under Title VIII and related laws to provide greater detail.

The regulation at §§ 103.45 and 103.50 describes, in general terms, the notification that will be provided to aggrieved persons and respondents. HUD intends to develop forms consistent with these regulatory provisions that will define with greater detail the procedural rights and obligations of the parties under the complaint processing procedures, and that will describe the additional information that will be provided to assist the parties. While HUD does not believe that it is necessary to detail these provisions in the regulations, HUD will take the comments on these sections into consideration in developing its notification forms.

Section 103.55 Answer to complaint.

One commenter argued that § 103.55 (Answer to complaint) should be revised to state that the respondent is under no obligation to file an answer and that a decision not to answer will have no impact on the respondent's position in the case. This section clearly provides that the filing of an answer is permissive. Since answers will generally expedite complaint processing, the regulations should not include provisions that would discourage their filing.

Subpart C—Referral of Complaints to State and Local Agencies

Section 103.100 Notification and referral to substantially equivalent State or local agencies.

Section 103.100 states the procedures for the notification and referral of complaints to substantially equivalent State and local agencies and provides for the notification of the aggrieved person and the respondent of the referrals, including the notification of the right of the aggrieved person to commence a civil action under section 813 of the Fair Housing Act. A commenter suggested that the notification under this section (and under § 103.115—Notification upon reactivation) also state that a suit may be filed in State court as well as Federal court. The proposed revision has not been made since State and local jurisdictions must provide such notifications to the complainant and the respondent as a requirement of certification (see § 115.3(a)(1) (ii) and (iii).

Section 103.110 Reactivation of referred complaints.

Under § 103.110, HUD will reactivate a referral complaint under three circumstances. Comments regarding each of these circumstances are discussed below.

Consensual reactivation. The complaint may be reactivated when a substantially equivalent State or local agency consents to the reactivation. In response to a comment, this section has been clarified to add that the Assistant Secretary may reactivate a complaint with the consent or at the request of the agency.

Prompt processing. The complaint may be reactivated if the substantially equivalent State or local agency fails to commence proceedings with respect to

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the complaint within 30 days of the date that the agency received the notification and referral of the complaint, or the agency commenced proceedings within this 30-day period, but the Assistant Secretary determines that the agency has failed to carry the proceedings forward with reasonable promptness. HUD will not reactivate a complaint under these conditions, however, until the appropriate HUD Regional Office has conferred with the agency to determine the reason for the delay in the processing of the complaint. If the Assistant Secretary believes that the agency will proceed expeditiously following the conference, HUD may leave the complaint with the agency for a reasonable time.

While commenters supported the provision for consultation prior to reactivation, several changes were recommended. Commenters suggested that the regulations should provide for a written notice announcing the time and place for the conference and stating the reasons that the proceeding may be reactivated. Consultation contemplated under this section will be an informal process. In many instances, HUD anticipates that the consultation will be best accomplished through such measures as a telephone, rather than a face-to-face, consultation. To ensure that the procedures to be used are flexible and best suited to the certified agency, the procedures for consultation will be negotiated with each certified agency and incorporated in the memorandum of understanding. The proposed change is not included in the final rule.

In order to prevent arbitrary actions by the regional offices, commenters recommended that HUD establish criteria for determining when an agency has failed to act with reasonable promptness. Specific suggestions included placing an upper limit on the amount of time that HUD may leave a complaint with an agency; and establishing procedures for the identification and time limits for processing of specific types of cases that require a greater processing time (*i.e.*, systemic cases).

The determination that an agency has failed to act with reasonable promptness is one that must be made on a case-by-case basis through consultation with the certified agency. Given the numerous factors that must be considered (e.g., the subject matter, the number of aggrieved persons, the complexity of the issues involved in the complaint, the progress made by the agency since the referral of the case, the workload and resources available to the certified agency, scheduling difficulties between the agency, the aggrieved person and the respondent, etc.), HUD does not believe that it would be worthwhile to set forth the list of all relevant factors that may reflect a determination that an agency has failed to act with reasonable promptness.

Some commenters have argued that HUD's failure to provide greater specificity with regard to the issue of reasonable promptness and the reactivation of complaints is contrary to the goal of the 1988 Amendments to achieve expeditious resolution of complaints. HUD notes, however, that certified agencies must meet various performance standards for initial and continued certification, including limitations on the time for processing of complaints (see § 115.4). HUD believes that these limitations and the provisions for reactivation for failure to act with reasonable promptness are sufficient to serve the purposes of the Act.

A commenter requested regulatory clarification defining what is meant by "commenced proceedings". Because the 1988 Amendments provide for conciliation beginning as early as the filing of the charge, this term, as used in the final rule, could mean the start of investigation or the start of conciliation. Since the initial investigation or conciliation activity to be conducted will vary from agency to agency, HUD has not defined commencement of proceedings in the regulation. This term will be defined in the memorandum of understanding with each agency and will be based on the individual agency's procedures.

Decertification. Complaints may also be reactivated if the Assistant Secretary determines that the agency no longer qualifies for recognition as a substantially equivalent State or local agency and may not accept interim referrals with respect to the alleged discriminatory housing practice. No comments were received on this issue.

Section 103.115 Notification upon reactivation.

Under § 103.115, the Assistant Secretary is required to notify the certified State or local agency, the aggrieved person and the respondent of the reactivation of a complaint. A commenter noted that HUD staff often will notify the parties that they do not need to continue to cooperate with the certified agency after reactivation. The commenter argued that the notification in § 103.115 should clearly indicate that the agency may continue to process the complaint after reactivation and that the parties should continue to cooperate with such efforts.

HUD recognizes the certified agency's responsibility under State and local law to continue processing complaints following reactivation. The final rule has been amended to assure that the parties are aware of these responsibilities.

Subpart D—Investigation Procedures

Procedural steps prior to investigation and conciliation

One commenter, a mortgage banking association, feared that individuals frustrated by the rejection of loan applications for legitimate underwriting reasons will use the fair housing complaint process to appeal their rejection. The commenter urged HUD to provide a screening process to eliminate those complaints that fall outside of the fair housing area. If a complaint, on its face, sets forth an allegation of a discriminatory housing practice, HUD is obligated to accept the complaint and process it under its procedures. HUD cannot, and has not, provided a "screening process" to eliminate such complaints.

Section 103.200 Investigations.

HUD-initiated investigations. Upon the filing of a complaint, the Assistant Secretary is required to initiate an investigation. In addition to investigations initiated by complaints, the 1988 amendments permit HUD to initiate an investigation of housing practices to determine whether a complaint should be filed under Subpart B (see section 810(a)(1)(A)(iii) of the Act). The proposed rule would permit such investigations upon the written direction of the Assistant Secretary.

While many commenters supported the provisions permitting HUD to initiate complaints, they opposed the requirement that these investigations may be initiated only upon the written direction of the Assistant Secretary. Commenters argued that the requirement is impractical, will delay investigations and should be stricken. As an alternative, the commenters suggested that the regulations provide that the Assistant Secretary may delegate authority to the regions to initiate investigations under certain circumstances.

HUD emphasizes that the requirement for prior approval applies only to those investigations that are initiated by HUD. In the absence of a complaint alleging a discriminatory housing practice made by an aggrieved person, HUD believes that the approval of the Assistant Secretary is necessary to ensure that sufficient grounds for investigation exist and to ensure the efficient utilization of

resources. While the text of the rule states that the *Assistant Secretary* will make such approvals, as the Department develops uniform internal standards to govern the initiation of investigations and gains experience with HUD-initiated investigations, the Assistant Secretary will make appropriate delegations of authority for the initiation of investigations to the regional offices. Such delegations of authority can be made by **Federal Register** notice without the necessity of a rulemaking procedure.

Testing during investigations. One commenter argued that section 103.200 should provide that HUD will conduct professional testing or will fund other groups to conduct testing during the investigation stage. In connection with this revision, the commenters urge HUD to establish (with the assistance of housing professionals) the standards for conducting tests, what the tests should measure and the criteria to be used in determining whether discrimination exists.

Testing has been sanctioned by court decisions as an appropriate and essential tool of fair housing enforcement, and HUD will consider evidence developed through testing or auditing by fair housing groups or representatives of an aggrieved person in its investigations. HUD staff, however, does not engage in testing. Funding for private entities conducting projects designed to enforce the Fair Housing Act and substantially equivalent fair housing laws will be permitted under the Fair Housing Initiatives Program (proposed rule published July 7, 1988 (53 FR 25576)).

Section 103.205 Systemic processing.

Section 103.205 provides for the systemic processing of complaints. One commenter objected to the inclusion of this provision. The commenter argued that HUD's processing should be limited to the specific complaint, not other fair housing issues.

Section 810 clearly contemplates the investigation of matters related to, but not specifically alleged in, the filed complaint. (E.g., section 810(g)(2)(B) provides that the charge need not be limited to the facts or grounds alleged in the filed complaint.) The purpose of systemic processing is to provide for the investigation of discriminatory housing practices that are pervasive or institutional in nature and for the processing of complaints that involve complex issues, involve novel questions of fact or law, or affect a large number of persons. HUD believes that the cited revision is inconsistent with the scope of HUD's investigative authority and would undermine HUD's ability to address complex issues. The proposed change has not been made in the final rule.

Section 103.215 Conduct of investigations.

Section 103.215(a) continues HUD's existing practice of seeking the voluntary cooperation of persons to obtain access to information necessary to further the investigation. One commenter argued that this section serves no useful purpose. Much of the information obtained through HUD's investigations is provided through cooperative efforts rather than through procedural discovery techniques. In recognition of the success of these efforts, paragraph (a) is being retained.

Section 103.215(b) states that the Assistant Secretary and the respondent may conduct discovery in aid of the investigation by the same methods and to the same extent that parties may conduct discovery in an administrative hearing under Part 104, except that the Assistant Secretary would have the power to issue subpoenas as described in § 104.590 in support of the investigation or at the request of the respondent. One commenter argued that paragraph (b) does not comport with the statute and appears to unnecessarily complicate discovery. The commenter suggested the substitution of language directing that discovery and subpoenas be issued in the same manner as in civil actions in the United States District Court for the district in which the investigation is taking place.

The reference in the rule to the Part 104 procedures provides uniformity in discovery techniques while assuring compliance with the statutory requirement in section 811, which provide that discovery and subpoenas be issued in the same manner as civil actions in the United States for the district in which the investigation is taking place. (See §§ 104.500(a) and 104.590(a)). The rule is unchanged.

Another commenter argued that since HUD should be neutral with respect to the parties during the investigation, there is no reason to deny the aggrieved person the right to conduct discovery while providing this same right to the respondent. While HUD is neutral with respect to the parties, the parties' positions during the investigation are not equal. The respondent is the focus of an investigation aimed at determining whether he or she has committed a discriminatory housing practice and, thus, must be offered the ability to discover information in its own defense. The complaining party, on the other hand, by filing a complaint rather than pursuing its own civil action under section 813, places the conduct of the investigation in HUD's hands and will not be allowed to conduct separate discovery. HUD notes that the Fair Housing Act does not foreclose a discovery avenue to aggrieved persons who have filed complaints, since the complainant may file a civil action under section 813(a) with regard to the alleged discriminatory housing practice and obtain discovery through the court proceeding.

Subpoenas issued by the Assistant Secretary would require the approval of the General Counsel before issuance. Some commenters argued that only one entity should be involved in the issuance of subpoenas during the investigation. These commenters would delete the references to General Counsel's approval of subpoena issuances. Subpoenas issued by HUD in furtherance of an investigation may be challenged or enforced through judicial proceedings. Since the legal sufficiency of the subpoena will be at issue, it is necessary to ensure that the issuance is justified. Accordingly, the rule continues to provide for review by the General Counsel. A minor clarifying change has been included limiting the General Counsel's review to legal issues.

Section 103.220 Cooperation of Federal, State and local agencies.

Section § 103.220 reflects provisions currently contained in Part 105 which permit the Assistant Secretary, in processing Fair Housing Act complaints, to seek the cooperation and utilize the services of State and local agencies and of other appropriate Federal agencies. Proposed § 103.220 also contained language designed to ensure that other Federal agencies are aware of their responsibility under section 808 (d) and (e) of the Act and under Executive Order No. 12259.

Upon review, HUD has concluded that proposed § 103.220 may generate confusion concerning the agencies' obligations to provide information during the investigation process and their duty to ensure that programs and activities are administered in a manner that will affirmatively further fair housing and their duty to cooperate with the Assistant Secretary in furthering the purposes of the Fair Housing Act, including the conduct of investigations. To clarify these provisions, § 103.220 has been revised to state that the Assistant Secretary, in processing Fair Housing Act complaints, may seek the cooperation and utilize the services of Federal, State or local agencies, including any agency having regulatory or supervisory authority over financial

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institutions. Provisions governing other agencies' duties to affirmatively further fair housing and for cooperating in furthering the purposes of the Fair Housing Act have been moved to a new § 103.515 entitled "Actions by other agencies".

One commenter argued that this section does not clearly announce what type of cooperation HUD will generally expect of banking regulators, or what role these agencies will play in providing material for investigations. The commenter also asserted that it is unclear whether material generated by banking regulators or financial institutions in response to regulatory requirements and for purposes unrelated to the proposed rule would, contrary to existing banking policy, become public documents. Another commenter supported the aims of § 103.220 but suggested specific regulatory provisions designed to address the duty of other agencies to cooperate in investigations and procedures to be followed in pursuing discovery from such agencies.

HUD intends to review and upgrade its memoranda of understanding with covered agencies to cover our cooperative understandings concerning the provision of in formation to HUD under the Fair Housing Act, including information to be provided pursuant to investigations. All terms and conditions of HUD access will be addressed in these agreements. Accordingly, it is not necessary to provide more specific regulations in this area.

Section 103.225 Completion of investigation.

Completion of investigation. Section 103.230 states that the investigation will remain open until the reasonable cause determination is made. A commenter argued that the General Counsel, who is charged with making the reasonable cause determination, could remove a case from the Assistant Secretary's control by issuing a determination on reasonable cause before the complaint is fully investigated. This commenter felt that conciliation should be available until the complaint is transferred by the Assistant Secretary to the General Counsel for a reasonable cause determination and the General Counsel has filed a charge or dismissed the complaint. To remedy this problem, § 103.400(c)(1) has been revised to provide that the General Counsel shall make the reasonable cause determination only after the Assistant Secretary forwards the matter for consideration.

Deadline for completion of investigation. Section 810(a)(1)(B)(iv) and (C) provide that HUD must complete investigations within 100 days after the filing of the compliant (or, when a complaint has been referred to a substantially equivalent State or local agency and reactivated, within 100 days after service of the notification of reactivation), unless it is impracticable to do so. If the investigation cannot be completed within this time limit, HUD is required to notify the aggrieved person and the respondent of the reasons for the delay. Section 810(g)(1) requires HUD to make the reasonable cause determination within the same 100-day time period, and to provide notification of the reasons for any delay. These requirements were included in §§ 103.225 and 103.400(c) of the proposed rule.

Several commenters requested deletion of the impracticability exception. The impracticability exception was a recognition by Congress that there may be circumstances where investigations may not be completed, and the reasonable cause determination made, within the prescribed 100-day period. While HUD intends to meet these deadlines whenever it is within its power to do so, it is concerned that the imposition of a strict 100-day deadline will not recognize the need for a lengthier investigation in complaints involving complex issues or recalcitrant respondents, and that respondents could argue for the dismissal of an otherwise meritorious complaint based on the failure to complete an investigation. Since HUD perceives that no valid fair housing-related goal would be served by imposing a strict 100-day deadline in all cases, the impracticability standard has been retained.

Other commenters argued that the regulation must clearly identify the circumstances under which it will be impracticable to complete the investigation or issue a reasonable cause determination within the 100-day period. These commenters suggested that impracticability be defined as extraordinary circumstances in the specific case and that the rule should state that the routine processing of other cases will not be grounds for a finding of impracticability. The range of circumstances that could legitimately cause delay in a case is numerous, and HUD is not prepared to identify all possible circumstances that would make it "impracticable" to take the described actions within the prescribed time period. Moreover, even if HUD were to articulate all such circumstances, it would not preclude the consideration of the demands upon HUD's resources caused by other docketed cases. Such a definition would fail to recognize that even the best-managed case inventory system may not posses sthe excess capacity to respond to extraordinary demands upon resources.

Section 103.230 Final investigative report (FIR).

Requirements governing the contents of the investigative report are codified at § 103.230. Paragraph (a)(1) of this section provides that the investigative report will disclose the names and dates of contacts with witnesses, but will not disclose the names of witnesses that request anonymity. As noted in the rule, however, HUD may be required to disclose the names of such witnesses during the course of an administrative hearing under Part 104 or in a civil action under Title VIII. Commenters argued that the provision for nondisclosure of the identity of witnesses should be eliminated. The questioned provision merely continues HUD's current policy with regard to the disclosure of the identity of witnesses. Contrary to the allegations of the commenters, this policy has not undermined the credibility of HUD's investigations nor has it stifled conciliation efforts. The provision has been retained in the final rule.

One commenter argued that the regulations also should bar the disclosure of personal information about third parties and safeguard information that potentially could endanger the physical safety of the parties or of a third party. While HUD's final investigative report will avoid the inclusion of extraneous information, it is impossible for HUD to bar the disclosure of all information about third parties and to guarantee the individual safety of parties or of a third party. The proposed provision has not been included.

One commenter was concerned that the format for the investigative report may not provide an adequate basis for a reasonable cause determination. The investigative report will not be the only document available in connection with the making of a reasonable cause determination. The actual statements of witnesses and documentary evidence as well as the analysis of the investigation also will be considered. Internal procedures relating to these matters will be developed by HUD. Such procedures are not appropriate for inclusion in this rule.

Commenters urged that the FIR requirements be expanded to include a recommendation by the investigator on the reasonable cause determination and to include the facts and legal basis for the investigator's recommendation. As a matter of internal policy, HUD anticipates that the views of the investigator with regard to the reasonable cause determination will be communicated to the General Counsel's office. HUD does not believe that it is necessary to incorporate this requirement in the regulation.

As required under section 810(d)(2) of the Act, § 103.230(c) provides that the Assistant Secretary shall make information derived from an investigation, including the final investigative report, available to the aggrieved person and the respondent, upon request, at any time following the completion of the investigation. In response to a commenter, the final rule has been revised to require HUD, following the completion of the investigation, to notify the aggrieved person and the respondent that the FIR is complete and will be provided or upon request. Under most circumstances, the notification will be provided with the charge, where a charge is issued under § 103.405, or with the notice of dismissal under § 104.400(a)(2).

Subpart E—Conciliation Procedures

Section 103.310 Conciliation agreement.

If conciliation is successful, the terms of the settlement are reduced to a written conciliation agreement. Section 810(b)(2) of the Act provides that a conciliation agreement shall be an agreement between the respondent and the complainant, and shall be subject to the approval of the Secretary. Section 103.310(b) incorporates these requirements and states that the Assistant Secretary will indicate HUD approval of the conciliation agreement by signing the agreement.

The final rule makes a minor revision to this provision. Under the proposed rule, if HUD is the complainant, the Assistant Secretary would execute the agreement only if the aggrieved person is satisfied with the relief provided to protect his or her interest. The final rule recognizes that there may be circumstances where HUD may file a complaint that identifies a class of aggrieved persons, rather than specific aggrieved persons. Under such circumstances it would be impossible to determine if all aggrieved persons in the class are satisfied with the relief accorded. Accordingly, the final rule permits the Assistant Secretary to execute the agreement if all aggrieved persons named in the compliant filed by HUD are satisfied with the relief provided to protect their interests.

Section 103.310(b)(2) would preserve the General Counsel's ability to issue a charge under § 103.405, where the aggrieved person and the respondent have executed a conciliation agreement that has not been approved by the Assistant Secretary.

Commenters argued that HUD should not be permitted to commence or continue the investigation once an agreement is reached between the aggrieved party and the respondent. The commenters argued that the retention of this provision would "chill" conciliation agreements between the aggrieved person and the respondent and would serve no purpose since the Assistant Secretary will have right to initiate complaints under the 1988 Amendments. HUD could lose the ability to initiate a new complaint if the time period for the filing of the complaint has passed. Moreover, it would be wasteful of administrative resources to require HUD to file another complaint and to maintain a second case file under these circumstances. The final rule does not adopt the commenter's suggestion.

Section 103.315 Relief sought for aggrieved persons.

Section 103.315 lists the types of relief that may be sought for the aggrieved person during conciliation. Under paragraph (a)(1), monetary relief in the form of damages, including damages caused by humiliation or embarassment and attorneys fees. One commenter argued that monetary relief should be limited to "compensatory" damages. Another commenter argued against the provision of damages for humiliation or embarrassment, stating that such a practice would result in extraordinary and unreasonable damage awards.

HUD has left paragraph (a)(1) unchanged. Damages for humiliation and embarrassment and noncompensatory damages (i.e., punitive and exemplary damages) can be awarded in civil actions brought under Title VIII. Since respondents will seek a full release of all claims as a part of the conciliation, the regulation should permit negotiations that take such factors into account as a part of the settlement. Although monetary damages other than actual damages are usually not provided for in a conciliation agreement, it is HUD's intent that the rule not preclude the possibility of seeking punitive or exemplary damages for an aggrieved person in an appropriate situation.

Paragraph (a)(2) provides for other make-whole relief, including access to the dwelling at issue or to a comparable dwelling, the provision of services or facilities in connection with a dwelling, or other specific relief. This provision has been amended to provide for "other equitable relief, including but not limited to" the listed actions. While one commenter felt that the provision for access to a comparable dwelling was redundant, HUD believes that the inclusion of this provision is appropriate to cover situations where the original dwelling at issue is no longer available.

Commenters argued that the provisions permitting the binding arbitration of disputes arising out of the complaint could be improved by the addition of a description of the rules and procedures that will be used in arbitration. This change has not been made. HUD wishes to keep the arbitration remedy as flexible as possible in order that individual aggrieved persons and respondents will have the opportunity to adopt the procedures that will best suit their circumstances.

Section 103.320 Provisions sought for the public interest.

Section 103.320 lists the types of provisions that may be sought for the vindication of the public interest. Commenters argued that the regulations should announce the standards that HUD will use in determining whether a conciliation agreement will adequately vindicate the public interest. No useful purpose would be served by listing every form of public interest that HUD may protect with conciliation agreement provisions. These provisions are often tailored to the circumstances of particular cases. The suggested change has not been adopted.

One commenter noted that civil penalties may be assessed in the administrative proceeding and the civil action. This commenter urged HUD to add a new provision permitting the seeking of civil penalties of up to $50,000 in conciliation. As noted above, HUD has not precluded the negotiation of damages in lieu of possible court-awarded punitive damages on behalf of the aggrieved person in conciliation, because such agreements are made in return for the full release by the aggrieved person of all claims against the respondent. However, since the public interest is vindicated by ensuring future compliance and by rectifying the effects of past discriminatory housing practices, rather than penalizing the respondent for such practices, civil penalties have not been added under §103.320.

One commenter argued that HUD should be permitted to seek compensation for private fair housing groups that have participated in

mediation or investigation before the complaint is filed. HUD recognizes that private fair housing groups often play a significant role in assisting and referring complaints on a Federal and State level, and in providing initial investigation and mediation assistance that is often useful in handling the complaint after it is filed. However, HUD does not believe that the conciliation agreement is an appropriate device for the recovery of such compensation on behalf of the fair housing group in any case where the group is not an aggrieved person. In other instances, HUD fears that attempts to recover compensation for such groups would be viewed as collusion between HUD and the groups.

Section 103.330 Prohibitions and requirements with respect to disclosure of information obtained during conciliation, and § 103.300(a) Participation as conciliator and investigator.

Under section 810(d), nothing said or done in the course of conciliation may be made public or used as evidence in a subsequent proceeding under Title VIII without the written consent of the persons concerned. Proposed § 103.330(a) implemented this provision with the additional statement that information disclosed during conciliation would not be used in the investigation of the complaint.

Upon reconsideration, HUD has decided to remove the additional statement concerning information disclosed during conciliation. By barring the use of conciliation statements or conduct "in an investigation", the proposed rule imposed greater restraints on the use of such information than are imposed under the statute. The statutory language represents a balance between the need to encourage candor in conciliation discussions and the need for a full development of the facts in the investigation and litigation of the complaint. The proposed language, in striking a different balance, may not conform to the statutory intent.

Although it is fairly obvious that statements made during conciliation might provide useful investigative leads, Congress did not preclude the use of such statements. The real concern of Congress was the effect on conciliation if statements made or conduct exhibited during conciliation were admissible in a later administrative proceeding or civil action.

By barring the investigative use of conciliation statements and conduct, HUD invites both complainants and respondents to argue that the investigation has somehow been "tainted" by information obtained during the conciliation. This would invite wasteful litigation concerning whether HUD conducted its conciliation and investigation activities in accordance with its own regulations and would provide parties with an incentive to insulate themselves from the use of evidence at trial, by disclosing key facts during conciliation.

In the final rule, the prohibition against the use of conciliation information in investigations will be dropped. HUD notes that the use of such information in administrative hearings and civil actions will be governed by Rule 408 of the Federal Rules of Evidence. (See § 104.730) Rule 408 makes inadmissible at trial "evidence of conduct or statements made in compromise negotiations," but "does not require the exclusion of any evidence otherwise discoverable merely because it is presented in the course of compromise negotiations."

As a related matter, § 103.300(c) limits the participation of officers, employees, and agents of HUD engaged in the investigation of a complaint under Part 103 in the conciliation of the same complaint or in any factually related complaint. While the original purpose of this general limitation was to ensure that information gathered during the conciliation process is not used in the investigation of the complaint, HUD continues to believe that conciliation of individual complaints can be best promoted where the investigation and conciliation functions are kept separate, so § 103.300(c) is being retained despite the adjustments made in § 103.330, discussed above.

Section 103.300(c) continues to recognize that there may be circumstances where a dual role for the HUD employee may be necessary. This section permits the investigator to suspend fact finding and engage in efforts to resolve the complaint by conciliation where the rights of the aggrieved person and the respondent can be protected and the prohibitions with respect to the disclosure of information obtained during conciliation can be observed. HUD emphasizes that such conciliations will generally occur where the investigator, during the course of investigation, is requested by the parties to conciliate and will rarely be initiated by the investigator.

One commenter, concerned that any suspension of fact finding would unduly delay the completion of the investigation, opposed this provision. The suspension of the investigation envisioned under this provision should not delay the investigation appreciably and should not prevent the Department from fulfilling its 100-day deadline for investigation and the reasonable cause determination.

Section 103.330(b) provides an exception to the prohibition against disclosure of conciliation information. This section provides that conciliation agreements will be made public, unless the aggrieved person and the respondent request nondisclosure and the Assistant Secretary determines that disclosure is not required to further the purposes of the Fair Housing Act. One commenter suggested that the provision should note that one of the purposes to be considered in determining whether disclosure should be required is the education of people about their fair housing rights and remedies and to show that meaningful redress can result from reporting possible violations to HUD and utilizing the conciliation process. While HUD agrees that the cited factor is significant in determining whether disclosure of a conciliation agreement will further the purposes of the Fair Housing Act, HUD is required to consider other purposes in making the disclosure determination. The final rule has not been changed to highlight this purpose.

One commenter asked how conciliation agreements would be made public. Where the terms of a conciliation agreement do not otherwise provide, HUD intends to issue a press release setting out the fact of successful conciliation and outlining the major terms of the agreement. The statute also requires "public disclosure" in the case of any complaint where the Secretary has determined that no reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, and has dismissed the complaint. The Department intends to employ press releases for this purpose as well. Where a complaint is dismissed on a finding of no reasonable cause and the respondent specifies that even public disclosure absolving the respondent would be unwelcome, the Department will refrain from issuing a press release. However, HUD interprets the Amendments Act as requiring some form of public disclosure on the occasion of a dismissed complaint, and accordingly the Department's policy will be to disclose this information to the public if a specific request is received.

Section 103.335 Review of compliance with conciliation agreements.

Proposed § 103.335 stated that HUD may, from time to time, review compliance with the terms of any conciliation agreement. Whenever HUD has reasonable cause to believe that a respondent has breached a conciliation agreement, HUD shall refer the matter to the Attorney General with a recommendation that a civil action be filed under section 814(b)(2) of the Act for the enforcement of the terms of the conciliation agreement.

One commenter argued that the language used in this section indicates that review of compliance agreements will be "haphazard and perfunctory." The commenter recommended the deletion of the phrase "from time to time" and would make compliance review mandatory and periodic (at least once a year) whether or not HUD has reasonable cause to believe that a breach has occurred.

Requiring HUD staff to monitor every conciliation agreement on a mandatory and periodic basis is not the most effective used of HUD's limited resources. Compliance reviews under this section will not be performed on a haphazard or perfunctory basis. Rather, compliance reviews will be performed on a random sampling basis, or if HUD has reason to believe that the signatories are not complying with the terms of a particular agreement. The final rule is unchanged.

Subpart F—Issuance of Charge

Section 103.400 Reasonable cause determination.

Reasonable cause standard. Proposed § 103.400(a) provided that if a conciliation agreement has not been executed by the complainant and the respondent and approved by the Assistant Secretary, the General Counsel, within specified time limits, shall determine, based on the totality of the factual circumstances known at the time of the decision, whether reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur. The reasonable cause determination shall be based on all the facts concerning the alleged discriminatory housing practice, provided by the complainant and respondent and otherwise, disclosed during the investigation. In making the reasonable cause determination, the General Counsel shall consider whether the facts concerning the alleged discriminatory housing practice are sufficient to warrant the initiation of a civil action in federal court.

A number of commenters objected to the reasonable cause standard announced in this section. Some argued that the standard is overly restrictive and may unduly limit the number of charges that will be issued by HUD. Others alleged that the meaning of the proposed standard is unclear and may open the door for subjective decisions and may permit the consideration of irrelevant factors. (*I.e.*, Some commenters suggested that the proposed language would permit HUD to consider any matters that could have a bearing on a decision to bring a lawsuit, including: an assessment of the strength of the suit, the amount of anticipated damages, the government's resources that would be devoted to the proceeding, the availability of witnesses, docket scheduling, and other factors generally bearing on the exercise of prosecutorial discretion). Commenters argued that language of the statute and relevant legislative history limit HUD's assessment to the issue of liability alone.

Contrary to the allegations of the commenters, a fair reading of the regulation clearly demonstrates HUD's intent to limit the reasonable cause assessment to the issue of whether a discriminatory housing practice has occurred or is about to occur. HUD, by repetition in the regulation, expressed its position that the reasonable cause determination is to be based solely on the issue of liability. No less than three passages state this proposition. (*I.e.*, the regulation states that the determination will be "based on the totality of the factual circumstances"; that the reasonable cause determination "shall be based on all facts concerning the alleged discriminatory housing practice"; and "the General Counsel shall consider whether the facts concerning the alleged discriminatory housing practice are sufficient to warrant the initiation of the civil action." While the proposed language would foreclose the consideration of extraneous matters not related to the factual determination of liability, HUD has made an additional modification in the final rule to reflect HUD's intent that the reasonable cause determination is to be based *solely on* the facts determined during investigation.

The source of many commenters' dissatisfaction is the provision that requires the General Counsel to determine whether the facts concerning the alleged discriminatory housing practice are sufficient to warrant the initiation of a civil action. Rather than permitting consideration of the probability of winning the case, this standard is merely intended to require that the charge is well-grounded in the facts and that the conduct that is the subject of the complaint appears to constitute a violation of the Act.

Commenters suggested several alternative standards. These standards are, in some cases, identical to the standard contained in the proposed rule. For example, some commenters proposed that the standard should be whether the information disclosed warrants the initiation of a civil action *or* an administrative proceeding under Part 104. In other cases, the alternative standards are substantially the same as the standard contained in the proposed rule (e.g., whether a reasonable and fair-minded trier of fact could conclude that a discriminatory housing practice has occurred or is about to occur, etc.). Accordingly, the proposed standards have not been incorporated in the final rule.

Other commenters argued that, in addition to the reasonable cause standard, HUD should make certain presumptions in favor of the aggrieved person when making the determination (e.g., to construe the facts in favor of the aggrieved person or to assume that the evidence offered by the aggrieved person is true) or that HUD should reserve all issues of material fact for determination at the hearing or trial. Such presumptions and reservations are inconsistent with HUD's duty to analyze and make a reasoned judgment concerning the alleged discriminatory housing practice and would obviate any need for a HUD investigation, as required by the statute. For this reason, the suggestions are rejected.

Written reasonable cause determination. Commenters argued that all determinations of reasonable cause or lack of reasonable cause must be in writing and set forth in an opinion which states the facts and legal conclusions. The commenters argued that such a requirement would discourage subjective determinations and establish accountability on the part of the fact finder and respect for the administrative process.

HUD has made minor changes to the final rule to clarify that all determinations will be made in writing and will set forth a brief summary of the factual basis of the determination. An extensive factual recitation will be unnecessary, since the complete investigative report will contain this information and will be available to the aggrieved person and the respondent. (The rules already provide that where a finding of reasonable cause is made, the charge will include a short and plain statement of the facts upon which the General Counsel has found reasonable cause to believe that a discriminatory housing practice has occurred or is about to occur). The notification will not state the legal theory upon which the determination is made since the Department feels that such a statement would encourage needless litigation by

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encouraging the participants to mount collateral attacks on the reasonable cause determination.

Appeal of reasonable cause determination. The regulation provides no right to appeal a reasonable cause determination. Commenters argued that such an appeal is necessary to permit review of errors of law or facts, and that failure to provide such an appeal is contrary to standard administrative procedure. Some commenters would limit appeals to determinations of no reasonable cause.

The statute does not contemplate a review of the reasonable cause determination. Section 810(g)(1) requires HUD to make the reasonable cause determination within a 100-day time period from the filing of the complaint and to take specified actions immediately (or promptly) after the determination is made. (The statute directs HUD to "immediately" issue a charge on behalf of the aggrieved person after reasonable cause is found (section 810(g)(2)) and to "promptly dismiss" the complaint and make public disclosure of the dismissal where no reasonable cause is found (section 810(g)(3)).) In light of these directions, HUD believes that it is significant that the Act does not specifically provide for an appeal of the reasonable cause determination, particularly where such procedures are specified within other sections. (See section 812(h), which provides for Secretarial review of the ALJ's initial decision.) Moreover, HUD believes that appeals of the determination of reasonable cause would be contrary to the legislative history of the 1988 Amendments, which supports the expeditious resolution of complaints. The additional review would delay the resolution of proceedings by civil action or administrative hearings under Part 104.

HUD notes that the failure to provide for the review of the reasonable cause determination will not preclude an aggrieved person from filing a civil action under section 813 of the Act. Nor will the dismissal prevent an aggrieved person from refiling a complaint based on newly discovered or previously unavailable information, provided the one-year time limit for the filing of a complaint is met. (In this regard, one commenter argued that the regulations should permit HUD to toll the statutory one-year statute of limitation for filing where a complaint is refiled. This change has not been made since there is no statutory authority for such an action.)

Reasonable cause determination and State and local zoning cases. Under proposed § 103.400(a)(1), if the General Counsel determines that reasonable cause exists, the General Counsel shall immediately issue a charge on behalf of the aggrieved person, unless the matter involves the legality of a State or local zoning or other land use law or ordinance. If such a law or ordinance is involved, HUD is required to refer the matter to the Attorney General for appropriate action under section 814(b)(1) of the Act. One commenter argued that the rule should state that the referral of such a case will not be made until an investigation has been completed and conciliation has been attempted. It is HUD's intention to investigate complaints alleging discriminatory housing practices that involve the legality of a State or local law and to forward its investigation to the Department of Justice. This section has been revised to provide further clarity on this point. See § 103.400(a)(2) of the final rule.

Adoption of a reasonable cause determination made by a certified agency. Commenters argued that the final rule should state that a finding of reasonable cause by a substantially equivalent agency will automatically be adopted by HUD, and require the Secretary to issue a charge. Commenters argued that the failure to include this provision will deny complainants the full protection of the new law during the 40-month period that currently substantially equivalent agencies have to conform their procedures and remedies.

The 1988 Amendments require HUD to make referrals for up to 40 months following the date of enactment to agencies that are certified (including agencies that are certified for interim referrals under Part 115) on the date of enactment. As noted in the preamble to the proposed rule, it is unlikely that such agencies will immediately provide the full range of remedies accorded to complainants under the 1988 Amendments. Given the limited statutory authorization for reactivation provided under section 810(f)(2) of the Act, it does not appear that HUD has unilateral authority to reactivate the complaint to provide the full range of remedies available under the Act absent other circumstances.

Under the limited circumstance where HUD will be able to reactivate and where the State or local agency has issued a reasonable cause determination (the existence of such a determination is highly unlikely until the State or local agency has modified its existing procedures to conform to the 1988 Amendments), HUD cannot automatically adopt the local agency's determination. HUD must ensure that the determination rests on a firm factual basis. While HUD may use the information gathered by such agencies (with appropriate supplementation through a HUD investigation) to make its independent evaluation of the factual circumstances surrounding the alleged discriminatory housing practice, the responsibility for making the reasonable cause determination cannot be delegated in such a manner.

Deadline for reasonable cause determination. Issues regarding 100-day deadline for the reasonable cause determination are discussed above.

Participation of the Assistant Secretary in the reasonable cause determination. Several commenters argued that the regulations should state that the reasonable cause determination will be made in consultation with the Assistant Secretary's office, and with due regard to the recommendations of the investigator. Another commenter feared that the investigation report, without further supporting data, may not be sufficient for the General Counsel to make the reasonable cause determination. The commenter asked whether the General Counsel would have access to the complete file, whether the General Counsel may send the case back for further investigation, and whether the General Counsel would be permitted to conduct his or her own independent investigation.

As noted under the discussion of the investigation report, the General Counsel will provide due deference to the recommendations of the Assistant Secretary and the investigator. There obviously will be communications between the two offices concerning this determination and access to files and additional investigative materials. Since such communications will be a matter of internal administrative procedures at HUD, it is not necessary to set forth the procedures in the regulation.

With regard to the investigation of additional matters, the final rule provides that the investigation will remain open until the reasonable cause determination is made. This provision was intended to permit the General Counsel to request the Assistant Secretary to make a further investigation where the investigative report is insufficient to determine whether reasonable cause exists, and to make direct inquiries to supplement the investigation.

Several commenters asserted that permitting the General Counsel to conduct his or her own investigation would be contrary to the intention of the legislation, would undermine the Assistant Secretary's investigative function; may needlessly duplicate investigative activity; and would delay the disposition of cases. The General Counsel does not have the resources to engage in extensive fact-finding. Accordingly, where such fact-finding is required, the Assistant Secretary will be requested to conduct further investigation. Whenever there are minor issues capable of expeditious resolution, however, nothing prevents the General Counsel from resolving the issues through direct inquiries. The internal procedures for the conduct of such further inquiries will be worked out through agreements between the Assistant Secretary and the General Counsel.

Section 103.405 Issuance of charge.

Section 103.405 governs the issuance of the charge. Paragraph (a)(5) of this section provides that the charge need not be limited to the facts or grounds that are alleged in the complaint. A commenter argued that HUD should not be able to set forth new facts or new grounds in the charge. The commenter argued that HUD should be required to amend the complaint if new acts or grounds are found. Following the amendment, the respondent and aggrieved person should be given an opportunity to enter a conciliation agreement based upon the additional facts or grounds.

Section 810(g)(2)(B) expressly provides that the charge need not be based on the facts or grounds alleged in the complaint. Where additional grounds are discovered during the processing of the complaint, HUD intends to inform the respondent of the additional grounds and to seek information from the respondent concerning such matters. HUD will not require the amendment of the complaint as long as the record of the investigation clearly indicates that the respondent has been given notice and an opportunity to respond to the new allegations. The final rule at § 103.405(a)(3) has been amended to reflect this policy.

Section 103.410 Election of civil action or provision of administrative proceeding.

Section 103.410 governs the election of a civil action under section 810(o) or the provision of an administrative proceeding under Part 104.

One commenter stated that the rule should clarify whether the agreement of the complainant and the respondent is necessary for Part 104 procedure to apply. If no person makes a timely election to proceed with a civil action under section 810(o) of the Act, Part 104 will apply. The Department has made minor revisions to the regulations to clarify this point.

Paragraph (e) of the proposed rule provided that the General Counsel shall be available for consultation concerning any legal issues raised by the Attorney General regarding how best to proceed in the event that commencement of a civil action would implicate Rule 11 of the Federal Rules of Civil Procedure. Numerous commenters claimed that paragraph (e) is unnecessary, serves no useful purpose, may be used by the Department of Justice (DOJ) to reduce its litigation caseload, is not required by statute, and should be deleted.

Following the reasonable cause determination and an election, the statute provides that the Attorney General shall commence and maintain a civil action not later than 30 days from the election (section 810(o)). While we believe that the need for such consultation will be infrequent, we do not believe that Congress intended to preclude the two Federal agencies from discussing an appropriate method of proceeding in light of new relevant factual information or court decisions. Allowing 20 days for the election, the Attorney General's complaint may be filed as many as 50 days following the issuance of the charge. During that time period, new facts may be discovered or court decisions rendered which demonstrate that there is no reasonable cause to believe that a discriminatory housing practice has occurred or is about to occur. In such circumstances, it would be senseless for the Attorney General to institute a civil action. Under such circumstances, HUD will take such action as is necessary to supplement the investigative report (see section 810(b)(5)(B) which provides that a final investigative report may be amended if additional evidence is later discovered) and, if further evidence to support a finding is not developed, to void the reasonable cause determination *ab initio*. This procedure is designed for the sole purpose of assuring that all civil actions are supportable at the time of filing and, in line with the intention of Congress, to ensure that the Secretary is the official making the determination whether to proceed with a charge or civil action. At the same time, the procedure helps to ensure that the Secretary will have the necessary information to make the required decision.

Some commenters argued that the reference in paragraph (e) to Rule 11 of the Federal Rules of Civil Procedure is unnecessary. As discussed above, the purpose of the DOJ/HUD consultation is to examine new court decisions and newly discovered evidence that are relevant to the reasonable cause determination. While the Rule 11 standard might be implicated if a civil action is filed where a new decision or evidence indicates a lack of a basis for a reasonable cause determination, HUD agrees that the specific reference to this rule of procedure should be excluded from the final rule. The final rule has been revised to emphasize that the General Counsel will be available for "consultation concerning any legal issues raised by the Attorney General as to how best to proceed in the event that a new court decision or newly discovered evidence is regarded as relevant to the reasonable cause determination."

Several commenters argued that DOJ must publish regulations or make public all proposed procedures for handling the civil actions authorized under section 812(o). DOJ's procedures for pursuing such actions are beyond the jurisdiction of the Secretary, and thus not appropriate for addressing in this rule.

Subpart G—Other Actions by the Department

Section 103.500 Prompt judicial action.

Proposed § 103.500(a) provided: "If at any time following the filing of a complaint, the General Counsel concludes that prompt judicial action is necessary to carry out the purposes of Part 103 or Part 104, the General Counsel will request that the Attorney General commence a civil action for appropriate temporary or preliminary relief pending the final disposition of the complaint."

One commenter objected to the language stating that the General Counsel would "request" the Attorney General to commence a civil action. The commenter argued that the language implies that following the request, it is within the Attorney General's discretion to file the civil action. The commenter noted that section 810(e) *requires* the Attorney General promptly to commence action after the Secretary *authorizes* the action. The statute does provide that when the Secretary authorizes the civil action, the Attorney General shall promptly commence and maintain such action and the final rule has been revised to track the statute.

Before making the determination to request such action, the proposed rule stated that the General Counsel would consult with the Assistant Attorney General for the Civil Rights Division. Commenters urged deletion of the consultation requirement. Commenters argued that the provision: (1) Adds time-consuming steps to the process of seeking emergency relief; (2) is not

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necessary, since HUD is free to consult with DOJ at any time; (3) will be unnecessary when HUD acquires enforcement experience; and (4) is inconsistent with the statute and with the legislative intent to provide the simplest and fastest method to obtain emergency relief for discrimination victims.

The final rule is unchanged on this point. As noted above, once the general Counsel issues the authorization, the Attorney General is *required* to commence and maintain the action. In light of this mandate, it is crucial that authorized civil actions are justified on both the facts and the law. As noted in the preamble to the proposed rule, prior consultation will ensure that the civil action can be maintained by providing HUD with access to DOJ's extensive experience in seeking relief in different factual situations and in different forums.

Commenters' fears that the consultation requirement will impede the process of obtaining temporary and preliminary relief are unfounded. The consultation envisioned under this section will not be a time-consuming process. Rather, HUD and DOJ plan to consult through informal contacts between representative, of the two agencies. Moreover, HUD expects and intends that the conferences will expedite, rather than delay, proceedings by providing DOJ with important background information in individual proceedings before the issuance of an authorization and by providing DOJ with advance information concerning upcoming litigation. With such information, DOJ should be better prepared to act expeditiously to preserve the aggrieved person's rights when the authorization is issued. To emphasize this point, § 103.500(a) has been revised to provide that the purpose of the DOJ consultation is to ensure the prompt initiation of the civil action.

Section 103.500(b), which implements section 810(e)(2) of the Act, has been revised slightly to more closely reflect the statutory provision.

Section 103.510 Other action by HUD.

Section 103.510 addresses other actions that HUD may take with respect to matters asserted in a complaint. A commenter felt that the proposed rule's list of proceedings that may be initiated under other civil rights authorities was incomplete. The commenter urged the addition of the Age Discrimination Act of 1975 (42 U.S.C. 6101) and Executive Order 12259. The final rule has been amended to add the Age Discrimination Act. The cited executive order addresses HUD's authority to coordinate the fair housing efforts of federal agencies, is not an enforcement authority, and has not been added.

Part 104—Administrative Proceedings Under Section 812 of the Fair Housing Act

Statutory limitations applicable to administrative procedures

In many instances, commenters suggested revisions to the proposed administrative procedures that cannot be adopted because they conflict with statutory requirements contained in the Fair Housing Act. The statutorily impermissible suggestions included:

1. The deletion of the provision contained in § 104.590(e) which states that HUD will pay witness fees and mileage if the party requesting the issuance of the subpoena is unable to pay. Section 811(b) of the Act requires HUD to pay the fees under such circumstances.

2. The increase or decrease of the amount of the ceiling on civil penalties that may be awarded. Section 812(g)(3) provides for civil penalty ceilings ranging from $10,000 to $50,000. These ceilings are reflected in § 104.910(b)(3).

3. The deletion of provisions contained in § 104.940 requiring HUD to pay attorney's fees to the extent provided under the Equal Access to Justice Act (5 U.S.C. 504). Section 812(p) imposes this liability on the United States.

4. The reconciliation of the proposed deadline for a petition for review of the final decision in a United States Court of Appeals (30 days from issuance of decision); and the date that findings of fact and the final decision become conclusive in connection with a petition for enforcement (45 days after the date of issuance of the decision, if no petition for review is filed). These time periods are imposed under sections 812 (i) and (*l*) of the Act.

Subpart A—General Information

Section 104.20 Definitions

Section 104.20 contains the definitions used in Part 104. In addition to the comments on definitions addressed above, a commenter urged HUD to define separately "hearing" and "hearing on the record". While "hearing" is defined and used in Part 104, the phrase "hearing on the record" does not appear in the part. While the commenter noted that a civil action under section 813 is barred after the commencement of "a hearing of the record" by the ALJ (see 813(a)(3)), it is inappropriate to prescribe by HUD regulation the limitations on the jurisdiction of the United States District Court imposed under section 813 of the Act.

Section 104.30 Computation of time.

Section 104.30 governs the computation of time periods. A commenter suggested a clarification in § 104.30(a) to provide that the time computations relate only to filing and serving papers. The section is intended to apply to all computations of time (e.g., deadlines for the commencement of the hearing (§ 104.700); issuance of the initial decision (§ 104.910(d)); and the notification of appropriate governmental entities following the issuance of the final decision (§ 104.935(a)(2)). Accordingly, the proposed change has not been made.

Section 104.40 Service and filing.

Section 104.40 requires the filing of all documents in Washington, DC. One commenter argued that this provision places a burden on the aggrieved person, could have a chilling effect and is contrary to legislative intent to provide relief to persons in outlying areas. This commenter would revise § 104.40(a) to require filing in Washington, DC until the Assistant Secretary designates local addresses for filing. While HUD intends to conduct the hearing at a place in the vicinity in which the discriminatory housing practice is alleged to have occurred or to be about to occur (§ 104.700), all other administrative functions will be performed at the Office of the Administrative Law Judges in Washington, DC. Since service and filing can be accomplished by mail, HUD does not believe that this requirement will impose an undue burden on persons outside the Washington, DC area.

Subpart B—Administrative Law Judge

Section 104.100 Designation.

Section 104.100 provides that a presiding ALJ for the proceeding shall be appointed by HUD's Chief ALJ. One commenter argued that, consistent with statutory intent for the expeditious handling of complaints, the rules must include procedures for the appointment of the presiding ALJ. HUD believes that the deadlines for the commencement of the hearing are sufficient to ensure the timely appointment of a presiding ALJ and that there is no need to impose a regulatory deadline for appointments by the presiding ALJ.

The commenter also argued that the rules must prescribe the qualifications for ALJ. The qualifications for the appointment of ALJs are fully set forth in 5 U.S.C. 3105, which is specifically

cited at § 104.100. Section 104.100 is unchanged.

Section 104.130 Ex parte communications.

Section 104.130 governs the prohibitions of *ex parte* communications. One commenter argued that the listed sanctions for *ex parte* communications are too harsh, particularly where an aggrieved person is unrepresented by counsel and inadvertently makes an improper contact. To remedy this problem, the commenter would delete the list of sanctions from the regulations. This section places the decision to sanction and the choice of sanctions within the sound discretion of the ALJ. The rule clearly provides that the listed sanctions are illustrative and that the ALJ may provide for other, more appropriate, sanctions.

Section 104.140 Separation of functions.

Under § 104.140, no officer, employee or agent of the Federal government engaged in the performance of investigative, conciliatory, or prosecutorial functions in connection with the proceeding or any factually related proceeding under Part 104 may participate or advise in the decision of the ALJ, except as witness or counsel during the proceedings. One commenter would revise this section to provide that no officer, employee, or agent * * * may participate or advise in the decision of the ALJ, except as a witness or counsel *to a party* during the proceedings. Persons filing *amicus* briefs are not "parties" to the proceedings under § 104.200. The proposed change has not been made since it could have the effect of prohibiting participation by such persons.

Subpart C—Parties

Section 104.200 In general.

Under § 104.200 the parties to the proceedings are HUD, the respondent named in the charge and against whom relief is sought, and any intervenors. In accordance with section 812(c) of the Act, the proposed rule permitted the intervention by any aggrieved person. No other intervention is permitted in the proceedings, although briefs of amicus curiae may be permitted at the discretion of the ALJ (§ 104.200(a) and (c)).

Commenters objected to the proposed rules governing intervention. One commenter noted that the proposed rule would permit any potential complainant to intervene without regard to the relevance of his or her concerns in the case. HUD agrees that the proposed rules governing intervention are too broad and has revised this section to permit any aggrieved person to file a timely request for intervention (see discussion below on the timeliness of petitions for intervention). Intervention shall be permitted where the intervenor is the aggrieved person on whose behalf the charge is issued. Intervention shall also be permitted where the intervenor is an aggrieved person who claims an interest relating to the property or transaction that is the subject matter of the charge and the disposition of the action may, as a practical matter, impair or impede the aggrieved person's ability to protect that interest, unless the aggrieved person's interest is adequately represented by the existing parties. The revised provisions are based on the rules of intervention as of right under Rule 24 of the Federal Rules of Civil Procedure.

The commenters also noted that the rule would not permit non-aggrieved persons to intervene. The statute addresses intervention only by aggrieved persons (see section 812(c)). HUD is reluctant to expand the classes of persons that may be permitted to intervene, particularly in light of the statutory time limitations on the issuance of administrative decisions. HUD notes, however, that other persons may be permitted to submit briefs of amicus curiae under § 104.205(c).

Section 104.210 Representation.

Section 104.210 governs representation of the parties. Under § 104.210(b)(5), parties may be represented by an attorney admitted to practice before a Federal Court or before the highest court in any State. One commenter would permit representation only by attorneys who are admitted to practice before a Federal Court. Attorneys in good standing before State or Federal courts may be sufficiently qualified to represent the parties in a Part 104 proceeding. It is unnecessary to limit the parties' choice of representatives as proposed by the commenter.

Under § 104.210(d), the attorney or other representative must file a written notice of intent before withdrawal from the proceeding. One commenter urged HUD to limit the representative's ability to withdraw. The rule does not prescribe such limitations. To the extent that the commenter fears that withdrawals may be used to delay the proceeding, we note that such dilatory tactics would be prohibited under the standards of conduct (§ 104.220). The commenter suggested that the rule require, at a minimum, service of the written notification of withdrawal on all parties. This service is already required under § 104.40.

One commenter argued that the regulations do not unambiguously provide that complainants may employ private counsel to represent their interests in the administrative hearings, in addition to the representation provided by HUD. The regulations clearly provide that aggrieved persons may intervene as parties (§ 104.200(b)) and that parties may be represented by counsel (§ 104.210(a)(5)). HUD does not believe that further clarification is necessary.

Subpart D—Pleadings and motions

Section 104.410 The charge.

The requirements governing the filing, service and contents of the charge are found at § 104.410. Paragraph (b)(2) of this section refers to "an election * * * to use the administrative procedure." A commenter observed that the administrative procedure will be used if no election is made to have the claim litigated in a civil action and may not be the result of a deliberate election by the parties. The final rule has been revised to clarify this point.

Section 104.430 Requests for intervention.

Within 30 days after the service of the charge, any aggrieved person may file a request for intervention and participate as a party to the proceeding. No other intervention was permitted under the proposed rule. Commenters suggested the revision of this section to permit intervention after the expiration of the 30-day period.

While the 1988 Amendments require the commencement of a hearing and the issuance of an initial decision within specified periods, the statute imposes no absolute deadline for intervention. To ensure that aggrieved persons will not be unnecessarily excluded from a proceeding, the final rule has been amended to permit the filing of a timely request for intervention after the 30-day period. In determining whether intervention will be permitted, the ALJ may consider such factors as: the progress of the litigation when intervention is sought; the delay in seeking intervention and the reasons for the delay; and the prejudice to other parties if intervention is permitted. All requests for intervention submitted within 30 days of the filing of the complaint will be considered to be timely filed.

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Section 104.450 Motions.

Section 104.450(b) states that any party may file an answer to a written motion. Further responsive documents are prohibited, unless otherwise ordered by the ALJ. One commenter would clarify further that prohibited responsive documents would not include exhibits, memoranda, or briefs. The Department does not believe that it is necessary to list all types of responsive documents that would be excluded under this rule. The final rule is unchanged.

Subpart E—Discovery

Section 104.500 Discovery

Section 104.500 contains the general provisions governing discovery. Paragraph (d) provides that the frequency and sequence of the discovery methods are not limited, unless otherwise ordered by the ALJ or restricted under Subpart E. One commenter suggested that the final rule require that the ALJ hold an initial pretrial conference addressing discovery issues as a part of the prehearing procedures under Subpart G. At the pretrial conference, the parties would be required to describe the nature and amount of discovery to be undertaken. The discovery plans would be reduced to a written order and all discovery would be completed in accordance with the order. The commenter noted that this procedure is consistent with limitations on discovery imposed in the United States District Courts.

It is not necessary to provide a pretrial discovery conference and order for every proceeding. Where such a procedure is required to expedite the proceeding, however, a pretrial discovery conference may be conducted and a discovery order issued as a part of a prehearing conference under proposed § 104.810. The final rule is unchanged on this point.

Section 104.500(e) provides that all discovery must be completed 15 days before the date scheduled for the hearing. A commenter argued that this date was too close to the hearing. As an alternative, the commenter suggested that the rule provide that all discovery be completed within 80 days of the issuance of the charge.

The 15-day deadline was imposed to ensure that parties' final preparation for hearing will not be interrupted by late-filed discovery requests, and HUD continues to believe that the 15-day time period is a sufficient buffer. The Department notes that the proposed 80-day deadline would not always ensure more uninterrupted time for trial preparation, since hearings may be commenced at any time within 120 days following the issuance of the charge.

Several commenters noted that the proposed rule will not always permit discovery from a non-intervening aggrieved person on whose behalf the complaint was filed and who is the real party in interest. The commenters argued that such persons should be required to comply with discovery requests (and that the results of this discovery should be admissible in the hearing) as if the aggrieved person were a party to the charge.

Because the administrative decision will depend upon the course of dealings between the respondent and the aggrieved person and the extent of damage will depend upon the injury suffered by the aggrieved person, HUD believes that it is appropriate to allow all forms of discovery to be used against nonintervening aggrieved persons. Accordingly, the final rule includes a new § 104.500(f) stating that for the purposes of obtaining discovery from a non-intervening aggrieved person, the term "party" as used in the subpart includes the aggrieved person on whose behalf the charge was issued.

Section 104.510 Depositions.

Section 104.510 govern depositions upon oral examination and written interrogatories. At the request of a commenter, paragraph (d), which explains the procedures and grounds for requesting suspension of a deposition, has been clarified to permit the suspension of a deposition for improper conduct in addition to improper questioning. (For example, a deposition may be suspended if the party makes improper objections or improper instructions to a witness during the deposition.)

Section 104.520 Use of deposition at hearings.

Section 104.520 governs the use of depositions at hearings. One commenter would amend this provision to deny third parties the right to use information contained in depositions. The 1988 Amendments contemplate that the administrative proceeding is a public proceeding. As such, HUD cannot preclude the use of information contained in the record of the proceeding. HUD notes, however, that the discovery of information and the use of discovered information may be limited in accordance with protective orders issued under §§ 104.570 and 104.740.

Section 104.530 Interrogatories.

The proposed rule permitted unlimited use of interrogatories. One commenter suggested that the number of interrogatories that may be served without an ALJ order should be limited to 20 interrogatories. A rule limiting the number of interrogatories is consistent with practice in Federal courts and will force the parties to focus on pertinent issues when drafting interrogatories. HUD believes, however, that a 20-interrogatory limitation would unduly restrict discovery under this section. As revised, § 104.530 permits a party to serve up to 30 interrogatories on any other party without an ALJ order. Where necessary for full and complete discovery, the parties are permitted to serve additional interrogatories with an ALJ order.

Section 104.570 Protective orders.

One commenter argued that the ALJ must narrow discovery to specific matters raised by the complaint. Part 104 contemplates that discovery will be pursued through the voluntary efforts of the parties and that the ALJ will intervene in the process only where it is necessary to protect a party or person from annoyance, embarrassment, oppression or undue burden or expense. Where necessary to protect the person or party, the ALJ may issue an appropriate protective order directing that certain irrelevant matters may not be the subject of discovery (see § 104.570(d)).

Section 104.580 Failure to make or cooperate in discovery.

Section 104.580 governs motions to compel discovery and the imposition of sanctions. One commenter requested the deletion of § 104.580(d)(1), which permits an inference to be drawn in favor of a requesting party if another party fails to comply with a discovery order issued by the ALJ. The cited provision provides the ALJ with an effective method of compelling compliance with orders by parties or persons who unjustifiably resist discovery. It is retained in the final rule.

Subpart F—Subpoenas

Section 104.590 Subpoenas.

Section 104.590 provides for the issuance of subpoenas in aid of administrative hearings. Paragraph (f) of the proposed rule addressed motions to quash or limit subpoenas. One commenter argued that all evidence must be allowed into discovery and urged the deletion of this provision. While Part 104 is designed to permit the discovery of any matter, not privileged, that is relevant to the subject matter involved in the proceeding, § 104.590 recognizes that there may be occasions where a subpoena should be quashed because it is unreasonable and oppressive or for other good cause, or where the subpoena should be conditioned upon the discovering party's advancing the reasonable cost of producing subpoenaed books, papers or documents. The proposed provision is retained.

Subpart G—Prehearing procedures

Subpart G governs prehearing statements (§ 104.600); prehearing conferences (§ 104.610); and settlement negotiations before a settlement judge (§ 104.620). Except for comments addressing the addition of a discovery conference discussed above, no commenters addressed this subpart.

Subpart H—Hearing Procedures

Section 104.720 Waiver of right to appear.

Section 104.720 permits the parties to waive the right to an oral hearing and present the matter for decision on a written record. Commenters urged the revision of this section to prohibit waiver unless non-party aggrieved persons agree to the waiver. Alternatively, the commenters would provide notice of the proposed waiver to non-party aggrieved persons and would permit such persons to intervene within 15 days of the notice.

Those aggrieved persons interested in participating in the proceeding as an intervenor and controlling the procedural conduct of the litigation as a party are permitted to intervene of right (aggrieved persons on whose behalf the charge is issued) or by permission of the ALJ (other aggrieved persons). Where such persons have not filed timely requests for intervention, or where their interest is not sufficient to justify intervention, HUD does not believe that any purpose would be served by a regulation permitting the person the right to control the conduct of selected aspects of the proceeding. Part 104 was drafted with the expectation that the HUD representative, in the absence of intervention by the aggrieved person on whose behalf the charge is issued, will keep that person informed of the course of the proceedings where necessary for the proper disposition of the charge. Therefore, provision for notification to such persons of this procedural step is not mandated by the rules.

Section 104.740 In camera and protective orders.

Section 104.740, which governs in camera inspections and protective orders contains a minor editorial revision suggested by commenters.

Section 104.750 Exhibits.

Section 104.750 provides for the prehearing exchange of exhibits to be offered into evidence. One commenter noted that some parties may attempt to use the requirement for the prehearing exchange of exhibits to prevent the use of rebuttal exhibits that have not been exchanged. At the request of the commenter, HUD has revised this section to exclude unanticipated rebuttal exhibits from the exchange requirement.

Section 104.760 Authenticity.

At the request of a commenter, § 104.760 has been clarified to state that the authenticity of all documents submitted "*and furnished to the parties as required under § 104.750*" as proposed exhibits in advance of the hearing shall be admitted.

Section 104.780 Record of hearing.

Under § 104.780, all oral hearings must be recorded and transcribed by a reporter designated by and under the supervision of the ALJ. One commenter observed that this section requires all hearings to be transcribed and argued that this requirement will be expensive. The commenter recommended that this section be revised to require transcripts only if requested by a party or an aggrieved party, or ordered by the ALJ. HUD believes that the provision of a transcript is necessary for the full and complete record in the case and to ensure the adequate review of the proceeding by the Secretary under § 104.930, and by the courts under section 812(i), and to permit court enforcement of the Administrative order under section 812(j).

Subpart I—Dismissals and Decisions

Section 104.900 Dismissal.

Under § 104.900, the ALJ is required to dismiss the proceeding:

—Where the complainant, the respondent or the aggrieved person on whose behalf the complaint was filed makes a timely election to have the claims asserted in the charge decided in a civil action under section 812(o) of the Act (see §104.900(a)); or

—Where an aggrieved person has commenced a civil action under an Act of Congress or a State law seeking relief with respect to the discriminatory housing practice and the trial of the civil action has commenced. The commencement of a civil action for appropriate temporary or preliminary relief under section 810(e) or proceedings for such relief under section 813 of the Fair Housing Act do not affect administrative proceedings under Part 104. (see § 104.900(b)). At the suggestion of a commenter, this provision has been clarified to provide that the administrative proceeding will not be affected by such proceedings as a hearing on the temporary or preliminary relief or the issuance of a decision or order granting or denying such relief.

One commenter noted that Part 104 procedures are applicable where the respondent and the aggrieved person do not act (*i.e.*, neither the respondent nor the aggrieved person elects the civil remedy). The commenter argued that Part 104 should include a procedure for an ALJ order by default. Even though the aggrieved person and the respondent may choose not to participate actively in a case, HUD's representative will be required to present sufficient evidence to make a *prima facie* case that a discriminatory housing practice has occurred or is about to occur. Accordingly, there are no provisions for default in the regulation.

Section 104.910 Initial decision of administrative law judge.

Under § 104.910, if the ALJ determines that the respondent has engaged, or is about to engage in a discriminatory housing practice, the ALJ is required to issue an initial decision against the respondent and to order appropriate relief including damages; injunctive or other equitable relief; and civil penalties. The following issues were raised regarding relief.

Injunctive or such other equitable relief. Under proposed § 104.910(b)(2) the ALJ may impose injunctive or such other equitable relief as may be appropriate. One commenter argued that the regulations should discuss the types of affirmative relief (e.g., the posting of fair housing posters) that may be ordered by the ALJ. Given the range of affirmative remedial activities that may be accorded to overcome discriminatory housing practices, HUD believes that it would be counterproductive to undertake a listing of all types of such relief under this section.

The proposed rule provides that no order for injunctive or other relief may affect any contract, sale, encumbrance, or lease consummated before the issuance of the initial decision that involves a *bona fide* purchaser, encumbrancer, or tenant without actual knowledge of the charge.

Commenters noted that a considerable amount of the time may elapse between the filing of the complaint and the issuance of the charge, and from the issuance of the charge to the issuance of the initial decision. They argued that the

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regulations do not provide a mechanism for providing third parties with notice that a complaint or charge has been filed. They charged that the failure to include such requirements threatens the efficacy of the equitable relief provisions. Commenters asserted that a respondent seeking to avoid the injunctive or other equitable relief will have sufficient time to contract for the sale, encumbrance or lease to another during this period. The commenters suggested the addition of provisions requiring the respondent to give actual notice to such persons. Alternatively, commenters suggested that the rule provide that, simultaneously with the issuance of the charge, the Secretary will exercise the authority under section 810(e) to secure an injunction which preserves the status of all property identified in the charge until final resolution of the charge.

HUD agrees that the proposed rule did not adequately address this issue. To remedy this problem, the final rule requires the respondent to give actual notice to third parties with whom the respondent engages in a contract, sale, encumbrance, or lease involving the property that is the subject of the charge. The copy of the charge would be provided before the respondent and the third party enter into the contract, sale, encumbrance or lease.

Commenters also recommended that the final rule should provide that the failure to give the notice would constitute a separate discriminatory housing practice. HUD does not believe that such actions constitute an actionable discriminatory housing practice. This change has not been made.

Some commenters suggested that the respondent be required to provide the notice to third parties following the issuance of the charge while others would require notice following the filing of the complaint. Section 812(g)(4) provides that no order shall affect the described transactions consummated before the order and involving a third party without actual notice of the *charge*. Accordingly, the notice will be required only after the issuance of the charge. The proposed change is included at § 104.610(b)(3).

Civil penalties. Under § 104.910(b)(3), the ALJ may assess a civil penalty against the respondent. The amount of the civil penalty is subject to ceilings of $10,000 to $50,000. The ceiling will depend on the number of previous discriminatory housing practices the respondent has been adjudged to have committed within designated time periods in any administrative hearing or civil action permitted under the Fair Housing Act or any State or local fair housing law, or in any licensing or regulatory proceeding conducted by a Federal, State or local governmental agency.

Under the proposed rule, if the ALJ determines that more than one respondent has been engaged or is about to engage in a discriminatory housing practice, the ALJ would be permitted to assess the civil penalty, up to the maximum permitted under the rule, against each respondent. One commenter argued that this provision penalizes the respondent who has not committed a prior act, simply for an association with another respondent that has committed such act. The commenter alleged that such a penalty is unfair. This section was intended to address civil penalties where multiple respondents are involved and to permit the ALJ to assess a civil penalty against each respondent. The section has been revised for clarity.

Section 104.925 Resolution of the charge.

The resolution of the charge prior to the issuance of a final decision by the ALJ is addressed in § 104.925. Commenters argued that the proposed language does not account for the possibility that some, but not all, of the aggrieved persons of whose behalf the charge is issued may agree to resolve the charge. The final rule has been revised to provide for such resolutions.

Section 104.930 Final decision.

Section 104.930 permits the Secretary to review the ALJ's initial decision and issue a final decision. The Secretary may affirm, modify or set aside, in whole or in part, the initial decision, or remand the initial decision for further proceedings. If no final decision is issued by the Secretary within 30 days after the initial decision, the initial decision of the ALJ would become the final decision of the Department.

The proposed rule does not place any time limitation for issuance of the ALJ decision on remand. Commenters claimed that this omission creates the possibility for substantial delay in decisionmaking which is contrary to the congressional goals of assuring expedited processing. The regulation has been revised to state that the ALJ is required to issue the decision on remand within 60 days of the date of issuance of the Secretary's decision, unless it is impracticable to do so. If the ALJ is unable to issue such a decision on remand within this time period (or within any succeeding 60-day period following the initial 60-day period), the ALJ is required to notify all parties and the aggrieved person on whose behalf the charge was filed in writing of the reasons for the delay. This approach is consistent with section 812(g)(2) of the Act. All remanded proceedings will be conducted in accordance with the requirements of Part 104.

Section 812(h) provides that the Secretary may review any finding, conclusion or order issued by the ALJ. In accordance with this section, the final rule has not been revised to include a standard for Secretarial review of the initial decision, as suggested by one commenter.

Section 104.940 Attorney's fees and costs.

Several commenters addressed § 104.940, which provides for the recovery of fees and costs. While some commenters argued that the rules regarding attorney's fees and costs were proper and identical to those governing the Federal courts, others argued that the specificity of this section was unnecessary.

HUD continues to believe that the regulation should provide some regulatory direction concerning the amount of attorney's fees that may be awarded. There appears to be no specific objection to § 104.940(b)(1) which governs the payment of attorney's fees by HUD to the respondent (see section 812(p) which makes the Equal Access to Justice Act applicable to such payments) or to § 104.940(b)(2) which states that intervenors should be liable to the respondent for reasonable attorney's fees only to the extent that the intervenor's participation in the administrative proceeding was frivolous or vexatious, or was for the purposes of harassment. (see *Hughes v. Rowe*, 449 U.S. 5, 11 (1980) and *Christianberg Garment Co. v. E.E.O.C.*, 434 U.S. 412, 422 (1978)).

Numerous commenters raised the issue of the appropriate standard for the recovery of attorney's fees by prevailing intervenors. The Act provides in section 812(p) that the ALJ or the court may allow the prevailing party a reasonable attorney's fee. That statutory direction is applicable to prevailing intervenors. This entitlement to fees is identical to that provided in a private enforcement action under section 813 and an enforcement action by the Attorney General under section 814. The Department believes that such factors as the appropriateness, necessity and effectiveness of any work performed by a prevailing party are among the factors relevant to the factual determination by an ALJ or court as to whether or what amount of attorney's fees are

"reasonable". Similarly, the issue of whether the amount of fees sought by a prevailing party is reasonable given the participation of federal attorneys is a question of fact to be determined by the ALJ or the court. Accordingly, the rule is unchanged.

Part 106—Fair Housing Administrative Meetings Under Title VIII of the Civil Rights Act of 1968

Part 106 establishes procedures for public meetings or conferences to gather information to assist the Assistant Secretary in achieving the aims of the Fair Housing Act for the promotion and assurance of equal housing opportunity under the Fair Housing Act. No substantive comments were received on the proposed part. It is adopted without change.

Part 109—Fair Housing Advertising

The Fair Housing Advertising Regulations (Part 109) are being revised to reflect the expansion of the classes of persons protected under the Fair Housing Act from discriminatory advertising.

General

The purpose of the HUD Fair Housing Advertising Regulations is to assist all advertising media, advertising agencies and advertisers in complying with the requirements of the Fair Housing Act with respect to advertisements for the sale, rental or financing of housing. These regulations also describe the matters which the Department will consider in evaluating compliance with the Fair Housing Act in connection with the investigation of complaints alleging discrimination in advertising.

Section 804(c) of the Fair Housing Act has been amended to expand the prohibitions or discrimination in advertising for the sale or rental of a dwelling. The amendment added "handicap" and "familial status" to the existing prohibitions of discrimination on the basis of race, color, religion, sex, or national origin.

The Department is revising the Fair Housing Advertising Regulations to reflect the expanded coverage of the Fair Housing Act with respect to discrimination in advertising. Following is a section-by-section description of the changes made in Part 109.

Section 109.5 Policy.

This section describes the statutory provisions on which the Fair Housing Advertising Regulations are based. The two new protected coverages of the amended statute—"handicap" and "familial status"—have been added in two places to the existing list of bases on which discrimination is prohibited. In addition, a reference to appraisal services has been inserted in the list of discriminatory practices specifically made unlawful under the Fair Housing Act. Because of the exemption in section 807(b) of the Fair Housing Act for "housing for older persons", a sentence has been added to § 109.5 to explain that the prohibitions of the act regarding familial status do not apply with respect to such housing.

In addition, references to Title VIII of the Civil Rights Act of 1968 have been changed to the new short title of the statute, the "Fair Housing Act", both in this section and throughout the regulations.

Section 109.10 Purpose.

The Department has made only editorial changes in this section.

Section 109.15 Definitions.

This section contains definitions of the major terms used in Part 109. The Department has added definitions of the terms "handicap" and "familial status" in paragraphs (h) and (i), respectively. These new definitions are the same as the definitions contained in the Fair Housing Act. In addition, the definition of "Secretary" has been eliminated since the term is not used in the regulations, a definition of "General Counsel" has been added, and the definitions of "person" and "discriminatory housing practice" have been revised to reflect statutory changes.

Section 109.16 Scope.

This section explains the use of the criteria contained in Part 109 by the Department with regard to action on complaints alleging discriminatory advertising with respect to advertising media and persons placing advertisements. The Department has made changes in the introductory language of paragraph (a) and in the language of paragraphs (a)(1) and (a)(2) to reflect the changes in complaint processing brought about by the Fair Housing Act amendments. Under the new procedure, the General Counsel will make determinations as to whether there is reasonable cause to believe that a discriminatory housing practice has occurred or is about to occur. Thus, § 109.16 would indicate that the General Counsel will consider the use or the failure to use the criteria in this part in making a determination of reasonable cause to believe that a discriminatory housing practice has occurred or is about to occur.

Section 109.20 Use of words, phrases, symbols, and visual aids.

Several commenters objected to the statement in the first sentence of proposed § 109.20 that the words, phrases, symbols, and forms set forth in this section have been used in advertising to "convey either overt or tacit discriminatory intent" and that therefore their use should be avoided, because that statement appears to focus solely on the intent that may lie behind discriminatory real estate advertising. The Department agrees that the language, which was already contained in § 109.20, could be construed as a limitation on the types of activities considered to constitute unlawful conduct. Since the Department wishes to maintain a neutral position on the issue of whether discriminatory intent is necessary for advertising to be considered violative of the Fair Housing Act, the statement has been revised. In addition, similar revisions have been made in § 109.20(e) and (f). These revisions also make it clear that this regulation does not prohibit the use of any of the words, phrases, symbols or visual aids in this section, but instead is intended to suggest that the use of such words, phrases and symbols can indicate a preference in particular contexts.

The undesignated introductory paragraph in § 109.20 has also been revised to state that the Department will consider whether, in a particular case, there is a need for "further proceedings on" the complaint, rather than a need for "seeking resolution of" the complaint. This change reflects the new complaint processing procedures under the amended act.

In paragraph (a), which provides examples of words descriptive of dwelling, landlord, and tenants which should not be used in advertising, the Department has added the phrase "adult building".

In paragraph (b), which lists examples of words indicative of persons in the protected groups covered by the Fair Housing Act, the Department has added specific provisions on words relating to handicap and familial status. In paragraph (b)(6), the rule provides that nothing in Part 109 restricts the inclusion of information about the availability of accessible housing in advertising of dwellings. In paragraph (b)(7), concerning familial status, the Department has included a statement making it clear that nothing in Part 109 would restrict advertisements of dwellings which are intended and operated for occupancy by older persons

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and which constitute "housing for older persons" as defined in section 807(b) of the Fair Housing Act. In addition, paragraph (b)(6) has been revised and the word "exclusive" has been substituted for the words "ghetto" and "disadvantaged".

In paragraphs (c) and (d), the words "handicap" and familial status" have been added to the list of protected groups.

With regard to paragraph (e), one commenter expressed doubt that directions to real estate could imply a discriminatory preference. However, it has been the Department's experience that references to real estate location in terms of landmarks significant with respect to race, national origin or religion may indicate a preference to certain homeseekers or convey a negative implication to others. Accordingly, this paragraph has not been changed.

Section 109.25 Selective use of advertising media or content.

This section indicates examples of how the selective use of advertising media or content can be used exclusively with respect to particular housing developments or sites, with discriminatory results.

In paragraph (c), which concerns selective use of human models when conducting an advertising campaign, the Department has made changes in the last two sentences of the paragraph to provide an example of selective advertising with respect to familial status.

Section 109.30 Fair housing policy and practices.

This section discusses actions that advertisers can take which would be considered as evidence of compliance with the prohibitions against discrimination in advertising under the Fair Housing Act.

The Department has added the words "handicap" and "familial status" where appropriate in paragraphs (a) and (b). In addition, the Department has added language in paragraph (b), concerning use of human models, to indicate that models used in display advertising should represent families with children, when appropriate, as well as both majority and minority groups in the metropolitan area and both sexes.

Two commenters suggested that paragraph (a) be revised to provide that use of the equal housing opportunity logotype, without more, would be sufficient to indicate compliance with the advertising provisions of the Fair Housing Act. However, the use of the logotype (or the equal housing opportunity statement or slogan) is only one indication of compliance, and such use would not preclude the use, in the same advertisement, or words, phrases, symbols, or forms which convey a discriminatory preference or limitation (see § 109.20). Accordingly, suggested change has not been made.

Minor editorial changes have been made in paragraphs (c) and (d) of § 109.30.

Appendix to Part 109

The appendix to Part 109 contains three tables intended to serve as a guide for the use of the Equal Housing Opportunity logotype, statement, slogan, and publisher's notice for advertising. The Department has added the words "handicap" and "familial status" where appropriate in the three tables.

Part 110—Fair Housing Poster

Part 110 sets forth the procedures established by the Secretary of Housing and Urban Development with respect to the display of a fair housing poster by persons subject to sections 804 through 806 of the Fair Housing Act. The Department has amended Part 110 to reflect the changes made by the Fair Housing Amendments Act of 1988. The major changes in the poster regulations are in § 110.25, Description of Posters. The legend of the poster has been revised to add "handicap" and "familial status" to the bases of illegal discriminatory acts. The legend has also been revised to show that discrimination in the appraising of housing is illegal. In addition to the above amendments, editorial modification has been made for clarification purposes and for consistency in terminology.

Part 115—Recognition of Jurisdictions With Substantially Equivalent Laws

Part 115 has been revised to comply with the requirements of the Fair Housing Act. This part: (1) Provides a revised process for certifying agencies as substantially equivalent in place of the recognition process as provided in the current Part 115; (2) defines the requirements for certification with the specificity required by the Act; (3) defines the effect of the Act on agencies recognized on September 12, 1988 as substantially equivalent under current Part 115; (4) requires that in order to become certified, agencies must provide protection against discrimination based on "handicap" and "familial status"; and (5) provides a prohibition against coercion, intimidation and threats.

To obtain certification State and local agencies must administer laws which prohibit all discriminatory housing practices which are prohibited by the Act and must include as protected classes all classes protected by the Act. Discrimination on the basis of handicap is described in the statutory language and only those provisions of section 804 (f) of the Act which clearly do not apply to State or local agencies may be omitted from the law or ordinance the agency administers if certification is to be granted. Further, the remedies available to a certified agency must be substantially equivalent to the remedies available under the Act. Final agency actions must be subject to judicial review and aggrieved persons must have the right of access to a State or local court. The Act also requires that the procedures followed by a certified agency be shown to be substantially equivalent to those created by the Act. Such procedures as: Filing of complaints by the agency; acknowledgment of receipt of complaints and notice of procedural rights and obligations, completion of investigation and investigative report within 100 days and notice of cause for delay; provision for conciliation and a conciliation agreement which shall be made public under certain conditions; were provided as examples of procedural matters which must be included in the law or ordinance administered by a certified agency.

The regulations require that the law or ordinance provide for resolution of a complaint by a body empowered to grant relief substantially equivalent to the relief which may be granted by the Secretary under the Act.

The Department received a number of comments. These comments can be divided into five major categories: (1) Should procedures in Fair Housing laws of States and localities be required to mirror the Fair Housing Act rather than be "substantially equivalent" to the Act; (2) Should an agency be certified which protects less than all of the classes protected by the Act; (3) Should building codes and other laws or ordinances administered by State or local agencies other than the agency administering the fair housing law be considered in determining the adequacy of the law; (4) Should State or local fair housing laws be required to include an exemption from discrimination based on familial status for housing of the elderly; and (5) Should State and local agency enforcement mechanisms be required to be substantially equivalent to the Act. Significant comments in these areas were focused principally on §§ 115.3 and 115.3a of the proposed rule.

It appears that many commenters misunderstood the requirements in § 115.3(e) for a determination that a State or local law "on its face" satisfies the criteria for certification, indicating that they believed the ordinance or law standing alone must meet the criteria. Both the preamble and the proposed rule indicate that a determination as to whether a State or local law "on its face" is adequate, is not limited to an analysis of the literal text of the law but must take into account regulations, directives and rules of procedure of a State or local agency, as well as other relevant matters of State or local law or interpretations by competent authorities. However, in order to avoid any possible confusion as to matters which will be considered as part of a determination of the adequacy of a law "on its face," § 115.3(e) has been clarified by substituting the word "all" for the word "such" in the second sentence thereof.

Procedures for Investigations

Several commenters suggested that time limits, provisions for notices to complainants and respondents and similar procedural criteria are inappropriate, burdensome and may require substantial amendments to current laws or ordinances. Under section 604(f)(3)(A) the Secretary is required to determine that the procedures followed by an agency administering a fair housing law are substantially equivalent to those in the Act. The Department believes the procedural aspects which were contained in the proposed rule are essential to providing adequate procedural protections to persons and that the absence of such protections would substantially weaken a fair housing law. These requirements have been retained in the rule.

A number of commenters objected to the requirement that investigations be commenced within 30 days of the filing of a complaint and that the processing of such complaints be completed within one year of filing. Both the Act and the regulations refer to commencement of proceedings within 30 days of filing. The proposed regulations do not refer to a date for commencement of the investigation, and requiring that the disposition of the complaint be completed within one year of filing of the complaint is reasonable.

Protected Classes

A number of commenters urged that the final rule provide that State and local fair housing laws should be eligible for certification even though they do not include coverage of the new classes of persons protected by the Act, if they meet all other requirements for recognition. Some commenters suggested in the alternative that certification should be permitted based on protections of a certain number of protected classes (e.g. coverage for five or six of the seven protected classes).

The Department believes that the legislative history of the Fair Housing Act supports the position in the proposed regulation that coverage of all protected classes is essential to a substantial equivalency certification.

In connection with the inclusion in section 810(f) of the Act of a provision relating to the grandfathering of substantially equivalent agencies, the House Judiciary Committee Report on the Fair Housing Amendments Act described the process as follows:

> Presently, there are 36 states and 78 local agencies certified by the Secretary as substantially equivalent under existing federal law. Many of these states provide for some degree of administrative enforcement, as well as protecting handicapped persons and families with children. The Committee expects that many states will be able to maintain their substantial equivalency status within the time period provided.
>
> In order to provide a reasonable transition period for states to adjust to the new law, agencies currently certified on the day before the date of enactment will continue to remain certified for 40 months. This allows most jurisdictions sufficient time to conform their laws to the new federal standards so that they may remain certified. The Committee recognizes that some jurisdictions may need additional time because of the infrequency of legislative sessions, and the Secretary may grant an additional 6 months for this purpose. Report p. 35.

Thus, it appears clear that Congress intended to provide grandfathered agencies time to broaden their protections to encompass the new protected classes. For this reason the final regulation retains the requirement that State and local laws provide protection to all the classes of persons protected under the Federal law.

Enforcement Procedures

Comments that the proposed regulations unreasonably require certified agencies to amend their laws to provide relief which they are currently not authorized to grant appear to be objections to the Act rather than to the regulations. The Fair Housing Amendments Act put "teeth" into the fair housing law. It grants the Department authority to take action against those who commit acts made unlawful by the Fair Housing Act. Consequently, those agencies to which the Department must refer complaints must administer laws which provide the State or local agency with the same authority to take action against those who commit unlawful acts.

Some commenters in this area insisted that agencies be required to provide for administrative judges and alternative choices—administrative tribunal or civil court—by either complainant or respondent as well as an independent right to go immediately to civil court. We believe it is sufficient that a certified agency be authorized to obtain relief by whatever procedure its law or ordinance provides as long as those procedures provide rights and protections substantially equivalent to those in the Fair Housing Act. This articulation recognizes that it is possible that agencies will be authorized to provide more effective relief on behalf of aggrieved persons through judicial enforcement mechanisms, which are no more burdensome on complainants, without any administrative enforcement procedure. Under the final rule States and localities are permitted to provide such judicial enforcement mechanisms as an alternative to an administrative enforcement—civil action mechanism such as that in the Fair Housing Act.

Building Codes

Several commenters indicated that incorporating into the certification procedures a requirement that States and localities provide accessibility requirements for new construction which are substantially equivalent to section 804(f) of the Act was onerous and inconsistent with State and local fair housing enforcement procedures. These commenters pointed out that building code ordinances and mechanisms are not part of fair housing enforcement in most areas and that generally, enforcement of requirements is not handled in the same manner as fair housing cases. These commenters suggested that the requirement in § 115.3a(b)(3) be deleted.

The Department is aware that enactment of accessibility requirements will in some cases present problems for States and localities. However, the Department believes that the legislative history of the Act and particularly the discussion of the importance of the involvement of States and localities in the implementation of new construction accessibility requirements in the Statement of Managers in the Senate, 134 Cong. Rec. S10450 (daily ed. Aug. 1, 1988) supports the determination of the Department to require local construction requirements as part of the HUD certification process.

Protection against housing discrimination because of handicap including accessibility requirements has

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been made a part of the Fair Housing Act and must be a part of a fair housing act of a State or locality which obtains certification. A certified agency must have authority and responsibility to receive and process complaints of discrimination based on handicap including complaints of violations of the accessibility standards.

Housing for Older Persons

The Fair Housing Act exempts from the familial status provisions certain housing for older persons. This exemption reflects the unique status of housing for older persons described in the House Report on the Fair Housing Amendments Act:

> The bill specifically exempts housing for older persons. The Committee recognizes that some older Americans have chosen to live together with fellow senior citizens in retirement-type communities. The Committee appreciates the interest and expectation these individuals have in living in environments tailored to their specific needs. (Report p. 21).

The Act delineates with specificity the nature of housing for older persons which is exempt from the prohibitions against discrimination because of familial status. In the proposed rule, the department indicated that it intended to require that the State or local law assure that no prohibition based on familial status applies to housing for older persons as a condition for certification. The preamble noted that, while HUD had not previously required States or localities to include in their laws or ordinances any exceptions or exemptions which the Federal law contains, in view of the Congressional concern that the prohibitions against discrimination because of familial status not impinge on housing for older persons, provisions providing for housing for older persons should be required in State or local fair housing laws.

Many commenters objected to the requirement that certified agencies administer a fair housing law which provides the same protections for housing for older persons as those contained in the Fair Housing Act. Some commenters pointed out that as a result of the proposed requirement their fair housing laws would have to be amended to limit existing protections for families with children in order to obtain certification.

While the Department believes that Congress intended to promote housing opportunities to address the needs of older persons, there is nothing in the statute or legislative history to indicate that Congress sought to limit the ability of States and localities to provide additional protections. For this reason, the final rule has been revised to delete the requirement for an exemption for housing for older persons in State or local laws.

However, in order to reflect the congressional interest in the protection of housing opportunities for older persons, the final rule specifically indicates that State and local fair housing laws may include an exemption for housing for older persons. This provision is intended to encourage States and localities to consider the needs of older persons in connection with the development of fair housing laws.

In addition to the above comments some commenters objected to the provision that certified agencies administer a law requiring that conciliation agreements be made public. (Section 115.3(a)(2)(vi)).

The Department is aware that there are strong arguments for and against disclosure of conciliation agreements. However, Congress has chosen to require such disclosure (The Fair Housing Act (Sec. 810(b)(4))). Uniformity of procedures, in this regard, followed by the Department and certified agencies is preferable to dissimilar practices from State to State and locality to locality. Both complainants and respondents will have the knowledge that no matter the location of the discriminatory housing practice resulting in a Title VIII complaint, any conciliation agreement arising out of conciliation engaged in by the Department or any certified agency will be governed by the same disclosure rules.

Finally, in order to provide consistency in connection with State and local enforcement procedures, § 115.3(b)(1)(iv) has been amended to clarify that a certified agency must have authority to seek injunctive or other equitable relief in a court of competent jurisdiction, as an alternative to the stated authority to grant such relief. This change allows the agency an alternative similar to the alternatives provided in § 115.3(b)(1) (iii) and (v).

Part 121—Collection of Data

The Department is recodifying 24 CFR Part 100, entitled "Racial, Sex, and Ethnic Data", as a new Part 121 of Title 24. Part 100 was originally adopted in 1971 under the heading "Racial and Ethnic Data", to enable the Secretary of Housing and Urban Development to obtain information concerning minority-group identification to assist the Secretary in carrying out responsibility for administering the national policies prohibiting discrimination and providing for fair housing. In 1975, in light of the 1974 amendment of Title VIII to prohibit discrimination on the basis of sex, Part 100 was amended to provide for obtaining information on sex, as well as minority-group, identification.

Section 562 of the Housing and Community Development Act of 1987 (Pub. L. 100-242, approved February 5, 1988) requires the Secretary of Housing and Urban Development to collect data on the racial and ethnic characteristics of persons eligible for, assisted, or otherwise benefitting under each community development, housing assistance, and mortgage and loan insurance and guarantee program administered by the Secretary, and to include a summary and evaluation of such data in the Secretary's annual report to the Congress.

Section 808(e)(6) of the Fair Housing Act, 42 U.S.C. 3608(e)(6), as added by section 7(b)(1)(D) of the Fair Housing Amendments Act of 1988, requires the Secretary to collect data on the race, color, religion, sex, national origin, age, handicap and family characteristics of persons and households who are applicants for, participants in, or beneficiaries or potential beneficiaries of, programs administered by the Department, to the extent that such persons and households are within the coverage of the civil rights laws and executive orders referred to in section 808(f) of the Fair Housing Act or specified by the Secretary by publication in the **Federal Register** and to the extent that the Secretary determines the data to be necessary or appropriate.

Since Part 100 is now being used for regulations setting forth the coverage of the Fair Housing Act, the regulations concerning collection of data have been moved to a new Part 121—Collection of Data. The Department proposed a revision of the provisions contained in the old Part 100 to provide a more specific regulatory framework for the Secretary to use in carrying out the new data collection and reporting responsibilities mandated by the legislation described above.

A number of commenters asserted that the Department has had authority for some time to collect the types of data which are needed for reporting to Congress but that it has failed to generate such data. These commenters offered various suggestions for the restructuring of Part 121 to accomplish that purpose.

The Department does not believe that any restructuring of Part 121 is necessary. The language of proposed § 121.2 was drawn largely from that

contained in section 808(e)(6) of the Fair Housing Act, described above, to enable HUD to meet the responsibilities mandated by that legislation. HUD remains committed to that objective and believes that the provisions of Part 121, as proposed, will enable HUD to achieve that purpose.

Accordingly, the Department has adopted Part 121 in this final rule with no changes from the proposed rule.

Legislative review issues

A number of commenters, including members of the Banking Committees of the House and Senate and two leading Senate Judiciary Committee proponents of the Fair Housing Amendments Act, asserted that the Department violated section 7(o) of the Department of HUD Act—HUD's legislative review statute—by failing to supply the Banking Committees with copies of HUD's proposed rule for 15 session days before the rule's publication.

Aside from the substantial constitutional question whether the section 7(o) rule-request process is valid and enforceable against HUD (See *INS v. Chadha*, 462 U.S. 910 (1983)), HUD had *no duty* to submit this rule for prepublication review for two reasons, either of which is dispositive:

—the explicit direction contained in the Fair Housing Amendments Act regarding publication of rules for comment, and for effect within 180 days of enactment, coupled with the then-pending adjournment of the Congress, made compliance with section 7(o)(2) impossible (and therefore unnecessary); and

—there was no timely request from either Committee for prepublication review of the rule, as required by section 7(o)(2) of the Department of HUD Act.

Impossibility of compliance with section 7(o). In the proposed rule, the Department compared the specific rule-production requirements set out in the Fair Housing Amendments Act with the legislative review requirements in section 7(o). The Department looked at the 1988 legislative calendar, which called for October 5, 1988 adjournment *sine die*. The Department looked at the September 13, 1988 approval date for the Fair Housing Amendment Act, and concluded that the Congress could not possibly have intended for HUD to adhere to the requirements of both Acts.

If the Department had waited for the opening of the new session to expose its rule to the required 15-session-day review, a *proposed* rule could not have been published before February 6, 1989. (HUD published its proposed rule at its earliest opportunity, after developing it on an accelerated schedule. The Department could not possibly have completed the 15-day prepublication review *before* the Congress adjourned on October 22, 1988, notwithstanding the fact that adjournment was delayed beyond the earlier October 5 projection.)

HUD's long experience with section 7(o) compliance does not comport with the commenters' suggestion that HUD could have followed the dictates of *both* laws—the rapid-pace rulemaking requirements of the Amendments Act, and the leisurely, all-purpose dictates of section 7(o). The requirements of these two statutes could not be in greater conflict, and the Department followed the correct course in choosing the Amendment Act's particularity over section 7(o)'s generality.

Many of the same public commenters who insisted that prepublication review should have been afforded to the Banking Committees under section 7(o) also complained that the Department should have afforded the public a longer period for public comment on its published proposed rule. HUD notes that if both of these requests had been honored the public comment period would have expired approximately one month after the March 12, 1989 effective date of the Amendments Act, and that no rules for implementation of the rights granted by the Fair Housing Amendments Act could have been published for effect until at least June 1989.

Lack of timely request for congressional review. Beyond the question of statutory interpretation, prepublication review under section 7(o) was not required because the Banking Committees failed to make a timely request for such review. The following facts are relevant to this issue:

1. By letter of September 14, 1988, the General Counsel submitted to the Banking Committees of both Houses HUD's semiannual agenda of rules, as required by section 7(o). This agenda, normally submitted in October of each year, was provided to the Committees one month early because adjournment was scheduled for October 5, 1988. (Under section 7(o), the Committees have a period of 15 *session* days to review the agenda and request that particular HUD rules be submitted to the Committees for prepublication review.)

2. In the letter transmitting the semiannual agenda, the General Counsel asked for committee restraint in requesting proposed rules from the agenda, since the effect of any such request made during September would be to delay HUD publication of the requested rules until the following February. The General Counsel also notified the Committees that HUD did not regard certain rules arising out of statutory enactments that contained their own rules-production deadlines as *subject* to the requirements of legislative review. "Notably," the General Counsel's letter continued, "the Fair Housing Amendments Act and the Indian Housing Act contain difficult production deadlines for rulemaking that coincide with congressional recess and adjournment periods. Since it is clearly not possible to honor these deadlines *and* those in the legislative review statute, we intend to focus our efforts on meeting the explicit production deadlines contained in these statutes."

3. The Committees' statutory review period for the submitted agenda expired on September 30, 1988. Neither the House nor the Senate Banking Committee made a timely response to HUD's semiannual agenda submission by that date.

By letter dated October 18, 1988 (and apparently forwarded to HUD six days later), the Secretary received a request from the Chairmen of the House and Senate Banking Committees that HUD "follow the requirements of section 7(o) and provide the proposed Fair Housing Amendments Act rules for review by the Committees before publication." A similar letter was received from Senators Kennedy and Specter of the Senate Judiciary Committee. In deference to these requests, the Banking Committees and Senators Kennedy and Specter were provided copies of the proposed rule shortly before its publication. The Department, however, did *not* delay the rule's publication for 15 session days, or for any other designated period, pending their review.

Public comment period

Section 13 of the 1988 Amendments requires the Department to provide an opportunity for public notice and comment. While HUD's general policy is to afford the public not less than 60 days for the submission of public comments (see 24 CFR 10.1), based on the 180-day production schedule and the requirement that a final rule be effective by March 12, 1989, the Department provided 30 days for public comment on this proposed rule.

The Department agrees with the commenter that the period available for public comment, coupled with the size and scope of the proposed rule, made public response difficult. Despite the abbreviated comment period, however, the rule attracted more than 6,400 timely comments—by far the greatest number in HUD's recent history. Many hundreds

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of these comments reflected thoughtful consideration of the rule and the issues it raised, and lengthy analytical comments were received from virtually all major housing industry organizations, civil rights and handicapped rights groups, and other interested organizations. Hundreds of additional comments have been received since the close of the December 7, 1988 public comment period, and all of these have been read to determine whether any novel issues were raised that were not treated in the timely comments. The Department is convinced that the public comment period permitted full exploration of the issues.

Equally important, as a result of providing less time for the receipt of public comments, the Department has been able to issue this final rule in advance of the law's March 12, 1989 effective date. It is vital that persons subject to the law's greatly increased penalties and newly proscribed conduct have as much advance notice as possible concerning the types of conduct made illegal under the amended statute. Issuance of this rule on or near the effective date of the statute would have ill-served housing suppliers subject to the law's requirements and to HUD regulations interpreting those requirements.

As indicated earlier, HUD found it impossible to follow both the regulation-writing requirements specified in the Amendments Act and the more general requirements of section 7(o) of the Department of HUD Act. Nevertheless, publication of this rule in January permits the Department to provide for a waiting period following publication before the final rule takes effect—a procedure that comports with HUD's rule on rules, 24 CFR Part 10, and which meets the requirements of section 7(o)(3) of the Department of HUD Act, which requires 30 session days after publication before HUD final rules may become effective. While HUD does not believe that this rule, with its difficult statutory production schedule, is technically subject to the 30-session-day waiting period required by section 7(o)(3), we nevertheless believe that given the controversial issues involved, it is useful and helpful to provide the Congress with time to consider whether any facet of this rule making calls for a legislative response.

In summary, the Department believes that the public interest was well-served by HUD's early publication of a proposed rule, that the public comments received on that rule were of unusually high quality and were complete in their exploration of legal and policy issues, and that early publication of the final rule—well before its scheduled effectiveness—also serves the public interest and provides the Congress time to assess whether the rule comports fully with congressional intent.

The Department regrets that resource constraints prevented the proposed rule's being made more widely available on tape. However, the Regulations Division of HUD (the Office of the Rules Docket Clerk) received no requests that the tape be made available for the specific use of any person outside the Washington, DC area.

Codification of analysis of regulations

One commenter recommended that the final regulations include, as an appendix, an analysis of the regulations, similar in form to the preamble to the proposed rule.

The Department has attempted to make the guidance provided by its rule text as helpful as possible, and has provided examples of conduct where appropriate to assist in understanding the text. In addition, we have added the analytical guidance contained in the preamble to the final rule as an appendix to the regulation. The preamble will, thus, be codified in the 1989 edition of the Code of Federal Regulations. This will assure the availability of the preamble to interested persons in the future.

Regulatory Impact Analysis

One commenter argued that a preliminary regulatory impact analysis should have been prepared based upon the proposed rule's impact on consumers. The Director of the Office of Management and Budget waived the requirement for the preparation of a preliminary Regulatory Impact Analysis under section 3 of the Executive Order based on a determination that compliance with the requirement for a preliminary Regulatory Impact Analysis may unduly delay the rule and may prohibit the issuance of a final rule effective by March 12, 1989. The proposed rule announced that the final Regulatory Impact Analysis would be prepared before the publication of the final rule.

Commenters argued that the effects of the proposed rule on consumers and the housing industry are significant and complex. Commenters also argued that HUD's finding that the proposed rule would not cause a major increase in costs or prices for consumers is incorrect. A commenter noted that the changing of all-adult communities to family communities will result in major expenditures which will require commensurate increases in rents. Increased costs would include redesign of advertising, brochures, signs, etc., rewriting and reprinting of management documents, increased management and maintenance staff, the addition of playgrounds and play areas for children, higher repair and maintenance expenses because of children, higher potential legal liability and increased insurance rates. One commenter argued that a housing affordability analysis based upon current data should be conducted.

The Department agrees that this rule constitutes a "major rule" as defined in section 1(b) of Executive Order 12291 and has prepared a final Regulatory Impact Analysis as required by the Executive Order. This analysis is available in the Office of HUD's Rules Docket Clerk at the address cited above.

Environment

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implements section 102(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of General Counsel, Rules Docket Clerk, at the address listed above.

Regulatory Flexibility Act

Several commenters objected to HUD's finding that this rule making would not have a significant economic impact on small entities. The commenters argued that the date in the Steinfeld study (cited in the proposed rule) was over ten years old, and the study's assumptions did not reflect common construction practices. Because HUD did not update this data for OMB, neither HUD nor OMB have considered the major increases in costs or prices adversely impacting housing affordability for consumers, a commenter claimed. In contrast to the Steinfeld study, the commenter asserted that 1988 data indicates a 25 percent loss in profitability of garden-style multifamily units alone. The commenter asserted that it could find no basis for the minimal increases in costs contemplated by the Steinfeld study, unless exterior design site planning and construction considerations bearing on density loss were omitted from the calculations. The minimal expenditure of funds envisioned by HUD is therefore seriously flawed and the impact of the rule upon consumers is vastly understated.

In addition to these issues, commenters also felt that the proposed rule did not adequately consider the

fiscal impact on small governmental entities. The commenter stated that there will be an increase in costs to become certified a substantially equivalent, to make required changes, and to handle the increased caseload associated with the addition of handicap and familial status. The commenter noted that this will require additional FHAP funds to permit the increase in staff once local laws are amended.

Other commenters argued that the regulatory flexibility analysis should have considered the economic impact on communities and municapalities planned for senior citizens. (*I.e.*, The design of such homes on small lots with significant common areas and facilities and which have a direct effect on the demand for service from municipalities in which they are located. Such communities also have significantly reduced demand for schools and certain recreational activities). Each of these factors will have an impact on the organization of municipal governments and their budgets and facilities, a commenter asserted.

While all of these comments reflect what may well be realistic difficulties associated with compliance with the requirements of the Fair Housing Amendments Act, and while the economic impact of the statute may in fact be greater than HUD's preliminary analysis indicated, the Department fails to see what latitude exists for affording regulatory relief based upon the fact that some businesses or governmental entities affected by the statute's requirements are "small entities". The purpose of the Regulatory Flexibility Act is to establish, as a principle of regulatory issuance,

> that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulations. (5 U.S.C. 601 note)

The Department has reviewed the objectives of the Fair Housing Amendments Act and finds that its principal objective is stepped-up law enforcement and the expansion of civil rights. There is no suggestion in the statute that HUD is being provided with discretion to apply the law's requirements differentially, depending upon whether a prospective respondent is a large corporation, or a small entity within the meaning of the Regulatory Flexibility Act. While it is true that future regulation by HUD in such limited areas as compliance reporting or other record-maintenance functions may permit provisions calling for lesser burdens on small entities, the basic prohibitions, compliance procedures, discovery procedures, hearing rights, and other requirements of this final rule are not of a nature that invites regulatory flexibility. To the extent that small entities are subject to the Fair Housing Act's requirements, they are subject as well to the requirements of the rule—to the same extent and in the same manner that larger entities are so subject. Accordingly, HUD's Regulatory Impact Analysis and Regulatory Flexibility Analysis are concerned with the costs of compliance with the law, but having accomplished those analyses, the Department sees its discretion to alter the impact of this rule on small entities as extremely limited by the statute. There are no significant alternatives to the regulatory scheme provided for in the rule that are consistent with the objectives of the Fair Housing Amendment Act.

"Takings" Analysis

A commenter suggested that HUD should conduct a "takings analysis" in accordance with Executive Order 12630 of March 15, 1988, "Governmental Actions and Interference with Constitutionally Protected Property Rights".

A takings analysis involves assessing the economic impact of a proposed policy or action to determine, to the extent possible, what economic or property interests are likely to be affected by the proposed action of government.

The economic impact of this rule on identified property interests, according to many commenters, is expected to be significant, but this fact alone does not end the inquiry. Additionally, in accordance with Guidelines issued by the Attorney General relative to agency analyses under Executive Order 12630, consideration is to be given to:

> . . . Whether the proposed policy or action carries benefits to the private property owner that offset or otherwise mitigate the adverse economic impact of the proposed policy or action; and
>
> *Whether alternative actions are available that would achieve the underlying lawful governmental objective* and would have a lesser economic impact (Emphasis Added)

As indicated earlier in our discussion of Regulatory Impact and Regulatory Flexibility Act considerations, the Department does not perceive any "alternative actions" available to the rule maker except to follow the expressed intention of the Congress and provide for enforcement of the Fair Housing Amendments Act. Nor does the Department regard the effects of this rule on private property rights as being sufficiently severe as to "effectively deny economically viable use of any distinct legally protected property interest of [a property owner], or to have the effect of, or result in, a permanent or temporary physical occupation, invasion, or deprivation." (The quoted phrase is part of the Attorney General's advisory to agencies with reference to determinations of policies having "takings" implications.)

Agencies conducting takings analyses are encouraged by the Executive Order and the accompanying Guidelines to strive, to the extent permitted by law, to undertake policies or actions in a way which minimizes their takings implications. This, the Department has done. Compliance with the Fair Housing Amendments Act will, in some circumstances, limit owner discretion concerning admissions policies and will require builders of multifamily housing to comply with additional construction-related criteria associated with accessibility by handicapped persons. There are other aspects of the Amendments Act that will have some economic impact and will thus affect property rights. None of these impacts, in the Department's view, rises to the level of a "taking" within the meaning of the Fifth Amendment of the United States Constitution.

Paperwork Reduction Act

The information collection requirements contained in this rule have been submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act of 1980. Sections 100.304(c)(2), 103.30, 115.3(a)(i), 115.5, 115.7 and 115.9 of this proposed rule have been determined by the Department to contain collection of information requirements. Information on these requirements are provided as follows:

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TABULATION OF ANNUAL REPORTING BURDEN PROPOSED RULE—FAIR HOUSING AMENDMENTS ACT OF 1988

Description of information collection and section of 24 CFR affected	Number of respondents	Number of responses per respondent	Total annual responses	Hours per response	Total hour
Policy and Procedures—Housing for Persons 55 years and older—§ 100.304(c)(2)	1,231	1	1,231	1	1,231
Housing Discrimination Complaint Forms HD-903 & 903A Spanish Version (2529-0011)—§§ 103.30 & 115.3(a)(1)	8,400	1	8,400	1	8,400
Certification Request Documentation (2529-0025)—§§ 115.5, 115.7 & 115.9	30	1	30	17	510
Total annual burden					10,141

Collections of information conducted or sponsored by HUD during the conduct of an administrative action or investigation against specific individuals or entities after a case file is opened are not covered by 5 CFR Part 1320—Controlling Paperwork Burdens on the Public (see 5 CFR 1320.3(c)). Accordingly, the tabulation above, does not include the information collection hours associated with §§ 104.420, 104.530, 104.540(b)(4), 104.540(c), 104.550(a), 104.550(b), 104.590, 104.600(b), 104.620(b)(2), 104.700(a), 104.720, 104.790(b), 104.910(d), 115.3(a)(ii), (iii) and (iv), and 115.4(b)(2)(i). No burden hours are reported for Part 110 since public disclosure of information originally supplied by the Federal Government to the recipient for the purposes of disclosure is not a collection of information. (See 5 CFR 1230.7(c)(2)). No burden hours are included for § 121.2 because information collection requirements on race, color, religion, sex, national origin, age, handicap, and family characteristics will be imposed under the regulations applicable to the specific HUD program.

Impact on Family

The General Counsel, as the Designated Official under Executive Order No. 12606—The Family, has determined that this rule, if implemented, may have a significant impact on family formation, maintenance and general well-being because the rule provides Federal law enforcement assistance to families confronting housing discrimination based on race, color, religion, national origin, familial status or handicap. However, review under the Order is not required because the statutory mandate leaves little effective discretion in the Department to lessen the family impact. In any event, the purpose of the statute is to have a positive impact on family values by offering a measure of protection to persons confronting illegal discrimination.

Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order No. 12612—Federalism, has determined that the policies contained in this rule would, if implemented, have federalism implications and are subject to review under the Order. Specifically, the amended statute continues to provide for referral to State and local fair housing enforcement agencies. However, in the future the determination of substantial equivalency will depend upon State and local enforcement machinery that matches up with the much-strengthened Federal law. Accordingly, the effect of the amended Fair Housing Act will be to encourage States and localities to amend their laws to match the Federal enforcement machinery, or suffer the eventual loss of recognition as substantially equivalent State or local agencies and possible loss of function if citizens of the jurisdiction do not choose to file complaints with State or local officials. Additionally, jurisdictions losing equivalency status will lose eligibility for grant funds available to co-enforcers of fair housing laws.

While the rule would have federalism impacts, review under the Federalism Executive Order is not required because the implementation of the statute leaves little discretion with HUD to lessen these impacts. HUD's statutory mandate is clear—it must accept complaints nationwide, and refer complaints for processing (after the initial grandfather period) only to jurisdictions with substantially equivalent laws. Moreover, since the statute addresses the Federalism issue by declaring that certain conduct will be illegal and by providing machinery for referral to State and local authority under appropriate circumstances, further study of Federalism implications could not appreciably affect the approach taken in the implementing regulations.

Other matters

This rule was listed in the Department's Semiannual Agenda of Regulations published October 24, 1988 (53 FR 41974, 42606) under Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance program number and title is 14.400 Equal Opportunity in Housing.

List of Subjects

24 CFR Part 14

Equal access to justice, Lawyers, Claims

24 CFR Part 100

Fair housing, Incorporation by reference, Nondiscrimination

24 CFR Part 103

Administrative practice and procedure, Fair housing

24 CFR Part 104

Administrative practice and procedure, Fair housing

24 CFR Part 105

Administrative practice and procedure, Fair housing

24 CFR Part 108

Administrative practice and procedure, Fair housing

24 CFR Part 109

Advertising, Fair housing, Signs and symbols

24 CFR Part 110

Fair housing, Signs and symbols

24 CFR Part 115

Fair housing, Intergovernmental relations.

24 CFR Part 121

Fair housing, statistics, Reporting and Recordkeeping requirements.

Accordingly, Title 24 of the Code of Federal Regulations is amended as follows:

PART 14—IMPLEMENTATION OF THE EQUAL ACCESS TO JUSTICE ACT IN ADMINISTRATIVE PROCEEDINGS

1. The authority citation for Part 14 is revised to read as follows:

Authority: Sec. 504(c)(1) of the Equal Access to Justice Act (5 U.S.C. 504(c)(1)); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. In §14.115, the phrase "or" at the end of paragraph (a)(8) is removed, the period at the end of paragraph (a)(9) is removed and in its place the phrase "; or" is added, and new paragraph (a)(10) is added to read as follows:

§ 14.115 Proceedings covered.

(a) * * *

(10) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3600–3620) and 24 CFR Part 104.

* * * * *

3. Part 100 is revised to read as follows:

PART 100—DISCRIMINATORY CONDUCT UNDER THE FAIR HOUSING ACT

Subpart A—General

Sec.
100.1 Authority.
100.5 Scope.
100.10 Exemptions.
100.20 Definitions.

Subpart B—Discriminatory Housing Practices

100.50 Real estate practices prohibited.
100.60 Unlawful refusal to sell or rent or to negotiate for the sale or rental.
100.65 Discrimination in terms, conditions and privileges and in services and facilities.
100.70 Other prohibited sale and rental conduct.
100.75 Discriminatory advertisements, statements and notices.
100.80 Discriminatory representations on the availability of dwellings.
100.85 Blockbusting.
100.90 Discrimination in the provision of brokerage services.

Subpart C—Discrimination in Residential Real Estate-Related Transactions

100.110 Discriminatory practices in residential real estate-related transactions.
100.115 Residential real estate-related transactions.
100.120 Discrimination in the making of loans and in the provision of other financial assistance.
100.125 Discrimination in the purchasing of loans.
100.130 Discrimination in the terms and conditions for making available loans or other financial assistance.
100.135 Unlawful practices in the selling, brokering, or appraising of residential real property.

Subpart D—Prohibitions Against Discrimination Because of Handicap

100.200 Purpose.
100.201 Definitions.
100.202 General prohibitions against discrimination because of handicap.
100.203 Reasonable modifications of existing premises.
100.204 Reasonable accommodations.
100.205 Design and construction requirements.

Subpart E—Housing for Older Persons

100.300 Purpose.
100.301 Exemption.
100.302 State and Federal elderly housing programs.
100.303 62 or over housing.
100.304 55 or over housing.

Subpart F—Interference, Coercion or Intimidation

100.400 Prohibited interference, coercion or intimidation.

Autority: Title VIII, Civil Rights Act of 1968, 42 U.S.C. 3608–3620; section 7(d), Department of HUD Act, 42 U.S.C. 3535(d).

Subpart A—General

§ 100.1 Authority.

This regulation is issued under the authority of the Secretary of Housing and Urban Development to administer and enforce Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988 (the Fair Housing Act).

§ 100.5 Scope.

(a) It is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States. No person shall be subjected to discrimination because of race, color, religion, sex, handicap, familial status, or national origin in the sale, rental, or advertising of dwellings, in the provision of brokerage services, or in the availability of residential real estate-related transactions.

(b) This part provides the Department's interpretation of the coverage of the Fair Housing Act regarding discrimination related to the sale or rental of dwellings, the provision of services in connection therewith, and the availability of residential real estate-related transactions.

(c) Nothing in this part relieves persons participating in a Federal or Federally-assisted program or activity from other requirements applicable to buildings and dwellings.

§ 100.10 Exemptions.

(a) This part does not:

(1) Prohibit a religious organization, association, or society, or any nonprofit institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association, or society, from limiting the sale, rental or occupancy of dwellings which it owns or operates for other than a commercial purpose to persons of the same religion, or from giving preference to such persons, unless membership in such religion is restricted because of race, color, or national origin;

(2) Prohibit a private club, not in fact open to the public, which, incident to its primary purpose or purposes, provides lodgings which it owns or operates for other than a commercial purpose, from limiting the rental or occupancy of such lodgings to its members or from giving preference to its members;

(3) Limit the applicability of any reasonable local, State or Federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling; or

(4) Prohibit conduct against a person because such person has been convicted by any court of competent jurisdiction of the illegal manufacture or distribution of a controlled substance as defined in Section 102 of the Controlled Substances Act (21 U.S.C. 802).

(b) Nothing in this part regarding discrimination based on familial status applies with respect to housing for older persons as defined in Subpart E of this part.

(c) Nothing in this part, other than the prohibitions against discriminatory advertising, applies to:

(1) The sale or rental of any single family house by an owner, provided the following conditions are met:

(i) The owner does not own or have any interest in more than three single family houses at any one time.

(ii) The house is sold or rented without the use of a real estate broker, agent or salesperson or the facilities of any person in the business of selling or renting dwellings. If the owner selling the house does not reside in it at the time of the sale or was not the most recent resident of the house prior to such sale, the exemption in this paragraph (c)(1) of this section applies to only one such sale in any 24-month period.

(2) Rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than four families living independently of each other, if the owner actually maintains and occupies one of such living quarters as his or her residence.

§ 100.20 Definitions.

As used in this part:

"Aggrieved person" includes any person who—

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(a) Claims to have been injured by a discriminatory housing practice; or

(b) Believes that such person will be injured by a discriminatory housing practice that is about to occur.

"Broker" or "Agent" includes any person authorized to perform an action on behalf of another person regarding any matter related to the sale or rental of dwellings, including offers, solicitations or contracts and the administration of matters regarding such offers, solicitations or contracts or any residential real estate-related transactions.

"Department" means the Department of Housing and Urban Development.

"Discriminatory housing practice" means an act that is unlawful under section 804, 805, 806, or 818 of the Fair Housing Act.

"Dwelling" means any building, structure or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure or portion thereof.

"Fair Housing Act" means Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988 (42 U.S.C. 3600–3620).

"Familial status" means one or more individuals (who have not attained the age of 18 years) being domiciled with—

(a) A parent or another person having legal custody of such individual or individuals; or

(b) The designee of such parent or other person having such custody, with the written permission of such parent or other person.

The protections afforded against discrimination on the basis of familial status shall apply to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years.

"Handicap" is defined in § 100.201.

"Person" includes one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in cases under Title 11 of the United States Code, receivers, and fiduciaries.

"Person in the business of selling or renting dwellings" means any person who:

(a) Within the preceding twelve months, has participated as principal in three or more transactions involving the sale or rental of any dwelling or any interest therein;

(b) Within the preceding twelve months, has participated as agent, other than in the sale of his or her own personal residence, in providing sales or rental facilities or sales or rental services in two or more transactions involving the sale or rental of any dwelling or any interest therein; or

(c) Is the owner of any dwelling designed or intended for occupancy by, or occupied by, five or more families.

"Secretary" means the Secretary of the Department.

"State" means any of the several states, the District of Columbia, the Commonwealth of Puerto Rico, or any of the territories and possessions of the United States.

Subpart B—Discriminatory Housing Practices

§ 100.50 Real estate practices prohibited.

(a) This subpart provides the Department's interpretation of conduct that is unlawful housing discrimination under section 804 and section 806 of the Fair Housing Act. In general the prohibited actions are set forth under sections of this subpart which are most applicable to the discriminatory conduct described. However, an action illustrated in one section can constitute a violation under sections in the subpart. For example, the conduct described in § 100.60(b)(3) and (4) would constitute a violation of § 100.65(a) as well as § 100.60(a).

(b) It shall be unlawful to:

(1) Refuse to sell or rent a dwelling after a *bona fide* offer has been made, or to refuse to negotiate for the sale or rental of a dwelling because of race, color, religion, sex, familial status, or national origin, or to discriminate in the sale or rental of a dwelling because of handicap.

(2) Discriminate in the terms, conditions or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with sales or rentals, because of race, color, religion, sex, handicap, familial status, or national origin.

(3) Engage in any conduct relating to the provision of housing which otherwise makes unavailable or denies dwellings to persons because of race, color, religion, sex, handicap, familial status, or national origin.

(4) Make, print or publish, or cause to be made, printed or published, any notice, statement or advertisement with respect to the sale or rental of a dwelling that indicates any preference, limitation or discrimination because of race, color, religion, sex, handicap, familial status, or national origin, or an intention to make any such preference, limitation or discrimination.

(5) Represent to any person because of race, color, religion, sex, handicap, familial status, or national origin that a dwelling is not available for sale or rental when such dwelling is in fact available.

(6) Engage in blockbusting practices in connection with the sale or rental of dwellings because of race, color, religion, sex, handicap, familial status, or national origin.

(7) Deny access to or membership or participation in, or to discriminate against any person in his or her access to or membership or participation in, any multiple-listing service, real estate brokers' association, or other service organization or facility relating to the business of selling or renting a dwelling or in the terms or conditions or membership or participation, because of race, color, religion, sex, handicap, familial status, or national origin.

(c) The application of the Fair Housing Act with respect to persons with handicaps is discussed in Subpart D of this part.

§ 100.60 Unlawful to sell or rent or to negotiate for the sale or rental.

(a) It shall be unlawful for a person to refuse to sell or rent a dwelling to a person who has made a *bona fide* offer, because of race, color, religion, sex, familial status, or national origin or to refuse to negotiate with a person for the sale or rental of a dwelling because of race, color, religion, sex, familial status, or national origin, or to discriminate against any person in the sale or rental of a dwelling because of handicap.

(b) Prohibited actions under this section include, but are not limited to:

(1) Failing to accept or consider a *bona fide* offer because of race, color, religion, sex, handicap, familial status, or national origin.

(2) Refusing to sell or rent a dwelling to, or to negotiate for the sale or rental of a dwelling with, any person because of race, color, religion, sex, handicap, familial status, or national origin.

(3) Imposing different sales prices or rental charges for the sale or rental of a dwelling upon any person because of race, color, religion, sex, handicap, familial status, or national origin.

(4) Using different qualification criteria or applications, or sale or rental standards or procedures, such as income standards, application requirements, application fees, credit analysis or sale or rental approval procedures or other requirements, because of race, color, religion, sex, handicap, familial status, or national origin.

(5) Evicting tenants because of their race, color, religion, sex, handicap, familial status, or national origin or because of the race, color, religion, sex, handicap, familial status, or national origin of a tenant's guest.

§ 100.65 Discrimination in terms, conditions and privileges and in services and facilities.

(a) It shall be unlawful, because of race, color, religion, sex, handicap, familial status, or national origin, to impose different terms, conditions or privileges relating to the sale or rental of a dwelling or to deny or limit services or facilities in connection with the sale or rental of a dwelling.

(b) Prohibited actions under this section include, but are not limited to:

(1) Using different provisions in leases or contracts of sale, such as those relating to rental charges, security deposits and the terms of a lease and those relating to down payment and closing requirements, because of race, color, religion, sex, handicap, familial status, or national origin.

(2) Failing or delaying maintenance or repairs of sale or rental dwellings because of race, color, religion, sex, handicap, familial status, or national origin.

(3) Failing to process an offer for the sale or rental of a dwelling or to communicate an offer accurately because of race, color, religion, sex, handicap, familial status, or national origin.

(4) Limiting the use of privileges, services or facilities associated with a dwelling because of race, color, religion, sex, handicap, familial status, or national origin of an an owner, tenant or a person associated with him or her.

(5) Denying or limiting services or facilities in connection with the sale or rental of a dwelling, because a person failed or refused to provide sexual favors.

§ 100.70 Other prohibited sale and rental conduct.

(a) It shall be unlawful, because of race, color, religion, sex, handicap, familial status, or national origin, to restrict or attempt to restrict the choices of a person by word or conduct in connection with seeking, negotiating for, buying or renting a dwelling so as to perpetuate, or tend to perpetuate, segregated housing patterns, or to discourage or obstruct choices in a community, neighborhood or development.

(b) It shall be unlawful, because of race, color, religion, sex, handicap, familial status, or national origin, to engage in any conduct relating to the provision of housing or of services and facilities in connection therewith that otherwise makes unavailable or denies dwellings to persons.

(c) Prohibited actions under paragraph (a) of this section, which are generally referred to as unlawful steering practices, include, but are not limited to:

(1) Discouraging any person from inspecting, purchasing or renting a dwelling because of race, color, religion, sex, handicap, familial status, or national origin, or because of the race, color, religion, sex, handicap, familial status, or national origin of persons in a community, neighborhood or development.

(2) Discouraging the purchase or rental of a dwelling because of race, color, religion, sex, handicap, familial status, or national origin, by exaggerating drawbacks or failing to inform any person of desirable features of a dwelling or of a community, neighborhood, or development.

(3) Communicating to any prospective purchaser that he or she wold not be comfortable or compatible with existing residents of a community, neighborhood or development because of race, color, religion, sex, handicap, familial status, or national origin.

(4) Assigning any person to a particular section of a community, neighborhood or development, or to a particular floor of a building, because of race, color, religion, sex, handicap, familial status, or national origin.

(d) Prohibited activities relating to dwellings under paragraph (b) of this section include, but are not limited to:

(1) Discharging or taking other adverse action against an employee, broker or agent because he or she refused to participate in a discriminatory housing practice.

(2) Employing codes or other devices to segregate or reject applicants, purchasers or renters, refusing to take or to show listings of dwellings in certain areas because of race, color, religion, sex, handicap, familial status, or national origin, or refusing to deal with certain brokers or agents because they or one or more of their clients are of a particular race, color, religion, sex, handicap, familial status, or national origin.

(3) Denying or delaying the processing of an application made by a purchaser or renter or refusing to approve such a person for occupancy in a cooperative or condominium dwelling because of race, color, religion, sex, handicap, familial status, or national origin.

(4) Refusing to provide municipal services or property or hazard insurance for dwellings or providing such services or insurance differently because of race, color, religion, sex, handicap, familial status, or national origin.

§ 100.75 Discriminatory advertisements, statements and notices.

(a) It shall be unlawful to make, print or publish, or cause to be made, printed or published, any notice, statement or advertisement with respect to the sale or rental of a dwelling which indicates any preference, limitation or discrimination because of race, color, religion, sex, handicap, familial status, or national origin, or an intention to make any such preference, limitation or discrimination.

(b) The prohibitions in this section shall apply to all written or oral notices or statements by a person engaged in the sale or rental of a dwelling. Written notices and statements include any applications, flyers, brochures, deeds, signs, banners, posters, billboards or any documents used with respect to the sale or rental of a dwelling.

(c) Discriminatory notices, statements and advertisements include, but are not limited to:

(1) Using words, phrases, photographs, illustrations, symbols or forms which convey that dwellings are available or not available to a particular group of persons because of race, color, religion, sex, handicap, familial status, or national origin.

(2) Expressing to agents, brokers, employees, prospective sellers or renters or any other persons a preference for or limitation on any purchaser or renter because of race, color, religion, sex, handicap, familial status, or national origin of such persons.

(3) Selecting media or locations for advertising the sale or rental of dwellings which deny particular segments of the housing market information about housing opportunities because of race, color, religion, sex, handicap, familial status, or national origin.

(4) Refusing to publish advertising for the sale or rental of dwellings or requiring different charges or terms for such advertising because of race, color, religion, sex, handicap, familial status, or national origin.

(d) 24 CFR Part 109 provides information to assist persons to advertise dwellings in a nondiscriminatory manner and describes the matters the Department will review in evaluating compliance with the Fair Housing Act and in investigating complaints alleging discriminatory housing practices involving advertising.

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§ 100.80 Discriminatory representations on the availability of dwellings.

(a) It shall be unlawful, because of race, color, religion, sex, handicap, familial status, or national origin, to provide inaccurate or untrue information about the availability of dwellings for sale or rental.

(b) Prohibited actions under this section include, but are not limited to:

(1) Indicating through words or conduct that a dwelling which is available for inspection, sale, or rental has been sold or rented, because of race, color, religion, sex, handicap, familial status, or national origin.

(2) Representing that covenants or other deed, trust or lease provisions which purport to restrict the sale or rental of dwellings because of race, color, religion, sex, handicap, familial status, or national origin preclude the sale of rental of a dwelling to a person.

(3) Enforcing covenants or other deed, trust, or lease provisions which preclude the sale or rental of a dwelling to any person because of race, color, religion, sex, handicap, familial status, or national origin.

(4) Limiting information, by word or conduct, regarding suitably priced dwellings available for inspection, sale or rental, because of race, color, religion, sex, handicap, familial status, or national origin.

(5) Providing false or inaccurate information regarding the availability of a dwelling for sale or rental to any person, including testers, regardless of whether such person is actually seeking housing, because of race, color, religion, sex, handicap, familial status, or national origin.

§ 100.85 Blockbusting.

(a) It shall be unlawful, for profit, to induce or attempt to induce a person to sell or rent a dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, sex, familial status, or national origin or with a handicap.

(b) In establishing a discriminatory housing practice under this section it is not necessary that there was in fact profit as long as profit was a factor for engaging in the blockbusting activity.

(c) Prohibited actions under this section include, but are not limited to:

(1) Engaging, for profit, in conduct (including uninvited solicitations for listings) which conveys to a person that a neighborhood is undergoing or is about to undergo a change in the race, color, religion, sex, handicap, familial status, or national origin of persons residing in it, in order to encourage the person to offer a dwelling for sale or rental.

(2) Encouraging, for profit, any person to sell or rent a dwelling through assertions that the entry or prospective entry of persons of a particular race, color, religion, sex, familial status, or national origin, or with handicaps, can or will result in undesirable consequences for the project, neighborhood or community, such as a lowering of property values, an increase in criminal or antisocial behavior, or a decline in the quality of schools or other services or facilities.

§ 100.90 Discrimination in the provision of brokerage services.

(a) It shall be unlawful to deny any person access to or membership or participation in any multiple listing service, real estate brokers' organization or other service, organization, or facility relating to the business of selling or renting dwellings, or to discriminate against any person in the terms or conditions of such access, membership or participation, because of race, color, religion, sex, handicap, familial status, or national origin.

(b) Prohibited actions under this section include, but are not limited to:

(1) Setting different fees for access to or membership in a multiple listing service because of race, color, religion, sex, handicap, familial status, or national origin.

(2) Denying or limiting benefits accruing to members in a real estate brokers' organization because of race, color, religion, sex, handicap, familial status, or national origin.

(3) Imposing different standards or criteria for membership in a real estate sales or rental organization because of race, color, religion, sex, handicap, familial status, or national origin.

(4) Establishing geographic boundaries or office location or residence requirements for access to or membership or participation in any multiple listing service, real estate brokers' organization or other service, organization or facility relating to the business of selling or renting dwellings, because of race, color, religion, sex, handicap, familial status, or national origin.

Subpart C—Discrimination in Residential Real Estate-Related Transactions

§ 100.110 Discriminatory practices in residential real estate-related transactions.

(a) This subpart provides the Department's interpretation of the conduct that is unlawful housing discrimination under section 805 of the Fair Housing Act.

(b) It shall be unlawful for any person or other entity whose business includes engaging in residential real estate-related transactions to discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction, because of race, color, religion, sex, handicap, familial status, or national origin.

§ 100.115 Residential real estate-related transactions.

The term residential "real estate-related transactions" means:

(a) The making or purchasing of loans or providing other financial assistance—

(1) For purchasing, constructing, improving, repairing or maintaining a dwelling; or

(2) Secured by residential real estate; or

(b) The selling, brokering or appraising of residential real property.

§ 100.120 Discrimination in the making of loans and in the provision of other financial assistance.

(a) It shall be unlawful for any person or entity whose business includes engaging in residential real estate-related transactions to discriminate against any person in making available loans or other financial assistance for a dwelling, or which is or is to be secured by a dwelling, because of race, color, religion, sex, handicap, familial status, or national origin.

(b) Prohibited practices under this section include, but are not limited to, failing or refusing to provide to any person, in connection with a residential real estate-related transaction, information regarding the availability of loans or other financial assistance, application requirements, procedures or standards for the review and approval of loans or financial assistance, or providing information which is inaccurate or different from that provided others, because of race, color, religion, sex, handicap, familial status, or national origin.

§ 100.125 Discrimination in the purchasing of loans.

(a) It shall be unlawful for any person or entity engaged in the purchasing of loans or other debts or securities which support the purchase, construction, improvement, repair or maintenance of a dwelling, or which are secured by residential real estate, to refuse to purchase such loans, debts, or securities, or to impose different terms or conditions for such purchases, because of race, color, religion, sex, handicap, familial status, or national origin.

(b) Unlawful conduct under this section includes, but is not limited to:

(1) Purchasing loans or other debts or securities which relate to, or which are secured by dwellings in certain communities or neighborhoods but not in others because of the race, color, religion, sex, handicap, familial status, or national origin of persons in such neighborhoods or communities.

(2) Pooling or packaging loans or other debts or securities which relate to, or which are secured by, dwellings differently because of race, color, religion, sex, handicap, familial status, or national origin.

(3) Imposing or using different terms or conditions on the marketing or sale of securities issued on the basis of loans or other debts or securities which relate to, or which are secured by, dwellings because of race, color, religion, sex, handicap, familial status, or national origin.

(c) This section does not prevent consideration, in the purchasing of loans, of factors justified by business necessity, including requirements of Federal law, relating to a transaction's financial security or to protection against default or reduction of the value of the security. Thus, this provision would not preclude considerations employed in normal and prudent transactions, provided that no such factor may in any way relate to race, color, religion, sex, handicap, familial status or national origin.

§ 100.130 Discrimination in the terms and conditions for making available loans or other financial assistance.

(a) It shall be unlawful for any person or entity engaged in the making of loans or in the provision of other financial assistance relating to the purchase, construction, improvement, repair or maintenance of dwellings or which are secured by residential real estate to impose different terms or conditions for the availability of such loans or other financial assistance because of race, color, religion, sex, handicap, familial status, or national origin.

(b) Unlawful conduct under this section includes, but is not limited to:

(1) Using different policies, practices or procedures in evaluating or in determining creditworthiness of any person in connection with the provision of any loan or other financial assistance for a dwelling or for any loan or other financial assistance which is secured by residential real estate because of race, color, religion, sex, handicap, familial status, or national origin.

(2) Determining the type of loan or other financial assistance to be provided with respect to a dwelling, or fixing the amount, interest rate, duration or other terms for a loan or other financial assistance for a dwelling or which is secured by residential real estate, because of race, color, religion, sex, handicap, familial status, or national origin.

§ 100.135 Unlawful practices in the selling, brokering, or appraising of residential real property.

(a) It shall be unlawful for any person or other entity whose business includes engaging in the selling, brokering or appraising of residential real property to discriminate against any person in making available such services, or in the performance of such services, because of race, color, religion, sex, handicap, familial status, or national origin.

(b) For the purposes of this section, the term appraisal means an estimate or opinion of the value of a specified residential real property made in a business context in connection with the sale, rental, financing or refinancing of a dwelling or in connection with any activity that otherwise affects the availability of a residential real estate-related transaction, whether the appraisal is oral or written, or transmitted formally or informally. The appraisal includes all written comments and other documents submitted as support for the estimate or opinion of value.

(c) Nothing in this section prohibits a person engaged in the business of making or furnishing appraisals of residential real property from taking into consideration factors other than race, color, religion, sex, handicap, familial status, or national origin.

(d) Practices which are unlawful under this section include, but are not limited to, using an appraisal of residential real property in connection with the sale, rental, or financing of any dwelling where the person knows or reasonably should know that the appraisal improperly takes into consideration race, color, religion, sex, handicap, familial status, or national origin.

Subpart D—Prohibition Against Discrimination Because of Handicap

§ 100.200 Purpose.

The purpose of this subpart is to effectuate sections 6 (a) and (b) and 15 of the Fair Housing Amendments Act of 1988.

§ 100.201 Definitions.

As used in this subpart:

"Accessible", when used with respect to the public and common use areas of a building containing covered multifamily dwellings, means that the public or common use areas of the building can be approached, entered, and used by individuals with physical handicaps. The phrase "readily accessible to and usable by" is synonymous with accessible. A public or common use area that complies with the appropriate requirements of ANSI A117.1–1986 or a comparable standard is "accessible" within the meaning of this paragraph.

"Accessible route" means a continuous unobstructed path connecting accessible elements and spaces in a building or within a site that can be negotiated by a person with a severe disability using a wheelchair and that is also safe for and usable by people with other disabilities. Interior accessible routes may include corridors, floors, ramps, elevators and lifts. Exterior accessible routes may include parking access aisles, curb ramps, walks, ramps and lifts. A route that complies with the appropriate requirements of ANSI A117.1–1986 or a comparable standard is an "accessible route".

"ANSI A117.1–1986" means the 1986 edition of the American National Standard for buildings and facilities providing accessibility and usability for physically handicapped people. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from American National Standards Institute, Inc., 1430 Broadway, New York, New York 10018. Copies may be inspected at the Department of Housing and Urban Development, 451 Seventh Street, S.W., Room 10276, Washington, D.C., or at the Office of the Federal Register, 1100 L Street, N.W., Room 8401, Washington, D.C.

"Building" means a structure, facility or portion thereof that contains or serves one or more dwelling units.

"Building entrance on an accessible route" means an accessible entrance to a building that is connected by an accessible route to public transportation stops, to accessible parking and passenger loading zones, or to public streets or sidewalks, if available. A building entrance that complies with ANSI A117.1–1986 or a comparable standard complies with the requirements of this paragraph.

"Common use areas" means rooms, spaces or elements inside or outside of a building that are made available for the use of residents of a building or the guests thereof. These areas include hallways, lounges, lobbies, laundry rooms, refuse rooms, mail rooms,

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recreational areas and passageways among and between buildings.

"Controlled substance" means any drug or other substance, or immediate precursor included in the definition in section 102 of the Controlled Substances Act (21 U.S.C. 802).

"Covered multifamily dwellings" means buildings consisting of 4 or more dwelling units if such buildings have one or more elevators; and ground floor dwelling units in other buildings consisting of 4 or more dwelling units.

"Dwelling unit" means a single unit of residence for a family or one or more persons. Examples of dwelling units include: a single family home; an apartment unit within an apartment building; and in other types of dwellings in which sleeping accommodations are provided but toileting or cooking facilities are shared by occupants of more than one room or portion of the dwelling, rooms in which people sleep. Examples of the latter include dormitory rooms and sleeping accommodations in shelters intended for occupancy as a residence for homeless persons.

"Entrance" means any access point to a building or portion of a building used by residents for the purpose of entering.

"Exterior" means all areas of the premises outside of an individual dwelling unit.

"First occupancy" means a building that has never before been used for any purpose.

"Ground floor" means a floor of a building with a building entrance on an accessible route. A building may have more than one ground floor.

"Handicap" means, with respect to a person, a physical or mental impairment which substantially limits one or more major life activities; a record of such an impairment; or being regarded as having such an impairment. This term does not include current, illegal use of or addiction to a controlled substance. For purposes of this part, an individual shall not be considered to have a handicap solely because that individual is a transvestite. As used in this definition:

(a) "Physical or mental impairment" includes:

(1) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or

(2) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, Human Immunodeficiency Virus infection, mental retardation, emotional illness, drug addiction (other than addiction caused by current, illegal use of a controlled substance) and alcoholism.

(b) "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.

(c) "Has a record of such an impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(d) "Is regarded as having an impairment" means:

(1) Has a physical or mental impairment that does not substantially limit one or more major life activities but that is treated by another person as constituting such a limitation;

(2) Has a physical or mental impairment that substantially limits one or more major life activities only as a result of the attitudes of other toward such impairment; or

(3) Has none of the impairments defined in paragraph (a) of this definition but is treated by another person as having such an impairment.

"Interior" means the spaces, parts, components or elements of an individual dwelling unit.

"Modification" means any change to the public or common use areas of a building or any change to a dwelling unit.

"Premises" means the interior or exterior spaces, parts, components or elements of a building, including individual dwelling units and the public and common use areas of a building.

"Public use areas" means interior or exterior rooms or spaces of a building that are made available to the general public. Public use may be provided at a building that is privately or publicly owned.

"Site" means a parcel of land bounded by a property line or a designated portion of a public right or way.

§ 100.202 General prohibitions against discrimination because of handicap.

(a) It shall be unlawful to discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap of—

(1) That buyer or renter;

(2) A person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or

(3) Any person associated with that person.

(b) It shall be unlawful to discriminate against any person in the terms, conditions, or privileges of the sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a handicap of—

(1) That buyer or renter;

(2) A person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or

(3) Any person associated with that person.

(c) It shall be unlawful to make an inquiry to determine whether an applicant for a dwelling, a person intending to reside in that dwelling after it is so sold, rented or made available, or any person associated with that person, has a handicap or to make inquiry as to the nature or severity of a handicap of such a person. However, this paragraph does not prohibit the following inquiries, provided these inquiries are made of all applicants, whether or not they have handicaps:

(1) Inquiry into an applicant's ability to meet the requirements of ownership or tenancy;

(2) Inquiry to determine whether an applicant is qualified for a dwelling available only to persons with handicaps or to persons with a particular type of handicap;

(3) Inquiry to determine whether an applicant for a dwelling is qualified for a priority available to persons with handicaps or to persons with a particular type of handicap;

(4) Inquiring whether an applicant for a dwelling is a current illegal abuser or addict of a controlled substance;

(5) Inquiring whether an applicant has been convicted of the illegal manufacture or distribution of a controlled substance.

(d) Nothing in this subpart requires that a dwelling be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others.

§ 100.203 Reasonable modifications of existing premises.

(a) It shall be unlawful for any person to refuse to permit, at the expense of a handicapped person, reasonable modifications of existing premises, occupied or to be occupied by a handicapped person, if the proposed modifications may be necessary to afford the handicapped person full enjoyment of the premises of a dwelling. In the case of a rental, the landlord may, where it is reasonable to do so, condition permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted. The landlord may not increase for handicapped persons any customarily required security deposit. However, where it is necessary in order to ensure with reasonable certainty that funds will be available to pay for the restorations at the end of the tenancy, the landlord may negotiate as part of such a restoration agreement a provision requiring that the tenant pay into an interest bearing escrow account, over a reasonable period, a reasonable amount of money not to exceed the cost of the restorations. The interest in any such account shall accrue to the benefit of the tenant.

(b) A landlord may condition permission for a modification on the renter providing a reasonable description of the proposed modifications as well as reasonable assurances that the work will be done in a workmanlike manner and that any required building permits will be obtained.

(c) The application of paragraph (a) of this section may be illustrated by the following examples:

Example (1): A tenant with a handicap asks his or her landlord for permission to install grab bars in the bathroom at his or her own expense. It is necessary to reinforce the walls with blocking between studs in order to affix the grab bars. It is unlawful for the landlord to refuse to permit the tenant, at the tenant's own expense, from making the modifications necessary to add the grab bars. However, the landlord may condition permission for the modification on the tenant agreeing to restore the bathroom to the condition that existed before the modification, reasonable wear and tear excepted. It would be reasonable for the landlord to require the tenant to remove the grab bars at the end of the tenancy. The landlord may also reasonably require that the wall to which the grab bars are to be attached be repaired and restored to its original condition, reasonable wear and tear excepted. However, it would be unreasonable for the landlord to require the tenant to remove the blocking, since the reinforced walls will not interfere in any way with the landlord's or the next tenant's use and enjoyment of the premises and may be needed by some future tenant.

Example (2): An applicant for rental housing has a child who uses a wheelchair. The bathroom door in the dwelling unit is too narrow to permit the wheelchair to pass. The applicant asks the landlord for permission to widen the doorway at the applicant's own expense. It is unlawful for the landlord to refuse to permit the applicant to make the modification. Further, the landlord may *not*, in usual circumstances, condition permission for the modification on the applicant paying for the doorway to be narrowed at the end of the lease because a wider doorway will not interfere with the landlord's or the next tenant's use and enjoyment of the premises.

§ 100.204 Reasonable accommodations.

(a) It shall be unlawful for any person to refuse to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling unit, including public and common use areas.

(b) The application of this section may be illustrated by the following examples:

Example (1): A blind applicant for rental housing wants live in a dwelling unit with a seeing eye dog. The building has a "no pets" policy. It is a violation of § 100.204 for the owner or manager of the apartment complex to refuse to permit the applicant to live in the apartment with a seeing eye dog because, without the seeing eye dog, the blind person will not have an equal opportunity to use and enjoy a dwelling.

Example (2): Progress Gardens is a 300 unit apartment complex with 450 parking spaces which are available to tenants and guests of Progress Gardens on a "first come first served" basis. John applies for housing in Progress Gardens. John is mobility impaired and is unable to walk more than a short distance and therefore requests that a parking space near his unit be reserved for him so he will not have to walk very far to get to his apartment. It is a violation of § 100.204 for the owner or manager of Progress Gardens to refuse to make this accommodation. Without a reserved space, John might be unable to live in Progress Gardens at all or, when he has to park in a space far from his unit, might have great difficulty getting from his car to his apartment unit. The accommodation therefore is necessary to afford John an equal opportunity to use and enjoy a dwelling. The accommodation is reasonable because it is feasible and practical under the circumstances.

§ 100.205 Design and construction requirements.

(a) Covered multifamily dwellings for first occupancy after March 13, 1991 shall be designed and constructed to have at least one building entrance on an accessible route unless it is impractical to do so because of the terrain or unusual characteristics of the site. For purposes of this section, a covered multifamily dwelling shall be deemed to be designed and constructed for first occupancy on or before March 13, 1991 if they are occupied by that date or if the last building permit or renewal thereof for the covered multifamily dwellings is issued by a State, County or local government on or before January 13, 1990. The burden of establishing impracticality because of terrain or unusual site characteristics is on the person or persons who designed or constructed the housing facility.

(b) The application of paragraph (a) of this section may be illustrated by the following examples:

Example (1): A real estate developer plans to construct six covered multifamily dwelling units on a site with a hilly terrain. Because of the terrain, it will be necessary to climb a long and steep stairway in order to enter the dwellings. Since there is no practical way to provide an accessible route to any of the dwellings, one need not be provided.

Example (2): A real estate developer plans to construct a building consisting of 10 units of multifamily housing on a waterfront site that floods frequently. Because of this unusual characteristic of the site, the builder plans to construct the building on stilts. It is customary for housing in the geographic area where the site is located to be built on stilts. The housing may lawfully be constructed on the proposed site on stilts even though this means that there will be no practical way to provide an accessible route to the building entrance.

Example (3): A real estate developer plans to construct a multifamily housing facility on a particular site. The developer would like the facility to be built on the site to contain as many units as possible. Because of the configuration and terrain of the site, it is possible to construct a building with 105 units on the site provided the site does not have an accessible route leading to the building entrance. It is also possible to construct a building on the site with an accessible route leading to the building entrance. However, such a building would have no more than 100 dwelling units. The building to be constructed on the site must have a building entrance on an accessible route because it is not impractical to provide such an entrance because of the terrain or unusual characteristics of the site.

(c) All covered multifamily dwellings for first occupancy after March 13, 1991 with a building entrance on an accessible route shall be designed and constructed in such a manner that—

(1) The public and common use areas are readily accessible to and usable by handicapped persons;

(2) All the doors designed to allow passage into and within all premises are sufficiently wide to allow passage by handicapped persons in wheelchairs; and

(3) All premises within covered multifamily dwelling units contain the following features of adaptable design:

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(i) An accessible route into and through the covered dwelling unit;

(ii) Light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;

(iii) Reinforcements in bathroom walls to allow later installation of grab bars around the toilet, tub, shower, stall and shower seat, where such facilities are provided; and

(iv) Usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space.

(d) The application of paragraph (c) of this section may be illustrated by the following examples:

Example (1): A developer plans to construct a 100 unit condominium apartment building with one elevator. In accordance with paragraph (a), the building has at least one accessible route leading to an accessible entrance. All 100 units are covered multifamily dwelling units and they all must be designed and constructed so that they comply with the accessibility requirements of paragraph (c) of this section.

Example (2): A developer plans to construct 30 garden apartments in a three story building. The building will not have an elevator. The building will have one accessible entrance which will be on the first floor. Since the building does not have an elevator, only the "ground floor" units are covered multifamily units. The "ground floor" is the first floor because that is the floor that has an accessible entrance. All of the dwelling units on the first floor must meet the accessibility requirements of paragraph (c) of this section and must have access to at least one of each type of public or common use area available for residents in the building.

(e) Compliance with the appropriate requirements of ANSI A117.1–1986 suffices to satisfy the requirements of paragraph (c)(3) of this section.

(f) Compliance with a duly enacted law of a State or unit of general local government that includes the requirements of paragraphs (a) and (c) of this section satisfies the requirements of paragraphs (a) and (c) of this section.

(g)(1) It is the policy of HUD to encourage States and units of general local government to include, in their existing procedures for the review and approval of newly constructed covered multifamily dwellings, determinations as to whether the design and construction of such dwellings are consistent with paragraphs (a) and (c) of this section.

(2) A State or unit of general local government may review and approve newly constructed multifamily dwellings for the purpose of making determinations as to whether the requirements of paragraphs (a) and (c) of this section are met.

(h) Determinations of compliance or noncompliance by a State or a unit of general local government under paragraph (f) or (g) of this section are not conclusive in enforcement proceedings under the Fair Housing Amendments Act.

(i) This subpart does not invalidate or limit any law of a State or political subdivision of a State that requires dwellings to be designed and constructed in a manner that affords handicapped persons greater access than is required by this subpart.

Subpart E—Housing for Older Persons

§ 100.300 Purpose.

The purpose of this subpart is to effectuate the exemption in the Fair Housing Amendments Act of 1988 that relates to housing for older persons.

§ 100.301 Exemption.

(a) The provisions regarding familial status in this part do not apply to housing which satisfies the requirements of §§ 100.302, 100.303 or § 100.304.

(b) Nothing in this part limits the applicability of any reasonable local, State, or Federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling.

§ 100.302 State and Federal elderly housing programs.

The provisions regarding familial status in this part shall not apply to housing provided under any Federal or State program that the Secretary determines is specifically designed and operated to assist elderly persons, as defined in the State or Federal program.

§ 100.303 62 or over housing.

(a) The provisions regarding familial status in this part shall not apply to housing intended for, and solely occupied by, persons 62 years of age or older. Housing satisfies the requirements of this section even though:

(1) There are persons residing in such housing on September 13, 1988 who are under 62 years of age, provided that all new occupants are persons 62 years of age or older;

(2) There are unoccupied units, provided that such units are reserved for occupancy by persons 62 years of age or over;

(3) There are units occupied by employees of the housing (and family members residing in the same unit) who are under 62 years of age provided they perform substantial duties directly related to the management or maintenance of the housing.

(b) The following examples illustrate the application of paragraph (a) of this section:

Example (1): John and Mary apply for housing at the Vista Heights apartment complex which is an elderly housing complex operated for persons 62 years of age or older. John is 62 years of age. Mary is 59 years of age. If Vista Heights wishes to retain its "62 or over" exemption it must refuse to rent to John and Mary because Mary is under 62 years of age. However, if Vista Heights does rent to John and Mary, it might qualify for the "55 or over" exemption in § 100.304.

Example (2): The Blueberry Hill retirement community has 100 dwelling units. On September 13, 1988, 15 units were vacant and 35 units were occupied with at least one person who is under 62 years of age. The remaining 50 units were occupied by persons who were all 62 years of age or older. Blueberry Hill can qualify for the "62 or over" exemption as long as all units that were occupied after September 13, 1988 are occupied by persons who were 62 years of age or older. The people under 62 in the 35 units previously described need not be required to leave for Blueberry Hill to qualify for the "62 or over" exemption.

§ 100.304 55 or over housing.

(a) The provisions regarding familial status shall not apply to housing intended and operated for occupancy by at least one person 55 years of age or older per unit, *Provided That* the housing satisfies the requirements of § 100.304 (b)(1) *or* (b)(2) *and* the requirements of § 100.304(c).

(b)(1) The housing facility has significant facilities and services specifically designed to meet the physical or social needs of older persons. "Significant facilities and services specifically designed to meet the physical or social needs of older persons" include, but are not limited to, social and recreational programs, continuing education, information and counseling, recreational, homemaker, outside maintenance and referral services, an accessible physical environment, emergency and preventive health care of programs, congregate dining facilities, transportation to facilitate access to social services, and services designed to encourage and assist residents to use the services and facilities available to them (the housing facility need not have all of these features to qualify for the exemption under this subparagraph); or

(2) It is not practicable to provide significant facilities and services designed to meet the physical or social needs of older persons *and* the housing facility is necessary to provide important housing opportunities for older persons. In order to satisfy this paragraph (b)(2) of this section the owner or manager of the housing facility must demonstrate through credible and objective evidence that the provision of significant facilities and services designed to meet the physical or social needs of older persons would result in depriving older persons in the relevant geographic area of needed and desired housing. The following factors, among others, are relevant in meeting the requirements of this paragraph (b)(2) of this section—

(i) Whether the owner or manager of the housing facility has endeavored to provide significant facilities and services designed to meet the physical or social needs of older persons either by the owner or by some other entity. Demonstrating that such services and facilities are expensive to provide is not alone sufficient to demonstrate that the provision of such services is not practicable.

(ii) The amount of rent charged, if the dwellings are rented, or the price of the dwellings, if they are offered for sale.

(iii) The income range of the residents of the housing facility.

(iv) The demand for housing for older persons in the relevant geographic area.

(v) The range of housing choices for older persons within the relevant geographic area.

(vi) The availability of other similarly priced housing for older persons in the relevant geographic area. If similarly priced housing for older persons with significant facilities and services is reasonably available in the relevant geographic area then the housing facility does not meet the requirements of this paragraph (b)(2) of this section.

(vii) The vacancy rate of the housing facility.

(c)(1) At least 80% of the units in the housing facility are occupied by at least one person 55 years of age or older per unit *except that* a newly constructed housing facility for first occupancy after March 12, 1989 need not comply with this paragraph (c)(1) of this section until 25% of the units in the facility are occupied; and

(2) The owner or manager of a housing facility publishes and adheres to policies and procedures which demonstrate an intent by the owner or manager to provide housing for persons 55 years of age or older. The following factors, among others, are relevant in determining whether the owner or manager of a housing facility has complied with the requirements of this paragraph (c)(2) of this section:

(i) The manner in which the housing facility is described to prospective residents.

(ii) The nature of any advertising designed to attract prospective residents.

(iii) Age verification procedures.

(iv) Lease provisions.

(v) Written rules and regulations.

(vi) Actual practices of the owner or manager in enforcing relevant lease provisions and relevant rules or regulations.

(d) Housing satisfies the requirements of this section even though:

(1) On September 13, 1988, under 80% of the occupied units in the housing facility are occupied by at least one person 55 years of age or older per unit, provided that at least 80% of the units that are occupied by new occupants after September 13, 1988 are occupied by at least one person 55 years of age or older.

(2) There are unoccupied units, provided that at least 80% of such units are reserved for occupancy by at least one person 55 years of age or over.

(3) There are units occupied by employees of the housing (and family members residing in the same unit) who are under 55 years of age provided they perform substantial duties directly related to the management or maintenance of the housing.

(e) The application of this section may be illustrated by the following examples:

Example 1: A. John and Mary apply for housing at the Valley Heights apartment complex which is a 100 unit housing complex that is operated for persons 55 years of age or older in accordance with all the requirements of this section. John is 56 years of age. Mary is 50 years of age. Eighty (80) units are occupied by at least one person who is 55 years of age or older. Eighteen (18) units are occupied exclusively by persons who are under 55. Among the units occupied by new occupants after September 13, 1988 were 18 units occupied exclusively by persons who are under 55. Two (2) units are vacant. At the time John and Mary apply for housing, Valley Heights qualifies for the "55 or over" exemption because 82% of the occupied units (80/98) at Valley Heights are occupied by at least one person 55 years old or older. If John and Mary are accepted for occupancy, then 81 out of the 99 occupied units (82%) will be occupied by at least one person who is 55 years of age or older and Valley Heights will continue to qualify for the "55 or over" exemption.

B. If only 78 out of the 98 occupied units had been occupied by at least one person 55 years of age or older, Valley Heights would still qualify for the exemption, but could not rent to John or Mary if they were both under 55 without losing the exemption.

Example 2: Green Meadow is a 1,000 unit retirement community that provides significant facilities and services specifically designed to meet the physical or social needs of older persons. On September 13, 1988, Green Meadow published and thereafter adhered to policies and procedures demonstrating an intent to provide housing for persons 55 years of age or older. On September 13, 1988, 100 units were vacant and 300 units were occupied only by people who were under 55 years old. Consequently, on September 13, 1988 67% of the Green Meadow's occupied units (600 out of 900) were occupied by at at least one person 55 years of age or older. Under paragraph (d)(1) of this section, Green Meadow qualifies for the "55 or over" exemption even though, on September 13, 1988, under 80% of the occupied units in the housing facility were occupied by at least one person 55 years of age or older per unit, provided that at least 80% of the units that were occupied after September 13, 1988 are occupied by at least one person 55 years of age or older. Under paragraph (d) of this section, Green Meadow qualifies for the "55 or over" exemption, even though it has unoccupied units, provided that at least 80% of its unoccupied units are reserved for occupancy by at least one person 55 years of age or over.

Example 3: Waterfront Gardens is a 200 unit housing facility to be constructed after March 12, 1989. The owner and manager of Waterfront Gardens intends to operate the new facility in accordance with the requirements of this section. Waterfront Gardens need not comply with the requirement in paragraph (c)(1) of this section that at least 80% of the occupied units be occupied by at least one person 55 years of age or older per unit *until* 50 units (25%) are occupied. When the 50th unit is occupied, then 80% of the 80 occupied units (*i.e.*, 40 units) must be occupied by at least one person who is 55 years of age or older for Waterfront Gardens to qualify for the "55 or over" exemption.

Subpart F—Interference, Coercion or Intimidation

§ 100.400 Prohibited interference, coercion or intimidation.

(a) This subpart provides the Department's interpretation of the conduct that is unlawful under section 818 of the Fair Housing Act.

(b) It shall be unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of that person having exercised or enjoyed, or on account of that person having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by this part.

(c) Conduct made unlawful under this section includes, but is not limited to, the following:

(1) Coercing a person, either orally, in writing, or by other means, to deny or limit the benefits provided that person in connection with the sale or rental of a dwelling or in connection with a residential real estate-related transaction because of race, color, religion, sex, handicap, familial status, or national origin.

(2) Threatening, intimidating or interfering with persons in their enjoyment of a dwelling because of the race, color, religion, sex, handicap, familial status, or national origin of such persons, or of visitors or associates of such persons.

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(3) Threatening an employee or agent with dismissal or an adverse employment action, or taking such adverse employment action, for any effort to assist a person seeking access to the sale or rental of a dwelling or seeking access to any residential real estate-related transaction, because of the race, color, religion, sex, handicap, familial status, or national origin of that person or of any person associated with that person.

(4) Intimidating or threatening any person because that person is engaging in activities designed to make other persons aware of, or encouraging such other persons to exercise, rights granted or protected by this part.

(5) Retaliating against any person because that person has made a complaint, testified, assisted, or participated in any manner in a proceeding under the Fair Housing Act.

4. Part 103 is added to read as follows:

PART 103—FAIR HOUSING—COMPLAINT PROCESSING

Subpart A—Purpose and Definitions

Sec.
103.1 Purpose and applicability.
103.5 Other civil rights authorities.
103.9 Definitions.

Subpart B—Complaints
103.10 Submission of information.
103.15 Who may file complaints.
103.20 Persons against whom complaints may be filed.
103.25 Where to file complaints.
103.30 Form and content of complaint.
103.40 Date of filing of complaint.
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103.45 Service of notice on aggrieved person.
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Subpart C—Referral of Complaints to State and Local Agencies
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103.105 Cessation of action on referred complaints.
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103.300 Conciliation.
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103.315 Relief sought for aggrieved persons.
103.320 Provisions sought for the public interest.
103.325 Termination of conciliation efforts.
103.330 Prohibitions and requirements with respect to disclosure of information obtained during conciliation.
103.335 Review of compliance with conciliation agreements.

Subpart F—Issuance of Charge
103.400 Reasonable cause determination.
103.405 Issuance of charge.
103.410 Election of civil action or provision of administrative proceeding.

Subpart G—Prompt Judicial Action
103.500 Prompt judicial action.

Subpart H—Other Action
103.510 Other action by HUD.
103.515 Action by other agencies.

Authority: Title VIII, Civil Rights Act of 1968, 42 U.S.C. 3600–3620; section 7(d), Department of HUD Act, 42 U.S.C. 3535(d).

Subpart A—Purpose and Definitions

§ 103.1 Purpose and applicability.

(a) This part contains the procedures established by the Department of Housing and Urban Development for the investigation and conciliation of complaints under section 810 of the Fair Housing Act, 42 U.S.C. 3610.

(b) This part applies to:

(1) Complaints alleging discriminatory housing practices because of race, color, religion, sex or national origin; and

(2) Complaints alleging discriminatory housing practices on account of handicap or familial status occurring on or after March 12, 1989.

(c) Part 104 governs the administrative proceedings before an administrative law judge adjudicating charges issued under § 103.405.

(d) The Department will reasonably accommodate persons with disabilities who are participants in complaint processing.

§ 103.5 Other Civil Rights authorities.

In addition to the Fair Housing Act, other civil rights authorities may be applicable in a particular case. Thus, where a person charged with a discriminatory housing practice in a complaint filed under section 810 of the Fair Housing Act is also prohibited from engaging in similar practices under Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–2000d–5), section 109 of the Housing and Community Development Act of 1974 (42 U.S.C. 5309), Executive Order 11063 of November 20, 1962, on Equal Opportunity in Housing (27 FR 11527–11530, November 24, 1962), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), the Age Discrimination Act (42 U.S.C. 6101) or other applicable law, the person may also be subject to action by HUD or other Federal agencies under the rules, regulations, and procedures prescribed under Title VI (24 CFR Parts 1 and 2), section 109 (24 CFR 570.602)), Executive Order 11063 (24 CFR Part 107), section 504 (24 CFR Part 8), or other applicable law.

§ 103.9 Definitions.

As used in this part,

Aggrieved person includes any person who:

(a) Claims to have been injured by a discriminatory housing practice; or

(b) Believes that such person will be injured by a discriminatory housing practice that is about to occur.

Assistant Secretary means the Assistant Secretary for Fair Housing and Equal Opportunity in HUD.

Attorney General means the Attorney General of the United States.

Complainant means the person (including the Assistant Secretary) who files a complaint under this part.

Conciliation means the attempted resolution of issues raised by a complaint, or by the investigation of a complaint, through informal negotiations involving the aggrieved person, the respondent, and the Assistant Secretary.

Conciliation agreement means a written agreement setting forth the resolution of the issues in conciliation.

Discriminatory housing practice means an act that is unlawful under section 804, 805, 806 or 818 of the Fair Housing Act, as described in Part 100.

Dwelling means any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, or any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof.

Fair Housing Act means Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3600–3620.

General Counsel means the General Counsel of HUD.

HUD means the United States Department of Housing and Urban Development.

Person includes one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustee in cases under Title 11 of the United States Code, receivers and fiduciaries.

Personal service means handing a copy of the document to the person to be served or leaving a copy of the document with a person of suitable age and discretion at the place of business, residence or usual place of abode of the person to be served.

Receipt of notice means the day that personal service is completed by handing or delivering a copy of the document to an appropriate person or the date that a document is delivered by certified mail.

Respondent means:

(a) The person or other entity accused in a complaint of a discriminatory housing practice; and

(b) Any other person or entity identified in the course of investigation and notified as required under § 103.50.

State means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, or any of the territories and possessions of the United States.

Substantially equivalent State or local agency means a State or local agency certified by HUD under 24 CFR Part 115 (including agencies certified for interim referrals).

To rent includes to lease, to sublease, to let, and otherwise to grant for consideration the right to occupy premises not owned by the occupant.

Subpart B—Complaints

§ 103.10 Submission of information.

(a) The Assistant Secretary will receive information concerning alleged discriminatory housing practices from any person. Where the information constitutes a complaint within the meaning of the Fair Housing Act and this part and is furnished by an aggrieved person, it will be considered to be filed under § 103.40. Where additional information is required for purposes of perfecting a complaint under the Fair Housing Act, HUD will advise what additional information is needed and will provide appropriate assistance in the filing of the complaint.

(b) HUD may also concurrently initiate compliance reviews under other appropriate civil rights authorities, such as E.O. 11063 on Equal Opportunity in Housing, Title VI of the Civil Rights Act of 1964, section 109 of the Housing and Community Development Act of 1974, section 504 of the Rehabilitation Act of 1973 or the Age Discrimination Act (42 U.S.C. 6101). The information may also be made available to any other Federal, State or local agency having an interest in the matter. In making available such information, steps will be taken to protect the confidentiality of any informant or complainant where desired by the informant or complainant.

§ 103.15 Who may file complaints.

Any aggrieved person or the Assistant Secretary may file a complaint no later than one year after an alleged discriminatory housing practice has occurred or terminated. The complaint may be filed with the assistance of an authorized representative of an aggrieved person, including any organization acting on behalf of an aggrieved person.

§ 103.20 Persons against whom complaints may be filed.

(a) A complaint may be filed against any person alleged to be engaged, to have engaged, or to be about to engage, in a discriminatory housing practice.

(b) A complaint may also be filed against any person who directs or controls, or has the right to direct or control, the conduct of another person with respect to any aspect of the sale, rental, advertising or financing of dwellings or the provision of brokerage services relating to the sale or rental of dwellings if that other person, acting within the scope of his or her authority as employee or agent of the directing or controlling person, is engaged, has engaged, or is about to engage, in a discriminatory housing practice.

§ 103.25 Where to file complaints.

(a)(1) Aggrieved persons may file complaints in person with, or by mail to: Fair Housing, Department of Housing and Urban Development, Washington DC 20410, or any HUD Office. A list of Regional Offices (with addresses and areas of jurisdiction) and Field Offices (with addresses) is contained in an appendix to this part.

(2) Aggrieved persons may provide information to be contained in a complaint by telephone to any Regional or Field Office of HUD. HUD will reduce information provided by telephone to writing on the prescribed complaint form and send the form to the aggrieved person to be signed and affirmed as provided in § 103.30(a).

(3) Complaints may be filed in person or by mail with any substantially equivalent State or local agency. Complaints filed with a substantially equivalent State or local agency will be considered to be complaints dual filed with the agency under its own law, and with HUD under the Fair Housing Act.

(b) Generally, complaints will be processed through HUD's Regional Administrator having jurisdiction in the State in which the alleged discriminatory housing practice occurred. However, where a complaint has been identified for systemic processing under § 103.205, that complaint may be processed in the Office of the Assistant Secretary in Washington, DC.

§ 103.30 Form and content of complaint.

(a) Each complaint must be in writing and must be signed and affirmed by the aggrieved person filing the complaint or, if the complaint is filed by HUD, by the Assistant Secretary. The signature and affirmation may be made at any time during the investigation. The affirmation shall state: "I declare under penalty of perjury that the foregoing is true and correct."

(b) The Assistant Secretary may require complaints to be made on prescribed forms. Complaint forms will be available in any HUD office or in any substantially equivalent State or local agency. Notwithstanding any requirement for use of a prescribed form, HUD will accept any written statement which substantially sets forth the allegations of a discriminatory housing practice under the Fair Housing Act (including any such statement filed with a substantially equivalent State or local agency) as a Fair Housing Act complaint. Personnel in these offices will provide appropriate assistance in filling out forms and in filing a complaint.

(c) Each complaint must contain substantially the following information:

(1) The name and address of the aggrieved person.

(2) The name and address of the respondent.

(3) A description and the address of the dwelling which is involved, if appropriate.

(4) A concise statement of the facts, including pertinent dates, constituting the alleged discriminatory housing practice.

§ 103.40 Date of filing of complaint.

(a) Except as provided in paragraph (b) of this section, a complaint is filed when it is received by HUD, or dual filed with HUD through a substantially equivalent State or local agency, in a form that reasonably meets the standards of § 103.30.

(b) The Assistant Secretary may determine that a complaint is filed for the purposes of the one-year period for the filing of complaints, upon the submission of written information (including information provided by telephone and reduced to writing by an employee of HUD) identifying the parties and describing generally the alleged discriminatory housing practice.

(c) Where a complaint alleges a discriminatory housing practice that is continuing, as manifested in a number of incidents of such conduct, the complaint will be timely if filed within one year of the last alleged occurrence of that practice.

§ 103.42 Amendment of complaint.

Complaints may be reasonably and fairly amended at any time. Such amendments may include, but are not limited to: amendments to cure technical

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defects or omissions, including failure to sign or affirm a complaint, to clarify or amplify the allegations in a complaint, or to join additional or substitute respondents. Except for the purposes of notifying respondents under § 103.50, amended complaints will be considered as having been made as of the original filing date.

§ 103.45 Service of notice on aggrieved person.

Upon the filing of a complaint, the Assistant Secretary will notify, by certified mail or personal service, each aggrieved person on whose behalf the complaint was filed. The notice will:

(a) Acknowledge the filing of the complaint and state the date that the complaint was accepted for filing.

(b) Include a copy of the complaint.

(c) Advise the aggrieved person of the time limits applicable to complaint processing and of the procedural rights and obligations of the aggrieved person under this part and Part 104.

(d) Advise the aggrieved person of his or her right to commence a civil action under section 813 of the Fair Housing Act in an appropriate United States District Court, not later than two years after the occurrence or termination of the alleged discriminatory housing practice. The notice will state that the computation of this two-year period excludes any time during which a proceeding is pending under this part or Part 104 with respect to a complaint or charge based on the alleged discriminatory housing practice. The notice will also state that the time period includes the time during which an action arising from a breach of a conciliation agreement under section 814(b)(2) of the Fair Housing Act is pending.

(e) Advise the aggrieved person that retaliation against any person because he or she made a complaint or testified, assisted, or participated in an investigation or conciliation under this part or an administrative proceeding under Part 104, is a discriminatory housing practice that is prohibited under section 818 of the Fair Housing Act.

§ 103.50 Notification of respondent; joinder of additional or substitute respondents.

(a) Within ten days of the filing of a complaint under § 103.40 or the filing of an amended complaint under § 103.42, the Assistant Secretary will serve a notice on each respondent by certified mail or by personal service. A person who is not named as a respondent in a complaint, but who is identified in the course of the investigation under Subpart D of this part as a person who is alleged to be engaged, to have engaged, or to be about to engage in the discriminatory housing practice upon which the complaint is based may be joined as an additional or substitute respondent by service of a notice on the person under this section within ten days of the identification.

(b)(1) The notice will identify the alleged discriminatory housing practice upon which the complaint is based, and include a copy of the complaint.

(2) The notice will state the date that the complaint was accepted for filing.

(3) The notice will advise the respondent of the time limits applicable to complaint processing under this part and of the procedural rights and obligations of the respondent under this part and Part 104, including the opportunity to submit an answer to the complaint within 10 days of the receipt of the notice.

(4) The notice will advise the respondent of the aggrieved person's right to commence a civil action under section 813 of the Fair Housing Act in an appropriate United States District Court, not later than two years after the occurrence or termination of the alleged discriminatory housing practice. The notice will state that the computation of this two-year period excludes any time during which a proceeding is pending under this part or Part 104 with respect to a complaint or charge based on the alleged discriminatory housing practice. The notice will also state that the time period includes the time during which an action arising from a breach of a conciliation agreement under section 814(b)(2) of the Fair Housing Act is pending.

(5) If the person is not named in the complaint, but is being joined as an additional or substitute respondent, the notice will explain the basis for the Assistant Secretary's belief that the joined person is properly joined as a respondent.

(6) The notice will advise the respondent that retaliation against any person because he or she made a complaint or testified, assisted or participated in an investigation or conciliation under this part or an administrative proceeding under Part 104, is a discriminatory housing practice that is prohibited under section 818 of the Fair Housing Act.

§ 103.55 Answer to complaint.

(a) The respondent may file an answer not later than ten days after receipt of the notice described in § 103.50. The respondent may assert any defense that might be available to a defendent in a court of law. The answer must be signed and affirmed by the respondent. The affirmation must state: "I declare under penalty of perjury that the foregoing is true and correct."

(b) An answer may be reasonably and fairly amended at any time with the consent of the Assistant Secretary.

Subpart C—Referral of Complaints to State and Local Agencies

§ 103.100 Notification and referral to substantially equivalent State or local agencies.

(a) Whenever a complaint alleges a discriminatory housing practice that is within the jurisdiction of a substantially equivalent State or local agency and the agency is certified or may accept interim referrals under 24 CFR Part 115 with regard to the alleged discriminatory housing practice, the Assistant Secretary will notify the agency of the filing of the complaint and refer the complaint to the agency for further processing before HUD takes any action with respect to the complaint. The Assistant Secretary will notify the State or local agency of the referral by certified mail.

(b) The Assistant Secretary will notify the aggrieved person and the respondent, by certified mail or personal service, of the notification and referral under paragraph (a) of this section. The notice will advise the aggrieved person and the respondent of the aggrieved person's right to commence a civil action under section 813 of the Fair Housing Act in an appropriate United States District Court, not later than two years after the occurrence or termination of the alleged discriminatory housing practice. The notice will state that the computation of this two-year period excludes any time during which a proceeding is pending under this part or Part 104 with respect to complaint or charge based on the alleged discriminatory housing practice. The notice will also state that the time period includes the time during which an action arising from a breach of a conciliation agreement under section 814(b)(2) of the Fair Housing Act is pending.

§ 103.105 Cessation of action on referred complaints.

(a) After a complaint is referred under § 103.100, the Assistant Secretary will take no futher action with respect to the complaint, except as provided in § 103.110.

(b) A referral under § 103.100 does not prohibit the Assistant Secretary from taking appropriate action to review or investigate matters in the complaint that raise issues cognizable under other civil rights authorities applicable to departmental programs (see § 103.5).

§ 103.110 Reactivation of referred complaints.

The Assistant Secretary may reactivate a complaint referred under § 103.100 for processing by HUD if:

(a) The substantially equivalent State or local agency consents or requests the reactivation;

(b) The Assistant Secretary determines that, with respect to the alleged discriminatory housing practice, the agency no longer qualifies for certification as a substantially equivalent State or local agency and may not accept interim referrals; or

(c) The substantially equivalent State or local agency has failed to commence proceedings with respect to the complaint within 30 days of the date that it received the notification and referral of the complaint; or the agency commenced proceedings within this 30-day period, but the Assistant Secretary determines that the agency has failed to carry the proceedings forward with reasonable promptness. HUD will not reactivate a complaint under this paragraph (c) of this section until the appropriate HUD Regional Office has conferred with the agency to determine the reason for the delay in processing of the complaint. If the Assistant Secretary believes that the agency will proceed expeditiously following the conference, the Assistant Secretary may leave the complaint with the agency for a reasonable time, notwithstanding the expiration of the 30-day period or a previous failure to carry the proceedings forward with reasonable promptness.

§ 103.115 Notification upon reactivation.

(a) Whenever a complaint referred to a State or local fair housing agency under § 103.100 is reactivated under § 103.110, the Assistant Secretary will notify the substantially equivalent State or local agency, the aggrieved person and the respondent of HUD's reactivation. The notification will be made by certified mail or personal service.

(b) The notification to the respondent and the aggrieved person will:

(1) Advise the aggrieved person and the respondent of the time limits applicable to complaint processing and the procedural rights and obligations of the aggrieved person and the respondent under this part and Part 104.

(2) State that HUD will process the complaint under the Fair Housing Act and that the State or local agency to which the complaint was referred may continue to process the complaint under State or local law.

(3) Advise the aggrieved person and the respondent of the aggrieved person's right to commence a civil action under section 813 of the Fair Housing Act in an appropriate United States District Court, not later than two years after the occurrence or termination of the alleged discriminatory housing practice. The notice will state that the computation of this two-year period excludes any time during which a proceeding is pending under this part or Part 104 with respect to a complaint or charge based on the alleged discriminatory housing practice under Part 104. The notices will also state that the time period includes the time during which an action arising from a breach of conciliation agreement under section 814(b)(2) of the Fair Housing Act is pending.

Subpart D—Investigation Procedures

§ 103.200 Investigations.

(a) Upon the filing of a complaint under § 103.40, the Assistant Secretary will initiate an investigation. The purpose of an investigation are:

(1) To obtain information concerning the events or transactions that relate to the alleged discriminatory housing practice identified in the complaint.

(2) To document policies or practices of the respondent involved in the alleged discriminatory housing practice raised in the complaint.

(3) To develop factual data necessary for the General Counsel to make a determination under § 103.400 whether reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, and to take other actions provided under this part.

(b) Upon the written direction of the Assistant Secretary, HUD may initate an investigation of housing practices to determine whether a complaint should be filed under Subpart B of this part. Such investigations will be conducted in accordance with the procedures described under this subpart.

§ 103.205 Systemic processing.

Where the Assistant Secretary determines that the alleged discriminatory practices contained in a complaint are pervasive or institutional in nature, or that the processing of the complaint will involve complex issues, novel questions of fact or law, or will affect a large number of persons, the Assistant Secretary may identify the complaint for systemic processing. This determination can be based on the face of the complaint or on information gathered in connection with an investigation. Systemic investigations may focus not only on documenting facts involved in the alleged discriminatory housing practice that is the subject of the complaint but also on review of other policies and procedures related to matters under investigation, to make sure that they also comply with the nondiscrimination requirements of the Fair Housing Act.

§ 103.215 Conduct of investigation.

(a) In conducting investigations under this part, the Assistant Secretary will seek the voluntary cooperation of all persons to obtain access to premises, records, documents, individuals, and other possible sources of information; to examine, record, and copy necessary materials; and to take and record testimony or statements of persons reasonably necessary for the furtherance of the investigation.

(b) The Assistant Secretary and the respondent may conduct discovery in aid of the investigation by the same methods and to the same extent that parties may conduct discovery in an administrative proceeding under 24 CFR Part 104, except that the Assistant Secretary shall have the power to issue subpoenas described in 24 CFR 104.590 in support of the investigation or at the request of the respondent. Subpoenas issued by the Assistant Secretary must be approved by the General Counsel as to their legality before issuance.

§ 103.220 Cooperation of Federal, State and local agencies.

The Assistant Secretary, in processing Fair Housing Act complaints, may seek the cooperation and utilize the services of Federal, State or local agencies, including any agency having regulatory or supervisory authority over financial institutions.

§ 103.225 Completion of investigation.

The investigation will remain open until the reasonable cause determination is made under § 103.400, or a conciliation agreement is executed and approved under § 103.310. Unless it is impracticable to do so, the Assistant Secretary will complete the investigation of the alleged discriminatory housing practice within 100 days of the filing of the complaint (or where the Assistant Secretary reactivates the complaint, within 100 days after service of the notice of reactivation under § 103.115). If the Assistant Secretary is unable to complete the investigation within the 100-day period, the Assistant Secretary will notify the aggrieved person and the respondent, by certified mail or personal service, of the reasons for the delay.

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§ 103.230 Final investigative report.

(a) At the end of each investigation under this part, the Assistant Secretary will prepare a final investigative report. The investigative report will contain:

(1) The names and dates of contacts with witnesses, except that the report will not disclose the names of witnesses that request anonymity. HUD, however, may be required to disclose the names of such witnesses in the course of an administrative hearing under Part 104 or a civil action under Title VIII of the Fair Housing Act;

(2) A summary and the dates of correspondence and other contacts with the aggrieved person and the respondent;

(3) A summary description of other pertinent records;

(4) A summary of witness statements; and

(5) Answers to interrogatories.

(b) A final investigative report may be amended at any time, if additional evidence is discovered.

(c) Notwithstanding the prohibitions and requirements with respect to disclosure of information contained in § 103.330, the Assistant Secretary will make information derived from an investigation, including the final investigative report, available to the aggrieved person and the respondent. Following the completion of investigation, the Assistant Secretary shall notify the aggrieved person and the respondent that the final investigation report is complete and will be provided upon request.

Subpart E—Conciliation Procedures

§ 103.300 Conciliation.

(a) During the period beginning with the filing of the complaint and ending with the filing of a charge or the dismissal of the complaint by the General Counsel, the Assistant Secretary will, to the extent feasible, attempt to conciliate the complaint.

(b) In conciliating a complaint, HUD will attempt to achieve a just resolution of the complaint and to obtain assurances that the respondent will satisfactorily remedy any violations of the rights of the aggrieved person, and take such action as will assure the elimination of discriminatory housing practices, or the prevention of their occurrence, in the future.

(c) Generally, officers, employees, and agents of HUD engaged in the investigation of a complaint under this part will not participate or advise in the conciliation of the same complaint or in any factually related complaint. Where the rights of the aggrieved party and the respondent can be protected and the prohibitions with respect to the disclosure of information can be observed, the investigator may suspend fact finding and engage in efforts to resolve the complaint by conciliation.

§ 103.310 Conciliation agreement.

(a) The terms of a settlement of a complaint will be reduced to a written conciliation agreement. The conciliation agreement shall seek to protect the interests of the aggrieved person, other persons similarly situated, and the public interest. The types of relief that may be sought for the aggrieved person are described in § 103.315. The provisions that may be sought for the vindication of the public interest are described in § 103.320.

(b)(1) The agreement must be executed by the respondent and the complainant. The agreement is subject to the approval of the Assistant Secretary, who will indicate approval by signing the agreement. The Assistant Secretary will approve an agreement and, if the Assistant Secretary is the complainant, will execute the agreement, only if:

(i) The complainant and the respondent agree to the relief accorded the aggrieved person;

(ii) The provisions of the agreement will adequately vindicate the public interest; and

(iii) If the Assistant Secretary is the complainant, all aggrieved persons named in the complaint are satisfied with the relief provided to protect their interests.

(2) The General Counsel may issue a charge under § 103.405 if the aggrieved person and the respondent have executed a conciliation agreement that has not been approved by the Assistant Secretary.

§ 103.315 Relief sought for aggrieved persons.

(a) The following types of relief may be sought for aggrieved persons in conciliation:

(1) Monetary relief in the form of damages, including damages caused by humiliation or embarrassment, and attorney fees;

(2) Other equitable relief including, but not limited to, access to the dwelling at issue, or to a comparable dwelling, the provision of services or facilities in connection with a dwelling, or other specific relief; or

(3) Injunctive relief appropriate to the elimination of discriminatory housing practices affecting the aggrieved person or other persons.

(b) The conciliation agreement may provide for binding arbitration of the dispute arising from the complaint. Arbitration may award appropriate relief as described in paragraph (a) of this section. The aggrieved person and the respondent may, in the conciliation agreement, limit the types of relief that may be awarded under binding arbitration.

§ 103.320 Provisions sought for the public interest.

The following are types of provisions may be sought for the vindication of the public interest:

(a) Elimination of discriminatory housing practices.

(b) Prevention of future discriminatory housing practices.

(c) Remedial affirmative activities to overcome discriminatory housing practices.

(d) Reporting requirements.

(e) Monitoring and enforcement activities.

§ 103.325 Termination of conciliation efforts.

(a) HUD may terminate its efforts to conciliate the complaint if the respondent fails or refuses to confer with HUD; the aggrieved person or the respondent fail to make a good faith effort to resolve any dispute; or HUD finds, for any reason, that voluntary agreement is not likely to result.

(b) Where the aggrieved person has commenced a civil action under an Act of Congress or a State law seeking relief with respect to the alleged discriminatory housing practice, and the trial in the action has commenced, HUD will terminate conciliation unless the court specifically requests assistance from the Assistant Secretary.

§ 103.330 Prohibitions and requirements with respect to disclosure of information obtained during conciliation.

(a) Except as provided in paragraph (b) of this section and § 103.230(c), nothing that is said or done in the course of conciliation under this part may be made public or used as evidence in a subsequent administrative hearing under Part 104 or in civil actions under Title VIII of the Fair Housing Act, without the written consent of the persons concerned.

(b) Conciliation agreements shall be made public, unless the aggrieved person and respondent request nondisclosure and the Assistant Secretary determines that disclosure is not required to further the purposes of the Fair Housing Act. Notwithstanding a determination that disclosure of a conciliation agreement is not required, the Assistant Secretary may publish tabulated descriptions of the results of all conciliation efforts.

§ 103.335 Review of compliance with conciliation agreements.

HUD may, from time to time, review compliance with the terms of any conciliation agreement. Whenever HUD has reasonable cause to believe that a respondent has breached a conciliation agreement, the General Counsel shall refer the matter to the Attorney General with a recommendation for the filing of a civil action under section 814(b)(2) of the Fair Housing Act for the enforcement of the terms of the conciliation agreement.

Subpart F—Issuance of Charge

§ 103.400 Reasonable cause determination.

(a) If a conciliation agreement under § 103.310 has not been executed by the complainant and the respondent, and approved by the Assistant Secretary, the General Counsel, within the time limits set forth in paragraph (c) of this section, shall determine whether, based on the totality of the factual circumstances known at the time of the decision, reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur. The reasonable cause determination will be based solely on the facts concerning the alleged discriminatory housing practice, provided by complainant and respondent and otherwise, disclosed during the investigation. In making the reasonable cause determination, the General Counsel shall consider whether the facts concerning the alleged discriminatory housing practice are sufficient to warrant the initiation of a civil action in Federal court.

(1) In all cases not involving the legality of local zoning or land use laws or ordinances:

(i) If the General Counsel determines that reasonable cause exists, the General Counsel will immediately issue a charge under § 103.405 on behalf of the aggrieved person, and shall notify the aggrieved person and the respondent of this determination by certified mail or personal service.

(ii) If the General Counsel determines that no reasonable cause exists, the General Counsel shall: issue a short and plain written statement of the facts upon which the General Counsel has based the no reasonable cause determination; dismiss the complaint; notify the aggrieved person and the respondent of the dismissal (including the written statement of facts) by certified mail or personal service; and make public disclosure of the dismissal. Public disclosure of the dismissal shall be by issuance of a press release, except that the respondent may request that no release be made. Notwithstanding a respondent's request that no press release be issued, the fact of the dismissal, including the names of the parties, shall be public information available on request.

(2) If the General Counsel determines that the matter involves the legality of local zoning or land use laws or ordinances, the General Counsel, in lieu of making a determination regarding reasonable cause, shall refer the investigative materials to the Attorney General for appropriate action under section 814(b)(1) of the Fair Housing Act, and shall notify the aggrieved person and the respondent of this action by certified mail or personal service.

(b) The General Counsel may not issue a charge under paragraph (a) of this section regarding an alleged discriminatory housing practice, if an aggrieved person has commenced a civil action under an Act of Congress or a State law seeking relief with respect to the alleged discriminatory housing practice, and the trial in the action has commenced. If a charge may not be issued because of the commencement of such a trial, the General Counsel will so notify the aggrieved person and the respondent by certified mail or personal service.

(c)(1) The General Counsel shall make the reasonable cause determination after the Assistant Secretary forwards the matter for consideration. The General Counsel shall make a reasonable cause determination within 100 days after filing of the complaint (or where the Assistant Secretary has reactivated a complaint, within 100 days after service of the notice of reactivation under § 103.115), unless it is impracticable to do so.

(2) If the General Counsel is unable to make the determination within the 100-day period specified in paragraph (c)(1) of this section, the Assistant Secretary will notify the aggrieved person and the respondent, by certified mail or personal service, of the reasons for the delay.

§ 103.405 Issuance of charge.

(a) A charge:

(1) Shall consist of a short and plain written statement of the facts upon which the General Counsel has found reasonable cause to believe that a discriminatory housing practice has occurred or is about to occur;

(2) Shall be based on the final investigative report; and

(3) Need not be limited to facts or grounds that are alleged in the complaint filed under Subpart B of this part. If the charge is based on grounds that are alleged in the complaint, HUD will not issue a charge with regard to the grounds unless the record of the investigation demonstrates that the respondent has been given notice and an opportunity to respond to the allegation.

(b) Within three business days after the issuance of the charge, the General Counsel shall:

(1) Obtain a time and place for hearing from the Chief Docket Clerk of the Office of Administrative Law Judges;

(2) File the charge along with the notifications described in § 104.410(b) with the Office of Administrative Law Judges;

(3) Serve the charge and notifications in accordance with 24 CFR 104.40; and

(4) Notify the Assistant Secretary of the filing of the charge.

§ 103.410 Election of civil action or provision of administrative proceeding.

(a) If a charge is issued under § 103.405, a complainant (including the Assistant Secretary, if HUD filed the complaint), a respondent, or an aggrieved person on whose behalf the complaint is filed may elect, in lieu of an administrative proceeding under 24 CFR Part 104, to have the claims asserted in the charge decided in a civil action under section 812(o) of the Fair Housing Act.

(b) The election must be made not later than 20 says after the receipt of service of the charge, or in the case of the Assistant Secretary, not later than 20 days after service. The notice of the election must be filed with the Chief Docket Clerk in the Office of Administrative Law Judges and served on the General Counsel, the Assistant Secretary, the respondent, and the aggrieved persons on whose behalf the complaint was filed. The notification will be filed and served in accordance with the procedures established under 24 CFR Part 104.

(c) If an election is not made under this section, the General Counsel will maintain an administrative proceeding based on the charge in accordance with the procedures under 24 CFR Part 104.

(d) If an election is made under this section, the General Counsel shall immediately notify and authorize the Attorney General to commence and maintain a civil action seeking relief under section 812(o) of the Fair Housing Act on behalf of the aggrieved person in an appropriate United States District Court. Such notification and authorization shall include transmission of the file in the case, including a copy of the final investigative report and the charge, to the Attorney General.

(e) The General Counsel shall be available for consultation concerning

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any legal issues raised by the Attorney General as to how best to proceed in the event that a new court decision or newly discovered evidence is regarded as relevant to the reasonable cause determination.

Subpart G—Prompt Judicial Action

§ 103.500 Prompt judicial action.

(a) If at any time following the filing of a complaint, the General Counsel concludes that prompt judicial action is necessary to carry out the purposes of this part or 24 CFR Part 104, the General Counsel may authorize the Attorney General to commence a civil action for appropriate temporary or preliminary relief pending final disposition of the complaint. To ensure the prompt initiation of the civil action, the General Counsel will consult with the Assistant Attorney General for the Civil Rights Division before making the determination that prompt judicial action is necessary. The commencement of a civil action by the Attorney General under this section will not affect the initiation or continuation of proceedings under this part or administrative proceedings under Part 104.

(b) If the General Counsel has reason to believe that a basis exists for the commencement of proceedings against the respondent under section 814(a) of the Fair Housing Act (Pattern or Practice Cases), proceedings under section 814(c) of the Fair Housing Act (Enforcement of Subpoenas), or proceedings by any governmental licensing or supervisory authorities, the General Counsel shall transmit the information upon which that belief is based to the Attorney General and to other appropriate authorities.

Subpart H—Other Action

§ 103.510 Other action by HUD.

In addition to the actions described in § 103.500, HUD may pursue one or more of the following courses of action:

(a) Refer the matter to the Attorney General for appropriate action (e.g., enforcement of criminal penalties under section 811(c) of the Act).

(b) Take appropriate steps to initiate proceedings leading to the debarment of the respondent under 24 CFR Part 24, or initiate other actions leading to the imposition of administrative sanctions where HUD determines that such actions are necessary to the effective operation and administration of Federal programs or activities.

(c) Take appropriate steps to initiate proceedings under:

(1) 24 CFR Part 1, implementing Title VI of the Civil Rights Act of 1964;

(2) 24 CFR 570.912, implementing section 109 of the Housing and Community Development Act of 1974;

(3) 24 CFR Part 8, implementing section 504 of the Rehabilitation Act of 1973;

(4) 24 CFR Part 107, implementing Executive Order 11063; or

(5) The Age Discrimination Act, 42 U.S.C. 6101.

(d) Inform any other Federal, State or local agency with an interest in the enforcement of respondent's obligations with respect to nondiscrimination in housing.

§ 103.515 Action by other agencies.

In accordance with section 808 (d) and (e) of the Fair Housing Act and Executive Order No. 12259, other Federal agencies, including any agency having regulatory or supervisory authority over financial institutions, are responsible for ensuring that their programs and activities relating to housing and urban development are administered in a manner affirmatively to further the goal of fair housing, and for cooperating with the Assistant Secretary in furthering the purposes of the Fair Housing Act.

5. A new Part 104 is added to read as follows:

PART 104—ADMINISTRATIVE PROCEEDINGS UNDER SECTION 812 OF THE FAIR HOUSING ACT

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104.20 Definitions.
104.30 Time computations.
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104.600 Prehearing statements.
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104.900 Dismissal.
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Subpart J—Judicial Review and Enforcement of Final Decision

104.950 Judicial Review of Final Decision.
104.955 Enforcement of Final Decision.

Authority: Title VIII, Civil Rights Act of 1968 (42 U.S.C. 3600–3620); section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Subpart A—General Information

§ 104.10 Scope.

(a) *Applicability.* This part contains the rules of practice and procedure established by the Department of Housing and Urban Development for administrative proceedings before an Administrative Law Judge adjudicating the claims asserted in a charge issued under 24 CFR Part 103, where no party—the complainant, the respondent, or an aggrieved party—elects to have the claims decided in a civil action under section 812(o) of the Fair Housing Act.

(b) *General application of rules.* Hearings under this subpart shall be conducted as expeditiously and inexpensively as possible, consistent with the needs and rights of the parties

to obtain a fair hearing and a complete record.

(c) *Conduct of proceedings.* The Department will reasonably accommodate persons with disabilities who are participants in the hearing process or interested members of the general public.

§ 104.20 Definitions.

Aggrieved person includes any person who:

(a) Claims to have been injured by a discriminatory housing practice; or

(b) Believes that such person will be injured by a discriminatory housing practice that is about to occur.

Attorney General means the Attorney General of the United States.

Complainant means the person (including the Assistant Secretary for Fair Housing and Equal Opportunity) who filed the complaint under 24 CFR Part 103.

Complaint means a complaint filed under 24 CFR Part 103.

Charge means the statement of facts issued under 24 CFR 103.405 upon which HUD has found reasonable cause to believe that a discriminatory housing practice has occurred or is about to occur.

Discriminatory housing practice means an act that is unlawful under section 804, 805, 806 or 818 of the Fair Housing Act.

Fair Housing Act means Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3600–3620.

General Counsel means the General Counsel of HUD.

Hearing means that part of an administrative proceeding that involves the submission of evidence, either by oral presentation or written submission, and includes the submission of briefs and oral arguments on the evidence and applicable law.

HUD means the United States Department of Housing and Urban Development.

Party means a person or agency named or admitted as a party to a proceeding. Party includes an aggrieved person who intervenes under § 104.430.

Person includes one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in cases under Title 11 of the United States Code, receivers and fiduciaries.

Personal service means handing a copy of the document to the person to be served or leaving a copy of the document with a person of suitable age and discretion at the place of business, residence or usual place of abode of the person to be served.

Prevailing party has the same meaning as the term has in section 722 of the Revised Statutes of the United States (42 U.S.C. 1988).

Respondent means the person accused in a charge of discriminatory housing practice.

State means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, or any of the territories and possessions of the United States.

§ 104.30 Time computations.

(a) *In general.* In computing time under this part, the time period begins the day following the act, event, or default and includes the last day of the period, unless the last day is a Saturday, Sunday, or legal holiday observed by the Federal Government, in which case the time period includes the next business day. When the prescribed time period is seven days or less, intermediate Saturdays, Sundays, and legal holidays shall be excluded from the computation.

(b) *Modification of time periods.* Except for time periods required by statute, the administrative law judge may enlarge or reduce any time period required under this part where necessary to avoid prejudicing the public interest or the rights of the parties.

(c) *Entry of orders.* In computing any time period involving the date of the issuance of an order or decision by an administrative law judge, the date of issuance is the date the order or decision is served by the Chief Docket Clerk.

(d) *Computation of time for delivery by mail.* (1) Documents are not filed until received by the Chief Docket Clerk. However, when documents are filed by mail, three days shall be added to the prescribed time period.

(2) Service is effected at the time of mailing.

(3) When a party has the right or is required to take an action within a prescribed period after the service of a document upon the party, and the document is served by mail, three days shall be added to the prescribed period.

§ 104.40 Service and filing.

(a) *Generally.* Copies of all filed documents shall be served on all parties of record. All filed documents shall clearly designate the docket number, if any, and title of the proceeding. All documents to be filed shall be delivered or mailed to the Chief Docket Clerk, Office of Administrative Law Judges, Room 2158, 451 Seventh Street, SW., Washington, DC 20410.

(b) *By parties.* Parties shall file all documents with the Office of Administrative Law Judges with a copy to all other parties of record. Service of documents upon any party may be made by personal service or by mailing a copy to the last known address. When a party is represented by an attorney, service shall be made upon the attorney. The person serving the document shall certify to the manner and date of service.

(c) *By the Office of Administrative Law Judges.* The Office of Administrative Law Judges shall serve all notices, orders, decisions and all other documents by mail to the last known address.

Subpart B—Administrative Law Judge

§ 104.100 Designation.

Proceedings under this part shall be presided over by an administrative law judge appointed under 5 U.S.C. 3105. The presiding administrative law judge shall be designated by the chief administrative law judge at HUD.

§ 104.110 Authority.

The administrative law judge shall have all powers necessary to the conduct of fair and impartial hearings including, but not limited to, the power:

(a) To conduct hearings in accordance with this part.

(b) To administer oaths and affirmations and examine witnesses.

(c) To issue subpoenas in accordance with § 104.590.

(d) To rule on offers of proof and receive evidence.

(e) To take depositions or have depositions taken when the ends of justice would be served.

(f) To regulate the course of the hearing and the conduct of parties and their counsel.

(g) To hold conferences for the settlement or simplification of the issues by consent of the parties.

(h) To dispose of motions, procedural requests, and similar matters.

(i) To make initial decisions as described under Subpart I of this Part.

(j) To exercise such powers vested in the Secretary as are necessary and appropriate for the purpose of the hearing and conduct of the proceeding.

§ 104.120 Disqualification.

(a) *Disqualification.* If an administrative law judge finds that there is a basis for his or her disqualification in a proceeding, the Administrative law judge shall withdraw from the proceeding. Withdrawal is

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accomplished by entering a notice in the record and by providing a copy of the notice to the chief administrative law judge.

(b) *Motion for recusal.* If a party believes that the presiding administrative law judge should be disqualified in a proceeding for any reason, the party may file a motion to recuse with the administrative law judge. The motion shall be supported by an affidavit setting forth the alleged grounds for disqualification. The administrative law judge shall rule on the motion. If the administrative law judge denies the motion, the administrative law judge shall incorporate a written statement of the reasons for the denial in the record.

(c) *Redesignation of administrative law judge.* If an administrative law judge is disqualified, the chief administrative law judge shall designate another administrative law judge to preside over further proceedings.

§ 104.130 Ex Parte communications.

(a) *General.* An ex parte communication is any direct or indirect communication concerning the merits of a pending proceeding, made by a party in the absence of any other party, to the administrative law judge assigned to the proceeding and which was neither on the record nor on reasonable prior notice to all parties. Ex parte communications do not include communications made for the sole purpose of scheduling hearings, requesting extensions of time, or requesting information on the status of cases.

(b) *Prohibition.* Ex parte communications are prohibited.

(c) *Procedure upon receipt.* If the administrative law judge receives an ex parte communication that the administrative law judge knows or has reason to believe is prohibited, the administrative law judge shall promptly place the communication, or a written statement of the substance of the communication, in the record and shall furnish copies to all parties. Unauthorized communications shall not be taken into consideration in deciding any matter in issue. Any party making a prohibited ex parte communication may be subject to sanctions including, but not limited to, exclusion from the proceeding, and adverse ruling on the issue that is the subject of the prohibited communication.

§ 104.140 Separation of functions.

No officer, employee, or agent of the Federal Government engaged in the performance of investigative, conciliatory, or prosecutorial functions in connection with the proceeding shall, in that proceeding or any factually related proceeding under this part, participate or advise in the decision of the administrative law judge, except as a witness or counsel during the proceedings.

Subpart C—Parties

§ 104.200 In general.

(a) *Parties.* Parties to the proceeding include:

(1) HUD. HUD files the charge under 24 CFR 103.405 seeking appropriate relief for an aggrieved party and vindication of the public interest.

(2) Respondent. A respondent is a person named in the charge issued under 24 CFR 103.405 against whom relief is sought.

(3) Intervenors. Any aggrieved person may file a request for intervention under § 104.430. Intervention shall be permitted if the request is timely and:

(i) The intervenor is the aggrieved person on whose behalf the charge is issued; or

(ii) The intervenor is an aggrieved person who claims an interest in the property or transaction that is the subject of the charge and the disposition of the charge may as a practical matter impair or impede the aggrieved person's ability to protect that interest, unless the aggrieved person is adequately represented by the existing parties.

(b) *Rights of parties.* Each party may appear in person, be represented by counsel, examine or cross-examine witnesses, introduce documentary or other relevant evidence into the record, and request the issuance of subpoenas.

(c) *Amicus Curiae.* Briefs of amicus curiae may be permitted at the discretion of the administrative law judge. Such participants are not parties to the proceeding.

§ 104.210 Representation.

(a) *Representation of HUD.* HUD is represented by the General Counsel.

(b) *Representation of other parties.* Other parties may be represented as follows:

(1) Individuals may appear on their own behalf.

(2) A member of a partnership may represent the partnership.

(3) An officer of a corporation, trust or association may represent the corporation, trust or association.

(4) An Officer or employee of any governmental unit, agency or authority may represent that unit, agency or authority.

(5) An attorney admitted to practice before a Federal Court or the highest court in any State. The attorney's representation that he or she is in good standing before any of these courts is sufficient evidence of the attorney's qualifications under this section, unless otherwise ordered by the administrative law judge.

(c) *Notice of appearance.* Each attorney or other representative of a party shall file a notice of appearance. The notice must indicate the party of whose behalf the appearance is made. Any individual acting in a representative capacity may be required by the administrative law judge to demonstrate authority to act in that capacity.

(d) *Withdrawal.* An attorney or other representative of a party must file a written notice of intent before withdrawing from participation in the proceeding.

§ 104.220 Standards of conduct.

(a) *In general.* All persons appearing in proceedings under this part shall act with integrity and an ethical manner.

(b) *Exclusion.* The administrative law judge may exclude parties or their representatives for refusal to comply with directions, continued use of dilatory tactics, refusal to adhere to reasonable standards of orderly and ethical conduct, failure to act in good faith, or violations of the prohibitions against ex parte communications. If an attorney is suspended or barred from participation in a proceeding by an administrative law judge, the administrative law judge shall include in the record the reasons for the action. An attorney that is suspended or barred from participation may appeal to the chief administrative law judge. The proceeding will not be delayed or suspended pending disposition on the appeal, except that the administrative law judge shall suspend the proceeding for a reasonable time to enable the party to obtain another attorney.

Subpart D—Pleadings and motions

§ 104.00 In general.

(a) *Form.* Every pleading, motion, brief, or other document shall contain a caption setting forth the title of the proceeding, the docket number assigned by the Office of Administrative Law Judges, and the designation of the type of document (*e.g.*, charge, answer or motion to dismiss).

(b) *Signature.* Every pleading, motion, brief, or other document filed by a party shall be signed by the party, the party's representative, or the attorney representing the party, and must include the signer's address and telephone number. The signature constitutes a

certification that the signer has read the document; that to the best of the signer's knowledge, information and belief there is good ground to support the document; and that it is not interposed for delay.

(c) *Timely filing.* The administrative law judge may refuse to consider any motion or other pleading that is not filed in a timely fashion and in compliance with this part.

§ 104.410 The charge.

(a) *Filing and service.* Within three days after the issuance of a charge under 24 CFR 103.405, the General Counsel shall file the charge with the Chief Docket Clerk in the Office of Administrative Law Judges and serve copies (with the additional information required under paragraph (b) of this section) on the respondent and the aggrieved person on whose behalf the complaint was filed.

(b) *Contents.* The charge shall consist of a short and plain written statement of the facts upon which the General Counsel has found reasonable cause to believe that a discriminatory housing practice has occurred or is about to occur. The following notifications shall be served with the charge:

(1) The notice shall state that a complainant (including HUD, if HUD filed the complaint), a respondent, or an aggrieved person on whose behalf the complaint was filed may elect to have the claims asserted in the charge decided in a civil action under section 812(o) of the Act, in lieu of an administrative proceeding under this part. The notice shall state that the election must be made not later than 20 days after the receipt of the service of the charge. Where HUD is the complainant, the Assistant Secretary must make the election not later than 20 days after the service of the charge. The notice shall state that the notification of the election must be served on the Chief Docket Clerk in the Office of Administrative Law Judges, the respondent, the aggrieved party on whose behalf the complaint was filed, the Assistant Secretary and the General Counsel.

(2) The notice shall state that if no person timely elects under paragraph (b)(1) of this section to have the claims asserted in the charge decided in a civil action under section 812(o) of the Act, an administrative proceeding will be conducted. The notice shall state that if an administrative hearing is conducted:

(i) The parties will have an opportunity for a hearing at a date and place specified in the notice.

(ii) The respondent will have an opportunity to file an answer to the charge within 30 days of the date of service of the charge.

(iii) The aggrieved person may participate as a party to the administrative proceeding by filing a timely request for intervention.

(iv) All discovery must be concluded 15 days before the date set for hearing.

(3) The notice shall state that if at any time following the service of the charge on the respondent, the respondent intends to enter into a contract, sale, encumbrance, or lease with any person regarding the property that is the subject of the charge, the respondent must provide a copy of the charge to the person before the respondent and the person enter into the contract, sale, encumbrance or lease.

§ 104.20 Answer to charge.

Within the 30 days after the service of the charge, a respondent contesting material facts alleged in a charge or contending that the respondent is entitled to judgement as a matter of law shall file an answer to the charge. An answer shall include:

(a) A statement that the respondent admits, denies, or does not have and is unable to obtain sufficient information to admit or deny, each allegation made in the charge. A statement of lack of information shall have the effect of a denial. Any allegation that is not denied shall be deemed to be admitted.

(b) A statement of each affirmative defense and a statement of facts supporting each affirmative defense.

§ 104.30 Request for intervention.

Upon timely application, any aggrieved person may file a request for intervention to participate as a party to the proceeding. Requests for intervention submitted within 30 days after the filing of the charge shall be considered to be timely filed.

§ 104.440 Amendments and supplemental pleadings.

(a) *Amendments*—(1) By right. HUD may amend its charge once as a matter of right prior to filing of the answer.

(2) *By leave.* Upon such conditions as are necessary to avoid prejudicing the public interest and the rights of the parties, the administrative law judge may allow amendments to pleadings upon motion of the party.

(3) *Conformance to the evidence.* When issues not raised by the pleadings are reasonably within the scope of the original charge and have been tried by the express or implied consent of the parties, the issues shall be treated in all respects as if they had been raised in the pleadings and amendments may be made as necessary to make the pleading conform to evidence.

(b) *Supplemental pleadings.* The administrative law judge may, upon reasonable notice, permit supplemental pleadings concerning transactions, occurrences or events that have happened or been discovered since the date of the pleadings and which are relevant to any of the issues involved.

§ 104.450 Motions.

(a) *Motions.* Any application for an order or other request shall be made by a motion which, unless made during an appearance before the administrative law judge, shall be made in writing. Motions or requests made during an appearance before the administrative law judge shall be stated orally and made a part of the transcript. All parties shall be given a reasonable opportunity to respond to written or oral motions or requests.

(b) *Answers to written motions.* Within five days after a written motion is served, any party to the proceeding may file an answer in support of, or in opposition to the motion. Unless otherwise ordered by the administrative law judge, no further responsive documents may be filed.

(c) *Oral argument.* The administrative law judge may order oral argument on any motion.

Subpart E—Discovery

§ 104.500 Discovery.

(a) *In general.* This subpart governs discovery in aid of administrative proceedings under this Part. Except for time periods stated in these rules, to the extent that these rules conflict with discovery procedures in aid of civil actions in the United States District Court for the District in which the investigation of the discriminatory housing practice took place, the rules of the United States District Court apply.

(b) *Scope.* The parties are encouraged to engage in voluntary discovery procedures. Discovery shall be conducted as expeditiously and inexpensively as possible, consistent with the needs of all parties to obtain relevant evidence. Unless otherwise ordered by the administrative law judge, the parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the proceeding, including the existence, description, nature, custody, condition, and location of documents or persons having knowledge of any discoverable matter. It is not grounds for objection that information sought will not be admissible if the information

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sought appears reasonably calculated to lead to the discovery of admissible evidence.

(c) *Methods.* Parties may obtain discovery by one or more of the following methods:

(1) Deposition upon oral examination or written questions.

(2) Written interrogatories.

(3) Requests for the production of documents or other evidence, for inspection and other purposes, and physical and mental examinations.

(4) Requests for admissions.

(d) *Frequency and sequence.* Unless otherwise ordered by the administrative law judge or restricted by this subpart, the frequency or sequence of these methods is not limited.

(e) *Completion of discovery.* All discovery shall be completed 15 days before the date scheduled for hearing.

(f) *Not intervening aggrieved person.* For the purposes of obtaining discovery from a non-intervening aggrieved person, the term "party" as used in this subpart includes the aggrieved person on whose behalf the charge was issued.

§ 104.510 Depositions.

(a) *In general.* Depositions may be taken upon oral examination or upon written interrogatory before any person having the power to administer oaths.

(b) *Notice.* Any party desiring to take the deposition of a witness shall indicate to the witness and to all parties the time and place of the deposition, the name and post office address of the person before whom the deposition is to be taken, the name and address of the witness, and the subject matter of the testimony of the witness. Notice of the taking of a deposition shall be given not less than five days before the deposition is scheduled. The attendance of a witness may be compelled by subpoena under § 104.590.

(c) *Procedure at deposition.* Each witness deposed shall be placed under oath or affirmation, and other parties shall have the right to cross-examine. The questions propounded and all answers and objections made to the propounded questions shall be reduced to writing; read by or to, and subscribed by, the witness; and certified by the person before whom the deposition was taken.

(d) *Objections.* During a deposition, a party or deponent may request suspension of the deposition on grounds of bad faith in the conduct of the examination, oppression of a deponent or party, or improper questioning or conduct. Upon the request for suspension, the deposition will be adjourned. The objecting party or deponent must immediately move the administrative law judge for a ruling on the objections. The administrative law judge may then limit the scope or manner of taking the deposition.

(e) *Payment of costs of deposition.* The party requesting the deposition shall bear all costs of the deposition.

§ 104.520 Use of deposition at hearings.

(a) *In general.* At the hearing, any part or all of a deposition, so far as admissible under the Federal Rules of Evidence, may be used against any party who was present or represented at the taking of the deposition or who had due notice of the taking of the deposition, in accordance with the following provisions:

(1) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of the deponent as a witness.

(2) The deposition of expert witnesses, may be used by any party for any purpose, unless the administrative law judge rules that such use is unfair or a violation of due process.

(3) The deposition of a party or of anyone who at the time of the taking of the deposition was an officer, director, or duly authorized agent of a public or private corporation, partnership, or association that is a party, may be used by any other party for any purpose.

(4) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the administrative law judge finds:

(i) That the witness is dead;

(ii) That the witness is out of the United States or more than 100 miles from the place of hearing, unless it appears that the absence of the witness was procured by the party offering the deposition;

(iii) That the witness is unable to attend to testify because of age, sickness, infirmity, or imprisonment;

(iv) That the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or

(v) Whenever exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open hearing, to allow the deposition to be used.

(5) If a part of a deposition is offered in evidence by a party, any other party may require the party to introduce all of the deposition that is relevant to the part introduced. Any party may introduce any other part of the deposition.

(6) Substitution of parties does not affect the right to use depositions previously taken. If a proceeding has been dismissed and another proceeding involving the same subject matter is later brought between the same parties or their representatives or successors in interest, all depositions lawfully taken in the former proceeding may be used in the latter proceeding.

(b) *Objections to admissibility.* Except as provided in this paragraph, objection may be made at the hearing to receiving in evidence any deposition or part of a deposition for any reason that would require the exclusion of the evidence if the witness were present and testifying.

(1) Objections to the competency of a witness or to the competency, relevancy, or materiality of testimony are not waived by failure to make them before or during the taking of the deposition, unless the basis of the objection is one which might have been obviated or removed if presented at that time.

(2) Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of parties, and errors of any kind which might be obviated, removed or cured if promptly presented, are waived unless reasonable objection is made at the taking of the deposition.

(3) Objections to the form of written interrogatories are waived unless served in writing upon the party propounding the interrogatories.

§ 104.530 Written interrogatories.

(a) *Written interrogatories to parties.* Any party may serve on any other party written interrogatories to be answered by the party served. If the party served is a public or private corporation, a partnership, an association, or a governmental agency, the interrogatories may be answered by any authorized officer or agent who shall furnish such information as may be available to the party. A party may serve not more than 30 written interrogatories on another party without an order of the administrative law judge.

(b) *Responses to written interrogatories.* Each interrogatory shall be answered separately and fully in writing under oath or affirmation, unless the party objects to the interrogatory. If a party objects to an interrogatory, the response shall state the reasons for the objection in lieu of an answer. The answer and objections shall be signed by the person making them, except that objections may be signed by the counsel for the party. The party upon whom the interrogatories were served shall serve a copy of the answers and objections upon all parties within 15 days after service of the interrogatories.

§ 104.540 Production of documents and other evidence; entry upon land for inspection and other purposes; and physical and mental examinations.

(a) *In general.* Any party may serve on any other party a request to:

(1) Produce and permit the party making the request, or a person acting on the party's behalf, to inspect and copy any designated documents, or to inspect and copy, test, or sample any tangible things that are in the possession, custody, or control of the party upon whom the request is served;

(2) Permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, photographing, testing, or other purposes stated in paragraph (a)(1) of this section; or

(3) Submit to a physical or mental examination by a physician.

(b) *Contents of request.* The request shall:

(1) Set forth the items to be inspected by individual item or by category of items;

(2) Describe each item or category with reasonable particularity;

(3) Specify a reasonable time, place and manner for making the inspection and performing the related acts; and

(4) Specify the time, place, manner, conditions, and scope of the physical or mental examination, and the person or persons who will make the examination. A report of the examining physician shall be made in accordance with Rule 35(b) of the Federal Rules of Civil Procedure.

(c) *Response to request.* Within 15 days of the service of the request, the party upon whom the request is served shall serve a written response on the party submitting the request. The response shall state, with regard to each item or category:

(1) That inspection and related activities will be permitted as requested; or

(2) That objection is made to the request in whole or in part. If an objection is made, the response must state the reasons for the objection.

§ 104.550 Admissions.

(a) *Request for admissions.* A party may serve on any other party a written request for the admission of the genuineness and authenticity of any relevant document described in or attached to the request, or for the admission of the truth of any specified relevant matter of fact.

(b) *Response to request.* (1) Each matter for which an admission is requested is admitted unless, within 15 days after service of the request, the party to whom the request is directed serves on the requesting party:

(i) A written statement specifically denying the relevant matters for which an admission is requested;

(ii) A written statement setting forth in detail why the party cannot truthfully admit or deny the matters; or

(iii) Written objections to the request alleging that the matters are privileged or irrelevant, or that the request is otherwise improper.

(2) The party to whom the request is directed may not give lack of information or knowledge as a reason for failure to admit or deny, unless the party states that it has made a reasonable inquiry and that the information known or readily obtainable is insufficient to enable the party to admit or deny.

(c) *Sufficiency or response.* The party requesting admissions may move for a determination of the sufficiency of the answers or objections. Unless the administrative law judge determines that an objection is justified, the administrative law judge shall order that an answer be served. If the administrative law judge determines that an answer does not comply with the requirements of this section, the administrative law judge may order either that the matter is admitted or that an amended answer be served.

(d) *Effect of admission.* Any matter admitted under this section is conclusively established unless, upon the motion of a party, the administrative law judge permits the withdrawal or amendment of the admission. Any admission made under this section is made for the purposes of the pending proceeding only, is not an admission by the party for any other purpose, and may not be used against the party in any other proceeding.

(e) *Service of requests.* Each request for admission and each written response must be served on all parties and filed with the Office of administrative law judges.

§ 104.560 Supplementation of responses.

(a) *In general.* A party who responded to a request for discovery with a response that was complete when made is under no duty to supplement the response to include information acquired after the response was made except:

(1) A party is under a duty to timely supplement responses with respect to any question directly addressed to:

(i) The identity and location of persons having knowledge of discoverable matters; and

(ii) The identity of each person expected to be called as an expert witness at the hearing, the subject matter on which the expert witness is expected to testify, and the substance of the testimony.

(2) A party is under a duty to timely amend a previous response if the party later obtains information upon the basis of which:

(i) The party knows the response was incorrect when made; or

(ii) The party knows the response though correct when made is no longer true and the circumstances are such that a failure to amend the response is, in substance, a knowing concealment.

(b) *By order or agreement.* A duty to supplement responses may be imposed by order of the administrative law judge or by agreement of the parties.

§ 104.570 Protective orders.

Upon motion of a party or a person from whom discovery is sought or in accordance with § 104.580(c), the administrative law judge may make appropriate orders to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense as a result of the requested discovery request. The order may direct that:

(a) The discovery may not be had;

(b) The discovery may be had only on specified terms and conditions, including a designation of time and place for discovery;

(c) The discovery may be had by a method of discovery other than that selected by the party seeking discovery;

(d) Certain irrelevant matters may not be the subject of discovery, or that the scope of discovery be limited to certain matters;

(e) Discovery may be conducted with no one present other than persons designated by the administrative law judge;

(f) A trade secret or other confidential research, development or commercial information may not be disclosed, or may be disclosed only in a designated way; or

(g) To protect privileged matters, the administrative law judge may take such other action permitted under § 104.740.

§ 104.580 Failure to make or cooperate in discovery.

(a) *Motion to compel discovery.* If a deponent fails to answer a question propounded, or a party upon whom a request is made under §§ 104.530 through 104.550 fails to respond adequately, objects to a request, or fails to permit inspection as requested, the discovering party may move the administrative law judge for an order

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compelling a response or an inspection in accordance with the request. The motion shall:

(1) State the nature of the request;

(2) Set forth the response or objection of the party upon whom the request was served;

(3) Present arguments supporting the motion; and

(4) Attach copies of all relevant discovery requests and responses.

(b) *Evasive or incomplete answers.* For the purposes of this section, an evasive or incomplete answer or response will be treated as a failure to answer or respond.

(c) *Administrative law judge ruling.* In ruling on a motion under this section, the administrative law judge may enter an order compelling a response or an inspection in accordance with the request, may issue sanctions under paragraph (d) of this section, or may enter a protective order under § 104.570.

(d) *Sanctions.* If a party fails to comply with an order (including an order for taking a deposition, the production of evidence within the party's control, a request for admission, or the production of witnesses) the administrative law judge may:

(1) Draw an inference in favor of the requesting party with regard to the information sought;

(2) Prohibit the party failing to comply with the order from introducing evidence concerning, or otherwise relying upon, testimony relating to the information sought;

(3) Permit the requesting party to introduce secondary evidence concerning the information sought;

(4) Strike any appropriate part of the pleadings or other submissions of the party failing to comply with such order; or

(5) Take such other action as may be appropriate.

Subpart F—Subpoenas

§ 104.590 Subpoenas

(a) *In general.* This section governs the issuance of subpoenas in administrative proceedings under this part. Except for time periods stated in these rules, to the extent that this rule conflicts with procedures for the issuance of subpoenas in civil actions in the United States District Court for the District in which the investigation of the discriminatory housing practice took place, the rules of the United States District Court apply.

(b) *Issuance of subpoena.* Upon the written request of a party, the chief administrative law judge or the presiding administrative law judge may issue a subpoena requiring:

(1) The attendance of a witness for the purpose of giving testimony at a deposition;

(2) The attendance of a witness for the purpose of giving testimony at a hearing; and

(3) The production of relevant books, papers, documents or tangible things.

(c) *Time of request.* Requests for subpoenas in aid of discovery must be submitted in time to permit the conclusion of discovery 15 days before the date scheduled for the hearing. If a request for subpoenas of a witness for testimony at a hearing is submitted three days or less before the hearing, the subpoena shall be issued at the discretion of the chief administrative law judge or the presiding administrative law judge, as appropriate.

(d) *Service.* A subpoena may be served by any person who is not a party and is not less than 18 years of age. Service on a person shall be made by delivering a copy of the subpoena to the person and by tendering witness fees and mileage to that person. When the subpoena is issued on behalf of HUD, witness fees and mileage need not be tendered with the subpoena.

(e) *Amount of witness fees and mileage.* A witness summoned by a subpoena issued under this part is entitled to the same witness and mileage fees as a witness in proceedings in United States District Courts. Fees payable to a witness summoned by a subpoena shall be paid by the party requesting the issuance of the subpoena, or where the administrative law judge determines that a party is unable to pay the fees, the fees shall be paid by the Department.

(f) *Motion to quash or limit subpoena.* Upon a motion by the person served with a subpoena or by a party, made within five days of the service of the subpoena (but in any event not less than the time specified in the subpoena for compliance), the administrative law judge may:

(1) quash or modify the subpoena if it is unreasonable and oppressive or for other good cause shown; or

(2) condition denial of the motion upon the advancement, by the party on whose behalf the subpoena was issued, of the reasonable cost of producing subpoenaed books, papers or documents. Where the circumstances require, the administrative law judge may act upon such a motion at any time after a copy of the motion has been served upon the party on whose behalf the subpoena was issued.

(g) *Failure to comply with subpoena.* If a person fails to comply with a subpoena issued under this section, the party requesting the subpoena may refer the matter to the Attorney General for enforcement in appropriate proceedings under section 814(c) of the Fair Housing Act.

Subpart G—Prehearing Procedures

§ 104.600 Prehearing statements.

(a) *In general.* Before the commencement of the hearing, the administrative law judge may direct parties to file prehearing statements.

(b) *Contents of statement.* The prehearing statement must state the name of the party or parties presenting the statement and, unless otherwise directed by the administrative law judge, briefly set forth the following:

(1) Issues involved in the proceeding.

(2) Facts stipulated by the parties and a statement that the parties have made a good faith effort to stipulate to the greatest extent possible.

(3) Facts in dispute.

(4) Witnesses (together with a summary of the testimony expected) and exhibits to be presented at the hearing.

(5) A brief statement of applicable law.

(6) Conclusions to be drawn.

(7) Estimated time required for presentation of the party's case.

(8) Such other information as may assist in the disposition of the proceeding.

§ 104.610 Prehearing conference.

(a) *In general.* Before the commencement or during the course of the hearing, the administrative law judge may direct the parties to participate in a conference to expedite the hearing.

(b) *Matters considered.* At the conference, the following matters may be considered:

(1) Simplification and clarification of the issues.

(2) Necessary amendments to the pleadings.

(3) Stipulations of fact and of the authenticity, accuracy, and admissibility of documents.

(4) Limitations on the number of witnesses.

(5) Negotiation, compromise, or settlement of issues.

(6) The exchange of proposed exhibits.

(7) Matters of which official notice will be requested.

(8) A schedule for the completion of actions discussed at the conference.

(9) Such other information as may assist in the disposition of the proceeding.

(c) *Conduct of conference.* The conference may be conducted by telephone, correspondence or personal attendance. Conferences, however, shall generally be conducted by a conference call, unless the administrative law judge determines that this method is impracticable. The administrative law judge shall give reasonable notice of the time, place and manner of the conference.

(d) *Record of conference.* Unless otherwise directed by the administrative law judge, the conference will not be stenographically recorded. The administrative law judge will reduce the actions taken at the conference to a written order or, if the conference takes place less than seven days before the beginning of the hearing, may make a statement on the record summarizing the actions taken at the conference.

§ 104.620 Settlement negotiations before a settlement judge.

(a) *Appointment of settlement judge.* The administrative law judge, upon the motion of a party or upon his or her own motion, may request the chief administrative law judge to appoint another administrative law judge to conduct settlement negotiations. The order appointing the settlement judge may confine the scope of settlement negotiations to specified issues. The order shall direct the settlement judge to report to the chief administrative law judge within specified time periods.

(b) *Duties of settlement judge.* (1) The settlement judge shall convene and preside over conferences and settlement negotiations between the parties and assess the practicalities of a potential settlement.

(2) The settlement judge shall report to the chief administrative law judge describing the status of the settlement negotiations, evaluating settlement prospects, and recommending the termination or continuation of the settlement negotiations.

(c) *Termination of settlement negotiations.* Settlement negotiations shall terminate upon the order of the chief administrative law judge issued after consultation with the settlement judge. The conduct of settlement negotiations shall not unduly delay the commencement of the hearing.

Subpart H—Hearing Procedures

§ 104.700 Date and place of hearing.

(a) *Date.* The hearing shall commence not later than 120 days following the issuance of the charge under § 103.405, unless it is impracticable to do so. If the hearing cannot be commenced within this time period, the administrative law judge shall notify in writing all parties, the aggrieved persons on whose behalf the charge was filed, and the Assistant Secretary, of the reasons for the delay.

(b) *Place.* The hearing will be conducted at a place in the vicinity in which the discriminatory housing practice is alleged to have occurred or to be about to occur.

(c) *Notification of time and place for hearing.* The charge issued under 24 CFR 103.405 will specify the time, date and place for the hearing. The administrative law judge may change the time, date or place of the hearing, or may temporarily adjourn or continue a hearing for good cause shown. If such a change is made or the hearing is temporarily adjourned, the administrative law judge shall give the parties at least five days notice of the revised time, date and place for the hearing, unless otherwise agreed by the parties.

§ 104.710 Conduct of hearings.

The hearing shall be conducted in accordance with the Administrative Procedure Act (5 U.S.C. 551–559).

§ 104.720 Waiver of right to appear.

If all parties waive their right to appear before the administrative law judge or to present evidence and arguments, it is not necessary for the administrative law judge to conduct an oral hearing. Such waivers shall be made in writing and filed with the administrative law judge. Where waivers are submitted by all parties, the administrative law judge shall make a record of the relevant written evidence submitted by the parties and pleadings submitted by the parties with respect to the issues in the proceeding. These documents shall constitute the evidence in the proceeding and the decision shall be based upon this evidence. Such hearings shall be deemed to commence on the first day that written evidence may be submitted for the record.

§ 104.730 Evidence.

The Federal Rules of Evidence apply to the presentation of evidence in hearings under this part.

§ 104.740 In camera and protective orders.

The administrative law judge may limit discovery or the introduction of evidence, or may issue such protective or other orders necessary to protect privileged communications. If the administration law judge determines that information in documents containing privileged matters should be made available to a party, the administrative law judge may order the preparation of a summary or extract of the nonprivileged matter contained in the original.

§ 104.750 Exhibits.

(a) *Identification.* All exhibits offered into evidence shall be numbered sequentially and marked with a designation identifying the party offering the exhibit.

(b) *Exchange of exhibits.* One copy of each exhibit offered into evidence must be furnished to each of the parties and to the administrative law judge. If the administrative law judge does not fix a time for the exchange of exhibits, the parties shall exchange copies of exhibits at the earliest practicable time before the commencement of the hearing. Exhibits submitted as rebuttal evidence are not required to be exchanged before the commencement of the hearing if the submission of such evidence could not reasonably be anticipated at that time.

§ 104.760 Authenticity.

The authenticity of all documents furnished to the parties as required under § 104.750 and submitted as proposed exhibits in advance of the hearing shall be admitted unless a party files a written objection to the exhibit before the commencement of the hearing. Upon a clear showing of good cause for failure to file such a written objection, the administrative law judge may permit the party to challenge the authenticity.

§ 104.770 Stipulations.

The parties may stipulate to any pertinent facts by oral agreement at the hearing or by written agreement at any time. Stipulations may be submitted into evidence at any time before the end of the hearing. When received into evidence, the stipulation is binding on the parties.

§ 104.780 Record of hearing.

(a) *Hearing record.* All oral hearings shall be recorded and transcribed by a reporter designated by, and under the supervision of, the administrative law judge. The original transcript shall be a part of the record and shall constitute the sole official transcript. All exhibits introduced as evidence shall be marked for identification and incorporated as a part of the record. Transcripts may be obtained by the parties and by the public from the official reporter at rates not to exceed the applicable rates fixed by the contract with the reporter.

(b) *Corrections.* Corrections to the official transcript will be permitted upon motion of a party. Motions for correction must be submitted within five days of

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the receipt of the transcript. Corrections of the official transcript will be permitted only where errors of substance are involved and upon the approval of the administrative law judge.

§ 104.700 Arguments and briefs.

(a) *Arguments.* Following the submission of evidence at an oral hearing, the administrative law judge may hear oral arguments at the hearing. The administrative law judge may limit the time permitted for such arguments to avoid unreasonable delay.

(b) *Submission of written briefs.* The administrative law judge may permit the submission of written briefs following the adjournment of the oral hearing. Written briefs shall be simultaneously filed by all parties and shall be due not later than 30 days following the adjournment of the oral hearing.

§ 104.800 End of hearing.

(a) *Oral hearings.* Where there is an oral hearing, the hearing ends on the day of the adjournment of the oral hearing or, where written briefs are permitted, on the date that the written briefs are due.

(b) *Hearing on written record.* Where the parties have waived an oral hearing, the hearing ends on the date set by the administrative law judge as the final date for the receipt of submissions by the parties.

§ 104.810 Receipt of evidence following hearing.

Following the end of the hearing, no additional evidence may be accepted into the record, except with the permission of the administrative law judge. The administrative law judge may receive additional evidence upon a determination that new and material evidence was not readily available before the end of the hearing, the evidence has been timely submitted, and its acceptance will not unduly prejudice the rights of the parties. However, the administrative law judge shall include in the record any motions for attorney's fees (including supporting documentation), and any approved corrections to the transcripts.

Subpart I—Dismissals and Decisions

§ 104.900 Dismissal.

(a) *Election of judicial determination.* If the complainant, the respondent, or the aggrieved person on whose behalf a complaint was filed makes a timely election to have the claims asserted in the charge decided in a civil action under section 812(o) of the Act, the administrative law judge shall dismiss the administrative proceeding.

(b) *Effect of a civil action on administrative proceeding.* An administrative law judge may not continue an administrative proceeding under this part regarding an alleged discriminatory housing practice after the beginning of the trial of a civil action commenced by the aggrieved person under an act of Congress or a State law seeking relief with respect to that discriminatory housing practice. If such a trial is commenced, the administrative law judge shall dismiss the administrative proceeding. The commencement and maintenance of a civil action for appropriate temporary or preliminary relief under section 810(e) or proceedings for such relief under section 813 of the Fair Housing Act does not affect administrative proceedings under this part.

§ 104.910 Initial decision of administrative law judge.

(a) *In general.* Within the time period set forth in paragraph (d) of this section, the administrative law judge shall issue an initial decision including findings of fact and conclusions of law upon each material issue of fact or law presented on the record. The initial decision of the administrative law judge shall be based on the record of the proceeding.

(b) *Finding against respondent.* If the administrative law judge finds that a respondent has engaged, or is about to engage, in a discriminatory housing practice, the administrative law judge shall issue an initial decision against the respondent and order such relief as may be appropriate. The relief may include, but is not limited to, the following:

(1) The administrative law judge may order the respondent to pay damages to the aggrieved person (including damages caused by humiliation and embarrassment).

(2) The administrative law judge may provide for injunctive or such other equitable relief as may be appropriate. No such order may affect any contract, sale, encumbrance or lease consummated before the issuance of the initial decision that involved a bona fide purchaser, encumbrancer or tenant without actual knowledge of the charge issued under § 104.405.

(3) To vindicate the public interest, the administrative law judge may assess a civil penalty against the respondent.

(i) The amount of the civil penalty may not exceed:

(A) $10,000, if the respondent has not been adjudged to have committed any prior discriminatory housing practice in any administrative hearing or civil action permitted under the Fair Housing Act or any State or local fair housing law, or in any licensing or regulatory proceeding conducted by a Federal, State or local governmental agency.

(B) $25,000, if the respondent has been adjudged to have committed one other discriminatory housing practice in any administrative hearing or civil action permitted under the Fair Housing Act, or any State or local fair housing law, or in any licensing or regulatory proceeding conducted by a Federal, State, or local government agency, and the adjudication was made during the five-year period preceding the date of filing of the charge.

(C) $50,000, if the respondent has been adjudged to have committed two or more discriminatory housing practices in any administrative hearings or civil actions permitted under the Fair Housing Act or any State or local fair housing law, or in any licensing or regulatory proceeding conducted by a Federal, State, or local government agency, and the adjudications were made during the seven-year period preceding the date of the filing of the charge.

(ii) If the acts constituting the discriminatory housing practice that is the subject of the charge were committed by the same natural person who has previously been adjudged, in any administrative proceeding or civil action, to have committed acts constituting a discriminatory housing practice, the time periods set forth in paragraphs (b)(3)(i) (B) and (C) of this section do not apply.

(iii) In a proceeding involving two or more respondents, the administrative law judge may assess a civil penalty as provided under paragraph (b) of this section against each respondent that the administrative law judge determines has been engaged or is about to engage in a discriminatory housing practice.

(c) *Finding in favor of respondent.* If the administrative law judge finds that a respondent has not engaged, and is not about to engage, in a discriminatory housing practice, the administrative law judge shall make an initial decision dismissing the charge.

(d) *Date of issuance.* The administrative law judge shall issue an initial decision within 60 days after the end of the hearing, unless it is impracticable to do so. If the administrative law judge is unable to issue the initial decision within this time period (or within any succeeding 60-day period following the initial 60-day period), the administrative law judge shall notify in writing all parties, the aggrieved person on whose behalf the charge was filed, and the Assistant Secretary, of the reasons for the delay.

§ 104.920 Service of initial decision.

Simultaneously with the issuance of the initial decision, the administrative law judge shall serve the initial decision on all parties, the aggrieved person on whose behalf the charge was filed, the Assistant Secretary and the Secretary of HUD. The initial decision will include a notice stating that the initial decision will become the final decision of the Department unless the Secretary issues a final decision under § 104.930 within 30 days of the date of issuance of the initial decision.

§ 104.925 Resolution of charge.

At any time before the issuance of a final decision under § 104.930, the parties may submit an agreement resolving the charge. The agreement must be signed by the General Counsel, the respondent, and the aggrieved person upon whose behalf the charge was issued. The administrative law judge shall accept the agreement by issuing an initial decision based on the agreed findings. The submission of an agreement resolving the charge constitutes a waiver of any right to challenge or contest the validity of a decision entered in accordance with the agreement.

§ 104.930 Final decision.

(a) *Issuance of final decision by Secretary.* The Secretary of HUD may review any finding of fact, conclusion of law, or order contained in the initial decision of the administrative law judge and issue a final decision in the proceeding. The Secretary may affirm, modify or set aside, in whole or in part, the initial decision or remand the initial decision for further proceedings. The Secretary shall serve the final decision on all parties no later than 30 days from the date of issuance of the initial decision of the administrative law judge. The final decision shall be served on all parties, the aggrieved person on whose behalf the charge was filed, and the Assistant Secretary.

(b) *No final decision by Secretary.* If the Secretary of HUD does not serve a final decision within the time period described above, the initial decision of the administrative law judge will become the final decision of the Department. For the purposes of this part, such a final decision will be considered to have been issued 30 days following the date of issuance of the initial decision.

(c) *Public disclosure.* HUD shall make public disclosure of each final decision.

(d) *Decisions on remand.* If the Secretary remands the decision for further proceedings, the administrative law judge shall issue an initial decision on remand within 60 days of the date of issuance of the Secretary's decision, unless it is impractical to do so. If the administrative law judge is unable to issue the initial decision within this time period (or within any succeeding 60-day period following the initial 60-day period), the administrative law judge shall notify in writing the parties, the aggrieved person on whose behalf the charge was filed, and the Assistant Secretary, of the reasons for the delay.

§ 104.935 Action upon issuance of a final decision.

(a) *Licensed or regulated businesses.* (1) If a final decision includes a finding that a respondent has engaged or is about to engage in a discriminatory housing practice in the course of a business that is subject to licensing or regulation by a Federal, State or local governmental agency, the Assistant Secretary will notify the governmental agency of the decision by:

(i) Sending copies of the findings of fact, conclusions of law and the final decision to the governmental agency by certified mail; and

(ii) Recommending appropriate disciplinary action to the governmental agency, including, where appropriate, the suspension or revocation of the license of the respondent.

(2) The Assistant Secretary will notify the appropriate governmental agencies within 30 days after the date of issuance of the final decision, unless a petition for judicial review of the final decision as described in § 104.950 has been filed before the issuance of the notification of the agency. If such a petition has been filed, the Assistant Secretary will provide the notification to the governmental agency within 30 days of the date that the final decision is affirmed upon review. If a petition for judicial review is timely filed following the notification of the governmental agency, the Assistant Secretary will promptly notify the governmental agency of the petition and withdraw his or her recommendation.

(b) *Notification to the Attorney General.* If a final decision includes a finding that a respondent has engaged or is about to engage in a discriminatory housing practice and another final decision including such a finding was issued under this part within the five years preceding the date of issuance of the final decision, the General Counsel will notify the Attorney General of the decisions by sending a copy of the final decisions in each administrative proceeding.

§ 104.940 Attorney's fees and costs.

Following the issuance of the final decision under § 104.930, any prevailing party, except HUD, may apply for attorney's fees and costs. The administrative law judge will issue an initial decision awarding or denying such fees and costs. The initial decision will become the final decision of HUD unless the Secretary reviews the initial decision and issues a final decision on fees and costs within 30 days. The recovery of reasonable attorney's fees and costs will be permitted as follows:

(a) If the respondent is the prevailing party:

(1) HUD will be liable for reasonable attorney's fees and costs to the extent provided under the Equal Access to Justice Act (5 U.S.C. 504) and HUD's regulations at 24 CFR Part 14; and

(2) An intervenor will be liable for reasonable attorney's fees and costs only to the extent that the intervenor's participation in the administrative proceeding was frivolous or vexatious, or was for the purpose of harassment.

(b) To the extent that an intervenor is a prevailing party, the respondent will be liable for reasonable attorney's fees unless special circumstances make the recovery of such fees and costs unjust.

Subpart J—Judicial Review and Enforcement of Final Decision

§ 104.950 Judicial review of final decision.

(a) *Petition for review.* Any party adversely affected by a final decision under § 104.930 may file a petition in the appropriate United States Court of Appeals for review of the decision under section 812(i) of the Fair Housing Act. The petition must be filed within 30 days of the date of issuance of the final decision.

(b) *No petition for review.* If no petition for review is filed under paragraph (a) within 45 days from the date of issuance of the final decision, the findings of facts and final decision shall be conclusive in connection with any petition for enforcement described under § 104.955(a) filed thereafter by the General Counsel, and in connection with any petition for enforcement described under § 104.955(b).

§ 104.955 Enforcement of final decision.

(a) *Enforcement by HUD.* Following the issuance of a final decision under § 104.930, the General Counsel may petition the appropriate United States Court of Appeals for the enforcement of the final decision and for appropriate temporary relief or restraining order in accordance with section 812(j) of the Fair Housing Act.

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(b) *Enforcement by others.* If before the expiration of 60 days from the date of issuance of the final decision under § 104.930, no petition for review of the final decision described under § 104.950 has been filed, and the General Counsel has not sought enforcement of the final decision as described in paragraph (a) of this section, any person entitled to relief under the final decision may petition the appropriate United States Court of Appeals for the enforcement of the final decision in accordance with section 812(m) of the Fair Housing Act.

PART 105—FAIR HOUSING

6. The appendix to Part 105 is redesignated as the appendix to Part 103 and the remainder of Part 105 is removed.

PART 106—FAIR HOUSING ADMINISTRATIVE MEETINGS UNDER THE FAIR HOUSING ACT

7. The title to Part 106 is revised as set forth above.

8. The authority citation for Part 106 is revised to read as follows:

Authority: Title VIII, Civil Rights Act of 1968 (42 U.S.C. 3600–3620); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

9. Section 106.1 is revised to read as follows:

§ 106.1 Purpose.

The purpose of this part is to establish procedures for public meetings or conferences that may be used to assist the Assistant Secretary in achieving the aims of the Fair Housing Act for the promotion and assurance of equal opportunity in housing with regard to race, color, religion, sex, handicap, familial status, or national origin, and, specifically, to carry out those responsibilities delegated to him or her by the Secretary of Housing and Urban Development under sections 808(e) (1), (2), and (3), and 809 of the Fair Housing Act.

10. Section 106.2 is revised to read as follows:

§ 106.2 Definitions.

As used in this part:

(a) "Assistant Secretary" means the Assistant Secretary for Fair Housing and Equal Opportunity in the Department of Housing and Urban Development.

(b) "Meeting" means a public meeting or conference held under the authority of the Fair Housing Act and this part.

(c) "Fair Housing Act" means Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988, 42 U.S.C. 3600–3620.

11. Part 109 is revised to read as follows:

PART 109—FAIR HOUSING ADVERTISING

Sec.

109.5 Policy.
109.10 Purpose.
109.15 Definitions.
109.16 Scope.
109.20 Use of words, phrases, symbols, and visual aids.
109.25 Selective use of advertising media or content.
109.30 Fair housing policy and practices.
Appendix I to Part 109—Fair Housing Advertising.

Authority: Title VIII, Civil Rights Act of 1968 (42 U.S.C. 3600–3620); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

§ 109.5 Policy.

It is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States. The provisions of the Fair Housing Act (42 U.S.C. 3600, *et seq.*) make it unlawful to discriminate in the sale, rental, and financing of housing, and in the provision of brokerage and appraisal services, because of race, color, religion, sex, handicap, familial status, or national origin. Section 804(c) of the Fair Housing Act, 42 U.S.C. 3604(c), as amended, makes it unlawful to make, print, or publish, or cause to be made, printed, or published, any notice, statement, or advertisement, with respect to the sale or rental of a dwelling, that indicates any preference, limitation, or discrimination because of race, color, religion, sex, handicap, familial status, or national origin, or an intention to make any such preference, limitation, or discrimination. However, the prohibitions of the act regarding familial status do not apply with respect to "housing for older persons", as defined in section 807(b) of the act.

§ 109.10 Purpose.

The purpose of this part is to assist all advertising media, advertising agencies and all other persons who use advertising to make, print, or publish, or cause to be made, printed, or published, advertisements with respect to the sale, rental, or financing of dwellings which are in compliance with the requirements of the Fair Housing Act. These regulations also describe the matters this Department will review in evaluating compliance with the Fair Housing Act in connection with investigations of complaints alleging discriminatory housing practices involving advertising.

§ 109.15 Definitions.

As used in this part:

(a) "Assistant Secretary" means the Assistant Secretary for Fair Housing and Equal Opportunity.

(b) "General Counsel" means the General Counsel of the Department of Housing and Urban Development.

(c) "Dwelling" means any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof.

(d) "Family" includes a single individual.

(e) "Person" includes one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in cases under Title 11 of the United States Code, receivers, and fiduciaries.

(f) "To rent" includes to lease, to sublease, to let and otherwise to grant for a consideration the right to occupy premises not owned by the occupant.

(g) "Discriminatory housing practice" means an act that is unlawful under section 804, 805, 806, or 818 of the Fair Housing Act.

(h) "Handicap" means, with respect to a person—

(1) A physical or mental impairment which substantially limits one or more of such person's major life activities,

(2) A record of having such an impairment, or

(3) Being regarded as having such an impairment.

This term does not include current, illegal use of or addiction to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)). For purposes of this part, an individual shall not be considered to have a handicap solely because that individual is a transvestite.

(i) "Familial status" means one or more individuals (who have not attained the age of 18 years) being domiciled with—

(1) A parent or another person having legal custody of such individual or individuals; or

(2) The designee of such parent or other person having such custody, with the written permission of such parent or other person. The protections afforded against discrimination on the basis of familial status shall apply to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years.

§ 109.16 Scope.

(a) *General.* This part describes the matters the Department will review in evaluating compliance with the Fair Housing Act in connection with investigations of complaints alleging discriminatory housing practices involving advertising. Use of these criteria will be considered by the General Counsel in making determinations as to whether there is reasonable cause to believe that a discriminatory housing practice has occurred or is about to occur.

(1) *Advertising media.* This part provides criteria for use by advertising media in determining whether to accept and publish advertising regarding sales or rental transactions. Use of these criteria will be considered by the General Counsel in making determinations as to whether there is reasonable cause to believe that a discriminatory housing practice has occurred or is about to occur.

(2) *Persons placing advertisements.* A failure by persons placing advertisements to use the criteria contained in this part, when found in connection with the investigation of a complaint alleging the making or use of discriminatory advertisements, will be considered by the General Counsel in making a determination of reasonable cause to believe that a discriminatory housing practice has occurred or is about to occur.

(b) *Affirmative advertising efforts.* Nothing in this part shall be construed to restrict advertising efforts designed to attract persons to dwellings who would not ordinarily be expected to apply, when such efforts are pursuant to an affirmative marketing program or undertaken to remedy the effects of prior discrimination in connection with the advertising or marketing of dwellings.

§ 109.20 Use of words, phrases, symbols, and visual aids.

The following words, phrases, symbols, and forms typify those most often used in residential real estate advertising to convey either overt or tacit discriminatory preferences or limitations. In considering a complaint under the Fair Housing Act, the Department will normally consider the use of these and comparable words, phrases, symbols, and forms to indicate a possible violation of the act and to establish a need for further proceedings on the complaint, if it is apparent from the context of the usage that discrimination within the meaning of the act is likely to result.

(a) *Words descriptive of dwelling, landlord, and tenants.* White private home, Colored home, Jewish home, Hispanic residence, adult building.

(b) *Words indicative of race, color, religion, sex, handicap, familial status, or national origin*—(1) *Race*—Negro, Black, Caucasian, Oriental, American Indian.

(2) *Color*—White, Black, Colored.

(3) *Religion*—Protestant, Christian, Catholic, Jew.

(4) *National origin*—Mexican American, Puerto Rican, Philippine, Polish, Hungarian, Irish, Italian, Chicano, African, Hispanic, Chinese, Indian, Latino.

(5) *Sex*—the exclusive use of words in advertisements, including those involving the rental of separate units in a single or multi-family dwelling, stating or tending to imply that the housing being advertised is available to persons of only one sex and not the other, except where the sharing of living areas is involved. Nothing in this part restricts advertisements of dwellings used exclusively for dormitory facilities by educational institutions.

(6) *Handicap*—crippled, blind, deaf, mentally ill, retarded, impaired, handicapped, physically fit. Nothing in this part restricts the inclusion of information about the availability of accessible housing in advertising of dwellings.

(7) *Familial status*—adults, children, singles, mature persons. Nothing in this part restricts advertisements of dwellings which are intended and operated for occupancy by older persons and which constitute "housing for older persons" as defined in Part 100 of this title.

(8) *Catch words*—Words and phrases used in a discriminatory context should be avoided, e.g., "restricted", "exclusive", "private", "integrated", "traditional", "board approval" or "membership approval".

(c) *Symbols or logotypes.* Symbols or logotypes which imply or suggest race, color, religion, sex, handicap, familial status, or national origin.

(d) *Colloquialisms.* Words or phrases used regionally or locally which imply or suggest race, color, religion, sex, handicap, familial status, or national origin.

(e) *Directions to real estate for sale or rent (use of maps or written instructions).* Directions can imply a discriminatory preference, limitation, or exclusion. For example, references to real estate location made in terms of racial or national origin significant landmarks, such as an existing black development (signal to blacks) or an existing development known for its exclusion of minorities (signal to whites). Specific directions which make reference to a racial or national origin significant area may indicate a preference. References to a synagogue, congregation or parish may also indicate a religious preference.

(f) *Area (location) description.* Names of facilities which cater to a particular racial, national origin or religious group, such as country club or private school designations, or names of facilities which are used exclusively by one sex may indicate a preference.

§ 109.25 Selective use of advertising media or content.

The selective use of advertising media or content when particular combinations thereof are used exclusively with respect to various housing developments or sites can lead to discriminatory results and may indicate a violation of the Fair Housing Act. For example, the use of English language media alone or the exclusive use of media catering to the majority population in an area, when, in such area, there are also available non-English language or other minority media, may have discriminatory impact. Similarly, the selective use of human models in advertisements may have discriminatory impact. The following are examples of the selective use of advertisements which may be discriminatory:

(a) *Selective geographic advertisements.* Such selective use may involve the strategic placement of billboards; brochure advertisements distributed within a limited geographic area by hand or in the mail; advertising in particular geographic coverage editions of major metropolitan newspapers or in newspapers of limited circulation which are mainly advertising vehicles for reaching a particular segment of the community; or displays or announcements available only in selected sales offices.

(b) *Selective use of equal opportunity slogan or logo.* When placing advertisements, such selective use may involve placing the equal housing opportunity slogan or logo in advertising reaching some geographic areas, but not others, or with respect to some properties but not others.

(c) *Selective use of human models when conducting an advertising campaign.* Selective advertising may involve an advertising campaign using human models primarily in media that cater to one racial or national origin segment of the population without a

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complementary advertising campaign that is directed at other groups. Another example may involve use of racially mixed models by a developer to advertise one development and not others. Similar care must be exercised in advertising in publications or other media directed at one particular sex, or at persons without children. Such selective advertising may involve the use of human models of members of only one sex, or of adults only, in displays, photographs or drawings to indicate preferences for one sex or the other, or for adults to the exclusion of children.

§ 109.30 Fair housing policy and practices.

In the investigation of complaints, the Assistant Secretary will consider the implementation of fair housing policies and practices provided in this section as evidence of compliance with the prohibitions against discrimination in advertising under the Fair Housing Act.

(a) *Use of Equal Housing Opportunity logotype, statement, or slogan.* All advertising of residential real estate for sale, rent, or financing should contain an equal housing opportunity logotype, statement, or slogan as a means of educating the homeseeking public that the property is available to all persons regardless of race, color, religion, sex, handicap, familial status, or national origin. The choice of logotype, statement or slogan will depend on the type of media used (visual or auditory) and, in space advertising, on the size of the advertisement. Table I (see Appendix I) indicates suggested use of the logotype, statement, or slogan and size of logotype. Table II (see Appendix I) contains copies of the suggested Equal Housing Opportunity logotype, statement and slogan.

(b) *Use of human models.* Human models in photographs, drawings, or other graphic techniques may not be used to indicate exclusiveness because of race, color, religion, sex, handicap, familial status, or national origin. If models are used in display advertising campaigns, the models should be clearly definable as reasonably representing majority and minority groups in the metropolitan area, both sexes, and, when appropriate, families with children. Models, if used, should portray persons in an equal social setting and indicate to the general public that the housing is open to all without regard to race, color, religion, sex, handicap, familial status, or national origin, and is not for the exclusive use of one such group.

(c) *Coverage of local laws.* Where the Equal Housing Opportunity statement is used, the advertisement may also include a statement regarding the coverage of any local fair housing or human rights ordinance prohibiting discrimination in the sale, rental or financing of dwellings.

(d) *Notification of fair housing policy*—(1) *Employees.* All publishers of advertisements, advertising agencies, and firms engaged in the sale, rental or financing of real estate should provide a printed copy of their nondiscrimination policy to each employee and officer.

(2) *Clients.* All publishers or advertisements and advertising agencies should post a copy of their nondiscrimination policy in a conspicuous location wherever persons place advertising and should have copies available for all firms and persons using their advertising services.

(3) *Publishers' notice.* All publishers should publish at the beginning of the real estate advertising section a notice such as that appearing in Table III (see Appendix I). The notice may include a statement regarding the coverage of any local fair housing or human rights ordinance prohibiting discrimination in the sale, rental or financing of dwellings.

Appendix I to Part 109—Fair Housing Advertising

The following three tables may serve as a guide for the use of the Equal Housing Opportunity logotype, statement, slogan, and publisher's notice for advertising:

Table I

A simple formula can guide the real estate advertiser in using the Equal Housing Opportunity logotype, statement, or slogan.

In all space advertising (advertising in regularly printed media such as newspapers or magazines) the following standards should be used:

Size of advertisement	Size of logotype in inches
¼ page or larger	2 x 2
⅛ page up to ¼ page	1 x 1
4 column inches to ⅛ page	½ x ½
Less than 4 column inches	(1)

(1) Do not use.

In any other advertisements, if other logotypes are used in the advertisement, then the Equal Housing Opportunity logo should be of a size at least equal to the largest of the other logotypes; if no other logotypes are used, then the type should be bold display face which is clearly visible. Alternatively, when no other logotypes are used, 3 to 5 percent of an advertisement may be devoted to a statement of the equal housing opportunity policy.

In space advertising which is less than 4 column inches (one column 4 inches long or two columns 2 inches long) of a page in size, the Equal Housing Opportunity slogan should be used. Such advertisements may be grouped with other advertisements under a caption which states that the housing is available to all without regard to race, color, religion, sex, handicap, familial status, or national origin.

Table II

Illustrations of Logotype, Statement, and Slogan. Equal Housing Opportunity Logotype:

EQUAL HOUSING OPPORTUNITY

Equal Housing Opportunity Statement: We are pledged to the letter and spirit of U.S. policy for the achievement of equal housing opportunity throughout the Nation. We encourage and support an affirmative advertising and marketing program in which there are no barriers to obtaining housing because of race, color, religion, sex, handicap, familial status, or national origin.

Equal Housing Opportunity Slogan: "Equal Housing Opportunity."

Table III

Illustration of Media Notice—Publisher's notice: All real estate advertised herein is subject to the Federal Fair Housing Act, which makes it illegal to advertise "any preference, limitation, or discrimination because of race, color, religion, sex, handicap, familial status, or national origin, or intention to make any such preference, limitation, or discrimination."

We will not knowingly accept any advertising for real estate which is in violation of the law. All persons are hereby informed that all dwellings advertised are available on an equal opportunity basis.

PART 110—FAIR HOUSING POSTER

12. The authority citation for Part 110 is revised to read as follows:

Authority: Title VIII, Civil Rights Act of 1968 (42 U.S.C. 3600–3620); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

13. Section 110.1 is revised to read as follows:

§ 110.1 Purpose.

The regulations set forth in this part contain the procedures established by the Secretary of Housing and Urban Development with respect to the display of a fair housing poster by persons subject to sections 804 through 806 of the Fair Housing Act, 42 U.S.C. 3604–3606.

14. In § 110.5, paragraphs (b), (e), (g) and (h) are revised to read as follows:

§ 110.5 Definitions.

* * * * *

(b) "Discriminatory housing practice" means an act that is unlawful under section 804, 805, 806, or 818 of the Act.

* * * * *

(e) "Person" includes one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in cases under Title 11 of the United States Code, receivers and fiduciaries.

* * * * *

(g) "Fair housing poster" means the poster prescribed by the Secretary for display by persons subject to sections 804–806 of the Act.

(h) "The Act" means the Fair Housing Act (The Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988), 42 U.S.C. 3600, *et seq.*

* * * * *

15. In § 110.10, paragraph (a) introductory text and paragraph (c) is revised to read as follows:

§ 110.10 Persons subject.

(a) Except to the extent that paragraph (b) of this section applies, all persons subject to section 804 of the Act, Discrimination in the Sale or Rental of Housing and Other Prohibited Practices, shall post and maintain a fair housing poster as follows:

* * * * *

(c) All persons subject to section 805 of the Act, Discrimination In Residential Real Estate-Related Transactions shall post and maintain a fair housing poster at all their places of business which participate in the covered activities.

* * * * *

16. Section 110.15 is revised to read as follows:

§ 110.15 Location of posters.

All fair housing posters shall be prominently displayed so as to be readily apparent to all persons seeking housing accommodations or seeking to engage in residential real estate-related transactions or brokerage services as contemplated by sections 804 through 806 of the Act.

17. In § 110.25, paragraph (a) is revised to read as follows:

§ 110.25 Description of posters

(a) The fair housing poster shall be 11 inches by 14 inches and shall bear the following legend:

EQUAL HOUSING OPPORTUNITY

EQUAL HOUSING OPPORTUNITY

We do Business in Accordance With the Fair Housing Act

(The Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988)

IT IS ILLEGAL TO DISCRIMINATE AGAINST

ANY PERSON BECAUSE OF RACE, COLOR, RELIGION, SEX, HANDICAP, FAMILIAL STATUS (HAVING ONE OR MORE CHILDREN), OR NATIONAL ORIGIN

- In the sale or rental of housing or residential lots.
- In advertising the sale or rental of housing.
- In the financing of housing.
- In the appraisal of housing.
- In the provision of real estate brokerage services.
- Blockbusting is also illegal.

Anyone who feels he or she has been discriminated against should send a complaint to:

U.S. Department of Housing and Urban Development, Assistant Secretary for Fair Housing and Equal Opportunity, Washington, DC 20410

or

HUD Region or [Area Office stamp]

* * * * *

18. Part 115 is revised to read as follows:

PART 115—CERTIFICATION OF SUBSTANTIALLY EQUIVALENT AGENCIES

Sec.

115.1 Purpose.
115.2 Basis of determination.
115.3 Criteria for adequacy of law.
115.3a Criteria for adequacy of law—discrimination because of handicap.
115.4 Performance standards.
115.5 Request for certification.
115.6 Procedure for certification.
115.7 Denial of certification.
115.8 Withdrawal of certification.
115.9 Conferences.
115.10 Consequences of certification.
115.11 Interim referrals.

Authority: Title VIII, Civil Rights Act of 1968 (42 U.S.C. 3600–3620); sec. 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d)).

§ 115.1 Purpose.

(a) Section 810(f) of the Fair Housing Act, (The Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988 (the Act)) provides that: whenever a complaint alleges a discriminatory housing practice within the jurisdiction of a State or local public agency that has been certified by the Secretary as substantially equivalent, the Secretary shall refer the complaint to that certified agency before taking any action with respect to the complaint. Except with the consent of the certified agency, the Secretary, after referral is made, shall take no further action with respect to the complaint unless:

(1) The certified agency has failed to commence proceedings with respect to the complaint before the end of the 30th day after the date of referral;

(2) The certified agency, having commenced proceedings, fails to carry forward proceedings with reasonable promptness; or

(3) The Secretary determines that the certified agency no longer qualifies for certification.

The Secretary has delegated the exercise of functions and duties under section 810(f) of the Act to the Assistant Secretary for Fair Housing and Equal Opportunity (the Assistant Secretary).

(b) The purpose of this part is to set forth:

(1) The basis for agency certification.

(2) The procedure by which a determination to certify is made by the Assistant Secretary.

(3) The basis and procedure for withdrawal of certification.

(4) The consequences of certification.

§ 115.2 Basis of determination.

A determination to certify an agency as substantially equivalent involves a two-phase procedure. The determination requires examination and an affirmative conclusion by the Assistant Secretary on two separate inquiries:

(a) Whether the law, administered by the agency, on its face, provides that:

(1) The substantive rights protected by the agency in the jurisdiction with respect to which certification is to be made;

(2) The procedures followed by the agency;

(3) The remedies available to the agency; and

(4) The availability of judicial review of the agency's actions;

Are Substantially substantively equivalent to those created by and under the act; and

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(b) Whether the current practices and past performance of the agency demonstrate that, in operation, the law in fact provides rights and remedies which are substantially equivalent to those provided in the Act.

§ 115.3 Criteria for adequacy of law.

(a) In order for a determination to be made that a State or local fair housing agency administers a law which, on its face, provides rights and remedies for alleged discriminatory housing practices that are substantially equivalent to those provided in the Act, the law or ordinance must:

(1) Provide for an administrative enforcement body to receive and process complaints and provide that:

(i) Complaints must be in writing;

(ii) Upon the filing of a complaint the agency shall serve notice upon the complainant acknowledging the filing and advising the complainant of the time limits and choice of forums provided under the law;

(iii) Upon the filing of a complaint the agency shall promptly serve notice on the respondent or person charged with the commission of a discriminatory housing practice advising of his or her procedural rights and obligations under the law or ordinance together with a copy of the complaint;

(iv) A respondent may file an answer to a complaint.

(2) Delegate to the administrative enforcement body comprehensive authority, including subpoena power, to investigate the allegations of complaints, and power to conciliate complaint matters, and require that:

(i) The agency commence proceedings with respect to the complaint before the end of the 30th day after receipt of the complaint;

(ii) The agency investigate the allegations of the complaint and complete the investigation in no more than 100 days after receipt of the complaint, unless it is impracticable.

(iii) If the agency is unable to complete the investigation within 100 days it shall notify the complainant and respondent in writing of the reasons for not doing so;

(iv) The agency make final administrative disposition of a complaint within one year of the date of receipt of a complaint, unless it is impracticable to do so. If the agency is unable to do so it shall notify the complaintant and respondent, in writing, of the reasons for not doing so;

(v) Any conciliation agreement arising out of conciliation efforts by the agency shall be an agreement between the respondent and the complainant and shall be subject to the approval of the agency;

(vi) Each conciliation agreement shall be made public unless the complainant and respondent otherwise agree and the agency determines that disclosure is not required to further the purposes of the law or ordinance.

(3) Not place any excessive burdens on the complainant that might discourage the filing of complaints, such as:

(i) A provision that a complaint must be filed within any period of time less than 180 days after an alleged discriminatory housing practice has occurred or terminated;

(ii) Anti-testing provisions;

(iii) Provisions that could subject a complainant to costs, criminal penalties or fees in connection with filing of complaints.

(4) Not contain exemptions that substantially reduce the coverage of housing accommodations as compared to Section 803 of the Act (which provides coverage with respect to all dwellings except, under certain circumstances, single family homes sold or rented by the owner and units in owner-occupied dwellings containing living quarters for no more than four families).

(5) Be sufficiently comprehensive in its prohibitions to be an effective instrument in carrying out and achieving the intent and purposes of the Act, *i.e.*, prohibit the following acts:

(i) Refusal to sell or rent based on discrimination because of race, color, religion, sex, familial status, or national origin;

(ii) Refusal to negotiate for a sale or rental based on discrimination because of race, color, religion, sex, familial status, or national origin;

(iii) Otherwise making unavailable or denying a dwelling based on discrimination because of race, color, religion, sex, familial status, or national origin;

(iv) Discriminating in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, based on discrimination because of race, color, religion, sex, familial status, or national origin;

(v) Advertising in a manner that indicates any preference, limitation, or discrimination because of race, color, religion, sex, familial status, or national origin;

(vi) Falsely representing that a dwelling is not available for inspection, sale, or rental because of discrimination because of race, color, religion, sex, familial status, or national origin;

(vii) Coercion, intimidation, threats, or interference with any person in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other person in the exercise of enjoyment of any right granted or protected by section 803, 804, 805, or 806 of the Act;

(viii) Blockbusting based on representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, sex, familial status, or national origin;

(ix) Discrimination in residential real estate-related transactions by providing that: It shall be unlawful for any person or other entity whose business includes engaging in residential real estate-related transactions to discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction, because of race, color, religion, sex, familial status, or national origin. Such transactions include:

(A) The making or purchasing of loans or the provision of other financial assistance for purchasing, constructing, improving, repairing, or maintaining a dwelling; or the making or purchasing of loans or the provision of other financial assistance secured by residential real estate; or

(B) The selling, brokering, or appraising of residential real property;

(x) Denying a person access to, or membership or participation in, a multiple listing service, real estate brokers' organization, or other service because of race, color, religion, sex, familial status or national origin.

(b) In addition to the factors described in paragraph (a) of this section, the provisions of the State or local law must afford administrative and judicial protection and enforcement of the rights embodied in the law.

(1) The agency must have authority to:

(i) Seek prompt judicial action for appropriate temporary or preliminary relief pending final disposition of a complaint if the agency concludes that such action is necessary to carry out the purposes of the law or ordinance;

(ii) Issue subpoenas;

(iii) Grant actual damages or arrange to have adjudicated in court at agency expense the award of actual damages to an aggrieved person;

(iv) Grant injunctive or other equitable relief, or be specifically authorized to seek such relief in a court of competent jurisdiction.

(v) Assess a civil penalty against the respondent, or arrange to have adjudicated in court at agency expense the award of punitive damages against the respondent.

(2) Agency actions must be subject to judicial review upon application by any party aggrieved by a final agency order.

(3) Judicial review of a final agency order must be in a court with authority to grant to the petitioner, or to any other party, such temporary relief, restraining order, or other order as the court determines is just and proper; affirm, modify, or set aside, in whole or in part, the order, or remand the order for further proceedings; and enforce the order to the extent that the order is affirmed or modified.

(c) The requirement that the State or local law prohibit discrimination on the basis of familial status does not require that the State or local law limit the applicability of any reasonable local, State or Federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling.

(d) The State or local law may assure that no prohibition based on discrimination because of familial status applies to housing for older persons substantially as described in Part 100, Subpart E.

(e) A detemination of the adequancy of a State or local fair housing law "on its face" is intended to focus on the meaning and intent of the text of the law, as distinguished from the effectiveness of its administration. Accordingly, this determination is not limited to an analysis of the literal text of the law but must take into account all relevant maters of State or local law, *e.g.*, regulations, directives and rules of procedure, or interpretations of the fair housing law by competent authorities, as may be necessary.

(f) A law will be held to be not adequate "on its face" if it permits any of the agency's decision making authority to be contracted out or delegated to a non-governmental authority. For the purposes of this paragraph, "decision making authority" shall include:

(1) acceptance of the complaint;

(2) Approval of the concilitation agreement;

(3) Dismissal of a complaint;

(4) Any action specified in Section 115.3(a)(2)(iv) or 115.3(b)(1).

(g) The State or local law must provide for civil enforcement of the law or ordinance by an aggrieved person by the commencement of an action in an appropriate court not less than 1 year after the occurrence or termination of an alleged discriminatory housing practice. The court should be empowered to:

(1) Award the plaintiff actual and punitive damages;

(2) Grant as relief, as it deems appropriate, any temporary or permanent injunction, temporary restraining order or other order;

(3) Allow reasonable attorney's fees and costs.

§ 115.3a Criteria for adequacy of law—discrimination because of handicap.

(a) In addition to the provisions of § 115.3, in order for a determination to be made that a State or local fair housing agency administers a law which, on its face, provides rights and remedies for alleged discriminatory housing practices, based on handicap, that are substantially equivalent to those provided in the Act, the law or ordinance must be sufficiently comprehensive in its prohibitions to be an effective instrument in carrying out and achieving the intent and purposes of the Act, *i.e.*, it must prohibit the following acts:

(1) Advertising in a manner that indicates any preference, limitation, or discrimination because of handicap;

(2) Falsely representing that a dwelling is not available for inspection, sale, or rental based on discrimination because of handicap;

(3) Blockbusting, based on representations regarding the entry or prospective entry into the neighborhood of a person or persons with a particular handicap;

(4) Discrimination in residential real estate-related transactions by providing that: It shall be unlawful for any person or other entity whose business includes engaging in residential real estate-related transactions to discriminate against any person in making available such a transaction, or in the terms and conditions of such a transaction, because of handicap. Residential and real estate-related transactions include:

(i) The making or purchasing of loans or the provision of other financial assistance for purchasing, constructing, improving, repairing, or maintaining a dwelling; or the making or purchasing of loans or the provision of other financial assistance secured by residential real estate; or

(ii) The selling, brokering, or appraising of residential real property;

(5) Denying a person access to, or membership or participation in, multiple listing services, real estate brokers' organizations, or other services because of handicap;

(6) Discrimination in the sale or rental, or otherwise making unavailable or denying, a dwelling to any buyer or renter because of a handicap of that buyer or renter, or of a person residing in or intending to reside in that dwelling after it is sold, rented, or made available, or of any person associated with the buyer or renter;

(7) Discrimination against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with the dwelling, because of a handicap of that person, of a person residing in or intending to reside in the dwelling after it is sold, rented, or made available, or of any person associated with that person.

(b) For purposes of this section, discrimination includes—

(1) A refusal to permit, at the expense of the handicapped person, reasonable modifications of existing premises occupied or to be occupied by the handicapped person, if the modifications may be necessary to afford the handicapped person full enjoyment of the premises, except that, in the case of a rental, the landlord may, where it is reasonable to do so, condition permission for a modification on the renter's agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted;

(2) A refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling; or

(3) In connection with the design and construction of covered multifamily dwellings for first occupancy after March 13, 1991, a failure to design and construct dwellings in such a manner that—

(i) The dwellings have at least one building entrance on an accessible route, unless it is impractical to do so because of the terrain or unusual characteristics of the site;

(ii) With respect to dwellings with a building entrance on an accessible route—

(A) The public use and common use portions of the dwellings are readily accessible to and usable by handicapped persons;

(B) All the doors designed to allow passage into and within all premises are sufficiently wide to allow passage by handicapped persons in wheelchairs; and

(C) All premises within covered multifamily dwelling units contain an accessible route into and through the dwelling; light switches, electrical outlets, thermostats, and other environmental controls are in accessible locations; there are reinforcements in the bathroom walls to allow later installation of grab bars; and there are

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usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space.

(c) The law or ordinance administered by the State or local fair housing agency may provide that compliance with the appropriate requirements of the American National Standard for buildings and facilities providing accessibility and usability for physically handicapped people (commonly cited as "ANSI A117.1–1986") suffices to satisfy the requirements of paragraph (b)(3)(ii)(C) of this section.

(d) As used in this section, the term "covered multifamily dwellings" means buildings consisting of four or more units if such buildings have one or more elevators and ground floor units in other buildings consisting of four or more units.

§ 115.4 Performance standards.

(a) The initial and continued certification that a State or local fair housing law provides rights and remedies substantially equivalent to those provided in the Act will be dependent upon an assessment of the current practices and past performance of the appropriate State or local agency charged with administration and enforcement of the law to determine that, in operation, the law is in fact providing substantially equivalent rights and remedies. The performance standards set forth in paragraph (b) of this section will be used in making this assessment.

(b) A State or local agency must:

(1) Engage in comprehensive and thorough investigative activities; and

(2) Commence proceedings with respect to a complaint before the end of the 30th day after the receipt of the complaint, carry forward proceedings with reasonable promptness, and in accordance with the memorandum of understanding described in section 115.6 of this part, make final administrative disposition of a complaint within one year of the date of receipt of the complaint and, within 100 days of receipt of the complaint, complete the following proceedings:

(i) Investigation, including the preparation of a final investigative report containing—

(A) The names and dates of contacts with witnesses;

(B) A summary and dates of correspondence and other contacts with the aggrieved person and the respondent;

(C) A summary description of other pertinent records;

(D) A summary of witness statements; and

(E) Answers to interrogatories.

(ii) Conciliation activity.

(3) Conduct compliance reviews of all settlements, conciliation agreements and orders issued by or entered into to resolve discriminatory housing practices.

(4) Consistently and affirmatively seek and obtain the type of relief designed to prevent recurrences of such practices;

(5) Consistently and affirmatively seek the elimination of all prohibited practices under its fair housing law;

(c) Where the State or local agency has duties and responsibilities in addition to administration of the fair housing law, the Assistant Secretary may consider such matters as the relative priority given to fair housing administration, as compared to such other duties and responsibilities, and the compatibility or potential conflict of fair housing objectives with the agency's other duties and responsibilities.

§ 115.5 Request for certification.

(a) A request for certification under this part may be filed with the Assistant Secretary by the State or local official having principal responsibility for administration of the State or local fair housing law. The request shall be supported by the following materials and information:

(1) The text of the jurisdiction's fair housing law, the law creating and empowering the agency, any regulations and directives issued under the law, and any formal opinions of the State Attorney General or the chief legal officer of the jurisdiction that pertain to the jurisdiction's fair housing law.

(2) Organization of the agency responsible for administering and enforcing the law.

(3) Funding and personnel made available to the agency for administration and enforcement of the fair housing law during the current operating year, and not less than the preceding three operating years (or such lesser number during which the law was in effect).

(4) Data demonstrating that the agency's current practices and past performance comply with the performance standards described in § 115.4.

(5) Any additional information which the submitting official may wish to be considered.

(b) The request and supporting materials shall be filed with the Assistant Secretary for Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. A copy of the request and supporting materials will be kept available for public examination and copying at:

(1) The office of the Assistant Secretary, and

(2) the HUD Regional Office in whose jurisdiction the State or local jurisdiction seeking recognition is located, and

(3) the office of the State or local agency charged with administration and enforcement of the State or local law.

§ 115.6 Procedure for certification.

(a) Upon receipt of a request for certification filed under § 115.5, the Assistant Secretary may request further information that he or she considers relevant to the determinations required to be made under this part.

(b) If the Assistant Secretary determines, after application of the criteria set forth in §§ 115.3 and 115.3a, that the State or local fair housing law, on its face, provides rights and remedies for alleged discriminatory housing practices which are substantially equivalent to the rights and remedies provided in the Act, the Assistant Secretary shall inform the submitting State or local official in writing of that determination. Except under circumstances where the Assistant Secretary determines that interim referrals or other utilization of services under § 115.11 is appropriate, the Assistant Secretary shall publish a notice in the **Federal Register** which advises the public of the determination that the law, on its face, is substantially equivalent, and shall invite interested persons and organizations, during a period of not less then 30 days following publication of the notice, to file written comments relevant to the determination whether the current practices and past performance of the State or local agency charged with administration and enforcement of such law demonstrates that, in operation, the State or local law in fact provides rights and remedies which are substantially equivalent to those provided in the Act. The **Federal Register** notice shall also invite comments on the Department's determination as to the adequacy of the law on its face.

(c) If the Assistant Secretary determines, on the basis of the standards specified in § 115.4 and after considering the materials and information submitted pursuant to § 115.5, additional material obtained under paragraph (a) of this section, and any written comments filed under paragraph (b) of this section, that, in operation, a State or local fair housing law in fact provides rights and remedies which are substantially equivalent to

those provided in the Act, the Assistant Secretary shall offer to enter into a written agreement with the appropriate State or local agency providing for referral of complaints to the agency and for procedures for communication between the agency and HUD that are adequate to permit the Assistant Secretary to monitor the continuing substantial equivalency of the State or local law. The written agreement may, but need not, be incorporated in a Memorandum of Understanding as described in 24 CFR 111.104(a)(2). Upon execution of a satisfactory agreement, the Assistant Secretary shall publish notice of certification under this part in the **Federal Register**.

(d) During the period which begins on September 13, 1988 and ends January 13, 1992, each State or locality recognized as substantially equivalent under 24 CFR Part 115 (including any State or locality which had entered into an agreement for interim referrals under § 115.11, unless the State or locality is subsequently denied recognition under 24 CFR 115.7) for the purposes of the Fair Housing Act before September 13, 1988 shall, for the purposes of this paragraph, be considered certified under this part with respect to those matters for which the agency was previously recognized. If the Secretary determines in an individual case that a State or locality has not been able to meet the certification requirements within this 40-month period because of exceptional circumstances (such as the infrequency of legislative sessions in that jurisdiction), the Secretary may extend the period of temporary certification to no later than September 13, 1992.

(1) No State, locality or agency thereof shall be considered certified under this paragraph for the purpose of processing complaints alleging—

(i) Discrimination based on familial status;

(ii) Discrimination based on handicap; or

(iii) Coercion, intimidation or threats as described in § 115.3(a)(5)(vii).

(2) Certification under this paragraph is not a determination that the administrative or judicial remedies provided by the State or locality is substantially equivalent to those provided by the Act.

(e) Certification of a State or local fair housing agency under this part shall remain in effect until withdrawn under § 115.8.

(f) Not less frequently than annually, the Assistant Secretary will cause to be published in the **Federal Register** a notice which sets forth:

(1) An updated, consolidated list of all certified agencies;

(2) A list of all agencies whose certification under this part has been withdrawn since publication of the previous notice;

(3) A list of agencies with respect to which notice of denial of certification has been published under § 115.7(c) since issuance of the previous notice;

(4) A list of agencies with respect to which a notice for comment has been published under paragraph (b) of this section whose request for certification remains pending;

(5) A list of agencies for which notice of proposed withdrawal of certification has been published under § 115.8(c) whose proposed withdrawal remains pending; and

(6) A list of agencies with which an agreement for interim referrals or other utilization of services has been entered under § 115.11 and remains in effect.

§ 115.7 Denial of certification.

(a) If the Assistant Secretary determines, after application of the criteria set forth in §§ 115.3 and 115.3a, that a State or local fair housing law, on its face, fails to provide rights and remedies for alleged discriminatory housing practices which are substantially equivalent to the rights and remedies provided in the Act, the Assistant Secretary shall inform the submitting State or local official in writing of the reasons for that determination. The Assistant Secretary's advice may include specification of the manner in which the State or local law could be amended in order to provide substantially equivalent rights and remedies. The Assistant Secretary shall extend to the State or local official an opportunity to submit data, views, and arguments in opposition to the Assistant Secretary's determination and to request an opportunity for a conference in accordance with § 115.9. If no submission or request is made, no further action shall be required to be taken by the Assistant Secretary. If the State or local official submits materials but does not request a conference, the Assistant Secretary shall evaluate any arguments in opposition or other materials received from the State or local agency. If, after that evaluation, the Assistant Secretary is still of the opinion that the law, on its face, fails to provide rights and remedies for alleged discriminatory housing practices that are substantially equivalent to the rights and remedies provided in the Act, the Assistant Secretary shall inform the submitting State or local official in writing that certification is denied.

(b) If the Assistant Secretary determines, after considering the materials and information submitted under § 115.5, any additional information obtained under § 115.6(a), an assessment of the current practices and past peformance of the agency in meeting the standards of § 115.4(b), and any written comments received under § 115.6(b), that it has not been demonstrated that, in operation, a State or local fair housing agency in fact provides rights and remedies for alleged discriminatory housing practices which are substantially equivalent to those provided in the Act, the Assistant Secretary shall communicate this determination in writing to the State or local agency and shall allow the agency not less than 15 days to submit data, views, and arguments in opposition and to request an opportunity for a conference in accordance with § 115.9. If a request for a conference is not received within the time provided, the Assistant Secretary shall evaluate any arguments in opposition or other materials received from the State or local agency and, if after that evaluation the Assistant Secretary is still of the opinion that certification should be denied, the Assistant Secretary shall inform the submitting State or local official in writing that certification is denied.

(c) Where comment on a request for certification was invited in accordance with § 115.6(b), notice of denial of certification under this section shall be published in the **Federal Register**.

§ 115.8 Withdrawal of certification.

(a) Not less frequently than every 5 years, the Assistant Secretary shall determine whether each agency certified under this part continues to qualify for certification. The Assistant Secretary shall take appropriate action with respect to any agency not so qualifying.

(b) The Assistant Secretary shall periodically review the administration of fair housing laws recognized under this part. If the Assistant Secretary finds, as a result of a periodic review, upon the petition of an interested person or organization, or otherwise, that taken as a whole, the agency's administration of its fair housing law or the law, on its face, no longer meets the requirements of this part, the Assistant Secretary shall propose to withdraw the certification previously granted.

(c) The Assistant Secretary shall propose withdrawal of certification unless review establishes that the current fair housing law administered by the certified agency meets the criteria of § 115.3 and that current practices and past performance of the agency meet the standards of § 115.4.

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(d) Before the Assistant Secretary publishes notice of a proposed withdrawal of certification, the Assistant Secretary shall inform the State or local agency in writing of his or her intention to withdraw certification. The communication shall state the reasons for the proposed withdrawal and provide the agency not less than 15 days to submit data, views, and arguments in opposition and to request an opportunity for a conference in accordance with § 115.9.

(e) Notice of a proposed withdrawal shall be published in the **Federal Register**. The notice shall allow the State or local agency and other interested persons and organizations not less than 30 days in which to file written comments on the proposal.

(f) If a request for a conference in accordance with § 115.9 is not received within the time provided, the Assistant Secretary shall evaluate any arguments in opposition or other materials received from the State or local agency and other interested persons or organizations, and if after that evaluation the Assistant Secretary is still of the opinion that certification should be withdrawn, the Assistant Secretary shall withdraw certification and shall publish notice of the withdrawal in the **Federal Register**.

§ 115.9 Conferences.

(a) Whenever an opportunity for a conference is timely requested by a State or local agency in accordance with § 115.7 or § 115.8, the Assistant Secretary shall issue an order designating an officer who shall preside at the conference. The order shall indicate the issues to be resolved and any initial procedural instructions that might be appropriate for a particular conference. It shall fix the date, time and place of the conference. The date shall not be less than 20 days after the date of the order. The date and place shall be subject to change for good cause.

(b) A copy of the order shall be served on the State or local agency and:

(1) In the case of a denial of certification, on any person or organization that files a written comment in accordance with § 115.6(b); or

(2) In the case of a withdrawal of certification, on any person or organization that files a petition in accordance with § 115.8(a) or written comment in accordance with § 115.8(c). The agency and all such persons and organizations shall be considered to be participants in the conference. After service of the order designating the conference officer, and until the officer submits a recommended determination, all communications relating to the subject matter of the conference shall be addressed to that officer.

(c) The conference officer shall have full authority to regulate the course and conduct of the conference. A transcript shall be made of the proceedings at the conference. The transcript and all comments and petitions relating to the proceedings shall be made available for inspection by interested persons.

(d) The conference officer shall prepare proposed findings and a recommended determination, a copy of which shall be served on each participant. Within 20 days after service, any participant may file written exceptions. After the expiration of the period for filing exceptions, the conference officer shall certify the entire record, including the proposed findings and recommended determination, and any exceptions to the findings and recommendations, to the Assistant Secretary, who shall review the record and issue a final determination within 30 days. Where applicable, this determination shall be published in the **Federal Register**.

§ 115.10 Consequences of certification.

(a) Where all alleged violations of the Act contained in a complaint received by the Assistant Secretary appear to constitute violations of a State or local fair housing law administered by an agency that has been certified as substantially equivalent, the complaint shall be referred promptly to the appropriate State or local agency, and no further action shall be taken by the Assistant Secretary with respect to such complaint, except as provided for by the Act, this Part, and by §§ 103.100 through 103.115 or § 105.20 through 105.22 of this chapter.

(b) Notwithstanding paragraph (a) of this section, no complaint based in whole or in part on allegations of discrimination on the basis of familial status or handicap shall be referred to any State, locality or agency thereof whose certification was granted in accordance with § 115.6(d) or section 810(f)(4) of the Act, without regard to whether the fair housing law administered by such certified agency appears to prohibit discrimination based on familial status or handicap.

(c) Notwithstanding paragraph (a) of this section, whenever the Secretary has reason to believe that a complaint shows a basis may exist for the commencement of proceedings against any respondent under section 814(a) of the Act, or for proceedings by any governmental licensing or supervisory authorities, the Secretary shall transmit the information upon which that belief is based to the Attorney General, or to appropriate governmental licensing or supervisory authorities.

§ 115.11 Interim referrals.

If the Assistant Secretary determines after application of the criteria set forth in § 115.3, that a State or local fair housing law on its face provides rights and remedies for alleged discriminatory housing practices which are substantially equivalent to those provided in the Act, but that the law has not been in effect, or the appropriate State or local agency in operation, for a sufficient time to permit a demonstration of compliance with the performance standards described in § 115.4, the Assistant Secretary may enter into a written agreement with the State or local agency providing for referral of complaints to the agency on such terms and conditions as the Assistant Secretary shall prescribe, or providing for other utilization of the services of the State or local agency and its employees upon agreed terms, and providing further for procedures for communications between the agency and HUD that are adequate to permit the Assistant Secretary to monitor the agency's administration and enforcement of its law and to assist the Assistant Secretary in making the determination required in § 115.2(b). The agreement may provide for reactivation of referred complaints by the Assistant Secretary without regard to the limitations described in § 115.10. If such an agreement for interim referrals or other utilization of services is entered, the Assistant Secretary may defer final determination under § 115.6 or § 115.7 for a reasonable period determined by the Assistant Secretary to be necessary in order to permit a fair assessment of the agency's performance. In no event shall this period extend more than two years beyond the date of entry into the agreement for interim referrals or other utilization of services. This two-year limitation does not apply to agencies certified in accordance with § 115.6(d). However, an agreement under this section shall not be extended beyond the date of certification under § 115.6 or denial of recognition under § 115.7. Notice of entry into an agreement under this section shall be published in the **Federal Register**.

19. Part 121 is added to read as follows:

PART 121—COLLECTION OF DATA

Sec.
121.1 Purpose.
121.2 Furnishing of data by program participants.

Authority: Title VIII, Civil Rights Act of 1968 (42 U.S.C. 3600–3620); E.O. 11063, 27 FR 11527; sec. 602, Civil Rights Act of 1964 (42 U.S.C. 2000d–1); sec. 562, Housing and Community Development Act of 1987 (42 U.S.C. 3608a); sec. 2, National Housing Act, 12 U.S.C. 1703; sec. 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

§ 121.1 Purpose.

The purpose of this part is to enable the Secretary of Housing and Urban Development to carry out his or her responsibilities under the Fair Housing Act, Executive Order 11063, dated November 20, 1962, Title VI of the Civil Rights Act of 1964, and section 562 of the Housing and Community Development Act of 1987. These authorities prohibit discrimination in housing and in programs receiving financial assistance from the Department of Housing and Urban Development, and they direct the Secretary to administer the Department's housing and urban development programs and activities in a manner affirmatively to further these policies and to collect certain data to assess the extent of compliance with these policies.

§ 121.2 Furnishing of data by program participants.

Participants in the programs administered by the Department shall furnish to the Department such data concerning the race, color, religion, sex, national origin, age, handicap, and family characteristics of persons and households who are applicants for, participants in, or beneficiaries or potential beneficiaries of, those programs as the Secretary may determine to be necessary or appropriate to enable him or her to carry out his or her responsibilities under the authorities referred to in § 121.1.

20. The text of the preamble to this rule beginning at the heading "BACKGROUND" and ending before the heading "*Legislative review issues.*" is added as Appendix I to Subchapter A of Chapter I as follows:

Appendix I to Subchapter A—Preamble to Final Rule Implementing Fair Housing Amendments Act of 1988 (Published January 19, 1989)

Dated: January 12, 1989.

Samuel R. Pierce, Jr.,

Secretary.

[FR Doc. 89–1211 Filed 1–19–89; 8:45 am]

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Monday
January 23, 1989

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Parts 121, 125, and 135
Minimum Equipment List (MEL) Requirements; Notice of Proposed Rulemaking

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 121, 125, and 135

[Docket No. 25780; Notice No. 88-2]

RIN 2120-AC86

Minimum Equipment List (MEL) Requirements

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to amend Part 125 and 135 requirements for the use of a Minimum Equipment List (MEL).

The proposed amendment would provide much needed guidance and direction by clarifying the intent of the MEL concept in Part 121. It also proposes to amend the Part 121 requirements for the use of an MEL to make them consistent with the amended Part 125 and 135 MEL requirements. Finally, it provides for the development and use of MEL's for single-engine aircraft operated under Part 135.

DATE: Comments must be received on or before March 24, 1989.

ADDRESSES: Comments on this notice should be mailed in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC-204), Docket No. 25780, 800 Independence Avenue, SW., Washington, DC 20591. Comments delivered must be marked "Docket No. 25780." Comments may be examined in the Rules Docket weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Marlene G. Livack, Project Development Branch (AFS-240), Air Transportation Division, Office of Flight Standards, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; Telephone (202) 267-3753.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments and by commenting on the possible environmental, energy, or economic impact of this proposal. The comment should identify the regulatory docket or notice number and be submitted in duplicate to the address above. All comments received, as well as a report summarizing any substantive public contact with FAA personnel on this rulemaking, will be filed in the docket. The docket is available for public inspection both before and after the closing date for making comments.

Before taking any final action on the proposal, the Administrator will consider any comment made on or before the closing date for comments. The proposal may be changed in light of comments received.

The FAA will acknowledge receipt of a comment if the commenter submits with the comment a self addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 25780." When the comment is received, the postcard will be dated, time stamped, and returned to the commenter.

Availability of NPRM's

Any person may obtain a copy of this notice of proposed rulemaking by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-3484. Requests should identify the docket number of this proposed rule. Persons interested in being placed on a mailing list for future proposed rules should also request a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

The airworthiness certification of an aircraft is based upon the requirement that the aircraft conforms to its type certificate and is in a condition for safe operation. Early commercial aircraft had very little equipment redundancy beyond that necessary to meet the existing Civil Aviation Regulations (CAR) basic type certification requirements. Prior to adoption of specific provisions in the CAR operating rules, operation with inoperative equipment was prohibited.

The concept of the Minimum Equipment List (MEL) presently embodied in Part 121 was first developed for air carrier and commercial operators of large aircraft in 1953 (then CAR 40 and 41) when it was recognized that a flight or series of flights might be continued with certain inoperable instruments and equipment under appropriate circumstances. This concept was established following the determination of the Civil Aeronautics Agency (CAA) that strict observance of the requirement to delay or postpone a flight with an inoperative equipment was an undue hardship and that strict compliance was not necessary to maintain the type certification level of safety. In 1956, the CAR's were further updated to outline the circumstances when procedures for limited operations beyond a terminal point with inoperative required equipment might be incorporated and authorized in air carrier manuals.

The air carrier operating rules of the CAR were recodified effective April 1, 1965. Part 121 of the Federal Aviation Regulations (FAR), which replaced CAR 40, 41, and 42, was initiated to regulate the certification and operations of air carriers and commercial operators of large aircraft. The preamble to Part 121 indicates the intent to carry over procedures for operating with inoperative equipment, as they existed in CAR 40 and 41, intact in the recodification and introduced the term "minimum equipment list." To date there have been no substantive amendments to the Part 121 MEL procedures.

Historically, the MEL process has been an effective mechanism to permit continued flight with instruments and equipment inoperative. It allows operational flexibility and a higher degree of schedule reliability while still maintaining the level of safety required by the type certification rules.

Evolutionary improvements in both aircraft design and in safety requirements have provided modern aircraft with the capability for operation over a wide range of environmental conditions. These improvements also have provided improved convenience for both the operator and passengers. Certain installed equipment is required to operate in specific environmental conditions. This equipment is not essential for safe operations provided the kind of operation necessitating the equipment is avoided; for example, certain lights are not essential during daytime operations. Other non-required optional equipment (such as entertainment systems, logo lights, and galley equipment) may be installed for the convenience of the operator or passengers.

The MEL is a practical method of enhancing air carrier dispatch reliability where equipment and accessories not required for type certification are involved. Also, experience has shown that given individual aircraft designs, operation of every system or component may not be necessary when the remaining operative equipment can provide the required level of safety. Section 121.627(c) provides that the Minimum Equipment List and procedures for continuing flight beyond a terminal point with equipment required by § 121.303(d) inoperative may

be included in the certificate holder's manual if the Administrator finds that, in a particular situation, literal compliance with those equipment requirements is not necessary in the interests of safety. Although it would be desirable to maintain the aircraft at all times with installed equipment operative, it is possible under controlled conditions to maintain the required level of safety with specific items of equipment inoperative until repairs are available or feasible.

A Master Minimum Equipment List (MMEL) for a particular aircraft type is developed by the FAA along with the holder of the type certificate for that aircraft. The MMEL is the basis for development of an individual operator's MEL which takes into consideration the operator's particular aircraft equipment configuration and operational conditions. The individual operator's MEL, when approved and authorized by the FAA air carrier certificate holding district office, allows relief from the maintenance and operating rules that require every item of equipment or instrument installed in the aircraft to be operable. The intent of this process is to improve aircraft utilization and thereby provide more covenient and economic air transportation for the public.

On September 16, 1981, the FAA issued Notice of Proposed Rulemaking (NPRM) No. 81-14 (46 FR 52278; October 26, 1981). This notice proposed to consolidate MEL requirements that were contained in Parts 121, 125, and 135 into Part 91. It also proposed regulatory changes to permit the operation of general aviation aircraft (for which an MMEL has not been developed) with certain inoperative instruments and equipment that are not essential for the safe operation of the aircraft through an approved aircraft flight manual or operating limitations statement. Due to concerns and objections expressed by the general aviation community, the FAA decided that the notice needed further changes. Subsequent to the publication of NPRM No. 81-14, the FAA determined that although the rules concerning MEL requirements should be standardized, Parts 121, 125, and 135 should each contain a separate reference to MEL requirements.

The proposed amendment would standardize application of the MEL concept by bringing Part 121 in line with Parts 125 and 135 which contain detailed requirements concerning the MEL. As a result of this standardization, implementation and enforcement of the MEL concept would be more consistent for all operators in air transportation. Additionally, the proposal requires amendment of individual operator's operations specifications to authorize the use of an MEL, if that operator elects to use an MEL. The inclusion of the MEL authorization in the operations specifications eliminates the need for the letter of authorization currently required in Parts 125 and 135.

Discussion of Proposals

Section 121.627(c) contains the only Part 121 reference to MEL. This rule permits an MEL to be included in the certificate holder's manual. This simple statement has fostered numerous questions within the air carrier industry and, therefore, needs to be clarified. The FAA proposes to amend § 121.627 by deleting paragraph (c) and by adding a new § 121.628, which would set forth specific requirements for an MEL. As a result, the current § 121.303(d) will be revised by deleting reference to § 121.627(c) and referring instead to the new § 121.628. The FAA also proposes to amend the language of §§ 135.179 and 125.201 to make them essentially the same as § 121.628. The FAA proposes to eliminate the need for the letter of authorization currently required by §§ 125.201(b)(2) and 135.179(b)(2). Instead, the authorization to operate in accordance with an FAA approved MEL will be contained in the certificate holder's operations specifications. Proposed §§ 121.628(a)(2), 125.201(a)(2), and 135.179(a)(2) would require that an operations specifications authorization be obtained and would also require either that the MEL be carried aboard the aircraft or that the flight crew have access to all information contained in the MEL prior to and during flight.

It is not the FAA's intention to require that the actual MEL be carried aboard the aircraft, although this would be an acceptable means of compliance. The FAA may accept any method which allows the information contained in the MEL to be "directly" accessible to the flightcrew at all times prior to and during flight. This could be accomplished through a state-of-the-art information retrieval system. Furthermore, the FAA does not intend for the pilot to have access by "indirect" means such as conversations and maintenance personnel over the aircraft radio.

These proposals are being made to clarify the extent to which MELs can permit operation with inoperative equipment. Since the purpose of an MEL is to allow an aircraft to be dispatched with certain inoperative equipment, the proposal would reduce ambiguity and, at the same time, standardize and clarify the FARs. Finally, these proposals will standardize the language of Parts 121, 125, and 135 to clarify the intent of the Minimum Equipment List, provide a uniform application of Minimum Equipment List throughout industry, and establish that configurations approved through the proper use of a Minimum Equipment List constitute an approved change to the type design.

The current § 135.179 limits the use of an MEL to multiengine aircraft. Since the rule is silent concerning single-engine aircraft, those aircraft must have all instruments and equipment operative. Strict observance of the requirment to delay or postpone a flight with certain equipment inoperative creates an unnecessary economic burden for operators of single-engine aircraft in air transportation and strict compliance is not necessary to maintain the required level of safety. The proposed changes to Part 135 will allow for the use of an MEL by any civil aircraft, including single-engine aircraft.

With respect to the length of time an aircraft may be operated with inoperative instruments or equipment, it should be noted that the FAA has implemented procedures which categorize items of equipment and place a fixed "time to repair" requirement on items within a category. These procedures are contained in the individual air carrier's operations specifications. The "time to repair" requirement is currently being implemented for air carriers operating under Part 121 although it is anticipated that the same requirements will be effected in the future for Part 125 and 135. Implementation of the "time to repair" requirement is being carried out independently of this rulemaking project.

Regulatory Evaluation Summary

Benefits

The benefits of these proposed rule changes are nonquantifiable because they primarily would reorganize and standardize the MEL provisions of various operating rules to clarify and explain the intent of existing requirements. Further, to the extent that their single-engine aircraft could operate using an MEL, Part 135 operators would benefit from the greater flexibility and efficiency in the utilization of these aircraft that would be allowed under the proposed rules, and their passengers and shippers would avoid unnecessary delays and inconveniences as well. Additionally, the use of operations specifications in lieu of letters of authorization, in the long run, should result in a consolidation of

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administrative burdens for both the FAA and the air carriers. This should work to reduce administrative costs. The FAA, however, has no precise basis on which to quantify these benefits, since it cannot predict the extent to which Part 135 operators of single-engine aircraft will elect to use MELs.

Costs

Operators subject to the proposed rule change would not incur any compliance costs because the proposals would only change the format in which MEL authorizations are granted. The substantive provisions of the MEL's for individual operators would continue to be determined by the FAA flight standards field offices having jurisdiction over the particular operators, and policy guidance for specific MEL operating privileges and limitations would continue to be disseminated through nonregulatory channels, such as the Advisory Circular system. The FAA would incur some minor administrative costs in transferring MEL requirements from letters of authorization to operations specifications, but this would be a one-time expense and is in the nature of an ordinary cost of doing business for a regulatory agency. Moreover, the use of operations specifications should, in the long run, tend to ease administrative burdens and reduce costs for both the FAA and the carriers.

International Trade Impact Assessment

The proposed regulations would clarify and standardize existing MEL requirements for various classes of United States operators, and as such, would have no effect on the sale of foreign aviation products or services in the United States, nor would they affect the sale of United States aviation products or services in foreign countries.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. Small entities are independently owned and operated by small businesses and small not-for-profit organizations. The RFA requires agencies to review rules that may have "a significant economic impact on a substantial number of small entities." FAA Order 2100.14A, *Regulatory Flexibility Criteria and Guidance*, establishes threshold cost values and small entity size standards for complying with RFA review requirements in FAA rulemaking actions.

The small entities potentially affected by the proposed rule changes are those Part 121, 125, and 135 operators that own nine or fewer aircraft. However, because these proposals would not impose any compliance costs on affected operators, and would provide relief in the case of Part 135 operators of single-engine aircraft, none of the threshold cost values stipulated in Order 2100.14A are expected to be exceeded by any operator. Therefore, the FAA has determined that these proposals would not have a significant economic impact on a substantial number of small entities, and a regulatory flexibility analysis is not required under the terms of the RFA.

Federalism Implications

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Conclusion

For the reasons discussed in the preamble, and based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that this proposed regulation is not major under Executive Order 12291. In addition, this proposal, if adopted, will not have significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This proposal is considered significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). An initial evaluation of the proposal, including a Regulatory Flexibility Determination and Trade Impact Analysis, has been placed in the docket. A copy may be obtained by contacting the person identified under "FOR FURTHER INFORMATION CONTACT."

List of Subjects

14 CFR Part 121

Aviation safety, Safety, Air carriers, Airplanes.

14 CFR Part 125

Aircraft, Airworthiness.

14 CFR Part 135

Aviation safety, Air carriers, Safety, Airworthiness Aircraft, Airplanes.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend Parts 121, 125, and 135 of the Federal Aviation Regulations (14 CFR Parts 121, 125, and 135) as follows:

PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS, AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

1. The authority citation for Part 121 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1355, 1356, 1357, 1401, 1421, 1430, 1472, 1485, and 1502; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983).

2. By amending § 121.303 by revising the introductory text of paragraph (d) to read as follows:

§ 121.303 Airplane instruments and equipment.

• • • • •

(d) Except as provided in §§ 121.627(b) and 121.628, no person may take off any airplane unless the following instruments and equipment are in operable condition:

• • • • •

§ 121.627 [Amended]

3. By amending § 121.627 by removing paragraph (c).

4. By adding a new § 121.628 following § 121.627 to read as follows:

§ 121.628 Inoperable instruments and equipment.

(a) No person may take off an airplane with inoperable instruments or equipment installed unless the following conditions are met:

(1) An approved Minimum Equipment List exists for the airplane.

(2) The Flight Standards District Office having certification responsibility has issued the certificate holder operations specifications authorizing operations in accordance with an approved Minimum Equipment List. The approved Minimum Equipment List shall be carried aboard the airplane or the flight crew shall have access at all times prior to and during flight to all of the information contained in the approved Minimum Equipment List. An approved Minimum Equipment List, as authorized by the operations specification, constitutes an approved change to the type design.

(3) The approved Minimum Equipment List must:

(i) Be prepared in accordance with the limitations specified in paragraph (b) of this section.

(ii) Provide for the operation of the airplane with the instruments and equipment in an inoperable condition.

(4) Records identifying the inoperable instruments and equipment must be available to the pilot.

(5) The airplane is operated under all applicable conditions and limitations contained in the Minimum Equipment List and the operations specifications authorizing use of the Minimum Equipment List.

(b) The following instruments and equipment may not be included in the Minimum Equipment List:

(1) Instruments and equipment that are either specifically or otherwise required by the airworthiness requirements under which the airplane is type certificated and which are essential for safe operations under all operating conditions.

(2) Instruments and equipment required by an airworthiness directive.

(3) Instruments and equipment required for specific operations by this part.

(c) Notwithstanding paragraphs (b)(1) and (b)(3) of this section, an airplane with inoperable instruments or equipment may be operated under a special flight permit under §§ 21.197 and 21.199 of this chapter.

PART 125—CERTIFICATION AND OPERATIONS: AIRPLANES HAVING A SEATING CAPACITY OF 20 OR MORE PASSENGERS OR A MAXIMUM PAYLOAD CAPACITY OF 6,000 POUNDS OR MORE

5. The authority citation for Part 125 continues to read as follows:

Authority: 49 U.S.C. 1354, 1421 through 1430 and 1502; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983).

6. By revising § 125.201 to read as follows:

§ 125.201 Inoperable instruments and equipment.

(a) No person may take off an airplane with inoperable instruments or equipment installed unless the following conditions are met:

(1) An approved Minimum Equipment List exists for the airplane.

(2) The Flight Standards District Office having certification responsibility has issued the certificate holder operations specifications authorizing operations in accordance with an approved Minimum Equipment List. The approved Minimum Equipment List shall be carried aboard the airplane or the flight crew shall have access at all times prior to and during flight to all of the information contained in the approved Minimum Equipment List. An approved Minimum Equipment List, as authorized by the operations specification, constitutes an approved change to the type design.

(3) The approved Minimum Equipment List must:

(i) Be prepared in accordance with the limitations specified in paragraph (b) of this section.

(ii) Provide for the operation of the airplane with the instruments and equipment in an inoperable condition.

(4) Records identifying the inoperable instruments and equipment must be available to the pilot.

(5) The airplane is operated under all applicable conditions and limitations contained in the Minimum Equipment List and the operations specifications authorizing use of the Minimum Equipment List.

(b) The following instruments and equipment may not be included in the Minimum Equipment List:

(1) Instruments and equipment that are either specifically or otherwise required by the airworthiness requirements under which the airplane is type certificated and which are essential for safe operations under all operating conditions.

(2) Instruments and equipment required by an airworthiness directive.

(3) Instruments and equipment required for specific operations by this part.

(c) Notwithstanding paragraphs (b)(1) and (b)(3) of this section, an airplane with inoperable instruments or equipment may be operated under a special flight permit under §§ 21.197 and 21.199 of this chapter.

PART 135—AIR TAXI OPERATORS AND COMMERCIAL OPERATORS

7. The authority citation for Part 135 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1355(a), 1421-1431 and 1502; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983).

8. By revising § 135.179 to read as follows:

§ 135.179 Inoperable instruments and equipment for multiengine aircraft.

(a) No person may take off an aircraft with inoperable instruments or equipment installed unless the following conditions are met:

(1) An approved Minimum Equipment List exists for the aircraft.

(2) The Flight Standards District Office having certification responsibility has issued the certificate holder operations specifications authorizing operations in accordance with an approved Minimum Equipment List. The approved Minimum Equipment List shall be carried aboard the aircraft or the flight crew shall have access at all times prior to and during flight to all of the information contained in the approved Minimum Equipment List. An approved Minimum Equipment List, as authorized by the operations specifications, constitutes an approved change to the type design.

(3) The approved Minimum Equipment List must:

(i) Be prepared in accordance with the limitations specified in paragraph (b) of this section.

(ii) Provide for the operation of the aircraft with the instruments and equipment in the inoperable condition.

(4) Records identifying the inoperable instruments and equipment and the information required by paragraph (a)(3)(ii) of this section must be available to the pilot.

(5) The aircraft is operated under all applicable conditions and limitations contained in the Minimum Equipment List and the operations specifications authorizing use of the Minimum Equipment List.

(b) The following instruments and equipment may not be included in the Minimum Equipment List:

(1) Instruments and equipment that are either specifically or otherwise required by the airworthiness requirements under which the airplane is type certificated and which are essential for safe operations under all operating conditions.

(2) Instruments and equipment required by an airworthiness directive.

(3) Instruments and equipment required for specific operations by this part.

(c) Notwithstanding paragraphs (b)(1) and (b)(3) of this section, an aircraft with inoperable instruments or equipment may be operated under a special flight permit under §§ 21.197 and 21.199 of this chapter.

Issued in Washington, DC, on January 12, 1989.

Robert L. Goodrich,

Acting Director, Flight Standards Service.

[FR Doc. 89-1171 Filed 1-19-89; 8:45 am]

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Monday
January 23, 1989

Part V

Department of Agriculture

Forest Service

36 CFR Parts 211, 228, and 261

Oil and Gas Resources; Proposed Rule

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Parts 211, 228, and 261

Oil and Gas Resources

AGENCY: Forest Service, USDA.

ACTION: Proposed rule.

SUMMARY: These proposed rules set forth the procedures by which the Forest Service of the U.S. Department of Agriculture would carry out its statutory responsibilities for management of oil and gas leasing and attendant surface disturbing activities conducted on leaseholds on National Forest System lands. In the past, the Forest Service has relied on Bureau of Land Management procedures and regulations. However, the Federal courts have ruled that the Forest Service must promulgate its own procedures and regulations. Additionally, the Federal Onshore Oil and Gas Leasing Reform Act of 1987 expanded the authority of the Secretary of Agriculture in the management of oil and gas resources on National Forest System lands and directed the Secretary to issue rules on bonding and reclamation standards. The intent of these rules is to satisfy both judicial direction and the new statute; to coordinate Forest Service oil and gas resource management procedures with those of the Bureau of Land Management, and to promote cooperation among the Agency, the oil and gas industry, and other publics interested in the management of oil and gas resources of the National Forest System lands.

DATE: Comments must be received in writing by March 24, 1989.

ADDRESSES: Send written comments to F. Dale Robertson, Chief (2820), Forest Service, USDA, P.O. Box 96090, Washington, DC 20090-6090.

The public may inspect comments received on these proposed rules in the office of the Director, Minerals and Geology Management Staff, Room 608, 1621 North Kent Street, Arlington, VA, during regular business hours (8 a.m. to 5 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Stanley Kurcaba, Minerals and Geology Management Staff, (703) 235-8715.

SUPPLEMENTARY INFORMATION: The Forest Service of the United States Department of Agriculture and the Bureau of Land Management of the United States Department of the Interior have joint responsibilities for the administration of the Federal oil and gas resources on National Forest System lands. In the past, the Forese Service has relied upon interagency agreements with the Bureau of Land Management to guide Forest Service review of proposed oil and gas leasing and review of proposed surface disturbances caused by oil and gas operations on those leases. However, the Forest Service has received judicial direction to promulgate regulations governing oil and gas leasing on National Forest System lands. The recently enacted Federal Onshore Oil and Gas Leasing Reform Act of 1987 (30 U.S.C. 226 et seq.) also requires the Forest Service to promulgate rules both to implement the new authority that the statute gave to the Secretary of Agriculture over oil and gas leasing and operations and to fulfill the statute's mandate that the Secretary of Agriculture develop rules which ensure that adequate bonds are posted for reclamation of surface disturbing operations on a lease.

The Forest Service seeks to facilitate the orderly and environmentally sound development of Federal leasable oil and gas resources of the National Forest System in cooperation with the oil and gas industry and other interested publics. These regulations are designed to achieve that end.

The Secretary of Agriculture is reserving the authority at lease issuance to deny all operations on a leasehold in those circumstances where further environmental analyses beyond those done at the suitability determination indicate such preclusion is appropriate. This reservation of authority is required under such cases as *Conner* v. *Burford*, 848 F.2d 1441 (9th Cir. 1988) and *Sierra Club* v. *Peterson*, 717 F.2d 1409 (D.C. Cir. 1983) to allow the agency the flexibility to engage in staged NEPA compliance. To the extent practicable given the changes in the Forest Service's authority over oil and gas leasing and operations made by the Leasing Reform Act, the proposed rule maintains the existing procedures by which the Bureau of Land Management and the Forest Service have been jointly responding to leasing and operating proposals. The primary reason for following the existing procedures to the extent practicable is that they reflect the many legal authorities applicable to oil and gas leasing and operating decisions and they are responsive to current management needs. In addition, agency personnel, the oil and gas industry and other persons interested in the management of National Forest System resources are familiar with existing procedures and requirements. Therefore, maintaining the existing procedures to the extent possible will reduce confusion over Agency roles and operator responsibilities in the leasing and development of Federal oil and gas resources located on National Forest System lands.

Many of the new requirements and procedures that are included in the proposed rule are designed to define the role that the Forest Service will play in the approval of oil and gas leasing and operations because of the expanded authority of the Secretary of Agriculture under the Leasing Reform Act. Other of the new requirements are included to implement the direction in the Leasing Reform Act to the Secretary of Agriculture to issue regulations establishing bonding standards.

The following briefly describes the role that the Forest Service would play under the proposed rule in the issuance of oil and gas leases, the approval of operations on the leaseholds, and the administration of those operations.

The Bureau of Land Management cannot issue leases for Federal oil and gas resources on National Forest System lands without the approval of the Forest Service. Therefore, the Forest Service must develop a process for making decisions as to whether to authorize the Bureau of Land Management to offer National Forest System lands for leasing. First, the Forest Service proposes to identify lands with potential for leasing based on existing oil and gas production, known geologic potential, or industry interest in an area and, in cooperation with the oil and gas industry, the Bureau of Land Management, and interested publics to develop a schedule for reviewing those areas. Then the Forest Service would determine if these lands with leasing potential are legally available for leasing. The Agency would review whether available lands are suitable for exploration and development by considering whether oil and gas development is consistent with the forest land and resource management plan or not precluded by the plan or if the lands could be suitable for leasing if stipulations governing surface uses were added to a lease. The Forest Service and Bureau of Land Management would then evaluate the adequacy of the Forest Plan Environmental Impact Statement or other National Environmental Policy Act documents to determine if additional National Environmental Policy Act analysis and documentation is required. The Forest Service would make a determination of an area's suitability for oil and gas leasing and give public notice of the decision. A suitability determination would be an appealable decision under Forest Service appeals procedures (36 CFR 211.18). The Forest Service would then forward its decision

to the appropriate Bureau of Land Management office.

The Bureau of Land Management would then be able to offer such lands for competitive sale. If there were no bidders for the offering, the lands would then be available for lease by an over-the-counter application process for a period of 2 years.

After the Bureau of Land Management issued a lease, the operator might seek to conduct surface disturbing activities on the lease. In accordance with the Federal Onshore Oil and Gas Leasing Reform Act, the proposed regulations would require an operator to obtain Forest Service approval of a surface use plan of operations before conducting operations. In order to coordinate review of proposed operations by the Forest Service and the Bureau of Land Management and to ease the administrative burden on the public, the proposed rules would direct operators to submit surface use plans of operations involving National Forest System lands to the Bureau of Land Management as part of the operator's Application for a Permit to Drill. The proposed rule specifies the information that the operator would have to include in a surface use plan of operations for a lease on National Forest System lands and encourages the operator to contact the appropriate local Forest Service office for assistance in preparing the proposed plan. Upon receipt of a surface use plan of operations involving operations on National Forest System lands, the Bureau of Land Management would forward that plan to the Forest Service for its review and approval.

Prior to, or in connection with, the submittal of a surface use plan of operations, the operator could request that the Forest Service authorize the Bureau of Land Management to modify or waive a stipulation included in a lease at the direction of the Forest Service. The proposed rule would permit the Forest Service to grant such a request in the circumstances specified after compliance with the National Environmental Policy Act of 1969 and other applicable laws. The Forest Service would give public notice of its decision on a substantial stipulation modification or waiver request in a newspaper of general circulation. The decision would be subject to administrative appeal under the procedures at 36 CFR 211.18.

The Forest Service would review a proposed surface use plan of operations for adequacy using the criteria proposed in the rule. If the plan of operations was adequate as submitted, the Forest Service would approve the plan. If the plan of operations was not adequate, the Forest Service could disapprove the plan or approve the plan subject to operating conditions which would render the plan adequate. As part of the review process, the Forest Service would establish bonding requirements for any plan of operations that would be approved. In accordance with the requirements of the Federal Onshore Oil and Gas Leasing Reform Act, the proposed rules would direct an operator to post a bond in an amount sufficient to ensure reclamation and the restoration of any lands or surface water adversely affected by the operations prior to the commencement of operations.

At the conclusion of the surface use plan of operations review process, the Forest Service would advise the operator and the appropriate Bureau of Land Management office of the decision on a proposed plan and, if appropriate, the bonding requirements for the operations. Public notice of the decision also would be given. The decision would be subject to administrative appeal under the procedures at 36 CFR 211.18.

If the operator completed the operations authorized by the initial surface use plan of operations and desired to conduct further operations, the operator would be required to submit a supplemental plan of operations which would be subject to review and approval in the same manner as an initial plan of operations.

The proposed regulations would require an operator to perform reclamation on the leasehold as the operations were completed. The proposed regulations also provide for the staged release of bonds as reclamation is completed.

Under the proposal, the operator would be required to conduct operations on the leasehold in accordance with the terms of the lease, these regulations and an approved surface use plan of operations. The proposed rule also details the remedies that the Forest Service would have if the operations conducted by the operator were not in compliance with the terms of the lease, these regulations and an approved surface use plan of operations. Initially, the Forest Service would try to obtain the operator's voluntary compliance with the applicable provision. If the operator refused to voluntarily comply, the proposed rules would provide that the Forest Service would issue the operator a notice of noncompliance specifying a deadline for the operator to bring the operations into compliance. The proposed regulations provide that if the operator still failed to come into compliance the Forest Service would take the following actions, as appropriate:

1. If the noncompliance appeared to be material, the Forest Service would initiate a material noncompliance proceeding in accordance with the procedures proposed in the regulations. If the Forest Service official presiding over the proceeding found that the noncompliance was material, the operator and the Bureau of Land Management would be so advised. An operator found to be in material noncompliance would be ineligible to receive further Federal oil and gas leases or assignments until the operations were brought into compliance.

2. If the noncompliance was resulting in an imminent danger to public health or safety or in irreparable resource damage, the Forest Service could suspend the approval of the surface use plan of operations. The proposed rule provides that the suspension would last until the operator brought the operations into compliance.

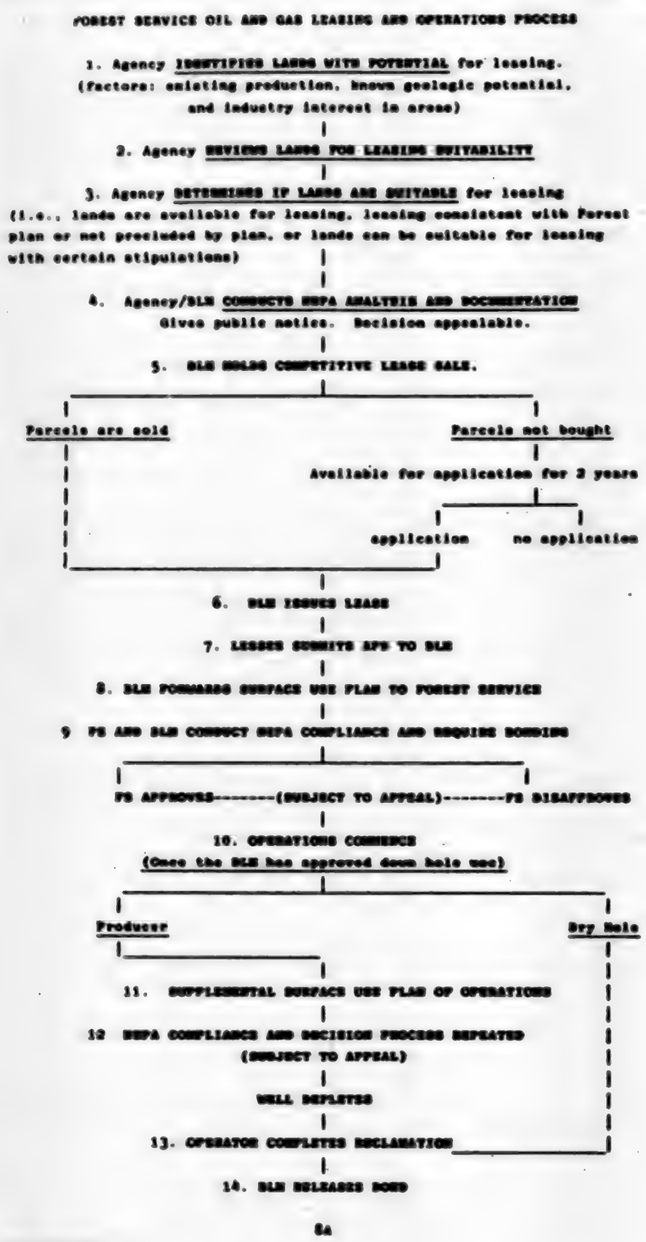
3. If the noncompliance was resulting in an emergency, the Forest Service could take whatever measures were necessary to abate the emergency. The proposed regulations would require the operator to reimburse the Forest Service for the full cost of such abatement actions.

The proposed rule also advises the operator that the Forest Service could seek criminal penalties for the operator's noncompliance pursuant to 36 CFR Part 261.

In addition to these requirements which would be set forth at 36 CFR Part 228, Subpart E, the proposed rules would make conforming changes in two other existing Forest Service rules—36 CFR 211.18, which governs the Forest Service administrative appeal process; and 36 CFR Part 261, which specifies conduct on the National Forest System which is prohibited and for which criminal penalties may be imposed.

The following diagram illustrates how oil and gas leasing and operations would be administered on National Forest System lands:

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Section-by-Section Analysis of Proposed Rule

The rules governing Forest Service procedures for responding to and managing oil and gas leasing and surface disturbing operations on National Forest System lands would be codified as a new Subpart E of Part 228 of Title 36 of the Code of Federal Regulations. The following section-by-section analysis describes in detail the provisions of the proposed rule.

Section 228.100 Scope and applicability.

This section specifies the scope of Forest Service responsibility in oil and gas leasing and further states that the rules would apply to leases and operations in effect as of the effective date of the rule as well as to new leases issued under the Federal Onshore Oil and Gas Leasing Reform Act of 1987. This section also makes clear that surface uses off a leasehold require authorization by the authorized Forest officer and cites the major existing rules that apply to those uses.

Section 228.101 Definitions.

This section defines special terms used in the proposed rules.

Section 228.102 Determination of lands suitable for leasing.

The Federal Onshore Oil and Gas Leasing Reform Act of 1987 made significant changes in the manner in which Federal oil and gas leasing is conducted. Under the Act, application for leases will no longer be accepted until after lands have been offered for competitive sales. Therefore, in order to offer leases, Federal Agencies must take the initiative to identify lands suitable for leasing and to make those lands available for competitive sale through the Bureau of Land Management. Under the proposed rule, each Forest Supervisor would, within 6 months of the effective date of the rule, identify those areas of the National Forest System in which there is potential for leasing and that have not been previously evaluated and develop a schedule for determining their suitability for oil and gas leasing. The Forest Supervisor, in cooperation with the oil and gas industry and the Bureau of Land Management, would give first priority to those areas having the highest potential for leasing. This would meet the mandate in the *Mountain States Legal Foundation vs Andrus (1980)* decision to require the Forest Service to develop a leasing process and would eliminate needless analyses of areas where no potential for oil and gas leasing exists. Potential lessees would have the opportunity to participate in the process of establishing the priority for reviewing those areas identified as having leasing potential.

When areas are reviewed for their suitability for leasing, this section would require the authorized Forest officer to identify those areas legally available (that is, not withdrawn from leasing), review the Forest land and resource management plan for direction, and identify conditions of occupancy that would be included as lease stipulations. The Forest Service and the Bureau of Land Management would cooperate in meeting the analysis and documentation requirements of the National Environmental Policy Act. This section would require the authorized Forest officer to give written notice to the Bureau of Land Management of the outcome of a suitability determination, which in effect is the notice to consent, or not to consent, to leasing certain lands. The authorized Forest officer would include any stipulations as a condition of leasing derived from the suitability determination. For decisions on suitability for leasing, the Regional Forester is the authorized Forest officer.

Section 228.103 Notice and transmittal of suitability decision.

This section would require public notice in a newspaper of general circulation of the suitability decision and of appeal rights available under 36 CFR 211.18. It should be noted that in addition to this public notice requirement, under existing agency procedures, all who request notice of a suitability decision would receive direct notice. This section also specifies inclusion in all leases to which the Forest Service consents of a standard stipulation that gives the lessee notice that the Secretary of Agriculture retains the authority to preclude all operations on a leasehold in those exceptional circumstances where further environmental analyses indicate such action is appropriate, that lease operations are subject to the regulations of the Secretary of Agriculture and that the operator must submit a surface use plan of operations for Forest Service approval or disapproval. The Secretary of Agriculture is specifically requesting public comments on the effect of this retention of authority and its effect on perceived lease value and compared with lease rights currently specified at 43 CFR 3101.1-2.

Section 228.104 Consideration of request to modify lease terms.

This section would allow an operator to request that the Forest Service modify or waive a stipulation included in a lease at the direction of the Forest Service. The proposed rule would permit the Forest Service to grant such a request in the circumstances specified after compliance with the National Environmental Policy Act of 1969 and other applicable laws. The Forest Service would give notice of its decision on a substantial stipulation modification or waiver request and of appeal rights under the procedures at 36 CFR 211.18 in a newspaper of general circulation.

Section 228.105 Operator's submission of a surface use plan of operations.

The proposed rule would clarify that an operator would submit a surface use plan of operations that would involve the National Forest System through the appropriate Bureau of Land Management office. Having the Bureau of Land Management continue to receive the entire Application for Permit to Drill (APD) package will provide for more efficient administration and less burden to an operator than submitting information separately to two agencies. This section also encourages cooperation between the operator and the Forest Service in preparing a surface use plan of operations prior to formally submitting an APD, thus eliminating potential problems early in the process. This section specifies surface use plan of operations content which is the same information as currently required for lands administered by the Bureau of Land Management.

Section 228.106 Review of a surface use plan of operations.

This section establishes the process by which the Forest Service would review a surface use plan of operations. Under this proposed process, the authorized Forest officer would base the approval of a surface use plan of operations on the terms of the lease, direction in the Forest land and resource management plan in effect at the time the surface use plan of operation is submitted, and information derived from the result of National Environmental Policy Act analyses.

When lands are determined to be suitable for leasing, a lessee can normally expect that future lease operations would be authorized, but the Forest Service must explicitly approve operations under a lease and comply with the National Environmental Policy Act before approving or denying such operations. Past experience demonstrates that most problems can be solved by the Forest Service and the lessee working cooperatively to obtain necessary revisions in the design of a

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proposal. However, if the circumstances warrant, the Forest Service will use the authority granted the Secretary of Agriculture by the Leasing Reform Act of 1987 to disapprove proposed operations. In exceptional circumstances, this could mean that no operations would be approved on a leasehold.

This section also gives notice that the National Environmental Policy Act of 1969, implementing regulations at 40 CFR Parts 1500 through 1508, and Forest Service implementing policies and procedures must be followed as part of the Agency's review of an operating plan.

This section would further require the authorized Forest officer to advise the Bureau of Land Management of the reasons when a proposed surface use plan cannot be processed within 3 days after the conclusion of the 30-day notice period. Finally, this section requires the Forest Service to give public notice of a decision on a surface use plan of operations and appeal rights available under 36 CFR 211.18.

Section 228.107 Surface use requirements.

This section establishes requirements that would apply to oil and gas operations on the National Forest System. The requirements address the design of access facilities, protection of cultural and historic resources, fire prevention and control, maintaining fisheries, wildlife and plant habitat, conduct of reclamation, safety measures, waste disposal, and watershed protection. It is necessary to establish minimum surface use requirements for operations on National Forest System lands in order to carry out the direction in Section (g) of the Leasing Reform Act of 1987 which directs that:

> * * * For National Forest lands, the Secretary of Agriculture, shall regulate all surface disturbing activities conducted pursuant to any lease issued under the Act and shall determine reclamation and other actions as required in the interests of conservation of surface resources.

The surface use requirements of the rule are the same requirements as currently contained in standard stipulations that the Forest Service, until recently, has attached to all lease issuance decisions or recommendations.

Establishment of specific National reclamation standards would not be appropriate because of the diverse land surfaces, vegetation, animal life, soil types, etc., and the uniqueness of many surface disturbances. Therefore, standards for reclamation and mitigation measures to minimize adverse impacts are established for each operation by the Bureau of Land Management and Forest Service personnel during the onsite inspection as part of the review of each Application for Permit to Drill and the accompanying surface use plan of operations. General guidance on reclamation and operating standards is contained in a joint Bureau of Land Management, Forest Service, and Geological Survey publication entitled, "Surface Operating Standards for Oil and Gas Exploration and Development," Second Edition, August 1978.

Section 228.108 Bonds.

This section would establish that bonding is required before surface disturbing activities can be authorized and would require the authorized Forest officer to fix the bond amount at a sum adequate to ensure compliance with 30 U.S.C. 226(g). A bond required by the authorized Forest officer would be held by the Bureau of Land Management. This would provide for more efficient management and less burden on the public. The proposed rule does not establish a fixed bond sum because the extent of reclamation required varies by site and type of operation. The authorized Forest officer is in the best position to determine what is an adequate bond amount based upon on-the-ground site specific review of proposed operations.

Section 228.109 Indemnification.

This section would provide a means of protecting the United States Government from liability as a result of claims, demands, losses, or judgments caused by an operator's use or occupancy. This language is similar to that found in 36 CFR 251.56, terms and conditions for special use permits, and is necessary to adequately regulate occupancy.

Section 228.110 Temporary cessation of operations.

The Agency has experienced a high incidence of operators temporarily ceasing operations without adequate stabilization of the site or protection of resources or public safety. This section addresses this problem by requiring notification to the Forest Service of temporary or seasonal cessation of operations. This notification would allow the authorized Forest officer to work with the lessee in taking appropriate interim measures to protect resources or public safety.

Section 228.111 Compliance and inspection.

Section (g) of the Leasing Reform Act of 1987 (30 U.S.C. 226(g)) provides remedies in situations where operators fail to comply in any material respect with the reclamation, bonding, and other standards established by the Secretary of Agriculture. Because the sanctions of the Act can result in loss of leases, it is important to establish compliance procedures that ensure operators timely notice of noncompliance, opportunity to remedy the violation, and opportunity for a hearing. Sections 228.111 through 228.113 set forth both informal and formal compliance and hearing procedures. Section 228.111 would require the Forest officer to give notice to an operator when that operator is found in noncompliance with an approved surface use plan of operations, with stipulations made part of the lease at the direction of the Forest Service, or with these proposed regulations. Because it is the intent of the Forest Service to resolve problems at the local level if possible, this section is designed to encourage cooperation between the Forest Service and the operator.

This section also notifies the operator of other statutes applicable to their operations.

Section 228.112 Notice of noncompliance.

This section of this proposed rule would establish the formal procedures to be followed if the authorized Forest officer has determined an entity may have failed or refused to comply in any material respect with the reclamation requirements and other applicable standards established under 30 U.S.C. 226(g) of the Federal Onshore Oil and Gas Leasing Reform Act of 1987. The authorized Forest officer would be required to refer noncompliance such as, but not limited to, operating without an approved surface use plan of operations or failure to complete reclamation. The section describes the manner of serving notice and states that the authorized Forest officer shall either refer the matter to a compliance officer for review and/or suspend the surface use plan of operations in the event of imminent dangers to public health or safety and irreparable resource damage. The section also provides for the abatement of such emergencies as irreparable resource damage through actions by the Forest Service and for billing of the operator for costs incurred by the Agency to perform such abatement actions.

Section 228.113 Material noncompliance preceedings.

This section would establish the procedure for review and determination of material noncompliance. The Deputy Chief of the National Forest System would review a noncompliance referral made by the authorized Forest officer and if evidence supports a reasonable belief that an operator has failed to come into compliance with the requisite standards and that noncompliance may be material, the Deputy Chief would initiate the material noncompliance proceedings. The section requires due notice to the operator and specifies the content of the notice, permits an operator to submit argument and allows for an informal hearing at the operator's request or a fact finding conference.

The proposed rule specifies that the compliance officer's decision shall be based on the entire record and prescribes the content of decision letter.

Upon determining that an operator is in material noncompliance, the compliance officer would be required to notify the Secretary of the Interior of his/her findings. This section of the proposed rule would require the Deputy Chief for the National Forest System to maintain and distribute a list of operators in noncompliance to help ensure that pursuant to the 1987 Act, such operators do not receive future leases. Paragraph (g) of this section also provides for petition of the authorized Forest officer to rescind a finding of noncompliance once an entity has come into compliance. Reinstatement of an operator's opportunity to obtain future leases is clearly envisioned by the 1987 Leasing Reform Act and the petitioning process proposed in this section provides a manageable process for achieving reinstatement when an operator has come into compliance.

Section 228.114 Additional notice of decisions.

In compliance with 30 U.S.C. 226(f) of the Leasing Reform Act, this section requires the Forest Service to post notices provided by the Bureau of Land Management of lease sales, requests for modification of lease stipulations, and applications for permit to drill. The section specifies where such notices are to be posted and makes clear that posting notices is in addition to the public notice requirements imposed elsewhere in the rule.

36 CFR 211.18 Appeal of decisions of forest officers.

In addition to the proposed rules at Part 228, Subpart E of Title 36, this rulemaking contains an amendment to the rules governing appeal of decisions of authorized Forest officers. Under this proposed rule, 36 CFR 211.18 would be amended to exempt from those rules, appeal of decisions related to determining lands suitable for leasing made pursuant to 36 CFR 228.102 and related to the issuance of a notice of noncompliance or to material noncompliance proceedings related to oil and gas leasing operations on National Forest System lands pursuant to 36 CFR 228.11 through 228.112. Section 228.113 of the proposed rule would establish separate administrative procedures for material noncompliance decisions. It should be noted that, under this conforming amendment, the general public also could not appeal decisions related to compliance and noncompliance decisions. This exclusion is appropriate since compliance decisions are solely matters affecting the business relationship that exists between the operator and the Forest Service based on the terms of a Federal lease and an approved surface use plan of operations. Those decisions that are appealable are identified in this proposed rulemaking.

36 CFR Part 261 Prohibitions.

This rulemaking also contains an amendment to the rules governing occupancy of the National Forest System. Under this proposed rule, 36 CFR Part 261, Subpart A—General Prohibitions, would amend "Operating Plan" to include a surface plan of operations as provided for in 36 CFR Part 228, Subpart E. This is necessary to differentiate between a plan of operations at 36 CFR Part 228, Subpart A.

Regulatory Impact

These proposed rules have been reviewed under the Department of Agriculture procedures and Executive Order 12291, and it has been determined that these regulations are not major rules. This regulation will not have an effect on the economy of $100 million or more and, in and of itself, will not increase major costs to consumers, geographic regions, industry, or Federal, State, and local agencies. These regulations are essentially procedural and represent no change in current requirements on lessees, assignees, or operators and, therefore, it will not adversely affect competition, employment, investment, productivity, innovation, or the ability of United States based enterprises to compete in foreign markets.

It has also been determined that these proposed rules do not have a significant economic impact on a substantial number of small entities because of its limited scope and application. Therefore, the proposed rules are not subject to review under the Regulations Flexibility Act (5 U.S.C. 60 et seq.).

It should be noted, that while the requirements of the surface use plan of operations proposed in this rule are new requirements by the Department of Agriculture, the requirements are identical to that now required by the Bureau of Land Management, U.S. Department of the Interior, as part of an Application for Permit, to Drill or Sundry Notice and, therefore, will not increase the amount or type of information a lessee would have to submit for operations on National Forest System lands.

The total burden hours on an operator are estimated to be 125 hours annually. These hours are the same as estimated by the Bureau of Land Management in its request for Office of Management and Budget clearance of Forms 3160-3 and 3160-5. These forms were cleared through December 31, 1988, and are assigned clearance numbers 1004-0136 and 1004-0135 respectively. An operator proposing to conduct surface disturbing activities on the National Forest System is required to utilize these existing Bureau of Land Management forms and submit information required in this proposed rule to the appropriate Bureau of Land Management office.

However, because these requirements will not be levied by the Department of Agriculture, a request for approval of these new reporting requirements has been submitted to the Office of Management and Budget pursuant to 5 CFR Part 1320. Those wishing to comment on the proposed information requirements of this rule are encouraged to send their written comments to the Forest Service and to the:

USDA Regulatory Desk Officer, Office of Information and Regulatory Affairs, Attention: Docket Library, Room 3201 NEOB, Washington, DC 20503

Based on both experience and environmental analysis, this proposed rule will have no significant effect on the human environment, individually or cumulatively. Therefore, it is categorically excluded from documentation in an environmental assessment or an environmental impact statement (40 CFR 1508.4).

List of Subjects

36 CFR Part 211

Administrative practice and procedure, Fire prevention, Intergovernmental relations, National forests.

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36 CFR Part 228

Administrative practices and procedures, Environmental protection, Mines, National forests, Public lands—Mineral resources, Rights of way, Reporting and recordkeeping, Surety bonds, Wilderness areas.

36 CFR Part 261

Law enforcement, National forests.

Therefore, for the reasons set forth in the preamble, it is proposed to amend Chapter II of Title 36 of the Code of Federal Regulations as follows:

PART 211—ADMINISTRATION

1. The authority citation for Part 211 would continue to read as follows:

Authority: 30 Stat. 35, as amended, sec. 1, 33 Stat. 628 (16 U.S.C. 551, 472).

Subpart B—Appeal of Decisions Concerning the National Forest System

2. Amend § 211.18 by adding a new paragraph (b)(16) to read as follows:

§ 211.18 Appeal of decisions of Forest officers.

* * * * *

(b) * * *

(16) Decisions made pursuant to 36 CFR Part 228, Subpart E, except as otherwise provided by §§ 228.102(d), 228.104(c) and 228.108(b).

* * * * *

PART 228—MINERALS

1. The authority citation for Part 228 would be revised to read as follows:

Authority: 30 Stat. 35 and 36, as amended (16 U.S.C. 478, 551); 41 Stat. 437, as amended, sec. 5102(d), 101 Stat. 1330–256 (30 U.S.C. 226); 61 Stat. 914, as amended (30 U.S.C. 352).

2. Add new Subpart E to read as follows:

Subpart E—Oil and Gas Resources

Sec.

228.100 Scope and applicability.
228.101 Definitions.

Leasing

228.102 Determination of lands suitable for leasing.
228.103 Notice and transmittal of suitability decision.
228.104 Consideration of requests to modify lease terms.

Authorization of Occupancy Within a Leasehold

228.105 Operator's submission of surface use plan of operations.
228.106 Review of surface use plan of operations.
228.107 Surface use requirements.
228.108 Bonds.
228.109 Indemnification.

Administration of Operations

228.110 Temporary cessation of operations.
228.111 Compliance and inspection.
228.112 Notice of noncompliance.
228.113 Material noncompliance proceedings.

Notice of Decisions

228.114 Additional notice of decisions.

§ 228.100 Scope and applicability.

(a) *Scope.* This subpart sets forth the rules and procedures by which the Forest Service of the United States Department of Agriculture will carry out its statutory responsibilities in the issuance of oil and gas leases on National Forest System lands, for approval and modification of attendant surface use plans of operations, for monitoring of surface disturbing operations on such leases, and for enforcement of surface use requirements and reclamation standards.

(b) *Applicability.* The rules of this subpart apply to leases on National Forest System lands and to operations that are conducted on Federal oil and gas leases on National Forest System lands as of (*Insert effective date of these rules*).

(c) *Applicability of other rules.* Surface uses, including access, associated with oil and gas prospecting, exploration, development, production, and reclamation activities, that are conducted on National Forest System lands outside a leasehold must be authorized by the Forest Service. Such off-leasehold activities are subject to the regulations set forth elsewhere in 36 CFR Chapter II, including but not limited to the regulations set forth in 36 CFR Parts 251 and 261.

§ 228.101 Definitions.

For the purposes of this subpart, the terms listed in this section have the following meanings:

Assignee. A person to whom a lessee has transferred all or part of the lessee's interest in a Federal oil and gas lease.

Assignment. The transfer of all or part of an interest in a Federal oil and gas lease by a lessee to an assignee.

Authorized Forest officer. The Forest Service employee delegated the authority to perform a duty described in these rules. Generally, a Regional Forester, Forest Supervisor, District Ranger, or Minerals Staff Officer depending on the scope and level of the duty to be performed.

Compliance Officer. The Deputy Chief, or the Associate Deputy Chiefs, National Forest System or the line officer designated to act in the absence of the Duty Chief.

Leasehold. The area described in a Federal oil and gas lease.

National Forest System. All National Forest lands reserved or withdrawn from the public domain of the United States, all National Forest lands acquired through purchase, exchange, donation, or other means, the National Grasslands and land utilization projects administered under title III of the Bankhead-Jones Tenant Act (7 U.S.C.A. 1010 et seq.), and other lands, waters, or interests therein which are administered by the Forest Service or are designated for administration through the Forest Service as a part of the system (16 U.S.C. 1609).

Off-leasehold. A term used to characterize activities associated with oil and gas leasing operations that occur on National Forest System lands outside the area described in a Federal oil and gas lease.

Operations. Surface disturbing activities that are conducted on a leasehold on National Forest System lands pursuant to a current approved surface use plan of operations, including but not limited to, exploration, development, production and utilization of oil and gas resources and reclamation of surface resources.

Operator. A person who is conducting operations pursuant to a Federal oil and gas lease. The operator may be a lessee, assignee, or a person conducting operations on behalf of a lessee or assignee.

Person. An individual, partnership, corporation, association or other legal entity.

Surface use plan of operations. A document submitted by an operator as part of an Application for Permit to Drill or a supplement to an approved plan of operations detailing proposed surface occupancy and planned operations pursuant to a Federal oil and gas lease.

Leasing

§ 228.102 Determination of land suitable for leasing.

(a) *Compliance with the National Environmental Policy Act of 1969.* In determining lands suitable for leasing, the authorized Forest officer shall comply with the National Environmental Policy Act of 1969, implementing regulations at 40 CFR Parts 1500–1508, and Forest Service implementing policies and procedures set forth in Forest Service Manual Chapter 1950 and Forest Service Handbook 1909.15. In compliance with the Act, the authorized Forest officer shall take into

consideration the authority granted by the Federal Onshore Oil and Gas Leasing Reform Act of 1987, to subsequently approve or disapprove a surface use plan of operations proposed following issuance of a lease.

(b) *Identification of potential leasing areas.* Within 6 months of the effective date of these rules, Forest Supervisors shall identify those areas of the National Forest System under their jurisdiction that have potential for oil and gas leasing and that have not previously been evaluated for their suitability for oil and gas leasing.

(1) An area shall be considered to have potential for oil and gas leasing if:

(i) There is ongoing oil and gas production in the area;

(ii) The geological environment of the area is known to be favorable for the accumulation of oil and gas resources; or

(iii) There is ongoing industry interest in obtaining oil and gas leases for the area.

(2) After identifying those areas that have potential for oil and gas leasing, each Forest Supervisor shall consult with the oil and gas industry, the Bureau of Land Management, and other interested parties and develop a schedule for reviewing areas not previously evaluated to determine their suitability for oil and gas leasing. In developing this schedule, the Forest Supervisor shall give first priority to reviewing those areas that appear to have the highest potential for leasing. The Forest Supervisor may update the schedule as appropriate.

(c) *Review of lands for leasing suitability.* In reviewing areas identified as having potential for oil and gas leasing, the authorized Forest officer:

(1) Shall identify and exclude from further review the following lands, which are not available for leasing:

(i) Lands withdrawn from mineral leasing by an act of Congress or by an order of the Secretary of the Interior;

(ii) Lands recommended for wilderness allocation by the Secretary of Agriculture;

(iii) Lands designated by statute as wilderness study areas, unless oil and gas leasing is specifically allowed to continue by the statute designating the study area;

(iv) Lands within areas allocated for wilderness or further planning in Executive Communication 1504, Ninety-Sixth Congress (House Document No. 96–119), unless such lands subsequently have been allocated to uses other than wilderness by an approved forest land and resource management plan or have been released to uses other than wilderness by an act of Congress; and

(v) Roadless areas currently undergoing evaluation pursuant to 36 CFR 219.17; and,

(2) Shall review the relevant forest land and resource management plan to identify direction, management prescriptions, and associated standards and guidelines that would be applicable to oil and gas leasing on the area.

(d) *Determination of suitability.* The respective Regional Forester shall determine that an area is suitable for oil and gas leasing and authorizes the Bureau of Land Management to offer oil and gas leasing upon:

(1) A finding that the lands are available for oil and gas leasing,

(2) A finding that oil and gas leasing operations on the area would be consistent with, or would not be precluded by, the applicable forest land and resource management plan, management prescriptions, and associated standards and guidelines in the plan, and

(3) Identification of conditions of surface occupancy and use that would be required as stipulations in leases issued for the area to ensure consistency with law and the forest land and resource management plan for the area.

§ 228.103 Notice and transmittal of suitability decision.

(a) *Public notice.* The authorized Forest officer shall give public notice in a newspaper of general circulation of the outcome of each suitability review conducted pursuant to § 228.102(d). The notice shall further specify that the decision is subject to administrative appeal under the procedures at 36 CFR 211.18.

(b) *Notice to the Bureau of Land Management.* The authorized Forest officer shall promptly notify the appropriate Bureau of Land Management office, in writing, of the decision. The notice shall clearly specify those lands that the Forest Service authorizes the Bureau of Land Management to offer for oil and gas leasing and those stipulations which the Forest Service directs the Bureau of Land Management to include in a lease which may be issued for those lands.

(c) *Standard stipulation.* The following standard stipulation shall be included in oil and gas leases issued for National Forest System lands: "The lessee must comply with the applicable rules and regulations of the Secretary of Agriculture set forth at Title 36, Chapter II, of the Code of Federal Regulations governing use and management of the National Forest System and must submit to the authorized Forest officer a surface use plan of operations for approval or disapproval in accordance with 36 CFR Part 228, Subpart E. The Secretary of Agriculture retains the authority under this lease to preclude all operations on a leasehold where analyses of the environment indicate such action is appropriate."

§ 228.104 Consideration of requests to modify lease terms.

(a) *General.* A person proposing to conduct operations on a lease may request the authorized Forest officer to authorize the Bureau of Land Management to modify or waive a stipulation included in a lease at the direction of the Forest Service except for the standard stipulation as required by § 228.103(c) of this subpart. The person making the request should submit any information which might assist the authorized Forest officer in making a decision.

(b) *Review.* The authorized Forest officer shall review any information submitted in support of the request and any other pertinent information.

(1) As part of the review, the authorized Forest officer shall comply with the National Environmental Policy Act of 1970 (42 U.S.C. 4331 et seq.) and any other applicable laws, and prepare any appropriate environmental documents.

(2) The authorized Forest officer may grant a request to modify or waive a stipulation if:

(i) Modification or waiver of the stipulation is consistent with applicable Federal laws;

(ii) Modification or waiver of the stipulation is consistent with the current forest land and resource management plan if such a plan is in effect;

(iii) The management objectives which led the Forest Service to require the inclusion of the stipulation in the lease can be met without restricting operations in the manner provided for by the stipulation given the present condition of the surface resources or the nature, location, or timing of the proposed operations; or are no longer applicable for the area; and

(iv) Is acceptable to the authorized Forest officer based upon the review of the environmental consequences of the proposed modification.

(c) *Notice of decision.* (1) When the review of a stipulation modification or waiver request has been completed and the authorized Forest officer has reached a decision, the authorized Forest officer shall promptly notify the operator and the appropriate Bureau of Land Management office, in writing, of the decision to grant, with or without additional conditions, or deny the request.

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(2) For any decision to modify or waive a lease stipulation that would result in a substantial modification of a lease term, the authorized Forest officer shall give notice in a newspaper of general circulation of the decision. The notice shall specify that the decision is subject to administrative appeal at 36 CFR 211.18.

Authorization of Occupancy Within a Leasehold

§ 228.106 Operator's submission of surface use plan of operations.

(a) *General.* An operator proposing to conduct operations that will cause disturbance of surface resources of National Forest System lands must submit a proposed surface use plan of operations as part of the Application for Permit to Drill to the appropriate Bureau of Land Management office for forwarding to the Forest Service.

(b) *Preparation of plan.* In preparing the surface use plan of operations, the operator is encouraged to contact the local Forest Service office for assistance and to make use of such information as is available from the Forest Service concerning the surface resources and uses, environmental considerations, and local reclamation procedures.

(c) *Content of plan.* The type, size, and intensity of the proposed operations and the sensitivity of the surface resources that will be affected by the proposed operations determine the level of detail and the amount of information which the operator must include in a proposed plan of operations. However, any surface use plan of operations submitted by an operator shall contain maps and plats of a scale no smaller than 1:24,000 and narrative descriptions which provide the following information:

(1) *Access facilities.* The location, size, and type of existing or new access facilities that the operator proposes to use, maintain, improve, or construct in connection with the operations;

(2) *Ancillary facilities.* The location, size, and type of any ancillary facilities (such as airstrips, camps, living facilities, parking areas, reserve and burn pits, and soil material stockpiles) that the operator proposes to use in connection with the operations;

(3) *Drill pad.* The location and design parameters of the drill pad that the operator proposes to construct;

(4) *Production facilities.* To the extent known or anticipated, the location, size, and type of production facilities and lines that the operator anticipates would be installed if the well is successful;

(5) *Reclamation measures.* The measures that the operator proposes to take to reclaim surface resources disturbed in connection with the operations, including information on the configuration of the reshaped topography, drainage system, segregation of spoil materials, surface manipulations, waste disposal, revegetation methods, soil treatments and other practices necessary to reclaim all disturbed areas, including any access roads or portions of drill pads when no longer needed;

(6) *Reclamation timing.* An estimate of the time for commencement and completion of reclamation operations, dependent upon weather conditions and other surface uses of the area;

(7) *Waste disposal.* The methodology that the operator proposes to use for the safe containment and disposal of the waste materials (such as cuttings, garbage, salts, chemicals, sewage, etc.) that will result from drilling the proposed well and the location of the waste containment and disposal facilities that the operator proposes to utilize; and

(8) *Other information.* Any other information that might assist the authorized Forest officer in reviewing the proposed surface use plan of operations.

(d) *Supplemental plan.* The operator must submit a supplemental surface use plan of operations to the Bureau of Land Management for forwarding to the Forest Service whenever the operator proposes to conduct additional surface disturbing operations that are not authorized by a current approved surface use plan of operations. A supplemental plan of operations is subject to the same requirements under this subpart as an initial surface use plan of operations.

§ 228.106 Review of surface use plan of operations.

(a) *Review.* The authorized Forest officer shall review and decide on the adequacy of a surface use plan of operations as promptly as practicable given the nature and scope of the proposed plan.

(1) As part of the review, the authorized Forest officer shall comply with the National Environmental Policy Act of 1969, implementing regulations at 40 CFR Parts 1500 through 1508, and the Forest Service implementing policies and procedures set forth in Forest Service Manual Chapter 1950 and Forest Service Handbook 1909.15.

(2) An adequate surface use plan of operations is one that:

(i) Contains the information specified in § 228.105(c) of this subpart;

(ii) Is consistent with the terms of the lease, including the lease stipulations, and applicable Federal laws;

(iii) Is consistent with the current forest land and resource management plan if such a plan is in effect; and

(iv) Meets or exceeds the surface use requirements of § 228.107 of this subpart.

(v) Is acceptable to the authorized Forest officer based upon the review of the environmental consequences of the proposed operation.

(b) *Decision.* The authorized Forest officer shall make a decision on the approval of a surface use plan of operations as follows:

(1) If the authorized Forest officer will not be able to make a decision on the proposed plan within 3 days after the conclusion of the 30-day notice period provided for by 30 U.S.C. 226(f), the authorized Forest officer shall advise the appropriate Bureau of Land Management office, either in writing or orally with subsequent written confirmation, that additional time will be needed to process the plan. The authorized Forest officer shall explain the reason why additional time is needed and predict the date by which the authorized Forest officer will make a decision on the plan.

(2) When the review of a surface use plan of operations has been completed, the authorized Forest officer shall promptly notify the operator and the appropriate Bureau of Land Management office, in writing, that:

(i) The plan is approved as submitted upon signature of the operator and posting of the required bond with the Bureau of Land Management as specified by the authorized Forest officer (§ 228.108);

(ii) The plan is approved subject to specified operating conditions upon signature of the operator and posting of the required bond with the Bureau of Land Management as specified by the authorized Forest officer (§ 228.108); or

(iii) The plan has been disapproved for the reasons stated.

(c) *Notice of decision.* The authorized Forest officer shall give public notice of the decision on a plan and include in the notice that the decision is subject to appeal under the administrative appeal procedures at 36 CFR 211.18.

(d) *Transmittal of decision.* The authorized Forest officer shall immediately forward a decision on the approval of a surface use plan of operations to the appropriate Bureau of Land office.

(e) *Supplemental plans.* A supplemental surface use plan of operations (§ 228.105(d)) is reviewed in the same manner as an initial surface use plan of operations.

§ 228.107 Surface use requirements.

(a) *General.* The operator shall conduct operations on a leasehold on National Forest System lands to minimize effects on surface resources, to prevent unnecessary or unreasonable surface resource disturbance, and in compliance with the other requirements of this section.

(b) *Notice of operations.* The operator must notify the authorized Forest officer 48 hours prior to commencing operations or resuming operations following their temporary cessation (§ 228.110).

(c) *Access facilities.* The operator shall construct and maintain access facilities to assure adequate drainage and to minimize or prevent damage to surface resources.

(d) *Cultural and historical resources.* The operator shall report findings of cultural and historical resources to the authorized Forest officer immediately and, except as otherwise authorized in an approved surface use plan of operations, protect such resources.

(e) *Fire prevention and control.* To the extent practicable, the operator shall take measures to prevent uncontrolled fires on the area of operation and to suppress uncontrolled fires resulting from the operations.

(f) *Fisheries, wildlife and plant habitat.* The operator shall comply with the requirements of the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) and its implementing regulations (50 CFR Chapter IV), and, except as otherwise provided in an approved surface use plan of operations, conduct operations in such a manner as to maintain and protect other fisheries, wildlife, and plant habitat.

(g) *Reclamation.* (1) Unless otherwise provided in an approved surface use plan of operations, the operator shall conduct reclamation concurrently with other operations.

(2) Within 1 year of completion of operations on a portion of the area of operation, the operator must reclaim that portion, unless a different period of time is specified in writing by the authorized Forest officer.

(3) The operator must:

(i) Control soil erosion and landslides;

(ii) Control water runoff;

(iii) Remove, or control, solid wastes, toxic substances, and hazardous substances;

(iv) Reshape and revegetate disturbed areas;

(v) Remove structures, improvements, facilities and equipment, unless otherwise authorized; and

(vi) Take such other reclamation measures as specified in the approved surface use plan of operations.

(h) *Safety measures.* (1) The operator must maintain structures, facilities, improvements, and equipment located on the area of operation in a safe and neat manner and in accordance with an approved surface use plan of operations.

(2) The operator must take appropriate measures in accordance with applicable Federal and State laws and regulations to protect the public from hazardous sites or conditions resulting from the operations. Such measures may include, but are not limited to, posting signs, building fences, or otherwise identifying the hazardous site or condition.

(i) *Wastes.* The operator must either remove garbage, refuse, and sewage from National Forest System lands or treat and dispose of that material in such a manner as to minimize or prevent adverse impacts on surface resources. The operator shall treat or dispose of produced water, drilling fluid, and other waste generated by the operations in such a manner as to minimize or prevent adverse impacts on surface resources.

(j) *Watershed protection.* (1) Except as otherwise provided in the approved surface use plan of operations, the operator shall not conduct operations in areas subject to mass soil movement, riparian areas and wetlands.

(2) The operator shall take measures to minimize or prevent erosion and sediment production. Such measures include, but are not limited to, siting structures, facilities, and other improvements to avoid steep slopes and excessive clearing of land.

§ 228.108 Bonds.

(a) *Bond amount.* As part of the review of a proposed surface use plan of operations, the authorized Forest officer shall determine, based upon the costs of reclamation of surface disturbance and other pertinent factors, the bonding requirements for any plan of operations that the authorized Forest officer proposes to approve. Bonds required by the Forest Service are posted with the Bureau of Land Management.

(b) *Calculation.* The authorized Forest officer shall fix the amount of the bond at the sum that is adequate, for the entire period of operations that will be authorized by the plan of operations, to ensure compliance with 30 U.S.C. 226(g), including complete and timely reclamation of the leasehold and the restoration of lands or surface waters adversely affected by lease operations after the abandonment or cessation of oil and gas operations on the lease. An adequate amount is one that is equal to but not greater than the cost of reclaiming surface disturbances.

(c) *Reduction in bond amount after reclamation.* (1) The operator may request the authorized Forest officer to request the Bureau of Land Management to approve a reduction in the amount of an individual lease bond whenever the operator receives a notice that reclamation has been satisfactorily completed on a portion of the area of operation.

(2) The authorized Forest officer receiving the request shall:

(i) Calculate the sum that is sufficient for the remainder of the period of operation authorized by the surface use plan of operations;

(ii) Notify the Bureau of Land Management of the amount that is sufficient for the remainder of operations; and

(iii) If appropriate under the circumstances, recommend a reduction in the amount of the bond.

(d) *Recalculation of bond requirements.* The authorized Forest officer shall recalculate bonding requirements whenever the authorized Forest officer proposes to approve a supplemental plan of operations (§ 228.105(d)).

§ 228.109 Indemnification.

The operator and, if the operator does not hold all of the interest in the applicable lease, all lessees and assignees are jointly and severally liable in accordance with Federal and State laws for indemnifying the United States for:

(a) Injury, loss or damage, including fire suppression costs, which the United States incurs as a result of the operations; and

(b) Payments made by the United States in satisfaction of claims, demands or judgments for an injury, loss or damage, including fire suppression costs, which result from the operations.

Administration of Operations

§ 228.110 Temporary cessation of operations.

(a) *General.* Except as provided in paragraph (b) of this section, immediately upon the temporary cessation of operations for a period of 45 days or more, the operator must file a statement with the authorized Forest officer that verifies the operator's intent to maintain structures, facilities, improvements, and equipment that will remain on the area of operation during the cessation of operations and that specifies the expected date by which operations will be resumed.

(b) *Seasonal shutdowns.* The operator need not file the statement required by paragraph (a) of this section if the

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cessation of operations results from seasonally adverse weather conditions and the operator will resume operations promptly upon the conclusion of those adverse weather conditions.

(c) *Interim measures.* The authorized Forest officer may require the operator to take reasonable interim reclamation or erosion control measures to protect surface resources during temporary cessations of operations, including cessations of operations resulting from seasonally adverse weather conditions.

§ 228.111 Compliance and inspection.

(a) *General.* Operations must be conducted in accordance with the lease, including stipulations made part of the lease at the direction of the Forest Service, an approved surface use plan of operations, and the regulations of this subpart.

(b) *Voluntary correction of noncompliance.* When, during an inspection, an authorized Forest officer finds that the operator is not in compliance with a reclamation requirement or other standard in a stipulation included in the lease at the request of the Forest Service, an approved surface use plan of operations or the regulations of this subpart, the authorized Forest officer shall promptly notify the operator on-site or by telephone of the noncompliance and give the operator the opportunity to either correct the noncompliance or, if appropriate, to reach agreement with the authorized Forest officer on an amendment to the approved surface use plan of operations that would remedy the noncompliance. After discussing the noncompliance with the operator, the authorized Forest officer shall establish a deadline for voluntary compliance, advise the operator of the deadline, and make a note to the file of the noncompliance, the applicable deadline, and the date the operator was advised of the deadline. If the operations have not been brought into compliance by the deadline, the authorized Forest officer shall utilize the provisions of § 228.112 of this subpart.

(c) *Completion of reclamation.* The authorized Forest officer shall give prompt written notice to an operator whenever reclamation of a portion of the area affected by surface operations has been satisfactorily completed in accordance with the approved surface use plan of operations and § 228.108 of this subpart. The notice shall describe the portion of the area on which the reclamation has been satisfactorily completed.

(d) *Compliance with other statutes and regulations.* Nothing in this subpart shall be construed to relieve an operator from complying with applicable Federal and State laws or regulations, including, but not limited to:

(1) Federal and State air quality standards, including the requirements of the Clean Air Act, as amended (42 U.S.C. 1857 et seq.);

(2) Federal and State water quality standards including the requirements of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1151 et seq.);

(3) Federal and State standards for the use or generation of solid wastes, toxic substances and hazardous substances;

(4) The Endangered Species Act of 1973, 16 U.S.C. 1531 et seq., and its implementing regulations, 50 CFR Chapter IV; and

(5) The Archeological Resources Protection Act of 1979, as amended (16 U.S.C. 470aa et seq.) and its implementing regulations 36 CFR Part 296.

(e) *Penalties.* An operator is subject to the prohibitions and attendant penalties of 36 CFR Part 261 if surface disturbing operations are being conducted that are not authorized by an approved surface use plan of operations or those operations violate a term or operating condition of an approved surface use plan of operations.

(f) *Inspection.* Forest Service officers shall periodically inspect the area of operations to determine whether the operation are being conducted in compliance with the regulations in this subpart, the stipulations included in the lease at the direction of the Forest Service, and an approved surface use plan of operations.

§ 228.112 Notice of noncompliance.

(a) *Issuance.* When an operator has not voluntarily corrected an instance of noncompliance with a reclamation requirement or other standard, in a stipulation included in a lease at the direction of the Forest Service, an approved surface use plan of operation, or the regulations in this subpart by the deadline established through the procedures of §228.111(b) of this subpart, the authorized Forest officer shall issue a notice of noncompliance.

(1) *Content.* The notice of noncompliance shall include the following:

(i) Identification of the reclamation requirements or other standard(s) with which the operator is not in compliance;

(ii) Description of the measures which are required to correct the noncompliance;

(iii) Specification of a reasonable period of time within which the noncompliance must be corrected;

(iv) If the noncompliance appears to be material, identification of the possible consequences of continued noncompliance of the requirement(s) or standard(s) as described in 30 U.S.C. 226(g);

(v) If the noncompliance appears to be in violation of the prohibitions set forth in 36 CFR Part 261, identification of the possible consequences of continued noncompliance of the requirement(s) or standard(s) as described in 36 CFR 261.1b; and

(vi) Notification that the authorized Forest officer remains willing and desirous of working cooperatively with the operator to resolve or remedy the noncompliance.

(2) *Extension of deadlines.* The oeprator may request an extension of a deadline specified in a notice of noncompliance if the operator is unable to come into compliance with the applicable requirement(s) or standard(s) identified in the notice of noncompliance by the deadline because of conditions beyond the operator's control. The authorized Forest officer shall not extend a deadline specified in a notice of noncompliance unless the operator requested an extension and the authorized Forest officer finds that there was a condition beyond the operator's control, that such condition prevented the operator from complying with the notice of noncompliance by the specified deadline, and that the extension will not adversely affect the interests of the United States. Conditions which may be beyond the operator's control include, but are not limited to, closure of an area in accordance with 36 CFR Part 261, Subparts B or C, or inaccessibility of an area of operations due to such conditions as fire, flooding, or snowpack.

(3) *Manner of service.* The authorized Forest officer shall serve a notice of noncompliance or a decision on a request for extension of a deadline specified in a notice upon the operator in person, by certified mail or by telephone. However, if notice is initially provided in person or by telephone, the authorized Forest officer shall send the operator written confirmation of the notice or decision by certified mail.

(b) *Failure to come into compliance.* If the operator fails to come into compliance with the applicable requirement(s) or standard(s) identified in a notice of noncompliance by the deadline specified in the notice, or an approved extension, the authorized Forest officer shall decide whether the noncompliance appears to be material given the reclamation requirements and other standards applicable to the lease established by 30 U.S.C. 226(g) the

regulations in this subpart, the stipulations included in a lease at the direction of the Forest Service, or an approved surface use plan of operations and whether the noncompliance is resulting in an imminent danger to public health or safety, irreparable resource damage or another emergency.

(1) *Referral to compliance officer.* When the operations appear to be in material noncompliance, the authorized Forest officer shall promptly refer the matter to the compliance officer. The referral shall be accompanied by a complete statement of the facts supported by appropriate exhibits. Noncompliance which the authorized Forest officer shall refer includes, but is not limited to, operating without an approved surface use plan of operations, operating under a suspended surface use plan of operations, failing to timely complete reclamation in accordance with an approved surface use plan of operations, failing to maintain an acceptable bond in the amount specified by the authorized Forest officer during the period of operation, failing to timely reimburse the Forest Service for the cost of abating an emergency, and failing to comply with any term included in a lease, stipulation, or approved surface use plan of operations relating to the protection of a threatened or endangered species.

(2) *Suspension of a surface use plan of operations.* When the noncompliance is resulting in an imminent danger to public health or safety or in irreparable resource damage, the authorized Forest officer shall suspend approval of the surface use plan of operations, in whole or in part.

(i) A suspension will remain in effect until the operator comes into compliance with the applicable requirement(s) or standard(s) identified in the notice of noncompliance.

(ii) The authorized Forest officer shall serve decisions suspending a surface use plan of operations upon the operation in person, by certified mail, or by telephone. However, if notice is initially provided in person or by telephone, the authorized Forest officer shall send the operator written confirmation of the decision by certified mail.

(iii) The authorized Forest officer shall immediately notify the appropriate Bureau of Land Management office of a suspension of an operator's surface use plan of operations.

(3) *Abatement of emergencies.* When the noncompliance is resulting in an emergency, the authorized Forest officer may take action as necessary to abate the emergency. The total cost to the Forest Service of taking actions to abate an emergency becomes an obligation of the operator.

(i) Emergency situations include, but are not limited to, imminent dangers to public health or safety or irreparable resource damage.

(ii) The authorized Forest officer shall promptly serve a bill for such costs upon the operator by certified mail.

§ 228.113 Material noncompliance proceedings.

(a) *Initiation of proceedings.* The compliance officer shall promptly evaluate a referral made by the authorized Forest officer pursuant to § 228.112(b)(1) of this subpart. If the compliance officer agrees that there is adequate evidence to support a reasonable belief that an operator has failed to come into compliance with the applicable requirement(s) or standard(s) identified in a notice of noncompliance by the deadline specified in the notice, or an extension approved by the authorized Forest officer, and that the noncompliance may be material, the compliance officer shall initiate a material noncompliance proceeding.

(1) *Notice of proceedings.* The compliance officer shall inform the operator, and if the operator does not hold all the interest in the lease, all lessees, and assignees of the material noncompliance proceedings by certified mail, return receipt requested.

(2) *Content of notice.* The notice of the material noncompliance proceeding shall include the following:

(i) The specific reclamation requirement(s) or other standard(s) of which the operator may be in material noncompliance;

(ii) A description of the measures that are required to correct the violation;

(iii) A statement that if the compliance officer finds that the operator is in material noncompliance with a reclamation requirement or other standard applicable to the lease, the Secretary of the Interior will not be able to issue new leases or approve new assignments of leases to the operator, any subsidiary or affiliate of the operator, or any person controlled by or under common control with the operator until the compliance officer finds that the operator has come into compliance with such requirement or standard; and

(iv) A recitation of the specific procedures governing the material noncompliance proceeding set forth in paragraphs (b) through (e) of this section.

(b) *Answer.* Within 30 calendar days after receiving the notice of the proceeding, the operator may submit, in person, in writing, or through a representative, an answer containing information and argument in opposition to the proposed material noncompliance finding, including information that raises a genuine dispute over the material facts. In that submission, the operator also may:

(1) Request an informal hearing with the compliance officer; and

(2) Identify pending administrative or judicial appeal(s) which are relevant to the proposed material noncompliance finding and provide information which shows the relevance of such appeal(s).

(c) *Informal hearing.* If the operator requests an informal hearing, it shall be held within 20 calendar days from the date that the compliance officer receives the operator's request.

(1) The compliance officer may postpone the date of the informal hearing if the operator requests a postponement in writing.

(2) At the hearing, the operator, appearing personally or through and attorney or another authorized representative, may informally present and explain evidence and argument in opposition to the proposed material noncompliance finding.

(3) A transcript of the informal hearing shall not be required.

(d) *Additional procedures as to disputed facts.* If the compliance officer finds that the answer raises a genuine dispute over facts essential to the proposed material noncompliance finding, the compliance officer shall so inform the operator by certified mail, return receipt requested. Within 10 days of receiving this notice, the operator may request a fact-finding conference on those disputed facts.

(1) The fact-finding conference shall be scheduled within 20 calendar days from the date the compliance officer receives the operator's request, unless the operator and compliance officer agree otherwise.

(2) At the fact-finding conference, the operator shall have the opportunity to appear with counsel, submit documentary evidence, present witnesses, and confront the person(s) the Forest Service presents.

(3) A transcribed record of the fact-finding conference shall be made, unless the operator and the compliance officer by mutual agreement waive the requirement for a transcript. The transcript will be made available to the operator at cost upon request.

(4) The compliance officer may preside over the fact-finding conference or designate another authorized Forest officer to preside over the fact-finding conference.

(5) Following the fact-finding conference, the authorized Forest officer

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who presided over the conference shall promptly prepare written findings of fact based upon the preponderance of the evidence. The compliance officer may reject findings of fact prepared by another authorized Forest officer, in whole or in part, if the compliance officer specifically determines that such findings are arbitrary and capricious or clearly erroneous.

(e) *Dismissal of proceedings.* The compliance officer shall dismiss the material noncompliance proceeding if, before the compliance officer renders a decision pursuant to paragraph (f) of this section, the authorized Forest officer who made the referral finds that the operator has come into compliance with the applicable requirements or standards identified in the notice of proceeding.

(f) *Compliance officer's decision.* The compliance officer shall base the decision on the entire record, which shall consist of the authorized Forest officer's referral and its accompanying statement of facts and exhibits, information and argument that the operator provided in an answer, any information and argument that the operator provided in an informal hearing, and the findings of fact if a fact-finding conference was held.

(1) *Content.* The compliance officer's decision shall state whether the operator has violated the requirement(s) or standard(s) identified in the notice of proceeding and, if so, whether that noncompliance is material given the requirements of 30 U.S.C. 226(g), the stipulations included in the lease at the direction of the Forest Service, the regulations in this subpart or an approved surface use plan of operations. If the compliance officer finds that the operator is in material noncompliance, the decision also shall:

(i) Describe the measures that are required to correct the violation;

(ii) Apprise the operator that Secretary of the Interior is being notified that the operator has been found to be in material noncompliance with a reclamation requirement or other standard applicable to the lease; and

(iii) State that the decision is the final administrative determination of the Department of Agriculture.

(2) *Service.* The compliance officer shall serve the decision upon the operator and, if the operator does not hold all of the interest in the applicable lease, upon all lessees and assignees by certified mail, return receipt requested. If the operator is found to be in material noncompliance, the compliance officer also shall immediately send a copy of the decision to the appropriate Bureau of Land Management office.

(g) *Petition for withdrawal of finding.* If an operator who has been found to be in material noncompliance under the provisions of this section believes that the operations have subsequently come into compliance with the applicable requirement(s) or standard(s) identified in the compliance officer's decision, the operator may submit a written petition requesting that the material noncompliance finding be withdrawn. The petition shall be submitted to the authorized Forest officer who issued the operator the notice of noncompliance under § 228.112(a) of this subpart and shall include information or exhibits which shows that the operator has come into compliance with the requirement(s) or standard(s) identified in the compliance officer's decision.

(1) *Response to petition.* Within 30 calendar days after receiving the operator's petition for withdrawal, the authorized Forest officer shall submit a written statement to the compliance officer as to whether the authorized Forest officer agrees that the operator has come into compliance with the requirement(s) or standard(s) identified in the compliance officer's decision. If the authorized Forest officer disagrees with the operator, the written statement shall be accompanied by a complete statement of the facts supported by appropriate exhibits.

(2) *Additional procedures as to disputed material facts.* If the compliance officer finds that the authorized Forest officer's response raises a genuine dispute over facts material to the decision as to whether the operator has come into compliance with their requirement(s) or standard(s) identified in the compliance officer's decision, the compliance officer shall so notify the operator and authorized Forest officer by certified mail, return receipt requested. The notice shall also advise the operator that the fact finding procedures specified in paragraph (d) of this section apply to the compliance officer's deicision on the petition for withdrawal.

(3) *Complaince officer's decision.* The compliance officer shall base the decision on the petition on the entire record, which shall consist of the operator's petition for withdrawal and its accompanying exhibits, the authorized Forest officer's response to the petition and, if applicable, its accompanying statement of facts and exhibits, and if a fact-finding conference was held, the findings of fact. The compliance officer shall serve the decision on the operator by certified mail.

(i) If the compliance officer finds that the operator remains in violation of requirement(s) or standard(s) identified in the decision finding that the operator was in material noncompliance, the decision on the petition for withdrawal shall identify such requirement(s) or standard(s) and describe the measures that are required to correct the violation(s).

(ii) If the compliance officer finds that the operator has subsequently come into compliance with standard(s) identified in the compliance officer's decision that the operator is in material noncompliance, the compliance officer also shall immediately send a copy of the decision on the petition for withdrawal to the appropriate Bureau of Land Management office.

(h) *List of operators found to be in material noncompliance.* The Deputy Chief, National Forest System, shall compile and maintain a list of operators who have been found to be in material noncompliance with reclamation requirements and other standards as provided in 30 U.S.C. 226(g), the regulations in this subpart, a stipulation included in a lease at the direction of the Forest Service, or an approved surface use plan of operations, for a lease on National Forest System lands to which such standards apply. This list shall be made available to Regional Foresters, Forest Supervisors, and upon request, members of the public.

Notice of Decisions

§ 228.114 Additional notice of decisions.

(a) The authorized Forest officer shall promptly post notices provided by the Bureau of Land Management of:

(1) Competitive lease sales which the Bureau plans to conduct that include National Forest System lands;

(2) Substantial modifications in the terms of a lease which the Bureau proposes to make for leases on National Forest System lands; and

(3) Applications for permits to drill which the Bureau has received for leaseholds located on National Forest System lands.

(b) The notice shall be posted at the offices of the affected Forest Supervisor and District Ranger in a prominent location readily accessible to the public.

(c) The authorized Forest officer shall keep a record of the date(s) the notice was posted in the offices of the affected Forest Supervisor and District Ranger.

(d) The posting of notices required by this section are in addition to the requirements for public notice of decisions provided in § 228.104(c) (Notice of decision), and § 228.106 (Review of surface use plan of operations) of this subpart.

PART 261—PROHIBITIONS

1. The authority citation for Part 261 would continue to read as follows:

Authority: 16 U.S.C. 551; 16 U.S.C. 472; 7 U.S.C. 1011(f); 16 U.S.C. 1246(i); 16 U.S.C. 1133(c)-(d)(1).

Subpart A—General Prohibitions

2. Amend § 261.2 by adding a new definition to read as follows:

§ 261.2 Definitions.

"Operating plan" means a plan of operations as provided for in 36 CFR Part 228, Subpart A, and a surface use plan of operations as provided for in 36 CFR Part 228, Subpart E.

Date: January 13, 1989.

Richard E. Lyng,

Secretary of Agriculture.

[FR Doc. 89-1252 Filed 1-19-89; 8:45 am]

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Part VI

Department of Agriculture

Forest Service

36 CFR Parts 211, 217, 228, 251 and 292
Appeal of Decisions Concerning the National Forest System; Final Rule

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DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Parts 211, 217, 228, 251 and 292

Appeal of Decisions Concerning the National Forest System

AGENCY: Forest Service, USDA.

ACTION: Final rule.

SUMMARY: This rule revises Departmental policies and procedures by which individuals or groups may appeal decisions made by Forest Service officials concerning the management of the National Forest System. The Forest Service is replacing its current administrative appeal regulation at 36 CFR 211.18 with two distinct processes for obtaining administrative review of decisions. One rule, 36 CFR Part 251, Subpart C, is limited to appeal of decisions regarding written instruments authorizing occupancy and use of National Forest System lands, except contracts subject to the Contracts Disputes Act, and is available to certain applicants for and holders of such authorizations. The second rule, 36 CFR Part 217, offers any citizen or organization a process for obtaining review of decisions relating to land and resource management plans, projects, and activities. The changes result from a comprehensive review of the current rule as required by Departmental Regulation 1512-1, consideration of suggestions received during that review from appellants and Forest Service officials, analysis of public comment, and consideration of suggestions from other government officials on the proposed rule as published in the Federal Register of May 16, 1988 (53 FR 17310). The intended effect of the rule is to simplify the appeal process and to provide appeal procedures that are commensurate with the nature and type of decision being disputed.

EFFECTIVE DATE: February 22, 1989.

FOR FURTHER INFORMATION CONTACT: Kathryn C. Hauser, Program Analyst, National Forest System, Forest Service, U.S. Department of Agriculture, 202-382-9340.

SUPPLEMENTARY INFORMATION:

Background

The Forest Service, USDA, is responsible for managing 191 million acres of National Forest, National Grassland, and other land known collectively as the National Forest System. The Chief of the Forest Service, through a line organization of Regional Foresters, Forest Supervisors, and District Rangers, manages the surface resources, and, in some instances, the subsurface resources, of these lands.

The Department provides a process by which individuals or groups may appeal National Forest System management decisions, currently set forth at 36 CFR 211.18. During the period Fiscal Years 83 to 85 the Forest Service received an average of 535 appeals per year, of which 235 reached the office of the Chief for review. In FY 86, 1,609 appeals were received of which 506 were directed to the Chief. Most of the latter, 308 in number, were appeals relating to the approval of Forest level land and resource management plans prepared under the provisions of the National Forest Management Act of 1976 (NFMA), and its implementing regulation at 36 CFR Part 219. Relatively few initial decisions of the Chief are appealed to the Secretary, only 10 during FY 86. Review officials are guided in the appeal process by 36 CFR 211.18, and by Forest Service policy and procedures as set forth in the Forest Service Manual (FSM 1570) and accompanying Handbook (FSH 1509.12).

Introduction

There is no statutory requirement that the Forest Service provide a grievance or appeal procedure. Rather, at its own discretion and initiative, the agency, since 1906, has provided some kind of process by which permittees and the general public could challenge forest officer decisions. In fact, until the enactment of several environmental statutes in the 1960's and 70's, the appeal process was about the only formal mechanism the public could utilize to influence agency decisionmaking. Appeal procedures were first codified in 1936 (1 CFR Part 1092, August 15, 1936). During the intervening half century, the Forest Service has periodically revised the appeal regulations responding to changing law and policy, and to its own experiences under the procedures existing at the time. During this period, the rules have shifted alternatively back and forth from informal to formal in nature, and from wholly internal administrative review to review and adjudication by independent boards.

Since 1965 the appeal regulation has been revised three times, the latest in 1982 after the agency conducted a major review of the then current regulation (36 CFR 211.19 promulgated in 1977) to comply with Executive Order (EO) 12044, the first EO to require review of existing regulations on a 5-year cycle. The result was a revised appeal procedure at 36 CFR 211.18 (48 FR 13425, March 31, 1983), the current rule.

The Forest Service announced its decision to review the current appeal regulation in the Semi-Annual Regulatory Agenda published April 27, 1987 (52 FR 14144). On May 20, 1987, the agency issued a press release announcing the impending review, and informed the public that their comments would be solicited. Subsequently, on June 11, 1987, a Federal Register notice (52 FR 22348) was published seeking public input about how well the current appeal process meets public needs, is likely to do so in the future, and what people like and dislike about the process. Additionally, the Forest Service issued 928 letters inviting public comment, and conducted 106 interviews with various line and staff officers throughout the agency.

The review revealed that the appeals process has served the agency and the public with varying degrees of success for many years. However, the process as it has evolved during the last few years is not the simple, quick, informal process that the agency originally intended it to be. Instead, it has become a significant generator of paperwork and a time-consuming, procedurally onerous, and costly effort, trading off resources and energies that otherwise might be directed to substantive on-the-ground resource management needs. Based on these findings, the Forest Service concluded that the appeals process needed adjustment to better serve the public and the agency. Accordingly, the agency published proposed rules revising the appeal procedure in the Federal Register of May 16, 1988 (53 FR 17310).

Analysis of Public Comment

In addition to publishing the proposed rules in the Federal Register, the Forest Service mailed 21,426 letters to known interested parties inviting comment on the rule. Also, agency personnel conducted 193 briefings for groups around the country. In response to these efforts, the Forest Service received 921 letters postmarked on or before the July 15 end-of-comment period, and more than 100 late responses, all of which were considered. Eighteen different types of respondents, as shown below, provided input:

Respondent	Number of Letters
Federal agencies, excluding FS	5
State agencies	16
City/Municipal government	4
Federal elected officials	4
State elected officials	3
County elected officials	6
City elected officials	1
Indian tribal councils	2
Professional societies	1
Conservation/environmental/preservation organizations	127
Civic groups	4
Businesses/business groups	23
Timber industry organizations	55
Associations and unions	41
Riding and hiking interests	5
Hunting and sports groups	4
Other organizations	6
Individuals and families	614
Total timely respondents	921
Total untimely respondents	104
Total	1025

Many letters seemed campaign inspired, using similar or identical language to identify and describe respondents' respective interests or concerns, frequently referring to or referencing other respondents' statements and including them as enclosures. While there was a great deal of common information noticeable in these letters, much of this shared information was erroneous or misleading. The result was considerable comment based on misunderstanding, an indication some respondents were not well apprised about the rule itself or the preamble which presented the rationale behind the proposals. However, many of the comments received were well-informed, constructive, and well-written.

Comments substantially focused on the informal decision review process proposed for 36 CFR Part 217. These comments centered on 11 major areas of concern, constituting more than three-quarters of the total comment. These areas were: purpose and scope, notice of decision, appealable/nonappealable decisions, levels of review, filing procedures/time extensions, responsive statements, stays, open/closed communications, intervention, oral presentations, and filing fees.

After the public comment period closed, and prior to the drafting of this final rule, the Subcommittee on Family Farms, Forests and Energy, of the House Committee on Agriculture, held an oversight hearing on the proposed rule. In addition, the staff of the Senate Committee on Agriculture, Nutrition, and Forestry requested a briefing. The suggestions that arose from the hearing and briefing, along with the public comment received on the proposed rule, whether timely or late, were reviewed and have been fully considered in preparation of these final rules.

Responses received are available for review at the office of the Staff Assistant for Operations, National Forest System, Forest Service, USDA, Room 4211, South Agriculture Building, 14th and Independence Avenues SW., Washington, DC 20013, telephone (202) 382-9349.

General comments

As proposed, two separate processes would be created, geared to the type of decision at issue. One process, to be codified at 36 CFR Part 251, provides for appealing decisions when the appeal is a legally-based grievance arising from a past action that may be affected by the current and disputed decision. This appeal process would afford instrument holders or applicants a degree of process appropriate to the specific nature of their legal, business-type, relationship with the agency.

The second appeal process, to be codified at 36 CFR Part 217, involves decisions made during the planning and decisionmaking process and documented according to the National Environmental Policy Act (NEPA) and National Forest Management Act (NEMA) implementing instructions. It affords interested individuals and organizations who do not have a business-type relationship with the agency one more opportunity, following and in addition to their input during the planning process, to seek agency oversight and reconsideration at a higher level. It emphasizes public participation features currently found in planning and decisionmaking for future actions.

In addition to comments on specific sections of the proposed rules, many respondents expressed concern that: (1) Rights of appeal to which the public is legally entitled are being curtailed; and (2) the public is being divided into two classes, with some of the public relegated to second class status, with attendant diminution of legal rights.

In the first instance, many respondents believed any agency appeal regulation must afford the procedural rights of due process guaranteed by the Fifth Amendment of the Constitution that are required when property rights are affected. Other respondents believed that the appeal regulation must contain all the features of a formal Administrative Procedure Act (APA) process, including a formalized hearing procedure, an impartial judge, and provision for building a record. Some also believed that the appeal regulation is a right specifically provided by statute. There was support expressed for "streamlining" the process, but not to the extent of eliminating features considered to constitute due process (such as responsive statements and consequent replies, intervention, and oral presentations).

In the second instance, respondents' concerns about the rules creating two unequal classes of appellants centered on the perceived reduction of input opportunities for those using 36 CFR Part 217 procedures, although some respondents also felt that 36 CFR Part 251 eliminated input opportunities as well. Those who do not have a legal relationship with the Forest Service do not see the legal relationship as an adequate basis for modifying the kind of "access to process" necessary for review of management decisions.

Response: Respondents who urged that the APA must be followed failed to grasp the distinction between the types of due process intended by that Act. When an appeal procedure is mandated by statute, then specific, formalized elements of due process detailed in the APA must be applied. When an appeal procedure is not mandated by statute, but rather provided voluntarily by an agency, as this one is, then only the broad principles of the APA apply. In other words, the procedures made available by the APA for notice and opportunity to be heard must be applied fairly. Any process voluntarily deemed as "due" must then be followed by the agency which institutes it.

The procedures being adopted are based on the type of decision that has been made, and the type of relationship that exists between parties to the decision and the agency. The rules are not based on a concept that a certain class or party should have more or less access to a process for having a decision reviewed. This fundamental concept on which the two rules are based was thoroughly discussed in the supplementary information to the proposed rule, and is not presented again in this response (53 FR 17310). See Comment and Response under § 217.1 for further discussion.

Comment: The proposed rule provoked considerable general comment, largely critical, on the relationship between the Forest Service and the public. The public's concerns in this area can be described in three categories: (1) Those indicating that the proposed changes limit public input in the decision-making process; (2) arguments that public involvement prior to the decision should not preclude a readily available means to protest the decision; and (3) those reflecting a feeling that the Forest Service was operating in bad faith.

Comments from those expressing concern that the Forest Service was limiting public input were often phrased to indicate that the public sees the appeals process as one facet of public

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involvement. There are a substantial number of people who feel that by tightening the appeals rules, the Forest Service is trying to close a legitimate avenue of involvement.

The second group of respondents see appeals as a separate category from other kinds of public involvement, but feel that public involvement prior to decision making is not a basis to preclude redress through appeal. Several argued that, had public involvement been operating as envisioned under the National Environmental Policy Act (NEPA) and NFMA, the flood of planning-related appeals that have been so slow to resolve would never have occurred.

The third group of respondents reacted to the proposed changes more broadly in terms of trust. Comments in this category expressed distrust of the agency's decisionmaking. Some of these respondents described the agency as corrupt, deserving suspicion, hypocritical, or biased toward the timber industry.

Response: We agree that the appeals process can be viewed as a facet or type of public involvement, but appeals are a very limited means of public involvement compared to the public's opportunity to provide input in the predecisional stages. Not all the public is involved through an appeal to influence the disputed decisions; only appellants and intervenors are. The rest of the public very seldom become involved after an appeal is filed.

The Forest Service does not seek through the revised procedures to limit public involvement in decisionmaking. To the contrary, the rules emphasize public involvement prior to a decision being made, and provisions are incorporated into the rules that create explicit opportunities for conflict resolution before a decision is implemented and while a decision is being reviewed. Additionally, the final rule at 36 CFR Part 217 restores intervention as a procedural process users have been accustomed to in the past.

Nevertheless, we believe that public participation and involvement in planning and decisionmaking is more effective prior to making the actual decision than afterwards, if for no other reason than more people participate. However, public involvement prior to making a decision should not limit access to a decision review process, and we had no intent to do so. Having a decision review process is actually an incentive for the agency to commit to public involvement prior to making decisions.

The "trust" and "bad faith" comments are legitimate, if troubling, expressions of public concern. In releasing the proposed rules, the Forest Service went on record to say that the agency sincerely wants to make better decisions and involve the public more effectively and to improve its performance in handling appeals. The agency has every intention of doing this and hopes that all its constituent publics will monitor our performance and thus help the agency earn public trust.

The above three categories of comment are also responded to in the discussion of specific sections of 36 CFR Part 217, since many respondents brought up similar concerns and targeted them at specific sections.

Oral Presentations

The proposed rules at Part 217 would eliminate the oral presentation procedure, but it emphasizes the authority of the Deciding and Reviewing Officers to discuss issues with requesters and others, and to hold meetings. Currently, appellants and intervenors must request an oral presentation when they file their notice of appeal/request for intervention; if granted, it is usually held after the record is received by the Reviewing Officer.

Comments: A few respondents supported the elimination of oral presentations, but those who did gave no reasons for their support, they simply listed a number of features that they favored.

Those who opposed the proposed change described the advantages of oral presentations, including the following: Communicates in a way that is impossible to achieve on paper; clarifies issues and positions; permits "give and take" between the parties; helps verify the sincerity of each party's beliefs; gets at the "heart" of the appeal; enchances dialogue leading to resolution of disagreements; permits viewing physical evidence; and reduces angry feelings triggered by reading the impersonal documents.

Several comments noted the dual standard which allows oral presentations under Part 251, but not under Part 217.

Some respondents said that the lack of oral presentations will lead to more litigation because fewer appeals will be settled to appellants' satisfaction. Others feared that flawed decisions would result from eliminating communications with appellants such as responsive statements and oral presentations afford. And, one respondent was disappointed with the apparent lack of "openness" signaled by the rule; while another feared that the change signifies the elimination of all public involvement meetings.

One claimed the oral presentation is "less time consuming" than extracting information "from the review file."

Response: Opportunities for and references to more openness, direct contact between Deciding Officers and participants, and resolution of issues during a review abound in the proposal and are explained in the preamble discussion.

While the formal feature of oral presentations permitted under the current rule would be eliminated under Part 217, the proposed process features and promotes options for informal meetings and discussions. In addition, the final rule includes a new provision that any of the parties may request such meetings at any time during the appeal. The benefits of what is called an "oral presentation" under the current rule still accrue to everyone involved. Consequently, the final rule regarding oral presentations, remains as proposed.

Filing Fees

For the reasons stated in the supplementary information to the proposed rule (53 FR 17314), a requirement for filing fees was not included in the proposed rules. However, public comment was solicited on the possibility of imposing filing fees, because the fee idea as a requisite part of the appeals process is a recurring one. The increased number of appeals filed during the past year or two leads many observers to believe that the administrative appeals process provided under 36 CFR 211.18 is being abused by groups and individuals to disrupt resource programs, especially timber sale and harvest in some areas of the country. In response, many groups and individuals have proposed that a significant filing fee be imposed to cover the cost of processing an appeal, a strategy designed to prevent "frivolous" appeals.

Comments: Public comment on the filing fee idea was 3 to 1 opposed. Most respondents felt that imposing fees of any sort would be counter to the historical objectives of the Department and the Forest Service in providing the public an open, informal administrative appeals process. Additionally, they thought that it would be costly to taxpayers, and only result in further complicating the appeals process. A few respondents questioned whether the agency has statutory authority to require a fee as a condition of filing an appeal if the objective is to recover costs. Others felt that fees, whether to recover costs

or a modest filing charge, would discriminate against parties not able to afford the charges, and thus give rise to some sort of waiver policy. Some respondents cited beliefs that filing fees should be unnecessary, given the thrust of the revised rules to make better decisions earlier so that sufficient time is available for appeal review without holding activities such as timber sales and subsequent harvests in abeyance. Supporters of filing fees generally cited a need for a mechanism to combat, from their perspective, the "frivolous" appeals that delay resource activities, particularly the sale and harvest of timber from many National Forest areas. Other respondents also suggested that a bond be required where an economic hardship on a third party would be created by a decision to stay implementation of a project or activity.

Response: Public comment about imposing filing fees can be divided into two areas of concern, one dealing with policy considerations, the other with legal authorities. The following discussion examines the implications of these concerns and serves as the basis for the decision not to include filing fees as a requisite part of the administrative appeal processes established in this final rulemaking.

1. *Possible impact on NEPA procedures.* The Forest Service administrative appeal regulation is closely linked to fulfillment of public notice and opportunity to comment requirements of the NEPA implementing regulations (40 CFR 1506.10). Under the NEPA regulations, the Forest Service has been permitted to issue decision documents along with the environmental disclosure documents because the administrative appeal procedure gives the public opportunity to challenge a decision. The likelihood that filing fees could discourage use of the appeal process calls to question whether the Forest Service could continue to issue environmental disclosure and decision documents simultaneously.

2. *Impact of substantial fees.* Historically, the Forest Service has invited and encouraged public use of the administrative appeal process, consciously and successfully developing a public expectation that it may freely gain access to decisionmakers through the appeals process. The process has served well, albeit slowly at times, as a policy review mechanism to test and adjust agency direction. Substantial fees would operate to discourage appeals; as a result, the policy review mechanism would lose effectiveness with any decline in use of the process.

In defending agency action, government counsel often argue in litigation that plaintiffs must first exhaust their administrative remedies. Imposing substantial fees could lead to more direct filings in Federal District Courts, thus depriving the agency of opportunity to review and document its decision (through administrative appeal proceedings to show rational decisionmaking) prior to litigation. Imposing a substantial fee would also likely promote requests for a fee waiver procedure process (similar to Freedom of Information Act (FOIA) situations) and further complicate the administrative appeal process.

High fees also would tend to discriminate against individuals rather than organizations. While any nominal fee would discourage appeals by individuals who file non-specific appeals on numerous projects, imposing fees only for the purpose of limiting appeals affects all potential appellants without regard to subject matter or merit. As a matter of policy, other alternatives to limit the negative effects of appeals could be more effective, as for example, simplified processing, faster reviews, as well as improved public involvement prior to the decision.

3. *Inconsistency of fees with simpler, streamlined review process.* Initiating substantial fees would seem inconsistent with amending the existing appeal process for simplicity. The proposed regulation, 36 CFR Part 217, modifies existing administrative appeal features appellants have come to rely on or view as "due process protections." If the agency imposes substantial fees, appellants will expect more "due process" protections, such as right to confront and interrogate witnesses, right to several levels of appeal, right to responsive statements, etc.

Once an appellant has invested a substantial filing fee, settlement for less than complete relief may be less likely, and the tendency to litigate an adverse and costly appeal decision will likely increase.

4. *Statutory authority for fees.* There is no specific statutory authority for the Forest Service to require a fee as a condition for filing an appeal. However, the Independent Offices Appropriation Act, as revised (31 U.S.C. 9701 (1986)) might be considered authority for a reasonable fee. Under this Act, such charge is to be fair and based on the cost to the government, the value of the service, public policy or interest served, and other relevant facts. The agency has invited the public to utilize the appeals process, so it may be questionable whether its use by the public is a "service" to the public as contemplated by the Act.

A fee of $1,000, as proposed by some respondents, would probably exceed the scope of the Act, and would be far beyond fees imposed upon private parties by Federal District Courts ($120), U.S. Claims Court ($80), and Federal Circuit Courts ($100). Federal court fees are not based on costs of service, but on separate statutory authority to collect fees. However, these courts may award damages, costs, and attorney fees in favor of successful parties. It would appear that specific statutory authority for filing fees is needed so that substantial, high fees could be insulated from serious judicial scrutiny.

Other formal administrative bodies within the Department of Agriculture, such as the Agriculture Board of Contract Appeals, and the Judicial Office which holds all formal APA hearings for the Department, impose no filing fees or require bonds. Neither are fees imposed in the "protest" procedure for certain decisions involving land and resource management plans of the Bureau of Land Management, Department of the Interior. Moreover, limiting fees to only certain types of activity, such as timber sale and related harvest activity, might be deemed arbitrary and capricious.

5. *Fees based on cost recovery vs. minimum filing fee.* The Forest Service appeals workload nearly doubled from 874 cases in FY 87 to 1,600 cases in FY 88. No cost breakdown is available for 1988, but for the previous 2 years, direct costs to process appeals during those years averaged $5,304,952, or about $5,424 per case. Facing this situation, fees based on cost recovery would place the administrative appeal process beyond the reach of most individuals and small organizations, and thus undermine the basis for having an appeal process. A fee collection program involving a nominal fee for administrative appeals, based on other experiences in fee collection activities elsewhere in the agency, would cost about $35 per appeal. For 1988, this would have amounted to only $56,315. The administrative burden of collecting fees would not be worth the small amount collected. Therefore, for the reasons set forth, the final rule does not include provisions for fee collection in either 36 CFR Part 217 or 251.

Specific comments

The following summarizes the major comments and suggestions received on the proposed revision of 36 CFR Part 217, and the Department's response to these comments. Although reviewers were asked to key their comments to specific sections, the majority did not

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respond in this manner. Also, many comments embodied multiple sections. Where this is the case, our response to the public comment similarly embodies multiple sections. Many respondents pointed out that the proposed rule was hard to follow. Thus, the final rule has been rearranged to more closely follow the steps in the process and many of the headings have been retitled to better describe their contents. However, the publics' comments and our responses are keyed to the section numbers and headings of the proposed rule document.

Section 217.1 Purpose and scope.

This section stipulated that this is an informal review process and is tied to the NEPA process. Only decisions documented as a consequence of agency compliance with NEPA procedures are reviewable under this rule. The proposed rule emphasized public participation and dispute resolution, and deemphasized process and procedures.

Comments: Some respondents thought that making two rules out of the current one rule was unfair because due process aspects retained in 36 CFR Part 251 are not provided for in 36 CFR Part 217. These respondents felt that they are just as entitled to due process in Part 217 as are permit holders under Part 251. They also commented that decisions under 36 CFR Part 251, specifically timber and mining activities, affect more than just the permit holder and should be appealable by other interested and affected parties.

Response: Some misinformation persists concerning what would be reviewable under Part 217 versus what would be appealable under Part 251. Decisions concerning mining activities authorized by appropriate written instruments are not confined exclusively to Part 251 as some respondents thought. If such activities involve environmental analysis and documentation prior to a decision to issue or modify an authorization, review of the decision would be available under 36 CFR Part 217. As is currently the case, disputes between the Forest Service and a timber purchaser arising from administration of a timber sale contract will continue to be administered under 7 CFR Part 24, the Contract Disputes Act.

Those respondents who feel they have the same rights to due process as holders of written instruments issued by the Forest Service need to understand better the fundamental basis on which the two-rule process was developed and proposed. Elements of due process are incorporated in the Part 251 regulations because of the legal and business relationship involved between the holder of the written instrument and the Forest Service. As noted in the preamble to the proposed rule, this relationship does not exist between the Forest Service and individuals and groups who disagree with a resource allocation or management decision. Therefore, it is not believed necessary to provide the same degree of due process as provided in Part 251 for appealing a management decision under Part 217. Moreover, the publics who wish to dispute a management decision under Part 217 do not have a legal right to administrative appeal. They do have a legal right to timely notice of a decision, but access to an appeals process and the right to be heard in a prompt, objective review of the decision are provided at the administrative discretion of the Forest Service.

This Department does not believe it is in the best interests of National Forest System management or public policy to disrupt or delay management activities over long periods of time. It is in the public's interest to have a timely mechanism for reviewing decisions and either abandoning the management action or proceeding to implementation.

Therefore, the final rule retains two separate rules, emphasizes the multiple opportunities prior to review of a decision for the public to influence decisionmaking, and points out the role of constructive dialogue between participants during the review. However, in recognition of the public comment, some elements of due process in 36 CFR Part 251 have been incorporated into the final rule at 36 CFR Part 217. These are intervention and additional stay procedures. These are discussed under §§ 217.4 and 217.12 of this preamble.

Section 217.2 Applicability and effective date.

This section would allow for the continuance of appeals that have already been filed under the current rules at 36 CFR 211.18, 211.18, 228.14, and 292.15. No comments were received on this section. Therefore, this section is retained as proposed but it is recoded as § 217.19.

Section 217.3 Definitions and terminology.

This section provided definitions for the terms used in the rule.

Comments: The only comment received on this section was from seven respondents who objected to the words "request" and "requester," stating it was confusing and appeared to set up a class distinction.

Response: It was not the intent of this rule to set up a class distinction. The intent in using the words "request" and "requester" was to make a distinction between the more formal procedures in 36 CFR Part 251 and the simpler review process of Part 217. However, because respondents found these words confusing, the final rule restores the currently utilized terms of "appeal," "appellant," and "intervenor." This section has been modified to reflect this change and conforming amendments are made elsewhere in the rule for consistency throughout the rule. This section is recoded in the final rule as § 217.2.

Section 217.4 Eligible participants.

The proposed rule established a review process accessible to a virtually unlimited range of interests. The only limitation was that Federal entities, as well as Forest Service employees, would be excluded from participation in this review process.

Under the current rule, anyone can request to intervene at any time during the process. The proposed rule eliminated intervention as a formal process but provided for accepting written comments into the review file from any interested person or organization.

Comments: The respondents to this section represented two points of view. One concerned exempting Federal organizations and Forest Service employees from using this rule. These respondents pointed to the possible need for Federal organizations to have access to this review process as an alternative to existing issue-resolution mechanisms that might prove unproductive in occasional instances. Some respondents also believed that a Forest Service employee who has a private property interest in land impacted by a management decision should be able to request a review under this rule.

The other view concerned intervention. The majority of these respondents felt they have a "right" to intervene as they have been accustomed to under 36 CFR 211.18. Consequently, they want that "right" retained. However, some respondents added the recommendation that time delays to permit intervention should not be permitted.

Response: Means for resolving disagreements between Federal agencies concerning proposed major Federal actions that might cause unsatisfactory environmental effects are available through the Council on Environmental Quality (CEQ) (40 CFR Part 1504). Moreover, Federal agencies have informal mechanisms through their agency heads to bring their concerns to

the attention of the Forest Service. No purpose would be served by providing agencies an additional administrative process to challenge decisions. Therefore, the final rule retains the exclusion.

Forest Service employees having a private property interest in land subject to impact from a management decision would have access to appeal under 36 CFR Part 251. Therefore, the final rule retains the exclusion of employees from challenges to management decisions.

In the proposed rule, the Forest Service viewed intervention as a structured process for involvement when rights have to be protected, e.g., rights of parties that may be injured by an appeal decision. However, injury was not the focus of proposed 36 CFR Part 217. Rather, it was designed to review information developed through National Environmental Policy Act (NEPA) and National Forest Management Act (NFMA) planning activities and attendant public participation. The intent of 36 CFR Part 217 was to provide an optional final step, through appeal, in this decisionmaking process to review the kind and quality of information in the environmental documentation, including the decision itself. If that information is inadequate for a Reviewing Officer to substantiate the decision, the decision would likely not stand on review. The agency welcomes all forms of information germane to the decision and its supporting documentation. But, formal intervention as practiced under the current appeal rule and retained under the proposed rule for Part 251 was not considered appropriate to this information assessment step, anymore than it is considered suitable as a structured mechanism during the earlier steps in the planning and decisionmaking process. The agency continues to believe that providing all the "formal" embellishments of intervention is unnecessary and counterproductive to achieving the initial goals of offering a separate, less formal process for review of management decisions.

However, having considered the public comment which strongly favored retention of intervention, the final rule provides for a simpler form of intervention than does the current rule or in Part 251. Under the final rules at Part 217, intervention will be granted if requested within the time period provided, intervenors can provide comments on issues raised in the notice of appeal, have the right to receive and comment on additional information requested by the Reviewing Officer, and can participate in resolution meetings. Unlike the current appeal rules, intervenors under Part 217 cannot intervene at any time, request a stay, or continue an appeal if the appellants withdraw an appeal. The agency believes that this form of intervention both meets the concerns of those who were concerned about the loss of stature in and access to the appeals process and still contributes achieving an unarrayed, less formal review procedure, a major objective of this rulemaking process. A new section coded § 217.14 and titled "Intervention" addresses this change. Because intervention will be permitted, there is no need to provide for written comments by other individuals. Therefore, the provision has been deleted in the final rule. In addition, in the final rule, the section entitled "Eligible participants" is recoded and retitled § 217.6 Participants.

Section 217.5 Obtaining notice of decision.

The proposed rule required notice only through publishing a legal notice in a newspaper of general circulation in the area affected by the decision, and notice of certain other decisions in the Federal Register. The review period would begin with the date of publication.

Comments: A common perception by respondents was that notice in the Federal Register or a newspaper would replace the current practice of mailing a Decision Notice or Record of Decision to interested and affected persons. Respondents felt that anyone who had expressed interest in the decision should be notified in writing. Respondents mentioned the drawbacks of Federal Register notification, such as being time-consuming, not readily available to the general public, and expensive. Problems associated with newspaper notification included: The definition of general distribution; local people do not usually subscribe to regional papers; people outside the circulation area of a local newspaper would not have ready access to the notice; delays in notice because local rural newspapers are often weekly; Forests are often served by several newspapers.

Response: Motives for specifying legal notices were misinterpreted as trying to maintain secrecy, attempting to rush implementation of controversial projects, and reducing the ability of the general public to appeal decisions. The legal notice requirement was intended to be an *addition* to the notice requirements specified by the Council on Environmental Quality (CEQ) at 40 CFR 1506.6. And, the date of the published notice was intended to signify the start of the review period.

Because of this misunderstanding, this section has been rewritten to include common practice currently observed by the agency, applied to all decisions appealed under this rule. The rule also requries that Federal Register notice will be given on decisions that are considered to have effects of National concern, and appealable decisions made by the Chief. The requirement for legal notice has been made discretionary because it presented more problems than solutions. The appeal period will start on the day following when the decision document is signed and dated, as is currently the practice. Additionally, the final rule specifies that the decision will be mailed promptly so that those wishing to utilize the process will have the maximum time available to them.

This section has been retitled Giving notice of decisions subject to appeal.

Section 217.6 Decisions subject to review and Section 217.7 Decisions not subject to review.

Part 217 proposed a review process applicable to all decisions arising from a NEPA evaluation, and documented in a Record of Decision, Decision Notice, or Decision Memo. It excluded all other decisions plus a list of exclusions similar to the current rule. Further, the proposal excluded catastrophic events from review when the Chief or Regional Forester believes it critical to move quickly with rehabilitation or salvage and publishes an exclusion to this effect in the Federal Register.

Comments: The majority of the comments dealt with these two sections as one subject; thus, we are responding in a similar manner.

Some respondents suggested that a proposed action should be appealable only on the basis that it is inconsistent with the Forest plan, thus narrowing the scope of review. Other respondents wanted a broader definition of what should be availlable for decision review They saw the narrowing of the process as restricting citizen oversight of decisions affecting National Forest management because administrative, policy, and procedural decisions are not covered by this review process. There was some concern voiced regarding which regulation (36 CFR Part 217 or 36 CFR Part 251) would apply for certain decisions and whether the Forest Service or the requester/appellant would make the choice.

Many respondents said decisions on catastrophic events should not be excluded from review. They said the Forest Service would abuse the

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definition and slip in other things besides these natural events.

Response: Currently, appeal of rehabilitation activity decisions are covered by an interim rule at 36 CFR 211.16. Folding the broad provisions of this rule into the final rule eliminates a separate rule, but it retains the opportunity for the public to request review of decisions concerning rehabilitation activities unless the Chief or the Regional Forester, because of severity and time lines, makes a decision to exclude them, and publishes a notice to this effect in the Federal Register.

The notion for narrowing the scope of review to only whether a proposed action is in conformance with the Forest plan has a defect. First, some sort of review would be needed to determine whether the disputed action conformed to the Forest plan. We expect most actions would. What's critically important is: Does the decision to undertake the disputed action meet NEPA requirements? The action might conform to the plan but not NEPA. Therefore, the proposed action should not proceed until it is in compliance with both the Forest plan and NEPA. Thus, the final rule does not narrow the scope of review.

Policy-type administrative decisions were not included in the review process because they determine how the agency is to approach a task or situation. These policy decisions seldom require documentation of environmental impacts. Under the current rule, policy or procedural decisions have constituted only a miniscule proportion of appeals received. Other administrative avenues are open to the public to influence decisionmaking of this kind, and to request reconsideration, which would be more efficient than utilizing the appeal process. For example, many Forest Service policies and procedures are published in the Federal Register for comment. Additionally, notice of such comment opportunities is mailed to interested and affected persons and often also announced through press releases.

There was never any intent that the Forest Service would choose which rule would be applicable to a particular decision. The choice is up to the appellant to make. Each new rule, 36 CFR Part 217 and 36 CFR Part 251, clearly defines which kind of decision is covered by which rule.

The final rule retains the proposed inclusions and exclusions, but the sections are recoded and retitled § 217.3 Decisions subject to appeal and § 217.4 Decisions not subject to appeal.

Section 217.8 Levels of review available.

Under the proposed rule change, a second level of review was a discretionary decision by the Reviewing Officer at that level.

Comments: Many respondents objected to the concept of a one-level review process because: they felt it was designed for agency expediency at the individual's expense; it vested an inappropriate amount of power in one person; it did nothing to encourage or promote negotiated settlements; and it would lead to cursory and superficial review. And, while reducing the number of appeals, respondents saw the one level review as increasing the potential for more litigation.

The major concerns about the one-level review centered on District Ranger decisions. Respondents focused on the Forest Supervisor as final reviewing officer, doubting that the review could be objective because the project or activity (action) being appealed was in keeping with goals established by the Forest Supervisor and may have been undertaken with advice and supervision from the Supervisor's level.

The second area of concern over the one-level review process centered on concerns that the current second level was a vehicle to make upper levels of the Forest Service aware of local issues which have possible regional or national implications. Many respondents felt that the second review was also a chance to be heard by those who had a broader perspective of Forest Service policy and national issues; that it was a chance for the Chief to clarify policy to the field; and it was seen as a chance to make national organizations aware of local concerns.

Many found the idea of discretionary review unsatisfactory for a variety of reasons. There was concern that without specified decision criteria there would not be a fair way to determine if a second level was needed. Several respondents stated they felt they should automatically receive a second review. And some respondents stated that public controversy should be a reason for second review.

Considerable concern was expressed that the 15-day period to exercise discretion was insufficient, and that the 30-day second level review period would not permit adequate consideration, thereby causing the lower decision to stand by default.

Response: Although there were numerous comments on the need for two levels, the one-level review with discretionary review at the second level best fits the intent of the rule. It simplifies the process, improves the potential to process appeals in a timely manner, yet retains the option for a second review. Inherent in the process is the requirement for full and proper use of the NEPA process. The NEPA process requires Federal agencies to involve the public early and continuously throughout the decisionmaking process; thus a fair and open hearing on issues related to a decision are available. Lastly, the intent of the rule is dispute resolution by establishing stronger ties between the initial decisionmaker and the public, all in the overall interest of making better National Forest management decisions.

The public perceived the relationship between the Forest Supervisor and the District Ranger as being so close as to prevent an objective review of Ranger decisions by Forest Supervisors. Even though 82 percent of the District Ranger decisions currently appealed are resolved without a second level appeal, the final rule provides for a two-level appeal process for decisions made at the District Ranger level. However, second level review of a Ranger decision by the Regional Forester will not be automatic. It will have to be requested, and the review will be based solely on the existing record without additional submissions. The second level appeal decision will not receive further review.

In the final rule, a new paragraph (d) was added to clarify that Forest Supervisor's dismissal decisions are subject only to discretionary review, not to a second level appeal.

This section is recoded as § 217.7. The provisions detailing how discretionary review will work have been moved to a new section, § 217.17 Discretionary review, bringing into one place all references to discretionary review. In the proposed rule, these references were found in §§ 217.8, 217.13, 217.14, and 217.15. For response to additional comments on discretionary review see the discussion under § 217.15 Review decision.

Section 217.9 Filing procedures and timeliness; Section 217.10 Extension of time; Section 217.11 Content of a request for review.

The proposed rule eliminated the discretionary extension of time for filing a Statement of Reasons, while maintaining extension options for all Forest Service deadlines, except at the discretionary review level. The proposal required that the Statement of Reasons material be filed with the Request for Review. And, it included very specific direction on what must be included.

Comments: Public responses tended to link these three sections together. Many respondents felt that preparation of an appeal, including the complete statement of reasons, in the allotted 45 days could not be accomplished, and recommended provisions for extensions. Some claimed that the Forest Service was biased against individuals and volunteer organizations which would be working nights and weekends to provide the analysis, and be less likely to meet the 45-day limit than organizations which have paid staff. Several pointed out that extensions are needed in order to request and obtain needed data from the Forest Service. Others mentioned that, although they had been involved in the development of major projects, the Environmental Impact Statement preferred alternatives often change between draft and final, and that an entirely new review and analysis opportunity is therefore needed. Many pointed out that the proposed rules allow the Forest Service to grant itself extensions, and felt this was unfair, since the agency holds all the information and should be the best prepared to meet timeliness. Respondents mentioned that Forest Service failures to meet timelines under the current process are causing significant project delays and that the proposed rule perpetuates this situation.

Response: While this rule emphasizes dispute resolution, it is not intended to take the place of early and continuous public participation in the agency's NEPA-based planning and decisionmaking process. If the public is concerned about National Forest management matters, it has a responsibility to work with responsible officials in the development of various environmental documents prior to decisions being made that are subject to appeal under this rule. The final rule retains the 45-day filing period, with no extension permitted, for those appealing a decision on a project or activity. However, taking into consideration the public comment, the final rule has been modified to provide a 90-day filing period for those appealing a decision on a land and resource management plan approval, significant amendment, or revision, or on programmatic decisions documented in a Record of Decision. It should be noted that the longer appeal period does not change the effective date of the decision.

Additionally, the final rule has been modified to limit when the Forest Service can grant itself time extensions. Reviewing Officers will be permitted to extend the time of the review period only to request, acquire, and evaluate information needed to clarify issues, or to hold meetings to resolve issues.

Responding to public concerns that the new rule just perpetuates current Forest Service practice of not following timelines, and recognizing as an agency that internal management must be improved, a new paragraph has been added to clearly delineate how long the process should take.

For clarity, and because all these changes deal with how the appeal process will work, § § 217.9 and 217.10 have been combined. These sections are recoded § 217.8 and retitled Appeal process sequence. Section 217.11 is recoded § 217.9 Content of a notice of appeal. Proposed paragraph (b)(7) would have required appellants to state whether they had participated in predecisional activities. This paragraph has been dropped from the final rule because of the confusion it caused. Even though knowing whether or not an appellant has participated in predecisional matters is desirable, whether or not a participant was involved in predecisional matters was not intended to be a basis for dismissal. However, this was how the public interpreted the requirement.

To assist the public in understanding the timeframes and sequence of steps under the new rule, a flow chart of the process is set out at the end of this document as Appendix A; however it will not appear in the Code of Federal Regulations.

Section 217.12 Requests to delay implementation of a decision.

Proposed Part 217 did not permit delaying implementation of a Forest plan, but provided for an automatic delay of implementation of projects or activities scheduled during pendency of the review, upon request, so that a meaningful review on the merits would be preserved. The delay decisions were not subject to further discretionary review.

Comments: Most of the comments received concerned five major themes, characterized as follows: (1) All parties concerned should be notified of a delay request and the decision to grant or deny the request; (2) "urgent and compelling need" should be defined, preferably with examples; (3) requests to delay implementation should be granted automatically *except* under extraordinary circumstances; (4) requests to delay should be granted *only* under extraordinary circumstances; and, (5) there is a need for clear and comprehensive guidelines (standards) for granting a delay request. Many respondents pointed to a dual standard because in 36 CFR Part 251 the appellant has to justify the request for stay while under 36 CFR Part 217 the government is required to justify not granting a delay request.

Several respondents wanted the denial of a delay request to be appealable. Lastly, many respondents thought that the proposed provision which excludes delay of Forest plan implementation meant that subsequent projects would not be subject to delay, and that this was unacceptable. And, some respondents disagreed with quoted language from the preamble, "* * * there are not actions in a forest plan per se that would be immediately implementable and thus there are no actions to be stayed."

Response: In retrospect, the language should have stated, "* * * there are *seldom* any actions in a forest plan per se that would be * * * immediately implementable, and thus there are no actions to be stayed * * *". If a site specific project or activity is authorized in the forest plan, and which meets NEPA requirements, a delay should be considered if implementation would moot the review. Thus, the final language of the rule has been modified to make such projects or activities within a plan subject to delay if appellants so ask.

It has always been the practice of the agency to notify all parties concerned about stay decisions (referred to in the proposed rule as delay of implementation requests). This will not change with new rules.

The automatic stay device in the proposed rule was viewed as a way to preserve a meaningful review and simultaneously avoid forcing a requester to Court to obtain a restraining order. But in response to the dual standard concerns for granting stays voiced by respondents, the final rule provides that stay requests will not be automatically granted but will be considered and that stay requests must include specific reasons why the delay is needed. It is on this basis that the Reviewing Officer will either grant or deny a stay. Accordingly, the "urgent and compelling" standard is no longer necessary and has been deleted.

Additionally, the term "implementation" in proposed paragraph (a) has been changed to read "approval." It was the intent of this paragraph to preclude stays of plan approvals, but to consider staying activities undertaken to implement the plan, which as a consequence might moot a review if prematurely implemented. This change clarifies this intent.

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For consistency with providing two levels of review on District Ranger decisions, the final rule provides for discretionary review of a Forest Supervisor's decision on a stay request. And, consistent with other language changes for clarity and understanding, the final rule has been modified to use the term "stay."

This section is recoded § 217.10 and retitled Stays.

217.13 Review file.

The proposal defined what constitutes the review file and specified how much time the Deciding Officer would have to assemble the relevant decision documents and pertinent records and transmit them to the Reviewing Officer. In contrast to the current rule, the Deciding Officer would not be required to prepare a Responsive Statement. Instead, the proposal allowed the Deciding Officer to respond briefly to issues raised in the request for review when transmitting the file to the Reviewing Officer.

Comments: Respondents voiced their concerns about the elimination of the Responsive Statement. The most frequent comments pertained to the value of the Responsive Statement and the reply thereto in "clarifying" the issues and in "justifying" the decision to proceed with an action. The Responsive Statement is seen by many as a way to foster dialogue about the rationale for the decision, the meaning of special terminology or technical matters, and the intent of the proposed activity. Many said that the current requirement to prepare a Responsive Statement helps ensure that the Deciding Officer understands an appellant's position.

Additionally, some respondents pointed out that the responsive statement had been eliminated in name only. Because the Deciding Officer would be allowed briefly to respond to issues in the transmittal letter, the letter would be, in fact, a Responsive Statement, and the appellant is given no opportunity to review or respond.

Response: Under the current rule, Responsive Statements are being used to carry the burden of discussion and justifying a project, plan, or activity. The intent of 36 CFR Part 217 is to focus on the environmental documentation and decision document completed as a consequence of the planning and decisionmaking process, and made available to those participating in the decisionmaking process, and to others prior to an appeal being filed. If the decision document does not "justify" the decision to proceed with an action, or explain the rationale for the decision, it is inadequate. A Responsive Statement is not necessary for a Reviewing Officer to make this determination. The purpose of eliminating the Responsive Statement is twofold: To expedite processing of an appeal and to ensure that NEPA-based decisions are adequately documented. The result should be better decision documents that reflect environmental disclosures and explain management action rationale. For these reasons, the final rule does not reinstate the requirement of a Responsive Statement. To prevent transmittal letters from becoming de facto Responsive Statements, the final rule deletes the provision allowing the Deciding Officer to respond to issues raised in the request for review, but retains the requirement that the Deciding Officer identify where in the documentation appellant's issues are addressed. The transmittal letter wil be made available to appellants and intervenors.

Other modifications to this section include giving Deciding Officers 30 days to transmit the record, instead of the proposed 21 days. This is because the rule has been modified to eliminate time extensions for this purpose, which under the current rule have nearly always been granted if requested. Lastly, taking into account other changes, the final rule states that the record closes either when the Deciding Officer forwards the record or when intervenors' comments are received, which ever is the latter.

This section is recoded and retitled § 217.15 Appeal record.

Section 217.14 Authority of reviewing officer in conduct of a review.

Part 217, as proposed, authorized the Reviewing Officer to establish whatever procedures are necessary to ensure orderly and expeditious conduct of a review. This section retained the provision of the current rule at 36 CFR 211.18 allowing a Reviewing Officer to consolidate reviews of the same decision or similar decisions involving common issues of fact or law. In keeping with the informal nature of the proposed review process, the Reviewing Officer has the authority to discuss issues related to the review with requesters, the Deciding Officer, or those who submit comments.

Comments: Part 217, as proposed, would permit free and open communication between parties with no requirement that these communications be documented or shared. Because of this, respondents raised the question of "*ex parte*" communications in which the Reviewing Officer is influenced by these discussions and the requester is not informed about them. Most respondents stated that the public had a right to know. The comments frequently used strong language to characterize this feature, such as unfair, undemocratic, prejudicial, secrecy, "back room deals," hiding information, etc. A few comments reflected a fear that internal documents would be immune to public review and that public participation would be discouraged.

One respondent suggested that, for purposes of issuing one decision, consolidation of appeals filed pursuant to Part 251 and reviews requested pursuant to Part 217 should be permitted, provided, of course, that both involve the same initial decision.

Response: This section has been modified to make it clear that any information sought by or otherwise utilized by the Reviewing Officer must be documented and shared among and between appellants and intervenors with opportunity afforded for comment. However, communications among or between the Deciding Officer, appellants, or intervenors do not have to be documented and made part of the record. Consolidation of review of appeals filed under Parts 217 and 251 which involve the same decision is not permitted, but the rules make clear that issuing only one decision may be appropriate.

In addition, as discussed under § 217.10, Reviewing Officers will be permitted to extend the time of the review period only to request, acquire, and evaluate information needed to clarify issues, or to hold meetings to resolve issues.

This section is recoded as § 217.13 and retitled, "Reviewing officer authority." Additionally, that portion dealing with discretionary review has been removed from this section and incorporated in § 217.17 Discretionary review.

217.15 Review decision.

The proposal established timelines for review decisions, 30 days for project decisions and 90 days for LRMP's, and stipulated that if no decision is made within 30 days once a decision is accepted for discretionary review, the lower level decision stands.

Comments: Several respondents felt it was unfair to allow the Forest Service twice the time to issue a decision on an appeal of a Forest plan decision (90 days) than is allowed for an appellant to read and review the plan, gather data, and prepare the request (45 days).

As discussed in § 217.8, many respondents found the idea of discretionary review unsatisfactory, voicing concerns that the timeframes would force a hurried review, because the 15-day period was insufficient to

exercise discretion, and the 30-day second level review period was too short. These respondents believed that the appellants would be punished by Forest Service procrastination or choosing to ignore the appeal, as the lower level decision would stand if timelines were not met.

Response: The 90-day timeframe for a Reviewing Officer to render a decision on an appeal of a Forest plan decision is retained in the final rule. As discussed under proposed § 217.9, the time available to prepare and file an appeal of a Forest plan has been modified. Thus, appellants of Forest plan decisions will have the same amount of time to prepare their appeal as the Reviewing Officer has to render a decision.

In response to comments that criteria are needed to guide a second level Reviewing Officer when deciding whether or not to review a lower level appeal decision, the final rule has been modified in § 217.16 to explain circumstances under which a Reviewing Officer might elect to exercise discretionary review of a lower decision. For example, a Reviewing Officer would consider such factors as controversy and litigation potential.

While the 15-day period provided for deciding whether to conduct a discretionary review of the lower level appeal or dismissal decision is unacceptable to some respondents, it is 5 days more than currently provided at the Chief's level. Thus, it is retained in the final rule. However, a provision has been added to the final rule stating that if the Reviewing Officer sends for the record at this point, the 15-day time period is suspended. The Deciding Officer has 5 days to send it forward. Upon receipt, the higher level Reviewing Officer will have 15 days to decide whether to conduct a discretionary review. It should be noted that the agency recognizes that it must improve its internal management of the process itself. This will require strengthening management controls, including those to be instituted by the Forest Service to assure that the discretionary review process works effectively and as it was intended. These will be issued as amendments to Forest Service Manual 1571 and Forest Service Handbook 1509.12 as direction to Forest Service personnel. Finally, the paragraph on discretionary review has been moved to a new section, § 217.17 Discretionary review.

The agency agrees with those respondents who expressed concern about appellants being punished by Forest Service procrastination. Therefore, the provision for automatically terminating the discretionary review after 30 days has been deleted and a statement releasing appellants from the administrative process has been added in the final rule. This section is recoded as § 217.16 and retitled "Decision."

217.16 Dismissal without review and decision.

The proposal specified the circumstances which would allow the dismissal of a review request without review.

Comments: Provision for dismissal without review was of considerable concern. Some respondents felt that the reasons for dismissal in the proposed rule were not clearly defined and that they would be interpreted subjectively, or used by the Forest Service to abuse the process. Several respondents suggested that the reasons for dismissal should be documented and that the decision to dismiss should be subject to discretionary review.

Response: The Forest Service agrees. As is the current practice, the agency will require a Reviewing Officer to document the reasons for dismissal in a decision letter. The omission of language to this effect in the proposed rule was an oversight. The final rule has been amended to direct the Reviewing Officer to provide written notice of a dismissal including an explanation of why the appeal is dismissed. And, on the basis of fairness and objectivity of review, the final rule has been modified to provide discretionary review of dismissal decisions. The final language cross-references new paragraph § 217.7(d) for clarification.

We believe the rule clearly defines the circumstances under which an appeal will be dismissed, and no modification is required.

This section is recoded § 217.11 and retitled "Dismissal without review."

Section 217.17 Resolution of issues during review.

The proposal made explicit the ability of the Deciding Officer to negotiate with those challenging a decision through the review process, and for Reviewing Officer to extend time for doing so. The proposed rule also provided that Deciding Officers could withdraw their initial decisions.

Comments: Some respondents were skeptical about and others opposed to the concept of seeking issue resolution after an appeal had been filed. They were concerned about compromising professional integrity and causing long delays in projects. Others were concerned that the Forest Service would use the resolution process to suspend action on an appeal, while allowing Forest plan direction to be implemented.

Most of the comments received supported the idea of a negotiated settlement, and offered additional suggestions. One respondent felt that the proposal would be strengthened by adding from 36 CFR Part 251 the mandatory "invitation to meet" language now required in decision letters to instrument holders. Several respondents were worried that the extension of deadlines would be abused, and unreasonable delays would occur. Suggestions included adding a definite time period to accomplish the negotiations; stipulating that the requester, Deciding Officer, Reviewing Officer, and other affected parties must agree to any extensions.

Additional concerns were expressed about communications during negotiations. Several respondents suggested that all affected parties be invited to participate in the negotiations. Because in the past some respondents had experienced a reluctance from the Forest Service to negotiate, several suggested that appellants, or even Reviewing Officers, should be able to request a negotiation session, not just the Deciding Officer.

Response: The Forest Service considered including the "invitation to meet" language from proposed 36 CFR Part 251 in proposed 36 CFR Part 217. However, it was not included because who might appeal is not known at the time a decision is recorded. Instead, the idea behind the "invitation to meet" proposed in 36 CFR Part 251 is embodied in this section and gives the Deciding Officer encouragement to meet with appellants and intervenors during the process to resolve issues. However, we agree that extensions of time to permit negotiations to occur should not be open ended. The final rule requires the Reviewing Officer to establish a reasonable duration. To require all parties to agree to any extensions is impractical, and in many cases an unlikely prospect. Some participants may be willing to work out solutions, and this prospect is more important than requiring all parties to agree to extensions. Therefore, this condition is not included in the final rule. The agency concurs with those respondents expressing concern about overcoming a reluctance to negotiate. There are some Forest Service officers who prefer a more structured appeals process rather than an informal negotiation process. Therefore, the final rule language is modified to allow Deciding Officers, Reviewing Officers, appellants, and intervenors to request meetings to

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resolve issues. However, to preserve a Reviewing Officer's independence and objectivity should settlement not occur, the final rule provides that even though the Reviewing Officer may request that a meeting be held, Reviewing Officers may not participate in negotiations with appellants and/or intervenors, a limitation which overcomes problems associated with *ex parte* communications.

This section is recoded § 217.12, and retitled "Resolution of issues."

Section 217.18 Policy in event of judicial proceedings.

This section in the proposed rule created no new policy; it merely articulated longstanding practice consistent with judicial precedent favoring completion of the administrative process prior to court involvement.

Comments: The comments on this issue were few but emphatic. Respondents criticized the proposed language in other parts of the rule that would limit the kind of information included in the record or available to parties to the appeal, i.e., undocumented conversations or other information not shared with parties to the appeal. Absent an equitable procedure for sharing information, an inadequate administrative record is the result. Therefore, exhaustion of the administrative procedures in 36 CFR Part 217 should not be required of appellants as a prerequisite to direct access to court, because a court would not limit itself to an inadequate administrative record. Respondents also expressed concern that the Forest Service could frustrate appellants' access to court by delaying decisionmaking through manipulating extensions of time.

Response: As discussed in § 217.14, the final rule has been modified to make it clear that it is the information sought by the Reviewing Officer that must be documented and shared with all participants with opportunity for comment provided. The Forest Service believes that this clarification in the final rule resolves the concern. Therefore, this section is retained. However, it has been modified to permit the Chief to waive the policy on a case-by-case basis.

General Comment on Proposed Rule 36 CFR Part 251

Much less comment was received about this rule than the proposal for 36 CFR Part 217. However, the comment generally centered around the same major concerns expressed about 36 CFR Part 217, and most of it appeared to be from individuals and organizations who would not be eligible to utilize this rule.

The following summarizes the major comments and suggestions received on the proposed revision of 36 CFR Part 251, Subpart C, and the Department's response to these comments. Many respondents felt that the proposed rule was hard to follow. Thus, the final rule has been rearranged to more closely follow the steps in the process, and the headings have been retitled to better describe their contents. However, comments are keyed to the section numbers and headings of the proposed rule document.

Section 251.80 Purpose and scope.

The proposed rule asserted that it established a fair and deliberate process for appealing and reviewing written decisions arising from the issuance, approval, and administration of written instruments that authorize the occupancy and use of National Forest System land.

Comments: Those commenting on this section focused on the unfairness of two rules. They said it was inconsistent with the tenets of due process as well as unworkable. They also voiced concerns because it does not provide for an impartial judge. Others were concerned because they already feel they are in a weak bargaining position with the Forest Service and that this rule will make it worse.

Response: The agency disagrees that this rule is inconsistent with the tenets of due process. In fact, this rule is a structured, grievance-oriented rule that provides the elements of due process that are fundamental to resolving issues that arise from a business or legal relationship between the Forest Service and an appellant. It is quite similar in this respect to the current rule, 36 CFR 211.18. As pointed out in the discussion of Options Considered in the proposed rule document, the agency considered an independent board or impartial judge. However, this idea was rejected because such a formalized process may intensify adversarial relationships with the agency. Such a relationship is counter to the Forest Service commitment and desire to increase communication and cooperation with the public. In addition, the independent board or judge approach to appeal administration would tend to erode the agency's statutory authority to administer its programs and to supervise, correct, or redirect its operations. Therefore, the final rule remains an internal administrative appeal procedure.

The final rule retains this section, as proposed.

Section 251.81 Applicability and effective date.

This section would allow for the continuance of appeals related to written instruments that have already been brought under the current rule: 36 CFR 211.18, 36 CFR 228.14, or 36 CFR 292.15. No comments were received. The final rule retains this section as proposed; however, it is recoded as § 251.102.

Section 251.82 Definitions and terminology.

This section defines the terms used in this subpart. No comments were received. The final rule retains this section as proposed, however, it is recoded as § 251.81.

Section 251.83 Parties eligible to participate.

The rule proposed three types of parties eligible to participate: (1) Appellants—that is a holder of a written instrument or authorization or an applicant who is applying for an authorization in response to a solicitation by the Forest Service; (2) intervenors—other applicants for the same authorization, or holders of similar authorizations who have a direct interest that could be directly impacted by the appeal decision; and (3) the Deciding Officer.

Comments: There were many comments voiced about eligibility. Some respondents said it was too narrow as to who was eligible because it didn't apply to all applicants, and that it prevents adjacent landowners from appealing issuance of permits for activities which would have a negative environmental impact on their lands. Some respondents believed that States should have an opportunity to appeal or intervene. Others suggested allowing groups to intervene who supported either the permittee or appellant or those who would be affected by the appeal decision.

Response: The limitations on who can appeal and intervene are essential to this rule, because it is designed only to resolve issues arising from a decision to issue or approve, to deny issuance or approval, or to administer an existing authorization. These persons have a business or legal relationship with the Forest Service by virtue of the application for or the holding of a written instrument, and because of that relationship must have a procedure for bringing and resolving grievances.

Those who object to the use of the lands or resources to be covered by the issuance of an authorization can request review of the basic decision under 36 CFR Part 217 if this basic decision involves documentation required by agency planning and environmental analysis procedures. In addition, the initial allocation decision made through Forest level planning is reviewable under 36 CFR Part 217.

Therefore, this section has been retained in its entirety and is recoded § 251.86 and retitled Parties.

Section 251.84 Appealable decisions.

This section of the proposed rule lists the written decisions arising from specific types of permitted uses of National Forest System lands that can be appealed. The decisions vary from approval of grazing of livestock to approvals of special use permits. The approval of plans of mining operations pursuant to 36 CFR Part 228 and 36 CFR 292.17 and 292.18 would be added to the list of appealable decisions, ending previous separate processes. It also gives instructions for how notice of decisions appealable under this rule will be given.

Comments: Comments on this section generally dealt with specific questions on different types of decisions and whether or not they were appealable under this rule. For instance, Memorandums of Understanding (MOU), purchases of forest lands under 16 U.S.C. 521c–521i; decisions not to proceed with exchanges and disapproval of surface use plans. Other comments included questions about which rule would govern if a permit action triggered a NEPA review, and why notices of decision were sent only to applicants or holders and not to other National Forest users. One respondent suggested making the list of instruments non-inclusive so that future ones could be included.

Response: If the decision on a MOU is recorded through NEPA procedures, the decision is appealable under the procedures outlined in 36 CFR Part 217. However, later action under the MOU would be appealable by the holder of a permit under 36 CFR Part 251.

Section 251.86 of the proposed rule speaks to those situations where a decision could be appealed under both rules. An appellant eligible to appeal under either rule must choose which review process will be used and forfeits all right to use the other process.

Decisions covered under 16 U.S.C. 521c–521i usually entail NEPA compliance and, therefore, would be appealable under 36 CFR Part 217. We agree that decisions not to proceed with an exchange or disapproval of a surface use plan should also be listed. We also agree with the suggestion that the list be non-inclusive. The final rule language has been revised to include both of these items.

Because the matter under appeal is between the Forest Service and the holder of a permit or an applicant for a permit, extensive public notice requirements are not necessary unless the action involved NEPA, in which case the notice requirements of 36 CFR Part 217 must be met. A new section is added to the final rule, § 251.84 Obtaining notice, and the language about notice in proposed § 251.84 has been incorporated in this new section. The final rule clarifies that prompt notice is required. Also, this section is recoded § 251.82.

Section 251.85 Decisions not appealable under this subpart.

This section excludes from appeal the same decisions that are currently excluded under 36 CFR 211.18. In addition, it updates the list to reflect the enforcement of Uniform Rules for Protection of Archaeological Resources at 36 CFR Part 296, orders related to 36 CFR Part 261, decisions related to rehabilitation of National Forest System lands resulting from natural catastrophes if a Regional Forester or the Chief gives notice in the **Federal Register**, and decisions covered by 36 CFR Part 217.

Comments: Comments on this section generally addressed the exclusion of decisions related to rehabilitation for National Forest System lands resulting from natural catastrophes. Some respondents expressed the opinion that it is unnecessary to list these as exclusions since the Regional Forester or Chief would exclude them via **Federal Register** notice. Other respondents said the rule (§ 251.85(k)) was unclear concerning which NEPA decisions were appealable and which were excluded.

Response: The agency expects most decisions resulting from natural catastrophes will not be excluded except under extraordinary circumstances. In any event, a decision to exclude does not excuse the Regional Forester or Chief from NEPA compliance on the rehabilitation decision. A holder of a written instrument or an applicant could appeal under 36 CFR Part 251 or 36 CFR Part 217 depending on how the decision affects them. Therefore, it is appropriate to have the rehabilitation exclusion proviso in this section, and the final rule retains it.

Paragraph (k) refers to intermediate decisions. This exclusion continues current practice. Only the final decision, as documented in a Record of Decision, Decision Notice, or Decision Memo is appealable under 36 CFR Part 217, except as provided for at 36 CFR 251.86. The final rule retains this exclusion.

This section is recoded as § 251.83, and retitled Decisions not appealable.

Section 251.86 Election of appropriate review procedure.

This section covers those instances when a decision might be appealable under this rule as well as reviewable under Part 217. It requires the appellant to choose the appropriate review process, and further advises that an appellant thereby forfeits all right to use the other process for that decision.

Comments: Respondents on this section questioned the likelihood of the same decision being appealable and reviewable under both rules. They voiced the opinion that it just complicates the process and doubted its usefulness. Others suggested permitting participation under 36 CFR Part 217 even if an appellant has elected appeal under 36 CFR Part 251.

Response: It is possible that a decision could be made that is both appealable under this rule and reviewable under 36 CFR Part 217, but it should be a fairly rare circumstance. Therefore, this procedure is necessary. The choice of formal or informal review should be the applicant's or instrument holder's choice to make, not the Forest Service's choice. However, the final rule now includes a provision for appellants under this rule to participate in a review being conducted under 36 CFR 217.8(b).

The final rule retains this section but recodes it as § 251.85, retitled "Election of appeal process."

Section 251.87 Levels of review available.

The proposed rule change offers one level of appeal but makes the second level of review at the discretion of that officer.

Comments: Many respondents objected to the concept of a one-level appeal process in this rule for the same reasons outlined in the section discussing the public comment received on 36 CFR Part 217. Therefore, the discussion is not repeated here.

Response: Similarly, and consistent with the final rule at 36 CFR Part 217, the final rule provides for a two-level appeal process for decisions made at the District Ranger level. However, second level appeal of a Ranger Decision by the Regional Forester will not be automatic. The appellant will have to request it; the review will be based solely on the existing record without any additional submissions; and, the second level decision will not receive further review.

Also consistent with the changes at 36 CFR Part 217, dismissal decisions will be subject to discretionary review. A

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new paragraph (d) was added in the final rule to clarify this change.

The provisions detailing how discretionary review will work has been moved to a new section, § 251.100 Discretionary review, bringing into one place all references to discretionary review. In the proposed rule, these references were found in §§ 251.87, 251.89, 251.94, 251.97, 251.98, and 251.99. The comments on discretionary review are further responded to under § 251.99 Appeal decision.

Section 251.88 Filing procedures and timeliness.

The procedures of this section are different from the current rule in two notable ways. One, under the proposed rule, an appellant would file an appeal with the Reviewing Officer instead of the Deciding Officer. Second, the filing period which would end 45 days from the date of the written decision, is not extendable, and timeliness decisions are not subject to appeal.

Comments: Comments received on this section questioned the appeal period beginning on the date the decision is signed. They felt it should begin after the appellant receives the decision. They went on to say that the agency should use Certified Mail to establish this date and to establish timely filing by the appellant. Other respondents questioned whether it was the postmark or receipt at the designated office that established timely filing.

Some respondents perceived that the filing period had been shortened and asserted that the possibility for time extensions must be included along with extending the 20-day period appellants have to reply to the Responsive Statement.

Response: The only date the Forest Service can control is the date of the decision. It would be extremely confusing for everyone concerned to have differing dates should there be multiple appeals. Furthermore, the proposed language follows current practice. Using Certified Mail to establish the date does not guarantee the party will receive it in a timely manner, and, therefore, the appeal period might never begin for that party. Current practice by the Forest Service is to send appeal related correspondence via certified mail within a day of the decision. The proposed rule does not preclude Forest officers from continuing this practice. The agency cannot require appellants to use certified mail. As in current practice, timely filing will be ascertained by the postmarked date if the documents are mailed, or delivery date if others means are used.

The proposed rule language provided for the same length of time to file a first level appeal as the current appeal rule.

The discussion that follows on § 251.89 addresses the concerns voiced on time extensions.

This section is retitled "Filing procedures." A flow chart of the process will be set out at the end of this document as Appendix B, but it will not appear in the Code of Federal Regulations.

Section 251.89 Extension of time.

This section would give a Reviewing Officer the discretion to extend all time lines expressed in the rule except the time to file a notice of appeal and for discretionary reviews of appeal decisions.

Comments: The only comment received on this section urged that instead of granting time extensions, both parties be placed on a rigid time table. It was suggested that if the appellant fails to meet any of the time lines, the Forest Service decision should stand; and if the Forest Service fails to meet any of the time lines, the appellant should prevail and the decision be changed to reflect the relief requested in the appellant's notice of appeal.

Response: The agency believes there are instances involving written instrument authorizations when extenuating circumstances prevail and extending the time lines is necessary and appropriate. Therefore, the final rule retains the language from the proposal. It is retitled "Time extensions."

Section 251.90 Notice of appeal content.

The proposed rule made clear that the appellant bears the burden of proof in their notice of appeal as to why a decision should be changed. It included a detailed list of information to be provided by the appellant.

Comments: Those commenting on this section focused on three areas of concern. First, the fact that the Statement of Reasons must accompany the Notice of Appeal and the time provided was insufficient to prepare all this information; second, that there is no provision for correcting deficiencies; and last, there is no provision for notifying Deciding Officers about receipt of an appeal so their preparation of the Responsive Statement can begin.

Response: The agency believes that the time provided is adequate. Most matters involving written instrument will be relatively straight forward and will not require additional time. The rules, as proposed, did not prohibit correcting deficiencies or augmenting initial submissions with additional submissions. As is the current practice, however, if additional information is submitted for the record, it must be shared with all parties in a timely manner that will allow them time for comment prior to the record closing.

The proposed rule did require simultaneous filing of an appeal with the Deciding Officer in § 251.89. This triggers the Deciding Officer's preparation of the Responsive Statement.

The final rule retains the proposed language; however, it is retitled "Content of notice of appeal."

Section 251.91 Responsive statement.

The proposed rule retains the features of the current rule with regard to responsive statements. A Deciding Officer must prepare the Responsive Statement within 30 days and send to the appellant a statement responding to the facts, or issues of law or regulation alleged by an appellant. A copy must also be sent to any intervenors. All parties have 20 days to reply to the Responsive Statement.

Comments: Those comments addressing this section were concerned with two areas. First, that only permittees received a copy of the responsive statement and not the public. Second, that the 20-day time period to comment on the responsive statement is tied to the postmarked date of the responsive statement rather than the day it is received.

Response: It is fundamental to this rule that parties to the appeal be apprised of information submitted to the record and provided an opportunity to reply to the information. Because the public is not a party to the appeal, they are not entitled to receive a copy of the responsive statement. This is consistent with the current rule.

The only date the Forest Service can control is the date it is mailed. It is not practicable to use the receipt date. Therefore, the final rule retains the proposed language. However, it is recoded and retitled, § 251.94 Responsive statement.

Section 251.92 Implementation and request for stay of implementation.

The proposed rule allowed implementation of a decision under appeal unless a stay is requested and granted. This section incorporates most of the content requirements of the existing rule for requesting a stay.

Comments: There were two differing opinions expressed on this section. Some respondents felt that it should be deleted altogether because most stay

requests are frivolous and used as a delay tactic. The other respondents voiced the opinion that stays should be granted automatically.

Response: Decisions appealable under this rule involve holders and certain applicants who enjoy a business or legal relationship with the Forest Service. This provision is needed to ensure that the appeal is not mooted by implementation of the decision prior to review of the disputed decision. The agency does not believe that most stay requests filed pursuant to the current rule are frivolous. By their very nature, a stay is a delaying mechanism. However, as noted above, it is a necessary one.

The final rule retains the language as proposed but combines this section with §§ 251.93 and 251.94. The combined sections are recoded and retitled as § 251.91 Stays.

Section 251.93 Ruling on stay requests.

This section, as proposed, permits the Reviewing Officer to deny a stay if the decision appealed is not scheduled to take effect during pendency of the appeal. The section also requires the Reviewing Officer to rule on stay requests within 10 calendar days from receipt, and also lists the criteria a Reviewing Officer shall consider in ruling on stay requests. And, as is the current practice, the proposed rule required the Reviewing Officer to issue a written decision and specified the content of the decision letter, depending on the decision.

Comments: The only comment on this section voiced concern that the language in paragraph (b) could expose the Forest Service to charges of being arbitrary. Without elaborating, the contention appears to be based on respondent's view that § 251.93(b) gives blanket authority for denial, while § 251.92 requires appellants to justify a stay request.

Response: The agency has reviewed the proposed language and does not agree that paragraph (b) could be considered arbitrary. It is a signal to appellants to utilize the stay procedures judiciously and not to clog the process with meaningless requests. As discussed in the preamble to the proposed rule, the purpose of a stay is to delay implementation of a decision under appeal if harmful effects to the appellant could occur during pendency of the appeal. It makes no sense to process paperwork for decisions that will not take effect until after the appeal decision is rendered. Thus, the final rule modifies the provision for denial of a stay where implementation is not imminent to say that the Reviewing Officer will not accept such requests. And, for consistency with providing two levels of review on District Ranger decisions, the final rule provides for discretionary review of a Forest Supervisor's decision on a stay request.

The final rule combines this section with §§ 251.92 and 251.94. The combined section is retitled "Stays" and coded as § 251.91.

Section 251.94 Duration of and changes to stay decisions.

The proposed language establishes that stays will remain in effect during the 15-day period for determining discretionary review. Further, a Reviewing Officer may change a stay decision at any time that circumstances support a change. Petitions to change will also be accepted. Stay decisions or changes thereto are not appealable. No comments on this section were received. The final rule retains the language as proposed but incorporates it in § 251.91 Stays.

Section 251.95 Intervention.

Under the proposed rule, intervention would be limited to applicants for or holders of a written instrument of the same or a similar type that is the subject of or affected by the appeal, and have an interest that could be directly affected by an appeal decision. Intervenors would not be able to continue an appeal if the appellant withdraws the appeal.

Comments: Two areas of concern were surfaced from those commenting on this section. Many respondents believed that the proposal was too limiting as to who could intervene. Some believed that anyone with an immediate interest or affected by the decision should be allowed to intervene. Other respondents said the proposal prevented organizations from intervening on behalf of holders.

The other area of concern was continuance of an appeal. Respondents believed that they have the right to continue an appeal even if the appellant withdraws.

Response: The proposed rule is limited, by virtue of a written instrument, to those persons who have a business or legal relationship with the Forest Service that is established by the instrument. It is, therefore, appropriate and necessary to limit the basis for intervention in an appeal under the proposed rule to parties who have a similar relationship that could be affected by the disputed decision. In many instances, the decision to grant or to deny a particular use of lands or resources under a written instrument may be preceded by environmental analysis and documented pursuant to agency planning and decision making procedures (36 CFR Part 219 and 40 CFR Parts 1500 through 1508 and associated implementing regulations). Consequently, the general public has opportunity at this point to appeal under 36 CFR Part 217.

Since an intervenor would not be a party to an appeal unless an appellant had appealed, it is only logical that there is no further standing for an intervenor to carry on an appeal mooted by withdrawal. Intervenors are defined as those having an interest that could be directly affected by the decision on the appeal. If there is no appeal decision because the appeal is withdrawn, there is no effect on the intervenor.

Therefore, the final rule retains the language proposed. The section is recoded § 251.96.

Section 251.96 Oral presentations.

The proposed rule established the purpose of the oral presentation and that they can be held either in person or by phone. A request for an oral presentation that accompanies a notice of appeal would be granted automatically; requests received later would also be considered but the decision to grant the request would be discretionary. Decisions on oral presentation requests would not be appealable.

Appellant and intervenors must bear any expense in attending an oral presentation. And, the presentation may be open to public attendance, but to participation, at the Reviewing Officer's discretion.

Comments: Respondents on this section voiced a concern that parties must bear any expense of participation. Some suggested that the oral presentation should take place as close to the site involved as possible while others suggested making oral presentations discretionary.

Respondents also found unacceptable the option for public attendance at the oral presentation.

Response: While the agency is sympathetic, the Government cannot assume costs for either conference calls or transportation associated with an oral presentation, except on its own behalf. Neither is the Forest Service required to arrange an oral presentation at a location or in a manner that is disadvantageous to the Government. Moreover, the proposal is consistent with current practice.

Practice under the current rule usually limits attendance to the parties involved in the appeal; however, members of the general public sometimes request, and receive, permission to attend at the

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discretion of the Reviewing Officer. The proposal incorporated this policy. Because the appeal process is an open process, this provision is retained in the final rule. The remainder of this section is also retained without change in the final rule; however, the section is recoded § 251.97.

Section 251.97 Authority of reviewing officer in conduct of appeal.

This section would authorize the Reviewing Officer to establish whatever procedures are necessary to ensure an orderly, expeditious, and fair conduct of an appeal. Such procedural matters would not be subject to appeal and further review. The proposal retains the current provision allowing a Reviewing Office to consolidate appeals. The proposed rule also makes clear that the Reviewing Officer may ask for additional information from any party to an appeal, but all parties must be notified of the request and receive copies of any information supplied. This section stipulates that an appeal of a Chief's initial decision conducted by the Secretary would be subject to the same rules and procedures applicable to all other first level appeals. This section also addresses procedures applicable to conduct of discretionary reviews.

Comments: Respondents commented on two segments of this section: consolidation, and acquiring additional information. Most respondents commenting on consolidation were concerned with having no recourse to opposing consolidation. One respondent suggested that this section provide for consolidation of appeals/reviews proceeding simultaneously under Parts 251 and 217. Others suggested that appellants should also be able to request consolidation.

Some respondents suggested that any additional information sought by the Reviewing Officer should be limited to information existing at the time of the initial decision. Other respondents commented that if adequate documentation did not exist for the original decision when it was made, the decision should be canceled rather than seeking additional information. Some respondents also expressed confusion about requirements for sharing acquired information.

Response: As is the practice currently, appellants may register their opposition to consolidation. Experience shows consolidation of multiple appeals of the same or similar decision is a useful procedure to simplify paperwork. And, the proposed language follows a longstanding practice currently permitted by the present rule. Appellants are seldom in a position to know when consolidation is appropriate. However, incorporating the results of a separate review of the same decision under Part 217 and an appeal under Part 251 into one decision is a good idea. As discussed in the corresponding section of Part 217, the final rule has been modified to permit this at the discretion of the Reviewing Officer.

The provision for acquiring additional information does not imply that the Reviewing Officer could seek information that was not available to the Deciding Officer when the decision was made. The final rule clarifies that additional information sought by the Reviewing Officer is solely for clarifying issues.

This section is recoded as § 251.95 and retitled "Authority of Reviewing Officer." Additionally, the portions discussing discretionary review have been incorporated into a new section devoted exclusively to discretionary review at § 251.100.

Section 251.98 Appeal record.

This section defines what constitutes the appeal record at both the first level and discretionary level of review. Additionally, this section prohibits reopening the record at the discretionary level except when the Secretary reviews an initial decision of the Chief.

Comments: The respondents to this section questioned whether the record would be available and all actions documented.

Response: The proposed rule language makes clear that the appeal record is open to the public throughout the appeal. Further, it details what the record should contain.

The final rule retains the language as proposed. However, the paragraph discussing discretionary review is moved to the new separate § 251.100.

Section 251.99 Appeal decision.

The proposed rule provided information to the Reviewing Officer on the nature of the decision to be rendered and continued the 30-day timeframe from closure of the record for rendering a decision on the appeal. This section also set a 30-day period for rendering a decision if discretionary review is exercised.

Comments: Respondents to this section expressed concern about discretionary review. Some respondents believe that it gives the reviewer an easy way out and is not responsive to public concerns. Further, some respondents objected to decisions being made on whether or not to exercise discretionary review without explanation being provided to parties.

Some respondents suggested that an extension clause be added to extend the 30-day discretionary review period by 15 days on a priority basis. Other respondents suggested that appellants be given an opportunity to waive the discretionary review.

There were also some respondents who objected to decisions on the merits being made without being given an answer. A few respondents objected to the Forest Service being able to grant itself additional time to render the decision.

Response: The agency would not expect a Reviewing Officer to escape review by letting time expire. As discussed in Part 217, while the 15-day period provided for deciding whether to conduct a discretionary review of the lower level appeal or dismissal decision is unacceptable to some respondents, it is 5 days more than currently provided at the Chief's level. Thus, it is retained in the final rule. However, a provision has been added to the final rule stating that if the Reviewing Officer sends for the record at this point, the 15-day time period is suspended. The Deciding Officer has 5 days to send it forward. Upon receipt, the higher level Reviewing Officer will have 15 days to decide whether to conduct a discretionary review. It should be noted that the agency recognizes that it must improve its internal management of the process itself. This will require strengthening management controls, including those to be instituted by the Forest Service to assure that the discretionary review process works effectively and as it was intended. These will be issued as amendments to Forest Service Manual 1571 and Forest Service Handbook 1509.12 as direction to Forest Service personnel. While the suggestion for waiver of the discretionary review by the appellant has merit, it increases the paperwork involved. Requesting waiver is not prohibited, so appellants have this option should they wish to use it. If, under the current rule the Secretary chooses not to exercise discretionary review, no explanation of this decision is required or given. The final rule continues this practice, but appellants will be notified. This paragraph of this section has been moved and incorporated in the new section devoted to discretionary review.

Consistent with changes in Part 217, the provision for automatically terminating the discretionary review after 30 days has been deleted and a statement releasing appellants from the administrative process has been added in the final rule. The final rule also includes general criteria for the Reviewing Officer to consider when contemplating discretionary review. For example, controversy surrounding the decision and potential for litigation.

The agency noted that the proposed rule is confusing about what constitutes "issuing" an appeal decision. Therefore, the final rule clarifies this point and stipulates that it will be mailed.

As explained under § 251.89, the agency believes there are instances involving written instrument authorizations when time extensions are necessary. For example, when a permittee must assemble records that are not readily available. Moreover, the provision for requesting a time extension does apply to both the agency and the appellant. Therefore, the final rule retains this provision.

The remaining sections on dismissal (§ 251.100), resolution of issues (§ 251.101), and judicial proceedings (§ 251.102), did not receive specific comments. However, for consistency with the final rule at 36 CFR 217.11, and in response to comment on the proposal at 36 CFR 217.16, the provision on dismissal is modified to provide that dismissal decisions are subject to discretionary review at the next higher administrative level, is cross-referenced to new paragraph § 251.87(d), and is recoded § 251.92 in the final rule. Resolution of issues is recoded at § 251.93, and Policy in event of judicial proceedings is recoded at § 251.101 and modified similar to § 217.17 to permit the exhaustion policy to be waived by the Chief.

Full attention has been given to the comments received in preparing these final regulations. Therefore, the agency is adopting as a final rule, 36 CFR Part 251, Subpart C and 36 CFR Part 217, with the changes discussed in this preamble and with the necessary conforming amendments to Parts 211 and 228 which are adopted without change from the proposed rule. In addition, the final rule contains a conforming amendment to the rules in Part 292, Subpart C, to make clear that appeals of decisions related to the standards for use, subdivision, and development of privately owned property within the boundaries of the Sawtooth National Recreation Area are subject to the final rules at 36 CFR Part 251.

Regulatory Impact

This proposed rule has been reviewed under USDA procedures and Executive Order 12291 on Federal Regulations. It has been determined that this is not a major rule. The rule will not have an effect of $100 million or more on the economy, substantially increase prices or costs for consumers, industry, or State or local governments, nor adversely affect competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete in foreign markets.

Moreover, this proposed rule has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), and it has been determined that this action will not have a significant economic impact on a substantial number of small entities.

Environmental Impact

Based on both experience and environmental analysis, this final rule would not have a significant effect on the human environment, individually or cumulatively. Therefore, it is categorically excluded from documentation in an environmental assessment or an environmental impact statement (40 CFR 1508.4).

Controlling Paperwork Burdens on the Public

This rule does not contain any recordkeeping or reporting requirements or other information collection requirements as defined in 5 CFR Part 1320 and therefore imposes no paperwork burden on the public.

Lists of Subjects

36 CFR Part 211

Administrative practice and procedure, National forests.

36 CFR Part 228

Environmental protection, Mines, National forests, Public lands—mineral resources, Public lands—rights-of-way, Reporting and recordkeeping requirements, Surety bonds, Wilderness.

36 CFR Part 251

Administrative practice and procedure, Electric power, National forests, Public lands—right-of-way, Reporting and recordkeeping requirements, Water resources.

36 CFR Part 292

Recreation and recreation uses.

Therefore, for the reasons set forth above, Title 36 of the Code of Federal Regulations is amended as follows:

PART 211—ADMINISTRATION [AMENDED]

1. The authority citation for Part 211 would continue to read as follows:

Authority: 30 Stat. 35, as amended, sec. 1, 33 Stat. 628 (16 U.S.C. 551, 472).

Subpart B—Appeal of Decisions Concerning the National Forest System [Amended]

2. Add a new paragraph (o) to § 211.16 to read as follows:

§ 211.16 Appeal of resource recovery and rehabilitation decisions resulting from natural catastrophes.

* * * * *

(o) *Applicability and effective date.* The procedures of this section shall not apply to any appeal received after February 22, 1989.

3. Amend paragraph (s) of § 211.18 by adding a sentence to the end of the paragraph as follows:

§ 211.18 Appeal of decisions of forest officers.

* * * * *

(s) * * * The procedures of this section shall not apply to any request to appeal filed after February 22, 1989.

4. Add a new Part 217 to read as follows:

PART 217—REQUESTING REVIEW OF NATIONAL FOREST PLANS AND PROJECT DECISIONS

Sec.

217.1 Purpose and scope.
217.2 Definitions.
217.3 Decisions subject to appeal.
217.4 Decisions not subject to appeal.
217.5 Giving notice of decisions subject to appeal.
217.6 Participants.
217.7 Levels of appeal.
217.8 Appeal process sequence.
217.9 Content of a notice of appeal.
217.10 Stays.
217.11 Dismissal without review.
217.12 Resolution of issues.
217.13 Reviewing officer authority.
217.14 Intervention.
217.15 Appeal record.
217.16 Decision.
217.17 Discretionary review.
217.18 Policy in event of judicial proceedings.
217.19 Applicability and effective date.

Authority: 16 U.S.C. 551, 472.

§ 217.1 Purpose and scope.

(a) This subpart provides a process by which a person or organization interested in the management of the National Forest System may obtain review of an intended action by a higher level official. These rules establish who may appeal planned actions, the kind of decisions that may be appealed, the responsibilities of the participants in an appeal, and the procedures that apply.

(b) The process established in this part constitutes the final administrative opportunity for the public to influence National Forest System decisionmaking prior to implementation of various

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decisions. The rules of this subpart complement, but do not replace, numerous opportunities to participate in and influence agency decisionmaking provided pursuant to the National Environmental Policy Act of 1969 (NEPA), and the associated implementing regulations and procedures in 40 CFR Parts 1500 through 1508, 36 CFR Parts 216 and 219, Forest Service Manual Chapters 1920 and 1950, and Forest Service Handbooks 1909.12 and 1909.15. The rules do not provide an adjudication, grievance-oriented process. Rather, they provide an expeditious, objective review of NEPA derived decisions by an official at the next administrative level.

§ 217.2 Definitions.

For the purposes of this part—

"Appellant" is the term used to refer to a person or organization (or an authorized agent or representative acting on their behalf) filing a notice of appeal under this part.

"Deciding Officer" means the Forest Service line officer who has the delegated authority and responsibility to make the decision being questioned under these rules.

"Decision document" means a written document that a Deciding Officer signs to execute a decision subject to review under this part. Specifically a Record of Decision, a Decision Notice, or Decision Memo.

"Decision documentation" refers to the decision document and all relevant environmental and other analysis documentation on which the Deciding Officer based a decision that is at issue under the rules of this part. Decision documentation includes, but is not limited to, a project file for proposed actions categorically excluded from documentation in an environmental assessment or environmental impact statement, environmental assessments, findings of no significant impact, environmental impact statements, land and resource management plans, regional guides, documents incorporated by reference in any of the preceding documents, and drafts of these documents released for public review and comment.

"Decision Memo" is a concise memorandum to the files signed by a Deciding Officer recording a decision to take or implement an action that has been categorically excluded from documentation in either an environmental assessment or environmental impact statement (40 CFR 1508.4).

"Decision Notice" means the written document signed by a Deciding Officer when the decision was preceded by preparation of an environmental assessment (40 CFR 1508.9).

"Decision review" or "review" is the term used to refer to the process provided in this part by which a higher level officer reviews a decision of a subordinate officer in response to a notice of appeal.

"Forest Service line officer". The Chief of the Forest Service or a Forest Service official who serves in a direct line of command from the Chief and who has the delegated authority to make and execute decisions under this subpart. Specifically, for the purposes of this subpart, a Forest Service employee who holds one of the following offices and titles: District Ranger, Forest Supervisor, Deputy Forest Supervisor, Regional Forester, Deputy Regional Forester, Deputy Chief, Associate Deputy Chief, Associate Chief, or the Chief of the Forest Service.

"Intervenor" is an individual who, or organization that, is interested in or potentially affected by a decision under appeal pursuant to this part, who has made a timely request to intervene in that appeal.

"Notice of appeal" is the written document filed with a Reviewing Officer by one who objects to a decision covered by this part and who requests review by the next higher line officer.

"Participants" include appellants, intervenors, the Deciding Officer, and the Reviewing Officer.

"Record of Decision" is the document signed by a Deciding Officer recording a decision that was preceded by preparation of an environmental impact statement (40 CFR 1505.2).

"Reviewing Officer" is the line officer one administrative level higher than the Deciding Officer or, in the case of a discretionary review, one level higher than the line officer who issued a first-level appeal decision.

§ 217.3 Decisions subject to appeal.

(a) Except as provided in § 217.4 of this part, written decisions governing plans, projects, and activities to be carried out on the National Forest System that result from analysis, documentation, and other requirements of the National Environmental Policy Act and the National Forest Management Act, and the implementing regulations, policies, and procedures are subject to appeal under this part.

(1) Only decisions documented in a Decision Memo, Decision Notice, or a Record of Decision are subject to appeal under this part. Preliminary planning decisions or preliminary decisions as to National Environmental Policy Act or National Forest Management Act processes made prior to release of final plans, guides, and other environmental documents are not appealable until issuance of decision documents.

(2) Forestry research and State and private forestry programs and activity decisions are subject to appeal under this part, if a specific decision is documented pursuant to paragraph (a)(1) of this section, and would be carried out directly on National Forest System lands.

(b) Decisions subject to appeal under this part include, but are not limited to:

(1) Approval, amendment, and revision of a forest land and resource management plan prepared pursuant to 36 CFR Part 219.

(2) Approval, and amendment of a regional guide for forest planning prepared pursuant to 36 CFR 219.8.

(3) Other projects and activities for which decision documents are prepared, such as timber sales, road and facility construction, range management and improvements, wildlife and fisheries habitat improvement measures, forest pest management activities, removal of certain minerals or mineral materials, land exchanges and acquisitions, and establishment or expansion of winter sports or other special recreation sites.

(c) Decisions on any of the matters listed in this section made by an authorized subordinate Forest Service staff officer acting within delegated authority are considered to be decisions of the Forest Service line officer to whom the subordinate employee reports.

§ 217.4 Decisions not subject to appeal.

(a) The following decisions are not subject to appeal under this part:

(1) Decisions appealable to the Agriculture Board of Contract Appeals, U.S. Department of Agriculture, under 7 CFR Part 24.

(2) Decisions involving Freedom of Information Act denials under 7 CFR Part 1 or Privacy Act determinations under 7 CFR 1.118.

(3) Decisions for which the jurisdiction of another Government agency or the Comptroller General supercedes that of the Department of Agriculture.

(4) Recommendations of Forest Service line officers to higher ranking Forest Service or Departmental officers or to other entities having final authority to implement the recommendation in question.

(5) Decisions appealable under separate administrative proceedings, including, but not limited to, those under 36 CFR 223.117, Administration of Cooperative or Federal Sustained Yield Units; 7 CFR 21.104, Eligibility for Relocation Payment or Amount; and 4 CFR Part 21, Bid Protests.

(6) Decisions pursuant to Office of Management and Budget Circular A-76, Performance of Commercial Activities.

(7) Decisions concerning contracts under the Federal Property and Administration Services Act of 1949, as amended.

(8) Decisions covered by the Contract Disputes Act.

(9) Decisions involving Agency personnel matters.

(10) Decisions where relief sought is reformation of a contract or award of monetary damages.

(11) Decisions related to rehabilitation of National Forest System lands and recovery of forest resources resulting from natural disasters or other natural phenomena such as wildfires, severe wind, earthquakes, and flooding when the Regional Forester or, in situations of national significance, the Chief of the Forest Service determines and gives notice in the **Federal Register** that good cause exists to exempt such decisions from review under this part.

(12) Decisions embodied in rulemaking promulgated in accordance with the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) or in policies and procedures issued in the Forest Service Manual and handbooks (36 CFR Parts 200 and 216).

(13) Decisions imposing penalties for archaeological violations under 36 CFR 296.15 or to issue order or violations of prohibitions and orders under 36 CFR Part 261.

(14) Decisions solely affecting the business relationship between the Forest Service and applicants for or holders of written instruments regarding occupancy and use of National Forest System lands except as provided for at 36 CFR 251.82.

(b) In addition to decisions excluded from appeal by paragraph (a) of this section, the Forest Service shall not accept any notice of appeal on subsequent implementing actions that result from the initial decision subject to review under this part as defined at § 217.3(b)(3). For example, an initial decision to offer a timber sale is appealable under this part; subsequent actions to advertise or award that sale are not appealable under this part. A subsequent implementing decision that is documented in a new decision document would be subject to appeal under this part.

§ 217.5 Giving notice of decisions subject to appeal.

(a) For decisions subject to appeal under this part, Deciding Officers shall promptly mail the appropriate decision document (§ 217.3(a)(1)) to those who, in writing, have requested it, and to those who are known to have participated in the decisionmaking process.

(b) In addition to the notice required by paragraph (a) of this section, the Deciding Officer shall promptly publish a notice in the **Federal Register** about decisions that are considered to have effects of national concern, including those types of decisions of national concern made by the Chief that are subject to review under this part.

(c) Responsible officials may provide other forms of notice, including legal notice in newspapers of general circulation, as provided for in 40 CFR 1506.6, Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act.

§ 217.6 Participants.

(a) Other than Forest Service employees, any person or any non-Federal organization or entity may challenge a decision covered by this part and request a review by the Forest Service line officer at the next administrative level.

(b) An intervenor as defined in § 217.2 of the subpart.

§ 217.7 Levels of appeal.

(a) *Decisions made by the Chief.* If the Chief of the Forest Service is the Deciding Officer, the notice of appeal is filed with the Secretary of Agriculture. Review by the Secretary is wholly discretionary. Within 15 days of receipt of a notice of appeal, the Secretary shall determine whether or not to review the decision in question. If the Secretary has not decided to review the Chief's decision by the expiration of the 15-day period, the requester(s) shall be notified that the Chief's decision is the final administrative decision of the Department of Agriculture. Procedures governing such reviews are set forth at § 217.17 of this part.

(b) *Decisions made by Forest Supervisors and Regional Foresters.* Only one level of administrative review is available on written decisions by Forest Service line officers below the level of the Chief and above the level of the District Ranger. The levels of available review are as follows:

(1) If the decision is made by a Forest Supervisor, the notice of appeal is filed with the Regional Forester;

(2) If the decision is made by a Regional Forester, the notice of appeal is filed with the Chief of the Forest Service.

(c) *Decisions made by the District Ranger.* Two levels of appeal are available for written decisions by the District Ranger.

(1) The initial appeal is filed with the Forest Supervisor.

(2) The notice of appeal for a second level of review must be filed with the Regional Forester within 15 days of the Forest Supervisor's appeal decision. Upon receiving the appeal, the Regional Forester shall promptly request the first level appeal record from the Forest Supervisor. The review shall be conducted on the existing file and no additional information shall be added to the file.

(d) *Discretionary review of dismissal decisions.* Dismissal decisions rendered by Forest Service line officers pursuant to this part (§ 217.11) are subject to discretionary review (§ 217.17) by the officer at the next higher level. The levels of discretionary review are as follows:

(1) If the Reviewing Officer was the Forest Supervisor, the Regional Forester has discretion to review.

(2) If the Reviewing Officer was the Regional Forester, the Chief has discretion to review.

(3) If the Reviewing Officer was the Chief, the Secretary of Agriculture has discretion to review.

(e) *Discretionary review of appeal decisions.* Appeal decisions rendered by Regional Foresters and the Chief pursuant to this part are subject to discretionary review (§ 217.17) by the officer at the next higher level. The levels of discretionary review are as follows:

(1) If the Reviewing Officer was the Regional Forester, the Chief has discretion to review, except as provided for in paragraph (e)(3) of this section.

(2) If the Reviewing Officer was the Chief, the Secretary of Agriculture has discretion to review.

(3) A Regional Forester's decision on a second-level appeal constitutes the final administrative determination of the Department of Agriculture on the appeal and is not subject to discretionary review by a higher level officer under the subpart.

§ 217.8 Appeal process sequence.

(a) *Filing procedures.* To appeal a decision under this part, a person or organization must:

(1) File a written notice of appeal in accordance with the provisions of § 217.9 of this part with the next higher line officer.

(2) Simultaneously send a copy of the notice of appeal to the Deciding Officer.

(3) File the notice of appeal within 45 days of the date of the decision for project decisions documented in a Decision Memo, Decision Notice, or Record of Decision (§ 217.3).

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(4) File the notice of appeal within 90 days of the date of the decision for land and resource management plan approvals, significant amendments, or revisions, and for other programmatic decision documented in a Record of Decision.

(b) *Computation of time periods.* (1) The day after the decision date is the first day of the time period for filing. All other time periods applicable to this part are tied to the filing of a notice of appeal and begin on the first day following that filing.

(2) All time periods in this rule are to be computed using calendar days. Saturdays, Sundays, and Federal holidays are included in computing the time period for filing a notice of appeal; however, when the filing period would expire on a Saturday, Sunday, or Federal holiday, the filing time is extended to the end of the next Federal working day.

(c) *Evidence of timely filing.* It is the responsibility of the appellant to file the notice on or before the last day of the filing period. In the event of question, a legible postmark will be considered evidence of timely filing. Where postmarks are illegible, the Reviewing Officer shall rule on the timely filing of the appeal. As provided for in § 217.11, notices of appeal that are late shall be dismissed.

(d) *Time extensions.* (1) The 45-day/90-day filing periods for a notice of appeal are not extendable.

(2) Time extensions are not permitted except as provided in §§ 217.12, 217.13, and 217.17 of this subpart.

(e) *Appeal decision.* Unless time has been extended as provided for in §§ 217.12 and 217.13, the Reviewing Officer shall not exceed the following time periods for rendering an appeal decision:

(1) An appeal of a project decision, not more than 100 days from the date the notice of appeal was filed.

(2) An appeal of a land and resource management plan approval, significant amendment, or revision, or on a programmatic decision documented in a Record of Decision, not more than 160 days from the date the notice of appeal was filed.

(3) A second-level appeal of a District Ranger's decision, not more than 30 days from the date the first-level appeal record was received.

(4) In the event of multiple appeals of the same decision, the appeal decision date shall be calculated from the filing date of the last notice of appeal.

§ 217.9 Content of a notice of appeal.

(a) It is the responsibility of those who appeal a decision under this part to provide a Reviewing Officer sufficient narrative evidence and argument to show why the decision by the lower level officer should be changed or reversed.

(b) At a minimum, a written notice of appeal filed with the Reviewing Officer must:

(1) List the name, address, and telephone number of the appellant;

(2) Identify the decision about which the requester objects;

(3) Identify the document in which the decision is contained by title and subject, date of the decision, and name and title of the Deciding Officer.

(4) Identify specifically that portion of the decision or decision document to which the requester objects;

(5) State the reasons for objecting, including issues of fact, law, regulation, or policy, and, if applicable, specifically how the decision violates law, regulation, or policy; and

(6) Identify the specific change(s) in the decision that the appellant seeks.

§ 217.10 Stays.

(a) Requests to stay the approval of land and resource management plans prepared pursuant to 36 CFR Part 219 shall not be granted. However, requests to stay implementation of a project or activity included in such a plan will be considered as provided for in paragraph (b) of this section.

(b) Where a project or activity would be implemented before an appeal decision could be issued, the Reviewing Officer shall consider written requests to stay implementation of that decision pending completion of the review.

(c) To request a stay of implementation, an appellant must—

(1) File a written request with the Reviewing Officer;

(2) Simultaneously send a copy of the stay request to any other appellant(s), intervenor(s), and to the Deciding Officer; and

(3) Provide a written justification of the need for a stay, which at a minimum includes the following:

(i) A description of the specific project(s), activity(ies), or action(s) to be stopped.

(ii) Specific reasons why the stay should be granted in sufficient detail to permit the Reviewing Officer to evaluate and rule upon the stay request, including at a minimum:

(A) The specific adverse effect(s) upon the requester;

(B) Harmful site-specific impacts or effects on resources in the area affected by the activity(ies) to be stopped; and

(C) How the cited effects and impacts would prevent a meaningful decision on the merits.

(d) The Reviewing Officer shall rule on stay requests within 10 days of receipt of a request.

(e) In deciding a stay request, a Reviewing Officer shall consider:

(1) Information provided by the requester pursuant to paragraph (c) of this section;

(2) The effect that granting a stay would have on preserving a meaningful appeal on the merits;

(3) Any information provided by the Deciding Officer or other party to the appeal in response to the stay request; and

(4) Any other factors the Reviewing Officer considers relevant to the decision.

(f) A Reviewing Officer must issue a written decision on a stay request.

(1) If a stay is granted, the stay shall specify the specific activities to be stopped, duration of the stay, and reasons for granting the stay.

(2) If a stay is denied in whole or in part, the decision shall specify the reasons for the denial.

(3) A copy of a decision on a stay request shall be sent to the appellant(s), intervenor(s), and the Deciding Officer.

(g) A decision may be implemented during a review unless the Reviewing Officer has granted a stay.

(h) A Reviewing Officer's decision on a request to stay implementation of a project or activity is not subject to discretionary review at the next administrative level, except when the Reviewing Officer is the Forest Supervisor. In this instance, the Regional Forester has discretion to review.

§ 217.11 Dismissal without review.

(a) A Reviewing Officer shall dismiss an appeal and close the appeal record without decision on the merits when:

(1) The notice is not filed within the time specified in § 217.8 of this part;

(2) The requested relief or change cannot be granted under law, fact, or regulation existing when the decision was made.

(3) The notice of appeal fails to meet the minimum requirements of § 217.9 of this part to such an extent that the Reviewing Officer lacks adequate information on which to base a decision;

(4) The decision at issue is being appealed under another administrative proceeding;

(5) The decision is excluded from appeal pursuant to § 217.4 of this part;

(6) The appellant(s) withdraws the appeal; or

(7) The Deciding Officer withdraws the appealed decision.

(b) The Reviewing Officer shall give written notice of a dismissal to all participants that includes an explanation of why the appeal is dismissed.

(c) A Reviewing Officer's dismissal decision is subject to discretionary review at the next administrative level as provided for in § 217.7(d) of this part.

§ 217.12 Resolution of issues.

(a) When a decision is appealed, the Deciding Officer may discuss the appeal with the appellant(s) and intervenor(s) together or separately to narrow issues, agree on facts, and explore opportunities to resolve the issues by means other than review and decision on the appeal. Reviewing Officers may, on their own initiative, request the Deciding Officer to meet the participants to discuss the appeal and explore opportunities to resolve the issues. However, Reviewing Officers may not participate in such discussions. Reviewing Officers may at the request of the Deciding Officer's, or on their own initiative, extend the time periods for review and specify a reasonable duration to allow for conduct of meaningful negotiations.

(b) The Deciding Officer has the authority to withdraw a decision, in whole or in part, during the appeal. Where a Deciding Officer decides to withdraw a decision, all participants to the appeal will be notified that the case is dismissed. A Deciding Officer's subsequent decision to reissue or modify the withdrawn decision constitutes a new decision and is subject to appeal under this part.

§ 217.13 Reviewing officer authority.

(a) *Discretion to establish procedures.* A Reviewing Officer may issue such determinations and procedural instructions as appropriate to ensure orderly and expeditious conduct of the appeal process as long as they are in accordance with all the applicable rules and procedures of this part.

(1) In appeals involving intervenors, the Reviewing Officer may prescribe special procedures to conduct the appeal.

(2) In case of multiple appeals of a decision, the Reviewing Officer may prescribe special procedures as necessary to conduct the review.

(3) All participants shall receive notice of any procedural instructions or decisions governing conduct of an appeal.

(4) Procedural instructions and decisions are not subject to review by higher level officers.

(b) *Consolidation of multiple appeals.* (1) The Reviewing Officer shall determine whether to issue one appeal decision or separate decisions in cases involving multiple notices of appeal under this part, or if the same decision is also under appeal pursuant to 36 CFR Part 251. In the event of a consolidated decision, the Reviewing Officer shall give advance notice to all who have appealed the decision.

(2) Decisions to consolidate an appeal decision are not subject to review by higher level officers.

(c) *Requests for information.* At any time during the appeal process, the Reviewing Officer at the levels specified in § 217.7 (a) and (b) of this part may extend the time periods for review to request additional information from an appellant, intervenor, or the Deciding Officer. Such requests shall be limited to obtaining and evaluating information needed to clarify issues raised. The Reviewing Officer shall notify all participants of such requests and provide them opportunity to comment on the information obtained.

(d) *Conduct of review of decisions made by the Chief.* When the Secretary elects to review an initial decision made by the Chief (§ 217.7(a)), the Secretary shall conduct the review in accordance with all the applicable rules and procedures of this part.

§ 217.14 Intervention.

(a) For a period not to exceed 20 days following the filing of a first level notice of appeal, the Reviewing Officer shall accept requests to intervene in the appeal from any interested or potentially affected person or organization. Requests to intervene in an appeal at the second level (§ 217.7(c)) or during the discretionary review (§ 217.7(e)) shall not be accepted.

(b) Upon receiving such a request, the Reviewing Officer shall promptly acknowledge the request, in writing, and mail the Notice of Appeal to the intervenor.

(c) The Reviewing Officer shall accept into the appeal record written comments about the appeal from an intervenor for a period not to exceed 30 days following acknowledgement of the intervention request (§ 217.14(b)).

(d) Intervenors must concurrently furnish copies of all submissions to the appellant. Failure to provide copies may result in removal of a submission from the appeal record.

(e) An intervenor cannot continue an appeal if the appeal is dismissed (§ 217.11).

§ 217.15 Appeal record.

(a) Upon receipt of a copy of the notice of appeal, the Deciding Officer shall assemble the relevant decision documentation (§ 217.2) and pertinent records, and transmit them to the Reviewing Officer within 30 days.

(b) In transmitting the decision documentation to the Reviewing Officer, the Deciding Officer shall indicate where the documentation addresses the issues raised in the notice of appeal. The Deciding Officer shall provide a copy of the transmittal letter to the appellant(s) and intervenor(s).

(c) The review of decisions appealed under this part focuses on the documentation developed by the Deciding Officer in reaching decisions. The records on which the Reviewing Officer shall conduct the review consists of the notice of appeal, any written comments submitted by intervenors, the official documentation prepared by the Deciding Officer in the decisionmaking process, the Deciding Officer's letter transmitting those documents to the Reviewing Officer, and any appeal related correspondence, including additional information requested by the Reviewing Officer pursuant to § 217.13 of this part.

(d) It is the responsibility of the Reviewing Officer to maintain in one location a file of documents related to the decision and appeal.

(e) *Closing the record.* (1) In appeals involving intervenors, the appeal record shall close upon receipt of comments on the appeal by the intervenor or at the end of the 30-day period for providing comments, whichever is the latter date, unless time has been extended as provided for in §§ 217.12 and 217.13.

(2) In appeals without intervenors, the appeal record shall close upon receipt of the decision documentation from the Deciding Officer, unless time has been extended as provided for in §§ 217.12 and 217.13.

(f) The appeal record is open to public inspection at any time during the review.

§ 217.16 Decision.

(a) The Reviewing Officer shall not issue a decision prior to the record closing (§ 217.15(e)).

(b) The Reviewing Officer's decision shall, in whole or in part, affirm or reverse the original decision. The Reviewing Officer's decision may include instructions for further action by the Deciding Officer.

(c) An appeal decision must be consistent with applicable law, regulations, and orders.

(d) The Reviewing Officer shall send a copy of the decision to all participants and to others upon request.

(e) Unless a higher level officer exercises the discretion to review a Reviewing Officer's decision as

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provided at § 217.7(e), or the Reviewing Officer is a Forest Supervisor, the Reviewing Officer's decision is the final administrative decision of the Department of Agriculture and that decision is not subject to further review under this part.

§ 217.17 Discretionary review.

(a) Petitions or requests for discretionary review shall not, in and of themselves, give rise to a decision to exercise discretionary review. In electing to exercise discretion, a Reviewing Officer should consider, but is not limited to, such factors as controversy surrounding the decision, the potential for litigation, whether the decision is precedential in nature, or whether the decision modifies existing or establishes new policy.

(b) Within one day following the date of a Forest Supervisor's stay decision (§ 217.10(f)), a dismissal decision (§ 217.11) or an appeal decision (§ 217.16) rendered by a Reviewing Officer, that officer shall forward a copy of the appeal decision and the decision documents (§ 217.2) upon which the appeal is predicated to the next higher officer.

(c) When a stay of implementation is in effect, it shall remain in effect until the end of the 15-day period in which a higher level officer must decide whether or not to review a Reviewing Officer's decision (§ 217.17(d)), or until the end of the 15-day period provided for a second level appeal of a District Ranger's decision (§ 217.7(c)). If the higher level officer decides to review the Reviewing Officer's decision or a second level appeal is filed, the stay will remain in effect until a decision is issued (§ 217.17(f)), or until the end of the 30-day review period provided in §217.17(g), whichever is less.

(d) The higher level officer shall have 15 days from date of receipt to decide whether or not to review a lower level appeal decision, and may request and use the appeal record in deciding whether or not to review the decision, including decisions to dismiss. If the record is requested, the 15-day period is suspended at that point. The lower level Reviewing Officer shall forward it within 5 days of the request. Upon receipt, the higher level officer shall have 15 days to decide whether or not to review the lower level decision. If that officer takes no action by the expiration of the 15-day period or the additional 5-day period following receipt of the record, the decision of the Reviewing Officer stands as the final administrative decision of the Department of Agriculture. All participants shall be notified by the discretionary level whether or not the decision will be reviewed.

(e) Where an official exercises the discretion in § 217.7 (d) or (e) of this subpart to review a dismissal or appeal decision, the discretionary review shall be made on the existing appeal record and the lower level Reviewing Officer's appeal decision. The record shall not be reopened to accept additional submissions from any party to the appeal or from the Reviewing Officer who appeal decision is being reviewed.

(f) The second level Reviewing Officer shall conclude the review within 30 days of the date of notice issued to participants that the lower level decision will be reviewed, and shall send a copy of the review decision to all participants.

(g) If a discretionary review decision is not issued by the end of the 30-day review period, appellants and intervenors shall be deemed to have exhausted their administrative remedies for purposes of judicial review. In such case, the participants shall be notified by the discretionary level.

§ 217.18 Policy in event of judicial proceedings.

It is the position of the Department of Agriculture that any filing for Federal judicial review of a decision subject to review under this part is premature and inappropriate unless the plaintiff has first sought to invoke and exhaust the procedures available under this part. This position may be waived upon a written finding by the Chief.

§ 217.19 Applicability and effective date.

(a) The appeal procedures established in this part apply to all notices of appeal filed after February 22, 1989.

(b) Notices of appeal filed under 36 CFR 211.16, 36 CFR 211.18, 36 CFR 228.14, and 36 CFR 292.15 prior to February 22, 1989 remain subject to those procedures.

PART 228—MINERALS [AMENDED]

5. The authority citation for Part 228 continues to read as follows:

Authority: 30 Stat. 35 and 36, as amended (16 U.S.C. 55), and 94 Stat. 2400.

Subpart A—Locatable Minerals [Amended]

6. Revise § 228.14 to read as follows:

§ 228.14 Appeals

Any operator aggrieved by a decision of the authorized officer in connection with the regulations in this part may file an appeal under the provisions of 36 CFR Part 251, Subpart C.

PART 251—LAND USES [AMENDED]

7. Add a new Subpart C to read as follows:

Subpart C—Appeal of Decisions Relating to Occupancy and Use of National Forest System Lands

Sec.
- 251.80 Purpose and scope.
- 251.81 Definitions and terminology.
- 251.82 Appealable decisions.
- 251.83 Decisions not appealable.
- 251.84 Obtaining notice.
- 251.85 Election of appeal process.
- 251.86 Parties.
- 251.87 Levels of appeal.
- 251.88 Filing procedures.
- 251.89 Time extensions.
- 251.90 Content of notice of appeal.
- 251.91 Stays.
- 251.92 Dismissal.
- 251.93 Resolution of issues.
- 251.94 Responsive statement.
- 251.95 Authority of Reviewing Officer.
- 251.96 Intervention.
- 251.97 Oral presentation.
- 251.98 Appeal record.
- 251.99 Appeal decision.
- 251.100 Discretionary review.
- 251.101 Policy in event of judicial proceedings.
- 251.102 Applicability and effective date.

Authority: 16 U.S.C. 472,551.

§ 251.80 Purpose and scope.

(a) This subpart provides a process by which those who hold or, in certain instances, those who apply for written authorizations to occupy and use National Forest System lands, may appeal a written decision by an authorized Forest Service line officer with regard to issuance, approval, or administration of the written instrument. The rules in the subpart establish who may appeal under these rules, the kinds of decisions that can and cannot be appealed, the responsibilities of parties to the appeal, and the various procedures and timeframes that will govern the conduct of appeals under this subpart.

(b) The rules in this subpart seek to offer appellants a fair and deliberate process for appealing and obtaining administrative review of decisions regarding written instruments that authorize the occupancy and use of National Forest System lands.

§ 251.81 Definitions and terminology.

For the purposes of this subpart, the following terms are defined:

Appeal. A request to a higher ranking officer for relief from a written decision filed under this subpart by an applicant for or a holder of a written instrument issued or approved by a Forest Service line officer.

Appeal decision. The written decision rendered by the Reviewing Officer on an appeal for relief under this subpart. The use of this term is limited to the final decision of a Reviewing Officer and does not refer to a stay decision or to any other determinations or procedural orders made on the conduct of an appeal (§ 251.99).

Appeal record. The documents submitted to the Reviewing Officer by an appellant, intervenor, or Deciding Officer (§ 251.98).

Appellant. An eligible applicant for or holder of a written instrument issued for the occupancy and use of National Forest System land (or their authorized agent or representative) who files an appeal pursuant to the provisions of this subpart (§ 251.86).

Deciding officer. The Forest Service line officer who makes a decision related to issuance, approval, or administration of an authorization to occupy and use National Forest System lands that is appealed under this subpart.

Decisions regarding a written instrument or authorization to occupy and use National Forest System lands. A broad, all inclusive phrase used throughout this subpart to connote the full range of actions and decisions a forest officer takes to issue written instruments, or to manage authorized uses of National Forest System lands, including, but not limited to, enforcement of terms and conditions, and suspension, cancellation, and/or termination of an authorization.

Forest System line officer. The Chief of the Forest Service or a Forest Service official who serves in a direct line of command from the Chief and who has the delegated authority to make and execute decisions under this subpart. Specifically, for the purposes of this subpart, a Forest Service employee who holds one of the following offices and titles: District Ranger, Forest Supervisor, Deputy Forest Supervisor, Regional Forester, Deputy Regional Forester, Deputy Chief, Associate Deputy Chief, Associate Chief, or the Chief of the Forest Service.

Intervenor. An individual who, or organization that, is an applicant for or holder of the written instrument, or a similar instrument, issued by the Forest Service that is the subject of an appeal, and who has an interest that could be affected by an appeal, and who has made a timely request to intervene in that appeal, and who has been granted intervenor status by the Reviewing Officer (§ 251.96).

Issuance of a written instrument of authorization. Applies both to decisions to grant and to deny a written instrument or authorization.

Notice of appeal. The document prepared and filed by an appellant to dispute a decision subject to review under this subpart (§ 251.90).

Oral presentation. An informal meeting (in person or by telephone) at which an appellant, intervenor, and/or Deciding Officer may present information related to an appeal to the Reviewing Officer (§ 251.97).

Parties to an appeal. The appellant(s), intervenor(s), and the Deciding Officer.

Responsive statement. A written document prepared by a Deciding Officer that responds to the notice of appeal record by an appellant (§ 251.94).

Reviewing Officer. The officer at the next administrative level above that of the Deciding Officer who conducts appeal proceedings, makes all necessary rulings regarding conduct of an appeal, and issues the appeal decision.

Written instrument or authorization. Any of those kinds of documents listed in § 251.82 of this subpart issued or approved by the Forest Service authorizing an individual, organization or other entity to occupy and use National Forest System lands and resources.

§ 251.82 Appealable decisions.

(a) The rules of this subpart govern appeal of written decisions of Forest Service line officers related to issuance, denial, or administration of the following written instruments to occupy and use National Forest System lands, including but not limited to:

(1) Permits for ingress and egress to intermingled and adjacent private lands across National Forest System lands, 36 CFR 212.8 and 212.10.

(2) Permits and occupancy agreements on National Grasslands and other lands administered under the provisions of Title III of Bankhead-Jones Farm Tenant Act issued under 36 CFR 213.3.

(3) Grazing and livestock use permits issued under 36 CFR Part 222, Subpart A.

(4) Mining plans of operating under 36 CFR Part 228, Subpart A.

(5) Mining operating plans for the Sawtooth National Recreation Area issued under 36 CFR 292.17 and 292.18.

(6) Permits and agreements regarding mineral materials (petrified wood and common varieties of sand, gravel, stone, pumice, pumicite, cinder, clay and other similar materials) under 36 CFR 228, Subpart C.

(7) Permits authorizing exercise of mineral rights reserved in conveyance to the United States issued under 36 CFR Part 251, Subpart A.

(8) Special use authorizations issued under 36 CFR Part 251, Subpart B, except, as provided in § 251.60(g), for suspension or termination of easements issued pursuant to 36 CFR 251.53(e) and (e)(1).

(9) Land exchange agreements under 36 CFR 254.11 and decisions to proceed/not proceed with land exchanges.

(10) Permits for uses in Wilderness Areas issued under 36 CFR 293.3.

(11) Permits to excavate and/or remove archaeological resources issued under the Archaeological Resources Protection Act 1979 and 36 CFR Part 296.

(12) Approval/non-approval of Surface Use Plans of Operations related to the authorized use and occupancy of a particular site or area.

(13) Decisions to object, or not to object to the issuance of minerals leases.

(14) Decisions related to the standards for the use, subdivision, and development of privately owned property within the boundaries of the Sawtooth National Recreation Area pursuant to 36 CFR Part 292, Subpart C.

(b) Written decisions on any of the matters of the type listed in paragraph (a) of this section issued by a Forest Service staff officer with delegated authority to act for a Forest Service line officer are considered to be decisions of the line officer.

§ 251.83 Decisions not appealable.

The following decisions are not appealable under this subpart:

(a) Decisions appealable to the Agriculture Board of Contract Appeals, USDA, under 7 CFR Part 24.

(b) Decisions involving Freedom of Information Act denials under 7 CFR Part 1 or Privacy Act determinations under 7 CFR 1.118.

(c) Decisions for which the jurisdiction of another Government agency, the Comptroller General, or a court to hear and settle disputes supersedes that of the Department of Agriculture.

(d) Recommendations of Forest Service line officers to higher ranking Forest Service line officers or to other entities having final authority to implement the recommendation in question.

(e) Decisions appealable under separate administrative proceedings, including, but not limited to, those under 36 CFR 223.117 (Administration of Cooperative for Federal Sustained Yield Units); 7 CFR 21.104 (Eligibility for Recreation Payment of Amount); and 4 CFR Part 21 (Bid Protests).

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(f) Decisions pursuant to Office of Management and Budget Circular A–76, Performance of Commercial Activities.

(g) Decisions concerning contracts under the Federal Property and Administrative Services Act of 1949, as amended.

(h) Decisions covered by the Contract Disputes Act.

(i) Decisions involving Agency personnel matters.

(j) Decisions where relief sought is reformation of a contract or award of monetary damages.

(k) Decisions made during the preliminary planning process pursuant to 36 CFR Part 219 and 40 CFR Parts 1500–1508 that precede decisions to implement the proposed action.

(l) Decisions related to National Forest land and resource management plans and projects only reviewable under 36 CFR Part 217.

(m) Decisions related to rehabilitation of National Forest System lands and recovery of forest resources resulting from natural disasters or other natural phenomena such as wildfires, severe wind, earthquakes, and flooding when the Regional Forester or, in situations of national significance, the Chief of the Forest Service determines and gives notice that good cause exists to exempt such decisions from appeal under this subpart.

(n) Decisions imposing penalties for archaeological violations under 36 CFR 296.15 or for violations of prohibitions and orders under 36 CFR Part 261.

(o) Reaffirmation of prior decisions to terminate a special use authorization.

§ 251.84 Obtaining notice.

A Deciding Officer shall promptly give written notice of decisions subject to appeal under this subpart to applicants and holders defined in § 251.86 of this subpart and to any holder of like instruments who has made a written request to be notified of a specific decision. The notice shall include a statement of the Deciding Officer's willingness to meet with applicants or holders to hear and discuss any concerns or issues related to the decision (§ 251.93). The notice shall also specify the name of the officer to whom an appeal of the decision may be filed, the address, and the deadline for filing an appeal.

§ 251.85 Election of appeal process.

(a) No decision can be appealed by the same person under both this subpart and Part 217 of this chapter.

(b) Should a decision be reviewable under this subpart as well as Part 217 of this chapter, a party who qualifies to bring an appeal under this subpart can elect which process to use for obtaining review of a decision, but in so doing, the appellant thereby forfeits all right to appeal the same decision under the other review process. However, a holder who waives the right to appeal under the provisions of 36 CFR Part 217 may intervene pursuant to 36 CFR 217.6(b).

§ 251.86 Parties.

Only the following may participate in the appeals process provided under this subpart:

(a) An applicant who, in response to a prospectus or written solicitation or other notice by the Forest Service, files a formal written request for a written authorization to occupy and use National Forest System land covered under § 251.82 of this subpart and

(1) Was denied the authorization, or

(2) Was offered an authorization subject to terms and conditions that the applicant finds unreasonable or impracticable.

(b) The signatory(ies) or holder(s) of a written authorization to occupy and use National Forest System land covered under § 251.82 of this subpart who seeks relief from a written decision related to that authorization.

(c) An intervenor as defined in § 251.81 of this subpart.

(d) The Deciding Officer who made the decision being appealed under this subpart.

§ 251.87 Levels of appeal.

(a) *Decisions made by the Chief.* If the Chief of the Forest Service is the Deciding Officer, the appeal is to the Secretary of Agriculture. Review by the Secretary is discretionary. Within 15 calendar days of receipt of a timely notice of appeal, the Secretary shall determine whether or not to review the decision. If the Secretary has not decided whether or not to review the decision by the expiration of the 15-day period, the appellant shall be notified that the Chief's decision is the final administrative decision of the Department of Agriculture. Procedures governing such reviews are set forth at § 251.100 of this part.

(b) *Decisions made By Forest Supervisors and Regional Foresters.* Only one level of appeal is available on written decisions by Forest Service line officers below the level of the Chief and above the level of the District Ranger. The levels of available appeal are as follows:

(1) If the decision is made by a Forest Supervisor, the appeal is filed with the Regional Forester;

(2) If the decision is made by a Regional Forester, the appeal is filed with the Chief of the Forest Service.

(c) *Decisions made by the District Ranger.* Two levels of appeal are available for written decisions by District Rangers.

(1) The appeal for initial review is filed with the Forest Supervisor.

(2) The appeal for a second level of review is filed with the Regional Forester within 15 days of the first level appeal decision. Upon receiving such a request, the Regional Forester shall promptly request the first level file from the Forest Supervisor. The review shall be conducted on the existing record and no additional information shall be added to the file.

(d) *Discretionary review of dismissal decisions.* Dismissal decisions rendered by Forest Service line officers pursuant to this part (§ 251.92) are subject only to discretionary review by the officer at the next higher level. The levels of discretionary review are as follows:

(1) If the Reviewing Officer was the Forest Supervisor, the Regional Forester has discretion to review.

(2) If the Reviewing Officer was the Regional Forester, the Chief has discretion to review.

(3) If the Reviewing Officer was the Chief, the Secretary of Agriculture has discretion to review.

(e) *Discretionary review of appeal decisions.* Appeal decisions rendered by Regional Foresters and the Chief pursuant to this part are subject to discretionary review by the officer at the next higher level. The levels of discretionary review are as follows:

(1) If the Reviewing Officer is the Regional Forester, the Chief of the Forest Service has discretion to review.

(2) If the Reviewing Officer is Chief, the Secretary of Agriculture has discretion to review.

(3) A Regional Forester's decision on a second-level appeal constitutes the final administrative determination of the Department of Agriculture on the appeal and is not subject to further review by a higher level officer under this subpart.

§ 251.88 Filing procedures.

(a) *Filing procedures.* In order to appeal a decision under this subpart, an appellant must:

(1) File a notice of appeal in accordance with § 251.90 of this subpart with the next higher line officer as identified in § 251.87.

(2) File the notice of appeal within 45 days of the date on the notice of the written decision being appealed (§ 251.84); and

(3) Simultaneously send a copy of the notice of appeal to the Deciding Officer.

(b) *Evidence of timely filing.* It is the responsibility of those filing an appeal

to file the notice of appeal by the end of the filing period. In the event of questions, legible postmarks will be considered evidence of timely filing. Where postmarks are illegible, the Reviewing Officer shall rule on the timeliness of the notice of appeal. Untimely submissions are subject to dismissal as provided for in § 251.92(2).

(c) *Computation of time period for filing.* (1) The time period for filing a notice of appeal of a decision under this subpart begins on the first day after the Deciding Officer's written notice of the decision. All other time periods applicable to this subpart also will be computed to begin on the first day following an event or action related to the appeal.

(2) Time periods applicable to this subpart are computed using calendar days. Saturdays, Sundays, or Federal holidays are included in computing the time allowed for filing an appeal; however, when the filing period would expire on a Saturday, Sunday, or Federal holiday the filing time is extended to the end of the next Federal working day.

§ 251.89 Time extensions.

(a) *Filing of notice of appeal.* Time for filing a notice of appeal is not extendable.

(b) *All other time periods.* Appellants, Intervenors, Deciding Officers, and Reviewing Officers shall meet the time periods specified in the rules of this subpart, unless a Reviewing Officer has extended the time as provided in this paragraph. Except as noted in paragraph (a) of this section, the Reviewing Officer may extend all other time periods under this subpart.

(1) For appeals of initial written decisions by the Chief, a Regional Forester, or a Forest Supervisor, a Reviewing Officer, where good cause exists, may grant a written request for extension of time to file a responsive statement or replies thereto. The Reviewing Officer shall rule on requests for extensions within 10 days of receipt of the request and shall provide written notice of the extension ruling to all parties to the appeal.

(2) Except for discretionary reviews of appeal decisions as provided in § 251.87(d) of this subpart, a Reviewing Officer may extend the time period for issuance of the appeal decision, including for purposes of allowing additional time for the Deciding Officer to resolve disputed issues, as provided in § 251.93 of this subpart.

§ 251.90 Content of notice of appeal.

(a) It is the responsibility of an appellant to provide a Reviewing Officer sufficient narrative evidence and argument to show why a decision by a lower level officer should be reserved or changed.

(b) An appellant must include the following information in a notice of appeal:

(1) The appellant's name, mailing address, and daytime telephone number;

(2) The title or type of written instrument involved, the date of application for or issuance of the written instrument, and the name of the responsible Forest Service Officer;

(3) A brief description and the date of the written decision being appealed;

(4) A statement of how the appellant is adversely affected by the decision being appealed;

(5) A statement of the facts of the dispute and the issue(s) raised by the appeal;

(6) Specific reference to any law, regulation, or policy that the appellant believes to be violated and that the appellant believes to be violated and the reason for such an allegation;

(7) A statement as to whether and how the appellant has tried to resolve the issue(s) being appealed with the Deciding Officer, the date of any discussion, and the outcome of that meeting or contact; and

(8) A statement of the relief the appellant seeks.

(c) An appellant may also include in the notice of appeal a request for oral presentation (§ 251.97) or a request for stay of implementation of the decision pending on the appeal (§ 251.93).

§ 251.91 Stays.

(a) A decision may be implemented during an appeal unless the Reviewing Officer grants a stay.

(b) An appellant or intervenor may request a stay of a decision at any time while an appeal is pending, if the harmful effects alleged pursuant to paragraph (c)(3) of this section would occur during pendency of the appeal. The Reviewing Officer shall not accept any request to stay implementation of a decision that is not scheduled to begin during pendency of the appeal.

(c) To request a stay of decision, an appellant or intervenor must—

(1) File a written request with the Reviewing Officer;

(2) Simultaneously send a copy of the stay request to any other appellant(s), to intervenor(s), and to the Deciding Officer.

(3) Provide a written justification of the need for a stay, which at a minimum includes the following:

(i) A description of the specific project(s), activity(ies), or action(s) to be stopped.

(ii) Specific reasons why the stay should be granted in sufficient detail to permit the Reviewing Officer to evaluate and rule upon the stay request, including at a minimum:

(A) The specific adverse effect(s) upon the requester;

(B) Harmful site-specific impacts or effects on resources in the area affected by the activity(ies) to be stopped, and

(C) How the cited effects and impacts would prevent a meaningful decision on the merits.

(d) A Deciding Officer and other parties to an appeal may provide the Reviewing Officer with a written response to a stay request. A copy of any response must be sent to all parties to the appeal.

(e) *Timeframe.* The Reviewing Officer must rule on a stay request no later than 10 calendar days from receipt.

(f) *Criteria to consider.* In deciding a stay request, a Reviewing Officer shall consider:

(1) Information provided by the requester pursuant to paragraph (c) of this section including the validity of any claim of adverse effect on the requester;

(2) The effect that granting a stay would have on preserving a meaningful appeal on the merits;

(3) Any information provided by the Deciding Officer or other party to the appeal in response to the stay request; and

(4) Any other factors the Reviewing Officer considers relevant to the decision.

(g) *Notice of decision on a stay request.* A Reviewing Officer must issue a written decision on a stay request.

(1) If a stay is granted, the stay shall specify the specific activities to be stopped, duration of the stay, and reasons for granting the stay.

(2) If a stay is denied in whole or in part, the decision shall specify the reasons for the denial.

(3) A copy of a decision on a stay request shall be sent to all parties to the appeal.

(h) *Duration.* A stay shall remain in effect for the 15-day period for determining discretionary review (§ 251.100), unless changed by the Reviewing Officer in accordance with paragraph (i) of this section.

(i) *Change in a stay.* A Reviewing Officer may change a stay decision in accordance with any terms established in the stay decision itself or at any time during pendency of an appeal that circumstances support a change of stay. In making any changes to a stay decision, the Reviewing Officer must issue a written notice to all parties to the appeal explaining the reason for

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making the changes and setting forth any terms or conditions that apply to the change.

(j) *Petitions to change a stay.* An appellant or intervenor may petition a Reviewing Officer to change or lift a stay at any time during the pendency of a stay. Such petitions must be in writing, must explain how circumstances have changed since the stay was imposed, and must state why the change in the stay is being requested. The petitioner must send a copy of the petition to all parties to the appeal.

(k) *Appeal of stay decision or changes in stay.* A Reviewing Officer's decision to grant, deny, lift, or otherwise change a stay is not subject to further appeal and review, except when the first-level Reviewing Officer was the Forest Supervisor. In this instance, the Regional Forester has discretion to review.

§ 251.92 Dismissal.

(a) The Reviewing Officer shall dismiss an appeal and close the record without a decision on the merits when:

(1) The appellant is not eligible to appeal a decision under this subpart.

(2) Appellant's notice of appeal is not filed within the required time period, or the notice of appeal fails to meet the minimum requirements of § 251.90 of this subpart to such an extent that the Reviewing Officer lacks adequate information on which to base a decision.

(3) In cases where there is only one appellant, the appellant withdraws the appeal.

(4) The requested relief cannot be granted under existing law, fact, or regulation.

(5) The decision is excluded from appeal under this subpart (§ 251.83).

(6) The Deciding Officer has withdrawn the decision under appeal.

(7) A request for review of the same decision has been filed by the same person under Part 217 of this Chapter.

(b) The Reviewing Officer shall give written notice of dismissal that includes an explanation of why the appeal is dismissed.

(c) A Reviewing Officer's dismissal is subject to discretionary review at the next highest administrative level as provided for in § 251.87(d).

§ 251.93 Resolution of issues.

(a) Authorized Forest Service officers shall, to the extent practicable and consistent with the public interest, consult and meet in person, or by phone, with holders of written instruments prior to issuing written decisions related to administration of a written authorization. The purpose of such meetings is to discuss any issues or concerns related to the authorized use and to reach a common understanding and agreement where possible prior to issuance of a written decision.

(b) When decisions are appealed, the Deciding Officer may discuss the appeal with the appellant(s) and intervenor(s) together or separately to narrow issues, agree on facts, and explore opportunities to resolve the issues by means other than review and decision on the appeal. At the request of the Deciding Officer, the Reviewing Officer may extend the time periods for review and specify a reasonable duration to allow for conduct of meaningful negotiations.

(c) The Deciding Officer has the authority to withdraw a decision, in whole or in part, during the appeal. Where a Deciding Officer decides to withdraw a decision, all parties to the appeal and the Reviewing Officer must receive written notice.

§ 251.94 Responsive statement.

(a) *Content.* A responsive statement contains the Deciding Officer's response to the specific facts or issues of law or regulation and the requested relief set forth by the appellant in the notice of appeal.

(b) *Timeframe.* Unless the Reviewing Officer has granted an extension or dismissed the appeal, the Deciding Officer shall prepare a responsive statement and send it to the Reviewing Officer and all parties to the appeal within 30 days of receipt of the notice of appeal.

(c) *Replies.* Within 20 days of the postmarked date of the responsive statement, the appellant(s) and any intervenor(s) may file a written reply to the responsive statement with the Reviewing Officer. Appellants and intervenors must send a copy of any reply to a responsive statement to all parties to the appeal, including the Deciding Officer.

§ 251.95 Authority of reviewing officer.

(a) *Discretion to establish procedures.* A Reviewing Officer may issue such procedural orders as deemed appropriate to ensure orderly, expeditious, and fair conduct of an appeal providing they are consistent with other provisions of this part.

(1) In appeals involving intervenors, the Reviewing Officer may prescribe special procedures to conduct the appeal.

(2) All parties to an appeal shall receive notice of any orders or decisions on the conduct of the appeal.

(3) Orders and determinations governing the conduct of an appeal are not subject to appeal and further review.

(b) *Consolidation of appeals.* A Reviewing Officer may consolidate multiple appeals of the same decision, or of similar decisions involving common issues of fact or law and issue one appeal decision. Similarly, a Reviewing Officer may issue one decision in cases involving separate reviews filed pursuant to 36 CFR Part 217 and under this part when the decision at issue is the same decision. In such case, the Reviewing Officer shall give notice to all parties to multiple appeals.

(1) A decision to consolidate appeals is not subject to appeal and further review.

(2) At the discretion of the Reviewing Officer, the Deciding Officer may prepare one responsive statement to multiple appeals.

(c) *Requests for additional information.* Except in discretionary reviews conducted pursuant to § 251.100 of this subpart, the Reviewing Officer may ask any party to an appeal for additional information as deemed necessary to decide the appeal. Such requests will be limited to obtaining and evaluating information needed to clarify issues raised. The Reviewing Officer shall notify all parties of the request for information, provide it to all parties, give opportunity to comment, and extend time periods if necessary to allow for submission of the information.

(d) *Conduct of appeals of decisions made by the Chief.* When the Secretary elects to review an initial decision made by the Chief (§ 251.87(a)), the Secretary shall conduct the review in accordance with all the applicable rules and procedures of this subpart.

§ 251.96 Intervention.

(a) A request to intervene in an appeal may be made at any time prior to the closing of the appeal record (§ 251.98) at the first level of appeal (§ 251.87). Requests to intervene in an appeal at the discretionary review level (§ 251.87(d)) shall be denied.

(b) To request intervention in a first-level appeal under this subpart, a party, at a minimum, must:

(1) Submit a written petition to intervene to the Reviewing Officer.

(2) Be, as defined at § 251.81 of this subpart, an applicant for or party to a written instrument issued by the Forest Service that is the subject of or affected by the appeal, and have an interest that could be directly affected by a decision on the appeal, and

(3) Show, in the request for intervention, how the decision on the appeal would directly affect petitioner's interests.

(c) The Reviewing Officer determines whether a party requesting intervention meets the requirements of paragraph (a) of this section. In granting intervention, the Reviewing Officer must give notice to all other parties to the appeal.

(d) A granting or denial of intervention is not subject to appeal to a higher level.

(e) Appellants and intervenors must concurrently furnish copies of all submissions to each other as well as the Deciding Officer. Failure to provide each other copies may result in removal of a submission from the appeal record. At the discretion of the Reviewing Officer, appellants may be given additional time to review and comment on initial submissions by intervenors.

(f) An intervenor cannot continue an appeal if the appellant withdraws the appeal.

§ 251.97 Oral presentation.

(a) *Purpose.* An oral presentation provides an additional opportunity for an appellant, and other parties to an appeal, to present their viewpoints to the Reviewing Officer. The purpose is to restate, emphasize, and/or clarify information related to an appeal. Oral presentations are to be conducted in an informal manner and shall not be subject to formal rules of procedure such as those applicable to judicial proceedings.

(b) *Requests.* Only an appellant may request and be granted an oral presentation. An appellant may request an oral presentation at any time prior to closing of the appeal record (§ 251.98). A Reviewing Officer shall automatically grant an oral presentation if the appellant requested the presentation as part of the notice of appeal.

(c) *Participation.* At the discretion of the Reviewing Officer, oral presentations may be open to public attendance, but participation is limited to parties to the appeal. The Reviewing Officer shall advise all parties to the appeal, including the Deciding Officer, of the place, time, and date of the oral presentation, and how the oral presentation will be conducted. All parties to an appeal shall be invited to participate. Appellants and intervenors must bear any expense involved in making an oral presentation in person or by telephone.

(d) *Limitation.* Oral presentations shall be held only at the first level of appeal (§ 251.87(b)).

§ 251.98 Appeal record.

(a) The following rules apply only to the appeal record for appeals at the first level (§ 251.87 (a), (b)):

(1) It is the responsibility of the Reviewing Officer to maintain in one location the documents related to the appeal.

(2) The record consists of the documents filed with the Reviewing Officer including, but not limited to, the notice of appeal, responsive statement, replies to submissions by various parties to the appeal, orders and determinations made on the conduct of the appeal, and correspondence.

(3) The Reviewing Officer has discretion to remove from the record documents that were not sent to all parties to an appeal.

(4) Unless the Reviewing Officer has ordered otherwise, the appeal record closes with the expiration of the time period for filing of the reply(ies) to the responsive statement, or at the conclusion of an oral presentation, if there is one. The Reviewing Officer shall notify all parties to an appeal of the closure of the record.

(5) The appeal record is open to public inspection.

§ 251.99 Appeal decision.

(a) The Reviewing Officer shall base the appeal decision on the appeal record and laws, regulations, orders, policies and procedures in effect at the time the decision was made.

(b) The Reviewing Officer shall affirm or reverse the original decision whole or in part and include the reason(s) for the decision. The Reviewing Officer may also include in the appeal decision instructions for further action by the Deciding Officer.

(c) At the first level of appeal, the Reviewing Officer shall make and issue an appeal decision within 30 days of the date the record is closed.

(d) At the second level of appeal provided in § 251.87(c), the Reviewing Officer shall make and issue an appeal decision within 30 days of the date the record is received from the first level Reviewing Officer.

(e) The Reviewing Officer shall send a copy of all appeal decisions to all participants.

(f) Unless the next higher officer exercises the discretion to review an appeal decision as provided in §§ 251.87(e) and 251.100 of this subpart, the appeal decision is the final administrative decision of the Department of Agriculture and is not subject to further review under this subpart or Part 217 of this chapter.

§ 251.100 Discretionary review.

(a) Petitions or requests for discretionary review shall not, in and of themselves, give rise to a decision to exercise discretionary review. In electing to exercise discretion, a Reviewing Officer should consider, but is not limited to, such factors as controversy surrounding the decision, the potential for litigation, and whether the appeal decision is precedential in nature or establishes new policy.

(b) Within one day following the date of a dismissal (§ 251.92) or an appeal decision (§ 251.99) is signed by a Reviewing Officer, the Reviewing Officer shall forward a copy of the appeal decision and the initial decision upon which the appeal is predicated to the next higher officer.

(c) The next higher level officer shall have 15 calendar days from date of receipt to decide whether or not to review an appeal decision and may call for or use the appeal record in deciding whether or not to review the appeal decision. If the record is requested, the 15-day period is suspended at that point. The lower level Reviewing Officer shall forward it within 5 days of the request. Upon receipt, the higher level officer shall have 15 days to decide whether or not to review the lower level decision. If that officer takes no action by the expiration of the discretionary review period, appellants shall be notified that the appeal decision of the Reviewing Officer stands as the final administrative review decision of the Department of Agriculture.

(d) When an official exercises the discretion in § 251.87(d) or § 251.87(e) of this subpart to review a dismissal or appeal decision, the discretionary review shall be made on the existing appeal record and the lower level Reviewing Officer's appeal decision. The record shall not be reopened to accept additional submissions from any party to the appeal or from the Reviewing Officer whose appeal decision is being reviewed.

(e) When an official exercises discretion to review an appeal decision, a Reviewing Officer may extend a stay, in whole or in part, during pendency of the discretionary review.

(f) The second level Reviewing Officer shall conclude the review within 30 days of the date of notice issued to an appellant that the lower level decision will be reviewed.

(g) If a discretionary review decision is not issued by the end of the 30-day review period, appellants and intervenors shall be deemed to have exhausted their administrative remedies for purposes of judicial review. In such case, appellants, intervenors, and the lower level Reviewing Officer shall be notified.

(h) The Reviewing Officer shall provide a copy of the decision to all

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appellants, intervenors, the Deciding Officer, and the lower level Reviewing Officer.

§ 251.101 Policy in event of judicial proceedings.

It is the position of the Department of Agriculture that any filing for Federal judicial review of and relief from a decision appealable under this subpart is premature and inappropriate, unless the appellant has first sought to resolve the dispute by invoking and exhausting the procedures of this subpart. This position may be waived only upon a written finding by the Chief.

§ 251.102 Applicability and effective date.

(a) Except where applicants or holders elect the decision review procedures of Part 217 of this Chapter, all appeals of decisions by applicants or holders arising from the issuance, approval, and administration of written instruments authorizing occupancy and use of National Forest System lands as defined at § 251.82 of this subpart shall be subject to the provisions of this subpart as of February 22, 1989.

(b) Appeals of the type covered by this subpart and filed prior to February 22, 1989, shall continue to be conducted under the provisions of 36 CFR 211.18.

PART 292—NATIONAL RECREATION AREAS [AMENDED]

Subpart C—Sawtooth National Recreation Area—Private Lands [Amended]

8. The authority citation for Part 292, Subpart C continues to read as follows:

Authority: Sec. 4(a), Act of Aug. 22, 1972 (86 Stat. 613).

§ 292.15 [Amended]

9. Revise § 292.15(*l*) to read as follows:

* * * * *

(*l*) *Appeals.* Any landowner who is adversely affected by a decision of the Area Ranger under these regulations may file an appeal under the provisions of 36 CFR Part 251, Subpart C.

Date: January 12, 1989.

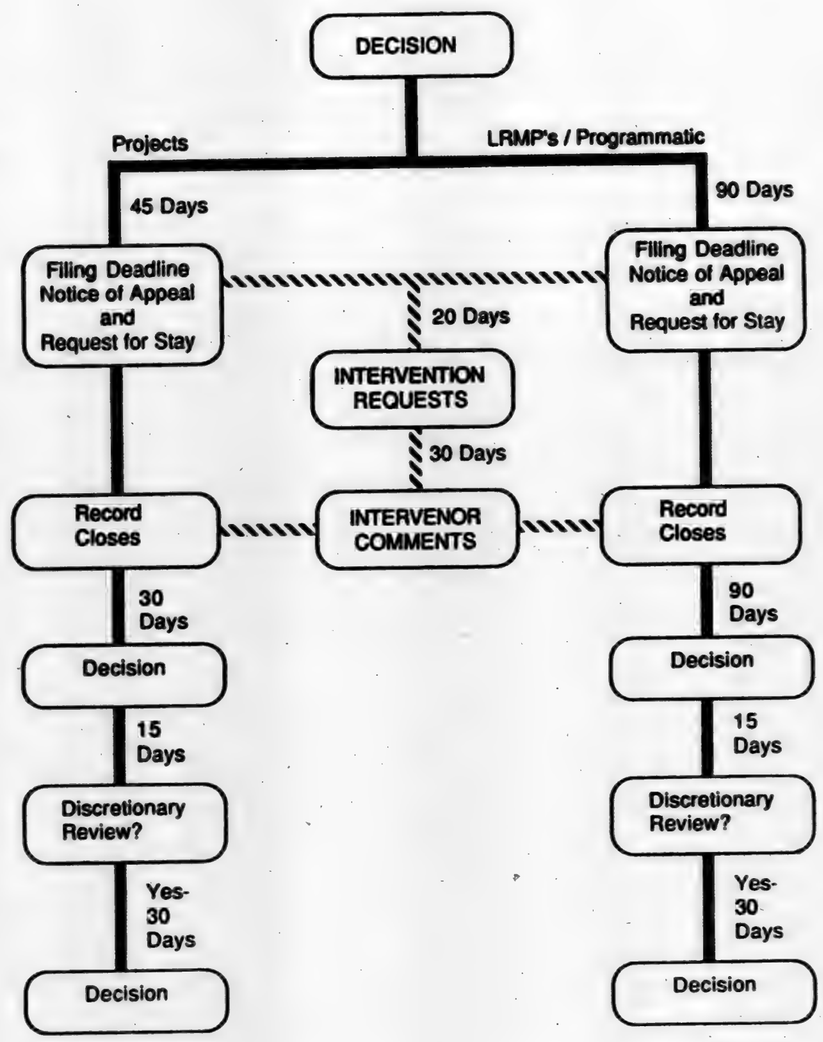
Richard E. Lyng,

Secretary.

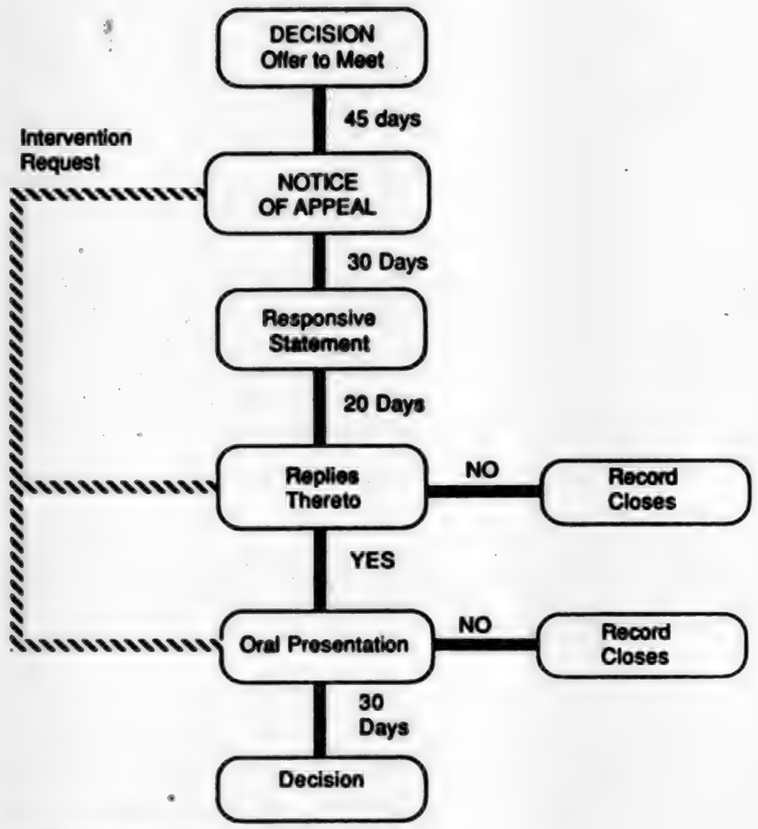
Editorial note: These appendices will not appear in the Code of Federal Regulations.

BILLING CODE 3410-11-M

Appendix A - 36 CFR 217



Appendix B - 36 CFR 251



[FR Doc. 89-1222 Filed 1-19-89; 8:45 am]
BILLING CODE 3410-11-C

federal register

Monday
January 23, 1989

Part VII

Department of the Interior

Minerals Management Service

Outer Continental Shelf Operations in the Central Gulf of Mexico; Notices

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DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf Central Gulf of Mexico; Notice of Leasing Systems, Sale 116

Section 8(a)(8) (43 U.S.C. 1337(a)(8)) of the Outer Continental Shelf Lands Act (OCSLA) requires that, at least 30 days before any lease sale, a Notice be submitted to the Congress and published in the **Federal Register**.

1. identifying the bidding systems to be used and the reasons for such use; and

2. designating the tracts to be offered under each bidding system and the reasons for such designation.

This Notice is published pursuant to these requirements.

1. *Bidding systems to be used.* In the Outer Continental Shelf (OCS) Sale 116, blocks will be offered under the following two bidding systems as authorized by section 8(a)(1) (43 U.S.C. 1337(a)(1)): (a) bonus bidding with a fixed 16⅔-percent royalty on all unleased blocks in less than 400 meters of water; and (b) bonus bidding with a fixed 12½-percent royalty on all remaining unleased blocks.

a. *Bonus Bidding with a 16⅔-Percent Royalty.* This system is authorized by section (8)(a)(1)(A) of the OCSLA. This system has been used extensively since the passage of the OCSLA in 1953 and imposes greater risks on the lessee than systems with higher contingency payments but may yield more rewards if a commercial field is discovered. The relatively high front-end bonus payments may encourage rapid exploration.

b. *Bonus Bidding with a 12½-Percent Royalty.* This system is authorized by section (8)(a)(1)(A) of the OCSLA. It has been chosen for certain deeper water blocks proposed for the Central Gulf of Mexico (Sale 116) because these blocks are expected to require substantially higher exploration, development, and production costs, as well as longer times before initial production, in comparison to shallow water blocks. Department of the Interior analyses indicate that the minimum economically developable discovery on a block in such high-cost areas under a 12½-percent royalty system would be less than for the same blocks under a 16⅔-percent royalty system. As a result, more blocks may be explored and developed. In addition, the lower royalty rate system is expected to encourage more rapid production and higher economic profits. It is not anticipated, however, that the larger cash bonus bid associated with a lower royalty rate will significantly reduce competition, since the higher costs for exploration and development are the primary constraints to competition.

2. *Designation of Blocks.* The selection of blocks to be offered under the two systems was based on the following factors:

a. Lease terms on adjacent, previously leased blocks were considered to enhance orderly development of each field.

b. Blocks in deep water were selected for the 12½-percent royalty system based on the favorable performance of this system in these high-cost areas as evidenced in our analyses.

The specific blocks to be offered under each system are shown on Map 2 entitled "Central Gulf of Mexico Lease Sale 116—Final, Bidding Systems and Bidding Units." This map is available from the Minerals Management Service, Gulf of Mexico Region, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394.

Robert E. Kallman

Director, Minerals Management Service.

Approved: January 13, 1989.

James E. Cason

Deputy Assistant Secretary—Land and Minerals Management.

[FR Doc. 89–1339 Filed 1–19–89; 8:45 am]

BILLING CODE 4310-MR-M

UNITED STATES
DEPARTMENT OF THE INTERIOR
MINERALS MANAGEMENT SERVICE

Outer Continental Shelf
Central Gulf of Mexico
Oil and Gas Lease Sale 118

1. Authority. This Notice is published pursuant to the Outer Continental Shelf (OCS) Lands Act (43 U.S.C. 1331-1356, (1982)), as amended by the OCS Lands Act 1985 Amendments (100 Stat. 147), and the regulations issued thereunder (30 CFR Part 256).

2. Filing of Bids. Sealed bids will be received by the Regional Director (RD), Gulf of Mexico Region, Minerals Management Service (MMS), 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123-2394. Bids may be delivered in person to that address during normal business hours (8 a.m. to 4 p.m., Central Standard Time (c.s.t.)) until the Bid Submission Deadline at 10 a.m., Tuesday, March 14, 1989. All times cited in this Notice refer to c.s.t. Bids will not be accepted the day of Bid Opening, Wednesday, March 15, 1989. Bids received by the RD later than the time and date specified above will be returned unopened to the bidders. Bids may not be modified unless written modification is received by the RD prior to 10 a.m., Tuesday, March 14, 1989. Bids may not be withdrawn unless written withdrawal is received by the RD prior to 8:30 a.m., Wednesday, March 15, 1989. Bid Opening Time will be 9 a.m., Wednesday, March 15, 1989, at the Marriott Hotel, 555 Canal Street, New Orleans, Louisiana. All bids must be submitted and will be considered in accordance with applicable regulations including 30 CFR Part 256. The list of restricted joint bidders which applies to this sale appeared in the Federal Register at 53 FR 41249, published on October 20, 1988.

3. Method of Bidding. A separate bid in a sealed envelope labeled "Sealed Bid for Oil and Gas Lease Sale 118, (insert map number, map name, and block number(s)), not to be opened until 9 a.m., Wednesday, March 15, 1989," must be submitted for each block or prescribed bidding unit bid upon. The company qualification number should also appear on the envelope. For example, a label would read as follows: "Sealed Bid for Oil and Gas Lease Sale 118, MG 16-1, Atwater Valley, Block 701, not to be opened until 9 a.m., Wednesday, March 15, 1989, Overthrust Inc. #1093." For those blocks which must be bid upon as a bidding unit (see paragraph 12), it is recommended that all numbers of blocks comprising the bidding unit appear on the sealed envelope. A suggested bid form appears in 30 CFR Part 256, Appendix A. In addition, the total amount bid must be in whole dollar amounts (no cents). Bidders must submit with each bid one-fifth of the cash bonus, in cash or by cashier's check, bank draft, or certified check, payable to the order of the U.S. Department of the Interior--Minerals Management Service. The company qualification number should also appear on the check or draft together with bid block identification. No bid for less than all of the unleased portions of a block or bidding unit, as referenced in paragraph 12, will be considered. Bidders are advised to use the description "All the Unleased Federal Portions" for those blocks having only aliquot portions currently available for leasing.

All documents must be executed in conformance with signatory authorizations on file. Partnerships also need to submit or have on file in the Gulf of Mexico regional office a list of signatories authorized to bind the partnership. Bidders submitting joint bids must state on the bid form the proportionate interest of each participating bidder, in percent to a maximum of five decimal places after the decimal point; e.g., 33.33333 percent. Other documents may be required of bidders under 30 CFR 256.46. Bidders are warned against violation of 18 U.S.C. 1860, prohibiting unlawful combination or intimidation of bidders.

4. Bidding Systems. All bids submitted at this sale must provide for a cash bonus in the amount of $25 or more per acre or fraction thereof. All leases awarded will provide for a yearly rental payment of $3 per acre or fraction thereof. All leases will provide for a minimum royalty of $3 per acre or fraction thereof. The bidding systems to be employed for this sale apply to blocks or bidding units as shown on Map 2 (see paragraph 12). The following bidding systems will be used:

(a) Bonus Bidding with a 12 1/2-Percent Royalty. Bids on the blocks and bidding units offered under this system must be submitted on a cash bonus basis with a fixed royalty of 12 1/2 percent.

(b) Bonus Bidding with a 16 2/3-Percent Royalty. Bids on the blocks and bidding units offered under this system must be submitted on a cash bonus basis with a fixed royalty of 16 2/3 percent.

5. Equal Opportunity. Each bidder must have submitted by the Bid Submission Deadline stated in paragraph 2, the certification required by 41 CFR 60-1.7(b) and Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, on the Compliance Report Certification Form, Form MMS-2033 (June 1985), and the Affirmative Action Representation Form, Form MMS-2032 (June 1985). See paragraph 14(e).

6. Bid Opening. Bid opening will begin at the Bid Opening Time stated in paragraph 2. The opening of the bids is for the sole purpose of publicly announcing bids received, and no bids will be accepted or rejected at that time. If the Department is prohibited for any reason from opening any bid before midnight on the day of Bid Opening, that bid will be returned unopened to the bidder as soon thereafter as possible.

7. Deposit of Payment. Any cash, cashier's checks, certified checks, or bank drafts submitted with a bid may be deposited by the Government in an interest-bearing account in the U.S. Treasury during the period the bids are being considered. Such a deposit does not constitute and shall not be construed as acceptance of any bid on behalf of the United States.

8. Withdrawal of Blocks. The United States reserves the right to withdraw any block from this sale prior to issuance of a written acceptance of a bid for the block.

9. Acceptance, Rejection, or Return of Bids. The United States reserves the right to reject any and all bids. In any case, no bid will be accepted, and no lease for any block or bidding unit will be awarded to any bidder, unless:

(a) the bidder has complied with all requirements of this Notice and applicable regulations;

(b) the bid is the highest valid bid; and

(c) the amount of the bid has been determined to be adequate by the authorized officer.

No bonus bid will be considered for acceptance unless it provides for a cash bonus of $25 or more per acre or fraction thereof. Any bid submitted which does not conform to the requirements of this Notice, the OCS Lands Act, as amended, and other applicable regulations may be returned to the person submitting that bid by the RD and not considered for acceptance.

10. Successful Bidders. Each person who has submitted a bid accepted by the authorized officer will be required to execute copies of the lease, pay the balance of the cash bonus bid together with the first year's annual rental, as specified below, and satisfy the bonding requirements of 30 CFR 256, Subpart I. Successful bidders are required to submit the balance of the bonus and the first year's annual rental payment, for each lease issued, by electronic funds transfer in accordance with the requirements of 30 CFR 218.155.

11. Leasing Maps and Official Protraction Diagrams. Blocks or bidding units offered for lease may be located on the following Leasing Maps or Official Protraction Diagrams which may be purchased from the Gulf of Mexico regional office (see paragraph 14(a)):

(a) Outer Continental Shelf Leasing Maps--Louisiana Nos. 1 through 12. This is a set of 27 maps which sells for $28. (Revised and New Maps have recently been issued.)

(b) Outer Continental Shelf Official Protraction Diagrams:

NH 15-12	Ewing Bank	(revised December 2, 1976).
NH 16-4	Mobile	(revised November 8, 1988).
NH 16-7	Viosca Knoll	(revised December 2, 1976).
NH 16-10	Mississippi Canyon	(revised December 2, 1976).
NG 15-3	Green Canyon	(revised December 2, 1976).
NG 15-6	Walker Ridge	(revised December 2, 1976).
NG 15-9	(No Name)	(approved March 3, 1987).
NG 16-1	Atwater Valley	(revised November 10, 1983).
NG 16-4	Lund	(revised August 22, 1986).
NG 16-7	(No Name)	(approved March 3, 1987).

These sell for $2 each.

12. Description of the Areas Offered for Bids.

(a) Acreages of blocks are shown on Leasing Maps and Official Protraction Diagrams. Some of these blocks, however, may be partially leased, or transected by administrative lines such as the Federal/State jurisdictional line. In these cases, the following supplemental documents to this Notice are available from the Gulf of Mexico regional office (see paragraph 14(a)).

(1) Central Gulf of Mexico Lease Sale 118 - Final. Unleased Split Blocks.

(2) Central Gulf of Mexico Lease Sale 118 - Final. Unleased Acreage of Blocks with Aliquots Under Lease.

(b) References to Maps 1, 2, and 3 in this Notice refer to the following maps which are available on request from the Gulf of Mexico regional office.

Map 1 entitled "Central Gulf of Mexico Lease Sale 118 - Final. Stipulations, Lease Terms, and Warning Areas."

Map 2 entitled "Central Gulf of Mexico Lease Sale 118 - Final. Bidding Systems and Bidding Units," refers largely to Royalty Rates and Bidding Units.

Map 3 entitled "Central Gulf of Mexico Lease Sale 118 - Final. Detailed Maps of Biologically Sensitive Areas," pertains to areas referenced in Stipulation No. 2.

(c) In several instances, two or more blocks have been joined together into bidding units totaling less than 5,760 acres. Any bid submitted for a bidding unit having two or more blocks must be for all of the unleased Federal acreage within all of the blocks in that bidding unit. The list of those bidding units with their total acreages appears on Map 2.

(d) The areas offered for leasing include all those blocks shown on the OCS Leasing Maps and Official Protraction Diagrams listed in paragraph 11, except for those blocks or partial blocks described on pages 7 through 20 of this Notice.

(e) The proposed Notice for this sale, issued in September 1988, listed all Federal acreage under lease at that time. Subsequent lease expirations and relinquishments by lessees, however, have resulted in the availability of a number of such previously leased blocks for bidding in this sale. For the convenience of potential bidders, these newly available blocks are listed on page 6 of this Notice.

Sale 118 Update List

The following blocks have become available for leasing since publication of the proposed Notice of Sale 118. This list is being furnished for your convenience.

West Cameron

57
278

West Cameron, West Addition

389

West Cameron, South Addition

501
535
659

East Cameron

2
99
100
102

Vermilion

88
241
242

South Pass

55

South Pass, South East

88

Main Pass

57 (8%)

Main Pass, South East

199
232
261
271
276
281
286
287

Mobile

910
912
913

Vermilion, South

270
395

South Marsh Island, South

206

Eugene Island

54
72
81
98
253 (E½; E½W½; W½ W½; E½ SW¼ W½; SW¼)

Eugene Island, South

290

Ship Shoal

70

Viosca Knoll

654
694
782
822
823
899

Ewing Bank

909
910
932
933
937
938
953
957

Mississippi Canyon

110
240
241
316
490

Ship Shoal, South

352
368

South Timbalier

182

South Timbalier, South

280
297
298
316

Grand Isle, South

106

West Delta

39

West Delta, South

149

Green Canyon

15
103
146

(1) Descriptions of blocks listed represent all Federal acreage leased unless otherwise noted.

Sabine Pass	West Cameron (continued)	West Cameron (continued)	West Cameron (continued)	West Cameron, West Addition (continued)	West Cameron, West Addition (continued)
3	66	165	229	302	415
9	67	166	231	303	420
10	68 (S½)	167	236	304	421
11	69 (N½)	168	237	311	425
12	71	170	238	312	426
13	72	171	239	313	427
	73	172	240	314	428
	76	173	244	315	433
West Cameron	77	174	247	317	436
	81	176	248	318	437
17	91	177	249	328	438
18 (SW¼)	92	178	251	329	442
20	94	180	252	331	443
21 (SW¼SW¼)	95	181	253	332	
22	96	187	254	333	West
23	100	188	264	343	Cameron,
24	101	189	265	345	S. Addition
26	102	192	266	346	
28 (N½;	103	193	277	352	445
N½S½S½)	105	194	279	358	447
34	106	196	280	359	452
35	107	197	281	360	455
39	108	198		362	456
40	109	199		363	457
41	110	200		364	458
42	111	201	West	365	459
43	115	202	Cameron,	366	461
44 (S½S½S½;	116	204	West	367	463
Portion	117	205	Addition	368	468
seaward	118	206		369	472
of 8g Line)	129	208	157	370	477
45	130	209	161	379	478
47	131	210	163	382	480
48	132	211	287	391	485
49	133	212	288	395	487
53	137	215	289	396	488
55	139	216	290	397	491
56 (N½)	141	217	291	398	493
58	142	220	292	401	494
60	143	222	293	402	498
61	144	224	294	405	499
62	145	225	295	409	504
64	146	226	296	412	507 (N½)
65	149	227	300	413	
	150	228		414	

West Cameron, S. Addition (continued)	West Cameron, S. Addition (continued)	West Cameron, S. Addition (continued)	East Cameron (continued)	East Cameron (continued)	East Cameron (continued)
509	577	643	40	109	199
510	579	644	41	110	204 (N½N½)
516	580	645	42	111	205
518	581	646	43	115	206
522	584	648	44	116	208
523	585	650	45	117	209
524	586	652	46	118	213
527	587	653	47	119	214
530	588	654	48	121	215
531	589	656	49	122	216
532	590	658	50	123	217
533	591	660	51	128	219
534	592	661	53	129	220
536	593	663	55	131	221
537	594		56	133	222
538	595		57	134	228
539	596		58	136	229
540	597		60	137	231
541	599	East	61	138	232
542	600	Cameron	63	139	233
543	601		64	140	235
544	605	8	65	142	
549	606	9	66	143	
551	608	11 (Portion	67	148	
552	609	landward	70	149	
553	610	of 8g line)	71	151	
554	611	13	72	158	E. Cameron,
555	612	14 (Portion	73	160 (E½)	S. Addition
556	613	landward	76	166	
557	614	of 8g line)	78	167	236
560	616	15	81	169	237
561	617	16	82	170	239
563	618	17	83	172	240
564	619	22	87	179	245
565	620	23	88	182	246
566	622	24	89	185	249
569	623	25	90	188	250
570	628	26	91	189	254
571	629	32	94	192	257
572	630	33	95	193	261
573	633	34	96	194-	262
574	637	38	97	(E½E½E½)	264
575	638	39 (Portion	104	195 (E½)	265
576	639	seaward	106	196	266
	642	of 8g line)	107	197	267

East Cameron, S. Addition (continued)

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East Cameron, S. Addition (continued)

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East Cameron, S. Addition (continued)

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Vermilion

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34
35
36 (E½SE¼)
38
39
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41
42
43
45
46 (W½)
48
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Vermilion (continued)

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95
96
97
98
102
103
104 (SE¼; W½;E½SW¼;E½ W½SW¼)
105
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Vermilion (continued)

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171
172
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176
178
179 (SE¼SE¼; E½SE¼SW¼; SE¼SW¼SW¼)
186
187
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191
196
199
200
201
202
203
207
214
215
216
217 (E½; W½SE¼)
218 (E½SE¼; E½SW¼SE¼; W½SW¼SE¼)
221
223
225
226
228
229
234

Vermilion (continued)

237
238
245
246
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Vermilion, S. Addition

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Vermilion, E. Addition (continued)

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Vermilion, E. Addition (continued)

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S. Marsh Island, North Addition

South Marsh Island, W. Addition (continued)

221-
(Landward of lease 0310 stip. line)
222
223
224
225
226
227
228
229
230-
(Landward of lease 0310 stip. line)
231
232
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South Marsh Island, E. Addition (continued)

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S. Marsh Island

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South Marsh Island, (continued)

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S. Marsh Island, S.Addition

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South Marsh Island, S. Addition (continued)

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South Marsh Island, S. Addition (continued)

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Eugene Island

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Eugene Island (continued)

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87
89
90
93 (E½)
94
95
97
99
100
105
107
108
109
113A
116 (E½)
119
120
125
126
128
128A
129
129A
133
135
136
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Eugene Island (continued)

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211
212
214-
(W½E½E½; W½)
215
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221
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225

Eugene Island (continued)

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248
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251
252
253-
(W½W½W½)
254 (S½)
255 (S½)
256
257
258
259
260 (S½)
261
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Eugene Island, S. Addition

Eugene Island, S. Addition (continued)

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Eugene Island, S. Addition (continued)

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Eugene Island, S. Addition (continued)

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Ship Shoal

11
12
13
16 (S½S½)
15
16
25-
(Seaward of Zone 2)
26
27
28
29
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31
32
33
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36
37
50
51
52
53
57
58
59
62-
(Landward of 8g Line)
63
64 (W½)
65
66
67

Ship Shoal (continued)

68
69
71 (W½)
72
73
77
78
80
84
86
87 (W½)
89
90
91
92
93
94 (S½NE¼)
97
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Ship Shoal (continued)

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Ship Shoal (continued)

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Ship Shoal, S. Addition

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Ship Shoal, S. Addition (continued)

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289
290
291-
(W½; SE¼)
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356

Ship Shoal, S. Addition (continued)

357
358
359
361
364

South Timbalier

18
21
22
23
24
26
27 (W½; W½W½)
28
29
30
33 (Portion seaward of 8g Line)
34
35
36
37
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South Timbalier (continued)

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South Timbalier (continued)

170
171
172
173
173
176
177
184
185
186
188 (NW¼)
189
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South Timbalier, S. Addition

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212
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South Timbalier, S. Addition (continued)

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South Timbalier, S. Addition (continued)

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South Pelto

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11
12 (W½)
13
15
16
17
18
19 (W½)
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23
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Bay Marchand

2
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Grand Isle

16
17
18
19
20
21
22
23
26
29 (W½)
30 (Portion in Zone 2)
32
33
34
37
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44
47
48
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51
52
53 (W½)
54
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76
78

Grand Isle (continued)

82-
(NW¼; S½)
83
85

Grand Isle, South Addition

86
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116
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West Delta

16
17
18
19
20
21-
(S½N½S½; S½S½)
22 (S½)
23
24
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78
79
80 (S½; S½S½; N½S½S½)
85
86
87(S½)
89
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93

West Delta (continued)

94
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West Delta S. Addition

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144
152

South Pass

6
17 (Seaward of the 4th Supp.Decree to lft. wwd. of 3rd Supp. Decree)

South Pass, South & East Addition

62
63
64
65
66 (Seaward of 1965 Decree Line)
67
68
69
70
75
76 (Portion landward of 8g Line)
77
78
80
81
82
83
86
87
89
92
93-
94
96

Main Pass

6
7-
(S½; S½S½, in Zone 2)
18 (S½)
19
20
27
29
30
37
38
39

Main Pass (continued)

40
41
42
43
44
56
57 (S½)
58 (S½)
59
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73
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83
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87
88
89
90
91
92
93-
(Seaward of the 8g Line)
94
95
96
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111
112

Main Pass (continued)

113
114
116
117
120
122
124
125
126
127 (S½)
128
129
130
131
132
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141
142
144
145
146
148
151
152 (Seaward of 1965 Decree Line)
153

Main Pass, South & East Addition

157
158
159
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162
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Main Pass, South & East Addition (continued)

164
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167
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Main Pass, South & East Addition (continued)

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Main Pass, South & East Addition (continued)

312
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315

Breton Sound

41
42
53-
(W½ Portion Seaward of 75 Decree Line)
54
55
56

Chandeleur

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Chandeleur E. Addition

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Mobile

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779
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Mobile (continued)

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Viosca Knoll

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Viosca Knoll (continued)

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Viosca Knoll (continued)

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434
692
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737
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781
783
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Viosca Knoll (continued)

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999

Viosca Knoll (continued)

1000
1001
1002
1003

Ewing Bank

305
306
438
482
746
781
782
783
785
786
787
824
825
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830
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832
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870
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Ewing Bank (continued)

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1011

Mississippi Canyon

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Mississippi Canyon (continued)

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Mississippi Canyon (continued)
928 929 931 932 933 934 935 936 937 938 939 940 941 942 952 953 955 956 969 971 972 973 975 976 978 979 980 981 982 985 986 999 1006 1007 1008

Green Canyon
5 6 7 9 10

Green Canyon (continued)
18 19 20 21 22 25 26 27 28 29 30 31 32 34 35 36 38 39 41 43 44 45 48 49 50 51 52 53 54 55 58 61 64 65 66 69 70 72 73 74 75 76 78 79 80

Green Canyon (continued)
81 82 92 93 94 95 96 97 98 106 107 108 109 110 113 114 115 116 117 118 120 121 122 123 133 134 136 140 141 142 143 144 145 147 148 150 152 153 154 155 156 158 160 161

Green Canyon (continued)
162 163 165 166 167 168 172 173 183 184 185 186 188 198 199 200 201 204 205 206 207 208 209 210 212 213 224 225 227 228 230 232 233 234 242 243 247 248 249 250 251 252 253 254

Green Canyon (continued)
256 257 258 271 272 285 286 287 288 290 294 295 296 297 298 301 304 305 313 320 325 326 329 330 333 334 340 342 344 353 369 372 377 385 386 393 398 403 404 415 416 428 429 430 431

Green Canyon (continued)
446 448 459 460 470 471 472 473 475 505 506 508 509 510 513 514 515 516 517 543 544 545 548 552 554 556 557 558 559 567 568 587 588 589 590 600 601 602 603 604 605 606 631 632 648

17

Mississippi Canyon (continued)
324 325 328 329 330 331 335 336 337 338 339 340 341 342 351 352 353 354 355 356 360 361 364 365 371 372 378 382 383 384 385 388 392 397 398 399 400 401 407 410 411 412 413 416 426 427 428 429 430

Mississippi Canyon (continued)
431 436 437 442 443 444 445 451 454 455 456 458 459 460 461 474 475 476 480 481 485 487 488 489 498 499 501 502 504 505 506 508 509 517 518 519 520 521 524 526 531

Mississippi Canyon (continued)
532 533 536 538 539 542 543 547 551 553 554 555 561 562 563 564 568 570 580 582 583 584 589 590 591 592 593 594 595 596 597 600 601 605 606 607 608 612 613 620 621

Mississippi Canyon (continued)
622 627 631 632 633 634 635 636 637 638 639 642 643 647 656 657 661 664 665 668 673 674 675 676 677 678 679 680 687 688 692 694 695 698 705 708 709 710 711 713 716 717 718 719

Mississippi Canyon (continued)
720 721 724 725 728 730 731 732 734 738 739 752 753 755 756 757 758 760 762 763 764 768 769 772 773 774 775 776 777 778 785 786 787 788 793 794 795 796 797 798 799 801 803 804 806

Mississippi Canyon (continued)
807 808 809 810 830 831 832 837 838 840 841 842 843 846 847 848 849 850 851 852 853 854 863 868 875 876 881 884 885 888 890 891 892 893 894 895 896 897 898 900 911 912 913

Green Canyon (continued)	Atwater Valley	Atwater Valley (continued)	Atwater Valley (continued)	Atwater Valley (continued)
647	1	257	391	622
648	3	258	397	623
649	5	261	401	666
650	7	266	405	667
651	8	267	406	
690	17	284	407	
691	18	289	408	Walker Ridge
692	19	290	413	
693	47	291	414	120
699	50	299	415	121
700	51	300	425	164
734	52	310	426	205
735	62	311	427	206
736	79	327	428	207
737	84	332	429	249
742	85	333	430	250
743	89	334	431	251
764	91	335	433	425
765	92	336	434	426
766	93	339	435	469
778	106	340	444	470
808	118	341	445	678
810	119	343	446	723
825	121	344	450	724
826	122	345	451	766
850	123	346	452	767
851	127	353	453	768
852	128	362	455	811
853	133	363	456	
854	134	370	457	
863	135	371	458	
864	136	375	471	
870	137	376	472	
871	162	377	478	
872	163	378	479	
873	163	379	480	
915	177	380	488	
955	178	381	489	
958	179	382	490	
999	209	383	496	
1001	210	384	573	
	217	387	574	
	253	388	575	
	254	389	617	
	256	390	618	

(ii) Although currently unleased and shown on the OCS Official Protraction Diagram, Mobile NH 16-4 (First Issued October 1972 and recently revised November 8, 1988), no bids will be accepted at this sale on the following blocks:

Mobile -- Blocks 765 through 767
809 through 811
853 through 855
897 through 899

13. Lease Terms and Stipulations.

(a) Leases resulting from this sale will have initial terms as shown on Map 1 and will be on Form MMS-2005 (March 1986). Copies of the lease form are available from the Gulf of Mexico regional office (see paragraph 14(a)).

(b) The applicability of the stipulations which follow is as shown on Map 1 and Map 3 and as supplemented by references in this Notice.

Stipulation No. 1--Protection of Archaeological Resources.

(This stipulation will apply to all blocks offered for lease in this sale.)

(a) "Archaeological resource" means any prehistoric or historic district, site, building, structure, or object (including shipwrecks); such term includes artifacts, records, and remains which are related to such a district, site, building, structure, or object. (16 U.S.C. 470w(5), National Historic Preservation Act, as amended.) "Operations" means any drilling, mining, or construction or placement of any structure for exploration, development, or production of the lease.

(b) If the Regional Director (RD) believes an archaeological resource may exist in the lease area, the RD will notify the lessee in writing. The lessee shall then comply with subparagraphs (1) through (3).

(1) Prior to commencing any operations, the lessee shall prepare a report, as specified by the RD, to determine the potential existence of any archaeological resource that may be affected by operations. The report, prepared by an archaeologist and a geophysicist, shall be based on an assessment of data from remote-sensing surveys and of other pertinent archaeological and environmental information. The lessee shall submit this report to the RD for review.

(2) If the evidence suggests that an archaeological resource may be present, the lessee shall either:

(i) Locate the site of any operation so as not to adversely affect the area where the archaeological resource may be; or

(ii) Establish to the satisfaction of the RD that an archaeological resource does not exist or will not be adversely affected by operations. This shall be done by further archaeological investigation, conducted by an archaeologist and a geophysicist, using survey equipment and techniques deemed necessary by the RD. A report on the investigation shall be submitted to the RD for review.

(3) If the RD determines that an archaeological resource is likely to be present in the lease area and may be adversely affected by operations, the RD will notify the lessee immediately. The lessee shall take no action that may adversely affect the archaeological resource until the RD has told the lessee how to protect it.

(c) If the lessee discovers any archaeological resource while conducting operations on the lease area, the lessee shall report the discovery immediately to the RD. The lessee shall make every reasonable effort to preserve the archaeological resource until the RD has told the lessee how to protect it.

Stipulation No. 2--Topographic Features.

(This stipulation will be included in leases located in the areas so indicated on Maps 1 and 3 described in paragraph 12.)

The banks which cause this stipulation to be applied to blocks of the Central Gulf are:

Bank Name	No Activity Zone Defined by Isobath (meters)	Bank Name	No Activity Zone Defined by Isobath (meters)
McGrail Bank	85	Jakkula Bank	85
Bouma Bank	85	Sweet Bank/1	85
Rezak Bank	85	Bright Bank	85
Sidner Bank	85	Geyer Bank/3	85
Rankin Bank	85	MacNeil Bank/3	82
Sackett Bank/2	85	Alderdice Bank	80
Ewing Bank	85	Fishnet Bank/2	76
Diaphus Bank/2	85	29 Fathom Bank	64
Parker Bank	85	Sonnier Bank	55

1/Only paragraph (a) of the stipulation applies.
2/Only paragraphs (a) and (b) apply.
3/Western Gulf of Mexico bank with a portion of its "3-Mile Zone" in the Central Gulf of Mexico.

(a) No activity including structures, drilling rigs, pipelines, or anchoring will be allowed within the listed isobath ("No Activity Zone" as shown on Map 3) of the banks as listed above.

(b) Operations within the area shown as "1,000-Meter Zone" on Map 3 shall be restricted by shunting all drill cuttings and drilling fluids to the bottom through a downpipe that terminates an appropriate distance but no more than 10 meters from the bottom.

(c) Operations within the area shown as "1-Mile Zone" on Map 3 shall be restricted by shunting all drill cuttings and drilling fluids to the bottom through a downpipe that terminates an appropriate distance but no more than 10 meters from the bottom. (Where there is a "1-Mile Zone" designated, the "1,000-Meter Zone" in paragraph (b) is not designated.)

(d) Operations within the area shown as "3-Mile Zone" on Map 3 shall be restricted by shunting all drill cuttings and drilling fluids from development operations to the bottom through a downpipe that terminates an appropriate distance but no more than 10 meters from the bottom.

Stipulation No. 3--Live Bottoms.

(To be included only on leases in the following blocks: Main Pass Area, South and East Addition, Blocks 219-226, 244-266, 276-288; Viosca Knoll, Blocks 521, 522, 564, 565, 566, 609, 610, 654, 692-698.)

For the purpose of this stipulation, "live bottom areas" are defined as seagrass communities; or those areas which contain biological assemblages consisting of such sessile invertebrates as sea fans, sea whips, hydroids, anemones, ascidians, sponges, bryozoans, or corals living upon and attached to naturally occurring hard or rocky formations with rough, broken, or smooth topography; or areas whose lithotope favors the accumulation of turtles, fishes, and other fauna.

Prior to any drilling activities or the construction or placement of any structure for exploration or development on this lease, including, but not limited to, anchoring, well drilling, and pipeline and platform placement, the lessee will submit to the Regional Director (RD) a live bottom survey report containing a bathymetry map prepared utilizing remote sensing techniques. The bathymetry map shall be prepared for the purpose of determining the presence or absence of live bottoms which could be impacted by the proposed activity. This map shall encompass such an area of the seafloor where surface disturbing activities, including anchoring, may occur.

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If it is determined that the live bottoms might be adversely impacted by the proposed activity, the RD will require the lessee to undertake any measure deemed economically, environmentally, and technically feasible to protect the pinnacle area. These measures may include, but are not limited to, the following:

(a) the relocation of operations; and

(b) the monitoring to assess the impact of the activity on the live bottoms.

Stipulation No. 4--Military Areas.

(This stipulation will be included in leases located within the Warning Areas and Eglin Water Test Areas 1 and 3, as shown on Map 1 described in paragraph 12.)

(a) Hold and Save Harmless

Whether compensation for such damage or injury might be due under a theory of strict or absolute liability or otherwise, the lessee assumes all risks of damage or injury to persons or property, which occur in, on, or above the Outer Continental Shelf (OCS) to any persons or to any property of any person or persons who are agents, employees, or invitees of the lessee, its agents, or independent contractors or subcontractors doing business with the lessee in connection with any activities being performed by the lessee in, on, or above the OCS, if such injury or damage to such person or property occurs by reason of the activities of any agency of the U.S. Government, its contractors or subcontractors, or any of their officers, agents or employees, being conducted as a part of, or in connection with, the programs and activities of the command headquarters listed in the following table.

Notwithstanding any limitation of the lessee's liability in section 14 of the lease, the lessee assumes this risk whether such injury or damage is caused in whole or in part by any act or omission, regardless of negligence or fault, of the United States, its contractors or subcontractors, or any of its officers, agents, or employees. The lessee further agrees to indemnify and hold and save harmless the United States against all claims for loss, damage, or injury sustained by the lessee, or to indemnify and hold and save harmless the United States against all claims for loss, damage, or injury sustained by the agents, employees, or invitees of the lessee, its agents, or any independent contractors or subcontractors doing business with the lessee in connection with the programs and activities of the aforementioned military installation, whether the same be caused in whole or in part by the negligence or fault of the United States, its contractors or subcontractors, or any of its officers, agents, or employees and whether such claims might be sustained under a theory of strict or absolute liability or otherwise.

(b) Electromagnetic Emissions

The lessee agrees to control its own electromagnetic emissions and those of its agents, employees, invitees, and independent contractors or subcontractors emanating from individual designated defense warning areas in accordance with requirements specified by the commander of the command headquarters listed in the following table to the degree necessary to prevent damage to, or unacceptable interference with, Department of Defense flight, testing or operational activities, conducted within individual designated warning areas. Necessary monitoring control, and coordination with the lessee, its agents, employees, invitees, and independent contractors or subcontractors, will be effected by the commander of the appropriate onshore military installation conducting operations in the particular warning area; provided, however, that control of such electromagnetic emissions shall in no instance prohibit all manner of electromagnetic communication during any period of time between a lessee, its agents, employees, invitees, and independent contractors or subcontractors and onshore facilities.

(c) Operational

The lessee when operating, or causing to be operated on its behalf, boat or aircraft traffic in the individual designated warning areas shall enter into an agreement with the commander of the individual command headquarters listed in the following table upon utilizing an individual designated warning area prior to commencing such traffic. Such an agreement will provide for positive control of boats and aircraft operating in the warning areas at all times.

Warning Areas' Command Headquarters

Warning Areas	Command Headquarters
W-155 (For Agreement)	Chief, Naval Air Training Naval Air Station ATTN: Lieutenant Commander Armitage or Major Danuser Corpus Christi, Texas 78419-5100 Telephone: (512) 939-3927/3902
'W-155 (For Operational Control)	Fleet Area Control & Surveillance Facility (FACSFAC) Naval Air Station ATTN: Chief Lyon Pensacola, Florida 32508 Telephone: (904) 452-2735/4671

V-92	Naval Air Station Air Operations Department Air Traffic Division/Code 52 ATTN: Chief Skerret New Orleans, Louisiana 70146-5000 Telephone: (504) 393-3100/3208/3106
W-453	159th Tactical Fighter Group (ANG) NAS NOLA ATTN: Colonel Jack Boh or Captain Eric McDonald New Orleans, Louisiana 0143 Telephone: (504) 393-3376/3377
Eglin Water Test Areas 1 and 3	Commander Armament Division 3246th Test Wing/CA ATTN: Aubrey Freeman Eglin AFB, Florida 32542 Telephone: (904) 882-3614

14. Information to Lessees.

(a) Supplemental Documents. For copies of the various documents identified as available from the Gulf of Mexico regional office, prospective bidders should contact the Public Information Unit, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123-2394, either in writing or by telephone at (504) 736-2519. For additional information, contact the Regional Supervisor for Leasing and Environment at that address or by telephone at (504) 736-2755.

(b) Navigation Safety. Operations on some of the blocks offered for lease may be restricted by designation of fairways, precautionary zones, anchorages, safety zones, or traffic separation schemes established by the U.S. Coast Guard pursuant to the Ports and Waterways Safety Act (33 U.S.C. 1221 et seq.), as amended. Corps of Engineers permits are required for construction of any artificial islands, installations, and other devices permanently or temporarily attached to the seabed located on the OCS in accordance with section 4(e) of the OCS Lands Act, as amended.

(c) Offshore Pipelines. Bidders are advised that the Department of the Interior and the Department of Transportation have entered into a Memorandum of Understanding, dated May 6, 1976, concerning the design, installation, operation, and maintenance of offshore pipelines. Bidders should consult both Departments for regulations applicable to offshore pipelines.

(d) 8-Year Leases. Bidders are advised that any lease issued for a term of 8 years will be cancelled after 5 years, following notice pursuant to the OCS Lands Act, as amended, if within the initial 5-year period of the lease, the drilling of an exploratory well has not been initiated, or if initiated, the well has not been drilled in conformance with the approved exploration plan criteria, or if there is not a suspension of operations in effect. See 30 CFR 256.37.

(e) Affirmative Action. Revision of Department of Labor regulations on affirmative action requirements for Government contractors (including lessees) has been deferred, pending review of those regulations (see Federal Register of August 25, 1981, at 46 FR 42865 and 42968). Should changes become effective at any time before the issuance of leases resulting from this sale, section 18 of the lease form (Form MMS-2005, March 1986) would be deleted from leases resulting from this sale. In addition, existing stocks of the affirmative action forms described in paragraph 5 of this Notice contain language that would be superseded by the revised regulations at 41 CFR 60-1.5(a)(1) and 60-1.7(a)(1). Submission of Form MMS-2032 (June 1985) and Form MMS-2033 (June 1985) will not invalidate an otherwise acceptable bid, and the revised regulations' requirements will be deemed to be part of the existing affirmative action forms.

(f) Ordnance Disposal Areas. Bidders are cautioned as to the existence of two inactive ordnance disposal areas in the Mississippi Canyon area, shown on map 1, described in paragraph 12 of this Notice. These areas were used to dispose of ordnance of unknown composition and quantity. Water depths range from approximately 750 to 1,525 meters. Bottom sediments in both areas are generally soft, consisting of silty clays. Exploration and development activities in these areas require precautions commensurate with the potential hazards.

The U.S. Air Force has released an indeterminable amount of unexploded ordnance throughout Eglin Water Test Areas 1 and 3. The exact location of the unexploded ordnance is unknown, and lessees are advised that all lease blocks included in this sale within these water test areas should be considered potentially hazardous to drilling and platform and pipeline placement.

15. New Regulatory Provisions. Bidders are advised of new MMS operating regulations, "Oil and Gas and Sulphur Operations in the Outer Continental Shelf, 30 CFR Parts 250 and 256," which were published April 1, 1988, in the Federal Register at 53 FR 10595.

This information is provided to bidders since any leases issued as a result of this sale will be subject to the April 1, 1988, regulations.

R. E. V.

Director, Minerals Management Service

Robert E. Kallman

Approved:

James E. Cason

Assistant Secretary - Land and Minerals Management

James E. Cason

1/13/89

Date

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Part VIII

Environmental Protection Agency

40 CFR Part 302
Designation of Extremely Hazardous Substances as CERCLA Hazardous Substances; Proposed Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 302

[FRL-3364-1]

Designation of Extremely Hazardous Substances as CERCLA Hazardous Substances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to designate 232 extremely hazardous substances (EHSs) listed pursuant to Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA) as hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. Although 134 substances listed as EHSs under SARA Title III are already CERCLA hazardous substances, there are 232 that are not. Currently, only releases of those EHSs that are also CERCLA hazardous substances are required to be reported to the National Response Center (NRC) under section 103 of CERCLA. With today's proposed rulemaking, EPA intends to reduce potential confusion concerning the different SARA Title III and CERCLA requirements by ensuring consistent procedures for reporting releases of all EHSs. In addition, today's proposal would facilitate the expedited determination of the need for a Federal response to such releases.

DATES: Comments must be submitted on or before March 24, 1989.

ADDRESSES:

Comments: Comments should be submitted in triplicate to: Emergency Response Division, Superfund Docket Clerk, Attention: Docket Number 102 RQ-232EHS, Room LG-100, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Docket: Copies of materials relevant to this rulemaking are contained in Room LG-100 at the above address. The docket is available for inspection between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Federal holidays. Appointments to review the docket can be made by calling 1-202/382-3046. As provided in 40 CFR Part 2, a reasonable fee (the first 50 pages are free and each additional page costs $.20) may be charged for copying services.

Release Notification: The toll-free telephone number of the National Response Center is 1-800/424-8802; in the Washington, DC metropolitan area, the number is 1-202/426-2675.

FOR FURTHER INFORMATION CONTACT: Ms. Gerain H. Perry, Response Standards and Criteria Branch, Emergency Response Division (OS-210), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460; or the RCRA/Superfund Hotline at 1-800/424-9346; in the Washington, DC metropolitan area at 1-202/382-3000.

SUPPLEMENTARY INFORMATION: The contents of today's preamble are listed in the following outline:

I. Introduction
  A. Statutory Authority
  B. Background of this Rulemaking
II. Rationale for Designation of Extremely Hazardous Substances as CERCLA Hazardous Substances
  A. SARA Title III
  B. Criteria for Designation of Extremely Hazardous Substances
  C. Simplification of Reporting Requirements
III. Consequences of Designation
  A. Notification Under CERCLA
  B. Penalties Under CERCLA
  C. Notification and Penalties Under SARA Title III
  D. Liability
  E. Other Consequences
  F. Public Health and Welfare and Environmental Benefits
IV. Differences in SARA Title III and CERCLA Notification Requirements Following Designation
  A. Substances Covered
  B. Facilities Covered
  C. Releases Covered
V. Regulatory Analyses
  A. Executive Order No. 12291
  B. Regulatory Flexibility Act
  C. Paperwork Reduction Act

I. Introduction

A. Statutory Authority

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (Pub. L. 96-510), 42 U.S.C. 9601 et seq. (CERCLA or the Act), as amended, establishes broad Federal authority to respond to releases or threats of releases of hazardous substances from vessels and facilities. The term "hazardous substance" is defined in section 101(14) of CERCLA chiefly by reference to other environmental statutes. Currently, there are 719 CERCLA hazardous substances. The Administrator of the U.S. Environmental Protection Agency (EPA or the Agency) is authorized under CERCLA section 102(a) to promulgate regulations designating as a hazardous substance any substance which, when released into the environment, may present substantial danger to public health or welfare or the environment. Designation as a CERCLA hazardous substance indicates a level of concern about a given substance sufficient to require a report to the National Response Center (NRC) in the event of a release in an amount equal to or greater than the reportable quantity (RQ) for that substance.

Section 102(b) of the Act establishes RQs for releases of hazardous substances at one pound, except those substances for which RQs were established pursuant to section 311(b)(4) of the Clean Water Act (CWA). Section 102(a) of CERCLA authorizes EPA to adjust all of these RQs by regulation.

B. Background of This Rulemaking

On May 25, 1983, EPA proposes a rule (48 FR 23552) to clarify procedures for reporting releases of CERCLA hazardous substances, to list "hazardous substances" defined under section 101(14) of CERCLA, and to adjust RQs for 387 of the then 696 CERCLA hazardous substances.[1] The preamble to the proposed rule contained a detailed discussion of the CERCLA notification provisions (including the persons required to notify the NRC of a release, the hazardous substances for which notification is required, the types of releases subject to the notification requirements, and the exemptions from these requirements), the methodology and criteria used to adjust the RQ levels, and the RQ adjustments proposed under section 102 of CERCLA and under section 311 of the CWA.

The Agency promulgated final RQ adjustments for 340 hazardous substances in an April 4, 1985 final rule (50 FR 13456) and for an additional 102 hazardous substances in a September 29, 1986 final rule (51 FR 34534). In a Notice of Proposed Rulemaking (NPRM) published on March 10, 1987 (52 FR 8140), EPA proposed RQ adjustments for 273 hazardous substances. The March 10, 1987 **Federal Register** also contained an NPRM in which EPA proposed RQ adjustments for radionuclides. In an NPRM published on March 2, 1988 (53 FR 6762), EPA reproposed RQ adjustments for lead metal and four lead compounds, and proposed to delist ammonium thiosulfate as a CERCLA hazardous substance. In addition, the Agency published an April 19, 1988 NPRM on reduced reporting requirements for continuous releases (53 FR 12868) and a July 19, 1988 NPRM to clarify the exemption from CERCLA reporting and liability requirements for federally permitted releases.

[1] Since the May 25, 1983 proposed rule, 25 additional substances have been added and two substances have been deleted from the CERCLA list, bringing the total number of CERCLA hazardous substances to 719. The 25 substances added to the list are: waste stream F024 (49 FR 5308); coke oven emissions (49 FR 36660); waste streams F020, F021, F022, F023, F026, F027, and F028 (50 FR 1978); waste streams K111, K112, K113, K114, K115, and K116, o-toluidine, and p-toluidine (50 FR 42936); waste streams K117, K118, and K136 (51 FR 5327); 2-ethoxyethanol (51 FR 6537); and waste streams K123, K124, K125, and K126 (51 FR 37725). The two substances deleted from the list are iron dextran (53 FR 43578) and strontium sulfide (53 FR 43881). Finally, based on a September 13, 1988 final rule (53 FR 35412), waste streams K084, K085, K086, K088, K090, and K091 will be added to the CERCLA list effective March 13, 1989.

Pursuant to Title III of the Superfund Amendments and Reauthorization Act of 1986 (Pub. L. 99-499) (SARA), EPA has published a list of extremely hazardous substances (EHSs) for purposes of emergency planning. Today EPA is proposing to designate as CERCLA hazardous substances, those 232 SARA Title III EHSs not currently on the list of 719 hazardous substances. This proposed rule would amend Table 302.4 of 40 CFR 302.4, by adding the names and Chemical Abstracts Service Registry Numbers of the EHSs proposed to be designated under CERCLA section 102. In addition, if the list of EHSs is revised in the future pursuant to SARA Title III to include additional substances, EPA intends to designate concurrently any non-CERCLA EHSs as CERCLA hazardous substances.

Today's proposed rule does not include RQ adjustments for the 232 substances proposed to be designated as hazardous under CERCLA section 102. EPA intends to move expeditiously to adjust the RQs for the substances being proposed for designation. After the effective date of the final rule designating these substances as CERCLA hazardous substances and until the RQs for the substances are adjusted, however, the RQs for the substances will be set at one pound pursuant to section 102(b) of CERCLA.

II. Rationale for Designation of Extremely Hazardous Substances as CERCLA Hazardous Substances

A. SARA Title III

Although most SARA provisions amend CERCLA, Title III of SARA is a free-standing statute separate from SARA's amendments to CERCLA, titled "The Emergency Planning and Community Right-to-Know Act of 1986." Title III establishes both a framework for emergency planning at the State and local level and extensive reporting requirements for stored or released hazardous chemicals to allow the public access to information on hazardous chemicals in local communities.

Section 302 of SARA required the EPA Administrator to publish a list of EHSs for purposes of emergency planning (51 FR 41570, November 17, 1986). The statute specified that the list be identical to the list published in November 1985 by the Administrator in Appendix A of the "Chemical Emergency Preparedness Program Interim Guidance." Along with the list of EHSs, EPA also published a threshold planning quantity (an amount which, if present at a facility, subjects that facility to the emergency planning requirements of SARA sections 302 and 303) for each substance and a State and local release reporting trigger, which was either the RQ established under CERCLA regulations or one pound, as required by SARA section 304. A revised list of 406 EHSs and threshold planning quantities was promulgated on April 22, 1987 (52 FR 13378) and is codified in 40 CFR Part 355. In two separate **Federal Register** notices, published on December 17, 1987 (52 FR 48072, 48083) and February 25, 1988 (53 FR 5574), EPA delisted 40 EHSs from 40 CFR Part 355 that were found to not meet the acute toxicity listing criteria.

Section 304 of SARA establishes State and local emergency notification requirements for releases of both EHSs and CERCLA hazardous substances. Generally, releases are subject to these notification requirements if they would be reportable under CERCLA section 103(a) and if they are from a facility that produces, uses, or stores a hazardous chemical. The term "hazardous chemical" is defined in regulations implementing the Occupational Safety and Health Act of 1970 (29 CFR 1910.1200(c)) and section 311 of SARA. Releases that only result in on-site exposure are exempted from SARA section 304 notification requirements.

As provided in 40 CFR Part 355, the notice required by section 304 of SARA is to be given by the owner or operator of a facility (by such means as telephone, radio, or in person) immediately after the release of an RQ or more of a CERCLA hazardous substance or one pound or more of a non-CERCLA EHS. Notice is to be given to both the community emergency coordinator for each local emergency planning committee for any area likely to be affected by the release and to the State commission of any State likely to be affected by the release. Notice requirements for transportation-related releases are satisfied by dialing 911 or, in the absence of a 911 emergency number, calling the telephone operator and providing the release information. SARA section 304(b)(2) and 40 CFR 355.40(b) further outline the requirements for an emergency notification.

B. Criteria for Designation of Extremely Hazardous Substances

Although many of the 366 substances on EPA's list of EHSs are already CERCLA hazardous substances, 232 substances were not. The Agency noted on March 16, 1987 (52 FR 8140, 8142) and April 22, 1987 (52 FR 13378, 13392) that it would propose to designate, under section 102(a), EHSs that are not presently CERCLA hazardous substances. Based on the potentially harmful characteristics of the substances, EPA believes that these EHSs meet the statutory criterion for designation under section 102(a) of CERCLA. Section 102(a) authorizes EPA to designate as hazardous substances those substances which, "when released in the environment may present substantial danger to the public health or welfare or the environment." In determining which substances were of the most immediate concern to communities for emergency planning purposes, Congress adopted the list of acutely toxic chemicals developed under the Chemical Emergency Preparedness Program. The Agency believes that the list of EHSs identifies "substances which could cause serious irreversible health effects from accidental releases" (51 FR 41570, 41571, November 17, 1986). Although the EHS list is not an exhaustive compilation of all of these substances, it does present substances "most likely to induce serious acute reactions following short term exposure" (51 FR 41570, 41573).

In identifying EHSs, EPA used available acute toxicity data derived from experiments with animals, as reported in the scientific literature, to infer potential for acute effects in humans. A chemical was identified as a potential acute human toxicant if animal test data in any mammalian species were identified with a value less than or equal to that stated for the median lethal concentration (LC_{50}) or median lethal dose (LD_{50}) criteria for any one of three exposure routes. EHSs have LC_{50} values of less than or equal to 0.5 milligrams per liter of air, dermal LD_{50} values of less than or equal to 50 milligrams per kilogram of body weight, or oral LD_{50} values of less than or equal to 25 milligrams per kilogram of body weight. The specific values chosen are recognized by the scientific community as indicating a high potential for acute toxicity (November 17, 1986, 51 FR 41570, 41573). Some additional substances meeting less stringent acute toxicity criteria, but also representing health concerns due to considerations

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including high production, have also been included on the list of EHSs.

The addition of non-CERCLA EHSs to the list of CERCLA hazardous substances is appropriate because the increased likelihood for prevention of, or rapid response to, releases of EHSs will contribute to the protection of human health. As discussed in Section III.F. of today's preamble, facilities subject to Federal notification and liability requirements for releases of hazardous substances may be encouraged to take steps to reduce the occurrence of releases and to clean up releases that do occur. In some cases, the requirement for reporting to the NRC will also trigger timely action by Federal, State, or local response authorities.

Under the provisions of SARA section 302, any future additions to the list of EHSs must take into account the toxicity, reactivity, volatility, dispersability, combustibility, or flammability of the substances. "Toxicity" includes short- or long-term health effects from short-term exposure. EPA believes that such substances will meet the CERCLA section 102(a) criterion for designation as CERCLA hazardous substances. The Agency plans, therefore, to coordinate future rulemakings to designate those substances as hazardous under CERCLA simultaneously with their addition to the list of EHSs. If substances are to be delisted from the EHS list and if these substances are CERCLA hazardous substances solely because they are on the EHS list, the Agency will coordinate rulemakings to delist the substances under CERCLA simultaneously with their removal from the EHS list. Subsequently, if the Agency determines on a case-by-case basis that any of the substances meet the criterion for designation as CERCLA hazardous substances, those substances will be once again designated under the authority of CERCLA section 102.

C. Simplification of Reporting Requirements

By designating non-CERCLA EHSs as CERCLA hazardous substances, the reporting requirements for these substances will be simplified. The release of any EHS or CERCLA hazardous substance will generally be subject to the same State and local reporting requirements. Until the designation of non-CERCLA EHSs as CERCLA hazardous substances, however, releases of any CERCLA hazardous substance will be required to be reported to the NRC in addition to being reported to State and local officials, while releases of non-CERCLA EHSs will be required to be reported only to State and local officials. This difference in notification requirements may create confusion for the typical facility owner or operator who needs to determine whether, how, and to whom to report releases of CERCLA hazardous substances or EHSs. After designation of non-CERCLA EHSs as CERCLA hazardous substances, releases that require State and local reporting will also require Federal reporting. In addition, if all EHSs are designated as CERCLA hazardous substances, certain releases of EHSs exempted from reporting under Title III, such as releases from vessels, will be reported to the NRC, who will notify the appropriate On-Scene Coordinator (OSC). Notification will then be conveyed to appropriate State officials. In this manner, reponse authorities will be notified of releases that would otherwise not be required to be reported.

By eliminating the category of EHSs that do not require CERCLA notice, the Agency's proposed action will promote consistency between Federal and State and local requirements. SARA section 304 already establishes State and local reporting requirements for these EHSs, and, therefore, designation will impose no additional State and local reporting burden. Although EPA envisions that most releases of these substances will be responded to by States and localities, designation will ensure that most releases of EHSs that may require a response are also reported to the NRC. Designation of non-CERCLA EHSs under CERCLA may result in some increased administrative and cost burden to the CERCLA regulated community and the Federal government associated with submitting and processing reports to the NRC. The potential benefit to public health and the environment from appropriate notice of releases of these substances is, EPA believes, sufficient to warrant this increase in reporting burden.

III. Consequences of Designation

This section contains a summary of CERCLA section 103 notification requirements and the penalties associated with failing to notify the NRC of a release of an RQ or more of a CERCLA hazardous substance. In addition, Sections III.D. and III.E. provide a description of the liability provisions of CERCLA and other consequences of designation, including requirements imposed by other statutes. Finally, the public health and welfare and environmental benefits resulting from designation are discussed in Section III.F.

A. Notification Under CERCLA

CERCLA section 103 requires that releases of hazardous substances that equal or exceed their RQs be reported immediately to the NRC by the person in charge of a vessel or facility from which the release occurred unless the release is federally permitted or otherwise exempted.[8] A major purpose of the section 103 notification requirement is to alert the appropriate government officials to releases of hazardous substances that may require a Federal response action to protect public health and welfare and the environment. Under section 104 of CERCLA, the Federal government may response whenever there is a release or a substantial threat of a release of a hazardous substance into the environment. Response activities are to be taken, to the extent practicable, in accordance with the National Contingency Plan (40 CFR Part 300), which was originally developed under the CWA and which has been revised to reflect the responsibilities and authority created by CERCLA.

Upon designation of the 232 non-CERCLA EHSs as CERCLA hazardous substances, releases of EHSs will be required to be reported to the NRC when they occur in amounts equal to or greater than their RQ. Until such time as the RQs of these 232 EHSs are adjusted, releases of these substances that equal or exceed one pound must be reported to the NRC (CERCLA section 102(b)). Currently, releases of one pound or more of these substances must be reported to State and local officials under section 304 of SARA.

EPA emphasizes that a hazardous substance release notification is merely a trigger for informing the government of a release so that appropriate Federal personnel can evaluate what, if any, Federal action should be taken. Federal personnel evaluate all reported releases, but do not necessarily initiate a removal or remedial action in response to all reported releases. The RQ of a hazardous substance does not represent a determination that releases of that particular quantity are actually harmful to public health or welfare or the environment. Thus, government personnel assess each reported release on a case-by-case basis to determine what, if any, Federal response action

[8] A release into the environment of a substance that is not listed as a CERCLA hazardous substance, but which rapidly forms a CERCLA hazardous substance upon release, is subject to the notification requirements of section 103. If the amount of the CERCLA hazardous substance formed as such a reaction product equals or exceeds the RQ for that substance, the release must be reported to the NRC.

should be taken. In their assessment, response officials consider such factors as location of the release, its proximity to drinking water supplies or other valuable resources, the likelihood of exposure or injury to nearby populations, and response actions taken to responsible parties, States, or localities. In certain limited situations, when direct reporting to the NRC is not practicable, the person in charge may report to the Coast Guard- or EPA-predesignated OSC for the geographic area where the release occurs. Such reports shall be promptly relayed to the NRC. If it is not possible to notify the NRC or predesignated OSC immediately, reports may be made immediately to the nearest Coast Guard unit, provided that the person in charge notifies the NRC as soon as possible (40 CFR Part 300 and 33 CFR Part 153).

B. Penalties Under CERCLA

Section 103(b) of CERCLA authorizes penalties, including criminal sanctions, for persons in charge of vessels or facilities who fail to report releases of harzardous substances that equal or exceed RQs. Thus, upon designation of EHSs as CERCLA harzardous substances, a person in charge who fails to report a release of an EHS that equals or exceeds its RQ would be subject to the penalty provisions of section 103(b). Section 103(b) of CERCLA was amended by SARA to increase the maximum penalties and years of imprisonment beyond those previously permissible. Any person with knowledge of a reportable release, who fails to report the release immediately pursuant to section 103(b), or who submits any information that he or she knows to be false or misleading, shall, upon conviction, be fined in accordance with the applicable provisions of Title, 18, United States Code, or imprisoned for not more than three years (or not more than five years for second and subsequent convictions), or both. Notifications received under section 103(b) or information obtained by exploitation of such notifications cannot be used against any reporting person in any criminal case, except a prosecution for perjury or for giving a false statement.

Section 109 of CERCLA also provides for a two-tiered system of administrative penalties for violations, of CERCLA section 103(a) or (b), enforceable through civil proceedings. Class I penalties may not exceed $25,000 per violation. Class II penalties are assessed according to section 554 of the Administrative Procedure Act (which requires an opportunity for a hearing on the record) and may not exceed $25,000 per day of a continuing violation ($75,000 per day for subsequent violations). EPA may also seek to have penalties judicially assessed by bringing an action in the appropriate U.S. district court. Such judicially assessed penalties have the same statutory ceilings as Class II administrative penalties (see CERCLA section 109(c)). In addition, the EPA Deputy Assistant Administrator for Criminal Enforcement is authorized under CERCLA section 109(d) to exercise his discretion in awarding up to $10,000 to any individual who provides information leading to the arrest and conviction of a person for failure to give required notice of a release (53 FR 16066). CERCLA section 310 authorizes citizen suits by any person (including a State or municipality) to enforce CERCLA requirements; thus, after designation of EHSs as CERCLA hazardous substances, State and local governments will have an additional enforcement tool that may be used against parties who fail to report releases of EHSs.

C. Notification and Penalties Under SARA Title III

In addition to the reporting requirements established by CERCLA, SARA section 304 requires reporting to State and local officials for certain releases of CERCLA hazardous substances and EHSs. SARA section 325(b) authorizes civil, administrative, and criminal penalties for violations of section 304. SARA section 328 authorizes citizen suits to obtain injunctive relief and to seek civil penalties for certain violations of section 304, specifically, failure to submit a followup emergency notice under section 304(c). The SARA section 304 notification requirements are outlined in Section II of this preamble. These requirements and the penalties under SARA Title III already apply to releases of the EHSs proposed for designation as CERCLA hazardous substances. Thus, designation of Non-CERCLA EHSs as CERCLA hazardous substances will have no additional State and local reporting consequences.

D. Liability

Section 107 of CERCLA establishes liability for response costs and natural resource damages caused by releases of hazardous substances. Upon designation as CERCLA hazardous substances, the 232 non-CERCLA EHSs will be subject to the CERCLA section 107 provisions. Unless specifically exempted under CERCLA, a party responsible for a release of a CERCLA hazardous substance is liable for the costs associated with responding to that release and for any natural resource damages caused by the release, even if the release is not subject to the notification requirements of sections 103 (a) and (b). Similarly, proper reporting of a release in accordance with sections 103 (a) and (b) does not preclude liability for cleanup costs. The fact that a release of a hazardous substance is properly reported or that it is not subject to the notification requirements of sections 103 (a) and (b) will not preclude EPA or other government agencies from taking response actions under section 104, seeking reimbursement from responsible parties under section 107, or pursuing an enforcement action against responsible parties under section 106. As a result of the designation of non-CERCLA EHSs as CERCLA hazardous substances, EPA or a State will be able to recover costs from responsible parties for cleanups of releases of previously non-CERCLA EHSs. This will help to protect and preserve the Hazardous Substances Superfund, as well as State resources.

E. Other Consequences

Several other consequences follow when a substance is designated as a hazardous substance under CERCLA section 102(a). Section 108(a) establishes financial responsibility requirements for vessels carrying hazardous substances. CERCLA hazardous substances, other than RCRA hazardous wastes, are subject to requirements for underground storage tanks under RCRA Subtitle I. Finally, section 306(a) of CERCLA requires that CERCLA hazardous substances be listed and regulated as "hazardous materials" under the Hazardous Materials Transportation Act (49 U.S.C. 1801).

F. Public Health and Welfare and Environmental Benefits

Designating non-CERCLA EHSs as CERCLA hazardous substances furthers CERCLA's primary goal of protecting public health and welfare and the environment. Public health benefits under CERCLA include the avoidance or minimization of fatalities or injuries resulting from exposure to CERCLA hazardous substances. Public welfare benefits include the reduction or avoidance of damage to buildings, personal property, agriculture, and recreational and aesthetically valuable resources. Environmental benefits include the prevention or reduction of surface water and ground water contamination, fish kills, wildlife losses, and other types of damage to natural resources.

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These public health and welfare and environmental benefits may be realized by: (1) preventing releases of CERCLA hazardous substances; and (2) mitigating the effects of any releases of these substances that do occur. The ways in which the achievement of these two objectives is furthered by the designation of EHSs as CERCLA hazardous substances are discussed below.

Designation of non-CERCLA EHSs as CERCLA hazardous substances provides several incentives for prevention of releases. These incentives include: (1) Civil penalties under CERCLA section 109 for failure to report hazardous substance releases under CERCLA; (2) criminal penalties under section 103 of CERCLA for failure to report CERCLA hazardous substance releases, and for submitting false or misleading information in reports of releases; and (3) the liability of potentially responsible parties under section 107 of CERCLA for the costs of responding to CERCLA hazardous substance releases or threats of releases and for attendant damage to natural resources. These provisions of CERCLA may cause members of the regulated community to reduce the use of a hazardous substance, or to eliminate its use entirely (possibly by using a substitute that is not a CERCLA hazardous substance).

Moreover, even if the substance is used, because of the increased Federal oversight and awareness, its designation as a hazardous substance under CERCLA may cause it to be used with greater precautions to avoid or minimize releases. These precautions may include increased training and supervision of plant personnel handling the hazardous substance, more frequent and careful inspections, and better maintenance of plant equipment. In addition, personnel and equipment on motor vehicles, aircraft, rail cars, and vessels would likely be subject to similar enhanced measures.

Designation of an EHS as a CERCLA hazardous substance may help mitigate the effects of releases that do occur. Response capabilities vary from locality to locality; some local response authorities (e.g., volunteer fire departments) may not have the resources or expertise to respond to a release of an EHS quickly and appropriately. Designation of an EHS as a hazardous substance under CERCLA and the resulting Federal notification requirements under sections 102 and 103 of CERCLA will make Federal resources available to State and local response officials more quickly, thereby decreasing potential threats to public health and welfare and the environment. In addition, Federal government personnel, through administering the CERCLA notification program, have gained substantial knowledge of the dangers associated with releases of particular hazardous substances as well as the advisability of implementing certain cleanup measures. State and local authorities can improve the effectiveness of response efforts by using this Federal expertise. The Federal government may provide assistance not only in stopping a release, containing it, and cleaning it up, but also in evacuations and any other measures that may be necessary to protect potentially threatened populations.

Besides these direct forms of assistance, the Federal government may provide indirect assistance in the form of on-site and off-site monitoring or the supervision of response activities. For example, Federal officials can assess the appropriateness of cleanups conducted by the parties that are potentially responsible for a release.

Reporting releases of all EHSs, as well as other CERCLA hazardous substances, to the NRC fulfills an additional goal of developing a comprehensive national data base, the analysis of which will help the Agency prevent, as well as prepare for and respond to, future releases. The Accidental Release Information Program uses the release reporting provided to the NRC to trigger a report from specific chemical facilities that meet certain criteria. Under section 104(e) of CERCLA, this program requires a facility that experiences certain releases to evaluate its chemical safety response and to report to the Agency. The knowledge gained by the Agency from these evaluations is used in implementing its chemical accident prevention program. Without a comprehensive reporting system for key chemicals of concern, such as the EHSs, there would be substantial gaps in reporting and in understanding the causes and cures of chemical accidents. This will hinder the effectiveness of the Agency's prevention program.

IV. Differences in SARA Title III and CERCLA Notification Requirements Following Designation

A. Substances Covered

The Federal reporting requirements contained in CERCLA section 103 apply to substances that have been defined as CERCLA hazardous substances either by reference to other environmental statutes or by designation under CERCLA section 102(a). The State and local reporting requirements contained in SARA section 304 apply to EHSs defined under SARA Title III and to CERCLA hazardous substances. As a result of designating non-CERCLA EHSs as CERCLA hazardous substances, releases of EHSs that must be reported to State and local officials under SARA Title III would also require Federal reporting under CERCLA. Further, any release of an EHS in an amount that equals or exceeds its RQ would require Federal reporting pursuant to CERCLA whether or not it would also need to be reported to State and local officials.

B. Facilities Covered

Although both CERCLA section 103 and SARA section 304 apply to releases from facilities, the facilities covered are not identical. Thus, despite the designation of 232 EHSs as CERCLA hazardous substances in this rulemaking, the requirements for reporting releases of those substances to the NRC may differ somewhat from the requirements for reporting to State and local officials. Both the CERCLA section 101(9) and the SARA section 329(4) definitions of "facility" are broad, but they are slightly different. In addition, CERCLA section 103 requires the reporting of releases from vessels as well as facilities, whereas SARA Title III does not require reporting from vessels.

Many releases that must be reported under section 103 of CERCLA will not be required to be reported under SARA section 304, because section 304 of SARA only applies to releases from facilities that produce, use, or store, a "hazardous chemical." [8] For example, in the case of a research laboratory where all hazardous chemicals are "under the direct supervision of a technically qualified individual," the release of an EHS or CERCLA hazardous substance would not require State and local reporting. This is because the Title III definition of hazardous chemical does not include substances used under these circumstances. Similarly, the release of an EHS or CERCLA hazardous substance from an industrial facility where all hazardous chemicals are "present in the same form and concentration" as a consumer product, would also be exempt from State and local reporting, again because the Title III definition of hazardous chemical does not include substances present in the same form and concentration as consumer products. With the designation of EHSs as CERCLA hazardous substances, however, releases of an RQ of an EHS under these circumstances would require Federal reporting, which could result in a Federal response if deemed necessary.

[8] A "hazardous chemical" is defined by SARA section 311(e) as having the same meaning as in OSHA regulations (29 CFR 1910.1200(c)) "* * * except that such term does not include the following:

(1) Any food, food additive, color additive, drug, or cosmetic regulated by the Food and Drug Administration.

(2) Any substance present as a solid in any manufactured item to the extent exposure to the substance does not occur under normal conditions of use.

(3) Any substance to the extent it is used for personal, family or household purposes, or is present in the same form and concentration as a product packaged for distribution and use by the general public.

(4) Any substance to the extent it is used in a research laboratory or hospital or other medical facility under the direct supervision of a technically qualified individual.

(5) Any substance to the extent it is used in routine agricultural operations or is a fertilizer held for sale by a retailer to the ultimate customer."

C. Releases Covered

SARA section 304(a)(4) exempts from SARA section 304 reporting requirements any release that "results in exposure to persons solely within the site or sites on which a facility is located." In contrast, under EPA's interpretation of the phrase "into the environment" in the CERCLA section 101(22) definition of "release," a release is exempt from CERCLA reporting requirements only if it remains wholly contained within a building or structure (50 FR 13456). Thus, a release of an RQ or more that did not remain wholly contained within a building or structure but resulted in exposure solely on-site, would have to be reported to Federal officials but not to State or local officials. Upon designation of non-CERCLA EHSs as CERCLA hazardous substances, a release of an RQ or more of any EHS that leaves a building or structure but remains on-site, will be reportable to Federal officials. Although reporting to State and local officials is not required until the release moves off-site, EPA encourages such reporting when a risk of such movement is perceived, in order to increase the opportunity for a timely response.

Application of the CERCLA "petroleum exclusion," will also result in differences in reporting under CERCLA and SARA Title III. Under this exclusion, petroleum is excluded from the CERCLA section 101(14) definition of "hazardous substance." Because petroleum is exempted generally from CERCLA notification and liability requirements and because no such exclusion exists under SARA Title III, EHSs present in petroleum are subject to SARA section 304 reporting requirements (52 FR 13385). EPA interprets the petroleum exclusion under CERCLA to apply to crude oil and refined petroleum fractions, including listed or designated hazardous substances that are indigenous in these petroleum products. The petroleum exclusion also includes substances normally mixed with or added to crude oil or crude oil fractions during the refining process.[4] Under the Agency's interpretation of the CERCLA and SARA Title III provisions, the release of a petroleum fraction, for example, which contains an RQ or more of an EHS, would be exempt from Federal, but not State and local, reporting.[5] If, on the other hand, the release only contained an RQ or more of a CERCLA hazardous substance that was not an EHS, then the release would be exempt from State and local reporting, as well as from Federal reporting. The effect of this difference has been minimized with the recent delisting from the EHS list of three chemicals that are naturally occurring in petroleum products. Future adjustment to RQs for any remaining chemicals in petroleum may reduce the effect of this difference even further.

V. Regulatory Analyses

A. Executive Order No. 12291

Executive Order (E.O.) 12291 requires that regulations be classified as major or non-major for purposes of review by the Office of Management and Budget (OMB). According to E.O. 12291, major rules are regulations that are likely to result in:

(1) An annual effect on the economy of $100 million or more; or

(2) A major increase in costs of prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

An economic analysis performed by the Agency, available for inspection in Room LG–100, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, shows that today's proposed rule is non-major, because the rule will result in costs of approximately $3.3 million annually. Of this amount, an estimated $0.9 million will be incurred by the regulated community (the remainder to be incurred by government). Once RQ adjustments are promulgated for the newly designated CERCLA hazardous substances, these costs will decline significantly. These estimated costs reflect only those effects of designation that are readily quantifiable in dollars. The costs do not include the dollar value of human health and welfare and environmental effects, which are inherently difficult to measure and are not included because of serious information constraints. This proposed rule has been submitted to OMB for review, as required by E.O. 12291.

[4] Memorandum from Francis S. Blake, EPA General Counsel, to J. Winston Porter, Assistant Administrator for Solid Waste and Emergency Response, (July 31, 1987) discussing the Scope of the CERCLA Petroleum Exclusion Under Sections 101(14) and 104(a)(2).

[5] Releases of oil that cause a sheen on the surface of waters of the U.S., however, are required to be reported to the NRC under section 311 of the Clean Water Act (see 40 CFR Part 110). When it is deemed appropriate, response action is taken by Federal or State authorities.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires that a Regulatory Flexibility Analysis be performed for all rules that are likely to have a "significant impact on a substantial number of small entities." To determine whether a Regulatory Flexibility Analysis is necessary for today's proposed rule, a preliminary analysis was conducted. (See the "Economic Impact Analysis of Designating SARA Title III Extremely Hazardous Substances Pursuant to Section 102(a) of CERCLA," November 1988, available for inspection in Room LG–100, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.)

This preliminary analysis suggests that designation of EHSs as CERCLA hazardous substances will have minimal financial impacts on small businesses, and today's proposed rule is not expected to have a significant impact on a substantial number of small entities. Therefore, the Administrator of EPA certifies that no Regulatory Flexibility Analysis is necessary.

C. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to OMB under the Paper Reduction Act, 44 U.S.C. 3501 et seq. An Information Collection Request document has been prepared by EPA (ICR No. 1491) and a copy may be obtained from Carl Koch, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, or by calling 1–202/382–2739.

The public reporting burden for this collection of information is estimated to vary from 3 to 6 hours per response, with an average of 3.1 hours per response, including time for reviewing

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instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

List of Subjects in 40 CFR Part 302

Air pollution control, Chemicals, Hazardous chemicals, Hazardous materials, Hazardous materials transportation, Hazardous substances, Hazardous wastes, Intergovernmental relations, Natural resources, Pesticides and pests, Reporting and recordkeeping requirements, Superfund, Waste treatment and disposal, Water pollution control.

Dated: January 12, 1989.

Lee M. Thomas,

Administrator.

For the reasons set out in the preamble, it is proposed to amend Title 40 of the Code of Federal Regulations as follows:

PART 302—DESIGNATION, REPORTABLE QUANTITIES AND NOTIFICATION

1. The authority citation for Part 302 continues to read as follows:

Authority: 42 U.S.C. 9602; 33 U.S.C. 1321 and 1361.

2. Section 302.4 is amended by adding the following entries to Table 302.4 and to its Appendix A as set forth below. The note preceding Table 302.4 is revised to read as follows:

§ 302.4 Designation of Hazardous Substances.

* * * * *

Note.—The numbers under the column headed "CASRN" are the Chemical Abstracts Service Registry Numbers for each hazardous substance. Other names by which each hazardous substance is identified in other statutes and their implementing regulations are provided in the "Regulatory Synonyms" column. The "Statutory RQ" column lists the RQs for hazardous substances established by section 102 of CERCLA. The "Statutory Code" column indicates the statutory source for hazardous substances defined in section 101(14) of CERCLA or designated under section 102 of CERCLA: "1" indicates that the statutory source is section 311(b)(4) of the Clean Water Act, "2" indicates that the source is section 307(a) of the Clean Water Act, "3" indicates that the source is section 112 of the Clean Air Act, "4" indicates that the source is RCRA section 3001, and "5a" indicates that the source is SARA section 302. The "RCRA Waste Number" column provides the waste identification numbers assigned to various substances by RCRA regulations. The column headed "Category" lists the code letters "X", "A", "B", "C", and "D", which are associated with reported quantities of 1, 10, 100, 1000, and 5000 pounds, respectively. The "Pounds (kg)" column provides the reportable quantity for each hazardous substance in pounds and kilograms.

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES

[Note.—All comments/notes are located at the end of this table] [1]

Hazardous substance	CASRN	Regulatory synonyms	Statutory RQ	Statutory Code †	Statutory RCRA waste number	Proposed RQ Category	Proposed RQ Pounds (Kg)
Bis(chloromethyl) ketone	534078		1	5a			1# (0.454)
Bitoscanate	4044659		1	5a			1# (0.454)
Boron trichloride	10294345		1	5a			1# (0.454)
Boron trifluoride	7637072		1	5a			1# (0.454)
Boron trifluoride compound with methyl ether (1:1)	353424		1	5a			1# (0.454)
Bromadiolone	28772567		1	5a			1# (0.454)
Bromine	7726956		1	5a			1# (0.454)
Cadmium oxide	1306190		1	5a			1# (0.454)
Cadmium stearate	2223930		1	5a			1# (0.454)
Cantharidin	56257		1	5a			1# (0.454)
Carbachol chloride	51832		1	5a			1# (0.454)
Carbamic acid, methyl-, O-[(2,4-dimethyl-1,3-dithiolan-2-yl)methylene]amino]-	26419738		1	5a			1# (0.454)
Carbophenothion	786196		1	5a			1# (0.454)
Chlorfenvinfos	470906		1	5a			1# (0.454)
Chlormephos	24934916		1	5a			1# (0.454)
Chloroacetic acid	79118		1	5a			1# (0.454)
Chloroethanol	107073		1	5a			1# (0.454)
Chloroethyl chloroformate	627112		1	5a			1# (0.454)
Chloromequat chloride	999815		1	5a			1# (0.454)
Chlorophacinone	3691358		1	5a			1# (0.454)
Chloroxuron	1982474		1	5a			1# (0.454)
Chlorthiophos	21923239		1	5a			1# (0.454)
Chromic chloride	10025737		1	5a			1# (0.454)
Cobalt carbonyl	10210681		1	5a			1# (0.454)
Cobalt, [(2,2'-(1,2-ethanediylbis (nitrilomethylidyne))bis[6-fluorophenolato]](2)	62207765		1	5a			1# (0.454)
Colchicine	64868		1	5a			1# (0.454)
Coumaphos	5836293		1	5a			1# (0.454)
Crimidine	535897		1	5a			1# (0.454)
Cyanogen iodide	506785		1	5a			1# (0.454)
Cyanophos	2636262		1	5a			1# (0.454)
Cyanuric fluoride	675148		1	5a			1# (0.454)
Cycloheximide	66819		1	5a			1# (0.454)
Cyclohexylamine	108918		1	5a			1# (0.454)
Decaborane (14)	17702419		1	5a			1# (0.454)
Demeton	8065483		1	5a			1# (0.454)
Demeton-S-methyl	919868		1	5a			1# (0.454)

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note.—All comments/notes are located at the end of this table] [1]

Hazardous substance	CASRN	Regulatory synonyms	Statutory RQ	Statutory Code †	Statutory RCRA waste number	Proposed RQ Category	Proposed RQ Pounds (Kg)
Diallor	10311849		1	5a			1# (0.454)
Diborane	19287457		1	5a			1# (0.454)
Dichloromethylphenylsilane	149746		1	5a			1# (0.454)
Dicrotophos	141662		1	5a			1# (0.454)
Diethyl chlorophosphate	814493		1	5a			1# (0.454)
Diethylcarbamazine citrate	1642542		1	5a			1# (0.454)
Digitoxin	71636		1	5a			1# (0.454)
Diglycidyl ether	2238075		1	5a			1# (0.454)
Digoxin	20830755		1	5a			1# (0.454)
Dimefox	115264		1	5a			1# (0.454)
Dimethyldichlorosilane	75785		1	5a			1# (0.454)
Dimethyl-p-phenylenediamine	99989		1	5a			1# (0.454)
Dimethyl phosphorochloridothioate	2524030		1	5a			1# (0.454)
Dimethyl sulfide	75183		1	5a			1# (0.454)
Dimetilan	644644		1	5a			1# (0.454)
Dinoterb	1420071		1	5a			1# (0.454)
Dioxathion	78342		1	5a			1# (0.454)
Diphacinone	82666		1	5a			1# (0.454)
Dithiazanine iodide	514738		1	5a			1# (0.454)
Emetine, dihydrochloride	316427		1	5a			1# (0.454)
Endothion	2778043		1	5a			1# (0.454)
EPN	2104645		1	5a			1# (0.454)
Ergocalciferol	50146		1	5a			1# (0.454)
Ergotamine tartrate	379793		1	5a			1# (0.454)
Ethanesulfonyl chloride, 2-chloro-	1622328		1	5a			1# (0.454)
Ethanol, 1,2-dichloro-, acetate	10140871		1	5a			1# (0.454)
Ethoprophos	13194484		1	5a			1# (0.454)
Ethylbis(2-chloroethyl)amine	538078		1	5a			1# (0.454)
Ethylene fluorohydrin	371620		1	5a			1# (0.454)
Ethyl thiocyanate	542905		1	5a			1# (0.454)
Fenamiphos	22224926		1	5a			1# (0.454)
Fenitrothion	122145		1	5a			1# (0.454)
Fensulfothion	115902		1	5a			1# (0.454)
Fluenetil	4301502		1	5a			1# (0.454)
Fluoroacetic acid	144490		1	5a			1# (0.454)
Fluoroacetyl chloride	359068		1	5a			1# (0.454)
Fluorouracil	51218		1	5a			1# (0.454)
Fonofos	944229		1	5a			1# (0.454)
Formaldehyde cyanohydrin	107164		1	5a			1# (0.454)
Formetanate hydrochloride	23422539		1	5a			1# (0.454)
Formothion	2540821		1	5a			1# (0.454)
Formparanate	17702577		1	5a			1# (0.454)
Fosthietan	21548323		1	5a			1# (0.454)
Fuberidazole	3878191		1	5a			1# (0.454)
Gallium trichloride	13450903		1	5a			1# (0.454)
Hexamethylenediamine, N,N'-dibutyl-	4835114		1	5a			1# (0.454)
Hydrogen peroxide (concentration >52%)	7722841		1	5a			1# (0.454)
Hydrogen selenide	7783075		1	5a			1# (0.454)
Hydroquinone	123319		1	5a			1# (0.454)
Iron, pentacarbonyl-	13463406		1	5a			1# (0.454)
Isobenzan	297789		1	5a			1# (0.454)
Isobutyronitrile	78820		1	5a			1# (0.454)
Isocyanic acid, 3,4-dichlorophenyl ester	102363		1	5a			1# (0.454)
Isophorone diisocyanate	4098719		1	5a			1# (0.454)
Isopropyl chloroformate	108236		1	5a			1# (0.454)
Isopropyl formate	625558		1	5a			1# (0.454)
Isopropylmethylpyrazolyl dimethylcarbamate	119380		1	5a			1# (0.454)
Lactonitrile	78977		1	5a			1# (0.454)
Leptophos	21609905		1	5a			1# (0.454)
Lewisite	541253		1	5a			1# (0.454)
Lithium hydride	7580678		1	5a			1# (0.454)
Manganese, tricarbonyl methylcyclopentadienyl	12108133		1	5a			1# (0.454)
Mechlorethamine	51752		1	5a			1# (0.454)
Mephosfolan	950107		1	5a			1# (0.454)
Acetone thiosemicarbazide	1752303		1	5a			1# (0.454)
Acrylyl chloride	814686		1	5a			1# (0.454)
Adiponitrile	111693		1	5a			1# (0.454)
Allylamine	107119		1	5a			1# (0.454)
Aminopterin	54626		1	5a			1# (0.454)
Amiton	78535		1	5a			1# (0.454)
Amiton oxalate	3734972		1	5a			1# (0.454)
Amphetamine	300629		1	5a			1# (0.454)
Aniline, 2,4,6-trimethyl-	88051		1	5a			1# (0.454)
Antimony pentafluoride	7783702		1	5a			1# (0.454)

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note.—All comments/notes are located at the end of this table]

Hazardous substance	CASRN	Regulatory synonyms	Statutory			Proposed RQ	
			RQ	Code †	RCRA waste number	Category	Pounds (Kg)
Antimycin A	1397940		1	5a			1# (0.454)
Arsine	7784421		1	5a			1# (0.454)
Azinphos-ethyl	2642719		1	5a			1# (0.454)
Benzenamine, 3-(trifluoromethyl)-	98166		1	5a			1# (0.454)
Benzenearsonic acid	98055		1	5a			1# (0.454)
Benzene, 1-(chloromethyl)-4-nitro-	100141		1	5a			1# (0.454)
Benzimidazole, 4,5-dichloro-2-(trifluoromethyl)-	3615212		1	5a			1# (0.454)
Benzyl cyanide	140294		1	5a			1# (0.454)
Bicyclo[2.2.1]heptane-2-carbonitrile, 5-chloro-6[[((methylamino)carbonyl)oxy]im...	15271417		1	5a			1# (0.454)
Mercuric acetate	1600277		1	5a			1# (0.454)
Mercuric chloride	7487947		1	5a			1# (0.454)
Mercuric oxide	21908532		1	5a			1# (0.454)
Methacrolein diacetate	10476956		1	5a			1# (0.454)
Methacrylic anhydride	760930		1	5a			1# (0.454)
Methacryloyl chloride	920467		1	5a			1# (0.454)
Methacryloyloxyethyl isocyanate	30674807		1	5a			1# (0.454)
Methamidophos	10265926		1	5a			1# (0.454)
Methanesulfonyl fluoride	558258		1	5a			1# (0.454)
Methidathion	950376		1	5a			1# (0.454)
Methoxyethylmercuric acetate	151382		1	5a			1# (0.454)
Methyl 2-chloroacrylate	80637		1	5a			1# (0.454)
Methyl disulfide	624920		1	5a			1# (0.454)
Methyl isothiocyanate	556616		1	5a			1# (0.454)
Methylmercuric dicyanamide	502396		1	5a			1# (0.454)
Methyl phenkapton	3735237		1	5a			1# (0.454)
Methyl phosphonic dichloride	676971		1	5a			1# (0.454)
Methyl thiocyanate	556649		1	5a			1# (0.454)
Methyltrichlorosilane	75795		1	5a			1# (0.454)
Methyl vinyl ketone	78944		1	5a			1# (0.454)
Metolcarb	1129415		1	5a			1# (0.454)
Monocrotophos	6923224		1	5a			1# (0.454)
Mustard gas	505602		1	5a			1# (0.454)
Nicotine sulfate	65305		1	5a			1# (0.454)
Nitrocyclohexane	1122607		1	5a			1# (0.454)
Norbormide	991424		1	5a			1# (0.454)
Organorhodium complex (PMN-82-147)	00		1	5a			1# (0.454)
Ouabain	630604		1	5a			1# (0.454)
Oxamyl	23135220		1	5a			1# (0.454)
Oxetane, 3,3-bis(chloromethyl)-	78717		1	5a			1# (0.454)
Oxydisulfoton	2497076		1	5a			1# (0.454)
Ozone	10028156		1	5a			1# (0.454)
Paraquat	1910425		1	5a			1# (0.454)
Paraquat methosulfate	2074502		1	5a			1# (0.454)
Pentaborane	19624227		1	5a			1# (0.454)
Pentadecylamine	2570265		1	5a			1# (0.454)
Peracetic acid	79210		1	5a			1# (0.454)
Phenol, 3-(1-methylethyl)-, methylcarbamate	64006		1	5a			1# (0.454)
Phenol, 2,2'-thiobis(4-chloro-6-methyl-	4418660		1	5a			1# (0.454)
Phenol, 2,2'-thiobis(4,6-dichloro-	97187		1	5a			1# (0.454)
Phenoxarsine, 10,10'-oxydi-	58366		1	5a			1# (0.454)
Phenylhydrazine hydrochloride	59681		1	5a			1# (0.454)
Phenylsilatrane	2097190		1	5a			1# (0.454)
Phosacetim	4104147		1	5a			1# (0.454)
Phosfolan	947024		1	5a			1# (0.454)
Phosmet	732116		1	5a			1# (0.454)
Phosphamidon	13171216		1	5a			1# (0.454)
Phosphonothioic acid, methyl-, S-(2-(bis(1-methylethyl)amino)ethyl O-ethyl ester.	50782899		1	5a			1# (0.454)
Phosphonothioic acid, methyl-,O-(4-nitrophenyl) O-phenyl ester	2665307		1	5a			1# (0.454)
Phosphonothioic acid, methyl-,O-ethyl O-(4-(methylthio)phenyl) ester	2703131		1	5a			1# (0.454)
Phosphoric acid, dimethyl 4-(methylthio)phenyl ester	3254635		1	5a			1# (0.454)
Phosphorothioic acid, O,O-dimethyl-S-(2-methylthio)ethyl ester	2587908		1	5a			1# (0.454)
Phosphorus pentachloride	10026136		1	5a			1# (0.454)
Phosphorus pentoxide	1314563		1	5a			1# (0.454)
Physostigmine	57476		1	5a			1# (0.454)
Physostigmine, salicylate (1:1)	57647		1	5a			1# (0.454)
Picrotoxin	124878		1	5a			1# (0.454)
Piperidine	110894		1	5a			1# (0.454)
Piprotal	5281130		1	5a			1# (0.454)
Pirimifos-ethyl	23505411		1	5a			1# (0.454)
Promecarb	2631370		1	5a			1# (0.454)
Propargyl bromide	106967		1	5a			1# (0.454)
Propiolactone, beta-	57578		1	5a			1# (0.454)
Propiophenone, 4-amino-	70699		1	5a			1# (0.454)

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note.—All comments/notes are located at the end of this table]

Hazardous substance	CASRN	Regulatory synonyms	Statutory			Proposed RQ	
			RQ	Code †	RCRA waste number	Category	Pounds (Kg)
Propyl chloroformate	109615		1	5a			1# (0.454)
Prothoate	2275185		1	5a			1# (0.454)
Pyridine, 2-methyl-5-vinyl	140761		1	5a			1# (0.454)
Pyridine, 4-nitro-, 1-oxide	1124330		1	5a			1# (0.454)
Pyriminil	53558251		1	5a			1# (0.454)
Salcomine	14167181		1	5a			1# (0.454)
Sarin	107448		1	5a			1# (0.454)
Selenium oxychloride	7791233		1	5a			1# (0.454)
Semicarbazide hydrochloride	563417		1	5a			1# (0.454)
Silane, (4-aminobutyl)diethoxymethyl-	3037727		1	5a			1# (0.454)
Sodium cacodylate	124652		1	5a			1# (0.454)
Sodium pentachlorophenate	131522		1	5a			1# (0.454)
Sodium selenate	13410010		1	5a			1# (0.454)
Sodium tellurite	10102202		1	5a			1# (0.454)
Stannane, acetoxytriphenyl-	900958		1	5a			1# (0.454)
Strychnine, sulfate	60413		1	5a			1# (0.454)
Sulfoxide, 3-chloropropyl octyl	3569571		1	5a			1# (0.454)
Sulfur dioxide	7446095		1	5a			1# (0.454)
Sulfur tetrafluoride	7783600		1	5a			1# (0.454)
Sulfur trioxide	7446119		1	5a			1# (0.454)
Tabun	77816		1	5a			1# (0.454)
Tellurium	13494809		1	5a			1# (0.454)
Tellurium hexafluoride	7783804		1	5a			1# (0.454)
Terbufos	13071799		1	5a			1# (0.454)
Tetrasuthyltin	597648		1	5a			1# (0.454)
Tetramethyl lead	75741		1	5a			1# (0.454)
Thallous malonate	2757168		1	5a			1# (0.454)
Thiocarbazide	2231574		1	5a			1# (0.454)
Thiourea, (2-methylphenyl)-	614788		1	5a			1# (0.454)
Titanium tetrachloride	7550450		1	5a			1# (0.454)
Trans-1,4-dichlorobutene	110576		1	5a			1# (0.454)
Triamiphos	1031476		1	5a			1# (0.454)
Triazofos	24017478		1	5a			1# (0.454)
Trichloroacetyl chloride	76028		1	5a			1# (0.454)
Trichloro(chloromethyl)silane	1558254		1	5a			1# (0.454)
Trichloro(dichlorophenyl)silane	27137855		1	5a			1# (0.454)
Trichloroethylsilane	115219		1	5a			1# (0.454)
Trichloronate	327980		1	5a			1# (0.454)
Trichlorophenylsilane	98135		1	5a			1# (0.454)
Triethoxysilane	998301		1	5a			1# (0.454)
Trimethylchlorosilane	75774		1	5a			1# (0.454)
Trimethylolpropane phosphite	824113		1	5a			1# (0.454)
Trimethyltin chloride	1066451		1	5a			1# (0.454)
Triphenyltin chloride	639587		1	5a			1# (0.454)
Tris(2-chloroethyl)amine	555771		1	5a			1# (0.454)
Valinomycin	2001958		1	5a			1# (0.454)
Warfarin sodium	129066		1	5a			1# (0.454)
Xylylene dichloride	28347139		1	5a			1# (0.454)
Zinc, dichloro(4,4-dimethyl-5[(((methylamino) carbonyl)oxy)imino)pentanenitrile)-(T-4)-	58270089		1	5a			1# (0.454)

† —indicates the statutory source as defined by 1, 2, 3, 4, or 5a below
1 —indicates that the statutory source for designation of this hazardous substance under CERCLA is CWA Section 311(b)(4)
2 —indicates that the statutory source for designation of this hazardous substance under CERCLA is CWA Section 307(a)
3 —indicates that the statutory source for designation of this hazardous substance under CERCLA is CAA Section 112
4 —indicates that the statutory source for designation of this hazardous substance under CERCLA is RCRA Section 3001
5a —indicates that the statutory source for designation of this hazardous substance is CERCLA Section 102(a)
—The Agency is in the process of applying the primary and secondary RQ adjustment criteria to this hazardous substance. When complete, the Agency may propose to adjust the 1-pound statutory RQ. Until then, the 1-pound statutory RQ applies.

APPENDIX A—SEQUENTIAL CAS REGISTRY NUMBER LIST OF EXTREMELY HAZARDOUS SUBSTANCES

CASRN	Hazardous substance
00	Organorhodium complex (PMN-82-147).
50146	Ergocalciferol.
51218	Fluorouracil.
51752	Mechlorethamine.
51832	Carbachol chloride.
54626	Aminopterin.

APPENDIX A—SEQUENTIAL CAS REGISTRY NUMBER LIST OF EXTREMELY HAZARDOUS SUBSTANCES—Continued

CASRN	Hazardous substance
56257	Cantharidin.
57476	Physostigmine.
57578	Propiolactone, beta.
57647	Physostigmine, salicylate (1:1).
58366	Phenoxarsine, 10,10'-oxydi.
59681	Phenylhydrazine hydrochloride.

APPENDIX A—SEQUENTIAL CAS REGISTRY NUMBER LIST OF EXTREMELY HAZARDOUS SUBSTANCES—Continued

CASRN	Hazardous substance
60413	Strychnine, sulfate.
64006	Phenol, 3-(1-methylethyl)-, methylcarbamate.
64866	Colchicine.
65305	Nicotine sulfate.
66819	Cycloheximide.

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APPENDIX A—SEQUENTIAL CAS REGISTRY NUMBER LIST OF EXTREMELY HAZARDOUS SUBSTANCES—Continued

CASRN	Hazardous substance
70698	Propiophenone, 4-amino.
71636	Digitoxin.
75183	Dimethyl sulfide.
75741	Tetramethyllead.
75774	Trimethylchlorosilane.
75785	Dimethyldichlorosilane.
75796	Methyltrichlorosilane
76089	Trichloroacetyl chloride.
77616	Tabun.
78342	Dioxathion.
78535	Amiton.
78717	Oxetane, 3,3-bis(chloromethyl).
78820	Isobutyronitrile.
78944	Methyl vinyl ketone.
78977	Lactonitrile.
79118	Chloroacetic acid.
79210	Peracetic acid.
80837	Methyl 2-chloroacrylate.
82666	Diphacinone.
88051	Aniline, 2,4,6-trimethyl.
97187	Phenol, 2,2'-thiobis(4,6-dichloro).
98066	Benzenearsonic acid.
98135	Trichlorophenylsilane.
98168	Benzenamine, 3-(trifluoromethyl).
99989	Dimethyl-p-phenylenediamine.
100141	Benzene, 1-(chloromethyl)-4-nitro.
102363	Isocyanic acid, 3,4-dichlorophenyl ester.
106867	Propargyl bromide.
107073	Chloroethanol.
107119	Allylamine.
107164	Formaldehyde cyanohydrin.
107448	Sarin.
108236	Isopropyl chloroformate.
108918	Cyclohexylamine.
108915	Propyl chloroformate.
110576	Trans-1,4-dichlorobutene.
110894	Piperidine.
111693	Adiponitrile.
115219	Trichloroethylsilane.
115294	Dimefox.
115902	Fensulfothion.
116380	Isopropylmethylpyrazolyl dimethylcarbamate.
122145	Fenitrothion.
123319	Hydroquinone.
124652	Sodium cacodylate.
124878	Picrotoxin.
129066	Warfarin sodium.
131522	Sodium pentachlorophenate.
140294	Benzyl cyanide.
140761	Pyridine, 2-methyl-5-vinyl.
141662	Dicrotophos.
144490	Fluoroacetic acid.
149748	Dichloromethylphenylsilane.
151362	Methoxyethylmercuric acetate.
297789	Isobenzan.
300629	Amphetamine.
316427	Emetine, dihydrochloride.
327980	Trichloronate.
353424	Boron trifluoride compound with methyl ether (1:1).
359069	Fluoroacetyl chloride.
371620	Ethylene fluorohydrin.
379793	Ergotamine tartrate.
470906	Chlorfenvinfos.
502398	Methylmercuric dicyanamide.
505602	Mustard gas.
506796	Cyanogen iodide.
514736	Dithiazanine iodide.
534070	Bis(chloromethyl) ketone.
535897	Crimidine.
538078	Ethylbis(2-chloroethyl)amine.
541253	Lewisite.
542906	Ethylthiocyanate.
556771	Tris(2-chloroethyl)amine.
556816	Methyl isothiocyanate.
556849	Methyl thiocyanate.
558258	Methanesulfonyl fluoride.
563417	Semicarbazide hydrochloride.
597648	Tetraethyltin.
614788	Thiourea, (2-methylphenyl).
624920	Methyl disulfide.
625558	Isopropyl formate.
627112	Chloroethyl chloroformate.
630604	Ouabain.
639587	Triphenyltin chloride.
644644	Dimefiun.
675149	Cyanuric fluoride.
676971	Methyl phosphonic dichloride.
732116	Phosmet.
760930	Methacrylic anhydride.
786196	Carbophenothion.
814496	Diethyl chlorophosphate.
814686	Acrylyl chloride.
824113	Trimethylolpropane phosphite.
900958	Stannane, acetoxytriphenyl.
919868	Demeton-S-methyl.
920467	Methacryloyl chloride.
944229	Fonofos.
947024	Prosulfalin.
950107	Mephosfolan.
950378	Methidathion.
991494	Norbormide.
998301	Triethoxysilane.
999815	Chlormequat chloride.
1031478	Triamiphos.
1066451	Trimethyltin chloride.
1122937	Nitrocyclohexane.
1124330	Pyridine, 4-nitro-, 1-oxide.
1129415	Metolcarb.
1306190	Cadmium oxide.
1314563	Phosphorus pentoxide.
1397940	Antimycin A.
1420071	Dinoterb.
1558254	Trichloro(chloromethyl)silane.
1600277	Mercuric acetate.
1622328	Ethanesulfonyl chloride, 2-chloro.
1642542	Diethylcarbamazine citrate.
1752303	Acetone thiosemicarbazide.
1810458	Paraquat.
1982474	Chlorosuron.
2001958	Validamycin.
2074502	Paraquat methosulfate.
2097190	Phenylsilatrane.
2104645	EPN.
2223930	Cadmium stearate.
2231674	Thiocarbazide.
2238075	Diglycidyl ether.
2275186	Prothoate.
2497076	Oxydisulfoton.
2524030	Dimethyl phosphorochloridothioate.
2540821	Formothion.
2570266	Pentadecylamine.
2587908	Phosphorothioic acid, 0,0-dimethyl-S-(2-methylthio) ethyl ester.
2631370	Promecarb.
2636262	Cyanophos.
2642719	Azinphos-ethyl.
2665307	Phosphonothioic acid, methyl-,0-(4-nitrophenyl) 0-phenyl ester.
2703131	Phosphonothioic acid, methyl-,0-ethyl 0-(4-(methylthio)phenyl) ester.
2757188	Thallous malonate.
2778043	Endothion.
3037727	Silane, (4-aminobutyl)diethoxymethyl.
3254626	Phosphoric acid, dimethyl 4-(methylthio)phenyl ester.
3566571	Sulfoxide, 3-chloropropyl octyl.
3615212	Benzimidazole, 4,5-dichloro-2-(trifluoromethyl)
3691358	Chlorophacinone.
3734972	Amiton oxalate.
3735237	Methyl phenkapton.
3878191	Fuberidazole.
4044658	Biocarzate.
4098719	Isophorone diisocyanate.
4104147	Phosacetim.
4301502	Fluenetil.
4418660	Phenol, 2,2'-thiobis[4-chloro-6-methyl-phenol, 2,2'-thiobis (4-chloro-6-methyl).
4835114	hexamethylenediamine, N,N'-dibutyl.
5281130	Piprotal.
5836293	Coumatetralyl.
6923224	Monocrotophos.
7446095	Sulfur dioxide.
7446119	Sulfur trioxide.
7487947	Mercuric chloride.
7550450	Titanium tetrachloride.
7580678	Lithium hydride.
7637072	Boron trifluoride.
7722841	Hydrogen peroxide (concentration>52%).
7726956	Bromine.
7783075	Hydrogen selenide.
7783600	Sulfur tetrafluoride.
7783702	Antimony pentafluoride.
7783804	Tellurium hexafluoride.
7784421	Arsine.
7791233	Selenium oxychloride.
8065483	Demeton.
10025737	Chromic chloride.
10026138	Phosphorus pentachloride.
10028156	Ozone.
10102202	Sodium tellurite.
10140871	Ethanol, 1,2-dichloro-, acetate.
10210681	Cobalt carbonyl.
10265926	Methamidophos.
10294345	Boron trichloride.
10311849	Dialifor.
10476958	Methacrolein diacetate.
12108133	Manganese, tricarbonyl methylcyclopentadienyl.
13071799	Terbufos.
13171216	Phosphamidon.
13194484	Ethoprophos.
13410010	Sodium selenate.
13450903	Gallium trichloride.
13463406	Iron, pentacarbonyl.
13494809	Tellurium.
14167181	Salcomine.
15271417	Bicyclo[2.2.1]heptane-2-carbonitrile, 5-chloro-6-(((methylamino)carbonyl)oxy)m.
17702419	Decaborane(14).
17702577	Formparanate.
18287457	Diborane.
19624227	Pentaborane.
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30782989	Phosphonothioic acid, methyl-, S-(2-(bis(1-methylethyl)amino)ethyl 0-ethyl ester.
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62207765	Cobalt, ((2,2'-(1,2-ethanediylbis (nitrilomethylidyne))bis(5-fluorophenolato))(2).

[FR Doc. 89-1360 Filed 1-19-89; 8:45 am]

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federal register

Monday
January 23, 1989

Part IX

The President

Proclamation 5935—National Day of Excellence, 1989

Executive Order 12667—Presidential Records

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Presidential Documents

Title 3—

The President

Proclamation 5935 of January 18, 1989

National Day of Excellence, 1989

By the President of the United States of America

A Proclamation

On this third anniversary of the Space Shuttle Challenger's tragic accident, the lines of Tennyson in his poem "Ulysses" seem most appropriate:

Come, my friends,
'Tis not too late to seek a newer world.
It may be that the gulf will wash us down;
It may be that we touch the Happy Isles,
And see the great Achilles, whom we knew.
Tho' much is taken, much abides; . . .

Indeed, much was taken when we lost Challenger's brave crew. Yet much abides, because the American people will forever remember them and salute the devotion to excellence that characterized them and continues to characterize the members of the U.S. space program. That spirit has manifested itself again and again as we have journeyed to the moon and probed planets, our solar system, and beyond. It thrives today as we seek a permanent base in space and further manned exploration.

The Challenger crew made the supreme sacrifice on their quest to extend man's horizons. As we resolve to go forward in space, let us always take with us the spirit of vision, skill, and excellence.

That spirit was evident on September 29, 1988, when the Space Shuttle Discovery lifted off from the launch pad. There could be no more fitting testimony to the Challenger crew and the excellence they personified than this mission, which returned our Nation to manned space flight. May our boundless dreams continue to inspire us in the pursuit of excellence—in space and in every endeavor.

The Congress, by Public Law 100-681, has designated January 28, 1989, as "National Day of Excellence" and authorized and requested the President to issue a proclamation in observance of that day.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim January 28, 1989, as National Day of Excellence. I call upon the people of the United States to observe that day with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this eighteenth day of January, in the year of our Lord nineteen hundred and eighty-nine, and of the Independence of the United States of America the two hundred and thirteenth.

Ronald Reagan

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Executive Order 12667 of January 18, 1989

Presidential Records

By virtue of the authority vested in me as President by the Constitution and laws of the United States of America, and in order to establish policies and procedures governing the assertion of Executive privilege by incumbent and former Presidents in connection with the release of Presidential records by the National Archives and Records Administration pursuant to the Presidential Records Act of 1978, it is hereby ordered as follows:

Section 1. *Definitions.* For purposes of this Order:

(a) "Archivist" refers to the Archivist of the United States or his designee.

(b) "NARA" refers to the National Archives and Records Administration.

(c) "Presidential Records Act" refers to the Presidential Records Act of 1978 (Pub. L. No. 95-591, 92 Stat. 2523-27, as amended by Pub. L. No. 98-497, 98 Stat. 2287), codified at 44 U.S.C. 2201-2207.

(d) "NARA regulations" refers to the NARA regulations implementing the Presidential Records Act. 53 Fed. Reg. 50404 (1988), codified at 36 C.F.R. Part 1270.

(e) "Presidential records" refers to those documentary materials maintained by NARA pursuant to the Presidential Records Act and the NARA regulations.

(f) "Former President" refers to the former President during whose term or terms of office particular Presidential records were created.

(g) A "substantial question of Executive privilege" exists if NARA's disclosure of Presidential records might impair the national security (including the conduct of foreign relations), law enforcement, or the deliberative processes of the Executive branch.

(h) A "final court order" is a court order from which no appeal may be taken.

Sec. 2. *Notice of Intent to Disclose Presidential Records.*

(a) When the Archivist provides notice to the incumbent and former Presidents of his intent to disclose Presidential records pursuant to section 1270.46 of the NARA regulations, the Archivist, utilizing any guidelines provided by the incumbent and former Presidents, shall identify any specific materials, the disclosure of which he believes may raise a substantial question of Executive privilege. However, nothing in this Order is intended to affect the right of the incumbent or former Presidents to invoke Executive privilege with respect to materials not identified by the Archivist. Copies of the notice for the incumbent President shall be delivered to the President (through the Counsel to the President) and the Attorney General (through the Assistant Attorney General for the Office of Legal Counsel). The copy of the notice for the former President shall be delivered to the former President or his designated representative.

(b) Upon the passage of 30 days after receipt by the incumbent and former Presidents of a notice of intent to disclose Presidential records, the Archivist may disclose the records covered by the notice, unless during that time period the Archivist has received a claim of Executive privilege by the incumbent or former President or the Archivist has been instructed by the incumbent President or his designee to extend the time period. If a shorter time period is required under the circumstances set forth in section 1270.44 of the NARA regulations, the Archivist shall so indicate in the notice.

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Sec. 3. *Claim of Executive Privilege by Incumbent President.*

(a) Upon receipt of a notice of intent to disclose Presidential records, the Attorney General (directly or through the Assistant Attorney General for the Office of Legal Counsel) and the Counsel to the President shall review as they deem appropriate the records covered by the notice and consult with each other, the Archivist, and such other Federal agencies as they deem appropriate concerning whether invocation of Executive privilege is justified.

(b) The Attorney General and the Counsel to the President, in the exercise of their discretion and after appropriate review and consultation under subsection (a) of this section, may jointly determine that invocation of Executive privilege is not justified. The Archivist shall be promptly notified of any such determination.

(c) If after appropriate review and consultation under subsection (a) of this section, either the Attorney General or the Counsel to the President believes that the circumstances justify invocation of Executive privilege, the issue shall be presented to the President by the Counsel to the President and the Attorney General.

(d) If the President decides to invoke Executive privilege, the Counsel to the President shall notify the former President, the Archivist, and the Attorney General in writing of the claim of privilege and the specific Presidential records to which it relates. After receiving such notice, the Archivist shall not disclose the privileged records unless directed to do so by an incumbent President or by a final court order.

Sec. 4. *Claim of Executive Privilege by Former President.*

(a) Upon receipt of a claim of Executive privilege by a former President, the Archivist shall consult with the Attorney General (through the Assistant Attorney General for the Office of Legal Counsel), the Counsel to the President, and such other Federal agencies as he deems appropriate concerning the Archivist's determination as to whether to honor the former President's claim of privilege or instead to disclose the Presidential records notwithstanding the claim of privilege. Any determination under section 3 of this Order that Executive privilege shall not be invoked by the incumbent President shall not prejudice the Archivist's determination with respect to the former President's claim of privilege.

(b) In making the determination referred to in subsection (a) of this section, the Archivist shall abide by any instructions given him by the incumbent President or his designee unless otherwise directed by a final court order. The Archivist shall notify the incumbent and former Presidents of his determination at least 30 days prior to disclosure of the Presidential records, unless a shorter time period is required in the circumstances set forth in section 1270.44 of the NARA regulations. Copies of the notice for the incumbent President shall be delivered to the President (through the Counsel to the President) and the Attorney General (through the Assistant Attorney General for the Office of Legal Counsel). The copy of the notice for the former President shall be delivered to the former President or his designated representative.

Sec. 5. *Judicial Review.* This Order is intended only to improve the internal management of the Executive branch and is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.

Ronald Reagan

THE WHITE HOUSE,
January 18, 1989.

[FR Doc. 89-1576
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Billing code 3195-01-M

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The **List of Public Laws** will be resumed when bills are enacted into public law during the first session of the 101st Congress, which convened on January 3, 1989. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 523–6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202–275–3030).

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CFR CHECKLIST

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An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

New units issued during the week are announced on the back cover of the daily Federal Register as they become available.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

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[4] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
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DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 2

[Docket No. FM-89-001]

Revision of Delegation of Authority

AGENCY: Office of the Secretary, USDA.
ACTION: Final rule.

SUMMARY: This document revises the delegations of authority from the Secretary of Agriculture and general officers of the Department by delegating to the Assistant Secretary for Marketing and Inspection Services and the Administrator, Agricultural Marketing Service (AMS), the authority to establish and collect user fees for the recovery of costs involved in providing, on request, copies of software programs, pamphlets, reports or other publications prepared in carrying out any of the missions or programs otherwise delegated to them.

EFFECTIVE DATE: January 24, 1989.

FOR FURTHER INFORMATION CONTACT: Richard Hooper, Financial Management Division, Agricultural Marketing Service, Department of Agriculture, Washington, DC (202) 447-6981.

SUPPLEMENTARY INFORMATION: This document amends the delegations of authority of the Department of Agriculture in 7 CFR Part 2 by delegating to the Assistant Secretary for Marketing and Inspection Services, and the Administrator, AMS, the responsibility and the authority for establishing and collecting user fees under section 1121 of the Agriculture and Food Act of 1981, as amended by section 1769 of the Food Security Act of 1985. Section 1121 (7 U.S.C. 2242a) authorizes the furnishing, on request, of copies of software programs, pamphlets, reports or other publications prepared in carrying out any of the missions or programs otherwise delegated to them; and the charging of such fees as are determined to be reasonable.

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity to comment thereon are not required, and this rule may be made effective less than 30 days after publication in the Federal Register. Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Order 12291. Finally, this subject is not a rule as defined by Pub. L. No. 96-354, the Regulatory Flexibility Act, and thus, is exempt from the provisions of that Act.

List of Subjects in 7 CFR Part 2

Authority delegations (Government agencies).

Accordingly, 7 CFR Part 2 is amended as follows:

PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

1. The authority citation for Part 2 continues to read:

Authority: 5 U.S.C. 301 and Reorganization Plan No. 2 of 1953.

Subpart C—Delegations of Authority to the Deputy Secretary, the Under Secretary for International Affairs and Commodity Programs, the Under Secretary for Small and Rural Development, and Assistant Secretaries

2. Section 2.17 is amended by adding new paragraph (a)(4) to read as follows:

§ 2.17 Delegations of Authority to the Assistant Secretary for Marketing and Inspection Services.

* * * * *

(a) * * *

(4) Furnish, on request, copies of programs, pamphlets, reports, or other publications for missions or programs as may otherwise be delegated or assigned to the Assistant Secretary, and charge user fees therefor, as authorized by section 1121 of the Agriculture and Food Act of 1981, as amended by section 1769 of the Food Security Act of 1985, 7 U.S.C. 2242a.

* * * * *

Subpart F—Delegations of Authority by the Assistant Secretary for Marketing and Inspection Services

(3) Section 2.50 is amended by adding new paragraph (a)(4) to read as follows:

§ 2.50 Administrator, Agricultural Marketing Service.

(a) * * *

(4) Furnish, on request, copies of programs, pamphlets, reports, or other publications for missions or programs as may otherwise be delegated or assigned to the Administrator, and charge user fees therefore, as authorized by section 1121 of the Agriculture and Food Act of 1981, as amended by section 1769 of the Food Security Act of 1985, 7 U.S.C. 2242a.

* * * * *

For Subpart C:
Richard E. Lyng,
Secretary of Agriculture.
Date: January 12, 1989
For Subpart F:
Kenneth A. Gilles,
Assistant Secretary of Agriculture, Marketing and Inspection Services.
Date: January 13, 1989.

[FR Doc. 89-1493 Filed 1-23-89; 8:45 am]
BILLING CODE 3410-02-M

Agricultural Marketing Service

7 CFR Part 29

[TB-88-002]

Tobacco; Fees and Charges for Permissive Inspection

AGENCY: Agricultural Marketing Service, USDA.
ACTION: Final rule.

SUMMARY: This final rule would establish separate fees and charges for the permissive inspection and certification of tobacco for export. In addition, the basis for charging these fees would be changed from an hourly rate to a per pound rate. The changes would generate revenues that would meet the costs of operating the export inspection program. This final rule does not affect the permissive inspection fee for tobacco for domestic use or the mandatory inspection fee for tobacco at auction warehouses.

EFFECTIVE DATE: February 23, 1989.

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FOR FURTHER INFORMATION CONTACT: Ernest L. Price, Director, Tobacco Division, Agricultural Marketing Service, United States Department of Agriculture, Room 502 Annex Building, P.O. Box 96456, Washington, DC 20090-6456, telephone—(202) 447-2567.

SUPPLEMENTARY INFORMATION: Notice was given (53 FR 40069, October 13, 1988) that the Department proposed to amend the regulations to establish separate fees and charges on a per pound basis for permissive inspection and grading services for export tobacco. Interested parties were given an opportunity to comment on the proposed rule.

Two comments were received from companies which export tobacco. Both stated that they favor the proposed rule.

The Department hereby adopts the regulations appearing in the proposed rule which provided for a fee of $.0025 per pound for the voluntary inspection and certification of tobacco for export. Previously, the same hourly fee had applied to both the permissive inspection of tobacco for domestic use and for export.

The Tobacco Inspection Act authorizes permissive inspections which are made available to interested parties on a fee basis sufficient to cover, as nearly as practicable, the costs incurred by the Department for the inspection and certification of tobacco, including administrative and supervisory costs. The Department had determined that the previous fees and charges for permissive inspections did not cover the costs for export inspection and certification. The major factors causing the need for the separate rate are increases in salaries, travel and administrative costs. Different personnel are utilized for the inspection and certification of tobacco for export than for permissive inspection for domestic use because tobacco processed for export in large lots is different in form than tobacco in small lots on a warehouse floor or in a redrying plant.

For the most part, seasonal employees are utilized for permissive inspection for domestic use and the program costs are their salary for the actual time they are conducting permissive inspections, administrative and supervisory costs, travel and per diem. However, personnel assigned to inspection and certification of tobacco for export must be available year-round. The higher costs of personnel with the expertise needed for the inspection and certification of tobacco for export will be attributed to the program that incurs the costs. In addition, the amount of tobacco which will be exported in any given year is more easily estimated than the amount of time which will be necessary for inspection and certification of tobacco for export. Thus, a per pound fee is a more appropriate method of recovering the costs of the inspection and certification of tobacco for export.

The previous fee was $20.60 per hour, plus travel expenses and per diem. Revenues (for export tobacco) for the 12-month period beginning June 1, 1987, were about $43,000, with costs of about $57,400. In FY 1989, it is estimated that approximately $70,000 in revenues would be generated and that program costs would be approximately $89,900.

In order to cover the Department's costs of providing permissive export tobacco inspection and certification, the fee should be $.0025 per pound. In addition, miscellaneous conforming changes are made to various provisions in § 29.123. This final rule is the same as the proposed rule except for changes in punctuation.

The final rule has been reviewed under USDA procedures established to implement Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "nonmajor rule" because it does not meet any of the criteria established for major rules under the Executive Order.

Additionally, in conformance with the provisions of Pub. L. 96-354, the Regulatory Flexibility Act, full consideration has been given to the potential economic impact upon small business. Most of the firms which would be affected by this final rule do not fall within the confines of "small business," as defined in the Regulatory Flexibility Act. The Administrator, Agricultural Marketing Service, has determined that this action would not have a significant economic impact on a substantial number of small entities. This final rule would not substantially affect the normal movement of the commodity in the marketplace. Compliance with this revision would not impose substantial direct economic costs, recordkeeping, or personnel workload changes on small entities, and it would not alter the market share or competitive positions of small entities relative to large entities. Furthermore, the Department is required by law to fix and collect fees and charges to cover the Department's cost in operating the tobacco inspection program.

List of Subjects in 7 CFR Part 29

Administrative practice and procedure, Tobacco.

Accordingly, the Department hereby amends the regulations under the Tobacco Inspection Act contained in 7 CFR Part 29 as follows:

PART 29—TOBACCO INSPECTION

Subpart B—Regulations

1. An authority citation for Subpart B is added to read as follows:

Authority: 7 U.S.C. 511m and 511r.

2. In § 29.123, the introductory text to the section is revised to read as follows:

§ 29.123 Fees and charges.

Fees and charges for tobacco inspection and certification service shall be collected by the Director to cover, insofar as practicable, all costs of the services, including establishment of standards, administrative, and supervisory costs, as follows:

* * * * *

3. In § 29.123, the heading for paragraph (b) is revised to read as follows:

* * * * *

(b) *Domestic permissive inspection and certification.* * * *

* * * * *

4. In § 29.123, paragraph (c) is redesignated as paragraph (d).

5. A new paragraph (c) is added to § 29.123, to read as follows:

* * * * *

(c) *Export permissive inspection and certification.* The inspection and certification fee for export tobacco is $.0025 per pound.

* * * * *

Dated: January 18, 1989.

J. Patrick Boyle,

Administrator.

[FR Doc. 89-1528 Filed 1-23-89; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Parts 53 and 54

[LS-88-031]

Standards for Grades of Slaughter Cattle and Standards for Grades of Carcass Beef

AGENCY: Agricultural Marketing Service (AMS), USDA.

ACTION: Final rule.

SUMMARY: This final rule revises the official U.S. standards for grades of carcass beef and the related standards for grades of slaughter cattle. The revisions provide for separate application of the quality grade and yield grade for steer, heifer, cow, and bullock carcasses and for slaughter cattle. The revisions do not change either the individual quality grade or yield grade requirements. These changes should provide more flexibility in using the grading service by permitting the voluntary use of either the beef quality grades and/or the yield grades. These revisions will enable packers to adopt certain advanced production and marketing procedures, and the industry as a whole to choose the procedures which most efficiently meet consumer demands for trimmer beef. The separation of the quality and yield grades enables the industry to trim carcasses before grading and still maintain the option of quality grading. This revision also allows the industry to pursue alternative procurement systems which may benefit producers of cattle with higher lean meat yields by discouraging overproduction of fat in order to maximize selling weights of both cattle and beef.

EFFECTIVE DATE: April 9, 1989.

FOR FURTHER INFORMATION CONTACT: Dr. Michael L. May, Chief, Standardization Branch, Livestock and Seed Division, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, Washington, DC 20090-6456, 202-447-4486.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This final rule which revises the beef carcass (7 CFR Part 54) and slaughter cattle (7 CFR Part 53) standards was reviewed under Department procedures established to implement Executive Order 12291 and Departmental Regulation No. 1512-1 and is hereby classified as a non-major rule because (1) it would not have an annual effect on the economy of $100 million or more, (2) it would not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (3) it would not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Effect on Small Entities

This action was reviewed under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et. seq.). The Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities as defined by the RFA because the changes would not change the grade requirements for slaughter cattle or beef carcasses but would provide all users with greater flexibility in using the grade standards to identify quality and/or yield characteristics. Users of the grades would be able to specify the combinations of quality and/or yield grades that best meet their needs. Further, the use of the beef grades is voluntary, and they are applied equally to all size entities covered by these regulations.

Background

Federal grading of beef is a voluntary service, provided under the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621 *et seq.*), which is designed to facilitate the marketing of cattle and beef. Beef grades are intended to segregate the beef supply into groups with similar attributes of palatability and yields of cuts. These criteria are generally of ultimate concern to consumers and the beef industry because they affect the acceptability, price, and consumption of beef. Grades provide a uniform basis for marketing cattle and beef and allow consumer desires to be communicated to the industry so that necessary changes in feeding and production may be made.

Beef grading is provided by the Department for a fee to users who request the service. Beef grading is voluntary, and not all marketed beef is graded. In 1987 approximately 54 percent of commercial beef production was graded. However, approximately 66 percent of the federally inspected steer and heifer slaughter was graded. The steer and heifer slaughter is the portion of the beef supply generally available to consumers as retail cuts.

The official beef grade currently consists of both a quality grade and a yield grade. The quality grades identify differences in the palatability of cooked beef principally through the characteristics of marbling and maturity. The yield grades identify differences in the percentage of product that may be obtained from a carcass. Such yield grades are established by examining the characteristics of external fat cover; percent kidney, pelvic, and heart fat; hot carcass weight; and ribeye area. Yield grades are also useful as predictors of the yield of further subdivisions of carcasses, but yield grade's usefulness diminishes as the size of the cuts lessens, fat is trimmed, and bone is removed.

Yield grades are primarily used as wholesale marketing indicators and are seldom used at retail because retail product receives additional fat trim prior to merchandising. AMS believes that consumers are generally able to differentiate differences in the amount of lean meat and fat and to make value comparisons. Quality grades are also used in wholesale marketing, but unlike yield grades, are used at retail to identify quality differences which are difficult for consumers to differentiate when purchasing beef.

Industry Petition

Although significant progress has been made in production of leaner cattle without sacrificing quality, excess fat and bone must still be removed in order to satisfy consumer demands. The industry recognizes the inefficiency of not trimming excess fat and removing bone at the packer level. Therefore, in order to provide retailers and consumers with the types of beef preferred and to increase efficiency, most packers have either initiated or intend to initiate programs to provide purchasers with more closely trimmed primal and subprimal cuts.

To most efficiently produce these desirable types of cuts, packers have also examined alternative production and marketing procedures. One procedure is to remove external fat from carcasses at the time of slaughter, a process called hot-fat trimming. Although this procedure offers potential economic benefits, two provisions in the current standards prevent packers from using this technology if they desire to have beef officially graded. The first provision is the coupling of the quality and yield grades. The second provision that prevents the grading of carcasses that have had substantial amounts of external fat removed. This prevents the yield grading of carcasses that have been trimmed because accurate yield grade determinations cannot be made on trimmed carcasses. For these reasons, the American Meat Institute and the National Cattlemen's Association petitioned the Department in June 1987 to amend the beef carcass grade standards to permit the voluntary use of either the beef quality grades and/or the beef yield grades.

The petitioners pointed out that under the current standards, plants wishing to produce closely trimmed primals and subprimals have essentially two options: (1) Add personnel and equipment to maintain present processing or production rates or (2) reduce processing rates to match existing personnel and facility restraints. Both options are considered costly and inefficient. The petitioners further stated that hot-fat trimming on the slaughter floor could more efficiently remove most of the excess fat before processing. The industry would benefit if packers were afforded the opportunity to implement cost-effective production systems in a

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constantly changing, competitive economic environment.

The petitioners also stated that market demands would dictate use of the grading service. If beef purchasers, whether large or small volume, accept hot-fat trimmed primals and subprimals, they would have no need for yield grade identification. If they do not accept hot-fat trimmed product, they could still choose to use the yield grading system on quality graded or non-quality graded product.

A benefit of uncoupling perceived by the petitioners is the opportunity it gives the industry to adopt hot-fat trimming and allow producers to be paid on lean meat yield. As the difference in amount of external fat on carcasses is narrowed, the differences in composition among carcasses of different yield grades narrows. Carcasses from cattle with less fat would have higher trimmed carcass weights. If producers are paid on a final trimmed carcass weight basis, for two cattle weighing the same live, the leaner animal would have the heavier pay weight. Such a system would encourage beef producers to adopt breeding and feeding technology directed toward the production of leaner cattle.

Proposed Standards

Consideration of all the available data and information indicated that a revision of the beef carcass and slaughter cattle standards to allow either quality grading and/or yield grading appears to offer the potential for improving the effectiveness of the beef grades in meeting the needs of the marketplace. Considerable changes have occurred in the marketing of beef which necessitate the more efficient removal of excess fat and bone. Although the industry retains its goal of eliminating excess waste through improved breeding and feeding technology, the current information suggests that technologies, such as hot-fat trimming, offer considerable promise to the industry as potential methods for more efficient removal of waste fat. There are potential economic benefits associated with these technologies that could assist not only producers and packers, but also beef purchasers and consumers who desire the attributes of trimmer beef. The current provision requires both a quality and a yield grade. These provisions effectively prevent some new technologies from being adopted and the benefits of yield grading to be extended to non-quality graded carcasses. Grades of slaughter cattle are intended to be directly related to the grade of the carcasses they produce. Accordingly, the standards for grades of slaughter cattle would be revised to reflect any changes in the beef carcass grade standards.

Therefore, it was proposed in the February 3, 1988, **Federal Register** (53 FR 3025–3028) that the beef carcass and slaughter cattle standards be amended to allow the application of the quality grade only, the yield grade only, or the application of both the quality and yield grades. As a result of the uncoupling of these grades, it was proposed that carcasses that have had external fat removed for any non-fraudulent or non-deceptive cause may receive a yield grade only if it is determined that an accurate grade evaluation can be made. No changes in the actual grade requirements for either quality or yield grades were proposed. In addition, it was proposed that the standards for grades of slaughter cattle be revised to reflect the changes proposed for the carcass grade standards.

Comments

A 60-day comment period, which was scheduled to close on April 4, 1988, was provided for submission of comments and supporting data. At the request of an industry trade association, the close of the comment period was extended to June 6, 1988 (53 FR 10545). In addition to the period for written comments, a public hearing session was held in Kansas City, Missouri, on March 8, 1988. The official number of written and/or oral comments that were submitted prior to the close of the comment period was 208, of which 207 addressed the proposed changes.

The comments were divided among several sectors representing segments of the production and consumption chain with similar interests. The comments were also classified as individual or organization. The distribution of comments by these categories is shown in Table 1. The percentage support/non-support for the proposed change by sector and classification (i.e., individual or organization) is shown in Table 2. Overall, the majority of both individual and organization comments supported the changes as proposed. A majority of comments from the livestock production, packing, consumer, and academic, government, and health sectors supported the proposed changes. Most of the comments that did not support the proposed changes or favored an alternative to the proposal were received from the purveyor; processor; HRI (hotel, restaurant, and institutional) user; and retailer segments.

TABLE 1.—DISTRIBUTION OF COMMENTS

Sector	Classification		
	Individual [1]	Organization [2]	Total
Livestock production	52	18	70
Packing	19	3	22
Purveyor and processor	34	2	36
HRI user	9	1	10
Retailer	4	1	5
Consumer	28	0	28
Academia, government, and health	36	2	38
Total	162	27	170

[1] Includes comments of individuals, comments with multiple signers, and businesses.
[2] Includes comments of state, regional, and national organizations and government agencies.

TABLE 2—PERCENT SUPPORT/NONSUPPORT

(In percent)

Sector	Classification					
	Individual [1]			Organization [2]		
	Favor	Opose	Alternative	Favor	Opose	Alternative
Livestock production	80.8	17.3	1.9	72.2	11.1	16.7
Packing	84.2	10.5	5.3	66.7	33.3	0.0
Purveyor and processor	5.9	82.3	11.8	0.0	50.0	50.0
HRI user	11.1	77.8	11.1	0.0	100.0	0.0
Retailer	25.0	75.0	0.0	0.0	100.0	0.0
Consumer	92.6	7.4	0.0	0.0	0.0	0.0
Academia, Government, and Health	83.3	8.3	8.3	50.0	50.0	0.0
Total	84.6	29.8	5.5	59.3	25.9	14.8

[1] Includes comments of individuals, comments with multiple signers, and businesses.
[2] Includes comments of state, regional, and national organizations and government agencies.

The comments supporting the uncoupling of the yield and quality grades generally saw the uncoupling as a means to provide the industry greater flexibility in determining the point of fat removal and the value determination for livestock and beef. The comments supporting the changes from the livestock and packer segments indicated the changes would allow the industry to determine the most efficient methods of removing fat, including possible adoption of new technologies such as hot-fat trimming, in order to meet the goal of providing trimmer cuts to buyers.

These comments also supported the change as a means to allow the industry to examine new procurement systems for livestock, including potential trimmed hot carcass weight purchasing. The current requirement for coupled yield and quality grades was seen as preventing the industry from adopting the most efficient technologies in order to meet the increased consumer demand for trimmer beef.

In addition to the increased flexibility the proposed changes presented the industry, several comments indicated the uncoupling would allow the benefits of yield grading to be extended to portions of the beef supply that are not currently being graded because of the coupled requirement. It was believed that some purchasers are primarily concerned with yield, and would request yield graded beef only, if available. Many of the commenters who supported the changes, and several of those who favored an alternative to the changes, believe the actual amount of beef that would be yield graded would increase if yield grading only were allowed.

Supply Concerns

Many of the commenters opposed to the proposed changes indicated a concern that if the grades were uncoupled, a supply of yield graded beef would no longer be available. These commenters believed that the potential existed that packers would choose to quit yield grading. Some of the comments from smaller purveyors expressed their concern that only large volume purchasers would be able to specify both quality and yield graded product.

The Department has carefully considered these concerns. While it can be speculated that packers could choose to quit yield grading all beef, there is no evidence to indicate that this would occur. The widespread reliance on yield grades that was indicated in the comments from purveyors, HRI users, and retailers indicates that the utilization of yield grades in beef marketing is deeply entrenched. It is not likely that meat purchasers would abandon the use of yield grades for alternative methods of marketing until the benefits of such alternatives had been successfully demonstrated by packers. Furthermore, with such a widespread demand for yield graded beef, packers should continue to offer it to purchasers until any alternatives have been accepted in the marketplace. It is likely that the amount of beef that is yield graded could be reduced if hot-fat trimmed product proves to be advantageous to both packers and buyers. However, the entire marketplace will determine the use and value of yield grading, not a single sector.

Seam Fat Concerns

Many of the commenters opposed to the proposed changes were concerned about potential problems identifying beef with high levels of seam fat. There was concern that packers would simply not yield grade fatter carcasses and mix them with better yielding carcasses and label them only with the quality grade. There was also concern that it would not be possible to identify fatter beef that was hot-fat trimmed, and such fatter beef could be intermingled with higher yielding beef.

It is recognized that there are differences in the amount of seam fat between carcasses of different yield grades. Generally, the better yield grades will have lower amounts of seam fat. However, it is also recognized that different cutting and trimming procedures can account for up to 80 percent of the difference in seam fat between the yield grades. Because beef purchasers are demanding trimmer product, even if a substantial amount of beef were hot trimmed and not yield graded, it would be expected that packers would use hot trimmed beef in providing the more closely trimmed subprimals to meet his demand. Thus, most of the variation in seam fat that could occur in this beef could be accounted for by using these cutting and trimming specifications. Proponents of uncoupling also believe the potential marketing of beef based on a value based system relying on trimmed carcass weights would further reduce the amount of Yield Grade 4 and 5 beef, thus further reducing the amount of beef that has excessive seam fat.

It is possible that packers could choose not to yield grade fatter beef and commingle it with leaner beef. However, there is nothing that prevents this practice now other than the packer's desire to provide beef that meets their own boxed beef specifications used in their merchandising programs. Even with the severe discounts that are often associated with Yield Grade 4 and 5 beef, packers now grade and separately market this type of beef, even though it could be marketed as subprimals and labeled with the quality designation only or as ungraded beef.

Limited Uncoupling

Many of the commenters opposed to the uncoupling indicated much of their opposition was because no requirements were presented in the proposed changes to require hot-fat trimming in order to quality grade only. Many of these commenters believed packers should only have the option to quality grade only if the carcasses had been trimmed. Some of these commenters indicated a desire that the carcasses would have to be trimmed to a specified maximum fat cover. The commenters wanted to continue to require both quality and yield grading for carcasses that had not been trimmed. However, some of these comments did suggest that packers be allowed to grade carcasses for yield grade only, but not quality grade only.

Allowing the beef grades to be uncoupled only for trimmed carcasses would achieve one of the major objectives of most supporters of the proposed changes; i.e., to allow the industry the opportunity to hot trim carcasses. To allow uncoupling for only hot-fat trimmed carcasses would also provide purchasers with the knowledge that some degree of fat trimming had been done on the carcass if it were quality graded only. This alternative would not jeopardize benefits of coupled yield and quality grades on beef not subjected to trimming.

AMS had carefully considered limited uncoupling prior to proposing the complete uncoupling of the beef quality and yield grades. To allow uncoupling for only trimmed carcasses would require a defined level of trim to qualify the carcass for uncoupling. A determination would have to be made on each carcass presented for grading to determine if it met the required level of trim. A principal hindrance to this type of compliance determination is the extreme difficulty in monitoring levels of trim on carcasses, especially on a

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production-line basis. To achieve or approach the levels of accuracy and precision of other grading operations would probably require significant slowing of grading operations and/or significant plant modifications and expenditures in order to make such determinations. In addition to the difficulties associated with creating a satisfactory definition and then determining compliance with the requirement, there is another major concern. A fat trim level implemented on carcasses would provide only limited information on potential variation in yields for boxed beef products, which is the form in which most beef is now marketed. An external fat trim requirement would also not identify or account for any variations in seam fat that could exist between trimmed carcasses.

A few comments were received that supported uncoupling, but expressed a desire to develop a system to grade trimmed carcasses for yield prior to fat removal on the slaughter floor. There is merit for such a system; however, technology in the area of instrument grading is currently not ready for implementation on a production basis. Several commenters supporting uncoupling believed it would place the beef industry at a severe disadvantage to delay implementation of uncoupling until a workable instrument grading system was available. These commenters were concerned that the beef industry must immediately begin providing trimmer products in the most efficient manner in order to meet consumer demands and to compete with other meat species.

Some proponents of uncoupling were concerned that limited uncoupling would not provide as much flexibility to the industry as total uncoupling. It was indicated that limited uncoupling for hot trimmed carcasses only would lock packers into one system, but not provide for adoption of other potential technologies that could become available in the future. There was also concern expressed that monitoring of fat trim levels should not be a function of the grade standards. Instead it was suggested that the certification service offered by AMS could be used to monitor trim specifications, either on carcasses or on cuts. The limited uncoupling for trimmed carcasses only would also prevent the industry from having the option to yield grade only. Several commenters favored this as a means of improving marketing information. Accordingly, for the reasons set forth herein, the suggestions concerning limited uncoupling are not adopted in this final rule.

Regulatory Concerns

Several comments took issue with the determinations that the proposed revision was a "non-major" rule, and that it would not have a significant economic impact on a substantial number of small entities. These commenters urged USDA to initiate an economic impact study on the effects of the change. AMS had previously reviewed the proposed revision under Executive Order 12291 and Departmental Regulation No. 1512-1, and classified the rule as "non-major." Also, AMS determined that the change would not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Currently, yield and quality grades must be applied together. The change will remove this provision and will provide for the separate application of yield and quality grades. The final rule does not change either the yield grade or the quality grade requirements. Also, it does not change the voluntary nature of the program. Thus, the revision is merely providing more flexibility to the users of the service by permitting the use of the yield grades, the quality grades, or both. This alone does not lead to the conclusion that a significant segment of market participants will change their usage of the grading program. Neither opponents nor proponents of the change offered evidence to the contrary.

Changes in marketing practices and procedures may, however, lead to changes in program usage by market participants. The separation of yield and quality grades allows the beef industry to use new, more efficient technologies available today and in the future. Thus, packers could adopt certain advanced production and marketing techniques, and the industry as a whole could choose those procedures which most efficiently meet consumer needs. With the adoption of new techniques, usage of the grading program could change. However, AMS believes that retailers and others will continue to specify yield grading as a purchasing requirement unless the benefits of new technologies have been successfuly demonstrated.

The principal technology currently under consideration by the industry which would remove external fat from carcasses at the time of slaughter is a process called hot-fat trimming. Research on hot-fat trimming has indicated that beef carcasses could be substantially trimmed of excess subcutaneous fat and most of the kidney, pelvic, and heart fat. However, there has been only limited testing of hot-fat trimming on a production basis, and there is substantial disagreement as to the feasibility of commercial implementation. Thus, while separating the yield and quality grades would remove one hindrance to adopting this new technology, it does not assure that its adoption will occur. Also, there has been no indication from interested parties as to how much hot-fat trimming would be adopted should the yield and quality grades be separated. The level of adoption would depend upon both the acceptance of the product in the marketplace and whether it facilitated packers' processing needs to supply more closely trimmed beef to purchasers.

A few commenters were concerned that if packers were allowed to trim product prior to grading, employees of purveyors, retailers, etc., would not be needed for trimming product and could cause unemployment of these employees. While the Department does believe that some packers may choose to hot-trim product in order to more efficiently provide trimmer products to purchasers, there is evidence to indicate that both packers and buyers have already expressed a need for trimmer product and it will be provided whether the product is trimmed prior to or after grading. The uncoupling of the quality and yield grades would merely provide the packing industry with an option to remove the fat in the most efficient manner for their operations. Because market forces are already in place to provide trimmer product, the uncoupling should not significantly alter the actual location of fat removal, but only possibly the time of such removal at the packing plant.

Based on the above considerations, AMS has concluded that there is no evidence nor was any quantitative data supplied that significant negative changes will occur as a result of separating the yield and quality grades. Any substantive change in usage of the program will only result from changes in marketing practices and procedures. Nothing in the proposal presented by the petitioners nor the comments from interested parties offers any evidence that current marketing practices and procedures will change negatively as a result of separating yield and quality grades.

After thorough review of the comments received and the information available, there is no indication nor was any quantitative data supplied that would alter the prior determination that the revision be classified as "non-major" and that it would not have a significant economic impact on a substantial number of small entities.

Other Concerns

Proponents of the revision have indicated the change would allow the industry to pursue an alternative procurement system (based on trimmed carcass weights) benefiting producers of cattle with higher lean meat yields. This would discourage the overproduction of fat. Some commenters from the livestock sector were concerned that no specifics for such a program were specified. No party interested in the revision gave any indication as to the specific structure of such a new procurement system, nor did they provide a timetable for the adoption of such a system.

A few comments were received that indicated the commenters believed that AMS intended to yield grade trimmed carcasses. Changes were proposed in 7 CFR 54.104 (g) to allow the quality grading of carcasses that were trimmed to facilitate processing and marketing. However, any carcass fraudulently trimmed would not be eligible for any grade determination. The intent of the proposed change was to allow carcasses with some minor trimming associated with meat inspection or dressing to be yield graded if the grader determines that an accurate yield grade determination could still be made. Provisions for yield grading carcasses with more than minor amounts of fat removed were not intended. A minor rewording of this section has been made to clarify this intent.

In consideration of the public comments submitted in response to the proposed rule of February 3, 1988 (53 FR 3025-3028), and all other available information, USDA adopts the proposed regulations to revise the slaughter cattle and beef carcass standards to allow the application of the quality grade only, or the yield grade only, or both. The standards for grades of slaughter cattle are intended to be directly related to the grades of the carcasses they produce.

List of Subjects

7 CFR Part 53

Livestock, Cattle, Grading and Certification, Standards.

7 CFR Part 54

Beef carcasses, Meat and meat products, grading and certification, Standards.

In consideration of the foregoing, certain sections of the regulations and standards appearing at 7 CFR Part 53 as they relate to livestock and certain sections of the regulations and standards at 7 CFR Part 54 as they relate to meats, prepared meats, and meat products are amended as set forth below.

PARTS 53 AND 54—[AMENDED]

1. The authority citation for Parts 53 and 54 continues to read as follows:

Authority: Agricultural Marketing Act of 1946, secs. 203, 205, as amended; 60 Stat. 1087, 1090, as amended (7 U.S.C. 1622 and 1624).

§ 53.203 [Amended]

2. In 7 CFR 53.203(a), the last sentence is revised to read as follows:

(a) * * * The grades of slaughter cattle may consist of the quality grade only, the yield grade only, or a combination of the quality grade and the yield grade except that slaughter bulls are yield graded only.

* * * * *

3. In 7 CFR Part 54, § 54.104 (a) and (g) are revised to read as follows:

§ 54.104 Application of standards for grades of carcass beef.

(a) The carcass beef grades identify two separate general considerations: The indicated yield of closely trimmed (⅛ inch fat or less), boneless retail cuts expected to be derived from the major wholesale cuts (round, sirloin, short loin, rib, and square-cut chuck) of a carcass, herein referred to as the "yield grade," and characteristics of the meat which predict the palatability of the lean, herein referred to as the "quality grade." When officially graded, the grade of a steer, heifer, cow, or bullock carcass may consist of the quality grade only, the yield grade only, or a combination of the quality grade and the yield grade. The grade of a bull carcass consists of the yield grade only.

* * * * *

(g) Beveling of the fat over the ribeye, application of pressure, or any other influences which may alter the characteristics of the ribeye or thickness of fat over the ribeye prevent an accurate grade determination. Therefore, carcasses subjected to such influences shall not be eligible for grade determinations, and the presentation of such carcasses for official grade determinations shall be considered a fraudulent or deceptive practice in connection with the services requested for such carcasses. Carcasses that have had more than minor amounts of external fat removed shall not be eligible for a yield grade determination, although carcasses with only minor amounts of external fat removed may be yield graded if the official grader determines that an accurate yield grade determination can be made. Although entire carcasses with more than minor amounts of lean removed from the major wholesale cuts (round, sirloin, short loin, rib, or square-cut chuck) shall not be eligible for grade determinations, the remaining portions of these carcasses which are unaffected by the removal of lean shall remain eligible for grade determinations, provided that a cross section at the 12th-13th rib is available and accurate grade determinations may be made.

* * * * *

Done at Washington, DC, on January 18, 1989.

J. Patrick Boyle,
Administrator.

[FR Doc. 89-1484 Filed 1-23-89; 8:45 am]
BILLING CODE 3410-02-M

Federal Crop Insurance Corporation

7 CFR Part 406

[Docket No. 6401S]

Nursery Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) adds a new Part 406 in Chapter IV of Title 7, Code of Federal Regulations to be known as the Nursery Crop Insurance Regulations (7 CFR Part 406), effective for the 1989 and succeeding crop years. The intended effect of this rule is to: (1) Prescribe procedures for insuring nursery crops in counties approved by the Board of Directors of FCIC; and (2) provide for codification of the Nursery Crop policy of insurance in 7 CFR Part 406 in the Code of Federal Regulations. This rule authorizes the offer of insurance directly through FCIC which previously had been available only through an FCIC reinsured company.

EFFECTIVE DATE: February 23, 1989.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date for these regulations is June 1, 1993.

John Marshall, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive

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Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region, or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons and will not have a significant economic impact on a substantial number of small entities.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3018, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

FCIC herewith adds a new Part 406 in Chapter IV of Title 7, Code of Federal Regulations to be known as the Nursery Crop Insurance Regulations (7 CFR Part 406), effective for the 1989 and succeeding crop years, to provide the provisions for insuring nursery crops. This rule authorizes the offer of insurance directly through FCIC which previously had been available only through an FCIC reinsured company.

On Friday, September 23, 1988, FCIC published a notice of proposed rulemaking in the Federal Register at 53 FR 36985, to prescribe procedures for insuring nursery crops in counties approved by the Board of Directors of FCIC, and provide for codification of the Nursery Crop policy of insurance in 7 CFR Part 405 in the Code of Federal Regulations.

The public was given 30 days in which to submit written comments, data, and opinions on the proposed rule. Two comments were received from the American Association of Nurserymen and the Florists' Mutual Insurance Company. In each case the commenters expressed concern that the insurance which currently is offered to prospective insureds through companies under a Reinsurance Agreement with FCIC, was proposed to be offered through companies under an Agency Sales and Service Contract. The major concern in all comments received centers on the ability of the agency sales and service network to properly market a very technical and complicated program. Another concern is the limitation of coverage to 75 percent of average yield as the maximum coverage offered by FCIC.

In direct communication with the commenters, FCIC has assured each that it is aware of the wide differences between nursery crops and other crops it insures. FCIC will train all its personnel in the intricacies of nursery crop production, and will train, test, and certify all agents before that are permitted to sell nursery crop insurance under the agency Sales and Service Contract. With respect to the comment regarding the values of nursery crop acreages as far exceeding the value of other crops insured by FCIC, concern was expressed that the 25 percent loss deductible (expressed as the 75 percent maximum coverage limit on all FCIC programs) is not a viable coverage because of the higher values mentioned above.

The mandate of the Federal Crop Insurance Act of 1980 is that FCIC will not make available to producers any level of coverage in excess of the seventy-five percent level, thus negating the possibility of a higher level of coverage which may be perceived as protection of the profit margin of farming, while undergirding the basic concept of the insurance proposal; to protect the investment made by the insured in producing the crop to enable such producer to keep farming in the face of unavoidable natural disasters.

Further, the expansion of the insurance offer to producers serviced by companies under an Agency Sales and Service Contract fully implements the provisions of the Federal Crop Insurance Act in employing a dual delivery system to better serve all producers.

Finally, one of the commenters referred to three dates in the proposed rule, one of which is the Sunset Review date of June 1, 1993. This date is the 5-year projection under the procedures established by Departmental Regulation 1512-1. These provide that a review as to the need, currency, clarity, and effectiveness of these regulations must be conducted before such date in order to permit them to continue in existence.

The second date referred to, found in § 406.7(b), provides the authority for the extension of the sales closing date for accepting applications beyond the September 30th deadline. This authority is a standard provision used by FCIC under controlled circumstances and is immediately rescinded in the event of the possibility of adverse selectivity.

The final date of concern to this commenter is the June 30th deadline for filing policy changes in the service offices. The commenters expressed concern that this date seriously hampers the activities of agents between June 30 and the September 30 deadline for accepting applications on the basis that, while this period may be adequate for other crops insured by FCIC, it is not sufficient time to consider the enormous variety of different plants grown on a nursery farm.

FCIC considered this question very carefully and verified its findings with the Crop Hail Insurance Actuarial Association. The final determination is that 90 days is a reasonable time in which to allow agents to complete preparations and to sell policies to prospective insureds.

For the reason stated above, FCIC contemplates no changes to the rule as proposed at 53 FR 36985, and herewith adopts such rule as a final rule.

List of Subjects in 7 CFR Part 406

Crop insurance, Nursery crop.

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation adds a new Part 406 in Chapter IV of Title 7, Code of Federal Regulations, to be known as 7 CFR Part 406—Nursery Crop Insurance Regulations, effective for the 1989 and succeeding crop years, to read as follows:

PART 406—NURSERY CROP INSURANCE REGULATIONS

Subpart: Regulations for the 1989 and Succeeding Crop Years

Sec.

406.1 Availability of nursery crop insurance.
406.2 Premium rates, amounts of insurance, and coverage levels at which indemnities shall be computed.
406.3 OMB control numbers.
406.4 Creditors.
406.5 Good faith reliance on misrepresentation.
406.6 The contract.
406.7 The application and policy.

Authority: 7 U.S.C. 1508, 1516.

§ 406.1 Availability of nursery crop insurance.

(a) Insurance shall be offered under the provisions of this subpart on the insured crop in counties within the limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act, as amended, (the Act). The counties shall be designated by the Manager of the Corporation from those approved by the Board of Directors of the Corporation.

(b) The insurance is offered through two methods. First, the Corporation offers the contract contained in this part directly to the insured through Agents of the Corporation. Those contracts are specifically identified as being offered by the Federal Crop Insurance Corporation. Second, companies reinsured by the Corporation (hereinafter "Reinsured companies") offer contracts containing substantially the same terms and conditions as the contract set out in this part.

(c) No person may have in force more than one contract on the same crop for the crop year, whether insured by the Corporation or insured by a Reinsured company.

(d) If a person has more than one contract under the Act outstanding on the same crop for the same crop year, all such contracts will be voided for that crop year but the person will still be liable for the premium on all contracts unless the person can show to the satisfaction of the Corporation that the multiple contract insurance was inadvertent and without the fault of the insured.

(e) If the multiple contract insurance is shown to be inadvertent and without the fault of the insured, the contract with the earliest application will be valid and all other contracts on that crop for that crop year will be cancelled. No liability for indemnity or premium will attach to the contracts so cancelled.

(f) The person must repay all amounts received in violation of this section with interest at the rate contained in the contract for delinquent premiums.

(g) An insured whose contract with the Corporation or with a Reinsured company under the Act has been terminated because of violation of the terms of the contract is not eligible to obtain multi-peril crop insurance under the Act with the Corporation or with a Reinsured company unless the insured can show that the default in the prior contract was cured prior to the sales closing date of the contract applied for or unless the insured can show that the termination was improper and should not result in subsequent ineligibility.

(h) All applicants for insurance under the Act must advise the agent, in writing, at the time of application, of any previous applications for a Contract under the Act and the present status of the applications or contracts.

§ 406.2 Premium rates, amounts of insurance, and coverage levels at which indemnities shall be computed.

(a) The Manager shall establish premium rates, amounts of insurance, and coverage levels, for the insured crop which will be included in the actuarial table on file in the applicable service offices for the county and which may be changed from year to year.

(b) At the time the application for insurance is made, the applicant will elect a coverage level from among those contained in the actuarial table for the crop year.

§ 406.3 OMB control numbers.

OMB control numbers are contained in Subpart H of Part 400, Title 7 CFR.

§ 406.4 Creditors.

An interest of a person in an insured crop existing by virtue of a lien, mortgage, garnishment, levy, execution, bankruptcy, involuntary transfer or other similar interest shall not entitle the holder of the interest to any benefit under the contract.

§ 406.5 Good faith reliance on misrepresentation.

Notwithstanding any other provision of the nursery insurance contract, whenever:

(a) An insured under a contract of crop insurance entered into under these regulations, as a result of a misrepresentation or other erroneous action or advice by an agent or employee of the Corporation or a Reinsured company;

(1) Is indebted to the Corporation or a Reinsured company for additional premiums; or

(2) Has suffered a loss to a crop which is not insured or for which the insured is not entitled to an indemnity because of failure to comply with the terms of the insurance contract, but which the insured believed to be insured, or believed the terms of the insurance contract to have been complied with or waived; and

(b) The Board of Directors of the Corporation (the Manager in cases involving not more than $100,000) or a Reinsured company finds that:

(1) An agent or employee of the Corporation or a Reinsured company did in fact make such misrepresentation or take other erroneous action or give erroneous advice;

(2) Said insured relied thereon in good faith; and

(3) To require the payment of the additional premiums or to deny such insured's entitlement to the indemnity would not be fair and equitable, such insured shall be granted relief the same as if otherwise entitled thereto.

Requests for relief under this section must be submitted to the Corporation or a Reinsured company in writing.

§ 406.6 The contract.

The insurance contract shall become effective upon the acceptance by the Corporation or a Reinsured company of a duly executed application for insurance on a form prescribed by the Corporation or a Reinsured company and payment of the premium due. The contract shall cover the nursery crop as provided in the policy. The contract shall consist of the application, the policy and any amendments thereto, and the county actuarial table. Changes made in the contract shall not affect its continuity from year to year. No indemnity will be paid unless the insured complies with all terms and conditions of the contract. The forms referred to in the contract are available at the applicable service offices.

§ 406.7 The application and policy.

(a) Application for insurance on a form prescribed by the Corporation must be made by any person to cover such person's share in the nursery crop as owner if the person wishes to participate in the program. The application shall be submitted to the Corporation or a Reinsured company at the service office on or before the applicable sales closing date on file in the service office.

(b) The Corporation or a Reinsured company may discontinue the acceptance of any application or applications in any county upon its determination that the insurance risk is excessive. The Manager of the Corporation is authorized in any crop year to extend the sales closing date for submitting applications in any county, by placing the extended date on file in the applicable service offices and publishing a notice in the Federal Register upon the Manager's determination that no adverse selectivity will result during the extended period. However, if adverse conditions should develop during such period, the Corporation will immediately discontinue the acceptance of applications.

(c) A contract in the form provided for in this subpart will come into effect as a continuation of the contract issued under such prior regulations, without the filing of a new application.

(d) The application for the 1989 and succeeding crop years is found at Subpart D of Part 400—General Administrative Regulations (7 CFR

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400.37, 400.38) and may be amended from time to time for subsequent crop years. The provisions of the Nursery Crop Insurance Policy for the 1989 and succeeding crop years are as follows:

Federal Crop Insurance Corporation

Nursery Crop Insurance

(This is a continuous contract. Refer to Section 15.)

Note: This is a contract with the Federal Crop Insurance Corporation, a United States Government Agency. The terms of the contract are published in the Federal Register under the provisions of the Federal Register Act (44 U.S.C. 1501), and may not be waived or varied in any way by the crop insurance agent or any other agent or employee of FCIC.

Agreement to Insure: We will provide the insurance described in this policy in return for the premium and your compliance with *ALL* provisions of the crop insurance contract.

Throughout this policy, "you" and "your" refer to the insured shown on the accepted Application and "we," "us," and "our" refer to the Federal Crop Insurance Corporation. Unless the context indicates otherwise, use of the plural form of a word includes the singular and use of the singular form of the word includes the plural.

1. Insured Crops

a. The crops insured will be all nursery crops grown in the county in standard nursery containers which are listed on the eligible plant listing located in the actuarial table.

b. We do not insure any nursery crops which:

(1) Are not grown in standard nursery containers;

(2) Are not classified as woody, herbaceous, or foliage landscape plants;

(3) Produce citrus fruit or other edible fruits or berries;

(4) Are grown in the field;

(5) Are not listed on the eligible plant listing located in the actuarial table;

(6) Have not been inspected prior to submission of your application;

(7) Are inspected by us and determined unacceptable;

(8) Are not grown in a hardiness zone listed on the eligible plant listing for those crops; or

(9) Are not grown in accordance with the production practices for which premium rates have been established.

2. Causes of Loss

a. The insurance provided is against unavoidable damage resulting from the following causes occurring within the insurance period:

(1) Adverse weather conditions;

(2) Fire;

(3) Insects;

(4) Plant disease;

(5) Wildlife;

(6) Earthquake;

(7) Volcanic eruption; or

(8) If applicable, failure of the irrigation water supply due to an unavoidable cause occurring after insurance attaches;

unless those causes are excepted, excluded, or limited by the actuarial table.

b. We do not insure against any loss caused by:

(1) The neglect, mismanagement, or wrongdoing by you, any member of your family or household, your tenants, or employees;

(2) The failure to follow recognized good production practices for nursery crops;

(3) Water contained by any governmental, public, or private dam or reservoir project;

(4) Flooding on any unit subject to a flood or water flowage easement;

(5) Failure or breakdown of irrigation equipment or facilities;

(6) Failure to carry out a good irrigation practice for the nursery crops;

(7) The inability to market the nursery crop as a direct result of quarantine, boycott or refusal of any entity to accept production;

(8) Any loss of production due to fire, where weeds and other forms of undergrowth have not been controlled; or

(9) Any cause not specified in this policy as an insured cause of loss.

c. You must not obtain any other crop insurance under the Federal Crop Insurance Act (Multiple Peril Crop Insurance Policy or Federal Crop Insurance Policy) on the insured crops. More than one policy will result in our voiding the policies and collecting the premium from you unless the violation of this provision is found by us to have been inadvertent. If we determine that the violation was inadvertent, the policy with the earliest date of application will be the one in force and all other policies will be void. Nothing in this paragraph prevents the insured from obtaining other hail and fire insurance not issued under the Act and which is subject to the provisions of section 9 hereof.

d. Although your violation of a number of federal statutes including the Federal Crop Insurance Act may cause cancellation, termination, or voidance of your insurance contract, you are specifically directed to the provisions of Title XII of the Food Security Act of 1985 (Pub. L. 99-198) and the regulations promulgated thereunder, generally referred to as the sodbuster, swampbuster, and controlled substance provisions. Your insurance policy will be cancelled if you are determined to be in violation of these provisions. We will recover any and all monies paid to you or received by you and your premium will be refunded.

3. Nursery Crop Report

a. You must submit an annual crop report to us of all of your eligible nursery crops in the county by unit, type, container size, number of plants and wholesale price of plants for each month of the crop year. This report must be submitted on or before September 30 preceding the crop year.

b. Your crop report may be revised only with our consent.

c. We may determine all losses on the basis of information on your crop report or the inventory as determined by us.

d. You must designate separately any inventory which is not insurable. Your annual crop report will be used as the basis to determine your premium and the amount of insurance for each unit. If you do not submit the report by the reporting date, we may elect to determine the inventory for each unit or we may deny liability on any unit. Errors in reporting units may be corrected by us at the time of adjusting a loss.

4. Amount of Insurance and Coverage Level

a. The amount of insurance and coverage levels are contained in the actuarial table and must be elected on or before September 30 prior to the crop year.

b. You may change the amount of insurance and the coverage level on or before the sales closing date for that crop year.

5. Annual Premium

a. The annual premium is due and payable on or before September 30 preceding each crop year and will be earned in full when the policy becomes effective.

b. Coverage will not begin if the premium due under this policy is not paid when due and payable.

c. The annual premium amount for each unit is computed in accordance with these subsections:

(1) Develop an inventory of all eligible containerized crops, by type of crop and container size, for each month of the proposed policy period.

(2) Apply market values to these inventory numbers using your wholesale price list. If you discount prices published in your wholesale price list, the discounted prices must be used in calculating market values. Record these monthly values by type of crop on your insurance application.

(3) Add the total monthly market values separately for each type of crop and divide that monthly total for each crop by the number of months in the crop year to get the "Average Monthly Market Value".

(4) Add the Average Monthly Market Value for each of the eligible crops in the unit to get the "Yearly Average".

(5) Multiply the Yearly Average by 90% to obtain the "Field Market Value".

(6) Multiply Field Market Value by the coverage level.

(7) Multiply this result by the applicable premium rate contained in the actuarial table.

6. Amounts Due Us

a. Interest will accrue at the rate of one and one-fourth percent (1¼%) simple interest per calendar month, or any part thereof, on any unpaid balance due us. Interest will start on the date that notice is issued to you for the collection of any amount determined to be due. Interest, penalties and costs will be charged in accordance with 31 U.S.C. 3717 and 4 CFR 102.13. The penalty for accounts more than 90 days past due (31 U.S.C. 3717(e)(2)) is six percent (6%) per annum. Interest on any amount due us found to have been received by you because of fraud or misrepresentation will start on the date you received the amount with the penalty beginning 90 days after the notice of amount due is issued to you.

b. All amounts paid will be applied first to costs and penalties, second to accrued interest, and then to reduction of the principal balance.

c. If we determine that it is necessary to contract with a collection agency or to employ an attorney to assist in collection, you agree to pay all of the expenses of collection. Those expenses will be paid before the application of any amounts to interest, penalties or principal.

d. Any amount due us may be deducted from any indemnity payment due you or from any replanting payment, or from any loan or payment due you under any Act of Congress or program administered by the United States Department of Agriculture or its Agencies and from any amounts due you from any other United States Government Agency.

7. Insurance Period

Insurance attaches on October 1 and ends for each unit at the earliest of:

a. Sale or disposal of all or a portion of the crop;

b. Final adjustment of the loss on the part of the insured crop damaged; or

c. September 30 of the crop year.

8. Notice of Damage or Loss

In case of damage or probable loss you must:

a. Provide sufficient care to protect the crop from further damage;

b. Provide us with written notice within 72 hours of your discovery of the loss and obtain our written consent prior to:

(1) Destroying, selling or otherwise disposing of any crop that is damaged; or

(2) Changing or discontinuing your normal growing practices with respect to care and maintenance of the insured crop; and

c. Upon our request, provide complete copies of your nursery crop wholesale price list for the 12-month period immediately preceding the loss and your marketing records for the same period.

9. Claim for Indemnity

a. Any claim for indemnity on a unit must be submitted to us on our form not later than 60 days after the earliest of:

(1) Your loss; or

(2) September 30 of the crop year.

b. We will not pay any indemnity unless you:

(1) Establish the value of the insured crop on the unit and that any loss of value has been directly caused by one or more of the insured causes during the insurance period; and

(2) Furnish all information we require concerning the loss.

c. The production to count (containers) will be all plants eligible for insurance in a unit.

d. The indemnity will not exceed the lesser of:

(1) The amount of insurance applicable to the unit less 90% of the value of said damaged crop which is marketable at any time after the loss; or

(2) The amount, calculated for each unit as follows:

(a) Subtract field market value B from field market value A (see section 17) to determine the total amount of loss; and

(b) Subtract therefrom the annual loss deductible.

e. Annual Loss Deductible amounts will be applied on an annual aggregate loss deductible basis for each individual unit insured for the crop year. Individual insured losses occurring on the same unit during the crop year may be accumulated (but each loss must be reported and valued by us). The total amount of insured losses on a unit during the crop year, less the annual aggregate loss deductible applicable to that unit, is the amount payable under this policy for that unit during the crop year, as limited by the amount of insurance for that unit.

f. The value of production of any insured crop may be determined on the basis of our field appraisals conducted after the end of the insurance period.

g. If you elect to exclude hail and fire as insured causes of loss and the insured crop is damaged by hail or fire, appraisals will be made in accordance with the applicable Form FCI-78 or FCI-78-A, "Request To Exclude Hail And Fire."

h. You must not abandon any part of the insured crop to us.

i. Any suit against us for an indemnity must be brought in accordance with the provisions of 7 U.S.C. 1508(c). You must bring suit within 12 months of the date notice of denial of the claim is received by you.

j. An indemnity will not be paid unless you comply with all policy provisions.

k. Under no circumstances will we be liable for the payment of damages (compensatory, punitive, or other), attorney's fees, or other charges in connection with any claim for indemnity, whether we approve or disapprove such claim. (State and local laws to the contrary are not applicable to this insurance contract). We will pay simple interest computed on the net indemnity ultimately found to be due by us or by the final judgment of a court of competent jurisdiction, from and including the 61st day after the date you sign, date and submit to us the properly completed FCIC claim form. Interest will be paid only if the reason for our failure to timely pay is not due to your failure to provide information or other material necessary for the computation or payment of the indemnity. The interest rate will be that established by the Secretary of the Treasury under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611), and published in the Federal Register semiannually on or about January 1 and July 1 of each year and will vary with each publication.

l. If you die, disappear, or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved after insurance attaches for any crop year, any indemnity will be paid to the person determined to be beneficially entitled thereto.

m. If you have other fire insurance, fire damage occurs during the insurance period, and you have not elected to exclude fire insurance from this policy, we will be liable for loss due to fire only for the smaller of the amount:

(1) Of indemnity determined pursuant to this contract without regard to any other insurance; or

(2) By which the loss from fire exceeds the indemnity paid or payable under such other insurance. (For the purpose of this subsection, the amount of loss from fire will be the difference between the fair market value of the production on the unit before the fire and after the fire).

10. Concealment or Fraud

We may void the insurance contract on all crops without affecting your liability for premiums or waiving any right, including the right to collect any amount due us, if at any time, you have concealed or misrepresented any material fact or committed any fraud relating to this or any other contract with us. The voidance will be effective as of the beginning of the crop year with respect to which such act or omission occurred.

11. Transfer of Right to Indemnity on Insured Share

If you transfer any part of your share during the crop year, you may transfer your right to the applicable indemnity. The transfer must be on our form and approved by us. Both you and the person to whom you transfer your interest are jointly and severally liable for the payment of the premium. The transferee has all rights and responsibilities under the contract consistent with the transferee's interest.

12. Assignment of Indemnity

You may assign to another party your right to an indemnity for the crop year. The assignment must be on our form and will not be effective until approved in writing by us. The assignee may submit all notices and forms required to protect the insurance contract and to claim an indemnity.

13. Subrogation (Recovery of Loss From a Third Party)

Because you may be able to recover all or a part of your loss from someone other than us, you must do all you can to preserve any such right. If we pay you for your loss, then your right of recovery will at our option belong to us. If we recover more than we paid you plus our expenses, the excess will be paid to you.

14. Access to Nursery

Any person designated by us will have access to the nursery for purposes related to the contract.

15. Contract Term, Cancellation and Termination Dates

a. This contract will be in effect for the crop year specified on the application and may not be cancelled by you for such crop year after insurance attaches. Thereafter, the contract will continue in force for each succeeding crop year unless cancelled or terminated as provided in this section or unless the premium is not paid.

b. This contract may be cancelled by either you or us for any succeeding crop year by giving written notice on or before September 30, preceding such crop year.

c. This contract will terminate as to any crop year if any amount due us on this or any other contract with you is not paid on or before September 30 preceding such crop year for the contract on which the amount is due.

d. If you die or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved, the contract will terminate as of the date of death, judicial declaration, or dissolution. If such event occurs after insurance attaches for any crop year, the

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contract will continue in force through the crop year and terminate at the end thereof. Death of a partner in a partnership will dissolve the partnership unless the partnership agreement provides otherwise. If two or more persons having a joint interest are insured jointly, death of one of the persons will dissolve the joint entity.

e. The contract will terminate if no premium is earned for three consecutive years.

16. Contract Changes

We may change any terms and provisions of the contract from year to year. The date by which contract changes will be available in your service office is June 30 preceding the crop year.

17. Meaning of Terms

a. *"Actuarial table"* means the forms and related material for the crop year approved by us which are available for public inspection in your service office, and which show the amount of insurance, coverage levels, premium rates, practices, and related information regarding crop insurance in the county.

b. *"Amount of insurance"* means the value computed by:

(1) multiplying the Yearly Average by .9 to equal field market value; and

(2) multiplying the result by the coverage level.

c. *"Annual loss deductible"* means the value computed by subtracting the maximum limit of liability from the Field Market Value for that unit.

d. *"County"* means the county shown on the application and any additional land located in a local producing area bordering on the county as shown by the actuarial table.

e. *"Crop year"* means the period beginning October 1 and extending through September 30 of the next calendar year and is designated by the year in which the crop year ends. (The 1988 crop year would be from October 1, 1987 through September 30, 1988).

f. *"Field Market Value "A"* means the total market value of the insured crop for the unit involved (prior to the loss occurrence) had the crop been sold in your markets for the values which would have been reasonably expected in the month which the loss occurred, less 10% of such market value to eliminate costs for packing, shipping and sales commissions or other expenses not insured.

g. *"Field Market "B"* means the total market value of the insured crop for the unit involved in the loss (following the loss occurrence) less 10% of such market value to eliminate costs for packing, shipping and sales commissions or other expenses not insured.

h. *"Insured"* means the person who submitted the application accepted by us and does not extend to any other person unless specifically indicated on the application and accepted by us.

i. *"Insured crops"* means the crops insured under the provisions of this policy.

j. *"Loss ratio"* means the ratio of indemnity to premium.

k. *"Person"* means a partnership, association, corporation, estate, trust, or other legal entity, and wherever applicable, a State or a political subdivision or agency of a State.

l. *"Service office"* means the office servicing your contract as shown on the application for insurance or such other approved office as may be selected by you or designated by us.

m. *"Tenant"* means a person who rents land from another person for a share of the crop or a share of the proceeds therefrom.

n. *"Unit"* means all growing locations within a five mile radius of the name insured location designated on your crop report. Growing locations outside of the five mile radius of the name insured location but within the county may be designated in the unit or as a separate unit. If they are not designated in the unit or as a separate unit, they will be included in the closest unit listed.

18. Descriptive Headings

The descriptive headings of the various policy terms and conditions are formulated for convenience only and are not intended to affect the construction or meaning of any of the provisions of the contract.

19. Determinations

All determinations required by the policy will be made by us. If you disagree with our determinations, you may obtain reconsideration of or appeal those determinations in accordance with Appeal Regulations (7 CFR Part 400, Subpart J).

20. Notices

All notices required to be given by you must be in writing and received by your service office within the designated time unless otherwise provided by the notice requirement. Notices required to be given immediately may be by telephone or in person and confirmed in writing. Time of the notice will be determined by the time of our receipt of the written notice.

21. Dates, Reports, and Notices

To preserve your rights under this insurance contract you are required to file a number of reports and notices with us by certain dates. The actual content requirements and time limits of those reports and notices are set out elsewhere in this contract and you must refer to those sections for those requirements.

As a convenience to you and without limitation on our rights under this contract, a short description of most of the dates, reports and notices have been compiled in this section. Omission of any date, report or notice, or any of the requirements thereof, from this section does not relieve you of the requirement to comply with the terms of this contract.

a. *"Application"*—A form required by Subpart D of Part 400 of 7 CFR and each individual program regulation. The application for insurance form must be completed and filed in the service office prior to the sales closing date (contained in the actuarial table) for the first crop year for which an insurance policy is requested by the insured.

b. *"Assignment of indemnity"*— A transfer of contract rights, made on our form, and effective when approved by us. It is the arrangement whereby you assign your right to an indemnity payment to any party of your choice for the crop year.

c. *"Claim for indemnity"* (See: section 9)—A claim made by the insured for damage or loss to the insured crop.

d. *"Contract change date"* The date by which FCIC makes any contract changes available for inspection in the service office (See: Section 16).

e. *"Crop report"*— A report required by section 3 of this contract. This report contains, in addition to other information, the report of the insured's share of all inventory of nursery crops in the county whether insurable or uninsurable and must be filed on or before September 30 prior to the crop year.

f. *"Damage, notice of"*— (See: Probable loss, Notice of).

g. *"End of insurance period, Date of"*— The date upon which the insured's crop insurance coverage ceases (See: section 7).

h. *"Insurance attaches, Date"*— October 1 of the crop year.

i. *"Intent to abandon, Notice of"*— The written notice to the Corporation by the insured indicating that because of damage from an insured cause, the insured has decided to no longer care for the crop.

j. *"Probable loss, notice of"*—A written notice required to be filed in the service office whenever an insured believes that the nursery crops have been damaged to the extent that a loss is probable (See: section 8).

k. *"Reporting date"*—The crop reporting date (contained in the Actuarial Table) by which you are required to report all your insurable and uninsurable inventory in the county in which you have a share at the time insurance attaches.

l. *"Sales closing date"*—The date contained in the actuarial table on file in the respective service office which sets out the final date when an application for insurance may be filed. The sales closing date of this policy is September 30.

Done in Washington, DC, on January 11, 1989.

David W. Gabriel,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 89-1425 Filed 1-23-89; 8:45 am]

BILLING CODE 3410-08-M

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7 CFR Part 422

[Amdt. No. 4; Docket No. 6444S]

Potato Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Corp Insurance Corporation (FCIC) hereby amends the Potato Crop Insurance Regulations (7 CFR Part 422), effective for the 1989 and succeeding crop years in all states, the intended effect of which is to: (1) Revise and reissue the Quality Potato Option to make the option continuous and to define "acceptable inspection"; (2) add a new Frost/Freeze Option to provide coverage against frost and freeze, and (3) add a new Processing Potato Quality Option as a means of providing insurance on potatoes produced under contract with a processor.

EFFECTIVE DATE: December 31, 1988.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The new sunset review date established for these regulations is August 1, 1993.

John Marshall, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons and will not have a significant economic impact on a substantial number of small entities.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

FCIC hereby revises and reissues the Quality Potato Option (7 CFR 422.9) with the following changes:

1. The Option has been made continuous. The insured no longer has to submit a new application for each crop year. All language regarding annual submission of the form has been removed.

2. Language has been added to indicate that if both this Option and the frost/freeze Option are in effect that only the Option which results in the least production to count will be considered. This language is necessary to prevent the possibility of a separate indemnity for each Option.

3. The definition of "acceptable inspection" and language designating who may make grade determinations has been added. These additions are in response to an Office of Inspector General—Audit (OIG) comment which requested that any grade determination should be made by someone with proper training.

4. Additional minor editorial changes have been made to improve clarity. These changes do not affect the meaning or intent of the provisions.

FCIC also adds two new Options to the Potato Crop Insurance Regulations for the 1989 crop year, as follows:

1. The Frost/Freeze Option (7 CFR 422.10), is a modification of the frost/freeze chart formerly used in conjunction with the 1986 loss adjustment procedures. This Option may be added to a grower's basic policy at an additional premium.

2. The Processing Potato Quality Option (7 CFR 422.11), may also be added to a grower's basic policy for an additional premium. This Option provides quality adjustment specifically for processing potatoes. Its availability will initially be limited to two counties. The current Quality Potato Option will provide quality adjustment for both fresh and processing potatoes in other selected counties. After insuring experience is analyzed, use of this Processing Potato Quality Option may be expanded.

On Friday, October 28, 1988, FCIC published a notice of proposed rulemaking in the **Federal Register** at 53 FR 43719, to (1) revise and reissue the Quality Potato Option to make the option continuous and to define "acceptable inspection"; (2) add a new Frost/Freeze Option to provide coverage against frost and freeze, and (3) add a new Processing Potato Quality Option as a means of providing insurance on potatoes produced under contract with a processor.

The public was given 30 days in which to submit written comments, data, and opinions on the proposed rule, but none were received. Therefore, FCIC herewith adopts, without change, the proposed rule published at 53 FR 43719 as a final rule.

Section 422.7(d)16 of the Potato Crop Insurance Regulations provides that the earliest date by which any change to the policy must be filed in order to be effective for the 1989 crop year is December 31, 1988. The policy amendments herein were placed on file in all service offices in accordance with this provision. Therefore, good cause is shown for making these regulations effective on December 31, 1988, to coincide with the date such regulations were on file.

List of Subjects in 7 CFR Part 422

Crop insurance, Potatoes.

Final rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby amends the Potato Crop Insurance Regulations (7 CFR Part 422), effective for the 1989 and succeeding crop years, in the following instances:

PART 422—[AMENDED]

1. The authority citation for 7 CFR Part 422 continues to read as follows:

Authority: 7 U.S.C. 1506, 1516.

2. Title 7 CFR 422.9 is revised to read as follows:

§ 422.9 Quality Potato Option.

(a) Notwithstanding the provisions of subsection § 422.7(d)9.e. of this part, an insured producer may, upon submission to the Corporation or a reinsured company and subsequent approval of a Quality Potato Option (Option), elect to insure all insurable acreage of potatoes under this option. The Option is continuous and will remain in effect until the underlying potato insurance policy (basic policy) is cancelled or terminated in accordance with the basic policy's terms, or until the Option is cancelled or terminated by the insured or the Corporation in the same manner as the basic policy may be cancelled or terminated.

(b) For those who elect to insure potatoes under this Option, all provisions of the basic policy will apply except those in conflict with this Option. The terms of the Option are:

UNITED STATES DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Potato Crop Insurance Policy, Quality Potato Option

(This is a continuous Option. Refer to section 15 of the Potato Crop Insurance Policy)

BEST COPY AVAILABLE

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Insured's Name
Contract No.
Address
Crop Year
Identification No.
SSN
TAX

1. You must have a Federal Crop Insurance Potato Policy (basic policy) in force. This Quality Potato Option (Option) provides guaranteed production on a hundredweight (cwt.) basis only.

2. This Option must be submitted to us on or before the sales closing date for the initial crop year in which you wish to insure your potatoes under this Option.

3. If you elect this Option, all acreage of potatoes insured under the basic policy must be insured under this Option except for any acreage:

a. Specifically excluded by the Actuarial Table;

b. Grown for seed if you elect to exclude the acreage from coverage; or;

c. Insured under the Processing Potato Quality Option.

4. Production to count determined under subsection 9.e. of the basic policy will be further modified as follows:

a. Production to count, unharvested appraised production, production stored after an acceptable inspection, and marketed production containing potatoes that grade less than U.S. No. 2 [1] will be determined by dividing the actual percentage of potatoes grading U.S. No. 2 [1] or better by the percentage factor, and multiplying the result, not to exceed 1.000, by the number of weight (cwt.) of such potatoes; or

b. Production to count of potatoes stored without an acceptable inspection will be 100 percent of the gross cwt. of such potatoes.

5. If you have a Frost/Freeze Potato Option and this Option in effect on the same production, the production to count will be based on the Option which results in the least production to count.

6. All sampling and grade determinations must be made by a potato grader licensed or certified by the applicable State or United States Department of Agriculture. However, if such a grader is not available to sample or grade the potatoes, the sampling or grading for the purposes of this Option will be performed by us.

7. Your premium rate for this Option will be contained in the Actuarial Table.

8. *"Acceptable Inspection"* means that prior to storage the potatoes are evaluated by us and grade determinations are made in accordance with section 8 of this Option.

9. *"Percentage factor"* means the historical average percentage of potatoes grading U.S. No. 2 [1] or better, by type, determined from your records as established by us. If at least four continous years of records are available, the percentage factor will be the simple average of the available records not to exceed 10 years. If less than four years of records are available, the percentage factor will be the one contained in the actuarial table. The Actuarial Table may provide different percentage factors by type.

[1] The actuarial table may provide for U.S. No. 1 in place of U.S. No. 2.

Insured's Signature
Date
Corporation Representative's Signature and Code Number

Date

Collection of Information and Data (Privacy Act)

The following statements are made in accordance with the Privacy Act of 1974 (5 U.S.C. 552(a)). The authority for requesting information to be supplied on this form is the Federal Corp Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), or any of the crop insurance regulations contained in 7 CFR Part 400 *et seq.*

The information requested is necessary for the Federal Crop Insurance Corporation (FCIC) to process this form to provide insurance, determine eligibility, determine the correct parties to the agreement or contract, collect premiums, pay indemnities, or other purposes. Furnishing the Social Security number is voluntary and no adverse action will result from failure to do so.

Furnishing the information required by this form, other than the Social Security number, is also voluntary; however, failure to furnish the correct, complete information requested may result in rejection of this form, rejection of any claim for indemnity, or the ineligibility of any applicant for insurance. Failure to provide certain requested information may result in appropriate action being taken, including suit against the policyholder/debtor to recover an indebtedness. The information contained in this form will be used by Federal Agency Officers and FCIC employees who have a need for such information in the performance of their duties.

The information may be furnished to FCIC contract agencies and contract loss adjusters, reinsured companies, other U.S. Department of Agriculture agencies, Internal Revenue Service, Department of Justice, or other State and Federal law enforcement agencies if litigation becomes necessary, credit reporting agencies and U.S. Government contract collection agencies, and in response to orders of a court, magistrate, administrative tribunal or opposing counsel as evidence in the course of discovery in litigation.

3. A new § 422.10, the Frost/Freeze Potato Option and § 422.11, the Processing Potato Quality Option are added to read as follows:

PART 422—POTATO CROP INSURANCE REGULATIONS

* * * * *

§ 422.10 Frost/freeze option.

(a) Notwithstanding the provisions of § 422.7(d)9.e. of this part, an insured producer may, upon submission to the Corporation or a reinsured company and subsequent approval of a Frost-Freeze Potato Option (Option), elect to insure all insurable acreage of potatoes under this Option. The Option is continuous and will remain in effect until the underlying potato insurance policy (basic policy) is cancelled or terminated in accordance with the basic policy's terms, or until the Option is cancelled or terminated by the insured or the Corporation in the same manner as the basic policy may be cancelled or terminated.

(b) For those who elect to insure potatoes under this Option, all provisions of the basic policy will apply except those in conflict with this Option. The terms of the Option are:

UNITED STATES DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Potato Crop Insurance Policy, Frost/Freeze Potato Option

(This is a continuous Option. Refer to section 15 of the Potato Crop Insurance Policy)

Insured's Name
Contract No.
Address
Crop Year
Identification No.
SSN
TAX

1. You must have a Federal Crop Insurance Potato Policy (basic policy) in force. This Frost-Freeze Potato Option (Option) provides guaranteed protection on a hundredweight (cwt.) basis only.

2. This Option must be submitted to us on or before the sales closing date for the initial crop year in which you wish to insure your potatoes under this Option.

3. If you elect this Option, all acreage of potatoes insured under the basic policy must be insured under this Option.

4. If the actuarial table provides a date after which loss of production due to frost or freeze damage is not insurable, this Option will provide coverage only with such date.

5. Production to count for a unit damaged by frost or freeze will be determined by applying the percentage obtained from the following table to the production to count determined under the basic policy:

Percent damage due to frost or freeze	Percent of production to count
0-5	100
6	90
7	80
8	70
9	60
10	50
11	45
12	40
13	35
14	30
15	25
16	20
17	15
18	10
19	5
20	0

The adjusted production to count will then be counted against your production guarantee to determine the amount of loss. We must inspect the production prior to harvest to determine the amount of frost or freeze damage.

If the frost or freeze damage is determined to be 20 percent or more at the time of harvest, you may with our written permission, destroy the crop, (it will be considered a total loss) and you will be indemnified accordingly. You may also elect to market or store the crop and apply the total harvested production minus the frost or freeze damaged potatoes against the guarantee. This decision must be made by you on the day the potatoes are determined to be 20 percent or more frost or freeze damaged.

6. If you have the Potato Quality Option or the Processing Potato Quality Option and this Option in effect, the production to count will be based on the Option which results in the least production to count.

7. Your premium rate for this Option will be established by the actuarial table.

Insured's Signature
Date
Corporation Representative's Signature and Code Number

Date

Collection of Information and Data (Privacy Act)

The following statements are made in accordance with the Privacy Act of 1974 (5 U.S.C. 552(a)). The authority for requesting information to be supplied on this form is the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), or any of the crop insurance regulations contained in 7 CFR Part 400 *et seq.*

The information requested is necessary for the Federal Crop Insurance Corporation (FCIC) to process this form to provide insurance, determine eligibility, determine the correct parties to the agreement or contract, collect premiums, pay indemnities, or other purposes. Furnishing the Social Security number is voluntary and no adverse action will result from failure to do so. Furnishing the information required by this form, other than the Social Security number, is also voluntary; however, failure to furnish the correct, complete information requested may result in rejection of this form, rejection of any claim for indemnity, or the ineligibility of any applicant for insurance. Failure to provide certain requested information may result in appropriate action being taken, including suit against the policyholder/debtor to recover an indebtedness. The information contained in this form will be used by Federal Agency Officers and FCIC employees who have a need for such information in the performance of their duties.

The information may be furnished to FCIC contract agencies and contract loss adjusters, reinsured companies, other U.S. Department of Agriculture agencies, Internal Revenue Service, Department of Justice, or other State and Federal law enforcement agencies if litigation becomes necessary, credit reporting agencies and U.S. Government contract collection agencies, and in response to orders of a court, magistrate, administrative tribunal or opposing counsel as evidence in the course of discovery in litigation.

§ 422.11 Processing Potato Quality Option.

(a) Notwithstanding the provisions of § 422.7(d)9.e. of this part, an insured producer may, upon submission to the Corporation or a reinsured company and subsequent approval of a Processed Potato Quality Option (Option), elect to insure all insurable acreage of potatoes contracted with a processor under this option. The Option is continuous and will remain in effect until the underlying potato insurance policy (basic policy) is cancelled or terminated in accordance with the basic policy's terms, or until the Option is cancelled or terminated by the insured or the Corporation in the same manner as the basic policy may be cancelled or terminated.

(b) For those who elect to insure potatoes under this Option, all provisions of the basic policy will apply except those in conflict with this Option. The terms of the Option are:

UNITED STATES DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Potato Crop Insurance Policy, Processing Potato Quality Option

(This is a continuous Option. Refer to section 15 of the Potato Crop Insurance Policy)

1. You must have a Federal Crop Insurance Potato Policy (basic policy) in force. This Processing Potato Quality Option (Option) provides guaranteed production on a hundredweight (cwt.) basic only.

2. This Option must be submitted to us on or before the sales closing date for the initial crop year in which you wish to insure your potatoes under this Option.

3. A written contract must be executed with a processor for the potato types insured under this Option and a copy submitted to us on or before the acreage reporting date for potatoes. If you elect this Option, all insurable acreage of the types of potatoes under contract with a processor must be insured under this Option.

4. This Option does not apply to potatoes damaged by frost or freeze.

5. Production to count, determined in accordance with subsection 9.e. of the policy, will be further modified as follows:

a. Production to count of unharvested appraised potatoes, potatoes stored after an acceptabale inspection, and potatoes marketed (unless the potatoes were marketed to a processor for human consumption) which grade less than U.S. No. 2 [2]:

(1) For factors other than those listed in subsection (2) below, will be determined by dividing the percentage of potatoes grading U.S. No. 2 [2] or better by the percentage factor, and multiplying the result, not to exceed 1.000, by the number of cwt. of such potatoes, or:

(2) Due to internal defects, because of a specific gravity of less than 1.070, or have a fry color of No. 3 or darker due to either sugar exceeding 10% or sugar ends exceeding 19%, production will be:

(i) Zero for unharvested appraised potatoes;

(ii) Twenty five percent (25%) of the gross weight for potatoes stored after an acceptable inspection; or

b. All grade determinations for the purposes of this Option will be made using the United States Standards for Grades of Potatoes for Processing.

7. If you have the Frost/Freeze Potato Option and this Option in effect, the production to count will be based on the Option which results in the least production to count.

8. All sampling and grade determinations must be made by a potato grader licensed or certified by the applicable State or United States Department of Agriculture. However, if such a grader is not available, sampling or grading for the purposes of this Option will be performed by us.

9. Your premium rate for this Option will be established by the actuarial table.

10. *"Acceptable Inspection"* means that prior to storage the potatoes are evaluated by us and grades determined in accordance with section 8 of this Option.

11. *"Percentage Factor"* means the historical average percentage of potatoes grading U.S. No. 2 [2] or better, by type, determined from your records or established by us. If at least four continuous years of records are available, the percentage factor will be the simple average of the available records not to exceed 10 years. If less than four years of records are available, the percentage factor will be the one contained in the actuarial table. The Actuarial Table may provide different percentage factors by type.

Insured's Signature
DATE
Corporation Representative's Signature and Code Number

DATE

Collection of Information and Data (Privacy Act)

The following statements are made in accordance with the Privacy Act of 1974 (5 U.S.C. 552(a)). The authority for requesting information to be supplied on this form is the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), or any of the crop insurance regulations contained in 7 CFR Part 400 *et seq.*

The information requested is necessary for the Federal Crop Insurance Corporation (FCIC) to process this form to provide insurance, determine eligibility, determine the correct parties to the agreement or contract, collect premiums, pay indemnities, or other purposes. Furnishing the Social Security number is voluntary and no adverse action will result from failure to do so. Furnishing the information required by this form, other than the Social Security number, is also voluntary; however, failure to furnish the correct, complete information requested may result in rejection of this form, rejection of any claim for indemnity, or the ineligibility of any applicant for insurance. Failure to

[2] The actuarial table may provide for U.S. No. 1 grade in place of U.S. No. 2.

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provide certain requested information may result in appropriate action being taken, including suit against the policyholder/debtor to recover an indebtedness. The information contained in this form will be used by Federal Agency Officers and FCIC employees who have a need for such information in the performance of their duties.

The information may be furnished to FCIC contract agencies and contract loss adjusters, reinsured companies, other U.S. Department of Agriculture agencies, Internal Revenue Service, Department of Justice, or other State and Federal law enforcement agencies if litigation becomes necessary, credit reporting agencies and U.S. Government contract collection agencies, and in response to orders of a court, magistrate, administrative tribunal or opposing counsel as evidence in the course of discovery in litigation.

Done in Washington, DC on January 11, 1989.

David W. Gabriel,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 89-1427 Filed 1-23-89; 8:45 am]

BILLING CODE 3410-08-M

Agricultural Marketing Service

7 CFR Part 906

[Docket No. FV-88-121]

Oranges and Grapefruit Grown in the Lower Rio Grande Valley in Texas; Tighter Grapefruit Minimum Size Requirements for Specified Period

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule implements tighter minimum size requirements for fresh Texas grapefruit shipments beginning in the 1989-90 shipping season and each season thereafter. Under a proposed rule, the minimum size requirements for grapefruit were to be tightened by prohibiting the shipment of any grapefruit smaller than pack size 96 during the period November 16 through January 31 each season, starting in 1988. However, a one year delay in the effective date reflects current crop and marketing conditions which make implementation this year impractical. When implemented, the change is expected to provide more desirable sizes with more acceptable maturity and flavor during the peak demand period of the shipping season. The change is needed by the Texas grapefruit industry to help it more successfully market its crop.

EFFECTIVE DATE: November 16, 1989.

FOR FURTHER INFORMATION CONTACT: Gary D. Rasmussen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, D.C. 20090-6456; telephone: (202) 475-3918.

SUPPLEMENTARY INFORMATION: This final rule is issued under the Marketing Agreement and Marketing Order No. 906, as amended (7 CFR Part 906), regulating the handling of oranges and grapefruit grown in the Lower Rio Grande Valley in Texas. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 78 handlers of Texas oranges and grapefruit subject to regulation under the Texas citrus marketing order, and approximately 2,500 orange and grapefruit producers in Texas. The increase in the number of handlers and the decrease in the number of producers in this final rule from that indicated in the proposed rule reflects more recent industry information. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of these handlers and producers may be classified as small entities.

The Texas Valley Citrus Committee (TVCC), which administers the order locally, unanimously recommended at its meeting on June 29, 1988, that any grapefruit smaller than pack size 96 (3⁹⁄₁₆ inches in diameter) should be prohibited from being shipped to fresh markets during the November 16 through January 31, period each season starting with the 1988-89 season. A proposed rule regarding this recommendation was issued September 26, 1988, and published in the **Federal Register** (53 FR 36295, September 30, 1988). The proposed rule provided that interested persons could file public comments through October 17, 1988. No comments were received.

On November 10, 1988, the TVCC met again and unanimously recommended that implementation of the tighter minimum size requirements be delayed until the 1989-90 season. The TVCC now reports that the crop and marketing situation confronting the Texas grapefruit industry has changed considerably since its June meeting. The Texas grapefruit sizes are unusually small this season and the juice and products markets are extremely weak because there are more than enough supplies to meet needs in those markets. Hence, tightening the minimum size requirements at this time would require handlers to direct additional supplies of small grapefruit to the already oversupplied juice and products markets.

Allowing the use of smaller size 112's in fresh markets this entire season will provide handlers and growers in the production area the opportunity of obtaining greater returns. Although the fruit in Texas is usually small, it has already reached an acceptable level of maturity and flavor.

The TVCC believes that by next season growing and marketing conditions will have returned to normal, and thus, the tighter requirements should become effective during the November 16 through January 31 period during the 1989-90 season and each season thereafter.

Minimum size requirements for Texas grapefruit are currently specified in § 906.365. The current regulation provides that grapefruit in fresh shipments be at least pack size 96 (3⁹⁄₁₆ inches in diameter), except that grapefruit grading at least U.S. No. 1 may be shipped if it is at least pack size 112 (3⁵⁄₁₆ inches in diameter). These requirements are in effect on a continuous basis from season to season unless changed.

The Texas grapefruit shipping season extends from late September through May. The temporary prohibition of shipments to size 112's starting next November 16 is intended to provide more desirable sizes with more acceptable maturity and flavor during the peak demand period. According to the TVCC, more than enough larger-size fruit are usually available during this

period to meet market needs. The TVCC also indicated that this action will provide growers with an incentive to hold the smaller-sized fruit on the trees longer to gain size, maturity, and flavor and to provide the trade with a more acceptable product later in the season when available supplies are diminishing.

Delaying the implementation of the size increase until mid-November will lessen the chances of any grower hardship by allowing the shipment of size 112's until juice plants open. There is no viable economic outlet for small-sizes and cull citrus in the production area other than for juice and products. Reinstituting the shipment of size 122's after January 31 would ensure that there are adequate supplies of flavorful fruit available for fresh market needs for the remainder of the season.

In addition, miscellaneous changes to § 906.365 are made to remove obsolete language and update references to the U.S. Standards For Grades of Oranges and Grapefruit (Texas and States other than Florida, California and Arizona (7 CFR 51.660 through 51.714, and 7 CFR 51.620 through 51.653 respectively). The proposed rule inadvertently specified 2⁹⁄₁₆ inches as the minimum size requirement for pack size 288. The size should have been 2-6/16 inches in diameter. Section 906.365(a)(2) is changed from the proposal to correctly state a 2-6/16 inch minimum size requirement.

Section 906.365 is issued on a continuing basis subject to modification, suspension, or termination by the Secretary. The TVCC meets prior to and during each season to consider recommendations for modification, suspension, or termination of the regulatory requirements for Texas grapefruit. TVCC meetings are open to the public and interested persons may express their views at these meetings. The U.S. Department of Agriculture (Department) reviews TVCC recommendations and other information submitted by the TVCC and other available information, and determines whether modification, suspension, or termination of the regulatory requirements will tend to effectuate the declared policy of the Act.

Texas grapefruit shipments to markets in the United States, Canada, and Mexico are regulated under this marketing order. Certain shipments are exempt from the handling requirements effective under the marketing order. Handlers may ship grapefruit within the production area (the counties of Cameron, Hidalgo, and Willacy) exempt from all marketing order requirements. Grapefruit shipped in gift packages of not more than 500 pounds which are individually addressed and not for resale are exempt from handling requirements. Also, grapefruit shipped under the minimum quantity exemption provisions, and for relief, charity, and home use are exempt under certain conditions. In addition, grapefruit shipped to approved processors for conversion into canned or frozen products are not subject to the handling requirements.

These tighter minimum size requirements for Texas grapefruit reflect the TVCC's and the Department's appraisal of the need to issue the rule. Delaying implementation of this rule until the 1989-90 season recognizes current and prospective supply and demand conditions for grapefruit and the TVCC's views of what is needed to strengthen the marketing position of Texas grapefruit growers and handlers.

Therefore, the Department's view is that the impact of this action will be beneficial to producers and handlers because it will enable handlers to better provide grapefruit consistent with buyer requirements. The application of minimum size requirements to Texas grapefruit over the past several years has resulted in fruit of acceptable sizes being shipped to fresh markets.

Based on the above, the Administrator of the AMS has determined that this action will not be have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, the information and recommendations submitted by the committee, and other available information, it is found that the rule as hereinafter set forth will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 906

Marketing agreements and orders, Texas, Grapefruit, Oranges.

For the reasons set forth in the preamble, 7 CFR Part 906 is amended as follows:

PART 906—ORANGES AND GRAPEFRUIT GROWN IN THE LOWER RIO GRANDE VALLEY IN TEXAS

1. The authority citation for 7 CFR Part 906 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Section 906.365 is amended by revising the introductory text of paragraph (a), and paragraphs (a)(2), (a)(4), and (b), and by removing paragraph (c) to read as follows:

Note.—This action will be published in the Code of Federal Regulations.

§ 906.365 Texas orange and grapefruit grade and size regulations.

(a) No handler shall handle any variety of oranges or grapefruit grown in the production area unless:

* * * * *

(2) Such oranges are at least pack size 288, except that the minimum diameter limit for pack size 286 oranges in any lot shall be 2⁹⁄₁₆ inches;

* * * * *

(4) Such grapefruit are at least pack size 96, except that the minimum diameter limit for pack size 96 grapefruit in any lot shall be 3⁹⁄₁₆ inches: *Provided*, That any handler may handle grapefruit, except during the period November 16 through January 31 each season, which are smaller than pack size 96, if such grapefruit grade at least U.S. No. 1 and they are at least pack size 112, except that the minimum diameter limit for pack size 112 grapefruit in any lot shall be 3-5/16 inches;

* * * * *

(b) Terms relating to grade, pack size, and diameter shall mean the same as in the U.S. Standards for Grades of Oranges (Texas and States other than Florida, California, and Arizona) (7 CFR 51.660 through 51.714) or in the U.S. Standards for Grades of Grapefruit (Texas and States other than Florida, California and Arizona) (7 CFR 51.620 through 51.653).

Dated: January 18, 1989.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89-1490 Filed 1-23-89; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 907

[Navel Orange Reg. 684]

Navel Oranges Grown in Arizona and Designated Part of California; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 684 establishes the quantity of California-Arizona navel oranges that may be shipped to market during the period January 20 through January 26, 1989. Such action is needed to balance the supply of fresh navel oranges with the demand for such oranges during the period specified due to the marketing situation confronting the orange industry.

DATES: Regulation 684 (§ 907.984) is effective for the period January 20, 1989, through January 26, 1989.

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FOR FURTHER INFORMATION CONTACT: Jacquelyn R. Schlatter, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2528–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 447–5120.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order 907 (7 CFR Part 907), as amended, regulating the handling of navel oranges grown in Arizona and designated part of California. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended, hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of the use of volume regulations on small entities as well as larger ones.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 125 handlers of California-Arizona navel oranges subject to regulation under the navel orange marketing order, and approximately 4,065 producers in California and Arizona. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of California-Arizona navel oranges may be classified as small entities.

This action is consistent with the marketing policy for 1988–89 adopted by the Navel Orange Administrative Committee (Committee). The Committee met publicly on January 17, 1989, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and unanimously recommended a quantity of navel oranges deemed advisable to be handled during the specified week. The Committee reports that demand for navel oranges has improved.

Based on consideration of supply and market conditions, and the evaluation of alternatives to the implementation of prorate regulations, the Administrator of the AMS has determined that this final rule will not have a significant economic impact on a substantial number of small entities.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared policy of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. To effectuate the declared purposes of the Act, it is necessary to make this regulatory provision effective as specified, and handlers have been apprised of such provision and the effective time.

List of Subjects in 7 CFR Part 907

Arizona, California, Marketing agreements and orders, Navel oranges.

For the reasons set forth in the preamble, 7 CFR Part 907 is amended as follows:

PART 907—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

1. The authority citation for 7 CFR Part 907 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 907.984 is added to read as follows:

Note.—This section will not appear in the Code of Federal Regulations.

§ 907.984 Navel Orange Regulation 684.

The quantity of navel oranges grown in California and Arizona which may be handled during the period of January 20, 1989, through January 26, 1989, are established as follows:

(a) District 1: 1,479,000 cartons;
(b) District 2: 221,000 cartons;
(c) District 3: unlimited cartons;
(d) District 4: unlimited cartons.

Dated: January 18, 1989.

Robert C. Keeney,
Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–1520 Filed 1–19–89; 8:45 am]
BILLING CODE 3410–02–M

7 CFR Part 910

[Lemon Reg. 649]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 649 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 280,000 cartons during the period January 22 through January 28, 1989. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

DATES: Regulation 649 (§ 910.949) is effective for the period January 22 through January 28, 1989.

FOR FURTHER INFORMATION CONTACT: Beatriz Rodriguez, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523, South Building, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 447–5697.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory action to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 65 handlers of lemons grown in California and Arizona subject to regulation under the lemon marketing order and approximately 2500 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of California-Arizona lemons may be classified as small entities.

This regulation is issued under Marketing Order No. 910, as amended (7 CFR Part 910) regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act (the "Act," 7 U.S.C. 601–674), as amended. This action is based upon the recommendation and information submitted by the Lemon Administrative Committee (Committee) and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This regulation is consistent with the marketing policy for 1988–89. The Committee met publicy on January 17, 1989, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and by a 12–1 vote recommended a quantity of lemons deemed advisable to be handled during the specified week. The Committee reports that demand for lemons is fair.

Pursuant to 5 U.S.C 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary, in order to effectuate the declared purposes of the Act, to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona Lemons.

For the reasons set forth in the preamble, 7 CFR Part 910 is amended as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR Part 910 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 910.949 is added to read as follows:

Note.—This section will not appear in the Code of Federal Regulations.

§ 910.949 Lemon Regulation 649.

The quantity of lemons grown in California and Arizona which may be handled during the period January 22, 1989, through January 28, 1989, is established at 280,000 cartons.

Dated: January 18, 1989.

Robert C. Keeney,
Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–1519 Filed 1–19–89; 8:45 am]
BILLING CODE 3410–02–M

7 CFR Part 1097

[DA–89–009]

Milk in the Memphis, Tennessee Marketing Area; Order Terminating Certain Provision of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Termination of rule.

SUMMARY: This action terminates the portion of the fluid milk plant definition of the Memphis order relating to pool supply plants. The termination was requested by Mid-America Dairymen, Inc. (Mid-Am), a cooperative association that is continuing to supply the fluid milk needs of Memphis distributing plants with supplemental shipments of milk supplies that are associated with other Federal order markets. The termination is necessary to allow the reserve milk supplies and supplemental shipments for fluid milk needs to continue to be regulated under the orders with which the milk is currently associated and to facilitate making sufficient supplies of milk available to Memphis distributing plants for fluid use.

EFFECTIVE DATE: January 24, 1989.

FOR FURTHER INFORMATION CONTACT: John F. Borovies, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 447–2089.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding: Notice of Proposed Termination: Issued December 23, 1988; published December 30, 1988 (53 FR 53002).

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. Such action will tend to ensure that dairy farmers will continue to have their milk priced under the order for the market which is the primary outlet for their milk and thereby receive the benefits that accrue from such pricing.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under the criteria contained therein.

This order of termination is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and of the order regulating the handling of milk in the Memphis, Tennessee marketing area.

Notice of proposed rulemaking was published in the **Federal Register** on December 30, 1988 (53 FR 53002) concerning a proposed termination of a provision of the order. Interested parties were afforded opportunity to file written data, views, and arguments thereon. No views in opposition were received.

After consideration of all relevant material, including the proposal in the notice, the comments received, and other available information, it is hereby found and determined that the following provisions of the order do not tend to effectuate the declared policy of the Act:

In § 1097.7, paragraph (b) in its entirety.

Statement of Consideration

This action terminates that portion of the fluid milk plant definition that relates to pool supply plants. The provision has been suspended on three prior occasions: October–December 1986, March–December 1987, and January–December 1988. Such provision under the Memphis order regulates any plant that ships in excess of 70,000 pounds of milk to fully regulated distributing plants during the month.

The termination was requested by Mid-America Dairymen, Inc. (Mid-Am), a cooperative association that is making supplemental shipments of milk to meet increased fluid milk needs of plants regulated under the Memphis order.

The most feasible supply that Mid-Am has available to meet the continuing fluid milk needs of Memphis handlers is

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located in the heavy milk producing area of southwest Missouri. However, milk in such area is associated with Mid-Am's plants that are regulated under either the Southern Illinois-Eastern Missouri, Southwest Plains, or Texas Federal orders. These plants are qualified for pool status under the respective orders either on the basis of shipments from the plants to distributing plants or on the basis of Mid-Am's marketwide performance in supplying milk to distributing plants. Shipments of milk from any of such plants in excess of 70,000 pounds per month to Memphis distributing plants would result in regulation under the Memphis order. Since the Memphis order provides for individual-handler pooling, minimal shipments that would regulate any of such supply plants would result in a reduction of returns to Mid-Am's producers since all of the receipts of milk at the supply plants, which constitute the reserve milk supplies of other markets, would be regulated under the Memphis order.

Mid-Am has been relying on the southwest Missouri production area to supply Memphis handlers since September 1986. A shift in regulation of its supply plants has been avoided by suspension actions during October–December 1986, March–December 1987 and January–December 1988 and by alternating the plants from which milk is shipped during those months when the provision was not suspended. It is anticipated that a greater and continuing reliance on such milk supplies will be necessary for an extended period of time after the expiration of the current suspension. As a result, Mid-Am requested that the provision be terminated effective January 1, 1989.

The Memphis order provision relating to supply plants has been suspended for all or parts of the last three years. In addition, no supply plant was regulated under the order for a number of years prior to the issuance of the previous suspension actions. Thus, the provision serves no useful purpose and its continuance is not necessary to maintain orderly marketing conditions under the Memphis order. In fact, such provision, if allowed to operate, would result in disorderly marketing conditions by pooling, under the order, the reserve supplies of milk for other markets. This, in turn, would inhibit the movement of sufficient supplies of milk that are necessary to meet the fluid milk needs of Memphis distributing plants. Consequently, the provision should be terminated. Such termination is effective upon publication in the **Federal Register** and is applicable to milk that is marketed on and after January 1, 1989.

It is hereby found and determined that thirty days' notice of the effective date hereof are impractical, unnecessary and contrary to the public interest in that:

(a) The termination is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing area in that the action will tend to assure that dairy farmers will continue to have their milk priced under the order covering their primary market outlet and also to facilitate making sufficient supplies of milk available to Memphis handlers for fluid use;

(b) This termination does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views, or arguments concerning this termination. No comments in opposition were received.

Therefore, good cause exists for making this order effective upon publication in the **Federal Register**.

List of Subjects in 7 CFR Part 1097

Milk marketing orders, Milk, Dairy products.

It is therefore ordered, That the following provision in § 1097.7 of the Memphis, Tennessee order is hereby terminated.

PART 1097—MILK IN THE MEMPHIS, TENNESSEE MARKETING AREA

1. The authority citation for 7 CFR Part 1097 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

§ 1097.7 [Amended]

2. In § 1097.7, paragraph (b) is removed and is reserved.

Signed at Washington, DC, on January 13, 1989.

Kenneth A. Gilles,

Assistant Secretary of Agriculture, Marketing and Inspection Services.

[FR Doc. 89–1494 Filed 1–23–89; 8:45 am]

BILLING CODE 3410–02–M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 50 and 55

Policy Statement on the Conduct of Nuclear Power Plant Operations

AGENCY: Nuclear Regulatory Commission.

ACTION: Final policy statement.

SUMMARY: This policy statement is being issued to make clear the Commission's expectation of utility management and licensed operators with respect to the conduct of nuclear power plant operations. The Commission believes that it is essential that utility management at each nuclear power reactor facility establish and maintain a professional working environment with a focus on safety in control rooms and throughout the plant. The Commission also believes that each individual licensed by the NRC to operate the controls of a nuclear power reactor must be keenly aware that he or she holds the special trust and confidence of the American people, conferred through the NRC license, and that his or her first responsibility is to assure that the reactor is in a safe condition at all times. This policy statement specifically describes the Commission's expectations of utility management and licensed operators in fulfilling NRC regulations and prior guidance regarding the conduct of control room operations.

The policy statement further provides the Commission's endorsement of industry initiatives to enhance professionalism by both management and plant operators.

EFFECTIVE DATE: January 24, 1989.

FOR FURTHER INFORMATION CONTACT: Jack W. Roe, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: (301) 492–1004.

SUPPLEMENTARY INFORMATION:

Background

It is essential that control room operators are (1) well trained and qualified, (2) physically and mentally fit to carry out their duties, and (3) attentive to plant status relevant to their responsibilities to ensure the continued safe operation of nuclear facilities. It is also essential that management at each nuclear power reactor facility establish and maintain a professional working environment in which the licensed operator may be fully successful in discharging his or her safety responsibilities.

On a number of occasions, the NRC has received reports and has found instances of operator inattentiveness and unprofessional behavior in control rooms of some operating facilities. Reported instances include: (1) Licensed operators observed to be apparently sleeping while on duty in the control room or otherwise being inattentive to their license obligations, (2) operators using entertainment devices (for example, radios, tape players, and video games) in the control room in a way that might distract their attention from required safety-related duties, and (3) unauthorized individuals being allowed to manipulate reactivity controls. Such conduct is unacceptable and inconsistent with the operators' licensed duties.

The Commission has previously addressed its expectations of operator conduct in Commission regulations and regulatory guidance. Under 10 CFR 50.54(k), "An operator or senior operator licensed pursuant to Part 55 of this chapter shall be present at the controls at all times during the operation of the facility." [1] The continuous presence of a senior operator in the control room to ensure that the operator at the controls is able to perform the actions and/or mitigate an accident is required by § 50.54(m)(2)(iii). Commission regulations in 10 CFR Part 55 establish standards for licensing nuclear power plant operators.

The Commission has addressed operator training and qualifications and fitness-for-duty in policy statements.[2] The policy statement on training and qualifications endorsed the Institute of Nuclear Power Operations (INPO)-managed Training Accreditation Program. The policy statement on fitness for duty endorsed the concept that the workplace at nuclear power plants is to be drug and alcohol free. Fitness-for-duty rulemaking is under consideration by the Commission.[3]

Guidance regarding the conduct of licensed operator and control room operations has been addressed in an NRC Circular and in NRC Information Notices.[4] Specifically, IE Information Notice 79–20, Revision 1, emphasized that only licensed operators are permitted to manipulate controls (10 CFR 50.54(i)) and that a licensed operator is required to be present at the controls during facility operation (10 CFR 50.54(k)). IE Circular 81–02 provided the following guidance: (1) Knowledge of the plant's status must be ensured during shift changes by a formal watch turnover and relief, (2) licensed operators must be alert and attentive to instruments and controls, (3) potentially distracting activities in the control room must be prohibited, (4) access to the control room must be limited, and (5) eating and training activities should not compromise operator attentiveness or a professional atmosphere. Information Notice 85–53 reiterated the guidance of IE Circular 81–02.

In Information Notice 87–21, the NRC informed all nuclear power reactor facilities and licensed operators about certain licensed operators observed to be apparently sleeping while on duty. The notice reaffirmed the necessity for high standards of control room professionalism and operator attentativeness to ensure safe operation of nuclear power facilities. Further, Information Notice 88–20 reiterated the concern about unauthorized individuals manipulating controls and performing control room activities.

The Commission is aware that the industry has taken action to foster the development of professional codes of conduct by operators and has worked toward establishing management principles for enhancing professionalism of nuclear personnel. The Commission believes that such an operator code of conduct developed by operators and supported by utility management can contribute to operator professionalism and commends the industry and especially the operators who contributed to these efforts. The Commission encourages and supports the prompt and effective implementation of these industry initiatives at each licensed power reactor.

The Commission has decided to issue this policy statement to help foster the development and maintenance of a safety culture at every facility licensed by the NRC, and to make clear its expectations of utility management and licensed operators in fulfilling NRC regulations and prior guidance regarding the conduct of control room operations.

Policy Statement

The Commission believes that the working environment provided for the conduct of operations at nuclear power facilities has a direct relationship to safety. Management has a duty and obligation to foster the development of a "safety culture" at each facility and to provide a professional working environment, in the control room and throughout the facility, that assures safe operations. Management must provide the leadership that nurtures and perpetuates the safety culture. In this context, the term "safety culture" is defined as follows:

> The phrase 'safety culture' refers to a very general matter, the personal dedication and accountability of all individuals engaged in any activity which has a bearing on the safety of nuclear power plants. The starting point for the necessary full attention to safety matters is with the senior management of all organizations concerned. Policies are established and implemented which ensure correct practices, with the recognition that their importance lies not just in the practices themselves but also in the environment of safety consciousness which they create. Clear lines of responsibility and communication are established; sound procedures are developed; strict adherence to these procedures is demanded; internal reviews are performed of safety related activities; above all, staff training and education emphasize the reasons behind the safety practices established, together with the consequences for safety of shortfalls in personal performance.
>
> These matters are especially important for operating organizations and the staff directly engaged in plant operation. For the latter, at all levels, training emphasizes the significance of their individual tasks from the standpoint of basic understanding and knowledge of the plant and the equipment at their command, with special emphasis on the reasons underlying safety limits and the safety consequences of violations. Open attitudes are required in such staff to ensure that information relevant to plant safety is freely communicated; when errors of practice are committed, their admission is particularly encouraged. By these means, an all pervading safety thinking is achieved, allowing an inherently questioning attitude, the prevention of complacency, a commitment to excellence, and the fostering of both personal accountability and corporate self-regulation in safety matters.[5]

Nuclear power plant operators have a professional responsibility to ensure that the facility is operated safely and within the requirements of the facility's license, including its technical specifications and the regulations and orders of the NRC. Mechanical and electrical systems and components required for safety can and do fail. However, the automated safety features of the plant, together with the operator, can identify at an early stage degradation in plant systems that could

[1] Copies of *Title 10, Code of Federal Regulations, Parts 0 to 50 and Parts 51 to 199* (revised January 1, 1988), may be purchased from the Superintendent of Documents, U.S. Government Printing Office, by calling (202) 275–2060 or by writing to the U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013–7082. Copies may also be purchased from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. A copy of 10 CFR is available for inspection and/or copying for a fee in the NRC Public Document Room, 2120 L Street NW., Washington, DC.

[2] Policy Statement on Training and Qualification of Nuclear Power Plant Personnel (50 FR 11147, March 20, 1985, and amended 53 FR 46603, November 18, 1988) and Policy Statement on Fitness for Duty of Nuclear Power Plant Personnel (51 FR 27921, August 4, 1986).

[3] Proposed Rule on 10 CFR Part 26 Fitness-for-Duty Programs (53 FR 36796, September 22, 1988).

[4] IE Circular 81–02, dated February 9, 1981; Information Notice 79–20, Revision 1, dated September 7, 1979; Information Notice 85–53, dated July 12, 1985; Information Notice 87–21, dated May 11, 1987; and Information Notice 88–20, dated May 5, 1988 (available at the NRC Public Document Room at 2120 L Street, NW., Washington, DC).

[5] International Nuclear Safety Advisory Group (INSAG)-3, Basic Safety Principles for Nuclear Power Plants.

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affect reactor safety. The operator can take action to mitigate the situation. Therefore, nuclear power plant operators on each shift must have knowledge of those aspects of plant status relevant to their responsibilities, maintain their working environment free of distractions, and using all their senses, be alert to prevent or mitigate any operational problems. Each individual licensed by the NRC to operate the controls of a nuclear power reactor must be keenly aware that he or she holds the special trust and confidence of the American people, conferred through the NRC license, and that his or her first responsibility is to assure that the reactor is in a safe condition at all times.

The following criteria reflect the Commission's expectations concerning the conduct of operations in control rooms and licensed operators at nuclear reactors consistent with 10 CFR 50.54 and guidance provided in an NRC Circular and Information Notices:

—Conduct within the control room should always be professional and proper, reflecting a safety-minded approach to routine operations. The operator "at the controls" and the immediate supervisor must never relinquish their safety responsibilities unless properly relieved, including a thorough turnover briefing, by a qualified operator.

—Activities within the control room should be performed with formality. Operator actions must be in accordance with approved procedures. Verbal communications should be clear and concise. Appropriate considerations should be given to the need for acknowledgment and verification of instructions received.

—The control room of a nuclear power plant, and in particular the area "at the controls", must be secure from intrusion. Access should be strictly controlled by a designated authority; only authorized personnel should be permitted to be present in the control room; and regulatory restrictions concerning manipulation of the controls must be meticulously observed.

—The operator at the controls, and the immediate supervisor, must be continuously alert to plant conditions and ongoing activities affecting plant operations, including conditions external to the plant such as grid stability, meteorological conditions, and change in support equipment status; operational occurrences should be anticipated; alarms and off-normal conditions should be promptly responded to; and problems affecting reactor operations should be corrected in a timely fashion.

—Activities within the control room should be limited to those necessary for the safe operation of the plant. Management should provide the direction, facilities, and resources needed to accommodate activities not directly related to plant operations.

—Activities outside the control room with the potential to affect plant operations, such as on-line maintenance and surveillance, should be fully coordinated with the control room. Effective methods for communication with or notification of the operator at the controls should be established and maintained throughout each evolution.

—Written records of plant operations must be carefully prepared and maintained in accordance with requirements for such records and in sufficient detail to provide a full understanding of operationally significant matters.

—The working environment in the control room should be maintained to minimize distractions to the operators. Management should act to remove distractions that would interfere with the operator's ability to monitor the plant either audibly or visually, including work activities that are not related to the operator's immediate responsibility for safe plant operation. Consideration should be given to reducing environmental distractions such as lighted alarms that are not operationally significant, or alarms that signify normal operating conditions.

—Foreign objects and materials not necessary for plant operations, ongoing maintenance, or surveillance testing should be restricted from the area "at the controls" to preclude inadvertent actuation of the controls or contamination of control devices.

Implementation of Policy

The Commission intends this Policy Statement to make clear the Commission's expectations and to provide guidance to licensees in improving and assessing the conduct of operations in the control rooms of nuclear power plants. The Commission believes that utility management should routinely monitor the conduct of operations at the plant, particularly in the control room, and review their procedures and policies on the conduct of operations, considering the guidance of this policy statement, to assure they support an environment for professional conduct.

Nothing in this policy statement limits the authority of the NRC to take appropriate enforcement action for violations of Commission requirements or on matters otherwise affecting the safe operation of the plant and thus the public health and safety.

Dated at Rockville, Maryland, this 17th day of January 1989.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 89-1408 Filed 1-23-89; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 25

[Docket No. NM-35; Special Conditions No. 25-ANM-22]

Special Conditions: CASA CN-235-100, Lightning and Radio Frequency (RF) Energy Protection

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: This special conditions are issued for the CASA Model CN-235-100 airplane. This airplane will have novel or unusual design features associated with engine electronic controllers. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for the protection of the engine electronic controllers from the effects of lightning and the susceptibility to external radio frequency (RF) energy sources. This notice contains the additional safety standards which the Administrator finds necessary to ensure that the critical and essential functions these controllers perform are maintained.

EFFECTIVE DATE: December 13, 1988.

FOR FURTHER INFORMATION CONTACT: Gene Vandermolen, Flight Test and Systems Branch, ANM-111, Transport Airplane Directorate, Aircraft Certification Service, FAA, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168, telephone (206) 431-2157.

SUPPLEMENTARY INFORMATION:

Background

On May 12, 1987, Construcciones Aeronauticas S.A. (CASA) applied for an amendment to their Type Certificate No. A21NM to include the Model CN-235-100 airplane. The CN-235-100 airplane, which is a derivative version of the CN-236 airplane, is modified to incorporate a new version of the General Electric CT7-7A engine (CT7-9C), new engine nacelles, relocation of the right forward door, and an increased passenger capacity.

Under the provisions of § 21.101 of the Federal Aviation Regulations (FAR), CASA must show that the Model CN-235-100 meets the applicable provisions of the regulations incorporated by reference in Type Certificate A21NM, or the applicable regulations in effect on the date of application for the Model CN-235-100. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis."

The type certification basis for the CASA CN-235-100 airplane includes Part 25 of the FAR, effective February 1, 1965, including Amendments 25-1 through 25-54, and the requirements of § 25.904 concerning an automatic takeoff power control system (ATPCS); Part 36 of the FAR effective December 1, 1969, including Amendments 36-1 through current amendment; Special Federal Aviation Regulation 27, dated February 1, 1974, including Amendments 27-1 through 27-6 (Fuel Venting and Exhaust Emissions); and the special conditions contained herein.

If the Administrator finds that the applicable airworthiness regulations (i.e., Part 25 as amended) do not contain adequate or appropriate safety standards for the Model CN-235-100 because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16 to establish a level of safety equivalent to that established in the regulations.

Special conditions, as appropriate, are issued in accordance with § 11.49 of the FAR after public notice, as required by §§ 11.28 and 11.29(b), and become part of the type certification basis in accordance with § 21.17(a)(2).

Lightning Protection

The CASA CN-235-100 airplane is designed with engine electronic controllers which perform critical and essential engine functions, such as the engine power turbine (Np) overspeed-protection, minimum power turbine speed during ground operation (bottoming governing system), and constant torque takeoff system. These controllers are susceptible to disruption to both the command/response signals and the operational mode logic as a result of electrical and magnetic interference. This disruption of signals could result in dual engine shutdown due to opening of the engine ultimate overspeed fuel cutoff solenoids. To ensure that a level of safety is achieved equivalent to that of existing operating airplanes, special conditions are needed which require that the controllers will be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of lightning. To provide a means of compliance with the special conditions, a clarification on the threat definition for lightning is needed.

The following "threat definition", based on SAE Report AE4L-87-3, may be used as a basis for demonstrating compliance with the lightning protection special conditions.

The lightning current waveforms (Components A, D, and H) defined below, along with the voltage waveforms in Advisory Circular (AC) 20-53A, will provide a consistent and reasonable standard which is acceptable for use in evaluating the effects of lightning on the airplane. These waveforms depict threats that are external to the airplane. How these threats affect the airplane and its systems depend upon the systems' installation configuration, materials, shielding, airplane geometry, etc. Therefore, tests (including tests on the completed airplane or an adequate simulation) and/or verified analysis need to be conducted in order to obtain the resultant internal threat to the installed systems. The propulsion control systems may then be evaluated with this internal threat in order to determine their susceptibility to upset and/or malfunction.

To evaluate the induced effects to these systems, three considerations are required:

1. *First Return Stroke:* (Severe Strike—Component A, or Restrike—Component D). This external threat needs to be evaluated to obtain the resultant internal threat and to verify that the level of the induced currents and voltages is sufficiently below the equipment "hardness" level;

2. *Multiple Stroke Flash:* (½ Component D). A lightning strike is often composed of a number of successive strokes, referred to as a multiple-stroke. Although multiple strokes are not necessarily a salient factor in a damage assessment, they can be the primary factor in a system upset analysis. Multiple strokes can induce a sequence of transients over an extended period of time. While a single event upset of input/output signals may not affect system performance, multiple signal upsets over an extended period of time (2 seconds) may affect the systems under consideration. Repetitive pulse testing and/or analysis needs to be carried out in response to the multiple stroke environment to demonstrate that the system response meets the safety objective. This external multiple stroke environment consists of 24 pulses and is described as a single Component A followed by 23 randomly spaced restrikes of ⅓ magnitude of Component D (peak amplitude of 50,000 amps), all within 2 seconds. An analysis or test needs to be accomplished in order to obtain the resultant internal threat environment for the system under evaluation; and

3. *Multiple Burst:* (Component H). In-flight data-gathering projects have shown bursts of multiple, low amplitude, fast rates of rise, short duration pulses accompanying the airplane lightning strike process. While insufficient energy exists in these pulses to cause direct (physical damage) effects, it is possible that indirect effects resulting from this environment may cause upset to some digital processing systems.

The representation of this interference environment is a repetition of low amplitude, high peak rate of rise, double exponential pulses which represent the multiple bursts of current pulses observed in these flight data gathering projects. This component is intended for an analytical (or test) assessment of functional upset of the system. Again, it is required that this component be translated into an internal environmental threat in order to be used. This "Multiple Burst" consists of 24 random sets of 20 strokes within a period of 2 seconds. Each set of 20 strokes is made up of 20 "Multiple Burst" waveforms randomly distributed within a period of one millisecond. The individual "Multiple Burst" waveform is defined below.

The following current waveforms constitute the "Severe Strike" (Component A), "Restrike" (Component D), "Multiple Stroke" (½ Component D), and the "Multiple Burst" (Component H). These components are defined by the following double exponential equations:

$$i(t) = I_0(e^{-\alpha t} - e^{-\beta t})$$

where:

t = time in seconds,

i = current in amperes, and

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	Severe strike (component A)	Restrike (component B)	Multiple strokes (1% component B)	Multiple burst (component H)
I_o, amp	=218,810	108,405	54,703	10,572
a, sec^{-1}	=11,354	22,708	22,708	187,191
b, sec^{-1}	=647,295	1,294,539	1,294,539	19,105,100
This equation produces the following characteristics:				
peak	=200 KA	100 KA	50 KA	10 KA
and				
(di/dt)$_{max}$ (amp/μs)	=1.4 x 10^{11} @t=0+sec	=1.4 x 10^{11} @t=0+sec	=0.7 x 10^{11} @t=0+sec	=2.0 x 10^{11} @t=0+sec
di/dt, (amp/sec)	=1.0 x 10^{11} @t=.5 us	=1.0 x 10^{11} @t=.35 us	=0.5 x 10^{11} @t=.35 us	
Action Integral (amp^2 sec)	=2.0 x 10^4	=0.35 x 10^4	=.0625 x 10^4	

Protection From Unwanted Effects of Radio Frequency (RF) Energy

Airplane designs which utilize metal skins and mechanical command and control means have traditionally been shown to be immune from the effects of RF energy from ground-based transmitters. With the trend toward increased power levels from these sources, plus the advent of space and satellite communications, coupled with electronic command and control of the airplane, the immunity of the airplane to RF energy must be established. No universally accepted guidance to define the maximum energy level in which civilian airplane system installations must be capable of operating safely has been established.

It is not possible to precisely define the RF energy to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for RF energy. Furthermore, coupling to cockpit-installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing RF emitters, an adequate level of protection exists when compliance with the RF special condition is shown with paragraph 1 or 2 below:

1. A minimum RF threat of 100 volts per meter average electric field strength from 10 KHz to 20 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. An RF threat external to the airframe of the following field strengths for the frequency ranges indicated.

Frequency	Average (V/m)	Peak (V/m)
10 KHz–3 MHz	100	100
3 MHz–30 MHz	1,000	1,000
30 MHz–100 MHz	100	100
100 MHz–200 MHz	200	3,000
200 MHz–1 GHz	2,000	6,000
1 GHz–2 GHz	2,000	14,000
2 GHz–8 GHz	600	14,000
8 GHz–10 GHz	2,000	14,000
10 GHz–40 GHz	1,000	6,000

To establish the values in paragraph 2 above, an analysis was performed using a model of U.S. airspace and the Electromagnetic Compatibility Analysis Center (ECAC) data base, which contains the characteristics of all U.S. emitters. This analysis assumed a minimum seperation distance between the airplane and emitters as follows: in the airport environment, 250 ft. for fixed emitters and 50 ft. for mobile emitters; for the air-to-air environment, 50 ft. from interceptor aircraft and 500 ft. from non-interceptor aircraft; for the ground-to-air environment, 500 ft.; and for the ship-to-air environment, 1,000 ft. The results of this analysis were then combined with the results of a study of emitters in European countries. The above values are therefore believed to represent the worst case external threat levels to which an airplane would be exposed in the operating environment.

Discussion of Comments

Notice of Proposed Special Conditions No. SC–88–8–NM for the CASA Model CN–235–100 airplane was published in the **Federal Register** on November 14, 1988 (53 FR 45771). Comments received were of a clarifying nature and have been incorporated as appropriate.

Under standard practice, the effective date of these final special condition would be 30 days after publication in the **Federal Register**; however, as the intended type certification date for the CN–235–100 airplane is approximately December 15, 1988, the FAA finds that good cause exists to make these special conditions effective upon issuance.

Conclusion

This action affects only certain unusual or novel design features on one model series of airplanes. It is not a rule of general applicability and affects only the manufacturer who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Parts 21 and 25

Air transportation, Aircraft, Aviation safety, Safety.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the CASA Model CN–235–100 airplane.

1. The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2), 42 U.S.C. 1857f–10, 4321 et seq.; E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

2. *Lightning Protection.*

a. Each electronic system which performs critical functions must be designed and installed to ensure that these critical functions are not affected when the airplane is exposed to lightning.

b. Each essential function of an electronic system must be protected to ensure that the essential function can be recovered after the airplane has been exposed to lightning and prior to the time at which the loss of that function would have a significant impact on safety.

c. for the purpose of these special conditions, the following definitions apply:

(1) *Critical Functions.* Functions whose failure would contribute to or cause a condition which would prevent the continued safe flight and landing of the airplane.

(2) *Essential Functions.* Functions whose failure would contribute to or cause a condition which would significantly impact the safety of the airplane or the ability of the flightcrew to cope with adverse operating conditions.

3. *Protection from Unwanted Effects of Radio Frequency (RF) Energy.* Each engine and propeller control system which performs critical functions must be designed and installed to ensure that these critical functions are not adversely affected when the airplane is exposed to high energy RF fields.

Issued in Seattle, Washington, on December 13, 1988.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89–1472 Filed 1–23–89; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Parts 21 and 25

[Docket No. NM–34; Special Conditions No. 25–ANM–34]

Special Conditions; Boeing Model 747–400, Flight Deck Displays and Propulsion Control Systems

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the Boeing Model 747–400 airplane. This airplane will have novel or unusual design features associated with the display of certain airplane system information that are not addressed in the existing regulations. In addition, the propulsion installation requirements of Part 25 do not contain adequate standards by which to determine an acceptable level of safety for a full authority digital electronic control system installed on a transport category airplane. These special conditions contain additional safety standards which will require proper displays and alerts of sufficient capacity to enable the crew to identify and perform required remedial action and will also require full authority digital electronic control systems (FADEC) to have the level of integrity and reliability of current hydromechanical systems. The Administrator finds these special conditions necessary to establish a level of safety equivalent to that established by the airworthiness standards of Part 25.

EFFECTIVE DATE: December 21, 1988.

FOR FURTHER INFORMATION CONTACT: Gene Vandermolen, Flight Test and Systems Branch, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, FAA, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168, telephone (206) 431–2157.

SUPPLEMENTARY INFORMATION:

Background

On May 17, 1985, the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124–2207, submitted an application to amend Type Certificate A20WE to include the Boeing Model 747–400 series airplane. This airplane is a derivative version of the existing Model 747–300 series airplane. The 747–400 will be delivered with PW4000, CF6–80C2, or RB211–524G engines with full authority digital engine controls. Maximum takeoff gross weight will be increased to 870,000 lbs. Cockpit controls will be simplified and automated for operation by a crew of two. Appropriate hydraulics, avionics, pneumatic, and environment control system changes will be made. An optional fuel tank is being offered in the horizontal tail section. Scheduled completion date for certification is December 1988.

Discussion

1. The Boeing Model 747–400 uses six Cathode Ray Tubes (CRT) to display all flight, navigation, powerplant, and systems information. The lower center CRT is shared by displays of secondary engine parameters, fuel system, hydraulic system, and electrical system information. The use of shared display space for displaying various system parameters and schematics is being used on Boeing transport airplanes for the first time. It is not covered by the current regulations

Part 25 of the FAR was written prior to the development of multipurpose cockpit displays. Sections 25.1303, 25.1305, and 25.1307 list only the required instruments because individual gauges were all that existed at that time. With the introduction of CRT displays, it became possible to display the operating information from many different systems on a single CRT. This display allows the operating information to be centralized and displayed in many different formats. Some of the operating parameters presented on these displays share the display space with others or are not permanently displayed. When displays are shared or inhibited, means to alert the crew of parameter exceedances or other information requiring crew awareness must be provided so the crew can take corrective action. In addition to alerting the crew that corrective action is required, the display must have sufficient capacity so that all the information needed by the crew to conduct safe operation of the airplane can be simultaneously displayed. In the event of a failure condition, the data presented to the crew must be arranged and displayed in a manner so as not to cause confusion. The displayed parameters or alerts need to be arranged and edited in a form that effectively communicates to the flightcrew information necessary for selection of the appropriate corrective actions following a single event, condition, or combination of events.

2. The proposed Propulsion Control System for the Boeing Model 747–400 airplane is made up of: (1) A dual channel FADEC mounted on each engine's fan case; (2) an array of interfacing aircraft computers which provide data necessary for thrust management, data validation and reversion modes; (3) power levers in the aisle stand; (4) the hydromechanical interfaces on the engines; (5) the power supplies; and (6) the interconnecting wiring. While the software function contained in the engine's FADEC has been validated to a "critical" level, the overall level of integrity and reliability of the installed propulsion control system has not been evaluated to satisfy Part 25 requirements. Unlike conventional hydromechanical controls, the electronic control does not exhibit a "wear out" characteristic but rather exhibits an in-service failure rate which may be somewhat random with time. Therefore, endurance tests or other "mechanical" type evaluations and subsequent tear downs do not establish any significant degree of implied or inherent system design integrity as has been the case with mechanical systems previously evaluated in accordance with Part 25. Therefore, current regulations do not provide an adequate level of safety for proposed 747–400 FADEC propulsion control systems, and special conditions are necessary to provide system safety levels equivalent to those that would be provided by a hydromechanical system. These special conditions would require that the components of the propulsion control system that are directly associated with setting thrust and continued safe operation of each engine must demonstrate a level of system integrity and reliability commensurate with

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current standards for transport category airplanes.

Discussion of Comments

Notice of proposed special conditions No. SC-88-6-NM for the Boeing Model 747-400 airplane was published in the **Federal Register** on November 18, 1988 (53 FR 46822). Comments were received from two commenters.

One commenter is concerned that insufficient simplification and automation exists in the 747-400 cockpit, and that "an *extensive* Quick Reference Handbook" would be required to aid the flightcrew during normal and emergency operations.

The FAA does not agree that the special conditions call for such a handbook. Airplane system parameters and procedures will be automatically displayed on the CRTs to assist and guide the flightcrew. The requirements set forth in the special conditions ensure that this information will be presented clearly and correctly.

The other commenter is concerned that the operation of the 747-400 with a crew of two may not be safe based on workload demands.

The 747-400 cockpit controls and displays are highly automated to reduce pilot workload. A determination is made by the FAA flight test pilots during the certification program as to whether this reduction in workload is sufficient to ensure safe operation with only two crewmembers. It is based on the cockpit design as presented by the manufacturer.

Type Certification Basis

The type certification (TC) basis for the Boeing Model 747-400 series airplane is proposed to be Part 36 of the Federal Aviation Regulations (FAR); Special Aviation Regulation (SFAR) No. 27-6; and Part 25 of the FAR, as amended by Amendments 25-1 through 25-59, except that the applicable amendment numbers for the following sections are those indicated as follows: § 25.571 through Amendment 25-6; §§ 25.251; 25.305, 25.607, 25.657, and 25.683 through Amendment 25-22; § 25.1401 through Amendment 25-26; §§ 25.787 and 25.812 through Amendment 25-31; § 25.675 through Amendment 25-37; § 25.1438 through Amendment 25-40; §§ 25.107, 25.109 and 25.149 through Amendment 25-41; §§ 25.331, 25.351, 25.789, and 25.809 through Amendment 25-45; § 25.772 through Amendment 25-46; and § 25.785 through Amendment 25-50 and §§ 25.365 and 25.783 through Amendment 25-53. As proposed, the requirements of the following sections do not apply to this type design because the original certification basis, which did not include these sections, has been determined to be adequate: §§ 25.631, 25.832, 25.856, and 25.1529. The TC basis includes special conditions, exemptions, and equivalent safety findings which are part of the Model 747-300 series certification basis. These exceptions, existing exemptions and the noise and environmental requirements are not pertinent to these special conditions. Special conditions concerning flight deck electronic displays, overhead crew rest accommodations, and the reliability of electronic engine controls and thrust management systems are also being considered.

Special conditions may be issued and amended, as necessary, as a part of the type certification basis if the Administrator finds that the airworthiness standards designated in accordance with § 21.101(b)(2) do not contain adequate or appropriate safety standards because of novel or unusual design features of an airplane. Special conditions, as appropriate, are issued in accordance with § 11.49 after public notice as required by §§ 11.28 and 11.29(b), effective October 14, 1980, and may become part of the type certification basis in accordance with § 21.101.

Under the standard practice, the effective date of these final special conditions would be 30 days after publication in the **Federal Register**. As the intended type certification date for the Boeing Model 747-400 is December 1988, the FAA finds that good cause exists to make these special conditions effective upon issuance.

Conclusion

This action affects only certain novel or unusual design features on one model series of airplanes. It is not a rule of general applicability and affects only the manufacturer who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Parts 21 and 25

Air transportation, Aircraft, Aviation safety, Safety.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the Boeing Model 747-400 series airplane.

1. The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2), 42 U.S.C. 1857f-10, 4321 et seq.; E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

2. The required displays and alerts for each phase of flight must be provided in a timely manner and form that enables the crew to identify and carry out necessary remedial actions.

3. Sufficient display capacity should be provided so that any parameter display or alerting will not suppress another display or alerting that also requires immediate crew awareness necessary for continued safe flight and landing.

4. Displays of a parameters or alerts that could cause the subsequent activation of other displays or alerts must be presented in a manner and form to ensure appropriate identification of the most significant hazards and required crew actions.

5. In addition to the requirements of §§ 25.901(c) and 25.903(b) of the FAR, the components of the propulsion control system for each engine, both airframe and engine furnished, that affect thrust in either the forward or reverse direction and are required for continued safe operation, must at least have the level of integrity and reliability of a hydromechanical system meeting current airworthiness standards.

Issued in Seattle, Washington, on December 21, 1988.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-1299 Filed 1-23-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 88-NM-94-AD; Amdt. 39-6120]

Airworthiness Directives; Boeing Model 757 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 757 series airplanes, which requires periodic freeplay checks of the elevator, and replacement of worn elevator power control actuator (PCA) reaction link rod end bearings and the PCA rod end bearing, if necessary. This amendment is prompted by reports of excessive wear of elevator PCA rod end and reaction link rod end bearings. This condition, if not corrected, could lead to unacceptable airframe vibration during flight.

EFFECTIVE DATE: March 6, 1989.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Dan R. Bui, Airframe Branch, ANM-120S; telephone (206) 431-1919. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to Boeing Model 757 series airplanes, which requires periodic freeplay checks of the elevator, and replacement of worn elevator power control actuator (PCA) reaction link rod end bearings and the PCA rod end bearings, if necessary, was published in the **Federal Register** on August 8, 1988 (53 FR 31016). The period for public comment closed on September 23, 1988.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

The manufacturer suggested that the wording of the final rule be changed to clarify that terminating action consists of replacing the old design *PCA reaction link rod end* bearings. The FAA concurs and has incorporated this change in paragraph D. of the final rule.

The Air Transport Association (ATA) of American advised that, based on recommendations in Boeing Service Letter 757-SL-27-28, dated April 1, 1988, its member operators have revised their bearing lubrication schedule from 3,000 hours ("C-check") to 1,000 hours. ATA requested that the proposed compliance period be changed so that if lubrication of the subject bearings is being conducted at intervals of 1,000 flight hours or less, then the initial check of the subject bearings may be accomplished within the next 90 days after the effective date of the AD, or prior to the accumulation of 4,000 flight hours, whichever occurs later; and repetitive inspections may be accomplished thereafter at 4,000 flight hour intervals. This would permit inspections to be accomplished during "C-check." The FAA has considered the request and concurs that extension of the compliance time will provide an acceptable level of safety if the bearings are lubricated at 1,000-hour intervals; extending the repetitive inspection interval to 4,000 hours for these airplanes will have no adverse impact on safety. The final rule has been revised by adding a new paragraph A. to address airplanes upon which this schedule of maintenance has been followed. The FAA has determined that this change will not increase the scope of the AD, nor will it increase the economic burden on any operator.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the following rule, with the changes previously noted.

There are approximately 134 Model 757 series airplanes of the affected design in the worldwide fleet. It is estimated that 90 airplanes of U.S. registry will be affected by this AD, that it will take approximately 30 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $108,000.

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities, because few, if any, Model 757 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Boeing: Applies to Model 757 series airplanes listed in Boeing Alert Service Bulletin 757-27A0066, dated June 9, 1988, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent unacceptable airframe vibrations during flight, accomplish the following:

A. For airplanes on which the elevator power control actuator (PCA) rod end and reaction link rod end bearings are lubricated at intervals of 1,000 flight hours or less, in accordance with Boeing Service Letter 757-SL-27-28, dated April 1, 1988: Within the next 90 days after the effective date of this AD or prior to the accumulation of 4,000 flight hours total time-in-service, whichever occurs later, and thereafter at intervals not to exceed 4,000 flight hours, perform an elevator freeplay check in accordance with Boeing Alert Service Bulletin 757-27A0066, dated June 9, 1988.

B. For all other airplanes: Within the next 90 days after the effective date of this AD or prior to the accumulation of 3,000 flight hours total time-in-service, whichever occurs later, and thereafter at intervals not to exceed 3,000 flight hours, perform an elevator freeplay check in accordance with Boeing Alert Service Bulletin 757-27A-0066, dated June 9, 1988.

C. If freeplay exceeds the limits specified in the service bulletin, before further flight, replace elevator PCA reaction link rod end bearings and PCA rod end bearings, as necessary, in accordance with Boeing Alert Service Bulletin 757-27A0066, dated June 9, 1988.

D. Terminating action for the repetitive inspection requirements of paragraph A. and B. of this AD consists of replacing all old design PCA reaction link rod end bearings with improved bearings and subsequent successful completion of freeplay inspection, in accordance with Boeing Alert Service Bulletin 757-27A0066, dated June 9, 1988.

E. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note.—The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Seattle Aircraft Certification Office.

F. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

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All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective March 6, 1989.

Issued in Seattle, Washington, on January 11, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-1474 Filed 1-23-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 88-NM-144-AD; Amdt. 39-6122]

Airworthiness Directives; Fokker Model F-27 Series Airplanes in Mark 500 Configuration

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Fokker Model F-27 series airplanes in Mark 500 configuration, which requires a one time inspection of the upper fuselage cableloom for chafing and insufficient clamping, and repair, if necessary. This amendment is prompted by reports of chafing of the electrical wiring due to insufficient clamping of the cableloom and interference between the cableloom and the cable ducting. This condition, if not corrected, could lead to loss of electrical power and could create a potential fire hazard.

EFFECTIVE DATE: March 6, 1989.

ADDRESSES: The applicable service information may be obtained from Fokker Aircraft USA, Inc., 1199 N. Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Quam, Standardization Branch, ANM-113; telephone (206) 431-1976. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations, to include a new airworthiness directive, applicable to Fokker Model F-27 series airplanes in Mark 500 configuration, which requires a one-time inspection of the upper fuselage cableloom for chafing and insufficient clamping, and repair, if necessary, was published in the **Federal Register** on October 20, 1988 (53 FR 41190).

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received in response to the proposal.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 14 airplanes of U.S. registry will be affected by this AD, that it will take approximately 12 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $6,720.

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities because of the minimal cost of compliance per airplane ($480). A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Fokker: Applies to Model F-27 series airplanes, Serial Numbers 10623 through 10692, in Mark 500 configuration, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent loss of electrical power and eliminate a potential fire hazard, due to chafing wire bundles, accomplish the following:

A. Within 60 days after the effective date of this AD, perform a one-time inspection of the upper fuselage cableloom for chafing and insufficient clamping, and repair, if necessary, in accordance with Fokker Service Bulletin F27/24-77, dated June 7, 1988.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Standardization Branch, ANM-113.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Fokker Aircraft USA, Inc., 1199 N. Fairfax Street, Alexandria, Virginia 22314. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective March 6, 1989.

Issued in Seattle, Washington, on January 11, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate Aircraft Certification Service.

[FR Doc. 89-1475 Filed 1-23-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 88-NM-137-AD; Amdt. 39-6121]

Airworthiness Directives; Fokker Model F-28 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Fokker Model F-28 series airplanes, which requires relocation of the instrument panel lighting ballast transformers. This amendment is prompted by reports of the transformers overheating due to inadequate ventilation. This condition, if not corrected, could lead to the transformers overheating, causing smoke in the cockpit and creating a potential fire hazard.

EFFECTIVE DATE: March 6, 1989.

ADDRESSES: The applicable service information may be obtained from Fokker Aircraft, USA, Inc., 1199 N. Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Quam, Standardization Branch, ANM-113; telephone (206) 431-1976. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations, to include a new airworthiness directive, applicable to Fokker Model F-28 series airplanes, which requires relocation of the instrument panel lighting ballast transformers, was published in the **Federal Register** on October 20, 1988 (53 FR 41191).

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received in response to the proposal.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 51 airplanes of U.S. registry will be affected by this AD, that it will take approximately 24 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. The estimated cost for parts is $800. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $79,560.

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities because few, if any, Model F-28 series airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Fokker: Applies to Model F-28 series airplanes, Serial Numbers 11003 through 11231, 11991, and 11992, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent a potential fire hazard in the cockpit, accomplish the following:

A. Within 60 days after the effective date of this AD, relocate the instrument lighting ballast transformers from the glareshield panel and the right hand cockpit sidewall to the left-hand cockpit sidewall, in accordance with Fokker Service Bulletin No. F28/33-34, dated June 1, 1988.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Standardization Branch, ANM-113.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the modification required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Fokker Aircraft, USA, Inc., 1199 N. Fairfax Street, Alexandria, Virginia 22314. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective March 6, 1989.

Issued in Seattle, Washington, on January 11, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-1476 Filed 1-23-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 88-NM-107-AD; Amdt. 39-6115]

Airworthiness Directives; Garrett Model GTCP331-200A, -200AC, -200C, -200ER, -250F, -250H, and -200P Auxiliary Power Units Installed in, but Not Limited to, Boeing Model 757 and 767 Series Airplanes, Airbus Model A310 and A300-600 Series Airplanes, and Certain Boeing Model 747 Series Airplanes with Dual Units

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revises an existing airworthiness directive (AD), applicable to Garrett Model GTCP331 series Auxiliary Power Units (APU) with a certain fan assembly, which currently requires incorporation of a new fan assembly with an improved fan containment housing. This amendment requires revision to the modified fan assembly configuration. This amendment is prompted by three

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uncontained failures of the modified fan assembly. This condition, if not corrected, could lead to additional failures and potential inflight or ground fires.

EFFECTIVE DATE: February 22, 1989.

ADDRESSES: The applicable service information may be obtained from Garrett Airline Service Division, a Division of the Allied-Signal Aerospace Company, Technical Publications, Dept. 65–70, P.O. Box 29003, Phoenix, Arizona 85038. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Roy McKinnon, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806–2425; telephone (213) 988–5247.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to revise AD 85–14–02, Amendment 39–5571 (52 FR 5945; February 27, 1987), to require installation of an improved fan containment housing on Garrett Model GTCP331 Series APU's, was published in the **Federal Register** on September 13, 1988, (53 FR 35320).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter suggested the rule be revised to reflect the initial compliance time as 12 months after the effective date of the AD, instead of 6 months, as proposed, in order that this commenter may accomplish the subject retrofit within its existing scheduled maintenance times. The FAA does not concur. The proposed compliance time of 6 months was determined based on the safety implications of this action, as well as parts availability. The FAA has determined that 6 months represents the maximum interval of time allowable for all affected airplanes to continue to operate prior to the installation of the required modification without compromising safety.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 800 APU's installed on airplanes of U.S. registry will be affected by this AD, that it will take approximately 4 manhours per APU to accomplish the required actions, and that the average labor cost will be $40 per manhour. The manufacturer has indicated that it will supply required parts at no charge to operators. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $128,000.

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect, positive or negative, on a substantial number of small entities, because of the minimal cost of compliance per APU ($160). A final evaluation has been prepared for this regulation and has been placed in the docket .

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By revising AD 85–14–02, Amendment 39–5571 (52 FR 5945; February 27, 1987), as follows:

Garrett Auxiliary Power Division (Formerly Garrett Turbine Engine Company and the Aireseareh Manufacturing Company of Arizona): Applies to all GTEC Models GTCP331–200A, –200AC, –200C, –200ER, –250F, –250H, and –200P Auxiliary Power Units (APU) with fan assembly, Garrett Part Number 3982160–3, –4, or –5, installed; as installed in, but not limited to, Boeing Model 757 and 767 series airplanes, Airbus Model A310 and A300–600 series airplanes, and certain Boeing Model 747 series airplanes with dual units; certificated in any category. Compliance is required as indicated, unless already accomplished.

To prevent an uncontained APU cooling fan failure, accomplish the following:

A. Upon removal of the cooling fan assembly, Garrett Part Number 3982160–3 or –4, from an affected GTCP331 series Auxiliary Power Unit (APU) for any reason; or within 1,000 airplane hours time-in-service after August 15, 1985, or prior to September 15, 1985, whichever comes first, for the Boeing Model 757 and 767 series airplanes; and within 1,000 airplane hours time-in-service after April 2, 1987 (the effective date of Amendment 39–5571), for all other airplanes with a GTC331 series APU installed; incorporated the new fan assembly with the improved fan containment housing as specified in Section 2.A., "Accomplishment Instructions," of Garrett Service Bulletin GTCP331–49–5546, dated August 9, 1984.

B. Upon removal of the modified cooling fan assembly, Garrett Part Number 3982160–5, from an affected GTCP331 series APU for any reason, or within six (6) months after the effective date of this AD, whichever occurs first, for all airplanes with GTCP331 series APU installed, incorporate the latest improved fan containment configuration in accordance with the Accomplishment Instructions of Garrett Service Bulletin 3982160–49–5716, dated November 19, 1987.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a maintenance base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the Garrett Airline Service Division, A Division of the Allied-Signal Aerospace Company, Technical Publications, Dept. 65–70, P.O. Box 29003, Phoenix, Arizona 85038. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at

3229 East Spring Street, Long Beach, California.

This amendment becomes effective February 22, 1989.

Issued in Seattle, Washington, on January 4, 1989.

Leroy A. Keith, Manager,

Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89–1473 Filed 1–23–89; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM88–25–000]

18 CFR Part 37

Generic Determination of Rate of Return on Common Equity for Public Utilities

January 13, 1989

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of benchmark rate of return on common equity for public utilities.

SUMMARY: In accordance with § 37.5 of its regulations, the Federal Energy Regulatory Commission, by its designee, the Director of the Office of Economic Policy, issues the update to the "advisory" benchmark rate of return on common equity applicable to rate filings made during the period February 1, 1989 through April 30, 1989. This benchmark rate is set at 12.38 percent.

EFFECTIVE DATE: February 1, 1989.

FOR FURTHER INFORMATION CONTACT: Marvin Rosenberg, Office of Economic Policy, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357–8283.

SUPPLEMENTARY INFORMATION:

Benchmark Rate of Return on Common Equity for Public Utilities

On December 19, 1988, the Federal Energy Regulatory Commission (Commission) issued a final rule (Order No. 510) concerning the generic determination of the rate of return on common equity for public utilities.[1] In several earlier rulemaking proceedings, the Commission established a discounted cash flow (DCF) formula to determine the average cost of common equity and a quarterly indexing procedure to calculate benchmark rates of return on common equity for public utilities and codified the formula and procedure at § 37.9 of its Regulations.[2] In Order No. 510, the Commission determined that 4.3 percent is an appropriate expected annual dividend growth rate for use in the quarterly indexing procedure during the 12 months beginning February 1, 1989 and that 0.03 percent is an appropriate flotation cost adjustment factor for that period.

The Commission, by its designee, the Director of the Office of Economic Policy, uses the quarterly indexing procedure to determine that the benchmark rate of return on common equity applicable to rate filings made during the period February 1, 1989 through April 30, 1989 is 12.38 percent.

Section 37.9 of the Commission's regulations requires that the quarterly benchmark rate of return be set equal to the average cost of common equity for the jurisdictional operations of public utilities. This average cost is based on the average of the median dividend yields for the two most recent calendar quarters for a sample of 99 utilities. The average yield is used in the following formula with fixed adjustment factors (determined in the most recent annual proceeding) to determine the cost rate:

$k_t = 1.02\ Y_t + 4.33$

where k_t is the average cost of common equity and Y_t is the average dividend yield.

The attached appendix provides the supporting data for this update. The median dividend yields for the 99-company sample of utilities for the third and fourth quarters of 1988 are 7.92 and 7.85 percent, respectively. The average yield for those two quarters is 7.89 percent. Use of the average dividend yield in the above formula produces an average cost of common equity of 12.38 percent.

This notice supplements the generic rate of return rule announced in Order No. 510, issued December 19, 1988 and effective on February 1, 1989.

List of Subjects in 18 CFR Part 37

Electric power rates, Electric utilities, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission amends Part 37, Chapter I, Title 18 of the Code of Federal Regulations, as set forth below, effective February 1, 1989.

Richard P. O'Neill,

Director, Office of Economic Policy.

PART 37—GENERIC DETERMINATION OF RATE OF RETURN ON COMMON EQUITY FOR PUBLIC UTILITIES

1. The authority citation for Part 37 continues to read as follows:

Authority: Federal Power Act, 16 U.S.C. 791a–825r (1982); Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982).

2. In § 37.9, paragraph (d) is revised to read as follows:

§ 37.9 Quarterly indexing procedure.

* * * * *

(d) *Table of Quarterly Benchmark Rates of Return.* The following table presents the quarterly benchmark rates of return on common equity:

Benchmark applicability period (t)	Dividend increase adjustment factor (a)	Expected growth adjustment factor (b)	Current dividend yield (Y_t)	Cost of common equity (k_t)	Benchmark rate of return
February 1, 1986 to April 30, 1986	1.02	4.54	9.03	13.75	13.75
May 1, 1986 to July 31, 1986	1.02	4.54	8.37	13.08	13.25
August 1, 1986 to October 31, 1986	1.02	4.54	7.49	12.18	12.75
November 1, 1986 to January 31, 1987	1.02	4.54	6.75	11.43	12.25
February 1, 1987 to April 30, 1987	1.02	4.63	6.44	11.20	11.20
May 1, 1987 to July 31, 1987	1.02	4.63	6.54	11.30	11.30
August 1, 1987 to October 31, 1987	1.02	4.63	6.97	11.74	11.74
November 1 1987 to January 31, 1988	1.02	4.63	7.49	12.27	12.27
February 1, 1988 to April 30, 1988	1.02	4.36	7.90	12.42	12.42
May 1, 1988 to July 31, 1988	1.02	4.36	7.99	12.51	12.51
August 1, 1988 to October 31, 1988	1.02	4.36	7.84	12.36	12.36

[1] Generic Determination of Rate of Return on Common Equity for Public Utilities, Order N. 510, 53 FR 51,752 (Dec. 23, 1988), 45 FERC ¶ 61,452 (Dec. 19, 1988).

[2] 18 CFR 37.9 (1988). The most recent adoption of the DCF formula and quarterly indexing procedure came in Order No. 489, 53 FR 3342 (Feb. 5, 1988).

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Benchmark applicability period (t)	Dividend increase adjustment factor (a)	Expected growth adjustment factor (b)	Current dividend yield (Y_t)	Cost of common equity (k_t)	Benchmark rate of return
November 1, 1988 to January 31, 1989	1.02	4.36	7.92	12.44	12.44
February 1, 1989 to April 30, 1989	1.02	4.33	7.89	12.36	12.36

Note: The Appendix will not be published in *Code of Federal Regulations*.

Appendix

Exhibit No. and Title

1 Initial sample of utilities
2 Utilities excluded from the sample for the indicated quarter due to either zero dividends or a reduction in dividends for this quarter or the prior three quarters
3 Annualized dividend yields for the indicated quarter for utilities retained in the sample

Source of Data: Standard and Poor's Compustat Services, Inc., Utility COMPUSTAT II Quarterly Data Base.

EXHIBIT 1—SAMPLE OF UTILITIES

Utility	Ticket symbol	Industry code
ALLEGHENY POWER SYSTEM	AYP	4911
AMERICAN ELECTRIC POWER	AEP	4911
ATLANTIC ENERGY INC	ATE	4911
BALTIMORE GAS & ELECTRIC	BGE	4931
BLACK HILLS CORP	BKH	4911
BOSTON EDISON CO	BSE	4911
CAROLINA POWER & LIGHT	CPL	4911
CENTERIOR ENERGY CORP	CX	4911
CENTRAL & SOUTH WEST CP/RP	CSR	4911
CENTRAL HUDSON GAS & ELEC	CNH	4931
CENTRAL IL PUBLIC SERVIC	CIP	4931
CENTRAL LOUISIANA ELECTRI	CNL	4911
CENTRAL MAINE POWER CO	CTP	4911
CENTRAL VERMONT PUB SERV	CV	4911
CILCORP INC	CER	4931
CINCINNATI GAS & ELECTRIC	CIN	4931
CMS ENERGY CORP	CMS	4931
COMMONWEALTH EDISON	CWE	4911
COMMONWEALTH ENERGY SYSTE	CES	4931
CONSOLIDATED EDISON OF NY	ED	4931
DELMARVA POWER & LIGHT	DEW	4931
DETROIT EDISON CO	DTE	4911
DOMINION RESOURCES INC-VA	D	4931
DPL INC	DPL	4931
DUKE POWER CO	DUK	4911
DUQUESNE LIGHT CO	DQU	4911
EASTERN UTILITIES ASSOC	EUA	4911
EMPIRE DISTRICT ELECTRIC	EDE	4911
FITCHBURG GAS & ELEC LIGH	FGE	4931
FLORIDA PROGRESS CORP	FPC	4911
FPL GROUP INC	FPL	4911
GENERAL PUBLIC UTILITIES	GPU	4911
GREEN MOUNTAIN POWER CORP	GMP	4911
GULF STATES UTILITIES CO	GSU	4911
HAWAIIAN ELECTRIC INDS	HE	4911
HOUSTON INDUSTRIES INC	HOU	4911
I E INDUSTRIES INC	IEL	4931
IDAHO POWER CO	IDA	4911
ILLINOIS POWER CO	IPC	4931
INTERSTATE POWER CO	IPW	4931
IOWA RESOURCES INC	IOR	4911
IOWA-ILLINOIS GAS & ELEC	IWG	4931
IPALCO ENTERPRISES INC	IPL	4911
KANSAS CITY POWER & LIGHT	KLT	4911
KANSAS GAS & ELECTRIC	KGE	4911
KANSAS POWER & LIGHT	KAW	4931
KENTUCKY UTILITIES CO	KU	4911
LONG ISLAND LIGHTING	LIL	4931
LOUISVILLE GAS & ELECTRIC	LOU	4931
MAINE PUBLIC SERVICE	MAP	4911
MIDDLE SOUTH UTILITIES	MSU	4911
MIDWEST ENERGY CO	MWE	4931
MINNESOTA POWER & LIGHT	MPL	4911
MONTANA POWER CO	MTP	4931
NECO ENTERPRISES INC	NPT	4911
NEVADA POWER CO	NVP	4911
NEW ENGLAND ELECTRIC SYST	NES	4911
NEW YORK STATE ELEC & GAS	NGE	4931
NIAGARA MOHAWK POWER	NMK	4931
NIPSCO INDUSTRIES INC	NI	4931
NORTHEAST UTILITIES	NU	4911
NORTHERN STATES POWER-MN	NSP	4931
OHIO EDISON CO	OEC	4911
OKLAHOMA GAS & ELECTRIC	OGE	4911
ORANGE & ROCKLAND UTILITI	ORU	4931
PACIFIC GAS & ELECTRIC	PCG	4931
PACIFICORP	PPW	4931
PENNSYLVANIA POWER & LIGH	PPL	4911
PHILADELPHIA ELECTRIC CO	PE	4931
PINNACLE WEST CAPITAL COR	PNW	4911
PORTLAND GENERAL CORP	PGN	4911
POTOMAC ELECTRIC POWER	POM	4911
PSI HOLDINGS INC	PIN	4911
PUBLIC SERVICE CO OF COLO	PSR	4931
PUBLIC SERVICE CO OF N H	PNH	4911
PUBLIC SERVICE CO OF N ME	PNM	4931
PUBLIC SERVICE ENTERPRISE	PEG	4931
PUGET SOUND POWER & LIGHT	PSD	4911
ROCHESTER GAS & ELECTRIC	RGS	4931
SAN DIEGO GAS & ELECTRIC	SDO	4931
SCANA CORP	SCG	4931
SCECORP	SCE	4911
SIERRA PACIFIC RESOURCES	SRP	4931
SOUTHERN CO	SO	4911
SOUTHERN INDIANA GAS & EL	SIG	4931
ST JOSEPH LIGHT & POWER	SAJ	4931
TECO ENERGY INC	TE	4911
TEXAS UTILITIES CO	TXU	4911
TNP ENTERPRISES INC	TNP	4911
TUCSON ELECTRIC POWER CO	TEP	4911
UNION ELECTRIC CO	UEP	4911
UNITED ILLUMINATING CO	UIL	4911
UNITIL CORP	UTL	4911
UTAH POWER & LIGHT	UTP	4911
UTILICORP UNITED INC	UCU	4931
WASHINGTON WATER POWER	WWP	4931
WISCONSIN ENERGY CORP	WEC	4931
WISCONSIN PUBLIC SERVICE	WPS	4931
WPL HOLDINGS INC	WPH	4931

N = 99.

EXHIBIT 2.—UTILITIES EXCLUDED FROM THE SAMPLE FOR THE INDICATED QUARTER DUE TO EITHER ZERO DIVIDENDS OR A CUT IN THE DIVIDENDS FOR THIS QUARTER OR THE PRIOR THREE QUARTERS

[Year = 88 Quarter = 4]

Ticker symbol	Utility	Reason for exclusion
CX	CENTERIOR ENERGY CORP	Dividend rate was reduced for the quarter CALENDAR 88Q2.
CNH	CENTRAL HUDSON GAS & ELEC	Dividend rate was reduced for the quarter CALENDAR 88Q1.
CMS	CMS ENERGY CORP	Dividend rate was zero for quarter CALENDAR 88Q4.
GSU	GULF STATES UTILITIES CO	Dividend rate was zero for quarter CALENDAR 88Q4.
LIL	LONG ISLAND LIGHTING	Dividend rate was zero for quarter CALENDAR 88Q4.
MSU	MIDDLE SOUTH UTILITIES	Dividend rate was zero for quarter CALENDAR 88Q3.
NGE	NEW YORK STATE ELEC & GAS	Dividend rate was reduced for the quarter CALENDAR 88Q1.
PCG	PACIFIC GAS & ELECTRIC	Dividend rate was reduced for the quarter CALENDAR 88Q3.
PIN	PSI HOLDINGS INC	Dividend rate was zero for quarter CALENDAR 88Q4.
PNH	PUBLIC SERVICE CO OF N H	Dividend rate was zero for quarter CALENDAR 88Q4.
PNM	PUBLIC SERVICE CO OF N ME	Dividend rate was reduced for the quarter CALENDAR 88Q2.

N = 11.

EXHIBIT 3.—ANNUALIZED DIVIDEND YIELDS FOR THE INDICATED QUARTER FOR UTILITIES RETAINED IN THE SAMPLE

Year = 88 Quarter = 4

Ticker symbol	Price, 1st month of quarter-high	Price, 1st month of quarter-low	Price, 2nd month of quarter-high	Price, 2nd month of quarter-low	Price, 3rd month of quarter-high	Price, 3rd month of quarter-low	Average price	Dividends annual rate	Annualized dividend yield
AEP	28.125	26.750	28.500	26.125	27.875	26.625	27.333	2.370	8.671
ATE	34.000	33.375	33.875	33.000	34.500	32.750	33.583	2.760	8.218
AYP	39.000	37.875	38.625	37.125	38.250	37.000	37.979	3.080	8.110
BGE	32.750	31.125	32.375	30.750	31.625	30.625	31.542	2.000	6.341
BKH	27.500	26.250	27.750	25.750	26.125	24.500	26.312	1.400	5.321
BSE	17.000	15.250	17.250	15.125	16.875	15.500	16.167	1.820	11.258
CER	33.375	31.750	33.375	30.750	33.000	31.500	32.292	2.400	7.432
CES	30.750	29.375	32.125	30.125	32.000	30.375	30.792	2.800	9.093
CIN	27.750	26.375	27.000	25.500	26.500	25.875	26.500	2.240	8.453
CIP	22.375	21.375	22.500	21.375	22.375	21.500	21.917	1.760	8.030
CNL	33.750	32.500	33.625	32.750	33.000	31.625	32.875	2.320	7.057
CPL	36.250	35.000	38.500	35.000	37.625	35.825	36.000	2.760	7.667
CSR	32.500	30.875	31.875	30.125	32.000	30.500	31.312	2.440	7.792
CTP	18.375	17.250	18.500	17.125	18.875	17.500	17.937	1.480	8.251
CV	26.000	24.125	25.750	24.250	24.625	23.500	24.708	1.980	8.013
CWE	32.375	30.375	32.500	31.125	33.375	30.875	31.771	3.000	9.443
D	45.000	43.000	44.875	42.375	44.000	42.000	43.542	3.200	7.349
DEW	17.750	17.000	17.375	16.875	17.750	17.125	17.312	1.460	8.433
DPL	27.000	25.125	27.125	24.750	25.875	25.000	25.812	2.180	8.398
DQU	18.875	15.750	17.875	16.625	18.875	17.500	17.250	1.280	7.420
DTE	16.625	14.375	16.750	15.750	17.500	16.000	16.167	1.680	10.392
DUK	47.625	45.375	47.500	44.625	46.875	45.250	46.208	2.960	6.406
ED	46.000	44.500	46.750	44.000	46.625	44.500	45.396	3.200	7.049
EDE	29.125	26.500	29.000	27.500	28.125	27.500	28.292	2.220	7.847
EUA	29.375	27.625	33.125	29.000	32.750	31.500	30.562	2.400	7.853
FGE	28.000	25.375	25.250	27.250	30.750	29.250	28.312	1.800	6.358
FPC	35.875	34.250	36.125	33.625	35.375	33.625	34.812	2.560	7.354
FPL	31.875	30.375	32.000	30.000	32.000	30.500	31.125	2.200	7.068
GMP	25.875	24.875	25.250	23.000	23.875	22.000	24.146	1.920	7.952
GPU	38.500	35.250	37.250	36.125	38.000	36.750	36.979	1.800	4.868
HE	30.000	28.125	29.250	28.500	29.750	28.625	29.042	2.040	7.024
HOU	30.000	28.625	30.000	27.250	28.125	26.625	28.437	2.960	10.409
IDA	22.625	21.375	22.250	21.250	23.750	22.125	22.229	1.800	8.097
IEL	23.750	23.000	24.000	23.250	24.000	22.625	23.438	2.040	8.704
IOR	18.125	17.250	18.625	17.000	17.875	17.000	17.646	1.680	9.407
IPC	19.625	18.375	19.625	19.000	20.000	19.250	19.312	2.640	13.670
IPL	23.375	22.375	23.375	22.500	23.250	22.500	22.896	1.640	7.163
IPW	23.125	21.375	22.625	21.000	22.875	21.250	22.042	1.960	8.892
IWG	40.500	38.250	39.375	37.875	39.125	37.625	38.792	3.180	8.196
KAN	24.375	23.375	24.125	22.750	23.500	22.250	23.396	1.720	7.352
KGE	20.125	19.000	21.250	18.750	21.750	20.125	20.333	1.600	7.869
KLT	32.000	29.500	32.250	29.750	32.000	30.000	30.917	2.440	7.892
KU	19.125	17.750	19.000	17.500	19.125	18.125	18.437	1.340	7.268
LOU	34.875	32.750	34.875	34.000	35.375	33.750	34.271	2.720	7.937
MAP	38.375	36.125	40.750	37.500	41.625	40.000	39.063	3.000	7.680
MPL	25.500	24.375	25.250	23.500	24.375	23.125	24.354	1.720	7.062
MTP	37.000	34.750	36.250	34.250	35.875	34.625	35.458	2.680	7.558
MWE	19.625	19.000	19.625	18.750	19.375	18.625	19.167	1.560	8.139
NES	24.875	23.500	25.500	24.250	25.125	23.875	24.521	2.040	8.319
NI	13.875	12.000	13.750	13.250	14.125	13.375	13.396	0.600	4.479
NMK	14.250	13.375	14.000	12.500	13.875	13.000	13.500	1.200	8.889
NPT	18.000	17.625	18.250	17.250	20.250	18.000	18.229	1.500	8.229
NSP	34.125	32.125	34.250	31.875	33.625	32.250	33.042	2.120	6.416
NU	21.250	19.875	21.500	20.000	21.000	19.750	20.562	1.760	8.559

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EXHIBIT 3.—ANNUALIZED DIVIDEND YIELDS FOR THE INDICATED QUARTER FOR UTILITIES RETAINED IN THE SAMPLE—Continued

Year = 88 Quarter = 4

Ticker symbol	Price, 1st month of quarter-high	Price, 1st month of quarter-low	Price, 2nd month of quarter-high	Price, 2nd month of quarter-low	Price, 3rd month of quarter-high	Price, 3rd month of quarter-low	Average price	Dividends annual rate	Annualized dividend yield
NVP	20.500	19.625	20.750	19.625	20.500	20.000	20.167	1.520	7.537
OEC	19.250	18.250	19.250	18.000	19.000	18.000	18.625	1.960	10.522
OGE	33.000	32.000	33.250	31.625	33.250	32.000	32.521	2.280	7.011
OKU	30.625	29.125	30.375	28.875	29.875	28.875	29.625	2.360	7.529
PE	20.250	18.500	20.250	19.125	20.250	19.250	19.804	2.200	11.222
PEG	25.375	24.250	25.250	24.000	24.875	24.000	24.625	2.040	8.284
PGN	21.750	20.625	22.625	21.250	22.625	20.875	21.625	1.960	9.064
PNW	23.000	18.375	17.500	15.000	16.500	15.250	17.271	2.800	16.212
POM	22.375	20.875	22.000	20.750	21.250	19.250	21.063	1.380	6.545
PPL	36.750	35.250	37.000	35.375	36.500	35.000	35.979	2.760	7.671
PPW	36.875	34.625	36.875	35.000	36.125	34.875	35.729	2.640	7.389
PSD	19.625	18.750	19.000	18.250	19.375	18.250	18.875	1.760	9.325
PSR	21.750	20.250	20.875	19.750	21.875	20.750	20.875	2.000	9.581
RGS	17.875	16.750	17.875	17.000	17.750	16.875	17.354	1.500	8.643
SAJ	23.000	21.500	22.000	20.750	21.000	19.750	21.333	1.400	6.563
SCE	34.000	32.250	34.500	32.000	33.000	31.750	32.917	2.480	7.534
SCG	32.000	30.625	31.875	30.750	32.250	30.375	31.312	2.400	7.665
SDO	36.750	34.500	39.375	34.375	39.500	36.875	36.729	2.600	7.079
SIG	28.250	27.375	28.375	26.250	29.625	26.500	27.729	1.700	6.131
SO	22.625	21.250	22.250	20.875	22.750	21.500	21.875	2.140	9.783
SRP	22.750	21.625	23.000	22.375	23.750	22.875	22.729	1.800	7.919
TE	24.875	23.125	24.500	23.500	24.625	23.250	23.979	1.420	5.922
TEP	54.500	52.125	53.500	49.750	51.625	48.750	51.708	3.900	7.542
TNP	19.875	19.250	20.000	18.500	19.875	18.875	19.396	1.470	7.579
TXU	29.250	27.500	29.375	28.000	28.875	27.875	28.479	2.880	10.113
UCU	19.875	18.750	19.750	19.000	19.875	19.125	19.409	1.096	5.657
UEP	24.750	23.375	25.000	23.625	24.375	23.625	24.125	2.000	8.290
UIL	24.625	23.250	27.375	23.750	27.500	25.125	25.271	2.320	9.181
UTL	30.000	28.125	30.875	29.125	30.250	28.500	29.646	2.080	7.016
UTP	33.125	29.900	31.875	30.375	32.125	30.625	31.104	2.320	7.459
WEC	27.875	26.125	27.750	26.500	27.750	26.875	27.146	1.540	5.673
WPH	23.750	22.250	23.500	22.250	23.250	22.250	22.875	1.620	7.082
WPS	23.250	21.125	23.375	22.125	22.875	21.625	22.396	1.580	7.055
WWP	27.750	26.750	28.375	26.625	28.125	26.750	27.396	2.480	9.052

N = 99.

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DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 4

[T.D. 89-13]

Interpretation of the Coastwise Laws

AGENCY: U.S. Customs Service, Treasury.

ACTION: Final interpretive rule.

SUMMARY: This document gives notice that a Customs Service Decision (C.S.D.) which held that the movement of a vessel on another vessel from a coastwise point to a point on the high seas where the vessel is removed from the carrying vessel and then towed to another coastwise point is considered coastwise trade, will remain unchanged. The C.S.D., in accord with the coastwise laws which provide that no foreign vessel may transport merchandise between points in the U.S., either directly or via a foreign port, or for any part of the transportation, held that the carrying vessel in this kind of movement must be coastwise qualified, i.e., U.S. owned, built and properly documented. The changing of the C.S.D., as requested in a petition for an interpretive ruling, would have permitted, insofar as the coastwise laws were concerned, the carriage by a foreign-built launch barge or an outer continental shelf platform jacket from a point in the U.S. to a point outside U.S. territorial waters where the jacket would be unloaded from the barge and then towed to an installation site on the U.S. outer continental shelf.

The petitioner, in its submission, had contended that towing is not "transportation" and a vessel is not "merchandise" for the purposes of the coastwise laws. It noted that qualified barges capable of launching a deepwater jacket are nonexistent and it is economically impracticable for anyone to build such a barge in the U.S. because of competitive pressures from foreign marine fabricators. Additionally, the petitioner stated that the previous ruling does not serve to promote the American merchant marine or domestic shipbuilding industry insofar as it prevents the domestic fabrication industry from participating in deepwater projects.

This document, after consideration of the comments submitted in response to a proposed interpretive rule published in the **Federal Register** less on June 29, 1987 (52 FR 24169), affirms Customs existing position.

FOR FURTHER INFORMATION CONTACT: Paul G. Hegland, Carrier Rulings Branch, (202-566-5706).

SUPPLEMENTARY INFORMATION:

Background

By notice published in the **Federal Register** on June 29, 1987 (52 FR 24169), it was announced that Customs was inviting public comments on the issues raised in a petition requesting that Customs reconsider its ruling in C.S.D. 85-9, published in 19 Cust. Bull. 508, January 20, 1985. Customs held in C.S.D. 85-9, that the movement of a vessel on another vessel from a coastwise point to a point on the high seas where the vessel is removed from the carrying vessel and then towed to another coastwise point is considered coastwise trade. The carrying vessel in that kind of movement must be U.S. owned, built,

and properly documented pursuant to 46 U.S.C. App. 883. The notice specified that if the previous ruling were changed, it would permit, insofar as the coastwise laws were concerned, the carriage by a foreign-built launch barge of an outer continental shelf (OCS) platform jacket from a point in the U.S. to a point outside U.S. territorial waters where the jacket would be unloaded from the barge and then towed to an installation site on the U.S. outer continental shelf. It further noted that the petitioner contended that towing is not "transportation" and a vessel is not "merchandise" for the purposes of the coastwise laws. In addition, the petitioner stated that qualified barges capable of launching a deepwater jacket are nonexistent and it is economically impracticable for anyone to build such a barge in the U.S. because of competitive pressures from foreign marine fabricators. The petitioner also stated that the previous Customs ruling did not serve to promote the American merchant marine or domestic shipbuilding industry and that it tended to prevent the domestic fabrication industry from participating in deepwater projects. Petitioner's arguments were fully set out in the notice.

Public Law 100-329

Since publication of the notice, Congress has recognized the lack of coastwise-qualified launch barges capable of launching deepwater jackets in Pub. L. 100-329. Under Pub. L. 100-329, transportation on certain launch barges of large platform jackets between points in the United States at one of which there is an installation or other device within the meaning of the Outer Continental Shelf Lands Act (OCSLA) would not be deemed transportation subject to section 883. A launch barge with a carrying capacity of 12,000 long tons or more which was built or under construction as of the date of enactment of Pub. L. 100-329 and was documented under the laws of the United States could be used to transport a platform jacket which could not be transported on and launched from a barge of lesser capacity.

Part of the motivation for the launch barge provision in Pub. L. 100-329 was C.S.D. 85-9 (January 28, 1988, Hearings of the Subcommittee on Merchant Marine, U.S. Senate Committee on Commerce, Science, and Transportation). However, passage of Pub. L. 100-329 does not make moot the issue considered in this interpretive ruling. The question of the applicability of the coastwise laws to dual-mode movements still exists with regard to the movement of platform jackets between points other than sites on the OCS, as well as to the movement of articles other than platform jackets not exempted from the provisions of section 883 by Pub. L. 100-329.

Analysis of Comments

Seventeen comments were submitted in response to the proposed interpretative rule published on June 29, 1987. An analysis of the comments follows:

Comments Agreeing with Petitioner that C.S.D. 85-9 Should be Modified

All of the commenters agreeing with the petitioner that C.S.D. 85-9 should be modified gave economic or practical, non-legal reasons for doing so. These arguments include the claim that C.S.D. 85-9 promotes the exportation of the jacket fabricating industry and the jobs associated therewith.

Also included in these arguments is the claim that there are no coastwise-qualified launch barges capable of launching the jackets required for deepwater sites. Such arguments contend that there is too much uncertainty in the market to promote construction of coastwise-qualified barges.

Another such contention is that because the use of transportation alternatives not requiring coastwise-qualified barges, such as the fabrication of jackets abroad or the modification of OCS development plans, could increase project costs and risks, development of the OCS may be deferred. This consequence, according to the argument, could damage the domestic fabrication industry, ship building and offshore supply industries as well as overall United States national energy security and the domestic oil industry.

Three of the commenters agreeing with the petitioner that C.S.D. 85-9 should be modified have submitted virtually identical substantial legal arguments on the issue. These commenters claim that the position of Customs before C.S.D. 85-9 was a correct interpretation of the relevant laws and should continue to be the position of Customs. Because a violation of 46 U.S.C. App. 883 calls for a severe penalty, the commenters state that it is well established that section 883 should be construed strictly.

The commenters recount the history and evolution of the applicable statutes, 46 U.S.C. App. 883 (enacted in 1920 as the Jones Act and amended many times since, although its antecedents can be traced back to 1817) and section 316(a) (enacted in 1940 and recently amended by the Act of May 19, 1988 (Pub. L. 99-307, 100 Stat. 447), although its antecedents can be traced back to 1866). The commenters state that the two statutes are somewhat similar, although the prohibition in section 316(a) is directed against the towing vessel and that of section 883 is against the merchandise transported.

The commenters use an Opinion of the Attorney General (30 Op. Att'y Gen. 3 (1919)) to trace the evolution of the language of section 883. The commenters contend that this Opinion of the Attorney General makes it clear that the "transportation" which was prohibited by the predecessor of section 883, when it refers to transportation by water, means transportation by water *in vessels*. The commenters contend that this interpretation is buttressed by a word-by-word and phrase-by-phrase analysis of section 883.

The commenters state that there were no changes in sections 883 and 316(a) between 1940 and the issuance of C.S.D. 85-9 warranting or necessitating the change in Customs position made by C.S.D. 85-9. There were many consistent rulings with regard to dual-mode transportation issued by Customs during this period, according to the commenters. Further, there were no decisions by any courts interpreting the statutes or these rulings, although the commenters describe an order, subsequently vacated, of the United States District Court for the Eastern District of Texas, Beaumont Division (concerning the movement of a floating drydock from Hawaii to Texas which was described in the **Federal Register** Notice) which held that the dual-mode transportation in that case would not violate 46 U.S.C. App. 316(a) or 883.

The commenters note that although Customs concluded in C.S.D. 85-9 that the so-called "mystical transformation" theory underlying the dual-mode exception from applicability of the coastwise laws made no sense, Customs also recognized that the key to determining the applicability of section 883 to such movements was whether the vessel or article was *transported* between coastwise points. The commenters state that the error of C.S.D. 85-9 was the omission of the words "in a vessel" after "transportation" as the key in determining the applicability of section 883. Contending that the key word in the phrase "or for any part of the transportation" in the statute is the word "transportation," the commenters conclude that "transportation" in this phrase includes "merchandise transported *by water between points in the United States in any vessel.*"

The commenters contend that the whole to which "any part" in the above

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phrase refers is "the transportation" which the commenters claim means "transported *by water between points in the United States in a vessel.*" The commenters state that the substitution in the 1920 Act of "transportation" for "voyage" was made because the addition of the phrase "or by land and water" meant that some transportation could be done other than by water in a vessel but that, where only water transportation is involved, transportation has the same meaning as voyage previously had, "transported by water in a vessel." Thus, the commenters contend, for section 883 to apply to an all-water movement, there must be a loading of merchandise in a vessel at one United States coastwise point and a transportation in that or another vessel to another United States coastwise point where the cargo is offloaded from the vessel.

The commenters note that Customs has indicated that sections 883 and 316(a) are to be construed *in pari materia* but that each statute has its own application and operates to the exclusion of the other. The transportation of merchandise *in* a vessel and the towing of a vessel *by* another vessel are two different modes of transportation as, the commenters state, Congress has recognized by enacting separate statutes. Further, these commenters contend, there is no legislative history to indicate that the statutes should not be considered and treated separately (i.e., there is no legislative history indicating that transportation between coastwise points via a non-coastwise point *in* a vessel should be linked to towing *by* a vessel).

In examining Customs rulings to illustrate the applicability and interpretation of sections 316(a) and 883, the commenters cite Customs rulings holding that "for there to be a coastwise transportation subject to (section 883), there must be a lading of merchandise at one coastwise point and a transportation of the merchandise to another coastwise point where it is unladen," or similar words to the same effect. The commenters note that Customs has held that "a towing operation is not such a transportation *in* a vessel as will give rise to a penalty under the first portion of section 883 Title 46" and that "[t]he prohibition in section 883 is applicable to merchandise transported in the coastwise trade *in* a non-coastwise-qualified vessel." There is no such transportation by the tug when towing a vessel, according to the commenter, citing C.S.D. 82-74. Since in the dual-mode movement described by the petitioner there is no loading and unloading of the platform jacket on and from the tug, but only on and from the transporting vessel, the commenters contend that section 883 does not apply to such a movement.

In the dual-mode movement described by the petitioner, the commenters reiterate, merchandise will only be carried between the point in the United States at which the platform jacket will be loaded *in* the carrying vessel to a point outside the territorial waters of the United States where the platform jacket will be unloaded from that vessel. Because a towing operation is not transportation *in* a vessel, the entire transportation *in* a vessel is between a coastwise point and a non-coastwise point.

The commenters offer several scenarios to help trace the evolution and application of section 883 and to illustrate the "absurdity" of C.S.D. 85-9. The commenters state that in a dual-mode movement in which a platform jacket is transported in a coastwise-qualified vessel from a coastwise point to a non-coastwise point and is towed by a non-coastwise-qualified vessel from the latter point to another coastwise point, the towing segment of the movement would be prohibited by 46 U.S.C. App. 883, even though it would not be prohibited by 46 U.S.C. App. 316(a) and the carriage segment of the movement would not be prohibited by 46 U.S.C. App. 883. This, the commenters state, is an absurd result which follows from failing to recognized the presence of the phrase "in any vessel" and its effect on the meaning of the term "transportation."

These commenters on the legal aspects of this issue also contend that Customs failed, in its issuance of C.S.D. 85-9, to follow its established (see 19 CFR Part 177) procedures for issuance of a ruling which has the effect of changing a position of the Customs Service which results in a restriction or prohibition. The commenters cite 19 CFR 177.10(c)(2) which requires publication in the **Federal Register** of notice that such a change in position is under review and that interested parties be given an opportunity to comment on the correctness of the contemplated change.

The commenters state that by the issuance of C.S.D. 85-9, changing its position on the subject of that C.S.D. and treating the position adopted in the C.S.D. as the current Customs position, Customs improperly places the burden of modifying or changing the positon back to the one existing before C.S.D. 85-9 on the petitioner or others who would seek a ruling permitting a movement which would be prohibited under C.S.D. 85-9. The commenters submit that comments on this matter should address the issue of whether the position of Customs before C.S.D. 85-9 was correct or, if not, should be modified, and the position of the petitioner should be approved based on the long-standing interpretations of Customs.

Comments Opposing Modification of C.S.D. 85-9

Several of the commenters opposing modification of C.S.D. 85-9 concede that there may not be coastwise-qualified launch barges capable of launching deepwater platforms on the OCS. Another commenter states that permitting the petitioner's proposed movement would not result in any benefit to United States shipbuilders or owners; the only benefit would be to United States manufacturers of platform jackets and foreign manufacturers of launch barges and tugs.

Most of the commenters opposing the modification of C.S.D. 85-9 took the position that the economic arguments, including the possible absence of coastwise-qualified launch barges capable of launching deep-water platforms, are irrelevant to Customs determination of the applicability of the coastwise laws. These commenters contend that the proper forum for consideration of such factors is the United States Congress. Customs responsibility with regard to the coastwise laws, according to these commenters, is to enforce those laws as written, regardless of the economic effect of such enforcement.

In this regard, several of these commenters point out that there are existing waiver mechanisms, both administrative and legislative, which could allow foreign-built launch barges to be used for the launching of United States origin platforms on the OCS. These commenters refer to the provision for waiver of the coastwise laws in the interest of national defense under the Act of December 27, 1950 (64 Stat. 1120), and special legislation granting particular vessels the right to engage in the coastwise trade. Granting the petitioner's request by means of an interpretative ruling instead of using one of these waiver mechanisms would, according to one of these commenters, set a harmful precedent.

Legally, most of the commenters opposing modification of C.S.D. 85-9 contend that the dual-mode movement which the petitioner proposes should be permitted, is a violation of the coastwise laws and the intent of those laws which is, to protect and develop the American merchant marine. In this regard, one commenter refers to the case of *Port Royal Marine Corp. v. United States*, 378 F. Supp. 345 (S.D. Ga. 1974), *aff'd*, 420 U.S. 901 (1975), as an illustration of its contention that 46 U.S.C. App. 883 should be construed broadly in the face of technological advances so as to continue to fulfill its Congressional purpose.

Several of the commenters opposing modification of C.S.D. 85-9 state that the petitioner's argument that a dual-mode movement is not within the coastwise laws, would result in a loophole in the coastwise laws. One of these commenters states that a dual-mode movement is not different than the transportation in a vessel of cargo from a United States point to a foreign point where the cargo is unloaded and laden onto another vessel and transported to another United States port. Another of these commenters points out that under the dual-mode interpretation advocated by the petitioner, a rig could be towed on a non-coastwise-qualified vessel 99⅞ miles to a platform installation site 100 miles from the United States mainland and launched to be towed on its own bottom the remaining ⅛ mile. A third commenter states that the petitioner's construction of 46 U.S.C. App. 316(a) and 883 requires a narrow reading of those statutes which is inconsistent with Congressional intent.

Several commenters contend that the petitioner's argument is faulty in the assumption that the towage of a platform does not constitute "transportation" of merchandise under 46 U.S.C. App. 883. One of these commenters cites *Cornell Steamboat Co. v. U.S.A.*, 321 U.S. 634 (1944), in which the Supreme Court held that towage was included within the term "transportation," as that term is utilized in the Interstate Commerce Act.

Another of these commenters, citing *Borough of Brielle v. Zeigler*, 179 A. 2d 789 (1962), and *In the Matter of the Application of Newton Creek Towing Company*, 199 N.Y.S. 886 (1923), states that "transportation" is generally defined as the system or modes of conveyance of persons or goods from one place to another and has been interpreted to include movement by towing vessels, i.e., tugs.

One commenter contends that since 46 U.S.C. App. 883 provides that "no merchandise shall be transported by water, or by land and water, * * * or *for any part of the transportation* in any other vessel than a [coastwise qualified vessel]" (emphasis supplied by commenter), the statute contemplates that its provisions will apply where part of the transportation is effected by modes of conveyance other than a carrier vessel without exclusion of conveyance by towing for a portion of the movement.

Citing *American Maritime Association v. Blumenthal, supra*, 32 Op. Att'y Gen. 350 (1920), 34 Op. Att'y Gen. 355 (1924), and *The Bermuda*, 70 U.S. 514, 553 (1865), the commenter states that 46 U.S.C. App. 883 applies where goods are loaded at a coastwise point, unloaded at a foreign point, and reloaded on another vessel for a coastwise destination. The commenter recognizes that in *Blumenthal*, 46 U.S.C. App. 883 was held not to be applicable because there was no continuity of movement of cargo between two United States coastwise points. The commenter states that the inference drawn from *Blumenthal* and set forth in a final rule of Customs in its amendment of 19 CFR 4.80b at 44 FR 42177 (19/9), that where merchandise being transported by vessel between coastwise points does not undergo substantial change at an intermediate non-coastwise point, but is merely transshipped, the shipper's intent should control, supports the interpretation in C.S.D. 85-9.

The commenter states that in the situation described in the proposed interpretive rule, the shipper intends the drilling jacket to move from a United States coastal point to a point on the OCS which is subject to the coastwise law. The commenter states that the intended intermediate stop on the high seas is not a break in the continuity of the voyage that would create two separate non-coastwise voyages. According to the commenter, the lowering of the drilling jacket from the barge to the water for tow is analogous to a transshipment where two modes of transportation are employed to achieve a single coastwise movement subject to 46 U.S.C. App. 883 and, as a result, a violation would occur where a non-coastwise-qualified vessel was used for the carrying portion of the transportation.

Several commenters dispute the petitioner's arguments that the coastwise laws do not apply to dual-mode movements of the kind described in the notice because a drilling jacket should be treated as merchandise when carried on another vessel and as a vessel, not "merchandise," for purposes of 46 U.S.C. App. 883, when being towed. One commenter argues that the launching of the jacket does not "miraculously" convert the jacket from merchandise to a vessel in such a way to avoid application of 46 U.S.C. App. 883, nor is the launching of the jacket from the launch barge enough of an interruption of the transportation to remove the movement from the confines of that statute (citing *American Maritime Association v. Blumenthal, supra*). Another commenter states that it agrees with Customs position, which the commenter states is apparent from C.S.D. 85-9, that the drilling jacket described in the proposed interpretive rule would be "merchandise," for purposes of 46 U.S.C. App. 883, during its entire movement, both while aboard the carrying barge and while under tow. A third commenter contends that this argument is faulty because the drilling jacket is not a "vessel," as that term is utilized in 46 U.S.C. App. 316(a), citing the definitions of "vessel" in 1 U.S.C. 3 and 46 U.S.C. App. 801 and a number of court decisions, as well as other authorities. Because the drilling jacket is not a "vessel," the commenter states, it is not within the scope of 46 U.S.C. App. 316(a).

One commenter disagrees with the petitioner's contention that maintenance of Customs current position under C.S.D. 85-9 would have "mischievous" consequences because of a conflict between 46 U.S.C. App. 883 and the "vessel in distress" provision of 46 U.S.C. App. 316(a). Because the intent of the coastwise laws is not to impede the protection of life and property at sea, the commenter finds it impossible to believe that a tug operator, obligated by United States and international law to come to the aid of a vessel in distress, would be penalized for doing so.

One commenter states that C.S.D. 85-9 was a proper exercise of Customs powers as an administrative agency. The commenter recognizes that Customs, as part of the Department of the Treasury, is an administrative agency charged with, among other things, the interpretation and enforcement of the coastwise laws. Further, the commenter states that Customs, in the exercise of its rulemaking powers, is subject to the principles of administrative law. Citing several court cases in support, including two of the Supreme Court, the commenter states that an administrative agency may abandon precedent in certain situations. If an agency does decide to depart from precedent, the commenter notes, it is required to explain its reasoning in doing so. The commenter contends that Customs adequately explained its decision to modify its prior decisions in C.S.D. 85-9 and that that decision is therefore valid.

Analysis

With regard to the contention that Customs failed to follow its procedures in issuing C.S.D. 85-9 and improperly

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shifted the burden of modifying or changing that position back to the position taken by Customs before C.S.D. 85–9, we recognize that the issuance of C.S.D. 85–9 may not have been in accordance with the Customs procedures set forth in § 177.10(c)(2), Customs Regulations (19 CFR 177.10(c)(2)). We disagree with the argument that C.S.D. 85–9 shifted the burden of modifying or changing Customs position. In our reconsideration of C.S.D. 85–9 and our consideration of the petition, we have carefully considered all evidence submitted to us on the matter as well as any other pertinent evidence or considerations on the proper interpretation of the coastwise laws with regard to the issues considered in C.S.D. 85–9 and raised by the petitioner. We have not presumed that our position before the issuance of C.S.D. 85–9 was correct or incorrect, nor have we presumed that the position taken in C.S.D. 85–9 is correct or incorrect. Whether or not C.S.D. 85–9 was issued in accordance with Customs procedures, we believe that these rulemaking procedures meet the Customs requirements set forth in Part 177.

With regard to the various economic arguments advanced, there is no provision in the coastwise laws under which movements which would otherwise be subject to those laws may be exempt or waived because of the economic effect on the shipbuilding or merchant marine industries, or any other industries. Nor is there any provision for exception or waiver of those laws because United States coastwise-qualified vessels are not or will not be available to perform such movements. Accordingly, considerations such as the lack of coastwise-qualified launch barges and the economic infeasibility of building such barges in the United States, as well as the direct and indirect effect on the United States jacket fabricating and related industries, cannot control our interpretation of the coastwise laws.

As noted by several commenters, there is a statute under which waivers of the coastwise laws can be granted, but only if necessary in the interest of national defense (see the Act of December 27, 1950 (64 Stat. 1120)). At least one such waiver has been granted under this law for the transportation of a large drilling and production jacket from the United States to a site on the OCS. We are aware of special legislative provisions permitting specifically named vessels to be documented for the coastwise trade. Also, a considerable number of general provisos have been added to the coastwise laws under which non-coastwise-qualified vessels may be used to engage in activities which would otherwise be considered coastwise trade. As noted above, Pub. L. 100–329, enacted on June 7, 1988, permits the use of certain non-coastwise-qualified launch barges to transport large platform jackets from U.S. points to OCS sites and launch them at those sites. We believe that the proper mechanisms for consideration of the economic and other factors described in the previous paragraph are legislation by the Congress and/or the waiver provision.

We concur with the contention that 46 U.S.C. App. 883 should be construed strictly because it imposes a severe penalty, that of forfeiture of the merchandise transported or a monetary amount up to the value thereof. We also recognize that under the immediate predecessor to the 1920 Jones Act (46 U.S.C. App. 883) (section 1 of the Act of February 17, 1898 (30 Stat. 248)), the movement described by the petitioner *might* not have been prohibited (because the 1898 Act prohibited the transportation of merchandise by water between ports of the United States, "or for any part of the *voyage*," in any vessel not of the United States), depending on the definition given to the word "voyage" (but see, 29 Op. Att'y Gen. 572, 576 (1912), discussed *infra*).

Section 27 of the Act of June 5, 1920 (46 U.S.C. App. 883; 41 Stat. 999, often called the Jones Act), now provides, in pertinent part, that:

> No merchandise shall be transported by water, or by land and water, on penalty of forfeiture of the merchandise (or a monetary amount up to the value thereof * * *), between points in the United States * * * embraced within the coastwise laws, either directly or via a foreign port, or for any part of the transportation, in any other vessel than a vessel built in and documented under the laws of the United States and owned by persons who are citizens of the United States * * *.

Our interpretation of the parts of this provision which are applicable to a dual-mode movement is that they apply to merchandise transported by water, or land and water, between points in the United States embraced within the coastwise laws in any vessel, or to any part of transportation of merchandise by water, or land and water, between points in the United States embraced within the coastwise laws when that part of the transportation is in any vessel (regardless of whether or not all of the transportation between points in the United States embraced within the coastwise laws is *in* a vessel). To interpret the statute to apply to merchandise transported by vessel between points in the United States embraced within the coastwise laws in any vessel, or to any part of transportation between points in the United States only when *all* of the transportation is *in* a vessel ignores the changes made to the 1898 Act in 1920.

Clearly, transportation by land is not transportation "*in* any vessel." Yet, just as clearly, transportation by land from a point in the United States to a foreign or other non-coastwise point and by water in a non-coastwise-qualified vessel from that point to a second point in the United States would be prohibited by 46 U.S.C. App. 883 as a result of the addition of the words "or by land and water" in the 1920 Act. Thus, it is clear that not all of the transportation referred to in the phrase "or for any part of the transportation" in the statute need be *in* a vessel for the statute to be applicable.

Another change made in the 1898 Act by the 1920 Act was the substitution of the word "transportation" for the word "voyage" in the phrase "or for any part of the voyage." Even if the word "voyage" is defined narrowly, to include only movements *in* a vessel, so that the pre-1920 Act would not apply to the movement described by the petition, it must be conceded that the word "transportation" has a broader coverage than that narrow definition of the word "voyage" (see *Webster's New International Dictionary of the English Language*, 2d Ed. 1953; see also the court cases cited by the commenters opposing modification of C.S.D. 85–9 in which towage is included within the term "Transportation"). Thus, the 1920 Act broadened the "or for any part of the transportation" clause. It is not apparent that, as contended by three of the commenters supporting modification of C.S.D. 85–9, this broadening change was intended only with regard to transportation by land and water and not with regard to transportation by water only, nor is this apparent from the current statutory provision.

With regard to the *United States* v. *1,500 Cords, More or Less, Jackpine Pulpwood*, 108 F.Supp. 224 (W.D. Wis. 1952), *aff'd*, 204 F. 2d 760 (7th Cir. 1953), Customs has taken the position that the *1,500 Cords* decision should be limited to the facts of the case in view of the limitation in the case on the application of 46 U.S.C. App. 883 to transportation in interstate commerce. In any event, however, the *1,900 Cords* case is clearly a court decision indicating that a "transportation" of merchandise, within the terms of 46 U.S.C. App. 883, may occur even though the merchandise transported is not actually "in" the vessel (as noted *supra*, the Attorney General, in 29 Op. Att'y Gen. 572, so stated with regard to the predecessor of 46 U.S.C. App. 883).

In our view, the "whole" to which the phrase, "or for any part of the transportation" refers is simply defined by the words preceding it (i.e., "no merchandise shall be transported by water, or by land and water * * * between points in the United States * * * embraced within the coastwise laws, either directly or via a foreign port"). Thus, what is prohibited by virtue of this clause of the statute is any part of the transportation described previously by the statute, including any part of transportation by water between points in the United States embraced within the coastwise laws when, in the words of the statute following this clause, that part of the transportation is "in any vessel other than a [coastwise-qualified] vessel."

This interpretation does not, as stated by three of the commenters contending that C.S.D. 85–9 should be modified, bring about the "absurd" result that a towing vessel would be subject to 46 U.S.C. App. 883 whenever it engages in a dual-mode movement, even if the carrying part of the movement was performed by a coastwise-qualified vessel and/or the towed vessel was in distress. What is prohibited by virtue of the "or for any part of the transportation" clause is a part of transportation by water or by land and water, when the part of the transportation is "*in* any vessel other than a [coastwise-qualified] vessel." In a dual-mode movement, in the segment of the movement in which the merchandise is towed in the water, the merchandise obviously is not transported *in* a vessel although, as discussed above, that segment of the movement does constitute "transportation."

The intention of 46 U.S.C. App. 883 is "to protect the American shipping industry already engaged in the coastwise trade, to provide work for American shipyards, and to improve and enhance the American Merchant Marine" (*Marine Carriers Corp. v. Fowler*, 429 F. 2d 702, 708 (2d Cir. 1970), *cert. den.*, 400 U.S. 1020 (1971)). Our interpretation of the coastwise laws with regard to the dual-mode movement under consideration, as described above and as applied in C.S.D. 85–9, is consistent with this intention.

Several of the commenters supporting modification of C.S.D. 85–9 limit their arguments to the practical, economic side and state that they concur with the legal and technical rationale offered by the petitioner. This rationale was summarized in the Notice. The only argument in the petition which is not addressed above is that in order for there to be a coastwise transportation within the terms of 46 U.S.C. App. 883, there must be a lading of merchandise onto a vessel at one coastwise point and an unlading of the merchandise from the vessel at another coastwise point. Since, in the dual-mode movement described in the Notice, the jacket is unladen from the carrying vessel at a non-coastwise point, the petitioner contends that there can be no coastwise transportation within the terms of 46 U.S.C. App. 883.

As pointed out above in the discussion of the "or for any part of the transportation" clause of 46 U.S.C. App. 883, § 883 applies to the transportation of merchandise by water, "or by land and water." In transportation by land and by water (e.g., by vessel from a point in the United States to a point in Canada and by land from that point to another point in the United States), there would not be a lading of the merchandise onto the vessel at one coastwise point and an unlading of the merchandise from the vessel at another coastwise point. Thus, it is clear that a lading of merchandise onto a vessel at one coastwise point and an unlading of the merchandise from the vessel at another coastwise point is not always necessary in order for transportation of merchandise to be subject to 46 U.S.C. App. 883.

Several of the commenters opposing modification of C.S.D. 85–9 analogize the dual-mode movement described in the proposed interpretive rule to transportation of merchandise in one vessel from a United States point to a foreign port or to a point on the high seas where the merchandise is landed and then loaded onto another vessel, or transshipped to another vessel, and from which port or point the merchandise is transported in the second vessel to a second United States point. Although this transportation may be somewhat similar to the dual-mode movement described in the proposed interpretive rule, such transportation via a foreign port is actually subject to 46 U.S.C. App. 883 by virtue of a different clause of that statute ("either directly or via a foreign port"). Such transportation involving a transshipment on the high seas concerns statutory interpretive issues which are different from those raised by the dual-mode movement described in the proposed interpretive rule.

Some of the commenters opposing modification of C.S.D. 85–9 contend that permitting the dual-mode movement described in the proposed interpretive rule would create a loophole in the coastwise laws which was not intended by the Congress, one comparing the percentage of carriage and towing in such a movement. This may or may not be so. Our determination as to the applicability of the coastwise laws to the dual-mode movement described in the proposed interpretive rule must, however, be based on a clear reading and thorough consideration of the laws involved, not a mechanical weighing of the respective proportions of the carrying and towing segments in a dual-mode movement or an evaluation of whether a movement is intended to evade the coastwise laws. We believe that our interpretation reflects just such a reading and consideration of the coastwise laws.

Action

After careful analysis of the comments and following further review of the matter, we find that the ruling in C.S.D. 85–9 should stand. That ruling modified C.S.D. 80–96 and similar rulings so that the movement of a vessel on another vessel from a coastwise point to a foreign point or a point on the high seas where the vessel is removed from the carrying vessel and then towed onward to another coastwise point is considered coastwise trade. Accordingly, the carrying vessel in this kind of movement must be coastwise-qualified.

Authority

This document is issued under the authority of 19 U.S.C. 66, 1624; 46 U.S.C. App. 13, 316(a), 319, 802, 808, 883, 883–1, and 46 U.S.C. 12106.

Drafting Information

The principal author of this document was Arnold L. Sarasky, Regulations and Disclosure Law Branch, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

Michael H. Lane,

Acting Commissioner of Customs.

Approved: December 5, 1988.

John P. Simpson,

Acting Assistant Secretary of the Treasury.

[FR Doc. 89–1451 Filed 1–23–89; 8:45 am]

BILLING CODE 4820–02–M

19 CFR Part 152

Dutiability of Quota Charges; Solicitation of Comments

AGENCY: U.S. Customs Service, Treasury.

ACTION: Extension of comment period.

SUMMARY: This notice extends the period of time within which interested members of the public may submit

comments concerning the dutiability of quota charges. Customs proposed, in a notice published in the Federal Register (53 FR 40628) on November 18, 1988, that all quota charges paid as a prerequisite to the exportation of foreign merchandise to the United States will be dutiable, regardless of to whom they are paid. Comments were invited from the public on this proposal. Comments were to be received on or before January 17, 1989. A request has been received to extend the period of time for comments an additional 30 days. In view of the complexity of the issues involved, the request is being granted.

DATE: Comments will now be accepted if received on or before February 17, 1989.

ADDRESS: Comments should be submitted to and may be inspected at the Regulations and Disclosure Law Branch, Room 2119, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, DC 20229.

All comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), between 9:00 a.m. and 4:30 p.m. on normal business days, at the address above.

FOR FURTHER INFORMATION CONTACT: Thomas L. Lobred, Commercial Rulings Division, (202-566-2938).

Dated: January 18, 1989.

R. Rossettie,

Acting Assistant Commissioner, Commercial Operations.

[FR Doc. 89-1447 Filed 1-23-89; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs Not Subject to Certification; Enrofloxacin Tablets

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Mobay Corp., Animal Health Division. The NADA provides for use of Baytril® (enrofloxacin) Tablets for the treatment of susceptible bacterial infections in dogs.

EFFECTIVE DATE: January 24, 1989.

FOR FURTHER INFORMATION CONTACT: Sandra K. Woods, Center for Veterinary Medicine (HFV-114), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3420.

SUPPLEMENTARY INFORMATION: Mobay Corp., Animal Health Division, P.O. Box 390, Shawnee Mission, KS 66201, filed NADA 140-441 providing for use of Baytril® (enrofloxacin) Tablets. The product is used to treat bacterial dermal, respiratory, and urinary tract infections of dogs. The NADA is approved and the regulations are amended by adding new 21 CFR 520.812 to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an abbreviated environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR Part 520 continues to read as follows:

Authority: Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)); 21 CFR 5.10 and 5.83.

2. Part 520 is amended by adding a new § 520.812 to read as follows:

§ 520.812 Enrofloxacin tablets.

(a) *Specifications.* Each tablet contains either 5.7, 22.7, or 68.0 milligrams of enrofloxacin.

(b) *Sponsor.* See No. 000859 in § 510.600(c) of this chapter.

(c) *Conditions of use*—(1) *Amount.* 2.5 mg/kg (1.13 mg/lb) of body weight twice daily.

(2) *Indications for use.* Dogs for treatment of the following bacterial infections: dermal infections (wounds and abscesses) caused by susceptible strains of *Escherichia coli, Klebsiella pneumoniae, Proteus mirabilis,* and *Staphylococcus aureus;* respiratory infections (pneumonia, tonsilitis, rhinitis) caused by susceptible strains of *Escherichia coli* and *Staphylococcus aureus;* and urinary cystitis caused by susceptible strains of *Escherichia coli, Proteus mirabilis,* and *Staphylococcus aureus.*

(3) *Limitations.* Treatment should be continued for 2 to 3 days beyond cessation of clinical symptoms. Do not use for more than 10 days. Safe use in breeding female dogs has not been established. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Dated: January 12, 1989.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 89-1444 Filed 1-23-89; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 207 and 255

[Docket No. R-88-1853; FR-2511]

Revisions Relating to the Full Insurance and Coinsurance of Existing Cooperatives

AGENCY: Office of Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This rule revises certain overly restrictive provisions contained in HUD regulations authorizing FHA full insurance or coinsurance of existing cooperative housing projects. The provisions relate to cooperative mortgagor eligibility, secondary financing limitations and the maximum refinancing mortgage allowable. The purpose of the rule is to remove unnecessarily restrictive program participation requirements.

EFFECTIVE DATE: March 8, 1989.

FOR FURTHER INFORMATION CONTACT: James Hamernick, Office of Multifamily Housing Development, Room 6132, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 755-6500. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION:

On June 24, 1985 at 50 FR 25940, HUD revised its regulations concerning FHA insurance of mortgages covering existing multifamily housing projects (24 CFR 207.32a) to expressly include cooperative housing projects. In doing so, language was included which, while perhaps workable in connection with mortgages covering newly constructed or substantially rehabilitated cooperative projects, has been shown to be inappropriate for the insurance of existing projects. Without the clarifying revisions contained in this rule, a significant number (perhaps a majority) of existing projects which would normally be expected to utilize this type of FHA insurance to refinance their cooperative mortgage debt might not be able to do so. The revisions proposed herein are more technical than substantive in nature and are intended to remedy this situation. They reflect no new policies of the Department but rather, are designed to carry out existing policy more effectively.

The intent of the 1985 revision was to improve the availability of section 223(f) mortgage insurance and coinsurance for refinancing existing cooperative projects and for financing the purchase of an existing rental project involving conversion to cooperative ownership. In doing so, reference was made to a "cooperative mortgagor", which was described as a nonprofit cooperative ownership housing corporation or nonprofit cooperative ownership housing trust, *where permanent occupancy of the dwellings is restricted to members of such corporations or to beneficiaries of such trusts.* This description was inadvertently carried over from definitions used in HUD's other programs for cooperative projects (*e.g.*, 24 CFR Parts 213, 221 and 236). The restrictive nature of the italicized language tracks statutory language found in section 213 of the National Housing Act. Insurance of mortgages covering existing multifamily projects are insured under section 207 of the Act, which contains no such restrictive language, rather than section 213. During the development of handbook instructions for insurance and coinsurance of existing cooperatives, HUD found that this language could be interpreted in such a way as to render many existing cooperative projects ineligible because they contain some units held by non-occupant owners. To make clear that such projects are eligible, this rule revises § 207.32a(m) of the current regulation.

Another potential problem that came to light during development of handbook instructions concerns certain limitations on secondary financing under the existing regulations. The transfer of an individual cooperative unit often involves financing (share loans) outside of the project mortgage financing undertaken by the cooperative (corporation) mortgagor. In many states, these individual unit or share loans are considered personal property loans, as opposed to real property financing, and as such would not present a problem in terms of the limitations on secondary financing under Parts 207 or 255 of HUD's regulations. However, in some states (*e.g.*, California and Florida), these loans made to individual cooperative members may be treated as debt against the property (project) and, therefore, the existence of such loans could be in violation of the current program regulations. This rule amends Parts 207 (§ 207.32a(j)(6)) and 255 (§ 255.504(g)) to exclude "share" or "membership" loans by individual cooperative members from limitations on secondary financing applicable to the project as a whole.

Finally, the rule adds a provision to § 207.32a(d) requiring that the maximum mortgage on a cooperative project be based solely on the cost to finance the existing indebtedness. (This provision was inadvertently omitted in the 1985 revision but appears, correctly, in the current coinsurance regulation at § 255.203(d)(2).)

Procedural Requirements

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation issued by the President on February 17, 1981. Analysis of the proposed rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during regular business hours at the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410.

The catalog of Federal Domestic Assistance program numbers are 14.135 and 14.137.

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule would not have a significant economic impact on a substantial number of small entities. The rule makes it feasible for a limited number of cooperatives to obtain the benefits of FHA mortgage insurance not otherwise available to them.

This rule was listed as item # 985 in the Department's Semiannual Agenda of Regulations published on October 24, 1988 (53 FR 41974, 41995) pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

List of Subjects

24 CFR Part 207

Mobile homes, Mortgage insurance, Solar energy.

24 CFR Part 255

Mortgage insurance, Coinsurance of multifamily mortgages.

Accordingly, 24 CFR Parts 207 and 255 are amended as follows:

PART 207—MULTIFAMILY HOUSING MORTGAGE INSURANCE

1. The authority citation for Part 207 continues to read as follows:

Authority: Secs. 207, 211, National Housing Act (12 U.S.C. 1713, 1715b); section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Sections 207.258 and 207.258b are also issued under section 203(e), Housing and Community Development Amendments of 1978 (12 U.S.C. 1701z-11(e)).

2. Section 207.32a is amended by revising paragraph (j)(1) introductory text, by adding a new paragraph (j)(6) and by revising paragraphs (d) and (m) to read as follows:

§ 207.32a Eligibility of mortgages on existing projects.

* * * * *

(d) *Maximum mortgage amounts-property to be refinanced.* If property is to be refinanced by the insured mortgage without a change of ownership, or if property is sold to a purchaser who has an identity of

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interest with the seller and the purchase is to be financed with the insured mortgage, then the maximum mortgage amount shall not exceed:

(1) In the case of a rental project, the greater of—

(i) 70 percent of the Commissioner's estimate of value of the property; or

(ii) The cost to refinance the existing indebtedness, which will consist of the following items, the eligibility and amounts of which must be determined by the Commissioner:

(A) The amount required to pay off the existing indebtedness;

(B) The amount of the initial deposit for the reserve fund for replacements;

(C) Reasonable and customary legal, organizational, title, and recording expenses, and fees including discounts charged by the mortgagee;

(D) The estimated repair costs, if any;

(E) Architect's and engineer's fees, municipal inspection fees, and any other required professional or inspection fees.

(2) In the case of a cooperative project, the cost to refinance the existing indebtedness as defined in paragraph (d)(1)(ii) of this section.

* * * * *

(j) *Secondary financing.* (1) Except as provided in paragraphs (j)(5) and (j)(6) of this section, when a loan is made to finance the purchase of an existing multifamily housing project, the mortgagor may not have any additional obligations in connection with the transaction that exceed the lesser of:

* * * * *

(6) The limitations on secondary financing described in this paragraph (j) do not apply to loans taken by individual cooperative members to finance "share" or "membership" purchases or unit transfers.

* * * * *

(m) *Additional eligibility requirements for cooperative projects.* For those projects in which the mortgagor is a nonprofit cooperative ownership housing corporation, the mortgagor must require membership eligibility and transfer of membership in the cooperative in a manner approved by the Commissioner:

(1) The mortgagor must be regulated or supervised under State laws or by a political subdivision of a State, or agencies thereof;

(2) A General Operating Reserve must be established and maintained, in accordance with standards established by the Commissioner, throughout the period that the mortgage insurance is in force; and

(3) In the case of the conversion of a property to cooperative ownership, the mortgage will be accepted for insurance only where the Commissioner determines that:

(i) The conversion of the property to cooperative ownership is sponsored by a bona fide tenants' organization representing a majority of the households in the project;

(ii) Continuation of the property as rental housing is unnecessary to assure adequate rental housing opportunities for low and moderate income people in the community; or

(iii) Continuation of the property as rental housing would have an undesireable and deleterious effect on the surrounding neighborhood.

PART 255—COINSURANCE FOR THE PURCHASE OR REFINANCING OF EXISTING MULTIFAMILY HOUSING PROJECTS

3. The authority citation for Part 255 continues to read as follows:

Authority: Secs. 211, 244, National Housing Act (12 U.S.C. 1715b, 1715z-9), sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

4. Paragraph (b) of § 255.3 is revised to read as follows:

§ 255.3 Definitions.

* * * * *

(b) "Cooperative Mortgagor" means a nonprofit cooperative ownership housing corporation regulated under State law and by the lender under a regulatory agreement, and which requires membership eligibility and transfer of membership in a manner approved by the Commissioner.

* * * * *

5. Section 255.504 is amended by adding at the end thereof the following new paragraph (g) to read as follows:

§ 255.504 Mortgage lien and other obligations.

* * * * *

(g) The limitation on secondary financing described in this section does not apply to loans taken by individual cooperative members to finance "share" or "membership" purchases or unit transfers.

Date: January 17, 1989.

James E. Schoenberger,

General Deputy Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 89-1511 Filed 1-23-89; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 515

Supplemental List of Specially Designated Nationals (Cuba)

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice of additions to the list of specially designated nationals.

SUMMARY: This notice provides the names of firms that have been added to the list of Specially Designated Nationals under the Treasury Department's Cuban Assets Control Regulations (31 CFR Part 515).

ADDRESS: Copies of the list of Specially Designated Nationals are available upon request at the following location: Office of Foreign Assets Control, 1331 G Street NW., Room 300, Washington, DC 20220.

FOR FURTHER INFORMATION CONTACT: Richard J. Hollas, Chief, Enforcement Division, Office of Foreign Assets Control, Tel: (202) 376-0400.

SUPPLEMENTARY INFORMATION: Under the Cuban Assets Control Regulations, persons subject to the jurisdiction of the United States are prohibited from engaging, directly or indirectly, in transactions with any nationals or specially designated nationals of Cuba, or involving any property in which there exists an interest of any national or specially designated national of Cuba, except as authorized by the Treasury Department's Office of Foreign Assets Control by means of a general or specific license.

Section 515.302 of Part 515 defines the term "national," in part, as (a) a subject or citizen domiciled in a particular country, or (b) any partnership, association, corporation, or other organization owned or controlled by nationals of that country, or that is organized under the laws of, or that has had its principal place of business in that foreign country since the effective date (for Cuba, 12:01 a.m., e.s.t., July 8, 1963), or (c) any person that has directly or indirectly acted for the benefit or on behalf of any designated foreign country. Section 515.305 defines the term "designated national" as Cuba or any national thereof, including any person who is a specially designated national. Section 515.306 defines "specially designated national" as any person who has been designated as such by the Secretary of the Treasury; any person who, on or since the effective date, has either acted for or on behalf of the government of, or authorities exercising

control over any designated foreign country; or any partnership, association, corporation or other organization that, on or since the applicable effective date, has been owned or controlled directly or indirectly by such government or authorities, or by any specially designated national. Section 515.201 prohibits any transaction, except as authorized by the Secretary of the Treasury, involving property in which there exists an interest of any national or specially designated national of Cuba. The list of Specially Designated Cuban Nationals is a partial one, since the Department of the Treasury may not be aware of all the persons located outside Cuba that might be acting as agents or front organizations for Cuba, thus qualifying as specially designated nationals of Cuba. Also, names may have been omitted because it seemed unlikely that those persons would engage in transactions with persons subject to the jurisdiction of the United States. Therefore, persons engaging in transactions with foreign nationals may not rely on the fact that any particular foreign national is not on the list as evidence that it is not a specially designated national. The Treasury Department regards it as incumbent upon all U.S. persons engaging in transactions with foreign nationals to take reasonable steps to ascertain for themselves whether such foreign nationals are specially designated nationals of Cuba, or other designated countries (at present, Cambodia, North Korea, and Vietnam). The list of Specially Designated Nationals was last published on December 10, 1986, in the **Federal Register** (51 FR 44459), and was amended on November 3, 1988 (53 FR 44397).

Please take notice that section 16 of the Trading with the Enemy Act (the "Act"), as amended, provides in part that whoever willfully violates any provision of the Act or any license, rule or regulation issued thereunder:

Shall, upon conviction, be fined not more than $50,000, or, if a natural person, imprisoned for not more than ten years, or both; and the officer, director, or agent of any corporation who knowingly participates in such violation shall be punished by a like fine, imprisonment, or both, and any property, funds, securities, papers, or other articles or documents, or any vessel, together with her tackle, apparel, furniture, and equipment, concerned in such violation shall be forfeited to the United States.

In addition, persons convicted of an offense under the Act may be fined a greater amount than set forth in the Act, as provided in 18 U.S.C. 3623.

Authority: 50 U.S.C. App. 5(b) and 18 U.S.C. 3623.

Specially Designated Nationals of Cuba

Acefrosty Shipping Co., Ltd., 171 Old Bakery St., Valletta, Malta
Ace Indic Navigation Co., Ltd., Malta
Aimoros Shipping Co., Valletta, Malta
Caribbean Princess Shipping, Ltd., Limassol, Cyprus
Caribbean Queen Shipping, Ltd., Limassol, Cyprus
Edyju, S.A., Panama
Elshippers, Inc., Monrovia, Liberia
Global Marine Overseas Inc., Panama
Guamar Shipping Co., S.A., Panama
Lopez, Quirino Gutierrez, c/o Anglo Caribbean Shipping Co., Ltd., 7th Floor, Ibex House, Minories, London, EC3N, UK
Manzper Corp., Panama
Naviera Maritima de Arosa, S.A., Paseo de Pereda 36, Apartado 141, 39004, Santander, Spain
Pioneer Shipping Ltd., Valletta, Malta
Pocho Navigation Co., Ltd., Limassol, Cyprus
Shipley Shipping Corp., Panama
Temis Shipping Co., Panama
United Fair Agencies, Ltd., 1202 Carrian Center, 151 Gloucester Rd., Wanchai, Hong Kong
Violet Navigation Co., Ltd., Limassol, Cyprus

Property in which Designated Nationals of Cuba Have an Interest

For purposes of the prohibitions in 31 CFR Part 515, there is reasonable cause to believe that the following vessels constitute property in which a designated national of Cuba has an interest:

ACECHILLY (Acechilly Navigation Co., Malta)
ACEFROSTY (Acefrosty Shipping Co., Malta)
ALEGRIA DE PIO (Naviera Maritima de Arosa, Spain)
CARIBBEAN PRINCESS (Caribbean Princess Shipping, Cyprus)
CARIBBEAN QUEEN (Caribbean Queen Shipping, Cyprus)
CICLON (Senanque Shipping Co., Cyprus)
COTTY (Heywood Navigation Corp., Panama)
CRIOLLO (Senanque Shipping Co., Cyprus)
FLYING DRAGON (Flight Dragon Shipping Ltd., Malta)
FRIGO HISPANIA (Ace Indic Navigation Co., Malta)
GRACE L. (Elshippers, Inc., Liberia)
HERMANN (Guamar Shipping Co., S.A., Panama)
HURACAN (Senanque Shipping Co., Cyprus)
LAS COLORADOS (Naviera Maritima de Arosa, Spain)
LAURA (Aimoros Shipping Co., Malta)
MAR AZUL (Senanque Shipping Co., Cyprus)
PALMA MOCHA (Naviera Maritima de Arosa, Spain)
PINO DEL AGUA (Naviera Maritima de Arosa, Spain)
RAHIM 3 (Pioneer Shipping Ltd., Malta)
ROSE ISLANDS (Shipley Shipping Corp., Panama)
TIFON (Senanque Shipping Co., Cyprus)
TULIP ISLANDS (Pocho Navigation Co., Cyprus)
VIOLET ISLANDS (Violet Navigation Co., Cyprus)

Date: January 5, 1989.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: January 11, 1989.

Salvatore R. Martoche,

Assistant Secretary (Enforcement).

[FR Doc. 89-1558 Filed 1-19-89; 11:05 am]

BILLING CODE 4810-25-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD13 88-19]

Drawbridge Operation Regulations; Isthmus Slough, OR

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the Oregon Department of Transportation (ODOT), the Coast Guard is changing the regulations governing the bascule bridge across Isthmus Slough, mile 1.0, at Coos Bay, Oregon, by requiring that 24 hours advance notice be given for bridge openings. This change is being made because of a steady decrease in requests for opening the draw. This action will allow ODOT to change the locking mechanism from electrical to manual, resulting in a more economical, but slower operation of the draw while still providing for the reasonable needs of navigation.

EFFECTIVE DATE: This regulation becomes effective on February 23, 1989.

FOR FURTHER INFORMATION CONTACT: John E. Mikesell, Chief, Bridge Section, Aids to Navigation and Waterways Management Branch, (Telephone: (206) 442-5864).

SUPPLEMENTARY INFORMATION: On November 1, 1988, the Coast Guard published a proposed rule (53 FR 44038) concerning this amendment. The Commander, Thirteenth Coast Guard District, also published the proposal in a public notice dated November 10, 1988.

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In each notice interested persons were given until December 16, 1988, to submit comments.

Drafting Information

The drafters of this notice are: Austin Pratt, project officer, and Lieutenant Deborah R. Schram, project attorney.

Discussion of Comments

No objections to the proposed rule were received in response to either notice. The U.S. Fish and Wildlife Service, the sole respondent, expressed no objection to the rule change.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and non-significant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal has been found to be so minimal that a full regulatory evaluation is unnecessary. Navigation and marine related interests will not be significantly affected by this final rule because the subject bridge is opened infrequently for vessels. The reasonable needs of these interests will still be met by the changed regulations. Since the economic impact of these regulations is expected to be minimal, the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. Section 117.879 is revised to read as follows:

§ 117.879 Isthmus Slough.

The draw of the Oregon State secondary highway bridge, mile 1.0, at Coos Bay, shall open on signal if at least 24 hours notice is given.

Dated: January 11, 1989.

D.C. O'Donovan, Capt., USCG,

Acting Commander, 13th Coast Guard District.

[FR Doc. 89–1539 Filed 1–23–89; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Family Support Administration

45 CFR Part 233

Essential Persons; Eligibility Coverage and Conditions

AGENCY: Family Support Administration, HHS.

ACTION: Final rule.

SUMMARY: This regulation precludes States from considering individuals who do not provide an essential benefit or service to a family from being considered to be essential persons under the Aid to Families with Dependent Children (AFDC) program. Current regulations do not limit the individuals whom States may include as "essential persons" in payments under the AFDC program. This clarification would ensure that only those individuals who are actually providing an essential benefit or service to the family could receive AFDC payments, if not otherwise eligible.

EFFECTIVE DATE: January 24, 1989.

FOR FURTHER INFORMATION CONTACT: Ms. Diann Dawson, Director, Division of Policy, OFA, Family Support Administration, 5th Floor, 370 L'Enfant Promenade SW., Washington, DC 20447, telephone 202–252–5116.

SUPPLEMENTARY INFORMATION:

Timing and Form of Regulation

On October 5, 1987, a Notice of Proposed Rulemaking for the Aid to Families and Dependent Children program was published in the **Federal Register** (52 FR 37183–37185). It stated that in order to be considered an essential person the individual must provide an essential benefit or service.

Background

The Social Security Act at sections 402 and 406 and the implementing regulation at § 233.20(a)(2)(vi) permit States, at their option, to include in the AFDC grant benefits for "essential persons." Such individuals are not eligible for AFDC in their own right, but their needs are taken into account in determining the benefits payable to the AFDC family because they are considered "essential to the well-being" of an AFDC recipient in the family.

Twenty-four States currently include the option as part of their respective State Plans. A wide variety of individuals are included as essential persons. The definition and categories of essential persons vary from State to State, including the following:

—Unemployed or incapacitated stepparents living in the home with eligible children and the natural parent;
—Individuals age 18–21 who are not attending school;
—A relative necessary to provide child care or other services because the caretaker is incapacitated or employed;
—A second natural or adoptive parent living in the home;
—The needy spouse of the caretaker relative;
—Stepparents who work fewer than 100 hours per month;
—An unmarried individual who has a child in common with the caretaker relative.

Since 1943, Federal policy has recognized the concept of the essential person in the AFDC program. Such benefit or service may be provided directly to a recipient, or provided to someone else in the home so long as the well-being of the recipient is thereby promoted.

The Social Security Amendments of 1967 (Pub. L. 90–248) amended sections 402 and 406 of the Act to provide a specific statutory base for an essential person policy. The implementing regulations permit States to specify those individuals considered essential. States are also required to provide recipients with the final decision as to whether individuals are in fact essential. Accordingly, in implementing this provision, the Department has allowed States to simply identify the categories of individuals considered to be essential in their State plans without requiring them to identify the benefits or services that such individuals specifically have to provide in order to be considered essential.

In light of recent Congressional amendments to title IV–A of the Act, and subsequent changes which States have made in their State plans, we have re-evaluated the current regulation. For example: In 1981, Congress amended section 406(a)(2) of the Act to exclude students age 19 to 21 from the definition of a dependent child. Some States then included such children categorically as essential persons, without regard to such individual's provision of an essential benefit or service. This is an indication that some States are using the essential person provision to circumvent and/or avoid Congressional intent.

Three States, in particular, seem to be using the essential person provision to extend benefits to 19 and 20 year-olds. These States account for an estimated 55 percent of all AFDC essential persons nationwide, but 72 percent of all AFDC

essential persons aged 19 and 20 live in these three States.

From another perspective, in these same three States, we estimate that 45 percent of the 19 and 20 year-olds living in AFDC households who are not otherwise receiving AFDC benefits as eligible adults, are included as essential persons. This is in contrast to five other States that explicitly require the provision of essential services, where only an estimated 3 percent of 19 and 20 year-olds in AFDC households are included as essential persons.

Data from the years 1981 and 1982 very strongly suggest that States did in fact shift older children made ineligible by the Omnibus Budget Reconciliation Act of 1981 (OBRA) onto the AFDC rolls as essential persons. In 1981, our data showed 4,500 cases with individuals over the age limit (for a dependent child) who were not classified as adult recipients. In 1982, this figure was 23,000 cases—a fivefold increase. Further evidence that 18 to 21-year-old recipients previously considered dependent children were apparently converted to essential person status in order to obtain additional Federal funds comes from examining data from two large States. There, the 1982 figure for the total number of individuals over 18 who were not adult recipients was very similar to the 1981 number of 18 to 21-year-old dependent children. These two States accounted for about 18,000 of the 23,000 cases nationwide. Today they continue to carry a large number of 18 to 21 year-olds as essential persons.

These same two States are using the essential person provision to directly shift the financial burden of State assistance programs to the Federal government. For example, one State specifies that a minor child ineligible for AFDC in his own right, but who is eligible for General Assistance, may be considered to be essential. The other State includes eligibility for public assistance other than AFDC as a factor in determining essential person status. These two States account for approximately 45% of the total expenditures for essential persons.

In addition to the problems which we identified regarding the categorical inclusion of broad groups of individuals, the Office of Inspector General, in a recent review, discovered other individual situations where persons who were in no position to provide essential benefits or services to an AFDC family were classified as essential. These individuals included a two-year-old and a drug addict. In another case, seven individuals were classified as essential persons for a single AFDC household.

Discussion of Regulation

Based on these experiences, it is clear that the needs of non-essential persons are being covered under the AFDC program as essential persons. Therefore, we are amending the regulation to emphasize that in order to be considered an essential person, an individual must provide an essential benefit or service. In the proposed rule, essential benefits and services were limited to two specific services. We have now expanded the list as a result of public comment to include three other services in addition to the two which were previously listed in the **Federal Register** on October 5, 1987, at 52 FR 37184. The complete list of benefits or services which are considered essential are as follows:

(1) The provision of child care which enables a caretaker relative to work on a full-time paid basis outside the home;

(2) Care for an incapacitated family member in the home;

(3) The provision of child care that enables a caretaker relative to receive training full-time;

(4) The provision of child care that enables a caretaker relative to attend high school (or General Education Development (GED) classes) full-time; and

(5) The provision of child care for a period not to exceed two months that enables a caretaker relative to participate in Employment Search or another AFDC work program.

For purposes of (1), (3), and (4) above, the State is free to define "full-time." However, the definition, applicable both to minor and adult caretaker relatives, must be consistent with the definition of full-time that the State uses for purposes of the earned income disregards at 45 CFR 233.20(a)(11).

With regard to (2) above, we note that the requirements for determining incapacity are similar to those set out at § 233.90(c)(1)(iv) for a State to find that a parent is incapacitated for AFDC purposes. Thus, we expect that States would have little difficulty in making incapacity determinations.

Moreover, to assure the likelihood of success of these policies, we are also modifying the regulation to require that a member of the State agency supervisory staff affirm the recipient's choice of essential person and agree, based on the evidence, that the designated individual does in fact meet the definitional requirements of an essential person. For purposes of this determination, a member of the State agency supervisory staff is a person of a higher position or authority than the first line caseworker or income maintenance intake employee. Since the AFDC and Adult Assistance programs are administered in a similar manner, we have added that change to the Adult Assistance regulation at § 233.20(a)(2)(vi) as well.

While we are not proposing any additional reporting or recordkeeping requirements, we would expect States, pursuant to 45 CFR 205.60(a) and 206.10(a)(9)(iii), to continue to make periodic determinations that individuals included as essential persons meet the definitional requirements for an essential person, and maintain appropriate written documentation in the AFDC case record of the essential person determination. Appropriate documents might include items such as the recipient's request that the individual be included as an essential person, the basis under which the individual was determined to be an essential person, and information necessary to support the determination (such as information on the nature, regularity, and length of service and on the capacity of the individual to provide such an essential benefit or service). In a case where more than one individual was to be classified as an essential person, such as in a case of severe incapacity, the documentation would have to include justification of the need for more than one essential person.

In the proposed rule, we solicited comments as to whether a specific regulatory change to further clarify this policy would be of value. We did not receive any comments on this issue. As a consequence, no regulatory changes have been made to further describe this documentation requirement.

Finally, States would still be free to limit essential person status to categories of individuals, such as grandparents or the needy spouse of a caretaker, but only if such individuals are actually providing an essential benefit or service. Likewise, States may specify a minimum age for classification of an individual as an essential person.

Discussion of Comments

Comments were received from 18 interested parties regarding the proposed rule on the essential person provision. The commenters include 12 State welfare agencies, 3 County and City welfare agencies, and 3 welfare rights and legal groups. These comments are discussed below:

Comment: In the proposed rule, the essential benefits or services are limited to (1) the provision of child care which enables a caretaker relative to work on a full-time paid basis outside the home, and (2) care for an incapacitated family

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member in the home. Several commenters made suggestions for expanding the list of services. Most of their suggestions focused on the inclusion of child care so that a caretaker could participate in a work program or attend school.

Response: Having considered the many services that were recommended for inclusion, we have determined that the list of essential services should be expanded. (See "Discussion of Regulation" above.) In reviewing the suggestions for additional services, we considered an important goal of the AFDC program; i.e., to promote recipient self-sufficiency by encouraging family members to seek employment. As a consequence, we are adding three additional services to the two that were listed in the proposed rule which will assist AFDC families in achieving that goal. The additional services are: (1) The provision of child care that enables a caretaker relative to attend training full-time, (2) the provision of child care that enables a caretaker relative to attend high school full-time or attend General Education Development (GED) classes on a full-time basis, and (3) the provision of child care for a period not to exceed two months that enables a caretaker relative to participate in Employment Search or work programs.

We have determined that the inclusion of an essential person in the AFDC grant is permissible in situations (1) and (2) above only when a caretaker is in training or in high school on a full-time basis. This is consistent with the Notice of Proposed Rulemaking that proposed considering a person who provides child care which enables a caretaker relative to work on a full-time paid basis outside the home to be an essential person. In addition, the full-time requirement encourages family members to become self-sufficient as quickly as possible. For this latter reason, we have also limited the period of time during which an essential person can be included in situation (3) above to two months. We believe that this allows sufficient time to secure employment, yet discourages extending periods of participation in Employment Search or a work program indefinitely.

Other suggestions for expanding the essential person provision were: (a) To include categorically as essential persons certain groups of individuals (such as stepparents) without documenting that they are providing a specific benefit or service, (b) to consider as an essential service the provision of child care that enables the caretaker relative to attend school, training, or work on a part-time basis, and (c) to include individuals who provide intangible benefits (e.g., individuals who by their mere presence in the home represent family models, promote family unity, provide emotional support, or provide psychological benefits) as essential persons. After due consideration, we reject these suggestions for the following reasons.

A determination that a specific benefit or service is being provided by the essential person must be made in every case. The determination involves two parts: (1) The family identifies the person and benefit or service being provided and (2) a member of the State agency supervisory staff concurs by affirming the assistance unit's choice of the essential person, and by determining if the individual is needy and if the provision of the benefit or service is essential (i.e., it is included in the list of five essential benefits or services identified in "Discussion of Regulations" above.)

Therefore, to permit states to designate certain categories, such as stepparents, to be eligible as essential persons without documentation that they are providing a specific benefit or service would negate much of the effect of this regulation and allow individuals who live in the home but who do not provide any benefit or service to be eligible as essential persons.

States will continue to be permitted to limit essential persons to categories of individuals. Within such categories, those individuals may be included only if they provide an essential benefit or service. For example, a State may limit essential persons to only grandparents. However, the grandparent would still have to perform at least one of the essential benefits or services in order to be an essential person.

With regard to work, school attendance, and training on a part-time basis, there are already other mechanisms available for child care. For example, child care could be provided through Head Start and school-based programs, programs funded under the Social Services Block Grant, services provided through a specific education or training program such as the Job Training Partnership Act (JTPA) program, or the child care disregard under 45 CFR 233.20(a)(11). At the same time, one of the AFDC program's major goals is to foster independence from welfare. Consistent with that goal, we are providing additional support to those recipients who are making a full commitment toward self-sufficiency in terms of training, high-school attendance or GED equivalent on a full-time basis. That additional support is evidenced by including as an essential service the provision of child care.

Finally, in view of the extreme difficulty of measuring whether a particular individual provides emotional or psychological benefits, we believe that including such "intangible benefits" in the list of benefits and services would result in the same abuses of the essential person provision as are currently taking place.

Comment: One commenter asked if the State would be free to define the term "full-time" for purposes of the essential benefit or service.

Response: The definition of full-time in essential benefits and services as in "attendance in high school (or GED) full-time", "work full-time", and "training full-time" is left to the States. However, the definition, applicable to both minor and adult caretaker relatives, must be consistent with the definition of full-time as used by the State for purposes of the earned income disregards at 45 CFR 233.20(a)(11) because States have had to establish definitions of full-time work and school attendance for comparable purposes. Accordingly, any work, high school (or GED) attendance, or training that does not meet the State's definition of full-time, would not meet the requirement to permit the inclusion of an essential person.

Comment: One commenter asked if the AFDC grant included payment for an essential person who provides child care which enables the caretaker relative to work full-time, could child care expenses also be deducted from the caretaker relative's earnings?

Response: If the AFDC grant includes payment for an essential person as described above, then the State may not deduct a child care allowance from the caretaker relative's earnings. The basis for including the essential person in the grant is the provision of services—i.e., child care. To then permit a deduction based on the caretaker paying for the same service would clearly be duplicative.

Comment: Two commenters asked if the essential person must be related to the AFDC child.

Response: There is no requirement that the essential person be related to the AFDC child. However, States may choose to limit essential persons to certain categories of relatives, such as grandparents or stepparents.

Comment: One commenter cited SSA–AT–80–32 (OFA), which transmitted the AFDC final rule on continued absence, and asked about the impact the Essential Persons regulation would have on the convicted offender provision. The preamble to that final rule (45 FR 58125) states that "the parent living at home but serving a court imposed sentence may be considered an essential person * * *"

Response: The parent who is living at home but serving a court-imposed sentence may be considered an essential person if the State agency determines that he/she provides one of the five essential benefits or services described under the heading "Discussion of Regulation" above.

Comment: One commenter stated that the definition of incapacity included in the regulation was too strict, and suggested that we allow verification from third parties or a simple note from a physician regarding the incapacitated person's condition and the expected duration of the condition.

Response: The definition of incapacity in the essential person provision is consistent with the definition of incapacity used for determining deprivation at 45 CFR 233.90(c)(1)(iv). We are adopting the evidentiary requirements for a finding of deprivation due to incapacity as well. This should ease the administrative burden and reduce the chance of error. Therefore, if an individual cannot establish incapacity based upon eligibility for OASDI or SSI benefits due to disability or blindness, then the medical evidence must meet State policy requirements for establishing incapacity which are consistent with provisions at 45 CFR 233.90(c)(1)(iv).

Comment: Two States raised an issue regarding Federal Financial Participation (FFP) in the following situation. An alcoholic parent lives with but does not care for his/her children and the caretaker relative who is not the other parent. Currently, both States provide for such a parent as an essential person. Since the parent does not provide services yet must be included in the unit, they asked how to include the parent and receive FFP as well.

Response: The current regulation at 45 CFR 206.10(a)(1)(vii) requires that all parents of AFDC dependent children must be included in the assistance unit. The situtation in the comment above occurs when someone other than a parent is considered the caretaker relative even though a parent resides in the household. In this situation, if the State has determined that the parent is prevented from functioning as the caretaker relative because of a physical or mental condition, both the parent and caretaker may be included in the AFDC grant without applying the essential person provision.

Comment: Two commenters requested that we retain the current regulatory language at 45 CFR 233.20(a)(2)(vi). These commenters state that, pursuant to the current regulation, when both parents live in the home but are not married to each other and have a child in common living with them, the second parent could be included as an essential person.

Response: Both parents could be included in the following case:

The household consists of two unmarried parents with one common child and three other children from the mother's previous marriage. The mother and her three children from the previous marriage are receiving AFDC benefits; the man and their commoon child are ineligible for AFDC because there is an intact family and the father is not disabled or unemployed. However, if the father is providing one of the five essential benefits or services, he could be included as an essential person.

Regulatory Procedures

Executive Order 12291

This final regulation has been reviewed under Executive Order 12291 and does not meet any of the criteria for a major regulation. A regulatory impact analysis is not required because the regulation will not:

(1) Have an annual effect on the economy of $100 million or more;

The Federal annual savings of these regulatory provisions are estimated to be:

Year	Savings in millions
1988	$13 (last quarter only).
1989	54.
1990	55.
1991	57.
1992	59.

(2) Impose a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or

(3) Result in significant adverse effects on competition, employment, investment, innovation, or the ability of United States based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

There will be no new reporting or recordkeeping requirements imposed on the public or the States which would require clearance by the Office of Management and Budget (OMB).

Regulatory Flexibility Act

We certify that this regulation, if promulgated, will not have a significant impact on a substantial number of small entities because it primarily affects State governments and individuals. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96–354, the Regulatory Flexibility Act, is not required.

Family and Federalism

We certify that this action has been assessed using the criteria and principles set forth in Executive Orders 12606 and 12612.

While this regulation does not have any significant Federalism effects, it may have a significant monetary effect on certain families currently receiving AFDC benefits supplemented by the inclusion of an essential person in the grant. We estimate that 80,000 families will be affected by this regulation. The AFDC grants to these families will be reduced or, in some cases, terminated.

The focus of this regulation is upon the exclusion of individuals who are not providing an essential benefit or service, as essential persons. For example, some States have shifted 19 and 20 year-olds, who were made ineligible by the Omnibus Budget Reconciliation Act of 1981, onto the AFDC rolls as essential persons without any determination as to whether they are providing an essential benefit or service.

This regulation in no way precludes individuals, who are providing one of the designated benefits or services, from being included as essential persons. As a consequence, we believe that this regulation will not have a negative impact on family stability. Moreover, because this regulation follows Congressional intent in limiting eligibility under the AFDC program to individuals under 19, we believe that any negative impact on families with 19 and 20 year-olds is justified. Finally, although AFDC will no longer cover the needs of individuals who are not performing an essential benefit or service, many of these individuals will be eligible for assistance from State-only programs.

In summary, then, we believe that the language in the Final Rule strikes an appropriate balance which will prevent abuse, yet allow States the flexibility to include those individuals who actually strengthen the family by assisting family members in becoming self-sufficient.

(Catalog of Federal Domestic Assistance Programs 13.780, Assistance Payments Maintenance Assistance)

List of Subjects in 45 CFR Part 233

Aliens, Grant programs-social programs, Public assistance programs, Reporting and recordkeeping requirements.

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Dated: August 2, 1988.

Wayne A. Stanton,

Administrator of the Family Support Administration.

Approved: September 12, 1988.

Otis R. Bowen,

Secretary of the Department of Health and Human Services.

PART 233—COVERAGE AND CONDITIONS OF ELIGIBILITY

1. The authority citation for Part 233 is revised to read as follows and all other authority citations which appear throughout Part 233 are removed:

Authority: Sections 1, 402, 406, 407, 1002, 1102, 1402, and 1602 of the Social Security Act (42 U.S.C. 301, 602, 606, 607, 1202, 1302, 1352, and 1382 note), and Section 6 of Pub. L. 94–114, 89 Stat. 579 and Part XXIII of Pub. L. 97–35, 95 Stat. 843, and Pub. L. 97–248, 96 Stat. 324, and Pub. L. 99–603, 100 Stat. 3368.

2. Section 233.20 is amended by revising paragraph (a)(2)(vi) and adding paragraph (a)(2)(vii) to read as follows:

§ 233.20 Need and amount of assistance.

(a) * * *

(2) * * *

(vi) For OAA, AB, APTD, or AABD, if the State chooses to establish the need of the individual on a basis that recognizes, as essential to his well-being, the presence in the home of other needy individuals, (*a*) specify the persons whose needs will be included in the individual's need, and (*b*) provide that the decision as to whether any individual will be recognized as essential to the recipient's well-being shall rest both with the recipient, and be supported and concurred in by the agency supervisory staff—a person of a higher position or authority than the first line caseworker or income maintenance intake employee.

(vii) For AFDC, if the State chooses to establish the need of the individual on a basis that recognizes, as essential to his/her basic well-being, the presence in the home of other needy individuals, (*a*) specify the persons whose needs will be included in the individual's need, but limited to those individuals who regularly provide at least one of the following benefits or services: (*1*) child care which enables a caretaker relative to work on a full-time basis outside the home, (*2*) care for an incapacitated family member in the house, (*3*) child care that enables a caretaker relative to receive training on a full-time basis (*4*) child care that enables a caretaker relative to attend high school (or General Education Development (GED) classes) on a full-time basis, (*5*) child care for a period not to exceed two months that enables a caretaker relative to participate in Employment Search or another AFDC work program; and (*b*) provide that the decision as to whether any individual will be recognized as essential to the recipient's well-being shall rest both with the recipient, and be supported and concurred in by the agency supervisory staff—a person of a higher position or authority than the first line caseworker or income maintenance intake employee. A person will be considered incapacitated for purposes of the previous sentence when he has a physical or mental defect, illness, or impairment. The incapacity shall be supported by medical evidence and/or recorded testimony of a licensed medical health care professional, and must be of such a debilitating nature as to reduce substantially or eliminate his/her ability to support or care for himself/herself and be expected to last for a period of at least thirty (30) days. A finding of eligibility for OASDI or SSI benefits, based on disability or blindness, is acceptable proof of incapacity. The definition of the term "full-time," applicable to both minor and adult caretaker relatives, as used above in paragraph (a)(2)(vii)(*a*) (*1*), (*3*), and (*4*) of this section shall be consistent with the definition used by the State for purposes of the earned income disregards at § 233.20(a)(11).

* * * * *

[FR Doc. 89–1460 Filed 1–19–89; 8:45 am]

BILLING CODE 4150–04–M

Office of Human Development Services

45 CFR Part 1336

Native American Programs; Assistance to Native Hawaiians and Native American Pacific Islanders

AGENCY: Administration for Native Americans (ANA), Office of Human Development Services, HHS.

ACTION: Final rule.

SUMMARY: The Administration for Native Americans is hereby providing notice that the interim final rule with comment period amending 45 CFR Part 1336 which was published at 53 FR 23964–23973 on June 24, 1988, is adopted as a final rule without change. The interim final rule amended the regulations for the Administration for Native Americans to: (1) Establish the procedures and criteria by which ANA will make a five-year demonstration grant to an agency in Hawaii to manage a Revolving Loan Fund to promote economic development for Native Hawaiians; and (2) extend eligibility for ANA financial assistance to include Native American Pacific Islanders (including American Samoan Natives).

EFFECTIVE DATE: July 25, 1988.

FOR FURTHER INFORMATION CONTACT: Jan Phalen, Administration for Native Americans, Office of Human Development Services, Department of Health and Human Services, Hubert H. Humphrey Building, Room 344F, 200 Independence Avenue SW., Washington, DC 20201–0001, (202) 245–7730.

SUPPLEMENTARY INFORMATION: On June 24, 1988, the Department published an interim final rule with a 60 day comment period amending 45 CFR Part 1336 (53 FR 23964). No comments were received, and no changes have been made in the final rule.

The Office of Management and Budget has approved the information collection requirements of this final rule in accordance with the Paperwork Reduction Act. The control number is OMB No. 0980–0201.

List of Subjects in 45 CFR Part 1336

Native American Pacific Islander, Native Hawaiian revolving loan fund, Economic development.

PART 1336—NATIVE AMERICAN PROGRAMS

Accordingly, the interim final rule amending 45 CFR Part 1336 which was published at 53 FR 23964–23973 on June 24, 1988, is adopted as a final rule without change.

Dated: December 21, 1988.

Sydney Olson,

Assistant Secretary for Human Development Services.

Approved: January 5, 1989.

Otis R. Bowen,

Secretary.

[FR Doc. 89–1513 Filed 1–23–89; 8:45 am]

BILLING CODE 4130–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 88–2, Phase II; FCC 88–382]

Furnishing of Enhanced Services by Communications Common Carriers; AT&T's Open Network Architecture Plan

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Acting pursuant to the regulatory policies established in its Third Computer Inquiry (*Computer III*), the Commission approved, with a minor condition, AT&T's Open Network Architecture plan. The effect of full ONA implementation should be more competition in the provisions of enhanced services, lower prices, and more choices for consumers.

ADDRESS: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Charles Oliver, Policy and Program Planning Division, Common Carrier Bureau (202) 632–6047.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order (FCC 88–382), adopted November 17, 1988, and released December 22, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Office of Public Affairs (Room 202), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Summary of Memorandum Opinion and Order

1. The Memorandum Opinion and Order, adopted November 17, 1988, approved, with a minor condition, the AT&T Open Network Architecture (ONA) plan filed on February 1, 1988. The Commission established AT&T's ONA plan filing requirement in its reconsideration order in Phase I of the *Computer III* proceeding. AT&T's ONA requirements differ from those for the BOCs, in part because AT&T, unlike the BOCs, participates in the competitive market for interexchange basic services.

2. The Commission found that AT&T's ONA plan adequately described the manner in which it planned to respond to the needs of competing enhanced service providers (ESPs) for equal and efficient access to its basic services. The Commission also approved AT&T's description of: (1) Its capabilities available to transport unbundled basic service functions; (2) its arrangements for providing such transport in a nondiscriminatory manner; and (3) its procedures for responding to requests of the Bell Operating Companies (BOCs) and other local exchange carriers (LECs) for new forms of transport for other basic functions. In addition, the Commission approved AT&T's description of its implementation of Comparably Efficient Interconnection (CEI) and the other nonstructural safeguards for the enhanced services it now offers using facilities that are not collocated with basic service facilities.

3. The Commission approved AT&T's treatment of its basic Accunet Packet Service (APS) as a "building block" for a number of its enhanced services. In addition, the Commission approved AT&T's proposal to use a password identification system, as well as administrative and managerial procedures, to comply with the Commission's rules regarding customer proprietary network information (CPNI).

4. As a condition of approval of AT&T's ONA plan, the Commission required AT&T to comply with the CEI requirements for noncollocated enhanced services for a specific service known as REDI-ACCESS that AT&T co-markets with Control Data Corporation or, alternatively, file a statement with the Common Carrier Bureau within 60 days of the release of this order explaining why AT&T should not be required to comply with these requirements for REDI-ACCESS.

Ordering Clauses

5. It is hereby ordered, that pursuant to sections 1, 2(a), 4(i) and (j), 201, 202, 203, 205, 218, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152(a), 154(i) and (j), 201, 202, 203, 205, 218, and 405, and 5 U.S.C. 553, AT&T's ONA plan is approved, subject to the conditions described herein.

6. It is further ordered, that DYTEL's motion for leave to file late comments is granted.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89–1121 Filed 1–23–89; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 64

[CC Docket No. 88–2; FCC 88–381]

Furnishing of Enhanced Services by Communications Common Carriers; Bell Operating Companies' Open Network Architecture Plans

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Acting pursuant to the policies established in its Third Computer Inquiry (*Computer III*), the Commission approved in part and rejected in part the Bell Operating Companies' (BOCs') Open Network Architecture plans and required the BOCs to amend their plans by May 19, 1989. The effect of full ONA implementation should be more competition in the provisions of enhanced services, lower prices, and more choices for consumers.

ADDRESS: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: William F. Maher, Policy and Program Planning Division, Common Carrier Bureau (202) 632–9342.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order (FCC 88–381), adopted November 17, 1988, and released December 22, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Office of Public Affairs (Room 202), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Summary of Memorandum Opinion and Order

1. The Memorandum Opinion and Order, adopted November 17, 1988, conditionally approved the Open Network Architecture (ONA) plans that the Bell Operating Companies filed on February 1, 1988. Among other things, the BOCs ONA plans described unbundled basic services for use by enhanced service providers (ESPs), and also described BOC compliance with other nonstructural safeguards that the Commission's established in its *Computer III* proceeding. Upon implementation by a BOC of an approved ONA plan, the existing separate subsidiary requirements for the BOC's enhanced service operations will be removed. However, the Commission identified a number of areas in which the plans are deficient, and ordered the BOCs to amend their plans accordingly by May 19, 1989. Until the Commission approves those amendments and the BOCs implement their amended ONA plans, the existing separate subsidiary rules for BOC provision of enhanced services will remain in place.

2. The Commission approved the BOC's methods of obtaining ESP input in designing their ONA plans. For future input on further development of ONA, the Commission found the Information Industry Liaison Committee (IILC) to be an appropriate inter-industry forum and

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directed the BOCs to work through the IILC on a number of issues requiring further inter-industry effort.

3. The Commission generally approved use of the "common ONA model" offered by the BOCs in their plans. Under that model, ESPs obtain access to optional ONA services, which the BOCs call Basic Service Elements (BSEs), through BOC-provided access links, which the BOCs call Basic Serving Arrangements (BSAs). The Commission did not require BOCs to allow ESPs to connect their own loops or trunks to BOC switching facilities. The Commission also clarified that its nondiscrimination rules apply to all basic ONA services regardless of their classification.

4. The Commission found that the BOCs have done a generally acceptable job of identifying initial ONA services that they feasibly can provide in the short term, using the existing capabilities of their networks. However, because some BOCs have not proposed to offer some initial ONA services that others offer, propose, the Commission directed the BOCs to examine each other's plans to determine whether they can augment their initial sets of ONA services.

5. The Commission directed the BOCs to continue working to achieve greater uniformity in the nomenclature, technical characteristics, availability and deployment of ONA services, and noted topics that the ILLC could consider in this area.

6. The Commission, pursuant to section 410(b) of the Communications Act, established a joint conference with state regulatory commissions from the seven BOC regions to act as a forum for cooperation and coordination among the FCC and the states on specific ONA issues of common interest.

7. The Commission also preserved the existing exemption from federal access charges for ESPs, ensuring that ESPs will continue to have the option of using state-tariffed access arrangements to provide interstate enhanced service offerings.

8. The Commission generally approved those portions of the BOCs' plans that provide for state-tariffed ONA services to be used for intrastate enhanced services or, pursuant to the federal access charge exemption, for interstate enhanced services. However, the Commission did not approve that portion of the BellSouth state tariffing proposal that deprived ESPs of existing state access arrangements.

9. The Commission required the BOCs to establish a federally tariffed BSA option for ESPs to use for interstate enhanced services, which will include unbundled interstate BSEs provided pursuant to full federal tariffing principles. Because the Commission's existing Part 69 rules for access tariffs must be modified to implement this requirement, the Commission announced its intention to initiate a separate rulemaking to amend Part 69. Complementary Network Services (CNSs), those basic services used by consumers in connection with enhanced services, will continue to be tariffed at the state level, subject to existing nondiscrimination requirements.

10. The Commission required the BOCs to provide three-year projected deployment schedules for their ONA services and to explain the manner in which they will offer advanced ONA services through new technologies such as Signalling System #7, Integrated Services Digital Network (ISDN), and Intelligent Network/2. The Commission also required the BOCs to incorporate ESP input on these issues into their network planning processes. In addition, the Commission required the BOCs to provide geographic deployment schedules, where feasible, for advanced ONA services that BOCs will begin placing in service within three years.

11. The Commission also required the BOCs to make certain changes in their implementation of the Customer Proprietary Network Information (CPNI) requirements to protect the interests of competing ESPs. The Commission permitted all BOCs except US West to file installation and maintenance reports in a simplified format, because those BOCs have provided adequate assurances that their internal procedures precluded discrimination in the timing of installation and maintenance of ONA services. The Commission lifted the quality reporting requirement for all BOCs except Bell Atlantic, because those BOCs have demonstrated that they lack the ability to discriminate in the quality of their ONA services. Finally, the Commission approved all of the BOCs' proposed treatment of network information disclosure.

Ordering Clause

12. It is hereby ordered, that pursuant to section 1, 4(i) and (j), 201, 202, 203, 205, 218, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i) and (j), 201, 202, 203, 205, 218, and 405, and 5 U.S.C. 553, the ONA plans of Ameritech, Bell Atlantic, BellSouth, NYNEX, Pactel, SWBT, and US West are approved in part and rejected in part, subject to the conditions described herein.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89-1122 Filed 1-23-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 69

[CC Docket No. 87-113; FCC 88-400]

Amendment of Part 69 of the Commission's Rules; Access Charge Rules; Allocation Procedures

AGENCY: Federal Communication Commission.

ACTION: Final rule.

SUMMARY: In this Order, the Commission generally affirms its decision regarding the new allocation procedures established in the Part 69 Access Charge rules. Part 69 has been recently revised to conform to the Uniform System of Accounts and to the Separations Manual. This Order grants, to a limited extent, the petitions for reconsideration and clarification of Part 69 by revising the procedures applicable to the local switching access element. The Commission also revised the procedures applicable to property Held for Future Telecommunications Use and Telecommunications Plant Under Construction—Short Term.

DATE: The modifications of Part 69 of the Commission's Rules will become effective April 1, 1989.

ADDRESS: Federation Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Diane Shaw-Gill, Accounting and Audits Division, Common Carrier Bureau, at (202) 632-7500.

SUPPLEMENTARY INFORMATION: This is a summary of the petitions for reconsideration and clarification of Part 69, Amendment of Part 69 of the Commission's Rules and Regulations, Access Charges, To Conform It With Part 36, Jurisdictional Separations Procedures, CC Docket No. 87-113, FCC 88-400, adopted December 9, 1988, and released December 12, 1988.

The full text of Commission decisions are available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this Order may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., 2100 M Street NW., Suite 140, Washington, DC 20037 (202) 857-3800.

Summary of Order on Reconsideration

1. In this Order, the Commission addresses a number of issues. It revises its prescribed phase-out schedule for the discounted Local Switching 2 rate element. The former Part 69 rules required carriers to apportion costs between three end office elements. Local Switching is one of the three end office elements. Those rules also provided the division of Local Switching into subelements, Local Switching 1 (LS1) and Local Switching 2 (LS2). The new Part 69 rules phases-out LS1, the discount subelement which reflects a 35 percent discount. This phase-out begins in April, 1989 and ends in June, 1993. On reconsideration, the Commission revised the schedule for phasing out the LS1 subelement.

2. The Commission declined to revise the allocation procedures for the General Support Facilities (GSF). The new Part 69 rules, combine Land, Buildings, and Vehicles and apportion the investment portion of each category among the Interexchange and Billing and Collection categories and the access elements on the basis of the combined investment in COE, Information Origination/Termination Equipment (IOT), and Cable and Wire Facilities (C&WF), excluding Category 1.3 C&WF (subscriberline). The Commission affirms its original decision that the inclusion of Category 1.3 C&WF would apportion excessive GSF costs to the Carrier Common Line Element. The Commission also declined to adopt other approaches suggested by two parties for the allocation of GSF costs.

3. The Commission declined to revise the new allocation procedures for computer expenses related to Billing and Collection. The new Part 69 rules assign the interstate portion of the Revenue Accounting Expenses in the Customer Services Account to the Billing and Collection category. The computer expenses related to Billing and Collection are included in two computer accounts. The new rules allocate General Purpose Computer Expenses on the basis of the allocation of GSF. Those rules also allocate the Information Management Expenses on the basis of the Big Three Expenses. The Commission found that any modifications of the current apportionment procedures for computer expenses related to billing and collection would add undue complexities to those procedures.

4. The Commission clarified the allocation procedures for Category 4.23 Central Office Equipment (COE), All Other Interexchange Circuit Equipment. Circuit Equipment that is used in conjunction with a particular cable or wire facility will be assigned or allocated in the same manner as the associated facility. Circuit Equipment that is used with an ordinary subscriber line is assigned to the Common Line element. Circuit Equipment that is used with a WATS access line or a private line is assigned to the Special Access Element. Circuit Equipment that is used with trunks that connect end office switches or that connect end office and interexchange switches is assigned to Transport. Circuit Equipment uses with trunks that are not classified as "origination" or "termination" for purposes of the Part 69 access charge rules are assigned to the interexchange category.

5. The Commission declined to adopt alternative proposals for the allocation of COE direct expenses. Under the new Part 69 rules, COE direct expenses are allocated on the basis of total COE investment. The Commission found that this is in conformance with the Part 36, separations rules which allocate COE expenses between the jurisdictions on the basis of total COE investment.

6. The Commission declined to exclude equal access investment from the allocation factor for Other Investment. The Commission found that the proposed modification of these two accounts would not have a significant impact upon the charges for the other elements.

7. The Commission revised the allocation procedures for Property Held for Future Telecommunications Use and Telecommunications Plant Under Construction—Short term. The new Part 69 rules require that the investment in these accounts be apportioned among the Interexchange and Billing and Collection categories and the appropriate access elements in the same proportion as the associated investment. The Commission modified these procedures to allow the allocation of these accounts on the basis of Total Plant In Service instead of associated investment.

8. The Commission declined to include Telecommunications Plant Under Construction—Long Term, in the definition of net investment. It allowed investment in Telecommunications Plant Adjustment to be included in the definition of net investment in those limited cases in which the Common Carrier Bureau has granted a waiver to allow the inclusion of this account in the rate base. The Commission found that such an approach will ensure that Part 65 and Part 69 policies are consistent.

9. The Commission declined to allocate gross receipts taxes on the basis of taxable receipts, finding that the allocation of gross receipts taxes on the basis of net income is consistent with the Part 36 separations procedures which allocate these taxes on the basis of net plant.

10. The Commission declined to change the annual access tariff filing period from annual to biennial, finding that such a modification is outside the scope of this proceeding.

Regulatory Flexibility Act

11. The Commission certified that the Regulatory Flexibility Act[1] is not applicable to the rule changes it adopted in this proceeding. In accordance with the provisions of section 605 of that Act, a copy of this certification will be sent to the Chief Counsel for Advocacy of the Small Business Administration at the time of publication of a summary of this Notice in the Federal Register. As part of its analysis of the new rules adopted in this Order, the Commission considered the impact of proposals on small telephone companies, *i.e.*, those serving 50,000 or fewer access lines.[2] The action adopted herein will have a beneficial economic impact on all such telephone companies because the new procedures will reduce administrative burdens and will better reflect cost-causation principles. The carriers will therefore be able to develop rates that better reflect their actual costs.

Paperwork Reduction Act

12. The Commission analyzed the new rules contained herein with respect to the Paperwork Reduction Act of 1980[3] and concluded that they will not impose new or modified information collection requirements on the public. Therefore, implementation of the new rules will not be subject to approval by the Office of Management and Budget as prescribed by the Paperwork Reduction Act.

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[1] 5 U.S.C. 601.

[2] Because of the nature of local exchange and access service, this Commission has concluded that small telephone companies are dominant in their fields of operation and, therefore, are not small entities as defined by the Regulatory Flexibility Act. *See* MTS and WATS Market Structure, 93 FCC 2d 241, 338-39 (1983). Thus, the Commission is not required by the terms of the Regulatory Flexibility Act to apply the formal procedures set forth therein. It is nevertheless committed to reducing the regulatory burdens on small telephone companies whenever possible consistent with its other public interest responsibilities. Accordingly, it has chosen to utilize, on an informal basis, appropriate Regulatory Flexibility Act procedures to analyze the effect of proposed regulations on small telephone companies.

[3] 44 U.S.C. 501.

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Ordering Clause

13. Accordingly, it is ordered, That the Petitions for Reconsideration or Clarification filed in these proceedings ARE GRANTED to the extent provided herein and otherwise ARE DENIED.

List of Subjects in 47 CFR Part 69

Communications common carrier, Telephone, Uniform system of accounts, Access charges, Jurisdictional separations procedures.

Authorizing Provisions

This action is taken pursuant to sections 47 U.S.C. 154(i), 154(j), 201, 202, 203, 205, 218, and 221(c).

Federal Communications Commission.

Donna R. Searcy,

Secretary.

Appendix A

Part 69 of Title 47 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 69 continues to read:

Authority: Secs. 4, 201, 202, 203, 205, 218, 403, 48 Stat. 1066, 1070, 1072, 1077, 1094, as amended, 47 U.S.C. 154, 201, 202, 203, 205, 218, 403.

2. Sec. 69.205 is amended by revising para. (d) to read to as follows:

§ 69.205 Transitional premium charges.

* * * * *

(d) During each of the following years the LS1 transition factor shall be:

(1) From April 1, 1989 to June 30, 1990—.877

(2) From July 1, 1990 to June 30, 1991—.921

(3) From July 1, 1991 to June 30, 1992—.960

(4) From July 1, 1992 to June 30, 1993—.995

3. Sec. 69.302 is amended by revising para. (b) to read as follows:

§ 69.302 Net investment.

* * * * *

(b) Investment in Accounts 2002, 2003 and to the extent such inclusions are allowed by this Commission, Account 2005 shall be apportioned on the basis of the total investment in Account 2001, Telecommunications Plant in Service.

In addition, the following changes are made to the *Access Charge Rules*, 52 FR 37,306 (October 6, 1987):

§ 69.2 [Amended]

In § 69.2(g), add "and included in Account 2410" after "Manual."

In § 69.2(i), add "and included in Accounts 2210, 2220 and 2230" after "Manual."

In § 69.2(l)(1), change "6223" to "6230."

In § 69.2(q), add "and included in Account 2110" after "Manual."

In § 69.2(r), add "and in Account 2310" after "Manual."

In § 69.2(dd), add ", WATS" after "FX."

§ 69.302 [Amended]

In § 69.302(b)(3), change "2001" to "2110."

§ 69.408 [Amended]

In § 69.408, change "69.403" to "69.404."

[FR Doc. 89-1123 Filed 1-23-89; 8:45 am]

BILLING CODE 6712-01-M

Proposed Rules

Federal Register
Vol. 54, No. 14
Tuesday, January 24, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 213

Schedule B Appointment Authority for Professional and Administrative Career Positions

AGENCY: Office of Personnel Management.

ACTION: Proposed rulemaking.

SUMMARY: The Office of Personnel Management published a proposed regulation on May 11, 1982 (47 FR 20264). That regulation established a new appointing authority in the excepted service made pursuant to Schedule B authority at 5 CFR 213.3202(1). Following the receipt of comments from interested members of the public, the final rule was published on August 31, 1982 (47 FR 38257). The regulation provided for the filling of professional and administrative career (PAC) positions at the GS–5 and GS–7 levels during the period when the Office of Personnel Management did not have a register of competitive eligibles to fill vacancies in those occupations. The new Schedule B authority applied only when agencies used external recruiting and hiring procedures to fill such positions. Since that time, one union has challenged the absence of competitive, job-specific examinations for all of the approximately 118 PAC occupations which were formerly examined under the PACE and which were subject to the Schedule B authority. The United States Court of Appeals for the DC Circuit (*NTEU* v. *Horner*, Nos. 87–5102 & 87–5191) and the United States District Court for the District of Columbia (Civil Action No. 84–2573) have directed that OPM conduct a notice and comment rulemaking proceeding in order to supplement the rulemaking record which was developed in 1982 to include the publication of the cost data upon which OPM relied in making its decision in 1982 to permit agencies to use Schedule B in those occupations where alternative examinations had not been developed. The reasons, based on various cost factors, for OPM's decision not to develop examinations in all of the PAC occupations are stated below under "Supplementary Information." The purpose of this publication of the proposed rule is to provide an opportunity for comment by interested members of the public.

DATE: Comments must be received on or before February 24, 1989.

ADDRESS: Written comments may be sent to Donald L. Holum, Chief, Staffing Policy Division, Career Entry and Employee Development Group, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20451 or delivered to Room 6355, 1900 E Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: James S. Green, Associate General Counsel, Office of General Counsel, (202) 632–5087.

SUPPLEMENTARY INFORMATION: Pursuant to the terms of a consent decree which was entered by the U.S. District Court for the District of Columbia on November 18, 1981 (*Luevano* v. *Devine*, Civil Action No. 79–271), OPM agreed to eliminate the Professional and Administrative Career Examination (PACE), a general abilities test, and the register of eligibles derived therefrom and to replace that examination with job-specific, alternative examinations for approximately 118 job series. Those jobs are in Professional and Administrative Career (PAC) occupations at the GS–5 and GS–7 levels.

OPM considered a number of factors relating to cost when it arrived at its decision to permit agencies to use a Schedule B authority until OPM could develop alternative examinations to replace the PACE. In 1981, OPM anticipated little outside hiring due to a government-wide, employment freeze which had been imposed by the President of the United States. Reductions-in-force (RIGs), due to severe budget reductions, were also declared and conducted at that time and in 1982. For those reasons, cost considerations were a prominent feature in OMP's cost-analysis in determining when and for which occupations new competitive examinations should be developed.

The emphasis in 1981 and 1982 was in placement of Federal employees who had been the subject of RIFs into any upcoming Federal vacancies. That was accomplished through programs such as the Displaced Employees Program (DEP) and the Voluntary Inter-Agency Placement Program (VIPP) wherever possible. Thus, in 1982, OPM anticipated that there would be substantially reduced external hiring in most Federal occupations, including those which had been formerly filled through the use of the PACE. It was believed that most hiring in the PACE occupations would be accomplished through internal means, including promotions, transfers, and reassignments, and that few agencies would use Schedule B to hire from external sources.

In arriving at its decision to develop examinations in only those occupations where the Federal government had the largest number of vacancies instead of examining in all the approximately 118 occupations, OPM considered a number of factors. Among those were historical trends based on the annual number of hires from the PACE register in each occupation over a six-year period (1975 to 1981), the overall hiring figures and anticipated hiring trends throughout the Federal government in all occupations, the actual cost for development and implementation of the PACE which were based on OPM's previous experience with the PACE, and the legislative budget allocated for examination development.

Between 1975 and 1981, the annual hiring figures from the PACE register appeared to be steadily declining. For example, in FY 1976, over 7,000 applicants had been selected from the PACE register. By FY 1980, however, selections had decreased to 4,674. Based on the hiring freeze mandated by the President in 1981, OPM anticipated hiring less than 2,000 employees per year after 1982 into all of the PAC occupations. In 1983, external hiring through Schedule B amounted to 2,059, and, in 1984, it increased to 4,020. The unexpected increase was due to a subsequent Presidential emphasis on hiring at the Department of Defense and the Department of the Treasury.

Known costs for PACE research and development amounted to $320,000 plus an additional $800,000 for four criterion-related validation studies, all related to the single PACE examination. Those

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costs were expended for the PACE between 1973 and 1975. In other words, during that period, OPM spent approximately $1.2 million on the development of the single PACE examination.

Based on the developmental costs for the PACE, OPM estimated in 1981 that it would have to allocate at least $5 million over a four-year period (1982–1985) to develop job-specific examinations for seven of the large-fill occupations which had been covered by the PACE. That figure took into account an average cost of $520,000 per examination in 1972 to 1975 dollars which had to be augmented by inflation. Thus, it was anticipated that a single examination would cost somewhere between $550,000 to $800,000 to develop, depending upon the nature of the examination required by that specific occupation. Start-up costs alone for the development of examinations for those seven occupations were estimated to be $1.5 million out of the $5 million projected expenditure. Actual start-up costs amounted to $1.8 million.

The Office of Personnel Research and Development (OPRD) at the Office of Personnel Management was responsible for the development of competitive examinations. OPM's total operating budget for the OPRD was $856,249 in FY 1981 and $962,823 in FY 1982. Although, on average, approximately one-third of the budget of OPRD has been devoted since 1981 to the development of alternative examinations for the PAC occupations, it could not possibly have absorbed the enormous costs which would have been required to develop and implement 100 examinations. Furthermore, in 1981, OPM knew that the OPRD staff would be reduced by 50% early in 1982 as a result of the reduction-in-force at the OPM. All programs, including the effort to develop alternative examinations, suffered by those reductions.

Thus, the decision was made to use Schedule B as an appointing authority while OPM initially pursued the development of competitive alternatives in those seven occupations which historically had the largest number of hires and for which OPM anticipated significant hiring would continue. OPM concentrated its limited resources on seven occupations which, in conjunction with the competitive examinations which had been developed prior to November 1981 in nine other former PACE occupations, accounted for 55% to 60% of all hires in the PAC occupations. The remaining 100 occupations historically have accounted for no more than 40% to 45% of all such hires.

In the three year period between January 1, 1983, and December 31, 1985, of the 100 occupations for which no competitive alternatives had been developed, eighty-seven of those occupations had an annual average of 20 or fewer external PAC hires under Schedule B throughout the Federal government. Of those eighty-seven occupations, forty occupations had no external PAC hires under Schedule B during that three year period. Seven occupations had an annual average of between 21 to 50 total external PAC hires throughout the Federal government during that entire period. Six occupations had an annual average of between 51 to 100 total external PAC hires; three occupations had an annual average of between 101 to 200 total external PAC hires; and only five occupations had over 200 total external PAC hires during all of that same period in all Federal agencies. Of those five occupations, four are now covered by a new competitive examination and the fifth is scheduled to be in the next group for examination development.

Those figures must be compared with the total number of all PAC selections and the total number of employees in the Federal workforce at that time. The average total for external PAC hires under Schedule B during that three year period amounted to only 3,396 out of an average total of 15,280 for all PAC selections and represented only a small fraction of the total Federal workforce which, between 1983 and 1985, averaged 2.25 million employees, excluding postal workers.

OPM estimated, in 1981, that it would have cost approximately $71.4 million to develop examinations (excluding operational costs) in the remaining 100 occupations where OPM had traditionally done little hiring from the PACE register. That cost projection, too, was based on prior PACE expenditures. OPM had neither the financial nor staff resources to commit those expenditures.

The following represent OPM's actual costs for test development between FY 1981 and FY 1987 for seven PAC occupations: Computer Specialist ($742,900); Tax Technician ($744,400); Internal Revenue Officer ($547,300); Customs Inspector ($554,200); Contract Specialist ($1,038,550), and Social Insurance Claims Examiner and Social Insurance Representative ($684,100). Additional operating costs during this same period range from $100,000 to $300,000 for each examination.

Accordingly, total costs actually expended by OPM for development and implementation for competitive examinations in those seven occupations amounted to $5,461,450 between FY 1981 and FY 1987.

It is the intention of OPM to re-adopt its final rule previously adopted by OPM on August 31, 1982 (47 FR 38257), as amended on July 6, 1987 (52 FR 25193). OPM intends to continue to seek the appropriate means of examining so that examination development is accomplished on an overall cost-productive basis. OPM will continue to permit Federal agencies to utilize Schedule B as an appointing authority while it develops competitive examinations for the remaining PAC occupations.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it pertains solely to procedures for appointment of employees by Federal agencies.

List of Subjects in 5 CFR Part 213

Government employees.

Office of Personnel Management.

Constance Horner,

Director.

Accordingly, OPM is republishing its final regulation under 5 CFR Part 213, originally published on August 31, 1982 (47 FR 38257) and amended on July 6, 1987 (52 FR 25193), as a proposed regulation with opportunity for comments, as set forth below:

PART 213—EXCEPTED SERVICE

1. The authority citation for Part 213 continues to read as follows:

Authority: 5 U.S.C. 3301 and 3302. E.O. 10577, 3 CFR 1954–1958 Comp., p. 218; Section 213.101 also issued under 5 U.S.C. 2103; Section 213.102 also issued under 5 U.S.C. 1104, Pub. L. 95–454, sec. 3(5); Section 213.3102 also issued under 5 U.S.C. 3301, 3302 (E.O. 12364, 47 FR 22931), 3307, 8337(h), and 8457.

2. Paragraph (l) of 5 CFR 213.3202 is republished without change to read as follows:

§ 213.3202 Entire Executive Civil Service.

* * * * *

(l) Professional and administrative career (PAC) positions at the GS–5 or GS–7 grade level which are subject to the decree entered on November 19, 1981, by the United States District Court for the District of Columbia in the civil action known as *Luevano* v. *Devine* and numbered as No. 79–271, which were not removed from coverage of the Professional and Administrative Career Examination (PACE) prior to the effective date of the consent decree, and which are to be filled, under the conditions described below, by appointment of individuals other than those who at the time of such appointment already have competitive status in the Federal civil service. When a Federal agency needs to fill a PAC position that was not removed from PACE coverage before the consent decree became effective, and the agency has made maximum use of priority placement sources and has given appropriate consideration to available and qualified status applicants, then OPM may authorize the agency to make a new appointment under this paragraph. Such appointments shall be authorized and made pursuant to such Schedule B requirements for PAC positions as shall be prescribed in the Federal Personnel Manual. Terms of use of this appointment authority shall be established by an appointment authority agreement to be executed for each position excepted from the competitive service pursuant to this authority. The appointment authority agreement will remain in effect with respect to particular GS–5 and GS–7 PAC positions only so long as there is no competitive examination available to fill those positions. Establishment of a register under an alternative competitive examination for any PAC position(s) at grades GS–5 and GS–7 will immediately terminate all agreements permitting new Schedule B appointments to such position(s) under this authority. Individuals appointed before termination of the agreements may, however, continue to serve under those appointments at grades GS–5 and GS–7 until they are appointed to a competitive position in accordance with applicable civil service laws, rules, and regulations. An incumbent of a Schedule B PAC position may be converted to a career or career-conditional appointment under the provisions of Executive Order 12596, subject to the conditions set out in § 315.710 of this chapter.

[FR Doc. 89–1467 Filed 1–18–89; 11:57 am]

BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 907 and 908

Expenses and Assessment Rates for Specified Marketing Orders

AGENCY: Agricultural Marketing Service.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize expenditures and establish assessment rates under Marketing Order Nos. 907 and 908 for the 1988–89 fiscal year established for each order. Funds to administer these programs are derived from assessments on handlers.

DATES: Comments must be received by February 3, 1989.

ADDRESS: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2085–S, Washington, DC 20090–6456. Comments should reference the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Jacquelyn R. Schlatter, Marketing Specialist, Volume Control Programs, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456; telephone: (202) 447–5120.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Order Nos. 907 (7 CFR Part 907) and 908 (7 CFR Part 908), regulating the handling of California-Arizona navel and Valencia oranges. Both orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulations 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 125 handlers of navel oranges and 115 handlers of Valencia oranges subject to regulation under the navel and Valencia orange marketing orders, and approximately 4,065 producers of navel oranges and 3,500 producers of Valencia oranges in their respective production areas. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having average gross annual revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of California-Arizona navel and Valencia orange producers and handlers may be classified as small entities.

Marketing orders require that assessment rates for a particular fiscal year shall apply to all assessable commodities handled from the beginning of such year. An annual budget of expenses is prepared by each administrative committee and submitted to the Department of Agriculture for approval. The members of administrative committees are handlers and producers of the regulated commodities. They are familiar with the committees' needs and with the costs for goods, services, and personnel in their local areas and are thus in a position to formulate appropriate budgets. The budgets are formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by each committee is derived by dividing anticipated expenses by expected shipments of the commodity. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committees' expected expenses. Recommended budgets and rates of assessment are usually acted upon by the committees shortly before a season starts, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approvals must be expedited so that the committees will have funds to pay their expenses.

The Navel Orange Administrative Committee (NOAC) met on December 6, 1988, and unanimously recommended 1988–89 fiscal year expenditures of $1,247,455 and an assessment rate of $0.025 per carton of navel oranges. In

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comparison, 1987–88 fiscal year budgeted expenditures were $1,114,750 and the assessment rate was $0.026 per carton. Expenditure categories in the 1988–89 budget are $336,830 for program administration, $151,020 for compliance activities, $583,155 for the field department, $171,300 for direct expenses, and $3,350 for a salary reserve. Assessment income for 1988–89 is expected to total $1,087,500, based on shipments of 43.5 million cartons of oranges. Interest and incidental income is estimated at $50,000. The NOAC may expend operational reserve funds of $109,955 to meet budgeted expenses. Additional reserve funds may be used to meet any other unanticipated deficit in assessment income.

The Valencia Orange Administrative Committee (VOAC) met on December 8, 1988, and unanimously recommended 1988–89 fiscal year expenditures of $894,840 and an assessment rate of $0.028 per carton of Valencia oranges. In comparison, 1987–88 fiscal year budgeted expenditures were $526,560 and the assessment rate was $0.029 per carton. Expenditure categories in the 1988–89 budget are $166,785 for program administration, $74,380 for compliance activities, $287,325 for the field department, $164,800 for direct expenses, and $1,550 for a salary reserve. Assessment income for 1988–89 is expected to total $868,000 based on shipments of 21 million cartons of oranges. Interest and miscellaneous income is estimated at $30,000. The VOAC may expend operational reserve funds of $76,840 to meet budgeted expenses. Additional reserve funds may be used to meet any other unanticipated deficit in assessment income.

While this proposed action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be significantly offset by the benefits derived from the operation of the marketing orders. Therefore, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

Based on the foregoing, it is found and determined that a comment period of less than 30 days is appropirate because the budget and assessment rate approvals for both programs need to be expedited. The committees need to have sufficient funds to pay their expenses, which are incurred on a continuous basis.

List of Subjects in 7 CFR Parts 907 and 908

Arizona, California, Marketing agreements and orders, Navel, Oranges, Valencia.

For the reasons set forth in the preamble, it is proposed that new §§ 907.228 and 908.228 be added as follows:

1. The authority citation for both 7 CFR Parts 907 and 908 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. New §§ 907.228 and 908.228 are added to read as follows:

PART 907—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

§ 907.228 Expenses and assessment rate.

Expenses of $1,247,455 by the Navel Orange Administrative Committee are authorized, and an assessment rate of $0.025 per carton of navel oranges is established for the fiscal year ending October 31, 1989. Unexpended funds from the 1988–89 fiscal year may be carried over as a reserve.

PART 908—VALENCIA ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

§ 908.228 Expenses and assessment rate.

Expenses of $894,840 by the Valencia Orange Administrative Committee are authorized, and an assessment rate of $0.028 per carton of Valencia oranges is established for the fiscal year ending October 31, 1989. Unexpended funds from the 1988–89 fiscal year may be carried over as a reserve.

Dated: January 18, 1989.

William J. Doyle,
Associate Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89-1401 Filed 1-23-89; 8:45 am]
BILLING CODE 3410-02-M

7 CFR Part 982

[FV-88-133]

Filberts/Hazelnuts Grown in Oregon and Washington; Proposed Establishment of Final Free and Restricted Percentages for the 1988–89 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This action proposes the establishment of final free and restricted percentages for domestic inshell filberts/hazelnuts for the 1988–89 marketing year under the Federal marketing order for filberts/hazelnuts grown in Oregon and Washington. The proposed percentages would specify the amounts of domestically produced filberts/hazelnuts which may be marketed in domestic, export and other outlets. The percentages are intended to stabilize the supply of domestic inshell filberts/hazelnuts in order to meet the limited domestic demand for such filberts/hazelnuts and provide reasonable returns to producers. This proposal was recommended by the Filbert/Hazelnut Marketing Board (Board), the agency responsible for local administration of the order.

DATE: Comments must be received by February 23, 1989.

ADDRESS: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, F&V, AMS, USDA, Room 2085–S, P.O. Box 96456, Washington, DC 20090–6456. Comments should reference the date and page number of his issue of the Federal Register and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Tom Jacobs, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 475–5120.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under Marketing Order and Agreement No. 982 (7 CFR Part 982), as amended, regulating the handling of filberts/hazelnuts grown in Oregon and Washington. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposal on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly

or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities action on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 28 handlers of filberts/hazelnuts subject to regulation under the filbert/hazelnut marketing order, and approximately 1,300 producers in the Oregon and Washington production area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having gross annual revenues for the last three years of less than $500,00, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of filberts/hazelnuts may be classified as small entities.

The Board is required to meet prior to September 20 of each marketing year to computer an inshell trade demand and preliminary free and restricted percentages, if the use of volume regulation is recommended during the season. The order prescribes formulas for computing the inshell trade demand, as well as preliminary, interim final, and final precentages. The inshell trade demand establishes the amount of inshell filberts/hazelnuts the market can support throughout the season and the percentages release the inshell trade demand. The preliminary percentages release 60 percent of the inshell trade demand in order to protect against underestimates of the crop. On or before November 15, the Board must meet to recommend to the Secretary final percentages which release 100 percent of the inshell trade demand and 15 percent of the three year average trade acquisition. The additional 15 percent above the 100 percent of the inshell trade demand is released to provide for an adequate carryover into the following season. The Board's recommendation and this proposed rule are based on requirements specified in the order.

This proposed rule would restrict the amount of domestic inshell filberts/hazelnuts that can be marketed in domestic markets. The domestic outlets for this commodity are characterized by limited demand, and the establishment of free and restricted percentages would benefit the industry by promoting stronger marketing conditions and stabilizing prices and supplies, thus improving grower returns.

As provided in § 982.40 of the order, the Board meets prior to September 20 of each marketing year for the purpose of formulating its marketing policy for that year and submitting its recommendations for regulation. If the Board recommends volume regulation, it must compute and announce an inshell trade demand for that year prior to September 20. The inshell trade demand, rounded to the nearest whole number, equals the average of the preceding three "normal" years' trade acquisitions of inshell filberts/hazelnuts, with the provision that the Board may increase such estimate by no more than 25 percent, if market conditions warrant such an increase.

On August 30, 1988, the Board reviewed and adopted its marketing policy and unanimously recommended the use of volume control regulations for the 1988–89 season. The Board computed and announced an estimated inshell trade demand and preliminary percentages which were calculated to release 80 percent of the inshell trade demand to the domestic inshell market.

The preliminary free and restricted percentages make available portions of the filbert/hazelnut crop which may be marketed in domestic inshell markets (free) and exported, shelled, or disposed of in noncompetitive inshell outlets (restricted) early in the 1988–89 season. The preliminary free percentage is 80 percent of the established inshell trade demand, expressed as a percentage of the total supply subject to regulation, and is based on preliminary crop estimates. The Board computed and announced at its August 30, 1988, meeting, preliminary free and restricted percentages of 16 and 84 percent, respectively, to release 80 percent of the inshell trade demand. The reason only 80 percent of the inshell trade demand is releasable under the preliminary percentage is to guard against underestimates of the crop. The preliminary restricted percentage is 100 percent minus the free percentage.

The Board is required to meet prior to November 15 to formally review and approve its marketing policy and recommend to the Secretary for approval, the establishment of interim final and final free and restricted percentages. The Board uses current crop estimates to calculate the interim final and final percentages. The interim percentages are calculated in the same way as the preliminary percentages and release 100 percent of the inshell trade demand previously computed by the Board for the marketing year. The final free and restricted percentages release an additional 15 percent of the average of the preceding three years' trade acquisitions which is used to ensure an adequate carryover into the following season. The final free and restricted percentages must be effective at least 30 days prior to the end of the marketing year (July 1 through June 30), or earlier, if recommended by the Board and approved by the Secretary. In addition, revisions in the marketing policy can be made until February 15 of each marketing year. However, the inshell trade demand can only be revised upward.

The Board met on November 15, 1988, reviewed and approved an amended marketing policy and recommended the establishment of final free and restricted percentages. The Board decided that market conditions were such that immediate release of the additional free tonnage will not adversely affect the 1988–89 domestic inshell market. Accordingly, no interim final free and restricted percentages were recommended. The proposed marketing percentages are based on the industry's final production estimates and release 4,069 tons to the domestic inshell market. The Oregon Agricultural Statistics Service provided an early estimate of 18,000 tons total production for the Oregon and Washington area. However, a handler survey conducted by the Board provided a more current estimate of 15,500 tons total production for the area. Therefore, the Board voted to unanimously accept the more current estimate of 15,500 tons.

In addition to complying with the provisions of the marketing order, the Board also considers the U.S. Department of Agriculture's Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders (Guidelines) when making its computations in the marketing policy. This volume control regulation provides a method to collectively limit the supply of inshell filberts available for sale in domestic markets. The Guidelines require this primary market to have available a quantity equal to 100 percent of recent years' sales in those outlets before secondary market allocations are approved. This is to provide for plentiful supplies for consumers and for market expansion while retaining the mechaniam for dealing with oversupply situations. In order to meet expected needs of the trade and to comply with the Guidelines, an increase of 10 percent (417 tons) has been included in the calculations used in determining the inshell trade demand. The proposed final percentages, which would release 100 percent of the inshell trade demand and 15 percent of the three year average trade acquisition, would make available 125 percent of prior years' sales, thus exceeding the requirements of the Guidelines.

The marketing percentages are based on the industry's initial production estimates and the following supply and demand information for the 1988–89 marketing year:

Inshell supply	Tons
(1) Total production (Filbert/Hazelnut Marketing Board Handler survey estimate)	15,500
(2) Less substandard, farm use (disappearance)	866
(3) Merchantable production (the Board's adjusted crop estimate)	14,634
(4) Plus undeclared carryin as of July 1, 1988, subject to regulation	0
(5) Supply subject to regulation (item 3 plus item 4)	14,634
(6) Average trade acquisition based on three prior years' domestic sales	4,172
(7) Increase to encourage increased sales (10 percent)	417
(8) Less declared carryin as of July 1, 1988, not subject to regulation	1,148
(9) Inshell Trade Demand	3,443
(10) 15 percent of the average trade acquisitions based on three years domestic sales	626
(11) Inshell Trade Demand plus 15 percent (item 9 plus item 10)	4,069

Percentages	Free	Restricted
(12) Final percentages (item 11 divided by item 5) x 100	28	72

Based on available information, the Administrator of the AMS has determined that the issuance of this proposed rule would not have a significant economic impact on a substantial number of small entities.

List of Subjects in 7 CFR Part 982

Filberts/hazelnuts, Marketing agreements and orders, Oregon, and Washington.

For the reasons set forth in the preamble, 7 CFR Part 982 is proposed to be amended as follows:

PART 982—FILBERTS/HAZELNUTS GROWN IN OREGON AND WASHINGTON

Subpart—Grade and Size Regulation

1. The authority citation for 7 CFR Part 982 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 982.236 is added to read as follows:

§ 982.236 Final free and restricted percentages—1988–89 marketing year.

The final free and restricted percentages for merchantable filberts/hazelnuts for the 1988–89 marketing year shall be 28 and 72 percent, respectively.

Dated: January 18, 1989.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89-1652 Filed 1-23-89; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Parts 1006, 1012 and 1013

[Docket Nos. AO-356-A26, AO-347-A29 and AO-286-A36; DA-88-102]

Milk in the Upper Florida, Tampa Bay and Southeastern Florida Marketing Areas; Decision on Proposed Amendments to Marketing Agreements and to Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This decision would amend provisions of the three Florida milk orders to reflect current marketing conditions. The propose changes are based upon industry proposals considered at a public hearing held January 26, 1988, in Orlando, Florida.

Each of the three orders would be amended to provide a two-month "lock-in" provision for pool distributing plants, seasonal diversion limits, and an increase in the charges on overdue accounts. Shrinkage on other source milk receipts would be limited to bulk fluid milk products.

The Upper Florida and Tampa Bay orders would be amended to permit a pool plant and a manufacturing plant under a single roof to operate as separate facilities.

The Southeastern Florida order would be changed to require that a dairy farmer must deliver 10 days' production to a pool plant in order for such dairy farmer's milk to be diverted to nonpool plants as producer milk. Other miscellaneous amendments would delete the $9 maximum on partial payments to producers and make other changes to conform the Southeastern Florida order to other Federal milk orders.

These changes are needed to reflect current marketing conditions and to insure orderly marketing. Cooperative associations will be polled to determine whether producers favor issuance of the proposed amended orders.

FOR FURTHER INFORMATION CONTACT: Robert F. Groene, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 447–2089.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. The amended order will promote more orderly marketing of milk by producers and regulated handlers.

Prior documents in this proceeding:

Notice of Hearing: Issued January 12, 1988; published January 15, 1988 (53 FR 1035).

Recommended Decision: Issued September 2, 1988; published September 8, 1988 (53 FR 34780).

Preliminary Statement

A public hearing was held upon proposed amendments to the marketing agreement and the order regulating the handling of milk in the Upper Florida, Tampa Bay and Southeastern Florida marketing areas. The hearing was held, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice (7 CFR Part 900), at Orlando, Florida, on January 26, 1988. Notice of such hearing was issued on January 12, 1988 and published January 15, 1988 (53 FR 1035).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Administrator on September 2, 1988, filed with the Hearing Clerk, United States Department of Agriculture, his recommended decision containing notice of the opportunity to file written exceptions thereto.

The material issues, findings and conclusions, rulings, and general findings of the recommended decision are hereby approved and adopted and are set forth in full herein, subject to the revision of the seventh paragraph of issue No. 4 and the addition of two new paragraphs at the end of such issue.

The material issues on the record of hearing relate to:

1. Two-month "lock-in" for distributing plants under the three Florida milk orders;

2. Diversion of producer milk to nonpool plants under the three Florida milk orders;

3. Classification of shrinkage on milk receipts under the three Florida milk orders;

4. Charges on overdue accounts under the three Florida milk orders;

5. Amendments to the pool plant provisions of the three Florida milk orders;

6. Miscellaneous amendments to the three Florida milk orders.

7. Regulatory treatment under Upper Florida and Tampa Bay milk orders of a pool plant and a manufacturing plant under a single roof.

8. Regulatory status of an exempt distributing plant under the Upper Florida order; and

9. Miscellaneous amendments to the Southeastern Florida order.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. *Two-month "lock-in" for distributing plants under the three Florida orders.* The orders should be amended to provide that a pool distributing plant will not shift regulation to another Federal order until the third month of greater fluid milk sales in the marketing area of the other order.

The three Florida orders currently provide that a distributing plant which qualifies as a pool shall be regulated under the order for the market in which the plant's distribution in the marketing area is the greatest.

A representative of the Florida Dairy Farmers' Association and Tampa Independent Dairy Farmers' Association proposed that a distributing plant continue to be pooled under the order for the market in which it had been previously regulated until the third month that the plant's sales in the marketing area of another order exceeded its fluid milk sales in the marketing area of the order in which the plant had been regulated. The cooperatives indicated that since 1983, four distributing plants have shifted regulation among the three Florida orders 28 times. Such shifts have caused distortions in the monthly market data published by the market administrator. In addition, such shifts often reveal confidential information regarding the plant that switches regulation from one order to another order. When a plant shifts regulation, the handler is identified as the source of increased route sales by pool handlers in the marketing area of the new order. Route sales in the marketing area of the prior milk order by the handler are reflected in increased out-of-area sales by pool handlers when the plant shifts regulation.

The shifting in plant regulation from one order to another order on a month-to-month basis serves no useful purpose and can cause a number of administrative problems for the handler involved in such shifts. For example, a shift in regulation of the plant can cause a handler to have problems in pooling milk diverted to nonpool plants for Class II use.

Requiring that a plant continue to be regulated under an order until the third month that it has more sales in the marketing area of another order will minimize the number of times that a plant will shift regulation. Such change will insure that a plant which has greater sales in another order area due to some aberration in sales for a relatively short period will not shift to another order immediately. Instead, the plant will continue to be regulated by the order under which the plant was previously regulated until the third month in which the plant has greater sales in the marketing area of another order.

2. *Diversion of producer milk to nonpool plants under the three Florida milk orders.* Seasonal diversion limits should apply on producer milk diverted to nonpool plants for Class II use. Cooperative associations and proprietary plant operators should be permitted to divert producer milk in amounts up to the following percentages of milk physically received at pool plants for which they are the responsible handler: 40 percent in March–June, 25 percent in December–February and 20 percent in July–November.

Under the three Florida orders, cooperative associations and proprietary plant operators are permitted currently to divert an amount equivalent to 25 percent of the aggregate quantity of milk physically received from producers at a pool plant. Proponents indicated that current provisions allow up to 50 percent of producer milk physically received at pool plants to be diverted to nonpool plants. In this regard, they noted that while cooperative associations are limited to diverting only the milk of member producers, the order provisions also permit a proprietary plant operator to divert up to 25 percent of the milk of producers received at a pool pant. A representative of Southern Milk Sales, Inc., likewise pointed out that the proposed limits are less than now permitted under the separate orders.

The seasonal diversion limits adopted herein are identical to the modified diversion limits proposed at the hearing by proponent cooperatives. In the proposals contained in the notice of hearing, the proponent cooperative had specified the following diversion limits: 40 percent in April, May and June, 30 percent in March and 20 percent in all other months.

An exhibit presented at the hearing by proponent cooperatives identified the percent of producer milk that such cooperatives had diverted on a month-by-month basis from 1983 through 1987. The months of March–June were the months when the greatest amount of milk was diverted and the months of July-November were the months when the least amount of milk was diverted. The months of December–February are months of somewhat greater diversion than the months of July–November.

The cooperatives pointed out that the exhibit represents the combined diversions of proponent cooperatives for the three Florida milk orders. Their spokesman pointed out that the individual cooperatives' diversions from specific plants varied greatly from the percentages shown on the exhibit.

Monthly average diversions to nonpool plants by proponent cooperatives in the three Florida orders for the years 1983 through 1987 as a percentage of producer milk pooled by proponent cooperatives ranged from a low of 0 in August 1987 to a high of 7.7 in December 1983. On the basis of prior diversions, the percentage limitations adopted herein will facilitate the handling of milk that is in excess of the fluid needs of handlers. Furthermore, proponent cooperatives modified at the hearing the diversion limits set forth in the hearing notice after consulting with other cooperative associations serving the Florida markets. Such modified limits are the percentage diversion limits adopted herein.

The seasonal monthly limits on diversions provided herein represent a monthly average of 27.5 percent on a year-round basis. This is only 2.5 percentage points greater than the limit now provided for a cooperative under the order. It is concluded, therefore, that the diversion limits requested by proponent cooperatives of 40 percent in March–June, 25 percent in December–February and 20 percent in July–November are reasonable limits and should be adopted.

Any milk diverted by a handler in excess of the quantity limitations should not be producer milk. The diverting handler should be permitted to designate the dairy farmer deliveries to nonpool plants that would not be producer milk.

In the event that the diverting handler fails to designate which producer's milk was over-diverted, the market

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administrator shall make such determination. In this regard, milk last diverted during such month in lots of an entire day's production, should be excluded first in determining which milk would not be producer milk.

Proponent cooperatives suggested that the market administrator should determine whose milk was over-diverted in the event that the diverting handler fails to make such determination. Proponents, however, gave no indication how the market administrator should make such determination. Accordingly, this decision adopts a method that has been used in other Federal orders to make such choice.

In conjunction with the seasonal diversion limits, proponent cooperatives asked that the minimum monthly delivery of 10 days' production of each producer to a pool plant under the Upper Florida and Tampa Bay milk orders and the proposed 10-day requirement for the Southeastern Florida milk order (discussed later in this decision) be modified. Proponents indicated that the producer whose milk is diverted may not be able to meet the 10-day requirement if a pool plant switches regulation to another Federal order. In such case, the cooperatives proposed that milk delivered to an other order plant regulated by the order that had regulated such pool plant in the prior month shall be counted towards meeting the 10-day production requirement.

The proposed change is an appropriate modification and is adopted herein. Unless such change is adopted, a dairy farmer who delivered 10 days' production to two pool plants might not be able to qualify the milk that was diverted to a nonpool plant as producer milk if one of the two pool plants became regulated under another order during the month. Under the change adopted herein, the producer could use the milk delivered to the pool plant and the other order plant to qualify the milk diverted for manufacturing use as producer milk. In the event that a cooperative is the diverting handler, the cooperative should be permitted to elect under which order the diverted milk is to be pooled as producer milk.

3. *Classification of shrinkage on other source milk receipts under the three Florida milk orders.* Shrinkage on receipts of producer milk and bulk milk receipts that is classified as Class II milk should be more effectively limited to one and one-half percent of such receipts. In prorating total plant shrinkage between receipts of fluid milk products that are generally intended for Class I use and other receipts of fluid milk products and fluid cream products intended for Class II use (including milk products that are utilized in the plant's processing operations to produce other milk products), only receipts that are in bulk should be used in such proration.

Under the current provisions of the three orders, shrinkage is assigned to both packaged fluid milk products and bulk fluid milk products that are received at a pool plant. Proponent cooperatives requested that plant shrinkage not be assigned to packaged receipts of fluid milk products.

The shrinkage provisions of orders recognize that losses do occur in the processing of raw milk into packaged fluid milk products. Processing losses do not occur in the handling of packaged fluid milk products that are transferred between plants. In most cases, there is no shrinkage or loss in the handling of packaged fluid milk products transferred between plants. Under usual circumstances, the quantity of packaged fluid milk products that is received at a pool plant is disposed of on routes without any loss. Consequently, the orders should be changed so that shrinkage losses are not attributed to packaged fluid milk products transferred to a pool plant. This will assign plant shrinkage to those milk receipts for which a handler is more likely to incur shrinkage as well as better effect the limit on the Class II classification of shrinkage.

4. *Charges on overdue accounts under the three Florida orders.* Late payment charges should apply on all funds due to the market administrator (Sections 71, 72, 77, 85, and 86—Payments to the producer-settlement fund, payments by handlers operating a partially regulated distributing plant, adjustment of accounts, assessment for order administration and deductions for marketing services, respectively) and on payments due to producers and cooperative associations) (Section 73—Payments to producers and to cooperative associations). The charge for late payments should be one percent for each month or portion thereof that such payment is overdue. The order should also provide that the amounts payable on overdue accounts shall be computed monthly on each unpaid obligation, which shall include any unpaid charges previously computed on such overdue accounts. Any obligation that was determined at a date later than prescribed by the order because of a handler's failure to submit a report to the market administrator when due shall be considered to have been payable by the date it would have been due if the report had been filed when due. Also, all monies collected on overdue accounts shall be paid to the administrative fund maintained by the market administrator.

The Upper Florida and Tampa Bay milk orders currently provide for late payment charges on accounts due the market administrator. The Southeastern Florida milk order applies a late payment charge only on funds due to the producer-settlement fund. In each of the three orders, the charge for late payments is one-half of one percent for each month the payment is overdue. The representative for the two Florida cooperative associations requested that late payment charges apply on all accounts due the market administrator and on payments due producers and cooperative associations. The cooperatives requested that the charges on overdue accounts be one percent for the first month the account is overdue, one and one-half percent the second month the account is overdue, and two percent per month for each succeeding month that the account is overdue.

The cooperatives' representative indicated that he was not aware of any handler who is habitually tardy in making payments required under the order. However, he believed that the individual orders should not encourage late payments as temporary short-term sources of funds by the imposition of relatively low charges on late payments. Also, the cooperatives indicated that producers and cooperative associations should not be expected to become sources of operating funds for handlers. If a handler fails to make payments as required, cooperative associations would have to borrow short-term capital to pay member producers or reduce the payment that they make to producers.

Charges on overdue accounts should apply on the unpaid obligations of a handler pursuant to Sections 71, 72, 73, 77, 85 and 86 in each of the three Florida milk orders. As indicated by proponents, none of the Federal milk orders provide for late payment charges as high as those proposed for the three Florida orders. The Alabama-West Florida order provides for a charge of one and one-half percent per month on overdue accounts. All of the other Federal milk orders that have late payment charges have rates that range from one-half of one percent to one percent per month.

The effectiveness of the late payment charges that currently apply under the three Florida orders is nullified to a large extent by the relatively small charge (½ of 1 percent of the unpaid obligation) and the fact that the charge does not apply until the first of the month following the due date. If the charge on overdue accounts is to have an impact on encouraging prompt payments, it should be an amount that is more nearly what a delinquent handler would be charged by commercial banks for money borrowed for short-term purposes. Otherwise, handlers who may have financial problems would be encouraged to delay their payments, knowing that the charge under the order is cheaper than borrowing money commercially at a higher loan rate.

The late-payment charge should be established at the rate of one percent per month of the unpaid balance. This charge is only one-half the rate proposed by proponents. The rate that cooperatives proposed was based upon the rate of interest charged by certain credit card companies for loans extended to their customers. The rate of 1 percent per month on the unpaid balance is more nearly representative of the cost of borrowing money commercially and should tend to encourage the payment of an obligation.

In the event that the 1-percent-per-month charge on overdue accounts fails to encourage prompt payment of accounts by handlers, further modification of the late payment charge provisions could be considered at a hearing. For example, such charge could be applied more promptly. Currently, late payment charges are not applied until the first day of the month after the account is due. The regulatory provisions in certain other Federal milk orders specifically provide that the charge shall apply immediately after the account is due.

Late-payment charges on all overdue accounts should accrue to the administrative expense fund maintained by the market administrator. In the event a handler is delinquent in the payment of an obligation, money must be spent by the market administrator in determining the amount of the late-payment charges and in collecting such payments. The money to cover the cost of these activities comes from the administrative assessment fund. Thus, the competitors of the noncomplying handlers who pay assessments to this fund are bearing the administrative costs of dealing with the delinquent handler. Therefore, it is reasonable that the late-payment charges assessed on noncomplying handlers be used to help defray these administrative costs.

Proponent cooperatives excepted to the proposed amendment which provides that charges on overdue accounts payable to producers and cooperative associations shall accrue to the administrative expense fund of the market administrator. The cooperative associations pointed out that in the event producers are not paid on a timely basis, the producers are the "shorted" party. For this reason, the cooperative associations believed that the charges on accounts that are overdue producers and cooperatives should be remitted to the producer-settlement fund. According to the cooperative associations, this would allow funds collected on such overdue accounts to be returned to the producers who were the ones foregoing timely payment.

If the order were amended to specify that charges on accounts overdue producers and cooperatives be paid to the producer-settlement fund, in these markets where virtually all of the milk received by handlers is from cooperatives, it would tend to reduce the incentive for cooperatives to insist on timely payment from handlers. This would detract from the basic intent of the late payment charge. More importantly, as previously noted, money must be spent by the market administrator in determining the amount of the late-payment charges and in collecting such payments. The money to cover the cost of these activities comes from the administrative expense fund. Accordingly, cooperative associations' exception to having charges on accounts overdue producers and cooperatives accrue to the administrative expense fund is hereby denied.

5. *Amendments to the pool plant provisions of the three Florida milk orders.* The pool distributing plant and the pool supply plant provisions should be amended to provide that the performance standards for such plants are based upon the fluid milk products physically received at the plant and diverted from such plant to a nonpool plant as producer milk.

The current provisions of the three orders base the performance standards for pool distributing plants and pool supply plants upon the fluid milk products received at a plant. Proponent cooperatives requested that diversions to a nonpool plant be counted in computing the qualification percentage of the plant from which such milk is diverted during the month.

As noted by proponents, milk pooled on the Florida markets must move a significant amount of time to handlers regulated under the orders to fill the needs of the marketplace. This is evident from the high Class I utilization of producer milk in the three markets.

The proposed change is appropriate for the three Florida orders because the State is deficit in milk production. Such change clarifies the pool plant qualification standards and will tend to assure that sufficient quantities of fluid milk products are available to meet the fluid milk requirements of regulated handlers.

As provided herein, milk diverted from a pool plant to a nonpool plant for Class II use would be included in the pool plant's receipts for the purpose of determining whether or not the plant meets the applicable pooling standards. It is necessary under this procedure to safeguard against a plant not meeting the pooling standards because too much milk was diverted from the plant, perhaps without timely knowledge of this by the plant operator. Accordingly, whatever quantity of milk diverted by a cooperative from a pool plant that would cause such plant to become a nonpool plant should not be considered as producer milk. In such event, the cooperative should be permitted to designate the dairy farmer deliveries to nonpool plants that would not be producer milk. Otherwise, the milk last diverted by the cooperative from the pool plant, in lots of an entire day's production, should be excluded first in determining the milk of dairy farmers that would not be producer milk.

6. *Miscellaneous amendments to the three Florida milk orders.* The provisions of the three Florida orders should also be amended as follows:

(1) The basic formula price section of the orders should be amended to delete a provision that establishes a floor price of $4.33 for the basic formula price;

(2) The section of the orders dealing with the handler's value of milk for computing the uniform price should be amended by removing the last paragraph in such section. Such paragraph provided during a temporary period a transportation credit for bulk fluid milk products received from an other order plant.

(3) The plant location adjustments for handlers in section 52 of the orders should provide that the Class I price applicable to producer milk and other source milk when adjusted by location pricing shall not be less than the Class II price for the month; and

(4) The plant location adjustments on nonpool milk should be amended to provide that the uniform price when adjusted to the location of the nonpool plant from which the milk was received shall not be less than the Class II price for the month.

The basic formula section of the three orders should be amended to delete an inappropriate floor price for the basic formula price. The $4.33 floor price is no longer an appropriate price since the basic formula price at the present time is more than twice the floor price. Accordingly, the $4.33 floor price should be deleted.

The paragraph to be removed from Section 60 of the orders, handler's value

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of milk for computing uniform price, was made a provision of the orders for a temporary period. The paragraph was added to provide a transportation credit through February 1985. Since the period in which the transportation credit was available has expired, the paragraph should be removed from each of the three orders.

In the plant location adjustments for handlers section of the orders, a limit should be placed on the amount that the Class I price applicable to producer milk and other source milk shall be adjusted downward. Likewise, in the plant location adjustments for the uniform price to producers and on nonpool milk, a limit should be placed on the amount that the uniform price on nonpool milk shall be adjusted downward. In each instance, the price shall not be less than the Class II price for the month. Such limit is appropriate since the Class II price represents the minimum value of producer milk in a manufacturing use. Furthermore, such change brings these provisions of the three Florida orders in conformity with changes made in other Federal milk orders at the time of the uniform classification changes.

7. Regulatory treatment under the Upper Florida and Tampa Bay milk orders of a pool plant and a manufacturing plant under a single roof. The Upper Florida and Tampa Bay milk orders should be amended to provide that the term pool plant shall not apply to any building, premises, or facilities, the primary function of which is to hold or store bottled milk or milk products (including filled milk) in finished form, nor shall it include any part of a plant in which the operations are entirely separated (by wall or other partition) from the handling of producer milk.

The current provisions of the Upper Florida and Tampa Bay orders do not provide for two facilities under a single roof to operate as separate facilities. Proponent cooperatives pointed out that the Southeastern Florida milk order permits a manufacturing plant to be operated as a seperate facility if it is separated by a wall from a facility that is handling producer milk. The cooperatives requested that such provision be incorporated in the Upper Florida and Tampa Bay milk orders.

When the provision was adopted in the Southeastern Florida order, the findings and conclusions stated:

> A minimum requirement for treating the manufacturing facilities as a nonpool plant would be that a separate receiving plant or platform is maintained for nonproducer milk and that the equipment for manufacturing be in a room entirely separated from the fluid milk handling equipment, such separation to be by a solid partition without communicating doorway. It would, of course, be necessary that handlers keep adequate records as to transfers of milk and milk products between the two parts of the plant. (Official notice is taken of the final decision for the Southeastern Florida order issued July 11, 1957 [22 FR 5529].)

Such provision has been included in the Southeastern Florida order since September 1, 1957. The provision should be adopted in the Upper Florida and Tampa Bay milk orders to provide uniformity among the three orders. Thus, a pool plant that has a separate manufacturing facility will be treated the same when shifting regulatory status among the three Florida orders.

8. Regulatory status of an exempt distributing plant under the Upper Florida milk order. The pool plant definition of the Upper Florida milk order should be modified to conform to the nonpool plant definition of the order. Such definition provides that an exempt distributing plant shall not be a pool plant. Accordingly, the pool plant definition should specify that the term "pool plant" shall not apply to an exempt distributing plant.

The nonpool plant definition of the order identifies one category of nonpool plant as an "exempt distributing plant". Such plant is defined as a distributing plant operated by a governmental agency.

The pool plant modification adopted herein was proposed by proponent cooperatives. The adoption of the change will conform the pool plant definition to the nonpool plant definition. Accordingly, the pool plant definition should be changed to specify that the term "pool plant" shall not apply to an exempt distributing plant.

9. Miscellaneous amendments to the Southeastern Florida milk order.

(a) The producer definition of the order should be revised to specify that milk of a dairy farmer must be received at a pool plant during the month in order for the dairy farmer to be a producer under the order.

Proponent cooperatives requested the modification of the producer definition that is adopted herein.

The proposed modification is appropriate and should be adopted herein. In the absence of the proposed change, any dairy farmer who produces Grade A milk could be qualified as a producer under the Southeastern Florida milk order. The proposed change provides specificity as to which dairy farmers are to be identified as producers under the order. Obviously, only those dairy farmers whose milk is received at a pool plant regulated by the Southeastern Florida order should be producers under such order. It is appropriate that the order be modified accordingly.

(b) The Class III price shall be computed by multiplying the butterfat differential for the month by 35 and rounding the result to the nearest cent. The net result of such computation is that the value of skim milk classified as Class III is effectively zero.

Under the current provisions of the order, the Class III price is determined by multiplying the Chicago butter price by 1.25, adding 4 cents and multiplying the result by 3.5. This formula results in a Class III price that is about 60 cents above the value of Class II butterfat in a hundredweight of milk testing 3.5 percent butterfat. This is largely because the butterfat differential under the order is based on a yield factor of 1.15 compared to the 1.25 yield factor in this formula. Since the value of butterfat as reflected through the butterfat differential adjustment to the uniform price is about 60 cents per 3.5 pounds lower than the Class III price, the current formula effectively results in a handler being charged about 60 cents per hundredweight for Class III skim milk.

Proponent cooperatives requested that the computation for the Class III price be amended to provide a zero value for skim milk classified as Class III.

In the Southeastern Florida order, Class III milk is all milk of which the skim milk portion is disposed of for fertilizer or livestock feed or dumped after such prior notification as the market administrator may require. It is obvious that skim milk classified as Class III is of no value to the handler. Accordingly, the order should be amended to provide for a zero value for skim milk in a Class III use. The butterfat differential is the amount that the value of a tenth of a pound of butterfat exceeds the value of a tenth of a pound of skim milk. Thus, to effect a zero value for a hundredweight of skim milk in Class III, the Class III price needs to be established at the butterfat differential value in a hundredweight of milk containing 3.5 percent butterfat.

(c) The provision providing that the partial payment to producers shall not exceed $8 per hundredweight should be deleted.

The current provisions of the order provide that a handler shall make a partial payment to a producer on or before the 20th day of the month for milk received during the first 15 days of the month. On or before the 5th day of the following month, a handler is required to make a partial payment to a producer for milk received from the 16th day of the month until the last day of the month. The amount of the partial payment is the uniform price for the preceding month less ten percent, but not to exceed $8, multiplied by the hundredweight of milk received during the two periods of the months.

Proponent cooperatives requested that the $8 maximum be deleted. They noted that such rate is no longer appropriate in today's market. Handlers in the market have been paying in excess of the maximum rate provided under the order for a long period of time.

As noted by proponent, the $8 maximum is no longer appropriate in today's market in which the uniform price under the Southeastern Florida Federal milk order ranges from $14 to $15 per hundredweight. Accordingly, the $8 maximum should be deleted.

(d) Ten days' milk production must be received from a producer in order for milk of such producer to be diverted to a nonpool plant for Class II use.

The current order provisions define producer milk as skim milk and butterfat contained in milk diverted from a pool plant to a nonpool plant, other than a producer-handler plant subject to certain limitations. It is not clear from the order language whether milk of a producer must be received once a month at a pool plant to be eligible for diversion to a nonpool plant or whether such milk may be diverted to a nonpool plant every day after being received once at a pool plant.

Proponent cooperatives requested that the Southeastern Florida milk order be modified to require that at least 10 days' production must be received at a pool plant in order for milk of a producer to be eligible for diversion as Class II milk to a nonpool plant. The cooperatives noted that the Upper Florida and Tampa Bay milk orders currently contain such requirement.

Only that milk genuinely associated with the market should be eligible to be diverted to nonpool plants. A requirement that at least 10 days' production of a producer must be physically received at a pool plant during the month to qualify any of such producer's production in the same month for diversion to a nonpool plant as producer milk should provide assurance that such milk is genuinely associated with the market and still permit the necessary flexibility in diverting milk not needed for fluid use. Such limitation has been in effect under the Upper Florida and Tampa Bay milk orders for a number of years and has served to identify that milk associated with such markets. The 10-day production requirement under the Southeastern Florida order adopted herein should provide assurance that the milk of such producer is associated with the Southeastern Florida market.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

The findings and determinations hereinafter set forth supplement those that were made when the Upper Florida, Tampa Bay, and Southeastern Florida orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) The tentative marketing agreements and the orders, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing areas, and the minimum prices specified in the tentative marketing agreements and the orders, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreements and the orders, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, marketing agreements upon which a hearing has been held.

Rulings on Exceptions

In arriving at the findings and conclusions, and the regulatory provisions of this decision, each of the exceptions received was carefully and fully considered in conjunction with the record evidence. To the extent that the findings and conclusions and the regulatory provisions of this decision are at variance with any of the exceptions, such exceptions are hereby overruled for the reasons previously stated in this decision.

Marketing Agreement and Order

Annexed hereto and made a part hereof are two documents, a Marketing Agreement regulating the handling of milk, and an Order amending the orders regulating the handling of milk in the Upper Florida, Tampa Bay and Southeastern Florida marketing areas, which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered that this entire decision and the two documents annexed hereto be published in the Federal Register.

Determination of Producer Approval and Representative Period

September 1988 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the order, as amended and as hereby proposed to be amended, regulating the handling of milk in the Upper Florida, Tampa Bay and Southeastern Florida marketing areas is approved or favored by producers, as defined under the terms of the orders as amended and as hereby proposed to be amended, who during such representative period were engaged in the production of milk for sale within the aforesaid marketing areas.

List of Subjects in 7 CFR Parts 1006, 1012 and 1013

Milk marketing orders, Milk Dairy products.

Signed at Washington, DC. on January 13, 1989.

Kenneth A. Gilles,

Assistant Secretary for Marketing and Inspection Services.

Order Amending the Orders Regulating the Handling of Milk in the Upper Florida, Tampa Bay and Southeastern Florida Marketing Areas

(This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.)

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the orders were first issued and when they were

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amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) *Findings.* A public hearing was held upon certain proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the Upper Florida, Tampa Bay and Southeastern Florida marketing areas. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure (7 CFR Part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said orders as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing areas; and the minimum prices specified in the orders as hereby amended are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said orders as hereby amended regulate the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, marketing agreements upon which a hearing has been held.

Order Relative to Handling

It is therefore ordered that on and after the effective date hereof, the handling of milk in the Upper Florida, Tampa Bay and Southeastern Florida marketing areas shall be in conformity to and in compliance with the terms and conditions of the orders, as amended, and as hereby amended, as follows:

The provisions of the proposed marketing agreements and order amending the orders contained in the recommended decision issued by the Administrator on September 2, 1988 and published in the Federal Register on September 8, 1988 (53 FR 34798), shall be and are the terms and provisions of this order, amending the orders, and are set forth in full herein.

PART 1006—MILK IN THE UPPER FLORIDA MARKETING AREA

1. The authority citation for 7 CFR Parts 1006, 1012 and 1013 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Revise § 1006.7 to read as follows:

§ 1006.7 Pool plant.

Except as provided in paragraph (d) of this section, "pool plant" means:

(a) A distributing plant that has route distribution, except filled milk, during the month of not less than 50 percent of the total Grade A fluid milk products, except filled milk, that are physically received at such plant or diverted as producer milk to a nonpool plant pursuant to § 1006.13, and that has route disposition, except filled milk, in the marketing area during the month of not less than 10 percent of such receipts.

(b) A supply plant from which not less than 50 percent of the total quantity of Grade A fluid milk products that are physically received from dairy farmers at such plant or diverted as producer milk to a nonpool plant pursuant to § 1006.13 during the month is shipped as fluid milk products, except filled milk, to pool plants meeting the requirements of § 1006.7(a).

(c) A plant, other than a distributing plant, that is located in the marketing area and is operated by a cooperative association if pool plant status under this paragraph is requested for each plant by the cooperative association and 50 percent or more of the producer milk of members of the cooperative association is received at pool distributing plants either directly from farms or by transfer from plants of the cooperative association for which pool plant status under this paragraph has been requested, subject to the following conditions:

(1) The plant is approved by a duly constituted health authority for the disposition of Grade A milk in the marketing area; and

(2) The plant does not qualify as a pool plant under paragraph (b) of this section or under the provisions of another Federal order applicable to a supply plant.

(d) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant;

(2) An exempt distributing plant;

(3) A distributing plant qualified pursuant to paragraph (a) of this section which meets the requirements of a fully regulated plant pursuant to the provisions of another order issued pursuant to the Act and from which a greater quantity of fluid milk products, except filled milk, is disposed of during the month from such plant as route disposition in the marketing area regulated by the other order than as route disposition in this marketing area: *Provided,* That such a distributing plant which was a pool plant under this order in the immediately preceding month shall continue to be subject to all of the provisions of this part until the third consecutive month in which a greater proportion of its route disposition is made in such other marketing area, unless the other order requires regulation of the plant without regard to its qualifying as a pool plant under this order; and

(4) Any building, premises, or facilities, the primary function of which is to hold or store bottled milk or milk products (including filled milk) in finished form, nor shall it include any part of a plant in which the operations are entirely separated (by wall or other partition) from the handling of producer milk.

3. In § 1006.13, paragraph (b) is revised to read as follows:

§ 1006.13 Producer milk.

* * * * *

(b) Diverted from a pool plant to a nonpool plant that is not a producer-handler plant, subject to the following conditions:

(1) Such milk shall be deemed to have been received by the diverting handler at the plant to which diverted;

(2) Not less than 10 days' production of the producer whose milk is diverted is physically received at a pool plant: *Provided,* That any delivery during the current month from such producer to an other order plant regulated by the order that regulated such pool plant in the prior month shall be counted towards meeting the 10-day production requirement;

(3) To the extent that it would result in nonpool plant status for the pool plant from which diverted, milk diverted for the account of a cooperative association from the pool plant of another handler shall not be producer milk;

(4) A cooperative association may divert for its account the milk of a producer. The total quantity of such milk so diverted by a cooperative that exceeds the following specified applicable percentage of producer milk that the cooperative association caused to be delivered to and physically received at pool plants during the month shall not be producer milk:

(i) 40 percent in March-June,

(ii) 25 percent in December-February, and

(iii) 20 percent in July-November;

(5) The operator of a pool plant other than a cooperative association may divert for its account any milk of producers that is not under the control of a cooperative association that is diverting milk during the month pursuant to paragraph (b)(4) of this section. The total quantity so diverted by the operator of the pool plant that exceeds the following specified applicable percentage of milk physically received at such plant during the month that is eligible to be diverted by the plant operator shall not be producer milk:

(i) 40 percent in March-June,

(ii) 25 percent in December-February, and

(iii) 20 percent in July-November;

(6) The diverting handler shall designate the dairy farmers whose milk is not producer milk pursuant to paragraph (b) (4) and (5) of this section. If the handler fails to make such designation, milk diverted on the last day of the month, then the second-to-last day of the month, and so on, shall be excluded until all diversions in excess of the prescribed limit are accounted for.

4. In § 1006.40, paragraph (b)(6) is revised to read as follows and paragraph (b)(7) is removed:

§ 1006.40 Classes of utilization.

* * * * *

(b) * * *

(6) Skim milk and butterfat in shrinkage assigned pursuant to § 1006.41(a) to the receipts specified in § 1006.41(a)(2) and in shrinkage specified in § 1006.41 (b) and (c).

* * * * *

5. Revise § 1006.41 to read as follows:

§ 1006.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1006.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each pool plant to the respective quantities of skim milk and butterfat:

(1) In the receipts specified in paragraphs (b) (1) through (6) of this section on which shrinkage is allowed pursuant to such paragraphs; and

(2) In other source milk not specified in paragraphs (b) (1) through (6) of this section which was received in the form of a bulk fluid milk product or a bulk fluid cream product.

(b) The shrinkage of skim milk and butterfat, respectively, assigned pursuant to paragraph (a) of this section to the receipts specified in paragraph (a)(1) of this section that is not in excess of:

(1) Two percent of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to another plant and milk received from a handler described in § 1006.9(c));

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1006.9(c), except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm, the applicable percentage under this paragraph shall be two percent;

(3) Plus 0.5 percent of the skim milk and butterfat, respectively, in producer milk diverted from such plant by the plant operator to another plant, except that if the operator of the plant to which the milk is diverted purchases such milk on the basis of weights determined from its measurement on the farm, the applicable percentage under this paragraph shall be zero;

(4) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other pool plants;

(5) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other order plants, excluding the quantity for which Class II classification is requested by the operator of both plants;

(6) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received from unregulated supply plants, excluding the quantity for which Class II classification is requested by the handler; and

(7) Less 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products transferred to other plants that is not in excess of the respective quantities of skim milk and butterfat to which percentages are applied in paragraphs (b) (1), (2), (4), (5) and (6) of this section; and

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1006.9 (b) and (c), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm, the applicable percentage under this paragraph for the cooperative association shall be zero.

§ 1006.51 [Amended]

6. Amend § 1006.51 by removing the last sentence which reads "For the purpose of computing the Class I price, the resulting price shall not be less than $4.33."

7. Amend § 1006.52 by adding a new paragraph (c) to read as follows:

§ 1006.52 Plant location adjustments for handlers.

* * * * *

(c) The Class I price resulting from such adjustments specified in this section shall not result in a price less than the Class II price for the month and the Class I price applicable to other source milk shall be adjusted at the rates specified in paragraph (a) of this section, except that the adjusted Class I price shall not be less than the Class II price for the month.

§ 1006.60 [Amended]

8. In § 1006.60, paragraph (h) is removed.

9. In § 1006.75, revise paragraph (b) to read as follows:

§ 1006.75 Plant location adjustments for producers and on nonpool milk.

* * * * *

(b) For purposes of computations pursuant to §§ 1006.71 and 1006.72, the uniform price shall be adjusted at the rates set forth in § 1006.52 applicable at the location of the nonpool plant from which the milk was received, except that the resulting adjusted price shall not be less than the Class II price for the month.

10. Revise § 1006.78 to read as follows:

§ 1006.78 Charges on overdue accounts.

Any unpaid obligation of a handler pursuant to §§ 1006.71, 1006.73, 1006.76, 1006.77, 1006.85 or 1006.86 shall be increased by 1 percent for each month or portion thereof that such obligation is overdue, subject to the following conditions:

(a) The amounts payable pursuant to this section shall be computed monthly on each unpaid obligation, which shall include any unpaid charges previously computed pursuant to this section;

(b) For the purposes of this section, any obligation that was determined at a date later than prescribed by the order because of a handler's failure to submit a report to the market administrator when due shall be considered to have been payable by the date it would have been due if the report had been filed when due; and

(c) All monies collected pursuant to this section shall be paid to the administrative assessment fund maintained by the market administrator.

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PART 1012—MILK IN THE TAMPA BAY MARKETING AREA

11. Revise § 1012.7 to read as follows:

§ 1012.7 Pool plant.

Except as provided in paragraph (c) of this section, "pool plant" means:

(a) A distributing plant that has route distribution, except filled milk, during the month of not less than 50 percent of the total Grade A fluid milk products, except filled milk, that are physically received at such plant or diverted as producer milk to a nonpool plant pursuant to § 1012.13, and that has route disposition, except filled milk, in the marketing area during the month of not less than 10 percent of such receipts.

(b) A supply plant from which not less than 50 percent of the total quantity of Grade A fluid milk prodcuts that is physically received from dairy farmers at such plant or diverted as producer milk to a nonpool plant pursuant to § 1012.13 during the month is shipped as fluid milk products, except filled milk, to pool plants meeting the requirements of § 1012.7(a).

(c) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant;

(2) A distributing plant qualified pursuant to paragraph (a) of this section which meets the requirements of a fully regulated plant pursuant to the provisions of another order issued pursuant to the Act and from which a greater quantity of fluid milk products, except filled milk, is disposed of during the month from such plant as route disposition in the marketing area regulated by the other order than as route disposition in this marketing area: *Provided*, That such a distributing plant which was a pool plant under this order in the immediately preceding month shall continue to be subject to all of the provisions of this part until the third consecutive month in which a greater proportion of its route disposition is made in such other marketing area, unless the other order requires regulation of the plant without regard to its qualifying as a pool plant under this order; and

(3) Any building, premises, or facilities, the primary function of which is to hold or store bottled milk or milk products (including filled milk) in finished form, nor shall it include any part of a plant in which the operations are entirely separated (by wall or other partition) from the handling of producer milk.

12. In § 1012.13, paragraph (b) is revised to read as follows:

§ 1012.13 Producer milk.

* * * * *

(b) Diverted from a pool plant to a nonpool plant that is not a producer-handler plant, subject to the following conditions:

(1) Such milk shall be deemed to have been received by the diverting handler at the plant to which diverted;

(2) Not less than 10 days' production of the producer whose milk is diverted is physically received at a pool plant: *Provided*, That any delivery during the current month from such producer to an other order plant regulated by the order that regulated such pool plant in the prior month shall be counted towards meeting the 10-day production requirement;

(3) To the extent that it would result in nonpool plant status for the pool plant from which diverted, milk diverted for the account of a cooperative association from the pool plant of another handler shall not be producer milk;

(4) A cooperative association may divert for its account the milk of a producer. The total quantity of such milk so diverted by a cooperative that exceeds the following specified applicable percentage of producer milk that the cooperative association caused to be delivered to and physically received at pool plants during the month shall not be producer milk:

(i) 40 percent in March–June,

(ii) 25 percent in December–February, and

(iii) 20 percent in July–November;

(5) The operator of a pool plant other than a cooperative association may divert for its account any milk of producers that is not under the control of a cooperative association that is diverting milk during the month pursuant to paragraph (b)(4) of this section. The total quantity so diverted by the operator of the pool plant that exceeds the following specified applicable percentage of milk physically received at such plant during the month that is eligible to be diverted by the plant operator shall not be producer milk:

(i) 40 percent in March–June,

(ii) 25 percent in December–February, and

(iii) 20 percent in July–November;

(6) The diverting handler shall designate the dairy farmers whose milk is not producer milk pursuant to paragraphs (b) (4) and (5) of this section. If the handler fails to make such designation, milk diverted on the last day of the month, then the second-to-last day of the month, and so on, shall be excluded until all diversions in excess of the prescribed limit are accounted for.

13. In § 1012.40, paragraph (b)(6) is revised to read as follows and paragraph (b)(7) is removed:

§ 1012.40 Classes of utilization.

* * * * *

(b) * * *

(6) Skim milk and butterfat in shrinkage assigned pursuant to § 1012.41(a) to the receipts specified in § 1012.41(a)(2) and in shrinkage specified in § 1012.41 (b) and (c).

* * * * *

14. Revise § 1012.41 to read as follows:

§ 1012.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1012.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each pool plant to the respective quantities of skim milk and butterfat:

(1) In the receipts specified in paragraphs (b)(1) through (6) of this section on which shrinkage is allowed pursuant to such paragraphs; and

(2) In other source milk not specified in paragraphs (b)(1) through (5) of this section which was received in the form of a bulk fluid milk product or a bulk fluid cream product.

(b) The shrinkage of skim milk and butterfat, respectively, assigned pursuant to paragraph (a) of this section to the receipts specified in paragraph (a)(1) of this section that is not in excess of:

(1) Two percent of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to another plant and milk received from a handler described in § 1012.9(c));

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1012.9(c), except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm, the applicable percentage under this paragraph shall be two percent;

(3) Plus 0.5 percent of the skim milk and butterfat, respectively, in producer milk diverted from such plant by the plant operator to another plant, except that if the operator of the plant to which the milk is diverted purchases such milk on the basis of weights determined from its measurement on the farm, the applicable percentage under this paragraph shall be zero;

(4) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other pool plants;

(5) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other order plants, excluding the quantity for which Class II classification is requested by the operator of both plants;

(6) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received from unregulated supply plants, excluding the quantity for which Class II classification is requested by the handler; and

(7) Less 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products transferred to other plants that is not in excess of the respective quantities of skim milk and butterfat to which percentages are applied in paragraphs (b) (1), (2), (4), (5) and (6) of this section; and

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1012.9 (b) and (c), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm, the applicable percentage under this paragraph for the cooperative association shall be zero.

§ 1012.51 [Amended]

15. Amend § 1012.51 by removing the last sentence which reads "For the purpose of computing the Class I price, the resulting price shall not be less than $4.33."

16. Amend § 1012.52 by adding a new paragraph (c) to read as follows:

§ 1012.52 Plant location adjustments for handlers.

* * * * *

(c) The Class I price resulting from such adjustments specified in this section shall not result in a price less than the Class II price for the month and the Class I price applicable to other source milk shall be adjusted at the rates specified in paragraph (a) of this section, except that the adjusted Class I price shall not be less than the Class II price for the month.

§ 1012.60 [Amended]

17. In § 1012.60, paragraph (h) is removed.

18. In § 1012.75, revise paragraph (b) to read as follows:

§ 1012.75 Plant location adjustments for producers and on nonpool milk.

(a) * * *

(b) For purposes of computations pursuant to §§ 1012.71 and 1012.72, the uniform price shall be adjusted at the rates set forth in § 1012.52 applicable at the location of the nonpool plant from which the milk was received, except that the resulting adjusted price shall not be less than the Class II price for the month.

19. Revise § 1012.78 to read as follows:

§ 1012.78 Charges on overdue accounts.

Any unpaid obligation of a handler pursuant to §§ 1012.71, 1012.73, 1012.76, 1012.77, 1012.85 or 1012.86 shall be increased 1 percent for each month or portion thereof that such obligation is overdue, subject to the following conditions:

(a) The amounts payable pursuant to this section shall be computed monthly on each unpaid obligation, which shall include any unpaid charges previously computed pursuant to this section;

(b) For the purposes of this section, any obligation that was determined at a date later than prescribed by the order because of a handler's failure to submit a report to the market administrator when due shall be considered to have been payable by the date it would have been due if the report had been filed when due; and

(c) All monies collected pursuant to this section shall be paid to the administrative assessment fund maintained by the market administrator.

PART 1013—MILK IN THE SOUTHEASTERN FLORIDA MARKETING AREA

20. Revise § 1013.7 to read as follows:

§ 1013.7 Pool plant.

Except as provided in paragraph (c) of this section, "pool plant" means:

(a) A distributing plant that has route distribution, except filled milk, during the month of not less than 50 percent of the total Grade A fluid milk products, except filled milk, that are physically received at such plant or diverted as producer milk to a nonpool plant pursuant to § 1013.13, and that has route disposition, except filled milk, in the marketing area during the month of not less than 10 percent of such receipts.

(b) A supply plant from which not less than 50 percent of the total quantity of Grade A fluid milk products that is physically received from dairy farmers at such plant or diverted as producer milk to a nonpool plant pursuant to § 1013.13 during the month is shipped as fluid milk products, except filled milk, to pool plants meeting the requirements of § 1013.7(a).

(c) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant;

(2) A distributing plant qualified pursuant to paragraph (a) of this section which meets the requirements of a fully regulated plant pursuant to the provisions of another order issued pursuant to the Act and from which a greater quantity of fluid milk products, except filled milk, is disposed of during the month from such plant as route disposition in the marketing area regulated by the other order than as route disposition in this marketing area: *Provided*, That such a distributing plant which was a pool plant under this order in the immediately preceding month shall continue to be subject to all of the provisions of this part until the third consecutive month in which a greater proportion of its route disposition is made in such other marketing area, unless the other order requires regulation of the plant without regard to its qualifying as a pool plant under this order; and

(3) Any building, premises, or facilities, the primary function of which is to hold or store bottled milk or milk products (including filled milk) in finished form, nor shall it include any part of a plant in which the operations are entirely separated (by wall or other partition) from the handling of producer milk.

21. Revise § 1013.12 to read as follows:

§ 1013.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any person who produces milk in compliance with the inspection requirements of a duly constituted health authority, which milk is received at a pool plant or diverted pursuant to § 1013.13 from a pool plant to a nonpool plant.

(b) The term "producer" shall not include:

(1) A producer-handler as defined in any order (including this part) issued pursuant to the Act; or

(2) Any person with respect to milk produced by such person that is reported as diverted to an other order plant if any portion of such person's milk so moved is assigned to Class I milk under the provisions of such other order.

22. In § 1013.13, paragraph (b) is revised to read as follows:

§ 1013.13 Producer milk.

* * * * *

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(b) Diverted from a pool plant to a nonpool plant that is not a producer-handler plant, subject to the following conditions:

(1) Such milk shall be deemed to have been received by the diverting handler at the plant to which diverted;

(2) Not less than 10 days' production of the producer whose milk is diverted is physically received at a pool plant: *Provided,* That any delivery during the current month from such producer to an other order plant regulated by the order that regulated such pool plant in the prior month shall be counted towards meeting the 10-day production requirement;

(3) To the extent that it would result in nonpool plant status for the pool plant from which diverted, milk diverted for the account of a cooperative association from the pool plant of another handler shall not be producer milk;

(4) A cooperative association may divert for its account the milk of a producer. The total quantity of such milk so diverted by a cooperative that exceeds the following specified applicable percentage of producer milk that the cooperative association caused to be delivered to and physically received at pool plants during the month shall not be producer milk:

(i) 40 percent in March–June,

(ii) 25 percent in December–February, and

(iii) 20 percent in July–November;

(5) The operator of a pool plant other than a cooperative association may divert for its account any milk of producers that is not under the control of a cooperative association that is diverting milk during the month pursuant to paragraph (b)(4) of this section. The total quantity so diverted by the operator of the pool plant that exceeds the following specified applicable percentage of milk physically received at such plant during the month that is eligible to be diverted by the plant operator shall not be producer milk:

(i) 40 percent in March–June,

(ii) 25 percent in December–February, and

(iii) 20 percent in July–November;

(6) The diverting handler shall designate the dairy farmers whose milk is not producer milk pursuant to paragraph (b) (4) and (5) of this section. If the handler fails to make such designation, milk diverted on the last day of the month, then the second-to-last day of the month, and so on, shall be excluded until all diversions in excess of the prescribed limit are accounted for.

23. In § 1013.40, paragraph (b)(6) is revised to read as follows and paragraph (b)(7) is removed:

§ 1013.40 Classes of utilization.

* * * * *

(b) * * *

(6) Skim milk and butterfat in shrinkage assigned pursuant to § 1013.41 (a) to the receipts specified in § 1013.41 (a)(2) and in shrinkage specified in § 1013.41 (b) and (c).

* * * * *

24. Revise § 1013.41 to read as follows:

§ 1013.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1013.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each pool plant to the respective quantities of skim milk and butterfat:

(1) In the receipts specified in paragraphs (b) (1) through (6) of this section on which shrinkage is allowed pursuant to such paragraphs; and

(2) In other source milk not specified in paragraphs (b) (1) through (6) of this section which was received in the form of a bulk fluid milk product or a bulk fluid cream product.

(b) The shrinkage of skim milk and butterfat, respectively, assigned pursuant to paragraph (a) of this section to the receipts specified in paragraph (a)(1) of this section that is not in excess of:

(1) Two percent of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to another plant and milk received from a handler described in § 1013.9(c));

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1013.9(c), except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm, the applicable percentage under this paragraph shall be two percent;

(3) Plus 0.5 percent of the skim milk and butterfat, respectively, in producer milk diverted from such plant by the plant operator to another plant, except that if the operator of the plant to which the milk is diverted purchases such milk on the basis of weights determined from its measurement on the farm, the applicable percentage under this paragraph shall be zero;

(4) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other pool plants;

(5) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other order plants, excluding the quantity for which Class II classification is requested by the operator of both plants;

(6) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received from unregulated supply plants, excluding the quantity for which Class II classification is requested by the handler; and

(7) Less 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products transferred to other plants that is not in excess of the respective quantities of skim milk and butterfat to which percentages are applied in paragraphs (b) (1), (2), (4), (5) and (6) of this section; and

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1013.9 (b) and (c), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm, the applicable percentage under this paragraph for the cooperative association shall be zero.

25. In § 1013.50, revise the introductory text and paragraph (c) as follows:

§ 1013.50 Class prices.

Subject to the provisions of § 1013.52, the Class prices for the month per hundredweight of milk containing 3.5 percent butterfat shall be as follows:

* * * * *

(c) *Class III price.* The Class III price shall be computed as follows: Multiply the butterfat differential pursuant to § 1013.74 for the month by 35 and round the result to the nearest cent.

§ 1013.51 [Amended]

26. Amend § 1013.51 by removing the last sentence which reads: "For the purpose of computing the Class I price, the resulting price shall not be less than $4.33."

27. Amend § 1013.52 by adding a new paragraph (c) to read as follows:

§ 1013.52 Plant location adjustments for handlers.

* * * * *

(c) The Class I price resulting from such adjustments specified in this section shall not result in a price less than the Class II price for the month and the Class I price applicable to other source milk shall be adjusted at the rates specified in paragraph (a) of this section, except that the adjusted Class I price shall not be less than the Class II price for the month.

§ 1013.60 [Amended]

28. In § 1013.60, paragraph (h) is removed.

§ 1013.73 [Amended]

29. Amend § 1013.73(a) (1) and (2) by removing the phrase "but not to exceed $6,".

30. In § 1013.75, revise paragraph (b) to read as follows:

§ 1013.75 Plant location adjustments for producers and no nonpool milk.

* * * * *

(b) For purposes of computations pursuant to §§ 1013.71 and 1013.72, the uniform price shall be adjusted at the rates set forth in § 1013.52 applicable at the location of the nonpool plant from which the milk was received, except that the resulting adjusted price shall not be less than the Class II price for the month.

31. Revise § 1013.78 to read as follows:

§ 1013.78 Charges on overdue accounts.

Any unpaid obligation of a handler pursuant to §§ 1013.71, 1013.73, 1013.76, 1013.77, 1013.85 or 1013.86 shall be increased 1 percent for each month or portion thereof that such obligation is overdue, subject to the following conditions:

(a) The amounts payable pursuant to this section shall be computed monthly on each unpaid obligation, which shall include any unpaid charges previously computed pursuant to this section;

(b) For the purposes of this section, any obligation that was determined at a date later than prescribed by the order because of a handler's failure to submit a report to the market administrator when due shall be considered to have been payable by the date it would have been due if the report had been filed when due; and

(c) All monies collected pursuant to this section shall be paid to the administrative assessment fund maintained by the market administrator.

Marketing Agreement Regulating the Handling of Milk in the Upper Florida, Tampa Bay and Southeastern Florida Marketing Areas

The parties hereto, in order to effectuate the declared policy of the Act, and in accordance with the rules of practice and procedure effective thereunder (7 CFR Part 900), desire to enter into this marketing agreement and do hereby agree that the provisions referred to in paragraph I hereof as augmented by the provisions specified in paragraph II hereof, shall be and are the provisions of this marketing agreement as if set out in full herein.

I. The findings and determinations, order relative to handling, and the provisions of §§ [1] to [2], all inclusive, of the order regulating the handling of milk in the ( ) marketing area (7 CFR Part [3]) which is annexed hereto; and

II. The following provisions:

§ [3] Record of milk handled and authorization to correct typographical errors.

(a) Record of milk handled. The undersigned certifies that he handled during the month of September 1988, hundredweight of milk covered by this marketing agreement.

(b) Authorization to correct typographical errors. The undersigned hereby authorizes the Director, or Acting Director, Dairy Division, Agricultural Marketing Service, to correct any typographical errors which may have been made in this marketing agreement.

§ [3] Effective date. This marketing agreement shall become effective upon the execution of a counterpart hereof by the Secretary in accordance with § 900.14(a) of the aforesaid rules of practice and procedure.

In Witness Whereof, The contracting handlers, acting under the provisions of the Act, for the purposes and subject to the limitations herein contained and not otherwise, have hereunto set their respective hands and seals.

(Signature)

By

(Name) (Title)

(Address)

Attest

Date

[FR Doc. 89-1526 Filed 1-23-89; 8:45 am]

BILLING CODE 3410-02-M

Animal and Plant Health Inspection Service

9 CFR Part 91

[Docket No. 88-047]

Ports Designated for Exportation of Animals

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations concerning inspection and handling of livestock for exportation by adding Stevedoring Service of America as an operator of an export inspection facility at the port of Seattle, Washington. We have determined that the facility of Stevedoring Service of America meets the requirements of the regulations for inclusion in the list of export inspection facilities. This action would add an additional facility through which animals may be exported. We are also proposing to correct the telephone number of the operator of Seattle's existing export facility, S&W Export Ltd.

DATE: Consideration will be given to comments postmarked or received on or before February 8, 1989.

ADDRESSES: Send an original and two copies of written comments to Helene R. Wright, Regulatory Analysis and Development, PPD, APHIS, USDA, Room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 88-047. Comments received may be inspected at USDA, Room 1141, South Building, 14th and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. George Winegar, Senior Staff Veterinarian, Import-Export Animals Staff, VS, APHIS, USDA, Room 761, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8383.

SUPPLEMENTARY INFORMATION:

Background

We are proposing to amend the regulations in 9 CFR Part 91 concerning inspection and handling of livestock for exportation (referred to below as the regulations). Pursuant to a request by Stevedoring Service of America, we are proposing to amend § 91.14 by adding its facility as an animal export inspection facility at the port of Seattle, Washington.

The regulations provide that inspection facilities, to be approved, must meet the specified requirements in § 91.14(c) concerning materials, size, inspection implements, cleaning and disinfection, feed and water, access, testing and treatment, location, disposal of animal wastes, lighting, and office and rest room facilities.

The facility being operated by Stevedoring Service of America has been inspected by representatives of Veterinary Services, and meets the requirements contained in § 91.14(c).

[1] First and last sections of the respective orders.
[2] Appropriate part number.
[3] Next consecutive section number.

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Therefore, we are proposing to add the facility operated by Stevedoring Service of America, located at 3615 11th Avenue SW., Seattle, WA 98134, as an animal export inspection facility at the port of Seattle, Washington.

Miscellaneous

The telephone number of Seattle's existing animal export inspection facility, operated by S&W Export Ltd., is incorrectly listed in § 91.14 as (206) 248–2360. We are proposing to correct the number to read (206) 241–1637.

Public Comment Period

James W. Glosser, Administrator of the Animal and Plant Health Inspection Service, has determined that this rulemaking procedure should be expedited by allowing a 15-day comment period on this proposal. Stevedoring Service of America meets the requirements contained in § 91.14(c) for approval as an animal export inspection facility. The addition of this facility should be made promptly in order to inform exporters so that they can make appropriate plans to export their animals, and avoid unnecessary restrictions on the exportation of animals.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this proposed rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule would have an effect on the economy of less than $100 million; would not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; and would not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

The addition of another animal export inspection facility at the port of Seattle, Washington, would facilitate the export of livestock from the United States. However, we believe the addition of this facility would have little or no economic impact on animal exporters, the majority of whom are small businesses. The primary impact would be the increased convenience of having two animal export facilities from which to choose.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The regulations in this proposal contain no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR 3015, Subpart V.)

List of Subjects in 9 CFR Part 91

Animal diseases, Animal welfare, Exports, Humane animal handling, Livestock and livestock products, Transportation.

Accordingly, 9 CFR Part 91 would be amended as follows:

PART 91—INSPECTION AND HANDLING OF LIVESTOCK FOR EXPORTATION

1. The authority citation for Part 91 would continue to read as follows:

Authority: 21 U.S.C. 105, 112, 113, 114a, 120, 121, 134b, 134f, 612, 613, 614, 618, 46 U.S.C 466a, 466b, 49 U.S.C. 1509(d); 7 CFR 2.17, 2.51, and 371.2(d).

§ 91.14 [Amended]

2. In § 91.14, the telephone number in paragraph (a)(15)(ii)(A), "(206) 248–2360", would be corrected to read "(206) 241–1637".

3. Section 91.14 would be amended by adding a new paragraph (a)(15)(ii)(B) to read as follows:

§ 91.14 Ports of embarkation and export inspection facilities.

(a) * * *
(15) * * *
(ii) * * *
* * * * * *

(B) Stevedoring Service of America, 3615 11th Avenue, SW., Seattle, WA 98134, (206) 623–0304.

* * * * * *

Done in Washington, DC, this 18th day of January 1989.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89-1489 Filed 1-23-89; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88-NM-185-AD]

Airworthiness Directives; Boeing Model 737 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to revise an existing airworthiness directive (AD), applicable to certain Boeing Model 737 series airplanes, which currently requires inspection of the elevator tab inboard hinge support structure to detect fatigue cracking which could result in vibration and possible flutter. The FAA has determined that additional airplanes were manufactured to the same design and are subject to the same failure. This action would expand the applicability of the existing AD to require inspection of additional affected airplanes.

DATES: Comments must be received no later than March 17, 1989.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 88-NM-185-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Steven C. Fox, Airframe Branch, ANM-120S; telephone (206) 431-1923. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 88-NM-185-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

On May 24, 1976, FAA issued AD 76-11-05, Amendment 39-2630 (41 FR 22343; June 3, 1976), to require inspection of the elevator tab inboard hinge support structure on certain categories of Boeing Model 737 airplanes to detect fatigue cracking which could cause vibration and possible flutter.

As a result of recent routine inspections, it has been reported that additional Boeing Model 737 airplanes have the same type design and are subject to the same failure conditions as those identified in AD 76-11-05.

The FAA has reviewed and approved Boeing Alert Service Bulletin 737-55A1020, Revision 1, dated August 20, 1976, which describes inspection of the elevator tab inboard hinge support structure for certain categories of Model 737 airplanes.

Since this condition is likely to exist or develop on other airplanes of this same type design, a revision to AD 76-11-05 is proposed which would require the inspection of the elevator tab inboard hinge support structure on 5 additional (U.S.-registered) Model 737 airplanes. In addition, this proposal contains several editorial changes to conform with current FAA standards.

There are approximately 401 Model 737 series airplanes of the affected design in the worldwide fleet. It is estimated that 5 additional airplanes of U.S.-registry would be affected by this AD, that it would take approximately 92 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $19,600.

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because few, if any, Model 737 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By revising AD 76-11-05, Amendment 39-2630 (41 FR 22343; June 3, 1976), as amended by Amendments 39-2667 and 39-2708, as follows:

Boeing: Applies to all Boeing Model 737 series airplanes, line number 001 through 401, certificated in any categories. Compliance required as indicated, unless previously accomplished.

To prevent hazardous flutter of the elevator/horizontal stabilizer, accomplish the following:

A. Upon receipt of a pilot report of vibration in the longitudinal control system, prior to further flight, accomplish the inspection required by paragraph C., below. If the relative deflections are less than specified in paragraph C., below, prior to further flight, investigate for the cause of vibration, in accordance with existing procedures.

B. In addition to paragraph A., above, within the next 300 hours time-in-service after the effective date of this AD, unless accomplished within the last 700 hours time-in-service, and at intervals thereafter not to exceed 1,000 hours time-in-service, conduct the inspection required by paragraph C., below.

C. Inspect for excessive deflection of the elevator tab, right and left hand, in accordance with the inspection procedures specified in Section III, Part I, paragraphs C. and D., of Boeing Alert Service Bulletin 737-55A1020, Revision 1, dated August 20, 1976. If the elevator tab-to-elevator relative defection exceeds 1/10 inch, prior to further flight, modify the elevator in accordance with paragraph D., below.

D. Installation of one of the modifications specified in Boeing Alert Service Bulletin 737-55A1030, Section III, Part II, dated August 20, 1976, including installation of the bolt retainer clips, is considered terminating action for the inspection requirements of this AD.

E. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note.—The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Seattle Aircraft Certification Office.

F. Special flight permits may be issued in accordance with FAR 21.97 and 21.199 to operate airplanes having cracked parts to a base in order to comply with the requirements of this AD. The application for a special flight permit must contain a limitation stating that the airplane must be operated within the limits specified in Boeing Operation Manual Bulletin 76-2.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on January 9, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-1477 Filed 1-23-89; 8:45 am]

BILLING CODE 4910-13-M

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FEDERAL TRADE COMMISSION

16 CFR Part 240

Guides for Advertising Allowances and Other Merchandising Payments and Services

AGENCY: Federal Trade Commission.

ACTION: Extension of time for public comment on staff recommendations.

SUMMARY: The Federal Trade Commission has extended the closing date for comments on the Guides for Advertising Allowances and Other Merchandising Payments and Services ("Guides") from January 24, 1989 to February 15, 1989. The National Grocers Association ("NGA") requested an extension until March 15, 1989, representing that its annual meeting would begin on January 30, 1989, and that it wished to defer submitting its comments until it could complete a post-meeting survey of its members. The Commission has determined to grant the request in part by extending the public comment period until February 15, 1989. See 53 FR 43233, October 26, 1988.

DATE: Comments must be submitted on or before February 15, 1989.

ADDRESS: Comments should be addressed to the Secretary, Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580. All comments should be labeled "Guides for Advertising Allowances".

FOR FURTHER INFORMATION CONTACT: Federal Trade Commission, Washington, DC 20580, A. Ray Latvik, [202] 326-3334.

List of Subjects in 16 CFR Part 240

Robinson-Patman Act, Promotional allowances and services.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 89-1479 Filed 1-23-89; 8:45 am]

BILLING CODE 6750-01-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1, 3, 31, 145, and 147

Leverage Transactions

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rules.

SUMMARY: The Commodity Futures Trading Commission ("Commission") is proposing amendments to its rules relating to leverage transactions to permit additional participation in the leverage business, as directed by Congress in section 19(c)(2) of the Commodity Exchange Act ("Act"). Futures Trading Act of 1986, Pub. L. 99-641, section 109, 100 Stat. 3556 (1986). The substance of the current regulatory framework would be retained. Most of the proposed rule amendments and the few proposed new rules would be of a procedural nature and would be designed to provide for a regulatory structure of direct supervision by a registered futures association under Commission oversight. Such a structure would be consistent with the other regulatory programs administered by the Commission under the Commodity Exchange Act.

Each leverage transaction merchant ("LTM") would be required to be a member of a registered futures association, and the registered futures association would be required to adopt rules establishing minimum financial, cover, segregation and sales practice requirements, and related reporting requirements. With respect to each area, these rules would have to be at least as stringent as the Commission's standards set forth in Part 31 of the rules promulgated under the Act. The registered futures association also would be required to have an arbitration procedure to settle leverage customer claims or grievances.

The Commission would authorize the National Futures Association ("NFA") to perform the function of processing the registration of an LTM and its associated persons ("APs"). The Commission has previously authorized NFA by a series of delegation orders to perform the function of processing the registration applications for all other persons that must register under the Act. LTMs would be required to file monthly reports of leverage contract trading volume and pricing, and quarterly reports of closed-out leverage contracts, with the NFA instead of with the Commission. The NFA would prepare summaries of those reports for the Commission.

The specific exemption procedure currently set forth in Rule 31.24 would be deleted, and the provisions of exemptions already granted under Rule 31.24 to the existing LTMs which are of general applicability would be incorporated into the rules as appropriate. The only major function with respect to leverage contracts for which the Commission would retain sole authority would be the registration of leverage commodities.

DATE: Comments must be submitted on or before March 27, 1989.

ADDRESS: Comments should be sent to the Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, Attention: Office of the Secretariat. Reference should be made to "Amendments to Rules Relating to Leverage Transactions."

FOR FURTHER INFORMATION CONTACT: Lawrence B. Patent, Assistant Chief Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, telephone (202) 254-8955; David R. Merrill, Senior Assistant General Counsel, Office of the General Counsel, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, telephone (202) 254-6680; or Paul M. Architzel, Chief Counsel, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, telephone (202) 254-6990.

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act Notice

The annual public reporting burden for this collection of information is estimated to average 40 hours per LTM, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This includes the time necessary to maintain the various records, and to prepare and file the appropriate reports required by the Part 31 rules promulgated under the Act. Of course, this burden will vary from firm to firm based on the number of leverage contracts offered and sold, the number of employees, the firm's financial condition and other factors. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Joseph G. Salazar, CFTC Clearance Officer, 2033 K Street NW., Washington, DC 20581; and to Office of Management and Budget, Paperwork Reduction Project (3038-0029), Washington, DC 20503.

II. Proposed Rule Amendments

1. Registration

The principal rules governing the registration of LTMs and their APs are Rules 3.17 and 3.18, respectively (17 CFR 3.17 and 3.18 (1988)). Most of the proposed amendments to those rules would change references from the Commission to the NFA because the Commission would authorize NFA to perform the function of processing the registration applications of LTMs and their APs.[1] NFA would therefore assume the registration processing function for all persons who must register under the Act. Since NFA would be specifically authorized to perform the registration processing function, NFA would be specifically named in Rules 3.17 and 3.18, as it is throughout the Part 3 registration rules.[2]

The other proposed amendments to the Part 3 rules would eliminate the references to the Commission in those rules where there are currently references to both the NFA and the Commission. The Commission proposes to amend Rules 3.2 (notification of registration), 3.21 (fingerprinting exemption), 3.31 (updates), 3.32 (new registration requirements), 3.33 (withdrawal), and 3.40 and 3.43 (temporary licensing of APs). *See also* proposed amendments to Rule 31.6(b)(1) and the introductory text of Rule 31.13(a). Deletions are proposed to Rule 3.3, since NFA would set registration fees for LTMs and their APs instead of the Commission, and Rule 3.20, since there are no more registration renewals. Recent changes to the rules provide for perpetual registration of firms and annual information update filings. 53 FR 8428 (March 15, 1988).

2. Part 31 Rules

a. Moratoria Rules

The Commission proposes to delete Rules 31.1 and 31.2 (17 CFR 31.1 and 31.2 (1988)), which impose moratoria on the entry of new firms into the leverage business unless a firm was so engaged on June 1, 1978 (with respect to leverage contracts involving gold and silver bullion and bulk coins) or February 2, 1979 (with respect to leverage contracts involving all other commodities upon which leverage contracts could have been offered at that time, *i.e.*, all but the agricultural commodities enumerated in the Act), respectively. Other provisions of the rules which relate to the moratoria and their treatment of "grandfathered" firms, *i.e.*, those firms which were engaged in a leverage business on the dates specified in the moratoria rules, would also be deleted. These provisions include paragraphs (c), (d) and (e) of Rule 31.5, and paragraphs (a)(1) and (b)(1) of Rule 31.6. *See also* proposed amendment to Rule 31.22. Accordingly, the regulatory framework for an applicant for registration as an LTM or an AP of an LTM would be comparable to the framework for any other applicant for registration. Such applicant would not be permitted to engage in business requiring registration until registration had been granted.

b. Status of Copper and Foreign Currency Leverage Contracts

The amendments to section 19 of the Commodity Exchange Act enacted by Congress in 1986 made it unlawful for any person to offer to enter into, to enter into, or to confirm the execution of, any leverage contract to or with a leverage customer involving any leverage commodity other than gold and silver bullion, bulk gold and silver coins and platinum. These amendments had the effect of prohibiting new leverage contracts involving copper, which had been offered by International Precious Metals Corporation ("IPMC"), and our foreign currencies (British pound, Deutsche mark, Japanese yen and Swiss franc), which had been offered by Monex International, Ltd. ("Monex"), on and after the date of enactment of the Futures Trading Act of 1986, November 10, 1986. Congress also provided that its ban on new copper and foreign currency leverage contracts did not affect any rights or obligations arising out of any leverage contract involving any of those commodities that was entered into prior to November 10, 1986. The Commission sent letters to IPMC and Monex in November 1986 to inform them of these amendments to the law and to remind them of their obligations to service leverage contracts involving copper and foreign currencies, respectively, entered into prior to November 10, 1986, including providing cover for such open contracts. The Commission proposes to codify the statutory provision and its November 1986 letter to IPMC and Monex in a new paragraph 31.5(c).

Because of the reference to November 10, 1986 in that provision, the Commission also proposes to make technical amendments to the introductory text of paragraph (a) and to paragraph (b) of Rule 31.5 to make clear that the current reference to the "effective date of this section" means the *original* effective date of the section, April 13, 1984. *See also* proposed technical amendments to Rules 31.13(b)(2) and 31.21. Another proposed technical amendment to Rule 31.5 would be the deletion of paragraph (g), which relates to the denial, suspension or revocation of registration of an LTM or an AP of an LTM. The Commission adopted Subpart C of Part 3 of its rules, which applies to the denial, suspension of registration for all registrants, subsequent to the adoption of the leverage contract rules in 1984. Because of that and in light of the proposal to authorize NFA to perform the registration processing function for LTMs and their APs, the Commission proposes to delete Rule 31.5(g).

c. Definitions

The Commission proposes to amend the definition of "leverage commodity" in Rule 31.4(g), which currently includes references to copper and four foreign currencies.[3] IPMC closed out its last copper leverage contract in November 1987, and Monex closed out its last foreign currency leverage contract in August 1988. The proposed amendment to the leverage commodity definition reflects the amendment to Section 19 of the Act limiting the offer and sale of leverage contracts to those involving gold and silver bullion, bulk gold and silver coins and platinum. The Commission has reviewed all of the other definitions in Rule 31.4 and believes that changes thereto are neither necessary nor appropriate.

d. Leverage Commodity Registration

The Commission proposes to retain for itself the function of processing applications for and granting leverage commodity registration under Rule 31.6. This is the only function which the Commission would reserve completely; as experience is gained and leverage commodity registration becomes more standardized, the Commission would consider amending the rules to authorize NFA to register leverage commodities. The Commission also proposes to add a new paragraph (a)(6) to Rule 31.6 which would provide an additional condition for leverage commodity registration. This additional condition would be that the leverage contracts based on the leverage commodity do not include substantial characteristics of other interests such as options, certificates of deposits or other regulated instruments. The Commission required an extended period of time to resolve two leverage commodity registration applications.

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[1] The Commission is exploring the feasibility of authorizing NFA to perform the registration processing function for the existing three LTMs and their APs, most of whom are also APs of affiliated futures commission merchants, without regard to whether the leverage moratoria are repealed.

[2] Proposed amendments to Part 31 would generally refer to a registered futures association, rather than to NFA specifically, because it is possible that there could be another registered futures association for the futures industry as a whole, or for a segment thereof such as the leverage business. However, we should not anticipate another futures association being registered in the foreseeable future (no applications are pending) as most of the direct regulatory responsibility will rest with NFA, under Commission oversight.

[3] The Commission also proposes to delete the reference to leverage contracts on foreign currencies in Rule 31.2(b), which governs the treatment of carrying charges.

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which were subsequently withdrawn, because the leverage contracts contained an option component. Such instruments may be extremely complex and may raise additional issues regarding customer protection. Moreover, such hybrid leverage instruments are not readily included under the present regulatory program. Of course, the Commission may further consider inclusion of such instruments in its leverage rules as the Commission gains greater experience regulating an expanded leverage business.

An noted above, the cross-references to current Rule 31.5(c) and "grandfathered" LTMs are proposed to be deleted from paragraphs (a)(1) and (b)(1) of Rule 31.6. No leverage commodity registration would be granted to a person that was not a registered LTM. The Commission would endeavor to coordinate with the NFA so that the first leverage commodity registration would be granted simultaneously with the granting of registration as an LTM.[6]

e. Financial Early Warning System

The Commission proposes to amend Rule 31.7(c) to delete the exception that persons who have applied for registration as LTMs are not required to send early warning notices to the NFA. Such applicants should be required to send such notices to the NFA since the NFA, and not the Commission, will be processing applications for registration as an LTM. However, an LTM or an applicant for registration as an LTM would still be required to file financial early warning notices with the Commission also. FCMs and IBs, and applicants for registration in either category, must do so under Rule 1.12 (17 CFR 1.17 (1988)), the relevant provisions of which are incorporated by reference in Rule 31.7(c). Paragraphs (a) and (b) of Rule 31.7 already contain references to the capital, cover and segregation rules of a designated self-regulatory organization ("DSRO"), and these provisions would become operative under the Commission's proposed regulatory framework for an expanded leverage business.

f. Cover and Segregation

The basic cover requirements would remain the same. Under these requirements, at least 90 percent of the amount of physical commodities subject to open long leverage contracts and, separately, at least 90 percent of the amount of physical commodities subject to open short leverage contracts, must be covered by the LTM. In addition, at least 25 percent of the amount of physical commodities subject to open long leverage contracts must be covered with physicals.[8] Such physical cover may be subject to a loan not exceeding 70 percent of current market value.

The Commission remains concerned about cover being held outside of the United States, and therefore it would retain the requirement that permissible cover consisting of futures contracts or commodity options be limited to those futures contracts or commodity options which are traded on or subject to the rules of a contract market.[9] Although the Commission has adopted rules to govern foreign futures and option transactions (52 FR 26980 (August 5, 1987), most of which are codified at 17 CFR Part 30 (1988)), foreign futures or foreign options to *not* constitute permissible cover for leverage contracts and the Commission does not propose to amend Rule 31.6 in that area.

The Commission proposes three substantive amendments to its cover requirements to incorporate the provisions of exemptions granted to the current LTMs. Rule 31.6(a)(2)(ii) would be amended to provide that permissible cover could also include one type of bulk gold coins for leverage contracts involving another type of bulk gold coins on an ounce-for-ounce basis if each type of bulk gold coins used as cover is the subject of a leverage contract offered by the LTM. Similar treatment also would be allowed for different types of bulk silver coins. As noted, this is consistent with current Commission policy. The Commission's cover rules currently permit bullion to be used as cover for leverage contracts involving bulk coins and vice versa. Since the bulk coins are valued based upon their metallic content rather than their numismatic value, the Commission believes that it is appropriate to allow some fungibility between bullion and bulk coins for cover purposes.

The Commission also proposes to codify two other exemptions which have been granted with respect to permissible physical cover for long leverage contracts. These codifications would appear as new paragraphs (a)(2)(iii) and (a)(2)(iv) of Rule 31.8. The current paragraph (a)(2)(iii), which contains the permissible futures cover for long leverage contracts, would be redesignated as paragraph (a)(2)(v).

One of the proposed additional forms of permissible physical cover of a long leverage contract would be purchase of the leverage commodity subject to the leverage contract under a two-day settlement procedure, which is the normal cash market procedure. The LTM would be considered covered from the time the purchase order is confirmed, even though the LTM does not get possession or control of a warehouse receipt until settlement on the second following business day. Such a purchase could not be made from an affiliated firm of the LTM.

The other proposed additional form of permissible physical cover of a long leverage contract would be a long spot futures contact on the leverage commodity subject to the leverage contract, if the LTM has stopped a non-transferable delivery notice with respect to that futures contract and has otherwise complied with any procedures, including payment, necessary for taking delivery. If those conditions are met, the LTM would be considered to have covered his commitments to leverage customers with physical cover, even though the LTM does not have possession or control of a warehouse receipt for two business days. The Commission notes that simply holding a spot futures position is considered to be futures cover rather than physical cover, since the futures position could be liquidated by an offsetting transaction prior to the beginning of the delivery process.

In the cases referred to in the three preceding paragraphs, the alternative forms of cover set forth in paragraph (a)(2)(ii) (bullion for coins and vice versa, as well as certain cross-coin cover) would be allowed, and the LTM would be required to maintain records of the transactions subject to inspection, copying and audit by the Commission and a DSRO. Also, the Commission would limit the amount of cover which could consist of purchases under a two-day settlement procedure or spot futures contracts on which a delivery notice has been stopped to 10 percent of the LTM's obligations on long leverage contracts in each case. As noted, the Commission has granted exemptions in these areas so these proposed new provisions of the cover rule, Rule 31.8, are consistent with existing Commission policy.

The Commission is also proposing two technical amendments to the cover rule. Paragraph (b) would be amended to provide that a DSRO could take action against a member LTM for not maintaining adequate cover in accordance with the DRSO's rules. Paragraph (e) would be amended to include a specific reference to Rule 31.28, which is proposed to be the new rule that would require any self-regulatory organization with member LTMs to adopt and enforce minimum cover requirements for its member LTMs at least as stringent as those of the Commission.[7]

g. Minimum Financial and Related Reporting Requirements

The only amendments which the Commission proposes to Rule 31.9, the minimum capital requirements for an LTM, are of a procedural nature. Paragraph (a)(2) of Rule 31.9 would be amended in a manner similar to the proposed amendment to Rule 31.8(e). The proposed amendment would include a specific reference to Rule 31.28, which is the proposed new rule that would require any self-regulatory organization with member LTMs to adopt and enforce minimum financial requirements for its member LTMs that are at least as stringent as those of the Commission. Paragraph (a)(4) of Rule 31.9 would be amended in a manner similar to the proposed amendment to Rule 31.8(b). The proposed amendment provides that a DSRO could take action against a member LTM for non-compliance with the DSRO's minimum financial requirements.

The third proposed amendment to Rule 31.9 would make paragraph (d) thereof conform to Rule 1.18 (17 CFR 1.18 (1988)), the comparable provision for FCMs. Rule 31.9(d) requires an LTM or an applicant therefor to make a formal monthly capital computation. That rule currently requires that the computation be made available for inspection by any representative of the Commission, the DSRO of the United States Department of Justice. The proposed amendment would maintain that required availability of the monthly capital computation for an LTM, but an applicant for registration as an LTM would only be required to make its monthly capital computation available to any representative of the NFA, which will be processing LTM registration applications.

The Commission has determined to maintain the current $2.5 million minimum adjusted net capital requirement for an LTM even if a regulatory structure with direct supervision by a self-regulatory organization were adopted. As the Commission noted when it adopted the rules relating to leverage transactions, "if an LTM were to join the exisitng registered futures association, the National Futures Association, or any other such association which may be established, the LTM's minimum financial requirement or its minimum cover requirement would not necessarily be lowered." 49 FR 5498, 5512 (February 13, 1984).

The Commission considered whether there should be an adjustment to the LTM capital requirement, but determined not to propose any such adjustment based on its regulatory experience and the off-exchange environment in which leverage contracts are traded. The Commission believes that any increase in supervision afforded by membership in a self-regulatory organization does not affect the reasons why the Commission set financial requirements for an LTM substntially higher than those for an FCM, which were stated as follows:

> The leverage market is essentially a principals' market, and the purchaser of a leverage contract is solely dependent on the LTM for performance in the contract. Because leverage contracts are not a traded on boards of trade designated as contract markets by the Commission, there is no clearing organization to take the other side of every trade, no FCM guarantee of variation margin to the clearing organization and no clearing organization guaranty fund and assessment power, nor is there any established secondary market for leverage contracts.
>
> Because the LTM takes the other side of every leverage contract entered into by a leverage customer and because the LTM is the sole guarantor of performance on the leverage contract, an LTM may properly be viewed as comparable to the clearing organization of a contract market.[8]

The proposed amendments to the financial reporting requirements in Rule 31.13 are also of a procedural and conforming nature. As noted above, the reference in the introductory text of paragraph (a) as to where to file an application for registration as an LTM would be changed from the Commission to NFA. Paragraph (b)(2) would be amended to include a specific reference to Rule 31.28, for the same reasons that a similar amendment is proposed to Rules 31.9(a)(2) and 31.8(e). Paragraph (c) would be amended to conform to a recent amendment to Rule 1.16, which is cross-referenced in Rule 31.13(c). *See* 53 FR 4606, 4612 (February 17, 1988).

Paragraph (g)(2) would be amended to conform to a recent amendment to Rule 1.10(d)(2)(ii) to accommodate the recently issued Financial Accounting Standards Board Statement No. 95 which requires companies to file a statement of cash flows as part of a full set of financial statements in place of the statement of changes in financial position. *See* 53 FR 4606, 4609, 4611.[9] Various amendments also are proposed to paragraphs (j), (k), (l) and (m) of Rule 31.13 to refer to the NFA or the DSRO, as appropriate, in lieu of the Commission. Those provisions relate to an LTM's choice of fiscal year, extensions of time to file fianancial reports, and the availability of financial reports.

h. Disclosure

The Commission is proposing certain amendments to its disclosure requirements for an LTM, which are set forth in Rule 31.11, to take account of the fact that new leverage contracts are now limited to those involving gold and silver bullion, bulk gold and silver coins, and platinum. The reference to foreign currencies in the first paragraph of the bold-faced risk disclosure statement would be deleted. The cross-reference to Rule 31.4(g) in Rule 31.11(a)(2)(ii) would refer to the revised Rule 31.4(g) (1)–(4).

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[6] The current fee for processing a leverage commodity registration application is $4,000.

[7] A similar amendment is proposed as a new Rule 31.12(h) regarding segregation rules of a self-regulatory organization. That is the only amendment to Rule 31.12.

[8] 49 FR 5498, 5512. Congress has also recognized the need for a high net capital requirement for LTMs. Indeed, in proposing the 1982 amendments to section 19 of the Act directing the Commission to promulgate regulations governing leverage transactions, which amendments were adopted by Congress essentially as proposed, Congressmen Glickman stated: "I think the CFTC has to set regulatory standards and high net capital requirements to keep bad operators out of business." Excerpt from Unofficial Transcript of Mark-Up Session, Subcommittee on Conservation, Credit and Rural Development, House Committee on Agriculture, at 99, April 1, 1982, with the permission of Congressman Dan Glickman. *Id.* at n.32.

[9] There would also be conforming amendments proposed to Form 2–FR, the basic financial reporting form for LTMs, and to Rules 145.5(d)(1)(i)(H) and 147.3(b)(4)(i)(A)(*6*) so that the statement of cash flows would receive confidential treatment to the same extent as the statement of changes in financial position. Other minor, technical changes would be made to Form 2–FR to conform to certain of the proposed rule changes discussed herein. Due to the nature of these changes, and the fact that Form 2–FR does not appear in the Code of Federal Regulations, the proposed amendments in further information on this aspect of the proposals should contact Mr. Patent at the telephone number listed above.

[8] The Commission granted an exemption to Monex with respect to cover of long foreign currency leverage contracts which permitted Monex to cover all of its commitments on such leverage contracts with futures or option contracts traded on or subject to the rules of a contract market, rather than requiring 25 percent physical cover. A special net capital haircut applied to such cover in excess of 75 percent of Monex' leverage contract obligations. This petition was granted because maintaining physical foreign currency in United States depositories would prevent Monex from earning interest thereon, and because the Commission did not want to permit such cover to be held in the country of origin where it could earn interest, but may be beyond the reach of United States jurisdiction and thus of little benefit to leverage customers. This exemption is now moot with respect to Monex, and it is unnecessary to codify this exemption in the rules because no new LTM could offer leverage contracts on foreign currencies.

[9] *See also* Rule 31.12(a)(2) (17 CFR 31.12(a)(2) (1988)), which requires leverage customer funds to be kept in the United States.

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Paragraph (a)(2)(viii) would also be amended to delete the specific reference to metal or coins in the provision referring to the possible need for an inspection or assay at the customer's expense. The reference to metal or coins presumes that there can be other types of leverage commodities, such as foreign currencies. Since new leverage contracts involving such other types of leverage commodities are now prohibited, a specific reference to metal or coins in Rule 31.11(a)(2)(viii) is unnecessary.

The Commission also proposes to amend Rule 31.11(e) to require LTMs to file their Disclosure Documents with the NFA for review. A copy of the Disclosure Document would also need to be filed with the Commissoin, but NFA would be authorized to perform the review function.

The other proposed amendments to Rule 31.11 would codify exemptions previously granted by the Commission. Rule 31.11(h) would be amended by adding a proviso that no notification to leverage customers is required if the LTM changes its carrying charge rate by less than one percent from the rate charged at the prior month-end and the new rate is made available to leverage customers by means of a toll-free telephone call, and such availability is set forth in the LTM's Disclosure Document. However, a carrying charge rate change which amounts cumulatively to one percent or more as compared to the prior month-end would continue to require an LTM to notify leverage customers of such a change within 24 hours of such a change by first class mail or other at least equivalent means of communication.

The other proposed amendments to Rule 31.11 would be set forth in a new paragraph (i) and would codify another exemption granted by the Commission. Proposed Rule 31.11(i) would allow those LTMs which offer only long leverage contracts to delete various specific references to short leverage contracts in their Disclosure Documents that are otherwise required by Rule 31.1.[10] Rule 31.11(i)(2) would provide that any LTM using a Disclosure Document that deletes or disregards references to short leverage contracts would have to file a new Disclosure Document meeting all of the requirements of Rule 31.11 at least 30 calendar days before it begins to offer any short leverage contract.

[10] Of the forty-six affirmative respondents to the survey which Congress directed the Commission to conduct with the assistance of a registered futures association regarding interest in entering the leverage business, two respondents indicated that they would offer long leverage contracts only and ten others reported that they were undecided on the long leverage/short leverage issue.

i. Monthly Reports of LTMs

Rule 31.16 requires each LTM to file a written report each month stating the total number of open leverage contracts as of the end of the month and the total number of leverage contracts entered into during the month. (These are to be shown separately for all customers and for commercial interests, but to date no commercial interests have appeared in these reports.) The monthly report must also show the total number of leverage contracts repurchased, resold, and liquidated by the LTM, as well as the number of deliveries and rescissions. The Commission proposes to amend Rule 31.16 to require the LTM to file its monthly reports with the NFA instead of with the Commission, in accordance with the instructions and in the format specified. NFA would prepare summaries of these reports for the Commission.[11]

j. Separate LTM Entity

The Commission proposes to retain the substance of Rule 31.22, which prohibits an FCM from offering to enter into, entering into, or confirming the execution of, or soliciting or accepting orders for, any leverage contract. The Commission would retain this provision and proposes to extend it to include introducing brokers ("IBs") as well.[12] As noted above, the proviso to Rule 31.22 which applies which applies to "grandfathered" firms would be deleted since it is no longer relevent.

Rule 31.22 therefore would require any FCM or IB seeking to enter the leverage business to set up a separate firm to conduct LTM business.[13] The Commission believes that a separate entity requirement is appropriate based on the disparate nature of the financial requirements applicable to FCMs and IBs and LTMs. The Commission also believes that this structure is necessary to pervent financial difficulties of the LTM from having a direct impact on the adjusted net capital of the FCM or the IB.

The Commission notes that Rules 3.12(f)(2) (ii) and (iii) and 3.18(f)(1) (ii) and (iii) prohibit an AP from being associated simultaneously with an FCM or IB and an LTM. The Commission further notes, however, that both Rules 3.12 and 3.18, in paragraphs (g) of each rule, contain a procedure whereby any person adversely affected by the operation of each rule can file a petition for exemption from the requirements of the rule.

k. Petitions for Exemption

The Commission proposes to delete the specific petition for exemption provision currently set forth in Rule 31.24. The Commission adopted such a rule as part of its original rules relating to leverage transactions because it was establishing a major addition to the existing regulatory structure under the Act, it was aware that in certain instances the new rules might require an ongoing firm to alter or amend its current business practices, and the Commission believed it would be dealing with a small number of firms due to the moratoria rules. If the leverage business is allowed to expand, there would be no "grandfathered" firms and there could be a significant number of new firms.

The Commission now has some experience with the rules relating to leverage transactions and proposes to codify petitions for exemption already granted which are of general applicability. The Commission therefore does not beleive that it would be necessary or appropriate to maintain the extremely time-consuming special exemption procedure for an expanded leverage business. The Commission would expect to see greater uniformity if the leverage business is expanded than has been the case with the "grandfathered" firms. However, any person involved in the leverage business would have whatever petition rights are afforded by the Administrative Procedure Act.

l. Carrying Charges

The Commission proposes to amend Rule 31.25(b) regarding carrying charges to take into account another exemption granted by the Commission. The proposed amendment would permit the compounding of carrying charges on long leverage contracts, *i.e.*, including in the base upon which carrying charges are assessed previously assessed but unpaid carrying charges. If an LTM compounded carrying charges on long leverage contracts, it would be compelled to pay compound interest on short leverage contracts. As noted above, the reference to leverage contracts on foreign currencies would be deleted.

[11] As in the case of the proposed amendments to Part 3 and other reference to applications for LTM or AP of an LTM registration, there would be a specific reference to NFA in Rule 31.16. The Commission believes that this is appropriate because the monthly report data should be centralized and maintained with a single custodian, even if multiple self-disciplinary organizations for the leverage business are established.

[12] One IB responded affirmatively to the leverage survey.

[13] Twenty-one FCMs responded affirmatively to the leverage survey.

m. Quarterly Reporting Requirement

Rule 31.28 provides that each LTM must file a quarterly report setting forth various information on each leverage contract which was either repurchased, resold or settled by delivery during the quarter, including, with respect to each contract repurchased or resold, the profit or loss incurred by the leverage customer.[14] The Commission proposes to amend Rule 31.28 to require an LTM to file its quarterly report with the NFA, instead of with the Commission, in accordance with the instructions and in the format specified by the NFA. NFA would be delegated the function to review and analyze those reports.[15]

n. Mandatory Membership

The Commission proposes a new Rule 31.27 to provide that each person required to register as an LTM must become and remain a member of a registered futures association which provides for member LTMs, unless no such futures association is so registered. This rule would be one of the key provisions necessary to establish a regulatory structure for LTMs and their APs similar to that for other registrants under the Act, which is direct supervision by a DSRO under Commission oversight. Under current conditions, the Commission anticipates that NFA would have the direct supervisory responsibility for LTMs, although it is conceivable that another futures association could be registered with a broad self-regulatory mandate over the futures industry or one which is limited only to the leverage business.

o. DSRO Plan

The Commission also proposes to add a new Rule 31.29, which would be a counterpart to Rule 1.52 (17 CFR 1.52 (1988)) that is applicable to FCMs and IBs. The most important provision of Rule 31.29 would require each self-regulatory organization with member LTMs to adopt and enforce rules prescribing minimum financial, cover, segregation and sales practice, and related reporting requirements for its member LTMs. These self-regulatory organization requirements would have to be the same as, or more stringent than, the rules set forth in Part 31. This proposed rule, taken together with proposed Rule 31.27, forms the basis for the self-regulatory structure of LTMs under Commission oversight.

The sales practice requirements of the self-regulatory organization would be required to encompass several of the Part 31 rules: 31.3 (general antifraud); 31.10 (repurchase and resale of leverage contracts by LTMs); 31.11 (disclosure and confirmation statements); 31.14 (recordkeeping); 31.15 (purchase-and-sale and monthly statements to leverage customers); 31.17 (records of leverage transactions); 31.18 (margin calls); 31.19 (unlawful representations); 31.20 (prohibitions of guarantees against loss); and 31.23 (limited right to rescind first leverage contract). All of those Part 31 rules would remain unchanged, except for rule 31.11, as noted above. The self-regulatory organization would be expected to assure that all LTM oral solicitations and promotional material adequately disclose the risks involved with respect to leverage contracts.

The self-regulatory organizations would be allowed to set their own fees for conducting financial and sales practice audits, and the Commission proposes to delete its schedule of fees for audits of LTMs set forth in Appendix B to Part 31.

Rule 31.29 would provide for a situation where there is more than one self-regulatory organization for LTMs. If such a situation arises, which the Commission does not presently foresee, the self-regulatory organizations could develop a joint auditing arrangement to provide for a DSRO to conduct the auditing and monitoring for compliance with minimum financial, cover, segregation and sales practice, and related reporting requirements. These provisions are also modelled on those in Rule 1.52 applicable to DSRO plans for FCMs and IBs.

p. Arbitration

The third new rule which the Commission is proposing would be Rule 31.29. The rule would require each self-regulatory organization with member LTMs to provide an arbitration or other dispute settlement procedure consistent with the standards set forth in Part 180 of the Commisson's rules.

[14] The calculation of the profit or loss incurred on each closed-out leverage contract must include, among other things, the carrying charges associated with each leverage contract. Monex and IPMC were granted exemptions with respect to this rule so that they only are required to include contract-by-contract carrying charges in the profit and loss calculations for those contracts which were already open when Rule 31.28 because effective from that point until the contract was closed out, since these firms had not previously calculated carrying charges in that manner. Since there would be no similar problems for new LTMs, the Commission would not propose to amend Rule 31.28 regarding the inclusion of contract-by-contract charges in the profit and loss calculation. Monex and IMPC would, of course, be permitted to continue to operate pursuant to the exemptions previously granted by the Commission with respect to Rule 31.28. However, Monex and IPMC will be required to be in full compliance with Rule 31.28 when the exemptions are no longer applicable, *i.e.*, after all the pre-1988 leverage contracts are closed out.

[15] As in the case of the proposed amendments to part 3 and other references to applications for LTM or AP of an LTM registration, there would be a specific reference to NFA in Rule 31.28. The Commission believes that this is appropriate because a computerized database would be involved, as in the case of registration, and the data should be centralized and maintained with a single custodian, even if multiple self-regulatory organizations for the leverage business are established.

III. Related Matters

1. Paperwork Reduction Work

The Paperwork Reduction Act of 1980 ("PRA"), 44 U.S.C. 3501 *et seq.* (1982), imposes certain requirements on federal agencies, including the Commission, in connection with their conducting or sponsoring any collection of information as defined by the PRA. In compliance with the PRA, the Commission has submitted these proposed rule amendments, and their associated information collection requirements, to the Office of Management and Budget ("OMB"). This information collection contains an average response burden of 49 hours by 24 respondents for a total of 9,726.00 burden hours. The frequency of response would be daily, weekly, quarterly and annually.

Persons wishing to comment on the information which would be required by these proposed rule amendments should contact Gary Waxman, Office of Management and Budget, Paperwork Reduction Project (3038-0029) Room 3228, NEOB, Washington, DC 20503, (202) 395-7340. Copies of the information collection submission to OMB are available from Joseph G. Salazar, CFTC Clearance Officer, 2033 K Street NW., Washington, DC 20581, (202) 254-9735.

2. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601 *et seq.* (1982), requires that agencies, in proposing rules, consider the impact of those rules on small businesses. The rule amendments being proposed herein would affect LTMs. The Commission has previously determined that with respect to FCMs, based upon the fiduciary nature of FCM/customer relationships, as well as the requirements that FCMs meet minimum financial requirements, FCMs should be excluded from the definition of a small entity.[16] Since LTMs have a somewhat similar relationship with their customers as do FCMs, and since LTMs have a higher minimum financial requirement

[16] *See* 47 FR 18618, 18619 (April 30, 1982).

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than FCMs, LTMs should likewise be excluded from the definition of a small entity. Therefore, pursuant to section 3(a) of the RFA, 5 U.S.C. 605(b), the Chairman certifies that these proposed rule amendments will not have a significant economic impact on a substantial number of small entities. Nonetheless, the Commission specifically requests comment on the impact these proposed rule amendments may have on small entities.

List of Subjects

17 CFR Part 1

Reporting and recordkeeping requirements.

17 CFR Part 3

Reporting and recordkeeping requirements, Registration.

17 CFR Part 31

Gold, Silver, Reporting and recordkeeping requirements, Leverage transactions.

17 CFR Part 145

Freedom of information, Commission records.

17 CFR Part 147

Sunshine Act, Commission records.

In consideration of the foregoing, and pursuant to the authority contained in sections 8a(5) and 19 of the Commodity Exchange Act, as amended, 7 U.S.C. 12a(5) and 23 (1982), *as amended by* Pub. L. No. 99-641, 100 Stat. 3556 (1986), and pursuant to the authority contained in 5 U.S.C. 552 and 552b (1982), the Commission hereby proposes to amend Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

1. The authority citation for Part 1 continues to read as follows:

Authority: Sections 2(a)(1), 4, 4a, 4b, 4c, 4d, 4e, 4f, 4g, 4h, 4i, 4k, 4m, 4n, 4o, 5, 5a, 6(a), 6(b), 6b, 6c, 8, 8a, 8c, 12, 15, 17, and 20 of the Commodity Exchange Act, 7 U.S.C. 2, 2a, 4, 6, 6a, 6b, 6c, 6d, 6a, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 7, 7a, 8, 9, 12, 12a, 12c, 12a, 12e–i, 16, 19, 21, and 24.

2. Section 1.3 is proposed to be amended by revising paragraph (ff) to read as follows:

§ 1.3 Definitions.

* * * * *

(ff) *Designated self-regulatory organization.* This term means:

(1) A self-regulatory organization of which a futures commission merchant, an introducing broker or a leverage transaction merchant is a member; or

(2) If a futures commission merchant or an introducing broker is a member of more than one self-regulatory organization and such futures commission merchant or introducing broker is the subject of an approved plan under §1.52, then a self-regulatory organization delegated the responsibility by such a plan for monitoring and auditing such futures commission merchant or introducing broker for compliance with the minimum financial and related reporting requirements of the self-regulatory organizations of which the futures commission merchant or introducing broker is a member, and for receiving the financial reports necessitated by such minimum financial and related reporting requirements from such futures commission merchant or introducing broker; or

(3) If a leverage transaction merchant is a member of more than one self-regulatory organization and such leverage transaction merchant is the subject of an approved plan under §31.26 of this chapter, then a self-regulatory organization delegated the responsibility by such a plan for monitoring and auditing such leverage transaction merchant for compliance with the minimum financial, cover, segregation and sales practice, and related reporting requirements of the self-regulatory organizations of which the leverage transaction merchant is a member, and for receiving the reports necessitated by such minimum financial, cover, segregation and sales practice, and related reporting requirements from such leverage transaction merchant.

* * * * *

PART 3—REGISTRATION

Subpart A—Registration

3. The authority citation for Part 3 continues to read as follows:

Authority: 7 U.S.C. 2, 4, 4a, 6c, 6d, 6e, 6f, 6h, 6m, 6n, 6p, 12a, 12c, 16a, unless otherwise noted.

4. Section 3.2 is proposed to be amended by revising paragraph (c) to read as follows:

§ 3.2 Registration processing by the National Futures Association; notification of registration.

* * * * *

(c) The National Futures Association will notify the registrant, or the sponsor in the case of an applicant for registration as an associated person, if registration has been granted under the Act. If an applicant for registration as an associated person receives a temporary license in accordance with §3.40 of this part, the National Futures Association may notify the sponsor only that a temporary license has been granted.

* * * * *

5. Section 3.3 is proposed to be amended by revising paragraph (a) to read as follows:

§ 3.3 Registration fees; form of remittance.

(a) *Amount of fees—Floor brokers.* Each application for registration, or for renewal thereof, as a floor broker must be accompanied by a fee of $25.

* * * * *

6. Section 3.17 is proposed to be amended by revising paragraphs (a) and (c) to read as follows: § 3.17 Registration of leverage transaction merchants.

(a) *Initial registration.* (1) Application for initial registration as a leverage transaction merchant must be on Form 7–R, completed and filed with the National Futures Association in accordance with the instructions thereto and the provisions of § 31.13 of this chapter.

(2) Each Form 7–R filed in accordance with the requirements of paragraph (a)(1) of this section must be accompanied by a Form 8–R, completed in accordance with the instructions thereto and executed by each natural person who is a principal of the applicant, and must be accompanied by the fingerprints of that principal on a fingerprint card provided by the National Futures Association for that purpose. The provisions of this paragraph (a)(2) do not apply to any principal who has a current Form 8–R or Form 94 on file with the Commission or the National Futures Association.

* * * * *

(c) *Annual filing.* Any person registered as a leverage transaction merchant in accordance with paragraph (a) of this section must file with the National Futures Association a Form 7–R, completed in accordance with the instructions thereto, annually on a date specified by the National Futures Association. The failure to file the Form 7–R within thirty days following such date shall be deemed to be a request for withdrawal from registration. On at least thirty days written notice, and following such action, if any, deemed to be necessary by the Commission or the National Futures Association, the National Futures Association may grant the request for withdrawal from registration.

7. Section 3.19 is proposed to be amended by revising paragraphs (c)(3), (c)(4), (d)(1), (d)(3), (d)(4) and (d)(5) to read as follows:

§ 3.19 Registration of associated persons of leverage transaction merchants.

* * * * *

(c) * * *

(3) Each Form 8–R filed in accordance with the requirements of paragraph (c) of this section must be accompanied by the fingerprints of the applicant on a fingerprint card provided for that purpose by the National Futures Association.

(4) When the National Futures Association determines that an applicant for registration as an associated person is not unfit for such registration, it will provide notification in writing to the sponsor which has made the certifications required by paragraph (c)(1) of this section that the applicant's registration as an associated person is granted contingent upon the sponsor hiring or otherwise employing the applicant as such within thirty days.

(d) *Special temporary licensing and registration procedures for certain persons—*(1) *Registration terminated within the preceding sixty days.* Except as otherwise provided in paragraphs (d)(4) and (f) of this section, any person whose registration as an associated person in any capacity has terminated within the preceding sixty days and who becomes associated with a new sponsor will be granted a temporary license to act in the capacity of an associated person of such sponsor upon the mailing by that sponsor to the National Futures Association of a Form 8–R, completed in accordance with the instructions thereto, which includes written certifications stating:

* * * * *

(3) *Registration still in effect.* Except as provided for in paragraphs (d)(4) and (f) of this section, any person whose registration as an associated person in any capacity is still in effect and becomes associated with a sponsoring leverage transaction merchant will be registered as an associated person of such sponsor upon mailing by that sponsor to the National Futures Association of a Form 8–R, completed in accordance with the instructions thereto, containing the written certifications required by paragraph (d)(1) of this section.

(4) An applicant will not be registered or granted a temporary license upon mailing of a properly completed Form 8–R pursuant to paragraph (d) of this section unless such form is accompanied by the fingerprints of the applicant on a fingerprint card provided by the National Futures Association for that purpose, and a Supplemental Sponsor Certification Statement signed by the new sponsor if the applicant's prior registration as an associated person was subject to conditions or restrictions.

(5) A temporary license granted in accordance with paragraph (d) of this section will terminate five days after service upon the applicant of a notice by the National Futures Association that such person may be found subject to a statutory disqualification from registration.

* * * * *

§ 3.20 [Amended]

8. Section 3.20 is proposed to be amended by removing and reserving paragraph (d)(2).

9. Section 3.21 is proposed to be amended by revising paragraph (a)(1) to read as follows ((a) introductory text is republished):

§ 3.21 Exemption from fingerprinting requirement in certain cases.

(a) Any person who is required by this part to submit a fingerprint card may file, or cause to be filed, in lieu of such card:

(1) A legible, accurate and complete photocopy of a fingerprint card which has been submitted to the Federal Bureau of Investigation for identification and appropriate processing and of each report, record, and notation made available by the Federal Bureau of Investigation with respect to that fingerprint card if such identification and processing has been completed satisfactorily by the Federal Bureau of Investigation not more than ninety days prior to the filing with the National Futures Association of the photocopy; or

* * * * *

10. Section 3.31 is proposed to be amended by revising paragraph (c)(1) introductory text and (c)(2) to read as follows:

§ 3.31 Deficiencies, inaccuracies, and changes, to be reported.

* * * * *

(c)(1) After the filing of a Form 8–R or a Form 3–R by or on behalf of any person for the purpose of permitting that person to be an associated person of a futures commission merchant, commodity trading advisor, commodity pool operator, introducing broker, or a leverage transaction merchant, that futures commission merchant, commodity trading advisor, commodity pool operator, introducing broker or leverage transaction merchant must, within twenty days after the occurrence of either of the following, file a notice thereof with the National Futures Association indicating:

* * * * *

(2) Each person registered as, or applying for registration as, a futures commission merchant, commodity trading advisor, commodity pool operator, introducing broker or leverage transaction merchant must, within twenty days after the termination of the affiliation of a principal with the registrant or applicant, file a notice thereof with the National Futures Association.

* * * * *

11. Section 3.32 is proposed to be amended by revising paragraphs (b), (c), (d)(2), (d)(3), (e), (f) and (h) to read as follows:

§ 3.32 Changes requiring new registration; addition of principals.

* * * * *

(b) Application for a new registration required under paragraph (a) of this section must be on Form 7–R, completed and filed with the National Futures Association in accordance with the instructions thereto.

(c) Notwithstanding any other provision of this part, each Form 7–R filed in accordance with paragraph (b) of this section must be accompanied by a Form 8–R, completed in accordance with the instructions thereto and executed by each natural person who is a principal of the registrant and who was not listed on the registrant's initial application for registration or any amendment thereto. The Form 8–R for each such principal must be accompanied by the fingerprints of that principal on a fingerprint card provided by the National Futures Association for that purpose.

(d) * * *

(2) Notification by the National Futures Association of the granting of the new registration; or

(3) Five days after service upon the registrant of a notice by the National Futures Association that the registrant may be found subject to a statutory disqualification from registration.

(e)(1) Except where a registrant chooses to file an application pursuant to paragraph (d) of this section, if applicable, in the event of a change as described in paragraphs (a)(4) or (a)(5) of this section, a new registration will not be required if the registrant submits a written notice on Form 3–R to the National Futures Association prior to the date of such change in control (and such change does not occur until the registrant receives written approval from the National Futures Association) and includes with such notice a Form 8–R, completed in accordance with the instructions thereto and executed by each natural person who will become a

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principal of the registrant. The Form 8–R for each such individual must be accompanied by the fingerprints of that individual on a fingerprint card provided for that purpose by the National Futures Association: *Provided, however,* That a fingerprint card need not be provided under this paragraph for any individual who currently is registered with the Commission as an associated person or floor broker, or is a principal of a Commission registrant from whom the filings required by this part have been made.

(2) No person who submits written notification in accordance with the provisions of paragraph (e)(1) of this section may become a principal of such registrant until that registrant receives a written confirmation from the National Futures Association that such affiliation has been approved.

(f) All documents submitted pursuant to this section shall be filed with the National Futures Association.

* * * * *

(h) Except as otherwise provided in this section, within twenty days after any natural person becomes a principal of an applicant or registrant subsequent to the filing of a Form 7–R in accordance with the requirements set forth in §§ 3.10(a), 3.12(a), 3.14(a), 3.15(a), or 3.17(a) of this part, the applicant or registrant must file a Form 8–R with the National Futures Association. The Form 8–R must be completed by such principal in accordance with the instructions thereto and must be accompanied by the fingerprints of that principal on a fingerprint card provided for that purpose by the National Futures Association. This filing need not be made for any such principal who has a current Form 8–R or Form 94 on file with the Commission or the National Futures Association: *Provided,* That within twenty days the applicant or registrant must notify the National Futures Association of the name of such added principal on Form 3–R.

* * * * *

12. Section 3.33 is proposed to be amended by revising paragraphs (b) introductory text, (e), and (f) introductory text to read as follows:

§ 3.33 Withdrawal from registration.

* * * * *

(b) A request for withdrawal from registration under this section must be made on a Form 7–W completed and filed with the National Futures Association in accordance with the instructions thereto. The request for withdrawal must be made by the sole proprietor if the registrant is a sole proprietorship, by a general partner if a partnership, or by the president or chief executive officer if a corporation, and must specify:

* * * * *

(e) A request for withdrawal from registration as a futures commission merchant, introducing broker, commodity trading advisor, commodity pool operator or leverage transaction merchant must be sent to the National Futures Association, Registration Office, 200 West Madison Street, Chicago, Illinois 60606 and a copy of such request must be sent by the registrant, and by the National Futures Association within three business days of the receipt of such withdrawal request, to the Commodity Futures Trading Commission, Division of Trading and Markets, Registration Unit, 2033 K Street, NW., Washington, DC 20581. Within three business days of any determination by the National Futures Association under §§ 3.10(d), 3.13(c), 3.14(c), 3.15(c) or 3.17(c) of this part to treat the failure by a registrant to file an annual Form 7–R as a request for withdrawal, the National Futures Association shall send the Commission notice of that determination.

(f) Except as otherwise provided in §§ 3.10(d), 3.13(c), 3.14(c), 3.15(c) and 3.17(c) of this chapter, a request for withdrawal from registration will become effective on the thirtieth day after receipt of such request by the National Futures Association, or earlier upon written notice from the National Futures Association (with the written concurrence of the Commission) of the granting of such request, unless prior to the effective date:

* * * * *

13. Section 3.40 is proposed to be amended by revising the introductory paragraph and paragraph (b) to read as follows:

§ 3.40 Temporary licensing of applicants for associated person registration.

Notwithstanding any other provision of these regulations and pursuant to the terms and conditions of this subpart, the National Futures Association may grant a temporary license to any applicant for registration as an associated person upon the contemporaneous filing with the National Futures Association of:

* * * * *

(b) The fingerprints of the applicant on a fingerprint card provided by the National Futures Association for that purpose; and

* * * * *

14. Section 3.43 is proposed to be amended by revising paragraph (b)(1) to read as follows:

§ 3.43 Relationship to registration.

* * * * *

(b) * * *

(1) A determination by the National Futures Association that the applicant is qualified for registration as an associated person; or

* * * * *

PART 31—LEVERAGE TRANSACTIONS

15. The authority citation for Part 31 continues to read as follows:

Authority: 7 U.S.C. 12a and 23, unless otherwise noted.

§ 31.1 [Removed and reserved]

16. Section 31.1 is proposed to be removed and reserved.

§ 31.2 [Removed and reserved]

17. Section 31.2 is proposed to be removed and reserved.

18. Section 31.4 is proposed to be amended by revising paragraph (g) to read as follows:

§ 31.4 Definitions.

* * * * *

(g) "Leverage commodity" means a commodity (gold bullion, silver bullion, bulk gold coins, bulk silver coins, or platinum) which is the subject of a leverage contract offered for purchase or sale, or purchased or sold, by a particular leverage transaction merchant, the value of which is reflected in a widely accepted and broadly disseminated commercial or retail cash price series for cash market transactions, which price series reasonably reflects the price for the leverage commodity which the customer can except to pay or receive in normal commercial or retail market channels, including, if applicable, specified premiums or discounts; each leverage commodity is defined by reference to the following distinguishing characteristics:

(1) The nominal size, composition and tolerable ranges of the delivery pack or the actual size, composition and tolerable range of the component of the delivery pack;

(2) Minimum guaranteed quality, deliverable countries of origin, deliverable markings or imprints, and deliverable refiners or mints;

(3) The method of pricing; and

(4) The delivery specifications or alternatives including type and location of delivery facilities, packaging, transportation, registration and associated costs.

* * * * *

19. Section 31.5 is proposed to be amended by revising paragraph (a) introductory text and paragraph (b), by removing paragraphs (c), (d), (e), and (g), by adding a new paragraph (c) and by redesignating paragraph (f) as paragraph (d) to read as follows:

§ 31.5 Unlawful conduct.

(a) On and after April 13, 1984, it shall be unlawful for any person:

* * * * *

(b) On and after April 13, 1984, it shall be unlawful for any leverage transaction merchant to permit any natural person to become or remain associated with it as a partner, officer or employee (or in any similar status or position involving similar functions) in any capacity which involves the offering to enter into, the entry into, or the conformation of the execution of a leverage contract with a leverage customer, or the solicitation or acceptance of a leverage customer's order (other than in a clerical capacity) for a leverage contract, or the supervision of any person or persons so engaged, if the leverage transaction merchant knew or should have known that the person was not registered with the Commission in accordance with § 3.18 of this chapter or that the person's registration had expired, been suspended (and the period of suspension had not expired) or been revoked.

(c) On and after November 10, 1986, it shall be unlawful for any person to offer to enter into, enter into or confirm the execution of a leverage contract to or with a leverage customer, or to solicit or accept a leverage customer's order for a leverage contract, or to accept any leverage customer funds from a leverage customer to enter into or maintain a leverage contract, unless the leverage commodity which is the subject of the leverage contract has been registered with the Commission in accordance with § 31.6 and involves silver bullion, gold bullion, bulk silver coins, bulk gold coins, or platinum. This paragraph shall not affect any rights or obligations arising out of any leverage contract involving any other leverage commodity that was entered into, or the execution of which was confirmed, before November 10, 1986.

* * * * *

20. Section 31.6 is proposed to be amended by revising paragraphs (a)(1), (a)(4) and (a)(5), by adding a new paragraph (a)(6) and by revising paragraph (b)(1) to read as follows:

§ 31.6 Registration of leverage commodities.

(a) * * *

(1) The person requesting registration of a leverage commodity is a registered leverage transaction merchant;

* * * * *

(4) The commodity can be readily purchased or sold in normal commercial or retail channels by leverage customers making or taking delivery on a leverage contract;

(5) The terms and conditions of the leverage contracts based on the leverage commodity are consistent with the Act and the regulations thereunder, and are not contrary to the public interest; and

(6) The terms and conditions of the leverage contracts based on the leverage commodity do not include substantial characteristics of other interests, such as options, certificates of deposit, or other regulated instruments.

(b) * * *

(1) Provide evidence that the person applying for registration of the leverage commodity is registered or has applied to the National Futures Association for registration as a leverage transaction merchant;

* * * * *

21. Section 31.7 is proposed to be amended by revising paragraph (c) to read as follows:

§ 31.7 Maintenance of minimum financial, cover and segregation requirements by leverage transaction merchants.

* * * * *

(c) The requirements of §§ 1.12(c), 1.12(d), 1.12(e) and 1.12(g) of this chapter shall apply to registered leverage transaction merchants and to persons who have applied for registration as leverage transaction merchants, as if in those paragraphs the term "leverage transaction merchant or applicant therefor" were substituted for the phrase "applicant or registrant."

22. Section 31.8 is proposed to be amended by revising paragraph (a)(2)(ii), by redesignating paragraphs (a)(2)(iii)(A) and (a)(2)(iii)(B) as paragraphs (a)(2)(v)(A) and (a)(2)(v)(B), by adding new paragraphs (a)(2)(iii) and (a)(2)(iv), and by revising paragraphs (b) and (e) to read as follows:

§ 31.8 Cover of leverage contracts.

(a) * * *

(2) * * *

(ii) Warehouse receipts for gold bullion in the case of leverage contracts for bulk gold coins, bulk gold coins in the case of leverage contracts for gold bullion, silver bullion in the case of leverage contracts on bulk silver coins, bulk silver coins in the case of leverage contracts on silver bullion, one type of bulk gold coins for leverage contracts involving another type of bulk gold coins on an ounce-for-ounce basis if each type of bulk gold coins used as cover is the subject of a leverage contract offered by the leverage transaction merchant pursuant to registration under § 31.6, and one type of bulk silver coins for leverage contracts involving another type of bulk silver coins on an ounce-for-ounce basis if each type of bulk silver coins used as cover is the subject of a leverage contract offered by the leverage transaction merchant pursuant to registration under § 31.6, which are held in commercial banks located in the United States or in approved contract market depositories: *Provided,* That the balance of the principal and accrued interest on any loans against such warehouse receipts does not exceed 70 percent of the current market value of the commodity for which it represents cover.

(iii) Purchase, in physical form, of the leverage commodity subject to the leverage contract, or of the same alternative commodities provided for in paragraph (a)(2)(ii) of this section, with settlement within two business days shall be considered permissible cover from the time the purchase order is confirmed, even though the leverage transaction merchant does not have possession or control of a warehouse receipt until settlement: *Provided, however,* That such purchases are not made from an affiliated firm, and such purchases at no time constitute more than 10 percent of the amount of physical commodities subject to open long leverage contracts entered into with leverage customers: *And, provided further,* That the leverage transaction merchant maintains, in accordance with § 31.14, detailed records of these transactions which will be subject to inspection, copying and audit by the Commission and a designated self-regulatory organization.

(iv) A long spot futures contract on the leverage commodity subject to the leverage contract, or of the same alternative commodities provided for in paragraph (a)(2)(ii) of this section, if the leverage transaction merchant has stopped a delivery notice which is non-transferable with respect to that futures contract and has otherwise complied with any procedures, including payment, necessary for taking delivery, even though the leverage transaction merchant does not have possession or control of a warehouse receipt for two business days: *Provided, however,* That the amount of physical commodities subject to such long spot futures contracts at no time constitutes more than 10 percent of the amount of physical commodities subject to open long leverage contracts entered into

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with leverage customers: *And, provided further,* That the leverage transaction merchant maintains, in accordance with § 31.14, detailed records of its deliveries on futures contracts, which will be subject to inspection, copying and audit by the Commission and a designated self-regulatory organization.

* * * * *

(b) Such leverage transaction merchant must be in compliance with paragraph (a) of this section at all times and must be able to demonstrate such compliance to the satisfaction of the Commission and/or the designated self-regulatory organization. A leverage transaction merchant who is not in compliance with paragraph (a) of this section or is unable to demonstrate such compliance must immediately cease engaging in the business of offering to enter into, entering into, or confirming the execution of, any leverage contract until such time as the leverage transaction merchant is able to demonstrate such compliance. Nothing in this paragraph (b) shall be construed as preventing the Commission or the designated self-regulatory organization from taking action against a leverage transaction merchant for non-compliance with any of the provisions of this section.

* * * * *

(e) The requirements of paragraphs (a) through (d) of this section shall not be applicable if the leverage transaction merchant is a member of a designated self-regulatory organization and conforms to minimum cover standards and related reporting requirements set by such designated self-regulatory organization in its bylaws, rules, regulations or resolutions approved by the Commission pursuant to Section 19 of the Act and § 31.28.

23. Section 31.9 is proposed to be amended by revising paragraphs (a)(2), (a)(4) and (d) to read as follows:

§ 31.9 Minimum financial requirements.

(a) * * *

(2) The requirements of paragraph (a) of this section shall not be applicable if the applicant or registrant is a member of a designated self-regulatory organization and conforms to minimum financial standards and related reporting requirements set by such designated self-regulatory organization in its bylaws, rules, regulations or resolutions approved by the Commission pursuant to section 19 of the Act and § 31.28.

* * * * *

(4) A leverage transaction merchant who is not in compliance with this section, or is unable to demonstrate such compliance as required by paragraph (a)(3) of this section, must immediately cease engaging in the business of offering to enter into, entering into, or confirming the execution of, any leverage contract until such time as the leverage transaction merchant is able to demonstrate such compliance. Nothing in this paragraph shall be construed as preventing the Commission or the designated self-regulatory organization from taking action against a leverage transaction merchant for non-compliance with any of the provisions of this section. Any leverage transaction merchant required immediately to cease doing business under this paragraph shall remain liable on all leverage contracts previously entered into until all rights of and obligations owing to the customers thereunder have been fulfilled.

* * * * *

(d) Each registered leverage transaction merchant, and each person who has applied for registration as a leverage transaction merchant, must make and keep as a record in accordance with § 31.14 formal computations of its adjusted net capital and of its minimum financial requirements pursuant to this section as of the close of business each month. Such computations must be completed and made available for inspection by any representative of the National Futures Association, in the case of an applicant, or of the Commission, the designated self-regulatory organization, if any, or the United States Department of Justice in the case of a registrant, within 30 days after the date for which the computations are made, commencing the first month-end after the date the application for registration is filed.

24. Section 31.11 is proposed to be amended by revising the first sentence of paragraph (a)(1), paragraphs (a)(2)(ii), (a)(2)(viii), (e) and (h), and by adding a new paragraph (m) to read as follows:

§ 31.11 Disclosure.

(a) * * *

(1) The following bold-faced risk disclosure statement in at least ten-point type on the first page of the Disclosure Document:

BECAUSE OF THE UNPREDICTABLE NATURE OF THE PRICES OF PRECIOUS AND OTHER METALS, LEVERAGE CONTRACTS INVOLVE A HIGH DEGREE OF RISK AND ARE NOT SUITABLE FOR MANY MEMBERS OF THE PUBLIC. * * *

(2) * * *

(ii) The distinguishing characteristics of the contract and of the leverage commodity, including, in particular, those characteristics of the leverage commodity enumerated in § 31.4(g)(1)–(4);

* * * * *

(viii) A statement to the effect that other persons may be unwilling to buy from the leverage customer the leverage commodity that is deliverable on the leverage contract without first requiring an inspection or assay at the expense of the leverage customer; a statement to the effect that the leverage transaction merchant may be unwilling to accept delivery and pay for such leverage commodity without first requiring an inspection or assay at the expense of the leverage customer; and a description of any other requirements for the delivery of a leverage commodity by a leverage customer to a leverage transaction merchant in connection with a short leverage contract;

* * * * *

(e)(1) The leverage transaction merchant must file with the National Futures Association three copies and with the Commission at its Washington, DC headquarters, Attn: Secretariat, one copy of the document for each leverage contract that it offers or that it intends to offer not less than 21 calendar days prior to the date the leverage transaction merchant first intends to furnish the document to a prospective leverage customer. The leverage transaction merchant must specify with the filing the date it first intends to deliver the document to a prospective leverage customer;

(2) Subject to paragraphs (h) and (m) of this section, the leverage transaction merchant must file with the National Futures Association three copies and with the Commission at its Washington, D.C. headquarters, Attn: Secretariat, one copy of all subsequent amendments to the document for each leverage contract that it offers or that it intends to offer within 30 calendar days after the date upon which the leverage transaction merchant first knows or has reason to know of the defect requiring the amendment.

* * * * *

(h) A leverage transaction merchant must transmit a notification to each leverage customer within 24 hours of making any change not otherwise permitted under the contract terms set forth in accordance with paragraph (a)(2) of this section. A notification of any change in the interest rate charged by the leverage transaction merchant must also be transmitted to each leverage customer within twenty-four hours of each change: *Provided, however,* That no notification is required if the change in interest rate is less than one percent from the rate charged at the prior month-end and the new interest rate is made available to customers by means of a toll-free telephone call, and such availability is set forth in the Disclosure Document. The notification required by this paragraph must be transmitted by first class mail or other, at least equivalent, means of communication.

* * * * *

(m)(1) Notwithstanding any other provision of this section, if a leverage transaction merchant is not offering to enter into, entering into or confirming the execution of, soliciting or accepting a leverage customer's order for, or accepting any leverage customer funds from a leverage customer to enter into or maintain any short leverage contract, the leverage transaction merchant may delete or disregard references to short leverage contracts in its Disclosure Document as follows:

(i) The third sentence of the first paragraph of the required bold-faced risk disclosure statement in paragraph (a)(1) of this section;

(ii) The words "and a short leverage transaction" in the fourth sentence of the first paragraph of the required bold-faced risk disclosure statement in paragraph (a)(1) of this section;

(iii) The words "and leverage contracts sold to a leverage transaction merchant are re-established at the then prevailing ask price" in the fifth sentence of the third paragraph of the required bold-faced risk disclosure statement in paragraph (a)(1) of this section;

(iv) The second sentence of the fifth paragraph of the required bold-faced risk disclosure statement in paragraph (a)(1) of this section;

(v) The words "or resold to" in the first sentence of the sixth paragraph of the required bold-faced risk disclosure statement in paragraph (a)(1) of this section;

(vi) The words "or resell," "and must also offer to resell any short leverage contract previously sold by a leverage customer," and "or short" in the second sentence of the sixth paragraph of the required bold-faced risk disclosure statement in paragraph (a)(1) of this section;

(vii) The words "or resold" and "or resale" (twice) in paragraph (a)(2)(vii) of this section;

(viii) All of the words following the first semicolon in paragraph (a)(2)(viii) of this section;

(ix) The words "and a representative single short leverage contract" in paragraph (a)(3) of this section; and

(x) The words "or short" in paragraphs (a)(5)(i) and (a)(5)(ii) of this section.

(2) Any leverage transaction merchant using a Disclosure Document that deletes or disregards references to short leverage contracts as permitted by paragraph (n)(1) of this section must file, in accordance with the provisions of paragraph (e)(2) of this section, a new Disclosure Document meeting all of the requirements of paragraphs (a) through (i) of this section at least 30 calendar days before it begins to offer any short leverage contract.

25. Section 31.12 is proposed to be amended by adding a new paragraph (h) to read as follows:

§ 31.12 Segregation.

* * * * *

(h) The requirements of paragraphs (a) through (g) of this section shall not be applicable if the leverage transaction merchant is a member of a designated self-regulatory organization and conforms to minimum segregation standards and related reporting requirements set by such designated self-regulatory organization in its bylaws, rules, regulations or resolutions approved by the Commission pursuant to section 19 of the Act and § 31.28.

26. Section 31.13 is proposed to be amended by revising paragraphs (a) introductory text, (b)(2), (c), (g)(2), (j), (k), (1)(i) introductory text, (l)(1)(vii), (l)(2), (l)(3), and (m) to read as follows:

§ 31.13 Financial reports of leverage transaction merchants.

(a) Each leverage transaction merchant who files an application for registration with the National Futures Association under § 3.17 of this chapter shall submit concurrently with the filing of such application either:

* * * * *

(b) * * *

(2) The provisions of paragraph (b)(1) of this section may be met by any person registered as a leverage transaction merchant who is a member of a designated self-regulatory organization and conforms to minimum financial standards and related reporting requirements set by such designated self-regulatory organization in its bylaws, rules, regulations, or resolutions and approved after April 13, 1984 by the Commission pursuant to Section 19 of the Act and § 31.28: *Provided, however,* That each such registrant shall promptly file with the Commission a true and exact copy of each financial report which it files with such designated self-regulatory organization.

(c) Each Form 2–FR which must be certified by an independent public accountant in accordance with the provisions of paragraphs (a)(1), (a)(2) and (b)(1) of this section, must be certified in accordance with § 1.16 of this chapter, and must be accompanied by the accountant's report on material inadequacies in accordance with the provisions of § 1.16(c)(5) of this chapter. In all other respects, the independent public accountant shall act in accordance with the provisions of § 1.16 (except paragraph (f)): *Provided, however,* That the term "Form 2–FR" shall be substituted for "Form 1–FR" in § 1.16(c)(5), the term "§ 31.9" shall be substituted for the term "§ 1.17," the term "leverage transaction merchant" shall be substituted for the term "futures commission merchant," and "the segregation requirements of § 31.12" shall be substituted for "the segregation requirements of Section 4d(2) of the Act and these regulations and the secured amount required of the Act and these regulations."

* * * * *

(g) * * *

(2) Statements of: income (loss); cash flows; changes in ownership equity; and changes in liabilities subordinated to claims of general creditors, for the period between the date of the most recent statement of financial condition filed with the Commission and the date for which the report is made: *Provided, however,* That for an applicant filing pursuant to paragraph (a) of this section, the period must be the year ending as of the date of the statement of financial condition;

* * * * *

(j) Any leverage transaction merchant wishing to establish a fiscal year other than the calendar year may do so by notifying the National Futures Association of its election of such fiscal year in writing, concurrently with the filing of Form 2–FR pursuant to paragraph (a) of this section or within 90 days of the effective date of this section, but in no event may such fiscal year end more than one year from the date of the Form 2–FR filed pursuant to paragraph (a) of this section or more than one year from the effective date of this regulation. A leverage transaction merchant which does not so notify the National Futures Association will be deemed to have elected the calendar year as its fiscal year. A leverage transaction merchant must continue to use its elected fiscal year, calendar or otherwise, unless a change in such fiscal year is approved upon written application to the designated self-regulatory organization.

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(k) In the event any leverage transaction merchant finds that it cannot file its report for any period within the time specified in paragraphs (b) or (d) of this section without substantial undue hardship, it may file with the designated self-regulatory organization an application for an extension of time to a specified date which may not be more than 90 days after the date as of which the financial report was to have been filed. The application must state the reasons for the requested extension and must contain an agreement to file the report on or before the specified date. The application must be received by the designated self-regulatory organization before the time specified in paragraphs (b) or (d) of this section for filing the report. Within 10 calendar days after receipt of the application for an extension of time, the designated self-regulatory organization shall: (1) Notify the leverage transaction merchant of the grant or denial of the requested extension; or (2) indicate that additional time is required to analyze the request, in which case the amount of time needed will be specified.

(l)(1) In the event a leverage transaction merchant finds that it cannot file its certified financial report and schedules for any year within the time specified in paragraph (b) of this section without substantial undue hardship, it may file with the designated self-regulatory organization an application for an extension of time to a specified date not more than 90 days after the date as of which the certified financial report and schedules were to have been filed. The application must be submitted by the leverage transaction merchant and must:

* * * * *

(vii) Be received by the designated self-regulatory organization prior to the date on which the report is due; and

* * * * *

(2) Within 10 calendar days after receipt of an application for extension of time, the designated self-regulatory organization shall: (i) Notify the leverage transaction merchant of the grant or denial of the requested extension; or (ii) indicate that additional time is required to analyze the request, in which case the amount of time needed will be specified.

(3) On the written request of a leverage transaction merchant, or on its own motion, the designated self-regulatory organization may grant an extension of time or an exemption from any of the certified financial reporting requirements of this section either unconditionally or on specified terms and conditions.

(m) All of the Forms 2–FR filed pursuant to this section will be public: *Provided, however,* That if the statement of financial condition, the computation of the minimum capital requirements pursuant to § 31.9, the schedule of coverage requirements and cover provided, and the schedule of segregation requirements and funds on deposit in segregation are bound separately from the other financial statements (including the statement of income (loss)), footnote disclosures and schedules of Form 2–FR, trade secrets and certain other commercial or financial information on such other statements and schedules, then such other statements and schedules will be treated as nonpublic for purposes of the Freedom of Information Act and the Government in the Sunshine Act and Parts 145 and 147 of this chapter. All information on such other statements, footnote disclosures and schedules will, however, be available for official use by any official or employee of the United States or any State, by any self-regulatory organization of which the person filing such report is a member, by the National Futures Association in the case of an applicant, and by any other person to whom the Commission believes disclosure of such information is in the public interest. The independent public accountant's opinion filed pursuant to this section will be deemed to be public information.

* * * * *

27. Section 31.16 is proposed to be amended to read as follows:

§ 31.16 Monthly reporting requirements.

(a) *Monthly activity.* Each leverage transaction merchant shall file written monthly reports with the National Futures Association in the format specified by the National Futures Association, by the tenth business day of the month following the month covered by the report and shall include the following information separately for each leverage commodity and each long and short leverage contract:

(1) The total number of leverage contracts that are open as of the close of business on the last business day of the month for:

(i) All customer accounts, and

(ii) Separately for commercial leverage accounts.

(2) The total number of leverage contracts entered into by leverage customers during the month for:

(i) All customer accounts, and

(ii) Separately for commercial leverage accounts.

(3) The total number of leverage contracts which were repurchased or resold by the leverage transaction merchant during the month.

(4) The total number of leverage contracts which were liquidated by the leverage transaction merchant during the month (*i.e.*, as a result of overdue or unanswered margin calls).

(5) The total number of deliveries on leverage contracts during the month.

(6) The total number of leverage contracts which were rescinded during the month.

(b) *Prices.* The monthly report shall also show the following information separately for each leverage commodity and each long and short leverage contract: the leverage transaction merchant's last bid price offered and last ask price offered as of the close of the business on each business day.

28. Section 31.21 is proposed to be revised to read as follows:

§ 31.21 Leverage contracts entered into prior to April 13, 1984; subsequent transactions.

Nothing contained in these regulations shall be construed to affect any lawful activities that occurred prior to April 13, 1984. All leverage contracts offered or entered into on or after April 13, 1984 shall be subject to the terms and conditions of these regulations.

29. Section 31.22 is proposed to be revised to read as follows:

§ 31.22 Prohibited trading in leverage contracts.

No futures commission merchant or introducing broker shall offer to enter into, confirm the execution of, or solicit or accept orders for any leverage contract.

30. Section 31.25 is proposed to be amended by revising paragraph (b) to read as follows:

§ 31.25 Bid and ask prices; carrying charges.

* * * * *

(b) A leverage transaction merchant must apply a carrying charge rate on a short leverage contract that is within one percent per annum of the carrying charge rate that it applies to a long leverage contract. In the case of a short leverage contract, the leverage customer must be credited with carrying charges computed on the total initial value of the contract, using the bid price when the contract was executed, plus any margin deposits made by the leverage customer in connection with the contract, and the same carrying charge rate must be applied to the total initial value of the contract and to the margin deposits. In the case of a long leverage contract, the leverage customer must be assessed carrying charges only on the unpaid balance of the contract, which is the total initial value of the contract, using the ask price when the contract was executed, minus any margin deposits made in connection with the contract: *Provided, however,* That in the case of a long leverage contract, interest on unpaid carrying charges may be assessed at the same rate as the interest rate component of the carrying charges and, if such an assessment were made and if the leverage transaction merchant offers short leverage contracts, payment of interest on carrying charges that have been credited to the leverage customer's account and not withdrawn must be made at the same rate as the interest rate component of the carrying charges.

31. Section 31.26 is proposed to be amended by removing paragraph (b) and the designation for paragraph (a), redesignating former (a)(1) through (12) as (a) through (l), and revising the introductory text, to read as follows:

§ 31.26 Quarterly reporting requirement.

Each leverage transaction merchant must file, in accordance with the instructions of, and in the format specified by, the National Futures Association a quarterly report with the National Futures Association by the fifteenth business day of the month following the quarter covered by the report. The report must list all leverage contracts which were either repurchased, resold, liquidated or settled by delivery by or to the leverage transaction merchant during the quarter and, with respect to each leverage contract, must include the following information:

* * * * *

32. Section 31.27 is proposed to be added to read as follows:

§ 31.27 Registered futures association membership.

Each person required to register as a leverage transaction merchant must become and remain a member of at least one futures association which is registered under section 17 of the Act and which provides for the membership therein of such leverage transaction merchant, unless no such futures association is so registered.

33. Section 31.28 is proposed to be added to read as follows:

§ 31.28 Self-regulatory organization adoption and surveillance of minimum financial, cover, segregation and sales practice requirements.

(a) Each self-regulatory organization must adopt, and submit for Commission approval, rules prescribing minimum financial, cover, segregation and sales practice, and related reporting requirements for all its members who are registered leverage transaction merchants. Each self-regulatory organization shall submit for Commission approval any modification or other amendments to such rules. Such requirements must be the same as, or more stringent than, those contained in this Part 31 and the definition of adjusted net capital must be the same as that prescribed in § 31.9(b)(4).

(b) Each self-regulatory organization which has members who are registered leverage transaction merchants shall have in effect and enforce rules submitted to the Commission pursuant to paragraph (a) of this section and approved by the Commission.

(c) Any two or more self-regulatory organizations may file with the Commission a plan for delegating to a designated self-regulatory organization, for any registered leverage transaction merchant which is a member of more than one such self-regulatory organization, the responsibility of:

(1) Monitoring and auditing for compliance with the minimum financial, cover, segregation and sales practice, and related reporting requirements adopted by such self-regulatory organizations in accordance with paragraph (a) of this section; and

(2) Receiving the reports necessitated by such minimum financial, cover, segregation and sales practice, and related reporting requirements.

(d) Any plan filed under this section may contain provisions for the allocation of expenses reasonably incurred by the designated self-regulatory organization among the self-regulatory organizations participating in such a plan.

(e) A plan's designated self-regulatory organization must report to that plan's other self-regulatory organizations any violation of such other self-regulatory organizations' rules and regulations for which the responsibility to monitor, audit or examine has been delegated to such designated self-regulatory organization under this section.

(f) The self-regulatory organizations may, among themselves, establish programs to provide access to any necessary information.

(g) After appropriate notice and opportunity for comment, the commission may, by written notice, approve such a plan, or any part of the plan, if it finds that the plan, or any part of it:

(1) Is necessary or appropriate to serve the public interest;

(2) Is for the protection and in the interest of leverage customers;

(3) Reduces multiple monitoring and auditing for compliance with the minimum financial, cover, segregation and sales practice, and related reporting requirements of the self-regulatory organizations submitting the plan for any leverage transaction merchant which is a member of more than one self-regulatory organization;

(4) Reduces multiple reporting of the information necessitated by such minimum financial, cover, segregation and sales practice, and related reporting requirements by any leverage transaction merchant which is a member of more than one self-regulatory organization;

(5) Fosters cooperation and coordination among the self-regulatory organizations; and

(6) Does not hinder the development of a registered futures association under section 17 of the Act.

(h) After the Commission has approved a plan or part of one under paragraph (g) of this section, a self-regulatory organization relieved of responsibility must notify each of its members which is subject to such a plan:

(1) Of the limited nature of its responsibility for such a member's compliance with its minimum financial, cover, segregation and sales practice, and related reporting requirements; and

(2) Of the identity of the designated self-regulatory organization which has been delegated responsibility for such a member.

(i) The Commission may at any time, after appropriate notice and opportunity for hearing, withdraw its approval of any plan or part of one established under this section, if such plan or part of one ceases to effectuate adequately the purposes of section 19 of the Act or of this section.

(j) Whenever a registered leverage transaction merchant holding membership in a self-regulatory organization ceases to be a member in good standing of that self-regulatory organization, such self-regulatory organization must, on the same day that event takes place, give telegraphic notice of that event to the principal office of the Commission in Washington, D.C. and send a copy of that notification to such leverage transaction merchant.

(k) Nothing in this section shall preclude the Commission from examining any leverage transaction merchant for compliance with the minimum financial, cover, segregation and sales practice, and related reporting requirements to which such leverage transaction merchant is subject.

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(l) In the event a plan is not filed and/or approved for each registered leverage transaction merchant which is a member of more than one self-regulatory organization, the Commission may design and, after notice and opportunity for comment, approve a plan for those leverage transaction merchants which are not the subject of an approved plan (under paragraph (g) of this section), delegating to a designated self-regulatory organization the responsibilities described in paragraph (c) of this section.

34. Section 31.29 is proposed to be added to read as follows:

§ 31.29 Arbitration or other dispute settlement procedures.

Each self-regulatory organization which has members who are registered as leverage transaction merchants must be able to demonstrate its capability to promulgate rules and to conduct proceedings which provide a fair, equitable and expeditious procedure, through arbitration or otherwise, for the voluntary settlement of a leverage customer's claim or grievance brought against any member leverage transaction merchant or any employee of a member leverage transaction merchant. Such rules shall be consistent with the rules set forth in Part 180 of this chapter governing contract market arbitration and dispute settlement procedures.

Appendix B to Part A—[Removed]

35. Appendix B to Part 31 is proposed to be removed.

PART 145—COMMISSION RECORDS AND INFORMATION

36. The authority citation for Part 145 continues to read as follows:

Authority: Pub. L. 88-554, 80 Stat. 383, Pub. L. 90-23, 81 Stat. 54, Pub. L. 93-502, 88 Stat. 1561-1564 (5 U.S.C. 552); Sec. 101(a), Pub. L. 93-463, 88 Stat. 1389 (7 U.S.C. 4a(j)); Pub. L. 99-570.

37. Section 145.5 is proposed to be amended by revising paragraph (d)(1)(i)(H) to read as follows:

§ 145.5 Disclosure of nonpublic records.

* * * * *

(d) * * *
(1) * * *
(i) * * *
(H) The following portions, and footnote disclosures thereof, of the Form 2-FR, provided the procedure set forth in § 31.13(m) of this chapter is followed: The Statement of Income (Loss), the Statement of Cash Flows, the Statement of Changes in Ownership Equity, the Statement of Changes in Liabilities Subordinated to the Claims of General Creditors Pursuant to a Satisfactory Subordinate Agreement and the accountant's report on material inadequacies filed under § 1.16(c)(5) of this chapter;

* * * * *

PART 147—OPEN COMMISSION MEETINGS

38. The authority citation for Part 147 continues to read as follows:

Authority: Sec. 3(a), Pub. L. 94-409, 90 Stat. 1241 (5 U.S.C. 552b); Sec. 101(a)(11), Pub. L. 93-463, 88 Stat. 1391 (7 U.S.C. 4a(j)).

39. Section 147.3 is proposed to be amended by revising paragraph (b)(4)(i)(A)(*6*) to read as follows:

§ 147.3 General requirement of open meetings; grounds upon which meetings may be closed.

* * * * *

(b) * * *
(4) * * *
(i) * * *
(A) * * *
(*6*) The following portions, and footnote disclosures thereof, of the Form 2-FR provided the procedure set forth in § 31.13 of this chapter is followed: The Statement of Income (Loss), the Statement of Cash Flows, the Statement of Changes in Ownership Equity, the Statement of Changes in Liabilities Subordinated to the Claims of General Creditors Pursuant to a Satisfactory Subordination Agreement and the accountant's report on material inadequacies filed under § 1.16(c)(5) of this chapter;

* * * * *

Issued in Washington, DC on January 17, 1989 by the Commission

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 89-1294 Filed 1-23-89; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 122

Overflight Exemptions for Private Aircraft

AGENCY: U.S. Customs Service, Treasury.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Customs Regulations concerning the overflight exemption program for private aircraft. If exempted, private aircraft arriving in the U.S. from foreign countries in the Western Hemisphere south of the U.S. may overfly a Customs designated airport along the southern U.S. border and proceed to another, typically more interior, airport where Customs inspectional services are available. T.D. 87-42, published in the **Federal Register** on March 30, 1987 (52 FR 10047), set forth interim regulations in § 6.14(f), Customs Regulations (19 CFR 6.14(f)), modifying the overflight exemption program by creating more stringent procedures. Those interim regulations were drafted to close a loophole in narcotic interdiction efforts involving a large volume of air traffic traveling from the direction of narcotic source countries. The interim regulations have not yet been finalized. This document proposes to amend the interim regulations by providing for a fingerprint requirement as part of the application process for all usual and anticipated pilots and crewmembers seeking overflight exemptions for flights that do not involve air ambulance operations or the non-emergency transport of persons seeking medical treatment in the U.S. If adopted, this amendment will allow Customs to conduct more thorough background investigations on applicants and thus better provide control over air traffic arriving from the direction of countries that are major sources of illegal drugs.

DATE: Comments must be received on or before March 27, 1989.

ADDRESS: Written comments (preferably in triplicate) must be submitted to and may be inspected at the Regulations and Disclosure Law Branch, Room 2119, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, DC 20229. Comments relating to the information collection aspects of the proposal should be addressed to Customs, as noted above, and also to the Office of Information and Regulatory Affairs, Attention: Desk Officer for U.S. Customs Service, Office of Management and Budget, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Glenn Ross, Office of Passenger Enforcement and Facilitation (202-566-5607).

SUPPLEMENTARY INFORMATION:

Background

As part of Customs effort to combat the problem of drug smuggling by air, in 1975 the Customs Regulations were amended to add a new § 6.14 (19 CFR 6.14), that provides in part that private aircraft arriving in the U.S. via the U.S.-Mexican border must provide a notice of intended arrival with Customs (T.D. 75-201, 40 FR 33203). The section further provided that these private aircraft must

land at any one of the designated airports near the U.S.-Mexican border, Gulf Coast, or Florida coast areas. The purpose of this regulation was to provide Customs with increased enforcement efficiency by providing tight control over air traffic arriving from the direction of countries that are major sources of illegal drugs destined for the U.S.

Section 6.14 provided, however, for exemptions under certain circumstances from the requirement of landing at one of the designated airports. These exemptions, called overflight exemptions, allow private aircraft arriving in the U.S. from foreign countries in the Western Hemisphere south of the U.S. to overfly a Customs-designated airport along the southern border and proceed to another, typically more interior, airport where Customs inspectional services are available if Customs approves of the application to do so.

In our diligence to fight the national epidemic of illegal drugs, Customs recently concluded that the overflight exemption program constituted a loophole in our drug interdiction program, allowing smugglers to engage in "touch and go" or air drop smuggling of illegal drugs and contraband. "Touch and go" smuggling involves aircraft crossing the U.S. border and landing and quickly unloading illegal drugs or contraband before flying to the airport at which they report for inspection. Air drop smuggling involves flying very low over some point between the border and the airport at which they will report for inspection, pushing illegal drugs or contraband out of the aircraft to be retrieved on the ground, and continuing on to the airport. Accordingly, Customs published in the **Federal Register** (52 FR 10047), on March 30, 1987, Treasury Decision 87-42, that set forth interim regulations modifying the overflight exemption program, making it more stringent. The interim regulations, which allow only U.S. based companies or individuals to apply for overflight exemptions and require individual applications from each pilot or crewmember intended to participate in an overflight, have not yet been finalized. Treasury Decision 88-12, published in the **Federal Register** on March 22, 1988 (53 FR 9285), which revised the Customs Regulations relating to air commerce, removed § 6.14(f), and set forth the interim regulation in a new § 122.25.

While the interim regulations have been in effect, Customs has determined that requiring the fingerprints of those seeking overflight exemptions would improve the overflight exemption program. Customs ability to investigate the background of all overflight applicants would be greatly enhanced by requiring fingerprints of applicants as part of the application process. Accordingly, Customs is proposing that § 122.25, Customs Regulations be amended to state that except for flights involving air ambulance operations and the non-emergency transport of persons seeking medical treatment, all usual and anticipated pilots and crewmembers on flights applying for overflight exemptions must submit fingerprints. Fingerprinting of applicants will give Customs another tool by which to check the background of applicants and thereby prevent smuggling.

Customs believes that the increasing use of general aviation aircraft to smuggle narcotics warrants that this fingerprinting requirement be instituted.

Comments

Before adopting this proposal, consideration will be given to any written comments (preferably in triplicate) timely submitted. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4) and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on normal business days between the hours of 9:00 a.m. to 4:30 p.m. at the Regulations and Disclosure Law Branch, Customs Service Headquarters, Room 2119, 1301 Constitution Avenue, NW., Washington, DC 20229.

Executive Order 12291

This document does not meet the criteria of a "major rule" as defined in section 1(b) of E.O. 12291. Accordingly, a regulatory impact analysis is not required.

Regulatory Flexibility Act

Under the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified, that if adopted, this proposed amendment will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collection of information should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for U.S. Customs Service, with copies to Customs at the address previously specified.

The collection of information in this regulation is in § 122.25(c)(5), Customs Regulations (19 CFR 122.25(c)(5)). This information is required by Customs as a means of controlling the use of general aviation aircraft to smuggle narcotics from countries south of the U.S. The information will be used to enable Customs to perform more thorough background investigations of those seeking overflight exemptions. The likely respondents are individuals or households, business or other for-profit institutions or small businesses or organizations.

Estimated total annual arrival reporting and/or recordkeeping burden: 750 hours.

Estimated average annual burden per respondent and/or recordkeeper: 2 hours.

Estimated number of respondents: 375.

Estimated annual frequency of responses: 4.

List of Subjects in 19 CFR Part 122

Customs duties and inspection, Imports, Air carrier, Aircraft, Airports.

Proposed Amendments to the Regulations

It is proposed to amend Part 122, Customs Regulations (19 CFR Part 122) as set forth below.

PART 122—AIR COMMERCE REGULATIONS

1. The authority citation for Part 122 continues to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (Gen Hdnote 11), 1624; 49 U.S.C. 1509.

2. It is proposed to revise § 122.25(c)(5) to read as follows:

§ 122.25 Exemption from special landing requirements.

* * * * *

(c) *Content of request.* * * *

(5) Individual signed applications and fingerprints from each usual or anticipated pilot or crewmember for aircraft for which an overflight exemption is sought except for flights involving air ambulance operations and the non-emergency transport of persons seeking medical treatment. Applications must state name, address, Social Security number, Federal Aviation Administration certificate number, and place and date of birth. Fingerprints must be submitted on Standard Form 87;

* * * * *

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Drafting Information

The principal author of this document was Harold M. Singer, Regulations and Disclosure Law Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

William von Raab,
Commissioner of Customs.
Approved: October 18, 1988.
John P. Simpson,
Acting Assistant Secretary of the Treasury.
[FR Doc. 89-1448 Filed 1-23-89; 8:45 am]
BILLING CODE 4820-02-M

19 CFR Parts 141, 143, 145

Proposed Customs Regulations Amendments Changing the Maximum Amount for Informal Entries to $1250

AGENCY: U.S. Customs Service, Treasury.
ACTION: Proposed rule.

SUMMARY: Under current Customs Regulations, a shipment must generally be valued at $1000 or less to qualify for informal entry procedures. This document amends various parts of the Customs Regulations to raise the $1000 ceiling to $1250.

Pub. L. 98-573, dated October 30, 1984, amended 19 U.S.C. 1498(a)(1) by granting the Secretary of the Treasury the authority to increase the informal entry limit from $250 to $1250. When the Customs Service originally implemented the statutory change in 1985, it decided to set the maximum for informal entry at $1000, reserving the option to raise the limit to the statutory maximum at a subsequent time. Customs has now determined that in order to devote its resources to higher priority, higher valued shipments, it is appropriate to raise the limit for informal entry to the statutory maximum.

DATE: Comments must be received on or before March 27, 1989.

ADDRESS: Comments (preferably in triplicate) may be addressed to and inspected at the Regulations and Disclosure Law Branch, Customs Service Headquarters, 1301 Constitution Ave., NW., Room 2119, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: William G. Rosoff, Chief, Entry Rulings Branch, (202) 566-5856.

SUPPLEMENTARY INFORMATION:

Background

All merchandise which is imported into the customs territory of the United States is subject to entry and clearance procedures. Section 484(a), Tariff Act of 1930, (19 U.S.C. 1484(a)), provides that the consignee of imported merchandise or his agent shall make entry by filing such documentation as is necessary to enable the Customs officer to determine whether the merchandise may be released from Customs custody and to ascertain properly the duties on the merchandise as well as whether other legal requirements are met. Part 142, Customs Regulations (19 CFR Part 142), implements section 484, and prescribes procedures applicable to most Customs entry transactions. These procedures, known as formal entry procedures, generally require the filing of Customs forms as well as commercial documents pertaining to the transaction.

Section 498, Tariff Act of 1930 (19 U.S.C. 1498), as originally enacted, authorized the Secretary to prescribe rules and regulations for, among other things, the declaration and entry of shipments the aggregate value of which did not exceed $250. Regulations setting forth procedures for such shipments were issued in Subpart C of Part 143, Customs Regulations (19 CFR Part 143, Subpart C), entitled "Informal Entries". Informal entry procedures are less burdensome than their formal counterparts. For example, with the assent of the district director of Customs, merchandise eligible for informal entry may be entered simply by means of a commercial invoice which contains a signed declaration by the importer.

Section 206 of Pub. L. 98-573, dated October 30, 1984, amended section 498 by granting, with certain exceptions, the Secretary of the Treasury the authority to raise to $1250 the maximum amount for informal entry status. On July 23, 1985, Customs published a number of conforming amendments in the **Federal Register** (50 FR 29949), including one raising the limit for which informal entries could be filed. However, Customs raised the limit to only $1000 and preserved the option of raising the ceiling further until after it could evaluate the operational effect of this increase.

On December 16, 1987, Customs published a proposal in the **Federal Register** (52 FR 47729), to change the procedures for the clearance of cargo carried by express consignment operators or carriers. One purpose of this proposal was to provide more expedited clearance procedures for the processing of such cargo. In this document we proposed to increase from $1000 to $1250 the ceiling for which informal entry procedures could be used for cargo carried by express consignment operators or carriers.

After examining the comments received in response to the December 16, 1987, notice, and upon further evaluation of the operational benefits of raising the informal entry limits, Customs now deems it appropriate to increase the maximum amount for informal entry eligibility to $1250 for all transactions to which the $1000 limit applied. Customs experience indicates that the revenue collected on informal entries is very small. Customs believes that increasing the ceiling to $1250 will allow Customs Service personnel to focus their attention on higher valued commercial transactions, which tend to be more import sensitive. In addition, this change will lessen the burden on importers by allowing them to file informal entries for an additional group of transactions.

Proposal

In order to make the less burdensome informal entry procedures available for a greater number of import transactions, Customs proposes to amend various sections of the regulations to conform them to the satutory limit for informal entries.

Comments

Before adopting the proposed regulations, consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m., at the Regulations and Disclosure Law Branch, Room 2119, Customs Headquarters, 1301 Constitution Avenue, NW., Washington, DC 20229.

Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) it is certified that, if adopted, the proposed amendment will not have a significant impact on a substantial number of small entities. Accordingly, it is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Executive Order 12291

This document does not meet the criteria for a "major rule" as specified in E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

Drafting Information

The principal author of this document was Arnold L. Sarasky, Regulations and Disclosure Law Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects

19 CFR Part 141

Imports.

19 CFR Part 143

Imports.

19 CFR Part 145

Postal Service.

Proposed Amendments

It is proposed to amend Parts 141, 143, and 145 (19 CFR Parts 141, 143, and 145) as set forth below.

PART 141—ENTRY OF MERCHANDISE

1. The general authority citation for Part 141 and the specific authority for the affected subpart continues to read as follows:

Authority: 19 U.S.C. 66, 1448, 1484, 1624. Subpart F also issued under 19 U.S.C. 1481.

§ 141.82 [Amended]

2. It is proposed to amend § 141.82(d) by removing "$1000" and inserting in its place "$1250".

PART 143—CONSUMPTION APPRAISEMENT AND INFORMAL ENTRIES

1. The general authority citation for Part 143 remains as follows:

Authority: 19 U.S.C. 66, 1481, 1484, 1484, 1498, 1624.

§ 143.21 [Amended]

2. It is proposed to amend § 143.21, paragraphs (a), (b), (c), (f), (g) and (l), by removing "$1000" and inserting in its place "$1250".

§ 143.22 [Amended]

3. It is proposed to amend § 143.22(c) by removing "$1000" and inserting in its place, "$1250".

§ 143.23 [Amended]

4. It is proposed to amend § 143.23(d) by removing "$1000" and inserting in its place "$1250".

§ 143.29 [Amended]

5. It is proposed to amend the introductory text and paragraph (b) of § 143.29 by removing "$1000" and inserting in its place "$1250".

PART 145—MAIL IMPORTATIONS

1. The general authority citation for Part 145 and the specific authority for the affected sections continue to read as follows:

Authority: 19 U.S.C. 66, 1202, 1624. Section 145.12 also issued under 19 U.S.C. 1315, 1484, 1498; section 145.35 also issued under 19 U.S.C. 1498.

§ 145.12 [Amended]

2. It is proposed to amend § 145.12, paragraphs (a)(2), (a)(3), (b) and (c) by removing "$1000" and inserting in its place "$1250".

§ 145.35 [Amended]

3. It is proposed to amend § 145.35 by removing "$1000" and inserting in its place "$1250".

§ 145.41 [Amended]

4. It is proposed to amend § 145.41 by removing "$1000" and inserting in its place "$1250".

William von Raab,
Commissioner of Customs.
Approved: January 12, 1989.
Gerald Hilsher,
Acting Assistant Secretary of the Treasury.
[FR Doc. 89-1446 Filed 1-23-89; 8:45 am]
BILLING CODE 4820-02-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

Kentucky Permanent Regulatory Program; Public Comment Period and Opportunity for Public Hearing on Amendments

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.
ACTION: Proposed rule.

SUMMARY: OSMRE is announcing receipt of proposed amendments to the Kentucky permanent regulatory program (hereinafter referred to as the Kentucky program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendments are intended to make the Commonwealth's regulations consistent with revised Federal regulations contained in 30 CFR Chapter VII.

This notice sets forth the times and locations that the proposed amendments are available for public inspection, the comment period during which interested persons may submit written comments, and the procedures that will be following during a public hearing, if one is requested.

DATES: Written comments must be received on or before 4:00 p.m. on February 23, 1989, to ensure consideration in the decision process. If requested, a public hearing on the proposed amendments will be held at 10:00 a.m. on February 21, 1989. Requests to present oral testimony at the hearing must be received on or before 4:00 p.m. on February 8, 1989.

ADDRESSES: Written comments and requests for a hearing should be mailed or hand delivered to: W. Hord Tipton, Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504.

Copies of the Kentucky program, the proposed amendments, a listing of any scheduled public meetings, and all written comments received in response to this notice will be available for public review at the OSMRE Lexington Field Office and at the office of the Department for Surface Mining Reclamation and Enforcement listed below, during normal business hours, Monday through Friday, excluding holidays. Each requestor may receive, free of charge, one single copy of the proposed amendments by contacting the OSMRE Lexington Field Office.

Office of Surface Mining Reclamation and Enforcement, Lexington Field Office, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504, Telephone: (606) 233-7327.

Office of Surface Mining Reclamation and Enforcement, Administrative Record Office, Room 5315 A, 1100 "L" Street, NW., Washington, DC 20240, Telephone: (202) 343-5492.

Office of Surface Mining Reclamation and Enforcement, Eastern Field Operations, Ten Parkway Center, Pittsburgh, Pennsylvania 15220, Telephone: (412) 937-2828.

Department for Surface Mining Reclamation and Enforcement, #2 Hudson Hollow Complex, Frankfort, Kentucky 40601, Telephone: (502) 564-6940.

If a public hearing is held, its location will be: The Harley Hotel, 2143 North Broadway, Lexington, Kentucky 40505.

FOR FURTHER INFORMATION CONTACT: Mr. W. Hord Tipton, Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504; Telephone: (606) 233-7327.

SUPPLEMENTARY INFORMATION:

I. Background

The Kentucky program was conditionally approved by the Secretary of the Interior on May 18, 1982. Information pertinent to the general

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background, revisions, modifications, and amendments to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of appoval of the Kentucky program can be found in the May 10, 1982, **Federal Register** (47 FR 21404–21435). Subsequent actions concerning the conditions of approval and program amendments are identified in 30 CFR 917.11, 917.15, 917.16, and 917.17.

II. Discussion of Amendments

By letter dated June 9, 1987, OSMRE notified Kentucky of State regulations that must be amended to be consistent with revised Federal regulations. OSMRE's letter, pursuant to 30 CFR 732.17, identified 5 changes needed in the Kentucky regulatory program for cultural and historic resources.

In response to the OSMRE letter Kentucky submitted on December 21, 1988, (Administrative Record No. KY-841) proposed program amendments to the cultural and historic resource regulations contained in the Kentucky program.

The proposed amendments modify portions of the Kentucky Administrative Regulations (KAR) Title 405 Chapters 8 and 24. Specifically, the proposed amendments revise 405 KAR 8:010 by including information on the nature and location of archaeological resources on public and Indian lands as confidential information, and by adding a requirement for a new written findings by the Cabinet relating to properties listed or eligible for listing on the National Register of Historic Places. The proposed amendments revise 405 KAR 8:020 to require the inclusion of information on cultural, historic, and known archaeological resources in the narrative description of each exploration and reclamation operations plan. The proposed amendments revise the permit requirements at 405 KAR 8:030 and 405 KAR 8:040 to specify that Kentucky may require the applicant to identify and evaluate important historic and archaeological resources. In addition, the proposed regulations require that each plan contain a description of measured to be used to prevent adverse impacts to public parks or places listed on the National Register of Historic Places and allows the cabinet to require the applicant to utilize appropriate mitigation and treatment measures. The proposed amendments also revise the Kentucky Regulations at 405 KAR 24:040 to permit the relocation of cemeteries if authorized by applicable State law or regulations.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSMRE is now seeking comments on whether the amendments proposed by Kentucky fully satisfy the criteria of 30 CFR 732.15 for the approval of State program amendments. If the amendments are deemed adequate, they will become part of the Kentucky program.

Written Comments

Written comments should be specific, pertain only to those issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "**DATES**" or at locations other than the Lexington Field Office, Lexington, Kentucky, will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to testify at a public hearing should contact the person listed under "**FOR FURTHER INFORMATION CONTACT**" by the close of business on February 8, 1989. If no one requests an opportunity to testify at a public hearing, a hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSMRE officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specific date until all persons scheduled to testify have been heard. Persons in the audience who have not been scheduled to testify and who wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. A summary of the meeting will be included in the Administrative Record.

Persons wishing to meet with OSMRE representatives to discuss the proposed amendments may request a meeting at the OSMRE, Lexington Field Office listed under "**ADDRESSES**" by contracting the person listed under "**FOR FURTHER INFORMATION CONTACT.**" All such meetings will be open to the public and, if possible, notices of meetings will be posted in advance at the locations listed under "ADDRESSES." A written summary of each public meeting will be made a part of the Administrative Record.

IV. Procedural Determinations

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On July 12, 1984, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subject in 30 CFR Part 917

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Carl C. Close,

Assistant Director, Eastern Field Operations.

[FR Doc. 89–1486 Filed 1–23–89; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD13 89–01]

Drawbridge Operation Regulations; Umpqua River, OR

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of the Oregon Department of Transportation (ODOT), the Coast Guard is considering a change to the regulations governing the swingspan bridge across the Umpqua River, mile 11.1, at Reedsport, Oregon, by requiring that two hours advance notice be given for bridge openings at all times. The current regulations require the span to open on signal between 8 a.m. and 4 p.m. Monday through Friday. At all other times, at least four hours notice is required for openings. This proposal is being made because of a steady decrease in requests for opening the draw. This action should allow the bridge to be operated in a more economical fashion and still provide for the reasonable needs of navigation.

DATE: Comments must received on or before March 10, 1989.

ADDRESSES: Comments should be mailed to Commander (ob), Thirteenth Coast Guard District, 915 Second Avenue, Seattle, Washington 98174–1087. The comments and other materials referenced in this notice will be available for inspection and copying at 915 Second Avenue, Room 3410. Normal office hours are between 7:45 a.m. and 4:15 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: John E. Mikesell, Chief, Bridge Section, Aids to Navigation and Waterways Management Branch, (Telephone (206) 442–5864).

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with, or any recommended changes in the proposal. Persons desiring acknowledgement that their comments have been received should include a stamped, self-addressed postcard or envelope. The Commander, Thirteenth Coast Guard District, will evaluate all communications and determine a course of final action on this proposal. The proposed regulations may be changed in light of comments received.

Drafting Information

The drafters of this notice are Austin Pratt, project officer, and Lieutenant Deborah K. Schram, project attorney.

Discussion of the Proposed Regulations

The Oregon Department of Transportation has asked the Coast Guard to approve a change to the operating regulations which would require that vessels request openings at least two hours in advance of the time when they wish to pass the Umpqua River Bridge. Records show a decline in openings since 1982. In that year the total number of openings was 367. Since 1982, the average annual number of openings has been sixty. This corresponds to only five openings per month. The proposed regulation change would enable the bridge owner to maintain the bridge without a draw tender in attendance yet still serve the reasonable needs of navigation.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 1291 on Federal Regulation and non-significant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. Navigation and marine related interests will not be significantly affected by this proposed rule because the subject bridge is opened infrequently for vessels. The reasonable needs of these interests would still be met by the proposed operating regulation. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations, as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. Section 117.893, paragraph (a) is revised to read as follows:

§ 117.893 Umpqua River

(a) The draw of the U.S. 101 bridge, mile 11.1, at Reedsport, shall open on signal if at least two hours notice is given.

* * * * *

Dated: January 12, 1989.

D.C. O'Donovan,

Capt. USCG, Acting Commander, 13th Coast Guard District.

[FR Doc. 89–1538 Filed 1–23–89; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–3507–8]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Proposed rule.

SUMMARY: USEPA is proposing to disapprove a revision to the Ohio State Implementation Plan (SIP) for ozone. The requested revision for Steel City Corporation in Youngstown, Ohio consists of a proposal to meet the current requirements for surface coating of miscellaneous metal parts and products as contained in Ohio Administrative Code (OAC) Rule 3745–21–09(U) (3.5 pounds of volatile organic compounds per gallon of coating, excluding water, limitation) using an alternative emission control program (bubble) between a spray coating line and two dip tanks located at the facility. This revision request also includes a monthly volume-weighted average for the source. Ohio's rule currently requires that this limit be met as a daily volume-weighted average for each applicator.

USEPA is proposing to disapprove this revision because there is insufficient documentation to support that complying coatings for Steel City Corporation are unavailable, and because there is no documentation provided that demonstrates that the 30-day averaging period provision, in the requested SIP revision, is as short as practicable. As a result of this action, the source remains subject to the control requirements of OAC Rule 3745–21–09(U) and OAC Rule 3745–21–04(C)(28) which requires compliance with OAC Rule 3745–21–09(U) by December 31, 1982.

DATE: Comments on the requested SIP revision and on the proposed USEPA action must be received by February 23, 1989.

ADDRESSES: Copies of the requested SIP revision are at the following addresses for review: (It is recommended that interested parties telephone Debra Marcantonio, at (312) 886–6088, before visiting the Region V Office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604.

Ohio Environmental Protection Agency, Office of Air Pollution Control, 361 East Broad Street, Columbus, Ohio 43216.

Copies of the Technical Support Document for this proposed rulemaking are also available from the Region V Office. Comments on this proposed rule should be addressed to: (Please submit an original and three copies, if possible.) Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR-26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Debra Marcantonio, Air and Radiation Branch (5AR-26),I U.S. Environmental Protection Agency, Region V, Chicago, Illinois 60604, (312) 886-6088.

SUPPLEMENTARY INFORMATION: On November 30, 1985, the Ohio Environmental Protection Agency (OEPA) submitted a site-specific SIP revision request for the miscellaneous metal coating lines at the Steel City Corporation in Youngstown, Ohio. Steel City is a steel products manufacturer specializing in small consumer products such as mailboxes, fence posts, metal shelves and storage parts. Steel City paints these products using three surface coating lines: a brown dip tank (K006), a green dip tank (K005) and an electrostatic spray both (K004), known as the mailbox line.

All three lines are subject to the requirements of OAC Rule 3745-21-09(U) for surface coating of miscellaneous metal parts and products. This rule limits the VOC content of any extreme performance coating used on these lines to 3.5 pounds of VOC per gallon of coating, excluding water. These lines are also subject to OAC Rule 3745-21-09-04(C)(28) that requires compliance with Rule 3745-21-09(U) by December 31, 1982. Additionally, OAC Rule 3745-3-1-09(B) requires that this limit be met as a daily volume-weighted average for each applicator. USEPA approved these rules as meeting the reasonably available control technology (RACT) [1] requirement of the Clean Air Act on October 31, 1980 (45 FR 72122), and June 29, 1982 (47 FR 28097).

Through the use of water-based coatings, the green and brown dip tanks are in compliance with this limit. The average VOC content of coatings used in these lines since July 1985 is 2.2 pounds of VOC per gallon of coating, excluding water. However, Steel City has been unsuccessful in developing complying coatings for the mailbox line.

OEPA requested an alternative mission control program (bubble) for Steel City because the source does not have complying coatings for its mailbox line. This bubble would allow Steel City to offset the excess emissions from this line with the surplus emission reductions from the green and brown dip tanks. The average coating used on the mailbox line has a VOC content of 4.5 pounds of VOC per gallon of coating, excluding water. Because more paint is used on each dip line than on the mailbox line on an average day, under normal operations, the average VOC content of paint used in this facility overall will be less than 3.5 pounds of VOC per gallon of coating, excluding water.

Therefore, OEPA requested the site-specific RACT determination for Steel City to allow the source to meet the limitation of 3.5 pounds of VOC per gallon of coating, excluding water, on a plant-wide, monthly, volume-weighted average basis in lieu of the daily basis specified in OAC Rule 3745-21-09(B).

The OEPA proposes to specify the following allowable VOC emission limitations for Steel City's coating lines in lieu of the requirements of OAC Rules 3745-21-09(B) and 3745-21-09(U)(1)(a)(iii):

1. For K004 (the electrostatic spray, or mailbox, line):

(a) The VOC content of any coating employed in this coating line shall not exceed 4.8 pounds of VOC per gallon of coating applied, excluding water; and

(b) The VOC content of all coatings applied in sources K004, K005, and K006 shall not exceed 3.5 pounds of VOC per gallon of coating applied, excluding water, on a monthly volume-weighted average basis.

2. For K005 and K006 (the green dip tank and brown dip tank):

(a) The VOC content of any coating employed in this coating line shall not exceed 3.0 pounds of VOC per gallon of coating applied, excluding water; and

(b) The VOC content of all coatings applied in sources K004, K005, and K006 shall not exceed 3.5 pounds of VOC per gallon of coating applied, excluding water, on a monthly volume-weighted average basis.

OEPA issued a variance and permits to operate to Steel City Corporation, which include the above emission limits. In addition, the variances contain recordkeeping and reporting requirements.

On April 10, 1986, USEPA notified OEPA that its November 30, 1985, submittal for Steel City was deficient as discussed in USEPA's technical support document dated March 4, 1986. OEPA submitted supplemental information on June 13, 1986 and August 18, 1986. USEPA subsequently wrote three technical support document addenda dated July 7, 1986; September 23, 1986; and December 12, 1986.

This notice identifies two major deficiencies which cause the revision to be unapprovable. However, if the State corrects these major deficiencies, it should also ensure conformance with USEPA requirements specified in the following documents before submitting the revision for approval by USEPA: (1) Appendix D of the Post-1987 ozone policy, titled "Discrepancies and Inconsistencies found in Current SIP's, (2) a May 25, 1988, clarification to Appendix D titled "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations," and (3) the "SIP Approvability Checklist-Enforceability" which is attached to a September 23, 1987, policy memorandum titled "Review of State Implementation Plans and Revisions for Enforceability and Legal Sufficiency." These documents contain USEPA requirements (largely dealing with SIP approvability and enforceability) which must be met for a site-specific SIP revision to be approved.

Alternative Emission Control Program (Bubble) Criteria

Criteria for evaluating emissions trades (bubbles) are contained in the USEPA's Emission Trading Policy Statement dated December 4, 1986 (51 FR 43813). This policy requires that any emission reductions used in trades be surplus, permanent, quantifiable and enforceable.

The use of the weighted-average emission limitation specified in the OEPA's variance and permits to operate ensures that all of the reductions used for the bubble are surplus, quantifiable, and permanent. The reductions are surplus because only the reductions below the SIP allowable are used for credit and the reductions did not occur prior to 1984 (which is after the monitoring data was collected for use in the approved ozone attainment demonstration). This trade would also be enforceable because SIP-approved compliance methods are contained in the variance. Therefore, the emission trading policy requirements have been satisfied.

Extended Averaging Time Criteria

USEPA's January 20, 1984, policy memorandum, subject "Averaging Times for Compliance with VOC Emission Limits", contains the following criteria for evaluating VOC requests for extended averaging times. Also included below is USEPA's evaluation of the Steel City Corporation revision with respect to each requirement.

Criterion 1

Extended averaging can be permitted where the source operations are such that daily VOC emissions cannot be determined, or where the application of RACT for each emission point is not economically or technically feasible on a daily basis.

USEPA's Evaluation

The Steel City revision has not met this requirement because it did not document that it is infeasible to achieve the RACT limit on a daily basis through the use of complying coatings.

Although OEPA's June 13, 1986, letter lists eight coating suppliers contacted by Steel City, it does not document why these suppliers were unable to provide complying coatings. The source must document that it contacted all suppliers that could reasonably be expected to provide coatings for the mailbox line and that any complying coatings that were developed were tested.

The revision did, however, document that the cost effectiveness of add-on control for this source is higher than what USEPA has considered reasonable in the miscellaneous metals control technique guidelines. Nevertheless, USEPA cannot approve this revision without adequate documentation that the use of complying coatings is not a reasonably available option for Steel City. Further discussion of the type of demonstration required can be found in the Appendix A to the notice of proposed rulemaking on the Easco Aluminum action published oin November 9, 1988 at (53 FR 45285). If an adequate demonstration is made that complying coatings are not available to Steel City, USEPA would consider a request for a site-specific RACT determination for this source.

Criterion 2

The area must not lack an approved SIP and there must not be any measured violations of the ozone standard.

USEPA's Evaluation

Steel City is located in Mahoning County which is part of the Youngstown demonstration area. This is a nonattainment area for ozone. USEPA approved the Ohio ozone SIP on October 31, 1980 (45 FR 72122). The Mahoning County ozone moniter did not record any violations for any three-year period between 1982 and 1987. Thus, when the request for redesignation was submitted, this criterion had been met. However, based on 1986-1988 monitoring data, there was a violation of the ozone standard in this area. Hence, the area may be a candidate for a SIP call under section 110(a)(2)(H), and if the State resubmits this request to correct the other problems identified in this notice, that submittal must address these exceedances of the ozone standard.

Criterion 3

A demonstration must be made that the use of long-term averaging (greater than 24-hour averaging) will not jeopardize either ambient standards attainment or the reasonable further progress (RFP) plan for the area. This must be accomplished by showing that the maxium daily increase in emissions associated with monthly averaging is consistent with the approved ozone SIP.

USEPA's Evaluation

OEPA has demonstrated that the use of monthly averaging by this source will not jeopardize the RFP plan for the area. The 1983 RFP chart for the Youngstown demonstration area indicates a growth cushion of 42,247 pounds of VOC per day. This is more than sufficient to cover Steel City's needs of 470 pounds of VOC per day, which is based on maximum operation of all three lines. Thus, when the request for redesignation was submitted, this criterion had been met. However, as stated previously, there has been a recent violation of the ozone standard in this area. Thus, the previously approved control strategy demonstration may be inadequate, and the existence of a growth cushion is now questionable. If the State resubmits to correct the other problems identified in this notice, that submission must also address how the long-term average will not jeopardize either attainment of the ambient air quality standard or RFP for the area in light of the questionable status of the control strategy demonstration.

Criterion 4

Averaging times must be as short as practicable and in no case longer than 30 days.

USEPA's Evalution

Steel City Corporation has not submitted documentation to demonstrate that it is not possible to comply with the limit-contained in the proposed revision using a shorter averaging time than 30 days (e.g. 7 days, 15 days, etc.). USEPA cannot approve a SIP revision that includes a 30-day averaging period without such a demonstration.

Conclusion

USEPA is proposing to disapprove this revision to the Ohio ozone SIP for the Steel City Corporation in Mahoning County because there is insufficient documentation to support that complying coatings for this source are unavailable and because there is no documentation provided that demonstrates that a 30-day averaging period is as short as practicable.

Pursaunt to the provisions of 5 U.S.C. 605(b), I certify that this action will not have a significant economic impact on a substantial number of small entities, because it affects only one source. In addition, this action imposes no new requirements on the source.

Under Executive Order 12291, today's action is not "major". It has been submitted to the Office of Management and Budget for review.

Authority: 42 U.S.C. 7401-7642.

Dated: February 6, 1987.

Valdas V. Adamkus,

Regional Administrator.

Note: This document was received by the Office of the Federal Register January 10, 1989.

[FR Doc. 89-1481 Filed 1-23-89; 8:45 am]

BILLING CODE 6560-50-M

[1] A definition of RACT is contained in a December 9, 1976, memorandum from Roger Strelow, former Assistant Administrator for Air and Waste Management. RACT is defined as the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility.

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposal To Determine Lesquerella congesta and Physaria obcordata To Be Threatened Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to determine two plants, *Lesquerella congesta* (Dudely Bluffs bladderprod and *Physaria obcordata* (Dudley Bluffs twinpod), both members of the mustard family from Rio Blanco County, Colorado, to be threatened species under the Endangered Species Act of 1973, as amended (Act). Both species grow on oil shale outcrops that are primarily over a range of approximately 15 miles along two adjacent drainages, Piceance and Yellow Creeks, in Piceance Basin. The twinpod also occurs on two localities on Calamity Ridge 12 miles to the west of these two drainages. They are known from five populations each, two of which occur together. Most of these sites are on public land administered by the Bureau of Land

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Management, with portions of three twinpod sites along Piceance Creek and Calamity Ridge on private and one one bladderpod site along Yellow Creek on Colorado Division of Wildlife land. No Federal or State laws protect the two species on these sites. Within the oil shale rich Piceance Basin, the Dudley Bluffs bladderpod and twinpod occur in the multimineral oil shale zone, an area containing rich deposits of oil shale in the mahogany zone and sodium minerals, nahcolite (sodium bicarbonate) and dawsonite (a potential source of alumina) in the saline zone. If project designs for development of these deposits do not include planning for conservation of these two mustards, which only occur here, both species could be significantly impacted. This proposal, if made final, would implement Federal protection provided by the Act for *Lesquerella congesta* and *Physaria obcordata*. The Service seeks data and comments from the public on this proposal.

DATES: Comments from all interested parties must be received by March 27, 1989. Public hearing requests must be received by March 10, 1989.

ADDRESSES: Comments and materials concerning this proposal should be sent to the State Supervisor, U.S. Fish and Wildlife Service, Fish and Wildlife Enhancement, 529-25 ½ Road, Suite B113, Grand Junction Colorado 81505. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: John Anderson at the Grand Junction address above (303/243-2778 or FTS 322-0351).

SUPPLEMENTARY INFORMATION:

Background

Two new species of wild mustards, *Lesquerella congesta* (Dudley Bluffs bladderpod) and *Physaria obcordata* (Dudley Bluffs twinpod), were discovered in 1982 during a floristic inventory of the Piceance Basin conducted by the Colorado Natural Heritage Inventory for the Bureau of Land Management (Bureau; The Nature Conservancy 1982, Colorado Natural Areas Program 1987). They were subsequently described by Dr. Reed Rollins, an expert on the mustard family, who visited Piceance Basin and observed them at Dudley Bluffs in 1983 (Rollins 1982, Rollins 1984). These two herbaceous perennials are the rarest of several oil shale plant species in the Piceance Basin.

L. congesta is an extremely small cushion plan only 1–3 centimeters (0.4–1.2 inches) in diameter with fruiting stems up to 1.5 centimeters (0.6 inches) tall. The cushion growth habit is an adaptation to erosive badland soils which has independently evolved in several unrelated taxa in this area. It has small linear, entire, silvery leaves 8–13 millimeters (0.3–.5 inches) long; bright yellow flowers; and rounded, pubescent fruits, 2.5–3.5 millimeters (0.10–0.14 inches) wide. *P. obcordata* is 12–18 centimeters (4.8–7.2 inches) tall with oblanceolate, entire leaves 1.0–1.5 centimeters (0.4–0.6 inches) wide and 4.0–6.0 centimeters (1.6–3.6 inches) long, with a silvery sheen due to a dense covering of overlapping, dish-shaped trichomes. It has yellow flowers, 7–9 millimeters (0.3–0.4 inches) long, and slightly inflated, heart-shaped (obcordate) fruits.

These two rare mustards grow on steep, barren outcrops derived from a mixture of calcareous sandstone and shale strata which are exposed along drainages through erosion from downcutting of streams in the Piceance Basin. The surrounding hills and mesas which support pinyon-juniper woodlands also contain scattered outcrops of habitat that support *L. congesta*. These strata are derived from the Eocene Green River and Uinta Formations (Cashion and Donnell 1974). The rich oil shale bearing Green River Formation formed as a lacustrine deposit in Lake Uinta, forming fine textured shale. Later, Lake Uinta filled with sand and silt deposits which are the coarser grained Uinta Formation. At the interface of these two formations, the lakebed Green River Formation shale intertongues with the deltaic and fluvial sandstones and siltstones of the Uinta Formation. For instance, at the type locality of the two species, the hillside with the bladderpod and twinpod is formed by strata of the Uinta Formation on the top and the base with the Thirteen Mile Creek Tongue of the Green River Formation on the slope (where most of the mustards grow at this site). Along Yellow Creek, the Dudley Bluffs bladderpod and twinpod grow primarily on outcrops of the Uinta Formation, whereas at Calamity Ridge the twinpod grows on outcrops of the Parachute Creek Member of the Green River Formation. Elevational ranges for these species are 1880–3010 meters (6140–6644 feet) for *L. congesta* and 1800–2285 meters (5900–7490 feet) for *P. obcordata*.

In 1986 the Colorado National Areas Program conducted field work on *P. obcordata* to determine its rarity and range (Colorado Natural Areas Program 1987). Sites of *L. congesta* were delineated at the same time. During this survey, populations of both species were found for the first time along Yellow Creek, the next drainage west of Piceance Creek and about 5 miles away. The largest known populations of both species, approximately 10,000 individuals each, were discovered growing together at the junction of Piceance Creek and Ryan Gulch, 2 miles north of Dudley Bluffs. Also mapped were the previously discovered sites of *P. obcordata* at Calamity Ridge, the western boundary of the Piceance Basin and approximately 15 miles west of Piceance Creek. These sites differ from those along Piceance and Yellow Creeks by occurring along ridges at the heads of two drainages and on a different stratum. No *L. congesta* was found at Calamity Ridge. All major drainages in the Piceance Basin were surveyed, and these two species were found only along Piceance and Yellow Creeks and the twinpod at Calamity Ridge.

L. congesta has five populations on approximately 50 total acres over a range of 10 miles. *P. obcordata*, which occurs on outcrops farther upstream on Piceance Creek and downstream on Yellow Creek, has a range of 15 miles, plus the two populations on Calamity Ridge, with a total of five populations on approximately 250 acres. However, the Dudley Bluffs and Ryan Gulch sites, which are only 2 miles apart, contain a majority of both species.

The Dudley Bluffs bladderpod and twinpod occur mostly on land administered by the Bureau, with the exception of portions of the Dudley Bluffs site on private land and a portion of the Yellow Creek sites on Colorado Division of Wildlife land. The Bureau has designated the Federal portions of the Dudley Bluffs site and one of the Calamity Ridge sites as Areas of Critical Environmental Concern (Bureau of Land Management 1987a).

L. congesta and *P. obcordata* grow either on outcrops of the oil shale bearing Green River Formation or the overlying Uinta Formation, which is considered overburden to the oil shale. Except for the Calamity Ridge sites, all the occurrences are within the multimineral oil shale area. This area at the center of the Piceance Basin contains thick, rich sections of oil shale in the mahogany zone (and thick overburden of the Uinta Formation) and also, in the underlying saline zone, the sodium minerals nahcolite (sodium bicarbonate) and dawsonite (a potential source of alumina). *L. congesta* and *P. obcordata* are vulnerable to impacts resulting from the development and extraction of these oil shale minerals and associated activities.

Federal action involving these species began on September 27, 1985, when the Service published a notice of review in the Federal Register (45 FR 39526) covering plants being considered for classification as endangered or threatened. *L. congesta* and *P. obcordata* were included in this notice as category 2 species. Unfortunately, *L. congesta* was erroneously listed as *L. condensata*, a common species. Category 2 comprises taxa for which information now in possession of the Service indicates that proposing to list them as endangered or threatened species is possibly appropriate, but for which substantial data on biological vulnerability and threats are not currently known or on file. The present proposal is based on more current biological data from the Colorado Natural Areas Program (1987).

Section 4(b)(3)(B) of the Endangered Species Act (Act), as amended in 1982, requires the Secretary of the Interior to make findings on certain petitions within 1 year of their receipt. All taxa contained in the 1985 notice, including *L. congesta* and *P. obcordata*, were treated as being petitioned on October 11, 1985. In October 1986, October 1987, and October 1988, the Service made the 12-month finding that the petition to list *L. congesta* and *P. obcordata* was warranted, but precluded by other listing actions of higher priority. The present proposal constitutes the final 1-year finding requirement of section 4(b)(3)(B) of the Act for this species.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Lesquerella congesta* Rollins (Dudley Bluffs bladderpod) and *Physaria obcordata* Rollins (Dudley Bluffs twinpod) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Portions of the multimineral oil shale area, including Dudley Bluffs, Ryan Gulch, and Yellow Creek, overlay oil shale deposits that are potentially recoverable by open-pit mining (Bureau of Land Management 1984). The rest of the area is suitable for underground mining of oil shale. A pilot project for a nahcolite solution mine has been constructed on Bar D Mesa between Piceance Creek, Yellow Creek, and Ryan Gulch, and a 120,000 tons per year commercial mine, including evaporation pounds and a pipeline, has been proposed which would cover 254 acres (Bureau of Land Management 1986; Bureau of Land Management 1987b). Currently, the Bureau is reserving the multimineral area from commercial leasing until improved multimineral recovery technology is developed. However, leases for noncommercial research tracts not exceeding 2,000 acres will still be considered (Bureau of Land Management 1986; Bureau of Land Management 1987a). Because of the massive scale of potential development in the limited area in which *L. congesta* and *P. obcordata* occur, a significant portion of the habitat of these two wild mustards would be destroyed and/or modified and their range possibly curtailed if development occurs. Up to 100 and 72 percent of the acreages on which *L. congesta* and *P. obcordata* occur, respectively, could be developed. There is already a designated linear utility corridor for pipelines, transmission lines, and roads along Ryan Gulch (Bureau of Land Management 1987a), and potential corridors exist along Dudley Gulch, Piceance Creek, and Yellow Creek (Bureau of Land Management 1984). One of the Calamity Ridge sites has been bisected by a road (Colorado Natural Areas Program 1987).

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* No detrimental uses of these plants are known.

C. *Disease or predation.* No threats are known.

D. *The inadequacy of existing regulatory mechanisms.* There are no Federal or State laws protecting *L. congesta* and *P. obcordata* on Federal, State, or private lands. The Bureau's designation of one area each at Dudley Bluffs and Calamity Ridge as Areas of Critical Environmental Concern provides for priority management of *L. congesta* and *P. obcordata)* at these sites. However, these areas only protect about 20 percent of the already limited habitat (about 50 acres for *L. congesta* and 250 acres for *P. obcordata* for these two species. The Act would provide additional protection and encourage active management through the "Available Conservation Measures" discussed below.

E. *Other natural or manmade factors affecting its continued existence.* These species' pattern of rarity, being locally abundant on small areas of specialized habitat, makes them particularly vulnerable to surface disturbances despite their high densities.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Lesquerella congesta* and *Physaria obcordata* as threatened. These species are restricted endemics with threats from oil shale development which could cause the two species to become endangered within the foreseeable future throughout all or a significant portion of their range; thus they are threatened species as defined by the Act. The Bureau has designated two of the areas as Areas of Critical Environmental Concern, which will provide for priority management, but neither species is currently protected by any State or Federal legislation. For reasons given below, it is not considered prudent to propose designation of critical habitat.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species which is considered to be critical habitat at the time the species is determined to be endangered or threatened. The designation of critical habitat is not considered to be prudent when such designation would not be of net benefit to the species. The Service finds that designation of critical habitat is not prudent for these species at this time because no additional benefits would be provided by the critical habitat designation that would not already be provided by listing under 50 CFR 424.12. Any impacts to the plants' habitat also would affect the plants as rooted organisms and, consequently, would be addressed through consultation under section 7 of the Act as a result of their listing. Protection of these species' habitat also will be addressed through the recovery process. The Bureau is aware of the occurrences on their land and of its obligation under section 7 of the Act. The designation of critical habitat for these species would not increase the Bureau's obligation under the Act.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition

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through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may adversely affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service.

L. congesta and *P. obcordata* occur primarily on Federal land administered by the Bureau. The Bureau's involvement could include Section 7 consultation on multimineral development and land exchanges with energy companies to bring the privately owned sites into Federal ownership and protection (since listed plants are not protected on private land). On both Federal and private land, the Service expects that listing would elevate the awareness of these plants' status and foster efforts aimed toward their conservation.

The Act and its implementing regulations found at 50 CFR 17.71 and 17.72 set forth a series of general trade prohibitions and exceptions that apply to all threatened plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.71, would apply. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale this species in interstate or foreign commerce, or to remove and reduce to possession the species from areas under Federal jurisdiction. Seeds from cultivated specimens are exempt from these prohibitions provided that a statement of "cultivated origin" appears on their containers. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving threatened species under certain circumstances. With regard to *L. congesta* and *P. obcordata*, it is anticipated that few, if any, trade permits would ever be sought or issued since these species are not common in cultivation or in the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, P.O. Box 27329, Washington, DC 20038-7329 (202/343-4955).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of this proposal are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Lesquerella congesta* and *Physaria obcordata*;

(2) The location of any additional populations of these species and the reasons why any habitat should or should not be determined to be critical habitat as provided by Section 4 of the Act;

(3) Additional information concerning the range and distribution of these species; and

(4) Current or planned activities in the subject area and their possible impacts on these species.

Final promulgation of the regulation on *Lesquerella congesta* and *Physaria obcordata* will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing and addressed to the State Supervisor, Fish and Wildlife Enhancement, Grand Junction, Colorado (see ADDRESSES above).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the Federal Register on October 25, 1983 (48 FR 49244).

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Bureau of Land Management. 1986. Draft environmental impact statement, Wolf Ridge Corporation mine plan for a nahcolite solution mine. Meeker, Colorado. 149p.

Bureau of Land Management. 1987a. Piceance Basin resource management plan record of decision. U.S. Government Printing Office. Washington, DC 57p.

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Cashion, W.B. and J.R. Donnell. 1974. Revision of nomenclature of the upper part of the Green River Formation, Piceance Creek Basin, Colorado, and Eastern Uinta Basin, Utah. U.S. Geological Survey Bulletin 1394-C. 9p.

Colorado Natural Areas Program. 1987. Status report for *Physaria obcordata*. Denver, Colorado. 53p.

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The Nature Conservancy. 1982. Inventory of the Piceance Basin, Colorado: threatened and endangered plants, plant associations, and the general flora. 5 Volumes. Colorado Natural Heritage Inventory. Bureau of Land Management Contract No. YA-553-CTI-110. Denver, Colorado.

Author

The primary author of this proposed rule is John L. Anderson, Botanist, U.S. Fish and Wildlife Service, Grand Junction, Colorado (303/243-2778, FTS 322-0351; see ADDRESSES above.)

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Proposed Regulation Promulgation

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*); Pub. L. 99-625, 100 Stat. 3500 (1986), unless otherwise noted.

2. It is proposed to amend § 17.12(h) by adding the following in alphabetical order, under the family Brassicaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species—scientific name—common name	Historic range	Status	When listed	Critical habitat	Special rules
Brassicaceae—Mustard family:					
Lesquerella congesta—Dudley Bluffs bladderpod	U.S.A. (CO)	T		NA	NA
Physaria obcordata—Dudley Bluffs twinpod	U.S.A. (CO)	T		NA	NA

Dated: December 22, 1988.

Becky Norton Dunlop,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 89-1487 Filed 1-23-89; 8:45 am]

BILLING CODE 4310-55-M

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Notices

Federal Register
Vol. 54, No. 14
Tuesday, January 24, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

Other Tobacco; National Marketing Quotas for Maryland (Type 32) Tobacco, Cigar-Filler (Type 41) and Cigar Binder (Types 51 & 52) Tobacco

AGENCY: Agricultural Stabilization and Conservation Service (ASCS), United States Department of Agriculture, (USDA).

ACTION: Notice of Proposed Determination.

SUMMARY: The Secretary of Agriculture is required by the Agricultural Adjustment Act of 1938, as amended, to proclaim by March 1, 1989, national marketing quotas for Maryland (type 32) cigar-filler (type 41), and cigar binder (types 51 & 52) tobaccos for the 1989–90, 1990–91, and 1991–92 marketing years and the amounts of the quotas for such kinds of tobacco for the 1989–90 marketing year. The public is invited to submit written comments, views and recommendations concerning the determination of the national marketing quotas, the conduct of referenda, and other related matters which are discussed in this notice.

DATE: Comments must be received on or before February 10, 1989, to be assured of consideration.

ADDRESS: Send comments to the Director, Commodity Analysis Division, ASCS, U.S. Department of Agriculture, P.O. Box 2415, Washington, DC 20013, (202) 447–3391. All written submissions made pursuant to this notice will be made available for public inspection from 8:15 a.m. to 4:45 p.m., Monday through Friday, in Room 3741, USDA South Building, 14th and Independence Avenue, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert Tarczy, Agricultural Economist, Commodity Analysis Division, ASCS, USDA, Room 3736-South Building, P.O. Box 2415, Washington, DC 20013, (202) 447–5187.

Maryland tobacco growers have not had marketing quotas since 1965 and cigar binder tobacco growers have not had marketing quotas since 1963; cigar-filler tobacco growers have never approved marketing quotas. Since none of these tobacco growers are expected to approve quotas for the next three marketing years, a Preliminary Regulatory Impact Analysis has not been prepared. If growers of any kind of these tobacco should approve quotas, a Final Regulatory Impact Analysis describing the options considered in developing the final notice and the impact of implementing each option would be made available on request from Robert Tarczy.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA procedures established to implement Executive Order 12291 and Department Regulation 1512–1 and has been classified as "not major." The matters under consideration will not result in: (1) An annual effect on the economy of $100 million or more, (2) a major increase in costs for consumers, individual industries, Federal, State or local governments, or geographical regions, or (3) significant adverse effects on competition, employment, investment, productivity, innovation, the environment or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal Assistance Program that this notice applies to are: Title—Commodity Loan and Purchases, Number—10.051, as set forth in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since the Agricultural Stabilization and Conservation Service (ASCS) is not required by 5 U.S.C. 553 or any provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this notice.

This activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

The Agricultural Adjustment Act of 1938, as amended (hereinafter referred to as the "Act"), requires that, with respect to Maryland tobacco, cigar-filler, and cigar-binder tobacco, the Secretary of Agriculture must, by March 1, 1989, proclaim marketing quotas for the 1989–90, 1990–91, and 1991–92 marketing years and determine, announce the amount of the national marketing quota in effect for the 1989–90 marketing year.

In addition, the Secretary is required to conduct, within 30 days after the proclamation of such national marketing quotas, referenda of farmers engaged in the 1988 production of each such kinds of tobacco in order to determine whether they favor or oppose marketing quotas for such years. Section 312(a) of the Act (7 U.S.C. 1312(a)) provides that the Secretary shall, not later than March 1 of any marketing year with respect to these kinds of tobacco, proclaim a national marketing quota for each of the next three succeeding marketing years whenever the Secretary determines with respect to such kinds of tobacco—

(1) That a national marketing quota has not previously been proclaimed and the total supply as of the beginning of such marketing year exceeds the reserve supply level therefor;

(2) That such marketing year is the last year of three consecutive years for which marketing quotas previously proclaimed will be in effect;

(3) That amendments have been made in provisions for establishing farm acreage allotments which will cause material revision of such allotments before the end of the period for which quotas are in effect; or

(4) That a marketing quota previously proclaimed for such marketing year is not in effect because of disapproval by producers in a referendum: *Provided*, That if such producers have disapproved national marketing quotas for three successive years subsequent to 1952, thereafter a national marketing quota shall not be proclaimed in accordance with section 312(a) which would be in effect for any marketing year within the three-year period for which national marketing quotas previously proclaimed were disapproved by producers, unless prior to November 10 of the marketing year one-fourth or more of the farmers

engaged in the production of the crop of tobacco harvested in the calendar year in which such marketing year begins petition the Secretary, in accordance with such regulations as may be prescribed, to proclaim a national marketing quota for each of the next three succeeding marketing years.

Producers of Maryland (type 32), cigar-filler (type 41), and cigar-binder (types 51 & 52) tobaccos have disapproved national marketing quotas for three successive years subsequent to 1952. Quotas for these kinds of tobacco were last proclaimed for the 1986–87, 1987–88, and 1988–89 marketing years (51 FR 21004, 22958). Producers of Maryland (type 32), cigar-filler (type 41) and cigar-binder (types 51 & 52) tobaccos disapproved marketing quotas in separate referenda held during February 24–27, 1986, (51 FR 16575).

Section 312(b) of the Act (7 U.S.C. 1312(b)) provides that the Secretary shall determine and announce, not later than the first day of March 1989, with respect to the kinds of tobacco specified in this notice of proposed determinations, the amount of the national marketing quota which will be in effect for the 1989–91 marketing year in terms of the total quantity of tobacco which may be marketed which will make available during such marketing year a supply of each kind of tobacco equal to the reserve supply level. Section 312(b) provides further that the amount of such 1989–90 national marketing quota may, not later than March 1, 1989, be increased by not more than 20 percent if the Secretary determines that such increase is necessary in order to meet market demands or to avoid undue restrictions of marketings in adjusting the total supply to the reserve supply level.

Section 312(c) of the Act (7 U.S.C. 1312(c)) provides that within 30 days after national marketing quotas are proclaimed in accordance with section 312(a) for a kind of tobacco, the Secretary shall conduct a referendum of farmers engaged in the production of the crop of such kind of tobacco harvested immediately prior to the holding of the referendum to determine whether such farmers are in favor of or opposed to such quotas for the next three succeeding marketing years. If more than one-third of the farmers voting in a referendum for a kind of tobacco oppose the quotas, such results shall be proclaimed by the Secretary and the national marketing quotas so proclaimed shall not be in effect but the results shall in no way affect or limit the subsequent proclamation and submission to a referendum of national marketing quotas as otherwise authorized by section 312.

Section 313(g) of the Act (7 U.S.C. 1313(g)) authorizes the Secretary to convert the national marketing quota into a national acreage allotment by dividing the national marketing quota by the national average yield for the five years immediately preceding the year in which the national marketing quota is proclaimed, and to apportion the national acreage allotment, less a reserve not to exceed 1 percent thereof for new farms and for making corrections and adjusting inequities in old farm allotments.

Proposed Determination

Accordingly, the Secretary proposes to make the following determinations with respect to Maryland (type 32), tobacco cigar-filler (type 41), and cigar-binder (types 51 & 52) tobacco:

1. The amount of the national marketing quota for each kind of tobacco for the 1989–90 marketing year. With respect to Maryland (type 32) tobacco, a national marketing quota within a range of 25 million to 40 million pounds is proposed. With respect to cigar-filler (type 41) tobacco, a national marketing quota within a range of 15 million to 25 million pounds is proposed. With respect to cigar-binder (types 51 & 52) tobacco, a national marketing quota within a range of 1 million to 3 million is proposed;

2. The conversion of the national marketing quotas into national acreage allotments and apportionment of the national acreage allotments, less a reserve of not to exceed 1 percent, among old farms;

3. The amounts of the national acreage allotments to be reserved for new farms and for making corrections and adjusting inequities in old farm allotments; and

4. The date(s) or period(s) of the referenda on quotas for determining whether marketing quotas will be in effect for the 1989–90, 1990–91, and 1991–92 marketing years for Maryland (type 32), cigar-filler (type 41) and cigar-binder tobacco, and whether the referenda should be conducted at polling places rather than by mail ballot (See 7 CFR Part 717).

Signed at Washington, DC on January 19, 1989.

Milton Hertz,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 89–1043 Filed 1–19–89; 3:38 pm]

BILLING CODE 3410–05–M

National Marketing Quotas for Fire-Cured (Type 21), Fire-Cured (Types 22–23), Dark Air-Cured (Types 35–36), Virginia Sun-Cured (Type 37), and Cigar-Filler and Cigar-Binder (Types 42–44; 53–55) Tobaccos

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Notice of proposed determinations.

SUMMARY: The Secretary of Agriculture is required by the Agricultural Adjustment Act of 1938, as amended, to proclaim by March 1, 1988, national marketing quotas for Virginia sun-cured tobacco for the 1989–90, 1990–91, and 1991–92 marketing years and to determine and announce the amounts of the national marketing quotas for fire-cured (type 21), fire-cured (types 22–23), dark air-cured (Types 35–36), Virginia sun-cured (typed 37), and cigar-filler and cigar-binder (types 42–44; 53–55) kinds of tobacco for the 1989–90 marketing year. The public is invited to submit written comments, views and recommendations concerning the determination of the national marketing quotas for such kinds of tobacco, the conduct of the referendum, and other related matters which are discussed in this notice.

DATE: Comments must be received on or before February 10, 1989, in order to be assured of consideration.

ADDRESSES: Send comments to the Director, Commodity Analysis Division, ASCS, U.S. Department of Agriculture, P.O. Box 2415, Washington, DC 20013. All written submissions made pursuant to the notice will be made available for public inspection from 8:15 a.m. to 4:45 p.m. Monday through Friday, in Room 3741-South Building, 14th and Independence Avenue, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert L. Tarczy, Agricultural Economist, Commodity Analysis Division, ASCS, Room 3736 South Building, P.O. Box 2415, Washington, DC 20013, (202) 447–5187. The Preliminary Regulatory Impact Analysis describing the options considered in developing this notice and the impact of implementing each option is available on request from Robert L. Tarczy.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA procedures established to implement Executive Order 12291 and Departmental Regulation 1512–1 and has been classified as "not major." The matters under consideration will not result in: (1) An annual effect on the

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economy of $100 million or more; (2) increases in cost for consumers, individual industries, Federal, State or local government agencies or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, the environment or on the ability of the United States based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal Assistance Program to which this notice applies are: Title—Commodity Loan and Purchases; Number—10.051, as set forth in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since the Agricultural Stabilization and Conservation Service (ASCS) is not required by 5 U.S.C. 553 or any provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this notice.

This activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

The Agricultural Adjustment Act of 1938, as amended (hereinafter referred to as the "Act"), requires that, with respect to Virginia sun-cured tobacco, the Secretary of Agriculture must proclaim by March 1, 1989, the respective national marketing quotas for the 1989–90, 1990–91, and 1991–92 marketing years. In addition, the Secretary is required to conduct, within 30 days after proclamation of such national marketing quotas, a referendum of farmers engaged in the 1988 production of this kind of tobacco to determine whether they favor or oppose marketing quotas for such years. For Virginia sun-cured tobacco the 1988–89 marketing year is the last year of the three consecutive marketing years for which marketing quotas previously proclaimed will be in effect for this kind of tobacco.

The Secretary is also required: (1) To determine and announce the amounts of the national marketing quotas with respect to fire-cured (type 21), fire-cured (types 22–23), dark air-cured (types 35–36), Virginia sun-cured, and cigar-filler and cigar-binder (types 42–44, 53–55) tobaccos for the 1989–90 marketing year; (2) to convert such marketing quotas into national acreage allotments and announce the allotments; (3) to apportion such allotments, less reserves of not to exceed 1 percent of each kind of tobacco respectively, through county ASCS committees among old farms; and (4) to apportion the reserves for use in (a) establishing acreage allotments for new farms and (b) making corrections and adjusting inequities in old farm allotments. The five kinds of tobacco to which this notice applies account for approximately 3 percent of the total U.S. tobacco production.

Section 312(b) of the Act (7 U.S.C. 1312(b)) provides that the Secretary shall determine and announce, not later than the first day of March 1989, with respect to kinds of tobacco specified in this notice of proposed determination, the amount of the national marketing quota which will be in effect for the 1989–90 marketing year in terms of the total quantity of tobacco which may be marketed which will make available during such marketing year a supply of each kind of tobacco equal to the reserve supply level. Section 312(b) provides further that the amount of such 1989–90 national marketing quota may, not later than March 1, 1989, be increased by not more than 20 percent if the Secretary determines that such increase is necessary in order to meet market demands or to avoid undue restrictions of marketings in adjusting the total supply to the reserve supply level.

The aggregate reserve supply level for the 1989–90 marketing year for the 5 kinds of tobacco discussed in this notice was determined to be 217 million pounds (53 FR 18109). The proposed reserve supply level for the 1989–90 marketing year will range between 180 million and 250 million pounds. The aggregate total supply for the 1989–90 marketing year is 212 million pounds based on carryover of 172 million and production of 40 million pounds.

Section 312(c) of the Act (7 U.S.C. 1312(c)) provides that, within 30 days after a national marketing quota is proclaimed in accordance with section 312(a) of the Act for a kind of tobacco, the Secretary shall conduct a referendum of farmers engaged in the production of the crop of such kind of tobacco harvested immediately prior to the holding of the referendum to determine whether such farmers are in favor of or opposed to such quotas for the next three succeeding marketing years. If more than one-third of the farmers voting in a referendum for a kind of tobacco oppose the quotas, such results shall be proclaimed by the Secretary and the national marketing quotas so proclaimed shall not be in effect, but the results shall in no way affect or limit the subsequent proclamation and submission to a referendum of a national marketing quota as otherwise authorized in section 312.

Section 313(g) of the Act (7 U.S.C. 1313(g)) authorizes the Secretary to convert the national marketing quota into a national acreage allotment by diviing the national marketing quota by the national average yield for the five years immediately preceding the year in which the national marketing quota is proclaimed. In addition, the Secretary is authorized to apportion through county committees the national acreage allotment to tobacco producing farms (less a reserve not to exceed 1 percent thereof for new farms, and for making corrections and adjusting inequities in old farm allotments) among old farms.

Proposed Determinations

Accordingly, comments are requested on the following proposed determinations for the kinds of tobacco listed for the 1989–90 marketing year:

1. With respect to fire-cured (type 21), fire-cured (types 22–23), dark air-cured (types 35–36), Virginia sun-cured, and cigar-filler and binder (types 42–44; 53–55) tobaccos:

a. The amount of the reserve supply level, within the aggregate range of 180 and 250 million pounds;

b. The amount of the national marketing quota for each kind of tobacco for the 1989–90 marketing year, within an aggregate range of 30 million-60 million pounds; and

c. The amounts of the national acreage allotments to be reserved for new farms, and for making corrections and adjusting inequities in old farm allotments, within the aggreate range of 100 and 500 acres.

2. With respect to Virginia sun-cured tobacco:

a. The date(s) or period(s) of the referenda for determining whether quotas will be in effect for the 1989–90, 1990–91, and 1991–92 marketing years for such kinds of tobacco; and

b. Whether the referenda should be conducted at polling places rather than by mail ballot (See 7 CFR Part 717).

Authority: Secs. 301, 312 and 313, 52 Stat. 38, as amended, 65, as amended, and 47, as amended (7 U.S.C. 1301, 1312 and 1313).

Signed at Washington, DC on January 19, 1989.

Milton Hertz,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 89–1644 Filed 1–19–89; 3:38 pm]

BILLING CODE 3410-05-M

Forest Service

Aircraft Flights Over Wilderness; Public Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of public meeting.

SUMMARY: On January 27, 1989, the Forest Service will host a meeting to present its plans for conducting an assessment of the impacts of aircraft overflights on wilderness resources of the National Forest System. The assessment is required by the National Parks Overflights Act of 1987. The public is invited to attend.

DATE: The meeting will be held on January 27, 1989, from 9:00 a.m. to 12:00 p.m.

ADDRESS: The meeting will be held in the Club Room at the Rosslyn Westpark Hotel, 1900 North Fort Myer Drive, Arlington, Virginia 22209.

FOR FURTHER INFORMATION CONTACT: William J. Makel, National Coordinator, Wilderness Overflight Sound Project, San Dimas Technology Development Center, (714) 599–1267 or Anne S. Fege, Recreation Management Staff, Forest Service, USDA, (202) 447–2422.

SUPPLEMENTARY INFORMATION: Section 5 of the National Parks Overflights Act of 1987 (16 U.S.C. 1a–1) directs the Chief of the Forest Service to conduct an assessment to determine what, if any, adverse impacts to wilderness resources are associated with aircraft flights over National Forest System wilderness areas. The assessment excludes Alaska and applies only to overflight of wilderness areas. It does not apply to aircraft flights or landings adjacent to National Forest System wilderness units. As required by the Act, the Chief will report the results of the assessment to Congress for its consideration.

On January 27, 1989, the Forest Service will present its proposed plans for conducting the assessment. Items to be covered include the legislative history of the Overflights Act, the composition and role of the technical steering committee that has been established to help guide the assessment, plans for obtaining public input in the assessment, and the time schedule for conducting and completing the assessment. While questions from participants will be answered, the purpose of the meeting is not to receive formal statements or testimony on the impacts of flights over wilderness. Opportunities for substantive input to the assessment will occur during the assessment and will be fully explained at this meeting. Interested and affected organizations and persons have been invited to attend the meeting, which is also open to attendance by the general public. It is not necessary for those who plan to attend to notify the agency in advance.

Date: January 17, 1989.

Larry Henson,

Associate Deputy Chief.

[FR Doc. 89–1527 Filed 1–23–89; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census.

Title: Survey of Income and Program Participation—1987 Panel Wave 8 Employer Questionnaire and Authorization Form

Form Number: EPB–7814 Employer Questionnaire and Authorization Form; EPB–16, EPB–17, EPB–18 Business Letter; EPB–19 Respondent Letter; Questionnaire Insert for SIPP 7800.

Type of Request: New.

Burden: 1,344 hours.

Number of Respondents: 8,064.

Avg Hours Per Response: 10 minutes.

Needs and Uses: This survey provides information, not previously available, on employer contributions to the respondents' medical insurance plans, pension plans, and life insurance plans.

Affected Public: Individuals or households; state or local governments.; farms; business or other for-profit; Federal agencies or employees; non-profit institutions; small businesses or organizations.

Frequency: One time only.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Francine Picoult—395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room H6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Francine Picoult, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: January 18, 1989.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 89–1536 Filed 1–23–89; 8:45 am]

BILLING CODE 3510-07-M

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census.

Title: Survey of Income and Program Participation—1987 Panel Wave 6.

Form Number: SIPP–7800 Wave 7 Questionnaire, SIPP–85/7803 Reminder Card, and SIPP–85/7805(L) Introductory Letter.

Agency Approval Number: 0607–0425 (87 Panel).

Type of Request: Revision.

Burden: 11,760 hours.

Number of Respondents: 23,520.

Avg Hours Per Response: 30 minutes.

Needs and Uses: This survey provides statistics not previously available, for the Executive and Legislative Branches, such as multiple recipiency of benefits of major government programs and monthly program participation to support policy analyses. The data requirements include income, employment and household composition, taxes, assets, in-kind income, and related subjects to estimate the effects of Executive and Legislative decisions.

Affected Public: Individuals or households.

Frequency: One time only.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Francine Picoult—395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room H6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Francine Picoult, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: January 18, 1989.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 89–1537 Filed 1–23–89; 8:45 am]

BILLING CODE 3510-07-M

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Bureau of Export Administration

[Docket No. 8879-01]

Actions Affecting Export Privileges: Data Systems Engineering, Inc.

Summary

Pursuant to the November 23, 1988 Recommended Decision and Order of the Administrative Law Judge and the modification thereof by this Decision and Order, Data Systems Engineering, Inc., aka DSE, Inc., with an address of 1108 Pollack Avenue, Ocean, New Jersey 07712 is denied for a period of two years from the date hereof, all privileges of participating in any transaction involving commodities or technical data exported from the United States in whole or in part, or to be exported, or that are otherwise subject to the regulations (14 CFR Parts 768–700); however, that one hundred eighty (180) days from the date hereof the denial period shall be suspended for the balance of the two year term, and shall be terminated at the end of such term, provided that the Respondent has committed no violations of the Act, the Regulations, or the final Order entered in this proceeding.

Background and Discussion

The ALJ originally made his Recommended Decision and Order in this case on September 23, 1988. The matter was remanded to the ALJ on October 21, 1988 in order that he might answer questions posed by the Remand. The questions posed and the ALJ's answers to them appear in the attached Recommended Decision and Order of the ALJ. The questions posed by the Remand sought to explore certain apparent inconsistencies between certain findings made by the ALJ and the Record, some inconsistencies apparent within the Recommended Decision and Order itself, and to solicit legal authority to support certain statements made by the ALJ in support of his original Recommended Decision and Order. On December 23, the ALJ submitted a Recommended Decision and Order identical to that originally filed, adding only the questions posed on Remand and the ALJ's answers to them. Generally speaking, I find the ALJ's answers to the questions non-responsive and argumentative. Too often, instead of legal authority or careful analysis, only conclusory statements are provided. The ALJ's answer to the posed questions have done little to assist the Under Secretary in making a just, final decision in this matter.

The crucial question I address in this Decision and Order is whether the Respondent committed one violation of the Act and Regulation as the ALJ concludes on page 28 of his Recommended Decision and Order, or multiple separate violations of the Act and Regulation as the ALJ finds on page 27 of his Recommended Decision and Order. For the reasons set out below, I find that there were fifteen separate violations.

The ALJ's pique with Departmental Counsel relates to the failure by Departmental Counsel to set out in a form acceptable to the ALJ the specific violations charged. Specifically, the ALJ calls "an unusual manner of pleading" the following charge: "The Department alleges that DSE committed twelve violations each of §§ 387.4, 387.5, and 387.6 of the Regulations, for a total of thirty-six violations of the Regulations * * *" Contrary to the ALJ's opinion, this simple English sentence is not one subject to gross misinterpretation. The Department has alleged that each of the sections cited has been violated twelve times. Twelve plus twelve plus twelve equals thirty-six. Obviously the allegations are subject to proof with respect to each of the thirty-six counts. The filings by the Department during the proceeding, and especially at the close of the proceeding, amply and clearly detail the violations claimed.

Whether it is legally proper that one particular shipment constitute multiple (in this case three) violations is another question. However, there can be no doubt that the Regulations so provide, and that the Department believes that each shipment in the instant case contained three violations: one for acting with knowledge (§ 787.4); one for misrepresentation (§ 787.5); and one for exporting without proper authorization (§ 787.6). Even though the ALJ goes to lengths in his Recommended Decision and Order to deal with six separate and distinct transactions, (identified as shipments 2, 5, 7, 8, 10 and 12 respectively), eventually finding five of those to have been made in violation of the Regulations relating to Temporary Exports, he concludes that the five shipments constitute a single overall or comprehensive violation. In view of the ALJ's indicated bias regarding the possibility of multiple violations for a single shipment, it is certainly understandable if the ALJ were to argue that with respect to each of the five shipments there was only one violation per shipment. However, it is a *non sequitur* for the ALJ, after finding specifically that there were five separate, unrelated shipments, to conclude that the five represent one transaction. To do so, the ALJ would have had to cite facts connecting the five shipments together as a series of shipments related to one transaction. There is no such finding in the ALJ's Recommended Decision and Order—indeed the findings are contrary—and there are no facts in the record to support such a finding. At the very least, I am faced with a Respondent who has committed five separate violations of the Act and Regulations as found by the ALJ, and possibly as many as fifteen violations, again with support by the findings of the ALJ.

It is clear that multiple violations of the Regulations are possible for an individual transaction. Certainly there can be a diversion without authorization which involves neither misrepresentation or acting with specific knowledge that authorization is required. If a person completely unknowledgeable concerning the Act and the Regulations carries a controlled product on his body to a prescribed destination and delivers at that point, he has neither acted with specific knowledge nor has he misrepresented. However, he has diverted. So too, hypotheticals may be constructed involving other combinations. The ALJ may not like it, but that is the law. In most instances, the practical effect of the multiple violations is most apparent upon consideration of appropriate penalties. The ALJ would do well to enforce the law and the regulations as they are written rather than to strain to construe them in such a manner as to achieve what he considers a more reasoned result.

His stretch in the instant case is a perfect example of the danger of this type of approach: It leads to internally inconsistent decisions. Note that the ALJ did find that the Respondent acted not as a novice, but with knowledge of the Regulations (ALJ page 25), and that the exports were not of a temporary nature (ALJ page 25); thus rendering the use by the Respondent of its GTE license number D90918 on shipping documentations a misrepresentation. Thus the ALJ's own findings support fifteen violations, not five, and certainly not one. Notwithstanding this fact, I cannot say for certain that the totality of circumstances mandates a significantly greater penalty than that imposed by the ALJ. The ALJ has found specifically that the Respondent cooperated with the authorities with respect to another investigation, and took this into account in setting his recommended penalty. However, a period of greater than two months is appropriate for the ultimate denial of export privileges. I find that the appropriate period in this case should be six months. Hence, the ALJ's opinion will be modified to that extent.

Finding

1. I find that Respondent committed three violations each with respect to shipments numbered 2, 5, 7, 8, and 12, for a total of fifteen violations.

2. With respect to each shipment identified above the Respondent

a. Made shipments that were not authorized, in violation of then § 387.6 of the Regulations;

b. Acted with knowledge that the shipments were in violation of the Regulations, in violation of then § 387.4 of the Regulations; and

c. Misrepresented facts on shipping documents, in violation of then § 387.5 of the Regulations.

3. The findings are supported by the Record and by the specific findings of the ALJ.

4. The unsuspended period of denial of export privileges is more properly set at 180 days rather than 60 days.

Order

On November 23, 1988, the ALJ entered his Recommended Decision and Order in the captioned matter. That Decision and Order, a copy of which is attached hereto and made a part hereof, has been referred to me for final action. In keeping with the Discussion and Findings above, I hereby modify the Recommended Decision and Order of the ALJ as follows:

A. The first sentence of paragraph II of the ALJ's Order (ALJ page 40) is hereby modified to read as follows: "Commencing 180 days from the date that this Order becomes effective, the denial of export privileges set forth above shall be suspended, in accordance with § 388.16 of the Regulations, for the remainder of the two year period set forth in paragraph 1 above and shall be terminated at the end of that period, provided the Respondent has committed no further violations of the Act, the Regulations, or the final Order entered in this proceeding."

B. The last sentence of paragraph III of the ALJ's Order (ALJ page 42) is hereby modified to read as follows: "Such denial of export privileges shall extend only to those commodities and technical data which are subject to the Act and Regulations."

This constitutes final agency action in this matter.

Date: January 13, 1989.

Paul Freedenberg,

Under Secretary for Export Administration.

Preliminary Statement

Appearance for Respondent: Michael W. Beasley, Esq., Bequai & Beasley, 1634 Eye Street NW., Suite 900, Washington, DC 20006.

Appearance for Agency: Daniel C. Hurley, Jr., Esq., Attorney-Advisor, Office of Export Enforcement, Room No. 3845, U.S. Department of Commerce, Washington, DC 20230.

On August 1, 1986, the then Office of Export Administration, International Trade Administration, U.S. Department of Commerce ("the Agency"), issued a charging letter against Respondent Data Systems Engineering, Inc. ("DSE"). This letter was issued under the authority of the Export Administration Act (50 U.S.C.A.App. 2412(c)(1) and Part 388 of the Export Administration Regulations (codified at 15 CFR Parts 368–399) (the "Regulations").[1] The letter asserts that Respondent DSE had violated §§ 387.4, 387.5, and 387.6 of the Regulations for each of six exports, four to Greece and two to Switzerland,[2] of U.S.-origin computer equipment as temporary exports under general license GTE.[3] The charging document did not clearly lay out the acts which are claimed to constitute each of the violations charged.

Agency Counsel has stated that the number of violations charged here is now eighteen, this is not clear from the charging document, nor was it adequately addressed in Agency Counsel's Post-Hearing Brief. It is also the subject of critical comment by Respondent's Counsel in his Post Hearing Reply Brief at pp. 4–5. A serious problem in these proceedings is that Agency Counsel refuses to adequately lay out to Responsends or this Tribunal just what the violations are.

The charging letter, in one paragraph, asserts "The Department alleges that DSE committed 12 violations each of §§ 387.4, 387.5 and 387.6 of the Regulations, for a total of 36 violations of the Regulations, each of which involves U.S.-origin commodities controlled under section 5 of the Act for national security reasons."

Because of the confusion generated by such unusual manner of pleading and presentation at the hearing, Agency Counsel was informed that "I would also like to remind you that in the post-hearing briefs submissions, Agency Counsel, I want you to present each and every violation separately. I want you to lay out in clear detail what constituted each and every violation, the separate elements, proposed findings, whatever have you on all of them. I want you to know that as I look at these inadequate charging letters, I see a possibility of two violations" (Tr. 302–303).

I am aware that in administrative proceedings it is not required that there be a precision of language similar to that utilized in criminal or other judicial proceedings. There must, however, be some limit on how general and non-specific the Agency and its Counsel may be. The Respondent is, of course, entitled to know the nature and number of charges. In addition, this Tribunal must be informed on what is charged. The Tribunal should not be required to ascertain the numbers and contentions through some Rubic's Cube or other puzzle solving approach. I advised Counsel that I saw the possibility of two violations and asked for clarification. Whether it is because of his obstinate nature or because he cannot lay out the total number of charges he contends remain in the charging letter, I know not. However since he has not explained each of the charges which he contends are laid, I address a single charge since I no longer perceive the basis for the two which I saw at the time of the hearing.

This is not to say that I cannot construct less, more and or different possibilities. However that is not my function. I am also not certain that they are what the Agency intends to charge. In no case do they add up to the number which Agency Counsel contends are alleged here.

As already ordered, from and after July 1, 1988, charging letters which do not separately set forth each alleged violation and the applicable individual section of the Regulations or law violated will be subject to dismissal.

The Agency also asserts that these shipments were intended to satisfy existing sales contracts, that DSE knew that these shipments actually required

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[1] Pursuant to the provisions of section 15 of the Export Administration Amendments Act of 1985 (15 U.S.C.A.App. 2414), the position of Under Secretary for Export Administration was established effective October 1, 1987. Proceedings are now initiated on behalf of the Bureau of Export Administration within the Department of Commerce. The one year period for the processing of these cases fixed by those amendments applies to this case. The complexity of this record and the delay caused by the appeal to the U.S. District Court, in combination, constitutes good cause for the delay involved here.

[2] A number of shipments which were the basis for charged violations in the original charging letter were listed in an attached Schedule. There are only six shipments remaining in issue. The charges stemming from sequentially the first, third, fourth, sixth and ninth shipments on that Schedule were withdrawn. The eleventh shipment was withdrawn at the hearing. The fact that the shipments are not numbered on the schedule adds to the confusion.

[3] According to the Regulations, a General License designated "GTE" was established to authorize only temporary exports which met specified designated conditions (15 CFR 371.22).

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export licenses, did not obtain such licenses, and filed false and/or misleading information with the Agency relating to these shipments. On October 4, 1988, Respondent answered the charging letter and requested a hearing pursuant to the Regulations, which subsequently took place on September 17, 1987 before the undersigned Administrative Law Judge. The record in this matter closed on November 30, 1987.

The Decision was issued on September 23, 1988. On October 24, 1988, the proceeding was remanded. Nine questions were posed to which responses are provided.

Procedural Issues

Agency Counsel attempted to file and serve an amended charging letter on December 22, 1986. This Tribunal denied the request to do so because that device, which restarts the proceeding, was simply unnecessary. Charges may be dropped without such a filing. The charges, as presented, were already stale. The Agency had over four years to investigate them. In the past, Agency Counsel have explained such delays with representations of complicated investigations and late receipt of information respecting the violations. Here that certainly was not the case. The actions were known at the time of, or shortly after the violations. This is clear from the advice given by the investigating Agent while the transactions were ongoing. Unfortunately this case has become a Serbonian Bog of bureaucratic delay into which even this Tribunal has become mired. The Agency may not be permitted to change direction, obfuscate or delay further the processing of the case.[4]

For over one full year from the time the Agency issued the original charging letter, Counsel for the Agency and Respondent engaged in discovery. After notice to this Tribunal, Respondent initiated an action in the United States District Court in an attempt to obtain judicial resolution of the Agency's refusal to comply with the Discovery Order issued pursuant to the Agency Regulation which states

"* * * enforcement by a district court of the United States may be sought * * *" (15 CFR 388.9(d)). The matter was remanded to this Tribunal by the District Court without a substantive disposition.[5]

In consequence of Agency Counsel's refusal to comply with the Administrative Law Judge's discovery order, and after the ruling of the District Court, this Tribunal issued an Order on June 15, 1987, citing the above regulation, directing that, as to any information that Agency Counsel refused to disclose to opposing Counsel, this Tribunal would "take particular facts * * * as being established" at the hearing. This Order was issued in order to enforce this Tribunal's previous orders to cooperate in the discovery process.[6]

The Agency has objected to the consequences of that order, asserting that "serious procedural error" was committed by not allowing the Agency to present the testimony of a Special Investigative Agent for the limited purpose of rebutting testimony of one of Respondent's witnesses. This is a blatant misstatement, ignoring the facts surrounding the ruling.

Agency Counsel was fully aware, as early as December 12, 1987, that the Respondent intended to present DSE's president as a witness. Agency Counsel cannot come to the hearing nine months later, and expect to present a witness to rebut this testimony without giving opposing Counsel notice of such an intent. To allow such action would be to give Agency Counsel an unfair advantage of surprise due to the relative availability of such investigative agents to Agency Counsel, particularly in light of the unavailability of such witnesses to Respondent's Counsel in the discovery process. Such advantage is unjustified, since it was Agency Counsel's failure to comply with previous discovery orders which led to the sanctioning order. He cannot now complain that the testimony of the Agent should have been permitted at the hearing.

Facts

Summary

Between August 13, 1981 and October 3, 1982 Respondent is alleged to have exported four shipments of controlled U.S.-origin computer equipment to Greece and two shipments of U.S.-origin computer equipment to Switzerland as temporary exports under general license GTE when the shipments were asserted to be permanent exports requiring validated licenses.

In connection with each of the shipments, Respondent filed Shipper's Letters of Instruction (SLI) or Shipper's Export Declarations (SED) representing that computer equipment could be exported under General License GTE.

The four shipments to Greece were made in response to orders placed by Alan Simmons who at the time was Respondent's sales agent in Greece. Respondent terminated that relationship in February, 1982, at the suggestion of an Agency Special Agent investigating Simmons.

The Particular Shipments

Shipment No. 2 [7]

DSE Invoice No. 275 (Agency Exh. 4B), Air Waybill dated August 13, 1981 (Agency Exh. 4A), reflects the export of U.S.-origin computer equipment to Greece. According to the schedule on the invoice, "Buyer must provide DSE, Inc. with a valid import certificate covering the above goods within 90 days." The price of the goods is listed as $5,300.00, with a bank draft submitted for this amount (Agency Exh. 4C), dated August 12, 1981, one day before the date of shipment shown on the Air Waybill. Further evidence indicated that DSE's bank notified DSE just one week later that collection had been requested (Agency Exh. 4).

DSE's "Shipper's Letter of Instructions" ("SLI") [8] (Agency Exh. 4D), which accompanied this shipment at the time of export, shows the full amount as $5,300.00 and notes in the "Special Instructions" block that the shipment is "CAD", meaning "cash against documents", and asks the freight forwarding agent to notify DSE of the Air Waybill number, flight number and estimated time of arrival.

Shipment No. 5

DSE Invoice No. 331 (Agency Exh. 7B), Air Waybill dated September 24, 1981 (Agency Exh. 7A), to Greece reflects a full purchase price of $111,450.00 at the time of shipment, and that payment was requested within 30 days ("Net 30"). DSE received payment less than one month later, the invoice having been stamped "PAID" on October 23, 1981. The record also includes a DSE credit memo to Digital Resources, LTD, dated December 7, 1981, providing a price adjustment in the amount of $6,990.00 (Agency Exh. 7).[9]

Shipment No. 7

DSE Invoice No. 332 (Agency Exh. 9B), Air Waybill dated December 14, 1981 (Agency Exh. 9A), reflects, on the invoice, the purchase price of $41,600.00. The invoice shows that DSE requested payment within 30 days, and received such payment within three weeks. It was stamped "PAID" on December 30, 1981.[10] DSE's SLI reflects the full dollar amount and contained Special Instruction to the freight forwarding agent "Notify shipper of AWB#, FLT# and ETA* * *. This is important as buyer will collect upon arrival, and must be notified" (Agency Exh. 9E). The buyer was Digital Resources, LTD.

Shipment No. 8

DSE Invoice No. 332 (Agency Exh. 10B), Air Waybill dated December 15, 1981 (Agency Exh. 10A), indicates the full purchase price of $30,400.00 was sought within 30 days of the shipment. The evidence reflects that such payment was received within three weeks of this shipment, the invoice being stamped "PAID" on December 30, 1981.[11] DSE's worksheet for this transaction reflects a "SALES ORDER NO.", the purchase price and the date shipped (Agency Exh. 10E). The invoice did not indicate that the shipment was temporary, the SLI indicates the full dollar amount and states the Special Instructions to the freight forwarding agent "Notify shipper of AWB#, FLT# and ETA * * *. This is important as buyer will collect upon arrival, and must be notified" (Agency Exh. 10G).

Shipment No. 10

DSE Invoice No. 362 (Agency Exh. 12B), Air Waybill dated March 24, 1982 (Agency Exh. 12A), shows that the invoice requested a full purchase price of $2,375.00. Again, the invoice reflects that payment was sought within 30 days. The invoice is further stamped "PAID," with a line drawn through the word. The president of DSE testified that payment was not received. There was no evidence refuting the fact that the shipments requested payment. The invoice also states "Demo—two weeks" and was annotated as shipped as demonstration items to Switzerland (Tr. 214–215). Respondent Exhibit A is the manufacturer's (DATARAM Corporation) invoice which states that the equipment was being sent to DSE for a "30 day evaluation". A telex was presented from DSE stating that the unit in question was being sent to Switzerland under GTE License as a "demo unit" (Resp. Exh. B). A message from DSE to the consignee asking for return of the demo unit was also presented (Resp. Exh. C). Further evidence indicates that the items were returned to the manufacturer (Resp. Exh. E, F, G, H, I). The Respondent presented testimony from one of it's employees concerning the details of the return of these items (Tr. 290–291).

Shipment No. 12

DSE Invoice No. 443 (Agency Exh. 14A), Air Waybill dated October 3, 1982 (Agency Exh. 14), and invoices for several pieces of equipment, DSE Invoice Nos. 440, 441, and 432, (Agency Exh. 14J, 14M, 14P) which were not included in the August 1, 1981 charging letter.[12] Respondent's SED for this shipment (Agency Exh. 14D) and other related invoices for this shipment indicated that U.S.-origin commodities valued at $23,079.00 were being shipped to Switzerland. The evidence also reflects that DSE requested payment within 30 days and in fact received payment three weeks later on October 20, 1982. Invoice No. 443 is stamped "PAID" but the date is illegible (Agency Exh. 14A). On September 16, 1982, DSE applied for a validated license (Agency Exh. 14E) for the equipment exported on October 3, 1982 under general licenses GTE (Agency Exh. 14A, 14D). A letter from Respondent to the Agency, dated September 16, 1982, requested expedited action on its permanent license application (Agency Exh. 14R) due to the fact the president of DSE needed to take this equipment (Agency Exh. 14A, 14J) with him for installation at that time, which he, in fact, did prior to obtaining the required validated license. The four invoices introduced were also stamped "Goods for demonstration. Import Certificate required for purchase."

The Regulations

Section 387.4 of the regulations in effect at the time of the alleged violations read as follows:

Acting with knowledge of a violation. No person may order, buy, receive, conceal, store, use, sell, loan, dispose of, transfer, transport, finance, forward, or otherwise service, in whole or in part, any commodity or technical data exported or to be exported from the United States or which is otherwise subject to the Export Administration Regulations, with knowledge or reason to know that a violation of the Export Administration Act or any regulation, order, or license has occurred, is about to occur, or is intended to occur with respect to the whole or any part of such transaction.

Section 387.5 of the regulations read:

Misrepresentation and Concealment of Facts

(a) *Misrepresentation and concealment.* No person may make any false or misleading

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[4] Respondent's Counsel argued that the six remaining separate export transactions which underpin Respondent's alleged violations of the Regulations occurred more than five years prior to the administration of punitive sanctions against the Respondent, and enforcement should thus be barred under 28 U.S.C. 2462, citing *United States v. Core Laboratories, Inc.* 759 F.2d 480 (5th Cir. 1985) (Resp. Brief at 14), and that is true.

Respondent argues that the statute should not be tolled following the issuance of the original charging letter due to Agency's disobedience of the Administrative Law Judge's discovery orders (Resp. Brief at 14, *citing* 759 F.2d 480 at 484). I do not find this argument compelling. Under the Agency interpretation, which finds support in the construction of other Circuit Courts of Appeal Decisions (*U.S. v. Meyer*, 808 F.2d 912 (1st Cir. 1987)) to which I must defer, the statute was tolled from the filing of the charging letter.

[5] *See Data Systems Engineering, Inc. v. Baldrige, et al.*, Misc. No. 87-0017 (D.D.C., April 28, 1987). In denying Respondent DSE's motion to compel discovery, Judge Gesell declared that the District Court had no jurisdiction over the matter, and further stated that the Regulations promulgated pursuant to the Export Administration Act authorized the Administrative Law Judge to issue discovery orders and take "reasonable and appropriate" action for failure to comply with such orders 15 CFR 388.9(d) (1988). The court also stated that it was barred by 50 U.S.C.A.App. 2412(c)(1) from judicial review of this matter, limiting its review power to enforcing administrative subpoenas of Agency. 50 U.S.C. 2411(a), in discovery disputes, unless perhaps important procedural rights of the Respondent were affected. The 1988 revision to the Act providing for judicial review may alter this holding (Omnibus Trade and Competitiveness Act of 1988, Pub.L.No. 100-418, 102 Stat. 1107).

The agency regulation (15 CFR 388.9(d)) appears to provide some substantial opportunity for discovery. In practice this has been rather one-sided, for unlike other bureaus in the Department, Counsel for BXA as here, refuse to permit respondent, or even in camera, access to the statements, reports and the like of expected or noticed witnesses. Nor is the result here an exception or aberration. Agency Counsel who prepared the regulations, 50 FR 53130, citing the Federal Rules of Civil Procedure as the model, is the same Senior Attorney who appeared on behalf of the Agency here.

[6] The Agency was on notice that such action would be taken after the Pre-hearing Conference of December 9, 1986, the decision of the District Court and Order of this Tribunal of December 18, 1986, all of which indicated that the Administrative Law Judge should and would use available sanctions for Agency Counsel's failure to comply with the discovery order. See also Respondent's Post Hearing Reply Brief at 16–17, which I adopt.

[7] The shipments are numbered in accordance with the sequence in which they appeared in the Agency's charging letter. The missing numbers of the original eleven were dropped.

[8] A Shipper's Letter of Instruction is a multiple-copy document formatted and used by the freight forwarder as a Shipper's Export Declaration.

[9] Digital Resources, Ltd. was a company operated by Alan Simmons. The company and Mr. Simmons were found to have violated §§ 387.2, 387.4, 387.5 and 387.6 of the Regulations. They were and are subject to an export denial order. However this listing was subsequent to all of these transactions. Docket Nos. 2636-01, 2636-02, (Order, February 20, 1986, 52 FR 7478, March 4, 1986).

[10] The invoice is stamped "December 30, 1982" which DSE's president testified was apparently a mistake, and should have been stamped with the year "1981".

[11] *See* footnote 6, *supra*.

[12] The Agency was not allowed to add these exports as separate charges to its case. All of these were included in one shipment made on or about October 3, 1982, as indicated in the Shipper's Export Declaration (Agency Exh. 14D). DSE further stamped each invoice "Paid October 20, 1982". The Agency properly treats these invoices as one single shipment.

With respect to Shipment No. 12, a qualified export licensing officer testified that a validated license was required for export of the commodities shown on the "Request for Licensing Determination" (Tr. 102, Agency Exh. 14X). That conclusion is accepted.

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representation, statement, or certification, or falsify or conceal any material fact, whether directly to the Office of Export Administration, the Office of Antiboycott Compliance, any customs office, or an official of any other United States agency, or indirectly to any of the foregoing through any other person or foreign government agency or official—

(1) In the course of an investigation or other action instituted under the authority of the Export Administration Act;

(2) In connection with the preparation, submission, issuance, use, or maintenance of any export control document, as defined in § 370.2, or restrictive trade practice or boycott request report, as defined in § 369.6;

(3) For the purpose of or in connection with effecting an export from the United States, or the reexport, transshipment, or diversion of any such export.

(b) *Scope.* Paragraph (a) applies to all representations, statements, and certifications made to, and material facts concealed from, the Office of Export Administration, the Office of Antiboycott Compliance, and the U.S. Customs Service, or other agencies with respect to matters within the jurisdiction of those agencies under the statutes, Executive Orders, and regulations, relating to export control, restrictive trade practices or boycotts, and orders or licenses issued or established under the Act.

(c) *Representations to be continuing in effect; notification.* All representations, statements, and certifications made by any person are deemed to be continuing in effect. Every person who has made any representation, statement, or certification must notify, in writing, the Office of Export Administration or the Office of Antiboycott Compliance, as well as any other cognizant agency(ies), of any change of any material fact or intention from that previously represented, stated, or certified. Such notification shall be made immediately upon receipt of any information which would lead a reasonably prudent person to believe that a change of material fact or intention has occurred or may occur in the future.

Section 387.6 of the regulations read:

Export, Diversion, Reexport, Transshipment

Except as specifically authorized by the Office of Export Administration, no person may export dispose of, divert, direct, mail or otherwise ship, transhp, or reexport commodities or technical data to any person or destination or for any use in violation of or contrary to the terms, provisions, or conditions of any export control document, any prior representation, any form of notification of prohibitation against such action, or any provision of the Export Administration Act or any regulation, order, or license issued under the Act.

Section 371.22 of the Regulations governs the use of general license GTE and, during the period relevant to this proceeding, read in part:

(b) *Temporary exports subject to general license GTE.* Export described in §§ 371.22(b)(1) through (8) intended for temporary use abroad (including exports for use in international waters) and prompt return, in no case later than 1 year after the date of export, to the United States may be made under the provisions of this general license, unless restricted by the exceptions set forth in § 371.22(c):

(1) Usual and reasonable kinds and quantities of commodities for use by the exporter or his representative, agent or employee in an enterprise or undertaking of the exporter approved by the Office of Export Administration.

(2) Commodities for exhibition or demonstration in Country Group T or V only. (Through July 21, 1981).

(2) Commodities for exhibition or demonstration in Country Group T or V, provided the U.S. exporter retains title. The SED for this type of transaction shall show the U.S. exporter as ultimate consignee, in care of the person who will have custody of the commodities abroad.

(*Export Administration Bulletin*, No. 222, August 9, 1982).[13]

(3) Commodities to be inspected, tested, or calibrated, or repaired abroad.

(c) *Exceptions.* * * *

(3) *Use or disposition.* No commodity may be exported under this general license with the intent to change the registration, sell, or otherwise dispose of the commodity abroad.

Discussion

Agency Counsel argues that each of the respondent's exports failed to qualify for use of general license GTE, and were shipped in violation of §§ 387.4 and 387.6 of the Regulations. The Agency alleges that Respondent DSE improperly used general license GTE to export these six shipments of U.S.-origin computer equipment because Respondent DSE intended these shipments to be sales and knew that this equipment was not being exported temporarily, a prerequisite for using this general license. It is argued that Respondent, knowing this, intentionally made false and misleading statements to the Agency and other Governmental bureaus.[14]

Respondent DSE argues that the exports in question were not intended as sales, but were all properly shipped as temporary exports under general license GTE for testing and evaluation purposes. Respondent contends that the Agency's case must fail because it did not show that Respondent did not intend its exports of computer equipment to be temporary at the time of export under provisions of GTE license authority. Respondent contends that they acted appropriately and that Agency's own witness stated that the Regulations call for, and recognize the need to change a temporary licensing status to provide for permanent export when one was not originally contemplated (Tr. 61–62).

First Four Shipments

Respondent does not dispute that following customer testing and acceptance, some of the equipment shipped required a change in license status to provide for validated licenses (Resp. Brief at 2–3). Respondent claims, however, that an investigative field agent for the Department of Commerce directed the Respondent not to submit necessary changes to license status concerning the first four shipments. The Respondent contends that this agent, then investigating Alan Simmons, directed DSE not to submit necessary changes to license status because of sensitive national security considerations. That assertion is accepted as true. However, I do not find that there was credible evidence offered by the Respondent at the hearing further indicating when any of the final sales of these shipments occurred, other than relying on the original shipment documents which indicate that final sales were contemplated at the time of shipment. The president's testimony rather reflects his misunderstanding of what constitutes a temporary export.

As to Shipment No. 2, the president of DSE, testified under oath regarding Respondent's conversations with the consignee, and his agent in Greece, Alan Simmons of Amber Company (Tr. 160–190). The president claims that the annotations made on the export documentation (e.g. "PAID") pertained to invoice costs, not the costs of the commodities [15] (Tr. 184). Respondent

[13] This change to the regulations governing General License GTE is explained as clarifying the requirements on commodities exported temporarily for exhibition or demonstration (*Export Administration Bulletin No. 222*, at 7).

[14] For each of the shipments under review in this proceeding, the commodities were controlled for national security reasons under Commodity Control List (CCL) entry 1565A and required validated licenses for export to Greece and Switzerland, except where certain general licensing provisions would be applicable (Tr. 69–103). Except for the shipment No. 12, it was stipulated by the parties that validated licenses were required for the U.S.-origin computer equipment during the period when shipments were made (Tr. 105).

[15] Respondent attempts to make much of the fact that the shipment, then valued at $5,300 would now be worth under $5,000 and thus not require a validated export license for a permanent shipment. This is irrelevant to the acts charged here, which constituted a violation at the time it was committed.

stands by the documentation annotations which indicate that there is a need for additional documentation in the event of final export (Tr. 188).

There is nothing on the record indicating that a separate decision was to be made by the ultimate consignee or notification made to the Respondent, that this shipment was to be purchased by the consignee (Tr. 189). Finally, Respondent claims that DSE never applied for a validated export license on this shipment because the Investigative Agent told him to discontinue dealing with Simmons due to national security reasons (Tr. 189; Resp. Brief at 8). Though this assertion is accepted, it does not alter the conclusion that the facts reflect a sales transaction from the outset.

As to Shipment No. 5, the Respondent stands by the marking on the DSE invoice indicating that the commodities shipped were done so for demonstration purposes (Tr. 192–194; Agency Exh. 7B). The company president testified that the agent in Greece, had to advance Respondent's cost for the demonstration equipment before it could be shipped to Greece because the Respondent could not afford to obtain it from the manufacturer before that time (Tr. 195–196). The circumstances do not support a conclusion other than that this was in fact a sale financed by the buyer.

According to DSE's president, Shipment No. 7, was also for test and demonstration purposes, thus Respondent contends that these items were for temporary export (Tr. 198; Resp. Brief at 10). The witness contended that the language on Invoice 307, "The above goods sent and invoiced * * *" did not really mean that commodities were sent and payment demanded, but instead were used simply to satisfy a Greek customs formality (Tr. 255–256).

Shipment No. 8 is also claimed to have been for demonstration purposes only (Tr. 200–201). The president of DSE testified that the cost-related invoice information annotations on the shipment documents demonstrated that he relied on the GTE temporary license (Tr. 202–203). Again, the witness testified that the investigative agent informed Respondent DSE that it was to terminate all contacts with Simmons because of national security reasons, and DSE complied fully (Tr. 203, 207–208).

The Respondent's arguments for each of the annotations on the different documentation are simply not convincing when considered in the context of the transactions. It appears, from a preponderance of the evidence, that the Respondent did in fact violate the regulations as charged with respect to these shipments because the transactions were in fact meant to be sales with some right of return.

The Respondent claims that Shipment No. 10 was returned to the U.S. vendor after testing overseas, and thus it was an entirely appropriate GTE-licensed transaction not requiring validated export license. Respondent's arguments concerning this shipment are convincing. This shipment involved goods that were claimed to be for temporary purposes and subsequently returned to the United States. The documentation and evidence presented indicate that the parties intentions were to demonstrate the equipment. This was properly documented. The evidence does not support a conclusion that they were already sold. I conclude that the equipment was properly exported under the temporary license.[16]

The last shipment in question, Shipment No. 12, was covered by an export license subsequently approved and validated by the Department. Respondent argues that this was appropriate because it was covered by an approved Agency validated export license upon being accepted by the customer after demonstration and testing.

The Respondent's president testified that the shipping documentation stated that the item covered by Invoice 443, was exported *for demo purposes* (Tr. 232–233). Further, Respondent claims that Validated Export License Nos. 64067 and 64068 subsequently covered any permanent export of the item listed in Invoice 443. The Respondent claims that the demo model was approved for purchase later by the consignee, therefore he properly obtained the validated export license for permanent export of this equipment (and other related equipment shipped along with it).

The evidence indicates that, as to this computer eqipment, a validated export license was asked for and yet the equipment was sent under a GTE license. Thus, Respondent knew what the intentions was and chose to misrepresent it in order to expedite his shipment (Tr. 233–234).[17] The mere fact that the shipment would have been valid if made under the appropriate Export License does not excuse Respondent's conduct in circumventing the law. Nor would the shipment have been proper under GLV as is now argued for it was Respondent who elected to make one shipment under a number of invoices which in combination were not "de minimus" in value. This shipment made under Invoice No. 443, was improper. The fact that Respondent attempted in the course of the transaction to acquire the proper license, indicates that the Respondent knew that the actions were violations. Further, this shipment was made after the Respondent was aware of the investigations into some of its previous transactions.

The Agency also contends generally that the export control documents, including SLIs and SEDs, prepared by the Respondent contain false representations, due to the fact that DSE knew that these exports were intended to be shipped to complete sales. Respondent provided its general license number as GTE D90018 for the first four questioned shipments, Shipments Nos. 2, 5, 7, and 8. The fifth and sixth shipments, Shipments Nos. 10 and 12 listed general license number GTE D90918 on the SEDs. By listing these license numbers, the Agency contends that DSE falsely represented that these shipments were eligible for export under these temporary licenses, knowing that these shipments were ineligible for such treatment were as part of sales transactions.

Conclusion

The evidence indicates that a permanent exports were in fact made for Shipments Nos. 2, 5, 7, 8 and 12, although Respondent's witness testified to the contrary. The totality of the circumstances and evidence produced on behalf of the Respondent does not rebut the documents presented by the Agency which support the conclusion that sales were intended and made. there has not been credible evidence produced that any of the equipment shipped in the above numbered exports was intended to be returned.[18]

[16] While the Respondent further claims that the Agency purposely overlooked this evidence. The record does not support that assertion. I see it as a disagreement respecting the interpretation of the acts.

[17] Testimony was given to the effect that this order was for demonstration purposes, in that if there was a defect in the product, it could be returned.

It was clear from the testimony of Respondent's president that this shipment was for final sale. As with most final sales, a defect in the product allows the buyer to return it within a reasonable time. This general consideration in commercial transactions is insufficient to classify the transaction as "temporary for demonstration purposes" under § 371.22 of the Regulations, which clearly does *not* cover exports "* * * with the intent to change the registration, sell, or otherwise dispose of the commodity abroad" 15 CFR 371.22(c)(3).

[18] As Agency counsel points out in his Reply Brief, evidence that contemporaneously and objectively attests to DSE's export activities is entitled to greater weight than subjective explanations by an interested party. Respondent ignores the documentary evidence introduced by the

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The record reflects that DSE was not a novice respecting the use of general license GTE and/or validated licenses. DSE had reason to know what § 371.22 of the regulations required, since it applied for registration as an exporter of commodities for temporary use abroad under the provisions of Section 371.22 of the Regulations on September 5, 1979, certifying that it "underst[oo]d and will comply fully with the provisions of General License GTE." Respondent even received a warning letter from the Department in May of 1980 in connection with its voluntary disclosure of the sale in Switzerland of two disc controllers exported under general license GTE.

The evidence is clear and uncontested that the export of the commodities involved required validated licenses.[10] The real and singular issue is whether the exports were "temporary"—I conclude that they were not. A mere right of refusal or to cancel and return is not sufficient grounds for labelling the export as temporary. The record here reflects all the common aspects of a sale including delivery. That there may have been some ability to negate the sale does not qualify to make the transfer temporary. With respect to Shipment No. 10, the evidence shows an export for demonstration. The details support the contention that this was a true demonstration activity and no violation is found incident to that export.

Though I find that Respondent "knowingly" exported the five items improperly, I do not find that the violation was deliberate or willful. Rather the kind of knowledge and or intent found (and that which applies generally in these cases), is that described by the Supreme Court in *United States v. International Minerals and Chemicals Corp.*, 402 U.S. 558 (1971). It was held there that even where the requirement was that the individual "knowingly" violated the statute, the quality of the knowledge involved related to a knowledge of the facts, not the law, and reiterated the general rule that ignorance of the law is no excuse. *See also United States v. Jonas Brothers of Seattle, Inc.*, 368 F.Supp. 783 (COURT, 1974) and *Newell*, 2 Ocean Resources and Wildlife Reporter (O.R.W.) 111, (NOAA 1979), 2 O.R.W. 366 (NOAA App. 1981).

Agency showing that it received payment for three shipments and a portion of a fourth shipment out of the six shipments in question. (Agency Reply Brief at 2-3). With respect to Shipment No. 12, I find that the sale was final prior to shipment.

[10] Respondent did not concur or stipulate to the need for a validated license with respect to Shipment No. 12, as with the other shipments. However, the attempt to question that determination was not convincing. No showing was made respecting why the items involved was not a properly controlled commodity as was his burden since the question respecting whether matters are properly on the list is a matter for determination in a seperate process.

Findings

1. Respondent Data Systems Engineering (DSE) is a United States corporation and person within the meaning of the Export Administration Act, as amended, and the regulations promulgated thereunder, 50 U.S.C.A.App. 2412(c)(1), 15 CFR Part 300.

2. Between August 1, 1981, and October 3, 1982, Respondent exported, on five occasions, (the charged Shipment Nos. 2, 5, 7, 8 and 12) Shipments of U.S.-origin equipment to Greece and Switzerland as temporary exports under GTE licenses.

3. The five exports were to fulfill existing sales contracts requiring validated licenses at the time of shipment.

4. The existence of a right to reject or return equipment with or without trial or test by the purchaser does not constitute a "temporary" export. A sale on approval or with a right to refuse and return does not constitute a "temporary" export. Shipment for test, evaluation, demonstration and the like incident to or in contemplation of a sale is not a "temporary" export.

5. The five exports were not temporary exports within the meaning of the regulations particularly 15 CFR 371.22. The five shipments were not made principally for demonstration, test or evaluation.

6. The use of GTE licenses for such shipments under the circumstances was improper.

7. Respondent exported the five shipments which it had reason to know required a validated export license in violation of the regulations.

8. The evidence presented does not establish that the export of Shipment No. 10 under the GTE License was improper. That aspect of the charge is DISMISSED with prejudice.

Conclusion

I conclude that a violation of the Export Administration regulation § 371.22 and incident thereto, of §§ 387.4, 387.5 and 387.6 occurred. The failure of the Agency to spell out with some clarity what acts constitute which violations leads me to find a single overall or comprehensive violation. Contrary to Agency Counsel's assertions, his Post Hearing submission was not responsive to my request. I share Respondent's Counsel's assertion of a lack of clarity and disclaim the representation that it is "self-inflicted". Upon examination of the charging letter and the evidence it appears that there may well be multiple violations inherent in the alleged misconduct recited, however it is for Agency Counsel to clearly state what they are rather than for this Tribunal to decipher equivocal and confusing messages. It is also probable that the approach attempted is substantially multiplicious and the sanction would be the same regardless of the tally.

I conclude that this company in what appears to have been an attempt to avoid the delays which bedeviled routine export licenses, some years ago improperly used its GTE Temporary License to promptly fill its purchase orders, fully intending to follow up with a validated license in due course. That was not permissible.

I specifically disapprove of a civil penalty in this case because the costs borne by this company in business, legal expenses, reputation and personal apprehension has substantially exceeded what would otherwise be appropriate by way of civil penalty here.[20] It is also the basis for the substantial suspension of the denial period.

In arriving at the penalty set forth in the Order that follows I have given particular credit to the cooperation Respondent and its president gave in the larger Simmons investigation, Respondent understanding of the credit he would receive for such participation; the unconscionable and unexplainable delay in initiating and completing these proceedings, the Respondent's precarious small business status and the lack of willful intent. Nevertheless, some sanction is appropriate for the GTE license process was abused. Had the proper validated licenses been timely sought the identification and sanction of Mr. Simmons might have been made sooner.

Remand Questions and Responses

1. If the charging letter was "inadequate" (Recommended Decision and Order, page 3), why were the charges not dismissed?

Ans. Not every inadequacy warrants dismissal. The deficiencies in the style and content are fully discussed in the Decision.

2. In light of the Department's post-hearing brief, pages 4 through 18, how is it not clear that the Department was charging three separate violations of the regulations for each of six shipments? Please refer to the specific language of the Department's post-hearing brief which fails to make this method of alternative pleading clear.

Ans. The charging document which initiates the proceeding is where the separate and sufficient allegations must be stated. In the charging letter of August 1, 1986, the Respondent is alleged to have committed thirty six violations which are not sufficiently set forth. In the course of the proceedings some of the alleged violations were withdrawn. The problem in understanding just which alleged violations were dropped and the effect on what might be termed the cross violations was most confusing. This cross-referencing to sections of the regulations omits allegations as to the particular violative actions. The absence of specific separate charging language renders the process confusing and uncertain. The direction at the conclusion of the hearing to Agency Counsel to the effect that: "' ' ' I want you to present each and every violation separately. I want you to lay out in clear detail what constituted each and every violation, the separate elements, proposed findings, whatever have you on all of them", was clear, unequivocal and proper. The post-hearing submissions on behalf of the Bureau did not confirm to that reasonable request. The decision clearly reflects the facts found. The Agency did not lay out each charge separately in the charging documents, as it should have done. Nor did its counsel do so even when offered the opportunity to do so after the hearing, which in retrospect constituted an inappropriate deference to the Agency. The only alternative reasonably available was to announce findings of facts consistent with the allegations and the evidence of record. It is for the Agency to articulate each separate charge, if it chooses to lump multiple acts in a single charge that is one of its options. It is not proper or appropriate for this Tribunal to parse the record and select which violations may be separately found. Because the Administrative Law Judge's decision appears to lay out what maybe considered as multiple violations it is not appropriate to conclude that the charging letter was sufficient to support any particular number of violations more than one. It must stand by itself. As issued, it fails to separately and insufficiently set forth the sixteen or so violations now claimed.

3. On page 26 and 27 of the Recommended Decision and Order, five specific shipments are found to have violated Export Administration Regulations. In view of this fact, how can the conclusion be drawn that there was one, "single overall or comprehensive violation" of the Regulations? Specifically, were the five sales separate and distinct transactions, or were they all part of one transaction which would support, possibly, the conclusion reached on page 28?

Ans. There were construed to have been so charged by virtue of the failure of the Agency to: specifically identify each charge at the outset; identify the proof relative to each separate charge in the evidentiary presentation and to therefore provide the requested identification and correlation for each of the remaining charges. The decision respecting whether to consolidate or separate charges is to be made at the time the proceeding is initiated, the generalized approach utilized in this case has led to "garbage can" records from which findings and conclusions are extracted without the connection between pleadings and proof that is necessary for proper initial adjudication and subsequent review. The conclusion on page 26 is reiterated and reaffirmed. If the Agency wishes to charge multiple separate violations they must be so stated in the charging document so that this Tribunal, the Respondent and appellate reviewers, administrative and judicial, may track the pleadings and proof.

4. Of what relevance is the following statement on page 28 of the Recommended Decision and Order: "I conclude that this company in what appears to have been an attempt to avoid the delays which be bedeviled routine export licenses, some years ago improperly used its GTE temporary license to promptly fill its purchase orders, fully intending to follow-up with a validated license in due course."? Specifically, did the ALJ take into consideration any facts which suggest "delays which be bedeviled routine export licenses" in making his Recommended Decision and Order?

Ans. It is my recollection that in the initial meetings with Mr. Beasley and Mr. Reed before Mr. Hurley intervened, there was some such allusion. It was also referenced and common knowledge that there had been lengthly delays in the licensing process during the relevant period. Another contributing circumstrance was, that part of the license appeal process had been transferred to this office without adjudication responsibility in 1986. The "leave them swinging in the breeze" attitude apparent in the handling of those cases which was even more dilatory than that previously observed as the Hearing Commissioner and Appeals advisor over a decade ago. It further reflected the Agency attitude and practice on license processing matters, the observation was considered relevant because it reflected a probable motivation, albeit an inappropriate one, for the Respondent's conduct and was consistent with the known practice of the Agency.

5. Assuming, *arguendo*, that there were five specific and separate violations of the Export Administration Act, would the ALJ's recommended penalties have been greater than those found in the Recommended Decision and Order?

Ans. No. (*see infra* p. 26), where it is stated "It is also probable that the approach attempted is substantially multipicious and the sanctions would be the same regardless of the tally."

6. The ALJ has characterized the Department's action as one of "unconscionable and unexplainable delay in initiating and completing these proceedings." (Page 29) What specific rules, statutes or orders were violated by the Department in its handling of this case? Please be specific and indicate the amount of time that each act added to the conduct of the case. Did the Department ever act outside its legal rights? Ans. The quote is plural. No score or time card is maintained on the problems with delays, Agency Counsel appeared to initially complicate and drag out these relatively simple proceedings. The records in this and other proceedings speak for themselves. The congressional imposition of the one-year period for adjudication manifests the attitude and action of that legislative body. "Justice delayed is justice denied" is not a trite remark, in these international activities the frequent three to five year unexplained delays in initiating proceedings seriously inhibit the ability to develop a complete and accurate record. Not charging this Respondent at the same time as Alan Simmons, who was charged nearly four years prior to the issuance of this charging letter, shows the Agency's lack of diligence, when it is apparent that the evidence used relating to the Respondent's transactions with Mr. Simmons were available at that time. The Agency acted outside its "legal" rights in refusing to comply with the discovery order and in contending that multiple violations were charged when the pleadings did not sufficiently identify each of the separate allegations

[20] The lack of standards for civil penalties in these cases despite the specific authorization in section 11(c)(4) of the 1985 Amendments, the Administrative Conference reports and adopted recommendations as well as the example of other agencies, even within this Department, complicate such impositions.

and Counsel obdurately refused to describe them as directed.[21]

7. Of what legal relevance in setting penalties is the fact that the business involved is a small business or the fact that it has borne legal expenses and other subjective costs in defending its extra legal activity? Ans. As the late Justice Benjamin Cardozo put it, it is the duty of judges "to weigh the effect of the default and adjust the rigor of the remedy to the gravity of the wrong." All of the circumstances surrounding the incident are for consideration including the nature and size of the business, the full range of costs incurred, and other adverse social consequences. The failure of the Bureau to establish standards for determining appropriate penalties as it's predecessor Administration indicated it would do almost a decade ago (Agency Assessment and Mitigation of Civil Penalties, 1 CFR 305.79-3) constitutes a substantial defect in the process (79 Colum. L. Rev. 1436 (1979)).

8. Since the Recommended Decision and Order finds five separate violations with knowledge, how can it be said that there was no willful intent to violate the Export Administration Regulations?

Ans. A single consolidated charge was found to have been made, nevertheless, the premise, either as posed or as more accurately stated, bears little relevance to the "willful intent" questions. Willful violations are cognizable under sec. 11(b) of the statute and are criminally actionable. Whether there were one or one hundred separate acts may, has little relevance to whether they were willful. The test to be applied in these cases is discussed in the full paragraph on Page 28 and again at page 29 of the decision, as well as in a number of other cases. The bare assertion, in a post hearing submission by Agency Counsel, constitutes neither a legal or factual basis for such a finding.

9. What legal authority exists for excluding or disallowing the proposed testimony of a witness to be called for the limited and specific purpose of impeaching a prior witness' statement with respect to a particular matter of fact?

Ans. The drawing of inferences and the exclusion of witnesses are but two of the routine types of sanctions invoked for failure to comply with discovery orders. The sanctions imposed here were reasonable and appropriate under the circumstances (*see infra* pp. 7–8).

[21] Senate Comm. on Governmental Affairs, Study on Federal Regulation, Volume Four, Delay in the Regulatory Process, S.Doc. No. 72, 95th Cong., 1st Sess. (IX) (1977) ("Ribicoff Report, Volume Four").

The situation which developed in this case was foreseeable and foreseen.

Section 788.9 of the Regulations (15 CFR 788.9) provides for discovery. The history of that provision over the past fifteen or so years is documented in Agency records. A decision was consciously made in about 1977 to reject the hardline approach of denying discovery in favor of the approach contained in the above cited rule which suggests that the Federal Rules of Civil Procedures shall apply subject to a consistency test. Rule 37 is particularly pertinent to the situation presented here. The cases cited in note 63–Sanctions and 39–Order of Preclusion in Title 28 of the United States Code Annotated, Federal Rules of Civil Procedure are particularly pertinent. The subject of discovery is also treated in an Administrative Conference Recommendation (Discovery in Agency Adjudication, 1 CFR 305.76–4) as well as in numerous other Civil and Administrative Law texts. The comments in Underwood, *A Guide To Federal Discovery Rules* (2d ed.), in para. 1.08 "The Use Of Issue Oriented Sanctions", which is summarized as follows, is particularly germane:

> If a party violates a court order regarding discovery, the court can fashion and issue preclusive order, directing that a certain issue be considered resolved in favor of the party requesting the sanction. The impact of this order will depend on the issues it covers and can range from the harsh equivalent of a dismissal to the chastening but less severe preclusion of a minor issue.

When Agency Counsel refused to comply with the discovery order he was informed he would not be permitted to call the particular witness. The Respondents explanation of the events, including the representations made to him, is the credible evidence in the record which was considered in assessing an appropriate penalty. To have allowed the Agency to call the sanctioned witness in the circumstances would have been improper. Particularly since Agency Counsel well knew from Respondents Counsel assertions the precise nature of the testimony to be offered on behalf of the Respondents. Before its president testified! (*McAlpine v. U.S. Dept. of Commerce*, U.S. DCAK No. A83–214 Civil, April 21, 1983)

Order

I. For a period of two years from the date of the final Agency action, Respondent—Data Systems Engineering, Inc., 7108 Pollack Ave., Ocean, New Jersey 07712 and all successors, assignees, officers, partners, representatives, agents, and employees hereby are denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported from the United States in whole or in part, or to be exported, or that are otherwise subject to the Regulations.

II. Commencing sixty days from the date that this order becomes effective, the denial of export privileges set forth above shall be suspended, in accordance with Section 388.16 of the Regulations, for the remainder of the two year period set forth in Paragraph I above, and shall be terminated at the end of that period, provided that Respondent has committed no further violations of the Act, the Regulations, or the final Order entered in this proceeding. During the suspension period, Respondent may participate in transactions involving the export of U.S.-origin commodities or technical data from the United States or abroad in accordance with the requirements of the Act and the Regulations. The provisions of paragraph VI of this Order are also suspended during the suspension period.

III. Participation prohibited in any such transaction, either in the United States or abroad, shall include, but not be limited to, participation:

(i) As a party or as a representative of a party to a validated export license application;

(ii) In preparing or filing any export license application or reexport authorization, or any document to be submitted therewith;

(iii) In obtaining or using any validated or general export license or other export control document;

(iv) In carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported from the United States, or to be exported; and

(v) In the financing, forwarding, transporting, or other servicing of such commodities or technical data.

Such denial of export privileges shall extend to matters which are subject to the Act and the Regulations.

IV. After notice and opportunity for comment, such denial of export privileges may be made applicable to any person, firm, corporation, or business organization with which the Respondent is now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of export trade or related services.

V. All outstanding individual validated export licenses in which Respondent appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of Respondent's privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

VI. No person, firm, corporation, partnership, or other business organization, whether in the United States or elsewhere, without prior disclosure and specific authorization from the Office of Export Licensing, shall, with respect to U.S.—origin commodities and technical data, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with any Respondent or any related person, or whereby any Respondent or any related person may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly:

(a) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transshipment, or diversion of any commodity or technical data exported in whole or in part, or to be exported by, to, or for any Respondent or related person denied export privileges, or

(b) Order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance or otherwise service or participate in any export, reexport, transshipment or diversion of any commodity or technical data exported or to be exported from the United States.

VII. This Order as affirmed or modified shall become effective upon entry of the Secretary's final action in this proceeding pursuant to the Act (50 U.S.C.App. 2412(c)(1)).

Date: November 23, 1988.

Hugh J. Dolan,

Administrative Law Judge.

[FR Doc. 89–1515 Filed 1–23–89; 8:45 am]

BILLING CODE 3510-DT-M

The MCTL Implementation, Technical Advisory Committee; Partially Closed Meeting

A meeting of the MCTL Implementation Technical Advisory Committee will be held February 8, 1989, 9:30 a.m., Herbert C. Hoover Building, Room 1617F, 14th Street and Constitution Avenue NW., Washington, DC. The Committee advises and assists the Office of Technology and Policy Analysis in the implementation of the Militarily Critical Technologies List (MCTL) into the Export Administration Regulations and provides for continuing review to update the Regulations as needed.

Agenda: Open Session

1. Opening Remarks by the Chairman.
2. Introduction of Members & Public Attendees.
3. Introduction of Invited Guests.
4. Presentation of Papers or Comments by the Public.
5. Department of Defense Report on Current Status of MCTL.

Executive Session

6. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 13, 1989, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended that the series of meetings or portions of meetings of the committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C. 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10 (a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC. For further information or copies of the minutes contact Betty Ferrell, 202–377–2583.

Date: January 17, 1989.

Betty Anne Ferrell,

Director, Technical Advisory Committee Unit, Office of Technology and Policy Analysis.

[FR Doc. 89–1529 Filed 1–23–89; 8:45 am]

BILLING CODE 3510-DT-M

Transportation and Related Equipment, Technical Advisory Committee; Partially Closed Meeting

A meeting of the Transportation and Related Equipment Technical Advisory Committee will be held February 16, 1989, 9:30 a.m. Room 1617–F, U.S. Department of Commerce, 14th & Constitution Avenue NW., Washington, DC. The Committee advises the Office of Technology & Policy Analysis with respect to technical questions which affect the level of export controls applicable to transportation and related equipment or technology.

General Session

1. Opening Remarks by the Chairman.
2. Introduction of Members and Visitors.
3. Presentation of Papers or Comments by the Public.
4. Discussion of Agenda and Work Plan for 1989.
5. Presentation on Recent Changes to the Export Administration Regulations.

Executive Session

6. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The general session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 13, 1989, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended that the series of meetings or portions of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C. 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC. For further information or copies of the minutes call Betty Anne Ferrell 202–377–4959.

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Date: January 17, 1989.

Betty Anne Ferrell,

Director, Technical Advisory Committee Unit, Office of Technology & Policy Analysis.

[FR Doc. 89-1530 Filed 1-23-89; 8:45 am]

BILLING CODE 3510-DT-M

Foreign-Trade Zones Board

[Order No. 424]

Approval of Revised Plan and Extension of Zone Status for Foreign-Trade Zone No. 84, Harris County, Texas, Houston Customs Port of Entry

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), and the Foreign-Trade Zones Board Regulations (15 CFR Part 400), the Foreign-Trade Zones Board (the Board) adopts the following order:

Whereas, the Port of Houston Authority (PHA), Grantee of Foreign-Trade Zone No. 84, has applied to the Board for authority to revise the plan and extend the authority for its foreign-trade zone located in Harris County, Texas, within the Houston Customs port of entry;

Whereas, the application was accepted for filing on February 8, 1988, and notice inviting public comments was given in the **Federal Register** on February 18, 1988 (Docket No. 8–88, 53 FR 4985);

Whereas, after the application was filed the Board conditionally approved three petroleum and chemical terminal sites, which were processed as separate applications (Docket Nos. 20–88, 41–85, 7–87);

Whereas, an examiners committee has investigated the application and PHA's request to include the three foregoing terminal sites in its revised zone plan in accordance with the Board's regulations and recommends approval with restrictions; and,

Whereas, the Board has found that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations would be satisfied if approval is given subject to the following conditions:

1. FTZ 84 sites shall be designated for identification in accordance with Appendix I of the examiners report.

2. The private manufacturing sites (formerly D–5, D–8) are redesignated subzones (SZ 84A, SZ 84B) and approved for a period of five years, subject to extension.

3. The zone will continue to operate under a centralized inventory control system approved by Customs, subject to exceptions allowed by Customs.

4. Manufacturing operations involving steel or steel products are restricted to items produced for export, otherwise formal entries shall be made on any foreign steel items prior to their use in a manufacturing process, and all steel mill products admitted to the zone shall be licensed under the President's Steel Program, while the program or a substitute program is in effect.

5. Full zone benefits for blending and processing at petroleum and chemical storage and blending sites shall be available for export only.

6. Privileged foreign status (19 CFR 146.65) shall be elected for any foreign merchandise prior to any blending or processing operations at petroleum and chemical storage and blending sites.

7. The FTZ Board's Executive Secretary shall be notified for approval prior to the commencement of any new manufacturing operations.

8. The District Director of Customs shall be notified for approval prior to the activation of any zone site.

9. Because of the nature of the project, PHA, as grantee, should play an active and continous role as overseer to ensure that the zone project is operated in the public interest and consistent with FTZ public utility principles.

10. Any further changes to the Houston zone plan should be presented and reviewed under conventional requirements.

Now, therefore, the Board hereby orders:

That the extension and revised zone plan requested by the Grantee, including the three petroleum and chemical terminals, is approved subject to the conditions listed above. The grant does not include authority for manufacturing operations not covered in the application, and the Grantee shall notify the Board for approval prior to the commencement of any new manufacturing or assembly operations. The authority given in this Order is subject to settlement locally by the District Director of Customs and the District Army Engineer regarding compliance with their respective requirements relating to foreign-trade zones.

Signed at Washington, DC this 12th day of January 1989.

Jan W. Mares,

Assistance Secretary of Commerce for Import Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 89-1531 Filed 1-23-89; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A-588-809]

Initiation of Antidumping Duty Investigation: Certain Small Business Telephone Systems and Subassemblies Thereof From Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating an antidumping duty investigation to determine whether imports of certain small business telephone systems and subassemblies thereof from Japan are being, or are likely to be, sold in the United States at less than fair value. We are notifying the U.S. International Trade Commission (ITC) of this action so that it may determine whether imports of this product materially injure, or threaten material injury to, a U.S. industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before February 13, 1989. If that determination is affirmative, we will make a preliminary determination on or before June 6, 1989.

EFFECTIVE DATE: January 24, 1989.

FOR FURTHER INFORMATION CONTACT: Louis Apple, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377–1769.

SUPPLEMENTARY INFORMATION:

The Petition

On December 28, 1988, we received a petition filed in proper form by American Telephone and Telegraph Company and Comdial Corporation on behalf of the domestic industry engaged in the production of certain small business telephone systems and subassemblies thereof. In compliance with the filing requirements of 19 CFR 353.36, petitioners allege that imports of certain small business telephone systems and subassemblies thereof from Japan are being, or are likely to be, sold in the United States to less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, a U.S. industry.

If any interested party as described under paragraphs (C), (D), (E), or (F) of

section 771(9) of the Act wishes to register support of or opposition to this petition, please file written notification with the Commerce official cited in the "For Further Information Contact" section of this notice.

United States Price and Foreign Market Value

United States price was based on U.S. list prices to supply houses or interconnects. Petitioners deducted discounts, U.S. import duties, ocean freight, and marine insurance. In an exporter's sales price (ESP) situation, a deduction was also made for indirect selling expenses.

Petitioners based foreign market value on Japanese retail prices. A distributor's margin was deducted to arrive at the first arm's length price. Adjustments were made, as appropriate, for differences in circumstances of sale. In an ESP situation, a deduction was also made for indirect selling expenses. In certain cases, foreign market value was also adjusted to reflect differences in physical characteristics in the merchandise being compared.

Based on a comparison of United States price and foreign market value, petitioners allege dumping margins ranging from 27.3 percent to 157.3 percent.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation and whether it contains information reasonably available to the petitioners supporting the allegations.

We examined the petition on certain small business telephone systems and subassemblies thereof from Japan and found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether imports of certain small business telephone systems and subassemblies thereof from Japan are being, or are likely to be, sold in the United States at less than fair value. If our investigation proceeds normally, we will make our preliminary determination by June 6, 1989.

Scope of Investigation

The products covered by this investigation are certain small business telephone systems and subassemblies thereof, currently classifiable under *Harmonized Tariff Schedule* item numbers 8517.30.2000, 8517.30.2500, 8517.30.3000, 8517.10.0020, 8517.10.0040, 8517.10.0050, 8517.10.0070, 8517.10.0080, 8517.90.1000, 8517.90.1500, 8517.90.3000, 8518.30.1000, 8504.40.0004, 8504.40.0008, 8504.40.0010, 8517.81.0010, 8517.81.0020, 8517.90.4000, and 8504.40.0015.

Certain small business telephone systems are telephone systems, whether complete or incomplete, assembled or unassembled, with intercom or internal calling capability and total non-blocking port capacities of between 2 and 256 ports, and discrete subassemblies thereof designed and dedicated for use in such systems. These subassemblies include:

(1) Telephone sets and consoles, consisting of dedicated, proprietary, corded telephone sets or consoles. A console has the ability to perform certain functions including: answer all lines in the system; monitor the status of other phone sets; and transfer calls. The term telephone sets and consoles is defined to include units having any two or more of the following items, when imported or shipped in the same container, with or without additional apparatus: housing; hand set; cord (line or hand set); power supply; and telephone set or console circuit cards.

(2) Control and switching equipment, whether denominated as a key service unit, control unit, or cabinet/switch. Control and switching equipment includes units consisting of one or more circuit cards/modules (including backplane circuit cards) and connectors to accept circuit cards/modules and/or building wiring, when imported or shipped in the same container, with or without additional apparatus.

(3) Circuit cards and modules, including power supplies. These may be incorporated into control and switching equipment or telephone sets and consoles, or they may be imported or shipped separately. A power supply converts or divides input power of not more than 2400 watts into output power of not more than 1800 watts supplying DC power of approximately 5 volts, 24 volts, and 48 volts, as well as 90 volt AC ringing capability.

The following merchandise has been excluded from this investigation: (1) Nonproprietary industry-standard ("tip/ring") telephone sets and other subassemblies that are not specifically designed and dedicated for use in a covered system, even though a system may be adapted to use such nonproprietary equipment to provide some system functions; (2) telephone answering machines or facsimile machines integrated with telephone sets; and (3) adjunct software.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will allow the ITC access to all privileged and business proprietary information in our files, provided it confirms in writing that it will not disclose such information either publicly or under Administrative protective order without the written consent of the Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by February 13, 1989, whether there is a reasonable indication that imports of certain small business telephone systems and subassemblies thereof from Japan materially injure, or threaten material injury to, a U.S. industry. If its determination is negative, the investigation will be terminated otherwise, it will proceed according to the statutory and regulatory procedures.

This notice is published pursuant to section 732(c)(2) of the Act.

Jan W. Mares,

Assistant Secretary for Import Administration.

[FR Doc. 89-1532 Filed 1-23-89; 8:45 am]

BILLING CODE 3510-DS-M

[A-580-803]

Initiation of Antidumping Duty Investigation: Certain Small Business Telephone Systems and Subassemblies Thereof From Korea

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating an antidumping duty investigation to determine whether imports of certain small business telephone systems and subassemblies thereof from Korea are being, or are likely to be, sold in the United States at less than fair value. We are notifying the U.S. International Trade Commission (ITC) of this action so that it may determine whether imports of this product materially injure, or threaten material injury to, a U.S. industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before February 13, 1989. If that

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determination is affirmative, we will make a preliminary determination on or before June 6, 1989.

EFFECTIVE DATE: January 24, 1989.

FOR FURTHER INFORMATION CONTACT: Louis Apple, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-1769.

SUPPLEMENTARY INFORMATION:

The Petition

On December 28, 1988, we received a petition filed in proper form by American Telephone and Telegraph Company and Comdial Corporation on behalf of the domestic industry engaged in the production of certain small business telephone systems and subassemblies thereof. In compliance with the filing requirements of 19 CFR 353.36, petitioners allege that imports of certain small business telephone systems and subassemblies thereof from Korea are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, a U.S. industry.

If any interested party as described under paragraphs (C), (D), (E), or (F) of section 771(9) of the Act wishes to register support of or opposition to this petition, please file written notification with the Commerce official cited in the "For Further Information Contact" section of this notice.

United States Price and Foreign Market Value

United States price was based on U.S. list prices to supply houses or interconnects. Petitioners deducted discounts, U.S. import duties, ocean freight and marine insurance. In an exporter's sales price (ESP) situation, a deduction was also made for indirect selling expenses.

Petitioners based foreign market value on Korean retail prices. A distributor's margin was deducted to arrive at the first arm's length price. Adjustments were made, as appropriate, for differences in circumstances of sale. In an ESP situation, a deduction was also made for indirect selling expenses. In certain cases, foreign market value was also adjusted to reflect differences in physical characteristics in the merchandise being compared.

Based on a comparison of United States price and foreign market value, petitioners allege dumping margins ranging from 5.8 percent to 93.0 percent.

Initiation of Investigation

Under section 732(c) of this Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation, and whether it contains information reasonably available to the petitioners supporting the allegations.

We examined the petition on certain small business telephone systems and subassemblies thereof from Korea and found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether imports of certain small business telephone systems and subassemblies thereof from Korea are being, or are likely to be, sold in the United States at less than fair value. If our investigation proceeds normally, we will make our preliminary determination by June 6, 1989.

Scope of Investigation

The products covered by this investigation are certain small business telephone systems and subassemblies thereof, currently classifiable under *Harmonized Tariff Schedule* item numbers 8517.30.2000, 8517.30.2500, 8517.30.3000, 8517.10.0020, 8517.10.0040, 8517.10.0050, 8517.10.0070, 8517.10.0080, 8517.90.1000, 8517.90.1500, 8517.90.3000, 8518.30.1000, 8504.40.0004, 8504.40.0008, 8504.40.0010, 8517.81.0010, 8517.81.0020, 8517.90.4000, and 8504.40.0015.

Certain small business telephone systems are telephone systems, whether complete or incomplete, assembled or unassembled, with intercom or internal calling capability and total non-blocking port capacities of between 2 and 256 ports, and discrete subassemblies thereof designed and dedicated for use in such systems. These subassemblies include:

(1) Telephone sets and consoles, consisting of dedicated, proprietary, corded telephone sets or consoles. A console has the ability to perform certain functions including: answer all lines in the system; monitor the status of other phone sets; and transfer calls. The term telephone sets and consoles is defined to include units having any two or more of the following items, when imported or shipped in the same container, with or without additional apparatus: housing; hand set; cord (line or hand set); power supply; and telephone set or console circuit cards.

(2) Control and switching equipment, whether denominated as a key service unit, control unit, or cabinet/switch. Control and switching equipment includes units consisting of one or more circuit cards/modules (including backplane circuit cards) and connectors to accept circuit cards/modules and/or building wiring, when imported or shipped in the same container, with or without additional apparatus.

(3) Circuit cards and modules, including power supplies. These may be incorporated into control and switching equipment or telephone sets and consoles, or they may be imported or shipped separately. A power supply converts or divides input power of not more than 2400 watts into output power of not more than 1800 watts supplying DC power of approximately 5 volts, 24 volts, and 48 volts, as well as 90 volt AC ringing capability.

The following merchandise has been excluded from this investigation: (1) Nonproprietary industry-standard ("tip/ring") telephone sets and other subassemblies that are not specifically designed and dedicated for use in a covered system, even though a system may be adapted to use such nonproprietary equipment to provide some system functions; (2) telephone answering machines or facsimile machines integrated with telephone sets, and (3) adjunct software.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will allow the ITC access to all privileged and business proprietary information in our files, provided it confirms in writing that it will not disclose such information either publicly or under administrative protective order without the written consent of the Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by February 13, 1989, whether there is a reasonable indication that imports of certain small business telephone systems and subassemblies thereof from Korea materially injure, or threaten material injury to, a U.S. industry. If its determination is negative, the investigation will be terminated; otherwise, it will proceed according to the statutory and regulatory procedures.

This notice is published pursuant to section 732(c)(2) of the Act.

January 17, 1989.

Jan W. Mares,

Assistant Secretary for Import Administration.

[FR Doc. 89-1533 Filed 1-23-89; 8:45 am]

BILLING CODE 3510-DS-M

[A-583-806]

Initiation of Antidumping Duty Investigation: Certain Small Business Telephone Systems and Subassemblies Thereof From Taiwan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating an antidumping duty investigation to determine whether imports of certain small business telephone systems and subassemblies thereof from Taiwan are being, or are likely to be, sold in the United States at less than fair value. We are notifying the U.S. International Trade Commission (ITC) of this action so that it may determine whether imports of this product materially injure, or threaten material injury to, a U.S. industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before February 13, 1989. If that determination is affirmative, we will make a preliminary determination on or before June 6, 1989.

EFFECTIVE DATE: January 24, 1989.

FOR FURTHER INFORMATION CONTACT: Louis Apple, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-1769.

SUPPLEMENTARY INFORMATION:

The Petition

On December 28, 1988, we received a petition filed in proper form by American Telephone and Telegraph Company and Comdial Corporation on behalf of the domestic industry engaged in the production of certain small business telephone systems and subassemblies thereof. In compliance with the filing requirements of 19 CFR 353.36, petitioners allege that imports of certain small business telephone systems and subassemblies thereof from Taiwan are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, a U.S. industry.

If any interested party as described under paragraphs (C), (D), (E), or (F) of section 771(9) of the Act wishes to register support of or opposition to this petition, please file written notification with the Commerce official cited in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

United States Price and Foreign Market Value

United States price was based on a U.S. list price to an end user. Petitioners then deducted a supply house and interconnect distributor's margin to arrive at the first arm's length price. Deductions were then made for U.S. import duties, ocean freight, and insurance.

Petitioners based foreign market value on manufacturers' list price to dealers. An end user discount and distributor's margin was deducted to arrive at the first arm's length price. Adjustments were made for differences in circumstances of sale to arrive at the foreign market value.

Based on a comparison of United States price and foreign market value, petitioners allege a dumping margin of 45.9 percent.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation, and whether it contains information reasonably available to the petitioners supporting the allegations.

We examined the petition on certain small business telephone systems and subassemblies thereof from Taiwan and found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether imports of certain small business telephone systems and subassemblies thereof from Taiwan are being, or are likely to be, sold in the United States at less than fair value. If our investigation proceeds normally, we will make our preliminary determination by June 6, 1989.

Scope of Investigation

The products covered by this investigation are certain small business telephone systems and subassemblies thereof, currently classifiable under *Harmonized Tariff Schedule* item numbers 8517.30.2000, 8517.30.2500, 8517.30.3000, 8517.10.0020, 8517.10.0040, 8517.10.0050, 8517.10.0070, 8517.10.0080, 8517.90.1000, 8517.90.1500, 8517.90.3000, 8518.30.1000, 8504.40.0004, 8504.40.0008, 8504.40.0010, 8517.81.0010, 8517.81.0020, 8517.90.4000, and 8504.40.0015.

Certain small business telephone systems are telephone systems, whether complete or incomplete, assembled or unassembled, with intercom or internal calling capability and total non-blocking port capacities of between 2 and 256 ports, and discrete subassemblies thereof designed and dedicated for use in such systems. These subassemblies include:

(1) Telephone sets and consoles, consisting of dedicated, proprietary, corded telephone sets or consoles. A console has the ability to perform certain functions including: answer all lines in the system; monitor the status of other phone sets; and transfer calls. The term telephone sets and consoles is defined to include units having any two or more of the following items, when imported or shipped in the same container, with or without additional apparatus: housing; hand set; cord (line or hand set); power supply; and telephone set or console circuit cards.

(2) Control and switching equipment, whether denominated as a key service unit, control unit, or cabinet/switch. Control and switching equipment includes units consisting of one or more circuit cards/modules (including backplane circuit cards) and connectors to accept circuit cards/modules and/or building wiring, when imported or shipped in the same container, with or without additional apparatus.

(3) Circuit cards and modules, including power supplies. These may be incorporated into control and switching equipment or telephone sets and consoles, or they may be imported or shipped separately. A power supply converts or divides input power of not more than 2400 watts into output power of not more than 1800 watts supplying DC power of approximately 5 volts, 24 volts, and 48 volts, as well as 90 volt AC ringing capability.

The following merchandise has been excluded from this investigation: (1) Nonproprietary industry-standard ("tip/ring") telephone sets and other subassemblies that are not specifically designed and dedicated for use in a covered system, even though a system may be adapted to use such nonproprietary equipment to provide some system functions; (2) telephone answering machines or facsimile machines integrated with telephone sets, and (3) adjunct software.

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Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will allow the ITC access to all privileged and business proprietary information in our files, provided it confirms in writing that it will not disclose such information either publicly or under administrative protective order without the written consent of the Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by February 13, 1989, whether there is a reasonable indication that imports of certain small business telephone systems and subassemblies thereof from Taiwan materially injure, or threaten material injury to, a U.S industry. If its determination is negative, the investigation will be terminated; otherwise, it will proceed according to the statutory and regulatory procedures.

This notice is published pursuant to section 732(c)(2) of the Act.

January 17, 1989.

Jan W. Mares,

Assistant Secretary for Import Administration.

[FR Doc. 89-1534 Filed 1-23-89; 8:45 am]

BILLING CODE 3510-DS-M

[A-475-601]

Certain Valves and Connections, of Brass, for Use in Fire Protection Systems From Italy; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to a request by the petitioner, the Department of Commerce has conducted an administrative review of the antidumping duty order on certain valves and connections, of brass, for use in fire protection systems from Italy. The review covers one manufacturer/exporter and one third-country reseller of this merchandise to the United States and the period March 1, 1986, through February 28, 1987. The review indicates the existence of dumping margins during the period.

As a result of the review, the Department has preliminarily determined to assess dumping duties equal to the calculated differences between United States price and foreign market value from the previous final results of administrative review as best information otherwise available.

We used the best information available for these firms because Rubinetterie A. Giacomini, the only manufacturer, provided an inadequate response to our request for information.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: January 24, 1989.

FOR FURTHER INFORMATION CONTACT: G. Leon McNeill or Maureen Flannery, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-3601/2923.

SUPPLEMENTARY INFORMATION:

Background

On March 1, 1985, the Department of Commerce ("the Department") published in the **Federal Register** (50 FR 8354) an antidumping duty order on certain brass fire protection equipment from Italy. The petitioner requested in accordance with § 353.53a(a) of the Commerce Regulations that we conduct an administrative review for the period March 1, 1986, through February 28, 1987. We published a notice of initiation of the antidumping duty administrative review on April 22, 1987 (52 FR 13268). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. On January 1, 1989, the United States fully converted to the Harmonized Tariff Schedule (HTS), as provided for in section 1201 et seq. of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after that date is now classified solely according to the appropriate HTS item number(s). HTS items are provided for convenience and Customs purposes. The written description remains dispositive.

Imports covered by the review are shipments of certain valves and connections, of brass, suitable for use in interior fire protection systems from Italy. This merchandise consists of single and double clapper siamese fire department connections and pressure restricting valves. During the review period, such merchandise was classifiable under items 680.1420 and 680.1440 of the Tariff Schedules of the United States Annotated. The merchandise is currently classifiable under HTS item numbers 8481.80.1050 and 8481.80.1070.

The review covers one manufacturer/exporter and one third-country reseller of this merchandise to the United States and the period March 1, 1986, through February 28, 1987.

The manufacturer, Rubinetterie A. Giacomini ("Giacomini"), provided an inadequate response to our request for information. Specifically, Giacomini failed to provide a narrative on certain variables listed in its submission relative to the Canadian and United States prices; failed to provide model match information for each model sold to the United States; failed to provide cost differences (material, direct labor and factory overhead) between models sold to the United States and the Canadian models; provided incomplete and inadequate constructed value information which did not include a description of its accounting system, direct labor, factory overhead, selling, general and administrative (SG&A) expenses, profit, export packing, a listing of all materials and the amounts of each, and the purchase price and quantity of each material used in the production of the merchandise; and provided no explanation as to why some shipment dates preceded sale dates in its sales data submission. Therefore, we used the best information otherwise available.

During the previous administrative review, the Department found no margins for Giacomini and an 85.54 percent margin for Giacomini's sales to the United States through Ganbrook Limited ("Ganbrook"). Since information on the record for this review indicates that Ganbrook acted as an agent of Giacomini, the best information available for these firms is 85.54 percent.

Preliminary Results of the Review

As a result of our review, we preliminarily determine that the following margins exist:

Manufacturer/ Exporter/Third-Country Reseller (Country)	Time period	Margin (percent)
Rubinetterie A. Giacomini S.p.A.	3/1/86-2/28/87	85.54
Giacomini/ Ganbrook Limited (Great Britain)	3/1/86-2/28/87	85.54

Interested parties may request disclosure and/or an administrative protective order within 5 days of the date of publication of this notice, and may request a hearing within 8 days of publication. Any hearing, if requested, will be held 35 days after the date of publication or the first workday thereafter. Prehearing briefs and written comments from interested parties may be submitted not later than 25 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to the issues raised in those comments, may be filed not later than 32 days after the date of publication. The Department will publish the final results of the administrative review, including the results of its analysis of any such comments or hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Further, as provided for by section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties based on the above margins shall continue to be required for these firms. For any future entries of this merchandise from a new exporter, not covered in this or the prior administrative review, whose first shipments of Italian brass fire protection equipment occurred after February 28, 1987, and who is unrelated to any reviewed firm or any previously reviewed firm, a cash deposit of 85.54 percent shall be required. These cash deposit requirements are effective for all shipments of Italian brass fire protection equipment entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.53a.

Jan W. Mares,

Assistant Secretary for Import Administration.

Date: January 12, 1989.

[FR Doc. 89-1535 Filed 1-23-89; 8:45 am]

BILLING CODE 3510-DS-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of a Negotiated Settlement on Import Limits and Guaranteed Access Levels for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Costa Rica

January 17, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit.

EFFECTIVE DATE: January 26, 1989 and February 1, 1989.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); President's February 20, 1986 announcement of a Special Access Program.

During negotiations held between the Governments of the United States and Costa Rica, agreement was reached, effected by a Memorandum of Understanding dated December 21, 1988, to establish a new bilateral textile agreement for cotton and man-made fiber textile products in Categories 342/642 beginning on June 1, 1988, and extending through May 31, 1991. The United States Government will control imports in Categories 342/642 at the agreed level for the first agreement period June 1, 1988 through May 31, 1989.

The agreement also establishes Guaranteed Access Levels for Categories 342/642 for the periods June 1, 1989 through May 31, 1990 and June 1, 1990 through May 31, 1991.

Beginning on February 1, 1989, for goods to be exported from Costa Rica to the United States during the period June 1, 1989 through May 31, 1990, U.S. Customs will start signing the first section of the form ITA-370P for shipments of U.S. formed and cut parts in Categories 342/642 that are destined for Costa Rica and subject to the Guaranteed Access Level established for Categories 342/642. These products, which are assembled in Costa Rica from parts cut in the United States from fabric formed in the United States, are governed by Harmonized Tariff item number 9802.00.8010. Interested parties should be aware that shipments of cut parts in Categories 342/642 must be accompanied by a form ITA-370P, signed by a U.S. Customs officer, prior to export from the United States for assembly in Costa Rica in order to qualify for entry under the Guaranteed Access Level.

A formal exchange of notes between the Governments of the United States and Costa Rica will follow.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 53 FR 44937, published on November 7, 1988). Also see 53 FR 47241, published on November 22, 1988.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

January 17, 1989

Commissioner of Customs,

Department of the Treasury, Washington, D.C. 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on November 17, 1988 by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports into the United States of cotton and man-made fiber textile products in Categories 342/642, produced or manufactured in Costa Rica and exported during the period which began on May 27, 1988 and extends through May 26, 1989.

Effective on January 26, 1989, you are directed to amend to 247,000 dozen the limit for Categories 342/642 for the new restraint period beginning on June 1, 1988 and extending through May 31, 1989.

Textile products in Categories 342/642 which have been exported to the United States during the period May 27, 1988 through May 31, 1988 shall not be subject to this directive and are being deducted from charges for goods imported during the period October 1-31, 1988 (342—2,637 dozen; 642—2,786 dozen). As a result, you are directed to deduct 2,061 dozen from charges already made to Category 342 and charge 1,673 to Category 642. This includes complete charges for the import period October 1-31, 1988.

Beginning on February 1, 1989, U.S. Customs is directed to start signing the first section of the form ITA-370P for shipments of U.S. formed and cut parts in Categories 342/642 that are destined for Costa Rica and re-export to the United States during the period June 1, 1989 through May 31, 1990.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs

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exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89-1506 Filed 1-23-89; 8:45 am]

BILLING CODE 3510-DR-M

Amendment of Export Visa and Certification Requirements Under the Special Access Program for Certain Woven Apparel Products From Haiti

January 17, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending export visa and certification requirements.

EFFECTIVE DATE: January 27, 1989.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); President's February 29, 1988 announcement of the Special Access Program.

The Governments of the United States and Haiti reached agreement to amend the existing visa and certification requirements to extend coverage to woven apparel products assembled in Haiti from fabric parts formed and cut in the United States which are subject to bleaching, acid-washing, stone-washing or permapressing after assembly.

A copy of the current bilateral agreement is available from the Textiles Division, Bureau of Economic and Business Affairs, U.S. Department of State, (202) 647-1956.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 53 FR 44937, published on November 7, 1988). Also see 52 FR 6053, published on February 27, 1987.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

January 17, 1989

Commissioner of Customs

Department of the Treasury

Washington, D.C. 20229

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on February 19, 1987 by the Chairman, Committee for the Implementation of Textile Agreements, establishing visa and certification requirements for certain cotton and man-made fiber textile products, produced, manufactured or assembled in Haiti.

Effective on January 27, 1989, you are directed to permit entry under the Special Access Program of woven apparel products assembled in Haiti from fabric parts formed and cut in the United States and then subjected to bleaching, acid-washing or permapressing in Haiti after assembly and exported to the United States on and after January 1, 1989.

These products shall be entered under the Special Access Program, even though they may not be classified under NTS number 9902.00.8010 of the Harmonized Tariff Schedules.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89-1504 Filed 1-23-89; 8:45 am]

BILLING CODE 3510-DR-M

Amendment of Export Visa and Certification Requirements Under the Special Access Program for Certain Woven Apparel Products From Jamaica

January 17, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending export visa and certification requirements.

EFFECTIVE DATE: January 27, 1989.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Governments of the United States and Jamaica reached agreement to amend the existing visa and certification requirements to extend coverage to woven apparel products assembled in Jamaica from fabric parts formed and cut in the United States which are subject to bleaching, acid-washing, stone-washing or permapressing after assembly.

A copy of the current bilateral agreement is available from the Textiles Division, Bureau of Economic and Business Affairs, U.S. State Department, (202) 647-1956.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 53 FR 44937, published on November 7, 1988). Also see 52 FR 6049, published on February 27, 1987.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

January 17, 1989

Commissioner of Customs

Department of the Treasury

Washington, D.C. 20229

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on February 19, 1987, as amended, by the Chairman, Committee for the Implementation of Textile Agreements, establishing visa and certification requirements for certain cotton, man-made fiber and other vegetable fiber textiles and textile products, produced, manufactured or assembled in Jamaica.

Effective on January 27, 1989, you are directed to permit entry under the Special Access Program of woven apparel products assembled in Jamaica from fabric parts formed and cut in the United States and then subjected to bleaching, acid-washing, stone-washing or permapressing in Jamaica after assembly and exported to the United States on and after January 1, 1989.

These products shall be entered under the Special Access Program, even though they may not be classified under HTS number 9902.00.8010 of the Harmonized Tariff Schedules.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89-1505 Filed 1-23-89; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP87-554-001]

Intent To Prepare an Environmental Assessment for the APEC Project and Request for Comments on Environmental Issues; Algonquin Gas Transmission Co. et al.

In the matter of: Algonquin Gas Transmission Company, Docket No. CP87-554-001; CNG Transmission Corporation, Docket No. CP87-5-002 *et al.*; Texas Eastern Transmission Corporation and CNG Transmission Corporation, Docket No. CP87-5-003 *et al.*; and Transcontinental Gas Pipe Line Corporation, Docket No. CP88-6-000.

January 19, 1989.

Summary

Notice is hereby given that the staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) on the facilities proposed in the above-referenced dockets for the *Associated PennEast Customer Group (APEC) Project.*

Texas Eastern Transmission Corporation (Texas Eastern), CNG Transmission Corporation (CNG), Transcontinental Gas Pipe Line Corporation (Transco), and Algonquin Gas Transmission Company (Algonquin) are seeking certificates of public convenience and necessity under section 7(c) of the Natural Gas Act to construct and operate a total of 217.37 miles of replacement pipeline, 100.56 miles of pipeline loop, 4.98 miles of new pipeline, 27,990 horsepower (HP) of compression at 5 new compressor stations, an additional 40,600 HP at 4 existing compressor stations, 10 new injection/ withdrawal wells and 3 existing wells to be reworked at 2 existing storage fields. The proposed facilities would be used to transport natural gas through the Texas Eastern and CNG pipeline systems and interconnections with Transco and Algonquin to provide service to customers in Pennsylvania, New Jersey, New York, Massachusetts, Rhode Island, Connecticut, Maryland, and the District of Columbia.

By this notice the FERC staff is requesting comments on the scope of the analysis that should be conducted for the EA. All comments will be reviewed prior to publication of the EA and significant issues will be addressed. Comments should focus on potential environmental effects, alternatives to the proposal (including alternative routes), and measures to mitigate impact. Written comments must be submitted by February 21, 1989 in accordance with the instructions identified at the end of this notice.

Proposed Action

In the Commission's *Order Finding Additional Discrete Projects*, issued September 16, 1988, the pending applications encompassed by the APEC settlement proposal were determined to be discrete, and therefore can be processed independently from the consolidated Northeast open-season proceedings. In severing certain projects or portions of projects for this settlement, the Commission consolidated the pending applications into four new projects for processing as separate and discrete projects. Further, the Commission required the projects' sponsors to modify the consolidated applications to reflect all changes in facilities and services.

On October 3, 1988, Texas Eastern and CNG filed a joint application with the FERC in Docket No. CP87-5-003, *et al.* to: remove 215.01 miles of 20- and 24-inch-diameter pipeline and replace it with 36-inch-diameter pipeline along its mainline pipeline system in southern Pennsylvania; place 344.73 miles of 20- and 24-inch-diameter pipeline in idle service; construct 62.23 miles of 8- to 42-inch-diameter pipeline loops; construct 4.0 miles of new 36-inch-diameter pipeline; add 28,000 HP of compression to 3 existing compressor stations; and construct a new 4,000 HP compressor station. All of the above-identified facilities will be owned and operated by Texas Eastern except for 107.43 miles of the replacement pipeline which will be in joint ownership with CNG. The estimated cost of facilities for both Texas Eastern and CNG is $455,699,000. This project represents a major component of facilities formerly proposed by Texas Eastern and PennEast Gas Services Company in Docket No. CP87-92-000. On February 25, 1987, the Commission issued a "Notice of Intent to Prepare an Environmental Assessment for the Capacity Restoration and Expansion Program and Request for Comments on Environmental Issues," for facilities proposed in Docket Nos. CP87-92-000 and 001.

On October 3, 1988, CNG filed in Docket No. CP87-5-002 *et al.* to construct 7.6 miles of 30-inch-diameter pipeline loop, and 3 new compressor stations totaling 22,880 HP. CNG also proposed Phase I storage facilities previously filed in Docket No. CP87-314-000 to construct 10 new injection/ withdrawal wells in the Greenlick Storage Pool, to rework 3 existing wells at the Sharon Storage Pool, to construct 0.98 mile of new connecting pipeline, to replace 2.36 miles of connecting pipeline, and to construct a new 1,100 HP compressor station. Phase II and III storage services and facilities will be analyzed in a later EA. The estimated cost of facilities by CNG is $37,271,130.

On October 3, 1988, Algonquin filed in Docket No. CP87-554-001 to construct 4.3 miles of 12- to 20-inch-diameter pipeline loop in 4 segments. The proposed facilities for Algonquin are estimated to cost $8,031,000. The facilities are identical to those proposed in Docket No. CP87-554-000.

On October 3, 1988, Transco filed in Docket No. CP90-6-000 to construct 26.43 miles of 20- to 36-inch-diameter pipeline loop, and to install 12,600 HP of compression at an existing compressor station. The proposed facilities are estimated to cost $44.9 million. A portion of these facilities had been proposed in Docket No. CP88-177-000.

The purpose of the APEC expansion proposal is to provide long-term service that would commence in the 1989-90 winter season and meet the peak day and winter season requirements of the APEC customers. Under the APEC project, Texas Eastern would restore the capacity of its deteriorating Lines Nos. 1 and 2 to its certification capacity of 554,282 dekatherms per day (Dtd) under its Capacity Restoration Program. The application by Texas Eastern and CNG would provide CNG with capacity rights totaling 225,000 Dtd in the joint ownership of a segment of Texas Eastern's pipeline. This capacity would be utilized by CNG to provide 45,000 Dtd for seasonal sales to APEC customers, 100,000 Dtd for firm storage service of natural gas owned by the APEC and other customers, and a second phase sales of 80,000 Dtd to Washington Gas Light and Baltimore Gas and Electric. CNG would additionally provide seasonal sales of 170,000 Dtd of natural gas, transported by Transco to APEC customers. Transco would then render firm, long-term winter season transportation service of natural gas of up to 170,000 Dtd for 6 distribution customers.

Proposed Facilities

The general locations of the proposed pipeline and compression facilities are identified in figures 1 and 2.[1] Table 1

[1] Figures 1 and 2 are not being printed in the Federal Register, but copies are available from the Commission's Public Reference Branch at (202) 357-8118.

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identifies the proposed pipeline loop segments, replacement pipeline, and new pipeline. The major construction features of the APEC project are the removal and replacement of pipeline segments on Texas Eastern's uncoated Lines Nos. 1 and 2 in southern Pennsylvania. Texas Eastern and CNG propose to abandon and remove 100.03 miles of Texas Eastern's 20-inch-diameter pipeline and 46.98 miles of its 24-inch-diameter pipeline, and to install 215.01 miles of 30-inch-diameter pipeline in the same pipeline trench. The deterioration of the unprotected Texas Eastern pipeline and encroachment of population has required a reduction in operational pipe pressures resulting in the loss of 157,745 Dtd certified throughput capacity in its system. No new permanent right-of-way would be required, although a 75-foot-wide temporary working right-of-way would be disturbed during construction. Some of this temporary right-of-way would extend beyond the edge of the previously disturbed right-of-way.

In addition, Texas Eastern, Algonquin and Transco propose to construct 17 pipeline loop segments from 8- to 42-inch diameter, totaling 100.50 miles. The pipeline loop segments would require a 75- to 100-foot-wide disturbed construction right-of-way with a 25- to 39-foot-wide permanent operational right-of-way. Texas Eastern proposes to construct one new 4.0-mile pipeline segment and CNG proposes to construct 10 new segments of gathering lines totaling 0.98 mile. New pipeline segments would require a 75- to 100-foot-wide disturbed construction right-of-way with 50 feet remaining as a permanent operational right-of-way.

Table 2 identifies the locations of the proposed new compressor station sites and the additions to existing compressor stations. Texas Eastern and CNG propose to construct 5 new compressor stations adjacent to their existing pipeline systems on 20- to 70-acre sites. Texas Eastern proposes to construct a 4,000 HP compressor station on approximately 20 acres adjacent to its pipeline and State Highway 166 near Waynesburg, in Greene County, Pennsylvania. CNG would construct three new compressor stations in Pennsylvania and one in West Virginia. In Pennsylvania, the Ardell Compressor Station would be located on a 37.5-acre site in the Moshannon State Forest, adjacent to Lincoln Highway, 6 miles east of the town of Medix Run, in Elk County; the Crayne Compressor Station would be located on a 22-acre site north of State Route 166 near the town of Waynesburg, in Green County; and the Stateline Compressor Station would be located near CNG's existing Sharon Storage Pool in Potter County. In West Virginia, the L.L. Tonkin Compressor Station would be located on a 70-acre site west of Middle Island Creek and State Road 18, near the town of West Union, in Doddridge County. Texas Eastern and Transco would expand capacity at four existing compressor stations with no additional land requirements. CNG would drill and connect 10 new storage injection/withdrawal wells at their existing Greenlick Storage Pool located in Clinton County, Pennsylvania and rework three existing storage wells at their existing Sharon Storage Pool located in Potter County, Pennsylvania. Both of the areas are dedicated to underground natural gas storage.

TABLE 1.—APEC PROJECT PIPELINE FACILITIES

Segment	Diameter	Miles	Right-of-way (feet)		County and State
			Construction	New permanent	
Texas Eastern/CNG:					
Crooksville	36" Loop	27.50	75	25	Perry, Muskingum, OH
Sarahsville to Berne	36" New/loop	4.00	75	25/50	Noble, Monroe, OH
Sarahsville	20" Loop	5.61	75	25	Monroe, OH
Berne	36" Loop	9.68	75	25	Marshall, WV Greene, PA
Wind Ridge	8" Loop	1.41	75	25	Greene, PA
Holbrook	36" Loop	12.53	75	25	Fayette, PA
Connellsville	36" Replacement	58.17	75	0	Fayette, Somerset, Bedford, PA
Bedford	36" Replacement	49.28	75	0	Bedford, Fulton, Franklin, PA
Chambersburg	36" Replacement	60.60	75	0	Franklin, Adams, York, Lancaster, PA
Marietta	36" Replacement	46.98	75	0	Lancaster, Chester, PA
Lambertville	42" Loop	5.50	75	25	Somerset, NJ
CNG:					
TL-474	30" Loop	7.60	50–100	30	Westmoreland, PA
Sharon Pool	4"–14" Replacement	2.36	75	35	Potter, PA
Greenlick Pool	6" New	0.98	75	35	Clinton, Potter, PA
Algonquin:					
G-4 Loop	16" Loop	1.30	75	20	Newport, RI
G-5 Loop	16" Loop	0.60	75	20	Bristol, MA
G-6 Loop	20" Loop	1.20	75	35	Plymouth, MA
1-4 Loop	12" Loop	1.20	75	20	Norfolk, MA
Transco:					
Leidy Line	30" Loop	5.15	75	25	Clinton, PA
Leidy Line	36" Loop	12.48	75	25	Monroe, PA
Caldwell Lateral	36" Loop	4.13	75	25	Morris, Essex, NJ
Caldwell Lateral	36" Loop	0.88	75	25	Morris, Essex, NJ

TABLE 2.—APEC PROJECT COMPRESSOR STATIONS AND OTHER FACILITIES

Location	New HP	Added HP	Size (acres)	County and State
Texas Eastern/CNG:				
Sarahsville		11,000		Noble, OH
Berne		8,000		Monroe, OH
Holbrook		11,000		Greene, PA

TABLE 2.—APEC PROJECT COMPRESSOR STATIONS AND OTHER FACILITIES—Continued

Location	New HP	Added HP	Size (acres)	County and State
Waynesburg	4,000		20	Greene, PA
CNG:				
L. L. Tonkin	4,380		70 [1]	Doddridge, WV
Crayne	5,900		22	Greene, PA
Ardell	12,600		37.5	Elk, PA
State Line	1,100		25	Potter, PA
Sharon Pool		([2])		Potter, PA
Greenlick Pool	([3])			Clinton, PA
Transco:				
Salladasburg		12,600		Lycoming, PA

[1] Site of a former compressor station.
[2] 10 new wells.
[3] Rework 3 wells.

Construction Timing and Techniques

The applicants propose to begin construction of facilities in the spring of 1989 and continue through November 1989. Texas Eastern would construct its compression and pipeline facilities west of the Connellsville Compressor Station in 1990. Pipeline construction would begin with the clearing and grading of a right-of-way approximately 75 to 100 feet wide to prepare a relatively level strip to accommodate construction equipment. Rotary-wheel ditching machines, backhoes, or rippers, would then excavate a trench deep enough to provide the minimum depth of cover, normally 36 inches, required by the U.S. Department of Transportation. Blasting would be required when areas of consolidated rock are encountered. Texas Eastern, CNG, and Algonquin would remove and conserve topsoil in all cropland areas in Ohio, West Virginia, Pennsylvania, Massachusetts, Rhode Island, and all areas in New Jersey. However, Transco proposes to segregate topsoil only in farmland actually under cultivation when required by landowners, if feasible and appropriate.

After trenching, pipe segments would be strung along the right-of-way, bent to conform to the contours of the trench, welded together, coated, and lowered into the trench. Backfilling of the trench would use previously excavated materials. Topsoil that was conserved would be replaced at its original horizon. The right-of-way would be restored to its original contours as much as practicable, and reseeded, limed, fertilized, and mulched in accordance with erosion and sedimentation control plans filed with appropriate state agencies and reviewed by the staff.

Comment Procedures

Based on a review of the comments to the February 25, 1987 notice, preliminary analyses of the applications for new facilities, and the environmental information provided by the applicants, the staff has identified several issues which will be specifically addressed in the EA. Comments are solicited on the following issues:

(1) Alternatives, route deviations, or special construction techniques in areas where residential development has encroached on the right-of-way of the existing pipeline segments proposed for replacement or looping;

(2) Alternatives to proposed compressors where new compressor station sites may create visual, noise or land use impacts;

(3) Mitigation, route deviations, and/or compensation in areas where the proposed replacement segments or other construction activities cross orchards; and

(4) Restoration of agricultural lands crossed by the proposed project.

Comments are also solicited on any additional topics of environmental concern to residents and others in the project area.

A copy of this notice and request for comments on environmental issues has been sent to Federal, state and local environmental agencies, parties in this proceeding, and the public. All counties in the project area, and all local jurisdictions which have experienced residential development adjacent to the pipelines or compressor stations, have been provided copies of detailed maps which identify the location of the proposed project in their respective areas. Comments on the scope of the EA should be filed as soon as possible but no later than February 21, 1989. All written comments must reference Docket No. CP87-5-001 and be addressed to the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. A copy of the comments should also be sent to Mr. Chris Zerby, Project Manager, Federal Energy Regulatory Commission, Room 7312, 825 North Capitol Street, NE., Washington, DC 20426. Comments recommending that the FERC staff address specific environmental issues should be supported with a detailed explanation of the need to consider such issues.

The EA will be based on the staff's independent analysis of the proposal and, together with the comments received, will comprise part of the record to be considered by the Commission in this proceeding. The EA will be sent to all parties in this proceeding, to those providing comments in response to this notice, to Federal and state agencies, and to interested members of the public. The EA may be offered as evidentiary material if an evidentiary hearing is held in this proceeding. In the event that an evidentiary hearing is held, anyone not previously a party to this proceeding and wishing to present evidence on environmental or other matters must first file with the Commission a motion to intervene, pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214).

Additional information about the proposal, including detailed route maps for specific locations, is available from Mr. Chris Zerby, telephone (202) 357-9111.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 89-1556 Filed 1-23-89; 8:45 am]
BILLING CODE 6717-01-M

[Project No. 7534-002]

Edwards Energy System, Inc.; Surrender of Preliminary Permit

January 18, 1989.

Take notice that Edwards Energy System, Inc., permittee for the proposed

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Inglis Dam Hydro Project No. 7534, has requested that its preliminary permit be terminated. The permit was issued on July 31, 1986, and would have expired June 30, 1989. The project would have been located on the Withlacoochee River in Levy County, Florida. The permittee cites that the proposed project is not economically feasible as the basis for the surrender request.

The permittee filed the request on January 3, 1989, and the preliminary permit for Project No. 7534 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 89-1557 Filed 1-23-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP89-603-000]

CNG Transmission Corp.; Request Under Blanket Authorization

January 13, 1989.

Take notice that on January 12, 1989, CNG Transmission Corporation (CNG), 445 West Main Street, Clarksburg, West Virginia, 26302-2450, filed in Docket No. CP89-603-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) and the Natural Gas Policy Act (18 CFR 284.223) for authorization to transport natural gas for various shippers under CNG's blanket certificate issued in Docket No. CP86-311-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

CNG proposes to transport gas for shippers on an interruptible basis from various receipt points on its system to various interconnections between CNG and certain local distribution companies and pipelines. CNG lists for each shipper the receipt and delivery points, the maximum daily, average daily, and annual volumes, as well as the docket number related to the 120-day transportation services initiated by CNG (see attachment appendix).

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

Docket No.	Shipper customer	Commence date	Max. daily dt; Avg. daily dt; Est. annual dt	Receipt point	Delivery point or LDC
ST89-1682	Pantex Petroleum Inc.	11-2-88	2,000 466 178,120	B	Transco.
ST89-1684	North Atlantic Utilities, Inc.	11-1-88	20,000 615 224,475	A	NFG.
ST89-1680	Appalachian Gas Sales, Inc.	11-1-88	1,000 220 80,300	B	PNG.
ST89-1685	Chemtech Industries	11-1-88	3,000 300 109,500	C	NIMO.
ST89-1686	Phoenix Diversified Ventures, Inc.	11-9-88	5,000 1,364 497,860	B	NIMO.

LDC or Delivery Points
PNG—Peoples Natural Gas Company.
NIMO—Niagara Mohawk Power Corp.
NFG—National Fuel Gas Supply Corp.
Transco—Transcontinental Gas Pipeline Corporation.
Receipt Points
A—Various interconnects between Tennessee Gas Pipeline Company and CNG.
B—Various receipt points in WV/PA/NY.
C—Various interconnects between Texas Gas Transmission Corporation and CNG.

[FR Doc. 89-1548 Filed 1-23-89; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2436, Michigan]

Consumers Power Co.; Intent To File an Application for a New License

January 18, 1989.

Take notice that on December 16, 1988, Consumers Power Company, the existing licensee for the Foote Plant Hydroelectric Project No. 2436, filed a notice of intent to file an application for a new license, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 808, as amended by section 4 of the Electric Consumers Protection Act of 1986, Pub. L. 99-495. The original license for Project No. 2436 was issued effective April 1, 1962, and expires December 31, 1993.

The project is located on the Au Sable River in Iosco County, Michigan. The principal works of the Foote Plant Porject include an earthfill dam, 40 feet high and 4000 feet long, with a 214-foot-long concrete spillway; a reservoir of 1,570 acres at water surface elevation 639.17 feet m.s.l.; a powerhouse at the dam with an installed capacity of 9,000 kW; a 46-kV transmission line connection; and appurtenant facilities.

Pursuant to section 15(b)(2) of the Act, the licensee is required to make available certain information described in Docket No. RM87-7-000, Order No. 496 (Final Rule issued April 28, 1988). A copy of this Docket can be obtained from the Commission's Public Reference Branch, Room 1000, 825 North Capitol Street, NE., Washington, DC 20426. The above information as described in the rule is now available from the licensee at 1945 West Parnall Road, Jackson, MI 49201, Attn: Mr. R.J. Ford, telephone (517) 788-0150.

Pursuant to section 15(c)(1) of the Act, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 31, 1991.

Linwood A. Watson Jr.,

Acting Secretary.

[FR Doc. 89-1549 Filed 1-23-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. G-16679-000]

Jupiter Corp. and Tennessee Gas Pipeline Co.; Proposed Settlement

January 18, 1989.

On January 9, 1989, Jupiter Industries, Inc., successor to Jupiter Corporation (Jupiter) filed a proposed settlement agreement (settlement) between Jupiter and Tennessee Gas Pipeline Company (Tennessee). The proposed settlement stems from a 1966 order by the Federal Power Commission [1] that required Jupiter to deposit in an escrow account a certain percentage of the Louisiana Severance Tax it had collected from Tennessee between 1958 and 1965, together with interest at 7 percent from the date of collection, and other monies refunded to Jupiter. The order directed that the amounts deposited in the escrow account "together with accumulated interest" be retained subject to further order in Docket No. G-16679 which would direct disposition of the funds. 35 FPC at 1095.

The escrow account has continued since 1966 and Jupiter and Tennessee desire to conclude this matter and terminate the escrow account. The proposed settlement provides that Jupiter will receive the funds in the escrow account and pay Tennessee the sum of one million nine hundred one thousand three hundred and ninety-eight dollares ($1,901,398.000). Tennessee agrees to waive any claim it might have to retain any of the escrow money it receives and to pass on such refunds to its customers by crediting such amounts to its Unrecovered Purchased Gas Cost Account. The settlement is subject to a final non-appealable Commission order (1) specifying the amount to be paid by Jupiter to Tennessee in satisfaction of Jupiter's escrow obligation; (2) limiting Tennessee's refund liability to its customers to the amounts specified to be paid by Jupiter to Tennessee and (3) approving the flow through to Tennessee's customers of the amounts received by Tennessee by crediting Tennessee's Unrecovered Purchased Gas Cost Account.

Any person desiring to be heard or to make any protest concerning the settlement should file a protest or petition to intervene in accordance with the requirements of Rules 211 or 214 of the Commission's rules of practice and procedure (18 CFR 385.211 or 385.214). All such filings should be made not later than 15 days following publication of this notice in the Federal Register and should be addressed to Federal Energy Regulatory Commission, 825 North Capitol St. NE., Washington, DC 20426. Protests will be considered by the Commission in determining the action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene in accordance with Rule 214.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 89-1555 Filed 1-23-89; 8:45 am]

BILLING CODE 6717-01-M

[1] *See* The Jupiter Corp. and Tennessee Gas Pipeline Co., 35 FPC 1091 (1966).

[Project No. 2506, Michigan]

Mead Corp.; Intent To File an Application for a New License

January 18, 1989.

Take notice that on December 20, 1988, Mead Corporation, Publishing Paper Division, the existing licensee for the Escanaba Hydroelectric Project No. 2506, filed a notice of intent to file an application for a new license, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 808, as amended by section 4 of the Electric Consumers Protection Act of 1986, Pub. L. 99-495. The original license for Project No. 2506 was issued effective April 1, 1962, and expires December 31, 1993.

The project is located on the Escanaba River in Delta and Marquette Counties, Michigan. The principal works of the Escanaba Project include Boney Falls Dam (Dam No. 4), a reservoir of 170 acres, and a powerplant; Dam No. 3, a reservoir of 146 acres, and a powerplant; Dam No. 2 and a reservoir of 45 acres; and Dam No. 1, a reservoir of 125 acres, and a powerplant. The total installed capacity of the three powerplants is 9,200 kW, and each has transmission line connections and appurtenances.

Pursuant to section 15(b)(2) of the Act, the licensee is required to make available certain information described in Docket No. RM87-7-000, Order No. 496 (Final Rule issued April 28, 1988). A copy of this docket can be obtained from the Commission's Public Reference Branch, Room 1000, 825 North Capitol Street, NE, Washington, DC 20426. The above information as described in the rule is now available from the licensee at County Road 426, Escanaba, MI 49829.

Pursuant to section 15(c)(1) of the Act, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 31, 1991.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 89-1550 Filed 1-23-89; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2334, Massachusetts]

Western Massachusetts Electric Co., Intent To File an Application for a New License

January 18, 1989.

Take notice that on December 20, 1988, Western Massachusetts Electric Company, the existing licensee for the Gardners Falls Hydroelectric Project No. 2334, filed a notice of intent to file an application for a new license, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 808, as amended by section 4 of the Electric Consumers Protection Act of 1986, Pub. L. 99-495. The original license for Project No. 2334 was issued effective March 1, 1962, and will expire December 31, 1993.

The project is located on the Deerfield River in Franklin County, Massachusetts. The principal works of the Gardners Falls Project include a concrete gravity dam constructed to elevation 332.79 feet NGVD; a 1,300-foot-long power canal to the penstock headgates; a powerhouse with an installed capacity of 3,580 kW; a transmission line connection; and appurtenant facilities.

Pursuant to section 15(b)(2) of the Act, the license is required to make available certain information described in Docket No. RM87-7-000, Order No. 496 (Final Rule issued April 28, 1988). A copy of this Docket can be obtained from the Commission's Public Reference Branch, Room 1000, 825 North Capitol Street,

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NE., Washington, DC 20426. The above information as described in the rule will be available from the licensee after January 31, 1989, at WMECO Hadley Service Center, 55 Russell Street, Hadley, MA 01035.

Pursuant to section 15(c)(1) of the Act, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 31, 1991.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 89-1551 Filed 1-23-89; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2486, Wisconsin]

Wisconsin Electric Power Co.; Intent To File an Application for a New License

January 18, 1989.

Take notice that on December 19, 1988, Wisconsin Electric Power Company, the existing licensee for the Pine Hydroelectric Project No. 2486, filed a notice of intent to file an application for a new license, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 808, as amended by section 4 of the Electric Consumers Protection Act of 1986, Pub. L. 99-495. The original license for Project No. 2486 was issued effective April 1, 1962, and expires December 31, 1993.

The project is located on the Pine River in Florence County, Wisconsin. The principal works of the Pine Project include a 146-foot-long concrete gravity dam, a 124-foot-long concrete spillway, and a 358-foot-long earth dike; a reservoir of 170 acres; a 1,830-foot-long channel to two steal penstocks; a powerhouse with an installed capacity of 3,600 kW; a transmission line connection; and appurtenant facilities.

Pursuant to section 15(b)(2) of the Act, the licensee is required to make available certain information described in Docket No. RM87-7-000, Order No. 496 (Final Rule issued April 28, 1988). A copy of this Docket can be obtained from the Commission's Public Reference Branch, Room 1000, 825 North Capitol Street, NE., Washington, DC 20426 The above information as described in the rule is now available from the licensee at Real Estate Department, Public Service Building Room 452, 231 West Michigan Street, Milwaukee, WI 53201.

Pursuant to section 15(c)(1) of the Act, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 31, 1991.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 89-1552 Filed 1-23-89; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2373, Illinois]

Wisconsin Power & Light Co.; Intent To File an Application for a New License

January 18, 1989.

Take notice that on December 27, 1988, Wisconsin Power & Light Company, the existing licensee for the Rockton Hydroelectric Project No. 2373, filed a notice of intent to file an application for a new license pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 808, as amended by section 4 of the Electric Consumers Protection Act of 1986, Pub. L. 99-495. The original license for Project No. 2373 was issued effective April 1, 1962, and expires December 31, 1993.

The project is located on the Rock River in Winnebago County, Illinois. The principal works of the Rockton Project include a rock-filled, concrete-capped diversion dam; a control structure with five Taintor gates at the head of a power canal; a powerhouse with an installed capacity of 1,100 kW; a transmission line connection; and appurtenant facilities.

Pursuant to section 15(b)(2) of the Act, the licensee is required to make available certain information described in Docket No. RM87-7-000, Order No. 496 (Final Rule issued April 28, 1988). A copy of this Docket can be obtained from the Commission's Public Reference Branch, Room 1000, 825 North Capitol Street, NE., Washington, DC 20426. The above information as described in the rule is now available from the licensee at the Valley Bank Building, 6th floor, 222 West Washington Avenue, Madison, WI 53701.

Pursuant to section 15(c)(1) of the Act, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 31, 1991.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 89-1553 Filed 1-23-89; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2546, Wisconsin]

Wisconsin Public Service Corp.; Intent To File an Application for a New License

January 18, 1989.

Take notice that on December 15, 1988, Wisconsin Public Service Corporation, the existing licensee for the Sandstone Rapids Hydroelectric Project No. 2546, filed a notice of intent to file an applicaiton for a new license, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 808, as amended by section 4 of the Electric Consumers Protection Act of 1986, Pub. L. 99-495. The original license for Project No. 2546 was issued effective May 1, 1965, and expires December 31, 1993.

The project is located on the Peshtigo River in Marinette County, Wisconsin. The principal works of the Sandstone Rapids Project include a 46-foot-high, 349-foot-long concrete dam and spillway section and a 28-foot-high, 420-foot-long earthfill section; a reservoir of 150 acres at water surface elevation 724.1 feet NGVD datum; a powerhouse with an installed capacity of 3,840 kW; a transmission line connection; and appurtenant facilities.

Pursuant to section 15(b)(2) of the Act, the licensee is required to make available certain information described in Docket No. RM87-7-000, Order No. 496 (Final rule issued April 28, 1988). A copy of this Docket can be obtained from the Commission's Public Reference Branch, Room 1000, 825 North Capitol Street, NE., Washington, DC 20426. The above information as described in the rule is now available from the licensee at 700 North Adams Street, Green Bay, WI 54307-8002.

Pursuant to section 15(c)(1) of the Act, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 31, 1991.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 89-1554 Filed 1-23-89; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3508-1]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Requests (ICRs) abstracted below have been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICRs describe the nature of the information collection and their expected cost and burden; where appropriate, they include the actual data collection instrument.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202 382-2740).

SUPPLEMENTARY INFORMATION:

Office of Solid Waste and Emergency Response

Title: Notification of Hazardous Waste Activity (EPA ICR #0261; OMB #2050-0028). This is a renewal of a currently approved collection.

Abstract: The notification form contains owner and operator information for facilities that handle hazardous wastes. An owner or operator must submit this form to EPA prior to handling hazardous wastes or prior to handling new hazardous waste streams. EPA uses this information to maintain an inventory of all hazardous waste activities throughout the nation.

Burden Statement: The estimated average public reporting burden for this collection of information is 3 hours per respondent per year. This estimate includes all aspects of the information collection including time for reviewing instructions, gathering the data needed, and submitting the notification form.

Respondents: Owners and operators of facilities that handle hazardous wastes.

Estimated No. of Respondents: 850.

Estimated Total Annual Burden on Respondents: 2550.

Frequency of Collection: One time.

Title: RCRA Hazardous Waste Permit Application Part A (ICR #0262; OMB #2050-0034). This is a renewal of a currently approved collection.

Abstract: The RCRA permit application is used by owners and operators of hazardous waste treatment, storage, and disposal facilities in applying for permits as required by RCRA Section 3005. The permit application is also used to define the processes and the wastes that can be managed at the facility in interim status. The application must be revised if certain changes are made to an interim status facility.

Burden Statement: The estimated average public reporting burden for this collection of information is 7.5 hours per respondent. This estimate includes all aspects of the information collection including time for reviewing instructions, gathering and maintaining the data needed, and submitting the forms.

Respondents: Owners and operators of facilities that handle hazardous waste.

Estimated No. of Respondents: 765.

Estimated Total Annual Burden on Respondents: 5745.

Frequency of Collection: On occasion.

Title: Accidental Release Information Program (EPA ICR #1331; OMB #2050-0028). This is a renewal of a currently approved collection.

Abstract: The Accidental Release Information Program (ARIP) applies trigger criteria (death/injury, large releases, and frequent releases of chemicals above the RQ) to select certain hazardous substance releases reported to the National Response Center. Facilities responsible for the selected releases are required to complete and return a questionnaire which asks for more detailed information on the causes, consequences and prevention practices in place at the time of the releases.

Burden Statement: The estimated public reporting burden for this collection of information is 27 hours per respondent. This estimate includes time to read the instructions, gather existing information, and prepare and submit the final questionnaire.

Respondents: Owners/operators of facilities with accidental releases.

Estimated No. of Respondents: 1425.

Estimated Total Annual Burden on Respondents: 38,475 hours.

Frequency of Collection: On occasion.

Public comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, must be received by January 25, 1989.

Office of Administration and Resource Management

Title: Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs (ICR #1245; OMB #2030-0021). This is a reinstatement of a previously approved collection.

Abstract: State and local governments receiving EPA assistance will collect information concerning needs for replacement housing and replacement business locations from persons whose real property is being acquired or who are being relocated. Information will be collected as acquisition and relocation progresses, to ensure compliance with Pub. L. 91-646.

Burden Statement: The estimated average public reporting and recordkeeping burden for this collection of information is between 1 and 2 hours per respondent, per year. This estimate includes all aspects of the information collection, including time for reviewing instructions, gathering and maintaining the data needed, carrying out and analyzing tests, and submitting applications.

Respondents: Persons whose real property is acquired and/or relocated from dwellings, businesses, or farms as a result of an EPA award of financial assistance to a State or local government.

Estimate No. of Respondents: 200.

Estimated Total Annual Burden on Respondents: 300.

Frequency of Collection: 1 response per year.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM-223), 401 M Street, SW., Washington, DC 20460.

and

Marcus Peacock, Office of Management and Budget, Office of Information and Regulatory Affairs, 726 Jackson Place, NW., Washington, DC 20503, (Telephone (202) 395-3084).

OMB Responses to Agency PRA Clearance Requests

EPA ICR #1135; New Sources Performance Standards for the Magnetic Tape Manufacturing Industry; was approved 9/23/88; OMB #2060-0170; expires 9/30/91.

EPA ICR #1051; NSPS—Portland Cement Plant Monitoring Provisions; was approved 12/9/88; OMB #2060-0025; expires 12/31/91.

EPA ICR #0597; Amendment to Existing ICR 2070-0024 for Tolerance Petitions and New Inert Ingredients; was approved 12/12/88; OMB #2070-0024; expires 5/31/89.

EPA ICR #0193; NESHAP for Beryllium (Subpart C)—Information Requirements; was approved 12/16/88; expires 12/31/91; OMB #2060-0092.

EPA ICR #1058; NSPS Municipal Incinerator Reporting and Recordkeeping Provisions; was approved 12/16/88; expires 12/31/91; OMB #2060-0040.

EPA ICR #0801.06; Uniform Hazardous Waste Manifest; was approved 12/16/88; expires 6/30/89; OMB #2050-0039.

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Dated: January 12, 1989.

David Schwarz,

Acting Director, Information and Regulatory Systems Division.

[FR Doc. 89-1462 Filed 1-23-89; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3508-2; PSD-FL-007]

PSD Permit Modification for the Florida Power Corp.; Citrus County, FL

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Notice is hereby given that a modification to the Prevention of Significant Deterioration (PSD) permit (PSD-FL-007) was issued to Florida Power Corporation, Citrus County, Florida on November 30, 1988. This modification became effective on November 30, 1988. The PSD permit was modified for the purpose of allowing the company to make changes to the two natural draft cooling towers serving units 4 and 5, and to remove the natural draft cooling tower salt drift limits from the National Pollutant Discharge Elimination System (NPDES) permit No. FL 0036366 issued on April 3, 1981, and reissued on June 20, 1988 and incorporate these changes into the PSD permit.

DATE: This action is effective as of November 30, 1988, the date of issuance of the PSD permit modification.

ADDRESSES: Copies of the permit application, preliminary determination, and final determination and modified PSD permit are available for public inspection upon request at the following locations:

U.S. Environmental Protection Agency, Air Programs Branch, 345 Courtland Street NE., Atlanta, Georgia 30365.

Bureau of Air Quality Management, Florida Department of Environmental Regulation, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32399-2400.

FOR FURTHER INFORMATION CONTACT: Lewis Nagler or Wayne Aronson of the EPA Region IV, Air Programs Branch at the Atlanta address given above, telephone (404) 347-2864; (FTS) 257-2864.

SUPPLEMENTARY INFORMATION: On May 11, 1988, the Florida Power Corporation submitted an application to EPA for a permit modification to their Crystal River Plant located in Citrus County, Florida. Specifically, the permit modification allows the company to make changes to the natural draft cooling towers serving units 4 and 5. In addition, this modification removes the salt drift limits from the NPDES permit and incorporates them into the PSD permit. The preliminary determination was made by the EPA Region IV Air Programs Branch on October 5, 1988. Comment letters were received from Florida Power Corporation, Hollins Corporation and the Florida Department of Environmental Regulations (DER) during the public comment period. Subsequent to the public comment period, Florida Power Corporation and Hollins Corporation withdrew their comments submitted regarding Public Notice No. 88 FL149. The Florida DER concurred with the BACT analysis and had no other comments regarding the preliminary determination and draft permit.

On November 30, 1988 EPA prepared the Final Determination and Permit Conditions. These conditions require that each of the two natural draft cooling towers not exceed a total suspended particulate emissions rate of 175 lb/hr and that each tower be tested once every five years. Unit 4 is to be tested initially no later than February 17, 1989, and Unit 5 is to be tested by May 1, 1992. Also, the permittee is required to continue salt drift monitoring and expand and modify the existing monitoring program.

The modification to the PSD permit (PSD-FL-007) was issued on November 30, 1988, and became effective on the date of issuance pursuant to § 124.15(b)(3) of the Consolidated Permit Regulations (45 FR 33290, May 19, 1980). The effective date of this permit constitutes final agency action under 40 CFR 124.19(f)(1) and section 307 of the Clean Air Act, for purpose of judicial review. Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 27, 1989. This action may not be challenged later in proceedings to enforce its requirements (see § 307(b)(2)).

Date: January 10, 1989.

Lee A. DeHihns, III,

Acting Regional Administrator

[FR Doc. 89-1463 Filed 1-23-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Type: Existing Collection in use without an OMB Control Number.

Title: Behavioral Analysis Survey in Support of Hurricane Evacuation Studies.

Abstract: The information collected from the behavioral analysis survey will be used to develop reliable data concerning the expected evacuation response of the public vulnerable to hurricane hazards. The data is needed to estimate the time necessary to evacuate the public in the face of various hurricane scenarios.

Type of Respondents: Individuals or households.

Estimate of Total Annual Reporting and Recordkeeping burden: 600.

Number of Repsondents: 3,600.

Estimated Average burden Hours Per Response: 17.

Frequency of Response: One-Time.

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 646-2624, 500 C Street, SW., Washington, DC 20472.

Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to the FEMA Clearance Officer at the above address; and to Francine Picoult, (202) 395-7231, Office of Management and Budget, 3235, NEOB, Washington, DC 20503 within two weeks of this notice.

Date: January 11, 1989.

Wesley C. Moore,

Director, Office of Administrative Support.

[FR Doc. 89-1485 Filed 1-23-89; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL HOME LOAN BANK BOARD

[No. 89-5]

Applications for Unlisted Trading Privileges and Opportunity for Hearing; Midwest Stock Exchange, Inc.

Date: January 9, 1989.

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice of application.

SUMMARY: The Midwest Stock Exchange, Inc. has filed, pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, applications ("Applications") with the Federal Home Loan Bank Board ("Board") for unlisted trading privileges in the following securities:

The Dime Savings Bank of New York, Brooklyn, New York (FHLBB No. 7837), Common Stock, $1.00 Par Value

Home Owners Federal Savings and Loan Association, Boston, Massachusetts (FHLBB No. 3696), Common Stock, $.01 Par Value.

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Comments: Any interested person may inspect the Applications at the Board, and, within 15 days of publication of this notice in the **Federal Register**, submit to the Corporate and Securities Division, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552, written data, views and arguments bearing upon whether the extensions of unlisted trading privileges pursuant to the Applications are consistent with the maintenance of fair and orderly markets and the protection of investors. Following this opportunity for hearing, the Board will approve the Applications after the date mentioned above if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to the Applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

FOR FURTHER INFORMATION CONTACT: John P. Harootunian, Assistant General Counsel for Securities Policy, Corporate and Securities Division, Office of General Counsel, at (202) 377-6415 or at the above address.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89-1471 Filed 1-23-89; 8:45 am]

BILLING CODE 6720-01-M

[No. 89-4]

Approval of Applications for Unlisted Trading Privileges; Philadelphia Stock Exchange

Date: January 9, 1989.

AGENCY: Federal Home Loan Board.

ACTION: Notice of application.

SUMMARY: The Philadelphia Stock Exchange filed with the Federal Home Loan Bank ("Board") applications ("Applications"), pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 ("Act") and Rule 12f-1 (17 CFR 240.12f-1) thereunder, for unlisted trading privileges in the following securities which are listed on one or more national securities exchanges:

Downey Savings and Loan Association, Costa Mesa, California (FHLBB No. 6189), Comon Stock, No Par Value

Mercury Savings and Loan Association, Huntington Beach, California (FHLBB No. 6649), Common Stock, $1.00 Par Value.

Notice of the Applications and opportunity for hearing was published in the **Federal Register** on July 7, 1988, and interested persons were invited to submit written data, views and arguments within 15 days. *See* Board Resolution No. 88-539, dated June 29, 1988. 53 FR 25541 (July 7, 1988). The Board received no comments with respect to the Applications. Notice is hereby given that the Office of General Counsel for the Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the Applications for unlisted trading privileges in these securities on December 26, 1988.

SUPPLEMENTARY INFORMATION: The Board finds that the approval of the Applications for unlisted trading privileges in these securities is consistent with the maintenance of fair and orderly markets and the protection of investors. As a national securities exchange registered with the Securities and Exchange Commission ("Commission") pursuant to Section 6 of the Act, the Philadelphia Stock Exchange is subject to the provisions of paragraph (b) of that section, and to the Commission's inspection authority and oversight responsibility under sections 17 and 19 of the Act and the rules and regulations thereunder. Transactions in the subject securities, regardless of the market in which they occur, are reported in the consolidated transaction reporting system contemplated by Rule 11Aa3-1 under the Act. 17 CFR 240Aa3-1. The availability of last sale information for the subject securities should contribute to pricing efficiency and to ensuring that transactions on the Philadelphia Stock Exchange are executed at prices which are reasonably related to those occurring in other markets. Further, the approval of the Applications will provide increased opportunities for competition among brokers and dealers and among exchange markets consistent with the purposes of the Act and the objectives of the national market system. Finally, the Board received no comments indicating that the granting of the Applications would not be consistent with the maintenance of fair and orderly markets and the protection of investors.

Accordingly, pursuant to section 12(f)(1)(B) of the Act, the Office of General Counsel for the Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the Applications for unlisted trading privileges in the above named securities on December 26, 1988.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89-1470 Filed 1-23-89; 8:45 am]

BILLING CODE 6720-01-M

[No. AC-761; FHLBB No. 2690]

First Federal Savings and Loan Association of Russellville, Russellville, KY; Final Action; Approval of Conversion Application

Date: January 11, 1989.

Notice is hereby given that on December 13, 1988, the Office of the General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of First Federal Savings and Loan Association of Russellville, Russellville, Kentucky for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Office of the Secretariat at the Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552, and at the Office of the Supervisory Agent at the Federal Home Loan Bank of Cincinnati, 2000 Atrium Two, 221 E. 4th Street, Cincinnati, Ohio 45202.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc 89-1462 Filed 1-23-89; 8:45 am]

BILLING CODE 6720-01-M

[No. AC-763]

Fountain Federal Savings Bank, Bloomington, IN; Final Action; Approval of Conversion and Holding Company Applications

Date: January 11, 1989.

Notice is hereby given that on December 23, 1988, the General Counsel, and the Executive Director of the Office of Regulatory Activities (or their respective designees), acting pursuant to delegated authority, approved the application of Fountain Federal Savings Bank, Bloomington, Indiana (the "Association") for permission to convert to the stock form of organization pursuant to a voluntary supervisory

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conversion, the application of Greencastle Federal Savings Bank, Greencastle, Indiana, to merge with the Association.

By the Federal Home Loan Bank Board.
John F. Ghizzoni,
Assistant Secretary.
[FR Doc. 89-1403 Filed 1-23-89; 8:45 am]
BILLING CODE 6720-01-M

[No. AC-762]

Glen Ridge Savings and Loan Association, Glen Ridge, NJ; Final Action; Approval of Conversion and Holding Company Application

Date: January 11, 1989.

Notice is hereby given that on December 27, 1988, the General Counsel, and the Executive Director of the Office of Regulatory Activities (or their respective designees), acting pursuant to delegated authority, approved the application of Glen Ridge Savings and Loan Association, Glen Ridge, New Jersey for permission to convert to the stock form of organization pursuant to a voluntary supervisory conversion, and the application of Collective Bancorp, Inc., Egg Harbor City, New Jersey, to acquire control of Glen Ridge Savings and Loan Association.

By the Federal Home Loan Bank Board.
John F. Ghizzoni,
Assistant Secretary.
[FR Doc. 89-1404 Filed 1-23-89; 8:45 am]
BILLING CODE 6720-01-M

[No. AC-763; FHLBB No. 1239]

Midland Financial Savings and Loan Association, Des Moines, IA; Final Action; Approval of Conversion Application

Date: January 11, 1989.

Notice is hereby given that on December 30, 1988, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to authority, delegated to the General Counsel or his designee, approved the application of Midland Financial Savings and Loan Association, Des Moines, Iowa, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Office of the Secretariat at the Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552, and at the Office of the Supervisory Agent, at the Federal Home Loan Bank of Des Moines, 907 Walnut Street, Des Moines, Iowa 50309.

By the Federal Home Loan Bank Board.
John F. Ghizzoni,
Assistant Secretary.
[FR Doc. 89-1405 Filed 1-23-89; 8:45 am]
BILLING CODE 6720-01-M

[No. AC-760]

United Federal Savings Bank, State College, PA; Final Action; Approval of Conversion Application

Date: January 11, 1989.

Notice is hereby given that on January 6, 1989, the Office of the General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of United Federal Savings Bank, State College, Pennsylvania for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Office of the Secretariat at the Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552, and at the Office of the Supervisory Agent at the Federal Home Loan Bank of Pittsburgh, One Riverfront Center, 20 Stanvix Street, Pittsburgh, Pennsylvania 15222-4893.

By the Federal Home Loan Bank Board.
John F. Ghizzoni,
Assistant Secretary.
[FR Doc. 89-1406 Filed 1-23-89; 8:45 am]
BILLING CODE 6720-01-M

FEDERAL MARITIME COMMISSION

Request for Additional Information

Agreement No.: 203-011223
Title: Transpacific Stabilization Agreement
Parties: American President Lines, Ltd.; Evergreen Marine Corp. (Taiwan) Ltd.; Hanjin Shipping Co., Ltd.; Hyundai Merchant Marine Co., Ltd.; Kawasaki Kisen Kaisha, Ltd.; A.P. Moller-Maersk Line Mitsui O.S.K. Lines, Ltd.; Neptune Orient Lines, Ltd.; Nippon Liner System, Ltd.; Nippon Yusen Kaisha Orient Overseas Container Line, Inc.; Sea-Land Service, Inc.; Yangming Marine Transport Corp.
Synopsis: Notice is hereby given that the Federal Maritime Commission, pursuant to section 6(d) of the Shipping Act of 1984 (46 U.S.C. app. 1701-1720) ("the Act"), has requested additional information from the parties to the Agreement in order to complete the statutory review of Agreement No. 203-011223 as required by the Act. This action extends the review period under section 6(c) of the Act.

By Order of the Federal Maritime Commission.
Joseph C. Polking,
Secretary.
Dated: January 18, 1989.
[FR Doc. 89-1407 Filed 1-23-89; 8:45 am]
BILLING CODE 6730-01-M

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 212-011227
Title: The NYK/K Line/NLS Rationalization Agreement in the Far East (including Japan)-Puerto Rico/Virgin Islands Trades
Parties: Nippon Yusen Kaisha; Kawasaki Kisen Kaisha, Ltd.; Nippon Liner System, Ltd.
Synopsis: The proposed Agreement would authorize the parties to charter space, rationalize sailings, and pool revenues on cargo carried by the parties in the trades from ports and points in the Far East (including Japan) to ports and points in Puerto Rico and the U.S. Virgin Islands.

By Order of the Federal Maritime Commission.
Joseph C. Polking,
Secretary.
Dated: January 18, 1989.
[FR Doc. 89-1408 Filed 1-23-89; 8:45 am]
BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Change in Bank Control; Acquisitions of Shares of Banks or Bank Holding Companies; Gene A. Baughman, et al.

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and section 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 3, 1989.

A. **Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Gene A. Baughman*, Paulding, Ohio; to acquire an additional 0.55 percent of the voting shares of Oakwood Deposit Bank, Oakwood, Ohio.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Dr. Salvador Bonilla-Sosa and Salvador Bonilla-Mathe*, both of Miami, Florida, to acquire up to 29.9 percent of the voting shares of Gulf Bank, Miami, Florida.

2. *S.J. St. Martin, M.D.*, LaPlace, Louisiana; to acquire up to 14.41 percent of the voting shares of LaPlace Bancshares, Inc., LaPlace, Louisiana, and thereby indirectly acquire Bank of LaPlace of St. John the Baptist Parish, LaPlace, Louisiana.

3. *Harold V. Willis*, Manchester, Tennessee; to acquire up to 13.7 percent of the voting shares of Peoples Bancorp, Inc., Manchester, Tennessee, and thereby indirectly acquire Peoples Bank & Trust Company, Manchester, Tennessee.

Board of Governors of the Federal Reserve System, January 13, 1989.
Barbara R. Lowrey,
Associate Secretary of the Board.
[FR Doc. 89-1433 Filed 1-23-89; 8:45 am]
BILLING CODE 6210-01-M

Drake-Lyman Bancshares, Inc.; Application to Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 10, 1989.

A. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Drake-Lyman Bancshares, Inc.*, Sheridan, Wyoming; to engage *de novo* in selling any type of insurance except life insurance or annuities unless any life insurance is credit related as permitted bank holding companies with total consolidated assets of less than $50 million under § 225.25(b)(8)(vi) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, January 17, 1989.
Barbara R. Lowrey,
Associate Secretary of the Board.
[FR Doc. 89-1434 Filed 1-23-89; 8:45 am]
BILLING CODE 6210-01-M

First State Bancorp, Inc., et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than February 10, 1989.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First State Bancorp, Inc.*, Harwood Heights, Illinois; to acquire 100 percent of the voting shares of PB State Bank, Harwood Heights, Illinois, a *de novo* bank.

2. *Union Bancorporation*, Defiance, Iowa; to beome a bank holding company by acquiring 99.7 percent of the voting shares of Defiance State Bank, Defiance, Iowa.

B. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *First Banks, Inc.*, St. Louis, Missouri; to acquire at least 80.42 percent of the voting shares of The Salem National Bank, Salem, Illinois.

2. *South Gasconade Investment Corporation*, Owensville, Missouri; to become a bank holding company by acquiring 100 percent of the voting shares of Eagle Bank of Gasconade County, Owensville, Missouri.

Board of Governors of the Federal Reserve System, January 17, 1989.
Barbara R. Lowrey,
Associate Secretary of the Board.
[FR Doc. 89-1435 Filed 1-23-89; 8:45 am]
BILLING CODE 6210-01-M

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Agency Forms Under Review

January 13, 1989.

Background

Notice is hereby given of the submission of proposed information collection(s) to the Office of Management and Budget (OMB) for its review and approval under the Paperwork Reduction Act (Title 44 U.S.C. Chapter 35) and under OMB regulations on Controlling Paperwork Burdens on the Public (5 CFR Part 1320). A copy of the proposed information collection(s) and supporting documents is available from the agency clearance officer listed in the notice. Any comments on the proposal should be sent to the OMB desk officer listed in the notice. OMB's usual practice is not to take any action on a proposed information collection until at least ten working days after notice in the **Federal Register**, but occasionally the public interest requires more rapid action.

FOR FURTHER INFORMATION CONTACT: *Federal Reserve Board Clearance Officer*—Frederick Schroeder—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202-452-3822).

OMB Desk Officer—Gary Waxman—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503 (202-395-7340)

Request for OMB approval to revise the following report

1. *Report Title:* Reports of Condition and Income.
Agency Form Number: FFIEC 031-034.
OMB Docket Number: 7100-0036.
Frequency: Quarterly.
Reporters: State member banks.
Annual Reporting Hours: 148,900.
Estimated Average Hours per Response: 34.667.
Number of Respondents: 1,081.
Small businesses are affected.
General Description of Report: This information collection is mandatory (12 U.S.C. 324) and is given partial confidential treatment.

State member banks are required to file detailed schedules of assets, liabilities, and capital accounts in the form of a condition report and summary statement; detailed schedule of operating income and expense, sources and disposition of income, and changes in equity capital in the form of an income statement; and a variety of supporting schedules. Data are used for supervisory and monetary policy purposes. The proposed revisions for March 1989 affect several Call Report schedules and are being made primarily to aid the banking agencies in identifying and monitoring risks for which adequate data have not been available. These risks emanate in part from the ongoing expansion of bank powers, especially at the state level, which allow banks to make investments that were previously not permissible. Memorandum items covering an area of off-balance sheet exposure for which no data are currently collected would be added at this time to fill the void prior to the anticipated adoption of other refinements to off-balance sheet item reporting in conjunction with risk-based capital. If approved, the proposed revisions would be effective as of the March 31, 1989, report date.

Board of Governors of the Federal Reserve System, January 13, 1989.
William W. Wiles,
Secretary of the Board.
[FR Doc. 89-1439 Filed 1-23-89; 8:45 am]
BILLING CODE 6210-01-M

Madison Bancshares Group, Ltd., et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than February 9, 1989.

A. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Madison Bancshares Group, Ltd.*, Blue Bell, Pennsylvania.; to become a bank holding company by acquiring 100 percent of the voting shares of the Madison Bank, in organization, Blue Bell, Pennsylvania, a *de novo* bank.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Peoples Community Bancorporation, Inc.*, Bloomsdale, Missouri; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Bloomsdale, Bloomsdale, Missouri.

C. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Hansen Minnesota, Inc.*, Freeborn, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of First State Bank, Freeborn, Minnesota.

Board of Governors of the Federal Reserve System, January 13, 1989.
Barbara R. Lowrey,
Associate Secretary of the Board.
[FR Doc. 89-1436 Filed 1-23-89; 8:45 am]
BILLING CODE 6210-01-M

Northern Trust Corp.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition,

conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 9, 1989.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Northern Trust Corporation*, Chicago, Illinois; to acquire IDA Asset Management Systems, Inc., San Jose, California, and thereby engage in data processing activities pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, January 13, 1989.
Barbara R. Lowrey,
Associate Secretary of the Board.
[FR Doc. 89-1437 Filed 1-23-89; 8:45 am]
BILLING CODE 6210-01-M

Change in Bank Control; Acquisition of Shares of Banks or Bank Holding Companies; W.E. Schreiber

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 7, 1989.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minmneapolis, Minnesota 55480:

1. *W.E. Schreiber*, Bigfork, Montana; to acquire 1.48 percent of the voting shares of Flathead Holding Company of Bigfork, Bigfork, Montana, and thereby indirectly acquire Flathead Bank of Bigfork, Bigfork, Montana.

Board of Governors of the Federal Reserve System, January 17, 1989.
Barbara R. Lowrey,
Associate Secretary of the Board.
[FR Doc. 89-1438 Filed 1-23-89; 8:45 am]
BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

New Techniques Small Grants for Alcohol Researchers

AGENCY: National Institute on Alcohol Abuse and Alcoholism.

ACTION: Notice of limited competition.

SUMMARY: The National Institute on Alcohol Abuse and Alcoholism (NIAAA) announces a request for applications entitled, "New Techniques Small Grants for Alcohol Researchers." Due to the rapid emergence of new research technology, the ability of some established investigators in the alcohol community to pursue new directions has been impaired by the lack of experience in the most current technology. The purpose of this small grant program is to provide an opportunity for established alcohol researchers to acquire personal expertise in the utilization of specialized techniques applicable to alcoholism research. The award is for 3 to 6 months and a maximum of $35,000. This is a one time announcement. About 5 to 10 awards will be made in FY 1989. The awards will be made under the authority of sections 301 and 510 of the Public Health Service Act (42 U.S.C. 241 and 290bb). The Catalog of Federal Domestic Assistance Number is 13.273.

NIAAA is limiting competition to current grantees and investigators who have had NIAAA grants within the past 3 years. This restriction will enable active alcohol researchers to update their research skills and will increase the likelihood of the techniques being applied to alcohol research.

CONTACT: Additional information may be obtained from: Helen M. Chao, Ph.D., Chief, Biomedical Research Branch, Division of Basic Research, National Institute on Alcohol Abuse and Alcoholism, Parklawn Building, Room 14C-20, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-4223.

Joseph R. Leone,
Associate Administrator for Management, Alcohol, Drug Abuse, and Mental Health Administration.
[FR Doc. 89-1524 Filed 1-23-89; 8:45 am]
BILLING CODE 4160-20-M

Health Resources and Services Administration

Pediatric Acquired Immune Deficiency Syndrome (AIDS) Health Care Demonstration Projects

AGENCY: Health Resources and Services Administration.

ACTION: Notice of extension of application due date.

SUMMARY: This notice extends the application due date for Pediatric Acquired Immune Deficiency Syndrome Health Care Demonstration Project grants published in the **Federal Register**, December 19, 1988 (53 FR 51011). The application due date is extended from February 22, 1989 to March 22, 1989. The address where completed applications are to be mailed remains the same as the address published in the December 19, 1988 **Federal Register** (53 FR 51011).

Dated: January 17, 1989.
John H. Kelso,
Acting Administrator.
[FR Doc. 89-1445 Filed 1-23-89; 8:45 am]
BILLING CODE 4160-15-M

National Institutes of Health

Division of Research Resources; Meeting of the General Clinical Research Centers Committee

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the General Clinical Research Centers (GCRC) Committee, Division of Research Resources (DRR), February 21-22, 1989, at the National Institutes of Health, Conference Room 6, Building 31, 9000 Rockville Pike, Bethesda, Maryland 20892.

The meeting will be open to the public on February 21 from 8:30 a.m. to 9:30 a.m. during which time there will be comments by the Acting Director, DRR; and an update on the General Clinical Research Centers Program by Dr. Judith L. Vaitukaitis, Director, GCRC Program, DRR. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and sec. 10(d) of Pub. L. 92-463, the meeting will be closed to

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the public on February 21 from 9:30 a.m. to 6:00 p.m., and on February 22 from 8:00 a.m. to approximately 4:00 p.m., for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property, such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. Michael Fluharty, Public Affairs Specialist, DRR, NIH, Westwood Building, Room 857, 5333 Westbard Avenue, Bethesda, Maryland 20892, (301) 496-5545, will provide a summary of the meeting, and a roster of the committee members upon request. Dr. Bela J. Gulyas, Executive Secretary, General Clinical Research Centers Committee, (301) 496-6595, will furnish program information upon request.

(Catalog of Federal Domestic Assistance Program No. 13.333, Clinical Research, National Institutes of Health)

Dated: January 12, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89-1458 Filed 1-23-89; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Allergy and Infectious Diseases; Notice of Meeting of Allergy and Clinical Immunology Subcommittee of the Allergy, Immunology, and Transplantation Research Committee

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Allergy and Clinical Immunology Subcommittee of the Allergy, Immunology, and Transplantation Research Committee, National Institute of Allergy and Infectious Diseases, on February 21-22, 1989, at the Hyatt Regency Bethesda Hotel, One Bethesda Metro Center, Bethesda, Maryland 20814.

The meeting will be open to the public from 8:30 a.m. to 9:30 a.m. on February 21, to discuss administrative details relating to committee business and for program review. Attendance by the public will be limited to space available. In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92-463, the meeting of the Allergy and Clinical Immunology Subcommittee will be closed to the public for the review, discussion, and evaluation of individual grant applications and contract proposals from 9:30 a.m. until recess on February 21, and from 8:30 a.m. until adjournment on February 22. These applications, proposals, and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Patricia Randall, Office of Research Reporting and Public Response, National Institute of Allergy and Infectious Diseases, Building 31, Room 7A32, National Institutes of Health, Bethesda, Maryland 20892, telephone (301-496-5717), will provide a summary of the meeting and a roster of the committee members upon request.

Dr. Kamal K. Mittal, Executive Secretary, Allergy, Immunolgoy and Transplantation Research Committee, NIAID, NIH, Westwood Building, Room 3A07, Bethesda, Maryland 20892, telephone (301-496-3528), will provide substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.855, Pharmacological Sciences; 13.856, Microbiology and Infectious Diseases Research, National Institutes of Health)

Dated: January 12, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89-1454 Filed 1-23-89; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Allergy and Infectious Diseases; Notice of Meeting of Microbiology and Infectious Diseases Research Committee

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Microbiology and Infectious Diseases Research Committee, National Institute of Allergy and Infectious Diseases, on February 15, 16, and 17, 1989, in Building 31C, Conference Room 9, at the National Institutes of Health, Bethesda, Maryland 20892.

The meeting will be open to the public from 8:30 a.m. to 10:30 a.m. on February 15, to discuss administrative details relating to committee business and for program review. Attendance by the public will be limited to space available. In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92-463, the meeting of the Microbiology and Infectious Diseases Research Committee will be closed to the public for the review, discussion, and evaluation of individual grant applications and contract proposals from 10:30 a.m. until recess on February 15, from 8:30 a.m. until recess on February 16, and from 8:30 a.m. until adjournment on February 17. These applications, proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Patricia Randall, Office of Research Reporting and Public Response, National Institute of Allergy and Infectious Diseases, Building 31, Room 7A32, National Institutes of Health, Bethesda, Maryland 20892, telephone (301-496-5717), will provide a summary of the meeting and a roster of the committee members upon request.

Dr. Olivia T. Preble, Executive Secretary, Microbiology and Infectious Diseases Research Committee, NIAID, NIH, Westwood Building, Room 3A10, Bethesda, Maryland 20892, telephone (301-496-6208), will provide substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.855, Pharmacological Sciences; 13.856, Microbiology and Infectious Diseases Research, National Institutes of Health)

Dated: January 12, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89-1455 Filed 1-23-89; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Allergy and Infectious Diseases; Meeting of Transplantation Biology and Immunology Subcommittee of the Allergy, Immunology, and Transplantation Research Committee

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Transplantion Biology and Immunology Subcommittee of the Allergy, Immunology, and Transplantation Research Committee, National Institute of Allergy and Infectious Diseases, on March 1, 1989, in Conference Room 9, Building 31C, at the National Institutes of Health, Bethesda, Maryland 20892.

The meeting will be open to the public from 8:30 a.m. to 9 a.m. on March 1, to discuss administrative details relating to committee business and for program review. Attendance by the public will be limited to space available. In accordance with the provisions set forth in secs. 552b(c)(4) and 552(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92-463, the meeting of the Transplantation Biology and Immunology Subcommittee

will be closed to the public for the review, discussion, and evaluation of individual grant applications and contract proposals from 9 a.m. on March 1 until adjournment. These applications, proposals, and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Patricia Randall, Office of Research Reporting and Public Response, National Institute of Allergy and Infectious Diseases, Building 31, Room 7A32, National Institutes of Health, Bethesda, Maryland 20892, telephone (301-496-5717), will provide a summary of the meeting and a roster of the committee members upon request.

Dr. Kamal K. Mittal, Executive Secretary, Allergy, Immunology and Transplantation Committee, NIAID, HIH, Westwood Building, Room 3A07, Bethesda, Maryland 20892, telephone (301-496-3528), will provide substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.855, Pharmacological Sciences; 13.856, Microbiology and Infectious Diseases Research, National Institutes of Health)

Dated: January 12, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89-1456 Filed 1-23-89; 8:45 am]

BILLING CODE 4140-01-M

Division of Research Grants; Meetings

Pursuant to Pub. L. 92-463, notice is hereby given of the meetings of the following study sections for January through March 1989, and the individuals from whom summaries of meetings and rosters of committee members may be obtained.

These meetings will be open to the public to discuss administrative details relating to study section business for approximately one hour at the beginning of the first session of the first day of the meeting. Attendance by the public will be limited to space available. These meetings will be closed thereafter in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92-463, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Office of Committee Management, Division of Research Grants, Westwood Building, National Institutes of Health, Bethesda, Maryland 20892, telephone 301-496-7534 will furnish summaries of the meetings and rosters of committee members. Substantive program information may be obtained from each executive secretary whose name, room number, and telephone number are listed below each study section. Since it is necessary to schedule study section meetings months in advance, it is suggested that anyone planning to attend a meeting contact the executive secretary to confirm the exact date, time and location. All times are a.m. unless otherwise specified.

Study section	January-March 1989 meetings	Time	Location
Allergy & Immunology, Dr. Eugene Zimmerman, Rm. 320, Tel. 301-496-7360	Feb. 23-25	8:30	Hyatt Regency, Bethesda, MD.
Bacteriology & Mycology-1, Dr. Timothy J. Henry, Rm. 304, Tel. 301-496-7340	Feb. 15-17	8:30	University Center Hospital, Gainesville, FL.
Bacteriology & Mycology-2, Dr. William Branche, Jr., Rm. 306, Tel. 301-496-7082	Feb. 15-17	8:30	University Center Hospital, Gainesville, FL.
Behavioral Medicine, Dr. Joan Ritenhouse, Rm. 436, Tel. 301-496-7109	Feb. 8-10	9:00	Omni Georgetown Hotel, Washington, DC.
Biochemical Endocrinology, Dr. Michael Knecht, Rm. 226, Tel. 301-496-7430	Feb. 14-16	8:30	Hyatt Regency, Bethesda, MD.
Biochemistry-1, Dr. Adolphus P. Toliver, Rm. 316B, Tel. 301-496-7516	Feb. 22-25	8:30	Crowne Plaza, Rockville, MD.
Biochemistry-2, Dr. Alex Liacouras, Rm. 318A, Tel. 301-496-7517	Feb. 22-24	8:30	Holiday Inn, Chevy Chase, MD.
Bio-Organic & Natural Products Chemistry, Dr. Michael Rogers, Rm. 5, Tel. 301-496-7107.	Feb. 23-25	9:00	Holiday Inn, Georgetown, DC.
Biophysical Chemistry, Dr. John B. Wolff, Rm. 236B, Tel. 301-496-7070	Feb. 9-11	8:30	NIH, Room 6, Bldg. 31C, Bethesda, MD.
Bio-Psychology, Dr. A. Keith Murray, Rm. 220, Tel. 301-496-7056	Feb. 6-9	8:30	The Savoy Suites Hotel, Washington, DC.
Cardiovascular & Pulmonary, Dr. Gordon L. Johnson, Rm. 439A, Tel. 301-496-7316	Mar. 1-3	8:00	Crowne Plaza, Rockville, MD.
Cardiovascular & Renal, Dr. Rosemary Morris, Rm. 321, Tel. 301-496-7901	Feb. 28-Mar. 2	8:30	Holiday Inn, Georgetown, DC.
Cellular Biology and Physiology-1, Dr. Gerald Greenhouse, Rm. 336, Tel. 301-496-7266.	Feb. 22-24	7:00 p.m.	Conference Rm. B119, Federal Building, Bethesda, MD.
Cellular Biology and Physiology-2, Dr. Gerhard Ehrenspeck, Rm. 304, Tel. 301-496-7661.	Feb. 20-22	8:30	Holiday Inn, Georgetown, DC.
Chemical Pathology, Dr. Edmund Copeland, Rm. 353, Tel. 301-496-7078	Feb. 22-25	8:00	Hacienda Del Sol, Tucson, AZ.
Diagnostic Radiology, Dr. Catharine Wingate, Rm. 2198, Tel. 301-496-7650	Mar. 1-3	8:30	Omni Georgetown Hotel, Washington, DC.
Endocrinology, Dr. Harry Brodie, Rm. 333, Tel. 301-496-7346	Feb. 6-8	8:00	Hyatt Regency, Bethesda, MD.
Epidemiology & Disease, Control-1, Dr. Sooja Kim, Rm. 203C, Tel. 301-496-7246	Feb. 8-10	8:30	Guest Quarters, Bethesda, MD.
Epidemiology & Disease, Control-2, Dr. Horace Sills, Rm. 340, Tel. 301-496-7246	Feb. 8-10	8:30	Guest Quarters, Bethesda, MD.
Experimental Cardiovascular Sciences, Dr. Richard Peabody, Rm. 234,, Tel. 301-496-7940.	Feb. 14-16	8:00	One Washington Circle Hotel, Washington, DC.
Experimental Immunology, Dr. Calbert Laing, Rm. 222B, Tel. 301-496-7238	Feb. 22-24	8:00	Hyatt Regency, Crystal City, VA.
Experimental Therapeutics-1, Dr. Faye Calhoun, Rm. 221, Tel. 301-496-7839	Feb. 7-9	8:00	Hyatt Regency, Bethesda, MD.
Experimental Therapeutics-2, Dr. Marcia Litwack, Rm. 2A03, Tel. 301-496-9848	Mar. 2-3	8:30	Holiday Inn, Bethesda, MD.
Experimental Virology, Dr. Garrett V. Keefer, Rm. 206, Tel. 301-496-7474	Feb. 27-Mar. 1	8:30	NIH, Room 8, Bldg. 31C, Bethesda, MD.
General Medicine A-1, Dr. Harold Davidson, Rm. 354A, Tel. 301-496-7797	Feb. 22-24	8:30	Ramada Inn, Downtown, Tucson, AZ.
General Medicine A-2, Dr. Mushtaq Khan, Rm. 354B, Tel. 301-496-7140	Mar. 1-3	8:30	NIH, Room 6, Bldg. 31C, Bethesda, MD.
General Medicine B, Dr. Daniel McDonald, Rm. 322, Tel. 301-496-7730	Feb. 3-6	8:00	Sir Francis Drake, San Francisco, CA.
Genetics, Dr. David Remondini, Rm. 348, Tel. 301-496-7271	Feb. 16-18	9:00	Holiday Inn, Bethesda, MD.
Hearing Research, Dr. Joseph Kimm, Rm. 1A03, Tel. 301-496-7404	Feb. 15-17	8:30	Guest Quarters, Bethesda, MD.
Hematology-1, Dr. Clark Lum, Rm. 355A, Tel. 301-496-7506	Feb. 17-19	8:00	Tamarron Resort Hotel, Tamarron, CO.
Hematology-2, Dr. Jerrold Fried, Rm. 355B, Tel. 301-496-7506	Feb. 17-19	8:00	Tamarron Resort Hotel, Tamarron, CO.
Human Development & Aging-1, Dr. Teresa Levitin, Rm. 303, Tel. 301-496-7025	Feb. 15-17	9:00	Omni Shoreham Hotel, Washington, DC.
Human Development & Aging-2, Dr. Louis Quatrano, Rm. 305, Tel. 301-496-7640	Feb. 8-10	8:30	Governor's House, Washington, DC.
Human Development & Aging-3, Dr. Anita Sostek, Rm. 203A, Tel. 301-496-9403	Feb. 20-22	8:30	JW Marriott Hotel, Washington, DC.
Human Embryology & Development, Dr. Arthur Hoversland, Rm. 319A, Tel. 301-496-7507.	Feb. 21-22	8:30	Crowne Plaza, Rockville, MD.
Immunological Sciences Dr. William Styles, Rm. 222A, Tel. 301-496-7780	Feb. 15-17	8:30	Hyatt Regency, Bethesda, MD.

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Study section	January-March 1989 meetings	Time	Location
Immunobiological Sciences, Dr. Anita Corman Weinblatt, Rm. 233A, Tel. 301-496-7179	Feb. 22-24	8:30	Holiday Inn, Bethesda, MD.
Mammalian Genetics, Dr. Jerry Roberts, Rm. 349, Tel. 301-496-7271	Feb. 16-18	8:30	Holiday Inn, Bethesda, MD.
Medicinal Chemistry, Dr. Ronald Dubois, Rm. 5, Tel. 301-496-7107	Feb. 22-24	8:30	Crowne Plaza, Rockville, MD.
Metabolic Pathology, Dr. Marcellina Powers, Rm. 435, Tel. 301-496-5251	Feb. 14-16	8:30	The Savoy Suites Hotel, Washington, DC.
Metabolism, Dr. Krish Krishnan, Rm. 339A, Tel. 301-496-7091	Feb. 22-24	8:00	Holiday Inn, Bethesda, MD.
Metallobiochemistry, Dr. Edward Zapolski, Rm. 310, Tel. 301-496-7733	Jan. 28-31	9:00	Doubletree Hotel, Ventura, CA.
Microbial Physiology, & Genetics-1, Dr. Martin Slater, Rm. 238, Tel. 301-496-7183	Feb. 22-24	8:30	Guest Quarters, Bethesda, MD.
Microbial Physiology, & Genetics-2, Dr. Gerald Liddel, Rm. 357, Tel. 301-496-7130	Feb. 15-17	8:30	Hyatt Regency, Bethesda, MD.
Molecular & Cellular Biophysics, Dr. Patricia Jost, Rm. 236A, Tel. 301-496-7060	Feb. 9-11	8:30	One Washington Circle Hotel, Washington DC.
Molecular Biology, Dr. Zein Abedin, Rm. 329, Tel. 301-496-7830	Feb. 16-18	8:30	Congressional Park Days Inn, Rockville, MD.
Molecular Cytology, D. Ramesh Nayak, Rm. 233B, Tel. 301-496-7149	Feb. 3-5	8:00	Hotel Californian, San Francisco, CA.
Neurological Sciences-1, Dr. Allen C. Stoolmiller, Rm. 437B, Tel. 301-496-7279	Feb. 11-13	8:00	Hyatt Regency, Miami, FL.
Neurological Sciences-2, Dr. Stephen Gobel, Rm. 1A05, Tel. 301-496-9808	Feb. 14-16	8:30	Holiday Inn, Bethesda, MD.
Neurology A, Dr. Catherine Woodbury, Rm. 303A, Tel. 301-496-7506	Feb. 15-17	8:00	The Savoy Suites Hotel, Washington, DC.
Neurology B-1, Dr. Jo Ann McConnell, Rm. 152, Tel. 301-496-7846	Feb. 14-17	8:00	Hotel Washington, Washington, DC.
Neurology B-2, Dr. Herman Teitelbaum, Rm. 152, Tel. 301-496-7422	Feb. 21-24	8:30	The Savoy Suites Hotel, Washington, DC.
Neurology C, Dr. Kenneth Nemeck, Rm. 232, Tel. 301-496-5581	Feb. 15-17	8:30	Omni Georgetown Hotel, Washington, DC.
Nursing Research, Dr. Gertrude McFarland, Rm. A18, Tel. 301-496-0558	Feb. 28-Mar. 2	9:00	Holiday Inn, Chevy Chase, MD.
Nutrition, Dr. Ai Lien Wu, Rm. 204, Tel. 301-496-7178	Feb. 13-15	8:30	NIH, Room 8, Bldg. 31C, Bethesda, MD.
Oral Biology & Medicine-1, Dr. J. Terrell Hoffeld, Rm. 325, Tel. 301-496-7818	Feb. 13-16	8:30	Capital Holiday Inn, Washington, DC.
Oral Biology & Medicine-2, Dr. J. Terrell Hoffeld, Rm. 325, Tel. 301-496-7818	Feb. 6-9	8:30	Capital Holiday Inn, Washington, DC.
Orthopedics & Musculoskeletal, Ms. Ileen Stewart, Rm. 350, Tel. 301-496-7561	Mar. 1-3	8:30	Crowne Plaza, Rockville, MD.
Pathobiochemistry, Dr. John Mathis, Rm. A26, Tel. 301-496-7820	Feb. 3-5	8:30	Lombard Hotel, San Francisco, CA.
Pathology A, Dr. Marlin Padarathsingh, Rm. 337, Tel. 301-496-7305	Feb. 28-Mar. 3	7:00 p.m.	Guest Quarters, Bethesda, MD.
Pathology B, Dr. Marlin Padarathsingh, Rm. 352, Tel. 301-496-7244	Feb. 15-17	8:30	Ramada Inn, Bethesda, MD.
Pharmacology, Dr. Joseph Kaiser, Rm. 206, Tel. 301-496-7408	Feb. 14-16	8:30	American Inn, Bethesda, MD.
Physical Biochemistry, Dr. Gopa Rakhit, Rm. 218B, Tel. 301-496-7120	Feb. 27-Mar. 1	8:30	Crowne Plaza, Rockville, MD.
Physiological Chemistry, Dr. Stanley Barnove, Rm. 336B, Tel. 301-496-7837	Feb. 23-25	9:00	Holiday Inn, Bethesda, MD.
Physiology, Dr. Michael A. Lang, Rm. 209, Tel. 301-496-7878	Feb. 22-24	8:30	Crowne Plaza, Rockville, MD.
Radiation, Dr. John Zimbrick, Rm. 218A, Tel. 301-496-7073	Jan. 29-31	8:30	Keystone Village, Keystone, CO.
Reproductive Biology, Dr. Dharam Dhindsa, Rm. 307, Tel. 301-496-7318	Feb. 13-16	8:30	Holiday Inn, Bethesda, MD.
Reproductive Endocrinology, Dr. Abulkalar A. Shaikh, Rm. 325B, Tel. 301-496-8857	Feb. 9-10	8:30	Holiday Inn, Bethesda, MD.
Respiratory & Applied Physiology, Dr. Clyde Watkins, Rm. 218A, Tel. 301-496-7320	Feb. 12-15	8:30	Crowne Plaza, Rockville, MD.
Safety & Occupational Health, Dr. Richard Rhoden, Rm. 154, Tel. 301-496-6723	Feb. 22-24	8:30	Marbury House, Georgetown, DC.
Sensory Disorders & Language, Dr. Michael Halasz, Rm. 3A-07, Tel. 301-496-7550	Feb. 15-17	8:30	Capitol Holiday Inn, Washington, DC.
Social Sciences & Population, Ms. Carol Campbell, Rm. 210, Tel. 301-496-7606	Feb. 9-11	9:00	Embassy Square Suites, Washington, DC.
Surgery & Bioengineering, Dr. Paul F. Parakkal, Rm. 322, Tel. 301-496-7027	Feb. 6-7	8:30	Crowne Plaza, Rockville, MD.
Surgery, Anesthesiology & Trauma, Dr. Keith Krantz, Rm. 319B, Tel. 301-496-7771	Feb. 22-24	2:p.m.	Holiday Inn, Bethesda, MD.
Toxicology, Dr. Alfred Maroozi, Rm. 205, Tel. 301-496-7570	Feb. 15-17	8:00	Crowne Plaza, Rockville, MD.
Tropical Medicine & Parasitology, Dr. Jean Hickman, Rm. 334, Tel. 301-496-1190	Feb. 14-16	8:00	Holiday Inn, Georgetown, DC.
Virology, Dr. Bruce Maurer, Rm. 308, Tel. 301-496-7805	Feb. 23-25	8:00	Hyatt Regency, Bethesda, MD.
Visual Sciences A-1, Dr. Luigi Giacometti, Rm. 207, Tel. 301-496-7000	Feb. 9-11	8:30	Hyatt Regency, Miami, FL.
Visual Sciences A-2, Dr. Jane Ha, Rm. 436A, Tel. 301-496-7786	Feb. 21-24	8:30	Hotel Washington, Washington, DC.
Visual Sciences B, Dr. Earl Fisher, Jr., Rm. 325, Tel. 301-496-7251	Feb. 22-25	8:30	Marriott Hotel, Bethesda, MD.

(Catalog of Federal Domestic Assistance Program Nos. 13.306, 13.333, 13.337, 13.393-13.396, 13.837-13.844, 13.846-13.878, 13.892, 13.893, National Institutes of Health, HHS)

Dated: January 12, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89-1457 Filed 1-23-89; 8:45 am]

BILLING CODE 4140-01-M

Public Health Service

National Commission on Orphan Diseases; Public Meeting

AGENCY: Office of the Assistant Secretary for Health.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (DHHS) and the Office of the Assistant Secretary for Health are announcing a meeting of the National Commission on Orphan Diseases scheduled on January 26-27, 1989.

DATE: Date, time and place: Open Public Meeting, January 26, 1989, 9:00 a.m.-12:00 noon and 2:00-5:00 p.m.; Open Public Session, January 26, 1989, 1:00-2:00 p.m.; Monroe West Room; January 27, 1989, 8:00 a.m.-12:00 noon, Jefferson East Room; Washington Hilton, 1919 Connecticut Avenue, NW., Washington, DC 20009. The entire meeting is open to the public.

FOR FURTHER INFORMATION CONTACT: Written requests to participate in the Open Public Session should be sent to: Mary C. Custer, Ph.D., Executive Secretary, National Commission on Orphan Diseases, 5600 Fishers Lane, Park Building, Room 1-20, Rockville, MD 20857, 301-443-6150.

Agenda: Open Public Session

Interested persons may present data, information or views, orally or in writing, on issues pending before the Commission or on any of the duties and responsibilities of the Commission on January 26 from 1:00 p.m. to 2:00 p.m. Those desiring to make oral presentations should notify the contact person before January 20, 1989 and submit a brief statement of the information they wish to present to the Commission. The request should include the names and addresses of proposed participants and an indication of the approximate time required to make their comments. Any person attending the open public session who does not request prior approval to speak may make an oral presentation at the conclusion of the session, if time permits, at the chairperson's discretion.

Agenda: Open Commission Meeting

The Commission will review the final draft of their report to Congress and approve and release the report. Copies of the Executive Summary will be available at the meeting. Written requests for copies of the Executive Summary should be directed to the Executive Secretary.

SUPPLEMENTARY INFORMATION: The Commission meeting will be conducted in accordance with the agenda

published in this **Federal Register** notice. Any changes in the agenda will be announced at the beginning of the meeting.

Persons interested in specific agenda itmes to be discussed in the open meeting may ascertain from the contact person the approximate time of discussion.

A list of Commission members and the charter of the Commission will be available at the meeting. Interested persons who are unable to attend the meeting may request this information from the contact person. In addition, summary minutes of the meeting will be available upon request from the contact person.

This notice is issued under 10(a) (1) and (2) of the Federal Advisory Committee Act, Pub. L. 92-463 (5 U.S.C. Appendix I).

Robert E. Windom,

Assistant Secretary for Health.

[FR Doc. 89-1468 Filed 1-23-89; 8:45 am]

BILLING CODE 4160-17-M

[NTP-88-200, NTP-88-201]

National Toxicology Program; Fiscal Year 1988 Annual Plan

The National Toxicology Program (NTP) announces the availability of the *NTP Annual Plan for Fiscal Year 1988*, solicits comments on it, and urges all interested persons to propose chemicals for possible toxicological evaluation.

The tenth NTP Annual Plan consists of two parts. First, the *NTP Annual Plan for Fiscal Year 1988* [NTP-88-200] describes current year NTP research, applied studies, methods development and validation efforts, resources and past year program accomplishments (Table of Contents follows this announcement). Second, the *Review of Current DHHS, DOE and EPA Research Related to Toxicology* [NTP-88-201] lists chemicals being studied by the various DHHS agencies, the Department of Energy, and the Environmental Protection Agency, and describes toxicology research and toxicology methods currently being developed by these agencies.

Background

The National Toxicology Program (NTP) was established within the Public Health Service of the Department of Health and Human Services (DHHS) in November 1978. The continuing broad goals of the NTP are to coordinate and strengthen DHHS basis and applied toxicology research and methods development and validation, and to provide toxicological information for use by health research and regulatory agencies and others in protecting the public health. Specific goals are to:

- Broaden the spectrum of toxicologic information obtained on selected chemicals;
- Increase the numbers of chemicals studied within funding limits;
- Develop and validate a series of tests and protocols responsive to regulatory needs;
- Communicate program plans and results to governmental agencies, the medical and scientific communities, and the public.

The NTP coordinates selected toxicology activities of the National Institute of Environmental Health Sciences, National Institutes of Health; the National Center for Toxicological Research, Food and Drug Administration; and the National Institute for Occupational Safety and Health, Centers for Disease Control.

Primary program oversight is provided by the NTP Executive Committee which links DHHS health research institutes with Federal health regulatory agencies to ensure that the basis and applied toxicology research and development activities are responsive to regulatory and public health needs. Agencies represented on the Executive Committee are:

- Agency for Toxic Substances and Disease Registry.
- Consumer Product Safety Commission.
- Environmental Protection Agency.
- Food and Drug Administration.
- National Cancer Institute.
- National Institute for Occupational Safety and Health.
- National Institute of Environmental Health Sciences.
- National Institute of Health.
- Occupational Safety and Health Administration.

The NTP Board of Scientific Counselors provides scientific oversight, advising the NTP Director and the NTP Executive Committee on scientific content and policy and evaluating the scientific merit and overall quality of NTP science. The members (listed in the 1988 Annual Plan) are appointed by the Secretary, DHHS. For the purposes of the Program, the NTP Director, Dr. David P. Rall, reports to the Assistant Secretary for Health.

Scientific activities are divided into four major program areas: Carcinogenesis; cellular and genetic toxicology; reproductive and developmental toxicology; and toxicological characterization. The latter area covers activities in cardiac, cutaneous, immunologic, neurobehavioral, pulmonary and renal toxicologies, and includes programs in chemical disposition and chemical pathology. Program and project leaders, along with addresses and telephone numbers, are identified in the 1988 Annual Plan.

The chemical nomination and selection process is integral to the effective long-term operation of the NTP with respect to toxicological studies of chemicals using modern techniques and to the development and validation of new assay methods. Thus, the NTP welcomes nominations of chemicals for study from everyone. At a minimum, the nominator should give the name of the chemical or substance, the rationale for the nomination, and recommend the type study(ies) to be considered. In addition, it is desirable, but not essential, to supplement each nomination with the following information, if known:

I. Chemical and physical properties.
II. Production, use, occurrence, and analysis data.
III. Toxicology information.
IV. Chemical disposition and structure-activity-relations.
V. Planned or ongoing or recently completed toxicological and environmental studies.

To receive the *NTP Annual Plan for Fiscal Year 1988*, and the *FY 1988 Review of Current DHHS, DOE, and EPA Research Related to Toxicology*, please write or telephone the NTP Public Information Office, P.O. Box 12233, Research Triangle Park, NC 27709 (telephone: (919) 541-3991 or FTS 629-3991).

Comments on the FY 1988 NTP Annual Plan are requested and welcome. These should be addressed to Dr. Larry Hart, National Toxicology Program, P.O. Box 12233, Research Triangle Park, NC 27709 (telephone: (919) 541-3971 or FTS 629-3971).

Dated: January 17, 1989.

David P. Rall,

Director, National Toxicology Program.

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[FR Doc. 89-1489 Filed 1-23-89; 8:45 am]
BILLING CODE 4140-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N-89-1825]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (20) 755-6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Office for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Date: January 10, 1989.

John T. Murphy,

Director, Information Policy and Management Division.

Proposal: Comprehensive Improvement Assistance Program (CIAP): Survey Instrument.
Office: Housing.
Description of the Need for the Information and its Proposed Use: The PHAs, in performing the required physical needs assessments on projects proposed for comprehensive modernization, will use the Survey Instrument to collect data on project conformance within the modernization standards.
Form Number: HUD-52827.
Respondents: State or Local Governments and Non-Profit Institutions.
Frequency of Submission: On Occasion.
Reporting Burden: Survey Instrument—
Number of respondents, 400 X Frequency, of response, 1 X Hours per response, .24 = Burden, hours, 9,600.
Total Estimated Burden Hours: 9,600.
Status: Extension.
Contact: Pris Buckler, HUD, (202) 755-6640, John Allison, OMB, (202) 395-6880.

Date: January 10, 1989.

[FR Doc. 89-1512 Filed 1-23-89; 8:45 am]
BILLING CODE 4210-01-M

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N-89-1914; FR-2605]

Establishment of an Advisory Committee on Housing for Handicapped Families

AGENCY: Office of the Assistant for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of intent to establish an Advisory Committee.

SUMMARY: HUD is establishing a Committee on Housing for Handicapped Families pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App 2). The Committee will participate in developing standards and procedures for the revised section 202 program for housing for handicapped families as authorized by section 162 of the Housing and Community Development Act of 1987.

The Committee will continue in existence for a period of 12 months from the date its charter becomes effective unless the charter is sooner amended or revoked.

DATE: The charter of the Committee on Housing for Handicapped Families shall become effective on the date the Secretary of Housing and Urban Development files it with the Senate Committee on Banking, Housing and Urban Affairs, and the House Committee on Banking, Finance and Urban affairs, which are the standing committees of Congress having legislative jurisdiction over the Department.

FOR FURTHER INFORMATION CONTACT: Barbara Capozzola, Committee Management Officer, Room 5168, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Telephone: (202) 755-5123.

Margaret Milner, Office of Housing, Room 9108, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Telephone: (202) 755-6490. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committtee Act (5 U.S.C. App 2), HUD has determined that the establishment of a Committee on Housing for Handicapped Families is necessary, appropriate, and in the public interest. The Committee's charter is being published with this notice.

The Committee shall participate in developing distinct standards and procedures for the section 202 program for housing for handicapped families that reflect the differences between such housing and the housing for elderly families that is also developed under section 202.

The membership of the Committee is planned to consist of no more than nine people. Members will include representatives of the disability community and persons with experience in providing housing for handicapped persons.

The Committee will continue in existence for a period of 12 months from the date its charter becomes effective as provided in the Federal Advisory Committee Act, unless the charter is amended or revoked sooner. All the meetings of the Committee will be open to the public.

The time, place, and agenda for the first Committee meeting and for each subsequent meeting, will be published in the **Federal Register** at least 15 days prior to the meeting. At the time the first meeting is announced, the names of the members of the Committee will be published.

Dated: January 17, 1989.

Thomas T. Demery,

Assistant Secretary for Housing-Federal Housing Commissioner.

Advisory Committee on Housing for Handicapped Families

Section 1. *Purpose.* The purpose of this document is to establish a Charter for an Advisory Committee on Housing for Handicapped Families, as required under the provisions of the Federal Advisory Committee Act (FACA).

Section 2. *Authority.* The Committee is established by the Secretary pursuant to section 162 of the Housing and Community Development Act of 1987 (P.L. 100-242, 101 Stat. 1815; 42 U.S.C. 5301) in furtherance of § 202 of the Housing Act of 1959 (Pub. L. 86-372, 73 Stat. 654, 667; 12 U.S.C. 1701q), and implements the determination of the Secretary of Housing and Urban Development to establish an Advisory Committee pursuant to section 9(a)(2) of the FACA.

Section 3. *Objectives, Scope of Activities, and Duties.* The Committee shall participate in developing distinct standards and procedures for the allocation of funds and the processing of applications for loans and assistance payments under the new program, as the Secretary determines such standards and procedures to be appropriate due to differences between housing for handicapped families and other housing assisted under section 202.

Section 4. *Membership.* The Committee shall be composed of no more than 9 members, and shall include members of the disability community and persons who have been involved in the provision of housing for handicapped persons. The members will be selected on the basis of personal experience and expertise.

Section 5. *Appointments.* The Committee members shall be appointed by the Secretary to serve a term of 12 months from the effective date of the charter. Members shall serve at the pleasure of the Secretary.

Section 6. *Chairperson.* The Chairperson shall be appointed by the Secretary. The Chairperson is responsible for:

a. Establishing the informal organization of the Committee and appointing such subcommittees as deemed necessary;

b. Developing, with the advice and consent of the Committee, procedures for its effective and efficient operation;

c. Ensuring that procedures for public participation in Committee meetings are established in accordance with the FACA:

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d. Taking such other actions as may be required to facilitate the discharge of Committee duties.

Section 7. *Committee Organization.* The organization and agenda of the Committee will be established at the first full meeting of the Committee on Housing for Handicapped Families. Once established, the organization of the Committee may be modified when deemed appropriate by the Chairperson. Any subcommittees appointed by the Chairperson shall be subordinate and advisory to the full Committee. Such subcommittees may meet at such times and places as the subcommittee Chairperson has approved for the performance of Committee business. The results of all subcommittee meetings shall be reported to the full Committee for its review.

Section 8. *Meetings.* The Committee will meet at least twice during its term. The Committee Chairperson may call special meetings as needed. The Committee and any of its subcommittees shall convene under the following conditions:

a. A notice of each Committee or subcommittee meeting shall be published in the **Federal Register** at least 15 days in advance of the meeting. Shorter notice is permissible in cases of emergency, but the reason for such emergency must be reported in the notice.

b. Detailed minutes of each meeting of the Committee shall be kept, and their accuracy certified to by the Committee Chairperson and submitted to the Secretary of HUD and filed with the Departmental Committee Management Officer. The minutes shall include:

(1) The time and place of the meeting;

(2) A list of Committee members and staff and agency employees present at the meeting;

(3) A complete summary of matters discussed and the conclusions reached;

(4) Copies of all reports received, issued or approved by the Committee;

(5) A description of the extent to which the meeting was open to the public;

(6) A description of public participation, including a list of members of the public who attended the meeting.

c. In accordance with the FACA, an employee designated by the Secretary will attend every meeting of the Advisory Committee. The designated employee, or his designee, must call or approve the calling of each meeting, and is authorized to adjourn any Committee meeting whenever he determines that adjournment is in the public interest.

Section 9. *Support Services.* The Assistant Secretary for Housing-Federal Housing Commissioner shall, to the extent permitted by law and subject to the availability of funds, provide the Committee with such administrative services, funds, facilities, staff and other support as may be necessary for the effective performance of its functions.

Section 10. *Estimated Support and Cost.* The Department estimates that the operating cost of the Committee will not exceed $21,600, including staff support costs.

Section 11. *Travel and Compensation.* Members of the Committee will serve without compensation, but are entitled to be paid for travel and subsistence in the performance of duties on an actual expense basis, as authorized by 5 U.S.C. 5703(b).

Section 12. *Reports.* The Committee shall submit a written report to the Secretary, describing its membership, functions and actions prior to its termination. The Committee shall submit other written reports from time to time to the Secretary containing its recommendations and findings.

Section 13. *Expiration.* The Committee established under this Charter shall terminate 12 months after the charter is filed, unless sooner extended.

Date: October 18, 1988.

Approved:

Samuel R. Pierce, Jr.,

Secretary, Department of Housing and Urban Development.

[FR Doc. 89-1509 Filed 1-23-89; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ-020-09-4330-12]

Meetings: Kingman Resource Area Grazing Board

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting—Kingman Resource Area Grazing Board.

SUMMARY: The Kingman Resource Area Grazing Advisory Board will hold a meeting on Tuesday, March 7, 1989. The meeting will start at 9:00 a.m. in the Kingman Resource Area Conference Room, 2475 Beverly Avenue, Kingman, Arizona 86401.

The agenda for the meeting will include:

1. Update of the Bureau's Exchange Program.
2. Status of the Bureau's Planning and Environmental Impact Statements.
3. Status of Wilderness Program.
4. Report on Range Improvements for FY 89.
5. Range Policy Update.
6. Request for Advisory Board Expenditures.
7. Arrangements for Future Meetings.

The meeting is open to the public. Anyone wishing to make oral or written statements to the Board is requested to do so through the office of the District Manager, 2015 West Deer Valley Road, Phoenix, Arizona 85027, at least seven days prior to the meeting date.

Summary minutes of the Board meeting will be maintained in the District Office and be made available for public inspection and reproduction (during regular business hours) within 30 days following the meeting.

Henri R. Bisson,

District Manager.

Date: January 13, 1989.

[FR Doc. 89-1440 Filed 1-23-89; 8:45 am]

BILLING CODE 4310-33-M

[AZ-020-09-4320-12]

Meeting: Phoenix/Lower Gila Resource Areas Grazing Advisory Board

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting—Phoenix/Lower Gila Resource Areas Grazing Advisory Board.

SUMMARY: The Phoenix/Lower Gila Resource Areas Grazing Advisory Board will hold a meeting on Thursday, March 9, 1989. The meeting will start at 9:00 a.m. in the Phoenix District Office Conference Room, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

The agenda for the meeting will include:

1. Update of the Bureau's Exchange Program.
2. Status of the Bureau's Planning and Environmental Impact Statements.
3. Status of Wilderness Program.
4. Report on Burro Captures in Arizona.
5. Report on Range Improvements for FY 89.
6. Range Policy Update.
7. Request for Advisory Board Expenditures.
8. Arrangements for Future Meetings.

The meeting is open to the public. Anyone wishing to make oral or written statements to the Board is requested to do so through the office of the District Manager, 2015 West Deer Valley Road, Phoenix, Arizona 85027, at least seven days prior to the meeting date.

Summary minutes of the Board meeting will be maintained in the District Office and be made available for public inspection and reproduction (during regular business hours) within 30 days following the meeting.

Henri R. Bisson,

District Manager.

Date: January 13, 1989.

[FR Doc. 89-1441 Filed 1-23-89; 8:45 am]

BILLING CODE 4310-33-M

[NM-010-4212-13/GP9-0105; NM NM 68419]

Issuance of Exchange Conveyance Document and Order Providing for Opening of Public Land in Rio Arriba County; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The United States issued two exchange conveyance documents. One to Wayne G. Wallace, Barbara J. Wallace, and James B. Mocho on October 17, 1988, for the surface and mineral interests in the following described land in Dona Ana County, New Mexico, pursuant to section 206 of the Act of October 21, 1976 (43 U.S.C. 1716):

New Mexico Principal Meridian

T. 23 S., R. 3 E.,
Sec. 28, E½, E½W½, and NW¼NW¼.
Containing 520.00 acres.

A second patent was issued to Wayne G. Wallace and Barbara J. Wallace on October 18, 1988, after the payment of an equalization fee of $126,000.00, for the surface and mineral interests in the following described land in Dona Ana County, New Mexico, pursuant to section 206 of the Act of October 21, 1976 (43 U.S.C. 1716):

New Mexico Principal Meridian

T. 23 S., R. 3 E.,
Sec. 28, SW¼NW¼ and W½SW¼.
Containing 120.00 acres.

In exchange for the 520.00 acres of land described above, Wayne G. Wallace and Barbara J. Wallace reconveyed to the United States the surface estate in 7,28.96 acres, in Rio Arriba County, New Mexico. The reconveyed land is described in the Notice of Realty Action published in the **Federal Register** on August 19, 1988, 53 FR 31764.

The purpose of the exchange was to enable BLM to consolidate public land on Superior and Delgadito Mesas in Rio Arriba County, enhancing the opportunities to improve wildlife, range, recreation and cultural management. The 640.00 acres of selected land are located in the designated disposal area in Dona Ana County. The exchange was consistent with the Bureau's land use plans in both areas. The public interest was served through completion of this exchange.

The values of Federal public land and the non-Federal land in the exchange were appraised at $605,600.00 and $479,600.00, respectively. An equalization payment of $126,000.00 was paid to the United States.

At 9:00 a.m. on February 6, 1989, the land reconveyed to the United States shall be open to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All applications received at or prior to 9:00 a.m. on February 6, 1989, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

Dated: January 6, 1989.

Larry L. Woodard,

State Director.

[FR Doc. 89-1442 Filed 1-23-89; 8:45 am]

BILLING CODE 4310-FB-M

National Park Service

Farmington Wild and Scenic River Study; MA and CT; Farmington River Study Committee; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770, 5 U.S.C. App. 1 10), that a meeting of the Farmington River Study Committee will be held Thursday, February 9, 1989.

The Committee was established pursuant to Pub. L. 99-590. The purpose of the Committee is to consult with the Secretary of the Interior and to advise the Secretary in conducting the study of two segments of the Farmington River.

The meeting will convene at 7:30 p.m. at the Barkhamsted Elementary School, Barkhamsted, Connecticut, for the following reasons:

1. Approval of minutes of 12/15/88 meeting.
2. Report from Budget Working Group.
3. Discussion of Resource Assessment.
4. Report from Water Resources Subcommittee.
5. Report from River Conservation Planning Subcommittee.
6. Opportunity for Public Comment.
7. Other business.

It is anticipated that about 100 people will be able to attend the session in addition to the Committee members.

Interested persons may make oral/written presentations to the Committee or file written statements. Such requests should be made to the official listed below prior to the meeting.

Further information concerning this meeting may be obtained from the Public Affairs Officer, National Park Service, North Atlantic Region, 15 State St., Boston, MA 02109 (617) 565-8887.

Herbert S. Cables, Jr.,

Regional Director.

[FR Doc. 89-1496 Filed 1-23-89; 8:45 am]

BILLING CODE 4310-70-M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before January 14, 1989. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013-7127. Written comments should be submitted by February 6, 1989.

Carol D. Shull,

Chief of Registration, National Register.

CALIFORNIA

San Francisco County

Federal Reserve Bank of San Francisco, 400 Sansome St., San Francisco, 89000009

COLORADO

Arapahoe County

Delaney Barn, 200 S. Chambers Rd., Aurora, 89000010

Montezuma County

Southern Hotel, 101 S. Fifth St., Dolores, 89000015

CONNECTICUT

Hartford County

Southington Public Library, 239 Main St., Southington, 89000015

Woodruff, Capt. Samuel, House, 23 Old State Rd., Southington, 89000014

Middlesex County

Haddam Center Historic District, Roughly 2.5 mi. along Walkley Rd. and CT 154/ Saybrook Rd., Haddam, 89000012

New Haven County

Shelly House, 248 Boston Post Rd., Madison, 89000017

DELAWARE

New Castle County

Kingswood Methodist Episcopal Church, Fourteenth and Claymont Sts., Wilmington, 89000008

Vansant, John C., House, 110 Possum Hollow Rd., Newark vicinity, 89000007

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Sussex County

Lightship WLV 539, Lewes—Rehoboth Canal between Shipcarpenter and Mulberry Sts., Lewes, 88000008

FLORIDA

Lee County

Buckingham School, Buckingham and Cemetery Rds., Buckingham, 88000011

KENTUCKY

Bath County

Kirtley House (Boone County MRA), 2451 Second Creek Rd., Petersburg vicinity, 88000013

MASSACHUSETTS

Suffolk County

Mount Pleasant Historic District, Roughly bounded by Forest St. and Mount Pleasant Ave., Boston, 88000004

WISCONSIN

Dane County

Hoff Department Store, 101–109 Main St., Mount Horeb, 88000005

The following property was erroneously listed as pending on the list dated January 10, 1989:

KENTUCKY

Mercer County

US Post Office—Harrodsburg, (Mercer County MRA) 108 N. Main St. Harrodsburg

[FR Doc. 89-1501 Filed 1-23-89; 8:45 am]

BILLING CODE 4310-70-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Administration.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that (1) propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 U.S.C. 3303a(a).

DATE: Requests for copies must be received in writing on or before March 10, 1989. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

ADDRESS: Address requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, Washington, DC 20408. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in parentheses immediately after the name of the requesting agency.

SUPPLEMENTARY INFORMATION: Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights and interests of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

Schedules Pending

1. Department of the Air Force (N1-AFU-89-3). Routine supply and inventory records for Air Force commissaries.

2. Department of the Army (N1-AU-89-4). Routine and facilitative records of the U.S. Army Intelligence and Security Command relating to physical security equipment.

3. Department of the Army (N1-336-87-4). Routine and facilitative records of U.S. Army Stations, ca. 1945-65 (records relating to significant policies, procedures, and operations are permanent).

4. Central Intelligence Agency (N1-263-88-1). The CIA schedule is classified in the interest of national security pursuant to Executive Order 12356 and is further exempt from public disclosure pursuant to the National Security Act of 1947, 50 U.S.C. 403(d)(3), and the CIA Act of 1949, 50 U.S.C. 403g.

5. Department of Commerce, National Oceanic and Atmospheric Administration (N1-370-88-2). Medical examination files maintained for members of the NOAA Uniformed Corps. Significant medical information incorporated into an individual's official personnel folder (OPF) has been identified for permanent retention.

6. Farm Credit Administration, Records and Projects Division (N1-103-88-1). Supervisory Division administrative action files which include general correspondence, cease and desist orders, and compliance reports.

7. Federal Emergency Management Agency, State and Local Programs Support Directorate (N1-311-89-1). Summer Shelter Survey Technician Course student records.

8. National Archives and Records Administration, Office of the National Archives, Pacific Southwest Region (N2-75-89-1 and -2). Accessioned records of the Department of the Interior, Bureau of Indian Affairs, Pima and Fort Apache Indian Agencies. Routine financial and administrative correspondence, 1903-51.

9. Department of Health and Human Services, Public Health Service, Alcohol, Drug Abuse and Mental Health Administration, National Institute of Mental Health (NIMH) (N1-90-88-6). Forms, mostly unanswered, from the 1961 NIMH survey of foundation support for mental health.

10. National Security Agency (N1-457-89-5). This NSA schedule is classified in the interest of national security pursuant to Executive Order 12356 and is further exempt from public disclosure pursuant to the National Security Act of 1947, 50 U.S.C. 403(d)(3), and Public Law 86-36.

11. Nuclear Regulatory Commission, Advisory Committee on Nuclear Waste (N1-431-88-1). Program and project records of the committee, including copies of Waste Management Licensing Files.

12. President's Commission on American Outdoors (N1-220-89-4). Administrative and facilitative records of the commission.

13. Tennessee Valley Authority, Office of Corporate Services, Division of Medical Services (N1-142-88-5). Report of known or suspected occupation-related condition or disease (TVA Form 2275).

14. Department of the Treasury, Office of the Secretary, Office of Tax Policy (N1-56-88-2). Legislative history files for legislation of prime interest to agencies other than Treasury.

15. United States Information Agency (N1-306-88-6). Records concerning USIA exhibits in foreign countries.

16. United States Information Agency (N1-306-88-7). Housekeeping and routine administrative records of the Press and Publications Service.

17. United States Information Agency, Bureau of Educational and Cultural Affairs, Office of the Associate Director (N1-306-89-4). Routine facilitative records and chronological files. Policy materials are scheduled for permanent retention.

18. Veterans Administration, Department of Veterans Benefits (N1-15-89-2). VA Form 28-0521, Application for Certified Rehabilitation Counselor Maintenance.

19. Veterans Administration, Office of Information Management and Statistics (N1-15-89-3). Typescript copies of Veterans Administration regulations and procedures and VA Federal Register publications. (VA regulations in printed form are already scheduled for permanent retention.)

Dated: January 18, 1989.

Don W. Wilson,

Archivist of the United States.

[FR Doc. 89-1546 Filed 1-23-89; 8:45 am]

BILLING CODE 7515-01-M

NUCLEAR REGULATORY COMMISSION

Abnormal Occurrence Report; Section 208 Report Submitted to the Congress

Notice is hereby given that pursuant to the requirements of section 208 of the Energy Reorganization Act of 1974, as amended, the Nuclear Regulatory Commission (NRC) has published and issued another periodic report to Congress on abnormal occurrences (NUREG-0090, Vol. 11, No. 2).

Under the Energy Reorganization Act of 1974, which created the NRC, an abnormal occurrence is defined as "an unscheduled incident or event which the Commission (NRC) determines is significant from the standpoint of public health or safety." The NRC has made a determination, based on criteria published in the **Federal Register** (42 FR 10950) on February 24, 1977, that events involving an actual loss or significant reduction in the degree of protection against radioactive properties of source, special nuclear, and by-product material are abnormal occurrences.

The report to Congress is for the second calendar quarter of 1988. The report identifies the occurrences or events that the Commission determined to be significant and reportable; the remedial actions that were undertaken are also described. For the reporting period, there were no abnormal occurrences at nuclear power plants licensed to operate. There were two abnormal occurrences under other NRC-issued licenses: a significant breakdown in management and procedural controls at a medical facility and a medical diagnostic misadministration.

There was one abnormal occurrence reported by an Agreement State (Texas) involving radioactive material released during a transportation accident.

A copy of the report is available for public inspection and/or copying at the NRC Public Document Room, 2120 L Street NW., (Lower Level), Washington DC 20555, or at any of the nuclear power plant Local Public Document Rooms throughout the country.

Copies of NUREG/0090, Vol. 11, No. 2 (or any of the previous reports in this series), may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013-7082. A year's subscription to the NUREG/0090 series publication, which consists of four issues, is also available.

Copies of the report may also be purchased from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

Dated at Rockville, MD this 17th day of January 1989.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 89-1500 Filed 1-23-89; 8:45 am]

BILLING CODE 7590-01-M

Northeast Nuclear Energy Co.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

[Docket No. 50-336]

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-65, issued to Northeast Nuclear Energy Company (the licensee), for operation of the Millstone Nuclear Power Station, Unit 2, located in New London County, Connecticut.

The proposed amendment would allow operation of Millstone Unit 2 for Cycle 10. The changes to the Technical Specifications (TS) are required to reflect a revised safety analysis that includes the use of fuel designed and fabricated by Advanced Nuclear Fuels Corporation (ANF). Fuel designed and fabricated by ANF has not been previously utilized for Millstone Unit 2.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the request for amendment involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

As part of the licensee's submittal dated November 15, 1988, the licensee/(or NNECO) has addressed the various technical issues related to the "No Significant Hazards Consideration" criteria of 10 CFR 50.92. The licensee has stated that the proposed changes to the TS would not:

1. Involve a significant increase in the probability or consequences of an accident previously analyzed.

ANF reviewed all SRP Chapter 15 accidents and transients to determine which events need to be reanalyzed for Cycle 10, assuming a mixed core or a core containing only ANF fuel. As a result, ANF reanalyzed all of the nonradiological events currently in Chapter 14 of the Millstone Unit No. 2 FSAR. On the basis of this review, NNECO concludes that there is no significant increase

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in the probability or consequences of any of these events.

With respect to calculated consequences, ANF specifically reanalyzed the impact of the events on relevant key parameters associated with the plant response to the event (i.e., assessments of consequences were not restricted to dose assessments). The parameters analyzed all relate to the boundary performance during the accident. In all cases, the values of the relevant parameters remain below applicable acceptance criteria and there are no impacts on the protective boundaries. NNECO therefore concludes that the proposed amendment does not involve a significant increase in consequences of any event previously analyzed.

Specifically, both large- and small-break LOCA safety analyses were performed to support the proposed amendment. The results of the large-break ECCS analysis indicated that the limiting break size is the 0.6 [double ended cold leg guillotine (DECLG)] break. The maximum peak clad temperature (PCT) for the DECLG, including consideration of end-of-cycle coastdown, is 2176°F. This PCT value remains within the ECCS acceptance criteria of 10 CFR 50, Appendix K.

The small-break LOCA analysis indicated the limiting break size, with symmetric steam generator tube plugging, is the 1.9% break. The PCT for this case was calculated to be 1811°F with a maximum local cladding oxidation of 4.17%. The results for asymmetric steam generator tube plugging at the limiting break size are similar to the results for symmetric tube plugging, with the PCT being slightly higher for the symmetric tube plugging case. Again, these values remain well within the Appendix K ECCS acceptance criteria.

The steamline break analysis involved a calculation of the expected asymmetric thermal hydraulic and neutronic core characteristics resulting from this accident. Specifically, fuel response was evaluated against fuel failure criteria for four scenarios, assuming both availability of off-site power and loss of off-site power. The hot zero power (HZP) scenario with loss of off-site power was determined to be the most limiting in this analysis from an MDNBR standpoint. In no scenario evaluated, however, does fuel failure occur as a result of penetration of the MDNBR safety limit. An HZP scenario with off-site power available was determined to be the most limiting in the analysis from the standpoint of centerline melt. However, again this case does not represent a significant increase in consequences as there remains margin to the fuel centerline melt limit (maximum LHGR).

Finally, a non-LOCA transient event analysis was also performed in support of Millstone Unit No. 2 operation with ANF reload fuel, and a disposition of events for Cycle 10 provided in the SAFETY ASSESSMENT. All anticipated operational occurrences were shown to result in no significant increase in either DNB, fuel centerline melt, deposited enthalpy, or radiological consequences. The postulated accidents were also shown to meet all appropriate acceptance criteria. With respect to the fuel centerline melt, deposited enthalpy and radiological consequences, the rod ejection and rod withdrawal from subcritical accidents show increases in consequences due to the increase in rod worth related to the increase in shutdown margin and also due to the increase in the allowable radial peaking factor. However, ... these increases are not significant in that they do not challenge the acceptance criteria for deposited enthalpy, fuel centerline melt, or off-site doses due to fuel failure. With respect to DNB, the increases are not significant in that they do not violate the 95/95 acceptance criteria. In total, therefore, NNECO concludes that the proposed change does not involve a significant increase in consequences of any accident previously analyzed.

With respect to probability of an accident previously analyzed, there is no change in the probability of occurrence of any design basis accident. Further, there are no changes or failure modes associated with the proposed amendment that will increase the probability of an accident to the point where it should be considered within the design basis. Therefore, in this respect, no significant hazard consideration is involved.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

As a result of the proposed use of ANF fuel and the proposed amendment, there will be no change to plant response. The plant will respond for all events in a manner similar to that previously analyzed. . . . The only changes identified in the reanalysis of Chapter 14 events relate to the impact of certain transients on parameters related to boundary performance. There are no changes to the basic trends the transients follow.

Thus, there are no failure modes associated with the proposed change that could represent a new unanalyzed accident.

In addition, there is no change in the probability of occurrence of any design basis accident. There are also no changes or new failure modes associated with the changes that will increase the probability of an accident or transient to the point where it should be considered to be within the design basis. Therefore, NNECO concludes that the proposed changes do not create any new or different kind of accident from those previously analyzed.

3. Involve a significant reduction in any margin of safety.

As discussed above, the accident reanalysis performed to support the proposed change included all nonradiological events currently in Chapter 14 of the Millstone Unit 2 FSAR. The analysis specifically focused on the impact of these accidents and transients on key parameters related to protective boundary performance. On the basis of this review, NNECO is able to conclude that the proposed amendment does not involve a significant reduction in any margin of safety.

Specifically, as discussed above, the proposed changes do involve some nonsignificant changes in consequences. This is reflected in the change in some parameters relative to Technical Specification bases. However, these changes are largely due to (a) methodology differences between the accident analyses performed by the previous vendor, Westinghouse, and that of the new vendor, ANF; (b) changes to or deletion of an LCO or LSSs, resulting in a corresponding change in Technical Specification bases; and (c) minor clarifications. However, in all cases where there are increases in the limiting value of a parameter, the value remains below the applicable safety limit and therefore does not affect the ability of the boundary to perform its function.

The changes in boundary parameters, discussed above, may be summarized as follows:

- The limiting large break LOCA resulted in a PCT of 2169 °F. The PCT for a 12 °F reduction in primary coolant temperature resulted in a PCT of 2176 °F. These values do not involve a significant reduction in margin for any acceptance criterion.
- The limiting small break LOCA resulted in a PCT of 1811 °F, with symmetric steam generator tube plugging. The PCT with asymmetric plugging was slightly lower. These values do not involve a reduction in any acceptance limit.
- Fuel response was evaluated for the steam line break events. In no scenario evaluated was fuel failure calculated to occur as a result of exceeding the MDNBR acceptance limit or the maximum LHGR.
- The rod ejection and rod withdrawal from subcritical accidents result in increases in relevant parameters due to the proposed increase in rod worth and the increase in the allowable radial peaking factor. However, as discussed above, there is no reduction in margin of safety because the parameters do not exceed existing acceptance criteria for deposited enthalpy, fuel centerline melt, or for off-site doses due to fuel failure.
- Accidents with DNB criteria may show consequence increase due to the need to rely on statistical methodologies. However, there is no reduction in the margin of safety because the 95/95 acceptance criteria is met in all cases.

In summary, the proposed amendment does not involve any significant reduction in a margin of safety and, therefore, does not involve a significant hazard consideration.

The NRC staff has reviewed and concurs in the licensees "No Significant Hazard Consideration" findings; therefore, based on the above considerations, the Commission has made a proposed determination that the amendment request involves no significant hazards considerations.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this Federal Register notice. Written comments may also be delivered to Room P-216, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene are discussed below.

By February 23, 1989, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendments under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards considerations. The final determination will serve to decide when the hearing is held.

If the final determination is that the request for amendment involves no significant hazards considerations, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If a final determination is that the amendment involves significant hazards considerations, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards considerations. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to John F. Stolz: (petitioner's name and telephone number), (date petition was mailed), (plant name), and (publication date and page number of this Federal Register notice). A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and Gerald Garfield, Esquire, Day, Berry and Howard, One Constitution Plaza, Hartford, Connecticut 06103.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated November 15, 1988, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC, and at the Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Dated at Rockville, Maryland, this 18th day of January 1989.

For the Nuclear Regulatory Commission.

David H. Jaffe,

Project Manager, Project Directorate I-4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 89-1499 Filed 1-23-89; 8:45 am]
BILLING CODE 7590-01-M

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OFFICE OF MANAGEMENT AND BUDGET

Small Business Competitiveness Demonstration Program; Policy Directive; Correction

AGENCY: Office of Federal Procurement Policy (OFPP) Small Business Administration (SBA).

ACTION: Interim policy directive correction.

SUMMARY: In the **Federal Register** of December 29, 1988, (53 FR 52880) OFPP and SBA published an interim policy directive implementing Title VII of the "Business Opportunity Development Reform Act of 1988", which establishes the Small Business Competitiveness Demonstration Program. In several places in the document, errors were made. This corrects those errors.

FOR FURTHER INFORMATION CONTACT: Karen Maris, Deputy Associate Administrator, (202) 395–3300; or William Coleman, Deputy Associate Administrator, (202) 395–3601.

1. On page 52880, in the first column, in the paragraph entitled **ADDRESSES**, in the fifth line, delete "Director" and insert "Administrator".

2. On page 52880, in the third column, in the third line, delete "categories" and insert "groups".

3. On page 52882, in the first column, delete "4. The Department of Health and Human Services," the second time it appears.

4. On page 52893, in the third column, in the third paragraph ("IV A. 3."), in the fifth line, after "as", and before "goals" insert the following: "specified in paragraph IV.B. Any necessary modifications to agency solicitation practices for the purpose of achieving the agency's 40 percent".

5. On page 52894, in the first column, delete lines 19–25, beginning with the heading "1. Refuse and Related Systems" and ending with "services, SICs 4212".

Allan V. Burman,

Deputy Administrator and Acting Administrator, Office of Federal Procurement Policy.

[FR Doc. 89-1345 Filed 1-23-89; 8:45 am]

BILLING CODE 3110-01-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 34-26484; File No. SR-NASD-88-2]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc. Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Membership Application Fee

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) ("Act"), notice is hereby given that on January 12, 1989, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The NASD has designated this proposal as one establishing or changing a fee under section 19(b)(3)(A)(ii) of the Act, which renders the fee effective upon the Commission's receipt of this filing. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of The Terms of Substance of The Proposed Rule Change

The proposed rule change to section 2(h) of Schedule A to the NASD's By-Laws raises the membership application fee from $500 to $1,500.

II. Self-Regulatory Organization's Statement of The Purpose of, And Statutory Basis For, The Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change to section 2(h) of Schedule A to the NASD's By-Laws raises the membership application fee from $500 to $1,500. The fee has not been changed since it was set at $500 in 1974, and has been raised at this time to help defray the increased administrative costs of processing membership applications.

The proposed rule change is consistent with the provisions of section 15A(b)(5) of the Act, which requires that the rules of the NASD provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system the NASD operates or controls.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that this rule change does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of The Proposed Rule Change And Timing For Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act and subparagraph (e) of Rule 19b-4 thereunder in that it affects assessments and fees imposed by the NASD.

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All

submissions should refer to the file number in the caption above and should be submitted by February 14, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: January 17, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-1521 Filed 1-23-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-16757; 812-7141]

January 17, 1989.

Agency: Securities and Exchange Commission ("SEC").

Action: Notice of Application for Exemption under the Investment Company Act of 1940 ("1940 Act").

Applicant: Sears Mortgage Funding Corporation ("Applicant" or the "Company").

Relevant 1940 Act Sections: Exemption requested under section 6(c) from all provisions of the 1940 Act.

Summary of Application: Applicant seeks a conditional order, on behalf of itself and certain trusts ("Issuer Trusts") to be created by the Company, exempting the Company and the Issuer Trusts from all provisions of the 1940 Act in connection with the proposed issuance of collateralized mortgage obligations and the sale of beneficial ownership interests in the Issuer Trusts.

Filing Date: The application was filed on October 4, 1988, and amended on November 14, 1988, December 30, 1988 and January 9, 1989.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any request must be received by the SEC by 5:30 p.m., on February 6, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

Addresses: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 2500 Lake Cook Road, Riverwoods, Illinois 60015.

For Further Information Contact: Jeremy N. Rubenstein, Staff Attorney, at (202) 272-2847, or Stephanie M. Monaco, Branch Chief, at (202) 272-3030 (Office of Investment Company Regulation, Division of Investment Management).

Supplementary Information: Following is a summary of the application. The complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who can be contacted at (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations:

1. The Company is a wholly-owned, limited purpose finance subsidiary of Sears Mortgage Securities Corporation, a wholly-owned indirect subsidiary of Sears Roebuck and Company. The Company was organized as a Delaware corporation on April 23, 1986 to facilitate the financing of mortgage loans, and is not empowered to engage in any business or investment activities unrelated to such purpose. The requested relief is sought to permit the Company, directly or through one or more Issuer Trusts, to issue evidences of indebtedness ("Bonds") in one or more series ("Series").

2. The Bonds will be collateralized primarily by mortgage pass-through certificates ("Mortgage Certificates") consisting of either Agency Certificates or Non-Agency Certificates (together, "Mortgage Collateral"). "Agency Certificates" are defined as (1) fully-modified pass-through mortgage-backed certificates guaranteed by the Government National Mortgage Association ("GNMA Certificates"), (2) mortgage participation certificates issued by the Federal Home Loan Mortgage Corporation ("FHLMC Certificates"), and (3) guaranteed mortgage pass-through securities issued by the Federal National Mortgage Association ("FNMA Certificates"). "Non-Agency Certificates" are defined as pass-through certificates and participation certificates which are neither issued nor guaranteed by an agency or instrumentality of the United States and which evidence the entire undivided interest in pools of mortgage loans secured by single family (one-to-four unit) residences. All or a portion of the Agency Certificates securing a Series of Bonds may be backed by mortgage loans that provide for payments during the initial portion of their term that are less than the actual amount of principal and interest payable thereon on a level debt service basis ("GPM GNMA Certificates"). In addition to the Mortgage Collateral directly securing the Bonds, a Series may have additional collateral which may include certain collection accounts and reserve funds as specified in the related Indenture.

3. Each Series of Bonds will be issued under the terms of a separate Trust Indenture (the "Indenture") between the Company, if the Bonds are issued directly by the Company, or a bank, trust company or other fiduciary acting on behalf of an Issuer Trust (the "Owner Trustee"), and the Indenture Trustee (the "Indenture Trustee"). The Indentures will be qualified under the Trust Indenture Act of 1939 unless an appropriate exemption is available.

4. In the case of each Series of Bonds: (a) The Company or the Owner Trustee (with respect to an Issuer Trust) will hold no substantial assets other than Mortgage Collateral and cash; (b) the Bonds will be secured by Mortgage Collateral or cash having a collateral value determined under the Indenture, at the time of issuance and following each payment date for such Bonds, equal to or greater than the outstanding principal balance of the Bonds; (c) distributions of principal and interest received on the Mortgage Collateral securing the Bonds and any applicable reserve funds, plus reinvestment income thereon, will be sufficient to pay all interest on the Bonds and to retire each class of Bonds by its stated maturity; and (d) the Mortgage Collateral will be assigned to the Indenture Trustee and will be subject to the lien of the related Indenture.

5. Without the consent of the holder of each outstanding Bond affected thereby, no party may (a) change the stated maturity of the principal of, or any installment of interest on, any Bond or reduce the principal amount thereof, the interest rate specified thereon, the redemption price with respect thereto or the earliest date on which such Bonds may be redeemed at the option of the Company or the Owner Trustee (with respect to an Issuer Trust), or change any place of payment where, or the coin or currency in which, such Bond or any interest thereon is payable, or impair the right to institute suit for the enforcement of certain provisions of the Indenture regarding payment, (b) reduce the percentage of the aggregate amount of the outstanding bonds of such Series, the consent of the holders of which is required for any such change, or the consent of the holders of which is required for any waiver of compliance with certain provisions of the Indenture or of certain defaults thereunder and their consequences as provided for in the Indenture, (c) modify the provisions of the Indenture specifying the circumstances under which the provisions of the Indenture may not be changed without the consent of each outstanding Bondholder affected

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thereby, or the provisions of the Indenture with respect to certain remedies available in the event of default, except to increase any percentage specified therein or to provide that certain other provisions of the Indenture cannot be modified or waived without the consent of the holder of each outstanding Bond affected thereby, (d) modify or alter the provisions of the Indenture regarding the voting of Bonds held by the Company or the Owner Trustee, if any, the manager of the Bonds, any owner of the Company or an affiliate of any such party, (e) permit the creation of any lien ranking prior to, or on a parity with, the lien of the Indenture with respect to any part of the property subject to the lien under the Indenture, or terminate the lien of the Indenture on any property at any time subject thereto or deprive the holder of any Bond of the security afforded by the lien of the Indenture, or (f) modify any of the provisions of the Indenture in such manner as to affect the calculation of the debt service requirement for any Bond or the rights of the Bondholders to the benefits of any provisions for the mandatory redemption of Bonds of such Series contained therein.

6. Subject to the conditions contained in the application, the Company may sell or assign its beneficial interests (the "Beneficial Interests") in an Issuer Trust. The interests of the Bondholders will not be compromised or impaired by the sale of Beneficial Interests in any Issuer Trust. The sale of Beneficial Interests in any Issuer Trust will not alter the payment of cash flows under the Indenture, including the amounts to be deposited in the collection account or any reserve fund created under the Indenture to support the payment of principal and interest on the Bonds.

7. Except to the extent permitted by the limited right to substitute collateral, it will not be possible for the Company, its parent, Sears Mortgage Securities Corporation, the Beneficial Interest holders, or the Owner Trustee, if any, to alter the collateral initially pledged to secure a Series of Bonds, and in no event will such right to substitute collateral result in a diminution in the value or qualify of such collateral. Although it is possible that any collateral substituted for collateral initially pledged may have a different prepayment experience than the original collateral, the interests of the Bondholders will not be impaired because: (a) the prepayment experience of any collateral will be determined by market conditions beyond the control of the Company, its parent, Sears Mortgage Securities Corporation, or the Owner Trustee, if any, which market conditions are likely to affect all mortgage certificates of similar payment terms and maturities in a similar fashion; and (b) the interests of the Company, its parent, Sears Mortgage Securities Corporation, or the Owner Trustee, if any, are not likely to be greatly different from those of the Bondholders with respect to collateral prepayment experience. No Mortgage Certificates may be released from the lien of the Indenture prior to retirement in full of all Bonds of any Series except to the extent permitted by the limited right to substitute collateral as described herein.

8. Subject to the conditions in the application, the Company may issue Bonds of a Series which bear interest at rates which vary in relation to an index specified in the related prospectus supplement for a Series of Bonds.

Applicant's Conditions

Applicant agrees that if an order is granted it will be expressly conditioned on the following:

A. Conditions Relating to the Bonds

1. Each Series of Bonds will be registered under the Securities Act of 1933 ("1933 Act"), unless offered in a transaction exempt from registration under section 4(2) of such Act.

2. The Bonds will be "mortgage-related securities" within the meaning of section 3(a)(41) of the Securities Exchange Act of 1934. In addition, the mortgage collateral underlying the Bonds will be limited to GNMA Certificates, FNMA Certificates, FHLMC Certificates or Non-Agency Certificates as described herein.

3. New Mortgage Collateral will not be substituted for more than 40% of the aggregate face amount of the Mortgage Collateral initially pledged to secure the Bonds. If new Mortgage Collateral is substituted, the substitute collateral will: (i) Be of equal or better quality than the collateral replaced; (ii) have similar payment terms as, and a cash flow not less than, the collateral replaced; (iii) be sufficient to satisfy all interest and principal obligations on the Bonds when due; (iv) be insured or guaranteed to the same extent as the collateral replaced; (v) be similar in kind to the substituted for Mortgage Certificates; and (vi) meet the conditions set forth in Conditions A(2), A(4) and A(6). In addition, a substitution will be made only if the Bonds will continue to be rated in the rating category which they originally rated by the rating agency rating such Bonds. In no event will any right to substitute Mortgage Collateral result in a diminution in the value or quality of such Mortgage Collateral. New Non-Agency Certificates may be substituted for Non-Agency Certificates initially pledged as Mortgage Collateral only in the event of a default, late payment or other defect in the Mortgage Collateral being replaced.

4. The Company or the Owner Trustee (in the case of an Issuer Trust) will pledge all Mortgage Collateral, funds, accounts or other collateral securing a Series of Bonds to the Indenture Trustee under the related Indenture in order to secure the Bonds and such collateral will be held at all times by the Indenture Trustee, or a custodian on behalf of the Indenture Trustee. Neither the Indenture Trustee, the custodian, if any, nor the Owner Trustee (in the case of an Issuer Trust) will be an affiliate (as the term "affiliate" is defined in Rule 405 under the 1933 Act, 17 CFR 230.405) of the Company or of the master servicer or originating lender of any mortgage underlying the Mortgage Collateral. The Indenture Trustee will be provided with a first priority perfected security or lien interest in and to all collateral securing the Series of Bonds.

5. Each Series of Bonds will be rated in at least the second highest bond rating category by at least one nationally recognized statistical rating organization that is not affiliated with the Company or the Owner Trustee (in the case of an Issuer Trust). The Bonds will not be "redeemable securities" within the meaning of section 2(a)(32) of the 1940 Act.

6. The master servicer of any mortgages underlying Non-Agency Certificates that are pledged as collateral will not be an affiliate of the Indenture Trustee, and, in the event that there is no master servicer, no servicer of such mortgages will be an affiliate of the Indenture Trustee. The master servicer and servicer of such mortgages will be approved by FNMA or FHLMC as an "eligible seller/servicer" of conventional, residential mortgage loans. The agreement governing the servicing of such mortgages shall obligate the servicer to provide substantially the same services with respect to those mortgages as it is then currently required to provide in connection with the servicing of mortgage loans insured by FHA, guaranteed by the United States Veterans Administration or eligible for purchase by FNMA or FHLMC.

7. No less often than annually, an independent public accountant will audit the books and records of the Company and each Issuer Trust (including the books and records of each Indenture Trustee as such relate to each Series of Bonds) and will report that it has no exceptions to the calculations as set forth in any statements made by the Company, each Issuer Trust and each Indenture Trustee to the Bondholders, or that all such exceptions are set forth in such report, and in addition will report on whether the anticipated payments of principal and interest on the Mortgage Collateral relating to each Series of Bonds continues to be adequate to pay the principal and interest on such Bonds in accordance with their terms. Upon completion, copies of the auditor's reports will be provided to the Indenture Trustee.

8. Beneficial and legal ownership of all Mortgage Collateral deposited with the Indenture Trustee will not be transferred until such time as the Indenture Trustee releases such Mortgage Collateral from the Indenture.

B. Conditions Relating to Variable Rate Bonds

1. Bonds bearing interest at a variable rate will be subject to maximum interest rates ("interest rate caps") and may or may not have minimum interest rates (interest rate floors). The maximum and minimum interest rates may vary from period to period, and always will be specified in the related prospectus supplement. The cash flow generated by the related Mortgage Collateral securing such Series of Bonds (together with other collateral) plus income received thereon at the assumed reinvestment rate specified in the related prospectus supplement will be sufficient to provide for the full and timely payment of the Bonds of such Series (even if the interest rates on variable rate Bonds were the maximum applicable interest rates for each specified period).

2. In addition to those mechanisms referred to in the application, the Company or an Issuer Trust may utilize additional mechanisms to ensure the adequacy of the Mortgage Collateral notwithstanding the issuance of Bonds bearing interest at variable rates. The Company will give the staff of the SEC notice by letter of any such additional mechanisms before they are utilized to give the staff an opportunity to raise any questions as to their appropriateness.

C. Conditions Relating to REMIC Election

1. If the Company elects to have a Series of Bonds treated as a REMIC, it will provide for the payment of administrative fees and expenses incurred in connection with the issuance of the Bonds and the administration of the Bonds by one of the following methods or a combination of one or more of such methods:

(a) A third party, whose credit is acceptable to the agency rating the Bonds and the Indenture Trustee, will guaranty the payment of such fees and expenses;

(b) One or more reserve funds will be established to provide for the payment of fees and expenses. In establishing such fund or funds, maximum fees typically will be projected, assuming current inflation scenarios required by the rating agency at the time of the issuance of the Bonds and the establishment of such reserve funds. Thereafter, the Indenture Trustee will look solely to such reserve funds for the payment of certain fees and expenses. The procedure used to calculate the anticipated level of fees and expenses will be reasonable and will have been successfully used in the past by other issuers to calculate the amount of available funds sufficient to pay administrative fees and expenses and to ensure that such funds will be adequate to cover future administrative fees and expenses;

(c) The Bonds will be secured by Mortgage Collateral, the value of which is in excess of the amount necessary to make payments of principal and interest on the Bonds. Such excess or a portion thereof will be applied to the payment of administrative fees and expenses and may be used in combination with any of the other methods described herein; and

(d) The owners of the beneficial or residual interests of each Series will be personally liable pursuant to the provisions of the Indenture for the fees and expenses of the issuer with respect to such Series not otherwise payable from one of the sources described above.

The Company will insure that the anticipated level of fees and expenses will be more than adequately provided for regardless of which of the methods described above (which methods may be used in combination) are selected by the Company to provide for the payment of such fees and expenses.

2. The election by the Company to be treated as a REMIC will not increase the level of the expenses that would be incurred by the Company. Furthermore, should the Company elect for a Series of Bonds to be treated as a REMIC, all administrative fees and expenses in connection with the administration of the Series will be paid or provided for in a manner satisfactory to the agency rating the Bonds.

D. Conditions Relating to the Transfer of Beneficial Interests

1. Applicant will sell or assign Beneficial Interests only in Issuer Trusts in which the Mortgage Collateral is limited to Agency Certificates. Beneficial Interests will be sold to no more than 100 investors who are either institutional investors or non-institutional investors who are "accredited investors" as defined in Rule 501(a) under the 1933 Act. Institutional investors will have such knowledge and experience in financial and business matters as to be able to evaluate the risks of purchasing Beneficial Interests and to understand the volatility of interest rate fluctuations as they affect the value of mortgages, mortgage-related securities and beneficial interests therein. Non-institutional investors will be limited to not more than 35, be required to purchase at least $250,000 of such Beneficial Interests and will have a net worth at the time or purchase that exceeds $1,000,000 (exclusive of their primary residence). Non-institutional investors will have such knowledge and experience in financial and business matters, specifically in the field of mortgage-related securities, as to be able to evaluate the risk of purchasing Beneficial Interests and will have direct, personal and significant experience in making investments in mortgage-related securities. Owners of Beneficial Interests will be limited to mortgage lenders, thrift institutions, commercial and investment banks, savings and loan associations, pension funds, employee benefit plans, insurance companies, real estate investment trusts, open-end management investment companies or other institutional or non-institutional investors as described above which customarily engage in the purchase or origination of mortgages and mortgage-related securities. Each open-end management investment company will be required to satisfy itself that any purchase of a Beneficial Interests will be incompliance with the provisions of section 12(d)(1) of the 1940 Act.

2. Each sale of a Beneficial Interest will be in a transaction exempt from the registration requirements of the 1933 Act under section 4(2) thereof.

3. Each purchase of a Beneficial Interest will be required to represent that it is purchasing such Beneficial Interest for investment purposes and not for distribution, and that it will hold such Benefical Interest in its own name and not as nominee for undisclosed investors.

4. Each purchaser of a Beneficial Interest will agree that it will not resell such interest unless (i) the subsequent purchase would have been eligible to purchase the Beneficial Interest directly under the terms of Condition D(1), (ii) after the sale there would be no more

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than 100 holders of Beneficial Interests, and (iii) the subsequent purchaser agrees to be subject to the same representations and undertakings as are applicable to the reselling purchaser. In addition, the Indenture relating to each Issuer Trust will prohibit the transfer of any Beneficial Interests in any Issuer Trust if there would be more than 100 owners of Beneficial Interests at any time.

5. No owner of a Beneficial Interest will be affiliated with the Indenture Trustee, any custodian of the Mortgage Certificates, or any agency rating the Bonds of the relevant Series.

6. No holder of a controlling interest in Applicant (as the term "control" is defined in Rule 405 under the 1933 Act) will be affiliated with any custodian of the Mortgage Certificates or any agency rating the Bonds of the relevant Series.

7. If the sale of Beneficial Interests results in the transfer of control of an Issuer Trust (as the term "control" is defined in Rule 405 under the 1933 Act), the relief afforded by any order granted on the application would not apply to any subsequent offerings of securities by such Issuer Trust.

8. Applicant will not deposit in any Issuer Trust Mortgage Collateral with a collateral value, as determined under the Indenture, in excess of 120% of the aggregate principal amount of the related Bonds.

E. Special Condition

1. If any of the equity interests in the Company are sold and such sale results in the transfer of control (as the term "control" is defined in Rule 405 under the 1933 Act) of the Company, the relief afforded by any order granted on the application would not apply to subsequent Bond offerings by the Company or any Issuer Trust.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-1522 Filed 1-23-89; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 89-001]

The Boat Safety Account of the Aquatic Resources Trust Fund; Availability of Fiscal Year 1989 Financial Assistance

AGENCY: Coast Guard, DOT.

ACTION: Notice of availability of FY 89 financial assistance.

SUMMARY: Pursuant to Title 46 United States Code section 13103(c), the Coast Guard is seeking to enter into financial assistance agreements with national nonprofit public service organizations for national boating safety activities. The Coast Guard has fiscal year 1989 funds available to subsidize selected national boating safety activities. This announcement seeks proposals for all types of projects that will promote boating safety on a national level.

DATES: Proposals must be submitted to the following address by 1 April 1989.

ADDRESSES: Specific information on organization eligibility, proposal requirements, award procedures, financial administration procedures and application forms (SF 424) may be obtained from Commandant (G-NAB-5), U.S. Coast Guard, 2100 Second Street, SW. Washington, DC 20593-0001.

FOR FURTHER INFORMATION CONTACT: Mr. Ladd Hakes by telephone at (202) 267-0864 or at U.S. Coast Guard Headquarters (C-NAB-5), 2100 Second Street, SW. Washington, DC 20593-0001.

SUPPLEMENTARY INFORMATION: Title 26, United States Code, Section 9504 establishes the Boat Safety Account of the Aquatic Resources Trust Fund. The Coast Guard may award annually up to 5 percent of the available funds to national nonprofit public service organizations for national boating safety activities. Up to $1,500,000 is available for the fiscal year ending September 30, 1989. Twelve awards totaling $1,000,000 were made in fiscal year 1988; awards ranged from $10,000 to $200,000. Nothing in this announcement should be construed as committing the Coast Guard to dividing available funds among all qualified applicants or awarding any specified amount.

It is anticipated that several awards will be made by the Chief, Office of Navigation Safety and Waterway Services, U.S. Coast Guard. Applicants must be responsible, nongovernment, nonprofit public service organizations and must establish that their activities are, in fact, national in scope.

Some areas of particular interest include:

- Projects designed to help boat and engine manufacturers understand and comply with Coast Guard Boating Safety Standards and other manufacturer requirements;
- Projects that would identify and analyze hazards associated with personal watercraft;
- Projects to design and develop boating safety education media and materials, including computer-assisted training modules, for use in elementary, junior high, and high school classroom settings;
- Projects designed to increase boaters' understanding of, and compliance with, national requirements for reporting boating accidents, or which would otherwise promote increased reporting of boating accidents;
- Projects that would produce data and information on the real-world reliability of inflatable personal flotation devices in actual use;
- A project that would provide a consolidated review of boating safety education media currently available from Federal, State, and other safety sources, to determine which media are out-of-date or in need of revision; and
- Projects that would produce needed media on such boating topics as waterskiing and towboat operation, the effects of alcohol on the boat operator, heavy weather/rough water boating, houseboat safety, boating accident rescue techniques for marine police and rescue squads, high-speed boat safety, or other appropriate boating safety/related topics.

This list should not constrain submission of proposals addressing other boating safety concerns. Innovative approaches are welcome.

The Boating Safety Financial Assistance Program is listed in Section 20.005 of the Federal Domestic Assistance Catalog.

Dated: January 18, 1989.

R.T. Nelson,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 89-1540 Filed 1-23-89; 8:45 am]

BILLING CODE 4910-14-M

Urban Mass Transportation Administration

UMTA Section 3 and 9 Grant Obligations

AGENCY: Urban Mass Transportation Administration (UMTA), DOT.

ACTION: Notice.

SUMMARY: The Department of Transportation and Related Agencies Appropriations Act, 1989, Pub. L. 100-457, signed into law by President Reagan on September 30, 1988, contained a provision requiring the Urban Mass Transportation Administration to publish an announcement in the **Federal Register** each time a grant is obligated pursuant to sections 3 and 9 of the Urban Mass Transportation Act of 1964, as amended.

The statute requires that the announcement include the grant number, the grant amount, and the transit property receiving each grant.

This notice provides the information as required by statute.

FOR FURTHER INFORMATION CONTACT: Edward R. Fleischman, Chief, Resource Management Division, Department of Transportation, Urban Mass Transportation Administration, Office of Grants Management, 400 Seventh Street SW., Room 9305, Washington, DC 20590, (202) 366-2053.

SUPPLEMENTARY INFORMATION: The section 3 program was established by the Urban Mass Transportation Act of 1964 to provide capital assistance to eligible recipients in urban areas. Funding for this program is distributed on a discretionary basis. The section 9 formula program was established by the Surface Transportation Assistance Act of 1982. Funds appropriated to this program are allocated on a formula basis to provide capital and operating assistance in urbanized areas. Pursuant to the statute UMTA reports the following grant information:

SECTION 3 GRANTS

Transit property	Grant no.	Grant amount	Obligation date
Connecticut Department of Transportation, New York/SW Connecticut	CT-03-0057	$7,987,500	12-30-88
Connecticut Department of Transportation, New York/SW Connecticut	CT-03-0058	8,937,500	12-30-88
Connecticut Department of Transportation, New York/SW Connecticut	CT-03-0059	47,812,500	12-23-88
Connecticut Department of Transportation, New York/SW Connecticut	CT-03-0060	13,200,00	12-30-88
Connecticut Department of Transportation, New York/SW Connecticut	CT-03-0061	3,750,000	12-23-88
Connecticut Department of Transportation, New York/SW Connecticut	CT-03-0063	1,725,000	12-30-88
Connecticut Department of Transportation, New York/SW Connecticut	CT-03-0064	7,312,500	12-30-88
New Jersey Transit Corporation, Statewide, NJ	NJ-03-0074	7,998,750	12-21-88
New Jersey Transit Corporation, Statewide, NJ	NJ-03-0067	48,639,645	12-21-88
City of Camden, Camden, NJ	NJ-03-0080	7,707,000	12-21-88
South Carolina Department of Highways and Public Transportation, Orangeburg, SC	SC-03-0006	75,000	12-30-88

SECTION 9 GRANTS

Transit property	Grant no.	Grant amount	Obligation date
Tuscaloosa County Parking and Transit Authority, Tuscaloosa, AL	AL-90-X036	$195,830	12-30-88
City of Gadsden, Gadsden, AL	AL-90-X037	43,337	12-30-88
Birmingham-Jefferson County Transit Authority, Birmingham, AL	AL-90-X038	2,748,320	(1)
Montgomery Area Transit System, Montgomery, AL	AL-90-X039	1,675,667	12-30-88
Tucson Transit Authority, Tucson, AZ	AZ-90-X021	6,041,693	(1)
Sacramento Regional Transit District, Sacramento, CA	CA-90-X313	10,457,410	12-30-88
Hub Area Transit Authority, Yuba City, CA	CA-90-X315	709,750	12-30-88
Santa Clara County Transportation Agency, San Jose, CA	CA-90-X320	11,271,086	12-30-88
San Mateo County Transit District, San Francisco, CA	CA-90-X322	2,500,186	12-30-88
City of Napa, Napa, CA	CA-90-X324	387,690	12-30-88
Bay Area Rapid Transit District, San Francisco, CA	CA-90-X326	3,821,072	12-30-88
City of Torrance, Torrance, CA	CA-90-X333	182,000	12-30-88
California Department of Transportation, Sacramento, CA	CA-90-X335	7,980,539	12-30-88
Mesa County, Grand Junction, CO	CO-90-X044	278,436	12-30-88
Greater Hartford Transit District, Hartford, CT	CT-90-X126	1,696,000	12-09-88
Greater New Haven Transit District, New Haven, CT	CT-90-X127	933,800	12-30-88
Meriden-Middletown Midstate Regional Planning Agency, Meriden, CT	CT-90-X128	44,240	12-30-88
Delaware Transportation Authority, Dover, DE	DE-90-X008	2,270,065	12-29-88
Metropolitan Dade Transportation Agency, Miami, FL	FL-90-X101-02	2,920,000	12-30-88
Orange-Seminole-Osceola Transportation Authority, Orlando, FL	FL-90-X117	2,723,240	12-30-88
Metropolitan Dade Transit Agency, Miami, FL	FL-90-X118	29,167,337	12-30-88
Hillsborough Area Regional Transit Authority, Tampa, FL	FL-90-X119	4,887,321	12-30-88
Regional Transit System, Gainesville, FL	FL-90-X120	948,492	12-30-88
Tallahassee Transit Authority, Tallahassee, FL	FL-90-X121	645,286	12-30-88
Sarasota County Area Transit Authority, Sarasota, FL	FL-90-X122	979,857	12-30-88
East Volusia Transportation Authority, Daytona Beach, FL	FL-90-X123	892,710	12-30-88
City of Augusta, Augusta, GA	GA-90-X044	1,221,976	12-30-88
Cobb County, Atlanta, GA	GA-90-X047	1,701,521	(1)
Des Moines Metropolitan Transit Authority, Des Moines, IA	IA-90-X094-01	1,486,507	12-30-88
Blackhawk County, Waterloo, IA	IA-90-X097-1	497,373	12-30-88
City of Coralville, Iowa City, IA	IA-90-X098	333,579	12-30-88
University of Iowa, Iowa City, IA	IA-90-X099	991,447	12-30-88
Iowa City Transit, Iowa City, IA	IA-90-X100	295,843	12-30-88
Sioux City Transit System, Sioux City, IA	IA-90-X101	454,588	12-30-88
City of Decatur, Decatur, IL	IL-90-X127	818,672	12-30-88
Bloomington-Normal Public Transit System, Bloomington, IL	IL-90-X130	624,247	12-30-88
Lowes Park Transit System (LPTS), Rockford, IL	IL-90-X131	87,383	12-30-88
Rockford Mass Transit District, Rockford, IL	IL-90-X132	1,331,573	(1)
Fort Wayne Public Transportation Corp., Fort Wayne, IN	IN-90-X115	1,395,900	12-30-88
Greater LaFayette Public Transportation Corporation, LaFayette, IN	IN-90-X116	1,813,311	12-30-88
City of Terre Haute, Terre Haute, IN	IN-90-X117	452,000	12-30-88
Muncie Public Transportation Corporation, Muncie, IN	IN-90-X118	1,038,611	12-30-88
Wichita Metropolitan Transit Authority, Wichita, KS	KS-90-X035	1,759,835	12-30-88
Johnson County Transit, Kansas City, KS	KS-90-X036	240,000	(1)
Transit Authority of River City, Louisville, KY	KY-90-X040	4,478,517	12-30-88
City of Baton Rouge, Baton Rouge, LA	LA-90-X089	1,873,327	12-30-88

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SECTION 9 GRANTS—Continued

Transit property	Grant no.	Grant amount	Obligation date
Lowell Regional Transit Authority, Lowell, MA	MA-90-X070-02	1,100,000	12-30-88
Southeastern Regional Transit Authority, New Bedford, MA	MA-90-X078-01	26,400	12-30-88
Montachusett Regional Transit Authority, Fitchburg, MA	MA-90-X084	397,788	(1)
Berkshire County Regional Planning Commission, Pittsfield, MA	MA-90-X086	20,000	12-30-88
Worcester Regional Transit Authority, Worcester, MA	MA-90-X087	1,917,192	12-30-88
Southeastern Regional Transit Authority, New Bedford, MA	MA-90-X088	3,066,653	12-30-88
Massachusetts Bay Transportation Authority, Boston, MA	MA-90-X090	18,741,886	(1)
Maine Department of Transportation, Lewiston, ME	ME-90-X039	208,347	12-30-88
Ann Arbor Transportation Authority, Ann Arbor, MI	MI-90-X103	1,579,244	12-30-88
Twin Cities Area Transportation Authority, Benton Harbor, MI	MI-90-X105	357,980	12-30-88
Grand Rapids Area Transit Authority, Grand Rapids, MI	MI-90-X107	3,884,846	12-30-88
Southeastern Michigan Transportation Authority, Detroit, MI	MI-90-X108	25,224,160	12-30-88
City of Moorhead, Moorhead, MN	MN-90-X036	226,277	12-30-88
Kansas City Area Transportation Authority, Kansas City, MO	MO-90-X051	4,981,843	12-30-88
Mid-America Regional Council, Kansas City, MO	MO-90-X052	200,000	12-30-88
Gulf Regional Planning Commission, Gulfport, MS	MS-90-X004	113,000	12-30-88
City of Raleigh, Raleigh, NC	NC-90-X075-02	585,195	12-29-88
Durham County, Durham, NC	NC-90-X087	32,000	12-23-88
Omaha Metro Area Transit, Omaha, NE	NE-90-X019	52,000	12-30-88
City of Lincoln, Lincoln, NE	NE-90-X029	2,010,193	12-30-88
New Jersey Transit Corporation, Statewide, NJ	NJ-90-X089	40,660,117	12-30-88
City of Las Cruces, Las Cruces, NM	NM-90-X020-02	161,988	12-30-88
City of Albuquerque, Albuquerque, NM	NM-90-X023	320,000	12-30-88
Washoe County Regional Transportation Commission, Reno, NV	NV-90-X009	1,146,137	12-30-88
Clark County Regional Transportation Commission, Las Vegas, NV	NV-90-X089-01	47,484	(1)
Saratoga County Planning Board, Albany, NY	NY-90-X150	760,000	(1)
City of Poughkeepsie, Poughkeepsie, NY	NY-90-X151	462,080	12-30-88
City of Glen Falls, Glen Falls, NY	NY-90-X152	272,800	12-30-88
Niagara Frontier Transportation Authority, Buffalo, NY	NY-90-X153	7,055,710	12-30-88
Rochester-Genesee Regional Transportation Authority, Rochester, NY	NY-90-X156	4,858,348	12-30-88
Canton Regional Transit Authority, Canton, OH	OH-90-X082-01	557,205	12-30-88
Toledo Area Regional Transit Authority, Toledo, OH	OH-90-X089-01	32,000	(1)
Canton Regional Transit Authority, Canton, OH	OH-90-X101-01	50,000	12-30-88
Portage Area Regional Transportation Authority, Akron, OH	OH-90-X109	281,000	12-30-88
Central Ohio Transit Authority, Columbus, OH	OH-90-X110	670,320	12-30-88
Central Ohio Transit Authority, Columbus, OH	OH-90-X111	4,452,295	12-30-88
Miami Valley Regional Transit Authority, Dayton, OH	OH-90-X112	2,982,627	12-30-88
Southwest Ohio Regional Transit Authority, Cincinnati, OH	OH-90-X113	4,469,574	(1)
Toledo Area Regional Transit Authority, Toledo, OH	OH-90-X114	4,290,797	(1)
Metropolitan Tulsa Transit Authority, Tulsa, OK	OK-90-X027	2,104,917	12-30-88
Central Oklahoma Transportation and Parking Authority, Oklahoma City, OK	OK-90-X028	4,197,982	(1)
Tri-County Metropolitan Transportation District of Oregon, Portland, OR	OR-90-X028	8,152,277	(1)
Lane Transit District, Eugene, OR	OR-90-X029	1,275,741	(1)
County of Lackawanna Transit System, Scranton, PA	PA-90-X147-01	1,291,189	12-23-88
Cumberland-Dauphin-Harrisburg Transit Authority, Harrisburg, PA	PA-90-X150-01	527,426	12-23-88
Luzerne County Transportation Authority, Scranton, PA	PA-90-X154-01	966,853	12-23-88
Southeastern Pennsylvania Transportation Authority, Philadelphia, PA	PA-90-X155	28,005,102	12-29-88
York Area Transportation Authority, York, PA	PA-90-X156	34,400	12-23-88
Port Authority of Allegheny County, Pittsburgh, PA	PA-90-X157	20,673,979	12-29-88
Beaver County Transit Authority, Pittsburgh, PA	PA-90-X158	775,361	12-29-88
Westmoreland County Transit Authority, Pittsburgh, PA	PA-90-X159	288,714	12-23-88
Department of Transportation and Public Works, San Juan, PR	PR-90-X029-01	74,800	12-30-88
Metropolitan Bus Authority, San Juan, PR	PR-90-X044	8,029,085	12-30-88
Department of Transportation and Public Works, San Juan, PR	PR-90-X045	342,700	12-30-88
Rhode Island Department of Transportation, Providence, RI	RI-90-X012	5,744,329	12-30-88
Greenville Transit Authority, Greenville, SC	SC-90-X021-01	91,402	12-23-88
City of Charleston, Charleston, SC	SC-90-X084	3,972,821	12-29-88
Central Midlands Regional Planning Council, Columbia, SC	SC-90-X085	1,165,140	12-29-88
City of Sioux Falls, Sioux Falls, SD	SD-90-X013	846,160	(1)
City of Rapid City, Rapid City, SD	SD-90-X014	154,147	12-30-88
Metropolitan Transit Authority, Nashville, TN	TN-90-X068	1,700,826	(1)
Chattanooga Area Regional Transportation Authority, Chattanooga, TN	TN-90-X069	1,566,666	(1)
Knoxville Transportation Authority, Knoxville, TN	TN-90-X070	1,407,244	12-29-88
Memphis Area Transit Authority, Memphis, TN	TN-90-X071	5,031,867	(1)
Dallas Area Rapid Transit, Dallas, TX	TX-90-X122	5,352,649	12-30-88
City of Laredo, Laredo, TX	TX-90-X140	776,800	12-30-88
Regional Transit Authority, Corpus Christi, TX	TX-90-X142	2,544,260	12-30-88
Fort Worth Transportation Authority, Fort Worth, TX	TX-90-X143	4,660,000	12-30-88
City of Arlington, Dallas, TX	TX-90-X144	148,200	12-30-88
City of San Angelo, San Angelo, TX	TX-90-X146	376,614	12-30-88
McAllen-Lower Rio Grande Valley Development Council, McAllen, TX	TX-90-X147	90,000	12-30-88
Utah Transit Authority, Salt Lake City, UT	UT-90-X012	4,421,899	(1)
Peninsula Transportation District Commission, Hampton, VA	VA-90-X055-01	1,845,299	12-23-88
Greater Richmond Transit Company, Richmond, VA	VA-90-X060-01	2,698,016	12-23-88
City of Charlottesville, Charlottesville, VA	VA-90-X061-01	906,258	12-23-88
Tidewater Transportation District Commission, Norfolk, VA	VA-90-X062	4,681,598	12-23-88
Chittenden County Transportation Authority, Burlington, VT	VT-90-X009	392,500	12-30-88
Snohomish County Transportation Authority, Everett, WA	WA-90-X060	190,000	12-30-88
City of Yakima, Yakima, WA	WA-90-X061	1,691,028	12-30-88

SECTION 9 GRANTS—Continued

Transit property	Grant no.	Grant amount	Obligation date
City of Wausau, Wausau, WI	WI-90-X100	304,740	12-30-88
Kanawha Valley Regional Transportation Authority, Charleston, WV	WV-90-X031	902,106	12-23-88

[1] The Section 9 grants shown with no obligation date are awaiting a section 13(c) certification from the Department of Labor. After receipt of this certification the grants will be obligated.

Issued On: January 17, 1989.

Alfred A. DelliBovi,

Administrator.

[FR Doc. 89-1400 Filed 1-23-89; 8:45 am]

BILLING CODE 4910-57-M

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 89-12]

Suspension of Individual Broker's License No. 7355; Lawrence C. Melilli, dba Praise The Lord Customhouse Broker

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: Notice is hereby given that the Secretary of the Treasury on December 12, 1988, pursuant to section 641, Tariff Act of 1930, as amended (19 U.S.C. 1641), and Part 111.74 of the Customs Regulations, as amended (19 CFR 111.74), suspended the individual broker's license No. 7355 issued to Lawrence C. Melilli for a period of 20 days. This action is effective as of February 1, 1989.

Dated: January 17, 1989.

Victor G. Weeren,

Director, Office of Trade Operations.

[FR Doc. 89-1449 Filed 1-23-89; 8:45 am]

BILLING CODE 4820-02-M

[T.D. 89-14]

Conditional approval and accreditation of Bennett Testing Service, Inc., as a commercial gauger and laboratory

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Conditional Approval and Accreditation of Bennett Testing Service, Inc., as a Commercial Gauger and Laboratory.

SUMMARY: Bennett Testing Service, Inc., of Carteret, New Jersey, recently applied under § 151.13 of the Customs Regulations (19 CFR 151.13) for Customs approval to gauge and sample imported petroleum, petroleum products, organic chemicals, and vegetable and animal oils and for Customs accreditation to analyze petroleum and petroleum products for API gravity, sediment and water, and distillation characteristics, and organic chemicals for identity and composition. Customs has determined that Bennett Testing Service meets the requirements for conditional approval and accreditation.

Therefore, in accordance with § 151.13(e), Bennett Testing Service, Inc., P.O. Box 654, Foot of Lafayette Street, Carteret, New Jersey 07008, is conditionally approved and accredited to gauge, sample and analyze the products named above in all Customs districts.

EFFECTIVE DATE: January 17, 1989.

FOR FURTHER INFORMATION CONTACT: Roger J. Crain, Office of Laboratories and Scientific Services, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, DC 20229 (202-566-2446).

Dated: January 17, 1989.

John B. O'Loughlin,

Director, Office of Laboratories and Scientific Services.

[FR Doc. 89-1450 Filed 1-23-89; 8:45 am]

BILLING CODE 4820-02-M

VETERANS ADMINISTRATION

Geriatrics and Gerontology Advisory Committee; Meeting

The Veterans Administration gives notice under Pub. L. 92-463 that a meeting of the Geriatrics and Gerontology Advisory Committee (GGAC) will be held in the Medical Center Directors Conference Room at the Houston VA Medical Center, 2002 Holcombe Blvd., Houston, TX 77211 on February 7, 1989. The purpose of the Geriatrics and Gerontology Advisory Committee is to advice the Administrator and the Chief Medical Director relative to the care and treatment of the aging veterans, and to evaluate the Geriatric Research, Education and Clinical Centers established by the Department of Medicine and Surgery.

The meeting will convene at 8:30 a.m. on February 7 and adjourn at 3 p.m. This will be a working session to discuss future evaluation and to develop strategies to assure that the field of geriatrics, both treatment and education, are placed in the mainstream of all VA medical activities. The meeting is open to the public up to the seating capacity of the room. Because the capacity is limited, it will be necessary for those wishing to attend to contact Jacqueline Holmes, Program Assistant, Office of Assistant Chief Medical Director for Geriatrics and Extended Care, Veterans Administration Central Office (phone 202/233-3781) prior to February 2, 1989.

Dated: January 11, 1989.

By direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 89-1443 Filed 1-23-89; 8:45 am]

BILLING CODE 8320-01-M

VOL 54 ISS 14 JA 24 1989 UMI

Sunshine Act Meetings

Federal Register
Vol. 54, No. 14
Tuesday, January 24, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:07 p.m. on Tuesday, January 17, 1989, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider (1) matters relating to the possible closing of certain insured banks; (2) matters relating to an assistance agreement pursuant to section 13(c) of the Federal Deposit Insurance Act; (3) a request for financial assistance pursuant to section 13(c) of the Federal Deposit Insurance Act; and (4) a personnel matter.

In calling the meeting, the Board determined, on motion of Director C. C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Dated: January 18, 1989.

Federal Deposit Insurance Corporation.

M. Jane Williamson,

Assistant Executive Secretary.

[FR Doc. 89-1547 Filed 1-18-89; 5:05 pm]

BILLING CODE 6714-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of January 23, 30, February 6, and 13, 1989.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of January 23

Monday, January 23

2:00 p.m.
Briefing on Accident Management Program (Public Meeting)

Tuesday, January 24

2:30 p.m.
Briefing on the Progress of GE Advanced BWR Standard Plant Review (Public Meeting)

Thursday, January 26

10:00 a.m.
Briefing on Final Report on BWR MARK I Containment Issues (Public Meeting)

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Final Rule on Emergency Preparedness for Fuel Cycle and Other Radioactive Material Licensees (Tentative)

Week of January 30—Tentative

Thursday, February 2

10:00 a.m.
Periodic Briefing on EEO Programs (Public Meeting)

2:00 p.m.
Briefing on Proposed Rulemaking on Substandard Components (Public Meeting)

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of February 6—Tentative

Monday, February 6

2:00 p.m.
Briefing on Status of Peach Bottom (Public Meeting)

Tuesday, February 7

2:00 p.m.
Briefing on Final Rule Regarding the High Level Waste Management Licensing Support System (Public Meeting)

Wednesday, February 8

10:00 a.m.
Briefing on Final Rule on Fitness for Duty (Public Meeting)

Thursday, February 9

10:00 a.m.
Briefing on Final Rule on Early Site Permits; Standard Design Certification; and Combined Licenses for Nuclear Power Reactors (Public Meeting)

2:00 p.m.
Briefing on Safety Goal Implementation Plan (Public Meeting)

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of February 13—Tentative

Friday, February 17

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING)—(301) 492-0292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 492-1661.

William M. Hill, Jr.,

Office of the Secretary.

January 19, 1989.

[FR Doc. 89-1645]

BILLING CODE 7590-01-M

Corrections

Federal Register
Vol. 54, No. 14
Tuesday, January 24, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1124

[Docket Nos. AO-368-A16 and AO-226-A32; DA-88-108]

Milk in the Oregon-Washington and Puget Sound-Inland Marketing Areas; Order Amending and Merging Orders

Correction

In rule document 88-30074 beginning on page 52975 in the issue of Friday, December 30, 1988, make the following corrections:

§ 1124.2 [Corrected]

1. On page 52976, in the third column, in § 1124.2, under "Washington Counties", in the last line, insert "Whatcom" before "Whitman".

§ 1124.7 [Corrected]

2. On page 52977, in the second column, in § 1124.7(b)(1), in the fourth line, "is" should read "it".

§ 1124.17 [Corrected]

3. On page 52980, in the third column, in § 1124.17, in the second line, "nonmilk" was misspelled.

§ 1124.43 [Corrected]

4. On page 52984, in the second column, in § 1124.43(b), in the second line, insert "from" after "milk".

§ 1124.44 [Corrected]

5. On page 52985, in the third column, in § 1124.44(a)(13)(i), in the second line, "paragraphs" was misspelled.

§ 1124.51a [Corrected]

6. On page 52987, in the first column, in § 1124.51a(a), in the fifth line, "pursuant" was misspelled.

§ 1124.52 [Corrected]

7. On page 52987, in the second column, in § 1124.52(a), in the second line, "determining" was misspelled.

8. On the same page, in the third column, in § 1124.52(c), in the last line, "Class II" should read "Class III".

9. In the same column, in § 1124.52(d), in the second line, "at" should read "to" and in the fifth line, "shall" was misspelled.

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

[Announcement No. 908]

Cooperative Agreements for Minority and Other Community-Based Human Immunodeficiency Virus (HIV) Prevention Projects Program Announcement and Availability of Funds for Fiscal Year 1989

Correction

In notice document 89-395 beginning on page 663 in the issue of Monday, January 9, 1989, make the following corrections:

1. On page 663, in the second column, in the paragraph under **Authority**, in the third line, "301f(a)" should read "301(a)".

2. On page 664, in the second column, in the second complete paragraph, in the fifth line from the bottom, "The" should read "This".

3. On page 665, in the first column, in the third paragraph under **Evaluation Criteria**, in the third line, "with" should read "within".

4. On the same page, in the second column, in the first complete paragraph, in the second line from the bottom, "for" should read "from".

5. On page 666, in the first column, in the ninth line, "messages" was misspelled.

6. On the same page, in the same column, in the fourth complete paragraph, in the second line, "order" should read "other".

7. On page 667, in the first complete paragraph under **Final Application**, in the last line, "March 14, 1989" should read "March 24, 1989".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 888

[Docket No. 78N-2847 et al.]

Medical Devices; Reproposed Classifications of 70 Electromedical Devices

Correction

In proposed rule document 88-26210 beginning on page 46040 in the issue of Tuesday, November 15, 1988, make the following corrections:

§ 888.1500 [Corrected]

1. On page 46046, in the second column the first CFR section number should read as it appears above.

§ 888.5360 [Corrected]

2. On the same page, in the same column the second CFR section number should read as it appears above.

BILLING CODE 1505-01-D

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 1141-89]

Direct Mail Program

Correction

In notice document 89-440 beginning on page 861 in the issue of Tuesday, January 10, 1989, make the following corrections:

1. On page 862, in the first page-column, in the table, in the entry for California, the region designation should read "W". In the entry for Colorado, the region designation should read "N".

2. On the same page, in the second page-column, in the table, in the fourth and sixth columns, in the entry for I-130, insert "A" and "X" respectively.

BILLING CODE 1505-01-D

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NUCLEAR REGULATORY COMMISSION

10 CFR Parts 170 and 171

Revision of Fee Schedules

Correction

In rule document 88-29767 beginning on page 52632 in the issue of Thursday, December 29, 1988, make the following corrections:

1. On page 52636, in the first column, in the second complete paragraph, in the ninth line, after "§ 171.11" insert a period.

2. On the same page, in the second column, in the second complete paragraph, in the seventh line, "use" should read "used".

3. On page 52639, in Table III at the bottom of the page, the heading is incorrect and should read as follows:
Table III—Part 171 Fee By Reactor Category—Summary
(Fees in Millions)
With Minor Adjustments for Plants West of Rockies or Westinghouse Plants With Ice Condensers the Following Apply to Plant/Containment

4. On the same page, in the same table, in the first table-column, under "Type", remove "PART 171 FEES BY REACTOR CATEGORY—SUMMARY".

5. On page 52642, at the top of the page, remove "-42-"

6. On page 52643, at the top of the page, remove "-43-".

7. On page 52646, in the table at the top of the page, in the second table-column, in the fourth line, "475" should read "3075"; and in the first table-column, in the fifth line, "J. NSSS CCE—Large Dry Containments" should read "J. NSSS CE—Large Dry Containments".

§ 170.31 [Corrected]

8. On page 52650, in the 1st page-column, in the 1st table-column, in the 32nd line, after "Inspections:", insert "*"; and in the 46th line, make the same correction.

9. On the same page, in the 3rd page-column, in the 1st table-column, in the 52nd line, after "chapter" insert "; except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally lincensed under Part 31 of this chapter".

10. On page 52652, in § 170.31, in the first column, in footnote 1(a) of the table, in the second line, "of" should read "or".

BILLING CODE 1505-01-D

POSTAL SERVICE

39 CFR Part 265

Amendments to Release of Information Regulations

Correction

In rule document 88-28446 beginning on page 49983 in the issue of Tuesday, December 13, 1988, make the following correction:

On page 49983, in the third column, and continuing on page 49984 in the first column, the form headed *FOR POST OFFICE USE ONLY* should read as follows:

FOR POST OFFICE USE ONLY

[ ] MAIL IS DELIVERED TO ADDRESS GIVEN	NEW ADDRESS
[ ] NOT KNOWN AT ADDRESS GIVEN	_____
[ ] MOVED, LEFT NO FORWARDING ADDRESS	_____
	BOX/HOLDER'S STREET ADDRESS
[ ] NO SUCH ADDRESS	
[ ] OTHER (SPECIFY):	_____
_____	_____
_____	

Agency return address | Postmark/Date Stamp

BILLING CODE 1505-01-D

federal register

Tuesday
January 24, 1989

Part II

Department of Education

Office of Special Education and Rehabilitative Services

Arbitration Panel Decision Under the Randolph-Sheppard Act; Blind Vending Facilities

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DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitation Services

Arbitration Panel Decision Under the Randolph-Sheppard Act; Blind Vending Facilities

AGENCY: Department of Education.

ACTION: Notice of Arbitration Panel Decision under the Randolph-Sheppard Act.

SUMMARY: Notice is hereby given that on December 18, 1987, an arbitration panel rendered a decision in the matter of the State of Kansas, Department of Social and Rehabilitation Services, Division of Services for the Blind v. the United States Department of Transportation, Federal Aviation Administration. The Kansas Department of Social and Rehabilitation Services is a "State Licensing Agency" (SLA) designated by the Secretary of Education. The panel was convened by the Secretary of Education pursuant to 20 U.S.C. 107d–1(b), upon receipt of a complaint filed by the State of Kansas on August 20, 1986 (Docket No. R–S/86–5).

Under this section of the Act, whenever a State Licensing Agency determines that a Federal property managing agency is failing to comply with the Act and implementing regulations, it may file a complaint with the Secretary, who is then required to convene an arbitration panel to resolve the dispute.

FOR FURTHER INFORMATION CONTACT: George F. Aranow, Chief, Vending Facility Branch, Division for Blind and Visually Impaired, Rehabilitation Services Administration, Room 3230, Mary E. Switzer Building, 330 C Street SW., Washington, DC 20202–2738, Area Code (202) 732–1317 or TTY (202) 732–1298. A synopsis of the panel's decision is appended. The full text of the arbitration panel decision can be obtained from this contact.

Dated: January 17, 1989.

Madeleine Will,

Assistant Secretary for Special Education and Rehabilitation Services.

Synopsis of Arbitration Panel Decision

Background

The arbitration record established that in 1982, the Kansas State Licensing Agency (SLA) and the Federal Aviation Administration (FAA) entered into a cafeteria contract at the Air Route Traffic Control Center (Center) in Olathe, Kansas under the Randolph-Sheppard Act (the Act). Pursuant to this contract, the blind vendor assigned by the SLA provided the services through several vending machines located in and adjacent to the cafeteria. In late 1983, after the FAA determined that hot meal service was needed by its employees, the SLA agreed to operate such a service on a trial basis, in addition to the vending machines. However, the original contract was not modified to reflect this additional arrangement.

On May 1, 1985, the SLA notified the FAA that it was terminating the hot meal service because it was unprofitable and caused a reduction in vending machines income. The FAA subsequently solicited bids from outside contractors and on August 1, 1986, awarded a hot-meal cafeteria contract to Breaktime, Inc., which by its terms prohibited Breaktime from using any vending machines in its operation. In making preparation for the new service, the FAA moved three SLA vending machines from the cafeteria to the corridor leading into the cafeteria, where two other SLA machines were located. In addition, the FAA consolidated the blind vendor's storage space from several small rooms to one large room.

Arbitration Panel Decision

The panel first determined that the FAA did not breach its contract with the SLA or violate the Act by relocating the vending machines and consolidating storage space. On this point, the panel found as a fact that the new space assigned to the SLA was a "satisfactory site" [1] under the Act and regulations.

Although it further found that the hot food service provided by Breaktime was in direct competition with the SLA vending machines, resulting in a reduction in profits to the blind vendor, the panel determined that such competition was not proscribed by the contract or by the priority provisions of the statute. The panel specifically held that since Breaktime was precluded from operating vending machines, the provisions of the Act at 20 U.S.C. 107d–3 that require sharing of income from competing vending machines did not apply.

The panel member who represented the SLA dissented. In his opinion, the FAA violated the Act by imposing a "limitation" on the SLA's vending machine operation, within the meaning of 20 U.S.C. 107(b),[2] without prior approval of the Secretary of Education. The dissenting panel member believed that the reduction in blind-vendor sales caused by the Breaktime cafeteria contract constituted a limitation imposed by the FAA, as did the relocation of the vending machines and reduction of storage space.

The views expressed by the panel do not necessarily represent the views and opinion of the Department of Education.

[FR Doc. 89–1541 Filed 1–23–89; 8:45 am]

BILLING CODE 4000–01–M

[1] Satisfactory site means, in pertinent part, an area fully accessible to vending facility patrons and consisting of a minimum of 250 square feet, including storage. 20 U.S.C. 107a(d) and 34 CFR 395.1(q).

[2] Under this section, "[a]ny limitation on the placement or operation of a [blind-operated] vending facility based on a finding that such placement or operation would adversely affect the interests of the United States shall be fully justified in writing to the Secretary [of Education], who shall determine whether such limitation is justified."

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Part III

Department of Housing and Urban Development

Office of the Secretary

Request for Mortgagee Applications for Reservations of Home Equity Conversion Mortgage Authority; Notice of Request for Applications

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. N-89-1824; FR-3002]

Request for Mortgagee Applications for Reservations of Home Equity Conversion Mortgage Authority

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of request for applications.

SUMMARY: HUD-approved mortgagees may now apply for reservations of insurance authority under the Home Equity Conversion Mortgage Insurance Demonstration (also referred to as the reverse mortgage program). Under this demonstration, HUD will insure mortgages on the homes of elderly homeowners, enabling them to turn their home equity into cash. A total of 2,500 mortgages may be insured through September 30, 1991.

DATE: Applications from HUD-approved mortgagees for reservations of insurance authority are now being accepted by HUD Regional Offices. To be eligible for the initial allocation of reservations, a mortgagee must submit an application by 4 p.m. on February 23, 1989.

ADDRESS: Applications should be sent to the Director, Regional Office of Housing, U.S. Department of Housing and Urban Development, in the region in which the mortgages will be originated. Regional Office addresses are listed below:

Region I: 10 Causeway Street, Room 301, Boston, MA 02222-1092, 617-565-5102
Region II: 26 Federal Plaza, New York, NY 10278-0068, 212-264-4771
Region III: 105 South 7th Street, Philadelphia, PA 19106-3392, 215-597-2645
Region IV: 75 Spring Street, Atlanta, GA 30303-3388, 404-331-4127
Region V: 626 West Jackson Boulevard, Chicago, IL 60606, 312-353-6950
Region VI: 1600 Throckmorton, Post Office Box 2905, Fort Worth, TX 76113-2905, 817-885-5531
Region VII: 1103 Grand Avenue, Kansas City, MO 64106-2496, 816-374-6436
Region VIII: 1405 Curtis Street, Denver, CO 80202-2349, 303-844-4959
Region IX: 450 Golden Gate Avenue, Post Office Box 36003, San Francisco, CA 94102-3448, 415-556-0796
Region X: 1321 Second Avenue, Seattle, WA 98101-2058, 206-442-4373

FOR FURTHER INFORMATION CONTACT: Judith V. May, Office of Policy Development and Research, Room 8218, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, (202) 755-5420. (This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

1. Introduction

The Home Equity Conversion Mortgage Insurance Demonstration was authorized by section 417 of the Housing and Community Development Act of 1987 (Pub. L. 100-242) which added a new section 255 to the National Housing Act (Act). A proposed rule to implement the program was published in the **Federal Register** (53 FR 43156) on October 25, 1988. This notice arises out of § 206.11 of the proposed rule which will require a mortgagee originating a mortgage under section 255 of the Act to have a reservation of insurance authority. A reservation of insurance authority is an assurance by the Secretary that the Secretary will be able to insure a mortgage which meets the Secretary's requirements.

In the proposed rule, HUD announced its intention to invite lenders to apply for reservations of insurance authority prior to publications of the final rule, so that it could train HUD-approved housing counseling agencies about reverse mortgages and their alternatives in those areas where lenders plan to originate mortgages. The purpose of this notice is to inform mortgagees that applications for reservations are now being accepted by their HUD Regional Office of Housing. Applications will continue to be accepted until all reservations have been used. These reservations can be used to apply for mortgage insurance only after the final rule becomes effective. It is the final rule that will determine the terms and conditions under which HUD will accept applications for insurance, issue commitments, and insure reverse mortgages.

2. Anticipated Changes in the Final Rule

The final rule will be revised to the extent needed to conform to the allocation and reservation procedures announced in this notice. In addition, on the basis of a preliminary review of the comments during the 60-day public comment period and further development of concepts in the proposed rule, the Department expects that the final rule will differ from the proposed rule as follows regarding the terms and conditions of eligible mortgages.

- The definition of "principal limit" will be clarified, and it will be used to calculate all payments to mortgagors, including tenure monthly payments. This change will have little impact upon the size of a tenure monthly payment, but it will greatly increase the simplicity and flexibility of FHA-insured reverse mortgages. The proposed rule could be read to suggest that FHA proposed to insure three different types of mortgages. In fact, any FHA-insured reverse mortgage can be more accurately thought of as a line of credit mortgage under which the pattern of payments may be changed or varied.
- Under this reverse mortgage program, there is a unique principal limit for each mortgage which depends upon: (1) The age of the youngest mortgagor, (2) the expected average mortgage interest rate, and (3) the value of the property, up to the maximum mortgage amount for a section 203(b) mortgage on a one-family residence in the area.

The principal limit at origination is the maximum amount that a mortgagor can receive on the first day of a mortgage and is determined by using a factor table to be provided by the Secretary. Technically, it represents the present value of all future payments that a mortgagor can receive, given the mortgagor's age, interest rate, and house value.

The principal limit increases each month by one-twelfth of the expected average mortgage interest rate plus periodic mortgage insurance premium. The growing maximum principal limit represents the sum of the present values of all past payments made to the mortgagor plus all future payments that the mortgagor may receive.

When the mortgage balance equals the principal limit, the mortgagor cannot receive any more payments, but may remain in the property until the mortgagor moves, sells, or dies.

- A mortgagor will be permitted to receive an initial payment under an FHA-insured reverse mortgage up to the principal limit to pay off an existing mortgage, to pay a contractor who has made repairs in exchange for a lien to be paid off at closing, or for other purposes.
- Within the principal limit, a mortgagor will have flexibility in determining the pattern of payments under a reverse mortgage. For example, a mortgagor will be able to combine a line of credit with a term or tenure mortgage or a lump sum draw with a tenure mortgage. HUD is continuing to consider whether limits should be placed on the borrower's choices, either by rule or at the lender's discretion.
- HUD will permit shared appreciation between the mortgagee and mortgagor for all of the types of reverse mortgages that can be originated under the program, as long as the mortgagee offers a mortgagor a comparable mortgage without shared appreciation.

3. Regional Allocation of Reservations

HUD has allocated its 2,500 reservation of insurance authority in lots of 50 among its 10 Regions in proportion to each Region's share of the Nation's elderly homeowners. The allocations are as follows: Region I, 150; Region II, 200; Region III, 250; Region IV, 500; Region V, 500; Region VI, 300; Region VII, 150; Region VIII, 100; Region IX, 250; and Region X, 100. Reservations may not be transferred among mortgagees or Regions.

4. Eligible Mortgagees

Any mortgagee approved under Part 203 of Title 24, Chapter II of the Code of Federal Regulations, except an investing mortgagee approved under § 203.6, may apply for 50 reservations per Region. A mortgagee approved under § 203.3, 203.4, 203.6, or 203.7 may purchase, hold, and sell mortgages insured under Section 255 of the Act without additional approval. A mortgagee may apply for additional reservations after its initial reservations are used or expire.

5. Applications

To apply for a reservation of insurance authority, a mortgagee must submit a written request stating: (a) The name and address of the mortgagee; and (b) the 10-digit mortgagee identification number confirming that the mortgagee is a HUD-approved mortgagee. Each application will be for 50 units in the Region where the mortgagee applies.

In addition, a loan correspondent approved under section 203.5 must provide evidence that all of the mortgages that it originates under section 255 of the Act will be purchased by the loan correspondent's sponsor or sponsors which have been approved under section 203. For each sponsor, the loan correspondent must provide: (a) The sponsor's name and address; (b) the sponsor's 10-digit mortgagee identification number; and (c) a copy of the purchase agreement which obligates the sponsor to purchase the mortgages. The collective agreements must show that all of the mortgages originated by the loan correspondent will be purchased if all insurance authority reserved by the loan correspondent is used.

6. Initial Distribution of Reservations

Regional Offices of Housing will make initial distributions of reservations 30 days after the publication of this notice and will notify mortgagees of the results of the random drawing. If a Regional Office receives more applications than its allocation of reservations, all mortgagees who have applied during the initial 30-day application period will be placed on a list according to a random drawing. Reservations will be distributed to mortgagees starting at the top of the list. Mortgagees who do not receive reservations will remain on the list. Mortgagees who apply after the 30-day period will be added to the list in the order in which their applications are received. Any further reservations that become available will be distributed according to this list.

7. Expiration and Redistribution of Reservations

A reservation will last for six months, dating from the effective date of HUD's pending final rule implementing the Home Equity Conversion Mortgage Insurance Demonstration Program. If a conditional commitment has been issued, a reservation may be extended until the firm commitment for that application expires. Mortgagees that hold reservations may apply for reverse mortgage insurance on the date that the final rule for the demonstration becomes effective. At the end of six months, the Regional Office will recall reservations for which a conditional commitment has not been issued and will distribute them to the next mortgagees on the list. At the discretion of the Director of the Regional Office of Housing, a mortgagee may receive fewer reservations than requested if fewer than 50 are available for distribution. If a Regional Office does not have a waiting list, HUD Headquarters will reallocate the reservations to Regional Offices with waiting lists.

8. HUD User 800 Number for Mortgagees and Mortgagors

Mortgagees who want the names, addresses, and telephone numbers of the HUD-approved housing counseling agencies in their area may call HUD User—(800) 245-2691. (This is a toll-free number.) About 60 days after the publication of this notice, potential mortgagors may call this number to obtain the names, addresses, and telephone numbers of the participating mortgagees and the HUD-approved housing counseling agencies in their area.

Other Matters

This notice and the rule with which it is associated do not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulation issued by the President on February 17, 1981. Analysis of the notice indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50 which implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk at the above address.

The rule with which this notice is associated was listed as item 922 in the Department's Semiannual Agenda of Regulations published on October 24, 1988 (53 FR 41974, 41982) under Executive Order 12291 and the Regulatory Flexibility Act. The Home Equity Conversion Mortgage Insurance Demonstration is not listed in the Catalog of Federal Domestic Assistance.

The collection of information requirements contained in this notice have been submitted to OMB along with the proposed rule for review under section 3504(h) of the Paperwork Reduction Act of 1980. The OMB clearance number is 2528-0133.

Date: January 17, 1989.

Samuel R. Pierce, Jr.,

Secretary.

[FR Doc. 89-1510 Filed 1-23-89; 8:45 am]

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Part IV

Department of Education

Office of Special Education and Rehabilitative Services

Arbitration Panel Decision Under the Randolph-Sheppard Act; Blind Vending Facilities; Notice

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DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

Arbitration Panel Decision Under the Randolph-Sheppard Act; Blind Vending Facilities

AGENCY: Department of Education.

ACTION: Notice of Arbitration Panel Decision Under the Randolph-Sheppard Act.

SUMMARY: Notice is given that on October 20, 1987, an arbitration panel rendered a decision in the matter of James C. Parkman, Vendor v. Florida Department of Education, Division of Blind Services, a "State Licensing Agency" (SLA) designated by the Secretary of Education. This panel was convened by the Secretary of Education pursuant to 20 U.S.C. 107d–1(a), upon receipt of a complaint filed by petitioner James C. Parkman on July 9, 1981, as amended on December 3, 1985. (Docket No. R–S/82–7).

Under this section of the Act, a blind licensee who is dissatisfied with the State's operation or administration of the vending facility program may request a full evidentiary hearing from the SLA. If the licensee is dissatisfied with the State agency decision, the licensee may file a complaint with the Secretary, who is then required to convene an arbitration panel to resolve the dispute.

FOR FURTHER INFORMATION CONTACT: George F. Arsnow, Chief, Vending Facility Branch, Division for Blind and Visually Impaired, Rehabilitation Service Administration, Room 3230, Mary E. Switzer Building, Department of Education, 330 C Street, SW., Washington, DC 20202–2736, Area Code (202) 732–1317 or TTY (202) 732–1298.

The full text of the arbitration panel decision can be obtained from this source.

Dated: January 17, 1989.

Madeleine Will,

Assistant Secretay for Special Education and Rehabilitative Services.

Synopsis of Arbitration Panel Decision

I. Background

Pursuant to a permit entered into between Florida SLA and the National Aeronautics and Space Administration (NASA) under the Randolph-Sheppard Act, the complainant James Parkman began operating a snack bar (vending facility #150) on the third floor of the Kennedy Space Center Headquarters building in 1968. From 1975 to 1981, competing vending facilities were operated by Jet Services, a private corporation, consisting of a cafeteria, vending machines on the first floor, four (4) machines on the second floor, and three (3) machines on the third floor.

In 1981, the SLA obtained a permit from the Space Center to operate all the snack bars and vending machines, including those previously operated by Jet Services. This resulted in the establishment of a new Randolph-Sheppard vending facility #284, a large vending machine route that employed eight blind vendors and eight sighted persons. Shortly thereafter, Mr. Parkman requested that the vending machines on the second and third floors be assigned to his facility #150. The SLA agreed to add the third floor machines to his facility, but left the four (4) (reduced to three (3) since 1984) machines on the second floor under the control of the new Randolph-Sheppard facility #284.

II. Panel Decision

The panel concluded that the SLA did not abuse its discretion by refusing to add the disputed vending machines to complainant's vending facility. In addressing the complainant's claim that the vending machines on the second floor assigned to facility #284 were in competition with him, the panel agreed with the SLA that nothing in the Act prohibits competition *between* blind vendors. Rather, the income sharing provisions of the Act and implementing regulations at 34 CFR 395.1 (f) and (z) apply only to competition existing between commercial vending concerns and blind vendors on Federal property.

Secondly, the panel held that it lies within the discretion of the SLA to determine how many blind-vendor facilities it will establish on a given Federal property, as long as the incomes of the respective vendors are not adversely affected as a result. The panel specifically found that nothing in the Act or implementing regulations guarantees a blind vendor any more than a fair return. The panel determined that the transfer of the disputed machines to the complainant would have disproportionately benefited him at the expense of the other vendors operating facility #284. Furthermore, the SLA had cushioned any negative financial effects the complainant might have suffered from the establishment of facility #284 by assigning to him the income from vending machines near the snack bar on the third floor.

For the reasons cited above, the panel upheld the State hearing that dismissed complainant's grievance. The views expressed by the panel do not necessarily represent the views and opinions of the Department of Education.

[FR Doc. 89–1542 Filed 1–23–89; 8:45 am]

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Part V

The President

Memorandum of January 19, 1989—Actions Concerning the Generalized System of Preferences: Thailand

Proclamation 5936—National Day of Prayer and Thanksgiving, 1989

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Presidential Documents

Title 3—

The President

Memorandum of January 19, 1989

Actions Concerning the Generalized System of Preferences—Thailand

Memorandum for the United States Trade Representative

Pursuant to sections 502(c)(5), 504(a)(1), and 504(c)(3)(B) and (C) of the Trade Act of 1974, as amended ("Act") (19 U.S.C. 2462(c)(5), 2464(a)(1) and (c)(3)(B) and (C)), I am hereby acting to modify the application of duty-free treatment under the Generalized System of Preferences (GSP) currently being afforded to certain products exported from Thailand and to make findings concerning the extent to which Thailand is providing adequate and effective means under its laws for foreign nationals to secure, exercise, and enforce exclusive rights in intellectual property, including patents and copyrights.

After considering two private-sector requests for review concerning the extent to which Thailand provides adequate and effective means of securing exclusive rights in patents and copyrights, and in accordance with section 502(c)(5) of the Act, I have determined that Thailand does not fully provide adequate and effective means to secure, exercise, and enforce exclusive rights in intellectual property. Therefore, pursuant to sections 504(a)(1) and 504(c)(3)(B) and (C) of the Act, I have decided to deny Thailand's request for a competitive need waiver on certain jewelry items. In addition, I revoke four competitive need waivers granted to Thailand as part of the 1988 GSP General Review because I have determined that these waivers are no longer warranted due to changed circumstances. I also have determined that calculation of Thailand's competitive need limit for specified products imported during calendar year 1988 shall be consistent with section 504(c)(2)(B) of the Act and implemented on July 1, 1989. (The products affected by each of these actions are enumerated in the annex to this document.) Finally, future requests for competitive need waivers for Thai products will not be looked upon favorably until Thailand provides adequate and effective intellectual property protection.

These determinations shall be published in the **Federal Register.**

Ronald Reagan

THE WHITE HOUSE,
Washington, January 19, 1989.

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ANNEX

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I. DENIAL OF REQUESTED COMPETITIVE NEED WAIVER		
74014	7113.11.50	Jewelry of precious metals
	7113.19.50	
	7113.20.50	
II. REVOCATION OF 1988 GSP GENERAL REVIEW COMPETITIVE NEED WAIVERS		
74005	7113.11.20	Jewelry etc. and parts
14014	0713.31.40	Mung beans, dried
13135	1102.30.00	Rice meal and flour
	1103.14.00	
68842	8909.19.10	Other connection apparatus
	8539.90.00	
	8543.20.00	
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72735	9401.40.00	Furniture, wood
	9401.61.60	NSPF
	9401.69.80	
	9403.30.80	
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	9403.60.80	
53222	6908.10.20	Mosaic Ceramic Floor Tile
74821	6702.90.60	Artificial Flowers NSPF

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Presidential Documents

Proclamation 5936 of January 20, 1989

National Day of Prayer and Thanksgiving, 1989

By the President of the United States of America

A Proclamation

On this Bicentennial of the Presidency of the United States of America, it is fitting to recall our first President, George Washington, who believed in our country's divine destiny. He said, "No people can be bound to acknowledge and adore the invisible hand, which conducts the affairs of men, more than the people of the United States."

As we celebrate this American Bicentennial Presidential Inaugural, we celebrate America's brotherhood—our common ideals, our common kinship, our national unity. We celebrate America as "one nation under God."

As I assume the office of President, I am humbled before God and seek His counsel and favor on our land, and join with our first President who said, ". . .it would be peculiarly improper to omit in this first official act, my fervent supplications to that Almighty Being who rules over the universe. . .that his benediction may consecrate to the liberties and happiness of the people of the United States, a government instituted by themselves for these essential purposes."

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, by the authority vested in me by the Constitution and laws of the United States, do hereby proclaim January 22, 1989, a National Day of Prayer and Thanksgiving and call upon the citizens of our great Nation to gather together on this day in homes and places of worship to pray in thanksgiving for our blessings of peace, freedom, prosperity, and Independence. Let all Americans kneel humbly before our Heavenly Father in search of His counsel and for His divine guidance and wisdom upon the leaders of the United States of America.

IN WITNESS WHEREOF, I have hereunto set my hand this twentieth day of January, in the year of our Lord nineteen hundred and eighty-nine, and of the Independence of the United States of America the two hundred and thirteenth.

George HW Bush

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 318

[Docket No. 88-058]

Inspection of Means of Conveyance, Baggage, and Cargo Moving Interstate From Hawaii, Puerto Rico, or the Virgin Islands

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending two subparts in our Hawaiian and territorial quarantine notices with respect to inspection requirements and the location of inspection for ships, other surface craft, aircraft, and cargo, baggage, and personal effects moving from Hawaii, Puerto Rico, or the Virgin Islands of the United States to other parts of the United States. These amendments will improve the efficiency of inspections, and consolidate and clarify the Department's regulations and procedures with respect to these inspections. We are also making editorial changes to make the organization of the two subparts similar.

EFFECTIVE DATE: February 24, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Charles A. Havens, Port Operations Staff, PPQ, APHIS, USDA, Room 663, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8295.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR Part 318, among other things, quarantine Hawaii, Puerto Rico, and the Virgin Islands of the United States to prevent the spread of dangerous plant diseases and insect infestations that are new to or not widely prevalent or distributed within and throughout the United States. The two subparts we are amending are "Hawaiian Fruits and Vegetables" (7 CFR 318.13 *et seq.*), and "Fruits and Vegetables From Puerto Rico or Virgin Islands" (7 CFR 318.58 *et seq.*).

We published in the **Federal Register** on February 3, 1988 (53 FR 3028-3036, Docket Number 84-356), a proposal to amend the requirements for inspection of ships, vessels, other surface craft, and aircraft, and of certain cargo, baggage, and personal effects moving from Hawaii, Puerto Rico, or the Virgin Islands to other parts of the United States. That proposal specified requirements for inspection of baggage moved from Hawaii, Puerto Rico and the Virgin Islands to other parts of the United States, clarified requirements for inspection of means of conveyance and cargo from Hawaii, Puerto Rico and the Virgin Islands, and consolidated various requirements of the Hawaii and Puerto Rico-Virgin Islands regulations to improve organization of the regulations and to aid enforcement.

Comments

Our proposal invited the submission of written comments, which were required to be postmarked or received on or before April 4, 1988. We received two comments, one from the Office of Inspector General of the United States Department of Agriculture and one from the Department of Agriculture of the Commonwealth of Puerto Rico.

The Office of Inspector General noted that the proposed regulations do not state specific actions to be taken by an inspector who finds a passenger or an article to be in violation of the regulations, and suggested that the inspector's responsibilities under these circumstances be detailed in the regulations.

In response to this comment, we are making changes to §§ 318.13-10 and 318.58-10, "Inspection of baggage, other personal effects, and cargo". In §§ 318.13-10 and 318.58-10, the proposed regulations require that a person found to be in violation of the regulations "shall state his or her name and address, and provide corroborative identification to the inspector." We are adding to this provision, each place it appears, a requirement that the inspector seize the violative articles, and record the name and address of the person in violation of the regulations, the nature of the identification presented for corroboration, the nature of the violation, the types of articles involved, and the date, time, and place of the violation.

The proposed regulations state the responsibilities of the inspector for disposing of articles in violation of the regulations, in §§ 318.13-8 and 318.58-8, "Articles and persons subject to inspection."

Taken together, these sections of the regulations describe the inspector's responsibility to prevent the movement of articles in violation of the regulations, and to obtain the information necessary for filing a complaint or assessing a civil penalty against the violator. Proceedings for civil penalties or other legal actions against the violator, if any are initiated, will be handled in accordance with applicable Department procedures and rules of practice.

The Puerto Rico Department of Agriculture objected to the fact that the proposed regulations do not deal with the movement of baggage and cargo from the mainland to Puerto Rico, and noted that there are many pests and diseases that could move to Puerto Rico in baggage or cargo and cause harm to Puerto Rican agriculture.

We are not making any changes in response to this comment. We agree that there are many pests, such as citrus canker and various fruit files, that could cause damage if moved to Puerto Rico from the mainland. However, movement of articles that could contain pests and diseases from any other state to Puerto Rico is regulated by 7 CFR Part 301, "Domestic Quarantine Notices," and is outside the scope of the proposed regulations, which pertain to the quarantines imposed on Hawaii, Puerto Rico and the Virgin Islands, and concern movements from, not to, those places.

Based on the rationale in the proposal, we are adopting the provisions of the proposal as a final rule.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase

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in costs or prices for consumers, individual industries, federal, state or local government agencies or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Most of the effects of this rule will apply to airlines and ship lines that are not small entities. Any effects on small entities by the rule's inspection and shipping requirements (e.g., small packers and shippers) should be minimal; the rule does not prohibit the movement of any products formerly allowed movement, and will not increase shipping costs to small entities. Persons are not charged for the inspection of their baggage and other personal effects by an inspector, and there is no inspection cost to shippers and importers of cargo with the exception of reimbursement to the Department for overtime hours requested by shippers or importers.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The regulations in this rule contain no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980, as amended (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V.)

List of Subjects in 7 CFR Part 318

Agricultural commodities, Baggage, Cargo, Guam, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Hawaii, Puerto Rico, Transportation, Virgin Islands, Incorporation by reference.

Accordingly, 7 CFR Part 318 is amended as follows:

PART 318—HAWAIIAN AND TERRITORIAL QUARANTINE NOTICES

1. The authority citation for Part 318 is revised to read as follows:

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162, 164a, 167; 7 CFR 2.17, 2.51 and 371.2(c).

§ 318.13a [Amended]

2. Section 318.13a is amended by removing paragraph (b).

3. Section 318.13–3 is amended by revising paragraph (a) and by adding a new paragraph (d) to read as follows:

§ 318.13–3 Conditions of movement.

(a) *To any destination.* Any regulated articles may be moved interstate from Hawaii in accordance with this subpart to any destination if:

(1) The movement is authorized by a valid certificate issued in accordance with § 318.13–4 (a) or (b) and the movement complies with the conditions of any applicable compliance agreement made under § 318.13–4(d), or

(2) The movement is exempted from certificates or limited permit requirements by administrative instructions in this subpart.

* * * * *

(d) *Attachment of certificates and limited permits.* Except as otherwise provided for certain air cargo and containerized cargo on ships moved in accordance with § 318.13–10, each box, bale, crate, or other container of regulated articles moved under certificate or limited permit shall have the certificate or limited permit attached to the outside of the container: *Provided,* That if a certificate or limited permit is issued for a shipment of more than one container of for bulk products, the certificate or limited permit shall be attached to or stamped on the accompanying waybill, manifest, or bill of lading.

4. Section 318.13–6 is revised to read as follows:

§ 318.13–6 Container marking and identity.

For shipments of regulated articles moved in accordance with this subpart, the following information shall be clearly marked on each container, or for shipments of multiple containers or bulk products, on the waybill, manifest, or bill of lading accompanying the articles: Nature and quantity of contents; name and address of shipper, owner, or person shipping or forwarding the articles; name and address of consignee; shipper's identifying mark and number; and, the number of the certificate or limited permit authorizing movement, if one was issued.

§ 318.13–7 [Amended]

5. Section 318.13–7 is amended as follows:

a. The heading is changed to read "Products as ships' stores or in the possession of passengers or crew."

b. In paragraph (a) "ship, vessel, other surface craft, or aircraft" is removed and "aircraft moving to Guam, ship, vessel, or other surface craft" is inserted.

c. In paragraph (a) "Virgin Islands of the United State:" is removed and "Virgin Islands of the United States." is inserted, and the remainder of that sentence is removed.

d. In paragraph (b) "a ship, vessel, or other surface craft, or aircraft in Hawaii" is removed and "an aircraft moving from Hawaii to Guam, or a ship, vessel, or other surface craft in Hawaii" is inserted.

e. In paragraph (b) "the ship, vessel, other surface craft, or aircraft before arrival" is removed and "the aircraft moving from Hawaii to Guam, or the ship, vessel, or other surface craft before arrival" is inserted.

6. Section 318.13–8 is revised to read as follows:

§ 318.13–8 Articles and persons subject to inspection.

Persons, means of conveyance (including ships, other ocean-going craft, and aircraft), baggage, cargo, and any other articles, that are destined for movement, are moving, or have been moved from Hawaii to the continental United States, Guam, Puerto Rico, or the Virgin Islands of the United States are subject to agricultural inspection at the port of departure and/or the port of arrival. If an inspector finds any article prohibited movement by the quarantine and regulations of this subpart, he or she, taking the least drastic action, shall order the return of the article to the place of origin, or the exportation of the article, under safeguards satisfactory to him or her, or otherwise dispose of it, in whole or part, to comply with the quarantine and regulations of this subpart.

7. Section 318.13–9 is revised to read as follows:

§ 318.13–9 Inspection of means of conveyance.

(a) *Inspection of aircraft prior to departure.* No person shall move any aircraft from Hawaii to the continental United States, Puerto Rico, or the Virgin Islands of the United States, unless the person moving the aircraft has contacted an inspector and offered the inspector the opportunity to inspect the aircraft prior to departure and the inspector has informed the person proposing to move the aircraft that the aircraft may depart.

(b) *Inspection of aircraft moving to Guam.* Any person who has moved an aircraft from Hawaii to Guam shall contact an inspector and offer the inspector the opportunity to inspect the aircraft upon the aircraft's arrival in Guam, unless the aircraft has been inspected and cleared in Hawaii prior to departure in accordance with arrangements made between the operator of the aircraft, the Animal and Plant Health Inspection Service, and the government of Guam.

(c) *Inspection of ships upon arrival.* Any person who has moved a ship or other ocean-going craft from Hawaii to the continental United States, Guam, Puerto Rico, or the Virgin Islands of the United States shall contact an inspector and offer the inspector the opportunity to inspect the ship or other ocean-going craft upon its arrival.

§§ 318.13–10 and 318.13–11 [Removed]

8. Sections 318.13–10 and 318.13–11 are removed.

§ 318.13–12 [Redesignated as § 318.13–10 and Revised]

9. Section 318.13–12 is redesignated as § 318.13–10, and is revised to read as follows:

§ 318.13–10 Inspection of baggage, other personal effects, and cargo.

(a) *Offer for inspection by aircraft passengers.* Passengers destined for movement by aircraft from Hawaii to the continental United States, Puerto Rico, or the Virgin Islands of the United States shall offer their carry-on baggage and other personal effects for inspection at the place marked for agricultural inspections, which will be located at the airport security checkpoint or the aircraft boarding gate, at the time they pass through the checkpoint or the gate. Passengers shall offer their check-in baggage for inspection at agricultural inspection stations prior to submitting their baggage to the check-in baggage facility. When an inspector has inspected and passed such baggage or personal effects, he or she shall apply a USDA stamp, inspection sticker, or other identification to such baggage or personal effects to indicate that such baggage or personal effects have been inspected and passed as required. Passengers shall disclose any fruits, vegetables, plants, plant products, or other articles that are requested to be disclosed by the inspector. When an inspection of a passenger's baggage or personal effects discloses an article in violation of the regulations in this part, the inspector shall seize the article. The passenger shall state his or her name and address to the inspector, and provide the inspector with corroborative identification. The inspector shall record the name and address of the passenger, the nature of the identification presented for corroboration, the nature of the violation, the types of articles involved, and the date, time, and place of the violation.

(b) *Offer for inspection by aircraft crew.* Aircraft crew members destined for movement by aircraft from Hawaii to the continental United States, Puerto Rico, or the Virgin Islands of the United States, shall offer their baggage and personal effects for inspection at the inspection station designated for the employing airline not less than 20 minutes prior to the scheduled departure time of the aircraft or the rescheduled departure time as posted in the public areas of the airport. When an inspector has inspected and passed such baggage or personal effects, he or she shall apply a USDA stamp, inspection sticker, or other identification to the baggage or personal effects to indicate that such baggage or personal effects have been inspected and passed as required. Aircraft crew members shall disclose any fruits, vegetables, plants, plant products, or other articles that are requested to be disclosed by the inspector. When an inspection of a crew member's baggage or personal effects discloses an article in violation of the regulations in this part, the inspector shall seize the article. The crew member shall state his or her name and address to the inspector, and provide the inspector with corroborative identification. The inspector shall record the name and address of the crew member, the nature of the identification presented for corroboration, the nature of the violation, the types of articles involved, and the date, time, and place of the violation.

(c) *Baggage inspection for persons traveling to Guam on aircraft.* No person who has moved from Hawaii to Guam on an aircraft shall remove or attempt to remove any baggage or other personal effects from the area secured for customs inspections before the person has offered to an inspector, and has had passed by the inspector, his or her baggage and other personal effects. persons shall disclose any fruits, vegetables, plants, plant products, or other articles that are requested to be disclosed by the inspector. When an inspection of a person's baggage or personal effects discloses an article in violation of the regulations in this part, the inspector shall seize the article. The person shall state his or her name and address to the inspector, and provide the inspector with corroborative identification. The inspector shall record the name and address of the person, the nature of the identification presented for corroboration, the nature of the violation, the types of articles involved, and the date, time, and place of the violation.

(d) *Baggage acceptance and loading on aircraft.* No person shall accept or load any check-in aircraft baggage destined for movement from Hawaii to the continental United States, Puerto Rico, or the Virgin Islands of the United States, unless a certificate is attached to the baggage, or the baggage bears a USDA stamp, inspection sticker, or other indication applied by an inspector representing that the baggage has been inspected and passed.

(e) *Offer for inspection by persons moving by ship.* No person who has moved on any ship or other ocean-going craft from Hawaii to the continental United States, Puerto Rico, Guam, or the Virgin Islands of the United States, shall remove or attempt to remove any baggage or other personal effects from the designated inspection area as provided in § 318.13–10(b) on or off the ship or other ocean-going craft unless the person has offered to an inspector for inspection, and has had passed by the inspector, the baggage and other personal effects. Persons shall disclose any fruits, vegetables, plants, plant products, or other articles that are requested to be disclosed by the inspector. When an inspection of a person's baggage or personal effects discloses an article in violation of the regulations in this part, the inspector shall seize the article. The person shall state his or her name and address to the inspector, and provide the inspector with corroborative identification. The inspector shall record the name and address of the person, the nature of the identification presented for corroboration, the nature of the violation, the types of articles involved, and the date, time, and place of the violation.

(f) *Loading of certain cargoes.* (1) Except as otherwise provided in paragraph (f)(2) of this section, no person shall present to any common carrier or contract carrier for movement, and no common carrier or contract carrier shall load, any cargo containing fruits, vegetables, or other articles regulated under this subpart that are destined for movement from Hawaii to the continental United States, Puerto Rico, or the Virgin Islands of the United States, unless the cargo has been offered for inspection, passed by an inspector, and bears a USDA stamp or USDA inspection sticker, or unless a certificate or limited permit is attached to the cargo as specified in § 318.13–3(d).

(2) Cargo designated in paragraph (f)(1) of this section may be loaded without a USDA stamp or USDA inspection sticker, and without an

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attached certificate or limited permit if the cargo is moved:

(i) As containerized cargo on ships or other ocean-going craft or as air cargo;

(ii) The carrier has on file documentary evidence that a valid certificate or limited permit was issued for the movement; and

(iii) A notation of the existence of these documents is made by the carrier on the waybill, manifest, or bill of lading that accompanies the shipment.

(g) *Removal of certain cargoes in Guam.* No person shall remove or attempt to remove from a designated inspection area as provided in § 318.13–10(b), on or off the means of conveyance, any cargo moved from Hawaii to Guam containing fruits, vegetables, or other articles regulated under this subpart, unless the cargo has been inspected and passed by an inspector in Guam.

(h) *Space and facilities for baggage inspection.* Baggage inspection will not be performed until the person in charge or possession of the ship, other ocean-going craft, or aircraft provides space and facilities on the means of conveyance, pier, or airport that are adequate, in the inspector's judgment, for the performance of inspection.

10. A new § 318.13–11 is added to read as follows:

§ 318.13–11 Disinfection of means of conveyance.

If an inspector, through an inspection pursuant to this subpart, finds that a means of conveyance is infested with or contains plant pests, and the inspector orders disinfection of the means of conveyance, then the person in charge or in possession of the means of conveyance shall disinfect the means of conveyance and its cargo in accordance with an approved method contained in the Plant Protection and Quarantine Treatment Manual under the supervision of an inspector and in a manner prescribed by the inspector, prior to any movement of the means of conveyance or its cargo. The Plant Protection and Quarantine Treatment Manual is incorporated by reference. For the full identification of this standard, see § 300.1, "Materials incorporated by reference."

§§ 318.13–12 through 318.13–17 [Redesignated as §§ 318.13–12 through 318.13–16]

11. Sections 318.13–13 through 318.13–17 are redesignated as 318.13–12 through 318.13–16.

§ 318.13–12 [Amended]

12. Newly designated § 318.13–12 is amended as follows:

a. In the first sentence of paragraph (a) "Before any ship, vessel, other surface craft, or aircraft from Hawaii" is removed and "Before any aircraft moving to Guam from Hawaii, or any ship, vessel, or other surface craft from Hawaii" is inserted.

b. In the second sentence of paragraph (a) the colon after "inspection area" is replaced with a period, and the remainder of that sentence is removed.

13. Newly designated § 318.13–13 is revised to read as follows:

§ 318.13–13 Movements by the Department of Agriculture.

Notwithstanding any other restrictions of this subpart, articles subject to the requirements of the regulations in this subpart may be moved if they are moved:

(a) By the United States Department of Agriculture for experimental or scientific purposes;

(b) Pursuant to a Departmental permit issued for the article and kept on file at the port of departure;

(c) Under conditions specified on the Departmental permit and found by the Administrator to be adequate to prevent the spread of plant pests and diseases; and,

(d) With a Departmental tag or label bearing the number of the Departmental permit issued for the article securely attached to the outside of the container of the article or securely attached to the article itself if not in a container.

Subpart—Fruits and Vegetables from Puerto Rico or Virgin Islands

§ 318.58–1 [Amended]

14. Section 318.58–1 is amended by adding a new paragraph (f) to read as follows:

* * * * *

(f) *Certificate.* A document signed by an inspector certifying that a particular ship, vessel, other surface craft, or aircraft, or any specified lot or shipment of fruits or vegetables or other plant materials, via baggage, parcel post, express, freight or other mode of transportation, has been inspected and found apparently free from articles the movement of which is prohibited by the quarantine and regulations in this subpart, and from the plant pests referred to in said quarantine; or that the lot or shipment is of such a nature that no danger of infestation or infection is involved; or that it has been treated in a manner to eliminate infestation. A certificate covering treated products must state the treatment applied.

§ 318.58–2 [Removed]

15. Section 318.58–2 is removed.

§ 318.58–3 [Redesignated as § 318.58–2 and Amended]

16. Section 318.58–3 is redesignated as § 318.58–2, the section heading is revised, paragraphs (a), (b) and (c) are redesignated as (b)(1), (b)(2) and (b)(3), and a new paragraph (a), and new heading for paragraph (b) are added to read as follows:

§ 318.58–2 Regulated articles.

(a) *Prohibited movement.* Fruits, vegetables, and other products specified in § 318.58 and not eligible for inspection and certification under § 318.58–4 or otherwise expressly authorized movement in the regulations in this subpart are prohibited movements.

(b) *Regulated movement.* (1) Subject to * * *

* * * * *

17. A new § 318.58–3 is added to read as follows:

§ 318.58–3 Conditions of movement.

(a) *To any destination.* Any regulated articles may be moved interstate from Puerto Rico or the Virgin Islands of the United States in accordance with this subpart to any destination if:

(1) The movement is authorized by a valid certificate issued in accordance with § 318.58–4, or

(2) The movement is exempted from certificate requirements by administrative instructions in this subpart.

(b) *Segregation of certified articles.* Articles authorized for movement by a certificate after treatment in accordance with § 318.58–4(b), taken aboard any ship, vessel, other surface craft, or aircraft in Puerto Rico or the Virgin Islands of the United States, must, under the supervision of an inspector, be segregated and protected from infestation by any plant pest or disease.

(c) *Attachment of certificates.* Except as otherwise provided for certain air cargo and containerized cargo on ships moved in accordance with § 318.58–10, each box, bale, crate, or other container of regulated articles moved under a certificate shall have the certificate attached to the outside of the container: *Provided,* that if a certificate is issued for a shipment of more than one container or for bulk products, the certificate shall be attached to or stamped on the accompanying waybill, manifest, or bill of lading.

§ 318.58–5 [Removed]

§ 318.58–4 [Redesignated as § 318.58–5]

18. Section 318.58–5 is removed, and § 318.58–4 is redesignated as § 318.58.5.

19. A new § 318.58–4 is added to read as follows:

§ 318.58–4 Issuance of certificates.

An inspector may issue a certificate for the movement of regulated articles upon compliance with the regulations in this subpart and under either of the following conditions:

(a) *Certification on basis of inspection or nature of lot involved.* An inspector may issue a certificate for fruits and vegetables designated in § 318.58–2(b)(1) after he has inspected them and found that they appear free from infestation and infection, or has determined without an inspection that the lot for shipment is of such a nature that there appears to be no danger of infestation or infection.

(b) *Certification on basis of treatment.* Fruits and vegetables designated in § 318.58–2(b) may be certified after undergoing an approved treatment contained in the Plant Protection and Quarantine Treatment Manual under the supervision of an inspector and if the articles are handled after treatment in accordance with all conditions that the inspector requires. The Plant Protection and Quarantine Treatment Manual is incorporated by reference. For the full identification of this standard, see § 300.1, "materials incorporated by reference." Treatments shall be applied at the expense of the shipper, owner, or person in charge of the articles. The Department of Agriculture or its inspector will not be responsible for loss or damage resulting from any treatment prescribed or supervised under this subpart.

§ 318.58–3c [Redesignated as § 318.58–4a]

20. Section 318.58–3c is redesignated as § 318.58–4a.

§ 318.58–7 [Amended]

21. Section 318.58–7 is amended as follows: (a) By removing "ships, vessels, or aircraft" and inserting "ships or other ocean-going craft"; (b) by adding the phrase, "or aircraft moving from Puerto Rico or the Virgin Islands of the United States to Guam" after the words "United States" and before the words ": Provided, That"; and (c) by amending the reference to "318.58–11" to read "318.58–12" in the proviso.

22. Section 318.58–8 is revised to read as follows:

§ 318.58–8 Articles and persons subject to inspection.

Persons, means of conveyance (including ships, other ocean-going craft, and aircraft), baggage, cargo, and any other articles that are destined for movement, are moving, or have been moved from Puerto Rico or the Virgin Islands of the United States to any other State, Territory, or District of the United States are subject to agricultural inspection at the port of departure and/or the port of arrival. If an inspector finds any article prohibited movement by the quarantine and regulations of this subpart, he or she, taking the least drastic action, shall order the return of the article to the place of origin or the exportation of the article, under safeguards satisfactory to him or her, or otherwise dispose of it, in whole or part, to comply with the quarantine and regulations of this subpart.

23. Section 318.58–9 is revised to read as follows:

§ 318.58–9 Inspection of means of conveyance.

(a) *Inspection of aircraft prior to departure.* No person shall move any aircraft from Puerto Rico or the Virgin Islands of the United States to any other State, District, or Territory of the United States, except Guam, unless the person moving the aircraft has contacted an inspector and offered the inspector the opportunity to inspect the aircraft prior to departure and the inspector has informed the person proposing to move the aircraft that the aircraft may depart.

(b) *Inspection of aircraft moving to Guam.* Any person who has moved an aircraft from Puerto Rico or the Virgin Islands of the United States to Guam shall contact an inspector and offer the inspector the opportunity to inspect the aircraft upon the aircraft's arrival in Guam, unless the aircraft has been inspected and cleared in Puerto Rico or the Virgin Islands prior to departure in accordance with arrangements between the operator of the aircraft, the Animal and Plant Health Inspection Service, and the government of Guam.

(c) *Inspection of ships upon arrival.* Any person who has moved a ship or other ocean-going craft from Puerto Rico or the Virgin Islands of the United States to any other State, District, or Territory of the United States shall contact an inspector and offer the inspector the opportunity to inspect the ship or other ocean-going craft upon its arrival.

§§ 318.58–10 and 318.58–14 [Removed]

§ 318.58–11 [Redesignated as § 318.58–10 and Revised]

24. Sections 318.58–10 and 318.58–14 are removed, and § 318.58–11 is redesignated as § 318.58–10 and revised to read as follows:

§ 318.58–10 Inspection of baggage, other personal effects, and cargo.

(a) *Offer for inspection by aircraft passengers.* Passengers destined for movement by aircraft from Puerto Rico or the Virgin Islands of the United States to any other State, Territory, or District of the United States, except Guam, shall offer their carry-on baggage and other personal effects for inspection at the place marked for agricultural inspections, which will be located at the airport security checkpoint or the aircraft boarding gate, at the time they pass through the checkpoint or the gate. Passengers shall offer their check-in baggage for inspection at agricultural inspection stations prior to submitting their baggage to the check-in baggage facility. When an inspector has inspected and passed such baggage or personal effects, he or she shall apply a USDA stamp, inspection sticker, or other identification to the baggage or personal effects to indicate that the baggage or personal effects have been inspected and passed as required. Passengers shall disclose any fruits, vegetables, plants, plant products, or other articles that are requested to be disclosed by the inspector. When an inspection of a passenger's baggage or personal effects discloses an article in violation of the regulations in this part, the inspector shall seize the article. The passenger shall state his or her name and address to the inspector, and provide the inspector with corroborative identification. The inspector shall record the name and address of the passenger, the nature of the identification presented for corroboration, the nature of the violation, the types of articles involved, and the date, time, and place of the violation.

(b) *Offer for inspection by aircraft crew.* Aircraft crew members destined for movement by aircraft from Puerto Rico or the Virgin Islands of the United States to any other State, Territory, or District of the United States, except Guam, shall offer their baggage and personal effects for inspection at the inspection station designated for the employing airline not less than 20 minutes prior to the scheduled departure time of the aircraft or the rescheduled departure time as posted in the public areas of the airport. When an inspector has inspected and passed such baggage or personal effects, he or she shall apply a USDA stamp, inspection sticker, or other identification to the baggage or personal effects to indicate that such baggage or personal effects have been inspected and passed as required. Aircraft crew members shall disclose any fruits, vegetables, plants, plant products, or other articles that are requested to be disclosed by the inspector. When an inspection of a crew member's baggage or personal effects discloses an article in violation of the

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regulations in this part, the inspector shall seize the article. The crew member shall state his or her name and address to the inspector, and provide the inspector with corroborative identification. The inspector shall record the name and address of the crew member, the nature of the identification presented for corroboration, the nature of the violations, the types of articles involved, and the date, time, and place of the violation.

(c) *Baggage inspection for persons traveling to Guam on aircraft.* No person who has moved from Puerto Rico or the Virgin Islands of the United States to Guam on an aircraft shall remove or attempt to remove any baggage or other personal effects from the area secured for customs inspections before the person has offered to an inspector, and had passed by the inspector, his or her baggage and other personal effects. Persons shall disclose any fruits, vegetables, plants, plant products, or other articles that are requested to be disclosed by the inspector. When an inspection of a person's baggage or personal effects discloses an article in violation of the regulations in this part, the inspector shall seize the article. The person shall state his or her name and address to the inspector, and provide the inspector with corroborative identification. The inspector shall record the name and address of the person, the nature of the identification presented for corroboration, the nature of the violation, the types of articles involved, and the date, time, and place of the violation.

(d) *Baggage accepting and loading on aircraft.* No person shall accept or load any check-in aircraft baggage destined for movement from Puerto Rico or the Virgin Islands of the United States to any other State, Territory, or District of the United States, except Guam, unless a certificate is attached to the baggage, or the baggage bears a USDA stamp, inspection sticker, or other indication applied by an inspector representing that the baggage has been offered for inspection and passed by an inspector.

(e) *Offer for inspection by persons moving by ship.* No person who has moved on any ship or other ocean-going craft from Puerto Rico or the Virgin Islands of the United States to any other State, Territory, or District of the United States shall remove or attempt to remove any baggage or other personal effects from a designated inspection area as provided in § 318.58–10(h), on or off the ship or other ocean-going craft unless the person has offered to an inspector for inspection, and has passed by the inspector, the baggage and other personal effects. Persons shall disclose any fruits, vegetables, plants, plant products, or other articles that are requested to be disclosed by the inspector. When an inspection of a person's baggage or personal effects discloses an article in violation of the regulations in this part, the inspector shall seize the article. The person shall state his or her name and address to the inspector, and provide the inspector with corroborative identification. The inspector shall record the name and address of the person, the nature of the identification presented for corroboration, the nature of the violation, the types of articles involved, and the date, time, and place of the violation.

(f) *Loading of certain cargoes.* (1) Except as otherwise provided in paragraph (f)(2) of this section, no person shall present to any common carrier or contract carrier for movement, and no common carrier or contract carrier shall load, any cargo containing fruits, vegetables, or other articles regulated under this subpart that are distined for movement from Puerto Rico or the Virgin Islands of the United States to any other State, Territory, or District of the United States, except Guam, unless the cargo has been offered for inspection, passed by an inspector, and bears of USDA stamp or USDA inspection sticker, or uless a certificate or limited permit is attached to the cargo as specified in § 318.58–3(c).

(2) Cargo designated in paragraph (f)(1) of this section may be loaded without a USDA stamp or USDA inspection sticker and without an attached certificate or limited permit if the cargo is moved:

(i) As containerized cargo on ships or other ocean-going craft or as air cargo;

(ii) The carrier has on file documentary evidence that a valid certificate or limited permit was issued for the movement; and

(iii) A notation of the existence of these documents is made by the carrier on the waybill, manifest, or bill of lading that accompanies the shipment.

(g) *Removal of certain cargoes in Guam.* No person shall remove or attempt to remove from a designated inspection area as provided in § 318.58–10(h), on or off the means of conveyance, any cargo moved from Puerto Rico or the Virgin Islands of the United States to Guam containing fruits, vegetables, or other articles regulated under this subpart, unless the cargo has been inspected and passed by an inspector in Guam.

(h) *Space and facilities for baggage inspection.* Baggage inspection will not be performed until the person in charge or possession of the ship, other ocean-going craft, or aircraft provides space and facilities on the means of conveyance, pier or airport that are adequate, in the inspector's judgment, for the performance of inspections.

25. A new § 318.58–11 is added to read as follows:

§ 318.58–11 Disinfection of means of conveyance.

If an inspector, through an inspection pursuant to this subpart, finds that a means of conveyance is infested with or contains any plant pest, and the inspector orders disinfection of the means of conveyance, then the person in charge or in possession of the means of conveyance shall disinfect the means of conveyance and its cargo, in accordance with an approved method contained in the Plant Protection and Quarantine Treatment Manual under the supervision of an inspector and in a manner prescribed by the inspector, prior to any movement of the means of conveyance or its cargo. The Plant Protection and Quarantine Treatment Manual is incorporated by reference. For the full identification of this standard, see § 300.1, "Materials incorporated by reference."

§ 318.58–12 [Redesignated as § 318.58–14]

26. Section 318.58–12 is redesignated as § 318.58–14.

27. A new § 318.58–12 is added and reserved as follows:

§ 318.58–12 [Reserved]

28. Section 318.58–13 is revised to read as follows:

§ 318.58–13 Movements by the Department of Agriculture.

Notwithstanding any other restrictions of this subpart, articles subject to the requirements of the regulations in this subpart may be moved if they are moved:

(a) By the United States Department of Agriculture for experimental or scientific purposes;

(b) Pursuant to a Departmental permit issued for the article and kept on file at the port of departure;

(c) Under conditions specified on the Departmental permit and found by the Administrator to be adequate to prevent the spread of plant pests and diseases; and,

(d) With a Departmental tag or label bearing the number of the Departmental permit issued for the article securely attached to the outside of the container of the article or securely attached to the article itself if not in container.

29. A new § 318.58–15 is added to read as follows:

§ 318.58–15 Costs and charges.

Plant Protection and Quarantine shall furnish the services of the inspector during regularly assigned hours of duty at the usual places of duty without cost to the person requesting the services. Plant Protection and Quarantine will not assume responsibility for any costs or charges, other than those indicated in this paragraph, in connection with the inspection, treatment, conditioning, storage, forwarding, or any other operation incidental to the movement of regulated articles under this subpart.

30. A new § 318.58–16 is added to read as follows:

§ 318.58–16 Cancellation of certificates.

Any certificate that has been issued or authorized under this subpart may be withdrawn by an inspector orally or in writing if he or she determines that the holder of the certificate has not complied with all conditions under the regulations for the use of the document. If the cancellation is oral, the decision and the reasons for the withdrawal shall be confirmed in writing as promptly as circumstances allow. Any person whose certificate has been withdrawn may appeal the decision in writing to the Administrator within ten (10) days after receiving written notification of the withdrawal. The appeal must state all of the facts and reasons upon which the person relies to show that the certificate was wrongfully withdrawn. As promptly as circumstances allow, the Administrator will grant or deny the appeal, in writing, stating the reasons for the decision. A hearing will be held to resolve any conflict as to any material fact. Rules of practice concerning a hearing will be adopted by the Administrator.

Done in Washington, DC, this 19th day of January 1989.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89–1851 Filed 1–24–89; 8:45 am]

BILLING CODE 3410–34–M

Agricultural Stabilization and Conservation Service

7 CFR Parts 725 and 726

Farm Marketing Quotas, Acreage Allotments, and Production Adjustment

AGENCY: Agricultural Stabilization and Conservation Service (ASCS), USDA.

ACTION: Final rule.

SUMMARY: This final rule adopts without change an interim rule that was published on October 31, 1988 (53 FR 43845). The interim rule amended the regulations found at 7 CFR Parts 725 and 726 to implement provisions of the Disaster Assistance Act of 1988 with respect to: (1) Crediting flue-cured or burley tobacco undermarketings; (2) determining 1989 effective burley tobacco marketing quotas; and (3) the lease and transfer of burley tobacco marketing quotas after July 1.

EFFECTIVE: January 25, 1989.

FOR FURTHER INFORMATION CONTACT: Dennis Daniels, Program Specialist, Tobacco and Peanuts Division, ASCS, USDA, P.O. Box 2415, Washington, DC 20013, telephone (202) 382–0200.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Department Regulation No. 1512–1 and has been classified as "not major." It has been determined that this rule will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local governments, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal Assistance Program to which this rule applies are: Commodity Loan and Purchases; 10.051, as found in the catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule since the Agricultural Stabilization and Conservation Service (ASCS) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

Discussion of Changes

This final rule adopts without change an interim rule which amended the regulations found at 7 CFR Parts 725 and 726 to implement the provisions of section 203 of the Disaster Assistance Act of 1988 ("the 1988 Act") with respect to the determination of the undermarketings of the 1988 crop of burley or flue-cured tobacco that otherwise could be claimed in accordance with sections 317 and 319 of the Agricultural Adjustment Act of 1938, as amended ("the 1938 Act"). Section 203 of the 1988 Act provides that such undermarketings shall be reduced by the number of pounds for which a disaster payment was made on the 1988 crop of tobacco.

With regard to burley tobacco, section 304 of the 1988 Act authorizes an increase in the 1989 effective undermarketings from that previously authorized if producers on a farm have undermarketed the farm's 1988 effective farm marketing quota due to a natural disaster condition. The interim rule amended the regulations found at 7 CFR Part 726 to provide that the 1989 effective undermarketings for qualifying burley tobacco farms may not exceed the sum of the pounds of quota leased to the farm in 1988 and 125 percent of the 1988 basic farm marketing quota.

The interim rule also amended the regulations at 7 CFR Part 726 to implement the provisions of section 304 of the 1988 Act which amended section 319 of the 1938 Act with respect to the 1988 and subsequent crops of burley tobacco to authorize the lease and transfer of burley tobacco marketing quotas after July 1 under certain natural disaster conditions.

One comment was received during the comment period which ended on November 30, 1988. A State farm organization urged adoption of the interim rule as a final rule.

Lists of Subjects in 7 CFR Parts 725 and 726

Acreage allotments, Marketing quotas, Reporting and recordkeeping requirements, Tobacco.

Final Rule

PARTS 725 AND 726—[AMENDED]

Accordingly, the interim rule amending 7 CFR Parts 725 and 726 which was published at 53 FR 43845 on October 31, 1988, is adopted as a final rule without change.

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Signed in Washington, DC, on January 6, 1989.

Milton Hertz,
Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 89-1282 Filed 1-24-89; 8:45 am]
BILLING CODE 3410-05-M

Agricultural Marketing Service

7 CFR Part 981

[FV-88-129FR]

Handling of Almonds Grown in California; Final Salable, Reserve, and Export Percentages for the 1988-89 Crop Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action establishes salable, reserve, and export percentages of 75 percent, 25 percent, and 0 percent, respectively, for marketable California almonds received by handlers during the 1988-89 crop year, which began July 1, 1988. This action is taken under the marketing order for almonds grown in California and is intended to avoid unreasonable fluctuations in shipments and prices in view of projected record large California and worldwide almond supplies.

EFFECTIVE DATE: February 24, 1989.

FOR FURTHER INFORMATION CONTACT: Allen Belden, Marketing Specialist, Marketing Order Administration Branch, Room 2525, South Building, F&V, AMS, USDA, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 447-5120.

SUPPLEMENTARY INFORMATION: This final rule is issued under marketing agreement and Order No. 981, both as amended (7 CFR Part 981), regulating the handling of almonds grown in California, hereinafter referred to as the "order." The order and agreement are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both status have small entity orientation and compatibility.

There are an estimated 115 handlers of almonds subjects to regulation under the marketing order for California almonds during the current season. There are approximately 7,500 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having average gross annual revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of California almonds may be classified as small entities.

This action will require handlers of California almonds to withhold, as a reserve, from normal domestic and export markets, 25 percent of merchantable almonds received from growers during the 1988-89 crop year—July 1, 1988 through June 30, 1989. The remaining 75 percent (the salable percentage) of the crop may be sold by handlers in any market. Total 1988 crop marketable production has been projected to be 556.8 million kernel weight pounds—which would be the third largest crop in history. Total 1988-89 crop year supplies (1988 crop marketable production plus marketable production carried in from the 1987-88 crop year) are projected at a record large 782.4 million kernel weight pounds—11.3 percent larger than last year's previous record supply of 702.9 million kernel weight pounds. These projections are based on the most recent official almond crop estimate. Worldwide supplies for 1988 are also expected to be a record high. Domestic and export trade demand for 1988-89 is estimated at 530 million kernel weight pounds.

Reserve almonds may be released to the salable category at a later date if it is found that the amount of almonds released by the salable percentage is insufficient to satisfy the 1988-89 trade demand, including desirable carryover requirements for use during the 1989-90 crop year (i.e., if it appears that the released portion of the 1988 crop will be insufficient to meet 1989-90 trade demand needs). This could happen, for example, if the crop should fall significantly short of projected production. The Almond Board of California (Board) may then vote to release a higher percentage of reserve almonds to the salable category to provide adequate almonds to meet trade demand. Otherwise, reserve almonds must be diverted to secondary outlets.

While this rule may restrict the amount of almonds which handlers may sell in normal domestic and export markets, the salable and reserve percentages are needed to lessen the impact of the projected oversupply situation facing the industry and to promote stronger marketing conditions, thus avoiding unreasonable fluctuations in prices and supplies and improving grower returns. The reserve percentage is designed to reduce the oversupply situation in the industry in the 1988-89 crop year by holding off the market a percentage of the available almonds that could be added to an already fully supplied market. If the reserve were zero and all available California almonds were salable, almond prices, in a market which already has record supplies on hand, would be expected to drop in both domestic and foreign markets. Thus, the Board's recommendation for a 25 percent reserve is designed to effectuate the purposes of the Act by avoiding unreasonable fluctuations in supplies and prices. Also, the creation of a reserve from this year's crop may add market stability to the 1989-90 crop year by reserving 25 percent of this year's production for shipment during the 1989-90 season in the event that 1989 production is inadequate to fill that season's trade demand.

The authority to establish salable and reserve percentages is found in § 981.47 of the order. This action is based on a recommendation of the Almond Board of California, hereinafter referred to as the "Board," which is the agency responsible for local administration of the order, and upon other available information.

Pursuant to §§ 981.47 and 981.49 of the order, the Board based its recommendation for salable, reserve, and export percentages of 75 percent, 25 percent, and 0 percent (0 percent of the reserve set aside for export), respectively, on estimates of marketable supplies and combined domestic and export trade demands for the 1988-89 crop year. The Board's 1988 marketable production estimate of 556.8 million kernel weight pounds is based on its

1988 crop estimate of 580.0 million kernel weight pounds, minus an estimated weight loss of 23.2 million kernel weight pounds resulting from the removal of inedible kernels by handlers and losses during manufacturing.

Trade demand is estimated at 530.0 million kernel weight pounds—160.0 million pounds for domestic needs and 370.0 million pounds for export needs. An inventory adjustment is made to account for supplies of salable almonds carried in from the 1987-88 crop year on July 1, 1988. Inventory adjustments are also made for 1987-88 crop year reserve almonds released to the salable category effective August 1, 1988 and for supplies of salable almonds to be carried over on June 30, 1989 for early season shipment during the 1989-90 crop year until the 1989 crop is available for market. After adjusting for available inventory, the trade demand is calculated at 417.6 million kernel weight pounds, the quantity of almonds from the estimated 1988 marketable production necessary to meet trade demand. The salable percentage of 75 percent is designed to meet that demand.

The remaining 25 percent (139.2 million kernel weight pounds) of the 1988 crop marketable production will be withheld by handlers to meet their reserve obligations. All or part of these almonds may later be released to the salable category if it is found that the supply made available by the salable percentage is insufficient to satisfy 1988-89 trade demand, including desirable carryover requirements for use during the 1989-90 crop year. The Board is required to make any recommendations to the Secretary to increase the salable percentage prior to May 15, 1989. Alternatively, reserve almonds may be sold by the Board, or by handlers under agreement with the Board, to governmental agencies or charitable institutions or for diversion into almond oil, almond butter, animal feed, or other outlets which the Board finds are noncompetitive with existing normal markets for almonds.

The order permits the Board to include normal export requirements with domestic requirements in its estimate of trade demand when recommending the establishment of salable, reserve, and export percentages for any crop year.

A tabulation of the estimates and calculations used by the Board in arriving at its July 20, 1988, recommendation follows:

MARKETING POLICY ESTIMATES—1988 CROP

[Kernel Weight Basis]

	Million lbs.	Percent
Estimated Production:		
1. 1988 Production	580.0	
2. Loss and Exempt—4.0%	23.2	
3. Marketable Production	556.8	
Estimated Trade Demand:		
4. Domestic	160.0	
5. Export	370.0	
6. Total	530.0	
Inventory Adjustment:		
7. Carryin 7/1/88	112.8	
8. Additional Carryin 8/1/88	112.8	
9. Desirable Carryover 6/30/89	113.2	
10. Adjustment (item 9 minus item 7 minus item 8)	(−112.4)	
Salable/Reserve:		
11. Adjusted Trade Demand (item 6 plus item 10)	417.6	
12. Reserve (item 3 minus item 11)	139.2	
13. Salable % (item 11÷item 3×100)		75%
14. Reserve % (100% minus item 13)		25%

As shown by the preceding table, for the 1988-89 crop year, estimated exports are included in the trade demand. Thus, an export percentage of 0 percent of the reserve is established. Therefore, unreleased reserve almonds will not be eligible for export to normal export outlets.

This action is designed to help avoid unreasonable fluctuations in shipments and prices as the almond industry faces its largest total worldwide supply in history. Worldwide production for 1988-89 is forecast by the Board at 788.3 million kernel weight pounds—second only to last year's (1987-88) record high production of 871.4 million kernel weight pounds. Worldwide supply for the period September 1, 1988 through August 31, 1989, is forecast by the Board at a record 940.0 million kernel weight pounds. In addition, the projected 1988-89 crop year domestic supply of 782.4 million marketable kernel weight pounds would be 39.4 percent larger than the 561.4 million kernel weight pound average of domestic supplies for the last five years (1983-84 through 1987-88). This year's projected domestic crop of 580 million kernel weight pounds would be the third largest in history.

The 1982 Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders (Guidelines) specify that 110 percent of recent years' sales must be made available to primary markets each season. This action and an earlier release of reserve almonds from the 1987 crop (53 FR 28631, July 29, 1988) will provide an estimated 643.2 million kernel weight pounds of California almonds for unrestricted sales (1988 crop salable production plus carryin from the 1987 crop) to meet increasing domestic and world almond consumption demands. This amount exceeds the actual 1987-88 record for delivered sales of California almonds by 32.9 percent. Thus, the Guidelines requirement will be met.

Interested persons were invited in a proposed rule (53 FR 36053, September 16, 1988) to submit their views and comments on this action during a 15-day comment period.

Eleven comments were received during the 15-day comment period. Ten comments on the proposed rule did not support the proposed percentages for salable and reserve categories for California almonds in the 1988-89 marketing year. One comment, from Blue Diamond Growers, Inc., supported the proposed rule. Two of the comments were not filed in direct response to the request for comments in the proposed rule, but were letters to the Secretary of Agriculture concerning proposed salable and reserve percentages for California almonds during the 1988-89 year. These were included by the Department as comments in opposition to the proposed rule.

Commenters on the proposed rule to establish salable and reserve percentages for California almonds during the 1988-89 crop year were: Steven W. Easter, of Blue Diamond Growers (Blue Diamond); Budge Brown, of Brown Enterprises; Frank S. Swain, Chief Counsel for Advocacy of the Small Business Administration (SBA); Lars E. Johnson, of L. E. Johnson Almond Orchards; Gary Powell, of the Quality Nut Co.; Cloyd Angle, of Cal-Almond, Inc.; Robert G. den Dulk; James G. Crecelius, of Monte Vista Farming Company; Brian Leighton, counsel to the Independent Almond Handlers Association; Daniel L. Mallory, of the Roberts Ferry Nut Co.; and Les Portello, of Portello Ranch.

Several objections submitted to the proposed 1988-89 volume regulations were raised by more than one commenter. Where objections have been duplicated by more than one party, the content of such comments are discussed together. Other comments are addressed individually.

The most prevalent comment on the proposed volume regulation for the 1988-89 year concerned the percentage levels proposed for salable and reserve categories. Several commenters raised

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objections that the reserve percentage of 25 percent is larger than required in the present market. Some commenters also asserted that no volume regulation at all would be the most advantageous strategy for this year. One commenter stated that selling all available almonds without utilizing a reserve might expand markets for almonds. Several commenters felt that while an almond reserve of some percentage might be useful this year, a reserve of 25 percent would be too large because the actual crop yield may be below, perhaps significantly below, the latest official National Agricultural Statistics Service (NASS) estimate of 580 million kernel weight pounds. If the crop should be smaller than the NASS estimate, these commenters stated, a 25 percent reserve could result in reduced supplies of almonds available for unrestricted sales, causing the industry to be unable to fully satisfy the anticipated trade demand, if the percentages were not revised later in the season. One commenter stated that if next year's crop is also unusually large, which is a possibility, then the 25 percent reserve would not be likely to be released, and would result in excessive carryover of inventory from previous years which could depress prices, or else the reserve would be disposed of in noncompetitive outlets, causing a large reduction in returns on the 25 percent of the crop that had been placed in reserve. Several commenters suggested that a reserve in the 15 percent range might be sufficient to provide a buffer against a short crop next year, while allowing for high levels of almond shipments early in this crop year. (Many of the concerns raised by the foregoing comments were discussed in some detail at the Board's July 20, 1988, meeting, when the 1988–89 salable, reserve and export percentages were recommended. At that meeting, options discussed included the establishment of no reserve for the 1988–89 year, and the potential impact of such action on the market.)

In regard to the concern that the crop estimate is higher than actual crop production may be this year, the Board monitors ongoing developments in the industry, including such factors as whether the total almond production in the current crop year will fall short of early season estimates. The Board has the responsibility to recommend an increase of the salable percentage later in the season if it appears that supplies made available by the initial free percentage will be insufficient to meet trade demand needs. The next NASS crop estimate will be available early in 1989. However, the Board need not wait until the early 1989 estimate, but may recommend revising the salable and reserve percentages at any time until May 15 of each year, if other information available to the Board indicates such revision is necessary to provide sufficient supplies to meet trade demand.

Other commenters felt that the reserve of 25 percent would be too large because there is currently strong market demand for almonds. Commenters stated that since demand appears good in the industry, holding almonds in reserve would be necessary and would reduce sales at the start of the season. The level of demand is evidenced, one commenter stated, by the fact that Blue Diamond and Dole Foods, two large handlers of almonds, withdrew temporarily from the market in mid-September to reassess the market situation and adjust their pricing structures. One comment noted that, in a press release issued to explain why it was withdrawing from the market, Blue Diamond stated that it anticipates that the total California almond yield will be less than official crop estimates (probably due to stress and disease factors stemming from this summer's dry growing conditions) and that almond sales are currently brisk.

Steven W. Easter of Blue Diamond, however, in his comment in support of the proposed salable and reserve percentages, wrote that if the almond industry were to release all of the available almond tonnage to the market immediately without use of the reserve, the impact on growers' returns would be "disastrous." Use of zero percent reserve at the opening of the crop year would be very detrimental to almond prices, Mr. Easter wrote. In his opinion, if there were no reserve, monetary returns to growers might not even cover the costs of almond production. He added that he also believes that all of the available almonds could not be absorbed by the market this year, and that if all available almonds were marketed, speculative buying of almonds would occur at very low prices in an unstable market. Mr. Easter added that since 1970, at least one year in three has yielded a small almond crop with consequent shortages in the marketplace. The use of the reserve in this year of excess supply, this commenter stated, would also provide a buffer in the event of a short crop and an undersupplied market next year, which is a statistical possibility, and would provide market stability.

Another concern raised in comments upon the proposed rule was that withholding a 25 percent reserve on the 1988–89 almond crop would be detrimental to small handlers and independent handlers of almonds. Several commenters stated that, as small businesses, if they could sell all of their almonds quickly in the beginning of the season (i.e., without volume regulation) they would make more money than if they held almonds in reserve, and thus, the proposed action to hold a reserve would have a significant impact on their business. However, these comments do not take into account the fact that if there were no volume regulation, not only the commenters' own businesses but most other small almond handlers would be trying to sell their almonds quickly in order to reduce storage or holding costs. Large handlers also would continue to aggressively market their almonds, and the market would be under the pressure of record large supplies, driving down prices received for almonds. Prices likely to be received by handlers under such rapid marketing of their almonds (i.e., without a reserve) would not be the same as prices with a reserve in place. Without a reserve, prices would be expected to be significantly lower in an oversupplied market. The advantage described by a handler if that handler were able to market all its almonds immediately, is valid only theoretically, because in actual practice most handlers would likely follow the same course of action, and thus, no particular handler would be able to market its almonds immediately without stiff competition from the rest of the industry also attempting to do so. While large handlers traditionally market throughout the crop year, it is reasonable to assume that, without regulation, they also would seek to market more of their almonds early in the crop year.

In a related concern, several commenters state that the price improvement gained by the reserve would have to be quite high in order to compensate for the holding of a reserve, because these commenters equate the reserve to losing 25 percent of their crop. In actual practice, the 25 percent reserve is not lost to the market. Commonly, a portion of the reserve, and in some cases the entire reserve, is released to be freely salable later in the season, as the 18 percent reserve portion of the crop was released in the 1987–88 crop year. Such releases may occur once a portion of an annual crop has been marketed, and the danger of a seriously oversupplied market early in the marketing season, with consequent price reductions, has passed.

In the event that the reserve is not released, it would be marketed to low-value outlets non-competitive with normal markets. While reserve almonds would not likely be sold at prices comparable with salable almonds, the improved prices received for the salable portion of the crop and the improved stability of the industry are expected to compensate for this reduction.

Raising a similar concern, another commenter stated that in the event that the 25 percent reserve is not released later in the season or carried over into the next year, the Board should prepare an economic analysis to be certain that the improvement in grower and handler returns due to the holding of the 25 percent reserve would be sufficient to cover the reduction in revenue represented by selling the reserve into non-competitive outlets such as almond butter, oil, donations to educational or charitable organizations, etc. The Department anticipates that the Board will review economic conditions as the season progresses and will make recommendations to release reserve almonds as they are needed. Again, if reserve almonds are eventually disposed of into low-value outlets, the revenue gain on the salable portion of the crop would be maximized as much as possible. This would take place, for example, if the production surplus cannot be absorbed by the market and releasing the reserve would be detrimental to the market.

One comment concerned the classification of this action as a "major" or a "non-major" rule. The Department has, in accordance with Executive Order 12291 and Departmental Regulation 1512–1, found this action to be a "non-major" rule under criteria contained therein. Under those criteria, an action would be classified as "major" if such action were expected to have an annual effect on the economy of $100,000,000, expected to cause a major increase in prices to consumers or costs to industry or expected to have significant adverse effects on productivity, employment, competition, investment, or the ability of U.S.-based businesses to compete with foreign enterprise. The commenter in voicing concern about the "major" or "non-major" status of the rule makes certain calculations which the commenter states show an impact to the economy of more than $100,000,000 which would classify this action as "major." However, the commenter arrives at this "impact figure" by calculating the total dollar value of the reserve (approximately 139 million kernel weight pounds) and equating this figure to lost revenue. In actual practice the reserve does not equal lost revenue because such a calculation does not take into account expected improved returns for the 75 percent salable portion of the crop, or the returns received for the 25 percent of the crop which will be sold to low-value outlets or released to the salable category later in the season. In the event that some or all of the reserve is transferred to the salable category later in the season, there would not be a reduction of revenue received for the reserve, but improved returns would be anticipated for both the reserve and the initial salable percentage of 75 percent of the 1988–89 almond crop. Therefore, this action will not have an impact of $100,000,000 on the annual economy, but is designed to prevent a negative impact on the almond industry due to oversupplied markets.

Regarding the remaining criteria that could classify this action as a "major" rule, the establishment of salable, reserve, and export percentages is not expected to cause a major price increase to either consumers or industry, but is designed to stabilize both supplies and prices. For the same reasons, the salable and reserve percentages to be established by this action will not have an adverse effect on productivity, employment, competition, investment, or the ability of U.S.-based businesses to compete with foreign enterprise.

The SBA, in its comment, requested that the Department conduct a Regulatory Flexibility Analysis regarding the proposed rule, showing an economic analysis of the effects of the proposed almond reserve. Mr. Swain of the SBA also stated that small almond handlers could possibly lose part of their market share due to the 25 percent reserve limiting their ability to meet contractual obligations for the year, whereas this is less likely to be a problem for larger handlers who market for a cooperative.

With respect to such potential contractual obligations, the almond marketing order has been in effect since 1950 and many reserve percentages have been established. Handlers are aware of the marketing order and program operations conducted under the order, and plan their business operations accordingly. Thus, the probability of a large almond crop this year, in addition to the large carryover from the prior season, would be sufficient cause for handlers to anticipate the establishment of a reserve and plan their business operations accordingly taking these factors into consideration.

Section 605(b) of the Regulatory Flexibility Act provides that a Regulatory Flexibility Analysis is not necessary if the head of an Agency has certified that a rule will not have a "significant economic impact on a substantial number of small entities." That section further requires the Agency to provide a succinct statement explaining the reasons for such certification. The AMS has considered the economic impact of this rule on small entities. The majority of handlers in the California almond industry may be classified as small businesses. Any costs imposed on small businesses by this action are expected to be more than offset by the benefits derived therefrom. Therefore, this action is not expected to have a significant economic impact on them. For this and other reasons stated herein, the Administrator of the AMS has certified that this action will not have a significant economic impact on a substantial number of small entities. This certification meets the applicable requirements of the RFA.

Miscellaneous comments also were received concerning the perceived fairness or unfairness of the almond marketing order in general and the makeup of the industry representation on the Board between members representing the cooperative and independents. This final rule only concerns the establishment of salable, reserve and export percentages for almonds. However, marketing agreement and Order No. 981 regulating the handling of almonds grown in California are effective under the Agricultural Marketing Agreement Act of 1937, as amended, and the nomination and selection of the members on the Committee are pursuant to the procedures that appear in the provisions of the order.

After consideration of all relevant material presented, including the Board's recommendations, the comments received, and other available information, it is found that this regulation, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

This final rule will take effect 30 days after its publication in the **Federal Register** and will apply to all almonds received by handlers during the 1988–89 crop year, which began July 1, 1988 and ends June 30, 1989. The 30-day period is intended to give handlers adequate time to meet the requirements of this rule.

List of Subjects in 7 CFR Part 981

Almonds, California, Marketing agreements and orders.

For the reasons set forth in the preamble, 7 CFR Part 981 is amended as follows:

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PART 981—ALMONDS GROWN IN CALIFORNIA

1. The authority citation for 7 CFR Part 981 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Subpart—Salable, Reserve, and Export Percentages

2. Add a new § 981.236 to read as follows:

Note: This section will not appear in the annual Code of Federal Regulations.

§ 981.236 Salable, reserve, and export percentages for almonds during the crop year beginning July 1, 1988.

The salable, reserve, and export percentages during the crop year beginning July 1, 1988, shall be 75 percent, 25 percent, and 0 percent, respectively.

Dated: January 19, 1989.

Charles R. Brader,

Director, Fruit and Vegetable Division.

[FR Doc. 89–1652 Filed 1–24–89; 8:45 am]

BILLING CODE 3410–02–M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 61

Low-Level Radioactive Waste Disposal Facility; Availability of Publication Concerning Application of Quality Assurance

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Availability.

SUMMARY: The Nuclear Regulatory Commission (NRC) is announcing the availability of a publication which provides guidance to an applicant in meeting the low-level waste (LLW) disposal facility quality assurance requirements in 10 CFR Part 61.

ADDRESS: Copies of NUREG–1293, may be purchased by calling the U.S. Government Printing Office on (202) 275–2060 or 2171 or by writing to the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013–7082.

FOR FURTHER INFORMATION CONTACT: Clayton L. Pittiglio Jr., Division of Low-Level Waste Management and Decommissioning, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555 Telephone: (301) 492–3436

SUPPLEMENTARY INFORMATION: This document provides guidance to an applicant in meeting the quality control (QC) requirement of 10 CFR 61.12(j). The regulation requires that a license application for an LLW disposal facility include a description of the QC program to be applied to determining the proposed characteristics of the disposal site. The regulation also requires a QC program during design, construction, operation, and closure of the land disposal facility and the receipt, handling, and emplacement of waste. Audits and managerial controls must be included in the QC program. The propose of the managerial controls, audits and QC program required by 10 CFR 61.12(j) is to ensure a planned, organized, and documented approach to meeting the performance objectives and the technical requirements of 10 CFR Part 61. The requirements stated in 10 CFR 61.12(j) provide the bases for developing a QA program and the guidance provided.

The document provides guidance to an applicant for the development of an acceptable quality assurance program using eighteen criteria that are similar to the criteria developed for Appendix B of 10 CFR Part 50. Although Appendix B of 10 CFR Part 50 is not a regulatory requirements for an LLW disposal facility, the criteria that were developed for 10 CFR Part 50 are basic to any QA program. Some of the criteria addressed here are identical to criteria addressed in 10 CFR Part 50; some of the criteria addressed here have been modified to address an LLW disposal facility.

This document provides QA guidance for the design, construction, operation and closure of those structures, systems, and components as well as site characterization activities necessary to meet the regulatory requirements.

Dated at Rockville, Maryland, this 17th day of January 1989.

For the Nuclear Regulatory Commission.

Michael J. Bell,

Chief, Division of Low-Level Waste Management and Decommissioning, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 89–1497 Filed 1–24–89; 8:45 am]

BILLING CODE 7590–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88–CE–25–AD; Amdt. 39–6119]

Airworthiness Directives; Piper PA–60 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to Piper PA–60 series airplanes, which requires a one-time inspection of the cabin door for proper rigging, installation of cabin door placards, and modification of the cabin door latching system by installation of a door ajar warning system. The FAA has learned of twelve accidents/incidents in which it has been reported that the upper cabin entry door opened in flight. The actions of this AD will help insure that the upper cabin door is properly secured to preclude possible loss of control of the airplane.

EFFECTIVE DATE: February 24, 1989.

Compliance: Required within the next 100 hours time-in-service after the effective date of this AD, unless already accomplished.

ADDRESSES: Piper Service Letter (SL) 980, dated February 7, 1985, Piper Maintenance Manual (Part Number 761 732), Revision IR880920, dated September 20, 1988, and Piper Service Bulletin (SB) 600–74, dated July 3, 1978, may be obtained from the Piper Aircraft Corporation, 2926 Piper Drive, Vero Beach, Florida 32960, telephone (407) 567–4361. Information regarding Air Continental's Supplemental Type Certificate (STC) SA1327GL may be obtained from Air Continental, Inc., One Continental Drive, Norwalk, Ohio 44857; telephone (419) 668–3068/1–800–321–4409. This information also may be examined at the Rules Docket, FAA, Office of the Assistant Chief Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Charles L. Perry, Aerospace Engineer, ACE–120A, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia 30349, telephone (404) 991–2910.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an AD requiring a one-time inspection of the cabin door for proper rigging, installation of main cabin door placards, and modification of the cabin door latching system by installation of a warning system on all Piper PA–60 series airplanes was published in the **Federal Register** on September 16, 1988 (53 FR 36055). The proposal resulted from twelve accidents/incidents since 1980 involving cabin door openings on these series airplanes. The FAA has determined that these incidents and accidents were caused by failure to insure that the door was closed and latched prior to takeoff, improper door latching due to misrigging, or a lack of attention to the maintenance of the mechanical condition of the door latching system. Further investigation has shown that in addition to the rigging instructions available in the Piper Maintenance Manual for these airplanes, Piper has issued other service information pertaining to the cabin door latching system. Specifically, Piper issued SB 600–74, dated July 3, 1978, which provides instructions for installation of a placard on the D-ring door handle that will indicate the direction of handle rotation for latching/locking the door. In addition, this SB provides instructions for installation of index decals to indicate the position of the latching pins. Piper also issued SL 980, dated February 7, 1985, that announces the availability of an Entrance Door Ajar Warning System. This system will alert the pilot when the door is not secured by providing a warning light on the instrument panel.

Interested persons have been afforded an opportunity to comment on the proposal. Thirty-four commenters responded. Twenty-nine of the commenters were from the same company and submitted identical statements. These comments expressed support of the proposed AD indicating they had experienced several incidents where the upper cabin door came open in flight. They pointed out that their company is the holder of an STC that covers the installation of a dual switch door ajar warning system for Piper Models PA–60–600/601 airplanes. Their STC door ajar warning light system was evaluated and considered satisfactory. Therefore, the FAA has determined that this STC, which specifies the installation of a cabin door ajar warning system in accordance with Air Continental, Inc., Kit No. 10001, no revision, dated June 6, 1988, is an optional means of compliance with part of the proposed AD for Model PA–60–600/601 airplanes and it is hereby incorporated without further notice.

Of the five (5) remaining commenters, one commenter supports an annual full inspection of the door latching mechanism, a cabin door placard, and a requirement that a reliable "door unsafe warning system" be installed in all Piper PA–60 series airplanes. This commenter indicated that Piper's current door warning system is not optimal since the door latch pin may become worn and may not properly engage the plunger on the switch so that a false door warning is given. As noted, the commenter considered that the one-time inspection of the rigging of the door latching mechanism is insufficient and that it should be part of every annual inspection. This inspection was not proposed annually by the FAA because it is specified in the Maintenance Manual and mandated by FAR 43.

The commenter also said the estimated cost of compliance with the AD would be far less than the estimated cost of $850 because Piper has reduced the cost of their modification kit. This cost reduction is relieving in nature and will not have an adverse effect on small entities.

Another commenter said, "if the micro-switch breaks, the pilot would get a false indication that the door was in a safe, locked position." He also stated that PA–60 pilots should rely upon their own eyes during a proper preflight inspection. This commenter recommended changes to the door closing procedure shown on the checklist. The commenter felt that "aviators cannot be placarded or annunicated against unsafe behavior." The FAA realizes the micro-switch could fail, as the commenter suggested. However, the light would not be annunciated when the door is normally open prior to closing the door for operating the airplane and, therefore, should be noticed by the pilot. As this commenter further suggests, the pilot should be alert to an unlatched door. The proposal is not being changed in view of these comments.

Another commenter suggested that the installation of a door ajar warning system be left to the discretion of the owner/operator until and unless an extremely reliable device is available at a price of approximately $125. The FAA has learned that the price of the kit has been reduced to this price range. As noted previously, this is relieving in nature and will not have an adverse effect on small entities. The proposal is not being changed in view of this comment.

Another commenter said, "Regarding modification and installation of a door ajar warning system for the Aerostar, I think it would be a burden of inconvenience to have such a system installed and a waste of money for such a system. I believe the placards on the airplane are sufficient for any competent pilot to close and secure the cabin door." The FAA agrees that if the pilot is attentive to details, the placards should be sufficient to assure that the pilot properly closes and secures the door. However, in view of the number of reported accidents/incidents, additional safeguards will provide an increased level of safety. Therefore, the proposal is not being changed in view of these comments.

Another commenter, who operates a PA–60–601P airplane, respond that the AD is reasonable and, very likely the provisions of the AD would increase safe operation of these airplanes. Therefore, the commenter had no objection to the proposed ruling and supports and FAA position. This commenter reviewed the docket file on this proposal and discussed the action with other interested parties. As a result of the investigation and supporting evidence presented by the FAA, the commenter supports this FAA rulemaking effort. The commenter also supports the FAA's efforts to make aviation safer for all concerned parties.

Accordingly, the above changes have been incorporated into this final rule along with minor editorial clarifications.

Comments on the FAA determination of cost were noted with the above comments on the proposal. Piper has reduced the cost of their kit and accordingly, the FAA estimate has been revised downward. This cost reduction is relieving to the owner and/or operator and, accordingly, has no effect on the issuance of this AD.

Accordingly, the proposal is adopted with the changes noted above. The FAA has determined that this regulation involves approximately 1,020 airplanes at an approximate one-time cost of $445 for each airplane, or a total one-time fleet cost of $453,900. The cost of complying with the proposal is so small that it will not have a significant financial impact on any small entities owning the affected airplanes.

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Therefore, I certify that this action: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting

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the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the FAR as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1422; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new AD:

PIPER (AEROSTAR): Applies to PA-60 series (all serial numbers) airplanes certificated in any category.

Compliance: Required within the next 100 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent the upper cabin door from opening in flight, accomplish the following:

(a) Inspect the cabin door for proper rigging in accordance with Piper Maintenance Manual (Part Number 761 732), Revision [illegible], dated September 30, 1988. Prior to further flight, repair any discrepancies.

(b) Install cabin door placards in accordance with Piper Service Bulletin 930-74, dated July 3, 1978.

(c) Modify the cabin door latching system by the installation of a door ajar warning kit as prescribed in the information listed in either paragraph (c)(1) or (c)(2), as follows:

(1) Piper Service Letter 980, dated February 7, 1985, or

(2) Supplemental Type Certificate SA1327CE1 issued to Air Continental, Inc., which specifies Kit No. 10081, no revision, dated June 6, 1988 (for Model PA-60 600/601 airplanes).

(d) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(e) An equivalent method of compliance with this AD, if used, must be approved by the Manager, Atlanta Aircraft Certification Office, ACE-115A, 1669 Phoenix Parkway, Suite 210C, Atlanta, GA 30349.

All persons affected by this directive may obtain copies of the documents referred to herein upon request to the Piper Aircraft Corporation, 2926 Piper Drive, Vero Beach, Florida 32960, telephone (407) 567-4361; or Air Continental, Inc., One Continental Drive, Norwalk, Ohio 44857, telephone 1-800-321-4409/(419) 668-3068; or may examine these documents at the FAA, Office of the Assistant Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This amendment becomes effective on February 24, 1989.

Issued in Kansas City, Missouri, on January 11, 1989.

Don C. Jacobsen,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-1585 Filed 1-24-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 88-ACE-11]

Alteration of Transition Area; Des Moines, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this Federal Action is to alter the transition area at Des Moines, Iowa, by increasing the radius of the 700-foot transition area from fifteen (15) miles to twenty (20) miles. This action eliminates the need to increase Minimum Vectoring Altitudes (MVA) caused by the application of a new method for determining the elevation of the general terrain.

EFFECTIVE DATE: 0901 u.t.c., April 6, 1989.

FOR FURTHER INFORMATION CONTACT: Lewis G. Earp, Airspace Specialist, Traffic Management and Airspace Branch, Air Traffic Division, ACE-540, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 426-3408.

SUPPLEMENTARY INFORMATION: A change has been made in the method for evaluating the elevation of general terrain. In the past, the general terrain had been determined by review of quadrangle charts. The current method uses the contour lines of sectional charts to verify the terrain elevations. This method results in higher MVA's. This action will increase the radius of the Des Moines, Iowa, 700-foot transition area from fifteen (15) miles to twenty (20) miles and eliminates the need to increase the MVA of 2,500 feet within this radius. This action will provide ample area for descent to the final approach intercept at a reasonable altitude. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6D dated January 4, 1988.

Discussion of Comments

On page 45274 of the Federal Register dated November 9, 1988 (53 FR 45274), the Federal Aviation Administration published a Notice of Proposed Rulemaking which would amend § 71.181 of Part 71 of the Federal Aviation Regulations so as to alter the transition area at Des Moines, Iowa. Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No objections were received as a result of the Notice of Proposed Rulemaking.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operating current. It, therefore (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the FAR (14 CFR Part 71) is amended as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. By amending § 71.181 as follows:

Des Moines, Iowa

That airspace extending upward from 700' above the surface within a 23-mile radius of the Des Moines Municipal Airport ASR radar site (latitude, 41°32'28"N; longitude, 093°39'10"W).

This amendment becomes effective at 0901 u.t.c. April 6, 1989.

Issued in Kansas City, Missouri, on January 9, 1989.

Clarence E. Newbern,

Manager, Air Traffic Division.

[FR Doc. 89-1588 Filed 1-24-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 88-ASO-19]

Revocation of Transition Area; Forest, MS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revokes the transition area, Forest, MS. The transition area was established to accommodate instrument flight rule (IFR) operations at the Forest Municipal Airport. At the time the transition area was established, a nonfederal, Nondirectional Radio Beacon (NDB) with a Standard Instrument Approach Procedure (SIAP) had been planned for the airport. The airport authority has since abandoned plans to commission the NDB and to publish a NDB SIAP.

EFFECTIVE DATE: 0901 U.T.C., May 4, 1989.

FOR FURTHER INFORMATION CONTACT: James G. Walters, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763-7646.

SUPPLEMENTARY INFORMATION:

History

On October 27, 1988, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to revoke the Forest, Mississippi, Transition Area (53 FR 43447). The transition area was originally established to accommodate IFR operations. A nonfederal NDB was planned to support a standard instrument approach procedure (SIAP) to the Forest Municipal Airport. The Airport Authority has since abandoned plans to commission the NDB and to publish a NDB SIAP. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6D dated January 4, 1988.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations revokes the Forest, Mississippi, Transition Area.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition area.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Public Law 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Forest, MS [Removed]

Issued in East Point, Georgia, on January 10, 1989.

William D. Wood,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 89-1597 Filed 1-24-89; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 7

[T.D. ATF 280; Ref: Notice Nos. 600, 610, 611]

Use of the Terms "Cereal Beverage," "Near Beer," "Alcohol-Free," "Non-Alcoholic," and "Reduced/Low Alcohol" in the Labeling and Advertising of Malt Beverages

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Treasury decision, final rule.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) is issuing this final rule clarifying in the regulations that malt beverage products containing less than one-half of 1 percent (.5%) alcohol by volume shall be designated labels and in advertisements as "malt beverage," or "cereal beverage," or "near beer." Further, ATF is incorporating into the regulations ATF Rul. 84-1, concerning the use of the terms "reduced alcohol" and "low alcohol" for malt beverages containing less than 2.5 percent alcohol by volume, and ATF Rul. 85-11, concerning the use of the terms "non-alcoholic" for malt beverages containing less than 0.5 percent alcohol by volume, and "alcohol-free" for malt beverage products containing no alcohol.

ATF believes that these new regulations will provide industry members with specific guidelines concerning the use of the above-mentioned terms in order to better inform consumers as to the identity of such products containing reduced, little, or no alcohol.

EFFECTIVE DATE: February 24, 1989.

FOR FURTHER INFORMATION CONTACT: Jim Ficaretta, (202) 566-7626.

SUPPLEMENTARY INFORMATION:

Background

Section 105 (e) and (f) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e) and (f), provides, in general terms, that malt beverage labeling and advertising shall not contain any statement which is false, deceptive, misleading, or is likely to mislead the consumer regarding the product. In addition, section 105(e) and (f) authorizes the Secretary to prescribe such regulations as will provide the consumer with adequate information as to the identity and quality of the malt beverage product, except that statements of, or statements likely to be considered as statements of, alcohol content of malt beverages are prohibited unless required by State law.

Regulations which implement these provisions are set forth in 27 CFR Part 7. In that regard, §§ 7.29(a) and 7.54(a) prohibit false and misleading statements in the labeling and advertising of malt beverages. Sections 7.22(a) and 7.52(b) provide that a class designation must appear on the labels of, and in the advertising of, all malt beverages.

Sections 7.28 and 7.29(f), respectively, prohibit statements of actual alcohol content, or statements likely to be considered as statements of alcohol content, from appearing on labels of malt beverages, unless required by State

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law. Similar prohibitions exist in § 7.54(c) for the advertising of malt beverages.

The term "malt beverage," as defined in section 117(a)(8) of the FAA Act, 27 U.S.C. 211(a)(7), and its implementing regulation, 27 CFR 7.10, refers to a beverage made by alcoholic fermentation from specific materials.

Neither the law, nor the regulations, contain any reference to a minimum level of alcohol content before a product is considered a "malt beverage." The legislative history of the FAA Act clearly shows that Congress intentionally omitted any minimum alcoholic content from the definition in order to bring all malt beverages within the purview of the statute, regardless of alcohol content. In that regard, the report of the Committee on Ways and Means of the Federal Alcohol Control Bill stated: "The definition of malt beverages * * * is a technical one designed to cover the beverage products of the brewing industry and includes such products regardless of their alcoholic content." H.R. Rep. No. 1542, on H.R. 8870, 74th Cong., 1st Sess. 16 (1935).

Notice No. 600

On August 12, 1986, ATF published a notice of proposed rulemaking (Notice No. 600, 51 FR 28836) addressing, in part, the use of the word "light" (lite) in the labeling and advertising of alcoholic beverages. The Bureau also proposed to incorporate into the regulations ATF Rul. 84-1 (A.T.F. Q.B. 1984-2, 38). This ruling permitted malt beverage products containing less than 2.5 percent alcohol by volume to be labeled and advertised as a "reduced alcohol" or "low alcohol" malt beverage.

As mentioned in ATF Rul. 84-1, the legislative history of the FAA Act indicates that Congress was concerned with prohibiting statements of alcoholic strength in the labeling and advertising of malt beverages. Thus, the Bureau believes that while the statute prohibits statements which represent the malt beverage as being high in alcohol content, it would not preclude statements which indicate that the alcohol content of the malt beverage is below the range of alcohol content found in regular malt beverages.

The comment period for Notice No. 600 closed on November 10, 1986, but was reopened four days later on November 14, with the publication of Notice No. 611 (51 FR 41355). The comment period finally closed on December 31, 1986, with ATF receiving over 600 comments.

Having carefully analyzed the comments, the Bureau determined that another notice of proposed rulemaking addressing the "light" issue was necessary. Such notice was published in the Federal Register on June 17, 1988 (Notice No. 659, 53 FR 22878). However, the proposal in Notice No. 600 to incorporate ATF Rul. 84-1 into the regulations is being addressed in this final rule.

Analysis of Comments—"Reduced/Low Alcohol"

In response to Notice No. 600, ATF received five comments on the "low/reduced alcohol" issue. Two commenters were in favor of incorporating ATF Rul. 84-1 into the regulations. One of those commenters, the Beer Institute, represents 37 U.S. brewers who produce over 92 percent of the beer sold in the United States. The other commenter, the Federal Trade Commission (FTC), supported ATF's proposal, "because it will facilitate truthful labeling, increase consumer information, and therefore improve market efficiency."

Two commenters opposed the incorporation of ATF Rul. 84-1 into the regulations. One of the two commenters failed to cite a reason, while the other believed the terms "low alcohol" or "reduced alcohol" should be allowed, "only after the enactment of a requirement that all malt beverage labels must disclose the alcohol content of the product." However, ATF believes that such disclosure requires legislative action.

The fifth comment was submitted on behalf of Cardinal Brewery Fribourg, S.A., brewer of Moussy, a malt beverage containing less than one half of one percent (.5%) alcohol by volume. In their petition to the Bureau, initially discussed in Notice No. 610, Cardinal Brewery requested that, among other things, the term "low alcohol" be limited to malt beverages containing an alcohol content above .05 percent by volume, but below .5 percent.

Although such levels of alcohol content would be considered "low," ATF believes the term "low alcohol," as defined by Cardinal Brewery, is too restrictive. As noted in ATF Rul. 84-1, the alcohol content of regular malt beverages falls within the range of 3.5 to 5.0 percent alcohol by volume. Thus, malt beverage products containing less than 2.5 percent alcohol by volume have a substantially lower alcohol content and may be accurately described as "low alcohol" or "reduced alcohol" malt beverages.

Therefore, with this final rule, malt beverage products containing less than 2.5 percent alcohol by volume may be labeled and advertised as a "low alcohol" or "reduced alcohol" malt beverage. Accordingly, with the effective date of this final rule, ATF Rul. 84-1 (and corresponding Industry Circular #84-5) is superseded.

Further, labeling and advertising for reduced alcohol or low alcohol malt beverages may include statements comparing the alcohol content of the reduced or low alcohol product to the alcohol content of any other (malt) beverage, provided they are truthful, accurate, specific, and not misleading. Comparative statements regarding malt beverages may not refer to the *actual* alcohol content of either of the products being compared.

Notice No. 610

On October 30, 1986, ATF published Notice No. 610 in the Federal Register (51 FR 39668) proposing to incorporate into regulations ATF Rul. 85-11 (A.T.F. Q.B. 1985-3, 42), concerning the use of the terms "non-alcoholic" and "alcohol-free" in the labeling and advertising of malt beverages containing less than .5 percent alcohol by volume. Specifically, the Bureau proposed that only malt beverage products containing *no* alcohol could be labeled or advertised as "alcohol-free." Further, malt beverages labeled or advertised as "non-alcoholic" must include the statement "contains less than 0.5 percent alcohol by volume," in direct conjunction with that term, in readily legible printing and on a completely contrasting background. ATF believed these regulations, if adopted as proposed, would provide consumers with better information as to the identity of malt beverage products containing little or no alcohol.

In Notice No. 610, the Bureau also proposed to clarify in the regulations that malt beverages containing less than .5 percent alcohol by volume shall bear the class designation "malt beverage," "cereal beverage," or "near beer," and *not* "beer," on labels and in advertising. This was addressed, to some degree, in Rev. Rul. 57-322, 1957-2, C.B. 930, which allowed the term "near beer" to be used in labeling and advertising of malt beverages containing less than .5 percent alcohol by volume. Thus, as prescribed by regulation (§ 7.24(d)), only malt beverage products containing at least .5 percent alcohol by volume may use the designation "beer."

It should also be noted that in Notice No. 610 ATF solicited comments on a petition it received on behalf of Cardinal Brewery Fribourg (previously mentioned). The petitioner requested, as an alternative to disclosure of actual alcohol content on labels of and in the advertising of malt beverages, the establishment of two categories for malt beverages containing less than .5 percent alcohol by volume—

(a) "Alcohol-free" for malt beverages containing alcohol at or below .05 percent by volume, and;

(b) "Non-alcoholic" or "Low alcohol" for malt beverages containing more than .05 percent alcohol by volume, but less than .5 percent alcohol by volume.

Cardinal Brewery believed that some differentiation should be made between malt beverages with only trace amounts of alcohol and those with greater amounts.

Analysis of Comments—"Alcohol-Free"

The comment period for Notice No. 610 closed on January 28, 1987, with the Bureau receiving a total of seven comments. Five commenters supported the Bureau's proposal regarding the term "alcohol-free." Two commenters, including the petitioner Cardinal Brewery, objected to ATF's proposed definition of "alcohol-free." Both commenters believed that ATF should define the term in the same manner that the Food and Drug Administration (FDA) had defined "salt-free," i.e., FDA has allowed *de minimis* (trace) amounts of salt in "salt-free" foods (see 21 CFR 105.66). Further, one of the (two) commenters noted that FDA has issued proposed regulations allowing *de minimis* quantities of cholesterol in foods labeled as "cholesterol free" (51 FR 42584; November 24, 1986).

Similarly, both commenters believed that *de minimis* amounts of alcohol should be permitted in "alcohol-free" products.

However, as pointed out in Notice No. 610, ATF's proposed definition of "alcohol-free" *is* consistent with FDA's policy that alcohol free claims on labels of food (including "non-alcoholic" beverages) that contain alcohol render the food misbranded under the provisions of the Federal Food, Drug, and Cosmetic Act, and are subject to regulatory action. As stated in FDA's testimony given at a congressional hearing held in Washington, DC on May 19, 1986—

> * * * FDA has interpreted the claim "alcohol-free" when applied to dealcoholized beverages to imply that the alcohol has been completely removed. Since that is not totally possible, we object to the use of this claim even though the trace amounts that may remain in these products are not significant from a health standpoint.

In addition to the above, one commenter noted that use of the term "alcohol-free," as defined by Cardinal Brewery, "* * * would contradict the public perception of the meaning of the word 'free' and would affirmatively mislead the public into believing that the product contains absolutely no alcohol whatsoever." This comment reflects the views of the Bureau as well.

Thus, AFT is adopting the definition as proposed in Notice No. 610, in that only malt beverage products containing *no* alcohol may be labeled or advertised as "alcohol-free."

"Non-Alcoholic"

Six commenters addressed the use of the term "non-alcoholic." Four commenters supported the definition, and the accompanying qualification statement ("contains less than 0.5 percent alcohol by volume"), proposed by ATF.

Another commenter believed that the Bureau's proposed qualification statement emphasizes the "negligibility of the alcohol rather than the existence of alcohol." As an alternative, the commenter suggested the following statement accompany the term "non-alcoholic"—"ALERT, this product is not alcohol free and may contain .5% alcohol." AFT, however, believes the qualification statement, as proposed in Notice No. 610, fully protects the consumer who sees a product labeled as "non-alcoholic" from being misled regarding the presence of trace amounts of alcohol in the product.

The sixth commenter was the petitioner Cardinal Brewery. In addition to that stated earlier, Cardinal Brewery contented that their proposed definitions were based upon similar restrictions that FDA has imposed on products containing sodium. However, as mentioned, while FDA has established *de minimis* levels of sodium for "low salt" and "salt free" products, no such levels have been established for dealcoholized beverages under their jurisdiction, such as dealcoholized wine. As stated in their testimony at the May 1986 hearing, referred to earlier,

"* * * our policy on the use of the terms 'alcohol-free' and 'non-alcoholic' is consistent with the current policy of [AFT] for the use of these claims on the labels of malt beverages."

ATF believes that the proposals made in Notice No. 610, regarding the use of the terms "alcohol-free" and "non-alcoholic," adequately protect the consumer from receiving any false or misleading impression concerning the meaning of these terms and is, therefore, adopting the regulations as proposed. Accordingly, with the effective date of this final rule, ATF Rul. 85-11 (and corresponding Industry Circular #85-13) is superseded.

Designation of Malt Beverages Containing Less Than One-Half of 1 Percent Alcohol by Volume

Under the FAA Act, and its implementing regulation, 27 CFR 7.10, the term "malt beverage" is defined to mean a beverage made by alcoholic fermentation from specific materials. Neither the law, nor the regulations, contain any reference to a minimum level of alcohol content before a product is considered a "malt beverage."

As noted in Notice No. 610, the legislative history of the FAA Act clearly shows that Congress intentionally omitted any minimum alcoholic content from the definition in order to bring all malt beverages within the purview of the statute, regardless of alcohol content. Thus, any product which meets the above definition of a "malt beverage" may bear that designation on its label or in its advertising.

However, the regulations at 27 CFR 7.24(d) prohibit any product containing less than one-half of 1 percent alcohol by volume from bearing the designation "beer," "ale," "porter," etc. This regulation reflects historic trade and consumer recognition that the reference to a product as a "beer" means that the product contains not less than .5 percent alcohol by volume. Section 7.24(d) is also consistent with section 5052(a) of the Internal Revenue Code of 1986, and its implementing regulation, 27 CFR 25.11.

Malt beverage products containing less than .5 percent alcohol by volume, on the other hand, have historically been referred to in the regulations and in ruling (e.g., Rev. Rul. 57-322) as "cereal beverage" or "near beer." This was discussed, at length, in Notice No. 610. To summarize, ATF proposed that malt beverage products containing less than .5 percent alcohol by volume shall bear the class designation "malt beverage," "cereal beverage," or "near beer." In accordance with Rev. Rul. 57-322, if the designation "near beer" is used, both words must appear in the same size and style of type, in the same color of ink, and on the same background.

In response to Notice No. 610, the Bureau received one comment addressing the issue of designations for malt beverages containing less than .5 percent alcohol by volume. The commenter opposed the Bureau's restrictions on the use of the term "beer," limiting it to a product containing not less than .5 percent alcohol by volume. Basically, the commenter believed that such a

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restriction is unnecessary, and is likely to harm consumers by depriving them of product information. For example, consumers seeking substitutes for beer may decide not to purchase a "near beer" or "cereal beverage," based on the assumption that the latter products are significantly different in smell, taste, etc. from "beer" when, in fact, they may not be.

It should be noted that in their petition, Cardinal Brewery had also requested the definition of "beer" be amended to include malt beverages containing less than .5 percent alcohol by volume. However, that request was previously denied, based on the reasons presented in Notice No. 610.

ATF maintains that the current definition of "beer" reflects historic trade and consumer recognition of a product containing not less than .5 percent alcohol by volume. Similarly, the terms "near beer" and "cereal beverage" reflect historic trade and consumer recognition of a product containing less than .5 percent alcohol by volume. Further, the restriction on the use of the term "beer," as prescribed in regulations issued pursuant to the FAA Act, is consistent with the term as defined in regulations issued pursuant to the Internal Revenue Code. Therefore, ATF is adopting the regulations as proposed in Notice No. 610. In addition, the provisions of Rev. Rul. 57-322, relating to the use of the term "near beer," are being incorporated into the regulations. Accordingly, with the effective date of this final rule, Rev. Rul. 57-322 is superseded.

Executive Order 12291

In compliance with Executive Order 12291, ATF has determined that this final rule is not a "major rule" since it will not result in:

(a) An annual effect on the economy of $100 million or more;

(b) A major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; or

(c) Significant adverse affect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to a final regulatory flexibility analysis (5 U.S.C. 604) are not applicable to this final rule because it will not have a significant economic impact on a substantial number of small entities. The final rule will not impose, or otherwise cause, a significant increase in reporting, recordkeeping, or other compliance burdens on a substantial number of small entities. The final rule is not expected to have significant secondary or incidental effects on a substantial number of small entities. Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that this final rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The collections of information contained in this final regulation have been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3504(h)) under control number 1512-0482. The estimated average burden associated with the collections of information in this final rule is 1 hour per respondent or recordkeeper.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Chief, Information Programs Branch, Room 7011, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue NW., Washington, DC 20226, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for the Bureau of Alcohol, Tobacco and Firearms.

Disclosure

Copies of the petition, the notices of proposed rulemaking, all written comments, and this final rule will be available for public inspection during normal business hours at: Office of Public Affairs and Disclosure, Room 4412, Ariel Rios Federal Building, 1200 Pennsylvania Avenue NW., Washington, DC.

Drafting Information

The author of this document is James P. Ficaretta, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 7

Advertising, Beer, Consumer protection, Customs duties and inspection, Imports, and Labeling.

Authority and Issuance

Part 7—Labeling and Advertising of Malt Beverages is amended as follows:

PART 7—[AMENDED]

Paragraph 1. The authority citation for 27 CFR part 7 continues to read as follows:

Authority: 27 U.S.C. 205.

Par. 2. Section 7.24 is amended by adding two new sentences at the beginning of paragraph (d) to read as follows:

§ 7.24 Class and type.

* * * * *

(d) Products containing less than one-half of 1 percent (.5%) of alcohol by volume shall bear the class designation "malt beverage," or "cereal beverage," or "near beer." If the designation "near beer" is used, both words must appear in the same size and style of type, in the same color of ink, and on the same background. * * *

* * * * *

Par. 3. Section 7.26 is amended by designating the existing text as paragraph (a), and adding new paragraphs (b), (c), and (d) to read as follows:

§ 7.26 Alcoholic content.

(a) * * *

(b) The terms "low alcohol" or "reduced alcohol" may be used only on malt beverage products containing less than 2.5 percent alcohol by volume.

(c) The term "non-alcoholic" may be used on malt beverage products, provided the statement "contains less than 0.5 percent (or .5%) alcohol by volume" appears in direct conjunction with it, in readily legible printing and on a completely contrasting background.

(d) The term "alcohol-free" may be used only on malt beverage products containing no alcohol.

Par. 4. Section 7.29 is amended by adding a new sentence at the end of the existing paragraph (f) to read as follows:

§ 7.29 Prohibited practices.

* * * * *

(f) *Use of words "strong", "full strength", and similar words.* * * * This does not preclude use of the terms "low alcohol," "reduced alcohol," "non-alcoholic," and "alcohol-free," in accordance with § 7.26 (b), (c), and (d).

* * * * *

Par. 5. Section 7.54 is amended by adding a new sentence at the end of existing paragraph (c) to read as follows:

§ 7.54 Prohibited statements.

* * * * *

(c) *Alcohol content.* * * * This does not preclude use of the terms "low alcohol," "reduced alcohol," "non-alcoholic," and "alcohol-free," as used on labels, in accordance with § 7.26 (b), (c), and (d).

* * * * *

Signed: December 16, 1988.

Stephen E. Higgins,

Director.

Approved: January 4, 1989.

Salvatore R. Martoche,

Assistant Secretary (Enforcement).

[FR Doc. 89-1468 Filed 1-24-89; 8:45 am]

BILLING CODE 4810-31-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 61

[FRL-3506-3; Docket No. AM704]

National Emission Standards for Hazardous Air Pollutants; Delegation of Authority to the State of Delaware Department of Natural Resources and Environmental Control

AGENCY: Environmental Protection Agency.

ACTION: Delegation of authority.

SUMMARY: Section 112(d) of the Clean Air Act permits EPA to delegate to the states the authority to implement and enforce the standards set out in 40 CFR Part 61, National Emissions Standards for Hazardous Air Pollutants (NESHAP). On August 20, 1987, the State of Delaware Department of Natural Resources and Environmental Control (DNREC) requested delegation of authority for an additional NESHAP source category to implement and enforce NESHAP regulations for Equipment Leaks of Benzene. The benzene NESHAP, as delegated, will be incorporated by reference to 40 CFR Part 61, Subparts A, J, and V (July 1, 1987 revision). EPA granted the request on November 10, 1987, with the understanding that EPA will retain full responsibility for the application of the benzene NESHAP to Texaco Refining and Marketing, Inc. (TEXACO), until the current litigation with EPA is concluded. Certain provisions that address standard setting and waiver of compliance have not been delegated. Those provisions are cited at 40 CFR 61.08, 61.11, 61.12(d), 61.13(h), 61.14(g), 61.16 and 61.244. The State has the authority to implement and enforce the NESHAP regulation for Equipment Leaks of Benzene as of the date of the publication of this notice.

EFFECTIVE DATE: January 25, 1989.

ADDRESSES: Copies of the delegation and accompanying documents are available for inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107, Attn: Joseph W. Kunz.

State of Delaware, Department of Natural Resources and Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19901.

FOR FURTHER INFORMATION CONTACT: Kelley Yost of EPA, Region III above, telephone (215) 597-2746.

SUPPLEMENTARY INFORMATION: The Delaware Department of Natural Resources and Environmental Control (DNREC) was delegated the authority to enforce the National Emission Standards for Hazardous Air Pollutants (NESHAP) promulgated by EPA. Notice of that delegation was published at 43 FR 6771 (February 15, 1978). They also requested and were delegated authority for several other NESHAP source categories for which EPA published notifications at 44 FR 70465 (December 7, 1979), 47 FR 17960 (April 27, 1982), and 51 FR 12144 (April 9, 1986).

On August 24, 1987, the Secretary of The Delaware Department of Natural Resources and Environmental Control submitted a letter to EPA Region III, requesting delegation of the benzene NESHAP. The following letter was sent to Delaware on November 10, 1987, delegating authority for the benzene NESHAP.

Mr. Robert R. French,

Manager, Air Resources Section, Delaware Department of Natural Resources & Environmental Control, P.O. Box 1401, Dover, Delaware 19901

Dear Mr. French: This letter responds to your August 20, 1987 request to EPA, for delegation of authority to the Delaware Department of Natural Resources & Environmental Control (DNREC) to enforce the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Equipment Leaks of Benzene, 40 CFR Part 61, Subparts A, J, and V (collectively referred to as the benzene NESHAP).

We have reviewed the pertinent laws, rules and regulations of the State of Delaware and have determined that they continue to provide adequate and effective procedures for implementation and enforcing the NESHAP. Therefore, EPA delegates primary authority for implementation and enforcement of the benzene NESHAP, as delegated, will be incorporated by reference to 40 CFR Subparts A, J, and V as of July 1, 1987.

This delegation will become effective upon publication, by EPA, in the **Federal Register**. At that time, certain conditions and exceptions to this delegation will be set forth. This delegation is granted with the understanding that EPA will retain full responsibility for the application of the benzene NESHAP to Texaco Refining and Marketing, Inc. (Texaco), in Delaware City, until all current EPA litigation pertaining to Texaco for benzene NESHAP is resolved in federal courts.

This Notice now sets forth the conditions and exceptions to this delegation of responsibility for the benzene NESHAP to Delaware. The following provisions of the NESHAP regulations are excepted from this delegation, and EPA retains exclusive authority for their application:

a. Determination of whether actions intended to be taken constitute construction or modification of a source subject to a standard (40 CFR 61.06).

b. Waiver of compliance from existing sources. (40 CFR 61.11)

c. Allowance of alternative means of compliance. (40 CFR 61.12(d))

d. Approved of specified on alternative emission testing. (40 CFR 61.13(h))

e. Approval of specified or alternative monitoring requirements. (40 CFR 61.14(g))

f. Determination of public availability of information (40 CFR 61.16)

g. Allowance of use of alternative means of emission limitation. (40 CFR 61.244)

Enforcement of the NESHAP regulation for Equipment Leaks of Benzene in the State of Delaware will primarily be the responsibility of the DNREC.

Pursuant to section 112(d)(2) of the Clean Air Act, 42 U.S.C. 7412(d)(2), EPA retains authority to enforce any NESHAP standard whenever such enforcement is deemed by the EPA to be necessary to carry out the purposes of the Clean Air Act. Where the Department determines that such enforcement is not feasible and so notifies EPA when the DNREC acts in a manner inconsistent with the term of this delegation, U.S. EPA will exercise its concurrent enforcement authority, pursuant to section 113 of the Clean Air Act, as amended, with respect to sources within the State of Delaware subject to NESHAP regulations.

The reporting provisions of 40 CFR 61.04 requiring sources to make submission to the EPA will be satisfied only by making such submission to both the DNREC and to EPA, Region III.

The DNREC and U.S. EPA Region III will develop a system of communication sufficient to guarantee that each office is always fully informed regarding the interpretation of applicable regulations. In instances where there is a conflict between a DNREC interpretation and Federal interpretation of applicable regulations, the Federal interpretation must be applied if it is more stringent than that of the DNREC. This system of communication will insure that both agencies are informed on:

a. The current compliance status of subject sources in the State of Delaware;

b. The interpretation of applicable regulations;

c. The description of sources and source inventory data; and,

d. Applications for compliance test waivers and approval of waivers for matters where EPA retains authority for such waivers pursuant to this delegation.

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From time to time when appropriate, the DNREC will revise its NESHAP regulations to include the provisions of Federal amendments and newly promulgated regulations for NESHAP pollutant source categories.

If the Director of the Air Management Division, or other appropriate staff at EPA Region III, determines that a DNREC program of enforcing or implementing the NESHAP regulations is inadequate, or is not being effectively carried out, this delegation may be revoked in whole or in part. Any such revocation shall be effective as of the date specified in a Notice of Revocation to the DNREC.

This delegation is effective upon publication. There is no requirement that the DNREC notify the U.S. EPA of its acceptance.

Unless U.S. EPA receives from the DNREC written notice of objections within ten (10) days of publication of this notice, the DNREC will be deemed to have accepted all of the terms of the delegation.

The Office of Management and Budget has exempted this delegation of authority from the requirements of section 3 of Executive Order 12291.

Authority: Section 112(d), the Clean Air Act 42 U.S.C. 7412(d).

Date: January 12, 1989.

James M. Seif,

Regional Administrator.

[FR Doc. 89-1589 Filed 1-24-89; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 17

Nondiscrimination on the Basis of Age in Federally-Assisted Programs

AGENCY: Department of the Interior.

ACTION: Final rule.

SUMMARY: These final regulations implement the provisions of the Age Discrimination Act of 1975, and the government-wide regulations published in the **Federal Register** on June 12, 1979 (44 FR 33768, June 12, 1979). The Age Discrimination Act prohibits discrimination on the basis of age in programs and activities receiving Federal financial assistance.

The Age Discrimination Act contains exceptions which permit, under certain circumstances, continued use of age distinctions or factors other than age that may have a disproportionate effect on a particular age group. The Act excludes from its coverage most employment practices except for programs funded under the public services employment titles of the Job Partnership Training Act. The Act applies to persons of all ages.

These final regulations are designed to guide the actions of recipients of financial assistance from the Department of the Interior (DOI). They discuss the responsibilities of DOI recipients and the investigation, conciliation and enforcement procedures DOI will use to ensure compliance with the Act.

EFFECTIVE DATE: February 24, 1989.

FOR FURTHER INFORMATION CONTACT: Charlene D. Hutchinson, Office for Equal Opportunity, Department of the Interior, Washington, DC 20240, or phone (202) 343-3443 (voice) or (202) 343-3434 (TDD).

SUPPLEMENTARY INFORMATION:

I. Background

In November 1975, Congress enacted the Age Discrimination Act (42 U.S.C. 6101 *et seq.*) as part of the amendments to the Older Americans Act (Pub. L. 94-135). The Age Discrimination Act was amended by the Civil Rights Restoration Act of 1986 (Pub. L. 100-259).

The Act prohibits discrimination on the basis of age in programs or activities receiving Federal financial assistance. The Act prohibits recipients of Federal financial assistance from taking actions that result in denying or limiting services or otherwise discriminating on the basis of age. The Act contains exceptions which limit the general prohibition against age discrimination. The Act permits the use of age distinctions which are necessary to the normal operation of a program or to the achievement of a statutory objective. The Act applies only to programs or activities in which there is an intermediary (recipient) standing between the Federal financial assistance and the ultimate beneficiary of that assistance. The Act does not apply to programs of direct assistance (such as the National Parks System) in which Federal assistance flows directly and unconditionally from the Federal government to the individual beneficiary. In accordance with the Act, the Secretary of the Department of Health, Education and Welfare (now the Department of Health and Human Services (HHS)) issued government-wide regulations to guide the development of agency specific regulations by each Federal agency that administers programs of Federal financial assistance, (44 FR 33768, June 12, 1979, codified at 45 CFR Part 90). These final regulations are intended to be consistent with HHS' government-wide regulations. These final regulations were approved by HHS on August 10, 1988.

The Civil Rights Restoration Act of 1987, Pub. L. 100-259 (CRRA), was enacted on March 22, 1988, subsequent to the publication of these rules as proposed regulations. The CRRA, among other matters, amends the Age Discrimination Act of 1975, and other civil rights statutes, to define the term "program and activity" to mean all of the operations of specified entities. For State and local governments, only the department or the agency that receives the aid is covered. For private corporations, if the federal aid is extended to the corporation as a whole, or if the corporation is prinicipally engaged in providing education, health care, housing, social services or parks and recreation, the entire corporation is covered. If the federal aid is extended to only one plant or geographically separate facility of other private businesses, only that plant is covered. For other entities, established by two or more of the entities listed in the statute, the entire entity is covered if it receives any federal aid. The CRRA leaves in effect the enforcement structure and adds no new language to the fund termination provision of the Age Discrimination Act. The CRRA contains a provision which leaves intact the current exemption from coverage by the civil rights laws for "ultimate beneficiaries" of federal financial assistance such as farmers who receive assistance under commodity programs or other comparable programs.

DOI published proposed regulations in the **Federal Register** on October 21, 1987, (52 FR 39243, October 21, 1987). Publication of the proposed rule was followed by a 30 day comment period. Comments, suggestions, and recommendations were requested by November 20, 1987. No comments were received.

In order to be consistent with HHS' government-wide rule (45 CFR Part 90), several sections of the proposed rule have been revised. The last sentence of § 17.335(a)(1), "Compliance Procedures" has been deleted to ensure consistency with 45 CFR Part 90. Section 17.335(b) has been revised to more precisely reflect the degree of "pinpointing" required by the Age Discrimination Act and to make this section consistent with the government-wide rule.

Section 17.303(b) "Definition", has been corrected to include "or the use of any policy, rule, standard, or method of administration." This portion of the definition was inadvertently omitted from the proposed rule.

In addition to publishing specific regulations consistent with the government-wide regulations, the

following actions will be taken by DOI to implement the Act:

1. DOI will report annually to the Congress through HHS on its compliance and enforcement activities.
2. DOI will provide written notices to its recipients concerning their obligations under the Act. Technical assistance will be provided to recipients where necessary and educational materials will be made available explaining the rights and obligations of beneficiaries and recipients.
3. DOI will establish a procedure for processing complaints of alleged age discrimination. The complaints process will entail an initial screening by DOI after consultation with the recipient, if necessary, to determine whether the complaint meets the criteria in §§ 17.310, 17.311, and 17.331 before referral to mediation. DOI will send appropriate notices to complainants and recipients of their rights and obligations under the Act. All complaints covered by the Act will be referred to the Federal Mediation and Conciliation Service (FMCS) for mediation.
4. DOI will evaluate the effectiveness of its regulations 30 months after their effective date. The results of this evaluation will be published in the **Federal Register** for public comment.

Section 90.31(f) of HHS' government-wide regulations (44 FR 33768, June 12, 1979), requires each Federal agency to publish an appendix to its final age regulations containing a list of each age distinction in a Federal statute or in regulations affecting financial assistance administered by the agency. DOI has determined that statutes and regulations which govern DOI's programs of financial assistance do not contain age distinctions. Therefore, an appendix listing are distinctions in statutes and regulations governing DOI financial assistancee programs is not published with these final regulations.

This final rule is divided into the following major categories: General; Standards for Determining Age Discrimination; Responsibilities of Recipients; and Investigation, Conciliation, and Enforcement Procedures.

The "general" section of these regulations explains the purpose of DOI's age discrimination regulations and defines terms used throughout the rule.

Each recipient of Federal financial assistance must sign an assurance that it will comply with the Act and these regulations.

The general and specific prohibitions against discrimination on the basis of age are covered in § 17.310 of this rule. The exceptions to those prohibitions are set forth in § 17.311.

The rule contains several exceptions which limit prohibitions against age discrimination. Section 17.311 of the regulations permits the use of age distinctions which are based on reasonable factors other than age. Section 17.311(a) of the regulations defines two terms which are essential to an understanding of those exceptions: "Normal operation" and "statutory objective." "Normal operation" means the operation of a program or activity without significant changes that would impair its ability to meet its objectives. "Statutory objective" means any purpose of a program or activity expressly stated in any Federal, State, or local statute or ordinance adopted by an elected legislative body.

Recipients of DOI funds also are permitted to take an action otherwise prohibited by the Act, if the action is based on "reasonable factors other than age." The action may be taken even though it has a disproportionate effect on persons of different ages. According to the regulations, however, the factor other than age must bear a direct and substantial relationship to the program's normal operation or to the achievement of a statutory objective.

This rule sets forth the duties of DOI recipients. DOI recipients are responsible for ensuring that their programs and activities are in compliance with the Act and DOI regulations.

Where a primary recipient extends financial assistance to subrecipients, the primary recipient must notify subrecipients of their obligations under the regulations. DOI recipients must also inform beneficiaries of the protections provided by the Act and these regulations.

This final rule establishes the procedures DOI will use in its investigation, conciliation, and enforcement activities. These procedures reflect the procedural requirements included in HHS' government-wide regulations.

Section 17.332 introduces mediation into the complaints process for age discrimination. DOI will refer all complaints covered by the Act to the FMCS, which was designated by the Secretary of HHS to manage the mediation process.

Complainants and recipients are required to participate in the effort to reach a mutually satisfactory mediated settlement of the complaint. Mediation may last no more than 60 days from the date DOI first receives the complaint. No further action will be taken by DOI in connection with a successfully mediated complaint.

DOI will, however, investigate complaints that are unresolved after mediation or are reopened because the mediation agreement is violated.

Finally, the regulations permit DOI to disburse withheld funds to an alternate recipient. The alternate recipient must be in compliance with the regulations and must demonstrate the ability to achieve the goals of the program for which the funds were originally extended.

II. Regulatory Procedures

Impact Analysis Executive Order 12291

Executive Order 12291 requires that a regulatory impact analysis be prepared for major rules. A major rule is defined in the Order as any rule that has an annual effect on the national economy of $100 million or more, or certain other specified effects. The administrative and procedural regulations implementing the Age Discrimination Act are not major rules within the meaning of the Executive Order because they will not have an effect on the economy of $100 million or more or otherwise meet the threshold criteria.

Regulatory Flexibility Act of 1980

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires the Federal Government to anticipate and reduce the impact of rules and paperwork requirements on small businesses. For each rule with a "significant economic impact on a substantial number of small entities" an analysis must be prepared describing the rule's impact on small entities. Small entities are defined by the Act to include small businesses, small nonprofit organizations, and small governmental entities. The impact of these regulations on small entities is minimal because an economic impact such as termination of funding will occur only in those very limited instances where the small entity fails to comply with the statutory and regulatory prohibition concerning age discrimination.

Paperwork Reduction Act (Recordkeeping and Reporting Requirements)

The information collection requirements contained in § 17.323 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1084-0027.

National Environmental Policy Act

Because these regulations are administrative, legal, and procedural in

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nature, they will not have a significant effect on the quality of the human environment and are categorically excluded from the NEPA Process. *See* 516 DM 2, Appendix 1.

Authorship Statement

The principal author of this final rulemaking document is Charlene D. Hutchinson of the Office for Equal Opportunity, U.S. Department of the Interior.

Date: November 16, 1988.

Rick Ventura,

Assistant Secretary, Policy, Budget and Administration.

List of Subjects in 43 CFR Part 17

Civil rights, Handicapped.

The Department of the Interior adds a new Subpart C to 43 CFR Part 17 as set forth below:

PART 17—[AMENDED]

Subpart C—Nondiscrimination on the Basis of Age

General

Sec.

17.300 What is the purpose of the Age Discrimination Act of 1975?
17.301 What is the purpose of DOI's age discrimination regulations?
17.302 To what programs do these regulations apply?
17.303 Definitions.

Standards for Determining Age Discrimination

17.310 Rules against age discrimination.
17.311 Exceptions to the rules against age discrimination.
17.312 Burden of proof.
17.313 Special benefits for children and the elderly.
17.314 Age distinctions contained in DOI regulations.
17.315 Affirmative action by recipients.

Duties of DOI Recipients

17.320 General responsibilities.
17.321 Notice to subrecipients and beneficiaries.
17.322 Assurance of compliance and recipient assessment of age distinctions.
17.323 Information collection requirements.

Investigation, Conciliation, and Enforcement Procedures

17.330 Compliance reviews.
17.331 Complaints.
17.332 Mediation.
17.333 Investigation.
17.334 Prohibition against intimidation or retaliation.
17.335 Compliance procedure.
17.336 Hearings, decisions, post-termination proceedings.
17.337 Remedial action by recipients.
17.338 Alternate funds disbursal procedure.
17.339 Exhaustion of administrative remedies.

Authority: Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101 *et seq.*; 45 CFR Part 90.

Subpart C—Nondiscrimination on the Basis of Age

General

§ 17.300 What is the purpose of the Age Discrimination Act of 1975?

The Age Discrimination Act of 1975, as amended, is designed to prohibit discrimination on the basis of age in programs and activities receiving Federal financial assistance. The Act also permits federally assisted programs and activities, and recipients of Federal funds, to continue to use certain age distinctions and factors other than age which meet the requirements of the Act and these regulations.

§ 17.301 What is the purpose of DOI's age discrimination regulations?

The purpose of these regulations is to set out DOI's policies and procedures under the Age Discrimination Act of 1975 and the general age discrimination regulations at 45 CFR Part 90. The Act and the general regulations prohibit discrimination on the basis of age in programs or activities receiving Federal financial assistance. The Act and the general regulations permit federally assisted programs and activities, and recipients of Federal funds, to continue to use age distinctions and factors other than age which meet the requirements of the Act and its implementing regulations.

§ 17.302 To what programs do these regulations apply?

(a) The Act and these regulations apply to each DOI recipient and to each program or activity operated by the recipient which receives or benefits from Federal financial assistance provided by DOI.

(b) The Act and these regulations do not apply to:

(1) An age distinction contained in that part of a Federal, State or local statute or ordinance adopted by an elected, general purpose legislative body which:

(i) Provides any benefits or assistance to persons based on age; or,

(ii) Establishes criteria for participation in age-related terms; or,

(iii) Describes intended beneficiaries or target groups in age-related terms; or

(2) Any employment practice of any employer, employment agency, or labor-management joint apprenticeship training program, except for any program or activity receiving Federal financial assistance for public service employment under the Job Partnership Training Act (29 U.S.C. 1501 *et seq.*).

§ 17.303 Definitions.

As used in these regulations, the term:

(a) "Act" means the Age Discrimination Act of 1975, as amended (Title III of Pub. L. 94-135).

(b) "Action" means any act, activity, policy, rule, standard, or method of administration; or the use of any policy, rule, standard, or method of administration.

(c) "Age" means how old a person is, or the number of years from the date of a person's birth.

(d) "Age distinction" means any action using age or an age-related term.

(e) "Age-related term" means a word or words which necessarily imply a particular age or range of ages (for example, "children," "adult," "older persons," but not "student").

(f) "Discrimination" means unlawful treatment based on age.

(g) "DOI" means the United States Department of the Interior.

(h) "Federal financial assistance" means any grant, entitlement, loan, cooperative agreement, contract (other than a procurement contract or a contract of insurance or guaranty), or any other arrangement by which the agency provides or otherwise makes available assistance in the form of:

(1) Funds;

(2) Services of Federal personnel;

(3) Real and personal property or any interest in or use of property, including:

(i) Transfers or leases of property for less than fair market value or for reduced consideration; and

(ii) Proceeds from a subsequent transfer or lease of property if the Federal share of its fair market value is not returned to the Federal Government.

(i) "FMCS" means the Federal Mediation and Conciliation Service.

(j) "Recipient" means any State or its political subdivision, any instrumentality of a State or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which Federal assistance is extended, directly or through another recipient. Recipient includes any successor, assignee, transferee, or subrecipient, but excludes the ultimate beneficiary of the assistance.

(k) "Secretary" means the Secretary of the Department of the Interior or his or her designee.

(l) "Subrecipient" means any of the entities in the definition of "recipient" to which a recipient extends or passes on Federal financial assistance. A subrecipient is generally regarded as a recipient of Federal financial assistance and has all the duties of a recipient in these regulations.

(m) "United States" means the fifty states, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Commonwealth of the Northern Marianas, and the territories and possessions of the United States.

Standards for Determining Age Discrimination

§ 17.310 Rules against age discrimination.

The rules stated in this section are limited by the exceptions contained in § 17.311.

(a) *General rule.* No person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

(b) *Specific rules.* A recipient may not, in any program or activity receiving Federal financial assistance, directly or through contractual, licensing, or other arrangements, use age distinctions or take any other actions which have the effect, on the basis of age, of:

(1) Excluding individuals from, denying them the benefits of, or subjecting them to, discrimination under a program or activity receiving Federal financial assistance; or

(2) Denying or limiting individuals in their opportunity to participate in any program or activity receiving Federal financial assistance.

(c) The specific forms of age discrimination listed in paragraph (b) of this section do not necessarily constitute a complete list.

§ 17.311 Exceptions to the rules against age discrimination.

(a) Definitions. For purposes of this section, the terms "normal operation" and "statutory objective" shall have the following meaning:

(1) "Normal operation" means the operation of a program or activity without significant changes that would impair its ability to meet its objectives.

(2) Statutory objective" means any purpose of a program or activity expressly stated in any Federal, State, or local statute or ordinance adopted by an elected, general purpose legislative body.

(b) Exceptions to the rules against age discrimination: Normal operation or statutory objective of any program or activity.

A recipient is permitted to take an action otherwise prohibited by § 17.310 if the action reasonably takes into account age as a factor necessary to the normal operation or the achievement of any statutory objective of a program or activity. An action reasonably takes into account age as a factor necessary to the normal operation or the achievement of any statutory objective of a program or activity, if:

(1) Age is used as a measure or approximation of one or more other characteristics; and

(2) The other characteristic(s) must be measured or approximated in order for the normal operation of the program or activity to continue, or to achieve any statutory objective of the program or activity; and

(3) The other characteristic(s) can be reasonably measured or approximated by the use of age; and

(4) The other characteristic(s) are impractical to measure directly on an individual basis.

(c) Exceptions to the rules against age discrimination: Reasonable factors other than age. A recipient is permitted to take an action otherwise prohibited by § 17.310 which is based on a factor other than age, even though that action may have a disproportionate effect on persons of different ages. An action may be based on a factor other than age only if the factor bears a direct and substantial relationship to the normal operation of the program or activity or to the achievement of a statutory objective.

§ 17.312 Burden of proof.

The burden of proving that an age distinction or other action falls within the exceptions outlined in §§ 17.311(b) and 17.311(c), is on the recipient of Federal financial assistance.

§ 17.313 Special benefits for children and the elderly.

If a recipient operating a program provides special benefits to the elderly or to children, such use of age distinctions shall be presumed to be necessary to the normal operation of the program, notwithstanding the provisions of § 17.311.

§ 17.314 Age distinctions contained in DOI regulations.

Any age distinctions contained in a rule or regulation issued by DOI shall be presumed to be necessary to the achievement of a statutory objective of the program to which the rule or regulation applies, notwithstanding the provisions of § 17.311.

§ 17.315 Affirmative action by recipients.

Even in the absence of a finding of discrimination, a recipient may take affirmative action to overcome the effects of conditions that resulted in limited participation in the recipient's program or activity on the basis of age.

Duties of DOI Recipients

§ 17.320 General responsibilities.

Each DOI recipient has primary responsibility to ensure that its programs and activities are in compliance with the Act and these regulations, and shall take steps to eliminate violations of the Act. A recipient also has responsibility to maintain records, provide information, and to afford DOI access to its records to the extent DOI finds necessary to determine whether the recipient is in compliance with the Act and these regulations.

§ 17.321 Notice to subrecipients and beneficiaries.

(a) Where a recipient extends Federal financial assistance from DOI to subrecipients, the recipient shall provide the subrecipients written notice of their obligations under the Act and these regulations.

(b) Each recipient shall make necessary information about the Act and these regulations available to its program beneficiaries in order to inform them of the protections against discrimination provided by the Act and these regulations.

§ 17.322 Assurance of compliance and recipient assessment of age distinctions.

(a) Each recipient of Federal financial assistance from DOI shall sign a written assurance as specified by DOI that it will comply with the Act and these regulations.

(b) *Recipient assessment of age distinctions.* (1) As part of a compliance review under § 17.330 or complaint investigation under § 17.331, DOI may require a recipient employing the equivalent of 15 or more employees to complete a written self-evaluation, in a manner specified by the responsible Department official, of any age distinction imposed in its program or activity receiving Federal financial assistance from DOI to assess the recipient's compliance with the Act.

(2) Whenever an assessment indicates a violation of the Act and the DOI regulations, the recipient shall take corrective action.

§ 17.323 Information collection requirements.

Each recipient shall:

(a) Keep records in a form and containing information which DOI determines may be necessary to ascertain whether the recipient is complying with the Act and these regulations.

(b) Provide to DOI, upon request, information and reports which DOI

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determines are necessary to ascertain whether the recipient is complying with the Act and these regulations.

(c) Permit reasonable access by DOI to the books, records, accounts, and other recipient facilities and sources of information to the extent DOI determines necessary to ascertain whether the recipient is complying with the Act and these regulations.

(d) The information collection requirements contained in this section have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1084-0027. The information will be collected and used to assess recipients' compliance with the Act. Response is required to obtain a benefit.

(e) Public reporting burden for this information is estimated to average 8 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed; and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to: Departmental Clearance Officer, U.S. Department of the Interior, 18th and C Streets, NW., Washington, DC 20240, Mail Stop 2242; and the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Investigation, Conciliation, and Enforcement Procedures

§ 17.330 Compliance reviews.

(a) DOI may conduct compliance reviews and pre-award reviews of recipients or use other similar procedures that will permit it to investigate and correct violations of the Act and these regulations. DOI may conduct these reviews even in the absence of a complaint against a recipient. The reviews may be as comprehensive as necessary to determine whether a violation of the Act and these regulations has occurred.

(b) If a compliance review or pre-award review indicates a violation of the Act or these regulations, DOI will attempt to secure voluntary compliance with the Act. If voluntary compliance cannot be achieved, DOI will arrange for enforcement as described in § 17.335.

§ 17.331 Complaints.

(a) Any person, individually or as a member of a class or on behalf of others, may file a complaint with DOI, alleging discrimination prohibited by the Act or these regulations based on an action occurring on or after July 1, 1979. A complaint must be filed within 180 days from the date the complainant had knowledge of the alleged act of discrimination. For good cause shown, however, DOI may extend this time limit.

(b) DOI will consider the date a complaint is filed to be the date upon which the complaint sufficiently meets the criteria for acceptance as described in paragraphs (a) and (c)(1) of this section.

(c) DOI will attempt to facilitate the filing of complaints wherever possible, including taking the following measures:

(1) Accepting as a sufficient complaint, any written statement which identifies the parties involved and the date the complainant first had knowledge of the alleged violation, describes generally the action or practice complained of, and is signed by the complainant.

(2) Freely permitting a complainant to add information to the complaint to meet the requirements of a sufficient complaint, as described in paragraphs (a) and (c)(1) of this section.

(3) Notifying the complainant and the recipient of their rights and obligations under the complaint procedure, including the right to have a representative at all stages of the complaint procedure.

(4) Notifying the complainant and the recipient (or their representatives) of their right to contact DOI for information and assistance regarding the complaint resolution process.

(d) DOI will return to the complainant any complaint outside the jurisdiction of these regulations, and will state the reason(s) why it is outside the jurisdiction of these regulations.

§ 17.332 Mediation.

(a) *Referral of complaints for mediation.* DOI will promptly refer to the FMCS all sufficient complaints that:

(1) Fall within the jurisdiction of the Act and these regulations unless the age distinction complained of is clearly within an exception; and,

(2) Contain all information necessary for further processing.

(b) Both the complainant and the recipient shall participate in the mediation process to the extent necessary to reach an agreement or make an informed judgment that an agreement is not possible.

(c) If the complainant and the recipient reach an agreement, FMCS shall prepare a written statement of the agreement and have the complainant and the recipient sign it. The FMCS shall send the agreement to DOI. DOI, however, retains the right to monitor the recipient's compliance with the agreement.

(d) The FMCS shall protect the confidentiality of all information obtained in the course of the mediation process. No mediator shall testify in any adjudicative proceeding, produce any document, or otherwise disclose any information obtained in the course of the mediation process without prior approval of the head of the mediation agency.

(e) DOI will use the mediation process for a maximum of 60 days after receiving a complaint. Mediation ends if:

(1) 60 days elapse from the time the complaint is filed; or

(2) Prior to the end of that 60 day period, an agreement is reached; or

(3) Prior to the end of that 60 day period, the FMCS determines that an agreement cannot be reached.

(f) The FMCS shall return unresolved complaints to DOI.

§ 17.333 Investigation.

(a) *Informal Investigation.* (1) DOI will investigate complaints that are unresolved after mediation or are reopened because of a violation of a mediation agreement.

(2) As part of the initial investigation, DOI will use informal fact finding methods, including joint or separate discussions with the complainant and recipient to establish the facts, and, if possible, settle the complaint on terms that are mutually agreeable to the parties. DOI may seek the assistance of any involved State program agency.

(3) DOI will put any agreement in writing and have it signed by the parties and an authorized official at DOI.

(4) The settlement shall not affect the operation of any other enforcement effort of DOI, including compliance reviews and investigation of other complaints which may involve the recipient.

(5) The settlement is not a finding of discrimination against a recipient.

(b) *Formal investigation.* If DOI cannot resolve the complaint through informal means, it will develop formal findings through further investigation of the complaint. If the investigation indicates a violation of these regulations, DOI will attempt to obtain voluntary compliance. If DOI cannot obtain voluntary compliance, it will begin enforcement as described in § 17.335.

§ 17.334 Prohibition against intimidation or retaliation.

A recipient may not engage in acts of intimidation or retaliation against any person who:

(a) Attempts to assert a right protected by the Act or these regulations; or

(b) Cooperates in any mediation, inquiry, hearing, or other part of DOI's investigation, conciliation, and enforcement process.

§ 17.335 Compliance procedure.

(a) DOI may enforce the Act and these regulations through:

(1) Termination of a recipient's Federal financial assistance from DOI under the program or activity involved where the recipient has violated the Act or these regulations. The determination of the recipient's violation may be made only after a recipient has had an opportunity for a hearing on the record before an administrative law judge.

(2) Any other means authorized by law including but not limited to:

(i) Referral to the Department of Justice for proceedings to enforce any rights of the United States or obligations of the recipient created by the Act or these regulations.

(ii) Use of any requirement of, or referral to, any Federal, State or local government agency that will have the effect of correcting a violation of the Act or these regulations.

(b) DOI will limit any termination under § 17.335(a)(1) to the particular recipient and particular program or activity or part of such program or activity DOI finds in violation of these regulations. DOI will not base any part of a termination on a finding with respect to any program or activity of the recipient that does not receive Federal financial assistance from DOI.

(c) DOI will take no action under paragraph (a) of this section until:

(1) The Secretary or his/her designee has advised the recipient of its failure to comply with the Act and these regulations and has determined that voluntary compliance cannot be obtained.

(2) Thirty days have elapsed after the Secretary or his/her designee has sent a written report of the circumstances and grounds of the action to the committees of Congress having legislative jurisdiction over the Federal program or activity involved. The Secretary or his/her designee will file a report whenever any action is taken under paragraph (a) of this section.

(d) DOI also may defer granting new Federal financial assistance from DOI to a recipient when a hearing under § 17.335(a)(1) is initiated.

(1) New Federal financial assistance from DOI includes all assistance for which DOI requires an application or approval, including renewal or continuation of existing activities or authorization of new activities, during the deferral period. New Federal financial assistance from DOI does not include increases in funding as a result of changed computation of formula awards or assistance approved prior to the beginning of a hearing under § 17.335(a)(1).

(2) DOI will not begin a deferral until the recipient has received a notice of an opportunity for a hearing under § 17.335(a)(1). DOI will not continue a deferral for more than 60 days unless a hearing has begun within that time or the time for beginning the hearing has been extended by mutual consent of the recipient and the Secretary. DOI will not continue a deferral for more than 30 days after the close of the hearing, unless the hearing results in a finding against the recipient.

§ 17.336 Hearings, decisions, post-termination proceedings.

Certain DOI procedural provisions applicable to Title VI of the Civil Rights Act of 1964 apply to DOI's enforcement of these regulations. The procedural provisions of DOI's Title VI regulations can be found at 43 CFR 17.8 through 17.10 and 43 CFR Part 4, Subpart I.

§ 17.337 Remedial action by recipients.

Where DOI finds a recipient has discriminated on the basis of age, the recipient shall take any remedial action that DOI may require to overcome the effects of the discrimination. If another recipient exercises control over the recipient that has discriminated, DOI may require both recipients to take remedial action.

§ 17.338 Alternate funds disbursal procedure.

(a) When DOI withholds funds from a recipient under these regulations, where permissible the Secretary may disburse the withheld funds directly to an alternate recipient under the applicable regulations of the bureau or office providing the assistance.

(b) The Secretary will require any alternative recipient to demonstrate:

(1) The ability to comply with these regulations; and

(2) The ability to achieve the goals of the Federal statute authorizing the program or activity.

§ 17.339 Exhaustion of administrative remedies.

(a) A complainant may file a civil action following the exhaustion of administrative remedies under the Act. Administrative remedies are exhausted if:

(1) 180 days have elapsed since the complainant filed the complaint and DOI has made no finding with regard to the complaint; or

(2) DOI issues any finding in favor of the recipient.

(b) If DOI fails to make a finding within 180 days or issues a finding in favor of the recipient, DOI will:

(1) Promptly advise the complainant of this fact;

(2) Advise the complainant of his or her right to bring a civil action for injunctive relief; and

(3) Inform the complainant:

(i) That he or she may bring a civil action only in a United States district court for the district in which the recipient is found or transacts business;

(ii) That a complainant prevailing in a civil action has the right to be awarded the costs of the action, including reasonable attorney's fees, but that the complainant must demand these costs in the complaint;

(iii) That before commencing the action the complainant shall give 30 days notice by registered mail to the Secretary of HHS, the Attorney General of the United States, the Secretary of the Interior, and the recipient;

(iv) That the notice must state: the alleged violation of the Act; the relief requested; the court in which the complainant is bringing the action; and whether or not attorney's fees are demanded in the event the complainant prevails; and

(v) That the complainant may not bring an action if the same alleged violation of the Act by the same recipient is the subject of a pending action in any court of the United States.

[FR Doc. 89-1661 Filed 1-24-89; 8:45 am]
BILLING CODE 4310-RE-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 86-144; FCC 89-422]

Minimum Power Requirements for Noncommercial Educational FM Stations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This Order amends § 73.511 of the Commission's Rules concerning minimum power requirements for noncommercial educational FM Stations. It is needed to make these requirements correspond with similar requirements recently revised for commercial Class A radio stations.

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EFFECTIVE DATE: January 25, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Rita McDonald, Policy and Rules Division, Mass Media Bureau (202) 254-3394.

SUPPLEMENTARY INFORMATION:

Order

Adopted: December 22, 1988; Released: January 18, 1989.

In the matter of review of technical parameters for FM allocation rules of Part 73, Subpart B, FM broadcast stations.

1. This action originates in an earlier Commission decision in Docket 88-144, (See *Memorandum Opinion and Order* in MM Docket No. 88-144, FCC 88-152, 53 FR 17040, May 13, 1988) which changed the minimum power requirements for Class A commercial radio broadcast facilities and, accordingly amended § 73.211 of the Commission's Rules. Correspondingly, § 73.511 of the noncommercial FM radio rules should have been revised at the same time because the definition of a class A station is the same whether the station is commercial or noncommercial. However, revision of § 73.511 was inadvertently omitted in the earlier decision. This *Order* corrects that oversight and pursuant to the Agency's oversight function, and § 73.511 is amended accordingly.

2. This *Order* makes no substantive changes which impose additional burdens or remove provisions relied upon by licensees or the public and, accordingly, we conclude, for the reasons set forth above, that this revision will serve the public interest.

3. Because this amendment does not impose any additional burdens, and raises no issue upon which public comment would serve a meaningful purpose, good cause exists for dispensing with the notice, comment, and effective date provisions contained in the Administrative Procedure Act. *See* 5 U.S.C. 553 (b) and (d).

4. Because a general notice of proposed rule making is not required, the Regulatory Flexibility Act does not apply.

5. The amendment contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or recordkeeping, labeling, disclosure, or record retention requirements; and will not increase or decrease burden hours imposed on the public.

6. Therefore, it is ordered, that pursuant to sections 4 and 303 of the Communications Act of 1934, as amended (47 U.S.C. 154 and 303), Part 73 of the FCC Rules and Regulations is hereby amended as set forth below, effective upon publication in the **Federal Register.**

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Rule Amendments

47 CFR Part 73 is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154 and 303.

2. Section 73.511 is amended by revising paragraph (a) to read as follows:

§ 73.511 Power and antenna height requirements.

(a) No new noncommercial educational station will be authorized with less power than minimum power requirements for commercial Class A facilities. (See § 73.211.)

* * * * *

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89-1572 Filed 1-24-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-474; RM-5855, RM-5878, RM-5915]

Radio Broadcasting Services; Springdale, AR and Aurora, Carthage, and Willard, MO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document grants two proposals to modify existing facilities at Springdale, Arkansas, and Aurora, Carthage and Willard, Missouri, as set forth *infra* (see Supplementary Information). With this action, the proceeding is terminated.

EFFECTIVE DATE: March 3, 1989.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-474, adopted November 28, 1988, and released January 18, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

The Commission, at the request of Moran Broadcasting Company, substitutes Channel 285C2 for Channel 285A at Springdale, Arkansas, and modifies the license of Station KCIZ(FM) to specify operation on the higher powered channel. Channel 285C2 is allotted to Springdale with a site restriction 27.3 kilometers northwest of the community at reference coordinates 36-19-47 and 94-22-55. In order to accommodate the upgrade at Springdale, it is necessary to substitute Channel 250A for Channel 285A at Carthage, Missouri, and modify the license of Station KRGK(FM) accordingly. Channel 250A is allotted to Carthage at the current licensed site of Station KRGK(FM) at reference coordinates 37-10-58 and 94-21-35. Additionally, at the request of Aurora Broadcasting, Inc., Channel 263C2 is substituted for Channel 261A at Aurora, Missouri, and the license of Station KELE(FM) modified accordingly. Channel 263C2 is allotted to Aurora, with a site restriction 20.9 kilometers northeast of the community at reference coordinates 37-03-51 and 93-30-46. In order to accommodate the Aurora modification, Channel 286C2 is substituted for Channel 263A at Willard, Missouri, as requested by Aurora Broadcasting, Inc. Channel 286C2 is allotted to Willard at a restricted site 11.0 kilometers west of the community at reference coordinates 37-19-35 and 93-32-47. The Carthage, Missouri substitution set forth above is also required to accommodate the Willard upgrade. Channel 263A at Willard, Missouri was made available for filing applications in Report Number No. W-30 which opened on December 16, 1987 and closed on January 26, 1988. The Public Notice announcing the acceptance of applications for Willard indicated the possibility of an upgrade in Docket No. 87-474. Thus, since public notice of the channel upgrade was given, the Commission will not open another window for the Class C2 channel at Willard, Missouri.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended under Arkansas, with respect to Springdale, by deleting Channel 285A and adding Channel 285C2.

3. Section 73.202(b), the Table of FM Allotments is amended under Missouri, with respect to the communities listed below, as follows: Aurora—remove Channel 261A and add Channel 263C2; Carthage—remove Channel 285A and add Channel 250A; Willard—remove Channel 263A and add Channel 286C2.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-1569 Filed 1-24-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-599; RM-6036; RM-6318, RM-6319]

Radio Broadcasting Services; Anna, Christopher, Herrin, IL and Lutesville, MO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 243C2 for Channel 224A at Anna, Illinois, and modifies the license of Station WRAJ(FM) to specify operation on the higher class channel, as requested by Union Broadcasting, Inc. ("petitioner"). The restricted site coordinates for Channel 243C2 at Anna are 37-22-31 and 89-28-51. Missouri Bible Study Group and Illinois Bible Study Group filed a consolidated counterproposal requesting allotment of Channel 243A to Christopher, Illinois and Lutesville, Missouri. In addition, Bluff City Broadcasting, Inc., filed a counterproposal requesting allotment of Channel 243A to Herrin, Illinois. The three proposals are mutually exclusive. However, the need for a community comparison is not necessary, since channels are available for all three communities. This action allots Channel 278A to Christopher, Illinois with a site restriction of 3.6 kilometers (2.2 miles) southeast, Channel 224A to Herrin, Illinois, and Channel 286A to Lutesville, Missouri. The coordinates for Channel 278A, Christopher are 37-57-59 and 89-00-38, the coordinates for Channel 224A, Herrin are 37-48-12 and 89-01-36, and the coordinates for Channel 286A, Lutesville, Missouri are 37-16-01 and 89-58-52. With this action, this proceeding is terminated.

DATES: Effective March 3, 1989. The window period for filing applications for Channel 278A at Christopher, Channel 224A at Herrin, and Channel 286A at Lutesville will open on March 6, 1989, and close on April 5, 1989.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-599, adopted November 30, 1988, and released January 18, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended for Illinois by adding Channel 243C2 at Anna, and deleting Channel 224A, by adding Channel 278A at Christopher, by adding Channel 224A at Herrin and by adding Channel 286A at Lutesville, Missouri.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-1568 Filed 1-24-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 88-143; RM-6159]

Radio Broadcasting Services; Cloquet and Grand Marais, MN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes FM Channel 263C1 for Channel 265A at Cloquet, Minnesota, in response to a petition filed by WKLK, Inc. We shall also modify the license of Station WKLK-FM to specify operation on Channel 263C1 in lieu of Channel 265A in accordance with § 1.402(g) of the Commission's Rules. The coordinates for Channel 263C1 are 46-45-40 and 92-22-12. To accommodate the substitution of channels at Cloquet, it is necessary to substitute Channel 237C for Channel 263C at Grand Marais, Minnesota. Timothy D. Martz is the applicant for Channel 263C at Grand Marais (870908MK) and in comments filed in this proceeding has agreed to the substitution of channels at coordinates 47-50-13 and 90-24-12. In accordance with Commission policy, we will retain the applicants' filing protection for Channel 236C when he amends to specify Channel 237C since the class of channel is equivalent. With this action, this proceeding is terminated.

EFFECTIVE DATE: March 3, 1989.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88-143, adopted December 9, 1988, and released January 18, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. In § 73.202(b), the Table of FM Allotments under Minnesota is amended by deleting Channel 265A and adding Channel 263C1 at Cloquet and by deleting Channel 263C and adding Channel 237C at Grand Marais.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-1573 Filed 1-24-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 88-72; RM-6157]

Radio Broadcasting Services; Brookings, SD

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Dakota Broadcasting, Inc., substitutes Channel 229C2 for Channel 232A at Brookings, South Dakota, and modifies its license for Station KGKG to specify operation on the higher powered channel. Channel 229C2 can be allotted to Brookings in compliance with the Commission's minimum distance separation requirements and can be used at its current transmitter site. The required mileage separations are met based on the recent modification of Station KKRC–FM's license at Sioux Falls, South Dakota, to specify operation on Channel 279C2 in lieu of its present Channel 228A in MM Docket 88–165. The coordinates for this allotment are North Latitude 44–18–13 and West Longitude 96–46–10. With this action, this proceeding is terminated.

EFFECTIVE DATE: March 3, 1989.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88–72, adopted December 9, 1988, and released January 18, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments for Brookings, South Dakota, is amended by deleting Channel 232A and adding Channel 229C2.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–1570 Filed 1–24–89; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 87–441; RM–5993]

Radio Broadcasting Services; Pinedale, WY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 266C2 to Pinedale, Wyoming, as that community's first local FM service, at the request of Connie Lyn Garder. The channel can be allotted in compliance with the Commission's minimum distance separation requirements, at coordinates 42–51–54 and 109–51–48. With this action, this proceeding is terminated.

DATES: Effective March 3, 1989. The window period for filing applications will open on March 6, 1989, and close on April 5, 1989.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87–441, adopted November 30, 1988, and released January 18, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, is amended under Wyoming by adding Channel 266C2 to Pinedale, Wyoming.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–1571 Filed 1–24–89; 8:45 am]

BILLING CODE 6712–01–M

GENERAL SERVICES ADMINISTRATION

48 CFR Part 553 and Appendix A

[APD 2800.12 CHGE 60]

General Services Administration Acquisition Regulation; Availability of GSA Form 3501 Concerning Solicitation Provisions and Appendix A Concerning Contracting Office Assignment Codes

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Final rule.

SUMMARY: The General Services Administration Acquisition Regulation (GSAR) Chapter 5, is amended to revise section 553.370–3501 to illustrate the August 1988 edition of the GSA Form 3501, Solicitation Provisions (Sealed Bid) and to revise Appendix A to reflect current Contracting Office Assignment Codes. The intended effect is to provide procedures and guidance to GSA contracting activities.

EFFECTIVE DATE: February 3, 1989.

FOR FURTHER INFORMATION CONTACT: Ms. Marjorie Ashby, Office of GSA Acquisition Policy and Regulations on (202) 523–3822.

SUPPLEMENTARY INFORMATION: This rule was not published in the **Federal Register** for public comment because the rule is establishing internal agency guidance, which has no impact on offerors or contractors. The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. The exemption applies to this rule. The GSA certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The rule simply revises GSA's internal operating procedures. Therefore, no regulatory flexibility analysis has been prepared. The rule does not contain information collection requirements that are subject to OMB under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

List of Subjects in 48 CFR Part 553

Government procurement.

1. The authority citation for 48 CFR Part 553 and Appendix A continues to read as follows:

Authority: 40 U.S.C. 486(c).

Editorial Note: The form mentioned above and Appendix A are illustrated and made a part of the regulation. However, the form and Appendix A are not illustrated in the **Federal Register** or the Code of Federal Regulations. Individual copies may be obtained from the Office of GSA Acquisition Policy and Regulations (VP), 18th and F Streets NW., Washington, DC 20405.

Dated: January 13, 1989.

Richard H. Hopf III,

Associate Administrator for Acquisition Policy.

FR Doc. 89–1544 Filed 1–24–89; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 675

[Docket No. 81131–9019]

Groundfish of the Bering Sea and Aleutian Islands; Foreign Fishing

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final notice of initial specifications of groundfish for 1989; reapportionment of reserves; request for comments.

SUMMARY: NOAA announces final specifications of total allowable catches (TACs) and initial domestic annual harvest (DAH) and reserve amounts for each category of groundfish in the Bering Sea and Aleutian Islands (BSAI) area for the 1989 fishing year. This action also reapportions some of the reserve to U.S. fishing vessels working in joint ventures with foreign processing vessels (JVP) and solicits comments on this reapportionment. The initial specification of the total allowable level of foreign fishing (TALFF) is zero.

This action is necessary to establish harvest limits for groundfish in the 1989 fishing year. This action is based on public comments, the best available information on the biological condition of groundfish stocks, the socioeconomic condition of the fishing industry, and consultation with the North Pacific Fishery Management Council (Council) at its meeting of December 5–9, 1988. The intended effect of this action is the conservation and management of groundfish resources in the BSAI area.

DATES: Effective at 0901 Greenwich Mean Time (GMT or 0001 Alaska Standard Time (AST)) on January 1, 1989 through 0900 GMT on January 1, 1990 (2400 AST, on December 31, 1989) or until changed by subsequent notice in the **Federal Register**.

Comments on the reapportionment part of this notice are invited until February 3, 1989.

ADDRESS: Send comments to Steven Pennoyer, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802–1668.

FOR FURTHER INFORMATION CONTACT: Jay J.C. Ginter, Fishery Management Biologist, NMFS, 907–586–7229.

SUPPLEMENTARY INFORMATION: Groundfish fisheries in the BSAI area are governed by Federal regulations (at 50 CFR 611.93 and Part 675) which implement the Fishery Management Plan for the Groundfish Fishery in the Bering Sea and Aleutian Islands Area (FMP). The FMP was developed by the Council and approved by the Secretary of Commerce (Secretary) under the Magnuson Fishery Conservation and Management Act (Magnuson Act).

The FMP and implementing regulations require the Secretary, after consultation with the Council, to annually specify the TAC, initial DAH, and initial TALFF for each target species and the "other species" category as soon as practicable after December 15 (§ 675.20(a)(6)). The sum of the species' TACs must be within the optimum yield (OY) range of 1.4 million to 2.0 million metric tons (mt) (§ 675.20(a)(2)). For 1989, this sum of TACs is equal to 2.0 million mt, as indicated in Table 1.

A notice specifying preliminary initial TAC, reserve, DAH, and TALFF amounts for the 1989 fishing year was pulished on November 29, 1988 and comments were invited until December 23, 1988 (53 FR 47998). Eight written comments were received and are summarized and responded to below. In addition, oral comments were heard and public consultation with the Council occurred during the Council's December 5–9, 1988 meeting in Anchorage, Alaska. Council recommendations made at this meeting account for differences between the preliminary specifications and those published in this notice.

The specified TACs for each species are based on the most recent biological and socioeconomic information. The Council, its Advisory Panel (AP), and Scientific and Statistical Committee (SSC), at their September and December 1988 meetings, reviewed current biological information about the condition of groundfish stocks in the BSAI area. This information was compiled by the Council's BSAI groundfish Plan Team and presented in the 1988 resource assessment document (RAD). The Plan Team annually produces such a document as the first step in the process of specifying TACs. The RAD contains a review of the latest scientific analyses and estimates of each species' biomass and other biological parameters. From these data and analyses, the Plan Team estimates an acceptable biological catch (ABC) for each species category.

A summary of preliminary ABCs for each species for 1989 and other biological data from the 1988 draft RAD were provided in the notice of preliminary 1988 specifications (53 FR 47998, November 29, 1988). The Plan Team's revised ABCs were reviewed by the SSC, AP, and Council at its December 1988 meeting. Revisions were made based on the SSC's review to produce the Council's final ABC estimates. The Council then developed its TAC recommendations to the Secretary based on the final ABCs as adjusted for other biological and socioeconomic considerations. For each species category, the recommended TAC for 1989 is equal to or less than that species' final ABC. Therefore, the Secretary finds that the recommended TACs are consistent with the biological condition of groundfish stocks.

A principal consideration for the Council in developing its 1989 TAC recommendations was assuring that the sum of the species TACs did not exceed the maximum OY of two million mt. The Secretary finds also that the recommended TACs, to the extent possible under the maximum OY limit, are consistent with socioeconomic goals and objectives of the FMP.

Apportionment of TAC

As required under § 675.20(a)(3), the amount of TAC for each species initially is reduced by 15 percent. The sum of these 15 percent amounts is designated as the reserve. This reserve is not species-specific and any amount of the reserve may be reapportioned to a target species or the "other species" category during the year, provided that such reapportionments do not result in overfishing (§ 675.20(a)(3)).

The remaining 85 percent of TAC is the initial TAC (ITAC). This amount is apportioned between DAH and TALFF such that TALFF, for each target species and the "other species" category at the beginning of the year, equals the ITAC minus DAH. For 1989, initial TALFF is zero for all species because the DAH equals ITAC.

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Each DAH amount is further apportioned between its two components, JVP and the expected domestic annual processing (DAP) category which includes U.S. vessels that process their catch onboard or deliver it to U.S. fish processors. Under the intent of the domestic processor preference amendments to the Magnuson Act (Pub. L. 98-364), JVP equals DAH minus DAP. In consultation with the Council, the initial amounts of DAP and JVP are determined by the Director, Alaska Region, NMFS (Regional Director). The initial DAP and JVP amounts for each target species and the "other species" category equal the actual DAP and JVP of the previous year plus any additional amounts the Regional Director projects will be used by the U.S. fishing industry during the coming year, subject to available TAC and accommodation of DAP. This projection is based on the latest reliable information that is available, including industry surveys, market data and the stated intentions of U.S. fishing industry representatives (§ 675.20(a)(4)). The final TACs, ITACs, reserve, and initial apportionments of groundfish between DAP and JVP in the BSAI area for 1989 are given in Table 1 of this notice.

JVP Split Apportionment

Amendment 11 to the FMP established a procedure for splitting the initial JVP apportionment of pollock for each subarea into two parts (52 FR 45966, December 3, 1987). This rule (§ 675.20(b)(3)) provided for Part One to be available for harvest by the JVP fishery on January 15 and Part Two to be withheld until April 15. The initial JVP for pollock in 1989 is small relative to comparable amounts in 1987 and 1988. In anticipation of this decreased initial JVP amount, the Council, at its September 1988 meeting, recommended suspension of the split-apportionment rule for 1989 with the JVP directed fishery for pollock to begin on January 15. The Secretary has taken this action by emergency rule effective January 15 through April 15, 1989 (53 FR 616; January 6, 1988). Therefore, the initial JVP for pollock in Table 1 is available for directed fishing on January 15.

Reapportionment

This action makes an initial reapportionment from reserve to JVP under authority of § 675.20(b)(1)(i). This reapportionment subtracts a total of 4,725 mt from reserve and adds it to the JVP species categories as follows: Arrowtooth flounder—700 mt; squid—25 mt; and "other species"—4,000 mt. See Table 2. Species categories receiving reapportioned amounts from the reserve are species which are likely to be harvested incidentally during JVP directed fishing for other species, and which have TACs that are not expected to be fully used by DAP fisheries. Based on past experience, NMFS anticipates that this reapportionment will not limit DAP fishing in any way. The purpose of this reapportionment is to provide JVP fisheries with the option to retain this bycatch which otherwise would have to be treated in the same manner as prohibited species and be discarded.

Directed Fishing Prohibition

When the Regional Director determines that the amount of the TAC of any target species or of the "other species" category remaining during the fishing year is necessary in other groundfish fisheries, § 675.20(a)(7) directs the Secretary to prohibit further directed fishing for that species. Directed fishing is defined at § 675.2 but generally allows a fisherman to retain bycatches of that species up to 20 percent of the catch, take, or harvest, or to 20 percent of the fish or fish products onboard his vessel. Such retained bycatches are counted against the remaining TAC for that species. The purpose of this provision is to minimize the waste of groundfish resources from required discarding by slowing the harvest rate of any groundfish species as its total catch approaches its TAC. However, when the catch of a species reaches its TAC (or JVP, for example), any further bycatches of it may not be retained and must be treated in the same manner as a prohibited species (§ 675.20(a)(8)).

The Regional Director, Alaska Region, has determined that the amounts of certain groundfish species apportioned to DAP and JVP are insufficient for directed fishing without excessive waste later in the fishing year from discard as "prohibited species" and that these amounts are necessary for bycatch in fisheries for other groundfish species. These species and the amounts necessary for bycatch in other fisheries are as follows:

DAP sablefish, Bering Sea subares.	2,380 mt.
JVP arrowtooth flounder	700 mt.
JVP squid	25 mt.
JVP "other species"	4,000 mt.

Therefore, the Secretary prohibits DAP directed fishing for sablefish in the Bering Sea subares, and JVP directed fishing for arrowtooth flounder, squid, and "other species" in the Bering Sea and Aleutian Islands area for the remainder of the fishing year.

Comments and Responses

Eight letters of comment were received on the preliminary 1989 specifications published November 29, 1988 (53 FR 47998). Most comments were affected by the Council's actions at its December, 1988 meeting. In summary, commenters expressed one of two basic concerns, either that estimates and apportionments of DAP were inflated and would harm JVP interests, or that DAP could harvest the entire TAC and that premature reapportionment of reserve or DAP to JVP would harm DAP interests. Commenters focused almost exclusively on the apportionment of pollock in the Bering Sea subarea. Comments and responses, therefore, are summarized below according to these two basic concerns.

Comment 1: The 1.34 million mt TAC for pollock in the Bering Sea subarea can be fully harvested by the growing DAP fleet. The NMFS projection of the 1989 DAP harvest of pollock is sufficiently high to justify prohibiting JVP directed fishing for this species until the second half of the fishing year. The Council recommendation for initial DAP pollock in the Bering Sea subarea is only about 81 percent of the NMFS-projected DAP harvest. If the entire "reserve" (i.e., 15 percent of the Bering Sea subarea pollock TAC) for this species were reapportioned to DAP, the total would amount to only 73 percent of the projected harvest. There is no justification for an initial JVP that allows JVP directed fishing for this species. The procedure used by the Council to provide for 50,000 mt of pollock in the Bering Sea subarea for JVP directed fishing was inappropriate and violates the requirement to specify DAP before JVP. If implemented, the Council's recommendation creates a risk that DAP will run out of fish (pollock) before the end of the fishing year. NMFS should not make any early-year reapportionments from reserve to JVP to preserve the ability of the DAP sector to harvest pollock throughout the year up to its TAC.

Response: There is no question of the rapid growth in harvesting and processing capacity of the DAP sector. The annual DAP harvest of groundfish off Alaska generally has increased an average of 70 percent from 1981 through 1987. The 1988 total groundfish harvest is likely to be about 50 percent greater than that in 1987. In recent years, most of this growth has occurred in the Bering Sea subarea and, specifically, from pollock.

To estimate DAP harvests in a succeeding year, NMFS, Alaska Region, surveys domestic groundfish processors on their processing capacity and intentions for the coming year. This survey includes shore-based and floating processors and new operations planned for the coming year but not yet operational. Due to the uncertainty of new and planned processing operations, NMFS forecasts or projections of DAP harvests in the coming year tend to liberally favor DAP. For example, the NMFS survey performed in November 1987, for the 1988 fishing year resulted in a projected DAP pollock harvest from the Bering Sea subarea of 614,162 mt. The actual DAP pollock harvest from this area in 1988 is likely to be about 526,162 mt or about 86 percent of the original projection. The Alaska Region refines its projected DAP harvest throughout the year with subsequent inseason surveys and reapportions surplus DAP to JVP, if indicated.

The projected DAP harvest of Bering Sea subarea pollock in 1989, based on a November 1988 survey of processors, is 1,342,193 mt. The Council apparently was skeptical that domestic processors could actually achieve this level of production which represents an increase in production equivalent to 2.4 times that in 1988. In addition, the Council noted that initial NMFS projections in the past have been about 20 percent higher than actual performance. Decreasing the 1989 projection by this proportion produces an estimated DAP harvest of pollock in the Bering Sea subarea of about 1,074,000 mt. Based on public testimony, the Council further reduced this estimate to 1,045,585 mt. This is a decrease from the NMFS projection of about 22 percent but still provides for DAP growth of nearly two times the likely 1988 harvest of pollock in the Bering Sea subarea. Moreover, reapportionments from reserve to pollock DAP in this area could be made later in the year up to an amount equivalent to the TAC. Such reapportionments could make an additional 201,000 mt of pollock available to DAP fisheries. This would increase the total pollock DAP in the Bering Sea subarea to 1,246,585 mt or almost 2.5 times the likely catch in 1988. NOAA has determined that the Councils' recommended specification of DAP for pollock in the Bering Sea subarea is consistent with the Magnuson Act because it provides ample opportunity in 1989 for domestic processors to achieve their probable production of pollock products, based on a comparison of 1988 NMFS projections with actual 1988 production. Therefore, NOAA considers the Council's recommendation to be defensible and appropriate.

The Alaska Region will be refining its projections of the DAP harvest of pollock (and other species) during the 1989 fishing year based on in season surveys of domestic processor intentions and capacity. The Secretary will publish reapportionments based on these revised data as provided under § 675.20(b). It is unlikely that DAP harvesters will use the entire potential DAP (initial DAP plus later apportionments from reserve) before the end of the 1989 fishing year.

Comment 2: Apportionments to DAP should be made in a manner that is fair and equitable to JVP fishermen. Requests of the DAP sector (from the NMFS survey of domestic processing capacity and intentions) should be critically reviewed and verified. Reevaluations should be made quarterly to determine the probability of surplus DAP, and reapportionment to JVP should be more timely to allow uninterrupted operations.

The DAP sector requests include 25 processor vessels which are not currently operating. Many of these planned operations are unlikely to materialize because of difficulty in securing financing and shipyard commitments. The NMFS should intensively review such projects using more realistic assumptions. Not doing this results in inflated projections of DAP capacity which unfairly excludes American fishermen in joint venture operations from the groundfish fisheries. Inflated projections also result from "double-dipping" on the survey response. The DAP survey lacks transparency which prevents effective commenting and rebuttal of domestic processing claims.

The OY limit should be raised by emergency Secretarial rulemaking. Not raising this limit and accepting the DAP requests at face value will exclude at least 50 percent of the 90 to 125 U.S. catcher vessels working in joint ventures from the fishery, because they do not have a domestic market for their catch. This dislocation constitutes a socio-economic emergency. The rapid capitalization of the DAP fleet also indicates a need to raise the OY limit in combination with a moratorium on new entry into the fishery.

The JVP fishery has 100 percent observer coverage on all vessels receiving JVP catches. This observer coverage provides a source of data important to the biological assessment of the stocks and monitoring of catch rates. This data base will be lost if JVP operations are forced to leave before implementation of adequate observer coverage in the DAP fleet. If 20 percent observer coverage is considered adequate, then 20 percent of the OY should be earmarked for JVP.

Response: NOAA is likewise concerned with the accuracy of its surveys of domestic processing needs and the impact of DAP apportionments on JVP harvesters. It is for these reasons that NOAA thoroughly scrutinizes the results of those surveys and endeavors to accurately assess domestic processor needs and balance fairly the statutory requirement to accommodate DAP processors while recognizing the needs of JVP fishermen.

Estimates of groundfish harvests by planned (but not currently operational) DAP operations are arguably the most uncertain. Another uncertainty arises from survey responses that indicate the production of different kinds of fish products at the same time, an unlikely event due to logistical or marketing impracticalities. The Alaska Region accounts for these and other uncertainties in formulating its projections by discounting, sometimes by significant amounts, the domestic processor requests from the survey. In addition, NMFS, in presenting its projections, cautions the Council regarding these uncertainties and to what extent they have been accounted for. The Council may further adjust the NMFS projections, based on this information and public testimony, in formulating its recommendations to the Secretary. All information and survey results presented to the Council are public and available for comment and rebuttal. The responses of individual firms cannot be made public because of the need to preserve the confidentiality of private businesses.

On several previous occasions, the Council has considered changing the upper limit to the OY range. Its most recent consideration was in 1988 when the Council developed a draft environmental impact statement (DEIS). After reviewing the DEIS, the Council decided against making a recommendation to the Secretary to amend the FMP in this regard.

Classification

This action is authorized under 50 CFR 611.93(b) and 675.20 and complies with Executive Order 12291. The Assistant Administrator for Fisheries finds for good cause that it is impractical and contrary to the public interest to provide prior notice and comment on the reapportionment part of this notice. As immediate effectiveness of this action is necessary to benefit

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fishermen who would otherwise forego harvestable amounts of groundfish, the 30-day delayed effectiveness provision is also waived. However, interested persons are invited to submit comments in writing on the reapportionment to the above address.

List of Subjects

50 CFR Part 611

Fisheries, Foreign relations.

50 CFR Part 675

Fisheries.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 19, 1989

James W. Brennan,

Assistant Administrator For Fisheries, National Marine Fisheries Service.

TABLE 1—FINAL 1989 TOTAL ALLOWABLE CATCH (TAC) AND APPORTIONMENTS OF GROUNDFISH IN THE BERING SEA AND ALEUTIAN ISLANDS AREA [1]

Species	1989 TAC	Initial TAC [2]	DAP [3]	JVP [4]	DAH [5]	TALFF [6]
Pollock:						
BS	1,340,000	1,139,000	1,045,585	93,415	1,139,000	0
AI	13,458	11,432	11,432	0	11,432	0
Pacific Ocean Perch						
BS	5,000	4,250	4,250	0	4,250	0
AI	6,000	5,100	5,100	0	5,100	0
Other Rockfishes:						
BS	400	340	340	0	340	0
AI	1,100	935	935	0	935	0
Sablefish:						
BS	2,800	2,380	2,380	0	2,380	0
AI	3,400	2,890	2,890	0	2,890	0
Atka Mackerel: BSAI	20,285	17,242	17,242	0	17,242	0
Pacific Cod: BSAI	230,681	196,079	158,613	37,466	196,079	0
Yellowfin Sole: BSAI	182,675	155,274	45,274	110,000	155,274	0
Greenland Turbot: BSAI	8,000	6,800	6,800	0	6,800	0
Arrowtooth Flounder: BSAI	6,000	5,100	5,100	0	5,100	0
Rock Sole: BSAI	90,782	77,148	67,543	9,605	77,148	0
Other Flatfishes: BSAI	75,183	63,906	23,906	40,000	63,906	0
Squid: BSAI	1,000	850	850	0	850	0
Other Species: BSAI	13,264	11,274	11,274	0	11,274	0
Total	2,000,000	1,700,000	1,409,514	290,486	1,700,000	0

[1] Amounts are in metric tons.
[2] Initial TAC (ITAC) = 0.85 of TAC; initial reserve = TAC—ITAC = 300,000.
[3] DAP = domestic annual processing.
[4] JVP = joint venture processing.
[5] DAH = DAP + JVP.
[6] TALFF = total allowable level of foreign fishing.

TABLE 2—REAPPORTIONMENT OF RESERVE: REVISED 1989 TOTAL ALLOWABLE CATCH (TAC) AND APPORTIONMENTS OF GROUNDFISH IN THE BERING SEA AND ALEUTIAN ISLANDS AREA [1]

Species	TAC	Initial TAC [2]	DAP [3]	JVP [4]	DAH [5]	TALFF [6]
Pollock:						
BS	1,340,000	1,139,000	1,045,585	93,415	1,139,000	0
AI	13,458	11,432	11,432	0	11,432	0
Pacific Ocean Perch:						
BS	5,000	4,250	4,250	0	4,250	0
AI	6,000	5,100	5,100	0	5,100	0
Other Rockfishes:						
BS	400	340	340	0	340	0
AI	1,100	935	935	0	935	0
Sablefish:						
BS	2,800	2,380	2,380	0	2,380	0
AI	3,400	2,890	2,890	0	2,890	0
Atka Mackerel: BSAI	20,285	17,242	17,242	0	17,242	0
Pacific Cod: BSAI	230,681	196,079	158,613	37,466	196,079	0
Yellowfin Sole: BSAI	182,675	155,274	45,274	110,000	155,274	0
Greenland Turbot: BSAI	8,000	6,800	6,800	0	6,800	0
Arrowtooth Flounder: BSAI	6,000	5,100	5,100	0	5,100	0
Change: Add	0	0	0	700	700	0
Revised	6,000	5,100	5,100	700	5,800	0
Rock Sole: BSAI	90,782	77,148	67,543	9,605	77,148	0
Other Flatfishes: BSAI	75,183	63,906	23,906	40,000	63,906	0
Squid: BSAI	1,000	850	850	0	850	0
Change: Add	0	0	0	25	25	0
Revised	1,000	850	850	25	875	0
Other Species: BSAI	13,264	11,274	11,274	0	11,274	0
Change: Add	0	0	0	4,000	4,000	0
Revised	13,264	11,274	11,274	4,000	15,274	0
Totals	2,000,000	1,700,000	1,409,514	290,486	1,700,000	0
Change [7]	0	0	0	4,725	4,725	0

TABLE 2—REAPPORTIONMENT OF RESERVE: REVISED 1989 TOTAL ALLOWABLE CATCH (TAC) AND APPORTIONMENTS OF GROUNDFISH IN THE BERING SEA AND ALEUTIAN ISLANDS AREA [1]—Continued

Species	TAC	Initial TAC [2]	DAP [3]	JVP [4]	DAH [5]	TALFF [6]
Revised	2,000,000	1,700,000	1,409,514	295,211	1,704,725	0

[1] Amounts are in metric tons.
[2] Initial TAC (ITAC) = 0.85 of TAC; initial reserve = TAC—ITAC = 300,000.
[3] DAP = domestic annual processing.
[4] JVP = joint venture processing.
[5] DAH = DAP + JVP.
[6] TALFF = total allowable level of foreign fishing.
[7] The total increase in JVP and DAH is subtracted from the reserve. Hence, the remaining reserve = 300,000—4,725 = 295,275.

[FR Doc. 89-1666 Filed 1-19-89; 4:33 pm]

BILLING CODE 3510-22-M

50 CFR Part 675

[Docket No. 81131-9019-1]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of prohibition on receipt.

SUMMARY: NOAA announces prohibitions on receipt by foreign processors in the Exclusive Economic Zone (EEZ) of pollock taken in directed fisheries for pollock in the Bering Sea Subarea. This action, taken under provisions of the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP), limits joint venture processing (JVP) to the amount of pollock specified for JVP, assures optimum use of groundfish, and promotes orderly conduct of the groundfish fisheries.

DATES: Effective 1000 G.M.T., January 21, 1989 (0100 Alaska Standard Time, January 21, 1989). Comments will be accepted through February 3, 1989.

ADDRESS: Comments should be mailed to Steven Pennoyer, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, Alaska 99802, or be delivered to Room 453, Federal Building, 709 West Ninth Street, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Pat Peacock, Fishery Management Specialist, NMFS, 907-586-7230.

SUPPLEMENTARY INFORMATION: The FMP, which governs the groundfish fishery in the EEZ under the Magnuson Fishery Conservation and Management Act, is implemented by rules appearing at 50 CFR 611.93 and Part 675. An emergency interim rule (54 FR 416, January 6, 1989) established one JVP pollock season in 1989, starting January 15 and reversed Amendment 11 to the FMP (52 FR 45966, December 3, 1987), which divided the JVP pollock season into two parts for the 1988 and 1989 fishing seasons.

For other actions in 1989 concerning JVP pollock in the Bering Sea Subarea, see the Notice of Specifications for groundfish in the Bering Sea and Aleutian Islands published elsewhere in todays's Federal Register.

Notice of Closure to Directed Fishing

Under § 675.20(a)(7), the Regional Director (RD) has determined that 43,415 mt of pollock out of the 93,415 mt JVP apportionment for this species in the Bering Sea subarea will be needed for bycatch in other JVP fisheries (i.e., Pacific cod, yellowfin sole, rock sole, and "other flatfish"). To preserve this bycatch amount for other JVP fisheries, it is necessary that foreign processors must cease receiving pollock at 1000 GMT, January 21, 1989 (0100 Alaska Standard Time) caught by U.S. fishermen, when the RD estimates 50,000 mt of pollock will have been delivered to foreign processors. Directed fishing is defined in § 675.2.

Classification

The action is taken under the authority of 50 CFR 675.20(a)(7) and complies with Executive Order 12291.

The Assistant Administrator for Fisheries finds for good cause that it is impractical and contrary to the public interest to provide prior notice and opportunity for comment. Immediate effectiveness of this notice is necessary to prevent the harvest of pollock from exceeding the JVP amount.

Interested persons are invited to submit comments in writing to the address above for 15 days after the effective date of this notice.

List of Subjects in 50 CFR Part 675

Fish, Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 19, 1989.

Richard H. Schaefer,

Director of Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89-1667 Filed 1-19-89; 4:32 pm]

BILLING CODE 3510-22-M

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VOL 54 ISS 15 JA 25 1989 UMI

Proposed Rules

Federal Register
Vol. 54, No. 15
Wednesday, January 25, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Parts 1944 and 1951

Interest, Penalties, and Administrative Costs

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Farmers Home Administration proposes to amend its regulations to provide for assessing individual borrowers a $7.00 fee when the Agency must process an uncollectible item. This action is taken to implement an Office of Management and Budget (OMB) Circular A-129 requirement that agencies assess interest, penalties, and administrative costs. The effect of this action will be to compensate the Agency for the cost of processing an uncollectible item.

DATES: Comments are due on or before March 27, 1989.

ADDRESSES: Submit written comments in duplicate to the Chief, Directives and Forms Management Branch, Farmers Home Administration, U.S. Department of Agriculture, Room 6348, South Agriculture Building, 14th Street and Independence Avenue SW., Washington, DC 20250. All written comments made pursuant to this publication will be available for public inspection during regular work hours at the above address.

FOR FURTHER INFORMATION CONTACT: William J. French, Financial and Management Analysis Staff, Farmers Home Administration, USDA, Room 6434, South Agriculture Building, 14th Street and Independence Avenue, SW., Washington, DC 20250. Telephone (202) 475-4741.

SUPPLEMENTARY INFORMATION:

Classification

This action has been reviewed under USDA procedures established in Departmental Regulation 1512-1, which implements Executive Order 12291, and has been determined to be nonmajor, because there will not be an annual effect on the economy of $100 million or more; a major increase in cost or prices for consumers, individual industrials, Federal, State, or local government agencies or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G "Environmental Program." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and, in accordance with the National Environmental Policy Act of 1969, Pub. L. 91-190, an Environmental Impact Statement is not required.

Regulatory Flexibility Act

The Administrator, Farmers Home Administration, USDA, has determined that this action will not have a significant economic impact on a substantial number of small entities because it only deals with the assessment of a fee on individual borrowers allowing the Government to capture its costs of processing uncollectible items.

Intergovernmental Consultation

This activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Programs Affected

These changes affect the following FmHA programs as listed in the Catalog of Federal Domestic Assistance:

10.404 Emergency Loans
10.406 Farm Operating Loans
10.407 Farm Ownership Loans
10.410 Low Income Housing Loans
10.411 Rural Housing Site Loans
10.416 Soil and Water Loans
10.417 Very Low-Income Housing Repair Loans and Grants
10.428 Economic Emergency Loans

Discussion

The Farmers Home Administration is required by OMB Circular A-129 to assess interest, penalties, and administrative costs on delinquent accounts in accordance with the Debt Collection Act of 1982. The Agency has not passed the cost of processing uncollectible items on to the borrower in the past, however, it has been determined that it is not fiscally responsible for the Agency to continue to absorb these losses. We, therefore, are proposing to charge a fee of $7.00 to individual borrowers for each uncollectible item which will only cover our costs of processing the item.

List of Subjects

7 CFR Part 1944

Home improvement, Housing and community development, Low and moderate income housing, Mobile homes, Mortgages, Rural housing and subsidies.

7 CFR Part 1951

Account servicing, Accounting, Collection of loan payments & depositing payments through the Concentration Banking System (CBS), Financial institutions, Credit, Loan programs—Agriculture, Loan programs—Housing and community development, Low and moderate income housing loans—Servicing.

Therefore, as proposed, Chapter XVII of Title 7, Code of Federal Regulations, is amended as follows:

PART 1944—HOUSING

1. The authority citation for Part 1944 continues to read as follows:

Authority: 42 U.S.C. 1480, 5 U.S.C. 301, 7 CFR 2.23, 7 CFR 2.70.

Subpart A—Section 502 Rural Housing Loan Policies, Procedures, and Authorizations

2. Exhibit D to Subpart A is amended by revising item 12 to read as follows:

Exhibit D of Subpart A—Rural Housing Applicant Interview

* * * * *

12. *Monthly Payment:* Regular payments must be made on or before the due date. Normally, payments will be applied first to unpaid interest and the balance to principal. If a noninterest accruing administrative cost has been charged to the borrowers account, payment will be applied to the outstanding administrative cost first. If for any reason a payment cannot be made on time the borrower should immediately contact the local County Office.

* * * * *

PART 1951—SERVICING AND COLLECTIONS

3. The authority citation for Part 1951 continues to read as follows:

Authority: 7 U.S.C. 1988, 42 U.S.C. 1480, 5 U.S.C. 301, 7 CFR 2.23, 7 CFR 2.70

Subpart A—Account Servicing Policies

4. Section 1951.6 is amended by revising paragraph (e)(4) to read as follows:

§ 1951.6 Handling payments.

* * * * *

(e) * * *

(4) If an uncollectible item is received, the Finance Office will reverse the amount from the borrower's account and a new Form FmHA 451-26, "Transaction Record," reflecting the uncollectible amount will be prepared. The Form FmHA 451-26 will be mailed to the County Office. The uncollectible item with a transmittal memorandum will be sent to the County Office. The County Office will return the uncollectible check to the borrower after it is fully redeemed. The borrower will make payment by sending a new check and a new payment coupon to the Finance Office. There will also be a $7.00 noninterest accruing administrative cost charged to the borrower's account for uncollectible items due to insufficient funds. Therefore, the borrower's payment for the uncollectible item should be for the regular payment amount plus the administrative cost.

* * * * *

5. Section 1951.10 is amended by revising the introductory text to read as follows:

§ 1951.10 Application of payments on production-type loan accounts.

Employees receiving payments on OL, EO, SW codes "24," EM for Subtitle B purposes, EE operating-type, and other production-type loan accounts will select, in accordance with the provisions of this section, the account(s) to which such payment will be applied. All payments on OL and EM loans approved on or before December 31, 1971, will be credited first to any administrative costs, to a portion of interest which accrues during the deferral period, to interest accrued to the date of the payment and then to principal, in accordance with the terms of the note. This section only applies after the County Supervisor determines the amount of proceeds that will be released for other purposes in accordance with the annual plan (Form FmHA 431-2) and Form FmHA 1962-1.

* * * * *

6. In § 1951.11, current paragraphs (d)(1)(i) and (d)(1)(ii) are redesignated as paragraphs (d)(1)(ii) and (d)(1)(iii), respectively, and a new paragraph (d)(1)(i) is added to read as follows:

§ 1951.11 Application of payments on real estate accounts.

* * * * *

(d) *Finance Office handling.*

(1) * * *

(i) Payments will be applied first to satisfy any administrative costs.

* * * * *

Subpart G—Borrower Supervision, Servicing and Collection of Single Family Housing Loan Accounts

7. In § 1951.309, current paragraphs (b)(1)(i), (b)(1)(ii), (b)(1)(iii) and (b)(1)(iv) are redesignated as paragraphs (b)(1)(ii), (b)(1)(iii), (b)(1)(iv) and (b)(1)(v), respectively, and a new paragraph (b)(1)(i) is added to read as follows:

§ 1951.309 Receiving and applying payments.

* * * * *

(b) * * *

(1) * * *

(i) Administrative cost.

* * * * *

Dated: October 3, 1988.

Vance L. Clark,

Administrator, Farmers Home Administration.

[FR Doc. 89-1503 Filed 1-24-89; 8:45 am]

BILLING CODE 3410-07-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 89-ASO-1]

Proposed Revision of Transition Area; Athens, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revise the Athens, Georgia, transition area. This revision will increase the transition area radius from 9 to 11.5 miles to provide additional controlled airspace for aircraft executing Standard Instrument Approach Procedures (SIAP's) utilizing the Athens, Georgia, VHF Omnidirectional Range (VOR). It will also correct the airport name and the airport geographical position coordinates.

DATES: Comments must be received on or before March 1, 1989.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, ASO-530, Manager, Airspace and Procedures Branch, Docket No. 89-ASO-1, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Regional Counsel, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, telephone: (404) 763-7646.

FOR FURTHER INFORMATION CONTACT: James G. Walters, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763-7646.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 89-ASO-1." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Regional Counsel, Room 652, 3400 Norman Berry Drive, East Point, Georgia

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30344, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace and Procedures Branch (ASO-530), Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Comunications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Administration (14 CFR Part 71) to revise the Athens, Georgia, transition area. The radius of the transition area would be increased from 9 to 11.5 miles to provide additional controlled airspace for aircraft executing standard instrument approach procedures utilizing the Athens, Georgia, VOR. The airport name would be corrected from Athens Municipal to Athens/Ben Epps Airport. Also, a minor correction would be made to the airport geographical position coordinates. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6D dated January 4, 1988.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition area.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Public Law 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Athens, Georgia [Revised]

That airspace extending upward from 700' above the surface within an 11.5-mile radius of Athens/Ben Epps Airport (Lat. 33°56'55"N., Long. 83°19'36"W).

Issued in East Point, Georgia, on January 11, 1989.

William D. Wood,

Acting Manager, Air Traffic Division, Southern Region

[FR Doc. 89-1602 Filed 1-24-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 88-ACE-24]

Proposed Designation of Transition Area; Tipton, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This Notice proposes to designate a 700-foot transition area at Tipton, Iowa, to provide controlled airspace for aircraft executing a new instrument approach procedure to the Mathews Memorial Airport, Tipton, Iowa, utilizing the Cedar Rapids VORTAC as a navigational aid. This proposed action will change the airport status from VFR to IFR.

DATES: Comments must be received on or before February 27, 1989.

ADDRESSES: Send comments on the proposal to: Federal Aviation Administration, Manager, Traffic Management and Airspace Branch, Air Traffic Division, ACE-540, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 426-3408

The official docket may be examined at the Office of the Assistant Chief Counsel, Central Region, Federal Aviation Administration, Room 1558, 601 East 12th Street, Kansas City, Missouri.

An informal docket may be examined at the Office of the Manager, Traffic Management and Airspace Branch, Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis G. Earp, Airspace Specialist, Traffic Management and Airspace Branch, Air Traffic Division, ACE-540, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 426-3408.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons may participate in the proposed rulemaking by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number, and be submitted in duplicate to the Traffic Management and Airspace Branch, Air Traffic Division, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106. All communications received on or before the closing date for comments will be considered before action is taken on the proposed amendment. The proposal contained in this Notice may be changed in light of the comments received. All comments received will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons.

Availability of NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Traffic Management and Airspace Branch, 601 East 12th Street, Kansas City, Missouri 64106, or by calling (816) 426-3408.

Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for further NPRMS should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

Discussion

The FAA is considering an amendment to Subpart G, § 71.181 of the Federal Aviation Regulations (14 CFR 71.181) by designating a 700-foot transition area at Tipton, Iowa. To enhance airport usage, a new instrument approach procedure is being developed for the Mathews Memorial Airport, Tipton, Iowa, utilizing the Cedar Rapids VORTAC as a navigational aid. This navigational aid will provide new navigational guidance for aircraft utilizing the airport. The establishment of a new instrument approach procedure based on this navigational aid entails designation of a transition area at Tipton, Iowa, at and above 700 feet above ground level within which aircraft are provided air traffic control service. Transition areas are designed to contain IFR operations in controlled airspace during portions of the terminal operation and while transiting between the terminal and en route environment. The intended effect of this action is to insure segregation of aircraft using the approach procedure under instrument flight rules (IFR) and other aircraft operating under visual flight rules (VFR). This action will change the airport status from VFR to IFR.

Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) IS not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the FAA proposes to amend Part 71 of the FAR (14 CFR Part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Tipton, Iowa

That airspace extending upward from 700 feet above the surface within a 6.5 mile radius of the Mathews Memorial Airport (41°45'52"N, 91°09'15"W).

Issued in Kansas City, Missouri on January 9, 1989.

Clarence E. Newbern,

Manager, Air Traffic Division.

[FR Doc. 89-1600 Filed 1-24-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 88-AGL-15]

Proposed Alteration to Transition Area; Menominee, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the Menominee, MI, transition area to accommodate existing Standard Instrument Approach Procedures (SIAPs) to Menominee-Marinettee Twin County Airport, Menominee, MI. The intended effect of this action is to ensure segregation of the aircraft using approach procedures in instrument conditions in controlled airspace.

DATES: Comments must be received on or before March 3, 1989.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Regional Counsel, AGL-7, Attn: Rules Docket No. 88-AGL-15, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Harold G. Hale, Air Traffic Division, Airspace Branch, AGL-520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-7360.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 88-AGL-15". The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of Regional Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2, which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the designated transition area airspace near Menominee, MI.

The present transition area is being modified to accommodate existing SIAPs to Menominee-Marinette Twin County Airport. The alterations will consist of a size reduction to the existing control zone extensions and returning that portion of airspace back to the public.

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Aeronautical maps and charts will reflect the defined areas which will enable other aircraft to circumnavigate the area in order to comply with applicable visual flight rule requirements.

Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

The FAA has determined that this proposed regulation only inovives an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 100(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Menominee, MI [Revised]

That airspace extending upward from 700 feet above the surface within a 6.5 mile radius of the Menominee-Marinette Twin County Airport (lat. 45°07'36"N., long. 87°38'18"W.) within 2 miles each side of the 352° bearing from the airport extending from the 6.5 mile radius to 11.5 miles north of the airport, within 3 miles each side of the 212° bearing from the airport extending from the 6.5 mile radius to 6.5 miles southwest of the airport.

Issued in Des Plaines, Illinois, on January 12, 1989.

Teddy W. Burcham,

Manager, Air Traffic Division.

[FR Doc. 89-1500 Filed 1-24-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 88-ANM-23]

Proposed Amendment of Transition Area; Lakeview, OR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Lakeview, Oregon, Transition Area. Additional 1,200 foot area is needed to encompass controlled airspace associated with holding at Goose NDB Lakeview, Oregon to accommodate climbing in the holding pattern by Turbojet aircraft.

DATES: Comments must be received on or before March 10, 1989.

ADDRESSES: Send comments on the proposal to: Manager, Airspace & System Management Branch, ANM-530, Federal Aviation Administration, Docket No. 88-ANM-23, 17900 Pacific Highway South, C-68966, Seattle, Washington, 98168.

The official docket may be examined in the Office of Regional Counsel at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Robert L. Brown, ANM-535, Federal Aviation Administration, Docket No. 88-ANM-23, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168, Telephone: (206) 431-2535.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communication should identify the airspace docket and be submitted to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 88-ANM-23". The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking any action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Airspace & System Management Branch, 17900 Pacific Highway South, C-68966, Seattle, Washington, 98168.

Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to provide additional controlled airspace to accommodate climbing in the Goose NDB (Lakeview, Oregon) holding pattern by turbojet aircraft. This area will be depicted on aeronautical charts enabling pilots operating in Visual Flight Rules conditions to circumnavigate the area and avoid conflicting with aircraft operating on Instrument Flight Rules clearances.

Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendment are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal.

Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Lakeview, Oregon [Amended]

On the eighth line after "RBN", Change the period to a semi-colon and add the following: "and that airspace within an area bounded by a line beginning at Latitude 42°22'00", longitude 120°41'00", to Latitude 42°22'00", longitude 120°12'00", to latitude 41°48'00", longitude 120°12'00", to latitude 41°48'00", longitude 120°41'00", to beginning."

Issued in Seattle, Washington, on January 10, 1989.

Temple H. Johnson, Jr.,

Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 89-1601 Filed 1-24-89; 8:45 am]

BILLING CODE 4901-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 163

[Docket No. 86P-0297/CP]

Cacao Products; Proposal To Amend the Standards of Identity

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend the U.S. standards of identity for certain cacao products. The proposed amendments would provide for the use of safe and suitable nutritive carbohydrate sweeteners, neutralizing agents, and emulsifiers; reduce the current minimum milkfat content; and eliminate the current "nonfat milk solids-to-milkfat ratios" in certain cacao products. The agency is also proposing to update the language and format of the standards and to provide for optional ingredient labeling requirements. The proposed amendments respond principally to a citizen petition submitted by the Chocolate Manufacturers Association of the United States of America (CMA), will promote honesty and fair dealing in the interest of consumers, and, to the extent practicable, will achieve consistency with the Codex standards.

DATE: Comments by March 27, 1989. The agency proposes that any final rule that may be issued based upon this proposal become effective 60 days after date of publication of the final rule in the Federal Register.

ADDRESS: Written comments, data, or information to the Dockets Management Branch (FHA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Arthur R. Johnson, Center for Food Safety and Applied Nutrition (HFF-414), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-485-0112.

SUPPLEMENTARY INFORMATION:

I. Advance Notices of Proposed Rulemaking

In the Federal Register of December 2, 1985 (50 FR 49398 and 49405), FDA published two advance notices of proposed rulemaking (ANPR's) that offered interested persons the opportunity to comment on the desirability of, and need for, adopting the Codex Alimentarius standard for Chocolate (Codex standard 87-1981) and the Codex Alimentarius standard for Cocoa Powders (Cocoas) and Dry Cocoa—Sugar Mixtures (Codex standard 105-1981). The comment period for the notices ended January 30, 1986. At the request of CMA, FDA extended the comment period 90 days to April 30, 1986, and subsequently, for an additional 30 days to May 30, 1986.

II. Comments

Ten letters, containing one or more comments, were received from ingredient distributors, a consultant, and CMA. Six letters were in response to the chocolate ANPR and four were in response to the cocoa powders ANPR. The comments generally opposed the adoption of the Codex standards, but CMA did submit a citizen petition proposing to amend the U.S. standards for cacao products (21 CFR Part 163) to incorporate certain aspects of the Codex standards for chocolate and cocoa powders. Several comments suggested changes similar to those recommended in the CMA petition, while others addressed issues outside the scope of the ANPR's.

The agency has reviewed the CMA petition and the comments received in response to the ANPR's for chocolate and cocoa powders and has concluded that it would be in the best interest of consumers to propose to amend the U.S. standards to incorporate some of the changes suggested by CMA and by those commenting on the ANPR's. The agency believes that these proposed changes will achieve, to the extent practicable, consistency with the Codex standards for chocolate and cocoa powders.

The agency is also taking this opportunity to propose a number of other changes such as (1) adding a new § 163.5 *Methods of analysis* (21 CFR 163.5) which will eliminate repetition in the cacao standards, (2) deleting the outdated ingredient listings, (3) updating the Official Methods of Analysis of the Association of Official Analytical Chemists (AOAC) citations, and (4) updating the format and language of the standards. The FDA-initiated changes will be discussed under the heading "Other Changes."

The CMA-requested changes, the grounds given in support thereof, the comments received to the two ANPR's, and the agency's responses are discussed below.

III. Chocolate Manufacturers Association Petition

The Chocolate Manufacturers Association of the United States of America, 7900 Westpark Dr., McLean, VA 22102, requested in a petition dated July 8, 1986, that FDA amend the standards of identity for cacao nibs (21 CFR 163.110), chocolate liquor (21 CFR 163.111), breakfast cocoa (21 CFR 163.112), sweet chocolate (21 CFR 163.123), milk chocolate (21 CFR 163.130), buttermilk chocolate (21 CFR 163.135), skim milk chocolate (21 CFR 163.140), and mixed dairy product chocolates (21 CFR 163.145) to accomplish four major changes. The changes would (1) provide for the use of additional nutritive carbohydrate sweeteners in chocolate, (2) permit the use of specified neutralizing agents in

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the preparation of cacao nibs, (3) reduce the minimum milkfat content of chocolate products and eliminate current nonfat milk solids-to-milkfat ratio requirements, and (4) permit the use of safe and suitable emulsifying ingredients in addition to those now permitted.

A. Nutritive Carbohydrate Sweeteners

CMA requested that FDA amend the standards of identity for sweet chocolate (§ 163.123) and milk chocolate (§ 163.130) to (1) replace the term "optional saccharine ingredients" with the term "nutritive carbohydrate sweeteners" wherever it appears, (2) include in the list of permitted sweeteners cane or beet sugar, partly refined sugars (soft sugars), anhydrous dextrose, dextrose monohydrate, modified glucose syrup, dried modified glucose syrup, glucose syrup, dried glucose syrup, fructose, fructose syrup, dried fructose syrup, lactose, hydrolyzed lactose (acid or enzyme), honey, and maple syrup, and (3) permit the specified sweeteners to be used alone or in combinations of two or more and remove the quantitative limitations on the permitted sweeteners listed in the standards. One comment on the ANPR for cocoa powders also requested that fructose be included in the permitted list of sweeteners.

The grounds given by CMA for these requested changes are as follows: The current U.S. standards for sweet chocolate and milk chocolate (§§ 163.123 and 163.130) permit only sucrose and some forms of dextrose and corn syrup as optional nutritive carbohydrate sweeteners. Furthermore, these current U.S. standards place quantitative limitations on the ratios of such ingredients. CMA stated that it is not aware of any reason why other nutritive carbohydrate sweeteners should not be used in these chocolate products, nor of any basis for restricting the proportions or quantities of any particular nutritive carbohydrate sweetening ingredients.

CMA further stated that since the chocolate standards were initially promulgated over 40 years ago, various forms of equally satisfactory new carbohydrate sweetening ingredients have become commercially available. It pointed out that advances in food technology have enabled manufacturers of chocolate to utilize these sweeteners in the production of products having a wide variety of textures and taste properties. CMA argued that allowance for the use of such new ingredients, many of which are permitted in other standardized foods, would provide the consumer with a wider variety of products from which to choose. Moreover, the additional carbohydrate sweeteners would include all sweeteners permitted by the Codex Alimentarius, as set forth in the Codex standard for chocolate. CMA also argued that permitting the use of the additional nutritive carbohydrate sweeteners in the manufacture of chocolate may provide an advantage to manufacturers in the foreseeable future, with resulting benefit to the consumer.

The agency agrees in principle with the CMA proposal to permit the use of additional nutritive carbohydrate sweeteners in chocolate products, thereby allowing manufacturers to avail themselves of more innovative technology. However, rather than specifying the additional nutritive carbohydrate sweeteners in the standards as suggested by the comments and CMA, FDA is proposing to amend the standards for sweet chocolate and milk chocolate (§§ 163.123 and 163.130), and, by cross reference, the standards of identity for buttermilk chocolate (§ 163.135), skim milk chocolate (§ 163.140), mixed dairy product chocolates (§ 163.145), sweet cocoa and vegetable fat (other than cacao fat) coating (§ 163.150), sweet chocolate and vegetable fat (other than cacao fat) coating (§ 163.153), and milk chocolate and vegetable fat (other than cacao fat) coating (§ 163.155), to identify the sweeteners by functional group designation, i.e., as safe and suitable "[n]utritive carbohydrate sweeteners" and to require specific ingredient listing by common or usual name on product labels in accordance with the applicable sections of Part 101 (21 CFR Part 101). The agency believes that permitting the use of safe and suitable ingredients of a particular functional category will minimize any future need to amend the standards to provide for additional specific ingredients, and that the benefits resulting from this action will be passed on to the consumer.

B. Neutralizing Agents

CMA requested that FDA amend the standards of identity for cacao nibs (§ 163.110), chocolate liquor (§ 163.111), breakfast cocoa (§ 163.112), sweet chocolate (§ 163.123), and milk chocolate (§ 163.130) to provide for the optional use of phosphoric acid, citric acid, and *L*-tartaric acid as neutralizing agents within specified limits of use.

The grounds given by CMA for this requested amendment are as follows: U.S. standards allow only the use of alkalies as pH adjusting agents. Alkalies are necessary in the production of certain types of chocolate, but even with the most cautious processing procedures, it is difficult to control exactly the amount of alkali to be added. It is important to do so because the desired flavor and function are achieved only when the alkalinity is within 0.2 pH units of the optimum pH. CMA stated that the use of the neutralizing agents requested will ensure consistent pH levels, functionality, flavor, and consumer acceptability in the products produced. Moreover, according to CMA, the requested neutralizing agents are identical to those now permitted in the Codex standard for cocoas. In addition, CMA asserted that exacting control over the raw materials (cocoa beans, nibs) by permitting the use of neutralizing agents to maintain a specific pH, functionality, and flavor will result in a cost advantage to the manufacturer, who will be able to use a wider variety of raw materials, resulting ultimately in an economic benefit to the consumer.

The agency believes CMA's request has merit. The three acids specified as neutralizing agents by CMA are generally recognized as safe (GRAS) and are listed among the GRAS substances in 21 CFR Parts 182 and 184 (phosphoric acid (§ 182.1073), citric acid (§ 182.1033), and *L*-tartaric acid (§ 184.1099)). They are also listed in current Food Chemicals Codex specifications. Accordingly, FDA is proposing to amend the standards for cacao nibs (§ 163.110), chocolate liquor (§ 163.111), and breakfast cocoa (§ 163.112), and, by cross reference, the standards for sweet chocolate (§ 163.123) and milk chocolate (§ 163.130), to provide for the three acids as neutralizing agents.

C. Minimum Milkfat Content and Milk Solids to Milkfat Ratio

CMA requested that FDA amend the standards of identity for milk chocolate (§ 163.130), buttermilk chocolate (§ 163.135), skim milk chocolate (§ 163.140), and mixed dairy product chocolates (§ 163.145) to change references to the milkfat level from 3.66 percent to 3.39 percent and to eliminate the required nonfat milk solids-to-milkfat ratios.

CMA stated several reasons in support of the requested amendments. The U.S. standard for milk chocolate mandates that "finished milk chocolate contain not less than 3.66 percent by weight of milkfat." CMA asserted that because this level is seven percent higher than the level of milkfat found naturally in whole milk, manufacturers of milk chocolate must add butterfat to their formulations to comply with the standard. Consequently, it suggested

that if the milkfat requirement for milk chocolate is reduced to "not less than 3.39 percent," milk chocolate could be made from commercially available whole milk with no additional butterfat required, and consistency would be achieved between the standard for milk chocolate and the U.S. standard for milk (21 CFR 131.110).

CMA stated that the amount of milkfat required for milk chocolate represents a limitation on the manufacture of milk chocolates with greater than 12 percent milk solids (12 percent being the minimum total milk solids content required by the standard) because more butterfat must be added when the solids are increased above 12 percent to maintain the current ratio. CMA asserted that if the required nonfat milk solids-to-milkfat ratios were removed, more flexibility in the types of products manufactured would be available, and greater choice would be given to the consumer. Moreover, CMA stated that removal of the ratio requirement is consistent with the Codex standards.

CMA further stated that although many chocolate products do not require a higher milk solids content, for some products, particularly those coated with milk chocolate, a slightly more firm chocolate having less susceptibility to heat is desirable. For other products, a higher milk solids content, without a proportional increase in milkfat, enhances palatability and mouth-feel. On the other hand, the richer, higher milkfat chocolates, produced in accordance with the U.S. standards, are also highly desirable. Adoption of the requested amendments will permit manufacturers to meet consumer needs by producing certain products with a high milk solids content. At the same time, those manufacturers desiring to make chocolates in conformance with the minimum requirements of the standards could do so.

The agency believes that the CMA requests have merit and are consistent with FDA policy and efforts to provide, where appropriate, technological flexibility. Accordingly, FDA is proposing to lower the required minimum level for milkfat to "not less than 3.39 percent" or "less than 3.39 percent", as appropriate, and to delete the requirements for the "nonfat milk solids-to-milkfat ratio" in the standards for milk chocolate (§ 163.130), buttermilk chocolate (§ 163.135), skim milk chocolate (§ 163.140), and mixed dairy product chocolates (§ 163.145).

D. Emulsifying Ingredients

CMA requested that FDA amend the standards of identity for sweet chocolate (§ 163.123) and milk chocolate (§ 163.130) to provide for the use of safe and suitable emulsifying ingredients in an amount not to exceed 1.0 percent in the finished food. Comments on the ANPR for chocolate suggested including the additional emulsifiers listed in the Codex standard.

The grounds given by CMA for this requested amendment are as follows: The U.S. standards permit only specified emulsifiers as optional ingredients in sweet chocolate and milk chocolate. CMA asserted that these requirements are unnecessarily restrictive, reflect the outdated use of "strict recipes," and inhibit innovation and the introduction of new food technologies in the chocolate industry. CMA argued that permitting the use of safe and suitable emulsifiers is consistent with FDA's policy of providing food manufacturers with more flexibility regarding their use of permitted optional ingredients. Examples of food standards where FDA has adopted a "safe and suitable" policy for optional ingredients include standards of identity for fruit butters, jellies, preserves, and related products (21 CFR Part 150); cheeses and related cheese products (21 CFR Part 133); bakery products (21 CFR Part 136); and frozen desserts (21 CFR Part 135). In addition, the Codex standard for chocolate provides for the use of emulsifiers not permitted by the U.S. standards (50 FR 49398). CMA argued that while it would be possible to simply conform to the Codex list, utilizing the "safe and suitable" approach is preferable because it would allow the chocolate manufacturer to use more innovative technologies as they become available without the necessity for formal amendment of the standards.

The agency agrees with the CMA proposal to employ the safe and suitable approach relating to emulsifying ingredients in chocolate products, thereby allowing manufacturers to avail to themselves of more innovative technology. However, rather than list the specific emulsifying ingredients in the standards as suggested by the comments, FDA is proposing to identify the permitted ingredients as safe and suitable emulsifying agents in the standards of identity for sweet chocolate (§ 163.123) and milk chocolate (§ 163.130), to retain the maximum combined use level of not more than 1.0 percent to prevent possible abuse, and to require listing of the specific emulsifier used in the food in accordance with the requirements of applicable sections of the labeling regulations in Part 101.

The agency notes that not all of the emulsifiers listed in the Codex standard for chocolate are permitted for use in foods in this country. Specifically, polyglycerol polyricinoleate, sorbitan tristearate, and ammonium salts of phosphatidic acids have not been listed by FDA for use in food and are not GRAS or subject to a prior sanction. Therefore, they are not considered safe and suitable for use in chocolate products.

IV. Other Changes

FDA is proposing to make several additional changes in the standards of identity for cacao products in Part 163.

1. FDA is proposing to insert new § 163.5 *Methods of analysis* to avoid repetitive listing of the methods for determining cacao fat or cacao shell content and is deleting the reference citations in the individual standards.

2. FDA is also proposing to update the format and language in the standards of identity for cacao nibs (§ 163.110), chocolate liquor (§ 163.111), breakfast cocoa (163.112), cocoa (§ 163.113), low-fat cocoa (which FDA is proposing to correct editorially to read "lowfat cocoa") (§ 163.114), cocoa with dioctyl sodium sulfosuccinate for manufacturing (§ 163.117), sweet chocolate (§ 163.123), milk chocolate (§ 163.130), buttermilk chocolate (§ 163.135), skim milk chocolate (§ 163.140), mixed dairy product chocolates (§ 163.145), sweet cocoa and vegetable fat (other than cacao fat) coating (which FDA is proposing to rename "chocolate flavor coating") (§ 163.150), sweet chocolate and vegetable fat (other than cacao fat) coating (which FDA is proposing to rename "sweet chocolate and vegetable fat coating") (§ 163.153), and milk chocolate and vegetable fat (other than cacao fat) coating (which FDA is proposing to rename "milk chocolate and vegetable fat coating") (§ 163.155. Where appropriate, the agency is providing for the use of safe and suitable optional ingredients by functional category and requiring label declaration of the ingredients used in accordance with Part 101. FDA believes that adopting this approach in the cacao products standards will benefit consumers because manufacturers will be able to produce a wider variety of high quality products and will be able to avail themselves of the advantages of modern technological innovation as well as of added flexibility in product formulation. The safety and suitability of the ingredients chosen from a functional category are governed by the definition of "safe and suitable" in 21 CFR 130.3(d) in conjunction with appropriate food additive and GRAS regulations in Parts 172, 182, and 184 (21

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CFR Parts 172, 182, and 184), including the good manufacturing practice regulations in §§ 172.5, 182.1, and 184.1 (21 CFR 172.5, 182.1, and 184.1).

3. The current U.S. standards for chocolate liquor (§ 163.111), sweet chocolate (§ 163.123), and milk chocolate (§163.130) provide for the optional use of dried cereal malt extract, ground coffee, and ground nut meats as seasoning ingredients. No provision for these ingredients is made in the Codex standards. FDA believes that these ingredients are seldom used in the preparation of chocolate or milk chocolate and would more likely be used in confectionery products not included under the cacao products standards. Accordingly, the agency is proposing to delete specific mention of these ingredients from the list of optional ingredients. Their presence, when used in a confectionery product, would be listed in the ingredient statement of the product in accordance with the applicable sections of the labeling regulations in Part 101 of this chapter.

4. The current U.S. standards provide for the use of honey, molasses, brown sugar, and maple sugar as optional seasoning ingredients. FDA proposes to delete specific mention of these from the present list of optional ingredients because they will be included under the proposed amendment as safe and suitable nutritive carbohydrate sweeteners.

5. The current U.S. standards for chocolate liquor (§ 163.111(a)) and breakfast cocoa (§ 163.112(a)) cite Official Methods of Analysis of the Association of Official Analytical Chemists (AOAC), 13th Ed. (1980), Section 13.031, "Fat in Cacao Products, Knorr Tube Method," as the prescribed method for the determination of fat content. This 1925 method is outdated. Therefore, FDA is proposing to cite the newer, currently used method in the AOAC, 14th Ed. (1984), Sections 13.032–13.033, "Fat in Cacao Products, Soxhlet Extraction Method," as the prescribed method for the determination of fat content. The adoption of the newer method was a joint effort by the AOAC and the Office of International du Cacao et du Chocolat (OICC). The method was collaboratively studied in 1970 and is cited in Analytical Methods of the OICC, 8A/1972, and in the Codex standards.

6. The U.S. standard for sweet cocoa and vegetable fat (other than cacao fat) coating (§ 163.150) does not provide for the optional use of chocolate liquor as an ingredient. FDA believes it is sometimes desirable to formulate confectionery coatings to contain some chocolate liquor. Therefore, FDA is proposing to amend § 163.150 to provide for the optional use of cocoa alone or in combination with chocolate liquor.

In addition "Sweet cocoa and vegetable fat (other than cacao fat) coating" is not generally used in the industry. FDA believes that the term "chocolate flavored coating" is more appropriate for a product containing both cocoa and chocolate as characterizing flavors and is proposing to amend the standard accordingly.

7. The U.S. standards for sweet cocoa and vegetable fat (other than cacao fat) coating (§ 163.150), sweet chocolate and vegetable fat (other than cacao fat) coating (§ 163.153), and milk chocolate and vegetable fat (other than cacao fat) coating (§ 163.155) describe confectionery coatings prepared with vegetable fats with required melting points either higher or lower than that for cacao fat. FDA is aware that advances in the technology for food fats have resulted in various fat formulations and processing techniques that will allow the production of suitable coatings, with the desired physical properties, within the parameters of the standards without specification of melting points of the fat and oil components used. Thus, FDA believes that the melting point restrictions imposed by the standards are outdated and, therefore, proposes to remove them.

Based on past correspondence with the confectionery industry the agency believes that manufacturers recognize and understand that the vegetable fat referred to in these standards is not cacao fat. Accordingly, in the interest of providing for shorter names, FDA is proposing to delete the phrase "other than cacao fat" in the names of the standards for these vegetable fat coatings. The agency believes that label declarations of the vegetable fat source or the common or usual name of the fat ingredients, as required by applicable sections of Part 101, will have more meanings to the consumer. Accordingly, FDA is proposing to require listing the common or usual name of each ingredient in accordance with Part 101 of this chapter.

V. Economic Impact

In accordance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601), FDA has reviewed this proposed rule to determine the impact on small businesses. The proposed rule provides increased flexibility to the producer, relaxes the recipe-type requirements, and permits the use of certain safe and suitable optional ingredients. FDA certifies that this action will not have significant economic impact on a substantial number of small entities.

VI. Environmental Impact

The agency has determined under 21 CFR 25.24(b)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VII. Request for Comments

Interested persons may, on or before March 27, 1989, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 163

Cacao products, Chocolate, Food grades and standards.

Therefore, under the Federal Food, Drug, and Cosmetic Act, and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, it is proposed that Part 163 be amended as follows:

PART 163—CACAO PRODUCTS

1. The authority citation for 21 CFR Part 163 is revised to read as follows:

Authority: Secs. 401, 701(e), 52 Stat. 1046, 70 Stat. 919 as amended (21 U.S.C. 341, 371(e)); 21 CFR 5.10 and 5.61.

2. Section 163.5 is added to Subpart B to read as follows:

§ 163.5 Methods of analysis.

Shell and cacao fat content in cacao products shall be determined by the following methods of analysis prescribed in "Official Methods of Analysis of the Association of Official Analytical Chemists," which is incorporated by reference in accordance with 5 U.S.C. 552(a). Copies may be obtained from the Association of Official Analytical Chemists, 1111 North 19th St., Suite 210, Arlington, VA 22209, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

(a) Shell content—12th Ed. (1975), sections 13.010–13.014, under the heading "Shell in Cacao Nibs—Official Final Action," pages 208–210.

(b) Fat content—14th Ed. (1984), sections 13.032–13.033, under the heading "Fat in Cacao Products—Soxhlet Extraction Method—Final Action," pages 242–243.

3. Section 163.110 is revised to read as follows:

§ 163.110 Cacao nibs.

(a) *Description.* (1) Cacao nibs is the food prepared by removing the shell from cleaned, cured, dried, and cracked cacao beans. The cacao shell content is not more than 1.75 percent by weight, calculated on an alkali-free basis, as determined by the method prescribed in § 163.5(a).

(2) The cacao nibs, or the cacao beans from which they are prepared, may be processed by heating with one or more of the optional alkali ingredients specified in paragraph (b)(1) of this section.

(3) The cacao nibs, or the cacao beans from which they were prepared, as appropriate, may be further processed with one or more of the optional neutralizing agents specified in paragraph (b)(2) of this section.

(b) *Optional ingredients.* The following safe and suitable ingredients may be used:

(1) *Alkali ingredients.* Bicarbonate, carbonate, or hydroxide of ammonia, potassium, or sodium, or carbonate or oxide of magnesium, added as such or in aqueous solution. For each 100 parts by weight of cacao nibs, used as such or before shelling from the cacao beans, the total quantity of alkali ingredient used is not greater in neutralizing value (calculated from the respective combining weights of the alkali ingredients used) than the neutralizing value of 3 parts by weight of anhydrous potassium carbonate.

(2) *Neutralizing agents.* Phosphoric acid, citric acid, and *L*-tartaric acid, added as such or in aqueous solution. For each 100 parts by weight of cacao nibs, used as such or before shelling from the cacao beans, the total amount of phosphoric acid used is not greater than 0.5 part by weight, expressed as P_2O_5. The total amount, singly, or in combination, of citric acid and *L*-tartaric acid is not greater than 1.0 part by weight.

(c) *Nomenclature.* The name of the food is "cacao nibs," "cocoa nibs," or "cracked cocoa."

(1) When the cacao nibs, or the cacao beans, are processed with alkali ingredients specified in paragraph (b)(1) of this section, the name of the food shall be accompanied by the statement, "Processed with alkali" or "Processed with _____," the blank being filled in with the common or usual name of the specific alkali ingredient used in the food.

(2) When the cacao nibs or the cacao beans are processed with neutralizing agents specified in paragraph (b)(2) of this section, the name of the food shall be accompanied by the statement "Processed with neutralizing agent" or "Processed with _____," the blank being filled in with the common or usual name of the specific neutralizing agent used in the food.

(3) Whenever the name of the food appears on the label so conspicuously as to be easily seen under customary conditions of purchase, the statements prescribed in paragraphs (c)(1) and (c)(2) of this section shall precede or follow the name without intervening printed or graphic matter.

(d) *Label declaration.* The common or usual name of each of the optional ingredients used in the food shall be declared on the label as required by applicable sections of Part 101 of this chapter.

4. Section 163.111 is revised to read as follows:

§ 163.111 Chocolate liquor.

(a) *Description.* (1) Chocolate liquor is the solid or semiplastic food prepared by finely grinding cacao nibs. The fat content of the food may be adjusted by adding one or more of the optional ingredients specified in paragraph (b)(1) of this section to the cacao nibs. Chocolate liquor contains not less than 50 percent nor more than 58 percent by weight of cacao fat as determined by the method prescribed in § 163.5(b). When milkfat is added, the prescribed method of analysis is not applicable.

(2) Optional alkali ingredients specified in paragraph (b)(2) of this section may be used as such in the preparation of the chocolate liquor under the conditions and limitations specified in § 163.110(b)(1). Any alkali ingredients used in the preparation of the cacao beans, cacao nibs, or ground cacao nibs from which the chocolate liquor is prepared, or from any cocoa added in the preparation of such chocolate liquor, shall be considered as optional ingredients in the finished chocolate liquor.

(3) Optional neutralizing agents specified in paragraph (b)(3) of this section may be used as such in the preparation of the chocolate liquor under the conditions and limitations specified in § 163.110(b)(2). Any neutralizing agents used in the preparation of the cacao beans, cacao nibs, or ground cacao nibs from which the chocolate liquor is prepared, or from any cocoa added in the preparation of such chocolate liquor, shall be considered as optional ingredients in the finished chocolate liquor.

(4) Chocolate liquor may be spiced, seasoned, or flavored with one or more of the ingredients listed in paragraphs (b)(4), (b)(5), and (b)(6) of this section.

(b) *Optional ingredients.* The following safe and suitable ingredients may be used.

(1) Cacao fat and cocoas (breakfast cocoa, cocoa, or lowfat cocoa) or any mixture of two or more of these.

(2) Alkali ingredients. Bicarbonate, carbonate, or hydroxide of ammonia, potassium, or sodium or carbonate or oxide of magnesium, used as such or in aqueous solution.

(3) Neutralizing agents. Phosphoric acid, citric acid, and *L*-tartaric acid, used as such or in aqueous solution.

(4) Spices, natural and artificial flavorings, and other seasonings that do not impart a flavor that imitates the flavor of chocolate, milk, or butter.

(5) Butter or milkfat.

(6) Salt.

(c) *Nomenclature.* The name of the food is "chocolate liquor," "chocolate," "unsweetened chocolate," "bitter chocolate," "baking chocolate," "cooking chocolate," "chocolate coating," or "unsweetened chocolate coating."

(1) When any optional alkali ingredient specified in paragraph (b)(2) of this section is used, including those used in the preparation of the cacao nibs and cocoas from which the chocolate liquor was prepared, the name of the food shall be accompanied by the statement "Processed with alkali" or "Processed with ——," the blank being filled in with the common or usual name of the specific alkali ingredient used in the food.

(2) When any optional neutralizing agent specified in paragraph (b)(3) of this section is used, including those used in the preparation of the cacao nibs and cocoas from which the chocolate liquor was prepared, the name of the food shall be accompanied by the statement "Processed with neutralizing agent" or "Processed with ——," the blank being filled in with the common or usual name of the specific neutralizing agent used in the food.

(3) When one or more other spices, seasonings, or flavorings specified in paragraph (b)(4) of this section is used in the chocolate liquor, the label shall bear an appropriate statement, e.g., "Spice added," "flavored with ——," or "with —— added," the blank being filled in with the common name of the spice, seasoning, or flavoring used, in accordance with §101.22 of this chapter.

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(4) When two or more of the statements set forth in this paragraph are required, such statements may be combined in a manner that is appropriate but not misleading.

(5) Whenever the name of the food appears on the label so conspicuously as to be easily seen under customary conditions of purchase, the statements prescribed in this paragraph, showing optional ingredients used, shall precede or follow the name without intervening printed or graphic matter.

(d) *Label declaration.* The common or usual name of each of the optional ingredients used shall be declared on the label as required by applicable sections of Part 101 of this chapter.

5. Section 163.112 is revised to read as follows:

§ 163.112 Breakfast cocoa.

(a) *Description.* (1) Breakfast cocoa is the food prepared by pulverizing the material remaining after part of the cacao fat has been removed from ground cacao nibs. Breakfast cocoa contains not less than 22 percent by weight of cacao fat as determined by the method prescribed in §163.5(b).

(2) Optional alkali ingredients specified in paragraph (b)(1) of this section may be used as such in the preparation of breakfast cocoa under the conditions and limitations specified in § 163.110(b)(1). Any alkali ingredients used in the preparation of the cacao beans, cacao nibs, or ground cacao nibs from which the breakfast cocoa is prepared shall be considered as optional ingredients in the finished breakfast cocoa.

(3) Optional neutralizing agents specified in paragraph (b)(2) of this section may be used as such in the preparation of the breakfast cocoa under the conditions and limitations specified in §163.110(b)(2). Any neutralizing agents used in the preparation of the cacao beans, cacao nibs, or ground cacao nibs from which the breakfast cocoa is prepared shall be considered as optional ingredients in the finished breakfast cocoa.

(4) Breakfast cocoa may be spiced, seasoned, or flavored with one or more of the ingredients listed in paragraphs (b)(3) and (b)(4) of this section.

(b) *Optional Ingredients.* The following safe and suitable ingredients may be used.

(1) Alkali ingredients. Bicarbonate, carbonate, or hydroxide of ammonia, potassium, or sodium or carbonate or oxide of magnesium, used as such or in aqueous solution.

(2) Neutralizing agents. Phosphoric acid, citric acid, and *L*-tartaric acid, used as such or in aqueous solution.

(3) Spices, natural and artificial flavorings, and other seasonings that do not impart a flavor that imitates the flavor of chocolate, milk, or butter.

(4) Salt.

(c) *Nomenclature.* The name of the food is "breakfast cocoa," or "high fat cocoa."

(1) When any optional alkali ingredient specified in paragraph (b)(1) of this section is used, including those used in the preparation of the cacao nibs from which the breakfast cocoa was prepared, the name of the food shall be accompanied by the statement "Processed with alkali" or "Processed with ——," the blank being filled in with the common or usual name of the specific alkali ingredient used in the food.

(2) When any optional neutralizing agent specified in paragraph (b)(2) of this section is used, including those used in the preparation of the cacao nibs from which the breakfast cocoa was prepared, the name of the food shall be accompanied by the statement "Processed with neutralizing agent" or "Processed with ——," the blank being filled in with the common usual name of the specific neutralizing agent used in the food.

(3) When one or more of the spices, seasonings, or flavorings specified in paragraph (b)(3) of this section is used in the breakfast cocoa, the label shall bear an appropriate statement, e.g., "Spice added," "flavored with ——," or "with —— added," the blank being filled in with the common name of the spice, seasoning, or flavoring used, in accordance with §101.22 of this chapter.

(4) When two or more of the statements set forth in this paragraph are required, such statements may be combined in a manner that is appropriate but not misleading.

(5) Whenever the name of the food appears on the label so conspicuously as to be easily seen under customary conditions of purchase, the statements prescribed in this paragraph showing optional ingredients used shall precede or follow the name written without intervening printed or graphic matter.

(d) *Label declaration.* The common or usual name of each of the optional ingredients used shall be declared on the lable as required by applicable sections of Part 101 of this chapter.

6. Section 163.113 is revised to read as follows:

§ 163.113 Cocoa.

(a) *Description.* Cocoa, or medium fat cocoa, is the food that conforms to the definition and standard of identity, and is subject to the requirements for label declaration of optional ingredients, for breakfast cocoa in § 163.112, except that the cacao fat content is less than 22 percent but not less than 10 percent by weight, as determined by the method in § 163.5(b).

(b) *Nomenclature.* The name of the food is "cocoa" or "medium fat cocoa."

7. Section 163.114 is revised to read as follows:

§ 163.114 Lowfat cocoa.

(a) *Description.* Lowfact cocoa is the food that conforms to the definition and standard of identity, and is subject to the requirements for label declaration of optional ingredients, for breakfast cocoa in § 163.112, except that the cacao fat content is less than 10 percent by weight, as determined by the method in § 163.5(b).

(b) *Nomenclature.* The name of the food is "lowfat cocoa".

8. Section 163.117 is revised to read as follows:

§ 163.117 Cocoa with dioctyl sodium sulfosuccinate for manufacturing.

(a) *Description.* Cocoa with dioctyl sodium sulfosuccinate for manufacting is the food additive complying with the provisions in § 172.520 of this chapter. It conforms to the definition and standard of identity, and is subject to the requirements for label statement of optional ingredients, for breakfast cocoa in § 163.112, or for cocoa in § 163.113, or for lowfat cocoa in § 163.114, except that the food additive contains dioctyl sodium sulfosuccinate (complying with the requirements of § 172.810 of this chapter, including the limit of not more than 0.4 percent by weight of the finished food additive).

(b) *Nomenclature.* The name of the food additive is "cocoa with dioctyl sodium sulfosuccinate for manufacturing" to which is added any modifier of the word "cocoa" required by the definition and standard of identity to which the food additive otherwise conforms. When the food additive is used in a fabricated food, the words "for manufacturing" may be omitted from any declaration of ingredients required under § 101.4 of this chapter.

9. Section 163.123 is revised to read as follows:

§ 163.123 Sweet chocolate.

(a) *Description.* (1) Sweet chocolate is the solid or semiplastic food prepared by intimately mixing and grinding chocolate liquor with one or more nutritive carbohydrate sweetners and one or more optional ingredients specified in paragraph (b) of this section.

(2) Sweet chocolate contains not less than 15 percent by weight of chocolate liquor complying with the requirements of § 163.111 and, if used, contains less than 12 percent by weight of total milk solids.

(3) Semisweet chocolate is sweet chocolate that contains not less than 35 percent by weight of chocolate liquor complying with the requirements of § 163.111.

(4) Cacao fat content is determined by the method prescribed in § 163.5(b).

(b) *Optional ingredients.* The following safe and suitable ingredients may be used:

(1) Cacao fat.

(2) Nutritive carbohydrate sweeteners.

(3) Spices, natural and artificial flavorings, and other seasonings that do not impart a flavor that imitates the flavor of chocolate, milk, or butter.

(4) Dairy ingredients.

(i) Cream, milkfat, butter.

(ii) Milk, concentrated milk, evaporated milk, sweetened condensed milk.

(iii) Skim milk, concentrated skim milk, evaporated skim milk, sweetened condensed skim milk, nonfat dry milk.

(iv) Concentrated buttermilk, dried buttermilk.

(5) Emulsifying agents, used singly or in combination, the total amount of which does not exceed 1.0 percent by weight.

(c) *Nomenclature.* (1) The name of the food is "sweet chocolate," "sweet chocolate coating," "semisweet chocolate," "semisweet chocolate coating," "bittersweet chocolate," or "bittersweet chocolate coating," as appropriate.

(2) When optional alkalizing ingredients are used in the preparation of the chocolate liquor or the cacao nibs from which the chocolate liquor was prepared, the label shall bear the statement "Processed with alkali" or "Processed with ——," the blank being filled in with the common or usual name of the specific alkali ingredient used in the food.

(3) When optional neutralizing agents are used in the preparation of the chocolate liquor or the cacao nibs from which the chocolate liquor was prepared, the label shall bear the statement "Processed with neutralizing agents" or "Processed with ——," the blank being filled in with the common or usual name of the specific neutralizing agent used in the food.

(4) Whenever the name of the food appears on the label so conspicuously as to be easily seen under customary conditions of purchase, the statements prescribed in this paragraph showing optional ingredients used shall precede or follow such name without intervening printed or graphic matter.

(d) *Label declaration.* The common or usual name of each of the optional ingredients used shall be declared on the label as required by applicable sections of Part 101 of this chapter.

10. Section 163.130 is revised to read as follows:

§ 163.130 Milk chocolate.

(a) *Description.* (1) Milk chocolate is the solid or semiplastic food prepared by intimately mixing and grinding chocolate liquor with one or more dairy ingredients and one or more optional ingredients specified in paragraph (b) of this section.

(2) Milk chocolate contains not less than 10 percent by weight of chocolate liquor complying with the requirements of § 163.111, not less than 3.39 percent by weight of milkfat, and not less than 12 percent by weight of total milk solids.

(b) *Optional ingredients.* The following safe and suitable ingredients may be used.

(1) Cacao fat.

(2) Nutritive carbohydrate sweeteners.

(3) Spices, natural and artificial flavorings, and other seasonings that do not impart a flavor that imitates the flavor of chocolate, milk, or butter.

(4) Dairy ingredients.

(i) Cream, milkfat, butter.

(ii) Milk, concentrated milk, evaporated milk, sweetened condensed milk.

(iii) Skim milk, concentrated skim milk, evaporated skim milk, sweetened condensed skim milk, nonfat dry milk.

(5) Emulsifying agents, used singly or in combination, the total amount of which does not exceed 1.0 percent by weight.

(c) *Nomenclature.* (1) The name of the food is "milk chocolate" or "milk chocolate coating."

(2) When optional alkali ingredients are used in the preparation of the chocolate liquor or the cacao nibs from which the milk chocolate was prepared, the label shall bear the statement "Processed with alkali" or "Processed with ——," the blank being filled in with the common or usual name of the specific alkali ingredient used in the food.

(3) When optional neutralizing agents are used in the preparation of the chocolate liquor or the cacao nibs from which the milk chocolate was prepared, the label shall bear the statement "Processed with neutralizing agents" or "Processed with ——," the blank being filled in with the common or usual name of the specific neutralizing agent used in the food.

(4) Whenever the name of the food appears on the label so conspicuously as to be easily seen under customary conditions of purchase, the statements prescribed in this paragraph showing optional ingredients used shall precede or follow such name without intervening printed or graphic matter.

(d) *Label declaration.* The common or usual name of each of the optional ingredients used shall be declared on the label as required by applicable sections of Part 101 of this chapter.

11. Section 163.135 is revised to read as follows:

§ 163.135 Buttermilk chocolate.

(a) *Description.* Buttermilk chocolate is the food that conforms to the standard of identity for milk chocolate, § 163.130, except that:

(1) The optional dairy ingredients are limited to sweet cream buttermilk, concentrated sweet cream buttermilk, or any combination of two or more of these.

(2) The finished buttermilk chocolate contains less than 3.39 percent by weight of milkfat and not less than 12 percent by weight of sweet cream buttermilk solids.

(b) *Nomenclature.* The name of the food is "buttermilk chocolate," "buttermilk chocolate coating," "sweet cream buttermilk chocolate," or "sweet cream buttermilk chocolate coating."

(c) *Label declaration.* The common or usual name of each of the optional ingredients used shall be declared on the label as required by applicable sections of Part 101 of this chapter.

12. Section 163.140 is revised to read as follows:

§ 163.140 Skim milk chocolate.

(a) *Description.* Skim milk chocolate is the food which conforms to the standard of identity for milk chocolate, § 163.130, except that:

(1) The optional dairy ingredients are limited to skim milk, concentrated skim milk, evaporated skim milk, sweetened condensed skim milk, nonfat dry milk, and any combination of two or more of these.

(2) The finished skim milk chocolate contains less than 3.39 percent by weight of milkfat and not less than 12 percent by weight of skim milk solids.

(b) *Nomenclature.* The name of the food is "skim milk chocolate," "skim milk chocolate coating," "sweet skim milk chocolate," ro sweet skim milk chocolate coating."

(c) *Label declaration.* The common or usual name of each of the optional ingredients used shall be declared on

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the label, as required by applicable sections of Part 101 of this chapter.

13. Section 163.145 is revised to read as follows:

§ 163.145 Mixed dairy product chocolates.

(a) *Description.* Mixed dairy product chocolates are the foods that conform to the standard of identity for milk chocolate, § 163.130, except that:

(1) The optional dairy ingredients for each of the foods are mixtures of two or more of the following:

(i) Any dairy ingredients or combination of such ingredients specified in § 163.130.

(ii) Any dairy ingredients or combination of such ingredients specified in § 163.135.

(iii) Any dairy ingredients or combination of such ingredients specified in § 163.140.

(2) The finished mixed dairy product chocolates shall contain not less than 12 percent by weight of total milk solids of the specific dairy ingredients used and may contain less than 3.39 percent by weight of milkfat. The quantity of each component used in any such mixture is such that no component contributes less than one third of the weight of the total milk solids contributed by that component used in largest proportion.

(b) *Nomenclature.* The name of the food is "chocolate" or "chocolate coating," preceded by the designation of the type of milk ingredients used as prescribed in paragraph (a) of this section in order of predominance by weight, e.g., "milk and skim milk chocolate".

(c) *Label declaration.* The common or usual name of each of the optional ingredients used shall be declared on the label, as required by applicable sections of Part 101 of this chapter.

14. Section 163.150 is revised to read as follows:

§ 163.150 Chocolate flavor coating.

(a) *Description.* Chocolate flavor coating is the food that conforms to the definition and standard of identity for sweet chocolate, § 163.123, except that:

(1) In the preparation of the product, cocoa or a mixture of cocoa and chocolate liquor is used in such quantity that the finished product contains not less than 8.0 percent by weight of nonfat cacao solids, calculated on a moisture-free basis.

(2) In its preparation, one or a combination of two or more optional ingredients specified in paragraph (b) of this section is used.

(3) The requirement in § 163.123(a)(2), limiting the total milk solids to 12 percent by weight does not apply.

(b) *Optional ingredients.* (1) Breakfast cocoa, cocoa, lowfat cocoa.

(2) Chocolate liquor.

(3) Safe and suitable vegetable derived oils, fats, and stearins other than cacao fat. The fats, oils, or stearins may be hydrogenated.

(c) *Nomenclature.* The name of the food is "chocolate flavor coating," "sweet cocoa and vegetable fat coating," or "sweet cocoa and vegetable fat (other than cacao fat) coating."

(d) *Label declaration.* The common or usual name of each of the optional ingredients used shall be declared on the label as required by the applicable sections of Part 101 of this chapter.

15. Section 163.153 is revised to read as follows:

§ 163.153 Sweet chocolate and vegetable fat coating.

(a) *Description.* Sweet chocolate and vegetable and fat coating conforms to the definition and standard of identity for sweet chocolate in § 163.123, except that in the preparation of the product, one or a combination of two or more optional ingredients specified in paragraph (b) of this section is used.

(b) *Optional ingredients.* Safe and suitable vegetable derived oils, fats, and stearins other than cacao fat. The fats, oils, and stearins may be hydrogenated.

(c) *Nomenclature.* The name of the food is "sweet chocolate and vegetable fat coating" or "sweet chocolate and vegetable fat (other than cacao fat) coating."

(d) *Labeling.* The common or usual name of each of the optional ingredients used shall be declared on the label as required by applicable sections of Part 101 of this chapter.

16. Section 163.155 is revised to read as follows:

§ 163.155 Milk chocolate and vegetable fat coating.

(a) *Description.* Milk chocolate and vegetable fat coating conforms to the definition and standard of identity for milk chocolate in § 163.130, except that in the preparation of the product, one or a combination of two or more of the optional ingredients specified in paragraph (b) of this section is used.

(b) *Optional ingredients.* Safe and suitable vegetable derived oils, fats, and stearins other than cacao fat. The oils, fat, and stearins may be hydrogenated.

(c) *Nomenclature.* The name of the food is "milk chocolate and vegetable fat coating" or "milk chocolate and vegetable fat (other than cacao fat) coating."

(d) *Labeling.* The common or usual name of each of the optional ingredients used shall be declared on the label as required by applicable sections of Part 101 of this chapter.

Dated: January 13, 1989.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 89-1581 Filed 1-24-89; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1316

Exemption From Civil Prosecution for Investigative and Law Enforcement Personnel

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: The DEA proposed to implement a provision of the Chemical Diversion and Trafficking Act of 1988 which exempts certain employees of the DEA from civil prosecution in the event that they make an unauthorized disclosure of information referred to in paragraph (c)(1) of section 310 of the Controlled Substances Act (21 U.S.C. 830).

DATE: Written comments and objections must be received on or before March 27, 1989.

ADDRESS: Comments and objections should be submitted in quintuplicate to the Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street, NW., Washington, DC 20537, Attention: DEA Federal Register Representative.

FOR FURTHER INFORMATION CONTACT: G. Thomas Gitbel, Chief, State and Industry Section, Office of Diversion Control, Drug Enforcement Administration, 1405 I Street, NW., Washington, DC 20537 (202-633-1216).

SUPPLEMENTARY INFORMATION: The Chemical Diversion and Trafficking Act of 1988 (Pub. L. 100-690) specifies that, although any person who is aggrieved by a disclosure of information in violation of section 310 of the Controlled Substances Act may bring a civil action against the violator for appropriate relief, a civil action may not be brought against investigative or law enforcement personnel of the DEA who make such a disclosure. The DEA finds it necessary to clarify this provision of the Act by providing definitions for the terms "investigative personnel" and "law enforcement personnel".

The Administrator of the DEA hereby certifies that this proposed rule will have no significant impact upon entities whose interests must be considered under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*). This rule is not a major rule for the purposes of E.O. 12291 of February 17, 1981. Pursuant to sections 3(c)(3) and 3(e)(2)(C) of E.O. 12291, this proposed rule has been submitted for review to the Office of Management and Budget.

This action has been analyzed in accordance with the principles and criteria contained in E.O. 12612 and it has been determined that the proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 21 CFR Part 1316

Administrative practice and procedure, Drug Enforcement Administration, Drug traffic control, Research, Seizures and forfeiture.

For reasons set out above, Title 21, Code of Federal Regulations, Part 1316 is proposed to be amended as follows:

PART 1316—ADMINISTRATIVE FUNCTIONS, PRACTICES AND PROCEDURES

Part 1316 is amended by adding a new Subpart F consisting of §§ 1316.91 and 1316.92 to read as follows:

Subpart F—Exemption From Civil Prosecution for Investigative and Law Enforcement Personnel of the Drug Enforcement Administration

Sec.
1316.91 Definitions.
1316.92 Exemption.

Subpart F—Exemption From Civil Prosecution for Investigative and Law Enforcement Personnel of the Drug Enforcement Administration

Authority: 21 U.S.C. 830, 871(b)

§ 1316.91 Definitions.

As used in this part, the following terms shall have the meaning specified:

(a) The term "investigative personnel" includes DEA management, Diversion Investigators, attorneys, analysts and support personnel employed by the Drug Enforcement Administration who are involved in the processing, reviewing and analyzing of declarations and other relevant documents or data relative to regulated transactions or are involved in conducting investigations inititated pursuant to the receipt of such declarations, documents or data.

(b) The term "law enforcement personnel" means Special Agents employed by the Drug Enforcement Administration.

§ 1316.92 Exemption.

(a) Any person who is aggrieved by a disclosure of information in violation of subsection (c)(1) of section 310 of the Controlled Substances Act (21 U.S.C. 830) may bring a civil action against the violator for appropriate relief.

(b) Notwithstanding the provision of paragraph (a) of this section, a civil action may not be brought under such paragraph against investigative or law enforcement personnel of the Drug Enforcement Administration.

Date: January 13, 1989.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 89-1514 Filed 1-24-89; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 206

Allowances for Extraordinary Costs, Transportation and Gas Processing

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of request for comments, extension of public comment period.

SUMMARY: The Minerals Management Service (MMS) hereby gives notice that it is extending the public comment period on its Notice of Request for Comments, which was published in the **Federal Register** on November 28, 1988 (53 FR 47829), concerning whether extraordinary cost allowance provisions should be developed for its oil, coal, and geothermal product value regulations. In response to requests for additional time, the MMS will extend the comment period from January 27, 1989, to March 15, 1989.

DATES: Comments must be received by 4:00 p.m. m.s.t. March 15, 1989.

ADDRESS: Written comments should be sent to: Minerals Management Service, Building 85, Denver Federal Center, P.O. Box 25165, Mail Stop 662, Denver, Colorado 80225, Attention: Dennis C. Whitcomb.

FOR FURTHER INFORMATION CONTACT: Dennis C. Whitcomb, Chief, Rules and Procedures Branch, telephone (303) 231-3432, (FTS) 326-3432.

Dated: January 18, 1989.

Jerry D. Hill,

Associate Director for Royalty Management.

[FR Doc. 89-1566 Filed 1-24-89; 8:45 am]

BILLING CODE 4310-MR-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3506-5]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Proposed rulemaking.

SUMMARY: USEPA is proposing disapproval of a revision to the Illinois State Implementation Plan (SIP) for ozone. The revision pertains to the disapproval of an Alternative Control Strategy (ACS or bubble) for Krueger Ringier, Incorporated (Krueger Ringier). USEPA's action is based upon a SIP revision request which was submitted by the State to satisfy the requirements of Part D of the Clean Air Act (Act).

DATE: Comments on this revision and on the proposed USEPA action must be received by February 24, 1989.

ADDRESSES: Copies of the SIP revision are available at the following addresses for review: (It is recommended that you telephone Randolph O. Cano, at (312) 886-6036, before visiting the Region V office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604.

Illinois Environmental Protection Agency, Division of Air Pollution Control, 2200 Churchill Road, Springfield, Illinois 62706.

Comments on this proposed rule should be addressed to: Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR-26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Randolph O. Cano, Air and Radiation Branch (5AR-26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-6036.

SUPPLEMENTARY INFORMATION: Under section 107 of the Act, USEPA has designated certain areas in each State as not attaining the National Ambient Air Quality Standards (NAAQS) for ozone. See 43 FR 8962 (March 3, 1978) and 43 FR 45993 (October 5, 1978). For these areas, Part D of the Act requires that each State revise its SIP to provide for attaining the primary NAAQS by December 31, 1982 (in certain cases, by December 31, 1987, for ozone and/or CO). These SIP revisions must also provide for attaining the secondary

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NAAQS as soon as practicable. The requirements for an approval SIP are described in a "General Preamble" for Part D rulemakings published at 44 FR 20372 (April 4, 1979), 44 FR 38583 (July 2, 1979), 44 FR 50371 (August 28, 1979), 44 FR 53761 (September 17, 1979), and 44 FR 67182 (November 23, 1979).

On December 8, 1988, the State of Illinois submitted to USEPA, as a proposed revision to the Illinois Ozone SIP, an ACS for Krueger Ringier. This ACS is in the form of a State Operating Permit, which was issued May 2, 1988, and expires either on June 30, 1988, or on the date that reinstallation of Rotogravure Press 21 is commenced in Illinois, whichever date is earlier.

This ACS, if approved by USEPA, would allow Krueger Ringier to exceed State emission limits for its varnish machine in Chicago, Illinois, by balancing the increase above allowable emissions with the emission reduction from the shutdown of its Rotogravure Press 21. This line has been relocated to Augusta, Georgia.

Summary of the Proposed Revision

Krueger Ringier, Incorporated, operates a plant in Chicago, Illinois, which prints paperback books. One part of the printing process is the application of varnish to the book covers. Krueger Ringier currently operates Varnish Coating Machine 865, which is subject to Rule 205(n)(1)(C) [1] for paper coating. This rule limits the Volatile Organic Compound (VOC) content of coatings used on this line to not more than 2.9 pounds of VOC per gallon of coating, excluding water. The average actual VOC content of coatings used on this line is 2.8 pounds of VOC per gallon of coating, and the maximum actual VOC content is 4.2 pounds of VOC per gallon of coating.

In order to offset the excess emissions from the varnish coater, Krueger Ringier requested a bubble between the varnish coater and a printing press that has been removed from the Chicago plant.

The Illinois Environmental Protection Agency (IEPA) issued a permit for this source, subject to the following conditions:

1. Krueger Ringier shall comply with the following limits in lieu of Rule 205(n)(1)(C):

a. Volatile organic material emissions from Varnish Machine 865 shall not exceed a total of 121 tons/year. Compliance with this limit shall be determined from a running total of 52 weeks of emissions data.

b. Coatings as applied at Varnish Machine 865 shall not have volatile organic material emissions in excess of 4.2 pounds per gallon of total coating (13.1 pounds per gallon of coating solids). Compliance with this limit shall be determined on a weekly basis.

c. Volatile organic material emissions from Varnish Machine 865 shall not exceed a total of 970 lbs/day. Compliance with this limit shall be determined by allocating weekly volatile organic material emissions in proportion to daily operation.

2. Krueger Ringier shall maintain the following records for Varnish Machine 865 to enable compliance with the limits in Condition 2 to be determined.

a. Daily records of the operating hours,

b. Weekly records of coating (including thinning solvent) consumption; and

c. Periodic records of the composition and volatile organic material content of coatings, as received.

On December 8, 1988, Illinois requested USEPA to revise its SIP similarly.

USEPA Evaluation of the Proposed Revision Bubble

Criteria for evaluating requests for bubbles are contained in USEPA's December 4, 1986, Emissions Trading Policy Statement (ETPS) (51 FR 43814). This policy states that only reductions which are surplus, enforceable, permanent and quantifiable can be used in an emission trade.

To determine the quantity of reductions that are surplus, the State must first establish an appropriate emissions baseline. The baseline for any source is the product of three factors—emission rate, capacity utilization, and hours of operation. For a source located in a nonattainment area lacking an approved demonstration of attainment, the baseline is the lowest of actual, SIP-allowable, or RACT-allowable emissions. The baseline is calculated using the actual emission rate, SIP limit or RACT limit, whichever is lowest, as of the date of application to trade, and the lower of actual and allowable capacity utilization and hours of operation. Actual values for these factors are generally based on the 2 years of operation preceding the source's application to trade, unless another 2-year period is shown to be more representative of actual operations. Sources which were shut down prior to the application to trade have zero emissions and, therefore, have no credit available. In addition, bubbles in these areas must produce progress toward attainment, which means in the case of bubbles submitted to USEPA after December 4, 1986, a reduction of at least 20 percent in the remaining emissions.

Krueger Ringier's bubble is based on credit from the shutdown of a printing press which was removed from the Chicago plant in 1984. Krueger Ringier submitted its bubble application to Illinois Environmental Protection Agency (IEPA) on December 10, 1985. Illinois, in submitting the ACS revision, calculated the emissions from the source, as if the emission reduction from the shutdown of Rotogravure Press 21 were creditable. However, because the shutdown of the printing press occurred prior to the application for trade, no credit is available from this source, and the ACS is not approvable.

The actual and allowable emissions by which IEPA determined the bubble to be approvable are summarized below:

EMISSIONS (TONS/YEAR)

Source	Actual		Allowable	
	Before bubble	After bubble	Before bubble	After bubble
Varnish Machine 865	121	51	51.0	121
Press 21	726	0	181.5	0
Total	847	51	232.5	121

The "before bubble" actual and allowable emissions and the "after bubble" allowable emissions are based on 1980 and 1981 solids usage. The "after bubble" actual emissions are based on expected production and do not represent a regulatory limit.

Weekly Averaging

Guidance for evaluation of requests for long-term (greater than 24-hour) averaging is given in a January 20, 1984, memorandum titled "Averaging Time for Compliance with VOC Emission Limits," and a January 20, 1987, memorandum titled "Determination of Economic Feasibility." These state that long-term averaging can be permitted if it is not possible to keep accurate daily records, or compliance on a daily basis is not feasible. The January 20, 1984, memorandum contains the following additional criteria for approval of a longer averaging time:

1. Averaging times must be as short as practicable and in no case longer than 30 days.

2. A demonstration must be made that the use of long-term averaging will not jeopardize either attainment of the ozone standard or the reasonable further progress plan for the area.

3. Sources in areas lacking approved SIPs cannot be considered for longer term averages, until the SIP has been revised.

Krueger Ringier believes that weekly averaging is justified because it is extremely difficult to keep accurate daily records. However, Krueger Ringier has not adequately explained why it would be infeasible to keep daily records. In addition, weekly averaging cannot be allowed in the Chicago area, while it lacks an approved ozone SIP. It should be noted that on May 26, 1988, USEPA notified the Governor of Illinois that the Ozone SIP for this area is substantially inadequate to assure attainment of the NAAQS. Further, on October 17, 1988 (53 FR 40415), USEPA disapproved the Ozone SIP for the Chicago area.

Consistency With USEPA Policy

The bubble does not meet the requirements of USEPA's December 4, 1986, ETPS because it grants credit for pre-application shutdown in a nonattainment area lacking an approved attainment demonstration. In addition, it does not satisfy USEPA's policy on long-term averaging. The bubble provides no permanent, enforceable emission limit, because a State operating permit which has a limited life is the basis for the bubble. If USEPA were to approve this bubble, the SIP revision would expire upon expiration of this operating permit, at which time the federally enforceable emission limit for the source would be the underlying SIP requirements. (See *Bethlehem Steel Corporation v. Gorsuch*, 742 F.2d 1028 (7th Cir. 1984).)

This notice identifies major deficiencies which cause the revision to be unapprovable. However, if the State corrects these major deficiencies, it should also ensure conformance with USEPA requirements specified in the following: (1) Appendix D of the proposed Post-1987 ozone policy, titled "Discrepancies and Inconsistencies Found in Current SIP's", (2) a May 25, 1988, clarification to Appendix D titled "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations", and (3) the "SIP Approvability Checklist-Enforceability", which is attached to a September 23, 1987, policy memorandum titled "Review of State Implementation Plans and Revisions for Enforceability and Legal Sufficiency," before resubmitting the revision for approval by USEPA. These documents contain USEPA's requirements (largely dealing with SIP approvability and enforceability) which must be met for a site-specific SIP revision to be approved.

Proposed Rulemaking Action

For the above cited reasons, USEPA proposes to disapprove the incorporation of an ACS for Krueger Ringier into the Illinois SIP. Public comment is solicited on the proposed SIP revision and on USEPA's proposed rulemaking action. Pubic comments received by the date indicated above will be considered in the development of USEPA's final rulemaking action.

Under the Regulatory Flexibility Act, 5 U.S.C. *et seq.*, USEPA must assess the impact of any final rule on small entities. If this ACS is finally disapproved, it will not have a significant economic impact on a large number of small entities. Only a single entity, Krueger Ringier, is involved.

Under Executive Order 12291, this action is not "Major". It has been submitted to the Office of Management and Budget (OMB) for review.

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporation by Reference, Intergovernmental relations, Ozone.

Note: Incorporation by reference of the State Implementation Plan for the State of Illinois was approved by the Director of the Federal Register on July 1, 1982.

Authority: 42 U.S.C. 7401–7642.

Dated: January 12, 1989.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 89–1800 Filed 1–24–89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA-6936]

Proposed Flood Elevation Determinations; Pennsylvania; Correction

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects a Notice of Proposed Determinations of base (100-year) flood elevations previously published at 53 FR 40105 on October 13, 1988. This correction notice provides a more accurate representation of the Flood Insurance Study and Flood Insurance Rate Map for the Township of Jackson, Butler County, Pennsylvania.

FOR FURTHER INFORMATION CONTACT: John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the correction to the Notice of Proposed Determinations of base (100-year) flood elevations for selected locations in the Township of Jackson, Butler County, Pennsylvania, previously published at 53 FR 40105 on October 13, 1988, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–488)), 42 U.S.C. 4001–4128, and 44 CFR Part 67.

List of Subjects in 44 CFR Part 67

Flood insurance, Floodplains.

PART 67—[AMENDED]

The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

On page 40105, in the October 13, 1988 issue of Federal Register, the entries under Jackson (Township), Butler County, are corrected to read as follows:

Source of flooding and location	Depth in feet above ground. Elevation in feet (NGVD)
* * * * *	
Breakneck Creek:	
At confluence with Connoquenessing Creek	*914
Approximately 0.1 mile upstream of corporate limits	*926
* * * * *	

Maps available for inspection at the Township Secretary's Office, Box 68, Zelienople, Pennsylvania.

Send comments to The Honorable William Tomlinson, Chairman of the Township of Jackson Board of Supervisors, Butler County, R.D. #2, Zelienople, Pennsylvania 16063.

Issued: January 18, 1989.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 89–1580 Filed 1–24–89; 8:45 am]

BILLING CODE 6718-03-M

[1] It should be noted that Illinois has recodified it air regulations into 35 Illinois Administrative Code (35 IAC). This ACS is written as a variance to the IAC regulations. This regulatory format is not part of the Illinois SIP. Therefore, the ACS is discussed in this rulemaking as though it were a variance from the regulations, in the SIP, using the numbering system in the SIP.

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44 CFR Part 67

[Docket No. FEMA-6838]

Proposed Flood Elevation Determinations; Virginia; Correction

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects a Notice of Proposed Modified Determinations of base (100-year) flood elevations previously published at 53 FR 40111 on October 13, 1988. This correction notice provides a more accurate representation of the revised Flood Insurance Rate Map for the Town of Appalachia, Wise County, Virginia.

FOR FURTHER INFORMATION CONTACT: John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2754.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the correction to the Notice of Proposed Modified Determination of base (100-year) flood elevations for selected locations in the Town of Appalachia, Wise County, Virginia, previously published at 53 FR 40111 on October 13, 1988, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR 67.4(a).

List of Subjects in 44 CFR Part 67

Flood insurance, Floodplains.

PART 67—[AMENDED]

The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

On page 40111, in the October 13, 1988 issue of **Federal Register**, the entries under Appalachia, Town, Wise County, for Looney Creek, are corrected to read as follows:

Source of flooding and location	Depth in feet above ground. *Elevation in feet (NGVD)	
	Existing	Modified
* * * * *		
Looney Creek:		
Approximately .40 mile downstream of North Inman Street	*1,648	*1,646
Approximately 1.06 miles upstream of North Inman Street	*1,775	*1,774

Maps available for inspection at the Town Hall, Appalachia, Virginia. Send comments to the Honorable Bobby L. Dorton, Appalachia Town Manager, Wise County, P.O. Drawer 112, Appalachia, Virginia 24216.

Issued: January 18, 1989.

Harold T. Duryee

Administrator, Federal Insurance Administration.

[FR Doc. 89-1579 Filed 1-24-89; 8:45 am]

BILLING CODE 6718-03-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Human Development Services

45 CFR Parts 1385, 1386, 1387, and 1388

Developmental Disabilities Program; Correction

AGENCY: Office of Human Development Services, HHS.

ACTION: Notice of proposed rulemaking; correction.

SUMMARY: The Administration for Developmental Disabilities is correcting an error in § 1386.32(a) of the Notice of Proposed Rulemaking (NPRM) which appeared in the **Federal Register** on December 7, 1988 (53 FR 49332). The preamble stated that we were proposing the same change regarding financial status reports in § 1386.32(a) as was proposed in § 1386.23(c). This change, however was not made in § 1386.32(a).

DATE: The comment period remains the same. Commentors have until February 6, 1989 to submit comments.

ADDRESSES: Please address comments to: Commissioner, Administration on Developmental Disabilities, Room 5300 (Regulations), Wilbur J. Cohen Building, 330 Independence Avenue SW., Washington, DC 20201. Attention: Ms. Elsbeth Porter Wyatt.

It would be helpful if agencies and organizations submitted comments in duplicate. Two weeks after the close of the comment period, comments and letters will be available for public inspection in Room 5300, Wilbur J. Cohen Building, 330 Independence Avenue SW., Washington, DC 20201, Monday through Friday, 9:00 a.m. to 4:00 p.m. telephone (202) 245-7719.

FOR FURTHER INFORMATION CONTACT: Elsbeth Wyatt, (202) 245-7719.

SUPPLEMENTARY INFORMATION: On December 7, 1988, the Department published an NPRM proposing amendments to 45 CFR Parts 1385, 1386, 1387, and 1388 to implement the Developmental Disabilities Assistance and Bill of Rights Act Amendments of 1987 (42 U.S.C. 6000 *et seq.*).

The NPRM proposed standards for determining whether a State has used Federal funds to supplement and not supplant State and local funds. It also proposed to establish a peer review process for the evaluation of applications under the University Affiliated Program and made other clarifying, technical, and conforming changes. The proposed regulatory language for § 1386.32(a) was inadvertently omitted.

The preamble stated: "In § 1386.32 Periodic reports: Basic State grants, we are proposing to make the same change regarding financial status reports as we proposed in § 1386.23(c). OHDS will continue to require quarterly reports and will implement this requirement administratively through an OHDS Program Instruction rather than through language in the regulations. The new language proposed in paragraph (a) continues the requirement that the State agency must submit financial status reports but deletes the regulatory language specifying a time period for submittal."

The following correction is made in § 1386.32(a) of the NPRM published in the **Federal Register** on December 7, 1988 (53 FR 49332).

PART 1386—[AMENDED]

1. Section 1386.32(a) in the first column on page 49335 is revised to read as follows:

§ 1386.32 Periodic reports: Basic State grants.

(a) The Governor or the appropriate State financial Officer must submit financial status reports on the programs funded under this subpart according to a frequency interval which will be specified by OHDS. In no case will such reports be required more frequently than quarterly.

* * * * *

(Catalog of Federal Domestic Assistance Program Number 13.630—Developmental Disabilities Basic Support.

Approved: January 18, 1989.

James E. Larson,

Acting Deputy Assistant Secretary for Information and Resources Management.

[FR Doc. 89-1653 Filed 1-24-89; 8:45 am]

BILLING CODE 4130-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 88-185, RM-6288, RM-6499]

Radio Broadcasting Services; Montgomery, Dunbar and Mount Gay-Shamrock, WV

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on two mutually exclusive proposals for the use of Channel 227A. (1) Upper Kanawha Valley Broadcasters, Inc., seeks the allottment of Channel 227A to Montgomery, West Virginia, as a first local FM service (Option I). (2) Donald Mills d/b/a West Virginia Rural Radio Company, seeks the substitution of Channel 227A for vacant but unapplied for Channel 234A at Mount Gay-Shamrock, West Virginia, in order to accomplish the substitution of Channel 233B1 for Channel 233A at Dunbar, West Virginia, and the modification of its construction permit for Station WBES-FM at Dunbar (Option II). To accomplish the Dunbar upgrade an alternative plan is considered for the deletion of Channel 234A from Mount-Gay Shamrock without benefit of a replacement channel (Option III). The community of Dunbar could receive its first wide coverage area FM service. Channel 233B1 at Dunbar requires a site restriction of 13.1 kilometers (8.2 miles) northeast of the city at coordinates 38-27-34 and 81-39-17. Channel 227A at Montgomery requires a site restriction of 6.5 kilometers (4 miles) west of the community, at coordinates 39-09-47 and 81-23-40.

DATES: Comments must be filed on or before March 10, 1989, and reply comments on or before March 27, 1989.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Jeffrey R. Batten, Manager, Upper Kanawha Valley Broadcasters, Inc., 1028 First Avenue, Montgomery, West Virginia 25136 (Petitioner for Montgomery, West Virgina); and Leonard S. Joyce, Esquire, Blair, Joyce & Silva, 1825 K Street, NW., Washington, DC 20006 (Counsel for proponent at Dunbar, West Virginia).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Further Notice of Proposed Rule Making, MM Docket No. 88-185, adopted December 2, 1988, and released January 18, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-1575 Filed 1-24-89; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF DEFENSE

Department of the Air Force

48 CFR Chapter 53

Air Force Systems Command Federal Acquisition Regulation Supplement; Contracting by Negotiation

AGENCY: Department of the Air Force, DoD.

ACTION: Proposed rule; withdrawal.

SUMMARY: On September 14, 1987, the Department of the Air Force published (at 52 FR 34882) a proposed rule to amend Chapter 53 of Title 48 of the Code of Federal Regulations by adding the Air Force Sytems Command (AFSC) Federal Acquisition Regulation as Appendix B, consisting of Parts AFSC 5315, Contracting by Negotiation, and AFSC 5352, Solicitation Provisions and Contract Clauses. It has been determined that these parts apply to other departments within the Department of Defense and should be incorporated into the DOD FAR Supplement. The Air Force has submitted a case to the DAR Council for consideration.

DATE: January 25, 1989.

FOR FURTHER INFORMATION CONTACT: Ms. Hazel Stevens, HQ AFSC/PKCP, Andrews AFB MD 20334-5000, telephone (301) 981-4022.

SUPPLEMENTARY INFORMATION: Therefore, the Department of the Air Force has withdrawn the proposal to amend Title 48 of the Code of Federal Regulations, Chapter 53, by adding Appendix B to include AFSC 5315 and Part 5352.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 89-1691 Filed 1-24-89; 8:45 am]

BILLING CODE 3910-01-M

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 503 and 552

[GSAR Notice 5-221]

General Services Administration Acquisition Regulation; Improper Business Practices and Personal Conflicts of Interest

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Proposed rule.

SUMMARY: This notice invites comments on a proposed change to the General Services Administration Regulation (GSAR) that would revise Subpart 503.2 which deals with contractor gratuities to Government employees to provide agency procedures for dealing with violation of the Gratuities clause; add section 503.404 to prescribe a solicitation provision and contract clause on contingent fees for use in acquisitions of leasehold interests in real property; revise section 503.570 which deals with contractors referring to contracts awarded by GSA in commercial advertising in a manner which indicates the product or service is endorsed by the Government; revise Subpart 503.7 which deals with voiding and rescinding contracts to revise agency procedures; add sections

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552.203–4 and 552.203–5 to provide the text of the Contingent Fees provision and clause for use in acquisitions of leasehold interests in real property and would revise section 552.203–70 to amend the Restriction on Advertising clause.

DATE: Comments are due in writting on or before February 24, 1989.

ADDRESS: Comments should be addressed to Ms. Marjorie Ashby, Office of GSA Acquisition Policy and Regulations (VP), 18th & F Street, NW., Room 4026, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Jim Drummond, Office of GSA Acquisition Policy and Regulations, (202) 566–1224.

SUPPLEMENTARY INFORMATION:

A. Background

The Director, Office of Management and Budget, by memorandum December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. This exemption applies to this proposed rule.

B. Regulatory Flexibility Act

This proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* because it implements the Federal Acquisition Regulation (FAR) by providing agency procedures for dealing with violations of the Gratuities clause and for voiding and rescinding contracts under FAR Subpart 3.7. The proposal also makes minor changes to the existing policy on contractor's referring to GSA contract awards in commercial advertising. In addition, the proposed rule supplements the FAR by codifying a provision and clause on contingent fees for use in contracts for the acquisition of heasehold interests in real property. The provision and clause recognize real estate agents or brokers as being a bona fide employee or agency in line with real estate industry practices. Therefore, Initial Regulatory Flexibility Analysis has not been prepared. Comments have invited from small business and other interested parties.

C. Paperwork Reduction Act

This proposed rule does not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501, et seq.

List of Subjects in 48 CFR Part 503 and 552.

Government procurement.

It is proposed that 48 CFR Parts 503 and 552 be amended as follows:

1. The authority citation for 48 CFR Parts 503 and 552 continues to read as follows:

Authority: 40 U.S.C. 486(c).

PART 503—[AMENDED]

Subpart 503.2—Contractor Gratuities to Government Personnel

2. Section 503.203 is revised to read as follows:

503.203 Reporting suspected violations of the Gratuities clause.

Employees shall immediately report any suspected violation of the Gratuities clause to the contracting officer, the Assistant Inspector General for Investigations or the Regional Inspector General for Investigations and to the Deputy Standards of Conduct Counselor in accordance with GSPMR 105–735.202(e)(4). The report must outline circumstances which indicate the Gratuities clause has been violated and include all pertinent documents. The Office of Inspector General will investigate and, if appropriate, forward a report and recommendation to the Department of Justice and/or the Office of Acquisition Policy, and/or the Office of Ethics and Civil Rights.

3. Section 503.204 is revised to read as follows:

503.204 Treatment of violations.

(a) The Associate Administrator for Acquisition Policy or a designee shall make determinations under FAR 3.204.

(b) The Associate Administrator or designee, after coordinating the matter with legal counsel, may initiate proceedings under FAR 3.204(a) by notifying the contractor that action against the contractor for a violation of the Gratuities clause is being considered. Notice must be provided by means of a letter sent by certified mail to the last known address of a party, its counsel, or agent for service of process. In the case of a business, notice may be sent to any partner, principal officer, director, owner or co-owner, or joint venture. If no return receipt is received within 10 calendar days of mailing, receipt will be presumed.

(c) The contractor shall have 30 calendar days to exercise its rights under FAR 3.204(b), unless an extension is granted.

(d) The Associate Administrator or designee may refer a matter to an agency fact-finding official designated by the Chairman of the GSA Board of Contract Appeals, if a determination is made that there are disputes of fact material to making a determination under FAR 3.204(a). Referrals for fact-finding will not be made in cases arising from a conviction or indictment as defined in FAR 9.403. If a referral is made, the fact-finding official shall:

(1) Afford the contractor the opportunity to dispute material facts relating to the determinations under FAR 3.204(a) (1) and (2).

(2) Conduct the proceedings under rules that are consistent with FAR 3.204(b).

(3) Schedule a hearing within 20 calendar days of receipt of the referral. Extensions may be granted for good cause upon the request of the contractor or the agency.

(4) Deliver written findings of fact to the Associate Administrator or designee (together with a transcription of the proceedings, if made) within 20 calendar days after the hearing record closes. The findings must resolve any material disputes of fact by a preponderance of the evidence.

(e) The Associate Administrator or designee may reject the findings of the fact-finding official only if they are determined to be clearly erroneous or arbitrary and capricious.

(f) In cases arising from conviction or indictment, or in which there are no disputes of material fact, the Associate Administrator or designee shall conduct the hearing required by FAR 3.204(b).

(g) If it is determined that the Gratuities clause has been violated, the contractor may present evidence of mitigating factors to the Associate Administrator or designee, either orally or in writing, in accordance with a schedule established by the Associate Administrator or designee. The Associate Administrator or designee shall exercise the Government's right under FAR 3.204(c) only after considering mitigating factors.

Subpart 503.4—Contingent Fees

4. Section 503.404 is added to read as follows:

503.404 Solicitation provision and contract clause.

(a) The contracting officer shall insert the provision at 552.203–4, Contingent Fee Representation and Agreement, in solicitations and contracts for the acquisition of leasehold interests in real property.

(b) The contracting officer shall insert the provision at 552.203–5, Covenant Against Contingent Fees, in solicitations and contracts for the acquisition of leasehold interests in real property.

Subpart 503.5—Other Improper Business Practices

5. The text of section 503.570 is removed and the section title is revised to read as follows:

503.570 Advertising.

6. Section 503.570–1 is added to read as follows:

503.570–1 Policy.

Contractors shall not refer to contracts awarded by GSA in commercial advertising in a manner which states or implies that the product or service provided is approved or endorsed by the Government or is considered by the Government to be superior to other products or services. This policy is intended to avoid the appearance of preference by the Government toward any product or service.

7. Section 503.570–2 is added to read as follows:

503.570–2 Contract clause.

The contracting officer shall insert the clause at 552.203–70, Restriciton on Advertising, in solicitations and contracts for supplies or services when the contract amount is expected to exceed the small purchase limitation.

Subpart 503.7—Voiding and Rescinding Contracts

503.700 [Removed]

8. Section 503.700 is removed.

9. Section 503.702 is revised to read as follows:

503.702 Definitions.

"Notice" means a letter sent by certified mail to the last known address of a party, its counsel, or agent for service of process. In the case of a business, such notice may be sent to any partner, principal officer, director, owner or co-owner, or joint venture. If no return receipt is received within 10 calendar days of mailing, receipt will be presumed.

"Voiding and rescinding official" means the Associate Administrator for Acquisition Policy or a designee.

503.703 [Removed]

10. Section 503.703 is removed.

11. Section 503.705 is revised to read as follows:

503.705 Procedures.

(a) Where a contract has been tainted by fraud, bribery, conflict of interest, or similar misconduct, the contracting officer should consult with counsel to determine if the Government has a common law remedy such as avoidance, recision, or cancellation. Alternatively, the matter may be referred to the voiding and rescinding official under FAR 3.705, if there has been a final conviction for any violation of 18 U.S.C. 201–224.

(b) The contracting officer may postpone a decision to exercise the Government's common law right to void, rescind, or cancel a contract pending completion of legal proceedings against a contractor.

(c) A referral to the voiding and rescinding official should identify the final conviction and include the information required by FAR 3.705(d) (2) through (5). The contracting officer should coordinate the referral with the Office of Inspector General to ascertain if a debarment referral is contemplated.

(d) The voiding and rescinding official shall review the referral and coordinate the matter with assigned legal counsel and the contracting activity. If a determination is made to declare void and rescind a contract and to recover the amounts expended and the property transferred, the voiding and rescinding official shall issue the notice required by FAR 3.705, and conduct the hearing contemplated by FAR 3.705(c)(3). If the voiding and rescinding official determines that there is a genuine dispute of material fact regarding the agency decision, the voiding and rescinding official shall refer the matter to the fact-finding official designated by the Chairman of the GSA Board of Contract Appeals. Such a referral will be made if there is a dispute of fact that relates to:

(1) The contracts affected by the final conviction giving rise to the proposed action.

(2) The amounts expended and property transferred by the Government under the contracts covered by the proposed action.

(3) The identity and value of any tangible benefits received by the Government under the affected contracts.

(e) If a referral for fact-finding is made, the fact-finding official shall:

(1) Afford the contractor the opportunity to dispute material facts relating to 503.704(d) (1) through (3).

(2) Conduct the proceedings under rules that are consistent with FAR 3.705(c)(3).

(3) Schedule a hearing within 20 calendar days of receipt of the referral. Extensions may be granted for good cause upon the request of the contractor or the agency.

(4) Deliver written findings of fact to the voiding and rescinding official (together with a transcription of the proceeding, if made) within 20 calendar days after the hearing record closes. The findings must resolve any material disputes of fact by a preponderance of the evidence.

(f) The voiding and rescinding official shall not issue the agency's final decision under FAR 3.705(e) until receipt of the fact-finding official's report, if any. The voiding and rescinding official may reject the findings of the fact-finding official only if they are determined to be clearly erroneous or arbitrary and capricious.

(g) In actions in which it determined there are no material disputes of fact relating to the determinations required by FAR 3.705(d)(2), (4) and (5), the voiding and rescinding official will conduct the hearing contemplated by FAR 3.705(c)(3).

(h) The final decision must be coordinated with the contracting activity and a copy of the decision provided to the activity.

PART 552—[AMENDED]

Subpart 552.2—Text of Provisions and Clauses

12. Section 552.203–4 is added to read as follows:

552.203–4 Contingent Fee Representation and Agreement.

As prescribed in 503.404(a), insert the following provision:

Contingent Fee Representation and Agreement (XXX 1989)

(a) Representation. The Offeror represents that, except for full-time bona fide employees working solely for the offeror or bona fide established real estate agents or brokers maintained by the Offeror for the purpose of securing business, the Offeror—

(Note: The Offeror must check the appropriate boxes. For interpretation of the term "bona fide employee or agency," see paragraph (b) of the Covenant Against Contingent Fees clause.)

(1) —— has, —— has not employed or retained any person or company to solicit or obtain this contract and;

(2) —— has, —— has not paid or agreed to pay to any person or company employed or retained to solicit or obtain this contract any commission, percentage, brokerage, or other fee contingent upon or resulting from the award of this contract.

(b) Agreement. The Offeror agrees to provide information relating to the above Representation as requested by the Contracting Officer and, when subparagraph (a)(1) or (a)(2) is answered affirmatively, to promptly submit to the Contracting Officer—

(1) A completed Standard Form 119, Statement of Contingent or Other Fees, (SF 119); or

(2) A signed statement indicating that the SF 119 was previously submitted to the same contracting office, including the data and applicable solicitation or contract number,

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and representing that the prior SF 119 applies to this offer or quotation.

(End of provision)

13. Section 552.203–5 is added to read as follows:

552.203–5 Covenant Against Contingent Fees.

As prescribed in 503.404(b), insert the following clause:

Covenant Against Contingent Fees (XXX 1988)

(a) The Contractor warrants that no person or agency has been employed or retained to solicit or obtain this contract upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, the Government shall have the right to annul this contract without liability or, in its discretion, to deduct from the contract price or consideration, or otherwise recover the full amount of the contingent fee.

(b) "Bona fide employee or agency," as used in this clause, means licensed real estate agents or brokers having listings on property for rent, in accordance with general business practice, who have not obtained such license for the sole purpose of effecting this contract, that neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds itself out as being able to obtain any Government contracts or contracts through improper influence.

"Contingent fee," as used in this clause, means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a Government contract.

"Improper influence," as used in this clause, means any influence that induces or tends to induce a Government employee or officer to give consideration or to act regarding a Government contract on any basis other than the merits of the matter.

(End of clause)

14. Section 552.203–70 is revised to read as follows:

552.203–70 Restriction on Advertising.

As prescribed in 503.570–2, insert the following clause:

Restriction on Advertising (XXX 1988)

The Contractor shall not refer to contracts awarded by the United States Government in commercial advertising in such a manner as to state or imply that the product or service provided is approved or endorsed by any element of the Federal Government or is considered by the Government to be superior to other products or services. Any advertisement by the Contractor, including price-off coupons, which refer to a military resale activity shall contain the following statement: "This advertisement is neither paid for nor sponsored in whole or in part, by any element of the United States Government.

(End of clause)

Dated: January 12, 1989.

Richard H. Hopf III,

Associate Administrator for Acquisition Policy.

[FR Doc. 89–1543 Filed 1–24–89; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF DEFENSE

Department of the Air Force

48 CFR Part 5315

Department of the Air Force Federal Acquisition Regulation Supplement; Price Negotiation

AGENCY: Department of the Air Force, DOD.

ACTION: Proposed rule; withdrawal.

SUMMARY: On March 4, 1987, the Department of the Air Force published (at 52 FR 6580) a proposed rule to supplement FAR Subpart 15.8, Price Negotiation, to set forth Air Force policy on the segregation of recurring and nonrecurring costs for support equipment items. During the public comment process it was recommended that the change applied to other departments within the Department of Defense and should be recommended for incorporation into the DOD FAR Supplement. The Air Force agreed with the recommendation and submitted a case to the DAR Council for consideration.

DATE: January 25, 1989.

FOR FURTHER INFORMATION CONTACT: Maj. Rob Gecke, SAF/AQCP, Room, 4C251, Pentagon, Washington, DC., 20330–1000, telephone (202) 697–6522.

SUPPLEMENTARY INFORMATION: Therefore, the Department of the Air Force has withdrawn the proposed rule at section 5315.892, of Chapter 53, 48 CFR, subject: Segregation of recurring and nonrecurring costs for support equipment.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 89–1615 Filed 1–24–89; 8:45 am]

BILLING CODE 3910–01–M

Notices

Federal Register
Vol. 54, No. 15
Wednesday, January 25, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census.

Title: Sheets, Pillowcases, and Towels.

Form Number: MQ–23X.

Type of Request: New.

Burden: 90 hours.

Number of Respondents: 30.

Avg Hours per Response: 45 minutes.

Needs and Uses: The U.S. Government has a clear need for information on the domestic production of broadwoven fabrics to monitor textile agreements with foreign countries. The users of these data are Government agencies, business firms, and trade associations for making production, investment, and trade policy decisions.

Affected Public: Businesses or other for-profit.

Frequency: Quarterly.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Francine Picoult, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room H6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Francine Picoult, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: January 19, 1989.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 89–1625 Filed 1–24–89; 8:45 am]

BILLING CODE 3510–76–M

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census.

Title: 1990 Decennial Census—Precensus Local Review Recanvass.

Form Number: D–106A.

Type of Request: New.

Burden: 20,948 hours.

Number of Respondents: 654,619.

Avg Hours Per Response: 2 minutes (approximately).

Needs and Uses: This survey will provide local and tribal governments the opportunity to participate in a program to review preliminary housing unit and special place counts before Census Day. As required, enumerators recanvass selected geographic areas with discrepancies to identify possible coverage or geographic coding problems. The data are used by the Census Bureau to improve its address files before the actual census is taken.

Affected Public: Individuals or households.

Frequency: One-time.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Francine Picoult, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room H6622, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Francine Picoult, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: January 19, 1989.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 89–1626 Filed 1–24–89; 8:45 am]

BILLING CODE 3510–07–M

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census.

Title: Report of Building or Zoning Permits Issued and Local Public Construction.

Form Number: C–404.

Agency Approval Number: 0607–0094.

Type of Request: Revision.

Burden: 29,436 hours.

Number of Respondents: 104,400 monthly; 8,000 annual.

Avg Hours per Response: 15 minutes (monthly); 25 minutes (annual).

Needs and Uses: This data collected from state and local officials on new construction authorized by building permits provide one of the few monthly measures of economic activity available for small geographic areas. The series on housing authorizations, a component of the index of leading economic indicators, is also used to estimate housing starts.

Affected Public: State or local governments.

Frequency: Monthly and Annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Francine Picoult, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room H6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Francine Picoult, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

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Dated: January 19, 1989.

Edward Michels,

Department Clearance Officer, Office of Management and Organization.

[FR Doc. 89-1627 Filed 1-24-89; 8:45 am]

BILLING CODE 3510-07-M

Bureau of Export Administration

Computer Peripherals, Components and Related Test Equipment Technical Advisory Committee; Partially Closed Meeting

A meeting of the Computer Peripherals, Components and Related Test Equipment Technical Advisory Committee will be held Feb. 14, 1989 at 9:30 a.m., Herbert C. Hoover Building, Room 1617F, 14th Street and Constitution Avenue, NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions which affect the level of export controls applicable to computer peripherals and related test equipment or technology.

Agenda

General Session

1. Introduction of Members and Visitors.
2. Introduction of Invited Guests.
3. Presentation of Papers or Comments by the Public.
4. Approval of Minutes.
5. Review of Membership.
6. Discussion of G-COM Regulations.
7. Discussion of Graphic Workstation—Flow Chart.
8. Discussion of Optical Disk Drive Proposal.
9. Discussion of Disk Packs.

Executive Session

10. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting and can be directed to: Technical Support Staff, Office of Technology & Policy Analysis, Room 4066, 14th & Constitution Avenue, NW., Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1986, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C. 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC. For further information or copies of the minutes call Betty Ferrell, 202-377-4959.

Date: January 17, 1989.

Betty A. Ferrell,

Director, Technical Advisory Committee Unit, Office of Technology and Policy Analysis.

[FR Doc. 89-1628 Filed 1-24-89; 8:45 am]

BILLING CODE 3510-07-M

DEPARTMENT OF COMMERCE INTERNATIONAL TRADE ADMINISTRATION

[C-201-009]

Certain Iron-Metal Castings From Mexico; Final Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice of final results of countervailing duty administrative review.

SUMMARY: On April 27, 1988, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on certain iron-metal castings from Mexico. We have now completed that review and determine the total bounty or grant to be 0.01 percent *ad valorem* for the period April 1, 1983 through December 31, 1983, 0.03 percent *ad valorem* for the period January 1, 1984 through December 31, 1984, and 0.18 percent *ad valorem* for the period January 1, 1985 through December 31, 1985. The Department considers any rate less than 0.50 percent *ad valrem* to be *de minimis*.

EFFECTIVE DATE: January 25, 1989.

FOR FURTHER INFORMATION CONTACT: Paul McGarr or Bernard Carreau, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On April 27, 1988, the Department of Commerce ("the Department") published in the **Federal Register** (53 FR 15093) the preliminary results of its administrative review of the countervailing duty order on certain iron-metal castings from Mexico (48 FR 8834; March 2, 1983). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

Imports covered by this review are shipments of Mexican iron-metal construction castings ("castings"), including manhole covers, rings and frames, catch basin grates and frames, cleanout covers and grates, meter boxes and valve boxes. These castings are commonly called municipal or public works castings. During the review period, such merchandise was classifiable under items 657.0950, 657.0990, 657.2540 and 657.2550 of the Tariff Schedules of the United States Annotated. This merchandise is currently classifiable under items 7326.90.90 and 7325.10.00 of the Harmonized Tariff Schedule.

The review covers the period April 1, 1983 through December 31, 1985 and the following programs: (1) FOMEX; (2) state tax incentives (3) Article 15 of the General Law of Credit Institutions and Auxiliary Organizations; (4) CEPROFI; (5) FONEI; (6) FOGAIN; (7) CEDI; (8) NDP preferential discounts; (9) Bancomext loans; (10) FOMIN; (11) FIDEIN; (12) import duty reductions and exemptions; (13) delay of payments on loans; and (14) delay of payments to PEMEX of fuel charges.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received written comments from the Municipal Castings Fair Trade Committee and other domestic producers ("the petitioners"), and Maquiladora San Diego, Zaragoza Castings, and Fundidora de la Frontera ("the respondents").

Comment 1: The petitioners contend that special bank accounts for export earnings which receive interest benefits and devaluation protection are countervailable because these accounts are available only to exporters.

Department's Position: We disagree. The "special" bank accounts for export earnings are connected to the dual exchange rate system instituted by the Mexican government at the end of 1982. The bank accounts are not a new feature of the system. Under the dual exchange rate system, exporters must convert their dollar earnings into pesos at the controlled exchange rate. Because the controlled rate is lower than the "free" rate, the system actually works to the detriment, rather than the benefit, of exporters. In the *Final Affirmative Countervailing Duty Determination and Countervailing Duty Order; Certain Iron-Metal Construction Castings from Mexico* (March 2, 1983, 48 FR 8834), we found that this dual exchange rate system is not countervailable.

The peso amounts in these bank accounts are, effectively, indexed to dollars because they earn interest equal to the rate of devaluation of the controlled rate plus the average interest rate for deposits in the Eurodollar market (LIBOR + 1). If exporters were allowed to hold their export earnings in dollar accounts, they could earn an equivalent return with interest at comparable dollar rates. In fact, any company located within Mexico can open a dollar account, which earns interest at the rate of LIBOR + 1, with the deposits not converted into pesos until the date of withdrawal. For these reasons, we reaffirm our position in the final determination in this case that this program is not countervailable.

Comment 2: The petitioners contend that there were exports into the United States during the review period through Laredo, Texas that were not accounted for by any of the producers, manufacturers or exporters identified in the questionnaire response. The petitioners believe that the total countervailable benefits cannot be determined until all such producers, manufacturers and exporters are identified, and the benefits received by each determined.

Department's Position: We disagree. In our questionnaire, we requested data covering all exports of the subject merchandise to the United States. As is sometimes the case where there are many small companies, a 100 percent response rate is not always possible. In this case, the Mexican government could not identify all exporters from its export statistics because some exporters ship under a basket category export code. For each of the three periods covered in this review, we received company responses covering a portion of total exports which we consider sufficient for our final results of review. In none of the three review periods did exports imported through Laredo equal even one percent of total exports.

Comment 3: The petitioners contend that the Department, having found that one company in the state of Baja California del Norte used state tax incentives, made no effort to determine the use of state tax benefits by other exporters located in that state.

Department's Position: We disagree. We verified two of the three respondent exporters located in Baja California del Norte. One received the level of benefits that was reported in the questionnaire response. The second, as a cooperative, does not have payrolled employees and thus does not qualify for an exemption. Because we cannot verify all firms, we must determine the accuracy of the response based on those firms verified. Since verification demonstrated that in the questionnaire response the verified firms had reported all benefits, we believe it is reasonable to assume that the third firm, which reported in the questionnaire response that it received no benefits, did not receive benefits under this program.

Comment 4: The respondents contend that the Department must revoke the countervailing duty order on certain iron-metal construction castings from Mexico. Effective April 23, 1985, the date of the Understanding between the United States and Mexico Regarding Subsidies and Countervailing Duties ("the Understanding"), the United States Trade Representative designated Mexico "a country under the Agreement" as defined in section 701 of the Tariff Act of 1930. Since Mexico is now a "country under the Agreement," section 701 entitles Mexico to a determination by the International Trade Commission "ITC") that the subject merchandise materially injures or threatens material injury to a United States industry producing a like product. Pursuant to section 701, the Department cannot impose countervailing duties on any merchandise from Mexico without an affirmative ITC injury determination. Since the ITC has indicated that it does not have the authority to conduct an injury investigation on merchandise already subject to an outstanding order, the Department should revoke this order.

Department's Position: As we explained in the final results of the last administrative review of this order and in several other final results notices, we believe that we lack the authority to revoke any countervailing duty order on Mexican products on the basis of the Understanding. *See, e.g., Certain Iron-Metal Construction Castings from Mexico; Final Results of Countervailing Duty Administrotive Review* (51 FR 9696, March 20, 1986), *Portland Hydraulic Cement and Cement Clinker from Mexico; Final Results of Countervailing Duty Administrative Review*, (51 FR 44501, December 10, 1986), and *Portland Hydraulic Cement and Cement Clinker; Final Results of Countervailing Duty Administrative Review* (53 FR 18325, May 23 1988).

Comment 5: The respondents maintain that the Department's contention that the injury provision of the Understanding affects only countervailing duty orders issued after April 23, 1985 is in error. In a recent Court of International Trade ("CIT") decision, *Cementos Anahuac del Golfo, S.A. v. United States*, 12 CIT ____, Slip Op. 88-58 (May 12, 1988), the CIT determined that after the effective date of the Understanding, countervailing duties could only be imposed on Mexican merchandise following an affirmative ITC injury determination regardless of whether the countervailing duty order was issued before or after the effective date of the Understanding. The CIT remanded the review, instructing the Department to follow section 701 rather than section 303 of the Tariff Act. The Department should do the same in this case.

Department's Position. The CIT's decision in *Cemetos Anahuac del Golfo S.A. v. United States* ("*Anahuac I*") applies only to *Portland Hydraulic Cement and Cement Clinker from Mexico; Final Results of Administrative Review of Countervailing Duty Order* (50 FR 51732; December 19, 1985), which covered the period July 1, 1983 through December 31, 1983. Moreover, we are appealing the *Anahuac I* decision.

The respondents ignore an even more recent decision in the cement proceeding, *Cementos Anahuac del Golfo, S.A. v. United States*, Slip Op. 88-75, (June 9, 1988), ("*Anahuac II*"), which supports our position that the Understanding does not require an affirmative injury determination for Mexican countervailing duty orders issued before April 23, 1985.

Comment 6: The respondents contend that, even if the Department continues to believe that section 303 applies to this case, the Department must still revoke this countervailing duty order because section 303(a)(2) requires an affirmative injury determination for duty-free products from a country with which the United States has an international obligation. Although the Department has interpreted the phrase "international obligation" to refer only to the General Agreement on Tariffs and Trade ("GATT"), the CIT found in *Anahuac I* and the respondents agree, that the Understanding also constitutes such an international obligation. Because the subject merchandise enters free of duty, section 303(a)(2) rather than section 303(a)(1) applies to this case. Under similar circumstances in three previous countervailing duty proceedings, *Certain*

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Fasteners from India (47 FR 44129), *Carbon Steel Wire Rod from Trinidad and Tobago* (50 FR 19511), and *Certain Scissors and Shears from Brazil* (50 FR 11927), the Department determined, or preliminarily determined, that it did not have the authority to impose countervailing duties without an affirmative ITC injury determination. The same reasoning applies to this case.

Department's Position: As explained in our response to Comment 5, we are appealing the *Anahuac I* decision. Additionally, the CIT's decision in *Anahuac II* supports our position. In the three cases cited by the respondents, the exporting countries were GATT members and the merchandise was duty-free during the potential assessment period. None of these cases is analogous to the present case because Mexico was not a member of the GATT at the time the duty-free castings covered by this review were imported. *See* also, *Portland Hydraulic Cement and Cement Clinker from Mexico; Final Results of Countervailing Duty Administrative Review*, (53 FR 18325, May 23, 1988).

However, with Mexico's accession to the GATT on August 24, 1986, the United States has an "international obligation" to provide an injury test under section 303, which prohibits the imposition of countervailing duties absent such a test on duty-free merchandise entered into the United States after the date of Mexico's accession to the GATT. We are currently pursuing means by which an injury determination could be made concerning imports of Mexican castings entered on or after August 24, 1986, the date of Mexico's accession to the GATT.

Final Results of Review

After considering all of the comments received, we determine the total bounty or grant to be 0.01 percent *ad valorem* for the period April 1, 1983 through December 31, 1983, 0.03 percent *ad valorem* for the period January 1, 1984 through December 31, 1984, and 0.18 percent *ad valorem* for the period January 1, 1985 through December 31, 1985. The Department considers any rate less than 0.50 percent to be *de minimis*.

The Department will instruct the Customs Service to liquidate, without regard to countervailing duties, all shipments of this merchandise exported on or after April 1, 1983 and on or before December 31, 1985.

The Department will also instruct the Customs Service to waive cash deposits of estimated countervailing duties, as provided by section 751(a)(1) of the Tariff Act, on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of the publication of this notice. This deposit waiver shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.10.

Jan W. Mares,

Assistant Secretary for Import Administration.

January 13, 1989.

[FR Doc. 89-1650 Filed 1-24-89; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

Bluegrass Stone Center; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket Number: 88-222. *Applicant:* Bluegrass Stone Center, Lexington, KY 40504. *Instrument:* Lithotripter, Model HM4. *Manufacturer:* Dornier Medizintechnik, West Germany. *Intended Use:* See notice at 53 FR 23781, June 24, 1988.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, was available in the United States at the time it was ordered (August 21, 1987). *Reasons for this Decision:*

Although Medstone International, Inc., Costa Mesa, California manufactures a comparable device, it was not approved for general use by the Food and Drug Administration at the time of order of the foreign article.

Our consultants at the National Institutes of Health have advised us with respect to this application that there were no known approved domestic instruments available, at the time of order, which were equivalent to the foreign article.

We know of no other instrument that was being manufactured in the United States which was of equivalent scientific value to the foregin instrument for the purposes for which it was intended to be used at the time it was ordered (see also 52 FR 22512, June 12, 1987).

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 89-1646 Filed 1-24-89; 8:45 am]

BILLING CODE 3510-DS-M

University of California, et al.; Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Room 2841, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket Number: 88-176. *Applicant:* University of California, San Diego, La Jolla, CA 92093. *Instrument:* Cardiac Ventricular Volume Measuring Device Via Conductance, Model SIGMA-5. *Manufacturer:* Leycom, The Netherlands. *Intended Use:* See notice at 53 FR 20152, June 2, 1988. *Reasons for this Decision:* The foreign instrument continuously measures ventricular (heart) volume by analysis of five segmented signals from an impedance catheter. *Advice Submitted By:* The National Institutes of Health, September 16, 1988.

Docket Number: 88-152. *Applicant:* University of California, San Diego, La Jolla, CA 92093-0109. *Instrument:* Two (2) Microelectrode Microdrives. *Manufacturer:* Narishige Scientific Instrument Lab, Japan. *Intended Use:* See notice at 53 FR 17093, May 13, 1988. *Reasons for this Decision:* The foreign instrument provides high mechanical stability using a single-piece electrode positioning device that is skull mounted and adjustable in x, y, and z coordinates. *Advice Submitted By:* The National Institutes of Health, September 15, 1988.

Docket Number: 88-163. *Applicant:* Eastman Dental Center, Rochester, NY 14620. *Instrument:* Dental Implant Components. *Manufacturer:* Nobelpharma, Sweden. *Intended Use:* See notice at 53 FR 17095, May 13, 1988. *Reasons for this Decision:* The foreign instrument provides optimum geometric structure and titanium purity for success in osseointegration. *Advice Submitted By:* The National Institutes of Health, September 6, 1988.

Docket Number: 88-143. *Applicant:* University of Oklahoma, Norman, OK 73019. *Instrument:* Reflex Microscope with Software. *Manufacturer:* Reflex, United Kingdom. *Intended Use:* See notice at 53 FR 15100, April 27, 1988. *Reasons for this Decision:* The foreign instrument can digitize shape coordinates in three dimensions without physical contact with a precision of 0.02 mm in the horizontal plane. *Advice Submitted By:* The National Institutes of Health, September 6, 1988.

Docket Number: 88-132. *Applicant:* U.S. Department of Energy, Argonne, IL 60439-4612. *Instrument:* Laser, Model HD-300. *Manufacturer:* Lumonics, Inc., Canada. *Intended Use:* See notice at 53 FR 15099, April 27, 1988. *Reasons for this Decision:* The foreign instrument provides: (1) microprocessor controlled scanning, (2) repetition rates to 100Hz, (3) 95 percent beam polarization, and (4) a typical linewidth of 0.002nm. *Advice Submitted By:* The National Institutes of Health, September 6, 1988.

Docket Number: 88-136. *Applicant:* Cornell University, Ithaca, NY 14853. *Instrument:* Research Irradiator, Model Gammacell 1000. *Manufacturer:* Atomic Energy of Canada, Ltd., Canada. *Intended Use:* See notice at 53 FR 15100, April 27, 1988. *Reasons for this Decision:* The foreign instrument provides a stationery 1200 curie cesium source and low external surface radiation (0.1 to 0.3 mrem/hr). *Advice Submitted By:* The National Institutes of Health, September 6, 1988.

Docket Number: 88-141. *Applicant:* University of Wisconsin-Madison, Madison, WI. *Instrument:* Laser Scanning Confocal Microscope System. *Manufacturer:* MRC Lasersharp, United Kingdom. *Intended Use:* See notice at 53 FR 15100, April 27, 1988. *Reasons for this Decision:* The foreign instrument provides scanned laser beam confocal optics and computer-aided three dimensional image processing. *Advice Submitted By:* The National Institutes of Health, September 6, 1988.

Docket Number: 88-117. *Applicant:* University of California, La Jolla, CA 92093. *Instrument:* Primate Chairs and Surgical Implant Components. *Manufacturer:* The Workshop, University of Oxford, United Kingdom. *Intended Use:* See notice at 53 FR 15102, April 27, 1988. *Reasons for this Decision:* The foreign article is a restraint chair providing high stability for maintaining placement of neurological electrode implants in primates. *Advice Submitted By:* The National Institutes of Health, September 6, 1988.

Docket Number: 88-051R. *Applicant:* Texas A&M University, College Station, TX 77843-3255. *Instrument:* Fluorescence Lifetime Spectrometer. *Manufacturer:* Edinburgh Instruments, Ltd., United Kingdom. *Intended Use:* See notice at 53 FR 1811, January 22, 1988. *Reasons for this Decision:* The foreign instrument provides time-completed single photon counting operating in the pulsed light mode. *Advice Submitted By:* The National Institutes of Health, September 6, 1988.

Docket Number: 87-297. *Applicant:* University of Vermont, Burlington, VT 05401. *Instrument:* Five Syringe Quenched Flow Module. *Manufacturer:* Biologic, France. *Intended Use:* See notice at 52 FR 42028, November 2, 1987. *Reasons for this Decision:* The foreign instrument provides independent stepper motor control of five syringes allowing double mixing and quenching, programmable mixing ratios, and millisecond dead time. *Advice Submitted By:* The National Institutes of Health, September 21, 1988.

Docket Number: 88-161. *Applicant:* Virginia Commonwealth University, Richmond, VA 23298-0551. *Instrument:* Microforge, Model MF-83. *Manufacturer:* Narishige Scientific Instrument Laboratory, Japan. *Intended Use:* See notice at 53 FR 20153, June 2, 1988. *Reasons for this Decision:* The foreign instrument provides: (1) separate heating and cooling control, (2) precise micromanipulator positioning, and (3) fire polishing at 600x magnification. *Advice Submitted By:* The National Institutes of Health, September 6, 1988.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as each is intended to be used, is being manufactured in the United States. The National Institutes of Health advices that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff

[FR Doc. 89-1647 Filed 1-24-89; 8:45 am]

BILLING CODE 3510-DS-M

University of Utah, et al.; Applications for Duty-Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897; 15 CFR Part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with § 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5 p.m. in Room 2841, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket Number: 88-120R. *Applicant:* University of Utah, Purchasing Department, 151 Annex Building, Salt Lake City, UT 84112. *Instrument:* Scanning Electron Microscope, Model Camscan Series 2. *Manufacturer:* Cambridge Scanning Co., Ltd., United Kingdom. Original notice of this resubmitted application was published in the **Federal Register** of April 27, 1988.

Docket Number: 88-015. *Applicant:* University of California at Berkeley, Purchasing Department, 2405 Bowditch Street, Berkeley, CA 94720. *Instrument:* Electron Microscope, JEM-1200EX. *Manufacturer:* JEOL, Ltd., Japan. *Intended Use:* The instrument will be used primarily for the study of specialized nucleoprotein structures involved in the control of high-precision DNA transactions such as site-specific recombination, DNA replication and gene expression, both prokaryotic and eukaryotic systems. The experiments to be conducted will include studies on the following:

1. Site specific recombination of bacteriophage 2,
2. Initiation of replication of bacteriophage 2,
3. Determining subunit arrays in DNA replication,
4. Measurement of stereostructure of knots and catenanes produced by site-specific recombination,
5. The form of supercoiled DNA (papilloma virus),
6. State of viral minichromosomes from cells arrested at cell metaphase,
7. Visualization of replication intermediaries of viral DNA.

In addition, the instrument will be used on a one-to-one basis in the training of graduate students and post-doctoral fellows. *Application Received by Commissioner of Customs:* October 28, 1988.

Docket Number: 88-016. *Applicant:* Louisiana State University Medical Center in New Orleans, 1901 Perdido Street, New Orleans, LA 70112. *Instrument:* Electron Microscope, CM-10/PC. *Manufacturer:* N.V. Philips, The

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Netherlands. *Intended Use:* The instrument will be used for the following research purposes:

1. Study of the presence and distribution of neural elements in articular structures and corneal wound healing.

2. Examination of structure-function relationships in structural membrane proteins using bdellovibrios bacteria as a developmental model system and as a highly sensitive probe.

3. Study of periodontal cell attachment between bone-normal root, bone-diseased root and bone-root planed diseased root in the presence and absence of microbial products.

4. Mapping the central locations of primary afferent synapses from the dental pulp and assessing their relationships with trigeminothalamic relay cells.

5. Investigation of cardiac hypertrophy in cultured cardiac myocytes, particularly the possibility of constructing a ventricular cardiac myocyte tissue culture system based on heart muscle cells from spontaneously hypertensive rats.

6. Microstructural investigation of dental alloys used for restoration and prosthetic devices.

Application Received by Commissioner of Customs: October 28, 1988.

Docket Number: 89-017. *Applicant:* Tulane University, Delta Regional Primate Research Center, Three River Road, Covington, LA 70433. *Instrument:* Electron Microscope, Model JEM-1200EX/SEG/DP/DP. *Manufacturer:* JEOL, Ltd., Japan. *Intended Use:* The instrument will be used to examine animal and human tissues both in *in vivo* and *in vitro* druing infectious disease research. Studies will include examination of the organisms and the cells affected. The instrument will also be used from time to time to teach electron microscopy techniques to undergraduate and graduate students. *Application Received by Commissioner of Customs:* October 31, 1988.

Docket Number: 89-018. *Applicant:* National Institute for Occupational Safety and Health, Division of Physical Science and Engineering, MRSB, 4676 Columbia Parkway, Cincinnati, OH 45226. *Instrument:* Electron Microscope, Model JEM-100CXII. *Manufacturer:* JEOL, Ltd., Japan. *Intended Use:* The instrument will be used to examine samples from industrial hygiene surveys and asbestos abatement projects for the presence of asbestos fibers. *Application Received by Commissioner of Customs:* November 2, 1988.

Docket Number: 89-019. *Applicant:* VA Medical Center, 4150 Clement Street, San Francisco, CA 94121. *Instrument:* Spectophotometer, Model SF-51. *Manufacturer:* Hi-Tech Scientific, United Kingdom. *Intended Use:* The instrument will be used to study the rapid kinetic process in biological systems in order to define the transport and enzyme mechanisms by a kinetic approach. *Application Received by Commissioner of Customs:* November 2, 1988.

Docket Number: 89-020. *Applicant:* University of Utah, Purchasing Department, 151 Annex Building, Salt Lake City, UT 84112. *Instrument:* Electron Microscope, Model H-600-3. *Manufacturer:* Hitachi Scientific Instruments, Japan. *Intended Use:* The instrument will be used for research which concerns the organization of the vertebrate retina. *Application Received by Commissioner of Customs:* November 2, 1988.

Docket Number: 89-021. *Applicant:* University of Nebraska-Lincoln, Center for Agricultural Meteorology and Climatology, 242 Chase Hall, Lincoln, NE 68583-0728. *Instrument:* Infrared Gas Analyzer, Model E009. *Manufacturer:* Advanced Systems, Inc., Japan. *Intended Use:* The instrument will be used for studies of the exchange of carbon dioxide between vegetated surfaces and the atmosphere in order to develop improved understanding of surface transfer processes controlling the flux of carbon dioxide. In addition, the instrument will be used for educational purposes in the courses Agronomy 899, 999 and Agricultural Engineering 899, 999. Doctoral Dissertation. *Application Received by Commissioner of Customs:* November 2, 1988.

Docket Number: 89-022. *Applicant:* U.S. Department of Commerce, National Institute of Standards and Technology, Building 222, Room A121, Gaithersburg, MD 20899. *Instrument:* Time-of-Flight Secondary Ion Mass Spectrometer. *Manufacturer:* Kratos Analytical, United Kingdom. *Intended Use:* The instrument will be used for the following studies:

1. Investigation of the heterogeneous distribution of light elements (lithium, beryllium, boron) within individual micrometer-size ariborne particulates.

2. Study of the ability to fingerprint individual micrometer-sized airborne particulates.

3. Mapping of the distributions of organic species and polymer on surfaces and in biological tissue while minimizing damage produced by the primary ion beam.

Application Received by Commissioner of Customs: November 8, 1988.

Docket Number: 89-023. *Applicant:* U.S. Department of Energy, Argonne National Laboratory, 9700 South Cass Avenue, Argonne, IL 60439-4812. *Instrument:* Fragment Mass Analyzer. *Manufacturer:* Bruker Analtische Messtechnik, West Germany. *Intended Use:* The instrument will be used in the study of nuclear reactions induced by beams from the ATLAS heavy-ion accelerator to separate nuclear reaction products from the primary accelerator beam and to disperse them at the focal plane by mass/charge. *Application Received by Commissioner of Customs:* November 8, 1988.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 89-1648 Filed 1-24-89; 8:45 am]

BILLING CODE 3510-DS-M

Texas A & M University, et al.; Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 2841, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 88-227. *Applicant:* Texas A & M University, College Station, TX 77843. *Instrument:* Gas Isotope Ratio Mass Spectrometer. *Manufacturer:* CJS Sciences, Ltd., U.K. *Intended Use:* See notice at 53 FR 30084, August 10, 1988. *Reasons for this Decision:* The foreign instrument provides a guranteed internal precision of 0.015 per mil, an automatic cryo-cool inlet for sample volumes down to 6.0 µl and a multi-sample manifold driven by the data system. *Advice Submitted By:* National Bureau of Standards, September 19, 1988.

Docket Number: 88-240. *Applicant:* Research Foundation, State University of New York, Stony Brook, NY 11794. *Instrument:* Micromanipulator. *Manufacturer:* Narashige, Japan. *Intended Use:* See notice at 53 FR 31077, August 17, 1988. *Reasons for this Decision:* The foreign instrument provides hydraulically driven, vibration-free, independent movements in three dimensions with 2.0 µm increments. *Advice Submitted By:* National Institutes of Health, September 27, 1988.

Docket Number: 88-225. *Applicant:* National Bureau of Standards, Gaithersburg, MD 20899. *Instrument:* FTI Spectrophotometer System, Model DA3.16. *Manufacturer:* BOMEM, Inc., Canada. *Intended Use:* See notice at 53 FR 30084, August 10, 1988. *Reasons for this Decision:* The foreign instrument provides an unapodized resolution of 0.02 cm^{-1} and a spectral range of 200 to 50,000 cm^{-1}. *Advice Submitted By:* National Institutes of Health, September 27, 1988.

Docket Number: 88-188. *Applicant:* University City Science Center, Philadelphia, PA 19104. *Instrument:* Mortar and Pestle Mill System with Accessories. *Manufacturer:* The Pascall Engineering Co., Ltd., United Kingdom. *Intended Use:* See notice at 53 FR 20154, June 2, 1988. *Reasons for this Decision:* The foreign instrument extracts submitochondrial particles with electron transfer comonents from muscle tissue. *Advice Submitted By:* National Institutes of Health, September 6, 1988.

Docket Number: 88-199. *Applicant:* Duke University Medical Center, Durham, NC 27710. *Instrument:* Mass Spectrometer, Model NM70S. *Manufacturer:* VG Analytical, Ltd., United Kingdom. *Intended Use:* See notice at 53 FR 19984, June 1, 1988. *Reasons for this Decision:* The foreign instrument provides (1) continuous flow FAB, (2) resolution to 50 000, and (3) scan speed to 0.1 seconds per decade. *Advice Submitted By:* National Institutes of Health, September 21, 1988.

Docket Number: 88-165. *Applicant:* Thomas Jefferson University, Philadelphia, PA 19107. *Instrument:* Flash Photolysis Device. *Manufacturer:* Gert Rapp, West Germany. *Intended Use:* See notice at 53 FR 16329, May 23, 1988. *Reasons for this Decision:* The foreign instrument provides focussing optics and pulse shaping optimized for initiating contractile events in muscle fibers. *Advice Submitted By:* National Institutes of Health, September 21, 1988.

Docket Number: 88-220. *Applicant:* Howard Hughes Medical Institute, Upton, NY 11973. *Instrument:* Double Crystal Monochrometer, KMA-15. *Manufacturer:* Kohzu Seiki, Co., Ltd., Japan. *Intended Use:* See notice at 53 FR 23781, June 24, 1988. *Reasons for this Decision:* The foreign instrument provides a tunable angle range of 4.5° to 70° with constant height and a double crystal. *Advice Submitted By:* National Institutes of Health, September 21, 1988.

Docket Number: 88-217. *Applicant:* Thomas Jefferson University, Philadelphia, PA 19107. *Instrument:* Myograph-Microfluoromety System. *Manufacturer:* Dr. K. Guth, West Germany. *Intended Use:* See notice at 53 FR 22686, June 17, 1988. *Reasons for this Decision:* The foreign instrument provides a force transducer with a sensitivity of 1.0 mg with low-drift and a linearity range of at least 3 mm. *Advice Submitted By:* National Institutes of Health, September 21, 1988.

Docket Number: 88-088R. *Applicant:* U.S. Environmental Protection Agency, Research Triangle Park, NC 27771. *Instrument:* Mass Spectrometer, Model 90. *Manufacturer:* Finnigan MAT, West Germany. *Intended Use:* See notice at 53 FR 6028, February 29, 1988. *Reasons for this Decision:* The foreign instrument provides a (1) resolution to 50 000, (2) mass range to 175 000 amu, and (3) continuous flow FAB capability. *Advice Submitted By:* National Institutes of Health, October 4, 1988.

Docket Number: 88-068R. *Applicant:* University of Illinois at Chicago, Chicago, IL 60680. *Instrument:* Mass Spectrometer, Model MAT 90. *Manufacturer:* Finnigan MAT, West Germany. *Intended Use:* See notice at 53 FR 1812, January 22, 1988. *Reasons for this Decision:* The foreign instrument provides: (1) Extended mass range to 10 000 amu, (2) scan rates to 0.01 seconds per decade, and (3) continuous flow FAB capability. *Advice Submitted By:* National Institutes of Health, October 4, 1988.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as each is intended to be used, is being manufactured in the United States. The National Bureau of Standards and the National Institutes of Health advise that (1) the capabilities to each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) they know of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 89-1649 Filed 1-24-89; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Mid-Atlantic Fishery Management Council; Public Hearings

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of public hearings and request for comments.

SUMMARY: The Mid-Atlantic Fishery Management Council will hold public hearings to allow for input on Amendment 8 to the Fishery Management Plan for the Atlantic Surf Clam and Ocean Quahog Fisheries (FMP).

DATES: Written comments will be accepted until March 31, 1989. All hearings will begin at 7:00 p.m. and will be tape recorded with tapes filed as the official transcript of the hearing. The hearings are scheduled as follows.

1. February 22, 1989, Pocomoke, Maryland
2. February 27, 1989, Pomona, New Jersey
3. March 1, 1989, Galilee, Rhode Island
4. March 6, 1989, Cape May Court House, New Jersey.

ADDRESSES: Comments may be mailed to John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19901. The hearings will be held at the following locations:

1. Pocomoke—Pocomoke Days Inn, Rt. 13 South, Pocomoke, MD
2. Pomono—Stockton State College, Pomona, NJ
3. Galilee—Dutch Inn, Great Island Rd., Galilee, RI
4. Cape May Court House—Cape May County Extension Office, Dennisville Rd., Cape May Court House, NJ.

SUPPLEMENTARY INFORMATION: The FMP was developed and implemented to reverse the decline in the abundance of the surf clam resource. While the FMP has successfully achieved this goal, the industry remains overcapitalized. The moratorium on entry imposed in 1977 did not act as a significant check on effort, as vessel owners increased the fishing power of their vessels to deal with the constraints of a management regime centered around a limitation on fishing time. Currently, vessels are limited to several 6 hour trips per quarter. In an effort to alleviate the problems and inefficiencies in the fishery, the Mid-Atlantic Fishery Management Council (Council) initiated consideration of a management scheme involving an allocation of the resource quotas among participants in the fishery. This proposal became known as Amendment 8 to the FMP. The development of this amendment has been closely watched by the industry. In accord with section 302(h)(3) of the Magnuson Act, interested industry members have been afforded many opportunities to participate in this development process. The many options originally considered as management alternatives have been weighed and

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considered by the Council and narrowed to a point where the industry can focus on a comprehensive management program for comment.

The industry and other interested members of the public are invited to give their thoughts in writing or at the public hearings listed above on Amendment 8 which proposes to: (1) Revise the existing vessel permit requirement; (2) create an allocation permit requirement; (3) create a permit for those who buy, receive, and process surf clams or ocean quahogs; (4) allow the NMFS to establish fees for the permits; (5) combine the three surf clam management areas; (6) initiate a vessel allocation system coastwide for both surf clams and ocean quahogs; (7) remove all surf clam and ocean quahog effort limitations; (8) reduce the surf clam minimum size to 4.75"; (9) provide that the surf clam minimum size limit may be suspended on a year to year basis under certain conditions; (10) provide that dealers and processors must make their reports available for inspection by authorized officers or designated NMFS employees; (11) initiate a requirement that all surf clam and ocean quahog cages must be tagged from the time the surf clams or ocean quahogs are placed into the cage; (12) prohibit shucking surf clams or ocean quahogs at sea; (13) allow the Regional Director to require that vessel owners or operators notify NMFS before a vessel departs the dock on a trip to harvest surf clams or ocean quahogs and before the vessel reaches the dock from a trip on which surf clams or ocean quahogs were caught; (14) remove the moratorium on the entry of new vessels into the Mid-Atlantic surf clam fishery; and (15) allow the Regional Director to authorize experimental fishing not otherwise authorized by the regulations for the collection of fishery data.

Dated: January 19, 1989.

Richard H. Schaefer,

Director of Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89-1635 Filed 1-24-89; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board; Meeting

January 19, 1989.

The USAF Scientific Advisory Board Human Systems Division Advisory Group will meet at Wright-Patterson AFB, OH on March 8, 1989 from 8:00 a.m. to 5:30 p.m. and on March 9, 1989 from 8:00 a.m. to 2:00 p.m., in Room 203, Building 14.

The purpose of the meeting will be discussions on selected programs and projects relating to the missions of the Human Systems Division.

The meeting concerns matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly, will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at 202-697-4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 89-1635 Filed 1-24-89; 8:45 am]

BILLING CODE 3910-01-M

USAF Scientific Advisory Board Meeting

January 19, 1989.

The USAF Scientific Advisory Board Ad Hoc Committee on Electronic Combat will meet on February 9-10, 1989 from 8:00 a.m. to 5:00 p.m. at the Pentagon, Washington, DC 20330.

The purpose of this meeting is to review the requirements for and the status of Air Force Electronic Combat programs. This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697-4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 89-1634 Filed 1-24-89; 8:45 am]

BILLING CODE 3910-01-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: An expedited review has been requested in accordance with the Act, since allowing for the normal review period would adversely affect the public interest. Approval by the Office of Management and Budget (OMB) has been requested by February 21, 1989.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Jim Houser, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster, (202) 732-3915.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. Public reporting burden for this collection of information is estimated to average 31 minutes for response, including the time for reviewing instructions, searching existing data sources, gathering OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Office of Information Resources Management, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following:

(1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) title; (3) frequency of collection; (4) the affected public; (5) reporting burden; and/or (6) recordkeeping burden; and (7) abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: January 19, 1989.

Carlos U. Rice,

Director for Office of Information Resources Management.

Office of Educational Research and Improvement

Type of Review: Expedited.
Title: Integrated Quality Control Measurement Project.

Abstract: This study will determine the error rate in awards of student aid, assess the effectiveness of prior initiatives to reduce error rates and identify new initiatives to reduce error rates. The Department will use the information to compare actual award and disbursement amounts calculated by the financial institution with those calculated on the basis of the best available data.

Additional Information: An expedited review is requested for this new measurement project to allow adequate time to collect data from approximately 3500 students prior to the end of the Spring term. This information collection is required for the Department to comply with the Financial Integrity Act in order to measure the accuracy of student aid programs.

Frequency: One time only.

Affected Public: Individuals or households; businesses or other for-profit; non-profit institutions; small businesses or organizations

Reporting Burden:
Responses: 11,060.
Burden Hours: 5,676.

Recordkeeping:
Recordkeepers: 0.
Burden Hours: 0.

BILLING CODE 4000-01-M

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DATA COLLECTION INSTRUMENTS

The data collection instruments for which clearance is being sought are substantially similar to those used in the 1984 Title IV Quality Control Study, with the exception of the new Lending Institution Record Form. The specific rationale for each instrument is described below:

Institutional Questionnaire

Because institutions have discretion in making Campus-Based aid awards, it is very important to understand the institutional context and aid packaging policy, that is, how decisions are reached about the amounts and types of discretionary aid to grant to different students. Institutions are also responsible for determining whether students meet such categorical eligibility requirements as citizenship or resident alien status, at least half-time status, and maintenance of satisfactory academic progress. For example, for the eligibility requirement of "satisfactory progress", student records should show hours carried and grade point average, but each student's file can not be expected to include the institution's definition of satisfactory progress; it is necessary to get that information from an administrator.

Student and Parent Questionnaires

In order to determine whether the information reported at the time of application for financial assistance was correct and complete, personal interviews must be conducted with the recipient students and their parents, if dependent, and telephone interview may be conducted with parents of independent students. During the interviews, respondents will be asked to provide documentation for certain items in order to verify that the information they provided on their applications is correct. Many of the necessary documents are confidential and cannot be assessed except through the respondent or with his or her written permission. This documentation to verify respondents' answers is crucial since, in many cases, respondent recall on questions regarding finances or household information during an earlier specific period of time is not accurate.

Financial Institution Record Form

Experience with prior ED Quality Control studies has shown that obtaining accurate bank account balances requires direct confirmation from financial institutions.

Tax Assessor Record Form

Experience with prior ED Quality Control studies has shown that local tax assessors provide a more objective and accurate determination of the value of real estate assets than the student or parent would provide.

Lending Institution Record Form

Previous quality control studies have reported error in the Stafford Loan Program at the point of certification, but limited data was gathered on loan amounts. In this study, OPE will report both certification and loan error in the Stafford Loan Program. For this reason, an additional data collection instrument has been developed to confirm the Stafford loan amount directly from the institution furnishing the loan.

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B. ITEM BY ITEM JUSTIFICATION

The items included in the four questionnaires and three verification forms are justified by the seven major project objectives. Exhibit II-3 links each objective to its corresponding research questions, method of analysis, primary data needs, and sources of data. Thus, the exhibit provides an overall picture of the data requirements of each project objective.

Public reporting burden for this collection of information is estimated to average 31 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing thisd burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503.

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PLAN FOR ACHIEVING PROJECT OBJECTIVE 1

PROJECT OBJECTIVE 1:
To determine whether error persists in the Title IV programs

Selected Research Questions:	Analysis:	Primary Data Needs:	Sources of Data:
What are the levels and rates of overall error in each of the Title IV programs?	Compute best award - reported (actual) award (overall, student, institutional, marginal)	Best values of data	Students
What are the levels and rates of student error in each of the Title IV programs?	Extrapolate from sample to population	Reported values of data	Parents
What are the levels and rates of institutional error in each of the Title IV programs?	Compute confidence intervals	Sample design information	Institutions
What are the levels and rates of marginal error for student items in each of the Title IV programs?	Determine liability error		IRS
What are the levels and rates of marginal error for institutional items in each of the Title IV programs?			Tax assessors
What are the levels and rates of overall liability error in each of the Title IV programs?			Financial institutions
What are the levels and rates of student liability error in the Title IV programs?			Stafford Loan lenders
What are the levels and rates of institutional liability error in the Title IV programs?			Financial aid office files
			Other institutional records

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PLAN FOR ACHIEVING PROJECT OBJECTIVE 2

PROJECT OBJECTIVE 2:
To establish whether patterns and trends of error exist that point to problems across the Title IV programs

Selected Research Questions:	Analysis:	Primary Data Needs:	Sources of Data:
Are there particular characteristics of students that indicate highly error-prone nature, across the Title IV programs? If so, what are these characteristics. Are there particular characteristics of institutions that indicate highly error-prone nature, across the Title IV programs? If so, what are these characteristics.	Analysis of relationships between error and student characteristics: • Univariate • Multivariate Analysis of relationships between error and institutional characteristics: • Univariate • Multivariate	Best values of data Reported values of data Demographic and control variables of students and parents Demographic and control variables of institutions	Students Parents Institutions IRS Tax assessors Financial institutions Stafford Loan lenders Financial aid office files Other institutional records

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PLAN FOR ACHIEVING PROJECT OBJECTIVE 3

PROJECT OBJECTIVE 3:
To measure the effects of professional judgement on Title IV aid recipients

Selected Research Questions:	Analysis:	Primary Data Needs:	Sources of Data:
Are institutions meeting all of the regulatory requirements for exercising professional judgement? How frequently are institutions exercising professional judgement? • Application line items • SAI or FC • Cost of attendance • Overriding dependency status What is the magnitude of the changes institutions are making when they exercise professional judgement? • Application line items • SAI or FC • Cost of attendance • Overriding dependency status Where is professional judgement most often used? • What types of students • Which institutions • What items	Categorize and tabulate professional judgement decisions Tabulate effects of professional judgement using award data Compute/simulate awards without professional judgement, and compare to awards with professional judgement Tabulate and summarize differences in awards by types of students and types of institutions	Best values of data Reported values of data Best values of data in absence of professional judgement Demographic and control variables of students and parents Demographic and control variables of institutions	Students Parents Institutions IRS Tax assessors Financial institutions Stafford Loan lenders Financial aid office files Other institutional records

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PLAN FOR ACHIEVING PROJECT OBJECTIVE 4

PROJECT OBJECTIVE 4:
To measure, to the extent possible, the effects of prior ED initiatives

Selected Research Questions:	Analysis:	Primary Data Needs:	Sources of Data:
How have the levels and rates of error changed in each of the Title IV programs since the previous study? What proportion of these changes can be attributed to major ED corrective actions? To what extent does verification remove error (See Project Objective 5)? What is the effectiveness of institutional quality control procedures, coupled with an institutional verification program, vis-a-vis integrated verification?	Simulate best and reported awards with 1988-89 data under 1985-86 program rules For changes in verification procedures, compare error rates from 1985-86 study and 1988-89 study For changes in application procedures and program regulations, compare error from the 1985-86 study, with error calculated on the 1988-89 data using the 1985-86 rules Compare the error rates of the IQC pilot schools with the non-pilot comparison schools Establish baseline error rates for new pilot schools for further analysis after they have implemented corrective actions	Best values of 1985-86 data Reported values of 1985-86 data Best values of 1988-89 data Reported values of 1988-89 data Demographic and control variables of students and parents, 1985-86 Demographic and control variables of students and parents, 1988-89 Demographic and control variables of institutions, 1985-86 Demographic and control variables of institutions, 1988-89	Students Parents Institutions IRS Tax assessors Financial institutions Stafford Loan lenders Financial aid office files Other institutional records ED copies of data tapes and programs from the Stage Two Study

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PLAN FOR ACHIEVING PROJECT OBJECTIVE 5

PROJECT OBJECTIVE 5:
To measure residual error

Selected Research Questions:	Analysis:	Primary Data Needs:	Sources of Data:
What is the error removed through verification (by program)? • Integrated Verification • Institutional verification programs	Compute/simulate error prior to verification	Best values of data	Students
What is the error remaining after verification (by program)? • Integrated verification • Institutional verification programs	Compute/simulate error after verification	Reported values of data	Parents
What verification procedures are most effective at minimizing residual error?	Extrapolate information from sample to population	Documentation provided as a result of verification	Institutions
	Categorize and tabulate institutional policies and procedures concerning verification	Demographic and control variables of students and parents	IRS
	Analyze attributes affecting the effectiveness of verification	Demographic and control variables of institutions	Tax assessors
		Institutional guidelines and policies	Financial institutions
			Stafford Loan lenders
			Financial aid office files
			Pell History File
			Other institutional records

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PLAN FOR ACHIEVING PROJECT OBJECTIVE 6

PROJECT OBJECTIVE 6:
To the extent permitted by the data, identify probable causes and recommend corrective actions to reduce or eliminate error

Selected Research Questions:	Analysis:	Primary Data Needs:	Sources of Data:
To what extent are major item errors (student and institutional) a result of systemic problems or breakdowns? What actions can ED, applicants, institutions, lenders, and processors take to minimize the error in the Title IV programs? How much are these actions likely to reduce the errors, and what are the resulting effects on program costs likely to be? What are general estimates of the costs to implement major corrective actions? What actions are required on ED's part to implement major corrective actions? What is the estimated implementation schedule for major corrective actions, and how will primary forms and applications need to be revised to achieve the desired results?	Identify major contributors to error • Confusion • Lack of information • System design Assess causes of error Identify alternative corrective actions Assess potential effects • Error removed • Distribution of awards • Costs and benefits Recommend comprehensive set of corrective actions	Best values of data Reported values of data Demographic and control variables of students and parents Demographic and control variables of institutions Selected estimates of time, equipment, and support required to implement major corrective actions	Students Parents Institutions IRS Tax assessors Financial institutions Stafford Loan lenders Financial aid office files Other institutional records

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PLAN FOR ACHIEVING PROJECT OBJECTIVE 7

PROJECT OBJECTIVE 7:
To describe the effects of proposed corrective actions on improving quality in the delivery of Federal student aid

Selected Research Questions:	Analysis:	Primary Data Needs:	Sources of Data:
Already discussed in Project Objective 6. In order to recommend corrective actions, we believe it is necessary to assess the effects of the proposed corrective actions.	Assess potential effects of proposed corrective actions • Error removed • Distribution of awards • Costs and benefits Recommend comprehensive set of corrective actions	Best values of data Reported values of data Demographic and control variables of students and parents Demographic and control variables of institutions Selected estimates of time, equipment, and support required to implement major corrective actions	Students Parents Institutions IRS Tax assessors Financial institutions Stafford Loan lenders Financial aid office files Other institutional records

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Exhibit I-3

TOTAL REPORTING BURDEN

	Number		Hours		Total
Institutional Interviews	355	x	1.5	=	533
Students	3,550	x	.75	=	2,663
Parents of Dependent Students	2,308	x	.75	=	1,731
Parents of Independent Students	1,242	x	.17	=	211
Financial Institutions	410	x	.1	=	41
Lenders	2,029	x	.1	=	203
Tax Assessors	1,175	x	.25	=	294
Total	11,069				5,676

[FR Doc. 89-1601 Filed -24-89; 8:45 am]
BILLING CODE 4000-01-M

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DEPARTMENT OF ENERGY

Record of Decision; Superconducting Super Collider

AGENCY: Department of Energy (DOE).

ACTION: Record of decision: Superconducting Super Collider (SSC).

SUMMARY: DOE has decided to proceed with the SSC and that the location of the SSC will be in Ellis County, Texas. DOE will prepare a Supplemental Environmental Impact Statement (EIS) prior to construction of the SSC.

FOR FURTHER INFORMATION CONTACT: Dr. Wilmot Hess, Chairman, SSC Site Task Force, Office of Energy Research, ER-65/GTN, U.S. Department of Energy, Washington, DC 20545.

Decision

DOE has decided to proceed with the SSC and select the site proposed by the state of Texas as the location for the SSC. The Texas site is located in Ellis County, about 25 miles south of Dallas and 35 miles southeast of Fort Worth.

DOE has determined that this site is the location that will best meet its goal to permit the highest level of research productivity and effectiveness of the SSC, at a reasonable cost of construction and operation, with minimal adverse effect on the environment. Prior to construction of the SSC, DOE will prepare a Supplemental EIS to further analyze impacts at the Texas site based on site-specific design, and assess alternative measures to mitigate potentially adverse impacts.

Basis for Decision

This Record of Decision has been prepared pursuant to the Council on Environmental Quality "Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act (NEPA)" (40 CFR Part 1500), and the "DOE NEPA Guidelines" (52 FR 47662, December 15, 1987).

The Texas site was selected as the preferred alternative for location of the SSC in November 1988 and was identified as such in the final EIS *Superconducting Super Collider*, December 1988 (DOE EIS-0138). In addition to the information considered in selecting the preferred alternative, DOE has considered the final EIS and issues raised in comments on the final EIS, and has determined that the Texas proposal remains superior from an overall standpoint.

The Texas site provides the opportunity to construct the collider tunnel in a uniform, well-characterized geologic medium. The chalk and marl in which the tunnel will be constructed are essentially impermeable. The average tunnel depth is relatively shallow, about 150 feet. The site presents minimal construction risk.

Ample regional resources exist at the Texas site to support the SSC. The local communities can provide extensive housing, services, and employment opportunities for workers' families. The site is easily accessible. There is a skilled high-technology and construction labor pool in the area. Coordination between state and local governmental units is effective. A high level of public support for the project is present.

Environmental regulatory requirements can be met. The potential for adverse environmental impacts at the Texas site is small, and there is a substantial potential to mitigate any of the few potentially long- and short-term adverse impacts. The potential disturbance to a small area of wetlands could be feasibly mitigated. About 30 miles of new roads, 25 miles of road upgrades, and 5 miles of new powerlines would be required at the Texas site, but the site provides enough flexibility for locating these facilities that long-term adverse impacts are not expected.

The regional conditions at the Texas location would not pose adverse effects on the construction or operation of the SSC. The climate is favorable for construction schedules, and underground vibrations from nearby activities would not pose a problem. The Texas site could adequately support the SSC needs for electricity and water.

There are no scheduling problems anticipated from land acquisition at the Texas site. An estimated 420 ownerships would be affected, which would result in about 175 relocations.

The life-cycle cost estimate for the Texas site is expected to be approximately $10.8 billion, which was among the lowest at the seven alternative sites. Although there are inherent uncertainties in predicting costs for this project at any site over the 25-year operating period, possibly in the range of 10 percent, the projected life-cycle cost for the Texas site is consistent with the DOE construction estimate for the SSC. As explained in the final EIS, neither the no action alternative nor the programmatic alternatives would accomplish the mission of the SSC. Most technical alternatives were determined to be not feasible; technical alternatives that were feasible were not expected to have environmental consequences which would be significantly different from those associated with the conceptual design for the SSC.

Background

The purpose of the SSC and its associated national laboratory facility will be to investigate the structure of matter at a more fundamental level than is presently possible. This will provide the capability for the U.S. to maintain world leadership in high energy physics.

The SSC will be the largest scientific instrument ever built. The major feature of the facility will be an oval tunnel about 53 miles in circumference. The tunnel will contain approximately 10,000 superconducting magnets which will focus and guide two beams of protons (subatomic particles). The beams will be accelerated in opposite directions to velocities near the speed of light, and then made to collide at energies of up to 40 trillion electron volts. The collisions are expected to create smaller subatomic particles which will be analyzed to determine their character.

Construction of the SSC is anticipated to be completed during the late 1990's. The SSC is expected to remain in operation for 25 to 30 years after construction. After completion of its useful life it will be decommissioned. Additional NEPA review will be completed prior to a decision to either: (1) Expand SSC facilities into future use areas; or (2) decommission the facility.

Research and development for the SSC project has been conducted as a national scientific effort. In 1986, the Central Design Group of Universities Research Association, Inc., prepared a "Conceptual Design Report" which concluded that the SSC was technically feasible and that cost and schedule estimates were acceptable. In January 1987, the President proposed construction of the SSC to Congress. DOE established a Site Task Force (STF) in February 1987 to oversee many of the site selection functions and evaluate proposed sites for the SSC.

In April 1987 DOE issued an Invitation for Site Proposals (ISP) for the SSC. The ISP included the procedures for selection, qualification criteria, technical evaluation criteria, and cost considerations. Using an evalution process which included recommendations from the National Academy of Sciences and the National Academy of Engineering, seven best qualified site proposals were announced by DOE in January 1988. These seven best-qualified site proposals, analyzed in the EIS as the seven reasonable siting alternatives, are located in Arizona, Colorado, Illinois, Michigan, North Carolina, Tennessee, and Texas.

DOE issued an Advance Notice of Intent to prepare the SSC EIS (52 FR

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16304, May 4, 1987), followed by a Notice of Intent (53 FR 1821, January 22, 1988). Scoping meetings were held near each of the seven sites. DOE issued the draft EIS in August 1988. The Environmental Protection Agency (EPA) Notice of Availability (53 FR 34148, September 2, 1988) announced a 45-day public review and comment period on the draft EIS. During that time, public hearings were held near each of the seven sites. DOE received oral and written comments from approximately 5,700 commenters.

On November 10, 1988, the Secretary of Energy selected the Texas proposal as the preferred alternative for the location of the SSC. Selection of the preferred alternative considered the findings presented in "SSC Site Evaluations, A Report by the SSC Site Task Force," November 1988 (DOE/ER-0392), and the analysis of the sites in the draft EIS. The Secretary of Energy also considered input from meetings with the seven state proposers and the DOE Energy Systems Acquisition Advisory Board, in addition to issues raised in comments submitted by the public and government agencies on the draft EIS.

DOE issued the final EIS in December 1988. The EPA Notice of Availability for the final EIS was published on December 16, 1988 (53 FR 50568).

Alternatives Considered

Four different types of alternatives were considered by DOE for this project and evaluated in the EIS. These were: (1) Technical alternatives; (2) programmatic alternatives; (3) the no action alternative; and (4) site alternatives.

Technical Alternatives

DOE considered using different beam composition, energy, and luminosity. DOE also considered using conventional magnets, warm superconducting magnets, and alternative superconducting magnets. DOE is still considering the potential for feasible alternatives to the design of detectors and experimental areas, and injector configurations. Feasible alternatives developed will be identified in the Supplemental EIS.

Programmatic Alternatives

DOE considered using other accelerators, international collaboration for the SSC, and delay of constructing the project.

No Action Alternative

DOE considered the consequences of a decision not to site, construct, and operate the SSC.

Site Alternatives

The seven best qualified sites identified by DOE in January 1988 were analyzed as the only reasonable siting alternatives. The alternative sites are located in Arizona, Colorado, Illinois, Michigan, North Carolina, Tennessee, and Texas.

Environmentally Preferable Alternatives

Two of the alternatives assessed in the EIS are believed to be environmentally preferable: (1) The no action alternative; and (2) the Texas site alternative.

The no action alternative would result in the least amount of surface and subsurface environmental effects of any alternative considered in the EIS. However, the no action alternative is rejected by DOE because it would jeopardize the future of the U.S. high energy physics program. The operation of the SSC is a vital component of future U.S. basic research efforts in high energy physics. The lack of this instrument would erode U.S. world leadership in this field.

Of the siting alternatives, the Texas site alternative is felt to be environmentally preferable. The final EIS indicates that the adverse ecological impacts would be less at the Texas site compared to the other six site alternatives. The selected Texas site has already been highly modified through the extensive development of land for pasture and farming, and has a high potential for mitigation of adverse impacts.

Mitigation

DOE has considered all practicable means to avoid or minimize environmental harm from construction and operation of the SSC at the Texas site. As shown in the final EIS, construction and operation of the SSC at this site would result in the least amount of significant adverse environmental impacts which could not be mitigated. Residual adverse impacts include: Use of a small fraction of the excess surface water capacity; disturbance of about 3 acres of wetlands; relocation of about 175 parties; and impacts from construction of about 30 miles of new roads, 25 miles of road upgrades, and 5 miles of new powerlines. It may be possible to further mitigate these residual impacts through modifications to the final site design. Design mitigation measures will be identified and analyzed in the Supplemental EIS. Beneficial impacts, besides the knowledge to be gained from operation of the SSC, include increased job opportunities during both construction and operation of the SSC, and secondary socioeconomic benefits to local businesses and the community.

DOE is committed to implement mitigation measures required by DOE policy, law, or regulation, as identified in the final EIS. In addition, DOE will determine through the Supplemental EIS the potential for three additional types of mitigation: (1) Design-controlled elements (those included in the conceptual design for the SSC and/or included in the Texas proposal); (2) flexibility in placement of the collider ring and other surface facilities; and (3) the possibility for development of additional mitigation measures to further reduce residual impacts identified in the SSC EIS. The Supplemental EIS will identify measures to mitigate site-specific adverse impacts, such as for fire ant control.

Floodplain/Wetlands Statement of Findings

Pursuant to Executive Order 11988, "Floodplain Management," Executive Order 11990, "Protection of Wetlands," and 10 CFR 1022, "Compliance With Floodplain/Wetlands Environmental Review Requirements," DOE has incorporated a floodplain/wetlands assessment within the final EIS (Volume I, Chapter 5; and Volume IV, Appendixes 7 and 11). The final EIS contains: (1) A complete description of the proposed action at the Texas site, including maps of floodplain and wetland areas; (2) assessment of the positive and negative environmental effects of the proposed action upon floodplain and wetland areas; and (3) a discussion of possible alternatives which would lessen or avoid adverse impacts to floodplains and wetlands.

Floodplains

Ellis County, Texas is included in the national floodplain mapping program of the Federal Emergency Management Agency. Using the SSC conceptual design, certain of the project facilities (about 10 acres total) and some projected future use areas (about 70 acres total) would fall within the 100-year floodplain boundary of South Prong Creek, Chambers Creek, Baker Branch, Mill Branch, and an unnamed tributary to Chambers Creek. Access roads would cross the stream channels of Red Oak Creek and Big Onion Creek.

DOE has considered alternative means to mitigate adverse impacts to floodplains. In addition to not constructing the SSC at the Texas site, the final EIS considers the flexibility of relocating either the collider tunnel or related surface facilities to avoid encroachment upon floodplains; construction of berms, levees or other structures; channel diversion; and construction of bridges or culverts for access roads.

Construction of the SSC at the Texas site would not conflict with state or local floodplain protection standards.

Wetlands

DOE has determined that it is probable that construction of the SSC at the Texas site will encroach upon a small amount of wetland areas. The wetlands affected include both natural areas and constructed stock ponds. About 3 acres of wetlands would be disturbed if the facility is constructed according to the conceptual design. These areas have been previously degraded from a natural condition by grazing and soil erosion. In addition, up to about 37 acres of wetlands could be affected by construction at identified future expansion areas.

Operation of the SSC should not impact existing wetlands, but could add additional wetland areas due to construction of a 400-acre evaporation pond. DOE has considered alternative means to mitigate adverse impacts to wetlands. In addition to the option not to construct the SSC at the Texas site, the final EIS addresses the potential for relocating surface facilities to avoid wetland areas; using bridges for access roads; constructing erosion control measures; using responsible construction practices; and replacing lost wetlands.

Supplemental Assessment

The Texas site offers great potential for flexibility in adjusting both the overall layout of the collider ring and location of surface facilities along the ring. Site-specific impacts to floodplain and wetland areas potentially affected by the SSC will be assessed in the Supplemental EIS after initial site layout and facility design are determined. DOE will modify the final design of the facility to avoid floodplain and wetland areas to the extent practicable.

Construction of ancillary facilities, such as access roads and utility lines, and disposal of tunnel spoils, could disturb small areas of floodplains or wetlands. Because the exact location of these activities has not yet been determined, site-specific impacts and mitigation required will be assessed in the Supplemental EIS. At the Texas site about 550 acres will be disturbed by constructing ancillary facilities. DOE anticipates that access roads and utility lines can be located to avoid wetlands and to minimize encroachment upon floodplains. Spoils disposal will be in existing quarries and is not expected to affect either floodplains or wetlands.

The final EIS indicated the potential for adverse impacts to floodplains or wetlands if construction occurs in the future development areas. DOE will prepare additional NEPA documents if specific uses are proposed for these areas. Site-specific impacts, and potential mitigation for adverse effects, would be determined at that time.

Conclusion

Based on careful consideration of the environmental impacts associated with the proposed action and alternatives as analyzed in the SSC EIS, comments received on the EIS, and the anticipated benefits and costs associated with the proposed action and its various alternatives, the DOE has decided to proceed with the SSC at the site proposed by the State of Texas.

Issued at Washington, DC on January 18, 1989.

John S. Herrington,

Secretary of Energy.

[FR Doc. 89-1689 Filed 1-24-89; 8:45 am]

BILLING CODE 6450-01-M

Office of Fossil Energy

Coordinating Subcommittee on Petroleum Storage & Transportation, Committee on Petroleum Storage & Transportation, National Petroleum Council; Open Meeting

Notice is hereby given of the following meeting:

Name: Coordinating Subcommittee on Petroleum Storage and Transportation of the Committee on Petroleum Storage & Transportation of the National Petroleum Council

Date and Time: Tuesday, February 21, 1989, 1:00 p.m.; Wednesday, February 22, 1989, 8:00 a.m.

Place: National Petroleum Council, Conference Room, 1625 K Street, NW., Suite 600, Washington, DC.

Contact: Margie D. Biggerstaff, U.S. Department of Energy, Office of Fossil Energy (FE-1), Washington, DC 20585. Telephone 202/586-4695

Purpose of the Parent Council: To provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and gas or the oil and gas industries.

Purpose of the Meeting: Review draft volumes.

Tentative Agenda:

—Opening remarks by the Chairman and Government Cochairman.

—Review the drafts of Volume I, *Summary* and Volume II, *System Dynamics.*

—Discuss any other matters pertinent to the overall assignment from the Secretary of Energy.

Public Participation: The meeting is open to the public. The Chairman of the Subcommittee on Petroleum Storage & Transportation is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Subcommittee will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Ms. Margie D. Biggerstaff at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room 1E-190, DOE Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC on: January 19, 1989.

J. Allen Wampler,

Assistant Secretary Fossil Energy.

[FR Doc. 89-1688 Filed 1-24-89; 8:45 am]

BILLING CODE 6450-01-M

Office of Nuclear Energy

Certification of the Radiological Condition of Twenty-Six Private Properties Located in Maywood, Rochelle Park, and Lodi, NJ

AGENCY: Office of Remedial Action and Waste Technology, DOE.

ACTION: Notice of certification.

SUMMARY: The Department of Energy has completed radiological surveys and taken remedial action to decontaminate 10 properties in Rochelle Park, New Jersey; 8 properties in Lodi, New Jersey; and 8 properties in Maywood, New Jersey. The properties were found to contain quantities of radioactive material from thorium processing activities conducted at the former Maywood Chemical Works.

FOR FURTHER INFORMATION CONTACT: J.J. Fiore, Director, Division of Facility and Site Decommissioning Projects, Office of Remedial Action and Waste Technology, U.S. Department of Energy, Washington, DC 20545, (301) 353-5272.

SUPPLEMENTARY INFORMATION: The Department of Energy (DOE), Office of

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Nuclear Energy, Office of Remedial Action and Waste Technology, Division of Facility and Site Decommissioning Projects, has implemented a remedial action project in the Maywood, New Jersey, area as part of a specially authorized research and development project (The Energy and Water Appropriations Act for FY 1984). The ultimate objective of the program is to ensure that any properties contaminated as a result of activities at the former Maywood Chemical Works can be certified to be within current radiological guidelines and applicable standards established to project the general public.

The Maywood Chemical Works was founded in 1886. In 1916, the company began processing thorium from monazite sand for use in manfacturing gas mantles for various lighting devices. The company continued this work until 1956. Process wastes from manufacturing operations were pumped to an area west of the plant (now divided by Route 17). Subsequently, some of the contaminated wastes migrated onto adjacent properties on Grove Avenue and Parkway in Rochelle Park.

Over a period of time, some of the residues from the processing operations were moved from the company's property and used as landfill in nearby low-lying areas. The contamination at the Davison and Latham properties in Maywood resulted from the use of fill taken from the Maywood Chemical Works.

Unlike the Davison and Latham properties in Maywood, it is not known for certain how the properties in Lodi were contaminated. According to an area resident, fill from an unknown source was brought to Lodi and spread over large portions of the previously low-lying and swampy area. For several reasons, however, a more plausible explanation is that the contamination migrated along a drainage ditch originating on the Maywood Chemical Works property. It can be seen from old photographs and tax maps of the area that the course of a previously existing stream known as Lodi Brook, which originated at the former Maywood Chemical Works, generally coincides with the path of contamination in Lodi. The brook was subsequently replaced by a storm drain system as the area was developed. Secondly, samples taken from Lodi properties indicate elevated concentrations of a series of elements known as rare earths. Rare earth elements are typically found in monazite sands, which also include thorium. This type of sand was feedstock at the Maywood Chemical Works, and elevated levels are known to exists in the byproduct of the extraction process. Third, the ratio of thorium to other radionuclides found in Lodi is comparable to the ratio of those found in Maywood and Rochelle Park. And finally, long-time residents of Lodi recall chemical odors in and around the brook in Lodi, and have seen steam rising off the water. These observations suggest discharges of contaminants occurring upstream.

In 1954, the Atomic Energy Commission (AEC) issued a license to the Maywood Chemical Works to possess, process, manufacture, and distribute radioactive materials. This license allowed manufacturing activites to continue under the Atomic Energy Act of 1954.

The Stepan Chemical Company (now called the Stepan Company (SC)) purchased Maywood Chemical Works in 1959. The Stepan Company itself has never been involved in the manufacture or processing of any radioactive materials.

In 1961, the SC was issued an AEC radioactive materials storage license. Based on AEC inspections of and information related to the property on the western side of Route 17, the SC agreed to take remedial action in that area and began in 1963 to clean up piles of thorium waste. As result, residues and tailings on the property west of Route 17 (referred to as the Ballod property) were partially stabilized. From 1966 to 1968, the Stepan Company moved contaminated material from west of Route 17 to various places on the site.

At the request of the SC, a radiological survey of the company's property east of Route 17 was made by the AEC in 1968. Based on the findings of that survey, clearance was granted for unrestricted release of the property. At the time of the survey, however, the AEC was not aware of waste material still present west of Route 17. In late 1980, a resident's report that the area west of Route 17 was contaminated initiated a series of radiological characterizations that identified contaminated areas in Maywood, Lodi, and Rochelle Park, New Jersey.

The enactment of the 1984 Energy and Water Appropriations Act authorized DOE to conduct a decontamination research and development project at four sites throughout the nation, including the site of the former Maywood Chemical Works and its vicinity properties in the Boroughs of Maywood and Lodi and Township of Rochelle Park, New Jersey. Remedial action at these properties is being performed under the direction of the Formerly Utilized Sites Remedial Action Program (FUSRAP), a DOE effort to identify, decontaminate, or otherwise control sites where low-level radioactive contamination (exceeding current guidelines) remains from either the early years of the nation's atomic energy program or commercial operations causing conditions that Congress has mandated DOE to remedy.

On the basis of the 1984 Congressional authorization, DOE developed a remedial action plan to remove the contamination from 26 vicinity properties in Maywood, Lodi, and Rochelle Park, New Jersey. The first priority for the remedial action was to remove contaminated materials from residential properties, and then from commercial properties. These materials are stored at the Maywood Interim Storage Site. These 26 properties represent the first group of properties for which removal actions were taken under the Maywood project.

DOE coordinated its activities with the New Jersey Department of Environmental Protection, the Borough of Maywood, the Borough of Lodi, and the Township of Rochelle Park.

From May 1984 to November 1985, the 26 properties were decontaminated. Post-remedial action surveys have demonstrated and DOE has certified that radiological conditions on the affected properties are consistent with applicable criteria and that the use of the 26 properties presents no radiological hazard to the general public or to site occupants. These findings are supported by the DOE Certification Docket for the Remedial Action Performed at Properties in Maywood, Rochelle Park, and Lodi, New Jersey, in 1984 and 1985. Accordingly, these properties are released from the Formerly Utilized Sites Remedial Action Program.

The certification docket will be available for review between 9:00 a.m. and 4:00 p.m., Monday through Friday (except Federal holidays), in the Department of Energy Public Reading Room located in Room 1E-190 of the Forrestal Building, 1000 Independence Avenue SW., Washington, DC. The certification docket will also be available at the Maywood Public Library, 459 Maywood Avenue, Maywood, New Jersey 07607.

The Department of Energy, through the Oak Ridge Operations Office, Technical Services Division, has issued the following statement:

Statement of Certification: Twenty-Six Properties Associated with the Former Maywood Chemical Works

The U.S. Department of Energy, Oak Ridge Operations Office, Technical Services Division, has reviewed the radiological data obtained following remedial action at the 26 subject properties. Based on this review, DOE has certified that the properties listed below are in compliance with all applicable decontamination criteria and standards. This certification of compliance provides assurance that use of the properties will result in no radiological exposure above DOE criteria and standards to members of the general public or to site occupants. Accordingly, the following properties are released from the Formerly Utilized Sites Remedial Action Program:

Parcel 1 located on 454 Davison Street, Borough of Maywood, identified as Block 124A, Lots 22, 23.
Parcel 2 located on 459 Davison Street, Borough of Maywood, identified as Block 123, Lots 18, 19, 20A.
Parcel 3 located on 460 Davison Street, Borough of Maywood, identified as Block 124, Lots 24, 25.
Parcel 4 located on 464 Davison Street, Borough of Maywood, identified as Block 124, Lots 26, 27.
Parcel 5 located on 468 Davison Street, Borough of Maywood, identified as Block 124, Lots 28, 29.
Parcel 6 located on 459 Latham Street, Borough of Maywood, identified as Block 124, Lots 18, 19.
Parcel 7 located on 461 Latham Street, Borough of Maywood, identified as Block 124, Lots 16 17.
Parcel 8 located on 467 Latham Street, Borough of Maywood, identified as Block 124, Lots 14, 15.
Parcel 9 located on Ballod Associates property (up to the toe of the Route 17 embankment), Township of Rochelle Park, identified as Block 16, Lot 1, and Block 19A, Lot 1.
Parcel 10 located on 10 Grove Avenue, Township of Rochelle Park, identified as Block 17, Lots 42, 43.
Parcel 11 located on 22 Grove Avenue, Township of Rochelle Park, identified as Block 17, Lots 48, 49.
Parcel 12 located on 26 Grove Avenue, Township of Rochelle Park, identified as Block 17, Lots 50, 51.
Parcel 13 located on 30 Grove Avenue, Township of Rochelle Park, identified as Block 17, Lots 52, 53.
Parcel 14 located on 34 Grove Avenue, Township of Rochelle Park, identified as Block 17, Lots 54, 55.
Parcel 15 located on 38 Grove Avenue, Township of Rochelle Park, identified as Block 17, Lots 56, 57.
Parcel 16 located on 42 Grove Avenue, Township of Rochelle Park, identified as Block 17, Lots 58, 59.
Parcel 17 located on 86 Park Way, Township of Rochelle Park, identified as Block 17, Lots 36, 37, 38, 39B.
Parcel 18 located on 90 Park Way, Township of Rochelle Park, identified as Block 17, Lots 39A, 40, 41.
Parcel 19 located on 58 Trudy Drive, Borough of Lodi, identified as Block 176G, Lot 15.
Parcel 20 located on 59 Trudy Drive, Borough of Lodi, identified as Block 176H, Lot 5.
Parcel 21 located on 61 Trudy Drive, Borough of Lodi, identified as Block 176I, Lot 6.
Parcel 22 located on 64 Trudy Drive, Borough of Lodi, identified as Block 176L, Lot 3.
Parcel 23 located on 3 Hancock Street, Borough of Lodi, identified as Block 176H, Lot 4.
Parcel 24 located on 121 Avenue F, Borough of Lodi, identified as Block 223A, Lots 60, 61.
Parcel 25 located on 123 Avenue F, Borough of Lodi, identified as Block 223A, Lots 60, 63.
Parcel 26 located on 59 Avenue C, Borough of Lodi, identified as Block 212, Lots 11, 12, 13.

Dated: December 21, 1988.

J.E. Baublitz,

Acting Director, Office of Remedial Action and Waste Technology, Office of Nuclear Energy, U.S. Department of Energy.

[FR Doc. 89-1690 Filed 1-24-89; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. CP89-586-000, et al.]

Trunkline Gas Company, et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Trunkline Gas Company

[Docket No. CP89-586-000]

January 13, 1989.

Take notice that on January 10, 1989, Trunkline Gas Company (Trunkline), P.O. Box 1642 Houston, Texas 77251-1642 filed in Docket No. CP89-586-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under its blanket certificate issued in Docket No. CP86-586-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Trunkline proposes to transport natural gas for Unicorp Energy, Inc. (Unicorp), a marketer, pursuant to a transportation agreement dated November 1, 1988. Trunkline explains that service commenced December 9, 1988, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89-1575. Trunkline further explains that the peak day quantity would be 100,000 dekatherms, the average daily quantity would be 40,000 dekatherms, and that the annual quantity would be 14,600,000 dekatherms. Trunkline explains that it would receive natural gas for Unicorp's account at points of receipt in Illinois, Louisiana, Texas and offshore Louisiana. Trunkline states that it would transport and redeliver the natural gas to Consumers Power Company in Elkhart, Indiana.

Comment date: February 27, 1989, in accordance with Standard Paragraph G at the end of this notice.

2. United Gas Pipe Line Company

[Docket No. CP89-577-000]

January 13, 1989.

Take notice that on January 10, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP89-577-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to provide transportation service on behalf of LaSER Marketing Company (LaSER), a marketer of natural gas, under United's blanket certificate issued in Docket No. CP88-6-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

United requests authorization to transport, on an interruptible basis, up to a maximum of 103,000 MMBtu of natural gas per day for LaSER from receipt points located in Louisiana, Mississippi and Texas to delivery points located in Alabana, Florida, Louisiana, Mississippi and Texas. United anticipates transporting on an average day 103,000 MMBtu and an annual volume of 37,595,000.

United states that the transportation of natural gas for LaSER commenced October 25, 1988, as reported in Docket No. ST89-1407-000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations and the blanket certificate issued to United in Docket No. CP88-6-000.

Comment date: February 27, 1989, in accordance with Standard Paragraph G at the end of this notice.

3. Tennessee Gas Pipeline Company

[Docket No. CP89-585-000]

January 13, 1989.

Take notice that on January 10, 1989, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP89-585-000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas for Amoco Production Company (Amoco) under its blanket certificate issued in Docket No. CP87-115-000

pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Tennessee states that pursuant to a transportation agreement dated October 25, 1988, as amended, it would transport natural gas for Amoco, a producer, from points of receipt located Offshore Louisiana and in the states of Arkansas, Louisiana, New York and Texas to various delivery points located in multiple states. Tennessee further states that the maximum daily quantity of natural gas that would be transported for Amoco would be 300,000 dekatherms.

Tennessee indicates that it commenced the transportation of natural gas for Amoco on November 1, 1988, as reported in Docket No. ST-1076-000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations (18 CFR 284.223(a)).

Comment date: February 27, 1989, in accordance with Standard Paragraph G at the end of this notice.

4. Texas Gas Transmission Corporation

[Docket No. CP89-578-000]

January 13, 1989.

Take notice that on January 10, 1989, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP89-578-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to provide an interruptible transportation service for Energy Buyers Service Corporation (Energy Buyers) under the blanket certificate issued in Docket No. CP86-586-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Texas Gas requests authorization to transport on a peak day up to 10,000 MMBtu of natural gas for Energy Buyers, with an estimated average daily quantity of 1,000 MMBtu. On an annual basis, Energy Buyers estimates a volume of up to 2,000,000 MMBtu. The ultimate consumer of the gas would be Energy Buyers as Lake Side Hospital, *et. al.*

It is stated that transportation service for Energy Buyers commenced November 23, 1988, under the 120-day period automatic provisions of § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89-1365.

Comment date: February 27, 1989, in accordance with Standard Paragraph G at the end of this notice.

5. Carnegie Natural Gas Company

[Docket No. CP87-473-004]

January 13, 1989.

Take notice that on January 11, 1989,[1] Carnegie Natural Gas Company (Applicant), 800 Regis Avenue, Pittsburgh, Pennsylvania 15236, filed in Docket No. CP87-473-004, a petition to amend the certificate of public convenience and necessity issued in Docket No. CP87-473-000, on January 14, 1988 so as to authorize Applicant to substitute two alternative delivery points for one previously authorized delivery point, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Applicant proposes to amend the certificate issued to Applicant by Commission order of January 14, 1988, in Docket No. CP87-473-000, to substitute two alternative delivery points, station 2637 in Pickaway County, Ohio (Pickaway delivery point), and measuring station 1275 at Waynesburg in Greene County, Pennsylvania (Waynesburg delivery point) for measuring station 007, the Hooker delivery point, as points of delivery from Applicant to Columbia Gas of Ohio, Inc. (Columbia Gas of Ohio).

It is indicated that the Commission, by order dated January 14, 1988, authorized Applicant to sell natural gas for resale on a firm basis to Columbia Gas of Pennsylvania, Inc. and Columbia Gas of Ohio. It is further indicated that the Commission conditioned Applicant's authorization for service to Columbia Gas of Ohio upon the receipt by Texas Eastern Transmission Corporation (Texas Eastern) of appropriate authorization to deliver gas to Applicant at the Hooker delivery point.

Applicant states that, since the issuance of the certificate, construction by Columbia Gas of Ohio of a new line to serve its Columbus, Ohio market which interconnects with the Texas Eastern system requires location of the delivery point for Columbia Gas of Ohio at a different delivery point. Applicant further states that, as part of the general restructuring of Texas Eastern's sales and transportation services, Texas Eastern has agreed to designate deliveries to Columbia Gas of Ohio, for Applicant's new delivery point for sales service to Applicant at measuring station 2637 at Pickaway, Ohio. It is submitted that Applicants sales to Columbia Gas of Ohio, in turn, would be made from this delivery point. Applicant submits that this station is in the process of design and construction by Columbia Gas of Ohio and would be operational in the near future.

Applicant states that, prior to Applicant's being able to make the sale to Columbia Gas of Ohio at the Pickaway delivery point, the new station must be constructed by Columbia Gas of Ohio, and the Pickaway delivery point must be added to Applicant's service agreement with Texas Eastern. It is indicated that certificate authority must be granted to both Carnegie and Texas Eastern to utilize that point as, respectively, a sales point for the sale from Applicant to Columbia Gas of Ohio, and a delivery point for the delivery from Texas Eastern to Applicant. Applicant submits that it is imperative that alternative delivery points be specified in order to protect itself from any further delays in commencing sales. Applicant requests that the Commission amend its order to allow deliveries to be made at the alternative, existing delivery point that Applicant has Texas Eastern at Waynesburg. Applicant states that the addition of the Waynesburg delivery point would not require any additional filings by Texas Eastern. Applicant further states that the addition of this delivery point would provide Applicant with the opportunity to commence sales to Columbia Gas of Ohio on an interim basis until authorization for Texas Eastern to add the Pickaway delivery point to Applicant's service agreement is granted.

Applicant requests that the time by which sales service to Columbia Gas of Ohio must commence be extended to a date no earlier than three months from the date on which the Commission issues an order authorizing the Amendment. Applicant indicated that the Commission order required sales service related to the construction of facilities to commence within one year from the date of the Commission's order. It is indicated that, although the construction authorized in the order related solely to the proposed service to Columbia Gas of Pennsylvania, Inc., Applicant wishes to ensure that its certificate to serve Columbia Gas of Ohio would not expire before sales can commence.

Comment date: February 3, 1989, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

[1] The petition to amend was tendered for filing on December 27, 1988; however, the fee required by § 381.207 of the Commission's Rules (18 CFR 381.207) was not paid until January 11, 1989. Section 381.103 of the Commission's Rules provides that the filing date is the date on which the fee is paid.

6. Panhandle Eastern Pipe Line Company

[Docket No. CP89-591-000]

January 17, 1989.

Take notice that on January 10, 1989, Panhandle Eastern Pipe Line Company (Panhandle) P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-591-000 a request pursuant to § 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 284.223) for authority to provide interruptible transportation service for Mountain Iron and Supply Company (Mountain Iron), a marketer of natural gas, under Panhandle's blanket transportation certificate authority issued November 20, 1987, in Docket No. CP86-585-000, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Panhandle states it will receive the gas at various existing points on its system in the States of Texas, Oklahoma, Kansas, Colorado, Wyoming and Illinois and deliver the gas for the account of Mountain Iron to Central Illinois Light Company in Tazewell, Edgar, Moultrie, Douglas, Vermillion, Logan, Champaign, Sangamon, Peoria and Knox Counties, Illinois.

Panhandle proposes to transport up to 300 dt of gas per peak day and approximately 100 dt and 36,500 dt of gas per average day and annually, respectively. Panhandle states that the transportation service commenced under the 120-day automatic authorization of § 284.223(a) of the Commission's Regulations on December 1, 1988, pursuant to a transportation agreement dated October 14, 1988. Panhandle notified the Commission of the commencement of the transportation service in Docket No. ST89-1573-000.

Comment date: March 3, 1989, in accordance with Standard Paragraph G at the end of this notice.

7. Northern Natural Gas Company, Division of Enron Corp.

[Docket No. CP89-580-000]

January 17, 1989.

Take notice that on January 10, 1989, Northern Natural Gas Company, Division of Enron Corp., (Northern), 1400 Smith Steet, P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP89-580-000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Oxy USA Inc. (Oxy), a producer of natural gas, under its blanket certificate issued in Docket No. CP86-435-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open for public inspection.

Northern states that it would transport natural gas for Oxy from points of receipt located offshore Louisiana, Mississippi and Texas and in the state of Texas. Northern further states that the points of delivery would be located offshore Louisiana and Texas and in the states of Louisiana and Texas. Northern indicates that the maximum daily volume of natural gas that would be transported for Oxy would be 50,000 MMBtu.

Northern states that it commenced the transportation of natural gas for Oxy on November 21, 1988, as reported in Docket No. ST89-1618-000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations (18 CFR 284.223(a).

Comment date: March 3, 1989, in accordance with Standard Paragraph G at the end of this notice.

8. Williams Natural Gas Company

[Docket No. CP89-553-000]

January 17, 1989.

Take notice that on January 6, 1989, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP89-553-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to provide for The Quaker Oats Company (Quaker) under WNG's blanket certificate issued in Docket No. CP86-631-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open for public inspection.

WNG requests authorization to transport, on an interruptible basis, up to a maximum of 2,000 MMBtu of natural gas per day for Quaker from various receipt points in Colorado, Kansas, Oklahoma, Texas and Wyoming to various delivery points on WNG's pipeline system located in Missouri. WNG anticipates transporting 1,000 MMBtu on an average day and 730,000 MMBtu on an annual basis.

WNG states that the transportation of natural gas for Quaker commenced on September 25, 1988, as reported in Docket No. ST89-1571-000, for a 120-day period pursuant to § 284.223(a)(1) of the Commission's Regulations and the blanket certificate issued to WNG in Docket No. CP86-631-000. WNG proposes to continue this service in accordance with §§ 284.221 and 284.223 of the Commission's Regulations.

Comment date: March 3, 1989, in accordance with Standard Paragraph G at the end of this notice.

9. Trunkline Gas Company

[Docket No. CP89-547-000]

January 17, 1989.

Take notice that on January 6, 1989, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-547-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas for Entrade Corporation (Entrade), a marketer of natural gas, under Trunkline's blanket certificate issued in Docket No. CP86-586-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open for public inspection.

Specifically, Trunkline requests authority to transport up to 7,000 Dt. per day, on an interruptible basis, on behalf of Entrade, pursuant to a Transportation Agreement dated September 20, 1988 (Agreement). Trunkline states that the Agreement provides for Trunkline to receive gas on behalf of Entrade at various existing points of receipt on its system and deliver subject gas, less fuel and unaccounted for line loss, to Consumers Power Company in Elkhart County, Indiana. Peak day and average day transportation quantities are both estimated to be 7,000 Dt. and based thereon, the annual transportation quantity is expected to be 2,555,000 Dt. Trunkline advises that the service commenced on October 4, 1988, as reported in Docket No. ST89-0533-000, pursuant to § 284.223(a) of the Commission's Regulations.

Comment date: March 3, 1989, in accordance with Standard Paragraph G at the end of this notice.

10. Texas Gas Transmission Corporation

[Docket No. CP89-581-000]

January 17, 1989.

Take notice that on January 10, 1989, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP89-581-000 a request pursuant to §§ 57.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to provide an interruptible transportation service for Southern Gas Company, Inc. (Southern) under the blanket certificate issued in Docket No. CP88-686-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the

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request on file with the Commission and open to public inspection.

Texas Gas requests authorization to transport on a peak day up to 200,000 MMBtu of natural gas for Southern, with an estimated average daily quantity of 20,000 MMBtu. The ultimate consumer of the gas has been identified by Southern as various end-users behind Western Kentucky Gas Company.

Transportation service for Southern commenced November 24, 1988, under the 120-day automatic provisions of § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89-1379.

Comment date: March 3, 1989, in accordance with Standard Paragraph G at the end of this notice.

11. United Gas Pipe Line Company

[Docket No. CP89-536-000]

January 17, 1989.

Take notice that on January 5, 1989, United Gas Pipe Line Company (United), Post Office Box 1478, Houston, Texas 77251, filed in Docket No. CP89-536-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas for Graham Marketing Company (Shipper) under the blanket certificate issued in Docket No. CP88-6-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

United states that it proposes to transport for Shipper 123,600 dt on a peak day 123,600 dt on an average day and 45,114,000 dt on an annual basis. United also states that pursuant to a Transportation Agreement dated November 9, 1988 between United and Shipper (Transportation Agreement) proposes to transport natural gas for Shipper from points of receipt located in various counties in Louisiana. The points of delivery and ultimate points of delivery are located in multiple state.

United further states that it commenced their service November 9, 1988, as reported in Docket No. ST89-1350-000.

Comment date: March 3, 1989, in accordance with Standard Paragraph G at the end of this notice.

12. Tennessee Gas Pipeline Company

[Docket No. CP89-541-000]

January 17, 1989.

Take notice that on January 5, 1989, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP89-541-000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas for Clinton Gas Marketing, Inc. (Clinton) under its blanket certificate issued in Docket No. CP87-115-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Tennessee states that pursuant to a transportation agreement dated October 25, 1988, it would transport natural gas for Clinton, a marketer, from points of receipt located offshore Louisiana and in the states of Texas, Louisiana and New York. Tennessee further states that the point of delivery would be located in the state of Louisiana. Tennessee indicates that the ultimate delivery point of the natural gas would be the state of Ohio. Tennessee states that the maximum daily quantity of natural gas that would be transported for Clinton would be 16,600 dekatherms.

Tennessee indicates that it commended the transportation of natural gas for Clinton on December 1, 1988, as reported in Docket No. ST89-1427-000, for a 120-day period pursuant to § 284.223(a) of the Regulations (18 CFR 284.223(a)).

Comment date: March 3, 1989, in accordance with Standard Paragraph G at the end of this notice.

13. Northwest Pipeline Corporation

[Docket No. CP89-567-000]

January 17, 1989.

Take notice that on January 9, 1989, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP89-567-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas for Weyerhauser Company (Weyerhauser), an end-user of natural gas, under Northwest's blanket certificate issued in Docket No. CP85-578-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northwest proposes to transport up to 39,370,000 MMBtu equivalent of natural gas on a peak day, 300 MMBtu equivalent on an average day and 120,000 MMBtu equivalent on an annual basis for Weyerhauser. It is stated that Northwest would receive the gas for Weyerhauser's account at various existing points on Northwest's system and would deliver equivalent volumes at existing interconnections between Northwest and Cascade Natural Gas Corporation, Washington Natural Gas Company and Northwest Natural Gas Company in Washington and Oregon. It is asserted that the service would be effected using existing facilities and that no construction of facilities would be required. It is explained that the transportation service commenced November 24, 1988, under the self-implementing authorization of § 284.223 of the Commission's Regulations as reported in Docket No. ST89-1317.

Comment date: March 3, 1989, in accordance with Standard Paragraph G at the end of this notice.

14. Northern Natural Gas Company

[Docket No. CP89-559-000]

January 17, 1989.

Take notice that on January 9, 1989, Northern Natural Gas Company (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP89-559-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on an interruptible basis on behalf of Union Texas Petroleum Corporation (Union Texas Petroleum), a producer of natural gas, under its blanket certificate issued in Docket No. CP86-435-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Northern states that it proposes to transport natural gas on behalf of Union Texas Petroleum between numerous points of receipt and delivery located in offshore Louisiana, offshore Texas, Louisiana, Texas and offshore Mississippi.

Northern further states that the maximum daily, average and annual quantities that it would transport on behalf of Union Texas Petroleum would be 30,000 MMBtu equivalent of natural gas, 22,500 MMBtu equivalent of natural gas and 10,950,000 MMBtu equivalent of natural gas, respectively.

Northern indicates that in Docket No. ST89-1416, filed with the Commission on December 22, 1988, it reported that transportation service on behalf of Union Texas Petroleum had begun under the 120-day automatic authorization provisions of § 284.223(a).

Comment date: March 3, 1989, in accordance with Standard Paragraph G at the end of this notice.

15. Northwest Pipeline Corporation

[Docket No. CP89-565-000]

January 17, 1989.

Take notice that on January 9, 1989, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP89-565-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas for Ball-Incon Glass Packaging Corporation (Ball-Incon), an end-user of natural gas, under Northwest's blanket certificate issued in Docket No. CP86-578-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northwest proposes to transport up to 4,000 MMBtu equivalent of natural gas on a peak day, 80 MMBtu equivalent on an average day and 30,000 MMBtu equivalent on an annual basis for Ball-Incon. It is stated that Northwest would receive the gas for Ball-Incon's account at various existing points on Northwest's system and would deliver equivalent volumes at existing interconnections between Northwest and Washington Natural Gas Company in Washington. It is asserted that the service would be effected using existing facilities and that no construction of facilities would be required. It is explained that the transportation service commenced November 24, 1988, under the self-implementing authorization of § 284.223 of the Commission's Regulations as reported in Docket No. ST89-1321.

Comment date: March 3, 1989, in accordance with Standard Paragraph G at the end of this notice.

16. Southern Natural Gas Company

[Docket No. CP89-571-000]

January 17, 1989.

Take notice that on January 9, 1989, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202, filed in Docket No. CP89-571-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under the blanket certificate issued in Docket No. CP88-316-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Southern proposes to transport natural gas for Rangeline Corporation (Rangeline) pursuant to Rate Schedule IT. Southern explains that service commenced November 4, 1988, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89-1543. Southern explains that the peak duty quantity would be 15,500 MMBtu, the average daily quantity would be 5,150 MMBtu, and that the annual quantity would be 1,879,750 MMBtu. Southern explains that it would receive natural gas for Rangeline's account at existing receipt points in Louisiana, offshore Louisiana, Texas, Mississippi, offshore Texas, and Alabama for delivery at various delivery points in Mississippi.

Comment date: March 3, 1989, in accordance with Standard Paragraph G at the end of this notice.

17. Southern Natural Gas Company

[Docket No. CP89-573-000]

January 17, 1989.

Take notice that on January 9, 1989, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202, filed in Docket No. CP89-573-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under the blanket certificate issued in Docket No. CP86-316-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Southern proposes to transport natural gas for Sonat Marketing Company (Sonat) pursuant to Rate Schedule IT. Southern explains that service commenced November 1, 1988, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89-1546. Southern explains that the peak duty quantity would be 1,000 MMBtu, the average daily quantity would be 200 MMBtu, and that the annual quantity would be 73,000 MMBtu. Southern explains that it would receive natural gas for Sonat's account at receipt points in Louisiana, offshore Louisiana, Texas, Mississippi, offshore Texas, and Alabama for delivery at a delivery points in Alabama.

Comment date: March 3, 1989, in accordance with Standard Paragraph G at the end of this notice.

18. Williams Natural Gas Company

[Docket No. CP89-551-000]

January 17, 1989.

Take notice that on January 6, 1989, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP89-551-000 a request pursuant to §§ 157.205 and 284.223(2)(b) of the Commission's Regulations under the Natural Gas Act for authorization to transport gas for Kansas Industrial Energy Supply Company (Kansas Industrial), under WNG's blanket certificate issued in Docket No. CP86-631-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

WNG states that it would transport, on an interruptible basis, up to a maximum to 15,000 MMBtu of natural gas per day for Kansas Industrial. WNG states that various receipt points would be located in Kansas, Missouri, Oklahoma, Texas and Wyoming and the delivery points would be on WNG's pipeline system in Kansas. WNG indicates that the total volume of gas to be transported for Kansas Industrial on a peak day would be 15,000 MMBtu; on an average day would be 15,000 MMBtu; and an annual basis would be 5,475,000 MMBtu. WNG indicates it would perform the proposed transportation service for Kansas Industrial pursuant to a service agreement dated August 15, 1988, between WNG and Kansas Industrial.

WNG states that it commenced the transportation of natural gas for Kansas Industrial on November 16, 1988, as reported in Docket No. ST89-1378-000 for a 120-day period pursuant to § 284.223(a)(1) of the Commission's Regulations. WNG states that it proposes to continue this service in accordance with §§ 284.221 and 284.223.

WNG also states that it has no knowledge of any agency relationship under which a local distribution company or an affiliate of Kansas Industrial will receive natural gas on behalf of Kansas Industrial.

Comment date: March 3, 1989, in accordance with Standard Paragraph G at the end of this notice.

19. Northern Natural Gas Company, Division of Enron Corp.

[Docket No. CP89-593-000]

January 17, 1989.

Take notice that on January 11, 1989, Northern Natural Gas Company, Division of Enron Corp., (Northern) 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP89-593-000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Seagull Marketing Services, Inc. (Seagull), a marketer of natural gas,

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under Northern's blanket certificate issued in Docket No. CP86-435-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern proposes to transport up to 220,000 MMBtu/day for Seagull. Northern states that construction of facilities would not be required to provide the proposed service.

Northern further states that the maximum day, average day, and annual transportatin volumes would be approximately 220,000 MMBtu, 165,000 MMBtu and 80,300,000 MMBtu, respectively.

Comment date: March 3, 1989, in accordance with Standard Paragraph G at the end of this notice.

20. Ozark Gas Transmission System

[Docket No. CP89-594-000]

January 17, 1989.

Take notice that on January 12, 1989, Ozark Gas Transmission System (Ozark), 1700 Pacific Avenue, First City Center, Dallas, Texas 75201, filed in Docket No. CP89-594-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon certain compression facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Ozark claims that in February 1982, it began operating three 620 horsepower 2-stage compressor units at the Price Compressor Station, located adjacent to its mainline in Pope County, Arkansas. It is asserted that this station is used to compress natural gas produced from wells connected to the Price Lateral. It is further asserted that after compression, the gas is transported through the Price Lateral for delivery into Ozark's 20-inch main transmission line. Ozark claims that due to the significant decrease in production of wells connected to the Price Lateral, continued operation of three compressor units at the Price Compressor Station is no longer necessary or economical. It is alleged that abandonment of one of the compressor units at the Price Lateral and would not have an adverse effect on Ozark's shippers. It is istated that in contrast to the situation at the Price Station, Ozark has a demonstrable need for additional compression on the Tobey Lateral, in Franklin County, Arkansas where it currently operates two 620 horsepower compressor units at the Tobey Compressor Station.

It is requested that the Commission grant permanent abandonment authority pursuant to section 7(b) for one of the compressor units (Unit No. 34036) at the Price Compressor Station. It is asserted that the proposed abandonment would not affect Ozark's ability to provide service to its two firm shippers, nor would it affect the producers' ability to deliver the remaining gas into Ozark. It is alleged that by abandoning and relocating the 620 horsepower compressor unit, Ozark would be able to operate its system more efficiently and increase its ability to provide efficient service at the Tobey Lateral.

Comment date: February 7, 1989, in accordance with Standard Paragraph F at the end of this notice.

21. Northwest Pipeline Corporation

[Docket No. CP89-600-000]

January 18, 1989.

Take notice that on January 12, 1989, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP89-600-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under its blanket certificate issued in Docket No. CP86-578-000 pursuant to section 7 of the Natural Gas Act for Union Oil Company of California (Union Oil), all as more fully set forth in the request on file with the Commission and open to public inspection.

Northwest proposes to transport natural gas for Union Oil pursuant to a transportation agreement dated October 11, 1988. Northwest explains that service commenced November 3, 1988, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89-1096. Northwest further explains that the peak day quantity would be 12,500 MMBtu, the average daily quantity would be 3,700 MMBtu, and that the annual quantity would be 1,370,000 MMBtu. Northwest explains that it would receive natural gas for Union Oil's account from the Ignacio Plant receipt point in La Platta County, Colorado, the North Douglas Creek receipt point in Rio Blanco County, Colorado and the Sumas receipt point in Whatcom County, Washington and would redeliver the gas to the Union Oil Parachute Plant delivery point in Garfield County, Colorado.

Comment date: March 6, 1989, in accordance with Standard Paragraph G at the end of this notice.

22. Southern Natural Gas Company

[Docket No. CP89-570-000]

January 18, 1989.

Take notice that on January 9, 1989, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 3502-2563, filed in Docket No. CP89-570-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport gas, on a firm basis, for ARCO Oil and Gas Company, a Division of Atlantic Richfield Company (Arco), under Southern's blanket certificate issued in Docket No. CP88-316-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Southern states that it would perform the proposed transportation service for ARCO, a producer, under Southern's Rate Schedule FT, pursuant to a service agreement dated October 11, 1988. Southern further states that the service agreement is for a primary term through March 31, 1989, with successive terms of one month thereafter unless cancelled by either party. Southern expects to transport 50,000 Mcf of gas on both peak and average days and according thereto, 18,250,000 Mcf would be transported on an annual basis. Southern proposes to receive gas on behalf of ARCO, at a point of interconnection between the facilities of Matagorda Offshore Pipeline System (MOP) and ARCO located offshore Texas and deliver the gas to a point of interconnection between the jointly owned facilities of Southern and others near the terminus of MOP in Refugio County, Texas. Southern explains that, as a joint owner in MOP, it is entitled to 40 percent of MOP's capacity and would use such capacity to transport ARCO's gas. Finally, Southern advises that the transportation service commenced on November 1, 1988, as reported in Docket No. ST89-1545-000, pursuant to § 284.223(a)(1) of the Commission's Regulations.

Comment date: March 6, 1989, in accordance with Standard Paragraph G at the end of this notice.

23. Colorado Interstate Gas Company

[Docket No. CP89-602-000]

January 18, 1989.

Take notice that on January 12, 1989, Colorado Interstate Gas Company (CIG), Post Office Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP89-602-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations for authorization to transport natural gas for Union Pacific Resources Company (Union Pacific) under CIG's blanket certificate issued in Docket No. CP86-589, *et al.*, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

CIG proposes to transport for Union Pacific 50,000 Mcf of natural gas on a peak day, 45,000 on an average day and 16,425 Mcf on an annual basis. CIG states that it would perform the transportation service for Union Pacific under CIG's Rate Schedule TI-1 for a primary term extending until September 1, 1990, and continue on a monthly basis thereafter. CIG indicates that it would receive the gas at several points in Sweetwater and Uinta Counties, Wyoming and Kearny County, Kansas, for delivery at a point in Moore County, Texas.

It is explained that the service commenced under the automatic authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST88-342-000. CIG indicates that no new facilities would be necessary to provide the subject service.

In its request for authorization, CIG also petitions the Commission for a waiver of the 120-day limit on self-implementing transportation imposed by § 284.223(a)(1) of the Commission's Regulations. CIG states that it has been advised by Union Pacific that due to administrative burdens, Union Pacific was unable to return a signed copy of the service agreement to CIG in a timely manner. CIG states that it therefore was unable to comply with § 284.223(c)(3) of the Regulations for the completion of the prior notice requeat. CIG reasons that the potential hardship to shippers in interrupting the transportation service outweighs the potential benefit of adherence to the 120-day limitation in § 284.223(a)(1) of the Regulations.

Comment date: March 6, 1989, in accordance with Standard Paragraph G at the end of this notice.

24. United Gas Pipe Line Company

[Docket No. CP89-561-000]

January 18, 1989.

Take notice that on January 9, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas, 77251-1478, filed in Docket No. CP89-561-000, request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under its blanket certificate issued in Docket No. CP88-6-000, pursuant to section 7 of the Natural Gas Act for Texican Natural Gas Company (Texican), a marketer, all as more fully set forth in the requests on file with the Commission and open to public inspection.

United proposes to transport up to a maximum of 10,300 MMBtu of natural gas per day for Texican from the existing interconnection between United and the production facilities in Houma Field, Lafourche Parish, Louisiana, to other specific delivery points also in the state of Louisiana. United anticipates transporting up to 10,300 MMBtu on a peak day and average day, 3,759,500 MMBtu annually for Texican. United explains that service commenced December 1, 1988, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89-1273.

Comment date: March 6, 1989, in accordance with Standard Paragraph G at the end of this notice.

25. Natural Gas Pipeline Company of America

[Docket No. CP89-606-000]

January 18, 1989.

Take notice that on January 13, 1989, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP89-606-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for International Paper Company (IPC), an end-user, under the blanket certificate issued in Docket No. CP86-582-000, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Natural states that pursuant to a transportation agreement dated October 3, 1988, under its Rate Schedule ITS, it proposes to transport for IPC up to 40,000 MMBtu per day equivalent of natural gas (plus any additional volumes accepted pursuant to the overrun provisions of Natural's Rate Schedule ITS). Natural states that it would receive the gas at existing receipt points in Texas, offshore Texas, Oklahoma, Iowa, Kansas, and offshore Louisiana, and that it would transport and deliver the gas for ITS' account to MidVen Pipeline Company in Cass County, Texas.

Natural advises that service under § 284.223(a) commenced November 23, 1988, as reported in Docket No. ST89-1726. Natural further advises that it would transport 15,000 MMBtu on an average day and 5,475,000 MMBtu annually.

Comment date: March 6, 1989, in accordance with Standard Paragraph G at the end of this notice.

26. Williams Natural Gas Company

[Docket No. CP89-575-000]

January 18, 1989.

Take notice that on January 9, 1989, Williams Natural Gas Company (Williams), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP89-575-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas for Natural Gas Gathering Company of Texas, Inc. (NGGCT), a marketer, under the blanket certificate issued in Docket No. CP86-631-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Williams proposes to transport on an interruptible basis for NGGCT up to 12,000 MMBtu of natural gas on a peak day, approximately 12,000 MMBtu on an average day, and 4,380,000 MMBtu on an annual basis. Williams states that it would transport this gas from various receipt points in Kansas to various deliverly points on Williams' system in Kansas. Williams explains that service commenced under the automatic authzorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST89-1184-000.

Comment date: March 6, 1989, in accordance with Standard Paragraph G at the end of this notice.

27. Southern Natural Gas Company

[Docket No. CP89-595-000]

January 18, 1989.

Take notice that on January 12, 1989, Southern Natural Gas Company (Southern) P.O. Box 2563, Birmingham, Alabama 35303-2563, filed in Docket No. CP89-595-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Chevron U.S.A. Inc. (Chevron) under the authorization issued in Docket No. CP88-316-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Southern would perform the proposed transportation service for Chevron, a producer of natural gas, pursuant to a service agreement dated October 12, 1988, under Southern's Rate Schedule IT. It is stated that the term of the service agreement is for a primary term of one month, to continue and remain in effect for successive terms of one month unless cancelled by either party. Southern proposes to transport on a

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peak day up to 30,000 MMBtu; on an average day 30,000 MMBtu; and on an annual basis 10,950,000 MMBtu of natural gas for Chevron. Southern proposes to receive the gas at Mustang Island Block 658, offshore Texas for transportation to the interconnection between the jointly owned facilities of Southern and others with the 30 inch pipeline of Channel Industries near the terminus of the Matagorda Offshore Pipeline system near Tivoli, Refugio County, Texas. Southern asserts that no new facilities are required to implement the proposed service.

Southern states that it would perform such transportation service for Chevron pursuant to its Rate Schedule IT. It is further stated that Southern may agree from time to time to discount the rate charged Chevron for transportation services in accordance with the provisions of Rate Schedule IT. It is explained that the proposed service is currently being performed pursuant to the 120-day self-implementing provisions of § 284.223(a)(1) of the Regulations. Southern commenced such self-implementing service on November 12, 1988, as reported in Docket No. ST88-1554-000.

Comment date: March 6, 1989, in accordance with Standard Paragraph G at the end of this notice.

28. ANR Pipeline Company

[Docket No. CP89-580-000]

January 18, 1989.

Take notice that on January 10, 1989, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP89-580-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide a transportation service for PSI, Inc. (PSI) a marketer, under ANR's blanket certificate issued in Docket No. CP86-532-000 pursuant to section 7 of the Natural Gas act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

ANR states that the transportation service would be provided pursuant to a transportation agreement dated September 22, 1988, wherein ANR would to transport up to 25,000 dekatherms per day of natural gas on an interruptible basis for PSI. ANR further states that it would receive the gas at existing points of receipt located in onshore and offshore Louisiana and Texas, and in Kansas and Oklahoma and redelivery the gas for the account of PSI at existing interconnections located in the states of Kansas, Oklahoma, and Texas.

ANR states that it commenced service for PSI under § 284.223(a) on October 28, 1988, as reported in Docket No. ST89-795.

Comment date: March 6, 1989, in accordance with Standard Paragraph G at the end of this notice.

29. Texas Gas Transmission Corporation

[Docket No. CP89-604-000]

January 18, 1989.

Take notice that on January 13, 1989, Texas Gas Transmission Corporation (Texas Gas) 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP89-604-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas under its blanket authorization issued in Docket No. CP88-686-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Texas Gas proposes to transport natural gas on an interruptible basis for Chevron USA, Inc. (Chevron). Texas Gas explains that the service commenced December 1, 1988, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89-1382. Texas Gas proposes to transport on a peak day up to 35,000 MMBtu; on an average day up to 19,500 MMBtu; and on an annual basis up to 7,117,500 MMBtu. Texas Gas proposes to receive the subject gas from various points of receipt in Louisiana, Kentucky, Texas, Offshore Louisiana, Tennessee, Illinois, Ohio, and Indiana and redeliver the volumes to Texas Eastern Transmission Corporation.

Comment date: March 6, 1989, in accordance with Standard Paragraph G at the end of this notice.

30. Texas Gas Transmission Corporation

[Docket No. CP89-618-000]

January 19, 1989.

Take notice that on January 13, 1989, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP89-618-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for OXY USA Inc. (OCY), under the blanket certificate issued in Docket No. CP88-686-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Texas Gas states that pursuant to a transportation agreement dated November 11, 1988, under its Rate Schedule IT, it proposes to transport up to 10,000 MMBtu per day equivalent of natural gas for OXY from points of receipt listed in Exhibit "B" of the agreement to delivery points listed in Exhibit "C", which transportation service involves interconnections between Texas Gas and various transporters. Texas Gas advises that the ultimate consumer of the gas is Occidental Chemical.

Texas Gas advises that service under § 284.223(a) commenced December 1, 1988, as reported in Docket No. ST89-1387. Texas Gas further advises that it would transport 10,000 MMBtu on an average day and 3,650,000 MMBtu annually.

Comment date: March 6, 1989, in accordance with Standard Paragraph G at the end of this notice.

31. Northern Natural Gas Company, Division of Enron Corp.

[Docket No. CP89-556-000]

January 19, 1989.

Take notice that on January 9, 1989, Northern Natural Gas Company, Division of Enron Corporation (Northern), 1400 Smith Street, P.O. Box 1188, Houston Texas 77251-1188 filed in Docket No. CP556-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of PSI, Inc., under the certificate issued in Docket No. CP86-435-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Northern states that it proposes to transport up to 50,000 MMBtu of natural gas per day for PSI, Inc., on a peak day, 37,500 MMBtu on an average day and 18,250,000 MMBtu annually, under Rate Schedule IT-1. This service was reported to the Commission in ST89-1526-000. Northern further states that construction of facilities will not be required to provide the proposed service.

Comment date: March 6, 1989, in accordance with Standard Paragraph G at the end of this notice.

32. Northern Natural Gas Company, Division of Enron Corp.

[Docket No. CP89-605-000]

January 19, 1989.

Take notice that on January 13, 1989, Northern Natural Gas Company, Division of Enron Corp. (Northern), 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP89-605-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations (18 CFR 157.205 and 284.223) for authorization to transport natural gas for Helmerich & Payne, Inc. (H&P), a producer, pursuant to Northern's blanket certificate issued in Docket No. CP86-435-000 and section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Specifically, Northern requests authority to transport up to 100 billion Btu of natural gas per day on an interruptible basis on behalf of H&P pursuant to an interruptible contract dated December 1, 1988. Northern states that the transportation agreement provides for Northern to receive gas from various existing points of receipt on its system in Oklahoma, Texas, Kansas, Minnesota, and North Dakota and to redeliver the gas into the facilities of various downstream transporters in the states of Texas, Kansas and Iowa.

Northern indicates it would provide the service for a primary term of five years from the date of initial delivery and from month to month thereafter unless terminated by either party upon thirty days written notice to the other party. Northern states that it would charge the rates under its Rate Schedule IT.

It is indicated that the estimated maximum daily volume, average volume, and annual volumes would be 100 billion Btu, 75 billion Btu, and 36,500 billion Btu, respectively. Northern states it commenced a 120-day transportation service for H&P on December 1, 1988, as reported in Docket No. ST89-1519-000.

Comment date: March 6, 1989, in accordance with Standard Paragraph G at the end of this notice.

33. Florida Gas Transmission Company and Southern Natural Gas Company

[Docket No. CP87-415-002]

January 19, 1989.

Take notice that on December 29, 1988, Florida Gas Transmission Company (FGT) P.O. Box 1188, Houston Texas 77251-1188, and Southern Natural Gas Company (SNG) P.O. Box 2563, Birmingham, Alabama 35202-2563, (Applicant(s)), as successors in interest to Citrus Interstate Pipeline Company (CIPCO), filed in Docket No. CP87-415-002, an amendment pursuant to §§ 157.7 and 157.14 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.7 and 157.14), requesting authorization to construct and operate a total of approximately 52.5 miles of 30-inch pipeline, consisting of 51.3 miles and 0.8-mile segments, together with metering and appurtenant facilities, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

Applicants state that the proposed pipeline (Mobile Bay Pipeline) is the pipeline proposed previously herein by CIPCO (Docket No. CP87-415-000) and is designed to connect reserves to be produced in the vicinity of Mobile Bay. Applicants state that the Mobile Bay Pipeline would extend from a point near Bayou La Batre, Mobile County, Alabama on the west bank of Mobile Bay, where it would connect with the tailgate of the gas processing plants of Mobil Oil Exploration and Producing Southeast, Inc. (MOEPSI) and the plants proposed to be constructed by Jubilee Pipeline Company (Jubilee) and Shell Offshore Inc. (Shell), to points on FGT's 24-inch and 30-inch mainlines, approximately seven miles west of Citronelle, all in Mobile County, Alabama. Further, the Mobile Bay Pipeline would also connect to the gas processing plant to be constructed by Exxon Corporation (Exxon), to be located west of the junction of Fowl River and East Fowl River, approximately 3 miles north of MOEPSI's plant near the west bank of Mobile Bay. Applicants state that the metering facilities would be located at the tailgates of the MOEPSI, Shell, and Exxon plants and at the interconnect with the FGT system. (Jubilee has proposed to construct and operate the metering facilities to be located at the tailgate of its plant.)

Applicants assert that the Mobile Bay Pipeline would connect gas reserves to be produced generally from the Mobile and Viosca Knoll Areas, Federal Offshore Alabama. Applicants state that estimates of proven and probable reserves in the Mobile Bay Area range from 3.5 Tcf to 10 Tcf. It is anticipated that over 1,000 MMcf/d be produced within a few years from the deep Jurassic-Norphlet formation alone. Estimates of the shallow Miocene production currently indicate a maximum production of 443 MMcf/d. Applicants state, and proven and probable reserves are now estimated at 680 Bcf.

Applicants state the proposed pipeline is designed to transport 550 Mcf of natural gas per day, and initial throughout for the proposed system is expected to be approximately 350 MMcf/d in 1990, increasing to full design capacity by 1992.

Applicants assert that the total estimated cost of the Mobile Bay Pipeline is $35.77 million. Applicants state that the facilities are scheduled to be constructed and in service by October 1, 1990 assuming all regulatory approvals are received before October 1, 1989.

No new rates or services are proposed by Applicants, and each would render transportation services for shippers requesting such under the terms and conditions of its respective FERC Gas Tariff.

Applicants state that the Mobile Bay Area is expected to prove a significant source of long-term domestic gas supplies in the near future, and the proposed pipeline would provide facilities to move this gas to markets of Applicants and to other pipeline systems for distribution to markets throughout the country; construction of the line would encourage further development of the reserves in the Mobile Bay Area.

Comment date: March 6, 1989, in accordance with Standard Paragraph G at the end of this notice.

34. Texas Eastern Transmission Corporation and ANR Pipeline Company

[Docket No. CP89-511-000]

January 19, 1989.

Take notice that on December 30, 1988, Texas Eastern Transmission Corporation, P.O. Box 2521, Houston, Texas, 77252-2521, and ANR Pipeline Company, 500 Renaissance Center, Detroit, Michigan 48243 (Applicants) filed in Docket No. CP89-511-000 an application pursuant to § 157.7 of the Commission's Regulations (18 CFR § 157.7) requesting authority to construct and operate natural gas pipeline facilities, all as more fully set forth in the application which is on file with the Commission, and open to public inspection.

Applicants request that the Commission issue a certificate of public convenience and necessity authorizing: (1) Texas Eastern's construction, in two phases, and the operation of pipeline facilities to be used in the transportation of up to approximately 600,000 dth per day of natural gas from the Mobile Bay Area; (2) joint and undivided ownership by Texas Eastern and ANR of those pipeline facilities; (3) establishment of a new point of delivery under an existing exchange arrangement between Texas Eastern and ANR; (4) approval of a new

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transportation arrangement between Texas Eastern and ANR and/or ANR's transportation customers permitting the redelivery to ANR's system, through Texas Eastern's existing system, of volumes transported through ANR's capacity in the proposed pipeline; (5) rolled-in rate treatment for the portion of the facilities to be owned by Texas Eastern; (6) construction and operation by ANR of an interconnection with existing Texas Eastern facilities in West Carroll Parish, Louisiana; and (7) the proposed rates to be utilized by ANR for transportation services provided through ANR's capacity in the proposed pipeline.

Applicants propose the construction and operation of a 204-mile, 30-inch pipeline, to be operated by Texas Eastern, extending from existing and future Mobile Bay treating plants, in Mobile County, Alabama to Texas Eastern's existing main line transmission system at its Kosciusko Compressor Station in central Mississippi. In order to match the anticipated development of Mobile Bay Area reserves with available pipeline capacity, Applicants propose to construct the facilities in two phases. Applicants state that the proposed Phase I facilities would have a maximum capacity of approximately 400,000 dth of natural gas per day and the proposed Phase II facilities would provide additional capacity of approximately 200,000 dth of natural gas per day. Applicants request that the Phase I facilities be approved in time for their installation prior to April 1, 1992, the projected date for operation of the Exxon's Mobile Bay plant. Applicants also request approval of the Phase II facilities for start-up on April 1, 1994.

Applicants state that they would own the proposed facilities in undivided interests. During Phase I, Texas Eastern and ANR would have the right to use up to 300,000 dth and 100,000 dth, respectively, of the available daily capacity. The 200,000 dth per day of additional capacity provided by Phase II construction would be shared equally between Applicants, bringing Texas Eastern's share of the capacity to 400,000 dth per day and ANR's to 200,000 dth per day.

Applicants also seek approval of certain transportation and exchange arrangements. Volumes that ANR transports to Kosciusko through its capacity in the proposed facilities would be redelivered, at ANR's election, to ANR's system by transportation or exchange, requiring authorization for the amendment of an existing exchange arrangement and an agreement for the initiation of a new transportation service. Implementation of the latter agreement would require authorization for ANR to construct an interconnection and related facilities between the systems of Texas Eastern and ANR in West Carroll Parish, Louisiana (West Carroll Interconnection). Applicants state that a significant amount of the natural gas produced from a Mobile Bay Area requires onshore treating to become pipeline quality.

Applicants state they are willing to connect their proposed facilities to existing or future treating plants in the Mobile Bay Area as well as to other sources of gas produced in the Mobile Bay Area. Applicants designed the proposed facilities to terminate at the planned Exxon Plant, but are requesting authority to connect the proposed facilities to both existing and future treating plants located in that vicinity. Applicants state that negotiations are currently underway with producers in the Mobile Bay Area for the acquisition of reserves that would be available for system supply and/or transportation through the proposed pipeline. As these negotiations result in the execution of commitments of such volumes, Applicants will notify the Commission by supplementing this Application.

Applicants state the estimated costs of the proposed jointly owned Phase I and Phase II facilities are $153,307,000 and $27,500,000, respectively, for an estimated total cost of $180,807,000. The cost of proposed interconnection facilities for which ANR seeks authorization, which are to be constructed as part of Phase II, is estimated to be $463,000.

Texas Eastern stated that the primary use of the proposed facilities would be for the delivery of natural gas purchased for its system supply to meet existing certificated service obligations. Texas Eastern states it maintains an aggressive gas acquisition progam in an effort to offset expected deliverability deficiency and views the Mobile Bay Area reserves as an important source of the gas supplies it will require to satisfy the demands of its customers. To the extent that the capacity in the proposed facilities is not fully utilized for the purchase of system supply, Texas Eastern also would provide, on an open access, non-discriminatory basis, firm and interruptible transportation pursuant to its Rate Schedules FT-1 and IT-1, as such rate schedules shall exist from time to time in the future.

ANR states it is an "open access" transporter and has been issued a Part 284 blanket certificate. ANR would utilize its capacity in the proposed facilities to provide transportation services for existing and potential transportation customers that desire to purchase Mobile Bay Area gas reserves. ANR also would, as the need arises, utilize such capacity to meet requirements for sales services.

Applicants state that Texas Eastern does not propose to establish any new services or rates, other than the transportation arrangement. For the volumes expected to be purchased for Texas Eastern's system supply, Texas Eastern proposes to utilize its sales rate schedules and related sales rates, as they exist at the time volumes are purchased and sold. Texas Eastern states it would provide firm and interruptible transportation service pursuant to its then effective Rate Schedules FT-1 and IT-1 and the general terms and conditions of its FERC Gas Tariff.

Texas Eastern requests a Commission determination that Texas Eastern may roll its share of the cost of constructing and operating the proposed Mobile Bay facilities into the cost of service of Texas Eastern's rate cases filed after the new pipeline facilities are built. Texas Eastern believes that rolled-in treatment is appropriate because a substantial portion of Texas Eastern's capacity in the proposed facilities will be used for Texas Eastern's system supply purchases and the remainder is likely to be used for the transportation of volumes purchased from suppliers in the Mobile Bay Area by Texas Eastern's customers.

ANR proposes to establish a new rate, in its Volume 1-A Tariff, which would be applicable to transporation services performed through the facilities proposed in this application. ANR also proposes that the new facilities to be jointly owned with Texas Eastern will comprise a new area of its system to be known as the Mobile Bay Area. ANR further proposes that the costs associated with such facilities would be incremental and unbundled from all of its existing services and its existing rates. ANR proposes to render non-discriminatory transportation services for others through its share of the capacity at the rates shown in Exhibit P, to the application, which rates would be made a part of its FERC Gas Tariff Volume No. 1-A. Both firm and interruptible transportation would be made available to prospective shippers, pursuant to Rate Schedules FTS-1, FTS-2 and ITS of ANR's Volume 1-A Tariff. ANR proposes no changes to any of its existing rates in view of the above-described incremental rate and in view of the fact that the cost associated with the proposed West Carroll Interconnection to be constructed in ANR's existing Mainline Area is minimal.

ANR states that, since it does not intend to utilize its capacity in the proposed Mobile Bay Area to transport gas purchased for its system supply to serve its sales for resale customers, the costs of its shared Mobile Bay Area facilities and operations should not affect its existing sales rates. ANR reserves the right to utilize its capacity for any certificated service and apply such costs accordingly in a future rate proceeding.

Applicants state they have observed that, in addition to serving their needs, the route proposed also provides the potential for satisfying the requirements of other markets for Mobile Bay Area production that may be substantiated as part of the "open season" proceeding. Applicants state that to their knowledge, the pipeline proposed herein is the only one that will connect the Mobile Bay Area to Texas Eastern's system, provide the opportunity for connections to pipelines owned by United Gas Pipe Line Company (United), Florida Gas Transmission Company (Florida Gas) and Tennessee Gas Pipeline Company (Tennessee), and provide access to the Mobile Bay Area for ANR and its customers.

Applicants submitted an analysis of a pipeline that would follow the same route as that proposed by Applicants and which would, with relatively small modifications to the Applicants' proposal permit (a) the delivery of 1,000,000 dth per day, (b) deliveries to United, Florida Gas and Tennessee, in addition to those proposed to Texas Eastern and ANR, and (c) all the efficiencies of a large capacity facility, including reduced rates.

Additional delivery capacity of up to 400,000 dth per day (above the 600,000 dth per day in Applicant's proposal) could be created by the installation of 48.7 miles of 36-inch pipe on the southern end of Applicant's proposed route (in substitution for the 30-inch pipe Applicants proposed to use in that segment) and construction of various measurement and interconnection facilities. The total cost of such a project is estimated to be $202,203,000, approximately $21.4 million more than the cost of Applicants' proposed facilities.

Applicants state that they believe that facilities for which they authorize provide an efficient an efficient and cost-effective means of satisfying their needs and those of their customers. Nevertheless, should the Commission conclude that for economic, environmental or other reasons the needs of the Applicants and other securing natural gas in the Mobile Bay Area are best met by the construction of a single, large capacity pipeline facility, Applicants believe that consideration should be given to the route and facilities.

Comment date: February 9, 1989, in accordance with Standard Paragraph F at the end of this notice.

35. Transcontinental Gas Pipe Line Corporation

[Docket No. CP89-523-000]

January 19, 1989.

Take notice that on December 30, 1988, Transcontinental Gas Pipe Line Corporation (Transco), Post Office Box 1396, Houston, Texas 77251, filed in Docket No. CP89-523-000 an application pursuant to section 7(c) of the Natural Gas Act (NGA), as amended, and the Rules and Regulations of the Federal Energy Regulatory Commission (Commission), for a certificate of public convenience and necessity authorizing (1) operation of Transco's existing onshore pipeline (2) transportation of natural gas through the onshore pipeline, (3) construction and operation of a proposed pipeline from a gas treatment plant to be owned by Exxon Corporation (Exxon), and (4) construction and operation of proposed compression facilities to be associated with the Exxon gas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Transco states that in 1987 it constructed a 124-mile, 30-inch diameter pipeline from the tailgate of Mobil Oil Exploration & Producing Southeast Inc.'s (MOEPSI) treatment plant near Coden, Alabama, to an interconnection with Transco's existing main pipeline system near Butler, Choctaw County, Alabama (Onshore Pipeline). Transco states that it constructed the Onshore Pipeline pursuant to section 311(a)(1) of the Natural Gas Policy Act of 1978 (NGPA). Transco states that because it constructed the Onshore Pipeline pursuant to section 311(a)(1), all gas transported through such pipeline must be "on behalf of" either a local distribution company or an intrastate pipeline. Transco states that because (1) it is concurrently filing an application for a certificate of public convenience and necessity to construct and operate pipeline facilities primarily in the offshore Mobile Bay area (Offshore Pipeline), and (2) other companies have indicated their intention to deliver gas into the Onshore Pipeline, Transco must seek certificate authority to operate the Onshore Pipeline and transport gas through same to ensure that once the gas reaches the Onshore Pipeline, Transco will have all requisite legal authority to transport all gas through the Onshore Pipeline.

Transco further states that in addition to the Onshore Pipeline for which it is concurrently filing an application, there are other current and potential sources of gas to be transported through the Onshore Pipeline: (1) Gas owned by MOEPSI and other small interest owners in the Mary Ann Field in Mobile Bay is currently being transported through the Onshore Pipeline pursuant to section 311(a)(1) of the NGPA. (2) In Docket No. CP88-646-000 Jubilee Pipeline Company filed an application with the Commission for a certificate of public convenience and necessity to construct and operate a pipeline in the Mobile Bay area. Such application proposed that the Jubilee pipeline interconnect with the Onshore Pipeline. (3) Other companies may propose that their pipelines also interconnect with the Onshore Pipeline.

Transco requests authority to operate the Onshore Pipeline pursuant to section 7(c) of the NGA and to transport gas through the Onshore Pipeline for those shippers which request transportation services. Transco states that it would render such transportation services pursuant to its existing Rate Schedules IT (interruptible) and FT (firm).

Transco further states that Exxon has reserves within a block of twenty-five (25) state and federal leases in the Mobile Bay area. Transco states it has had the opportunity to review geological data on 15 of Exxon's 25 leases, and Transco's preliminary calculations indicate total potential reserves in place of 2.8 Tcf for those 15 leases, with 2.3 Tcf net to Exxon's working interest in those blocks. Transco states that Exxon plans to build a gathering line to collect the gas from such blocks and move it to a treatment plant which Exxon will build onshore to remove sulphur from its gas. Transco states that it requests authority to construct and operate three and one-half miles of 24-inch diameter pipeline to connect the tailgate of the Exxon plant to the Onshore Pipeline and transportation service pursuant to its existing Rate Schedules IT and FT.

Transco states that compression would also be needed to enable the gas from the Exxon plant to move into Transco's mainline system near Butler, Alabama. Accordingly, Transco requests authority to construct and operate such compression facilities.

Transco states that it seeks authorization to move Mobile Bay offshore volumes, and any other

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supplies which may require section 7(c) authority, to market. By the instant application, Transco seeks section 7(c) authority to operate its Onshore Pipeline without the "on behalf of" limitation prescribed by section 311(a)(1) of the NGPA. Compared to other proposals, Transco states that its Onshore Pipeline is the only logical choice to move gas from the Mobile Bay area to interstate pipeline systems in the United States because the Onshore Pipeline is already built. Transco asserts that it would not be economically efficient for the Commission to authorize other expensive and duplicative facilities when the Onshore Pipeline is already in place and ready to provide the necessary transportation service. Accordingly, Transco submits that the public convenience and necessary requires that Transco's requested authorizations be granted.

Comment date: February 9, 1989, in accordance with Standard Paragraph F at the end of this notice.

36. Chandeleur Pipe Line Company

[Docket No. CP89-518-000]

January 19, 1989.

Take notice that on December 30, 1988, Chandeleur Pipe Line Company (Chandeleur), P.O. Box 7141, San Francisco, California 94120-7141, filed in Docket No. CP89-518-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of new offshore pipeline facilities as well as onshore compression, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Chandeleur states that it operates an existing offshore pipeline system which consists of approximately 80 miles of 12 and 16-inch main transmission line along with an 11-mile 12-inch diameter lateral. It is indicated that the main line extends from Main Pass area block 41 (MP 41), offshore Louisiana to a terminus at Chevron Oil Company's (Chevron) Pascagoula Refinery at Pascagoula Mississippi. It is further indicated that the lateral extends from Mobile area block 861 (Mobile 861) to the vicinity of the main line in Mobile 902. Chandeleur notes that the lateral, although certificated, is currently unconnected to the main line. Chandeleur explains that it uses its system to transport approximately 173,000 Mcf per day for its two transportation customers, Chevron (an affiliate) and Mississippi Power and Light Company. Chandeleur states that it has no authority to sell gas and is exclusively a transporter.

Chandeleur proposes to undertake a three-phase extension of its existing system in order to transport for its existing shippers reserves being developed in new fields. It is indicated that the specific facilities are as follows.

- *Phase I:* 7.4 miles of 20-inch lateral extending from the terminus of the existing 11-mile lateral in Mobile 861 to an interconnection with anticipated 1990 production in Mobile 907.
- *Phase II:* 29.6 miles of 20-inch pipeline from Mobile 907 to Mobile 961 to be constructed in 1991 consistent with the anticipated timing of Mobile 961 area production.
- *Phase III:* 16.6 miles of 20-inch pipeline from Mobile 861 to Pascagoula. This phase would be constructed in 1992 and would enable the transportation of sour gas from offshore to a processing plant onshore which would extract carbon dioxide and sulphur.

Chandeleur states that it would operate its existing and the proposed extensions in accordance with the provisions of Order No. 509. Chandeleur insists that such operations would promote the Commission's policies as embodied in Order Nos. 436 and 500. Chandeleur states that the fact that it is exclusively a transporter would allow maximum flexibility to potential shippers.

Chandeleur notes that it has been issued a blanket certificate pursuant to § 284.301 and that it will shortly request a blanket certificate pursuant to § 157.201 of the Commission's Regulations. Chandeleur explains that these activities are likely to affect transportation on its system and ultimately will have a bearing on the subject application.

Chandeleur states that the timing of the subject application has been based on its interpretation of the Commission's order in Docket No. CP88-570-000, which established a time frame for applications involving transportation of gas out of the Mobile Bay area. Chandeleur indicates that its application has been made out of an abundance of caution so that Chandeleur would not be precluded from requesting authority to construct facilities in the future due to failure to comply with the Commission's order in Docket No. CP88-570-00.

Comment date: February 9, 1989, in accordance with Standard Paragraph F at the end of this notice.

37. Panhandle Eastern Pipe Line Company

[Docket No. CP89-569-000]

January 19, 1989.

Take notice that on January 10, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-569-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to transport natural gas for Amgas, Inc. (Amgas or Shipper), a shipper and marketer of natural gas, under Panhandle's blanket certificate issued in Docket No. CP86-585-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open for public inspection.

Panhandle requests authority to transport up to 4,000 dekatherms (dt) per peak day, on an interruptible basis, on behalf of Amgas pursuant to a transportation agreement dated September 19, 1988, between Panhandle and Amgas. Panhandle states that the transportation agreement provides for Panhandle to receive gas from various existing points of receipt on its system in Texas, Oklahoma, Kansas, Colorado, Wyoming and Illinois. Panhandle states that it will then transport and redeliver subject gas, less fuel used and unaccounted for line loss, to Central Illinois Light Company (CILCO) in Tazewell County, Illinois. It is stated that Shipper estimates that average day and estimated annual quantities would be 2,000 dt and 730,000 dt, respectively. It is stated that service under § 284.223(a) commenced on December 1, 1988, as reported in Docket No. ST89-1513. Panhandle states that no new facilities nor expansion of existing facilities are required to provide this service.

Comment date: March 6, 1989, in accordance with Standard Paragraph G at the end of this notice.

38. Southern Natural Gas Company

[Docket No. CP89-517-000]

January 19, 1989.

Take notice that on December 30 1988, Southern Natural Gas Company (Southern), Post Office Box 2563, Birmingham, Alabama 35202-2563, filed in Docket No. CP89-517-000, an application pursuant to section 7(c) of the Natural Gas Act, for a certificate of public convenience and necessity authorizing it to construct, install and operate certain pipeline facilities, all as more fully set forth in the application on file with the Commission and open to public inspection.

In the application, Southern requests authorization to construct a pipeline and appurtenant measurement facilities to provide access on its system to gas supplies to be produced in Main Pass Area Blocks 252 and 254, offshore Louisiana. Specifically, the facilities would include approximately 34 miles of 12-inch pipeline extending from a production platform to be constructed by Shell Offshore, Inc. (Shell) in Main Pass Block 252, to the existing facilities of Southern located at Shell's platform in Main Pass Block 289. Southern also proposes to construct approximately 4.9 miles of 6-inch pipeline from a subsea tap interconnecting owned by Hughes Eastern Petroleum Inc. (Hughes Eastern), in Main Pass Block 254. In addition, Southern plans to install a receiving station on the Shell Main Pass Block 252 platform and on the Hughes Eastern Block 254 platform. Southern states that the proposed facilities would be used to obtain access to gas supplies located in an around Main Pass Area Blocks 252 and 254. Southern states that such access would benefit Southern's customers by making additional gas supplies available and it would impact the producers in this area by providing a means to interconnect their gas reserves with an interstate pipeline system.

Comment date: February 9, 1989, in accordance with Standard Paragraph F at the end of this notice.

39. Southern Natural Gas Company

[Docket No. CP89-513-000]

January 19, 1989.

Take notice that on December 29, 1988, Southern Natural Gas Company (Southern) P.O. Box 2563, Birmingham, Alabama 35202-2563, filed in Docket No. CP89-513-000 an application pursuant to section 7(c) of the Natural Gas Act as amended, and the rules and regulations of the Federal Energy Regulatory Commission (Commission) seeking a certificate of public convenience and necessity authorizing Southern to construct, install and operate certain facilities, all as more fully described in the application which is on file with the Commission and open to public inspection.

Southern states that this application is being submitted in conjunction with the joint filing of Southern and Florida Gas Transmission Company (Florida) in Docket No. CP87-415-002, wherein Southern and Florida request issuance of a certificate of public convenience and necessity authorizing them to construct, install, and operate the facilities initially proposed by Citrus Interstate Pipeline Company in the vicinity of Mobile Bay, Alabama, in Docket No. CP87-415-000. Specifically, to ensure access for their customers to the vast natural gas reserves of Mobile Bay, Southern and Florida are proposing to construct approximately 52 miles of 30-inch pipeline together with metering and appurtenant facilities extending from a point near various existing and proposed onshore gas processing plants near Bayou La Batre, Alabama, on the west bank of Mobile Bay to a point of interconnection with Florida's interstate pipeline system and the facilities proposed herein by Southern near Citronelle, Mobile County, Alabama (Mobile Bay Pipeline).

Southern states that it requests a certificate of public convenience and necessity authorizing the construction, installation, and operation of the facilities hereinafter specified to complete its pipeline facilities from Mobile Bay to its existing pipeline system. Such facilities would extend from the terminus of the Mobile Bay Pipeline in Mobile County to Southern's Enterprise Compressor Station in Clarke County, Mississippi. Specifically, Southern proposes to construct, install, and operate a compressor station, consisting of two 2,000 horsepower reciprocating compressor units and necessary appurtenances, a receiving station, and approximately 86 miles of 24-inch pipeline which would extend from the proposed Mobile Bay Pipeline to Southern's Enterprise Compressor Station. The capacity of the proposed facilities is 300 MMcf per day. Southern states further that the construction and operation of the proposed receiving station and compressor station would have no significant adverse impact on the quality of the human environment.

Southern states the present and future public convenience and necessity require the construction, installation, and operation of the facilities proposed herein because its plan for direct access to its existing pipeline system from Mobile Bay would provide benefits for both its sales and transportation customers. With further decreases in this general system supply expected in the future, the substantial volumes of natural gas in the Mobile Bay area would help ensure that Southern has an opportunity to attract adequate supplies to fulfill the merchant services demanded by its customers. Southern states that direct access to the Mobile Bay gas reserves is equally important to its transportation customers. Such customers rely on diversity of supplies in undertaking the responsibility for their gas supply and the facilities proposed herein in conjunction with the Mobile Bay Pipeline make the Mobile Bay reserves as accessible as any other supply source on Southern's pipeline system. Additionally, since Southern is an open access transporter under both section 311 of the Natural Gas Policy Act of 1978 and Order No. 500, the Mobile Bay reserves would be readily accessible to all shippers—Southern's customers, their customers, the interstate pipelines with which Southern interconnects, and all of the shippers connected to those pipelines.

Southern states that its applications filed in Docket No. CP87-415-002 for the proposed Mobile Bay Pipeline and in this proceeding to extend said pipeline to its existing system offer a cost effective proposal for linking the Mobile Bay reserves with the country's natural gas markets and nationwide pipeline grid. A direct connection with Mobile Bay would help ensure economical and reliable natural gas service well into the future.

Southern states that this application is being submitted in conjunction with the joint filing of Southern and Florida in Docket No. CP87-45-002 in order to extend Southern's pipeline facilities from Mobile Bay to its existing system. Southern requests that the Commission evaluate the joint application and this application in tandem and, accordingly, requests that the Commission consolidate the two dockets into one proceeding.

Additionally, Southern states that Southern Florida, and Tennessee Gas Pipeline Company (Tennessee) have filed with the Commission in Docket No. CP89-464-000 a joint application to construct and operate certain facilities in the Mobile Bay area. As stated therein, the three parties consider that application as their primary and preferred proposal for consideration by the Commission during the "open season" for Mobile Bay pipeline facilities it established in Docket No. CP88-570-000. To ensure eligibility for construction as provided in that proceding, however, Southern has filed this application as well as that in Docket No. CP87-415-002. Upon receipt by Southern, Florida, and Tennessee of the authorization requested in Docket No. CP89-464-000, Southern states it will withdraw this application.

Comment date: February 9, 1989, in accordance with Standard Paragraph F at the end of this notice.

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40. Texas Eastern Transmission Corporation

[Docket No. CP89-512-000]

January 19, 1989.

Take notice that on December 30, 1988, Texas Eastern Transmission Corporation (Applicant), P.O. Box 2521, Houston, Texas 77252 filed an application pursuant to section 7(c) of the Natural Gas Act as amended, and § 157.7 of the Regulations of the Federal Energy Regulatory Commission thereunder, for a Certificate of Public Convenience and Necessity authorizing Applicant to construct and operate facilities to transport up to 287,000 dth per day of natural gas for Applicant's system supply from the Mobile Bay Area to Applicant's existing and proposed pipeline facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes a project to construct and operate facilities to permit the transportation of natural gas from the Mobile Bay area to the terminus of a proposed 24-inch line located in Viosca Knoll Area Block 203.

Applicant requests authorization to construct and operate facilities required to connect additional sources of natural gas to be used for Applicant's system supply:

(a) 55 miles of 24-inch pipeline, together with related facilities, extending from the location of existing and/or future Mobile Bay treating plants, located onshore near the West side of Mobile Bay to the terminus of Applicant's proposed pipeline to be located in Viosca Knoll Area Block 203, offshore Louisiana.

(b) 9.0 miles of 12-inch pipeline, together with related facilities, extending from the above proposed 24-inch line in Mobile Area Block 607, offshore Alabama to Mobile Area Block 821, offshore Alabama.

(c) 11.15 miles of 24-inch pipeline looping of Applicant's existing Line No. 40-B-3 from Main Pass Block 95, offshore Louisiana to Applicant's 24-inch line No. 40-B.

(d) Measurement facilities and a compression facility of up to 4,000 horsepower to be located at the tailgate of existing and/or future treating plants, located on the West side of Mobile Bay.

Applicant anticipates that additional reserves from Mobile Bay and adjacent areas will be identified and made available as pipelines are extended into these areas.

Applicant states that a significant amount of the natural gas produced from the Mobile Bay Area is heavy sulphur gas and therefore requires onshore treating to become pipeline quality. The only currently operating onshore treating facility in the Mobile Area is owned and operated by Mobile Oil Exploration and Producing Southeast, Inc. (MOEPSI) and located on the West side of Mobile Bay. Considerable additional treating capacity will be required for the development of the Mobile Bay Area reserves. As indicated in the Petition for Declaratory Order filed in Docket No. C189-27-000, Exxon proposed to construct a natural gas treating plant which would also be located on the West side of Mobile Bay. Applicant anticipates other treating plants also will be constructed within the immediate vicinity of the existing MOEPSI and planned Exxon plants. Applicant states it is willing to connect its proposed facilities to any treating plant located in this general area. Applicant states it designed the proposed facilities to terminate at the planned Exxon treating plant, but requests authority to connect the proposed facilities to both existing and future treating plants located in that vicinity.

In addition, applicant states reserves have been discovered in the Mobile Bay Area that do not require onshore processing to make them pipeline quality. Applicant's proposed route would provide access to most discoveries already made in the area, including both treated gas and gas not requiring treatment. Applicant proposed to construct facilities to connect reserves owned by Standard Oil Production Company (Standard Oil) in Mobile Bay Area Block 621. Reserves underlying this block are estimated at over 130 Bcf and would require only minor treatment at the platform to make it pipeline quality. Applicant states it is negotiating with Standard Oil regarding the Mobile Area Block 621 reserves and is continuing negotiations with other producers in the Mobile Bay area.

Applicant states that delivery into its system of the volumes of natural gas to be purchased from Mobile Bay Area producers would be accomplished by the construction of a 55-mile, 24-inch pipeline extending from the location of future Mobile Bay treating plants on the west side of Mobile Bay in Mobile County, Alabama to the proposed terminus of Applicant's 24-inch pipeline in Viosca Knoll Area Block 203. Applicant states that construction of the proposed facilities would commence upon receipt of authorization from the Commission. Applicant proposes to complete construction in sufficient time to commence service by November 1, 1991. The proposed facilities would have a design capacity of approximately 287,000 dth of natural gas per day. Applicant would finance the proposed facilities initially from funds on hand or short-term borrowings. Permanent financing would be undertaken as part of Applicant's overall long-term financing program at a later date.

Applicant states that Mobile Bay gas reserves are a significant and important source of future domestic gas supplies and their instant proposal would allow Applicant to extend facilities to this long-term source of supply and thereby expand its portfolio of dedicated natural gas reserves which would be utilized by Applicant to meet existing certificated service obligations. Applicant projects that by 1991 the annual deliverability available from reserves committed to it would be approximately 120 Bcf less than its 700 Bcf estimated market requirements. Applicant would require approximately 1.1 Tcf of annual reserves to meet current certificated sales obligations thus indicating a far greater deliverability deficiency. Applicant states that it maintains an aggressive gas acquisition program in an effort to offset this expected deliverability deficiency and views the Mobile Bay Area reserves as an important source of the gas supplies it would require to satisfy the demands of its customers.

At such times as the capacity of the proposed facilities is not fully utilized, Applicant states it also would provide, on an open access, non-discriminatory basis, interruptible transportation pursuant to its Rate Schedule IT-I, as such rate schedule shall exist from time to time in the future.

Applicant does not propose to establish any new services or rates in this application. Because the volumes to be moved through the proposed facilities are expected to be purchased for Applicant's system supply, Applicant proposes to utilize its existing rate schedules as applicable and related rates, as they exist at the time the services are rendered. To the extent that the facilities are not fully utilized to provide system supply gas, Applicant states it would also provide interruptible transportation service pursuant to its then effective Rate Schedule IT-I.

Applicant proposes that the costs associated with this project be treated for rate purposes on a rolled-in basis to be included in the cost of service of Texas Eastern's subsequent rate cases filed after the new facilities are built. Applicant feels incremental treatment is inappropriate because Applicant proposes to utilize these facilities for acquisition of additional system supplies that would benefit all sales customers of Applicant. Applicant's proposed facilities would provide a readily available system that would make possible the delivery of significant volumes of Mobile Bay Area natural gas into the interstate natural gas market.

Applicant submits that construction of the proposed facilities would be an effective and cost-efficent method of expanding Applicant's pipeline system to the benefit of its customers, and the proposed 24-inch line is a normal and logical extension of Applicant's existing and proposed gas supply facilities which would extend into an area where Applicant currently has no facilities and adds an additional advantage of assuring continued heavy utilization of Applicant's existing offshore Main Pass System.

Applicant states that the proposed pipeline could provide interruptible transportation opportunities for Applicant's existing or new customers, thus allowing these customers access to a wider variety of natural gas sources.

Applicant states that the route selected for the proposed pipeline was selected to avoid potentially environmentally sensitive areas. The pipeline follows a route which, within engineering feasibility parameters, maximizes environmental protection. Applicant states that installation and operation of the proposed facilities will not have a significant environmental impact and granting the requested authorization will not constitute a major federal action significantly affecting the quality of the human environment.

Comment date: February 9, 1989, in accordance with Standard Paragraph F at the end of this notice.

41. Transcontinental Gas Pipe Line Corporation

[Docket No. CP89-522-000]

January 19, 1989.

Take notice that on December 30, 1988, Transcontinental Gas Pipe Line Corporation (Transco), Post Office Box 1396, Houston, Texas 77251, filed in Docket No. CP89-522-000, an application pursuant to section 7(c) of the Natural Gas Act (NGA), as amended, and the Rules and Regulations of the Federal Energy Regulatory Commission (Commission), for a certificate of public convenience and necessity authorizing (1) construction and operation of certain pipeline and compression facilities, and (2) transportation of natural gas through such facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Transco is applying for a certificate to construct and operate certain pipeline and compression facilities which would enable the new gas reserves which have been discovered in the Mobile Area, Viosca Knoll Area and Main Pass Area East Addition, offshore Alabama, to move to markets. Transco proposes to construct and operate the following:

(1) 17.97 miles of 24-inch diameter pipeline from an onshore interconnection with Transco's existing pipeline near Coden, Mobile County, Alabama to a junction platform to be constructed by Transco in Block 109, Mobile Area. Transco would construct and operate separation and dehydration facilities on such junction platform. The facilities described in this Paragraph (1) will be hereinafter referred to as the "Phase I facilities". Transco plans to construct the Phase I facilities during the 1989 construction season. It is anticipated that producers and/or others would construct gathering lines to bring gas to the junction platform from Blocks 109, 908, and 980.

(2) 27.07 miles of 20-inch diameter pipeline from the Block 109 junction platform to a junction platform to be constructed by Transco in Block 206, Viosca Knoll Area, and 1,200 HP of onshore compression. Transco would construct and operate separation and dehydration facilities on such junction platform. The facilities in this Paragraph (2) will be hereinafter referred to as the Phase II facilities". Transco plans to construct the Phase II facilities during the 1990 construction season. It is anticipated the producers and/or others will construct gathering lines to bring gas to the junction platform from Blocks 203, 209, and 294, Viosca Knoll Area and from Block 187, Main Pass Area East Addition.

(3) 30.74 miles of 20-inch diameter pipeline from the Block 206 junction platform to a junction platform to be constructed by Transco in Block 249, Main Pass Area East Addition and 11,000 HP of onshore compression. Transco would construct and operate separation and dehydration facilities on such junction platform. The facilities described in this Paragraph (3) will be hereinafter referred to as the "Phase III facilities". Transco plans to construct the Phase III facilities during the 1991 construction season. It is anticipated that producers and/or others would construct gathering lines to bring gas to the junction platform from Block 280, Main Pass Area East Addition and Block 698, Viosca Knoll Area.

Transco states that the maximum capacity of Phase I under the pressure conditions shown in Exhibit G of this proceeding is 231,235 Mcf per day; that the maximum capability of Phase II (including the Phase I facilities) under the pressure conditions shown in Exhibit G is 457,100 Mcf per day; and that the maximum capability of Phase III (including the Phases I and II facilities) under the pressure conditions shown in Exhibit G is 515,507 Mcf per day.

Transco states that the estimated facilities cost of Phase I is $23,126,884; of Phase III is $21,565,871; and of Phase II is $29,445,689, for a total project cost of $74,138,444. Transco states that the proposed facilities would be financed initially through short-term loans and funds on hand, and permanent financing would be undertaken as part of Transco's overall long-term financing program at a later date.

Transco further states that it would transport gas for others through subject facilities. Transco states it is willing to transport for all shippers requesting service. Transco states that it does not currently know the identity of all shippers for which it would render transportation services because such shippers may be a mix of (1) the producers that own the reserves discovered in the offshore areas described above, (2) local distribution companies, (3) pipeline companies, (4) end users, and (5) marketers. Transco states it would provide such transportation services pursuant to its existing Rate Schedules IT (interruptible) and FT (firm).

It is stated that Phases I, II and III of the proposed facilities would enable the new gas reserves which have been discovered in the offshore areas described (all commonly referred to as the "Mobile Bay Area") to move to markets. The gas discoveries in the Mobile Bay Area have been described as some of the most potentially significant discoveries in the Lower 48 States during the past 20 years. Proven and probable gas reserves in such area are estimated to be approximately 5.4 trillion cubic feet. Producers in the Mobile Bay area are now nearing the stage where they will be ready to commerce production of their substantial gas reserves. Transco states that its proposed Phases I, II and III would enable such reserves to flow to markets in a timely manner. Transco states that because of declining drilling in recent years, gas reserves in the United States are depleting; therefore, it is stated that the Mobile Bay supplies will be a signficant and timely addition to reserves available for gas customers in the United States. Transco submits that the public convenience and necessity require that Transco's requested authorizations be granted.

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Comment date: February 9, 1989, in accordance with Standard Paragraph F at the end of this notice.

42. Florida Gas Transmission Company, Southern Natural Gas Company and Tennessee Gas Pipeline Company)

[Docket No. CP89-404-000]

January 19, 1989.

Take notice that on December 21, 1988, Florida Gas Transmission Company (FGT), P.O. Box 1188, Houston, Texas 77251-1188, Southern Natural Gas Company (SNG), P.O. Box 2563, Birmingham, Alabama 35202-2563, and Tennessee Gas Pipeline Company (TGP), P.O. Box 2511, Houston, Texas 77252, (Applicant(s)), filed in Docket No. CP89-404-000 pursuant to sections 7(b) and 7(c) of the Commission's Regulations under the Natural Gas Act, for authorization to construct and operate certain pipeline and related facilities and approval to acquire and abandon certain leaseholds, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Southern and Tennessee propose to construct and operate a total of approximately 52.5 miles of 36-inch pipeline, consisting of 51.3 miles and 0.6-mile segments, together with metering and appurtenant facilities, in Mobile County, Alabama to connect reserves to be produced in the vicinity of Mobile Bay. The proposed pipeline (Mobile Bay Pipeline) would extend from a point near Bayou La Batre, Alabama on the west bank of Mobile Bay, where it would connect with the tailgate of the gas processing plants of Mobile Oil Exploration and Producing Southeast, Inc. (MOEPSI) and the plants proposed to be constructed by Jubilee Pipeline Company and Shell Offshore Inc., to points on FGT's 24-inch and 30-inch mainlines, approximately seven miles west of Citronelle, all in Mobile County, Alabama. The Mobile Bay Pipeline would also connect to the gas processing plant to be constructed by Exxon Corp. (Exxon), to be located west of the junction of Fowl River and East Fowl River, approximately 3 miles north of MOEPSI's plant near the west bank of Mobile Bay.

The Mobile Bay Pipeline is proposed to connect gas reserves to be produced generally from the Mobile Bay and Viosca Knoll Areas, offshore Alabama. Applicants state that estimates of proven and probable reserves in the Mobile Bay Area range from 3.5 Tcf to 10 Tcf, and it is anticipated that over 1,000 MMcf/d may be produced within a few years from the deep Jurassic-Norphlet formation alone. Estimates of the shallow Miocene production currently indicate a maximum production of 443 MMcf/d, Applicants state, and proven and probable reserves are now estimated at 690 Bcf.

Applicants state the proposed pipeline is designed to transport 900 MMcf of natural gas per day, with throughput available to the proposed system in the first full year of production expected to be approximately 310 MMcf/d, increasing to over 900 MMcf/d by the third full year of production.

The total estimated cost of the Mobile Bay Pipeline is $47.1 million. TGP proposes to finance its portion from general funds and/or revolving credit, SNG states its exact plan of financing has not been determined. Applicants state that the facilities are scheduled to be constructed and in service by October 1, 1990 assuming all regulatory approvals are received before October 1, 1989.

Applicants also request approval of the following activities: (1) For Tennessee and Southern to abandon by lease, and FGT to acquire, a total firm capacity of the Btu equivalent of 300 MMcf/d in the Mobile Bay Pipeline; (2) for FGT to abandon by lease, and Southern and Tennessee to acquire, a total firm capacity of the Btu equivalent of 600 MMcf/d in a portion of FGT's system west of the FGT-Mobile Bay Pipeline interconnection; (3) for Southern and Tennessee to include in their respective rate bases as gas plant-in-service the lease payments paid to FGT for such capacity and their contributions in aid of construction and related taxes paid to FGT for reimbursement of the costs of certain facilities required by FGT, in connection with such leases; and for FGT to include, as accredit to its rate base, such lease payments; (4) for Southern's and Tennessee's investment in the Mobile Bay Pipeline and leased capacity (including related facilities) in FGT's lines to receive rolled-in treatment for rate purposes; (5) for the cost free exchange of leases, covering 150 MMcf/d of capacity, between FGT and Southern and between FGT and Tennessee; (6) for FGT, Southern, and Tennessee to construct and operate certain interconnecting facilities—by Southern with FGT at Franklinton, Louisiana; by Tennessee with FGT at Carnes, Mississippi; and by FGT with the Mobile Bay Pipeline, and with Southern and Tennessee; and (7) pre-granted abandonment and reacquisition of the leased capacity upon termination of the Lease Agreements between the parties. In addition, if approval is required, FGT requests authorization to back-flow gas west of the proposed FGT-Mobile Bay Pipeline interconnect located in Mobile County, Alabama.

With regard to the proposed leases of capacity, FGT proposes to lease firm capacity in a portion of its system to Southern and Tennessee. The respective capacity rights to be leased by FGT would equal Southern's and Tennessee's unleased capacity in the proposed Mobile Bay Pipeline of 300 MMcf/d each. Although FGT would continue to operate the facilities, Southern and Tennessee propose to move gas purchased for system supplies and to render open access transportation services by means of their leased capacity in FGT's line. Southern would lease capacity from FGT between the proposed FGT-Mobile Bay Pipeline interconnect and the proposed FGT-Southern interconnect at Franklinton, Louisiana; while Tennessee would lease capacity between the proposed FGT-Mobile Bay Pipeline interconnect and the proposed FGT-Tennessee interconnect at Carnes, Mississippi.

It is proposed that in exchange for the lease by FGT of 150 MMcf/d capacity each to Southern and Tennessee, they would each lease 150 MMcf/d of firm capacity (a total of 300 MMcf/d) to FGT in the Mobile Bay Pipeline, and in exchange for FGT's lease of an additional 150 MMcf/d each to Southern and Tennessee, they would each pay FGT the sum of $9 million, for a total of $18 million.

No new rates or services are proposed by Applicants, and each would render transportation services under the terms and conditions of its respective FERC Gas Tariff.

Applicants state that the Mobile Bay Area is expected to prove a significant source of long-term domestic gas supplies in the near future, and the proposed pipeline would provide facilities to move this gas to other pipeline systems for distribution to markets throughout the country.

Applicants state that approval of the instant proposals would allow the Mobile Bay Area gas to be made available both to shippers and to sales customers of each Applicant on a competitive basis, which should maximize its efficient allocation. By using existing facilities to the fullest extent possible, Applicants assert, the cost of making Mobile Bay gas available is reduced, resulting in a lower overall cost at the burner tip. If the proposals herein are approved, Applicants assert they would realize a net capital investment benefit of from $25 to $30 million each, which would accrue to the ratepayers of each Applicant. Further, Applicants submit that the utilization of existing facilities minimizes the construction of new facilities, thereby reducing the impact on the environment.

Comment date: February 9, 1989, in accordance with Standard Paragraph F at the end of this notice.

43. Gateway Pipeline Company

[Docket No. CP89-471-000]

January 19, 1989.

Take notice that on December 22, 1988, Gateway Pipeline Company (Gateway) 600 Travis, Houston, Texas 77002, filed in Docket No. CP89-471-000, an application pursuant to section 7(c) of the Commission's Regulations, for a certificate of public convenience and necessity authorizing Gateway to construct, own, and operate a natural gas pipeline and appurtenant facilities under the optional procedures contained therein, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Gateway filed an application requesting authorization to construct and operate a total of approximately 25.75 miles of 30-inch and 20-inch diameter pipeline in Mobile County, Alabama. Pursuant to § 157.103(f)(1) of the Commission's Rules and Regulations, Gateway requests pregranted authority to abandon any facilities authorized under this certificate application that Gateway determines are no longer needed upon the termination of Gateway's contractual obligations underlying the service. Gateway states that the purpose of this proposed pipeline is to transport natural gas produced in the Mobile Bay Area from gas treatment plants to United Gas Pipe Line Company's (United) interstate pipeline system.

Gateway proposes to construct the pipeline and related facilities in order to provide open-access transportation service for all potential shippers of Mobile Bay Area gas. Gateway states that the proposed pipeline would connect natural gas treatment plants in Mobile County, Alabama, with United's existing Lirette, Louisiana, to Mobile, Alabama, 30-inch pipeline at a point in Mobile County. The estimated cost to construct these facilities if financing $20,413,000. Gateway proposes to finance this proposed construction using funds on hand. Gateway states that additional compression facilities are not anticipated as the expected pressures from each of the three treatment plants would be sufficient to deliver gas into United's system.

Gateway states that on May 13, 1988, it filed an application under section 7(c) of the NGA in Docket No. CP88-393-000, requesting authorization to construct and operate approximately 25.75 miles of 30-inch and 20-inch diameter pipeline plus related facilities. Since then, the Commission has announced its intention to examine the Gateway project and several other proposed Mobile Bay Area pipelines in 1989, if their certificate applications are completed by December 30, 1988. Gateway states it remains convinced that its 7(c) application filed in Docket No. CP88-393-000 represents an economic alternative for transporting Mobile Bay Area gas volumes to the Nation's pipeline grid. Gateway believes that the optional certificate procedures would provide an expeditious alternative for constructing the proposed pipeline as it will hasten what otherwise may be lengthy consideration of its current abbreviated 7(c) certificate application.

Although Gateway states it intends to build only one pipeline in the Mobile Bay Area, Gateway emphasizes that this optional certificate application is not intended to prejudice or delay Gateway's application pending in Docket No. CP88-393-000. By concurrently applying for and seeking an optional certificate along with the traditional 7(c) application, Gateway states it intends to maintain both certificate options while permitting expeditious Commission review and action in each docket. Gateway states that upon approval of the project in either docket, Gateway will withdraw its application in the pending docket.

Comment date: February 9, 1989, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 89-1671 Filed 1-24-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-56-000]

Florida Gas Transmission Co.; Proposed Changes in Rates and Charges

January 19, 1989.

Take notice that on January 13, 1989, Florida Gas Transmission Company (FGT) tendered for filing proposed changes in its FERC Gas Tariff, Volume Nos. 1, 2, and 3, pursuant to section 4 of the Natural Gas Act, 15 U.S.C. 717(c) and the Commission's regulations thereunder to reflect a major rate increase as defined in 18 CFR 154.63, to be effective February 13, 1989.

FGT states that this filing is one of four interrelated proposals that FGT is filing concurrently to provide self-

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implementing, open-access transportation and to restructure its rates and contractual relationships with its customers. PGT states that it has filed in Docket No. CP89-555 for a blanket certificate pursuant to Order Nos. 436 and 500, and Subpart G of the Commission's Regulations, and for approval of new transportation Rate Schedules FTS-1, PIT-1 and ITS-1. PGT states that it also has filed in Docket Nos. CP88-179, *et al.*, to permit its customers to establish appropriate certificated levels of service, including daily and annual contract quantities for firm service. PGT states that all existing customers will be permitted to renominate levels of contract quantities and D-2 billing determinants by March 15, 1989. Jurisdictional sales service will be provided pursuant to revised Rates Schedules G and I and a new Rate Schedule SGS for customers purchasing less than 11,000,000 therms of natural gas on an annual basis.

PGT states that it also has filed in Docket No. CP89-556 for a blanket certificate of public convenience and necessity to make interruptible sales of natural gas in interstate commerce to on- and off-system customers pursuant to a new Rate Schedule ISS-1.

PGT states that the rates and charges filed in this docket are based on the overall cost of service for the test period consisting of actual experience for the twelve months ended September 30, 1988, adjusted for known and measurable changes through June 30, 1989. PGT states that the filing reflects an increase in the total cost of service for both jurisdictional and nonjurisdictional service, excluding purchase gas costs, of approximately $31.8 million.

PGT states that it has continued the historical practice of cost allocation embodied in Opinion Nos. 611 and 611-A issued on February 16, 1972 and January 19, 1973, respectively. However, PGT states that it has adopted the modified fixed variable method for cost classification and rate design.

PGT states that the proposed restructured rates being filed are designed to comply with the ratemaking principles embodied in Order Nos. 436 and 500. Firm jurisdictional sales and transportation will include demand/commodity rate design. Rates for jurisdictional preferred interruptible sales and transportation will include a commodity charge and an Entitlement Charge to recover a portion of the fixed charges associated with this service.

PGT states that although it does not propose time-differentiated rates, it has included seasonally-differentiated maximum daily contract quantities for each customer receiving firm service.

PGT states that it also has submitted revised tariff sheets to make its election under § 154.310(d) of the Commission's Regulations to utilize a unit of sales methodology in its PGA clause because it is more appropriate in an open access environment. These tariff sheets also include the revised definition of gas costs that is currently pending before the Commission in the Stipulation and Agreement filed by PGT in Docket No. RP89-44-000, which would permit PGT to recover through its PGA mechanism a portion of the fixed charge allocation of take-or-pay costs flowed through by PGT's upstream supplier, Southern Natural Gas Company.

PGT states that it also has submitted a pro forma tariff sheet which would establish a new section 26 to the General Terms and Conditions of its FERC Gas Tariff, First Revised Volume No. 1, which would permit PGT to revise its jurisdictional sales and transportation rates to reflect increases or decreases in the Federal income tax rate.

The Company states that copies of the filing have been mailed to each of its customers purchasing gas and receiving transportation services under its FERC Gas Tariff, to its affected direct sales customers and to interested State Commissions. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such motions or protests must be filed on or before January 27, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 89-1662 Filed 1-24-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA89-1-36-001]

Natural Gas Pipeline Co. of America; Filing

January 19, 1989

On January 9, 1989, Natural Gas Pipeline Company of America (Natural) filed Substitute Alternate Forty-third Revised Sheet No. 5A to its FERC Gas Tariff, Third Revised Volume No. 1.

Natural states that this tariff sheet is being filed to correct a typographical error reflected on Alternate Forty-third Revised Sheet No. 5A included in its original filing on December 30, 1988. Natural states that the total rate as filed did not change as a result of this calculation.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission' Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1989)). All such motions or protests should be filed on or before January 26, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 89-1672 Filed 1-24-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI85-29-011]

Odeco Oil & Gas Co.; Application for Extension of a Blanket Limited-Term Abandonment and Blanket Limited-Term Certificate With Pregranted Abandonment

January 19, 1989.

Take notice that on January 9, 1989, Odeco Oil & Gas Company (Odeco) of P.O. Box 61780, New Orleans, Louisiana 70161, filed an application pursuant to section 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for amendment of its blanket limited-term abandonment and blanket limited-term certificate with pregranted abandonment in Docket No. CI85-2-9-010 to extend such authorization for an unlimited term, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

By order issued March 31, 1988, in Docket No. CI85-665-003, *et al.*, the Commission extended Odeco's blanket limited-term abandonment and blanket limited term certificate with pregranted abandonment for a term expiring March 31, 1989. The Commission also consolidated Odeco's authorization in Docket No. CI87-776-000 pertaining to the sale of contractually uncommitted gas in Docket No. CI85-29-010 and extended it for a term expiring March 31, 1989. Odeco now seeks to extend such authorizations for an unlimited term.

Any person desiring to be heard or to make any protest with reference to said application should on or before February 7, 1989, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Odeco to appear or to be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 89-1673 Filed 1-24-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI89-154-000]

Shell Offshore, Inc.; Petition for Declaratory Order

January 18, 1989.

Take notice that on December 5, 1988, Shell Offshore Inc. (SOI) filed a petition requesting the Commission to issue a declaratory order stating that it has no jurisdiction over certain facilities SOI proposes to construct. Those facilities consist of a bundle of pipelines that will deliver sour gas produced from the Norphlet formation underlying Blocks 113 and 132 in the Northwest Gulf Unit area of Mobile Bay in Alabama state waters (Fairway Field) to an onshore gas treating facility which will be constructed and operated by SOI in South Mobile County, Alabama. In the future, SOI may extend the Fairway Field system to gather gas from other nearby leaseholds in Alabama state waters. SOI contends that the facilities are gathering facilities under section 1(b) of the Natural Gas Act (NGA) and are therefore exempt from the certificate requirements of section 7(c) of the NGA. Further, SOI contends that the facilities perform a gathering function under the primary function test set forth in *Farmland Industries, Inc.*, 23 FERC ¶ 61,063 (1983). SOI requests expedited consideration of its petition because of the relationship between the subject facilities and the proceedings in Docket No. CP88-570-000.

Any person desiring to be heard or to protest this petition should file a motion to intervene or protest in accordance with Rules 214 or 211 of the Commission's rules of practice and procedure. All motions to intervene or protests should be submitted to the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, within 15 days after publication of this notice in the **Federal Register**. All protests will be considered by the Commission but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene in accordance with Rule 214. Copies of the petition are on file with the Commission and available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 89-1674 Filed 1-24-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-52-000]

West Texas Gathering Co.; Tariff Filing

January 18, 1989.

Take notice that on January 10, 1989, West Texas Gathering Company, ("West Texas") 550 Westlake Park Blvd., Suite 170, Houston, Texas 77079, submitted for filing Original Sheet Nos. 1-37 of its FERC Gas Tariff, Revised Original Volume No. 2. The Tariff filing sets forth rates, terms and conditions for gas transportation service.

West Texas states that its tariff filing is designed to open access to West Texas' services, within the contemplation of Part 284 of the Commission's Regulations, 18 CFR Part 284. West Texas' tariff filing sets out transportation rates which include minimum and maximum rates separately identifying cost components attributable to transportation and gathering costs, includes a cost basis for rates, and expresses rates on an MMBtu basis, all as required by the Commission's Regulations.

West Texas states that these tariff sheets are filed to be made effective on January 10, 1989. West Texas has requested such waiver of the Commission's regulations as may be required in order to permit the proposed effective date.

On January 10, 1989, West Texas petitioned the Commission for waiver of the filing fee required by Part 381 of the Commission's Regulations, 18 CFR Part 381, to be submitted with West Texas' open access tariff filing of January 10, 1989.

West Texas originally filed its application for authority to commence open-access transportation and accompanying tariff sheets on November 21, 1988. The Commission accepted the filing feet but, by order dated December 21, 1988, rejected West Texas' tariff filing, citing numerous technical inconsistencies with Commission policy and regulations. West Texas states that the refiling of its open access tariff is in the nature of a nonsubstantial amendment to its initial November 21, 1988 filing, as defined in § 381.110 of the Commission's Regulations, 18 CFR 381.110.

West Texas points out that it is subject to "economic hardship" sufficient to justify waiver of the filing fee for its tariff filing. West Texas states that it is a small company depending on revenues from gathering services and that requiring West Texas to pay another filing fee for its January 10 filing would place an undue and disproportionate burden on West Texas.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1989)). All such motions or protests should be filed on or before January 26, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 89-1675 Filed 1-24-89; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2525, Wisconsin]

Wisconsin Public Service Corp.; Intent To File an Application for a New License

January 19, 1989.

Take notice that on December 15, 1988, Wisconsin Public Service

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Corporation, the existing licensee for the Caldron Falls Hydroelectric Project No. 2525, filed a notice of intent to file an application for a new license, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 808, as amended by section 4 of the Electric Consumers Protection Act of 1986, Pub. L. 99-495. The original license for Project No. 2525 was issued effective May 1, 1965, and expires December 31, 1993.

The project is located on the Peshtigo River in Marinette and Oconto Counties, Wisconsin. The principal works of the Caldron Falls Project include a 30-foot-high, 1,250-foot-long concrete dam; a reservoir of 1,180 acres at elevation 982.0 feet NGVD; two 10-foot-diameter steel penstocks; a powerhouse with an installed capacity of 6,400 kW; a substation and transmission line connection; and appurtenant facilities.

Pursuant to section 15(b)(2) of the Act, the licensee is required to make available certain information described in Docket No. RM87-7-000, Order No. 496 (Final Rule issued April 28, 1988). A copy of this Docket can be obtained from the Commission's Public Reference Branch, Room 1000, 825 North Capitol Street NE., Washington, DC 20426. The above information as described in the rule is now available from the licensee at 700 North Adams Street, Green Bay, WI 54307-9002.

Pursuant to section 15(c)(1) of the Act, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 31, 1991.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 89-1676 Filed 1-24-89; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2522, Wisconsin]

Wisconsin Public Service Corp.; Intent To File An Application For A New License

January 19, 1989.

Take notice that on December 15, 1988, Wisconsin Public Service Corporation, the existing licensee for the Johnson Falls Hydroelectric Project No. 2522, filed a notice of intent to file an application for a new license, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 808, as amended by section 4 of the Electric Consumers Protection Act of 1986, Pub. L. 99-495. The original license for Project No. 2522 was issued effective May 1, 1965, and expires December 31, 1993.

The project is located on the Peshtigo River in Marinette County, Wisconsin. The principal works of the Johnson Falls Project include a 508-foot-long dam with a concrete section and an earthfill section; a reservoir of 130.5 acres at elevation 814.0 feet NGVD; a powerhouse with an installed capacity of 3,520 kW; a subetation and transmission line connection; and appurtenant facilities.

Pursuant to section 15(b)(2) of the Act, the licensee is required to make available certain information described in Docket No. RM87-7-000, Order No. 496 (Final Rule issued April 28, 1988). A copy of this Docket can be obtained from the Commission's Public Reference Branch, Room 1000, 825 North Capitol Street, NE., Washington, DC 20426. The above information as described in the rule is now available from the licensee at 700 North Adams Street, Green Bay, WI 54307-9002.

Pursuant to section 15(c)(1) of the Act, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 31, 1991.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 89-1677 Filed 1-24-89; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2581, Wisconsin]

Wisconsin Public Service Corp.; Intent To File An Application For A New License

January 19, 1989.

Take notice that on December 15, 1988, Wisconsin Public Service Corporation, the existing licensee for the Peshtigo Hydroelectric Project No. 2581, filed a notice of intent to file an application for a new license, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 808, as amended by section 4 of the Electric Consumers Protection Act of 1986, Pub. L. 99-495. The original license for Project No. 2581 was issued effective May 1, 1965, and expires December 31, 1993.

The project is located on the Peshtigo River in Marinette County, Wisconsin. The principal works of the Peshtigo Project include a 20-foot-high, 357.5-foot-long concrete gravity dam; a reservoir of 460 acres at elevation 603 feet NGVD; a powerhouse with an installed capacity of 564 kW; a transmission line connection; and appurtenant facilities.

Pursuant to section 15(b)(2) of the Act, the licensee is required to make available certain information described in Docket No. RM87-7-000, Order No. 496 (Final Rule issued April 28, 1988). A copy of this Docket can be obtained from the Commission's Public Reference Branch, Room 1000, 825 North Capitol Street, NE., Washington, DC 20426. The above information as described in the rule is now available from the licensee at 700 North Adams Street, Green Bay, WI 54307-9002.

Pursuant to section 15(c)(1) of the Act, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 31, 1991.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 89-1678 Filed 1-24-89; 8:45 am]

BILLING CODE 6717-01-M

Wisconsin Public Service Corp.; Intent to File an Application for a New License

[Project No. 2433, Wisconsin]

January 19, 1989.

Take notice that on December 15, 1988, Wisconsin Public Service Corporation, the existing licensee for the Grand Rapids Hydroelectric Project No. 2433, filed a notice of intent to file an application for a new license, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 808, as amended by section 4 of the Electric Consumers Protection Act of 1986, Pub. L. 99-495. The original license for Project No. 2433 was issued effective August 1, 1965, and expires December 31, 1993.

The project is located on the Menominee River in Marinette County, Wisconsin and Menominee County, Michigan. The principal works of the Grand Rapids Project include a dam with a 24-foot-high, 490-foot-long concrete section and a 900-foot-long earthfill section; a reservoir of 300 acres at elevation 664.75 feet NGVD; a 3,200-foot-long power canal; a powerhouse with an installed capacity of 7,020 kW; a substation and transmission line connection; and appurtenant facilities.

Pursuant to section 15(b)(2) of the Act, the licensee is required to make available certain information described in Docket No. RM87-7-000, Order No. 496 (Final Rule issued April 28, 1988). A copy of this Docket can be obtained from the Commission's Public Reference Branch, Room 1000, 825 North Capitol Street, NE., Washington, DC 20426. The above information as described in the rule is now available from the licensee at 700 North Adams Street, Green Bay, WI 54307-9002.

Pursuant to section 15(c)(1) of the Act, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 31, 1991.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 89-1679 Filed 1-24-89; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2595, Wisconsin]

Wisconsin Public Service Corp.; Intent To File an Application for a New License

January 19, 1989.

Take notice that on December 15, 1988, Wisconsin Public Service Corporation, the existing licensee for the High Falls Hydroelectric Project No. 2595, filed a notice of intent to file an application for a new license, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 808, as amended by section 4 of the Electric Consumers Protection Act of 1986, Pub. L. 99-495. The original license for Project No. 2595 was issued effective April 1, 1962, and expires December 31, 1993.

The project is located on the Peshtigo River in Marinette County, Wisconsin. The principal works of the High Falls Project include a 38-foot-high, 878-foot-long concrete dam with earth dikes extending 1,425 feet east and 2,600 feet west from the dam; a reservoir of 1,670 acres at elevation 897.0 feet NGVD; a powerhouse with an installed capacity of 7,000 kW; a substation and transmission line connection; and appurtenant facilities.

Pursuant to section 15(b)(2) of the Act, the licensee is required to make available certain information described in Docket No. RM87-7-000, Order No. 496 (Final Rule issued April 28, 1988). A copy of this Docket can be obtained from the Commission's Public Reference Branch, Room 1000, 825 North Capitol Street, NE., Washington, DC 20426. The above information as described in the rule is now available from the licensee at 700 North Adams Street, Green Bay, WI 54307-9002.

Pursuant to section 15(c)(1) of the Act, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 31, 1991.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 89-1680 Filed 1-24-89; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Cases Filed; Week of December 16 Through December 23, 1988

During the Week of December 16 through December 23, 1988, the appeals and applications for other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy. Inadvertently omitted from earlier listes have also been included.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

January 17, 1989.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of December 16 through December 23, 1988]

Date	Name and location of applicant	Case No.	Type of submission
Dec. 16, 1988	Cone Mills Corporation, Greensboro, NC	RR272-21	Request for Modification/Rescission. If granted: The November 14, 1988 Decision and Order issued to Cone Mills Corporation (Case No. RF272-22264) would be rescinded and the firm would receive a refund in the crude oil refund proceeding.
Dec. 19, 1988	Anthony Mechanical Contractor, Kansas City, KS	KFA-0249	Appeal of an information Request Denial. If granted: The November 14, 1988 Freedom of Information Request Denial issued by the Office of Intergovernmental and External Affairs would be rescinded and Anthony Mechanical Contractor would receive access to information regarding the bid submitted by Consolidated Design, Inc.
Dec. 21, 1988	Economic Regulatory Administration, Washington, DC.	KRZ-0068	Interlocutory. If granted: The Office of Hearings and Appeals would amend the April 27, 1984 Proposed Remedial Order (HRO-0230) issued to Compton Corporation and Gratex Corporation to dismiss Gratex Corporation as a party in the proceeding.

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REFUND APPLICATIONS RECEIVED

Date received	Name of refund proceeding/name of refund application	Case No.
11/28/88	Amoco/Oklahoma	RQ251-489.
11/28/88	Vickers/Oklahoma	RQ1-490.
11/28/88	OKC/Oklahoma	RQ12-491.
12/16/88 through 12/23/88	Crude Oil Refund, applications received.	RF272-75161 through RF272-75176.
12/16/88 through 12/23/88	Exxon Refund, applications received.	RF307-7195 through RF307-7298.
12/16/88 through 12/23/88	Atlantic Richfield Co., applications received.	RF304-7548 through RF304-7578.
12/16/88 through 12/23/88	Murphy Oil Refund, applications received.	RF308-579 through RF308-599.
12/19/88	Jarrell Oil Co., Inc	RF313-3.
12/19/88	Bee's Super Service, Inc.	RF313-4.
12/19/88	Kern's Car Care Center.	RF300-10644.
12/19/88	Vernelle Steinke	RC272-15.
12/20/88	Amoco I/New York	RQ21-482.
12/20/88	Amoco II/New York.	RQ251-493.

REFUND APPLICATIONS RECEIVED—Continued

Date received	Name of refund proceeding/name of refund application	Case No.
12/20/88	Richards Fuel Oils, Inc.	RF313-5.
12/20/88	Davis Oil Co	RF313-6.
12/20/88	Econoco, Inc	RF313-7.
12/20/88	Cato's Crown Service Station.	RF313-8.
12/21/88	Hollin's Garage	RF313-9.
12/21/88	Capitol Oil Co., Inc	RF313-10.
12/21/88	Cooper Oil Co	RF313-11.
12/21/88	Wiener's Gulf Service #1.	RF300-10645.
12/21/88	Wiener's Gulf Service #2.	RF300-10646.
12/21/88	Berwick Bay Oil Co	RF314-3.
12/21/88	Delta Oil Co., Inc	RF314-4.
12/22/88	Vicksburg Petroleum Products.	RF314-2.
12/22/88	Kivett Oil Co	RF313-12.

[FR Doc. 89-1687 Filed 1-24-89; 8:45 am]
BILLING CODE 6450-01-M

Cases Filed; Week of December 23 Through December 30, 1988

During the Week of December 23 through December 30, 1988, the appeals and applications for other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

George B. Breznay,

Director, Office of Hearings and Appeals.

January 17, 1989.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of Dec. 23 through Dec. 30, 1988]

Date	Name and location of applicant	Case No.	Type of submission
Dec. 27, 1988	Restrepo & Associates, El Paso, TX	KFA-0250	Appeal of an Information Request Denial. If Granted: The Nov. 7, 1988, Freedom of Information Request Denial issued by the Chief of FOI and Privacy Acts, would be rescinded and Restrepo & Associates would receive access to information relating to Mr. Jose Arreola's allegations and statements attributed to DOE/Albuquerque Operations Office employee Mr. Roy Chavez.
Dec. 29, 1988	Osan Petroleum Co., Inc., Macon, GA	KEE-0169	Exception to the Reporting Requirements. If Granted: Osan Petroleum Co., Inc. would no longer be required to file form EIA-782B "Resellers/Retailers' Monthly Petroleum Product Sales Report."
Dec. 30, 1988	Barton J. Bernstein, Stanford, CA	KFA-0251	Appeal of an Information Request Denial. If Granted: The Dec. 9, 1988, Freedom of Information Request Denial would be rescinded and Barton J. Bernstein of Stanford University would receive access to a complete copy of Edward Teller's Comments on the Bethe Thermonuclear History, Aug. 14, 1952.

REFUND APPICATIONS RECEIVED

Date received	Name of refund proceeding/name of refund application	Case No.
10/21/87	Ram Fuel Corp	RF300-10649.
10/21/87	do	RF300-10650
10/21/87	L.S. Riggins Oil Co	RF300-10651.
7/5/88	AP Propane, Inc	RF272-75187.
7/5/88	Amerigas, Inc	RF272-75188.
12/23/88 through 12/30/88	Murphy Oil Refund, applications received.	RF309-700 through RF309-717
12/23/88 through 12/30/88	Atlantic Richfield Co., applications received.	RF304-7580 through RF304-7603.
12/23/88 through 12/30/88	Exxon Refund, applications received.	RF307-7300 through RF307-7382.
12/27/88	Monmouth College	RF272-75177.
12/27/88	Concrete, Inc	RF272-75178.

REFUND APPLICATIONS RECEIVED—Continued

Date received	Name of refund proceeding/name of refund application	Case No.
12/27/88	Chappell E-Z Go, #33.	RF272-75179.
12/27/88	Chappell E-Z Go, #43.	RF272-75180.
12/27/88	Botsford Ready Mix Co.	RF272-75181.
12/27/88	Sherman Conrad	RF300-10647.
12/27/88	Three M Service Station.	RF313-13.
12/29/88	Willie's E-Z Go	RF272-75189.
12/30/88	Bizzack Bro. Construction.	RF272-33336.
12/30/88	Gold Bond Building Products.	RF272-63111.

REFUND APPLICATIONS RECEIVED—Continued

Date received	Name of refund proceeding/name of refund application	Case No.
12/30/88	The L.E. Meyers Co.	RF272-64347.
12/30/88	Las Vegas Paving Construction.	RF272-74755.
12/30/88	Arundel Asphalt Products.	RF272-74856.
12/30/88	MacMillan's Mobil	RF272-75190.
12/30/88	SOS Truck Stop, Inc.	RF314-5.
12/30/88	CLK Assoc. Ltd	RF313-14.

[FR Doc. 89-1686 Filed 1-24-89; 8:45 am]
BILLING CODE 6450-01-M

Issuance of Proposed Decision and Order; Period of July 4 through December 2, 1988

During the period of July 4 through December 2, 1988, the proposed decision and order summarized below was issued by the Office of Hearings and Appeals of the Department of Energy with regard to an application for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR Part 205, Subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of this proposed decision and order are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except Federal holidays.

January 17, 1989.

George B. Breznay,

Director, Office of Hearings and Appeals.

Guam Energy Office, 11/28/88, KEF-0167

The Guam Energy Office filed an Application for Exception from the provisions of the Institutional Conservation Program (ICP), 10 CFR Part 455. If the exception request were granted, Guam would receive an exception from the requirement of 10 CFR Part 455, that buildings eligible for grants under the ICP be heated or cooled by mechanical means. On November 28, 1988, the Department of Energy issued a Proposed Decision and Order which tentatively determined that the exception request be granted.

[FR Doc. 89-1685 Filed 1-24-89; 8:45 am]
BILLING CODE 6450-01-M

Issuance of Decisions and Orders; Week of November 14 through November 18, 1988

During the week of November 14 through November 18, 1988, the decisions and orders summarized below were issued with respect to applications for relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Remedial Order

Intercontinental Oil Company, Inc., 11/16/88, KRO-0060

Intercontinental Oil Company, Inc. filed a Notice of Objection to a Proposed Remedial Order (PRO) that the DOE's Economic Regulatory Administration (ERA) issued to the firm on October 6, 1987. The firm did not, however, file a Statement of Objections. In the PRO, the ERA found that the firm had committed violations of, inter alia, 10 CFR 212.131 (the certification rule), § 212.183 (the crude oil resale rule), and § 212.186 (the layering rule). After reviewing the PRO and the firm's Notice of Objection, the DOE concluded that the PRO stated a prima facie case of regulatory violations that were not rebutted by the Notice of Objection. The DOE further concluded, however, that the miscertification portion of the PRO did not contain sufficient findings to support the full violation amount sought. Accordingly, the DOE remanded this portion of the PRO to the ERA and issued the remainder of the PRO as a final Remedial Order.

Petition for Special Redress

Maryland 11/15/88, KEG-0035

The DOE issued a Decision and Order concerning the Petition for Special Redress filed by the State of Maryland. Maryland sought approval to use Stripper Well funds for a project which the DOE's Assistant Secretary for Conservation and Renewable Energy held to be inconsistent with the terms of the Stripper Well Settlement Agreement. The DOE approved the State's proposal to use $49,500 for the Howard County Department of Public Works' Water and Energy Conservation Program, a project to inspect plumbing fixtures, repair water leaks, and install water saving retrofit kits in low income and elderly residences. The DOE determined that the residences would use less water, saving energy which would otherwise be used by Howard County and its citizens to pump, purify, and heat water. The DOE also found that the project was timely and part of a well-balanced restitutionary plan. In conclusion, the DOE found that Maryland's program was permissible under the terms of the Settlement Agreement and OHA precedent. Accordingly, Maryland's Petition for Special Redress was approved.

Refund Applications

Alpo Petfoods, Inc., et al., 11/14/88, RF272-19843, et al.

The DOE issued a Decision and Order denying nine Applications for Refund submitted in the crude oil refund proceeding. The DOE determined that each applicant had waived its rights to a Subpart V crude oil refund when it filed for a refund from the Surface Transporters Escrow account created by the Stripper Well Settlement Agreement. Accordingly, the DOE concluded, each applicant was ineligible to receive a Subpart V crude oil refund.

Aminoil U.S.A., Inc./Amerada Hess Corporation et al., 11/16/88, RF139-178, et al.

The DOE issued a Decision and Order concerning 12 Applications for Refund filed in the Aminoil U.S.A., Inc. special refund proceeding. In considering the Applications, the DOE noted that all of the applications were filed over three years after the deadline established in the Aminoil proceeding. The DOE found that the applications were filed by firms and/or a representative with experience before the DOE and that eleven of the applications were incomplete upon filing. Under these circumstances and because the proceeding is approaching completion, the applications were denied.

Aminoil U.S.A., Inc./Evans Oil & Gas, Inc. Williams Gas Service, 11/15/88, RF139-100, RF139-177

The DOE issued a Decision and Order concerning Applications for Refund filed by Evans Oil & Gas, Inc. and Williams Gas Service in the Aminoil U.S.A., Inc. special refund proceeding. Evans was a direct purchaser of Aminoil products and made a demonstration of injury which showed that it absorbed Aminoil price increases, including any overcharges, in an amount in excess of its maximum volumetric refund. After examining the firm's application and

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supporting documentation, the DOE concluded that Evans should receive a refund of $718,594, representing $405,696 in principal and $312,898 in interest. Williams, an indirect purchaser of Aminoil products resold by Evans, stated, as the basis for its claim, price increases which were alleged to have been implemented by Evans (rather than Aminoil) prior to both the period of Federal price regulations and the Aminoil consent order period. Since these alleged price increases could not have constituted violations and, in any case, were not Aminoil increases, the Williams claim was denied.

Arnold A. Spindler, et al., 11/18/88, RF272–33619, et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 16 applicants based on their respective purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. Each applicant used petroleum products for various activities, including farming, manufacturing, and heating public school facilities, and each determined its volume claim either by consulting actual purchase records or by reasonably estimating its consumption. Each applicant was an end-user of the products it claimed and was therefore presumed by the DOE to have been injured. The sum of the refunds granted in this Decision is $1,467.

Atlantic Richfield Company/Belen Butane Supply, Inc., 11/17/88, RF304–687

The DOE issued a Decision and Order concerning an Application for Refund filed in the Atlantic Richfield Company (ARCO) special refund proceeding by Belen Butane Supply, Inc., a reseller. The applicant requested a refund based on purchases of 20,647,810 gallons of ARCO propane. The applicant did not attempt to demonstrate injury and elected to limit its refund to 41% of its full volumetric allocation of the ARCO consent order funds. The refund granted in this Decision was $7,832 ($6,222 in principal and $1,610 in interest).

Atlantic Richfield Company/Commissioners of Berk County et al., 11/16/88, RF304–901, et al.

The DOE issued a Decision and Order concerning 65 Applications for Refund filed in the Atlantic Richfield Company (ARCO) special refund proceeding. As end-users of reseller/retailers claiming refunds of less than $5,000 in principal, each applicant was presumed to have been injured by ARCO's alleged overcharges. After examining the applications and supporting documentation, the DOE determined that the firms should receive refunds of $74,241 ($58,962 in principal and $15,259 in interest).

Atlantic Richfield Company/Earl R. Kimble et al., 11/14/88, RF304–475, et al.

The DOE issued a Decision and Order concerning nine Applications for Refund filed in the Atlantic Richfield Company (ARCO) special refund proceeding. All of the applicants documented the volume of their ARCO purchases and were resellers or retailers requesting refunds of less than $5,000. Therefore, each applicant was presumed injured. The refunds granted in this Decision totalled $1,991 ($1,582 in principal and $409 in interest).

Central Louisiana Electric Co. et al., 11/14/88, RF272–27830, et al.

The DOE issued a Decision and Order denying 12 Applications for Refund in the crude oil refund proceeding. Each of the applicants was a utility which also participated in the Stripper Well Utilities Escrow. In receiving money from the Stripper Well Utilities Escrow, each of the applicants signed an irrevocable waiver which rendered it ineligible to participate in any future refund proceedings involving crude oil monies, including the OHA's Subpart V crude oil refund proceeding. Accordingly, the 12 Applications for Refund were denied.

Easton Utilities Commission, City of Holyoke Gas & Electric Dep't, Taunton Municipal Lighting District, 11/17/88, RF272–8609, FR272–8615, FR272–9474

The DOE approved Subpart V crude oil refunds for three municipal utilities in the business of supplying electrical power and/or natural gas. The DOE considered comments which contended that the utilities were state entities, and that state entities could only receive refunds pursuant to the portion of the Stripper Well Settlement Agreement that reserved 80% of the fund for governmental agencies. The DOE found that there was no showing that the applicants were state entities and that, in any event, the states did not waive their right to direct restitution with respect to their own purchases of refined products. The refunds approved totalled $46,253.

Exxon Corporation/Daniels Oil Company, Inc., Roy A. Breaud, Kunkle Oil Co., 11/14/88, RF307–2124, FR307–2467, FR307–2588

The DOE issued a Decision and Order concerning three Applications for Refund files in the Exxon Corporation special refund proceeding. The applicants, wholesale distributors of Exxon products, each had an allocable share in excess of $5,000. Each applicant was eligible to receive as its refund the larger of $5,000 or 40% of its allocable share up to $50,000. Each applicant was granted a refund of $5,000 plus interest. The sum of the refunds granted in this Decision is $17,040 ($15,000 in principal and $2,040 in interest).

Exxon Corporation/George Hodak et al., 11/18/88, FR307–2303, et al.

The DOE issued a Decision and Order concerning nine Applications for Refund files in the Exxon Corporation special refund proceeding. Each of the applicants purchased directly from Exxon and was either a reseller whose allocable share was less than $5,000 or an end-user of Exxon products. The DOE determined that each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $10,078 ($8,816 in principal and $1,262 in interest).

Exxon Corporation/Shark Hills Exxon et al., 11/16/88, FR307–3700, et al.

The DOE issued a Decision and Order concerning 72 Applications for Refund files in the Exxon Corporation special refund proceeding. Each of the applicants purchased directly from Exxon and was either a reseller whose allocable share was less than $5,000 or an end-user of Exxon products. The DOE determined that each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $50,556 ($44,228 in principal and $6,328 in interest).

Exxon Corporation/William Ferguson et al., 11/14/88, FR307–1652, et al.

The DOE issued a Decision and Order concerning 36 Applications for Refund files in the Exxon Corporation special refund proceeding. Each of the applicants purchased directly from Exxon and was either a reseller whose allocable share was less than $5,000 or an end-user of Exxon products. The DOE determined that each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $41,873 ($36,631 in principal and $5,242 in interest).

Gary's Shell Service, Lindsey Oil Corporation, 11/14/88, FR272–9095, FR272–9168

The DOE issued a Decision and Order denying two Applications for Refund files in connection with the Subpart V crude oil refund proceeding. Each applicant was either a reseller or a retailer during the period August 19, 1973 through January 27, 1981. Because neither of the applicants demonstrated that it was injured due to crude oil overcharges, both were ineligible for a crude oil refund.

Getty Oil Company/DeMeyers Service Station, 11/17/88, RF265–2683

DeMeyers Service Station (DeMeyers) filed an application for Refund seeking a portion of the fund obtained by the DOE through a consent order entered into with the Getty Oil Company. DeMeyers documented the volume of the Getty motor gasoline which it purchased indirectly through the Don Sheetz Oil Company, a Getty jobber. Utilizing the procedures outlined in *Pioneer Corp./E.I. du Point de Nemours & Co.*, 14 DOE ¶ 85,190 (1986), we calculated DeMeyers' allocable share. The total amount of the refund approved in this Decision and Order is $1,714 ($832 in principal and $882 in interest).

Getty Oil Company/Rays Skelly Station, 11/18/88, RF265–2638

Rays Skelly Station (Rays) filed an Application for Refund seeking a portion of the fund obtained by the DOE through a consent order entered into with the Getty Oil Company. Rays documented the volume of Getty motor gasoline which it purchased indirectly through the Roger Oil Company, a Getty jobber. Utilizing the procedures outlined in *Pioneer Corp./E.I. du Point Nemours & Co.*, 14 DOE ¶ 85,190 (1986), we calculated Ray's allocable share. The total amount of this refund is $4,190 ($2,034 in principal and $2,156 in interest).

Glen Tofsrud et al., 11/18/88, RF272–33510, et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 13 applicants based on their respective purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. Each applicant used petroleum products for various activities including farming, manufacturing, and heating public school facilities, and each determined its volume claim either by consulting actual purchase records or by reasonably estimating its consumption. Because each applicant was an end-user of the products it claimed, it was presumed by the DOE to have been injured. The sum of the refunds granted in this decision is $2,796.

Gulf Oil Corporation/Belcher's Grocery Store et al., 11/17/88, RF300–1458, et al.

The DOE issued a Decision and Order concerning 17 Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision is $26,649.

Gulf Oil Corporation/Blue Ridge Transfer Co., Inc., et al., 11/16/88, RF300–4100, et al.

The DOE issued a Decision and Order concerning 154 Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision is $821,037.

Gulf Oil Corporation/Guardian Oil Corporation et al., 11/17/88, RF300–1547, et al.

The DOE issued a Decision and Order concerning seven Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision is $122,713.

Gulf Oil Corporation/Guilbeau, Inc., et al., 11/17/88, RF300–800, et al.

The DOE issued a Decision and Order granting 38 Applications for Refund in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision is $74,617.

Gulf Oil Corporation/Guy W. Ward et al., 11/14/88, RF300–2800, et al.

The DOE issued a Decision and Order concerning 85 Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision is $115,297.

Gulf Oil Corporation/Jos. Dibattista, Polar Industries, Inc., Standard Oil of Connecticut, Inc., 11/15/88, RF300–10568, RF300–10569, RF300–10570

The DOE issued a Supplemental Order concerning three Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each of these three applicants had previously received $5,000 in principal. *See Buckley and Scott, et al.*, 18 DOE ¶ 85,067 (1988). Because the earlier Decision and Order failed to refund interest on that amount, each of the applicants received $1,328 in interest in the Supplemental Order.

Gulf Oil Corporation/Lil Roundup et al., 11/17/88, RF300–880, et al.

The DOE issued a Decision and Order concerning 47 Applications for Refund in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision is $89,219.

Gulf Oil Corporation/M.G., Inc., et al., 11/18/88, RF300–803, et al.

The DOE issued a Decision and Order concerning 48 Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision is $53,670.

Gulf Oil Corporation/Nugent's Cen. Ser., Inc., et al., 11/18/88, RF300–5269, et al.

The DOE issued a Decision and Order concerning 99 Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision is $166,711.

Gulf Oil Corporation/Tuck's Chevron Service et al., 11/14/88, RF300–7500, et al.

The DOE issued a Decision and Order concerning 63 Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision is $123,978.

Hardin County, Highway Dept. et al., 11/16/88, RF272–16175, et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 48 applicants based on their respective purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. Each applicant documented its purchase volumes either by actual purchase records or by reasonable, conservative estimating procedures. Because each applicant was an end-user of the products purchased, it was presumed to have been injured. The sum of the refunds granted in this Decision is $18,445.

Jenkins Oil Co. et al., 11/18/88, RF272–61332, et al.

The DOE issued a Decision and Order denying 25 Applications for Refund filed in the crude oil refund proceeding. Each applicant was a reseller or retailer during the period August 19, 1973 through January 27, 1981. Because none of the applicants demonstrated that it was injured due to the crude oil overcharges, each applicant was ineligible for a crude oil refund.

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Kruepke Trucking, Inc., et al., 11/16/88, RF272-30848, et al.

The DOE issued a Decision and Order approving 30 Applications for Refund filed in the crude oil refund proceeding. The DOE found that the applicants, all end-users, met the eligibility requirements by supplying their actual or estimated purchase volume information for their commercial or agricultural activities. The DOE granted the applicants a total refund of $23,804.

Madison County, Highway Department et al., 11/15/88, RF272-15353, et al.

The DOE issued a Decision and Order, granting refunds from crude oil overcharge funds to 10 applicants based on their respective purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. Each applicant calculated its volume claim either by consulting actual purchase records or by estimating its consumption. Each applicant was an end-user of the products it claimed and was therefore presumed injured. The sum of the refunds granted in this Decision is $40,109.

Marlene C. Clark et al., 11/15/88, RF272-30440, et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 16 applicants based on their respective purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. Each applicant used petroleum products for various activities including farming, manufacturing, and heating public school facilities, and each determined its volume claim either by consulting actual purchase records or by reasonably estimating its consumption. Each applicant was an end-user of the products it claimed and was therefore presumed injured. The sum of the refunds granted in this Decision is $7,528.

McCreery Aviation Company, Inc., et al., 11/14/88, RF272-15015, et al.

The DOE issued a Decision and Order concerning 11 Applications for Refund filed in the crude oil refund proceeding. The applicants, resellers of petroleum products, failed to demonstrate that they were injured by alleged crude oil overcharges. Accordingly, all 11 applications were denied.

MCO Holdings, Inc., MGPC, Inc./Butane Power and Equipment Co., Eighty-Eight Oil Co., McPherson Propane, RF312-1, RF312-2, RF312-3

The DOE issued a Decision and Order granting refunds from the MCO Holding, Inc./MGPC, Inc. consent order fund to Butane Power and Equipment Co. (Butane), Eighty-Eight Oil Co. (Eighty-Eight), and McPherson Propane (McPherson). Each firm was a reseller of MGPC NGLs and NGLPs with an allocable share greater than $5,000. According to the procedures established in *MCO Holding, Inc.*, 17 DOE ¶ 85,696 (1988), a reseller with an allocable share greater than $5,000 may elect to receive 60 percent of its allocable share, or $5,000 may elect to receive 60 percent of its allocable share, or $5,000, whichever is greater, without making a detailed demonstration of injury. For both Butane and Eighty-Eight, 60 percent of their allocable share was greater; for McPherson $5,000 was greater. Accordingly, the applicants were granted a total refund of $45,905 ($40,487 in principal and $5,508 in interest).

Robert J. Lothspeich, William Moehrle., 11/14/88, RF272-75066, RF272-75067

The DOE issued a Supplemental Decision and Order to Robert J. Lothspeich (Lothspeich) and William Moehrle (Moehrle) in the crude oil refund proceeding. In *Pepsi Cola Bottling of Bennettsville*, 18 DOE ¶ 85,090 (1988), the DOE granted Lothspeich and Moehrle refunds based on their purchases of petroleum products. However, these applicants had prevously been granted refunds for the same volumes in *Steven E. Schroeder*, Case No. RF272-30000 (August 18, 1988). Therefore, the DOE rescinded the duplicate refunds granted in the *Pepsi* Decision.

Standard Oil Co. (Indiana) Colorado Vickers Energy Corp./Colorado, 11/15/88, RF251-122, RQ1-478

The DOE issued a Decision and Order granting the Motion for Modification and second-stage refund application filed by the State of Colorado in the Standard Oil Co. (Indiana) special refund proceedings. Colorado requested permission to use its previously approved $84,261 in Amoco II funds, and $151,360 in Vickers funds, for the State's Oil Inspection Unit. The Unit investigates complaints by Colorado residents about the quality of the liquid fuels they use. The Unit tests the fuel and takes any necessary action against the supplier to correct any problems that are found. The funds would buy new testing equipment for the Unit to increase the accuracy of the tests. The second-stage monies would supplement, not supplant, the Unit's current level of funding. The DOE found that this program provided restitution to injured consumers of petroleum products. Accordingly, Colorado's requests were granted.

Suburban Propane Gas Corporation/Monarch Service Station, 11/16/88, RF299-55

The DOE issued a Decision and Order granting an Application for Refund filed by Monarch Service Station, a purchaser of refined petroleum products, in the Suburban Propane Gas Corporation special refund proceeding. According to the procedures set forth in *Suburban Propane Gas Corporation*, 18 DOE ¶ 85,382 (1987), Monarch was found to be eligible for a refund based on the volume of product it purchased from Suburban. The total refund approved in this Decision is $13 ($146 in principal and $27 in interest).

Vanguard Petroleum Corp., 11/14/88, RF272-67019

The DOE issued a Decision and Order denying, on two independent grounds, a reseller's Application for Refund in the crude oil Subpart V refund proceeding. First, the DOE found that the applicant had waived its right to a Subpart V crude oil refund by signing a waiver and release and receiving a refund in the Resellers Escrow. Second, The DOE found that the applicant failed to demonstrate that it was unable to pass through the effects of crude oil overcharges to its own customers.

W & F Manufacturing Company, 11/16/88, RF272-10774

The DOE issued a Decision and Order granting an Application for Refund filed by W & F manufacturing Company, a purchaser of refined petroleum products, including paraffin and microcrystalline waxes, in the Subpart V crude oil refund proceeding. W & F was found to be eligible for a refund based on an estimated purchase volume of 6,356,721 gallons. The total refund approved in this Decision is $1,271.

Crude Oil End-Users

The Office of Hearings and Appeals granted crude oil overcharge refunds to end-user applicants in the following Decisions and Orders:

Name	Case No.	Date	No. of Applicants	Total Refund
Ronald Smith et al.	RF272-17600	11/16/88	97	$33,833
Waterbury Hospital et al.	RF272-9315	11/18/88	26	$8,341

Dismissals

The following submissions were dismissed:

Name and Case No.

Adee Tower Apartments, Inc.—RF272-28634
Best Oil Company—RF307-3678
Cacioppo Service Station—RF304-3404
Chiquita Brands, Inc.—RF272-74819
Don's Exxon Service—RF307-252
Grand Rapids Veterans Taxicab Company—RF270-2516
Greg's ARCO—RF304-3502
Howard's Butane-Propane—RF304-1183, RF304-1234, RF304-1310, RF304-1353
K Mart Corp.—RF272-14092
Ken Lockes Exxon Service—RF307-1005
Petrolane Transport Petrolane, Inc.—RF304-675
Tennessee Valley Authority—RF304-6407
University Arco Station—RF304-6543
W.R. Grace & Company—RD272-30636
Witco Chemical Corp.—RF307-4444, RF307-5390

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

George B. Breznay,

Director, Office of Hearings and Appeals.

January 17, 1989.

[FR Doc. 89-1604 Filed 1-24-89; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3506-7]

Transfer of Data to Department of Justice

AGENCY: Environmental Protection Agency.

ACTION: Notice of transfer of data and request for comments.

SUMMARY: The Environmental Protection Agency (EPA) will transfer to the U.S. Department of Justice, Antitrust Division, information which has been submitted to the EPA under section 3007 of the Resource Conservation and Recovery Act (RCRA) as part of the National Survey of Hazardous Waste Treatment, Storage, Disposal, and Recycling Facilities (TSDR Survey). Some of the information may have a claim of business confidentiality. The Department of Justice has requested EPA to provide selected data from the TSDR Survey to assist the Department in investigating whether a proposed acquisition may violate federal antitrust laws. The specific data EPA proposes to transfer to the Antitrust Division consists of capacity data for facilities that use incineration, and/or use hazardous waste as fuel to manage hazardous waste. Such facilities may include industrial boilers, industrial furnaces, and cement kilns which may burn hazardous waste as fuel, as well as incinerators. The transfer of the confidential data submitted to EPA will occur no sooner than February 6, 1989.

ADDRESSES: Comments should be sent to Dina Villari, Document Control Officer, Office of Solid Waste, Information Management Staff (OS-312), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC, 20460. Comments should be identified as "Transfer of Confidential Data."

FOR FURTHER INFORMATION CONTACT: Dina Villari, Document Control Officer, Office of Solid Waste, Information Management Staff (OS-312), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC, 20460, (202) 382-4670.

SUPPLEMENTARY INFORMATION:

Transfer of Data

The Hazardous and Solid Waste Amendments (HWSA) to the Resource Conservation and Recovery Act (RCRA), enacted on November 8, 1984, require the Agency to promulgate regulations that restrict the land disposal of hazardous waste. Land disposal restrictions may be delayed under a national capacity variance based upon EPA determination of inadequate capacity of alternative treatment/recovery technologies and the quantity of restricted waste being land disposed. Data to be used in this determination include data derived from the National Survey of Hazardous Waste Treatment, Storage, Disposal, and Recycling Facilities (TSDR Survey), collected under the authority of section 3007 of RCRA.

The Department of Justice has requested EPA to provide selected data from the TSDR Survey to assist the Department in investigating whether a proposed aquisition may violate federal antitrust laws.

The information proposed to be transferred to the Antitrust Division of the U.S. Department of Justice (AD/DOJ), is a subset of the TSDR Survey consisting of capacity data for facilities that use incineration and/or use hazardous waste as fuel to manage hazardous waste. Such facilities may include industrial boilers, industrial furnaces, and cement kilns which may burn hazardous waste as fuel, as well as incinerators. Data to be provided includes capacity data of all hazardous waste management activities at the facility.

In accordance with 40 CFR 2.209(c)(3), EPA is issuing this notice to inform submitters of TSDR Survey questionnaires and any related follow-up data that EPA may transfer to AD/DOJ information claimed to be confidential business information relating to capacity at facilities with incinerators, industrial boilers, and industrial furnaces burning hazardous waste.

The Antitrust Division has agreed to limit disclosure of confidential business information to employees of the Department of Justice involved in its investigation as provided for in 40 CFR 2.209(c)(5). EPA has determined that such assurances meet the requirements of its rules for transfer of confidential business information.

Date: January 10, 1989.

Jonathon Cannon,

Acting Assistant Administrator.

[FR Doc. 89-1586 Filed 1-24-89; 8:45 am]

BILLING CODE 6560-50-M

[OPP-00272; FRL-3509-2]

FIFRA Scientific Advisory Panel; Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will be a 1-day meeting of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Scientific Advisory Panel (SAP) to review a set of

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scientific issues being considered by the Agency in connection with the Special Review of carbofuran; a set of scientific issues being considered by the Agency on a Standard Evaluation Procedure (SEP) on Terrestrial Field Dissipation Studies; a set of scientific issues being considered by the Agency in connection with the peer review classifications of the pesticides Cinch as a Class D oncogen and paraquat as a Class E oncogen. An informational briefing will be provided for the Panel on the FIFRA 88 amendment as well as changes that will be needed for Part 158.

DATE: The meeting will be held on Wednesday, February 15, 1989 from 8:30 a.m. to 4:00 p.m.

ADDRESS: The meeting will be held at Environmental Protection Agency, Rm. 1112, Crystal Mall Building No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: By mail: Robert B. Jaeger, Executive Secretary, FIFRA Scientific Advisory Panel, Office of Pesticide Programs (TS-769C), 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm 1121, Crystal Mall Building No. 2, Arlington, VA. (703-557-4369).

SUPPLEMENTARY INFORMATION: The agenda for the meeting is:

1. Review of a set of scientific issues in connection with the Agency's preliminary determination to cancel all granular carbofuran products used on all sites. The Agency has made a determination that the use of carbofuran will result in unreasonable adverse effects to birds on all sites. In weighing the risks and benefits, the Agency reviewed a number of options other than cancellation to reduce the risk to birds. Among these measures were additional precautionary labeling regarding the hazard to birds, limiting carbofuran use to certain months of the year, limiting application geographically, and implementing a risk reduction program. The Agency evaluated these measures and determined that they would not adequately mitigate the risk.

2. Review of a set of scientific issues in connection with the Agency's Standard Evaluation Procedures for Terrestrial Field Dissipation Studies. This SEP is to be used as an aid for the Environmental Fate and Ground Water Branch data reviewers in their evaluations of the terrestrial field dissipation studies submitted by registrants in support of pesticide registration. Terrestrial field dissipation studies are required by 40 CFR 158.200 in support of registration of an end-use product intended for terrestrial use or domestic outdoor use (as defined by Subdivision N Guidelines) and to support registration of a manufacturing-use product which may also be legally used to formulate such an end-use product. Section 1.64-1 in Subdivision N Guidelines describes this study and provides a protocol for conducting it.

3. Review of a set of scientific issues in connection with the Agency's classification of the peer review of Cinch as a Class D oncogen (inadequate evidence). The classification of Cinch was based on the weight of evidence that there was no substantial biological evidence of tumor formation in either the rat or mouse study and the dosing in both was inadequate for determining oncogenic potential of Cinch.

4. Review of a set of scientific issues in connection with the Agency's classification of the peer review of paraquat as a Class E oncogen (no evidence). The classification of paraquat as a Class E oncogen was based on no evidence of carcinogenic effects in female Fischer 344 rats and, at best, equivocal evidence of carcinogenicity in male Fisher 344 rats. It was concluded that this equivocal evidence could not be associated with oral exposure but was possibly the result of dermal exposure.

5. In addition, the Agency may present status reports on other ongoing programs of the Office of Pesticide Programs.

Copies of documents relating to items 1-4 may be obtained by contacting: By mail: Information Services Branch, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm 1006, Crystal Mall Building No. 2, 1921 Jefferson Davis Highway, Arlington, VA., (703-557-2805).

Any member of the public wishing to submit written comments should contact Robert B. Jaeger at the address or telephone number given above to be sure that the meeting is still scheduled and to confirm the Panel's agenda. Interested persons are permitted to file such statements before the meeting. To the extent that time permits and upon advance notice to the Executive Secretary, interested persons may be permitted by the chairman of the Scientific Advisory Panel to present oral statements at the meeting. There is no limit on written comments for consideration by the Panel, but oral statements before the Panel are limited to approximately 5 minutes. Since oral statements will be permitted only as time permits, the Agency urges the public to submit written comments in lieu of oral presentations. Information submitted as a comment in response to this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public docket. Information not marked confidential will be included in the public docket without prior notice. The public docket will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. All statements will be made part of the record and will be taken into consideration by the Panel. Persons wishing to make oral and/or written statements should notify the Executive Secretary and submit ten copies to a summary no later than February 8, 1989, in order to ensure appropriate consideration by the Panel.

Dated: January 17, 1989.

Susan F. Vogt,

Acting Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 89-1583 Filed 1-24-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

January 17, 1989.

On November 16, 1988, the Federal Communications Commission submitted the following information collection requirement to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act, as amended (44 U.S.C. 3501 *et seq.*) In error the Commission did not publish a notice in the **Federal Register** at the time of submission. This notice is being published to provide the public with proper notice of the submission.

Copies of the submission may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037. Persons wishing to comment on this information collection should contact Eyvette Flynn, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395-3785.

Copies of these comments should also be sent to the Commission. For further information contact Doris Benz, Federal Communications Commission, (202) 632-7513.

Comments already received by OMB on this information collection are currently being reviewed. Only new comments need be submitted to OMB for this review. OMB has extended the deadline for comments since this notice was not published at the time it was submitted to OMB.

OMB Number: None.

Title: Amendment of Part 22 of the Commission's Rules to Revise Certain Filing Procedures for Mobile Services Division Applications.

Action: New collection.

Respondents: Businesses (including small businesses).

Frequency of Response: On occasion.

Estimated Annual Burden: 158,400 responses; 52,272 total hours; 20 minutes each.

Needs and Uses: Application forms are used by common carrier applicants (telephone companies, radio and other miscellaneous carriers) to request authority to construct or modify a radio station or assign or transfer a permit or license. Such filings are required by law under the provisions of the Communications Act and FCC Rules, Part 22. The change to microfiche results from acute lack of space and the labor intensive paper records storage and retrieval system. The use of microfiche will not only provide a better storage and retrieval system but will also provide a more secure method of protecting records.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89-1587 Filed 1-24-89; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-813-DR]

Amendment to Notice of a Major Disaster Declaration; Alaska

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Alaska (FEMA-813-DR), dated March 11, 1988, and related determinations.

DATED: January 17, 1989.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

Notice: The notice of a major disaster for the State of Alaska, dated March 11, 1988, is hereby amended to include the following type of assistance for those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of March 11, 1988:

North Slope Borough for Public Assistance for certain eligible costs of Early Childhood Education facilities not eligible under Department of Education programs.

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

[FR Doc. 89-1562 Filed 1-24-89; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-819-DR]

Major Disaster and Related Determinations; Illinois

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Illinois (FEMA-819-DR), dated January 13, 1989, and related determinations.

DATED: January 13, 1989.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3614.

Notice: Notice is hereby given that, in a letter dated January 13, 1989, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, (42 U.S.C. 5121 *et seq.*, Pub. L. 93-288, as amended by Pub. L. 100-707), as follows:

I have determined that the damage in certain areas of the State of Illinois resulting from severe storms and tornadoes beginning on January 7, 1989, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Public Law 93-288, as amended by Public Law 100-707). I therefore declare that such a major disaster exists in the State of Illinois.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Public Assistance in the affected areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under Public Law 93-288, as amended by Public Law 100-707, for Public Assistance will be limited to 75 percent of total eligible costs in the designated area.

The time period prescribed for the implementation of section 313(a), priority to certain applications for public facility and public housing assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Ronald Buddecke of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Illinois to have been affected adversely by this declared major disaster: Edwards, Wabash, Wayne, and White Counties for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83-516, Disaster Assistance.)

Robert H. Morris,

Deputy Director, Federal Emergency Management Agency.

[FR Doc. 89-1561 Filed 1-24-89; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-200085-001.

Title: Port of Portland Terminal Agreement.

Parties:

Port of Portland

Pacific Commerce Line (PCL)

Synopsis: The Agreement provides that PCL will exercise its option to extend the term of Agreement No. 224-200085, a terminal use agreement, for

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one year. The Agreement also provides for a change in lumber rates pursuant to the basic agreement.

Agreement No.: 224–300208–001.

Title: Georgia Ports Authority Terminal Agreement.

Parties:

Hapag-Lloyd A.G., Gulf Container Line B.V. and Compagnie Generale Maritime (referred to collectively as Sagumex) Georgia Ports Authority (GPA)

Synopsis: The Agreement provides a schedule of rates Sagumex will pay GPA for rail loading and unloading. The Agreement also provides a stack utilization fee and computer service charge Hapag-Lloyd will pay GPA.

Agreement No.: 224–300210.

Title: Port Authority of New York and New Jersey Terminal Agreement.

Parties:

Port Authority of New York and New Jersey (Authority)

Hapag-Lloyd (America), Inc. (HL)

Synopsis: The Agreement provides that the Authority will pay HL $25.00 per import container and $50.00 per export container unloaded from or loaded on HL's vessels at a marine terminal in the Port of NEW York/New Jersey (Port). The payment applies only to loaded containers for which HL is required to pay a railroad for transportation by rail to or from points more than 260 miles from a terminal within the port and have a prior or subsequent move by water through a marine terminal in the Port.

Agreement No.: 224–300211.

Title: Port of Charleston Terminal Agreement.

Parties: Southeast Atlantic Cargo Operations (SACO) and Smith and Kelly (SK).

Synopsis: The Agreement provides that SACO will furnish SK with supervision, labor and equipment to perform marine terminal/stevedoring services at the Port of Charleston and elsewhere at such rates, terms and conditions as may be agreed upon by the parties when SK requests such services and equipment from SACO.

By Order of the Federal Maritime Commission.

Dated: January 19, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 89–1633 Filed 1–24–89; 8:45 am]

BILLING CODE 6730–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 89N–0015]

Drug Export; Tandem® Icon® HBsAG Assay Test Kits

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Hybritech, Inc., has filed an application requesting approval for the export of the biological product Tandem® Icon® HBsAg Assay test kits to Australia, Austria, Belgium, Canada, Denmark, the Federal Republic of Germany, France, Iceland, Ireland, Italy, The Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, and The United Kingdom.

ADDRESS: Relevant information on this application may be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human biological products under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Boyd Fogle, Jr., Center for Biologics Evaluation and Research (HFB–120), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8191.

SUPPLEMENTARY INFORMATION: The Drug Export Amendments Act of 1986 (Pub. L. 99–660) (section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382)) provides that FDA may approve applications for the export of drugs that are not currently approved in the United States. The approval process is governed by section 802(b) of the act. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Hybritech, Inc., 11095 Torreyana Rd., San Diego, CA 92121–1104 has filed an application requesting approval for the export of the biological product Tandem® Icon® HBsAg Assay test kits (Murine Monoclonal Antibodies to Hepatitis B Surface Antigen Immunoconcentration—EIA), to Australia, Austria, Belgium, Canada, Denmark, the Federal Republic of Germany, France, Iceland, Ireland, Italy, The Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, and The United Kingdom. The Tandem® Icon® HBsAg Assay test kits contain an enzyme immunoconcentration assay intended for the qualitative detection of hepatitis B surface antigen (HBsAg) in human serum and plasma, and as a HBsAg confirmatory assay used for confirmatory neutralization of Tandem® Icon® HBsAg Assay reactive specimens. The application was received and filed in the Center for Biologics Evaluation and Research on December 23, 1988, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by February 6, 1989, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802, Pub. L. 99–660 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated under 21 CFR 5.44.

Dated: January 3, 1989.

Thomas S. Bozzo,

Director, Office of Compliance, Center for Biologics Evaluation and Research.

[FR Doc. 89–1564 Filed 1–24–89; 8:45 am]

BILLING CODE 4160–01–M

Health Care Financing Administration

[BERC–463–NC]

Medicare Program; Schedule of Limits on Home Health Agency Costs Per Visit for Cost Reporting Periods Beginning on or After July 1, 1988; Correction

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice with comment period; correction.

SUMMARY: In the October 18, 1988 issue of the **Federal Register** (FR Doc. 88–23908) beginning on page 40771, we set forth an updated schedule of limits on home health agency costs that may be reimbursed under the Medicare program. This updated schedule of limits applies to cost reporting periods beginning on or after July 1, 1988. Although editorial corrections of the notice were prepared by the Office of the Federal Register and issued on November 15, 1988 (53 FR 46015), the preamble, wage index, and addendum contain several technical errors. This notice corrects those errors.

FOR FURTHER INFORMATION CONTACT: Ann Pash, (301) 966–4601.

SUPPLEMENTARY INFORMATION:

We are making the following corrections to the October 18, 1988 document:

1. On page 40771, in the third column, in the sixth line in the summary, "scheduled" is changed to read "schedule".

2. On page 40772, in the second column, in the fifth line, "extension" should read "section".

3. On page 40779, in the table, in the middle column, the first entry under "Wage index" (that is, the value for Houston, TX) should read 1.0666.

4. On page 40782, in the table, in the first column, the tenth entry under "Wage index" (that is, the value for Washington, DC–MD–VA) should read 1.1965.

5. On page 40785, in the addendum, the fourteenth entry from the bottom in the last column under "Percentage change" (that is, the percentage change for Gainesville, FL) should read 28.531.

(Catalogue of Federal Domestic Assistance Programs No. 13.773; Medicare Hospital Insurance)

Dated: January 18, 1989.

James E. Larson,

Acting, Deputy Assistant Secretary for Information and Resource Management.

[FR Doc. 89–1654 Filed 1–24–89; 8:45 am]

BILLING CODE 4120–01–M

Health Resources and Services Administration

Final Funding Preferences for Grants for Geriatric Education Centers

The Health Resources and Services Administration announces the final funding preferences for Grants for Geriatric Education Centers which will be used in addition to other criteria in making grant awards in Fiscal Year 1989.

To be eligible for a grant under section 789(a) (formerly section 788(d)) of the PHS Act, the applicant must meet the requirements of a health professions school as defined by section 701(4), program for the training of physician assistants as defined in section 701(8) or a school of allied health as defined in section 701(10). Applicants conducting projects to be administered in other types of organizational settings will be considered for geriatric education center grants under section 301 of the PHS Act.

All applicants must be located in the United States, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands (the Republic of Palau), the Republic of the Marshall Islands, or the Federated States of Micronesia.

Grants may be awarded to support the improvement and development of collaborative arrangements involving several health professions. These arrangements, called Geriatric Education Centers (GECs) are established to facilitate training of medical, dental, optometric, pharmacy, podiatric, nursing, and appropriate allied health and public health faculty, students, and practitioners in the diagnosis, treatment, and prevention of diseases and other health problems of the aged. Projects supported under these grants may address any combination of the statutory purposes below:

(a) Improve the training of health professionals in geriatrics;

(b) Develop and disseminate curricula relating to the treatment of the health problems of elderly individuals;

(c) Expand and strengthen instruction in methods of such treatment;

(d) Support the training and retraining of faculty to provide such instruction;

(e) Support continuing education of health professionals and allied health professionals who provide such treatment; and

(f) Establish new affiliations with nursing homes, chronic and acute disease hospitals, ambulatory care centers, and senior centers in order to provide students with clinical training in geriatric medicine.

Grant supported projects may be designed to accomplish the statutory purposes in a variety of ways, emphasizing multidisciplinary, as well as discipline specific approaches to the development of geriatric education resources. For example:

- Health professions schools within a single academic health center, or a consortium of several educational institutions, may share their educational resources and expertise through a Geriatric Education Center to extend a broad range of multidisciplinary educational services outward to other institutions, faculty, facilities and practitioners within a geographic area defined by the applicant.
- Institutions with limited geriatric education resources and traditional linkages with geographic areas with substantial geriatric education needs may seek to establish Geriatric Education Centers designed to enhance and expand the capability of collaborating professional schools to serve as a geriatric education resource for such areas.
- Projects may support the development of Geriatric Education Centers designed to focus on multidisciplinary geriatric education emphasizing high priority services and high risk groups among the elderly, minority aging, or other special concerns.

After a peer review group, as required by section 789(a)(2) of the Act, composed principally of non-Federal experts, makes recommendations concerning each application, the Secretary will consult with the National Advisory Council on Health Professions Education, established in section 702 of the Act, with respect to such applications. The Secretary will decide which applications to approve by considering, the following:

(1) The degree to which the proposed project adequately provides for the project requirements described in 42 CFR 57.3904;

(2) The adequacy of the qualifications and experience of the staff and faculty;

(3) The administrative and managerial ability of the applicant to carry out the proposal in a cost-effective manner; and

(4) The potential of the project to continue on a self-sustaining basis.

In assigning merit scores to approved proposals, peer reviewers will give special consideration to the following:

- Projects which will provide training for faculty from four or more health professions, at least one of which must be allopathic or osteopathic medicine.

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with respect to the treatment of health problems of the elderly by multidisciplinary teams of health professionals.

• Projects which currently have or plan to provide for a high degree of areawide collaboration.

• Projects which provide organizational or other arrangements for participation by the social and behavioral science disciplines.

Proposed funding preferences were published in the **Federal Register** of October 7, 1988 (FR 39528) for public comment. One comment was received during the 30-day comment period.

The respondent expressed concern with the importance of the development of multidisciplinary geriatric programs to enhance the education of health care providers in states which do not have schools of medicine or osteopathy and that preference be given to those institutions (with or without medical schools) that can develop/demonstrate a model for the delivery of geriatric education to rural and frontier health practitioners.

The GEC program guidelines do not limit the scope of funded projects to States or institutions with medical schools, and some existing centers are administratively based in other types of professional schools or organizational settings. However, the peer review process required by the authorizing legislation carefully considers the probable availability of resources which are critical to the feasibility of conducting projects identified under section 788(a) of the PHS Act, (formerly section 788(d) of the Act). Successful applicants have involved resources from many health professions, including medicine, through a wide range of collaborative arrangements between academic health centers, other education institutions, community organizations and health facilities, in some cases covering all or portions of several States. The Health Resources and Services Administration believes that projects responding to the needs of rural elderly should include allopathic or osteopathic medicine as a participating discipline.

Therefore, the proposed funding preference will be retained as follows:

In determining the order of funding of competing applications which have been recommended for approval, a funding preference will be given to applications for projects which will offer training involving four or more health professions, one of which must be allopathic or osteopathic medicine. In addition, the priority scores of approved applications will be significantly improved for each of the criteria listed below:

• Applications which identify minority faculty or scholars with expertise in minority aging with substantial roles in carrying out the project. (Only individuals already employed or recruited may be included.)

• Applications documenting formal linkages (such as subcontracts, clinical teaching affiliation agreements, etc.) with predominantly minority educational institutions or health facilities to accomplish specific aspects of the project protocol (e.g., involving minority faculty, students, or practitioners, developing curricula or expanding teaching concerning minority elderly, providing trainees with experience in caring for minority elderly, etc.).

• Competing continuation applications or other applications from existing GECs which contain progress reports documenting that underrepresented minority enrollees (i.e., have participated or committed to participating in a focused/intensified GEC training program of 40 hours or more) were equal to or greater than representation of those minorities in the general population, or have increased annually for at least three years.

This program is listed at 13.969 in the *Catalog of Federal Domestic Assistance.* It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR Part 100).

Dated: January 18, 1989.

John H. Kelso,

Acting Administrator.

[FR Doc. 89-1562 Filed 1-24-89; 8:45 am]

BILLING CODE 4160-15-M

Final Special Consideration for Professional Nurse Traineeship Grants

The Health Resources and Services Administration announces the final special consideration for the Professional Nurse Traineeship Program which will be used in making grant awards in Fiscal Year 1989.

Section 830 of the Public Health Service Act authorizes grants for:

(1) Traineeships to prepare registered nurses in masters' degree and doctoral degree programs which educate such nurses to serve as nurse administrators, nurse educators, nurse researchers or other professional nursing specialties determined by the Secretary to require advanced education; and

(2) Traineeships to educate nurses for practice as nurse midwives.

To be eligible to receive support, an applicant must be a public or nonprofit private institution providing registered nurses with full-time advanced education leading to a graduate degree in eligible professional nursing specialties, or a public or nonprofit private school of nursing or entity which prepares registered nurses to practice as nurse midwives. The nurse midwife program must be approved by the American College of Nurse Midwives.

Special Consideration

The Secretary shall give special consideration to applications for nurse practitioner traineeship programs which conform to guidelines established by the Secretary under section 822(a)(2)(B) of the PHS Act.

An additional special consideration was published in the **Federal Register** of October 11, 1988 (53 FR 39648) under Program Announcement for Nurse Anesthetist Traineeship Grants and Professional Nurse Traineeship Grants, for public comment. Two comments were received during the 30-day comment period.

One comment expressed support of the proposed special consideration concerning the enrollment of minority graduate nursing students but was also concerned with the requirement that eligible trainees be engaged in full time study. Section 830 of the Public Health Service Act which governs these traineeships was recently extended and amended by the Nursing Shortage Reduction and Education Extension Act of 1988 (Title VII Pub. L. 100-607). The new authority provides traineeship assistance, not only for full time students but also for students who are enrolled at least half time in programs offering a master's degree in nursing.

Another comment requested a change in the authority for Professional Nurse Traineeships to specify that Certified Registered Nurse Anesthetists (CRNAs) in master's degree and doctoral degree programs be eligible for support. CRNAs may be eligible for traineeship support under the current legislation if enrolled in participating master's degree and doctoral degree program which educate registered nurses to serve as nurse practitioners, nurse administrators, nurse educators, nurse researchers or other nursing specialties determined by the Secretary to require advanced education.

Since neither of the comments specifically addresses the proposed special consideration concerning enrollment of minority graduate nursing students, the special consideration as proposed will be retained as follows:

Special consideration will be given to schools which currently enroll minority students or can demonstrate an increase in enrollment of minority graduate nursing students.

The Department believes that continued efforts must be made to increase the number of minority students in schools of nursing.

A school will be considered as having met special consideration criteria if it can:

(1) Demonstrate a three year average enrollment of minority students in the graduate nursing program in excess of the national average; or

(2) Demonstrate an increase in the enrollment of full-time graduate minority students as of October 15 in the current school year from the number enrolled full-time as of October 15 in the preceding school year.

This program is listed at 13.358 in the *Catalog of Federal Domestic Assistance.* It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR Part 100).

Dated: January 18, 1989.

John H. Kelso,

Acting Administrator.

[FR Doc. 89-1563 Filed 1-24-89; 8:45 am]

BILLING CODE 4160-15-M

Family Support Administration

Office of Refugee Resettlement

Refugee Resettlement Program; Proposed Availability of Funding for Grants for FY 1989 Targeted Assistance for Services to Refugees [1] in Local Areas of High Need

AGENCY: Office of Refugee Resettlement (ORR), FSA, HHS.

ACTION: Notice of proposed availability of funding for grants for FY 1989 targeted assistance for services to refugees [1] in local areas of high need.

SUMMARY: This notice announces the proposed availability of funds and award procedures for FY 1989 targeted assistance project grants for services to refugees under the Refugee Resettlement Program (RRP). These grants are for service provisions in localities with large refugee populations, high refugee concentrations, and high use of assistance, and where specific needs exist for supplementation of currently available resources.

This notice proposes that the qualification of counties for the targeted assistance program (TAP) be based on refugee and entrant arrivals during the period from calendar year (CY) 1983 through fiscal year (FY) 1988. Under this proposal, no new counties qualify for targeted assistance, and 26 counties which previously received targeted assistance grants on the basis of arrivals during FY 1980-1982 no longer qualify but would be allocated FY 1989 funds to permit an orderly phaseout of their targeted assistance programs.

DATE: Comments on the proposals contained in this notice must be received by February 24, 1989.

ADDRESS: Address written comments, in duplicate, to: Bill F. Gee, Director, Office of Refugee Resettlement, Family Support Administration, 370 L'Enfant Promenade, SW., Washington, DC 20447.

FOR FURTHER INFORMATION CONTACT: Ron Munia, (202) 252-4559, or Dr. Linda W. Gordon, (202) 252-4568.

APPLICATION DEADLINE: Applications from States for grants under this notice must be received on time.

An application will be considered to be received on time under either of the following two circumstances:

A. The application was sent via the U.S. Postal Service or by private commercial carrier not later than 45 days after publication of the final notice, unless it arrives too late to be considered by the reviewers. (Applicants are responsible for assuring that the U.S. Postal Service or private commercial carrier dates the application package. Applicants should be aware that not all post offices or private commercial carriers provide a dated postmark unless specifically instructed to do so.)

B. The application is hand-delivered on or before the closing date to the Office of Grants Management, FSA, 6th floor, 901 D Street, SW., Washington, DC 20447. Hand-delivered applications will be accepted during the normal working hours of 8:00 a.m. to 4:30 p.m., Monday through Friday (excluding Federal legal holidays) up through the closing date.

Late applications will be returned to the sending agency.

To be considered complete an application package must consist of a signed original and two copies of Standard Form 424, Parts I through IV.

GRANT REGULATIONS: FY 1989 grants will be subject to new HHS regulations on Grants Administration in 45 CFR Part 92. These regulations were published in the **Federal Register** of March 11, 1988, and became effective October 1, 1988. Part 92 is the HHS version of OMB Circular A-102 Common Rule.

SUPPLEMENTARY INFORMATION:

I. Purpose and Scope

This notice announces the proposed availability of funds for grants for targeted assistance for services to refugees in counties where, because of factors such as unusally large refugee populations, high refugee concentrations, and high use of public assistance, there exists and can be demonstrated a specific need for supplementation of resources for services to this population.

A total of $34,052,000 in FY 1989 funds is available for targeted assistance under the FY 1989 appropriations for the Department of Health and Human Services (Pub. L. 100-436).

The Conference Report on appropriations reads as follows with respect to the targeted assistance funds (H. Rept. 100-880, p. 28):

> The amount agreed to includes $10,531,000 for 12 months of additional special targeted assistance to Dade County schools and Jackson Memorial Hospital. For other targeted assistance grantees the conference agreement provides additional funding at the current rate of operations through fiscal year 1989.

Subsequent to the Conference Report, the amounts appropriated were reduced 1.2%.

Of that funds available, $10,404,700 (the $10,531,000 referred to in the Conference Report minus the 1.2% reduction) will be awarded for the Dade County schools and Jackson Memorial Hospital; $400,000 will be awarded to Massachusetts for the Lowell school system which has received a recent influx of refugees and has demonstrated a specific need for supplementation of available resources for services; and the remaining $23,247,300 is proposed for allocation as set forth in this notice.

Except as specified in this notice, requirements regarding the use of the FY 1989 targeted assistance funds remain unchanged from those applied to FY 1989 targeted assistance funds as set forth in a notice to States of March 4, 1988.

The purpose of targeted assistance grants is to provide, through a process of local planning and implementation, direct services intended to result in the economic self-sufficiency and reduced welfare dependency of refugees through job placements.

[1] In addition to persons admitted to the United States as refugees, eligibility for targeted assistance includes Cuban and Haitian entrants, certain Amerasians from Vietnam who are admitted to the U.S. as immigrants, and certain Amerasians from Vietnam who are U.S. citizens. (See section II of this notice on "Authorization.") The term "refugee," used in this notice for convenience, is intended to encompass such additional persons who are eligible to participate in refugee program services, including the targeted assistance program.

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The targeted assistance program reflects the requirements of section 412(c)(2)(B) of the Immigration and Nationality Act (INA), as amended by the Refugee Assistance Extension Act of 1986 (Pub. L. 99-605), which provides that targeted assistance grants shall be made available "(i) primarily for the purpose of facilitating refugee employment and achievement of self-sufficiency, (ii) in a manner that does not supplant other refugee program funds and that assures that not less than 95 percent of the amount of the grant award is made available to the county or other local entity."

Services funded under targeted assistance are required to focus primarily on those refugees who, either because of their considerable and protected use of public assistance or continued difficuly in securing employment, constitute a major resettlement problem for the affected jurisdiction which cannot be addressed without additional services. In order to assure sufficient emphasis on service to appropriate clients, each State would be required to assure that, for each qualified local area, cash assistance recipients (time-eligible and time-expired recipients under any program of the State or locality) would make up a percentage of the FY 1989 targeted assistance clientele which is not less than the State's final FY 1987 dependency rate.

Funds awarded under this program are intended to help fulfill the Congressional intent that "employable refugees should be placed on jobs as soon as possible after their arrival in the United States" (section 412(a)(1)(B) of the INA). Therefore at least 85% of targeted assistance funds would be required to support projects which directly enhance refugee employment potential, have specific employment objectives, and are designed to enable refugees to obtain jobs with less the one year's participation in the targeted assistance program. Innovative approaches to this objective, including strategies which address the employment potential of more than one wage earner in a household unit simultaneously, would be encouraged. Longer-term activities of general or remedial education which were not directed toward the achievement of a specific employment objective within less than one year would be outside the scope of the targeted assistance program, and TAP funds could not be used for those purposes. Examples of such activities not intended to be supported by TAP funds would include adult basic education, preparation for a high school equivalency diploma, and general English language training which is not job focused.

In order to meet extreme and unusual needs, up to 15% of a local area's allocation could be used for services which are not directed toward the achievement of a specific employment objective in less than one year but which are essential to the adjustment of refugees in the community, provided such needs are clearly demonstrated and such use is approved by the State, or by ORR in the case of State-administered local programs.

A State could request a waiver in order to be able to allow a county to use more than 15% for non-employment-related services. ORR would approve such a request only in the most extreme circumstances of need.

Cases in which a county plan contained proposed program activities not allowable under section VI, below, could be entertained by a State only where extreme and unusual need exists and is clearly demonstrated in the county's proposed plan. Such cases would be considered to involve a change in program scope or objectives and would therefore be subject to ORR prior approval.

The award of funds to States under this notice would be contingent upon the completeness of a State's application as described in section VIII, below.

II. Authorization

Targeted assistance projects are funded under the authority of section 412(c)(2) of the Immigration and Nationality Act (INA), as amended by the Refugee Assistance Extension Act of 1986 (Pub. L. 99-605), 8 U.S.C. 1522(c); section 501(a) of the Refugee Education Assistance Act of 1980 (Pub. L. 96-422), 8 U.S.C. 1522 note, insofar as it incorporates by reference with respect to Cuban and Haitian entrants the authorities pertaining to assistance for refugees established by section 412(c)(2) of the INA, as cited above; section 584(c) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988, as included in the FY 1988 Continuing Resolution (Pub.L. 100-202), insofar as it incorporates by reference with respect to certain Amerasians from Vietnam the authorities pertaining to assistance for refugees established by section 412(c)(2) of the INA, as cited above, including certain Amerasians from Vietnam who are U.S. citizens, as provided under title II of the Foreign Operations, Exporting Financing, and Related Programs Appropriations Act, 1989 (Pub. L. 100-461).

III. Eligible Grantees

The Director of ORR proposes to determine the eligibility of counties for inclusion in the FY 1989 targeted assistance program (TAP) as described in section V of this notice.

The following requirements, which have previously applied to TAP, would continue to apply with respect to FY 1989 awards:

Eligible grantees would be those agencies of State governments which are responsible for the refugee program under 45 CFR 400.5 in States containing counties which qualify for FY 1989 targeted assistance awards. The use of targeted assistance funds for services to Cuban and Haitian entrants would be limited to States which have an approved State plan under the Cuban/Haitian Entrant Program (CHEP).

The State agency would submit a single application on behalf of all county governments of the qualified counties in that State. Subsequent to the approval of the State's application by ORR, local targeted assistance plans would be developed by the county government or other designated entity and submitted to the State.

A State with more than one qualified county would be permitted, but not required, to determine the allocation amount for each qualified county within the State.

Applications submitted in response to this notice would not be subject to review by State and areawide clearinghouses under Executive Order 12372, "Intergovernmental Review of Federal Programs."

IV. Qualification and Allocation Formula

The Director of ORR proposes that a new basis be adopted for the FY 1989 TAP to determine which counties qualify for awards and in what amount.

Formula Used to Date

The Department has used a two-stage formula for qualification for, and allocation of, TAP funds since the inception of the refugee targeted assistance program in FY 1983. The first stage of the formula defines the qualification of counties for TAP through the use of four equally-weighted criteria which were selected to collectively indicate local conditions and problems which the program was intended to address.

In order to qualify for TAP funds, a county (or group of adjacent counties within the same Standard Metropolitan Statistical Area, or SMSA) was required to be above the median or above a specified cutoff point of jurisdictions for

which data were reviewed in three of the four following criteria: (1) The number of refugees placed in the county during FY 1980–1982; (2) the ratio of the overall county population to the refugees in item (1), above; (3) the number of refugees in the county who were receiving cash assistance under the programs of aid to families with dependent children (AFDC) and refugee cash assistance (RCA) on October 1, 1982; and (4) the ratio of refugees in item (3) to the number of refugees in item (1). A county which placed above the cutoff point in any three of the above categories was determined to be qualified to apply for targeted assistance funds and was included in the list of qualifying localities for determination of its targeted assistance allocation.

The median for Criterion 1, above, was 2,066.5. The median for Criterion 2 was 244.5. The cutoff point for Criterion 3 was 1,000. The cutoff point for Criterion 4 was established at 50%, the approximate national average dependency rate. Counties which met three of the four criteria qualified for the program.

The second stage of the formula consisted of the number of refugees in a qualified county who had been in the U.S. 36 months or less and who were receiving AFDC or RCA on October 1, 1982. Some adjustments were made for State-to-State differences in assistance programs. These adjusted figures on the use of assistance then comprised the formula base for the allocation of funds. (A more detailed description of this formula was published in the **Federal Register** of June 3, 1983, 48 FR 24986.)

Targeted assistance related to the needs of Cuban and Haitian entrants was based on county populations of entrants who also arrived during FY 1980–1982. (See the **Federal Register** of July 27, 1983, 48 FR 34127.)

The results of these formulas provided the basis for the allocation of TAP funds during each fiscal year in which such funds were appropriated—FY 1983, 1984, 1985, 1986, and 1988.

Proposed Revised Formula

More than 9 years have passed since the first—and more than 6 years since the last—of the arrivals during FY 1980–1982 (October 1, 1979–September 30, 1982) on which TAP has been based to date. More than $270,000,000 in TAP funds have been provided to address the needs of those refugees and entrants.

The Director believes that it is no longer appropriate to make TAP funds available on the basis of the needs of refugees and entrants who arrived during the period October 1, 1979–September 30, 1982, and proposes that the qualification of counties for FY 1989 TAP funds, and the allocation of those funds, be based on needs related to more recent arrivals.

For the FY 1989 targeted assistance program, the Director proposes to base county eligibility and funding on refugee and entrant placements during CY 1983–FY 1988, on the receipt of AFDC, RCA, and general assistance (GA) by time-eligible refugees and entrants as of March 31, 1988 (the most recent county data available to ORR), and on cash assistance dependency rates as of September 30, 1987 (ORR's most recent final dependency-rate data). The same four criteria used previously, including the same cutoff points, would be applied to this new information. As before, a county would have to meet three out of the four criteria in order to continue to qualify.

The Director proposes the following:

1. *Counties not continuing to qualify for TAP:* A currently participating county which no longer qualifies, and whose present project-period end-date, as specified in the FY 1988 TAP grant award and any subsequent no-cost extensions, is earlier than September 30, 1989, would be provided with a final TAP allocation in order to implement an orderly phaseout of its targeted assistance program. This phaseout allocation would not be intended to fund all current contracts, activities, or programs within a county through September 30, 1989, but rather to permit an orderly reduction and termination of TAP. No allocation would be made to a county whose project-period end-date is September 30, 1989, or later. For counties with project-period end-dates between October 1, 1988, and September 30, 1989, allocations would be based on the existing formula and would be prorated on the basis of the number of months between the project-period end-date and September 30, 1989.

2. *Counties continuing to qualify for TAP:* The allocation to a currently participating county which continues to qualify would be based on the number of initial placements in the county during CY 1983–FY 1988 multiplied by the State's time-eligible [2] dependency rate as of September 30, 1987, after taking into account the county's present project-period end-date. The result of this procedure would then be used to determine each county's share of the funds available for those counties that continue to qualify. We believe that, in the absence of additional data, the number of initial placements and the time-eligible dependency rates provide good indicators of relative need.[3]

3. *Counties not currently participating in TAP:* No county not currently participating in TAP has been found to meet at least three out of the four proposed criteria.

V. Proposed Allocations

ORR has screened data on all counties that have been receiving awards for targeted assistance since FY 1983 and on all other counties that could potentially qualify for TAP funds based on the criteria proposed in this notice. The same medians and cutoff points which were used previously were applied to this more recent information.

Analysis of these data indicated that no new counties would meet at least three of the four criteria, that 26 counties which have previously received targeted assistance grants would no longer qualify, and that 15 counties would continue to qualify.

Table 1 provides a list of the proposed qualifying counties, the number of placements in those counties, and the proposed funding based on each county's portion of the total arrivals in the qualifying counties, after taking into consideration the county's project-period end-date based on its current TAP funding.

Although Table 1 shows an amount for each county, the Director proposed, in the case of a State which contains more than one qualified county, to continue to permit the State to determine (in accordance with the requirements set forth in this notice) the appropriate allocation of the State's targeted assistance award among the qualified counties in the State. The Director sees this as continuing ORR's practice of providing as much authority and flexibility as possible to States in determining the relative needs of the qualified counties within a State. Thus each State, as in the FY 1988 TAP, would be responsible for determining an appropriate and equitable basis for allocating the funds among the qualified counties in the State and for including in its application for approval by ORR a

[2] The term "time-eligible" means refugees in their first 31 months in the U.S., the time-period for which States could claim cash and medical assistance costs against ORR's grants to the States as of the end of FY 1987. "Time-expired" refers to refugees who have been in the U.S. more than 31 months.

[3] More specific data might include the estimated county populations of refugees who arrived during CY 1983–FY 1988 and actual numbers of time-expired refugees who are receiving cash assistance. However, it is not possible to estimate county refugee populations reliably because of lack of county-level information on secondary migration. Data are not universally available on the receipt of cash assistance by time-expired refugees.

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description of this allocation basis and the data to be used.

Table 2 provides a list of the currently participating counties that would no longer qualify, the number of placements in those counties, and the proposed funding based on the existing formula, after taking into consideration the county's current project-period end-date. Under this proposal, the closeout allocation for each of these counties would be the amount shown. A State with more than one TAP county could not adjust these closeout allocations among counties without the prior approval of ORR.

Table 3 provides State totals for the allocations proposed in Tables 1 and 2.

The following is a more detailed description of Tables 1 and 2:

Columns A–G are common to both tables. *Col. A*, representing Criterion 1, shows total initial placements of refugees and entrants by county according to the ORR Refugee Data System and data on Cuban and Haitian entrants maintained by ORR's Florida Office in Miami. The cutoff point for Criterion 1 is 2,066.5. *Col. B* consists of the Census Bureau's 1985 estimates of total county populations. *Col. C*, representing Criterion 2, consists of the county population in Col. B divided by the number of initial placements in Col. A. Col. C may thus be interpreted as persons per refugee. The cutoff point for Criterion 2 is 244.5; figures smaller than 244.5, showing greater concentrations of refugees, meet this criterion. *Col. D*, showing States' dependency rates of time-eligible refugees, comprises Criterion 4; the cutoff point is 50%. *Col. E* represents Criterion 3; it shows the number of time-eligible refugees receiving assistance under the following programs as of March 31, 1988: Aid to families with dependent children (AFDC), refugee cash assistance (RCA), and general assistance (GA). The cutoff point is 1,000. A figure indicating less than 1,000 ("<1,000") or more than 1,000 (">1,000") represents an estimate; actual data would be substituted in the final notice if provided by the State or county. *If a county which is proposed for phaseout would meet Criterion 3 by including in its cash assistance count time-expired AFDC and GA recipients who arrived in the U.S. no earlier than CY 1983, the Director proposes to count such recipients if the State or county provides this information by no later than the closing date for comments on this notice. Col. F* indicates the number of criteria met, and *Col. G* the current project-period end-date.

As indicated previously, for each county that would continue to qualify for TAP, the county's number of initial placements (Col. A) was multiplied by the State's dependency rate (Col. D) to determine relative funding weights among these counties. These weights were then adjusted according to the number of months between each county's current project-period end-date and March 31, 1991, the project-period end-date proposed in this notice. This is reflected in Table 1, Cols. G–I.

For counties that would *not* continue to qualify, the proposed phaseout allocation is the amount which the existing formula would yield when adjusted according to the number of months between each county's current project-period end-date and September 30, 1989, the end-date proposed in this notice to provide an orderly phaseout of TAP in these counties. This is reflected in Table 2, Cols. G–I.

The basic intent of the proposed targeted assistance program remains: To concentrate available funds in those areas where there are appreciable numbers of unemployed and dependent refugees on whose behalf special self-support efforts are required.

TABLE 1.—TARGETED ASSISTANCE COUNTIES PROPOSED FOR CONTINUATION

	Arrivals Jan. 1983—Sept. 1988 (A)	1985 Census Bureau estimate (000) (B)	Population ratio (C)	Percent receiving assistance (D)	Number receiving assistance (E)	Number of criteria met (F)	FY 1988 project—period end-date (G)	Additional months to Mar 31, 1991 (H)	Proposed allocation (I)
County and State:									
Alameda, CA	*7,812	1,195.7	*153.1	*77.1	*2,350	4	3/31/89	24	$985,119
Fresno, CA	*4,846	580.0	*119.7	*77.1	*3,223	4	3/31/89	24	810,971
Los Angeles, CA	*50,398	8,108.7	*160.9	*77.1	*13,495	4	3/31/89	24	6,354,351
Orange, CA	*15,940	2,122.7	*133.2	*77.1	*3,352	4	3/31/89	24	2,010,068
Sacramento, CA	*4,099	892.9	*217.8	*77.1	*1,403	4	3/31/89	24	516,897
San Diego, CA	*10,163	2,132.7	*209.8	*77.1	*2,175	4	3/31/89	24	1,261,589
San Francisco, CA	*9,576	1,576.0	*164.6	*77.1	*1,365	4	3/31/89	24	1,207,567
San Joaquin, CA	*4,618	418.3	*90.6	*77.1	*1,404	4	3/31/89	24	582,346
Santa Clara, CA	*13,096	1,398.5	*106.8	*77.1	*3,465	4	3/31/89	24	1,651,324
Middlesex, MAS	*2,803	1,371.4	489.3	*73.6	*1,031	3	3/31/90	12	166,711
Suffolk, MAS	*7,463	*667.2	*89.4	*73.6	*1,546	4	3/31/90	12	449,184
Hennepin, MN	*3,951	979.4	247.9	*66.1	*1,049	3	7/31/89	20	355,959
Ramsey, MN	*4,361	471.4	*108.1	*66.1	*1,690	4	9/30/89	18	353,607
New York, NY	*23,791	1,479.8	*111.2	40.2	*3,826	3	9/30/89	18	1,173,201
King/Snohomish, WA	*9,345	1,724.0	*184.5	*65.5	*1,564	4	3/31/89	24	1,001,136
Total	172,352	25,117.8	145.8		42,940				16,702,060

Note.—An asterisk (*) to the left of a figure indicates county meets that criterion.

TABLE 2.—TARGETED ASSISTANCE COUNTIES PROPOSED FOR PHASEOUT

	Arrivals Jan. 1983–Sept. 1988 (A)	1985 Census Bureau estimate (000) (B)	Population ratio (C)	Percent receiving assistance (D)	Number receiving assistance (E)	Number of criteria met (F)	FY 1988 project—period end-date (G)	Additional months to Sept. 30, 1989 (H)	Proposed phaseout allocation (I)
County and State:									
Contra Costa, CA	2,033	712.2	1350.3	*77.1	620	1	3/31/89	6	$84,418

TABLE 2.—TARGETED ASSISTANCE COUNTIES PROPOSED FOR PHASEOUT—Continued

	Arrivals Jan. 1983–Sept. 1988 (A)	1985 Census Bureau estimate (000) (B)	Population ratio (C)	Percent receiving assistance (D)	Number receiving assistance (E)	Number of criteria met (F)	FY 1988 project—period end-date (G)	Additional months to Sept. 30, 1989 (H)	Proposed phaseout allocation (I)
Merced, CA	1,813	156.7	*87.5	*77.1	968	2	3/31/89	6	198,998
Riverside/San Bernardino, CA	*2,512	1906.7	759.0	*77.1	980	2	3/31/89	6	84,221
Stanislaus, CA	1,800	305.8	*169.9	*77.1	826	2	3/31/89	6	46,136
Denver, CO	*2,928	1372.1	468.6	37.3	742	1	12/31/88	9	149,404
Broward, FL	552	1,125.2	2,038.4	45.4	<1,000		5/31/89	4	109,990
Dade, FL	*3,255	1,753.1	538.6	45.4	*>1,000	2	3/31/89	6	13,282,988
Hillsborough, FL	976	754.1	772.6	45.4	<1,000		3/31/89	6	51,849
Palm Beach, FL	325	723.1	2,224.9	45.4	<1,000		3/31/90		
Honolulu, HI	1,681	814.6	484.6	*54.4	429	1	3/31/90		
Cook/Kane, IL	*12,660	5,600.7	442.4	30.4	*>1,000	2	6/30/88	3	257,603
Sedgwick, KS	1,854	387.8	*209.2	41.6	547	1	12/31/88	9	184,158
Orleans, LA	1,971	1,031.7	523.4	18.8	216		6/30/89	3	41,936
Montgomery/Prince Georges, MD	*3,179	1,321.5	415.7	31.3	779	1	3/31/90		
Jackson, MO	1,218	806.4	662.1	23.8	227		6/30/89	3	23,856
Essex, NJ	1,431	835.3	583.7	24.3	549		7/31/89	2	9,204
Hudson, NJ	1,024	558.5	545.4	24.3	549		7/31/89	2	61,586
Union, NJ	322	507.0	1,574.5	24.3	549		7/31/89	2	12,363
Multnomah, OR	*4,866	1,295.6	266.1	43.9	591	1	9/30/89		
Philadelphia, PA	6,317	1,637.4	259.2	38.8	*>1,000	2	12/31/89		
Providence, RI	2,530	578.3	*228.6	41.2	363	2	12/31/89		
Harris, TX	9,078	2,794.7	307.9	14.3	*1,304	2	4/30/89	5	187,266
Salt Lake, UT	*3,675	1,105.4	300.8	17.5	141	1	1/31/89	8	91,086
Arlington, VA	1,533	157.6	*102.8	27.7	179	1	3/31/90		
Fairfax, VA	*3,619	825.1	*228.0	27.7	693	2	3/31/90		
Pierce, WA	*2,111	523.5	248.0	*65.5	298	2	3/31/89	6	72,878
Phaseout total	75,265	29,592.1	393.2		17,560				14,949,940

Notes.—The proposed allocation for Dade County, Florida, includes $10,404,700 for Jackson Memorial Hospital (Miami) and the Dade County (Miami) public schools. This is the amount specified in the Conference Report on the FY 1989 HHS appropriation (Pub.L. 100–436) less the 1.2% reduction in the final appropriation ($10,531,000 minus 1.2%). The amounts are $5,675,300 for Jackson Memorial and $4,729,400 for the Dade County schools.

An asterisk (*) to the left of a figure indicates county meets that criterion.

TABLE 3.—PROPOSED TARGETED ASSISTANCE ALLOCATIONS BY STATE: FY 1989

Proposed Allocation by State:	
California	$15,614,025
Colorado	149,404
Florida	13,444,827
Hawaii	
Illinois	257,603
Kansas	184,158
Louisiana	41,936
Maryland	
Massachusetts	617,905
Minnesota	709,566
Missouri	23,856
New Jersey	83,153
New York	1,173,201
Oregon	
Pennsylvania	
Rhode Island	
Texas	187,266
Utah	91,086
Virginia	
Washington	1,074,014
Total	33,652,000

Note.—The proposed allocation for Florida includes $10,404,700 for Jackson Memorial Hospital (Miami) and the Dade County (Miami) public schools. (See note to Table 2.)

VI. Allowable Activities and Client Prioritization

At least 85% of a county's FY 1989 targeted assistance funds would be required to support activities permissible under section 412(c) of the INA which have specific employment objectives and are directly related to aiding refugees in finding and retaining jobs within less than one year's participation in the targeted assistance program. Examples of these activities are: Job development; job placement; job-related and vocational English; short-term job training specifically related to opportunities in the local economy; on-the-job training; business and employer incentives (such as on-site employee orientation, vocational English training, or bilingual supervisor assistance); and business technical assistance. Strategies which address the employment potential of more than one wage earner in a household unit simultaneously would be encouraged. Longer-term activities of general or remedial education which are not directed toward the achievement of a specific employment objective within less than one year would be outside the scope of this part of the targeted assistance program, and the 85% TAP funds could not be used for those purposes. Examples of such activities not intended to be supported by these 85% funds would include adult basic education, preparation for a high school equivalency diploma, and general English language training which is not job focused. These types of activities could, however, be supported with the 15% funds described below.

Up to 15% of a local area's allocation could be used for other services which are permissible under section 412(c) of the INA and which are identified and demonstrated in the county plan to be essential services in addressing extreme and unusual needs of the refugee population in the targeted assistance area even though they do not have the specific objective of job placement within less than one year. Subject to State review and approval, a maximum of 15% of the allocation amount for each area could be used in funding these services.

In the event that a State wished to grant a local area's request to allocate more than 15% of its funds for such non-employment-related services, the State would be required to obtain formal prior approval by the Director of ORR. Only

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the most extreme needs would be considered adequate justification for a local area to use more than 15% of its TAP funds for these services. In order to justify the provision of services for extreme and unusual needs, a county plan would have to identify the target population, demonstrate clearly the nature and extent of the needs, and describe how the use of more than 15% of its targeted assistance funds to address such needs would contribute to the adjustment of the refugee population.

Services funded under TAP would be required to focus primarily on those refugees who, either because of their considerable and protracted use of public assistance or continued difficulty in securing employment, constitute a major resettlement problem for the affected jurisdiction which cannot be addressed without additional services. In order to ensure sufficient emphasis on services to appropriate clients, each State would be required to provide an assurance in its application to ORR that, for each qualified local area, cash assistance recipients (time-eligible and time-expired recipients under any program of the State or locality) would make up a percentage of the FY 1989 targeted assistance clientele which is not less than the State's final FY 1987 dependency rate as determined by ORR.

This client prioritization requirement does not apply to the 15% funds described above.

VII. Application and Implementation Process

Under the FY 1989 targeted assistance program, as in FY 1988, States would apply for and receive grant awards on behalf of qualified counties in the State. A single allocation would be made to each State by ORR on the basis of an approved State application. The State agency would, in turn, receive, review, and determine the acceptability of individual county targeted assistance plans.

Although funding for educational services in Dade County, FL, and Lowell, MA, and for medical services at Jackson Memorial Hospital is part of the appropriation amount for targeted assistance, the scope of activities for those projects would be administratively determined. Application for those funds would therefore not be subject to provisions contained in this notice, but to other requirements which would be conveyed separately.

VIII. Application Requirements

The proposed State application requirements for grants for the FY 1989 targeted assistance program are as follows (applications are not requested until publication of the final notice):

States that are currently operating under approved management plans for their FY 1988 targeted assistance program and wish to continue to do so for their FY 1989 grants may provide the following in lieu of resubmitting the full FY 1988 or 1988 approved plan:

The State's application shall provide:

A. Assurance that the State's FY 1988 management plan for the administration of the targeted assistance program, as approved by ORR, will continue to be in full force and effect for the FY 1989 targeted assistance program, subject to any additional assurances or revisions required by this notice which are not reflected in the previous plans. Any proposed modifications to the approved plan will be described separately in the application and are subject to ORR review and approval.

B. Timetables for awarding funds to the local areas consistent with the conclusion of services under the FY 1988 program as modified by carry-forward requests of FY 1984–1988 targeted assistance funds. Service periods can be for up to eighteen months but must conclude by no later than March 31, 1991.

C. A line item budget and justification for State administrative costs limited to a maximum of 5% of the total award to the State.

D. Revised information and description of any proposed plan modifications. Any proposed changes must address and reference all appropriate portions of the FY 1988 and 1988 application content requirements to ensure complete incorporation in the State's existing management plan.

E. *This paragraph applies only to States administering the program locally*: States that have administered the program locally or provide direct service to the refugee population (with the concurrence of the county) must submit a program summary to ORR for prior review and approval. The summary must include a description of the proposed services; a justification for the projected allocation for each component including relationship of funds allocated to numbers of clients served, characteristics of clients, duration of training and services, projected outcomes, and cost per placement. In addition, the program component summary should describe any ancillary services or subcomponents such as day care, transportation, or language training.

F. *This paragraph applies only to States with two or more counties receiving targeted assistance funds*: As in FY 1988, a State with two or more local areas which qualify for the program may choose to determine respective county allocations. If the State chooses to determine county allocations differently from the allocations of FY 1988, the State should provide a description of the State's proposed allocation plan. The allocation approach should be based upon existing FY 1988 funds, FY 1984–1988 funds carried forward, and indicators of refugee need for targeted assistance services. The application should contain a description of the allocation approach, data used in its determination, and the calculated allocation amount for each county. States are encouraged to revise allocation formulas to assure adequate funding to all eligible counties for the duration of the grant such that targeted assistance activities within the State conclude simultaneously. The allocation formula is subject to ORR approval. If the State chooses not to determine county allocation amounts, it will provide the allocations which will be specified in the final notice.

G. Assurance that, for each qualified local area, cash assistance recipients (time-eligible or time-expired recipients under any program of the State or locality) will make up a percentage of the FY 1989 Targeted assistance clientele no less than the State's final FY 1987 dependency rate, as determined by ORR, unless a waiver of this requirement is granted by ORR.

IX. Review, Technical Assistance, and Award Procedure

Applications will be reviewed on a non-competitive basis to determine acceptability. Such determinations will be based on the completeness of the submission, satisfactory progress by the grantee, the receipt of required program and financial reports, and ORR's determination that continued funding is in the best interest of the Government. The Department will provide technical assistance to the applicant if it is necessary in order to develop a proposal which warrants the award of funds at the proposed allocation amount and if such assistance is requested by the applying State agency. Final determination as to the acceptability of applications is at the discretion of the Director of ORR.

X. Reporting Requirements

FY 1989 TAP grants must be tracked separately from previous TAP grants, both financially and programmatically. For the FY 1989 program, States are required to submit semiannual reports and one final report as in previous years on the services provided in each targeted area. States are required to report on the number of job placements and retentions, cash assistance recipients placed on jobs, costs per placement, and other items specified in the "Reporting Requirements for Targeted Assistance Grants for Services for Refugees in Local Areas of High Need," OMB No. 0970–0042, expiration date February 28, 1991. Semiannual reports covering activity through September 30 and March 31 of each year are due on November 30 and May 31 of each year. A final cumulative report is due 120 days after the end of the full grant period.

Dated: January 18, 1989.

Bill F. Gee,

Director, Office of Refugee Resettlement.

[FR Doc. 89–1624 Filed 1–24–89; 8:45 am]

BILLING CODE 4110-04-M

DEPARTMENT OF THE INTERIOR

National Park Service

Legislative Environmental Impact Statement on the Exchange of Land Interests in Gates of the Arctic National Park and Preserve

AGENCY: National Park Service, Interior.

ACTION: Notice of intent.

SUMMARY: The National Park Service (NPS) is beginning preparation of a legislative environmental impact statement (LEIS) for Gates of the Arctic National Park and Preserve. The purpose of the environmental impact statement is to evaluate a proposed land exchange agreement between the National Park Service and the Arctic Slope Regional Corporation, Nunamiut Corporation, and City of Anaktuvuk Pass. The land exchange agreement involves existing wilderness land and will require ratification by Congress.

This legislative environmental impact statement is being prepared in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4331 *et seq.*) and its implementing regulations at 40 CFR Part 1500. Preparation of the LEIS will follow the procedures outlined under 40 CFR 1506.8 for the legislative statement required by statute to be included with a legislative recommendation to Congress.

The purpose of the land exchange agreement is to provide improved summertime subsistence access by allowing greater use of all-terrain vehicles (ATV) on specific lands within the park in exchange for development interests on certain native-owned lands within the park. In general, the agreement recommends the adjustment of current wilderness boundaries by removing approximately 74,800 acres from existing wilderness and requesting designation of 17,900 new acres; establishes permanent limits on the use of ATVs by qualified subsistence users from Anaktuvuk Pass on approximately 158,600 acres of park land; provides improved recreational access for the general public across approximately 120,300 acres of native land to federally-owned lands within the park; and protects park related values on approximately 127,100 acres of ASRC and Nunamiut lands by conveyance of conservation easements and surface development rights.

Alternatives to the proposed action include taking no action (leaving the linear ATV easements of the existing 1983 "Chandler Lake" Land Exchange Agreement in effect); a modification of the proposed alternative involving a fee simple exchange of specific federal tracts and native lands; and taking administrative action to modify park boundaries and expand authority for ATV use on all lands obtained by the NPS under the Chandler Lake Agreement.

Interested groups, organizations, individuals, and government agencies are encouraged to comment on the proposal at anytime.

A draft statement is expected to be available for public review by June 1989. A formal public comment period with hearings will follow the release of the draft legislative environmental impact statement.

FOR FURTHER INFORMATION CONTACT:

Paul F. Haertel, Associate Regional Director, Resource Services, National Park Service, 2525 Gambell St., Room 107, Anchorage, Alaska 99503–2892. Telephone: (907) 257–2684.

Dated: December 7, 1988.

Richard J. Stenmark,

Acting Regional Director, Alaska Region.

[FR Doc. 89–1630 Filed 1–24–89; 8:45 am]

BILLING CODE 4310-70-M

Draft Colorado River Management Plan and Environmental Assessment, Grand Canyon National Park, AZ; Extension of Public Review Period

SUMMARY: The Notice of Availability of the Draft Colorado River Management Plan and Environmental Assessment, Grand Canyon National Park, was announced in the **Federal Register**, Vol. 53, No. 228, Monday, November 28, 1988. The public review period for the Plan and Assessment has now been extended to January 20, 1989.

ADDRESSES: Comments on the Plan and Assessment or requests for copies should be addressed to the Superintendent, Grand Canyon National Park, P.O. Box 129, Grand Canyon, AZ 86023.

Date: December 16, 1988.

W. Lowell Whiteman,

Acting Regional Director, Western Region.

[FR Doc. 89–1664 Filed 1–24–89; 8:45 am]

BILLING CODE 4310-70-M

Availability of Plan of Operations and Environmental Assessment Continued Operations; Mesa Limited Partnership, Lake Meredith Recreation Area; TX

Notice is hereby given in accordance with § 9.52(b) of Title 36 of the Code of Federal Regulations that the National Park Service has received from Mesa Limited Partnership, a Plan of Operations for continued operations of existing gas wells, Lake Meredith Recreation Area, Texas.

The Plan of Operations and Environmental Assessment are available for public review and comment for a period of 30 days from the publication date of this notice in the Office of the Superintendent, Lake Meredith Recreation Area, P.O. Box 1438, Fritch, Texas; and the Southwest Regional Office, National Park Service, 1220 South St. Francis Drive, Room 347, Santa Fe, New Mexico. Copies are available from the Southwest Regional Office, P.O. Box 728, Santa Fe, New Mexico 87504–0728, and will be sent upon request.

Date: January 12, 1989.

Richard Marks,

Acting Regional Director, Southwest Region.

[FR Doc. 89–1629 Filed 1–24–89; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–429 (Preliminary)]

Mechanical Transfer Presses From Japan

AGENCY: United States International Trade Commission.

ACTION: Institution of a preliminary antidumping investigation and scheduling of a conference to be held in connection with the investigation.

SUMMARY: The Commission hereby gives notice of the institution of preliminary

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antidumping investigation No. 731-TA-429 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Japan of mechanical transfer presses,[1] provided for in subheadings 8462.29.00, 8462.39.00, 8462.49.00, 8462.99.00 and 8466.94.50 of the Harmonized Tariff Schedules of the United States, that are alleged to be sold in the United States at less than fair value. As provided in section 733(a), the Commission must complete preliminary antidumping investigations in 45 days, or in this case by February 27, 1989.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, subparts A and B (19 CFR Part 207), and Part 201, subparts A through E (19 CFR Part 201).

EFFECTIVE DATE: January 12, 1989.

FOR FURTHER INFORMATION CONTACT: Brian Walters (202-252-1196), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Room 615-M, Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-252-1000.

SUPPLEMENTARY INFORMATION:

Background.—This investigation is being instituted in response to a petition filed on January 12, 1989, by Verson Division of Allied Products Corporation, Chicago, IL, the United Auto Workers of America, and the United Steelworkers of America (AFL-CIO-CLC).

Participation in the investigation.—Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than seven (7) days after publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service List

Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Limited disclosure of business proprietary information under a protective order.—Pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a) as amended by 53 FR 33041 (August 29, 1988)), the Secretary will make available business proprietary information gathered in this preliminary investigation to authorized applicants under a protective order, provided that the application be made not later than seven (7) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive business proprietary information under a protective order. The Secretary will not accept any submission by parties containing business proprietary information without a certificate of service indicating that it has been served on all the parties that are authorized to receive such information under a protective order.

Conference.—The Director of Operations of the Commission has scheduled a conference in connection with this investigation for 9:30 a.m. on Friday, February 3, 1989, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Brian Walters (202-252-1196) not later than Wednesday, February 1, 1989, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conferences.

Written submissions.—Any person may submit to the Commission on or before February 7, 1989, a written brief containing information and arguments pertinent to the subject of the investigation, as provided in § 207.15 of the Commission's rules (19 CFR 207.15). A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the rules (19 CFR 201.8). All written submissions except for business proprietary data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any information for which business proprietary treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Business Proprietary Information." Business proprietary submissions and requests for business proprietary treatment must conform with the requirements of §§ 201.6 and 207.7 of the Commission's rules (19 CFR 201.6 and 207.7).

Parties which obtain disclosure of business proprietary information pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a)) may comment on such information in their written brief, and may also file additional written comments on such information no later than February 10, 1989. Such additional comments must be limited to comments on business proprietary information received in or after the written briefs.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules (19 CFR 207.12).

By order of the Commission.

Issued: January 19, 1989.

Kenneth R. Mason,

Secretary.

[FR Doc. 89-1670 Filed 1-24-89; 8:45 am]

BILLING CODE 7020-02-M

[1] For purposes of this investigation, the term "mechanical transfer presses" refers to automatic metal-forming machine tools with multiple die stations in which the workpiece is moved from station to station by a transfer mechanism synchronized with the press action, whether imported as machines or parts suitable for use solely or principally with these machines. These presses may be assembled or unassembled.

INTERSTATE COMMERCE COMMISSION

Motor Carrier Applications To Consolidate, Merge or Acquire Control; Coach Builders, Inc.

The following Applications seek approval to consolidate, purchase, merge lease operating rights and properties, or acquire control of motor carriers pursuant to 49 U.S.C. 11343 or 11344. Also, applications directly related to these motor finance applications (such as conversions, gateway eliminations, and securities issuances) may be involved.

The applications are governed by 49 CFR 1182.1.

Persons wishing to oppose an application must follow the rules under 49 CFR 1182.2. If the protest includes a request for oral hearing, the request shall meet the requirements of 49 CFR 1182.3 and shall include the required certification. Failure seasonable to oppose will be construed as a waiver of opposition and participation in the proceeding.

In the absence of legally sufficient protests as to the finance application *or* to any application directly related thereto filed within 45 days of publication (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (unless the application involves impediments) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice.

Applicant(s) must comply with all conditions set forth in the grant or grants of authority within the time period specified in the notice of effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

Findings

The findings for these applications are set forth at 49 CFR 1182.6 MC-F-19295, filed November 22, 1988. Peter L. Picknelly, Sr. (Picknelly) (1776 Main Street, Springfield, MA 01103)—Control—Coach Builders, Inc. (Coach Builders) (2273 Main Street, Springfield, MA 01107). Representative: James M. Burns, 935 Main Street, Suite 304, Springfield, MA 01101. Picknelly, a noncarrier individual, seeks authority to acquire control of Coach Builders (MC-205751), a motor common carrier of passengers, through ownership of 100 percent of the common stock of Coach Builders. Picknelly owns 43.2 percent of the common stock of Peter Pan Bus Lines, Inc. (MC-61016), a motor common carrier of passengers.

Coach Builders has filed an application in No. MC-205751 for common carrier authority to transport passengers over irregular routes, in charter and special operations, between points in the United States. Coach Builders holds temporary authority under No. MC-205751 (Sub-No. E-1 TA) to transport passengers, in charter and special operations, between points in Connecticut, Massachusetts, New Hampshire, and New York, on the one hand, and, on the other, points in the United States. Because Picknelly, upon acquiring control of Coach Builders, will be a noncarrier individual in control of two or more carriers, his acquisition of control of Coach Builders is subject to our jurisdiction.

Decided: January 17, 1989.

By the Commission, Motor Carrier Board, Members Barnes, Guyton, and Hodge.

Noreta R. McGee,

Secretary.

[FR Doc. 89-1607 Filed 1-24-89; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31273 [1]]

National Intergroup, Inc.; Control Exemption; the Permian Corp. D/B/A Western Oil Transportation, Inc.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: In Finance Docket No. 31273, the Commission is granting an exemption, *nunc pro tunc*, under 49 U.S.C. 10505 from the prior approval requirements of 49 U.S.C. 11343 for the acquisition by National Intergroup, Inc. (NII), through it wholly owned subsidiary, NII Holdings, Inc. of the Permian Corp. d/b/a/ Western Oil Transportation, Inc. (TPC), a carrier operating under Certificate No. MC-115001. In Finance Docket No. 31274, an exemption under section 10505 from the prior approval requirements of section 11343 is granted for the continuance in Control by NII of Permian Operating Limited Partnership (POLP). In No. MC-FC-83265, the transfer of the operating rights of TPC and POLP under 49 U.S.C. 10926 is granted through publication of a notice in the *ICC Register*.

DATES: These exemptions and transfer approval will be effective on February 24, 1989. Finance Docket Nos. 31273 and 31274, petitions to stay must be filed by February 6, 1989, and petitions for reconsideration must filed by February 14, 1989. In No. MC-FC-83265, protests must be filed by February 14, 1989. Send pleadings referring to Finance Docket No. 31273, or No. MC-FC-83265 to:

(1) Office of the Secretary, Cases Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representative: Mike Cotten, P.O. Box 1148, Austin, Texas 78767

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7246. [TDD for hearing impaired: (202) 275-1721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone (202) 289-4357/4359. (Assistance for the hearing impaired is available through TDD services (202) 275-1721.)

Decided: January 12, 1989.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Simmons, Lamboley, and Phillips.

Noreta R. McGee,

Secretary.

[FR Doc. 89-1606 Filed 1-24-89; 8:45 am]

BILLING CODE 7035-01-M

[1] This proceeding embraces Finance Docket No. 31274, *National Intergroup, Inc.—Continuance in Control Exemption— Permian Operating Limited Partnership;* and No. MC-FC-83265, *The Permian Corp., Inc.—Transfer Exemption—Permian Operating Limited Partnership.*

These cases were originally docketed as No. MC-F-18518, *National Intergroup, Inc.—Control Exemption—The Permian Corp. d/b/a/ Western Oil Transportation Co., Inc.*, and No. MC-F-18530, *The Permian Corp. d/b/o Western Oil Transportation Co., Inc., Transferor and Permian Operating Limited Partnership, Transferee.*

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to Clean Water Act; Brodhead, KY, et al.

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on December 27, 1988, a proposed Consent Decree in *United States* v. *City of Brodhead, Kentucky and Commonwealth of Kentucky*, Civil Action No. 88-331, was lodged with the United States District Court for the Eastern District of Kentucky. The Complaint filed by the United States sought injunctive relief and the assessment of civil penalties under the Clean Water Act, as amended (the Act), against the City of Brodhead, Kentucky. The Complaint alleged that the City discharged pollutants from its sewage treatment plant in violation of its National Pollutant Discharge Elimination System (NPDES) permit and the Act.

Under the proposed Consent Decree, the City will pay a civil penalty of $2,500. The Decree requires the City to undertake numerous remedial measures to ensure that it complies with the Act in its operation of its sewage treatment plant.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments concerning the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, U.S.

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Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044, and should refer to *United States v. City of Brodhead, Kentucky, et al.*, D.J. Ref. 90-5-1-1-3205.

The proposed Consent Decree may be examined at any of the following offices: (1) The United States Attorney for the Eastern District of Kentucky, Limestone and Barr Streets, Fourth Floor, Lexington, Kentucky; (2) the U.S. Environmental Protection Agency, Region 4, 345 Courtland Street, NE., Atlanta, Georgia; and (3) the Environmental Enforcement Section, Land & Natural Resources Division, U.S. Department of Justice, 10th & Pennsylvania Avenue, NW., Washington, DC. Copies of the proposed Decree may be obtained by mail from the Environmental Enforcement Section of the Department of Justice, Land and Natural Resources Division, P.O. Box 7611, Benjamin Franklin Station, Washington, DC 20044-7611, or in person at the U.S. Department of Justice Building, Room 1517, 10th Street and Pennsylvania Avenue, NW., Washington, DC. Any request for a copy of the proposed Consent Decree should be accompanied by a check for copying costs totalling $2.10 ($0.10 per page) payable to "United States Treasurer."

Roger J. Marzulla,

Assistant Attorney General, Land & Natural Resources Division.

[FR Doc. 89-1613 Filed 1-24-89; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to Clean Water Act; Wheelwright, KY, et al.

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on December 27, 1988, a proposed Consent Decree in *United States v. City of Wheelwright, Kentucky and Commonwealth of Kentucky*, Civil Action No. 88-436, was lodged with the United States District Court for the Eastern District of Kentucky. The Complaint filed by the United States sought injunctive relief and the assessment of civil penalties under the Clean Water Act, as amended (the Act), against the City of Wheelwright, Kentucky. The Complaint alleged that the City discharged pollutants from its sewage treatment plant in violation of its National Pollutant Discharge Elimination System (NPDES) permit and the Act.

Under the proposed Consent Decree, the City will pay a civil penalty of $2,600. The Decree requires the City to undertake numerous remedial measures to ensure that it complies with the Act in its operation of its sewage treatment plant.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments concerning the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044, and should refer to *United States v. City of Wheelwright, Kentucky, et al.*, D.J. Ref. 90-5-1-1-2268.

The proposed Consent Decree may be examined at any of the following offices: (1) The United States Attorney for the Eastern District of Kentucky, Limestone and Barr Streets, Fourth Floor, Lexington, Kentucky; (2) the U.S. Environmental Protection Agency, Region 4, 345 Courtland Street, NE., Atlanta, Georgia; and (3) the Environmental Enforcement Section, Land & Natural Resources Division, U.S. Department of Justice, 10th & Pennsylvania Avenue, NW. Washington, DC. Copies of the proposed Decree may be obtained by mail from the Environmental Enforcement Section of the Department of Justice, Land and Natural Resources Division, P.O. Box 7611, Benjamin Franklin Station, Washington, DC 20044-7611, or in person at the U.S. Department of Justice Building, Room 1517, 10th Street and Pennsylvania Avenue, NW., Washington, DC. Any request for a copy of the proposed Consent Decree should be accompanied by a check for copying costs totalling $1.80 ($0.10 per page) payable to "United States Treasurer."

Roger J. Marzulla,

Assistant Attorney General, Land & Natural Resources Division.

[FR Doc. 89-1614 Filed 1-24-89; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-22,843]

H&S Drilling, Bradford, PA; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, (19 U.S.C. 2273) as amended by the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100-418), an investigation was initiated on November 18, 1988 in response to a worker petition dated November 14, 1988 and filed on behalf of workers and former workers engaged in contract drilling at H&S Drilling, Bradford, Pennsylvania.

There were no layoffs at H&S Drilling since 1984—almost a year prior to October 1, 1985, the earliest possible impact date. Consequently further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC, this 13th day of January 1989.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 89-1618 Filed 1-24-89; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-21,874]

Hydril Co., Houston, TX; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on November 18, 1988 in response to a worker petition received on November 18, 1988 which was filed by the United Steelworkers of America, Local No. 5801 on behalf of workers at Hydril Company, Houston, Texas.

All workers were separated from the subject plant more than one year prior to the date of the petition. Section 223 of the Act specifies that no certification may apply to any worker whose last separation occurred more than one year before the date of the petition. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 13th day of January 1989.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 89-1619 Filed 1-24-89; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-20,873]

Newcor, Inc., Bay City, MI; Negative Determination Regarding Application for Reconsideration

By an application dated November 10, 1988, Local #498 of the United Auto Workers together with company officials requested administrative reconsideration of the Department's negative determination on the subject petition for trade adjustment assistance. The initial petition was filed by the subject local on behalf of workers at Newcor, Inc., Bay City, Michigan. The denial notice was signed on October 14, 1988 and published in the Federal Register on November 17, 1988 (53 FR 46509).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If, in the opinion of the Certifying Office, a misinterpretation of facts or of the law justified reconsideration of the decision.

The workers at Newcor produce capital equipment—automated welding machinery for the auto and electronic industries. Bookings or sales increased in 1987 compared to 1986 and in the first seven months of 1988 compared to the same period in 1987. Production declined substantially in 1987 compared to 1986. The first seven months of 1988 saw an increase in production over the same period in 1987.

The union claims that sales and production of capital machinery at Newcor's Bay City plant declined steadily since 1984. The union states that the Department did not consider lost work to Newcor Canada and to ARP-LAS Europe or foreign owned domestic auto manufacturers' resistance to buying U.S. produced capital machinery.

The Department's denial was based on the fact that there was increased sales and production of capital machinery at Newcor's plant in Bay City in the first seven months of 1988 compared to the same period in 1987. Although sales increased in 1987 compared to 1986, production declined as the backlog of orders was reduced. The Department conducted a survey of the one company soliciting a large bid from Newcor in 1987. The survey showed that the bid was awarded to another domestic manufacturer. The value of the bid was large in relation to the Bay City's annual sales volume.

A review of the investigation file shows that Newcor Canada produced equipment only for the Canadian market and that the subject firm and Newcor Canada did not compete for the same projects. Also, ARP-LAS Europe is Newcor's manufacturing representative for Europe and there is no competition between ARP-LAS Europe and Bay City. Finally, there is no purpose in collecting data back to 1984 which is prior to the relevant period of the petition. Section 223(b)(1) of the Trade Act does not allow certification of workers separated more than one year prior to the date of the petition, which in this case is August 1, 1988.

A review of the findings on the Department's bid survey would not support a certification.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 4th Day of January, 1989.

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 89-1621 Filed 1-24-89; 8:45 am]

BILLING CODE 4510-30-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-22,074]

Summit Oil & Gas, Bradford, PA; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, (19 U.S.C. 2273) as amended by the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100-418), an investigation was initiated on November 18, 1988 in response to a worker petition dated November 14, 1988 and filed on behalf of workers and former workers engaged in the production of crude oil and natural gas at Summit Gas & Oil, Bradford, Pennsylvania.

The retroactive provisions of section 1421(a)(1)(B) of the Omnibus Trade and Competitiveness Act of 1988 (OTCA) do not apply to workers who were eligible to be certified for benefits under the Trade Act prior to the implementation of the retroactive provisions.

There were no layoffs at Summit Gas & Oil since 1984—several years prior to November 14, 1987, one year prior to the date of the petition and the earliest possible impact date. Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC, this 13th day of January 1989.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 89-1620 Filed 1-24-89; 8:45 am]

BILLING CODE 4510-30-M

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LIBRARY OF CONGRESS

National Film Preservation Board; Meeting

AGENCY: Library of Congress.

ACTION: Notice of meeting.

SUMMARY: This notice announces the first meeting of the National Film Preservation Board. This notice also describes the functions of the Board. Notice of this meeting is required in accordance with Pub. L. 100-446.

DATE: January 23, 1989, 10:30 a.m.

ADDRESS: Mumford Room, James Madison Memorial Building, Library of Congress, First Street and Independence Avenue, SE., Washington, DC 20540.

FOR FURTHER INFORMATION CONTACT: Office of the General Counsel, Library of Congress, Washington, DC 20540, telephone (202) 707-6316.

SUPPLEMENTARY INFORMATION: The meeting is open to the public.

The National Film Preservation Act of 1988 (2 U.S.C. 178) created the National Film Registry at the Library of Congress for the purpose of registering films that are culturally, historically, or aesthetically significant. The National Film Preservation Board, also created by the Act, is composed of 13 individuals, each selected by the Librarian of Congress from 13 organizations or institutions identified in the Act. The Board meets at least twice a year to nominate to the Librarian up to 25 films a year for inclusion in the National Film Registry. This is the first meeting of the Board.

Dated: January 11, 1989.

Arthur J. Lieh,

Executive Officer, Office of The Librarian.

[FR Doc. 89-1616 Filed 1-24-89; 8:45 am]

BILLING CODE 1410-01-M

NATIONAL FOUNDATION OF THE ARTS AND THE HUMANITIES

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Humanities.

ACTION: Notice.

SUMMARY: The National Endowment for the Humanities (NEH) has sent to the Office of Management and Budget (OMB) the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATE: Comments on this information collection must be submitted on or before February 24, 1989.

ADDRESSES: Send comments to Mrs. Ingrid Reyes Management Assistant, National Endowment for the Humanities, Administrative Services Office, Room 202, 1100 Pennsylvania Avenue, NW. Washington, DC 20506 (202-786-0233) and Mr. Jim Houser, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., Room 3208, Washington, DC 20503 (202-395-7316).

FOR FURTHER INFORMATION CONTACT: Ms. Ingrid Reyes, National Endowment for the Humanities, Administrative Services Office, Room 202, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 (202) 786-0233 from whom copies of forms and support documents are available.

SUPPLEMENTARY INFORMATION: All of the entries are grouped into new forms, revisions, or extensions. Each entry is issued by NEH and contains the following information: (1) The title of the form; (2) the agency form number if applicable; (3) how often the form must be filled out; (4) who will be required or asked to report; (5) what form will be used for; (6) an estimate of the number of hours needed to fill out the form. None of the entries are subject to 44 U.S.C. 3504(h).

Category: Extension

1. *Title:* Division of State Programs: Guidelines for Exemplary Award Proposals

Form Number: 3136-0114

Frequency of Collection: Annually

Respondents: State humanities councils applying for funding

Use: Application for benefits by state humanities councils to be used to produce humanities projects of an imaginative, exemplary nature which could serve as models to other state councils. Information will be used by reviewers, panelists and the Endowment's chairman to determine eligibility for funding

Estimated Number of Respondents: 23

Frequency of Response: Annually

Estimated Hours for Respondents to Provide Information: 120 hours per respondent or 2760 total hours for all respondents

Estimated Total Annual Reporting and Recording Burden: 3220

Susan H. Metts,

Assistant Chairman for Administration.

[FR Doc. 89-1617 Filed 1-24-89; 8:45 am]

BILLING CODE 7536-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-206]

Southern California Edison Co., and San Diego Gas and Electric Co., San Onofre Generating Station, Unit No. 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Provisional Operating License No. DPR-13 issued to Southern California Edison Company, *et al.*, (the licensee), for operation of San Onofre Nuclear Generating Station, Unit No. 1, located in San Diego County, California.

Environmental Assessment

Identification of Proposed Action

The proposed amendment is a request to change the power supply for motor-operated valve MOV-358 from motor control center 3 to the battery-supplied Uninterruptible Power Supply. MOV-358 is the inlet valve to reactor coolant loop "C" in the emergency core cooling recirculation system.

The Need for the Proposed Action

The proposed amendment is required to change the power supply to MOV-358 to eliminate a single failure vulnerability in the power supply arrangement for the recirculation system and thereby improve reliability and safety.

Environmental Impacts of the Proposed Action

The proposed action would not involve a significant change in the probability or consequences of any accident previously evaluated, nor does it involve a new or different kind of accident. Consequently, any radiological releases resulting from an accident would not be significantly greater than previously determined. The proposed amendment does not otherwise affect routine radiological plant effluents. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed amendment. The Commission also concludes that the proposed action will not result in a significant increase in individual or cumulative occupational radiation exposure.

With regard to nonradiological impacts, the proposed amendment does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed amendment.

The Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on December 13, 1988 (53 FR 50143). No request for hearing or petition for leave to intervene was filed following this notice.

Alternatives to the Proposed Action

Because the Commission has concluded that there are no significant environmental impacts associated with the proposed action, there is no need to examine alternatives to the proposed action.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in connection with the Final Environmental Statement related to operation of San Onofre Nuclear Generating Station, Unit No. 1, dated October 1973.

Agencies and Persons Consulted

The NRC staff has reviewed the licensee's request that supports the proposed amendment. The NRC did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed amendment.

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated November 7, 1988, which is available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555, and at the General Library, University of California, P.O. Box 19557, Irvine, California 92713.

Dated at Rockville, Maryland, this 17th day of January 1989.

For the Nuclear Regulatory Commission.

George W. Knighton,

Director, Project Directorate V, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89-1637 Filed 1-24-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-206]

Southern California Edison Co. and San Diego Gas and Electric Co., San Onofre Nuclear Generating Station, Unit No. 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Provisional Operating License No. DPR-13 issued to Southern California Edison Company, *et al.*, (the licensee), for operation of San Onofre Nuclear Generating Station, Unit No. 1, located in San Diego County, California.

Environmental Assessment

Identification of Proposed Action

The proposed amendment is a request to raise the allowable diesel generator load from 5250 KW to 6000 KW. The loading is currently limited because the diesel generators have piston skirts that have a propensity to crack. The licensee proposes to change the piston skirts to a new design that does not have this problem, and thereby restore the diesel generators to their full power rating of 6000 KW.

The Need for the Proposed Action

The proposed amendment is required to raise the allowable diesel generator load from 5250 KW to the design rating of 6000 KW.

Environmental Impacts of the Proposed Action

The proposed action would not involve a significant change in the probability or consequences of any accident previously evaluated, nor does it involve a new or different kind of accident. Consequently, any radiological releases resulting from an accident would not be significantly greater than previously determined. The proposed amendment does not otherwise affect routine radiological plant effluents. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed amendment. The Commission also concludes that the proposed action will not result in a significant increase in individual or cumulative occupational radiation exposure.

With regard to nonradiological impacts, the proposed amendment does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed amendment.

The Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on December 14, 1988 (53 FR 50340). No request for hearing or petition for leave to intervene was filed following this notice.

Alternatives to the Proposed Action

Because the Commission has concluded that there are no significant environmental impacts associated with the proposed action, there is no need to examine alternatives to the proposed action.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in connection with the Final Environmental Statement related to operation of San Onofre Nuclear Generating Station, Unit No. 1, dated October 1973.

Agencies and Persons Consulted

The NRC staff has reviewed the licensee's request that supports the proposed amendment. The NRC staff did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed amendment.

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated November 11, 1988, which is available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555, and at the General Library, University of California, P.O. Box 19557, Irvine, California 92713.

Dated at Rockville, Maryland, this 13th day of January 1989.

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For the Nuclear Regulatory Commission.
George W. Knighton,
Director, Project Directorate V, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.
[FR Doc. 89-1638 Filed 1-24-89; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 50-327, 50-328]

Tennessee Valley Authority; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of a temporary exemption from the requirements of § 50.46(a)(1) to 10 CFR Part 50 to the Tennessee Valley Authority (the licensee) for the Sequoyah Nuclear Plant, Units 1 and 2. The units are located at the licensee's site in Hamilton County, Tennessee. The exemption was requested by the licensee in its letter dated November 3, 1988 and supplemented by letters dated December 2 and 5, 1988.

Environmental Assessment

Identification of Proposed Action

The exemption would allow the licensee relief from the provisions of § 50.46(a)(1), for the entire operating Cycle 4 for both units, with respect to the requirement that the Emergency Core Cooling System (ECCS) cooling performance analysis for an operating nuclear power reactor be calculated on a plant-specific basis using an approved ECCS evaluation model and plant operating conditions. The current calculated ECCS performance for the Sequoyah Nuclear Plant including the approved Upper Head Injection (UHI) Calculation Model for the facility, as referenced in § 15.4 of the Sequoyah Final Safety Analysis Report (FSAR), is not based on the actual operating conditions for the current operating Cycle 4 for Unit 1 and there are corrections needed to be made to the UHI calculation model. This will be true for the Unit 2 for upcoming operating Cycle 4 which is presently scheduled to begin on or about March 31, 1989. The relief would allow operation of Sequoyah Units 1 and 2, in their respective operating Cycle 4, without an ECCS performance analysis using an approved UHI calculation model and plant operating conditions. Because both units will have the UHI system in operation during operating Cycle 4, the ECCS performance analysis for both units for Cycle 4 would have to include an approved UHI calculation model without errors to be in conformance with 10 CFR 50.46(a)(1). Operating Cycle 4 for Unit 1 began in November 1988 and for Unit 2 is scheduled to begin on or about March 31, 1989.

In its application dated November 3, 1988 for relief, the licensee stated that it would submit for operating Cycle 5 a calculated ECCS cooling performance analysis using approved non-UHI models and Cycle 5 and beyond plant operating conditions. The licensee is planning to remove the UHI system during the Cycle 4 refueling outage, prior to operating Cycle 5, for each unit. The Cycle 4 refueling outages are scheduled for early and late 1990 for Units 1 and 2, respectively. Unit 1 is currently in operating Cycle 4, and Unit 2, is in operating Cycle 3 with the Cycle 3 refueling outage scheduled to begin in January 1989. Therefore, the relief requested is an exemption for each unit for operating Cycle 4 until their restart for operating Cycle 5.

The Commission, in its letter dated October 20, 1988, granted a temporary exemption to the above provisions of § 50.46(a)(1) for Unit 1. This temporary relief was granted until the licensee submitted to NRC the ECCS cooling performance analysis for Unit 1 using an approved UHI model and actual plant operating conditions for Cycle 4, but not later than May 31, 1989. The licensee had requested this temporary relief in its letter dated September 19, 1988 because it did not have an approved ECCS calculation for actual plant conditions for operating Cycle 4 for Unit 1. This was because of required Technical Specification (TS) changes in the UHI system that would change the water delivered to the reactor coolant system during an accident. The licensee requested the temporary relief to allow Unit 1 to startup and operate in operating Cycle 4 before the ECCS performance analysis was completed. The licensee has now requested the same TS changes in the UHI system for Unit 2 that would also change the water delivered to the reactor coolant system during an accident. Therefore, relief is needed from 10 CFR 50.46(a)(1) for Unit 2 to allow the unit to startup and operate in operating Cycle 4 because, as for Unit 1, the licensee does not have an acceptable UHI/ECCS analysis for Unit 2 for operating Cycle 4.

Since the above relief was granted for Unit 1, the licensee has reassessed the resources necessary to perform the required UHI/ECCS analysis for both units in operating Cycle 4 and concluded that the performance of the UHI/ECCS analysis for only one cycle creates a significant hardship. The licensee stated that the resources directed toward the performance of a UHI/ECCS analysis are inconsistent with its plans to remove UHI at Units 1 and 2 and would delay the availability of resources needed to support the UHI deletion from the units and could, therefore, delay the implementation of UHI deletion until later than the presently scheduled Cycle 4 refueling outages for the units. Additionally, the licensee stated that the performance of the UHI/ECCS analysis is a poor utilization of its resources, as well as NRC resources in reviewing the UHI/ECCS analysis, because of the age of the UHI model. The UHI model is not currently available for use and would require extensive resources to verify and validate the model on the current Westinghouse Corporation computer system and, therefore, the resources directed at the UHI/ECCS analysis would be directed toward "old" methodologies and technologies. The licensee further stated that Sequoyah is the last commercial plant utilizing the UHI design in this country and this would force the licensee to bear by itself the full burden for these resource expenditures.

During the duration of the relief granted by the exemption the heat flux hot channel factor, $F_Q(z)$ will be limited to a value of 2.15 as compared to the current value of 2.237 in the Sequoyah Units 1 and 2 Technical Specifications. By letters dated September 21 and December 2, 1988, the licensee proposed changes to the Technical Specifications to reduce the $F_Q(z)$ to 2.15 for Units 1 and 2, respectively.

The Need for the Proposed Action

The proposed exemption is required to permit the licensee to continue operation of Unit 1 beyond May 31, 1989 and for operating Cycle 4 for both Units 1 and 2. The restart for Unit 2 from its Cycle 3 refueling outage is presently scheduled for on or about March 31, 1989.

Environmental Impacts of the Proposed Action

With respect to the requested exemption, the relief from the above requirement of 10 CFR 50.46(a)(1) would permit the licensee to use evaluations based on sensitivity studies to demonstrate during operating Cycle 4 for both units that the calculated peak cladding temperatures (PCTs) remain below the acceptance criterion (2,200 °F) of 10 CFR 50.45(b)(1). Provisions of 10 CFR 50.46(a)(1) require that ECCS performance be calculated with an acceptable calculation model. The intent of the requirement is to ensure that the PCTs during a postulated accident do not exceed 2,200 °F. The licensee has submitted the results of calculations with PCT penalties that demonstrate that the limiting PCT for both units resulting from the reduced minimum delivered UHI water volume is below the regulatory limit. Also, the licensee has accepted operating restrictions on the heat flux hot channel factor and steam generator tubes plugged for both units in operating Cycle 4 to provide an additional PCT margin of greater than 100 °F. This margin offsets any uncertainties of the licensee's sensitivity studies and ensures compliance with the 10 CFR 50.46 PCT acceptance criterion. Consequently, neither the probability of accidents nor the radiological releases from accidents will be increased. With regard to other potential radiological environmental impacts, the proposed exemption does not increase the radiological effluents from the facility and does not increase the occupational exposure at the facility. Therefore, the Commission concludes that there are no significant radiological impacts associated with the proposed exemption.

With regard to potential nonradiological environmental impacts, the proposed exemption involves systems located within the restricted areas as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed exemption.

Therefore, the proposed exemption does not significantly change the conclusions in the licensee's "Final Environmental Statement Related to the Operation of Sequoyah Nuclear Plant Units 1 and 2," (FES) dated February 21, 1974. The Commission concluded that operation of the Sequoyah units will not result in any environment impacts other than those evaluated in the FES in its letter to the licensee dated September 17, 1980 which granted the facility operating license DPR-77 for Unit 1.

Alternative to the Proposed Action

Because the staff has concluded that there is no measurable environmental impact associated with the proposed exemption, any alternative to this exemption will have either no significantly different environmental impact or greater environmental impact.

The principal alternative would be to deny the requested exemption. This would not reduce environmental impacts as a result of plant operations.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in connection with the "Final Environmental Statement Related to the Operation of the Sequoyah Nuclear Plant, Units 1 and 2," dated February 21, 1974.

Agencies and Persons Consulted

The NRC staff has reviewed the licensee's request and the licensee's supplemental letters that support the proposed exemption. The NRC staff did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For details with respect to this action, see the licensee's request for an exemption dated November 3, 1988 and the supporting information in the licensee's letters dated December 2 and 5, 1988, which is available for public inspection at the Commission's Public Document Room, Gelman Building, 2120 L Street, NW., Washington, DC, and at the Chattanooga-Hamilton County Bicentennial Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Dated at Rockville, Maryland, this 13th day of January 1989.

For the Nuclear Regulatory Commission.
Suzanne Black,
Assistant Director for Projects, TVA Projects Division, Office of Nuclear Reactor Regulation.
[FR Doc. 89-1639 Filed 1-24-89; 8:45 am]
BILLING CODE 7590-01-M

[NUREG-0800]

Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants; Issuance and Availability

The U.S. Nuclear Regulatory Commission (NRC) has published revisions to section 6.5.2, "Containment Spray as a Fission Product Cleanup System," and section 6.5.4, "Ice Condenser as a Fission Product Cleanup System," and has issued a new section 6.5.5, "Pressure Suppression Pool as a Fission Product Cleanup System," of NUREG-0800, "Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants," LWR Edition (SRP).

The revision of SRP section 6.5.2 (Revision 2) eliminated overly conservative assumptions in estimating the effectiveness of post-accident fission product removal by containment spray system. SRP section 6.5.4 (Revision 3) was revised to incorporate the pH range specified in SRP section 6.5.2, Revision 2, for recirculating solutions. New SRP section 6.5.5 (Revision 0) resolved an inconsistency in NRC regulatory guidance by giving credit to pressure suppression pools at post-accident fission product cleanup systems in boiling water reactors.

A Notice of Availability and Request for public and industry comments on SRP sections 6.5.2 and 6.5.5 was published in the **Federal Register** on April 6, 1987.

The revised and new SRP sections are effective immediately. A copy will be available in the Commission's Public Document Room within two weeks. Copies of the revised and new SRP sections or of the complete Standard Review Plan, NUREG-0800, Accession No. PD-81-020199 are available for purchase from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161; telephone (703) 487-4650.

Dated at Rockville, Maryland this 11th day of January 1989.

For the Nuclear Regulatory Commission.
Frank P. Gillespie,
Director, Program Management, Policy Development and Analysis Staff, Office of Nuclear Reactor Regulation.
[FR Doc. 89-1636 Filed 1-24-89; 8:45 am]
BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed or revoked under Schedules A, B, and C in the excepted service, as required by civil service rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: Leesa Martin, (202) 632-0728.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR Part 213 on December 28, 1988 (53 FR 249). Individual authorities established or revoked under Schedule A, B, or C between December 1, 1988, and

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December 31, 1988, appear in a listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities will be published as of June 30, of each year.

Schedule A

No Schedule A authorities were established or revoked during December.

Schedule B

No Schedule B authorities were established or revoked during December.

Schedule C

Department of Agriculture

One Executive Assistant to the Assistant Secretary for Food and Consumer Services. Effective December 19, 1988.

Department of Commerce

One Confidential Assistant to the Director, Office of Business Liaison. Effective December 2, 1988.

One Congressional Liaison Specialist to the Deputy Assistant Secretary for Congressional Affairs. Effective December 16, 1988.

One Private Secretary to the Director for Minority Business Development Agency. Effective December 28, 1988.

One Special Assistant to the Assistant Secretary for the National Oceanic and Atmospheric Administration. Effective December 29, 1988.

One Special Assistant to the Director General of the U.S. Foreign Commercial Service. Effective December 30, 1988.

One Executive Assistant to the Under Secretary for Export Administration. Effective December 30, 1988.

Department of Defense

One Personal and Confidential Assistant to the Judge, U.S. Court of Military Appeals. Effective December 14, 1988.

Department of Education

One Confidential Assistant to the Assistant Secretary for Educational Research and Improvement. Effective December 14, 1988.

One Staff Assistant to the Assistant Secretary for Educational Research and Improvement. Effective December 14, 1988.

One Special Assistant to the Director for the Office of Inter-governmental and Interagency Affairs. Effective December 14, 1988.

Department of Energy

One Secretary (Confidential Assistant) to the General Counsel. Effective December 16, 1988.

One Director to the Deputy Assistant Secretary and Staff Director for the Office of Special Projects. Effective December 23, 1988.

Department of Health and Human Services

One Special Assistant to the Deputy Commissioner for Policy and External Affairs. Effective December 9, 1988.

One Confidential Assistant to the Executive Assistant to the Secretary. Effective December 14, 1988.

One Confidential Assistant to the Assistant Secretary for Legislation. Effective December 16, 1988.

Department of Interior

One Departmental Committee Management Officer to the Deputy Assistant Secretary for Policy and Analysis. Effective December 23, 1988.

Department of Justice

One Confidential Assistant to the Assistant Attorney General for the Office of Legislative Affairs. Effective December 14, 1988.

One Special Assistant to the Director for the Office of Public Affairs. Effective December 14, 1988

Department of Labor

One Deputy Liaison Officer to the Assistant Secretary for the Office of Congressional Affairs. Effective December 9, 1988.

One Special Assistant to the Assistant Secretary for the Office of Congressional Affairs. Effective December 9, 1988.

One Legislative Analyst to the Assistant Secretary for the Office of Congressional Affairs. Effective December 28, 1988.

One Senior Liaison Officer to the Assistant Secretary for the Office of Congressional Affairs. Effective December 28, 1988.

Department of Transportation

One Special Assistant to the Director for the Office of Commercial Space Transportation. Effective December 7, 1988.

One Special Assistant to the Administrator for the Federal Aviation Administration. Effective December 14, 1988.

One Congressional Liaison Officer to the Director for the Office of Congressional Affairs. Effective December 23, 1988.

Department of Treasury

One Confidential Assistant to the Assistant Secretary for Public Affairs and Public Liaison. Effective December 16, 1988.

Action

One Special Assistant to the Associate Director. Effective December 9, 1988.

Commission on Civil Rights

One Special Assistant to the Commissioner. Effective December 19, 1988.

International Trade Commission

One Staff Assistant (Legal) to a Commissioner. Effective December 5, 1988.

One Confidential Assistant to a Commissioner. Effective December 7, 1988.

One Staff Assistant (Legal) to a Commissioner. Effective December 14, 1988.

Office of Science and Technology Policy

One Public Information Assistant to the Director. Effective December 19, 1988.

Small Business Administration

One Special Assistant to the Director of Private Sector Initiatives. Effective December 19, 1988.

Securities and Exchange Commission

One Staff Assistant to the Regional Administrator. Effective December 23, 1988.

United States Information Agency

One Special Assistant to the Director for the Office of International Visitors. Effective December 8, 1988.

United States Tax Court

One Secretary (Confidential Assistant) to a Judge. Effective December 9, 1988.

U.S. Office of Personnel Management.
Constance Horner,
Director.

Authority: 5 U.S.C. 3301, 3302; E.O. 10555, 3 CFR 1954–1958 Comp., P. 218.

[FR Doc. 89–1632 Filed 1–24–89; 8:45 am]
BILLING CODE 6325–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–26470; File No. SR–MBS–88–17]

Self-Regulatory Organizations; MBS Clearing Corp.; Proposed Rule Change Regarding Election of Directors to MBSCC's Board of Directors

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on November 16, 1988, MBS Clearing Corporation filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change.

A new Section 4A.2 has been added to MBSCC'S By-Laws providing for a Nominating Committee, composed of officers or partners of Participants, to choose nominees for the Board of Directors. In addition, a new Section 3.2 has been added directing the Nominating Committee to select candidates with a view towards fair representation of a cross section of Participants. Section 3.2 also allows Participants to directly nominate candidates by filing a petition signed by at least five Participants.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to assure Participants fair representation in the selection of Directors and administration of MBSCC's affairs. This is accomplished by the addition to the By-Laws of a new Section 4A.2 which provides for a Nominating Committee, composed of three members who are partners or officers of Participants, to choose nominees for the Board of Directors, and a new Section 3.2 which directs the Nominating Committee to select candidates with a view toward providing fair representation for the interests of a cross section of Participants. Section 3.2 also provides a mechanism allowing Participants to make nomination directly by filing a petition signed by at least five Participants. Conforming modifications are also made in existing Section 3.1.

In Release No. 24046 (File No. 600–22) dated February 2, 1987 the Securities and Exchange Commission (the "Commission") granted MBSCC temporary registration as a clearing agency under section 17A of the Securities Exchange Act of 1934, as amended (the "Act"). In that Release, the Commission stated that it expected MBSCC, as a condition to permanent registration, to file proposed Rule changes designed to satisfy the requirement of section 17A(b)(3)(C) that a clearing agency's rules assure fair representation to its participants in the selection of its directors and administration of its affairs. The proposed rule changes are intended to satisfy that requirement.

(B) Self-Regulatory Organization's Statement on Burden on Competition

MBSCC does not believe that any burdens will be placed on competition as a result of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-references self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by February 15, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: January 18, 1989.
Jonathan G. Katz,
Secretary.

[FR Doc. 89–1657 Filed 1–24–89; 8:45 am]
BILLING CODE 8010–01–M

[Rel. No. 34–26471; File No. SR–MBS–88–19]

Self-Regulatory Organizations; MBS Clearing Corp.; Filing of Proposed Rule Change Modifying MBSCC's Clearing Division

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on November 25, 1988, MBS Clearing Corporation, Clearing Division, filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Self-Regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed changes to the Rules of the Clearing Division of MBS Clearing Corporation ("the Corporation") include: (1) Provisions for reporting of settlements to the Corporation by both

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parties to an SBO Trade; (2) provisions for dealing with situations where the information submitted by both parties does not agree, or one party fails to submit settlement information; and (3) modifications to the SBO Cash Adjustment (formerly known as the SBO Amortized Value Adjustment), including addition of Broker Adjustments to be paid or received by the Dealers involved in an SBO Trade resulting from the netting of transactions originally entered through a Broker.

(1) *Two Sided Reporting and Comparison of SBO Trades.* Article II, Rule 6, Section 2, is amended to require the receiving Participant submit its receive ticket or a report of settlement through the Corporation's computer system (collectively referred to as an "SBO Settlement Notification") upon settlement of an SBO transaction, containing the same information that currently is required from the delivering Participant. Provisions that required the delivering and receiving Participants to verify the Notification of Settlement Report or submit a Withhold Instruction are deleted as no longer applicable under the two-sided reporting system. A new subparagraph (a) of Section 2 requires the Corporation to cancel the SBO Trade, furnish the delivering and receiving Participants with a Notification of Settlement Report, and completely or partially delete the SBO Trade from the Participants' respective Purchase and Sales Reports, Open Commitment Reports and Market Margin Differential Reports, if the SBO Settlement Notifications submitted by the two Participants agrees.

(2) *Failure to Return Agreeing Reports of SBO Trades.* A new subparagraph (b) of Article II, Rule 6, Section 2 requires the Corporation to furnish the delivering and receiving Participants with an Uncompared Advisory Report if the information in the SBO Settlement Notification does not agree or if only one Participant submits an SBO Settlement Notification, and provides that the SBO Trade will not be deleted from the reports until agreeing settlement information has been submitted or the Participant that has submitted unmatched settlement information deletes it. Article II, Rule 6, Section 2 and a provision of the new Section 2(b) of Rule 6 make clear that SBO Contra-Side Participants will continue to be subject to Market Margin Differential requirements until they have submitted agreeing SBO Settlement Notifications. Article II, Rule 6, Section 2, is amended to provide that, if the delivering and receiving Participants have not returned agreeing SBO Settlement Notifications, the Corporation will reflect the SBO Trades and any fines imposed for failure to respond in a timely manner to Uncompared Advisory Reports on a Delinquent SBO Advisory Report available as provided in the Procedures. References to the discontinued monthly SBO Fail Report are deleted. Article V, Rule 3, is amended to expressly authorize the Corporation to fine or otherwise sanction a Participant that has not timely responded to an Uncompared Advisory Report.

(3) *SBO Cash Adjustment.* Article II, Rule 3, Section 4 has been substantially revised. Section 4 will make it clear that the SBO Cash Adjustment (formerly the SBO Amortized Value Adjustment) will not be applied to Brokers whose SBO Trades net to a Net-Out Trade (formerly a Zero SBO Trade). Instead, the SBO Cash Adjustment of each Dealer on whose behalf the Broker has acted will include a Broker Adjustment equal to the SBO Market Differential multiplied by the percentage by which the amortized value of Securities delivered or received by the Dealer is greater or less than the quantity originally reported to the Corporation by the Broker following the Trade Date. The SBO Cash Adjustment will also include any fines or interest imposed on the Participant. Section 4 is further amended to remove from the Rules specific time frames for the delivery of the Cash Adjustment Report and for the payment of SBO Cash Adjustments. Those time frames will now be specified in the Procedures.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Item 3. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed Rule changes generally are intended to accommodate an enhancement of the Corporation's SBO System and to conform the terminology of the Rules to current usage. Capitalized terms herein have the meanings ascribed to them in the Corporation's Rules.

(1) *Two-sided Reporting and Comparison of SBO Trades.* Under the current Rules, settlements of SBO Trades are processed as follows: (a) Both the delivering and receiving Participants are furnished delivery/receive tickets at the time their netted SBO Trade is reported. (b) Following settlement, the delivering Participant returns its delivery ticket to the Corporation, reporting settlement of the SBO Trade and describing the Eligible Securities delivered. (c) On the next Business Day, the Corporation delivers a Notification of Settlement Report to both the delivering and receiving Participants based on the information submitted by the delivering Participant. (d) Before the end of the next Business Day: (i) If neither Participant has submitted a Withhold Instruction (indicating that the Notification of Settlement Report is erroneous), the Corporation deletes both sides of the SBO Trade from the Participants' Open Commitment Reports; or (ii) if either Participant has submitted a Withhold Instruction, the SBO Trade continues to be reflected on the Open Commitment Reports of both Participants until the discrepancy is resolved.

The proposed Rule changes require that both the delivering and the receiving Participants submit an SBO Settlement Notification, either by returning their delivery/receive tickets or by entering reports of settlements through the Corporation's computer system. The Corporation will compare the SBO Settlement Notifications and, if the information contained therein agrees within a prescribed range, will cancel the SBO Trade (wholly or in part) on the next Business Day and reflect such cancellation on the Participants' Notification of Settlement Reports, Purchase and Sale Reports, Open Commitment Reports and Market Margin Differential Reports.

(2) *Failure to Return Agreeing Reports of SBO Trades.* If SBO Settlement Notifications do not agree within the prescribed tolerances or if the Corporation has received an SBO Settlement Notification from only one SBO Contra-Side Participant, it will furnish both Participants with Uncompared Advisory Reports, Open Commitment Reports and Market Margin Differential Reports that continue to reflect the SBO Trade, until it has received SBO Settlement Notifications that do agree within the prescribed tolerances. If a Participant does not promptly respond to an Uncompared Advisory Report, it will also receive a Delinquent SBO Advisory Report (replacing the current SBO Fail Report). In order to deter late submission of settlement reports, the proposed Rule changes include an express provision for fining or otherwise sanctioning a Participant that has not made timely response to an Uncompared Advisory Report, with any fines reflected in its Delinquent SBO Advisory Report.

(3) *SBO Cash Adjustment.* The current Rules require that the Corporation calculate an SBO Amortized Value Adjustment, which is owed by or to a delivering or receiving Participant in order to compensate for any difference in the amortized value of Securities that was originally reported to the Corporation following the Trade Date and the amortized value of Securities actually delivered at settlement. The proposed Rule changes add to elements to the formula for calculating the SBO Amortized Value Adjustment: (i) A Broker Adjustment (discussed below) and (ii) at the Corporation's option, any fines or interest imposed on the Participant. The SBO Amortized Value Adjustment will be renamed the SBO Cash Adjustment and will be reported and payable as prescribed in the Procedures.

The Broker Adjustment is intended to address the situation of a broker whose SBO transactions have resulted in a Net-Out Trade (formerly referred to as a Zero SBO Trade), in which the Broker has no delivery or receive obligation. Under the current Rules, a Broker, like any other Participant, would be required to pay or entitled to receive an SBO Cash Adjustment even though all deliveries and receipts of Securities are being made by the Dealers on whose behalf he is acting. The proposed Rule changes correct this by requiring that the Corporation calculate a Broker Adjustment which will be included in the SBO Cash Adjustment to be paid by or to the delivering and receiving Dealers on whose behalf the Broker has acted. The Broker Adjustment is calculated in the same manner as the SBO Cash Adjustment that otherwise would have been payable by the Dealers had no Broker been involved in the transaction.

The proposed Rule changes are consistent with section 17A of the Securities Exchange Act of 1934 ("the Act"), in that they facilitate the prompt and accurate settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Corporation does not believe that any burden will be placed on competition as a result of the proposed Rule changes.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Corporation has not received comments on the proposed Rule changes from Participants. However, the Corporation has kept Participants informed about development and implementation of its enhancement of the SBO System through several Administrative Bulletins, and no comments regarding the matters addressed in the Bulletins have been received.

The text and a summary of the proposed Rule changes will be distributed to all Participants shortly after the submission of this Form. The Corporation will notify the Securities and Exchange Commission upon receipt of any written comments.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with resepct to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 52, will be available for inspection and copying in the Commission's Pubic Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filings will also be available for inspection and copying at the principal office of the above-referenced self-regulatory organization.

All submissions should refer to File No. SR-MBS-88-19 and should be submitted by February 15, 1989.

For the commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: January 18, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-1656 Filed 1-24-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-26465; File No. SR-MSRB-88-5]

Self-Regulatory Organizations; Proposed Rule Change by the Municipal Securities Rulemaking Board; Relating to Arbitration and Arbitration Fees and Deposits

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on November 23, 1988, the Municipal Securities Rulemaking Board ("Board") filed with the Securities and Exchange Commission a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

(a) The Municipal Securities Rulemaking Board is filing amendments to rule G-35 relating to arbitration and amendments to rule A-16 relating to arbitration fees and deposits (hereafter referred to as the "proposed rule change"). The Board requests that the Commission delay the effectiveness of Section 36 of rule G-35, relating to predispute arbitration agreements, for a period of three months following the date of Commission approval in order to allow dealers to revise their customer account agreements to include the required disclosures.

In general, the proposed rule change is intended to improve the efficiency of the arbitration process; to extend the benefits of simplified arbitration procedures to controversies not involving more than $10,000; to define public and industry arbitrators; to provide additional information concerning arbitrators' backgrounds to parties to arbitration proceedings; to codify the affirmative disclosure obligations of arbitrators; to improve pre-hearing discovery processes; to require that a verbatim record of

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proceedings be kept; to provide for the publication of arbitration awards; and to require certain disclosures to be provided to customers regarding predispute arbitration agreements.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) A Uniform Arbitration Code (the "Uniform Code") was developed by the Securities Industry Conference on Arbitration ("SICA"), which is composed of representatives of the Board, nine other self-regulatory organizations, four public members, and the Securities Industry Association. The Uniform Code, as implemented by the various self-regulatory organizations, has established a uniform system of arbitration procedures throughout the securities industry. The proposed rule change is intended to conform the provisions of the Board's arbitration code, contained in rule G-35, and arbitration deposits and fees, contained in rule A-16, to recent amendments to the Uniform Code approved by SICA.

(i) Arbitrators

(A) *Definition of public and industry arbitrators.* Section 12(c) of the proposed rule change would prohibit persons currently employed in the securities industry, or employed during the last three years, from acting as public arbitrators. The proposed rule change would retain industry members retired for more than three years as public arbitrators, but the Board will grant a challenge for cause to any customer who is concerned about the possible bias of such arbitrators.

The proposed rule change would remove from the public arbitrator pool attorneys who spent more than 20 percent of their work effort within the previous two years as municipal securities underwriter's counsel or representing dealers in securities-related litigation or arbitration matters involving public customers. Securities lawyers, accountants and other professionals who devote "substantial" work effort (30% or more of work effort) to other municipal securities dealer activities will continue to act as public arbitrators; however, customers, will be granted a challenge for cause if they are concerned about any possible bias. The Board has included this in section 8(c) of the proposed rule change.

(B) *Notice of appointment of arbitrators.* Since January 1988, the Board has asked arbitrators to complete an Arbitrator Profile Form, which includes extensive employment history and much more background information than previously was obtained. The proposed rule change would state that this more complete information, as well as other information discussed in subsection (C) below, be provided to the parties within eight business days of the initial hearing. The proposed rule change to section 8(b) of the Code also would state that a party may make further inquiry of the Director of Arbitration concerning the background of any arbitrator.

(C) *Required disclosure by arbitrators.* Section 13 of the Code would incorporate the specific scope of disclosures that are provided in the *American Bar Association/American Arbitration Association Code of Ethics for Arbitrators in Commercial Disputes* into its disclosure requirements for arbitrators.

The proposed rule change also would state that arbitrators must make a reasonable effort to inform themselves of any of the enumerated interests or relationships and that the obligation to disclose such interests or relationships is a continuing duty throughout the arbitration process.

(D) *Disqualification or other disability of arbitrators.* Section 14 of the Code would state that, after commencement of the first hearing, but prior to rendering an award, if an arbitrator should become disqualified, refuse or be unable to discharge his duties, the remaining arbitrators either may request that another arbitrator be appointed or continue with the hearing and determination of the case. If a party objects to the remaining arbitrators continuing with the case, the Director of Arbitration would appoint a new arbitrator to the panel. The proposed rule change also would authorize the Director of Arbitration to appoint a new arbitrator if an arbitrator becomes disqualified after appointment but prior to the first hearing. This would codify the Board's current procedure.

Section 8(b) of the Arbitration Code allows parties to request a peremptory challenge within five business days after notification of the identities of the arbitrators. As discussed above, section 14 states that, if an arbitrator should become disqualified, refuse or be unable to discharge his duties, either before the initial hearing or at any time before the rendering of the award, a new arbitrator may be appointed. The proposed rule change would clarify that, if a replacement arbitrator is appointed less than five business days prior to the hearing date, the parties have only until the hearing date to consider whether they wish to exercise a peremptory challenge. While the five business day period would be shortened in certain cases, the proposed rule change should expedite the processing of claims when a vacancy occurs on the hearing panel and a replacement arbitrator is chosen by holding the case to its initial hearing date.

(ii) Discovery

(A) *Document production and information exchange.* The proposed rule change would add a new provision to the Code (Section 22) setting forth a procedure for document production and information exchange. The section would allow any party to serve a written request for information or documents upon another party 20 business days or more after service of the Statement of Claim by the Director of Arbitration or upon service of the Answer by the Director of Arbitration, whichever is earlier. The parties must serve the request on all parties and file it with the Director of Arbitration. If a party objects to all or part of a request for information or documents, it must make such objections, in writing, within 15 calendar days from the date of service. Any response to objections must be served on all parties and filed with the Director of Arbitration within 10 calendar days of receipt of the objection. If there are no objections, these requests must be satisfied within 30 calendar days from the date of service.

In addition, prehearing conferences may be held. Such conferences allow parties to meet prior to the hearing to discuss any matters which would expedite the arbitration proceeding, including the exchange of documents, identification of witnesses and briefing of contested issues. The proposed rule change would provide that, at the request of an arbitrator, or at the discretion of the Director of Arbitration, a prehearing conference would be scheduled. The conference may be held by telephone and would be presided over by a Board staff member. The staff person would seek to achieve agreement among the parties to any open discovery issue. Any issues raised at the prehearing conference that are not resolved may be referred by the Director of Arbitration to one of the arbitrators for decision.

With the agreement of a majority of the arbitration panel, the Director of Arbitration may appoint one member of

the panel to decide all unresolved information and document issues. The arbitrator would be authorized to issue subpoenas, direct appearances of witnesses and production of documents, set deadlines on behalf of the panel and issue any other ruling that will expedite the arbitration process. These issues would be resolved without a hearing unless the arbitrator calls one. The arbitrator also may refer any issue to the full panel for a decision.

The proposed rule change also would require, at least 10 calendar days prior to the first scheduled hearing date, that all parties serve on each other copies of documents and the identities of witnesses they intend to present at the hearing as part of their direct testimony. The arbitrators may exclude from the arbitration any documents not exchanged or witnesses not identified.

(B) *Subpoenas and power to direct appearances.* The proposed rule change would amend section 23 of the Code regarding subpoenas and the power of arbitrators to direct the appearances of associated persons of dealers to require all parties to provide a copy of any subpoena issued to the other parties.

(iii) Record of Proceedings

Section 27 would require a verbatim record by stenographer or tape recording of all arbitration hearings to be made. If a party elects to have the record transcribed, the cost of such transcription would be borne by the party making the request unless the arbitrators direct otherwise. The arbitrators also may direct that the record be transcribed, with the cost borne by the Board.

(iv) Arbitration Awards

Section 31 of the Code states that awards shall be in writing and signed by a majority of the arbitrators. The proposed rule change would provide that an award must be prepared by the arbitrators and would contain (1) the names of the parties; (2) a summary of the issues in controversy, the damages and/or other relief requested, the damages and/or other relief awarded and a statement of any other issues resolved; and (3) the names of the arbitrators and the signatures of those arbitrators concurring in the award. The proposed rule change would state that summary information contained in the award shall be made publicly available in accordance with the policies of the Board.

Board arbitration awards would contain a characterization of the dispute involved as summarized by the arbitrators. The Board's publication policy, included in the Board's Arbitration Policies and Interpretations, provides for the public availability of the awards except for the names of parties who are public customers (unless the customer agrees to the disclosure of his identity) and the names of the arbitrators. If a party wishes to review prior awards rendered by the arbitrators assigned to the party's current case, such awards will be made available to that party.

(v) Disclosure Regarding Predispute Arbitration Agreements

In response to the Commission's concerns about predispute arbitration agreements as expressed in Chairman Ruder's July 8, 1988 letter to the Board, the proposed rule change would set forth requirements for using such agreements with customers. The proposed rule change would require the predispute arbitration clause to be highlighted and preceded by specific highlighted disclosure language which explains that arbitration is final and binding on the parties; that the parties are waiving their right to seek remedies in court; that discovery in arbitration is limited; that the award need not contain factual findings and legal reasoning; that appeals of awards are strictly limited; and that the arbitration panel will include a minority of persons who were or are affiliated with a dealer. The Board believes such disclosure clearly and concisely describes arbitration and its effect on customers who agree to arbitrate disputes.

In addition, the proposed rule change would require the agreement to include a statement immediately preceding the signature line that the agreement contains an arbitration clause. Also, it would require a dealer to give a copy of the arbitration agreement to the customer, who must acknowledge receipt on the agreement or on a separate document. The proposed rule change would apply only to new agreements signed by an existing or new customer of a dealer three months after the effective date of the proposed rule change.

(vi) Other Amendments to the Arbitration Code

(A) *Simplified arbitration for small claims.* The proposed rule change would raise the limit on the size of claims eligible for simplified arbitration procedures for public customers from $5,000 to $10,000. Under the simplified procedure, cases are decided by a single arbitrator, often without a hearing. The increase from $5,000 to $10,000 in section 34 of the Board's Code would increase the number of cases eligible for processing under this expedited provision and allow many more cases to be determined quickly, with fewer arbitrators. The proposed rule change also would be adopted for industry small claims under section 35.

(B) *Composition of arbitrator panels.* The proposed rule change also would revise section 12 which provides that customer claims exceeding $500,000 must be decided by a panel of five arbitrators, instead of the usual three. Five arbitrator panels cause inordinate administrative costs and delays the conclusion of these cases without providing substantial benefits. The proposed rule change would eliminate the five-member panel requirement and allow the Director of Arbitration to exercise discretion in appointing panels of either three or five arbitrators in all cases in which the claims exceed $10,000.

(C) *General denial by respondent.* Section 5(b)(2)(i) states that a respondent who pleads only a general denial as an answer may be barred, upon written objection by the adversary party to the Director of Arbitration before the hearing and in the discretion of the arbitrators, from presenting the facts or defenses not included in such party's answer at the hearing. The proposed rule change would delete the requirement that the objection must be made to the Director of Arbitration in writing prior to the hearing, leaving it up to the arbitrators to determine, upon objection by a party, whether any additional facts or defenses may be offered.

(D) *Administrator fee.* The proposed rule change also would revise rule A-16(4) which provides that a $25 administrative fee is retained in an arbitration case that is settled or withdrawn prior to the first hearing session. Such fees assist in defraying certain administrative costs associated with processing arbitration claims. Because of increasing costs of the Board's arbitration program, the proposed rule change would increase the fee retained to $50. The proposed rule change also would state that the fee does not apply to customer small claims so that the entire filing fee may be returned to these customers upon settlement of their disputes.

(b) The Board has adopted the proposed rule change pursuant to section 15B(b)(2)(C) and 15B(b)(2)(D) of the Securities Exchange Act of 1934. Section 15B(b)(2)(C) requires in pertinent part that the Board's rules be designed

to promote just and equitable principles of trade * * * to remove impediments to and perfect the mechanism of a free and open

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market in municipal securities, and, in general, to protect investors and the public interest * * *.

Section 15B(b)(2)(D) states that the Board shall, if it deems appropriate

provide for the arbitration of claims, disputes, and controversies relating to transactions in municipal securities: Provided, however, That no person other than a municipal securities broker, municipal securities dealer, or person associated with such a municipal securities broker or municipal securities dealer may be compelled to submit to such arbitration except at his instance and in accordance with section 29 of this title.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board does not believe that the proposed rule change will effect any burdens on competition in the municipal securities industry because the proposed rule change will be equally applicable to all participants in the industry.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Board did not solicit comments on the proposed rule change. One comment was received regarding the disclosure rule for predispute arbitration agreements. The Board revised its rule to address the commentator's concern. The proposed rule change was the subject of extensive discussions by SICA which approved the provisions as part of the Uniform Code.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing.

The proposed rule change represents significant modifications in the current rules for arbitration proceedings administered by the Board. On September 10, 1987, the Commission wrote to SICA, of which the Board is a member, in order to request that it consider a wide range of changes to its Uniform Code. Since that time, SICA has developed new rules to respond to many of the issues raised in the Commission's letter. The proposed rule change is intended, in large part, to conform the Board's arbitration rules to the new SICA rules. The Commission has asked the Board to make a number of, generally minor, amendments to the proposed rule change to more fully conform the Board's arbitration provisions to the SICA Uniform Code. The Commission understands that its recommendations will be considered at the Board's next regular meeting, and, if approved by the Board, that the proposed rule change will be amended accordingly.

The Commission encourages comment on any aspect of the proposed rule change. In addition, the Commission requests specific comment as follows.

The Board's proposed rule change differs in certain respects from the SICA Uniform Code. In particular, comment is sought on the Board's proposed public and industry arbitrator definitions as they would apply to attorneys and other professionals. The Uniform Code defines as an industry arbitrator an attorney, accountant or other professional who has devoted twenty percent or more of his or her professional work effort to securities industry clients within the last two years. Section 12(c) of the Board's proposed rule change would establish a narrower definition of the sort of professional representation that would disqualify a person from serving as a public arbitrator. Section 12(c) would remove from the public arbitrator pool only attorneys, and only those who have spent more than 20 percent of their work effort within the previous two years as municipal securities underwriter's counsel in securities-related litigation or arbitration matters involving public customers. On the other hand, the Board proposes, in section 8(c) of the proposed rule change, to give customers a challenge for cause to arbitrators who are securities lawyers, accountants and other professionals who devote 30 percent or more of their work effort to municipal securities activities [1] of securities industry clients. The Commission specifically seeks comment as to whether the proposed definitions of public and industry arbitrators, together with the right to challenge for cause, are adequate to assure the independence of public arbitrators from any perception of, or actual, influence from the securities industry. We also invite comment as to whether the appropriate balance has been struck by the Board between the need for impartial arbitrators and the need for industry expertise.

The Commission also seeks comment on the provisions of section 22 of the proposed rule change governing discovery. In particular, proposed section 22 does not explicitly provide for the taking of depositions. Rather, the section permits arbitrators to issue any ruling which will expedite the arbitration proceedings. The Commission understands this to include the ability to order depositions. Comment is specifically sought as to whether a party should be able to have the arbitrators order depositions in a particular case if he can demonstrate to them that a deposition is necessary to develop his case or that he cannot obtain equivalent information from documents alone.

Section 31 of the proposed rule change establishes standards for the content and public availability of arbitration awards. We invite comment as to whether these standards provide investors with sufficient ability to evaluate the arbitration system in general and the records of particular arbitrators.

Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filings also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by February 15, 1989.

For the commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: January 17, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-1609 Filed 1-24-89; 8:45 am]

BILLING CODE 8010-01-M

[1] The Commission has asked the Board to amend Section 8(c) to delete the reference to representation involving specifically "municipal securities activities."

[Release No. 34-26469; File No. SR-NASD-88-55]

Self-Regulatory Organizations; Proposed Rule Change by National Association of Securities Dealers, Inc, Relating to NASD Assessment on Members Conducting a Business in U.S. Government Securities

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on December 29, 1988 the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organizations Statement of the Terms of Substance of the Proposed Rule Change

The proposed amendment to section 1(b) of Schedule A to the Association's By-Laws imposes an assessment of .25% on the annual gross income from transactions in U.S. Government securities on NASD members whose books and records and financial operations regarding transactions in U.S. Government securities will be examined by the Association pursuant to the Government Securities Act of 1986.

II. Self-Regulatory Organization's Statement of the Purpose of, And Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed amendmet to Section 1(b) of Schedule A to the Association's By-Laws imposes an assessment of .25% on the annual gross income from transactions in U.S. Government securities on NASD members whose books and records and financial operations regarding transactions in U.S. Government securities will be examined by the Association pursuant to the Government Securities Act of 1986. Reflecting the expansion of the Association's regulatory responsibilities, the new assessment is designated to ensure that the Association's assessments on gross income are imposed fairly on all members and fairly reflect the costs of membership.

With the addition of section 15C to the Securities Exchange Act of 1934 ("Exchange Act") and the amendment of section 15A(f)(2), the NASD was assigned responsibility for examining the books and records and financial responsibility of NASD member firms with respect to their business in U.S. Government securities. This includes not only those firms newly required to become NASD members by section 15C of the Exchange Act, but all NASD members doing a business in U.S. Government securities (excluding only the approximately 175 NASD members that will be examined by another Self-Regulatory Organization). As a result, the NASD is currently responsible for examining the U.S. Government securities activities of 843 firms.

In enacting the Government Securities Act of 1986, Congress clearly stated that NASD surveillance of the books and records and financial responsibility of its members with respect to their transactions in U.S. Government securities is necessary to address "* * * specific weakness in the existing regulatory framework." Congress also specifically referenced "the recent failures of several government securities dealers." S. Rep. No. 426, 99th Cong., 2d Sess. 1 (1986). In response to this Congressional mandate, and based on its experience in this area to date, the NASD determined that it must employ all of the resources it utilizes in the regulation of the financial responsibility and recordkeeping of its membership generally. Manpower models, examination modules, and estimates of resource expenditure necessary to examine the U.S. Government securities activities of its member firms were developed accordingly. Cost elements included additional examining personnel, supporting personnel and facilities, and a pro rata allocation of general administrative costs, including, for example, training and legal support. On the basis of this analysis, an estimate of the minimum expenditure for the enterprise was developed and a rate calculated. It is estimated that, with the application of the annual assessment credit, the NASD will recover approximately $1.5 million of the $1.7 million it will expend in 1989. Like all NASD income assessments and the annual assessment credit, this rate will be reevaluated annually and, as experience is gained, it may be appropriate to alter the rate.

The proposed rule change is consistent with the provisions of section 15A(b)(5) of the Securities Exchange Act of 1934, which requires that the rules of the Association provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system the Association operates or controls.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Association believes that this rule change does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The proposed rule change was filed initially on September 21, 1988, as part of SR-NASD-88-41, in conjunction with a number of fee changes. Comments were neither solicited nor received by the NASD. Comments objecting to the assessment were, however, received by the Commission from Shearson Lehman Government Securities, Inc. ("SLGIS"), Merrill Lynch Government Securities, Inc., Aubrey Lanston & Co., Inc., Discount Corporation of New York, and County NatWest Government Securities, Inc. These comments were forwarded to the NASD. In order to consider these comments, the NASD temporarily withdrew the government securities assessment. Thereafter, additional comments were received by the NASD from the Government Securities Brokers Association ("GSBA"), a trade association representing government securities interdealer brokers. Copies of these letters are attached. The rule change proposed herein is a re-filing of that part of the rule change initially proposed in SR-NASD-88-41 relating to the U.S. Government securities assessment.

All of the commentators asserted that the NASD's proposed assessment was too high and reflected the Association's lack of understanding of the peculiarities of the U.S. Government securities marketplace. SLGSI argues, for example, that an assessment in the amount of .25% on annual gross income derived from transactions in U.S. Government securities is excessive because members that conduct transactions in U.S. Government securities (i) do not require the same extent of regulation as is required for

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transactions in other products, and (ii) do not utilize NASD services to the same extent as do other members. SLGSI characterizes its industry as one dominated by sophisticated institutions with ready access to all necessary information. At the same time, SLGSI suggests that "manipulative practices are virtually eliminated in a market whose enormous size precludes dominance by a single broker or dealer." Thus, SLGSI appears to be arguing that a lower (and presumably a less expensive) level of regulatory effort is required in the U.S. Government securities marketplace.

GSBA suggests that assessments on its members [1] should be lower than the assessment imposed on other government securities firms because its members "are exposed to and create fewer markets or customer risks, do not take positions, do not make markets, and transact business with only approximately sixty (60) accounts all of whom are NASD members." As further evidence that its members' assessment should be significantly lower, GSBA notes that the proposed assessment of its members (stated by GSBA to average $80,000 with the application of the 50% assessment credit) is significantly higher than the expense incurred by GSBA members for complete audits by their independent accountants.

Congress's mandate to the NASD, as expressed in the legislative history of the Government Securities Act and in the Exchange Act itself (at section 15A(f)(2)), is to provide regulation and surveillance of the books and records of its members engaged in the U.S. Government securities business.[2] Thus, as previously noted, the NASD will examine not only those firms newly required to become registered pursuant to section 15C of the Exchange Act, but all NASD members doing a business in U.S. Government securities (excluding only the approximately 175 NASD members that will be examined by another Self-Regulatory Organization). Thus, pursuant to the Government Securities Act, the NASD is required to assume the responsibility of examining the U.S. Government securities activities of a group that currently includes 843 firms.

It is true, as asserted by the commentators, that the U.S. Government securities market is primarily a wholesale market dominated by institutional investors. Nonetheless, the NASD, as noted above, is required by Congressional mandate to examine all of its members engaged in the government securities business, regardless of firm size or the particular nature of their business. If distinction should be made in the NASD's regulatory mandate among (i) those firms whose books and records with respect to their business in U.S. Government securities the NASD will examine (as urged by GSBA), or (ii) between those firms and the other over-the-counter members (as urged by all commentators), such distinctions should have been made by Congress when it adopted the Government Securities Act of 1986. Therefore, in accordance with its usual practice in establishing member fees and assessments, the NASD proposes to assess all NASD members doing a business in U.S. Government securities for the cost of regulating that activity without discriminating among these members.

It is this practice that the commentators object to fundamentally. Thus, for example, SLGSI argues that the assessment is excessive because institutional investors in U.S. Government securities would not utilize the arbitration services offered by the Association. The NASD Arbitration Department, however, is a necessary adjunct to the NASD's regulatory services and is intended as a service to all members and the investing public. The NASD is not simply an auditor or an arbitration forum seeking payment for services delivered incrementally. The NASD is a regulatory enterprise and has established the proposed assessment rate of a level sufficient to maintain that enterprise. As such, the cost of supporting that enterprise is properly allocated to all NASD members. The NASD should not be asked to develop assessments on an incremental cost basis for each member.

The commentators further assert that the NASD's proposed assessment is unfair because it is six times greater than the New York Stock Exchange's ("NYSE") assessment of .042% on FOCUS gross revenue. Unlike the NYSE, the NASD is registered as a "national securities association" under section 15A of the Exchange Act and is required to regulate the activities of all registered broker/dealers that deal with the public. Therefore, the NASD believes that its proposed assessment fee structure should not be compared to that of the NYSE, as the NASD's regulatory responsibilities and infrastructure are substantially different from that of the NYSE.

In further response to the commentators, the manpower analysis underlying the proposed assessment was reexamined. In particular, the NASD reexamined the amount of manpower required for a typical field examination, and concluded, based on its experience to date, that the analysis reflected a conservative assessment of the effort needed to carry out its regulatory responsibility with respect to the U.S. Government securities firms, including the six interdealer brokers represented by GSBA. Further, as noted above, NASD estimates that there will be a slight shortfall. NASD estimates that it will expend approximately $1.7 million in this effort during 1989, while, with the application of the annual assessment credit, it will recover approximately $1.5 million of that cost. Again, as previously noted, this fee, like all NASD fees and the annual assessment credit, will be evaluated annually and may be revised as experience is gained.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that

[1] NASD staff was advised by a representative of GSBA that there are a total of six Government securities interdealer brokers. The GSBA letter includes a comparison chart of NASD assessments on over-the-counter broker/dealers and on U.S. Government interdealer brokers. The NASD has discussed its objections to the premises underlying the comparison chart with a representative of GSBA.

[2] SLGSI in its letter states incorrectly that NASD would exempt NASD members that are registered pursuant to section 15B of the Exchange Act. The proposed rule change does not contain such an exemption, nor does any other part of Schedule A of the NASD By-Laws.

may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by February 15, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: January 18, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-1659 Filed 1-24-89; 8:45am]

BILLING CODE 8010-01-M

[Release No. 34-26463; File No. SR-NYSE-88-46]

Self-Regulatory Organizations; Proposed Rule Change by New York Stock Exchange, Inc., Relating to Authorization of Fees for New Organization and Statutory Disqualification Applicants

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 30, 1988, the New York Stock Exchange, Inc. (the "Exchange" or "NYSE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing fees for processing member organization and option trading right holder applications and "statutory disqualification" applicants. Amendments to Rules 311 and 346 will authorize the new fees.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) The purpose of the proposed rule change is to amend Exchange rules to authorize fees for processing new member organization and option trading right holder applications and applicants subject to a "statutory disqualification" as defined in section 3(a)(39) of the Act. These fees are intended to offset, in part, the cost to the Exchange of processing the applications and will be effective upon Commission approval of the filing. The proposed fees for processing of new applications are as follows:

Clearing organizations	$20,000
Introducing organizations	7,500
Non-Public floor professionals	2,500
Option trading right holders	2,500

The fee would be payable upon submission of a new application and would not apply to successor organizations, *e.g.*, conversion of a partnership to a corporation, new organization resulting from a merger, or reorganization of an existing organization or an individual member incorporating. In cases where an applicant is classified in more than one of the above categories, the higher fee category will apply.

The Act prohibits a person subject to a statutory disqualification (*i.e.*, a suspension or bar by the Commission or another exchange or being convicted of certain criminal activities) from being associated with a broker/dealer unless specific application to the Commission for such association is made by the self-regulatory organization ("SRO") on behalf of the broker/dealer. Such application is made by the SRO after investigation of the facts surrounding the request.

When a member organization seeks approval to remain or become associated with a person subject to any statutory disqualification, the Exchange will impose a $1,000 fee for processing the request.

(b) Statutory basis for the proposed rule change is section 6(b)(4) permitting the rules of an Exchange to provide for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its services.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change and new fees will not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by February 15, 1989.

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For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

Dated: January 17, 1989.

[FR Doc. 89-1610 Filed 1-24-89; 8:45 am]
BILLING CODE 8010-01-M

[Rel. No. 34-26406; File No. SR-NYSE-88-26]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change

On September 27, 1988, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) under the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 thereunder, [2] a proposed rule change to amend the Exchange's proxy rules for member organizations as set forth in NYSE Rule 450, "Restriction on Giving of Proxies."

The proposed rule change was noticed in Securities Exchange Act Release No. 26161, 53 FR 40150 (October 13, 1988). No comments were received on the proposed rule change.

The Exchange states that the purpose of the proposed rule change is to amend the Exchange's current proxy rules by allowing a member firm acting as investment manager of an ERISA Plan, under specified circumstances, to vote proxies in accordance with its ERISA Plan fiduciary responsibilities.

Currently, NYSE Rule 450, "Restrictions on Giving of Proxies," states that no member organization shall give a proxy to vote stock registered in its name, or in a nominee name, unless the member organization is the beneficial owner of such stock, except as permitted pursuant to NYSE Rule 452.[3] Under NYSE Rule 452, a member would be permitted to vote, at the direction of the beneficial owner, when the member organization is holding securities as executor or trustee with authority to a vote or when proxy material is sent to the beneficial owners of securities in the members' custody, the beneficial owners did not respond; and the proposal is inconsequential.

In an interpretive letter dated February 23, 1988, the Pension and Welfare Benefits Administration ("PWBA") of the Department of Labor ("Department") set forth its views regarding proxy voting by fiduciaries of employee retirement plans subject to the Employee Retirement Income Security Act of 1934 ("ERISA"). [4] In the interpretive letter, the Department stated that " . . . the fiduciary act of managing plan assets which are shares of corporate stock would include the voting of proxies appurtenant to those shares of stock." The Department stated its position that, with respect to the specific issues presented by the facts of the particular inquiry set forth in the request for interpretation (*i.e.*, a proposal to change the state of incorporation of a corporation in which a plan owned shares, and a proposal to rescind "poison pill" arrangements), the decision as to how proxies should be voted are fiduciary acts of plan asset management. The Department concludes that, to the extent that the plan permits a named fiduciary to appoint an investment manager to manage, acquire and dispose of plan assets, and the named fiduciary has not expressly reserved the voting rights to itself, there would be an ERISA violation if, during the duration of such delegation, any person other than the investment manager were to make the decision how to vote any proxy with respect to shares owned by the plan.[5]

In light of the Department's views with respect to proxy voting by plan investment managers, the Exchange believes that, should a member organization, designated as an investment manager to manage plan assets, follow the restrictions set forth in Exchange Rule 450 regarding the voting of proxies by member organizations, it may be in violation of its fiduciary responsibilities under Title I of ERISA. Accordingly, the Exchange proposes to amend Rule 450 in order to clarify the appropriate procedure to be followed by Exchange member firms where a conflict of duty could arise as a result of the Exchange's current rule. More specifically, the Exchange proposes to add a provision to Rule 450 which would state that "[n]otwithstanding the foregoing [the current provisions of Rule 450], any member organization, designated by a named fiduciary as the investment manager of stock held as assets of an ERISA Plan that expressly grants discretion to the investment manager to manage, acquire, or dispose of any plan asset and which has not expressly reserved the proxy voting right for the named fiduciary, may vote the proxies in accordance with its ERISA Plan fiduciary responsibilities."

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6, and the rules and regulations thereunder. More specifically, the Commission believes that the voting of proxies by a member organization in accordance with its ERISA Plan fiduciary responsibilities under the conditions specified in the proposal is consistent with the investor protection policies embodied in section 6(b)(5) of the Act. We note that in voting proxies as a plan fiduciary, an investment manager must consider those factors which would affect the value of the plan's investment and is prohibited from subordinating the interests of participants and beneficiaries in their retirement income to unrelated objectives.[6] In addition, the Commission notes that the Exchange's proposal will clarify the Exchange's policies with respect to the voting of proxies by Exchange member firms where a conflict of duty otherwise could arise between the policies set forth in

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1988).

[3] Rule 13d-3 of the Act defines beneficial owner for purposes of the reporting requirements of sections 13 (d) and 13 (g) of the Act as either voting power (including the power to vote or to direct the voting of such security) and/or investment power (including the power to dispose, or to direct the disposition of such security). Section (d)(2) of Rule 13d-3, however, provides that "a member of a national securities exchange shall not be deemed to be a beneficial owner of securities held directly or indirectly by it on behalf of another person solely because such member is the record holder of such securities and, pursuant to the rules of such exchange, may direct the vote of such securities, without instruction, on other than contested matters or matters that may affect substantially the rights or privileges of the holders of the securities to be voted, but is otherwise precluded by the rules of such exchange from voting without instruction."

[4] *See* Labor Department Letter on Proxy Voting By Plan Fiduciaries, dated Feb. 23, 1988, BNA Pension Reporter, Feb. 29, 1988, Vol. 15, PC. 301 ("Department Letter"). As noted in the Department's letter, PWBA is responsible for administration and enforcement of Title I of ERISA, which establishes standards governing the operation of employee benefit plans and includes fiduciary responsibility rules governing the conduct of plan officials and others who exercise discretionary authority or control with respect to the assets of the plan.

[5] Section 403(c)(3) of ERISA states that a plan may provide that a named fiduciary may appoint an investment manager or managers to manage plan assets. Section 403(a)(2) of ERISA provides that all assets of an employee benefit plan must be held in trust by one or more trustees, who must have exclusive authority and discretion to control the plan's assets unless the authority to manage, acquire or dispose of assets of the plan is delegated to one or more investment managers pursuant to section 402(c)(3).

[6] *See* Department Letter, *supra* note 4, at 301, note 4, and accompanying text. The named fiduciary would be responsible for monitoring decisions made and actions taken by investment managers with regard to proxy voting.

the Exchange's rule and ERISA guidelines. Accordingly, the Commission notes that the proposed rule change is consistent with section 6(b)(5) of the Act in that it will " * * * foster cooperation and coordination with persons engaged in regulation * * * and facilitating transactions in securities."

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[7] that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.[8]

Dated: January 18, 1989.

Jonathan G. Katz,
Secretary.

[FR Doc. 89-1611 Filed 1-24-89 8:45 am]
BILLING CODE 8010-01-M

[Release No. 34-26400; File No. SR-Phlx-88-45]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by Philadelphia Stock Exchange, Inc. Relating to Dues and Fees

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 29, 1988, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Philadelphia Stock Exchange, Inc. ("Phlx" or the "Exchange"), pursuant to Rule 19b-4 of the Securities Exchange Act of 1934 ("Act"), submitted a proposed rule change amending the Phlx's Schedule of Dues, Fees and Charges as follows.[1]

1. Increase options transaction charge respecting registered options traders and specialists in equity options, index options and foreign currency options from five cents to six cents, seven cents to eight cents and five cents to six cents respectively per contract as noted. Increase the options transaction charge for other than registered options traders and specialist in varying amounts.

2. Increase annual floor trading post rentals from one thousand dollars to one thousand two hundred fifty dollars annually per trading post.

3. Increase initiation fee and membership and participation transfer fees from one thousand and two hundred dollars respectively to one thousand five hundred and three hundred dollars respectively.

4. Initiate a new floor facility fee applicable to floor members and foreign currency options participants not renting floor trading posts at the rate of six hundred and twenty five dollars annually (i.e., fifty percent of floor trading post rental).

5. Initiate a new execution services and communication charge of one hundred dollars per month per receiver/output device for telephones and other communication equipment on the trading floors utilized for communication with other market centers for trade execution purposes.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statements of the Purpose of, and Statutory Basis for the Proposed Rule Change

The purpose of the proposed rule change is to amend the PHLX Schedule of Dues, Fees and Charges. The amended schedule increases the options transaction charge amongst registered traders and specialists for the first time since the PHLX began trading equity options in June 1975, index options in December 1983, and foreign currency options in December 1982 respectively. The increase in trading post rental is the first since the PHLX occupied its present facility in July 1981. The increase in initiation, membership and participation transfer fees is the first since October 1983. In each of these instances the increased fees are necessary to recover significantly increased costs attendant to providing existing members and participants with services necessary to the conduct of business on the Exchange.

The initiation of new charges respecting a floor facility fee and execution services/communication charges are being undertaken at this time in order to fairly allocate significantly increased costs attendant to providing existing members and participants with services necessary to the conduct of business on the floor of the Exchange.

B. Self-Regulatory Organizations Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested pesons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be

[7] 15 U.S.C. 78s (b)(2) (1982).

[8] 17 CFR 200.30-3(a)(12) (1988).

[1] A copy of the schedule of fees is available from the Phlx or Commission.

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available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to File No. SR–NYSE–88–20 and should be submitted by February 15, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: January 18, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–1612 Filed 1–24–89; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–16758; File No. 811–3072]

Hartford Variable Annuity Life Insurance Co.; Application

January 18, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 (the "1940 Act").

Applicant: The Hartford Variable Annuity Life Insurance Company-Variable Account "A" ("Applicant" or "Variable Account "A"").

Relevant 1940 Act Sections: Order requested under section 8(f).

Summary of Application: Applicant seeks an order under section 8(f) of the 1940 Act declaring that it has ceased to be an investment company.

Filing Date: The application was filed on June 2, 1988 and amended on August 23, 1988 and December 27, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on February 13, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request and the issues you contest. Serve Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESS: Secretary, SEC, 450 5th Street, NW., Washington, DC 20649. Hartford Life Insurance Companies, P.O. Box 2999, Hartford, Connecticut 06104–2999.

FOR FURTHER INFORMATION: Cindy J. Rose, Financial Analyst (202) 272–2058 or Clifford E. Kirsch, Special Counsel (202) 272–2061 (Office of Insurance Products and Legal Compliance).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's Commerical copier (800) 231–3282 (in Maryland (301) 252–4300).

Applicant's Representation

1. Applicant, a unit investment trust, is a separate account which was established under the laws of the State of Connecticut. The application states that Applicant filed a Form N–8B–2 on July 10, 1980. Applicant states that a registration statement on Form S–6, filed on July 10, 1980, became effective on November 4, 1980.

2. On March 31, 1988, Variable Account "A", sponsored by Hartford Variable Annuity Life Insurance Company, transferred all its assets and liabilities to Separate Account Two, a unit investment trust sponsored by Hartford Life Insurance Company.

3. All decisions and actions taken to transfer the assets and liabilities of Variable Account "A" were ratified and approved on September 30, 1985, by the Board of Directors of the Hartford Variable Annuity Life Insurance Company.

4. The application states that the transfer was pursuant to an Order of Exemption under the Investment Company Act of 1940, File No. 812–6882 and a No-Action Letter, Ref. No. IP–1–88.

5. Hartford Life Insurance Company assumed all expenses relating to the transfer of Variable Account "A" to Separate Account Two, sponsored by Hartford Life Insurance Company.

6. Applicant has no other debts or liabilities outstanding and is not a party to any litigation or administrative proceeding.

7. Applicant has no securityholders and is not now engaged in any business activities.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–1655 Filed 1–24–89; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–16758; File No. 811–3155]

Hartford Variable Annuity Life Insurance Co.; Application

January 18, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 (the "1940 Act").

Applicant: Hartford Variable Annuity Life Insurance Company—NQ Variable Account ("Applicant" or "NQ Variable Account").

Relevant 1940 Act Sections: Order requested under section 8(f).

Summary of Application: Applicant seeks an order under section 8(f) of the 1940 Act declaring that it has ceased to be an investment company.

Filing Date: The application was filed on June 2, 1988 and amended on August 23, 1988 and December 27, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on February 13, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESS: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Hartford Life Insurance Companies, P.O. Box 2999, Hartford, Connecticut 06104–2999.

FOR FURTHER INFORMATION CONTACT: Cindy J. Rosè, Financial Analyst (202) 272–2058 or Clifford E. Kirsch, Special Counsel (202) 272–2061 (Office of Insurance Products and Legal Compliance).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231–3282 (in Maryland (303) 252–4300).

Applicant's Representations

1. Applicant, a unit investment trust, is a separate account which was established under the laws of the State of Connecticut. The application states that Applicant filed a Form N–8B–2 on March 30, 1981. Applicant states that a registration statement on Form S–6, filed on March 30, 1981, became effective on February 26, 1982.

2. On March 31, 1988, NQ Variable Account, sponsored by Hartford Variable Annuity Life Insurance Company, transferred all its assets and liabilities to Separate Account Two, a unit investment trust sponsored by Hartford Life Insurance Company.

3. All decisions and actions taken to transfer the assets and liabilities of QP Variable Account were ratified and approved on September 30, 1985 by the Board of Directors of the Hartford Variable Annuity Life Insurance Company.

4. The application states that the transfer was pursuant to an Order of Exemption under the Investment Company Act of 1940, File No. 812–6882 and a No-Action Letter Ref. No. IP–1–88.

5. Hartford Life Insurance Company assumed all expenses relating to the transfer of NQ Variable Account to Separate Account Two, sponsored by Hartford Company.

6. Applicant has no debts or other liabilities and is not a party to any litigation or administrative proceeding.

7. Applicant has no security holders and is not now engaged in any business activities.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–1656 Filed 1–24–89; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms, and Recordkeeping Requirements; Submittals to OMB on January 18, 1989

AGENCY: Department of Transportation (DOT), Office of the Secretary.

ACTION: Notice.

SUMMARY: This notice lists those forms, reports, and recordkeeping requirements imposed upon the public which were transmitted by the Department of Transportation on January 18, 1989, to the Office of Management and Budget (OMB) for its approval in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

FOR FURTHER INFORMATION CONTACT: John Chandler, Annette Wilson, or Cordelia Shepherd, Information Requirements Division, M–34, Office of the Secretary of Transportation, 400 Seventh Street, SW., Washington, DC 20590, telephone, (202) 366–4735, or Gary Waxman or Sam Fairchild, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, DC 20503, (202) 395–7340.

SUPPLEMENTARY INFORMATION:

Background

Section 3507 of Title 44 of the United States Code, as adopted by the Paperwork Reduction Act of 1980, requires that agencies prepare a notice for publication in the **Federal Register**, listing those information collection requests submitted to the Office of Management and Budget (OMB) for initial, approval, or for renewal under that Act. OMB reviews and approves agency submittals in accordance with criteria set forth in that Act. In carrying out its responsibilities, OMB also considers public comments on the proposed forms, reporting and recordkeeping requirements. OMB approval of an information collection requirements must be renewed at least once every three years.

Information Availability and Comments

Copies of the DOT information collection requests submitted to OMB may be obtained from the DOT officials listed in the "For Further Information Contact" paragraph set forth above. Comments on the requests should be forwarded, as quickly as possible, directly to the OMB officials listed in the "For Further Information Contact" paragraph set forth above. If you anticipate submitting substantive comments, but find that more than 10 days from the date of publication are needed to prepare them, please notify the OMB officials of your intent immediately.

Items Submitted for Review by OMB

The following information collection requests were submitted to OMB on January 18, 1989.

DOT No: 3168.

OMB No: New.

Administration: Urban Mass Transportation Administration (UMTA).

Title: Control of Drug Use in Mass Transportation Operations.

Need for Information: The information is necessary to properly monitor the effectiveness of the program and to ensure compliance with the rule.

Proposed Use of Information: The information will be used to build a data base to help determine continuing need for the rule.

Frequency: Semi-annual, annually, monthly.

Burden Estimate: 376,205.

Respondents: State or local Governments, businesses, or other for profit, non-profit institutions, and small businesses or organizations.

Form(s): None.

Average Burden Hours Per Respondent: 112.5.

DOT No: 3169.

OMB No: 2106–0009.

Administration: Office of the Secretary, Tariffs Division.

Title: Part 221—Construction, Publication, Filing and Posting of Tariffs of Air Carriers and Foreign Air Carriers.

Need for Information: Section 403, Federal Aviation Act of 1958, as amended, requires that all air carriers and foreign air carriers file with the DOT, and post for public inspection, tariffs containing fares, rates and charges which apply to international air transportation.

Proposed Use of Information: Tariffs filed are used by carriers, travel agents, DOT, other government agencies and general public to determine the fares, rates and charges for international air transportation.

Frequency: As necessary.

Burden Estimate: 2,229,373.

Respondents: Air carriers and/or their agents.

Form(s): N/A.

Average Burden Hours Per Respondent: 5 hours, 34 minutes.

DOT No: 3170.

OMB No: 2137–0039.

Administration: Research and Special Programs Administration.

Title: Hazardous Materials Incident Reports.

Need for Information: Hazardous Materials Incident Reports are used and needed for evaluation of the adequacy of the hazardous materials transportation standards as set forth in the regulations for their transportation.

Proposed Use of Information: The reports are used to evaluate the adequacy of existing regulations for the packaging, marking and labeling of hazardous materials; exemptions to the regulations; etc., so as to determine what changes, if any, are needed.

Frequency: On occasion of reportable incident.

Total Estimated Burden: 8,693 hours.

Respondents: Carriers of hazardous materials.

Form Number(s): Department of Transportation Hazardous Materials Incident Report (DOT F 5800.1).

Estimated Average Per Respondent: 1 hour.

DOT No: 3171.

OMB No: 2130–0526.

Administration: Federal Railroad Administration.

Title: Control of Alcohol and Drug Use in Railroad Operations.

Need for Information: To deter use of alcohol or drug involvement in railroad operations.

Proposed Use of Information: FRA and the railroad industry uses this information to determine the extent of

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the alcohol and drug problems and to curtail the widespread use of alcohol and drugs.

Frequency: Recordkeeping, On Occasion, Monthly.

Burden Estimate: 139,570 Hours (1st Year), 112,188 Hours (Subsequent Years).

Respondents: 440 Railroads.

Form(s): FRA–F–6180.73 and FRA–F–6180.74.

Average Burden Hours Per Respondent: 11 Hours for reporting burden and 279 hours for recordkeeping burden.

DOT No: 3172.

OMB No: New.

Administration: Federal Aviation Administration.

Title: Security Programs for Foreign Air Carriers.

Need for Information: This amendment, which requires foreign air carriers to submit a written security program to the FAA for the Administrator's approval, will ensure that adequate security measures are being implemented by foreign air carriers that land or take off in the United States. The purpose of the amendment is to reduce fatalities and property damage attributable to acts of criminal violence and air piracy.

Proposed Use of Information: To ensure that adequate security measures are being implemented by foreign air carriers that land on take off in the United States.

Frequency: One time.

Burden Estimate: 17,700 hours.

Respondents: Foreign Air Carriers.

Form(s): None.

Average Burden Hours Per Respondent: 160 hours.

DOT No: 3173.

OMB No: 2130–0036.

Administration: Federal Aviation Administration.

Title: Notice of Landing Area Proposal.

Need for Information: FAR Part 157 requires that each person who intends to construct, activate a runway or taxiway, or change the status of an airport to public use, shall notify the Administrator. This action is necessary to help to ensure aviation safety through current and updated information.

Proposed Use of Information: The information will provide advice as to the effect the proposal will have on existing airports and on the safe and efficient use of airspace by aircraft. It will be used for aeronautical charting data and for a national airport system plan.

Frequency: As required.

Burden Estimate: 2250 hours annually.

Respondents: Anyone who intends to construct a runway, activate a runway or taxiway, or change the status of an airport.

Form(s): FAA Form 7480–1.

Average Burden Hours Per Respondent: It is estimated that it takes an average of 45 minutes to complete the form.

DOT No: 3174.

OMB No: 2125–0514.

Administration: Federal Highway Administration.

Title: Utility Accommodation Policies.

Need for Information: For FHWA to fulfill its statutory obligation regarding utility use of right-of-way on Federal-aid highway projects.

Proposed Use of Information: For FHWA to review and approve State highway agencies utility accommodation policies.

Frequency: After initial submission, submission on 3 to 5 year cycle as needed.

Burden Estimate: 2,800.

Respondents: State highway agencies.

Form(s): N/A.

Average Burden Hours Per Response: 280 hours per respondent.

DOT No: 3175.

OMB No: 2125–0531.

Administration: Federal Highway Administration.

Title: Alternate Procedures for Processing Utility or Railroad Adjustments.

Need for Information: For FHWA to meet its statutory obligations to process and approve State Highway agencies applications for alternate procedures for processing utility or railroad adjustments.

Proposed Use of Information: For FHWA to determine the State highway agencies policies and procedures for handling utility or railroad adjustments.

Frequency: On occasion

Burden Estimate: 80 hours

Respondents: State highway agencies

Form(s): N/A

Average Burden Hours Per Responses: 40 hours per respondent.

Issued in Washington, DC on January 18, 1989.

Robert J. Woods,

Director of Information Resource Management.

[FR Doc. 89–1642 Filed 1–24–89; 8:45 am]

BILLING CODE 4910–62–M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q during the Week Ended

January 13, 1989.

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et seq.*). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket No. 46856

Date Filed: January 9, 1989.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: February 6, 1989.

Description: Application of Pakistan International Airlines Corporation, pursuant to section 402 of the Act and Subpart Q of the Regulations, requests an amendment to its foreign air carrier permit to add Madrid, Spain as an intermediate point of its current U.S.-Pakistan route.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 89–1560 Filed 1–24–89; 8:45 am]

BILLING CODE 4910–62–M

[Order 89–1–28; Docket 45821]

Application of Trump Shuttle, Inc. for Certificate Authority

AGENCY: Department of Transportation.

ACTION: Notice of order to show cause.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding Trump Shuttle, Inc. fit and awarding it a certificate of public convenience and necessity to engage in domestic scheduled air transportation of persons, property, and mail.

DATES: Persons wishing to file objections should do so no later than February 2, 1989.

ADDRESSES: Objections and answers to objections should be filed in Docket 45821 and addressed to the Documentary Services Division (C–55, Room 4107), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590 and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Mrs. Janet A. Davis, Air Carrier Fitness Division (P–56, Room 6401), U.S. Department of Transportation, 400

Seventh Street, SW., Washington, DC 20590, (202) 366–9721.

Dated: January 18, 1989.

Gregory S. Dole,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 89–1641 Filed 1–24–89; 8:45 am]

BILLING CODE 4910–62–M

[Docket 37554]

Order Adjusting the Standard Foreign Fare Level Index

The International Air Transportation Competition Act (IATCA), Pub. L. 96–192, requires that the Department, as successor to the Civil Aeronautics Board, establish a Standard Foreign Fare Level (SFFL) by adjusting the SFFL base periodically by percentage changes in actual operation costs per available seat-mile. Order 80–2–69 established the first interim SFFL and Order 88–12–24 set the currently effective two-month SFFL applicable through January 31, 1989.

In establishing the SFFL for the two-month period beginning February 1, 1989, we have projected nonfuel costs based on the year ended September 30, 1988 data, and have determined fuel prices on the basis of the latest experienced monthly fuel cost levels as reported to the Department.

By Order 80–1–28 fares may be increased by the following factors over the October 1, 1979, level:

Atlantic—1.1736
Latin American—1.2346
Pacific—1.6510
Canada—1.2426

For further information contact: Keith A. Shangraw (202) 366–2439.

By the Department of Transportation.

Dated: January 18, 1989.

Gregory S. Dole,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 89–1640 Filed 1–24–89; 8:45 am]

BILLING CODE 4910–62–M

Federal Aviation Administration

[AC No. 43.13–1A]

Proposed Revision of Advisory Circular (AC) 43.13–1A; Acceptable Methods, Techniques, and Practices, Aircraft Inspection and Repair

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: FAA is soliciting comments on the proposed revision to AC 43.13–1A.

SUMMARY: This notice announces a proposed revision to AC 43.13–1A widely used by the aviation community as guidelines and acceptable practices for aircraft inspection and repair. Comments are requested from the public regarding required revisions, changes, corrections, and inclusion of new or different information.

DATE: Comments must be received on or before April 28, 1989.

ADDRESSES: Mail or deliver comments and suggestions to: Federal Aviation Administration, Aviation Standards National Field Office, Engineering and Manufacturing Branch, Airman's Record Building, Room 203, Attention: AVN–110, P.O. Box 25082, 6500 S. MacArthur, Oklahoma City, Oklahoma 73125. Comments mailed or delivered must be identified with "AC 43.13–1A."

FOR FURTHER INFORMATION CONTACT: Mr. George Torres, AVN–110, at the above address, telephone: (405) 686–4374.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to make comments and/or recommendations as to changes and the kinds of information they would like to see incorporated in this revision. All communications received on or before the closing date for comments will be considered before revising the AC. Comments may be inspected at the above address, in Room 203, weekdays, except Federal holidays, between 8:00 a.m. and 4:30 p.m.

Commentors wishing acknowledgement of receipt of their comments must submit, with their comments, a self-addressed stamped postcard bearing the statement: "AC 43.13–1A." The card will be dated and returned to the sender.

Types of comments solicited include:

1. Noted errors—typographical or data.

2. Suggested inclusion of new material.

3. Suggested additional chapters or addition of latest state-of-the-art technology.

4. Suggested clarification or rewrite of existing material.

Discussion of the Proposed Advisory Circular

Advisory Circular 43.13–1A contains acceptable methods, techniques, and practices for aircraft inspections and repairs used by the aviation industry in the absence of manufacturer's instructions. This AC, widely used by the general aviation industry, was last revised in 1972. In 1986, proposal was made to revise this document in two phases. Phase I, correction of errors and deletion of obsolete material was completed in 1988 and identified as Change 3. This AC, with Change 1, 2, and 3 incorporated, is now available from GPO under stock number 050–007–00606–3 at a price of $18. Phase II will be a completed revision of the present document. It will also incorporate information, but not be limited to, composites, lighter than air airships (hot air balloons), sailplanes/gliders, helicopters, avionics, and new technologies.

This AC was developed for, and is used extensively by the aviation community. Therefore, it has a significant influence on aviation safety.

To assure its contents are accurate and current, industry's input and expertise are needed.

Richard C. Hall,

Manager, Regulatory Support Division.

Issued in Oklahoma City, Oklahoma on December 16, 1988.

[FR Doc. 89–1603 Filed 1–24–89; 8:45 am]

BILLING CODE 4910–13–M

Proposed Advisory Circular 21–PCMC; Production Certification Multinational/ Multicorporate Consortia

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: This notice announces the availability of proposed Advisory Circular (AC) 21–PCMC, Production Certification Multinational/ Multicorporate Consortia for review and comments. The proposed AC 21–PCMC provides information and guidance concerning an acceptable means, but not the only means, of demonstrating compliance with the requirements of the Federal Aviation Regulations (FAR) Part 21, Certification Procedures for Products and Parts.

DATE: Comments submitted must identify the proposed AC 21–PCMC file number P8–220–133, and be received by February 27, 1989.

ADDRESSES: Copies of the proposed AC 21–PCMC can be obtained from and comments may be returned to the following: Federal Aviation Administration, Production Certification Branch, AIR–220, Aircraft Manufacturing Division, Aircraft Certification Service, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Diana Smith, Production Certification Branch, AIR–220, Aircraft Manufacturing Division, Room 333, Aircraft Certification Service, Federal Aviation Administration, 800

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Independence Avenue, SW., Washington, DC 20591 (202) 267-8361.

SUPPLEMENTARY INFORMATION:

Background

The proposed AC 21-PCMC provides information and describes criteria to be emphasized in evaluating and approving the quality control system of a multinational or multicorporate consortium seeking a production certificate (PC).

Comments Invited

Interested persons are invited to comment on the proposed AC 21-PCMC listed in this notice by submitting such written data, views, or arguments as they desire to the aforementioned specific address. All communications received on or before the closing date for comments specified above will be considered by the Director, Aircraft Certification Service, before issuing the final AC.

Comments received on the proposed AC 21-PCMC may be examined, before and after the comment closing date, in Room 333, FAA Headquarters Building (FOB-10A), 800 Independence Avenue, SW., Washington, DC 20591, between 8:30 a.m. and 4:30 p.m.

Issued in Washington, DC, on December 23, 1988.

Alphonse G. Santarelli,

Acting Manager, Aircraft Manufacturing Division.

[FR Doc. 89-1604 Filed 1-24-89; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[Delegation Order No. 4 (Rev. 19)]

Delegation of Authority; Regional Inspectors

AGENCY: Internal Revenue Service, Treasury.

ACTION: Delegation of authority.

SUMMARY: Regional Inspectors are delegated authority to issue a "John Doe" summons in which the proper name or names of the taxpayer is not identified because it is unknown or unidentifiable. The text of the delegation order appears below.

EFFECTIVE DATE: January 26, 1989.

FOR FURTHER INFORMATION CONTACT: James Hardy, LIS:OA, Room 6005, 1111 Constitution Avenue, NW., Washington, DC 20224; Telephone: (202) 566-3435, (not a toll-free telephone number).

Richard Byrd, Jr.,

Chief, Operations Analysis Branch.

Order No. 4 (Rev. 19)

Effective date: 1-26-89

Authority to Issue Summonses, to Administer Oaths and Certify, and to Perform Other Functions

1(a) The authorities granted to the Commissioner of Internal Revenue by 26 CFR 301.7602-1(b), 301.7603-1, 301.7604-1 and 301.7605-1(a) and the authorities contained in Section 7609 of the Internal Revenue Code of 1954 and vested in the Commissioner of Internal Revenue Service by Treasury Department Order No. 150-10 to issue summonses; to set the time and place for appearance; to serve summonses; to take testimony under oath of the person summoned; to receive and examine books, papers, records or other data produced in compliance with the summons; to enforce summonses; to apply for court orders approving the service of John Doe Summonses issued under Section 7609(f) of the Internal Revenue Code; to apply for court orders suspending the notice requirements in the case of summonses issued under Section 7609(g) of the Internal Revenue Code; and under Section 7609(i)(2) of the Internal Revenue Code; may, when requested, certify to third-party recordkeepers that no action to quash has been timely initiated or that the taxpayer has consented to the examination of the records summonsed, are delegated to the officers and employees of the Internal Revenue Service specified in paragraphs 1(b), 1(c), and 1(d) of this Order and subject to the limitations stated in paragraphs 1(b), 1(c), 1(d), 5, and 6 of this Order.

1(b) The authorities to issue summonses and to perform the other functions related thereto specified in paragraph 1(a) of this Order, are delegated to all District Directors and the following officers and employees, provided that the authority to issue a summons in which the proper name or names of the taxpayer or taxpayers is not identified because unknown or unidentifiable (hereinafter called a "John Doe" summons) may be exercised only by said officers and employees.

(1) Inspection: Director, Internal Security Division and Regional Inspectors.

(2) International: Deputy Assistant Commissioner and Directors, Offices of Compliance and Foreign Programs.

(3) District Criminal Investigation: Chief of Division, except this authority in streamlined districts is limited to the District Director.

(4) District Collection Activity: Chief of Division, except this authority in streamlined districts is limited to the District Director.

(5) District Examination: Chief of Division, except this authority in streamlined districts is limited to the District Director.

(6) District Employee Plans and Exempt Organizations: Chief of Division.

1(c) The authorities to issue summonses except "John Doe" summonses, and to perform other functions related thereto specified in paragraph 1(a) of this Order, are delegated to the following officers and employees:

(1) Inspection: Assistant Regional Inspectors (Internal Security) and Chief, Investigations Branch.

(2) Assistant Commissioner (International): Criminal Investigation Special Agents; Collection Group Managers; and Examination Case Managers and Group Managers.

(3) District Criminal Investigation: Assistant Chief of Division; and Special Agents.

(4) District Collection Activity: Assistant Chief of Division; Group Managers.

(5) District Examination: Case Managers, Group Managers and, in streamlined districts Chiefs, Examination Section.

(6) District Employee Plans and Exempt Organizations: Group Managers.

1(d) The authority to issue summonses except "John Doe" summonses and to perform the other functions related thereto specified in paragraph 1(a) of this Order is delegated to the following officers and employees except that in the instance of a summons to a third party witness, the issuing officer's case manager, group manager, or any supervisory official above that level, has in advance personally authorized the issuance of the summons. Such authorization shall be manifested by the signature of the authorizing officer on the face of the original and all copies of the summons or by a statement on the face of the original and all copies of the summons, signed by the issuing officer, that he/she had prior authorization to issue said summons and stating the name and title of the authorizing official and the date of authorization.

(1) Assistant Commissioner (International): Internal Revenue Agents; Attorneys, Estate Tax; Estate Tax Examiners; Revenue Service and Assistant Revenue Service Representatives; Tax Auditors; and Revenue Officers; GS-9 and above.

(2) District Collection: Revenue Officers, GS-9 and above.

(3) District Examination: Internal Revenue Agents; Tax Auditors; Attorneys, Estate Tax; and Estate Tax Examiners.

(4) District Employee Plans and Exempt Organizations: Internal Revenue Agents; Tax Law Specialists; and Tax Auditors.

(e) Each of the officers and employees referred to in paragaphs 1(b), 1(c), and 1(d) of this Order may serve a summons whether it is issued by him/her or another official.

(f) Revenue Represenatives, GS-5 and above, aides of Revenue Officers, GS-5 and above, and Revenue Officers, who are assigned to the district Collection activity may serve any summons issued by the officers and employees referred to in paragraphs 1(b), 1(c) and 1(d) of this Order.

(g) Tax Fraud Investigative Aides, GS-5 and above, who are assigned to the district Criminal investigation activity may serve any summons issued by the officers and employees referred to in Paragraphs 1(b) and 1(c) of this Order.

2. Each of the officers and employees referred to in paragraphs 1(b), 1(c), and 1(d) of this Order authorized to issue summonses, is delegated the authority under 26 CFR 301. 7602-1(b) to designate any other officer or employee of the Internal Revenue Service referred to in paragraph 4(b) of this Order, as the individual before whom a person summoned pursuant to Section 7602 of the Internal Revenue Code shall appear. Any such other officer or employee of the Internal Revenue Service when so designated in a summons is authorized to take testimony under oath of the person summoned and to receive and examine books, papers, records or other data produced in compliance with the summons.

3. Internal Security Inspectors are delegated the authority under 26 CFR 301.7603-1 to serve summonses issued in accordance with this Order by any of the officers and employees of the Inspection Service referred to in paragraphs 1(b)(1) and 1(c)(1) of this Order even though Internal Security Inspectors do not have the authority to issue summonses.

4(a). The authorities granted to the Commissioner of Internal Revenue by 26 CFR 301.7602-1(a), and 301.7605-1(a) to examine books, papers, records or other data, to take testimony under oath and to set the time and place of examination are delegated to the officers and employees of the Internal Revenue Service specified in paragraphs 4(b) and 4(c) of this Order and subject to the limitations stated in paragraphs 4(c) and 6 of this Order.

4(b) General Designations

(1) Inspection: Director, Internal Security Division; Director, Internal Audit Division; Regional Inspectors; Internal Auditors; Management Auditors; Internal Security Inspectors; Investigators (Internal Security); and Internal Security Assistants.

(2) District Criminal Investigation: Assistant Chief of Division; and Special Agents.

(3) International: Deputy Assistant Commissioner (International), Special Agents; Case Managers; Group Managers, Internal Revenue Agents; Estate Tax Attorneys; Estate Tax Law Clerks; Estate Tax Examiners; Revenue Service and Assistant Revenue Service Representatives; Tax Auditors; and Revenue Officers.

(4) District Collection Activity: Assistant Chiefs of Division; Revenue Representatives and Office Collection Representatives.

(5) District Examination: Internal Revenue Agents; Tax Auditors; Estate Tax Attorneys; Estate Tax Law Clerks; and Estate Tax Examiners.

(6) District Employee Plans and Exempt Organization: Internal Revenue Agents; Tax Law Specialists; and Tax Auditors.

(7) Service Center: Revenue Agents; Tax Auditors; Tax Examiners in the correspondence examination function; and Special Agents.

4(c) District Directors, Service Center Directors, Regional Inspectors, and the Chief of Investigation Branch, Internal Security Division, may redelegate the authority under 4(a) of this Order to student trainees (Revenue Officer), student trainee (Accounting Student Trainee), Audit Accounting Aides, Tax Fraud Investigative Aides, aides or trainees (Internal Auditor) and student trainees (Internal Security Inspector), provided that each student trainee or aide shall exercise said authority only under the appropriate supervision of a Revenue Officer, Tax Auditor, Revenue Agent, Special Agent, Internal Auditor, or Internal Security Inspector, as applicable.

5. Under the authority granted to the Commissioner of Internal Revenue by 26 CFR 301.7622-1, the officers and employees of the Internal Revenue Service referred to in paragraphs 1(b), 1(c), 1(d), and 4(b) and 4(c) of this Order are designated to administer oaths and affirmations and to certify to such papers as may be necessary under the internal revenue laws and regulations except that the authority to certify shall not be construed as applying to those papers or documents the certification of which is authorized by separate order or directive.

(a) Revenue Representatives and Office Collection Representatives referred to in paragraph 4(b)(4) of this Order are not designated to administer oaths or to perform the other functions mentioned in this paragraph, except that Revenue Representatives, GS-5 and above, are authorized to certify the method and manner of service, and the method and manner of giving notice, when performed the functions and duties contained in paragraph 1(f) of this order.

(b) Tax Fraud Investigative Aides, GS-5 and above, referred to in Paragraph 4(c) of this Order are not designated to administer oaths or to perform the other functions mentioned in this paragraph; except that the Tax Fraud Investigative Aides, GS-5 and above, are authorized to certify the method and manner of service, and the method and manner of giving notice, when performing the functions and duties contained in Paragraph 1(g) of this Order.

6. The authority delegated herein may not be redelegated except as provided in paragraph 4(c).

7. Delegation Order No. 4 (Rev. 18), effective October 31, 1987, is superseded.

Date: January 13, 1989.

Approved:

Michael J. Murphy,

Senior Deputy Commissioner.

[FR Doc. 89-1623 Filed 1-24-89; 8:45 am]

BILLING CODE 4830-01-M

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Sunshine Act Meetings

Federal Register
Vol. 54, No. 15
Wednesday, January 25, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ENERGY REGULATORY COMMISSION

January 18, 1989.

The following notice of meeting is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94-409, 5 U.S.C. 552B:

TIME AND PLACE: 10:00 a.m., January 25, 1989.

PLACE: 825 North Capitol Street, NE., Room 9306, Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Linwood A. Watson, Jr., Acting Secretary, Telephone (202) 357-8400.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Public Reference Room.

Consent Power Agenda

890th Meeting—January 25, 1989, Regular Meeting (10:00 a.m.)

CAP-1.
Project No. 6456-006, Village of Green Island, New York
CAP-2.
Docket No. HB03-75-1-002, Alabama Power Company
CAP-3.
Project No. 10524-001, North Coast Development Company, Inc.
CAP-4.
Project No. 7305-004, W.M. Lewis & Associates
CAP-5.
Project No. 619-000, Pacific Gas & Electric Company
CAP-6.
Project No. 7207-005, Joseph M. Keating
CAP-7.
Project No. 2179-002, Merced Irrigation District
CAP-8.
Project No. 2144-007, City of Seattle, Washington
CAP-9.
Docket No. ER89-1-000, Wisconsin Power & Light Company
CAP-10.
Docket Nos. ER88-594-000, ER88-595-000 and ER88-596-000, Southern Company Services, Inc.
CAP-11.
Docket No. EF89-2061-000, United States Department of Energy—Bonneville Power Administration
Docket No. ER89-52-000, Southern California Edison Company
CAP-12.
Docket No. ER88-586-000, ER88-588-000, ER88-593-000, ER88-597-000 and ER88-598-000, American Electric Power Companies
CAP-13.
Docket No. EL83-34-006, Seminole Electric Cooperative, Inc.
Docket No. ER84-379-006, Florida Power and Light Company
CAP-14.
Docket No. ER88-433-000, Central Louisiana Electric Company
CAP-15.
Docket No. ER88-499-000, Kanawha Valley Power Company
CAP-16.
Docket No. ER88-505-000, Canal Electric Company
CAP-17.
Docket No. ER86-75-000, Northern States Power Company (Minnesota)
CAP-18.
Docket No. EL89-2-000, City of Piqua, Ohio v. Dayton Power and Light Company
CAP-19.
Docket No. EL89-3-000, South Carolina Public Service Authority, Central Electric Power Cooperative, Inc. and Mid-Carolina Electric Cooperative, Inc. v. South Carolina Electric & Gas Company

Consent Miscellaneous Agenda

CAM-1.
Docket No. RM88-28-000, Revision of Filing Fees For Natural Gas Rate and Tariff Filings
CAM-2.
Docket Nos. RM85-14-002 and RM85-15-001, Interpretation of, and Regulations under, Section 5 of the Outer Continental Shelf Lands Act (OCSLA) Governing Transportation of Natural Gas by Interstate Natural Gas Pipelines on the Outer Continental Shelf
CAM-3.
Docket No. GP87-74-000, CNC Development Company
CAM-4.
Docket No. SA87-3-003, Pogo Producing Company
Docket No. SA87-3-003, Mobil Exploration and Producing North America, Inc. and Mobil Producing Texas & New Mexico Inc.
Docket No. SA87-6-003, Shell Offshore Inc. and Shell Oil Company
Docket No. SA87-16-003, Columbia Gas Development Corporation
Docket No. SA87-28-003, Samedan Oil Corporation
Docket No. SA87-30-000, Sun Exploration and Production Company
CAM-5.
Docket No. SA87-46-001, Pan Eastern Exploration Company
CAM-6.
Docket No. SA88-6-001, Crosstex Pipeline Partners, Ltd. d/b/a Crosstex Pipeline Company
CAM-7.
Docket No. SA87-39-001, The Louisiana Land and Exploration Company and LLOXY Holdings, Inc.
Docket No. SA87-40-001, Forest Oil Corporation
Docket No. SA87-47-001, FMP Operating Company
CAM-8.
Omitted
CAM-9.
Docket No. R87-20-000, Ted True, Inc. and Ted W. True

Consent Gas Agenda

CAG-1.
Docket No. RP88-227-005, Paiute Pipeline Company
CAG-2.
Docket No. RP89-29-000, Tennessee Gas Pipeline Company
CAG-3.
Docket No. RP89-48-000, Transwestern Pipeline Company
CAG-4.
Docket No. RP89-49-000, National Fuel Gas Supply Corporation
CAG-5.
Docket No. RP88-184-007, El Paso Natural Gas Company
CAG-6.
Docket No. RP88-98-94-014, Natural Gas Pipeline Company of America
CAG-7.
Docket No. RP88-187-012, Columbia Gas Transmission Corporation
CAG-8.
Docket No. RP89-47-000, Natural Gas Pipeline Company of America
CAG-9.
Docket No. TA89-1-18-000 and 001, Texas Gas Transmission Corporation
CAG-10.
Docket Nos. TA89-1-17-000 and 001, Texas Eastern Transmission Corporation
CAG-11.
Docket Nos. TQ89-1-23-000 and 001, Eastern Shore Natural Gas Company
CAG-12.
Docket No. TQ89-2-63-000, Carnegie Natural Gas Company
CAG-13.
Docket No. TQ89-2-22-000, CNG Transmission Corporation
CAG-14.
Docket No. TQ89-3-21-000, Columbia Gas Transmission Corporation
CAG-15.
Docket No. RP88-205-003, Alabama-Tennessee Natural Gas Company

CAG-16.
Docket Nos. RP85-122-015 and RP87-30-020, Colorado Interstate Gas Company
CAG-17.
Docket No. RP85-122-014, Colorado Interstate Gas Company
CAG-18.
Docket Nos. RP82-55-039 and RP87-7-045, Transcontinental Gas Pipe Line Corporation
CAG-19.
Docket No. RP88-217-000, CNG Transmission Corporation
CAG-20.
Docket No. RP85-208-042, Northern Natural Gas Company, Division of Enron Corp.
CAG-21.
Docket Nos. RP85-58-026 and TA85-1-33-015, El Paso Natural Gas Company
CAG-22.
Docket No. RP88-162-001, Gas Research Institute
CAG-23.
Docket No. RP89-14-002, Inter-City Minnesota Pipelines, Ltd., Inc.
CAG-24.
Docket No. RP87-15-026, Trunkline Gas Company
CAG-25.
Docket No. RP83-93-020, Trunkline Gas Company
CAG-26.
Docket No. RP88-239-000, Trunkline Gas Company
CAG-27.
Docket Nos. TQ89-1-55-002 and TQ88-1-55-002, Questar Pipeline Company
CAG-28.
Docket No. CP86-578-019, RP85-13-027, RP86-47-016, and TQ88-2-37-024, Northwest Pipeline Corporation
CAG-29.
Docket No. ST85-1397-002, Kansas Power and Light Company
CAG-30.
Docket Nos. RP89-09-001 and RP88-241-003, Panhandle Eastern Pipe Line Company
CAG-31.
Docket Nos. RP89-10-001 and RP88-240-003, Panhandle Eastern Pipe Line Company
CAG-32.
Docket No. RP88-88-003, Panhandle Eastern Pipe Line Company
CAG-33.
Omitted
CAG-34.
Docket No. RP88-207-007, Columbia Gas Transmission Corporation
CAG-35.
Omitted
CAG-36.
Omitted
CAG-37.
Docket No. RP88-106-002, Northern Natural Gas Company, Division of Enron Corp.
CAG-38.
Omitted
CAG-39.
Docket No. RP88-94-013, Natural Gas Pipeline Company of America
CAG-40.
Omitted
CAG-41.
Omitted
CAG-42.
Docket No. RP87-61-005, Eastern Shore Natural Gas Company
CAG-43.
Docket No. RP88-267-003, South Georgia Natural Gas Company
CAG-44.
Omitted
CAG-45.
Docket Nos. CP86-578-018 and RP85-13-024, Northwest Pipeline Corporation
CAG-46.
Docket Nos. TA83-1-37-008, TA83-2-37-003, TA84-1-37-004, TA84-2-37-010, TA85-1-37-004, TA85-2-37-022 and RP82-58-021, Northwest Pipeline Corporation
CAG-47.
Docket No. TQ89-1-29-001, Transcontinental Gas Pipe Line Corporation
CAG-48.
Docket Nos. RP88-93-003 and RP88-40-004, Questar Pipeline Company
CAG-49.
Docket No. RP86-32-014, Williams Natural Gas Company
CAG-50.
Docket No. RP80-97-058, Tennessee Gas Pipeline Company
CAG-51.
Docket No. RP88-259-003, Northern Natural Gas Company, Division of Enron Corp.
CAG-52.
Docket No. RP88-259-006, Northern Natural Gas Company, Division of Enron Corp.
CAG-53.
Docket No. RP88-211-004, CNG Transmission Corporation
CAG-54.
Docket No. RP82-114-013, Williams Natural Gas Company
CAG-55.
Docket No. RP88-81-009, Texas Eastern Transmission Corporation
CAG-56.
Docket No. RP88-115-006, Texas Gas Transmission Corporation
CAG-57.
Docket No. RP89-9-002, Panhandle Eastern Pipe Line Company
CAG-58.
Docket Nos. RP88-80-010 and RP88-251-004, Texas Eastern Transmission Corporation
CAG-59.
Docket No. RP89-11-002, Trunkline Gas Company
CAG-60.
Docket No. RP88-201-005, East Tennessee Natural Gas Company
CAG-61.
Omitted
CAG-62.
Omitted
CAG-63.
Docket Nos. RP83-58-000, RP86-63-000, RP86-114-000, RP87-17-000, RP86-96-000, RP88-210-000 and RP88-229-000, Southern Natural Gas Company
CAG-64.
Docket No. ST88-3758-000, Arkla Energy Resources, a Division of Arkla, Inc.
CAG-65.
Docket No. ST88-5599-000, Gulf South Pipeline Company
CAG-66.
Docket No. ST88-5804-000, Acacia Natural Gas Corporation
CAG-67.
Docket No. ST88-5632-000, Red River Pipeline Company
CAG-68.
Docket No. CP88-42-001, Kansas Power and Light Company v. Williams Natural Gas Company
Docket No. CP61-29-002, Williams Natural Gas Company
CAG-69.
Docket Nos. CP87-479-010 and CP87-480-007, Wyoming-California Pipeline Company
CAG-70.
Docket No. CP87-395-001, Consumers Power Company
CAG-71.
Docket No. CP87-506-001, Arkla Energy Resources, a Division of Arkla, Inc.
CAG-72.
Docket No. CP81-225-006, Great Lakes Gas Transmission Company
CAG-73.
Docket No. CP88-696-001, Midwestern Gas Transmission Company
CAG-74.
Docket No. CP88-700-001, Windward Energy and Marketing Company and ARCO Oil and Gas Company
CAG-75.
Docket Nos. CP87-150-001 and CP87-197-001, United Gas Pipe Line Company
CAG-76.
Docket No. CP88-397-002, Great Lakes Gas Transmission Company
CAG-77.
Omitted
CAG-78.
Docket No. CP89-93-000, Williams Natural Gas Company
CAG-79.
Omitted
CAG-80.
Docket No. CP88-137-000, ANR Pipeline Company
CAG-81.
Docket No. CP80-79-004 and CP70-242-002, Arkla Energy Resources, a Division of Arkla, Inc.
CAG-82.
Docket No. CP88-486-000, Cimarron Transmission Company
CAG-83.
Docket No. CP89-363-000, Falcon Seaboard Pipeline Company
CAG-84.
Docket No. CP89-287-000, Atlantic Richfield Company and Intalco Aluminum Corporation
CAG-85.
Docket Nos. RP89-13-001 and 003, Mississippi River Transmission Corporation
CAG-86.
Docket No. RP87-30-002, Colorado Interstate Gas Company

CAG–87.
Docket Nos. CP88–808–008, RP86–104–010 and RP87–30–017, Colorado Interstate Gas Company

I. Licensed Project Matters

P–1.
Retroactive Application of Order No. 464, Rule on Waiver of Certification Pursuant to the Clean Water Act. Reconsideration of retroactive application of Order No. 464, interpreting waiver provision of water quality certification requirements of Section 401(a)(1) of the Clean Water Act.

II. Electric Rate Matters

ER–1.
Reserved

Miscellaneous Agenda

M–1.
Docket No. FA88–63–002, Long Island Lighting Company. Concerning certain nuclear plant accounting issues.

M–2.
Reserved

M–3.
Reserved

I. Pipeline Rate Matters

RP–1.
Docket No. RP88–225–005, Tennessee Gas Pipeline Company. Concerning D–2 charges and D–2 nominations.

RP–2.
(A) Docket No. RP89–1–004, Northwest Pipeline Corporation. Concerning direct billing of PGA surcharge account balances.

RP–3.
(B) Docket No. TA89–1–6–000, Sea Robin Pipeline Company. Concerning waiver of the surcharge requirement and direct billing proposal.

II. Producer Matters

CI–1.
Reserved

III. Pipeline Certificate Matters

CP–1.
Reserved

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 89–1663 Filed 1–23–89; 9:02 am]
BILLING CODE 6717–01–M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

January 19, 1989.

TIME AND DATE: 10:00 a.m., Thursday, January 26, 1989.

PLACE: Room 600, 1730 K Street NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. Amber Coal Company, Docket No. KENT 88–136. (Issues include consideration of possible relief from a default order.)

Any person intending to attend this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(d).

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen, (202) 653–5629/(202) 566–2673 for TDD Relay.

Jean H. Ellen,
Agenda Clerk.

[FR Doc. 89–1758 Filed 1–23–89; 2:58 pm]
BILLING CODE 6735–01–M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 11:00 a.m., Monday, January 30, 1989.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposed electronic payment processor pilot program within the Federal Reserve System.
2. Proposals regarding the Board's performance management program.
3. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
4. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: January 23, 1989.

William W. Wiles,
Secretary of the Board.

[FR Doc. 89–1734 Filed 1–23–89; 11:39 am]
BILLING CODE 6201–01–M

BOARD FOR INTERNATIONAL BROADCASTING

Certification of Closed Meeting

The Executive Director, in accordance with section 3(f)(1) of the Government in the Sunshine Act (5 U.S.C. 552b(f)(1) and the Board's rules issued under that Act (22 CFR Part 1302), hereby certifies that the Board meeting of February 6, 1989, at which will be discussed matters concerning the broad foreign policy objectives of the United States Government, may properly be closed to the public on the basis of the exemptions set forth in the Board's rules in 22 CFR 1302.4 (c) and (h).

Dated: January 12, 1989.

Mark G. Pomar,
Deputy Executive Director.

[FR Doc. 89–1752 Filed 1–23–89; 12:12 pm]
BILLING CODE 6195–01–M

BOARD FOR INTERNATIONAL BROADCASTING

TIME AND DATE: 9:00 a.m. February 6, 1989.

PLACE: The Park Hyatt Hotel, 24th and M Streets NW., Washington, DC 20037.

STATUS: Closed, pursuant to 5 U.S.C. 552(b)(c)(1) 22 CFR 1302.4 (c) and (h) of the Board's rules (42 FR 9386, March 12, 1977).

MATTERS TO BE CONSIDERED: Matters concerning the broad foreign policy objectives of the United States Government.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Mark G. Pomar, Deputy Executive Director, Board for International Broadcasting, Suite 400, 1201 Connecticut Avenue NW., Washington, DC 20036.

Mark G. Pomar,
Deputy Executive Director.

[FR Doc. 89–1753 Filed 1–23–89; 12:12 pm]
BILLING CODE 6195–01–M

UNITED STATES INTERNATIONAL TRADE COMMISSION

TIME AND DATE: Wednesday, February 8, 1989 at 3:30 p.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratifications.
4. Petitions and Complaints.
5. Inv. No. 731–TA–426/428 (P) (Certain Telephone Systems and Subassemblies from Japan, Korea, and Taiwan)—briefing and vote.
6. Inv. No. 731–TA–234 (Final—Court Remand) (Carbon Steel Structural Shapes from Norway)—briefing and vote.
7. Inv. No. 731–TA–207 (Final—Court Remand) (Cellular Mobile Telephones and Subassemblies Thereof from Japan)—briefing and vote.
8. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 252–1000.

Kenneth R. Mason,
Secretary.

January 17, 1989.

[FR Doc. 89–1708 Filed 1–23–89; 10:45 am]
BILLING CODE 7020–02–M

UNITED STATES INTERNATIONAL TRADE COMMISSION

TIME AND DATE: Wednesday, February 15, 1989 at 12:00 p.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratifications.
4. Petitions and Complaints.
5. Inv. No. 701–TA–296 (P) (Fresh, Chilled, or Frozen Pork from Canada)—briefing and vote.
6. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 252–1000.

Kenneth R. Mason,
Secretary.

January 17, 1989.

[FR Doc. 89–1709 Filed 1–23–89; 8:45 am]
BILLING CODE 7020–02–M

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:30 a.m., Wednesday, February 1, 1989.

PLACE: The Board Room, Eighth Floor, 800 Independence Avenue SW., Washington, DC 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Aircraft Accident Report: Trans-Colorado Airlines, Inc., Fairchild Metro III, SA227, AC, N66TC, Bayfield (Durango), Colorado, January 19, 1988.
2. Revision to Existing System of Board Review of Brief Reports of Highway Accidents.
3. Aircraft Accident/Incident Summary Report: TWA Flight 786, Boeing 767, Scott Air Force Base, Belleville, Illinois, August 22, 1987.

FOR MORE INFORMATION CONTACT: Bea Hardesty, (202) 382–6525.

Bea Hardesty,
Federal Register Liaison Officer.

January 19, 1989.

[FR Doc. 89–1735 Filed 1–23–89; 11:39 am]
BILLING CODE 7533–01–M

SECURITIES AND EXCHANGE COMMISSION

AGENCY MEETING

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of January 23, 1989.

A closed meeting will be held on Tuesday, January 24, 1989, at 10 a.m.

The Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Schapiro, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Tuesday, January 24, 1989, at 10 a.m., will be:

Institution of injunctive actions.
Settlement of injunctive action.
Formal orders of investigation.
Institution of administrative proceeding of an enforcement nature.
Order compelling testimony.

At times changes in Commission priorities require alterations in the scheduling of meeting times. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Holly Smith at (202) 272–2100.

Jonathan G. Katz,
Secretary.

January 19, 1989.

[FR Doc. 89–1842 Filed 1–23–89; 4:01 pm]
BILLING CODE 8010–01–M

VOL
54
ISS
15
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Corrections

Federal Register
Vol. 54, No. 15
Wednesday, January 25, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 318 and 320

[Docket No. 86-041P]

Processing Procedures and Cooking Instructions for Cooked, Uncured Meat Patties

Correction

In proposed rule document 88-29794 beginning on page 52179 in the issue of Tuesday, December 27, 1988, make the following corrections:

1. On page 52180, in the first column, in the 24th line, after "requirements", insert "for".

2. On page 52183, in the third column, in the last complete paragraph, in the last line, before "to" insert "within 1.5 hours and from 80°F".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR-943-09-4214-11; GP9-068; OR-42315]

Conveyance of Public Land; Order Providing for Opening of Lands; Oregon

Correction

In notice document 88-30102 beginning on page 70, in the issue of Tuesday, January 3, 1989, make the following corrections:

1. On page 71, in the first column, under "Sec. 11, that portion described as follows:" in the 6th line, "39°01'30"E.," should read "39°02'30"E.,"

2. On the same page and in the same column, also under "Sec. 11 ***," in the 12th line, "of the SW¼" should appear only once.

3. On the same page and in the same column, in the last paragraph, in the first line, "1980" should read "1989."

BILLING CODE 1505-01-D

federal register

Wednesday
January 25, 1989

Part II

Department of Energy

Economic Regulatory Administration

10 CFR Part 500 et al.

Powerplant and Industrial Fuel Use Act of 1978; Notice of Proposed Rulemaking

VOL 54 ISS 15 JA 25 1989 UMI

DEPARTMENT OF ENERGY

Economic Regulatory Administration

10 CFR Parts 500, 501, 503, 504, 508 and 516

Powerplant and Industrial Fuel Use Act of 1978

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) is proposing to amend the regulations implementing the Powerplant and Industrial Fuel Use Act of 1978 (FUA or the Act). The ERA proposes to: (1) Incorporate Congressional amendments to certain FUA sections into the regulations; (2) revise and update the fuel price and inflation indices used in the cost test calculations supporting exemptions based on a lack of alternate fuel at a cost which does not substantially exceed the cost of using imported petroleum; (3) clarify how to calculate the fuel price when a petitioner proposes to burn natural gas by permitting the petitioner to use the price of natural gas directly or, alternatively, to use the price of an equivalent Btu value of low sulfur, No. 6 residual fuel oil for the required price computation, and (4) revise and update the oil/gas savings estimates used in determining eligibility for an exemption based on cogeneration.

More specifically, the ERA proposes to incorporate amendments to the FUA as a result of Pub. L. 100-42 (May 27, 1987) which removed the applicability of the FUA to all but baseload electric powerplants. In addition, ERA proposes to update and revise the criteria and indices used in the cost test to more accurately reflect significantly changed circumstances in projected fuel use and fuel pricing patterns. This notice seeks comments on the proposed revisions.

DATES: Written comments from interested parties must be submitted on or before March 13, 1989.

ADDRESS: All comments should be addressed to Ellen Russell, Office of Fuels Programs, Economic Regulatory Administration, Department of Energy, Room 3F-094, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-9624.

FOR FURTHER INFORMATION CONTACT:

Ellen Russell (Office of Fuels Programs), Economic Regulatory Administration, Department of Energy, Room 3F-094, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-9624.

Anthony J. Como (Office of Fuels Programs), Economic Regulatory Administration, Department of Energy, Room 3F-007, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-5935.

Steven E. Ferguson (Office of General Counsel) Department of Energy, Room 6B-144, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-6947.

SUPPLEMENTARY INFORMATION:

I. Background
II. Proposals
A. General
B. Definitions (Part 500)
C. Administrative Procedures and Sanctions (Part 501)
D. Cogeneration Oil-Gas Savings (Part 503)
E. Cost Calculation and Fuel Price Computations (Appendix II to Part 504)
1. Cost of Calculation for Petitions Proposing the Use of Natural Gas
2. Fuel Price and Inflation Indices
III. Procedural Matters
A. Written Comments
B. Section 102 of the National Environmental Policy Act (NEPA)
C. Regulatory Flexibility Act
D. Executive Order 12291
E. Paperwork Reduction Act of 1980

I. Background

On May 21, 1987, Pub. L. 100-42 (Powerplant and Industrial Fuel Use Act of 1978, Amendments) repealed certain sections of the Act and amended other sections. Repealed were section 202, New Major Fuel-Burning Installations; section 302, Existing Major Fuel-Burning Installations; section 401, Authority to Prohibit Use of Natural Gas in Certain Boilers Used for Space Heating; section 402, Prohibition on Use of Natural Gas for Decorative Outdoor Lighting; section 405, Authority to Restrict Increased Uses of Petroleum by Existing Powerplants; Title 5, System Compliance Options; and, section 801, Coal Reserves Disclosure. Section 201 was amended by prohibiting the construction or operation of new baseload electric powerplants without the capability to use coal or another alternate fuel as a primary energy source. In addition the Congress added a coal capability self-certification procedure for declaring new units to be alternate fuel capable.

The original statute was enacted following severe shortages of natural gas in the interstate market in the winter of 1976-1977. At the time, Congress sought to reduce oil imports, and to conserve natural gas and oil for uses other than electric utility generation or the commerical generation of steam. In order to achieve its purpose, FUA prohibited the use of oil and natural gas in new major fuel burning installations (MFBI) and powerplants unless ERA granted an exemption for such use.

(The most recent guidelines for filing exemption petitions are contained in the regulations issued November 30, 1981, (46 FR 59822, December 7, 1981). They define (1) MFBI, electric powerplant, cogeneration and other pertinent terms (Part 500); (2) describe the prohibitions applicable to new powerplants and MFBI's and set forth eligibility and evidentiary requirements for obtaining exemptions from such prohibitions (Part 501); (3) describe the cost calculation required for certain exemptions under FUA (Part 503, Subpart B); (4) prescribe rules relating to exemptions available (Part 504); and (5) provide administrative procedures for applying for exemptions (Part 501). Since the 1981 rulemaking, the administration of the Act has proceeded with a minimum number of amendments and adverse comments from industry.)

The purpose of this notice of proposed rulemaking is threefold. First, the major effect of the FUA amendment is that the Act no longer applies to industrial facilities or non-baseload electric powerplants. Therefore, the ERA is soliciting comments on proposed regulatory language which, when issued in a final document, will bring the regulations into conformity with the legislative changes imposed by Pub. L. 100-42. A method by which electric utilities can use the legislatively initiated alternate fuel capability self-certification provision for new baseload powerplants is also proposed.

Second, ERA seeks public comment on its proposed changes to calculations used for the cost test exemptions. Over the years of administering the provisions of the Act, the ERA has noted that the parameters and methodologies here proposed to be revised have become outdated due to the development of extensive oil/gas fuel switching capability, and by the growing comparability of the prices of low sulfur residual oil and natural gas when these fuels compete in the same market. ERA also proposes to reassess and revise the parameters and indices used in the fuel price computation methodology set forth in Appendix II.

Third, a state-by-state estimate of oil and gas savings which may be expected to be saved per kilowatt hour (kWh) of electricity displaced by cogenerated electricity is offered for comment.

Domestic energy markets have been fundamentally altered since the 1978 enactment of FUA. Phased decontrol of natural gas has resulted in a significant surplus of natural gas available to the interstate market. In addition, the use of natural gas in new electric powerplants can enable utilities to make cost-effective decisions on future capacity. It also provides potential new markets for domestic oil and gas producers.

The amended FUA offers added flexibility to utilities while preserving the "coal option" for new baseload electric powerplants. This is accomplished by repeal of the prohibition against the use of oil or gas contained in section 201 of the original statute, and substitution of a requirement that new baseload powerplants be capable of using coal or another alternate fuel as a primary energy source. Utilities which do not wish to construct "alternate fuel capable" units may still petition for exemptions, as provided by the 1978 Act.

During the past two years, the ERA has seen a very significant increase in the number of exemption petitions and certifications filed by owners/operators of gas-fired combine cycle units. These new high efficiency combined-cycle powerplants may be the technology of choice for future capacity additions. Such capacity can be added more rapidly and in smaller increments than direct coal-fired capacity, which results in significant savings to consumers during construction. Subsequently, if economic conditions warrant, a coal gasifier could be added to such plants, either on- or off-site, to produce clean synthetic coal gas that could be used in the combined-cycle powerplant.

Advances in gas combustion turbine technology have made it possible for powerplant owner/operators to install efficient gas turbines that could be altered at a later date if a decision were then made to add a gasifier to run the combustion turbine on clean, medium-Btu synthetic gas derived from coal. This type of combustion turbine is, for purpose of the amended Act, "alternate fuel capable"; that is, the turbine itself can be altered to a later date by installing different tubing, nozzles, ducts, vanes, etc., so that it is capable of handling the larger volumes of medium-Btu coal gas.

Changes in energy markets and the convergence of the per million Btu cost of low sulfur residual oil and natural gas have also caused the parameters and methodologies used in the FUA cost test regulations to become outdated and in need of change. These changes, particularly as they pertain to the fuel price computation set forth in Appendix II to Part 504 and referenced in § 503.6, stimulated the ERA's effort to reexamine the methodology of this computation. Further, the National Coal Association (NCA) specifically requested ERA commence a rulemaking to revise the indices contained in Appendix II. The NCA asserts that the indices used in the fuel price computation required for exemption purposes are outdated and inaccurate, and that reliance on them would neither appropriately reflect present fuel price patterns nor provide a suitable basis for reasonable fuel price projections. In addition, ERA has found that currently available data indicate that a substantially close pricing relationship has developed between imported petroleum and natural gas in the competitive industrial markets. Such a relationship did not exist when the initial criteria for the fuel price computation were adopted. This parity of pricing has persuaded ERA to consider simplifying the cost exemption requirements by permitting cost comparisons to be made between coal and the actual fuel(s) a petitioner proposes to use, and to reassess and revise the parameters and indices used in the fuel price computation methodology set forth in Appendix II.

II. Proposals

Major substantive changes to the regulations are described below.

A. General

1. Industrial Facilities

Throughout these regulations, the ERA proposes to remove all reference to new or existing major fuel burning installations, installations, MFBI, process life, and refinery operations.

2. Powerplants

ERA proposes to remove all reference to intermediate load and peakload powerplants. However, it should be noted that the 1987 FUA amendments did not affect the status of cogenerating "industrial" facilities which qualify as powerplants under the Act. If more than half of the electricity generated by such a facility is sold, it qualifies as a powerplant, and is subject to the prohibitions contained in the Act.

B. Definitions (Part 500)

1. Capability to Use Alternate Fuel

An important element of the recent FUA amendments was the redefining of a unit's coal or alternate fuel capability. Under the current rules a new facility is coal or alternate fuel capable if it has the ability to physically sustain combustion of an alternate fuel, and, if adequate space exists for appropriate pollution control or fuel handling equipment for the use of the alternate fuel. In addition, the alternate fuel must be available to the operator when the facility becomes operational.

The definition proposed herein is taken from the FUA amendment. A powerplant is now to be considered alternate fuel capable if it has the inherent design characteristics to permit the *addition of equipment* (including pollution devices) to render the unit coal or alternate fuel capable, *and* if it is not physically, structurally, or technologically precluded from using coal or another alternate fuel as its primary energy source.

This "coal capability" is not to be interpreted to mean that the unit is capable of using coal or another alternate fuel on its initial day of operation.

Example: A natural gas fired combined-cycle cogeneration facility would be considered "coal capable" if the unit were physically, structurally, and technically capable of being modified at a future date to burn an alternate fuel, such as gasified coal.

2. Various definitions are deleted or changed to conform with the provisions of the FUA amendments. In most cases, this involves changes or deletions associated with industrial facilities, and intermediate load and peakload powerplants.

C. Administrative Procedures and Sanctions (Part 501)

Part 501 has been simplified and, where appropriate, certain sections of the current rules have been consolidated or combined to eliminate provisions or requirements which are repetitious or which experience has shown to be unnecessary.

1. General Provisions (Subpart A)

In § 501.6, ERA proposes to remove the requirement that orders, notices, or other documents be served by certified mail.

For exemption requests, the ERA proposes to retain its requirement that an original and fourteen (14) copies of the request be filed. However, ERA will require only an original and three (3) copies of certification requests.

The ERA is proposing to remove the procedures for determining the commercial unmarketability of fuels. This language related mainly to industrial facilities no longer subject to FUA. Since FUA's 1978 enactment, no electric powerplant has submitted a request that the fuel consumed by the powerplant be determined to be commercially unmarketable and therefore an "alternate fuel".

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ERA has proposed to add a subparagraph (b) to § 501.9 (Effective date of orders or rules) taken from the amended Act which requires that, for purposes of section 201 of the Act, no order issued by ERA will take effect until all approvals required by State regulatory authorities relating to the construction of such facilities have been obtained.

The addresses for the filing of documents and the location of the public reading room for reviewing or copying documents have been updated.

2. Exemptions and Certifications (Subpart F)

The FUA amendments provide for a certification procedure to meet the alternate fuel capability requirement of the new section 201(a). Section 501.61 of these proposed rules implements that provision by requiring that the following information be submitted in addition to the alternate fuel certification signed by a duly authorized representative of the company: (1) A description of the planned facility including the size of the proposed unit(s) and process used (combined-cycle, simple-cycle, etc.), (2) the owner/operator of the facility, and (3) the facility's location. For cogeneration facilities filing self-certifications, the document is to include the name of the utility that will be purchasing the generated electricity.

D. Cogeneration Oil/Gas Savings (Part 503)

The ERA is proposing to replace a table of estimated regional oil and gas savings attributable to electricity backed off the grid by cogeneration with a comparable table by state. When the regional table was created in 1980 it contained data forecasts for 1988. The proposed table contains current, not projected, data.

E. Cost Calculation and Fuel Price Computations (Appendix II to Part 504)

Under FUA, a facility shall be granted an exemption to use oil or natural gas on the basis of cost when coal or another alternate fuel will not be available at a cost which "based upon the best practicable estimates, does not substantially exceed the cost, as determined by rule by the Secretary, of using imported petroleum * * *" (FUA, sections 211(a), 212(a), 311(a), 312(a), providing cost-based exemptions, and section 103(a)(20), defining "cost").

With respect to the fuel cost components of the cost calculations, the current regulations provide the equations and future fuel price indices for computing the price of delivered fuels over the lifetime of a facility. When an applicant proposes to use natural gas, the regulations require that the fuel cost computation for the proposed fuel must employ the cost of an equivalent energy use of No. 6 residual fuel oil. However, since adoption of the cost calculation regulations, domestic energy prices in general ceased rising and then declined under the impact of declining world petroleum prices, increasing supplies, steady efficiency improvements in energy use, and deregulation of natural gas prices. As a result, earlier projections of future coal and oil prices used for cost comparisons in applications for exemptions are outdated and need revision.

The ERA believes that market forces also have essentially eradicated the earlier price gap that represented the undervaluation of natural gas relative to petroleum when natural gas prices were constrained by binding price ceilings at the wellhead. Therefore, ERA now proposes that the price of the primary fuel to be used in the new facility, either natural gas or petroleum, be used directly in the fuel cost computations.

1. Cost Calculation for Petitions Proposing the Use of Natural Gas

The current requirement is that, for purposes of the cost calculation, natural gas be priced at the Btu equivalent price of No. 6 residual fuel oil. This was adopted originally to avoid biasing the cost comparison between gas and coal by employing an arbitrarily low natural gas price when binding wellhead price ceilings held natural gas prices below the energy-equivalent price of imported petroleum. The ERA now believes that market and regulatory changes have essentially eliminated the former disparity between the prices of oil and natural gas.

The Natural Gas Policy Act of 1978 (NGPA) (15 U.S.C. 717b) decontrolled high cost gas and allowed gradually rising prices for gas developed from "new" sources. Under the NGPA provisions, on January 1, 1985, wellhead price controls were removed from approximately half of all natural gas supplies. Even before partial decontrol, natural gas price increases had dampened, and some decline had begun under the combined pressure of weakening world oil prices, and the increase in domestic competition between oil and natural gas, and among gas suppliers. Under continuous pressure of market forces, natural gas prices continued falling after partial decontrol. The earlier undervaluation of natural gas relative to imported petroleum prices, attributable to wellhead ceiling prices, has vanished. In recent years the price of natural gas at the wellhead has actually declined in response to the decline in the prices of crude oil and its products with which natural gas competes.

Evidence of the changes in oil prices relative to gas prices is clear. The average landed cost of crude oil imports (in current dollars) declined from $36.52 per barrel in 1981 to $13.07 per barrel in October of 1986. The average wellhead price of natural gas, after rising steadily for more than 10 years, peaked at $2.70 per Mcf in June 1984, and fell to $1.54 per Mcf in September of 1986, while the average price delivered to steam-electric utility plants fell from $3.86 per Mcf in July 1984, to $2.12 per Mcf in September 1986. In 1980 and 1981, the delivered price of residual fuel oil to steam-electric utility plants was almost twice that of natural gas on an equivalent energy basis, but in October 1986, the gap had disappeared, with the delivered price of natural gas actually greater by $0.054 per MMBtu.

There is now demonstrated competition between natural gas and residual fuel oil in which many facilities with dual capability switch back and forth between the two fuels based on very small changes in their relative prices. The capability for substitution between the fuels both in the short- and long-run will prevent unconstrained swings in the price of one fuel relative to the other.

The ERA now believes that for electric utility and industrial users, the price of natural gas is no longer artificially too low to permit valid comparisons under FUA and, therefore, the real price of No. 6 residual fuel oil is no longer a necessary surrogate in the fuel price computation for an exemption to use natural gas. Accordingly, the ERA now proposes that a petitioner requesting an exemption to use natural gas should use the price of the fuel that will actually be used rather than price an equivalent energy value of No. 6 residual fuel oil.

As an alternative to this proposal, ERA will consider and requests comments on retaining the current regulations for an exemption requesting permission to use natural gas, although in view of the evidence concerning the radical changes in the domestic energy market the ERA believes this to be an inferior course of action.

2. Fuel Price and Inflation Indices

Under the current regulations, Appendix II—Fuel Price Computations provides the equations and parameters needed to compute the price of delivered fuels and inflation indices used in computing the cost of using an alternate fuel in Parts 503 and 504. Two options are now provided for accounting for the impact of fuel price escalation: Option 1 (paragraph (b)) allows use of the price and inflation indices contained in Tables II–1 and II–2 of Appendix II of the regulations; Option 2 (paragraph (c)) employs an annuity premium added to the price of oil to account for projected escalation in oil prices as compared to changes over time in alternate fuel prices. The ERA proposes the following changes to Option 1, and also proposes to eliminate Option 2.

Proposed Option 1: Appendix II of the regulations (paragraph (a)) indicates that, from time to time, the ERA will change the parameters specified in paragraphs (b)(4) and (c)(4) and in Tables II–1 and II–2. Having noted the substantial changes in energy markets and the economy, the ERA proposes to update the fuel price and inflation indices in these tables. For this purpose, the ERA evaluated the projections made by several forecasters and concluded that the DOE's Energy Information Administration (EIA) base case, or mid-range, forecast is the best practicable estimate.

As this forecast is published annually in the EIA's *Annual Energy Outlook* (AEO), the ERA proposes that the fuel price and inflation indices be updated yearly with the publication of the AEO. However, the relevant set of parameters for a specific petition for exemption will be the set in effect at the time the petition is submitted or the set in effect at the time a decision is rendered, whichever is more favorable to the petitioner.

Forecasts published by the EIA typically extend for approximately 15 years. Therefore, the ERA also is soliciting comments on a proposal to freeze the fuel and inflation indices at the level reached in the final year of the projection and extend them at that level throughout the remaining useful life of the proposed unit. As the ERA is proposing that the petitioner be allowed to compare the cost of coal with the cost of the fuel(s) planned to be used in the unit, the AEO price projections (per million Btu) for distillate oil, low sulfur residual oil, natural gas and steam coal are the relevant fuels to be used in calculating the indices.

The ERA is further proposing that petitioners planning to use more than one fuel in a powerplant compute a weighted average fuel cost for each fuel proposed to be used throughout the life of the unit(s) as described below.

The following is an example of the proposed changes to Option 1:

The equation to use in calculating the annual price index for each fuel (distillate oil, residual oil, natural gas, and steam coal) is:

$$\text{EQ II–1} \qquad PX_i = \frac{P_i}{P_o}$$

where:
PX_i = The fuel price index for each fuel in year i.
P_i = Price of fuel in year i.
P_o = Price of fuel in base year.

The fuel prices P_i and P_o used in equation EQ II–1 are to be taken from the current *Annual Energy Outlook*.

The equation to use in calculating annual inflation indices is:

$$\text{EQ II–2} \qquad IX_i = \frac{GX_i}{GX_o}$$

where:
IX_i = The inflation index for year i.
GX_i = The NIPA GNP price deflator for year i.
GX_o = The NIPA GNP price deflator for the base year.

When computing annual inflation indices, the petitioner is to use the Base Case National Macroeconomic Indicators (NIPA GNP Price Deflator) contained in the EIA's current AEO. If necessary, the petitioner must rebase the projection to the same year used for the fuel price projections. For example, the 1988 AEO projects the price deflator in 1982 dollars; this must be rebased to the year in which the petition is filed. The methodology used to rebase the inflation indices must follow standard statistical procedures and must be fully documented within the petition. This index will remain frozen at the last year of the AEO's projection for the remainder of the unit's useful life.

Using the equations II–1 and II–2 with the 1988 EIS fuel price projections and NIPA GNP price deflators, the following sample fuel price and inflation indices were computed:

Year	Distillate (DPX)	Residual (RPX)	Natural gas (GPX)	Coal (CPX)	Inflation (IX)
1988	1.000	1.000	1.000	1.000	1.000
1989	1.129	1.078	1.040	1.025	1.110
1993	1.458	1.429	1.411	1.087	1.341
1995	1.820	1.818	1.881	1.143	1.587
2000	2.160	2.155	2.257	1.168	1.960
2010	2.160	2.155	2.257	1.168	1.960

When planning to use two or more fuel in the proposed unit(s), the petitioner must use EQ II–3 (found in the regulatory text at the end of this notice) to compute the annual fuel price to each fuel to be burned. The petitioner must also estimate the proportion of each fuel to be burned over the useful life of the unit(s). With these proportions and the annual fuel price for each fuel to be used, the petitioner must compute a weighted average fuel price for each year of the unit(s) operation. The methodology used to calculate the weighted average fuel price must follow standard statistical procedures and be fully documented within the petition.

Proposed Option 2: Since publication of the current regulations (December 7, 1981), the ERA has received petitions for exemptions based on cost for 69 units. An examination of these petitions reveals that none employed the Option 2 fuel price computation provided by paragraph (c).

The ERA believes that since Option 2 has not been used by petitioners and since it is proposing to make Option 1 more reflective of changing energy markets, Option 2 is no longer necessary and should be eliminated. The ERA also is soliciting comments on this proposal.

III. Procedural Matters

A. Written Comments

Interested persons are invited to participate in this proceeding by submitting written data, views, or arguments with respect to the proposed rulemaking to the Office of Fuels Programs, Docket No. ERA R–88–1, Economic Regulatory Administration, Department of Energy, Room 3H–070, 1000 Independence Avenue, SW., Washington, DC 20585. Comments may also be hand-delivered between the hours of 8 a.m. and 4:30 p.m., Monday through Friday.

Comments should be identified on the outside of the envelope and the face of the documents submitted to DOE with the designation "Amendments to FUA Regulations". Fifteen copies should be submitted.

B. Section 102 of the National Environmental Policy Act (NEPA)

The environmental impact of the Fuel Use Act was addressed in the programmatic Environmental Impact Statement (DOE/EIS–0036) published in April 1979. The existing regulations were published on December 7, 1981 (46 FR 59872), after it was determined that those final regulations did not constitute a major federal action significantly affecting the human environment.

The proposed changes to the FUA regulations bring the language of the regulations into line with the amended FUA regarding the fuel price and inflation indices used in the cost

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calculations for an exemption, and change the fuel pricing formula when it is proposed to burn natural gas in a powerplant. Since this NOPR addresses the applicability of the FUA to all but baseload powerplants and updates certain computational parameters and pricing formulas, already evaluated in the programmatic EIS, the environmental impact of the proposed amendments falls within the scope of the previous EIS and its implementing rules. Thus, these amendments do not constitute a major federal action significantly affecting the human environment and neither an environmental assessment nor a supplemental to the existing EIS is required.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601 (September 19, 1980)) requires the DOE to describe the economic impact that a proposed rule would have on small entities or to certify that the rule would not have a significant economic impact on a substantial number of small entities.

Since the proposed rules reflect a reduction in the universe affected by the FUA and only change certain parameters already defined in the existing regulations, the DOE has determined that this proposed rule will not negatively impact firms that are "small entities" within the meaning of the Regulatory Flexibility Act. Accordingly, the DOE certifies that this proposed rule is not likely to have a significant impact on a substantial number of small entities within the meaning of that Act.

D. Executive Order 12291

Executive Order 12291 (46 FR 13193, February 19, 1981) requires an agency to prepare a regulatory impact analysis for any proposed major rule. At the time the existing regulations were published, the Office of Management and Budget waived the requirements of sections 3, 4, and 7 of Executive Order 12291 as they pertain to those regulations. Since this proposed rule reduces the universe affected by FUA and would change only a small portion of the existing regulations, no regulatory impact analysis has been prepared.

Pursuant to section 3(c)(3) of Executive Order 12291, this proposed rulemaking was submitted to the Office of Management and Budget for review at least 10 days prior to publication in the Federal Register.

E. Paperwork Reduction Act of 1980

The information collection requirements contained in 10 CFR Parts 500, 501, 503, and 504 of the existing regulations have received Office of Management and Budget (OMB) approval under control number 1903-0075. The information collection requirements contained in 10 CFR Parts 503 and 504 of the proposed regulations will be sent to the OMB for review under the provisions of the Paperwork Reduction Act of 1980, as amended (Pub. L. 96-511). As required, specific information regarding the collection requirements is provided below. This request, known as "A Revision to the Regulations Implementing the Powerplant and Industrial Fuel Use Act of 1978," proposes to: (1) Incorporate Congressional amendments to certain FUA sections into the regulations; (2) revise and update the fuel price and inflation indices used in the cost test calculations supporting exemptions based on the lack of alternate fuel at a cost which does not substantially exceed the cost of using imported petroleum; and (3) clarify how to calculate the fuel price when a petitioner proposes to burn natural gas by permitting the petitioner to use the price of natural gas directly or, alternatively, to use the price of an equivalent Btu value of low sulfur, No. 6, residual fuel oil for the required price computation. These changes are necessary to assure that data submitted under FUA rules are presented in a more useful format. Owners or operators of baseload powerplants must submit the information required in this regulation in order to obtain an exemption from the FUA. The total annual burden estimate on respondents for the information collection requirement of this proposed rule is 20 hours.

List of Subjects in 10 CFR Parts 501, 502, 503, and 504

Business and industry, Electric power plants, Energy conservation, Natural gas, Petroleum, Reporting and recordkeeping requirements.

In consideration of the foregoing, Chapter II, Title 10 of the Code of Federal Regulations is proposed to be amended as set forth below.

Issued in Washington, DC on January 17, 1989.

Chandler L. Van Orman,

Administrator, Economic Regulatory Administration.

For reasons set out in the preamble, Parts 500, 501, 503, 504, 508, and 516 of Chapter II, Title 10 of the Code of Federal Regulations are proposed to be amended as follows.

PART 500—DEFINITIONS

1. The authority citation for Part 500 is revised to read as follows:

Authority: Department of Energy Organization Act, Pub. L. 95-91, 91 Stat. 565 (42 U.S.C. 7101 *et seq.*); Powerplant and Industrial Fuel Use Act of 1978, Pub. L. 95-620, 92 Stat. 3289 (42 U.S.C. 8301 *et seq.*); Energy Security Act, Pub. L. 96-294, 94 Stat. 611 (42 U.S.C. 8701 *et seq.*); E.O. 1209, 42 FR 46267, September 15, 1977.

§ 500.2 [Amended]

2. By revising the definitions of "action" in § 500.2 to read as follows:

* * * * *

"Action" means a prohibition by rule or order, in accordance with sections 301 (b) and (c) of FUA; any order granting or denying an exemption in accordance with sections 211, 212, 311, and 312 of FUA; a modification or rescission of any such order, or rule; an interpretation; a notice of violation; a remedial order; and interpretive ruling; or a rulemaking undertaken by DOE.

* * * * *

3. By revising the definition of "Capability to use alternate fuel" in § 500.2 to read as follows:

* * * * *

"Capability to use alternate fuel," for the purposes of Title II prohibitions relating to construction of new powerplants, means the powerplant to be constructed:

(1) Has sufficient inherent design characteristics to permit the addition of equipment (including all necessary pollution devices) necessary to render such electric powerplant capable of using coal or another alternate fuel as its primary energy source; and

(2) Is not physically, structurally, or technologically precluded from using coal or another alternate fuel as its primary energy source.

Capability to use coal or another alternate fuel shall not be interpreted to require any such powerplant to be immediately able to use coal or another alternate fuel as its primary energy source on its initial day of operation.

* * * * *

4. By adding the definition of "Certification" in § 500.2 to read as follows:

* * * * *

"Certification" means that document, signed by an official of the company, notorized, and submitted to DOE, which declares that a new powerplant will have the "capability to use alternate fuel" (as defined herein).

* * * * *

5. By revising the definition of "cogeneration facility" in § 500.2 to read as follows:

* * * * *

"Cogeneration facility" means an electric powerplant that produces:

(1) Electric power; and

(2) Any other form of useful energy (such as steam, gas or heat) that is, or will be used, for industrial, commercial, or space heating purposes. In addition, for purposes of this definition, electricity generated by the cogeneration facility must constitute more than five (5) percent and less than ninety (90) percent of the useful energy output of the facility.

Note.—Any cogeneration facility selling or exchanging less than fifty percent (50%) of the facility's generated electricity is considered an industrial cogenerator and is exempt from the fuel use prohibitions of FUA.

* * * * *

6. By revising the definition of "combined cycle unit" in § 500.2 to read as follows:

* * * * *

"Combined cycle unit" means an electric power generating unit that consists of a combination of one or more combustion turbine units and one or more steam turbine units with a substantial portion of the required energy input of the steam turbine unit(s) provided by the exhaust gas from the combustion turbine unit(s). Substantial amounts of supplemental firing for a steam turbine or waste heat boiler to improve thermal efficiency will not affect a unit's classification as a combined cycle unit.

* * * * *

7. By revising the definition of "Costs" in § 500.2 to read as follows:

* * * * *

"Cost" means total costs, both operating and capital, incurred over the estimated remaining useful life of an electric powerplant, discounted to the present, pursuant to rules established in Parts 503 and 504 of these regulations.

* * * * *

8. By revising the definition of "Design capability" in § 500.2 to read as follows:

* * * * *

"Design capability" defined in section 103(a)(7) of FUA, shall be determined as follows:

(1) *Boiler and associated generator turbines.* The design fuel heat input rate of a steam-electric generating unit (Btu/hr) shall be the product of the generator's nameplate rating, measured in kilowatts, and 3412 (Btu/kWh), divided by the overall boiler-turbine-generator unit design efficiency (decimal); or if the generator's nameplate does not have a rating measured in kilowatts, the product of the generator's kilovolt-amperes nameplate rating, and the power factor nameplate rating; and 3412 (Btu/kWh), divided by the boiler turbine-generator unit's design efficiency (decimal). (The number 3412 converts kilowatt-hours (absolute) into Btu's (mean).)

(2) *Combustion turbine and associated generator.* The design fuel heat input rate of a combustion turbine (Btu/hr) shall be the product of its nameplate rating, measured in kilowatts, and 3412 (Btu/kWh), divided by the combustion turbine-generator unit's design efficiency (decimal), adjusted for peaking service at an ambient temperature of 59 degrees Fahrenheit (15 degrees Celsius) at the unit's elevation. (The number 3412 converts kilowatt-hours (absolute) into Btu's (mean).)

(3) *Combined cycle unit.* The design fuel heat input rat of a combined cycle unit (Btu/hr) shall be the summation of the product of its generator's nameplate rating, measured in kilowatts, and 3412 (Btu/kWh), divided by the overall combustion turbine-generator unit's efficiency (decimal), adjusted for peaking service at an ambient temperature of 59 degrees Fahrenheit (15 degrees Celsius) and at the unit's evaluation, plus the product of the maximum fuel heat input to any supplemental heat recovery steam generator/boiler in gallons or pounds per hour and the fuel's heat content. If the generator's nameplate does not have a rating measured in kilowatts, the product of the generator's kilowatt-amperes nameplate rating and power factor nameplate rating must be substituted for kilowatts. (The number 3412 converts kilowatt-hours (absolute) into Btu's (mean).)

* * * * *

9. By removing the definitions of "Existing major fuel burning installation", "Installation", "Major fuel burning installation", "New major fuel burning installation", and "MFBI" from § 500.2.

10. By removing the definition of "Intermediate load powerplant" and "Peakload powerplant" from § 500.2.

11. By revising the definition of "Nonboiler" in § 500.2 to read as follows:

* * * * *

"Nonboiler" means any powerplant which is not a boiler and consists of either a combustion turbine unit or combined cycle unit.

* * * * *

12. By revising the definition of "Primary energy source" in § 500.2 to read as follows:

* * * * *

"Primary energy source" means the fuel or fuels used by any existing or new electric powerplant except:

(1) Minimum amounts of fuel required for unit ignition, startup, testing, flame stabilization, and control uses. ERA has determined that, unless need for a greater amount is demonstrated, twenty-five (25) percent of the total annual Btu heat input of a unit shall be automatically excluded under this paragraph.

(2) Minimum amounts of fuel required to alleviate or prevent:

(i) Unanticipated equipment outages as defined in § 501.191 of these regulations; and

(ii) Emergencies directly affecting the public health, safety, or welfare that would result from electric power outages as defined in § 501.191 of these regulations.

Note.—(1) Any fuel excluded under the provisions of paragraph (1) of this definition is in addition to any fuel authorized to be used in any order granting a fuel mixtures exemption under Parts 503 and 504 of these rules. The exclusion of fuel under paragraph (1), together with the authority for such additive treatment, shall apply to any jurisdictional facility, regardless of whether or not it had received an order granting an exemption as of the date these rules are promulgated.

(2) If an auxiliary unit to an electric powerplant consumes fuel only for the auxiliary functions of unit ignition, startup, testing, flame stabilization, and other control uses, its use of minimum amounts of natural gas or petroleum is not prohibited by FUA. The measurement of such minimum amounts of fuel is discussed in *Associated Electric Cooperative*, et al., Interpretation 1980-42 (45 FR 82572, Dec. 15, 1980).

* * * * *

13. By revising the definition of "Prohibition Order" in § 500.2 to read as follows:

* * * * *

"Prohibition order" means:

(1) An order issued pursuant to section 301(b) of the Act that prohibits a powerplant from burning natural gas or petroleum as its primary energy source; or

(2) An order issued pursuant to section 301(c) of the Act that prohibits excessive use of natural gas or petroleum in mixtures burned by a powerplant as its primary energy source.

* * * * *

14. By revising the definition of "Rated capacity" in § 500.2 to read as follows:

* * * * *

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"Rated capacity" for the purpose of determining reduction in the rated capacity of an existing powerplant, means design capacity, or, at the election of the facility owner or operator, the actual maximum sustained energy output per unit of time that could be produced, measured in power output, expressed in kilowatts, per unit of time.

* * * * *

15. By revising the definition of "Reconstruction" in § 500.2 to read as follows:

* * * * *

"Reconstruction" means the following:

(1) Except as provided in paragraph (2) of this definition, reconstruction shall be found to have taken place whenever the capital expenditures for refurbishment or modification of an electric powerplant on a cumulative basis for the current calendar year and preceding calendar year, are equal to or greater than fifty (50) percent of the capital costs of an equivalent replacement unit of the same capacity, capable of burning the same fuels.

(2) Notwithstanding paragraph (1) of this definition, reconstruction shall not be found to have taken place whenever:

(i) The capital expenditures for refurbishment or modification of an electric powerplant, on a cumulative basis for the current calendar year and preceding calendar year, are not greater than eighty (80) percent of the capital costs of an equivalent replacement unit of the same capacity, capable of burning the same fuels and the unit, as refurbished or modified, will not have a greater fuel consumption capability than the unit it replaces;

(ii) The unit being refurbished or modified was destroyed, in whole or substantial part, in a plant accident and the unit, as refurbished or modified, will not have a greater fuel consumption capability than the unit it replaces; or

(iii) Refurbishment or modification of the unit is undertaken primarily for the purpose of increasing fuel burning efficiency of the unit, and will not result in:

(A) Increased remaining useful plant life, or

(B) Increased total annual fuel consumption.

* * * * *

16. By removing the definition of "Refinery operation" from § 500.2.

17. By revising the definition of "Site limitation" in § 500.2 to read as follows:

* * * * *

"Site limitation" means a specific physical limitation associated with a particular site that relates to the use of an alternate fuel as a primary energy source for the powerplant such as:

(1) Inaccessibility to alternate fuels;

(2) Lack of transportation facilities for alternate fuels;

(3) Lack of adequate land for facilities for the handling, use and storage of alternate fuels;

(4) Lack of adequate land or facilities for the control or disposal of wastes from such powerplant, including lack of land for pollution control equipment or devices necessary to assure compliance with applicable environmental requirements; and

(5) Lack of an adequate and reliable supply of water, including water for use in compliance with applicable environmental requirements.

* * * * *

Part 501 is proposed to be amended as follows:

PART 501—[AMENDED]

1. The authority citation for Part 501 is revised to read as follows:

Authority: Department of Energy Organization Act, Pub. L. 95-91, 91 Stat. 565 (42 U.S.C. 7101 *et seq.*); Powerplant and Industrial Fuel Use Act of 1978, Pub. L. 95-620, 92 Stat. 3289 (42 U.S.C. 8301 *et seq.*); Energy Security Act, Pub. L. 96-294, 94 Stat. 611 (42 U.S.C. 8701 *et seq.*); E.O. 12009, 42 FR 46267, September 15, 1977.

§ 501.2 [Amended]

2. By removing the reference "and MFBI's" in § 501.2(a).

3. By revising § 501.6 to read as follows:

§ 501.6 Service.

(a) DOE will serve all orders, notices interpretations or other documents that it is required to serve, personally or by mail, unless otherwise provided in these regulations.

(b) DOE will consider service upon a petitioner's duly authorized representative to be service upon the petitioner.

(c) Service by mail is effective upon mailing.

4. By removing § 501.7(a)(12).

5. By redesignating § 501.7(a)(13) as § 501.7(a)(12).

6. By revising § 501.7(b) as follows:

§ 501.7 [Amended]

* * * * *

(b) *Number of documents to be filed.* (1) A petitioner must file an executed original and fourteen (14) copies of all exemption requests submitted to ERA. For certification requests, an original and three (3) copies shall be submitted.

(2) Where the petitioner requests confidential treatment of some or all of the information submitted, an original and eleven (11) copies of the confidential document and three (3) copies of the document with confidential material deleted must be filed.

7. By revising § 501.9 as follows:

§ 501.9 Effective date of orders or rules.

(a) When ERA issues a rule or order imposing a prohibition or granting an exemption (or permit) under FUA, the rule or order will be effective sixty (60) days after publication in the **Federal Register**, unless it is stayed, modified, suspended or rescinded.

(b) If the appropriate State regulatory authority has not approved a powerplant for which a petition or certification has been filed, such exemption, to the extent it applies to the prohibition under section 201 of FUA shall not take effect until all approvals required by such State regulatory authority which relate to construction have been obtained.

8. By revising § 501.10 to read as follows:

§ 501.10 Order of precedence.

If there is any conflict or inconsistency between the provisions of this part and any other provisions or parts of this chapter, except for general procedures which are unique to Part 515 of this chapter, the provisions of this part will control with respect to procedure.

9. By revising § 501.11 to read as follows:

§ 501.11 Address for filing documents.

Send all petitions and written communications to the following address: Economic Regulatory Administration, Office of Fuels Programs, Coal and Electricity Division, Mail Code RG-22, 1000 Independence Avenue, SW., Washington, DC 20585.

10. By revising § 501.12 to read as follows:

§ 501.12 Public files.

DOE will make available at the Freedom of Information reading room, Room 1E190, 1000 Independence Avenue, SW., Washington, DC for public inspection and copying any information required by statute and any information that ERA determines should be made available to the public.

11. By revising § 501.14 to read as follows:

§ 501.14 Notice to Environmental Protection Agency.

A copy of any proposed rule or order that imposes a prohibition, order that imposes a prohibition, or a petition for an exemption or permit, shall be transmitted for comments, if any, to the Administrator and the appropriate Regional Administrator of the Environmental Protection Agency (EPA). The Administrator of EPA shall be given the same opportunity to comment and question as is given other interested persons.

12. By revising § 501.31(a) to read as follows:

§ 501.13 Written comments.

(a) *New facilities.* Except as may be provided elsewhere in this regulations, ERA shall provide a period of at least forty-five (45) days, commencing with publication of the Notice of Acceptance of Petition, or in the case of certification exemptions, Notice of Acceptance and availability of Certification, in the **Federal Register** in accordance with § 501.63(a), for submission of written comments concerning a petition for an exemption. Written comments shall be made in accordance with § 501.7.

* * * * *

13. By revising § 501.33(a) to read as follows:

§ 501.33 Request for a public hearing.

(a) *New facilities.* In the case of a petition for an exemption under Title II of FUA, any interested person may submit a written request that ERA convene a public hearing in accordance with section 701 of FUA no later than forty-five (45) days after publication of either the Notice of Acceptance of a petition, or in the case of a certification exemption, the publication of the Notice of Acceptance of Certification. This time period may be extended at the discretion of ERA.

* * * * *

14. By revising § 501.35(b) to read as follows:

§ 501.35 Public file.

* * * * *

(b) *Availability.* The public file shall be available for inspection at Room 1E190, 1000 Independence Avenue, SW., Washington, DC. Photocopies may be made available, on request. The charge for such copies shall be made in accordance with a written schedule.

15. By revising § 501.51 (a), (b)(2) and (3), (d)(2)(ii), and (3) to read as follows:

§ 501.51 Prohibitions by order—existing major fuel-burning installations and electing powerplants.

(a) ERA may prohibit by order the use of petroleum or natural gas as a primary energy source or in amounts in excess of the minimum amount necessary to maintain reliability of operation consistent with reasonable fuel efficiency in an electing powerplant, if:

(1) That facility has not been identified as a member of a category subject to a final rule at the time of the issuance of such order; and

(2) The requirements of § 504.6 have been met.

(b) * * *

(2) Pursuant to section 701 of FUA, prior to the issuance of a final order to an electing powerplant, ERA shall publish a proposed order in the **Federal Register** together with a statement of the reasons for the order. In the case of a proposed order that would prohibit the use of petroleum or natural gas as a primary energy source, the finding required by former section 301(b)(1) of the Act shall be published with such proposed order.

(3) ERA shall provide a period for the submission of written comments of at least three months after the date of the proposed order. During this period, the recipient of the proposed order and any other interested person must submit any evidence that they have determined at that time to support their respective positions as to each of the findings that ERA is required to make under former section 301(b) of the Act. A proposed order recipient may submit additional new evidence at any time prior to the close of the public comment period which follows publication of the Tentative Staff Analysis or prior to the close of the record of any public hearing, whichever occurs later. A request by the proposed order recipient for an extension of the three-month period may be granted at ERA's discretion.

* * * * * * *

(d) * * *

(2) * * *

(ii) Sufficient information for ERA to make the findings required by former section 301(b) of FUA.

(3) If ERA determines to accept the request, ERA shall publish a proposed order in the **Federal Register** together with a statement of the reasons for the order.

§ 501.56 [Removed and reserved]

16. By removing and reserving § 501.56.

17. The heading for Subpart F is revised to read as follows:

Subpart F—Exemptions and Certifications

18. By revising § 501.60(a)(1), (2), and (3) to read as follows:

§ 501.60 Purpose and scope.

(a)(1) If the owner or operator plans to construct a new baseload powerplant and the unit will not be in compliance with the prohibition contained in section 201(a) of FUA, this subpart establishes the procedures for filing a petition requesting a temporary or permanent exemption under, respectively, sections 211 and 212 of FUA.

(2) Self-certification alternative. If the owner or operator plans to construct a new baseload powerplant and the unit will be in compliance with the prohibitions contained in section 301(a) of FUA, this subpart establishes the procedures for the filing of a self-certification under section 201(d) of FUA.

(3) If the petitioner owns, operates or controls a new powerplant, this subpart provides the procedures for filing a petition requesting extension of a temporary exemption granted under sections 211 or 311 of FUA.

* * * * *

19. By adding a new § 501.61 to read as follows:

§ 501.61 Certification contents.

(a) A self-certification filed under section 201(d) of FUA should include the following information:

(1) Owner name and address.

(2) Operators name and address.

(3) Plant location and address.

(4) Plant configuration (combined cycle, simple cycle, topping cycle, etc.)

(5) Design capacity in megawatts (MW).

(6) Name of utility purchasing electricity from the proposed facility and percent of total output to be sold.

(7) Date unit is expected to be placed in service.

(8) Certification by an officer of the company or his designated representative certifying that the proposed facility:

(i) Has sufficient inherent design characteristics to permit the addition of equipment (including all necessary pollution devices) necessary to render such electric powerplant capable of using coal or another alternate fuel as its primary energy source; and

(ii) Is not physically, structurally, or technologically precluded from using coal or another alternate fuel as its primary energy source.

(b) A self-certification filed pursuant to § 501.61(a) shall be effective to establish compliance with the requirement of section 201(a) of FUA as of the date filed.

(c) ERA will publish a notice in the **Federal Register** within fifteen days reciting that the certification has been filed.

(d) ERA will notify the owner or operator within 60 days if supporting documentation is needed to verify the certification.

20. By revising § 501.63(a)(2) to read as follows:

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§ 501.63 Notice of the commencement of an administrative proceeding on an exemption petition.

(a) • • •

(2) ERA will notify the appropriate State agency having apparent primary authority to permit or regulate the construction or operation of a powerplant that an exemption proceeding has commenced and will consult with this agency to the maximum extent practicable. Copies of all accepted petitions also will be forwarded to ERA, as provided in § 501.14(a).

• • • • •

21. By revising § 501.65 to read as follows:

§ 501.65 Publication of notice of availability of draft EIS.

A Notice of Availability of any draft EIS will be published in the Federal Register and comments thereon will also be solicited. Interested persons may request a hearing on any draft EIS. Such hearing must be requested within thirty (30) days of publication of the Notice of Availability of the draft EIS.

22. By revising § 501.66(d) to read as follows:

§ 501.66 Decision and order.

• • • • •

(d) ERA may design any terms and conditions included in any temporary exemption issued or extended under section 211 of FUA, to ensure, among other things, that upon expiration of the exemption the persons and powerplant covered by the exemption will comply with the applicable prohibitions under FUA. For purposes of the provision, the subsequent grant of a permanent exemption to the subject unit shall be deemed compliance with applicable prohibitions.

23. By revising § 501.103(c) to read as follows:

§ 501.103 ERA decision.

• • • • •

(c) ERA will serve the rule or order granting or denying the request for modification or rescission upon the requester, or, if the action was initiated by ERA, upon the owner or operator of the affected powerplant. ERA will publish a notice of the issuance of a rule or order modifying or rescinding a rule or order in the Federal Register.

24. By revising § 501.190 to read as follows:

§ 501.190 Purpose and scope.

(a) If a person operates a powerplant covered by any of the prohibitions of Titles II, III, or IV of FUA, § 501.191 of this subpart establishes procedures to be followed for the use of minimum amounts of natural gas or petroleum under FUA section 103(a)(15)(B) in order to alleviate or prevent unanticipated equipment outages and emergencies directly affecting the public health, safety, or welfare that would result from electric power outages.

(b) *Explanatory note:* If a person operates a rental boiler as a powerplant covered by any of the prohibitions of Titles II, III, or IV of FUA, he may be able to use the provisions of this subpart for the emergency use of natural gas or petroleum.

25. By revising § 501.191(a) to read as follows:

§ 501.191 Use of natural gas or petroleum for certain unanticipated equipment outages and emergencies defined in section 103(a)(15)(B) of the act.

(a) In the event of the occurrence or imminent occurrence of an emergency, or of the occurrence or imminent occurrence of an unanticipated equipment outage in the unit, an owner or operator of a powerplant is automatically permitted to use the minimum amounts of natural gas or petroleum in the unit or in a substitute unit to prevent or alleviate the outage or to prevent or alleviate the emergency if he complies with procedures contained in paragraph (b) of this section.

• • • • •

§ 501.192 [Removed and Reserved]

26. By removing and reserving § 501.192.

Part 503 is proposed to be amended as follows:

PART 503—NEW FACILITIES

1. The authority citation for Part 503 is revised to read as follows:

Authority: Department of Energy Organization Act, Pub. L. 95-91, 91 Stat. 565 (42 U.S.C. 7101 *et seq.*); Powerplant and Industrial Fuel Use Act of 1978, Pub. L. 95-620, 92 Stat. 3289 (42 U.S.C. 8301 *et seq.*); Energy Security Act, Pub. L. 96-294, 94 Stat. 611 (42 U.S.C. 8701 *et seq.*); E.O. 1209, 42 FR 46267, September 15, 1977.

2. By revising the heading of Subpart A to read as follows:

SUBPART A—GENERAL PROHIBITION

3. By revising § 503.1 to read as follows:

§ 503.1 Purpose and scope.

This subpart sets forth the statutory prohibition imposed by the Act upon new powerplants. The prohibition in the subpart applies to all new baseload electric powerplants unless an exemption has been granted by ERA under Subparts C and D of this part. Any person who owns, controls, rents, leases or operates a new powerplant which is subject to the prohibition may be subject to sanctions provided by the Act or these regulations.

4. By revising § 503.2 to read as follows:

§ 503.2 Prohibition.

Section 201 of the Act prohibits, unless an exemption has been granted under Subpart C or D of this part, any new electric powerplant from being constructed or operated as a baseload powerplant without the capability to use coal or another alternate fuel as a primary energy source.

§ 503.3 [Removed and Reserved]

5. By removing and reserving § 503.3.

6. By removing the footnotes and revising the definition for "IX_t" in § 503.6(b)(4) and by revising (d)(4) to read as follows:

§ 503.6 Cost calculations for new powerplants and installations.

• • • • •

(b) • • •

(4) • • •

IX_t = Inflation index value for year t (see Appendix II to Part 504 for method of computation).

• • • • •

(d) • • •

(4) The discount rate (k) for analyses is 2.9% or that which is computed as specified in Appendix I. The method of computing the inflation index (IX) is shown in Appendix II to Part 504. ERA will modify these specified rates from time to time as required by changed conditions after public notice and an opportunity to comment. However, the relevant set of specified rates for a specific petition for exemption will be the set in effect at the time the petition is submitted or the set in effect at the time a decision is rendered, whichever set is more favorable to the petitioner.

7. By revising § 503.8(a) to read as follows:

§ 503.8 No alternate power supply—general requirement for certain exemptions for new powerplants.

(a) *Application.* To qualify for an exemption except in the case of an exemption for cogeneration units, section 213(c) of the Act requires a demonstration that despite reasonable good faith efforts, there is no alternative supply of electric power available within a reasonable distance at a reasonable cost without impairing short-run or long-run reliability of service. If a petitioner in unable to demonstrate that there is no alternate supply during the

first year of operation, ERA will conclude that the absence of the proposed powerplant will not impair short-term reliability of service, and as a result will not grant the exemption. Such action would not impair long-term reliability of service, since a petition may be submitted for a powerplant that would begin operation in a subsequent year.

• • • • •

8. By revising § 503.9(a) to read as follows:

§ 503.9 Use of mixtures-general requirement for certain permanent exemptions.

(a) *Criteria.* To qualify for a permanent exemption, except in the case of an exemption for fuel mixtures, section 213(a)(1) of the Act requires a demonstration that the use of a mixture of natural gas and petroleum and an alternate fuel for which an exemption under 10 CFR 503.38 (Fuel mixtures) would be available, would not be economically or technically feasible.

• • • • •

9. By revising § 503.10(a) to read as follows:

§ 503.10 Use of fluidized bed combustion not feasible-general requirement for permanent exemptions.

(a) *ERA finding.* Except in the case of an exemption for fuel mixtures, ERA may deny permanent exemptions authorized under section 212 of the Act if ERA finds on a site-specific or generic basis that use of a method of fluidized bed combustion of an alternate fuel is economically and technically feasible.

• • • • •

10. By revising § 503.11(a) to read as follows:

§ 503.11 Alternative sites—general requirement for permanent exemptions for new powerplants.

(a) *Criteria.* To qualify for a permanent exemption for lack of alternate fuel supply, site limitations, environmental requirements, or inadequate capital, section 212(a) of the Act requires a demonstration that one of these exemptions would be available to any reasonable alternative site for the facility.

• • • • •

11. By revising § 503.13(a) introductory text, (a)(1), and (b) to read as follows:

§ 503.13 Environmental impact analysis.

• • • • •

(a) All petitions for permanent exemptions must contain the following information:

(1) A description of the facility, including site location, and surroundings, alternative site(s), the facility's current proposed operations, its fuel capability and its pollution abatement systems and equipment (including those systems and equipment necessary for all fuel scenarios considered);

• • • • •

(b) For exemptions for cogeneration, the information enumerated below is to be submitted in lieu of the information required by paragraph (a) of this section. However, submission of the following information merely establishes a rebuttable presumption that the grant or denial of the exemption would have no significant environmental impact. ERA may, in individual cases, during the course of the administrative proceeding, determine that additional environmental information is required. In such cases, the petitioner will be required to submit the information described in paragraph (a) of this section.

• • • • •

12. By revising § 503.14 to read as follows:

§ 503.14 Fuels search.

Prior to submitting a petition for a permanent exemption for lack of alternate fuel supply, site limitations, inadequate capital, or state or local requirements, a petitioner must perform a fuels search by examining the use of conventional solid coal as a primary energy source at the site under consideration, and at reasonable alternative sites. Where a petitioner believes that its use of such coal would be infeasible, however, and where ERA and the petitioner can reach accord, it may evaluate use of a different alternate fuel in lieu of solid coal. A petitioner of these exemptions must demonstrate for any fuel examined that he would qualify for an exemption.

13. By revising § 503.20(b) to read as follows:

§ 503.20 Purpose and scope.

• • • • •

(b) This subpart establishes the criteria and standards which owners or operators of new powerplants who petition for a temporary exemption must meet to sustain their burden of proof under the Act.

• • • • •

14. By revising § 503.21(a)(4) to read as follows:

§ 503.21 Lack of alternate fuel supply.

• • • • •

(a) • • •

(4) No alternate power supply exists, as required under § 503.8 of these regulations.

• • • • •

§ 503.21 [Amended]

15. By removing § 503.21(c) and by redesignating § 503.21(d) as § 503.21(c).

16. By revising § 503.22(a)(3) to read as follows:

§ 503.22 Site limitation.

(a) • • •

(3) No alternate power supply exists, as required under § 503.8 of these regulations.

• • • • •

17. By revising § 503.23 (b)(8) and (d)(1)(ii) to read as follows:

§ 503.23 Inability to comply with applicable environmental requirements.

• • • • •

(b) • • •

(8) No alternate power supply exists, as required under § 503.8 of these regulations.

• • • • •

(d) • • •

(1) • • •

(ii) No alternate power supply exists, as required under § 503.8 of these regulations.

• • • • •

18. By revising § 503.24(a)(3) to read as follows:

§ 503.24 Future use of synthetic fuels.

(a) • • •

(3) No alternate power supply exists, as required under § 503.8 of these regulations.

• • • • •

19. By revising § 503.25(a)(3) to read as follows:

§ 503.25 Public interest.

(a) • • •

(3) No alternate power supply exists, as required under § 503.8 of these regulations.

• • • • •

20. By revising § 503.31(a) (3) and (5) to read as follows:

§ 503.31 Lack of alternate fuel supply for the first 10 years of useful life.

(a) • • •

(3) No alternate power supply exists, as required under § 503.8 of these regulations;

• • • • •

(5) Alternate sites are not available, as required under § 503.11 of these regulations.

• • • • •

21. By revising § 503.32(a) (3) and (5) to read as follows:

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§ 503.32 Lack of alternate fuel supply at a cost which does not substantially exceed the cost of using imported petroleum.

(a) * * *

(3) No alternate power supply exists, as required under § 505.8 of these regulations.

* * * * *

(5) Alternative sites are not available, as required under § 503.11 of these regulations.

* * * * *

§ 503.32 [Amended]

22. By removing § 503.32(c).

23. By revising § 503.33(a) (2) and (4) to read as follows:

§ 503.33 Site limitations.

(a) * * *

(2) No alternate power supply exists, as required under § 503.8 of these regulations;

* * * * *

(4) Alternative sites are not available, as required under § 503.11 of these regulations.

* * * * *

24. By revising § 503.34(a)(2), (c) (8) and (10), and (d)(1) (ii) and (iii) to read as follows:

§ 503.34 Inability to comply with applicable environmental requirements.

(a) * * *

(2) Reasonable alternative sites, which would permit the use of alternate fuels in compliance with applicable Federal or state environmental requirements, are not available.

* * * * *

(c) * * *

(8) No alternate power supply exists as required under § 503.8 of these regulations;

* * * * *

(10) Alternative sites are not available, as required under § 503.11 of these regulations;

* * * * *

(d) * * *

(1) * * *

(ii) No alternate power supply exists, as required under § 503.8 of these regulations;

(iii) Alternative sites are not available, as required under § 503.11 of these regulations; and

* * * * *

25. By revising § 503.35(a)(2) introductory text, (3), and (5) to read as follows:

§ 503.35 [Amended]

(a) * * *

(2) The additional capital cannot be raised:

* * * * *

(3) No alternative power supply exists, as required under § 503.8 of these regulations;

* * * * *

(5) Alternative sites are not available, as required under § 503.11 of these regulations.

* * * * *

26. By revising § 503.36(a) (4) through (6) and by adding (7) as follows:

§ 503.36 State or local requirements.

(a) * * *

(4) The petitioner is not entitled to an exemption for lack of alternate fuel supply, site limitation, environmental requirements, or inability to obtain adequate capital at the site of the proposed powerplant or at any reasonable alternative site for the alternate fuel(s) considered;

(5) At the proposed site and every reasonable alternative site where the petitioner is not entitled to an exemption for lack of alternate fuel supply, site limitation, environmental requirements, or inability to obtain adequate capital, the petitioner nevertheless would be barred at each such proposed or alternate site from burning an alternate fuel by reason of a State or local requirement;

(6) No alternate power supply exists, as required under § 503.8 of these regulations; and

(7) Use of mixtures is not feasible, as required under § 503.9 of these regulations.

* * * * *

27. By revising § 503.37 to read as follows:

§ 503.37 Cogeneration.

TABLE.—STATE ESTIMATES OF OIL/GAS SAVINGS ATTRIBUTABLE TO ELECTRICITY BACKED OFF THE GRID BY COGENERATION

State name	Oil/gas savings, Btu/kWh
Alabama	800
Arizona	1,000
Arkansas	7,000
California	7,000
Colorado	1,000
Connecticut	7,200
Delaware	4,700
Wash. D.C.	4,700
Florida	8,000
Georgia	800
Idaho	1,000
Illinois	800
Indiana	100
Iowa	800
Kansas	7,000
Kentucky	100
Louisiana	7,000
Maine	7,200
Maryland	4,700

TABLE.—STATE ESTIMATES OF OIL/GAS SAVINGS ATTRIBUTABLE TO ELECTRICITY BACKED OFF THE GRID BY COGENERATION—Continued

State name	Oil/gas savings, Btu/kWh
Massachusetts	7,200
Michigan	800
Minnesota	800
Mississippi	800
Missouri	7,000
Montana	1,000
Nebraska	800
Nevada	7,000
New Hampshire	7,200
New Jersey	4,700
New Mexico	7,000
New York	4,700
North Carolina	800
North Dakota	800
Ohio	100
Oklahoma	7,000
Oregon	7,000
Pennsylvania	4,700
Rhode Island	7,200
South Carolina	800
South Dakota	800
Tennessee	800
Texas	8,000
Utah	1,000
Vermont	7,200
Virginia	800
Washington	7,000
West Virginia	100
Wisconsin	800
Wyoming	1,000

Data are based upon current utility capacity and oil/gas statistics supplied by DOE's Energy Information Administration.

Example: The proposed cogeneration project is located in Mississippi, and would displace one million kilowatt hours (kWh) from the grid each year. To determine oil/gas savings associated with electricity backed off the grid:

1. Locate Mississippi on the above table. The oil/gas savings for Mississippi, according to the table are 800 Btu/kWh.

2. The annual oil/gas savings attributable to electricity backed off the grid by your cogenerator is: 1,000,000 kWh × 800 Btu/kWh = 800,000,000 Btu.

28. By revising § 503.38(a)(3) to read as follows:

§ 503.38 Permanent exemption for certain fuel mixtures containing natural gas or petroleum.

(a) * * *

(3) No alternate power supply exists, as required under § 503.8 of these regulations.

* * * * *

§ 503.38 [Amended]

29. By removing §§ 503.38 (b) and (d), and redesignating §§ 503.38 (c) and (e) as §§ 503.38 (b) and (c), respectively.

§ 503.39 [Removed and Reserved]

30. By removing and reserving § 503.39.

§ 503.40 [Removed and Reserved]

31. By removing and reserving § 503.40.

§ 503.41 [Removed and Reserved]

32. By removing and reserving § 503.41.

§ 503.42 [Removed and Reserved]

33. By removing and reserving § 503.42.

§ 503.43 [Removed and Reserved]

34. By removing and reserving § 503.43.

Part 504 is proposed to be amended as follows:

PART 504—EXISTING POWERPLANTS

1. The authority citation for Part 504 is revised to read as follows:

Authority: Department of Energy Organization Act, Pub. L. 95–91, 91 Stat. 565 (42 U.S.C. 7101 et seq.); Powerplant and Industrial Fuel Use Act of 1978, Pub. L. 95–620, 92 Stat. 3289 (42 U.S.C. 8301 et seq.); Energy Security Act, Pub. L. 96–294, 94 Stat. 611 (42 U.S.C. 8701 et seq.); E.O. 1209, 42 FR 46267, September 15, 1977.

§ 504.1 [Removed and Reserved]

2. By removing and reserving § 504.1.

3. Appendix II to Part 504 is revised to read as follows:

Appendix II to Part 504—Fuel Price Computation

(a) *Introduction.* This appendix provides the equations and parameters needed to specify the price of delivered fuels used in computing the cost of using an imported petroleum (approximated by pricing distillate oil, low sulfur residual oil, or natural gas) and the cost of using an alternate fuel (coal) in Parts 503 and 504 of these regulations. The delivered price of the fuel to be used to calculate delivered fuel expenses must reflect (1) the price of each fuel at the time of the petition; (2) the effects of future real price increases for each fuel; and (3) a substantially exceeds premium. The delivered price of an alternate fuel used to calculate delivered fuel expenses must reflect the petitioner's delivered price of the alternate fuel and the effects of real increases in the price of that alternate fuel. Paragraphs (b), (c), (d) and (e) below provide the procedure to: (1) Account for projected real increases in fuel prices; (2) calculate the inflation index; (3) account for projected real increases in fuel prices when planning to burn more than one fuel; and (4) account for projected real increases in the price of the alternate fuel. Table II–1 of this appendix (See paragraph (b)) contains example fuel price and inflation indices based on the latest data appearing in the Energy Information Administration's (EIA) *Annual Energy Outlook* (AEO).

The fuel price and inflation indices will change yearly with the publication of the *AEO*. Revisions shall become effective after final publication. However, the relevant set of parameters for a specific petition for exemption will be the set in effect at the time the petition is submitted or the set in effect at the time a decision is rendered, whichever is more favorable to the petitioner.

(b) *Computation of Fuel Price and Inflation Indices.* (1) the Petitioner is responsible for computing the annual fuel price and inflation indices by using Equation II–1 and Equation II–2, respectively.

EQ II–1 is:

$$PX_i = \frac{P_i}{P_o}$$

where:

PX_i = The fuel price index for each fuel in year i.

P_i = Price of fuel in year i.

P_o = Price of fuel in base year.

EQ II–2 is:

$$IX_i = \frac{GX_i}{GX_o}$$

where:

IX_i = The inflation index in year i.

GX_i = The NIPA GNP price deflator for year i.

GX_o = The NIPA GNP price deflator for the base year.

(2) The parameters to be used in EQ II–1 are the Base Case fuel price projections found in EIA's current *AEO*.

(3) When computing annual inflation indices, the petitioner is to use the Base Case National Macroeconomic Indicators (NIPA GNP Price Deflator) contained in EIA's current *AEO*. If necessary, the petitioner must rebase the projection to the same year used for the fuel price projections. For example, in 1988 *AEO* projects the price deflator in 1982 dollars; this must be rebased to the year in which the petition is filed. The methodology used to rebase the inflation indices must follow standard statistical procedures and must be fully documented within the petition. This index will remain frozen at the last year of the *AEO*'s projection for the remainder of the unit''(s) useful life.

(4) Table II–1 is provided as an example of the application of equations II–1 and II–2. This table contains annual fuel indices for distillate oil, low sulfur residual oil, natural gas, and coal. It also contains annual inflation indices. These values were computed from information contained in Table A3 and Table A11 of EIA's *Annual Energy Outlook, 1988*.

TABLE II–1.—PRICE AND INFLATION INDICES FOR USE IN THE COST CALCULATIONS

Year	Distillate (DPX)	Residual (RPX)	Natural gas (GPX)	Coal (CPX)	Inflation (IX)
1986	1.000	1.000	1.000	1.000	1.000
1987	1.056	1.024	1.071	1.012	1.030
1988	1.093	1.024	0.984	1.019	1.069
1989	1.129	1.078	1.040	1.025	1.110
1990	1.180	1.135	1.087	1.037	1.157
1991	1.230	1.176	1.130	1.050	1.210
1992	1.326	1.286	1.277	1.066	1.272
1993	1.458	1.429	1.411	1.087	1.341
1994	1.604	1.584	1.581	1.112	1.417
1995	1.725	1.710	1.751	1.130	1.500
1996	1.820	1.816	1.881	1.143	1.587
1997	1.811	1.896	1.996	1.155	1.678
1998	1.986	1.951	2.067	1.161	1.771
1999	2.076	2.069	2.162	1.168	1.864
2000	2.160	2.155	2.257	1.168	1.960
2001	2.160	2.155	2.257	1.168	1.960
2002	2.160	2.155	2.257	1.168	1.960
2003	2.160	2.155	2.257	1.168	1.960
2004	2.160	2.155	2.257	1.168	1.960
2005	2.160	2.155	2.257	1.168	1.960
2006	2.160	2.155	2.257	1.168	1.960
2007	2.160	2.155	2.257	1.168	1.960
2008	2.160	2.155	2.257	1.168	1.960

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TABLE II-1.—PRICE AND INFLATION INDICES FOR USE IN THE COST CALCULATIONS—Continued

Year	Distillate (DPX)	Residual (RPX)	Natural gas (GPX)	Coal (CPX)	Inflation (IX)
2009	2.160	2.155	2.257	1.168	1.960
2010	2.160	2.155	2.257	1.168	1.960

(c) Fuel Price Computation—Single Fuel. (1) The delivered price of the proposed fuel to be burned (FPB_i) must reflect the real escalation rate of the proposed fuel, a substantially exceeds premium, and must be computed with Equation II–3.

EQ II–3 is:

$$FPB_i = MPB\ (PX_i) + PREM$$

where:

FPB_i = Price of the proposed fuel (distillate oil, low sulfur residual oil, or natural gas) in year i.

MPB = The current delivered market price of the proposed fuel.

PX_i = The fuel price index value in year i, computed with Equation II–1.

PREM = A substantially exceeds premium of $1.00 per barrel of oil equivalent ($1.00 per 6.27 MMBTU) added to the price of the fuel to be burned.

(d) *Fuel Price Computation—More Than One Fuel.* When planning to use more than one fuel in the proposed unit(s), the petitioner must use Equation II–1 and Equation II–3 to calculate the annual fuel price of each fuel to be used. The petitioner then must estimate the proportion of each fuel to be burned annually over the useful life of the unit(s). With these proportions and the respective annual fuel prices for each fuel, the petitioner must compute an annual weighted average fuel price. The methodology used to calculate the weighted average fuel price must follow standard statistical procedures and be fully documented within the petition.

(e) *Fuel Price Computation—Alternate Fuel.* The delivered price of alternate fuel (PFA_i) must reflect the real escalation rate of alternate fuel and must be computed with Equation II–4.

ES II–4 is:

$$PFA_i = APF \times APX_i$$

where:

PFA_i = The price of the alternate fuel in year i.

APF = The current market price of the alternate fuel (f.o.b. the facility).

APX_i = The alternate fuel price index value for year i, computed with Equation II–1.

PART 508—[REMOVED]

For the reasons set out in the preamble, Part 508 of Chapter II, Title 10 of the Code of Federal Regulations is proposed to be removed as set forth above.

PART 516—PROHIBITIONS ON SALE AND DIRECT INDUSTRIAL USE OF NATURAL GAS FOR OUTDOOR LIGHTING

For the reasons set out in the preamble, Part 516 of Chapter II, Title 10 of the Code of Federal Regulations is proposed to be removed as set forth above.

[FR Doc. 89-802 Filed 1-24-89; 8:45 am]
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federal register

Wednesday
January 25, 1989

Part III

Department of Health and Human Services

Agency For Toxic Substances and Disease Registry

Health Effects of Medical Waste; Request for Comments and Information

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

Request for Comments and Information on the Health Effects of Medical Waste

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Public Health Service (PHS), Department of Health and Human Services (HHS).

ACTION: Request for comments and information.

SUMMARY: The Agency for Toxic Substances and Disease Registry (ATSDR) is interested in obtaining existing and available information and research findings related to the potential public health effects of medical waste for a report on the health effects of medical waste.

DATE: Comments concerning this notice must be submitted by May 1, 1989.

ADDRESS: Comments or information concerning this announcement, or inquiries about the study, should be submitted to: Dr. Maureen Y. Lichtveld, Chairperson, Medical Waste Group, Office of the Associate Administrator, Agency for Toxic Substances and Disease Registry, Chamblee, F–38, 1600 Clifton Road NE., Atlanta, Georgia 30333, Telephone: (404) 488–4204 or FTS 236–4204.

SUPPLEMENTARY INFORMATION: This study is mandated by section 11009 of the Medical Waste Tracking Act of 1988 (Pub. L. 100–582), which amended the Solid Waste Disposal Act. The Medical Waste Tracking Act states:

Health Impacts Report

Within 24 months after the enactment of this section, the Administrator of the Agency for Toxic Substances and Disease Registry shall prepare for Congress a report on the health effects of medical waste, including each of the following:

(1) A description of the potential for infection or injury from the segregation, handling, storage, treatment, or disposal of medical wastes.

(2) An estimate of the number of people injured or infected annually by sharps and the nature and seriousness of those injuries or infections.

(3) An estimate of the number of people infected annually by other means related to waste segregation, handling, storage, treatment, or disposal, and the nature and seriousness of those infections.

(4) For diseases possibly spread by medical waste, including Acquired Immune Deficiency Syndrome and hepatitis B, an estimate of what percentage of the total number of cases nationally may be traceable to medical wastes.

Medical waste is defined by the Medical Waste Tracking Act as any solid waste (solid, liquid, or gasses phase) which is generated in diagnosis, treatment, or in the production or testing of biologicals. Medical waste does not include any hazardous or household waste listed under the Resource Conservation and Recovery Act (RCRA), and implementing regulations.

ATSDR is soliciting any existing and available relevant information for the preparation of the report on the health effects of medical waste. Specifically, the Agency is requesting any information on the potential for infection or injury from medical waste of health care providers, janitorial workers, refuse workers, sanitation workers, morticians, waste site clean-up (remedial) workers, emergency response personnel (fire and police), and the general public. Sources of generation of medical waste of interest to ATSDR include hospitals, clinics, HMOs, physicians' offices, dentists' offices, medical laboratories, veterinary offices and clinics, biomedical research (academy and industrial) and manufacturing facilities, funeral homes, in-home medical care (e.g. insulin users) and other facilities relevant to the definition of medical waste. In addition to the sources of generation of medical waste, ATSDR solicits relevant information related to the transportation, storage, disposal (incineration, autoclaving, disinfection, landfilling, radiation, and sanitary sewer, etc.), and release to the environment of medical waste. Where available, the information should describe the total study population, rate of injury or infection, how the injury or infection was determined, and how the information was collected. Additionally, the Agency is soliciting any information concerning the number of people injured or infected by sharps annually and the nature and seriousness of those injuries or infections.

Dated: January 18, 1989.

James O. Mason,

Administrator, Agency for Toxic Substances and Disease Registry.

[FR Doc. 89–1565 Filed 1–24–89; 8:45 am]

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Part IV

Environmental Protection Agency

Preliminary Determination To Cancel Registrations of Carbofuran Products; Availability of Technical Support Document and Draft Notice of Intent To Cancel

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ENVIRONMENTAL PROTECTION AGENCY

[OPP-30000/48A; FRL-3509-3]

Preliminary Determination To Cancel Registrations of Carbofuran Products, Availability of Technical Support Document and Draft Notice of Intent To Cancel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of preliminary determination.

SUMMARY: This Notice sets forth EPA's preliminary determination regarding the continued registration of pesticide products containing granular carbofuran and sets forth the Agency's assessment of the risks and benefits associated with the pesticidal uses of granular carbofuran. This Notice announces the Agency's preliminary determination to cancel all registrations of granular carbofuran. In addition, this Notice announces the availability of the Carbofuran Special Review Technical Support Document and the Draft Notice of Intent to Cancel. The Technical Support Document and accompanying scientific reviews constitute the technical documents in support of the action.

DATE: Written comments must be received on or before March 27, 1989.

ADDRESS: Submit three copies of written comments, bearing the document control number "OPP-30000/48A" by mail to:

Public Docket and Freedom of Information Section, Field Operations Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

In person bring comments to: Room 236, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this Notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked CBI may be publicly disclosed by EPA without prior notice to the submitter. The carbofuran public docket, which contains all non-CBI written comments and the correspondence index, will be available for public inspection and copying in Rm. 236 at the Virginia address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: Jay Ellenberger, Special Review Branch, Registration Division (TS-767C), Office of Pesticide Programs, 401 M Street SW., Washington, DC 20460

Office location and telephone number: Room 1006, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-7400).

Copies of the Carbofuran Technical Support Document and draft Notice of Intent to Cancel are available from the contact person at the address given above.

SUPPLEMENTARY INFORMATION: This Notice is organized into six units. Unit I is the Introduction and provides background information related to carbofuran and the initiation of the Special Review of all granular products. The availability of the Technical Support Document and the draft Notice of Intent to cancel are also discussed. Unit II provides discussion of the legal background. Unit III summarizes the avian risk assessment, the benefits assessment, and the risk/benefit analysis. Information related to the hazard to humans from all formulations of carbofuran and its alternatives is also provided. Procedures related to the referral to the U.S. Department of Agriculture and the Scientific Advisory Panel are discussed in Unit IV. This Notice concludes with Units V and VI summarizing the opportunity for public comment and the availability of the public docket, respectively.

I. Introduction

Carbofuran is the common name for 2,3-dihydro-2,2-dimethyl-7-benzofuranyl methylcarbamate. FMC Corporation is the major producer and holds 11 registrations. FMC formulates carbofuran as a 2, 3, 5, 10, and 15 percent active ingredient (ai) granular product. These products include Furadan® 2G, 3G, 5G, 10G, and 15G. FMC also markets a 4 pound ai per gallon flowable formulation, a 75 percent wettable powder; and 75, 85, and 90 percent ai formulation intermediates. At present, the technical formulation is not federally registered. All granular carbofuran products marketed in the United States have been classified for restricted use based on the risk to avian species.

On September 30, 1985, EPA issued a Notice which initiated the Special Review of all granular products containing carbofuran, and which detailed the bases for the Agency's decision. (This document is also referred to as Position Document 1 or PD 1, 50 FR 41938). EPA determined that granular carbofuran products met or exceeded the risk criterion existing at that time for acute avian toxicity described in 40 CFR 162.11(a)(3)(i)(B)(2). This criterion provided that a Special Review shall be conducted if a pesticide "occurs as a residue immediately following application in or on the feed of an avian species, representative of the species likely to be exposed to such feed in amounts equivalent to the average daily intake of such representative species, at levels equal to or greater than the subacute dietary LC_{50} measured in avian test animals as specified in the Registration Guidelines."

The EPA also determined that granular carbofuran met or exceeded the risk criterion existing at that time for population effects described in 40 CFR 162.11(a)(3)(ii)(C). This criterion provided that a Special Review shall be conducted if the use of a pesticide "can reasonably be anticipated to result in significant local, regional, or national population reductions in nontarget organisms, or fatality to members of endangered species."

At that time, the Agency had proposed new criteria for initiating a Special Review on a specific pesticide, which would consider a pesticide for Special Review when its use results in "residues of the pesticide product or its ingredients, impurities, metabolites, or other degradation products in the environment of nontarget organisms at levels which equal or exceed concentrations acutely or chronically toxic to such organisms * * *." Available laboratory and field data indicated that granular formulations of carbofuran met or exceeded this proposed criterion. This risk criterion is now in effect and supersedes the old risk criteria. In either case the Agency determined that carbofuran met or exceeded the Special Review criteria, and the Agency would have initiated a Special Review regardless of which criterion was in effect.

Based on information received in public comments and on additional analyses performed since the Special Review process began, EPA has made a preliminary determination to propose cancellation of registrations of granular products containing carbofuran. EPA's position and a summary of the rationale underlying that position are set forth in this Notice. The basis for EPA's action is explained more fully in the Carbofuran Special Review Technical Support Document. Copies of the Technical Support Document are available upon

request from the contact person listed at the beginning of this Notice. The Technical Support Document also contains references, background information, and other information pertinent to the registration of pesticide products containing granular carbofuran.

In addition, copies of a draft Notice of Intent to Cancel granular carbofuran products are also available from the contact person listed above. Preparation of the draft Notice of Intent to Cancel is required by 40 CFR 154.31(b)(1). This draft Notice is being forwarded to the Scientific Advisory Panel (SAP) and the Secretary of Agriculture to permit their review of the Agency's action. The draft Notice of Intent to Cancel, along with the Carbofuran Technical Support Document and other notices and analyses prepared pursuant to 40 CFR 154.31, will be sent to all registrants and applicants for registration of pesticide products containing granular carbofuran. The draft Notice of Intent to Cancel is not now legally effective but is intended only to provide a basis for comment by the SAP, U.S. Department of Agriculture, registrants, and the public. The draft Notice indicates that registrants or distributors will not be allowed to sell and distribute existing stocks of cancelled products. Also, EPA will not allow the use of such existing stocks. The draft Notice also discusses requesting a cancellation or denial hearing after issuance of a final notice of intent to cancel. Comments on the draft Notice of Intent to Cancel, this Notice, and the Technical Support document must be filed within 60 days of the issuance of this Notice.

II. Legal Background

A. The Statute

A pesticide product may be sold or distributed in the United States only if it is registered or exempt from registration under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (7 U.S.C. 136 *et seq.*). Before a product can be registered unconditionally it must be shown that it can be used without "unreasonable adverse effects on the environment" (FIFRA section 3(c)(5)), that is, without causing "any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of the pesticide" (FIFRA section 2(bb)). The burden of proving that a pesticide meets this standard for registration is, at all times, on the proponent of initial or continued registration. If at any time the Agency determines that a pesticide no longer meets this standard for registration, then the Administrator may cancel this registration under section 6 of FIFRA.

B. The Special Review Process

The Special Review process, formerly called the Rebuttable Presumption Against Registration (RPAR), is a mechanism by which the Agency collects information on the risks and benefits associated with the uses of pesticides to determine whether any use causes unreasonable adverse effects to human health or the environment. The Special Review process is currently governed by 40 CFR Part 154.

Through the Special Review process the Agency: (1) Announces and describes the Agency's risk concerns regarding pesticidal use based on certain risk criteria; (2) establishes a public docket; (3) proposes a regulatory decision; (4) solicits comments from the public on the proposed decision and issues concerning the Special Review; (5) responds to significant comments from the Secretary of Agriculture and the SAP; and (6) makes a final regulatory decision based on a balancing of risks and benefits associated with a pesticide's use.

Issuance of this Notice means that the Agency has assessed the potential adverse effects and benefits associated with the use of pesticide products containing granular carbofuran and that the Agency has preliminarily determined that, unless the terms and conditions of registration are modified as proposed in this Notice, the risks from granular carbofuran outweigh the benefits of its continued use.

C. Other Statutes

In considering this action under FIFRA, EPA is mindful of other statues intended to protect birds. The Migratory Bird Treaty Act (MBTA) prohibits the taking, except by permit, of individual migratory birds (16 U.S.C. 703). Regulations promulgated pursuant to the MBTA list the migratory birds which are protected by the Act (50 CFR 10.13). The MBTA prohibits unpermitted taking "by any means or in any manner" of the protected bird species. Case law holds that even unintentional kills of birds by pesticide poisoning is prohibited by the MBTA. More than 20 species of birds protected by the MBTA. More than 20 species of birds protected by the MBTA have been reported killed by carbofuran. Indeed, in one incident, a carbofuran manufacturer was convicted of violating the MBTA for causing the deaths of a number of birds exposed to a wastewater pond containing carbofuran.

A similar provision in the Bald and Golden Eagle Protection Act (BGEPA) prohibits takings of bald and golden eagles (16 U.S.C. 668). The Endangered Species Act (ESA) prohibits takings of species designated by the Department of Interior as endangered or threatened (16 U.S.C. 1538(c)). A number of bald eagle kills due to carbofuran have been reported and the Fish and Wildlife Service has determined that the continued survival of several endangered species is threatened by carbofuran use (see Unit II of this document). Taken together, the provisions of these three statutes prohibiting unpermitted bird kills underline society's concern with needless destruction of wildlife and provide additional support for EPA's proposed action on carbofuran.

III. Summary of Risk and Benefit Determinations and Proposed Regulatory Actions

A. Risk Concerns

To evaluate the hazard to birds from grandular carbofuran in this Technical Support Document, the Agency evaluated the risk to birds based on (1) laboratory data on acute avian toxicity; (2) exposure; (3) estimated risk; (4) field studies; (5) bird kill incidents; (6) population effects; and (7) toxicity and risks of the alternatives.

Based on laboratory data, the Agency concluded that carbofuran is acutely toxic to birds, and that a single granule may kill a small bird. Based on an analysis of whether birds would be present when carbofuran is applied, the Agency determined that birds, including endangered species, are expected to be present at the time of application. Field and agricultural engineering studies confirm that at-planting application of granular pesticides, including carbofuran, results in granules exposed on the soil surface. Dietary exposure occurs from direct ingestion of granules and contaminated soil invertebrates such as earthworms. Predatory birds may be secondarily exposed to carbofuran by feeding on contaminated vertebrates such as small birds. Residues in wildlife confirm that both direct and secondary poisonings from carbofuran have occurred.

The Agency has described avian risk from granular carbofuran by comparing avian acute toxicity data (number of granules equal to an LD_{50} dose) to exposure (number of granules exposed per unit area). This ratio indicates that all registered uses of granular carbofuran pose a high risk to birds for acute toxicity. Field studies confirm the Agency's conclusion that bird mortality is expected when the expected amount

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of carbofuran granules are available for avian consumption.

The Agency assessed 6 field studies conducted at 11 locations that investigated the loss of birds from label-directed, soil-incorporated uses of 10G and 15G applied as band and in-furrow applications and 10G using specialized equipment. Commonly practiced techniques for soil incorporation of granules were used. Application of 1 and 4 lb ai/A resulted in approximately the same level of avian mortality. Both direct and secondary poisoning occurred. The Agency concluded that bird mortality following the label-directed use of granular carbofuran may be a frequent and regular occurrence. Furthermore, the magnitude of the acute mortalities could be more heavily influenced by the numbers of birds entering treated fields, than by the extent of incorporation of granules or application rate.

Bird kill incidents from direct carbofuran poisoning have occurred in several crops in various areas of the country and Canada. The types of birds varied and included both migratory and nonmigratory birds. Bird mortality was frequently associated with at-planting application, but has occurred with other uses at other times of the year. Direct poisoning of birds has caused over 40 separate, reported bird kill incidents involving one to over 2,000 birds. More than half of these reported incidents are associated with carbofuran's use on rice.

Secondary poisoning incidents have also occurred and involved bald eagles, red-tailed hawks, red-shouldered hawks, northern harriers (marsh hawks), and other birds of prey. Such species are attracted to dead and dying smaller birds and small mammals affected by granular carbofuran.

Birds of prey species commonly produce only a few young per year and are slow to reach sexual maturity. Thus, the death of each individual of these species can have important consequences for a population. A computer model of a small breeding population of bald eagles that had experienced several mortalities due to granular carbofuran was used to illustrate this point. If the rate of carbofuran-related mortality observed in this population remains constant, the model predicted that the small breeding population will remain static over a 10-year span, even under ideal breeding conditions. At secondary mortality rates slightly higher than those observed in this population, the model predicted that the breeding numbers could decrease over the short span of the model.

The Agency believes that direct and secondary bird kill incidents that have been reported underestimate the number of incidents actually taking place because of the problems associated with the reporting of bird kills and with carcass removal by predators.

Populations of declining or endangered species may be present in areas where carbofuran is applied. The Agency cited documented population declines of the red-shouldered hawk, loggerhead shrike, field sparrow, Henslow's sparrows, and others. Statistically significant declines have been measured for several species.

While the Agency does not consider granular carbofuran to be the sole causative factor in the decline of the bird species discussed, carbofuran is one of the most highly toxic pesticides to which these birds are exposed. Given its widespread use in agriculture, carbofuran is likely to be responsible for bird deaths in these species. The Agency concluded that granular carbofuran can, therefore, be an important additive factor in the declines.

The Division of Endangered Species and Habitat Conservation (DESHC) of the Fish and Wildlife Service indicated in the Biological Opinion dated July 2, 1987, for carbofuran, that the Aplomado falcon, Attwater's greater prairie-chicken, and Aleutian Canada goose were the bird species jeopardized by the use of carbofuran. To avoid jeopardy to these species, DESHC indicated that the use of carbofuran should be eliminated in certain areas. The use of carbofuran in certain areas is already prohibited to protect the Attwater's greater prairie-chicken, Aleutian Canada goose, and Kern primrose sphinx moth. DESHC also indicated that the bald eagle, whooping crane, and Mississippi sandhill crane may be adversely affected. DESHC recommended prohibiting the use of carbofuran in certain areas.

The Agency compared the risks of granular carbofuran to representative avian species to the risks posed by its alternatives. Since the greatest risk of granular pesticides to avian wildlife may result from direct exposure, especially ingestion, the Agency compared the acute toxicity (in terms of the number of granules equivalent to an LD_{50} dose) to estimates of exposure (in terms of the number of granules exposed and available to birds per unit area) for carbofuran and its alternatives. This comparison is expressed as the number of LD_{50}s/square foot of treated ground. Based on this analysis it appears that carbofuran generally poses a greater risk to birds than the alternatives.

B. Additional Considerations

The Agency evaluated information concerning the hazard to humans from carbofuran and its major alternatives. Based on the available data, carbofuran does not appear to pose a chronic human health hazard because it has not shown positive oncogenic, teratogenic, or reproductive effects. Existing data indicate no adverse chronic health effects associated with the alternatives although the data bases are incomplete for many effects so definitive conclusions cannot be drawn. The Agency has required additional studies to complete the data bases. Based on data on acute health effects, the acute oral hazard of carbofuran is the same order of magnitude as fonophos, phorate, and terbufos, but is less than aldicarb, and greater than the other alternatives examined.

The Agency also evaluated the potential for ground water contamination from carbofuran. The environmental fate data indicate that carbofuran is highly mobile and has a potential to leach. Simulation modeling with the Pesticide Root Zone Model support this hypothesis. The environmental fate data indicate that under low pH and low temperature, residues of carbofuran could persist after leaching into the ground water. Since these conditions are not widespread in the United States, most leaching of carbofuran will probably not result in significant concentrations at the wellhead. Ground water conditions of low pH and low temperature generally exist in the Northeast, where monitoring data indicate that New York, Massachusetts, and Maryland show the highest and most frequently found residues in ground water. The highest level found was 71 parts per billion and was found in a well near corn and potato fields in Maryland. Other studies suggest that carbofuran may also be found in surface waters that may be used for drinking water. The Agency will require registrants to amend their labels' current ground water advisory statement in an effort to further reduce the potential of ground water contamination for carbofuran use.

C. Determination of Benefits

The Agency's benefit analysis examined in depth the following use sites: field corn, sorghum, soybeans, rice, peanuts, tobacco, cotton, cranberries, pineseed orchards, and sunflowers. The Agency reviewed the pests associated with these crops, methods of application, agricultural practices, and chemical and nonchemical alternatives. In the Technical Support Document, the Agency also sought to identify newly emerging integrated pest management (IPM) strategies that may have an impact on the future benefit of carbofuran use. While the potential impacts of these strategies on the quantitative benefits estimates were not calculated, EPA notes that they do present potential alternative agricultural practices.

Approximately 7 to 10 million pounds of active ingredient (lb ai) of all carbofuran formulations are used on a variety of agricultural crops and forestry sites per year, with approximately 6 to 9 million lb ai of the annual usage accounted for by the granular formulations. About 68 percent of all carbofuran use is on corn, 14 percent on sorghum, 5 percent on soybeans, 2 percent on rice, 5 percent on peanuts, and 2 percent on tobacco. Also, less than 1 percent is used on each of the following sites: cotton, cranberries, sunflowers, and pineseed orchards. These uses encompass over 95 percent of the granular carbofuran usage and about 85 percent of all carbofuran formulation usage.

If carbofuran is not available for treatment of the 10 sites, the Agency estimated and annual grower impact that ranged from approximately $22.8 to $33.0 million. The largest economic impact from cancellation of granular carbofuran would be for rice since no registered alternatives are available for control of the rice water weevil. The Agency estimates that the grower impact would be $12.2 million annually; a $6.1 million decrease in Federal deficiency payments to rice growers would indicate a net loss to society of $6.1 million.

Corn is the major use site for carbofuran, and cost-effective, efficacious alternatives are available. No changes in costs of production, yields, or revenues would be expected. The corn insecticide market is highly competitive, and viable alternatives with similar pesticide performance would be available at comparable cost per acre.

The carbofuran market for field corn has been declining since 1978. Current usage is approximately one-third the level it was in 1978. Carbofuran has lost its market share primarily to terbufos and chlorpyrifos. By 1986, the market share held by carbofuran dropped to less than 15 percent. In terms of acre treatments, it ranked fourth out of the five major corn insecticides. The reasons for the decline are not clear, but could include loss of effectiveness, spectrum of control, and others.

Carbofuran is applied to an estimated 185 acres of nonflooded cranberries in Washington and Oregon to control the black vine weevil larval stage. Because of the soil or the terrain of the fields, these cranberry acres are not diked for flooding. Flooding can be a cultural method for controlling the weevil. Carbofuran is the only insecticide registered for control of the larval stage while acephate is registered for the control of the adult stage of this pest. The impact on cranberries, excluding acephate, is expected to occur over a 7-year period due to the perennial nature of the crop. Overall impacts could be approximately $7 million to $7.7 million over the 7 years or $1.0 to $1.1 million annually.

For the U.S. sorghum industry, cancellation would generally not have an adverse effect on the overall sorghum industry (at most $0.4 to $0.9 million annually) or on consumers. In years of high chinch bug infestations, which occur every 5 to 10 years, annual localized income reductions could range from $7.4 to $9.3 million in eastern Kansas if aldicarb is used as an at-planting alternative. However, this estimate of impact does not consider the foliar treatments that would be available for use when infestations actually occur. Foliar treatments may not always provide adequate control because of problems with treatment timing, limited availability of scouts, and chinch bug reinfestations.

For the remaining crops, the Agency does not anticipate major impacts. The overall economic impact from cancellation is not expected to result in significant changes in either production costs or outputs.

The Agency also evaluated aspects of carbofuran use that are not easily quantifiable. For example, only one carbamate (trimethacarb) would be available for corn growers who rotate organophosphate and carbamate insecticides to delay development of resistance in soil pests. The Agency recognizes that some cross-resistance with organophosphates could occur because both affect acetylcholinesterase. Also, carbofuran has residual and systematic properties and a broad spectrum of control. It should be noted that repeated use of carbofuran may lead to an apparent increase in soil microbial populations that are capable of reducing its effectiveness.

D. Risk/Benefit Analysis

There are three basic options for regulating the uses of carbofuran:

Option 1—Continuation of registration without changes,

Option 2—Continuation of registrations with modifications to the terms and conditions of registration, and

Option 3—Cancellation of registration.

Adoption of Option 1 would be appropriate only when the Agency has concluded that the level of risk is acceptable compared to the benefits of use and that further risk reduction measures are not necessary to assure that the use of the pesticide meets the statutory standard for continued registration. Adoption of Option 3 would be appropriate when the Agency has concluded that the risks from a use outweigh the benefits of that use and that the risks cannot be mitigated to an acceptable level when compared to the benefits by any measures short of cancellation.

Option 2 is appropriate when the risks of a pesticide's use can be reduced to a level where the benefits of use outweigh the risks. This risk reduction is accomplished by modifying the terms and conditions of the pesticide's registration. EPA has considered various modifications for regulating the uses of carbofuran; these modifications are evaluated fully in the Technical Support Document and are summarized here.

1. *Adding label precautionary statements.* The Agency considered requiring additional precautionary labeling regarding the hazard to birds from the use of carbofuran. However, the additional labeling would not significantly mitigate the hazard to birds. Carbofuran is already a restricted use pesticide on the basis of the avian hazard and limited in use only to certified applicators or persons under their direct supervision. Extensive environmental hazard warning statements already appear on the label and, despite such label statements, bird kill incidents still have occurred.

2. *Limiting application to certain months.* The Agency considered limiting carbofuran application to certain months because most of the bird kill incidents occurred during the major use season from April to June. Eliminating the use of carbofuran during any particular season of the year would eliminate the bird kills in direct proportion to use. Carbofuran must be applied during a certain season to be effective, and eliminating its use at that time of year would essentially result in cancellation.

3. *Limiting application to certain geographic areas.* Because most of the bird kill incidents involved waterfowl, the Agency considered limiting carbofuran application to areas outside

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those that constitute the major waterfowl migration flyways. By not allowing carbofuran application in those areas, the risk to these migrating waterfowl and birds within the flyway could be reduced. However, eliminating the use of carbofuran in the flyways would also affect a large portion of the usage of carbofuran. In addition, exact boundaries of these flyways cannot be readily defined.

4. *FMC Corporation's risk reduction program.* FMC Corporation, the major registrant of carbofuran, proposed a risk reduction program that included several measures to reduce the avian hazard. The major points of FMC Corporation's program are as follows:

a. *Reduce percent ai.* Voluntarily remove carbofuran 15G from the market, but retain the Federal registration. Carbofuran 10G would remain as the formulation with the highest percent ai until FMC has demonstrated that the avian hazard from 15G is at an acceptable level.

b. *Reduce application rate in corn.* Reduce maximum application rate for corn from 4 to 1 lb ai/A based on a 40-inch row space.

c. *Substitute "T" band for band applications.* "T" band is an application method combining band and in-furrow application. When using in-furrow application, granules are dropped into the furrow and covered with soil. When using band application, granules are applied as a 7-inch band on the soil surface and are then incorporated into the soil. "T" band application is a modified form of band application, which may leave as little as a 4-inch band, depending on the application equipment.

d. *Conduct research.* Begin studies to determine if changes such as modifying the release rate or size, shape, and color of granule could further reduce risk.

e. *Aid equipment research.* Aid research on new farm equipment which would result in greater incorporation of granules and subsidize growers for the purchase of new equipment if it is developed.

f. *Implement educational program.* Implement an educational program to educate growers on the proper use of carbofuran to reduce avian hazard.

g. *Provide funding for endangered species.* Provide $1,500,000 over the next 5 years for endangered species relocation and/or to purchase or preserve critical habitat.

5. *Agency's analysis of FMC's program.* The Agency evaluated each point of FMC's program, as discussed below.

a. *Reduce the percent ai.* Such a reduction would temporarily eliminate the hazard from 15G. However, the documented hazard from 10G would still remain. Also, application of 10G results in approximately 50 percent more granules than from 15G. A single granule of 10G can be lethal to small birds.

b. *Reduce application rate in corn.* Assuming the typical 35-inch row space, rate reduction from 4 to 1 lb ai/A would result in a maximum of 72 percent fewer granules applied. Although this would reduce the number of granules applied, field studies indicate that application of 1 lb ai/A would still pose a high risk to birds.

c. *Substitute "T" band application.* Based on studies with band and in-furrow application, estimates indicate that a 4-inch "T" band would result in 43 percent fewer granules remaining unincorporated than would occur with a 7-inch band application.

While "T" banding may reduce the number of granules exposed on the soil surface, it would not be expected to result in a proportional reduction in avian mortalities. Birds were killed in field studies using band application at 4 and 1 lb ai/A and in-furrow application at 1 lb ai/A. Because "T" band application would be expected to result in a number of granules exposed on the soil surface between the numbers resulting from in-furrow application at 1 lb ai/A and at 4 lb ai/A, "T" banding is expected to result in mortalities within the range of mortalities observed in these field studies.

d. *Conduct research and aid in research.* Research regarding reformulation of granular carbofuran products and developing new farm equipment has the potential to result in a formulation less attractive to birds and may result in fewer unincorporated granules. However, the Agency does not know if risk reduction would occur, and if so, to what extent.

e. *Implement educational program.* Educating users in the proper application of carbofuran would result in greater assurance of compliance with risk reduction measures and would probably help to ensure that carbofuran is applied properly. However, field studies and bird kill incident data indicate that proper application of carbofuran results in birds being killed.

f. *Provide endangered species funding and relocation.* In limited situations such as with dicofol, the OES has accepted funding and relocation as a way to offset the impact to endangered species.

However, the Aplomado Falcon has already been relocated from Mexico into Texas as an attempt to reintroduce it into its historic range, which happens to be an area of carbofuran use.

6. *The Agency's risk reduction program and analysis.* The Agency explored whether a modified risk reduction program developed by FMC Corporation would result in sufficient risk reduction. The major points analyzed by the Agency are as follows:

a. *Cancellation of 15G.* As opposed to temporarily removing 15G from the market, 15G would be cancelled. 10G would remain as the formulation with the highest percent ai.

b. *Reduce application rate in all crops.* In addition to requiring FMC's rate reduction for corn, rate reduction would be required on other crops as well.

c. *Requiring in-furrow application only.* In-furrow application would remain as the only registered application method for carbofuran.

As discussed under FMC's program, eliminating 15G would remove the hazard from 15G. The 10G formulation would be applied using in-furrow application, which results in the greatest degree of soil incorporation of all the carbofuran application methods.

However, the documented hazard from 10G would remain. Although fewer granules would be applied by using the 10G formulation in combination with rate reduction and in-furrow application, field studies indicate that rate reduction to 1 lb ai/A and in-furrow application may well result in mortality levels comparable to those resulting from banded application at higher rates. Also, a 1 lb ai/A limit for other crops may not be efficacious.

7. *Comparison of the two programs.* The two risk reduction programs were initially compared by calculating exposure reduction in terms of the number of granules remaining unincorporated on the surface of the soil and, therefore, available to birds.

The number of granules of 10G and 15G that are available to birds on the soil surface from carbofuran application are conservatively estimated as follows:

Current application	Estimated number of granules available to birds per acre
10G, 4 lb ai/A, 7-inch band	2,646,000
10G, 4 lb ai/A, 7-inch band	1,766,000

If either risk reduction program were implemented, the number of granules available on the surface of the soil would decrease. Table 1 compares estimates of the number of granules that would be readily available to birds on the surface of treated fields:

TABLE 1.—ESTIMATES OF THE NUMBER OF GRANULES AVAILABLE TO BIRDS

Proposed use program	Number of granules per acre	Change from current use pattern
FMC Program:		
15G—Voluntary suspension		
10G, 4 lb ai/A, 7-inch band	2,646,000	+880,000
10G, 1 lb ai/A, 7-inch band	662,000	−1,106,000
10G, 1 lb ai/A, 4-inch band	337,000	−1,431,000
EPA Program:		
15G—Suspension/ cancellation		
10G, 4 lb ai/A, 7-inch band	2,646,000	+880,000
10G, 1 lb ai/A, 7-inch band	662,000	−1,106,000
10G, 1 lb ai/A, in-furrow	95,000	−1,673,000

These estimates indicate that the number of exposed granules would be reduced. However, these estimates do not consider the number of granules available below the surface. Birds may consume below-surface granules while foraging for seeds, grit, or invertebrates. This is one reason why reducing the number of exposed granules would not be expected to result in a proportional reduction in avian risk.

The available field data do not indicate that the reduction in potential bird poisonings is proportional to the reduction of the number of granules. Although the field studies were performed at different application rates with different application methods, sites, and locales, avian mortality for direct carbofuran poisoning occurred in all studies and up to 60 days after application. Secondary poisoning occurred as well. The data indicate that the number of granules remaining would still result in approximately the same level of avian mortality as occurs following current application methods. As discussed earlier, one granule of either 10G or 15G is sufficient to kill a small bird. Therefore, risk reduction in the probability of birds consuming a single granule is necessary for substantial risk reduction to occur.

Field data are available for the following combinations of formulation and application methods:

Formulation	Application
10G and 15G	7-inch band at 4 and 1 lb ai/A.
10G and 15G	In-furrow at 1 lb ai/A.
10G	Specialized equipment at 25 lb ai/A.

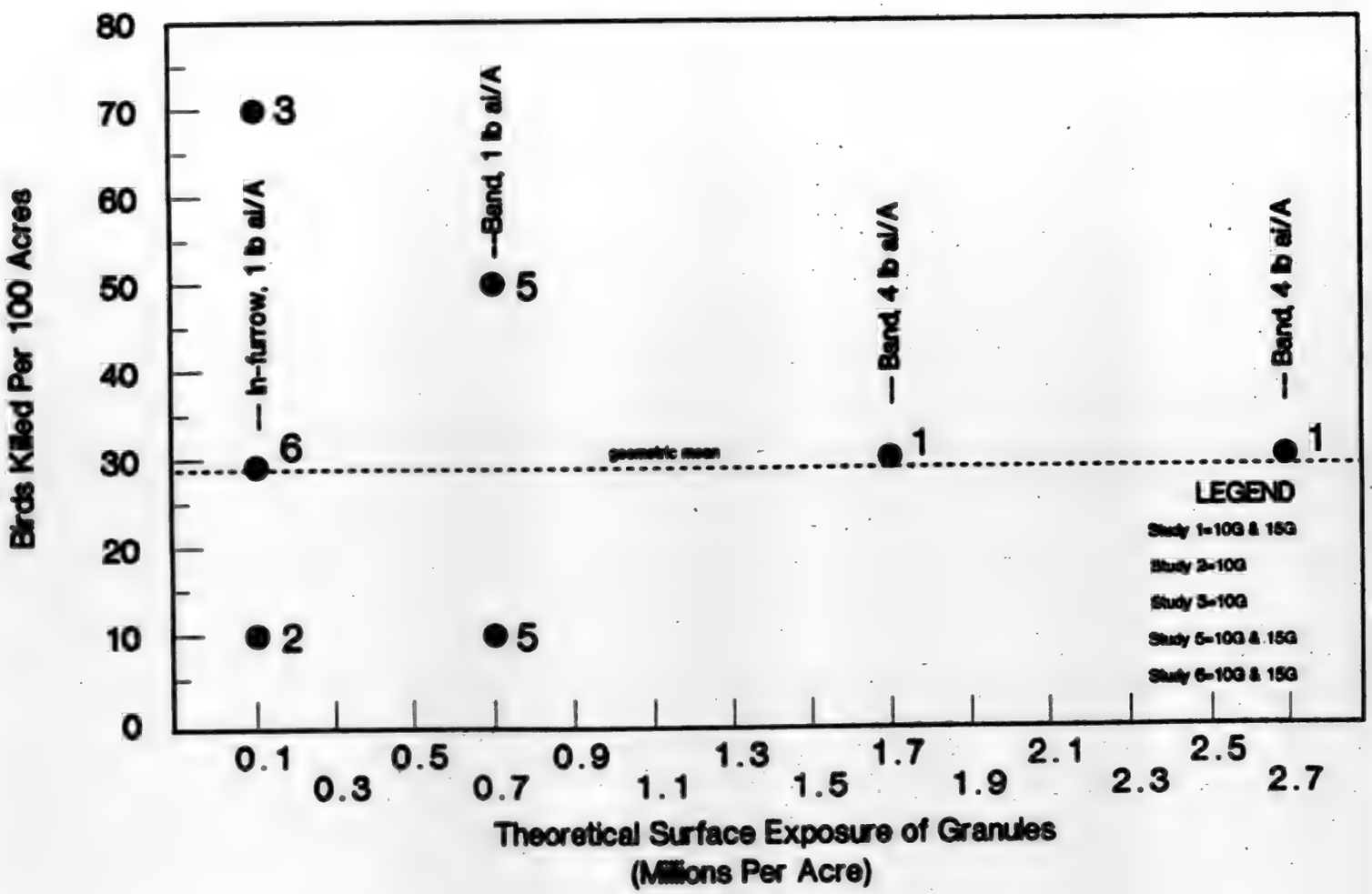
These data are plotted in the following Figure 1:

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Figure 1

RATES OF AVIAN MORTALITY OBSERVED DURING CARBOFURAN FIELD STUDIES



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These estimated number of granules remaining unincorporated on the surface of fields is plotted against the number of birds killed per 100 acres of searched area. The resulting curve is not a regression, and a correlation coefficient was not calculated. The purpose of representing the studies in this way is to show a possible relationship between the exposure of granules on the soil surface and the rate of avian mortality. Since these data are essentially not statistically comparable, they may not be used to establish a quantifiable relationship. Figure 1 shows that the rate of bird poisonings is roughly constant within the data points available. In other words, application of 10G at 1 lb ai/A in-furrow resulted in roughly the same rate of poisonings as application of 10G at 4 lb ai/A using a 7-inch band, even though the former application resulted in an estimated 100,000 granules per acre and the latter 2.6 million granules per acre.

If in-furrow application at 1 lb ai/A is used, very few granules per square foot could remain on top of the soil (excluding spilles). These granules would be concentrated in the seed rows. However, these few granules are of concern because field studies showed avian mortality under these application conditions. A possible explanation is that birds do not encounter these granules by chance but may be attracted to them because they are similar in appearance to grit.

Data are not available to estimate the potential bird poisoning rate below the 10G 1 lb ai/A in-furrow application scenario. Thus, while it is possible that some combination of lower application rates and changed application techniques could result in substantial reductions in the rate of bird poisonings, EPA lacks the data to determine an acceptable combination and whether or not that combination is efficacious.

The Agency therefore concluded that while net reductions in the number of granules available to birds would likely result from decreasing application rates and changing the methods of application, the field studies indicate that the remaining number of granules would still be expected to result in roughly comparable rates of direct avian mortality, even with applications of 10G carbofuran reduced to as low as 1 lb ai/A using in-furrow application.

E. Risk/Benefit Analysis of Regulatory Options

The Agency has concluded that if the registrations of carbofuran products were continued without restriction (Option 1), the risks to birds resulting from carbofuran application would exceed the benefits associated with carbofuran use.

The Agency has evaluated amending the terms and conditions of registration (Option 2) by modifying labeling to include additional precautionary language, limiting application to certain geographic areas or certain months of the year, or by imposing risk reduction measures through various risk reduction programs. The Agency has determined that none of these measures would adequately reduce the risk to birds to bring the risks and benefits of carbofuran use into balance.

As a result the Agency considered cancellation (Option 3), which would eliminate the hazard to birds from carbofuran exposure from these sites. To evaluate cancellation, an in-depth risk/benefit analysis on 10 sites of application was conducted.

The following crop-by-crop discussion notes whether there have been bird kills associated with field studies or incident reports linked to the application of carbofuran in a specific crop. Details pertaining to these kills are described in the Agency's Technical Support Document.

Exposure is often comparable among sites, and bird kills associated with one site strongly suggests that kills also will be associated with sites having similar exposure. When EPA lacks documentation of kills for a given site, this does not necessarily reflect a true absence of kills associated with the use of carbofuran at that site. Rather, the lack of systemic observations for that site and the lack of an effective system for reporting and verifying bird kills associated with pesticide use.

1. *Corn.* Species diversity and population levels are high in corn fields and may include endangered species such as the Aleutian Canada goose and Mississippi sandhill crane and other species such as waterfowl, marsh and shorebirds, upland game birds, and passerines. Researchers have documented birds using corn fields throughout the crop cycle for a range of activities, including feeding, resting, nesting, and brood-rearing. Since carbofuran may be applied both at-planting or postemergence, any of these activities may occur at the time of application.

Birds will mainly be exposed to carbofuran granules on the soil surface. Agricultural engineering and field studies confirm that application of granular pesticides, including carbofuran, applied at-planting results in granules exposed on the soil surface. This is of concern because data from acute toxicity testing indicate that one granule can provide a sufficient dose to kill some small birds.

The Agency estimated the number of $LD_{50}s$/sq ft for songbirds, upland gamebirds, and waterfowl based on current product label information, which resulted in a minimum of 6 and a maximum of 2211 $LD_{50}s$/sq ft. These estimates suggest that the use of granular carbofuran in corn poses a potential risk to birds. Field studies indicate that avian mortality occurred at estimated risk levels as low as 6 $LD_{50}s$/sq ft.

In addition to the bird mortality documented in the field studies, mortality has also been documented as reported bird kill incidents. Direct poisoning has resulted in killing waterfowl, songbirds, and other species from carbofuran application in several states. Secondary mortality to birds of prey such as hawks, bald eagles, and others has also occurred in the field studies and as secondary kill incident reports.

Because of its widespread use on corn, the Agency is concerned about the potential impact on populations of declining birds, which may be exposed by either direct or secondary poisoning. Population declines of the red-shouldered hawk, loggerhead shrike, and other birds of prey and small birds such as the field sparrow have been documented.

While the Agency does not consider granular carbofuran to be the sole causative factor in the decline of the bird species discussed, carbofuran is one of the most highly toxic pesticides to which these birds are exposed. Given its widespread use in corn, carbofuran is likely to be responsible for bird deaths in these species. The Agency concluded that granular carbofuran can, therefore, be an important additive factor in the decline of these birds.

Carbofuran is applied as a preventive treatment when seeds are planted to 4.5 to 5.5 million acres of corn or 5 to 7 percent of the U.S. corn crop per year. Carbofuran is used primarily to control the corn rootworm and corn borer complexes. Usage has been declining and is approximately one-third of the 1978 level. By 1986, the market share held by carbofuran dropped to less than 15 percent, where in terms of acre treatments, carbofuran ranked fourth out of the five major corn insecticides. These insecticides are terbufos, chlorpyrifos, fonofos, carbofuran, and phorate.

The Agency evaluated data that indicated that several efficacious alternatives such as terbufos and chlorpyrifos are available and are of

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comparable cost. Alternatives are available both for use at-planting, the most common method of application, and later in the season when pest problems actually occur. No difference in yield was demonstrated between carbofuran and its alternatives, and the economic impact of cancellation is negligible. Also, field data support the conclusion that carbofuran appears to pose a greater avian hazard than the alternatives.

Carbofuran has a broad spectrum of control and residual systemic properties, which makes it attractive to certain growers. Carbofuran is one of only two carbamate pesticides available for rotation between organophosphates and carbamates in corn to delay resistance in soil pests. The Agency recognizes that some cross-resistance with organophosphates could occur because both affect acetylcholinesterase. It should be noted that repeated use of carbofuran may lead to an apparent increase in soil microbial populations capable of reducing its effectiveness.

Because less hazardous, efficacious alternatives of comparable cost are available, the Agency concluded that the risk to birds outweighs the minor benefits and proposes cancelling carbofuran use on corn.

2. *Sorghum.* Birds such as marsh and shorebirds, game birds, songbirds, and waterfowl are expected to be in sorghum fields at the time of carbofuran application. Endangered species that may be exposed include, the Attwater's greater prairie-chicken, Aplomado falcon, and the whooping crane. In one case, whooping cranes had to be driven away from a sorghum field treated with granular carbofuran.

The Agency estimated the number of $LD_{50}s$/sq ft for songbirds, upland game birds, and waterfowl. The estimated values ranged from 5 to 1033.

Bird kills are likely to occur in sorghum as sorghum fields at planting time are similar to corn fields at planting time.

Carbofuran is applied to approximately 640,000 to 2.04 million acres of sorghum or 4 to 12 percent of the acres planted. It is primarily applied at-planting to control later infestations of chinch bug and greenbug.

For greenbug control, pesticides may be applied at-planting as a preventive treatment or later in the season if problems with greenbugs arise. Several alternatives are available, but terbufos is most likely to be used. In terms of product performance, terbufos appears to be equally effective.

Most years with normal pest infestations are not expected to have an adverse impact on growers. During years of high chinch bug infestations every 5 to 10 years, both localized cost increases and yield losses would be incurred with the use of aldicarb as an at-planting treatment. However, foliar treatments are available.

Sorghum has received considerable IPM attention. Due to the relatively low return on sorghum, a number of pest management and cultivation practices have already been incorporated into sorghum culture to reduce the need for pesticide application. None of these practices will completely replace the use of insecticides on sorghum, but they will help reduce the number of applications and the amount of insecticides used.

The Agency concluded that the risk to birds outweighs the minor benefits and therefore proposes to cancel the use of carbofuran on sorghum.

3. *Soybeans.* Birds that are expected to be present at application include waterfowl, marsh and shore birds, game species, and songbirds. Endangered species expected to be present at application include the bald eagle, whooping crane, and Mississippi crane.

The range of estimated $LD_{50}s$/sq ft for songbirds, upland gamebirds, and waterfowl are 6 to 2104, which are values that suggest that carbofuran poses a potential risk to birds.

The use pattern and thus the risk is similar to corn. A bird kill incident associated with corn and soybean fields was reported and involved 25 waterfowl, bluejays, grackles, and killdeer.

Carbofuran is applied to approximately 210,000 to 260,000 acres of soybeans or less than 1 percent of the U.S. soybean crop. It is used mainly to control the Mexican bean beetle. In the majority of the soybean-producing states, the Mexican bean beetle is not a major pest and is only of major concern in some of the southeastern states. Because carbofuran is applied at-planting, it is uncertain whether enough carbofuran will be present in the plant to control an infestation at pod set and fill, the critical stages of Mexican bean beetle infestation. Thus, consultants and extension entomologists in the majority of the soybean-producing states recommend the use of foliar sprays later in the season to control the Mexican bean beetle. The use of resistant varieties of soybeans, early planting, and crop rotation are also recommended.

Alternatives are available at-planting and as foliar sprays later in the season. Efficacy data indicate that viable alternatives, including disulfoton and terbufos, are available and are not expected to have adverse impacts on production costs. Overall, aggregate impacts are expected to be minor, amounting to less than 1 percent of the U.S. farm value of soybeans.

The Agency proposes to cancel the use on soybeans because the hazard to birds outweighs the minor benefits.

4. *Rice.* Rice fields offer attractive habitat to many types of birds, including migratory waterfowl. Diverse water species are expected to be present when carbofuran is applied, and hawk species are known to search rice fields for prey.

EPA estimated the number of $LD_{50}s$/sq ft for songbirds, upland gamebirds, and waterfowl. These values range from 13 to 261 and suggest that carbofuran poses a potential risk to representative bird groups.

The 20 reported bird kill incidents which have occurred on rice corroborate the assertion that the use of carbofuran on rice poses a high risk to birds. These 20 incidents are over half of all reported bird kill incidents associated with carbofuran. These incidents include direct and secondary waterfowl kill incidents. The numbers of killed birds range from 1 to 150. A field study was conducted in rice, but a quantitative analysis could not be conducted due to lack of important information on the extent of the treatments and the performance of carcass searches.

Carbofuran is applied to approximately 319,000 acres in Arkansas, California, Louisiana, Mississippi, Texas, and Missouri, or about 10 percent of the U.S. rice acreage, to control the rice water weevil.

Carbofuran is the only pesticide registered to control the rice water weevil, a major pest of rice in all growing regions, and treatment varies among California and southern rice-growing states. All control recommendations are based on annual population monitoring.

Since no alternative chemical controls are available, pest control costs would decrease by approximately $8.50 per acre or about 4 percent of the total variable operating costs in the Delta and 3 percent in California from cancellation of this use. Considering the savings from not applying carbofuran or any other pesticide, as well as the value of a 7 percent yield loss, the annual net revenue loss is approximately $12.2 million or 10 percent of the net farm income of the impacted acres. Some marginal rice growers who normally rely on carbofuran may be forced out of business.

Government payments under the current U.S. Department of Agriculture farm program would decrease by $6.1 million because of lower production. Subtracting the reduced government payments ($6.1 million) from the rice industry impact ($12.2 million) results in an estimate of the net loss to society of $6.1 million.

The Agency is unaware of any measures which would reduce the hazard from carbofuran use on this site. Because of risks, as exemplified by the number of reported bird kill incidents in rice, the risks outweigh the benefits on this site. As a result, the Agency proposes to cancel this use.

However, EPA recognizes that there are no chemical alternatives currently registered for use to control the rice water weevil and only limited information pertaining to the availability and efficacy of non-chemical alternatives. Thus the substantial risks associated with carbofuran's use must be weighed against the substantial benefits. Because the Agency is concerned about the lack of chemical alternatives for control of the rice water weevil, as well as the risks associated with carbofuran's use, the Agency requests comments on the following issues:

(1) The extent of usage of carbofuran to control the rice water weevil;

(2) The economic impacts that would result from cancellation of carbofuran's use on rice;

(3) The potential for other pesticides being registered to control the rice water weevil, particularly efficacy testing of such pesticides;

(4) The potential for non-chemical control methods, including draining of fields and biological control organisms, to control the rice water weevil (particularly efficacy testing of such methods); and,

(5) The availability of bird kill information on rice fields outside of California, and any information which would assist the Agency in interpreting the apparently extensive bird kills particular to that state.

5. *Peanuts.* An endangered species, the Attwater's greater prairie chicken, along with upland game and songbird species are expected to be present at application. Field studies were not available, and no bird kill incidents were reported. The estimated $LD_{50}s$/sqs ft for songbirds, upland gamebirds, and waterfowl ranged from 3 to 2632.

Approximately 136,500 acres of peanuts or 9 percent of the total crop are treated with carbofuran to control insects and nematodes. Efficacious alternatives are available for both uses. The generally higher rate of application for nematode control leads to higher treatment costs, particularly if aldicarb or fenamiphos are used. The overall annual change in insect and nematode control costs if carbofuran were not available would not exceed $4.0 million. The total variable costs of peanut production would increase 4 to 6 percent for alternative insecticides and 7 to 11 percent for alternative nematicides.

Based on estimated risks and the minor benefits, the Agency concluded that the risk outweighs the benefits and proposes to cancel the use of carbofuran on peanuts.

6. *Tobacco.* Numerous species of birds may be present when carbofuran is applied to tobacco fields. Tobacco fields tend to be small, thereby providing a high ratio of "edge" habitat to field area. Edge habitat would tend to have high levels of bird activity, including nesting, rearing, and foraging.

Extremely high values of $LD_{50}s$/sq ft have been estimated for songbirds, upland gamebirds, and waterfowl. The range is from 114 to 3150 which represents the highest range of values calculated for all 10 crop sites, with the exception of pineseed orchards.

Use of all carbofuran formulations has been declining in recent years in tobacco. Approximately 20,000 to 40,000 acres are treated each year, or 3 to 6 percent of the crop. A review of efficacy data indicate that effective alternatives are available, including ethoprop and fensulfothion, and yields of those acres normally treated would not be significantly reduced. The flowable carbofuran formulation is the preferred alternative. This formulation may also pose a hazard to birds, but at this time field study data are not available to evaluate the hazard. These data are being required through the reregistration process.

A change from granular to flowable carbofuran would increase per acre costs by approximately $11 to $20 per acre, which is less than 1 percent of annual variable production costs. A total annual production cost impact ranging from $220,000 to $800,000 is estimated for the current granular carbofuran user. Less than a 1 percent variable production cost increase for 3 to 6 percent of the U.S. tobacco crop may result, but should not affect tobacco prices. Output effects are not expected at the commodity or retail level.

Because of the minor benefits, the Agency concluded that the hazard to birds outweighs the benefits of use and proposes cancellation of granular carbofuran on tobacco.

7. *Cotton.* Cotton represents less than 1 percent of both the granular and total carbofuran usage. Approximately 30,000 acres are treated (primarily in Texas). Marshbirds and songbirds along with the endangered species, the Mississippi sandhill crane and the Aplomado falcon, may be exposed when carbofuran is applied. The estimated $LD_{50}s$/sq ft for the three representative bird groups range from 6 to 527. This range suggests that carbofuran's application to cotton sites poses a potential risk to avian species.

Carbofuran is used in cotton for preventive control of thrips. However, this use is controversial because some research indicates that this pest causes damage that reduces yield, while other research indicates that it does not.

Both at-planting and foliar treatments are available. Cancellation would result in aggregate farm level impacts totaling $120,000, at most. Adverse economic impacts are not expected to occur for either the cotton industry or other interrelated sectors of the economy.

The Agency concluded that the risk outweighs the minor benefits and proposes to cancel the use on this site.

8. *Cranberries.* Birds are expected to be present at the time that carbofuran is applied to cranberries. Carbofuran poses a very high risk to songbirds, upland gamebirds, and waterfowl as suggested by the Agency's estimated numbers of $LD_{50}s$/sq ft for this site. The estimated values range from 80 to 1052.

Cranberries represent less than 1 percent of both the granular and total carbofuran usage. Approximately 400 lb ai are applied to 185 acres of nonflooded cranberries in Washington and Oregon. While only carbofuran is registered for use on non-flooded cranberries to control the larval stage of the black vine weevil, acephate is an efficacious insecticide for the control of the adult stage of this pest. Major annual impacts without considering acephate's use are estimated to be $1.0 to $1.1 million ($7.0 to $7.7 million over 7 years).

The Agency has determined that the risks outweigh the benefits, and therefore proposes to cancel this use.

9. *Pineseed orchards.* A variety of birds including predator species are expected to be present at the time of application. Although no bird kill incidents were reported, a field study evaluated the effectiveness of specialized application equipment. The Agency concluded that the equipment did result in a high degree of incorporation, but birds mortalities still occurred ranging from 0.4 to 1.4 birds per acre.

The $LD_{50}s$/sq ft analysis for pineseed orchards resulted in the highest values of all of the crops analyzed. The minimum and maximum $LD_{50}s$/sq ft ranged from 438 to 10,002 for the three representative bird groups.

Pineseed orchards also represent less than 1 percent of both granular and total carbofuran usage. Only 5 percent or less

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of the 10,000 acres of mature seed producing pine orchards are treated with 1,500 to 7,500 lb ai. Use on young seed orchards is more important (20 to 50 percent of the acres), although usage is still estimated to be less than 100 lb ai. Aggregate annual economic impacts would be no higher than $11,000, which represents a 2 to 3 percent increase in production costs.

Because of the minor benefits associated with carbofuran's use on this site, the Agency proposes cancellation.

10. *Sunflowers.* Many types of birds, including waterfowl, game birds, songbirds, and other species are expected to be present when carbofuran is applied to this site. These birds are expected to frequent sunflower fields and border areas for feeding, nesting, cover, brood-rearing, and bedding. Neither field studies nor bird kill incidents were available.

The LD_{50}/sq ft analysis indicated a minimum of 6 and a maximum of 1368 for the three representative bird groups.

All of these are high enough to suggest potential risk to each bird group. Because of the similarity of this site to the other sites, such as corn, the risk is expected to be similar.

Sunflowers account for less than 1 percent of both granular and total carbofuran usage. From 1 to 5 percent or 18,400 to 106,900 U.S. acres are treated with 18,400 to 121,100 lb ai annually. Over the last few years, more cost-effective rescue treatments are replacing the use of at-planning insecticides such as granular carbofuran. No adverse impacts are expected for either sunflower producers or consumers.

Because of the minor benefits, the Agency concluded that high risks, especially as compared to the alternatives, outweigh the benefits of use and proposes cancellation.

11. *Other sites.* Carbofuran is also registered for use on sites that were not examined with the same degree of intensity. The risk from use on these sites is anticipated to be similar to the risks from use on corn.

Regarding benefits, a review of the potential alternatives for these sites indicated that registered alternatives are not available for the following:

Site	Pest
Section 3 registrations:	
Banana	Weevils.
Sugarcane stubble	Wireworms (FL only).
24(c) registrations:	
Sugarcane	Sugarcane beetle.
Sugarcane stubble	White grubs (TX). Sugarcane beetle (MS).
Sweet corn	Corn stalk weevil (FL).
Alfalfa	Pillbug (IL).
White pine	White pine cone beetle (OH).

The Agency did not receive comments during the PD 1 comment period regarding the benefits of use on these sites. Thus, the Agency assumes the benefits are negligible, although no alternatives are registered, and proposes cancellation.

A review of the potential alternatives of the other crops indicated that alternatives that may be used either at-planting or as foliar treatments are available. Thus, the Agency has determined that the hazard outweighs the minor benefits and proposes cancellation of these remaining minor uses of carbofuran.

F. Conclusions

The Agency proposes to cancel the registrations of all granular products containing the active ingredient carbofuran. The Agency has evaluated several risk reduction measures and has concluded that the avian hazard of granular carbofuran outweighs the benefits of continued use. The Agency recognizes that while the substantial risks outweigh the substantial benefits associated with the use of carbofuran on rice, additional information pertaining to carbofuran's risks and benefits and on this site would be desireable. Additionally, the Agency requests the submission of any efficacy data on carbofuran and its alternatives.

G. Proposed Regulatory Actions

The Agency proposes to cancel all granular products containing carbofuran that are registered for all crops.

IV. Procedural Matters

As required by FIFRA sections 6(b) and 25(d), and 40 CFR 154.31(b), EPA has transmitted copies of a draft Notice of Intent to Cancel based on this Notice, together with the support documents, to the Secretary of Agriculture and the Scientific Advisory Panel for comment. EPA will publish any comments received from the Secretary or the Panel, and EPA's responses, in the Notice of Final Determination.

V. Public Comment Opportunity

The Agency is providing a 60-day period for the public to comment on this Notice and on the Carbofuran Special Review Document. Comments must be submitted by March 27, 1989. All comments and information should be submitted in triplicate to the address given in this Notice under **ADDRESS.** The comments and information should bear the identifying notation OPP-30000/48A. All comments, information, and analyses which come to the attention of EPA may serve as a basis for final determination of regulatory action during the Special Review.

VI. Public Docket

The Agency has established a public docket (OPP-30000/48A) for the Carbofuran Special Review. This public docket will include (1) this Notice; (2) any other notices pertinent to the Carbofuran Special Review; (3) non-CBI documents and copies of written comments or other materials submitted to the Agency in response to this Notice, and any other documents regarding carbofuran submitted at any time during the Special Review process by any person outside the government; (4) a transcript of all public meetings held by the Agency for the purpose of gathering information on carbofuran; (5) memoranda describing each meeting held during the Special Review process between Agency personnel and any person outside government; and (6) a current index of materials in the public docket.

Dated: January 5, 1989.

John A. Moore,

Acting Deputy Administrator.

[FR Doc. 89-1584 Filed 1-24-89; 8:45 am]

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federal register

Wednesday
January 25, 1989

Part V

Department of Labor

Employment and Training Administration

Apprenticeship 2000, Focus Paper on Support Activities and Linkages; Notice and Request for Comments

VOL 54 ISS 15 JA 25 1989 UMI

DEPARTMENT OF LABOR

Employment and Training Administration

Apprenticeship 2000, Focus Paper on Support Activities and Linkages

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice; request for comments.

SUMMARY: The Department of Labor's Employment and Training Administration has completed the first stage of its review of apprenticeship. This included a public discussion of five broad issues surrounding expansion of the apprenticeship concept of training. This is the second focus paper, designed to examine specific issues and options in more detail. The first focus paper, published in the **Federal Register** of October 14, 1988, announced a series of three focus papers. This paper combines the second and third papers. It examines ways to overcome barriers to expansion of apprenticeship through appropriate support activities and better program linkages. The term "expansion" means expansion of the apprenticeship concept of training. It encompasses expansion outside the current occupational boundaries, as well as improvement to, and potential expansion of, the traditional apprenticeship program.

DATE: Public comment is sought on the effectiveness of the methods suggested for overcoming barriers to expansion, including the feasibility and appropriateness of the support activities and linkage options described in this focus paper. Public comment is also welcome on alternative methods for overcoming barriers to expansion. Comments must be received by February 24, 1989.

ADDRESS: Comments shall be mailed to James D. Van Erden, Director, Bureau of Apprenticeship and Training, Room N–4649, 200 Constitution Avenue NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: James D. Van Erden, Director, Bureau of Apprenticeship and Training, Office of Job Training Programs, Employment and Training Administration, Telephone (202) 535–0540 (this is not a toll-free number).

Signed at Washington, DC, this 19th day of January, 1989.

Roberto T. Jones,

Assistant Secretary of Labor for Employment and Training.

Apprenticeship 2000—Focus Paper on Support Activities and Linkages

Background

Publication of an issue paper exploring expansion of the apprenticeship concept (52 FR 45904, December 2, 1987) launched the Apprenticeship 2000 review. The purpose of the review is to determine the role of the apprenticeship system in meeting America's future needs for a skilled work force. A short-term research effort to support the review was announced in the **Federal Register** on June 3, 1988 (53 FR 20386).

The public response to the issue paper has been analyzed, and the results were published in the **Federal Register** on September 2, 1988 (53 FR 34250). The analysis of the public response found overwhelming support for the apprenticeship concept as a method of training skilled workers. There was also significant consensus that apprenticeship should be expanded, but within certain limits and without sacrificing quality. The first focus paper presented alternative models for apprenticeship and examined measures for defining quality in apprenticeship programs (53 FR 40326, October 14, 1988).

For discussion, this second focus paper assumes that some significant level of expansion of the apprenticeship model will occur, and asks how to accomplish such expansion. The details of the program structure needed to support expansion will be developed following analysis of public comments and research results. However, such further efforts will conform to several basic principles. These include: equal access for employers and equal opportunity for all workers; employer-based training; portability of worker credentials; formal recognition of identifiable skill competencies; and maximum flexibility, within a structured base, to adapt training to work place needs.

Expansion includes two parts: Strengthening the traditional apprenticeship program, without changing its basic character; and establishing a separate program, based on the most effective and successful characteristics of apprenticeship, but modified to fit the changing economic environment. Public comment is sought on the appropriate support and linkage activities necessary for an effective expansion of apprenticeship to occur. Comment is also sought on how these activities should be organized and carried out.

Framework for Expansion

1. Current Apprenticeship Programs

There is strong support for the current apprenticeship programs which produce well-rounded, multi-skilled journey workers primarily in the construction and manufacturing industries. The private sector financing structure and the delivery system for these traditional programs have worked well over the years, with government and education providing appropriate support activities. These programs should be preserved, but strengthened, where needed, to keep pace with technological changes and to be responsive to workers' needs for upgrade training and retraining. They should also expand because of the continuing need for skilled, versatile workers in traditional apprenticeable occupations.

The first focus paper presented alternatives for improving and expanding traditional apprenticeship programs. The alternatives included: A career ladder approach to journey level completion, worker certification, periodic assessments, and institution of a formal appeals process. This focus paper does not reach conclusions on these issues. It does, however, assume that the traditional apprenticeship program will be expanded within some limits. It also assumes that some changes to existing regulations will be made to improve the current system. Such changes will be consistent with the basis principles for expansion, and will assure a minimum standard of quality in training.

2. Structured Work-Place Training

The first focus paper presented the concept of a separate program based on the successful characteristics of the traditional apprenticeship program. No single proposal for such a program is proposed here. Therefore, this paper does not address details of any potential separate training program. However, a separate training program, based on the elements and concepts of apprenticeship, is being explored. To advance the discussion, commentators should assume that a separate program will be developed, in line with the basic principles mentioned above.

A structured work-place training program, based on the successful elements of apprenticeship, is one possible option for programs which might better suit employers' needs for specialized skills outside of the construction industry, or for skills that can be mastered in periods different from traditional programs. A work-place training program could also be responsive to workers' needs for flexibility and portability in training and retraining, and could encourage career ladder alternatives. It might also include some of the features of traditional apprenticeship programs, such as structured on-the-job training with related instruction; and industry-based, voluntary approach to training; registration of programs; and recognition of results. Some of the features might be different from the current apprenticeship system. These differences might include a separate program structure and separate terminology, career ladder or modular approaches to training (for example, recognized results less than journey level, or building skill competencies over time), and certification of skill competencies.

Need for Apprenticeship Models

Employers of all types and sizes will need employees with stronger basic skills as well as better skills required by new technologies. Yet private sector investment in training has been insufficient. The most common form of employee training is informal. Much less frequent is a more structured method of training. Only about 10 percent of employees receive any formal training from their employers.[1] In addition, small employers, who will need to train employees most, are the least able to make such a training investment.

Recent research at the University of Pittsburgh on how learning skills are acquired found that programs that are successful in teaching thinking and learning skills share many of the elements of apprenticeship. Like apprenticeship, the programs which were studied "encourage student observation and commentary * * * allow skill to build up bit by bit, yet permit participation even for the relatively unskilled, often as a result of the social sharing of tasks (and) are organized around particular bodies of knowledge and interpretation * * * rather than general abilities."[2]

Apprenticeship has added benefits. For the employer, apprentices are productive wage-earners while they are learning. In addition, the classroom instructor, the on-the-job mentor, and the employer all can review and contribute to an apprentice's progress in training. For the employee, apprenticeship offers the opportunity to earn wages while learning a skill.

A strength of apprenticeship in this country has always been that it is a voluntary program developed, supported, and carried out by industry, with minimal government regulation. Apprenticeship works because, in the industries in which it operates, employers, unions and employees are convinced that apprenticeship is in their self-interest.

Barriers

Despite employers' needs for skilled workers and the advantages of structured training, the number of employers who register apprenticeship programs has been relatively small. Therefore, there are assumed to be barriers to employers' use of apprenticeship to meet their needs. Some of these barriers are not specific to apprenticeship, but apply to overall employer investment in training. Among the barriers to investment in training, and in apprenticeship, are:

- Cost—Training can be expensive. This is particularly true for small employers training relatively few employees. Apprenticeship programs can involve start-up costs, time spent instructing by on-the-job trainers, deferred productivity, and costs related to classroom instruction.
- Perception of union control—The perception in the general employer community is that apprenticeship is a training program for the construction and manufacturing industries, used only for the organized trades. In fact, apprenticeship can be used for many occupations in a wide range of industries. The majority of approved programs are now in the non-union sector.
- Fear of "pirating"—Many say that the cost of apprenticeship might not be considered prohibitive if there were some assurance that apprentices—in the later stages of their training, when they are more productive—and completers were not hired by firms that do not invest in training.
- Lack of support structure—Many current apprenticeship program sponsors are individual employers not covered by collective bargaining agreements. Many sponsors of traditional programs, however, are covered by such agreements. The latter have a structure to support the development and implementation of apprenticeship programs designed to meet established standards. These Joint Apprenticeship and Training Committees (JATCs) operate apprenticeship trust funds, which share the costs of administration of apprenticeship programs by all participating employers. The absence of a support structure may inhibit significant expansion among new employers or employers not subject to a collective bargaining agreement. This may be particularly true for small employers who will experience most of the job growth and will do most of the training.
- Government involvement—Many employers, even entire industries, will not participate in a program that has any degree of government involvement. Apprenticeship is a cooperative national training system in which business, labor, education, and federal and state governments all have a role a play. The aversion to government programs may be at work with some employers, even though apprenticeship is a program in which the role of government is relatively non-intrusive.

Overcoming Barriers

There are many options for overcoming possible barriers and increasing an employer's motivation to sponsor an apprenticeship program. Some of these activities are ongoing in the apprenticeship system, and might be adapted to any expansion of apprenticeship. Others represent activities that would be new to the apprenticeship system. The categories presented below are: (1) Support activities, (2) linkages, and (3) appropriate roles for the federal and state governments.

1. Support Activities

Apprenticeship support activities, performed by the Bureau of Apprenticeship and Training (BAT) and the State Apprenticeship Councils (SACs), include: Promotion, technical assistance, registration and certification, and various oversight activities. This paper seeks comments on which of these activities would be critical to improvement and/or expansion of apprenticeship, what the objectives of the activities should be, and how they should be accomplished. Commentators may also wish to include suggestions for additional activities.

- *Promotion.* The promotion of apprenticeship programs has traditionally been a function of the BAT. Promotion is also a function of the state apprenticeship agencies, recognized by the Secretary of Labor for federal purposes. Promotion encourages enlisting new program sponsors and greater participation by existing sponsors. Promotional efforts at the national, state and local levels have

[1] American Society for Training & Development, The Learning Enterprise, Draft, September 1988.

[2] Resnick, Lauren B., Educational Researcher, December 1987

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included direct personal contacts, written materials, and to a lesser extent, radio and television public service announcements.

Except for the military and certain public sector jobs, success in marketing apprenticeship outside the traditional building and manufacturing trades has been limited. In recent years, federal promotional efforts have also been limited. How important will promotion be in efforts to broaden apprenticeship effectively in both the traditional areas and in new occupations and industries?

• *Technical assistance.* BAT and state staff provide technical assistance to potential and existing program sponsors. Staff assist sponsors in developing the structured on-the-job training component, securing appropriate related theoretical instruction, developing affirmative action plans, and in various aspects of ongoing programs. The availability and expertise of staff, especially outside the traditional skilled trade areas, however, varies from one location to another.

The availability and quality of technical assistance may be a significant support function needed for expansion. What should be the objectives of technical assistance in an expansion effort, and whose responsibility is it? Should efforts be directed to specific sponsors, or should there be a more systematic national effort to develop and make accessible curricula for a wide range of occupations? Are there other agencies or organizations which might also provide technical assistance?

• *Registration/Certification/Accreditation.* In support of apprenticeship programs, the BAT and the SACs register both new programs and new apprentices. Program sponsors in BAT states, and in some SAC states, receive a registration certificate which certifies that the program meets standards for registration. The apprentice, upon completion, receives a certificate of completion from the BAT, or the SAC or, in some states, both. Thus, in effect, there is no single, complete, national registration/certification system for apprenticeship programs.

This system of registration and certification does not ensure portability of skill recognition because a worker's certificate from one state may not be accepted in another state. Furthermore, the certificate only attests to completion and does not serve to inform employers of the specific competencies achieved. To promote the principle of portability, should current procedures be changed to provide universal recognition for program sponsors and for individual training results? If so, how should this be accomplished? Commentators should also consider whether a national system of registration/certification is needed. If the answer is yes, should portions of the process be delegated? If so, which entities should be involved, and, under what circumstances?

• *Special recognition.* Now the major—some say only—benefits for an employer of registering an apprenticeship program are the lowered wage rates permitted under Davis-Bacon, and the ability to require related training "off the clock," without compensation. Are there ways of increasing the recognition value of both registration approval and certification of completion that would provide enough additional incentive for employers to develop and register apprenticeship programs? For example, national awards for excellence in apprenticeship could focus attention on its contributions to national productivity and generate industry pride in training accomplishments. Or, are there means of helping industries to use their apprenticeship programs as a "selling" technique, such as auto dealers displaying their mechanics' training certificates in service departments?

• *Delivery system.* Apprenticeship is an industry-based training program. Private employers, either on their own initiative or through a collective bargaining agreement, sponsor apprenticeship programs. (Local, state and federal governments, including the military, also operate registered apprenticeship programs.) As mentioned above, the lack of a support structure or delivery system may be a barrier to expansion of apprenticeship. Under the JATC model, employers who lack the resources to train on their own can jointly sponsor an apprenticeship program. Furthermore, employee interests are represented in decision-making about the operation of the apprenticeship program. Is providing assistance in forming delivery systems crucial to expansion of apprenticeship and broader work-place training programs? Should efforts be made to duplicate the JATC model? If so, who should provide this assistance: government, education, associations, others? Finally, if such help is provided, should it be focused on emerging occupations and industries, on small employers, or on all potential programs, including those in the traditional apprenticeship trades?

• *Provide loans to apprenticeship or work-place training sponsors.* Employers or associations could receive loans to pay for the initial costs of developing and implementing apprenticeship programs. The amount of such loans could be based on some combination of number of apprentices, skill level of the occupation, and length of training.

• *Subsidize the costs of related instruction.* Providing classroom training related to the skills being learned on the job is essential to the success of apprenticeship and is a requirement for registration. Related instruction is sometimes paid for solely by the state, or in conjunction with federal vocational education funds. However, who provides related instruction and who pays for it varies from state to state. Some states have their own methods of providing funds for related instruction. California, for example, through the "Montoya Law," provides monies to apprenticeship program sponsors through the education system, for related and supplemental instruction.

• *Help lower the costs of doing business.* Among the possibilities for using apprenticeship to lower business costs is in the area of lower insurance rates. Apprenticeship includes safety training and strict rules of supervision while learning. It is logical to believe, and there is some evidence to suggest, that apprentices and journey workers trained through apprenticeship have a lower accident rate on the job. If this is shown to be true in specific industries, then the insurance industry might lower specific rates (e.g., workers' compensation) based on apprenticeship safety training.

• *Contract preference.* At times, in specific circumstances, preference in the award of federal or state contracts has been given to firms that exhibit certain characteristics or undertake certain activities. Preference on certain contracts could be reserved for firms that hire apprentices or structured work-place trainees in certain occupations.

2. Linkages

Apprenticeship programs over the years have developed linkages with other programs, particularly with the education system, and also with parts of the employment and training system. Although there are many creative apprenticeship linkages with a variety of organizations, these linkages have not been universally adopted.

Employers receive no direct federal funds for sponsorship of apprenticeship programs. However, many federal, state, and local funds are spent on education, employment and training, and related programs. These resources can be used to lower the costs of training for apprenticeship program sponsors. Operating in this way, linkages can be

significant incentives for program sponsors.

Apprenticeship linkages are conceivable with a great number and variety of organizations at state and local levels. The kinds of linkages that can develop and flourish will depend on the purpose, perspective and leadership of existing organizations. Barriers to successful coordination can be formidable, but the potential benefits may make the effort required to establish linkages extremely worthwhile. Linkage activities should increase the ability of apprenticeship programs both to produce skilled workers and to serve populations that are different from the current apprenticeship populations.

The specific objectives of apprenticeship linkage activities include the following:

• To provide for coordinated employment and training and education programs that produce the maximum value for the dollars invested;

• To increase the likelihood that women, minorities, immigrants and youth will be able to enter and succeed in apprenticeship;

• To raise the visibility and awareness of apprenticeship; and

• To improve the quality of apprenticeship through such methods as:

• Better related instruction; and

• Valid competency tests.

Commentators are asked to consider what kinds of linkages with the following organizations or programs will help meet these objectives. Commentators are specifically asked to suggest additional organizations which might be the focus of linkage efforts for a specific purpose, and how such linkages might best be established.

• *Education.* Linkages with education are among the most frequent kind of links for apprenticeship programs because of the requirement for related instruction. However, the details of how a related instruction program is developed and conducted vary considerably from state to state and among apprenticeship sponsors. Among the other links that could strengthen the apprenticeship program and which are operated, to varying degrees, are: School to apprenticeship programs; development of curricula and instructional materials; instructor training; associate degree programs, which combine apprenticeship training and college study; membership in sponsoring organizations to represent workers, if no union active in apprenticeship; and linkages with assessment and evaluation services.

• *Job Training Partnership Act (JTPA).* The prevalence of higher-paying skilled occupations in the apprenticeship system makes it an attractive link for programs like JTPA which are evaluated, in part, by participants' outcomes after completion. Pre-apprenticeship programs operated by JTPA sponsors are a fairly common method of providing the economically disadvantaged the necessary support and background to gain access to apprenticeship. Other kinds of links with JTPA could include using the Private Industry Councils to increase the visibility of apprenticeship in the employer community, and conducting upgrade training or retraining.

• *Job Corps.* Many Job Corps Centers already have strong linkages to apprenticeship through their pre-apprenticeship programs, largely in the building trades. Can these successful models be duplicated for other occupations?

• *Federal-State Employment Service system (ES).* The State Employment Service is used most frequently today by apprenticeship sponsors for testing and selection. In the past, ES has operated apprenticeship information centers, and some states have recently reinstituted this activity. The first focus paper presented for comment the idea that occupational performance tests could be used before completion of apprenticeship. At the national level, the United States Employment Service's (USES's) expertise in testing could make it a valuable partner for apprenticeship. Under federal BAT guidance, and with industry direction and involvement, USES might develop or adapt such performance tests or design others to assess and document the performance of apprentices. Another option might be to use USES to develop methods of assessing applicants' experience so they can begin their apprenticeship above the entry level.

• *Economic development organizations.* In recent years there has been a growing awareness among public and private economic development practitioners of the importance of the human capital factor in private investment decisions. Most states now include, at least in a general way, employment and training in their economic development plans for strengthening the business climate and creating jobs for their residents. However, most state coordination strategies in this area are still evolving. Because registered apprenticeship programs are evidence of a commitment to developing and maintaining a skilled work force, they can be a particularly attractive development tool. Links with economic development organizations, such as chambers of commerce, and state and local government economic development agencies, might include: Aggressive marketing of apprenticeship as evidence of a skilled work force in the state; and promoting apprenticeship in the small business community, while helping to tailor programs to their needs.

3. Federal/State Roles

Administration of the national apprenticeship system is a mix of solely federal, joint federal-state, and mostly state administration. In 23 states, the BAT directly administers apprenticeship. In the 27 states where direct administration of apprenticeship is delegated to a state agency, the role of the BAT varies widely, from only minimal involvement in some state activities to a substantial role in others.

While this diversity provides options and flexibility to the states, it also results in differences and inconsistencies in program registration and certification procedures among states. Thus, the current administrative structure needs review to examine options needed to support an expanded and improved national apprenticeship system. Some of the issues raised are long-standing. Recommendations for resolution of these issues could appropriately be made regardless of any expansion efforts. Following are some areas where change to the current federal/state relationship and roles might be considered.

• *Minimum state level.* Current federal regulations do not prescribe any minimum level of state activity required for recognition. In at least several states, the SAC serves essentially as a registration agency, with BAT staff performing all the administrative functions. Some maintain that this adds a cumbersome layer of bureaucracy with no real benefit to the program sponsors or the apprentices. Accordingly, should there be minimum requirements for the level of effort as a condition for recognition? If so, what criteria should be used in establishing the minimum state level of effort?

• *Participation by all states.* Several respondents to the broad issue on government role suggested establishing a federal-state apprenticeship system modeled after the federal-state unemployment insurance (UI) system. In the UI system, state agencies receive federal administrative grants and employers receive tax credits against their federal unemployment tax if the state enacts an unemployment insurance law that conforms with federal requirements. For employers to receive tax credits, the state law must meet requirements of the Federal

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Unemployment Tax Act. Receipt of administrative grants is conditioned on requirements in Title III of the Social Security Act. Although state participation in the UI system is theoretically voluntary, the financial inducements are such that all states participate in the system.

A similar arrangement or variations of such an arrangement are conceivable for the apprenticeship system. Of course, any alternative could change the present federal-state structure by adding more or less federal oversight. On the other hand, it would promote establishment of a national federal-state apprenticeship system unlike the hybrid structure that now exists. Is a federal-state apprenticeship system modeled after the UI system, or some other model, a desirable goal? If so, what should be the minimum federal requirements for state participation?

• *Consistency among states.* The focus papers have examined issues about quality, accreditation and portability of apprenticeship. Does there need to be more uniformity among the states in apprenticeship program operations? Or, does the unique economic environment of each state argue for diversity? If uniformity is important, is it more important in some areas than others: for example, in apprenticeable occupations, program standards, program registration and approval procedures, curriculum, or some other area?

• *Procedural safeguards.* Current federal regulations do not provide for potential program sponsors to be advised of the reasons for denial of program registration. There are no appeal rights for potential program sponsors in BAT states and in many SAC states. The right to appeal an adverse finding is basic to most government programs. Should it be included in apprenticeship programs? If so, what are the appropriate levels for appeal?

• *Oversight.* The BAT conducts annual compliance reviews of SAC operations for consistency with federal regulations. The Secretary of Labor may derecognize a SAC which fails to comply with federal regulations, after opportunity for corrective action. In fact, no SAC has ever been involuntarily derecognized. In large part, this is because this sanction is viewed as too extreme, considering the voluntary nature of state participation. Is derecognition too strong a tool for fostering compliance? If faced with this action, would a SAC choose to go out of business for "federal purposes" rather than comply with federal regulations? How might this impact the national apprenticeship system?

While derecognition would always be an option available to the Secretary, there may be interim actions to ensure SACs comply with federal rules. One suggested alternative is a periodic recertification of SACs. Another is to establish procedures for routine review and approval of state law and regulatory changes related to the delegation of federal functions. Are these viable options and/or are there others?

• *Other.* Suggestions have been made that additional efforts are needed to clarify respective responsibilities in states where apprenticeship is jointly administered by the BAT and the SAC. However, in 25 of the 27 SAC states, responsibilities are established in written agreements. However, many of these may be little more than a paper exercise. What more should be done to clarify the federal/state roles? Are there additional steps that might provide more structure to existing processes?

Summary of Public Comments Requested

ETA is presenting for comment many specific questions and issues related to various ways of overcoming any barriers to expansion of the apprenticeship concept of training. The general categories include: I. Support Activities, II. Linkages, and III. Federal/State Roles. Many commentators will not want to address all the issues and questions presented, and ETA welcomes responses to selected questions. For ease in responding, a summary of the questions is provided below. Commentators are requested to follow the order presented and key their responses to the numbers listed below.

Issue I—Support Activities

A. Public comment is sought on the mix of activities listed below that will best support expansion of apprenticeship. Should the mix be different for expansion of the traditional program than for expansion under a structured work-place training program?

- Promotion
- Technical assistance
- Registration/certification/accreditation
- Special recognition
- Delivery system
- Loans
- Help subsidize related instruction
- Lower costs of doing business
- Contract preference

B. Are there other support activities that would be effective in overcoming barriers to expansion?

C. Who should undertake the various activities necessary for expansion? BAT? States? Education? Business? How should these activities be implemented?

Issue II—Linkages

A. Public comment is sought on the degree to which strengthened or additional linkages are needed to improve or expand apprenticeship programs and on how such linkages should be undertaken.

B. What other organizations will be most important to improvement and expansion of apprenticeship? What should be the nature of the apprenticeship system's relationship with them?

System III—Federal/State Roles

A. *Minimum state level.* Should there be minimum requirements for the level of state effort as a condition of recognition by the Secretary?

B. *Participation by all states.* Is a federal/state apprenticeship system in which all states participate a desirable goal? If so, how can this goal be accomplished and what should be the minimum requirements for state participation?

C. *Consistency among states.* Is uniformity among states important? If so, in what areas is uniformity most important—apprenticeable occupations, program standards, program registration and approval procedures, curriculum, other?

D. *Procedural Safeguards.* Should there be minimum requirements for notification and rights to appeal adverse decisions on program registration?

E. *Oversight.* How can BAT best foster compliance of the SACs with federal regulations? What other options to derecognition are viable for compliance purposes, i.e., periodic recertification, regular review of law and regulatory changes?

F. *Other.* What more should be done to clarify the federal-state roles?

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January 25, 1989

Part VI

Office of Personnel Management

5 CFR Part 300

Employment (General); Government Use of Private Sector Temporaries; Final Rule

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 300

Employment (General);

Government Use of Private Sector Temporaries

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing a final rule establishing criteria and conditions under which agencies may consider using temporary help service firms for meeting short term temporary work needs. We are issuing the rule to respond to agencies' requests for flexibility to provide public services and to maintain productivity. The effect of this rule will be to give agencies an optional, additional tool for meeting short term needs which has long been available to other public and private organizations.

EFFECTIVE DATE: February 24, 1989.

FOR FURTHER INFORMATION CONTACT: Thomas O'Connor, (202) 653-0407.

SUPPLEMENTARY INFORMATION: On October 17, 1988, OPM published (at 53 FR 40546) proposed regulations which would permit agencies to use temporary help services in certain situations. The policy is intended to benefit the public, agencies, and employees: services to the public will be maintained, managers can keep up timely operations, and employees may more readily get time off for dependent care, family emergencies, extended recovery, or other important personal situations. In preparing the final regulations, we considered carefully the more than 50 responses received during the comment period. While we have maintained the basic approach of the proposal, we have made many changes in response to the concerns of agencies, Federal employee organizations, temporary help firms, and other organizations and individuals.

We appreciate the concerns raised by Federal employee unions and by some other commenters regarding such matters as the employer-employee relationship, supervision, costs, and OMB Circular A-76 requirements. We want to address those matters in detail first and will cover other comments in the section analysis. Some responses asked about operational and advisory matters which would not be included in a rule. In accordance with regular OPM practice, we will address those matters through the Federal Personnel Manual System.

I. Introduction

What these regulations would permit is simply this—the occasional use of a private sector temporary for a few days or weeks when an employee needs to be absent or an agency is faced with an immediate, critical need which cannot be met readily through temporary appointment procedures. A temporary help service firm specializes in having personnel on tap to step into a job quickly.

The use of outside help is a long-standing practice in every other type of organization in the United States: private companies; city, county, and State governments; and even Federal agencies which are independent of the general personnel system, such as the Federal Reserve System and the Tennessee Valley Authority. The Government of Canada has administratively authorized use since 1980.

In all of those organizations, the situation is the same. The outside temporaries are legally the employees of a temporary help firm, which exercises overall control of their activities from hiring through termination. The client contracts with the firm for services, gives the temporaries assigned a brief orientation and work tasks, and reviews the work product. There is no employer-employee relationship created with the client.

These regulations simply transfer this idea to the Federal sector. They will make outside temporaries available to Federal agencies, at their option, but in a more restricted and controlled way than other organizations use them.

In our capacity as the Federal agency authorized by statute to administer, execute, and enforce the laws governing the civil service under 5 U.S.C. 1103(a)(5), we believe such use is proper. There is no statutory prohibition. The guidance and opinions of the past (best known as the Pellerzi-Mondello opinions after the two General Counsels of the former Civil Service Commission who prepared them), which placed the use of temporary help services under the general ban against contracting for personal services, must give way to a new interpretation based on court decisions, the statutory definition of a Federal supervisor, evolving experience, and the now-established role which temporary help services perform. This rule reflects that new interpretation and it amends the Pellerzi-Mondello opinions with respect to the use of temporary help service firms.

Clearly, the policy is not meant to solve permanent recruitment needs, pay problems, or other unrelated matters, as some commenters believed. We believe the policy should be viewed in terms of the immediate, short-term needs it seeks to address, and, where the policy is used, we believe it will provide an opportunity for agencies and employees to judge how the use of these services function in practice.

We will keep the policy under review and are prepared to make changes where need is indicated. We plan to make a full review of the policy in 2 to 3 years, and will evaluate it for further continuation.

II. Origins

For a number of years, we have received many individual suggestions from Federal agencies and from private firms that the Government should be able to use the same services that are available to private sector organizations.

In 1986, the President issued Executive Order 12552, which requires agencies to improve the quality, timeliness, and efficiency of public services. We established the Personnel Directors Productivity Task Force at that time to identify impediments to modern personnel management in Federal agencies. For a wide variety of reasons, including major changes in the national work force, employers are facing increasingly difficult staffing challenges. These are described in the recently completed "Civil Service 2000" study, which provides a projection of future labor market conditions and agency needs through the end of this century. While some items in the report require further discussion, it is clear we must begin to address those challenges now.

The specific impetus for developing the new temporary help policy came from the Task Force's recommendations. We believe we have taken a reasonable and prudent approach to the recommendations, an approach which seeks to recognize the needs of agencies and employees. It should be noted that use of temporary help services is entirely optional with each agency, is a supplement to an agency's own personnel and resources, and is permitted only in narrowly defined circumstances. Because the policy is optional and because use is restricted to situations which are difficult to forecast—for example, individual employee needs for dependent care, family emergencies, or extended recovery—we have not projected any numerical estimates of the extent to

which agencies may elect to use these services.

The thrust of the proposal is to clarify previous legal or policy concerns so that Federal agencies may use, in a proper manner, services long available to other employers. The Federal Government will be the last significant employer to begin using those services.

III. The Employer-Employee Relationship

A permanent civil service is a vital component of all modern governments. The Federal civil service performs a wide variety of essential activities for our Nation. In the Federal Government, a comprehensive system of legal obligations, rights, restraints, and benefits encompasses and uniquely characterizes Federal employees. This system is necessary to assure the direct control of the basic machinery of the Government and to protect the integrity of the civil service.

When the work of an agency is performed by a contractor rather than by Federal employees, the general guidance is that the agency must avoid creating an employer-employee relationship with the contractor's employees because those employees were not hired under the system of civil service laws. This means an agency may not recruit, test, select, reward, reassign, grant leave to, discipline, or separate, a temporary help service contractor's employees. The contractor must perform these actions because the contractor is the employer. (This does not preclude a temporary help service employee from applying for and being hired by a Federal agency for civil service employment.)

We have reviewed the legal and policy restraints, resulting from the civil service employment laws, on the ability of agencies to contract for temporary help services. Under OPM's previous guidance, such contracts have not been allowed because they were understood to create an employer-employee relationship without observing the legal requirements for civil service employment.

While the definition of what constitutes civil service employment is in statute (5 U.S.C. 2105), the former Civil Service Commission interpreted that definition in 1987 and 1988 in its Federal Personnel Manual Letters 300-8 and 300-12 (the Pellerzi-Mondello opinions) to agencies. That guidance has been applied in Comptroller General rulings, in court decisions, and in the Federal Acquisition Regulation.

The statutory tests in 5 U.S.C. 2105 for identifying a Federal employee are whether the individual worker is performing an authorized Federal function, is supervised by a Federal official or employee, *and* is appointed formally to the civil service by an authorized Federal official or employee.

While outside temporaries would be doing Federal work, they would neither be supervised (they would receive technical instructions) nor appointed by Federal officials or employees, within the meaning of section 2105:

1. Absence of Supervision

A. Universal Practice

For all other employers, public and private, use of outside temporaries does not present a question that the temporaries might be the employees of the client. The role of the temporary help service firm is well established and clear cut, and the temporaries are legally its employees.

Typically, for example, a client will give rough drafts to, and review the typed products of, a typist from a temporary help firm. Yet this type of relationship has never been judged sufficient evidence of supervision to make the client the employer of the temporary. Supervision is a broad activity consisting of many significant authorities and responsibilities toward employees, including performance appraisal and accountability—it is far more than one individual's assigning work to another.

B. Statutory Definition

While 5 U.S.C. 2105 does not define supervision, in 1978 the Civil Service Reform Act added a definition of a Federal supervisor at 5 U.S.C. 7103(a)(10). It reads, in pertinent part,

> (10) supervisor means an individual employed by an agency having authority in the interest of the agency to hire, direct, assign, promote, reward, transfer, furlough, layoff, recall, suspend, discipline, or remove employees, to adjust their grievances, or to effectively recommend such action, if the exercise of the authority is not merely routine or clerical in nature but requires the consistent exercise of independent judgment * * *

The statute clearly states the broad scope and full range of activities which typifies a supervisor's relations with, and control over, employees. A Federal agency would not perform these supervisory activities with respect to outside temporaries; the temporary help firm would.

2. Absence of Appointment

Recent case law interpreting 5 U.S.C. 2105 makes clear that Federal employment cannot exist in the absence of a formal appointment. An appointment is a conscious, deliberate act by an agency to initiate an employer-employee relationship. Further, a contract issued by a contracting or procurement authority is not an appointment made by an official with authority to appoint as the law requires.

Section 2105 expressly goes beyond the common law employer-employee relationship and requires more than just the supervisory relationship. All three criteria of that law must be satisfied in order for an individual to be a Federal employee within the meaning of the statute. See *Costner* v. *United States*, 665 F. 2d 1016, 1021 (Ct. Cl. 1981); also, *United States* v. *Testan*, 424 U.S. 392 (1976); *Lodge 1858, American Federation of Government Employees* v. *Administrator, National Aeronautics and Space Administration*, 580 F. 2d 496 (DC Cir. 1978), *cert. denied*, 439 U.S. 927 (1978); *Baker* v. *United States*, 614 F. 2d 263 (Ct. Cl. 1980); *National Treasury Employees Union* v. *Reagan*, 663 F. 2d 239 (DC Cir. 1981); *Horner* v. *Acosta*, 803 F. 2d 687 (U.S.C.A. Fed. Cir. 1986); and *Watts* v. *OPM*, 814 F. 2d 1576 (U.S.C.A. Fed. Cir. 1987).

To quote just two of those cases, the court in *Costner* significantly noted,

> an abundance of Federal function and supervision will not make up for lack of an appointment.

In *Horner*, the court fully examined the appointment question and said,

> It is well established that an appointment is necessary for a person to hold a Government position and be entitled to its benefits.

IV. Responses to Other Frequent Comments

A. Oversight

Agency expenditures will be subject to the full range of internal controls and oversight, inspector general reviews, and audits which apply to every service contract. An agency contracting officer is responsible for seeing to the proper performance of the contract. Each agency is responsible for using these services to advance the work of the agency and for weighing program needs against costs. Agency adherence to our regulations is subject to review under our regular compliance and evaluation activities.

B. The Federal Procurement System

Several comments suggested adding security, suitability, liability, and other requirements which already are provided for in the comprehensive Federal procurement system. Agency use of these services will be a procurement rather than a personnel

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management matter and as such is subject to all of the contracting laws, the Federal Acquisition Regulation, and the policies of the Office of Federal Procurement Policy and the General Services Administration which apply to every other purchase of goods or services from the private sector.

Under those legal and policy requirements, the Federal procurement system provides for fair and open competition among interested firms and for selecting the firm whose services will provide the greatest value to the Government at the lowest total cost. The procurement system also requires special consideration for small or disadvantaged businesses, for women-owned businesses, for handicapped activities, and for affirmative action by Federal contractors to employ disabled and Vietnam era veterans.

C. Costs

Concern was expressed over costs, especially the salaries which firms would pay to the outside temporaries. We have explored the cost of using these services and there are many factors to consider:

—The fees an agency will pay are determined by the contracting process which favors the lowest bidder who can do the job best.

—Under Federal procurement regulations, an agency contracting officer must certify that the price is fair and reasonable.

—The large number of firms makes for a very competitive situation for the buyer.

—Fees vary by company, locality, and occupation.

—Temporary help firms bill clients only for services actually used. Clients do not pay for holidays, vacations, sick leave, or other absences of the firm's employees. From those fees, the firm pays: The salaries and benefits of its employees; the costs of recruiting, testing, hiring, and training as well as maintaining a ready referral pool for instant placement; overhead; and profit.

—The salaries temporary help firms pay are summarized by locality and occupation in a Department of Labor news report dated May 24, 1988, and a more comprehensive industry wage survey, Bulletin No. 2313, dated September 1986. Interested parties may wish to consult those publications.

Like any other private activity, temporary help firms have the right to set the pay of their employees. Agencies will need to be sensitive to Federal employee concerns in a situation where the total compensation a firm would pay to its employees would exceed that of Federal employees for comparable work under similar conditions.

D. Cost Effectiveness

It should be noted that, in every instance, each agency will be responsible for deciding whether temporary help services are worth the cost. Our policy simply will make using such services a possibility for agencies to consider—a use which is limited to certain defined situations and to very short periods spelled out in regulations.

In high-cost localities, agencies may well conclude that temporary help fees are not affordable in all but the most crucial situations. The need to meet a statutory deadline, to respond to a court order, to provide timely services to veterans, to dispense benefits to the elderly, and to assist farmers and small businesses, are representative of the daily tasks agencies must be prepared to perform through their resources. Before using outside temporaries, each agency must weigh each individual situation and consider the relative costs of alternatives, the importance of the work to be done, the need to maintain basic Government operations, the rights of the public, and the personal needs of its employees.

E. OMB Circular A–76 and Contracting Requirements

Since OMB is responsible for Circular A–76, we obtained its advice to respond to the following comments:

1. *Comment:* The authority delegated by this regulation must still comply with the requirements of OMB Circular A–76. Before contracting out for temporary employees, agencies must conduct the cost analyses required for an A–76 study. Decisions to fill position vacancies through a temporary help firm cannot be made on an ad hoc basis, especially where the potential exists for the agency to incur increased costs.

Response: Circular A–76 cost analysis requirements do not apply to the use of temporary employees under the conditions set by this regulation. A–76 requires cost comparisons of Government operated commercial activities with 10 or more full-time equivalent employees. Because this regulation only allows the use of outside temporaries when an agency cannot locate Federal employees in a timely manner to do the work, there is no competition between agencies and private firms for the work and no basis to make a cost comparison.

2. *Comment:* The proposal is contrary to the concept of career appointments which is inherent in the Federal system.

Response: To preserve the career appointment process, § 300.503(c) has been amended to specifically prohibit use of temporaries where career appointment should be made.

3. *Comment:* Federal personnel principles in essence permit agencies to contract out specific types of work when certain criteria are met, such as those contained in Circular A–76. OPM's regulation is in conflict with these principles in that it allows agencies to contract out positions, as distinguished from specific types of work.

Response: Circular A–76 sets the basic policy for executive agencies to determine whether commercial activities should be performed by Federal employees or by private contractors. There is no conflict between Circular A–76 and Federal personnel policies and, in these circumstances, there is no special bar to contracting out the work an individual performs as distinct from contracting out an entire function. The contracting procedure agencies would follow does not turn work or positions over to a contractor. Instead, a contractor is obligated to provide brief fill in or back up services, only at such times as an agency may request. In each instance, an agency must first determine that no employees or qualified candidates are immediately available. Agencies should use Federal employees to the maximum extent possible. The contracting procedure referred to is found in Subpart 16.5 of the Federal Acquisition Regulation and is used regularly by agencies to address possible future needs for goods and services which cannot be predicted.

4. *Comment:* The advisability of using contract temporaries is questionable, since pay disparities between workers doing the same work, side-by-side, will increase the already serious morale problems of the current Federal work force.

Response: The outside temporaries will accomplish work that cannot be accomplished by the existing Federal staff; therefore, their use should not harm morale. Without them, the work would not be done in a timely manner and would remain for Federal workers to do at some future time. Also, outside temporaries do not have the benefits that come with full-time Federal employment. For further information on this point, please refer to the earlier discussion in the supplementary information on costs and cost effectiveness.

5. *Comment:* OPM should limit the use of outside temporaries to certain situations and duties, i.e., typing and filing. Such workers should be prohibited from dealing with the public and working in areas where security clearances are necessary, and the firms should be limited to payments that do not exceed step 5 of the grade of the worker whose duties are being performed by the outside temporary.

Response: It is not necessary to restrict outside temporaries to particular positions. Federal managers may use outside temporaries for a variety of tasks only when work cannot be accomplished with Federal employees. To be sure, there are many Federal work assignments which could not be filled by outside temporaries. It would be unreasonable to expect outside temporaries to step into most middle and upper level jobs and have them hit the ground running. There is no need, however, to ban unlikely use and, at the same time, second-guess agencies on individual situations where outside temporaries would be feasible.

An agency must specify in the contract the capabilities and, if any, the security clearance requirements of the workers the firm is required to provide. If an individual does not meet the performance requirements the agency has specified, the firm will assign a qualified replacement.

Concerning the suggested limit on pay levels, please see the earlier discussion of costs and cost effectiveness.

V. Section Analysis

Here is a summary of the key changes we have made in the final regulation. Since the changes are based on the comments, we generally will not describe each individual comment.

A. Regulatory Agenda and Regulatory Flexibility Act

We did not list development of the regulation in the last agenda because at the time of our agenda submission, we had no decided on a regulatory approach. We have substantially expanded our statement in the regulation concerning the application of the Regulatory Flexibility Act.

B. Authority Citation

We added 5 U.S.C. 1103(a)(5) to indicate that we are acting in our capacity as the agency responsible for the administration, execution, and enforcement of the civil service laws.

C. Section 300.501

We clarified the definitions of temporary help service firms and private sector temporaries and added definitions for parental and family responsibilities (in place of maternity leave), Federal supervisor, critical need, and local commuting area. We did not add individual consultant-type services to the temporary help service firm definition because, among other reasons, those services may be acquired under the procurement laws or under 5 U.S.C. 3109.

D. Section 300.502

The reference to the Senior Executive Service (SES) in our proposed regulations was meant simply to identify those agencies within the scope of our regulations and not to suggest it would be appropriate to use temporary help services to perform SES work. Therefore, for clarity, we have excluded SES positions from coverage. We also have added an exclusion against using outside temporaries for managerial and supervisory work in the competitive service, since, like the SES, such work would entail control over Federal employees and programs. Lastly, the proposal included agencies with excepted Schedule A, B, and C positions. We are eliminating Schedule C because it would not be appropriate to use outside temporaries because of the confidential relationship required for those positions.

E. Section 300.503

We have dropped the concept of specific permitted use situations in the proposal for agency relocations, phase downs, and shortage category recruitment needs. Those situations implied, rather than required, some sort of special need and raised unrelated issues. Rather than listing the situations where use is permitted, we have taken instead a generic approach. We have added a more focused agency critical needs situation which parallels the empolyee needs situation. Thus, we have neither endorsed nor excluded particular situations, but have defined the kind of situation in which use may be appropriate. Both situations, taken together, will present occasions for temporary help usage as an alternative to short term temporary appointment and provide a rational place for those services within the overall Federal resources management picture.

We have dropped the open-ended special circumstances category from the employee needs situation, added a restriction on use when civil service recruitment for permanent employment should be conducted, and, at the recommendation of a veterans' organization, added references to veterans' preference, disabled veterans, and FPM chapter 316 temporary appointment requirements.

The proposal received overwhelming support from Federal agencies, although they favored expanded usage such as lengthening the 45 workday limit and suing outside temporaries for vacations. Since this is a new situation for most agencies, we have decided not to expand the usage and to proceed with a limited approach until more experience has been gained.

F. Section 300.504

We have made the following changes: (1) Stressed that outside temporaries shall not be considered or treated as Federal employees and shall not be regarded as performing a personal service; (2) changed the area for applying the 45 workday limit on an outside temporary from nationwide to the local commuting area; (3) added authority for an agency to grant a one-time, 20 workday extension to let the same outside temporary continue, in maternity situations only; (4) added an overall 120 day cap on any one situation and provided authority for OPM to permit appropriate extensions; (5) and, added instructions that Federal agencies, just like every other organization using temporary help services, are expected to give orientation, assign tasks, and review work products.

G. Section 300.505

Reminds agencies that a variety of other means may be available for meeting short-term needs.

H. Section 300.506

Reminds agencies of procurement requirements. There is no requirement for imposing civil service qualification standards (such as those in Civil Service Handbook X–118) for Federal empolyment, on private sector employees. We have noted that agencies must specify the obligations a contractor is required to meet including the types and levels of skills to be provided.

I. Section 300.507

Alerts agencies that basic records will need to be kept.

Each agency will be responsible for deciding whether to use temporary help firms and for using them as they would any other management alternative to advance the work of the agency. As in other management actions, an agency should weigh program needs against relative costs. Each agency will be responsible for observing the conditions and criteria of these regulations.

E.O. 12291, Federal Regulation

After a careful review of the proposed rulemaking, including the analysis set forth below for purposes of the Regulatory Flexibility Act, OPM has determined that this is not a major rule

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for the purposes of section 1(b) of E.O. 12991, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities for the following reasons:

1. OPM is not regulting, establishing criteria for participation of, or imposing requirments including record keeping or reporting on, small or other entities. OPM is regulating the conduct of Federal agencies to avoid the development of an employer-employee relationship should they elect to use outside temporary help.

2. The requirements an entity will have to observe will come about through an agency-initiated contracting process under the already-established, statutory Federal procurement system which applies to all contractors providing goods and services to the Government. The only entities affected would be those who seek and win a contract. Those entities may be viewed as receiving a beneficial economic impact, but we have no way of forecasting how many firms will compete or which ones will win contracts.

3. Our regulations do not require agencies to use private temporary help firms. Use is entirely optional with each agency.

4. Our regulations will provide an additional tool for agencies to consider using in very limited circumstances—emergency and critical needs situations, which by their nature are unpredictable. OPM has no basis for predicting when an agency will elect to use this alternative in light of the many other variables and alternatives which may or may not be present in any particular situation.

List of Subjects in 5 CFR Part 300

Administrative practice and procedure, Government employees.

U.S. Office of Personnel Management.

Constance Horner,

Director.

Accordingly, OPM is issuing final rules to amend 5 CFR Part 300 as follows:

PART 300—EMPLOYMENT (GENERAL)

1. The authority citation for Part 300 is revised to read as follows:

Authority: 5 U.S.C. secs. 552, 3301, 3302; E.O. 10577, 3 CFR, 1954–1958 Comp., page 218, unless otherwise noted.

Secs. 300.101 through 300.104 also issued under 5 U.S.C. secs. 7201, 7204, 7701; E.O. 11478, 3 CFR, 1966–1970 Comp., page 803.

Sec. 300.301 also issued under 5 U.S.C. 3304.

Secs. 300.401 through 300.405 also issued under 5 U.S.C. secs. 1302(e), 2302, and 2303.

Secs. 300.501 through 300.507 also issued under 5 U.S.C. 1103(a)(5).

Sec. 300.603 also issued under 5 U.S.C. 1104.

2. Subpart E is added to read as follows:

Subpart E—Use of Private Sector Temporaries

Sec.

300.501 Definitions.

300.502 Coverage.

300.503 Conditions for using private sector temporaries.

300.504 Prohibition on employer-employee relationship.

300.505 Relationship to civil service procedures.

300.506 Requirements for procurement.

300.507 Documentation.

Subpart E—Use of Private Sector Temporaries

§ 300.501 Definitions.

For purposes of this subpart:

(a) A "temporary help service firm" is a private sector entity which quickly provides other organizations with specific services performed by its pool and employees, possessing the appropriate work skills, for brief or intermittent periods. The firm is the legally responsible employer and maintains that relationship during the time its employees are assigned to a client. The firm, not the client organization, recruits, tests, hires, trains, assigns, pays, provides benefits and leave to, and as necessary, addresses performance problems, disciplines, and terminates its employees. Among other employer obligations, the firm is responsible for payroll deductions and payment of income taxes, social security (FICA), unemployment insurance, and workers' compensation, and shall provide required liability insurance and bonding.

(b) "Private sector temporaries" or "outside temporaries" are those employees of a temporary help service firm who are supervised and paid by that firm and whom that firm assigns to various client organizations who have contracted for the temporary use of their skills when required.

(c) "Parental and family responsibilities" are defined in chapter 630 of the Federal Personnel Manual and include situations such as absence for pregnancy, childbirth, child care, and care for elderly or infirm parents or other dependents.

(d) A "Federal supervisor" of Federal employees is defined in 5 U.S.C. 7103(a)(10) as

> an individual employed by an agency having authority in the interest of the agency to hire, direct, assign, promote, reward, transfer, furlough, layoff, recall, suspend, discipline, or remove employees, to adjust their grievances, or to effectively recommend such action, if the exercise of the authority is not merely routine or clerical in nature but requires the consistent exercise of independent judgment . . .

(e) A "critical need" is a sudden or unexpected occurrence; an emergency; a pressing necessity; or an exigency. Such occasions are characterized by additional work or deadlines required by statute, Executive order, court order, regulation, or formal directive from the head of an agency or subordinate official authorized to take final action on behalf of the agency head. A recurring, cyclical peak workload, by itself, is not a critical need.

(f) A "local commuting area" is defined in Part 351 of this chapter.

§ 300.502 Coverage.

These regulations apply to the competitive service and to Schedules A and B in the excepted service. These regulations shall not be used:

(a) For the Senior Executive Service, or

(b) For the work of managerial or supervisory positions.

§ 300.503 Conditions for using private sector temporaries.

An agency may enter into a contract or other procurement arrangement with a temporary help service firm for the brief or intermittent use of the skills of private sector temporaries, when required, and may call for those services, subject to these conditions:

(a) One of the following short-term situations exists—

(1) An employee is absent for a temporary period because of a personal need including emergency, accident, illness, parental or family responsibilities, or mandatory jury service, but not including vacations or other circumstances which are not shown to be compelling in the judgment of the agency, or

(2) An agency must carry out work for a temporary period which cannot be delayed in the judgment of the agency because of a critical need.

(b) The need cannot be met with current employees or through the direct appointment of temporary employees within the time available by the date, and for the duration of time, help is needed. At minimum, this should include an agency determination that there are no qualified candidates on the applicant supply file and on the reemployment priority list (both of which must provide preference for veterans), and no qualified disabled veterans with a compensable service-connected disability of 30 percent or more under 5 U.S.C. 3112, who are immediately available for temporary appointment of the duration required, and that employees cannot be reassigned or detailed without causing undue delay in their regular work. In instances where a need is foreseeable, as when approval of employee absence is requested well in advance, an agency may have sufficient time to follow the temporary appointment recruiting requirements, including veterans' preference in chapter 316 of the Federal Personnel Manual to determine whether qualified candidates are available by the date needed and for the length of service required.

(c) These services shall not be used:

(1) In lieu of the regular recruitmeht and hiring procedures under the civil service laws for permanent appointment in the competitive civil service, or

(2) To displace a Federal employee.

§ 300.504 Prohibition on employer-employee relationship

No employer-employee relationship is created by an agency's use of private sector temporaries under these regulations. Services furnished by temporary help firms shall be performed by their employees who shall not be considered or treated as Federal employees for any purpose, shall not be regarded as performing a personal service, and shall not be eligible for civil service employee benefits, including retirement. Further, to avoid creating any appearance of such a relationship, agencies shall observe the following requirements:

(a) No one employee of a temporary help firm may work at an agency within its local commuting area for more than 45 work-days in a 6-month period. For departments, the 45 day limit applies to the bureau, service, or other major organizational element at the headquarters level of the department. Provided a situation in § 300.503(a) of this subpart continues to exist, an agency may secure a different individual from the firm or, provided it can show that termination would cause significant delay, an agency may request OPM to authorize the extension of the same individual for a specified period. An agency may authorize the extension of the same individual for one period not exceeding 20 workdays when needed for maternity absence.

(b) An agency's use of private sector temporaries shall not exceed an overall duration of 120 calendar days in any one individual situation under § 300.503(a) of this subpart. OPM may extend that time limit, for a period not to exceed 120 calendar days, in the interest of good administration in circumstances it determines to be appropriate.

(c) Individual employees of a temporary help firm providing temporary service to a Federal agency may be eligible for competitive civil service employment only if appropriate civil service hiring procedures are applied to them.

(d) Agencies shall train their employees in appropriate procedures for interaction with private sector temporaries to assure that the supervisory responsibilities identified in paragraph (a) of § 300.501 of this subpart are carried out by the temporary help service firm. At the same time, agencies must give technical, task-related instructions to private sector temporaries including orientation, assignment of tasks, and review of work products, in order that the temporaries may properly perform their services under the contract.

§ 300.505 Relationship of civil service procedures.

Agencies continue to have full authority to decide to meet their temporary needs by a number of means including appointing individuals as civil service employees, details, redistribution of work, overtime, in-house pools, and the on-call authority.

§ 300.506 Requirements of procurement.

(a) Agencies must follow the Federal procurement laws and the Federal Acquisition Regulation, as applicable, in procuring services from the private sector.

(b) Agencies should make full use of the provisions of the Federal procurement system to make clear that the firm is the legally responsible employer and to specify the obligations the firm will have to meet to provide effective performance including such matters as the types and levels of skills to be provided, deadlines for providing service, liability insurance, and, when necessary, security requirements. The Federal procurement system also requires contractors to comply with affirmative action requirements to employ and advance in employment qualified disabled and Vietnam era veterans as provided in 41 CFR Part 60–250, and with public policy programs including equal employment opportunity, handicapped employment, and small businesses.

§ 300.507 Documentation.

Agencies are required to maintain basic records to establish that use of temporary help services is consistent with these regulations. Specific instructions will be provided through the Federal Personnel Manual System.

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Presidential Documents

Title 3—

The President

Presidential Determination No. 89-6 of December 21, 1988

Determination Under Section 702 of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989 (Public Law 100-204)

Memorandum for the Secretary of State

Pursuant to Section 702 of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989 (Public Law 100-204), I hereby determine that, with regard to the United Nations,

—the consensus based decision-making procedure established by General Assembly Resolution 41/213 is being implemented and its results respected by the General Assembly;

—progress is being made toward the 50 percent limitation on seconded employees of the Secretariat from any one member state as called for by recommendations 55 and 57 of the Group of High Level Intergovernmental Experts to Review the Efficiency of the Administrative and Financial Functioning of the United Nations (Group 18); and

—the 15 percent reduction in the staff of the Secretariat as called for by recommendation 15 of the Group of 18 is being implemented and that such reduction is being equitably applied among the nationals on such staff.

You are authorized and directed to report this determination to the Congress and to publish it in the **Federal Register.**

Ronald Reagan

THE WHITE HOUSE,
Washington, December 21, 1988.

[FR Doc. 89-1985
Filed 1-24-89; 4:47 pm]
Billing code 3195-01-M

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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Part 1930

Management and Supervision of Multiple Family Housing Borrowers and Grant Recipients

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulations governing the Management and Supervision of Multiple Family Housing Loan And Grant Recipients to incorporate provisions of the Tax Reform Act of 1986. This action permits owners of Rural Rental Housing (RRH) projects receiving tax credits additional time to market the units to attract tenants meeting tax credit income requirements when vacancies exist or occur. Also, this action is needed to inform FmHA staff members of their responsibilities with regard to the Tax Reform Act.

The FmHA also amends the same regulations to establish authorization for FmHA to transfer unused rental assistance (RA) without a borrower's consent, but *with* right of appeal.

EFFECTIVE DATE: February 27, 1989.

FOR FURTHER INFORMATION CONTACT: Ernest W. Harris, Loan Specialist, Multiple Family Housing Servicing and Property Management Division, Farmers Home Administration, Room 5321, 14th and Independence Avenue, SW., Washington, DC 20250, Telephone: (202) 382-1613.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established in Departmental Regulation 1512-1 which implements Executive Order 12291, and has been determined "non-major". It will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions, or significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. In addition, this action does not involve any of the designated categories for "reserved nonmajor" actions.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program." FmHA has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91-190, an Environmental Impact Statement is not required.

Intergovernmental Review

This program/activity is listed in the Catalog of Federal Domestic Assistance under numbers 10.405, 10.411, 10.415 and 10.427 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials (7 CFR Part 3015, Subpart V, 48 FR 29112, June 24, 1983).

General Information

1. Before passage of the Tax Reform Act of 1986, RRH borrowers were able to report operating "losses" on their investment in RRH projects due primarily to accelerated depreciation and mortgage interest paid on such properties. Such "losses" could legitimately be applied against other income for individual income tax purposes. The Tax Reform Act of 1986 replaces this type incentive with tax credits. Section 515(p) of the Housing Act of 1949 has been amended to reflect the provisions of the Tax Reform Act of 1986. This amendment to the regulation implements the amendment to the Housing Act of 1986 setting forth conditions regarding renting of the project under which borrowers may qualify for the tax credit without undue penalties caused by FmHA occupancy requirements. This amendment further provides safeguards for higher income tenants who may be displaced by the borrower's election to receive tax credit. Finally, this amendment will not affect projects not receiving tax credit consideration and will not materially affect existing tenant selection criteria.

2. In administering the rental assistance (RA) program, the FmHA has experienced two concerns. First there has been limited RA appropriation to meet the total RA need nationwide. Second, in some instances a few projects have not needed or utilized their full RA allotment on a sustained basis. This change will permit the FmHA to transfer sustained unused portions of RA allocations to other projects, as provided for in the rental assistance agreement, Form FmHA 1944-27, to fully utilize available RA funds. Such decisions would be appealable by the borrower.

Regulatory Flexibility Act

The Administrator, Farmers Home Administration, (FmHA) USDA, has determined that this action will not have a significant economic impact on a substantial number of small entities. It provides direction to rural rental housing borrowers receiving tax credits with regard to tenant selection, establishes authority for the FmHA State Director to transfer unused rental assistance and informs FmHA staff of their responsibilities with respect to the aforementioned changes.

Discussion of Comments

On June 8, 1988, FmHA published in the **Federal Register** (53 FR 21460) a proposed rule giving interested parties until August 8, 1988, to submit comments. A total of five comments were received in response to the proposed rule. Three comments were from the public sector and the other two were from FmHA field office staff.

All commentors expressed opposition to the tax credit provisions in general and to the provision regarding the six-month vacancy period before renting to other eligible tenants in particular. While the opposition is understood by the Agency, the inclusion of these provisions is statutory and not just an administrative requirement.

Two commentors suggested "* * * threat to financial viability * * *" should be defined and they stated their opposition to leaving the decision on

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this matter to the discretion of the FmHA District Director (D.D.). The Agency agrees and has responded to this expressed concern by including in the regulatory language a description of financial conditions in a project that defines "* * * threat to financial viability * * *".

One commentor suggested that any action taken by the D.D. to require occupancy by tax credit-ineligibles should be covered by the appeals process as provided by FmHA Instruction 1900–B. The Agency agrees and an amendment in the regulation pertaining to those units under tax credits will reflect this.

One commentor suggested that before transferring RA, the project should be operating, at least, at a break-even cash-flow position for six months and the project should have a waiting list showing the ability of the project to maintain a stable financial position. The Agency does not believe that this is a valid argument. It is not the intent of the Agency to involuntarily transfer RA from a project which clearly *needs* the RA already assigned to that project. The intent is to transfer RA from those projects where it is *not* needed, specifically where the owner has demonstrated a lack of eligible tenants and/or applicants who need it.

One commentor suggested that at least five RA units remain unused before FmHA considers a transfer. The Agency believes that a threshold of five (5) unused RA units is too high because of the large number of projects that have less than five (5) rental assistance units, yet are not using part of those units. The Agency addressed this issue by changing the regulation to provide that the State Director may transfer the number of unused, minus at least one. This will provide some degree of flexibility.

One commentor suggested that upon transfer of units from a project, the owner should have the first choice of reassignment of the units to one of that owner's other projects, the second choice to the discretion of the District Office in which the units are located, then to the State Office, etc. The existing regulation authorizes the State Director to decide where any transferred units are to be reassigned to meet the greatest need. The Agency believes that this policy should not be changed.

Finally, the two FmHA employees expressed their belief that unused RA should be transferred regardless of whether the RA agreement is on Form FmHA 1944–27 or otherwise. While the Agency fully understands this line of thought, this is not legally defensible since earlier versions of the RA agreement contained specific language which would not permit the Agency to carry out this action.

List of Subjects in 7 CFR Part 1930

Accounting, Administrative practice and procedure, Grant programs—Housing and Community Development, Loan programs—Housing and Community Development, Low- and moderate-income housing—Rental, Reporting requirements.

Accordingly, Chapter XVIII, Title 7, Code of Federal Regulations, is amended as follows:

PART 1930—GENERAL

1. The authority citations for Part 1930 continues to read as follows:

Authority: 42 U.S.C. 1480; 7 CFR 2.23, 2.70.

Subpart C—Management and Supervision of Multiple Family Housing Borrowers and Grant Recipients

2. Exhibit B to Subpart C is amended by revising paragraph VI. D. 2. e. (1), by redesignating paragraphs VI E and F as paragraphs VI F and G, respectively, and by adding a new paragraph VI E to read as follows:

Exhibit B of Subpart C—Multiple Housing Management Handbook

* * * * *

VI. Renting Procedure

* * * * *

D. * * *

2. * * *

e. * * *

(1) The borrower or management agent will request that each prospective tenant provide this information on a voluntary basis to enable monitoring of compliance with Federal laws prohibiting discrimination. When the applicant does not provide this information, the rental agent will complete this item based on personal observation or surname.

* * * * *

E. *Tax Credit Compliance.* The Tax Reform Act of 1988 permits certain RRH borrowers to receive tax credits for low-income housing projects if: 20 percent or more of the units are occupied by very low-income tenants whose annual adjusted income is 50 percent or less of the area median gross income, or 40 percent or more of the units are occupied by tenants whose annual adjusted income is 60 percent or less of the area median gross income.

1. Eligible borrowers with projects qualified to receive tax credits will follow the tenant selection criteria of paragraph VI F of this Exhibit except that tenant selection may be postponed until applicants for occupancy are available whose occupancy will allow borrowers to meet their tax credit requirements.

2. The borrower may be required to rent to other eligible applicants when the District Director determines that vacancies of at least six months duration exist, and that such vacancies threaten the financial viability of the project to the extent that current income, plus any remaining initial operating capital, and any funds from other borrower sources are no longer adequate to pay operating and maintenance costs, pay debt service and fund the reserve account as scheduled. This determination must be in the form of a written notification to the borrower. The borrower must be advised of their appeal rights on units designated for tax credits as specified in Subpart B of Part 1900 of this chapter. (Example: For 38 units of a 48-unit project designated for tax credits, the appeal applies when the borrower is required by the District Director to rent one or more of these 38 units to other eligible applicants.

3. Borrowers requesting Internal Revenue Service (IRS) tax credits in an existing project must honor the remaining period of a tenant's lease and, unless material noncompliance or other good cause to terminate occupancy as described in paragraph XIV A of this Exhibit exists, renew the tenant's lease or establish other mutually acceptable housing arrangements.

* * * * *

3. In Exhibit B, paragraph VII D is amended by changing the reference "paragraph VI F of this Exhibit" to read "paragraph VI G of this Exhibit."

4. In Exhibit B–1, paragraph No. 3 is amended by adding a new item h to read as follows:

Exhibit B–1 of Subpart C—Management Plan Requirements for FmHA Multiple Family Housing Projects

* * * * *

3. * * *

h. In projects receiving tax credits, what will the policy be toward renewal of leases with higher income tenants when borrowers are concerned with renting to low-income tenants, so as not to jeopardize their tax credits?

* * * * *

5. In Exhibit E, paragraphs XI B 1 b and 2 b are amended by changing the reference "paragraph VI E of Exhibit B" to read "paragraph VI F of Exhibit B."

6. In Exhibit E, paragraph XI B 4 is amended by changing the reference "paragraph VI E 3" to read "paragraph VI F 3."

7. Exhibit E to Subpart C is amended by adding a new paragraph XV B 5 c to read as follows:

Exhibit E of Subpart C—Rental Assistance Program

* * * * *

XV. Suspending or Transferring Existing Rental Assistance Agreements.

B. * * * *

5. * * *

c. If, after the end of the initial year of a Rental Assistance Agreement, the borrower has not used a portion of the RA units for any ensuing consecutive 12-month period, the State Director may transfer the number of unused units, minus at another project. This would apply only if the current agreement is on Form FmHA 1944–27 and when:

(1) The borrower has made the efforts described in paragraphs 5a (2) (i), (ii) and (iii) to market the project to tenants needing RA.

(5) The transfer will be completed in accordance with paragraph XV A 2 of this Exhibit.

* * * * *

Date: November 8, 1988.

Vance L. Clark,

Administrator, Farmers Home Administration.

[FR Doc. 89–1741 Filed 1–25–89; 8:45 am]

BILLING CODE 3410–07–M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 125

Procurement Automated Source System

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: The Small Business Administration (SBA) hereby amends its regulations relating to the collection of fees and distribution of user guides in connection with the Procurement Automated Source System (PASS). The purpose of these amendments is to facilitate an expansion of the number of users which had previously been limited by certain contract provisions. The primary effect of these changes will be to free the expansion of PASS from the constraints of the Agency's budget process, while retaining the Agency's own access to the system and its control over fundamental decisions related to the operation of the system.

DATES: Effective January 26, 1989.

FOR FURTHER INFORMATION CONTACT: Jonathan H. Mertz (202) 653–6635.

SUPPLEMENTARY INFORMATION: On November 23, 1988, SBA published the proposed rule with a 15 day comment period. (53 FR 226) No comments were received.

Under current procedures the SBA maintains a Procurement Automated Source System (PASS) through a private contractor and allows small and large businesses and government agencies direct access to the system. This rule reflects a restructuring of the contract fee arrangements for the PASS system.

Under previous provisions, the contractor received a monthly base user interface fee, and a fixed fee per user for any users above the number allowed under the base user interface fee, both paid by the Agency. The number of base users was set and the number of additional users was theoretically unlimited. Under the former provisions of the contract, Agency funding levels would restrict the ultimate number of system users.

This rule eliminates the requirement that all user receipts be credited to the agency and makes the contractor responsible for all accounts receivable and collection duties. The rule also reduces the number of manuals required to be distributed to each new user from two to one.

Compliance with Executive Order 12291, Executive Order 12612, the Regulatory Flexibility Act (5 U.S.C. 601, et seq.) and the Paperwork Reduction Act (44 U.S.C. Ch. 35).

Executive Order 12291

For the purposes of E.O. 12291, SBA has determined that this rule is not a major rule because it will not have an annual effect on the economy of $100 million or more; or cause a major increase in costs for consumers, individuals, industries, Federal, State, or local government agencies, or geographic regions; or have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based businesses to compete with foreign-based businesses in domestic or export markets. The total anticipated PASS budget is $1.2 million for fiscal year 1989 and the number of additional users are estimated at 150. Assuming normal use, the additional users will be expected to generate approximately $43,200 per year in user fees. This assumes the current user fee rate of $24 per hour of usage. This is well below the $100 million annual floor specified by E.O. 12291.

Executive Order 12612

This rule will not have federalism implications warranting the preparation of a Federal Assessment in accordance with E.O. 12612.

Regulatory Flexibility Act

For purposes of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*), SBA certifies that this rule will not have a significant economic impact on a substantial number of small entities. The direct effects of this rule will be on the PASS contractor and on those users who will receive one fewer training manuals. Additionally, most PASS users are not small businesses.

Paperwork Reduction Act

This rule will not impose any reporting or recordkeeping requirements which would be subject to the Paperwork Reduction Act, 44 U.S.C. Ch. 35.

List of Subjects in 13 CFR Part 125

Government procurement, Small business, Technical assistance.

For reasons set forth above, Title 13, Part 125 of the Code of Federal Regulations, is amended as follows:

PART 125—[AMENDED]

1. The authority citation for part 125 continues to read as follows:

Authority: Section 610(a) of Pub. L. 100–202, 101 Stat. 1330, secs. 5(b)(6), 8 and 15 of the Small Business Act, 72 Stat. 384, as amended (15 U.S.C. 631, *et seq.*), 31 U.S.C. 9701, 9702, 96 Stat. 1051).

§ 125.10 [Amended]

2. Section 125.10(b) is amended by removing from the sentence which begins "The contractor will bill the SBA * * *" the phrase "minus any fees it collects from non-SBA users," and substituting in the sentence beginning "Each PASS ID entitles * * *" the phrase "one PASS User guide" for "two PASS User Guides."

Dated: December 21, 1988.

James Abdnor,

Administrator.

[FR Doc. 89–1770 Filed 1–25–89; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88–CE–30–AD; Amdt. 39–6110]

Airworthiness Directives; British Aerospace PLC Model HP137 Mkl, Jetstream Model 200 and Jetstream Model 3101 (Includes Model 3100) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to certain British Aerospace (BAe) PLC Model HP137 Mkl, Jetstream Model 200, and Jetstream Model 3101 (includes Model 3100) airplanes, which requires initial and repetitive inspections of the wing spar fuselage attachment fitting shear angles for cracks, and repair thereof when detected. Cracks have been found in the shear angles necessitating a reduction in the previous inspection threshold specified by the manufacturer. The

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inspections and repair specified in this AD will preclude structural failure of the wing.

DATE: February 28, 1989.

COMPLIANCE: As prescribed in the body of the AD.

ADDRESSES: BAe Alert Service Bulletin (ASB) Jetstream 57–A–JA880144, dated June 14, 1988, and Service Bulletin (SB) 57–JM5303, dated June 14, 1988, applicable to this AD may be obtained from British Aerospace PLC, Manager, Product Support, Civil Aircraft Division, Prestwick Airport, Ayrshire, KA9 2RW, Scotland; telephone 44 292 79888; or British Aerospace, Inc., Librarian, Box 17414, Dulles International Airport, Washington, DC 20041; telephone (703) 435–9100. This information may also be examined at the Rules Docket, FAA, Office of the Assistant Chief Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Ted Ebina, Aircraft Certification Office, AEU–100, Europe, Africa, and Middle East Office, FAA, c/o American Embassy, B–1000 Brussels, Belgium; telephone (322) 513.38.30; or Mr. John P. Dow, Sr., FAA, ACE–100, 601 East 12th Street, Kansas City, Missouri 64106; telephone (816) 426–6932.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations (FAR) to include an AD requiring repetitive inspections of the wing spar fuselage attachment fitting shear angles for cracks, and repair thereof when detected, on certain British Aerospace PLC Model HP137 Mk1, Jetstream Model 200, and Jetstream Model 3101 (includes Model 3100) airplanes was published in the **Federal Register** on September 30, 1988 (53 FR 38299). The proposal resulted from a field report that during routine maintenance on a BAe Jetstream series airplane, a crack was detected on the shear angle of the left and right hand wing-to-fuselage main wing spar attachment fitting. The manufacturer had previously determined an inspection interval of the shear angle based upon fatigue testing. Consequently, because of this field report, British Aerospace (BAe) PLC issued ASB Jetstream 57–A–JA880144, dated June 14, 1988, which reduces the inspection threshold. This bulletin describes initial and recurring visual inspections of the shear angle of the left and right hand main wing-to-fuselage attachment fitting, dye penetrant inspections if cracks are suspected, remedial measures in the event cracks are found, and corrective measures to prevent such cracks. In addition, BAe issued SB 57–JM5303, dated June 14, 1988, permitting optional installation of new shear angles, which eliminate the repetitive inspection requirement of ASB 57–A–JA880144.

The Civil Airworthiness Authority (CAA), which has responsibility and authority to maintain the continuing airworthiness of these airplanes in the United Kingdom (UK), classified ASB 57–A–JA880144 and the actions recommended therein by the manufacturer as mandatory to assure the continued airworthiness of the affected airplanes.

On airplanes operated under CAA–UK registration, this action has the same effect as an AD on airplanes certified for operation in the United States. The FAA relies upon the certification of the CAA–UK combined with FAA review of pertinent documentation in finding compliance of the design of these airplanes with the applicable United States airworthiness requirements and the airworthiness and conformity of products of this design certificated for operation in the United States.

The FAA examined the available information related to the issuance of ASB Jetstream 57–A–JA880144, dated June 14, 1988, and the mandatory classification of this Service Bulletin by the CAA–UK, and concluded that the condition addressed by ASB Jetstream 57–A–JA880144, dated June 14, 1988, is an unsafe condition that may exist on other airplanes of this type certificated for operation in the United States. Accordingly, the FAA proposed an amendment to Part 39 of the FAR to include and AD on this subject.

Interested persons have been afforded an opportunity to comment on the proposal. No comments or objections were received on the proposal or the FAA determination of the related cost to the public. Therefore, the proposal is adopted without change except for minor editorial clarifications.

The FAA has determined that this regulation involves approximately 140 airplanes at an approximate annual cost of $93 for each airplane, or a total annual fleet cost of $13,000. The cost of compliance with the proposed AD is so small that the expense of compliance will not be a significant financial impact on any small entities operating these airplanes.

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the FAR as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new AD:

British Aerospace (BAe) PLC: Applies to Model HP 137 Mk1, Jetstream Model 200, and Jetstream Model 3101 (includes Model 3100) (all serial numbers) airplanes certificated in any category.

Compliance: Required as indicated in the body of the AD after the effective date of this AD, unless already accomplished.

To prevent reduction of strength of the main wing spar attachment structure, accomplish the following:

(a) Upon the accumulation of 4,000 landings or within the next 400 landings, whichever occurs later, and thereafter at intervals of 2,000 landings, visually or dye penetrant inspect, as required, the Part Number (P/N) 13707B99 and P/N 13707B100 shear angles for cracks as described in BAe Alert Service Bulletin (ASB) Jetstream 57–A–JA880144, dated June 14, 1988, section 2, ACCOMPLISHMENT INSTRUCTIONS.

(1) If a crack is detected that is 1 ½ inch (37 mm) in total length, or 1 inch (25 mm) vertically or longer, prior to further flight modify the airplane in accordance with BAe Modification JM5303, dated June 14, 1988, by replacing the shear angles with P/N 13707B125 and P/N 13707B126 shear angles.

(2) If a crack is detected that is less than 1 inch vertically or 1 ½ inch total length, re-inspect the shear angles thereafter at intervals not to exceed 100 landings, and prior to an additional 400 landings modify the airplane in accordance with BAe Modification JM5303, dated June 14, 1988.

(b) If no record of landings is available, 1 hour time-in-service equals 2 landings may be used in determining the compliance times in this AD.

(c) The inspections described in paragraph (a) above are not required when the airplane's left and right shear angles have been modified by BAe Modification JM5303, dated June 14, 1988.

(d) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(e) An equivalent means of compliance with this AD may be used if approved by the Manager, Aircraft Certification Office, AEU–100, Europe, Africa, and Middle East Office, FAA, c/o American Embassy, B–1000, Brussels, Belgium.

All persons affected by this directive may obtain copies of the documents referred to herein upon request to British Aerospace PLC, Manager, Product Support, Civil Aircraft Division, Prestwick Airport, Ayrshire, KA9 2RW, Scotland; or British Aerospace, Inc., Librarian, Box 17414, Dulles International Airport, Washington, DC 20041; or may examine these documents at the FAA, Office of the Assistant Chief Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This amendment becomes effective on February 28, 1989.

Issued in Kansas City, Missouri, on January 9, 1989.

Earse L. Tankesley,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89–1598 Filed 1–25–89; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 73

[Docket No. 87C–0379]

Confirmation of Effective Date for Carbazole Violet

AGENCY: Food and Drug Administration.

ACTION: Final rule; confirmation of effective date.

SUMMARY: The Food and Drug Administration (FDA) is confirming the effective date of November 22, 1988, for the final rule that amended the color additive regulations to provide for the safe use of carbazole violet for coloring contact lenses.

EFFECTIVE DATE: Effective date confirmed: November 22, 1988.

FOR FURTHER INFORMATION CONTACT: Mary W. Lipien, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of October 21, 1988 (53 FR 41322), FDA amended the color additive regulations by adding § 73.3107 (21 CFR 73.3107) to provide for the safe use of carbazole violet for coloring contact lenses.

FDA gave interested persons until November 21, 1988, to file objections or requests for a hearing on this final rule. The agency received no objections or requests for a hearing. Therefore, FDA concludes that the final rule published in the **Federal Register** of October 21, 1988, should be confirmed.

List of Subjects in 21 CFR Part 73

Color additives, Cosmetics, Drugs, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 701, 706, 52 Stat. 1055–1056 as amended, 74 Stat. 399–407 as amended (21 U.S.C. 371, 376)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), notice is given that no objections or requests for a hearing were filed in response to the October 21, 1988, final rule. Accordingly, the regulation promulgated thereby became effective November 22, 1988.

Dated: January 18, 1989.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 89–1711 Filed 1–25–89; 8:45 am]

BILLING CODE 4160–01–M

21 CFR Part 73

[Docket No. 87C–0253]

Confirmation of Effective Date for Chromium-Cobalt-Aluminum Oxide

AGENCY: Food and Drug Administration.

ACTION: Final rule; confirmation of effective date.

SUMMARY: The Food and Drug Administration (FDA) is confirming the effective date of November 22, 1988, for the final rule that amended the color additive regulations to provide for the safe use of chromium-cobalt-aluminum oxide for coloring contact lenses.

EFFECTIVE DATE: Effective date confirmed: November 22, 1988.

FOR FURTHER INFORMATION CONTACT: Mary W. Lipien, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C. St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of October 21, 1988 (52 FR 41324), FDA amended the color additive regulations by adding § 73.3110a (21 CFR 73.3110a) to provide for the safe use of chromium-cobalt-aluminum oxide for coloring contact lenses.

FDA gave interested persons until November 21, 1988, to file objections or requests for a hearing on this final rule. The agency received no objections or requests for a hearing. Therefore, FDA concludes that the final rule published in the **Federal Register** of October 21, 1988, should be confirmed.

List of Subjects in 21 CFR Part 73

Color additives, Cosmetics, Drugs, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 701, 706, 52 Stat. 1055–1056 as amended, 74 Stat. 399–407 as amended (21 U.S.C. 371, 376)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), notice is given that no objections or requests for a hearing were filed in response to the October 21, 1988, final rule. Accordingly, the regulation promulgated thereby became effective November 22, 1988.

Dated: January 18, 1989.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 89–1712 Filed 1–25–89; 8:45 am]

BILLING CODE 4160–01–M

21 CFR Part 520

Oral Dosage Form New Animal Drugs Not Subject to Certification; Diethylcarbamazine Citrate, Oxibendazole Chewable Tablets

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of two supplemental new animal drug applications (NADA's) filed by Norden Laboratories, providing for the safe and effective additional uses of diethylcarbamazine/oxibendazole chewable tablets in dogs for removal and control of whipworms and ascarids.

EFFECTIVE DATE: January 26, 1989.

FOR FURTHER INFORMATION CONTACT: Marcia K. Larkins, Center for Veterinary Medicine (HFV–112), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3430.

SUPPLEMENTARY INFORMATION: Norden Laboratories, Lincoln, NE 68501, is the sponsor of NADA 136–483, providing for use of Filaribits® Plus Chewable Tablets (diethylcarbamazine/oxibendazole) in

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the prevention of infection with *Dirofilaria immitis* (heartworm disease) and *Ancylostoma caninum* (hookworm infection) in dogs. Norden has filed two supplemental NADA's providing for additional uses of the drug for removal and control of *Trichuris vulpis* (whipworm infection) and for the removal and control of mature and immature stages of intestinal *Toxocara canis* (ascarid infection) in dogs. The supplemental NADA's are approved and 21 CFR 520.623(c)(2) is revised to reflect the approvals. The basis for approval is discussed in the freedom of information summaries.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), the summary of safety and effectiveness data and information submitted to support approval of these applications may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Room 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m., and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR Part 520 continues to read as follows:

Authority: Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)); 21 CFR 5.10 and 5.83.

2. Section 520.623 is amended by revising paragraph (c)(2) to read as follows:

§ 520.623 Diethylcarbamazine citrate, oxibendazole chewable tablets.

* * * * *

(c) * * *

(2) *Indications for use.* For prevention of infection with *Driofilaria immitis* (heartworm disease) and *Ancylostoma caninum* (hookworm infection) and for removal and control of *Trichuris vulpis* (whipworm infection) and mature and immature stages of intestinal *Toxocara canis* (ascarid infection).

* * * * *

Dated: January 18, 1989.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 89-1730 Filed 1-25-89; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Pyrantel Tartrate; Tylosin and Sulfamethazine

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to remove those portions of the regulations reflecting approval of two new animal drug applications (NADA's) held by Countrymark, Inc. The NADA's provide for (1) the use of Type A medicated articles containing 9.6 and 19.2 grams of pyrantel tartrate per pound for making Type C medicated swine feeds to be used as anthelmintics, and (2) the use of Type A medicated articles containing four concentrations of equal amounts of tylosin and sulfamethazine for making Type C medicated swine feeds to be used in accordance with 21 CFR 558.630(f)(2)(ii). Elsewhere in this issue of the Federal Register, FDA is withdrawing approval of the NADA's.

EFFECTIVE DATE: February 6, 1989.

FOR FURTHER INFORMATION CONTACT: Mohammad I. Sharar, Center for Veterinary Medicine (HFV-216), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3183.

SUPPLEMENTARY INFORMATION: In a notice published elsewhere in this issue of the Federal Register, FDA is withdrawing approval of NADA's 138-343 and 138-040 held by Countrymark, Inc. (formerly Ohio Farmers Grain and Supply Association). The NADA's provide for (1) the use of Type A medicated articles containing 9.6 and 19.2 grams of pyrantel tartrate per pound for making Type C medicated swine feeds to be used as anthelmintics, and (2) the use of Type A medicated articles containing four concentrations of equal amounts of tylosin and sulfamethazine for making Type C medicated swine feeds to be used in accordance with 21 CFR 558.630(f)(2)(ii). This document removes 21 CFR 558.485(a)(24) and reserves it for future use, and the firm's drug labeler code from 21 CFR 558.630(b)(10), which reflects approval of the NADA's.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR Part 558 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343-351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

§ 558.485 [Amended]

2. Section 558.485 *Pyrantel tartrate* is amended by removing paragraph (a)(24) and reserving it for future use.

§ 558.630 [Amended]

3. Section 558.630 *Tylosin and sulfamethazine* is amended in paragraph (b)(10) by removing drug sponsor code No. "026439,".

Dated: January 18, 1989.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 89-1816 Filed 1-25-89; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 3

[CG 88-112]

Change in Name and Location of Muskegon Captain of the Port

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This rulemaking amends the name and location of the Muskegon Captain of the Port Office. The Muskegon Captain of the Port Office is moving to Grand Haven, Michigan, and will thereupon be called Captain of the Port Grand Haven. This move consolidates several staffs to implement an organizational change. The boundaries of the Captain of the Port Zone do not change.

EFFECTIVE DATE: January 26, 1989.

FOR FURTHER INFORMATION CONTACT: Mrs. Janice C. Jackson, Project Manager, Office of Marine Safety, Security and Environmental Protection, telephone (202) 267-0389. Normal working hours are between 7:00 a.m. and 3:30 p.m. Monday through Friday, except holidays.

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking was not prepared for this regulation. This amendment relates to agency organization and is exempt from the notice of proposed rulemaking requirements in 5 U.S.C. 533(b). Since this change has no substantive effect, good cause exists to make it effective in less than 30 days after publication, under 5 U.S.C. 533(d). The rulemaking merely changes the name and location of the Office of the Muskegon Captain of the Port. There will be no effect on the public, since the boundaries of the Captain of the Port Zone will not change. The Grand Haven Captain of the Port will continue to perform the same marine safety functions at the new facility.

Drafting Information: The principal persons involved in drafting this rulemaking are Mrs. Janice C. Jackson, Project Manager, Office of Marine Safety, Security and Environmental Protection; and Lieutenant Commander Don M. Wrye, Project Council, Office of Chief Counsel.

Discussion: The U.S. Coast Guard will move Captain of the Port, Group Muskegon and ESMT Muskegon to Grand Haven, Michigan. This move is a follow-on to implementing an organizational change.

Regulatory Evaluation: This final rule is exempt from the provisions of Executive Order 12291 since it pertains to matters of agency organization as provided in section 1(a)(3) of the Order. It is considered to be nonsignificant under DOT regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this final rule has been found to be so minimal that further evaluation is unnecessary. Coast Guard marine safety activities in this area will not be affected by this rulemaking. The Captain of the Port Grand Haven, Michigan, will carry out the functions previously performed by the Captain of the Port Muskegon, Michigan. Since the impact of this final rule is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 3

Organization and Functions (Government Agencies).

In consideration of the preceding, Part 3 of Title 33 of the Code of Federal Regulations is amended as follows:

PART 3—[AMENDED]

1. The authority citation for Part 3 continues to read as follows:

Authority: 14 U.S.C. 633; 49 CFR 1.45, 1.46.

§ 3.45-80 [Amended]

2. Section 3.45-80 is amended by removing the word "Muskegon" in the section heading, and in paragraphs (a) and (b), and adding the words "Grand Haven" in its place.

Dated: January 18, 1989.

M.J. Schiro,

Captain, U.S. Coast Guard, Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 89-1850 Filed 1-25-89; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 117

[CGD5-88-054]

Drawbridge Operation Regulations; Neuse River, New Bern, NC

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the North Carolina Department of Transportation, the County of Pamlico, North Carolina, and the County of Craven, North Carolina, the Coast Guard is changing the regulations that govern the operation of the U.S. 17 drawbridge across the Neuse River at mile 33.7 in New Bern, North Carolina, by further restricting the number of bridge openings during weekday rush hours. This change is being made to alleviate vehicular traffic congestion caused by the steady increase in recreational traffic on the Neuse River during the boating season and the resulting increase in bridge openings. The Coast Guard is making similar changes to the regulations governing the operation of the drawbridge across the Trent River, mile 0.0, on U.S. 70, in New Bern, North Carolina. The changes to this regulation are to the extent practical and feasible, intended to provide for regularly scheduled drawbridge openings to help reduce motor vehicle traffic delays and congestion on the roads and highways linked by this drawbridge.

EFFECTIVE DATE: These regulations become effective on February 27, 1989.

FOR FURTHER INFORMATION CONTACT: Ann B. Deaton, Bridge Administrator, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, VA 23704-5004, (804) 398-6222.

SUPPLEMENTARY INFORMATION: On September 20, 1988, the Coast Guard published a notice of proposed rulemaking in the Federal Register (53 FR 36471) concerning the bridge across the Neuse River in New Bern, North Carolina. The Commander, Fifth Coast Guard District, also published the proposal as a Public Notice dated September 16, 1988. In the notice of proposed rulemaking, interested persons were given until November 4, 1988, to submit comments. In the public notice, interested persons were given until October 21, 1988, to submit comments. Four comments were received.

Drafting Information

The drafters of these regulations are Linda L. Gilliam, Project Officer, and LCDR Robin K. Kutz, Project Attorney.

Discussion of Comments

The North Carolina Department of Transportation, the County of Pamlico, North Carolina, and the County of Craven, North Carolina, requested that the U.S. 17 drawbridge across the Neuse River at mile 33.7 in New Bern, North Carolina, be regulated to restrict openings from 6:30 a.m. to 8:30 a.m. and from 4:00 p.m. to 6:00 p.m., Monday through Friday, with the exception of an opening at 7:30 a.m. and at 5:00 p.m. for any vessels waiting to pass through the bridge. The request also included the preservation of the current requirement that from May 24 to September 8, on Sundays and Federal holidays, drawbridge openings be restricted from 2:00 p.m. to 7:00 p.m., except for openings at 4:00 p.m. and 6:00 p.m. for any vessels waiting to pass. This request was made as a result of the steady increase in pleasure craft traffic on the Neuse River, resulting in excessive draw openings, which are causing vehicular traffic congestion on U.S. 17 during weekday and evening rush hours for motorists traveling to and from the Cherry Point Naval Aviation Depot.

A proposed rule restricting drawbridge openings during the requested timeframe was published in the Federal Register (53 FR 36471) on September 20, 1988, and the proposal was announced in a Public Notice dated September 16, 1988. Comments were solicited through November 4, 1988, and four comments were received. Two comments supported the extended weekday morning and afternoon closures. The two other comments were received from a private boatowner and the Fairfield Harbour Yacht Club, both opposing the Sunday and Federal holiday restrictions that begin on May 24 and run through September 8. The comments of the two opponents to the rule have been considered and it is felt that continuing the May 24 through

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September 8 restrictions for drawbridge openings on Sundays and Federal holidays should inconvenience boaters very little. This restriction was initially published in the **Federal Register** (37 FR 5296) on March 14, 1972, and for sixteen years it has remained in effect without objection. Consequently, the Coast Guard believes these restrictions are not unduly burdensome, and this provision shall remain untouched in the final rule.

Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the final rule does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment. Although the rule does impact both the town of New Bern and the State of North Carolina, specifically the Department of Transportation, which operates the bridge, the effect on state and local operations is minimal and entirely positive.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 of Federal Regulation and non-significant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. This conclusion is based on the fact that these regulations are not expected to have any effect on commercial navigation or on any businesses that depend on waterborne transportation for successful operations. Since the economic impact of these regulations is expected to be minimal, the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Regulation

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. Section 117.823(a) is revised to read as follows:

§ 117.823 House River.

(a) The draw of the U.S. 17 bridge, mile 33.7, at New Bern:

(1) Need not open from 6:30 a.m. to 8:30 a.m. and from 4:00 p.m. to 6:00 p.m., Monday through Friday, for pleasure vessels. However, the draw shall open at 7:30 a.m. and 5:00 p.m., for any vessel waiting to pass.

(2) Need not open from 2:00 p.m. to 7:00 p.m. from May 24 through September 8, on Sundays and Federal holidays, for pleasure vessels. However, the draw shall open at 4:00 p.m. and 6:00 p.m., for any vessel waiting to pass.

(3) Shall always open on signal for public vessels of the United States, State or local vessels used for public safety, tugs with tows, vessels in distress.

(4) Shall open on signal at all other times.

* * * * *

Dated: January 10, 1989.

A.D. Breed,

Rear Admiral, U.S. Coast Guard Commander, Fifth Coast Guard District.

[FR Doc. 89–1851 Filed 1–25–89; 8:45 am]

BILLING CODE 4910–14–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1228

Procedures for Transfers to Federal Records Centers

AGENCY: National Archives and Records Administration (NARA).

ACTION: Final rule.

SUMMARY: The National Archives and Records Administration is revising § 1228.152(f) to increase from 90 to 120 days the time allowed for agencies located outside the continental United States to transfer their records to the Federal records centers after receipt of the annotated SF 135. This will eliminate unnecessary paperwork and confusion for the Federal records centers and the agencies, and allow sufficient time for overseas agencies to transfer their records to the appropriate FRC.

EFFECTIVE DATE: January 26, 1989.

FOR FURTHER INFORMATION CONTACT: John Constance or Nancy Allard at 202–523–3214 (FTS 523–3214).

SUPPLEMENTARY INFORMATION: A study was recently completed to determine whether changing the time limit for agencies located outside the continental United States to transfer their records to Federal records centers would be beneficial to the agencies and the centers. It was determined that some overseas offices have experienced delays in shipping records to the Federal records centers, because records first go to a central staging area, where their transfer is often delayed. Delinquent notices from the centers stating that the 90 days had passed and that the agency must resubmit its paperwork often crossed in the mail with the actual records being sent to the centers. Amending this time limit will eliminate unnecessary paperwork and confusion for the Federal records centers and the agencies, and allow sufficient time for overseas agencies to transfer their records to the appropriate FRC. This change is being issued as a final rule, because it affects only Federal agencies and, since it relaxes requirements which are beneficial to the agencies, it is important to implement the change as soon as possible.

This rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981. As required by the Regulatory Flexibility Act, it is hereby certified that this rule will not have a significant impact on small business entities.

List of Subjects in 36 CFR Part 1228

Archives and records.

For the reasons set forth in the preamble, Chapter XII of Title 36 of the Code of Federal Regulations is amended as follows:

PART 1228—DISPOSITION OF FEDERAL RECORDS

1. The authority citation for Part 1228 continues to read as follows:

Authority: 44 U.S.C. 2101–2111, 2901–2909, 3101–3107, 3301–3314.

2. Section 1228.152 is amended by revising paragraph (f) to read as follows:

§ 1228.152 Procedures for transfers to Federal records centers.

* * * * *

(f) The physical transfer of records to a records center should be accomplished as soon as possible after the agency has received the annotated copy of the Standard Form 135. If NARA has not received the shipment within 90 days after transmittal of the annotated SF 135 to the agency (120 days for agencies located outside the continental United States), it will return the SF 135 to the agency. The agency will then have to resubmit the accessioning paperwork.

* * * * *

Dated: January 11, 1989.

Don W. Wilson,

Archivist of the United States.

[FR Doc. 89–1662 Filed 1–25–89; 8:45 am]

BILLING CODE 7515–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–3457–5]

Approval and Promulgation of State Implementation Plans, Montana; Butte TSP Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA today is modifying the March 4, 1980, conditions in the Montana State Implementation Plan (SIP) for attainment of the primary particulate standard in the Butte nonattainment area. EPA is approving the measures that were developed to reduce emissions from unpaved roads and an open copper mine owned by Washington Construction. These were the primary sources of the particulate emissions in the Butte nonattainment area at the time of the nonattainment designation. However, studies indicate that wood smoke is the probable cause of the recent violations. EPA is, therefore, requiring the State to address residential wood combustion as part of the Butte TSP Control Plan. The State has the option of replacing the Butte TSP SIP with a PM–10 SIP; the wood smoke problem will then be addressed under PM–10. (See 52 FR 24634 for PM–10 SIP requirements.)

EFFECTIVE DATE: This action will be effective on February 27, 1989.

ADDRESSES: Copies of the submittals are available for public inspection between 8:00 a.m. and 4:00 p.m. Monday through Friday at the following offices:

Environmental Protection Agency, Region VIII, Air Programs Branch, Denver Place, Suite 500, 999 18th Street, Denver, Colorado 80202–2405

Environmental Protection Agency, Public Information Reference Unit, Waterside Mall, 401 M Street SW., Washington, DC. 20460

FOR FURTHER INFORMATION CONTACT: Lee Hanley, Air Programs Branch, Environmental Protection Agency, Denver Place, Suite 500, 999 18th Street, Denver, Colorado 80202–2405, (303) 293–1762.

SUPPLEMENTARY INFORMATION: In 1977 the Montana Air Quality Bureau (AQB) divided the State into various control regions and classified the air quality of each region as required by the 1977 Clean Air Act Amendments. One such region was the east portion of Butte which was classified nonattainment of the National Ambient Air Quality Standard (NAAQS) secondary particulate standard. (See 43 FR 8962, March 3, 1978.) Classification was made using October 1976 to September 1977 particulate data collected at Greeley High School which showed a geometric mean of 79 ug/m³ as well as exceedances of the 24-hour secondary standard. The Butte nonattainment boundary was drawn by the AQB using air quality modeling information provided by the EPA and PEDCO (1977) and knowledge of the various sources of dust in Butte.

The AQB submitted the control region information to EPA on January 6, 1978. EPA reviewed the information and changed the designation from nonattainment of the secondary standard to nonattainment of both secondary and primary NAAQS particulate standards based on data collected through the end of 1977. (See 44 FR 45420, August 2, 1979, and 45 FR 14036, March 3, 1980.)

On April 24, 1979, the Butte SIP for attainment of the primary standard was submitted to EPA and included a request for delay in submission of the secondary standard plan for 18 months. The SIP identified fugitive emissions from paved roads and the open pit copper mine owned by the Anaconda Copper Company as the cause of the TSP problem. An analysis using the 1977 emission inventory and an acceptable diffusion model demonstrated that a strategy to control fugitive dust emissions would attain the annual primary standard by 1982. The State was proceeding to develop a regulation to control re-entrained dust from paved streets for an estimated reduction of 6 ug/m³.

EPA gave conditional approval of the April 24 submittal on March 4, 1980, 45 FR 14036, contingent upon the development and adoption of a revised airborne particulate rule and submission of a demonstration that the estimated reductions will be achieved. That rule was to be submitted to EPA by February 15, 1981; it was to be implemented so as to achieve the standard by December 1982.

In a separate action on March 4, 1980, 45 FR 14072, EPA proposed approval of the 18 month extension for the submission of a revised particulate rule. That action was finalized on September 23, 1980, 45 FR 62982, in which EPA approved a schedule calling for the adoption and submissin of an airborne particulate rule by February 15, 1981.

Studies which followed indicated that the airborne particulate rule was inappropriate. Therefore, the State proposed a new schedule specifying submittal of an effective plan by September 30, 1982. A plan was submitted on February 10, 1983, accompanied by a request for redesignation of the Butte TSP (primary and secondary) nonattainment area. The submittal included (1) a schedule for street sweeping and paving committed to by the Butte-Silver Bow local government and, (2) a commitment by the State to issue a permit to Anaconda limiting emissions from their mining operation. Internal EPA review of this submittal led to a requirement that the actual permit become part of the Plan.

On April 15, 1983, a permit was issued to Anaconda which specified emission controls and operating limits predicted to maintain compliance with the primary standard under all foreseen mining scenarios. A copy of the permit was submitted to EPA on April 18, 1983, and is part of the Butte TSP Plan. On June 7, 1983, the State submitted a document clarifying their authority to enforce conditions of the permit.

Mining operations at Anaconda ceased in April 1982. The mine (Berkeley Pit) was flooded with minimal plans for additional mining. The deterioration of the access roads and the poor economics of the mining industry made reopening of the mine highly improbable. Indefinite curtailment of all mining activities took place in June 1983. Anaconda continued to maintain the facility.

In addition to the conditions of the permit on the Anaconda operations, other parts of the February 1983 submittal were reviewed to determine the adequacy of the attainment demonstration. The review centered primarily on the State's choice to demonstrate compliance using the Industrial Source Complex Long Term (ISCLT) dispersion model. The model assumed mining would continue and included the conditions contained in the Anaconda air quality permit. Also, the model used meteorological data, temperature and wind data, from the Alpine site which is close to the mine.

Various future mining and control strategy scenarios were modeled. Two city activity levels (based on population) were evaluated and controls on the anticipated emissions defined as Level I and Level II. Level I is with no controls, and Level II is with 10% TSP controls achieved by street sweeping in the nonattainment area. The mine scenario evaluated three levels of controls on the mining activity: one consisted of 50% control on the active storage and crusher dump; the second assumed 70% control on haul roads; and the third assumed both controlling strategies together. Stripping ratio and total mining output were also varied so as to develop

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various options. (Stripping ratio is the volume of overburden to the volume of ore.)

Other permanent changes in mining activity include mining only in the East Pit and waste dumping only in the Hillcrest site. The East Pit is northeast of the nonattainment area. The change in the mining location from the previous site which was northwest of the Greeley site will have a significant effect on the nonattainment area. The wind direction in the Butte area is northwest to southeast. Mining originally was northwest of the Greeley High School. Moving the mining activity to the east reduces the fugitive emission impact on the nonattainment area.

The result of the modeling analysis demonstrated that with the implementation of all permit conditions, the Butte nonattainment area would achieve the primary annual NAAQS for particulates.

The State concentrated its modeling efforts on the primary annual standard since it was the initial cause of the nonattainment designation. The primary 24-hour standard had not appeared to be a problem in the studies conducted or in the monitoring data.

After extensive study on the modeling analysis, the monitoring data and the Anaconda permit, EPA advised the State on May 30, 1985 of its conclusion that an attainment demonstration had only provided for the primary standards. The State responded on June 21, 1985, that it wished to revise its February 10, 1983 submittal by requesting approval of the primary TSP Plan and redesignation for attainment of the primary standards.

As EPA proceeded to process the State's request, EPA was informed that violations of the primary 24-hour standard had occurred for the first time. (The violation occurred in December 1985.)

The Anaconda permit, that is one of the primary control strategies to the Butte TSP Plan, had also undergone some changes. In October 1985, Washington Construction of Missoula, Montana purchased the Butte mining interest of Anaconda's partner company, Atlantic Richfield Corporation and announced intentions to resume mining activity. In December 1985, the Anaconda permit was transferred to Washington Construction, therefore binding them to the same operating permit conditions which were imposed on Anaconda. In July 1986, Washington Construction resumed mining operations in Butte.

At a meeting on May 20, 1986, EPA and the State agreed that the request for redesignation of the Butte nonattainment area could not be approved because of the violations in 1985.

On May 7, 1986, the State submitted a letter and a study indicating that the sources of the particulate emission have changed since the February 10, 1983 plan was developed. The 1986 study demonstrated that the violations occurred in the winter months, and that the primary source of the remaining particulate problem is from residential wood combustion. Based on the State's statistical analysis, EPA agrees that wood smoke is the most probable source of the winter violations. Since the violations that occurred were of the 24-hour primary TSP standard, the State is now required to do short-term modeling.

On May 14, 1987, EPA proposed approval in the modifications of the March 4, 1980, conditions in the Montana TSP SIP. The comment period closed on July 13, 1987; no comments were received.

EPA Action

EPA is approving the control strategy submitted to meet the conditions in the March 4, 1980 conditional approval, as well as, modifying the conditional approval to require the State to address the wood smoke problem. The controls that are being approved include sweeping and flushing of Continental Drive, paving and partial paving of 18 streets, and the permit to Washington Construction Company (formally the Anaconda Minerals Company permit).

The EPA revised the particulate matter standard on July 1, 1987 (52 FR 24634) and eliminated the TSP ambient air quality standard. The revised standard is expressed in terms of particulate matter with a nominal diameter of ten micrometers or less (PM-10). However, at the State's option, EPA will continue to process TSP SIP revisions which were in process at the time the new PM-10 standard was promulgated. In the policy published on July 1, 1987, (p. 24679, column 2) EPA stated that it would regard existing TSP SIPs as necessary interim particulate matter plans during the period preceding the approval of State plans specifically aimed at PM-10. If the TSP SIP revision is judged to include more stringent provisions than are in the existing TSP plan, EPA's general policy would be to approve it. It is EPA's judgment that the regulations in this action would increase the stringency of the TSP plan and are therefore likely to result in better control of PM-10 as well. Thus, EPA is approving the modifications to this TSP SIP.

EPA is modifying the March 4, 1980 conditional approval by requiring the State to conclusively determine whether the recent violations are due to wood smoke emissions. Once a determination is made, a new control strategy will have to be incorporated into the Butte TSP Plan.

Under Section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by (60 days from publication). This action may not be challenged later in proceedings to enforce its requirements (See section 307(b)(2)).

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Particulate matter, Incorporation by reference.

Note.—Incorporation by reference of the State Implementation Plan for the State of Montana was approved by the Director of the Federal Register on July 1, 1982.

Date: September 26, 1988.

Lee M. Thomas,

Administrator.

Part 52 Chapter I, Title 40 of the *Code of Federal Regulations* is amended as follows:

PART 52—[AMENDED]

Subpart BB—Montana

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.1370 is amended by adding paragraph (c)(21) to read as follows:

§ 52.1370 Identification of plan.

* * * * *

(c) * * *

(21) Revisions to Montana TSP SIP for Butte were submitted by Governor Ted Schwinden on February 10, 1983.

(i) Incorporation by reference—

(A) State of Montana Air Quality Control, Implementation Plan, Chapter 5C, Butte, adopted January 14, 1983.

(B) Air quality Permit #1749 for Anaconda Minerals Company filed March 28, 1983.

[FR Doc. 89-1787 Filed 1-25-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 88-31; RM-5682, RM-5846, RM-5979, RM-6166, RM-6364, RM-6365]

Radio Broadcasting Services: Moscow, Ohio; Paris, Kentucky, etc.)

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 246C2 for Channel 244A at Somerset, Kentucky, and modifies the license of Station WSEK(FM) to specify operation on the higher class channel, as requested by First Radio, Inc., at coordinates 37-07-06 and 84-36-44. This action also allots Channel 245A at Dry Ridge, Kentucky. City reference coordinates for this allotment are 38-40-54 and 84-35-18. In addition, Channel 293A is allotted to Williamstown, Kentucky, with a site restriction at coordinates 38-37-15 and 84-35-45. The proposal to allot Channel 298A to Moscow, Ohio, is denied. A counterproposal to upgrade Station WCOZ at Paris, Kentucky, is denied. Channel 261C2 is substituted for Channel 261A at Winchester, Kentucky, and the license of Station WFMI(FM) is modified to specify operation on the higher class channel at coordinates 38-00-00 and 84-29-35. Channel 237A is substituted for 261A at Carrollton, Kentucky, and the license of Station WIKI(FM) is modified to specify operation on the new channel at coordinates 38-36-23 and 85-12-44. Channel 298A is substituted for Channel 237A at Falmouth, Kentucky, and the license of Station WIOK is modified to specify operation on the new channel at coordinates 38-43-15 and 84-22-27. With this action, this proceeding is terminated.

DATES: Effective January 27, 1989; The window period for filing applications for Channel 245A at Dry Ridge and Channel 293A at Williamstown will open on January 30, 1989, and close on March 1, 1989.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88-31, adopted December 8, 1988, and released December 13, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. § 73.202(b), the Table of FM Allotments, is amended under Kentucky by adding Channel 246C2 and removing Channel 244A at Somerset; adding Dry Ridge, Channel 245A; adding Williamstown, Channel 293A; adding Channel 261C2 and removing Channel 261A at Winchester; adding Channel 237A and removing Channel 261A at Carrollton; and adding Channel 298A and removing Channel 237A at Falmouth.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-1817 Filed 1-25-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-195; RM-5810]

Radio Broadcasting Services; Onawa, IA, and Vermillion, SD

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Barnco, substitutes Channel 272C1 for Channel 272A at Onawa, Iowa, and modifies its permit for Station KOOO to specify operation on the higher powered channel. Channel 272C1 can be allotted to Onawa in compliance with the Commission's minimum distance separation requirements and can be used at Station KOOO's present transmitter site. The coordinates for this allotment are North Latitude 42-01-41 and West Longitude 96-11-11. In addition, the Commission substitutes Channel 292A for Channel 272A at Vermillion, South Dakota, and modifies the license of Station KVRF to specify the alternate Class A channel. Channel 292A can be allotted to Vermillion in compliance with the Commission's minimum distance separation requirements and can be used at Station KVRF's present transmitter site. The coordinates for this allotment are North Latitude 42-47-32 and West Longitude 97-00-03. With this action, this proceeding is terminated.

EFFECTIVE DATE: March 6, 1989.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88-195, adopted November 29, 1988, and released January 19, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments is amended by revising the entry for Onawa, Iowa, by deleting Channel 272A and adding Channel 272C1, and revising the entry for Vermillion, South Dakota, by deleting Channel 272A and adding Channel 292A.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-1821 Filed 1-25-89; 8:45 am]

BILLING CODE 6712-01-M

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VOL 54 ISS 16 JA 26 1989 UMI

Proposed Rules

Federal Register
Vol. 54, No. 16
Thursday, January 26, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88-NM-189-AD]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, which would require replacement of the takeoff warning system stabilizer limit switch assembly mounting brackets that move the switch operating band outside the stabilizer green band. This proposal is prompted by reports that, even though the stabilizer controls have been set within safe operating limits, air loading on the horizontal stabilizer has caused sufficient movement when trim is set at the end of the "green band" to cause the takeoff warning alarm to sound during takeoff. This condition, if not corrected, could lead to unnecessary rejected takeoffs and the consequent high potential for airplane incidents and accidents.

DATES: Comments must be received no later than March 20, 1989.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 88-NM-189-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Mark J. Perini, Systems and Equipment Branch, ANM-130S; telephone (206) 431-1944. Mailing address: Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 88-NM-189-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

There have been several reports of operators of Boeing Model 747 series airplanes experiencing false alarms of the takeoff warning system during takeoff, even though the stabilizer controls are set within safe operating limits. Several of these incidents resulted in rejection of the takeoff at high speeds. It has been determined that the stabilizer limit switch actuation point was reached due to air loading of the horizontal stabilizer, causing the alarm to activate, while the stabilizer trim indicator was still within the green band.

The FAA has reviewed and approved Boeing Service Bulletin 747-27-2228, Revision 1, dated October 20, 1988, which describes procedures to replace the stabilizer limit switch assembly mounting brackets with new brackets that move the switch actuation points outside the stabilizer green band.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require replacement of the stabilizer switch assembly mounting brackets in accordance with the service bulletin previously described.

There are approximately 330 Model 747 series airplanes of the affected design in the worldwide fleet. It is estimated that 137 Model 747 airplanes of U.S. registry would be affected by this AD, that it would take approximately 17.5 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. The average cost of parts is estimated to be $86 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $109,052.

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because few, if any, Model 747 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Boeing: Applies to Model 747 series airplanes, as listed in Boeing Service Bulletin 747-27-2228, Revision 1, dated October 20, 1988, certificated in any category. Compliance required within the next 18 months following the effective date of this AD, unless previously accomplished.

To prevent rejected takeoffs as a result of false takeoff warnings, accomplish the following:

A. Replace the stabilizer limit switch assembly mounting brackets, in accordance with Boeing Service Bulletin 747-27-2228, Revision 1, dated October 20, 1988.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Seattle Aircraft Certification Office.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on January 11, 1989.

Darrell M. Pederson,
Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-1748 Filed 1-25-89; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 106

[Docket No. 87N-0402]

Infant Formula Microbiological Testing, Consumer Complaints, and Record Retention Requirements

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing, as required by the Drug Enforcement, Education, and Control Act of 1986 (Pub. L. 99-570), to revise its infant formula regulations with respect to record retention, microbiological and nutrient testing, manufacturer's audits, and consumer complaints. The proposed revisions would result in new, more detailed record retention provisions for the infant formula industry and would help ensure a safe, wholesome, and sanitary sole source of nutrition for infants.

DATES: Comments by March 27, 1989. Proposed compliance date for all affected products initially introduced or initially delivered for introduction in interstate commerce or prepared from raw materials shipped in interstate commerce is 60 days after date of publication of the final regulation.

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Nicholas Duy, Center for Food Safety and Applied Nutrition (HFF-204), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-245-3177.

SUPPLEMENTARY INFORMATION:

I. Background

In 1978, a major manufacturer of infant formulas reformulated two of its soy products by discontinuing the addition of salt. This reformulation resulted in the manufacture of products containing an inadequate amount of chloride, an essential nutrient. By mid 1979, hypochloremic metabolic alkalosis, a syndrome associated with chloride deficiency, had been diagnosed in a substantial number of infants. Most of the cases resulted from prolonged and exclusive use of these soy infant formulas.

After reviewing the matter, Congress determined that, to improve protection of infants using infant formula products, modifications of industry's and FDA's recall procedures were needed. In addition, greater regulatory control over the formulation and production of infant formulas was needed. Accordingly, Congress passed, and the President signed into law on September 26, 1980, the Infant Formula Act of 1980 (Pub. L. 96-359). The Infant Formula Act of 1980 (the 1980 act) is codified in section 412 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 350a). In 1982, FDA implemented the infant formula recall procedures, as prescribed for in section 412(d) of the act, by establishing Subpart D of 21 CFR Part 7 (see 47 FR 18832; April 30, 1982). In 1982, FDA also implemented the Infant Formula Quality Control Procedures, as provided for in section 412(a)(2)(D) of the act, by establishing 21 CFR Part 106 (see 47 FR 17016; April 20, 1982). In 1985, FDA further implemented the 1980 act by establishing Subparts B, C, and D in 21 CFR Part 107 regarding Infant Formula Labeling, Exempt Infant Formula, and Nutrient Requirements for Infant Formula, respectively (see 50 FR 1633, January 14, 1985; 50 FR 45106, October 30, 1985; and 50 FR 48183, November 22, 1985).

More recently, Congress amended section 412 of the act as a provision of the Drug Enforcement, Education, and Control Act of 1986 (Pub. L. 99-570) to address recent concerns expressed by Congress and consumers about the Infant Formula Act of 1980. The President signed the amendments on October 27, 1986. The 1986 amendments require the agency to publish regulations concerning current good manufacturing practices and quality control procedures for infant formula and regulations for the maintenance of records associated with these practices and procedures, including consumer complaint files.

The 1986 amendments significantly enlarge FDA's authority to require the retention of records and to make such records available to agency representatives. Specifically, the amendments provide for:

1. The retention of all records necessary to demonstrate compliance with good manufacturing practices and quality control procedures prescribed by the Secretary under paragraph (2) [of the amendments] including records

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containing the results of all testing required under paragraph (2)(B) [Paragraphs (2) and (2)(B) refer to good manufacturing practices and quality control procedures determined to be necessary by the Secretary, and specify testing for each required nutrient in each batch prior to distribution, the regularly scheduled testing during the shelf life of the infant formula, the testing and in-process controls designed to prevent adulteration of each batch, and the conduct of regularly scheduled audits to determine compliance with good manufacturing practices and quality control procedures.];

2. The retention of all certifications or guarantees of analysis by premix suppliers;

3. The retention by a premix supplier of all records necessary to confirm the accuracy of all premix certifications and guarantees of analysis;

4. The retention of—

a. All records pertaining to the microbiological quality and purity of raw materials used in infant formula powder and in finished infant formula, and

b. All records pertaining to food packaging materials which show that such materials do not cause an infant formula to be adulterated within the meaning of section 402(a).

5. The retention of all records of the results of regularly scheduled audits conducted pursuant to the requirements prescribed by the Secretary, and

6. The retention of all complaints and the maintenance of files with respect to, and the review of, complaints concerning infant formulas which may reveal the possible existence of a hazard to health.

No comparable provisions existed in the prior law. In adopting the 1986 amendments, Congress recognized that the retention of records by manufacturers and access on the part of the agency to such records are of critical importance in assuring that infant formulas are safe and have been manufactured in an appropriate manner. The amendments give FDA broad authority to require the retention of and access to records, including "all" records of certain types. It is for this reason the agency has decided to propose regulations concerning these record retention requirements.

The 1986 amendments to the Infant Formula Act also impose additional obligations on the agency concerning the promulgation of regulations establishing various other requirements pertaining to infant formulas. Because of these additional obligations, the agency is also proposing certain microbiological testing requirements and guidelines for use in determining when particular microorganisms are present at a level that may result in an adulterated product, requirements for additional nutrient testing and manufacturer's audits, and requirements concerning consumer complaints. The agency also plans to publish a second proposal at a later date to further amend the infant formula regulations concerning current good manufacturing practices and quality control procedures as required by the 1986 amendments.

II. Overview of the Proposed Regulation

The agency is proposing to amend its existing regulations concerning infant formula (21 CFR Part 106) to reflect the statutory changes concerning the retention of records, including consumer complaint files and the need to test for potential microbiological contaminants in powdered infant formula. The proposed regulations mirror the broad authority Congress provided the agency in this area.

The proposed regulations pertain to records concerning (1) the verification of the presence of required nutrients in infant formula in accordance with section 412(i) of the Act and in 21 CFR 107.100; (2) specific nutrient testing results at the "final product stage"; (3) premix certifications or guarantees; (4) microbiological quality and purity of raw materials in powdered infant formulas and in finished infant formulas; (5) food packaging materials; (6) manufacturer's audits, and (7) complaints. Each aspect of the proposed regulations is discussed below.

III. Records Pertaining to Microbiological Quality and Purity of Raw Materials and Finished Infant Formula

A. Background

The 1986 amendments require the retention of "all records pertaining to the microbiological quality and purity of raw materials used in infant formula powder and in finished infant formula." This portion of the 1986 amendments provides authority to review, evaluate, and copy all records containing microbiological testing results for raw materials used in the manufacture of powdered infant formula and the testing results for finished infant formula, both powdered and liquid. The 1986 amendments also provide FDA the authority to review, evaluate, and copy records containing the specifications used by an infant formula manufacturer to evaluate the results of its microbiological testing. In establishing these requirements, Congress recognized that infant formula is a special category of food that needs stringent safeguards that must include criteria to determine its microbiological quality and purity. Stringent microbiological safeguards are necessary because infant formula is often the only source of nourishment for an infant, and infants are far more sensitive than adults to many foodborne microorganisms or their toxins. (An infant's high degree of sensitivity is due to such factors as an underdeveloped immune system, high gastric pH, and unstable bowel flora.)

B. Powdered Infant Formula

Powdered infant formulas, unlike the liquid products, are not packaged in hermetically-sealed containers and then heated (cooked) until the product is commercially sterile. Accordingly, the low microbial levels that are routinely achieved for liquid products cannot be attained for powdered products. Therefore, manufacturers of powdered infant formulas rely primarily on a lack of moisture to prevent microbial growth in the product.

Prior to the 1986 amendments and the regulation proposed herein to implement these amendments, the agency has not had the authority to require testing or obtain access to the testing records of the powdered products. (The Good Manufacturing Practice Regulations for Thermally Processed Low-Acid Foods Packaged in Hermetically Sealed Containers (21 CFR Part 113) contain testing, recordkeeping, and access requirements concerning the commercial sterility of the liquid product.) Consequently, in the past, there have been occasions where infants became ill as a result of microbial contamination of the powdered product.[1] Conditions conducive to microbial growth occur when the microbial level present in the dry formula is excessive and the diluted product is not refrigerated as instructed on the label. For these reasons, there is a need to require manufacturers to test and evaluate the microbial quality of the finished powdered infant formulas.

This requirement of the proposed regulations is based on the premise that testing powdered formula at the final product stage is sufficient to determine when raw materials containing excessive levels of microbial contamination are used in the manufacture of powdered infant formula or when a powdered formula has inadvertently become microbiologically contaminated during processing.

[1] "*Salmonella ellig* Infections Associated With the Consumption of Infant Dried Milk," *The Lancet*, 2(856):900-903, October 17, 1987.

C. Microbiological Testing Requirements for Powdered Infant Formula

In deciding which microorganisms powdered infant formula manufacturers should test for, the agency has reviewed and evaluated data and information concerning the potential for microbiological contamination in infant formula. This review included the studies on Microbiological Quality of Dry-Milk Mixes and Milk Substitute Infant Formulas; Microbiological Guidelines and Sampling Plans for Dried Infant Cereals and Powdered Infant Formula from a Canadian National Microbiological Survey; and the report from the International Commission on Microbiological Specifications for Foods, 1974, as presented in the book "Microorganisms in Foods 2," Chapter 10. In light of the review,[2] the agency has concluded that manufacturers must test for those pathogenic microorganisms that have been found in infant formula and raw materials used for infant formula and those microorganisms that have been associated with manufacturing practices that enhance bacterial growth. These microorganisms include *Salmonella* species, *Listeria monocytogenes*, *Escherichia coli*, *Staphylococcus aureus*, *Bacillus cereus*, and *Clostridium perfringens* as well as those microorganisms detected by an Aerobic Plate Count.

The studies and information reviewed by the agency do not mention the need to test for *L. monocytogenes*. However, FDA has in routine testing begun to detect *L. monocytogenes* in milk and milk products. This organism represents a potential life-threatening situation if present in infant formula and, therefore, has been included among those for which testing would be required.

The agency has identified in Table I the levels for each of the above microorganisms at which a health concern may arise. This concern can be particularly alarming when infant formula containing excessive microbial levels is also misused by consumers who do not strictly follow the directions for preparation and use given on each container.

[2] "Proposed Microbiological Criteria for Powdered Dry-Milk, Milk-Derived, and Milk Substitute Infant Formulas"; copy on file with the Dockets Management Branch (address above).

TABLE I.—INFANT FORMULA MICROBIOLOGICAL GUIDELINES

Bacteria	n	M
Salmonella	60	[1] 0
Listeria monocytogenes	10	[1] 0
Escherichia coli	5	[1] <3
Staphylococcus aureus	5	[1] 3
Bacillus cereus	10	[2] 1,000
Clostridium perfringens	10	[2] 1,000
Aerobic plate count	5	[3] 10,000

Key: n = number of units sampled; M is on a per gram basis.
[1] Fails test if any unit exceeds the value (M).
[2] Fails test if 2 or more units exceed 100 organisms/gram or any unit exceeds the value (M).
[3] Fails test if 3 or more units exceed 1,000 organisms/gram or any unit exceeds the value (M).

The agency intends to treat these levels as guidelines for manufacturers' use in determining when particular microorganisms are present at a level that may result in an adulterated product. The agency has decided to use these levels as guidelines rather than propose tolerances because scientific understanding of microbial food contamination is evolving quickly in this area and the methodology for identifying microorganisms is also undergoing rapid change. The proposed testing requirement for potential microbiological contaminants and the levels given above are consistent with (1) the standard adopted by the International Commission on Microbiological Specifications for Foods of the Food and Agricultural Organization of the United Nations and the World Health Organization, and (2) results from FDA and Canadian Surveys as given in the reports referenced above.

The agency has also decided upon the sampling plan and the analytical methods that it will use in applying the microbiological guidelines. It is important for manufacturers to have this information because microbiological testing results depend upon the methods used. The methodology to be used by FDA is standard for testing this food class for these microorganisms and utilizes a statistically acceptable sample size.

The methodology that FDA will be using when sampling infant formula products is given in the Bacteriological Analytical Manual (BAM), 6th Edition (1984), and subsequent revisions, published by the Association of Official Analytical Chemists, 1111 North 19th St., Suite 210, Arlington, VA 22209, except for the method for *L monocytogenes*. The method for *L monocytogenes* is available at the Dockets Management Branch (address above) and will be included in the next edition of BAM. For *Salmonella*, FDA will use the methodology described in Chapter 7, BAM. The sample preparation procedures described in paragraph 1, Section C of Chapter 7 will be used. For *E coli*, FDA will use the methodology described in Chapter 5, BAM; for *S. aureus*, the methodology described in Chapter 14, BAM; for *B. cereus*, the methodology described in Chapter 16, BAM; for *C. perfringens*, the methodology described in Chapter 17, BAM; and for the Aerobic Plate Count, the methodology described in Chapter 4, BAM.

D. Lot Testing for Potential Microbiological Contamination

The proposed regulation contains the requirement that manufacturers test each lot of powdered infant formula for each of the microorganisms identified in Table I. However, the proposal also provides manufacturers the opportunity to identify alternate approaches. In offering an alternate approach, a manufacturer would have to justify why each lot of powdered infant formula should not be tested for each identified microorganism. (For example, stringent raw material specifications and in-process heating of the product may routinely result in levels of microorganisms significantly below the levels identified above. In this case, spot checking, checking of one or more indicator microorganism, or some other procedure may be sufficient to confirm the microbiological quality for each lot of final product.) To support the alternate approach, a manufacturer would also have to submit a complete description of quality control procedures, current good manufacturing practices, raw material specifications, processing procedures and specifications, and test results demonstrating a history of meeting these criteria. In addition, the manufacturer would have to justify how the alternate testing proposed is sufficient to assure the microbiological quality of the finished product.

Appropriate types of testing and testing frequency will vary depending on manufacturing procedures. Thus, more specific identification of information needed to obtain agency agreement is not possible. If the agency does not agree with the manufacturer's recommendation that it is not necessary to test for each microorganism in each lot, the agency will notify the manufacturer of that decision.

The 1986 amendments specifically require that all records pertaining to the microbiological quality and purity of raw materials used in powdered infant formula and in finished infant formula be retained as required by § 106.100(m).

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Accordingly, the proposal calls for the retention of all records related to required testing for 1 year after the expiration of the shelf life of the infant formula or 3 years from the date of manufacture, whichever is greater.

E. Microbial Quality of Raw Materials

The agency is proposing to require microbial testing of the final product only. The agency's rationale for placing requirements on the final product rather than raw materials is based on the fact that the level of microbial contamination in raw materials may or may not be indicative of the microbial level in the final product. Potential microbiological contamination may be introduced by raw materials or through improper processing or holding procedures. Final product testing would determine microbiological contamination from all of these sources. However, some manufacturers may find it in their best interests to test and evaluate the microbial quality of the raw material, as well as the final product. Although the agency is not proposing to require raw material microbiological testing, the agency is proposing that when the manufacturer performs such testing, the manufacturer must maintain the records of the testing and must permit FDA access to the records. This requirement will allow FDA to evaluate the results of the testing in the context of the processing procedures and specifications used by the manufacturer and will help identify any potential or real contamination problems.

IV. Complaints

The 1986 amendments require "the retention of all complaints and the maintenance of files with respect to, and the review of, complaints concerning infant formulas which may reveal the possible existence of a hazard to health." The agency proposes to define a complaint as any allegation, written or verbal, expressing dissatisfaction with the product for any reason that may reveal the possible existence of a hazard to health, including complaints about appearance, taste, odor, and quality. FDA is narrowing this definition to exclude correspondence about price, package size or shape, or other matters that could not possibly reveal the existence of a hazard to health. FDA believes that this definition, even with its qualifications is sufficiently broad to assure the protection of the public health because it requires investigation of all allegations that may reveal the possible existence of a hazard to health.

FDA is also proposing that complaints be separated into two classes: (1) those complaints which indicate that an infant became ill from consuming the product or that the infant required treatment by a physician or health care provider, and (2) those complaints that may involve a possible existence of a hazard to health but do not refer to an infant becoming ill or to the need for a physician's care. The agency believes that classifying complaints in this manner will assist in identifying complaints that call for FDA's most intensive review, and will expedite FDA's identification of potential health problems.

Moreover, the agency is proposing to require that manufacturers maintain a designated file for complaint records. The proposed regulations provide that each complaint file must contain the name of the infant formula, lot number, name of the complainant, copy of the complaint, all correspondence with the complainant, and all associated manufacturing records and complaint investigation records necessary to evaluate the complaint. The regulations would also require that the complaint file include the manufacturer's evaluations and findings concerning the complaint and a notation of the actions taken to follow up on any complaint that identified a possible existence of a hazard to health. FDA believes it is critical that information regarding serious health effects be investigated and promptly reported to FDA. Accordingly, FDA will immediately initiate its own investigation into this matter. Under existing regulations, manufacturers must promptly notify FDA whenever they have knowledge that an infant formula may present a hazard to human health. In this rulemaking, the agency is proposing a specific requirement that manufacturers must notify FDA within 15 days whenever an investigation indicates there is a reasonable probability of a casual relationship between an infant's death and the consumption of an infant formula. The notification shall be within 15 days of receiving such information. Moreover, the proposed regulations provide that when a manufacturer does not conduct an investigation of a complaint, the complaint file must include an explanation of why no investigation was conducted and the name of the responsible individual making the decision not to investigate.

The agency believes all the foregoing proposed requirements concerning the maintenance of a complaint file are essential to ensure the collection of the information necessary to provide an evaluation of the significance of a consumer complaint and to determine whether a hazard to health may exist. These criteria are consistent with agency requirements concerning consumer complaints on drugs, medical devices, biologics, and cosmetics.

V. Retention of Records Demonstrating Compliance With Good Manufacturing Practices and Quality Control Procedures

The 1986 amendments require manufacturers to test for (1) all required nutrients in each batch of infant formula prior to distribution to ensure compliance with section 412(b)(3)(C) of the act, and (2) vitamins A, B_1, C, and E at the "final product stage" in order to ensure that each batch of infant formula is in compliance wth section 412(b)(3)(A) and 412(i) of the act. The amendments also call for testing to verify the shelf life of the infant formula as a means of ensuring compliance with section 412(b)(2)(B)(ii) of the act. The proposed regulations would classify records containing the results of all these tests as "necessary" records and, accordingly, require the retention of all the test results. FDA would need access to these records containing test results in order to determine whether standard procedures and practices have been followed during the manufacture of infant formula and to determine the cause of any observed deviations in nutrient concentrations.

The 1986 amendments also require the retention of all certifications and guarantees of analyses by premix suppliers and all records necessary to confirm the accuracy of the analyses made to provide the basis of premix certification and guarantees for the period of time required by § 106.100(m). Premix manufacturers routinely maintain a record of the purity of the nutrient or ingredient, the amount of each nutrient or ingredient added to a premix, and the analytical testing results necessary to verify the addition of the correct amounts and purity of each nutrient. The agency is, therefore, proposing that it is necessary to retain all of these records and make them available for FDA review and evaluation upon request. The review of all of these records is necessary to be certain that a premix has been properly prepared.

Moreover, the 1986 amendments provide that manufacturers must retain records to demonstrate completion of regularly scheduled audits as required by section 412(b)(4)(A)(v) of the act. Accordingly, the agency is proposing that manufacturers maintain documentation establishing that regularly scheduled audits by appropriately trained individuals: (1) Are conducted; (2) assure compliance with current good manufacturing practices and quality control procedures; and (3) follow the firm's complete audit plans and procedures.

Without such information the agency would not be able to ascertain when or if manufacturers are conducting audits properly.

VI. Records Pertaining to Chemical Contaminants

The agency is also concerned about potential chemical contaminants which may cause an infant formula to become adulterated. For this reason, and because retention of chemical contaminants records is involved, the agency considered including, in this "record retention" proposal, a requirement that manufacturers conduct tests for potential chemical contaminants and that the results of these tests be retained and made available for FDA review. However, after reviewing the issues involving the establishment of current good manufacturing practices to control potential chemical contaminants, the agency has concluded it would be more appropriate to address the issues in the proposal on current good manufacturing practices quality control that the agency expects to issue in the near future.

VII. Miscellaneous Records

The 1986 amendments require the retention of all records that pertain to food-packaging materials and that show that such materials do not cause an infant formula to be adulterated by virtue of the fact that the formula contains an unsafe food additive (within the meaning of section 402(a)(2)(C) of the act). Any available information that indicates whether food-packaging materials do or do not result in the presence of unapproved food additives in infant formula is, by necessity, required to be retained and available for FDA review. The proposed regulations, accordingly, contain this requirement.

VIII. Conditions of Retention and Maintenance of Records

The 1986 amendments also require that records be retained for at least 1 year after the expiration of the shelf life of the products. The agency is proposing to require record retention for at least 1 year after the expiration of the shelf life of the product or 3 years from date of manufacture, whichever is greater. The 3-year limitation makes this proposed requirement consistent with the record retention requirement in 21 CFR 113.100 for thermally processed low-acid foods packaged in hermetically sealed containers.

IX. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(8) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

X. Economic Impact

In accordance with the Regulatory Flexibility Act (Pub. L. 96–354) and Executive Order 12291, the economic effects of this proposed rule have been analyzed. This proposed rule merely implements the requirements of the 1986 amendments and will not generate costs beyond those necessitated by the amendments.

Therefore, FDA certifies in accordance with section 605(b) of the Regulatory Flexibility Act that no significant economic impact on a substantial number of small entities will derive from this action. Further, in accordance with Executive Order 12291, FDA certifies that this proposed rule will not result in a major rule as defined by that order.

XI. Paperwork Reduction Act of 1980

Section 106.100 of this proposed rule contains collection of information requirements. As required by section 3504(h) of the Paperwork Reduction Act of 1980, FDA has submitted a copy of this proposed rule to the Office of Management and Budget (OMB) for its review of this collection of information requirements. Other organizations and individuals desiring to submit comments on the collection of information requirements should direct them to FDA's Dockets Management Branch (address above) and to the Office of Information and Regulatory Affairs, OMB, Rm. 3208, New Executive Office Bldg., Washington, DC 20503, Attn: Desk Officer for FDA.

XII. Comments

Interested persons may, on or before March 27, 1989, submit to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 106

Food grades and standards, Infants and children, Nutrition, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act, it is proposed that Part 106 be amended to read as follows:

PART 106—INFANT FORMULA QUALITY CONTROL PROCEDURES

1. The authority citation for 21 CFR Part 106 is revised to read as follows.

Authority: Secs. 412, 701(a), 52 Stat. 1055, 94 Stat. 1190 (21 U.S.C. 350a, 371(a)); 21 CFR 5.10, 5.11.

2. Section 106.100 is revised to read as follows:

Subpart C—Records and Reports

§ 106.100 Records.

(a) Every manufacturer of infant formula shall maintain the records specified in this regulation in order to permit the Food and Drug Administration to verify that each manufacturer is in compliance with section 412 of the Federal Food, Drug, and Cosmetic Act (the act). Such records shall include those which pertain to:

(1) Nutrient premixes;

(2) Quality control;

(3) Final product nutrient testing results;

(4) Distribution;

(5) Microbiological quality and purity of raw materials and in finished infant formula;

(6) [Reserved]

(7) Manufacturer's audits of current good manufacturing practices and quality control procedures; and

(8) Complaints.

(b) The manufacturer shall maintain all records that pertain to food-packaging materials and that show that such materials do or do not cause an infant formula to be adulterated within the meaning of section 402(a)(2)(C) of the act.

(c) The manufacturer shall maintain all records that pertain to nutrient premixes. Such records shall include, but are not limited to:

(1) All results of testing conducted to ensure that each nutrient premix is in compliance with the premix certificate and guarantee and specifications provided by the premix supplier.

(2) All certificates and guarantees given by premix suppliers concerning the nutrients required by section 412(i) of the act and § 107.100 of this chapter.

(3) The results of any testing conducted by the premix supplier to confirm the accuracy of all certificates

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and guarantees concerning nutrient premixes for infant formulas. Such records shall include:

(i) The results of tests conducted to determine the purity of each nutrient required by section 412(i) of the act or § 107.100 of this chapter and any other nutrient listed on the label;

(ii) The weight of each nutrient added;

(iii) The results of any quantitative tests conducted to determine the amount of each nutrient certified or guaranteed; and

(iv) The results of any quantitative tests conducted to identify the nutrient levels present when nutrient premixes exceed their expiration date or shelflife (retest date).

(d) The manufacturer shall maintain all records necessary to assure proper nutrient quality control in the manufacture of infant formula products. Such records shall include the results of any testing conducted to verify that each nutrient required by section 412(i) or § 107.100 of this chapter is present in each batch of infant formula at the appropriate concentration. This requirement pertains to ingredients in-process batch and finished product from the time of manufacture through its expiration date.

(e) The manufacturer shall maintain all records necessary to assure required nutrient content at the "final product stage." Such records shall include, but are not limited to, testing results for vitamins A, B_1 (thiamine), C, and E for each batch of infant formula. "Final product stage" means the point in the manufacturing process prior to distribution at which the infant formula is homogenous and not subject to further degradation from the manufacturing process.

(f) The manufacturer shall maintain all records pertaining to distribution of the infant formula. Such records shall include, but are not limited to sufficient information and/or data necessary to effect and monitor recalls for the products in accordance with Part 7, Subpart D of this chapter.

(g) The manufacturer shall maintain all records pertaining to the microbiological quality and purity of raw materials and finished powdered infant formula. Such records shall include, but are not limited to, test results for *Salmonella, Listeria monocytogenes, Escherichia coli, Bacillus cereus, Clostridium perfringens, Staphylococcus aureus,* and the Aerobic Plate Count for each lot of powedered infant formula. If a manufacturer wishes to demonstrate to FDA that a given powdered infant formula need not be tested as required under this paragraph, the manufacturer may request an exception from the requirement.

(1) Any request for exception must include the following information:

(i) The raw material microbiological specifications;

(ii) The details of in-process heating and other processing procedures that may affect the microbiological quality of the product;

(iii) All other quality control procedures and current good manufacturing practices affecting the microbiological quality of the product;

(iv) All tests results that pertain to compliance with published microbiological guidelines for infant formula; and

(v) An alternate quality control program and a justification that the testing proposed by the manufacturer is sufficient to assure the microbiological quality of the product.

(2) The Center for Food Safety and Applied Nutrition will review information submitted by an infant formula manufacturer under paragraph (g)(1) of this section. On the basis of such review and other information available, the Center for Food Safety and Applied Nutrition may accept or reject the manufacturer's contention that testing for each microorganism identified in paragraph (g) of this section, in each lot, is not necessary.

(3) If after completing its review of all information submitted, the Center for Food Safety and Applied Nutrition concludes that testing each lot for each microorganism identified in paragraph (g) of this section is necessary, the Center will so notify the manufacturer and specify the reasons therefore. Within the 10 working days following the receipt of this notification, the manufacturer may request under § 10.75 of this chapter to have the decision reviewed by the Office of the Commissioner of Food and Drugs. A determination by the Director of the Center for Food Safety and Applied Nutrition that is not appealed becomes a final agency decision.

(4) After a final decision by the Director of the Center for Food Safety and Applied Nutrition or by the Office of the Commissioner on the microbiological testing requirements, the manufacturer shall comply with this decision or the product will be considered to be adulterated.

(h) [Reserved]

(i) The manufacturer shall maintain all records pertaining to regularly scheduled audits. Such records shall contain the information and data necessary to assure compliance with current good manufacturing practices and quality procedures identified in Parts 106, 107, 109, 110, and 113 of this chapter. The records must include written assurances from the manufacturer that regularly scheduled audits by appropriately trained individuals are being conducted and that the complete audit plans and procedures for the firm have been followed. The actual written reports of the audits need not be made available.

(j) The manufacturer shall maintain records of procedures describing the handling of all written and oral compliants regarding infant formula. Each manufacturer shall follow these procedures and shall include in them provisions for the review of any complaint involving an infant formula and a determination as to the need for an investigation of a possible existence of a hazard to health.

(1) For purposes of this section, every manufacturer shall interpret a complaint as any communication that contains any allegation, written or verbal, expressing dissatisfaction with a product for any reason that may concern the possible existence of a hazard to health including complaints about appearance, taste, odor, and quality. Correspondence about prices, package size or shape, or other reasons that could not possibly reveal a possible existence of a hazard to health shall not, for compliance purposes, be considered a complaint and therefore need not be made available to an FDA investigator.

(2) When there is a possible existence of a hazard to health, the manufacturer shall conduct an investigation into the validity of the complaint. Where such an investigation is conducted, the manufacturer shall include in the record the determination of a possible existence of a hazard to health, or lack thereof, and basis for the determination. Where such an investigation is not conducted, the manufacturer shall include in the record the reason that an investigation was found to be unnecessary and the name of the responsible person making such a determination.

(3) When there is a reasonable possibility of a causal relationship between the consumption of an infant formula and an infant's death, the manufacturer shall conduct an investigation and shall notify the agency as required in § 108.120(b) within 15 days of receiving such information.

(4) The manufacturer shall maintain in a designated file all records pertaining to complaints. The manufacturer shall separate the files into two classes:

(i) Those complaints that allege that the infant became ill from consuming the product or required treatment by a physician or health care provider,

(ii) Those complaints that may involve a possible existence of a hazard to health but do not refer to an infant becoming ill or the need for treatment by physician or a health care provider,

(5) The manufacturer shall include in a complaint file the following information concerning a complaint:

(i) The name of the infant formula;

(ii) The lot number;

(ii) The name of complainant;

(iv) A copy of the complaint or a memo of the telephone conversation or meeting and all correspondence with the complainant;

(v) All the associated manufacturing records and complaint investigation records needed to evaluate the complaint;

(vi) All actions taken to follow up on the complaint; and

(vii) All findings and evaluations of the complaint.

(6) The manufacturer shall maintain the files regarding infant formula complaints at the establishment where the infant formula was manufactured, processed, or packed. The manufacturer may alternatively maintain such files at one other facility if all records required by this section for a manufacturer are readily available for inspection at that one other facility.

(k) The manufacturer shall make readily available for authorized inspection all records required under this part, or copies of such records. Records shall be available at any reasonable time during the retention period of the establishment where the activities described in such records occurred. (Infant formula complaint files may be maintained at one other facility for each manufacturer if all required records are readily available at that one other facility.) These records or copies thereof shall be subject to photocopying or other means of reproduction as part of such inspection. Records that can be immediately retrieved from another location by electronic means shall be considered as meeting the requirements of this paragraph.

(l) Records required under this part may be retained either as original records or as true copies such as photocopies, microfilm, microfiche, or other accurate reproductions of the original records. Where reduction techniques, such as microfilming, are used, suitable reader and photocopying equipment shall be readily available.

(m) Production control, product testing, testing results, complaints, and distribution records necessary to verify compliance with Parts 106, 107, 109, 110, and 113 of this chapter, or other appropriate regulations shall be retained for 1 year after the expiration of the shelf life of the infant formula or 3 years from the date of manufacture, whichever is greater.

(n) The manufacturer shall maintain quality control records that contain sufficient information to permit a public health evaluation of any batch of infant formula.

Dated: January 18, 1989.

Frank E. Young,

Commissioner of Food and Drugs.

Otis R. Bowen,

Secretary of Health and Human Services.

[FR Doc. 89-1721 Filed 1-25-89; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[EE-158-86, 160-86]

Excise and Income Taxes; 401(k) Arrangements Under the Tax Reform Act of 1986 and Nondiscrimination Requirements for Employee and Matching Contributions

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This document contains a correction to the **Federal Register** publication for Monday, August 8, 1988, at 53 FR 29719 of the notice of proposed rulemaking. The proposed rules relate to cash or deferred arrangements described in section 401(k) of the Internal Revenue Code of 1986, and nondiscrimination rules for employee contributions and matching contributions made to employee plans contained in section 401(m) of the Code by the Tax Reform Act of 1986.

FOR FURTHER INFORMATION CONTACT: Williams D. Gibbs, Office of the Assistant Chief Counsel, Employee Benefits and Exempt Organizations, 202-377-9372 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On August 8, 1988, proposed rules relating to cash or deferred arrangements and nondiscrimination rules for employee contributions and matching contributions were published in the **Federal Register** (53 FR 29719). The amendments were proposed to conform the regulations to changes in the applicable tax law made by the Tax Reform Act of 1986.

Need for Correction

As published, the proposed rules contain a typographical error which may prove to be misleading and is in need of correction.

Correction of Publication

Accordingly, the publication of the proposed rules (EE-158-86, 160-86), which was the subject of FR Doc. 88-17721 (53 FR 29719), is corrected as follows:

Paragraph 1. On page 29734, the third column, eleventh line from the bottom of the page, the word "following" is removed.

Dale D. Goode,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 89-1016 Filed 1-25-89; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD 05-88-01]

Regulated Navigation Area, Hampton Roads, VA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is considering revising the regulated navigation area in 33 CFR 165.501 for Hampton Roads, Virginia, to provide special operating requirements for the Elizabeth River ferries using the dock to be constructed at the foot of High Street in Portsmouth, Virginia. The restrictions are designed to ensure the safety of the passengers, the ferries, and other vessels navigating the area.

DATES: Comments must be received on or before February 24, 1989.

ADDRESSES: Comments and other materials should be mailed to Commander (mpv), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004. The comments and other materials referenced in this notice will be available for inspection and copying at the offices of the Commander, Fifth Coast Guard District, in Room 406A, 431 Crawford Street, Portsmouth, Virginia. Normal office hours are between 8:00 a.m. and 4:30) p.m., Monday through Friday, except Federal holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Lieutenant D.T. Ormes, Port and Vessel

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Safety Branch, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia, 23704-5004, (804) 398-6368.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD 05-89-01), and the specific section of the proposal to which their comments apply, and give the reasons for each comment.

Drafting Information

The drafters of this notice are LT D.T. Ormes, Project Officer, Port and Vessel Safety Branch, Fifth Coast Guard District, and CAPT R.J. Reining, Project Attorney, Fifth Coast Guard District Legal Staff.

Discussion of Proposed Rule

If adopted this proposal would impose operating restrictions on ferries being operated for the Tidewater Transportation District Commission (TRT) that will use a new dock being constructed by the City of Portsmouth, Virginia, at the foot of High Street. The District Engineer for the Norfolk District, U.S. Army Corps of Engineers, conditioned the issuance of a permit for the construction of the dock on the Coast Guard's approval of specific plans for the safe operation of the dock. This proposal will implement that condition.

Four basic restrictions are proposed. The restrictions are designed to ensure the safety of the passengers, the ferries, and other vessels navigating the area. First, use of the dock will be restricted to vessels being operated as ferries for TRT. Second, the ferries will not be allowed to remain moored to the dock when large vessels, such as aircraft carriers, and liquefied petroleum gas carriers transit the Elizabeth River. Third, the ferries will only be allowed to tie up long enough to embark and disembark passengers. They will not be allowed to remain at the dock waiting for a predetermined departure time. And fourth, when a ferry is tied up to the dock, the master or another licensed officer must be in the pilothouse and prepared to immediately get the vessel underway or stop passenger loading.

These restrictions are necessary because of the confined nature of the Southern Branch of the Elizabeth River in the immediate vicinity of the new dock. This situation is compounded by the occasional rafting of vessels at the Norfolk Shipbuilding and Drydock Co. facilities on the eastern bank of the river.

Since the dock is being permitted for ferry operations, the proposal restricts the use of the dock to vessels being operated as ferries by TRT.

The restrictions on mooring ferries to the dock during the transit of large naval vessels and liquefied petroleum gas carriers are necessary due to the limited maneuvering ability of these vessels. These vessels and their accompanying tugboats and escorts would be hampered by the presence of a ferry at the dock, and the ferry would be at risk if moored to the dock during such a passage.

Because of the exposed nature of the dock, the ferries will only be permitted to stay at the dock for the time necessary to conduct passenger operations. This measure is designed to limit the hazards posed to vessels transiting the area by the ferries moored at the dock. The docking facilities at Waterside in Norfolk and Portside in Portsmouth provide adequate facilities for the ferries to remain moored during crew rest breaks, while waiting for the next scheduled runs, and overnight.

The requirement for the master or another licensed officer to remain in the pilothouse while moored at the dock is being imposed to ensure that the ferry will be able to respond to any developing situations. One concern over the location is the danger to passengers from the wake of passing vessels. By remaining in the pilothouse the master or other licensed officer will be able to monitor other vessel traffic in the area, conduct any needed communications by radio, and if necessary take action to provide for the safety of the passengers.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034, February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. This proposal only imposes minimum restrictions on how the ferry will operate at the new dock being constructed at the foot of High Street. These restrictions should not have any effect on the economic viability of its operation.

Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

Environmental Impact

This action has been thoroughly reviewed by the Coast Guard and it has been determined to be excluded from further environmental documentation in accordance with section 2.B.2.c of Commandant Instruction (COMDTINST) M16475.1B.

Federalism Assessment

This rulemaking has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 and it has been determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, and Waterways.

Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 165 of Title 33, Code of Federal Regulations as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-1(g), 6.04-1, 6.04-6 and 160.5.

2. Section 165.501 is amended by adding paragraphs (d)(11)(iv), d(12)(v), and (d)(13) to read as follows:

§ 165.501 Chesapeake Bay entrance and Hampton Roads, Virginia and adjacent waters—regulated navigation area.

* * * * *

(d) *Regulations:* * * *

(11) *Restrictions on Vessel Operations During Aircraft Carrier and Other Large Naval Vessel Transits of the Elizabeth River.* * * *

(iv) Notwithstanding paragraph (d)(11)(i) of this section, a vessel may not remain moored at the Elizabeth River Ferry dock at the foot of High Street in Portsmouth, Virginia, when the dock is within a safety zone for a naval aircraft carrier or other large naval vessel.

(12) *Restrictions on Vessel Operations During Liquefied Petroleum Gas Carrier Movements on the Chesapeake Bay and Elizabeth River.* * * *

(v) Notwithstanding paragraph (d)(12)(i) of this section, a vessel may not remain moored at the Elizabeth River Ferry dock at the foot of High Street in Portsmouth, Virginia, when the dock is within a safety zone for a liquefied petroleum gas carrier.

(13) *Restrictions on the use of the Elizabeth River Ferry dock at the foot of High Street, Portsmouth, Virginia.*

(i) No vessels, other than those being operated as a ferry for the Tidewater Transit Transportation District, may embark or disembark passengers or otherwise moor at the Elizabeth River Ferry dock at the foot of High Street, Portsmouth, Virginia.

(ii) Any vessel being operated for the Tidewater Transit Transportation District may not moor at the dock longer than necessary to embark passengers waiting transportation or disembark passengers already aboard the vessel.

(iii) The master or another authorized licensed officer must remain in the pilothouse and be prepared to get the vessel underway immediately or take other actions necessary to ensure the safety of the vessel's passengers, whenever a vessel is moored at the dock.

* * * * *

Dated: January 13, 1989.

A.D. Breed,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 89-1652 Filed 1-25-89; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 61

[AD-FRL-3509-7]

National Emission Standards for Hazardous Air Pollutants; Test Methods; Addition of Methods 108B and 108C

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and notice of public hearing.

SUMMARY: The purpose of this proposed rule is to add Methods 108B and 108C, "Determination of Arsenic Content in Ore Samples from Nonferrous Smelters" to Appendix B of 40 CFR Part 61. These methods are being proposed as alternative test methods to Method 108A at the request of ASARCO, Inc. The request was made to preclude a financial hardship on the company by the analytical equipment required in Method 108A and to allow the use of standardized company procedures that are similar to Method 108A.

A public hearing will be held, if requested, to provide interested persons an opportunity for oral presentation of data, views, or arguments concerning the proposed rule.

DATES: *Comments.* Comments must be received on or before April 11, 1989.

Public Hearing. If anyone contacts EPA requesting to speak at a Public hearing by February 16, 1989, a public hearing will be held on March 13, 1989 beginning at 10:00 a.m. Persons interested in attending the hearing should call Foston Curtis at (919) 541-1063 to verify that a hearing will be held.

Request to Speak at Hearing. Persons wishing to present oral testimony must contact EPA by February 16, 1989.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate if possible) to: Central Docket Section (LE-131), Attention: Docket Number A-88-12, U.S. Environmental Protection Agency, South Conference Center, Room 4, 401 M Street, SW., Washington, DC 20460.

Public Hearing. If anyone contacts EPA requesting a public hearing, it will be held at EPA's Emission Measurement Laboratory, Research Triangle Park, North Carolina. Persons interested in attending the hearing or wishing to present oral testimony should notify Foston Curtis, Emission Measurement Branch (MD-19), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541-1063.

Docket. Docket No. A-88-12, containing materials relevant to this rulemaking, is available for public inspection and copying between 8:00 a.m. and 4:00 p.m., Monday through Friday, at EPA's Central Docket Section, South Conference Center, Room 4, 401 M Street, SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Foston Curtis or Roger T. Shigehara Emission Measurement Branch (MD-19), Technical Support Division, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541-1063.

SUPPLEMENTARY INFORMATION:

I. The Rulemaking

Proposed Methods 108B and 108C will allow applicable sources to use procedures that, in certain cases, are less expensive and easier to use than the existing Method 108A. Method 108B is an instrumental method that is very similar to Method 108A; Method 108C is a colorimetric procedure that has been recognized for use by the American Society for Testing and Materials. The methods have been used extensively by ASARCO Incorporated as part of their ore evaluation program. They have requested that these methods be accepted as alternatives to Method 108A and have submitted information describing the methods in detail and data to establish their validity. This request is based on ASARCO's successful use of the methods and their desire to avoid a financial hardship being placed on their two laboratories through the purchase of accessory equipment for Method 108A. This proposal will primarily affect ASARCO, but other applicable sources within primary copper smelters may choose to use these methods.

This rulemaking does not impose emission measurement requirements beyond those specified in the current regulations, nor does it change any emission standard or make it more stringent. Rather, the rulemaking will add alternative test methods of which they are already subject.

II. Administrative Requirements

A. Public Hearing

A public hearing will be held, if requested, to discuss the proposed revisions in accordance with section 307(d)(5) of the Clean Air Act. Persons wishing to make oral presentations should contact EPA at the address given in the **ADDRESSES** section of this preamble. Oral presentations will be limited to 15 minutes each. Any member of the public may file a written statement with EPA before, during, or within 30 days after the hearing. Written statements should be addressed to the Central Docket Section address given in the **ADDRESSES** section of this preamble.

A verbatim transcript of the hearing and written statements will be available for public inspection and copying during normal working hours at EPA's Central Docket Section in Washington, DC (see **ADDRESSES** section of this preamble).

B. Docket

The docket is an organized and complete file of all the information submitted to or otherwise considerd by EPA in the development of this proposed rulemaking. The principal purposes of the docket are to: (1) Allow interested parties to identify and locate documents so that they can effectively participate in the rulemaking process, and (2) serve as the record in case of judicial review (except for interagency review materials) [Section 307(d)(7)(A)].

C. Office of Management and Budget Review

Executive Order 12291 Review. Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirement of a regulatory impact analysis. This

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rulemaking would not result in any of the adverse economic effects set forth in Section 1 of the Order as grounds for finding a "major rule." It will not have an annual effect on the economy of $100 million or more, nor will it result in a major increase in costs or prices. There will be no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

D. Regulatory Flexibility Act Compliance

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this attached rule, if promulgated, will not have any economic impact on small entities because no additional costs will be incurred.

This rulemaking does not contain any information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

List of Subjects in 40 CFR Part 61

Air pollution control, Asbestos, Arsenic, Beryllium, Hazardous materials, Mercury, and Vinyl chloride.

Date: January 18, 1989

Don R. Clay

Acting Assistant Administrator for Air and Radiation.

It is proposed that 40 CFR Part 61 be amended as follows:

PART 61—[AMENDED]

1. The authority for 40 CFR Part 61 continues to read as follows:

Authority: Sections 101, 112, 114, 116, and 301 of the Clean Air Act, as amended (42 U.S.C. 7401, 7412, 7414, 7416, and 7601).

§ 61.164 [Amended]

2. In § 61.164(d)(2), "conduct mission" in the first sentence is corrected to read "conduct emission."

§ 61.174 [Amended]

3. In § 61.174(f)(2), "Method 108A" in the second sentence is revised to read "Method 108A, 108B, or 108C."

4. In § 61.174(f)(3), "R_s" in the equation is corrected to read "R_v."

5. By adding Methods 108B and 108C to Appendix B as follows:

Appendix B—Test Methods

* * * * *

Method 108B—Determination of Arsenic Content in Ore Samples From Nonferrous Smelters

1. Applicability and Principle

1.1 Applicability. This method applies to the determination of inorganic arsenic (As) content of process ore and reverberatory matte samples from nonferrous smelters and other sources as specified in the regulations. Samples resulting in an analytical concentration greater than 10 μg As/ml may be analyzed by this method.

1.2 Principle. Arsenic bound in ore samples is liberated by acid digestion and analyzed by flame atomic absorption spectrophotometry.

2. Apparatus

2.1 Sample Preparation.

2.1.1 Teflon Beakers. 150-ml.

2.1.2 Graduated Pipets. 5-ml disposable.

2.1.3 Graduated Cylinder. 50-ml.

2.1.4 Volumetric Flask. 100-ml.

2.1.5 Analytical Balance. To measure within 0.1 mg.

2.1.6 Hot Plate.

2.1.7 Perchloric Acid Fume Hood.

2.2 Analysis.

2.2.1 Spectrophotometer. Equipped with an electrodeless discharge lamp and a background corrector to measure absorbance at 193.7 nm.

2.2.2 Beaker and Watch Glass. 400-ml.

2.2.3 Volumetric flask. 1-liter.

2.2.4 Volumetric Pipets. 1-, 5-, 10-, and 25-ml.

3. Reagents

Unless otherwise specified, use American Chemical Society (ACS) reagent grade (or equivalent) chemicals throughout.

3.1 Sample Preparation.

3.1.1 Water. Deionized distilled to meet American Society for Testing and Materials Specification D 1193–74, Type 3.

3.1.2 Nitric Acid (HNO_3). Concentrated. HANDLE WITH CAUTION.

3.1.3 Hydrofluoric Acid (HF). Concentrated. HANDLE WITH CAUTION.

3.1.4 Perchloric Acid ($HClO_4$). 70 Percent. HANDLE WITH CAUTION.

Note.—Because of its caustic, hygroscopic, and deflagrating nature, use extreme care in handling $HClO_4$. Keep separate from water and oxidizable materials to prevent vigorous evolution of heat, spontaneous combustion, or explosion. Heat solutions containing $HClO_4$ only in hoods specifically designed for $HClO_4$.

3.1.5 Hydrochloric Acid (HCl). Concentrated. HANDLE WITH CAUTION.

3.2 Analysis.

3.2.1 Water. Same as in Section 3.1.1.

3.2.2 Stock Arsenic Standard, 1.0 mg As/ml. Dissolve 1.3203 g of primary grade As_2O_3 (dried at 105°C) in a 400-ml beaker with 10 ml of HNO_3 and 5 ml of HCl. Cover with a watch glass and heat gently until dissolution is complete. Add 10 ml of HNO_3 and 25 ml of $HClO_4$, evaporate to strong fumes of $HClO_4$, and reduce to about 20 ml of volume. Cool, add 100 ml of water and 100 ml of HCl, and transfer quantitatively to a 1-liter volumetric flask. Dilute to volume with water and mix.

3.2.3 Acetylene. Suitable quality for atomic absorption analysis.

3.2.4 Air. Suitable quality for atomic absorption analysis.

3.2.5 Quality Assurance Audit Samples. Same as in Method 108A, Section 3.2.8.

4. Procedure

4.1 Sample Collection. Same as in Method 108A, Section 4.1.

4.2 Sample Preparation. Weigh 100 to 1000 mg of finely pulverized sample to the nearest 0.1 mg. Transfer the sample to a 150-ml Teflon beaker. Dissolve the sample by adding 15 ml of HNO_3, 10 ml of HCl, 10 ml of HF, and 10 ml of $HClO_4$ in the exact order as described, and let stand for 10 minutes. In a $HClO_4$ fume hood, heat on a hot plate until 2–3 ml of $HClO_4$ remain, then cool. Add 20 ml of water and 10 ml of HCl. Cover and warm until the soluble salts are in solution. Cool, and transfer quantitatively to a 100-ml volumetric flask. Dilute to the mark with water.

4.3 Spectrophotometer Preparation. Same as in Method 108A, Section 4.3.

4.4 Preparation of Standard Solutions.

4.4.1 Pipet 1, 5, 10, and 25 ml of the stock As solution into separate 100-ml flasks. Add 2 ml of $HClO_4$, 10 ml of HCl, and dilute to the mark with water. This will provide standard concentrations of 10, 50, 100, and 250 μg As/ml. For lower level arsenic samples, use Method 108C.

4.4.2 Measure the standard absorbances against the reagent blank. Check these absorbances frequently against the blank during the analysis to ensure that baseline drift has not occurred.

4.4.3 Prepare a standard curve of absorbance versus concentration.

(Note.—For instruments equipped with direct concentration readout devices, preparation of a standard curve will not be necessary.) In all cases, follow calibration and operational procedures in the manufacturer's instruction manual. Maintain a laboratory log of all calibrations.

4.5 Analysis.

4.5.1 Arsenic Determination. Determine the absorbance of each sample using the blank as a reference. If the sample concentration falls outside the range of the calibration curve, make an appropriate dilution with 2 percent $HClO_4$/10 percent HCl (prepared by diluting 2 ml concentrated $HClO_4$ and 10 ml concentrated HCl to 100 ml with water) so that the final concentration falls within the range of the curve. From the curve, determine the As concentration in each sample.

4.5.2 Mandatory Check for Matrix Effects on the Arsenic Results. Same as in Method 12, Section 5.4.2, 40 CFR Part 60.

4.5.3 Audit analysis. Same as in Method 108A, Section 4.5.3.

5. Calculations

Same as in Method 108A, Section 5.

6. Bibliography

Same as in Method 108A, Bibliography.

Method 108C—Determination of Arsenic Content in Ore Samples From Nonferrous Smelters

1. Applicability and Principle

1.1 Applicability. This method applies to the determination of inorganic arsenic (As) content of process ore and reverberatory matte samples from nonferrous smelters and other sources as specified in the regulations. This method is applicable to samples having an analytical concentration less than 10 μg As/ml.

1.2 Principle. Arsenic bound in ore samples is liberated by acid digestion and analyzed by the molybdenum blue photometric procedure.

2. Apparatus

2.1 Sample Preparation and Distillation.

2.1.1 Analytical Balance. To measure to within 0.1 mg.

2.1.2 Erlenmeyer Flask. 300-ml.

2.1.3 Hot Plate.

2.1.4 Distillation Apparatus. No. 6, American Society for Testing and Materials (ASTM) E50; detailed in Figure 108C–1.

2.1.5 Graduated Cylinder. 50-ml.

2.1.6 Perchloric Acid Fume Hood.

2.2 Analysis.

2.2.1 Photometer. Capable of measuring at 600 nm.

2.2.2 Volumetric Flasks. 50- and 100-ml.

3. Reagents

Unless otherwise specified, use ACS reagent grade (or equivalent chemicals) throughout.

3.1 Sample Preparation.

3.1.1 Water. Deionized distilled to meet ASTM Specification D 1193–74, Type 3. When high concentrations of organic matter are not expected to be present, the analyst may omit the $KMnO_4$ test for oxidizable organic matter.

3.1.2 Nitric Acid (HNO_3). Concentrated. HANDLE WITH CAUTION.

3.1.3 Hydrofluoric Acid (HF). Concentrated. HANDLE WITH CAUTION.

3.1.4 Sulfuric Acid (H_2SO_4). Concentrated. HANDLE WITH CAUTION.

3.1.5 Prechloric Acid ($HClO_4$). 70 Percent. HANDLE WITH CAUTION.

Note.—Because of its caustic, hygroscopic, and deflagrating nature, use extreme care in handling $HClO_4$. Keep separate from water and oxidizable materials to prevent vigorous evolution of heat, spontaneous combustion, or explosion. Heat solutions containing $HClO_4$ only in hoods specifically designed for $HClO_4$.

3.1.6 Hydrochloric Acid (HCl). Concentrated. HANDLE WITH CAUTION.

3.1.7 Dilute Hydrochloric Acid. Add one part concentration HCl to nine parts water.

3.1.8 Hydrazine Sulfate ($(NH_2)_2.H_2SO_4$).

3.1.9 Potassium Bromide (KBr).

3.1.10 Bromine Water, Saturated.

3.2 Analysis.

3.2.1 Water. Same as in Section 3.1.1.

3.2.2 Methyl Orange Solution, 1 g/liter.

3.2.3 Ammonium Molybdate Solution, 5 g/liter. Dissolve 0.5 g $(NH_4)_6Mo_7O_{24}.4H_2O$ in water in a 100-ml volumetric flask, and dilute to the mark. This solution shall be freshly prepared.

3.2.4 Standard Arsenic Solution, 10 μg As/ml. Dissolve 0.1320 g of AS_2O_3 in 100 ml HCl in a 1-liter volumetric flask. Add 200 ml of water, cool, dilute to the mark with water, and mix. Transfer 100 ml of this solution to a 1-liter volumetric flask, add 40 ml HCl, cool, dilute to the mark, and mix.

3.2.5 Hydrazine Sulfate Solution, 1 g/liter. dissolve 0.1 g of $(NH_2)_2.H_2SO_4$ in water, and dilute to 100 ml in a volumetric flask. This solution shall be freshly prepared.

3.2.6 Potassium Bromate ($KBrO_3$) Solution, 0.03 Percent. Dissolve 0.3 g $KBrO_3$ in water, and dilute to 1 liter with water.

3.2.7 Ammonium Hydroxide (NH_4OH), Concentrated.

3.2.8 Boiling Granules.

3.2.9 1/1 HCl/Water. Dilute equal parts concentrated HCl with water.

4. Procedure

4.1 Sample Preparation and Distillation.

4.1.1 Weigh 1.0 g of finely pulverized sample to the nearest 0.1 mg. Transfer the sample to a 300-ml Erlenmeyer flask and add 15 ml of HNO_3, 4 ml HCl, 2 ml HF, 3 ml $HClO_4$, and 15 ml H_2SO_4. In a $HClO_4$ fume hood, heat on a hot plate to decompose the sample. Then heat while swirling over an open flame until dense, white fumes evolve. Cool, add 15 ml of water, swirl to hydrate the H_2SO_4 completely, and add several boiling granules. Cool to room temperature.

4.1.2 Add 1 g of KBr, 1 g hydrazine sulfate, and 50 ml HCl. Immediately attach the distillation head with thermometer and dip the side arm into a 50-ml graduated cylinder containing 25 ml of water and 2 ml of bromine water. Keep the graduated cylinder immersed in a beaker of cold water during distillation. Distill until the temperature of the vapor in the flask reaches 107 °C. When distillation is complete, remove the flask from the hot plate, and simultaneously wash down the side arm with water as it is removed from the cylinder.

4.1.3 If the expected arsenic content is in the range of 0.0020 to 0.10 percent, dilute the distillate to the 50-ml mark of the cylinder with water, stopper, and mix. Transfer a 5.0-ml aliquot to a 50-ml volumetric flask. Add 10 ml of water and a boiling granule. Place the flask on a hot plate and heat gently until the bromine is expelled and the color of methyl orange indicator persists upon the addition of 1–2 drops. Cool the flask to room temperature. Neutralize just to the yellow color of the indicator with dropwise additions of NH_4OH. Bring back to the red color by dropwise addition of dilute HCl, and add 10 ml excess. Proceed with the molybdenum blue color development as described in section 4.2.

4.1.4 If the expected arsenic content is in the range of 0.0002 to 0.0010 percent As, transfer either the entire initial distillate or the measured remaining distillate from above to a 250-ml beaker. Wash the cylinder with two successive portions of concentrated HNO_3, adding each portion to the distillate in the beaker. Add 4 ml of concentrated $HClO_4$, a boiling granule, and cover with a flat watch glass placed slightly to one side. Boil gently on a hot plate until the volume is reduced to approximately 10 ml. Add 3 ml of HNO_3, and continue the evaporation until $HClO_4$ is refluxing on the beaker cover. Cool briefly, rinse the underside of the watch glass and the inside of the beaker with about 3–5 ml of water, cover, and continue the evaporation to expel all but 2 ml of the $HClO_4$.

Note.—If the solution appears cloudy due to a small amount of antimony distilling over, add 4 ml of 1/1 HCl/water and 5 ml of water, cover, and warm gently until clear. If cloudiness persists, add 5 ml of HNO_3 and 2 ml H_2SO_4. Continue the evaporation of volatile acids to solubilize the antimony until dense white fumes of H_2SO_4 appear. Retain at least 1 ml of the H_2SO_4. To the 2 ml of $HClO_4$ solution or 1 ml of the H_2SO_4 solution, add 15 ml of water, boil gently for 2 minutes, and then cool. Proceed with the molybdenum

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blue color development by neutralizing the solution directly in the beaker just to the yellow indicator color by dropwise addition of NH_4OH. Just bring back the red color by dropwise addition of dilute HCl. Transfer the solution to a 50-ml volumetric flask, and rinse the beaker successively with 10 ml of dilute HCl, followed by several small portions of water. At this point the volume of solution in the flask should be no more than 40 ml. Continue with the color development as described in section 4.2.

4.2 Analysis.

4.2.1 Add 1 ml of $KBrO_3$ solution to the flask and heat on a low-temperature hot plate to about 50 °C to oxidize the arsenic and methyl orange. Add 5.0 ml of ammonium molybdate solution to the warm solution and mix. Add 2.0 ml of hydrazine sulfate solution, dilute until the solution comes within the neck of the flask, and mix. Place in a 400-ml beaker, 80 percent full of boiling water for 10 minutes. Enough heat must be supplied to prevent the water bath from cooling much below the boiling point upon inserting the volumetric flask. Remove the flask, cool to room temperature, dilute to the mark, and mix.

4.2.2 Transfer a suitable portion of the reference solution to an absorption cell, and adjust the photometer to the initial setting, using a light band centered at 600 nm. While maintaining this photometer adjustment, take the photometric readings of the calibration solutions followed by the samples.

4.3 Preparation of Calibration Curve. Transfer 1.0, 2.0, 4.0, 8.0, 12.0, 16.0, and 20.0 ml of standard arsenic solution (10 μg/ml) to each of seven 50-ml volumetric flasks. Dilute to 20 ml with dilute HCl. Add one drop of methyl orange solution and neutralize to the yellow color with dropwise addition of NH_4OH. Just bring back to the red color by dropwise addition of dilute HCl, and add 10 ml in excess. Proceed with the color development as described in Section 4.2 Plot the photometric readings of the calibration solutions against μg As per 50 ml of solution. From the curve, determine the As concentration in each sample.

4.4 Audit Analysis. Same as in Method 108A, Section 4.3.3.

5. Calculation

Same as in Method 108A, Section 5.

6. Bibliography

Ringwald, D. (TRW). Arsenic Determination on Process Materials from ASARCO's Copper Smelter in Tacoma, Washington. Unpublished Report. Prepared for the Emission Measurement Branch, Technical Support Division, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711. August 1980. 35 p.

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[FR Doc. 89-1792 Filed 1-25-89; 8:45 am]
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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 405

[BERC-480-P]

Medicare Program; Uniform Relative Value Guide for Anesthesia Services Furnished by Physicians

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: We are proposing to establish a relative value guide for use in all carrier localities in making payment for anesthesia services furnished by physicians under Medicare Part B. This proposal would implement section 4048(b) of the Omnibus Budget Reconciliation Act of 1987. The proposed relative value guide is designed to ensure that payments using the guide do not exceed the amount that would have been made under the current payment system. Although the statute requires that the uniform relative value guide be effective for services furnished on or after January 1, 1989, we are proposing to delay the effective date until March 1, 1989.

DATE: To be considered, comments must be mailed or delivered to the appropriate address, as provided below, and must be received by 5:00 p.m. on February 27, 1989.

ADDRESS: Mail comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BERC-480-FC, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309-G, Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, DC, or

Room 132, Eat High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

In commenting, please refer to file code BERC-480-P. Comments received timely will be available for public inspection as they are received, beginning approximately three weeks after publication of this document, in Room 309-G of the Department's offices at 200 Independence Ave., SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (phone: 202-245-7890).

FOR FURTHER INFORMATION CONTACT: James Menas, (301) 966-4507.

SUPPLEMENTARY INFORMATION:

I. Background

Under our current regulations (42 CFR 405.552 and 405.553), anesthesiology services personally furnished by a physician are reimbursed on a reasonable charge basis under Part B of the Medicare program (Supplementary Medical Insurance). In addition, payment on a reasonable charge basis under Medicare Part B can be made for the physician's personal medical direction that he or she furnishes to a qualified individual (for example, a certified registered nurse anesthetist (CRNA)).

As a condition for reasonable charge payment, the physician may not direct more than four concurrent anesthesia procedures at a time, must be physically present in the operating suite, and may not perform any other services during the same period of time. In addition to these requirements and prohibitions, the physician is required to perform several personal services to the patient before, during, and after the procedure such as examining the patient and personally participating in the most demanding parts of the procedure.

Medicare carriers processing anesthesia claims calculate the reasonable charge for anesthesia services based on the following:

- Base value units assigned to the specific procedure performed that represent the value of all anesthesia services except the value of the actual time spent administering the anesthesia
- Time units that represent the elapsed period of time from when the anesthesiologist prepares the patient for induction and ending when the anesthesiologist is no longer in personal attendance to the patient. The carrier allows no more than one time unit for each 15 minute interval
- The carrier may also use modifier units that take into account special factors such as the age or physical condition of the patient. About 65 percent of the carriers recognize modifier units.

The sum of these units is multiplied by the lesser of the individual physician's customary charge conversion factor or the prevailing charge conversion factor and compared with the billed charge to arrive at the reasonable charge for the physician's anesthesia service. The individual physician's customary charge conversion factor is derived from the physician's billed charges and underlying base, time, and if appropriate, modifier units. The prevailing charge conversion factor is computed by arraying the anesthesia customary charge conversion factors in ascending order and weighting each by the frequency of services on which it was based. An actual amount in the array that is high enough to include the customary charge conversion factors of the anesthesiologists who perform at least 75 percent of the cumulative services determines the prevailing charge conversion factor.

When the anesthesiologist medically directs concurrent anesthesia services, the amount of reasonable charge reimbursement depends on whether the anesthetist under medical direction is or is not the employee of the anesthesiologist and the number of concurrent anesthesia services performed. The number of base units are reduced by 10, 25, or 40 percent depending upon whether two, three, or four concurrent procedures are performed. If the anesthesiologist performs the entire service personally or medically directs concurrent services using his or her employee (anesthetist), one time unit for each 15 minute interval is allowed. If the anesthetist is not employed by the anesthesiologist, the carrier allows no more than one time unit for each 30 minute interval rather than one unit for each 15 minutes.

In cases in which a physician directs more than four concurrent procedures, all the reasonable and necessary preanesthesia services personally furnished by the physician up to and including induction of the patient qualify for reasonable charge reimbursement. Those services furnished subsequent to induction of the patient are considered physician services to the provider and are payable to the provider on a prospective payment basis if the services are furnished to an inpatient of a hospital that is subject to the prospective payment system or on a reasonable cost basis for all other hospitals. Section 8312.1G of the Medicare Carriers Manual (HCFA Pub. 14-3) further specifies that payment for these preanesthesia services is limited to three base units plus one time unit for induction if the induction was personally performed by the physician. No further time units are recognized for any of the concurrent procedures.

On December 22, 1987, the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100-203) was enacted. Section 4048(b) of Pub. L. 100-203 requires the Secretary, in consultation with groups representing physicians who furnish anesthesia services, to establish a relative value guide for use in all carrier localities in making payment under Medicare Part B for physician anesthesia services furnished on or after January 1, 1989. The provision is to be budget neutral. The guide must be designed to result in payments that do not exceed the amount of the expenditures that would have occurred absent this provision of the law. This proposed rule would implement the provision of section 4048(b) of Pub. L. 100-203.

II. Provisions of this Proposed Rule

A. Selection of Relative Value Guide and Coding Issues

In processing anesthesia claims, carriers currently have the authority to choose the relative value guide they use for assigning base units to anesthesia services. The principal relative value guides in use at this time include various versions of the American Society of Anesthesiologists' (ASA) Relative Value Guide, particularly the 1967, 1970, and 1973 versions of that guide; the 1964 or the 1969 California Relative Value Scale (CRVS); various State guides; and charge-based relative value guides. These guides assign anesthesia relative value base units to surgical procedures. Because of this, our carriers require physicians to report the anesthesia service using the surgical procedure codes from the Physicians Current Procedural Terminology, Fourth Edition, or commonly referred to as CPT-4.

The CPT-4 also includes an anesthesiology coding system developed by ASA that categorizes anesthesia procedures by body part. There are 17 broad categories ranging from anesthesia procedures on the head to anesthesia procedures associated with miscellaneous procedures. These categories are composed of approximately 248 codes. This compares with up to 4200 surgical procedure codes under which carriers currently classify anesthesia services.

ASA has also developed a relative value guide to complement the CPT-4 anesthesia codes which assign a specific number of base units to each of the 248 codes. ASA's relative value guide also provides for the use of modifier units for physical status and additional units for qualifying circumstances. In addition, ASA's relative value guide provides base unit values for pulmonary function testing and therapeutic and diagnostic services. However, the CPT-4 codes assigned to these services represent medical and surgical services, not anesthesia services. Therefore, we are proposing not to establish relative values for these categories of service.

Some carriers currently recognize additional payments beyond the current anesthesia fee for specialized forms of monitoring, such as intra-arterial, central venous, and Swan-Ganz. Under the CPT-4 coding system, these services are reported by medical or surgical codes. Under the adoption of the uniform relative value guide, we would allow carriers to continue with their current policies. Carriers who do not currently recognize additional payment for specialized forms of monitoring would maintain their current practice. We are concerned, however, that the continuation of this practice will result in payment policies that are not uniform for services that represent an integral part of the anesthesia service for a surgical patient. Therefore, we are requesting comments on the option of *not* recognizing separate reasonable charge payments for specialized monitoring. Rather, payment for specialized monitoring would be included through the anesthesia conversion charge factor.

The Department signed an agreement with the American Medical Association (AMA) on February 1, 1983 that permitted the Medicare and Medicaid programs to use the AMA's copyrighted CPT-4 for reporting physicians' services. It was the understanding of the parties involved that use of the CPT-4 anesthesia codes would be implemented unless experience indicated conversion was inappropriate. HCFA was to conduct analysis and research to determine whether the conversion from CPT-4 surgical codes to CPT-4 anesthesia codes would result in higher program expenditures. Although preliminary research describing variation in carrier anesthesia payment practices was conducted under a contract awarded by HCFA to a research firm, HCFA has not completed a full assessment of the impact of the carriers' conversion to the CPT-4 anesthesia codes on program expenditures. We believe that enactment of section 4048(b) of Pub. L. 100-203 provides us with the opportunity in implementing a uniform relative value guide to convert to CPT-4 anesthesia codes without increasing program expenditures.

We have discussed the choice of the relative value guide, as well as possible alternatives, with representatives of ASA. We are proposing to select the 1988 ASA Relative Value Guide as the uniform guide to be used for making payment under Medicare Part B for several reasons. First of all, the 1988 ASA Relative Value Guide is linked to the CPT-4 anesthesia codes. All other relative value guides are linked to the surgical procedures. Also, the number of procedure codes under this system is significantly less than under the current system, and this simplifies program administration.

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A further advantage of the 1988 ASA Relative Value Guide is that its design lends itself to determining relative value units for new procedures. Because the ASA guide is more oriented to grouping surgical procedures or body systems rather than oriented to the specific surgical procedure furnished, a relative value ordinarily can be assigned to a new procedure based on the existing relative value unit for the code in the surgical procedure group or body system category that is most comparable to the new procedure.

However, in adopting this relative value guide, we would reduce the number of base units assigned to all lens surgery to four units. Under the current ASA guide, lens surgery has a units value of six. On October 7, 1988, we published a final notice in which we uniformly reduced the number of base units for cataract surgery from eight units to four units (51 FR 35693). We plan to continue this policy. Also, in the final notice, we had reduced the number of base units for iridectomy anesthesia to four units. Under ASA's system, iridectomy anesthesia would be reported under "Anesthesia for procedures on eye; not otherwise specified." This category of services is currently assigned a base unit of five units. We are requiring carriers to continue to recognize four base units for iridectomy anesthesia and for physicians to identify iridectomy anesthesia separately from other anesthesia procedures on the eye.

In addition, for reasons discussed below, no modifier units would be recognized under the uniform relative value guide. Ordinarily, ASA revises its relative value guide annually. While we are proposing to adopt ASA's 1988 Relative Value Guide, as modified, we are reserving the right to accept or reject future revisions made to the guide by ASA and to modify existing relative values for technological changes or other reasons.

The relative value guide is set forth in the Appendix to this proposed rule.

Although we are proposing to adopt the ASA's relative value guide, we are concerned that the decrease in the number of codes to report anesthesia services would lead to a loss of coding information and carriers would be unable to make proper coverage decisions in all cases. For example, use of surgical codes currently allows a carrier to identify, at the front end, both surgical and anesthesia services associated with cosmetic surgery. This capability is lessened to some degree with the movement to anesthesia codes. However, this problem may be dealt with in different ways. To ensure that anesthesia services have not been inappropriately paid, we could require the carriers to conduct postpayment reviews. For services furnished on or after April 1, 1989, section 1842(p) of the Act, as added by section 202(g) of the Medicare Catastrophic Coverage Act of 1988, requires physicians to include the appropriate diagnosis code on their bills or Part B claims. We expect that the inclusion of diagnosis codes with bills or claims would allow the carriers to better identify noncovered anesthesia services if we adopt the use of CPT–4 anesthesia codes. While we are proposing the use of CPT–4 anesthesia codes, we are considering requiring the continuation of the use of CPT–4 surgical codes to report anesthesia services. We invite comment on the extent to which the CPT–4 anesthesia codes could be modified to prevent inappropriate coding or fragmentation of services and more readily permit the detection of noncovered services. We are also interested in receiving comments on whether the adoption of the CPT–4 anesthesia codes will lessen or enhance our ability to eliminate the use of time units (see discussion below).

In proposing to use the 1988 ASA guide with the described modifications, we considered a number of alternatives. We considered adopting the 1988 ASA Relative Value Guide but assigning the values to the surgical codes. We believe, however, that on balance adoption of both the anesthesia coding system and the relative value guide is perferable because it simplifies the coding system.

We also considered developing a new base unit relative value guide from the relative value guides currently used by carriers. The guide would have been developed from the most commonly used guide or a composite of commonly used guides. However, adoption of this option would have required us to develop our own guide and that would not have been feasible given the time constraints imposed on us by the requirements of section 4048(b) of Pub. L. 100–203. In addition, ASA is strongly opposed to this option because it would continue the use of surgical codes instead of anesthesia codes to describe anesthesia services.

We also considered adopting the complete ASA 1988 Relative Value Guide, including the use of modifier units and units for qualifying circumstances. Modifier units are allowed based on the patient's physical status (for example, one unit is added if the patient has a severe systemic disease). Additional units are allowed for qualifying circumstances, such as for patients of extreme age (for example, one additional unit is added if the patient is over age 70), for unusual risk factors (for example, use of total body hypothermia or controlled hypertension), or for less than optimum operative condition (for example, under emergency conditions).

We have discussed the use of modifier units with ASA and are not adopting modifier units as included in the 1988 ASA Guide. As noted previously, under ASA's system, different levels of modifier units may be recognized based on the patient's physical status. The use of modifier units under these circumstances appears to be subjective and difficult for carriers to validate in a claims review operation without substantial cost and effort. ASA has proposed to refine the circumstances under which modifier units are recognized, and has drawn up revised guidelines that define more precisely the specific patient conditions that warrant modifier units. For example, two additonal units would be added if the patient had a myocardial infarction less than three months before the operation. One additional unit would be added if the patient had unstable angina. ASA also recommended the elimination of modifier units for induced hypertension or hypothermia and suggested that the age-risk requirement for modifier units be raised from age 70 to 75.

We believe that the elimination of modifier units would not have a substantial adverse effect on individual anesthesiologists. Currently, about 35 percent of carriers do not recognize modifier units, and anesthesiologists in these carriers' areas would not experience any change. Second, the proportion of total anesthesia units associated with modifier units is relatively minor; with ASA's proposed changes, the proportion should be less than 10 percent of total units. Third, whether modifier units are included is significant only if there are substantial differences in the distribution of patients among anesthesiologists. This would occur only if some anesthesiologists see a very different mix of patients undergoing the same surgical procedures, for example, anesthesiologists who consistently see patients with angina and other conditions qualifying for modifier units more than other anesthesiologists in the area. Differences in the mix of patients undergoing surgery are already largely accounted for by differences in base and time units. Although ASA strongly believes that anesthesiologists in some hospitals, particularly teaching hospitals, do see patients more likely to have severe systemic disease and possibly more advanced age within a

surgical category, we currently do not have evidence that this is the case to any substantial degree.

We also believe it would be difficult to preserve budget neutrality under ASA's proposed modifier unit system. This is because each carrier would have to estimate the number of modifier units that it would have allowed if ASA's modifier unit policy had been used to process claims during 1988.

Finally, we are concerned with the precedent that modifiers could establish for other specialities with respect to Medicare patients. For example, surgeons could argue that Medicare cases should be charged higher amounts because that are longer and more complex than non-Medicare cases.

Another alternative we considered was to adopt the 1988 ASA Relative Value Guide only as it pertains to base units and to allow each carrier to continue its current modifier unit policy. We believe, however, that this would only continue the variations among carriers with respect to their policies on modifier units, and that this alternative would be inconsistent with the statutory requirement that we develop a uniform relative value guide.

Still another approach would be to develop a relative value guide that would recognize only base units. Under this approach, no time or modifier units would be recognized and payment for anesthesia services would be based only on reasonable charge conversion factors and base units. Under this system, we would create a new system of relative value units from the sum of the uniform base unit and the average time unit for the anesthesia procedure.

There are a number of considerations that would justify elimination of time units. First, the starting and ending points of the anesthesia time interval are not sharply defined, but are decided by the anesthesiologist. For example, anesthesia time starts when the anesthesiologist begins to prepare the patient for the induction of anesthesia in the operating room and ends when the anesthesiologist no longer is in personal attendance to the patient. Also, our current policy on time units allows the anesthesiologist an additional time unit for any portion of time that exceeds the allowable time unit. For example, if an anesthesiologist personally performs a procedure which lasts an hour, he or she would be allowed one unit for every 15 minutes, resulting in four time units. However, if the same procedure took 61 minutes, the anesthesiologist would receive an additional unit, thus resulting in five time units.

In fact, our current policy on recognizing time units was the focus of a recent study conducted by the Office of the Inspector General (OIG). (Copies of this report entitled "Medicare Part B Payments for Unexpended Physician Efforts Relating to Anesthesia Services" (A–07–88–00080 issued on August 9, 1988) can be obtained by writing to the Office of the Inspector General, 330 Independence Avenue SW., Washington, DC 20201.) Based on the study, OIG recommended the following options to change the current time policy:

- Pay for actual time expended, rather than treating all fractional units as whole units. That is 65 minutes would equal four and one-third time units instead of five units.
- Round all fractional units down to the next lower whole unit. That is, disregard all fractional time units (for example, any amount of time between 61 and 74 minutes would equal four units instead of five units).

Another alternative considered by OIG that would make anesthesia payments more commensurate with the effort expended would be to pay only for those fractional units in excess of one-half as whole units. That is, any fraction equal to or less than one-half time unit (seven and one-half minutes) would be disregarded (for example, 65 minutes would equal four units, but 68 minutes would equal five units).

We believe that elimination of time units would be consistent with the way in which we pay for other physicians' services. We do not ordinarily pay surgeons additional amounts based on the time it takes to perform the surgery. Surgeons bill and receive payment that does not vary with the length of the surgery. In our view, there is no policy or operational reason why the same principle should not apply to anesthesia services. While we have decided to retain the use of time units at this time for purposes of implementing the uniform relative value guide, we are considering the alternatives discussed above which would limit the potential for inappropriate use of time units for billing purposes. We are specifically requesting comments on these alternatives. We will initiate more aggressive monitoring of the accuracy of time reporting in the future. Moreover, we are announcing our intention (subject to publication of another proposed rule) to eliminate the separate time unit element of the anesthesia payment system within two years of the effective date of the final rule implementing the uniform relative value guide. The elimination of time units will be the subject of a separate notice of proposed rulemaking and comments submitted in response to that proposed rule will, of course, be carefully considered before final implementation of a revised time unit policy. Assuming that the ASA Relative Value Guide is adopted as proposed, we will carefully consider whether modifications of that guide are needed to facilitate the elimination of time units (for example, by some limited expansion of the number of codes). If the evidence suggests that elimination of time units is feasible only with the use of CPT–4 surgical codes, a conversion back to the use of those codes will be proposed in order to achieve the goal of eliminating time units (for example, because the statistical variation in the average time for procedures collapsed in the 248 anesthesia codes is too large).

As noted, adoption of ASA's current relative value guide will require that each carrier crosswalk its surgical codes to the anesthesia codes that are used by the ASA guide. ASA has furnished us with a table that crosswalks the CPT–4 surgical codes to the anesthesia codes. For example, the CPT–4 anesthesia code 00100, anesthesia for procedures on integumentary system of head and/or salivary glands, including biopsy, subsumes the following CPT–4 surgical codes: 15780, 15790, 15791, 15820, 15821, 15822, 15823, 15824, 15826, 15828, 15840, 15842, 15845. We will make this table available to the carriers to assist them in carrying out the coding conversion.

B. Budget Neutrality

Section 4048(b) of Pub. L. 100–203 provides that the uniform relative value guide is to be designed so as to result in Medicare payments for anesthesia services not exceeding the amount that would have occurred under the current system of reimbursement. In order to comply with this statutory requirement, we would require that carriers adjust their customary and prevailing charges during the profile update process for 1989. Customary and prevailing charges would be computed as if the 1988 ASA Relative Value Guide, without modifiers, had been used to process claims for services furnished during the 12-month period ending June 30, 1988. This is the 12-month period that is used to update the customary and prevailing charges on January 1, 1989. There are some carriers that are unable to make this adjustment as part of the profile update process because time and modifier units are merged. We would require these carriers to make the adjustment based on a representative sample of anesthesia services.

The prevailing charge as limited by the Medicare economic index (MEI) would be adjusted by the ratio of the

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unadjusted prevailing charge under the new system to the unadjusted prevailing charge under the old system.

Example

The prevailing charge conversion factor as limited by the MEI is $30. The unadjusted prevailing charge conversion factor, that is, the 75th percentile of the customary charge array under the prior system, is $30. The revised "budget neutral" unadjusted prevailing charge conversion factor is calculated at $33. The "budget neutral" MEI adjusted prevailing charge is calculated as follows:

$$\$20 \times \frac{\$33}{\$30} = \$22$$

Revised maximum allowable actual charges (MAACs) would be calculated by multiplying the previous year's MAAC by the ratio of the updated customary charge determined under the carrier's previous system to the updated customary charge determined under the uniform relative value guide.

C. Delay in the Effective Date of the Uniform Relative Value Guide

We are proposing to delay the implementation of the uniform relative value guide until March 1, 1989. Thus, for services furnished on or after January 1, 1989 and before March 1, 1989, anesthesia services would continue to be paid on the basis of CPT–4 surgical codes and under the carrier's relative value guide. The carriers would update customary and prevailing charge conversion factors on January 1, 1989 in the usual manner.

We are proposing the delay to allow the carriers additional time to recalculate budget neutral customary and prevailing charge conversion factors. In addition, since HCPCS will be updated in March 1989, the delay would also enable carriers to implement the coding change and the budget neutral conversion factors at the same time. If we were to adopt the statutory effective date, then our proposal would be implemented in two steps; that is the uniform relative value guide would be implemented on January 1, 1989 and the coding revisions on March 1, 1989. We believe that the additional time will provide for a more orderly transition between the current system and the uniform system.

The continuation of the current system for an additional two months would not adversely affect anesthesiologists or Medicare beneficiaries. Since the uniform relative value guide is to be implemented in a budget neutral fashion, the aggregate payment under the current system in January and February 1989 should not differ from payments that would have been made under the uniform relative value guide.

D. Updating the Uniform Relative Value Guide

One of the issues associated with our adopting a uniform relative value guide is the process by which the relative value guide is reviewed and revised. The ASA has advised us that they make only minor annual revisions to the Relative Value Guide and our analysis confirms this fact. For example, the 1988 Relative Value Guide lists only seven codes for which the base unit values have been changed from the 1987 version and four circumstances for which procedure code descriptions have changed.

It would be necessary to assign base units to new procedures as they are developed. The nature of the CPT–4 anesthesia codes is such that when new procedures are developed, the coding system generally would assign the new procedure to the body part code with which it is most closely associated. If there is no existing code that appropriately describes a new procedure, the carriers would, through their medical consultants, establish a local code and relative value base units. We would review that carriers' practices with those procedures every three years and establish uniform relative base units.

HCFA may, of course, propose modifications to existing relative value units because of changes in technology or for other reasons. For example, the technology involved with a given code may change and support a reduction in the base units assigned to the code. As noted, we believe that the number of revisions of this nature will not be significant on an annual basis. Also, we do not expect that the magnitude of these revisions would be enough to affect the customary and prevailing charge conversion factors.

The base unit adjustments would be similar to the cataract and iridectomy anesthesia base unit adjustment we made in October 1988. We would announce these adjustments through publication in the **Federal Register** of proposed and final notices as required under the regulations at § 405.502(h), which concern the establishment of special reasonable charge limits for physician services. A systematic adjustment to customary and prevailing charge factors may be required only when the cumulative number of revisions to the relative value units supports such an adjustment.

III. Regulatory Impact Statement

A. Executive Order 12291

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact analysis for any proposed rule that meets one of the E.O. criteria for a "major rule"; that is, that would be likely to result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Section 1842(b) of the Act requires that any relative value guide we propose as a basis for paying anesthesiologists must be implemented in such a way as not to result in payments to anesthesiologists for services provided to Medicare patients that are higher than the amounts they are currently receiving. In section II.B. of this preamble, we explain how we would implement this provision to comply with that requirement. Because we are required to maintain budget neutrality with respect to anesthesiology payments, we do not expect any economic impact to follow from this proposed rule. Therefore, this rule would not meet any of the criteria described in E.O. 12291 for a major rule, and, accordingly, we have not prepared a regulatory impact analysis.

B. Regulatory Flexibility Act

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a proposed rule would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, all anesthesiologists are treated as small entities.

As explained in our discussion of E.O. 12291, section 4048(b) of Pub. L. 100–203 requires the Secretary to implement the new relative value guide for determining anesthesiology payment in a manner that will not result in any change in payments to anesthesiologists. Thus, the proposed rule should have no economic impact on anesthesiologists. For this reason, we have determined, and the Secretary has certified, that a regulatory flexibility analysis is not necessary.

Section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a proposed rule may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital with fewer than 50 beds located outside of a Metropolitan Statistical Area.

We are not preparing a rural impact statement since we have determined, and the Secretary certifies, that this proposed rule would not have a significant economic impact on the operations of a substantial number of small rural hospitals.

IV. Other Required Information

A. Public Comment Period

In adopting substantive rules, we ordinarily publish a notice of proposed rulemaking in the **Federal Register** with a 60-day period for public comment as required under section 1871(b)(1) of the Act. Section 4039(g) of Pub. L. 100–203, however, provides that we may issue regulations on an interim or other basis as may be necessary to implement certain provisions of Pub. L. 100–203 relating to Medicare. We believe that this express legislative authority is fully applicable here with respect to implementation of section 4048(b) of Pub. L. 100–203. Consequently, in order to implement the provisions of section 4048(b) by March 1, 1989, we are shortening the period for comment to 30 days.

As previously discussed, section 4048(b) requires that we implement a uniform relative value guide for use in making payment for physician anesthesia services. This provision also requires that, in developing the relative value guide, we consult with groups representing physicians who furnish anesthesia services. We have acted expeditiously within the compressed time frame imposed by Congress to meet with physician anesthesia groups, to solicit their input on the design of the relative value guide, and to discuss with them the numerous options that have come under consideration. We have also sought to expedite the process of internal agency consideration of the draft rule through the use of shortened time frames. Notwithstanding these efforts, implementation of the relative value guide with a 60-day comment period would prevent publication of a final rule by the proposed implementation date of March 1, 1989. We therefore believe that shortening the public comment period from 60 days to 30 days is both necessary for the required execution of agency functions and in the best public interest.

We will consider all comments that we receive by the date and time specified in the "Date" section of this preamble. Because of the large number of comments that we normally receive during a comment period, we are unable to acknowledge or respond to each comment individually. However, we will respond to comments in the preamble to the final rule.

B. Paperwork Burden

This proposed rule does not impose information collection requirements. Consequently, it need not be reviewed by the Executive Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3511).

List of Subjects in 42 CFR Part 405

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Nursing homes, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 405, Subpart E would be amended as set forth below.

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

Subpart E—Criteria for Determination of Reasonable Charges; Reimbursement for Services of Hospital Interns, Residents, and Supervising Physicians

1. The authority citation for Subpart E is revised to read as follows:

Authority: Secs. 1102, 1814(b), 1832, 1833(a), 1842 (b) and (h), 1861 (b) and (v), 1862(a)(14), 1866(a), 1871, 1881, 1886, 1887, and 1889 of the Social Security Act as amended (42 U.S.C. 1302, 1395f(b)), 1395k, 1395l(c), 1395u (b) and (h), 1395x (b) and (v), 1395y(a)(14), 1395cc(a), 1395hh, 1395rr, 1395ww, 1395xx, and 1395zz) and section 4048(b) of Pub. L. 100–203 (42 U.S.C. 1395u note).

2. Section 405.553 is amended by revising paragraph (a) and adding a new paragraph (d) to read as follows:

§ 405.553 Reasonable charges for anesthesiology services.

(a) *General rule.* In determining reasonable charge payment for anesthesiology services that meet the conditions in § 405.552(a), the carrier follows the rules in paragraph (b) or (c) of this section, as applicable, and the rules in paragraph (d) of this section.

* * * * *

(d) *Use of a uniform relative value guide*— (1) *General rule.* For anesthesia services furnished by an anesthesiologist on or after March 1, 1989, the amount of payment for the service is determined based on a uniform relative value guide.

(2) *Selection of a uniform relative value guide.* The uniform relative value guide used is the 1988 American Society of Anesthesiologists' Relative Value Guide except that—

(i) The number of base units recognized for anesthesia services furnished during cataract or iridectomy surgery is four units;

(ii) Modifier units are not recognized; and

(iii) Base units associated with other than the Physicians' Current Procedure Terminology, Fourth Edition (CPT–4) anesthesia codes, such as those associated with medical or surgical services, are not recognized.

(3) *Updating the uniform relative value guide*—(i) *New procedures.* For new procedures, the carriers establish, through their medical consultants, a local code and number of base units. The number of base units for a new anesthesia procedure is determined by assigning to the new procedure the number of base units of the most comparable existing anesthesia procedure code in the appropriate body system or part category. Every three years, HCFA reviews the carriers' practices with those procedures and establishes uniform relative value base units for the new procedures.

(ii) *Revisions to current procedures.* Adjustments to the number of base units for current anesthesia procedures may be made under the provisions of § 405.502(h), which set forth the procedures for determining special reasonable charge limits for physician services.

(Catalog of Federal Domestic Assistance Program No. 13.774, Medicare—Supplementary Medical Insurance)

Dated: October 31, 1988.

William L. Roper,

Administrator, Health Care Financing Administration.

Approved: December 9, 1988.

Otis R. Bowen

Secretary.

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CPT-4	Procedure	Base units
	HEAD	
00100	Anesthesia for procedures on integumentary system of head and/or salivary glands, including biopsy; not otherwise specified	5
00102	Plastic repair of cleft lip	6
00104	Anesthesia for electroconvulsive therapy	4
00120	Anesthesia for procedures on external, middle, and inner ear, including biopsy; not otherwise specified	5
00124	Otoscopy	4
00126	Tympanotomy	4
00140	Anesthesia for procedures on eye; not otherwise specified	5
00142	Lens surgery	4
00144	Corneal transplant	6
00146	Vitrectomy	6
00148	Ophthalmoscopy	4
00160	Anesthesia for procedures on nose and accessory sinuses; not otherwise specified	5
00162	Radical surgery	7
00164	Biopsy, soft tissue	4
00170	Anesthesia for intraoral procedures, including biopsy; not otherwise specified	5
00172	Repair of cleft palate	6
00174	Excision of retropharyngeal tumor	6
00176	Radical surgery	7
00190	Anesthesia for procedures on facial bones; not otherwise specified	5
00192	Radical surgery (including prosthesis)	7
00210	Anesthesia for intracranial procedures; not otherwise specified	11
00212	Subdural taps	5
00214	Burr holes	9
	(For burr holes for ventriculography, see 01902.)	
00216	Vascular procedures	15
00218	Procedures in sitting position	13
00220	Spinal fluid shunting procedures	10
00222	Electrocoagulation of intracranial nerve	6
	NECK	
00300	Anesthesia for all procedures on integumentary system of neck, including subcutaneous tissue	5
00320	Anesthesia for all procedures on esophagus, thyroid, larynx, trachea and lymphatic system of neck; not otherwise specified	6
00322	Needle biopsy of thyroid	3
	(For procedures on cervical spine and cord see 00600, 00604, 00670)	
00380	Anesthesia for procedures on major vessels of neck; not otherwise specified	10
00382	Simple ligation	5
	(For arteriography, see radiologic procedure 01916)	
	THORAX (CHEST WALL AND SHOULDER GIRDLE)	
00400	Anesthesia for procedures on anterior integumentary system of chest, including subcutaneous tissue; not otherwise specified	3
00402	Reconstructive procedures on breast (eg., reduction or augmentation mammoplasty, muscle flaps)	5
00404	Radical or modified radical procedures on breast	5
00406	Radical or modified radical procedures on breast with internal mammary node dissection	13
00410	Electrical conversion of arrhythmias	4
00420	Anesthesia for procedures on posterior integumentary system of chest, including subcutaneous tissue	5
00450	Anesthesia for procedures on clavicle and scapula; not otherwise specified	5
00452	Radical surgery	8
00454	Biopsy of clavicle	3
00470	Anesthesia for partial rib resection; not otherwise specified	6
00472	Thoracoplasty (any type)	10
00474	Radical procedures, (eg., pectus excavatum)	13
	INTRATHORACIC	
00500	Anesthesia for all procedures on esophagus	15
00520	Anesthesia for closed chest procedures (including esophagoscopy, bronchoscopy, thoracoscopy); not otherwise specified	6
	(For transvenous pacemaker insertion, see 00530.)	
00522	Needle biopsy of pleura	4
00524	Pneumocentesis	4
00528	Mediastinoscopy	8
00530	Transvenous pacemaker insertion	4
00540	Anesthesia for thoracotomy procedures involving lungs, pleura, diaphragm, and mediastinum; not otherwise specified	12
00542	Decortication	15
00544	Pleurectomy	15
00546	Pulmonary resection with thoracoplasty	15
00548	Intrathoracic repair of trauma to trachea and bronchi	15
00560	Anesthesia for procedures on heart, pericardium, and great vessels of chest; without pump oxygenator	15
00562	With pump oxygenator	20
00580	Anesthesia for heart or heart/lung transplant	20
	SPINE AND SPINAL CORD	
00600	Anesthesia for procedures on cervical spine and cord; not otherwise specified (For myelography and discography see radiological procedures 01906–01914.)	10
00604	Posterior cervical laminectomy in sitting Position	13
00620	Anesthesia for procedures on thoracic spine and cord; not otherwise specified	10
00622	Thoracolumbar sympathectomy	13

CPT-4	Procedure	Base units
00630	Anesthesia for procedures in lumbar region; not otherwise specified	6
00632	Lumbar sympathectomy	7
00634	Chemonucleolysis	10
00670	Anesthesia for extensive spine and spinal cord procedures (eg., Harrington rod technique)	13
	UPPER ABDOMEN	
00700	Anesthesia for procedures on upper anterior abdominal wall; not otherwise specified	3
00702	Percutaneous liver biopsy	4
00730	Anesthesia for procedures on upper posterior abdominal wall	5
00740	Anesthesia for upper gastrointestinal endoscopic procedures	5
00750	Anesthesia for hernia repairs in upper abdomen; not otherwise specified	4
00752	Lumbar and ventral (incisional) hernias and/or wound dehiscence	6
00754	Omphalocele	7
00756	Transabdominal repair of diaphragmatic hernia	7
00770	Anesthesia for all procedures on major abdominal blood vessels	15
00790	Anesthesia for intraperitoneal procedures in upper abdomen including bowel shunts; not otherwise specified (For harvesting of liver, use 01990.)	7
00792	Partial hepatectomy (excluding liver biopsy)	13
00794	Pancreatectomy, partial or total (eg., Whipple procedure)	8
00796	Liver transplant (recipient)	30
	LOWER ABDOMEN	
00800	Anesthesia for procedures on lower anterior abdominal wall; not otherwise specified	3
00802	Panniculectomy	5
00806	Anesthesia for laparoscopic procedures	6
00810	Anesthesia for intestinal endoscopic procedures	5
00820	Anesthesia for procedures on lower posterior abdominal wall	5
00830	Anesthesia for hernia repairs in lower abdomen; not otherwise specified	4
00832	Ventral and incisional hernias	6
00840	Anesthesia for intraperitoneal procedures in lower abdomen; not otherwise specified	6
00842	Amniocentesis	4
00844	Abdominoperineal resection	7
00846	Radical hysterectomy	8
00848	Pelvic exenteration	8
00850	Cesarean section	7
00855	Cesarean hysterectomy	8
00860	Anesthesia for extraperitoneal procedures in lower abdomen, including urinary tract; not otherwise specified	6
00862	Renal procedures, including upper ⅓ of ureter or donor nephrectomy	7
00864	Total cystectomy	8
00866	Adrenalectomy	10
00868	Renal transplant (recipient) (For donor nephrectomy, use 00862.) (For harvesting kidney from brain-dead patient, use 01990.)	10
00870	Cystolithotomy	5
00872	Anesthesia for lithotripsy, extracorporeal shock wave	7
00880	Anesthesia for procedures on major lower abdominal vessels; not otherwise specified	15
00882	Inferior vena cava ligation	10
00884	Transvenous umbrella insertion	5
	PERINEUM	
00900	Anesthesia for procedures on perineal integumentary system (including biopsy of male genital system); not otherwise specified	3
00902	Anorectal procedure (including endoscopy and/or biopsy)	4
00904	Radical perineal procedure	7
00906	Vulvectomy	4
00908	Perineal prostatectomy	8
00910	Anesthesia for transurethral procedures (including urethrocystoscopy); not otherwise specified	3
00912	Transurethral resection of bladder tumor(s)	5
00914	Transurethral resection of prostate	5
00916	Post-transurethral resection bleeding	5
00920	Anesthesia for procedures on male external genitalia; not otherwise specified	3
00922	Seminal vesicles	6
00924	Undescended testis, unilateral or bilateral	4
00926	Radical orchiectomy, inguinal	4
00928	Radical orchiectomy, abdominal	6
00930	Orchiopexy, unilateral and bilateral	4
00932	Complete amputation of penis	4
00934	Radical amputation of penis with bilateral inguinal lymphadenectomy	6
00936	Radical amputation of penis with bilateral inguinal and iliac lymphadenectomy	8
00938	Insertion of penile prosthesis (perineal approach)	4
00940	Anesthesia for vaginal procedures (including biopsy of labia, vagina, cervix or endometrium); not otherwise specified	3
00942	Colpotomy, colpectomy, colporrhaphy	4
00944	Vaginal hysterectomy	6
00946	Vaginal delivery	5
00948	Cervical cerclage	4
00950	Culdoscopy	5
00952	Hysteroscopy	4
	PELVIS (EXCEPT HIP)	
01000	Anesthesia for procedures on anterior integumentary system of pelvis (anterior to iliac crest), except external genitalia	3
01110	Anesthesia for procedures on posterior integumentary system of pelvis (posterior to iliac crest), except perineum	5

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CPT-4	Procedure	Base units
01120	Anesthesia for procedures on bony pelvis	6
01130	Anesthesia for body cast application or revision	3
01140	Anesthesia for interpelvabdominal (hind quarter) amputation	15
01150	Anesthesia for radical procedures for tumor of pelvis, except hind quarter amputation	8
01160	Anesthesia for closed procedures involving symphysis pubis or sacroiliac joint	4
01170	Anesthesia for open procedures involving symphysis pubis or sacroiliac joint	8
01180	Anesthesia for obturator neurectomy, extrapelvic	3
01190	Intrapelvic	4
	UPPER LEG (EXCEPT KNEE)	
01200	Anesthesia for all closed procedures involving hip joint	4
01202	Anesthesia for arthroscopic procedures of hip joint	4
01210	Anesthesia for open procedures involving hip joint; not otherwise specified	6
01212	Hip disarticulation	10
01214	Total hip replacement or revision	10
01220	Anesthesia for all closed procedures involving upper ½ of femur	4
01230	Anesthesia for open procedures involving upper ½ of femur; not otherwise specified	6
01232	Amputation	5
01234	Radical resection	8
01240	Anesthesia for all procedures on integumentary system of upper leg	3
01250	Anesthesia for all procedures on nerves, muscles, tendons, fascia, and bursae of upper leg	4
01260	Anesthesia for all procedures involving veins of upper leg, including exploration	3
01270	Anesthesia for procedures involving arteries of upper leg, including bypass graft; not otherwise specified	6
01272	Femoral artery ligation	4
01274	Femoral artery embolectomy (for grafts involving intra-abdominal vessels see 00880)	6
	KNEE AND POPLITEAL AREA	
01300	Anesthesia for all procedures on integumentary system of knee and/or popliteal area	3
01320	Anesthesia for all procedures on nerves, muscles, tendons, fascia and bursae of knee and/or popliteal area	4
01340	Anesthesia for all closed procedures on lower ½ of femur	4
01360	Anesthesia for all open procedures on lower ½ of femur	5
01380	Anesthesia for all closed procedures on knee joint	3
01382	Anesthesia for arthroscopic procedures of knee joint	3
01390	Anesthesia for all closed procedures on upper ends of tibia and fibula, and/or patella	3
01392	Anesthesia for all open procedures on upper ends of tibia and fibula and/or patella	4
01400	Anesthesia for open procedures on knee joint; not otherwise specified	4
01402	Total knee replacement	7
01404	Disarticulation at knee	5
01420	Anesthesia for all cast applications, removal, or repair involving knee joint	3
01430	Anesthesia for procedures on veins of knee and popliteal area; not otherwise specified	3
01432	Arteriovenous fistula	5
01440	Anesthesia for procedures on arteries of knee and popliteal area; not otherwise specified	5
01442	Popliteal thromboendarterectomy, with or without patch graft	8
01444	Popliteal excision and graft or repair for occlusion or aneurysm	8
	LOWER LEG (BELOW KNEE) (Includes ankle and foot)	
01460	Anesthesia for all procedures on integumentary system of lower leg, ankle, and foot	3
01462	Anesthesia for all closed procedures on lower leg, ankle, and foot	3
01464	Anesthesia for arthroscopic procedures of ankle joint	3
01470	Anesthesia for procedures on nerves, muscles, tendons, and fascia of lower leg, ankle, and foot; not otherwise specified	3
01472	Repair of ruptured Achilles tendon, with or without graft	5
01474	Gastrocnemius recession (eg, Strayer procedure)	5
01480	Anesthesia for open procedures on bones of lower leg, ankle, and foot; not otherwise specified	3
01482	Radical resection	4
01484	Osteotomy or osteoplasty of tibia and/or fibula	4
01486	Total ankle replacement	7
01490	Anesthesia for lower leg cast application, removal, or repair	3
01500	Anesthesia for procedures on arteries of lower leg, including bypass graft, not otherwise specified	8
01502	Embolectomy, direct or catheter	6
01520	Anesthesia for procedures on veins of lower leg; not otherwise specified	3
01522	Venous thrombectomy, direct or catheter	5
	SHOULDER AND AXILLA (Includes humeral head and neck, sternoclavicular joint, acromioclavicular joint, and shoulder joint)	
01600	Anesthesia for all procedures on integumentary system of shoulder and axilla	3
01610	Anesthesia for all procedures on nerves, muscles, tendons, fascia, and bursae of shoulder and axilla	5
01620	Anesthesia for all closed procedures on humeral head and neck, sternoclavicular joint, and shoulder joint	4
01622	Anesthesia for arthroscopic procedures of shoulder joint	4
01630	Anesthesia for procedures on humeral head and neck, sternoclavicular joint, acromioclavicular joint, and shoulder joint; not otherwise specified	5
01632	Radical resection	6
01634	Shoulder disarticulation	9
01638	Interthoracoscapular (forequarter) amputation	15
01638	Total shoulder replacement	10
01650	Anesthesia for procedures on arteries of shoulder and axilla; not otherwise specified	6
01652	Axillary-brachial aneurysm	10
01654	Bypass graft	8

CPT-4	Procedure	Base units
01656	Axillary-femoral bypass graft	10
01670	Anesthesia for all procedures on veins of shoulder and axilla	4
01680	Anesthesia for shoulder cast application, removal or repair; not otherwise specified	3
01682	Shoulder spica	4
	UPPER ARM AND ELBOW	
01700	Anesthesia for all procedures on integumentary system of upper arm and elbow	3
01710	Anesthesia for procedures on nerves, muscles, tendons, fascia, bursae of upper arm and elbow; not otherwise specified	3
01712	Tenotomy, elbow to shoulder, open	5
01714	Tenoplasty, elbow to shoulder	5
01716	Tenodesis, rupture of long tendon of biceps	5
01730	Anesthesia for all closed procedures on humerus and elbow	3
01732	Anesthesia for arthroscopic procedures of elbow joint	3
01740	Anesthesia for open procedures on humerus and elbow; not otherwise specified	4
01742	Osteotomy of humerus	5
01744	Repair of nonunion or malunion of humerus	5
01756	Radical procedures	6
01758	Excision of cyst or tumor of humerus	5
01760	Total elbow replacement	7
01770	Anesthesia for procedures on arteries of upper arm; not otherwise specified	8
01772	Embolectomy	6
01780	Anesthesia for procedures on veins of upper arm and elbow; not otherwise specified	3
01782	Phlebotharphy	4
	FOREARM, WRIST AND HAND	
01800	Anesthesia for all procedures on integumentary system of forearm, wrist and hand	3
01810	Anesthesia for all procedures on nerves, muscles, tendons, fascia, bursae of forearm, wrist, and hand	3
01820	Anesthesia for all closed procedures on radius, ulna, wrist, or hand bones	3
01830	Anesthesia for open procedures on radius, ulna, wrist, or hand bones; not otherwise specified	3
01832	Total wrist replacement	6
01840	Anesthesia for procedures on arteries of forearm, wrist, and hand; not otherwise specified	6
01842	Embolectomy	6
01844	Anesthesia for vascular shunt, or shunt revision, any type (e.g. dialysis)	6
01850	Anesthesia for procedures on veins of forearm, wrist, and hand; not otherwise specified	3
01852	Phlebotharphy	4
01860	Anesthesia for forearm, wrist, or hand cast application, removal or repair	3
	RADIOLOGICAL PROCEDURES	
01900	Anesthesia for injection procedure for hysterosalpingography	3
01902	Anesthesia for burr hole(s) for ventriculography	9
01904	Anesthesia for injection procedure for pneumoencephalography	7
01906	Anesthesia for injection procedure for myelography; lumbar	5
01908	Cervical	5
01910	Posterior fossa	9
01912	Anesthesia for injection procedure for discography; lumbar	5
01914	Cervical	6
01916	Anesthesia for arteriograms, needle; carotid, or vertebral	5
01918	Retrograde, brachial or femoral	5
01920	Anesthesia for cardiac catheterization including coronary arteriography and ventriculography (not to include Swan-Ganz catheter)	7
01921	Anesthesia for angioplasty	7
01922	Anesthesia for computerized axial tomography scanning or magnetic resonance imaging	7
	MISCELLANEOUS PROCEDURE(S)	
01990	Physiological support for harvesting of organ(s) from brain-dead patient	7
01995	Regional IV administration of local anesthetic agent (upper or lower extremity)	5
01999	Unlisted anesthesia procedure(s)	*IC

* Individual Consideration.

[FR Doc. 89-1695 Filed 1-25-89; 8:45 a.m.]
BILLING CODE 4120-01-M

42 CFR Parts 405, 410, 412, 413, and 482

[BERC-423-P]

Medicare Program; Fee Schedules for the Services of Certified Registered Nurse Anesthetists

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: We are proposing to revise the Medicare regulations to allow certified registered nurse anesthetists (CRNAs) to receive Medicare payment for the anesthesia services and related care they furnish. In addition, this proposed rule sets forth the fee schedules that would be used to make payment for the services of CRNAs, except for the services of CRNAs in certain rural hospitals, which would be paid on a reasonable cost basis. This proposal, which would be effective for services furnished on or after January 1, 1989, would implement section 9320 of the Omnibus Budget Reconciliation Act of 1986, as amended by section 4084 of the Omnibus Budget Reconciliation Act of 1988, as amended by section 4084 of the Omnibus Budget Reconciliation Act of 1987, section 411(i)(3) of the Medicare Catastrophic Coverage Act of 1988, and section 608(c) of the Family Support Act of 1988.

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DATE: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5:00 p.m. on March 27, 1989.

ADDRESS: Mail comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BERC–423–P, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, DC.

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

When commenting, please refer to file code BERC–423–P. Comments received timely will be available for public inspection as they are received, generally beginning approximately three weeks after publication of a document, in Room 309–G of the Department's offices at 200 Independence Ave., SW., Washington, DC on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (phone 202–245–7890).

FOR FURTHER INFORMATION CONTACT: James Menas, (301) 966–4507, CRNA Fee Schedules.

George Morey, (301) 966–4653, Definition of CRNA.

SUPPLEMENTARY INFORMATION:

I. Background

Under the current regulations, which are located at 42 CFR 405.552 and 405.553, anesthesiology services personally furnished by a physician are paid on a reasonable charge basis under Part B of the Medicare program (Supplementary Medical Insurance). In addition, payment may also be made on a reasonable charge basis for the personal medical direction that a physician furnishes to a certified registered nurse anesthetist (CRNA).

If the physician directs an anesthesia procedure that involves a CRNA who is employed by the physician, the reasonable charge is determined as the least of the physician's customary charge conversion factor, the prevailing charge conversion factor, each of which is multiplied by the number of allowable units, or the physician's actual charge. The number of allowable units is the sum of the base units assigned to the anesthesia procedure, time units that represent the elapsed time of the anesthesia procedure (limited to no more than one time unit for each 15 minutes of anesthesia time) and modifier units that take into account special factors, such as the age or physical condition of the patient, if the physician bills and the carrier recognizes modifier units.

If a physician furnishes medical direction on an anesthesia procedure that involves a CRNA who is not employed by the physician, the reasonable charge is also determined as the least of the physician's customary charge conversion factor, the prevailing charge conversion factor, each of which is multiplied by the number of allowable units, or the physician's actual charge. However, in these cases, the number of allowable units is the sum of the base units assigned to the anesthesia procedure, time units, which are limited to no more than one time unit for each 30 minutes of anesthesia time, and modifier units, if the physician bills and the carrier recognizes modifier units.

When the CRNA is not employed by the physician, the cost of the CRNA's services is reimbursed to the hospital on a reasonable cost basis for anesthesia services furnished to hospital inpatients or outpatients or to the ambulatory surgical center (ASC) as part of the facility fee for anesthesia services furnished to ASC patients. Thus, the difference in Medicare payment to the physician between a medically-directed anesthesia procedure involving a CRNA who is the physician's employee and a medically-directed anesthesia procedure involving a CRNA who is not the physician's employee is two time units per hour multiplied by the appropriate conversion factor. Therefore, although the CRNA service is not identified separately on a physician's bill or claim, our current policy estimates the Part B payment for a CRNA's service at two time units per hour multiplied by the appropriate conversion factor.

II. Summary of New Legislation

On October 21, 1986, the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99–509) was enacted. The provisions of section 9320 of Pub. L. 99–509 made the following changes (which are reflected in sections 1832(a)(2)(B), 1833(a)(1)(H) and (1), and 1861(s)(11) and (bb) of the Social Security Act (the Act)) that affect Medicare payment for the services of nurse anesthetists:

- Effective with services furnished on or after January 1, 1988, direct reimbursement is provided for anesthesia services and related care furnished by CRNAs, subject to State licensure and nurse anesthetist certifying body requirements.
- Medicare pays 80 percent of the lesser of the actual charge or the fee schedule amount for anesthesia services and related care after the Part B deductible has been met. Assignment is mandatory in order for CRNAs to receive payment for these services, and violators are subject to civil monetary penalties.
- The Secretary is directed to establish a fee schedule for CRNA services, using a system of time units, a system of base and time units, or any other appropriate methodology. The initial fee schedule must be based on audited data from cost reporting periods ending in Federal fiscal year (FY) 1985, and must be adjusted annually by the percentage increase in the Medicare Economic Index, in order to be effective on January 1st of each year. The fee schedule can be national or adjusted for geographic areas.
- No hospital that presents a claim or request for payment for services of a CRNA may treat any uncollected coinsurance amount imposed with respect to such services as a bad debt of the hospital.
- The reasonable cost pass-through provision ends effective for CRNA services furnished to hospital inpatients after December 31, 1988.
- The initial fee schedule must be set so that total payment for CRNA services, plus the applicable coinsurance in FY 1988, equals estimated total amounts that would have been paid in 1989 if the services were included as inpatient hospital services. The Secretary is also directed to adjust physician charges for medical direction or the fee schedule amounts, or both, to ensure that total payments plus coinsurance for all these services in 1989 and 1990 do not exceed the amounts that would have been paid absent this legislation. If this results in reductions in physician reasonable charges, a nonparticipating physician may not charge more than 125 percent of the reduced prevailing charge plus (in the first year) half the difference between his or her actual charge in the previous year and 125 percent of the reduced prevailing charge. Violators are subject to sanctions.

In addition, section 9320 of Pub. L. 99–509 added a new paragraph (11) to section 1861(s) of the Act to provide specifically that "services of a certified registered anesthetist (as defined in subsection (bb))" are among the medical and other health services that are covered under Part B of Medicare. Section 1861(bb)(1) of the Act states that "services of a certified registered nurse anesthetist" means anesthesia services and related care, furnished by a CRNA, that the nurse anesthetist is authorized to perform as such by the State in which the services are furnished. Section 1861(bb)(2) of the Act states that the term "CRNA" means a CRNA licensed by the State who meets such education, training, and other requirements relating to anesthesia services and related care as the Secretary may prescribe. Section 1861(bb)(2) of the Act further authorizes the Secretary, in prescribing these requirements, to use the same requirements as those established by a national organization for the certification of nurse anesthetists.

On December 22, 1987, the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100–203) was enacted. The provisions of section 4084 of Pub. L. 100–203, which amended sections 1833 (l)(2) and (l)(5)(A) of the Act, made the following changes to the CRNA fee schedule legislation established by section 9320 of Pub. L. 99–509:

- The initial fee schedule could be developed from "other data as the Secretary determines necessary" in addition to using FY 1985 cost report data.
- The CRNA payment based on the fee schedule can be made to an ambulatory surgical center as well as the CRNA, the hospital, or physician group.

In addition to the changes made by section 4084 of Pub. L. 100–203, section 4048(a) of Pub. L. 100–203 amended section 1842(b) of the Act to provide that in determining the reasonable charge of a physician for medical direction of two or more CRNAs for anesthesia services furnished on or after April 1, 1988 and before January 1, 1991, the number of base units recognized for each concurrent procedure is reduced by—

- Ten percent, in the case of medical direction of two CRNAs;
- Twenty-five percent, in the case of medical direction of three CRNAs; and
- Forty percent, in the case of medical direction of four CRNAs.

On July 1, 1988, the Medicare Catastrophic Coverage Act of 1988 (Pub. L. 100–360) was enacted. Section 411(i)(3) of Pub. L. 100–360 made technical amendments to section 4084 of Pub. L. 100–203 to provide that—

- The term "CRNA," as prescribed by the Secretary, also includes an anesthesiologist assistant (section 1861(bb)(2) of the Act); and
- With respect to CRNA services, the amounts paid would be 80 percent of the least of the—

—Actual charge;

—Prevailing charge that would be recognized if the services had been performed by an anesthesiologist; or

—Fee schedule amount (section 1833(a)(1)(H) of the Act).

On October 13, 1988, the family Support Act of 1988 (Pub. L. 100–485) was enacted. Section 608(c) of Pub. L. 100–485 amended section 9320 of Pub. L. 99–509 to allow certain hospitals that are located in a rural area (as defined for purposes of section 1886(d) of the Act) to continue to be reimbursed on a reasonale cost basis for CRNA services during calendar years 1989, 1990, and 1991.

To qualify in 1989, a rural hospital must establish before April 1, 1989 to the satisfaction of the Secretary that—

- It employed or contracted with a CRNA but not more than one full-time equivalent CRNA as of January 1, 1988;
- It had a volume of 250 or fewer surgical procedures, including inpatient and outpatient procedures, requiring anesthesia in calendar year 1987; and
- Each CRNA employed by or under contract with the hospital has agreed not to bill under Medicare Part B for professional services furnished at the hospital.

To qualify in 1990 or 1991, a rural hospital must establish before the beginning of the calendar year that in the prior year it did not furnish more than 250 surgical procedures including inpatient and outpatient procedures requiring anesthesia services.

These provisions are to be implemented so as to maintain budget neutrality consistent with section 1833(1)(3) of the Act.

III. Provisions of this Proposed Rule

A. Services of a CRNA or an Anesthesiologist Assistant

To implement the provisions of sections 1861(s)(11) and (bb) of the Act, we are proposing to make two changes in the regulations on coverage of medical and other health services in 42 CFR Part 401, Subpart B. Specifically, we are planning to revise § 410.10 by adding "services of a CRNA or an anesthesiologist assistant" to the list of medical and other health services in that section. In additon, we are proposing to add a new § 410.66 to define the terms "CRNA", "anesthesiologist assistant," and "anesthetist."

We are proposing to define "CRNA" as a registered nurse who is licensed as a professional registered nurse by the State in which he or she practices, and either—

- Is currently certified by either the Council on Certification of Nurse Anesthetists or the Council on Recertification of Nurse Anesthetists; or
- Has graduated within the past 18 months from a nurse anesthesia program that meets the standards of the Council on Accreditation of Nurse Anesthesia Educational Programs and is awaiting initial certification.

This definition relies on certification by either of the two nationally recognized certifying bodies for nurse anesthetists, and thus reflects the provision of section 1861(bb) of the Act that authorizes the use of requirements established by a national organization for the certification of nurse anesthetists.

Although we are proposing this definition of CRNA, we recognize that there are other interpretations of section 1861(bb) of the Act which, if adopted, would require use of a more restrictive definition of that term. In particular, the phrase "certified registered nurse anesthetist licensed by the State" in section 1861(bb)(2) of the Act could be read to mean that the anesthetist must be licensed by the State *as a CRNA* rather than only as a registered nurse. Moreover, the statutory reference to a *certified* registered nurse anesthetist could be interpreted to exclude from the definition those persons who are not actually certified. Such an interpretation would not, for example, allow nurse anesthetists who have completed the CRNA training but have not passed the required certification examination to be classified as CRNAs for Medicare purposes.

While we considered use of the more restrictive definition of CRNA, we are not now proposing to adopt it. We believe use of this definition would be inconsistent with the intent of Congress in enacting section 1861(bb) of the Act and with current anesthesia practice. With respect to the issue of licensure, our information indicates that fewer than 10 States currently license CRNAs as such. The remaining States license registered nurses and either employ one of a variety of means to officially sanction the practice of anesthesia by a nonphysician or have no formal process by which they authorize nurses to give anesthesia. If we were to require CRNAs to be licensed as such by the State, individuals who are now functioning as CRNAs but practice in States that do not specifically license CRNAs could not be considered CRNAs under Medicare and would not be permitted to administer anesthesia in Medicare participating hospitals and ASCs. We doubt that Congress intended section 1861(bb) of the Act to achieve this result. Thus, with respect to licensure, we are proposing to require only that the individual be licensed as a professional registered nurse by the State in which he or she practices or meet any other licensure requirement the State imposes with respect to nonphysician anesthetists.

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With regard to the second issue, we believe it is permissible under section 1861(bb) of the Act for individuals to be considered CRNAs under Medicare even if they are in fact not certified. Several considerations persuaded us not to propose a definition of CRNA based on an interpretation of the law requiring actual certification. First, we have been advised that the Council on Certification of Nurse Anesthetists recognizes as "certification-eligible" those registered nurses who have graduated within the past 24 months from a nurse anesthesia program that meets the Council's standards, but have not yet passed the required certification examination. We also note that the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) accreditation standards permit certification-eligible nurse anesthetists to furnish services under the same degree of supervision as CRNAs. It was also stated to us that the laws of many States permit certification-eligible nurse anesthetists to function as CRNAs for specified time periods, usually ranging between 12 and 24 months in length.

If we were to adopt a definition of CRNA that excluded certification-eligible nurse anesthetists, we would be establishing a definition that is inconsistent with existing practice in the nursing profession, with the standards of the JCAHO, and with the nurse practice acts of many States. There is no indication in the legislative history of 1861(bb) of the Act that Congress specifically intended such an inconsistency. Therefore, we are proposing to recognize certification-eligible nurse anesthetists as CRNAs for a period of 18 months following their graduation from an approved nurse anesthesia program.

Because of the existence of alternative interpretations of section 1861(bb) of the Act, we are particularly interested in receiving public comment on which interpretation should be followed in the implementing regulations.

We are proposing to define an "anesthesiologist assistant" as an individual who is permitted by State law to administer anesthesia and has successfully completed a six-year program for anesthesiologist assistants, two years of which consist of specialized academic and clinical training in anesthesia and who is under the direct supervision of an anesthesiologist who is physically present. This definition is the same as that currently set forth in the Medicare conditions of participation for hospitals at § 482.52(a)(5). To ensure that these definitions are applied consistently, we would revise § 482.52 (a)(4) and (a)(5) to reflect the addition of the new § 410.69.

In addition, we are proposing to define the term "anesthetist" to include both anesthesiologist assistants and CRNAs. The use of this term represents a clear and convenient means of referring to both types of practitioners.

B. General Method of Payment

Effective with services furnished on or after January 1, 1989, as required by section 1833(a)(1)(H) of the Act, payment for the services of a CRNA is made, after the Part B deductible has been met, at 60 percent of the least of the—

- Actual charge;
- Prevailing charge that would be recognized if the services had been performed by an anesthesiologist; or
- Fee schedule amount.

C. Development of a Fee Schedule

1. Background

Section 1833(l)(1) of the Act requires the Secretary to establish a fee schedule for the services of CRNAs. In establishing the fee schedule, section 1833(l)(4) of the Act provides that the Secretary may use a system of time units, a system of base and time units, or any appropriate methodology. The Secretary may also establish a nationwide fee schedule or adjust the fee schedule for geographic areas.

In addition, under section 1833(l)(3)(A) of the Act, the initial fee schedule is to be established in such a way as to ensure that the estimated total amount paid under the fee schedule, plus the applicable coinsurance amounts, will be equal to the amount that would have been paid had the services been included as inpatient hospital services. Furthermore, section 1833(l)(3)(B) of the Act provides that the Secretary must reduce the prevailing charges of physicians for medical direction of CRNAs, or the fee schedule amount, or both, to the extent necessary to ensure that the estimated total amount that will be paid, plus the applicable coinsurance amounts, will not exceed the total amount that would have been paid absent this provision. This limitation is needed because physicians who employ CRNAs have been reimbursed for CRNA services through the reasonable charge allowance, and effective January 1, 1989, payment for all CRNA services will be through the fee schedule. Since the amounts paid on a per service basis to physicians for the CRNAs they employ are generally less than the amounts recognized as inpatient hospital costs, this adjustment is needed to ensure that we do not pay more under the CRNA fee schedule than we would have paid absent the new provision.

The difference in Medicare payment between the hospital-employed and physician-employed CRNAs is due primarily to the different payment methodologies. The hospital is reimbursed for CRNA services on a reasonable cost basis, which is related to the actual cost of the services. CRNAs who are employed and medically directed by anesthesiologists are paid as part of the physician's reasonable charge payment. Since fiscal year 1973, physicians' reasonable charge payments have been constrained by the Medicare economic index. Moreover, the basic method of paying physicians for their CRNA costs (that is, recognizing two additional time units per hour) was not established based on a statistical analysis of CRNA salary costs.

2. Structure and Geographic Basis for Fee Schedules

In determining the basic framework for the fee schedule, we believe that it is desirable to construct a system similar to that used for anesthesiologists (that is, a system based on time and base units). Since we are proposing to establish a uniform relative value guide for anesthesia services (see the proposed rule published elsewhere in this issue of the **Federal Register**), as required by section 4048 of Pub. L. 100-203, under which we are also proposing to eliminate modifier units, we are also proposing not to recognize modifier units in determining payments for CRNA services. We believe that use of the same type of system for anesthesia services furnished by CRNAs and anesthesiologists would be simpler for carriers to administer. Thus, the CRNA fee schedule payment would be determined by multiplying an appropriate conversion factor by the sum of the base unit for the anesthesia procedure and the time units. For CRNAs, one time unit would be allowed for each 15 minutes of anesthesia time.

As noted in the proposed rule on a uniform relative value guide for anesthesia services, it is our intention (subject to publication of another proposed rule) to eliminate the separate time unit element of the anesthesia payment system within two years of the effective date of the final rule implementing that guide. We are also considering alternatives discussed in the proposed rule on a uniform relative value guide for anesthesia services furnished by physicians, which would limit the potential for inappropriate use of time units for billing purposes. The elimination of time units will be the subject of a separate proposed rulemaking document and comments submitted in response to that proposed rule will, of course, be carefully considered at that time.

Our current policy on recognizing time units as a component of payment for physician anesthesia services was the focus of a recent study conducted by the Office of the Inspector General (OIG). (Copies of this report entitled "Medicare Part B Payments for Unexpended Physician Efforts Relating to Anesthesia Services" (A-07-88-00060 issued on August 9, 1988) can be obtained by writing to the Office of the Inspector General, 330 Independence Avenue SW, Washington, DC 20201.) Based on the study, OIG recommended the following options to change the current time policy:

- Pay for actual time expended, rather than treating all fractional units as whole units. That is, 65 minutes would equal four and one-third time units instead of five units.
- Round all fractional units down to the next lower whole unit. That is, disregard all fractional time units (for example, any amount of time between 61 and 74 minutes would equal four units instead of five units).

Another alternative considered by OIG that would make anesthesia payments more commensurate with the effort expended would be to pay only for those fractional units in excess of one-half as whole units. That is, any fraction equal to or less than one-half time unit (seven and one-half minutes) would be disregarded (for example, 65 minutes would equal four units, but 68 minutes would equal five units).

We are proposing to structure the CRNA fee schedule on an individual State-level basis because there are significant differences among States in terms of CRNA salaries and malpractice rates. Using a national or regional fee schedule could cause an unnecessary redistribution of payments. We considered establishing CRNA payment rates by carrier locality. However, we do not have data available on CRNA payment rates on a county-wide basis that would allow construction of payment rates by locality. Thus, we are proposing payment levels on a State-level basis.

We note that there are significant differences in payment rates of hospital-employed CRNAs depending on whether they are medically directed by an anesthesiologist or working under the general supervision of the surgeon. As a result, we believe it is appropriate to construct separate fee schedules for CRNAs working under the medical direction of an anesthesiologist and for CRNAs working only under the general supervision of the surgeon. This latter group of CRNAs have more responsibility and higher average earnings than CRNAs working with medical direction. Thus, we believe it is appropriate to compute the rates separately on the basis of whether or not the CRNA is medically directed.

Based on the American Association of Nurse Anesthetists' (AANA's) annual membership survey, we estimate that there are approximately 16,000 CRNAs in full-time practice of the 21,000 CRNAs registered with AANA. Of the full-time CRNAs, about 45 percent are employed by hospitals or universities, 36 percent by physicians, and 10 percent practice independently. The remainder of CRNAs are employed by the military or work under other arrangements. We considered the following two sources of earnings data in establishing the fee schedule for medically-directed CRNAs and nonmedically-directed CRNAs:

- The annual earnings membership surveys conducted by AANA (the most recent survey reflects 1986 calendar year practice and income characteristics).
- A special survey of hospitals claiming CRNA pass-through costs conducted by our fiscal intermediaries during the first quarter of 1988. The HCFA survey obtained information from hospitals on total hours and direct anesthesia hours reported by CRNAs during the hospital's cost reporting period beginning in Federal fiscal year 1985.

We have chosen to use the AANA survey data because it separates data based on whether a CRNA is or is not medically directed. The HCFA survey did not capture this information. While HCFA's results on the national average earnings for hospital-employed CRNAs on a per case basis were similar to the results of AANA's annual survey (HCFA's data were about 10 percent higher), wide variations at the State level indicate that the AANA survey results are preferable in establishing State-level rates. The AANA survey data distinguish, at the State level, between medically-directed CRNAs and nonmedically-directed CRNAs.

We believe the AANA survey data are valid and reliable because—

- We have no reason to believe there is any bias in the survey results particularly since the survey was not conducted for the purpose of constructing a fee schedule, but rather is an ongoing annual membership survey; and
- At a national level, after adjusting for fringe benefits, the data are comparable (actually lower) to HCFA's results.

In using the AANA salary survey to develop the State-level fee schedule for medically-directed CRNAs, certain adjustments were made, as described below.

Step 1. Updating the 1986 Earnings to 1989 Level—Data from AANA's Annual Membership Surveys show that the national average annual rate of increase in CRNA salaries from 1982 through 1986 was approximately six percent. We are proposing to use this rate of change to approximate the rate of increase in CRNA salaries through 1989. Projecting this rate of change through 1989 would require an increase of 19 percent (that is, $1.06 \times 1.06 \times 1.06$) over 1986 average earnings.

Step 2. Fringe Benefit Adjustments—The value of fringe benefits is not reported on the AANA survey. Fringe benefits include items such as the value of pension costs, FICA taxes, and employee health insurance. (We note that the value of vacation, sick, and holiday time is included in the survey's reported salary amounts.) We are proposing to use 20 percent of the 1986 national average salary or income of CRNAs as a reasonable approximation of the costs of fringe benefits incurred by hospitals for their CRNA employees. This is the fringe benefit factor that was initially used in determining the costs to hospitals for the services of nonphysician anesthetists furnished on or after October 1, 1984. (See the August 31, 1984 prospective payment system final rule (49 FR 34794).)

Step 3. Billing Costs—We believe an allowance should be made for the billing costs that will be incurred by CRNAs or their employers (that is, hospitals) who must now begin to separately identify and bill the Part B carrier for CRNA services. Based on estimates of billing costs provided by AANA from costs incurred by independently practicing CRNAs that bill non-Medicare patients, we are proposing to increase salaries and fringe benefits by seven percent to account for billing costs.

Step 4. Constructing a Conversion Factor—The annual earnings figures resulting from the adjustment in Steps 1 through 3 above were translated into a conversion factor by—

- Dividing the adjusted average annual CRNA compensation by the average annual anesthesia case load performed by a full-time medically-directed CRNA (649 cases) to derive average per case earnings; and
- Dividing this figure by the average of 11.6 units per case (the total of

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average time and base units per case) to compute a conversion factor.

The average case load of 649 anesthetics was reported in the 1986 AANA survey. The Center for Health Economics Research (CHER), a private nonprofit health care research organization, furnished us with the following information:

- The average number of base and time units per case (that is, Medicare and non-Medicare) involving a CRNA (11.8 units).
- The average number of base and time units per Medicare case involving an anesthesiologist who medically directs his or her CRNA employees (12.1 units).
- The average time per Medicare case involving an anesthesiologist who directs his or her CRNA employees (101 minutes).

The latter two items (12.1 units and 101 minutes) are used in Appendix B of this document to compute conversion factors for physician-employed medically-directed CRNAs.

The CHER statistics were calculated from data collected during the fall of 1986 as part of the Anesthesia Practice Survey. The purpose of this survey was to gather information on the practice patterns and case-mix characteristics of CRNAs and anesthesiologists. The Anesthesia Practice Survey was designed by CHER and funded under a cooperative agreement with HCFA.

Separate samples of CRNAs and anesthesiologists were selected for the Anesthesia Practice Survey. Each was a proportional random sample, stratified by regional and urban/rural location, to ensure an adequate geographic representation. Overall, 529 anesthesiologists and 520 CRNAs were interviewed.

An alternative data source we considered was a survey on anesthesia cases conducted by the accounting firm of Touche Ross for AANA during the first quarter of 1988. The Touche Ross survey estimated that the average number of base and time units per anesthesia case involving a CRNA is 10.9 units and the average number of base and time units per Medicare anesthesia case involving a CRNA is 11.3 units. We are not proposing to use the Touche Ross data since they are limited to eight hospitals and thus are not as representative as the CHER data.

Step 5. Malpractice Adjustment—The fee schedule conversion factor computed in Step 4 was further adjusted to reflect the cost of malpractice insurance incurred by hospitals for their CRNA employees. Data on State malpractice premiums for CRNAs were used for this purpose. The State-level malpractice premiums were obtained from St. Paul Fire and Marine Insurance Company, the largest carrier of malpractice insurance for CRNAs. We computed a State-level malpractice premium per unit by dividing the current State-level malpractice premium by the product of the national average number of anesthetics administered by CRNAs and the average total units per case. The malpractice adjustment was made after all the other adjustments because it reflects current malpractice rates.

The conversion factors that result from these computations are set forth in Appendix A. The following example illustrates the application of the methodology as described in Steps 1 through 5 to calculate the medically-directed hospital-employed CRNA rate for Alabama

EXAMPLE 1

Average salary for 1986 for full time medically-directed hospital-employed CRNAs (Alabama).	$52,582.
Average number of anesthesia cases.	649 cases.
Average number of base and time units per case involving CRNAs.	11.8 units/case.
Total units (649 × 11.8)	7,528 units.
1986 conversion factor ($52,582—7,528).	$6.98.
Adjustments for fringe benefits and billing costs ($6.98 × 1.20 × 1.07).	$8.97.
Update adjustment ($8.97 × 1.18)	$10.67.
Malpractice rate adjustment (Alabama).	$0.63.
1989 CRNA conversion factor ($10.67 + $0.63).	$11.30.

Another source of data used to establish the CRNA fee schedule is information from physician-employed CRNA arrangements. As noted above, if a physician employs and medically directs a CRNA, two time units per hour approximates Medicare's payment for the CRNA service. In Appendix B of this document, we list the CRNA rates for physician-employed CRNAs computed from the 1989 participating physician prevailing charge conversion factors and the average time per case. The 1989 particpating physician prevailing charge conversion factors represent a one percent increase over the comparable 1988 prevailing charge conversion factors due to the provisions of section 4042 of Pub. L. 100-203 (section 1842(b)(4) of the Act), which provides for a one percent increase in the Medicare economic index for physicians' services, other than services of primary care physicians, furnished on or after January 1, 1989. The following example illustrates the calculation of the physician-employed medically-directed CRNA rate for Alabama.

EXAMPLE 2

Average time per medically-directed case.	101 minutes
Average time and base units per Medicare case.	12.1 units.
1989 weighted average prevailing charge conversion factor for participating anesthesiologists in Alabama.	$12.90.
Conversion factor for medically-directed physician-employed CRNAs ($12.90 × 101/30)/(12.1).	$3.50.

Because of differences in program payments between physician-employed and hospital-employed CRNAs whose services are medically directed, we considered establishing two different State-level CRNA fee schedules for medically-directed CRNAs. However, we are not making such a proposal because we believe that it could result in shifts in practice arrangements that would increase program payments without any change in service quality. Moreover, as a general policy, we believe that the fee schedule payments for like services should be the same and should not vary according to employment arrangements.

We also considered setting a single State-level rate for medically-directed CRNAs (both hospital-employed and physician-employed) based on practice costs of medically-directed hospital-employed CRNAs only. Under this approach, Medicare payments for CRNA services to physicians who employ and medically direct CRNAs would increase over the amounts previously recognized. However, this approach would be budget neutral with regard to the payments that would be made if CRNA services were paid as inpatient hospital services. Overall, however, Medicare payment for CRNA services would increase. To maintain overall budget neutrality, we estimate that all anesthesiologists' medical direction payments would need to be reduced by approximately 14 percent if the fee schedule were based solely on practice costs of medically-directed hospital-employed CRNAs. Alternatively, if only medical direction payments for anesthesiologists who medically direct their own CRNA employees were affected, the reduction would be approximately 30 percent. (We refer the reader to Appendix C for a detailed example of the medical-direction adjustment.)

We do not believe that Congress envisioned adjustments to medical direction payments of this magnitude when it enacted the CRNA fee schedule legislation, particularly the provisions of section 1833(l)(3)(B) of the Act. Moreover, as discussed above, Congress subsequently enacted reductions in anesthesia payments for concurrent medically-directed procedures under section 4048 of Pub. L. 100-203.

We also considered establishing a single rate by blending the hospital and physician CRNA data weighted by the proportion of different employment practices. In blending hospital-employed and physician-employed CRNA rates, we would weight each portion of the rate because more CRNAs are employed by hospitals than are employed by physicians. Excluding CRNAs who are not medically-directed, nationally, approximately 58 percent of medically-directed CRNAs are employed by hospitals and 42 percent are employed by physicians. These weights are based on data in AANA's 1986 Annual Survey pertaining to full-time CRNA practice arrangements. Weighting produces a single blended State-level medically-directed CRNA rate that is estimated to be budget neutral overall. However, the resultant rates are less than those based solely on data from medically-directed hospital employment practice arrangements. Under this proposal, no reduction would be made in physicians' medical direction payments. Collectively, hospitals that employ CRNAs whose services are medically directed would experience an 18 percent reduction in their payments for CRNAs. Medicare payments for anesthesia services furnished by CRNAs who are employed and medically directed by an anesthesiologist would increase by 45 percent. However, since the CRNA fee schedule payment is made on an assignment-related basis, the CRNA fee schedule payment may be less than the amount that the anesthesiologist could have collected, if the claim were not assigned, from the beneficiary.

We also considered establishing a single rate by blending the hospital and physician CRNA data by weights of 79 percent and 21 percent respectively. Under this option, reductions in the CRNA fee schedule would be incurred by hospitals and CRNAs and adjustments to medical direction allowances would be incurred by anesthesiologists. We estimate that hospitals that employ CRNAs whose services are medically directed would experience a nine percent reduction in payments. Amounts for anesthesia services furnished by CRNAs who are both employed and medically directed by physicians would increase by 61 percent. To account for this increase in CRNA payments, medical direction allowances of all anesthesiologists would be reduced by seven percent. Set forth below is a table that shows the options for the CRNA Fee Schedule/Medical Direction Adjustments:

Level of CRNA Fee Schedule	Medical Direction Allowance Reduction
$9.90	14.0 percent.
$9.00	7.0 percent.
$8.10	0.0 percent.

We are proposing to establish a single blended rate that weighs medically-directed hospital-employed CRNA data at 58 percent and medically-directed physician-employed CRNA data at 42 percent. Adaption of this methodology results in no adjustment being made to physicians' medical direction allowances.

The results of the blended fee schedule for CRNAs working under the medical direction of an anesthesiologist are listed in Appendix D of this document. The following example illustrates the application of the blended rate methodology for Alabama.

EXAMPLE 3

National hospital-employed CRNA percentage.	58 percent.
National physician-employed CRNA percentage.	42 percent.
Hospital-employed medically-directed CRNA rate (from example 1).	$11.30.
Physician-employed medically-directed CRNA rate (from example 2).	$3.50.
Blended rate (.58×$11.30)+(.42×$3.50).	$8.06.

As mentioned above, section 4048 of Pub. L. 100-203 requires the Secretary to develop a uniform relative value guide for determining reasonable charges for anesthesia services. This provision is being implemented through a separate rulemaking document. Section 4048 of Pub. L. 100-203 requires that the uniform relative value guide be designed to ensure that Medicare program payments would not exceed the amount of payments that would otherwise occur. To achieve this result, carriers would need to adjust their prevailing charge conversion factors. Because of this adjustment, it would be necessary to recalculate medically-directed CRNA payment rates after the final rule on the uniform relative value guide is published in the Federal Register.

3. CRNAs Who Are Not Medically-Directed

AANA's 1986 annual membership survey collected data on State mean income and case load for CRNAs whose services are not medically-directed. In total, AANA collected data on 610 full-time CRNAs who are functioning without medical direction by a physician. Two-thirds of those CRNAs are independently practicing while the remaining one-third are employed by hospitals. The number of responses at the State-level was not sufficient to establish State-specific rates from the AANA data. Rather, we established the State-level rate for CRNAs who are not medically directed by analyzing the relationship between the national cost per case of full-time CRNAs who are not medically directed and full-time hospital-employed CRNAs who are medically-directed, and applying this ratio to the State-level rates for medically-directed CRNAs. The AANA data show that the average cost per case for full-time medically-directed hospital-employed CRNAs and nonmedically-directed CRNAs are $72.00 and $105.00 respectively. Because of the budget neutrality provision associated with rural hospitals that apply for reasonable cost payments for CRNAs, it was necessary that we adjust the nonmedically-directed rate. After this adjustment (See discussion below in section III. D. of this preamble), the nonmedically-directed cost per case was reduced to $99.00. The nonmedically-directed CRNA cost per case is 37.5 percent greater than the hospital-employed medically-directed CRNA cost per case.

The proposed State-level conversion factors for nonmedically-directed CRNAs, which are listed in Appendix E of this document, reflect this 37.5 percent differential (that is, the factors in Appendix E equal the factors in Appendix A multiplied by 37.5).

D. Continuation of Reasonable Cost Payments for Rural Hospitals

Section 9320 of Pub. L. 99-509 was amended by section 608(c) of Pub. L. 100-485 to allow certain hospitals located in rural areas to continue to be reimbursed on a reasonable cost basis for CRNA services during calendar years 1989, 1990, and 1991. To qualify in 1989, a rural hospital must establish before April 1, 1989 to the satisfaction of the Secretary that—

- As of January 1, 1988, it employed or contracted with a CRNA but not more than one full-time equivalent CRNA;

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• In 1987, it had a volume of 250 or fewer surgical procedures, including inpatient and outpatient procedures, requiring anesthesia services; and

• Each CRNA employed by or under contract with the hospital has agreed not to bill under Medicare Part B for professional services furnished at the hospital.

To qualify in 1990 or 1991, a rural hospital must establish before the beginning of the respective calendar year that in the prior year it did not furnish more than 250 surgical procedures, including inpatient and outpatient procedures, requiring anesthesia services.

We are proposing to define a full-time equivalent anesthetist as one or more anesthetists who in total work no more than 2,000 hours per year. These hours represent total hours at the hospital and include time spent in furnishing anesthesia services to patients and general services to the hospital. We are also proposing to define "surgical procedures requiring anesthesia services" as those procedures in which the anesthesia is administered and monitored by a qualified nonphysician anesthetist, a physician other than the primary surgeon, or an intern or resident.

As required by section 9320(k) of Pub. L. 99-509 (as enacted by section 608(c) of Pub. L. 100-485), a rural area would be defined in the same way it is defined for purposes of the inpatient hospital prospective payment system (that is, section 1886(d) of the Act). That definition is set forth at § 412.62(f) and provides that a rural area is any area outside of a Metropolitan Statistical Area (MSA), a New England County Metropolitan Statistical Area, as defined by the Executive Office of Management and Budget, or the New England counties deemed to be parts of urban areas under section 601(g) of the Social Security Amendments of 1983.

Under section 1886(d)(8)(B) of the Act, hospitals in certain rural counties adjacent to one or more MSAs are considered to be located in one of the adjacent MSAs if certain standards are met. (These requirements are explained in greater detail in the September 30, 1988 final rule on the inpatient hospital prospective payment system (53 FR 36490).) Since for purposes of payment under section 1886(d) of the Act, these hospitals are no longer classified as rural, we are proposing that these hospitals also would not qualify as rural hospitals under section 9320(k) of Pub. L. 99-509 and would not be eligible to continue to receive reimbursement on a reasonable cost basis for CRNA service during 1989, 1990, and 1991.

The legislation also requires that this provision be implemented so as to maintain budget neutrality consistent with section 1833(l)(3) of the Act. For purposes of budget neutrality, we assumed that hospitals in which CRNAs are medically directed would not qualify for continuation of reasonable cost payments. We assumed that anesthesiologists who medically direct at least two CRNAs would never furnish fewer than 125 medically directed procedures per CRNA.

We used the results of the HCFA survey described above to estimate the number of hospitals that would qualify for continuation of reasonable cost payments for CRNA services. From the HCFA survey data, we identified 531 rural hospitals that could qualify for reasonable cost payments. (If we extrapolate this finding to all rural hospitals who claimed pass-through costs, we estimate that the total number of hospitals that would qualify is 757.)

The AANA provided us with data on the number of hospitals in which a CRNA who is not medically directed practices full-time at only one hospital. This equals 610 hospitals. It was therefore necessary to identify which of the 531 rural hospitals had one full-time equivalent CRNA who furnished 250 or fewer cases in calendar year 1986 (that is, the year for which we have AANA survey data). The criterion we established for identifying a full-time equivalent CRNA was a CRNA who reported working between 1500 and 2500 total hours at the listed hospital on the HCFA survey and who worked 400 or fewer hours of direct anesthesia time. (According to our methodology, 400 hours equates to 250 anesthesia cases.) Of the 531 rural hospitals, we identified 43 hospitals or 8.1 percent of the total as qualifying rural hospitals with one full-time equivalent CRNA.

According to the AANA, the average number of anesthesia cases furnished by a full-time CRNA who is not medically-directed is 541 and the average 1986 salary/gross income is $57,021. The average cost per case of these CRNAs is $105. We adjusted these numbers to account for the CRNAs who work full-time at a rural hospital that is expected to apply for payment on a reasonable cost basis. Of the 610 listed, we estimate 40 (8.1 percent) will qualify and apply for reasonable cost payments. We estimate that the average number of anesthesia cases furnished by a qualifying rural hospital will be 159. This estimate is based on the average number of anesthesia cases determined from the direct anesthesia hours reported by the CRNA on the HCFA survey form. The revised average cost per case of nonmedically-directed CRNAs is $99.00, a 5.7 percent decrease.

We will review the rural hospitals that elect reasonable costs for CRNA services furnished in 1989 and make appropriate adjustments if necessary, in January 1990 to the conversion factors for CRNAs who are not medically directed. We will be unable to make those adjustments before January 1, 1990 for the following reasons. As hospitals will have until April 1, 1989 to make the election of reasonable cost reimbursement, we will not receive the data on qualified rural hospitals until sometime after April 1, 1989. Also, any adjustments we might make will have to be first published as a notice in the Federal Register. We believe it would be most practical to set forth all adjustments to the CRNA conversion factors that might be necessary in a single notice published just prior to the January 1, 1990 update for CRNA conversion factors.

E. Updating the Fee Schedule for Years After 1989

For calendar years beginning with January 1, 1990, we would update the CRNA fee schedule by the percentage increase in the Medicare economic index, as required by section 1833(1)(2) of the Act. Section 1833(1)(3)(B) of the Act also requires the Secretary to adjust the CRNA fee schedules in 1990 to ensure that Part B payments do not exceed what would have been paid if the CRNA fee schedules were not enacted. We would monitor expenditures for CRNA services in 1989 to verify the accuracy of the estimates used to construct the initial fee schedules and make appropriate changes, as necessary, effective with anesthesia services furnished on or after January 1, 1990.

F. Relationship of Payment Under the Fee Schedule to Payment to Physicians for the Medical Direction of CRNAs

For services furnished on or after January 1, 1989, if a physician medically directs an anesthesia procedure involving CRNAs, the carrier would, in determining the reasonable charge for the procedure, allow no more than one time unit for each 30 minutes of anesthesia time. One time unit for each 15 minutes would be allowed only if the physician personally performs the anesthesia procedure. Consequently, if the physician medically directs concurrent anesthesia procedures and is the employer of the CRNA, two separate payments would be made to the physician, that is, a medical direction payment for the physician's service and a payment under the CRNA fee schedule for the CRNA's service. Assignment is mandatory for the CRNA's service.

We are proposing to amend § 405.553 to revise the method of payment to physicians who medically direct CRNAs.

Under section 1833(l)(3)(B) of the Act, the Secretary may reduce either the medical direction reasonable charge payment or the CRNA fee schedule payment, or both, to ensure that the estimated total amount paid for medical direction and CRNA services in 1989 and 1990 do not exceed the amounts that would have been paid if section 9320 of Pub. L. 99-509 had not been enacted. As noted above, we are not proposing reductions in medical direction allowances.

Under the statute, for services furnished during the twelve-month period beginning January 1, 1989, a physician may not charge the beneficiary more than the limiting charge plus one-half of the amount by which the physician's actual charges for the service for the previous 12-month period exceeds the limiting charge. The limiting charge is 125 percent of the prevailing charge for the service after the medical direction adjustment. Since we are not proposing to adjust physician medical direction allowances, the special charge limit would not apply.

G. Supervision of CRNAs by Physicians Other Than Anesthesiologists

In the preamble to the March 2, 1983 final rule entitled, "Payment for Physician Services Furnished in Hospitals, Skilled Nursing Facilities, and Comprehensive Outpatient Rehabilitation Facilities," we noted that anesthesia payment rules apply to any physician who furnishes, directs, or supervises anesthesia services regardless of the physician's practice specialization or board certification (48 FR 8926). The preamble to that document also noted that the directing physician frequently is the surgeon who is performing the surgical procedure for which the anesthesia is required. Thus, in some hospitals and ambulatory settings, we have recognized the practice in which the surgeon assumes responsibility for direction of the anesthesia service.

Actual carrier practice for paying surgeons who medically direct CRNAs varies. Some carriers include a payment for the surgeon's anesthesia services with the surgical service allowance. Other carriers pay a separate amount for the surgeon's anesthesia service.

In a 1987 HCFA survey of carrier medical consultants concerning the propriety of the surgeons' anesthesia practice patterns, the overwhelming consensus of the carriers' medical directors was that a surgeon cannot appropriately provide the level of oversight needed to medically direct a CRNA and also perform surgery. We also believe that a surgeon cannot perform all the activities required for anesthesiology services related to medical direction under § 405.552, while concurrently performing surgery. For example, § 405.552(a)(2) specifically requires that a physician involved in medical direction not perform any other services, such as surgery, while the physician is involved in medical direction. This requirement could not be met by a surgeon who is performing an operative procedure. Therefore, we are proposing that, effective January 1, 1989, medical direction payments could not be made to a surgeon who concurrently supervises CRNAs and performs surgery. The payment of a separate reasonable charge for medical direction of anesthesia services is not a widespread practice. We note, however, that to the extent a surgeon employs or contracts with a CRNA, the surgeon is entitled to receive the CRNA fee schedule payment, effective on or after January 1, 1989, for services the CRNA furnishes.

We recognize that State law may require a surgeon to supervise the services of a CRNA while surgery is performed, and that this supervision is explicitly permitted under the hospital conditions of participation at § 482.52(a)(4) and the conditions for coverage of ambulatory surgical services at § 416.42(b)(2). However, we believe that it would be inappropriate to pay for such services of a surgeon as medical direction because we believe the requirements of § 405.552 would not be met. The oversight of a CRNA's services by a surgeon is, in our view, a quality control function that represents a service to the provider of the type described in § 405.480(a) or an ambulatory surgical center facility service.

We also recognize that CRNAs provide anesthesia services associated with therapeutic services, such as electroshock therapy, and anesthesia services associated with diagnostic radiology services, such as magnetic resonance imaging and computerized axial tomography scans. We are proposing that medical direction payments not be made to a radiologist or psychiatrist who furnishes nominal supervision of the anesthesia services since we do not believe these services meet the medical direction requirements under § 405.552. As in the case of supervision of anesthesia services by the operating surgeon, oversight of anesthesia required for electroshock therapy or diagnostic radiology, when furnished in a provider setting, represents a service to the provider.

H. Other Conforming Regulations Changes

Section 1833(l)(5)(C) of the Act requires that a hospital that files a claim or a request for payment for the services of a CRNA may not use any uncollected coinsurance amount for a CRNA service as a bad debt. We are proposing to revise § 413.80 to implement this provision.

I. Related Care Furnished by CRNAs

Anesthesiologists furnish specialized forms of monitoring, such as the insertion of intra-arterial lines, central venous pressure lines, and Swan Ganz catheters during surgical procedures. The majority of carriers recognize separate payments for these services in addition to payment for the anesthesia service. Also, anesthesiologists provide other services, such as pain management services, for which the carriers recognize separate payments. CRNAs also furnish specialized monitoring activities and other services not directly connected to the anesthesia service associated with the surgical service.

We are not recognizing additional payments for these services because payment for these services has been factored in the CRNA conversion factor rates. As noted, we used salary/income data from the AANA that reflects payment for all anesthesia and related charge services. If we recognized separate payments for these services, we would be allowing duplicate payments.

IV. Regulatory Impact Statement

A. Executive Order 12291

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact analysis for any proposed rule that meets one of the E.O. criteria for a "major rule"; that is, that will be likely to result in—

• An annual effect on the economy of $100 million or more;

• A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

• Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

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Pub. L. 99-509 adds section 1833(1)(3)(B) of the Act which provides that the Secretary must reduce the prevailing charges of physicians for medical direction of CRNAs, or the fee schedule amount, or both, to the extent necessary to ensure that the estimated total amount that will be paid for CRNA services, plus the applicable coinsurance amounts, will not exceed the total amount that would have been paid absent this provision.

In section III.C. of this document, we explain how our proposed payment methodology would maintain the same payment levels, in the aggregate, to CRNAs, hospitals, and physicians that they would have received under the present payment methodologies. Because we would maintain budget neutrality with respect to these payments, we do not expect any aggregate economic impact that would meet any of the E.O 12291 criteria to result from this proposed rule. Therefore, we have not prepared an initial regulatory impact analysis.

B. Regulatory Flexibility Act

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a proposed rule would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we do not consider individuals or State to be small entities, but we do consider hospitals, physicians, and CRNAs to be small entities.

We are preparing an initial regulatory flexibility analysis for this proposed rule because of the large number of hospitals, physicians, and CRNAs that could potentially be affected, and the significance and potential controversy of these provisions.

Section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a proposed rule may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital with fewer than 50 beds located of a Metropolitan Statistical Area.

We are not preparing a rural hospital impact statement since we have determined, and the Secretary certifies, that this proposed rule would not have a significant economic impact on the operations of a substantial number of small rural hospitals.

1. Fee Schedule Methodology

We are proposing to establish the CRNA fee schedule for medically-directed CRNAs by blending the amounts paid to hospitals for their employee CRNAs with estimated Part B payments for CRNAs employed by physicians. The blended rate would be established by weighting the hospital rate by 0.58 and the physician rate by 0.42. This would result in an 18 percent reduction in Medicare payments to hospitals for CRNA services. Medical direction payments would not be made to a surgeon who concurrently supervises CRNAs and performs surgery.

2. Impact on Hospitals

According to fiscal year 1985 cost reports, 2,750 hospitals claimed reasonable costs for service furnished by CRNAs. Of that number, 64 percent were rural hospitals and 36 percent were urban hospitals.

Section 608(c) of Pub. L. 100-485 allows qualified rural hospitals to continue to be paid on a reasonable cost basis for CRNA services. To qualify, the rural hospital—

- Must have employed or contracted with a CRNA, but not more than one full-time equivalent CRNA, as of January 1, 1988; and
- Must have had a volume of 250 or less surgical procedures, including inpatient and outpatient procedures, requiring anesthesia services in 1987.

In addition, each CRNA employed by or under contract with the hospital must have agreed not to bill under Part B for professional services furnished at the hospital. We estimate that almost 760 rural hospitals will qualify under this provision.

Hospitals who employ CRNAs whose services are medically directed by anesthesiologists would experience an 18 percent reduction in payments for CRNA services. These hospitals may continue to bill for services of CRNAs and experience this loss. Others may transfer the risk in payment reductions associated with the CRNA fee schedule to CRNAs by reducing their payments to CRNAs for services. Still other hospitals may choose to end the CRNAs' employment relationship with the hospital and allow the CRNAs to bill directly. The amount by which a hospital is able to reduce its payment to CRNAs for services, the hospital's Medicare patient volume, and the degree that the hospital wishes to exercise control over its CRNAs would be among the factors that ultimately determine whether hospitals continue to employ CRNAs and bill for CRNA services.

3. Impact on Physicians

a. *Anesthesiologists.* Under this proposed rule, anesthesiologists who medically direct CRNAs would not experience any reduction in Medicare medical direction allowances.

b. *Surgeons.* Under this proposed rule, medical direction payments would not be made to a surgeon who concurrently supervises CRNAs and performs surgery. The payment of a separate reasonable charge for medical direction anesthesia services is not a widespread practice. Thus, we believe that only a small number of practicing surgeons would be affected by this change. We do not have data available as to their number or the specific reduction in payments that would result from this change. We note that to the extent a surgeon employs or contracts with a CRNA, the surgeon is entitled to received the CRNA fee schedule payment, effective on or after January 1, 1989, for services the CRNA furnishes.

4. Impact on CRNAs

As noted in section III.C. of this preamble, no reduction would be made in physicians' medical direction payments while hospitals who employ CRNAs, collectively, would experience an 18 percent reduction in their payments for CRNAs. The effect of the 18 percent reduction on the hospital-employed CRNAs is discussed in section B.2. of this impact statement.

Currently, hospitals that use independently-practicing CRNAs who are not medically directed are paid on a reasonable cost basis. Under this proposed rule, hospitals or CRNAs would be paid on the basis of nonmedically-directed payment rates. These rates are based on data supplied by the AANA or CRNAs whose services are not medically directed. Thus, the rates are designed to approximate current hospital costs of obtaining the service of CRNAs contracting independently.

5. Alternatives Considered

Section III.C. of this preamble includes a complete discussion of the alternatives considered and explanations of why those alternatives were not chosen.

V. Other Required Information

A. Public Comments

Because of the large number of items of correspondence that we normally receive on a proposed rule, we are not able to acknowledge or respond to them individually. However, we will consider all comments that we receive by the date and time specified in the "Date" section of this preamble, and we will repsond to the comments in the preamble to the final rule.

B. Effective Date of the Fee Schedule

Section 9320 of Pub. L. 99-509 requires that we implement a fee schedule for CRNAs effective with services furnished on or after January 1, 1989. However, we are first publishing the fee schedule in proposed form to allow full public participation and comment before publication of the final fee schedule. Since we will not publish the final fee schedule before the statutorily required effective date of January 1, 1989, we have issued a program instruction to our Medicare carriers describing the interim procedures for payment for CRNA services effective January 1, 1989.

We plan to issue the final rule on the fee schedule for the services of CRNAs as soon as possible following the end of the comment period and our evaluation and consideration of the comments we receive. When we do publish the final fee schedule, it will be retroactively applied to all services furnished on or after January 1, 1989.

C. Paperwork Reduction Act

This proposed rule contains no information collection requirements; therefore, it does not come under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 through 3511).

List of Subjects

42 CFR Part 405

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Nursing homes, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 410

Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Rural areas, X-rays.

42 CFR Part 412

Health facilities, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 413

Health facilities, kidney diseases, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 482

Hospitals, Medicaid, Medicare, Reporting and recordkeeping requirements.

42 CFR Chapter IV would be amended as set forth below:

CHAPTER IV—HEALTH CARE FINANCING ADMINISTRATION, DEPARTMENT OF HEALTH AND HUMAN SERVICES

I. Part 405, Subpart E is amended as follows:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

Subpart E—Criteria for Determination of Reasonable Charges; Reimbursement for Services of Hospital Interns, Residents, and Supervising Physicians

A. The authority citation for Subpart E is revised to read as follows:

Authority: Secs. 1102, 1814(b), 1832, 1833(a), 1842 (b) and (h), 1861 (b) and (v), 1862(a)(14), 1866(a), 1871, 1881, 1886, and 1887 of the Social Security Act as amended (42 U.S.C. 1302, 1395f(b), 1395k, 1395l(a), 1395u (b) and (h), 1395x (b) and (v), 1395(a)(14), 1395cc(a), 1395hh, 1395rr, 1395ww, and 1395xx).

B. In § 405.502, the introductory text of paragraph (a) is republished and a new paragraph (a)(11) is added to read as follows:

§ 405.502 Criteria for determining reasonable charges.

(a) *Criteria.* The law allows for flexibility in the determination of reasonable charges to accommodate reimbursement to the various ways in which health services are furnished and charged for. The criteria for determining what charges are reasonable include:

* * * * *

(11) In the case of services furnished by a certified registered nurse-anesthethist or an anesthesiologist assistant, payment is made, after the Part B deductible is met, based on 80 percent of the least of the—

(i) Actual charge;

(ii) Prevailing charge that would be recognized if the services had been performed by an anesthesiologist; or

(iii) Fee schedule amount, as described in § 405.553.

* * * * *

C. Section 405.553 is revised to read as follows:

§ 405.553 Reasonable charges for anesthesiology services.

(a) *General rules.*

(1) In determining reasonable charge payment for anesthesiology services that meet the conditions in § 405.552(a), the carrier applies the provisions in paragraph (b) of this section for physicians and the provisions in paragraph (c) of this section for anesthetists, as defined in § 410.66 of this chapter.

(2) Payment is made for anesthesia services furnished by the following individuals:

(i) A physician with or without the assistance of an anesthetist.

(ii) An anesthetist receiving medical direction who is employed by, or under contract to—

(A) A physician;

(B) A hospital; or

(C) An ambulatory surgical center.

(iii) An anesthetist who furnishes anesthesia services or related care without medical direction.

(3) In determining reasonable charges for anesthesia services furnished by a physician, the carrier allows for the following time units, beginning from the time the physician or anesthetist begins to prepare the patient for induction of anesthesia, and ending when the patient may be safely placed under postoperative supervision and the physician or anesthetist is no longer needed in attendance:

(i) For services that are performed by a physician, including cases in which both an anesthetist and the physician furnish services to a single patient, no more than one time unit for each 15 minute interval, or fraction thereof.

(ii) For services that are medically directed by a physician, no more than one time unit for each 30 minute interval, or fraction thereof.

(b) *Services furnished by a physician.* The carrier determines the amount of payment for physician anesthesia services under the reasonable charge rules for physician services in providers set forth at § 405.551 and the general reasonable charge rules set forth at §§ 405.501 through 405.508.

(c) *Services furnished by anesthetists on or after January 1, 1989*—(1) *Amount of payment.* For services furnished on or after January 1, 1989, the carrier determines the amount of payment for anesthetist services based on the least of the—

(i) Actual charge;

(ii) Prevailing charge that would be recognized if the service had been performed by a physician; or

(iii) Fee schedule amount, which is the product of the applicable conversion factor, as described in paragraphs (c)(2) through (c)(6) of this section, and the sum of the base and time units per case. For services involving an anesthetist, the carrier allows no more than one time unit for each 15 minute interval, or fraction thereof.

(2) *Fee schedules.* HCFA establishes separate State-level fee schedules for—

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(i) Anesthetists whose services are medically directed; and

(ii) Anesthetists whose services are not medically directed.

(3) *Calculation of conversion factors for anesthetists who are medically directed*—(i) *Hospital-employed anesthetists.* HCFA computes State-specific base salary amounts for medically-directed hospital-employed anesthetists from the 1986 American Association of Nurse Anesthetists annual membership survey as follows:

(A) The base salary amounts are adjusted to reflect an allowance for fringe benefits and an allowance for billing costs, and updated by an inflation factor to 1989.

(B) The adjusted amounts are divided by the product of the estimated national average number of anesthesia cases furnished by a full-time medically-directed hospital-employed anesthetist and the estimated average number of base and time units per anesthesia case.

(C) HCFA computes State-specific amounts for malpractice expenses and adds those amounts to the State-specific adjusted amounts derived in paragraph (c)(3)(i)(B) of this section. The resultant amounts are considered to be State-specific conversion factors for medically-directed hospital-employed anesthetists.

(ii) *Physician-employed anesthetists.* HCFA computes State-specific conversion factors for medically-directed physician-employed anesthetists as follows:

(A) Multiply the locality prevailing charge conversion factor, as adjusted by the Medicare economic index, for anesthesia services of participating physicians by the average time per anesthesia case divided by 30 minutes. (If there are multiple localities within a State, or more than one carrier serves a State, a single, State-level weighted average participating physician prevailing charge is applied.)

(B) Divide the resulting amount by the average number of base and time units per anesthesia case involving a physician who medically directs and employs the CRNA.

(iii) *Calculation of medically-directed conversion factors.*

The applicable State-specific conversion factors for anesthetists who are medically directed are based on a blend of 58 percent of the hospital-employed conversion factor and 42 percent of the physician-employed conversion factor calculated under paragraphs (c)(3)(i) and (c)(3)(ii) of this section, respectively.

(4) *Calculation of conversion factors for anesthetists who are not medically directed.*

The State-specific conversion factors for anesthetists who are not medically directed are derived from the State-specific medically-directed hospital-employed anesthetist conversion factors, as calculated in paragraph (c)(3)(i) of this section, multiplied by 137.5 percent.

(5) *Updating the fee schedules.*

For services furnished in calendar years after 1989, the fee schedules applicable to each year are the previous year's schedule updated by the percentage increase in the Medicare economic index for that year.

(6) *Adjusting the fee schedules.*

The fee schedules may be adjusted for services furnished on or after January 1, 1990 to reflect data that are more accurate than the data used to construct the initial fee schedules.

(7) *Recipients of fee schedule payments.*

Fee schedule payments are made to the anesthetist who furnishes the service, or to a hospital, physician, or ambulatory surgical center with which the anesthetist has an employment or contractual arrangement that provides for these payments to be made.

II. Part 410 is amended as follows:

PART 410—SUPPLEMENTARY MEDICAL INSURANCE (SMI) BENEFITS

A. The authority citation for Part 410 continues to read as follows:

Authority: Secs. 1102, 1832, 1833, 1835, 1861(r), (s) and (cc), 1871, and 1881 of the Social Security Act (42 U.S.C. 1302, 1395k, 1395l, 1395n, 1395x(r), (s) and (cc), 1395hh, and 1395rr).

B. In § 410.10, the introductory text is republished, paragraph (o) is redesignated as paragraph (p), and a new paragraph (o) is added to read as follows:

§ 410.10 Medical and other health services: Includes services.

Subject to the conditions and limitations specified in § 410.12, "medical and other health services" includes the following services:

* * * * *

(o) Services of a certified registered nurse anesthetist or an anesthesiologist assistant.

* * * * *

C. In § 410.12, the introductory text of paragraph (a) is republished and paragraph (a)(2) is revised to read as follows:

§ 410.12 Medical and other health services: Basic conditions and limitations.

(a) *Basic conditions.* The medical and other health services specified in § 410.10 are covered by Medicare Part B only if they are not excluded under Subpart C of Part 405 of this chapter, and if they meet the following conditions:

* * * * *

(2) *By whom the services must be furnished.* The services must be furnished by a facility or other entity as specified in §§ 410.14 through 410.66.

* * * * *

D. A new § 410.66 is added to read as follows:

§ 410.66 Services of a certified registered nurse anesthetist or an anesthesiologist assistant: Basic rule and definitions.

(a) *Basic rule.*

Medicare Part B pays for anesthesia services and related care furnished by a certified registered nurse anesthetist or an anesthesiologist assistant who is legally authorized to perform the services by the State in which the services are furnished.

(b) *Definitions.*

For purposes of this part—

"Anesthesiologist assistant" means a person who—

(1) Is permitted by State law to administer anesthesia; and

(2) Has successfully completed a six-year program for anesthesiologist assistants of which two years consist of specialized academic and clinical training in anesthesia.

"Anesthetist" includes both an anesthesiologist assistant and a certified registered nurse anesthetist.

"Certified registered nurse anesthetist" means a registered nurse who is licensed by the State in which the nurse practices as a professional registered nurse and meets any other licensure requirements the State imposes with respect to nonphysician anesthetists, and either—

(1) Is currently certified by either the Council on Certification of Nurse Anesthetists or the Council on Recertification of Nurse Anesthetists; or

(2) Has graduated within the past 18 months from a nurse anesthesia program that meets the standards of the Council on Accreditation of Nurse Anesthesia Educational Programs and is awaiting initial certification.

III. Part 412 is amended as follows:

PART 412—PROSPECTIVE PAYMENT SYSTEM FOR INPATIENT HOSPITAL SERVICES

A. the authority citation for Part 412 continues to read as follows:

Authority: Secs. 1102, 1122, 1815(e), 1871, and 1886 of the Social Security Act (42 U.S.C. 1302, 1320a–1, 1395g(e), 1395hh, and 1395ww).

B. In § 412.1, paragraph (a) is revised to read as follows:

§ 412.1 Scope of part.

(a) *Purpose.* This part implements section 1886(d) of the Act by establishing a prospective payment system for inpatient hospital services furnished to Medicare beneficiaries in cost reporting periods beginning on or after October 1, 1983. Under the prospective payment system, payment for the operating costs of inpatient hospital services furnished by hospitals subject to the system (generally, short-term, acute-care hospitals) is made on the basis of prospectively determined rates and applied on a per discharge basis. Payment for other costs related to inpatient hospital services (capital-related costs, kidney acquisition costs incurred by hospitals with approved renal transplantation centers, direct costs of medical education, and the costs of qualified nonphysician anesthetists' services, as described in § 412.113(c)) is made on a reasonable cost basis. Additional payments are made for outlier cases, bad debts, and indirect medical education costs. Under the prospective payment system, a hospital may keep the difference between its prospective payment rate and its operating costs incurred in furnishing inpatient services, and is at risk for operating costs that exceed its payment rate.

* * * * *

C. In § 412.2, the introductory text of paragraph (d) is republished and paragraph (d)(5) is revised to read as follows:

§ 412.2 Basis of payment.

* * * * *

(d) *Excluded costs.* The following inpatient hospital costs are excluded from the prospective payment amounts and paid for on a reasonable cost basis:

* * * * *

(5) The costs of qualified nonphysician anesthetists' services, as described in § 412.113(c).

* * * * *

D. In § 412.71, the introductory text of paragraph (b) is republished and paragraph (b)(8) is revised to read as follows:

§ 412.71 Determination of base year costs

* * * * *

(b) *Modifications to base-year costs.* Prior to determining the hospital-specific rate, the intermediary will adjust the hospital's estimated base-year in patient operating costs, as necessary, to include malpractice insurance costs as described in § 413.55 of this chapter, and exclude the following:

* * * * *

(8) The costs of qualified nonphysician anesthetists' services, as described in § 412.113(c).

* * * * *

E. In § 412.113, paragraph (c) is revised to read as follows:

§ 412.113 Payments determined on a reasonable cost basis.

* * * * *

(c)(1) *Anesthesia services of hospital employed nonphysician anesthetists.* For cost reporting periods beginning on or after October 1, 1984 through any part of a cost reporting period occurring before January 1, 1989, payment is determined on a reasonable cost basis for anesthesia services provided in the hospital by qualified nonphysician anesthetists (certified registered nurse anesthetists and anesthesiology assistants) employed by the hospital or obtained under arrangements.

(2)(i) For cost reporting periods, or any part of a cost reporting period, beginning on or after January 1, 1989 through any part of a cost reporting period occurring before January 1, 1992, payment is determined on a reasonable cost basis for anesthesia services provided in a hospital by qualified nonphysician anesthetists employed by the hospital or obtained under arrangement, if the hospital demonstrates to its intermediary prior to April 1, 1989 that it meets the following criteria:

(A) The hospital is located in a rural area as defined in § 412.62(f) and is not deemed to be located in an urban area under the provisions of § 412.64(b)(3).

(B) The hospital must have employed or contracted with a qualified nonphysician anesthetist, as defined in § 410.66 of this chapter, as of January 1, 1988 to perform anesthesia services in that hospital. The hospital may employ or contract with more than one anesthetist; however, the total number of hours of service furnished by the anesthetists may not exceed 2,080 hours per year.

(C) The hospital must provide data for its entire patient population to demonstrate that, during calendar year 1987, its volume of surgical procedures (inpatient and outpatient) requiring anesthesia services did not exceed 250 procedures. For purposes of this section, a "surgical procedure requiring anesthesia services" means a surgical procedure in which the anesthesia is administered and monitored by a qualified nonphysician anesthetist, a physician other than the primary surgeon, or an intern or resident.

(D) Each qualified nonphysician anesthetist employed by or under contract with the hospital has agreed in writing not to bill on a reasonable charge basis for his or her patient care in that hospital.

(ii) To maintain its eligibility for reasonable cost reimbursement under paragraph (c)(2)(i) of this section in calendar years 1990 and 1991, a qualified hospital must demonstrate prior to January 1 of each respective year that for the prior year its volume of surgical procedures requiring anesthesia service did not exceed 250 procedures.

* * * * *

IV. Part 413 is amended as follows:

PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICES

A. The authority citation for Part 413 continues to read as follows:

Authority: Secs. 1102, 1122, 1814(b), 1815, 1833(a), 1861(v), 1871, 1881, and 1886 of the Social Security Act as amended (42 U.S.C. 1302, 1320a–1, 1395f(b), 1395g, 1395l(a), 1395x(v), 1395hh, 1395rr, and 1395ww).

B. In § 413.1, paragraph (b) is amended by changing the reference in the first sentence from "paragraphs (c) through (e)" to "paragraphs (c) through (f)" and a new paragraph (f) is added to read as follows:

§ 413.1 Introduction.

* * * * *

(f) *Services of qualified nonphysician anesthetists.* For cost reporting periods, or any part of a cost reporting period, beginning on or after January 1, 1989, costs incurred for the services of qualified nonphysician anesthetists are not reimbursed on a reasonable cost basis unless the provisions of § 412.113(c)(2) of this chapter apply. These services are paid under the special rules set forth in § 405.553 of this chapter.

C. In § 413.80, paragraph (a) is revised and a new paragraph (h) is added to read as follows:

§ 413.80 Bad debts, charity, and courtesy allowances.

(a) *Principle.* Bad debts, charity, and courtesy allowances are deductions from revenue and are not to be included in allowable cost; however, except for anesthetists' services described under paragraph (h) of this section, bad debts attributable to the deductibles and

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coinsurance amounts are reimbursable under the program.

• • • • •

(h) *Exception.*

Bad debts arising from services for anesthetists paid under a fee schedule, as described in § 405.553 of this chapter, are not reimbursable under the program.

V. Part 482 is amended as follows:

PART 482—CONDITIONS OF PARTICIPATION FOR HOSPITALS

A. The authority citation for Part 482 continues to read as follows:

Authority: Secs. 1102, 1814(a)(6), 1861 (e), (f), (k), (r), (v)(1)(G), and (z), 1864, 1871, 1883, 1886, 1902(a)(30), and 1905(a) of the Social Security Act (42 U.S.C. 1302, 1395f(a)(6), 1395x (e), (f), (k), (r), (v)(1)(g), and (z), 1395aa, 1395hh, 1395tt, 1395ww, 1396a(a)(30), and 1396d(a)).

B. In § 482.52, the introductory text of paragraph (a) is republished and paragraphs (a)(4) and (a)(5) are revised to read as follows:

§ 482.52 Condition of participation: Anesthesia services.

• • • • •

(a) *Standard: Organization and staffing.* The organization of anesthesia services must be appropriate to the scope of the services offered. Anesthesia must be administered by only—

• • • • •

(4) A certified registered nurse anesthetist (CRNA), as defined in § 410.69(b) of this chapter, who is under the supervision of the operating practitioner or of an anesthesiologist who is immediately available if needed; or

(5) An anesthesiology assistant, as defined in § 410.69(b) of this chapter, who is under the direct supervision of an anesthesiologist who is physically present.

• • • • •

(Catalog of Federal Domestic Assistance Programs No. 13.773, Medicare—Hospital Insurance; and No. 13.774, Medicare—Supplementary Medical Insurance)

Dated: January 9, 1989.

William L. Roper,

Administrator, Health Care Financing Administration.

Approved: January 17, 1989.

Otis R. Bowen,

Secretary.

Appendix A—Conversion Factors for Hospital-Based Medically-Directed CRNAs

[In dollars]

Alaska	13.48
Alabama	11.30
Arizona	10.17
Arkansas	9.84
California	12.18
Colorado	9.67
Connecticut	10.82
Delaware	9.62
District of Columbia	9.02
Florida	11.14
Georgia	10.89
Hawaii	10.51
Idaho	7.34
Illinois	12.34
Indiana	11.57
Iowa	10.30
Kansas	9.26
Kentucky	9.96
Louisiana	10.86
Maine	8.61
Maryland	9.42
Massachusetts	9.20
Michigan	11.28
Minnesota	9.57
Mississippi	(1)
Missouri	11.80
Montana	12.12
Nebraska	10.97
Nevada	12.08
New Hampshire	9.62
New Jersey	10.00
New Mexico	9.33
New York	10.46
North Carolina	9.29
North Dakota	9.88
Ohio	11.38
Oklahoma	9.58
Oregon	10.15
Pennsylvania	9.59
Rhode Island	9.90
South Carolina	11.05
South Dakota	11.87
Tennessee	12.06
Texas	10.72
Utah	9.62
Virginia	8.23
Vermont	9.77
Washington	9.29
West Virginia	8.23
Wisconsin	13.77
Wyoming	

[1] The carrier for Mississippi uses a relative value guide for anesthesia services that is significantly different from other carrier relative value guides. Its base unit values are significantly higher and its prevailing charge conversion factor significantly lower than for other carriers. Because of this, we are unable to furnish a meaningful CRNA conversion factor for Mississippi. We will provide a blended rate in the final rule based on the premise that all carriers, including the Mississippi carrier, will have calculated revised conversion factors to be used under the uniform relative value guide for pricing anesthesia services furnished on or after January 1, 1989.

Appendix B—Conversion Factors for Physician-Employed Medically-Directed CRNAs

[In dollars] [1]

Alaska	6.34
Alabama	3.59
Arizona	5.28
Arkansas	4.10
California	6.59
Colorado	4.92
Connecticut	5.09
Delaware	4.19
District of Columbia	5.18
Florida	6.57
Georgia	5.23
Hawaii	6.73
Idaho	4.42
Illinois	6.20
Indiana	4.26
Iowa	4.54
Kansas	4.12
Kentucky	4.65
Louisiana	4.03
Maine	4.08
Maryland	5.29
Massachusetts	4.92
Michigan	4.70
Minnesota	4.26
Mississippi	3.00
Missouri	4.58
Montana	5.98
Nebraska	5.04
Nevada	7.12
New Hampshire	3.76
New Jersey	5.82
New Mexico	5.59
New York	6.07
North Carolina	4.16
North Dakota	5.95
Ohio	5.06
Oklahoma	3.87
Oregon	4.42
Pennsylvania	4.95
Rhode Island	3.87
South Carolina	4.40
South Dakota	6.01
Tennessee	4.42
Texas	6.04
Utah	5.65
Virginia	4.31
Vermont	3.76
Washington	5.05
West Virginia	3.70
Wisconsin	4.99
Wyoming	4.42

[1] This conversion factor is applicable in those cases in which an anesthesiologist employs and medically directs a CRNA. The conversion factor was derived as follows: (1) We multiplied the 1989 State-level prevailing charge conversion factor for participating anesthesiologists by the ratio of 101/30 to obtain the average CRNA payment per case. The average time for an anesthesia procedure for a Medicare beneficiary is 101 minutes. Under the current system, the estimated payment for the physician employed CRNA service is one time unit per 30 minutes. (2) We divided the average payment per case by the average number of anesthesia units per Medicare case is 12.1 units. (The average of 101 minutes and 12.1 units for a Medicare anesthesia procedure were obtained from the CHER study, as discussed in the preamble to this document.)

An example of this calculation is provided for Alabama. The State level 1989 prevailing charge conversion factor for participating anesthesiologists in Alabama is $12.90. The estimated 1989 conversion factor for CRNA services would be:

$$(\$12.90 \times \frac{101}{30}) - 12.1 = \$3.59 \text{ per unit}$$

In States with more than one prevailing charge locality for anesthesia services or with multiple carriers, we computed the CRNA conversion factor by calculating weighted average State-level prevailing charge conversion factors. These conversion factors are based on the carriers' current base unit systems which vary. Section 4048 of Pub. L. 100-203 requires that HCFA develop a uniform relative value guide to pay for anesthesia services furnished on or after January 1, 1989. Expenditures under the uniform relative value guide must be no different than expenditures under the previous systems. To obtain this result, carrier prevailing charge conversion factors must be adjusted. In the final rule, we will advise the carriers how to calculate the conversion factors for medically-directed CRNAs based on the adjusted prevailing charge conversion factors.

	CRNA payment		Medical direction payment		Combined payment
Current system [1]	3.4×$20=$68.00	+	8.7×$20=$174.00	=	12.1×$20=$242.00
Proposed schedule [2] (CRNA's)	12.1×$9.90=$119.79	+	$242.00-$119.79=$122.21	=	Same as above $242.00

[1] This is the combined and component pieces of the anesthesia payment in which an anesthesiologist employs and medically directs CRNAs. Under the current system, the average allowable anesthesia payment is estimated at $242.00 or the product of 12.1 units per case multiplied by the national weighted average conversion factor of $20. This amount can be separated into two components, a CRNA payment and a medical direction payment. The CRNA payment is based on the fact that the anesthesiologist receives two time units per hour and the average time per Medicare case is 101 minutes. The medical direction payment represents the difference between the combined payment and the CRNA payment.

[2] This is the combined and component pieces of the anesthesia payment under the system if only hospital data were used to establish the CRNA fee schedule. The first column of row 2 shows the CRNA fee schedule payment: 12.1 units represent the average base and time units per Medicare anesthesia case involving a CRNA; and $9.90 is the national weighted average computed from the rates in Appendix A. The second column shows the resultant medical direction payment. The medical direction payment decreases from $174.00 under the current system to $122.21 under the proposed system, a 30 percent reduction. Thus, if only hospital data were used to establish the CRNA fee schedule, medical direction payments to physicians who employ CRNAs would be reduced 30 percent. If the payment reduction were applied to all anesthesiologists who medically direct CRNAs, the reduction would be 14 percent.

Data from the American Society of Anesthesiologists and the Center for Health Economic Research's Anesthesia Practice Survey show that the percentage of physicians who medically direct their employee CRNAs is 48 percent and the percentage of physicians who medically direct other CRNAs is 52 percent. We assume that each group of physicians furnishes the same volume of cases. The reduction of 14 percent is derived from spreading the 30 percent reduction over all medically-directed cases as follows:

$$\frac{(.30)(48)}{(52+48)} = 14 \text{ percent.}$$

Appendix D—Blended Conversion Factors for Medically-Directed CRNAs

[In dollars]

Alaska	10.48
Alabama	8.06
Arizona	8.11
Arkansas	7.43
California	9.83
Colorado	7.67
Connecticut	8.30
Delaware	7.34
District of Columbia	7.41
Florida	9.22
Georgia	8.38
Hawaii	8.92
Idaho	6.11
Illinois	9.76
Indiana	8.50
Iowa	7.88
Kansas	7.11
Kentucky	7.73
Louisiana	7.99
Maine	6.71
Maryland	7.59
Massachusetts	7.40
Michigan	8.52
Minnesota	7.34
Mississippi	(1)
Missouri	8.77
Montana	9.54
Nebraska	8.48
Nevada	10.00
New Hampshire	7.16
New Jersey	8.25
New Mexico	7.76
New York	8.62
North Carolina	7.14
North Dakota	8.29
Ohio	8.83
Oklahoma	7.16
Oregon	7.74
Pennsylvania	7.06
Rhode Island	7.37
South Carolina	7.41
South Dakota	8.93
Tennessee	8.74
Texas	9.11
Utah	8.56
Virginia	7.39
Vermont	8.35
Washington	7.79
West Virginia	6.94
Wisconsin	7.26
Wyoming	9.64

[1] The carrier for Mississippi uses a relative value guide for anesthesia services that is significantly different from other carrier relative value guides. Its base unit values are significantly higher and its prevailing charge conversion factor significantly lower than for other carriers. Because of this, we are unable to furnish a meaningful CRNA conversion factors for Mississippi. We will provide a blended rate in the final rule based on the premise that all carriers, including the Mississippi carrier, will have calculated revised conversion factors to be used under the uniform relative value guide for pricing anesthesia services furnished on or after January 1, 1989.

Appendix E—Conversion Factors for Nonmedically-Directed CRNAs

[In dollars]

Alaska	18.54
Alabama	15.53
Arizona	13.99
Arkansas	13.53
California	16.75
Colorado	13.30
Connecticut	14.60
Delaware	13.23
District of Columbia	12.41
Florida	15.32
Georgia	14.69
Hawaii	14.45
Idaho	10.09
Illinois	16.97
Indiana	15.90
Iowa	14.16
Kansas	12.76
Kentucky	13.70
Louisiana	14.93
Maine	11.84
Maryland	12.95
Massachusetts	12.65
Michigan	15.52
Minnesota	13.16
Mississippi	(1)
Missouri	16.23
Montana	16.67
Nebraska	15.08
Nevada	16.51
New Hampshire	12.23
New Jersey	13.76
New Mexico	12.83
New York	14.39
North Carolina	12.76
North Dakota	13.72
Ohio	15.89
Oklahoma	13.18
Oregon	13.96
Pennsylvania	11.81
Rhode Island	13.62
South Carolina	13.18
South Dakota	15.18
Tennessee	16.32
Texas	16.58
Utah	14.74
Virginia	13.23
Vermont	11.32
Washington	13.43
West Virginia	12.77
Wisconsin	12.69
Wyoming	16.93

[1] The carrier for Mississippi uses a relative value guide for anesthesia services that is significantly different from other carrier relative value guides. Its base unit values are significantly higher and its prevailing charge conversion factor significantly lower than for other carriers. Because of this, we are unable to furnish a meaningful CRNA conversion factors for Mississippi. We will provide a blended rate in the final rule based on the premise that all carriers, including the Mississippi carrier, will have calculated revised conversion factors to be used under the uniform relative value guide for pricing anesthesia services furnished on or after January 1, 1989.

[FR Doc. 89-1693 Filed 1-25-89; 8:45 am]

BILLING CODE 4120-01-M

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42 CFR Part 413

[BERC-601-P]

Medicare Program; Payment for Outpatient Surgery at Eye Specialty Hospitals and Eye and Ear Specialty Hospitals

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: In accordance with section 4068(a) of the Omnibus Reconciliation Act of 1987, this proposed rule would revise the payment provisions concerning outpatient hospital services furnished in connection with ambulatory surgical procedures for certain qualified eye hospitals and eye and ear hospitals. We are proposing that, for cost reporting periods beginning on or after October 1, 1988 and before October 1, 1990, the blended payment amount applicable to these hospitals would remain at 75 percent of the hospital-specific amount and 25 percent of the ambulatory surgical center amount.

DATE: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5:00 p.m. on March 27, 1989.

ADDRESS: Mail comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BERC-601-P, P.O. Box 35676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309-G, Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, DC.

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

In commenting, please refer to file code BERC-601-P. Comments received timely will be available for public inspection as they are received, generally beginning approximately three weeks after publication of this document, in Room 309-G of the Department's offices at 200 Independence Ave., SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (phone: 202-245-7890).

FOR FURTHER INFORMATION CONTACT: Linda McKenna, (301) 966-4530.

SUPPLEMENTARY INFORMATION:

I. Background

Section 9343(a) of the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99-509), enacted on October 21, 1986, set forth a new methodology to be used in determining Medicare payment for facility services furnished in a hospital on an outpatient basis in connection with covered ambulatory surgical center (ASC) procedures that are specified by the Secretary in accordance with section 1833(i)(1)(A) of the Social Security Act (the Act) and 42 CFR 416.65. Section 9343(a) of Pub. L. 99-509 amended section 1833(a)(4) of the Act and added a new section 1833(i)(3) to the Act to provide that, for hospital cost reporting periods beginning on or after October 1, 1987, payment for outpatient facility services in the aggregate is to be based on a comparison between two amounts. The payment is the lesser of the following:

- The amount for the services that would be paid to the hospital under section 1833(a)(2)(B) of the Act (that is, the lower of the hospital's reasonable costs or customary charges for the services, reduced by the applicable deductible and coinsurance amounts).
- An amount based on a blend of—

—The amount that would be paid to the hospital for the services under section 1833(a)(2)(B) of the Act (referred to below as the hospital-specific amount); and

—The amount that would be paid to a freestanding ASC for the same procedure in the same geographic area, in accordance with section 1833(i)(2)(A) of the Act, which is equal to 80 percent of the standard overhead amount reduced by the applicable deductible amount (referred to below as the ASC payment amount).

Section 1833(i)(3)(B) of the Act, as added by section 9343(a) of Pub. L. 99-509, provided that for cost reporting periods beginning on or after October 1, 1987 but before October 1, 1988, the blended amount is based on 75 percent of the hospital-specific amount and 25 percent of the ASC payment amount attributable to the procedure. For cost reporting periods beginning on or after October 1, 1988, the blended payment amount is based on 50 percent of the hospital-specific amount and 50 percent of the ASC payment amount.

We published a final rule in the Federal Register on October 1, 1987 (52 FR 36765) to implement the revised payment methodology for hospital outpatient ASC procedures. The regulations implementing this policy are set forth at 42 CFR 413.118.

II. New Legislation

Section 4068(a) of the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100-203), enacted on December 22, 1987, amended section 1833(i)(3)(B)(ii) of the Act to provide certain hospitals a two-year extension of the blended payment amount applicable for cost reporting periods beginning in Federal fiscal year (FY) 1988. The extenson of that blended payment amount (that is, 75 percent of the hospital-specific amount and 25 percent of the ASC payment amount) applies to eye hospitals and eye and ear hospitals that meet certain criteria discussed below and is effective for cost reporting periods beginning on or after October 1, 1988 and before October 1, 1990.

Section 4068(a)(2) of Pub. L. 100-203 amended section 1833(i)(3)(B)(ii) of the Act to provide that a hospital may make an application to the Secretary for an extension of the blended payment amount (75 percent of the hospital-specific amount and 25 percent of the ASC payment amount) if it demonstrates that it—

- Specializes in eye services, or eye and ear services, as determined by the Secretary;
- Receives more than 30 percent of its total revenues from outpatient services; and
- Was an eye specialty hospital or eye and ear specialty hospital on October 1, 1987.

III. Provisions of This Proposed Rule

To qualify as an eye specialty hospital or an eye and ear specialty hospital under section 4068(a) of Pub. L. 100-203, a hospital, in addition to making an application as discussed below, would have to meet certain qualifying criteria.

One of the criteria that a hospital would have to meet to qualify for the extension of the FY 1988 blended payment amount (that is, a blended amount based on 75 percent of the hospital-specific amount and 25 percent of the ASC payment amount) is that it must specialize in eye services or eye and ear services. We considered using outpatient data for determining whether a hospital specializes in providing eye services or eye and ear services. However, we believe that the types of services that a hospital provides to its inpatients represent a more valid and reliable picture of the types of services it generally provides, including services to its outpatients. Since inpatient services generally comprise a larger part of a hospital's total operation than outpatient services, we believe that the use of inpatient data would be a more accurate identifier of a hospital's specialty. In addition, we believe that the completeness and quality of the diagnostic information for inpatient services is far superior to that for outpatient care. Furthermore, we reiterate the belief that the inpatient area itself is the best representation of a hospital's specialty area.

Under the Medicare program, payment for most inpatient hospital services is made at a predetermined specific rate for each hospital discharge. All discharges are classified according to a list of diagnosis-related groups (DRGs). By examining the DRGs into which a hospital's Medicare discharges are classified, we can ascertain the type of inpatient hospital services the hospital furnishes. DRGs 30 through 48 relate to diseases and disorders of the eye, and DRGs 49 through 74 relate to diseases and disorders of the ear, nose, and throat. We believe that a hospital that has more than 60 percent of its Medicare discharges classified into the DRGs relating to diseases and disorders of the eye, or ear, nose, and throat, clearly specializes in eye procedures or eye and ear procedures and thus could qualify as an eye specialty hospital or an eye and ear specialty hospital for purposes of section 1833(i)(3)(B)(ii) of the Act.

The second criterion that a hospital would have to meet to qualify for the extension of the FY 1988 blended payment amount is that it receives more than 30 percent of its total revenues from outpatient services. For purposes of these provisions, we would consider revenues to be a hospital's gross charges as defined for the purpose of Medicare reimbursement. That is, gross charges are the regular rates established by a provider for services furnished to beneficiaries and other charge-paying patients. We believe that charges should be related consistently to the cost of the services and applied uniformly to all patients—inpatients and outpatients.

The third criterion would be that a hospital must have been an eye specialty hospital or an eye and ear specialty hospital on October 1, 1987. Therefore, we would use the data available for a hospital's cost reporting period beginning on or after October 1, 1986 and before October 1, 1987 to determine if the hospital would meet the necessary criteria. Whereas the statute is silent with respect to the period during which the hospital's outpatient revenues must represent 30 percent of its total revenues, section 1833(i)(3)(B)(ii) of the Act requires that a hospital demonstrate it was an eye specialty hospital or an eye and ear specialty hospital on October 1, 1987. Thus, we believe it is fully consistent and appropriate to apply the outpatient revenue test during the cost reporting period when the hospital's specialty is determined.

Hospitals seeking to qualify for the two-year extension of the FY 1988 blended payment rate under the criteria described above would be required to submit an application to the Secretary. We would require that a hospital submit its request in writing to its fiscal intermediary by [60 days from the date of publication] or the start of the hospital's cost reporting period beginning on or after October 1, 1988, whichever is later. As discussed above, in determining whether a hospital qualifies for an extension, the intermediary would use data available from cost reporting periods beginning on or after October 1, 1986 and before October 1, 1987. Upon completion of its determination, the intermediary would notify the hospital and the appropriate HCFA regional office of its determination.

A hospital that meets the three criteria, and has its application approved, would be eligible for an extension of the FY 1988 blended payment amount under § 413.118 for cost reporting periods beginning on or after October 1, 1988 and before October 1, 1990. We are proposing that each hospital that qualifies for the extension would have the extension granted retroactive to its first cost reporting period beginning on or after October 1, 1988. The blended payment amount would be equal to the sum of 75 percent of the hospital-specific amount and 25 percent of the ASC payment amount. For cost reporting periods beginning on or after October 1, 1990, the blended payment amount for eye and eye and ear hospitals would be equal to the sum of 50 percent of the hospital-specific amount and 50 percent of the ASC payment amount (which is the blended payment amount applicable to all hospitals not eligible for the extension effective with cost reporting periods beginning on or after October 1, 1988). We note that hospitals that qualify for the extension would continue to be subject to the payment principle in § 413.118(c) that provides that the aggregate amount of payments for facility services that are related to ASC procedures furnished by a hospital on an outpatient basis is equal to the lesser of—

- The hospital's reasonable costs or customary charges; or
- The blended payment amount.

We are proposing to amend § 413.118(d) to implement the special payment provisions for eye specialty hospitals and eye and ear specialty hospitals required by section 4068(a) of Pub. L. 100-203. We would also revise an incorrect statutory citation in § 413.118(a) so that paragraph (a) correctly states that § 413.118 implements sections 1833(a)(4) and (i)(3) of the Act.

IV. Regulatory Impact Statement

A. Executive Order 12291

Executive Order 12291 (E.O. 12291) requires us to prepare and publish an initial regulatory impact analysis for any proposed rule that meets one of the E.O. criteria for a "major rule"; that is, that would be likely to result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This proposed rule would not meet the $100 million criterion nor do we believe that it would meet the other E.O. 12291 criteria. Therefore, this proposed rule is not a major rule under E.O. 12291, and an initial regulatory impact analysis is not required.

B. Regulatory Flexibility Act

We generally prepare an initial regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a proposed rule would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, all physicians are treated as small entities.

Section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a proposed rule may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital with fewer than 50 beds located outside of a Metropolitan Statistical Area.

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Based on the definition of specialty hospital set forth in this proposed rule, we have identified 15 hospitals that would qualify as either eye specialty hospitals or eye and ear specialty hospitals. Although the effects of the statute and this proposed rule may have a significant effect on those hospitals that qualify as specialty hospitals, we believe that the number of hospitals that would qualify represent a small fraction of all small rural hospitals and of all hospitals. Thus, because affected hospitals do not represent a substantial number either of all small rural hospitals or all hospitals, the Secretary certifies that a regulatory flexibility analysis and a analysis of the effects of this rule on small rural hospitals is not required.

V. Other Required Information

A. Paperwork Reduction Act

This proposed rule contains no information collection requirements; therefore, it does not come under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 through 3511).

B. Comments

Because of the large number of items of correspondence we normally receive on a proposed rule, we are not able to acknowledge or respond to them individually. However, in preparing the final rule, we will consider all comments that we receive by the date and time specified in the "Date" section of this preamble, and, we will respond to the comments in the preamble of that rule.

List of Subjects in 42 CFR Part 413

Health facilities, Kidney diseases, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 413 would be amended as set forth below:

PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICE

1. The authority citation for Part 413 is revised to read as follows:

Authority: Secs. 1102, 1122, 1814(b), 1815, 1833(a) and (i), 1861(v), 1871, 1881, and 1886 of the Social Security Act as amended (42 U.S.C. 1302, 1320a–1, 1395f(b), 1395g, 1395l(a) and (i), 1395x(v), 1395hh, 1395rr, and 1395ww).

2. In § 413.118, paragraph (a) is revised; the spelling of the word "date" in paragraph (c)(2) is corrected to read "data"; the spelling of the word "reasonble" in paragraph (d)(1)(i) is corrected to read "reasonable"; paragraph (d)(2) is revised; and a new paragraph (d)(3) is added to read as follows:

§ 413.118 Payment for facility services related to covered ASC surgical procedures performed in hospitals on an outpatient basis.

(a) *Basis and scope.* This section implements sections 1833(a)(4) and (i)(3) of the Act and establishes the method for determining Medicare payments for services related to covered ambulatory surgical center (ASC) procedures performed in a hospital on an outpatient basis. It does not apply to services furnished by an ASC operated by a hospital that has an agreement with HCFA to be paid in accordance with § 416.30 of this chapter. (For regulations governing ASCs see Part 416 of this chapter.)

* * * * *

(d) *Blended payment amount.* * * *

(2) Except as provided in paragraph (d)(3) of this section, for cost reporting periods beginning on or after October 1, 1988, the blended payment amount is equal to 50 percent of the hospital-specific amount and 50 percent of the ASC payment amount.

(3) For cost reporting periods beginning on or after October 1, 1988 and before October 1, 1990, the blended payment amount is equal to 75 percent of the hospital-specific amount and 25 percent of the ASC payment amount for a hospital that makes an application to its fiscal intermediary and meets the following requirements:

(i) More than 60 percent of the hospital's inpatient hospital discharges, as described in § 412.60 of this chapter, occurring during its cost reporting period beginning in Federal fiscal year 1987, are classified in diagnosis-related groups 36 through 74.

(ii) During its cost reporting period beginning in Federal fiscal year 1987, more than 30 percent of the hospital's total revenues is from outpatient services.

* * * * *

(Catalog of Domestic Assistance Programs No. 13.773, Medicare-Hospital Insurance; and No. 13.774, Medicare-Supplementary Medical Insurance)

Dated: October 4, 1988.

William L. Roper,

Administrator, Health Care Financing Administration.

Approved: December 6, 1988.

Otis R. Bowen,

Secretary.

[FR Doc. 89–1694 Filed 1–25–89; 8:45 am]

BILLING CODE 4120–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 87–6; FCC 88–368]

Broadcast Services; Authorization of Use of Multiple Synchronous Transmitters by AM Broadcast Stations

AGENCY: Federal Communications Commission.

ACTION: Proposed rule termination.

SUMMARY: The Commission concludes that current transmitter synchronization technology is still in a developmental phase, and that it would therefore be inappropriate to issue proposed technical rules at this time. However, the Commission will continue to authorize individual AM broadcast stations to conduct synchronous operations on an experimental basis.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: James E. McNally, Jr., Mass Media Bureau, (202) 632–9660.

SUPPLEMENTARY INFORMATION: This is a summary of Commission's *Memorandum Opinion and Order*, MM Docket 87–6, adopted November 8, 1988 and released January 13, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this notice may also be purchased from the Commission's copy contractor, International Transcription Services, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Regulatory Flexibility. In accordance with section 605(b), an Initial Regulatory Flexibility Analysis is not required because no rule amendments are proposed herein. Consequently this action will not have a significant economic impact on a substantial number of small entities.

Summary of the Memorandum Opinion and Order

1. On March 3, 1987, the Commission released a *Notice of Inquiry ("Inquiry")* to solicit information relevant to the development of appropriate technical standards for the operation of synchronous AM transmitters (See 52 FR 8065, published March 16, 1987). Having carefully considered the comments filed in response to the *Inquiry*, the Commission concludes that current transmitter synchronization technology does not warrant continuing this proceeding to the rule making stage at this time.

2. Synchronous broadcasting is the use of the two or more geographically proximite transmitters broadcasting identical programming on the same radio frequency to enhance or extend the coverage of an AM station. Because the individual service areas of the transmitters will usually overlap to some extent, mutual interference will occur, but can be minimized by precisely synchronizing the carrier frequency or phase between them.

3. The *Inquiry* noted that conventional methods of enhancing or extending AM station service areas (e.g., increasing transmitter power, changing a directional antenna pattern, or relocating the station) were often precluded because of congestion in the AM service and difficulty in protecting signals of other stations. The use of supplemental, carefully placed, synchronous transmitters thus appears to offer an effective and economical way of improving service to geographic areas that are poorly served by conventional AM stations. However, the use of synchronous AM transmitters poses a number of complex technical and administrative questions. These include intra-system and inter-system interference criteria as well as various licensing and eligibility requirements. The Commission requested comment as to the most appropriate method for calculating the interference effects of multiple synchronous transmitters. The *Inquiry* encouraged testing to obtain data and practical test results based on actual field experience. The Commission also requested comment on appropriate power limitations for synchronous transmitters.

4. In addition to the technical issues, the Commission raised questions pertaining to potential licensing and eligibility requirements. For example, comment was requested on whether there should be limits on the extent to which coverage could be augmented, and if synchronous operation should be permitted only in those areas within a station's normaly protected contour. Additionally, the Commission sought comment on whether synchronous transmitters should be authorized only to the original "parent" AM station licensee, and whether synchronous transmitters should be counted for purposes of determining compliance with the multiple ownership "rule of twelve" and local ownership "duopoly" rules.

5. In response to the *Inquiry*, the Commission received twenty-two comments and one reply comment. Many of these comments expressed optimism over the potential benefits of synchronous transmitters, but others enumerated a variety of technical and operational difficulties. Comments on the effects of technical characteristics on intra-system signal protection ratios were expressed only in general terms. Experiences with program distribution equalization seemed encumbered with difficulties, and in several cases problems were encountered in achieving synchronization.

6. The matter of inter-system interference criteria received considerable comment. Generally, the parties recommended that synchronous transmitters be afforded protection similar to that provided the primary station, and that such transmitters not be used to extend the interference contour of the parent station. There was a consensus that synchronous transmitters should be regarded simply as extensions of the primary transmitter, and as such, comply with all current regulations.

7. Agreement was also noted in the matter of the maximum output power appropriate for synchronous transmitters, the general conclusion being that the maximum power of a synchronous transmitter should not exceed the power of the primary station. One commenter suggested that a minimum power of 100 watts be required and that the radiation efficiency of synchronous transmitter antenna systems meet a minimum standard. However, another disputed this view, arguing that allowing very low power levels would be consistent with the Commission's policy in conferring post-sunset authority. There was a consensus among the commenters on many of the various licensing and eligibility issue raised in the *Inquiry*. All agreed that synchronous transmitters should be authorized only to the licensees of the primary station, that they should not be counted for purposes of determinng compliance with multiple ownership regulations and that application of "duopoly" restrictions would be inappropriate, since synchronous transmitters were logical extensions of the primary station.

8. In sum, the *Inquiry* appears to have been useful in soliciting direction on eligibility and authorization issues associated with the use of synchronous transmitters, but less successful in resolving some of the technical issues. Therefore, the Commission concludes that while this proceeding has produced additional beneficial information concerning synchronous AM transmission, remaining technical uncertainties appear to preclude meaningful rule making activity at this time. The record indicates the use of a variety of different approaches to achieving transmitter synchronization, each with varying degrees of success. More importantly, no particular approach to synchronization emerged as being consistently efficacious, even in the absence of economic considerations. The record does mention several emerging technologies that may provide an economical and effective means of achieving phase synchronization. However, none of these have yet been tested in conjunction with AM broadcast operation. Because the applicability of the various current and new technologies to the unresolved technical issues related to AM transmitter synchronization may take some years to determine, it appears that the prudent course of action is to terminate this proceeding without action. Notwithstanding this action, the Commission will continue to issue experimental authorizations to AM station licensees who wish to investigate further the potential benefits of synchronous operation. Accordingly, pursuant to authority contained in Sections 4(i) and 303 of the Communications Act of 1934, as amended, it is ordered that MM Docket No. 87–6 is terminated.

Donna R. Searcy,

Secretary.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

[FR Doc. 89–1576 Filed 1–25–89; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 88–591, RM–6457]

Radio Broadcasting Services; Fruithurst, AL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Steven L. Gradick, seeking the allotment of FM Channel 274A to Fruithurst, Alabama, as that community's first local broadcast service. Reference coordinates for this proposal are 33–43–57 and 85–28–06.

DATES: Comments must be filed on or before March 13, 1989, and reply comments on or before March 28, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the

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petitioner, as follows: Steve Gradick, P.O. Box 32, 12 First Avenue West, Fruithurst, AL 36262.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88-591, adopted November 30, 1988, and released January 19, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-1823 Filed 1-25-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 88-593, RM-6490]

Radio Broadcasting Services; Wetumpka, AL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by William B. Grant, seeking the allotment of Channel 282A to Wetumpka, Alabama, as that community's first local FM broadcast service. Reference coordinates for this proposal are 32-36-40 and 86-11-56.

DATES: Comments must be filed on or before March 13, 1989, and reply comments on or before March 28, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: William B. Grant, Route 1, Box 400B, York, AL 36925.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88-593, adopted November 30, 1988, and released January 19, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-1825 Filed 1-25-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 88-592, RM-6491]

Radio Broadcasting Services; Dunsmuir, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Jay Stevens, seeking the allotment of FM Channel 261A to Dunsmuir, California, as that community's first local broadcast service. Reference coordinates for this proposal are 41-12-30 and 122-16-16.

DATES: Comments must be filed on or before March 13, 1989, and reply comments on or before March 28, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: William L. Zawila, Esq., 12550 Brookhurst Street, Suite A, Garden Grove, CA 92640.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88-592, adopted November 30, 1988, and released January 19, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-1822 Filed 1-25-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-594, RM-6394]

Radio Broadcasting Services; Othello, WA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by P-N-P Broadcasting, Inc., proposing the substitution of Channel 248C2 for channel 249A at Othello, Washington and modification of its construction permit for channel 249A to specify operation on the higher class channel. The substitution can be made consistent with the Commission's minimum spacing requirements from Othello's reference coordinates (46-9-36 and 119-10-00). Concurrence of the Canadian government must be obtained.

DATES: Comments must be filed on or before March 13, 1989, and reply comments on or before March 28, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Duane J. Polich, President, P-N-P Broadcasting, Inc., 9235 N.E. 175th, Bothell, WA 98011 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88-594, adopted November 30, 1988, and released January 19, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-1826 Filed 1-25-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 88-595, RM-6433]

Television Broadcasting Services; Casper and Sheridan, WY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Jessica Longston proposing the reallotment of vacant and unapplied for VHF Television Channel 9 to Casper, Wyoming from Sheridan, Wyoming. The allotment can be made to Casper in compliance with Section 73.610 of the Commission's Rules with a site restriction of 23.7 kilometers (14.7 miles) southwest of the city at coordinates 42-44-33 and 106-33-58. The proposal could provide Casper with its fifth commercial television service. This proposal is not affected by the freeze on television allotments, or applications therefor.

DATES: Comments must be filed on or before March 13, 1989, and reply comments on or before March 28, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Richard R. Zaragoza, Esquire, Fisher, Wayland, Cooper & Leader, 1255 23rd Street, NW., Suite 800, Washington, DC 20037 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88-595, adopted November 30, 1988, and released January 19, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-1824 Filed 1-25-89; 8:45 am]

BILLING CODE 6712-01-M

VOL 54 ISS 16 JA 26 1989 UMI

Notices

Federal Register
Vol. 54, No. 16
Thursday, January 26, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Summer Food Service Program for Children; Program Reimbursement for 1989

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This notice informs the public of the annual adjustments to the reimbursement rates for meals served in the Summer Food Service Program for Children. These adjustments reflect changes in the Consumer Price Index and are required by the statute governing the Program.

EFFECTIVE DATE: January 1, 1989.

FOR FURTHER INFORMATION CONTACT: Robert M. Eadie, Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, U.S. Department of Agriculture, Alexandria, Virginia 22302, (703) 756-3620.

SUPPLEMENTARY INFORMATION:

Classification

This notice has been reviewed under Executive Order 12291 and has been classified as *not major* because it will not have an annual effect on the economy of $100 million, will not cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions, and will not have significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601-612) and thus is exempt from the provisions of that Act. In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), no new recordkeeping or reporting requirements have been included that are subject to approval from the Office of Management and Budget.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.559 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials, (7 CFR Part 3015, Subpart V, and final rule related notice published at 48 FR 29114, June 24, 1983).

Definitions

The terms used in this Notice shall have the meaning ascribed to them in the regulations governing the Summer Food Service Program for Children (7 CFR Part 225).

Background

Pursuant to section 13 of the National School Lunch Act (42 U.S.C. 1761) and the regulations governing the Summer Food Service Program for Children (7 CFR Part 225), notice is hereby given of adjustments in Program payments for meals served to children participating in the Summer Food Service Program for Children during the 1989 Program. Adjustments are based on changes in the food away from home series of the Consumer Price Index for All Urban Consumers for the period November 1987 through November 1988. The new reimbursement rates in cents are as follows:

Maximum Per Meal Reimbursement Rates

Operating Costs:	
Breakfast	99.50
Lunch or Supper	178.50
Supplement	46.75
Administrative Costs:	
a. For meals served at rural or self-preparation sites:	
Breakfast	8.25
Lunch or Supper	17.00
Supplement	4.50
b. For meals served at other types of sites:	
Breakfast	7.25
Lunch or Supper	14.00
Supplement	3.75

The total amount of payments to State agencies for disbursement to Program sponsors will be based upon these Program reimbursement rates and the number of meals for each type served.

The above reimbursement rates, before being rounded-off to the nearest quarter-cent, represented a 4.30 per cent increase during 1988 (from 118.6 in November 1987 to 123.7 in November 1988) in the food away from home series of the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor. The change in the index values, as compared to index values published in the Notice for the preceding year, are due to the general rebasing of the Consumer Price Index by the Bureau of Labor Statistics.

Authority: Secs. 9, 13 and 14, National School Lunch Act, as amended (42 U.S.C. 1758, 1761 and 1762a).

Date: January 19, 1989.

Anna Kondratas,
Administrator, Food and Nutrition Service.

[FR Doc. 89-1879 Filed 1-25-89; 8:45 am]
BILLING CODE 3410-30-M

Forest Service

Pacific Northwest Region; Delegation of Authority

AGENCY: Forest Service, USDA.

ACTION: Notice of delegation.

SUMMARY: The Regional Forester of the Pacific Northwest Region of the Forest Service has delegated authority to Forest Supervisors to issue easement reservations to the Bureau of Land Management for construction and use of roads under authority of the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1761). The delegation is being issued in a Regional supplement to chapter 2730 of the Forest Service Manual, the principal source of internal direction to Forest Service line and staff officers.

EFFECTIVE DATE: This delegation was effective on January 9, 1989, the date the directive was signed.

FOR FURTHER INFORMATION CONTACT: Questions about the exercise of this delegation may be addressed to Eugene Fontenot, Leader Rights-of-Way, Pacific Northwest Region, Forest Service, USDA 319 SW Pine Street, P.O. Box 3623, Portland, Oregon 97208. Telephone: (503) 326-2921.

Dated: January 10, 1989.
Richard A. Ferraro,
Deputy Regional Forester.

[FR Doc. 89-1757 Filed 1-25-89; 8:45 am]
BILLING CODE 3410-11-M

Soil Conservation Service

Wheeling Creek Watershed, West Virginia and Pennsylvania

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of intent to prepare a supplemental environmental impact statement.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that a supplemental environmental impact statement is being prepared for the Wheeling Creek Watershed, Ohio and Marshall Counties, West Virginia and Greene and Washington Counties, Pennsylvania.

FOR FURTHER INFORMATION CONTACT: Rollin N. Swank, State Conservationist, Soil Conservation Service, 75 High Street, Room 301, Morgantown, West Virginia 26505, telephone (304) 291-4151.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the supplemental project may cause significant local, regional, or national impacts on the environment. As a result of these findings, Rollin N. Swank, State Conservationist, has determined that the preparation and review of a supplemental environmental impact statement are needed for this project.

Notice of Intent to Prepare a Supplemental Environmental Impact Statement

The supplemental project concerns a plan for flood prevention. Alternatives under consideration to reach these objectives include nonstructural measures, channel work, dikes, floodwalls, and dams.

A draft supplemental environmental impact statement will be prepared and circulated for review by agencies and the public. The Soil Conservation Service invites participation and consultation of agencies and individuals that have special expertise, legal jurisdiction, or interest in the preparation of the draft supplemental environmental impact statement. Meetings have been held with various resource agency personnel to determine the scope of the evaluation of the proposed action. Further information on the proposed action, or planned meetings may be obtained from Rollin N. Swank, State Conservationist, at the above address or telephone (304) 291-4151.

Date: January 18, 1989.
Rollin N. Swank,
State Conservationist.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)

[FR Doc. 89-1867 Filed 1-25-89; 8:45 am]
BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 423]

Resolution and Order Approving the Application of the City of Oakland, CA, for Subzone Status at the Mazda Facility in Benicia, CA

Pursuant to its authority under the Foreign-Trade Zones (FTZ) Act of June 18, 1934, as amended (19 U.S.C. 81e-81u), and the FTZ Board (the Board) Regulations (15 CFR Part 400), the Board adopts the following order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the City of Oakland, California, grantee of FTZ 56, filed with the Foreign-Trade Zones Board (the Board) on October 16, 1987, requesting special-purpose subzone status for the vehicle processing (non-manufacturing) facility of Mazda Motors of America (Central), Inc., in Benicia, California, adjacent to the San Francisco-Oakland Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant of Authority To Establish a Foreign-Trade Subzone at the Mazda Facility in Benicia, CA

Whereas, by an act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a-81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Board's regulations (15 CFR 400.304) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and where a significant public benefit will result;

Whereas, the City of Oakland, California, grantee of Foreign-Trade Zone No. 56, has made application (filed October 16, 1987, FTZ Docket 23-87, 52 FR 41314), in due and proper form to the Board for authority to establish a special-purpose subzone at the vehicle accessorization (non-manufacturing) facility of Mazda Motors of America (Central), Inc., in Benicia, California.

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations are satisfied;

Now, therefore, in accordance with the application filed October 16, 1987, the Board hereby authorizes the establishment of a subzone at the Mazda facility, designated on the records of the Board as Foreign-Trade Subzone No. 56A at the location mentioned above and more particularly described on the maps and drawings accompanying the application, said grant of authority being subject to the provisions and restrictions of the Act and regulations issued thereunder, to the same extent as though the same were fully set forth herein, and also to the following express conditions and limitations:

Activation of the subzone shall be commenced within a reasonable time from the date of issuance of the grant, and prior thereto the Grantee shall obtain all necessary permits from Federal, state, and municipal authorities.

Officers and employees of the United States shall have free and unrestricted access to and throughout the foreign-trade subzone in the performance of their official duties.

The grant shall not be construed to relieve the Grantee from liability for injury or damage to the person or property of others occasioned by the

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construction, operation, or maintenance of said subzone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and the Army District Engineer with the Grantees regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In Witness whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer at Washington, DC, this 18th day of January, 1989, pursuant to Order of the Board.

Foreign-Trade Zones Board

Jan W. Mares,

Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 89-1836 Filed 1-25-89; 8:45 am]

BILLING CODE 3510-DS-M

Foreign-Trade Zones Board

[Order No. 421]

Voluntary Termination of Foreign-Trade Subzone 27A, Fall River, MA

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), and the Foreign-Trade Zones Board Regulations (15 CFR Part 400), the Foreign-Trade Zones Board has adopted the following Order:

Whereas, on June 20, 1980, the Foreign-Trade Zones Board by Order No. 160 (45 FR 43455) issued a grant to the Massachusetts Port Authority (Massport), grantee of the Foreign-Trade Zone 27, authorizing the establishment of a special-purpose subzone at the Sterlingwale Corporation's textile manufacturing facility in Fall River, Massachusetts, designated Foreign-Trade Subzone No. 27A;

Whereas, Massport advised the Board on February 12, 1988, that zone procedures are no longer needed at the facility, and requests voluntary relinquishment of the subzone; and,

Whereas, the request has been reviewed by the FTZ Staff and the Customs Service, and approval has been recommended;

Now, Therefore, the Foreign-Trade Zones Board terminates the status of Subzone No. 27A effective this date.

Signed at Washington, DC this 19th day of January, 1989.

Foreign-Trade Zones Board

Jan W. Mares,

Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 89-1836 Filed 1-25-89; 8:45 am]

BILLING CODE 3510-DS-M

Foreign-Trade Zones Board

[Order No. 422]

Voluntary Termination of Foreign-Trade Subzone 27B, Quincy, MA

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), and the Foreign-Trade Zones Board Regulations (15 CFR Part 400), the Foreign-Trade Zones Board has adopted the following Order:

Whereas, on December 2, 1983, the Foreign-Trade Zones Board by Order No. 234 (48 FR 55304) issued a grant to the Massachusetts Port Authority (Massport), grantee of Foreign-Trade Zone 27, authorizing the establishment of a special-purpose subzone at the General Dynamics shipbuilding facility in Quincy, Massachusetts, designated Foreign-Trade Subzone No. 27B;

Whereas, Massport advised the Board on February 12, 1988, that the company no longer requires zone procedures at its facility, and requests voluntary relinquishment of the subzone; and,

Whereas, the request has been reviewed by the FTZ Staff and the Customs Service, and approval has been recommended;

Now, Therefore, the Foreign-Trade Zones Board terminates the status of Subzone No. 27B effective this date.

Signed at Washington, DC this 19th day of January, 1989.

Foreign-Trade Zones Board

Jan W. Mares,

Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 89-1837 Filed 1-25-89; 8:45 am]

BILLING CODE 3510-DS-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amendment of Export Visa and Certification Requirements Under the Special Regime for Certain Woven Apparel Products from Mexico

January 19, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending export visa and certification requirements.

EFFECTIVE DATE: January 27, 1989.

FOR FURTHER INFORMATION CONTACT: Diana Solkoff, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

SUPPLEMENTARY INFORMATION:

Authority. Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of February 13, 1988, as amended.

The Governments of the United States and the United Mexican States reached agreement to amend the existing visa and certification requirements to extend coverage under the Special Regime to woven apparel products assembled in Mexico from fabric parts formed and cut in the United States which are subject to bleaching, acid-washing, stone-washing or permapressing after assembly.

A copy of the current bilateral agreement is available from the Textiles Division, Bureau of Economic and Business Affairs, U.S. Department of State, (202) 647–1998.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 53 FR 44937, published on November 7, 1988). Also see 53 FR 32421, published on August 25, 1988.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

January 19, 1989.

Commissioner of Customs,
Department of the Treasury,
Washington, DC 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive

issued to you on August 22, 1988, as amended, by the Chairman, Committee for the Implementation of Textile Agreements, establishing visa and certification requirements for certain cotton and man-made fiber textile products, produced, manufactured or assembled in Mexico.

Effective on January 27, 1989, you are directed to permit entry under the Special Regime of woven apparel products assembled in Mexico from fabric parts formed and cut in the United States and then subjected to bleaching, acid-washing, stone-washing or permapressing in Mexico after assembly and exported to the United States on and after January 1, 1989.

These products may be entered under the Special Regime even though they may not be classified under HTS number 9802.00.8070 of the Harmonized Tariff Schedule.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89-1798 Filed 1-25-89; 8:45 am]

BILLING CODE 3510-DS-M

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Notice of Partially Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting.

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: 16–17 February 1989.

Time:

0900–1100 hours, 16 February (Open)
1300–1330 hours, (Closed)
1330–1700 hours, (Open)
0900–1200 hours, 17 February (Open)

Place: The Pentagon, Washington, DC.

Agenda: The Army Science Board's independent review of a product improvement program for the M1 Tank will hold its initial meeting. It will consist of briefings and discussions on the M1 Tank Block 2 and Block 3 planned improvements of electronic hardware and software. The open portions of the meeting are open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The closed portions of the meeting are closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C. Appendix 2, subsection 10(d). The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–3039/7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 89-1800 Filed 1-25-89; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: An expedited review has been requested in accordance with the Act, since allowing for the normal review period would adversely affect the public interest. Approval by the Office of Management and Budget (OMB) has been requested by February 3, 1989.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Jim Houser, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place NW., Room 3208, New Executive Office Building, Washington, DC. 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue SW., Room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster (202) 732–3915.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. 3517) requires that the Director of the Office of Management and Budget (OMB) provide interested agencies and persons an early and meaningful opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Office of Information Resources Management, publishes this notice with attached proposed information collection requests prior to submission of these requests to OMB. For each proposed information collection request, grouped by office, this notice contains the following information: (1) Type of Review requested, e.g., new, revision, extension, existing, or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting and/or Recordkeeping burden; and (6) Abstract. Because an expedited review by OMB is requested, the information collection request is also included as an attachment to this notice.

Dated: January 23, 1989.

Carlos U. Rice,

Director for Office of Information Resources Management.

Office of Educational Research and Improvement

Type of Review: Expedited
Title: Survey on Library Services to Children in Public Libraries
Abstract: This survey is used by public libraries to provide information on their library services to children. The Office of Library Programs uses this information in future planning of library services.
Additional Information: The National Center for Education Statistics is requesting an expedited review in order to provide national data on children's services to determine the appropriateness of amendments to The Library Services and Construction Act prior to its reauthorization in 1989. This data also is urgently needed for a White House Conference on Libraries and Information Science.
Frequency: Nonrecurring
Affected Public: State or local governments
Reporting Burden:
Responses: 813
Burden Hours: 407
Recordkeeping:
Recordkeepers: 0
Burden Hours: 0

BILLING CODE 4000-01-M

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UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF THE ASSISTANT SECRETARY FOR EDUCATIONAL RESEARCH AND IMPROVEMENT

National Center for Education Statistics

February 1989

Dear Library Director:

We request your cooperation in completing this questionnaire for the national survey on library services to children in public libraries. The purpose of the survey is to obtain current information regarding the availability and usage of services for children. This survey is the first national study on this topic and the findings will be used to help guide efforts to improve library services to children.

This survey was requested by the Office of Library Programs in the Office of Educational Research and Improvement, U.S. Department of Education. It has been reviewed by a group of children's library specialists, including library educators and practitioners, and approved by the Office of Management and Budget (OMB). We estimate that it will take an average of 30 minutes to complete the attached form. If you have any comments regarding this estimate or any other aspect of this survey, send them to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651, and to the Office of Management and Budget, Paperwork Reduction Project, OMB Number 1850-New, Washington, D.C. 20503.

The survey has been designed to be completed by the Children's Librarian or the person most knowledgeable about services to children (14 years old and under (8th graders and below) in your library. We are requesting information about individual libraries rather than library systems. Please respond only for your individual library building and the community it serves.

While your participation is voluntary, your cooperation is needed to make the results of this survey comprehensive, accurate, and timely. The information collected will be presented as aggregated statistics only, with no individually identifying information.

The survey is being conducted by our contractor, Westat, a research firm in Rockville, Maryland, using the Fast Response Survey System (FRSS). According to FRSS practice, Westat will send you a report of the survey findings when they are available.

We would appreciate your completing the questionnaire and returning it to Westat within two weeks. If you have any questions about the survey, please call Laurie Lewis, Westat's Survey Manager, at the toll-free Westat number (800) 937-8281, or Fay Nash, the NCES Project Officer for FRSS, at (202) 357-6754. Your cooperation is greatly appreciated.

Sincerely,

Emerson J. Elliott
Acting Commissioner

WASHINGTON, D.C. 20208

FAST RESPONSE SURVEY SYSTEM (FRSS)

NATIONAL CENTER FOR EDUCATION STATISTICS
U.S. DEPARTMENT OF EDUCATION
WASHINGTON, D.C. 20208-5651

Form approved OMB No. 1850- Exp. Exp.

SURVEY ON LIBRARY SERVICES TO CHILDREN IN PUBLIC LIBRARIES

This report is authorized by law (20 U.S.C. 1221e-1). While you are not required to respond, your cooperation is needed to make the results of this survey comprehensive, accurate, and timely.

This study is designed to obtain information about individual libraries rather than library systems. Please respond only for services that take place in your individual library BUILDING and the community it serves.

1a. Please estimate the number of persons (of all ages) who used your library in a TYPICAL WEEK during fall 1988. (Please use counts such as daily circulation rather than circulation transactions). _____ persons per week.

1b. About what percent of these were were children 14 years old and under (8th graders and below)? _____%

2. About what percent of your library's total circulation is children's materials? _____%

3. What percent of your library's total book budget for the last completed fiscal year was used for children's books? _____%

4. How many hours was your library open to the public during a typical week in fall 1988? _____ hours per week.

5a. How many librarians (full- and part-time) are employed at your library? (Include all paid staff who work as librarians, regardless of training. Do not include librarians whose ONLY job is technical or administrative (i.e., who do not work directly with the public). Do not include volunteers or support staff such as clerical workers, book shelvers, or desk attendants). _____ (IF ZERO, SKIP TO 6a)

5b. How many of these librarians have: Master of Library Science (MLS) degree _____; AT LEAST a 4-year college degree, but not an MLS _____; Other _____. (THESE NUMBERS SHOULD SUM TO 5a)

5c. How many of these librarians have the title "Children's Librarian" or comparable title? _____ (IF ZERO, SKIP TO 6a)

5d. How many of the Children's Librarians have: Master of Library Science (MLS) degree _____; AT LEAST a 4-year college degree, but not an MLS _____; Other _____. (THESE NUMBERS SHOULD SUM TO 5c).

6a. Is the assistance of a Children's Coordinator/Consultant available to your library? ☐ Yes; ☐ No. (IF NO, SKIP TO 07)

6b. From what source(s) is the assistance of a Children's Coordinator/Consultant available? (CHECK ALL THAT APPLY)

☐ Local system headquarters; ☐ Regional system headquarters; ☐ State library agencies;
☐ Other (Specify)_____.

7. How does your library define children? Age: Under _____ years; OR Grade: _____ grade and below.

The remainder of this questionnaire is concerned with services to children 14 years old and under. Although your library may define children differently, please respond for all persons 14 years old and under (8th graders and below).

8. Indicate the availability/usage of the services below by children 14 years old and under (8th graders and below) during the last 12 months. Use the following scale: 0 = not available; 1 = no usage or [illegible]; 2 = light usage; 3 = moderate usage; 4 = heavy usage.

a. Readers' advisory service (help with book selection, reference) _____
b. Reading lists/booklists _____
c. Summer reading programs _____
d. Story hours _____
e. Study space _____

9. For each service below, indicate by checking "yes" or "no" in Section A whether it is available at all for use or circulation at your library.

For each service available at the library, indicate in Section B by checking the appropriate column whether it is: available to all children; available to only some children (e.g., those with parental consent on file, only certain age groups, etc.); or not available to any children.

Resources and services	A. Available at all for use or circulation		B. Service is available to:		
	Yes	No	All children	Only some children	No children
a. Books in the adult collection					
b. Personal computers					
c. Computer software					
d. Videocassettes/films					
e. Audio recordings					
f. Interlibrary loan services					
g. Foreign language materials					

USE THE FOLLOWING SCALE FOR QUESTIONS 10, 11 AND 12:
1 = NEVER; 2 = INFREQUENTLY; 3 = SOMEWHAT FREQUENTLY; 4 = VERY FREQUENTLY.

10. During the last 12 months, how frequently did your library offer group programs (e.g., story hours or booktalks) at the library for:
a. Infants through 2-year-olds: ____; b. 3-year-olds through 5-year olds: ____; c. School-age children: ____.

11. During the last 12 months, how frequently did your library offer group programs at the library for parents or other child care-givers on topics related to children? _____.

12. During the last 12 months, how frequently did your library cooperate (e.g., scheduled meetings with staff or students, visits to schools for booktalks, tours, etc.) with schools and preschools/day care centers enrolling any children 14 years old and under (8th graders and below)?
Schools: _____; Preschools/day care centers: _____.

13a. Do you think that unattended children are a problem at your library? ☐ Yes; ☐ No.

13b. IF YES: How much of a problem are unattended children at your library? (CHECK ONLY ONE)

☐ Minor problem; ☐ Moderate problem; ☐ Major problem.

Person completing this form:_____ Title:_____

Library:_____ State:_____ Phone: (___)_____

NCES 2579-35.

[FR Doc. 89-1858 Filed 1-25-89; 8:45 am]
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Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before February 27, 1989.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Jim Houser, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster (202) 732–3915.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director, Office of Information Resources Management, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following:

(1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: January 23, 1989.

Carlos U. Rice,

Director for Office of Information Resources Management.

Office of Educational Research and Improvement

Type of Review: New
Title: National Household Education Survey (NHES) School-based Component Field Test
Frequency: Three times only
Affected Public: State or local governments, Non-profit institutions
Reporting Burden:
Responses: 80
Burden Hours: 640
Recordkeeping:
Recordkeepers: 0
Burden Hours: 0
Abstract: This field test of NHES will obtain lists of enrolled students from a sample of schools and collect a limited set of student identification information that is needed to sample and contact students to determine their dropout status. The Department will use this information to assess the methodological feasibility of the proposed school-based approach in the estimation of dropout rates and to develop and evaluate the methodology for the first full-scale NHES.

Office of Postsecondary Education

Type of Review: New
Title: 1990 National Postsecondary Education Student Aid Study
Frequency: Triennial
Affected Public: Individuals or households; non-profit institutions; small businesses or organizations
Reporting Burden:
Responses: 1272
Burden Hours: 1980
Recordkeeping:
Recordkeepers: 0
Burden Hours: 0
Abstract: This data collected by this study will provide the Office of Postsecondary Education a student-based information system for student financial aid and will assess the distribution and use of financial aid.

Office of Postsecondary Education

Type of Review: Extension
Title: Summary Data Sheet/Listing Form for Perkins Loan
Frequency: Annually
Affected Public: Individuals or households; State or local governments; Federal agencies or employees; Non-profit institutions
Reporting Burden:
Responses: 57
Burden Hours: 855
Recordkeeping:
Recordkeepers: 57
Burden Hours: 4.56
Abstract: The Summary Data Sheet and Listing Form will be used by the Department to compile and publish an official Directory of designated low-income elementary and secondary schools.

Office of Postsecondary Education

Type of Review: Reinstatement
Title: Performance Report for Training Program for Special Programs Staff and Leadership Personnel
Frequency: Annually
Affected Public: Non-profit institutions
Reporting Burden:
Responses: 12
Burden Hours: 36
Recordkeeping:
Recordkeepers: 12
Burden Hours: 2
Abstract: The Non-profit institutions which have participated in the Training Program for Special Programs Staff and Leadership Personnel are to submit these reports to the Department. The Department uses the information to assess the accomplishments of project goals and objectives, and to aid in effective program management.

[FR Doc. 89–1859 Filed 1–25–89; 8:45 am]

BILLING CODE 4000-01-M

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: An expedited review has been requested in accordance with the Act, since allowing for the normal review period would adversely affect the public interest. Approval by the Office of Management and Budget (OMB) has been requested by 02/21/89.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Jim Houser, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue, SW., Room 5624, Regional Office Building 3, Washingtoin DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster (202) 732–3915.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. 3517) requires that the Director of the Office of Management and Budget (OMB) provide interested agencies and persons an early and meaningful opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Office of Information Resources Management, publishes this notice with attached proposed information collection requests prior to submission of these requests to OMB. For each proposed information collection request, grouped by office, this notice contains the following information: (1) Type of review requested, e.g., new, revision, extension, existing, or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting and/or Recordkeeping burden; and (6) Abstract. Because an expedited review by OMB is requested, the information collection request is also included as an attachment to this notice.

Dated: January 23, 1989.

Carlos U. Rice,

Director for Office of Information Resources Management.

Office of Postsecondary Education

Type of Review: Expedited
Title: Application for Centers for International Business Education Program
Abstract: This form will be used by non-profit institutions to apply for funding under the Centers for International Business Program. The Department uses the information to make grant awards.
Additional Information: A February 21, 1989, publication date for the Notice Inviting Applications for New Awards in the **Federal Register** is scheduled. Unless this publication deadline is met, respondents will not have time to establish Center Advisory Councils, and undertake extensive planning in conjunction with these Councils, as required under the eligibility section of the authorizing statute. Furthermore, it will be impossible to complete the lengthy selection process of new grantees and issue grant awards within the timeframe for the year 1989 funding cycle. In accordance with the terms of the legislation, three-year awards are scheduled. This submission contains the standard form SF–424, Federal Assistance Face Sheet.
Frequency: Annually
Affected Public: Non-profit institutions
Reporting Burden:
Responses: 60
Burden Hours: 2,100
Recordkeeping:
Recordkeepers: 0
Burden Hours: 0

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Instructions for Part III- Application Narrative for Centers for International Business Education Program Applicants

Public reporting burden for this collection of information is estimated to average 35 hours per response, including time for reviewing of instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and to the Office of Management and Budget, Paperwork Reduction Project 1840-xxxx*, Washington, D.C. 20503.

Before preparing the application narrative, an applicant should read carefully all instructions. The Secretary recommends that you carefully consider the authorizing legislation for the Centers for Business and International Education Program, as you address the selection criteria the Secretary uses to evaluate the applications.

The narrative should--

1. Begin with an abstract; that is, a summary of the proposed project;

2. In order to establish eligibility under this program, the applicant should include:

(a) The date the Center Advisory Council was established;

(b) A list of the members of the Center Advisory Council and a description of their academic or other affiliations; and

(c) A description of the planning which was or will be conducted prior to the establishment of the Center for International Business Education, concerning the scope of the center's activities and the design of its programs.

3. Describe the proposed Center for International Business Education in light of each of the selection criteria in the order in which the criteria are listed. Describe the activities you propose to carry on in each year of the three-year funding cycle under the "Plan of Operation" section of your application.

4. Include any other pertinent information that might assist the Secretary in reviewing the application.

*OMB Number

[FR Doc. 89-1860 Filed 1-25-89; 8:45 am]

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[CFDA No. 84-146]

Notice Inviting Applications for New Awards Under the Transition Program for Refugee Children for Fiscal Year 1989.

Purpose: Provides grants to State educational agencies (SEAs) to assist Local educational agencies (LEAs) to provide supplemental educational services to meet the special needs of eligible refugee children.

Deadline for Transmittal of Application: April 21, 1989.

Deadline for Intergovernmental Review Comments: June 21, 1989.

Applications Available: Application packages will be available on January 26, 1989. The Office of Bilingual Education and Minority Languages Affairs will mail application forms and program information packages to all SEAs.

Funds Available: $15,808,000.

Project Period: 12 Months.

Programmatic Information: An SEA may apply for a grant if it meets the eligibility requirments contained in 34 CFR 538.2. To be eligible for a grant, and SEA must submit a count of refugee children eligible for assistance under the Transition Program for Refugee Children conducted in the month of March, 1989.

Applicable Regulations: (a) The regulations governing the Transition Program for Refugee Children in 34 CFR Part 538, as published in the Federal Register on December 28, 1988 (53 FR 52618), (b) Regulations governing the Refugee Resettlement Program in 45 CFR Part 400, and to the extent provided in 34 CFR 538.3(a)(2), and (c) the Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 76, 77, 79, 80, and 85.

For Applications or Information Contact: Jonathan Chang, Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 400 Maryland Avenue SW., (Room 5086), Mary E. Switzer Building, Washington, D.C. 20202-6641. Telephone: (202) 732-5708.

Program Authority: 8 U.S.C. 1522.

(Catalog of Federal Domestic Assistance Number 84.146, Transition Program for Refugee Children)

Dated: January 18, 1989.

Alicia Coro,

Acting Director, Office of Bilingual Education and Minority Languages Affairs.

[FR Doc. 89-1901 Filed 1-25-89; 8:45 am]

BILLING CODE 4000-01-M

Solicitation of Comments on Development of a Common Financial Reporting Form

AGENCY: Department of Education.

ACTION: Notice of solicitation of Comments on development of a common financial reporting form.

SUMMARY: The Secretary provides notice that the Department of Education is soliciting comments concerning the implementation of section 483(a)(1) of the Higher Education Act of 1965, as amended (HEA). Section 483(a)(1) provides that the Secretary shall prescribe a common financial reporting form to be used to determine the need and eligibility of a student for financial assistance under the major student financial assistance programs authorized by Title IV of the HEA (Title IV, HEA programs).

DATE: Comments must be received on or before March 16, 1989.

ADDRESS: All comments concerning this notice should be addressed to Mr. Stephen D. Carter, Chief, Analysis Section, Pell Grant Branch, Division of Policy and Program Development, Office of Student Financial Assistance, U.S. Department of Education, 400 Maryland Avenue SW., (Room 4318, ROB-3), Washington, DC 20202-5443.

FOR FURTHER INFORMATION CONTACT: Ms. Julie Laurel, Program Analyst, Pell Grant Branch, Division of Policy and Program Development, Office of Student Financial Assistance, U.S. Department of Education, 400 Maryland Avenue SW., (Room 4318 ROB-3), Washington, DC 20202-5443. Telephone (202) 732-4888.

SUPPLEMENTARY INFORMATION: Section 483(a) of the HEA, 20 U.S.C. 1090(a), requires the Secretary to develop a common financial reporting form to be used in determining the need and eligibility of a student for financial assistance under the major Title IV, HEA programs. These programs include the Pell Grant, Supplemental Education Opportunity Grant, Stafford Loan, College Work-Study, Income Contingent Loan, and Perkins Loan programs. As in prior years, the form shall be known as the Application for Federal Student Aid (AFSA).

The Secretary is not considering any major changes to the 1990-91 AFSA except the inclusion of Stafford Loan data elements. The Secretary is, however, requesting public comment concerning the 1990-91 AFSA. The Secretary is especially interested in comments concerning the following:

1. The design of the form.
2. The clarity of the instructions.
3. The burden on the applicant population of filling out the information on the form and methods for keeping this burden at a minimum.
4. The utility on the AFSA a small number of data elements which would eliminate the need for separate applications for Stafford Loans.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding the proposed 1990-92 AFSA. To obtain a copy of a draft in the 1990-91 AFSA, call 1-800-333-4636 (INFO), toll-free.

All comments submitted in response to this notice will be available for public inspection, during and after the comment period, in Room 4318, ROB-3 7th and D Streets SW., Washington, DC 20202-5443, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week, except Federal holidays.

Dated: January 23, 1989.

Kenneth D. Whitehead,

Assistant Secretary for Postsecondary Education.

(Catalog of Federal Domestic Assistance Numbers: 84.007 Supplemental Educational Opportunity Grant Program; 84.032 Stafford Loan Program; 84.033 College Work-Study Program; 84.038 Perkins Loan Program; 84.063 Pell Grant Program; 84.063 Income Contingent Loan Program)

[FR Doc. 89-1862 Filed 1-25-89; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

Proposed Consent Order With Quintana Energy Corp. et al.

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of proposed consent order and opportunity for public comment.

SUMMARY: The Economic Regulatory Administration (ERA) announces a proposed Consent Order between the Department of Energy (DOE) and Quintana Energy Corporation, Quintana Refinery Co., and Quintana Petrochemical Company (hereinafter collectively referred to as "Quintana"). The agreement proposes to resolve matters relating to Quintana's compliance with the federal petroleum price and allocation regulations for the period January 1, 1973 through January 27, 1981. If this Consent Order is approved, Quintana shall pay a total of

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$3,800,000 within fifteen days of the effective date of the Consent Order. DOE's Office of Hearings and Appeals (OHA) will be petitioned to implement Special Refund Procedures pursuant to 10 CFR Part 205, Subpart V, in which proceedings any persons who claim to have suffered injury from Quintana's alleged overcharges would have the opportunity to submit claims for payment.

Pursuant to 10 CFR 205.199J, ERA will receive written comments on the proposed Consent Order for thirty (30) days following publication of this notice. ERA will consider all comments received from the public in determining whether to accept the settlement and issue a final Order, renegotiate the agreement and issue a modified agreement as a final Order, or reject the settlement. DOE's final decision will be published in the **Federal Register**, along with an analysis of and response to the significant written comments, as well as any other considerations that were relevant to the final decision.

FOR FURTHER INFORMATION CONTACT:
Dorothy Hamid, Economic Regulatory Administration, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-4167.

SUPPLEMENTARY INFORMATION:

I. Resolution of Regulatory Issues
II. Determination of Reasonable Settlement Amount
III. Terms and Conditions of the Consent Order

I. Resolution of Regulatory Issues

Quintana is a petroleum refiner subject to the audit jurisdiction of ERA to determine compliance with the Federal Petroleum Price and Allocation Regulations. During the period covered by this proposed Order (January 1, 1973 through January 27, 1981), Quintana engaged in, among other things, the production, importation, refining, and sale of crude oil; and the sale of residual fuel oil, motor gasoline, middle distillates, aviation fuel, propane and other refined petroleum products.

ERA conducted an audit of Quintana's compliance for the period beginning in January 1978 through December 1980. During this audit, ERA identified certain areas in the pricing, refining, and sales of crude oil in which it believed that Quintana had failed to comply with the requirements of the Federal price and allocation regulations.

On June 24, 1988, ERA issued to Quintana a Proposed Remedial Order (PRO) to the Quintana-Howell Joint Venture (hereinafter Joint Venture), a Texas joint venture composed of Quintana Refinery Co., and Howell Corporation, which operated refineries in Corpus Christie and San Antonio, Texas. The PRO alleged violations of 10 CFR 211.66 (b) and (h) and § 205.202 as a result of the Joint Venture's significant understatement on its entitlements reports of its receipts of controlled tier crude oil at the two refineries, during the period April 1978 through December 1980. Specifically, ERA alleged that during this period the Joint Venture failed to correctly report the volumes of controlled tier certification associated with substantial volumes of its crude oil receipts at the two refineries. Instead, the Joint Venture reported such volumes as uncontrolled crude oil. ERA alleges that the Joint Venture's actions circumvented and contravened, or resulted in the circumvention and contravention of, the requirements of the Entitlements Program. As a remedy for these alleged violations, the Proposed Remedial Order seeks to recover jointly and severally from Quintana and Howell $10,322,848, which is the amount of Joint Venture's reduced post-entitlement crude costs. With interest, Quintana's interest in the Joint Venture represents approximately $4.9 million, plus interest of approximately $9 million; Howell Corporation's share of the total liability, $5.4 million plus interest of nearly $10 million, would not be resolved by this Consent Order.

II. Determination of Reasonable Settlement Amount

The settlement calls for Quintana to pay $3.8 million, to discharge in full its obligations under the price and allocation regulations. Under the terms of the proposed Consent Order, only the liability of Quintana would be resolved. The other partner to the Joint Venture, Howell Corporation, continues to be liable for the remaining principal sum of approximately $5.4 million, plus interest. ERA took into consideration for settlement purposes, the fact that Quintana benefitted from these transactions only in the amount of approximately $4.9 million, and that the case is in its relatively early stages of litigation. Moreover, inasmuch as Quintana took affirmative steps to end the types of transactions which subsequently came into dispute, significant amounts of overcharges that may have occurred were estopped. In addition, Quintana was not the principal manager of the transactions which did occur due to the Joint Venture. ERA has preliminarily agreed to the settlement amount after considering the factual aspects related to the various issues, assessing the litigation risks associated with establishing the alleged overcharges, and considering the benefit to the public from a significant settlement of the issues which would take years of continued litigation to resolve.

Based on all of these considerations, ERA has tentatively concluded that the resolution of these matters for $3.8 million is an appropriate settlement and in the public interest.

III. Terms and Conditions of the Consent Order

If the Consent Order is made final, Quintana will pay DOE $3.8 million within fifteen (15) days of the effective date of the Consent Order.

ERA will petition OHA to implement Special Refund Procedures under the provisions of Subpart V of the regulations. In these proceedings, OHA would develop procedures for the receipt and evaluation of applications for refund in order to distribute the settlement monies. To ensure that OHA has sufficient information to evaluate the claims, the proposed Consent Order requires that Quintana provide customer identification and purchase volume information to OHA upon request.

Quintana and DOE mutually release each other from claims and actions arising under the subject matters covered by the proposed Consent Order. The proposed Order does not affect the right of any other party to take action against Quintana, or of Quintana or the DOE to take action against any other party.

Submission of Written Comments:

The proposed Consent Order cannot be made effective until the conclusion of the public review process, of which this Notice is a part.

Interested parties are invited to submit written comments concerning this proposed Consent Order to: Quintana Consent Order Comments, RG-30, Economic Regulatory Administration, 1000 Independence Avenue SW., Washington, DC 20585. All comments received by the thirtieth day following publication of this notice in the **Federal Register**, will be considered before determining whether to adopt the proposed Consent Order as a final Order. Any modifications of the proposed Consent Order which significantly alter its terms or impact will be published for additional

comments. If, after considering the comments it has received, ERA determines to issue the proposed Consent Order as a final Order, the proposed Order will be made final and effective by publication of a notice in the **Federal Register**.

Any information or data considered confidential by the person submitting it must be identified as such in accordance with the provisions of 10 CFR 205.9(f).

Issued in Washington, DC, on January 18, 1989.

Milton C. Lorenz,

Chief Counsel for Enforcement Litigation, Economic Regulatory Administration.

Consent Order

I. Introduction

101. This Consent Order is entered into between Quintana Energy Corporation, Quintana Refinery Co., and Quintana Petrochemical Company (hereinafter collectively referred to as "Quintana") and the United States Department of Energy ("DOE"). Except as otherwise provided herein, this Consent Order settles and finally resolves all civil and administrative claims and disputes, whether or not heretofore asserted, between the DOE, as hereinafter defined, and Quintana, as hereinafter defined, relating to Quintana's compliance with the federal petroleum price and allocation regulations, as hereinafter defined, during the period January 1, 1973, through January 27, 1981 (all the matters settled and resolved by this Consent Order are referred to hereinafter as "the matters covered by this Consent Order").

II. Jurisdiction, Regulatory Authority and Definitions

201. This Consent Order is entered into by the DOE pursuant to the authority conferred upon it by sections 301 and 503 of the Department of Energy Organization Act ("DOE Act"), 42 U.S.C. 7151 and 7193, Executive Order No. 12009, 42 FR 46267 (1977); Executive Order No. 12038, 43 FR 4957 (1978); and 10 CFR 205.199J.

202. The Economic Regulatory Administration ("ERA") was created by Section 206 of the DOE Act, 42 U.S.C. 7136. In Delegation No. 0204-4, the Secretary of Energy delegated responsibility for the administration of the federal petroleum price and allocation regulations to the Administrator of the ERA. In Delegation No. 0204-4A, the Administrator delegated to the Special Counsel authority to audit the compliance of refiners, including Quintana, with the federal petroleum price and allocation regulations and to take appropriate enforcement actions based upon such audits.

203. For purposes of this Consent Order, the phrase "federal petroleum price and allocation regulations" means all statutory requirements and administrative regulations and orders regarding the pricing and allocation of crude oil, refined petroleum products, natural gas liquids, and natural gas liquid products, including the entitlements and mandatory oil imports programs, administered by the DOE. The federal petroleum price and allocation regulations include (without limitation) the pricing, allocation, reporting, certification, and recordkeeping requirements imposed by or under the Economic Stabilization Act of 1970, the Emergency Petroleum Allocation Act of 1973, the Federal Energy Administration Act of 1974, Presidential Proclamation 3279, all applicable DOE regulations codified in 6 CFR Parts 130 and 150 and 10 CFR Parts 205, 210, 211, 212, and 213, and all rules, rulings, guidelines, interpretations, clarifications, manuals, decisions, orders, notices, forms, and subpoenas relating to the pricing and allocation of petroleum products. The provisions of 10 CFR 205.199J and the definitions under the federal petroleum price and allocation regulations shall apply to this Consent Order except to the extent inconsistent herewith. Reference herein to "DOE" includes, besides the Department of Energy, the Cost of Living Council, the Federal Energy Office, the Federal Energy Administration, the Office of Special Counsel ("OSC"), the Economic Regulatory Administration and all predecessor and successor agencies. References in this Consent Order to "Quintana" shall include: (1) Quintana Energy Corporation, Quintana Petrochemical Company, Quintana Refinery Co., and all of their subsidiaries and affiliates, except the entity of the Quintana-Howell Joint Venture, (2) all of Quintana's petroleum-related activities as refiner, producer, operator, working interest or royalty interest owner, reseller, retailer, natural gas processor, or otherwise, and (3) except for purposes of Article IV, *infra*, Quintana's directors, officers, and employees.

III. Facts

The stipulated facts upon which this Consent Order is based are as follows:

301. During the period covered by this Consent Order, Quintana was a "refiner," "producer," and "reseller" as those terms are defined in the federal petroleum price and allocation regulations and was subject to the jurisdiction of the DOE. Quintana engaged in, among other things, the production, importation, sale, and refining of crude oil, the sale of residual fuel oil, motor gasoline, middle distillates, aviation fuel, propane, and other refined petroleum products.

302. DOE conducted an audit to determine Quintana's compliance with the federal petroleum price and allocation regulations. During the course of the DOE's audit, the enforcement proceedings instituted by the DOE and the negotiations that led to this Consent Order, the DOE raised certain issues with respect to Quintana's application of the federal petroleum price and allocation regulations. The DOE has taken an administrative enforcement action against Quintana, through the issuance of a Proposed Remedial Order on June 24, 1988. Quintana maintained, however, that it had calculated its costs, determined its prices, sold its crude oil and petroleum products, and operated in all other respects in accordance with the federal petroleum price and allocation regulations. The DOE and Quintana have disagreed in several respects concerning the proper application of the federal petroleum price and allocation regulations to Quintana's activities with respect to the matters covered by this Consent Order, and each has asserted its belief that its respective legal and factual positions on the matters resolved by this Consent Order are meritorious. These positions were emphasized in the intensive review and exchange of information conducted during the audit and subsequent settlement negotiation process. However, in order to avoid the expense of protracted and complex litigation and the disruption of its orderly business functions, Quintana has agreed to enter into this Consent Order. The DOE believes this Consent Order constitutes a satisfactory resolution of the matters covered herein and is in the public interest.

IV. Remedial Provisions

401. In full and final settlement of all matters covered by this Consent Order and in lieu of all other remedies which have been or might be sought by the DOE against Quintana for such matters under 10 CFR 205.199I or otherwise, Quintana shall pay a total amount of three million eight hundred thousand dollars ($3,800,000) to the DOE in the manner specified in paragraph 402.

402. The payment pursuant to paragraph 401 shall be made within fifteen (15) days of the effective date of the Consent Order by wire transfer in accordance with instructions furnished

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to Quintana by the DOE in a timely manner.

403. Payments made by Quintana pursuant to this Consent Order shall be distributed by the DOE pursuant to the special refund procedures prescribed by 10 CFR Part 205, Subpart V.

V. Issues Resolved

501. All pending and potential civil and administrative claims, whether or not known, demands, liabilities, causes of action or other proceedings by the DOE against Quintana regarding Quintana's compliance with and obligations under the federal petroleum price and allocation regulations during the period covered by this Consent Order, whether or not heretofore raised by an issue letter, Notice of Probable Violation, Notice of Proposed Disallowance, Proposed Remedial Order, Remedial Order, action in court or otherwise, including DOE's claim against Quintana as a joint venturer in the Quintana-Howell Joint Venture, are resolved and extinguished as to Quintana by this Consent Order. This Consent Order, however, does not resolve, extinguish, or otherwise affect DOE's claims against any other party, except as follows: (1) The DOE agrees to reduce the principal amount of its claim against Howell Corporation as a joint venturer in the Quintana-Howell Joint Venture, as set forth in Section VII(A) of the June 24, 1988 Proposed Remedial Order (at 41–42), from $10,322,848.09 to $5,407,988.44; the interest on this reduce amount accrued through April 30, 1988 totals $9,916,981.00; and (2) DOE agrees that it will not seek to obtain a judgment against the Quintana-Howell Joint Venture entity, provided that the liability of Howell Corporation and its subsidiaries, or the DOE's ability to sue Howell Corporation and its subsidiaries, is not reduced, resolved, or extinguished in any manner as a result of the DOE's agreement to not seek to obtain a judgment against the Quintana-Howell Joint Venture entity, and provided further that if a judgment is obtained against the Quintana-Howell Joint Venture, DOE agrees not to enforce such judgment against Quintana.

502. (a) Except as otherwise provided herein, compliance by Quintana with this Consent Order shall be deemed by the DOE to constitute full compliance for administrative and civil purposes with all federal petroleum price and allocation regulations for matters covered by this Consent Order. In consideration for performance as required under this Consent Order by Quintana, the DOE hereby releases Quintana completely and for all purposes from all administrative and civil judicial claims, demands, liabilities or causes of action, including without limitation claims for civil penalties, that the DOE has asserted or might otherwise be able to assert against Quintana before or after the date of this Consent Order for alleged violations of the federal petroleum price and allocation regulations with respect to matters covered by this Consent Order. The DOE will not initiate or prosecute any such administrative or civil judicial matter against Quintana or cause or refer any such matter to be initiated or prosecuted, nor will the DOE or its successors directly or indirectly aid in the initiation of any such administrative or civil judicial matter against Quintana or participate voluntarily in the prosecution of such actions. The DOE will not assert voluntarily in any administrative or civil judicial proceeding that Quintana has violated the federal petroleum price and allocation regulations with respect to the matters covered by this Consent Order or otherwise take any action with respect to Quintana in derogation of this Consent Order. However, nothing contained herein shall preclude the DOE from defending the validity of the federal petroleum price and allocation regulations.

(b) The DOE will not seek or recommend any criminal fines or penalties based on information or evidence presently in its possession for the matters covered by this Consent Order, provided, however, that nothing in this Consent Order precludes the DOE from (1) seeking or recommending such criminal fines or penalties if information subsequently coming to its attention indicates, either by itself or in combination with information or evidence presently known to DOE, that a criminal violation may have occurred or (2) otherwise complying with its obligations under law with regard to forwarding information of possible criminal violations of law to appropriate authorities. Nothing contained herein may be construed as a bar, estoppel or defense against any criminal or civil action brought by an agency of the United States other than the DOE under (i) section 210 of the Economic Stabilization Act of 1970 or (ii) any statute or regulation other than the federal petroleum price and allocation regulations. Finally, this Consent Order does not prejudice the rights of any third party or Quintana in any private action, including an action for contribution by or against Quintana.

(c) Quintana releases the DOE completely and for all purposes from all administrative and civil judicial claims, liabilities, or causes of action that Quintana has asserted or may otherwise be able to assert against the DOE relating to the DOE's administration of the federal petroleum price and allocation regulations. This release, however, does not preclude Quintana from asserting any factual or legal position or argument as a defense to any action, claim, or proceeding brought by the DOE, the United States, or any agency of the United States. Nor does it preclude Quintana from asserting a defense, counterclaim or offset to any action, claim or proceeding brought by any other person.

(d) Quintana hereby releases any and all claims that Quintana may have for refunds of crude oil overcharges pursuant to any special refund procedures implemented pursuant to 10 CFR Part 205, Subpart V.

503. (a) Within thirty (30) days after the Effective Date of this Consent Order, Quintana and the DOE will file or cause to be filed appropriate pleadings and will take all other steps necessary to withdraw all claims and dismiss with prejudice all proceedings against Quintana covered by this Consent Order then pending before the DOE's Office of Hearings and Appeals or the Federal Energy Regulatory Commission and to dismiss with prejudice any court proceeding then pending against Quintana involving an appeal from or seeking review of a decision by the OHA or the FERC in any such proceeding.

(b) Within fifteen (15) days after the execution of the Consent Order by both parties, DOE agrees to join with Quintana in written notification to DOE's Office of Hearings and Appeals, the Federal Energy Regulatory Commission and any appropriate court of the fact of such execution, which notice shall request that said administrative or judicial tribunal stay all further action against Quintana in the proceedings covered by this Consent Order until such time as DOE provides notice to said tribunals that the Consent Order has become effective or has been withdrawn pursuant to Article IX of this Consent Order.

504. Execution of this Consent Order constitutes neither an admission by Quintana nor a finding by the DOE of any violation by Quintana of any statute or regulation. The DOE has determined that it is not appropriate to seek to impose civil penalties for the matters covered by this Consent Order, and the DOE will not seek any such civil penalties. None of the payments or expenditures made by Quintana pursuant to this Consent Order are to be considered for any purpose as penalties, fines, or forfeitures or as settlement of any potential liability for penalties, fines, or forfeitures.

505. Notwithstanding any other provision herein, with respect to the matters covered by this Consent Order, the DOE reserves the right to initiate an enforcement proceeding or to seek appropriate penalties for any newly discovered regulatory violations committed by Quintana, but only if Quintana has concealed facts relating to such violations. The DOE also reserves the right to seek appropriate judicial remedies, other than full rescission of this Consent Order, for any misrepresentation of fact material to this Consent Order during the course of the audit or the negotiations that preceded this Consent Order or upon discovery of information that is materially inconsistent with the information which has been furnished by Quintana upon which this agreement is based.

VI. Recordkeeping, Reporting and Confidentiality

601. Quintana shall maintain such records as are necessary to demonstrate compliance with the terms of this Consent Order and records related to Quintana's purchases, sales, exchanges or other transfers of crude oil during the period January 1, 1978, through January 27, 1981. To assist DOE in the distribution of the monies paid pursuant to this Consent Order, Quintana shall also retain sales volume data and customers' names and addresses regarding its sales of crude oil and refined petroleum products for the transactions covered by this Consent Order until thirty (30) days after final distribution by DOE of such monies. If requested, Quintana shall make such information available to DOE. Except as otherwise provided in this paragraph, upon timely payment to DOE of the amount required to be paid under paragraph 402 of this Consent Order, Quintana is relieved of its obligation to comply with the recordkeeping requirements of the federal petroleum price and allocation regulations relating to the matters settled by this Consent Order.

602. Except for formal requests for information regarding other firms subject to the DOE's information gathering and reporting authority, Quintana will not be subject to any audit requests, report orders, subpoenas, or other administrative discovery by DOE relating to Quintana's compliance with the federal petroleum price and allocation regulations relating to the matters settled by this Consent Order.

603. The DOE will treat the sensitive commercial and financial information provided by Quintana pursuant to negotiations which were conducted with respect to this Consent Order or obtained by the DOE in its audit of Quintana and related to matters covered by this Consent Order as confidential and proprietary and will not disclose such information unless required to do so by law, including a request by a duly authorized committee or subcommittee of Congress. If a request or demand for release of any such information is made pursuant to law, the DOE will claim any privilege or exemption reasonably available to it. The DOE will provide Quintana with ten (10) days actual notice, if possible, of any pending disclosure of such information, unless prohibited or precluded from doing so by law or request of Congress. The DOE will retain the audit information which it has acquired during its review of Quintana's compliance with the federal petroleum price and allocation regulations in accordance with the DOE's established records retention procedures. Notwithstanding the otherwise confidential treatment afforded such information by the terms of this Consent Order, the DOE will make such information available to the Department of Justice ("DOJ") in response to a request pursuant to the DOJ's statutory authority by a duly authorized representative of the DOJ. If requested by the DOJ, the DOE shall not disclose that such a request has been made. Nothing in this paragraph shall be deemed to waive or prejudice any right Quintana may have independent of this Consent Order regarding the disclosure of sensitive commercial and financial information.

VII. Contractual Undertaking

701. It is the understanding and express intention of Quintana and the DOE that this Consent Order constitutes a legally enforceable contractual undertaking that is binding on the parties and their successors and assigns. Notwithstanding any other provision herein, Quintana (and its successors and assigns) and the DOE each reserves the right to institute a civil action in an appropriate United States district court, if necessary, to secure enforcement of the terms of this Consent Order, and the DOE also reserves the right to seek appropriate penalties and interest for any failure to comply with the terms of this Consent Order. The DOE will undertake the defense of the Consent Order, as made effective, in response to any litigation challenging the Consent Order's validity in which the DOE is named a party. Quintana agrees to cooperate with the DOE in the defense of any such challenge.

VIII. Final Order

801. Upon becoming effective, this Consent Order shall be a final order of DOE having the same force and effect as a remedial order issued pursuant to section 503 of the DOE Act, 42 U.S.C. 7193, and 10 CFR 205.199B. Quintana hereby waives its right to administrative or judicial review of this Order, but Quintana reserves the right to participate in any such review initiated by a third party.

IX. Effective Date

901. This Consent Order shall become effective as a final order of the DOE upon notice to that effect being published in the **Federal Register**. Prior to that date, the DOE will publish notice in the **Federal Register** that it proposes to make this Consent Order final and, in that notice, will provide not less than thirty (30) days for members of the public to submit written comments. The DOE will consider all written comments to determine whether to adopt the Consent Order as a final order, to withdraw agreement to the Consent Order, or to attempt to renegotiate the terms of the Consent Order.

902. Until the Effective Date, the DOE reserves the right to withdraw consent to this Consent Order by written notice to Quintana, in which event this Consent Order shall be null and void. If this Consent Order is not made effective on or before the one hundred fiftieth (150th) day following execution by Quintana, Quintana may, at any time thereafter until the Effective Date, withdraw its agreement to this Consent Order by written notice to the DOE, in which event this Consent Order shall be null and void.

I, the undersigned a duly authorized representative of Quintana, hereby agree to and accept on behalf of Quintana the foregoing Consent Order.

Dated: January 1, 1989.

H. P. Riley,

Vice President, Quintana Energy Corporation, Quintana Refinery Co., Quintana Petrochemical Company.

I, the undersigned, a duly authorized representative of DOE, hereby agree to and accept on behalf of the DOE the foregoing Consent Order.

Dated: January 9, 1989.

Milton C. Lorenz,

Chief Counsel for Enforcement Litigation, Economic Regulatory Administration.

[FR Doc. 89-1877 Filed 1-25-89; 8:45 am]

BILLING CODE 6450-01-M

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Federal Energy Regulatory Commission

[Project No. 2388-001 Massachusetts]

City of Holyoke, Massachusetts Gas and Electric Department; Availability of Environmental Assessment

January 23, 1989.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for minor license for the proposed Number 1 Hydro Unit located on the Holyoke Canal System, on the Connecticut River, in Holyoke, Hampden County, Massachusetts, and has prepared an Environmental Assessment (EA) for the proposed project. In the EA, the Commission's staff has analyzed the potential environmental impacts of the proposed project and has concluded that approval of the proposed project would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, Room 1000, of the Commission's offices at 825 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 89-1876 Filed 1-25-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-87-029 and TA89-1-6-003] [1]

Granite State Gas Transmission, Inc.; Proposed Changes in Rates and Tariff Provisions

January 19, 1989.

Take notice that on December 22, 1988, Granite State Gas Transmission, Inc. (Granite State), 120 Royall Street, Canton, Massachusetts 02021 tendered for filing with the Commission the revised tariff sheets listed below in its FERC Gas Tariff, First Revised Volume No. 1 and Original Volume No. 2 containing changes in rates and other tariff provisions for effectiveness on December 7, 1988 and January 1, 1989:

Proposed For Effectiveness December 7, 1988

First Revised Volume No. 1

Twenty-Second Revised Sheet No. 7
Eight Revised Sheet No. 7-A
Third Revised Sheet No. 14
Sixth Revised Sheet No. 68
Third Revised Sheet No. 69
Fifth Revised Sheet No. 70
Third Revised Sheet No. 70-A
Fourth Revised Sheet No. 71
Third Revised Sheet No. 71-A
Fourth Revised Sheet No. 72
Third Revised Sheet No. 73
Third Revised Sheet No. 74
Fifth Revised Sheet No. 75
Third Revised Sheet No. 75-A
Second Revised Sheet No. 75-B
First Revised Sheet No. 75-C
Fourth Revised Sheet No. 76
Second Revised Sheet No. 77
First Revised Sheet No. 77-A
Original Sheet No. 77-B
Second Revised Sheet No. 82
Third Revised Sheet No. 112
Second Revised Sheet No. 116

Original Volume No. 2

Ninth Revised Sheet No. 27

Proposed For Effectiveness January 1, 1989

First Revised Volume No. 1

Twenty-Third Revised Sheet No. 7

According to Granite State the rate changes and revised tariff provisions are submitted in compliance with an order of the Commission issued November 23, 1988 approving a settlement in Docket No. RP87-87-000. Granite State further states that the rate filing in Docket No. RP87-87-000, originally filed on August 20, 1987, reflected its increased costs for service to Bay State Gas Company (Bay State) and Northern Utilities, Inc. (Northern Utilities) resulting from the expanded operations approved in Docket No. CP87-39-000 to import and purchase Canadian gas from Shell Canada Limited (Shell) for system supply.

It is further stated that the settlement certified to the Commission contained two levels of a jurisdictional cost of service because of a phasing of the Shell deliveries during an initial interim period on an interruptible basis, followed by a period during which Shell will make firm daily deliveries. Also, according to Granite State, the settlement proposed jurisdictional rates for cost of service based on different cost allocation methods: Granite State's historical method and an allocation based on a systemwide costs. Granite State further states that, in the order approving the settlement issued November 23, 1988, the Commission directed Granite State to adopt the systemwide cost allocation procedure and to implement this method with rates effective December 1, 1988.

In its compliance filing, Granite State proposes to implement the requirements of the settlement on December 7, 1988. According to Granite State the compliance rates are based on the settlement rates for the period during which Shell provides full firm daily service to Granite State and the inauguration of such firm service commenced December 7, 1988.

According to Granite State copies of its filing were served upon its customers, Bay State and Northern Utilities, and the regulatory commissions of the States of Maine, Massachusetts and New Hampshire.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with sections 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before January 27, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 89-1870 Filed 1-25-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-4-51-000]

Great Lakes Gas Transmission Co., Proposed Changes in FERC Gas Tariff Purchased Gas Adjustment Clause Provisions

January 19, 1989.

Take notice that Great Lakes Gas Transmission Company ("Great Lakes") on January 12, 1989, tendered for filing Seventeenth-A Revised Sheet Nos. 57(i) and 57(ii) and Fifth-A Revised Sheet No. 57(v) to its FERC Gas Tariff, First Revised Volume No. 1.

Great Lakes states that Seventeenth-A Revised Sheet Nos. 57(i) and 57(ii) and Fifth-A Revised Sheet No. 57(v) reflect revised current PGA rates for the month of January, 1989. The tariff sheets are being filed in this out-of cycle PGA to reflect the latest estimated gas cost as provided to Great Lakes by its sole supplier of natural gas, TransCanada PipeLines, Limited ("TransCanada"). These pricing arrangements were the result of contract renegotiation between each of Great Lakes' resale customers and the supplier.

Great Lakes requested waiver of the notice requirements of the provisions of § 154.309 of the Commission's regulations and any other necessary waivers so as to permit the above tariff sheets to become effective on January 1, 1989 in order to implement the gas pricing agreements between Great Lakes' resale customers and TransCanada on a timely basis.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before January 27, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 89-1871 Filed 1-25-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-1-51-001 and TF89-1-51-001]

Great Lakes Gas Transmission Co.; Proposed Changes in FERC Gas Tariff Purchased Gas Adjustment Clause Provisions

January 19, 1989.

Take notice that Great Lakes Gas Transmission Company ("Great Lakes") on January 12, 1989, tendered for filing Second Substitute Sixteenth Revised Sheet Nos. 57(i) and 57(ii) and Third Substitute Third Revised Sheet No. 57(v) to its FERC Gas Tariff, First Revised Volume No. 1.

Great Lakes states that no November 23, 1988, Great Lakes Gas Transmission Company ("Great Lakes") filed with the Federal Energy Regulatory Commission ("Commission") six copies of Substitute Sixteenth Revised Sheet Nos. 57(i) and 57(ii), and Second Substitute Third Revised Sheet No. 57(v) to Great Lakes FERC Gas Tariff, First Revised Volume No. 1. These tariff sheets reflect an Out of Cycle PGA to revise the PGA rates for the months of November and December, 1988 and January, 1989 based on the latest estimated gas costs as provided to Great Lakes by its sole supplier of natural gas, TransCanada PipeLines, Limited ("TransCanada"). These pricing arrangements were the result of contract renegotiation between each of Great Lakes' resale customers and the supplier.

Great Lakes requested waiver of the notice requirements of the provisions of § 154.309 of the Commission's regulations and any other necessary waivers so as to permit the above tariff sheets to become effective on January 1, 1989 in order to implement these gas pricing agreements between Great Lakes' resale customers and TransCanada on a timely basis.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before January 27, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 89-1872 Filed 1-25-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA89-1-45-002]

Inter-City Minnesota Pipelines Ltd., Inc.; Filing Compliance

January 19, 1989.

Take notice that on January 12, 1989, Inter-City Minnesota Pipelines Ltd., Inc. ("Inter-City") 245 Yorkland Boulevard, North York, Ontario, Canada M2J 1R1, submitted for filing Substitute Thirty-first Revised Sheet No. 4 to Volume No. 1 of its FERC gas tariff.

Inter-City states the filing is made in compliance with the Commission's order issued in this proceeding on October 31, 1988. That order required Inter-City to recalculate its income taxes, interest rates and monthly interest payments.

Inter-City states that copies of the filing have been mailed to all of its customers and affected state regulatory commissions. Any persons desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before January 27, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene; provided, however, that any person who had previously filed a motion to intervene in this proceeding is not required to file a further motion. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 89-1875 Filed 1-25-89; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2509 Virginia]

Potomac Edison Co.; Intent To File an Application for a New License

January 23, 1989.

Take notice that on December 15, 1988, Potomac Edison Company, the existing licensee for the Shenandoah Hydro Station Hydroelectric Project No. 2509, filed a notice of intent to file an application for a new license, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 808, as amended by section 4 of the Electric Consumers Protection Act of 1986, Pub. L. 99-495. The original license for Project No. 2509 was issued effective April 1, 1962, and expires December 31, 1993.

The project is located on the South Fork of the Shenandoah River in Page County, Virginia. The principal works of the Shenandoah Hydro Station Project include a concrete gravity dam, about 15 feet high and 495 feet long; a reservoir of small pondage; a powerhouse with an installed capacity of 802 kW; a transmission line connection; and appurtenant facilities.

Pursuant to section 15(b)(2) of the Act, the licensee is required to make available certain information described in Docket No. RM87-7-000, Order No. 496 (Final Rule issued April 28, 1988). A copy of this Docket can be obtained from the Commission's Public Reference Branch, Room 1000, 825 North Capitol

[1] The filing was completed on January 13, 1989, at which time the required information for revision of its PGA rates were filed.

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Street NE., Washington, DC 20426. The above information as described in the rule is now available from the licensee at Downsville Pike, Hagerstown, MD 21740.

Pursuant to section 15(c)(1) of the Act, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 31, 1991.

Lois D. Cashell,
Secretary.

[FR Doc. 89-1674 Filed 1-25-89; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP89-230-000]

Texas Gas Transmission Corp.; Tariff Filing

January 19, 1989.

Take notice that on January 13, 1989, Texas Gas Transmission Corporation (Texas Gas) tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

First Revised Sheet No. 14D
First Revised Sheet No. 14E
First Revised Sheet No. 14F
First Revised Sheet No. 14G

Texas Gas states that this filing is made to reflect the allocation of Tennessee Gas Pipeline Company's revised take-or-pay demand surcharge during the six-month amortization period January 1 through June 30, 1989 to Texas Gas's downstream customers. The filing complies with a September 7, 1988 order in this docket which allows Texas Gas to track any modifications which the Commission may approve and represents a reduction in its monthly charge from $398,404 to $93,536. Texas Gas reserves the right to revise the filing as necessay to reflect any modifications made by the Commission or as required by any appellate court. The proposed effective date of the tariff sheets listed above is February 1, 1989.

Copies of this filing have been served upon Texas Gas's jurisdictional and nonjurisdictional sales customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before January 27, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 89-1673 Filed 1-25-89; 8:45 am]
BILLING CODE 6717-01-M

Western Area Power Administration

Parker-Davis Project; Order Confirming and Approving an Extension of Power Rates and Transmission Rates on an Interim Basis

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of an extension of Power Rates and Transmission Rates—Parker-Davis Project, Rate Schedules PD-F2, PD-FT2, PD-NFT2, and PD-FCT2.

SUMMARY: Notice is given of Rate Order No. WAPA-39 of the Deputy Secretary of Energy extending for 5 years the Rate Schedules PD-F2, PD-FT2, PD-NFT2, and PD-FCT2.

FOR FURTHER INFORMATION CONTACT: Mr. Earl W. Hodge, Assistant Area Manager for Power Marketing, Boulder City Area Office, Western Area Power Administration, P.O. Box 200, Boulder City, NV 89005, (702) 477-3255, or Mr. Conrad Miller, Western Area Power Administration, P.O. Box 3402, Golden, CO 80401, (303) 231-1535.

SUPPLEMENTARY INFORMATION: Pursuant to the Department of Energy Organization Act, 42 U.S.C. 7101-7352 (Supp. IV 1981), the power marketing functions, as vested in the Bureau of Reclamation (Reclamation) under the Reclamation Act of 1902, 43 U.S.C. 372, *et seq.* (1976), as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939, 43 U.S.C. 485h(c) (1976), and the acts specifically applicable to the project, were transferred to the Department of Energy (DOE).

By Amendment No. 1 to Delegation Order No. 0204-108, effective May 30, 1988 (51 FR 19744, May 30, 1988), the Secretary of Energy delegated: (1) The authority on a nonexclusive basis to develop power and transmission rates to the Administrator of the Western Area Power Administration; (2) the authority on a nonexclusive basis to confirm, approve, and place such rates in effect on an interim basis to the Under Secretary of the Department of Energy; and (3) the authority on an exclusive basis to confirm, approve, and place in effect on a final basis, remand, or disapprove such rates to the Federal Energy Regulatory Commission (FERC).

On October 27, 1988, the Secretary of Energy issued a notice (DOE N 1110.29), which has the effect of amending Delegation Order No. 0204-108 by transferring the authority to place rates into effect on an interim basis from the Under Secretary of the Department of Energy to the Deputy Secretary of the Department of Energy (Attachment A of this notice.)

Western is developing these rates in accordance with Reclamation law; DOE financial reporting policies, procedures, and methodology (DOE Order No. RA 6120.2 (September 20, 1979)); and the procedures for public participation in rate adjustments found at 10 CFR Part 903 (1987), as amended.

Power repayment studies and other analyses indicate that the existing rates are sufficient to maintain the financial integrity of the Parker-Davis Project (P-DP), and will provide sufficient revenues to recover all operation, maintenance, and replacement costs for the P-DP through the cost-evaluation period ending September 30, 1992. Further, revenues since the project was placed into commercial service have been sufficient to satisfy the repayment to the Treasury of the United States, with interest, of all Federal funds advanced to the P-DP for the construction of the P-DP's features, including the assumed obligations of other electrical facilities associated with the reclamation of lands and treaties of the United States with the Republic of Mexican States.

In accordance with 10 CFR 903.23, the Administrator of Western has determined, on the basis that this action does not affect the existing rates, that a consultation and comment period is not needed, nor is there any need for public information or comment forums. Notice of the proposed rate extension was published at 53 FR 46306, November 30, 1988. The extension of the existing rates is expected to be placed in effect on an interim basis on January 1, 1989, by the Deputy Secretary of the Department of Energy and will be forwarded to the FERC for approval on a final basis.

Issued at Washington, DC, December 22, 1988.

Joseph F. Salgado,
Deputy Secretary.

Attachment A

Subject: Authorities and Responsibilities of the Deputy Secretary and Under Secretary

[DOE N 1110.29]

EXPIRES: 10-27-88, 10-27-89.

Joseph F. Salgado, as Deputy Secretary of Energy is designated Chief Operating Officer of the Department. All authorities and responsibilities assigned by any Departmental directive or Delegation Order to the Under Secretary, except those identified below, are hereby assigned to the Deputy Secretary. As Chief Operating Officer the Deputy Secretary will function as Acquisition Executive for all major systems acquisitions and will chair the Energy System Acquisition Advisory Board (ESAAB).

Donna R. Fitzpatrick has been appointed Under Secretary and will, as required by Section 202 of the DOE Organization Act, bear primary responsibility for energy conservation. In addition the Under Secretary will serve as a member of the Energy System Acquisition Advisory Board and will oversee activities of the Office of Policy, Planning and Analysis which will continue to develop and coordinate policies that crosscut multiple Departmental elements and/or have broad Department-wide implications.

Secretarial Officers will continue to be responsible for developing and promulgating policies dealing with their operations and to assure implementation of Department-wide policy decisions.

This Notice supersedes DOE N 1100.18 dated 5-21-85, on the roles and responsibilities of the Under Secretary, DOE N 1100.19 dated 5-21-85, on the reporting relationship of the Office of Policy, Planning and Analysis to the Deputy Secretary, DOE N 1110.17 dated 11-12-86, on designation of the departmental acquisition executive, DOE 1110.26 dated 5-18-88 with respect to designation of the Under Secretary, Joseph F. Salgado and the Assistant Secretary, Conservation and Renewable Energy, Donna R. Fitzpatrick in acting capacity as Deputy Secretary and Associate Under Secretary respectively, and DOE N 1110.27 dated 7-22-88 on designation of the Associate Under Secretary as a member of the Energy System Acquisition Advisory Board.

Appropriate revisions to Departmental directives will be made to reflect these actions.

John S. Herrington,
Secretary.

December 22, 1988.

Pursuant to the Department of Energy Organization Act, 42 U.S.C. 7101-7352 (Supp. IV 1981), the power marketing functions, as vested in the Bureau of Reclamation (Reclamation) under the Reclamation Act of 1902, 43 U.S.C. 372, *et seq.* (1976), as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939, 43 U.S.C. 485h(c) (1976), and the acts specifically applicable to the project, were transferred to the Department of Energy (DOE).

By Amendment No. 1 to Delegation Order No. 0204-108, effective May 30, 1988 (51 FR 19744, May 30, 1988), the Secretary of Energy delegated: (1) The authority on a nonexclusive basis to develop power and transmission rates to the Administrator of the Western Area Power Administration (Western); (2) the authority on a nonexclusive basis to confirm, approve, and place such rates in effect on an interim basis to the Under Secretary of the Department of Energy; and (3) the authority on an exclusive basis to confirm, approve, and place in effect on a final basis, remand, or disapprove such rates to the Federal Energy Regulatory Commission.

On October 27, 1988, the Secretary of Energy issued a notice (DOE N 1110.29) which has the effect of amending Delegation Order No. 0204-108 by transferring the authority to place rates into effect on an interim basis from the Under Secretary of the Department of Energy to the Deputy Secretary of the Department of Energy.

Western is developing these rates in accordance with Reclamation law; DOE financial reporting policies, procedures, and methodology (DOE Order No. RA 6120.2 (September 20, 1979)); and the procedures for public participation in rate adjustments found at 10 CFR Part 903 (1987), as amended.

Background

The Parker Dam Project was authorized by section 2 of the Rivers and Harbors Act of August 30, 1935 (49 Stat. 1039), and the Davis Dam Project was authorized April 26, 1941, by the Acting Secretary of the Interior under provisions of the Reclamation Project Act of 1939 (43 U.S.C. 485, *et seq.*). The Parker-Davis Project (P-DP) was formed by the consolidation of the two projects under the terms of the act of May 28, 1954 (68 Stat. 143).

Parker Dam, which creates the Lake Havasu Reservoir, is located on the Colorado River between Arizona and California, 155 miles downstream from Hoover Dam. The dam was constructed by Reclamation, partially with funds advanced by the Metropolitan Water District (MWD) of Southern California. Under contract, MWD is entitled to one-half of the net energy generated. Davis Dam, which creates the Lake Mohave Reservoir, is located on the Colorado River between Arizona and Nevada, 67 miles downstream from Hoover Dam. The P-DP is operated in conjunction with other hydroelectric installations in the Colorado River Basin.

Construction of Parker Dam was authorized for the purpose of controlling floods, improving navigation, regulating flow of the streams of the United States, providing for storage and delivery of the stored waters thereof, reclamation of public lands and Indian reservations, other beneficial uses, and the generation of electric energy as a means of financially aiding and assisting such undertakings.

Davis Dam was constructed to provide reregulation for the fluctuating water releases from Lake Mead at Hoover Dam, from hourly to seasonal, to facilitate water delivery for downstream irrigation requirements, for delivery of water beyond the boundary of the United States as required by the Mexican Water Treaty, and for the generation of electric energy as a means of financially aiding and assisting such undertakings.

Discussion

Power repayment studies (PRS) and other analyses indicate that the existing rates are sufficient to maintain the financial integrity of the P-DP, and will provide sufficient revenues to recover all operation, maintenance, and replacement costs for the P-DP through the cost evaluation period ending September 30, 1992. Further, revenues since the project was placed into commercial service have been sufficient to satisfy the repayment to the Treasury of the United States, with interest, of all Federal funds advanced to the P-DP for the construction of the P-DP's features, including the assumed obligations of other electrical facilities associated with the reclamation of lands and treaties of the United States with the Republic of Mexican States.

Operating revenues for fiscal year 1987 were approximately $24.2 million, while average estimated operating revenues for the first 5-future years (FY 1988-FY 1992) are approximately $20 million. Revenues are impacted by two

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factors: (1) The amount of sales (kWh) and (2) the rates for such sales. Sales for fiscal years 1988 through 2008 (termination of current contracts) are based on firm power and transmission contractual commitments. The power and transmission rates now in effect are sufficient to recover the costs of producing and transmitting power and energy. Additionally, all federally funded construction of P–DP facilities has been recovered with appropriate interest.

The PRS on which the rate extension is based differs in the treatment of future replacements from the PRS on which the current rates are based. While the previous ratesetting PRS projected replacements for the entire term of the study, the PRS for the rate extension projects replacements for the 5-future-year cost evaluation period only. Additionally, since 1983, several events have occurred that are now reflected in the PRS prepared for the rate extension. First, fuel replacement sales were made utilizing Western's Boulder City Area Office's transmission system with the revenues from those sales shared among projects. Secondly, the P–DP is repaid, in part due to fuel replacement sales revenues as well as sales greater than expected resulting from surplus water. Lastly, surplus revenues are used during the 5-year cost evaluation period to repay budgeted investments, and thereafter are transferred to another project as required by law.

Beginning in fiscal year 1983, revenues to the Boulder City Area resulting from the settlement of a joint intra-Western projects agreement (Salt Lake City Area and Boulder City Area) have been allocated to both the P–DP and Pacific Northwest-Pacific Southwest Intertie/Southern Division (Intertie). This has resulted in approximately 30 percent (30%), or $10,502,544, of the net revenues to the Boulder City Area being allocated to the Intertie and transferred in FY 1988. This allocation is predicated on the basis that both the P–DP's and the Intertie's transmission systems are utilized proportionately to effect economy energy transactions within the Boulder City Area.

The PRS utilizes budget data to project the first 5-future years of operation, maintenance, and replacement costs for both Reclamation and Western. The FY 1992 operation and maintenance (O&M) budget amount was reduced by the amount of "extraordinary O&M expenses" to determine the FY 1993–FY 2042 level of O&M costs. Budgeted replacement amounts were used in the PRS for the cost evaluation period ending September 30, 1992 (FY 1992). Beginning in FY 1993, no further replacements costs are forecast through the end of the repayment analysis (FY 2042). Exclusion of future replacements costs beyond the cost-evaluation period would prevent a presently unnecessary rate increase for this project that has been repaid.

Also, the PRS reflects, in FY 1993, a transfer of $5,454,601 to the Lower Colorado River Basin Development Fund; from FY 1994 through FY 2004 an annual transfer of $2,727,936; and from FY 2005 through FY 2042 (end of study) an annual transfer of $1,649,936. These transfers represent the "surpluses" of revenues after all operation, maintenance, replacement costs, and completion of repayment requirements for P–DP have been satisfied, and are required by section 403 of the Colorado River Basin Project Act, as amended.

Order

In view of the foregoing and pursuant to the authority delegated to me by the Secretary of Energy, I hereby confirm and approve for a period effective January 1, 1989, a 5-year extension of existing Rate Schedules PD–F2, PD–FT2, PD–NFT2, and PD–FCT2 for wholesale firm power rates and the firm and nonfirm transmission rates for Western's Parker-Davis Project.

Issued in Washington, DC, December 22, 1988.

Joseph F. Salgado,
Deputy Secretary.

Schedule of Rates for Wholesale Firm Power Service; Rate Schedule PD–F2

Effective

The first day of the first full billing period beginning on or after December 15, 1983.

Available

In the area served by the Parker-Davis Project.

Applicable

To wholesale power customers for general power service supplied through one meter at one point of delivery, unless otherwise specified by contract.

Character and Conditions of Service

Three-phase alternating current at 60 hertz, delivered and metered at the voltages and points of delivery specified in the power service contract.

Monthly Rate

Capacity Charge: $1.87 per kilowatt of billing demand.

Energy Charge: 4.28 mills per kilowatthour for each kilowatthour scheduled or delivered, not to exceed the delivery obligation under the power service contract.

Billing Demand: The billing demand will be the greater of (1) the highest 30-minute integrated demand established during the month up to, but not in excess of, the delivery obligation under the power service contract, or (2) the contract rate of delivery.

Billing for Unauthorized Overruns

For each billing period in which there is a contract violation involving an unauthorized overrun of the contractual firm capacity and/or energy obligations, such overrun shall be billed at ten times the above rates.

Adjustments

For Transformer Losses. If delivery is made at transmission voltage but metered on the low-voltage side of the transformer, the meter readings will be increased 2 percent to compensate for transformer losses.

For Power Factor. None. The customer will normally be required to maintain a power factor at the point of delivery of between 95 percent lagging and 95 percent leading.

Schedule of Rates for Firm Transmission Service; Rate Schedule PD–FT2 (Supersedes Rate Schedule PD–T1)

Effective

The first day of the first full billing period beginning on or after December 15, 1983.

Available

In the area served by the Parker-Davis Project transmission facilities.

Applicable

The firm transmission service customers where capacity and energy are supplied to the Parker-Davis Project system at points of interconnection with other systems and transmitted and delivered, less losses, to points of delivery on the Parker-Davis Project system specified in the service contract.

Character and Conditions of Service

Transmission service for three-phase alternating current at 60 hertz, delivered and metered at the voltages and points of delivery specified in the service contract.

Rate

$7.56 per kilowatt per year, payable monthly at the rate of $.63 per kilowatt for the greater of each kilowatt contracted for or delivered at the point of delivery during that month, as specified in the service contract.

Adjustments

For Reactive Power. None. There shall be no entitlement to transfer of reactive kilovoltamperes at points of delivery, except when such transfers may be mutually agreed upon by contractor and contracting officer or their authorized representatives.

For losses. Power and energy losses incurred in connection with the transmission and delivery of power and energy under this rate schedule shall be supplied by the customer in accordance with the service contract.

Schedule of Rates for Transmission Service of Colorado River Storage Project (CRSP) Power And Energy; Rate Schedule PD–FCT2 (Supersedes Rate Schedule PD–T2)

Effective

The first day of the first full billing period beginning on or after December 15, 1983.

Available

In the area served by the Parker-Davis Project transmission facilities.

Applicable

To Colorado River Storage Project (CRSP) Southern Division costomers where CRSP capacity and energy are supplied to the Parker-Davis Project system by CRSP at points of interconnection with the CRSP system and for transmission and delivery, less losses, to Southern Division customers at points of delivery on the Parker-Davis Project system specified in the service contract.

Character and Conditions of Service

Transmission service for three-phase alternating current at 60 hertz, delivered and metered at the voltages and points of delivery specified in the service contract.

Seasonal Rate

$3.78 per kilowatt of the maximum allowable rate of delivery made available at each point of delivery during each season as specified in the service contract, payable monthly at the rate of $0.63 per kilowatt.

Adjustments

For Reactive Power. None. There shall be no entitlement to transfer of reactive kilovoltamperes at points of delivery, except when such transfers may be mutually agreed upon by contractor and contracting officer or their authorized representatives.

For Losses. Power and energy losses incurred in connection with the transmission and delivery of power and energy under this rate schedule shall be supplied by the customer in accordance with the service contract.

Schedule of Rates for Nonfirm Transmission Service; Rate Schedule PD–NFT2 (Supersedes Rate Schedule PD–T3)

Effective

The first day of the first full billing period beginning on or after December 15, 1983.

Available

In the area served by the Parker-Davis Project transmission facilities.

Applicable

To nonfirm transmission service customers where capacity and energy are supplied to the Parker-Davis Project system at points of interconnection with other systems, transmitted subject to the availability of transmission capacity, and delivered less losses to points of delivery on the Parker-Davis Project system specified in the service contract.

Character and Conditions of Service

Transmission service on an intermittent basis for three-phase alternating current at 60 hertz, delivered and metered at the voltages and points of delivery specified in the service contract.

Rate

1.4 mills per kilowatthour of the scheduled or delivered kilowatthours at the point of delivery, pursuant to the contract, payable monthly.

Adjustments

For Reactive Power. None. There shall be no entitlement to transfer of reactive kilovolt-amperes at points of delivery, except when such transfers may be mutually agreed upon by contractor and contracting officer or their authorized representatives.

For Losses. Power and energy losses incurred in connection with the transmission and delivery of power and energy under this rate schedule shall be supplied by the customer in accordance with the service contract.

[FR Doc. 89–1878 Filed 1–25–89; 8:45 am]
BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[WH–FLR–3509–8]

State and Local Assistance; Grants for Construction of Treatment Works (Title II) and State Water Pollution Control Revolving Funds (Title VI) Under the Clean Water Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of allotment.

SUMMARY: This notice sets forth the State allotments of fiscal year (FY) 1989 funding for the municipal wastewater treatment works construction grants program and the state revolving fund capitalization grants program under the Clean Water Act (the Act). On August 19, 1988, in Pub. L. 100–404 Congress appropriated $941 million in funding for the construction grants program (Title II) and $941 million for the state revolving fund capitalization grant program (Title VI). After national set-asides for Indian Tribes and the Marine Estuary Reserve are subtracted from the construction grants allotment, the remaining amounts are allotted in accordance with section 205(c)(3) of the Act, as amended by Pub. L. 100–4.

Through promulgation of this notice the requirements of the Act are fulfilled and the public is notified of the amounts made available to the States for grants to construct municipal wastewater treatment works and to capitalize the State water pollution control revolving funds. This notice also explains an adjustment to the allotment formula in section 205(c)(3) necessitated by laws affecting the funding status of the former Trust Territories of the Pacific Islands.

FOR FURTHER INFORMATION CONTACT: Mr. Leonard B. Fitch, Program Management Branch, Municipal Construction Division, Office of Municipal Pollution Control, (202) 382–5858.

SUPPLEMENTARY INFORMATION:

Pub. L. 100–404 appropriated and made available $941 million for construction grant funds (Title II) and $941 million for state revolving fund capitalization grant funds (Title VI) for fiscal year 1989. Two national set-asides (Marine Estuary and Indian Tribes Reserves) are subtracted from the amount available for the construction grants allotment prior to allotment to the States. Finally, adjustments to States' allotments are made to reflect the decreased amount of funding provided to the Federated States of Micronesia and the Republic of the Marshall Islands

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(formerly part of the Trust Territories of the Pacific Islands). The national set-asides and the adjustments necessitated by the change in status of the former Trust Territories are explained below. The amount of FY 1989 funding that is made available to each State is listed in the table at the end of this notice.

Marine Estuary

Section 205(l) of the Act provides that, prior to making allotments among the States, the Administrator shall reserve one and one-half percent of sums appropriated for FY 1989 for construction grants to address water quality problems in marine bays and estuaries. In accordance with this provision, one and one-half percent ($14,115,000) of the $941 million available for construction grant allotments is set aside prior to allotting funds to the individual States. Section 205(l) further stipulates that, "Of the sums reserved under this subsection, two-thirds shall be available to address water quality problems of marine bays and estuaries subject to lower levels of water quality due to the impacts of discharges from combined storm water and sanitary sewer overflows from adjacent urban complexes, and one-third shall be available for the implementation of section 320 of this Act, relating to the national estuary program." Funds set aside for these purposes available for obligation until September 30, 1990.

Indian Tribes

Section 518(c) of the Act provides that the Administrator shall reserve one-half of one percent of the sums appropriated for FY 1989 for construction grants to make wastewater treatment grants to Indian tribes. These funds are available for grants to develop waste treatment management plans and to construct sewage treatment works to serve Indian tribes. In accordance with this provision, one-half of the one percent ($4,705,000) of the $941 million available for allotment is set aside prior to allocating funds to the States.

Trust Territory Adjustment

In Pub. L. 99-658, Congress approved a Compact of Free Association for the Trust Territories' members and directed, for transition purposes, that the Trust Territories receive in FY 1989 "* * * amount not to exceed 25 per centum of the total amount appropriated for * * * [infrastructure] for fiscal year 1986." At the effective date of this allotment the Republic of Palau, a member of the Trust Territories, is yet to implement a Compact of Free Association. To cover this contingency, Pub. L. 99-239, section 105(h)(2) states that, "Upon the effective date of the Compact, the laws of the United States generally applicable to the Trust Territory of the Pacific Islands shall continue to apply to the Republic of Palau and the Republic of Palau shall be eligible for such proportion of Federal assistance as it would otherwise have been eligible to receive under such laws prior to the effective date of the Compact, as provided in appropriations Acts or other Acts of Congress." To comply with both Pub. L. 99-658 and Pub. L. 99-239 it is necessary to decrease the Trust Territories' allotment share from the appropriation. Funds that otherwise would have been allotted to the Trust Territories are redistributed to the remaining States and Territories in proportion to their respective shares of the appropriation. Because the amounts allotted to the Trust Territories for construction grants (Title II) and for capitalization of state revolving funds (Title VI) are different, the adjusted formula for Title II State allotment is different from the Title VI State allotment. This redistribution is accomplished by the new allocation shares shown in the column titled "Allotment Formulae After Trust Territory Adjustments" in the table at the end of this notice. The actual allotments resulting from the adjusted allotment shares are shown in the column titled "State Allotment." The table at the end of this notice lists the amount of funding made available to each State for the two programs. Advices of allowance for these allotments have been issued by the EPA Comptroller and these allotments are available for obligation until September 30, 1990. After September 30, 1990, unobligated balances will be reallotted in accordance with the Act and EPA regulation 40 CFR 35.2010. Grants from the allotments may be awarded as of the date that advices of allowance were issued to the Regional Administrator by the Comptroller of EPA.

Dated: January 19, 1989.

Lee M. Thomas,

Administrator.

State	Allotment formula	Allotment formulae after trust territory adjustments		FY 89 State allotment—	
		Title II	Title VI	Title II	Title VI
Alabama	0.011309	0.011315	0.011321	$10,434,700	$10,653,500
Alaska	.006053	.006056	.006060	5,585,100	5,702,100
Arizona	.006831	.006835	.006839	6,302,900	6,435,000
Arkansas	.006616	.006620	.006623	6,104,500	6,232,500
California	.072333	.072373	.073412	66,741,200	68,140,100
Colorado	.008090	.008095	.008099	7,464,600	7,621,100
Connecticut	.012390	.012397	.012404	11,432,200	11,671,800
Delaware	.004965	.004968	.004970	4,581,200	4,677,200
District of Columbia	.004965	.004968	.004970	4,581,200	4,677,200
Florida	.034139	.034158	.034176	31,499,900	32,160,100
Georgia	.017100	.017110	.017119	15,778,100	16,108,800
Hawaii	.007833	.007837	.007842	7,227,500	7,378,900
Idaho	.004965	.004968	.004970	4,581,200	4,677,200
Illinois	.045741	.045767	.045791	42,205,000	43,089,600
Indiana	.024374	.024388	.024401	22,489,700	22,961,100
Iowa	.013686	.013695	.013703	12,629,800	12,894,800
Kansas	.009129	.009134	.009139	8,423,300	8,599,800
Kentucky	.012972	.012979	.012986	11,876,900	12,125,900
Louisiana	.011116	.011124	.011130	10,256,500	10,473,500
Maine	.007829	.007833	.007838	7,223,800	7,375,200
Maryland	.024461	.024475	.024488	22,570,000	23,043,100
Massachusetts	.034338	.034357	.034376	31,683,500	32,347,500
Michigan	.043487	.043511	.043535	40,125,200	40,966,200
Minnesota	.018588	.018599	.018609	17,152,000	17,511,500
Mississippi	.009112	.009117	.009122	8,407,800	8,583,800
Missouri	.029037	.029053	.029066	26,789,600	26,411,800

State	Allotment formula	Allotment formulae after trust territory adjustments		FY 89 State allotment—	
		Title II	Title VI	Title II	Title VI
Montana	.004965	.004968	.004970	4,581,200	4,677,200
Nebraska	.005173	.005176	.005179	4,773,100	4,873,100
Nevada	.004965	.004968	.004970	4,581,200	4,677,200
New Hampshire	.010107	.010113	.010118	9,325,700	9,521,100
New Jersey	.041329	.041352	.041374	38,134,000	38,933,300
New Mexico	.004965	.004968	.004970	4,581,200	4,677,200
New York	.111632	.111684	.111755	103,002,200	105,161,100
North Carolina	.018253	.018263	.018273	16,841,900	17,194,900
North Dakota	.004965	.004968	.004970	4,581,200	4,677,200
Ohio	.056836	.056968	.056999	52,534,500	53,635,600
Oklahoma	.008171	.008176	.008180	7,539,300	7,697,400
Oregon	.011425	.011431	.011438	10,541,800	10,762,700
Pennsylvania	.040062	.040084	.040106	36,965,000	37,739,700
Rhode Island	.006791	.006795	.006798	6,266,000	6,397,300
South Carolina	.010361	.010367	.010372	9,560,000	9,760,400
South Dakota	.004965	.004968	.004970	4,581,200	4,677,200
Tennessee	.014682	.014700	.014708	13,556,200	13,840,400
Texas	.046226	.046252	.046277	42,652,500	43,546,400
Utah	.005329	.005332	.005335	4,917,000	5,020,100
Vermont	.004965	.004968	.004970	4,581,200	4,677,200
Virginia	.020698	.020710	.020721	19,097,900	19,498,200
Washington	.017586	.017598	.017607	16,228,300	16,568,500
West Virginia	.015766	.015775	.015783	14,547,200	14,852,100
Wisconsin	.027342	.027357	.027372	25,228,300	25,757,100
Wyoming	.004965	.004968	.004970	4,581,200	4,677,200
American Samoa	.000908	.000909	.000909	837,800	855,400
Guam	.000657	.000657	.000658	606,200	618,900
Northern Marianas	.000422	.000422	.000422	389,400	397,500
Puerto Rico	.013191	.013198	.013205	12,171,300	12,426,400
Pacific Trust Territory	.001295	.000737	.000198	680,500	186,400
Virgin Islands	.000527	.000527	.000528	486,300	4967,500
Total	1.000000	1.00000000	1.00000000	922,180,000	941,000,000
Indian setaside					4,705,000
Marine CSO and NEP setaside					14,115,000

[FR Doc. 89-1793 Filed 1-25-89; 8:45 am]

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(OSWER-FRL-3421-2)

Pollution Prevention Policy Statement

AGENCY: Environmental Protection Agency.

ACTION: Proposed policy statement.

SUMMARY: The Environmental Protection Agency's progress over the last 18 years in improving environmental quality through its media-specific pollution control programs has been substantial. However, EPA realizes that there are limits as to how much environmental improvement can be achieved under these programs, which emphasize management after pollutants have been generated. EPA believes that further improvements in environmental quality can be achieved by reducing or eliminating discharges and/or emissions to the environment through the implementation of source reduction and environmentally-sound recycling practices.

EPA's proposed policy encourages organizations, facilities and individuals to fully utilize source reduction techniques in order to reduce risk to public health, safety, welfare and the environment, and as a second preference, to use environmentally sound recycling to achieve these same goals. Industrial source reduction can be accomplished through input substitution, product reformulation, process modification, improved housekeeping, and onsite, closed loop recycling. Although source reduction is preferred to other management practices, the Agency recognizes the value of environmentally sound recycling, and is committed to promoting recycling as a sound preference, above treatment, control and disposal.

EPA believes pollution prevention through source reduction and environmentally sound recycling is highly desirable, and that as a Nation there are many opportunities in source reduction and recycling that we have not yet pursued. However, we recognize that, while there is still much progess to be gained, the extent to which we can prevent pollution also has limitations, and that safe treatment, storage and disposal, for pollution that couldn't reasonably be reduced at the source or recycled, will continue to be important components of an environmental protection strategy. Source reduction and recycling will not totally obviate the need for or the importance of these processes. Individuals as well as industrial facilities or organizations can practice source reduction and recycling through changing their consumption or disposal habits, their driving patterns and their on-the-job practices.

EPA firmly believes that all sectors of our society must work together to ensure continued environmental protection. Today's notice commits EPA to a preventive program to reduce or eliminate the generation of potentially harmful pollutants. The Agency has established a Pollution Prevention Office which together with EPA's media-specific offices will develop and implement this program. An Advisory Committee of senior Agency managers will help direct EPA's pollution prevention program and will assure the participation of the entire Agency in this important mission. EPA also believes that State and local government must play a primary role in encouraging this shift in the environmental priorities of all sectors of industry and the public.

Today's notice also commits EPA to working with States to develop and implement specific strategies and technical assistance programs to encourage commercial and

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manufacturing industries, the agricultural sector and the general public to reduce the amount of pollution generated.

There are varying views among representatives of industry, public interest groups, state and local governments and others over the role of recycling in pollution prevention. The Agency believes that source reduction (including closed-loop, in-plant recycling) can reduce risk and should be implemented in a cost efficient manner. It is generally preferred over other management approaches. The Agency also believes that out-of-loop and off-site recycling, when properly conducted, also offers the potential for significant economic benefits and reduced risk. With the publication of this proposed pollution prevention policy, the Agency would like to specifically request comment on the role of environmentally sound recycling in the pollution prevention program. Other comments on this policy, and on the steps necessary to implement it effectively are invited.

DATES: EPA urges interested parties to comment on this notice in writing. The deadline for submitting written comments is April 26, 1989.

ADDRESSES: All comments must be submitted in triplicate (original and two copies) to: EPA RCRA Docket (Room SE-301) (mail code OS-305), 401 M Street SW., Washington, DC 20460. Place the docket number #F-88-SRRP-FFFFF, on your comments.

For further information, contact: Gerald Kotas, Director, Pollution Prevention Office, Office of Policy, Planning and Evaluation, 401 M Street SW., Wasington, DC 20460, (202) 382-4335; or James Lounsbury, Office of Solid Waste (OS-302), 401 M Street SW., Washington, DC 20460, (202) 382-4807.

Pollution Prevention Policy Statement Outline:

This policy statement is organized as follows:

I. Background
II. EPA's Pollution Prevention Policy
III. Development of EPA's Multi-Media Pollution Prevention Program

I. Background

EPA has made substantial progress over the last 18 years in improving the quality of the environment through implementation of media-specific pollution control programs. Not withstanding past progress, there are economic, technological, and institutional limits on how much improvement can be achieved under these programs, which emphasize management after pollutants have been generated. As early as 1976, EPA believed the nation could not continue to reduce threats to human health and the environment while utilizing only better methods of control, treatment or disposal.

In practice, waste management activities by both the regulatory and the regulated community have largely focused on treatment, control and disposal as specified in EPA's major statutes, and to a lesser extent, on recycling. Although each of these techniques is appropriate in a comprehensive waste management strategy, government and industry are beginning to realize that end-of-pipe pollution controls alone are not enough. Significant amounts of waste containing toxic constituents continue to be released into the air, land, and water, despite stricter pollution controls and skyrocketing waste management costs.

There is increasing evidence of the economic and environmental benefits to be realized by reducing waste at the source rather than managing such waste after it is produced. Elimination of tons of pollutant discharges can be combined with cost savings estimated from the cost of pollution control facilities that did not have to be built; reduced operating costs for pollution control facilities; reduced manufacturing costs; and retained sales of products that might otherwise have been taken off the market as environmentally unacceptable.

Today's policy statement commits EPA to a program that reduces all environmentally harmful releases. EPA's experience with its current programs has shown that, notwithstanding the substantial gains that have been made in limiting environmental pollution, media-specific programs have some inherent limitations. Efforts to control or treat pollutants subsequent to their generation or production can sometimes result in transfers of these pollutants from one environmental medium to another, where they may continue to present a hazard. In addition, once these pollutants have been produced or generated, some proportion of those releases will have an impact on the environment, however effective the control or management techniques. The preventive approach of today's policy statement provides a way to more effectively respond to these remaining problems.

EPA believes that all sectors of our society must work together to ensure continued environmental protection. EPA is committed to working with individuals and organizations (both public and private) to make source reduction and as a second preference, environmentally sound recycling, the major focus of future environmental protection strategies. In particular, EPA believes that State and local governments must play a primary role in encouraging this shift in the environmental priorities of all sectors of industry and the public.

Some programs within EPA have already adopted measures to promote source reduction and recycling. For example, the Office of Water has adopted effluent guidelines that have resulted in flow reductions and product substitutions. The rapid phasing down of lead in gasoline by EPA's Office of Air and Radiation Programs is another attempt to reduce pollution at the source. Nevertheless, much of the past focus in these programs has been on pollution control rather than pollution prevention. It is necessary at this time to reassess EPA's programs in light of today's policy statement and redirect them accordingly.

The term "waste minimization", which EPA has previously used in reference to source reduction and recycling activities in its hazardous waste program, has been replaced in today's policy statement by the phrase "pollution prevention". Through eliminating a term that may be perceived as closely tied to RCRA, EPA is emphasizing that the policy has applicability beyond the RCRA hazardous waste context. EPA stresses that the policy focuses primarily on the prevention of pollution through the multi-media reduction of pollutants at the source. In addition, in order to obtain additional benefits of avoiding releases to the environment, EPA's pollution prevention program secondarily promotes environmentally sound recycling.

II. EPA's Pollution Prevention Policy

EPA's proposed policy encourages organizations, facilities and individuals to fully utilize source reduction techniques in order to reduce risk to public health, safety, welfare and the environment and as a second preference to use environmentally sound recycling to achieve these same goals. Industrial source reduction can be accomplished through input substitution, product reformulation, process modification, improved housekeeping, and on-site, closed loop recycling. Although source reduction is preferred to other management practices, the Agency recognizes the value of environmentally sound recycling, and is committed to promoting recycling as a second preference, above treatment, control and disposal.

EPA believes pollution prevention through source reduction and environmentally sound reduction is highly desirable, and that as a Nation there are many opportunities in source reduction and recycling that we have not yet pursued. However, we recognize that, while there is still much progress to be gained, the extent to which we can prevent pollution also has limitations, and that safe treatment, storage and disposal, for pollution that couldn't reasonably be reduced at the source or recycled, will continue to be important components of an environmental protection strategy. Source reduction and recycling will not totally obviate the need for or the importance of these processes. Individuals as well as industrial facilities or organizations can practice source reduction and recycling through changing their consumption or disposal habits, their driving patterns and their on-the-job practices. EPA believes that developing and implementing a new mutli-media prevention strategy, focused primarily on source reduction and secondarily on environmentally sound recycling, offers enormous promise for improvements in human health protection and environmental quality and significant economic benefits.

III. Development of EPA's Multi-Media Pollution Prevention Program

EPA has initiated development of a comprehensive pollution prevention program to implement this pollution prevention policy throughout the Agency programs, whether they affect air, land, surface water, or ground water. EPA has established a Pollution Prevention Office which together with the Agency's media-specific offices will develop and implement this program. EPA will develop an overall Agency pollution prevention strategy, as well as coordinate strategies among EPA's program and regional offices. An important emphasis of these strategies will be on educational, technical assistance and funding support to make it easier to build these programs into the public and private sectors. An Advisory Committee of senior Agency managers will help direct EPA's pollution prevention program and will assure the participation of the entire Agency in this important mission. As part of this program, EPA will establish mechanisms for avoiding or mitigating the generation and cross-media pollution prevention program will focus on several key components. These include:

- The development of institutional structures within each of EPA's media-specific and regional offices to ensure that the pollution prevention philosophy is incorporated into every feasible aspect of internal EPA decisionmaking and planning;
- The support of State and local pollution prevention programs. EPA believes that State and local agencies are more aware of the problems facing the commercial or manufacturing industries, or consumers, than the federal government. Indeed, a few States have already formally recognized the importance of multi-media pollution prevention. One of EPA's primary goals is to help States develop their own pollution prevention programs;
- The development of an outreach program targeted at State and local governments, industry and consumers, designed to effect a cultural change emphasizing the opportunities and benefits of pollution prevention;
- The creation of incentives and elimination of barriers to pollution prevention;
- The development of a multi-media clearinghouse to provide educational and technical information. This includes the support of research, development and demonstrations necessary to provide relevant data; and
- The collection, dissemination and analysis of data for the purpose of evaluating national progress in mutli-media pollution prevention.

EPA believes that the development of a comprehensive multi-media pollution prevention policy offers enormous promise for improvements in human health protection and environmental quality. Because the focus of pollution prevention is on greater efficiency in the use of materials and processing of products, its implementation could additionally result in significant economic benefits.

There are significant opportunities for industry to reduce the generation of waste at the source through cost-effective changes in production, operation, and raw materials use. Such changes offer industry substantial savings in reduced raw material, waste management, and liability costs as well as help protect the environment.

There are varying views among representatives of industry, public interest groups, state and local governments and others over the role of recycling in pollution prevention. The Agency believes that source reduction (including closed-loop, in-plant recycling) can reduce risk and should be implemented in a cost efficient manner. It is generally preferred over other management approaches. The Agency also believes that out-of-loop and off-site recycling, when properly conducted, also offers the potential for significant economic benefits and reduced risk. With the publication of this proposed pollution policy, the Agency would like to specifically request comment on the role of environmentally sound recycling in the pollution prevention program. Other comments on this policy, and on the steps necessary to implement it effectively are invited.

Lee M. Thomas.

January 19, 1989.

[FR Doc. 89-1794 Filed 1-25-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Applications for Consolidated Hearing; Media-Com, Inc., et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

I.

Applicant, City and State	File No.	MM Docket No.
A. Media-Com, Ind., Uhrichsville, OH.	BPH-871231ML	88-570
B. Edward Alan Schumacher, Uhrichsville, OH.	BPH-880107MV	
C. Thomas Larkin, Uhrichsville, OH.	BPH-880107NL	

Issue Heading and Applicant(s)

1. Comparative, A, B, C
2. Ultimate, A, B, C

II.

Applicant, City and State	File No.	MM Docket No.
A. Owen-Dumeyer Partnership, Biltmore Forest, NC.	BPH-870828MC	88-577
B. National Communications Industries, Inc., Biltmore Forest, NC.	BPH-870831MF	
C. RaKel Communications, Inc., Biltmore Forest, NC.	BPH-870831MG	
D. Ernest J. Phillips, III, Biltmore Forest, NC	BPH-870831MH	

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Applicant, City and State	File No.	MM Docket No.
E. Liberty Productions, A Limited Partnership, Biltmore Forest, NC.	BPH-870831MI	
F. Wiley Communications Limited Partnership, Biltmore Forest, NC.	BPH-870831MJ	
G. Biltmore Forest Broadcasting FM, Inc., Biltmore Forest, NC.	BPH-870831MK	
H. Skyland Broadcasting Company, Biltmore Forest, NC.	BPH-870831ML	
I. Biltmore Broadcasting Inc., Biltmore Forest, NC.	BPH-870831MM	
J. United Broadcasting Enterprises Inc., Biltmore Forest, NC.	BPH-870831MN	
K. Shamrock Communications, Inc., Biltmore Forest, NC.	BPH-870901MB	
L. Orion Communications Limited, Biltmore Forest, NC.	BPH-870901ME	
M. Herbinger Broadcasting Company, Biltmore Forest, NC.	BPH-870901MF	

Issue Heading and Applicants

1. Site Availability: C, G
2. Misrepresentation, C
3. Air Hazard, I
4. Comparative, A–O
5. Ultimate, A–O

III.

Applicant, City and State	File No.	MM Docket No.
A. A. Wayne Price d/b/a Price Broadcasting Company, Danville, WV.	BPH-871123MS	88-579
B. Boone Communications Company, Danville, WV.	BPH-871124MY	

Issue Heading and Applicant(s)

1. Comparative, A, B
2. Ultimate, A, B

IV.

Applicant, City and State	File No.	MM Docket No.
A. Knight Radio, Inc., Old Town, Maine.	BPH-871016MC	88-578
B. Penobscot Indian Nation, Old Town, Maine.	BPH-871026MO	

Issue Heading and Applicant(s)

1. Comparative, A, B
2. Ultimate, A, B

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirely under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

3. If there is any non-standardized issue in this proceeding, the full text of the issue and the applicants to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037. (Telephone (202) 857–3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 89–1627 Filed 1–25–89; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Board of Visitors for the Emergency Management Institute; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following committee meeting:

Name: Board of Visitors (BOV) for the Emergency Management Institute (EMI).

Dates of Meeting: February 15–17, 1989.

Place: Federal Emergency Management Agency, National Emergency Training Center, Emergency Management Institute, Conference Room, Building N, Emmitsburg, Maryland 21727.

Time: February 15—8:30 a.m. to 5:00 p.m., February 16—8:30 a.m. to 5:00 p.m., February 17—8:30 a.m. to Agenda Completion.

Proposed Agenda: Election of Chair and Vice Chair for CY 1989, status reports from the BOV task forces on Core Curriculum and Evaluation Systems Procedures, preparation of the 1988 Annual Report, and working sessions.

The meeting will be open to the public with approximately ten seats available on a first-come, first-serve basis. Members of the general public who plan to attend the meeting should contact the Office of the Superintendent, Emergency Management Institute, Office of Training, 16825 South Seton Avenue, Emmitsburg, Maryland 21727 (telephone number, 301–447–1251) on or before January 31, 1989.

Minutes of the meeting will be prepared by the Board and will be available for public viewing in the Director's Office, Office of Training, Federal Emergency Management Agency, Building N, National Emergency Training Center, Emmitsburg, Maryland 21727. Copies of the minutes will be available upon request 30 days after the meeting.

Dated: January 9, 1989.

Dave McLoughlin,

Director, Office of Training.

[FR Doc. 89–1749 Filed 1–25–89; 8:45 am]

BILLING CODE 6718–01–M

FEDERAL MEDIATION AND CONCILIATION SERVICE

Performance Review Board; Membership

AGENCY: Federal Mediation and Conciliation Service.

ACTION: Notice.

Notice is hereby given in accordance with 5 U.S.C. 4314(c)(4) of the appointment of the following persons to serve as members of this agency's Performance Review Board.

John Truesdale, Executive Secretary, National Labor Relations Board, Chairman

Charles R. Barnes, Executive Director, National Mediation Board

Michael D. Nossaman, Assistant General Counsel, Federal Labor Relations Authority

Dated: January 18, 1989.

Kay McMurray,

Director.

[FR Doc. 89–1727 Filed 1–25–89; 8:45 am]

BILLING CODE 6732–01–M

FEDERAL RESERVE SYSTEM

Barnett Banks, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities; Correction

This notice corrects a previous **Federal Register** notice (FR Doc. 89–617) published at page 1445 of the issue for Friday, January 13, 1989.

Under the Federal Reserve Bank of Atlanta, the comment period for Barnett Banks, Inc. is amended to end on February 28, 1989.

Board of Governors of the Federal Reserve System, January 19, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89–1630 Filed 1–25–89; 8:45 am]

BILLING CODE 6210–01–M

Gene A. Baughman et al.; Change in Bank Control; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 255.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 9, 1989.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Gene A. Baughman*, Mary Ann Baughman and The Baughman Tile Co., Inc., Paulding, Ohio; to acquire up to 15 percent of the total shares outstanding of Oakwood Deposit Bank, Oakwood, Ohio.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Robert Reiter*, Jack Schaffer, and Keith Hein; to each acquire 33.33 percent of the voting shares of Balaton Agency, Inc., Balaton, Minnesota, and thereby indirectly acquire Farmers & Merchants State Bank of Balaton, Balaton, Minnesota.

C. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *John L. and Phyllis Ary*, Canon City, Colorado; to acquire 5.35 percent of the voting shares of Pueblo Bancorporation, Pueblo, Colorado, and thereby indirectly acquire Pueblo Bank & Trust Company, Pueblo, Colorado.

D. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *James F. Eubanks, II*, Houston, Texas; to acquire 60.06 percent of the voting shares of Alvin Bancshares, Inc., Alvin, Texas, and thereby indirectly acquire Alvin State Bank, Alvin, Texas.

Board of Governors of the Federal Reserve System, January 19, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89–1631 Filed 1–25–89; 8:45 am]

BILLING CODE 6210–01–M

Excel Bancorp, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f)) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 16, 1989.

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Excel Bancorp, Inc.*, Quincy, Massachusetts; to acquire MAC Investment Services, Inc., Braintree, Massachusetts, and thereby engage in portfolio investment advise to financial institutions pursuant to § 225.25(b)(4) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, January 19, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89–1632 Filed 1–25–89; 8:45 am]

BILLING CODE 6210–01–M

First Essex Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than February 16, 1989.

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

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1. First Essex Bancorp, Inc., Lawrence, Massachusetts, and First Essex NH Bancorp, Inc., Windham, New Hampshire; to acquire 100 percent of the voting shares of Fortune Guaranty Savings Bank, Windham, New Hampshire. In connection with this application, First Essex NH Bancorp, Inc. has also applied to become a bank holding company. Comments on this application must be received by February 13, 1989.

B. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. Bridge Bancorp, Inc., Bridgehampton, New York; to become a bank by acquiring 100 percent of the voting shares of The Bridgehampton National Bank, Bridgehampton, New York.

C. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. Regent Bancshares Corp., Cherry Hill, New Jersey; to become a bank holding company by acquiring 100 percent of the voting shares of Regent National Bank, Philadelphia, Pennsylvania.

D. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Capital Holdings, Inc., Sylvania, Ohio; to become a bank holding company by acquiring 100 percent of the voting shares of Capital Bank, National Association, Sylvania, Ohio.

2. Commonwealth Trust Company, Butler, Kentucky; to become a bank holding company by acquiring 100 percent of the voting shares of The Farmers Bank, Butler, Kentucky. Comments on this application must be received by February 13, 1989.

E. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. County Bancorporation, Inc., Jackson, Missouri; to acquire at least 80 percent of the voting shares of Capital Bank & Trust Company of Clayton, Clayton, Missouri. Comments on this application must be received by February 13, 1989.

2. First State Bancshares, Inc., St. Charles, Missouri; to become a bank holding company by acquiring 100 percent of the voting shares of First State Bank of St. Charles, Missouri, St. Charles, Missouri.

F. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Dickinson Bancorporation, Inc., Dickinson, North Dakota; to become a bank holding company by acquiring 72.95 percent of the voting shares of Liberty National Bank and Trust Company, Dickinson, North Dakota.

Board of Governors of the Federal Reserve System, January 19, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-1833 Filed 1-25-89; 8:45 am]

BILLING CODE 6210-01-M

PNC Financial Corp.; Proposal To Engage in Full-Service Brokerage Activities for Institutional and Retail Customers

PNC Financial Corp., Pittsburgh, Pennsylvania ("Applicant"), has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.23(a) of the Board's Regulation Y (12 CFR 225.23(a)), for permission to engage through PNC Securities Corp., Inc., Pittsburgh, Pennsylvania ("Company"), in the offering of investment advisory services in conjunction with securities brokerage services to both retail and institutional customers ("full-service brokerage"). Company would conduct the proposed activity on a nationwide basis.

Company currently engages in the activities of underwriting and dealing in securities that state member banks are permitted to underwrite and deal in under the Glass-Steagall Act ("bank-eligible securities") and, to a limited degree, Company also engages in underwriting and dealing in certain bank-ineligible securities. *See PNC Financial Corp.*, 73 Federal Reserve Bulletin 742 (1987). Under this Order, Company is subject to certain retrictions designed to minimize conflicts of interests and other adverse effects. Company also provides discount brokerage services as permitted by § 225.25(b)(15) of Regulation Y (12 CFR 225.25(b)(15)).

The Board has previously approved the provision of full-service brokerage activities in *Bank of New England Corporation*, 74 Federal Reserve Bulletin 700 (1988) ("*BNEC*"). *See also Signet Banking Corporation*, 75 Federal Reserve Bulletin 34 (1989). Unlike these previously approved activities, Applicant proposes to provide to retail customers full-service brokerage services without limitation as to the types of securities offered, including securities that may be underwritten or dealt in by Company.

Section 4(c)(8) of the BHC Act provides that a bank holding company may engage in any activity which the Board has determined to be "so closely related to banking or managing or controlling banks as to be a proper incident thereto." PNC Financial believes that its proposed securities activities are closely related to banking essentially for the reasons previously discussed by the Board in previous Orders regarding similar activities. *See, e.g., National Westminster Bank PLC*, 72 Federal Reserve Bulletin 584 (1986); *BNEC*, 74 Federal Reserve Bulletin 800 (1988).

In determining whether an activity meets the second, or proper incident to banking test of section 4(c)(8), the Board must consider whether the performance of the activity by an affiliate of a holding company "can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices."

Applicant contends that Company's conduct of the proposed activity will not result in any significant adverse effects, primarily for the reasons set forth by the Board in previous Orders regarding similar activities. Applicant maintains that its proposal is substantially similar to those previously approved by the Board, and Applicant believes that the commitments made in previous proposals should address the potential for any adverse effects arising from the proposed activity.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than February 22, 1989. Any request for a hearing on this application must comply with § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)).

This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of Cleveland.

Board of Governors of the Federal Reserve System, January 23, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-1835 Filed 1-25-89; 8:45 am]

BILLING CODE 6210-01-M

Society Corp. et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 16, 1989.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Society Corporation*, Cleveland, Ohio; to engage *de novo* through its subsidiary, Society National Trust Company, in organization, Naples, Florida, in acting as investment or financial advisor pursuant to § 225.25(b)(4) of the Board's Regulation Y. These activities will be conducted in the Collier County and the State of Florida.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Perham State Bancshares*, Perham, Minnesota; to engage *de novo* in making loans to its common stockholders pursuant to § 225.25(b)(1) of the Board's Regulation Y. These activities will be conducted in Perham, Minnesota.

Board of Governors of the Federal Reserve System, January 19, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-1834 Filed 1-25-89; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Family Support Administration

Reconsideration of the Disapproval of Tennessee's Proposed Title IV-A State Plan Amendment

AGENCY: Department of Health and Human Services, FSA.

ACTION: Notice of hearing.

SUMMARY: The date of the hearing to reconsider the disapproval of Tennessee's State Plan Submittal No. ES-AP-88-2 noticed in 53 FR 47767, November 25, 1988, has been changed.

DATES: The hearing is rescheduled for 10:00 a.m. on February 17, 1989.

ADDRESSES: The hearing will be held in Room 905, 101 Marietta Tower, corner of Marietta and Spring Streets, Atlanta, Georgia.

FOR FURTHER INFORMATION CONTACT: Thomas D. Horvath, Senior Attorney, Departmental Appeals Board, Department of Health and Human Services, Room 451-F, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, Telephone Number (202) 475-0013.

Alexander G. Teitz,

Presiding Officer.

Date: January 19, 1989.

[FR Doc. 89-1785 Filed 1-25-89; 8:45 am]

BILLING CODE 4150-04-M

Food and Drug Administration

Countrymark, Inc.; Withdrawal of Approval of NADA's

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of two new animal drug applications (NADA's) held by Countrymark, Inc. The NADA's provide for the use of (1) pyrantel tartrate Type A medicated articles for making Type C medicated swine feeds, and (2) tylosin/sulfamethazine Type A medicated articles for making Type C medicated swine feeds. The firm requested the withdrawal of approval.

FOR FURTHER INFORMATION CONTACT: Mohammad I. Sharar, Center for Veterinary Medicine (HFV-216), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3183.

SUPPLEMENTARY INFORMATION: Countrymark, Inc. (formerly Ohio Farmers Grain and Supply Association), 4565 Columbus Pike, Rt. 23 North, Delaware, OH 43015-1206, is the sponsor of NADA's 138-940 and 138-343 which were originally approved October 18, 1965 (30 FR 42156) and June 18, 1965 (30 FR 25218), respectively. NADA 138-940 provides for the use of Type A medicated articles containing 9.6 and 19.2 grams of pyrantel tartrate per pound for making Type C medicated swine feeds to be used as anthelmintics, and NADA 138-343 provides for the use of Type A medicated articles containing four concentrations of equal amounts of tylosin and sulfamethazine for making Type C medicated swine feeds to be used in accordance with 21 CFR 558.630(f)(2)(ii).

In letters dated June 2, 1988, the sponsor requested the withdrawal of approval of the NADA's because the products are no longer marketed.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(e), 82 Stat. 345-347 (21 U.S.C. 360b(e))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.84), and in accordance with § 514.115 *Withdrawal of approval of applications* (21 CFR 514.115), notice is given that approval of NADA's 138-940 and 138-343 and all supplements thereto is hereby withdrawn, effective February 6, 1989.

In a final rule published elsewhere in this issue of the **Federal Register**, FDA is removing 21 CFR 558.485(a)(24) and reserving it for future use, and the firm's drug labeler code No. "026439" from 21 CFR 558.630(b)(10).

Dated: January 18, 1989.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 89-1820 Filed 1-25-89; 8:45 am]

BILLING CODE 4160-01-M

Food and Drug Administration

The Dow Chemical Co.; Withdrawal of Approval of NADA

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing

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approval of a new animal drug application (NADA) held by The Dow Chemical Co. The NADA provides for use of a Type A medicated article containing zoalene and roxarsone for making Type C medicated chicken feeds. The firm requested withdrawal of approval.

EFFECTIVE DATE: February 6, 1989.

FOR FURTHER INFORMATION CONTACT: Mohammad I. Sharar, Center for Veterinary Medicine (HFV-216), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3163.

SUPPLEMENTARY INFORMATION: The Dow Chemical Co., P.O. Box 1706, Midland, MI 48640, is the sponsor of NADA 36-662 which was originally approved by letter of August 28, 1967. The NADA provides for use of the type the Type A medicated article Zoamix® N which contains 25 percent zoalene and 10 percent roxarsone in making Type C medicated chicken feeds. The feeds are used as an aid for the prevention and control of caecal and intestinal coccidiosis and as an aid in stimulating growth, increasing feed efficiency, and for improving pigmentation.

In a letter dated May 18, 1988, the sponsor requested withdrawal of approval of the NADA and waived opportunity for hearing because the product is no longer being marketed.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(e), 82 Stat. 345-347 (21 U.S.C. 360b(e))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.84), and in accordance with § 514.115 *Withdrawal of approval of applications* (21 CFR 514.115), notice is given that approval of NADA 36-662 and all supplements thereto is hereby withdrawn, effective February 6, 1989.

Dated: Jan 16, 1989.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 89-1716 Filed 1-25-89; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 81D-0319]

Collection of Platelets, Pheresis; Availability of Revised Guideline

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a revised guideline prepared by the Center for Biologics Evaluation and Research for the collection of Platelets, Pheresis prepared by automated procedures using a currently approved instrument. The guideline is intended for use by blood collecting facilities that prepare platelets by this method.

ADDRESSES: The guideline may be seen at and comments submitted to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857. Requests for a copy of the revised guideline to the Biologics Information Staff (HFB-205), Building 29, Room B-16, 8600 Rockville Pike, Bethesda, MD 20892, 301-496-9508.

FOR FURTHER INFORMATION CONTACT: Joseph Fratantoni, Center for Biologics Evaluation and Research (HFB-480), Food and Drug Administration, 8600 Rockville Pike, Bethesda, MD 20892, 301-496-2577.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 27, 1981 (46 FR 53430), FDA announced the availability of a guideline for the collection of Platelets, Pheresis prepared by mechanical pheresis using a currently approved instrument. Platelets, Pheresis is a licensed biological product that may be prepared using automated equipment in an approved blood banking facility. FDA made the guideline available to recommend criteria for donor safety and to help ensure that final platelet products were safe and effective. In the **Federal Register** of April 2, 1984 (49 FR 13079), FDA announced the availability of a draft revised guideline intended to replace the original guideline made available in 1981. The draft revised guideline differed from the original guideline in several ways, including a revised standard for Platelets, Pheresis, a provision for donation of platelets for a specific recipient, and removal of some recommended platelet testing and processing procedures during donation periods.

In the 1984 notice, FDA also announced a 2-day public workshop to discuss issues concerning platelets. Public comments received on the draft revised guideline were discussed during the public workshop held on May 22 and 23, 1984. The draft revised guideline has been revised further as a result of comments received. Since 1984 FDA has approved new instrumentation and separation techniques, and has implemented additional testing for assuring the safety of blood products. These changes are reflected in the revised guideline.

In addition, the current revised guideline differs from the April 1984 draft revised guideline with respect to recommendations such as the donor deferral time interval after aspirin ingestion, an increase in the maximum number of platelet collections from a donor in any 1 year, and revised labeling.

FDA is making available the revised guideline under 21 CFR 10.90(b), which provides for the use of guidelines to outline procedures or standards of general applicability that are acceptable to FDA for a subject matter that falls within the laws administered by FDA. Although guidelines are not a legal requirement, a person may be assured that in following an agency guideline the procedures followed and standards used will be acceptable to FDA. A person may also choose to use alternative procedures or standards for which there is scientific rationale even though they are not provided for in a guideline. A person who chooses to use procedures or standards different from procedures or standards in a guideline may discuss the matter further with the agency to prevent an expenditure of resources for work that FDA may later determine to be unacceptable.

Copies of the revised guideline have been distributed to blood bank establishments and plasmapheresis centers that have pending or approved license applications to prepare Platelets, Pheresis using pheresis instruments for which the Center for Biologics Evaluation and Research has acceptable data.

Requests for a copy of the revised guideline should be sent to the Biologics Information Staff (address above).

Interested persons may submit to the Dockets Management Branch written comments on the revised guideline. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 18, 1989.

John M. Taylor

Associate Commissioner for Regulatory Affairs.

[FR Doc. 89-1715 Filed 1-25-89; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 88F-0442]

Ciba-Geigy Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Ciba-Geigy Corp., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of *N*-methyl-*N*-(1-oxo-9-octadecenyl)glycine as a corrosion inhibitor for lubricants with incidental food contact.

FOR FURTHER INFORMATION CONTACT: Andrew D. Laumbach, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 9B4124) has been filed by Ciba-Geigy Corp., Three Skyline Dr., Hawthorne, NY 10532, proposing that § 178.3570 *Lubricants with incidental food contact* (21 CFR 178.3570) be amended to provide for the safe use of *N*-methyl-*N*-(1-oxy-9-octadecenyl)glycine as a corrosion inhibitor for lubricants with the incidental food contact.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: January 13, 1989.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 89-1713 Filed 1-25-89; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 88F-0426]

Huels AG; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Huels AG has filed a petition proposing that the food additive regulations be amended to provide for the safe use of 3-aminomethyl-3,5,5-trimethylcyclohexylamine as a cross-linking agent for use in epoxy resins complying with the indirect food additive regulations.

FOR FURTHER INFORMATION CONTACT: Julius Smith, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 9B4118) has been filed by Huels AG, P.O. Box 1320, D-4370 Marl, Federal Republic of Germany, proposing that § 175.300 *Resinous and polymeric coatings* (21 CFR 175.300) be amended to provide for the safe use of 3-aminomethyl-3,5,5-trimethylcyclohexylamine as a cross-linking agent for use in epoxy resins complying with § 175.300(b)(3)(viii).

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: January 13, 1989.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 89-1714 Filed 1-25-89; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 85F-0062]

Ecolab, Inc.; Amended Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is amending the filing notice for a food additive petition filed by Economics Laboratory, Inc. (now Ecolab, Inc.), to provide for the safe use of decanoic acid, octanoic acid, a mixture of 1-octanesulfonic acid and 1-octanesulfonic-2-sulfinic acid, and the condensate of four moles of poly(oxyethylene)poly(oxypropylene) block copolymers with one mole of ethylenediamine as components of sanitizing solutions to be used on food-processing equipment and other food-contact articles. This notice makes clear that the sanitizing solution also contains lactic acid, phosphoric acid, and FD&C Yellow No. 5, and that the mixture of 1-octanesulfonic acid and 1-octanesulfonic-2-sulfinic acid also contains 1,2-octanedisulfonic acid.

FOR FURTHER INFORMATION CONTACT: Richard H. White, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of March 8, 1985 (46 FR 9521), FDA announced that a petition (FAP 5H3842) had been filed by Economics Laboratory, Inc., St. Paul, MN 55102 (the name and address of the company have been changed to Ecolab, Inc., Ecolab Center, St. Paul, MN 55102), proposing that the food additive regulations be amended to provide for the safe use of decanoic acid, octanoic acid, a mixture of 1-octanesulfonic acid and 1-octanesulfonic-2-sulfinic acid, (OSA mixture), and the condensate of four moles of poly(oxyethylene)poly(oxypropylene) block copolymers with one mole of ethylenediamine as components of sanitizing solutions to be used on food processing equipment and other food-contact articles. Subsequently, Ecolab, Inc., amended the petition and indicated the presence of 1,2-octanedisulfonic acid in the OSA mixture.

This notice makes clear that this ingredient is in the sanitizing solution and that this solution also contains FD&C Yellow No. 5, lactic acid, and phosphoric acid, components which were also not listed in the original notice of filing.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding may be seen in the Dockets Management Branch, Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD between 9 a.m. and 4 p.m., Monday through Friday. Under FDA's regulations implementing the National Environmental Policy Act (21 CFR Part 25), an action of this type would require an environmental assessment under 21 CFR 25.31a(a).

Dated: January 13, 1989.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 89-1819 Filed 1-25-89; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 89G-0388]

Fuji Oil Co., Ltd.; Filing of Petition for Affirmation of GRAS Status

AGENCY: Food and Drug Administration.

ACTION: Notice.

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SUMMARY: The Food and Drug Administration (FDA) is announcing that Fuji Oil Co., Ltd., has filed a petition (GRASP 8G0348) proposing to affirm that cocoa butter substitutes from safflower oil and sunflower oil are generally recognized as safe (GRAS) for use as direct human food ingredients.

DATE: Comments by March 27, 1989.

ADDRESS: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Lawrence J. Lin, Center for Food Safety and Applied Nutrition (HFF–334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–426–8467.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1788 (21 U.S.C. 348(b)(5))) and the regulations for affirmation of GRAS status in § 170.35 (21 CFR 170.35), notice is given that Fuji Oil Co., Ltd., 6–1, Hachiman-cho, Minami-ku, Osaka 542 Japan, has filed a petition (GRASP 8G0348) proposing that cocoa butter substitutes from safflower oil and sunflower oil be affirmed as GRAS for use as direct human food ingredients. The petition has been placed on display at the Dockets Management Branch address above).

Any petition that meets the requirements outlined in §§ 170.30 and 170.35 (21 CFR 170.30 and 170.35) is filed by the agency. There is no prefiling review of the adequacy of data to support a GRAS conclusion. Thus, the filing of a petition for GRAS affirmation should not be interpreted as a preliminary indication of suitability for GRAS affirmation.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the Federal Register in accordance with 21 CFR 25.40(c).

Interested persons may, on or before March 27 1989, Review the petition and/or file comments (two copies, identified with the docket number found in brackets in the heading of this document) with the Dockets Management Branch (address above). Comments should include any available information that would be helpful in determining whether the substances are, or are not, GRAS for the proposed use. A copy of the petition and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 13, 1989.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 89–1717 Filed 1–25–89; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 88F–0338]

Takeda Chemical Industries, Ltd.; Filing of Petition for Affirmation of GRAS Status

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a petition (GRASP 8G0342) has been filed on behalf of Takeda Chemical Industries, Ltd., proposing to affirm that urease enzyme derived from *Lactobacillus fermentum* be affirmed as generally recognized as safe (GRAS) as a direct human food ingredient.

DATE: Comments by March 27, 1989.

ADDRESS: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: JoAnn Ziyad, Center for Food Safety and Applied Nutrition (HFF–334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–426–8463.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1788 (21 U.S.C. 348(b)(5))) and the regulations for affirmation of GRAS status in § 170.35 (21 CFR 170.35), notice is given that a petition (GRASP 8G0342) has been filed on behalf of Takeda Chemical Industries, Ltd., c/o 1730 Rhode Island Ave. NW., Washington, DC 20078, proposing that urease enzyme derived from nonpathogenic and nontoxigenic *Lactobacillus fermentum* be affirmed as GRAS for use as a direct human food ingredient to prevent the development of ethyl carbamate in the alcoholic beverage Sake. The GRAS petition has been placed on display at the Dockets Management Branch (address above).

Any petition that meets the requirements outlined in 21 CFR 170.30 and 170.35 is filed by the agency. There is no prefiling review of the adequacy of data to support a GRAS conclusion. Thus, the filing of a petition for GRAS affirmation should not be interpreted as a preliminary indication of suitability for GRAS affirmation.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the Federal Register in accordance with 21 CFR 25.40(c).

Interested persons may, on or before March 27, 1989, review the petition and/or file comments (two copies, identified with the docket number found in brackets in the heading of this document) with the Dockets Management Branch (address above). Comments should include any available information that would be helpful in determining whether the substance is, or is not, GRAS for the proposed use. A copy of the petition and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 13, 1989.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 89–1718 Filed 1–25–89; 8:45 am]

BILLING CODE 4160–01–M

Advisory Committee; Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meeting and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

MEETING: The following advisory committee meeting is announced:

Circulatory System Devices Panel

Date, time, and place. February 6, 1989, 8:30 a.m., Rm. 703A–727A, Hubert H. Humphrey Bldg., 200 Independence Ave. SW., Washington, DC.

Type of meeting and contact person. Open public hearing, 8:30 a.m. to 10:30 a.m.; open committee discussion, 10:30 a.m. to 2:30 p.m.; closed committee deliberations, 2:30 p.m. to 4 p.m.; Keith Lusted, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7504.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of medical devices currently in use and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before January 30, 1989, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss an industry presentation of the use of doppler ultrasound in the characterization of prosthetic heart valves, and premarket approval applications (PMA's) for a pulse generator system and a patent ductus arteriosus occluder.

Closed committee deliberations. The committee will discuss trade secret or confidential commercial information regarding the PMA's listed above. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (Subpart C of 21 CFR Part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR Part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this Federal Register notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

Details on the agenda, questions to be addressed by the committee, and a current list of committee members are available from the contact person before and after the meeting. Transcripts of the open portion of the meeting will be available from the Freedom of Information Office (HFI–35), Food and Drug Administration, Rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting will be available from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

The Commissioner, with the concurrence of the Chief Counsel, has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA), as amended by the Government in the Sunshine Act (Pub. L. 94–409), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information on the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, notably deliberative sessions to formulate advice and recommendations to the agency on matters that do not independently justify closing.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770–776 (5 U.S.C. App. I)), and FDA's regulations (21 CFR Part 14) on advisory committees.

Dated: January 13, 1989.

James S. Benson,

Acting Commissioner of Food and Drugs.

[FR Doc. 89–1710 Filed 1–23–89; 4:00 pm]

BILLING CODE 4160–01–M

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Health Resources and Services Administration

Filing of Annual Report of Federal Advisory Committee

Notice is hereby given that pursuant to section 13 of Pub. L. 92–463, the Annual Report for the following Health Resources and Services Administration's Federal Advisory Committee has been filed with the Library of Congress: Council on Graduate Medical Education.

Copies are available to the public for inspection at the Library of Congress Newspaper and Current Periodical Reading Room, Room 1026, Thomas Jefferson Building, Second Street and Independence Avenue, SE., Washington, DC or weekdays between 9:00 a.m. and 4:30 p.m. at the Department of Health and Human Services, Department Library, HHS North Building, Room G–400, 330 Independence Avenue, SW., Washington, DC, telephone (202) 245–6791. Copies may be obtained from: Dr. Donald L. Weaver, Executive Secretary, Council on Graduate Medical Education, Health Resources and Services Administration, Room 4C–25, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–6190.

Dated: January 19, 1989.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 89–1731 Filed 1–25–89; 8:45 am]

BILLING CODE 4160–15–M

Health Education Assistance Loan Program; Maximum Interest Rates for Quarter Ending March 31, 1989

Section 727 of the Public Health Service Act (42 U.S.C. 294) authorizes the Secretary of Health and Human Services to establish a Federal program of student loan insurance for graduate students in health professions schools.

A. Section 60.13(a)(4) of the program's implementing regulations (42 CFR Part 60, previously 45 CFR Part 126) provides that the Secretary will announce the interest rate in effect on a quarterly basis.

The Secretary announces that for the period ending March 31, 1989, three interest rates are in effect for loans executed through the Health Education Assistance Loan (HEAL) program.

1. For loans made before January 27, 1981, the variable interest rate is 11⅛ percent. Using the regulatory formula (45 CFR 126.13(a) (2) and (3)) in effect prior to January 27, 1981, the Secretary would normally compute the variable rate for this quarter by finding the sum of the fixed annual rate (7 percent) and a variable component calculated by subtracting 3.50 percent from the average bond equivalent rate of 91-day U.S. Treasury bills for the preceding calendar quarter (7.99 percent), and rounding the result (11.49 percent) upward to the nearest ⅛ percent (11⅛ percent). However, the regulatory formula also provides that the annual rate of the variable interest rate for a 3-month period shall be reduced to the highest one-eighth of 1 percent which would result in an average annual rate not in excess of 12 percent for the 12-month period concluded by those 3 months. Because the average rate of the 4 quarters ending March 31, 1988, is not in excess of 12 percent, there is no necessity for reducing the interest rate. For the previous 3 quarters the variable interest at the annual rate was as follows: 9⅝ percent for the quarter ending June 30, 1988; 10 percent for the quarter ending September 30, 1988; and 10⅝ percent for the quarter ending December 31, 1988.

2. For variable rate loans executed during the period of January 27, 1981 through October 21, 1985, the interest rate is 11⅛ percent. Using the regulatory formula (42 CFR 60.13(a)(13)) in effect for that time period, the Secretary computes the maximum interest rate at the beginning of each calendar quarter by determining the average bond equivalent rate for the 91-day U.S. Treasury bills during the preceding quarter (7.99 percent); adding 3.50 percent (11.49 percent); and rounding that figure to the next higher one-eighth of 1 percent (11⅛ percent).

3. For fixed rate loans executed during the period of January 1, 1989 through March 31, 1989, and for variable rate loans executed on or after October 22, 1985, the interest rate is 11 percent. The Health Professions Training Assistance Act of 1985 (Pub. L. 99–129), enacted October 22, 1985, amended the formula for calculating the interest rate by changing 3.5 percent to 3 percent. Using the regulatory formula (42 CFR 60.13(a)(2)), the Secretary computes the maximum interest rate at the beginning of each calendar quarter by determining the average bond equivalent rate for the 91-day U.S. Treasury bills during the preceding quarter (7.99 percent); adding 3.0 percent (10.99 percent) rounding that figure to the next higher one-eighth of 1 percent (11 percent).

(Catalog of Federal Domestic Assistance No. 13.108, Health Education Assistance Loans)

Dated: January 19, 1989.

John H. Kelso,

Acting Administrator.

[FR Doc. 89–1728 Filed 1–25–89; 8:45 am]

BILLING CODE 4160–15–M

Advisory Council; Meetings; February

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory bodies scheduled to meet during the month of February 1989:

Name: National Advisory Council on the National Health Service Corps.

Date and Time: February 20–22, 1989, 8:30 a.m.–5:00 p.m.

Place: Hyatt Regency Hotel, One Metro Center, Bethesda, Maryland 20814.

The meeting is open to the public.

Purposes: The Council will advise and make appropriate recommendations on the National Health Service Corps (NHSC) program as mandated by legislation. It will also review and comment on proposed regulations promulgated by the Secretary under provision of the legislation.

Agenda: The agenda will include a Bureau and Division update; orientation to the Public Health Service structure and function for new members; speakers from the Council on Graduate Medical Education, Indian Health Service, American Medical Student Association, American Insurance Association and other topics of interest to the Council. A site visit may be scheduled for Tuesday afternoon, February 21.

Anyone requiring information regarding the subject Council should contact Anna Mae Voigt, National Advisory Council on the National Health Service Corps, Room 7A–39, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–1470.

* * * * *

Name: Subcommittee on Medical Education Program and Financing of the Council on Graduate Medical Education.

Time: February 22, 1989, 8:00 a.m.–5:00 p.m.

Place: Washington Hilton and Towers, 1919 Connecticut Avenue, NW., Washington, DC 20009.

Purpose: The subcommittee identifies the issues and problems in current methods of financing and support. Assesses the implications of alternative financing policies on medical education programs, service delivery, cost containment, physician supply & distribution, and shortages and excesses of physicians.

Analyzes existing information and data on current and alternative medical education programs of hospitals, schools of medicine and osteopathy, and accrediting bodies; federal policies regarding medical education programs; and their impact on the supply and distribution of physicians.

Agenda: Agenda items include: Presentation and discussion of direct graduate medical cost payments to nonhospital sponsors of graduate medical education programs. Panel presentation and discussion of the Medicare indirect teaching adjustment. Presentation and discussion of Medicare payment to teaching physicians.

Anyone requiring information regarding the subject Subcommittee should contact F. Lawrence Clare, M.D. Subcommittee Principal Staff Liaison, Division of Medicine, Bureau of Health Professions, Room 4C–16, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857 Telephone (301) 443–6328.

* * * * *

Name: Subcommittee on Physician Manpower of the Council on Graduate Medical Education

Time: February 22, 1989, 8 a.m.–5 p.m.

Place: Washington Hilton and Towers, 1919 Connecticut Avenue NW., Washington, DC 20009.

Open for entire meeting.

Purpose: The subcommittee reviews and analyzes currently applicable studies of under and oversupply of physician manpower giving special attention to number and distribution of specialists, primary care physicians and residents. It also is concerned with studies and recommendations regarding the number of undergraduate medical students as well as the need for improving physician manpower data.

Agenda: Agenda items include: Discussion of Subcommittee priority activities and preliminary action plan. Presentation and discussion of approach for physician specialty requirements modeling.

Anyone requiring information regarding the subject Subcommittee should contact Jerald M. Katzoff, Subcommittee Principal Staff Liaison, Division of Medicine, Bureau of Health Professionals, Room 4C–18, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–6326.

Name: Council on Graduate Medical Education

Time: February 23, 1989, 8:30 a.m.–4 p.m.

Place: Washington Hilton and Towers, 1919 Connecticut Avenue NW., Washington, DC 20009.

Open for entire meeting.

Purpose: Provides advice and recommendations to the Secretary and to the Committees on Labor and Human Resources, and Finance of the Senate and the Committees on Energy and Commerce and Ways and Means of the House of Representatives, with respect to (A) the supply and distribution of physicians in the United States; (B) current and future shortages of physicians in medical and surgical specialties and subspecialties; (C) issues relating to foreign medical graduates; (D) appropriate Federal policies regarding (A), (B), and (C) above; (E) appropriate efforts to be carried out by medical and osteopathic schools, public and private hospitals and accrediting bodies regarding matters in (A), (B), and (C) above; (F) deficiencies in the needs for improvements in, existing data bases concerning supply and distribution of, and training programs for physicians in the United States.

Agenda: The Council will receive and discuss the reports from its two Subcommittees and its future direction and agenda. The Council will also receive legislative updates from Health Resources and Service Administration, Health Care Financing Administration, and the Veterans' Administration. Dr. J. Jarrett Clinton, Director, Bureau of Health Professions, will discuss public health issues.

Anyone requiring information regarding the subject Council should contact Dr. Donald L. Weaver, Executive Secretary, Council on Graduate Medical Education, Health Resources and Services Administration, Room 4C–18, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–6190.

Agenda Items are subject to change as priorities dictate.

Date: January 19, 1989.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 89–1730 Filed 1–25–89; 8:45 am]

BILLING CODE 4160–15–M

National Institutes of Health

National Cancer Institute; Meeting of the Developmental Therapeutics Contracts Review Committee

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Developmental Therapeutics Contracts Review Committee, National Cancer Institute, National Institutes of Health, February 9, 1989, Holiday Inn, 8120 Wisconsin Avenue, Bethesda, Maryland 20814.

This meeting will be open to the public on February 9 from 8 a.m. to 8:30 a.m. to discuss administrative details. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on February 9 from 8:30 a.m. to adjournment for the review, discussion, and evaluation of individual contract proposals. The proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the proposals, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, the Committee Management Officer, National Cancer Institute, Building 31, Room 10A–06, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892 (301–496–5708), will provide a summary of the meeting and a roster of the committee members upon request.

Dr. Edward H. Allen, Executive Secretary, Developmental Therapeutics Contracts Review Committee, National Cancer Institute, Westwood Building, Room 805, National Institutes of Health, Bethesda, Maryland 20892 (301–496–7575) will provide substantive program information, upon request.

Dated: January 18, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89–1803 Filed 1–25–89; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute; Meetings of the National Cancer Advisory Board

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Cancer Advisory Board, National Cancer Institute, February 6–7, 1989, Building 31C, Conference Room 6, 6th Floor, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892. Meetings of the Subcommittees of the Board will be held at the times and places listed below. Portions of the Board meeting and its subcommittees will be open to the public to discuss issues relating to committee business as indicated in the notice. Attendance by the public will be limited to space available.

Portions of the meeeting will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6),

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Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal property.

The Subcommittee on Planning and Budget will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(9)(B), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, to discuss the 1990 Presidential Budget.

Mrs. Winifred J. Lumsden, Committee Management Officer, National Cancer Institute, 9000 Rockville Pike, Building 31, Room 10A08, National Institutes of Health, Bethesda, Maryland 20892, (301/496–5708), will provide a summary of the meeting and rosters of the Board members, upon request.

Name of Committee: Subcommittee on Cancer Centers.

Executive Secretary: Ms. Judith Whalen, Building 31, Room 11A19, Bethesda, MD 20892 (301/496–5515).

Date of Meeting: February 5.

Place of Meeting: Building 31C, Conference Room 7.

Open: 3 p.m. to adjournment.

Agenda: Continue the subcommittee's review of the cancer centers program.

Name of Committee: National Cancer Advisory Board.

Executive Secretary: Mrs. Barbara Bynum, Building 31, Room 10A03, Bethesda, MD 20892 (301/496–5147).

Date of Meeting: February 6 and 7.

Place of Meeting: Building 31C, Conference Room 6.

Open: February 6, 8:30 a.m. to recess; February 7, 1:00 p.m. to adjournment.

Agenda: Reports on activities of the President's Cancer Panel; the Director's Report on the National Cancer Institute; Subcommittee Reports; and New Business.

Name of Committee: AIDS Subcommittee.

Executive Secretary: Dr. Joyce O'Shaughnessy, Building 31, Room 11A23, Bethesda, MD 20892 (301/496–3505).

Date of Meeting: February 6.

Place of Meeting: Building 31C, Conference Room 7.

Open: Immediately following adjournment of NCAB meeting.

Agenda: Update on AIDS activities for the Institute.

Name of Committee: Subcommittee on Planning and Budget.

Executive Secretary: Ms. Judith Whalen, Building 31, Room 11A19, Bethesda, MD 20892 (301/496–5515).

Date of Meeting: February 6.

Place of Meeting: Building 31C, Conference Room 6.

Closed Session: February 6—½ hour closed—following adjournment of the NCAB meeting this subcommittee meeting will be closed to the public for approximately 30 minutes.

Closure Reason: Discussion of the President's Budget.

Open: February 6—immediately following closed session of this subcommittee meeting.

Agenda: To discuss and plan other budget matters.

Name of Committee: Subcommittee on Special Actions for Grants.

Executive Secretary: Mrs. Barbara S. Bynum, Building 31, Room 10A03, Bethesda, MD 20892 (301/496–5147).

Date of Meeting: February 7.

Place of Meeting: Building 31C, Conference Room 6.

Closed: 8:30 a.m. to 12:00 noon.

Agenda: Review and discussion of individual grant applications.

Name of Committee: Subcommittee on Minority Manpower Development.

Executive Secretary: Dr. Vincent Cairoli, Executive Plaza North, Room 2321l, Rockville, MD 20892 (301/496–8500).

Date of Meeting: February 7.

Place of Meeting: Building 31C, Conference Room 7.

Open: February 7—1:00 p.m. to adjournment.

Agenda: To discuss policies and potential changes regarding recruitment plans for under-represented minorities on institutional training grants.

(*Catalog of Federal Domestic Assistance Program Numbers:* 13.392, Project grants in cancer construction; 13.393, Project grants in cancer cause and prevention; 13.394, Project grants in cancer detection and diagnosis; 13.395, Project grants in cancer treatment; 13.396, Project grants in cancer biology; 13.397, Project grants in cancer centers support; 13.398, Project grants in cancer research manpower; and 13.399, Project grants and contracts in cancer control.)

Dated: January 18, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89–1804 Filed 1–25–89; 8:45 am]

BILLING CODE 4140–01–M

National Center for Nursing Research; Meeting of the Nursing Science Review Committee

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Nursing Science Review Committee, National Center for Nursing Research, March 15–17, 1989, Building 31, Conference Room 7, National Institutes of Health, Bethesda, Maryland 20892.

This meeting will be open to the public on March 15 from 9:00 a.m. to 11:00 a.m. Agenda items to be discussed will include the report of the Director, NCNR; NRRC Chairman's Report; and the Executive Secretary's Report. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on March 15 from 11:00 a.m. to recess, March 16 from 9:00 a.m. to recess, and March 17 from 9:00 a.m. to adjournment, for the review, discussion, and evaluation of individual grant applications. The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. Eileen Raizen, Executive Secretary, Nursing Science Review Committee, National Institutes of Health, Building 31, Room 5B19, Bethesda, Maryland 20892, (301) 496–0472, will provide a summary of the meeting, roster of committee members, and substantive program information upon request.

Dated: January 18, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89–1805 Filed 1–25–89; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Meeting of the Research Manpower Review Committee

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Research Manpower Review Committee, National Heart, Lung, and Blood Institute, National Institutes of Health, on February 26–28, 1989, at the Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, Maryland 20814.

This meeting will be open to the public on February 26, from 6 p.m. to approximately 9:30 p.m. to discuss administrative details and to hear reports concerning the current status of the National Heart, Lung, and Blood Institute. Attendance by the public is limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C., and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on February 27 from approximately 8 a.m. until adjournment on February 28, for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A21, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–4236, will provide a summary of the meeting and a roster of the Committee members.

Dr. Kathryn Ballard, Executive Secretary, NHLBI, Westwood Building, Room 550, Bethesda, Maryland 20892, (301) 496–7361, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.837, Heart and Vascular Diseases Research; 13.838, Lung Diseases Research; and 13.839, Blood Diseases and Resources Research, National Institutes of Health.)

Dated: January 18, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89–1806 Filed 1–25–89; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Meeting of the Clinical Trials Review Committee

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Clinical Trials Review Committee, National Heart, Lung, and Blood Institute, February 26–28, 1989, at the Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, Maryland 20814.

The meeting will be open to the public on February 26, from 6:30 p.m. to approximately 7:30 p.m. to discuss administrative details and to hear a report concerning the current status of the National Heart, Lung, and Blood Institute. Attendance by the public is limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C., and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on February 26 from approximately 7:30 p.m. to recess, and from 8:00 a.m. on February 27, to adjournment on February 28, for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A–21, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–4236, will provide a summary of the meeting and a roster of the Committee members.

Dr. David M. Monsees, Jr., Contracts, Clinical Trials and Training Review Section, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, Westwood Building, Room 550B, Bethesda, Maryland 20892, (301) 496–7361, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.837, Heart and Vascular Diseases Research; 13.838, Lung Diseases Research; 13.839, Blood Diseases and Resources Research National Institutes of Health.)

Dated: January 18, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89–1807 Filed 1–25–89; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Aging; Meetings

Pursuant to Pub. L. 92–463, notice is hereby given of meetings of the National Institute on Aging.

These meetings will be open to the public to discuss administrative details for approximately one-half hour at the beginning of the first session of the first day of the meetings. Attendance by the public will be limited to space available.

These meetings will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, for the review, discussion, and evaluation of individual research grant applications. These applications and the discussions could reveal confidential trade secrets or commerical property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal property.

Ms. June C. McCann, Committee Management Officer, National Institute on Aging, Building 31, Room 5C05, National Institutes of Health, Bethesda, Maryland, 20892, (301/496–9322), will provide summaries of the meetings and rosters of the committee members upon request.

Other information pertaining to the meetings can be obtained from the Executive Secretary indicated.

Name of Committee: Gerontology and Geriatrics Review Committee, Subcommittee A.

Executive Secretary: Dr. Walter Spieth, Dr. Maria Mannarino, Building 31, Room 5C12, National Institutes of Health, Bethesda, Maryland 20892, Phone: 301/496–9666.

Dates of Meeting: March 8–9, 1989.

Place of Meeting: Building 31, Conference Room 6, National Institutes of Health, Bethesda, Maryland 20892, Phone: 301/496–9666.

Open: March 8, 8:30 a.m.—9:00 a.m.

Closed: March 8, 9:00 a.m. to recess. March 9, 9:00 a.m. to adjournment.

Name of Committee: Gerontology and Geriatrics Review Committee, Subcommittee B and C.

Executive Secretary: Dr. David Lavrin, Subcommittee B, Dr. James Harwood, Subcommittee C, Building 31 Room 5C12, National Institutes of Health, Bethesda, Maryland 20892, Phone: 301/496–9666.

Dates of Meeting: March 14–15, 1989.

Place of Meeting: Building 31, Conference Room 6, National Institutes of Health, Bethesda, Maryland 20892.

Open: March 14, 8:30 to 9:00 a.m.

Closed: March 14, 9:00 a.m. to recess. March 15, 9:00 to adjournment.

(Catalog of Federal Domestic Assistance Program No. 13.866, Aging Research, National Institutes of Health.)

Dated: January 18, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89–1810 Filed 1–25–89; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Diabetes and Digestive and Kidney Diseases; Meeting of the National Diabetes and Digestive and Kidney Diseases Advisory Council and its Subcommittees

Pursuant to Pub. L. 92–463, notice is hereby given of a meeting of the National Diabetes and Digestive and Kidney Diseases Advisory Council and its subcommittees, National Institute of Diabetes and Digestive and Kidney Diseases, on February 22 and 23, 1989, National Institutes of Health, Bethesda, Maryland. The meeting will be open to

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the public February 22 from 8:30 a.m. to 12 noon and again on February 23 from 1 p.m. to adjournment to discuss administrative details relating to Council business and special reports. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92-463, the subcommittee and full Council meeting will be closed to the public for the review, discussion and evaluation of individual grant applications. The following subcommittees will be closed to the public on February 22 from 1 p.m. to recess: Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney, Urologic and Hematologic Diseases. The full Council meeting will be closed on February 23 from 8:30 a.m. to approximately 12 noon.

These deliberations could reveal confidential trade secrets or commercial property, such as patentable materials, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Further information concerning the Council meeting may be obtained from Dr. Walter Stolz, Executive Secretary, National Diabetes and Digestive and Kidney Diseases Advisory Council, NIDDK, Westwood Building 31, Room 9A07, Bethesda, Maryland 20892, (301) 496-7277.

A summary of the meeting and roster of the members may be obtained from the Committee Management Office, NIDDK, Building 31, Room 9A19, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-6917.

(Catalog of Federal Domestic Assistance Program No. 13.847-849, Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney Diseases, Urology and Hematology Research, National Institutes of Health).

Dated: January 18, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89-1609 Filed 1-25-89; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Diabetes and Digestive and Kidney Diseases; Meetings of Subcommittees B, C, and D of the Diabetes and Digestive and Kidney Diseases Special Grants Review Committee

Pursuant to Pub. L. 92-463, notice is hereby given of meetings of Subcommittees B, C, and D of the National Diabetes and Digestive and Kidney Diseases Special Grants Review Committee, National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK).

These meetings will be open to the public to discuss administrative details at the beginning of the first session of the first day of the meetings. Attendance by the public will be limited to space available. Notice of the meeting rooms will be posted in the hotel lobby.

These meetings will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92-463, for the review, discussion, and evaluation of individual research grant applications. Discussion of these applications could reveal confidential trade secrets or commercial property, such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Edith Wynkoop, Committee Management Officer, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, Building 31, Room 9A19, Bethesda, Maryland 20892, 301-496-6917, will provide summaries of the meetings and rosters of the committee members upon request. Other information pertaining to the meetings can be obtained from the Executive Secretary indicated.

Name of Committee: National Diabetes and Digestive and Kidney Diseases Special Grants Review Committee, Subcommittee B.

Executive Secretary: Judith M. Podskalny, Westwood Building, Room 417A, National Institutes of Health, Bethesda, Maryland 20892, Phone: 301-496-7841.

Dates of Meeting: February 23-24, 1989.

Place of Meeting: Hyatt Regency, One Bethesda Metro Center, Bethesda, Maryland 20814.

Open: February 23, 1:00 p.m.-1:30 p.m.

Closed: February 23, 1:30 p.m. to recess; February 24, 8:00 a.m. to adjournment.

Name of Committee: National Diabetes and Digestive and Kidney Diseases Special Grants Review Committee, Subcommittee C.

Executive Secretary: Tommie Sue Tralka, Westwood Building, Room 417, National Institutes of Health, Bethesda, Maryland 20892, Phone: 301-496-6830.

Dates of Meeting: March 6-7, 1989.

Place of Meeting: Holiday Inn Crowne Plaza, 1750 Rockville Pike, Rockville, Maryland 20852.

Open: March 6, 8:30 a.m.-9:30 a.m.

Closed: March 6, 9:30 a.m. to recess; March 7, 8:00 a.m. to adjournment.

Name of Committee: National Diabetes and Digestive and Kidney Diseases Special Grants Review Committee, Subcommittee D.

Executive Secretary: William E. Elzinga, Westwood Building, Room 421, National Institutes of Health, Bethesda, Maryland 20892, Phone: 301-496-7846.

Date of Meeting: February 10, 1989.

Place of Meeting: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, Maryland 20814.

Open: February 10, 8:30 a.m.-9:00 a.m.

Closed: February 10, 9:00 a.m. to adjournment.

Dated: January 18, 1989.

Betty Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89-1609 Filed 1-25-89; 8:45 am]

BILLING CODE 4140-01-M

National Library of Medicine; Meetings of the Biomedical Library Review Committee and the Subcommittee for the Review of Medical Library Resource Improvement Grant Applications

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Biomedical Library Review Committee on March 8-9, 1989, convening each day at 8:30 a.m. in the Board Room of the National Library of Medicine, Building 38, 8600 Rockville Pike, Bethesda, Maryland, and the meeting of the Subcommittee for the Review of Medical Library Resource Improvement Grant Applications on March 7 from 3 p.m. to 4 p.m. in the 5th-Floor Conference Room of the Lister Hill Center Building.

The meeting on March 8 will be open to the public from 8:30 to approximately 11:00 a.m. for the discussion of administrative reports and program developments. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C., and section 10(d) of Pub. L. 92-463, the regular meeting and the subcommittee meeting will be closed to the public for the review, discussion, and evaluation of individual grant applications as follows: The regular meeting on March 8 from approximately 11:00 a.m. to 5 p.m., and on March 9, from 8:30 a.m. to adjournment; and the subcommittee meeting on March 7 from 3 to 4 p.m. These applications and the discussion could reveal confidential trade secrets or commercial property, such as

patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. Roger W. Dahlen, Executive Secretary of the Committee, and Chief, Biomedical Information Support Branch, Extramural Programs, National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland 20894, telephone number: 301-496-4221, will provide summaries of the meeting, rosters of the committee members, and other information pertaining to the meeting.

(Catalog of Federal Domestic Assistance Program No. 13.879—Medical Library Assistance, National Institutes of Health.)

Dated: January 18, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89-1611 Filed 1-25-89; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered Species Permits Issued for the Months of October, November, December 1988

Notice is hereby given that the U.S. Fish and Wildlife Service has taken the following action with regard to permit applications duly received according to Section 10 of the Endangered Species Act of 1973, as amended, 16 U.S.C. 1539. Each permit listed as issued was granted only after it was determined that it was applied for in good faith, that by granting the permit it will not be the disadvantage of the endangered species; and that it will be consistent with the purposes and policy set forth in the Endangered Species Act of 1973, as amended.

Additional information on these permit actions may be requested by contacting the Office of Management Authority, P.O. Box 27329, Washington, DC, 20038-7239, telephone (202/343-4955) between the hours of 7:45 a.m. to 4:15 p.m. weekdays.

October

LEMSIP-New York Univ. Med. Ctr.	730563	09-30-88
Bilbie, David P.	730405	10-03-88
San Diego Zool. Society	730503	10-03-88
Hantig, Ferdinand Ferco	725867	10-06-88
Sayers, J. Hanley Jr.	730755	10-12-88
Hawthorn Circus Corp.	730854	10-12-88
Hawthorn Circus Corp.	730855	10-12-88
Hawthorn Circus Corp.	730856	10-12-88
Carpluk, William A	730610	10-13-88

October—Continued

Dunn, Robert E	730602	10-13-88
Greenburg, Dwight A. J.	730330	10-13-88
Hawthorn Circus Corp.	730859	10-13-88
Palombitt, Ryne	730847	10-19-88
Kansas City Zoo	730795	10-21-88
Rio Grande Zool. Park	730971	10-21-88
Persinger, Gerald D	730801	10-25-88
Barnhart, Leslie Irvin	731575	10-28-88
Cincinnati Zoo	731473	10-28-88
Gomez, Dennis	731580	10-28-88
Herrera, Jose Fernando	731578	10-28-88
Hawthorn Circus Corp.	731467	10-31-88
Hawthorn Circus Corp.	731471	10-31-88

November

Ringling Bros.-Barnum & Bailey	732098	11-03-88
Butler, Daniel Y	732076	11-15-88
Oberly, Jack	727187	11-21-88
Cincinnati Zoo	732162	11-22-88
Doty, Don W	732151	11-22-88
Johnson, Ernest L	729767	11-23-88

December

Tesch, Dave	731159	12-01-88
Pritchard, Peter C	728131	12-01-88
Rogers, Donald L	733581	12-01-88
Boulton, James A	732379	12-01-88
Zoo Atlanta	731901	12-05-88
Exotic Paws, Inc.	732760	12-09-88
Fontenot, Dallas J. Jr	732797	12-12-88
Torgerson, Thomas B	727375	12-16-88
EG & G	683011	12-30-88

Date: January 18, 1989.

R.K. Robinson,

Chief, Branch of Permits Office of Management Authority.

[FR Doc. 89-1869 Filed 1-25-89; 8:45 am]

BILLING CODE 4310-AN-M

Receipt of Applications for Permits

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to Section 10 (c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT-734003

Applicant: Richard M. Schubot, Avicultural Breeding and Research Center, Loxahatchee, FL

The applicant requests a permit to purchase in interstate commerce one pair of captive hatched Hawaiian (=nene) geese (*Nesochen* (=*Branta*) *Sandvicensis*) from the Sedgewick Co. Zoo & Botanical Gardens, Wichita, Kansas for the purpose of enhancement of propagation.

PRT-734321

Applicant: Knoxville Zoological Park, Knoxville, TN

The applicant requests a permit to import one male Asiatic lion (*Panthera leo persico*) from Zoo Negara Hulu Kelang, Selangor, Malaysia, for captive breeding purposes. The lion was captive born at Zoo Negara.

PRT-734322

Applicant: Cincinnati Zoo, Cincinnati, OH

The applicant requests a permit to import one pair of wild-caught Asian elephants (*Elephas maximus*) from Malaysia for purposes of educational exhibition and captive propagation.

PRT-734332

Applicant: AAZPA Species Survival Plan for Black Rhino c/o Ed Maruska, Cincinnati Zoo

The applicant requests a permit to import one wild-caught female black rhino (*Diceros bicornis minor*) from the Natal Parks Board, South Africa, for captive breeding in accordance with the guidelines set forth by the AAZPA, Game Conservation International and the Natal Parks Board. The rhino will be placed with La Coma Ranch, McAllen, Texas, for captive breeding.

PRT-734124

Applicant: University of Texas Science Park, Smithville, TX

The applicant requests a permit to import 35 blood samples of 2 ml each taken from wild peregrine falcons (*Falco peregrinus*) during banding procedures in Yellowknife, Canada, to be used for DNA studies.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) Room 403, 1375 K. Street NW., Washington, DC 20005, or by writing to the Director, U.S. Office of Management Authority, P.O. Box 27329, Central Station, Washington, DC 20038-7329.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate PRT number when submitting comments.

Dated: January 18, 1989.

R.K. Robinson,

Chief, Branch of Permits, U.S. Office of Management Authority.

[FR Doc. 89-1868 Filed 1-25-89; 8:45 am]

BILLING CODE 4310-AN-M

BEST COPY AVAILABLE

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Bureau of Land Management

Notice of Intent; Willow Creek Land Use Plan and Subsequent Activity Plans for the Eagle Lake Basin

AGENCY: Bureau of Land Management, Interior, Susanville District, Eagle Lake Resource Area, Susanville, California.

ACTION: Plan Amendment for the Willow Creek Land Use Plan and Subsequent Activity Plans for the Eagle Lake Basin.

SUMMARY: Pursuant to 43 CFR 1601.3 and 40 CFR 1501.7, notice is hereby given that the Eagle Lake Resource Area of the Susanville District, Bureau of Land Management, Susanville, California, will review the Willow Creek Land Use Plan as it pertains to the Eagle Lake Basin, which may result in a land use plan amendment. Activity plans in the Eagle Lake Basin are scheduled for completion following the land use plan review.

DATES: Land use plan amendment recommendations for the Willow Creek Land Use Plan will be developed by March 1, 1989, and final revisions to the plan, including public input and analysis by an interdisciplinary team, are scheduled for completion by June 30, 1989. Final environmental analysis of the amendments is scheduled for completion by July 31, 1989. Activity planning for the Eagle Lake Basin is scheduled for completion by September 30, 1989.

FOR FURTHER INFORMATION CONTACT: Richard H. Stark, Jr., Eagle Lake Resource Area Manager, Bureau of Land Management, Eagle Lake Resource Area Office, 2545 Riverside Drive, Susanville, California 96130. Telephone: (916) 257-0456.

SUPPLEMENTARY INFORMATION: The Eagle Lake Resource Area administers Federal land and resources in Lassen, Plumas, and Sierra counties in California, and Modoc county in Nevada. The plan amendment and activity plans will address both the public land and the private land with reserved Federal minerals in Lassen county, California within the Eagle Lake Basin. General issues identified by the Resource Area Staff include: livestock grazing, vegetation manipulation projects, timber and woodland resources, access, recreation management, water quality, and endangered species in the basin. The interdisciplinary team, which will complete the amendment and the activity plans, will consist of specialists in the fields of range management, botany, soils, wildlife, recreation, visual resources, forestry, watershed, fire management, and lands.

Opportunities for public input and comments will be announced through the media, a mailing list, and personal contact. An open house will be scheduled so that interested publics can contact the interdisciplinary team for information and/or to bring forth their concerns.

Richard H. Stark, Jr.,
Area Manager.

[FR Doc. 89-1699 Filed 1-25-89; 8:45 am]
BILLING CODE 4310-40-M

Susanville District Grazing Advisory Board Meeting

AGENCY: Bureau of Land Management, Interior, Susanville District Grazing Advisory Board, Susanville, California.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that the Susanville District Grazing Advisory Board, created under the Secretary of the Interior's discretionary authority on May 14, 1986, will meet on March 3, 1989.

The meeting will begin at 10:00 a.m. at the Susanville District Office, of the Bureau of Land Management, 705 Hall Street, Susanville, California.

The agenda on March 3, will include a report on progress of range improvement work for fiscal year 1989, an update on the Alturas Integrated Resource Management Plan, an update on the Wild Horse and Burro Program, an update on the Nevada water rights situation, an update on the Eagle Lake Basin Plan, an update on the High Rock situation, a film on the Productivity Pilot Program, and a discussion of other items as appropriate.

The meeting is open to the public. Interested persons may make oral statements to the Board between 3:00 p.m. and 4:30 p.m. on March 3, 1989, or file a written statement for the Board's consideration. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, 705 Hall Street, Susanville, California 96130, by February 24, 1989. Depending on the number of persons wishing to make oral statements, a per person time limit may be established.

Summary minutes of the Board meeting will be maintained in the District Office, and will be available for public inspection and reproduction (during regular business hours) within 30 days following the meeting.

Robert J. Sherve,
Acting District Manager.

[FR Doc. 89-1703 Filed 1-25-89; 8:45 am]
BILLING CODE 4310-40-M

[AZ 020-09; 4212-12; AZA 23849]

Realty Action; Arizona

Summary: The Notice of Realty Action in **Federal Register** document 87-21473, Vol. 52, No. 180, published on Thursday, September 17, 1987, on page 35150, is hereby corrected as follows:

Under T. 11 S., R. 9 E., secs 10 through 28, all, should read: secs. 10 to 15, incl., secs. 21 to 28, incl, all.

secs. 35, 36, unleased portions should be corrected to: sec. 35, unleased portions of E½E½, SW¼NE¼, W½SE¼; sec. 36, unleased portions of W½W½, SE¼NW¼, NE¼SW¼.

Under T. 14 S., R. 9 E., sec. 33 should be followed by: N½, N½S½, SE¼SW¼, SE¼.

Under T. 15 S., R. 9 E., sec. 30 should be followed by: lots 1 to 4, incl., E½, E½W½.

Under T. 12 S., R. 10 E., sec. 18 should be followed by: lots 1 to 4, incl., E½, E½W½, except for mineral patent 02-79-0009 in the SE¼SE¼SE¼SE¼.

Summary: The Notice of Realty Action in **Federal Register** document 88-19664, Vol. 53, No. 170, published Thursday, September 1, 1988, on page 33879, column 1, is hereby corrected as follows:

Under T. 8 N., R. 28 E., sec. 1 should read: lot 2, SW¼NE¼, W½SE¼;

Henri R. Bisson,
District Manager.

Date: January 13, 1989.

[FR Doc. 89-1722 Filed 1-25-89; 8:45 am]
BILLING CODE 4310-33-M

[CO-920-09-4111-15; COC43241]

Colorado; Proposed Reinstatement

January 19, 1989.

Notice is hereby given that a petition for reinstatement of oil and gas lease COC43241 for lands in Weld County, Colorado, was timely filed and was accompanied by all the required rentals and royalties accruing from October 1, 1988, the date of termination.

The lessee has agreed to new lease terms for rentals and royalties at rates of $5.00 and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee for the lease and has reimbursed the Bureau of Land Management for the estimated cost of this **Federal Register** notice.

Having met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920, as amended, (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease effective October 1, 1988,

subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Questions concerning this notice may be directed to Joan Gilbert of the Colorado State Office at (303) 236-1772.

Angelina Valverde,
Acting Chief, Fluid Minerals Adjudication Section.

[FR Doc. 89-1702 Filed 1-25-89; 8:45 am]
BILLING CODE 4310-JB-M

NM-940-09-4730-12

New Mexico; Filing of Plat of Survey

January 6, 1989.

The plats of survey described below are on open file in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico, pending official filing. Effective at 10:00 a.m. on February 17, 1989, these plats will be officially filed.

A survey representing the dependent resurvey of a portion of the north boundary, and the survey of tracts 37-43, Township 6 South, Range 19 West, NMPM, NM. This survey was requested by the Regional Forester, Southeastern Region, USFS, Albuquerque, New Mexico.

A survey representing the dependent resurvey of a portion of the east boundary, a portion of the subdivisional lines and the subdivision of section 24, Township 14 North, Range 12 West, NMPM, NM. This survey was requested by the District Manager, Albuquerque District, Albuquerque, New Mexico.

A survey representing the dependent resurvey of a portion of the subdivisional lines, and the subdivision of section 27, Township 25 South, Range 24 East, NMPM, NM. This survey was requested by the District Manager, Roswell District Office, Roswell, New Mexico.

A survey representing the dependent resurvey of a portion of the north boundary, a portion of the subdivisional lines, and the adjusted record meanders of a portion of the right bank of the North Fork of the Canadian River in sections 1 and 4, portions of the approximated 1872 left bank, the survey of partition lines in sections 1 and 4, the survey of portions of the 1872 medial line of the avulsed portion of the North Fork of the Canadian River in sections 1 and 4, and the survey of lots in section 4, Township 11 North, Range 3 West, IM, OK. This survey was requested by the BLM Area Manager, Oklahoma Resource Area Headquarters, Oklahoma City, Oklahoma.

The supplemental plat numbering an omitted lot in section 32, Township 15 North, Range 13 West, IM, OK. This plat was requested by BLM records.

The supplemental plat numbering omitted lots in section 33, Township 19 South, Range 16 East, NMPM, NM. This plat was requested by BLM records.

These plats will be in the open files of the New Mexico State Office, Bureau of Land Management, P.O. Box 1449, Santa Fe, New Mexico 87504. Copies of the plat may be obtained from that office upon payment of $2.50 per sheet.

Kelley R. Williamson,
Acting Chief, Branch of Cadastral Survey.

[FR Doc. 89-1726 Filed 1-25-89; 8:45 am]
BILLING CODE 4310-FB-M

[AZ-921-09-4212-13; A-18968]

Realty Action; Exchange of Public and Private Lands in Mohave County, AZ

January 13, 1989.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of exchange of land.

SUMMARY: This action informs the public of the completion of an exchange between the United States and Barton Walker Bell. The United States transferred 741.30 acres in Mohave County and Barton Walker Bell conveyed 12,392.28 acres in Mohave County.

FOR FURTHER INFORMATION CONTACT: Angela Mogel, BLM Arizona State Office, P.O. Box 16563, Phoenix, Arizona 85011, (602) 241-5534.

SUPPLEMENTARY INFORMATION: On November 10, 1988, the Bureau of Land Management issued Patent No. 02-89-0008 and Deed No. AZ-89-002, pursuant to the Federal Land Policy and Management Act of October 21, 1976. The patent transferred the following described land:

Gila and Salt River Meridian, Arizona

T. 20 N., R. 21 W.,
Sec. 20, E½SW¼, NE¼NW¼SW¼, S½N½NW¼NW¼SW¼, S½NW¼NW¼SW¼, S½NW¼SW¼, SE¼;
Sec. 32, N½.

The areas described comprise 637.50 acres in Mohave County.

The deed transferred the following described land:

Gila and Salt River Meridian, Arizona

T. 19 N., R. 21 W.,
Sec. 31, lots 2, 4, 7 and 9.

The area described comprises 103.80 acres in Mohave County.

In exchange the surface in the following described land was conveyed to the United States:

Gila and Salt River Meridian, Arizona

T. 16 N., R. 11 W.,
Sec. 1, lots 1 to 4, incl., S½N½, S½;
Sec. 3, lots 1 to 4, incl., S½N½, S½;
Sec. 4, lots 1 and 2, S½NE¼, SE¼;
Sec. 9, all;
Sec. 10, all;
Sec. 11, all;
Sec. 12, all;
Sec. 13, all;
Sec. 14, all;
Sec. 17, N½, N½SW¼, SE¼;
Sec. 21, N½NE¼, W½, SE¼;
Sec. 24, all;
Sec. 25, all;
Sec. 29, all;
Sec. 31, lots 1 to 4, incl., E½, E½W½.
T. 16 N., R. 12 W.,
Sec. 21, W½NE¼, W½, SE¼;
Sec. 23, N½, E½SW¼, NW¼SW¼, SE¼;
Sec. 25, E½, E½NW¼, SW¼;
Sec. 27, NE¼, NE¼NW¼, S½NW¼;
Sec. 29, SW¼NE¼, NE¼NW¼, S½NW¼, SW¼, W½SE¼;
Sec. 33, NE¼NE¼, S½NE¼ N½S½, SE¼SE¼.
T. 16½ N., R. 11 W.,
Sec. 33, E½, S½NW¼, SW¼.

The areas described comprise 12,392.28 acres in Mohave County.

The purpose of this notice is to inform the public and interested State and local government officials of the exchange of public and private land.

The land conveyed to the United States in this exchange will be administered by the Bureau of Land Management.

John T. Mezes,
Chief, Branch of Lands and Minerals Operations.

[FR Doc. 89-1724 Filed 1-25-89; 8:45 am]
BILLING CODE 4310-32-M

[CA-940-09-; CA 7154 WR]

Termination of Small Tract Classification No. 629; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Termination of Small Tract Classification.

SUMMARY: This action terminates Small Tract Classification No. 629 in its entirety which classified public land for disposition pursuant to the Small Tract Act of 1938. The Small Tract Act of 1938 was repealed by the Federal Land Policy and Management Act, 90 Stat. 2743, dated October 21, 1976, therefore, the classification is moot. Removal of the classification will allow an exchange of lands with the Nature Conservancy to

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acquire habitat for threatened and endangered species.

DATE: Judy Bowers, BLM California State Office, 2800 Cottage Way, Room E-2841, Federal Office Building, Sacramento, California 95825, (916) 978-4815.

1. Pursuant to the authority delegated by Appendix 1 of Bureau of Land Management Manual 1203 dated April 14, 1987, Small Tract Classification No. 629 is hereby terminated:

San Bernardino Meridian

T. 6 S., R. 22 E.,
Sec. 31, lots 3 through 20, inclusive;
Sec. 32, lots 1 through 58, inclusive.

The area described contains 231.81 acres in Riverside County.

2. The classification segregated the public lands from all other forms of appropriation under the public land laws, including location under the United States mining laws, but not leasing under the mineral leasing laws, pursuant to the Act of June 1, 1938 (52 Stat. 609; 43 U.S.C. 682a), as amended. The Small Tract Act of 1938 was repealed by section 702 of the Federal Land Policy and Management Act of October 21, 1976 (90 Stat. 2789); the classification therefore no longer serves a useful purpose.

3. Accordingly at 10 a.m. on February 22, 1989, the lands described in paragraph 1 will be opened to operation of the exchange provisions of FLPMA, but not the other public land laws, nor mining laws, subject to valid existing rights, the provisions of existing withdrawals and classifications, and the requirements of applicable law.

Dated: January 13, 1989.

Ed Hastey,
State Director.

[FR Doc. 89-1725 Filed 1-25-89; 8:45 am]
BILLING CODE 4310-84-M

[AZ-942-09-4730-12]

Arizona; Filing of Plats of Survey

January 19, 1989.

1. The plats of survey of the following described lands were officially filed in the Arizona State Office, Phoenix, Arizona, on the dates indicated:

A plat representing a dependent resurvey of a portion of the subdivisional lines, and a portion of the subdivision lines, and the survey of a portion of the subdivision lines and a metes-and-bounds survey in section 22, Township 6 North, Range 5 East, Gila and Salt River Meridian, Arizona, was accepted October 3, 1988, and was officially filed October 6, 1988.

This plat was prepared at the request of the U.S. Forest Service, Region Three.

A plat representing a survey of a portion of the subdivisional lines and the survey of subdivisions in section 9, Township 30 North, Range 5 East, Gila and Salt River Meridian, Arizona, was accepted October 3, 1988, and was officially filed October 6, 1988.

This plat was prepared at the request of the U.S. Forest Service, Grand Canyon National Park.

A plat (in two sheets) representing a dependent resurvey of portions of the south and west boundaries of the San Rafael Del Valle Land Grant and portions of the subdivisional lines, and the survey of subdivisions in sections 16 and 21, and the metes-and-bounds surveys of lot 5, section 16, and parcels A and B, section 21, and in the San Rafael Del Valle Land Grant in Township 23 South, Range 22 East, Gila and Salt River Meridian, Arizona, was accepted October 3, 1988, and was officially filed October 6, 1988.

This plat was prepared at the request of the Bureau of Land Management, Arizona State Office.

A supplemental plat showing amended lotting created by the cancellation of the unpatented mineral surveys in section 4, Township 14 North, Range 9 West, Gila and Salt River Meridian, Arizona, was accepted October 5, 1988, and was officially filed October 5, 1988.

A supplemental plat showing amended lottings created by the cancellation of the unpatented mineral surveys in section 33, Township 15 North, Range 9 West, Gila and Salt River Meridian, Arizona, was accepted October 5, 1988, and was officially filed October 5, 1988.

A supplemental plat showing amended lottings created by the cancellation of the unpatented Kyeke Millsite, Mineral Survey 4509-B in section 29, Township 15 North, Range 9 West, Gila and Salt River Meridian, Arizona, was accepted October 5, 1988, and was officially filed October 5, 1988.

These plats were prepared at the request of the Bureau of Land Management, Phoenix District Office.

A supplemental plat showing amended lotting of previously segregated mining claims in section 4, Township 10 North, Range 3 East, Gila and Salt River Meridian, Arizona, was accepted November 29, 1988, and was officially filed November 30, 1988.

This plat was prepared at the request of the Bureau of Land Management, Lands and Minerals Operations.

A plat (in three sheets) representing a dependent resurvey of portions of the south boundary, subdivisional lines, Homestead Entry Survey 373, Tract D Exemption of Homestead Entry Survey 373, and the dependent resurvey of the subdivision of sections 28 and 33; and a survey of subdivision of sections 21, 22, 27, and 33, and a survey of lot 1, section 33, in Township 22 North, Range 8 East, Gila and Salt River Meridian, Arizona, was accepted December 13, 1988, and was officially filed December 22, 1988.

This plat was prepared at the request of the U.S. Forest Service, Coconino National Forest.

2. These plats will immediately become the basic records for describing the land for all authorized purposes. These plats have been placed in the open files and are available to the public for information only.

3. All inquiries relating to these lands should be sent to the Arizona State Office, Bureau of Land Management, P.O. Box 16563, Phoenix, Arizona 85011.

James P. Kelley,
Chief, Branch of Cadastral Survey.

[FR Doc. 89-1723 Filed 1-25-89; 8:45 am]
BILLING CODE 4310-32-M

[CO-010-09-5700-11; COC-34329]

Realty Action; Lease of Public Lands for Recreation and Public Purposes; Colorado

The following public lands in the Piceance Basin, Rio Blanco County, Colorado have been found suitable for lease to Colorado State University for disturbed land reclamation research, and will be so classified under the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 et seq.).

Sixth Principal Meridian, Colorado

T. 2 S., R. 98 W., sec. 4, lots 9, 10, and 15-18 inclusive. A portion of the above parcel containing 50 acres more or less.

Leasing the surface of these lands does not conflict with current or proposed uses. Leasing is consistent with the Piceance Basin Resource Management Plan and would be in the public interest.

The lease, when issued, would be subject to the following conditions:

1. Provisions of the Recreation and Public Purposes Act and to the applicable regulations of the Secretary of the Interior.

2. All existing rights, leases, and reservations of record.

Publication of this notice in the **Federal Register** segregates the public lands from all other forms of appropriation under the public land laws and the general mining laws, except for lease under the Recreation and Public Purposes Act and the mineral leasing acts.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested persons may submit comments to the District Manager, Craig District, Bureau of Land Management, 455 Emerson Street, Craig, Colorado 81625. In the absence of any adverse comments, this realty action will become a final determination of the Department of the Interior and the classification will become effective 60 days from the date of publication of this notice.

Further information can be obtained from the White River Resource Area (303) 878-3601.

William J. Pulford,
District Manager.

[FR Doc. 89-1761 Filed 1-25-89; 8:45 am]
BILLING CODE 4310-JB-M

[CO-010-09-5700-11; COC-48511]

Realty Action; Lease of Public Lands for Recreation and Public Purposes; Colorado

The following public lands near Rangely, Colorado, have been found suitable for lease to Rio Blanco County for a historic-monument to commemorate the discovery oil and gas well drilled in the Chevron Rangely Oil Field, and will be so classified under the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 et seq.).

Sixth Principal Meridian, Colorado

T. 2 N., R. 102 W., sec. 30, E½SE¼ NW¼NW¼SE¼, W½SW¼NE¼NW¼SE¼. A portion of the above parcel containing 1 acre more or less.

Leasing the surface of these lands does not conflict with current or proposed uses. Leasing is consistent with the White River Resource Area Management Framework Plan and would be in the public interest.

The lease, when issued, would be subject to the following conditions:

1. Provisions of the Recreation and Public Purposes Act and to the applicable regulations of the Secretary of the Interior.

2. All existing rights, leases, and reservations of record.

3. All minerals and the right to mine and remove the same are reserved to the United States.

Publication of this notice in the **Federal Register** segregates the public lands from all other forms of appropriation under the public land laws and the general mining laws, except for lease under the Recreation and Public Purposes Act and the mineral leasing acts.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested persons may submit comments to the District Manager, Craig District, Bureau of Land Management, 455 Emerson Street, Craig, Colorado 81625. In the absence of any adverse comments, this realty action will become a final determination of the Department of the Interior and the classification will become effective 60 days from the date of publication of this notice.

Further information can be obtained from the White River Resource Area (303) 878-3601.

William J. Pulford,
District Manager.

[FR Doc. 89-1762 Filed 1-25-89; 8:45 am]
BILLING CODE 4310-JB-M

[CO-010-93-4000-93; COC-39339]

Realty Action; Direct Sale of Public Lands; Colorado

The following described public lands have been examined and identified as suitable for direct sale under Section 203 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1713) at not less than the appraised fair market value of $10,000.00.

Sixth Principal Meridian, Colorado

T. 1 N., R. 102 W., sec. 6, lot 13. Containing 2.45 acres.

To resolve an inadvertent unauthorized use and occupancy of the lands, this parcel would be offered for sale to the adjacent landowners and occupants, Mr. and Mrs. Robert Cott of Rangely, Colorado.

Sale is consistent with the White River Resource Area Management Framework Plan and would be in the public interest. The lands are not needed for any resource program and are not suitable for management by the Bureau or another Federal department or agency.

The patent, when issued, would be subject to the following conditions:

1. All existing rights, leases, and reservations of record;

2. All minerals and the right to explore, prospect for, mine, and remove same are reserved to the United States;

3. Rights-of-way for ditches and canals are reserved to the United States.

Publication of this notice in the **Federal Register** segregates the public lands from all other forms of appropriation under the public land laws, the general mining laws, and the mineral leasing acts, except for sale as described. Segregative effect will terminate upon patent issuance or 270 days from publication in the **Federal Register**, whichever occurs first.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested persons may submit comments to the District Manager, Craig District, Bureau of Land Management, 455 Emerson Street, Craig, Colorado 81625. In the absence of any adverse comments, this realty action will become a final determination of the Department of Interior and the lands will be offered for sale 60 days from the date of this notice.

Further information can be obtained from the White River Resource Area (303) 878-3601.

William J. Pulford,
District Manager.

[FR Doc. 89-1763 Filed 1-25-89; 8:45 am]
BILLING CODE 4310-JB-M

[OR-130-09-4212-14; GP9-103]

Notice of Realty Action; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The following described land in Chelan County is suitable for direct sale under Section 203 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1713, at no less than its appraised fair market value of *$7,500.00*. The land will not be offered for sale until at least 60 days after publication of this notice.

T.27N., R.23E. WM., Section 9: Lot 10, comprising 3.75 acres.

This land is being offered noncompetitively to James and Audrey Van De Mark in order to resolve a longstanding inadvertent occupancy trespass. It is not suitable for management by another Federal agency and no significant resource values will be affected by its disposal. The sale is consistent with BLM's planning for the land involved and will serve the public interest.

DATES: For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Bureau of Land Management, Spokane District Office, E. 4217 Main, Spokane, WA 99202. In the absence of timely objections, this realty action will become the final determination of the Department of the Interior.

SUPPLEMENTARY INFORMATION: The land described is hereby segregated from appropriation under the public land laws, including the mining laws, but not

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from sale under the above cited statute, for 270 days or until title transfer is completed or the segregation is terminated by publication in the **Federal Register**, whichever occurs first.

The patent, when issued, will contain a reservation to the U.S. of all minerals and the right to construct ditches and canals. The patent will also be subject to an existing right-of-way and the reservation of section 24 of the Federal Power Act. Detailed information concerning these reservations as well as specific conditions of the sale are available for review at the above address.

Joseph K. Buesing,
District Manager.
Date: January 18, 1989.

[FR Doc. 89-1764 Filed 1-25-89; 8:45 am]
BILLING CODE 4310-33-M

[NM-040-09-4212-11; OK NM 69660]

Recreation and Public Purposes Classification, Comanche County, OK

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action; Recreation and Public Purposes (R&PP) Act Classification; Oklahoma.

SUMMARY: The following described land has been examined and found suitable for classification for conveyance under the provisions of the Recreation and Public Purposes (R&PP) Act, as amended (43 U.S.C. 869 et seq.)

Indian Meridian

T. 3 N., R. 12 W.,
Sec. 19, N½NE¼.
Containing 10 acres.

The land was examined in response to R&PP application, Serial Number OK NM 69660, filed by the Medicine Park Board of Education proposing to use the land for an athletic field, a picnic area, recreational community events, and ecosystem area for the science projects.

The land is not needed for Federal purposes. Conveyance is consistent with current BLM land use planning and would be in the public interest.

The patent, when issued, will be subject to the following terms, conditions, and reservations:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of Interior.

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.

SUPPLEMENTARY INFORMATION: Upon publication of this Notice in the **Federal Register**, the land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws. The segregate effect will terminate upon issuance of a patent, 18 months following the issuance of this Notice, or upon publication of a notice of termination. For a period of 45 days from the date of publication of this Notice in the **Federal Register** interested persons may submit comments regarding the proposed conveyance or classification of the land to the Bureau of Land Management, District Manager, Tulsa District Office, 9552-H E. 47th Street, Tulsa, OK 74145. Any adverse comments will be reviewed by the State Director who may vacate or modify this realty action. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this Notice.

FOR FURTHER INFORMATION CONTACT: Paul Tanner, Area Manager, or Jacqueline Gratton, Program Leader, Oklahoma Resource Area, (405) 231-5491.

Jim Sims,
District Manager.
[FR Doc. 89-1799 Filed 1-25-89; 8:45 am]
BILLING CODE 4310-FB-M

[UT-060-09-4410-08]

Utah Vernal District; Resource Management Plans, etc.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent to Develop a Resource Management Plan and Environmental Impact Statement for the Diamond Mountain Resource Area.

SUMMARY: The Diamond Mountain Resource Area of the Utah Vernal District is undertaking a resource management planning effort and environmental impact statement scheduled for completion in 1992. The approved Resource Management Plan (RMP) will provide overall management direction for approximately 15-20 years. Necessary amendments to the approved plan will keep the document current and viable. Public comment will be solicited throughout the planning process.

SUPPLEMENTARY INFORMATION: The Diamond Mountain RMP/EIS is needed to consolidate, modify, update, and expand the decisions in the existing Browns Park, Diamond Mountain, and Ashley Creek-Duchesne Management Framework Plans (MFPs) completed during the period 1977 through 1979. The RMP will bring forward valid existing decisions from these MFPs, incorporating decisions from MFP amendments and other approved planning documents developed since 1979. The RMP/EIS will also incorporate needed decisions relating to policy and regulatory changes initiated or enacted since 1979.

The Diamond Mountain Resource Area is responsible for management of BLM-administered lands and minerals on approximately 698,000 acres in Daggett and Duchesne Counties and that portion of Uintah County west of the Green River. These counties are located in northeastern Utah.

The RMP will coordinate management of federal lands administered by the Bureau within the resource area with the management of the State of Utah; the Ute Indian Tribe; federal agencies such as the National Park Service, U.S. Forest Service, and Bureau of Indian Affairs; as well as other county and private entities. It will coordinate management of the federal sub-surface mineral estate with the private or other non-federal surface owner. It will also coordiante management with adjoining BLM districts in both Wyoming and Colorado; as well as the Price Resource Area (Moab District), the Bear River Resource Area (Salt Lake City District), and the Bookcliffs Resource Area (Vernal District) within Utah.

Issues, problems, and concerns arising since the completion of the MFPs in 1979 have been grouped into the following broad categories:

(1) Access and transportation needs
(2) Mineral leasing and development
(3) Special management areas
(4) Multiple-use-balance between land uses (oil/gas, mining, livestock grazing, timber harvest, rights-of-way) and resource protection (archeology, paleontology, wildlife habitat, soil/water/air/vegetation, threatened and endangered plants and animals.)

Special management needs have been tentatively identified for Browns Park, Pariette, Red Mountain, Castle Cove, Cowboy Bench, Leers Canyon, Uintah Mountain South Footslopes, and Nine Mile. Areas of Critical Environmental Concern (ACEC), therefore, are being studied for these lands. Public nominations are being solicited to identify appropriate ACECs. Comments on the 8 tentatively proposed ACECs or nominations on new ones should be submitted to the team leader. Nominations must include a map as well as a discussion on why an ACEC is necessary and what special management would be proposed.

Public participation is being sought at this initial stage in the planning process to ensure the RMP/EIS addresses all issues, problems, and concerns from anyone interested in the management of the resource area.

Initial scoping for the environmental impact statement took place during the month of November with public workshops, an introductory mailing and a media release.

Comments and input will be solicited throughout the RMP/EIS process, however, initial input on issues or ACEC nominations to be considered should be submitted to the team leader by February 28, 1989.

Formal public participation will be requested again for review of the draft RMP/EIS (1991) and proposed RMP/Final EIS (1992). Notice of availability of these documents will be published at the appropriate items.

The RMP will be developed by an interdisciplinary team composed of BLM resource specialists. The team will have a team leader and specialists in realty, wildlife (including threatened and endangered animals), forestry, fire management, archaeological and paleontological resource protection, minerals, soil/water/air, range, and vegetation (including threatened and endangered plants).

FOR FURTHER INFORMATION CONTACT: Penelope Smalley, Team Leader, Bureau of Land Management, Vernal District Office, 170 South 500 East, Vernal, UT 84078. Phone: (801) 789-1362 during the hours of 7:45 a.m. to 4:30 p.m., Monday thorugh Friday.

Dated: January 17, 1989.

Jean C. Jensen,
Acting State Director.
[FR Doc. 89-1798 Filed 1-25-89; 8:45 am]
BILLING CODE 4310-DQ-M

[CO-010-09-4320-02]

Craig, Colorado Advisory Council Meeting

Time and Date: March 8, 1989, at 10 a.m.
Place: BLM-Craig District Office, 455 Emerson Street, Craig, Colorado.
Status: Open to public; interested persons may make oral statements at 10:30 a.m. Summary minutes of the meeting will be maintained in the Craig District Office.
Matters To Be Considered:
1. Elections of Officers
2. Recreation 2000
3. Weed Control
4. District Riparian Plan

Contact Person for More Information: Mary Pressley, Craig District Office, 455 Emerson Street, Craig, Colorado 81625-1129, Phone: (303) 824-8261.

Dated: January 20, 1989.

William J. Pulford,
District Manager.
[FR Doc. 89-1865 Filed 1-25-89; 8:45 am]
BILLING CODE 4310-JB-M

National Park Service

Availability of Plan of Operations and Environmental Assessment Continued Operations; Frontier Geophysical Co., Big Thicket National Preserve, TX

Notice is hereby given in accordance with section 9.52(b) of Title 36 of the Code of Federal Regulations that the National Park Service has received from Frontier Geophysical Co., a Plan of Operations for conducting a geophysical exploration, Lance Rosier Unit, Big Thicket National Preserve, Texas.

The Plan of Operations and Environmental Assessment are available for public review and comment for a period of 30 days from the publication date of this notice in the Office of the Superintendent, Big Thicket National Preserve, 3785 Milam, Beaumont, Texas; and the Southwest Regional Office, National Park Service, 1220 South St. Francis Drive, Room 347, Santa Fe, New Mexico. Copies are available from the Southwest Regional Office, P.O. Box 728, Santa Fe, New Mexico 87504-0728, and will be sent upon request.

Date: January 12, 1989.

Richard Marks,
Acting Regional Director, Southwest Region.
[FR Doc. 89-1857 Filed 1-25-89; 8:45 am]
BILLING CODE 4310-70-M

New River Gorge National River; Cancellation of a Notice of Intent to Prepare an Environmental Impact Statement

SUMMARY: Notice is hereby given that the National Park Service is cancelling the notice issued in the **Federal Register** of September 12, 1980 (45 FR 60495), for the preparation of an Environmental Impact Statement on the New River Gorge National River. A General Management Plan, with an Environmental Assessment and a Finding of No Significant Impact, was issued November 11, 1982.

FOR FURTHER INFORMATION CONTACT: Jacob Hoogland, Chief, Environmental Compliance Division, National Park Service, U.S. Department of the Interior, Room 1210, 18th and C Streets NW., Washington, DC 20240, telephone (202) 343-2163.

Date: January 18, 1989.

Gerald D. Patten,
Associate Director, Planning and Development, National Park Service.
[FR Doc. 89-1855 Filed 1-25-89; 8:45 am]
BILLING CODE 4310-70-M

National Capital Region; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the National Capital Memorial Commission will be held on Thursday, January 26, 1989, at 1:30 p.m., in the Executive Conference Room at the National Capital Planning Commission, 1325 G Street NW., Washington, DC.

The Commission was established by Pub. L. 99-652, for the purpose of advising the Secretary of the Interior or the Administrator of the General Services Administration, depending on which agency has jurisdiction over the lands involved in the matter, on policy and procedures for establishment of (and proposals to establish) commemorative works in the District of Columbia or its environs, as well as such other matters concerning commemorative works in the Nation's Capital as it may deem appropriate. The Commission evaluates each memorial proposal and makes recommendations to the Secretary or the Administrator with respect to appropriateness, site location and design, and serves as an information focal point for those seeking to erect memorials on Federal land in Washington, DC, or its environs.

The members of the Commission are as follows:

William Penn Mott, Jr. Chairman, Director, National Park Service, Washington, DC
George M. White, Architect of the Capitol, Washington, DC
Honorable Andrew J. Goodpaster, Chairman, American Battle Monuments Commission, Washington, DC .
J. Carter Brown, Chairman, Commission of Fine Arts, Washington, DC
Glenn Urquhart, Chairman, National Capital Planning Commission, Washington, DC
Honorable Marion S. Barry, Jr., Mayor of the District of Columbia, Washington, DC
John Alderson, Administrator, General Services Administration, Washington, DC

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Honorable Frank Carlucci, Secretary of Defense, Washington, DC

The purpose of the meeting will be to review and take action on the following:

I. Women in Military Service Memorial to honor women who have served in the Armed Forces of the United States, authorized by Pub. L. 99–610, November 6, 1986.

—Review of Criteria for the Design Competition:

a. Memorial Design Requirements and Limitations.

b. Presentation Requirements.

II. Consideration of policies relating to the recognition of private contributions to memorials, museums, and other cultural facilities on public lands in the National Capital, as originally proposed by the National Capital Planning Commission.

Date: January 17, 1989.

Robert Stanton,

Regional Director, National Capital Region.

[FR Doc. 89–1656 Filed 1–25–89; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–306X]

Central Michigan Railway Co.; Abandonment Exemption; Kent, Muskegon, and Ottawa Counties, MI

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon 31.85 miles of raillines between: (1) milepost 165.5 at Penn Junction, Grand Rapids, MI, and milepost 191.40 at Muskegon, MI; and (2) between milepost 1.5 at Marne, MI and milepost 8.0 at Coopersville, MI. The lines are in Kent, Muskegon, and Ottawa Counties, MI.

Applicant has certified that: (1) No local traffic has moved over the lines for at least 2 years; (2) any overhead traffic on the lines can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the lines either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on February 25, 1989 (unless stayed pending reconsideration).[1] Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by February 6, 1989.[4] Petitions for reconsideration and requests for public use conditions under 49 CFR 1152.28 must be filed by February 15, 1989 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Kevin M. Sheys, Weiner, McCaffrey, Brodsky, & Kaplan, P.C., 1350 New York Ave., NW., Suite 800, Washington, DC 20005–4797.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by January 31, 1989. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3115, Interstate Commerce Commission, Washington, DC 20423) or by calling Carl Bausch, Chief, SEE at (202) 275–7316. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: January 18, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89–1736 Filed 1–25–89; 8:45 am]

BILLING CODE 7035–01–M

[1] This is the effective date for purposes of consummation of the transaction.

[2] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 4 I.C.C.2d 400 (1988). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[3] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987), and final rules published in the **Federal Register** on December 22, 1987 (52 FR 48440–48446).

[4] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

[Docket No. AB–55 (Sub-No. 297X)]

CSX Transportation, Inc.; Abandonment Exemption in Tuscarawas and Harrison Counties, OH

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its 14.72-mile line of railroad between milepost 44.78 at Freeport and milepost 59.50 at Urichsville, in Tuscarawas and Harrison Counties, OH.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on February 25, 1989 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by February 6, 1989.[3] Petitions for reconsideration and requests for public use conditions under 49 CFR 1152.28 must be filed by February 15, 1989, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Patricia Vail, CSX Transportation, Inc., 500 Water Street, Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by January 31, 1989. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3115, Interstate Commerce Commission, Washington, DC 20423) or by calling Carl Bausch, Chief, SEE at (202) 275–7316. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: January 18, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89–1737 Filed 1–25–89; 8:45 am]

BILLING CODE 7035–01–M

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 4 I.C.C. 2d 400 (1988). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in

Continued

formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by February 6, 1989.[3] Petitions for reconsideration and requests for public use conditions under 49 CFR 1152.28 must be filed by February 15, 1989, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Patricia Vail, CSX Transportation, Inc., 500 Water Street, Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by January 31, 1989. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3115, Interstate Commerce Commission, Washington, DC 20423) or by calling Carl Bausch, Chief, SEE at (202) 275–7316. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: January 18, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89–1737 Filed 1–25–89; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on January 5, 1989, a proposed Consent Decree in *United States v. The B.F. Goodrich Company and The BOC Group, Inc.*, Civil Action No. 89–0005–P(CS), was lodged with the United States District Court for the Western District of Kentucky. The Complaint filed by the United States sought injunctive relief and response costs under the Comprehensive Environmental Response, Compensation and Liability Act as amended (the Act), against the B.F. Goodrich Company and The BOC Group, Inc. The Complaint alleged that the defendants disposed of wasted and hazardous substances at two sites which appear on the National Priorities List ("NPL"), promulgated pursuant to the Act. The Complaint further alleges that releases of hazardous substances, pollutants and contaminants have occurred at the sites and have contaminated surface and subsurface soils at the sites and groundwater under the sites.

Under the proposed Consent Decree, the defendants will be liable for EPA's past response costs of $389,081.96, will implement the remedy selected by EPA through a remedial design/remedial action plan, and will conduct any operation and maintenance functions connected with the remedy.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments concerning the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044, and should refer to *United States v. The B.F. Goodrich Company and the BOC Group, Inc.*, D.J. Ref. 90–11–2–414.

The proposed Consent Decree may be examined at any of the following offices: (1) The United States Attorney for the Western District of Kentucky, 510 W. Broadway, 10th Floor, Louisville, Kentucky; (2) the U.S. Environmental Protection Agency, Region 4, 345 Courtland Street, NE, Atlanta, Georgia; and (3) the Environmental Enforcement Section, Land & Natural Resources Division, U.S. Department of Justice, 10th & Pennsylvania Avenues, NW, Washington, DC. Copies of the proposed Decree may be obtained by mail from the Environmental Enforcement Section of the Department of Justice, Land and Natural Resources Division, P.O. Box 7611, Benjamin Franklin Station, Washington, DC 20044–7611, or in person at the U.S. Department of Justice Building, Room 1517, 10th Street and Pennsylvania Avenue, NW, Washington, DC. Any request for a copy of the proposed Consent Decree should be accompanied by a check for copying costs totalling $5.20 ($0.10 per page) payable to "United States Treasurer."

Roger J. Marzulla,

Assistant Attorney General, Land & Natural Resources Division.

[FR Doc. 89–1705 Filed 1–25–89; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to the Clean Water Act; United States v. Metropolitan St. Louis Sewer District, et al.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on December 29, 1988, a proposed Consent Decree in *United States v. Metropolitan St. Louis Sewer District, et al.*, ("MDS") Civil No. 88–543–C–4, was lodged with the United States District Court for the Eastern District of Missouri. The proposed Consent Decree arises from a civil action filed on March 22, 1988 under the Clean Water Act, 33 U.S.C. 1251 *et seq.* The complaint alleged that the Metropolitan St. Louis Sewer District ("MSD") had violated the Clean Water Act by discharging pollutants and contaminants from its Bissell Point Sewage Treatment Plant and from several sewer interceptor lines without a National Pollutant Discharge Elimination System Permit ("NPDES Permit") issued pursuant to section 402 of the Clean Water Act, 33 U.S.C. 1362. The complaint also alleged that MSD had violated the Clean Water Act at a number of its other sewage treatment facilities by discharging pollutants or contaminants in violation of the NPDES Permits for those facilities. The consent decree requires MSD to construct the facilities believed necessary to achieve compliance with the Clean Water Act at all of its sewage treatment plants and sewer interceptor lines and to pay a civil penalty of $100,000 to the United States.

The Department of Justice will receive for a period of thirty (30) days from the date of publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. Metropolitan St. Louis Sewer District, et al.*, DJ Ref. 90–5–2–1–595.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Eastern District of Missouri, 812 North Seventh Street, Kansas City, Kansas 66101. Copies of the Consent Decree may be examined at the Environmental Enforcement Section,

order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C. 2d 164 (1987), and final rules published in the **Federal Register** on December 22, 1987 (52 FR 48440–48446).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

Land and Natural Resources Division, Department of Justice, Room 1748, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy please enclose a check in the amount of $3.10 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Donald A. Carr,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89-1704 Filed 1-25-89; 8:45 am]

BILLING CODE 4410-01-M

Antitrust Division

Notification Pursuant to the National Cooperative Research Act of 1984—OSI/Network Management Forum

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), the OSI/Network Management Forum, (the "Forum") has filed an additional written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing additions to its membership. The additional written notification was filed for the purpose of extending the protections of section 4 of the Act, limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

On October 21, 1988, the Forum filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the Federal Register pursuant to section 6(b) of the Act on December 8, 1988, 53 FR 49815.

The identities of the additional parties to the venture are given below:

Additional Voting Members

GEC Plessey Telecommunications Ltd., Stoke Works P.O. Box 53, Telephone Road, Coventry, CV3 1HJ, England
Nippon Telegraph and Telephone, Room 10-117A, 9-11 Midori-Cho 3 Chome, Musashino-Shi, Tokyo 180, Japan
MCI Telecommunications, 701 South 12th Street, Arlington, VA 22202, USA
Microtel Limited, 2100-401 West Georgia Street, Vancouver, British Columbia V6B 5C8, Canada

Additional Associate Members

Newbridge Networks Corporation, 600 March Road, P.O. Box 13600, Kanata, Ontario K2K 2G, Canada
Zellweger Telecommunications, Hombrechtikon, CH-8634, Switzerland
Philips Telecommunication and Data Systems, S-17588, Jarfalla, Sweden
Computrol, A division of Modcomp, an AEG Company, 239 Ethan Allen Highway, Ridgefield, CT 06877, USA
NCR Corporation, 1700 South Patterson Boulevard, Dayton, OH 45479, USA
Bull S.A., 68 Rt. de Versailles-BP3, Louveciennes, 78430, France
Prime Computer, Inc., 500 Old Connecticut Path, Framingham, MA 01701, USA
Telindus N.V., Geldenaaksebaan 335, Louvan 3030, Belgium
Siemens AG, Otto-Hahn-Ring 6, D-8000, Munich 83, Germany
Kokusai Denshin Denwa Co., Ltd., KDD Kamifukuoka R&D Labs., 2-1-15 Ohara Kamifukuoka-shi, Saitama, 356, Japan
Telwatch, 1241 Hawks Flight Court, El Dorado Hills, CA 95630, USA
Tech Nel Data Products, Limited, 8 Haslmere Way, Banbury, Oxon OX16 6TY, England
NEC America, Inc., 8 Old Sod Farm Road, Melville, NY 11747, USA
Racal-Milgo, P.O. Box 407044, Ft. Lauderdale, FL 33340-7044, USA
CNCP Telecommunications, 330 Bloor Street West—15th Floor, Toronto, Ontario M8X 2W8, Canada
Nixdorf Computer Engineering Corporation, 2520 Mission College Boulevard, Santa Clara, CA 95054, USA
Contel Technology Center, Contel Plaza Building, 2015 Lee Jackson Highway, Fairfax, VA 22033-3346, USA
Spider Systems Ltd., 65 Bonnington Road, Edinburgh, EH6 5JQ, England
Fujitsu America, Inc., 3055 Orchard Drive, San Jose, CA 95134-2017, USA

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 89-1706 Filed 1-25-89; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

Job Training Partnership Act (JTPA); Indian and Native American (INA) Programs for Program Year 1989 Methodology for Setting Grantee Performance Standards

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice; request for comments.

SUMMARY: For Program Year (PY) 1989 (July 1, 1989—June 30, 1990), the Department of Labor will retain the same basic methodology for setting Indian and Native American (INA) performance standards that was previously adopted for and implemented during PY 1987 (July 1, 1987—June 30, 1988). This methodology continues in use for the current period in PY 1988 (July 1, 1988—June 30, 1989). This notice describes certain limited changes in these model-based procedures anticipated for PY 1989. INA grantees and other interested parties may offer comments for review and consideration by the Department prior to its issuance of the PY 1989 planning instructions scheduled for February, 1989. Any further changes based on comments received in response to this notice and accepted by the Department will be incorporated into the PY 1989 planning instructions.

DATES: *Effective date:* July 1, 1989.

Comments: Interested persons are invited to submit comments. Comments must be received by the Department of Labor no later than February 9, 1989.

ADDRESS: Comments must be addressed to the Assistant Secretary for Employment and Training, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Clayton Johnson, Room N5637.

FOR FURTHER INFORMATION CONTACT: Clayton Johnson, Telephone: 202-535-0685 (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: Section 401 of the Job Training Partnership Act (JTPA) establishes federally-funded employment and training programs for Indians and Native Americans (INA) to ameliorate serious unemployment and economic disadvantages among members of their communities. JTPA section 106 requires the Secretary of Labor to formulate performance standards applicable to grantees designated to operate these Section 401 programs. JTPA section 401(h)(2) further specifies that "Recipients of funds under this section shall establish performance goals, which shall, to the extent required by the Secretary, comply with performance standards established by the Secretary pursuant to section 106". Department of Labor (DOL) regulations at 20 CFR 632.11(d) identify performance standards as one of fourteen responsibility tests that INA grantees must meet for redesignation. This notice sets forth the performance standards for JTPA section 401 INA programs beginning with Program Year (PY) 1989 (July 1, 1989—June 30, 1990).

Background

In accordance with legal requirements referenced above, performance standards have been in use for INA grantees since 1983 through each of the program periods up to the present.

1. *Required Performance Measures.* In consultation with grantee representatives, the Department has established and utilized three required performance measures as follows:

- *Entered Employment Rate* (EER)—the percentage of total terminees placed in unsubsidized employment.
- *Positive Termination Rate* (PTR)—the percentage of total terminees who entered unsubsidized employment plus those achieving certain other outcomes including return to full-time school, completion of a major level of education, or successful completion of other planned participant activity.
- *Cost per Positive Termination* (CPT)—total positive terminations divided into total training funds (minus administrative costs and community benefit costs).

The EER measure reflects the employment orientation of all JTPA programs. The PTR measure recognizes that many INA program participants live in areas with severely depressed economies and limited opportunities for employment. Thus, besides helping participants find employment immediately after termination, another important goal for INA programs is to enhance longer term employability by assisting them to return to school or participate in other training or planned activities. The CPT measure emphasizes that funds must be used cost effectively. A fourth measure available to grantees on an *optional* basis is the Community Benefit project (CB). These projects are monitored separately by the Department. Participants and costs involved in Community Benefit Projects are excluded in calculating grantee performance on the three required measures (EER, PTR, CPT).

2. *Previous "Past Performance" Method for Setting Grantee Standards.* Prior to PY 1987, the method used to set individual grantee standards was to take the grantee's performance level on the given measure in a previous year and apply that fixed number in advance as the minimum standard for the upcoming program period. This meant that grantees were locked into standards based on the previous year's performance without taking into account changes occuring in clientele served and other local conditions affecting outcomes achieved. Grantees who performed at high levels in the previous year were held to high standards even though their conditions may have changed. Accordingly, a number of INA grantees ended up unable to meet such standards because their performance did not match the prior year's higher levels. Conversely, those grantees who had performed at lower levels in previous years had much easier standards with little incentive to improve from one year to the next. This old approach was used during Transition Year 1984 and through Program Years 1984, 1985 and 1986.

3. *Development and Adoption of Model-Based Approach.* From the inception of performance standards, the Department's aim has been to establish a uniform and objective method for setting individual grantee standards so as to reflect each grantee's performance results in relation to its clientele characteristics and to certain local conditions for its own service area. The statistical technique known as multiple regression analysis is the technical procedure through which such a modeling approach can be developed and applied. This same technique has been and is the basic method used to develop and update performance standards for the mainline JTPA Title IIA programs operated by the States and local service delivery areas. This same approach is also being used to set standards for other JTPA employment and training programs such as Job Corps centers and the JTPA Section 402 Farmworker program grantees.

Over a period of several years (PY 1984–85–86) this type of approach was under development for INA programs including periodic consultation with grantee representatives. PY 1987 was the first year in which statistical models were adopted and implemented successfully for the three required INA performance measures. Essentially the same models with some minor changes are presently in use for the current PY 1988 period.

Basic Modeling Approach

Beginning with PY 1987, performance standards for INA program grantees have been set through the use of multivariate adjustment models developed for each of the three required performance measures (EER, PTR, CPT). This modeling approach examines the statistical relationships (via multiple regression analysis) between program outcomes, terminee characteristics, and local economic conditions in order to identify the important factors which influence each performance measure. Some factors are found to be associated with better performance and other factors are related to weaker performance. Models are then developed that quantify the relationships between the various factors so that specific adjustments can be calculated for each grantee on an individualized basis. Adding up the net effect of all factors in the model for each performance measure (EER, PTR, CPT) provides each grantee with its own individually adjusted performance standards.

As an example of how adjustments work for factors included in the models, take the case of various educational levels among the terminees in a grantee's program. If the grantee serves a higher proportion of school dropouts, then the entered employment rate proves to be lower on the average and the model yields somewhat easier standards for that grantee. On the other hand, if a grantee's program serves a higher proportion of high school graduates, then the model produces somewhat higher entered employment rate standards.

In summary, the adjustment model approach offers these advantages:

- It allows allows standards to be set consistently and equitably for all grantees by accounting for a variety of factors affecting performance.
- It reduces inducements for concentrating on easier to serve participants since grantees who may practice "creaming" will be held to stricter performance standards.
- It provides grantees with a useful tool in the planning process by projecting performance targets based on their own unique terminee characteristics and local conditions.
- It involves no disincentives for superior performance since grantees can be rated as superior performers in one year without making their standards more stringent in the subsequent year.

In addition to the above considerations, the model-based standard setting process provides INA grantees and the Department of Labor with objective criteria for assessing program performance on several key outcomes. Thus, well-managed programs should do better than the models predict while poorly managed programs can be expected to do worse.

Selection of Modeling Factors

The following criteria have been used to determine which factors are included in the models.

- Management practices have been excluded because they are regarded as within control of program managers, not beyond their control.
- There must be some variations among grantees on the factor.
- The relationship between the factor and the performance measure makes intuitive sense.
- The factor is strongly related to the performance outcome.
- The factor is objective and easily quantifiable.
- For local economic conditions, published sub-state level data is available nationwide.

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Factors appearing in the models use three main types of data including terminee characteristics, program characteristics, and service area characteristics (local economic conditions). For the PY 1989 models, data has been used from the Indian Annual Status Reports (ASRs) submitted by grantees for Program Years 1984, 1985, 1986 and 1987. These reports contain information from each grantee on outcomes achieved, services received by terminees, terminee characteristics and related fiscal data. Data for local economic factors have been drawn from reports published by the Bureau of the Census and the Bureau of Labor Statistics.

The following 14 factors have been selected for inclusion in one or more of the three models for the INA performance measures in PY 1989:

Local factors	Models		
	EER	PTR	CPT
Percent females			X
Percent aged 14 to 21	X	X	X
Percent school dropouts	X	X	
Percent students	X		X
Percent welfare recipients	X		
Percent long-term unemployed	X	X	
Percent not in labor force	X		
Average weeks participated			X
Tribal Government status	X	X	X
Percent employment in manufacturing	X		
Percent employment in farm, forestry, and fisheries	X	X	X
Average earnings in trade industry	X		X
Local area unemployment rate (BLS/LAUS)	X		
Percent families with income below the poverty level			X

Of the 14 factors listed in the table above, 13 of them have been used in the previous models for PY 1987 and/or PY 1988. The one factor being introduced for the first time in these PY 1989 models is the Local Area Unemployment Rate (LAUS) that is being added to the EER model as discussed below. Although a number of other possible factors were examined in developing these PY 1989 models, the factors shown above proved to be the ones that make the largest contribution to the model's predictive ability. Also, retention of these factors in the PY 1989 models make them broadly consistent with the corresponding models for the given measures in PY 1987 and PY 1988. Certain other changes in the particular models for PY 1989 are reviewed below.

Entered Employment Rate (EER) Model

The PY 1989 model for the EER measure contains a total of 11 factors, 10 of which appeared in the PY 1988 EER model. Among the factors retained are six terminee characteristics (Aged 14–21, School dropouts, Students, Welfare recipients, Long-term unemployed, and Not in the labor force). Three service area characteristics are also carried over from the previous PY 1988 EER model and these are Employment in manufacturing; Employment in farm, forestry, and fisheries; and Average earnings in the trade industry.

Tribal Government status continues to appear in the PY 1989 models for all three performance measures just as it did in all three models for PY 1987 and PY 1988. This factor recognizes that reservation grantees (i.e., those tribal groups having a recognized Government-to-Government relationship as defined by the Bureau of Indian Affairs) can be expected to face more serious barriers that can hamper performance on each of the required measures.

Two factors that appear in the PY 1988 EER model are being deleted from the PY 1989 model for this measure. One is "Percent of Population Living in Urban Areas" which was put into the PY 1988 model to distinguish between grantees located in more urbanized or more rural areas. However, this urban population variable makes an inconsequential contribution to the PY 1989 model and is therefore being dropped.

The other factor being deleted is the INA unemployment rate which was added to the PY 1988 EER model by the Department in response to grantees' concerns about severe unemployment in a number of areas. In the absence of any other appropriate data source, local data for this factor was calculated through an ad hoc approach of combining Indian unemployment data from the 1980 Census with current area unemployment statistics. This, however, led to apparent discrepancies for some grantees and raised questions as to data reliability.

Therefore, this factor will be discontinued pending availability of an acceptable nationwide data source based on standard definitions and uniform collection methods. A new factor to be added to the PY 1989 EER model is the Local Area Unemployment Rate (LAUS). Examination of this variable discloses that it is the best existing indicator of relative job opportunities available within the local labor market areas served by INA grantees. Local data for this factor will be drawn from the current local area unemployment statistics compiled regularly by the Bureau of Labor Statistics on a nationwide basis. This factor is expected to reflect changes in unemployment levels and local economic trends that may occur from one year to the next within the grantees' service areas.

Positive Termination Rate (PTR) Model

As shown in the preceding table, the PY 1989 PTR model will contain five factors which include Aged 14–21; School Dropouts; Long-term Unemployed; Employed in Farm, Forestry, and Fisheries; and Tribal Government Status. All five of these factors appeared in the PY 1988 PTR model. However, two factors that were in the PY 1988 PTR models are being dropped. One of these is the "Percent students" which is being omitted because its statistical influence is insignificant in the modeling process. The other factor being dropped is "Percent not in Labor Force" which the data shows as being opposite to its expected effect (i.e., PY 1988 PTR model showed terminees not in labor force as being slightly *harder* to achieve a positive termination; PY 1989 modeling data showed such terminees as being slightly *easier* to obtain a positive termination).

Cost per Positive Termination (CPT) Model

The PY 1989 model for the CPT contains eight factors each of which were also included in the PY 1988 CPT model. Among these are the three terminee characteristics: Females, Aged 14–21, and Students. Two program characteristics are also retained and these are the Average Weeks Participated and Tribal Government Status. The other remaining factors in the CPT model are the three local economic conditions which are Percent employment in farm, forestry, and fisheries; Average earnings in the trade industry; and Percent of families with incomes below the poverty level.

Two terminee characteristics included in the previous PY 1988 CPT model have been dropped because both factors (i.e., Percent of terminees who are long-term unemployed and Percent of terminees not in the labor force) no longer operate in the expected manner (i.e., somewhat more expensive to serve). Instead, based on the total program data analyzed, terminees with these characteristics are shown as being slightly less expensive to serve which appears counter-intuitive; therefore, these previous factors have been deleted from the PY 1989 CPT model.

Additional Modeling Results

In developing the models for PY 1989, special attention has been given to re-examining the question of whether program activity factors ("program mix") ought to be included. Previously, for the PY 1987 and PY 1988 standards, the Department's position has been that program mix is a matter that falls within management control and, hence, should be left out of the models. However, some grantees have expressed concern that performance standards discourage the use of Classroom Training because it is more expensive even though needed and appropriate for a number of INA participants.

In consideration of such concerns, the model building process for PY 1989 specifically addressed the question of how program activity factors would operate if they were added to the models. Based on program data reported by all grantees over the last several years, the average distribution of INA participants by program activity levels is as follows:

[In percent]

	Program year—		
	1984	1985	1986
Percent of participants in:			
Classroom Training	44.5	44.0	44.2
On-the-Job Training	12.2	13.1	14.4
Tryout Employment	1.3	.5	.7
Work Experience	33.5	34.1	32.7
Community Service Employment	8.6	8.4	8.0

The above data shows substantially the same pattern over the three program years except for the trend toward increased use of On-the-Job Training.

The detailed data analysis completed as part of the modeling process shows that, of the five program activities, On-the-Job Training is the most effective and cost efficient method of placing INA terminees in unsubsidized employment. Contrary to some expectations, Classroom Training turns out to be the next most effective and cost efficient approach to preparing terminees for unsubsidized jobs. Work Experience and Community Service Employment prove to be the least effective and most costly activities.

What this means in terms of including program mix in the models is that those grantees using higher proportions of On-the-Job Training and/or Classroom Training would end up getting more stringent performance standard (i.e., higher EERs and lower CPTs). This would be the opposite of the desired and expected results; therefore, to include program mix in the models, would likely lead to *discouraging* rather than encouraging greater use of Classroom Training in contrast to more expensive and less effective use of Work Experience and Community Service Employment.

In light of these results, and since a choice of program activity continues to be a key management decision, the Department sees little reason to include program mix in the models. In fact, inclusion of program mix in the models based on the above results might become a negative influence leading to lesser use of Classroom Training.

Departure Points

The models described above describe how performance standards can be adjusted for each grantee to reflect characteristics of terminees served and of the local economy. As part of the modeling process, it is also necessary to establish an overall level of performance around which adjustments are made for the various factors included in each model. These overall levels are referred to as departure points. The departure points for each measure are based on the national average performance levels compiled for all grantees during a given period. In the case of the PY 1987 and PY 1988 models, this period has been *one program year* from which data was most recently available.

However, further analysis has shown that using only one program year as the period for determining the departure points can lead to problems if there are significant shifts up or down in the national averages from one particular year to the next. In order to moderate this possible situation, the departure points for the PY 1989 models will be based instead on national averages over the most recent *three program years* for which data is available. This practice has the desired effect of avoiding or minimizing abrupt shifts in departure points for the models from year to year.

End of Transition Period

At the time the new model-based process was introduced, the Department established a two year transition timeframe (PY 1987 and PY 1988) during which grantees' standards would be calculated partially by model adjustments and partially by a past performance weight for each measure. The purpose was to provide a way of accommodating for changes involved in moving from the old past performance approach for setting grantee standards to the new adjustment model methodology. For PY 1987, the weights for past performance ranged from 31% for the CPT and 34% for the PTR to 44% to the EER. For PY 1988, the past performance weights were reduced to 25% on each measure thereby raising the model adjustment weights to 75%. *For PY 1989, the models will no longer include a past performance weight since the transition phase is over.*

Acceptable Performance Ranges

The adjustment models and departure points described above are used to set performance goals individually for each INA grantee. Following procedures previously established for PY 1987 and PY 1988, a range of acceptable performance will be calculated around the performance goal for each measure in the PY 1989 modeling calculations consisting of three levels:

- A *recommended performance goal* that reflects the adjustments for terminee characteristics and other local factors for the particular grantee.
- An *exemplary performance level* above the goal.
- A *Minimally acceptable level* below the goal which represents the minimum performance the grantee should meet.

The size of ranges between minimum, goal, and exemplary levels depend upon the relative size of the grantees' program. Smaller grantees have wider performance ranges than larger grantees, reflecting the fact that statistics can fluctuate more substantially when there are fewer numbers of participants being served.

By using these ranges of acceptable performance, rather than a single level, the performance standards can acknowledge that there are other factors affecting performance that are not captured by the models and that may be outside management control.

Experience With the PY 1987 Models

There has been a continuing pattern of improved performance among INA grantees on each of the three measures over the last several program years. This same pattern continued in PY 1987 which marked completion of the first program year in which model-based standards have been used to assess grantee performance. For information purposes, the following data display the relative proportions of INA grantees achieving the various levels of final results for PY 1987.

[In percent]

	EER	PTR	CPT
Exemplary	28.5	31.5	38.7
Goal level	38.7	44.2	47.5
Minimum standard	32.4	21.0	13.3
Below minimum	4.4	3.3	.5
Percent of total of all grantees	100.0	100.0	100.0

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As can be noted, the proportions of grantees achieving the better performance ratings is relatively high and tends to exceed by some margin the expected distribution of grantees which is about 15 percent exemplary, about 15 percent below minimum and the remainder above the minimum and/or goal levels. Thus, the model-generated levels did not impose overly stringent performance standards on the INA grantees during PY 1987. In fact, the number of grantees missing their standards was significantly less in PY 1987 under the modeling approach than under the old past performance method used in PY 1984, PY 1985, and PY 1986.

PY 1989 Planning Instructions

The Department expects to provide performance standards worksheets based on the models described herein so that grantees can use the projected levels in their planning estimates for PY 1989. As previously indicated, planning instructions will furnish guidance to grantees on the specific provisions outlined in this notice together with any further changes that may be adopted for PY 1989.

Signed at Washington, DC this 30th day of December 1988.

Roberta T. Jones,

Assistant Secretary of Labor.

[FR Doc. 89-1869 Filed 1-25-89; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL COMMISSION ON CHILDREN

Meeting

Background

The National Commission on Children was created by Pub. L. 100-203, December 22, 1987 as an amendment to the Social Security Act. The purpose of the law is to establish a bipartisan Commission directed to study the problems of children in the areas of health, education, social services, income security, and tax policy.

The powers of the Commission are vested in Commissioners consisting of 36 voting members as follows:

1. Twelve members appointed by the President.
2. Twelve members appointed by the Speaker of the House of Representatives.
3. Twelve members appointed by the President pro tempore of the Senate.

This notice announces the first meeting of the National Commission on Children to be held in Washington, DC.

Time: 12:00 pm–3:30 pm, Monday, February 6, 1989.

Place: 12:00 pm–1:30 pm, U.S. Capitol, Room H–137; 1:30 pm–3:30 pm, U.S. Capitol, Room S–126.

Status: 12:00 pm–1:30 pm, Executive Session (Closed); 1:30 pm–3:30 pm, Open meeting.

Agenda: Discussion of the Commission's future agenda.

Contact: Jeannine Atalay, Telephone: (202) 224–6472.

Date: January 23, 1989.

John D. Rockefeller IV,

Chairman, National Commission on Children.

[FR Doc. 89-1881 Filed 1-25-89; 8:45 am]

BILLING CODE 6820-27-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Dance Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Dance Advisory Panel (Dance/Film Video Section) to the National Council on the Arts will be held on February 14, 1989, from 9:00 a.m.–6:00 p.m., February 15, 1989 from 9:00 a.m.–8:00 p.m., and February 16, 1989 from 9:00 a.m.–5:00 p.m. at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Room 716, Washington, DC 20506.

A portion of this meeting will be open to the public on February 16, 1989 from 2:00–5:00 p.m. The topics for discussion will be guidelines and policy issues.

The remaining sessions of this meeting on February 14, 1989, from 9:00 a.m.–6:00 p.m., February 15, 1989 from 9:00 a.m.–8:00 p.m., and February 16, 1989 from 9:00 a.m.–2:00 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5433.

January 19, 1989.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 89-1760 Filed 1-25-89; 8:45 am]

BILLING CODE 7537-01-M

Design Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Design Arts Advisory Panel (Design Advancement/Organizations Section) to the National Council on the Arts will be held on February 14, 1989, from 9:00 a.m.–6:00 p.m., February 15, 1989 from 9:00 a.m.–7:30 p.m., February 16, 1989 from 9:00 a.m.–5:30 p.m., and February 17, 1989 from 9:00 a.m.–5:00 p.m. at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on February 17, 1989 from 1:00–5:00 p.m. The topics for discussion will be guidelines and policy issues.

The remaining sessions of this meeting on February 14, 1989, from 9:00 a.m.–6:00 p.m., February 15, 1989 from 9:00 a.m.–7:30 p.m., February 16, 1989 from 9:00 a.m.–5:30 p.m. and February 17, 1989 from 9:00–1:00 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5433.

January 19, 1989.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 89-1767 Filed 1-25-89; 8:45 am]

BILLING CODE 7537-01-M

Music Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Centers for New Music Resources/Services to Composers Section) to the National Council on the Arts will be held on February 15, 1989 from 9:00 a.m.–5:30 p.m., in Room M–14 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on February 15, 1989 from 2:00—3:00 p.m. The topics for discussion will be guidelines and policy issues.

The remaining sessions of this meeting on February 15, 1989 from 9:00 a.m.—2:00 p.m. and 3:00–5:30 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** on February 13, 1980, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5433.

January 19, 1989.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 89-1768 Filed 1-25-89; 8:45 am]

BILLING CODE 7537-01-M

Visual Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Visual Arts Advisory Panel (Art in Public Places Section) to the National Council on the Arts will be held on February 14–15, 1989 from 9:00 a.m.–8:00 p.m. and February 16 from 9:00 a.m. to 5:00 p.m. in room 730 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, this meeting will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

January 19, 1989.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 89-1769 Filed 1-25-89; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Subcommittee on Mechanical Components; Meeting; Revised

The **Federal Register** published Tuesday, January 17, 1989 (54 FR 1805) contained notice of a meeting of the ACRS Subcommittee on Mechanical Components scheduled for Friday, January 27, 1989. The starting time has been changed to *8:30 a.m. until the conclusion of business* instead of 2:00 p.m. All the other items pertaining to this meeting remain the same as previously published.

Date: January 19, 1989.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 89-1812 Filed 1-25-89; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on Auxiliary and Secondary Systems; Meeting; Cancellation

The ACRS Subcommittee meeting on Auxiliary and Secondary Systems scheduled to be held on January 27, 1989 has been cancelled. The notice of this meeting was previously published in the **Federal Register** on Tuesday, January 17, 1989 (54 FR 1806).

Date: January 19, 1989.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 89-1813 Filed 1-25-89; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on Thermal Hydraulic Phenomena; Meeting; Cancelled

The **Federal Register** published Wednesday, January 18, 1989 (54 FR 2008) contained notice of a meeting of the ACRS Subcommittee on Thermal Hydraulic Phenomena scheduled for January 23, 1989. This meeting has been cancelled.

Date: January 18, 1989.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 89-1814 Filed 1-25-89; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards (ACRS) and Advisory Committee on Nuclear Waste (ACNW); Proposed Meetings

In order to provide advance information regarding proposed public meetings of the ACRS Subcommittees and meetings of the ACRS full Committee, and of the ACNW, the following preliminary schedule is published to reflect the current situation, taking into account additional meetings which have been scheduled and meetings which have been postponed or cancelled since the last list of proposed meetings published December 28, 1988 (53 FR 52531). Those meetings which are definitely scheduled have had, or will have, an individual notice published in

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the **Federal Register** approximately 15 days (or more) prior to the meeting. It is expected that sessions of ACRS full Committee and ACNW meetings designated by an asterisk (*) will be open in whole or in part to the public. ACRS full Committee and ACNW meetings begin at 8:30 a.m. and ACRS Subcommittee meetings usually begin at 8:30 a.m. The time when items listed on the agenda will be discussed during ACRS full Committee and ACNW meetings and when ACRS Subcommittee meetings will start will be published prior to each meeting. Information as to whether a meeting has been firmly scheduled, cancelled, or rescheduled, or whether changes have been made in the agenda for the February 1989 ACRS full Committee and the ACNW meetings can be obtained by a prepaid telephone call to the Office of the Executive Director of the Committee (telephone 301/492-7288, ATTN: Barbara Jo White) between 7:30 a.m. and 4:15 p.m., Eastern Time.

ACRS Subcommittee Meetings

Human Factors, January 20, 1989, Bethesda, MD. The Subcommittee will review the Human Factors Research Program Plan.

Mechanical Components, January 27, 1989, Bethesda, MD. The Subcommitee will review the proposed resolution of Generic Issues 70, "PORV Reliability," and 94, "Low Temperature Over Pressure Protection," and other related matters.

Safety Research Program, February 8, 1989, Bethesda, MD. The Subcommittee will discuss the ongoing and proposed NRC Safety Research program and budget.

Babcock & Wilcox Reactor Plants, February 22–23, 1989, Sacramento, CA. The Subcommittee will discuss the lessons learned from the approximately 2-year shutdown of Rancho Seco that occurred following the December 16, 1985, overcooling event. Topics include monitoring the extended start-up program, as well as, plant and organizational changes as a result of the restart effort.

Occupational and Environmental Protection Systems, March 1–2, 1989, Bethesda, MD. The Subcommittee will discuss the general status of emergency planning for nuclear power plants.

Thermal Hydraulic Phenomena, March 7, 1989 (p.m. only) (tentative), Bethesda, MD. The Subcommittee will review the NRC staff's proposed final Policy Statement on additional applications of leak-before-break technology.

General Electric Reactor Plants (Peach Bottom Restart), March 8, 1989 (tentative), Bethesda, MD. The Subcommittee will review the proposed restart plan for the Peach Bottom Plant.

Materials and Metallurgy, March 15–16, 1989, Columbus, OH. The Subcommittee will review the degraded piping program, including NDE and aging of centrifugally cast stainless steel piping material.

Improved Light Water Reactors, March 21–22, 1989, Bethesda, MD. The Subcommittee will review the SER and Chapter 5 of the EPRI ALWR Requirements Document.

Auxiliary and Secondary Systems, March 23, 1989, Bethesda, MD. The Subcommittee will review the adequacy of the proposed staff's plans to implement the recommendations resulting from the Fire Risk Scoping Study.

Limerick 2, March 28, 1989, Philadelphia, PA. The Subcommittee will review Limerick 2 for a low power operating license.

Joint Materials and Metallurgy/ Structure Engineering, March 29, 1989, Bethesda, MD. The Subcommittee will review the proposed amendment to the pressurized thermal shock (PTS) rule updating the formula given in the PTS rule for calculating the level of radiation embrittlement in reactor vessel beltline and the staff's position on reactor support embrittlement.

Maintenance Practices and Procedures, March 30, 1989, Bethesda, MD. The Subcommittee will review the proposed maintenance rule.

Materials and Metallurgy, April 27, 1989, Palo Alto, CA. The Subcommittee will discuss the status of the following matters: erosion/corrosion of pipes, hydrogen/water chemistry, zinc addition to primary coolant loop and its effects on materials, decontamination effects on materials, and other related matters.

General Electric Reactor Plants (ABWR), May 10–11, 1989, Bethesda, MD. The Subcommittee will continue its review of the GE ABWR. The Subcommittee will also preview Chapters 1, 8, 9, 11, 12, 13, 14 and 17 of the GE ABWR SAR.

Materials and Metallurgy, May 24, 1989, Bethesda, MD. The Subcommittee will review low upper shelf fracture energy concerns of reactor pressure vessels.

AC/DC Power Systems Reliability, Date to be determined (February/March), Bethesda, MD. The Subcommittee will review the proposed resolution of Generic Issue 128, "Electrical Power Reliability."

Extreme External Phenomena, Date to be determined (February/March), Bethesda, MD. The Subcommittee will review planning documents on external events.

Instrumentation and Control Systems, Date to be determined (March), Bethesda, MD. The Subcommittee will review the proposed resolution of Generic Issue 101, "Break Plus Single Failure in BWR Water Level Instrumentation."

Advanced Pressurized Water Reactors, Date to be determined (March), Bethesda, MD. The Subcommittee will discuss the licensing review bases document being developed for Combustion Engineering's Standard Safety Analysis Report-Design Certification (CESSAR-DC).

Instrumentation and Control Systems, Date to be determined (March/April), Bethesda, MD. The Subcommittee will review the implementation status of the ATWS rule.

Advanced Pressurized Water Reactors, Date to be determined (April), Bethesda, MD. The Subcommittee will discuss the comparison of WAPWR (RESAR SP/90) design with other modern plants (in U.S. and abroad).

Plant Operating Procedures, Date to be determined (spring), Bethesda, MD. The Subcommittee will review the status of the NRC program on Technical Specifications update. Also, to review anonymous letter to Ms. E. Weiss (Union of Concerned Scientists), dated September 27, 1988, on Technical Specifications inadequacies.

Regulatory Policies and Practices, Date to be determined (May), Bethesda, MD. The Subcommittee will review the proposed rule on nuclear plant license renewal.

Decay Heat Removal Systems, Date to be determined (May/June), Bethesda, MD. The Subcommittee will review the proposed resolution of Generic Issue 23, "RCP Seal Failures."

Decay Heat Removal Systems, Date to be determined, Bethesda, MD. The Subcommittee will explore the issue of the use of feed and bleed for decay heat removal in PWRs.

Thermal Hydraulic Phenomena, Date to be determined, Bethesda, MD. The Subcommittee will discuss the status of Industry Best-Estimate ECCS Model submittals for use with the revised ECCS Rule.

Auxiliary and Secondary Systems, Date to be determined, Bethesda, MD. The Subcommittee will discuss the: (1) criteria being used by utilities to design Chilled Water Systems, (2) regulatory requirements for Chilled Water Systems design, and (3) criteria being used by the NRC staff to review the Chilled Water Systems design.

Joint Core Performance/Thermal Hydraulic Phenomena, Date to be determined, Bethesda, MD. The Subcommittee will review the implications of the core power oscillation event at LaSalle, Unit 2.

ACRS Full Committee Meetings

340th ACRS Meeting, February 9–11, 1989—Items are tentatively scheduled.

*A. *Nuclear Safety Research Program (Open)*—Discuss proposed ACRS annual report to the U.S. Congress regarding the NRC safety research program.

*B. *Severe Accident Policy for Future LWRs (Open)*—Briefing by NRC staff regarding implementation of severe accident policy for future lightwater reactors.

*C. *NRC Regulatory Process and Philosophy (Open)*—Discuss proposed ACRS consideration of NRC regulatory processes and policies.

*D. *Human Factors (Open)*—Briefing by NRC staff regarding revised Human Factors Research Program Plan.

*E. *Decay Heat Removal (Open*—Briefing and discussion regarding Staff's response to ACRS comments related to the proposed resolution of Generic Issue 99, "Improved Reliability of RHR Capability in PWRs".

*F. *Resolution of Generic Issues (Open)*—Review and report on proposed resolution of Generic Issue 70, "PORV Reliability" and 94, "Low Temperature Overpressure Protection".

*G. *NRC Safety Goal Implementation Plan (Open)*—Discuss proposed ACRS report regarding the proposed Staff plan for implementing the NRC's Safety Goal Policy.

*H. *Appointment of New ACRS Members (Open/Closed)*—Discuss qualifications of candidates proposed for consideration as ACRS members.

*I. *Anticipated ACRS Activities (Open)*—Discuss anticipated ACRS subcommittee activities and items proposed for consideration by the full Committee.

*J. *SECY 88-325 Additional Applications of Leak-Before-Break Technology (Open)*—Discuss potential ACRS review of subject proposed NRC Policy Statement.

*K. *ACRS Subcommittee Activities (Open)*—Hear and discuss reports of cognizant ACRS subcommittee chairman regarding the status of assigned activities.

*L. *Containment Design Criteria (Open)*—Discuss proposed ACRS action regarding development of recommendations for containment design criteria.

347th ACRS Meeting, March 9–11, 1989—Agenda to be announced.

348th ACRS Meeting, April 6–8, 1989—Agenda to be announced.

ACNW Full Committee Meetings

7th ACNW Meeting, February 22–23, 1989: Items are tentatively scheduled.

1. *NRC Staff Briefing on:*

1.1 Status of NRC's Review of DOE's Yucca Mountain Site Characterization Plan (SCP)

1.2 NRC's Review Plan for their review of the SCP

1.3 DOE's Design Acceptability Analysis (DAA) for the Exploratory Shaft Facility (ESF); and of DOE's 5 Study Plans for the ESF

2. State of Nevada comments on the Consultative Draft Site Characterization Plan

3. Greater than Class C Wastes

4. ACNW periodic meeting with the Commissioners

8th ACNW Meeting, March 22–23, 1989—Agenda to be announced.

9th ACNW Meeting, April 26–28, 1989—Agenda to be announced.

Date: January 19, 1989.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 89-1815 Filed 1-25-89; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF THE FEDERAL REGISTER

Agreements Between the American Institute in Taiwan and the Coordination Council for North American Affairs

AGENCY: Office of the Federal Register (NARA).

ACTION: Notice of availability of agreements.

SUMMARY: The American Institute in Taiwan has concluded a number of agreements with the Coordination Council for North American Affairs in order to maintain cultural, commercial and other unofficial relations between the American people and the people on Taiwan. The Director of the **Federal Register** is publishing the list of these agreements on behalf of the American Institute in Taiwan in the public interest.

SUPPLEMENTARY INFORMATION: Cultural, commercial and other unofficial relations between the American people and the people on Taiwan are maintained on a nongovernmental basis through the American Institute in Taiwan (AIT), a private nonprofit corporation created under the Taiwan Relations Act (Pub. L. 96-8; 93 Stat. 14). The Coordination Council for North American Affairs (CCNAA) is its nongovernmental Taiwan counterpart.

Under section 1(a) of the Act, agreements concluded between the AIT and the CCNAA are transmitted to the Congress, and according to sections 6 and 10(a) of the Act, such agreements have full force and effect under the law of the United States.

The texts of the agreements are available from the American Institute in Taiwan, 1700 North Moore Street, 17th floor, Arlington, Virginia 22209. For further information contact Joseph Kyle at this address, telephone (703) 525-8474.

Following is a list of agreements between AIT and CCNAA which were in force as of December 31, 1988.

Dated: January 13, 1989.

Joseph B. Kyle,

Corporate Secretary and Program Officer.

Dated: January 23, 1989.

Martha L. Girard,

Acting Director, Office of the Federal Register.

Agreements Concluded Between the American Institute in Taiwan and the Coordination Council for North American Affairs as of December 31, 1988

Aviation

Air transport agreement, with exchange of letters. Signed at Washington, DC March 5, 1960; entered into force March 5, 1960

Agreement implementing air transport, with exchange of letters. Signed March 31, 1961; entered into force March 31, 1961

Civair memorandum of understanding, signed at Washington and Arlington October 15, 1961; entered into force on October 15, 1961

Revision of Article VI of air transport agreement of March 5, 1960. Revision signed in Taipei on May 8, 1966; entered into force May 8, 1966

Aeronautical equipment and services agreement with four annexes. Signed at Washington, DC October 23, 1981 and Arlington September 24, 1981; entered into force December 1, 1981

Educational and Cultural

Implementing agreement financing certain educational and cultural exchange programs. Exchange of letters at Taipei April 14 and June 4, 1979; entered into force June 4, 1979

Agreement concerning the Taipei American School. Signed and entered into force on February 3, 1983

Privileges and Immunities

Agreement relating to privileges and immunities of courier systems. Signed at Washington and Arlington December 31,

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1979 and January 7, 1980; entered into force January 7, 1980

Privileges, exemptions and immunities agreement. Signed October 2, 1980; entered into force October 2, 1980

Addendum I to the agreement on privileges, exemptions, and immunities. Signed at Washington, DC, January 12, 1988; entered into force January 12, 1988

Protection of information agreement. Signed September 15, 1981; entered into force September 15, 1981

Trade and Commerce

Textile agreement. Signed November 18, 1982; entered into force November 18, 1982 (supersedes former agreements on textiles)

Textile agreement. Signed at Washington, DC on July 19, 1986; entered into force July 19, 1986. Supersedes textile agreement of November 18, 1982

Trade agreement with annexes. Exchange of letters signed October 24, 1979; entered into force October 24, 1979

Bilateral trade agreement (concerning tariffs). Exchange of letters signed December 31, 1981; entered into force December 31, 1981

Agreement concerning exports of rice from Taiwan. Exchange of letters on March 1, 1984; entered into force on March 1, 1984

Agreement relating to export performance requirements. Exchange of letters at Washington, DC October 9, 1986; entered into force October 9, 1986

Agreement on beer, wine and cigarettes. Signed at Washington, DC on December 12, 1985; entered into force December 12, 1980

Agreement concerning trade in certain machine tools. Signed at Washington, DC on December 15, 1986; entered into force December 15, 1986

Agreement relating to sale of Statue of Liberty coins. Signed at Washington, DC on March 3, and April 23, 1986; entered into force April 23, 1986

Scientific Cooperation

Agreement to further scientific and scholarly cooperation. Exchange of letters at Arlington September 4, 1980; entered into force September 4, 1980

Ionospheric and observation and reporting agreement. Signed November 26, 1980; entered into force November 26, 1980

Extension of ionospheric observation and reporting agreement. Signed in Taipei on October 1, 1987; entered into force October 1, 1987

Agreement on information exchange and cooperation on nuclear matters. Signed on May 12 and August 3, 1983; entered into force on August 3, 1983

Agreement on probabilistic risk analysis. Signed on August 23, 1982 and January 27, 1983; entered into force on January 27, 1983

Agreement on cooperation and assistance in electrical energy. Signed on June 24 and 28, 1982; entered into force on June 28, 1982

Guidelines for a cooperative program in the biomedical sciences. Signed on May 21, 1984; entered into force on May 21, 1984

Agreement relating to the establishment of a joint standing committee on civil nuclear cooperation. Signed on October 3, 1984; entered into force on October 3, 1984

Agreement relating to participation in severe nuclear accident research programs. Signed on October 12, 1984; entered into force on October 12, 1984

Extension until October 12, 1990 of the agreement relating to participation in severe nuclear accident research programs. Signed at Washington, DC, March 18 and March 22, 1988. Entered into force March 22, 1988

Guidelines for a cooperative program in food hygiene. Signed on January 28, 1985; entered into force January 28, 1985

Guidelines for a Cooperative Program in Atmospheric Research. Signed and entered into force on May 4, 1987

Guidelines for a Cooperative Program in the Physical Sciences. Signed and entered into force on March 10, 1987

Agreement relating to participation in the International Piping Integrity Research Group. Signed on April 10, 1987 and May 15, 1987. Entered into force on May 15, 1987

Agreement for a Cooperative Program in the Sale and Exchange of Technical, Scientific and Engineering Information. Signed and entered into force on November 17, 1987

Guidelines for a Cooperative Program in the Environmental Sciences. Signed and entered into force on November 3, 1987

Agreement for Technical Assistance in Dam Design Construction. Signed and entered into force on August 24, 1987

Extension of 1980 Cooperative Science Agreement. Signed at Washington, DC, March 10, 1987; effective March 10, 1987

Guidelines for a Cooperative Program in the Agricultural Sciences. Signed on January 15, 1986 and January 28, 1986. Entered into force on January 28, 1986

Second Agreement between the American Institute in Taiwan and the Coordination Council for North American Affairs for Procurement of Equipment for the Taiwan Synchrotron Radiation Research Center. Signed at Washington, DC, December 21, 1988. Entered into force December 21, 1988

Maritime

Agreement on tonnage measurement of ships. Signed on May 13 and 20, 1983; entered into force on May 20, 1983

Governing international fisheries agreement with annexes. Signed June 7, 1982; entered into force June 7, 1982

SOLAS agreement (concerning uninterrupted maritime trade and the safety of life at sea), with exchange of letters. Signed in Arlington August 17, 1982 and in Washington, DC September 7, 1982; entered into force September 7, 1982

Agreement on safety of life at sea, with exchange of letters. Signed at Washington, DC January 22, 1985; entered into force January 31, 1985

International convention for prevention of pollution from ships with exchange of letters. Signed at Washington, DC January 22, 1985; entered into force January 31, 1985

Load lines agreement with exchange of letters. Signed at Washington, DC March 26, 1985; entered into force April 10, 1985

[FR Doc. 89-1798 Filed 1-25-89; 8:45 am]

BILLING CODE 4710-07-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 34-26475; File No. SR-Amex-88-29]

Self-Regulatory Organizations; Proposed Rule Change by American Stock Exchange, Inc. Relating to Proposed Amendments to Exchange Procedures Which Govern the Administration of Security Industry Arbitration

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on November 18, 1988, the American Stock Exchange, Inc. ("Amex") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Amex. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.[1]

[1] Exhibit A, which contains the text of the proposed amended and new arbitration rules, is available for inspection in the Public Reference Branch at Commission headquarters in Washington, DC.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The text of the proposed rule change is available at the Office of the Secretary, Amex and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

(1) Purpose

The American Stock Exchange is proposing to amend Exchange Rules and procedures which govern the administration of securities industry arbitration. Rules and amendments to the Uniform Code of Arbitration similar to those proposed by the Exchange have been approved by SICA.

New Rule 427 requires that all pre-dispute arbitration clauses must be highlighted and specifies the information that must be included in such clauses. In addition, the proposed rule requires that the agreement must contain a statement calling the customer's attention to the fact that a pre-dispute arbitration clause is included.

The Exchange is proposing to include in the disclosure rule discussed above a provision which precludes broker-dealers from including in customer agreements any condition which limits or contradicts the rules of any SRO, limits the ability of any party to file an arbitration, or limits arbitrators' ability to make an award.

Rule 602 will list the factors for determining who is to be deemed an industry arbitrator, thus clarifying the limitations on who may serve as a public arbitrator, and specifying the type of information regarding each proposed arbitrator's background that must be provided by the Exchange to parties. It is also proposed that a new Rule 603 be adopted setting forth the disclosures to be made by each arbitrator prior to and while serving on a panel.

New Rule 607 sets forth a comprehensive pre-hearing procedure governing such matters as the exchange of information by parties and the use of pre-hearing conferences or preliminary hearings to resolve certain matters unrelated to the merits of the case. By specifying precise procedures for resolving discovery and other administrative disputes before the hearing, and establishing penalties for failure to exchange information before the hearing, this proposed rule will enable parties to more easily gain access to materials in the possession of their adversaries and will expedite the arbitration process by ensuring that at the commencement of the hearing, the parties and the panel will be able to address the merits of the case.

Rule 616 will expand the form and content of the written arbitration award to provide more detailed information. Pursuant to the amendment, the award must identify the parties and contain a summary of the issues involved, the relief sought, the issues resolved, the amount of any award or other relief granted, the names of the arbitrators and the signatures of the arbitrators concurring in the award. The proposal requires that the summary information contained in the awards must be made publicly available.

Rule 612 will be amended to require that a record be kept of every hearing. Currently, no record is required unless requested by the arbitrators or a party. Under the proposed new rule, either a stenographic record or tape recording must be kept, but need not be transcribed unless requested by the arbitrators or a party. Any party making such a request will bear the cost of the transcription. This amendment will codify procedures already implemented by the Exchange.

A number of further procedural modifications are being proposed. These modifications, designed to further clarify, expedite and make more efficient numerous aspects of the arbitration process, are as follows:

- Amend Rule 602 to set forth more comprehensive procedures for replacing an arbitrator emoved from a panel for any reason following commencement of the first hearing session. In such a case, a replacement will be appointed only if a party raises an objection to the continuation of the proceeding with only the remaining panelists.
- Amend Rules 605, 619 and 620 to provide for service of all pleadings other than the Statement of Claim by the parties themselves rather than by the Exchange, and to clarify that a party need not file a written objection prior to the hearing in order to request that an adversary who has submitted only a general denial as an answer be precluded from presenting any facts or defenses at the hearing.
- Amend Rule 606 to provide that where adjournment of a hearing scheduled in connection with a simplified proceeding is requested, the party making the request will not be required to pay an adjournment fee.
- Amend Rule 608 to provide that all parties must be given copies of any subpoena issued in connection with an arbitration.
- Amend Rule 618 to define the term "hearing session," set forth the total forum fees which arbitrators may determine to be chargeable to parties, clarify the arbitrators' discretion to award other costs and expenses pursuant to the parties' agreement, and establish a fee for a pre-hearing conference.

Finally, Rule 602 et seq. will be renumbered accordingly to allow for the insertion of the recommended new rules.

(2) Basis

The proposed rule change is consistent with sections 6(b)(4) and 6(b)(5) of the Act, in that the amendments to the Exchange's rules and procedures governing the administration of securities industry arbitration provide for the equitable allocation of reasonable dues, fees and other charges among the Exchange's members and issuers and other persons using its facilities, and that they are designed to promote just and equitable principles of trade and protect investors and the public interest by improving the administration of an impartial forum for the resolution of disputes relating to the securities industry.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to

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90 days of such date if it finds such longer priod to be appropriate and publishes its reasons for so finding or (ii) as to which the Amex consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

The Commission encourages comment on any aspect of the proposed rule change, including the proposed effective date. In addition, the Commission requests specific comment as follows:

1. The proposed rule change represents significant modifications in the current rules for arbitration proceedings administered by the Amex. On September 10, 1986, the Commission wrote to the Securities Industry Conference on Arbitration ("SICA") in order to request that it consider a wide range of changes to its Uniform Code of Arbitration, which was first developed in 1977 by SICA in order to promote a uniform system of arbitration procedures throughout the securities industry. The membership of SICA is composed of representatives of the Amex, nine other SROs, four public members and the Securities Industry Association. Since receiving the September 1987 letter, SICA has developed new rules to respond to many of the issues raised in the Commission's letter. In addition, on July 8, 1988, the Commission wrote to each of the SROs that administers an arbitration program requesting that they consider the issues raised by their members' use of mandatory predispute arbitration clauses. Proposed amendments to six of the Amex's arbitration rules contained in this filing respond to issues raised in the September 10, 1987 and July 8, 1988 letters. Accordingly, it is with particular interest that the Commission solicits comment on the amendments to those six Amex Rules 602, 603, 607, 614, 618 and 427. These rules deal with the definitions of public and industry arbitrators, the disclosure of arbitrator biographical information and potential conflicts of interest, the discovery process, the preservation of a record, the contents and public availability of arbitration awards and disclosure in connection with the use of predispute arbitration clauses. Comment is sought as to whether these proposed rule changes will appropriately protect investors and the public interest.

2. In particular, proposed Amex Rule 607, concerning prehearing proceedings, does not explicitly provide for the taking of depositions. Rather, the Rule permits arbitrators to issue any ruling which will expedite the arbitration proceedings. The Commission understands this to include the ability to order depositions. Comment is specifically sought as to whether a party should be able to have the arbitrators order depositions in a particular case if he can demonstrate to them that a deposition is necessary to develop his case or that he cannot obtain equivalent information from documents alone.

3. Comment is also solicited on the proposed amendment to Amex Rule 602, which defines public and industry arbitrators. Comment is specifically sought, first, as to whether the standards set out in the rule are adequate to assure the independence of public arbitrators from any perception of influence or actual influence from the securities industry, and second, as to whether the balance struck between the need for impartial arbitrators and the need for industry expertise has been properly made through the use of a majority of public arbitrators and a minority of industry arbitrators.[1]

4. Comment is also sought on whether Amex Rule 618, which establishes standards for the content and public availability of arbitration awards, provides investors with sufficient ability to evaluate the arbitration system in general, as well as the ability to review the past experience of particular arbitrators who have been selected to hear their particular cases.

5. In addition, comment is solicited on proposed new Amex Rule 427, which mandates new disclosures to be used in connection with any predispute arbitration clauses and also prohibits the use of arbitration clauses to limit the types of relief available to investors in arbitration. In particular, does the proposed rule adequately focus investor attention on the existence and meaning of predispute arbitration clauses and otherwise address the concerns surrounding the use of these clauses.

6. Finally, comment is specifically solicited on the proposed amendment to Amex Rule 620. This rule change assesses forum fees against counter, cross and third-party claimants and specifies costs that may be assessed against parties. The combined effect of these changes has the potential to increase significantly the fees and costs that could be assessed by the arbitrators against a single party to an arbitration proceeding. Comment is solicited on whether such fees and charges are reasonable.

[1] Commentators should be advised that the standards for public and industry arbitrators may differ among the SROs. See, e.g., SR-NASD-88-61.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to the file number in the caption above and should be submitted by February 16, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: January 19, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-1843 Filed 1-25-89; 8:45 am]

BILLING CODE 8010-01-M

(Release No. 34-26469; File No. SR-MBS-88-1)

Self-Regulatory Organizations; MBS Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding Fees

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on January 6, 1989, MBS Clearing Corporation filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of the following additions to the Fee schedule for the Depository Division (the "Depository") of MBS Clearing Corporation ("MBSCC"):

SCHEDULE OF FEES FOR COLLATERAL SAFEKEEPING SERVICES

Collateral	Fee
Cash wires (in/out)	$7.00/wire *.
Securities delivery/receipt (FHLMC, FNMA, T-bills, notes, bonds).	12.50 each.
Securities (on deposit at end of month).	5.00 each.

All costs associated with deposits of collateral to augment the Depository's Participants Fund are rebillable.

* Applies to all funds movements to/from the Depository.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to set fees for certain services provided by the Depository.

The proposed rule change is consistent with Section 17A of the Securities Exchange Act of 1934 in that it provides for the equitable allocation of reasonable dues, fees and other charges among the Depository's Participants.

(B) Self-Regulatory Organization's Statement on Burden on Competition

MBSCC does not believe that any burdens will be placed on competition as a result of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b-4.

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-referenced self-regulatory organization. All submissions should refer to SR-MBS-88-1 and should be submitted by February 16, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: January 19, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-1849 Filed 1-25-89; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Incorporated

January 18, 1989.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

Borden Chemical & Plastics, L.P., Depositary Units (File No. 7-4144)

Hubbell, Inc., Class B Common Stock, $5.00 Par Value (File No. 7-4145)

Healthvest, Inc., Shares of Beneficial Interest, No Par Value (File No. 7-4146)

Service Merchandise Company, Inc., Common Stock, $.50 Par Value (File No. 7-4147)

McClatchy Newspapers, Inc., Class A Common Stock, $.01 Par Value (File No. 7-4148)

RAC Income Fund, Inc., Common Stock, $.01 Par Value (File No. 7-4149)

RPS Realty Trust, Shares of Beneficial Interest, $.10 Par Value (File No. 7-4150)

Baroid Corporation, Common Stock, $.10 Par Value (File No. 7-4151)

Monarch Capital Corporation, Common Stock, $1.00 Par Value (File No. 7-4152)

NL Industries, Inc., Common Stock, $.125 Par Value (File No. 7-4153)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before February 7, 1989, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-1754 Filed 1-25-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-26476; File No. SR-NASD-88-4]

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval to Proposed Rule Change by the National Association of Securities Dealers, Inc.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby

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given that on January 17, 1989, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission") the proposed rule change described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The following is the full text of a proposed change to Section c.3.(B) of the Rules of Practice and Procedures for the NASD's Small order Execution System ("SOES") and an addition to the facilities description of SOES. The rule change shall be effective for a period of 90 days to permit consideration by the Commission of approval of the proposed modification on a permanent basis, which will be the subject of a separate rule filing. Material to be deleted is in brackets; material to be added is italicized.

(B) SOES will accept both market and limit orders for execution[; however, limit orders not immediately executed due to price will be returned to the SOES order entry firm]. Orders may be preferenced to a specific SOES market maker or may be unpreferenced, thereby resulting in execution in rotation against SOES market makers.

The following is the full text of a new section of the SOES facilities description approved in filing SR-NASD-84-26:

SOES Limit Order Processing

As indicated in the Rules of Practice and Procedure for the Small Order Execution System ("SOES") the system will accept both market and limit orders. An order which, because of price, cannot be immediately executed will be stored in the system. Order entry firms may enter day orders, good-till-cancelled orders, good-till-date orders and fill or kill orders at prices which are away from the current market. Such orders may be preferenced as with any other SOES order. Orders may be entered notwithstanding the existence of special conditions including locked and crossed markets; no quote or closed quote conditions; a lack of market makers in NASDAQ/NMS securities or market maker exposure. If the security is suspended, there is a one sided inside market; there are not market makers in a NASDAQ security other than a national market system security or the limit price is not reasonably related to the market such special conditions will cause the order to be rejected.

Limit orders will become executable at such time as the inside quote in the NASDAQ System is equal to or better than the limit price. Executable orders will be executed on a first-in first-out basis for as long as the inside quote remains equal to or better than the limit price. Orders not executed due to price movement will remain in the SOES limit order file. Unexecuted limit orders in the system will be purged either by their terms, by execution, prior to commencement of trading of the securities ex-dividend or by the NASD on a periodic basis as set forth in the SOES Users Guide. A new Users Guide for Limit Orders will be distributed to SOES participants and is incorporated herein by reference. This document will become a part of the general SOES Users Guide upon its next reprinting.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of SOES is to improve the efficiency of execution of transactions in NASDAQ securities through the use of data processing and communications techniques. The addition of limit order storage and execution capability increases the efficiency and capacity of the system to achieve this end.

The SOES limit order processing capability serves the purpose of providing members, and in particular members not having proprietary systems with such capability, with the ability to enter and store limit orders. The system does not impose priorities for execution of customer limit orders vis-a-vis members' proprietary transactions. Members are, therefore, responsible for ensuring that customer limit orders are handled in a manner consistent with members' obligations to their customers. The NASD believes that those obligations are as set forth in Notice to Members 85-12 dated Febrary 15, 1985.[1]

The NASD is cognizant of the need to ensure that the capacity of the NASDAQ System is sufficient to handle the volume of orders that will be generated by this enhancement to SOES. The NASD will monitor capacity closely during the early implementation phase of the limit order enhancement in order to detect potential capacity limitations.

The statutory basis for the further development and implementation of SOES is found in sections 11A(a)(1)(B) and (C)(i), 15A(b)(6), and 17A(a)(1) (B) and (C) of the Act. Section 11A(a)(1) (B) and (C)(i) set forth the Congressional goal of achieving more efficient and effective market operations and the economically efficient execution of transactions through new data processing and communications techniques. Section 15A(b)(6) requires that the rules of the Association be designed to "foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market." Section 17A(a)(1) (B) and (C) set forth the Congressional goal of reducing costs involved in the clearance and settlement process through new data processing and communications techniques. The NASD believes that the modifications to SOES will further these ends by providing enhanced mechanisms for the efficient and economic execution and clearance of limit orders in over-the-counter securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Association does not anticipate that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

[1] It is the Commission's position that use of the limit order file does not in any way alter the fiduciary obligations of member firms consistent with *In re* E.F. Hutton & Co., Inc., Securities Exchange Act Release No. 25887 (July 6, 1988). In particular, the Commission believes that entering a limit order into the file does not absolve the firm from taking steps to ensure full compliance with the obligations of the *Hutton* decision, including procedures to ensure that the firm either discloses or abstain from trading ahead of its own customers' limit orders.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Comments were neither solicited nor received with respect to the proposed rule change contained in this filing.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The NASD has requested that the Commission find good cause pursuant to section 19(b)(2) of the Act for approving the proposed rule change on a temporary basis prior to the thirtieth day after publication in the **Federal Register**, and in any event before January 20, 1989, the secheduled commencement date for the SOES limit order processing function. The Association believes that the enhancement to the SOES system will benefit members and their public customers by providing an automated method of processing limit orders for all SOES participants that will be comparable to proprietary systems now utilized by some member firms. The NASD contemplates an orderly introduction of the enhancement through the use of a phase-in beginning on January 20, 1989, of only those securities having NASDAQ symbols beginning with the letter "A," with an expansion to the remainder of SOES securities only after an initial test period that is contemplated to last approximately two weeks. The NASD does not believe that the enhancement will result in undue stress on the capacity of the NASDAQ System or SOES and that the ability to maintain stored orders will increase the efficiency of the system by eliminating the need to constantly re-enter orders for execution. The NASD contemplates no operational problems resulting from the enhancement and therefore believes that good cause exists for accelerating the effectiveness of the rule change prior to January 20, 1989, during the Commission's consideration of the permanent rule proposal covering this modification to SOES.

The Commission is concerned that the limit order file, as proposed, does not permit the crossing of limit orders that are entered between the spread. Indeed, serious questions appear to be raised under Sections 11A and 15A of the Act by the NASD institutionalizing a system whereby customers are precluded from interacting with one another. Nevertheless, solely for purpose of the pilot and in recognition of the need for the NASD to enhance automation, and based on the NASD's representation that it will promptly explore during the pilot period means of enhancing the limit order file system to accommodate the crossing of such order,[2] the Commission has concluded that it will not institute proceedings to disapprove this proposed pilot.

The Commission nevertheless finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of sections 11A(a)(1)(B), 15A(b)(6) and 17A(a)(1) (B) and (C) and the rules and regulations thereunder. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof, in that accelerated approval and the implementation of the modification to SOES scheduled to occur on January 20, 1989, will benefit public investors by providing limit order storage and execution capabilities that will result in more efficient handling of customer orders. The Commission notes that the NASD will shortly file a proposed rule change seeking permanent approval of the limit order enhancement to SOES and that such a proposal will be published for public comment prior to any Commission action on the proposal. The Commission also notes that the limit order file as proposed was viewed favorably by the Regulatory Review Task Force commissioned by the NASD, which endorsed the limit order file as an important first step toward providing improved investor access to the NASDAQ market and improving market liquidity.[3] The Commission believes that the benefits of approval of the temporary rule change outweigh any potential adverse effects during the period of the rule change's effectiveness.

IV. Solicitation of Comments

Interested persons are invited to submit written date, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying in the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by February 16, 1989.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved for a period of 90 days.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: January 19, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-1848 Filed 1-25-89; 8:45 am]

BILLING CODE 8010-01-M

[2] Telephone conversation between Joseph Hardiman, President, NASD, and Richard Ketchum, Director, Division of Market Regulations, SEC, on January 18, 1989.

[3] Report of the Special Committee of the Regulatory Review Task Force on the Quality of Markets, July 1988, p. 10. The Commission notes, however, that the Task Force called for the file to include a capability to execute offsetting buy and sell orders at the same price at or inside the best bid and ask.

[Rel. No. 34-26474; File No. SR-NYSE-88-29]

Self Regulatory Organization; Proposed Rule Changes By New York Stock Exchange, Inc. ("NYSE") Relating to Proposed Amendments to Exchange Procedures Which Govern the Administration of Security Industry Arbitration

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on October 14, 1988, the New York Stock Exchange, Inc. ("NYSE") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule changes as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. Amendment No. 1, submitted by the NYSE on January 6, 1989, and subsequently amended by letters received on January 18 and 19, 1989, makes additional changes to the Exchange's Rules under the proposed rule changes and the statements of purpose concerning the proposed rule changes. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.[1]

[1] Exhibit A, which contains the text of the proposed amended and new arbitration rules, is available for inspection in the Public Reference Branch at Commission headquarters in Washington, DC.

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I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Changes

The proposed amendments to rules 601 and 612 require that the parties to arbitration serve pleadings upon each other after the New York Stock Exchange serves the Statement of Claim upon the Respondent(s). The parties will be required to supply sufficient copies of the pleadings for the use of the arbitrators and other parties. Rule 612 will state how pleadings must be served. The proposed amendments to Rule 607 set forth the criteria for classifying arbitrators as securities or public. The proposed amendments to Rule 608 require that parties be supplied with background information on each arbitrator assigned to a matter. The Director of Arbitration will be allowed to fill vacancies on panels when arbitrators become unable to serve prior to the first hearing session. The proposed amendments to Rule 610 provide a more detailed statement concerning arbitrator disclosure requirements. The proposed amendments to rule 611 allow a hearing in progress to continue when a vacancy has occurred in a panel. If a party objects to continuing without a replacement arbitrator, the Director of Arbitration will be allowed to appoint a new arbitrator. The proposed amendments to Rule 619 enlarge the scope of the discovery process available in arbitration. The provisions of deleted Rules 620 and 638 will be incorporated into this rule. The proposed amendments to Rule 623 require that a verbatim record of each arbitration be made. The proposed amendments to Rule 627 require that the arbitrators' award include a summary of the issues in controversy, and the damages and relief requested and awarded. The rule will also require that summary arbitration data be made publicly available. The proposed amendments to Rule 629 define a hearing session and state the costs of a pre-hearing conference. The rule will allow the arbitrators to determine who shall bear the costs applicable to the arbitration. The adoption of New Rule 637 will set forth the requirements for using pre-dispute arbitration agreements with customers.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

The proposed rule changes are based for the most part on proposals developed by the Securities Industry Conference on Arbitration. The proposed changes are consistent with sections 6(b)(4) and (5) of the Act in that they provide for the equitable allocation of reasonable dues, fees and other charges among the Exchange's members and issuers and other persons using its facilities and in that they promote just and equitable principles of trade by insuring that members and member organizations and the public have an impartial forum for the resolution of their disputes. In general, the proposed rule changes are intended to improve the efficiency of the arbitration process; to expedite the service of pleadings in arbitration proceedings; to provide additional information concerning arbitrators' background to parties to arbitration proceedings; to codify the affirmative disclosure obligations of arbitrators; to require that parties pay deposits upon the filing of Counterclaims, Cross-Claims, and Third-Party Claims; to improve pre-hearing discovery processes and provide pre-hearing conferences; to require that a verbatim record of proceedings be kept; and to clarify the authority of arbitrators or the Director of Arbitration to assess fees and costs or to refund deposits.

The purposes of the proposed rule changes are to:

- Save administrative time and costs by requiring that the parties serve most pleadings upon each other and supply the Exchange with sufficient copies of pleadings for distribution to the parties and arbitrators. Under the existing rules, the Exchange serves all pleadings. Under the new procedures, the Exchange will serve only the Statement of Claim. (Rule 612)
- Avoid confusion regarding the service by pleadings by defining how service may be properly effected, namely by mail, overnight mail service or other means of delivery. (Rule 612)
- Praise customer confidence in arbitration by codifying criteria for arbitrator classification which will insure that no public arbitrator is perceived to have a close affiliation with the securities industry by excluding individuals with close securities industry ties, individuals who have spent a substantial part of their business careers in the securities industry, registered investment advisers and others who may be perceived to have close ties with the securities industry. (Rule 607)
- Avoid adjournments and promote knowledgeable use of peremptory challenges and challenges for cause by requiring that the parties be given full disclosure of the arbitrators' backgrounds, including ten (10) years business history, as well as any disclosures made by arbitrators pursuant to Rule 610. (Rule 608)
- Cut down on last-minute adjournments by allowing the Director of Arbitration to appoint a replacement arbitrator in instances in which a vacancy occurs after the arbitrator has been appointed but before the first hearing session. At the present time, a party may refuse to go forward on the scheduled date because the party was not given the required eight (8) business days' notice of the name and affiliation of a replacement arbitrator. (Rule 608)
- Provide guidance to arbitrators about the types of relationships that may create conflicts of interest, and insure that accurate disclosures made by the arbitrators are provided to the parties by incorporating the conflict of interest and disclosure provisions contained in the *Code of Ethics for Arbitrators in Commercial Disputes* into the arbitration rules. (Rule 610)
- Eliminate the time and cost inherent in rehearing an arbitration matter by allowing the Director of Arbitration to fill a vacancy in a panel which has already begun to hear the matter. The current rules require that the Director of Arbitration obtain the consent of the parties to either appoint a new arbitrator or continue with the remaining arbitrators, thus effectively allowing either party to obtain a re-hearing by withholding its consent. The rule will provide that unless a party requests a replacement arbitrator, the matter will go forward with only the arbitrators remaining. (Rule 611)
- Help the parties resolve all open discovery disputes and better prepare for the first hearing session by expanding the discovery process in arbitration. The amendments provide a procedure in which the parties begin the discovery process by exchanging information requests and attempting to resolve their discovery disputes voluntarily. If this proves fruitless, the parties, arbitrators or the Director of Arbitration may refer this dispute to a pre-hearing conference. The Director of Arbitration will appoint an individual to preside over this conference, which may be held by telephone conference call, and the presiding individual will seek to achieve agreements among the parties regarding the pre-hearing process including, but not limited to, the exchange of information, exchange/production of documents, stipulation of facts, identification of certain witnesses, identification and briefing of issues and any other related open matters. If the conference is unsuccessful, an arbitrator will be appointed to decide the unresolved issues. The arbitrator may issue subpoenas, direct appearances of witnesses, direct the production of documents and depositions, and set deadlines and issue any other ruling which will expedite the hearing and permit any party to develop fully its case. This may be done by the submission of papers or by a hearing. The arbitrator may refer any issues to a full panel. The amendments will also require that parties be informed of all outstanding subpoenas and that parties exchange witness lists ten (10) days before the scheduled hearing date. We anticipate that these procedures will bring an end to adjournments based on discovery disputes. Session costs and expert witness fees will be saved. (Rule 619)
- Provide for a sufficient record for review by requiring that a verbatim record be made of each arbitration hearing. The cost of transcription shall be borne by the party or parties making the request for the transcription unless the arbitrators direct otherwise. The Exchange currently provides a stenographic reporter at each hearing and will continue to do so. (Rule 623)
- Assure the parties that the arbitrators have considered all the issues raised and damage claims made by requiring that the arbitration award state a summary of the issues, damages and relief requested and awarded. The summary will include the names of the arbitrators and also will include the names of parties unless a public customer requests in writing that his/her name be deleted. By including such a summary, the parties will have a better understanding of the decision and a greater confidence in the process. The New York Stock Exchange will also make the awards and any opinions issued in connection therewith publicly available. This, too, will bolster the parties' confidence in the arbitration process. (Rule 627)
- Eliminate any confusion regarding the potential cost of arbitration by defining a hearing session as a meeting between the parties and arbitrators that lasts less than four (4) hours and by allowing the arbitrators to assess costs against the party they deem appropriate. The amendment will also change the minimum deposit required where no money amount is claimed from $100 to $200 and state the cost of a pre-hearing conference. The amendment will also require that parties pay deposits upon the filing of counterclaims, cross-claims and third-party claims, all of which may ultimately be assessed against a single party. These changes will help to better distribute the costs of arbitrations amongst its users. (Rule 629)
- Insure that customers are aware of the existence, nature and effect of pre-dispute arbitration clauses by requiring that such agreements be highlighted by the broker/dealer and acknowledged by the customer. The arbitration clause must include statements to the effect that arbitration is final and binding and that the parties are waiving their right to a court and jury trial, that pre-arbitration discovery is generally more limited than court proceedings, that arbitrators' awards may not include factual findings, that the right to appeal is strictly limited and that a panel of arbitrators will include a minority of arbitrators who are affiliated with the securities industry. The rule will also require that the disclosure language be included and highlighted. Because of the highlighting requirements and the fact that the disclosure of the existence of the arbitration agreement must appear immediately preceding the signature line, the Exchange did not believe its necessary to require a separate initialing of the arbitration agreement. (Rule 637)
- Insure that all arbitration clauses do not contain conditions which limit or contradict the rules of a self-regulatory organization of which the broker-dealer is a member. The rule will also prohibit limitations on the ability of a party to file a claim or the arbitrators to make an award. Thus, for example, parties will not be able to abbreviate statutes of limitations or designate hearing sites which are not in accordance with SRO rules. (Rule 637)

B. Self-Regulatory Organization's Statement on Burden on Competition

The New York Stock Exchange does not believe that the proposed rule changes will result in any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act.

C. Self-Regulatory Organization's Statement on Comments on the proposed Rule Changes Received from Members, Participants or Others

The Exchange did not solicit comments on the proposed rule changes. Three letters were received from member organizations (copies are attached). Rule 637 was modified to address the concerns expressed in these letters, namely, the requirement of a separate initialing of the acknowledgement of an arbitration clause was deleted.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate, up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule changes, or

(b) Institute proceedings to determine whether the proposed rule changes should be disapproved. Specifically, the New York Stock Exchange proposes to make effective Rules 606, 618, 619, 623, 607, 611 and 627 upon Commission approval of these proposed rule changes (except for Counterclaims and Third-Party Claims that were previously filed). The proposed provisions of Rules 601, 612 and 629 will only apply to cases filed after Commission approval of the proposed rule change. The proposed provision of Rule 637 will be effective 120 days from the date of Commission approval of this rule.

IV. Solicitation of Comments

The Commission encourages comment on any aspect of the proposed rule change, including the proposed effective date. In addition, the Commission requests specific comment as follows:

1. The proposed rule change represents significant modifications in the current rules for arbitration proceedings administered by the NYSE. On September 10, 1986, the Commission wrote to the Securities Industry Conference on Arbitration ("SICA") in order to request that it consider a wide range of changes to its Uniform Code of Arbitration, which was first developed in 1977 by SICA in order to promote a uniform system of arbitration procedures throughout the securities industry. The membership of SICA is composed of representatives of the NYSE, nine other SROs, four public members and the Securities Industry Association. Since receiving the September 1987 letter, SICA has developed new rules to respond to many of the issues raised in the Commission's

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letter. In addition, on July 6, 1988, the Commission wrote to each of the SROs that administers an arbitration program requesting that they consider the issues raised by their members' use of mandatory predispute arbitration clauses. Proposed amendments to seven of the NYSE's arbitration rules contained in this filing respond to issues raised in the September 10, 1987 and July 6, 1988 letters. Accordingly, it is with particular interest that the Commission solicits comment on the amendments to those seven NYSE Rules 607, 608, 610, 619, 623, 627 and 637. These rules deal with the definitions of public and industry arbitrators, the disclosure of arbitrator biographical information and potential conflicts of interest, the discovery process, the preservation of a record, the contents and public availability of arbitration awards and disclosure in connection with the use of predispute arbitration clauses. Comment is sought as to whether these proposed rule changes will appropriately protect investors and the public interest.

2. Comment is also solicited on the proposed amendment to NYSE Rule 607, which defines public and industry arbitrators. NYSE Rule 607 should be read together with the NYSE's "Guidelines for the Classification of Arbitrators," which is also contained in the rule filing. Comment is specifically sought, first, as to whether the standards set out in the rule and accompanying guidelines are adequate to assure the independence of public arbitrators from an perception of influence or actual influence from the securities industry, and second, as to whether the balance struck between the need for impartial arbitrators and the need for industry expertise has been properly made through the use of a majority of public arbitrators and a minority of industry arbitrators.[8]

3. Amended NYSE Rule 619 enlarges the scope of the discovery process available in arbitration, and incorporates the provisions of old NYSE Rules 620 and 638. On behalf of the arbitration panel, amended NYSE Rule 619 authorizes a single arbitrator to issue subpoenas, direct appearances of witnesses and production of documents or depositions, set deadlines and issue any other ruling which will expedite the arbitration proceeding or is necessary to permit any party to develop fully its case. Comment is solicited on whether the Rule is adequate to allow parties to resolve disputes in a timely way and develop their case.

[8] Commenters should be advised that the standards for public and industry arbitrators may differ among the SROs. *See, e.g.*, SR-NASD-88-51.

4. Comment is also sought on whether NYSE Rule 627, which establishes standards for the content and public availability of arbitration awards, provides investors with sufficient ability to evaluate the arbitration system in general, as well as the ability to review the past experience of particular arbitrators who have been selected to hear their particular cases.

5. In addition, comment is solicited on proposed new NYSE Rule 637, which mandates new disclosures to be used in connection with any predispute arbitration clauses and also prohibits the use of arbitration clauses to limit the types of relief available to investors in arbitration. In particular, does the proposed rule adequately focus investor attention on the existence and meaning of predispute arbitration clauses and otherwise address the concerns surrounding the use of these clauses?

6. Finally, comment is specifically solicited on the proposed amendment to NYSE Rule 629. This rule change assesses forum fees against the counter, cross and third-party claimants and specifies costs that may be assessed against parties. The combined effect of these changes has the potential to increase significantly the fees and costs that could be assessed by the arbitrators against a single party to an arbitration proceeding. Comment is solicited on whether such fees and charges are reasonable.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to the file number in the caption above and should be submitted by February 16, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: January 19, 1989.

[FR Doc. 89-1844 Filed 1-25-89; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Incorporated

January 19, 1989.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

Banco Bilbao Vizcaya, S.A., American Depositary Shares (File No. 7-4154)

Munivest Fund, Inc., Common Shares, $.10 Par Value (File No. 7-4155)

Hong Kong Telecommunications, Ltd., American Depositary Shares (File No. 7-4156)

ACM Government Spectrum Fund, Inc., Common Stock, $0.01 Par Value (File No. 7-4157)

Blackstone Income Trust Inc., Common Stock, $0.01 Par Value (File No. 7-4158)

Galaxy Carpet Mills, Inc., Common Stock, $0.01 Par Value (File No. 7-4159)

New America High Income Fund, Inc., Common Stock, $0.01 Par Value (File No. 7-4160)

Nuveen N.Y. Municipal Value Fund, Inc., Common Stock, $0.01 Par Value (File No. 7-4161)

Schafer Value Trust, Inc., Common Stock, $0.01 Par Value (File No. 7-4162)

Shawmut National Corporation, Common Stock, $0.01 Par Value (File No. 7-4163)

Homefed Corporation, Common Stock, $0.01 Par Value (File No. 7-4164)

Wellman, Inc., Common Stock, $0.01 Par Value (File No. 7-4165)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before February 10, 1989, written data, views and arguments concerning the above-referenced application. Persons desiring to make

written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-1755 Filed 1-25-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-16763; (811-5418)]

American Capital Prime Series, Inc.; Application

January 19, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "1940 Act").

Applicant: American Capital Prime Series, Inc.

Relevant 1940 Act Section: Section 8(f) and Rule 8f-1 thereunder.

Summary of Application: Applicant seeks an order declaring that it has ceased to be an investment company.

Filing Date: The application was filed on January 4, 1989.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on February 13, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for attorneys, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549; Applicant, 2800 Post Oak Blvd., Houston, Texas 77056.

FOR FURTHER INFORMATION CONTACT: Paul J. Heaney, Financial Analyst (202) 272-3420, or Brion R. Thompson, Branch Chief (202) 272-3016 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person, or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. On December 21, 1987, Applicant filed Form N-8A to register under the 1940 Act as an open-end, diversified management investment company. On December 21, 1987, Applicant also filed Form N-1A under the Securities Act of 1933, but such registration statement did not become effective and Applicant never made a public offering of its securities. Applicant is a corporation incorporated under the law of the State of Maryland and intends to file dissolution documents with the State of Maryland.

2. Applicant does not have any assets or liabilities. Applicant is not a party to any litigation or administrative proceedings. Applicant has no shareholders and is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding-up of its affairs.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-1845 Filed 1-25-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-16764/812-6967]

HT Insight Funds, et al.; Application

January 19, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "1940 Act").

Applicants: HT Insight Funds, Inc. ("HT Insight") and Lazard Freres & Co. ("Lazard").

Relevant 1940 Act Sections: Applicants seek approval of an exchange offer under section 11(a).

Summary of Application: The Applicants seek an order to permit HT Insight to offer shares of front-end load funds in exchange for shares of no-load funds, or any low load fund that may be offered in the future, at net asset value plus the applicable sales charge and that any order issued be applicable to any similar HT Insight investment portfolios that may be offered by Lazard Freres in the future.

Filing Dates: The Application was filed on January 20, 1988 and amended on July 11, September 16, 1988 and January 3, 1989. A supplemental letter was filed on January 18, 1989.

Hearing or Notification of Hearing: If no hearing is ordered, the Application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on February 10, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESS: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549; HT Insight Funds, Inc., Irene Pelliconi, One Rockefeller Plaza, New York, NY 10020.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

FOR FURTHER INFORMATION CONTACT: Fran Pollack-Matz, Staff Attorney (202) 272-7714 or Karen L. Skidmore, Branch Chief (202) 272-3023, Division of Investment Management.

Applicants' Representations

1. HT Insight is an open-end investment company, registered under the 1940 Act, which currently has five portfolios with different investment objectives. These five portfolios are the HT Insight Government Fund ("Government"), HT Insight Cash Management Fund ("Cash"), HT Insight Tax-Free Money Market Fund ("Tax-Free"), HT Insight Convertible Fund ("Convertible"), and HT Insight Equity Fund ("Equity") (collectively the "Funds", individually a "Fund"). Government, Cash and Tax-Free (collectively, "Money Market Funds") are offered at their respective net asset value without imposition of a sales load (each Money Market Fund and each future HT Insight portfolio offered at net asset value without a sales load, a "No-Load Fund"). Convertible and Equity are offered at their respective net asset value plus a sales load (Convertible, Equity and any future HT Insight

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portfolio sold with a sales load as set forth in the then current prospectus, "Load Fund." Any Loan Fund that may be offered from time to time in the future with a sales load less than the sales load of the Load Fund into which shares are exchanged, a "Low-Load Fund.")

2. Harris Trust and Savings Bank ("Harris Trust"), an Illinois state-chartered bank and registered investment adviser, is HT Insight's Investment Adviser. Pursuant to advisory contracts with each of the Funds, Harris Trust, in accordance with HT Insight's stated investment objectives, policies and restrictions, furnishes investment and policy direction in connection with the daily portfolio management of each Fund, transmits purchase and sale orders and selects brokers and dealers to execute Fund transactions on behalf of HT Insight. Lazard Freres, a New York partnership and registered broker-dealer, is HT Insight's administrator and principal underwriter. Additionally, Lazard maintains a continuous public offering of the Funds' shares at their respective current offering prices.

3. The five current Funds have a plan adopted pursuant to Rule 12b-1 under the Act (the "Service Plan"). The Service Plan provides that each Fund will bear the costs and expenses in connection with advertising and marketing the Funds' shares and pay the fees of financial institutions (which may include banks), securities dealers and other industry professionals, such as investment advisers, accountants and estate planning firms (collectively, "Service Agents") for servicing activities at a rate up to 0.25% per annum of the value of the Funds' average daily net assets. Harris Trust, however, may from time to time in its sole discretion volunteer to bear all or a part of the costs of such fees. From their inception to the present, none of the Funds has made any payments pursuant to the Service Plan.

4. The Exchange Offer would permit certain written or telephonic exchanges among the Funds. Each exchange would be subject to a minimum exchange amount equal to the minimum initial investment of the Fund into which the exchange is to be made or the minimum subsequent investment of the Fund into which the exchange is to be made if the investor had previously made the minimum initial investment in the Fund into which the exchange is made. Applicants have reserved the right to limit the number of times shares may be exchanged between funds, to reject any telephone exchange order or otherwise to modify or discontinue exchange privileges at any time, but will give shareholders at least 60 days notice. In addition, any sales literature mentioning the existence of the exchange offer will disclose (i) the amount of any nominal administrative fee or redemption fee that would be imposed at the time of the exchange and (ii) since the Applicants have reserved in the prospectus the right to change the terms of or terminate the exchange offer, that the exchange offer is subject to termination and its terms are subject to change.

5. Specifically, the Exchange Offer would permit the offer of shares in any Load Fund in exchange for shares of any No-Load Fund or Low Load Fund at net asset value plus the applicable sales load. The applicable sales load is equal to a percentage no greater than the excess, if any, of the rate of the sales load applicable to shares of the Load Fund in the absence of an exchange over the total rate of any sales load previously paid on the exchanged shares (the "Proposed Exchange Offer"). In calculating any such sales load, when an investor exchanges less than all of his shares in a particular Fund, the shares on which the highest sales load was previously paid will be deemed to have been exchanged first. Additionally, if any shares that are exchanged were acquired through the reinvestment of dividends or capital gains distributions, such shares will be deemed to have been sold with a sales load equal to the sales load previously paid on the shares on which the dividend was paid or distribution made. No administrative or redemption fee, or deferred sales load will be charged at this time by HT Insight or Lazard in connection with any Exchange Offer and any nominal administrative fee or scheduled variation thereof that may be charged in the future will be applied uniformly to all offerees of the class specified.

6. Lazard sells shares primarily on a wholesale basis through unaffiliated brokers and dealers, all of whom are members of the National Association of Securities Dealers, Inc. ("NASD"), for distribution through their retail network. Because of the possibility that brokers or dealers may utilize the exchange privilege as a means of generating commissions, these brokers and dealers have represented in their agreement with Lazard Freres that they will not solicit shareholders on an individual basis except on the infrequent occasion when circumstances suggest that an exchange would be in the best interests of the individual shareholder and the shareholder has requested that the exchange be made. The majority of information about the exchange privilege will be directed to shareholders of the Funds in each Fund's annual and periodic reports and in various other communications. Additionally, brokers and dealers will not receive advice from Lazard as to the suitability of an investment in a Fund or the advisability of exchanges among the Funds.

7. Upon issuance of the requested exemptive order, Applicants will mail to each broker or dealer firm a letter announcing the exchange program, stating the Applicants' and the SEC's concerns and reminding all such participants and their representatives of their responsibilities under their current contract with Lazard, federal securities laws and the Rules of Fair Practice. In addition, the Applicants have available, through the transfer agent of the Funds, a method of identifying exchanges where a commission is paid to a registered representative. Applicants will monitor such information to determine if exchange activity by any particular representative appears to be excessive or not in the best interests of the shareholder and, in the event that such determination is made, the Applicants will notify the representative's compliance officers for their review.

Applicants' Legal Conclusions

1. The Exchange Offer is equitable. If the full sales load were not charged, the exchanging shareholder would be inequitably benefitted because he would not pay the sales load that an investor purchasing directly into a Low-Load or a Load Fund would pay.

2. The purpose of the Exchange Offer is to provide greater investment flexibility to shareholders whose investment objectives have changed. The Exchange Offer also prevents shareholders from circumventing sales loads by purchasing shares of a No-Load Fund and subsequently exchanging them for shares of a Low-Load or a Load Fund.

3. The Exchange Offer is consistent with the most recently proposed Rule 11a-3 under the 1940 Act.

Applicants' Conditions

If the requested order is granted, Applicants agree to comply with the following conditions:

1. The Applicants will comply with the provisions of revised proposed Rule 11a-3 under the 1940 Act, as currently stated and as it may be adopted and modified in the future.

2. Any variations in sales charges on sales of shares, by means of exchange or otherwise, will be effectuated in accordance with Rule 22d-1 under the 1940 Act.

3. The Applicants will comply with Rule 12b-1 as adopted and as it may be modified in the future.

4. Any future offers of exchange among the Funds will be subject to the representations and conditions described in the Application.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-1846 Filed 1-25-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-16762; 812-7090]

Metro Portfolio Investors's Stock Fund and Fidelity Trend Fund; Application

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

Applicant: Metro Portfolio Investor's Stock Fund ("Metro Fund") and Fidelity Trend Fund ("Trend Fund", collectively with Metro Fund referred to as the "Applicants")

Relevant 1940 Act Sections: Order requested under section 17(b) of the Act.

Summary of Application: Applicants seek an order to permit the proposed acquisition by Trend Fund of substantially all of the assets of Metro Fund.

Filing Date: The application was filed on August 4, 1988 and amended on January 13, 1989.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on February 13, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicant, 82 Devonsire Street, Boston, Massachusetts 02109.

FOR FURTHER INFORMATION CONTACT: Cecilia C. Kalish, Staff Attorney (202) 272-3035 or Karen L. Skidmore, Branch Chief (202) 272-3023 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the Application; the complete Application is available for a fee from either the SEC's Public Reference Branch in person, or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicants' Representations

1. Metro Fund and Trend Fund are registered under the Act as open-end, diversified, management investment companies.

2. In accordance with the approval of the boards of directors of Trend Fund and of Metro Fund, Applicants intend to enter into an Agreement and Plan of Reorganization and Liquidation (the "Agreement"). The Agreement provides that, upon the satisfaction of certain terms and conditions, on the date of the exchange (the "Exchange Date"), Trend Fund is to acquire all of the assets of Metro Fund in exchange for which Metro Fund is to receive shares of Trend Fund. The number of shares of Trend Fund to be issued in exchange for Metro Fund's assets is to be determined on the basis of the aggregate value of the assets of Metro Fund transferred to Trend Fund and the net asset value per share of Trend Fund, both fixed as of the close of business on the New York Stock Exchange on the business day next preceding the Exchange Date and determined in accordance with the valuation procedures described in Trend Fund's current prospectus. Metro Fund will distribute the Trend Fund shares to the Metro Fund shareholders on a *pro rata* basis in liquidation of Metro Fund. Following such liquidation, Metro Fund will file an application with the Commission pursuant to Section 8(f) of the Act to terminate its registration as an investment company under the Act and will be dissolved in accordance with the laws of Massachusetts applicable to business trusts.

3. The Agreement provides that Trend Fund will not be assuming the liabilities of Metro Fund. The Agreement also provides that, to the extent that any liabilities may not be discharged prior to the Exchange Date, Metro Fund will retain cash or Trend Fund shares in such amount as it estimates to be necessary to pay any such liability. Metro Fund expects to discharge all of its known liabilities and obligations prior to the Exchange Date. In addition, Metro Fund's investment adviser has agreed to assume the expenses of Metro Fund in excess of 2.25% of average daily net assets. Thus, Applicants represent that Metro Fund will not in fact be required to retain any cash or Trend Fund shares to pay liabilities of Metro Fund.

4. The Agreement is conditioned on the holders of at least a majority of the outstanding shares of Metro Fund approving the Agreement and the transactions contemplated therein and on Metro Fund and Trend Fund obtaining all consents, permits, and orders of federal, state and local regulatory authorities (including those of the Commission) necessary for the consummation of the transactions contemplated by the Agreement. As required under the Agreement, Metro Fund received a favorable ruling from the Internal Revenue Service on December 16, 1988 as to the federal tax consequences of the proposed transactions.

5. The principal underwriter of Metro Fund is Fidelity Distributors Corporation ("Distributors"). The investment adviser for Trend Fund is Fidelity Management & Research Company ("FMR"). Distributors is under common control with FMR both of them being wholly-owned by FMR Corp.

Applicants' Legal Conclusions

1. FMR is an affiliated person of Distributors. FMR is also an affiliated person of Trend Fund by virtue of its being the investment adviser of Trend Fund. Thus, Trend Fund may be deemed an affiliated person of Distributors, the principal underwriter of Metro Fund, because they both may be deemed to be under common control. The proposed transaction is consistent with the general purposes of the Act because it conforms to the requirements of Rule 17a-8 under the Act, but for the fact that Rule 17a-8 does not specifically apply to transactions between investment companies which may be affiliated solely by reason of the fact that the investment adviser of one such investment company and the principal underwriter of the other are under common control. Therefore, the acquisition by Trend Fund of the assets of Metro Fund may be prohibited by Section 17(a) of the Act as a purchase of securities or other property by an affiliated person (Trend Fund) of the principal underwriter (Distributors) of a registered investment company (Metro Fund), and such acquisition may only be effected by obtaining an exemptive order from the SEC pursuant to Section 17(b) of the Act. The proposed transaction conforms to the standards set forth in Section 17(b) of the Act.

2. For the following reasons, the terms of the proposed transaction are fair and do not involve overreaching on the part of any person concerned.

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a. The terms of the proposed transaction were independently evaluated and unanimously approved by both the board of trustees of Metro Fund and the board of trustees of Trend Fund. None of the trustees of Metro Fund has any past or present affiliation with Trend Fund, Distributors or FMR and none of the trustees of Trend Fund has any past or present affiliation with Metro Fund.

b. The proposed transaction is fair to the shareholders of each of Metro Fund and Trend Fund because the acquisition of Metro Fund's assets by Trend Fund is to be accomplished on the basis of the aggregate value of the assets of Metro Fund to be acquired by Trend Fund and the net asset value of the shares of Trend Fund to be issued in exchange therefor, with both the aggregate value of the assets of Metro Fund and the net asset value of the shares of Trend Fund being determined in accordance with the same violation procedures—those described in Trend Fund's current prospectus.

c. The transaction will benefit the shareholders of Metro Fund by virtue of the lower expense ratio of Trend Fund and the flexibility and greater diversity in investment in a portfolio of Trend Fund's size.

d. The shareholders of Trend Fund will benefit from the transaction through an increase in the value of Trend Fund's net assets, as well as an increase in investment diversification of Trend Fund through such increase in net assets, without incurring the transaction costs usually associated with the acquisition of additional securities.

3. The proposed transaction is consistent with the policy of each registered investment company concerned. The investment objective of Metro Fund and Trend Fund are consistent and the investment portfolios of the Applicants will be substantially compatible at the time of the proposed transaction.

Applicants' Condition

If the requested order is granted, Applicants agree to the imposition of the following condition:

The proposed transaction will conform to the requirements of Rule 17a–8 under the Act to the extent that (1) the board of trustees of each of Metro Fund and Trend Fund, including a majority of the trustees of each such Fund who are not interested persons of such Fund, shall have determined that participation in the transaction is in the best interest of such Fund, after taking into account, among other things, that the interests of the existing shareholders of such Fund will not be diluted as a result of effecting the transaction, and (2) such findings, and the basis upon which the findings were made, shall have been recorded fully in the minute books of each of Metro Fund and Trend Fund.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

January 19, 1989.

[FR Doc. 89–1847 Filed 1–25–89; 8:45 am]

BILLING CODE 8010–01–M

[File No. 1–7391]

Issuer Delisting; Application to Withdraw from Listing and Registration; Damson Oil Corp.

In the matter of: Damson Oil Corporation, Common Stock, $.01 Par Value; $3.00 Cumulative Convertible Preferred Stock, $1.00 Par Value; $2.50 Cumulative Convertible Preferred Stock, $1.00 Par Value, American Stock Exchange

January 19, 1989.

Damson Oil Corporation ("Company"), has filed an application with the Securities and Exchange Commission pursuant to section 12(d) of the Securities Exchange Act of 1934 and Rule 12d2–2(d) promulgated thereunder, to remove the above specified security from listing and registration on the American Stock Exchange ("AMEX")

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

Trading in the Company's Common Stock has been suspended on the Amex since December 7, 1988. The Company understands that primarily due to the reduced market price of the Common Stock further dealings on the AMEX for the Common Stock and the Preferred Stock have become inadvisable. The Company understands that it also does not otherwise fully meet all of the financial guidelines of the AMEX with respect to the continued listing of such securities on the AMEX.

The Company intends to have the Common Stock and the Preferred Stock traded in the over-the-counter market and be reported in the "pink sheets" or if the Company so qualifies to be included in the National Association of Securities Dealers Automated Quotation ("NASDAQ") System.

Any interested person may, on or before February 10, 1989, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–1756 Filed 1–25–89; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Economic Injury Disaster Loan Area (EIDL) #6525; Amdt. #1]

California; Declaration of Disaster Loan Area

The above numbered economic injury declaration is hereby amended to include contiguous counties and to extend the filing period. Section 120 of Pub. L. 100–590 (11/88) provides, *inter alia*, that areas affected by an economic injury disaster include counties contiguous to the counties determined to be a disaster by the President, Secretary of Agriculture, or the Administrator of the Small Business Administration. This amendment adds the contiguous counties of Los Angeles, Riverside, San Bernardino, and San Diego, in the State of California, and extends the filing period to give economic injury disaster victims in those counties at least 4 months in which to request EIDLs. The termination date for filing EIDL applications is May 31, 1989, and the interest rate for eligible small businesses and small agricultural cooperatives is 4 percent.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Date: January 18, 1989.

James Abdnor,

Administrator.

[FR Doc. 89–1773 Filed 1–25–89; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Economic Injury Disaster Loan Area (EIDL) # 6525; Amdt. # 1]

California; Declaration of Disaster Loan Area

The above numbered economic injury declaration is hereby amended to include contiguous counties and to extend the filing period. Section 120 of

Pub. L. 100–590 (11/88) provides, *inter alia*, that areas affected by an economic injury disaster include counties contiguous to the counties determined to be a disaster by the President, Secretary of Agriculture, or the Administrator of the Small Business Administration. This amendment adds the contiguous counties of Los Angeles, Riverside, San Bernardino, and San Diego, in the State of California, and extends the filing period to give economic injury disaster victims in those counties at least 4 months in which to request EIDLs. The termination date for filing EIDL applications is May 31, 1989, and the interest rate for eligible small businesses and small agricultural cooperatives is 4 percent.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Date: January 18, 1989.

James Abdnor,

Administrator.

[FR Doc. 89–1774 Filed 1–25–89; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Economic Injury Disaster Loan Areas (EIDL) #6527 & 6535; Amdt. #2]

Illinois and Contiguous Counties in the State of Indiana; Declaration of Disaster Loan Area

The above numbered economic injury declaration is hereby amended to include contiguous counties and to extend the filing period. Section 120 of Pub. L. 100–590 (11/88) provides, *inter alia*, that areas affected by an economic injury disaster include counties contiguous to the counties determined to be a disaster by the President, Secretary of Agriculture, or the Administrator of the Small Business Administration. This amendment adds the contiguous counties of Cook, Grundy, Kane, Kankakee, Kendall, in the State of Illinois, and Lake County in the State of Indiana, and extends the filing period to give economic injury disaster victims in those counties at least 4 months in which to request EIDLs. Economic Injury Declaration #669500 is assigned to the State of Indiana. The termination date for filing EIDL applications is May 31, 1989, and the interest rate for eligible small businesses and small agricultural cooperatives is 4 percent.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Date: January 18, 1989.

James Abdnor,

Administrator.

[FR Doc. 89–1775 Filed 1–25–89; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area #2329]

Illinois; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on January 13, 1989, I find that the counties of Edwards, Wabash, Wayne and White, in the State of Illinois, constitute a disaster loan area due to damages from severe storms and tornadoes beginning on January 7, 1989. Eligible persons, firms, and organizations may file applications for physical damage until the close of business on March 17, 1989, and for economic injury until the close of business on October 13, 1989, at the address listed below:

Disaster Area 2 Office, Small Business Administration, 120 Ralph McGill Blvd., 14th Fl., Atlanta, Georgia 30308.

or other locally announced locations. In addition, applications for economic injury from small businesses located in the contiguous counties of Clay, Gallatin, Hamilton, Jefferson, Lawrence, Marion, Richland, and Saline, in the State of Illinois, and Gibson, Knox, and Posey Counties, in the State of Indiana, may be filed until the specified date at this location.

The interest rates are:

Homeowners With Credit Available Elsewhere—8.000%

Homeowners Without Credit Available Elsewhere—4.000%

Businesses With Credit Available Elsewhere—8.000%

Businesses and Non-Profit Organizations Without Credit Available Elsewhere—4.000%

Businesses and Non-Profit Organizations (EIDL) Without Credit Available Elsewhere—4.000%

Others (Including Non-Profit Organizations) With Credit Available Elsewhere—9.125%

The number assigned to this disaster for physical damage is 232912, and for economic injury the numbers are 670900 for the State of Illinois and 671000 for the State of Indiana.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Date: January 18, 1989.

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 89–1771 Filed 1–25–89; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Economic Injury Disaster Loan Areas (EIDL) #6670, 6701 & 6702; Amdt. #1]

Montana and Contiguous Counties in the States of Wyoming and Idaho; Declaration of Disaster Loan Area

Economic Injury Disaster Declaration #6670 is hereby amended to include contiguous counties. Section 120 of Pub. L. 100–590 (11/88) provides, *inter alia*, that areas affected by an economic injury disaster include counties contiguous to the counties determined to be a disaster by the President, Secretary of Agriculture, or the Administrator of the Small Business Administration. This amendment adds the contiguous counties of Broadwater, Carter, Chouteau, Custer, Deer Lodge, Garfield, Glacier, Golden Valley, Jefferson, Judith Basin, Lake, Lincoln, Meagher, Mineral, Musselshell, Petroleum, Pondera, Ravalli, Silver Bow, Sweet Grass, Teton, Treasure, and Yellowstone, in the State of Montana; Bonner, Clark, Clearwater, Idaho, Lemhi, and Shoshone Counties in the State of Idaho; and Campbell and Sheridan Counties in the State of Wyoming. Any other contiguous counties that are not listed here have already been included in other declarations. Applications may be filed until the specified date at the previously designated location.

Economic Injury Declaration #670100 is assigned to those contiguous counties in the State of Wyoming and #670200 for the State of Idaho. The termination date for filing EIDL applications is July 20, 1989, and the interest rate for eligible small businesses and small agricultural cooperatives is 4 percent.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Date: January 18, 1989.

James Abdnor,

Administrator.

[FR Doc. 89–1776 Filed 1–25–89; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Economic Injury Disaster Loan Area (EIDL) #6662; Amdt. #1]

New Jersey; Declaration of Disaster Loan Area

Economic Injury Disaster Declaration #6662 is hereby amended to include contiguous counties. Section 120 of Pub. L. 100–590 (11/88) provides, *inter alia*, that areas affected by an economic injury disaster include counties contiguous to the counties determined to be a disaster by the President, Secretary of Agriculture, or the Administrator of the Small Business Administration. This

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amendment adds the contiguous counties of Atlantic and Cumberland, in the State of New Jersey. Applications for economic injury from small businesses located in those contiguous counties may be filed until the specified date at the previously designated location. The termination date for filing EIDL applications is June 23, 1989, and the interest rate for eligible small businesses and small agricultural cooperatives is 4 percent.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Date: January 18, 1989.

James Abdnor,

Administrator.

[FR Doc. 89-1777 Filed 1-25-89; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Economic Injury Disaster Loan Areas (EIDL) #0612, 0683 & 0694; Amdt. #1]

New York and Contiguous Counties in the States of Connecticut and New Jersey; Declaration of Disaster Loan Area

Economic Injury Disaster Declaration #0612 is hereby amended to include contiguous counties and to reopen the filing period for 4 months. Section 120 of Pub. L. 100-590 (11/88) provides, *inter alia*, that areas affected by an economic injury disaster include counties contiguous to the counties determined to be a disaster by the President, Secretary of Agriculture, or the Administrator of the Small Business Administration. This amendment adds the contiguous counties of Bronx, Nassau, Orange, Putnam, and Rockland, in State of New York; Fairfield County, in the State of Connecticut, and Bergen County in the State of New Jersey, and reopens the filing period to give economic injury disaster victims in those counties the opportunity to request EIDLs. Economic Injury Declaration #669300 is assigned to those contiguous counties in the State of Connecticut, and for the State of New Jersey the number assigned is 669400. The termination date for filing EIDL applications is May 31, 1989, and the interest rate for eligible small businesses and small agricultural cooperatives is 4 percent.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Date: January 18, 1989.

James Abdnor,

Administrator.

[FR Doc. 89-1778 Filed 1-25-89; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Economic Injury Disaster Loan Area (EIDL) #0648; Amdt. #1]

New York; Declaration of Disaster Loan Area

The above numbered economic injury declaration is hereby amended to include contiguous counties and to extend the filing period. Section 120 of Pub. L. 100-590 (11/88) provides, *inter alia*, that areas affected by an economic injury disaster include counties contiguous to the counties determined to be a disaster by the President, Secretary of Agriculture, or the Administrator of the Small Business Administration. This amendment adds the contiguous counties of Herkimer, Lewis, Madison, Oswego, and Otsego, in the State of New York, extends the filing period to give economic injury disaster victims in those counties at least 4 months in which to request EIDLs. The termination date for filing EIDL applications is May 31, 1989, and the interest rate for eligible small businesses and small agricultural cooperatives is 4 percent.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Date: January 18, 1989.

James Abdnor,

Administrator.

[FR Doc. 89-1779 Filed 1-25-89; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Economic Injury Disaster Loan Areas (EIDL) #0644, 0696 & 0697; Amdt. #1]

New York and Contiguous Counties in the States of Connecticut and New Jersey; Declaration of Disaster Loan Area

Economic Injury Disaster Declaration #0644 is hereby amended to include contiguous counties and to extend the filing period. Section 120 of Pub. L. 100-590 (11/88) provides, *inter alia*, that areas affected by an economic injury disaster include counties contiguous to the counties determined to be a disaster by the President, Secretary of Agriculture, or the Administrator of the Small Business Administration. This amendment adds the contiguous counties of Bronx, Nassau, Orange, Putnam, and Rockland, in State of New York; Fairfield County, in the State of Connecticut, and Bergen County in the State of New Jersey, and extends the filing period to give economic injury disaster victims in those counties at least 4 months in which to request EIDLs. Economic Injury Declaration #669300 is assigned to those contiguous counties in the State of Connecticut, and for the State of New Jersey the number assigned is 669700. The termination date for filing EIDL applications is May 31, 1989, and the interest rate for eligible small businesses and small agricultural cooperatives is 4 percent.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Date: January 18, 1989.

James Abdnor,

Administrator.

[FR Doc. 89-1780 Filed 1-25-89; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Economic Injury Disaster Loan Area (EIDL) #0647; Amdt. #1]

North Carolina; Declaration of Disaster Loan Area

The above numbered economic declaration is hereby amended to include contiguous counties and to reopen the filing period for 4 months. Section 120 of Pub. L. 100-590 (11/88) provides, *inter alia*, that areas affected by an economic injury disaster include counties contiguous to the counties determined to be a disaster by the President, Secretary of Agriculture, or the Administrator of the Small Business Administration. This amendment adds the contiguous counties of Bladen, Brunswick, Columbus, Craven, Duplin, Jones, Pamlico, and Sampson, in the State of North Carolina, and reopens the filing period to give economic injury disaster victims in those counties the opportunity to request EIDLs. The termination date for filing EIDL applications is May 31, 1989, and the interest rate for eligible small businesses and small agricultural cooperatives is 4 percent.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Date: January 18, 1989.

James Abdnor,

Administrator.

[FR Doc. 89-1781 Filed 1-25-89; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Economic Injury Disaster Loan Areas (EIDL) #0655, 0696 & 0699; Amdt. #2]

South Dakota and Contiguous Counties in the States of Nebraska and Wyoming; Declaration of Disaster Loan Area

Economic Injury Disaster Declaration #0655 is hereby amended to include contiguous counties. Section 120 of Pub. L. 100-590 (11/88) provides, *inter alia*, that areas affected by an economic injury disaster include counties contiguous to the counties determined to be a disaster by the President, Secretary of Agriculture, or the Administrator of the Small Business Administration. This amendment adds the contiguous counties of Haakon, Harding, Lyman, Mellette, Perkins, Shannon, Stanley, Washabaugh, and Ziebach, in the State of South Dakota; Dawes and Sioux Counties in the State of Nebraska; and Crook, Niobrara, and Weston Counties in the State of Wyoming. One contiguous county in the State of Montana has been included in the declaration for that State. Applications for economic injury from small businesses located in contiguous counties in the States of South Dakota and Wyoming may be filed until the specified date at the previously designated location.

Applications for economic injury from small businesses located in contiguous counties in the State of Nebraska may be filed until the specified date at: Disaster Area 3 Office, Small Business Administration, 2306 Oak Lane, Suite 110, Grand Prairie, Texas 75051.

Economic Injury Declaration #669800 is assigned to those contiguous counties in the State of Nebraska and #669900 for the State of Wyoming. The termination date for filing EIDL applications is June 13, 1989, and the interest rate for eligible small businesses and small agricultural cooperatives is 4 percent.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Date: January 18, 1989.

James Abdnor,

Administrator.

[FR Doc. 89-1782 Filed 1-25-89; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Economic Injury Disaster Loan Areas (EIDL) #6695 & 6709; Amdt. #1]

Wyoming and Contiguous Counties in the State of Idaho; Declaration of Disaster Loan Area

Economic Injury Disaster Declaration #6695 is hereby amended to include contiguous counties. Section 120 of Pub. L. 100-590 (11/88) provides, *inter alia*, that areas affected by an economic injury disaster include counties contiguous to the counties determined to be a disaster by the President, Secretary of Agriculture, or the Administrator of the Small Business Administration. This amendment adds the contiguous counties of Big Horn, Carbon, Hot Springs, Lincoln, Natrona, Sweetwater, and Washakie, in the State of Wyoming, and Bonneville, Fremont and Teton Counties in the State of Idaho, thus giving economic injury disaster victims in those counties the opportunity to request EIDLs. Those Montana counties that are contiguous counties are covered as primary counties in the declaration for that State. Applications may be filed until the specified date at the previously designated location.

Economic Injury Declaration #670000 is assigned to those contiguous counties in the State of Idaho. The termination date for filing EIDL applications is July 6, 1989, and the interest rate for eligible small businesses and small agricultural cooperatives is 4 percent.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Date: January 18, 1989.

James Abdnor,

Administrator.

[FR Doc. 89-1783 Filed 1-25-89; 8:45 am]

BILLING CODE 8025-01-M

[License No. 03104-0065]

Tidewater Industrial Capital Corp.; Surrender of License

Notice is hereby given that Tidewater Industrial Capital Corporation (TICC), Suite 1424, Crestar Bank Building, Norfolk, Virginia 23510, has surrendered its License to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (Act). TICC was licensed by the Small Business Administration on February 13, 1962.

Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the surrender of the License was accepted on January 13, 1989, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: January 17, 1989.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 89-1784 Filed 1-25-89; 8:45 am]

BILLING CODE 8025-01-M

Region VI Advisory Council Meeting; Public Meeting

The U.S. Small Business Administration Region VI Advisory Council, located in the geographical area of El Paso, will hold a public meeting at 9:00 a.m. on Thursday, February 9, 1989 at the Texas Commerce Bank—Downtown, 201 E. Main Trust Conference Room, 5th Floor, El Paso, Texas, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call John E. Scott, District Director, U.S. Small Business Administration, 10737 Gateway West, Suite 320, El Paso, Texas 79935, 915/541-7676.

Dated: January 19, 1989.

Jeannette M. Pauli,

Acting Director, Office of Advisory Councils.

[FR Doc. 89-1772 Filed 1-25-89; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Advisory Circular; Turnover Protection of Occupants During Emergency Landing in Part 23 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability of proposed advisory circular (AC) and request for comments.

SUMMARY: This notice announces the availability of and request for comments on a proposed AC which provides information and guidance concerning turnover protection of occupants during emergency landing in Part 23 airplanes.

DATE: Comments must be received on or before March 27, 1989.

ADDRESS: Send all comments on the proposed AC to: Federal Aviation Administration, Small Airplanes Directorate, Aircraft Certification Service, Standards Office (ACE-110), 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Edward A. Gabriel, Aerospace Engineer Standards Office (AC-110), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; commercial telephone (816) 426-6941 or FTS 867-6941.

SUPPLEMENTARY INFORMATION: Any person may obtain a copy of this proposed AC by writing to: Federal Aviation Administration, Small Airplane Directorate, Aircraft Certification Service, Standards Office (ACE-110), 601 East 12th Street, Kansas City, Missouri 64106.

Comments Invited

Interested parties are invited to submit comments on the proposed AC. Commenters must identify AC 23.561-X, and submit comments to the address specified above. All written comments

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received on or before the closing date for comments will be considered by the FAA before issuing the final AC. The proposed AC and comments received may be inspected at the Standards Office (ACE-110), Room 1656, Federal Office Building, 601 East 12th Street, Kansas City Missouri, between the hours of 7:30 a.m. and 4:00 p.m. weekdays, except Federal holidays.

Background

Section 23.561(d) requires that the airplane structure be designed to protect the occupants in a complete turnover, if it is not established that a turnover is unlikely during an emergency landing. A requirement similar to the present § 23.561(d) rule has been in the airworthiness regulations dating back to the mid-1930s. At the time, and for at least a decade later, virtually all airplanes were equipped with a conventional landing gear with a tailwheel, a configuration obviously prone to turnover during hard decleration. Subsequently, the tricycle landing gear became the most common type. The tricycle landing gear is inherently resistant to turnover during *normal* operations, and it became generally accepted that low-wing airplanes with a tricycle landing gear did not need to be evaluated for occupant protection during a turnover. High-wing airplanes, regardless of landing gear type, were generally thought to have adequate structure to protect the occupants during a turnover.

Recent studies utilizing the FAA Accident/Incident Data System show that low-wing tricycle gear Part 23 airplanes turn over during emergency landing conditions (including undershoot, overshoot, takeoff and emergency landing following takeoff, loss of directional control, etc.) with sufficient frequency that new type designs should be investigated to determine if turnover is likely during such conditions. Subsequently, § 23.561(d) was changed by amendment 23-36 to Part 23 of the Federal Aviation Regulations (FAR) (effective 9/14/88) to reflect the results of these studies.

Accordingly, the FAA is proposing and requesting comments on AC 23.561-X which will provide an acceptable means of compliance with the requirements of § 23.561(d) of Part 23 of the FAR.

Issued in Kansas City, Missouri, January 9, 1989.

Don C. Jacobsen,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-1747 Filed 1-25-89; 8:45am]

BILLING CODE 4910-13-M

[Summary Notice No. PE-89-2]

Petition for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before February 15, 1989.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Petition Docket No. ———, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on January 19, 1989.

Denise Donohue Hall,

Manager, Program Management Staff, Office of the Chief Counsel.

Petitions for Exemption

Docket No.: 23290
Petitioner: Air Transport Association of America
Regulations Affected: 14 CFR 121.391(d) and 121.311(f)
Description of Relief Sought: To extend Exemption No. 4298B that allows required flight attendant(s) to be located at the mid-cabin flight attendant station during takeoff and landing on B-767 aircraft operated by petitioner's member airlines and other similarly situated Part 121 certificate holders who may apply for approval from the Principal Operations Inspectors. Exemption No. 4298B will expire on March 31, 1989.

Docket No.: 23477
Petitioner: Experimental Aircraft Association
Sections of the FAR Affected: 14 CFR 103.1 (a), (e)(1), and (e)(4)
Description of Relief Sought: To extend Exemption No. 3784, as amended, that allows individuals authorized by the petitioner to operate powered ultralights at an empty weight of not more than 330 pounds, that have a power-off stall speed of not more than 29 knots calibrated airspeed, and with another occupant for the purpose of flight instruction. Exemption No. 3784, as amended, will expire on June 30, 1989.

Docket No.: 23801
Petitioner: General Motors Corporation
Sections of the FAR Affected: 14 CFR 21.197
Description of Relief Sought: To allow certain aircraft to be flown with the flaps in the up position under specified conditions.

Docket No.: 25103
Petitioner: Air Wisconsin, Inc.
Sections of the FAR Affected: 14 CFR 121.371(a) and 121.378
Description of Relief Sought: To extend Exemption No. 4803 that allows petitioner to use on its British Aerospace, Fokker, and Short Brothers, Ltd., aircraft certain engines, components, and spare parts that have been manufactured, overhauled, repaired, tested, or inspected by persons outside the United States who do not hold U.S. airman certificates. Exemption No. 4803 will expire on May 31, 1989.

Docket No.: 25173
Petitioner: Airlift International, Inc.
Sections of the FAR Affected: 14 CFR 121.371(a) and 121.378
Description of Relief Sought: To extend Exemption No. 4798 that allows the original equipment manufacturers and foreign repair stations certificated by the Civil Air Authorities of their respective countries to perform maintenance, preventive maintenance, and alterations outside the United States on engines, components, and spare parts of the petitioner's F-27/FH-227 aircraft. Exemption No. 4798 will expire on June 30, 1989.

Docket No.: 25433
Petitioner: Raleigh Jet Charter
Sections of the FAR Affected: 14 CFR 25.853(d), 121.312(b), and 135.169
Description of Relief Sought: To allow petitioner to operate its Gulfstream G-1159B (N4890P) aircraft without complying with the seat fireblocking requirements until one of its other Gulfstream aircraft is in compliance with the fireblocking requirements.

Docket No.: 25748
Petitioner: Popular Rotorcraft Association
Sections of the FAR Affected: 14 CFR 91.42(a)(2)
Description of Relief Sought: To allow the establishment of guidelines and the training and rating of pilots in experimental gyroplane aircraft.

Docket No.: 23358
Petitioner: Clarke Outdoor Spraying Company, Inc.
Regulations Affected: 14 CFR 91.39(c)
Description of Relief Sought/Disposition: To extend Exemption No. 4309 that allows petitioner, under certain conditions, to carry passengers in restricted category aircraft.
GRANT, January 12, 1989, Exemption No. 5010

Docket No.: 25053
Petitioner: Crew Pilot Training
Sections of the FAR Affected: 14 CFR 61.63(d) (2) and (3); 61.157(d) (1) and (2); and Appendix A of Part 61
Description of Relief Sought/Disposition: To extend Exemption No. 4730 that allowed petitioner to use the FAA-approved visual simulators to meet certain training and testing requirements of the FAR. Exemption No. 4730 expired on November 30, 1988.
GRANT, January 13, 1989, Exemption No. 5011

Docket No.: 25617
Petitioner: Japan Air Lines Company, Ltd.
Sections of the FAR Affected: 14 CFR 91.27(c), 91.173(c) and (d), and 45.11; and Part 43, Appendix B, paragraphs (a) and (d)
Description of Relief Sought/Disposition: To allow petitioner to operate without keeping an FAA Form 337 on board its aircraft which have been modified by installation of fuel tanks in the passenger or baggage compartment. Also, to allow operation of petitioner's U.S.-registered aircraft without having an identification plate secured to the fuselage exterior and, with respect to its U.S.-registered aircraft manufactured before March 7, 1988, without displaying the aircraft model designation and builder's serial number on the aircraft exterior. In addition, to extend this relief to all Part 121 operators.
PARTIAL GRANT, January 6, 1989, Exemption No. 5008

Docket No.: 25653
Petitioner: Singapore Airlines, Ltd.
Sections of the FAR Affected: 14 CFR 91.27(c), 91.173(c) and (d), and 45.11; and Part 43, Appendix B, paragraphs (a) and (d)
Description of Relief Sought/Disposition: To allow petitioner to operate without keeping an FAA Form 337 on board its aircraft which have been modified by installation of fuel tanks in the passenger or baggage compartment. Also, to allow operation of petitioner's U.S.-registered aircraft without having an identification plate secured to the fuselage exterior and, with respect to its U.S.-registered aircraft manufactured before March 7, 1988, without displaying the aircraft model designation and builder's serial number on the aircraft exterior. In addition, to extend this relief to all Part 121 operators.
PARTIAL GRANT, January 6, 1989, Exemption No. 5008

Docket No.: 25276
Petitioner: Department of the Air Force
Sections of the FAR Affected: 14 CFR 91.104
Description of Relief Sought/Disposition: To allow aerial refueling operations between 3,000 feet mean sea level (MSL) and 12,000 feet MSL without regard to visual flight rules cruising altitudes.
DENIAL, December 22, 1988, Exemption No. 5012

Docket No.: 25245
Petitioner: United States Air Force
Sections of the FAR Affected: 14 CFR 91.24(b)
Description of Relief Sought/Disposition: To extend Exemption No. 4633B to continue to operate its aircraft without operating the aircraft's transponder and to expand the area affected by such operations.
PARTIAL GRANT, December 30, 1988, Exemption No. 4633C

Docket No.: 25030
Petitioner: Pan Am Express, Inc.
Sections of the FAR Affected: 14 CFR 93.123; 93.125; and 93.129
Description of Relief Sought/Disposition: To extend Exemption No. 4777 which allowed Pan Am to conduct Separate Access Landing System commuter operations and two additional operations in four of five high density hours at JFK International Airport, and to obtain authorization for two additional operations in the 1700 local timeframe and that the submission requirements specified in Part 11, Section 25(b)(1), of the regulations be waived.
PARTIAL GRANT, December 28, 1988, Exemption No. 4777A

Docket No.: 25724
Petitioner: Jet Express, Inc.
Sections of the FAR Affected: 14 CFR 93.123; 93.125; and 93.129
Description of Relief Sought/Disposition: To conduct two additional commuter operations in two of the five high density hours at JFK International Airport. The additional slots will be used only by short takeoff and landing aircraft using separate access procedures.
GRANT, December 28, 1988, Exemption No. 5004

[FR Doc. 89-1745 Filed 1-25-89; 8:45 am]

BILLING CODE 4910-13-M

Radio Technical Commission for Aeronautics (RTCA) Special Committee 166—User Requirements for Future Airport and Terminal Area Communication, Navigation, and Surveillance Systems; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I), notice is hereby given for the first meeting of RTCA Special Committee 166 on User Requirements for Future Airport and Terminal Area Communication, Navigation, and Surveillance Systems to be held February 16-17, 1989, in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005, commencing at 9:30 a.m.

The agenda for this meeting is as follows: (1) Introductory remarks; (2) review of Committee Terms of Reference, RTCA Paper No. 458-88/SC166-1; (3) briefing on Final Report of RTCA Special Committee 155 (SC-155); (4) briefing on recommendations of ICAO FANS; (5) briefing by Industry Task Force on Airport Capacity Improvement and Delay Reduction; (6) establishment of Working Groups; (7) Working Groups meet the separate sessions; (8) reports of Working Groups; (9) other business; and (10) date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005; (202) 682-0266. Any member of the public may present a

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written statement to the committee at any time.

Issued in Washington, DC on January 19, 1989.

Geoffrey R. McIntyre,

Acting Designated Officer.

[FR Doc. 89-1746 Filed 1-25-89; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

Supplemental Environmental Impact Statement: Boston, MA

January 18, 1989.

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that it is preparing a Supplement to the Final Environmental Impact Statement for the Central Artery (I-93)/Third Harbor Tunnel (I-90) Project in Boston, Massachusetts. The subject of the supplement is the proposed South Boston Haul Road an early construction mitigation measure for the Artery/Tunnel Project.

FOR FURTHER INFORMATION CONTACT: Mr. Alexander Almeida, Project Manager, Central Artery/Third Harbor Tunnel Project, Federal Highway Administration, Transportation Systems Center, 55 Broadway, 10th Floor, Cambridge, MA 02142, Telephone: (617) 494-2319.

Ms. Martha Bailey, Manager, Planning and Environment, Central Artery/Third Harbor Tunnel Project, Massachusetts Department of Public Works, One South Station, Boston, MA 02110, (617) 951-6113.

Mr. Walter Kudlick, representative for Bechtel/Parsons Brinckerhoff, Management Consultant, Central Artery/Third Harbor Tunnel Project, One South Station, Boston, MA 02110 (617) 951-6151.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Massachusetts Department of Public Works (MDPW), is preparing a Supplement to the Final Environmental Impact Statement (FEIS) which will address a proposal to build a Haul Road in South Boston. The Haul Road is planned to be built before construction begins on the extension of Interstate highway I-90 through South Boston.

The approved Final EIS for the Artery/Tunnel Project is dated August 16, 1985 (FHWA-MA-EIS-82-02-F). Copies of the FEIS are available for examination at the Artery/Tunnel Project Office at One South Station, Boston, MA 02110 and at the FHWA, 55 Broadway 10th Floor, Cambridge, MA 02142. The proposed improvements to I-93 and I-90 as described in the FEIS include generally:

- The construction of a widened (from six to eight lanes) and depressed Central Artery (I-93) from the Massachusetts Turnpike (I-90) Interchange on the Southeast Expressway (I-93) to the Gilmore Bridge area in Charlestown.
- The construction of a four-lane Third Harbor Tunnel (I-90) from the Southeast Expressway (I-93) and present terminus of the Massachusetts Turnpike Extension (I-90) just south of the Central Artery (I-93) Boston, to Logan Airport and Route 1A in East Boston via the waterfront industrial area of South Boston and Boston Harbor.

The FEIS identified construction haul roads as an element of the Artery/Tunnel Project which would be developed further during the design phase to mitigate the potentially negative effects of construction. The South Boston Haul Road is the first such haul road and an early phase construction mitigation measure for the Artery/Tunnel Project. The Haul Road would provide a two-lane commercial vehicle roadway through an existing consolidated rail corporation (CONRAIL) depressed railroad section and adjacent vacant land in South Boston. The Haul Road would extend in a north-south direction between Dorchester Avenue and Congress Street with access to the Massport Haul Road via Congress and B Streets.

The principal purpose of the Haul Road is to provide a truck route for construction vehicles generated by the Artery/Tunnel Project in the South Boston industrial waterfront area. Early construction contracts for major portions of the Artery/Tunnel Project will require large numbers of trucks for hauling construction materials, equipment and excavated material to and from the project sites. Other commercial vehicles would be permitted to use the Haul Road, including those which now use residential streets in South Boston, as well as trucks serving other construction projects and industrial activities in the South Boston waterfront area.

Letters describing the proposed action and soliciting comments have been sent to appropriate Federal, State and local agencies, and to other organizations and citizens who have previously expressed, or are known to have, an interest in this proposal. Public meetings have been held concerning the proposed action and others will be scheduled to be held in South Boston. A public hearing on the SEIS for the Haul Road will be scheduled in early 1989. The draft SEIS will be available for public and agency review and comment prior to the public hearing. No formal Federal scoping meeting will be held. Previously identified cooperating Federal agencies, however, will continue to be involved in this capacity. Project briefings are being conducted for all cooperating agencies.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues are identified, comments and suggestions are invited from interested parties. Comments or questions concerning this proposed action should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal Programs and activities apply to this program.)

Issued on: January 18, 1989.

Alexander Almeida,

Project Manager, Central Artery (I-93)/Third Harbor Tunnel (I-90) Project Cambridge, Massachusetts.

[FR Doc. 89-1700 Filed 1-25-89; 8:45 am]

BILLING CODE 4910-22-M

Federal Railroad Administration

Petition for Waiver of Compliance; Long Island Railroad

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance with a requirement of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provision involved, and the nature of the relief being requested.

Long Island Rail Road

Waiver Petition Docket Number PB-88-6

The Long Island Rail Road (LIRR) requests a waiver of compliance with a provision of the railroad power brakes regulation (49 CFR Part 232), § 232.13(a), concerning intermediate terminal air brake tests of passenger trains, which requires, among other things, that before the train proceeds, an "(i)nspector or trainman must determine if brakes on rear car of train properly apply and release." The LIRR seeks this waiver for its fleet of M-1/M-3 "Metropolitan" self-propelled passenger transit cars. These cars are defined as MU locomotives in the Locomotive Safety Standards (49 CFR § 229.5(j)).

The LIRR's justification is that the M-1/M-3 passenger cars "are among the most sophisticated rail vehicles operated under (49 CFR Part 232). These electric powered, passenger-carrying MU locomotives are equipped with a brake indicator system which supplies the following information to the engineer:

- That continuity of train line control for both service and emergency braking is complete.
- That the brake pipe is charged on every car.
- That the air brake is applied on every car.
- That the air brake is released on every car.
- That every hand brake on the train is released.

"Other information is supplied to the train by:

- The brake pipe gauge found on every car.
- The brake cylinder gauge found on every car.
- The local brake indicator lights found on every car.

"The brake indicator system found on these cars utilizes an in-train, train-lined electrical circuit which monitors air pressure on the individual trucks of the train. The system is designed 'fail safe.' The electrical circuit must be complete and energized prior to the brake indicator light system displaying the condition of the brakes (either applied or released.)"

The LIRR is "confident that the brake indicator systems found on the M-1/M-3 trains meet or exceed (Part 232) requirements. The accuracy and redundancy of these gauges, coupled with the ability to monitor the entire train braking system, far surpasses the current visual on/off rear car observation now standard on most railroads." The railroad states that its procedures and brake indication systems comply with, and exceed, the requirements of 49 CFR § 232.13(a).

Interested parties are invited to participate in this proceeding by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with this proceeding since the facts do not appear to warrant a hearing. If any interested parties desire an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (here, Waiver Petition Docket Number PB-88-6) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. Communications received before March 14, 1989 will be considered by FRA before final judgment is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m. to 5 p.m.) in Room 8201, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

Issued in Washington, DC, on January 17, 1989.

J.W. Walsh,

Associate Administrator for Safety.

[FR Doc. 89-1733 Filed 1-25-89; 8:45 am]

BILLING CODE 4910-06-M

National Highway Traffic Safety Administration

[Docket No. EX88-1; Notice 3]

General Motors Corp., Petition for Temporary Exemption From Federal Motor Vehicle Safety Standards Nos. 108 and 111

This notice extends a temporary exemption previously granted General Motors Corporation ("GM") for two Cadillac models to the additional Cadillac models.

On August 18, 1988, NHTSA granted NHTSA Exemption 88-1 to General Motors Corporation (53 FR 31411). This exemption applies to no more than 2500 Cadillac Seville and Eldorado passenger cars manufactured between August 1, 1988, and August 1, 1989, and to not more than 2500 such vehicles manufactured between August 1, 1989, and August 1, 1990. Exemption 88-1 excuses these vehicles from compliance with the requirements of 49 CFR 571.108 Motor Vehicle Safety Standard No. 108 *Lamps, Reflective Devices, and Associated Equipment*, that they be equipped with front and rear side marker lamps and reflectors, and that their headlamps, stop lamps, and turn signal lamps meet the photometric requirements of the standard. It also excuses such vehicles from compliance with paragraphs S5.2.1 and S5.4.2 of 49 CFR 571.111 Motor Vehicle Safety Standard No. 111 *Rearview Mirrors*.

The basis of the petition was that, in the absence of an exemption, GM would otherwise be prevented from selling a motor vehicle whose overall level of safety is equivalent to or exceeds the overall level of safety of nonexempted motor vehicles (15 U.S.C. 1410(a)(1)(D), implemented by 49 CFR 555.5 and 555.6(d)). Specifically, GM wished to institute a factory delivery program for two of its cars, similar to programs established by European manufacturers where Americans purchase vehicles conforming to the Federal motor vehicle safety standards. The vehicles covered by GM's factory delivery program would be European citizens either visiting this country or working temporarily here, who would export the vehicles to their home countries at the conclusion of their stay. Other than Standards Nos. 108 and 111, the vehicles could be built to both European and U.S. safety regulations, but relief was needed from those two standards in order to implement the factory delivery program.

On November 9, 1988, GM wrote NHTSA asking whether the exemption might be broadened to include the Cadillac DeVille and Fleetwood cars, with the understanding that the 2500 vehicle per year limit would not be exceeded as a result of this inclusion. In their U.S. version, these vehicles are substantially similar in compliance with Standards Nos. 108 and 111 to the ones previously exempted (with the exception that the DeVille and Fleetwood replaceable bulb headlamps use HB3 and HB4 light sources, whereas those of the Seville and Eldorado used HB1s). Exempted Devilles and Fleetwood cars would meet ECE photometrics, as do the Seville and Eldorado, "using the H4 bulb". Given the facts that the noncompliances would be identical, and that GM would otherwise be unable to sell the vehicles, the agency has decided to grant GM's request, and to amend the terms of Exemption 88-1.

Accordingly, the terms of Exemption 88-1 are amended to include the Cadillac DeVille and Cadillac Fleetwood models with the Cadillac Seville and Cadillac Eldorado models, with the proviso that the total number of exempted vehicles sold shall not exceed 2500 in either of the two years that the exemption is in effect.

(15 U.S.C. 1410; delegation of authority at 49 CFR 1.50)

Issued on January 23, 1989.

Diane K. Steed,

Administrator.

[FR Doc. 89-1853 Filed 1-25-89; 8:45 am]

BILLING CODE 4910-59-M

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[Docket No. EX89-1; Notice 1]

Panther Motor Car Co. Ltd.; Petition for Temporary Exemption From Federal Motor Vehicle Safety Standard No. 208

The Panther Motor Car Company, Ltd., of Byfleet, Surrey, England, has petitioned for a temporary exemption from the passive restraint requirements of Motor Vehicle Safety Standard No. 208, *Occupant Restraint Systems*, on the basis "that compliance would cause [it] substantial economic hardship and that [it] has, in good faith, attempted to comply with [the] standard from which it requests to be exempted." (15 U.S.C. 1410(a)(1)(A)).

Notice of receipt of the petition is published in accordance with the regulations of the National Highway Traffic Safety Administration on this subject (49 CFR Part 555) and does not represent any agency decision or other exercise of judgment concerning the merits of this petition.

Panther manufactures the Kallista, a roadster in the style of the 1930's. In the 12-month period October 1987–88 it produced 215 such passenger cars. Ssanyong Motors of Korea, a motor vehicle manufacturer, holds an 80% interest in Panther. The total motor vehicle production of Ssanyong in 1987 was 4660 units. Because the combined total of Panther and Ssanyong vehicle production did not exceed 10,000 units in the year preceding the filing of the petition, Panther is eligible to apply for a temporary exemption on the basis that compliance would cause it substantial economic hardship.

Petitioner requests a 2-year exemption from the passive restraint requirements of Standard No. 208 which become effective for convertibles such as the Kallista manufactured on and after September 1, 1989. The company is involved in a feasibility study of an airbag system, and has determined that certain major vehicle components will have to be modified to incorporate it. These involve changes to the steering wheel, modificaiton to the steering column to accommodate the steering wheel, the development of knee bolsters to absorb energy and limit femur loads, the development of mounting positions of an accelerator sensor and to determine "trigger level (i.e., utilize several vehicles to determine firing level)", the installation of an electronic module, and seat development to prevent submarining. Computer modeling would be validated by sled testing, and subsequently a slow speed crash test. "Rough" road tests would be required to "check for sensor closure threshold". Prototypes would follow, and finally validation with the final production system. The company estimates that the above would take at least 24 months and cost 500,000 Pounds Sterling ($900,000 at $1.80 to the Pound). Panther has experienced a "loss on ordinary activities after taxation for the financial year" of slightly over 1,000,000 Pounds Sterling in each year from 1984 through 1987.

Failure to receive an exemption would result in its withdrawal from the American market, creating a "significant financial penalty". It intends to comply at the end of the exemption period. Petitioner argued that an exemption would be in the public interest and consistent with the objectives of the National Traffic and Motor Vehicle Safety Act, in that its withdrawal from the American market would render it unable to provide "very necessary parts and service back-up" to existing owners of Panther cars.

Interested persons are invited to comment on the petition by Panther Motor Car Company, Ltd., described above. Comments should refer to the docket number and be submitted to Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that five copies be submitted.

All comments received before the close of business on the comment closing date below will be considered. The petition and supporting materials and all comments received are available for examination in the docket both before and after the closing date. Comments received after the closing date will also be filed and will be considered to the extent practicable. Notice of final action will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: February 27, 1989.

(15 U.S.C. 1410; delegations of authority at 49 C.F.R. 1.50 and 501.8)

Issued on: January 19, 1989.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 89-1732 Filed 1-25-89; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: January 23, 1989.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New.
Form Number: 8811.
Type of Review: New Collection.
Title: Information Return for Real Estate Mortgage Investment Conduits (REMICs).

Description: Form 8811 will be used to collect the name, address, and phone number of a representative of a REMIC who can provide brokers with the correct income amounts that the broker's clients must report on their income tax returns. It is estimated that there are some 1000 REMICs currently in existence.

Respondents: Businesses or other for-profit.

Estimated Number of Respondents: 1,000.

Estimated Burden Hours Per Response/Recordkeeping:
Recordkeeping: 3 hours 50 minutes.
Learning about the law or the form, 18 minutes.
Preparing, copying, assembling, and sending the form to IRS 22 minutes.

Frequency of Response: Taxpayer must only file once for each obligation issued.

Estimated Total Recordkeeping/ Reporting Burden: 4,510 hours.

OMB Number: 1545-0950.
Form Number: 23.
Type of Review: Extension.
Title: Application for Enrollment to Practice Before the Internal Revenue Service.

Description: The information relates to the granting of enrollment status to individuals admitted (licensed) by the Internal Revenue Service to practice before the Internal Revenue Service.

Respondents: Individuals or households.

Estimated Number of Respondents: 2,000.

Estimated Burden Hours Per Response: 1 hour.

Frequency of Response: One time filing.

Estimated Total Reporting Burden: 2,000 hours.

Clearance Officer: Garrick Shear—(202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224

OMB Reviewer: Milo Sunderhauf—(202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Managment Officer.

[FR Doc. 89-1839 Filed 1-25-89; 8:45am]

BILLING CODE 4810-25-M

Office of the Secretary

[Supplement to Department Circular—Public Debt Series—No. 1-89]

Treasury Notes, Series E-1996

Washington, January 12, 1989.

The Secretary announced on January 11, 1989, that the interest rate on the notes designated Series E-1996, described in Department Circular—Public Debt Series—No. 1-89 dated January 5, 1989, will be 9¼ percent. Interest on the notes will be payable at the rate of 9¼ percent per annum.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 89-1707 Filed 1-25-89; 8:45 am]

BILLING CODE 4810-40-M

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Sunshine Act Meetings

Federal Register
Vol. 54, No. 16
Thursday, January 26, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FARM CREDIT ADMINISTRATION

Regular Meetings

SUMMARY: Notice is hereby given pursuant to the Government in the Sunshine Act (5 U.S.C. 552(e)(3)), that no further regularly scheduled meetings of the Farm Credit Administration Board (Board) will be held until a quorum of the Board is constituted. At such time a notice in the **Federal Register** will be published.

FOR FURTHER INFORMATION CONTACT: David A. Hill, Secretary to the Farm Credit Administration Board, 1501 Farm Credit Drive, McLean, Virginia 22102-5090 (703) 883-4003.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090.

Date: January 23, 1989.

David A. Hill,

Secretary, Farm Credit Administration Board.

[FR Doc. 89-1943 Filed 1-24-89; 3:37 pm]

BILLING CODE 6705-01-M

FEDERAL COMMUNICATIONS COMMISSION

January 23, 1989.

FCC To Hold Open Commission Meeting, Monday, January 30, 1989

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Monday, January 30, 1989, which is scheduled to commence at 2:00 p.m., in Room 856, at 1919 M Street NW., Washington, DC.

Agenda, Item No., and Subject

General—1—Title: Amendment of Frequency Allocation and Aviation Services Rules (Parts 2 and 87) to provide frequencies for use by commercial space launch vehicles. Summary: The Commission will consider whether to adopt a Notice of Proposed Rule Making to amend parts 2 and 87 of the Commission's Rules concerning the use of frequencies in the 2310-2360 MHz band for telemetry operations by non-Government entities with fully operational commercial space launch vehicles.

Common Carrier—1—Title: In the Matter of Policy and Rules concerning Rates for Dominant Carriers, CC Docket No. 87-313. Summary: The Commission will consider further actions regarding the regulation of rates for dominant carrier interstate basic service offerings (price caps).

Mass Media—1—Title: Amendment of the Commission's Rules Regarding the Selection from Competing Applicants for New, AM, FM, and Television Stations. Summary: The Commission will consider whether to inititate a proceeding to consider improving the licensing process for new AM, FM, and television stations.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Audrey Spivack, Office of Public Affairs, telephone number (202) 632-5050.

Issued: January 23, 1989.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89-1946 Filed 1-24-89; 3:53 pm]

BILLING CODE 6712-01-M

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, January 31, 1989, 10:00 a.m.

PLACE: 99 E Street NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.

Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

* * * * *

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, Telephone: 202-376-3155.

Marjorie W. Emmons,

Secretary of the Commission.

FR Doc. 89-1949 Filed 1-24-89; 3:53 pm]

BILLING CODE 6715-01-M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

January 23, 1989.

TIME AND DATE: 10:00 a.m., Thursday, January 26, 1989.

PLACE: Room 600, 1730 K Street NW., Washington, DC.

STATUS: Closed [Pursuant to 5 U.S.C. 552b(c)(10)].

MATTERS TO BE CONSIDERED: In addition to the previously announced item, the Commission will consider the following in closed session:

2. *Lincoln Sand & Gravel Co.*, Docket No. LAKE 88-87-M.

It was determined by a unanimous vote of Commissioners that this item be included on the agenda and that it be held in closed session.

FOR MORE INFORMATION CONTACT: Jean Ellen (202) 653-5629/(202) 566-2673 for TDD Relay.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 89-1915 Filed 1-24-89; 2:27 pm]

BILLING CODE 6735-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Wednesday, February 1, 1989.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Street NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Federal Reserve Bank and Branch director appointments.
2. Proposed electronic payment processor pilot program within the Federal Reserve System. (This item was originally announced for a closed meeting on January 30, 1989.)
3. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
4. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Date: January 24, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89-1947 Filed 1-24-89; 3:37 pm]

BILLING CODE 6210-01-M

Corrections

Federal Register
Vol. 54, No. 16
Thursday, January 26, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 61

[FRL-3492-6]

Standards of Performance for New Stationary Sources and National Emission Standards for Hazardous Air Pollutants; Montana, North Dakota and Wyoming; Delegation of Authority

Correction

In rule document 88-28958 beginning on page 50524 in the issue of Friday, December 16, 1988, make the following correction:

§ 61.04 [Corrected]

On page 50528, in § 61.04(c), in the table, in the entry for "M Asbestos" in the column headed "WY", insert footnote reference 1 after the parenthetical asterisk.

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM-010-3110-10-7201-GP9-0104; NM NM 68533]

Issuance of Mineral Exchange Conveyance Document; New Mexico

Correction

In notice document 89-205 appearing on page 670 in the issue of Monday, January 9, 1989, make the following correction:

In the second column, under **New Mexico Principal Meridian**, the seventh and eighth lines should read "Sec. 12, S½SW¼, NE¼SE¼, and SW¼SE¼;".

BILLING CODE 1505-01-D

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Part II

Department of Labor

Occupational Safety and Health Administration

Safety and Health Program Management Guidelines; Issuance of Voluntary Guidelines; Notice

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DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. C-02]

Safety and Health Program Management Guidelines; Issuance of Voluntary Guidelines

AGENCY: Occupational Safety and Health Administration (OSHA), Department of Labor.

ACTION: Issuance of voluntary guidelines.

SUMMARY: The Occupational Safety and Health Administration (OSHA) is issuing safety and health program management guidelines for use by employers to prevent occupational injuries and illnesses.

The language in these guidelines is general so that it may be broadly applied in general industry, shipyards, marine terminals, and longshoring activities regardless of the size, nature, or complexity of operations. Construction activities are not addressed here because they are already covered by Subpart C of the Construction standards, 29 CFR Part 1926.

The guidelines consist of program elements which represent a distillation of applied safety and health management practices that are used by employers who are successful in protecting the safety and health of their employees. These program elements are advocated by many safety and health professionals and consultants. They were strongly endorsed by individuals, corporations, professional associations, and labor representatives who responded to the OSHA request for comments and information, 53 FR 26790, published on July 15, 1988.

EFFECTIVE DATE: January 26, 1989.

FOR FURTHER INFORMATION CONTACT: James F. Foster, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Room N3637, Washington, DC 20210. Telephone: (202) 523-8151.

SUPPLEMENTARY INFORMATION:

I. Background

Over their years of experience with enforcing the provisions of the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 *et seq.*), OSHA representatives have noted a strong correlation between the application of sound management practices in the operation of safety and health programs and a low incidence of occupational injuries and illnesses. Where effective safety and health management is practiced, injury and illness rates are significantly less than rates at comparable worksites where safety and health management is weak or non-existent. (See, for example, "DOL Safety Programs Cut Workers Comp Costs," *Good News*, Oklahoma Department of Labor, October 5, 1988, p. 1.; and Michael E. Nave, "Impact of Voluntary Compliance and Compliance Inspection Programs on Experience Rates among Small Employers in California," Doctoral Thesis, Oregon State University, 1987.)

As a result of this awareness, OSHA increased emphasis on management practices in several of the Agency's programs. Standards, including notably the Hazard Communication Standard (29 CFR 1910.1200), began specifically to require management programs. An early OSHA standard requiring safety and health management programs in the construction industry was recently clarified and reaffirmed by the issuance of OSHA Instruction STD 3-1.1. OSHA also instituted programs to encourage voluntary improvement of safety and health management. These included informational pamphlets and consultation services to assist in the development of management programs for small businesses.

In addition, in 1982 OSHA began to approve worksites with exemplary safety and health management programs for participation in the Voluntary Protection Programs (VPP). Safety and health practices, procedures, and recordkeeping at participating worksites have been carefully evaluated and monitored by OSHA. These VPP worksites generally have lost-workday case rates that range from one-fifth to one-third the rates experienced by average worksites (Unpublished statistics, U.S. Department of Labor, OSHA, 1988).

Further, most participating sites report improved employee morale and productivity as a by-product of their safety and health management activities.

Based upon the success of VPP and positive experience with other safety and health program initiatives and in order to broaden the information available to OSHA from other sources, OSHA published a request for comments and information on July 15, 1988, that included possible language for Safety and Health Program Guidelines which would be applicable to general industry, shipyard, and longshoring activities (53 FR 26790). That request inadvertently omitted reference to marine terminals, to which the guidelines are also intended to apply.

In response to several requests, on September 1, 1988, OSHA extended the original six-week comment period for another month, to September 28, 1988 (53 FR 33823). In addition, on September 6, 1988, OSHA announced a public information-gathering meeting to be held on October 6, 1988, at the OSHA Training Institute in Des Plaines, Illinois (53 FR 34780).

OSHA received 54 comments from individuals, labor representatives, trade associations, professional safety and health associations and societies, safety and health consultants, and Federal and State agencies. Thirteen commentors presented information and comments at the public meeting.

II. Summary of Public Response

In the July 15, 1988, request for information and comment, under the heading, "Issues for Discussion" (53 FR 26790), OSHA asked questions concerning five major areas: the nature of the risk from inadequate management; the value of safety and health programs; suitable language for safety and health management guidance; appropriate methods for educating employers; and incentives for effective management.

There was no new information received concerning either the nature of the risk or the value of safety and health programs, but many commentors expressed the belief that safety and health program management makes a major impact on loss prevention. During the public meeting, OSHA was informed that the VPP Participants' Association might be able to obtain information concerning costs and benefits of effective safety and health management through its membership (Tr. pp. 75-76).

As a means of educating employers, one commentor suggested videotaping model safety and health programs to help small businesses (Exh. 3-37). Another commentor advised a major outreach effort using all types of media to reach employers (Exh. 3-46).

Suggested incentives for effective management included tax breaks (Exh. 3-33) and incentives similar to those offered by the VPP (Exh. 3-37). One commentor suggesting the tax breaks acknowledged that they might be difficult to administer fairly (Exh. 3-36). Another commentor proposed the use of the guidelines by compliance officers to determine whether or not to do a partial or comprehensive inspection (Exh. 3-27).

Most respondents offered comments and/or suggestions on the subject of suitable guidance language. Several, however, also expressed a preference that the guidance from OSHA take the form of a mandatory standard rather than of voluntary guidelines (Exhs. 3-14, 3-17, 3-22, 3-26, 3-28).

Almost all the commentors endorsed the concept that effective safety and health management is the decisive factor in ensuring worker safety and health (e.g., Exhs. 3-4, 3-23, 3-36, 3-37, 3-45, 3-46). Three-fourths of the respondents specifically endorsed the issuance of guidelines. A few respondents objected to the proposal because of expected cost, anticipated impact on diversity and innovation, or the possibility of confusion resulting from the issuance of voluntary guidelines by a regulatory agency (e.g., Exhs. 3-41, 3-44, 3-50).

Most respondents indicated that the guidelines are generally applicable regardless of industry type, size, or nature of activity (e.g., Exhs. 3-28, 3-36). Several commentors recommended greater detail and specificity regarding duties, responsibilities, and program guidance (e.g., Exh. 3-29); others stated that greater specificity would inhibit necessary flexibility (e.g., Exh. 3-12). Although some proposed reorganization of the guidelines (e.g., Exhs. 3-7, 3-16, 3-22, 3-31, 3-32), there seemed to be agreement that the guidelines as suggested are generally applicable and complete.

Many respondents strongly maintained that the guidelines should specify that safety and health management goals and operational activities should be set forth in writing, regardless of how small the business may be (Exhs. 3-30, 3-35, 3-37, 3-49, 3-51).

Several commentors, including both organized labor respondents, maintained that compliance with the guidelines ought to be mandatory (Exhs. 3-14, 3-17, 3-22, 3-26). The majority maintained that they should not.

Several commentors provided safety and health program manuals and materials and suggested that the guidelines include appendices for industry groups or examples of adequate programs, or "question and answer" examples similar to those in the "Recordkeeping Guidelines for Occupational Injuries and Illnesses" developed by the Bureau of Labor Statistics (Exhs. 3-13, 3-20, 3-21, 3-30, 3-35, 3-43, 3-45, 3-46).

III. Issues and Rationale for Their Resolution

A. General Issues

Although commenters almost unanimously supported the concept of safety and health program management, they raised several general issues and proposed various changes to the language. The general issues were: (1) Whether OSHA publication of guidelines would be useful; (2) whether a different organization of the management program elements would promote their use; (3) whether the guidelines should be mandated in the form of a rule; (4) whether a task group should be formed to determine the content of the guidelines or appendices to the guidelines; and (5) whether various aspects of a safety and health management program should be in writing.

1. Usefulness of the Guidelines

A few respondents stated that safety and health program guidelines would be of no value or even counter-productive. These respondents stated, "We see no reason for issuance of guidance * * *" (Exh. 3-12); "* * * guidelines, when issued by a regulatory agency can create confusion with respect to compliance issues * * *" (Exh. 3-41); and "* * * guidelines are unnecessary and put companies with comprehensive, long-standing performance-based programs at risk in being forced to comply with the very specific, prescriptive language as proposed" (Exh. 3-19).

Most of the respondents expressed the belief that the guidelines describe policies, procedures, and practices which are essential to effective safety and health protection and that they are sufficiently performance-oriented that they can be met by a variety of methods. OSHA believes that the criteria described are not unreasonably prescriptive and that they are unlikely to conflict with effective programs already in place. They are not being promulgated as enforceable rules but are being issued as guidelines to assist employers in their efforts to maintain safe and healthful work and working conditions.

In addition, OSHA has observed, and most commenters agree, that a significant number of worksites, particularly medium and small businesses, often lack the professional resources to develop adequate safety and health management practices and programs on their own. In many larger worksites, some program elements are heavily emphasized while other important aspects are neglected. After careful consideration of the record and in light of the above, OSHA concludes that safety and health management guidelines will not be unnecessarily burdensome and will assist employers in their efforts to provide safe and healthful employment.

2. Organization of the Guidelines

Some commenters suggested different methods of organizing the elements of the guidelines or presented safety and health manuals in use at their operations which were organized differently. One respondent stated that since some of the most useful material in the notice requesting comment (53 FR 26790) was in the discussion of the guidelines, the suggested language should be expanded to include that material in the final guidelines. A suggested revision of the guidelines was attached to the comment (Exh. 3-22). This point of view was supported by another comment, "* * * the information currently contained in the background section of the July 15 preamble should be condensed into an introduction to the guidelines * * * OSHA should use [the analysis explaining the reasons for including each provision of the guidelines] in the body of the guidelines to ensure that the goals and objectives of the guidelines will be communicated to employers" (Exh. 3-46).

OSHA recognizes that effective programs can be organized and presented in a variety of ways and that significantly different terminologies and approaches are used by safety and health professionals and loss control managers. While these differences often appear to be great initially, upon examination by the Agency they are frequently found to address substantially the same components and objectives.

Since the responses to the request indicate that the program elements were generally understood, the basic organization of the elements as presented in the request for comments has been retained in the final version. OSHA has, however, incorporated some of the background and explanatory materials into the guidelines to assist the employer's comprehension of the objective of each action recommended by the guidelines. In addition, OSHA has added a Commentary following the guidelines themselves. The Commentary incorporates and expands on much of the explanatory material from the notice requesting comment.

Another commentor questioned whether management commitment is appropriately described as a program element (Exh. 3-44B). OSHA agrees with the observation that management commitment is not a program element in the same sense that worksite analysis, hazard prevention and control, and training are. However, the eight actions described under the title "Management

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Commitment" are specific program activities which directly indicate management commitment. At the same time, comments received on the nature and importance of employee involvement in an effective safety and health program (Exhs. 3–17, 3–21, 3–37, 3–43) suggest that such involvement merits clearer emphasis. OSHA has therefore decided to modify the element title to read, "Management Commitment and Employee Involvement."

3. Mandating the Guidelines

Several commentors stated that the guidelines should be mandated and enforced as a rule. For example, "In our view, OSHA has the authority under the Occupational Safety and Health Act of 1970 to issue regulations mandating worksite safety and health committees and broader workplace programs * * * we strongly urge the Agency to make this initiative a priority for regulatory action * * *" (Exh. 3–17); "* * * instead of a guideline, OSHA [should develop] a negotiated performance standard * * *" (Exh. 3–14); "* * * a [safety and health management] program is [the] * * * basic responsibility [of employers] and they should be required to do so through regulation * * *" (Exh. 3–22); "* * * workplace health and safety programs are so vital that they should be *mandatory*, not voluntary as currently proposed * * *" (Exh. 3–26); "* * * they should be proposed as a standard * * * the action could boost the issue of occupational safety and health out of needless conflicts and confusion to a higher order of national coherence" (Exh. 3–28). On the other hand, other respondents "* * * support the guideline versus the standard approach * * *" (Exh. 3–16); "* * * management commitment can not be mandated * * *" (Exh. 3–3); "* * * we recommend that no attempt be made to enforce the guidelines as if they were a rule * * *" (Exh. 3–5); "* * * encourage the Agency to issue these guidelines as advisories only" (Exh. 3–11).

After considering written comments and oral presentations made at the information-gathering meeting, OSHA has decided to issue voluntary safety and health program guidelines rather than a mandatory standard. A period of experience with published program guidelines will undoubtedly produce refinements in methods and practices, as well as provide evidence to indicate whether further action by the Agency is required. Publication of guidelines does not prevent the Agency from undertaking regulatory action, if found to be needed at some future date.

4. Task Group Consideration of the Guidelines

Several commentors favored the formation of a task group representing the affected constituencies and subject matter specialists to refine and further elaborate the guidelines (Exhs. 3–23, 3–35). It was also suggested that a bibliography of literature on safety and health management be developed and attached to the guidelines (Exhs. 3–36, 3–45, 3–46, 3–52).

OSHA welcomes all information and voluntary efforts designed to supplement these guidelines for use in special industry groups, special risk operations, small businesses, and any other applications. The Agency recognizes the value of these supplementary actions but will not delay publication of the guidelines while awaiting their completion. After publication, OSHA will consider how best to utilize the offers of assistance in compiling supplementary materials.

5. Written Safety and Health Guidance

A number of respondents strongly urged that safety and health programs be supported by written guidance in all cases. "Communication of authority, responsibility, and accountability to various parties must be written to prevent confusion and uncertainty" (Exh. 3–35). "The program will be understood better and managers can be held accountable more readily, if the specific elements of the employer's program are set forth clearly in writing" (Exh. 3–40). "[A] truly effective safety program can [not] be maintained unless it is reduced to writing. Understandings and practices are too easily confused [considering] cultural differences, personnel retirements, transfers, etc." (Exh. 3–51). This point is reinforced by OSHA's experience that almost all of the worksites observed to have excellent safety and health programs have written guidance covering such issues as policies, practices, procedures, emergency plans, posted signs, and performance objectives.

OSHA has noticed, however, that some businesses, usually small ones with less complex operations and/or potential hazards, effectively communicate policies and procedures orally and through example. It is not obvious at what level of complexity, or at what size of operation, written guidance becomes necessary, nor which particular processes within various operations require it.

For these reasons, OSHA has retained in the final guidelines the language providing for flexibility in the use of written guidance but has added information on the benefits of written guidance.

B. Specific Issues

Issues dealing with the substance of the guidelines were: (1) whether employees should be involved in the structure and operation of the program and in decisions which affect their safety and health, (b)(1)(ii); (2) whether the system to encourage employees to report conditions that appear hazardous should include the concept of protection from reprisal, (b)(2)(ii); (3) whether the term "competent persons" should be used, (b)(2)(i); (4) whether "a clearly communicated disciplinary system" should be specified, (b)(3)(i); (5) whether employers can be expected to ensure understanding of rules, responsibilities, and procedures by members of their organizations, (b)(4); (6) coordination with other OSHA instructions concerning safety and health management; (7) providing guidance on recordkeeping; and (8) miscellaneous clarifications.

1. Employee Involvement

Some respondents felt that OSHA's language on employee involvement, (b)(1)(ii), was too weak. "[T]he central element of worksite programs should be safety and health committees with worker participation * * * mandated by law" (Exh. 3–17). "OSHA should require that workers be allowed to participate in all phases of the program" (Exh. 3–26). Others felt that the language implied a transfer of decision-making authority to employees from employer. "Employers should determine * * * whether decision-making in this area will be shared * * * or whether it would unduly interfere with the responsibility to ensure a safe workplace" (Exh. 3–40). "Caution is urged as * * * to the 'decision-making' aspects of employee involvement * * * [T]he employer is responsible" (Exh. 3–51). Another group felt that OSHA should not specify employee involvement (Exhs. 3–37, 3–43). Other commentors agreed with the OSHA concept of employee involvement in decision-making and suggested added specifications such as advising employee involvement in all of the suggested possible areas of employee participation (Exhs. 3–14, 3–26). Most testimony at the public meeting which addressed this point also supported OSHA's choice of language (Exh. 3–4; Tr. pp. 17, 24, and 36).

OSHA has decided to retain the proposed language with slight revision, and with the addition of a clause that explains its intent. (See (c)(1)(4).) OSHA agrees that responsibility for *decision-making* lies with the employer. It has found, however, that employee *involvement* in decisions affecting their safety and health results in better management decisions and more effective protection. OSHA has, therefore, added explanatory language in its Commentary on the guidelines to make clear its intention to advise that employee not *make* decisions but that they *be included in the process* on decision-making on matters which affect their health and safety.

2. Employee Reports of Hazards

Some commentors felt that OSHA provisions for employee reports of hazards, (b)(2)(ii), were inadequate. One commentor stated that "* * * [a worksite] where employees know that management wants to be made aware of safety issues and will take action to correct them, and even solicits such suggestions, is a better place to work" (Exh. 3–29). OSHA's own experience, reflected in the VPP requirements, indicates a clear need for a system under which employee reports of safety and health concerns are encouraged, protected from reprisal, and given an appropriate response in a reliable and timely fashion. OSHA agrees that a similar provision should be a part of these guidelines as well. Accordingly, a separate provision to that effect has been included in the section dealing with worksite analysis.

3. Use of the Term "Competent Person"

Several respondents questioned the use of the term "competent persons," (b)(2)(i), to describe the need for expertise and experience in the conduct of periodic worksite analysis (Exh. 3–46). No one disputed whether persons conducting the analysis should be competent but questioned whether the term "competent" might be misunderstood in view of the many different risk situations and conditions possible in various workplaces and given that the term has specific meaning in maritime and construction standards.

Since the performance objective of a worksite analysis is defined in the phrase "so that all hazards and potential hazards are identified," OSHA agrees that it is not necessary to state the need for competence by persons who perform the work. That need is implicit. The emphasis on competence was included initially because many processes, equipment, and substances in use at worksites may pose hazards beyond the recognition of the employer and employees at the site. This point is made clear in paragraph (c)(2)(ii) and the term "competent" has been removed. A discussion of the relative competence needed for the various approaches to worksite analysis is, however, included in the Commentary.

4. Discipline

The proposed guidelines called for "a clearly communicated disciplinary system" as one of the sub-elements for hazard prevention and control, (b)(3)(i). One respondent suggested that such a system is more logically a part of training. Others questioned whether it should be contained in the guidelines at all. For example, "* * * it is not within OSHA's jurisdiction to dictate employer-employee relations. Secondly, it has been our experience that all too often the 'careless worker' is blamed. In almost every instance we have been able to identify external causes that contributed to workers's 'unsafe' behavior, such as hazardous conditions * * * production quotas/time pressure, inadequate training, etc." (Exh. 3–26). On the other hand, some commentors felt that OSHA had not emphasized discipline enough. For example, "* * * the guidelines [should] be more direct and also detail a compulsory disciplinary system or structure * * * to avoid vagueness, to establish consistency and fairness * * * and to take the onerous load off those who would othewise be loath to be so strict" (Exh. 3–10). "[The guidelines] should include * * * the concept that *all* employees have certain responsibilities regarding health and safety which if not exercised adequately will result in some type of disciplinary action" (Exh. 3–20).

In the revised final version of the guidelines, OSHA refers to enforcement of safe work procedures through a clearly communicated disciplinary system where necessary to the control or prevention of hazards. (See paragraph (c)(3)(i).) OSHA views this reference to enforcement through a disciplinary procedure as an indispensable piece of a whole approach to safety and health protection. Based on OSHA's experience and in light of the record, the Agency concludes that there is little possibility of effective safety and health protection without carefully designed rules for safe and healthful practices that cover all personnel, from the site manager to the hourly employees. Since those most involved with activity which could expose them to hazards are often the hourly employees, it makes good sense to involve them in the establishment of safe work practices and safe work rules as was discussed at the public meeting (Tr. pp. 117–118). Once these work practices are established and those who are expected to follow them understand why it is important to follow them, it is OSHA's experience that there is little need to utilize a corrective disciplinary system to ensure that they are followed.

When safe work practices, clearly understood and fairly enforced disciplinary procedures, and management accountability go hand-in-hand, there is little opportunity to push workers into taking short cuts. OSHA is not in any way suggesting harsh or punitive measures in lieu of the elimination or control of physical hazards. OSHA concludes that an organizational discipline exists for all levels of personnel at a worksite and believes that the application of that system to safety and health program activities is an important and appropriate concern for OSHA in the provision of safety and health management guidelines. Therefore, the language concerning discipline and enforcement is retained in paragraphs (c)(3)(i) and (c)(4)(ii). An elaboration of its rationale is included in the Commentary.

5. Ensuring Understanding

Several commentors objected that employers can never perfectly ensure that all employees understand all rules, responsibilities, and procedures. They recommended that the words "ensure understanding" be deleted from the guidelines and suggested using language similar to that provided in one comment, that "* * * all employees should be provided with training" (Exh. 3–54).

It is OSHA's experience that the quality, content, and success of training vary widely. The act of training itself is not the result that OSHA recommends for effective worker protection. OSHA recognizes the natural limits of communication and comprehension, and agrees that some reasonable interpretation of the phrase "ensure understanding" must be applied. The term used in the guidelines is intended to convey a need for individuals to verify by some reasonable means that hazard information and the necessary elements of a safety and health program are understood by the people who must deal with them. This can be done by formal testing, oral questioning, observation, or other means. In fact, observation and interviewing of employees are key methods used by OSHA in VPP reviews to determine, among other things, the quality of employee safety, health, and emergency training. The term is intended to convey the same diligence that would be applied to ensuring an understanding of other operational requirements, such as time and attendance, production schedules, and job skills. The Agency is

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retaining the words "ensure understanding" in paragraphs (c)(4)(i), (ii) and (iii).

6. Coordination with Other OSHA Instructions

Some respondents from Federal Agencies expressed concern that the proposed guidelines might conflict with requirements for safety and health management already established by OSHA for Federal Government agencies (Exhs 3–10, 3–44). Before preparing the final version, OSHA compared the proposed guidelines to existing Federal Agency requirements, its instructions to compliance officers for determining whether to do full or partial inspections based on safety and health program management, the requirements for the VPP, and the 7(c)(1) consultation safety and health program elements. The expanded sub-element on employee reports of hazards and the explanation added to the sub-element on employee involvement concerning protection from discrimination resulted in part from those comparisons. With these additions, OSHA concluded that, while these guidelines may lead to adjustments in the other policies reviewed, they pose no fundamental conflict with those policies.

7. Recordkeeping

Two of the commentors stated that OSHA should address the keeping of injury records (Exhs. 3–49, 3–51). To avoid confusing duplication, OSHA has decided not to include areas which are fully covered by regulation. No language concerning recordkeeping was added to the guidelines. The guidelines do, however, deal with the effective use of occupational injury and illness data. (See (c)(2)(v).)

8. Miscellaneous

Some commentors stated concerns with the use in the proposed guidelines of "OSHA advises," pointing out that this language appears in regulation and makes the guidelines sound less voluntary. The use of the word "encourage" was suggested as an alternative (Exhs. 3–14, 3–54). OSHA does not agree that the use of "advise" constitutes a requirement; rather it indicates advice which may or may not be accepted. OSHA has, however, added the words "and encourages" to "advises" in paragraph (a)(1), to ensure that employers understand the voluntary nature of the guidelines.

One commentor suggested that "facility" be added to the guideline language on preventive maintenance of equipment (Exh. 3–28). OSHA agrees and has expanded preventive maintenance to include the facility as well as equipment in paragraph (c)(3)(ii). Paragraph (c)(2)(i)(B), concerning analysis prior to use, was also changed to include "facility."

Another commentor suggested that OSHA use the term "change analysis" in describing the necessity to review all new equipment, procedures, materials, and facilities to ensure that potential hazards are identified and prevented or controlled (Exh. 3–21). Finding merit in this suggestion, OSHA has added the term to the Commentary on this issue.

A commentor suggested that OSHA make clear the necessity of safety and health training prior to the assumption of duties (Exh. 3–21). OSHA rulemaking records are replete with evidence supporting the need for such training. Consequently, such language has been included in the Commentary on employee training.

Based on its own further review, OSHA has made several additional changes. (1) In the "General" section of the guidelines, the word "systematic" has been added to emphasize the need for a systematic approach to all aspects of safety and health management. (2) In the section on "Management Commitment and Employee Involvement," an initial sub-element has been added which recommends a policy statement on safety and health protection, to ensure that all personnel concerned with the worksite understand the priority of safety and health protection in relation to other organizational values. (3) In the first sub-element under "Worksite Analysis," a distinction has been made between "baseline" comprehensive worksite surveys and "update" surveys, to emphasize the importance of a comprehensive baseline record for subsequent worksite analysis. In this same sub-element, the reference to "phase hazard analysis" has been dropped, because it is primarily relevant to construction.

OSHA's request for comments and information was published in the Proposed Rules Section of the **Federal Register** (53 FR 28790, July 15, 1988) based on the possibility that any guidelines issuing from it might be published in the Code of Federal Regulations (CFR). OSHA has decided not to publish the guidelines in the CFR at this time. The guidelines are therefore published as a notice.

Authority and Signature

This document was prepared under the direction of John A. Pendergrass, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

Accordingly, pursuant to the authority of the Assistant Secretary, the following guideline is published.

Signed at Washington, DC this nineteenth day of January, 1989.

John A. Pendergrass,

Assistant Secretary of Labor for Occupational Safety and Health.

Safety and Health Management Guidelines

Scope and Application. (1) This guideline applies to all places of employment which are covered by OSHA standards in 29 CFR Parts 1910, 1915, 1917 and 1918.

(2) This guideline does not apply to places of employment which are covered by OSHA standards found in 29 CFR Part 1926.

Introduction. The Occupational Safety and Health Administration (OSHA) has concluded that effective management of worker safety and health protection is a decisive factor in reducing the extent and the severity of work-related injuries and illnesses. Effective management addresses all work-related hazards, including those potential hazards which could result from a change in worksite conditions or practices. It addresses hazards whether or not they are regulated by government standards.

OSHA has reached this conclusion in the course of its evaluation of worksites in its enforcement program, its State-operated consultation program, and its Voluntary Protection Programs. These evaluations have revealed a basic relationship between effective management of worker safety and health protection and a low incidence and severity of employee injuries. Such management also correlates with the elimination or adequate control of employee exposure to toxic substances and other unhealthful conditions.

OSHA's experience in the Voluntary Protection Programs has also indicated that effective management of safety and health protection improves employee morale and productivity, as well as significantly reducing workers' compensation costs and other less obvious costs of work-related injuries and illnesses.

Through an analysis of public comment received in response to its request and through an earlier review of literature, OSHA has found that the conclusions it has reached from its own experience are supported by a substantial body of expert and practitioner opinion.

Based on this cumulative evidence that systematic management policies, procedures and practices are fundamental to the reduction of work-related injuries and illnesses and their attendant economic costs, OSHA offers the following guidelines for effective management of worker safety and health protection. OSHA urges all employers to establish and to maintain programs which meet these guidelines in a manner which addresses the specific operations and conditions of their worksites.

The Guidelines

(a) *General.* (1) Employers are advised and encouraged to institute and maintain in their establishments a program which provides systematic policies, procedures, and practices that are adequate to recognize and protect their employees from occupational safety and health hazards.

(2) An effective program includes provisions for the systematic identification, evaluation, and prevention or control of general workplace hazards, specific job hazards, and potential hazards which may arise from foreseeable conditions.

(3) Although compliance with the law, including specific OSHA standards, is an important objective, an effective program looks beyond specific requirements of law to address all hazards. It will seek to prevent injuries and illnesses, whether or not compliance is at issue.

(4) The extent to which the program is described in writing is less important than how effective it is in practice. As the size of a worksite or the complexity of a hazardous operation increases, however, the need for written guidance increases to ensure clear communication of policies and priorities and consistent and fair application of rules.

(b) *Major Elements.* An effective occupational safety and health program will include the following four elements. To implement these elements, it will include the actions described in paragraph (c).

(1) *Management commitment and employee involvement* are complementary. Management commitment provides the motivating force and the resources for organizing and controlling activities within an organization. In an effective program, management regards worker safety and health as a fundamental value of the organization and applies its commitment to safety and health protection with as much vigor as to other organizational purposes. Employee involvement provides the means through which workers develop and/or express their own commitment to safety and health protection, for themselves and for their fellow workers.

(2) *Worksite analysis* involves a variety of worksite examinations, to identify not only existing hazards but also conditions and operations in which changes might occur to create hazards. Unawareness of a hazard which stems from failure to examine the worksite is a sure sign that safety and health policies and/or practices are ineffective. Effective management actively analyzes the work and worksite, to *anticipate* and prevent harmful occurrences.

(3) *Hazard prevention and control* are triggered by a determination that a hazard or potential hazard exists. Where feasible, hazards are prevented by effective design of the job site or job. Where it is not feasible to eliminate them, they are controlled to prevent unsafe and unhealthful exposure. Elimination or control is accomplished in a timely manner, once a hazard or potential hazard is recognized.

(4) *Safety and health training* addresses the safety and health responsibilities of all personnel concerned with the site, whether salaried or hourly. It is often most effective when incorporated into other training about performance requirements and job practices. Its complexity depends on the size and complexity of the worksite, and the nature of the hazards and potential hazards at the site.

(c) *Recommended Actions.* (1) *Management Commitment and Employee Involvement.* (i) State clearly a worksite policy on safe and healthful work and working conditions, so that all personnel with responsibility at the site and personnel at other locations with responsibility for the site understand the priority of safety and health protection in relation to other organizational values.

(ii) Establish and communicate a clear goal for the safety and health program and objectives for meeting that goal, so that all members of the organization understand the results desired and the measures planned for achieving them.

(iii) Provide visible top management involvement in implementing the program, so that all will understand that management's commitment is serious.

(iv) Provide for and encourage employee involvement in the structure and operation of the program and in decisions that affect their safety and health, so that they will commit their insight and energy to achieving the safety and health program's goal and objectives.

(v) Assign and communicate responsibility for all aspects of the program, so that managers, supervisors, and employees in all parts of the organization know what performance is expected of them.

(vi) Provide adequate authority and resources to responsible parties, so that assigned responsibilities can be met.

(vii) Hold managers, supervisors, and employees accountable for meeting their responsibilities, so that essential tasks will be performed.

(viii) Review program operations at least annually to evaluate their success in meeting the goal and objectives, so that deficiencies can be identified and the program and/or the objectives can be revised when they do not meet the goal of effective safety and health protection.

(2) *Worksite Analysis.* (i) So that all hazards are identified:

(A) Conduct comprehensive baseline worksite surveys for safety and health and periodic comprehensive update surveys;

(B) Analyze planned and new facilities, processes, materials, and equipment; and

(C) Perform routine job hazard analyses.

(ii) Provide for regular site safety and health inspections, so that new or previously missed hazards and failures in hazard controls are identified.

(iii) So that employee insight and experience in safety and health protection may be utilized and employee concerns may be addressed, provide a reliable system for employees, without fear of reprisal, to notify management personnel about conditions that appear hazardous and to receive timely and appropriate responses; and encourage employees to use the system.

(iv) Provide for investigation of accidents and "near miss" incidents, so that their causes and means for their prevention are identified.

(v) Analyze injury and illness trends over time, so that patterns with common causes can be identified and prevented.

(3) *Hazard Prevention and Control.* (i) So that all current and potential hazards, however detected, are corrected or controlled in a timely manner, establish procedures for that purpose; using the following measures:

(A) Engineering techniques where feasible and appropriate;

(B) Procedures for safe work which are understood and followed by all affected parties, as a result of training, positive reinforcement, correction of unsafe performance, and, if necessary, enforcement through a clearly communicated disciplinary system;

(C) Provision of personal protective equipment; and

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(D) Administrative controls, such as reducing the duration of exposure.

(ii) Provide for facility and equipment maintenance, so that hazardous breakdown is prevented.

(iii) Plan and prepare for emergencies, and conduct training and drills as needed, so that the response of all parties to emergencies will be "second nature."

(iv) Establish a medical program which includes availability of first aid on site and of physician and emergency medical care nearby, so that harm will be minimized if an injury or illness does occur.

(4) *Safety and Health Training.* (i) Ensure that all employees understand the hazards to which they may be exposed and how to prevent harm to themselves and others from exposure to these hazards, so that employees accept and follow established safety and health protections.

(ii) So that supervisors will carry out their safety and health responsibilities effectively, ensure that they understand those responsibilities and the reasons for them, including:

(A) Analyzing the work under their supervision to identify unrecognized potential hazards;

(B) Maintaining physical protections in their work areas; and

(C) Reinforcing employee training on the nature of potential hazards in their work and on needed protective measures, through continual performance feedback and, if necessary, through enforcement of safe work practices.

(iii) Ensure that managers understand their safety and health responsibilities, as described under (c)(1), "Management Commitment and Employee Involvement," so that the managers will effectively carry out those responsibilities.

The Commentary

(Paragraph by Paragraph)

This Commentary indicates the background and rationale for each part of the guidelines. To facilitate its use, each segment of the guidelines except the Introduction is repeated just before it is discussed. The background of the Introduction immediately follows this paragraph.

Introduction

Comment on Introduction. Over the years, OSHA and State enforcement and consultation staff have seen many examples of exemplary workplaces where safety and health programs were well managed and where injury rates were exceptionally low. The common characteristics observed at these sites were the use of organized and systematic methods to assign appropriate responsibility to all managers, supervisors, and employees, to inspect regularly for and control existing and potential hazards, and to orient and train all employees in the ways and means to eliminate or avoid those hazards.

The fundamental importance of such methods has been reflected in decisions of the Occupational Safety and Health Review Commission and the U.S. Courts of Appeal, especially in cases involving an employer claim that a violative workplace condition or action resulted from unpreventable employee misconduct. Such misconduct has been recognized as a defense against citation only when an employer had a work rule prohibiting the conduct, had provided training to ensure that the rule was understood, and had supplied adequate supervision (including regular inspections and work rule enforcement) to ensure that the work rule was followed. These criteria have been applied by the courts in cases involving the citation of OSHA standards as well as the general duty clause. The implication of these cases is that an employer has the duty to establish and maintain such management practices, to the extent that they are necessary to ensure that safe and healthful working conditions are maintained and that safe and healthful work practices are followed.

OSHA has reflected its increasing recognition of the importance of effective safety and health program management by including program management requirements in standards; by recommending safety and health program improvements in conjunction with inspections; by issuing citations under the general duty clause of the Occupational Safety and Health Act of 1970 (Sec. 5(a)(1), 29 U.S.C. 654) which include safety and health management factors; by revising its State-operated consultation program to focus on the promotion of effective safety and health management; and by a range of other promotional efforts.

To further encourage employers and employees to adopt and improve existing safety and health programs, OSHA established, on July 2, 1982 (47 FR 29025), the Voluntary Protection Programs (VPP) to recognize worksites with exemplary safety and health management. The participation requirements embodied in the VPP are a distillation of the means, methods, and processes already in use at worksites where safety and health conditions are exceptionally good.

Because VPP participating worksites are officially recognized and are excluded from routine programmed OSHA inspections, the quality of the safety and health programs at these sites must be maintained as models of effectiveness. In 1988, 62 sites were participating in the VPP, and several had been in the program for five or more years. Collectively, during their participation in the VPP, these sites experienced lost-time injuries that were approximately one-fifth to one-third of the average for their industrial classifications. (Unpublished statistics, U.S. Department of Labor, OSHA, 1988.)

The fact that VPP participants have injury rates which are so much lower than their industry averages demonstrates that significant reduction is possible. It also strongly indicates that the requirements of the VPP, distilled in the management policies, procedures, and practices described in these recommended guidelines, are major means to achieve the reduction.

In addition, employers at these sites reported improved morale and productivity benefits, as well as significantly reduced workers' compensation and other costs. One plant manager found that the implementation of a single safe work practice at his 44-employee plant during the first three years of participation in the VPP resulted in a greater volume of product and a reduction in rejected product. This change alone saved $265,000 a year. (Proceedings of Public Information Gathering Meeting on Suggested Guidelines for General Safety and Health Programs, U.S. Department of Labor, OSHA, Docket No. C-02, p. 77 (October 6, 1988).)

The reduction in workers' compensation and other costs and the improvements in worksite morale and productivity reported by VPP participants reflect significant economic benefits which complement the substantial safety and health benefits of improved management of worker protection. A Business Roundtable report (*Improving Construction Safety Performance* (New York, The Business Roundtable, Report A-3, January, 1982), p. 16) concludes that, for construction, the savings from effective administration of safety and health protection is 3.2 times the cost. OSHA has no independent confirmation of this ratio nor of its relevance to industries other than construction. Based on its experience with VPP sites and the conclusions of experienced safety and health professionals, however, OSHA believes that the long-term benefits of

effective safety and health management consistently exceed its costs.

To understand this conclusion, it is essential to understand the indirect as well as the direct costs of occupational injuries and illnesses. According to commonly accepted safety management concepts as outlined by Frank E. Bird, Jr. in his *Management Guide to Loss Control* (Loganville, GA: Institute Press, 1978), for every $1 in medical or insurance compensation costs ("direct costs") for a worker injury, $5–50 more are likely to be spent on "indirect costs" to repair building, tool or equipment damage; to replace damaged products or materials; and to make up for losses from production delays and interruptions. An additional $1–3 in indirect costs will be spent for hiring and training replacements and for time to investigate the incident. Mr. Bird's figures do not consider the impact of reduced commitment to work when employees operate in a situation in which injuries are common. Because they frequently involve longer absences, the impact of job-related illnesses can be even greater.

Although economic incentives are secondary to human health and safety as motives for safety and health protection, an employer may find it useful to calculate the total (direct and indirect) costs of injuries and illnesses as a means of determining the economic benefits which might be achieved by preventing the injuries and illnesses. By determining the average cost of an injury and of an illness, the employer can estimate the incremental impact of reducing the rate of injuries and illnesses at the site and therefore the potential economic benefit of such reduction.

Some employers may wish to compare their savings or costs in relation to the national average for their industries. A method which can be used for that comparison with respect to occupational injuries is described by David R. Bell, a former OSHA employee, in his article, "Gauging Safety Outlays and Objectives," in *Occupational Hazards*, June, 1987. If the lost workday case rate (LWCR) for a site is *below* the national average, a formula provided by Bell can be used to calculate how many fewer injuries occurred than would have occurred if the site rate had equalled the national average. (Lost workday case rates are published annually by the Bureau of Labor Statistics in "Occupational Injuries and Illnesses in the United States by Industry", available from the U.S. Government Printing Office, Washington, DC 20402. The rate for each industry represents the average number of lost workday cases that occurred per 100 employees in the industry.)

The number of cases which would have occurred if the site rate had been average Bell calls "expected cases." The difference between the "expected cases" and the actual cases he calls "injuries avoided." His formula, in which "employment at the site" means the number of equivalent work-years at the site during the year, is as follows:

$$\frac{\text{Industry LWCR} \times \text{Employment at the site}}{100} = \text{Expected LWCases} - \text{Actual LWCases} = \text{Number of Injuries Avoided}$$

If the site lost workday case rate is above the national average, the number of cases by which the site exceeds the national average can be determined by subtracting "expected cases" from "actual cases," once the former number has been calculated.

By multiplying the number of "injuries avoided" or the number of injuries above the average by the average cost of an injury at the site, the employer can estimate the savings or losses which resulted from the quality of its management of safety protection relative to national performance. (Because national data on the incidence of occupational illnesses is incomplete, the formula is less useful in relation to occupational health protection.)

(a) General

"(a) *General.* (1) Employers are advised and encouraged to institute and maintain in their establishments a program which provides systematic policies, procedures, and practices that are adequate to recognize and protect their employees from occupational safety and health hazards."

Comment: In essence, this paragraph states that the end (protection of employees from occupational safety and health hazards) determines the means. The criterion for determining what is needed in a safety and health program at a particular site is: whatever feasible action it takes to protect the workers from the safety and health hazards at that specific site. The form of the safety and health program elements and implementing actions will vary at each site according to the nature of site organization and the nature of the hazards and potential hazards at the site.

"(2) An effective program includes provisions for the systematic identification, evaluation, and prevention or control of general workplace hazards, specific job hazards and potential hazards which may arise from foreseeable conditions."

Comment: Provisions for identifying and preventing hazards are *systematic.* If not, hazards or potential hazards will be missed and/or preventive controls will break down, and the chance of injury or illness will significantly increase.

General workplace hazards include such conditions as tripping hazards in walking areas and poor illumination. Specific job hazards may relate to the specific conditions in a job, such as exposure to a saw blade, or to the inherent hazardousness of an operation required in the job, such as the removal of jammed material from a point of operation. Potential hazards include such situations as the possibility of exposure to toxic chemicals as a result of a rupture of piping from the impact of a forklift.

"(3) Although compliance with the law, including specific OSHA standards, is an important objective, an effective program looks beyond specific requirements of law to address all hazards. It will seek to prevent injuries and illnesses, whether or not compliance is at issue."

Comment: OSHA and other government standards provide important guidance on the identification and control of hazards, but they are not always enough. Although compliance with the law is an important objective of and motive for an effective program, OSHA has found that the most successful programs look beyond government standards and legal requirements. They look for other sources of information about hazards, such as the National Electrical Code (NEC), the American Conference of Governmental Industrial Hygienists (ACGIH), and the American National Standards Institute (ANSI); and they use their own seasoned analytical abilities to look for and address hazards not covered by government or other standards. Their motive is to prevent injuries and illnesses and the attendant human and economic costs, whether or not compliance with the law is at issue.

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This approach is essential in view of the difficulty that regulatory agencies have in moving quickly to set standards for every possible hazard in the workplace and to revise them when new information becomes available.

"(4) The extent to which the program is described in writing is less important than how effective it is in practice. As the size of a worksite or the complexity of a hazardous operation increases, however, the need for written guidance increases to ensure clear communication of policies and priorities and consistent and fair application of rules."

Comment: OSHA recognizes that relatively simple, unwritten policies, practices, and procedures are adequate to address the hazards in many smaller or less hazardous establishments. The more complex and hazardous an operation is, the more formal (written) and complex the program will probably need to be. A written program which is revised regularly can clarify policy, create consistency and continuity in its interpretation, serve as a checkpoint whenever there is a question of priority between safety and production, and support fair and equitable enforcement of safe work rules and practices.

(b) Major Elements

"(b) *Major Elements.* An effective occupational safety and health program will include the following four elements. To implement these elements, it will include the actions described in paragraph (c).

(1) *Management commitment and employee involvement* are complementary. Management commitment provides the motivating force and the resources for organizing and controlling activities within an organization. In an effective program, management regards worker safety and health as a fundamental value of the organization and applies its commitment to safety and health protection with as much vigor as to other organizational purposes. Employee involvement provides the means through which workers develop and/or express their own commitment to safety and health protection: for themselves and for their fellow workers.

(2) *Worksite analysis* involves a variety of worksite examinations, to identify not only existing hazards but also conditions and operations in which changes might occur to create hazards. Unawareness of a hazard which stems from failure to examine the worksite is a sure sign that safety and health policies and/or practices are ineffective. Effective management actively analyzes the work and worksite, to *anticipate* and prevent harmful occurrences.

(3) *Hazard prevention and control* are triggered by a determination that a hazard or potential hazard exists. Where feasible, hazards are prevented by effective design of the job site or job. Where it is not feasible to eliminate them, they are controlled to prevent unsafe or unhealthful exposure. Elimination or control is accomplished in a timely manner, once a hazard or potential hazard is recognized.

(4) *Safety and health training* addresses the safety and health responsibilities of all personnel concerned with the site, whether salaried or hourly. It is often most effective when incorporated into other training about performance requirements and job practices. Its complexity depends on the size and complexity of the worksite, and the nature of the hazards and potential hazards at the site."

Comment: These paragraphs set forth the areas of managerial practice which are essential to effective safety and health protection. These practices, means, and methods are consistent with those used by employers to achieve other organizational objectives, such as cost control, quality, and productivity. Giving safety and health equal organizational priority in relation to these other objectives is fundamental to the protection of individual employees *and* to the effectiveness of the organization itself.

These elements consist of methods historically used to accomplish organizational objectives. They are generic in that they are generally applicable regardless of unique operations or conditions of particular firms. Only the form which they take varies. Though at points they are expressed in the terms of the "hierarchical" organizations most common in American industry (i.e., by reference to "managers," "supervisors," "employees"), they can easily be adapted to other organizational forms or styles of operation. They relate to essential concerns and activities of any organization. It is on this basis that OSHA considers them applicable in shipyard employment, marine terminals, and longshoring, as well as general industry.

(c) Recommended Actions

(c)(1) Management Commitment and Employee Involvement

Comment: Each action listed in this section represents the application to occupational safety and health of a key means for organizing, motivating and controlling activities within an organization.

"(c)(1)(i) State clearly a worksite policy on safe and healthful work and working conditions, so that all personnel with responsibility at the site and personnel at other locations with responsibility for the site understand the priority of safety and health protection in relation to other organizational values."

Comment: A statement of policy is the foundation of safety and health management. It communicates the value in which safety and health protection is held in the business organization. If it is absorbed by all in the organization, it becomes the basic point of reference for all decisions affecting safety and health. It also becomes the criterion by which the adequacy of protective actions is measured.

"(c)(1)(ii) Establish and communicate a clear goal for the safety and health program and objectives for meeting that goal, so that all members of the organization understand the results desired and the measures planned for achieving them."

Comment: A goal, and implementing objectives, make the safety and health policy more specific. Communicating them ensures that all in the organization understand the direction it is taking.

"(c)(1)(iii) Provide visible top management involvement in implementing the program, so that all will understand that management's commitment is serious."

Comment: Actions speak louder than words. If top management gives high priority to safety and health protection *in practice*, others will see and follow. If not, a written or spoken policy of high priority for safety and health will have little credibility, and others will not follow it. Plant managers who wear required personal protective equipment in work areas, perform periodic "housekeeping" inspections, and personally track performance in safety and health protection demonstrate such involvement.

"(c)(1)(iv) Provide for and encourage employee involvement in the structure and operation of the program and in decisions that affect their safety and health, so that they will commit their insight and energy to achieving the safety and health program's goal and objectives."

Comment: Since an effective program depends on commitment by employees as well as managers, it is important for their concerns to be reflected in it. An effective program includes all personnel in the organization—managers, supervisors, and others—in policy development, planning, and operations.

This does not mean transfer of responsibility to employees. The Occupational Safety and Health Act of 1970 clearly places responsibility for safety and health protection on the employer. However, employees' intimate knowledge of the jobs they perform and the special concerns they bring to the job give them a unique perspective which can be used to make the program more effective.

Employee participation may take any or all of a number of forms. For instance, the system for notifying management personnel about conditions that appear hazardous serves as a major means of

worksite analysis to identify hazards and is therefore included as paragraph (c)(2)(iii). Such a system is, however, by itself not sufficient to provide for effective employee involvement. Forms of participation which engage employees more fully in systematic prevention include (1) inspecting for hazards and recommending corrections or controls; (2) analyzing jobs to locate potential hazards and develop safe work procedures; (3) developing or revising general rules for safe work; (4) training newly hired employees in safe work procedures and rules, and/or training their co-workers in newly revised safe work procedures; (5) providing programs and presentations for safety meetings; and (6) assisting in accident investigations.

Such functions can be carried out in a number of organizational contexts. Joint labor-management committees are most common. Other means include labor safety committees, safety circle teams, rotational assignment of employees to such functions, and acceptance of employee volunteers for the functions.

Employee involvement is effective only when the employer welcomes it and provides protection from any discrimination, including unofficial harassment, to the employees involved. However, inclusion of employees in one or more of the suggested activities, or in any way that fits the individual worksite and provides an employee role that has impact on decisions about safety and health protection, will strengthen the employer's overall program of safety and health protection.

"(c)(1)(v) Assign and communicate responsibility for all aspects of the program, so that managers, supervisors, and employees in all parts of the organization know what performance is expected of them."

Comment: Assignment of responsibility for safety and health protection to a single staff member, or even a small group, will leave other members feeling that someone else is taking care of safety and health problems. *Everyone* in an organization has some responsibility for safety and health. A clear statement of that responsibility, as it relates both to organizational goals and objectives and to the specific functions of individuals, is essential. If all persons in an organization do not know what is expected of them, they are unlikely to perform as desired.

"(c)(1)(vi) Provide adequate authority and resources to responsible parties, so that assigned responsibilities can be met."

Comment: It is unreasonable to assign responsibility without providing adequate authority and resources to get the job done. For example, a person with responsibility for the safety of a piece of machinery needs the authority to shut it down and get it repaired. Needed resources may include adequately trained and equipped personnel and adequate operational and capital expenditure funds.

"(c)(1)(vii) Hold managers, supervisors, and employees accountable for meeting their responsibilities, so that essential tasks will be performed."

Comment: Stating expectations of managers, supervisors, and other employees means little if management is not serious enough to track performance, to reward it when it is competent and to correct it when it is not. Holding everyone accountable for meeting their responsibilities is at the heart of effective worker safety and health protection. If management states high expectations for such protection but pays greater attention to productivity or other values, safety and health protection will be neglected.

To be effective, a system of accountability must be applied to everyone, from senior management to hourly employees. If some are held firmly to expected performance and others are not, the system will lose its credibility. Those held to expectations will be resentful; those allowed to neglect expectations may increase their neglect. Consequently, the chance of injury and illness will increase.

"(c)(1)(viii) Review program operations at least annually to evaluate their success in meeting the goal and objectives, so that deficiencies can be identified and the program and/or the objectives can be revised when they do not meet the goal of effective safety and health protection."

Comment: A comprehensive program audit is essential periodically to evaluate the whole set of safety and health management means, methods, and processes, to ensure that they are adequate to protect against the potential hazards at the specific worksite. The audit determines whether policies and procedures are implemented as planned and whether in practice they have met the objectives set for the program. It also determines whether the objectives provide sufficient challenge to lead the organization to meet the program goal of effective safety and health protection. When either performance or the objectives themselves are found inadequate, revisions are made. Without such a comprehensive review, program flaws and their interrelationship may not be caught and corrected.

(c)(2) Worksite Analysis

Comment: The identification of hazards and potential hazards at a worksite requires an active, on-going examination and analysis of work processes and working conditions. Because many hazards are by nature difficult to recognize, effective examination and analysis will approach the work and working conditions from several perspectives. Each of the activities recommended in this paragraph represents a different perspective.

The recognition of hazards which could result from changes in work practices or conditions requires especially thorough observation and thought, both from those who perform the work and those who are specially trained for that purpose. Since such divergence from the routine and familiar is often the occasion for injuries and health hazard exposures to occur, the anticipation of such changes is critical.

Identification at a worksite of those safety and health hazards which are recognized in its industry is a critical foundation for safety and health protection. It is the general duty of the employer under the Occupational Safety and Health Act of 1970. Successful employers will actively seek the benefit of the experience of others in their industry, through trade associations, equipment manufacturers, and other sources.

An effective program does not stop at this point, however. It continually reviews working conditions and operations to identify hazards which have not previously been recognized in the industry.

Implicit in the provision for the surveys, reviews, and analyses recommended in this section is the need for employers to seek competent advice and assistance when they lack needed expertise and to use appropriate means and methods to examine and assess all existing and foreseeable hazards. Personnel who perform comprehensive baseline and update surveys, analysis of new facilities, processes, procedures, and equipment, and job hazard analyses may require greater expertise than those who conduct routine inspections, since the former are conducting a broader and/or deeper review.

Personnel performing regular inspections should, however, possess a degree of experience and competence adequate to recognize hazards in the areas they review and to identify reasonable means for their correction or control. Such competence should normally be expected of ordinary employees who are capable of safely supervising or performing the operations of the specific workplace. Smaller businesses which need assistance in the development of such competence can

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receive free assistance from a number of sources, including OSHA and a nationwide network of OSHA-funded, State-operated consultation projects.

"(c)(2)(i) So that all hazards and potential hazards are identified:

(A) conduct comprehensive baseline worksite surveys for safety and health and periodic comprehensive update surveys;

(B) analyze planned and new facilities, processes, materials, and equipment; and

(C) perform routine job hazard analyses."

Comment: A comprehensive baseline survey of the work and working conditions at a site permits a systematic recording of those hazards and potential hazards which can be recognized without intensive analysis. This baseline record provides a checklist for the more frequent routine inspections recommended in paragraph (c)(2)(ii). With those hazards under control, attention can be given to the intensive analysis required to recognize less obvious hazards.

Subsequent comprehensive surveys provide an opportunity to step back from the routine check on control of previously recognized hazards and look for others. With the baseline established, these subsequent reviews are one occasion for focusing more intensive analysis in areas with the highest potential for new or less obvious hazards. The frequency with which comprehensive examinations are needed depends on the complexity, hazardousness, and changeability of the worksite. Many successful worksites conduct such reviews on an annual or biannual basis.

Analysis of new facilities, processes, materials, and equipment in the course of their design and early use (sometimes called "change analysis") provides a check against the introduction of new hazards with them. Effective management ensures the conduct of such analyses during the planning phase, just before their first use, and during the early phases of their use. Numerous specific OSHA standards require inspection of particular equipment, conditions, and activities as a safety precaution prior to operation or use. This guideline makes clear that, in effective safety and health programs, this generally recognized inspection practice is applied more broadly to all conditions and activities.

Job hazard analysis is an important tool for more intensive analysis to identify hazards and potential hazards not previously recognized, and to determine protective measures. Through more careful attention to the work processes in a particular job, analysts can recognize new points at which exposure to hazards may occur or at which foreseeable changes in practice or conditions could result in new hazards.

"(c)(2)(ii) Provide for regular site safety and health inspections, so that new or previously missed hazards and failures in hazard controls are identified."

Comment: Once a comprehensive examination of the workplace has been conducted and hazard controls have been established, routine site safety and health inspections are necessary to ensure that changes in conditions and activities do not create new hazards and that hazard controls remain in place and are effective. Routine industrial hygiene monitoring and sampling are essential components of such inspections in many workplaces.

Personnel conducting these inspections also look out for new or previously unrecognized hazards, but not as thoroughly as those conducting comprehensive surveys.

The frequency and scope of these "routine" inspections depends on the nature and severity of the hazards which could be present and the relative stability and complexity of worksite operations.

"(c)(2)(iii) So that employee insight and experience in safety and health protection may be utilized and employee concerns may be addressed, provide a reliable system for employees, without fear of reprisal, to notify management personnel about conditions that appear hazardous and to receive timely and appropriate responses; and encourage employees to use the system."

Comment: A reliable system for employees to notify management of conditions or practices that appear hazardous and to receive a timely and appropriate response serves a dual purpose. It gives management the benefit of many more points of observation and more experienced insight in recognizing hazards or other symptoms of breakdown in safety and health protection systems. It also gives employees assurance that their investment in safety and health is worthwhile.

A system is reliable only if it ensures employees a credible and timely response. The response will include both timely action to address any problems identified and a timely explanation of why particular actions were or were not taken.

Since the employer benefits from employee notices, effective management will not only guard against reprisals to avoid discouraging them but will take positive steps to encourage their submission.

"(c)(2)(iv) Provide for investigation of accidents and 'near miss' incidents, so that their causes and means for preventing repetitions are identified."

Comment: Accidents, and incidents in which employees narrowly escape injury, clearly expose hazards. Analysis to identify their causes permits development of measures to prevent future injury or illness. Although a first look may suggest that "employee error" is a major factor, it is rarely sufficient to stop there. Even when an employee has disobeyed a required work practice, it is critical to ask, "Why?" A thorough analysis will generally reveal a number of deeper factors, which permitted or even encouraged an employee's action. Such factors may include a supervisor's allowing or pressuring the employee to take short cuts in the interest of production, inadequate equipment, or a work practice which is difficult for the employee to carry out safely. An effective analysis will identify actions to address each of the causal factors in an accident or "near miss" incident.

"(c)(2)(v) Analyze injury and illness trends over time, so that patterns with common causes can be identified and prevented."

Comment: A review of injury experience over a period of time may reveal patterns of injury with common causes which can be addressed. Correlation of changes in injury experience with changes in safety and health program operations, personnel, and production processes may help to identify causes.

(c)(3) Hazard Prevention and Control

Comment: Effective management prevents or controls identified hazards and prepares to minimize the harm from job-related injuries and illnesses when they do occur.

"(c)(3)(i) So that all current and potential hazards, however detected, are corrected or controlled in a timely manner, establish procedures for that purpose, using the following measures:

(A) engineering techniques where feasible and appropriate;

(B) procedures for safe work which are understood and followed by all affected parties, as a result of training, positive reinforcement, correction of unsafe performance, and, if necessary, enforcement through a clearly communicated disciplinary system;

(C) provision of personal protective equipment; and

(D) administrative controls, such as reducing the duration of exposure."

Comment: Hazards, once recognized, are promptly prevented or controlled. Management action in this respect determines the credibility of its safety and health management policy and the usefulness of its entire program.

An effective program relies on the means for prevention or control which provides the best feasible protection of employee safety and health. It regards legal requirements as a minimum. When there are alternative ways to address a hazard, effective managers have found that involving employees in discussions of methods can identify useful prevention and control measures, serve as a means for communicating the rationale for decisions made, and encourage employee acceptance of the decisions.

When safe work procedures are the means of protection, ensuring that they are followed becomes critical. Ensuring safe work practices involves discipline in both a positive sense and a corrective sense. Every component of effective safety and health management is designed to create a disciplined environment in which all personnel act on the basis that worker safety and health protection is a fundamental value of the organization. Such an environment depends on the credibility of management's commitment to safety and health protection, through evidences of direct management involvement in safety and health matters, inclusion of employees in decisions which affect their safety and health, rigorous worksite analysis to identify hazards and potential hazards, stringent prevention and control measures, and thorough training. In such an environment, all personnel will understand the hazards to which they are exposed, why the hazards pose a threat, and how to protect themselves and others from the hazards. Training for the purpose is reinforced by encouragement of attempts to work safely and by positive recognition of safe behavior.

If, in such a context, an employee, supervisor, or manager fails to follow a safe procedure, it is advisable not only to stop the unsafe action but also to determine whether some condition of the work has made it difficult to follow the procedure or whether some management system has failed to communicate the danger of the action and the means for avoiding it. If the unsafe action was not based on an external condition or a lack of understanding, or if, after such external condition or lack of understanding has been corrected, the person repeats the action, it is essential that corrective discipline be applied. To allow an unsafe action to continue not only continues to endanger the actor and perhaps others; it also undermines the positive discipline of the entire safety and health program. To be effective, corrective discipline must be applied consistently to all, regardless of role or rank; but it must be applied.

Factors which may affect the time required for correction of hazards include: (1) The complexity of abatement technology; (2) the degree of risk; and (3) the availability of necessary equipment, materials, and staff qualified to complete the correction. Because conditions affecting hazard correction and control vary widely, it is impractical for OSHA to recommend specific time limits for all situations. An effective program corrects hazards in the shortest time permitted by the technology required and the availability of needed personnel and materials. It also provides for interim protection when immediate correction is not possible.

"(c)(3)(ii) Provide for facility and equipment maintenance, so that hazardous breakdown is prevented."

Comment: Maintenance of equipment and facilities in an especially important means of anticipating potential hazards and preventing their development. Planning, scheduling, and tracking preventive maintenance activities provides a systematic way of ensuring that they are not neglected.

"(c)(3)(iii) Plan and prepare for emergencies, and conduct training and drills as needed, so that the response of all parties to emergencies will be 'second nature.' "

Comment: Planning and training for emergencies is essential in minimizing the harmful consequences of an accident or other threat if it does occur. If personnel are not so thoroughly trained to react to emergencies that their responses are immediate and precise, they may expose themselves and others to greater danger rather than reduce their exposure. The nature of potential emergencies depends on the nature of site operations and its geographical location. The extent to which training and drills are needed depends on the severity and complexity of the emergencies which may arise.

"(c)(3)(iv) Establish a medical program which includes availability of first aid on site and of physician and emergency medical care nearby, so that harm will be minimized if an injury or illness does occur."

Comment: The availability of first aid and emergency medical care are essential in minimizing the harmful consequences of injuries and illnesses if they do occur. The nature of services needed will depend on the seriousness of injuries or health hazard exposures which may occur. Minimum requirements are addressed in OSHA standards.

(c)(4) Safety and Health Training

Comment: Education and training are essential means for communicating practical understanding of the requirements of effective safety and health protection to all personnel. Without such understanding, managers, supervisors, and other employees will not perform their responsibilities for safety and health protection effectively.

It is not suggested that elaborate or formal training programs solely related to safety and health are always needed. Integrating consideration of safety and health protection into all organizational activities is the key to its effectiveness. Safety and health information and instruction is, therefore, often most effective when incorporated into other training about performance requirements and job practices, such as management training on performance evaluation, problem solving, or managing change; supervisors' training on the reinforcement of good work practices and the correction of poor ones; and employee training on the operation of a particular machine or the conduct of a specific task.

Each paragraph in this section recommends that the employer *ensure understanding* of safety and health information by employees, supervisors, and managers. The act of training itself is not sufficient to ensure practical comprehension. Some means of verifying comprehension is essential. Formal testing, oral questioning, observation, and other means can be useful. In its Voluntary Protection Programs, OSHA has found that observing and interviewing employees, supervisors, and managers are the most effective measures for determining their understanding of what is expected of them in practice. Although there is no fully reliable means for ensuring understanding, effective safety and health management will apply the same diligence with respect to safety and health protection as is applied to ensuring an understanding of other operational requirements, such as time and attendance, production schedules, and job skills.

"(c)(4)(i) Ensure that all employees understand the hazards to which they may be exposed and how to prevent harm to themselves and others from exposure to these hazards, so that employees accept and follow established safety and health protections."

Comment: The commitment and cooperation of employees in preventing and controlling exposure to hazards is critical, not only for their own safety and health but for that of others as well. That commitment and cooperation

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depends on their understanding what hazards they may be exposed to, why the hazards pose a threat, and how they can protect themselves and others from the hazards. The means of protection which they need to understand include not only the immediate protections from hazards in their work processes and locations, but also the management systems which commit the organization to safety and health protection and provide for employee involvement in hazard identification and prevention.

OSHA's Hazard Communication Standard specifies, for chemical hazards, an employer duty to inform employees about workplace hazards and to provide training that will enable them to avoid work-related injuries or illnesses. Other standards set forth training requirements, as summarized in OSHA Publication 2254, "Training Requirements in OSHA Standards and Training Guidelines." The rationale for these standards requirements is, however, applicable in relation to all hazards.

Education and training in safety and health protection is especially critical for employees who are assuming new duties. This fact is reflected by the disproportionately high injury rates among workers newly assigned to work tasks. Although some of these injuries may be attributable to other causes, a substantial number are directly related to inadequate knowledge of job hazards and safe work practices. The Bureau of Labor Statistics reports that in 1979, 48 percent of workers injured had been on the job less than one year. ("The New Worker Factor Associated with Occupational Injuries and Illnesses," U.S. Department of Labor, Bureau of Labor Statistics, 1982.) These figures make clear the importance of training employees on job hazards and safe work practices *before* they assume new duties.

The extent of hazard information which is needed by employees will vary, but includes at least: (1) The general hazards and safety rules of the worksite; (2) specific hazards, safety rules, and practices related to particular work assignments; and (3) the employee's role in emergency situations. Such information and training is particularly relevant to hazards that may not be readily apparent to, or within the ordinary experience and knowledge of, the employee.

"(c)(4)(ii) So that supervisors will carry out their safety and health responsibilities effectively, ensure that they understand those responsibilities and the reasons for them, including:

(A) analyzing the work under their supervision to identify unrecognized potential hazards;

(B) maintaining physical protections in their work areas; and

(C) reinforcing employee training on the nature of potential hazards in their work and on needed protective measures, through continual performance feedback and, if necessary, through enforcement of safe work practices."

Comment: First-line supervisors have an especially critical role in safety and health protection because of their immediate responsibility for workers and for the work being performed. Effective training of supervisors will address their safety and health management responsibilities as well as information on hazards, hazard prevention, and response to emergencies. Although they may have other safety and health responsibilities, those listed in these guidelines merit particular attention.

"(c)(4)(iii) Ensure that managers understand their safety and health responsibilities, as described under (c)(1), "Management Commitment and Employee Involvement," so that the managers will effectively carry out those responsibilities."

Comment: Because there is a tendency in some businesses to consider safety and health a staff function and to neglect the training of managers in safety and health responsibilities, the importance of managerial training is noted separately. Managers who understand both the way and the extent to which effective safety and health protection impacts on the overall effectiveness of the business itself are far more likely to ensure that the necessary safety and health management systems operate as needed.

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Part III

Environmental Protection Agency

40 CFR Parts 373 and 374

Superfund Programs; Regulations Governing Citizen Suits; Proposed Rules

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 373 and 374

[FRL-3430-3]

Superfund Programs; Regulations Governing Citizen Suits

AGENCY: Environmental Protection Agency.

ACTION: Proposed rules.

SUMMARY: The Environmental Protection Agency (EPA) is today publishing two proposed rules prescribing the manner in which notice of citizen suits is to be provided as required by section 310 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9659, as amended by the Superfund Amendments and Reauthorization Act (SARA) of 1986, Pub. L. No. 99-499, and Section 326 of the Emergency Planning and Community Right-To-Know Act (Title III of SARA), 42 U.S.C. 11046, Pub. L. No. 99-499. The rules prescribe the manner of service of the notice, the contents of the notice, and the timing of the notice. EPA is taking this action in response to provisions in Title III of SARA and amendments to CERCLA made by SARA, which authorize persons to commence citizen suits under CERCLA and Title III of SARA after providing notice in the manner prescribed by regulations.

DATES: Comments on these proposed rules must be submitted on or before February 27, 1989. Persons may use these proposed rules as guidance for providing such notice prior to the date they become effective on a final basis.

ADDRESS: Persons may mail comments on these rules to Belinda Holmes, Office of Enforcement and Compliance Monitoring, Hazardous Waste Division (LE-134S), Room 3219, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Persons may inspect comments at that address.

FOR FURTHER INFORMATION CONTACT: Belinda Holmes, Office of Enforcement and Compliance Monitoring, Hazardous Waste Division (LE-134S), U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, 202-382-2880.

Authority: EPA publishes these rules pursuant to Section 310 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9659, as amended by the Superfund Amendments and Reauthorization Act (SARA) of 1986, Pub. L. No. 99-499, and Section 326 of the Emergency Planning and Community Right-to-Know Act (Title III of SARA), 42 U.S.C. 11046.

SUPPLEMENTARY INFORMATION: Section 310 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9659, as amended by the Superfund Amendments and Reauthorization Act (SARA) of 1986, Pub. L. No. 99-499, and Section 326 of the Emergency Planning and Community Right-To-Know Act (Title III of SARA), 42 U.S.C. 11046, authorize citizen suits against violators of those statutes and against the Administrator of EPA or other federal and state officials for failing to perform specified duties. Both section 310 of CERCLA and section 326 of Title III of SARA require the persons intending to file an action to provide notice 60 days prior to filing the action in the manner specified by regulation. The regulations proposed today prescribe the manner in which the notice is to be provided.

Today EPA is publishing two separate proposed rules. One rule prescribes the manner in which notice is to be provided for citizen suits under CERCLA; the other rule prescribes the manner in which notice is to be provided for citizen suits under Title III of SARA.

Statutory Requirements

CERCLA: Section 310 of CERCLA authorizes any person to commence a civil action on his or her own behalf against: (1) Any person (including the United States or other governing agency) who is alleged to be in violation of any standard, regulation, condition, requirement, or order which has become effective under CERCLA (including any provision of an agreement under section 120, relating to Federal facilities); or (2) the President or other officer of the United States (including the Administrator of EPA or the Administrator of the Agency on Toxic Substances and Disease Registry) for an alleged failure to perform any act or duty which is not discretionary under CERCLA. For actions against a violator of CERCLA, the plaintiff must provide notice to the United States, the State, and the violator 60 days prior to commencing such action. For actions against an officer of the United States for failing to perform a nondiscretionary duty, the plaintiff must provide notice to the United States 60 days prior to commencing such action. Section 310(d) and section 310(e) of CERCLA authorize the President to promulgate these regulations; the President has delegated that authority to the Administrator of EPA. *See* section 6(d) of Executive Order 12580 of January 23, 1987, 52 FR 2923 (Jan. 29, 1987).

Section 113(1) of CERCLA provides that in any action filed under CERCLA in a United States court, including actions under section 310, the plaintiff (if not the United States) must provide a copy of the complaint to the Attorney General of the United States and to the Administrator of EPA.

Title III of SARA: Section 326(a)(1) of Title III of SARA authorizes any person to commence a civil action on his or her own behalf for specified violations of Title III of SARA against the following persons:

(1) An owner or operator of a facility for failing to: (A) Submit a followup emergency notice under section 304(c), (B) submit a material safety data sheet or a list under section 311(a), (C) complete and submit an inventory form under section 312(a) containing tier I information as described in section 312(d)(1), or (D) complete and submit a toxic chemical release form under section 313(a) (section 326(a)(1)(A));

(2) The Administrator of EPA for failing to (A) publish inventory forms under section 312(g), (B) respond to a petition to add or delete a chemical under section 313(e)(1) within 180 days after receipt of the petition, (C) publish a toxic chemical release form under section 313(g), (D) establish a computer data base in accordance with section 313(j), (E) promulgate trade secret regulations under section 322(c), or (F) render a decision in response to a petition under section 322(d) within 9 months after receipt of the petition (section 326(a)(1)(B)); or

(3) The Administrator of EPA, a state governor, or a state emergency response commission for failing to provide a mechanism for public availability of information in accordance with section 324(a) (section 326(a)(1)(C)).

For those citizens actions under section 326(a)(1)(A) of Title III of SARA against an owner or operator of a facility, the plaintiff must provide notice to the Administrator of EPA, the state in which the alleged violation occurs, and the alleged violator 60 days prior to commencing the action. For those citizen actions under sections 326(a)(1)(B) and 326(a)(1)(C) against the Administrator of EPA, the state governor, or the state emergency response commission, the plaintiff must provide notice to the Administrator of EPA, the state governor, or the state emergency response commission (as the case may be) 60 days prior to commencing the action. Section 326(d) of Title III of SARA authorizes the Administrator of EPA to promulgate these regulations prescribing the manner in which notice shall be given under section 326(a).

Section 326(a)(1)(D) also provides for actions by any person against a state governor or a state emergency response commission for failure to respond to a request for tier II information under section 312(e)(3) within 120 days after the date of receipt of the request. In addition, section 326(a)(2) authorizes state or local governments to commence certain actions:

(1) Any state or local government may commence an action against an owner or operator of a facility for failing to (A) provide notification to the emergency response commission in the state under section 302(c), (B) submit a material safety data sheet or a list under section 311(a), (C) make available information requested under section 311(c), or (D) prepare and submit an inventory form under section 312(a) containing tier I information;

(2) Any state emergency response commission or local emergency planning committee may commence an action against an owner or operator of a facility for failing to provide information under section 303(d) or for failing to submit tier II information under section 312(e)(1); or

(3) Any state may commence an action against the Administrator of EPA for failing to provide information to the State under section 322(g).

Plaintiffs in actions under sections 326(a)(1)(D) and 326(b)(2) are not required to provide notice of such actions to the United States. Neither of the rules proposed today apply to actions commenced under sections 326(a)(1)(D) or 326(a)(2).

Proposed Rules

These proposed rules prescribe the manner in which the notice is to be provided for civil actions under section 310 of CERCLA and section 326 of Title III of SARA. The rules describe the manner in which the notice is to be served, the contents of the notice, and the timing of the notice.

Section 310 of CERCLA provides that notice is to be provided to the President, as well as the state and the alleged violator. The President has delegated most authority under CERCLA to several agencies, primarily to the Administrator of EPA (who has delegated some authority to the Regional Administrators). *See* Executive Order 12580 of January 23, 1987, 52 FR 2923 (Jan. 29, 1987). Therefore, EPA proposes in the rule that notice be provided to the head of the agency with delegated authority over the provision of CERCLA violated instead of to the President. The notice must be provided to the Administrator and appropriate Regional Administrator of EPA if EPA has authority over the provision of CERCLA violated. If another agency has authority concerning the provision violated, the notice must be provided to the head of that agency.

Section 326 of Title III of SARA provides that notice is to be provided to the Administrator, as well as the state and the alleged violator. EPA proposes in the rule that notice be provided to the Administrator and appropriate Regional Administrator of EPA (or to other appropriate agency officer) because the Administrator has delegated some authority under Title III to the Regional Administrators. For purposes of Title III of SARA, EPA recognizes Indian tribes to have the same status as state governors and in some locations, the Indian tribe may be a member of the local emergency planning committees. Therefore, if the violation involves an Indian tribe on an Indian reservation, the rule provides that notice should be provided to the Chief Executive Officer of the Indian tribe, or other appropriate tribal official recognized by the Bureau of Indian Affairs of the Department of the Interior. EPA proposes in both rules that the notice include information about the proposed action so that EPA will have a basis to determine whether intervention or other action by the United States, as authorized by Section 310 and Section 326, is appropriate based on the matters at issue and considerations of optimal use of Agency resources. For convenience, the rules provide a list of addresses that will be frequently used in providing notice of citizen suits.

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 through 612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment, a regulatory flexibility analysis which describes the impact of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities. In such circumstances, a regulatory flexibility analysis is not required. The overall economic impact of these rules on small entities is small because they are procedural rules only. Accordingly, I hereby certify that these regulations will not have a significant impact on a substantial number of small entities. These regulations, therefore, do not require a regulatory flexibility analysis.

E.O. 12291

Under Executive Order 12291, the agency must judge whether a regulation is "major" and thus subject to the requirement to prepare a Regulatory Impact Analysis. The notice published today is not major because the rule will not result in an effect on the economy of $100 million or more, will not result in increased costs or prices, will not have significant adverse effects on competition, employment, investment, productivity, and innovation, and will not significantly disrupt domestic or export markets. Therefore, the Agency has not prepared a Regulatory Impact Analysis under the Executive Order.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order No. 12291.

Paperwork Reduction Act

This proposed rule does not contain any information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Parts 373 and 374

Environmental protection, Extremely hazardous substances, Hazardous substances, Hazardous wastes, Intergovernmental relations, Notice requirements, Natural resources, Superfund, Title III.

Dated: January 13, 1989.

Lee M. Thomas,

Administrator.

For the reasons set out in the preamble, and under authority of Section 310 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9659, Section 326 of the Emergency Planning and Community Right-To-Know Act (Title III of the Superfund Amendments and Reauthorization Act), 42 U.S.C. 11046, and Executive Order 12580, 40 CFR is proposed to be amended by adding parts 373 and 374 as follows:

PARTS 373—PRIOR NOTICE OF CITIZEN SUITS

Sec.

373.1 Purpose.
373.2 Service of notice.
373.3 Contents of notice.
373.4 Timing of notice.
373.5 Copy of complaint.
373.6 Addresses.

Authority: Sec. 310, Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9659.

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§ 373.1 Purpose.

Section 310 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended by the Superfund Amendments and Reauthorization Act of 1986, authorizes civil action by any person to enforce the Act. These civil actions may be brought against any person (including the United States, and any other governmental instrumentality or agency, to the extent permitted by the Eleventh Amendment to the Constitution), where there is alleged to be any violation of any standard, regulation, condition, requirement, or order which has become effective pursuant to the Act (including any provision of an agreement under section 120, relating to Federal facilities); and against the President or any other officer of the United States (including the Administrator of the Environmental Protection Agency and the Administrator of the Agency for Toxic Substances and Disease Registry) where there is alleged a failure to perform any act or duty under this Act, including an act or duty under section 120 (relating to Federal facilities), but not including any act or duty under section 311 (relating to research, development, and demonstration). These civil actions under section 310 are to be filed in accordance with the rules of the district court in which the action is instituted. The purpose of this part is to prescribe procedures governing the notice requirements of subsections (d) and (e) of section 310 as a prerequisite to the commencement of such actions.

§ 373.2 Service of notice.

(a) *Violation of standard, regulation, condition, requirement, or order.* Notice of intent to file suit under subsection 310(a)(1) of the Act shall be served by registered mail, return receipt requested, addressed to, or by personal service upon, an alleged violator of any standard, regulation, condition, requirement, or order which has become effective pursuant to this Act in the following manner:

(1) If the alleged violator is a private individual or corporation, notice shall be served upon the person alleged to be in violation. A copy of the notice shall be mailed to the head of the authorized Federal agency (if the authorized agency is the Environmental Protection Agency then to the Administrator of the Environmental Protection Agency and the Regional Administrator of the Environmental Protection Agency for the Region in which the violation is alleged to have occurred) and the Attorney General of the State in which the violation is alleged to have occurred. If the alleged violator is a corporation, a copy of the notice shall also be mailed to the registered agent, if any, of that corporation in the State in which such violation is alleged to have occurred.

(2) If the alleged violator is a State or local agency, notice shall be served upon the head of that agency. A copy of the notice shall be mailed to the Attorney General of the State in which the violation is alleged to have occurred and the head of the authorized Federal agency (if the authorized agency is the Environmental Protection Agency then to the Administrator of the Environmental Protection Agency and the Regional Administrator of the Environmental Protection Agency for the Region in which the violation is alleged to have occurred).

(3) If the alleged violator is a Federal agency, notice shall be served upon the head of the agency. A copy of the notice shall be mailed to the head of the authorized Federal agency (if the authorized agency is the Environmental Protection Agency, then to the Administrator of the Environmental Protection Agency and to the Regional Administrator of the Environmental Protection Agency for the Region in which the violation is alleged to have occurred) and the Attorney General of the State in which the violation is alleged to have occurred.

(b) *Failure to act.* Service of notice of intent to file suit under subsection 310(a)(2) of the Act shall be accomplished by registered mail, return receipt requested, addressed to, or by personal service upon, the appropriate officer of the agency of the United States (including the Environmental Protection Agency or the Administrator of the Agency for Toxic Substances and Disease Registry).

(c) Notice given in accordance with the provisions of this part shall be considered to have been served on the date of receipt. If service was accomplished by mail, the date of receipt will be considered to be the date noted on the return receipt card.

§ 373.3 Contents of notice.

(a) *Violation of standard, regulation, condition, requirement, or order.* Notice regarding an alleged violation of a standard, regulation, condition, requirement, or order (including any provision of an agreement under section 120, relating to Federal facilities) which has become effective under this Act shall include sufficient information to allow the recipient to identify the specific standard, regulation, condition, requirement, or order (including any provision of an agreement under section 120, relating to Federal facilities) which has allegedly been violated, the activity alleged to constitute a violation, the name and address of the site-facility, if known, the person or persons responsible for the alleged violation, the date or dates of the violation, and the full name, address, and telephone number of the person giving notice.

(b) *Failure to act.* Notice regarding an alleged failure of the President or other officer of the United States to perform an act or duty which is not discretionary under the Act shall identify the provisions of the Act which require such act or create such duty, shall describe with reasonable specificity the action taken or not taken by the President or other officer which is claimed to constitute a failure to perform the act or duty, shall identify the Agency and name and title of the Officers failing to perform the act or duty, and shall state the full name, address, and telephone number of the person giving the notice.

(c) *Identification of counsel.* The notice shall state the name, address, and telephone number of the legal counsel, if any, representing the person giving the notice.

§ 373.4 Timing of notice.

(a) *Violation of standard, regulation, condition, requirement, or order.* No action may be commenced under subsection 310(a)(1) of the Act before 60 days after the plaintiff has given notice of the violation as specified in this part. No action may be commenced under subsection 310(a)(1) of the Act if the President or his or her delegate has commenced and is diligently prosecuting an action under the Act or under the Solid Waste Disposal Act, 42 U.S.C. 6901 *et seq.*, to require compliance with the standard, regulation, condition, requirement, or order concerned (including any provision of an agreement under section 120).

(b) *Failure to act.* No action may be commenced under subsection 310(a)(2) of the Act before 60 days after the plaintiff has given notice of the failure to act as specified in this part.

§ 373.5 Copy of complaint.

At the time of filing an action under this Act, the plaintiff, if other than the United States, must provide a copy of the complaint to the Attorney General of the United States and to the Administrator of the Environmental Protection Agency.

§ 373.6 Addresses.

Administrator, U.S. Environmental Protection Agency, 401 M Street, SW. (A-100), Washington, DC 20460
Regional Administrator, Region I, U.S. Environmental Protection Agency, John F. Kennedy Building, Room 2203, Boston, MA 02203
Regional Administrator, Region II, U.S. Environmental Protection Agency, 26 Federal Plaza, Room 930, New York, NY 10278
Regional Administrator, Region III, U.S. Environmental Protection Agency, 841 Chestnut Street, Philadelphia, PA 19107
Regional Administrator, Region IV, U.S. Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, GA 30365
Regional Administrator, Region V, U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, IL 60604
Regional Administrator, Region VI, U.S. Environmental Protection Agency, 1445 Ross Avenue, 12th Floor, Suite 1200, Dallas, TX 75202-2733
Regional Administrator, Region VII, U.S. Environmental Protection Agency, 726 Minnesota Avenue, Kansas City, KS 66101
Regional Administrator, Region VIII, U.S. Environmental Protection Agency, 999 18th Street, Suite 500, Denver, CO 80202-2405
Regional Administrator, Region IX, U.S. Environmental Protection Agency, 215 Fremont Street, San Francisco, CA 94105
Regional Administrator, Region X, U.S. Environmental Protection Agency, 1200 Sixth Avenue, Seattle, WA 98101
Administrator, Agency for Toxic Substances and Disease Registry, Center for Disease Control, 200 Independence Avenue, SW., Washington, DC 20201

PART 374—PRIOR NOTICE OF CITIZEN SUITS

Sec.
374.1 Purpose.
374.2 Service of notice.
374.3 Contents of notice.
374.4 Timing of notice.
374.5 Addresses.

Authority: Sec. 326, Emergency Planning and Community Right-to-Know Act (Title III of the Superfund Amendments and Reauthorization Act), 42 U.S.C. 11046.

§ 374.1 Purpose.

(a) The purpose of this part is to prescribe procedures governing the notice requirements of subsection (d) of section 326 of the Emergency Planning and Community Right-to-Know Act (Title III of the Superfund Amendments and Reauthorization Act) as a prerequisite to the commencement of such actions.

(b) *Citizen suits.* Section 326 of the Act authorizes civil action by any person to enforce the Act. These civil actions may be brought against the following:

(1) An owner or operator of a facility for failing to—

(i) Submit a followup emergency notice under section 304(c),

(ii) Submit a material safety data sheet or a list under section 311(a),

(iii) Complete and submit an inventory form under section 312(a) containing tier I information as described in section 312(d)(1), or

(iv) Complete and submit a toxic chemical release form under section 313(a);

(2) The Administrator of the Environmental Protection Agency for failing to—

(i) Publish inventory forms under section 312(g),

(ii) Respond to a petition to add or delete a chemical under section 313(e)(1) within 180 days after receipt of the petition,

(iii) Publish a toxic chemical release form under section 313(g),

(iv) Establish a computer database in accordance with section 313(j),

(v) Promulgate trade secret regulations under section 322(c), or

(vi) Render a decision in response to a petition under section 322(d) within 9 months after receipt of the petition; or

(3) The Administrator of the Environmental Protection Agency, a State Governor, or a State emergency response commission, for failing to provide a mechanism for public availability of information in accordance with section 324(a).

§ 374.2 Service of notice.

(a) *Owner or operator.* Notice of intent to file suit under subsection 326(a)(1)(A) of the Act shall be served by registered mail, return receipt requested, addressed to, or by personal service upon the Administrator of the Environmental Protection Agency, the State in which the alleged violation occurred, and the alleged violator in the following manner:

(1) If the alleged violator is a private individual or corporation, notice shall be served upon the owner or operator of the facility alleged to be in violation. A copy of the notice shall be mailed to the Administrator of the Environmental Protection Agency, the Regional Administrator of the Environmental Protection Agency for the Region in which the violation is alleged to have occurred, and the Governor for the State in which the violation is alleged to have occurred. If the alleged violator is a corporation, a copy of the notice shall also be mailed to the registered agent, if any, of that corporation in the State in which such violation is alleged to have occurred.

(2) If the alleged violator is a State or local agency, notice shall be served upon the head of that agency. A copy of the notice shall be mailed to the Governor for the State in which the violation is alleged to have occurred, the Administrator of the Environmental Protection Agency, and the Regional Administrator of the Environmental Protection Agency for the Region in which the violation is alleged to have occurred.

(3) If the alleged violator is a Federal agency, notice shall be served upon the head of the agency. A copy of the notice shall be mailed to the Administrator of the Environmental Protection Agency, the Regional Administrator of the Environmental Protection Agency for the Region in which the violation is alleged to have occurred, and the Governor for the State in which the violation is alleged to have occurred.

(b) *Failure to act.* Service of notice of intent to file suit under subsections 326(a)(1)(B) or (a)(1)(C) of the Act shall be accomplished by registered mail, return receipt requested, addressed to, or by personal service upon, the Administrator of the Environmental Protection Agency, the State Governor, or the State emergency response commission (as the case may be).

(c) If the alleged violation or failure to act involves an Indian tribe, an Indian reservation, or an Indian tribe in its capacity as a local emergency planning committee, notice should be served on the Chief Executive Officer of the Indian tribe, or other appropriate tribal official, recognized by the Bureau of Indian Affairs of the United States Department of the Interior.

(d) Notice given in accordance with the provisions of this part shall be considered to have been served on the date of receipt. If service was accomplished by mail, the date of receipt will be considered to be the date noted on the return receipt card.

§ 374.3 Contents of notice.

(a) *Owner or operator.* Notice regarding an alleged violation under subsection 326(a)(1)(A) shall include sufficient information to allow the recipient to identify the specific requirement which has allegedly been violated, the activity alleged to constitute a violation, the person or persons responsible for the alleged violation, the date or dates of the violation, the name and address of the site, and the full name, address, and telephone number of the person giving notice.

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(b) *Administrator or State.* Notice regarding an alleged failure by the Administrator of the Environmental Protection Agency, a State Governor, or a State emergency response commission, to perform certain actions specified in subsections 326 (a)(1)(B) or (a)(1)(C) of the Act shall identify the provisions of the Act which require such action, shall describe with reasonable specificity the action not performed, shall identify the agency and name and title of the officer, and shall state the full name, address, and telephone number of the person giving the notice.

(c) *Identification of counsel.* The notice shall state the name, address, and telephone number of the legal counsel, if any, representing the person giving the notice.

§ 374.4 Timing of notice.

No action may be commenced under subsections 326 (a)(1)(A), (a)(1)(B), or (a)(1)(C) of the Act before 60 days after the plaintiff has given notice of the violation as specified in this part.

§ 374.5 Addresses.

Administrator, U.S. Environmental Protection Agency, 401 M Street, SW. (A-100), Washington, DC 20460

Regional Administrator, Region I, U.S. Environmental Protection Agency, John F. Kennedy Building, Room 2203, Boston, MA 02203

Regional Administrator, Region II, U.S. Environmental Protection Agency, 26 Federal Plaza, Room 930, New York, NY 10278

Regional Administrator, Region III, U.S. Environmental Protection Agency, 841 Chestnut Street, Philadelphia, PA 19107

Regional Administrator, Region IV, U.S. Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, GA 30365

Regional Administrator, Region V, U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, IL 60604

Regional Administrator, Regional VI, U.S. Environmental Protection Agency, 1445 Ross Avenue, 12th Floor, Suite 1200, Dallas, TX 75202-2733

Regional Administrator, Region VII, U.S. Environmental Protection Agency, 726 Minnesota Avenue, Kansas City, KS 66101

Regional Administrator, Region VIII, U.S. Environmental Protection Agency, 999 18th Street, Suite 500, Denver, CO 80202-2405

Regional Administrator, Region IX, U.S. Environmental Protection Agency, 215 Fremont Street, San Francisco, CA 94105

Regional Administrator, Region X, U.S. Environmental Protection Agency, 1200 Sixth Avenue, Seattle, WA 98101

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Thursday
January 26, 1989

Part IV

Department of Education

34 CFR Part 201

Migrant Education Program; Notice of Proposed Rulemaking

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DEPARTMENT OF EDUCATION

34 CFR Part 201

Migrant Education Program

AGENCY: Department of Education.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Secretary proposes regulations implementing Subpart 1 of Part D, Chapter 1 of Title I of the Elementary and Secondary Education Act of 1965, as amended, which provides financial assistance to State educational agencies to meet the special educational needs of migratory children. In implementing this program, the Secretary proposes to make applicable appropriate portions of the Education Department General Administrative Regulations (EDGAR).

DATES: Comments must be received on or before March 27, 1989.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Dr. John F. Staehle, Director, Office of Migrant Education, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., Room 2145, FOB #6, Washington, DC 20202-6135.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph P. Bertoglio, Office of Migrant Education, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., Room 2145, FOB #6, Washington, DC 20202-6135. Telephone (202) 732-4758.

SUPPLEMENTARY INFORMATION:

Overview of the Reauthorization

On April 28, 1988, the President signed into law the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988, Pub. L. 100-297. Principal themes of this new legislation are the promotion of access to quality education for educationally disadvantaged students and excellence in education for the Nation as a whole. In framing the legislation, Congress noted that Americans are becoming increasingly aware that enhancing educational opportunities is an investment in the future of the Nation. At the same time, there is recognition that anything less than a quality education for elementary and secondary students will have severe and far-reaching economic consequences, such as more expensive programs for remediating older students; deficiencies, retraining unskilled workers, forgone tax revenues, and lost productivity.

In keeping with these themes, Title I of the Hawkins-Stafford Act amends the Elementary and Secondary Education Act of 1965 (ESEA) to include a number of new and reauthorized Federal Education programs. One of these programs is Chapter 1 of Title II of the ESEA, which reauthorizes programs previously contained in Chapter 1 of the Education Consolidation and Improvement Act of 1981 (ECIA). Subpart 1 of Part D of Chapter 1, which these proposed regulations would implement, provides financial assistance to State educational agencies to meet the special educational needs of migratory children of migratory agricultural workers or migratory fishers. This assistance is provided to improve the educational opportunities of those children by helping them succeed in the regular program, attain grade-level proficiency, and improve their achievement in basic and more advanced skills.

In reauthorizing the Chapter 1 migrant education program, Congress retained the basic goals and structure of the program. However, the new law makes certain changes that affect the allocation of funds to each State, the content of State and local applications, the priority for services given to currently migratory children, the operation of the State program and local projects, and State and local evaluation procedures.

Specific Changes Required by the Reauthorization

State Allocations. Section 201.20 implements section 1201 of the Act, which changes the ages of migratory children who may be counted for purposes of the State allocation formula from ages 5 through 17 to ages 3 through 21. The proposed definition of "children" in § 201.3 is the same as the definition now in 34 CFR 204.2, which clarifies that migratory youth may be counted only until they graduate from high school.

Service Priorities. Section 201.31 implements section 1202(b) of the Act, which requires that all currently migratory children with special educational needs (regardless of age) be given priority for services over formerly migratory children, thereby eliminating the priority for program services (prior to reauthorization) of school-aged formerly migratory children over pre-school currently migratory children. With respect to services rendered to migratory preschool children, the Secretary proposes to retain the current interpretation that "instructional programs" for preschool children (§ 201.31(b)) include developmental activities.

Coordination With Other Programs. Section 201.34 implements section 1202(a)(2) of the Act, which expands the list of Federal programs with which the SEA's migrant education program and local projects must be coordinated. Programs with which coordination must be sought now include the High School Equivalency Program and the College Assistance Migrant Program authorized by the Higher Education Act, section 402 of the Job Training Partnership Act, the Education of the Handicapped Act, the Community Services Block Grant Act, the Head Start Program, the Migrant Health Program, and all other appropriate programs of the Departments of Education, Labor, and Agriculture. In addition, consistent with section 1012(b) of the Act, § 201.36(e) of the proposed regulations would require SEAs and subgrantees to provide time and resources for frequent and regular coordination of the migrant education program curriculum and that of the regular instructional program, and to maximize the coordination of migrant education program services with those provided to address the needs of children with limited English proficiency and handicapping conditions.

Relationship to requirements affecting the Chapter 1 local educational agency program. Section 1202(a)(3) of the Act maintains the existing statutory pattern in which Chapter 1 migrant education programs must be implemented in ways that are consistent with the basic objectives of several requirements for the Chapter 1 basic LEA grant program. Applicable portions of the Act include section 1011 (other than subsection (b)) on uses of funds, section 1012 on SEA and LEA assurances and applications, section 1014 on eligible children, including assessment of needs, section 1013 on fiscal requirements, and subpart 2 of Part F of the Act, which includes general provisions applicable to State administration. Where applicable, these proposed regulations incorporate these Chapter 1 provisions either by reference or by summarizing their content.

Definition of Formerly Migratory Children. Under previous legislation, children who once had been eligible to be counted as currently migratory could be counted or served as formerly migratory children only if they were found to be residing in areas served by a migrant education project. Because the new legislation omits this requirement, that provision has been deleted from the definition of a formerly migratory child in § 201.3. Therefore, children who are no longer currently migratory would qualify as formerly migratory children for up to five years regardless of where they reside in the State.

Identification and Enumeration of Migratory Children. Section 1201 of the Act specifically includes, as eligible to be counted and served, children of migratory agricultural dairy workers. The proposed definition in § 201.3 has been modified to reflect this statutory language.

Section 1201(b) of the Act allows the SEA a five percent standard error rate in the "information" it submits to the Migrant Student Record Transfer System on migratory children. These proposed regulations implement this provision in two respects. Section 201.20(a) would clarify an SEA's entitlement to receive its full projected grant award, subject to the five percent leeway in the accuracy of its eligibility determinations for all children in the State whom it considers to be migratory. Section 201.30(c) would incorporate this five percent tolerance level in the system the SEA must maintain to ensure the correctness of its eligibility information.

Section 1201(b)(2) of the Act requires the Secretary to develop a national standard form for certifying migrant student eligibility. In an effort to improve current practices, the Department, in cooperation with Migrant Education Program Directors and other interested parties, has undertaken an effort to revise current nonregulatory guidance on the identification, recruitment, and documentation of eligible migratory children. The Department plans to develop and distribute a proposed standard certification form after publication of these regulations and after completion of the process to revise the nonregulatory guidance.

Parental Involvement. In accordance with section 1202(a)(4) of the Act, § 201.35(a) and (b) would continue the requirement that SEAs and LEAs establish and appropriately consult with parent advisory councils, but only for programs extending for the duration of the school year. In addition § 201.35(c) by requiring consistency with the requirements in 34 CFR 200.34, published October 21, 1988, in the **Federal Register** (53 FR 41466) reflects the statutory requirement that all migrant education programs and projects be carried out in a manner consistent with the parental involvement requirements for the Chapter 1 basic grant program for LEAs contained in section 1016 of the Act.

Annual Needs Assessment. In accordance with section 1014 of the Act, § 201.32 would be revised to require that children with the greatest special educational needs (including library resource needs) be identified on the basis of educationally related objective criteria that include uniformly applied written or oral testing instruments.

Exclusions from supplement-not-supplant and comparability requirements. In accordance with section 1018 of the Act, § 201.45 of the proposed regulations would continue to permit an LEA to exclude State and local funds spent for compensatory education in determining compliance with the supplement-not-supplant and comparability requirements. The Secretary would determine in advance whether a State program meets certain requirements in order to be excluded, and the SEA would make similar determinations for local programs.

State complaint procedures. Section 201.47 of the proposed regulations would require States to develop and implement procedures for resolving complaints at State and local levels. The Secretary has added this section in response to language in the conference report accompanying the Hawkins-Stafford Act recommending that the Secretary "issue amended regulations making 34 CFR 76.780-783 applicable to Chapter 1." H.R. Rept. 100th Cong., 2d Sess. 341 (1988). The Secretary has proposed, in a notice of proposed rulemaking, published August 18, 1988, in the **Federal Register** (53 FR 3180) to remove the complaint procedures from 76 and to retain those procedures only in regulations for the specific programs to which they apply. Rather than repeating the complaint provisions currently in Part 76, however, the Secretary has attempted in § 201.46 to implement the conferees' intent that States develop and implement procedures to resolve complaints while affording States maximum flexibility in tailoring those procedures to fit the needs of the State and its subgrantees.

Assignment of personnel to supervisory duties. In accordance with section 1453 of the Act, § 201.49 would limit to sixty minutes or one period per day the time that migrant education personnel may be assigned to supervisory duties. Time spent on supervisory duties could be calculated on a daily, weekly, monthly, or annual basis. The proposed regulations define supervisory duties to include supervision of halls, playgrounds, lunchrooms, study halls and other similar activities.

SEA's authority to regulate. In accordance with section 1451 of the act, proposed § 201.46 contains provisions related to State rulemaking authority. In satisfying the requirement in § 201.46(b)(5), relating to a committee of practitioners, an SEA may, but is not required to, use the same committee it uses for rulemaking under the basic Chapter 1 LEA grant program. In section 1202(a)(3) of the Act, Congress determined that SEAs were to administer and carry out their migrant education programs "consistent with the basic objectives" of subpart 2 of part F of Chapter 1, which includes section 1451(a)(2). Section 1451(a)(2) contains an express limitation on States' authority to regulate local school districts' decisions regarding various matters, such as grade levels to be served, basic skills areas to be addressed, and instructional materials to be used, as part of their Chapter 1 programs. The basic objective of this provision would appear to be prevention of unwarranted State intrusion into decisions traditionally left to the local school district.

However, under Section 1201 and 1202 of the Act, the SEA is responsible both for administering and operating the State's Chapter 1 program for migratory children under the terms of an approved state application. While section 1201(a) permits the SEA to perform this function through subgrants to LEAs or other operating agencies, it need not do so. Hence, regardless of whether it chooses to select an LEA to operate an individual migrant education program, the SEA is responsible for that program's operation.

The Secretary encourages SEAs to continue to provide LEAs and other local operating agencies with flexibility and discretion in as many aspects of their migrant education programs as is possible. Nevertheless, the SEA must be able to retain authority to establish rules and policies that legitimately relate to its statutory responsibility for administering and operating the state's migrant education program. This is particularly true in areas, statewide needs of migrant children (see, for example, proposed § 201.25(b) on amounts of a subgrant to an LEA) and intrastate and interstate coordination efforts where the SEA must implement a statewide program. Therefore, consistent with the basic objectives of section 1451(a)(2) of the Act, the Secretary proposes in § 201.46(c) to make the statutory limitations on the State rulemaking applicable to the Chapter 1 migrant education program except where the SEA needs to establish rules or policies to permit it to implement responsibilities under its

approved state application or the Chapter 1 statute or regulations.

Other Changes Proposed in the Regulations. The Secretary also proposes the following amendments to Part 201 that are needed to clarify existing regulations, to clarify or interpret statutory provisions, or to incorporate provisions from Part 204 (General Definitions and Administrative, Project, Fiscal, and Due Process Requirements for Chapter 1 Programs).

Evaluation. Section 1019(b) of the Act requires the SEA to evaluate the migrant education program, at least every two years, to inform the public of the results, and to report those results to the Secretary. The Secretary intends to establish and announce the timelines and related dates (program year) upon which evaluation data are to be collected annually for both the regular school year program and the summer school program for biennial submittal to the Secretary. The new legislation continues the requirement for annual State reporting on demographic data including race, age, gender, and number of children served by grade level and adds a requirement for reporting on the number of participating children with handicapping conditions. Section 1435 of the Act further requires SEAs to conduct evaluations in accordance with national standards and report the results to the Department of Education. Section 201.52 would clarify that SEAs are to submit their evaluation reports every two years.

Sections 201.51–201.57 of the proposed new Subpart E contain proposed general evaluation standards. While no specific evaluation models would be required, State and local evaluation procedures would have to be consistent with four general technical standards [§ 201.53]. Grantees would continue to report on sustained gains, but, in accordance with the new legislation, would be required to do so only for those formerly migratory children who have been served in a full school year program for at least two years [§ 201.52].

Section 201.54 describes the composition of the nonproject comparison group that would be required, to the extent possible, by § 201.52(a)(2)(ii), and specifies that this requirement may be fulfilled through the use of appropriately normed achievement tests. Section 201.55 would allow for the submission of evaluation data based on representative samples which may include persons, schools, agencies, or projects. If the SEA proposes to use sampling, it would be required to submit the sampling plan to the Secretary for approval. Section 201.57 would require SEAs and LEAs to use the results of project evaluations for program improvement, while § 201.58 would require SEAs more specifically either to disapprove a project application if the project evaluation clarifies that the project is not making substantial progress toward meeting its educational goals, or to approve necessary changes in the project that will permit the SEA to meet those goals.

Additional guidance on the evaluation procedures and data to be submitted to the Secretary for the required report to Congress will be provided in both nonregulatory policy guidance and as part of a revised performance report form.

Child Residency Accrual at Special "Stop-over" Projects. Under the authority of § 201.20(a) of the current program regulations, the Secretary for many years has determined the amount of funds for which each SEA may apply on the basis of statistics or on the full-time-equivalent number of migratory children residing in each State that are generated by the Migrant Student Record Transfer System (MSRTS). SEAs may enroll identified migratory children in the MSRTS as of the date they became migratory residents of their States, consistent with the definitional criteria in § 201.2. Under current procedures these children are presumed to continue to be residents of those States for one year unless they are identified elsewhere.

Situations exist in which certain States operate migrant education projects in specific locations that are designed to permit project staff, among other things, to provide information to migrant parents on how to secure migrant education program services in the States to which they are moving. In doing so, the projects serve an important function. However, while the migrant parent or guardian may tell project staff that the child will be remaining at the project site for only a day or two while in transit to another State, project staff enroll the child as a migratory resident of their State on the basis of the move to the project site.

The Secretary has determined that permitting States to accrue migrant child residency credit under these circumstances seriously undercuts the integrity of the system by which migrant education program funds are distributed to each State. Since, at the time of their enrollment, parents or guardians have informed project staff of the likelihood that their children will soon leave the State, there is no logical basis for permitting that State to accrue more residency credit on their behalf. Moreover, these children "reside" in that State only in the sense that they stop briefly at the project site to receive project services while en route elsewhere.

Therefore, in § 201.20(a)(3), the Secretary proposes to require that if a State operates this form of migrant project and identifies children passing through the project in that State to another State as migratory residents of the project State, it may enroll those children in the MSRTS as residents of the project State only for the period of time the children are to remain at the project site. In the event the migratory child relocates elsewhere within the State while the child or his or her parents engage in temporary or seasonal agricultural activities, the child will be re-enrolled in the MSRTS.

Summer School Formula. Section 1201 of the Act continues the requirement that the Secretary adjust the full-time equivalent number of migratory children who reside in a State during the summer months to take into account the special needs of those children for summer programs and the additional costs of operating them. At the present time, SEAs receive a summer adjustment credit of one additional full-time equivalent migratory child for each 100 days that migratory students are enrolled in a summer project. For simplicity, the Department has wanted to avoid analyzing cost information relating to each summer migrant education project operated throughout the country. Therefore, use of this formula has assumed that each summer project warrants a commensurate increase in a State's allocation of program funds.

Information gathered from States around the country indicates that this assumption may not always be warranted. The Office of Migrant Education has learned of summer migrant education projects with organized programs of instruction that do not appear to warrant the full summer allocation adjustment based on the number of students participating in them. The Secretary believes that maintaining the current summer adjustment formula in this case distorts the summer adjustments on a national basis by placing SEAs that operate summer projects with extensive instructional components, and presumably higher costs, at a relative disadvantage to SEAs that do not.

In order to encourage SEAs to operate summer projects with extensive instructional components while continuing to provide SEAs flexibility in the summer school programs they carry on, the Secretary proposes to amend § 201.20(b) by revising the existing summer adjustment formula. Section 201.20(b) would establish a two-tier system for making summer adjustments in the basic allocation formula. Children participating in intensive summer projects, those with components of organized instruction for minimum daily or weekly durations, would continue to generate the same summer adjustment for their State as they do now. However, children participating in less intensive summer projects would generate an additional adjustment on the basis of one half an additional full-time equivalent migratory child for each 100 days that migratory students are enrolled in the summer project.

Amount of a Subgrant to an LEA. In the past, some States have used allocation formulas that distribute funds to local projects on the basis of the total number of migratory children, or the costs of projects to meet their special educational needs, without regard to whether those children are currently or formerly migratory. Given the emphasis the new statute places on first serving children who are currently migratory, the Secretary proposes to require SEAs, on a Statewide basis, to distribute program funds in ways that will place primary importance on meeting the needs of currently migratory children. Therefore, § 201.25 would require that the formula an SEA uses to determine the amount of a subgrant to an LEA or other operating agency reflect the priority the statute gives to serving first all currently migratory children in need of services.

Treatment of the Content of the SEA's Application. Section 1202(a) of the Act continues the requirement that the Secretary determine that an SEA's program and projects will meet enumerated statutory criteria before awarding an SEA a migrant education program grant. Section 201.12(a) of the current migrant education program regulations contains the list of existing requirements for a SEA's application. Rather than continue to repeat, in regulations, the application content requirements now contained in section 1202(a), the Secretary has determined that application forms specifying the statutorily required information will be prepared and distributed to all SEAs. Further, the remaining portions of § 201.12 concerning amending and updating applications have been incorporated into § 201.11. Therefore, the Secretary proposes to remove § 201.12.

Those portions of section 1202(a) that contain program requirements that are not addressed elsewhere in these proposed regulations are addressed in a proposed new § 201.36.

Applicability of EDGAR. As indicated in § 201.2(a), the Secretary proposes to make the relevant parts of EDGAR applicable to programs under this part. In making this proposal, the Secretary is responding to a need for additional guidance. During the six years that EDGAR has not been applicable to Chapter 1 of the ECIA, SEAs and LEAs have asked the Department numerous questions that are answered by the provisions in EDGAR. Moreover, without the benefit of the guidance in EDGAR, a number of States have incurred audit exceptions concerning fiscal control and fund accountability. The Secretary believes that making the relevant parts of EDGAR applicable to programs under this part will address the need for better guidance and accountability. Moreover, the Secretary does not believe this action will create additional burden for SEAs and LEAs because EDGAR is applicable to other State-administered Federal education programs and has recently been reviewed with respect to federalism issues and burden reduction, and unduly burdensome requirements have been revised or removed

Specifically, the Secretary proposes to apply Part 76 (State-Administered Programs), with certain exceptions: Part 77 (Definitions that Apply to Department Regulations); and Part 78 (Education Appeal Board). In addition, regulations implementing the new enforcement provisions in Part E of the General Education Provisions Act would apply when those regulations are promulgated. Further, the Secretary proposes in § 201.2(a)(4) to apply Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), unless a State formally adopts its own written fiscal and administrative requirements for expending and accounting for funds received by the SEA and its LEAs under this part. If a State does not have its own written requirements implemented by July 1, 1989, but wishes to develop them, the requirements in Part 80 would apply until such time as written requirements are formally adopted. If a State chooses to apply its own written requirements, those requirements must be available for Federal inspection. In a case where departmental officials determine that a State's requirements are not sufficient, the enforcement provisions in Part E of GEPA would apply, including the due process provisions in that part. During the transition period provided for in section 1491(c) of the Act (July 1, 1988–June 30, 1989), a State may continue to comply with the requirements under Chapter 1 of the ECIA. The Secretary specifically invites comments on § 201.2(a)(4).

Enforcement Procedures. Section 3501 of the Hawkins-Stafford Act amended Part E of GEPA to provide for new enforcement procedures. The amended Part E requires the Secretary to establish an Office of Administrative Law Judges (OALJ) to replace the existing Education Appeal Board and sets out new hearing procedures. 20 U.S.C. 1234–1234i. With the exception of provisions regarding withholding actions and judicial review of those actions, which are superseded by sections 1433 and 1434 of the Act, Part E applies to the Chapter 1 Migrant Education Program. As a result, appeals from cost disallowance decisions, received by an SEA on or after October 25, 1988, as well as most other enforcement proceedings under the Chapter 1 Migrant Education Program, will be heard by the OALJ. Proposed regulations implementing Part E will address whether withholding actions under the Chapter 1 Migrant Education Program will also be heard by the OALJ. The Education Appeal Board will continue to hear appeals from determinations under the Chapter 1 Migrant Education Program received before October 25

Proposed Removal of Part 204. The current Part 204 contains general definitions and administrative requirements that apply to all programs that were authorized by Chapter 1 of the ECIA. The Secretary has proposed in the NPRM for the Chapter 1 basic grant program for LEAs to remove Part 204 and to incorporate its provisions in the regulations governing each individual program authorized by Chapter 1 of the ESEA in order to make those regulations more self-contained and easily understood. For the migrant education program, the incorporated provisions are reflected in § 201.2 "Regulations that apply," and in § 201.3 "Definitions for this program." Proposed §§ 201.41 through 201.50 contain several of the administrative and fiscal provisions formerly contained in the removed Part 204, such as maintenance of effort, supplement-not-supplant, comparability and other generally applicable provisions.

Maintenance of effort. Sections 1202(a)(3) and 1018 of the Act reaffirm Congress' intent that migrant education programs and projects are to be administered in a manner that is consistent with the basic objectives of the basic Chapter 1 LEA grant program's maintenance of effort requirement.

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Under the Chapter 1 LEA grant program, an SEA must proportionately reduce the allocation of a LEA that failed to maintain fiscal effort. However, unlike the LEA grant program, the migrant education program is State rather than locally administered. Since the SEA itself is responsible for implementing programs for migratory children throughout the State, and the SEA unilaterally determines the subgrant amount for each LEA's migrant education project, LEAs receive migrant education program funds at the discretion of the SEA.

Consequently, because requiring the SEA proportionately to reduce the amount of a LEA's discretionary subgrant for the LEA's failure to maintain fiscal effort seems to be inconsistent with the SEA's primary responsibility for establishing programs and projects for the State's migratory children, the Secretary believes that the maintenance of effort requirement should be enforced differently for the migrant education program than it is for the basic Chapter 1 LEA grant program.

One of the basic objectives of the requirement is the encouragement of an LEA's maintenance of fiscal effort through an imposed reduction in the amount of its project funds if it fails to maintain effort. Consistent with this objective, the Secretary proposed in § 201.41 to require an SEA to reduce by 50 percent the amount of migrant education program funds LEAs that fail to maintain fiscal effort may charge to indirect costs. The Secretary proposes to use the indirect cost component of a LEA's subgrant because, like the LEA's fiscal effort, it is directly linked to overall expenses the LEA incurs. The Secretary proposes a 50 percent reduction in a LEA's allowable indirect costs for its failure to maintain effort in order to underscore the importance that Congress has placed on the maintenance of effort requirement.

Comparability. Sections 1018(b) and 1202 of the Act also retain the existing requirement that the basic objective of the comparability requirement for the basic Chapter 1 LEA grant program apply to the migrant education program.

The Secretary proposes to implement this requirement in § 201.44 by adopting proposed 34 CFR 200.43 from the basic Chapter 1 LEA grant program NPRM, with necessary modifications that reflect the difference between the way LEAs and SEAs select participating children for migrant education programs and the way they select children for the basic Chapter 1 LEA grant program. The proposed § 201.44 relies on the adoption by LEAs of district-wide salary schedules and policies to ensure that they provide children receiving migrant education program services with levels of LEA provided staff and curriculum materials that are equivalent to those received by other children. In addition, proposed § 201.10 would require that before an SEA approves an LEA's application for a subgrant, the SEA determines that the LEA's policies, if implemented, would result in comparability and that the LEA has maintained fiscal effort.

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are classified as major because they do not meet the criteria for major regulations established in the order.

Executive Order 12606

The Secretary certifies that these proposed regulations have been reviewed in accordance with Executive Order 12606 and that they do not have a significant negative impact on family formation, maintenance, and general well-being. To the contrary, the Chapter 1 Migrant Education Program supports and strengthens the family by containing strong parental involvement requirements. Specifically, an SEA and its LEAs must develop, in coordination with parents of participating children in regular school year programs, activities and procedures to: inform parents about the Chapter 1 migrant education program; support the efforts of parents, including training parents to work with their children at home; train teachers and other staff to work effectively with parents; consult with parents on an ongoing basis; and provide opportunities for full participation of parents who lack the literacy skills or whose native language is not English. Migrant education funds may be used to support these activities.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities.

Because these proposed regulations would affect States and State agencies, the regulations would not have an impact on small entities. States and State agencies are not defined as "small entities" in the Regulatory Flexibility Act.

The small entities that would be affected by these proposed regulations are small LEAs receiving Federal funds under this program. However, the regulations would not have a significant economic impact on the small LEAs affected because the regulations would not impose excessive regulatory burdens or require unnecessary Federal supervision. The regulations would impose minimal requirements to ensure the proper expenditure of program funds.

Paperwork Reduction Act of 1980

Sections 201.17, 201.25, 201.30, 201.35, 201.44, 201.47, 201.51, 201.52, 201.55, and 201.56, contain information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these sections to the Office of Management and Budget (OMB) for its review.

(44 U.S.C. 3504(h))

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, Room 3002, New Executive Office Building, Washington, D.C. 20503; Attention: James D. Houser.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objectives of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposal Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Invitation to Comment: Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposal regulations will be available for public inspection, during and after the comment period, in Federal Office Building 6, Room 2145, 400 Maryland Avenue, SW., Washington, D.C. between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, the Secretary invites comment on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

List of Subject, in 34 CFR Part 201

Children, Coordination, Education, Eligibility, Evaluation, Grant program education, Identification and recruitment, Local educational agencies, Migrant student record transfer system, Migratory children, Migratory Workers, Needs assessment, Priorities, Reporting and recordkeeping requirements, Special educational needs, State educational agencies, Subgrants.

Dated: January 19, 1989

(Catalog of Federal Domestic Assistance Number 84.011—Migrant Education Basic State Formula Grant Program)

Lauro F. Cavazos,

Secretary of Education.

The Secretary proposes to amend Title 34 of the Code of Federal Regulations by revising Part 201 as follows:

1. The title, table of contents, and authority citation for Part 201 are revised to read as follows:

PART 201—CHAPTER 1—MIGRANT EDUCATION PROGRAM

Subpart A—Applying for Chapter 1 Migrant Education Programs Funds

Sec.
201.1 Purpose.
201.2 Regulations that apply.
201.3 Definitions for this program.
201.4 201.9 [Reserved]

Applying for a State Grant

201.10 Eligibility of an SEA to participate as a grantee.
201.11 Documents an SEA must submit to receive a grant.
201.12 [Reserved]
201.13 Approval of an SEA's application.
201.14 201.15 [Reserved].

Applying to an SEA for a Subgrant

201.16 Documents that an LEA must submit to apply for a subgrant.
201.17 Submission of an LEA's project application to the SEA.
201.18 Approval of an LEA's project application for a subgrant.
201.19 [Reserved]

Subpart B—Determining the Amount of Grants and Subgrants

201.20 Amount available for an SEA grant.
201.21 Determination of an SEA grant.
201.22 Reallocation of excess funds.
201.23 Amount available for State administration.
201.24 Secretary's special arrangement for services (bypass).
201.25 Amount of a subgrant to an LEA.
201.26–201.29 [Reserved]

Subpart C—Project Requirements

201.30 Eligibility of a child to participate.
201.31 Service priorities.
201.32 Annual needs assessment.
201.33 [Reserved]
201.34 Coordination with other migrant programs and projects.
201.35 Requirements for parent involvement.
201.36 General program requirements.
201.37 201.39 [Reserved]

Subpart D—Administrative and Fiscal Requirements

201.40 Prohibition against using October 1 funds to provide general aid.
201.41 Maintenance of effort.
201.42 Waiver of maintenance of effort requirement.
201.43 Supplement not supplant.
201.44 Comparability.
201.45 Excluding special State and local funds from supplement-not-supplant and comparability determinations.
201.46 State rulemaking and other SEA responsibilities.
201.47 Complaint procedures for an SEA.
201.48 Allowable costs using program funds.
201.49 Personnel to be assigned supervisory duties.
201.50 Prohibition against considering payments under the migrant education program in determining State aid.

Subpart E—Evaluation

201.51 Demographic and evaluation reports.
201.52 Evaluation information to be collected.
201.53 General technical standards for evaluation.
201.54 Nonproject comparison groups.
201.55 Submission of sampling plans.
201.56 Use of evaluation results for program improvement.

Authority: 20 U.S.C. 2761–2762, unless otherwise noted.

2. In § 201.1, paragraph (a) is amended by adding "(including migratory agricultural dairy workers)" after the word "workers" and the undesignated introductory text and authority citation are revised to read as follows:

§ 201.1 Purpose.

The migrant education program, authorized by sections 1201–1202 of Chapter 1 of Title I of the Elementary and Secondary Education Act of 1965 is designed to—

• • • • •

(Authority: 20 U.S.C. 2761)

3. Section 201.2 is revised to read as follows:

§ 201.2 Regulations that apply.

The following regulations apply to the Chapter 1—Migrant Education Program:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR Part 76 (State-Administered Programs) as follows:

(i) Subpart A (General).

(ii) Section 76.125 through 76.137 (Consolidated Grant Applications for Insular Areas).

(iii) Section 76.401 (Disapproval of an application—opportunity for a hearing).

(iv) Subpart F (What Conditions Must be Met by the State and its Subgrantees?), except for §§ 76.650 through 76.662 (Participation of Students Enrolled in Private Schools).

(v) Subpart G (What Are the Administrative Responsibilities of the State and Its Subgrantees?), except for § 76.772 (Other responsibilities of the State).

(vi) Subpart H (What Procedures Does the Secretary Use to Get Compliance?).

(2) 34 CFR Part 77 (Definitions that Apply to Department Regulations).

(3) 34 CFR Part 78 (Education Appeal Board).

(4) 34 CFR Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), unless a State formally adopts its own written fiscal and administrative requirements for expanding and accounting for all funds received by SEAs and LEAs under this part. These requirements must be available for Federal inspection and must—

(i) Be sufficiently specific to ensure that funds received under this part are used in compliance with all applicable statutory and regulatory provisions;

(ii) Result in the efficient and effective administration of programs under this part;

(iii) Ensure that funds received under this part are only spent for reasonable and necessary costs of operating programs under this part; and

(iv) Ensure that funds received under this part are not used for general expenses required to carry out other responsibilities of State or local governments.

(5) 34 CFR Part 81 (GEPA-Enforcement).

(b) The regulations in this part 201.

(Authority: 20 U.S.C. 2761, 2831)

4. In § 201.3, new paragraph (a) is substituted for the existing paragraph (a), and paragraph (b) is amended by adding new introductory language; in the definition of "Formerly migratory child", the word "and" is added at the end of paragraph (1), paragraph (2) is removed, and paragraph (3) is redesignated as paragraph (2); the definition of "Migratory agricultural worker" is revised by adding the words "(including dairy work)" before the period at the end of the definition; new definitions for "Act", "Chapter 1", "Children", "Fiscal Year", and "Preschool Children" are added in alphabetical order; and the authority citation is revised to read as follows:

§ 201.3 Definitions for this program.

(a) *Definitions in the Elementary and Secondary Education Act.* The following

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terms used in this part are defined in section 1471 of the Act:
Equipment
Free public education
Local educational agency (LEA)
Parent
Parent advisory council
Secretary
State education agency (SEA)

(b) *Other definitions.* In addition to the terms defined in the applicable regulations listed in § 201.2, or referred to in paragraph (a) of this section, the following definitions also apply to this part:

* * * * *

"Act" means Elementary and Secondary Education Act of 1965, as amended.

"Chapter 1" means Chapter 1 of Title I of the Act.

"Children" means—

(1) Persons up through age 21 who are entitled to a free public education through grade 12; and

(2) Preschool children.

"Fiscal Year" means the Federal fiscal year—a period beginning on October 1 and ending on the following September 30—or another 12-month period normally used by the SEA for recordkeeping.

* * * * *

"Preschool children" means children who are—

(1) Below the age and grade level at which the agency provides free public education; and

(2) Of the age or grade level at which they can benefit from an organized instructional program provided in a school or instructional setting.

(Authority: 20 U.S.C. 2781, 2782, 2831)

5. The authority citation for § 201.10 is revised to read as follows:

(Authority: 20 U.S.C. 2781)

6. Section 201.11 is amended by redesignating paragraph (b) as (c) and revising the second sentence of redesignated paragraph (c) to read: "During subsequent years, the SEA's application must incorporate any updating reports arising from significant changes in the number or needs of children to be served, or the services to be provided.", by revising paragraph (a), adding new paragraphs (b) and (d), and revising the authority citation to read as follows:

§ 201.11 Documents an SEA must submit to receive a grant.

(a) *General.* An SEA that wishes to receive funds under this part for an SEA program designed to meet the special educational needs of migratory children shall submit and annually update an application to the Secretary that meets the requirements in section 1202(a) of the Act.

(b) *SEA assurances.* The SEA shall also provide assurances, which will remain in effect for the duration of its participation in the program under this part, that the SEA will—

(1) Meet the requirements in Section 435( ) (2) and (5) of the General Education Provisions Act (GEPA) as they relate to fiscal control and fund accounting procedures;

(2) Meet the requirements of Section 1202(a)(5) of Chapter 1 regarding when preschool children may be served;

(3) Carry out the evaluation requirements in §§ 201.51 through 201.56;

(4) Ensure that its subgrantee agencies comply with all applicable statutory and regulatory requirements.

* * * * *

(d) *Further updating of information in the application.* If, during the course of the project year, there are significant changes in number or needs of the children to be served or the services to be provided, the SEA shall submit a description of those changes to the Secretary together with the impact of the changes on the Chapter 1 migrant education budget, program and projects.

(Authority: 20 U.S.C. 1232d(b) (2), (5), 2722, 2729(b), 2781, 2782, 2731, 2838(c))

§ 201.12 [Removed]

7. Section 201.12 is removed.

8. The authority citation for § 201.13 is revised to read as follows:

(Authority: 20 U.S.C. 2781, 2782)

§ 201.16 [Amended]

9. Section 201.16 is amended by adding "developed in consultation with teachers and parents, and that is" before the word "specific" and revising the authority citation to read as follows:

(Authority: 20 U.S.C. 2722, 2781)

10. Section 201.17 is amended by revising paragraphs (b)(1), (b)(3), (b)(4), (c)(1), and the authority citation to read as follows:

§ 201.17 Submission of an LEA's project application to the SEA.

* * * * *

(b) * * *

(1) Information consistent with section 1012(b) of Chapter 1 regarding—

(i)(A) The LEA's separate annual assessments of the educational needs of its currently and formerly migratory children; and

(B) The general instructional program goals the LEA has established to meet the needs of those children in greatest need for migrant education program services;

(ii) A description of the local Chapter 1 migrant education project to be conducted; and

(iii) A description of the desired outcomes in terms of basic and more advanced skills that participating children are expected to master and in terms of related support services the LEA will provide.

* * * * *

(3) The assurances in section 1012(c) of Chapter 1 including the program requirements in §§ 201.35 and 201.36;

(4) The assurances in section 436 (b)(2) and (b)(3) of GEPA as they relate to fiscal control and fund accounting procedures; and

* * * * *

(c) * * *

(1) Data showing that the LEA has maintained fiscal effort under § 201.41;

* * * * *

(Authority: 20 U.S.C. 2722, 2781, 2782)

11. Section 201.18 is amended by revising pargraph (a) and the authority citation to read as follows:

§ 201.18 Approval of an LEA's project application for a subgrant.

(a) *Standards for approval.* (1) An SEA may approve an LEA's application for a subgrant only if it complies with the requirements in the Chapter 1 statute, the applicable regulations, and the provisions of the approved SEA application.

(2) Before approving an LEA's application for a subgrant, the SEA also determines that—

(i) The LEA has maintained fiscal effort in accordance with § 201.41 and § 201.42; and

(ii) The LEA's salary schedule and policies under § 201.44(b), if implemented, would result in compliance with the comparability requirement in that section.

* * * * *

(Authority: 20 U.S.C. 2781, 2782, 2831)

12. Section 201.20 is amended by removing "141 of Title I" in paragraph (a)(1), and adding, in its place, "1201 of Chapter 1 and the funds appropriated for grants to States under that section.", removing "141(b)(1) of Title I" in paragraph (a)(2) and adding, in its place, "1201(b)(1) of Chapter 1", removing "children aged five to seventeen" in paragraph (a)(2) and adding, in its place, "children (as defined in § 201.3) aged three through twenty-one", adding the sentence "In submitting such data the SEA shall not exceed a standard error rate of more than 5 percent in the total number of children (full or part-time) identified in accordance with the provisions of § 201.30 (a)" at the end of paragraph (a)(2), and adding a new paragraph (a)(3), and revising paragraph (b) and the authority citation to read as follows:

§ 201.20 Amount available for an SEA grant.

(a) * * *

(3) If an SEA operates a project in a specific location of the State that is designated to assist migratory children while they are en route, alone or with members of their immediate families, to other locations, the SEA may enroll the child in the MSRTS or other system of records as a resident of the State only for the limited period the child resides at the project site.

Special summer formula. (i)(i) The Secretary uses the formula in paragraphs (a)(3) and (4) of this section to adjust the full-time equivalent (FTE) number of migratory children who are in a State during the summer months to reflect—

(A) The special educational needs of migratory children for summer programs; and

(B) The expected additional costs of operating those projects compared to the costs of operating programs for children in the regular school year.

(ii) In making this adjustment, the Secretary determines—

(A) The FTE number of children who, on the basis of the best available information from the MSRTS, or other system, are participating in the State's summer programs; and

(B) The duration of their particiaption.

(2) An SEA may not enroll a child in the MSRTS or similar system for the purpose of the adjustment referred to in paragraph (b)(1) of this section unless the child is participating, during the 109 day period between May 15 and August 31, in an organized program of instruction that is not part of the regular school year program.

(3) An SEA receives one adjusted FTE for every 109 days that migratory children, in the aggregate, participate in the State's intensive summer school program of instruction. For purposes of this section, an intensive summer school program of instruction is one that is operated for at least 3 hours per day or 15 hours per week during the 109 day eligibility period.

Example: A migratory child is enrolled in an organized fourth grade reading program provided in the classroom setting 15 hours each week from June 1 through June 30. The child would earn for the SEA program .275 FTE (30 days divided by 109 days).

(4) An SEA receives one-half of an adjusted FTE for every 109 days that migratory children, in the aggregate, participate in any other summer school program of instruction.

Example: A migratory child is enrolled from June 1 through June 30 in a self-paced supplemental reading program which is monitored by periodic meetings with the teacher, possibly weekly. The child in this situation would earn for the SEA program .138 FTE (15 days divided by 109 days).

(5) The Secretary determines annually the FTE number of migratory children participating in a State's summer program as described in paragraphs (b)(2), (3), and (4) of this section and adds that number to the number of migratory children who resided in the State full-time and the FTE number of migratory children who resided in the State part-time during the calendar year preceding the July 1 on which the funds to be allocated will become available. For example, the number of children counted for allocation purposes in calendar year 1990, including the number added because of participation in summer school programs of instruction, is the number used in determining, in accordance with section 1201 of Chapter 1, the amount of each State's allocation from the fiscal year 1990 funds available on or after July 1, 1989.

* * * * *

(Authority: 20 U.S.C. 2781, 2782, 2831)

§ 201.21 [Amended]

13. In § 201.21, paragraph (b)(2) is amended by removing "554(a)(2) of Chapter 1 or Section 141 of Title I" and adding in its place, "1201 of Chapter 1" and the authority citation is revised to read as follows:

(Authority: 20 U.S.C. 2781, 2782)

§ 201.22 [Amended]

14. The authority citation for § 201.22 is revised to read as follows:

(Authority: 20 U.S.C. 2781, 2782)

15. Section 201.23 and the authority citation are revised to read as follows:

§ 201.23 Amount available for State administration.

Funds for State administration. (a) Except for programs under Part C of Chapter 1 and as provided in paragraph (b) of this section, an SEA shall use funds received under section 1404(a) of the Act for the proper and efficient performance of its duties under Chapter 1.

(b) The SEA may not use more than 15 percent of the funds referred to in paragraph (a) of this section for indirect costs.

(Authority: 20 U.S.C. 2781, 2782, 2824)

§ 201.24 [Amended]

16. The authority citation for § 201.24 is revised to read as follows:

(Authority: 20 U.S.C. 2782)

17. Section 201.25 is revised to read as follows:

§ 201.25 Amount of a subgrant to an LEA.

(a) An SEA shall determine the amount of a subgrant to an LEA or other operating agency based on—

(1) The number of currently migratory children with identified special educational needs who reside within the area by the LEA or other agency in sufficient concentrations to warrant implementation of a migrant education project designed to meet their needs;

(2) The nature, scope, and cost of the proposed project designed to meet the needs of these currently migratory children;

(3) The availability of migrant education funds to meet the identified special educational needs of formerly migratory children residing in or within the area served by the LEA or other agency, after the SEA has considered the costs of operating projects throughout the State that are designed to meet the needs of currently migratory children; and

(4) The availability of funds from other sources.

(b) In subgranting funds to LEAs or other operating agencies to meet the needs of their currently migratory children in accordance with paragraph (a) of this section, the SEA may develop other relevant criteria. These criteria may include the SEA's priorities concerning ages, grade levels of children to be served, areas of the State to be served, and types of services to be provided.

(Authority: 20 U.S.C. 2731, 2782, 2831)

18. Section 201.30 is amended by redesignating the last sentence of paragraph (b) as paragraph (c), removing "However, the" from the redesignated paragraph (c), adding, in its place, "The", adding a sentence to the end of paragraph (c), and revising the authority citation to read as follows:

§ 201.30 Eligibility of a child to participate.

* * * * *

(c) * * * The SEA shall ensure that the information is recorded on a certificate of eligibility developed by the Secretary to contain the minimally needed documentary information. The Secretary considers the State's count of its eligible migratory children, and the total number of days of eligibility those children accrue for the State, to be correct if the standard error rate of five (5) percent of

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the total number of children determined to be eligible is not exceeded.

(Authority: 2781, 2782, 2831)

19. Section 201.31 is revised to read as follows:

§ 201.31 Service priorities.

(a) Children (aged 3 through 21) who have been determined to be currently migratory shall be given priority over formerly migratory children in receipt of services provided in all programs and activities that the SEA, LEA, or other operating agency offers.

(b) If, in order to provide migrant education instructional services to preschool and regular school-aged currently migratory children, it would be necessary to provide day care or similar services to children aged two years or younger who are currently migratory children (or migrant education preschool services to currently migratory children three years of age or over who are not enrolled in instructional programs), and no funds—except Chapter 1 Migrant Education Program funds—are available for that purpose, an SEA or an operating agency may provide day care services to those children as if those children had a higher priority than formerly migratory children.

(Authority: 20 U.S.C. 2782)

20. Section 201.32 is amended by removing the words "shall base their" in the introductory text and adding, in their place, "shall design and improve their", redesignating paragraph (c) as paragraph (d), adding "(and library resource needs)" after the words "educational needs" in redesignated paragraph (d), adding a new paragraph (c), and revising paragraph (b), redesignated paragraph (d), and the authority citation to read as follows:

§ 201.32 Annual needs assessment.

* * * * *

(b) Identifies the general instructional areas on which the program will focus;

(c) Selects those educationally deprived children, consistent with the service priorities in § 201.31, who have the greatest need for special assistance as identified on the basis of educationally related objective criteria that include written or oral testing instruments, which are uniformly applied to particular grade levels; and

(d) Determines the educational needs (and library resource needs) of the children selected to participate with sufficient specificity to ensure concentration on those needs.

(Authority: 20 U.S.C. 2724, 2782)

§ 201.33 [Removed]

21. Section 201.33 is removed.

§ 201.34 [Amended]

22. Section 201.34 is amended by removing the words "Section 402 of the Job Training Partnership Act of 1982 and under the Community Services Block Grant Act of 1981," and adding, in their place, the words "section 418A of the Higher Education Act, section 402 of the Job Training Partnership Act, the Education of the Handicapped Act, the Community Services Block Grant Act, the Head Start Program, the Migrant Health Program, and all appropriate programs of the Departments of Education, Labor, and Agriculture", and revising the authority citation to read as follows:

(Authority: 20 U.S.C. 2782)

23. Section 201.35 is revised to read as follows:

§ 201.35 Requirements for parent involvement.

(a) *General.* An agency that receives Chapter 1 migrant education program funds shall design and implement its program or project in consultation with the parents of the children being served, and shall implement programs, activities, and procedures for the involvement of parents in such programs.

(b) *Parent advisory councils.*

(1) State and local agencies implementing programs extending for the duration of the school year shall establish a parent advisory council. The council must have a majority of members who are parents (or guardians) of children to be served by the migrant education program or projects and, wherever feasible, who are elected by the parents of children to be served;

(2) The SEA shall establish procedures to ensure that—

(i) The SEA and the State's operating agencies appropriately consult with, and solicit information from, councils representative of parents of migratory children in the planning, operation, and evaluation of a program or local project; and

(ii) Compliance with this provision at the State and local levels is documented annually in the State or local agency's application for funds or updating information.

(c) *Parental involvement.* Each SEA and operating agency must, in a manner consistent with 34 CFR 200.34, involve parents in meaningful consultation in the design and implementation of the programs and projects.

(Authority: 20 U.S.C. 2728, 2782)

24. In Subpart C a new § 201.36 is added to read as follows:

§ 201.36 General program requirements.

In developing and implementing its migrant education program and projects, the SEA shall ensure that—

(a) The children selected for services are those who have the greatest need for special assistance (as identified on the basis of educationally-related objective criteria), and the special educational needs of these children are sufficiently specified to permit the SEA to concentrate on meeting those needs;

(b) The size, scope, and quality of the program and projects offered are sufficient to give reasonable promise of substantial progress toward meeting the special educational needs of the migrant children being served;

(c) The results of evaluations will be used to improve the provision of services to eligible migrant children by either—

(1) Disapproving an application to continue a project in a succeeding year if the project is not making substantial progress toward meeting the educational goals of the project and this part; or

(2) Approving changes in the project that will enable the SEA to meet those goals;

(d) Services will be provided to eligible migratory children enrolled in private schools in accordance with the basic objectives of section 1017 of the Act;

(e) The SEA will allocate time and resources for frequent and regular coordination of the curriculum under the migrant education program with the regular instructional program; and

(f) In the case of children participating in the migrant education program who are also of limited English proficiency or are handicapped—

(1) The SEA will provide maximum coordination between services provided under the migrant education program and other services that are provided to address children's handicapping conditions or limited English proficiency; and

(2) The SEA's coordination activities will be designed to increase program effectiveness, eliminate duplication, and reduce fragmentation of services for migratory children.

(Authority: 20 U.S.C. 2722, 2724, 2728, 2782, 2831)

25. A new Subpart D containing §§ 201.40 through 201.50, inclusive, is added to Part 201 to read as follows:

Subpart D—Administrative and Fiscal Requirements

§ 201.40 Prohibition against using Chapter 1 funds to provide general aid.

An LEA or other operating agency that has received assistance from an SEA may use Chapter 1 funds provided under this part only for projects that are designed and implemented to meet the special educational needs of migratory children who are identified and selected for services in accordance with the provisions in this part.

(Authority: 20 U.S.C. 2781, 2782)

§ 201.41 Maintenance of effort.

(a)(1) *Basic standard.* Before an SEA may provide an LEA a subgrant for the operation of a migrant education project, the SEA must find either that the LEA's combined fiscal effort per student or its aggregate expenditures of State and local funds with respect to the provision of free public education for the preceding fiscal year was not less than 90 percent of the LEA's combined fiscal effort per student or the aggregate expenditures of State and local funds for the second preceding fiscal year.

(2) *Meaning of preceding fiscal year.* For purposes of determining maintenance of effort, the "preceding fiscal year" is the Federal fiscal year, or 12-month period most commonly used in a State for official reporting purposes, prior to the beginning of the Federal fiscal year in which funds are available.

Example: For funds first made available on July 1, 1988, if a State is using the Federal fiscal year, "the preceding fiscal year" is the Federal fiscal year 1988 (which began on October 1, 1987) and the "second preceding fiscal year" is fiscal year 1987 (which began on October 1, 1986). If a State is using a fiscal year that begins on July 1, 1988, the "preceding fiscal year" is the 12-month period ending on June 30, 1988 and the "second preceding fiscal year" is the period ending on June 30, 1987.

(3) *Expenditures*—(i) *To be considered.* In determining an LEA's compliance with the maintenance of effort requirement, the SEA shall consider the LEA's expenditures from State and local funds for free public education. These include expenditures for administration, instruction, attendance, health services, pupil transportation, plant operation and maintenance, fixed charges, and net expenditures to cover deficits for food services and student body activities.

(ii) *Not to be considered.* The SEA shall not consider the following expenditures in determining the LEA's compliance with the maintenance of effort requirement:

(A) Any expenditures for community services, capital outlay, or debt service.

(B) Any expenditures made from funds provided under Chapter 1 and Chapter 2 of Title I of the Act or Chapter 1 and Chapter 2 of the ECIA.

(b) *Failure to maintain effort.* (1) If an LEA fails to maintain effort as provided in paragraph (a) of this section, and a waiver under § 201.42 is not granted, the SEA shall reduce the LEA's subgrant with respect to the amount allowed for its indirect costs under 34 CFR 76.563 by 50 percent.

(2) In determining maintenance of effort for the fiscal year immediately following the fiscal year in which the LEA failed to maintain effort, the SEA shall consider the LEA's fiscal effort for the second preceding fiscal year to be no less than 90 percent of the combined fiscal effort per student or aggregate expenditures (using the measure most favorable to the LEA) for the third preceding fiscal year.

Example: In Federal fiscal year 1990, an LEA fails to maintain effort because its fiscal effort in the preceding fiscal year (1988) is less than 90 percent of its fiscal effort in the second preceding fiscal year (1987). In assessing whether the State maintained effort during the next fiscal year (1991), the SEA may consider the LEA's fiscal effort in the second preceding fiscal year (1988) (the year that caused the LEA's failure to maintain effort) to be no less than 90 percent of the LEA's expenditure in the prior fiscal year (1987).

(Authority: 20 U.S.C. 2728, 2782, 2831)

§ 201.42 Waiver of the maintenance of effort requirement.

(a)(1) An SEA may waive, for one fiscal year only, the maintenance of effort requirement applying to an LEA in § 201.41, if the SEA determines that a waiver would be equitable due to exceptional or uncontrolled circumstances. These circumstances include, but are not limited to, the following:

(i) A natural disaster.

(ii) A precipitous and unforeseen decline in the financial resources of the LEA.

(2) An SEA may not consider tax initiatives or referenda to be exceptional or uncontrollable circumstances.

(b)(1) If the SEA grants a waiver under paragraph (a) of this section the SEA shall not reduce the amount of migrant education funds the LEA is otherwise entitled to receive.

(2) In determining maintenance of effort for the fiscal year immediately following the fiscal year for which the waiver was granted, the SEA shall consider the LEA's fiscal effort for the second preceding fiscal year to be no less than 90 percent of the combined fiscal effort per student or aggregate expenditures (using the measure most favorable to the LEA) for the third preceding fiscal year.

Example: In fiscal year 1990, an LEA secures a waiver because its fiscal effort in the preceding fiscal year (1988) is less than 90 percent of its fiscal effort in the second preceding fiscal year (1987) due to exceptional or uncontrollable circumstances. In assessing whether the LEA maintained effort during the next fiscal year (1991), the SEA may consider the LEA's expenditures for the second preceding fiscal year (1988) (the year for which the LEA needed a waiver) to be no less than 90 percent of the LEA's expenditures in the prior fiscal year (1987).

(Authority: 20 U.S.C. 2728, 2782, 2831)

§ 201.43 Supplement not supplant.

(a) Except as provided in § 201.45, an agency that receives migrant education funds under this part may use those funds only to supplement and, to the extent practical, increase the level of non-Federal funds that would, in the absence of migrant education funds, be made available for the education of pupils participating in migrant education projects, and in no case may migrant education funds be used to supplant those non-Federal funds.

(b) To meet the requirement in paragraph (a) of this section, an LEA is not required to provide services under this part through the use of a particular instructional method or in a particular instructional setting.

(Authority: 20 U.S.C. 2728, 2782, 2831)

§ 201.44 Comparability.

(a) Except as provided in paragraph (b) of this section and § 201.45, an LEA may receive migrant education funds only if the LEA uses State and local funds to provide services to students receiving migrant education program services that, taken as a whole, are at least comparable to services being provided to students in the same grades who are not receiving migrant education programs funds; or

(b)(1) To meet the comparability requirements in paragraph (a) of this section, an LEA shall—

(i) Establish and implement—

(A) A district-wide salary schedule;

(B) A policy to ensure equivalence among schools in teachers, administrators, and auxiliary personnel; and

(C) A policy to ensure equivalence among schools in the provision of curriculum materials and instructional supplies;

(ii) Develop written procedures to ensure compliance with paragraph (a) of this section.

(iii) Maintain annual records documenting compliance with paragraph (a) of this section.

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(2) In determining compliance with paragraph (a) of this section, an LEA does not need to consider unpredictable changes in student enrollment or personnel assignments that occur after the beginning of a school year.

(c)(1) In accordance with the rulemaking requirements in § 201.46 of these regulations, an SEA may establish standards to ensure that an LEA's policies under paragraph (b)(1)(i)(B) and (C) of this section result in the provision of equivalent staffing, materials, and supplies among the schools of the LEA.

(2) In the absence of standards established by the SEA, an LEA shall establish standards, approved by the SEA under § 201.18, to ensure that the policies required under paragraph (b)(1)(i)(B) and (C) of this section result in the provision of equivalent staffing, materials, and supplies among the schools of the LEA.

(d)(1) The SEA shall monitor each LEA's compliance with the comparability requirements.

(2) If an LEA is found not to be in compliance with the comparability requirements, the amount to be withheld or repaid is the amount or percentage by which the LEA failed to comply with the standards established under paragraph (c) of this section.

(Authority: 20 U.S.C. 2728(c), (d), 2782, 1831)

§ 201.45 Excluding special State and local funds from supplement-not-supplant and comparability determinations.

(a) *General rule.* (1) For the purpose of determining compliance with the supplement-not-supplant requirement in § 201.43 and the comparability requirement in § 201.44, an LEA may exclude State and local funds spent in carrying out the following types of programs:

(i) Special State programs designed to meet the special educational needs of migratory children, including compensatory education for migratory children, that the Secretary has determined in advance under paragraph (b) of this section meet the requirements in section 1018(d)(1)(B) of the Act.

(ii) Special local programs designed to meet the special educational needs of migratory children, including compensatory education for migratory children, that the SEA has determined in advance under paragraph (c) of this section meet the requirements in section 1018(d)(1)(B) of the Act.

(2) For the purpose of determining compliance with the comparability requirements in § 201.44 only, an LEA may also exclude State and local funds spent in carrying out the following types of programs:

(i) Bilingual education for children of limited English proficiency.

(ii) Special education for handicapped children.

(iii) State phase-in programs that the Secretary has determined in advance under paragraph (b) of this section meet the requirements in section 1018(d)(2)(B) of the Act.

(b) *Secretarial determination regarding State programs.* (1) In order for an LEA to exclude State and local funds spent on State programs under paragraphs (a)(1)(i) and (2)(iii) of this section, an SEA shall request the Secretary to make an advance determination of whether—

(i) A special State program under paragraph (a)(1) of this section meets the requirements in section 1018(d)(1)(B) of the Act; and

(ii) A State phase-in program under paragraph (a)(2)(iii) of this section meets the requirements in section 1018(d)(2)(B) of the Act.

(2) Before making the determination, the Secretary requires the SEA to submit copies of the State law and implementing rules, regulations, orders, guidelines, and interpretations that the Secretary may need to make the determination.

(3) The Secretary makes the determination in writing and includes the reasons for the determination.

(4) If there is any material change in the pertinent State law affecting the program, the SEA shall submit those changes to the Secretary.

(c) *SEA determination regarding local programs.* (1) In order for an LEA to exclude State and local funds spent on a special local program under paragraph (a)(1)(ii) of this section, the LEA shall request the SEA to make an advance determination of whether that program meets the requirements in section 1018(d)(1)(B) of the Act.

(2) Before making a determination, the SEA shall require the LEA to submit copies of the State law and implementing rules, regulations, orders, guidelines, and interpretations that the SEA may need to make the determination.

(3) The SEA shall make the determination in writing and include the reasons for its determination.

(4) If there is any material change in the pertinent local requirements affecting the program, the LEA shall submit those changes to the SEA.

(Authority: 20 U.S.C. 2728 (b), (c), (d), 2782)

§ 201.46 State rulemaking and other SEA responsibilities.

(a) An SEA is responsible for ensuring that the agencies that receive Chapter 1 Migrant Education Program funds in the State comply with all statutory and regulatory provisions applicable to Chapter 1.

(b)(1) Except as provided in paragraph (c) of this section, Chapter 1 does not preempt, prohibit, or encourage State rules, regulations, or policies issued pursuant to State law.

(2) If a State issues rules, regulations, or policies, they may not be inconsistent with the provisions of the following:

(i) The Chapter 1 statute.

(ii) The regulations in this part.

(iii) Other applicable Federal statutes and regulations.

(iv) The SEA application approved under § 201.13.

(c) Unless needed to implement SEA responsibilities in its approved State application or in the Chapter 1 statute or regulations, a State may not issue rules, regulations, or policies that limit LEAs' decisions affecting funds received under this part regarding—

(1) Grade levels to be served;

(2) Basic skill areas to be addressed;

(3) Instructional settings, materials, or teaching techniques to be used;

(4) Instructional staff to be employed, so long as the staff meets State certification and licensing requirements for education personnel; or

(5) Other essential support services.

(d) Nothing in paragraph (c) of this section limits the SEA's authority to review and approve an LEA's or operating agency's application or to ensure that the use of Chapter 1 Migrant Education Program funds is in accordance with all applicable requirements.

(e) The imposition of any State rule or policy relating to the administration and operation of Chapter 1 Migrant Education Program, including those based on State interpretation of any Federal law, regulation, or guideline, shall be identified as a State imposed requirement.

(f)(1) If a State issues rules or regulations relating to the administration and operation of the Chapter 1 Migrant Education Program, a State committee of practitioners shall review before publishing—

(i) Any proposed rule or regulation, if one is required under State law; or

(ii) Any final rule or regulation if a proposal rule or regulation is not required by State law.

(2) The State is encouraged to convene the committee of practitioners for the purpose of the review required under paragraph (f)(1) of this section.

(3) In an emergency situation in which a rule or regulation must be issued within a limited time, the State—

(i) May issue a regulation without the prior consultation required in paragraph (f)(1) of this section; and

(ii) Shall immediately convene a committee of practitioners to review the emergency regulation prior to issuance in final form.

(4)(i) The committee of practitioners must include—

(A) Administrators;

(B) Teachers;

(C) Parents;

(D) Members of local boards of education; and

(E) Representatives of private school children; and

(ii) A majority of the committee must be representatives of LEAs.

(iii) SEAs are encouraged to request from appropriate organizations recommendations for membership on the committee.

(Authority: 20 U.S.C. 2782, 2831, 2851; H. Rept. 95, 100th Cong., 1st Sess. 34 (1987))

§ 201.47 Complaint procedures for an SEA.

(a) *Definition of a complaint.* For the purpose of this section, a complaint is a signed, written statement that includes—

(1) An allegation that a requirement applicable to the Chapter 1 Migrant Education Program has been violated; and

(2) Information that supports the allegation.

(b) *Who may complain.* Any parent, teacher, or other concerned individual or organization may file a complaint.

(c) *Where to file.* (1) Unless a complaint meets the standards for a direct complaint to the SEA in paragraph (d)(2)(iii) of this section, a complaint must be filed initially with the appropriate LEA.

(2) A complainant who is dissatisfied with the initial decision of the LEA may file an appeal with the SEA.

(d) *Procedures for complaint resolution.* (1) An SEA shall develop and implement written procedures to govern—

(i) Investigation and resolution of direct complaints by an LEA;

(ii) Review by the SEA of appeals of complaints resolved by an LEA; and

(iii) Investigation and resolution of direct complaints filed with the SEA.

(2) The procedures required under paragraph (d)(1) of this section must include—

(i) Specific time limits for investigation and resolution of complaints by an LEA;

(ii) Specific time limits for resolution of direct complaints and appeals by SEA; and

(iii) Standards for—

(A) Accepting direct complaints under paragraph (d)(1)(iii) of this section; or

(B) Referring a direct complaint to the appropriate LEA for resolution.

(Authority: H. Rept. 567, 100th Cong., 2d Sess. 341 (1988)(Conf. Rept.))

§ 201.48 Allowable costs using program funds.

(a) To administer its migrant education program for migratory children, and SEA may use the funds made available for the State migrant education program under § 201.21 only to perform those functions that are unique to the migrant education program or that are the same or similar to the functions performed by LEAs in the State under 34 CFR Part 200.

(b) These functions include, but are not limited to, the—

(1) Statewide identification and recruitment of eligible migratory children;

(2) Interstate and intrastate coordination of the State migrant education program and its local projects with other State programs and local projects;

(3) Coordination of project level activities with other public and private agencies;

(4) Implementation of the migrant student record transfer system;

(5) Processing of reports that are submitted by the operating agencies to the SEAs;

(6) Maintenance of inventories of property acquired with migrant education program funds;

(7) Negotiation and awarding of contracts; and

(8) Evaluation activities of the State migrant education program other than the design of evaluation report forms and final preparation of the SEA's evaluation report to the Secretary.

(Authority: 20 U.S.C. 2781, 2782, 2831)

§ 201.49 Personnel to be assigned supervisory duties.

(a) An LEA may assign public school personnel paid entirely with migrant education funds to limited supervisory duties that may provide some benefit to children not participating in the migrant education project if—

(1) Similarly situated personnel at the same school site, who are not paid with Chapter 1 migrant education funds, are assigned these duties; and

(2) The time spent by Chapter 1 personnel on these duties does not exceed the least of the following:

(i) The proportion of total work time that similarly situated non-Chapter 1 personnel at the same school site spend performing these duties.

(ii) One period per day.

(iii) Sixty minutes per day.

(b) The limited supervisory duties in paragraph (a) of this section need not be limited to classroom instruction.

(c) The amount of time referred to in paragraph (a)(2) of this section may be calculated on a daily, weekly, monthly, or annual basis.

(d) The allowable duties may include but are not limited to the following:

(1) Supervision of halls, playgrounds, lunchrooms, study halls, bus loading and unloading, and homerooms.

(2) Participation as a member of a school or district curriculum committee.

(3) Participation in the selection of regular curriculum materials and supplies.

(Authorities: 20 U.S.C. 2853; H Rept. 95, 100th Cong., 1st Sess. 34–35 (1987)

§ 201.50 Prohibition against considering payments under the migrant education program in determining State aid.

A State may not take into consideration payments under the migrant education program in determining—

(a) The eligibility of an LEA for State aid; or

(b) The amount of State aid to be paid to an LEA for free public education.

(Authority: 20 U.S.C. 2854)

26. A new Subpart E containing §§ 201.51 through 201.56, inclusive, is added to Part 201 to read as follows:

Subpart E—Evaluation

§ 201.51 Demographic and evaluation reports.

(a) *LEA evaluations.* (1) An LEA shall evaluate, at least once every three years, the effectiveness of its Chapter 1 Migrant Education Project, in terms of basic and more advanced skills that all children are expected to master, on the basis of—

(i) The desired outcomes described in the LEA's application; and

(ii) Except for Chapter 1 migratory children in preschool, kindergarten, and first grade, student achievement, aggregated for the LEA as a whole, in accordance with the national standards in § 201.53.

(2)(i) The LEA shall determine whether improved performance of the Chapter 1 formerly migratory children, participating in the full school year program at least two years, is sustained over a period of more than 12 months.

(ii) To make this determination, and LEA shall assess performance of the same children for at least two consecutive 12 month periods, provided these children continue to be enrolled in the schools of the LEA.

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Example: An LEA provides Chapter 1 migrant education services during 1988-89 school year. The LEA measures the gains made by participating children on a spring-spring testing cycle (spring 1988–1989). To determine whether improved performance is sustained over the period of more than 12 months, the LEA measures the performance again in the spring of 1991.

(3) The LEA shall report its evaluation results to the SEA at least once during each three year application cycle.

(b) *SEA evaluations.* (1) An SEA shall evaluate, at least every two years, the Chapter Migrant Education Program in the State on the basis of the local evaluations conducted under paragraph (a) of this section and sections 1107 and 1202(a)(6) of this Act.

(2) The SEA shall ensure that its biennial evaluation report is representative of the statewide program.

(3) The SEA shall inform its LEAs, in advance, of the specific data that will be needed and how the data may be collected.

(4) The SEA shall—

(i) By a date established by the Secretary, submit its evaluation to the Secretary; and

(ii) Make public the results of the evaluation.

(5) The SEA may require the LEAs to evaluate the effect of the Chapter 1 Migrant Education Projects on the children's achievement in basic and more advanced skills within the regular program, including, but not limited to, writing, science, history, or other subjects.

(c) *Annual performance report.* (1) An SEA shall annually—

(i) Collect data specified in section 1019 of the Act and by the Secretary in the SEA's annual performance report; and

(ii) Submit those data to the Secretary.

(2) An LEA shall provide to the SEA any data needed by the SEA to complete its annual report.

(Authority: 20 U.S.C. 2722, 2728, 2731, 2782, 2835, 2836)

§ 201.52 Evaluation information to be collected.

In assessing their programs and projects, the SEAs and LEAs shall develop evaluations that will assess the effectiveness of—

(a) Instructional services provided in grades 2–12:

(1) During the regular school-year term, the evaluation design will include—

(i) Objective measures of the educational progress of project participants (including educational achievement in basic skills) as measured, over a 12-month testing interval, against an appropriate nonproject comparison group; and

(ii) A measure for determining whether, for formerly migratory children who have been served under this part in a full school-year program for at least two years, improved performance is sustained for at least one additional year.

(2) During the summer term, the evaluation design will include—

(i) Objective measures of the educational progress of project participants (including educational achievement of basic skills over the project performance period; and

(ii) To the extent possible, a means of comparing project outcomes to those of an appropriate nonproject comparison group; and

(b) Support services provided in grades 2–12.

(1) During either the regular or summer terms, the evaluation design includes measures of the effects of the project on participants consistent with the defined support services objectives. (For example, changes in student attendance rates may be an appropriate measure of the effect of guidance and counseling services.)

(2) When possible, these project outcomes should also be compared to the performance of an appropriate nonproject comparison group.

(Authority: 20 U.S.C. 2728, 2782, 2831, 2833)

§ 201.53 General technical standards for evaluation.

SEAs and local operating agencies shall comply with the following technical standards in designing and implementing procedures for the evaluation of Chapter 1 migrant education projects:

(a) *Representativeness of evaluation findings.* The evaluation results must be computed so that the findings apply to the persons served in projects under the program. This may be accomplished by including in the evaluation either all or a representative sample of persons, schools, agencies, or projects.

(b) *Reliability and validity of evaluation instruments.* The evaluation instruments used must consistently and accurately measure progress toward accomplishing the objectives of the project, and must be appropriate considering factors such as the age, grade, mobility, language, degree of language fluency and background of the persons served by the project.

(c) *Soundness of evaluation procedures.* The evaluation procedures must minimize error by providing for proper administration of the evaluation instruments, accurate scoring and transcription of results, and the use of analysis and reporting procedures that are appropriate for the data obtained from the evaluation.

(d) *Valid assessment of project outcomes.* The evaluation procedures must provide for accurate and objective measurement of the progress made by project participants towards defined project objectives.

(Authority: 20 U.S.C. 2728, 2782, 2831, 2835)

§ 201.54 Nonproject comparison groups.

(a) To fulfill the requirements of § 201.52, regarding the information to be collected, an appropriate nonproject comparison group shall consist of persons similar in age, grade, language, degree of language fluency, previous achievement level, and other relevant background variables.

(b) To fulfill the requirements of § 201.52(a)(1), SEAs and LEAs may use appropriate forms and levels of national, State, or local normed achievement tests.

(Authority: 20 U.S.C. 2728, 2782, 2831, 2835)

§ 201.55 Submission of sampling plans.

(a) If an SEA wishes to use sampling in its evaluation of programs conducted under this part, the SEA shall submit, for prior approval by the Secretary, a proposed sampling plan designed to ensure that evaluations will be on a representative sample of its LEAs in any school year.

(b) The Secretary approves a sampling plan that will provide reliable and representative data under this subpart.

(c)(1) The SEA shall review its sampling plan at least once every three years.

(2) If based on this review or other circumstances, the sampling plan requires changes, the SEA shall request reapproval of the plan by the Secretary.

(Authority: 20 U.S.C. 2835; H.R. Rept. 567, 100th Cong., 2d Sess. 284 (1988) (Conf. Rept.))

§ 201.56 Use of evaluation results for program improvement.

SEAs and LEAs must ensure that the results of their evaluations are used to improve services provided to the children in their Chapter 1 migrant education programs and projects.

(Authority: 20 U.S.C. 2728, 2782)

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Part V

Department of Education

Final Funding Priorities for Certain New Direct Grant Awards and Invitation for Applications for New Awards Under Certain Direct Grant Programs for Fiscal Year 1989; Notices

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DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

Final Funding Priorities for Certain New Direct Grant Awards

AGENCY: Department of Education.

ACTION: Notice of final funding priorities for certain new direct grant awards.

SUMMARY: The Secretary announces final funding priorities for grants under the Handicapped Children's Early Education Program; Program for Severely Handicapped Children. Educational Media Research, Production, Distribution, and Training Program; Postsecondary Education Programs for Handicapped Persons; Secondary Education and Transitional Services for Handicapped Youth Program; and Technology, Educational Media, and Materials for the Handicapped Program.

EFFECTIVE DATE: These funding priorities take effect either 45 days after publication in the Federal Register or later if Congress takes certain adjournments. If you want to know the effective date of these funding priorities call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Joseph Clair, Division of Educational Services, Office of Special Education Programs, Department of Education, 400 Maryland Avenue, SW., (Switzer Building, Room 4093–MS 2313), Washington, DC 20202. Telephone: (202) 732–4503.

SUPPLEMENTARY INFORMATION: On September 29, 1988 at 53 FR 38254, the Secretary published in the Federal Register a Notice of Proposed Funding Priorities for fiscal years 1989 and 1990, for certain program competitions under the Office of Special Education and Rehabilitative Services.

This notice announces final funding priorities for fiscal years 1989 and 1990. Additional priorities for fiscal years 1989 and 1990 will be published in future editions of the Federal Register. One priority that was proposed under the Educational Media, Research, Production, Distribution and Training Program to provide closed-captioning of movies, mini-series, and specials, will not be included in this notice. This activity will be funded as a contract rather than a cooperative agreement in fiscal year 1989.

A notice requesting transmittal of applications under these priorities is published in this issue of the Federal Register.

Analysis of Comments and Changes

A total of fourteen comments were received in response to the proposed priorities. As a result of comments, changes were made to three priorities: (1) Two priorities under Handicapped Children's Early Education Program for Outreach Projects have been combined into one priority; (2) under Programs for Severely Handicapped Persons, a priority has been modified to address the problems students with severe disabilities who use assistive technology have when attending regular education classes; and, (3) under Programs for Severely Handicapped Children, the final report requirements for one priority have been modified to expand the type of educational settings for which results shall be reported. The Secretary has also made some technical changes in the wording of the priorities to provide greater clarity and to remove paperwork requirements that can be handled through other means. A discussion of the requests for clarification and changes on each individual priority follows:

Handicapped Children's Early Education Program—Nondirected Demonstration Projects

Comment: One commenter encouraged model demonstrations that emphasize interagency collaboration, efficacy of different service models and effective use of staff.

Discussion: These projects are allowable under the nondirected demonstration priority.

Changes: None.

Comment: One commenter requested that the use of assistive technology and services be included in the nondirected demonstration priority and that proposals addressing the use of that technology in integrated day care settings be given priority over other proposals.

Discussion: The Secretary recognizes the importance of assistive technology in facilitating the integration of children with severe handicaps into regular education programs. The intent of the nondirected demonstration priority is to support a wide range of applications and to invite applicants to address issues that will accommodate the child care needs of working parents who have young children with handicaps. Projects demonstrating the use of assistive technologies are allowable under this priority.

Changes: None.

Nondirected Experimental Projects

Comment: One commenter requested that the level of funding be increased to a minimum of $200,000 per application.

Discussion: The Secretary recognizes the importance of funding experimental projects at a level sufficient to enable researchers to conduct effective research. Projects recently funded under this program have demonstrated that effective research can be conducted within the funding range of $100,000 to $150,000. However, the funding level for each approved application will be determined on an individual basis and may range below and above the average level proposed.

Changes: None.

Mulit-disciplinary Training Programs for Child Care Personnel

Comment: One commenter expressed concern that the multidisciplinary training programs for child care personnel include an invitation for submission by community based, nonprofit organizations.

Discussion: The Secretary encourages submissions by community based, nonprofit organizations. The priority lists programs conducted by nonprofit public or private sector as an appropriate target for the model. The invitation by the Secretary includes applications from organizations that are interested in expanding current child care services to include services for children with handicaps. Projects demonstrating the expansion of child care services to community-based, nonprofit organizations are allowable under this priority.

Changes: None.

Comment: One commenter encouraged the inclusion of families, special educators, occupational therapists, physical therapists, speech and language pathologists, paraprofessionals, nutritionists, nurses, social workers and families in multi-disciplinary teams.

Discussion: This priority allows in-service training for child care workers to include coordination with families and a variety of related services personnels.

Changes: None.

State-wide Outreach Projects

Comment: One commenter expressed concern regarding the division of outreach efforts into a single State outreach priority and a national or mulit-State outreach priority. The commenter stated that a single State focus unnecessarily limits the impact potential of an outreach project; the commenter recommended several other ways in which the priorities should be developed.

Discussion: The Secretary agrees with the commenter that the distinction between single-State outreach and multi-State outreach would limit the focus of the outreach projects. Because funding constraints limit the number of awards under these priorities, the Secretary chooses to allow greater flexibility on the part of the applicants by eliminating the distinction between the two priorities.

Changes: State Outreach and National Outreach priorities have been combined into a single priority with several invitational requests.

Early Childhood Research Institute—Integrated Programs

Comment: One commenter provided a series of recommendations for additional areas of research within the proposed research institute on Integrated Programs. The first recommendation emphasized the need to conduct longitudinal research on many of the issues set forth in the priority. The second addressed the need to include research on legal, administrative, and fiscal issues that relate to least restrictive environment.

Discussion: The Secretary concludes that the priority allows for the inclusion of studies on these topics.

Changes: None.

Postsecondary Education Programs for Handicapped Persons—Postsecondary Demonstration Projects

Comment: One commenter endorsed the priority and suggested the establishment of an evaluation criterion that would compare dropouts with disabilities and dropouts without disabilities from postsecondary programs.

Discussion: The regulations at 34 CFR Part 336 set forth the evaluative criteria to be used in evaluating applications under this program. Included is a criterion for determining the soundness of the evaluations that are planned for the project described. The criterion is worded such that decisions are made on the match between stated objectives for the project and the evaluation methods for determining the effectiveness of attaining the project objectives. The specific consideration proposed by the commenter may not necessarily apply to all submissions under the announced priority.

Changes: None.

Programs for Severely Handicapped Children

Comments: Three commenters expressed concern that no priority addressed the dissemination of information pertaining to deaf-blindness, and urged that such a priority be developed.

Discussion: The proposed priority titled "Utilization of Innovative Practices for Children with Deaf-Blindness" includes the provision for the funding of a project to develop and disseminate information on deaf-blindness. In addition, information on deaf-blindness is disseminated through the State and multi-State deaf-blind projects and the technical assistance projects funded under the Services for Deaf-Blind Children and Youth Program.

Changes: None.

Comment: One commenter observed that the proposed priorities did not include "Technical assistance to State agencies to facilitate the transition of deaf-blind youth upon attaining age 22 from education to other services," as authorized by section 622 of Part C, EHA, and urged that this priority be added.

Discussion: This priority is included in regulations at 34 CFR Part 307. The Secretary anticipates including this priority along with others when an application notice for the Services for Deaf-Blind Children and Youth Program is announced later this year.

Changes: None.

Comment: One commenter recommended that in addition to the announced priorities, a priority needs to be added to fund a deaf-blind research institute, which would focus on the transition of deaf-blind youth from school to adult life.

Discussion: The importance of the suggested research is recognized as being among the most significant areas pertaining to deaf-blind youth that needs investigation. However, since over the past three years the Department has supported several demonstration projects addressing the issues of transition and supported work for deaf-blind youth, the Secretary intends to analyze the results of these projects as an interim step before developing an institute such as that suggested.

Changes: None.

Comment: One commenter suggested the addition of a priority that would assure that blind, visually impaired and deaf-blind children receive the appropriate services that they require in integrated settings.

Discussion: It is the intent of each of the proposed priorities under the Programs for Severely Handicapped Children, CFDA No. 84.086, that the services that they support will be appropriate services provided in integrated settings to the maximum extent appropriate.

Changes: None.

Comment: One commenter recommended the addition of a priority to address the problems students with severe disabilities who use assistive technology have when attending regular education.

Discussion: The Secretary recognizes the importance of addressing these problems.

Changes: Priority No. 2 under the Program for Severely Handicapped Children has been modified to provide for the funding of projects addressing these problems.

Comment: One commenter observed that under several priorities a common thread appears to be that the outcome must be that children with deaf-blindness be educated within classrooms of peers who are non-handicapped. The commenter expressed concern that the restrictive nature of this approach may preclude the support of model services to those children in other educational settings.

Discussion: The Secretary recognizes that solutions to problems in the delivery of services may be tested in a range of settings, and has modified the final reporting requirements under the priority titled "Validated Practices: Children with Deaf-Blindness". However, with the intent to extend the range of innovative approaches for providing educational services to this population, the Secretary elects to retain the original language of the other proposed priorities.

Changes: The final reporting requirements of priority No. 5 have been modified to require that grantees report on principles learned or tested for solving specific problems in educating children with deaf-blindness without regard to the educational setting in which services are provided.

Secondary Education and Transitional Services for Handicapped Youth Program Family Networking

Comments: One commenter wants the priorities to foster family networking through existing groups in the community.

Discussion: Existing community groups such as service organizations, churches, and hospitals, mentioned by the second commenter are eligible applicants under this priority.

Changes: None.

Technology, Educational Media and Materials for the Handicapped Program

Comment: One commenter suggested that the Technology program (CFDA 84.180) should stress the development of toys and materials which are play-oriented.

Discussion: The purpose of Part G of the Education of the Handicapped Act is

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for " * * * advancing the use of new technology, media, and materials in the *education* of handicapped students * * * " (italic added). The emphasis on education in the Act does not preclude the utilization of technology or materials which are oriented toward educational "play" under either of the priorities, as long as the design formats are consistent with the priorities as a whole.

Changes: None.

Title of Program: Handicapped Children's Early Education Program

CFDA No.: 84.024

Purpose: To provide Federal support for a variety of activities designed to address the special problems of infants and children with handicaps, from birth through age eight and their families, and to assist State and local entities in expanding and improving programs and services for those infants, toddlers, and children and their families. Activities include demonstration, outreach, experimental, research and training projects, and research institutes.

Priorities: The Secretary establishes the following funding priorities for the Handicapped Children's Early Education Program, CFDA No. 84.024. In accordance with the Education Department General Administrative Regulations (EDGAR) in 34 CFR 75.105(c)(3), the Secretary will give an absolute preference under this program to applications that respond to the following priorities; that is, the Secretary will select for funding only those applications proposing projects that meet these priorities.

Priority 1. Coordinated Service Delivery for Infants and Toddlers with Identified Handicapping Conditions. (CFDA No. 84.024)

This priority supports demonstration projects that design and evaluate model procedures for actively involving families in (1) the assessment of needs, planning and decision-making that result in the individualized family service plan (IFSP); and (2) the implementation of the plan. Models developed under this priority must build on current research findings regarding family involvement in service programs and family decision-making. The models must identify barriers that hinder family involvement and should identify and develop processes to support and enhance family involvement in the development and implementation of the IFSP. Procedures for implementation of the IFSP must include a case management system for the family that includes interagency coordination of all the early intervention services identified in the IFSP. This system must include strategies for assuring that services stipulated in the IFSP are provided by all identified service providers, that the financial responsibilities related to the delivery of services are met by the responsible agencies, that there is regular communication and coordination among all service providers involved in services to a particular child or family, and that the IFSP is reviewed and revised periodically.

The model must be evaluated using multiple case studies. Cases must include the families of infants and toddlers with identified handicapping conditions (e.g., children with Down's Syndrome, severe visual and/or hearing impairments, cerebral palsy, myleomenigocele) or with conditions that have a high probability of producing handicaps and that require medical intervention (e.g., extremely low birth weight of less than 750 grams, or AIDS-related complex). To assure that procedures are applicable to a range of families (including two-parent families, single-parent families, foster families, families with parents who are developmentally disabled, and low-income families) the case must also represent a range of families. The evaluation design should include assessment of outcomes for families and children as well as measures of family involvement and satisfaction. Projects must produce a manual delineating the procedures for enhancing family involvement in developing and using the IFSP and for case management to assure coordinated services, as well as sample case studies and outcome data for families who participated in the project.

Final reports submitted by projects funded under this priority must include both the specific findings of the project as well as general principles that have been learned or tested for developing interventions for involving families in the development and implementation of the IFSP. Quantifiable information from project evaluation activities must also be included along with precise information regarding the procedures for the interventions and contexts in which they were implemented as well as available cost information.

Priority 2. Nondirected Demonstrations (CFDA No. 84.024)

This priority supports demonstration projects that develop, implement, and evaluate new or improved approaches for serving young children with handicaps (ages birth through eight). Projects funded under this priority must design models that allow young children with handicaps to achieve their optimal functioning level within normalized, nonsegregated environments.

Projects must (1) address a specific service problem or issue; (2) include specific components or procedures of the model and the rationale, based on theory, research, or practice evaluation, for those components or procedures; (3) include specific types of students to participate in the project (i.e., by age, handicapping condition or diagnosis, level of functioning) and (4) include an evaluation design that includes functional outcome measures for the young children with handicaps who participate in the proposed intervention(s). Final reports submitted by projects funded under this priority must include both the specific findings of the project as well as general principals that have been learned or tested for developing interventions for young children with handicaps. Quantifiable information from project evaluation activities must also be included along with precise information regarding the procedures for the interventions and the contexts in which they were implemented as well as available cost information.

The Secretary particularly invites applications for demonstration projects that develop models for delivering, coordinating, or supplementing needed developmental, special educational, or related services to infants, toddlers, or preschool-aged children with handicaps who are in day-care programs (home-based, center-based, or home or center based in conjunction with part-day special education preschool programs). This invitational priority responds to the growing number of young children, including children with handicaps, who are placed in day-care services to accommodate the child-care needs of working parents. However, applications that meet this invitational priority will not receive a competitive preference over other applications for demonstration projects that develop, implement, and evaluate new or improved approaches for serving young children with handicaps (ages birth through eight).

Priority 3. Multi-disciplinary Training Programs Child Care Personnel (CFDA No. 84.024)

This priority supports demonstration projects that develop and evaluate in service training models that will prepare professionals and paraprofessionals to provide, coordinate, or enhance early intervention, special education, and related services to infants and toddlers with handicaps and/or preschool-aged children with handicaps. Model projects must provide inservice training for professionals and paraprofessionals

who are already engaged in the provision of child care, who have not been trained to serve infants and toddlers with handicaps and/or preschoolers with handicaps, but who are committed to serving these children in programs with nonhandicapped children.

In developing their model, projects must identify existing preschool or child care programs, and obtain their commitment prior to submission of the application. The model may target child care workers (e.g., day care providers, preschool providers) in the corporate or private-for-profit sector as well as in the not-for-profit public or private sector. A model must be based on a conceptual framework that identifies the existing roles and responsibilities of the individuals to be trained, the changes required in those roles to serve children with handicaps, and the skills needed to implement the new roles. A model must directly train personnel to provide, coordinate, or enhance special education or related services to children with handicaps in integrated community based programs. Inservice training procedures and materials must address the training needs of a variety of personnel. The model must enable the content and procedures to be tailored to the existing skills and roles of the different trainee groups. In addition to initial training the model must include an array of follow-up and support activities that insures that personnel participating in the training master and implement services to meet the needs of students with handicaps being served in settings with nonhandicapped children. During years 2 and 3, the inservice training model must collect data regarding the number of infants and toddlers or preschool-aged children with handicaps served in the target programs and the types of services provided to the children. Projects must also evaluate the inservice training model through direct assessment of participant skills following the training and after a period of time. At least some measures must be based on direct observation in the service setting using standardized observational rating techniques. Models must be consistent with personnel standards and certification/licensure requirements in their States.

The Secretary especially invites applications from: (a) Local, intermediate education agency or State-operated programs that are interested in placing children with handicaps in programs for nonhandicapped preschool children as a way to integrate handicapped and nonhandicapped children; (b) corporations or organizations that are interested in expanding current child care services to include services for children with handicaps an integrated setting; and (c) institutions or organizations that have collaborative relationships with entities described in (a) or (b) above. However, applications that meet this invitational priority will not receive a competitive preference over other applications for demonstration projects that develop, implement, an evaluate new or improved approaches for serving young children with handicaps (ages birth through eight).

Priority 4. Information Management of Services for Infants and Toddlers. (CFDA No. 84.024)

This priority supports demonstration projects to develop or improve and evaluate automated information management systems for tracking, managing, and planning services for young children with handicaps, aged birth through two years of age, and their families within a State or major urban area. The system must (1) separately track and count the children and families who receive early intervention services; (2) identify the types and location of those services provided and/or needed but not provided; (3) identify the provider and the funding sources (Federal, State, private, or local) for each service provided; (4) alert programs serving preschool-aged children of incoming three year old children, at least three months in advance of the children's transition from early intervention services to preschool services; and (5) use data elements compatible with State or regional child count systems.

Applicants must coordinate the program with the State education agency and the State agency designated to administer the Program for Infants and Toddlers With Handicaps in the States where the information system is tested. The system must be coordinated with any other information systems in the State (e.g., health agency systems for tracking specific medical conditions), that overlap in population tracked, intent or purpose. This may be achieved, for example, by using identifiers compatible with other existing systems, or by merging the existing systems into a single system.

Projects funded under this priority must include an evaluation design that assures that the automated system is operational (*i.e.* produces information and reports that are accurate and consistent with the system design), that the required information linkages are compatible and reliable, and that the information produced is useful for tracking and planning purposes by the intended users of the information system. It is anticipated that projects funded under this priority will develop the software, documentation, and users' guides that will allow other interested agencies to adopt the information system. Users guides must provide as much information as possible as to the ways elements of the system can be adapted to fit the data needs or hardware configurations of other agencies.

Priority 5. Nondirected Experimental Projects (CFDA No. 84.024)

This priority supports investigations of alternative interventions or approaches for serving infants, toddlers, or preschool-aged children with handicaps. Interventions selected for comparison must include those for which information is unavailable regarding their relative effectiveness for particular groups of children or within particular settings or conditions. Projects supported under this priority must:

(1) Compare the alternative interventions or approaches in typical service settings;

(2) Conduct the investigations using methodological procedures that will produce unambigious findings regarding the relative effectiveness of the alternative strategies as well as any findings as to interaction effects between particular approaches and particular groups of children or particular contexts; and

(3) Include dissemination activities that will lead to improved services for infants, toddlers, or preschool-aged children with handicaps.

Projects must (1) address a specific problem or issue; (2) include specific approaches or interventions that will be compared or validated, including the rationale for selecting particular approaches and previous evaluation information regarding these approaches; (3) include specific types of children targeted by the project (i.e., by age, handicapping condition or diagnosis, level of functioning); and (4) include an evaluation design that includes functional outcome measures for the young children with handicaps or their families who participate in the proposed intervention(s). Final reports submitted by projects funded under this priority must include both the specific findings of the project as well as general principles that have been learned or tested for developing interventions for young children with handicaps. Quantifiable information from project evaluation activities must also be

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included along with precise information regarding the procedures for the interventions and the contexts in which they were implemented as well as available cost information.

The Secretary particulary invites applications that compare alternative approaches to assessing family strengths and needs as part of the process for developing the individualized family plans (IFSP) required under Part H of the Education of the Handicapped Act. Such projects could compare approaches, instruments, or tools commonly used for family assessment across disciplines or within a single discipline to determine their relative effects on the strength and needs identified, on the process for developing the IFSP, on the document itself, and on the satisfaction of participants in the planning process, including families of infants and toddlers with handicaps. However, applications that meet the invitational priority will not receive a competitive preference over other applicants for projects that investigate alternative interventions or approaches for serving infants, toddlers, or preschool-aged children with handicaps.

Priority 6. State or Multi-State Outreach Projects. (CFDA No. 84.024)

This priority supports projects that facilitate the implementation in single or multiple States of proven infant, toddler or early childhood models, or selected components of those models. Projects supported under this priority must:

(1) Coordinate their dissemination and replication activities with the lead agency for Part H of the Education of the Handicapped Act for early intervention services or the State educational agency for special education and related services;

(2) Disseminate and replicate proven models, or components of proven models, that provide services needed to assist young children, aged eight and below to achieve the children's optimal functioning. Services at a minimum must contain the following components:

(a) Approaches relevant to programming in regular settings including provision for skills necessary to function in integrated educational environments;

(b) Team based programming that integrates the delivery of services that includes parents, teachers, therapists and other professional disciplines;

(c) Effective involvement of families in the planning and delivery of services; and

(d) Interagency coordination when multiple agencies are involved in the provision of services to children;

(3) Evaluate the dissemination and replication activities to determine their effectiveness including their impact on the provision of services to infants, toddlers, and young children with handicaps.

The models or components of models must be state-of-the art, providing procedures and information that are not readily available to program sites within States where outreach is planned. The models or components of models must be based on current theory and research, and must have unambigious evaluation information regarding effectiveness. In addition, the project should be consistent with the provisions of Part B or Part H of the Education of the Handicapped Act. Outreach activities may include, but not be limited to: public awareness, product development and dissemination, site development, training and technical assistance. The projects may work with major early childhood associations, provider groups or agencies in disseminating and replicating the proven models, or components of proven models.

Projects under this priority must (1) include models or components of models selected for outreach activities and a rationale as to the importance of these models; (2) select a model based on unambiguous evidence as to its effectiveness; (3) include specific dissemination and replication activities; and (4) have a rationale for those activities.

Final reports submitted by projects funded under this priority must include evaluation information as to the effectiveness of the model as implemented by replication sites.

The Secretary particularly invites applications for outreach projects that are based on models serving young children with severe disabilities, young children with handicaps due to chronic health problems, or young children with handicapping conditions who have been previously unserved or underserved. However, applications that meet this invitational priority will not receive a competitive preference over other applications for outreach projects that serve other young children with handicaps aged birth through eight.

Priority 7. Early Childhood Research Institute—Integrated Programs. (CFDA No. 84.024)

This priority establishes an Early Childhood Research Institute to develop, field-test, and disseminate intervention strategies to improve the integration of young children with handicaps into a range of preschool, child-care, pre-kindergarten, and kindergarten programs available to non-handicapped children in local communities (whether sponsored by public, private, or corporate agencies). The goal of the institute is to produce validated intervention procedures that service can providers use to adapt to on-going preschool, child-care, pre-kindergarten, and kindergarten programs to appropriately meet the needs of children with a range of handicapping conditions. The institute must conduct a program of research that will:

(1) Work with major early childhood associations and provider groups or agencies to identify major approaches, curricula, or models that are commonly used by preschool, child-care, pre-kindergarten, or kindergarten providers to structure and deliver services for non-handicapped preschool or kindergarten-aged children. These approaches may encompass the entire program or particular program areas (i.e., language development, practical life skills, etc.), but they must be found in communities throughout the Nation;

(2) Identify through analysis of materials and classroom observation the extent to which particular approaches, models, or curricula are compatible with the learning characteristics and education/related service needs of preschool-aged children with a range of handicapping conditions as well as program barriers that affect the capacity of the programs to address the special needs of children with a range of handicapping conditions. The results of these analyses must be shared and revised through discussions with major early childhood associations and provider groups or agencies.

(3) Develop and test adaptations of particular approaches, models, or curricula to meet the special needs of children with a range of handicapping conditions. In developing and testing adaptations, the institute will work with major early childhood associations and provider groups or agencies to (a) select approaches, models, or curriculum that are most promising (based on the analyses of 2 above) for meeting the special needs of children with handicaps; (b) develop adapted activities, materials, curricula, instructional strategies, classroom environments that are compatible with key features of particular approaches and models, but that are also consistent with the learning characteristics and special education/related service needs of children with a range of handicapping conditions; and, (c) test and evaluate the intervention strateges in multiple sites, employing research designs that assure that the effectiveness of the intervention strategy is determined;

(4) Work with major early childhood associations and provider groups and agencies to develop and test materials that would allow public, private, and corporate providers of preschool, child-care, pre-kindergarten, and kindergarten programs for non-handicapped students to adapt their programs to meet the needs of students with a range of handicapping conditions. Materials must be developed that describe adaptations identified in (3) above for particular approaches, models, or curricula. Materials must be developed that outline general principles for providing services for preschool-aged children with various handicapping conditions in integrated preschool and kindergarten settings. Inservice and preservice materials for training early childhood personnel to adapt and modify programs to meet the needs of preschool-aged students with handicaps must also be developed and field tested; and

(5) Provide research training and experience for at least 10 graduate students each year.

The institute must conduct the program of research and development within a conceptual framework that identifies major approaches and models for delivering preschool, childcare, pre-kindergarten, and kindergarten services to non-handicapped children; the learning characteristic and special education/related service needs of preschool-aged children with a range of handicapping conditions; and program dimensions that impede or facilitate the integration of preschool-aged students with handicaps.

Period of Award. The Secretary will approve one cooperative agreement with a project period of up to 60 months subject to the requirements of 34 CFR 75.253(a) for continuation awards. In determining whether to continue the institute for the last two years of the project period, in addition to considering the factors in 34 CFR 75.253(a), the Secretary will consider the recommendation of a review team consisting of three external experts selected by the Secretary and designated Federal program officials. The services of the review team are to be performed during the last half of the institute's second year, and will replace that year's annual evaluation that the recipient is required to perform under 34 CFR 75.590. During all other years of the project, the recipient must comply with 34 CFR 75.590. Costs associated with the services to be performed by the three external members of the review team are to be incorporated into the applicant's proposed budget. In developing its recommendation, the review team will consider, among other factors, the following:

(1) The timeliness and the effectiveness with which all requirements of the negotiated cooperative agreement have been or are being met by the recipient of the cooperative agreement; and

(2) The degree to which the institute's research design and methodological procedures demonstrate the potential for producing significant new knowledge and products.

Priority 8. Early Childhood Research Institute—Intervention (CFDA No. 84.024)

This priority will establish an Early Childhood Research Institute to develop new or improved interventions for infants and toddlers with handicaps who, because of the nature of their disabilities, require extended medical care in hospital intensive care units and who may require life-supporting technologies and systems of health care. The institute's purpose is to conduct a program of research and development designed to produce information and materials that can be used in concert with the provision of intensive health care and that promote the developmental progress of these children. The institute's research and development activities must produce information and materials that can be used within intensive care units and that facilitate the successful transition of the child to the home and to community-based services. The research and development activities must consist of two major areas of inquiry.

First, the institute must conduct a program of research to develop new or improved procedures related to the identification, referral, and intervention process. The institute's research must include, but need not be limited to, studies that: (1) Develop exemplary practices related to physician referral, initial family counseling, and tracking of the child's progress and services; (2) indentify effective practices and procedures for forming and involving a multidisciplinary team to plan services for the child and family; (3) establish criteria for enlisting the services of different State agencies, including the State Protection and Advocacy agency or other child protection groups; (4) develop exemplary models for determining the point in the child's life when nonmedical interventions can be appropriately and safely implemented; (5) identify a variety of effective nonmedical interventions that are keyed to child developmental needs, child medical needs, family needs and characteristics, and the potential for delivering such services within a hospital intensive care unit; and (6) develop new or improved interventions that will facilitate the transition of the child to the home and to community-based services. The outcomes of this research are expected to lead to improved processes of referral, family counseling, and planning and coordinating services.

Second, the institute must conduct a program of research to develop new or improved organizational structures related to the identification, referral and intervention process. The institute's research must include but not be limited to studies that: (1) Identify the full range of services and personnel needed in a comprehensive hospital-based intensive care unit; (2) develop model organizational structures (including roles, responsibilities, lines of authority, communication, and coordination) for a comprehensive hospital-based intensive care unit; (3) identify exemplary models in involving parents, siblings, friends, and extended family with a multi-disciplinary team; (4) develop procedures to prevent or remediate role conflicts among team members; and (5) identify alternative approaches to team composition and team member roles in providing intervention and transitional services. The outcomes of this research are expected to lead to improved processes for implementing interdisciplinary interventions as well as knowledge related to organizational configurations and disciplinary combinations that will enhance these processes.

It is anticipated that in conducting this research and development effort, a consortium of neonatal intensive care units will participate in order to permit the research objectives to be met and to determine the utility and effectiveness of the new information and materials in a variety of neonatal intensive care units. In forming a consortium of participating neonatal intensive care units, the applicant should consider inclusion of a range of units that currently vary on dimensions of quality and comprehensiveness of services, client characteristics, geographic location, organizational configuration, and intake and transition procedures, as appropriate. In considering transitional processes, the applicant should address the need to develop and field test specific transitional procedures and materials for children and families who require continuing medical care after discharge. In carrying out its research activities, the institute must provide

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research training and experience for at least 10 graduate students annually.

The institute must conduct the program of research and development within a conceptual framework that identifies major approaches to multi-disciplinary team coordination in planning and delivering services, characteristics and needs of children requiring extended medical interventions and their parents, and the organizational structures of intensive care units and relevant service agencies.

Period of Award. The Secretary will approve one cooperative agreement with a project period of up to 60 months subject to the requirements of 34 CFR 75.253(a) for continuation awards. In determining whether to continue the institute for the last two years of the project period, in addition to considering the factors in 34 CFR 75.253(a), the Secretary will consider the recommendation of a review team consisting of three external experts selected by the Secretary and designated Federal program officials. The services of the review team are to be performed during the last half of the institute's second year, and will replace that year's annual evaluation that the recipient is required to perform under 34 CFR 75.590. During all other years of the project, the recipient must comply with 34 CFR 75.590. Costs associated with the services to be performed by the three external members of the review team are to be incorporated into the applicant's proposed budget. In developing its recommendation, the review team will consider, among other factors, the following:

(1) The timeliness and the effectiveness with which all requirements of the negotiated cooperative agreement have been or are being met by the recipient of the cooperative agreement; and

(2) The degree to which the institute's research design and methodological procedures demonstrate the potential for producing significant new knowledge and products.

Program Authority: 20 U.S.C. 1424.

Title of Program: Educational Media Research, Production, Distribution, and Training Program

CFDA No.: 84.026.

Purpose: To promote the educational advancement of persons with handicaps by providing assistance for: (a) conducting research in the use of educational media for persons with handicaps; (b) producing and distributing educational media for the use of persons with handicaps, their parents, their actual or potential employers, and other persons directly involved in work for the advancement of persons with handicaps; and (c) training persons in the use of educational media for the instructions of persons with handicaps.

Priorities: The Secretary establishes the following funding priorities for the Educational Media, Production, Distribution, and Training Program, CFDA No. 84.026. In accordance with the Education Department General Administrative Regulations (EDGAR) at 34 CFR 75.105(c)(3), the Secretary will give an absolute preference under this program to applications that respond to the following priorities; that is, the Secretary will select for funding only those applications proposing projects that meet these priorities.

Priority 1. Closed-Captioned Local and Regional News. (CFDA No. 84.026)

The purpose of this priority is to support projects for the closed-captioning of local television news programs which, at the end of this three year award, will be maintained and continued without additional Federal funding. Projects must:

(1) Include a total number of television hours (first time and repeat) to be captioned per week and a specific method to be used for each hour—real-time, computer assisted, teleprompting, etc.;

(2) Obtain financial commitments for project continuation by the end of the third year;

(3) Provide a back-up system that will ensure successful, timely captioning; and

(4) Have obtained willingness of major networks to permit captioning of their programs.

Priority 2. Illiteracy Projects. (CFDA No. 84.026)

The purpose of this priority is to support development projects which analyze the prevalence and nature of illiteracy among persons who are handicapped and develop ways to use educational media and captioning technology to alleviate the problems associated with illiteracy in the work place and in independent living within the community. This priority allows projects to address problems identified by investigators in the field. However, the strategies proposed by investigators must be consistent with validated approaches in the area of adult literacy. Projects must (1) address a specific illiteracy-related problem including whether the problem is in the workplace or home; (2) include how the educational media or captioning application developed, produced, or tested, by the project can be expected to alleviate that problem; and (3) include an evaluation design that includes functional outcome measures for individuals with handicaps who have used the educational media or captioning application. The final reports submitted by projects funded under this priority must include both the specific findings of the project as well as general principles that have been learned or tested for developing and using educational media and captioning to alleviate problems resulting from illiteracy. Quantifiable information from project evaluation activities also must be included.

Program Authority: 20 U.S.C. 1451, 1452.

Title of Program: Postsecondary Education Programs for Handicapped Persons

CFDA No.: 84.078.

Purpose: To develop, operate, and disseminate specially designed model programs of postsecondary, vocational, technical, continuing, or adult education for individuals with handicapping conditions.

Priority: The Secretary establishes the following funding priority for the Postsecondary Education Programs for Handicapped Persons, CFDA 84.078. In accordance with the Education Department General Administrative Regulations (EDGAR) in 34 CFR 75.105 (c)(3), the Secretary will give an absolute preference to applications that respond to the following priority; that is, the Secretary will select for funding only those applications proposing projects that meet this priority.

Postsecondary Demonstration Projects. (CFDA 84.078C)

This priority supports model projects which provide individuals with mild or moderately disabling conditions other than deafness with adapted or specially designed programs that coordinate, facilitate, and promote the provision of appropriate education of these individuals with their nondisabled peers. These projects are to be targeted to improve the vocational outcomes for youths and adults who have completed or left secondary school programs and who are in need of additional education or training in order to secure and maintain competitive employment. Projects under this priority must:

(1) Establish strategies for use in locating and serving youth and adults with disabilities who are in need of continued educational services;

(2) Establish or make use of existing formal cooperative relationships among and between schools (public secondary and higher educational institutions).

vocational rehabilitation agencies, and potential employers;

(3) Develop individualized programs that detail the goals and objectives necessary for students to obtain the requisite skills for securing competitive employment;

(4) Achieve appropriate job placements for persons with disabilities served by the project through short term postsecondary educational interventions;

(5) Provide follow-up and follow-along activities for persons with disabilities placed in jobs by the project; and

(6) Propose training of project participants in relevant aspects of adjustment to the community as well as workplace.

Program Authority: 20 U.S.C. 1424a.

Title of Program: Program for Severely Handicapped Children

CFDA No.: 84.086.

Purpose: To provide Federal financial assistance for demonstration or development, research, training, and dissemination activities for severely handicapped, including deaf-blind, children and youth.

Priorities: The Secretary establishes the following funding priorities for the Program for Severely Handicapped Children, CFDA No. 84.086. In accordance with the Education Department General Administrative Regulations (EDGAR) at 34 CFR 75.105(c)(3), the Secretary will give an absolute preference under this program to applications that respond to the following priorities; that is, the Secretary will select for funding only those applications proposing projects that meet these priorities.

Priority 1. State-Wide Systems Change. (CFDA No. 84.086)

This priority supports projects that do all of the following:

(a) Develop, in conjunction with the Part B State plan, activities to improve the quality of special education and related services in the State for severely handicapped (including deaf-blind) children and youth, birth through 21 years of age, and to change the delivery of these services from segregated to integrated environments;

(b) Significantly increase the number of severely handicapped including deaf-blind children in the State who are served in regular school settings alongside their same-aged nonhandicapped peers;

(c) Evaluate the effectiveness of these activities, including tracking the number of children with severe handicaps and deaf-blindness in the State in each type of educational setting and showing changes from previous years; and,

(d) Evaluate and disseminate information about the project's outcomes. Projects under this priority must:

(1) Identify resources available in the State to provide the needed services to children and youth who are severely handicapped, including deaf-blind, as well as financial resources available through other agencies or parties.

(2) Establish services needed to assist these children and youth to achieve their most realistic functioning level in normalized, nonsegregated least restrictive environments. These services must include at a minimum:

(i) Delivery of integrated educational services that include providing severely handicapped, including deaf-blind, children who are currently being served in segregated environments with special educational and related services in programs at facilities with nonhandicapped children;

(ii) Movement of participating children and youth to and integration into less segregated environments, with the objective of facilitating the placement of these children in appropriate regular school settings;

(iii) Delivery of curricula relevant to education in integrated settings including the teaching of social integration skills, community referenced skills, and employment skills;

(iv) Activities to promote acceptance of severely handicapped including deaf-blind children and youth by the general public through increasing both the quality and frequency of meaningful interactions of these children and youth with handicapped and nonhandicapped peers and adults;

(v) Delivery of services to meet the unique needs of severely handicapped including deaf-blind children and youth; and

(vi) Effective involvement of families in the planning and delivery of services to their severely handicapped children and youth.

(3) Establish a project advisory board having representation of parents of project children and youth, including parents of deaf-blind children and youth, providers of services to this population, and State and professional organizations, that is responsible for providing significant input on project management procedures.

(4) Formulate and implement formal, written policies and procedures with relevant State, local and professional organizations for coordinating services provided to the target population, of severely handicapped including deaf-blind children and youth including the elimination of overlapping and redundant services.

Each project must include a specific number of deaf-blind students that will benefit from the project.

Priority 2. Innovations for Meeting Special Problems of Children with Severe Handicaps in the Context of Regular Education Settings. (CFDA No. 84.086)

This priority supports projects that are designed to develop in-depth, innovative approaches to a particular problem for educating students with severe handicaps in the context of regular educational settings. Towards this end, projects must include a setting in which the activities will be carried out, with particular attention paid to the extent to which physical and social integration between students with severe handicaps and students without handicaps exist in the proposed setting. Projects must ensure that the proposed setting has the following prerequisite components: (1) An established system of community-based training; (2) a systematic, data-based educational program; and (3) an established functional curriculum. Projects must build upon previous research and demonstration activities in the field and demonstrate a thoughtful synthesis and extension of such work within a complete approach of their own. Projects funded under this priority must include (1) a specific problem that the project will address; (2) a proposed approach developed by the project that can be expected to alleviate that problem; and (3) an evaluation design that includes functional outcome measures for children and youth who experience severe handicaps who participate in the proposed intervention. Final reports submitted by projects funded under this priority must include both the specific findings of the project as well as general principles that have been learned and tested for solving specific problems that may arise when students who experience severe handicaps are educated within the context of regular education settings. Quantifiable information from project evaluation activities must also be included.

The Secretary particularly invites applications that address one of the following special problems:

(1) Serving individuals with profound disabilities and/or who are treatment-assisted or otherwise require significant therapeutic or medical intervention;

(2) Designing models for incorporating nonaversive approaches within curriculum and instruction, particularly

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for students who present difficult and persistent excess behaviors;

(3) Developing approaches to encourage social support systems for individuals with severe handicaps within educational and community environments;

(4) Establishing innovative approaches to facilitating home-school communication and interactions that serve to benefit the student and the family and that allow for the varied needs and concerns of individual families;

(5) Developing steps for providing related services within regular education settings, or

(6) Developing approaches that address the problems children and youth with severe handicaps who use assistive technology have when attending regular education programs.

However, in accordance with EDGAR at 34 CFR 75.105(c)(1), an application that meets this invitational priority receives no competitive or absolute preference over applications that meet the priorities described in this notice.

Priority 3. Innovations for Meeting Special Problems of Children with Deaf-Blindness in the Context of Regular Education Settings. (CFDA No. 84.086)

This priority supports projects that are designed to develop in-depth innovative approaches to a particular problem for educating students with deaf-blindness in the context of regular educational settings. Toward this end, projects must include a setting in which the proposed activities will be carried out, with particular attention paid to the extent to which physical and social integration between students with deaf-blindness and students without handicaps exist in the proposed setting. Projects must ensure that the proposed setting has the following prerequisite components: an established system of community-based training; a systematic, data-based educational program; and an established functional curriculum. Projects must build upon previous research and demonstration activities in the field and demonstrate a thoughtful synthesis and extension of such work within a complete approach of their own. Each project must include a specific number of deaf-blind students who will benefit from the project.

Final reports submitted by projects under this priority must include both the specific findings of the project as well as general principles that have been learned and tested for solving specific problems that may arise when students who are deaf-blind are educated in the context of regular education settings. Quantifiable information from program evaluation activities must also be included.

The Secretary particularly invites applications that address one of the following special problems:

(1) Serving children and youth with deaf-blindness who have other severe handicaps in extended school year demonstration projects that focus on maintaining and enhancing skills in integrated environments;

(2) Serving children and youth with deaf-blindness who have other profound disabilities and/or who are treatment-assisted or otherwise require significant therapeutic or medical intervention;

(3) Designing models for incorporating nonaversive approaches within curriculum and instruction, particularly for students who present difficult and persistent excess behaviors;

(4) Developing approaches to encourage social support systems for individuals with deaf-blindness within educational and community environments;

(5) Establishing innovative approaches to facilitating home-school communications and interaction that serve to benefit the student and the family and that allow for the varied needs and concerns of individual families;

(6) Developing strategies for providing specialized services such as orientation and mobility within regular educational settings; or

(7) Developing systematic strategies for facilitating movement of individual students with deaf-blindness into regular classrooms, which predominantly serve nonhandicapped students.

However, in accordance with EDGAR at 34 CFR 75.105(c)(1), an application that meets this invitational priority receives no competitive or absolute preference over applications that meet the priorities described in this notice.

Priority 4. Validated Practices: Children with Severe Handicaps. (CFDA No. 84.086)

This priority supports projects that test solutions to specific problems in the delivery of special education and related services to students with severe handicaps (as defined at 34 CFR 315.4(d)). Projects supported under this priority must use methodological procedures that will produce unambiguous findings regarding the relative effectiveness of different solutions to a specific problem or that use well-designed outcome evaluations to test the effects of a single program or solution. The projects must be designed to improve the services for children and youth with severe handicaps.

Projects funded under this priority must include (1) a specific problem that the project will address; (2) specific solutions that will be compared or validated, including previous evaluations regarding these approaches; and (3) an evaluation design that includes functional outcome measures for children and youth who experience severe handicaps who participate in the proposed intervention(s). Final reports submitted by projects funded under this priority must include both the specific findings of the project as well as general principles that have been learned or tested for solving specific problems that may arise when students who experience severe handicaps are educated within the context of regular education settings. Quantifiable information from project evaluation activities must also be included along with precise information regarding the procedures for the interventions and the contexts in which they were implemented as well as available cost information.

The Secretary particularly invites applications that address one of the following areas:

(1) Improving and expanding social interaction skills in regular classrooms, workplaces, or recreational settings;

(2) Improving curricular and instructional procedures that enhance acquisition, generalization, and maintenance of functional skills and activities;

(3) Improving communication skills of children with severe handicaps in their interaction with peers and others in educational and non-educational settings;

(4) Expanding the activities that support the participation in a range of community-based settings for children with severe handicaps, with such settings to include living environments, recreation-leisure options, transportation options, and neighborhood shopping, educational and cultural settings;

(5) Supported employment for youth with severe handicaps; or

(6) Supported living for children and youth with severe handicaps.

However, in accordance with EDGAR at 34 CFR 75.105(c)(1), an application that meets this invitational priority receives no competitive or absolute preference over applications that meet the priorities described in this notice.

Priority 5. Validated Practices: Children with Deaf-Blindness. (CFDA No. 84.086)

This priority supports projects that test solutions to specific problems in the delivery of special education and related services to students with deaf-blindness. Projects supported under this priority must use methodological procedures that will produce unambiguous findings regarding the relative effectiveness of different solutions to a specific problem, or that use well-designed outcome evaluations to test the effects of a single program or solution in addressing the service delivery problem. The projects must be designed to improve the services for children and youth with deaf-blindness as defined at 34 CFR 300.5(b)(2).

Projects funded under this priority must include (1) a specific problem that the project will address; (2) specific solutions that will be compared or validated, including previous evaluations regarding these approaches; and (3) an evaluation design that includes functional outcome measures for children and youth with deaf-blindness who participate in the proposed intervention(s). Final reports submitted by projects funded under this priority must include both the specific findings of the project as well as general principles that have been learned or tested for solving specific problems that may arise in providing services. Quantifiable information from project evaluation activities must also be included along with precise information regarding the procedures for the interventions and the contexts in which they were implemented as well as available cost information. Each project must include a specific number of deaf-blind students that will benefit from the proposed project.

The Secretary particularly invites applications that address one of the following areas:

(1) Improving and expanding social interaction skills in regular classrooms, workplaces, or recreational settings;

(2) Improving curricular and instructional procedures that enhance acquisition, generalization, and maintenance of functional skills and activities;

(3) Improving communications skills of children who are deaf-blind in their interaction with peers and others in educational and noneducational settings;

(4) Expanding the activities that support the participation in a range of community-based settings for children with deaf-blindness, with such settings to include living environments, recreation-leisure options, transportation options, and neighborhood shopping, educational and cultural settings;

(5) Supported employment for youth with deaf-blindness; or

(6) Supported living for children and youth with deaf-blindness.

However, in accordance with EDGAR at 34 CFR 75.105(c)(1), an application that meets this invitational priority receives no competitive or absolute preference over applications that meet the priorities described in this notice.

Priority 6. Utilization of Innovative Practices for Children with Severe Handicaps. (CFDA No. 84.086)

This priority promotes the adoption and use of innovative practices for the education of students with severe handicaps through the support of technical assistance activities such as inservice training, program replication, and/or product dissemination. The practices are to be selected from current data and best practices and must be justified in the application in terms of their proven ability to address the needs of children with severe handicaps.

Applicants are particularly encouraged to select practices that have been generated and implemented across a range of disciplines that provide services to students with severe handicaps. Projects must identify a focus of the utilization activities and the importance of the focus in terms of its impact on the education and quality of life of students with severe handicaps, as defined at 34 CFR 315.4.

Projects under this priority must include a design that (a) defines a target audience for the training or dissemination activities; (b) includes what this target audience is expected to do or to accomplish by participating in the project; (c) includes the utilization activities that are appropriate and well-suited to achieving the described activities with the intended audiences; i.e., inservice training, program replication, and/or product dissemination, as needed to accomplish the selected change; and (d) includes systematic evaluation and reporting of the impact and effectiveness of project activities. Target audiences shall include family members whenever practicable. The Secretary particularly invites applications that address one of the following topics:

(1) Least restrictive environments for children and youth with severe handicaps;

(2) Supported employment for youth with severe handicaps;

(3) Community-based curriculum and instruction for children and youth with severe handicaps;

(4) Integration of related services for children and youth with severe handicaps into instructional objectives;

(5) Increased participation of parents in the educational process; or

(6) Communication skills of children and youth with severe handicaps.

However, in accordance with EDGAR at 34 CFR 75.105(c)(1), an application that meets this invitational priority receives no competitive or absolute preference over applications that meet the priorities described in this notice.

Priority 7. Utilization of Innovative Practices for Children with Deaf-Blindness. (CFDA No. 84.086)

This priority promotes the adoption and use of innovative practices for the education of students with deaf-blindness through the support of technical assistance activities such as inservice training, program replication, and/or product dissemination. The practices are to be selected from current data and best practices and must be justified in terms of the proven ability to address the needs of children who are deaf-blind.

Applicants are particularly encouraged to select practices that have been generated and implemented across a range of disciplines that provide services to students who are deaf-blind. Projects must identify a focus of the utilization activities and the importance of the focus in terms of its impact on the education and quality of life of students with deaf-blindness, as defined at 34 CFR 300.5(b)(2).

Projects under this priority must include a design that (a) defines a target audience for the training or dissemination activities; (b) includes what this target audience is expected to do or to accomplish by participating in the project; (c) includes activities that are appropriate and well-suited to achieving the training or dissemination activities with the intended audience; i.e., inservice training, program replication, and/or product dissemination, as needed to accomplish the selected change; and (d) includes systematic evaluation and reporting of the impact and effectiveness of the project activities. Target audiences must include family members whenever practicable.

The Secretary particularly invites applications that address one of the following topics:

(1) Least restrictive environments for children and youth with deaf-blindness;

(2) Supported employment for youth with deaf-blindness;

(3) Community-based curriculum and instruction for children and youth with deaf-blindness;

(4) Integration of related services for children and youth with deaf-blindness into instruction objectives;

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(5) Communication skills of children and youth with deaf-blindness; or

(6) Transitional services from school to independent living or working for youth with deaf-blindness.

However, in accordance with EDGAR at 34 CFR 75.105(c)(1), an application that meets this invitational priority receives no competitive or absolute preference over applications that meet the priorities described in this notice.

Program Authority: 20 U.S.C. 1424.

Title of Program: Secondary Education and Transitional Services for Handicapped Youth Program

CFDA No.: 84.158.

Purpose: To assist handicapped youth in the transition from secondary school to postsecondary environments such as competitive or supported employment and to ensure that secondary special education and transitional services result in competitive or supported employment for handicapped youth.

Priorities: The Secretary establishes the following funding priorities for the Secondary Education and Transitional Services for Handicapped Youth Program, CFDA No. 84.158. In accordance with the Education Department General Administrative Regulations (EDGAR) at 34 CFR 74.105(c)(3), the Secretary will give an absolute preference under this program to applications that respond to the following priorities; that is, the Secretary will select for funding only those applications proposing projects that meet these priorities.

Priority 1. Training and Employment Models for Youth with Handicaps. (CFDA) No. 84.158)

This priority supports school and community-based model projects for youth with handicaps to be prepred for and placed in competitive or supported work prior to leaving school. This priority responds to growing evidence that youth with handicaps who exit from school may have difficulty obtaining competitive or supported employment despite the vocational programming that may have been offered in school. These students often remain at hope for several years before a placement can be found in a job training or supported employment program. By providing employment experiences in setting where the requisite support services are provided by adult service agencies or other public or private providers prior to exit from school, it is more likely that a smooth transition can be made from school to work and adult life. Projects funded under this priority must include models that emphasize the following:

(1) Collaboration with employers;

(2) Measurement of employer and youth satisfaction;

(3) Program evaluation with outcome measures to determine initial and continuing employment status;

(4) Working relationships between education agencies and supported and transitional work efforts at the State and/or local level; and

(5) Working partnerships with families that demonstrate a commitment to maximizing independence.

The goal of these models is to place youths with handicaps in competitive or supported employment. Supported employment must include paid employment in integrated work settings and ongoing support from adult service agencies or other public or private services.

Final reports submitted by projects funded under this priority must include both the specific findings of the project as well as general principles that have been learned or tested regarding the preparation of youth with handicaps for competitive or supported employment upon leaving school. Quantifiable information from project evaluation activities must also be included along with precise information regarding the procedures used to implement the model and the contexts in which the model was implemented.

Priority 2. Secondary and Transition Services Follow-up, Follow-Along Projects. (CFDA No. 84.158)

This priority supports school and community-based model projects to improve tracking systems for youth with handicaps who complete or leave secondary programs and to revise curriculum and/or program options based on continued analyses of outcome data. Projects funded under this priority must include models that emphasize the following:

(1) Development of enhancement of procedures for a follow-up/follow-along system for all youth with handicaps who complete or leave secondary education, and

(2) Revision of existing program options to improve outcomes for youth with handicaps completing or leaving school.

This priority is intended to support a variety of strategies to determine the status of "completers" and "leavers" living in our communities. The strategies employed by individual projects must ensure that all exiting students are included in status reports. It is expected that outcome measures will be developed to determine how successful our education programs are at preparing youth with handicaps to live and work in the community. Additional information regarding the availability of needed public services and informal supports should be obtained during the follow-up/follow-along process. Final reports submitted by projects funded under this priority must include both the specific findings of the project as well as general principles that have been learned or tested regarding the preparation of youth with handicaps for employment and adult life upon leaving school. Quantifiable information from project evaluation activities must also be included along with precise information regarding the procedures for the follow up system as well as available cost information.

Priority 3. Family Networking. (CFDA No. 84.158)

This priority supports model demonstration projects that build on existing transition planning processes to assist youth with handicaps and their families in identifying, accessing, and using formal and informal networks to obtain needed supports and services to maximize independence in adult life. Projects under this priority must ensure that there is an existing planning process in place that includes the student, his or her family, representatives from the school, and representatives from adult service agencies or other providers in planning for the transition of students who will be exceeding the maximum age for public school services.

Models funded under this priority must assist youth with handicaps and their families in identifying the range of possible post-school options for living, working, recreation, or post-secondary education, and assessing the supports or services needed by the student to participate in different post-school options. Projects must develop strategies to assist youth with handicaps and their families in identifying potential formal (service agencies, handicapped student services) and informal (extended family, friends) sources of services and supports and in learning to effectively access and use these sources. Persistent barriers to obtaining needed supports or services must also be identified and strategies developed and tested for overcoming these barriers.

Final reports submitted by projects funded under this priority must include both the specific findings of the project as well as general principles that have been learned or tested regarding the idenification, access, and use of formal and informal networks by youth with handicaps and their families to obtain needed supports and services. Common barriers identified to accessing and using various sources for support and service should be described along with any implications for policy makers or service providers. Quantifiable information for project evaluation activities must also be included along with precise information regarding the model procedures, the context in which it was implemented, and available cost information.

Program Authority: 20 U.S.C. 1425.

Title of Program: Technology, Educational Media, and Materials for the Handicapped Program

CFDA No: 84.180.

Purpose: The purpose of this program is to support projects and centers for advancing the availability, quality, use, and effectiveness of technology, educational media, and materials in the education of children and youth with handicaps and the provision of early intervention services to infants and toddlers with handicaps. In creating a new Part G, Congress expressed the intent that the projects and centers funded under the part should be primarily for the purpose of enhancing research and development advances and efforts being undertaken by the public or private sector, and to provide necessary linkages to make more efficient and effective the flow from research and development to application.

Priorities: The Secretary establishes the following funding priorities for the Technology, Educational Media, and Materials for the Handicapped Program, CFDA No. 84.180. In accordance with the Education Department General Administrative Regulations (EDGAR, 34 CFR 75.105(c)(3)), the Secretary gives an absolute preference under this program to applications that respond to the following priorities; that is, the Secretary will select for funding only those applications proposing projects that meet one of these priorities.

Priority 1. Using Technology to Improve Assessment of Children with Handicaps, (CFDA 84.180)

This priority supports projects that use innovative technologies to advance assessment theory and practice for infants, toddlers, children, and youth with handicaps. Projects must develop and evaluate technology applications which extend beyond the current paper and pencil tests used to measure skill, proficiency, competence or performance of children with handicaps in educational, home, community, or training settings. The cognitive, language, perceptual-motor, academic, vocational, or social proficiency domains can be addressed.

Projects must develop and evaluate technologically based prototypes for advancing assessment theory and practice. These projects are not meant to produce tests or scales but rather to stimulate such development in the future by providing prototypic design features related to any of the following: (a) Item stimuli, (b) sequence of item presentation, (c) expanded response capabilities, or (d) scoring criteria. The innovative methodologies developed may require expansions of traditional psychometric theory to address new procedures for establishing indices of reliability and validity. Projects must address issues of reliability and validity where applicable. Thus, these projects are viewed as development activities providing direction for future test assessment products.

Projects must include specific strategies and rationales that justify the development activity including why the assessment would be important and what impact the applications of such an assessment might have. Projects must also provide resources and expertise related to the domain(s) being measured and the integration of electronic technologies. The final report must highlight the prototypic design features by describing their nature and evidence to support the extent to which they advance current practice.

Priority 2. Compensatory Technology Applications. (CFDA No. 84.180)

This priority supports the innovative development of hardware or software technology prototypes which have market potential. The prototype must alleviate mobility, manipulation, communication or instructional barriers to providing educational opportunities for learners who are handicapped. The prototype may be operated by either the teacher or the learner. The prototype must be designed not only to compensate for a particular learner's handicap but must also be easily modified to accommodate other learners with similar handicaps. Projects must develop working prototypes which use existing technology, where possible, and which capitalize on recent technological advances to enhance the teaching or learning of children with handicaps. Projects must include a plan for the formative evaluation of the innovative adaptations to determine the soundness of the engineering, the adequacy of the design, whether it compensates for the disability, whether it is feasible to operate and maintain in a school setting, and the feasibility for future production and distribution. A final report must include the prototype product as well as a discussion and rationale to support any needed and recommended modifications for the prototype based on the formative evaluation.

Program Authority: 20 U.S.C. 1461.

Intergovernmental Review

These programs are subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal assistance.

In accordance with the Order, this document is intended to provide early notification of the Department's specific plans and actions for these programs.

(Catalog of Federal Domestic Assistance Numbers: 85.024, Handicapped Children's Early Education Program; 84.026, Educational Media Research, Production, Distribution, and Training Program; 84.078, Postsecondary Education Program for Handicapped Persons; 84.086, Programs for Severely Handicapped Children, 84.158, Secondary Education and Transitional Services for Handicapped Youth Program; 84.180, Technology, Educational Media and Materials for the Handicapped Program.)

Dated: December 13, 1988.

Lauro F. Cavazos,

Secretary of Education.

[FR Doc. 89-1662 Filed 1-25-89; 8:45 am]

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DEPARTMENT OF EDUCATION

Office of Special Education Programs

Invitation for Applications for New Awards under Certain Direct Grant Programs for Fiscal Year 1989

Note to Applicants: This notice is a complete application package. The notice contains information, application forms, and instructions needed to apply for a grant under these competitions. The priorities for these programs are published in a separate part of this issue of the **Federal Register**.

The estimates of funding levels in this notice do not bind the Department of Education to a specific number of grants, unless the amount is otherwise specified by statute or regulation.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74, 75, 77, 79, 80 and 85; and the following program regulations:

Handicapped Children's Early Education Program (CFDA No. 84.024) 34 CFR Part 309, as amended August 11, 1987 (52 FR 29616)

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Educational Media Research, Production, Distribution and Training (CFDA No. 84.026) 34 CFR Part 332

Program For Severely Handicapped (Including Deaf-Blind) Children (CFDA No. 84.086) 34 CFR Part 315, as amended August 24, 1987 (52 FR 31958)

Secondary Education and Transitional Services for Handicapped Youth Program (CFDA No. 84.158) 34 CFR Part 326

Technology, Educational Media, and Materials for the Handicapped Program (CFDA No. 84.180) 34 CFR Part 333, 53 FR 6952-6954 (March 3, 1988)

TITLE OF PROGRAM: HANDICAPPED CHILDREN'S EARLY EDUCATION PROGRAM

Application Notices for Fiscal Year 1989

Title and CFDA Number	Deadline for Transmittal of Applications	Deadline for Intergovernmental Review	Available Funds	Estimated Range of Awards	Estimated Size of Awards	Estimated Number of Awards	Project Period in Months
Multi-Disciplinary Training Programs for Child Care Personnel (CFDA No. 84.024P).	Mar. 10, 1989	May 10, 1989	$1,250,000	$100,000 to 135,000	$125,000	10	Up to 36 months.
State or Multi-State Outreach Project (CFDA No. 84.024O).	do	do	5,861,000	350,000 to 405,000	390,000	[1]15	Do.
Early Childhood Research Institute—Integrated Programs (CFDA No. 84.024R).	Mar. 13, 1989	May 12, 1989	700,000	650,000 to 700,000	700,000	1	Up to 60 months.
Early Childhood Research Institute—Intervention (CFDA No. 84.024S).	do	do	700,000	650,000 to 700,000	700,000	1	Do.

[1] Anticipated to be fully funded for 36 months in fiscal year 1989.

Selection Criteria

The Secretary uses the following criteria under 34 CFR Part 309 to evaluate an application. The maximum score for all the criteria is 100 points.

(a) *Importance.* (15 points)

(1) The Secretary reviews each application to determine the extent to which the proposed project addresses concerns in light of the purposes of this part.

(2) The Secretary considers—

(i) The significance of the problem or issue to be addressed;

(ii) The extent to which the project is based on previous research findings related to the problem or issue;

(iii) The numbers of individuals who will benefit; and

(iv) How the project will address the identified problem or issue.

(b) *Impact.* (15 points)

(1) The Secretary reviews each application to determine the probable impact of the proposed project in meeting the needs of children with handicaps, birth through age eight, and their families.

(2) The Secretary considers—

(i) The contribution that project findings or products will make to current knowledge and practice;

(ii) The methods used for dissemination of project findings or products to appropriate target audiences; and

(iii) The extent to which findings or products are replicable, if appropriate.

(c) *Technical soundness.* (35 points)

(1) The Secretary reviews each application to determine the technical soundness of the project plan;

(2) In reviewing applications under this part, the Secretary considers—

(i) The quality of the design of the project;

(ii) The proposed sample or target population, including the numbers of participants involved and methods that will be used by the applicant to ensure that participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition;

(iii) The methods and procedures used to implement the design, including instrumentation and data analysis; and

(iv) The anticipated outcomes.

(3) With respect to training projects, in applying the criterion in paragraph (c)(2)(iii) of this section, the Secretary considers—

(i) The curriculum, course sequence, and practica leading to specific competencies; and

(ii) The relationship of the project to the comprehensive system of personnel development plans required by Parts B and H of the Act, and State licensure or certification standards.

(4) In addition to the criteria in paragraph (c)(2) of this section, the Secretary, in reviewing outreach projects, also considers—

(i) The agencies to be served through outreach activities;

(ii) The current services, their location, and anticipated impact of outreach assistance for each of those agencies;

(iii) The model demonstration project upon which the outreach project is based, including the effectiveness of the model program with children, families, or other recipients of project services; and

(iv) The likelihood that the demonstration project will be continued and supported by funds other than those available through this part;

(d) *Plan of operation.* (10 points)

(1) The Secretary reviews each application to determine the quality of the plan of operation for the project.

(2) The Secretary considers—

(i) The extent to which the management plan will ensure proper and efficient administration of the project;

(ii) Clarity in the goals and objectives of the project;

(iii) The quality of the activities proposed to accomplish the goals and objectives;

(iv) The adequacy of proposed timelines for accomplishing those activities; and

(v) Effectiveness in the ways in which the applicant plans to use the resources and personnel to accomplish the goals and objectives.

(e) *Evaluation plan.* (5 points)

(1) The Secretary reviews each application to determine the quality of the plan for evaluating project goals, objectives, and activities.

(2) The Secretary considers the extent to which the methods of evaluation are appropriate and produce objective and quantifiable data.

(f) *Quality of key personnel.* (10 points)

(1) The Secretary reviews each application to determine the qualifications of the key personnel the applicant plans to use.

(2) The Secretary considers—

(i) The qualifications of the project director and project coordinator (if one is used);

(ii) The qualifications of each of the other key project personnel;

(iii) The time that each person referred to in paragraphs (f)(2)(i) and (ii) of this section will commit to the project; and

(iv) How the applicant will ensure that personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(3) The Secretary considers experience and training in areas related to project goals to determine qualifications of key personnel.

(g) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application to determine adequacy of resources allocated to the project.

(2) The Secretary considers the adequacy of the facilities and the equipment and supplies that the applicant plans to use.

(h) *Budget and cost-effectiveness.* (5 points)

(1) The Secretary reviews each application to determine if the project has an adequate budget.

(2) The Secretary considers the extent to which—

(i) The budget for the project is adequate to undertake project activities; and

(ii) Costs are reasonable in relation to objectives of the project.

Eligible Applicants

Public agencies and nonprofit private organizations may apply for an award under any of the priorities.

TITLE OF PROGRAM.—EDUCATIONAL MEDIA RESEARCH, PRODUCTION, DISTRIBUTION AND TRAINING

[Application notices for fiscal year 1989]

Title and CFDA number	Deadline for transmittal of applications	Deadline for intergovernmental review	Available funds	Estimated range of awards	Estimated size of awards	Estimated number of awards	Project period in months
Closed-Captioned Local and Regional News (CFDA No. 84.026L).	Mar. 14, 1989	May 15, 1989	$400,000	$40,000 to $60,000	$50,000	8	Up to 36 months.

Selection Criteria

The Secretary uses the following criteria under 34 CFR Part 332 to evaluate applications for new awards. The maximum score for all criteria is 100 points.

(a) *Plan of operation.* (25 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective;

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally under represented, such as—

(A) Handicapped persons;

(B) Members of racial or ethnic minority groups;

(C) Women; and

(D) The elderly.

(b) *Quality of key personnel.* (20) points.

(1) The Secretary reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its non-discriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally under represented, such as—

(A) Handicapped persons;

(B) Members of racial or ethnic minority groups;

(C) Women; and

(D) The elderly.

(3) To determine the qualifications of a person, the Secretary considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (15 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (5 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project. (*See* 34 CFR 75.590–Evaluation by the grantee.)

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (10 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources for the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Need.* (20 points)

(1) The Secretary reviews each application for information that shows the need for the project.

(2) The Secretary looks for information that shows—

(i) The need for the proposed activity with respect to the handicapping condition served or to be served by the applicant;

(ii) The potential for using the results in other projects or programs.

(g) *Marketing and dissemination.* (5 points)

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(1) The Secretary reviews each application for information that shows adequate provisions for marketing or disseminating results.

(2) The Secretary looks for information that shows—

(i) The provisions for marketing or otherwise disseminating the results of the project; and

(ii) Provisions for making materials and techniques available to the populations for whom the project would be useful.

Eligible Applicants

Parties eligible for grants under this subpart are profit and nonprofit public and private agencies, organizations, and institutions.

Authority: 20 U.S.C. 1451, 1452.

TITLE OF PROGRAM.—PROGRAMS FOR SEVERELY HANDICAPPED CHILDREN

[Application notices for fiscal year 1989]

Title and CFDA number	Deadline for transmittal of applications	Deadline for intergovernmental review	Available funds	Estimated range of awards	Estimated size of awards	Estimated number of awards	Project period in months
Innovations for Meeting Special Problems of Children with Severe Handicaps in the Context of Regular Education Settings (CFDA No. 84.086D).	3/24/89	5/24/89	$609,000	$110,000-130,000	$120,000	5	36 months.
Innovations for Meeting Special Problems of Children with Deaf-Blindness in the Context of Regular Education Settings (CFDA No. 84.086F).	3/24/89	5/24/89	784,000	120,000-140,000	130,000	6	36 months.
Validated Practices: Children with Deaf-Blindness (CFDA 84.086G).	3/24/89	5/24/89	780,000	120,000-140,000	130,000	6	36 months.
Statewide Systems Change (CFDA 84.086J)	3/24/89	5/24/89	750,000	240,000-260,000	250,000	3	36 months.
Utilization of Innovative Practices for Children with Deaf-Blindness (CFDA 84.086L).	3/24/89	5/24/89	780,000	120,000-140,000	130,000	6	36 months.
Validated Practices: Children With Severe Handicaps (CFDA 84.086P).	3/24/89	5/24/89	608,000	110,000-130,000	120,000	5	36 months.
Utilization of Innovative Practices for Children with Severe Handicaps (CFDA 84.086U).	3/24/89	5/24/89	645,000	100,000-120,000	100,000	6	36 months.

Note: Each of these competitions will be evaluated using the selection criteria for Demonstration and Training Projects under 34 CFR 315.33.

Selection Criteria for Research Projects

The Secretary uses the following criteria under 34 CFR 315.32 to evaluate an application for a research project:

(a) *Importance and expected impact of the research.* (20 points) The Secretary reviews each application to determine the extent to which the project will develop new knowledge in understanding and effectively meeting the needs of severely handicapped children and youth, including the extent to which—

(1) The programmatic research areas proposed by the applicant represent critical areas of investigation, or problems whose solution would have greatest impact on improving services to severely handicapped children and youth; and

(2) The specific questions to be addressed in the project are likely to generate knowledge needed for bringing about a major change in understanding of the topical area.

(b) *Technical soundness of the project.* (15 points)

(1) The Secretary reviews each application to determine the technical soundness of the research plan, including—

(i) The design;

(ii) The proposed sample;

(iii) Instrumentation; and

(iv) Data analysis procedures.

(2) The Secretary also reviews each application for the relevance of its proposed training efforts, including—

(i) Strategies for provision of training; and

(ii) Relationships between the applicant, other organizations or agencies providing training in coordination with the applicant, and trainees receiving training from the applicant.

(c) *Plan of operation.* (15 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(2) How the objectives of the project relate to the purpose of the program;

(3) The quality of the applicant's plans to use its resources and personnel to achieve each objective; and

(4) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition.

(d) *Quality of key personnel.* (20 points)

(1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications of the project director or principal investigator;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) the time that each person referred to in paragraphs (d)(1) (i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(2) To determine personnel qualifications under paragraphs (d)(1) (i) and (ii) of this section, the Secretary considers—

(i) Experience and training in conducting, documenting, and applying research pertaining to severely handicapped children and youth;

(ii) Awareness of relevant research findings and demonstration project results pertaining to other handicapped children and youth and the potential for use of the findings and results with severely handicapped children and youth; and

(iii) Experience in communicating research findings to service providers of severely handicapped children and youth and in assisting these providers with effective application of the findings.

(e) *Budget and cost-effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project; and

(2) Costs are reasonable in relation to the objectives of the project.

(f) *Evaluation plan.* (10 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are appropriate to the project; and

(2) To the extent possible, are objective and produce data that are quantifiable.

(Cross-reference: See 34 CFR 75.590 Evaluation by the grantee.)

(g) *Adequacy of resources.* (5 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

(h) *Dissemination plan.* (5 points) The Secretary reviews each application to determine the quality of the dissemination plan for the project, including the extent to which the applicant's plan—

(1) Ensures proper and efficient dissemination of project information within the State in which the project is located and throughout the Nation; and

(2) Provides a clear description of the content, intended audiences, and timelines for production of all project documents and other products that the applicant will disseminate.

Selecton Criteria for Demonstration and Training Projects

The Secretary uses the following criteria under 34 CFR 315.33 to evaluate an application for a demonstration project and a training project.

(a) *Extent of need and expected impact of the project.* (25 points) The Secretary reviews each application to determine the extent to which the project is consistent with national needs in the provision of innovative services to severely handicapped and youth, including consideration of—

(1) The needs addressed by the project;

(2) The impact and benefits to be gained by meeting the educational and related service needs of severely handicapped children and youth served by the project, their parents and service providers; and

(3) The national significance of the project in terms of potential benefits to severely handicapped children and youth who are not directly involved in the project.

(b) *Plan of operation.* (25 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The quality of the design of the project;

(2) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(3) How well the objectives of the project relate to the purpose of the program;

(4) The quality of the applicant's plan to use its resources and personnel to achieve each objective;

(5) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition.

(c) *Quality of key personnel.* (15 points)

(1) The Secretary reviews each application to determine the quality of the key personnel the applicant plans to use on the project, including—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (c)(1) (i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(2) To determine personnel qualifications under paragraphs (c)(1) (i) and (ii) of this section, the Secretary considers—

(i) Experience and training in fields related to the objectives of the project; and

(ii) Any other qualifications that pertain to the quality of the project.

(d) *Budget and cost-effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project; and

(2) Costs are reasonable in relation to the objectives of the project.

(e) *Evaluation plan.* (15 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are appropriate to the project; and

(2) To the extent possible, are objective and produce data that are quantifiable.

Cross-reference: See 34 CFR 75.590 Evaluation by the grantee.)

(f) *Adequacy of resources.* (5 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

(g) *Dissemination plan.* (5 points) The Secretary reviews each application to determine the quality of the dissemination plan for the project, including the extent to which the applicant's plan—

(1) Ensures proper and efficient dissemination of project information within the State in which the project is located and throughout the Nation; and

(2) Adequately includes the content, intended audiences, and timeliness for production of all project documents and other products which the applicant will disseminate.

Eligible Applicants

Any public or private, profit or nonprofit, organization or institution may apply for a grant under this program.

Authority: 20 U.S.C. 1424.

Title of Program: Secondary Education and Transitional Services for Handicapped Youth Program

[Application Notices for Fiscal Year 1989]

Title and CFDA No.	Deadline for transmittal of applications	Deadline for intergovernmental review	Available funds	Estimated range of awards	Estimated size of awards	Estimated No. of awards	Project period in months
Training and employment models for youth with handicaps (CFDA 84.158N).	Mar. 31, 1989	May 31, 1989	$1,010,000	$90,000-110,000	$101,000	10	Up to 36.

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Title of Program: Secondary Education and Transitional Services for Handicapped Youth Program—Continued

[Application Notices for Fiscal Year 1989]

Title and CFDA No.	Deadline for transmittal of applications	Deadline for intergovernmental review	Available funds	Estimated range of awards	Estimated size of awards	Estimated No. of awards	Project period in months
Secondary and transition services follow-up, follow-along (CFDA 84.158R).	Mar. 10, 1989	May 10, 1989	$1,000,000	$120,000-130,000	$125,000	8	Up to 36.
Family networking (CFDA No. 84.158S)	do	do	$310,000	$95,000-100,000	$103,000	3	Up to 36.

Selection Criteria

The Secretary uses the following criteria under 34 CFR 329 to evaluate an application for new awards. The maximum score for all of the criteria is 100 points.

(a) *Plan of operation.* (10 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment of eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(b) *Quality of key personnel.* (10) points

(1) The Secretary reviews each application for information that shows the qualifications of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project.

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section will commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine personnel qualifications, the Secretary considers experience and training in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) Budget and cost effectiveness. (10 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget of the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (10 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

(See 34 CFR 75.590. Evaluation by the grantee)

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Importance.* (10 points)

The Secretary reviews each application for information that shows—

(1) The service delivery problem addressed by the proposed project is of concern to others in the Nation, and;

(2) The importance of the project in solving the problem.

(g) *Impact.* (10 points)

The Secretary reviews each application for information that shows the probable impact of the proposed model in educating handicapped youth, including

(1) The contribution that the project findings or products will make to current knowledge or practice; and

(2) The extent to which findings and products will be disseminated to, and used for the benefit of, appropriate target groups.

(h) *Innovativeness.* (10 points)

(1) The Secretary reviews each application for information that shows the innovativeness of the proposed project.

(2) The Secretary looks for information that shows a conceptual framework that—

(i) Is founded on previous theory and research; and

(ii) Provides a basis for the unique strategies and approaches to be incorporated into the model.

(i) *Technical soundness.* (25 points)

The Secretary reviews each application for information demonstrating the technical soundness of the plan for the development, implementation, and evaluation of the model with respect to such matters as—

(1) The population to be served;

(2) The model planning process;

(3) Recordkeeping systems;

(4) Coordination with other service providers;

(5) The identification and assessment of students;

(6) Interventions to be used, including proposed curricula;

(7) Individualized educational program planning; and

(8) Parent and family participation.

Eligible Applicants

Institutions of higher education, State educational agencies, local educational agencies, and other public and private nonprofit institutions or agencies (including the State job training coordinating councils and service delivery area administrative entities established under the Job Training Partnership Act (29 U.S.C. 1501 *et seq.*)).

Authority: 20 U.S.C. 1425.

Title of Program: Technology, Educational Media, and Materials for the Handicapped Program

[Application Notices for Fiscal Year 1989]

Title and CFDA No.	Deadline for transmittal of applications	Deadline for intergovernmental review	Available funds	Estimated range of awards	Estimated size of awards	Estimated No. of awards	Project period in months
Using technology to improve assessment of children with handicaps (CFDA No. 84.180G).	Apr. 3, 1989	June 2, 1989	$650,000	170,000-210,000	$190,000	5	Up to 24.
Compensatory technology applications (CFDA No. 84.180P).	Mar. 24, 1989	May 24, 1989	$930,000	100,000-160,000	$130,000	7	Up to 12.

Supplementary Information and Requirements

The Secretary uses the following criteria under 34 CFR Part 333 to evaluate applications for new awards. The maximum score for all the criteria is 100 points.

Selection Criteria

For priority 1 "Using Technology to Improve Assessment of Children with Handicaps", the Secretary uses the following criteria to evaluate applications. These criteria pertain to applications for research or evaluation activities. *See* 34 CFR 333.21.

(a) *Importance.* (15 points) The Secretary reviews each application to determine the extent to which the proposed project addresses national concerns in light of the purposes of this part, and considers the significance of the problem or issue to be addressed.

(b) *Technical soundness.* (30 points)

(1) The Secretary reviews each application to determine if the approach is technically and programmatically sound.

(2) The Secretary looks for—

(i) High quality in the design of the project;

(ii) Technical soundness of the research or evaluation plan, including if appropriate—

(A) The design;

(B) The proposed sample;

(C) The instrumentation; and

(D) The data analysis.

(c) *Plan of operation.* (15 points)

(1) The Secretary reviews each application to determine the quality of the plan of operation for the project.

(2) The Secretary looks for—

(i) An effective plan of management that ensures proper and efficient administration of the project;

(ii) A clear description of how the objectives of the project relate to the purpose of the program;

(iii) The way the applicant plans to use its resources and personnel to achieve each objective; and

(iv) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, or gender.

(d) *Quality of key personnel.* (15 points)

(1) The Secretary reviews each application to determine the qualifications of the key personnel the applicant plans to use on the project.

(2) The Secretary considers—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (d)(2)(i) and (ii) of this section plans to commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(3) To determine personnel qualifications, the Secretary considers experience and training in fields related to the objectives of the project, and any other qualifications that pertain to the quality of the project.

(e) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application to determine that the applicant plans to devote adequate resources for the project.

(2) The Secretary considers the extent to which—

(i) The facilities that the applicant plans to use are adequate;

(ii) The equipment and supplies that the applicant plans to use are adequate; and

(iii) The applicant demonstrates necessary access to target population necessary to conduct the research or evaluation.

(f) *Impact.* (5 points) The Secretary reviews each application to determine—

(i) The probable impact of the proposed project in educating or providing early intervention services to infants, toddlers, children, and youth with handicaps; and

(ii) The contribution that the project findings or products will make to current knowledge or practice.

(g) *Dissemination.* (5 points) The Secretary reviews each application to determine the extent to which the findings and products will be disseminated to, and used for the benefit of appropriate target groups.

(h) *Budget and cost effectiveness.* (10 points)

(1) The Secretary reviews each application to determine if the project has an adequate budget and is cost effective.

(2) The Secretary considers the extent to which—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

The Secretary uses the following criteria to evaluate applications under priority 2 "Compensatory Technology Applications". These criteria pertain to applications for development or demonstration activities. *See* 34 CFR 333.22.

(a) *Importance.* (20 points)

(1) The Secretary reviews each application to determine the extent to which the proposed project addresses national concerns in light of the purposes of this part.

(2) The Secretary considers—

(i) The significance of the problem or issue to be addressed;

(ii) The potential impact of the proposed project for providing innovative advancements to the problem or issue; and

(iii) Previous research findings related to the problem or issue.

(b) *Technical soundness.* (30 points)

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(1) The Secretary reviews each application to determine the quality and technical soundness of the plan of operation for the project.

(2) The Secretary looks for—

(i) High quality in the conceptual design of the project;

(ii) A clear specification of the procedures to be followed in carrying out the project; and

(iii) The extent to which the methods of evaluation are appropriate for the project and, to the extent possible, are objective and produce data that can be quantified.

(c) *Plan of operation.* (15 points)

(1) The Secretary reviews each application to determine the quality of the plan of operation for the project.

(2) The Secretary looks for—

(i) An effective plan of management that insures proper and efficient administration of the project;

(ii) The way the applicant plans to use its resources and personnel to achieve each objective; and

(iii) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition.

(d) *Evaluation plan.* (5 points) The Secretary reviews each application to determine the quality of the evaluation plan for assuring adequate performance measurement of project progress.

(Cross Reference: 34 CFR 75.590, Evaluation by the grantee)

(e) *Quality of key personnel.* (10 points)

(1) The Secretary reviews each application to determine the qualifications of the key personnel the applicant plans to use on the project.

(2) The Secretary considers—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (e)(2)(i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(3) To determine personnel qualifications, the Secretary considers experience and training, in fields related to the objectives of the project, and any other qualifications that pertain to the quality of the project.

(f) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application to determine that the applicant plans to devote adequate resources to the project.

(2) The Secretary considers the extent to which—

(i) The facilities that the applicant plans to use are adequate;

(ii) The equipment and supplies that the applicant plans to use are adequate; and

(iii) The applicant demonstrates access to subjects necessary to conduct the proposed project.

(g) *Marketing and dissemination.* (10 points)

(1) The Secretary reviews each application to determine if there are adequate provisions for marketing or disseminating results.

(2) The Secretary considers—

(i) The provisions of marketing, replicating, or otherwise disseminating the results of the project; and

(ii) Provisions for making materials and techniques available to the populations for whom the project would be useful.

(h) *Budget and cost effectiveness.* (5 points)

(1) The Secretary reviews each application to determine if the project has an adequate budget and is cost effective.

(2) The Secretary considers the extent to which—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(Authority: 20 U.S.C. 1461)

Eligible Applicants

Under this program, the Secretary may award grants or contracts, or enter into cooperative agreements with, institutions of higher education, State and local educational agencies, public agencies, and private nonprofit or for-profit organizations.

Intergovernmental Review of Federal Programs

These programs are subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR Part 79.

The objective of the Executive order is to foster an intergovernmental partnership and to strengthen federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

Applicants must contact the appropriate State Single Point of Contact to find out about, and to comply with, the State's process under Executive Order 12372. Applicants proposing to perform activities in more than one State should contact, immediately upon receipt of this notice, the Single Point of Contact for each State and follow the procedure established in those States under the Executive order. If you want to know the name and address of any State Single Point of Contact, see the list published in the **Federal Register** on November 18, 1987, pages 44338–44340.

In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the date indicated in this notice to the following address: The Secretary, E.O. 12372–CFDA # , following address: The Secretary, E.O. 12372—CFDA # (applicant must insert number and letter), U.S. Department of Education, MS 6403, 400 Maryland Avenue SW., Washington, DC 20303–0125. Proof of mailing will be determined on the same basis as applications.

Instructions for Transmittal of Applications

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA # [Applicant must insert number and letter]), Washington, DC 20203–4725 or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. (Washington, DC time) on the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA # [Applicant must insert number and letter]), Room #3633, Regional Office Building #3, 7th and D Streets, SW., Washington, DC

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) An applicant wishing to know that its application has been received by the Department must include with the application a stamped, self-addressed postcard containing the CFDA number and title of this program.

(3) The applicant *must* indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and letter, if any—of the competition under which the application is being submitted.

Application Instructions and Forms:

The appendix to this application is divided into three parts. These parts are organized in the same manner that the submitted application should be organized. The parts are as follows:

Part I: Application for Federal Assistance (Standard Form 424 (Rev. 4–88)) and instructions.

Part II: Budget Information—Non-Construction Programs (Standard Form 424A) and instructions.

Part III: Application Narrative.

Assurances—Non-Construction Programs (Standard Form 424B).

Certification regarding Debarment, Suspension, and Other Responsibility Matters: Primary Covered Transactions (ED Form GCS–008) and instructions.

Certification regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED Form GCS–009) and instructions. (**Note:** ED Form GCS–009 is intended for the use of primary participants and should not be transmitted to the Department.)

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certification. However, the application form, the assurances, and the certification must each have an *original signature.* No grant may be awarded unless a completed application form has been received.

FOR FURTHER INFORMATION CONTACT:

Joseph Clair, Division of Educational Services, Office of Special Education Programs, U.S. Department of Education, 400 Maryland Avenue, SW. (Switzer Building, Room 4620–2644), Washington, DC 20202 (except CFDA No. 84.180). Telephone: Joseph Clair (202) 732–4503.

Linda Glidewell, Division of Innovation and Development, Office of Special Education Programs, 400 Maryland Avenue, SW. (Switzer Building, Room 3094–M.S. 2313), Washington, DC 20202 (CFDA No. 84.180 only). Telephone: Linda Glidewell (202) 732–1099.

Dated: January 19, 1989.

Madeleine Will,

Assistant Secretary, Office of Special Education and Rehabilitative Services.

Appendix

Potential applicants frequently direct questions of officials of the Department regarding application notices and programmatic and administrative regulations governing various direct grant programs. To assist potential applicants the Department has assembled the following most commonly asked questions. In general these questions and answers are applicable to all direct grant competitions covered by this combined application package.

Q. Can we get an extension of the deadline?

A. No. A closing date may be changed only under extraordinary circumstances. Any change must be announced in the **Federal Register** and apply to *all* applications. Waivers for individual applications *cannot* be granted, regardless of the circumstances.

Q. How many copies of the application should I submit and must they be bound?

A. Current Government-wide policy is that only an original and two copies need be submitted. The binding of applications is optional. At least one copy should be left unbound of facilitate any necessary reproduction. Applicants should not use foldouts, photographs, or other materials that are hard-to-duplicate.

Q. We just missed the deadline for the XXX competition. May we submit under another competition?

A. Yes, but it may not be worth the postage. A properly prepared application should meet the specifications of the competition to which it is submitted.

Q. I'm not sure which competition is most appropriate. What should I do?

A. We are happy to discuss the questions with you and provide clarification on the unique elements of the various competitions.

Q. Will you help us prepare our application?

A. We are happy to provide general program information. Clearly, it would not be appropriate for staff to participate in the actual writing of an application, but we can respond to specific questions about application requirements, evaluation criteria, and the priorities. Applicants should understand that this previous contact is not required, nor does it guarantee the success of an application.

Q. When will I find out if I'm going to be funded?

A. You can expect to receive notification within 3 to 4 months of the application closing date, depending on the number of applications received and the number of competitions with closing dates at about the same time.

Q. Once my application has been reviewed by the review panel, can you tell me the outcome?

A. No. Every year we can called by a number of applicants who have legitimate reasons for needing to know the outcome of the review prior to official notification. Some applicants need to make job decisions, some need to notify a local school district, etc. Regardless of the reason, because final funding decisions have not been made at that point, we cannot share information about the review with *anyone.*

Q. How long should an application be?

A. The Department of Education is making a concerted effort to reduce the volume of paperwork in discretionary program applications. The scope and complexity of projects is too variable to establish firm limits on length. Your application should provide enough information to allow the review panel to evaluate the significance of the project against the criteria of the competition. It is helpful to include in the appendices such information as:

(1) Staff qualifications. These should be brief. They should include the person's title and role in the proposed project and contain only information relevant to the proposed project. Qualifications of counsultants and advisory council members should be provided and be similarly brief.

(2) Assurance of participation of an agency other than the applicant if such participation is critical to the project, including copies of evaluation instruments proposed to be used in the project in instances where such instruments are not in general use.

Q. How can I be sure that my application is assigned to the correct competition?

A. Applicants should clearly indicate in Block 10 of the face page of their application (Standard form 424) the CFDA number and the title of the program priority (e.g., 023) representing the competition in which the application should be considered. If this information is not provided, your application may inadvertently be assigned and reviewed under a different competition from the one you intended.

Q. Will my application be retured if am not funded?

A. We no longer return original copies of unsuccessful applications. Thus, applicants should retain at least one copy of the application. Copies of reviewer comments will be mailed to applicants who are not successful.

Q. How should my application be organized?

A. The application narrative should be organized to follow the exact sequence of the components in the selection criteria of the regulations pertaining to the specific program competition for which the application is prepared. In each instance, a table of contents and a one-page abstract summarizing the objectives, activities, project participants, and expected outcomes of the proposed project should precede the application narrative.

Q. Is travel allowed under these projects?

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A. Travel associated with carrying out the project is allowed (i.e. travel for data collection, etc.). Because we may request the principal investigator or director of funded projects to attend an annual meeting, you may also wish to include a trip to Washington, DC in the travel budget. Travel to conferences is sometimes allowed when it is for purposes of dissemination.

Q. If my application receives a high score from the reviewer does that mean that I will receive funding?

A. No. It is often the case that the number of applications scored highly by or approved by the reviewers exceeds the dollars available for funding projects under a particular competition. The order of selection, which is based on the scores of the applications and other relevant factors, determines the applications that can be funded.

Q. What happens during negotiations?

A. During negotiations technical and budget issues may be raised. These are issues that have been identified during panel and staff review and require clarification. Sometimes issues are stated as "conditions." These are issues that have been identified as so critical that the award cannot be made unless these conditions are met. Questions may also be raised about the proposed budget. Generally, these issues are raised because there is inadequate justification or explanation of a particular budget item, or because the budget item seems unimportant to the successful completion of the project. If you are asked to make changes that you feel could seriously affect the project's success, you may provide reasons for not making the changes or provide alternative suggestions. Similarly, if proposed budget reductions will, in your opinion, seriously affect the project activities, you may explain why and provide additional justification for the proposed expenses. An award cannot be made until all negotiation issues have been resolved.

Q. If my application is successful can I assume I will get the estimated/projected budget amounts in subsequent years?

A. No. The estimate for subsequent year project costs is helpful to us for planning purposes but it in no way represents a commitment for a particular level of funding in subsequent years. Grantees having a multi-year project will be asked to submit a continuation application and a detailed budget request prior to each year of the project.

Q. What is a cooperative agreement and how does it differ from a grant?

A. A cooperative agreement is similar to a grant in that its principal purpose is to provide assistance for a public purpose of support or stimulation as authorized by a Federal statute. A cooperative agreement differs from a grant because of the substantial involvement anticipated between the executive agency (in this case the Department of Education) and the recipient during the performance of the contemplated activity.

Q. Is the procedure for applying for a cooperative agreement different from the procedure for applying for a grant?

A. No. If the Department of Education determines that a given award should be made by cooperative agreement rather than a grant, the applicant will be advised at the time of negotiation of any special procedures that must be followed.

Q. How do I provide an assurance?

A. Simply state in writing that you are meeting a prescribed requirement.

Q. Where can copies of the Federal Register, program regulations, and federal statutes be obtained?

A. Copies of these materials can usually be found at your local library. If not, they can be obtained from the Government Printing Office by writing to: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. Telephone: (202) 783-3238.

BILLING CODE 4000-01-M

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

2. DATE SUBMITTED	Applicant Identifier
3. DATE RECEIVED BY STATE	State Application Identifier
4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction

5. APPLICANT INFORMATION

Legal Name: | Organizational Unit:

Address (give city, county, state, and zip code): | Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT (enter appropriate letter in box) ☐
A. State; B. County; C. Municipal; D. Township; E. Interstate; F. Intermunicipal; G. Special District; H. Independent School Dist.; I. State Controlled Institution of Higher Learning; J. Private University; K. Indian Tribe; L. Individual; M. Profit Organization; N. Other (Specify): _____

8. TYPE OF APPLICATION: ☐ New ☐ Continuation ☐ Revision
If Revision, enter appropriate letter(s) in box(es): ☐ ☐
A. Increase Award; B. Decrease Award; C. Increase Duration; D. Decrease Duration; Other (specify): _____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐ – ☐☐☐
TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):

13. PROPOSED PROJECT		14. CONGRESSIONAL DISTRICTS OF:	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:		
a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?
a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON: DATE _____
b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?
☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

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BILLING CODE 4000-01-C

Instructions for the SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item and Entry

1. Self-explanatory.

2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).

3. State use only (if applicable).

4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.

5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.

6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.

7. Enter the appropriate letter in the space provided.

8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:

—"New" means a new assistance award.

—"Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.

—"Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.

9. Name of Federal agency from which assistance is being requested with this application.

10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.

11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

12. List only the largest political entities affected (e.g., State, counties, cities).

13. Self-explanatory.

14. List the applicant's Congressional District and any District(s) affected by the program or project.

15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.

16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.

17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.

18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

BILLING CODE 4000-01-M

OMB Approval No. 0348-0044

BUDGET INFORMATION — Non-Construction Programs

SECTION A – BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B – BUDGET CATEGORIES

6. Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total (5)
	(1)	(2)	(3)	(4)	
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

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SECTION C - NON-FEDERAL RESOURCES				
(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS					
	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. NonFederal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT				
(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16 -19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION (Attach additional Sheets if Necessary)	
21. Direct Charges:	22. Indirect Charges:
23. Remarks	

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Instructions for the SF-424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary Lines 1-4, Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in *Column* (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) Through (g).

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5—Show the total for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a-i—Show the totals of Lines 6a to 6h in each column.

Line 6j—Show the amount of indirect cost.

Line 6k—Enter the total amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7—Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

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Section C. Non-Federal Resources

Lines 8–11—Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a)—Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b)—Enter the contributions to be made by the applicant.

Column (c)—Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d)—Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e)—Enter totals of Columns (b), (c), and (d).

Line 12—Enter the total for each of Columns (b)–(e). The amount in Column (e) should be equal to the amount on Line 5, Column(f), Section A.

Section D. Forecasted Cash Needs

Line 13—Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14—Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15—Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16–19—Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20—Enter the total for each of the Columns (b)–(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21—Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22—Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23—Provide any other explanations or comments deemed necessary.

Program Narrative

A. New Grants

Prepare the program narrative statement in accordance with the following instructions for all new grants programs and all new functions or activities for which support is being requested.

Note that the program narrative should encompass each program and each function or activity for which funds are being requested. Relevant selection criteria (included in this package) should be carefully examined for criteria upon which evaluation of an application will be made and the program narrative must respond to such criteria under the related headings below. The program narrative should begin with an overview statement (Abstract) of the major points covered below.

1. *Objectives and need for this assistance.* Describe the problem and demonstrate the need for assistance and state the principal and subordinate objectives of the project. Supporting documentation or other testimonies from concerned interests other than the applicant may be used.

Any relevant data based on planning studies should be included or footnoted. Projects involving Demonstration/Service activities should present available data, or estimates for need in terms of number of handicapped children (by type of handicap and by type of service) in the geographic area involved.

Projects involving Training should present available data, or estimates, for need in terms of number of personnel by position type (e.g., teachers, teacher-aides) by type of handicap to be served.

2. *Results or benefits expected.* Identify results and benefits to be derived. Projects involved in Training and or Demonstration/Service activities should indicate the number of personnel to be trained or the number of children to be served.

3. *Approach.* a. Outline a plan of action pertaining to the scope and detail of how the proposed work will be accomplished for each grant program, function or activity provided in the budget. Cite factors which might accelerate or decelerate the work and your reason for taking this approach as opposed to others.

For example, an application for demonstration/service programs should describe the planned educational curriculum: the types of attainable accomplishments set for the children served; supplementary services including parent education; and the composition and responsibilities of an advisory council.

An application for a training program should describe the substantive content and organization of the training program, including the roles or positions for which students are prepared, the tasks associated with such roles, the competencies that must be acquired; the program staffing; and the practicum facilities including their use by students, accessibility to students and their staffing.

B. Provide for each grant program, function or activity, quantitative projections of the accomplishments to be achieved.

An applications for demonstration/service programs should project the number of children to receive demonstration/services by type of handicapping conditions, and number of persons to receive inservice training.

Training programs should project the number of students to be trained by type of handicapped condition.

For non-demonstration/service and non-training activities of all programs, planned activities should be listed in chronological order to show the schedule of accomplishment and their target dates.

C. Identify the kinds of data to be collected and maintained and discuss the criteria to be used to evaluate the results and successes of the project. For demonstration/service activities, evaluation procedures should be related to the child-centered objectives set for project participants.

For all activities, explain the methodology that will be used to evaluate project accomplishments.

D. List organizations, cooperators, consultants, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution. Especially for demonstration/service activities, describe the liaison with community or State organizations as it affects project planning and accomplishments.

E. Present biographical sketch of the project director with the following information: name, address, telephone number, background, and other qualifying experiences for the project. Also, list the names, training and background for other key personnel engaged in the project.

Note.—The application narrative should not exceed 30 double-spaced typed pages (on one side only).

Assurances—Non-Construction Programs

OMB Approval No. 0348-0040 Standard Form 424B (4-88) Prescribed by DMB Circular A-102

Note.—Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management, and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. 4728–4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 CFR Part 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (Pub. L. 88–352) which prohibits discrimination of the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681–1683, and 1685–1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. 6101–6107), which prohibits discrimination on the basis of age;

(e) the Drug Abuse Office and Treatment Act of 1972 (Pub. L. 92–255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (Pub. L. 91–616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) sections 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd–3 and 290 ee–3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 et seq.), as amended, relating to non-discrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Pub. L. 91–646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. 1501–1508 and 7324–7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. 276a to 276a–7), the Copeland Act (40 U.S.C. 276c and 18 U.S.C. 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of section 102(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

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11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) Institution of environmental quality control measures under the National Environmental Policy Act of 1969 (Pub. L. 91–190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Managements Act of 1972 (16 U.S.C. 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (Pub. L. 93–523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (Pub. L. 93–205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271 et seq.) related to protection components or potential components of the national wild an scenic rivers system.

13. Will assist the awarding agency in assuring compliance with section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a–1 et seq.).

14. Will comply with Pub. L. 93–348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (Pub. L. 89–544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

Signature of Authorized Certifying Official
Title

Applicant Organization
Date submitted

Certification Regarding Debarment, Suspension, and Other Responsibility Matters Primary Covered Transactions

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, § 85.510, Participants' responsibilities. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160–19211). Copies of the regulations may be obtained by contacting the U.S. Department of Education, Grants and Contracts Service, 400 Maryland Avenue, SW. (Room 3633 GSA Regional Office Building No. 3), Washington, DC 20202, telephone (202) 732–2505.

(Before Completing Certification, Read Instructions Below)

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Name And Title of Authorized Representative

Signature
Date

Instructions for Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

4. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participated," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntary excluded from participation in this transaction, in addition to other remedies available to the Federal Governemnt, the department or agency may terminate this transaction for cause or default.

Certification Regarding Debarment, Suspension Ineligibility and Voluntary Exclusion Lower Tier Covered Transactions

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, § 85.510, Participants' responsibilities. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160–19211). Copies of the regulations may be obtained by contacting the person to which this proposal is submitted.

(Before Completing Certification, Read Instructions Below)

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Name And Title Of Authorized Representative

Signature
Date

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require established of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntary excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

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January 26, 1989

Part VI

Department of Labor

Employment Standards Administration, Wage and Hour Division

29 CFR Part 502

Reporting and Employment Requirements for Employers of Certain Workers Employed in Seasonal Agricultural Services; Final Rule

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DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

29 CFR Part 502

Reporting and Employment Requirements for Employers of Certain Workers Employed in Seasonal Agricultural Services

AGENCY: Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Final rule.

SUMMARY: This rule amends the regulations to exclude field work on hay from the definition of seasonal agricultural services for purposes of the reportable worker requirements of the special agricultural worker program. This action is taken because the litigation challenging the Department of Agriculture's failure to include hay in its definition has concluded. This rule also amends the regulations to provide a complete address for return mailing of Form ESA-82, to further clarify the definition of a "reportable worker," and to make a clarification in the procedures for appeal.

EFFECTIVE DATE: January 26, 1989.

FOR FURTHER INFORMATION CONTACT: Paula V. Smith, Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Telephone (202) 523-8305. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: In the Federal Register of September 9, 1988 (53 FR 35154), the Department of Labor issued final regulations, 29 CFR Part 502, entitled "Reporting and Employment Requirements for Employers of Certain Workers Employed in Seasonal Agricultural Services." These regulations were effective October 1, 1988.

In the regulations referred to above, the definition of "seasonal agricultural services" in § 502.2(o)(3) included field work related to the growing and harvesting of hay because application of sections 210 and 210A of INA to hay was being contested in litigation. In *Texas Farm Bureau et al.* v. *Lyng* (U.S. District Court for the Eastern District of Texas, No. M-88-095-CA, 9/28/88), the Court upheld the regulation issued by the Department of Agriculture which excludes hay from the special agricultural worker program. That decision was not appealed. Accordingly, this document revises the regulations to exclude field work on hay from seasonal agricultural services. In this regard, a conforming change is made to § 502.12(d)(2).

The regulations are amended at § 502.12(g) to provide the address to which Form ESA-82 must be mailed.

An amendment to clarify the definition of "reportable worker" is also made. It has come to our attention that there may have been some misunderstanding regarding the previous definition of "reportable worker." Accordingly, § 502.2(n) is clarified to make it clear that the phrase "INS Alien Registration Number in the A90000000 series" includes any Alien Registration Number starting with A9 and followed by any seven digits.

A minor amendment is made to § 502.39 to conform to the rules of the Department's Administrative Law Judges for conduct of hearings at 29 CFR Part 18. The regulation provides that where an exception is filed by mail, 5 days will be added to the prescribed time for filing.

For information purposes, a copy of revised Form ESA-82, deleting "hay" and including the mailing address, is attached as an appendix.

Publication in Final

The Department of Labor has determined, pursuant to 5 U.S.C. 553(b)(B), that good cause exists for waiving public comment on these amendments to the regulation. Such comment is unnecessary because the Department had previously announced its intention to amend the regulations to reflect the final disposition of hay and the other contested crops after conclusion of the litigation, and to publish the address to which the ESA-82 form must be mailed. The clarifying change to the reportable worker definition and to the procedural rules do not require notice and comment pursuant to 5 U.S.C. 553(b)(A), since they are interpretative and procedural in nature.

Effective Date

The Department has determined that good cause exists for waiving the customary requirement to delay the effective date of a final rule for 30 days following its publication. The amendments contained in this rule are necessary for the public to comply with the reporting requirements which must be fulfilled by January 16. Furthermore, the amendment deleting "hay" relieves a reporting requirement. Therefore, these amendments should be effective immediately.

Executive Order 12291

The Department has determined that this rule is not classified as a "major rule" under Executive Order 12291 on Federal Regulations, because it is not likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign based enterprises in domestic or export markets. Accordingly, no regulatory impact analysis is required.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for the rule under 5 U.S.C. 553(b), the requirements of the Regulatory Flexibility Act, Pub. L. 96-354, Stat. 1165, 5 U.S.C. 601 *et seq.* pertaining to regulatory flexibility analysis, do not apply to this rule. See 5 U.S.C. 601(2). In any event, the rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

Since the exclusion of hay from the list of eligible commodities under the special agricultural worker program and the other amendments to this rule require the collection of no additional information, additional approval of the Office of Management and Budget is not required. See 44 U.S.C. 3501 *et seq.*

Authority

For reasons set out in the preamble, Part 502 of Chapter V of Title 29 of the Code of Federal Regulations, is amended as set forth below:

PART 502—REPORTING AND EMPLOYMENT REQUIREMENTS FOR EMPLOYERS OF CERTAIN WORKERS EMPLOYED IN SEASONAL AGRICULTURAL SERVICES

1. The authority citation for Part 502 continues to read as follows:

Authority: 8 U.S.C. 1160, 1161; 1801 et seq.

Section 502.6 also issued under 29 U.S.C. 49k.

§ 502.2 [Amended]

2. Section 502.2(o)(3) is amended by removing the word "hay," from the first sentence.

3. In § 502.2, paragraph (n) is revised to read as follows:

§ 502.2 Definitions pertaining solely to a reportable worker employed in seasonal agricultural services.

* * * * *

(n) "Reportable Worker" is an alien employed in seasonal agricultural services who was admitted with lawful temporary resident status or whose status was adjusted to lawful temporary residency, and who is identified by an INS Alien Registration Number in the A90000000 series (i.e., the number starts with "A9," followed by any seven digits). This series includes:

(1) Resident aliens admitted under section 245A of the INA,

(2) Resident alien-special agricultural worker admitted under section 210 of the INA, and

(3) Resident alien-replenishment agricultural workers admitted between FY 1990 and FY 1993 under section 210A of the INA.

* * * * *

§ 502.12 [Amended]

4. Section 502.12(d)(2) is amended by removing the word "hay," from the text.

5. In § 502.12, paragraph (g) is revised to read as follows:

§ 502.12 Reporting to the Federal Government.

* * * * *

(g) The Form ESA-82 shall be submitted to "Committee for Employment Information on Special Agricultural Workers" and mailed to 1201 E. 10th Street, Jeffersonville, Indiana 47132.

* * * * *

6. In § 502.39, paragraph (c) is revised to read as follows:

§ 502.39 Service of determinations and computation of time.

* * * * *

(c) When a request for a hearing is filed by mail, (5) five days shall be added to the prescribed period during which the party has the right to request a hearing on the determination.

Note: The Department presents a form in the Appendix which satisfies certain recordkeeping aspects of the Act and regulations. This form, however, will not appear in the Code of Federal Regulations.

BILLING CODE 4510-27-M

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Appendix A—Work-Day Report, ESA–92

WORK-DAY REPORT (Form ESA - 92)

Required under Public Law 99-603, Sec 210A (b) (2)

Form ___ of ___ (use additional forms as needed)

2. EMPLOYER NAME
BUSINESS NAME
3. ADDRESS
CITY STATE ZIP -
DAYTIME PHONE
4. EIN
TYPE OF BUSINESS

1. Reporting Period [check quarter and year]

Quarter	Year
( ) Oct. 1 through Dec. 31 mail by Jan. 16	( ) 1988 ( ) 1989
( ) Jan. 1 through March 31 mail by April 17	( ) 1990 ( ) 1991
( ) April 1 through June 30 mail by July 17	( ) 1992
( ) July 1 through Sept. 30 mail by Oct. 16	

5. All crops on which reportable workers were employed:

6. The following (or attached, certified list of) employees are reportable workers and worked at least one work-day (4 or more hours worked) in seasonal agricultural services during the quarter reported:

Reportable Worker Name	INS Alien Registration Number	Number of days worked 4 hours or more in seasonal agricultural services		
		All Other Crops	Sod	Sugar Cane
	A9__-___-___			
	A9__-___-___			
	A9__-___-___			
	A9__-___-___			
	A9__-___-___			
	A9__-___-___			
	A9__-___-___			
	A9__-___-___			
	A9__-___-___			
	A9__-___-___			
	A9__-___-___			
	A9__-___-___			
	A9__-___-___			
	A9__-___-___			
	A9__-___-___			

I hereby certify that all information provided herewith is complete and accurate to the best of my knowledge. The willful falsification of any statements contained herein or attached hereto may subject the employer to civil or criminal prosecution. See Section 1001 of Title 18 of the United States Code.

Instructions and authority for report on reverse side of form.

7. Employer Signature and Date

Return To: CEISAW
Committee for Employment Information
on Special Agricultural Workers
1201 E. 10th Street
Jeffersonville, Indiana 47132

Form ESA '92
Form Approved
OMB Number 1215-0168
Expiration Date 8/91

Form ESA 92 (Cont)

AUTHORITY FOR EMPLOYERS REPORTS

The authority for this certified report to the Federal Government is contained in Section 210A of the Immigration and Nationality Act as amended by the Immigration Reform and Control Act of 1986 (IRCA), Public Law 99-603. This form is to report employment information on certain workers employed in seasonal agricultural services. This information is used to identify labor utilization and, if necessary, to determine any agricultural labor shortage in order to replenish the work force for this type of employment.

Public reporting burden for this collection of information is estimated to average 20 1/2 minutes per response, including the time for reviewing instruction, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Information Management, Department of Labor, Room N-1301, 200 Constitution Ave., NW, Washington, DC 20210, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

WHO MUST REPORT

This form is to certify employment information of certain workers employed in seasonal agricultural services in which the employer is required to provide such information to the Federal Government. A worker whose employment is to be reported is an individual with an INS Alien Registration Number (if applicable, submitted by the employee on the INS Form I-9) in the A80000000 series and who performs work in seasonal agricultural services for at least one workday (4 or more hours worked) during the quarter reported. For further details refer to regulations at 29 CFR 502.

ITEM 1. Indicate the quarter and year for which the information is submitted.

ITEM 2. Enter the complete employer and/or business name(s).

ITEM 3. Enter the complete address, and telephone number (including area code of the employer).

ITEM 4. Enter the employer's federal tax identification number and type of agricultural business, e.g., farm, nursery, or farm labor contractor.

ITEM 5. Indicate in the space all the crops (such as "cucumbers" or "wheat") in which reportable workers were employed.

ITEM 6. With respect to each employee with an Alien Registration Number in the A80000000 series who was employed in seasonal agricultural services at any time during the quarter reported, enter each worker's name, INS Alien Registration Number, and the total number of workdays that each worker was employed in seasonal agricultural services in any of the specific "contested crops" indicated and for all other crops. Where an employee worked in one or more "contested crops" and in other crops on the same day, enter that workday under "All Other Crops." The entries in all columns should add up to the total number of workdays that each worker was employed in seasonal agricultural services. A "workday" is defined as any day during which at least four (4) hours of work in seasonal agricultural services is performed. If one worker performs seasonal agricultural services for more than one employer on any one day, only one workday will be counted.

The information required under item 6 (only) may be supplied via a certified computer-generated paper listing in the same format as called for on the Form ESA-92 - attached to the otherwise complete ESA-92, but such attached listing must also be signed and dated (i.e., certified) by the responsible party to be valid.

ITEM 7. THIS FORM MUST BE SIGNED AND DATED BY THE REPORTING EMPLOYER OR A DESIGNATED REPRESENTATIVE OF THE EMPLOYER. NOTE: STATEMENTS SUBMITTED ARE SUBJECT TO 18 U.S.C. 1001.

Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned for not more than five years, or both.

Failure to accurately complete and mail this form within the time period specified in regulation 29 CFR 502 will be in violation of the Immigration and Nationality Act as amended by IRCA. The penalties imposed are contained in the statute and regulation 29 CFR 502.

DEFINITIONS

Performing work in "Seasonal Agricultural Services" means performing field work related to planting, cultural practices, cultivating, growing and harvesting of fruits and vegetables of every kind and other perishable commodities as defined in regulation 7 CFR part 1d. For purposes of this regulation only, "seasonal agricultural services" also includes field work performed in the following "contested crops": sod and sugarcane. The requirement of reporting these commodities does not constitute evidence that they are eligible commodities for purposes of the SAW program. The reporting requirements will enable the Federal Government and the replenishment agricultural worker to obtain needed data in the event that it is later decided that these commodities are SAW eligible.

"Field work" means any employment performed on agricultural lands for the purpose of planting, cultural practices, cultivating, growing, harvesting, drying, processing, or packing any fruits, vegetables, or other perishable commodities. These activities have to be performed on agricultural land in order to produce fruits, vegetables, and other perishable commodities, as opposed to those activities that occur in a processing plant or packinghouse not on agricultural lands. Thus, the drying, processing, or packing of fruits, vegetables, and other perishable commodities in the field and the "on the field" loading of transportation vehicles are included. Operations using a machine, such as a picker or a tractor, to perform these activities on agricultural lands are included. Supervising any of these activities shall be considered performing the activities.

"Agricultural lands" means any land, cave, or structure, such as a greenhouse, except packinghouses or canneries, used for the purpose of performing field work.

Fruits and vegetables of every kind and other perishable commodities INCLUDE the following. All fruits and vegetables, including (but not limited to) berries, melons, tree fruits and nuts, table vegetables; also corn and small grains, cotton, soybeans; other perishable commodities are limited to Christmas trees, cut flowers, herbs, hops, horticultural specialties (field grown, containerized, and greenhouse produced nursery crops), spanish reeds (arundo donax), spices, sugar beets, and tobacco, as defined in 7 CFR Part 1d.

Examples of other commodities which are EXCLUDED include: Animal aquacultural products, birds, dairy products, earthworms, fish including oysters and shellfish, flax, forest products, fur bearing animals and rabbits, hay, honey, horses and other equines, livestock of all kinds including animal specialties, forage, silage, poultry and poultry products, wildlife and wool.

"Contested crops" INCLUDE sod and sugarcane. Reports must be filed on field work performed by reportable workers in these crops.

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Signed at Washington, DC, this 18th day of January, 1989.

Ann McLaughlin,

Secretary of Labor.

Fred W. Alvarez,

Assistant Secretary for Employment Standards.

Paula V. Smith,

Administrator, Wage and Hour Division, Employment Standards Administration.

[FR Doc. 89-1864 Filed 1-25-89; 8:45 am]

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federal register

Thursday
January 26, 1989

Part VII

Department of Commerce

Patent and Trademark Office

37 CFR Parts 15 and 15a

Service of Process and Testimony of Employees of the Patent and Trademark Office and Production of Documents in Legal Proceedings; Final Rule

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DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Parts 15 and 15a

[Docket No. 9106-9006]

Service of Process and Testimony of Employees of the Patent and Trademark Office and Production of Documents in Legal Proceedings

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Final rule.

SUMMARY: The Patent and Trademark Office is adding 37 CFR Parts 15 and 15a to supplement 15 CFR Parts 15 and 15a. These new parts prescribe policies and procedures to be followed with respect to service of process on the Patent and Trademark Office, the Commissioner of Patents and Trademarks, and employees of the Office, the testimony of Office employees regarding official matters, and the production of official documents in legal proceedings. These regulations serve as a statement of Office policy and provide comprehensive guidelines for the Office and its employees, outside agencies, and other persons regarding the appropriate procedures for service of process, testimony, and production of documents.

EFFECTIVE DATE: January 26, 1989.

FOR FURTHER INFORMATION CONTACT: Associate Solicitor John W. Dewhirst by mail at Box 8, U.S. Patent and Trademark Office, Washington, DC 20231 and by phone at (703) 557-4035.

SUPPLEMENTARY INFORMATION: These regulations are designed to supplement, and be construed consistent with, 15 CFR Parts 15 and 15a. The regulations in Part 15a state the views of the Office with respect to the permissible scope of testimony which may be given by Office employees in connection with their performance of quasi-judicial patent and trademark matters. These Office views are consistent with *United States v. Morgan*, 313 U.S. 409, 422 (1941); *Western Electric Co., Inc. v. Piezo Technology, Inc. v. Quigg*, No. 88-1216, 860 F.2d 428, 8 USPQ 2d 1853 (Fed. Cir. Nov. 1, 1988); *In re Mayewsky*, 162 USPQ 88, 89 (E.D. Va. 1969), and *Shaffer Tool Works v. Joy Mfg. Co.*, 167 USPQ 170 (S.D. Tex. 1970).

Because these regulations concern agency management and personnel, they are not rules or regulations within the meaning of section 1(a) of Executive Order 12291, and they are not subject to the requirements of that Order. Accordingly, no preliminary or final regulatory impact analysis has to be or will be prepared.

These regulations, relating to agency management and personnel, are exempt from all requirements of section 553 of the Administrative Procedure Act (5 U.S.C. 553) including a delayed effective date and therefore will be effective immediately upon publication in the Federal Register.

Because a notice of proposed rulemaking and an opportunity for public comments are not required to be given for these regulations by section 553 of the APA, or by any other law, no regulatory flexibility analysis has to be or will be prepared for purposes of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)).

This final rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

This rule does not contain collections of information for purposes of the Paperwork Reduction Act.

List of Subjects in 37 CFR Parts 15 and 15a

Attorneys, Administrative practice and procedure, Courts, Government employees.

For the reasons set forth in the preamble, 37 CFR is amended as follows:

1. Part 15 is added to read as follows:

PART 15—SERVICE OF PROCESS

Sec.
15.1 Scope and purpose.
15.2 Definitions.
15.3 Acceptance of service of process.

Authority: 5 U.S.C. 301; 15 U.S.C. 1501, 1512, 1513, 1515, and 1518; Reorganization Plan No. 5 of 1950; 44 U.S.C. 3101; 15 CFR 15.2(a).

§ 15.1 Scope and purpose.

(a) This part supplements 15 CFR Part 15 and sets forth the procedures to be followed when a summons or complaint is served on the Office or the Commissioner or an employee of the Office in his or her official capacity. This part is to be construed consistent with 15 CFR Part 15.

(b) This part is intended to ensure the orderly execution of the affairs of the Office and not to impede any legal proceedings.

(c) This part does not apply to subpoenas. The procedures to be followed with respect to subpoenas are set out in Part 15a of this Title.

(d) This part does not apply to service of process made on an Office employee personally on matters not related to official business of the Office or to the official responsibilities of the Office employee.

§ 15.2 Definitions.

For the purpose of this part:

(a) "Commissioner" means Assistant Secretary and Commissioner of Patents and Trademarks.

(b) "Legal proceeding" means a proceeding before a tribunal constituted by law, including a court, an administrative body or commission, or an administrative law judge or hearing officer.

(c) "Office" means Patent and Trademark Office.

(d) "Office employee" means any officer or employee of the Office.

(e) "Official business" means the authorized business of the Office.

(f) "Solicitor" means the chief legal officer of the Office or other Office employee to whom the Solicitor has delegated authority to act under this part.

§ 15.3 Acceptance of service of process.

(a) Any summons or complaint to be served in person or by registered or certified mail or as otherwise authorized by law on the Office or the Commissioner or an Office employee in his or her official capacity, shall be served on the Solicitor or an Office employee designated by the Solicitor.

(b) Any summons or complaint to be served by mail may be addressed to Solicitor, P.O. Box 15667, Arlington, Virginia 22215. Any summons or complaint to be served by hand may be delivered to the Office of the Solicitor.

(c) Any Office employee served with a summons or complaint shall immediately notify and deliver the summons or complaint to the Office of the Solicitor.

(d) Any Office employee receiving a summons or complaint shall note on the summons or complaint the date, hour, and place of service and whether service was by personal delivery or by mail.

(e) When a legal proceeding is brought to hold an Office employee personally liable in connection with an action taken in the conduct of official business, rather than liable in an official capacity, the Office employee by law is to be served personally with process. Service of process in this case is inadequate when made upon the Solicitor or the Solicitor's designee. Any Office employee sued personally for an action taken in the conduct of official business shall immediately notify and deliver a copy of the summons or complaint to the Office of the Solicitor.

(f) An Office employee sued personally in connection with official business may be represented by the Department of Justice at its discretion. See 28 CFR 50.15 and 50.16 (1987).

(g) The Solicitor or Office employee designated by the Solicitor, when accepting service of process for an Office employee in an official capacity, shall endorse on the Marshal's or server's return of service form or receipt for registered or certified mail the following statement: "Service accepted in official capacity only." The statement may be placed on the form or receipt with a rubber stamp.

(h) Upon acceptance of service or receiving notification of service, as provided in this section, the Solicitor shall take appropriate steps to protect the rights of the Commissioner or Office employee involved.

2. Part 15a is added to read as follows:

PART 15a—TESTIMONY BY EMPLOYEES AND THE PRODUCTION OF DOCUMENTS IN LEGAL PROCEEDINGS

Sec.
15a.1 Scope.
15a.2 Definitions.
15a.3 Office policy.
15a.4 Testimony or production of documents; general rule.
15a.5 Testimony of Office employees in proceedings involving the United States.
15a.6 Legal proceedings between private litigants.
15a.7 Procedures when an Office employee receives a subpoena.

Authority: 5 U.S.C. 301; 15 U.S.C. 1501, 1512, 1513, 1515, and 1518; Reorganization Plan No. 5 of 1950; 44 U.S.C. 3101; 15 CFR 15a.1(e) and 15a.2(f).

§ 15a.1 Scope.

(a) This part supplements 15 CFR Part 15a and prescribes the policies and procedures of the Office with respect to the testimony of Office employees as witnesses in legal proceedings and the production of documents of the Office for use in legal proceedings pursuant to a request, order, or subpoena. This part is issued pursuant to 15 CFR 15a.1(e) and is to be construed consistent with 15 CFR Part 15a.

(b) This part does not apply to any legal proceeding in which an Office employee is to testify, while on leave status, as to facts or events that are in no way related to the official business of the Office.

(c) This part is intended to ensure the orderly execution of the affairs of the Office and not to impede any legal proceeding and in no way affects the rights and procedures governing public access to records pursuant to the Freedom of Information Act or the Privacy Act. See 15 CFR 15a.4 and 37 CFR 1.15.

§ 15a.2 Definitions.

For the purpose of this part:

(a) "Commissioner" means Assistant Secretary and Commissioner of Patents and Trademarks.

(b) "Demand" means a request, order, or subpoena for testimony or documents for use in a legal proceeding.

(c) "Document" means any record, paper, and other property held by the Office, including without limitation official patent and trademark files, official letters, telegrams, memoranda, reports, studies calendar and diary entries, maps, graphs, pamphlets, notes, charts, tabulations, analyses, statistical or informational accumulations, any kind of summaries of meetings and conversations, film impressions, magnetic tapes, and sound or mechanical reproductions.

(d) "Legal proceeding" means a proceeding before a tribunal constituted by law, including a court, an administrative body or commission, an administrative law judge or hearing officer or any discovery proceeding in support thereof.

(e) "Office" means Patent and Trademark Office.

(f) "Office employee" means any officer or employee of the Office.

(g) "Official business" means the authorized business of the Office.

(h) "Solicitor" means the chief legal officer of the Office or other Office employee to whom the Solicitor has delegated authority to act under this part.

(i) "Testimony" means a statement given in person before a tribunal or by deposition for use before the tribunal or any other statement given for use before a tribunal in a legal proceeding, including an affidavit, declaration under 35 U.S.C. 25, or declaration under 28 U.S.C. 1746.

(j) "United States" means the Federal Government, its departments and agencies, and individuals acting on behalf of the Federal Government.

§ 15a.3 Office policy.

The Office policy is that its documents will not be voluntarily produced and Office employees will not voluntarily appear as witnesses or give testimony in a legal proceeding. The reasons for this policy include:

(a) To conserve the time of Office employees for conducting official business.

(b) To minimize the possibility of involving the Office in controversial or other issues which are not related to the mission of the Office.

(c) To prevent the possibility that the public will misconstrue variances between personal opinions of Office employees and Office policy.

(d) To avoid spending the time and money of the United States for private purposes.

(e) To preserve the integrity of the administrative process, minimize disruption of the decision-making process, and prevent interference with the Office's administrative functions.

§ 15a.4 Testimony or production of documents; general rule.

(a) No Office employee shall give testimony concerning the official business of the Office or produce any document in any legal proceeding without the prior authorization of the Solicitor. Where appropriate, an Office employee may be instructed in writing by the Commissioner, Solicitor, or other appropriate Office employee not to give testimony or produce a document. Without prior approval, no Office employee shall answer inquiries from a person not employed by the Department of Commerce regarding testimony or documents subject to a demand or a potential demand under the provisions of this Part. All inquiries involving a demand or potential demand on an Office employee shall be referred to the Solicitor.

(b) A certified copy of a document, not otherwise available under Chapter I of this Title, will be provided for use in a legal proceeding upon written request and payment of applicable fees required by law.

(c)(1) *Request for testimony or document.* A request for testimony of an Office employee or document shall be mailed or hand-delivered to the Office of the Solicitor. The mailing address of the Office of the Solicitor is Box 8, Patent and Trademark Office, Washington, DC 20231.

(2) *Subpoenas.* A subpoena for testimony by an Office employee or a document shall be served in accordance with the Federal Rules of Civil or Criminal Procedure as appropriate, or applicable state procedure, and a copy of the subpoena shall be sent to the Solicitor.

(3) *Affidavit.* Every request and subpoena shall be accompanied by an affidavit or declaration under 28 U.S.C. 1746 or, if an affidavit or declaration is not feasible, a written statement setting forth the title of the legal proceeding, the forum, the requesting party's interest in the legal proceeding, the reasons for the request or subpoena, a showing that the desired testimony or document is not reasonably available from any other

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source, and if testimony is requested, the intended use of the testimony, a general summary of the testimony desired, and a showing that no document could be provided and used in lieu of testimony. The purpose of this requirement is to permit the Solicitor to make an informed decision as to whether testimony or production of a document should be authorized.

(d) Any Office employee who is served with a demand shall immediately notify the Office of the Solicitor.

(e) The Solicitor may consult or negotiate with an attorney for a party or the party, if not represented by an attorney, to refine or limit a demand so that compliance is less burdensome or obtain information necessary to make the determination required by paragraph (c) of this section. Failure of the attorney or party to cooperate in good faith to enable an informed determination to be made under this part may serve as the basis for a determination not to comply with the demand.

(f) A determination under this part to comply or not to comply with a demand is not an assertion or waiver of privilege, lack of relevance, technical deficiencies or any other ground for noncompliance. The Commissioner reserves the right to oppose any demand or any legal ground independent of any determination under this part.

§ 15a.5 Testimony of Office employees in proceedings involving the United States.

(a) An Office employee may not testify as an expert or opinion witness for any party other than the United States.

(b) When appropriate, the Solicitor may authorize an Office employee to give testimony as an expert or opinion witness on behalf of the United States. Expert or opinion testimony on behalf of the United States will not be authorized in any legal proceeding involving the validity or enforceability of a patent or registered trademark.

(c) Whenever, in any legal proceeding involving the United States, a request is made by an attorney representing or acting under the authority of the United States, the Solicitor will make all necessary arrangements for the Office employee to give testimony on behalf of the United States. Where appropriate, the Solicitor may require reimbursement to the Office of the expenses associated with an Office employee giving testimony on behalf of the United States.

§ 15a.6 Legal proceedings between private litigants.

(a) Testimony by an Office employee and production of documents in a legal proceeding not involving the United States shall be governed by § 15a.4.

(b) If an Office employee is authorized to give testimony in a legal proceeding, the testimony, if otherwise proper, shall be limited to facts within the personal knowledge of the Office employee. An Office employee is prohibited from giving expert or opinion testimony, answering hypothetical or speculative questions, or giving testimony with respect to subject matter which is privileged. If an Office employee is authorized to testify in connection with the employee's involvement or assistance in a quasi-judicial proceeding which took place before the Office, that employee is further prohibited from giving testimony in response to questions which seek:

(1) Information about that employee's:

(i) Background.

(ii) Expertise.

(iii) Qualifications to examine or otherwise consider a particular patent or trademark application.

(iv) Usual practice or whether the employee followed a procedure set out in any Office manual of practice in a particular case.

(v) Consultation with another Office employee.

(vi) Understanding of:

(A) A patented invention, an invention sought to be patented, or patent application, patent, reexamination or interference file.

(B) Prior art.

(C) Registered subject matter, subject matter sought to be registered, or a trademark application, registration, opposition, cancellation, interference or concurrent use file.

(D) Any Office manual of practice.

(E) Office regulations.

(F) Patent, trademark, or other law.

(G) The responsibilities of another Office employee.

(vii) Reliance on particular facts or arguments.

(2) To inquire into the manner in and extent to which the employee considered or studied material in performing the quasi-judicial function.

(3) To inquire into the bases, reasons, mental processes, analyses, or conclusions of that Office employee in performing the quasi-judicial function.

§ 15a.7 Procedures when an Office employee receives a subpoena.

(a) Any Office employee who receives a subpoena shall immediately forward the subpoena to the Office of the Solicitor. The Solicitor will determine the extent to which an Office employee will comply with the subpoena.

(b) If the Office employee is not authorized to comply with the subpoena, the Office employee shall appear at the time and place stated in the subpoena, produce a copy of Part 15a of Title 15 and a copy of this part, and respectfully refuse to provide any testimony or produce any document. *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951).

(c) When necessary or appropriate, the Solicitor will request assistance from the Department of Justice or a U.S. Attorney or otherwise assure the presence of an attorney to represent the interests of the Office or an Office employee.

Donald J. Quigg,

Assistant Secretary and Commissioner of Patents and Trademarks.

[FR Doc. 89-1602 Filed 1-25-89; 8:45 am]

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Friday, January 27, 1989

Presidential Documents

Title 3—

The President

Executive Order 12668 of January 25, 1989

President's Commission on Federal Ethics Law Reform

By the authority vested in me as President by the Constitution and laws of the United States of America, and in order to establish, in accordance with the provisions of the Federal Advisory Committee Act, as amended (5 U.S.C. App. 2), an advisory committee on reform of the Federal ethics laws, it is hereby ordered as follows:

Section 1. *Establishment.* (a) There is established the President's Commission on Federal Ethics Law Reform. The Commission shall be composed of not more than eight members appointed by the President. These members shall be distinguished individuals with broad experience in ethics and public service.

(b) The President shall designate a Chairman and Vice Chairman from among the members of the Commission.

Sec. 2. *Functions.* (a) The Commission shall review Federal ethics laws, Executive orders, and policies and shall make recommendations to the President for legislative, administrative, and other reforms needed to ensure full public confidence in the integrity of all Federal public officials and employees.

(b) The Commission shall report to the President by March 9, 1989, and shall provide a copy of its report to the Attorney General.

Sec. 3. *Administration.* (a) The heads of Executive agencies and the Director of the Office of Government Ethics, to the extent permitted by law, shall provide the Commission such information, advice, and assistance as it may require for purposes of carrying out its functions.

(b) Members of the Commission shall serve without compensation for their work on the Commission. However, while engaged in the work of the Commission, members may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law (including 5 U.S.C. 5701–5707), to the extent funds are available therefor.

(c) The Attorney General, to the extent permitted by law and subject to the availability of appropriations, shall provide the Commission with such administrative services, funds, facilities, staff, and other support services as may be necessary for the performance of its functions.

Sec. 4. *Counsel to the President.* Following the submission of the Commission's report, the Counsel to the President shall provide the President with periodic reports regarding the implementation of reforms to Federal ethics laws, Executive orders, and policies.

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Sec. 5. *General.* (a) Notwithstanding any other Executive order, the functions of the President under the Federal Advisory Committee Act, as amended, except that of reporting to the Congress, which are applicable to the Commission, shall be performed by the Attorney General, in accordance with guidelines and procedures established by the Administrator of General Services.

(b) The Commission shall terminate 30 days after its report, unless sooner extended.

George Bush

THE WHITE HOUSE,
January 25, 1989.

[FR Doc. 89-2188
Filed 1-25-89; 4:27 pm]
Billing code 3195-01-M

Editorial note: For the President's remarks on signing Executive Order 12698 and a White House announcement on the appointment of the membership of the Commission, released Jan. 25, see the *Weekly Compilation of Presidential Documents* (vol. 25, no. 4).

Rules and Regulations

Federal Register
Vol. 54, No. 17
Friday, January 27, 1989

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Rural Electrification Administration

7 CFR Part 1763

Architectural and Engineering Services—Telephone Program

AGENCY: Rural Electrification Administration, USDA.

ACTION: Final rule.

SUMMARY: The Rural Electrification Administration (REA) hereby adds Part 1763, Architectural and Engineering Services—Telephone Program, to 7 CFR Chapter XVII of the Code of Federal Regulations. This new part sets forth the provisions and requirements of the RE Act and the REA administrative policies, requirements, and procedures for the provisions of architectural and engineering services for the planning and construction activities for telecommunication facilities and systems for telephone borrowers with REA loan funds.

All borrowers that are parties to the planning and construction of borrowers' telecommunication facilities and systems will be affected by this rule.

EFFECTIVE DATE: This final rule is effective January 27, 1989.

FOR FURTHER INFORMATION CONTACT: William F. Albrecht, Director, Telecommunications Staff Division, Rural Electrification Administration, Room 2835 South Building, U.S. Department of Agriculture, Washington, DC 20250, telephone number (202) 382-8663. The Final Regulatory Impact Analysis describing the options considered in developing this rule amendment is available on request from the above named individual.

SUPPLEMENTARY INFORMATION: This rule is issued in conformity with Executive Order 12291, Federal Regulation. This action will not (1) have an annual effect on the economy of $100 million or more, (2) result in a major increase in costs or prices for consumers, individual industries, Federal, state or local government agencies, or geographic regions; or (3) result in significant adverse effects on competition, employment, investment or productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore, this rule has been determined to be "not major."

This action does not fall within the scope of the Regulatory Flexibility Act. REA has concluded that promulgation of this rule would not represent a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.* (1976)) and, therefore, does not require an environmental impact statement or an environmental assessment.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.851, Rural Telephone Loans and Loan Guarantees, and 10.852, Rural Telephone Bank Loans. For the reasons set forth in the final rule related Notice to 7 CFR Part 3015, Subpart V (50 FR 47034, November 14, 1985), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

The reporting and record keeping provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507 *et seq.*) contained in this rule have been approved by the Office of Management and Budget (OMB) under clearance number 0572-0064.

Public reporting burden for this collection of information is estimated to average .9 of an hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, Room 404-W, Washington, DC 20250; and to the Office of Information and Regulatory Affairs, ATTN: Desk Officer for REA, Office of Management and Budget, Washington, DC 20503.

Background

The following existing REA Bulletins contain the present policies, requirements, and procedures for providing architectural and engineering services for REA telephone borrowers:

340-1 Final Payments to Contractors, Engineers, and Architects-Telephone Program
341-1 Final Statement of Engineering Fee and Certificate of Engineer, Telephone Engineering Service Contract
341-3 Engineering Services for Telephone Borrowers
342-1 Architectural Services for Telephone Borrowers
380-3 Weekly Progress Report of Telphone Construction and Engineering Services
387-3 Final Documents Required to Close Out Construction of Buildings—Telephone Program.

These Bulletins contain certain policies, requirements, and procedures that are incorporated into this 7 CFR Part 1763 and other CFR Parts. When these CFR Parts are published as final rules, the above Bulletins will be rescinded.

On July 29, 1988, REA published in the **Federal Register** Proposed Rule 7 CFR Part 1763, Architectural and Engineering Services—Telephone Program, containing the provisions regarding architectural and engineering services performed by or for REA telephone borrowers. In the proposed rule REA invited interested parties to file comments on or before August 29, 1988.

Comments

Comments and recommendations were received from the Association of Communication Engineers (ACE), representing 36 engineering firms actively engaged in providing engineering services to REA telephone borrowers; Reed Veach, Wurdeman and Associates (RVW), a consulting engineering firm providing engineering services to several REA telephone borrowers; AT&T Network Systems; National Telephone Cooperative Association (NTCA); and filing as a group, the United States Telephone Association (USTA), the National Rural Telcom Association (NRTA), and the

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Organization for the Protection and Advancement of Small Telephone Companies (OPASTCO). The comments and recommendations are summarized as follows:

Section 1763.1 General.

USTA, NRTA and OPASTCO stated that (1) the Proposed Rule would restrict funding for a purpose permitted by the Rural Electrification Act; (2) many requirements are placed inappropriately on engineers and architects where they should be placed on borrowers; (3) the rule perpetuates nonregulatory language directly from REA Bulletins; and (4) in order for the public to have an opportunity to thoroughly review and comment on REA's regulations, a 60-day comment period should be granted.

Response. The language of this regulation merely reflects the provisions of 7 CFR Part 1745 with respect to the criteria for loan purposes or amounts of funds to be included in a loan and does not independently restrict these purposes. This regulation addresses only the provisions of architectural and engineering services for the purposes provided for in approved loans.

Regarding the second comment, the wording in several sections has been changed to place the requirements on the borrowers and not on the architects and engineers. As to the third point, appropriate explantatory and advisory language has been retained in the Final Rule. REA believes such information is helpful to borrowers, improves communications, and enhances program administration. Regarding the fourth point, a 30-day comment period was used because of the deadline imposed by the Omnibus Budget Reconciliation Act of 1987. REA continued to accept comments after the 30-day period.

1763.1(b)—RVW recommended that engineers performing services for REA borrowers, whether by contract or by force account, meet applicable State registration and licensing requirements.

Response: For many years telephone borrowers with qualified employees have been permitted to provide engineering services by the force account method for facilities financed with REA loan funds. The results have been satisfactory. The Final Rule sets forth experience requirements for borrowers' employees that will ensure continued satisfactory engineering services by the force account method.

Regarding architects and engineers hired under contract by borrowers, USTA, NRTA, and OPASTCO commented that the Proposed Rule imposes registration and licensing requirements on these architects and engineers, whereas it should require borrowers that employ architects and engineers under contract to employ only those who meet the specified requirements.

Response: REA agrees, and § 1763.1 (c) and (d) have been worded to place the requirement upon the borrower.

Section 1763.1(c)—USTA, NRTA, and OPASTCO stated that the requirement for an architect on all building projects financed with loan funds places unnecessary burdens on borrowers and that REA should list the types of building projects that are exempt from this requirement.

Response: REA agrees, and has added a new paragraph § 1763.1(d) listing the types of building construction that will require professional architectual or engineering services.

Section 1763.2 Definitions.

USTA, NRTA, and OPASTCO commented that the definition of "Project" is not clear and the term "rural telephone system" is not defined in the Rural Electrification Act (the Act).

Response: The definition of "Project" has been clarified in the Final Rule and the term "rural telephone system" has been deleted.

Section 1763.4 List of engineers.

USTA, NRTA, and OPASTCO commented that informing the public that REA keeps a list of participating engineers could suggest that borrowers limit their choices to those on the list.

Comment: REA is discontinuing the list.

Section 1763.5 Insurance requirements.

USTA, NRTA, and OPASTCO proposed certain changes in the language requiring architects and engineers performing work for borrowers to meet certain insurance requirements.

Response: 7 CFR Part 1788, which has been in effect since July 17, 1988, sets forth the insurance coverages which borrowers must require be maintained by contractors performing work on REA-financed construction. REA has added paragraph § 1763.4 to the Final Rule to require borrowers to employ only those architects and engineers who have and maintain such insurance coverages.

Section 1763.21 Architectual services contract.

RVW commented that there is a conflict between § 1763.2(a) of the Proposed Rule and the existing REA policy in Bulletins 341–3 and 342–1, which permits using either Form 185 or Form 217 for architectual services for unattended central office buildings.

Response: The Final Rule has been revised to permit the use of either Form 185 or Form 217 for architectural services for unattended central office buildings.

USTA, NRTA, and OPASTCO objected to all "advisory" sections of the CFR, suggesting that advice should not be contained in a regulation. Specifically mentioned were REA's suggestion that borrowers obtain legal counsel to ensure modified contracts are properly prepared and executed and that borrowers reach written agreements with architects for preliminary services required prior to REA approval of the Form 185 contract.

Response: REA is committed to the elimination of unnecessary requirements and advice to borrowers. REA believes, however, that it is appropriate to include advice in regulations when it will improve communications, prevent problems, or otherwise further effective program administration. The advice for legal counsel is retained in the Final Rule, but the advice on a written agreement with the architect for preliminary services has been deleted.

USTA, NRTA, and OPASTCO commented that if it is REA's intent for forms to contain requirements under the regulation, the forms should be published with the relevant rule or incorporated by reference to permit public notice and opportunity for comment. The comment specifically concerned the Form 185 Contract.

Response: REA believes it more appropriate to publish all of its forms under one CFR, rather than have them scattered throughout many sections. Therefore, REA contract forms have been published in the **Federal Register** under 7 CFR Part 1762. Specifications and drawings to be made a part of the contract are incorporated by reference in the **Federal Register** under 7 CFR Part 1772.

In § 1763.21(b) of the Final Rule, the term "required" has been changed to "set forth" to reflect REA's intent that any modification to Form 185 not affect the contractual obligations of the architect as set forth in the form.

Section 1763.22 Closeout of architectual services contract.

USTA, NRTA, and OPASTCO commented that the Proposed Rule places the requirement for obtaining REA Form 284, Final Statement of Architectual Fees, on the architect, rather than on the borrower.

Response: The Final Rule places the requirement on the borrower to obtain the completed Form 284 from the architect.

RVW commented there is a conflict between §§ 1763.21(c) and 1763.42(a) concerning the submission of contracts to REA.

Response: The review by the CFR is essential for the approval of contracts. Section 1763.21(c) in the Final Rule has been revised to require submission of the REA Form 185 contracts to REA through the CFR.

Section 1763.40 Preloan engineering.

Paragraph (a)—USTA, NRTA, and OPASTCO objected to advising borrowers to discuss their proposed method of obtaining preloan engineering services with the CFR before proceeding.

Response: REA believes that discussion with the CFR will often minimize the burden on borrowers and has retained the advisory language in the Final Rule.

Paragraph (b)—USTA, NRTA, and OPASTCO objected to REA suggesting that Form 835 be used for contracting preloan engineering services.

Response: In many cases, following this advice will minimize problems for borrowers. The advisory language is retained in the Final Rule.

Section 1763.41 Preloan engineering procedures.

USTA, NRTA, and OPASTCO commented that § 1763.41(a), referring to the borrower's selection of a preloan engineer, and § 1763.41(c), referring to requesting an advance to cover the cost of preloan engineering services, impose no requirements and should be stricken from the regulation.

Response: These items have been deleted in the Final Rule.

NTCA commented that the acronym FRS needs to be defined.

The Final Rule contains a definition for FRS in § 1763.2.

Section 1763.42 Postloan engineering by contract.

Paragraph (a)—RVW commented that the requirement to submit the REA Form 217, Postloan Engineering Service Contract, through the CFR adds one to two weeks or more to the time to process the contracts.

Response: Since the CFR has firsthand knowledge of the project, his review is essential for approval of the contracts. The requirement has been retained.

AT&T Network Systems commented that the requirement for postloan engineering services by contract to be on REA Form 217, Postloan Engineering Service Contract, subject to REA approval, and where REA may withhold approval if the form is modified, is not conducive to flexibility and freedom to structure business arrangements.

Response: There are many reasons for using standard forms of contract. Standard forms comply with the rules and regulations of the various Government entities administering the use of Government-provided funds. They provide essential security for the REA loans. All parties are familiar with them. They are readily accepted in all States and territories where REA telephone borrowers are located, and by the contractors. Their use has promoted efficient and economical facilities to the benefit of the rural subscribers. The use of nonstandard contracts could lessen these benefits and increase the complexity and cost of program administration, resulting in delays.

Paragraph (b)—RVW commented that the requirement that a letter be sent to REA giving the name of the firm and the name and license number of the individual who will sign the work order certification is unnecessary.

Response: REA agrees. The Final Rule does not contain the requirement for this letter.

Section 1763.43 Postloan engineering by force account.

Paragraph (a)—ACE recommended that REA require professional registration for new applicants seeking approval to perform force account engineering, but that REA allow all borrowers' employees whom REA has previously approved to direct force account engineering activities to continue in this capacity.

RVW commented that procedures would be streamlined and made administratively manageable by requiring that borrowers' engineers receive State registration before they may perform force account engineering.

Response: REA believes that an alternative to requiring State registration should be retained for those directing force account engineering. REA's experience with nonregistered engineers in this capacity has been satisfactory. The alternative qualifications have been retained in the Final Rule.

Section 1763.44 Loan funds for engineering services.

RVW commented that § 1763.1(g) states that REA approval of Form 245, Engineering Service Contract, Special Services—Telephone, is not required, but that § 1763.44(e) implies that approval is required in order for the borrower to obtain loan funds.

Response: REA approval of the Form 245 contract is not required. REA funds, if provided in the loan for this purpose, will be advanced upon the submission of the final invoice from the engineer. Section 1763.44(e) has been deleted.

USTA, NRTA, and OPASTCO commented that § 1763.44(a) is an attempt to codify REA behavior which could be arbitrary and capricious.

Response: REA will make loan funds available up to the amounts provided in the loan for these purposes, if all of the conditions for advance have been met as discussed in 7 CFR Part 1754. Section 1763.43 has been clarified and portions that duplicated 7 CFR Part 1754 have been deleted.

Section 1763.45 Engineering progress reports.

RVW agreed with the concept of progress and status reports but felt the requirements for the engineer should be in the REA Form 217 Postloan Engineering Services Contract, not in the Part 1763 regulation.

Response: REA states its requirements for borrowers in these regulations. The contract forms contain the borrower's requirements of contractors. It is REA's intent to require the borrower to obtain progress reports, so that requirement must be in this regulation.

USTA, NRTA, and OPASTCO commented that the borrower should be required to obtain the reports, rather than requiring the engineer to provide them. They also questioned whether the progress reports should cover only outside plant construction.

Response: The Final Rule contains revised language in § 1763.44 (a) and (b), which clarifies that progress reports are required for all telephone facilities.

Section 1763.45 Closeout of the postloan engineering contract.

RVW commented that upon REA approval of Form 506, Final Statement of Engineering Fee, one copy should be sent to the borrower and one copy to the engineer.

USTA, NRTA, and OPASTCO commented that this provision should be reworded to place on the borrower the requirement for obtaining Form 506.

Response: REA agrees with both comments. Final Rule § 1763.45(a) requires the borrower to obtain the REA Form 506 from the engineer. Section 1763.45(c) requires REA to send one copy of Form 506 to the borrower and one copy to the engineer after approval by REA.

List of Subjects in 7 CFR Part 1763

Loan programs—communications, Telecommunications, Telephone.

Therefore, REA adds new Part 1763 to 7 CFR Chapter XVII as follows:

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PART 1763—ARCHITECTURAL AND ENGINEERING SERVICES—TELEPHONE PROGRAM

Subpart A—General

Sec.

1763.1 General.
1763.2 Definitions.
1763.3 Availability of REA forms.
1763.4 Insurance requirements.
1763.5 Payments.
1763.6–1763.19 [Reserved]

Subpart B—Architectural Services

1763.20 Selection of architects.
1763.21 Architectural services contract.
1763.22 Closeout of architectural services contract.
1763.23–1763.39 [Reserved]

Subpart C—Engineering Services

1763.40 Preloan engineering.
1763.41 Postloan engineering by contract.
1763.42 Postloan engineering by force account.
1763.43 Loan funds for engineering services.
1763.44 Engineer's progress reports.
1763.45 Closeout of the postloan engineering service contract.
1763.46–1763.99 [Reserved]

Authority: 7 U.S.C. 901 *et seq.*, 7 U.S.C. 1921 *et seq.*

Subpart A—General

§ 1763.1 General.

(a) The standard REA Loan Documents (*See* 7 CFR Part 1758) contain provisions regarding engineering and architectural services performed by or for REA telephone borrowers. This part implements certain of the provisions by setting forth the requirements and procedures to be followed by borrowers in selecting architects and engineers and obtaining architectural and engineering services by contract or by force account.

(b) Preloan architectural and engineering services may be provided by qualified personnel on the borrower's staff or by consultants. Neither the selection of a preloan architect or engineer by a borrower, nor the contractual arrangements with them, requires REA approval.

(c) Postloan architectural and engineering services shall be obtained by borrowers from registered architects and engineers licensed in the State in which the facilities will be located, except where REA has approved the borrower to provide these services by the force account method. When the extent of the proposed major or minor construction is such that the postloan engineering involved is within the capabilities of employees on the borrower's staff, the borrower may request REA approval to provide such services. This method of providing engineering services is referred to as force account engineering. Refer to § 1763.42.

(d) To be considered for REA financing, the following contract requirements must be met for postloan architectural and engineering services:

(1) For major construction, services provided by architects and engineers not on the borrower's staff must be provided under Form 166, Architectural Services Contract—Telephone, or Form 217, Postloan Engineering Service Contract—Telephone. These contracts require REA approval.

(2) For minor construction, borrowers may use the contracts in § 1763.1(d)(1) for postloan architectural or engineering services or any other form of contract, such as Form 245, Engineering Service Contract, Special Services—Telephone. REA approval of contracts for postloan architectural or engineering services associated with minor construction, except for buildings covered in 1763.1(e), is not required.

(e) For buildings to be constructed with REA funds, postloan architectural or engineering services shall be obtained if (1) the construction cost exceeds $50,000 (prefab buildings using manufacturer's specifications approved by REA are exempt from this requirement) or (2) soil or seismic conditions require special design considerations.

§ 1763.2 Definitions.

For the purpose of this Part 1763:

(a) *Contract*—The services contract between the borrower and its architect or engineer.

(b) *Force Account Engineering*—Any preloan or postloan engineering services performed by the borrower's staff.

(c) *FRS*—REA Form 481 (OMB–No. 0572–0023) Financial Requirement Statement. See 7 CFR Part 1754.

(d) *GFR*—REA General Field Representative assigned to the Project.

(e) *Loan*—Any loan made or guaranteed by REA.

(f) *Loan Design (LD)*—Supporting data for a loan application. See § 1749.32 for further information.

(g) *Loan Funds*—Funds provided by REA through direct or guaranteed loans.

(h) *Major Construction*—A telephone plant project, estimated to cost more than $100,000, including all labor and materials.

(i) *Minor Construction*—A telephone plant project, estimated to cost $100,000 or less, including all labor and materials.

(j) *Non-loan Funds*—All funds other than REA loan funds.

(k) *Postloan Engineering Services*—The design, procurement, and inspection of construction to accomplish the objectives of a loan as stated in a LD approved by REA.

(l) *Preloan engineering services*—The planning and design work performed in preparing a LD. This consists of helping the borrower determine the objectives for a loan, selecting the most effective and efficient methods of meeting loan objectives, and preparing the LD which describes the objectives and discusses the method selected.

(m) *Project*—The construction described in the plans and specifications.

§ 1763.3 Availability of REA forms.

Single copies of REA forms and publications cited in this part are available free from Administrative Services Division, Rural Electrification Administration, United States Department of Agriculture, Washington, DC 20250–1500. These forms and publications may be reproduced.

§ 1763.4 Insurance requirements.

(a) All outside architects and engineers employed by REA telephone borrowers shall have insurance coverage as required by 7 CFR Part 1788.

(b) Borrowers shall ensure that their architects and engineers comply with the insurance requirements of their contracts. See 7 CFR 1788.54.

§ 1763.5 Payments.

(a) Borrowers shall make prompt payments to architects and engineers as required by the contract.

(b) REA shall not make loan funds available for late payment interest charges.

§§ 1763.6–1763.19 [Reserved]

Subpart B—Architectural Services

§ 1763.20 Selection of architects.

The borrower shall be responsible for selecting an architect to perform the architectural services required in the design and construction of buildings.

§ 1763.21 Architectural services contract.

(a) When contracting for architectural services for major construction, the borrower shall use Form 165, except for unattended central office buildings, in which case either Form 165 or Form 217 shall be used. Except for preloan studies (see 7 CFR Part 1749), the borrower shall incur no obligation for architectural services until REA has approved this agreement. A borrower shall not enter into the architectural services contract for major construction before REA has approved the borrower's LD.

(b) Reasonable modifications or additions to the terms and provisions in Form 165 may be made in order to obtain the specific services needed for a particular undertaking. Changes shall not be made that relieve the architect of any of the responsibilities set forth in the standard form. Borrowers should obtain assistance from their legal counsel to ensure that the contracts are properly prepared and executed.

(c) Three copies of Form 165 executed by the borrower and the architect shall be sent to the GFR to be forwarded to REA for approval. If REA approves the contract, one copy will be sent to the architect and one to the borrower.

(d) Loan funds will not be available to pay for the preliminary architectural services if a loan is not made for the construction project, or if the construction project is abandoned.

(e) Subpart B of 7 CFR Part 1765 sets forth the requirements and procedures to be followed by borrowers constructing central office, warehouse, and garage buildings with REA loan funds.

§ 1763.22 Closeout of architectural services contract.

(a) REA telephone borrowers shall obtain two copies of a completed Form 284, Final Statement of Architect's Fees, when all services and obligations required under the architectural services contract have been completed. All fees shown on the statement shall be supported by detailed information where appropriate. For example: out-of-pocket expense, cost plus, and per diem types of compensation shall be listed separately with labor, transportation, etc., itemized for each service involving these types of compensation.

(b) If Form 284 and supporting data are satisfactory, the borrower shall approve the statement, sign both copies, and send one copy to the GFR.

(c) Upon approval of Form 284 by REA, the borrower shall promptly make final payment to the architect.

§ 1763.23–1763.39 [Reserved]

Subpart C—Engineering Services

§ 1763.40 Preloan engineering.

(a) All engineering services required by a borrower to support its application for a loan shall be rendered by a qualified engineer selected by the borrower or by qualified employees on the borrower's staff. The selection of the preloan engineer, the form of preloan engineering service contract, and the contract itself, are not subject to REA approval. Borrowers, however, should discuss their proposed method of obtaining preloan engineering services with the GFR before proceeding with any arrangements.

(b) Form 835, Preloan Engineering Service Contract, Telephone System Design, is a suggested form of preloan engineering service contract. While use of this form of contract is not required, it will be helpful in determining the tasks to be performed. Any form of contract used shall specify that preloan engineering services conform to REA requirements for preloan studies. See Subpart D of 7 CFR Part 1749.

§ 1763.41 Postloan engineering by contract.

(a) *Major construction.* (1) Three copies of Form 217 executed by the borrower and the engineer shall be sent to the GFR to forward to REA for approval. The engineer's estimate of the engineering fees, on Form 506, shall be included.

(2) REA will review the contract terms and conditions. REA will not approve the contract if, in REA's judgement:

(i) Unacceptable modifications have been made to the contract form.

(ii) The contract will not accomplish loan purposes.

(iii) The engineering service fees are unreasonable.

(iv) The contract presents unacceptable loan security risk to REA. (See 7 CFR Part 1758).

(b) *Minor construction.* When a borrower contracts for an engineering firm to inspect and certify construction accounted for under the work order procedure or the Contract for Miscellaneous Construction Work and Maintenance Services, Form 773 (See 7 CFR Part 1765 Subpart G), the borrower shall require that the certification be signed by a licensed engineer.

§ 1763.42 Postloan engineering by force account.

(a) *Major construction.* When the extent and complexity of the proposed construction is such that the engineering involved is within the capabilities of employees on the borrower's staff, borrowers may request REA approval to provide such services.

(1) The request shall include:

(i) A description of services to be performed.

(ii) The name and qualifications of the employee to be in charge. REA requires this employee to meet the State experience requirements for registered engineers. In the absence of specific State experience requirements, the employee must have at least eight years experience in the design and construction of telecommunication facilities, with at least two years of the work experience at a supervisory level. REA does not require professional registration of this employee.

(iii) The names, qualifications, and responsibilities of other principal employees who will be associated with providing the engineering services. Form 179 may be used to submit the employee qualifications.

(iv) A letter signed by an authorized representative of the borrower authorizing the engineering services to be performed by force account and certifying the information supporting the request.

(2) REA shall notify the borrower by letter of approval or disapproval to perform force account engineering. The letter shall set forth any conditions associated with an approval or the reasons for disapproval.

(3) REA's approval of force account engineering for major construction shall be only for the specific projects named in the notice of approval.

(b) *Minor construction.* (1) When the borrower proposes to perform the inspection and certification of minor construction, the following shall be submitted to the REA:

(i) A copy of the employee's qualifications and experience record on Form 179, unless previously submitted. REA requires a minimum of four years of construction and inspection experience. The employee cannot be engaged in the actual construction.

(ii) A letter signed by an authorized representative of the borrower authorizing the performance of these services by the employee, subject to REA approval, and certifying the supporting information.

(2) REA shall notify the borrower by letter of approval or disapproval of the borrower's staff employee to perform the inspection and certification of construction. The approval shall be limited to the employee's area of expertise.

§ 1763.43 Loan funds for engineering services.

(a) Subject to the requirements of this part and other applicable regulations, REA will make loan funds available for the architectural and engineering services up to the amounts included in the approved loan.

(b) Advance of funds shall be requested on an FRS as set forth in 7 CFR Part 1754.

§ 1763.44 Engineer's progress reports.

(a) The borrower shall obtain monthly progress reports from the engineer during the design and construction of all telephone facilities, unless the contract requires more frequent reporting. The report shall reflect, beginning with the start of engineering activities for any

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facility, the progress of planning and construction until completion. Form 521, Progress Report of Telephone Construction and Engineering Services, may be used, but is not required. One copy of each progress report shall be submitted to the GFR.

(b) The borrower shall obtain Status of contract and Force Account Proposal (FAP) reports from the engineer once each month. The report shall show for each contract of FAP the approved contract or FAP amount, the date of approval, scheduled date construction was to begin and the actual date construction began, the scheduled completion date, the estimated or actual completion date, the estimated or actual date of submission of closeout documents, and an explanation of delays or other pertinent data relative to progress of the project. One copy of the report must be submitted to the GFR.

§ 1763.45 Closeout of the position engineering service contract.

(a) Upon completion of all services required under the engineering service contract Form 217, the borrower shall obtain from the engineer four copies of the Final Statement of Engineering Fee, Form 508.

(b) If the statement is satisfactory, the borrower shall sign all copies and send three to the GFR.

(c) After REA approval of Form 508, one copy shall be sent to the borrower and one copy sent to the engineer.

(d) The borrower shall promptly make final payment to the engineer.

§ 1763.46–1763.99 [Reserved]

Dated: January 13, 1989.

Jack Van Mark,

Acting Administrator.

[FR Doc. 89-1879 Filed 1-26-89; 8:45 am]

BILLING CODE 3410-15-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 25

[Docket No. 1688-SC; Special Conditions No. SC-A320-23]

Special Conditions: Airbus Industrie Model A320 Series Airplane

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the Airbus Industrie Model A320 airplane. This airplane will have novel and unusual design features when compared to the state of technology envisioned in the airworthiness standards of Part 25 of the Federal Aviation Regulations (FAR). This notice contains the additional safety standards which the Administrator considers necessary to establish a level of safety equivalent to that provided by the airworthiness standards of Part 25.

EFFECTIVE DATE: December 15, 1988.

FOR FURTHER INFORMATION CONTACT: Gregory J. Holt, FAA, Standardization Branch, ANM-113, Transport Airplane Directorate, Aircraft Certification Service, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168; telephone (206) 431-1915.

SUPPLEMENTARY INFORMATION

Background

On February 7, 1984, Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France, applied for type certification of their Model A320 by the Direction Generale de l'Aviation Civile (DGAC) under the provisions of Joint Airworthiness Requirements-25 (JAR-25) and by the FAA under the provisions of § 21.29 of the FAR and an existing bilateral airworthiness agreement with the government of France.

The bilateral agreement was reached in 1973 to facilitate French acceptance of aeronautical products exported from this country and reciprocal U.S. acceptance of such products imported from France. The bilateral agreement provides, in part, for U.S. acceptance of certification by the DGAC that the Model A320 complies with the applicable U.S. laws, regulations and requirements, or with the applicable French laws, regulations and requirements, plus any additional requirements the U.S. finds necessary to ensure that the Model A320 meets a level of safety equivalent to that provided by the applicable U.S. laws, regulations and requirements. The DGAC has elected to certify that the Model A320 complies with the French laws, regulations and requirements, plus any necessary special requirements.

The DGAC has advised that the French laws, regulations and requirements applicable to the Model A320 (i.e. the French type certification basis) consist of JAR-25 with changes 1 through 11 thereto and including the French National Variants, Joint Airworthiness Requirements-All Weather Operation (JAR-AWO), and Special Conditions and interpretations applied specifically to the Model A320. JAR-25 is a document developed jointly and accepted by the airworthiness authorities of various European countries, including France, for type certification of large airplanes. JAR-25 is based on Part 25 of the FAR, however there are certain specified differences in the requirements of the two documents. In addition, JAR-25 also contains requirements, known as National Variants, that are peculiar to individual accepting countries. "Orange Papers" are interim amendments which are eventually consolidated as a change to JAR-25. Special conditions are also applied where JAR-25 does not contain adequate or appropriate safety standards due to novel or unusual design features. In order to preclude confusion, these special conditions will be referred to herein as the "French Special Conditions." JAR-AWO contains additional requirements applicable to all weather operations.

The Airworthiness Authorities of Germany, England, and the Netherlands participated with France in a joint certification of the A320 in February 1988. U.S. type certification of the A320 is scheduled for December 15, 1988.

Based on the February 7, 1984, date of application for type certificate, the applicable U.S. laws, regulations and requirements, as established under the provisions of §§ 21.17 and 21.29 of the FAR, are Part 25 of the FAR with Amendments 25-1 through 25-56 thereto and the special conditions contained herein. When the applicable regulations do not contain adequate or appropriate safety standards because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16 of the FAR in order to establish a level of safety equivalent to that established in the regulations.

A comparison has been made of the French type certification basis and the above noted U.S. laws, regulations and requirements, including the respective French and U.S. special conditions. Based on this comparison, the FAA has prescribed the additional requirements that are necessary to ensure that the Model A320 meets a level of safety equivalent to that provided by the U.S. laws, regulations and requirements.

Noise certification is beyond the scope of the bilateral agreement; however, French test data are accepted by separate arrangement. The French noise certification basis is their "Arrete" (order) dated November 28, 1981 (ICAO Annex 16). The U.S. noise certification basis for the Model A320 is Part 36 of the FAR with Amendments 36-1 through 36-12 thereto and any subsequent amendments adopted prior to the date on which the U.S. type certificate is issued. French noise certification test data will be reviewed by the FAA for compliance with the U.S. noise certification basis.

The Model A320 must also comply with the engine emission requirements of Special Federal Aviation Regulation No. 27 (SFAR 27) with Amendments 27-1 through 27-5 thereto and any subsequent amendments adopted prior to the date on which the U.S. type certificate is issued. Engine emission requirements are also beyond the scope of the bilateral agreement; however, certification of compliance by the DGAC will be accepted by separate arrangement. Lastly, the statutory provisions of Pub. L. 92-574, "Noise Control Act of 1972," require that the FAA issue a finding of regulatory adequacy pursuant to Section 611 of that Act.

The French type certification basis, together with the additional requirements discussed above, Part 36 of the FAR, SFAR 27, and the Noise Control Act of 1972, will comprise the U.S. type certification basis for the Model A320.

A320 Design Features

General

The Model A320 airplane presented for U.S. type certification is a short to medium-range, twin-turbofan, transport category airplane with a seating capacity of 120 to 179 passengers, a maximum takeoff weight of 162,037 pounds, and a maximum operating altitude of 39,000 feet.

The structure of the A320 is generally of conventional design and construction, but with considerable use of composite materials. Elements of primary structure (the fin and horizontal tailplane) are constructed of composites as well as components such as flaps, spoilers, ailerons, engine cowls, and the leading and trailing edge access panels. In addition, the structural design makes limited use of overspeed protection and active controls in the form of load alleviation.

The model A320 utilizes fly-by-wire (FBW) flight controls for the elevators, ailerons, spoilers, tailplane trim, slats and flaps, speed brakes, trim in yaw, and engine control. The aerodynamic surfaces are positioned relative to the pilot's command by electronic signals sent via airplane wiring from the flight control computers to hydraulic actuators. Conventional mechanical control is provided for the rudder and tailplane trim hydraulic actuators. Should a short-term interrupt occur in the electronic flight controls, flight could be maintained for a period of time through the use of mechanical control of rudder and tailplane trim.

Normal electrical power is supplied by a constant frequency generator on each engine. An auxiliary power unit (APU) driven electrical generator is also available. A continuous source of electrical power is required by the A320 fly-by-wire flight controls. In the event of the loss of normal electrical power, a ram air turbine (RAT) is automatically deployed. The RAT provides hydraulic power which is used by a constant frequency generator to supply electrical power. Until the RAT powered generator comes on line (approximately 7 seconds), the flight control system is powered from the airplane's batteries. RAT deployment may also be selected manually by pushing switches either on the electrical or the hydraulic overhead panel. Hydraulic power to the flight control system is simultaneously provided by three independent hydraulic systems. Functions are shared among these systems in order to ensure airplane control in the event of loss of one or two systems. Two of the systems are pressurized by variable displacement pumps driven by the engine accessory gearbox, and the third system is powered by an electrically driven pump or by the RAT hydraulic pump in case of loss of normal electrical power.

The airplane has two basic engine configurations: the SNECMA-General Electric CFM56-5 engines, and the International Aero Engines; (IAE) V2500 engines. Both engine types have a takeoff rating of 25,000 pounds of thrust (sea level, static). The engine control system consists of a dual channel Full Authority Digital Engine Control (FADEC) mounted on the fan case of each engine. Each FADEC interfaces with various airplane computer systems. The FADEC provides gas generator control, engine limit protection, power management, thrust reverser control, and engine parameter inputs for the flight deck displays. In addition to control of the engines from the flight deck through changes in power lever position, an autothrust mode is provided which commands thrust changes directly to the FADEC without a corresponding change in power lever position. In this mode of operation, the position of the power lever sets the upper limit for thrust, except when alpha floor is reached. At alpha floor, the engines are commanded to full thrust, regardless of lever position, as part of the high angle-of-attack (AOA) protection. The autothrust mode can be disengaged by pushing a button on the power lever or by moving the thrust lever to TOGA or IDLE. The engine FADEC and associated airplane related systems form the complete propulsion control system.

Pitch and roll control inputs are made through flight deck side stick controllers mounted on the lateral consoles of the pilot and copilot positions, in place of central control columns. The flight instruments are displayed on six cathode ray tube (CRT) displays. Two CRT's are mounted directly in front of both the pilot and copilot and display primary flight instruments and navigational information. The other two CRT's are located in the center of the instrument panel and display engine parameters, warnings, and system diagnostics.

The proposed type design of the A320 contains novel or unusual design features not envisioned by the applicable Part 25 airworthiness standards and therefore special conditions are considered necessary.

Discussion of Comments

Notice of Proposed Special Conditions No. SC-87-5-NM for the Airbus Industrie Model A320 series airplanes was published in the **Federal Register** on October 19, 1987 (52 FR 38772).

Some of the comments received were of an editorial or clarifying nature and have been incorporated where appropriate. A discussion of the remainder of the comments follows, corresponding to the specific special condition as proposed in Notice No. SC-87-5-NM.

1. Electronic Flight Controls

Paragraph 1(a). One commenter expresses concern about the electrical power availability for the flight test instrumentation while the test is being conducted without the availability of normal electrical power sources. The FAA acknowledges these concerns. The test configuration must be tailored to the airplane and the electrical power demands for the flight instrumentation.

One commenter states that the compliance section should provide guidance on the test duration. The FAA agrees. The duration of the test demonstration after the loss of normal engine generated electrical power may be negotiated with the FAA on a case-by-case basis for test durations greater than 4 hours.

Another commenter proposes a clearer definition of normal and standby power. The FAA does not believe that the special condition wording should be changed but provides the following discussion for clarification for this commenter. Normal engine generated electrical power includes power supplied by the engine driven generators. Standby electrical power includes other means to generate

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electrical power on demand using, for example, Auxiliary Power Unit (APU) generators, Ram Air Turbine (RAT) driven generators, Hydraulic Motor Generators (HMG), etc. Batteries are time-limited emergency power sources.

One commenter suggests the FAA retain §§ 25.1351(d) (1), (2), and (3) in conjunction with this special condition. The FAA disagrees because of the reference made to a time period of not less than five minutes. This is no longer relevant with modern aircraft designs.

One commenter suggests a clarification of the parenthetical sentence under the discussion. The FAA agrees and proposes "A reasonable assumption can be made that transport airplanes will not have to remain in IMC for more than 30 minutes after experiencing the loss of normal electrical power."

Another commenter suggests that after 30 minutes in IMC, the airplane should be capable of continuous flight in VMC for a time sufficient to reach an alternate airport. The FAA disagrees because it is not feasible to so estimate what that time might be, in view of airline service on a world-wide basis and the variety of factors that affect routes and schedules. The FAA maintains that electrical power availability must parallel flight endurance.

One commenter requests further clarification about flight following loss of normal electrical power. The FAA requires that after 30 minutes of operation in IMC, the airplane should be demonstrated to be capable of continuous safe flight and landing in VMC. The length of time in VMC conditions must be computed based on the maximum flight duration capability for which the airplane is being certified. Consideration for speed reductions from the associated failure must be made and supported by performance calculations and a failure analysis.

Paragraph 1(b)(1)(i). One commenter suggests the removal of the words "when the failure or malfunctions occur within the operational flight envelope." The FAA agrees that this requirement could be too severe in cases of extreme failure combinations and flight envelope conditions. The words "operational flight envelope" have therefore been removed from the special condition. However, to ensure that the intent of the special condition is maintained, the manufacturer must present a document for FAA approval which contains: failure cases based on a failure analysis of the systems that affect the flight control systems, details of the analysis which was conducted to support the flying qualities, a listing of flight configurations with simulated faults, an overall description of the test facilities, and methodology used to validate the aerodynamic models used in the simulation.

Paragraph 1(b)(1)(i)(B). One commenter requests clarification of the wording of this paragraph. The FAA has revised the special condition to require that the airplane must be able to withstand the transient loads induced by the failure multiplied by a safety factor. It is further noted that acceptable airplane loads are defined under Special Condition 2(c). The factor of safety varies from 1.0 to 1.5 depending on the probability of failure of the system.

Paragraph 1(c). One commenter requests this paragraph be changed to read: "In addition to compliance with § 25.671, it must be shown that Electronic Flight Control System (EFCS) signals cannot be altered unintentionally, or that the altered signal characteristics are such that * * *" The FAA concurs as this properly reflects the system involved. The special condition is revised accordingly.

Paragraph 1(c)(1). One commenter proposes that the wording of this special condition be changed from "Stable gain and phase margins are maintained" to "no residual oscillations exist". The FAA does not concur. Stable gain and phase margins insure that the selected loop gains have been investigated for stability of the system throughout the flight envelope. Residual oscillation may occur as a result of wear, tolerance build-up in mechanical systems, etc. or other causes that are not related to the system's stability.

Paragraph 1(d). One commenter suggests that the requirement for powered control integrity of hydraulic powered systems be deleted because such designs are covered by existing regulations. The FAA disagrees. The A320 has a reduced number of power control actuators (PCAs) when compared to previously certified airplanes with hydraulic flight controls (i.e., 3 PCA's on other recently certified large transports vs. 2 on the A320). Equivalent redundancy is achieved on the A320 by using computers and associated sensors which enhance the ability to detect faults. The electronic control system is now an integral part of the electro-hydraulic actuation system which requires a stronger technical emphasis when finding compliance.

Another commenter requests paragraph 1(d) be revised to add the statement that, in addition to compliance with the requirements of § 25.671 of the FAR, the airplane control system must be designed to allow for continued safe flight and landing after any failure condition to the flight critical powered system which is not shown to be extremely improbable. The FAA concurs with this change, and the special condition is revised accordingly.

One commenter expresses concern about the lack of a back-up system for the Fly-by-Wire (FBW) flight controls, and recommends that an independent mechanical back-up system be required. The FAA does not concur with this commenter's premise that there is lack of experience with FBW flight controls and that with today's technology, FBW flight controls cannot be made to be as reliable as conventional mechanical systems. Fly-by-wire flight controls are currently operating successfully in service in military aircraft, on the space shuttle, and on commercial airplanes and helicopters for secondary flight controls such as flaps, slats, spoilers, yaw dampers, and brakes. Furthermore, the A320 design has mechanical controls for the rudder and for back-up stabilizer trim. These controls allow for pitch trim and directional control to the airplane, independent of the FBW flight controls.

One commenter expresses concern for the consequences of an electrical fire in the electronic bay, in view of the greatly increased reliance on electrical power in this airplane. The FAA notes this commenter's concerns; however, the existing regulations, together with these special conditions, are sufficient to address these concerns, including interruption of electrical, hydraulic, and pneumatic power supplies to the essential flight systems. This situation is addressed in the airplane by physical separation of the computers in the electronic bay and separation of the wire bundles. There is also a smoke detection system and specific procedures to be followed in case of smoke from the electronic bay.

2. Active Controls

Paragraph 2(a)(1)(ii). One commenter requests a definition for "the prescribed value of the current requirement." The FAA concurs with this comment and that statement has been replaced with the following: "for an airplane of similar characteristics without an active control system."

Paragraph 2(a)(1)(iv). Two commenters state that if there were nonlinearities in loads beyond limit load, there could be a change in the traditional ultimate load factor of 1.5. They further state that the proposed special condition did not define this factor. The FAA did not propose a factor to replace the current ultimate load factor of 1.5. The factor is dependent upon the nonlinear response of the system and would vary depending upon the system the FAA is approving. The FAA therefore does not believe that it is appropriate to define the load factor in the special condition.

Paragraph 2(a)(2)(i). Two comments were received. The first commenter believes that if there is a failure in the active control system with no compensating corrective action, the failure would not have to be detected prior to the next flight but would be detected within a time interval directly related to the probability of failure and the impact on structural capability. The second commenter believes that the flightcrew must be aware of any failure conditions which affect the structural capability of the airplane, whether or not a compensating procedure exists. The FAA does not concur with either comment. It is not necessary for the flightcrew to be aware of a failure in the active control system during the flight on which the failure occurs if there is no available corrective action; however, the airplane should not be exposed to the failure condition for an extended period of time. The flightcrew must therefore be alerted to the failure condition prior to the next flight. The second commenter also states that the words "operational limitations" in the first sentence should be replaced with the words "flight limitations." Flight limitations refers to a limitation imposed upon the airplane after an inflight failure and is the correct term. The FAA concurs, and the special condition is revised accordingly.

Paragraph 2(a)(2)(ii). One commenter discussed what was necessary to document compliance with the rule. The FAA agrees with the requirements the commenter discussed but it concerns the method of compliance and is outside the scope of the notice.

Paragraph 2(a)(2)(ii)(A)(1). One commenter believes that it is necessary to conduct a damage tolerance evaluation for compliance with § 25.571(b) to require limit loads be multiplied by a factor of 1.5. The commenter misunderstood this paragraph, and the FAA has revised this paragraph to state that the damage tolerance evaluation must be accomplished based upon the limit loads.

Paragraph 2(a)(2)(ii)(B)(1)(i). Two commenters state that in the figure the safety factor should be 1.5 for probability of failure equal to or less than 10^{-3}, to agree with the text. The FAA concurs and the final special condition is revised to correct this error.

Paragraph 2(a)(2)(ii)(B)(1)(ii). One commenter objects to the statement, "* * * the residual strength level must be at least 1g flight loads combined with ⅓ of the gust or maneuver conditions specified in FAR 25.571(b)." The commenter states that this requirement is more stringent than the criteria in Advisory Circular (AC) 25.672–1. The FAA concurs that combining 1g flight loads with ⅓ of the gust or maneuver conditions of § 25.571(b) can be more severe. The special condition is therefore revised to reflect the criteria in AC 25.672–1.

Paragraph 2(a)(2)(ii)(B)(2). Three comments were received. The first commenter states that the minimum floor of $1.15V_C$ for the flutter margin between V_C and V_D may penalize the use of a speed limiting system. The FAA agrees that this may be true in some cases; however, this special condition is necessary because the speed limiting may result in a margin between V_C and V_D that is too small to be used as an analytical fail-safe margin for flutter clearance. The analytical margin is provided because it is not possible to substantiate flutter speeds more accurately than 15 percent for fail-safe conditions. The margin is not directly related to the probability that the airplane may fly 15 percent faster; consequently, it is not proper to establish the minimum analytical margin based solely on the dive speed definition for this airplane.

The same commenter requests that the last sentence of this special condition be clarified or removed since it implies that V_D can become a variable as a function of the type of failure. The FAA disagrees. This sentence applies to types of failures that may not only affect flutter but also affect the performance of the speed limiting system. In these cases the value of V_D as used for flutter clearance must be the value of V_D that would be defined for the airplane with the speed limiting system operating at the reduced effectiveness. This should not be confused with "the" V_D, it is only the V_D that would be used as the fail-safe flutter clearance speed for analytical flutter substantiation.

Another commenter supports the 1.15 minimum floor, but believes that the transition between M_C+.05 and 1.15 V_C is not adequately addressed. Although the FAA did not provide a specific transition boundary, the transition is addressed in an equivalent manner. The special condition contains the statement "the fail-safe flutter speed at any altitude need not exceed the value of V_D that would result from compliance with § 25.335(b) without a high speed protection system." This statement was provided as a convenient method of establishing the transition boundary for an airplane that is relatively conventional without the speed protection system.

Paragraph 2(b)(1). One commenter states that realistic gust fields for the purpose of design and certification have not been defined. The commenter further states that existing gust criteria used with yaw dampers for load alleviation have provided adequate levels of safety. The FAA has not defined a gust field as part of the special condition; however, it is incumbent upon the applicant to propose and justify a gust field for FAA approval prior to certification.

Paragraph 2(b)(2). Two comments were received. One commenter states that realistic conditions of severe turbulence are not defined. The FAA did not define severe turbulence in the notice as the applicant is expected to propose and justify a level of severe turbulence for FAA approval. Both commenters object to the requirement to consider combinations of maneuvers and gusts. The FAA disagrees with these commenters. The load alleviation system must be evaluated for adequate power supply and control authority with combinations of maneuvers and gusts to assure that the system will perform its intended function.

Paragraph 2(b)(4). Two commenters believe that paragraph 2(b)(4) should be deleted. The first commenter states that monitoring this flight critical system is an inappropriate type certification requirement and that a system failure analysis must be performed to substantiate acceptable failure probabilities. This commenter also states that periodic data collection which may be required will be instituted through the FAA Maintenance Review Board. The second commenter states that in-service monitoring and implementation of corrective actions is standard procedure and covered by § 25.1529. The FAA does not agree with these commenters. Since the airplane design criteria for load levels are dependent on the reliability of the active controls, the probability of loss of system function must be evaluated in a realistic or conservative manner before certification. If the system proves less reliable in service than assessed for certification, adjustments in maintenance schedules, load levels, and/or operating limitations may be required. This necessitates monitoring of the systems for a sufficient period of time to substantiate an adequate level of reliability. Neither the FAA Maintenance Review Board nor the instructions for continued airworthiness contained in § 25.1529 contain requirements for reporting failures of

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components in an aircraft system. The monitoring equipment is necessary to assure an adequate safety record for this flight crucial system.

Paragraphs 2(b)(5) (i) through (iv). One commenter states that these paragraphs contain advisory material which should be removed from the special condition and handled as an Issue Paper. The FAA disagrees. These paragraphs are necessary to define an acceptable level of safety, and compliance is required for FAA certification.

A second commenter states that the requirements of paragraphs 2(b)(5) (i) and (iii) go beyond previous experience by requiring a flight test with extensive instrumentation and long flights in search of "adequate" turbulence. The FAA disagrees with this comment and expects the flight testing to demonstrate that the active control system does, in fact, provide the anticipated load relief. This can be accomplished by verifying loads achieved in flight with the loads from analysis.

A third commenter states that paragraph 2(b)(5)(iv) should be changed from "An investigation * * *" to "An analytical or test evaluation * * *." The commenter believes this paragraph requires testing of the active control system after structural damage. The FAA concurs. Testing is not the only way to achieve compliance with paragraph 2(b)(5)(iv), but the proposed change does provide additional clarification; therefore, the final special condition is revised accordingly.

Paragraph 2(b)(5)(iv)5. One commenter states that the reference for the definition of failure condition should be changed from Advisory Circular (AC) 25.1309–1 to AC 25.672–1. The FAA does not concur. The special condition was written based on the accepted definition provided in AC 25.1309–1.

3. Engine Controls and Monitoring

Paragraph 3(a). One commenter suggests that the words "loss of thrust control" used in the discussion portion of this special condition imply that the intent was to limit the reliability evaluation to only those control failures which would prevent continued safe flight and landing of the airplane. This commenter therefore recommends that the control failures in question be limited to only those associated with loss of more than 50 percent thrust. Another commenter contends that the reliability criteria should apply only to those failures which would prevent continued safe flight and landing of the airplane. The FAA does not agree. The flightcrew's inability to control thrust to the desired level would likely result in an in-flight shutdown (IFSD) and, for a twin-engine airplane such as the A320, an emergency being declared and subsequent diversion on a single engine. The intent of this special condition is to ensure that the probability of either single engine events or a multiple engine event is no more likely on a FADEC-equipped propulsion system than on current hydro-mechanical controlled engines certified to current standards.

One commenter suggests that the special condition for FADEC reliability is not necessary since compliance with the "single failures" requirements of § 25.901(c) and the "isolation" requirements of § 25.903(b) provides the same degree of safety as current propulsion systems. This commenter believes that requiring a level of reliability for one propulsion subsystem is not necessary or appropriate. The FAA does not agree. It is true that the "failsafe" and "isolation" requirements of Part 25 provide a degree of safety essential for transport category twin engine aircraft, regardless of the engine control type. This safety experience has been accumulated, however, on the vast majority of turbine engines incorporating hydro-mechanical control systems. The intent of this special condition is to clearly identify an expected level of reliability for an engine subsystem employing a technology which has not yet accumulated a large amount of service experience as an engine control. This special condition is in addition to the requirements of § 25.901(c) for a control system failing safely, and § 25.903(b) for isolation.

Paragraph 3(b). One commenter recommends that the thrust levers should move corresponding to autothrust commands. This commenter believes that the proposed wording "provide adequate cues for the flightcrew to monitor thrust changes during normal operation * * *" is too subjective. The FAA agrees that the original proposal could more clearly state the objective of this requirement and has therefore reworded it to emphasize the adequacy of the cues needed to monitor the system. The FAA does not agree, however, that the thrust levers would necessarily have to move during autothrust operation, provided the same (or greater) degree of information feedback regarding thrust commands is being provided to the crew. It is the intent of this special condition to require a satisfactory degree of monitoring capability to be incorporated in the design in order to compensate for the lack of thrust lever motion during autothrust operation.

Two commenters suggest the addition of a new paragraph 3(b)(5) highlighting the need to consider critical flight phases such as takeoff, approach, and landing. One of these commenters recommends that the ATS system should provide thrust lever motion at flight phases below 1500 feet above ground level (AGL) because this is where current autothrottle systems are most effective and important in providing tactile feedback to the pilot through movement of the thrust levers. The FAA agrees that takeoff, approach, and landing are especially important flight phases to be considered in assessing the effectiveness of the ATS command cues, as well as the ease and effectiveness of the disconnect. The FAA does not agree, however, that this may only be accomplished by means of physically moving the thrust levers. The special condition has been reworded to make it more clear as to the objectives of monitoring and override capability, and a new paragraph (5) has been added to address takeoff, approach, and landing.

Paragraph 3(c). One commenter acknowledges that the "black cockpit" concept is preferred, whereby items are not displayed unless they are required. This same commenter considers, however, that engine instruments are important enough to be continuously displayed. The FAA agrees that propulsion instruments, because of their role in communicating to the crew needed information relating to the engine's condition, are of vital importance. This is especially true since, for some engine conditions, rapid crew response is necessary in order to avoid engine failure. The FAA does not agree, however, that this can only be achieved by the permanent display of all engine parameters. The special condition has been reworded to more clearly state the objectives necessary for inhibited and shared propulsion displays for the A320.

Another commenter recommends that the loss of all propulsion system displays be shown to be extremely improbable. The FAA agrees, and paragraph 3(c) now contains the "extremely improbable" objectives for those failure conditions which would provide hazardously misleading information, rather than limit the requirement to only "loss of all propulsion system displays."

4. Protection from Lightning and Unwanted Effects of Radio Frequency (RF) Energy

RF Comments. One commenter notes that the RF threat only addresses the critical functions, and that the essential functions were omitted from consideration. The FAA believes that not specifying RF protection levels for the essential and nonessential functions is reasonable, since a failure of this category will not result in critical maneuvers or cause loss of control. It is noted that the FAA specifies minimum requirements; the manufacturer is well advised to consider additional requirements to protect his designs from RF interference for the essential and nonessential functions.

Several commenters express concern regarding the severity of the requirements that critical systems must not be affected when exposed to electromagnetic radiation. The intent of the special condition is to ensure that systems performing critical functions are not adversely affected by RF. The word "adversely" is not used in this special condition because it is a difficult word to define quantitatively. The determination of whether a critical system is adversely affected must be made on a case-by-case basis. An example of an acceptable condition would be a case where a computer input is perturbed by RF spurious signals, but the output signal remains within the design tolerances with the result that the system affected is able to continue in its selected mode of operation unaffected by the perturbation. It is not permissible that exposure to electromagnetic radiation could result in a large system upset. Pilot intervention to restore the system following an upset is not an acceptable means to restore that system to its normal state of operation.

One commenter expresses concern that no consideration was made to account for RF attenuation by the aluminum airframe. The FAA has proposed two methods to simulate the RF threat. One is based on 200 volts per meter average field strength from 10KHz to 20 GHz, applied without fuselage shielding, and the other method is to apply average and peak voltages in nine specified frequency ranges, taking into account the effects of fuselage shielding.

One commenter expresses the need for an international agreement for the control and location of large output RF emitters. The FAA has no disagreement with this comment, but it is beyond the scope of this action.

One commenter believes the threat cannot be precisely defined and proposes that an interim requirement of 100 volts per meter, applicable to Eletronic Engine Control (EEC) and its wiring, exclusive of airframe shielding, be used until more formal standards can be developed. Another commenter proposed to accept the RTCA–DO–160B test procedures and field strength levels to validate the Electronic Flight Control System (EFCS). A third commenter suggests that 100 volts per meter be used when applied directly at the system level, without the benefit of airframe shielding. Based on the Electromagnetic Compatibility Analysis Center (ECAC) study referenced in the notice and the high degree of integration of the electronic systems on this aircraft, the FAA has determined that the 200 volts per meter standard is necessary.

One commenter notes that the U.S. model representing peak and average values of electromagnetic threat is more severe than the equivalent European model and requests considerations for re-examination of the threat presented in this special condition. The FAA, in defining the external envelope, considered the information provided by a variety of organizations regarding strength and characteristics of RF emissions, including the ECAC group. So far the information obtained from these groups has not indicated a need to change the U.S. threat model.

Another commenter proposes to differentiate between the source of the threat defining a likely RF encounter, including airports and enroute flights, as opposed to hypothetical RF encounters which involve powerful emitters outside the normal airway traffic patterns of civil transport airplanes. The FAA has elected to define the most severe threat as a design requirement which includes all potential encounters, in view of the impracticality of imposing a complex set of operational restrictions. Only those system that have been determined to perform flight critical functions need to be hardened to this level of electromagnetic threat.

The same commenter discusses a means of showing compliance when it can be demonstrated that a safe flight and landing can be achieved, and when the threat exceeds the normal RF environment. The effects of the threat would be evaluated in terms of mode changes and recoverable interrupts, which affect one or several of the subsystems. The FAA disagrees. Such an approach would make the determination of compliance highly subjective and difficult to evaluate. Furthermore, the precise behavior of systems which are affected by RF levels equal to those specified in the special condition is not predictable in the actual operating environment. The FAA has adopted a different approach, specifying that critical systems must not be affected when exposed to levels of electromagnetic radiation specified by this special condition. RF exposure at these levels should not cause a system upset involving reconfiguration of the control laws or system capability degradation.

Another commenter notes that the external threat model has average and peak levels of 100 volts per meter at two frequency ranges. The alternate model requires 200 volts per meter over all frequencies. The commenter requests that the alternate model be adjusted downward to 100 volts per meter over the entire frequency range. The FAA disagrees and will require 200 volts per meter over the frequency range of 10 KHz to 20 GHz. Furthermore, the tests must be conducted with either the external or internal threat model over the total frequency range.

Another commenter states that the field effects of RF emitters which are located within existing prohibited areas should not be considered and thus removed from the field strength data in the external threat model. The FAA disagrees because EF emitters can be turned on at any time, emitting various field strengths and signal characteristics. It is noted that a number of emitters are installed onboard naval vessels and are free to move.

Lightning Protection Comments

One commenter expresses concern regarding the special condition requirement that critical systems must not be affected when exposed to lightning. It is argued that a minor upset that it is not perceptible to the flighcrew and which returns to normal operation after the upset is an "effect" and thus would not meet the requirement. The intent of the special condition is to ensure that systems performing critical functions not be adversely affected by lightning. The word "adversely" is not used in the special condition because it is a difficult word to define explicitly. The determination of whether a critical system is adversely affected must be made on a case-by-case basis. An example of an acceptable condition would be a case where a computer input is perturbed by lightning spurious signals, but the output signal remains within the design tolerances and is able to continue in its selected mode of operation unaffected by the perturbation. It is not permissible that a lightning strike could result in a major system upset, even though the effect would not prevent continued safe flight and landing.

One commenter proposes new wording to distinguish between lightning effects that would prevent the system from functioning and those systems that would continue with reduced capability. The FAA has considered this approach but adopted a distinction which

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recognizes systems that perform critical functions and essential functions.

Another commenter believes that the requirements specifying the acceptable level of lightning strike effect on the affected systems are vague. The FAA has revised the wording and specifies that systems which perform critical functions must be designed so that they are not affected. Essential systems are allowed to recover automatically or by pilot action.

5. Flight Characteristics

Paragraph 5(a). One commenter questions the need for a handling qualities rating system special condition and proposes the subject be addressed through an issue paper. Another commenter believes the proposed special condition lacks detail as to how the handling qualities ratings are to be used, specifically under what test conditions the airplane handling qualities must be satisfactory, adequate, or controllable. The FAA disagrees. The special condition should contain only the basic requirements for a handling qualities rating system. The detailed information, as it applies to the A320, is contained in an Issue Paper. The A320 will be the first airplane in which the FAA will use a systematic handling qualities rating system approach for flight control system failure states, and it is believed that a detailed special condition would not allow latitude in the application of the requirements.

Paragraph 5(b). One commenter recommends that the wording "suitable handling qualities" be changed to "satisfactory" handling qualities, degrading to "adequate," and then degrading to "controllable" handling qualities. The FAA disagrees. The effect of the special condition requiring "suitable dynamic and static longitudinal stability" is essentially the same as the commenter's proposal. Although the proposed special condition for a handling qualities rating (5(a)) is specifically for flight control system failure states, the ratings of satisfactory, adequate, and controllable, and their definitions, are applicable for all handling qualities tasks.

Paragraph 5(c). One commenter suggests that the rudder pedal force limit for sideslip be limited to 150 pounds, rather than 160 pounds. This commenter points out that this change was proposed during the promulgation of Amendment 25–42, effective March 1, 1978. Under Amendment 25–42, the rudder pedal force limit was changed from 160 pounds to 150 pounds for air minimum control speed under § 25.149, but was not changed for static lateral-directional requirements under § 25.177. The FAA does not agree with this commenter. Special conditions are developed for novel or unique features for which the present regulations do not provide adequate standards. The A320 design is not novel or unique in regard to the rudder system; therefore, the present regulations are applicable.

Paragraph 5(d). One commenter suggests that the wording of this special condition be changed to require flight control position annunciation "unless it can be shown that no flight condition exists in which near-full surface authority (not crew commanded) is being utilized for prolonged periods." The FAA does not agree. The intent of this special condition is to require control surface position annunciation for any unforeseen flight condition or configuration, as well as those flight conditions which can be analyzed. The FAA questions whether every possible flight condition or configuration can be analyzed; and, due to the lack of surface deflection feedback to the sidestick controller, flightcrews must be immediately aware of control surface saturation that is not crew commanded so that appropriate action may be taken.

Another commenter suggests replacing the words "near full surface authority" with "near-maximum achievable deflection." This commenter points out that actuators are rarely sized to provide full deflection at all possible operating conditions. While the commenter's suggestion is valid and control surfaces are subject to blow down, etc., the design of a control surface annunciation which would account for all "achievable deflections" would be extremely complex and would not add significantly to the intent of the special condition. The special condition has been revised to require annunciation when a flight condition exists where, without being commanded by the crew, control surfaces are coming so close to their limits that return to the normal flight envelope or continuation of safe flight requires a specific crew action.

The same commenter suggests adding a paragraph 5(e) to require that saturation of the flight control surfaces will not occur so frequently as to significantly degrade the proper functioning of the system. The FAA disagrees. Special Condition 1(b), Electronic Flight Control System (EFCS) Failure and Mode Annunciation, adequately addresses control surface saturation and a specific flight special condition is not required. This commenter also suggests adding a Paragraph 5(f) to deal with handling qualities transients when flight control system mode changes occur. The FAA disagrees. Special Conditions 1(b) and 6(a) are adequate to deal with handling qualities requirements for flight control mode system changes.

6. Flight Envelope Protection

Paragraph 6(a)(2). One commenter recommends requiring provisions by which the limit protection can be overridden. According to this commenter, studies show that pilots want to be able to override the limit protection. This commenter does not give specifics regarding which parameters are considered most important. This comment is addressed to the "failure state" portion of this special condition (general limiting requirements) and may be offered in belief that the FAA requirement (against undue parameter limiting) will not be successfully implemented or complied with. The selected limit values (NZ, AOA, pitch, roll, high speed) for the NORMAL control state are broad enough to satisfy safe and controllable maneuvering. For failure states, this special condition, as well as the handling qualities rating method of Special Condition 5(a), are available to determine suitable safe characteristics. It should also be noted that in the A320 design, limit protections are dropped for certain failure states. It may also be helpful to note that if abnormal attitudes are unexpectedly encountered, Special Condition 6(a)(3) also requires recovery capability.

Paragraph 6(b). Several commenters request the traditional use of V_{MIN} be retained as an alternate means of V_2 definition. The FAA disagrees. These special conditions address design features which are such that traditional V_{MIN} testing would not be an acceptable alternate to $V_{2\text{-}MIN}$.

Paragraph 6(b)(1)(i). One commenter requests that a delta symbol be inserted before "F_G" in the equation, and that a note be added to indicate that the delta F_G is the increment in gross thrust required to reduce the net thrust to zero. The commenter cites the § 25.103(a)(1) reference to zero (net) thrust at the stalling speed as the justification for this change. The following two FAA comments should aid understanding as to why the equation was provided, and why it still remains valid for this part of the special condition.

First, the equation, as presented in the special condition, is a correct expression of the aerodynamic lift capability of the airplane. In fact, if the 1-g stall speed is to be defined as speed at C_{LMAX}, divided by $\sqrt{N_{ZW}}$, then alternate C_L expressions would suffice to determine the speed at which C_{LMAX} occurred, as long as

ignoring, modifying, or retaining the thrust term only shifted the level of C_{LMAX}, and not the speed at which it occurred. The exact expression of the C_L equation only becomes a concern for those who wish to reconstruct the requested 1-g stall speed ($V/\sqrt{N_{ZW}}$) from exactly such an equation. Once the speed at C_{LMAX} has been noted and corrected for the load factor, it can be retrieved from an intermediate expression, which might assume $N_{ZW} = 1.0$ and only involve GW (or Mach) as the primary independent variable.

Secondly, Special Condition 6(b)(2)(iii) allows IDLE thrust, not exclusively zero net thrust, as required by § 25.103(a)(1), to be used in the determination of stalling speed.

A second commenter notes that "F_G" and "iF_G" are undefined terms in the CL equation of Paragraph 6(b)(1)(i). The FAA assumes that these terms are commonly used symbology. For clarification, "F_G" means gross thrust, and "iF_G" means incidence of the gross thrust relative to the airplane fuselage reference line. AOA (angle of attack) is also measured relative to the fuselage reference line.

Several commenters note that the new $V_{2\text{-}MIN}$ usage has not been uniformly applied throughout all Part 25 subparts. As configured for operation, the A320 is prevented from stalling by the incorporation of an angle-of-attack limiting feature. This feature would then not allow demonstration of the stall speeds used for structural design. During development flight testing, Airbus deactivated the stall protection feature and demonstrated compliance with the existing rules as currently interpreted both in the clean and flaps down configurations. Therefore, the special condition was not proposed for Subparts C&D.

Paragraph 6(b)(2)—Table B.2. One commenter strongly disagrees with the 25 degree bank limit before ALPHA floor operation at V_2, because the operation of ALPHA floor in either all engines operating or engine-out cases is beneficial to safety. The commenter suggests a 20 degree bank limit as being a much more appropriate value, and that if the FAA requirement prevails, the ALPHA floor feature might be deleted, which would be detrimental to safety. The FAA does not agree that requesting a 25 degree bank capability (free of ALPHA floor) at V_2 takeoff condition is unreasonable. Neither does the FAA look at removal of this feature as the only answer to achieving a 25 degree bank capability, since a deficiency (if one were to exist at all) can be made up by a slight V_{2MIN} increase. The 25 degree V_2 bank requirement is reasonably consistent with the 40 degree bank objectives for landing, and on all-engine takeoff climb capability at $V_2 + 10$ to 15. Specifically, the theoretical (zero thrust) ALPHA floor settings for a landing condition ($V_{REF} = 1.23\ V_{S1\text{-}g}$) and a takeoff condition ($V_{2MIN} = 1.13\ V_{S1\text{-}g}$) for 40 degree and 25 degree bank, respectively, would be about $1.077\ V_{S1\text{-}g}$ and $1.078\ V_{S1\text{-}g}$. If a 20 degree bank were allowed, the takeoff relationship would be mismatched at $1.096\ V_{S1\text{-}g}$.

Another way of looking at the lower 20 degree recommendation is that in straight flight V_{MIN} engine-inoperative climb, only about 4+ kts margin would exist for airspeed variation before automatic thrust increase at ALPHA floor during a FLEX (reduced thrust) takeoff. This could easily be eroded in gusty conditions. The 25-degree requirement strikes an appopriate balance between non-nuisance operation and compatibility with other operating speeds. The French DGAC A320 requirement was also published as 25 degrees at V_{2MIN}.

One commenter notes Table B.2 has an undefined term, "WAT." The term "WAT" (Weight-Altitude-Temperature) is thought to be uniformly understood as the collective independent term for establishing a climb-limited takeoff. The term "WAT" will be defined as such in future regulatory and advisory documents.

One comemnter recommends that the Table B.2 enroute maneuvering bank angle in the enroute configuration at final takeoff speed be reduced from 40 degrees to 30 degrees. The reason offered is that the speed in question represents a short duration condition for the airplane, in its acceleration to the enroute speed (engine-inoperative) and that 30 degrees bank, compatible with V_2, has been demonstrated for many years. Since 1961, the FAA has sought to ensure adequate maneuverability at operating speeds by confirming the Table B.2 bank angles. For final climb, the target has been 40 degrees, not 30 degrees. When performance speed factors on stall speed were reformulated because of the 1-g basis, instead of minimum speed in the stall, all factors were reduced by about .94, except for the V_{FTO} factor which was reduced slightly less. For compatibility with the 40 degree bank objective at V_{REF} (1.23 $V_{S1\text{-}g}$), the V_{FTO} factor was reduced from 1.25 to 1.23. A full .94 reformatting for V_{FTO} would reduce the factor to 1.18. With a V_{2MIN} factor of 1.13, second segment and final climb would not share a compatible 30 degree capability. Optimum V_{FTO} or enroute climb speeds are normally well in excess of $1.18\ V_{S1\text{-}g}$, even for gear down dispatch. By authorizing an excessively low V_{FTO} (and consequent bank capability), the FAA would be widening the speed gap between AFM performance for final and enroute climbs. Also, for gear down dispatch, normally there is no restriction against flight into icing conditions. Since icing effects are normally not flight tested to confirm predictions for effects on gear down L/D, it does not seem warranted to reduce the V_{FTO} to such a minimum condition of 30 degrees/$1.18\ V_{S1\text{-}g}$. Finally, because of buffet characteristics, the .94 relational factor between $V_{S1\text{-}g}$ and V_{MIN} does not generally prevail for flaps up, as it does for flaps down. For these reasons, the FAA has determined that the proposed bank/speed factor values for the A320, flaps up, are still appropriate.

Paragraph 6(b)(2)(viii). One commenter requests the V_{FTO} factor on $V_{S1\text{-}g}$ be reduced from 1.23 to 1.18. The FAA has responded to this comment in conjunction with the bank objective of Table B.2.

Paragraph 6(b)(2)(xi). Two commenters request deletion of this requirement, suggesting that § 25.143 of the FAR and AC 25–7, Flight Test Guide, already cover the operational assessment adequately. The FAA disagrees that § 25.143 and AC 25–7 provide adequate regulatory coverage, in view of the fact that this airplane incorporates significant EFCS mode changes and a limiter between approach AOA and AOA for C_{LMAX}. While definitive quantitative requirements, such as for path angle/delta speed, have not been promulgated, a reasonable assessment can be made in this critical area. The Joint European Authorities have published a somewhat similar special condition which deals with the effects of atmospheric disturbance on low speed flying qualities.

Paragraph 6(b)(2)(xii). One commenter recommends changing 40% to 30% in the reformulation of § 25.145(b)(1). This is a valid comment and the change has been accomplished for compatibility with other special condition changes.

Two commenters recommend changing V_{MIN} to V_{SW} in §§ 25.145(b)(6), 25.175(c), and 25.175(d). One commenter believes a typographical error was made in the notice, and the other commenter believes V_{SW} is needed for consistency with the 1-g stall speed reformulations. The FAA disagrees with both commenters. The published requirements, using V_{MIN} as the end point, are correct. The A320, in the normal EFCS state, has no artificial stall warning and probably will not have natural stall warning at the equivalent

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speed. The term V_{min} relates to steady state minimum speed on the AOA limiter, is a higher speed than the V_{min} which would be measured in a full stall, and reasonably correlates with previous requirements.

Paragraph 6(b)(2)(xiv). Two commenters provide similar objections to the power-off, straight ahead 5KTS/5% stall-free margin requirement. These commenters state that 2KTS/2% is historically equivalent to the FAR, when reformatted to the 1-g basis. For turning flight stalls, the commenters object to the term "stall-free characteristics" as being undefined, and would essentially substitute a qualitative or non-hazardous finding for safe flight, once recovery is initiated one second after warning onset. The FAA disagrees. The stall warning requirements are intended for failure states, of which there could be many, including non-standard aerodynamic and EFCS configurations. Forward c.g. stalling speeds are not usually developed for these variations, which could present difficulties in basing warning margins solely on the "normal" 1-g stall speed. If warning margins were based upon 1-g stall speeds, the commenter's suggested 2KTS/2% margins would be inadequate for a normal state airplane, as well as for a failure state airplane. This is because realistic margin to useable lift, not just equivalent margin to stall end point, as derived from current minimum speed rules, must be considered. As to the argument that "stall-free characteristics" is an undefined term, if stall characteristics have been defined and evaluated for years, then absence of those same characteristics should not suddenly present a definition problem.

7. Side Stick Controllers

Paragraph 7(b). One commenter suggests that this special condition requires that the side sticks be connected because of delays which unconnected side stick controllers can cause. Another commenter recommends the wording be changed to require that the pilots are aware of their own inputs, as well as the other pilot's inputs, at all times. This commenter believes confusion exists if one pilot is not aware of the other pilot's inputs. A third commenter suggests the wording be changed to require overriding control inputs by either pilot with no unsafe characteristics during time critical control phases; e.g., landing flare and evasive maneuvers. All of the commenters are concerned about the lack of side stick controller interconnection, especially during critical phases of flight. The FAA is aware of concerns about the lack of feedback or coupling in the A320 side stick controller design. Studies and research conducted by several organizations have shown that although some form of controller coupling is highly desirable, the lack of coupling is not, in itself, an unsafe design. The special condition does not contain a firm requirement for side stick controller coupling, but it does require that the side stick controller design of the A320 be adequately evaluated.

8. Flight Data Recorder

One commenter states that since the rudders on the A320 are conventional in design, it should therefore suffice to record either the pedal position or the surface position. The FAA notes that inputs from the pilot, as well as command signals from the different computers to the rudder trim, rudder travel limitation, yaw damper and autopilot servo loops are also inputed to the rudder servos. For this reason, the FAA requires that the pilot inputs and the surface position be recorded.

Another commenter questions the need for additional parameters to record electrical inputs to control surfaces and engine commands in addition to the surface movements. The A320 is a flight-through-computer airplane. For that reason, there is no longer a linear relationship between pilot input and output of the computer to the surface servo actuators. It is therefore necessary to record the output of the sidestick, rudder pedals, throttles, and flap handles, as well as the surface positions, in order to reconstruct the pilot inputs and surface response.

One commenter requested, prior to the expiration of the comment period, an extension in order to provide an indepth analysis of what was considered necessary for an adequate analysis of system failures in case of an accident. This commenter states that their organization participated as observers in the investigation of the fatal accident of an A320 airplane in France. As a result of the insight into the uniqueness of the control systems of this airplane gained through analysis and augmented by the above accident participation, they request a number of additional parameters and changes in sampling rates. This commenter also states that Version 2 of the DFDR (design) characteristics comes closest to their requirements. The FAA recognizes that major change requests submitted late in a type certification process can cause undue hardship on a manufacturer and is therefore very reluctant to agree to additions or changes. However, it is also considered that this situation is unique in that an accident was investigated prior to issuance of the U.S. type certificate, and a need for changes appears to be justified. Furthermore, Version 2 of the DFDR parameter is required by another airworthiness authority and thus already an available design. This commenter requests that Version 2 be modified to change certain sampling rates and to add others. Incorporation of those comments would utilize all of the remaining storage capacity of the DFDR system in an appropriate sampling mix of parameters which, in the view of the FAA, would enchance data retrieval for the purposes of aviation safety. Accordingly, this special condition has been revised, with the manufacturer's concurrence, to include all of the above requested parameters, except for auto-brake setting and brake pressure (left and right alternating).

Under standard practice, the effective date of these final special conditions would be 30 days after publication in the **Federal Register**. As the intended U.S. type certification date for the Airbus A320 is approximately December 15, 1988, the FAA finds that good cause exists to make these special conditions effective upon issuance.

Except as discussed above, the special conditions for the A320 are adopted as proposed.

Conclusion

This action affects only certain novel or unusual design features on one model series of airplanes. It is not a rule of general applicability, and affects only the manufacturer who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Parts 21 and 25

Air transportation, Aircraft, Aviation safety, Safety.

The Special Conditions

Accordingly, the following special conditions are issued as part of the type certification basis for the Airbus Industrie Model A320 series airplane.

PARTS 21 AND 25—[AMENDED]

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2), 42 U.S.C. 1857f–10, 4321 et. seq.; E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

1. Electronic Flight Controls.

(a) *Operation Without Normal Electrical Power.* In lieu of compliance with § 25.1351(d) of the FAR, it must be demonstrated by test or combination of test and analysis that the airplane can continue safe flight and landing with inoperative normal engine generated electrical power (electrical power sources excluding the battery and any other standby electrical sources). The airplane operation should be considered at the critical phase of flight and include the ability to restart the engines.

Discussion: This special condition requires that the emergency electrical power system be designed to supply: (1) Electrical power required for immediate safety, which must continue to operate without the need for crew action following the loss of the normal electrical power system; (2) electrical power required to continued safe flight and landing; and (3) electrical power required to restart the engines. For compliance purposes, a test demonstration of the loss of normal engine generated power is to be established such that:

1. The failure condition should be assumed to occur during night instrument meteorological conditions (IMC) at the most critical phase of flight relative to the electrical power system design and distribution of equipment loads on the system.

2. After the unrestorable loss of the source of normal electrical power, it must be possible to restart the engines and continue operations in IMC until visual meteorological conditions (VMC) can be reached. (A reasonable assumption can be made that turbojet transport airplanes are able to enter into VMC conditions 20 minutes after experiencing the failure.)

3. After 30 minutes of operation in IMC, the airplane must be demonstrated to be capable of continuous safe flight and landing in VMC conditions. The length of time in VMC conditions must be computed based on the maximum flight duration capability for which the airplane is being certified. Consideration for speed reductions resulting from the associated failure must be made.

(b) *Electronic Flight Control System (EFCS) Failure and Mode Annunciation.*

(1) In lieu of compliance with § 25.672(c) of the FAR, it must be shown that after any single failure or combination of failures of the flight control system that are not shown to be extremely improbable—

(i) The airplane has the following characteristics:

(A) Suitable handling qualities;

(B) The airplane is able to withstand the transient loads induced by the failure multiplied by a safety factor;

(C) VD/MD is not exceeded.

(ii) The airplane has suitable handling qualities for continued safe flight and landing.

(2) In addition to compliance with § 25.672 of the FAR—

(i) If the design of the electronic flight control system or any other automatic or power-operated system has submodes of operation that significantly change or degrade the flight or operating characteristics of the airplane, a means must be provided to indicate to the crew the current submode of operation. Crew procedures must be available to ensure safe and proper operation for the annunicated flight control submode; and

(ii) The total loss of the electronically signaled flight control system (including its electrical or hydraulic power supplies), must be designed to be extremely improbable if its loss would prevent continued safe flight and landing.

Discussion: Suitable handling qualities, for the purpose of Special Condition 1(b)(1) above, are those determined from compliance with Special Condition 5a, *Flight Characteristic Compliance Determination by Handling Qualities Rating System for EFCS Failure Cases.* Note that Special Condition 5a is also in lieu of § 25.672(c). The safety factor for the purpose of Special Condition 1(b)(1) above is determined from compliance with Special Condition 2(ii)(B)(*f*)(i), *Effect of Electronic Flight Control System on Structure.* The safety factor is a function of the system's probability of failure.

(c) *Command Signal Integrity:* In addition to compliance with § 25.671 of the FAR, it must be shown that Electronic Flight Control System (EFCS) signals cannot be altered unintentionally, or that the altered signal characteristics are such that:

(1) Stable gain and phase margins are maintained for all aerodynamically closed-loop flight control systems.

(2) The control authority characteristics are not degraded to a level that will prevent continued safe flight and landing. Failures which refer to (1) and (2) above which would otherwise prevent the airplane from continued safe flight and landing need not be considered.

Discussion: It should be noted that:

(1) The wording "signals cannot be altered unintentionally" is used in this special condition to emphasize the need for design measures to protect the fly-by-wire control system from the effects of electromagnetic interference (EMI) and radio frequency energy (RF), fluctuations in electrical power, accidental damage caused by uncontained rotary machinery debris (engine burst is addressed in § 25.903(d) of the FAR), environmental factors such as temperature, local fires, and any other spurious signals or disruptions that affect the command signals as they are being transmitted from their source of origin to the Power Control Actuators.

(2) A gain margin is the minimum change in loop gain, at nominal phase, which results in an instability beyond that allowed as a residual oscillation.

(3) A phase margin is the minimum change in phase, at nominal loop gain, which results in an instability.

(4) "Control authority characteristics" refers to the ability of the aerodynamic control surfaces to move the airplane.

(5) "Aerodynamically closed loop" are those elements (electrical signals, cables, bellcranks, etc.) which connect sensors and command signals to the Power Control Actuator that moves the aerodynamic control surface (aileron, spoiler, stabilizer, etc.).

(d) *Powered Control Integrity:* In addition to compliance with the requirements of § 25.671 of the FAR, the airplane control system must be designed to allow for continued safe flight and landing after any failure condition to the flight critical powered system which is not shown to be extremely improbable, unless it is associated with a wholly-unrelated failure condition that would itself prevent continued safe flight and landing.

(e) *Maximum Control Surface Displacement.*

(1) In lieu of compliance with § 25.331(c)(1) of the FAR, the airplane is assumed to be flying in steady level flight (point A_1, § 25.333(b)) and, except as limited by pilot effort in accordance with § 25.397(b), the pitching control is moved to obtain the extreme positive (nose up) pitching acceleration. The maximum possible elevator deflections commanded by the Electronic Flight Control System (EFCS) must be considered during this maneuver, using the most adverse system tolerances. The dynamic response, or at the option of the applicant, the transient rigid body response of the airplane must be taken into account in determining the tail load. Airplane loads which occur subsequent to the normal acceleration at the center of gravity exceeding the maximum positive limit maneuvering load factor, n_1 need not be considered. It should also be established that maneuver loads included by the system itself (e.g. abrupt changes in orders made possible by electric rather than mechanical combination of different inputs) are acceptably accounted for, up to V_B/M_B.

(2) In lieu of compliance with § 25.349(a) of the FAR, the following conditions, speeds, spoiler and aileron deflections (except as the deflections may be limited by pilot effort) must be considered in combination with an airplane load factor of zero and of two-thirds of the positive maneuvering factor used in design. In determining the required aileron and spoiler deflections, the torsional flexibility of the wing must be considered in accordance with § 25.301(b). It should also be established that maneuver loads induced by the system itself (e.g. abrupt changes in orders made possible by electric rather than mechanical combination of different inputs) are acceptably accounted for, up to V_B/M_B.

(i) Conditions corresponding to steady rolling velocities must be investigated. In addition, conditions corresponding to maximum angular acceleration must be investigated. The investigation must include the maximum possible aileron and spoiler deflections commanded by the EFCS, using the most adverse system tolerances. For the angular acceleration conditions, zero rolling velocity may be assumed in the absence of a rational time history investigation of the maneuver.

(ii) At V_A, sudden deflection of the aileron and spoiler to the maximum possible positions are assumed.

(iii) At V_C, the aileron and spoiler deflections must be that required to produce a rate of roll not less than that obtained in paragraph (ii).

(iv) At V_D, the aileron and spoiler deflections must be that required to produce a rate of roll not less than one-third of that in paragraph (ii).

Discussion: These special conditions require the manufacturer to consider the critical deflection rates and deflections of the control surfaces, considering the entire A320

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flight control system, as opposed to only the pilot's input, when demonstrating compliance with §§ 25.331 and 25.349 of the FAR.

2. Active Controls.

In addition to compliance with the structural requirements of Subpart C and D of the FAR, the airframe must be designed to meet the criteria in this special condition. These criteria are divided into two groups:

Basic Criteria: These criteria are considered necessary to define a certification basis. The objective of these criteria is to control, in a consistent way, the risk of catastrophic structural failure associated with each failure condition.

Supplementary criteria: The purpose of the supplementary criteria is to examine areas where the basic criteria may not be sufficient and to check certain situations which are considered realistic but not covered in the normal requirements. The precise need for additional requirements associated with these criteria and their level of severity will depend on the sensitivity of the airplane to these conditions and on the conclusion that these problems may show the airplane to have a lower level of safety compared to an airplane without active flight controls. These supplementary criteria will form the basis of required investigations to be performed by the manufacturer and will be evaluated by the certification authorities.

(a) *Basic Criteria.*

(1) *With the system operative.*

(i) *Determination of limit loads.* Limit loads must be derived in all normal operating configurations of the systems from all deterministic limit load conditions specified in Part 25, taking into account any special behavior of such systems or associated functions or any effect on the structural performance of the airplane which may occur up to limit loads. In particular, any significant nonlinearity (aerodynamic, aeroelastic, rate of displacement of control surfaces, and any other system limit nonlinearities) must be accounted for when deriving limit load conditions.

(ii) *Load conditions defined on a statistical basis.* In cases where Mission Analysis is used for continuous turbulence, all the systems failure conditions associated with their probability must be accounted for in a rational or conservative manner in order to ensure that the probability of exceeding the limit load is not higher than for an airplane of similar characteristics without an active control system.

(iii) *Strength requirements.* The airplane must meet the strength requirements of Part 25 (static strength, residual strength) using the appropriate factors specified in Part 25 to derive ultimate loads from the limit loads defined above.

(iv) *Nonlinearities above limit load.* When some systems present a nonlinear behavior beyond limit loads (e.g., saturation), an increase of the safety factors may be found necessary in order to ensure a protection of the airplane beyond the limit conditions comparable to an airplane not equipped with such systems, taking into account the physical limitations of the airplane established in a conservative way. It must also be shown that, between limit load and 1.5 times limit load, nonlinearities in the load alleviation function, including aeroelastic effects, will not result in a smaller load increment than the increment achieved at limit load due to load alleviation.

(2) *With the system in failure conditions.*

(i) Warnings must be provided to annunciate the existence of failure conditions which affect the structural capability of the airplane and for which the associated reduction in airworthiness can be minimized by suitable flight limitations. Failure conditions which affect the structural capability of the airplane and for which there is no suitable compensating flight limitation need not be annunciated to the flightcrew, but must be detected before the next flight.

(ii) In addition, the following conditions must be met for all failure conditions not shown to be extremely improbable and which have an impact on structural performance.

(A) *At the time of occurrence.* Starting from 1-g level flight conditions, a realistic scenario, including pilot corrective actions, must be established to determine the loads and speeds occurring at the time of failure and immediately after failure.

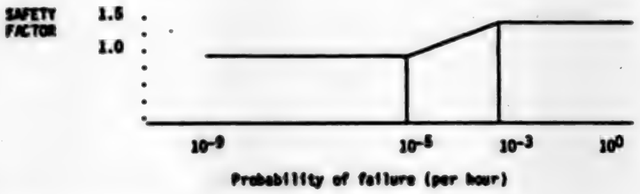
(*1*) The airplane must be able to withstand these loads, multiplied by a 1.5 factor of safety, to obtain ultimate loads. These loads without the 1.5 factor must also be included in the damage tolerance evaluation required by § 25.571(b) of the FAR, if the failure condition is probable.

(*2*) A flutter and divergence justification must be made in accordance with paragraph (2)(ii)(B) applied to failure conditions not shown to be extremely improbable. For failure conditions which result in speed increases beyond VC/MC, freedom from flutter and divergence must be shown to the speeds indicated by paragraph (2)(ii)(B) with VC/MC replaced by the maximum speed obtained during the above realistic scenario.

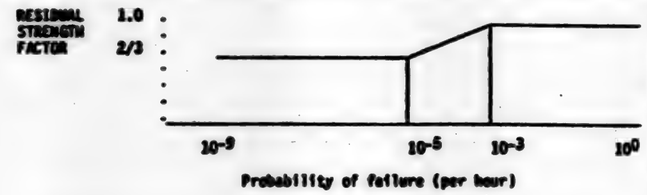
(B) *For continuation of the flight.* The new airplane configuration and associated flight limitations, if any, must be taken into account and the justification must cover:

(*1*) *A static and residual strength substantiation.* These investigations must take into account the loads induced by the failure condition (resulting from any single or combination of system failures not shown to be extremely improbable) in those cases where these loads will continue up to the end of the flight, in combination with the deterministic limit conditions specified in Part 25 (as maneuvers, discrete gust, design envelope for continuous turbulence, etc.)

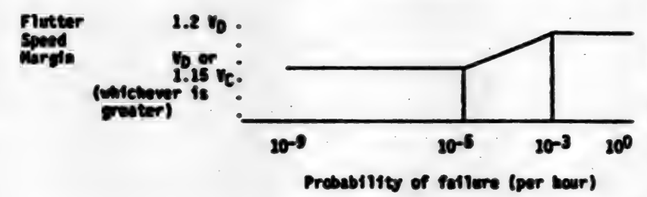
(*i*) For the static strength substantiation, each part of the structure affected by failure of the EFCS must be able to withstand the above specified loads multiplied by a factor between 1 and 1.5 depending on the probability of the failure conditions. The factors shown in the following figure may be used.



(*ii*) For structure affected by failure of the EFCS and with structural damage in combination with the EFCS failure conditions, a factor must be applied for the same purpose to the loads used for the justification of the airplane without system failure condition. In any case, the residual strength level must be at least % of the gust or maneuver conditions, combined with the normal operating cabin differential pressure (including the expected external aerodynamic pressures), specified in § 25.571(b) of the FAR. The residual strength factors shown in the following figure may be used.



(*2*) *Flutter and divergence substantiation.* Due to High Speed Protection, the speed margin between VC and VD, compared with an airplane without such protection, may be reduced. Therefore, compliance with § 25.629(d) must be shown to a speed of 1.15 VC or to VD, whichever is greater. However, at altitudes where VD is limited by Mach number, compliance may be shown to MD or MC + .05, whichever is greater. The failsafe flutter speed at any altitude need not exceed the value of VD that would result from compliance with § 25.335(b) without high speed protection. In addition, a margin up to 20% above VD/MD, depending on the probability of failure, must be provided for any system failure condition affecting the EFCS, the Load Alleviation Function (LAF), or High Speed Protection function. For probable failure conditions which affect the High Speed Protection function, this value of VD/MD must be the particular value defined for this failure condition. The margins shown in the following figure may be used.



(*3*) *Damage propagation substantiation.* If the time likely to be spent in this failure condition is not small compared to the damage propagation period, or if the loads induced by the failure condition may have a significant influence on the damage propagation, then the effects of the particular failure condition must be addressed and the corresponding inspection intervals adjusted to adequately cover this situation.

(C) *Known failure conditions.* The airplane may be considered to be airworthy in a system failure condition which reduces the structural performance if the effects of flight and operational limitations, when combined with those of the failure condition, allow the airplane to meet all Part 25 structural requirements. The consequences of subsequent system failures must also be considered.

(b) *Supplementary Criteria.*

(1) *Realistic Gust Fields.* Realistic representations of gust and turbulence must be accounted for. This is both to provide confidence that design assumptions based on idealized turbulence will not lead to optimistic estimates of the degree of load alleviation likely to be achieved and to avoid unnecessary constraints on control system design.

(2) *Availability of control authority and power supply to control systems.* Adequate power supply to the control systems (e.g., hydraulic power) and adequate control authority must be available for load alleviation and flight control under realistic conditions of severe turbulence. Maneuvers, gusts, and combinations of maneuvers and gusts must be considered.

(3) *Effects of control input on loads in turbulence.* The effects of loads induced by control activity during flight in turbulence on the LAF effectiveness in reducing the total loads in turbulence must be assessed.

(4) *System Reliability.* If the systems prove less reliable in service than assessed for certification, adjustments in maintenance schedules, load levels, and/or operating limitations may be required. The systems must be monitored for a sufficient period of time to substantiate an adequate level of reliability. Details of the reliability verification program must be based on system criticality and the degree of conservatism inherent in the system design and analysis. Periodic checks for system reliability may be required throughout the service life of the systems.

(5) *Test demonstration.* The purpose of the test demonstration is to show that the airplane meets the regulatory requirements by carrying out performance and fault tests at selected conditions. The tests shall include, in addition to those normally required by Part 25, the following simulator, ground, and flight demonstrations:

(i) The system effectiveness in alleviating loads must be demonstrated by flight tests for selected conditions within the airplane design envelope. Airplane response to oscillatory as well as hardover failures must be similarly verified by tests, unless these conditions are shown to be extremely improbable.

(ii) Manuevering to limit load factors or load factors which produce light buffeting at both low speed and high speed must be explored for system effectiveness.

(iii) If the airplane is proposed to be dispatched with failures in the EFCS (MEL configurations), the tests described in paragraph (i) above must include selected conditions in the MEL configuration.

(iv) An analytical or test evaluation must be made to determine that EFCS signals at various frequencies will not cause structural feedback resulting in control system instability. The frequency range must include the highest and lowest frequencies (including system failures not shown to be extremely improbable) which result in movement of a control surface and the lowest structural or rigid body frequency of the airplane. The effects of structural damage considered under §§ 25.571 (b) and (e) must be included. The investigation must cover all points in the v-n envelope.

The following definitions apply to the terms as they are used in this special condition.

1. *Structural performance.* Capability of the airplane to meet the requirements of Part 25 relating to structures.

2. *Flight limitations.* Limitations which can be applied to the airplane flight conditions following an in-flight occurrence and which are included in the flight manual, (e.g., speed limitations, avoidance of severe weather conditions, etc.).

3. *Operational limitations.* Limitations, including flight limitations, which can be

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applied to the airplane operating conditions before dispatch (e.g., payload limitations).

4. *Probabilistic terms.* The probabilistic terms (probable, improbable, extremely improbable) used in this special condition should be understood as defined in AC 25.1309-1.

5. *Failure condition.* The term "failure condition" should also be understood as defined in AC 25.1309-1, but this special condition applies only to system failure conditions which have a direct impact on the structural performance of the airplane (e.g., failure conditions which induce loads or change the response of the airplane to inputs such as gusts or pilot actions).

Discussion: The criteria in this special condition address only the direct structural consequences of the system's responses and performances and therefore cannot be considered in isolation but must be included in the overall safety evaluation of the airplane. The presentation of these criteria may, in some instances, duplicate standards already established for this evaluation. However, this presentation is used: (1) to keep explicit the links between the different items to be covered and the continuity with former requirements; and (2) to place in a proper context the specific additional structural requirements. These criteria are applicable to primary structure which, if failed, would prevent continued safe flight and landing. It is advisable to use the same basis for the whole of the structure, but some relief may be considered for cases leading to structural failures which would not prevent continued safe flight and landing.

(c) *Dive Speed Definition.* In lieu of compliance with § 25.335(b)(1) of the FAR, if the flight control system includes functions which act automatically to initiate recovery before the end of the 20-second period specified in § 25.335(b)(1) the greater of the speeds resulting from the following conditions may be used:

(i) From an initial condition of stabilized flight at V_c/M_c, the airplane is upset so as to take up a new flight path 7.5 degrees below the initial path. Control application, up to full authority, is made to try and maintain this new flight path. Twenty seconds after initiating the upset, manual recovery is made at a load factor of 1.5 g (0.5 g acceleration increment), or such greater load factor that is automatically applied by the system with the pilot's pitch control at neutral. The speed increase occurring in this maneuver may be calculated, if reliable or conservative aerodynamic data is used. Power, as specified in § 25.175(b)(1)(iv) of the FAR, is assumed until recovery is made, at which time power reduction and the use of pilot controlled drag devices may be assumed.

(ii) From a speed below V_c/M_c, with power to maintain stabilized level flight at this speed, the airplane is upset so as to accelerate through V_c/M_c, at a flight path 15 degrees below the initial path (or at the steepest nose down attitude that the system will permit with full control authority if less than 15 degrees). Recovery may be initiated two seconds after operation of high speed, attitude, or other alerting system by application of a load factor of 1.5 g (0.5 g acceleration increase), or such greater load factor that is automatically applied by the system with the pilot's pitch control at neutral. Power may be reduced simultaneously. All other means of decelerating the airplane, the use of which is authorized up to the highest speed in the maneuver, may be used. The interval between successive pilot actions must not be less than one second.

Discussion: Special Condition 2c above has been adapted from DGAC Special Condition SC-A 2.2.3 for the A320 dated April 4, 1986.

3. Engine Controls and Monitoring.

(a) *Full Authority Digital Engine Control System (FADEC).* In addition to compliance with the requirements of §§ 25.901(c) and 25.903(b) of the FAR, the components of the propulsion control system for each engine, both airframe and engine furnished, that affect thrust in either the forward or reverse direction and are required for continued safe operation, must have the level of integrity and reliability of a hydromechanical system (HMC) meeting current airworthiness standards.

Discussion: An acceptable method to demonstrate compliance with this special condition is to show that the engine control system, when installed in the A320, has a level of design integrity equivalent to propulsion controls presently in commercial airline service. The inherent level of design integrity for present day propulsion controls is demonstrated by an inservice loss of thrust control approximately once per 100,000 hours of operation. A similar level of integrity must be demonstrated for a FADEC control system considering all dispatchable states. This level of reliability for the loss of thrust control on one engine will result in an overall airplane propulsion control system reliability that is consistent with the guidance associated with § 25.1309(b)(1), assuming an independence of the failure conditions that contribute to the loss of thrust control. Proper compliance with §§ 25.901(c) and 25.903(b) should not result in any control system functions for one engine that are critical to continued safe flight and landing, that are totally dependent on FADEC system reliability to meet the objectives of § 25.1309(b)(1). Sources of information which are necessary in order to establish a meaningful determination of reliability include assessing service experience of like controls in similar environments, testing (e.g., bench, flight, etc.) and analysis. Service experience of a complex system such as the FADEC could involve similar units in a similar installation, military experience of like installations, or possibly identical installations on other aircraft. In each of these cases, the type and degree of exposure would depend upon various factors such as service history of previous systems produced by the manufacturers involved, or the number and type of failures observed during the service evaluation. The minimum dispatch configuration will have to be taken into account.

(b) *Engine Thrust Levers During Autothrust System Operation.* In lieu of compliance with § 25.1143(c) of the FAR, it must be established by analysis and test that the A320 automatic thrust system:

(1) Provides adequate cues for the flightcrew to monitor thrust changes without the need for exceptional diligence during normal operation and provides capability for the flightcrew to recognize a malfunction or inappropriate mode of operation and take corrective action without the need for exceptional skills.

(2) Provides a means for the flightcrew to disengage or otherwise override the automatic thrust system and regain regain manual control of engine thrust through normal motion of the thrust levers as defined in § 25.779(b) of the FAR.

(3) Provides visual cues for any disengagements, and provides visual and aural alerts during uncommanded disengagements.

(4) Functions reliably and does not allow the exceedance of any approved engine operating limit during normal system operation.

(5) Compliance with paragraphs 1 through 3 above shall include consideration of faults within the automatic thrust system which could affect any or all engines during critical flight operations, such as takeoff, approach and landing.

(c) *Display of Powerplant Parameters.* In addition to compliance with the requirements of §§ 25.1305, 25.1321, and 25.1337 of the FAR—

(1) The powerplant parameter displays required for certification must be arranged and isolated from each other so that no single fault, failure, malfunction, or probable combinations of failures, of any system or component that affects the display or accuracy of any propulsion system parameter for one engine shall result in the permanent loss of display or adversely affect the accuracy of any parameter display for the remaining engines.

(2) No single fault, failure, or malfunction, or probable combinations of failures, shall result in the permanent loss of display or adversely affect the accuracy of more than one propulsion unit parameter display for any single engine.

(3) Combinations of failures which would result in the display of hazardously misleading information for any powerplant parameter that affects more than one engine must be extremely improbable.

(4) Each powerplant parameter display required for certification that is not continuously displayed must have an operating limit or threshold established so that the appropriate engine, auxiliary power unit (APU), or fuel system parameters are automatically displayed for any condition that requires immediate crew awareness. In addition, those parameter displays must be manually selectable by the flightcrew.

(5) For designs incorporating shared displays, the engine parameters must have higher display priority for concurrent propulsion and airplane system failures, unless it is shown that crew attention to another propulsion or airplane system display is more critical for continued safe operations of the airplane. If the engine parameters are not concurrently displayed, it must be established that this condition does not jeopardize the safe operation of the airplane.

(6) Propulsion system parameters essential for determining the health and operational status of the engines and for taking appropriate corrective action, including engine restart, must be automatically displayed after the loss of normal electrical power.

(7) If individual fuel tank quantity information is not continuously displayed, there must be adequate automatic monitoring of the fuel system to alert the crew of both system malfunctions and abnormal fuel management.

Discussion: Section 25.1305 specifies the required powerplant instruments. Section 25.1321(c)(2) requires that powerplant instruments vital to the safe operation of the airplane must be plainly visible to the appropriate crewmembers, and § 25.1309(a) requires that the powerplant instruments function properly and perform their intended functions under any foreseeable operating condition. The instruments function properly if they accurately display the required parameter. The instruments are considered to be performing their intended function if they are displayed when the crew needs them to determine the health or operational status of the engines, or to monitor correct fuel system operation. Any foreseeable operating condition encompasses the entire range of normal airplane and engine operation, as well as engine or airplane system failures. Vital powerplant instruments are not plainly visible to the appropriate crewmembers if they are not being displayed.

4. Protection From Lightning and Unwanted Effects of Radio Frequency (RF) Energy.

(a) In the absence of specific requirements for protection from the unwanted effects of RF energy, the following apply:

(1) Each electronic system which performs critical functions must be designed and installed to ensure that the operation and operational capabilities of these critical systems are not affected when the airplane is exposed to externally radiated electromagnetic energy.

(2) For the purpose of this special condition, critical functions are functions whose failure would contribute to or cause a failure condition which would prevent the continued safe flight and landing of the airplane.

Discussion: It is not possible to precisely define the RF energy to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for RF energy. Based on surveys and analysis of existing RF emitters, an adequate level of protection exists when compliance with the above special condition is shown for the field strengths specified in either paragraph 1 or 2 below:

1. A minimum RF threat of 200 volts per meter average electric field strength from 10 KHZ to 20 GHZ.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. An alternate means of compliance is presented which considers the effect of shielding. That threat has the following field strengths for the frequency ranges indicated.

Frequency	Average (V/m)	Peak (V/m)
10 KHz-3 MHz	100	100
3 MHz-30 MHz	1,000	1,000
30 MHz-100 MHz	100	100
100 MHz-200 MHz	200	3,000
200 MHz-1 GHz	2,000	6,000
1 GHz-2 GHz	2,000	14,000
2 GHz-8 GHz	600	14,000
8 GHz-10 GHz	2,000	14,000
10 GHz-40 GHz	1,000	8,000

To establish the values in paragraph 2 above, an analysis was performed using a model of U.S. airspace and the Electromagnetic Compatibility Analysis Center (ECAC) data base, which contains the characteristics of all U.S. emitters. This analysis assumed a minimum separation distance between the airplane and emitters as follows: in the airport environment, 250 ft. for fixed emitters and 50 ft. for mobile emitters; for the air-to-air environment, 50 ft. from interceptor aircraft and 500 ft. from non-interceptor aircraft; for the ground-to-air environment, 500 ft.; and for the ship-to-air environment, 1,000 ft. The results of this analysis were then combined with the results of a study of emitters in European countries. The above values are therefore believed to represent the worst case levels to which an airplane would be exposed in the operating environment.

(b) In addition to compliance with the requirements of §§ 25.581 and 25.954 of the FAR concerning lightning protection—

(1) Each electronic system which performs critical functions must be designed and installed to ensure that the operation and operational capabilities of these critical systems are not affected when the airplane is exposed to lightning.

(2) Each electronic system which performs essential functions must be protected to ensure that the operation and operational capabilities of these essential functions can be recovered automatically or by simple pilot action after the system has been exposed to lightning. Fault annunciation must be provided if crew action is required.

(3) For the purpose of this special condition, the following definitions apply:

(i) *Critical Functions.* Functions whose failure would contribute to or cause a failure condition which would prevent the continued safe flight and landing of the airplane.

(ii) *Essential Functions.* Functions whose failure would contribute to or cause a failure condition which would significantly impact the safety of the airplane or the ability of the flightcrew to cope with adverse operating conditions.

Discussion: The current airworthiness regulations address lightning protection for fuel vapor ignition (§ 25.954) and for damage caused to the structural and skin details of the airplane (§ 25.581). However, application of the design requirements of these rules does not provide an equivalent level of safety to fly-by-wire applications when compared to the traditional designs which utilize mechanical means to connect the flight controls and the engines to the flight deck.

The following "threat definition" is proposed as a basis to sue in demonstrating compliance with this special condition.

The lightning current waveforms defined below, along with the voltage waveforms in JAR AMC-S5 or Advisory Circular (AC) 20-53A, will provide a consistent and reasonable requirement which is acceptable for use in evaluating the effects of lightning on the airplane. These waveforms depict threats that are external to the airplane. How these threats affect the airplane and its systems depend upon airplane geometry, the system's installation configuration, materials, shielding, etc. Therefore, tests (including tests on the completed airplane or an adequate simulation) and/or verified analysis need to be conducted in order to obtain the resultant internal threat to the installed systems. The individual systems may then be evaluated with this internal threat in order to determine their susceptibility to upset and malfunction.

In addition to the use of the Severe Strike/Restrike, Component A or D, to address the direct effects per AC 20-53A, the possible effects or upset that an avionics system or data transmission might experience needs to be identified. To evaluate the induced effects to these systems, three considerations are required:

1. *First Return Stroke:* (Severe Strike—Component A or Restrike—Component D). As identified above, this external threat needs to be evaluated to obtain the resultant internal threat and to verify that the level is sufficiently below the equipment "hardness" level; then

2. *Multiple Stroke Flash:* A lightning strike is often composed of a number of successive strokes, referred to as a multiple-stroke. Although multiple strokes are not necessarily a salient factor in a damage assessment, they can be the primarty factor in a system upset analysis. Multiple strokes can induce a sequence of transients over an extended period of time. While a single event upset of input/output signals may not affect system performance, multiple signal upsets over an extended period of time (2 seconds) may affect the systems under consideration. Repetitive pulse testing and/or analysis need to be carried out in response to the multiple stroke environment to demonstrate that the system response meets the safety objective. This external multiple stroke environment consists of 24 pulses and is described as a single Component A followed by 23 randomly spaced restrikes of ½ magnitude of component D (Peak Amplitude of 50,000 amps), all within 2 seconds. An analysis or test needs to be accomplished in order to obtain the resultant internal threat environment for the system under evaluation. And,

3. *Multiple Burst:* In-flight data-gathering projects have shown bursts of multiple, low amplitude, fast rates of rise, short duration pulses accompanying the airplane lightning strike process. While insufficient energy exists in these pulses to cause direct (physical damage) effects, it is possible that indirect effects resulting from this environment may cause upset to some digital processing systems.

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The representation of this interference environment is a repetition of low amplitude, high peak rate of rise, double exponential pulses which represent the multiple bursts of current pulses observed in these flight data gathering projects. This component is intended for an analytical (or test) assessment of functional upset of the system. Again, it is required that this component be translated into an internal environmental threat in order to be used. This "Multiple Burst" consists of 24 random sets of 20 strokes within a period of 2 seconds. Each set of 20 strokes is made up of 20 "Multiple Burst" waveforms randomly distributed within a period of one millisecond. The individual "Multiple Burst" waveform is defined below.

The following current waveforms constitute the "Severe Strike" (Component A), Restrike/ "Swept Stroke" (Component D), "Multiple Stroke" (¼ Component D), and the "Multiple Burst" (Component H).

These components are defined by the following double exponential polynomial equations:

$$I(t) = I_0 (e^{-mt} - e^{-nt})$$

where:
t = time in seconds,
I = current in amperes, and

	Severe Strike (Component A)	Restrike (Component D)	Multiple Stroke (¼ Component D)	Multiple Burst (Component H)
I_0, amp	218,810	109,405	54,703	10,572
a, sec^{-1}	11,354	22,708	22,708	187,191
b, sec^{-1}	647,266	1,294,530	1,294,530	19,105,100
These equations produce the following characteristics:				
I_{max}	200KA	100 KA	50 KA	10 KA
and				
$(di/dt)_{max}$ (amp/sec)	1.4 x 10^{11} @t=0+sec	1.4 x 10^{11} @t=0+sec	0.7 x 10^{11} @t=0+sec	2.0 x 10^{11} @t=0+sec
di/dt, (amp/sec)	1.0 x 10^{11} @t=.5 us	1.0 x 10^{11} @t=.25 us	0.5 x 10^{11} @t=.25 us	
Action integral (amp^2 sec)	2.0 x 10^4	0.25 x 10^4	.0625 x 10^{4}	

5. Flight Characteristics.

(a) *Flight Characteristic Compliance Determination by Handling Qualities Rating System for EFCS Failure Cases.* In lieu of compliance with § 25.672(c) of the FAR, a handling qualities rating system will be used for evaluation of EFCS configurations resulting from single and multiple failures not shown to be extremely improbable. The handling qualities ratings are:

(1) Satisfactory: Full performance criteria can be met with routine pilot effort and attention;

(2) Adequate: Adequate for continued safe flight and landing; full or specified reduced performance can be met, but with heightened pilot effort and attention.

(3) Controllable: Inadequate for continued safe flight and landing, but controllable for return to a safe flight condition, safe flight envelope and/or reconfiguration so that the handling qualities are at least Adequate. Handling qualities will be allowed to progressively vary with failure state, atmospheric disturbance level, and flight envelope. Specifically within the normal flight envelope, the pilot-rate handling qualities must be satisfactory/adequate in moderate atmospheric disturbance for probable failures, and must not be less than adequate in light atmospheric disturbance for improbable failures.

(b) *Longitudinal Stability.* In lieu of compliance with the requirements of §§ 25.171, 25.173, 25.175, and 25.181(a) of the FAR, the airplane must be shown to have suitable dynamic and static longitudinal stability in any condition normally encountered in service, including the effects of atmospheric disturbance.

(c) *Lateral-Directional Stability.*

(1) In lieu of compliance with § 25.171 of the FAR, the airplane must be shown to have suitable static lateral-directional stability in any condition normally encountered in service, including the effects of atmospheric disturbance.

(2) In lieu of compliance with §§ 25.177(b) and 25.177(c), the following applies: In straight, steady, sideslip (unaccelerated forward slips) the rudder control movements and forces must be substantially proportional to the angle of sideslip, and the factor of proportionality must lie between limits found necessary for safe operation throughout the range of sideslip angles appropriate to the operation of the airplane. At greater angles, up to the angle at which full rudder control is used or a rudder pedal force of 180 pounds is obtained, the rudder pedal forces may not reverse and increased rudder deflection must produce increased angles of sideslip. Unless the airplane has suitable sideslip indication, there must be enought bank and lateral control deflection and force accompanying sideslipping to clearly indicate any departure from steady unyawed flight.

(d) *Control Surface Awareness.* In addition to compliance with §§ 25.143, 25.671, and 25.672 of the FAR, when a flight condition exists where, without being commanded by the crew, control surfaces are coming so close to their limits that return to the normal flight envelope and/or continuation of safe flight requires a specific crew action, a suitable flight control position annunciation shall be provided to the crew, unless other existing indications are found adequate or sufficient to prompt that action.

Note: The term suitable also indicates an appropriate balance between nuisance and necessary operation.

6. Flight Envelope protection

In the absence of specific requirements for flight envelope protection, the following apply:

(a) *General Limiting Requirements.*

(1) *Normal Operation.*

(i) Onset characteristics of each envelope protection feature must be smooth, appropriate to the phase of flight and type of maneuver, and not in conflict with the ability of the pilot to satisfactorily change airplane flight path, speed, or attitude as needed.

(ii) Limit values of protected flight parameters (and if applicable, associated warning thresholds) must be compatible with:

(A) Airplane structural limits;

(B) Required safe and controllable maneuvering of the airplane; and

(C) Margin to critical conditions. Unsafe flight characteristics/conditions must not result if dynamic maneuvering, airframe and system tolerances (both manufacturing and in-service), and non-steady atmospheric conditions, in any appropriate combination and phase of flight, can produce a limited flight parameter beyond the nominal design limit value.

(iii) The airplane must be responsive to intentional dynamic maneuvering to within a suitable range of the parameter limit. Dynamic characteristics such as damping and overshoot must also be appropriate for the flight maneuver and limit parameter in question.

(iv) When simultaneous envelope limiting is engaged, adverse coupling or adverse priority must not result.

(2) *Failure States.* EFCS (including sensor) failures must not result in a condition where a parameter is limited to such a reduced value that safe and controllable maneuvering is no longer available. The flightcrew must be alerted by suitable means if any change in envelope limiting or maneuverability is produced by single or multiple failures of the EFCS not shown to be extremely improbable.

(3) *Abnormal Attitudes.* In case of abnormal attitude or excursion of any other flight parameters outside the protected flight boundaries, the operation of the EFCS, including the automatic protection functions, must not hinder airplane recovery.

(b) *Angle-of-Attack Limiting.*

(1) *FAR Part 1, § 1.2, Abbreviations and Symbols.*

(i) In lieu of the definition of V_S is 1.2, the following applies in subparts B, E, F, and G of FAR 25: "V_S means the reference stalling speed."

Discussion: This calibrated speed is determined in the stalling maneuver and expressed as $V_{CLMAX}/\sqrt{N_{zw}}$, where V_{CLMAX} is the speed occurring where C_L is first a maximum, and N_{zw} is the flight path normal load factor (not greater than 1.0) at the same point; C_L can be expressed as

$$\frac{N_{zw}W - F_G \sin(AOA + I_{FN})}{qS}$$

(ii) In lieu of the definition of V_{so} given in § 1.2, the following applies: "V_{so} means the reference stalling speed in the landing configuration."

(iii) In lieu of the definition of V_{s1} given in § 1.2, the following applies: "V_{s1} means the reference stalling speed in a specific configuration."

(iv) In addition to the definitions given, the following also apply:

"V_{sw} means the steady landing approach speed, selected by the applicant for manual landing, for a defined landing configuration."

"V_{MIN} means the minimum speed obtained by conducting a stalling maneuver."

"V_{SW} means the speed at which onset of natural or artifical stall warning occurs."

(2) FAR Part 25—Airworthiness Standards: Transport Category Airplanes.

(i) In lieu of compliance with § 25.21(b), the following applies: "The flying qualities will be evaluated at speeds based upon the forward CG stalling speed."

(ii) In lieu of compliance with § 25.103(a), the following applies: "V_S is the reference stalling speed with——."

(iii) In lieu of compliance with § 25.103(a)(1), the following applies: "Stalling speed determined at not greater than IDLE Conditions associated with the determination of the stalling speed are those provided in § 25.103 of the FAR.

(ii) In lieu of the definition of V_{so} given in § 1.2, the following applies: "V_{so} means the reference stalling speed in the landing configuration."

(iii) In lieu of the definition of V_{s1} given in § 1.2, the following applies: "V_{s1} means the reference stalling speed in a specific configuration."

(iv) In addition to the definitions given, the following also apply:

"V_{sw} means the steady landing approach speed, selected by the applicant for manual landing, for a defined landing configuration."

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(ii) In lieu of compliance with § 25.103(a), the following applies: "V_S is the reference stalling speed with——."

(iii) In lieu of compliance with § 25.103(a)(1), the following applies: "Stalling speed determined at not greater than IDLE thrust (NOTE: automatic go-around thrust application feature must be disengaged)."

(iv) In lieu of compliance with § 23.103(b)(1), the following applies: "From a stabilized straight flight condition at any speed not less than 1.16 V_S (or speed at AOA protection onset, if greater) nor more than 1.30 V_S, apply elevator control to decelerate the airplane so that the speed reduction at the stall does not exceed one knot per second."

(v) In lieu of § 25.107(b)(1), the following applies: "1.13V_S for——."

(vi) In addition to compliance with §§ 25.107(c) (1) and (2), the following also applies: "A speed selected by the applicant which provides fixed-speed maneuvering capability, which is free of stall warning and Alpha floor, not less than the values shown in TABLE B.2."

Note: Unless AOA protection system production tolerances are acceptably small, so as to produce insignificant changes in performance determinations, the flight test settings for features such as Alpha floor and stall warning should be set at the low AOA tolerance limit; high AOA tolerance limits should be used for characteristics evaluations.

TABLE B.2

Configuration	Speed	Maneuvering bank angle	Maximum thrust representative of:
Takeoff	V_2	30° (stall warning) 25° (Alpha floor)	WAT-limited V_2 climb.
Takeoff	*V_2+XX	40°	Climb rating (all engines).
Enroute	*V_{FTO}	40°	WAT-limited final climb.
Landing	V_{REF}	40°	−3° Flight path.

*Airspeed approved for all-engines initial climb.
+ Airspeed at end of final takeoff (FTO) flight path for engine-out performance.
Note.—FWD CG symmetrical thrust is acceptable.

(vii) In lieu of compliance with § 25.119(b), the following applies: "A climb speed of not more than V_{REF}."

(viii) In lieu of compliance with § 25.121(c) the following applies: "Final takeoff. In the enroute configuration at the end of the takeoff path determined in accordance with § 25.111, the steady gradient of climb may not be less than 1.2 percent at a speed not less than: * 1.23 V_S or * a speed which provides fixed-speed maneuvering capability which is free of stall warning and Alpha floor, not less than the value shown in TABLE B.2, and with—"

(ix) In lieu of compliance with § 23.121(d)(3), the following applies: "A climb speed established in connection with normal landing procedures but not exceeding 1.4V_{S1}."

(x) In lieu of compliance with § 23.125(a)(2), the following applies: "A stabilized approach, with a calibrated airspeed of not less than V_{REF}, must be maintained down to the 50-foot height. V_{REF} may not be less than: (a) 1.23 V_{SO}, or (b) the speed selected by the applicant which provides a fixed-speed maneuvering capability, which is free of stall warning and Alpha floor, not less than the value shown in TABLE B.2."

(xi) In addition to compliance with the requirements of § 25.143, the following also apply: "(1) The airplane must be shown to have suitable flight-path stability and control characteristics both in normal flight and when windshear is encountered in a takeoff or landing configuration. This may be shown by an appropriate combination of simulation and flight test." NOTE: Suitable characteristics are those no worse than conventionally controlled airplanes in similar conditions. "(2) Operation of automatic features (such as significant EFCS stability or control changes) must not adversely affect normal flight operations, including during expected levels of atmospheric disturbance."

(xii) In lieu of the speeds given in the following Part 25 regulations, comply with speeds as follows:

§ 25.145(a), V_{MIN} in lieu of V_S.
§ 25.145(b(1)–(4), 1.3V_{S1} in lieu of 1.4V_{S1}.
§ 25.145(b)(1), Change 40 percent to 30 percent.
§ 25.145(b)(6), 1.3V_{S1} in lieu of 1.4V_{S1}.
§ 25.145(b)(6), V_{MIN} in lieu of 1.1V_{S1}.
§ 25.145(6), 1.6V_{S1} in lieu of 1.7V_{S1}.
§ 25.145(c), 1.13V_{S1} in lieu of 1.2V_{S1}.
§§ 25.147(a), (e)(2), (c), (d), 1.3V_{S1} in lieu of 1.4V_{S1}.
§ 25.149(c), 1.13V_S in lieu of 1.2V_S.
§§ 25.161(b), (c)(1), (c)(2), (c)(3), (d), 1.3V_{S1} in lieu of 1.4V_{S1}.
§§ 25.175(a)(2), (b)(1), (b)(2), (b)(3), (c)(4), 1.3V_{S1} in lieu of 1.4V_{S1}.
§ 25.175(b)(2)(ii), (V_{MIN}+1.3V_{S1})/2 in lieu of (V_{MIN}+1.4V_{S1})/2.
§ 25.175(c), V_{MIN} and 1.7V_{S1} in lieu of 1.1V_{S1} and 1.6V_{S1}.
§ 25.175(d), V_{MIN} and 1.7 V_{S0} in lieu of 1.1V_{S0} and 1.3V_{S0}.
§ 25.175(d)(5), 1.3V_{So}, in lieu of 1.4V_{S0}.

Note: The stability requirements for §§ 25.173 and 25.175 are further amended by the special condition associated with longitudinal stability.

§ 25.177(a), (b)(1), (1.13V_{S1} in lieu of 1.2V_{S1}.
§ 25.201(a)(2), 1.5V_{S1} in lieu of 1.6V_{S1}.

(xiii) In lieu of compliance with § 25.203(c), the following applies: "With the EFCS operating normally and autothrust ON, the airplane must be shown to have suitable

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handling characteristics when decelerating at various rates and up to 1.5, in turning flight to the AOA Limit."

(xiv) In lieu of compliance with § 25.207(a), the following applies: "With the AOA limiter operating normally, stall warning is not required. For failure states with the AOA limiter inoperative, sufficient stall warning margin must be provided in the following straight and turning flight conditions:

(1) Stall-free characteristics must be shown in power-off, straight ahead stall approaches to a speed five percent (but not less than five knots) below V_{SR}.

(2) Stall-free characteristics must be shown in turning flight stall approaches, at entry rates up to three knots per second, when recovery is initiated not less than one second after the onset of stall warning."

(xv) The requirements of § 25.207(c) are not applicable.

(c) *Normal Load Factor (g) Limiting.* In addition to compliance with the requirements of § 25.143, the following apply:

(1) The positive limiting load factor must not be less than 2.5g (2.0g with high-lift devices extended) for the EFCS normal state.

(2) The negative limiting load factor must be equal to or more negative than minus 0.5g (0.0g with high lift devices extended) for the EFCS normal state.

Discussion: This allows an incremental plus or minus 1.5g for maneuvering flaps up, and plus or minus 1.0g flaps extended. This Special Condition does not impose an upper bound for the limiter, nor does it require that the limiter exist. If the limited is set at a value beyond the structural design limit maneuvering load factor "n" of §§ 25.333(b) and 25.337 (b) and (c), there should be a very positive tactile feel built into the controller and obvious to the pilot that serves as a deterrent to inadvertently exceeding the structural limit.

(d) *High-Speed Limiting.* In addition to compliance with the requirements of § 25.143 of the FAR, the following applies: "Operation of the high-speed limiter during all routine and descent procedure flight must not impede normal attainment of speeds up to overspeed warning."

(e) *Pitch and Roll Limiting.* In addition to compliance with the requirements of § 25.143 of the FAR, the following applies: "Operation of the pitch and roll limiter must not:

(1) Impede normal maneuvering for pitch angles up to the maximum required for normal maneuvering, including a normal all-engine takeoff, plus a suitable margin to allow for satisfactory speed control.

(2) Restrict or prevent attainment of roll angles up to 65 degrees or pitch attitudes necessary for emergency maneuvering."

7. Side Stick Controllers.

(a) *Pilot Strength.* In lieu of the "strength of pilots" limits of § 25.143(c) for pitch and roll, and in lieu of specific pitch force requirements of §§ 25.143(b) and 25.175(d), the following applies: "It must be shown that the temporary and maximum prolonged force levels for the side stick controllers are suitable for all expected operating conditions and configurations, whether normal or non-normal."

(b) *Controller Coupling.* In the absence of specific requirements for controller coupling, the following applies: "The electronic side stick controller coupling design must provide for corrective and/or overriding control inputs by either pilot with no unsafe characteristics. Annunciation of controller status must not be confusing to the flightcrew."

(c) *Pilot Control.* In the absence of specific requirements for side stick controllers, the following applies: "It must be shown by flight tests that the use of sidestick controllers does not produce unsuitable pilot-in-the-loop control characteristics when considering precision path control/tasks and turbulence."

(d) *Autopilot Quick-Release Control Location.* In lieu of compliance with § 25.1329(d) of the FAR, quick release (emergency) controls must be on both side stick controllers. The quick release means must be located so that it can readily and easily be used by the flightcrew.

8. Flight Recorder.

(a) In addition to compliance with the requirements of § 25.1459(a) of the FAR, the flight recorder must record the following parameters in addition to those required by Appendix B of Part 121:

(1) Pilot and copilot sidestick pitch controller, pitch control surface position, pilot and copilot sidestick roll controller, aileron surface position, spoiler surface position, rudder pedal position, rudder surface position, auto thrust system commanded thrust parameter, total air temperature (TAT), and frame counter.

(2) The following for each engine installation: Actual thrust (N1/N2), electronic engine control, commanded thrust, and thrust lever position.

(b) In lieu of compliance with § 25.1459(a)(4) of the FAR, there must be an aural or visual means for preflight checking that data are being recorded.

Issued in Seattle, Washington, on December 15, 1988.

Leroy A. Keith,

Manager, Transport Airplane Directorate Aircraft Certification Service.

[FR Doc. 89-1744 Filed 1-25-89; 8:45 am]

BILLING CODE 4910-13-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1207

Standards of Conduct

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Additions to final rule.

SUMMARY: On June 16, 1987, NASA revised and republished 14 CFR Part 1207, "Standards of Conduct" (52 FR 22755). Subpart G, "Administrative Enforcement Procedures for Alleged Violations of 18 U.S.C. 207," and Subpart H, "Post-Employment Regulations," were included in NASA's original "Standards of Conduct" regulations. Unfortunately, these two subparts were inadvertently left out of the revision. They are added by this rule. NASA is publishing these regulations to ensure conformity with current ethical standards of conduct required of NASA employees in carrying out their duties and responsibilities.

EFFECTIVE DATE: January 27, 1989.

ADDRESS: Office of General Counsel, NASA Headquarters, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Elizabeth Siegel, 202-453-2465.

SUPPLEMENTARY INFORMATION: To ensure conformity to the Ethics in Government Act of 1987, NASA published its revised regulations in the **Federal Register** on June 16, 1987 (52 FR 22755), and a correction to § 1207.405 was published in the **Federal Register** on September 28, 1987 (52 FR 36234).

The National Aeronautics and Space Administration has determined that:

1. This rule is not subject to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601-612, since it will not exert a significant economic impact on a substantial number of small entities.

2. This rule is not a major rule as defined in Executive Order 12291.

List of Subject in 14 CFR Part 1207

Administrative practice and procedures, Conflict of interest, Post-employment exemption.

For reasons set forth in the Preamble, 14 CFR Part 1207 is amended as follows:

PART 1207—STANDARDS OF CONDUCT

1. The authority citation for 14 CFR Part 1207 is revised to read as follows:

Authority: Ethics in Government Act of 1978, as amended by Pub. L. 98-19 and Pub. L. 98-28; EO 11222; 18 U.S.C. 201-219; 5 CFR Parts 734, 735, 737, 738, and 755.

2. The Table of Contents for Part 1207 is amended by adding entries for Subparts E, F, G, and H to read as follows:

Sec.

* * * * *

Subpart E—[Reserved]

Subpart F—Standards of Conduct for Special Government Employees [Reserved]

Subpart G—Administrative Enforcement Procedures for Alleged Violations of 18 U.S.C. 207

1207.700 Scope of subpart.
1207.701 Policy.
1207.702 Procedures for administrative disciplinary hearing.

Sec.

1207.703 Appeal from initial decision.
1207.704 Administrative sanctions.

Subpart H—Post-Employment Regulations

1207.800 Scope of subpart.
1207.801 Exemption for scientific and technological communications.

3. Subparts E and F are added and reserved. Subparts G and H are added to read as follows:

Subpart E—[Reserved]

Subpart F—Standards of Conduct for Special Government Employees [Reserved]

Subpart G—Administrative Enforcement Procedures for Alleged Violations of 18 U.S.C. 207

§ 1207.700 Scope of subpart.

The subpart establishes NASA's administrative enforcement procedures for handling allegations of violations of 18 U.S.C. 207, the Federal criminal prohibition against post-employment conflicts of interest by former Government employees. It implements 18 U.S.C. 207(j) which requires each agency to establish such procedures and the guidelines of the Office of Government Ethics (OGE) which appear at 5 CFR 737.27.

§ 1207.701 Policy.

Any allegation that a former NASA employee has violated 18 U.S.C. 207 will be thoroughly and impartially investigated following the guidelines of the OGE and the procedural requirements of this subpart before a final decision is reached.

§ 1207.702 Procedures for administrative disciplinary hearing.

(a) *Allegations of violations.* Any allegation that a former NASA employee has violated 18 U.S.C. 207 in connection with duties performed while the individual worked for NASA shall be referred to the NASA Inspector General for investigation. The Inspector General shall coordinate, as appropriate, with the Director of the OGE and the Criminal Division of the Department of Justice.

(b) *Initiation of hearing.* When the NASA Inspector General determines after appropriate review that there is reasonable cause to believe that a former NASA employee has violated 18 U.S.C. 207(a), (b), or (c), or any implementing regulations, the Inspector General shall prepare and issue the notice to the former employee required by 18 U.S.C. 207(j) which shall include:

(1) A statement of allegations (and the basis thereof) sufficiently detailed to enable the former Government employee to prepare an adequate defense;

(2) Notification of the right to a hearing; and

(3) An explanation of the method by which a hearing may be requested.

(c) *Appointment of examiner.* The Associate Deputy Administrator shall appoint an examiner upon issuance of a notice under paragraph (b) of this section. Any duly appointed examiner is hereby delegated authority to conduct an administrative hearing and to make an initial decision under the procedures of this subpart. The examiner shall be impartial and shall not have participated in any manner in the circumstances giving rise to the proceedings or the decision to initiate the proceedings. The examiner shall have a degree in law, be admitted to the bar, and be experienced in the conduct of administrative hearings.

(d) *Time, date, and place of hearing.* Upon a request for a hearing by the former employee, the examiner shall schedule a hearing as promptly as possible, with due regard for the former employee's need for adequate time to prepare a defense and expeditious resolution of potentially damaging allegations. The examiner shall observe the procedural requirements of 18 U.S.C. 207 and this subpart in conducting the hearing.

(e) *Rights of the former employee.* In connection with a hearing, the former employee shall have the right:

(1) To represent oneself or to be represented by counsel;

(2) To introduce and examine witnesses and to submit evidence;

(3) To confront and cross-examine witnesses;

(4) To present argument;

(5) To request a transcript or recording of the proceedings.

(f) *Burden of proof.* The agency shall have the burden of proof and must establish by substantial evidence that a violation has occurred.

(g) *Initial decision.* (1) The examiner shall make an initial determination based exclusively on matters of record in the proceedings.

(2) When a former employee does not elect a hearing, the examiner shall consider all available evidence, including any documentary evidence submitted by the parties, and shall issue an initial decision based thereon.

(3) The written initial decision shall set forth all findings of fact and conclusions of law relevant to the matter at issue.

§ 1207.703 Appeal from initial decision.

Within 30 days after the date of the initial decision, either party may appeal the initial decision to the Associate Deputy Administrator. The Associate Deputy Administrator will review the pertinent record of the proceedings and any written arguments submitted by the parties concerning the appeal. If the Associate Deputy Administrator modifies or reverses the initial decision, he or she shall specify the findings of fact and conclusions of law that are different than those of the examiner.

§ 1207.704 Administrative sanctions.

(a) The final agency decision shall be:

(1) The decision of the Associate Deputy Administrator on an appeal under § 1207.703; or

(2) The decision of the examiner which shall become final if no appeal is taken within the 30-day time limit.

(b) If the final decision of the agency is that a violation of 18 U.S.C. 207 (a), (b), or (c), or of implementing regulations has occurred, the following sanctions may be ordered by the Administrator against the former employee:

(1) Prohibiting the individual from making, on behalf of any other person (except the United States), any formal or informal appearance before, or, with the intent to influence, any oral or written communication to, NASA on any matter of business for a period not to exceed 5 years, which may be accomplished by directing NASA employees to refuse to participate in any such appearance or to accept any such communication; or

(2) Taking other appropriate disciplinary action.

(c) Any person found to have participated in a violation of 18 U.S.C. 207 (a), (b), or (c) or implementing regulations under the procedures of this subpart may seek judicial review of the administrative determination and shall be notified of the opportunity of such review in the final decision of the agency.

Subpart H—Post-Employment Regulations

§ 1207.800 Scope of subpart.

This subpart provides guidance to former NASA government employees who are subject to the restrictions of Title V of the Ethics of Government Act of 1978, as amended, and who want to

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communicate scientific or technical information to NASA.

§ 1207.20 Scope of subpart

This subpart provides guidance to former NASA government employees who are subject to the restrictions of Title V of the Ethics of Government Act of 1978, as amended, and who want to communicate scientific or technical information to NASA.

§ 1207.201 Exemption for scientific and technological communications.

(a) Whenever a former government employee who is subject to the constraints of post-employment conflict of interest, 18 U.S.C. 207, wishes to communicate with NASA under the exemption in section 207(f) for the making of a communication solely for the purpose of furnishing scientific or technological information, he or she shall state to the NASA employee contracted, the following information:

(1) That he or she is a former government employee subject to the post employment restrictions of 18 U.S.C. 207 (a), (b), or (c)—specify which;

(2) That he or she worked on certain NASA programs—enumerate which; and

(3) That the communication is solely for the purpose of furnishing scientific or technological information.

(b) If the former government employee has questions as to whether the communication comes within the scientific and technological exemption, he or she should contact the General Counsel, the designated agency ethics official.

Dale D. Myers,

Deputy Administrator.

January 23, 1989.

[FR Doc. 89-1880 Filed 1-25-89; 8:45 am]

BILLING CODE 7510-01-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Parts 770, 772 and 778

[Docket No. 81149-8249]

Revision of Enforcement and Administrative Proceedings

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Interim rule with request for comments.

SUMMARY: The agency is revising Parts 770 (Export Licensing General Policy), 772 (Individual Validated Licenses) and 788 (Administrative Proceedings) of the Export Administration Regulations (Parts 770, 772 and 780, Title 15, Code of Federal Regulations). These revisions are limited to those changes mandated by the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100-418, 101 Stat. 1107), which amended and extended the Export Administration Act of 1979 (50 U.S.C. app. §§ 2401-2420 (1982 and Supp. III 1985)) (the Act). These changes implement both new and revised statutory provisions concerning violations and set forth procedures governing the denial of export privileges for persons convicted of violating specified statutes.

DATES: Interim rule effective January 27, 1989; comments must be received on or before March 28, 1989.

ADDRESS: Written comments (six copies when possible) should be sent to: Daniel C. Hurley, Jr., Attorney-Advisor, Office of Chief Counsel for Export Administration, U.S. Department of Commerce, Room H-3329, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Daniel C. Hurley, Jr., Office of the Chief Counsel for Export Administration, 202/377-5311.

SUPPLEMENTARY INFORMATION: This rule revises the Export Administration Regulations to reflect changes in the Export Administration Act (for example, prescribes the method by which denials of export privileges to persons convicted of specified offenses may be extended to related persons), to conform specific procedural provisions to the Export Administration Act, and to reflect organizational changes within the Bureau of Export Administration.

The rule notes the availability of judicial review of final agency decisions in export control cases. Pursuant to Section 13(c) of the Act, the written order of the Secretary [1] is the final agency action, except that the charged party may, within 15 days after the order is issued, appeal the order to the United States Court of Appeals for the District of Columbia Circuit which may, while the appeal is pending, stay the order of the Secretary.

The rule also implements statutory changes governing temporary denial orders. Pursuant to Section 13(d) of the Act, the period for which temporary denial orders may be issued or renewed has been extended from 60 days to 180 days. In addition, a person subject to an order of the Under Secretary affirming, in whole or in part, the issuance of a temporary denial order may, within 15 days after the order is issued, appeal the order to the United States Court of Appeals for the District of Columbia Circuit.

[1] Pursuant to Department Organization Order 10-16, effective March 23, 1988, the Secretary's authority to issue final orders in administrative proceedings was delegated to the Under Secretary for Export Administration.

Rulemaking Requirements

1. Because this rule concerns a foreign and military affairs function of the United States, it is not a rule or regulation within the meaning of Section 1(a) of Executive Order 12291, and it is not subject to the requirements of that Order. Accordingly, no preliminary or final Regulatory Impact Analysis has to be or will be prepared.

2. This rule does not contain a collection of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility analysis has to be or will be prepared.

5. Section 13(a) of the Export Administration Act of 1979 (EAA), as amended (50 U.S.C. app. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule is also exempt from those APA requirements because it involves a foreign and military affairs function of the United States. Section 13(b) of the EAA does not require that this rule be published in proposed form because this rule does not impose a new control. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

However, consistent with the intent of Congress set forth in Section 13(b) of the Act to provide public participation in rulemaking, these regulations are issued in interim form and comments will be considered in developing final regulations.

The period for submission will close March 28, 1989. All comments received before the close of the comment period will be considered by the Department in the development of final regulations.

While comments received after the end of the comment period will be considered if possible, their consideration cannot be assured. Public comments that are accompanied by a request that part or all of the material be treated confidentially because of its business proprietary nature or for any other reason will not be accepted. Such comments and materials will be returned to the submitter and will not be considered in the development of final regulations.

All public comments on these regulations, whenever received, will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, comments in written form are preferred. If oral comments are received, a written summary will be available for public review and copying. Communications from agencies of the United States Government or foreign governments will not be made available for public inspection.

The public record concerning these regulations will be maintained in the Bureau of Export Administration Freedom of Information Records Inspection Facility, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Room H-4886, Washington, DC 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in Part 4 of Title 15 of the Code of Federal Regulations. Information about the inspection and copying of records at the facility may be obtained from Ms. Margaret Cornejo, the Bureau of Export Administration Freedom of Information Officer, at the above address or by calling 202/377-2593.

List of Subjects in 15 CFR Part 770

Exports, Reporting and recordkeeping requirements.

List of Subjects in 15 CFR Part 772

Exports, Validated License and recordkeeping requirements.

List of Subjects in 15 CFR Part 788

Administrative practice and procedure. Denial of export privileges. Exports, Temporary denial of export privileges.

Accordingly, Parts 770, 772 and 788 of the Export Administration Regulations (15 CFR Parts 768-799) are amended as follows:

1. The authority citations for Parts 770 and 772 are revised to read as follows:

Authority: Pub. L. 96-72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97-145 of December 29, 1981, 95 Stat. 1727, by Pub. L. 99-64 of July 12, 1985, 99 Stat. 120, and by Pub. L. 100-418 of August 23, 1988, 102 Stat. 1107; E.O. 12525 (3 CFR 377 (1986)) E.O. 12214 (3 CFR 256 (1981)), and E.O. 12002 (3 CFR 133 (1978)).

2. 15 CFR Part 770 is amended by revising § 770.15(a) to read as follows:

§ 770.15 Administrative action denying permission to apply for or use export licenses.

(a) *General.* The Director, Office of Export Licensing, in consultation with the Director, Office of Export Enforcement, may deny permission to apply for or use any export license, including any general license, to any person who has been convicted of a violation of the Export Administration Act, or any regulation, license, or order issued under the Act; any regulation, license or order issued under the International Emergency Economic Powers Act (50 U.S.C. 1701-1706); 18 U.S.C. 793, 794 or 798; Section 4(b) of the Internal Security Act of 1950 (50 U.S.C. 783(b)), or Section 38 of the Arms Export Control Act (22 U.S.C. 2778).

* * * * *

§ 770.15 [Amended]

3. 15 CFR Part 770 is amended by redesignating existing paragraphs (c) through (f) of § 770.15 as paragraphs (d) through (g), and by adding new § 770.15(c) to read as follows:

* * * * *

(c) *Criteria.* In determining whether to deny U.S. export privileges to a person previously convicted of one or more of the statutes set forth in paragraph (a) of this section, the Director, Office of Export Licensing may take into consideration any relevant information, including, but not limited to, the seriousness of the offense involved in the criminal prosecution, the nature and duration of the criminal sanctions imposed, and whether the person has undertaken any corrective measures.

* * * * *

§ 770.15 [Amended]

4. 15 CFR Part 770 is amended by adding § 770.15(h) to read as follows:

* * * * *

(h) *Applicability to related person.* The Director, Office of Export Licensing, in consultation with the Director, Office of Export Enforcement, may, through the Chief Counsel for Export Administration, notify any person related through affiliation, ownership, control, or position or responsibility to any person denied export privileges under paragraph (a) of this section, of his intent to deny that person permission to apply for or use any export license, including any general license. Such person so notified may request a hearing by filing a request for a hearing with the Office of The Administrative Law Judge, Room H6716, 14th Street and Constitution Avenue NW., Washington, DC 20230 and by serving a copy of the request for a hearing on the Office of the Chief Counsel for Export Administration. The sole issue to be raised and ruled on under this paragraph is the question whether such person so notified is related to any person denied export privileges under paragraph (a) of this section, and not the scope or duration of the underlying denial. The provisions of Part 788 of this chapter shall apply to any hearing requested under this paragraph (h).

§ 772.1 [Amended]

5. 15 CFR Part 772 is amended by revising § 772.1(h) to read as follows:

§ 772.1 General provisions.

* * * * *

(h) (1) *Administrative action revoking export licenses.* The Director, Office of Export Licensing, in consultation with the Director, Office of Export Enforcement, may revoke any export license, including any general license, issued or otherwise available to any person who has been convicted of a violation of the Export Administration Act, or any regulation, license, or order issued under the Act; any regulation, license, or order issued under the International Emergency Economic Powers Act (50 U.S.C. 1701-1706); 18 U.S.C. 793, 794 or 798; section 4(b) of the Internal Security Act of 1950 (50 U.S.C. 783(b)), or section 38 of the Arms Export Control Act (22 U.S.C. 2778).

* * * * *

6. The authority citations for 15 CFR Part 788 are revised to read as follows:

Authority: Pub. L. 96-72 of September 29, 1979, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97-145 of December 29, 1981, 95 Stat. 1727, by Pub. L. 99-64 of July 12, 1985, 99 Stat. 120, and by Pub. L. 100-418 of August 23, 1988, 102 Stat. 1107; E.O. 12525 (3 CFR 377 (1986)), E.O. 12214 (3 CFR 256 (1981)), and E.O. 12002 (3 CFR 133 (1978)).

§ 788.19 [Amended]

7. 15 CFR Part 788 is amended by substituting the number "180" in place of "60" where it appears in § 788.19(b)(4).

§ 788.19 [Amended]

8. 15 CFR Part 788 is amended by substituting the number "180" in place of "60" where it appears in § 788.19(d)(1).

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§ 788.19 [Amended]

9. 15 CFR Part 788 is amended by revising the last sentence in § 788.19(e)(5) to read as follows:

* * * * *

(e) * * *

(5) *Final decision.* * * * The Under Secretary's written order shall be final and is not subject to judicial review, except as provided in § 788.19(g).

* * * * *

§ 788.19 [Amended]

10. 15 CFR Part 788 is amended by adding new paragraph 788.19(g) to read as follows:

* * * * *

(g) *Judicial review.* The Under Secretary's written order may be appealed to the United States Court of Appeals for the District of Columbia pursuant to 50 U.S.C. app. 2412(d)(3).

§ 788.23 [Amended]

11. 15 CFR Part 788 is amended by removing the last sentence in § 788.23(c).

§ 788.23 [Amended]

12. 15 CFR Part 788 is amended by adding a new paragraph (e) to § 788.23 to read as follows:

* * * * *

(e) The Under Secretary's written order may be appealed within 15 days to the United States Court of Appeals for the District of Columbia pursuant to 50 U.S.C. app. 2412(c)(3).

Dated: January 18, 1989.

Michael E. Zacharia,

Assistant Secretary for Export Administration.

[FR Doc. 89-1797 Filed 1-26-89; 8:45 am]

BILLING CODE 3510-DT-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 107

[Docket No. 87N-0062]

Infant Formula Recall Requirements

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is, in accordance with the 1986 Infant Formula amendments to the Federal Food, Drug, and Cosmetic Act (the act), amending its recall regulations for infant formulas. These amendments: (1) Specify recall procedures that shall be used by manufacturers in removing from the marketplace adulterated or misbranded infant formula that the agency has determined may present a risk to human health; (2) require a manufacturer recalling an infant formula that presents a risk to human health to request that each retail establishment at which such infant formula is sold or available for sale post a notice of such recall; and (3) establish infant formula distribution records retention requirements.

EFFECTIVE DATE: March 28, 1989.

FOR FURTHER INFORMATION CONTACT: Curtis E. Coker, Jr., Center for Food Safety and Applied Nutrition (HFF-314), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-485-0024.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 13, 1987 (52 FR 30171), FDA proposed to amend its recall regulations for infant formulas to: (1) Specify recall procedures that shall be used by manufacturers in removing from the marketplace adulterated and misbranded infant formula that the agency has determined may present a risk to human health; (2) require a manufacturer recalling an infant formula that presents a risk to human health to request that each retail establishment at which such infant formula is sold or available for sale post a notice of such recall; and (3) establish infant formula distribution records retention requirements. FDA proposed these amendments to reflect changes in the infant formula provisions of the Federal Food, Drug, and Cosmetic Act (the act) contained in the Drug Enforcement Education and Control Act of 1986 (Pub. L. 99-570) (the 1986 amendments).

Interested persons were given until October 13, 1987, to comment on the proposal. FDA received comments from a trade association and a consumer group in support of the proposal. Both organizations suggested minor modifications to the proposed rule. The consumer group also commented on certain historical background information in the proposal's preamble. The agency is not responding to these comments on the historical background because they do not have a direct bearing on the proposed rule.

FDA initially proposed codifying the infant formula regulations in Part 7—Enforcement Policies (21 CFR Part 7), consisting of §§ 7.68 to 7.76. The agency has determined that because they specifically govern recalls of infant formulas and, because, in the case of a hazard to health, such recalls are mandatory, these regulations are more appropriately codified in Part 107—Infant Formula (21 CFR Part 107), consisting of §§ 107.200 to 107.260. The section headings have remained essentially the same. A summary of the pertinent comments and the agency's responses are as follows:

1. One comment requested that FDA revise the language in § 107.230(d) (21 CFR 107.230(d)) to require a 15-day limit on the time for displaying a notice of recall at retail establishments. (Section 107.230(d) was originally proposed as § 7.71(d) (21 CFR 7.71(d)).) In support of this suggestion, the comment stated that a uniform and definite posting period would be advantageous because it would eliminate the need for two communications from the manufacturer to the retailer, and that two communications could create an opportunity for confusion.

Another comment opposed limiting the time period for the display of this notice and stated that the required posting should be for a substantially longer period of time, although the comment did not suggest a specific alternative. In support of its opposition to the 15-day period, this comment stated that parents often buy infant formula in large quantities and, therefore, could miss a recall notice displayed for only a 15-day period.

The agency does not agree with either comment. FDA's experience is that each recall is unique; some recalls are completed before 15 days and others require a substantially longer time to complete. (FDA's current policy is that a recall of an infant formula is complete when the recalling firm has actually impounded all outstanding product that could reasonably be expected to be recovered.)

FDA believes that requiring an infant formula recall notice to be posted at a retail establishment after completion of the recall could cause confusion and concern to consumers and could have an unnecessary adverse economic impact on the industry and the recalling firm, as well as consumers, without achieving any public health benefit. Likewise, FDA believes that the public health would not be adequately protected by permitting such recall notices to be removed before completion of the recall. For these reasons, the agency has concluded that manufacturers should be required to request that recall notices be posted at retail establishments for the duration of the recall. Accordingly, § 107.230(d) remains as originally proposed.

2. One comment also suggested amending proposed § 107.240(a) to make it clear that inconsequential or technical violations of the act, such as a minor typographical error on a label or insignificant deviations in current good manufacturing practices, need not be reported to FDA. (Section 107.240(a) was originally proposed as § 7.72(a) (21 CFR 7.72(a).) In support, this comment cited statements by the amendments' cosponsors, Senators Hatch and Metzenbaum, made at the time the legislation was enacted. Another comment opposed this clarification and stated that FDA should be made aware of all deviations whether or not recall of a product results. The first comment also suggested a change in the format of § 107.240(a) to create two paragraphs in order to clarify that there are two separate instances in which notification to FDA is required.

The agency does not believe that the requested modification in the language of § 107.240(a) is warranted. The plain language of the notification provision of the 1986 amendments (section 412(e)(1) of the act, 21 U.S.C. 350a(e)(1) requires that a manufacturer with the requisite knowledge notify FDA of any infant formula that may not provide the required nutrients or that may otherwise be adulterated or misbranded; no exceptions from such notification for so-called technical violations are set forth in the statute. This plain language in the statute is controlling, in the absence of a clearly expressed legislative intent to the contrary. *United States* v. *Turkette*, 452 U.S. 576, 580 (1981).

In this case, the legislative history of the amendments, when read as a whole, expresses no clear intention by Congress to limit the types of adulteration or misbranding for which an infant formula manufacturer is required to notify FDA. In fact, Senator Hatch's complete remarks show that he was principally concerned about limiting the instances in which recalls, not notification to FDA, would be required. (132 Cong. Rec. S14047 (daily ed. September 27, 1986).) The final rule is consistent with both the plain language of the statute and the amendments' legislative history in that FDA will require an infant formula manufacturer to conduct a recall only when the infant formula presents a risk to human health.

Although FDA is declining at this time to limit by regulation the instances of adulteration and misbranding that must be reported to FDA pursuant to § 107.240(a), the agency intends to monitor the notifications made to the agency under § 107.240(a) to determine whether any limitations should be established in the future, either by guideline or further regulation.

In addition, FDA notes that even if a manufacturer elects to remove from the marketplace an infant formula that is adulterated or misbranded in only a technical way, such market removal does not constitute a recall subject to this subpart. Under longstanding agency policy, a firm's removal from the market of a product that is violative in some minor way (e.g., inconsequential deviations from good manufacturing practices), but would not be subject to seizure under current agency policy, is deemed to be a market withdrawal and not a recall. To constitute a recall, the subject product must be both violative and actionable (21 CFR 7.3(g)). Thus, even though this rule may require an infant formula manufacturer to notify FDA of a technical or minor instance of adulteration or misbranding, such notification will not necessarily trigger an FDA-required or even a firm-initiated recall. Accordingly, FDA believes that § 107.240(a) accurately implements this part of the 1986 amendments. For this reason, the language of § 107.240(a) remains as originally proposed.

FDA does believe, however, that the change in format recommended for § 107.240 has merit and, thus, has implemented that suggestion in the final regulation. Furthermore, in order to clarify the status of market recalls under this rule, FDA is revising § 107.210 (originally proposed as § 7.69) to state clearly that a manufacturer's voluntary removal from the market of an infant formula that is adulterated or misbranded in only a minor way and that would not be subject to agency legal action constitutes a market withdrawal within the meaning of 21 CFR 7.3(j). As revised, § 107.210(b) states that manufacturers conducting a market withdrawal may, but are not required to, adhere to the requirements of this subpart pertaining to product recalls. Revised § 107.210(b) also clarifies that, as discussed above, a manufacturer conducting a market withdrawal must nevertheless notify FDA of the adulteration or misbranding, as required by § 107.240(a). FDA does not consider this revision of § 107.210 to be a substantive change requiring reproposal because the preamble to the proposed rule clearly indicated the agency's intent to exclude market withdrawals from the recall requirements. ("As revised, new § 7.69 [now § 107.210] would apply to an infant formula that has been distributed, that does not present a human health risk, but that is otherwise in violation of the laws and regulations administered by FDA and against which the agency could initiate legal or regulatory action." (See 52 FR 30171 and 30172; August 13, 1987.))

In addition to the modifications in the final rule discussed above, FDA is making minor editorial changes in §§ 107.200, 107.220, 107.230, 107.240, and 107.250 to achieve greater clarity and consistency in the final rule. (These sections were originally proposed as §§ 7.68, 7.70, 7.71, 7.72, and 7.73, respectively.) FDA has determined that none of these modifications initiated by the agency is a substantive change that requires reproposal of the regulation.

Environmental Impact

The agency has previously considered the environmental effects of this rule as announced in the proposed rule of August 13, 1987 (52 FR 30171). No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

Economic Impact

In accordance with the Regulatory Flexibility Act, the agency previously considered the potential effects that this rule would have on small entities, including small businesses. In accordance with section 605(b) of the Regulatory Felxibility Act, the agency has determined that no significant impact on a substantial number of small entities would derive from this action. FDA has not received any new information or comments that would alter its previous determination.

In accordance with Executive Order 12291, FDA has previously analyzed the potential economic effects of this final rule. As announced in the proposal, the agency has determined that the rule is not a major rule as defined by the Order. The agency has not received any new information or comments that would alter its previous determination.

Paperwork Reduction Act of 1980

Section 107.260 of this final rule contains collection of information requirements that were submitted for review and approval to the Director, Office of Management and Budget (OMB), as required by section 3504(h) of the Paperwork Reduction Act of 1980. The requirements were approved and assigned OMB control number 0910-0188.

List of Subjects in 21 CFR Part 107

Food labeling, Infants and children, Nutrition, Reporting and recordkeeping requirements, Signs and symbols.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 107 is amended as follows:

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PART 107—INFANT FORMULA

1. The authority citation for 21 CFR Part 107 continues to read as follows:

Authority: Secs. 201 (n) and (aa), 403 (a) and (j), 412, 701, 52 Stat. 1041 as amended, 1047–1048 as amended, 1055–1056 as amended, 94 Stat. 1190–1199 (21 U.S.C. 321 (n) and (aa), 343 (a) and (j), 350a, 371); 21 CFR 5.11; § 107.100 issued only under secs. 201(aa), 412, 701(a), 52 Stat. 1055, 94 Stat. 1190–1193 (21 U.S.C. 321(aa), 350a, 371(a)); 21 CFR 5.11; Subparts A and C are issued under secs. 201 (n) and (aa), 409(a), 412, 701(a), 52 Stat. 1041 as amended, 1047 as amended, 1055, 94 Stat. 1190 (21 U.S.C. 321 (n) and (aa), 343(a), 350a, 371(a)); 21 CFR 5.11.

2. A new Subpart E consisting of §§ 107.200 through 107.280 is added to read as follows:

Subpart E—Infant Formula Recalls

Sec.

107.200 Food and Drug Administration-required recall.
107.210 Firm-initiated product removals.
107.220 Scope and effect of infant formula recalls.
107.230 Elements of an infant formula recall.
107.240 Notification requirements.
107.250 Termination of an infant formula recall.
107.260 Revision of an infant formula recall.
107.270 Compliance with this subpart.
107.280 Records retention.

Subpart E—Infant Formula Recalls

§ 107.200 Food and Drug Administration-required recall.

When the Food and Drug Administration determines that an adulterated or misbranded infant formula presents a risk to human health, a manufacturer shall immediately take all actions necessary to recall that formula, extending to and including the retail level, consistent with the requirements of this subpart.

§ 107.210 Firm-initiated product removals.

(a) If a manufacturer has determined to recall voluntarily from the market an infant formula that is not subject to § 107.200 but that otherwise violates the laws and regulations administered by the Food and Drug Administration (FDA) and that would be subject to legal action, the manufacturer, upon prompt notification to FDA, shall administer such voluntary recall consistent with the requirements of this subpart.

(b) If a manufacturer has determined to withdraw voluntarily from the market an infant formula that is adulterated or misbranded in only a minor way and that would not be subject to legal action, such removal from the market is deemed to be a market withdrawal, as defined in § 7.3(j) of this chapter. As required by § 107.240(a), the manufacturer shall promptly notify FDA of such violative formula and may, but is not required to, conduct such market withdrawal consistent with the requirements of this subpart pertaining to product recalls.

§ 107.220 Scope and effect of infant formula recalls.

(a) The requirements of this subpart apply:

(1) When the Food and Drug Administration has determined that it is necessary to remove from the market a distributed infant formula that is in violation of the laws and regulations administered by the Food and Drug Administration and that poses a risk to human health; or

(2) When a manufacturer has determined that it is necessary to remove from the market a distributed infant formula that:

(i) Is no longer subject to the manufacturer's control;

(ii) Is in violation of the laws and regulations administered by the Food and Drug Administration and against which the agency could initiate legal or regulatory action; and

(iii) Does not present a human risk.

(b) The Food and Drug Administration will monitor continually the recall action and will take appropriate actions to ensure that the violative infant formula is removed from the market.

§ 107.230 Elements of an infant formula recall.

A recalling firm shall conduct an infant formula recall with the following elements:

(a) The recalling firm shall evaluate in writing the hazard to human health associated with the use of the infant formula. This health hazard evaluation shall include consideration of any disease, injury, or other adverse physiological effect that has been or that could be caused by the infant formula and of the seriousness, likelihood, and consequences of the diseases, injury, or other adverse physiological effect. The Food and Drug Administration will conduct its own health hazard evaluation and promptly notify the recalling firm of the results of that evaluation if the criteria for recall under § 107.200 have been met.

(b) The recalling firm shall devise a written recall strategy suited to the individual circumstances of the particular recall. The recall strategy shall take into account the health hazard evaluation and specify the following: The extent of the recall; if necessary, the public warning to be given about any hazard presented by the infant formula; the disposition of the recalled infant formula; and the effectiveness checks that will be made to determine that the recall is carried out.

(c) The recalling firm shall promptly notify each of its affected direct accounts about the recall. The format of a recall communication shall be distinctive, and the content and extent of a recall communication shall be commensurate with the hazard of the infant formula being recalled and the strategy developed for the recall. The recall communication shall instruct consignees to report back quickly to the recalling firm about whether they are in possession of the recalled infant formula and shall include a means of doing so. The recalled communication shall also advise consignees how to return the recall infant formula to the manufacturer or otherwise dispose of it. The recalling firm shall send a followup recall communication to any consignee that does not respond to the initial recall communication.

(d) If the infant formula presents a risk to human health, the recalling firm shall request that each establishment, at which such infant formula is sold or available for sale, post at the point of purchase of such formula a notice of such recall at such establishment. The notice shall be provided by the recalling firm after approval of the notice by the Food and Drug Administration. The recalling firm shall also request that each retail establishment maintain such notice on display until such time as the Food and Drug Administration notifies the recalling firm that the agency considers the recall completed.

(e) The recalling firm shall furnish promptly to the appropriate Food and Drug Administration district office listed in § 5.115 of this chapter, as they are available, copies of the health hazard evaluation, the recall strategy, and all recall communications (including, for a recall under § 107.200, the notice to be displayed at retail establishments) directed to consignees, distributors, retailers, and members of the public.

§ 107.240 Notification requirements.

(a) *Notification of a violative infant formula.* A manufacturer shall promptly notify the Food and Drug Administration when the manufacturer has knowledge (as defined in section 412(e)(2) of the Federal Food, Drug, and Cosmetic Act (the act)) that reasonably supports the conclusion that an infant formula that has been processed by the manufacturer and that has left an establishment subject to the control of the manufacturer:

(1) May not provide the nutrients required by section 412(i) of the act and by regulations promulgated under section 412(i)(2) of the act; or

(2) May be otherwise adulterated or misbranded.

(b) *Method of notification.* The notification made pursuant to § 107.240(a) shall be made, by telephone, to the Director of the appropriate Food and Drug Administration district office specified in § 5.115 of this chapter. After normal business hours (8 a.m. to 4:30 p.m.), FDA's emergency number, 202–857–8400, shall be used. The manufacturer shall send written confirmation of the notification to the Division of Regulatory Guidance (HFF-310), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C St. SW., Washington, DC 20204, and to the appropriate Food and Drug Administration district office specified in § 5.115 of this chapter.

(c) *Reports about an infant formula recall*—(1) *Telephone report.* When a determination is made that an infant formula is to be recalled, the recalling firm shall telephone within 24 hours the appropriate Food and Drug Administration district office listed in § 5.115 of this chapter and shall provide relevant information about the infant formula that is to be recalled.

(2) *Initial written report.* Within 14 days after the recall has begun, the recalling firm shall provide a written report to the appropriate Food and Drug Administration district office. The report shall contain relevant information, including the following cumulative information concerning the infant formula that is being recalled:

(i) Number of consignees notified of the recall, and date and method of notification, including, for a recall pursuant to § 107.200 information about the notice provided for retail display and the request for its display.

(ii) Number of consignees responding to the recall communication and quantity of recalled infant formula on hand at the time it was received.

(iii) Quantity of recalled infant formula returned or corrected by each consignee contacted and the quantity of recalled infant formula accounted for.

(iv) Number and results of effectiveness checks that were made.

(v) Estimated timeframes for completion of the recall.

(3) *Status reports.* The recalling firm shall submit to the appropriate Food and Drug Administration district office a written status report on the recall at least every 14 days until the recall is terminated. The status report shall describe the steps taken by the recalling firm to carry out the recall since the last report and the results of these steps.

§ 107.250 Termination of an infant formula recall.

The recalling firm may submit a recommendation for termination of the recall to the appropriate Food and Drug Administration district office listed in § 5.115 of this chapter for transmittal to the Division of Regulatory Guidance, Center for Food Safety and Applied Nutrition, for action. Any such recommendation shall contain information supporting a conclusion that the recall strategy has been effective. The agency will respond within 15 days of receipt by the Division of Regulatory Guidance, Center for Food Safety and Applied Nutrition, of the request for termination. The recalling firm shall continue to implement the recall strategy until it receives final written notification from the agency that the recall has been terminated. The agency will send such a notification unless it has information, from FDA's own audits or from other sources, demonstrating that the recall has not been effective. The agency may conclude that a recall has not been effective if:

(a) The recalling firm's distributors have failed to retrieve the recalled infant formula; or

(b) Stocks of the recalled infant formula remain in distribution channels that are not in direct control of the recalling firm.

§ 107.260 Revision of an infant formula recall.

If after a review of the recalling firm's recall strategy or periodic reports or other monitoring of the recall, the Food and Drug Administration concludes that the actions of the recalling firm are deficient, the agency shall notify the recalling firm of any serious deficiency. The agency may require the firm to:

(a) Change the extent of the recall, if the agency concludes on the basis of available data that the depth of the recall is not adequate in light of the risk to human health presented by the infant formula.

(b) Carry out additional effectiveness checks, if the agency's audits, or other information, demonstrate that the recall has not been effective.

(c) Issue additional notifications to the firm's direct accounts, if the agency's audits, or other information demonstrate that the original notifications were not received, or were disregarded in a significant number of cases.

§ 107.270 Compliance with this subpart.

A recalling firm may satisfy the requirements of this subpart by any means reasonable calculated to meet the obligations set forth in this Subpart E. The recall guidelines in Subpart C of Part 7 of this chapter specify procedures that may be useful to a recalling firm in determining how to comply with these regulations.

§ 107.280 Records retention.

Each manufacturer of an infant formula shall make and retain such records respecting the distribution of the infant formula through any establishment owned or operated by such manufacturer as may be necessary to effect and monitor recalls of the formula. Such records shall be retained for at least 1 year after the expiration of the shelf life of the infant formula.

(Collection of information requirements in this section were approved by the Office of Management and Budget under OMB control number 0910–0188.)

Dated: December 22, 1988.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 89–1719 Filed 1–26–89; 8:45 am]

BILLING CODE 4160-01

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[T.D. ATF–281; Ref: Notice Nos. 620, 644, 647]

Stags Leap District Viticultural Area

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Final rule, Treasury decision.

SUMMARY: This final rule establishes a viticultural area in Napa County, California, to be known as "Stags Leap District." The northern boundary alone has been modified from that originally proposed, to the Yountville Cross Road. The establishment of viticultural areas and the subsequent use of viticultural area names as appellations of origin in wine labeling and advertising will help consumers better identify the wines they may purchase, and will help winemakers distinguish their products from wines made in other areas.

EFFECTIVE DATE: February 27, 1989.

FOR FURTHER INFORMATION CONTACT: James P. Ficaretta, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, Ariel Rios Federal Building, 1200 Pennsylvania Avenue NW., Washington, DC 20226 (202–566–7626).

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SUPPLEMENTARY INFORMATION:

I. Background

A. History

On August 23, 1978, ATF published Treasury Decision ATF-53 (43 FR 37672, 54624) revising regulations in 27 CFR Part 4. These regulations allow the establishment of definite viticultural areas. The regulations also allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements.

On October 2, 1979, ATF published Treasury Decision ATF-60 (44 FR 56692) which added a new Part 9 to 27 CFR, providing for the listing of approved American viticultural areas, the names of which may be used as appellations of origin.

B. Regulatory Criteria

Section 4.25a(e)(1), Title 27, CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features, the boundaries of which have been delineated in Subpart C of Part 9. Section 4.25a(e)(2) outlines the procedure for proposing an American viticultural area. The petition should include—

(a) Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;

(b) Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;

(c) Evidence relating to the geographical characteristics (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;

(d) A description of the specific boundaries of the viticultural area, based on features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and

(e) A copy of the appropriate U.S.G.S. map(s) with the boundaries prominently marked.

II. General Description—Final Rule

The Stags Leap District viticultural area is located east of the city of Yountville and approximately seven miles north of the city of Napa. It is bounded on the north by the Yountville Cross Road, on the east by the Stags Leap mountain range (400 foot contour line), on the south by a drainage creek that intersects the Silverado Trail at about the 60 foot contour line, and on the west by the Napa River. This viticultural area consists of approximately 2,700 acres, includes nine bonded wineries and approximately 1,360 acres of grapes, and is entirely within the Napa Valley viticultural area.

III. Rulemaking Proceeding

A. Petition

On August 22, 1986, the Stags Leap Appellation Committee (hereinafter referred to as Group A), petitioned ATF for establishment of a viticultural area in Napa Valley, California, to be known as "Stags Leap." The area proposed by the petitioners consisted of approximately 2,200 acres (including approximately 1,100 acres of vineyards), situated east of the city of Yountville, and five to eight miles north of the City of Napa. The proposed area was surrounded by hills to the north, east, and west, and was configured like a funnel.

Group A then submitted an amendment to its petition, dated December 18, 1986 (hereinafter referred to as the First Amendment) and requested, among other things, that the name of the proposed viticultural area be changed from "Stags Leap" to "Stags Leap District." This was done in order to underscore further the difference between the viticultural area designation and the names of two wineries within the proposed appellation, Stag's Leap Wine Cellars and Stags' Leap Winery.

On June 26, 1986, Group A submitted a second amendment and supplement to its original petition (hereinafter referred to as the Second Amendment). The Second Amendment requested a revision of the northern and western boundaries of the proposed Stags Leap District. Attached to the Second Amendment was a research document prepared by Silverado Vineyards, in support of Group A's contention that the Napa River, rather than the peaks of the hills west of the Silverado Trail, was the appropriate western boundary for the proposed viticultural area, and the ring of hills to the north was a more appropriate northern boundary. The revision of the northern and western boundaries added approximately 350 acres to the proposed viticultural area, for a total size of approximately 2,550 acres. Included within the extended boundaries were previously excluded vineyards owned by, among others, Silverado Vineyards and Mondavi Winery.

B. Notice

In response to the Second Amendment, ATF published Notice No. 620 in the Federal Register on February 11, 1987 (52 FR 4380), proposing establishment of the Stags Leap District viticultural area. The notice detailed the boundaries as proposed in the Second Amendment, and requested comments. Written comments were to be received on or before April 13, 1987.

C. Comments

ATF received two comments in response to the notice of proposed rulemaking. One comment in particular, dated April 10, 1987, was submitted by Mr. Stanley Anderson of S. Anderson Vineyard. Mr. Anderson, who owns a winery and vineyards located just north of the proposed northern boundary, requested that the northern boundary be extended approximately 800 yards. He suggested that the Yountville Cross Road would be a more appropriate boundary than the peaks of hills as proposed in Notice No. 620. The proposed revision would add 180 acres to the proposed Stags Leap District, for a total size of approximately 2,700 acres. With the exception of the northern boundary, Mr. Anderson supported the other boundaries as proposed in the notice.

Attached to Mr. Anderson's comment were letters from several neighboring vineyard owners who are also located in the proposed "northern extension," all of whom supported the extension of the northern boundary to the Yountville Cross Road. Mr. Anderson, and those of his neighbors who supported the northern extension, will hereinafter be referred to as Group B.

D. Hearing

In consideration of the comments received, ATF determined that the public interest would best be served by holding a public hearing on the matter. Pursuant to Notice No. 644, published on September 29, 1987 (52 FR 36431), ATF held a hearing on December 1 and 2, 1987, in Yountville, California, concerning establishment of the viticultural area. ATF heard oral comments from 32 persons. At the hearing, Mr. George Altamura (Altamura Vineyards & Winery), requested that the southern boundary of the proposed viticultural area be extended (approximately 2 miles) in order to include his vineyard and winery.

As specified in Notice No. 644, written comments were to be received on or before December 15, 1987. This date was then extended until January 15, 1988 (Notice No. 647, 52 FR 44917; November 23, 1987). In response to Notice Nos. 644 and 647, the Bureau received 167 comments, representing 172 signatures. ATF also received nine comments after the expiration of the comment period. All comments were given careful consideration in the preparation of this final rule.

IV. Decision

After extensive consideration of the evidence and comments presented regarding establishment of a Stags Leap District viticultural area, ATF finds that the evidence submitted with respect to the boundaries proposed by Group B satisfies the regulatory criteria set forth in § 4.25a(e)(2) of Title 27, Code of Federal Regulations, for the establishment of the Stags Leap District viticultural area.

Although recognizing that there is evidence which would support both Group A and Group B in this matter, ATF finds that the greater weight of evidence supports the Group B proposal. ATF finds that the general area encompassed within the boundaries proposed by Group B is locally referred to as Stags Leap District. In the Bureau's view, Group B adequately demonstrated that their proposed area reflects the current definition of Stags Leap District.

Further, ATF finds that the distinguishing features in the area proposed by Group A are also present in the northern extension proposed by Group B. Specifically, the soils in the northern extension are more similar to the soils within the area originally proposed than to the soils outside the proposed Stags Leap District. ATF believes that the soils (including subsoils) are the primary distinguishing geographical feature of the Stags Leap District.

In contrast, ATF finds that the evidence submitted in support of the proposed extension of the southern boundary did not satisfy the regulatory criteria. Specifically, there was no evidence that the area within the proposed southern extension is locally or nationally known as "Stags Leap (District)."

The boundaries of the viticultural area established by this final rule generally correspond to the area initially proposed by Group B, with modifications to avoid dividing existing vineyards. The specific boundaries of the viticultural area may be found at § 9.117.

V. Evidence

The following summarizes the evidence on which this final rule is based. As applicable, the petition, amendments, comments, and public hearing transcripts and exhibits are cross-referenced. This is indicated by parenthetical notations such as (Petition, p. * * *), (Tr. Vol. * * *, p. * * *), (Hearing Exhibit * * *), etc. In addition, to distinguish between comments received in response to the notice of proposed rulemaking (NPRM) and comments received in response to the hearing notices, comments will be referred to as either (NPRM Comment * * *) or (hearing Comment * * *).

A. Name

Both Group A and Group B submitted evidence which clearly established that there exists an area in Napa County, California, east of Yountville, with a viticultural history, known both historically and currently as Stags Leap District. (Petition, pp. 2–17; NPRM Comment 1). The only dispute regarding the name Stags Leap District concerns the specific boundaries of the viticultural area known by that name. Accordingly, ATF finds, based on the evidence, that both Group A and Group B satisfied the criteria of 27 CFR 4.25a(e)(2)(i) concerning the name of the viticultural area.

B. Boundaries

Group A submitted evidence that historically, the name Stags Leap was used solely in reference to Horace and Minnie Chase's summer manor house (Stags Leap Manor) constructed in 1890, their winery built in 1893, and the rocky promontory overlooking the area. (Petition, pp. 2–7, p. 25). For example, the petitioners submitted a copy of a wine label from the Chase winery indicating the name "Stags' Leap." (Petition, Exhibit 4). They also stated that "when old timers talk about the boundaries of Stags Leap District, they are more likely to be referring to the old Chase place and its immediate vicinity than they are to the broader viticultural area, which did not begin to be called Stags Leap until some time in the 1970s." (Second Amendment, p. 12).

Since the early 1970's, Mr. Carl Doumani (Stags' Leap Winery) and Mr. Warren Winiarski (Stag's Leap Wine Cellars) have included various brand and trade names on their wine labels which incorporate the geographic designation Stags Leap. (Petition, pp. 11–12; Petition, Exhibit 10).

In a 1973 court decision involving litigation over the use of the name Stags Leap, the judge ruled that "to a person of ordinary intelligence * * * 'STAG'S LEAP' is a designation for a substantial area or a range of mountains or hills." (Petition, p. 10). Thereafter, in the 1974 promotional material for his winery, Mr. Winiarski noted that "Stag's Leap is a regional designation which should in time become as familiar to wine buyers as certain domaines in European wine-growing regions." (Petition, pp. 15–16; Petition, Exhibit 10). The name Stags Leap gained further prominence when, in 1976, Mr. Winiarski's 1973 Cabernet Sauvignon took first place at a blind tasting in Paris, France. (Petition, p. 14).

While there was general agreement about the history of Stags Leap, the issues of contention during this rulemaking proceeding have centered around the northern boundary in particular and, to a lesser degree, the southern and western boundaries.

1. Southern Boundary

At the public hearing, Mr. George Altamura (Altamura Vineyards & Winery) commented that the area in which his vineyards and winery are located shares many of the same geographical features found within the proposed Stags Leap District, including soil series, vegetation, and air-flow pattern. Because of this, Mr. Altamura proposed that the southern boundary of the viticultural area be extended, approximately two miles, to a point where Soda Creek flows into the Napa River. (Tr. Vol. III, pp. 139–145). Mr. Altamura submitted evidence indicating that certain soils in the proposed southern extension (e.g., Haire series) were also found in the proposed Stags Leap District. (Hearing Exhibit 39; Hearing Comment 61).

In a post-hearing written comment (Hearing Comment 48), Mr. Ernie Weir of Hagafen Cellars stated that if the southern boundary was to be extended to include Mr. Altamura, he would also like his vineyards and winery to be included, however, "perhaps a more appropriate and correct southern border will not include either of us."

Neither Mr. Altamura nor Mr. Weir submitted evidence which would indicate that the name "Stags Leap" was locally or nationally known as referring to the proposed southern extension.

As previously mentioned, the regulations in 27 CFR 4.25a(e)(2) outline the procedure for proposing an American viticultural area. In particular, §§ 4.25a(e)(2) (i) and (ii) specify that evidence must be submitted indicating that the name of the viticultural area is locally and/or nationally known as referring to the area in the petition, and that the boundaries of the viticultural area are as specified in the petition. Based on the information in the rulemaking record, there is no evidence as to name, either historical or current, to support an extension of the southern boundary from that proposed in Notice No. 620. Therefore, ATF is not extending the southern boundary as proposed by Mr. Altamura.

2. Northern Boundary

Conflicting evidence as to the northern boundary was submitted in the

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petition, comments, and public hearing testimony. In its initial petition, Group A noted that there had been lively disagreement among the wine press over the boundaries of Stags Leap District. (Petition, p. 32). Group A and Group B both presented letters and declarations from long-time residents of the area, which presented conflicting recollections of the boundaries of the Stags Leap District. (Petition, Declarations B and C; NPRM Comment 1, Exhibits J–1 and P–1; Hearing Exhibit 2; Hearing Exhibit 28). Based on the evidence presented, ATF finds that while there are differences in the recollections of local residents as to the boundaries of the Stags Leap District, there is evidence to support the conclusion that the northern extension is known locally as part of Stags Leap District.

Mr. William F. Heintz, a wine historian, testified on behalf of Group A at the public hearing. Mr. Heintz stated that in the 1880s, the Napa Wine Growers Association created a series of sub-districts within the southern part of Napa Valley, for the purpose of gathering data. Mr. Heintz extrapolated from the available data that the boundaries of one of these sub-districts closely corresponded to the boundaries of the Stags Leap District, as proposed in Notice No. 620. (Tr. Vol. I, pp. 63–64). This evidence was disputed by Charles Sullivan, another wine historian, who contended that the evidence from the 19th century was too incomplete to draw any conclusions as to boundaries. Mr. Sullivan stated that for purposes of determining the validity of the appellation, only the history since the 1950s was relevant. (Hearing Comment 103). ATF finds that the evidence about the 19th century boundaries of the Napa Wine Growers Association sub-districts was inconclusive; therefore, this evidence was not considered to be significant for purposes of determining the current boundaries of the Stags Leap District.

Group A also presented evidence to the effect that the vineyard owners in the northern extension referred to themselves as being located in "Yountville" rather than "Stags Leap." (Hearing Comment 84, p. 6; Hearing Exhibit 10). Group A pointed to the fact that none of the grapes grown in the northern extension were used in wines that were labeled as "Stags Leap." (Hearing Comment 84, p. 9). They also pointed to the fact that one of the vineyard owners in the proposed extension, Mr. Jack Abruzzini, called his vineyard "J. Abruzzini's Yountville Vineyard," and considered himself as being within the Yountville area, rather than the "Stags Leap District." (NPRM Comment 2; Hearing Comment 29).

Group B presented evidence that the terms Yountville and Stags Leap District were not mutually exclusive, and stated that residents within the proposed Stags Leap District and the proposed northern extension had ties to the cities of Napa and Yountville. Mrs. Dorothy Barboza, a vineyard owner in the northern extension, submitted evidence that various vineyards and wineries located within the boundaries of the proposed Stags Leap District were listed in the telephone book as being in Yountville and Napa. (Tr. Vol. III, p. 58; Hearing Exhibit 33). Mrs. Barboza also submitted evidence that three of the wineries in the proposed Stags Leap District were members of the Yountville Chamber of Commerce. (Hearing Exhibit 35). In addition, Mrs. Barboza submitted labels for one winery in the proposed Stags Leap District indicating Yountville as its location. (Hearing Exhibit 30).

Group B argued that there was no uniformity in self-description in the Stags Leap District; thus, there was no contradiction between using a Yountville address and being within the Stags Leap District viticultural area. ATF finds that the various wineries and vineyards within both the proposed Stags Leap District and the so-called "northern extension" used various names in geographical self-description, including Yountville and Napa. Thus, the Bureau does not find that this criteria is a useful means of distinguishing vineyards and wineries within the appellation from those outside the appellation.

Both Group A and Group B submitted various articles from the wine press and the general press to support the respective boundaries proposed. Most of the articles submitted did not articulate specific boundaries for the Stags Leap District, but merely referred to the fact that various wineries or vineyards were located within the boundaries of Stags Leap. Of the articles which did mention specific boundaries, there was no uniformity.

For example, one article implied that the Stags Leap District area extended as far west as the Napa River (Petition, Exhibit 13, *Trumpetvine Wines*, April 1985, "Stags Leap Saga, Part II"), while others implied that the Silverado Trail (Petition, Exhibit 13, *Connoisseur's Guide to California Wine*, Jan–Feb 1977), or perhaps an area to the west thereof (Hearing Exhibit 12, the Napa Register (4/17/81), "Napa Wines Take Tasting Honors") were the boundary. In one article, a vineyard/winery owner described the Stags Leap District as consisting of only 450 acres (Petition, Exhibit 13, *The Wine Spectator*, January 1–31, 1985, "Standing Fast for Cabernet"), while in another article, it was described as consisting of 1,000 acres. (Petition, Exhibit 13, *Friends of Wine*, April-May 1984, "Napa Winery Profiles: The Quest For Site").

Some of the evidence submitted was susceptible of more than one interpretation. For example, in support of the extended northern boundary, Group B submitted as evidence a map prepared by the U.S. Department of Agriculture (USDA) Soil Conservation Service (SCS) which included a sub-district known as "South East Yountville Stag's Leap Area." (NPRM Comment 1, pp. 6–7). The sub-district had as its northern boundary the Yountville Cross Road, and as its western boundary the Napa River. Although the southern boundary extended almost all the way to the city of Napa, it did *not* include the vineyards owned by Mr. Altamura or Mr. Weir.

Group A countered with the claim that the map supported its assertion tha the so-called northern extension was a part of Yountville. (Hearing Comment 84, p. 7). ATF contacted the SCS, and was informed by letter dated May 16, 1988, that the boundaries were drawn based on the property lines of "cooperators," i.e., ranches and farms being assisted by the SCS. (Requested Information 5). The map was for internal filing purposes only, and was not distributed to the public. In addition, the map submitted by Group B was a replacement for one originally drawn up during the 1950s, but which had been lost sometime before 1983. Consequently, as pointed out by the SCS, "* * * it is highly unlikely that the current map matches the original." Therefore, ATF has concluded that the map is not of great evidentiary weight, and that it does not support conclusively either Group A or Group B.

Both Group A and Group B have pointed for support to an article that appeared in the September 1981 issue of *Vintage Magazine*, entitled "How Many Stags in a Stag's Leap?" (Petition, Exhibit 13). In describing the Stags Leap District, the author of the article, Richard Paul Hinkle, defined its bounds "[f]or the immediate sake of argument, * * * as being Clos du Val on the south, the Silverado Trail on the west, an extension of the Yountville Cross Road on the north (just south of Rector Reservoir), and the rocky promontories of the eastern flank of the Mayacamus Mountains (also called Stags Leap) to the east."

Group B uses this article in support of its contention that the northern boundary goes as far north as the Yountville Cross Road. (NPRM Comment 1, p. 4, 8). Group A points to the fact that the boundaries as articulated by Mr. Hinkle would eliminate all vineyards located west of the Silverado Trail (Hearing Comment 84, p. 6) including, among others, the vineyards of S. Anderson Vineyard, Pine Ridge Winery, Silverado Vineyards, and Mondavi Winery. However, Mr. Hinkle's article does go on to say that "[a] significant chunk of acreage may be disputed when the western boundaries come up for discussion. Involved are the Disney (Silverado) vineyards * * *, Pine Ridge's vines * * *, and Mondavi's * * *."

ATF finds that neither the Hinkle article, nor any other article submitted in the rulemaking record, specifically lists boundaries identical to either proposal. In addition, none of the articles submitted provides a comprehensive, all-inclusive list of wineries and vineyards included in the area which would correspond to the boundaries proposed by Group A or Group B.

Most of the articles submitted were not intended to present definitive lists of the wineries and vineyards within the Stags Leap District. Therefore, ATF does not find that the fact that some vineyards or wineries were not mentioned is evidence that those vineyards or wineries are not within the Stags Leap District. Some of the smaller vineyards located in the center of the proposed Stags Leap District were not mentioned in any of the articles submitted. Instead, ATF has found the press articles useful in setting the parameters of the boundaries of the Stags Leap District.

With reference to the disputed northern boundary, it should be noted that Group A did not submit any articles which specifically placed the northern boundary at the hills, as proposed in Notice No. 620. However, Group B submitted one article which specifically included S. Anderson Vineyard on a map of the "Stag's Leap Area." (NPRM Comment 1, Exhibit E). In addition, Group B submitted a copy of a 1983 itinerary for a wine touring business, Wine Adventures, Inc., which refers to S. Anderson Vineyard as being located in the Stag's Leap region. (Hearing Comment 47; Requested Information 2). Thus, ATF finds that the weight of the evidence supported the northern addition proposed by Group B.

3. Western Boundary

With reference to the western boundary, although there was no dispute to the boundary among the participants at the hearing, ATF did receive conflicting evidence as to its correct location. Specifically, while Group A amended its petition to move the western boundary from the hills west of the Silverado Trail to the Napa River, articles were submitted which indicated that the western boundary was somewhere east of the Napa River. (Hearing Exhibit 12; Petition, Exhibit 13). This conflict was noted in the Hinkle article previously mentioned. However, Group A presented evidence which indicated that the Napa River was the western boundary of the Stags Leap District area. (Petition, Exhibit 13). In addition, Group A submitted articles which specifically included Silverado Vineyards and Mondavi Winery vineyards as part of the Stags Leap area. (Second Amendment, pp. 3–4; Petition, Exhibit 13). ATF finds that the weight of the evidence supports the placement of the western boundary at the Napa River, as proposed in Notice No. 620.

4. Examples of Evidence Utilized in Support of Decision

ATF has utilized over 40 pieces of information which, taken collectively, support the boundaries as adopted in this Treasury decision. In the following paragraphs, the Bureau will provide some examples of the evidence it used in establishing the boundaries of the Stags Leap District viticultural area.

Northern Boundary—S. Anderson Vineyard. (1) A copy of an itinerary (dated 10/13/83) for a wine touring business, Wine Adventures, Inc., which refers to S. Anderson Vineyard as being located in the Stags Leap wine region. (Hearing Comment 47; Requested Information 2).

(2) An article, entitled "(Sinskey) Winery Cleared Over Objections" (Napa Register, 2/5/87), includes S. Anderson Vineyard on a map of the "Stag's Leap Area." (NPRM Comment 1, Exhibit E).

(North) Eastern Boundary—Shafer Winery, Stags' Leap Winery. (1) Copies of certificates of label approval for Shafer brand 1978 Cabernet Sauvignon and 1980 Zinfandel (dated 5/20/80 and 3/5/82, respectively). The labels indicate that the "grapes were grown in the Stag's Leap area of the Napa Valley." The grapes were grown in Shafer's vineyards. (Petition, Exhibit 10; Requested Information 4).

(2) An article in the April–May 1984 issue of *Friends of Wine* (page 35) which describes Shafer Vineyards as being located in the Stags' Leap area. (Petition, Exhibit 13).

(3) A copy of a certificate of label approval (dated 8/20/82) for Pine Ridge brand 1980 Merlot. The label indicates that part of the wine was derived from grapes grown in the "Stag's Leap district." The grapes came from the vineyards of Stags' Leap Winery. (Petition, Exhibit 10; Requested Information 4).

(4) An article in the April 1985 issue of *Trumpetvine Wines*, entitled "Stags Leap Saga, Part II," describes Stags' Leap Winery as being located in the "Stags Leap area." (Petition, Exhibit 13).

Southern Boundary—Clos du Val Winery. (1) In the revised edition of Bob Thompson's "The Pocket Encyclopedia of California Wines" (Copy. 1985), a reference is made that "most of the grapes (to make Clos du Val wines) come from winery-owned vineyards around the cellars at Stag's Leap * * *"

(2) In the third edition of Alexis Lichine's "New Encyclopedia of Wines & Spirits" (Copy. 1984), Clos du Val Winery is described as having "about 300 acres * * * of vineyards in the Stag's Leap and Carneros districts * * *"

Western Boundary—Silverado Vineyards, Robert Mondavi Winery. (1) A copy of a photograph that appeared in the January 1–31, 1982 issue of *The Wine Spectator*, with the caption "Silverado Vineyard, in Napa's Stag's Leap area, takes form." (Petition, Exhibit 13).

(2) In a review of Silverado's 1961 Cabernet, the *California Grapevine* (April–May 1984) noted that the "grapes were estate-grown in the Stag's Leap area." (Second Amendment, p. 5).

(3) In an article appearing in the *San Francisco Examiner* (3/9/83), writer Harvey Steiman notes that "Robert Mondavi has vineyards here (Stag's Leap District)." (Petition, Exhibit 13).

(4) An article in the April 1985 issue of *Trumpetvine Wines* (previously mentioned), includes the vineyards of Robert Mondavi, east of the Napa River and west of the Silverado Trail, as being included in the "Stags Leap area." (Petition, Exhibit 13).

Central Area—Pine Ridge Winery, Steltzner Vineyards, Stag's Leap Wine Cellars, Nathan Fay Vineyards. (1) In the September 1981 issue of the *Alabama Wine Guide* (Vol. 1, No. 4), Pine Ridge Winery is described as being "located in the Stag's Leap district of the Napa Valley." (Hearing Exhibit 12).

(2) In an article that appeared in the June 1, 1983 edition of the *San Francisco Chronicle*, entitled "Cabernets of Stag's Leap," writer Anthony Dias Blue mentions some of the wineries in the "Stags Leap district" including Pine

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Ridge and Stag's Leap Wine Cellars. Reference is also made to the vineyards of Richard Steltzner as being located in the Stags Leap area. (Petition, Exhibit 13).

(3) In the third edition (revised) of "The Connoisseurs' Handbook of California Wines" by Charles E. Olken, Earl G. Singer and Norman S. Roby (Copy. 1984), Stag's Leap is described as being east of Yountville and including Stag's Leap Wine Cellars. (Petition, Exhibit 13).

(4) Point of sale literature for St. Andrew's Vineyard brand 1981 Cabernet Sauvignon which indicates that part of the wine was derived from grapes grown in the "Stag's Leap area in the Napa Valley." The grapes were grown in Richard Steltzner's vineyards. (Petition, Exhibit 11; Requested Information 1).

(5) A copy of a certificate of label approval (dated 3/15/82) for San Francisco Symphony brand 1979 Cabernet Sauvignon which indicates "Stag's Leap District" as the origin of the wine. The label states that the grapes came from the vineyards of Richard Steltzner.

(6) A copy of a certificate of label approval (dated 10/30/80) for Berkeley Wine Cellars brand 1978 Cabernet Sauvignon which indicates the "Stag's Leap Region of Napa Valley" as the origin of the wine. The grapes came, in part, from the vineyards of Nathan Fay. (Petition, Exhibit 11; Requested Information 1).

(7) A copy of a certificate of label approval (dated 6/1/84) for Bay Cellars brand 1982 Clarion red wine. The label indicates that the wine was produced, in part, from grapes grown in the "Stag's Leap region." The grapes came from Nathan Fay's vineyards. (Petition, Exhibit 11; Requested Information 1).

After consideration of all of the evidence presented, ATF has concluded that there is sufficient evidence to substantiate that the additional area proposed by Group B has been and is currently considered within the Stags Leap District by the general public. Consequently, ATF finds that the area encompassed within the boundaries proposed by Group B accurately reflects the grape growing region known as Stags Leap District.

C. Geographical Features

Group A contends that their proposed area is distinguished from surrounding areas by geographical features. They maintain that the topography, climate, and soils which characterize their proposed area combine to produce unique growing conditions. Moreover, they contend that the additional area encompassed by the Group B proposal is characterized by geographical features which are more similar to the Napa Valley floor than to their proposed area.

On the other hand, Group B maintains that there are no significant differences in topography or climate between the area proposed in Notice No. 630 and the northern extension area. Group B presented evidence that the soils in the northern extension were the same as the soils in the proposed area.

1. Topography

In their initial petition, Group A submitted evidence that the proposed Stags Leap (District) viticultural area had a distinct microclimate, resulting from the orographic configuration of the area. They contended that the area, surrounded on three sides by hills or mountains, was configured like a funnel, which accentuated the inflow of cool air from San Pablo Bay, which is located south of the proposed area. (Petition, pp. 38–39). As stated in the weather report of Irving P. Krick Associates, Inc. (Petition, p. 39):

> The wide end of the funnel faces south to receive the bay breeze and the frequent fogs and low clouds which accompany it. These breezes are then guided into the area by its unique topography, including the mountains to the east of the Silverado Trail and the series of contiguous hills to the west of the Trail, which serve as the two sides of the funnel.

The Krick report goes on to state that the topography of the area also controls the movement of air out of the area, "[s]pecifically, the air exits to the mountain elevations to the north or, * * * to the main valley floor through the narrow passes at the north of Stags Leap." (Petition, p. 39).

However, with the subsequent extension of the western boundary from the hills west of the Silverado Trail to the Napa River (Second Amendment), as proposed in Notice No. 620, ATF does not believe that the topography of the viticultural area is a significant geographical feature in determining a western boundary. As meteorologist Donald Schukraft (Weather Network, Inc.) stated at the public hearing in discussing the extended (western) area, "[t]here is no funnel effect here. This area is open to the Valley." (Tr. Vol. I, p. 125).

Similarly, ATF does not believe that topography is a significant geographic feature in determining the northern boundary of the Stags Leap District viticultural area. Although the petitioners had noted that the northern ring of hills, just south of the Yountville Cross Road, defined part of the "funnel," no evidence was submitted in the rulemaking proceeding which conclusively demonstrated a difference between the area north and south of the hills.

2. Climate—Temperature

In their Second Amendment, Group A included a weather study of the proposed viticultural area (as specified in Notice No. 630), prepared by Weather Network, Inc. Weather data was obtained from thermographs and automatic weather stations located both inside and outside (e.g., approximately ½ mile west of) the proposed viticultural area. As noted in the report (Second Amendment, p. 34):

> * * * the daily maximum and minimum temperatures recorded by the stations in Stags Leap District were generally several degrees higher than those recorded by the weather station to the west of the Napa River and near the center of the Valley floor. On some days the differences between the two stations were over ten degrees.

However, Weather Network, Inc. did not set up a weather station in the proposed northern extension area. Consequently, there is no data available from that area. Moreover, the petitioners had conceded that actual maximum temperature values were not significantly different from those in nearby areas. (Petition, p. 40). In the aforementioned Krick report, it was stated that the funnel effect did not cause degree day values as currently calculated to vary appreciably between the Stags Leap area and the adjacent Napa Valley areas, and "for this reason it would be misleading to use only degree-days as a criteria for evaluating the microclimate of the various vineyards within short distances of Stags Leap." (Petition, p. 40).

At the public hearing, Mr. Donald Schukraft, a certified consulting meteorologist, commented that the hills along the northern boundary of the proposed Stags Leap area "provide changes in the wind-flow pattern that consequently produce changes in the temperatures and humidity in the vineyards to the north and south of the hills. These changes * * * are not found at the Yountville Cross Road." (Tr. Vol. I, p. 118). For example, Mr. Schukraft asserted that on a day when the wind-flow is from the south, the air would flow around the northern hills (south of the Yountville Cross Road) and exit the area south of the northern hills, resulting in temperatures that are lower and humidity that is higher than the area north of the hills. However, Mr. Schukraft presented no climatological data to support those conclusions.

ATF received conflicting reports from vineyard owners both within the proposed area and within the northern extension as to the effects of the wind on their respective grape vines.

Mr. Richard Chambers, who owns a vineyard in the northern extension, stated at the public hearing that the area in the northern extension (south of the Yountville Cross Road) also receives the breezes from the San Pablo Bay. (Tr. Vol. III, p. 25). To support this contention, he provided photographs of his vineyard and other vineyards in the northern extension (S. Anderson Vineyard and Missimer Vineyard) which depicted grape vines bent over, growing toward the north, away from the south wind. On the other hand, in the area around Yountville (west of the Napa River), Mr. Chambers noted only neutral vine growth. (Hearing Exhibit 27). As to how far north the strong wind extended, Mr. Chambers stated that "it undoubtedly crosses the Yountville Cross Road," before dissipating in the area further up State Lane. (Tr. Vol. III, p. 26).

However, Group A submitted evidence to the contrary. In their post-hearing brief (Hearing Comment 84, Exhibit P), Mr. John Stuart of Silverado Vineyards stated that in Silverado's vineyards in Yountville, cane growth is also oriented toward the north, with subsequent wind damage. Mr. Robert Egan submitted a post-hearing comment (Hearing Comment 85) which included photographs of Mr. Chambers' vineyard and Mr. Anderson's vineyard indicating that the wind had little or no effect on the vines or canes in either vineyard.

Mr. Egan provided photographs of his own vineyard, located just south of the northern hills, and suggested that the vines tended to lean to the north as a result of the wind.

ATF finds that the evidence presented as to the effect of the wind within the proposed viticultural area is too inconclusive to support a finding that the northern hills provide a significant barrier to the winds from the south, with resulting differences in temperature. ATF notes that the evidence presented at the hearing indicated that there was no "funnel effect" from the area west of the hills west of the Silverado Trail to the Napa River. ATF does not believe that the "funnel effect" represents a significant geographical feature of the entire viticultural area as proposed by Group A. Therefore, ATF does not believe that climate, with regard to temperature, is a significant distinguishing geographical feature in determining the boundaries of the Stags Leap District viticultural area.

3. Climate—Precipitation/Moisture

Based on data presented in the USDA SCS *Soil Survey of Napa County, California* (August 1978), average annual precipitation within the Stags Leap District is 25 to 30 inches.

Similar amounts of rainfall can be expected in the areas west and south of the viticultural area, while average rainfall north and east of the viticultural area increases to between 30 and 35 inches. ATF notes that there is no conclusive evidence that the area between the Yountville Cross Road and the northern hills has different precipitation patterns from the proposed viticultural area.

Professor Elliott-Fisk, an expert witness for Group A, concluded that the types of plants and density of forests and woodlands on the ridges and hills of the proposed Stags Leap District indicate the entrapment of moist, marine air within the area. She also stated that with the exception of the oak-madrone woodland, other types of woodlands found within the proposed Stags Leap District, such as the oak forest, madrone forest, and conifer-hardwood forest, do not continue to the north and south of the proposed district. (Hearing Comment 84, Exhibit M. p. 2). This evidence was disputed by Mrs. Dorothy Barboza, a vineyard owner in the northern extension, who sent photographs of conifer trees in the northern extension. (Post Hearing Comment Period 3). The Bureau has determined that there is insufficient evidence on this issue to support a finding that the types of vegetation in the northern extension differ significantly from the types of vegetation found in the proposed Stags Leap District.

4. Soil—General

Based on the evidence submitted in this rulemaking procedure, ATF has concluded that the soil (including the subsoil) is the primary geographical feature that distinguishes Stags Leap District from the surrounding areas.

According to the SCS soil survey, there are 31 soil series within Napa County. Approximately 45% of these soil series are present within the Stags Leap District, as adopted by this Treasury decision. Certain of these soil series, such as Millsholm, Perkins, and Kidd, are found within the viticultural area but not in the surrounding areas. However, within the Stags Leap District area, the Bale soil series predominates. Bale soils are also found to the north of the viticultural area, but not in the surrounding areas to the east, south, or west. The SCS describes Bale soils as being somewhat poorly drained on alluvial fans, flood plains, and low terraces. As described in the soil survey, they are formed in alluvium derived from rhyolite and basic igneous rock. In the following paragraphs, the Bureau will discuss the reasons why it concluded that the soils of the Stags Leap District form the best geographical basis for distinguishing the District from the areas which surround it.

a. Eastern Boundary. The Stags Leap mountain range is located just east of the Stags Leap District. Consequently, this area consists mainly of Rock outcrop and, to a lesser degree, the Hambright soil series. The SCS soil survey notes that these types of soils are not used for growing wine grapes, either because they are not suitable or there is no water available for irrigation. (SCS Soil Survey, August 1978, pp. 40–43).

b. Southern Boundary. The dominant soils south of the viticultural area include the Hambright series, the Haire series, the Yolo series, and the Cole series. These four soil series converge just south of the viticultural area and, in effect, "pinch" it off. In addition, in its post-hearing comment, Group A noted that there is a confluence of three drainage systems just south of the viticultural area—the Napa River, Dry Creek, and Hopper Creek. (Hearing Comment 84, Exhibit U).

c. Western Boundary. In Group A's initial petition, they submitted a report on soils from viticultural consultant Richard Nagoaka. Mr. Nagoaka stated that the dominant soils west of the Napa River include the Yolo series, the Cole series, and the Clear Lake Series. (Petition, p. 48). Mr. Nagoaka also stated that:

> The soils to the east of the (Napa) river (the Stags Leap side) were deposited by alluvial forces from parent materials from the Vaca Range on the eastern rim of the Napa Valley. By contrast, the soils to the west of the Napa River were deposited from parent materials from the Mayacamus Range on the western rim of the valley. These two ranges not only appear different, but are composed of profoundly different materials. (Petition, p. 45).

According to Mr. Nagoaka, the Vaca mountain range was formed about ten million years ago through volcanic activity. In contrast, the Mayacamus mountain range formed about 30 million years ago, and is composed of fines and sedimentary materials. Thus, as Mr. Nagoaka pointed out, soils west of the Napa River "tend to be deeper, more fertile and of greater water-holding capacity" than those east of the Napa River. (Petition, p. 46). Because of the greater water-holding capacity, soils west of the Napa River do not require

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late irrigation. Mr. Nagaoka compared the water-holding capacity of the Cole silt loam soils (west of the Napa River) with the Bale clay loam soils east of the Napa River. He found that the Bale soils contained 0.06–0.11 inches of available water per inch of soil, while the Cole soils contained 0.18–0.21 inches of water per inch of soil, approximately double the water-holding capacity. Mr. Nagaoka concluded that "[v]iticulturally, the management of vineyards west and east of the river is profoundly influenced by the different soil types and their characteristics." (Petition, p. 89).

d. Northern Boundary. The public hearing and subsequent comments produced much conflicting evidence as to classification of the soils in the proposed northern extension. Based upon the following evidence, however, ATF has concluded that the soils in the northern extension are more similar to the soils in the area proposed in Notice NO. 620 than to the area to the north of the Yountville Cross Road. The following evidence was considered by ATF:

i. Elliott-Fisk Geography Report. At the hearing, Professor Deborah Elliott-Fisk, an Assistant Professor, Department of Geography, University of California, Davis, testified on behalf of Group A. Professor Elliott-Fisk stated, on the basis of soil samples taken in the area north of the Yountville Cross Road, that she believed that the soils south of the Yountville Cross Road had been incorrectly mapped as Bale clay loam on SCS maps. (Tr. Vol. I, p. 94–95).

Professor Elliott-Fisk conceded, however, that she had not taken any soil samples from the area south of the Yountville Cross Road. In their post-hearing brief, Group A summarized the findings of Professor Elliott-Fisk, as follows:

> The vineyard area within (the proposed) Stags Leap District, which once served as the channel of the Napa River, contains alluvial sub-soils derived from volcanic and sedimentary bedrock and from Napa River deposits. These soils have never been covered by fan deposits and are fine, well-weathered and well-drained. By contrast, the sub-soils of the areas north and south of (the proposed) Stags Leap District are comprised of more recent deposits of the well-defined Rector Canyon Fan and Soda (Canyon) Creek Fan, respectively. (Hearing Comment 84, p. 11).

Professor Elliott-Fisk stated that the beginning of the Rector Canyon Fan abutted the northern edge of the hills which were proposed as the northern boundary of Stags Leap District. She stated that the Soda Canyon Fan began at approximately the southern boundary of the proposed viticultural area. (Tr. Vol. I, p. 92; Hearing Exhibit 6).

In support of the above conclusions, Professor Elliott-Fisk stated that (subsequent to the hearing) she had sampled and analyzed soils from both within and outside of the proposed viticultural area. The samples within the proposed viticultural area were taken from the Egan property (just south of the northern hills), and the Silverado Vineyards property (just inside the proposed western boundary, east of the Napa River). Samples were also taken from the Simonson property in the northern extension (just north of the proposed northern boundary, and south of the Yountville Cross Road), and from another Egan property (just north of the Yountville Cross Road, and west of State Lane), and from two sites just south of the proposed southern boundary of Stags Leap District (Shafer Winery's Oak Knoll vineyard).

In her report (Hearing Comment 113), Professor Elliott-Fisk noted that her analyses of the above-mentioned samples indicated the following:

(a) The soils on the properties of Simonson (located in the northern extension), and Egan (located just north of the Yountville Cross Road), were both formed on the Rector Canyon Fan; however, the Egan soil is "at the outer margin of the Rector Canyon Fan and the outer margin of the Napa River flood-plain/historic terrace." (Hearing Comment 113, p. 6).

(b) The soil on the Egan property within the proposed Stags Leap District is on the old (former) Napa River channel;

(c) The Silverado Vineyards property shares soil similarities with the more central portion of the proposed Stags Leap District, and;

(d) The soils on the Shafer property, just south of the proposed viticultural area, are on the Soda Canyon Fan.

Group A also contended that the different sub-soil profiles and compositions "are particularly relevant viticulturally because grape vines typically root in the sub-soil, not just the topsoil." (Hearing Comment 84, p. 11).

ii. Zinke Geography Report. In its post-hearing comment (Hearing Comment 101), S. Anderson Vineyard included a soils report prepared by Professor Paul Zinke, a professor in the Department of Forestry, University of California, Berkeley. Professor Zinke concluded, on the basis of observations he made while visiting the proposed Stags Leap District and its surrounding area, a review of various soil surveys, soil maps and topographical maps, and soil samples taken on a second visit to the proposed viticultural area, that the soils of the Stags Leap District (including the northern extension), are consistent throughout the properties stretching from a line following the small drainage channel approximately parallel to and immediately north of the Yountville Cross Road, west of the Silverado Trail, south to a point near the Chimney Rock Golf Course. He found that:

> The distinctive soil aspect of the Proposed Stags Leap District, including the Northern Extension, is a catena or topographic sequence of soils beginning in the east with a terrace against the base of the Stags Leap Ridge at an elevation of approximately 200 feet, continuing with an alluvial fan on which soils of the Bale series occur, then to the lower end where the fan buries deposits of the Napa River in the west. These distinctive combinations of soils occur several places in the Stags Leap District from immediately north of the Yountville Cross Road to near the Chimney Rock Golf Course. (Hearing Comment 101, Zinke Report, p. 1).

Professor Zinke stated that the Reactor Creek (Canyon) Fan begins at a drainage ditch which is approximately parallel to, and just north of the Yountville Cross Road. According to Professor Zinke:

> This is the line where the soils change from those of the Stags Leap District to the coarser soils of the Rector Creek Fan. North of this drainage ditch the soils begin to be dominated by the Rector Creek alluvial fan. (Hearing Comment 101, Zinke Report, p. 8).

SCS and USGS Reports. ATF was thus presented with conflicting reports from two experts in the field as to the characteristics of the soils in the northern extension. Both Professors Elliott-Fisk and Zinke acknowledged the presence of a Rector Canyon (Creek) Fan, and believed that Rector Canyon soils were different from Stags Leap District soils. However, whereas Professor Elliott-Fisk believed that the Rector Canyon Fan begins at the northern hills at the northern boundary of the proposed viticultural area, Professor Zinke believed that it began some 500 yards north of the hills, on the north side of the Yountville Cross Road.

The evidence submitted led ATF to the conclusion that the soils and subsoils were the primary geographical feature that distinguished the Stags Leap District from surrounding areas. In order to better evaluate the conflicting expert evidence which had been submitted on the issue of soils, ATF forwarded copies of the reports of Professors Elliott-Fisk and Zinke to the SCS and the United States Geological Survey (USGS) for their review and response.

By letter dated May 16, 1988, the SCS responded to ATF's request. (Requested Information 5). The SCS was unable to reach any definitive conclusions from the evidence before it, but did address Professor Elliott-Fisk's assertion that the soils in the northern extension had been incorrectly classified on the SCS map. The SCS included with its response an internal memorandum, dated May 5, 1988, which stated that almost all soil delineations contain small areas of other soils, often quite contrasting soils, which are called "inclusions." The letter stated that "it is important to note that the sample sites in her (Professor Elliott-Fisk's) report do not necessarily confirm that Bale soils similar to those described south of the 'Rector Canyon Fan' line do not exist within the northern extension proposed by Zinke."

By letter dated June 9, 1988, the USGS submitted its review of the data. (Requested Information 7). The letter noted that the reviewer was merely analyzing the reports, and did not have the advantage of a field review, detailed photographic review, or review of the data collected by either consultant. The reviewer concluded that there were reasonable arguments and data to support either position of the northern boundary.

The USGS reviewer noted the heterogeneity of soil types within the proposed Stags Leap District. (As previously mentioned, of the 31 soil series present within Napa County, approximately 45% of these are found in the viticultural area.) Thus, because of the diversity of soil types, the USGS believed that it was important to ascertain whether the soils in the northern extension were similar to those in the proposed viticultural area, or uniquely different.

In addition, the USGS believed it important to determine whether the soils in the northern extension were more like the Rector Canyon (Fan) deposits and soils than the Stags Leap District soils since, as previously noted, both Professors Elliott-Fisk and Zinke believed that Rector Canyon soils were different from Stags Leap District soils.

The USGS concluded that, in their opinion, there was insufficient data available to argue that the soils in the northern extension (south of the Yountville Cross Road) are significantly different from those within the proposed Stags Leap District. Further, the USGS opined that a more detailed study could conclude that the soils in the northern extension are transitional to both the Rector Canyon Fan and the Stags Leap materials. In any event, based on the available data, the USGS concluded that the soils in the northern extension appear to be more similar to the soils within the proposed viticultural area than to the soils north of the Yountville Cross Road.

Although the USGS stated that it could not recommend that a solely geologic, geomorphologic, or soils basis be used to determine the northern boundary of the district, the Bureau would note that viticultural area boundaries are not based solely on geographical features.

On the basis of geographical criteria, ATF finds that the area within the proposed Stags Leap District and the area within the northern extension are not distinguishable from one another. The evidence indicates that the climate, soil, precipitation, etc. within the area proposed by Group A, and the area within the northern extension proposed by Group B, are virtually the same. Although there are differences, ATF finds that there is insufficient evidence to indicate that these differences distinguish the proposed areas from one another.

ATF finds that the weight of the evidence supports the SCS map's classification of the soils in the northern extension as being predominantly Bale clay loam. Further, ATF finds that the evidence supports the conclusion of the USGS that the soils within the northern extension are more similar to the soils found in the proposed Stags Leap District than to the soils found north of the Yountville Cross Road. Therefore, ATF concludes, based on the evidence, that the northern extension area is distinguished by viticultural features from the remaining surrounding areas.

In summation, ATF finds that the boundaries proposed by Group B satisfy the criteria of 27 CFR 4.25a(e)(2)(iii) by encompassing an area that possesses generally homogeneous viticultural features different from surrounding areas which are distinguished by geographical features.

VI. Final Rule—Boundary Modifications

Based on the evidence in the rulemaking record, with the exception of the northern boundary, ATF is adopting the boundaries of the Stags Leap District viticultural area as proposed in Notice No. 620. ATF finds that the evidence submitted by Group B satisfies the criteria specified in § 4.25a(d)(2) of the regulations, and the northern boundary of the Stags Leap District viticultural area as proposed in Notice No. 620 is, therefore, modified to extend to the Yountville Cross Road.

VII. Boundaries of the Area

The boundaries of the Stags Leap District viticultural area may be found on one United States Geological Survey (U.S.G.S.) map of the 7.5 minute series, titled Yountville, California. The boundaries are described in § 9.117.

VIII. Additional Information

A. Miscellaneous

ATF does not want to give the impression that, by approving "Stags Leap District" as a viticultural area, it is approving or endorsing the quality of the wine from this area. ATF is approving this area as being distinct, but not better than other areas. By approving this area, ATF will allow wine producers to claim a distinction on labels and in advertisements as to the origin of the grapes. Any commercial advantage can only come from consumer acceptance of "Stags Leap District" wines.

B. Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to a final regulatory flexibility analysis (5 U.S.C. 604) are not applicable to this final rule because it will not have a significant economic impact on a substantial number of small entities. The final rule will not impose, or otherwise cause, a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of Section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this final rule will not have a significant economic impact on a substantial number of small entities.

C. Executive Order 12291

In compliance with Executive Order 12291, the Bureau has determined that this regulation is not a major rule since it will not result in:

(a) An annual effect on the economy of $100 million or more;

(b) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographical regions; or

(c) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

D. Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Pub. L. 96–511, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR Part 1320, do not apply to this final rule because no requirement to collect information is imposed.

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E. Disclosure

A copy of the petition (and amendments), the hearing transcript and exhibits, and the comments received are available for inspection during normal business hours at the following location: ATF Reading Room, Room 4412, Disclosure Branch, 1200 Pennsylvania Avenue, NW., Washington, DC.

F. Drafting Information

The principal author of this document is James P. Ficaretta, Wine and Beer Branch, Bureau of Alcohol, Tobacco, and Firearms.

List of Subjects in 27 CFR Part 9

Administrative practice and procedure, Consumer protection, Viticultural areas, and Wine.

IX. Authority and Issuance

Par. 1. The authority citation for 27 CFR Part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

PART 9—AMERICAN VITICULTURAL AREAS

Par. 2. The table of sections in 27 CFR Part 9, Subpart C, is amended to add the heading of § 9.117 to read as follows:

Subpart C—Approved American Viticultural Areas

Sec.

* * * * *

9.117 Stags Leap District.

* * * * *

Par. 3. Subpart C is amended by adding § 9.117 to read as follows:

Subpart C—Approved American Viticultural Areas

* * * * *

§ 9.117 Stags Leap District.

(a) *Name.* The name of the viticultural area described in this section is "Stags Leap District."

(b) *Approved maps.* The appropriate map for determining the boundaries of the Stags Leap District viticultural area is one U.S.G.S. topographic map in the 7.5 minute series, scaled 1:24000, titled "Yountville, Calif.," 1951 (photorevised 1968).

(c) *Boundaries.* The Stags Leap District viticultural area is located in Napa County, California, within the Napa Valley viticultural area. The boundaries are as follows:

(1) Commencing at the intersection of the intermittent stream (drainage creek) with the Silverado Trail at the 60 foot contour line in T6N/R4W, approximately 7 miles north of the city of Napa.

(2) Then southwest in a straight line, approximately 900 feet, to the main channel of the Napa River.

(3) Then following the main branch of the Napa River (not the southern branch by the levee) in a northwesterly then northerly direction, until it intersects the medium-duty road (Grant Bdy) in T7N/R4W, known locally as the Yountville Cross Road.

(4) Then northeast along the Yountville Cross Road until it intersects the medium-duty road, the Silverado Trail.

(5) Then north along the Silverado Trail approximately 580 feet to a gully entering the Silverado Trail from the east.

(6) Then northeast along the center line of that gully, approximately 600 feet, until it intersects the 400 foot contour line in Section 30 of T7N/R4W.

(7) Then in a generally southeast direction, following the 400 foot contour line through Sections 29, 32, 33, 4, and 3, until it intersects the intermittent stream in the southwest corner of Section 3 in T6N/R4W.

(8) Then in a generally southwest direction along that intermittent stream to the beginning point, at the intersection with the Silverado Trail.

Signed: December 29, 1988.

Stephen E. Higgins,

Director.

Approved: January 6, 1989.

John P. Simpson,

Deputy Assistant Secretary (Regulatory, Trade and Tariff Enforcement).

[FR Doc. 89-1941 Filed 1-26-89; 8:45 am]

BILLING CODE 4810-31-M

DEPARTMENT OF DEFENSE

Department of the Army

35 CFR Part 253

Regulations of the Secretary of the Army (Panama Canal Employment System); Employment Policy

AGENCY: Department of the Army, Defense.

ACTION: Final rule.

SUMMARY: The final rule removes language in § 253.8 of title 35, Code of Federal Regulations, which had previously excluded bureau directors and heads of independent units of the Panama Canal Commission from eligibility for the overseas recruitment or retention differential authorized by section 1217 of the Panama Canal Act of 1979. The removal of this exclusionary language allows these Commission officials to receive the appropriate differential. The revisions also reflect changes in titles and positions within the Commission.

EFFECTIVE DATE: January 27, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Rhode, Jr., Assistant to the Chairman and Secretary, Panama Canal Commission, 2000 L Street NW., Washington, DC 20036-4998 (Telephone: 202-634-6441) or Mr. John L. Haines, Jr., General Counsel, Panama Canal Commission, APO Miami 34011-5000 (Telephone in Balboa Heights, Republic of Panama: 011-507-52-7511).

SUPPLEMENTARY INFORMATION: Issuance of a notice of proposed rulemaking under 5 U.S.C. 553 is not necessary because this final rule pertains only to personnel of agencies covered by these regulations. Section 1217 of the Panama Canal Act of 1979 (22 U.S.C. 3657), authorizes the head of the Panama Canal Commission to pay an overseas recruitment of retention differential to eligible employees. In addition to the statutory requirements of the Act, agency regulations published at 35 CFR 251.31 (tropical differential) and 35 CFR 251.32 (Panama Area differential) contain requirements governing eligibility for the differentials. Bureau directors and heads of independent units of the Panama Canal Commission, however, are not covered by either the statute or the regulations due to the exclusionary language of 35 CFR 253.8(d). The final rule reflects the Commission's desire that these Commission officials receive the appropriate differential as do other Commission employees.

The final rule revises § 253.8(d) to apply the provisions of 22 U.S.C. 3657, 35 CFR 251.31 and 251.32, except for §§ 251.31(b)(4) and 251.32(b)(2) to bureau directors and heads of independent units. Accordingly, the bureau directors and heads of independent units may receive the differential subject to the same eligibility requirements as other Commission employees, except that these officials will not be subject to the provisions of §§ 251.31(b)(4) and 251.32(b)(2), which limit payment of the differential to an amount which, when combined with basic compensation, does not exceed the current rate of step 5, GS-17 of the General Schedule set out in 5 U.S.C. 5332(a). In other words, bureau directors and heads of independent units will not be subject to the step 5, GA-17 limitation, but rather, will receive, in addition to basic compensation, the appropriate differential regardless of the amount of aggregate compensation. The final rule also applies the provisions of § 251.25 to bureau directors and heads of independent units. Section 251.25 defines basic compensation or the rate of pay as the base salary plus the appropriate differential. This is significant for pay alignment purposes.

The final rule also makes two revisions in 35 CFR 253.8(b)(1) to reflect current position titles and alignment. To reflect the realignment of the Chief Financial Officer position from the Commission Officer Group to the Commission Executive Group, that position is removed from 35 CFR 253.8(b)(1). The Chief Financial Officer is instead considered included in the category of bureau directors and heads of independent units covered by 35 CFR 253.8(d).

The final rule also revises the title of the Secretary to reflect the current designation of Assistant to the Chairman and Secretary.

This is not a major rule for the purposes of Executive Order 12291 of February 17, 1981. As required by the Regulatory Flexibility Act, it is hereby certified that this rule will not have a significant impact on small business entities.

List of Subjects in 35 CFR Part 253

Panama Canal Commission, Pay allowances and differentials, Personnel policy.

For the reasons set forth in the preamble, 35 CFR Part 253 is amended as follows:

PART 253—REGULATIONS OF THE SECRETARY OF THE ARMY (PANAMA CANAL EMPLOYMENT SYSTEM)—EMPLOYMENT POLICY

1. The authority citation for Part 253 continues to read as follows:

Authority: 22 U.S.C. 3641-3701, E.O. 12173, 12215.

2. Section 253.8, paragraph (b)(1) and (d) are revised to read as follows:

§ 253.8 Exclusions.

* * * * *

(b) * * * (1) The Administrator, Deputy Administrator, Chief Engineer, Assistant to the Chairman and Secretary, Assistant to the Secretary for Congressional Affairs of the Panama Canal Commission.

* * * * *

(d) All Bureau Directors and Heads of Independent Units of the Panama Canal Commission, and the incumbents thereof, are excluded from the provisions of section 1212 of the Panama Canal Act which provide for merit selection for employment, sections 1213, 1215 and 1216 of the said Act, Subparts B and C of the regulations in this part, and Subpart B of Part 251, except for §§ 251.25, 251.31 and 251.32; provided, however, that the Bureau Directors and Heads of Independent Units are not subject to the limitations of §§ 251.31(b)(4) and 251.32(b)(2).

* * * * *

Date: January 23, 1989.

William R. Gianelli,

Chairman, Panama Area Personnel Board.

[FR Doc. 89-1883 Filed 1-26-89; 8:45 am]

BILLING CODE 3710-02-M

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

Rocky Mountain National Park Fishing Regulations

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: The National Park Service has modified the fishing regulations in Rocky Mountain National Park. The rule changes allow fishing in streams and lakes in Rocky Mountain National Park as designated by the Superintendent pursuant to authority provided by National Park Service general regulations. The park's active monitoring program has identified preservation concerns which include protecting and restoring native fish populations while affording a high quality fishing experience within limits necessary to perpetuate fish populations and riparian vegetation. The changes to the regulations address these concerns and will correct, on an annual basis, problems identified with the current regulations. With these changes in place, the park staff will be able to more effectively manage the fishery resources by manipulating season dates, bait and terminal gear restrictions, and the use of creel limits (including catch-and-release). Effects of the rules are expected to be minimal. This rulemaking will not alter to any degree the number of angler days presently occurring.

EFFECTIVE DATE: February 27, 1989.

FOR FURTHER INFORMATION CONTACT: David R. Stevens, Research Biologist, Rocky Mountain National Park, Estes Park, CO 80517. Phone: (303) 586-2371 or David J. Essex, Chief Park Ranger, Rocky Mountain National Park, Estes Park, CO 80517. Phone: (303) 586-2371.

SUPPLEMENTARY INFORMATION:

Background

The present Rocky Mountain National Park fishing regulations are codified in 36 CFR 7.7(a). They permit fishing in selected waters of the park with a variety of regulations for specific lakes and streams.

Technical fishing assistance has been provided to Rocky Mountain National Park by the U.S. Fish and Wildlife Service for 30 years. The present objectives have evolved since the late 1950s to closely coincide with the park's primary purpose, which is to preserve natural environments and native plant and animal life, and to provide for the enjoyment of the same in ways that maintain natural conditions.

Thus, the specific objectives of the park's fishery program are: 1. Protect and restore native fish populations, and meet the requirements of the Endangered Species Act of 1973.

2. Maintain a high quality fishing experience for the anglers.

3. Allow angler use according to National Park Service policy, and within limits necessary to perpetuate fish populations and reparian vegetation.

Attainment of these objectives requires that angler harvests do not alter natural replenishment rates or age structure, or significantly reduce numbers, biomass, or sizes, from those occurring in unfished populations. This management policy necessitates both a philosophical and literal distinction between recreational angling and removing fish for consumption.

Protective policies of the National Park Service that have prevented significant degradation of the aquatic habitat have also restricted the use of maintenance stocking in park waters. Given these constraints, special angling regulations have become the primary means to accomplish park fishery objectives.

Regulations used to protect fish and maintain angling quality have included manipulating season dates, bait and terminal gear restrictions, and the use of creel limits (including catch-and-release).

Of the 147 lakes within Rocky Mountain National Park, only 42 lakes are capable of maintaining reproducing fish populations due to cold water temperatures or lack of spawning habitat. Of the 42 lakes that sustain reproducing fish populations, 11 lakes and 11 streams contain pure populations of native trout species. The majority of these native fish populations were restored since 1973, under the Endangered Species Act.

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Because of the sensitivity of these native fish populations, the park staff must be able to respond rapidly to changes that occur in a dynamic ecosystem resulting from human activities and natural events.

The park's fishing regulations are currently codified in 36 CFR 7.7(a). In order for even minor changes to be made in these regulations through normal rulemaking procedures, approximately eight months are required. This process involves extensive review at various Government levels and includes a period set aside for public review and comment.

The new park fishing regulations allow the Superintendent the ability to make routine changes in the regulations locally and in a timely manner, using discretionary authority provided by National Park Service general regulations in 36 CFR 1.5. This procedure will afford greater protection to the park's fishery resources, be more responsive to public needs and allow park managers greater flexibility to respond to specific situations.

Public notice of restrictions established by the Superintendent will be provided through signs, maps, brochures, newspaper notices or other appropriate methods as required by 36 CFR 1.7. Detailed information pertaining to the nature and extent of fishing restrictions will be readily available to anglers in the park. Permanent or otherwise significant closures of park waters (such as the ones listed in paragraph (a)(3) of this rulemaking) are subject to the rulemaking requirements of 36 CFR 1.5(b) and will continue to be codified in 36 CFR 7.7.

The National Park Service published a proposed rulemaking in the Federal Register on August 16, 1988 (53 FR 30849) and provided a 30-day period for public comments on the proposed revisions. No comments were received. Therefore, the proposed rules are published unchanged, in final.

The park's fishing regulations will be reviewed at least annually by park staff and the U.S. Fish and Wildlife Service, and recommendations for changes, if any, will be made to the Superintendent.

Drafting Information

The primary authors of these regulations are David Essex, Chief Park Ranger, and David Stevens, Research Biologist, both of Rocky Mountain National Park.

Paperwork Reduction Act

This rulemaking does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Compliance With Other Laws

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 (February 19, 1981), 46 FR 13193, and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The economic effects of this rulemaking are local in nature and negligible in scope. The National Park Service has determined that this rulemaking will not have a significant effect on the quality of the human environment, health, and safety because it is not expected to:

(a) Increase public angling to the extent of impacting the aquatic ecosystem;

(b) Introduce noncompatible uses which might compromise the nature and characteristics of the area, or cause physical damage to it;

(c) Conflict with adjacent ownerships or land uses; or

(d) Cause a nuisance to adjacent owners or occupants.

Based on this determination, this rulemaking is categorically excluded from the procedural requirements of the National Environmental Policy Act (NEPA) by Departmental regulations in 516 DM 6 (49 FR 21438). As such, neither an Environmental Assessment nor an Environmental Impact Statement has been prepared.

List of Subjects in 36 CFR Part 7

National Parks; reporting and recordkeeping requirements.

In consideration of the foregoing, 36 CFR Chapter I is amended as follows:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

1. The authority citation for Part 7 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 462(k); § 7.96 also issued under D.C. Code 8-137 (1981) and D.C. Code 40-721 (1981).

2. By revising § 7.7(a) to read as follows:

§ 7.7 Rocky Mountain National Park.

(a) *Fishing*—(1) Fishing restrictions, based on management objectives described in the park's Resources Management Plan, are established annually by the Superintendent.

(2) The Superintendent may impose closures and establish conditions or restrictions, in accordance with the criteria and procedures of §§ 1.5 and 1.7 of this chapter, on any activity pertaining to fishing, including, but not limited to species of fish that may be taken, seasons and hours during which fishing may take place, methods of taking, size, creel, and possession limits.

(3) Fishing in closed waters or violating a condition or restriction established by the Superintendent is prohibited.

Becky Norton Dunlop

Assistant Secretary for Fish and Wildlife and Parks.

Date: December 19, 1988.

[FR Doc. 89-1854 Filed 1-26-89; 8:45 am]

BILLING CODE 4310-70-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[(FRL 3508-5); TN-076B]

Approval and Promulgation of Implementation Plans; Tennessee: Plan Revision for Volatile Organic Compounds (VOCs)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA today approves a request by Tennessee that an amendment to Regulation #7, Section (7-1)(11), Control of VOCs, be incorporated into the Nashville/Davidson County portion of the Tennessee State Implementation Plan (SIP). This amendment removes the deficiency in Nashville/Davidson County's VOC definition.

DATE: This action will become effective on March 28, 1989 unless notice is received within 30 days that someone wishes to submit adverse or critical comments.

ADDRESSES: Written comments should be addressed to Diane Altsman of EPA Region IV's Air Programs Branch (See Region IV address below). Copies of the materials submitted by Tennessee may be examined during normal business hours at the following locations:

Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland Street, NE., Atlanta, Georgia 30365.

Tennessee Department of Health and Environment, Customs House, 701 Broadway, Nashville, Tennessee 37219-5403.

Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Diane Altsman, Air Programs Branch, EPA Region IV, at the above address and telephone number (404) 347-2864 or FTS 257-2864.

SUPPLEMENTARY INFORMATION: On June 15, 1988, the State of Tennessee's Department of Health and Environment submitted to EPA, an amendment to Regulation No. 7, Section 7-1(11) of the Nashville/Davidson County portion of the SIP. Paragraph 11 of Section 7-1, references the definition of a VOC. The amendment to this regulation deletes paragraph(11) of Section 7-1, in its entirety and replaces it with a definition that is consistent with the EPA definition for VOC. This amendment removes the deficiency in Nashville/Davidson County's VOC definition. Due to the simplicity of this change, no Technical Support Document has been prepared. EPA issued final clarification of this regulation, after the State had adopted this VOC definition in Paragraph 11, 7-1. We are clarifying our understanding of Nashville/Davidson County, Tennessee's intent of the EPA approved definition of a VOC, within Part 52, Chapter I, Title 40, CFR, Subpart RR, 3 of this Federal Register notice.

Final Action. EPA approves the changes made in Tennessee Regulation No. 7, Section 7-1, Paragraph (11). This action is being taken without prior proposal because the change is noncontroversial and EPA anticipates no significant comments on it. The public should be advised that this action will be effective 60 days from the date of this Federal Register notice. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments, this action will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 28, 1989. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone.

Note: The Director of the Federal Register approves the incorporation by reference of the Tennessee SIP on July 1, 1982.

Date: January 19, 1989.

Dee M. Thomas,

Administrator.

Part 52 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

Subpart RR—Tennessee

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7642.

2. Section 52.2220 is amended by adding paragraph (c)(90) to read as follows:

§ 52.2220 Identification of plan.

* * * * *

(c) * * *

(90) An amendment to Section 7-1 of the Nashville/Davidson County regulations was submitted on June 15, 1988, by Tennessee's Department of Health and Environment.

(i) Incorporation by reference.

(A) Tennessee Department of Health and Environment, Division of Air Pollution Control, Board Order 11-88 approved on June 8, 1988.

(B) Letter of June 15, 1988, from the Tennessee Department of Health and Environment.

(ii) Other material-none.

§ 52.2222 [Amended]

3. Section 52.2222, Paragraph (C), is amended as follows. EPA approves Nashville/Davidson County, Tennessee's VOC Regulation No. 7, Section 7-1(11), which replaces the definition of Volatile Organic Compound (VOC) with a definition for VOC that is consistent with the EPA approved definition. The EPA approved definition defines VOC as any organic compound that participates in atmospheric photochemical reactions. However, it excludes organic compounds which have negligible photochemical reactivity. These compounds are as follows: methane, ethane, methyl chloroform (1,1,1-trichloroethane), CFC-113 (trichlorotrifluoroethane), methylene chloride, CFC 11 (trichlorofluoromethane), CFC-12 (dichlorodifluoromethane), CFC-22 (chlorodifluoromethane), FC-23 (trifluoromethane), CFC-114 (dichlorotetrafluoroethane), CFC-115 (chloropentafluoroethane). It is also our understanding that by adopting the EPA approved definition, Nashville/Davidson County, Tennessee will use EPA approved test methods for VOC.

[FR Doc. 89-1788 Filed 1-26-89; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Parts 261 and 268

[FRL-3588-4]

Identification and Listing of Hazardous Waste; Land Disposal Restrictions

AGENCY: Environmental Protection Agency.

ACTION: Administrative stay.

SUMMARY: The Environmental Protection Agency is today announcing an administrative stay of portions of its interpretation, stated most recently in the preamble to a final rule published August 17, 1988, that hazardous waste codes follow through to all wastes generated during the course of waste management.

DATE: January 13, 1989.

ADDRESSES: The OSW docket is located in the sub-basement at the following address, and is open from 9:00 to 4:00, Monday through Friday, excluding Federal holidays: EPA, RCRA Docket (OS-305), 401 M Street, SW., Washington, DC 20460.

The public must make an appointment (by calling (202) 475-9327) to review docket materials. Refer to "Docket number F-89-LDAS-FFFFF" when making appointments to review any background documentation for this rulemaking. The public may copy material at a cost of $0.15/page.

FOR FURTHER INFORMATION CONTACT: The RCRA/Superfund Hotline at (800) 424-9346 or at (202) 382-3000. For technical information contact Barbara McGuinness, Office of Solid Waste (OS-333), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382-4770.

SUPPLEMENTARY INFORMATION: In the preamble of the final regulations prohibiting hazardous wastes in the first third of the schedule from land disposal, and establishing treatment standards for those wastes, EPA reiterated its interpretation that the waste codes for the initial hazardous wastes follow through and so apply to all further forms of the waste, such as residues from treating the waste. 53 FR 31146-47 (August 17, 1988). EPA believes that this interpretation is legitimate and correct. However, unanticipated short-term difficulties have arisen upon

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promulgation of the final first-third regulation. These relate principally to the way that many existing hazardous waste permits are drafted. Although federal law does not require that hazardous waste permits be written in terms of waste codes, it appears that many permits are so drafted. As a result, when a residue carrying a series of waste codes (for example, wastes derived from incinerating a group of hazardous wastes) requires disposal, the disposal facility may not always have included all of these waste codes in its permit. Few facilities, for example, have included all of the P and U waste codes for § 261.33 wastes in their permits. The same difficulty can arise for treatment facilities which receive residues carrying multiple waste codes, such as intermediate treatment facilities receiving partially treated hazardous wastes carrying multiple waste codes. These difficulties arise notwithstanding that the disposal or treatment facility may already have been receiving this waste, and notwithstanding that the wastes may have been treated to meet all, or some (in the case of those wastes going to intermediate treatment) of the applicable section 3004(m) treatment standards. For at least one treatment facility, seeking treatment for its partially treated scrubber water, the situation is now an emergency since it is rapidly running out of storage capacity, and other treatment facilities are refusing to accept the partially treated waste.

EPA has solicited comment on regulatory changes which will alleviate these existing problems. See 53 FR 49477 (November 17, 1988) (soliciting comment on use of Class I permit modifications to allow facilities to receive certain types of treated and untreated wastes). In the interim, however, the Agency has determined to grant an administrative stay of portions of the wastecode carry-through principle, pursuant to 5 U.S.C. 705 and Rule 18 of the Federal Rules of Appellate Procedure, to facilitate treatment of prohibited hazardous wastes and thus to allow the orderly and successful implementation of the land disposal prohibition program. The stay applies to (1) all prohibited wastes that have been treated to meet BDAT, or which otherwise meet the BDAT treatment standards, and which are being sent to a disposal facility; (2) partially treated residues of prohibited hazardous wastes going to an intermediate treatment facility for further treatment, provided that such residues meet all treatment standards for organic constituents and require further treatment only for inorganic contaminants; and (3) residues from treating "soft hammer" restricted hazardous wastes by use of practically available technology which yields the greatest environmental benefit (as certified by the generator in the certification and demonstration required by § 268.8), which residues are being sent either to disposal facilities or to an intermediate treatment facility.

The stay will remain in effect until 30 days after EPA takes final action on the November 17 solicitation of comment. EPA has reviewed the comments on that notice and anticipates issuing a final rule in the near future. In the interim, the wastes described above, although still hazardous and subject to subtitle C standards (including those imposed by the land disposal prohibitions in Part 268, such as all of the treatment standards for the underlying wastes), need not be considered by their generators, intermediate treatment facilities, and land disposal facilities to carry all of the waste codes as the hazardous wastes from which they are derived. They may therefore be shipped to and accepted by intermediate treatment facilities and/or disposal facilities for treatment and/or disposal without permit modifications to allow their receipt. All applicable requirements in § 268.7 (a) and (b), as well as the soft hammer demonstration and certification in § 268.8, remain in effect. Consequently, these wastes must continue to be accompanied by all applicable notifications, demonstrations, and certifications required by Part 268, and must also be accompanied by a manifest.

The administrative stay does not apply to any of the listed dioxin-containing hazardous wastes (Hazardous Waste Codes F020, F021, F022, F023, F026, F027, and F028). With respect to the intermediate treatment facilities, the administrative stay also does not apply unless the treatment facility conducts treatment in non-land based units (i.e., normally tanks or containers) and does not add any new units or treatment processes. These distinctions are designed to limit the scope of this stay to situations that are environmentally innocuous, and for which Class 1 permit modifications may prove appropriate. (See 53 FR at 46475–77 (Nov. 17, 1988); see also § 270.42(o), 51 FR 40653 (Nov. 7, 1986), which provided for minor permit modifications in this situation.) Limiting the scope of the stay to residues already treated to meet standards for organics also is intended to assure that the stay apply only to situations posing minimal likelihood of adverse environmental effect, and to provide short-term relief for a particular emergency situation.

EPA is issuing this administrative stay for a number of reasons. The land disposal restrictions program requires proper treatment of hazardous wastes before land disposal. For the program to function, however, there must be a means to dispose of the treatment residues. If disposal facilities cannot accept these residues because of the multiple waste code classification, the system will not operate effectively. Treatment facilities, for example, may refuse to accept certain wastes because they lack disposal outlets. There are reports that these events already are occurring. This is not an environmentally beneficial result. (Indeed, were this a rulemaking, the Agency believes that the prospect of reduced availability of BDAT-level treatment plus the emergency faced by a particular treatment facility would constitute good cause to make the rule immediately effective.)

Second, the most pressing environmental reason for carrying through waste codes to residues from BDAT treatment (or to partially treated residues) is to make sure that disposal and intermediate treatment facilities are on notice of what the underlying waste was in order to verify that the waste has been treated to meet the applicable treatment standards. See, *e.g.*, § 268.7(c). EPA is not staying any aspect of this requirement. Thus all of the requirements in § 268.7 (b) and (c) (requiring notification and certification from treatment facilities as to applicable treatment standards) remain in effect.

EPA also stresses that it is not taking any action to reclassify those wastes that are derived from treating hazardous wastes as non-hazardous. Thus, the derived from rule classifying such wastes as hazardous, unless and until delisted, remains fully in force. Nor is the Agency withdrawing its interpretation that waste codes follow through to all aspects of a waste's subsequent management. The administrative stay is designed only to stop the adverse short-term effect of this interpretation in order to allow disposal of properly treated restricted hazardous wastes, and proper treatment of partially treated restricted wastes.

Date: January 13, 1989.

Lee M. Thomas,

Administrator.

[FR Doc. 89-1480 Filed 1-26-89; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 409, 410, 416, 421, 424, 441, and 489

[BERC-245-F]

Miscellaneous Medicare and Medicaid Amendments

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: These regulations make the following changes in the Medicare and Medicaid rules:

1. Remove from the Medicare rules the lists of deductible and coinsurance amounts that are revised annually.
2. Establish the conditions for Medicare Part B to pay for an antigen that is administered by someone other than the physician who prepares the antigen.
3. Provide that specified equipment is required to be available in an ambulatory surgical center (ASC) only if the medical staff of the ASC considers it necessary.
4. Clarify the rules on agreements with Medicare intermediaries and carriers and on coordination of their activities with the activities of peer review organization (PROs).
5. Correct an involuntary omission by adding "skilled nursing facility services for individuals under 21" to the list of Medicaid services for which Federal financial participation may be continued for up to 30 days after termination of the provider agreement.
6. Revise the rules on denial of Medicare provider agreements to reflect Bankruptcy Code changes under which a provider agreement may not be denied solely because of bankruptcy.

These amendments are necessary to simplify, clarify, or conform minor aspects of the Medicare rules on:

- Deductibles and coinsurance.
- Payment for antigens.
- Equipment required in ASCs.
- Agreements with intermediaries and carriers.
- Coordination of the activities of intermediaries and carriers and those of PROs.

The amendments also correct an omission in the Medicaid rules on Federal financial participation.

The first amendment is purely a matter of simplification. The other changes are intended to ensure that users of HCFA regulations have the clear understanding necessary for uniform application.

DATE: These regulations are effective February 27, 1989.

FOR FURTHER INFORMATION CONTACT:

James Hannon, (301) 966–4636, for changes that pertain to antigens.

Bernard Gelber, (301) 966–7416, for changes that pertain to agreements with Medicare intermediaries and carriers.

Luisa Iglesias, (202) 245–0383, other issues.

SUPPLEMENTARY INFORMATION:

I. Proposed Rules

On December 18, 1987 (at 52 FR 48127) we published an NPRM proposing the changes that are listed above in the summary.

We received 6 comments:

- One was from a State agency, expressing general support for the changes.
- One was from a Medicare intermediary, objecting to some of the changes proposed for intermediary agreements.
- Four responded to our specific request for suggestions on how to minimize the risks of allowing an antigen to be administered by someone other than the physician who prepares it.

The specific comments on the two proposals are discussed below under sections II B and II D. No comments were received on the other four proposals.

II. Provisions of the Regulations

A. Lists of Deductible and Coinsurance Amounts

1. Discussion

The amounts are revised for each calendar year, and published in the **Federal Register** no later than October 1 of the preceding year. The following practices ensure that interested persons are informed more effectively and more promptly than through annual amendments to the Medicare rules:

- Many newspapers and most publications aimed at retired persons pick up the information and reprint it.
- With the Old-Age, Disability, Dependents' and Survivors' Insurance (OASDI) check mailed December 3 or January 3, the Social Security Administration includes a stuffer prepared by HCFA.
- "Direct deposit" beneficiaries whose checks are mailed directly to their banks or other financial institutions are notified separately.
- Bills for premiums have the information printed on the bills, and beneficiaries whose SMI premiums are paid by third parties (employer, lodge, etc.) are also separately notified.

While this final rule was under development, the Medicare Catastrophic Coverage Act of 1988 (Pub. L. 100–360) was enacted. Section 102 of that law amends section 1813 of the Act to make several changes, one of which is the elimination of the hospital inpatient coinsurance requirement. As a result of this change, the whole of § 409.83 will be removed when HCFA rules are conformed to the changes made by Pub. L. 100–360.

2. Changes in the Regulations

We have amended §§ 409.82, 409.83, and 409.85 to remove the tables and specify that the amounts are published in the **Federal Register** for each calendar year no later than October 1, of the preceding year.

B. Conditions for Payment for Antigens Administered by Someone Other Than the Physician Who Prepared Them

1. Discussion

Previous regulations did not provide for antigens as a separate service because, before enactment of section 1861(s)(2)(G) of the Medicare statute, by section 938 of Pub. L. 96–499, antigens were covered only as "incident to" a physician's services.

Section 938 amended the definition of medical and other health services to include an antigen administered by a qualified person other than the physician who prepares the antigen "subject to quantity limitations prescribed in regulations by the Secretary".

2. Proposed Changes

In the December NPRM, we proposed to add a new § 410.64 (later corrected to be designated as § 410.66) to provide for Medicare Part B payment for a supply of antigen sufficient for not more than 12 weeks, prepared by a doctor of medicine or osteopathy, and administered by or under the supervision of the physician who prepared the antigen, or by another physician.

3. Comments

In the preamble to the proposed regulation, we noted that there might be some risks in allowing antigens to be administered by someone other than the physician who prepared them. We specifically requested comments on how this risk might be minimized. We received four comments: two from national professional allergy organizations, one from a county health care agency, and one from the physician advisor of a Medicare carrier.

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Both of the professional organizations indicated that they were not aware of any serious safety problems arising from the administration of antigens by someone other than the physician who prepared them. They suggested, however, that the best way to ensure safe administration is to—

- Have them prepared by a qualified allergist who has examined the patient and developed a plan of treatment that includes appropriate dosage; and
- Have them administered according to the plan of treatment by an individual who has proper instructions.

The county health agency considered that administration by nonphysicians ought to be monitored by a physician. The physician advisor recommended that nonphysicians be qualified to administer the antigens.

4. Changes Responsive to Comments

In general, we have revised the proposed rule to—

- Reflect the suggestions of the two professional organizations; and
- More accurately reflect the requirements of section 1861(s)(2)(G) of the Act that the antigens be administered by or under the supervision of a physician.

The final rule requires that antigens—

- Be prepared by a doctor of medicine or osteopathy "who has examined the patient and developed a plan of treatment including dosage levels"; and
- Be administered "in accordance with the preparing physician's plan of treatment, by a doctor of medicine or osteopathy, or by a properly instructed person under the supervision of a doctor of medicine or osteopathy".

We did not accept the suggestion that the doctor who prepares the antigen must be a qualified allergist because—

- The law does not specifically require this; and
- As a technical/medical matter, there appears to be no reason to limit participation in this way.

The law specifies that the antigen be forwarded to another "qualified person" for administration to the patient. However, neither the law nor the legislative history defines the term or specifies the degree of physician supervision required for administration by a "qualified person".

In view of the latitude permitted by the statute and the comments received, we believe that the decision as to whether the doctor of medicine or osteopathy or another qualified person will administer the antigen should be left to the judgment of the patient's allergist or local family physician. We understand that many physicians prefer that antigens be administered by the physician or a trained nurse working under a physician's supervision. However, if the patient's allergist or family physician decides that the patient has been properly instructed for self-administration, this is permitted under the law and the final regulations.

We note that, if the patient administers the antigen, Medicare Part B pays only for the antigen itself. There is no statutory authority to pay for any other medical supplies that the patient might use.

C. Equipment Required in ASC Operating Rooms

1. Discussion

Under previous Medicare rules, as a condition of participation in Medicare, an ASC was required to have available in the operating room emergency equipment, including a thoracotomy set (for cutting through the rib cage into the chest cavity).

We proposed to revise § 416.44(c) to remove the requirement for thoracotomy set because—

- Thoracotomy sets are used to permit open heart massage, which is no longer the preferred method for resuscitation of patients with heart disease;
- It is unlikely that it would be needed in connection with the surgical procedures performed in ASCs; and
- Use of this equipment by medical personnel inexperienced in handling it could be risky.

We would, however, include emergency medical equipment in the list of items that the ASC must make available if the medical staff requests it. This means that a thoracotomy set would be required if the medical staff considered it necessary.

2. Changes in the Regulations

We have amended § 416.44(c) to remove "thoracotomy set" from the list of required emergency equipment, and add "Emergency equipment and supplies specified by the medical staff".

D. Intermediary Agreements, Carrier Contracts, and Coordination with PROs

1. Discussion

Previous Medicare regulations (§§ 421.100, 421.200 and 421.204)—

- Specified certain functions that must be included in the agreement or contract; and
- Provided that either party must give 90-day notice if it intends not to renew a carrier contract at the end of its term.

Experience had shown the need to make clear that the first provision did not preclude requiring the performance of other functions and to ensure greater flexibility than was provided under the second provision.

2. Proposed Changes

We proposed to amend §§ 421.100 and 421.200 to make clear the following:

1. HCFA's agreement with an intermediary or contract with a carrier may require the intermediary or carrier to perform functions in addition to those listed in the rules.

2. The PRO performs reconsiderations of its determinations.

3. The intermediary or carrier takes appropriate action on PRO determinations, as well as those for which the intermediary or carrier itself made a determination because the PRO had not assumed review responsibility.

We proposed to achieve the first objective by revising the introductory text of § 431.100 to read:

"An agreement between HCFA and an intermediary specifies the functions to be performed by the intermediary, which must include, but are not necessarily limited to, the following:"

We also proposed to—

- Revise § 421.204 to remove the requirement for 90-day notice of intent not to renew a carrier contract and require instead that notice be "in accordance with the provisions of the contract";
- Add a parallel provision (§ 421.111) applicable to intermediary agreements.

3. Comments

The only comments on this portion of the NPRM came from a Medicare intermediary. The writer—

- Objected to the revised introductory text as too open-ended; and
- Considered that the new language might be construed to require the contractor to perform whatever functions HCFA requested without regard to the contractor's need for funding or lead-time to implement.

The same writer also recommended that the 90-day minimum notice (of intent not to renew an intermediary or carrier contract) be retained in the regulations because—

- 90 days is an appropriate time frame for the Government and the contractor, a reasonable frame that provides the time needed for HCFA and the outgoing and incoming contractors to work out the problems inherent in a change of contractor; and
- Such an important time frame ought not to be left to the contracting parties (the writer is concerned that HCFA might seek a shorter time frame).

4. Response to Comments

We believe that the fears of this intermediary are unjustified. As the name of the document indicates, the content of an intermediary agreement must be agreed to by the organization. HCFA cannot unilaterally determine and impose functions that the other organization does not agree to perform. HCFA must pay the intermediary for all the functions it does perform, and no agreement can be executed without its concurrence. In other words, the amendment clarifies the rule but does not affect the process that is followed to determine the content of an agreement. The change in the advance notice provisions does not force either party to accept a particular period for advance notice. It simply affords greater flexibility for both parties to deal with situations in which a longer or shorter advance notice period may be necessary or desirable.

The final rules do not change the proposed amendents to §§ 421.100 and 421.200. They do remove § 421.204 and drop proposed § 421.111 and restate their content in a single new paragraph (f) in § 421.5 General provisions.

E. Federal Financial Participation (FFP) in State Expenditures for Skilled Nursing Facility (SNF) Services Furnished to Individuals under 21

1. Discussion

Section 441.11 of the Medicaid rules provides that FFP in State payments for individuals in a facility may continue for up to 30 days after the Medicaid agency terminates or does not renew the facility's provider agreement if—

- The individual was admitted to the facility before the effective date of termination or expiration of the provider agreement; and
- The agency makes reasonable efforts to transfer the individual to another facility or to alternate care.

Through and oversight, SNF care for individuals under 21 was not included in the list of services subject to the 30-day continuation.

We proposed to correct that oversight.

2. Change in the Regulations

We amended § 441.11(c) to add SNF services to individuals under 21 to the list of services subject to the 30-day continuation.

F. Bases for Denial of Provider Agreements

1. Discussion

Previous Medicare rules provided that HCFA could refuse to enter into or renew a provider agreement with a provider or potential provider that had been adjudged bankrupt or insolvent (§ 489.12(a)(3)).

Section 525 if the Revised Bankruptcy Code (11 U.S.C. 525) prohibits a "government unit" from denying a "license, permit, charter, franchise or other similar grant to" a person solely because the person has been a debtor under that title or a bankrupt under the Bankruptcy Act. The purpose of the prohibition is to ensure that the intent of the Code (i.e., to afford the bankrupt individual or entity the opportunity for a "fresh start") is not frustrated.

2. Change in the Regulations

Since previous § 489.12(a)(3) was in conflict with section 525 of the revised bankruptcy code, (it specified that "bankruptcy" or "insolvency" was of itself a basis for denial of a provider agreement), we have, as we proposed, revised that section to specify that an agreement may be denied if the entity is unable to assure compliance with the requirements of the Medicare statute (title XVIII of the Act).

III. Technical Correction

While this final rule was under development, we published final rules on Conditions for Medicare Payment (March 2, 1988, at 53 FR 6629) and later discovered and incorrect cross reference. We are taking advantage of the opportunity afforded by this document to make the needed technical amendment, at the end of the regulations text.

IV. Regulatory Impact Statement

Executive Order 12291

Executive Order 12291 requires us to prepare and publish a regulatory impact analysis for any rule that is likely to have an annual impact of $100 million or more on the economy, cause a major increase in costs or prices, or meet other thresholds specified in section 1(b) of the Order. The Secretary has determined that these rules will have little, if any, impact and that a regulatory analysis is not required.

Regulatory Flexibility Analysis

Consistent with the Regulatory Flexibility Act (RFA) and section 1102(b) of the Social Security Act, we prepare a regulatory flexibility analysis for each rule, unless the Secretary certifies that the particular rule will not have a significant economic impact on a substantial number of small entities, or a significant impact on the operation of a substantial number of small rural hospitals.

For purposes of the RFA, we consider all providers and suppliers of services to be small entities. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that has fewer that 50 beds, and is located anywhere but in a metropolitan statistical area.

We have determined, and the Secretary certifies, that these rules will not have a significant economic impact on a substantial number of small entities or a significant impact on the operation of a substantial number of small rural hospitals.

Paperwork Reduction Act

This document contains no information collection requirements that are subject to review under the Paperwork Reduction Act of 1980.

List of Subjects

42 CFR Part 409

Health facilities, Medicare.

42 CFR Part 410

Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Rural areas, X-rays.

42 CFR Part 416

Health facilities, Health professions, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 421

Administrative practice and procedure, Health facilities, Health professions, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 424

Assignment of benefits, Claims for payment, Emergency services, Physician certification, Plan of treatment.

42 CFR Part 441

Family planning, Grant programs-health, Infants and children, Medicaid, Penalties, Prescription drugs, Reporting and recordkeeping requirements.

42 CFR Part 489

Health facilities, Medicare.

42 CFR Chapter IV is amended as set forth below:

A. Part 409 is amended as follows:

PART 409—HOSPITAL INSURANCE BENEFITS

1. The authority citation continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh) unless otherwise noted.

2. Section 409.62 is amended by revising paragraphs (b) and (c) to remove the tables and clarify

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applicability of deductible amounts, to read as follows:

§ 409.82 Inpatient hospital deductible.

* * * * *

(b) *Specific deductible amounts.* The specific deductible amounts for each calendar year are published in the **Federal Register** no later than October 1 of the preceding year.

(c) *Exception to published amounts.* If the total hospital charge is less than the deductible amount applicable for the calendar year in which the services were furnished, the amount of the charge is the deductible for the year.

3. Section 409.83 is amended by revising paragraphs (b) and (c) to remove the tables and clarify applicability of the coinsurance amounts, to read as follows:

§ 409.83 Inpatient hospital coinsurance.

* * * * *

(b) *Specific coinsurance amounts.* The specific coinsurance amounts for each calendar year are published in the **Federal Register** no later the October 1 of the preceding year.

(c) *Exceptions to published amounts.* (1) If the actual charge to the patient for the 61st through the 90th day of inpatient hospital services is less than the coinsurance amount applicable for the calendar year in which the services were furnished, the actual charge per day is the daily coinsurance amount.

(2) If the actual charge to the patient for the 91st through the 150th day (lifetime reserve days) is less than the coinsurance amount applicable for the calendar year in which the services were furnished, the beneficiary is deemed to have elected not to use the days because he or she would not benefit from using them.

4. Section 409.85 is amended by revising paragraphs (b) and (c) to remove the tables and clarify applicability of the SNF coinsurance amounts, to read as follows:

§ 409.85 Skilled nursing facility (SNF) care coinsurance.

* * * * *

(b) *Specific coinsurance amounts.* The specific SNF coinsurance amounts for each calendar year are published in the **Federal Register** no later than October 1 of the preceding year.

(c) *Exception to published amounts.* If the actual charge to the patient is less than the coinsurance amount applicable for the calendar year in which the services were furnished, the actual charge per day is the daily coinsurance.

B. Part 410 is amended as follows:

PART 410—SUPPLEMENTARY MEDICAL INSURANCE (SMI) BENEFITS

1. The authority citation continues to read as follows:

Authority: Secs. 1102, 1832, 1833, 1835, 1861 (r), (s), and (cc), 1871, and 1881 of the Social Security Act (41 U.S.C. 1302, 1395k(b), 1395l, 1395n, 1375x (r), (s) and (cc), 1395hh, and 1395rr).

2. A new § 410.68 is added, and the table of contents is amended to reflect this change.

§ 410.68 Antigens: Scope and conditions.

Medicare Part B pays for—

(a) Antigens that are furnished as services incident to a physician's professional services; or

(b) A supply of antigen sufficient for not more than 12 weeks that is—

(1) Prepared for a patient by a doctor of medicine or osteopathy who has examined the patient and developed a plan of treatment including dosage levels; and

(2) Administered—

(i) In accord with the plan of treatment developed by the doctor of medicine or osteopathy who prepared the antigen; and

(ii) By a doctor of medicine or osteopathy or by a properly instructed person under the supervision of a doctor of medicine or osteopathy.

C. Part 416 is amended as set forth below:

PART 416—AMBULATORY SURGICAL SERVICES

1. The authority citation continues to read as follows:

Authority: Secs.1102, 1832(a)(2), 1833, 1865, and 1884 of the Social Security Act (42 U.S.C. 1302, 1395k(a)(2), 1395l, 1395x, and 1395aa).

2. Section 416.44 is amended by revising paragraph (c) to remove the requirements for thoracotomy set and add "emergency medical equipment" as an item that the ASC must make available if the medical staff requests it, to read as follows:

§ 416.44 Condition for coverage—environment.

* * * * *

(c) *Standard: Emergency equipment.* Emergency equipment available to the operating rooms must include at least the following:

(1) Emergency call system.

(2) Oxygen.

(3) Mechanical ventilatory assistance equipment including airways, manual breathing bag, and ventilator.

(4) Cardiac defibrillator.

(5) Cardiac monitoring equipment.

(6) Tracheostomy set.

(7) Laryngoscopes and endotracheal tubes.

(8) Suction equipment.

(9) Emergency medical equipment and supplies specified by the medical staff.

* * * * *

D. Part 421 is amended as set forth below:

PART 421—INTERMEDIARIES AND CARRIERS

1. The authority citation continues to read as follows:

Authority: Secs. 1102, 1815, 1816, 1833, 1842, 1861(a), 1871, 1874, and 1875 of the Social Security Act (42 U.S.C. 1302, 1395g, 1395h, 1395l, 1395u, 1395x(a), 1395hh, 1395kk, and 1395ll), and 42 U.S.C. 1395b–1.

2. Section 421.5 is amended to add a new paragraph (f), to read as follows:

§ 421.5 General provisions.

* * * * *

(f) *Provision for automatic renewal.* Agreements and contracts under this part may contain automatic renewal clauses for continuation from term to term unless either party gives notice, within timeframes specified in the agreement or contract, of its intention not to renew.

3. Section 421.100 is amended by revising the introductory text and paragraphs (a) and (f) to read as follows:

§ 421.100 Intermediary functions.

An agreement between HCFA and an intermediary specifies the functions to be performed by the intermediary, which must include, but are not necessarily limited to, the following:

(a) *Coverage.* (1) The intermediary ensures that it makes payments only for services that are:

(i) Furnished to Medicare beneficiaries;

(ii) Covered under Medicare; and

(iii) In accordance with PRO determinations when they are services for which the PRO has assumed review responsibility under its contract with HCFA.

(2) The intermediary takes appropriate action to reject or adjust the claim if—

(i) The intermediary or the PRO determines that the services furnished or proposed to be furnished were not reasonable, not medically necessary, or not furnished in the most appropriate setting; or

(ii) The intermediary determines that the claim does not properly reflect the kind and amount of services furnished.

* * * * *

(f) *Reconsideration of determinations.* The intermediary must establish and maintain procedures approved by HCFA for the reconsideration of its determinations to deny payments to an individual or to the provider that furnished services to the individual. The PRO performed reconsideration of cases in which it made a determination subject to reconsideration.

4. Section 421.200 is amended by revising the introductory text and paragraph (a) to read as follows:

§ 421.200 Carrier functions.

A contract between HCFA and a carrier specifies the functions to be performed by the carrier, which must include, but are not necessarily limited in the following:

(a) *Coverage.* (1) The carrier ensures that payment is made only for services that are:

(i) Furnished to Medicare beneficiaries;

(ii) Covered under Medicare; and

(iii) In accordance with PRO determinations when they are services for which the PRO has assumed review responsibility under its contract with HCFA.

(2) The carrier takes appropriate action to reject or adjust the claim if—

(i) The carrier or the PRO determines that the services furnished or proposed to be furnished were not reasonable, not medically necessary, or not furnished in the most appropriate setting;

(ii) The carrier determines that the claim does not properly reflect the kind and amount of services furnished.

* * * * *

§ 421.204 [Removed]

5. Section 421.204 is removed and the table of contents is amended to reflect the removal.

E. Part 441 is amended as set forth below:

PART 441—SERVICES: REQUIREMENTS AND LIMITS APPLICABLE TO SPECIFIC SERVICES

1. The authority citation continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302) unless otherwise noted.

2. In § 441.11 the term "subchapter" is changed to "chapter" wherever it appears; the introductory text of paragraph (c) is reprinted, and a new paragraph (c)(8) is added, to read as follows:

§ 441.11 Continuation of FFP for institutional services.

* * * * *

(c) *Services for which FFP may be continued.* FFP may be continued for any of the following services, as defined in Subpart A of Part 440 of this chapter:

* * * * *

(8) Skilled nursing facility services for individuals under 21.

F. Part 489 is amended as set forth below:

PART 489—PROVIDER AGREEMENTS UNDER MEDICARE

1. The authority citation continues to read as follows:

Authority: Secs. 1102, 1861, 1864, 1866, and 1871 of the Social Security Act (42 U.S.C. 1302, 1395x, 1395aa, 1395cc, 1395hh).

§ 489.12 [Amended]

2. Section 489.12 is amended by revising paragraph (a)(3) and removing and reserving paragraph (b), to read as follows:

(a) *Bases for denial.* * * *

(3) The provider or prospective provider is unable to give satisfactory assurance of compliance with the requirements of title XVIII of the Act.

(b) [Reserved]

G. Technical Amendments:

§ 409.61 [Amended]

1. In paragraph (b), the parenthetical statement at the end is removed.

§ 424.80 [Amended]

2. In paragraph (b)(6), "§ 411.73(b)(3)" is changed to "§ 424.73(b)(3)".

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Program; No. 13.773, Medicare-Hospital Insurance, and No. 13.774, Medicare-Supplementary Medical Insurance)

Dated: October 31, 1988.

William L. Roper,

Administrator, Health Care Financing Administration.

Approved: November 17, 1988.

Otis R. Bowen,

Secretary.

[FR Doc. 89-1608 Filed 1-26-89; 8:45 am]

BILLING CODE 4120-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 87-264; RM-5725; RM-6097]

Radio Broadcasting Services; Live Oak and St. Augustine, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Shull Broadcasting Co., Inc. substitutes Channel 250C2 for Channel 249A at St. Augustine, Florida, and modifies its license for Station WUVU to specify operation on the higher powered channel. Channel 250C2 can be allotted to St. Augustine in compliance with the Commission's minimum distance separation requirements with a site restriction of 12.7 kilometers north to avoid a short-spacing to the proposed allotment of Channel 250C to Clearwater, Florida, and to the construction permit of Station WSCF, Channel 251C2 at Titusville, Florida. The coordinates for this allotment are North Latitude 30-00-00 and West Longitude 81-21-35. This action also denies the request of WNER Radio, Inc. to substitute Channel 251C for Channel 251C1 at Live Oak, Florida, and the modification of its license for Station WQHL accordingly. With this action, this proceeding is terminated.

EFFECTIVE DATE: March 10, 1989.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-264, adopted December 13, 1988, and released January 24, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments for St. Augustine, Florida, is amended by deleting Channel 249A and adding Channel 250C2.

Federal Communications Commission.

Steve Kamisar,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-1955 Filed 1-26-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 88-368; RM-6413]

Radio Broadcasting Services; Orlando, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Radio Orlando, substitutes Channel 255C2 for Channel 255A at Orlando, Florida, and modifies its permit for Station WURG to specify operation on the higher powered channel. Channel 255C2 can be allotted to Orlando in compliance with the Commission's minimum distance separation requirements with a site restriction of 4.7 kilometers (2.9 miles) west to avoid a short-spacing to Station WKGR, Channel 254C, Fort Pierce, Florida. The coordinates for this allotment are North Latitude 28-33-00 and West Longitude 81-35-30. With this action, this proceeding is terminated.

EFFECTIVE DATE: March 10, 1989.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88-368, adopted December 20, 1988, and released January 24, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments for Orlando, Florida, is amended by deleting Channel 255A and adding Channel 255C2.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-1956 Filed 1-26-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-370; RM-6311]

Radio Broadcasting Services; Idaho Falls, ID

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 288C1 to Idaho Falls, Idaho, as that community's fourth local FM service, at the request of AJP Investment Co., Inc. The channel can be allotted in compliance with the Commission's minimum distance separation requirements at city reference coordinates 43-29-30 and 112-02-00. With this action, this proceeding is terminated.

DATES: Effective March 10, 1989; the window period for filing applications will open on March 13, 1989, and close on April 12, 1989.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88-370, adopted November 30, 1988, and released January 24, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended under Idaho by adding Channel 288C1 to Idaho Falls.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-1954 Filed 1-26-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-282; RM-6300]

Radio Broadcasting Services; Greenwood, MS

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes FM Channel 230A for 270A at Greenwood, Mississippi, in response to a petition filed by Itawamba County Broadcasting Company, Inc., licensee of Station WFTA, Fulton, Mississippi. The substitution at Greenwood was requested to allow Station WFTA to relocate its facility in order to eliminate power outages and off air time. The applicant for Channel 270A at Greenwood, Clay Ewing, has no objection to the substitution of channels. In accordance with Commission policy, we will retain applicant's cut off protection for Channel 270A when the applicant amends to specify Channel 230A, since the channels are equivalent. The coordinates for Channel 230A are 33-31-55 and 90-11-36. With this action, this proceeding is terminated.

EFFECTIVE DATE: March 9, 1989.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88-282, adopted November 30, 1988, and released January 23, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Mississippi is amended by deleting Channel 270A and adding Channel 230A at Greenwood.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-1957 Filed 1-26-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 90

[PR Docket No. 86-404; FCC 88-362]

Specialized Mobile Radio Systems; Eligible Users Expansion

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In response to a petition for clarification and a petition for reconsideration, the Commission adopted a Memorandum Opinion and Order (MO&O) reconsidering its February 1988 decision to consolidate Subparts M and S of Part 90. The MO&O affirms the Commission's decision to expand the classes of eligible users that Specialized Mobile Radio System (SMRS) can serve to include federal government agencies and individuals. The MO&O also affirms the Commission's decision to transfer 200 trunked channels from Subpart M to Subpart S. Finally, the MO&O clarifies the portions of its decision related to private carrier operation above 800 MHz and loading standards in rural areas.

EFFECTIVE DATE: February 21, 1989.

FOR FURTHER INFORMATION CONTACT: Irene Bleiweiss, Land Mobile and Microwave Division, Private Radio Bureau, (202) 634-2443.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order, PR Docket No. 87-404, adopted on December 2, 1988 and released January 4, 1989. The full text of the Order is available for inspection and copying during normal business hours in the FCC Private Radio Bureau, Land Mobile and Microwave Division, Rules Branch (Room 5128), 2025 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's copy contractor, International Transcription Service, 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857-3800.

Summary of Memorandum Opinion and Order

1. In February 1988, the Commission adopted a *Report and Order* establishing one set of rules for most land mobile operations above 800 MHz. 3 FCC Rcd 1638 (1988). The *Memorandum Opinion and Order* affirms the action taken in the *Report and Order* and clarifies a few of the *Report and Order's* provisions.

2. The *Memorandum Opinion and Order* affirms the Commission's decision to expand SMR end user eligibility to include federal agencies and individuals. Eligibility of system users is not statutorily prescribed but is within the Commission's discretion. Expansion of eligibility would not affect the classification of SMR licensees as private carriers because SMR licensees do not resell for a profit the exchange services or facilities of a common carrier. Expanding end user eligibility would not overburden the spectrum because it does not require any SMR operator to serve either group, nor is it likely that all new eligible users will use the new option available to them.

3. The *Memorandum Opinion and Order* affirms the Commission's decision to transfer 200 trunked channels previously governed under Subpart M to the SMR pool governed by Subpart S. It is in the public interest to designate these channels for the category where they are used most and where the demand is greatest. SMR systems constitute 99 percent of current licensees on the channels. Non-SMR licensees can expand using available channels in their own pools, or they can ask for channels from the SMR pool through intercategory sharing.

4. The *Memorandum Opinion and Order* clarifies that non-profit communications cooperatives and community repeaters may continue to operate in the three non-SMR pools above 800 MHz. Entrepreneurial licensees, however, may operate above 800 MHz only in the SMR pool. The *Memorandum Opinion and Order* also clarifies the new relaxed loading standards that apply to trunked systems in rural areas. Finally, the *Memorandum Opinion and Order* amends the Commission's rules to correct errata.

Ordering Clauses

5. Accordingly, it is ordered, pursuant to 47 CFR 1.429(i), that the Joint Petition for Reconsideration filed on May 16, 1988 by the American Automobile Association, American Petroleum Institute, American Trucking Associations, Inc., Forest Industries Telecommunications, International Taxicab Association, Special Industrial Radio Service Association, Inc., and Utilities Telecommunications Council is denied.

6. It is further ordered that the Petition for Clarification filed by the National Association of Business and Educational Radio, Inc. on May 13, 1988, is granted.

7. It is further ordered that pursuant to Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r), Part 90 of the Commission's Rules is amended as set forth in the Appendix below, effective February 21, 1989.

8. It is further ordered that this proceeding is terminated.

Donna R. Searcy,

Secretary.

1. Part 90 of Chapter 1 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

2. The authority citation for Part 90 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303.

3. Section 90.7 is amended by revising the definition of Specialized Mobile Radio System to read as follows:

§ 90.7 Definitions.

* * * * *

Specialized Mobile Radio System. A radio system in which licensees provide land mobile communications services (other than radiolocation services) in the 800 MHz and 900 MHz bands on a commercial basis to entities eligible to be licensed under this Part, Federal Government entities, and individuals.

* * * * *

§ 90.17, 90.19, 90.21, 90.23, 90.25, 90.53, 90.63, 90.65, 90.67, 90.69, 90.71, 90.73, 90.75, 90.79, 90.81, 90.89, and 90.91 [Amended]

4. Sections 90.17(c)(15), 90.19(e)(22), 90.21(c)(10), 90.23(c)(10), 90.25(c)(16), 90.53(b)(21), 90.63(d)(17), 90.65(c)(30), 90.67(c)(20), 90.69(c)(5), 90.71(c)(3), 90.73(d)(21), 90.75(c)(33), 90.79(d)(15), 90.81(d)(7), 90.89(c)(12), and 90.91(c)(13) are amended by removing the words "Subparts M and S contain" and substituting the words "Subpart S contains."

§ 90.93 [Amended]

5. Sections 90.93(c)(5) and 90.95(d)(10) are amended by removing the reference to Subpart M and substituting a reference to Subpart S.

§ 90.119 [Amended]

6. Section 90.119(g) is amended by removing the reference to § 90.390 in the parenthetical clause.

7. Section 90.129 is amended by revising paragraph (i) to read as follows:

§ 90.129 Supplemental information to be routinely submitted with applications.

* * * * *

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(i) Showings required in connection with the use of frequencies as specified in Subpart S.

• • • • •

§ 90.155 [Amended]

8. Section 90.155 is revised by removing in paragraph (a) the reference to § 90.366(d) and (g) and by removing in paragraph (b) the reference to § 90.366.

9. Section 90.175 is amended by revising paragraphs (f)(7), (8), (10), and (11) to read as follows:

§ 90.175 Frequency coordination requirements.

• • • • •

(f) • • •

(7) [Reserved]

(8) Applications for frequencies listed in the SMR tables contained in §§ 90.617 and 90.619.

• • • • •

(10) Applications for mobile stations operating in the 470–512 MHz band or above 800 MHz if the frequency pair is assigned to a single system on an exclusive basis in the proposed area of operation.

(11) Applications for add-on base stations in multiple licensed systems operating in the 470–512 MHz band or above 800 MHz if the frequency pair is assigned to a single system on an exclusive basis.

• • • • •

10. Section 90.179 is amended by revising the introductory text and adding 90.179(g) to read as follows:

§ 90.179 Shared use of radio stations.

Licensees of radio stations authorized under this rule part may share the use of their facilities. A station is shared when persons not licensed for the station control the station for their own purposes pursuant to the licensee's authorization. Shared use of a radio station may be either on a non-profit cost shared basis or on a for-profit private carrier basis. Shared use of an authorized station is subject to the following conditions and limitations:

• • • • •

(g) Above 800 MHz, shared use on a for-profit private carrier basis is permitted only by SMR and Private Carrier Paging licensees. See Subparts P and S of this Part.

§ 90.201 [Amended]

11. Section 90.201 is revised by deleting the reference to Subpart M in the last sentence.

§ 90.437 [Amended]

12. Section 90.437(d) is amended by removing the reference to § 90.390.

13. Section 90.492 is revised to read as follows:

§ 90.492 One way paging operations in the 806–824/851–869 MHz and 896–901/935–940 MHz bands.

Paging operations are permitted in these bands only in accordance with §§ 90.645(e) and (f).

14. Section 90.611(d) is revised to read as follows:

§ 90.611 Processing of applications.

• • • • •

(d) Applications for channels in the SMR category that can not be granted due to a lack of available channels in a particular area will be placed on a waiting list for that area. Waiting lists will consist of two groups. The first group will be comprised of applications from existing licensees who, in the area corresponding to the particular waiting list, operate trunked systems with 70 or more mobile units per channel. The second group will be comprised of applications to establish new systems or to obtain additional channels for conventional systems. Applications will be placed in the appropriate group according to filing dates, with the earliest date receiving the highest ranking. All applications in the first group will receive priority over any application in the second group regardless of filing date. When channels become available, the highest ranking application(s) will be granted based on the site specified and the Commission's mileage separation standards. Trunked systems that have had authorized channels canceled due to failure to meet the loading requirements in § 90.631 will not be permitted on the waiting list for a period of 6 months from the date of the issuance of the superseding license.

[FR Doc. 89–1951 Filed 1–26–89; 8:45am]

BILLING CODE 6712-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Parts 13 and 14

Changes in the Import/Export License Fee and in the Collection of Import/Export Inspection Fees.

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service amends its regulations governing import/export license and inspection fees in 50 CFR Parts 13 and 14 to reduce the fee that it charges for an import/export license from $250 per year to $125 per year. The Service will also eliminate the five (5) prepaid wildlife shipments allowed under the current regulations. The Service will charge a $25 inspection fee for each shipment presented for clearance by a licensee. Further, the Service will change its policy for renewing import/export licenses and collecting import/export inspection fees. On October 1, 1988, the Service ceased billing importers and exporters for renewal of licenses or for inspection fees. The Service will now require import/export licensees to apply for renewal to the issuing office at least 30 days before the current license expires. The Service will also require import/export licensees to pay inspection fees before or at the time of inspection.

EFFECTIVE DATE: January 27, 1989.

FOR FURTHER INFORMATION CONTACT: Thomas L. Striegler, Acting Deputy Chief, Division of Law Enforcement, U.S. Fish and Wildlife Service, P.O. Box 28006, Washington, DC 20038–8006, telephone (202) 343–9242.

SUPPLEMENTARY INFORMATION: In 1986, the Service began charging import/export licensees a fee for inspecting wildlife shipments. The basic license fee was increased from $25 ($50 for two years) to $250 per year, and each licensee was allowed five (5) prepaid shipments. The Service charged a $25 inspection fee for each shipment in excess of five (5) that a licensee imported or exported during the license year. To collect these fees, the Service developed a computerized billing system and sent monthly bills to each licensee. The Service also used the system to bill licensees for the annual renewal of their licenses.

Recently the Service and the Department of the Interior (Department) identified several areas in which the inspection fee system was inconsistent with the Federal Government's financial management policies. First, the Service did not integrate the inspection fee billing system into the overall financial management system of the Service. Therefore, the Service could not maintain accounts receivable for the money owed to the Government. Second, the Service did not collect fees at the time it performed inspections. This resulted in what amounted to interest-free loans to licensees. Finally, the Service has not charged interest for late or unpaid bills.

To correct these problems, it was recommended that the Service collect inspection fees at the time of the inspection. The reviewers further recommended that the Service integrate the license and inspection fee program into its overall financial management system. Accordingly, the Service is proposing regulatory changes to implement these recommendations.

Beginning October 1, 1988, the Service stopped billing licensees for license renewal fees. To renew a license, the licensee will have to submit an application at least 30 days before the expiration date of the current license. The Service will process applications for license renewals according to the procedures in § 13.24 of Title 50, Code of Federal Regulations. This does not amount to a change in regulations. The existing procedure of billing licensees for license renewal has been, in fact, a deviation from the requirements of the regulations in Part 13.

Also effective October 1, 1988, the Service ceased billing licensees for inspection fees. The Service will require licensees to pay for each shipment at or prior to the inspection. The Service issued its last bills for import/export fees on November 4, 1988.

Because it has been virtually impossible for the Service to manage the system of allowing five (5) prepaid shipments to each licensee, the Service will modify its user fee system. These changes will not increase any licensee's costs for user fees, and will reduce the user fee costs for those licensees who import or export fewer than five (5) shipments annually. The Service will reduce the annual import/export license fee from $250 to $125. The Service will eliminate the five (5) prepaid shipments and will charge a $25 inspection fee for each shipment. Therefore, those licensees who import or export five (5) or more shipments annually will pay the same fees as they have been paying. However, licensees who import or export fewer than five (5) shipments will pay less in user fees.

Public Comments

The proposed rule was published on September 8, 1988 (53 FR 34795). Three letters were received which offered comments on the proposal. A customs brokerage and a fur company suggested that the Service was moving backwards in returning to a manual fee collection system. The recommended the Service retain the computerized, monthly billing system for the convenience of businesses involved. The fur company indicated it would be inconvenient for their field representatives to use a credit card to charge inspection fees at the time of each wildlife clearance. The Service understands that the return to a manual fee collection system may cause occasional inconvenience and limited additional cost to some businesses engaged in the international wildlife trade. However, the Service has no choice for the moment but to comply with the requirements of the Department of the Interior and Federal financial management policies regarding the collection of fees. The Service is currently exploring other methods of user fee collection which would be more convenient to the public while remaining in compliance with the Government financial management system.

The third letter of comment was received from the Humane Society of the United States. The Humane Society objected to the reduction of the import/export license fee and recommended that it be increased to $500 per year to more fully compensate the Government for the expenses of processing and issuing licenses. As stated above, the Service is not actually reducing the fee charged for wildlife inspections, but simply omitting the five prepaid inspections for which an additional $125 was built into the license fee. The Service does not believe that a license fee of $500 is appropriate at this time, particularly for small businesses which engage in limited commerce in wildlife each year.

Note.—The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and certifies that this proposed rule will not have a significant effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This final rule does not contain any new or additional information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* These changes in the regulations in Part 14 are regulatory and enforcement actions which are covered by a categorical exclusion from the National Environmental Policy Act procedures under 516 DM 6, Appendix 1, Sections 1.4(A)(1) and 1.5.

Author

The primary author of this final rule is Thomas L. Striegler, Special Agent in Charge, Division of Law Enforcement, U.S. Fish and Wildlife Service.

List of Subjects

50 CFR Part 13

Administrative practice and procedure, Exports, Fish, Imports, Penalties, Reporting requirements, Wildlife.

59 CFR Part 14

Exports, Fish, Imports, Labeling, Reporting and recordkeeping requirements, Transportation, Wildlife.

Regulation Promulgation

For the reasons set out in the preamble, Title 50, Chapter I, Subchapter B of the Code of Federal Regulations is amended as set forth below.

PART 13—GENERAL PERMIT PROCEDURES

1. The authority citation for Part 13 is revised to read as follows:

Authority: 16 U.S.C. 668a; 16 U.S.C. 704, 712; 16 U.S.C. 742j–1; 16 U.S.C. 1382; 16 U.S.C. 1538(d); 16 U.S.C. 1539, 1540(f); 16 U.S.C. 3374; 18 U.S.C. 42; 19 U.S.C. 1202; E.O. 11911, 41 FR 15683; 31 U.S.C. 9701.

§ 13.11 [Amended]

2. Section 13.11(d)(4) is amended by revising the first entry under "Fee" to read "$125 & inspection fees."

PART 14—IMPORTATION, EXPORTATION, AND TRANSPORTATION OF WILDLIFE

1. The authority citation for Part 14 continues to read as follows:

Authority: Lacey Act, (18 U.S.C. 42–44); Lacey Act Amendment, 1981, as amended, (16 U.S.C. 3371 *et seq.*); Endangered Species Act of 1973, as amended, (16 U.S.C. 1532, 1538, 1541, 1542); Marine Mammal Protection Act (16 U.S.C. 1382); Migratory Bird Treaty Act (16 U.S.C. 703 *et seq.*); Pub. L. 97–1581, 96 Stat. 1051 (31 U.S.C. 9701).

§ 14.93 [Amended]

2. Section 14.93(f)(1) is amended by removing "$250" and inserting in lieu thereof "$125".

3. Section 14.93(f)(2) is amended by removing the second sentence of the paragraph.

Date: December 20, 1988.

Becky Norton Dunlop,

Assistant Secretary for Fish & Wildlife and Parks.

[FR Doc. 89–1698 Filed 1–26–89; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 282

[Docket No. 81134–8234]

South Pacific Tuna Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Interim final rule with request for comments.

SUMMARY: The National Oceanic and Atmospheric Administration issues an interim final rule, with the concurrence of the Secretary of State, to implement the South Pacific Tuna Act of 1988

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("Act"), which in turn implements the obligations of the United States under the "Treaty on Fisheries Between the Governments of Certain Pacific Island States and the Government of the United States of America" ("Treaty").

All U.S. tuna purse seine vessels are now required to obtain licenses under the Treaty [through the United States Government] in order to fish in a 10 million square mile area in the South Pacific Ocean. Albacore vessels using trolling gear fishing outside of the 200 nautical mile fisheries zones of the Pacific Island Parties are excluded from the Treaty's licensing requirements. U.S. tuna purse seine vessels which have had difficulties at times fishing in this area because of unresolved jurisdictional fishing claims over tuna will now be able to obtain licenses under an established fee schedule and have access to much of the area.

As a foreign affairs function implementing an international fisheries agreement which is now in effect, these regulations are not required to be published as proposed regulations. However, these regulations are being published as interim final regulations to provide a 30 day public comment period. Although the Treaty and the Act have dictated the specific content of virtually all of the provisions of the regulations, some changes may be possible in response to comments received. Under the provisions of the Treaty and the Act most of this rule is already in force with respect to U.S. citizens and nationals.

DATE: This rule is effective February 27, 1989, except for §§ 282.3 and 282.5 which contain information collection requirements and which will not be effective until approved by the Office of Management and Budget. The effective date for §§ 282.3 and 282.5 will be published in a separate notice. Comments on this rule must be submitted no later than February 27, 1989.

ADDRESS: Comments should be addressed to the Director, Southwest Region, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce, 300 South Ferry Street, Room 2005, Terminal Island, California 90731. An environmental assessment is available upon request.

Send comments on the proposed collection of information to the Regional Director and the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: E.C. Fullerton (Director, Southwest Region, NMFS), (213) 514-6196.

SUPPLEMENTARY INFORMATION: On April 2, 1987, after more than two years of negotiations, the United States signed a treaty with 12 Pacific island nations (Australia, Cook Islands, Federated State of Micronesia, Fiji, Kiribati, Marshall Islands, Nauru, New Zealand, Papua New Guinea, Solomon Islands, Tuvbalu, and Western Samoa). The nations of Niue, Palau, and Vanuatu became signatories at a later date. Ten million square miles of South Pacific Ocean are encompassed by the Treaty area. On June 7, 1988, the President signed the implementing legislation into law as the South Pacific Tuna Act of 1988 (Pub. L. 100-330). The Treaty went into effect on June 15, 1988.

In the South Pacific Ocean, fisheries disputes between the United States and several Pacific island nations had resulted from conflicting juridical positions with respect to tuna. U.S. tuna purse seine vessels had been seized by island nations, causing retaliatory U.S. trade embargoes as mandated by the Magnuson Fishery Conservation and Management Act. The Treaty is a result of the efforts of the United States and Pacific island nations to resolve these problems.

The regulations set forth specifics of the implementation of the Treaty and the Act by the United States. The National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, is responsible for most of the day-to-day operational aspects of the Treaty obligations of the United States. The Department of State, in addition to having a consultative or concurrence role on many aspects of the regulations, is responsible for the formal country-to-country contacts under the Treaty. Certain obligations of the United States Government to the Pacific Island Parties relating to alleged infringements of the Treaty are not set forth in the regulations, nor are certain procedures established by the Act in regard to rulemaking authority and interagency operations. These matters are not obligations placed upon the public and were therefore not included in the regulations.

Licenses are required by all U.S. flag tuna fishing vessels to fish in the Treaty Area, except for albacore tuna fishing vessels using the trolling method outside of the 200 nautical mile fisheries zones of the Pacific Island Parties. Annual Licenses may be obtained from the Treaty Administrator, the Forum Fisheries Agency ("FFA"), by U.S. tuna purse seine vessels by completing an application form and providing it and some additional insurance, agent, and financial information along with the license fees required to the Southwest Regional Director, NMFS. The regulations set forth the criteria which the Commerce Department, in consultation with the Secretary of State, will use to determine whether a license application can be forwarded to the FFA for processing. License fees for the first year, which started on June 15, 1988, are a minimum of $50,000 a vessel for the first 40 licenses (fees for at least 35 licenses must be paid in the first licensing period). Licenses for 10 additional vessels are available for the first licensing period for $60,000 each. Fees for subsequent years are indexed to the price of tuna fish, with a minimum fee of $50,000. The licensing period is the same for all vessels, without any staggered periods or prorated fees.

Other requirements established by the Treaty and the Act which are addressed in the regulations cover (1) definitions; (2) compliance with certain laws of the Pacific island nations; (3) reporting requirements for vessels entering, within, and leaving the licensing area, and on fish caught and landed; (4) data confidentiality measures; (5) vessel and gear marking; (6) closed area fishing gear stowage measures; (7) radio monitoring frequencies; (8) prohibited acts; (9) civil penalty procedures; (10) vessel operators' rights to provide information bearing on an investigation of an alleged violation; (11) a "findings" procedure allowing the Secretary to order a vessel to leave various portions of the Treaty area under certain circumstances; (12) procedures on taking and treating observers and providing access aboard ship; and (13) inspection obligations.

Although these regulations reflect in very large part provisions specifically required by the Treaty and the Act, the Secretary does solicit comments on these interim final regulations and will consider them to the extent discretion exists to modify the regulations consistent with the Treaty and the Act. In this regard, comments are particularly encouraged on the following topics: (1) The specific license application procedures set forth in § 282.2; (2) the provisions defining and prescribing the duties of authorized inspectors set forth in §§ 282.2, 282.9, and 282.15; the cross-referencing in § 282.11 to the Agency's existing civil penalty procedures regulations; and the cross-referencing in § 282.4 to "applicable national laws."

Classification

The Assistant Administrator for Fisheries, NOAA, (Assistant Administrator) has determined that this rule will not have a significant impact on the human environment. NMFS has prepared an environmental assessment (EA) on the rule. The finding of the EA was that no significant impact on the human environment will occur as a result of this rule and that no environmental impact statement was required. The EA is available upon request (see ADDRESS).

This action is exempt from the provisions of Executive Order 12291 under section (2)(a)(1) because these regulations are issued with respect to a foreign affairs function of the United States.

The General Counsel of the Department of Commerce has certified to the Small Business Administration that the rule is exempt from the Regulatory Flexibility Act and the preparation of a regulatory flexibility analysis because it involves a foreign affairs function of the United States and notice and comment rulemaking is not required.

This action is not subject to section 553 of the Administrative Procedure Act because the implementation of this rule is a foreign affairs function. However, the Assistant Administrator will solicit public comments on the rule and will consider them to the extent discretion exists to modify the regulations consistent with the Treaty and the Act.

This rule includes a collection-of-information requirement subject to the Paperwork Reduction Act; effectiveness of the requirement is deferred until after approval by the Office of Management and Budget. A request to collect this information has been submitted to the Office of Management and Budget for approval. Public reporting burden for this collection of information is estimated to average 0.73 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Regional Director and to OMB (see ADDRESSES).

The rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

This rule does not directly affect the coastal zone of any state with an approved coastal zone management program.

List of Subjects in 50 CFR Part 282

Fisheries, Reporting and recordkeeping requirements, South Pacific Treaty.

Dated: January 23, 1989.

James W. Brennan,

Assistant Administrator For Fisheries, Fisheries Service.

For the reasons set forth in the preamble, 50 CFR Part 282 is added to Subchapter H as follows:

PART 282—SOUTH PACIFIC TUNA FISHERIES

Subpart A—General

Sec.

282.1 Purpose and scope.
282.2 Definitions.
282.3 Vessel licenses.
282.4 Compliance with applicable national laws.
282.5 Reporting requirements.
282.6 Vessel and gear identification.
282.7 Closed area stowage requirements.
282.8 Radio monitoring.
282.9 Prohibitions.
282.10 Exceptions.
282.11 Civil penalties.
282.12 Investigation notification.
282.13 Findings leading to removal from fishing area.
282.14 Observers.
282.15 Other inspections.

Authority: 16 U.S.C. 973-973r.

§ 282.1 Purpose and scope.

(a) The South Pacific Tuna Act of 1988 (16 U.S.C. 973-973r) authorizes the Secretary, with the concurrence of the Secretary of State, and after consultation with the Secretary of the Department in which the Coast Guard is operating, to promulgate regulations to implement the Act. The Act implements the obligations of the United States under the Treaty on Fisheries Between the Governments of Certain Pacific Island States and the Government of the United States of America. The Treaty Area is an area of ocean in the South Pacific Ocean.

(b) This Part implements the Act and Treaty and applies to persons and vessels subject to the jurisdiction of the United States.

§ 282.2 Definitions

In addition to the definitions contained in the Act, and unless the context requires otherwise, the terms used in this Part 282 have the following meanings (some definitions in the Act have been repeated here to aid in understanding the regulations):

Act means the South Pacific Tuna Act of 1988, 16 U.S.C. 973-973r.

Authorized Inspector means any individual authorized by a Pacific Island Party or the Secretary to conduct inspections, to remove samples of fish, and to gather any other information relating to fisheries in the Licensing Area.

Authorized Officer means any officer who is authorized by the Secretary, or the Secretary of the department in which the Coast Guard is operating, or the head of any Federal or State agency which has entered into an enforcement agreement with the Secretary under section 10(a) of the Act.

Authorized Party Officer means any officer authorized by a Pacific Island Party to enforce the provisions of the Treaty.

Applicable National Law means any provision of law of a Pacific Island Party which is described in paragraph 1(a) of Annex I of the Treaty.

Closed Area means any of the closed areas identified in Schedule 2 of Annex I of the Treaty.

Fishing means searching for, catching, taking, or harvesting fish; attempting to search for, catch, take, or harvest fish; engaging in any other activity which can reasonably be expected to result in the locating, catching, taking, or harvesting of fish; placing, searching for, or recovering fish aggregating devices or associated electronic equipment such as radio beacons; any operations at sea directly in support of, or in preparation for, any activity described in this paragraph; or aircraft use, relating to the activities described in this paragraph except for flights in emergencies involving the health or safety of crew members or the safety of a vessel.

Fishing Arrangement means an arrangement between a Pacific Island Party and the owner of a United States fishing vessel which complies with section 6(b) of the Act.

Fishing Vessel or *Vessel* means any boat, ship, or other craft which is used for, equipped to be used for, or of a type normally used for commercial fishing, and which is documented under the laws of the United States.

Licensing Area means all waters in the Treaty Area except for:

(a) Those waters subject to the jurisdiction of the United States in accordance with international law;

(b) Those waters within Closed Areas; and

(c) Those waters within Limited Areas closed to Fishing.

Licensing Period means the period of validity of licenses issued in accordance with the Treaty.

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Limited Area(s) means those area(s) so identified in Scheduled 3 of Annex I of the Treaty.

Operator means any person who is in charge of, directs or controls a vessel, including the owner, charterer and master.

Pacific Island Party means a Pacific Island nation which is a party to the Treaty.

Party means a nation which is a party to the Treaty.

Person means any individual (whether or not a citizen or national of the United States), any corporation, partnership, association, or other entity (whether or not organized, or existing under the laws of any State), and any Federal, State, local, or foreign government or any entity of any such government.

Secretary means the Secretary of Commerce, or the designee of the Secretary of Commerce.

State means each of the several States, the District of Columbia, the Commonwealths of Puerto Rico and the Northern Mariana Islands, American Samoa, the Virgin Islands, Guam and any other Commonwealth, territory, or possession of the United States.

Treaty means the Treaty on Fisheries Between the Governments of Certain Pacific Island States and the Government of the United States of America, signed in Port Moresby, Papua New Guinea, April 2, 1987, and its Annexes, Schedules, and implementing agreements.

Treaty Administrator means the individual or organization designated by the Pacific Island Parties to act on their behalf under the Treaty and notified to the United States.

Treaty Area means the area described in paragraph 1(k) of Article I of the Treaty.

§ 282.3 Vessel licenses.

(a) Each vessel fishing in the Licensing Area must have a valid license issued by the Treaty Administrator, unless excepted by § 282.10.

(b) The license shall be carried on board the vessel when in the licensing area or closed areas and shall be produced at the request of authorized officers, authorized party officers, or authorized inspectors. Prior to receipt of the license, the correct citation of the license number shall satisfy this requirement.

(c) Applications for licenses to fish in the Licensing Area must be requested by filing a Treaty license application form and a Regional Fishing Vessel Register Application Form with the Southwest Regional Director, National Marine Fisheries Service, 300 S. Ferry Street, Terminal Island, CA 90731, providing the information requested on the form. Copies of the two forms can be obtained from the Regional Director (address above). If any of the following information is not provided on these application forms, it must be provided separately:

(1) Identification of the year for which the license is requested;

(2) Name of agent for service of legal process located in Port Moresby, Papua, New Guinea;

(3) Insurance company statement establishing the vessel will be fully insured against all risks and liabilities normally provided in maritime liability insurance;

(4) A statement which explains how the owner or charterer has arranged for the provisions of reasonable financial assurance if the owner or charterer is the subject of proceedings under the bankruptcy laws of the United States;

(d) Treaty license fees must be included by certified check or money order payable to the "Forum Fishing Agency" for forwarding to the Treaty Administrator.

(1) The Treaty license fee for the license period beginning in 1988 is at least $50,000 a vessel for the first 40 licenses processed in order of receipt of a complete application with fee included. Another 10 licenses are available for the licensing period beginning in 1988 at a license fee of $60,000 a vessel. Additional licenses may be available in accordance with the Treaty. For the license period beginning in 1988 only, license fees totalling at least $1,750,000 must be received by the Secretary before any licenses will be forwarded to the Treaty Administrator for processing.

(2) After the first licensing period, license fees and availability will be announced by notice in the Federal Register when they are set in accordance with the Treaty.

(e) The Secretary, in consultation with the Secretary of State, may determine that a license application should not be forwarded to the Treaty Administrator for one of the following reasons:

(1) The application is not in accord with the requirements of the Secretary or the Treaty;

(2) The owner or charterer is the subject of proceedings under the bankruptcy laws of the United States, unless reasonable financial assurances have been provided to the Secretary;

(3) The owner or charterer has not established to the satisfaction of the Secretary that the fishing vessel is fully insured against all risks and liabilities normally provided in maritime liability insurance; or

(4) The owner or charterer has not paid any penalty which has become final, assessed by the Secretary in accordance with this Act.

(f) The Secretary may establish a system of allocating licenses in the event more applications are received than there are licenses available.

§ 282.4 Compliance with applicable national laws.

(a) The operator of the vessel shall comply with each of the applicable national laws, and the operator of the vessel shall be responsible for the compliance by the vessel and its crew with each of the applicable national laws, and the vessel shall be operated in accordance with those laws.

§ 282.5 Reporting requirements.

(a) License holders shall comply with the reporting requirements of part 4 of Annex I to the Treaty.

(b) Information provided by license holders under Schedule 5 of Annex I of the Treaty shall be provided on the designated Forum Fisheries Agency form(s) to the Southwest Regional Director of the National Marine Fisheries Service or the Director's designee within 2 days of reaching port.

(c) Information provided by license holders under Schedule 6 of Annex I of the Treaty shall be provided on the designated Forum Fisheries Agency form(s) to the Southwest Regional Director or the Director's designee within 2 days of completing unloading.

(d) Any information required to be recorded, or to be notified, communicated or reported pursuant to a requirement of these regulations, the Act, or the Treaty shall be true, complete and correct. Any change in circumstances which has the effect of rendering any of the information false, incomplete or misleading shall be communicated immediately to the Southwest Regional Director.

§ 282.6 Vessel and gear identification.

(a) While in the licensing area, a limited area closed to fishing, or a closed area, the international radio call sign of the vessel shall be painted in white on a black background, or in black on a white background, and be clear, distinct, and uncovered, in the following manner:

(1) Amid ships on both sides immediately below the gunwale, and on a horizontal plane on the superstructure, in letters and figures 8 inches apart, with each letter and figure being at least 40 inches high and 20 inches wide and with each line at least 5 inches wide;

(2) If a helicopter is being carried, on the body of the helicopter in a place clearly visible from sea level, in letters and figures 2 inches apart, with each letter and figure being at least 10 inches high, 4 inches wide and with each line being at least 1 inch wide; and

(3) On any other equipment being carried by an intended to be separated from the vessel during normal fishing operations, in letters and figures clearly legible to the naked eye.

§ 282.7 Closed area stowage requirements.

At all times while a vessel is in a Closed Area, the fishing gear of the vessel shall be stowed in a manner as not to be readily available for fishing. In particular, the boom shall be lowered as far as possible so that the vessel cannot be used for fishing, but so that the skiff is accessible for use in emergency situations; the helicopter, if any shall be tied down; and launches shall be secured.

§ 282.8 Radio monitoring.

The international distress frequency, 2.182 MHz, and 156.8 MHz (Channel 16, VHF) shall be monitored continuously from the vessel for the purpose of facilitating communication with the surveillance and enforcement authorities of the Parties.

§ 282.9 Prohibitions.

(a) Except as provided for in §282.10, it is unlawful for any person subject to the jurisdiction of the United States to do the following:

(1) To violate the Act or any provision of any regulation or order issued pursuant to Act;

(2) To use a vessel for fishing in violation of an applicable national law;

(3) To violate the terms and conditions of any fishing arrangement to which that person is a party;

(4) To use a vessel for fishing in a Limited Area in violation of the requirements set forth in Schedule 3 of Annex I of the Treaty on "Limited Areas";

(5) To use a vessel for fishing in any Closed Area;

(6) To falsify any information required to be reported, notified, communicated or recorded pursuant to a requirement of the Act or these regulations, or to fail to submit any required information, or to fail to report to the Secretary immediately any change in circumstances which has the effect of rendering the information false, incomplete or misleading;

(7) To intentionally destroy evidence which could be used to determine if a violation of these regulations, the Act or the Treaty has occurred;

(8) To refuse to permit any Authorized Officer of Authorized Party Officer to board a fishing vessel for purposes of conducting a search or inspection in connection with the enforcement of the Act or the Treaty;

(9) To refuse to comply with the instructions of an Authorized Officer or Authorized Party Officer relating to fishing activities under the Treaty;

(10) To refuse to permit an Authorized Inspector full access to any place where fish taken in the Licensing Area is unloaded;

(11) To refuse to allow an Authorized Inspector to remove samples of fish from a vessel which fished in the Licensing Area;

(12) To forcibly assault, resist, oppose, impede, intimidate, or interfere with:

(i) Any Authorized Officer, Authorized Party Officer or Authorized Inspector in the conduct of a search or inspection in connection with the enforcement of these regulations, the Act or the Treaty; or

(ii) An observer in the conduct of observer duties under the Treaty;

(13) To resist a lawful arrest for any act prohibited by these regulations or the Act;

(14) To interfere with, delay, or prevent, by any means, the apprehension or arrest of another person, knowing that such other person has committed any act prohibited by this section; or

(15) To ship, transport, offer for sale, sell, purchase, import, export, or have custody, control, or possession of, any fish taken or retained in violation of these regulations, the Act, or the Treaty, with the knowledge that the fish were so taken or retained.

(b) Except as provided for in § 282.10, it is unlawful for any person subject to the jurisdiction of the United States when in the Licensing Area:

(1) To use a vessel to fish unless validly licensed as required by the Treaty Administrator;

(2) To use a vessel for directed fishing for southern bluefin tuna or for fishing for any kinds of fish other than tunas, except that fish may be caught as a incidental by-catch;

(3) To use a vessel for fishing by any method, except the purse-seine method;

(4) To use any vessel to engage in fishing after the revocation of its license, or during the period of suspension of an applicable license;

(5) To operate a vessel in such a way as to disrupt or in any other way adversely affect the activities of traditional and locally based fishermen and fishing vessels;

(6) To use a vessel to fish in a manner inconsistent with an order issued by the Secretary under § 282.12 (section 11 of the Act); or

(7) Except for circumstances involving force majeure and other emergencies involving the health or safety of crew members or the safety of the vessel, to use aircraft in association with fishing activities of a vessel unless it is identified on the license application for the vessel, or any amendment thereto.

§ 282.10 Exceptions.

(a) The prohibitions of § 282.9 and the licensing requirements of § 282.3 shall not apply to fishing for albacore tuna by vessels using the trolling method outside of the 200 nautical mile fisheries zones of the Pacific Island Parties.

(b) The prohibitions of § 282.9 (a)(4), (a)(5), and (b)(3) shall not apply to fishing under the terms and conditions of a fishing arrangement.

§ 282.11 Civil penalties.

The procedures of 15 CFR Part 904 apply to the assessment of civil penalties, except as modified by the requirements of section 8 of the Act.

§ 282.12 Investigation notification.

Upon commencement of an investigation under section 10(b)(1) of the Act, the operator of any vessel concerned shall have 30 days after receipt of the Secretary's notification of the investigation and the operator's rights under section 10(b)(1) to submit comments, information, or evidence bearing on the investigation, and to request in writing that the Secretary provide the operator an opportunity to present the comments, information, or evidence orally to the Secretary or the Secretary's representative.

§ 282.13 Findings leading to removal from fishing area.

(a) Following an investigation conducted under section 10(b) of the Act, the Secretary, with the concurrence of the Secretary of State, and upon the request of the Pacific Island Party concerned, may order a fishing vessel which has not submitted to the jurisdiction of that Pacific Island Party to leave immediately the Licensing Area, all Limited Areas, and all Closed Areas upon making a finding that:

(1) The fishing vessel—

(i) While fishing in the Licensing Area did not have a license under the Treaty to fish in the Licensing Area, and that under paragraph 2 of Article 3 of the Treaty, the fishing is not authorized to be conducted in the Licensing Area without a license;

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(ii) Was involved in any incident in which an Authorized Officer, authorized Party Officer, or observer was allegedly assaulted with resultant bodily harm, physically threatened, forcibly resisted, refused boarding or subjected to physical intimidation or physical interference in the performance of duties as authorized by the Act or the Treaty;

(iii) Has not made full payment within sixty days of any amount due as a result of a final judgement or other final determination deriving from a violation in waters within the Treaty Area of a Pacific Island Party; or

(iv) Was not represented by an agent for service of process in accordance with the Treaty; or

(2) There is probable cause to believe that the fishing vessel—

(i) Was used in violation of section 5 (a)(4), (a)(5), (b)(2), or (b)(3) of the Act;

(ii) Used an aircraft in violation of section 5(b)(7); or

(iii) Was involved in an incident in which section 5(a)(7) was violated.

(b) Upon being advised by the Secretary of State that proper notification to Parties has been made under paragraph 7 of Article 5 of the Treaty that a Pacific Island Party is investigating an alleged infringement of the Treaty by a vessel in waters under the jurisdiction of that Pacific Island Party, the Secretary shall order the vessel to leave those waters until the Secretary of State notifies the Secretary that the order is no longer necessary.

(c) The Secretary shall rescind any order issued on the basis of a finding under paragraphs (a)(1) (iii) or (iv) of this section (subsections 11(a)(1) (C) or (D) of the Act) as soon as the Secretary determines that the facts underlying the finding do not apply.

(d) An order issued in accordance with this section is not subject to judicial review.

§ 282.14 Observers.

(a) The operator and each member of the crew of a vessel shall allow and assist any person identified as an observer under the Treaty by the Pacific Island Parties:

(1) To board the vessel for scientific, compliance, monitoring and other functions at the point and time notified by the Pacific Island Parties to the Secretary;

(2) Without interfering unduly with the lawful operation of the vessel, to have full access to and use of facilities and equipment on board the vessel which the observer may determine are necessary to carry out observer duties; have full access to the bridge, fish on board, and areas which may be used to hold, process, weigh and store fish; remove samples; have full access to the vessel's records, including its log and documentation for the purpose of inspection and copying; and gather any other information relating to fisheries in the Licensing Area;

(3) To disembark at the point and time notified by the Pacific Island Parties to the Secretary; and

(4) To carry out observer duties safely.

(b) The operator shall provide the observer, while on board the vessel, at no expense to the Pacific Island Parties, with food, accommodation and medical facilities of reasonable standard as may be acceptable to the Pacific Island Party whose representative is serving as the observer.

§ 282.15 Other inspections.

The operator of any vessel from which any fish taken in the Licensing Area is unloaded shall allow, or arrange for, and assist any authorized inspector, authorized party officer, or authorized officer to have full access to any place where this fish is unloaded, to remove samples, and to gather any other information relating to fisheries in the Licensing Area.

[FR Doc. 89-1060 Filed 1-26-89; 8:45 am]
BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 54, No. 17
Friday, January 27, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 275

[Amdt. No. 309]

Food Stamp Program: Quality Control Technical Amendments

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule proposes to amend provisions concerning the arbitration of quality control reviews. Current reviews are subject to time limits on State agencies' request for arbitration. However, there are no time limits on most past reviews. This proposed rule would impose time limits on these reviews and thus lead to more stable payment error rates.

DATE: Comments on this proposed rulemaking must be received on or before March 28, 1989 to be assured of consideration.

ADDRESS: Comments should be submitted to Duane S. Maddox, Chief, Quality Control Branch, Progam Accountability Division, Food Stamp Program, Food and Nutrition Service, USDA, Alexandria, Virginia 22302. All written comments will be open to public inspection at the offices of the Food and Nutrition Service (FNS) during regular business hours (8:30 a.m. to 5:00 p.m., Monday through Friday), at Room 905, 3101 Park Center Drive, Alexandria, Virginia.

FOR FURTHER INFORMATION CONTACT: Mr. Maddox, at the above address, or by telephone at (703) 756-3474.

SUPPLEMENTARY INFORMATION:

Classification

Executive Order 12291

This has been reviewed under Executive Order 12291 and Secretary's Memorandum No. 1512-1. The Department has classified this rule as non-major. The rule's effect on the economy will be less than $100 million. The rule will have no effect on costs or prices. Competition, employment, investment, productivity and innovation will remain unaffected. There will be no effect on the competition of United States-based enterprises with foreign-based enterprises.

Regulatory Flexibility Act

This action has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (Pub. L. 96-354, Stat. 1164, September 19, 1980). Anna Kondratas, Administrator of the Food and Nutrition Service, has certified that this rule does not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This action does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget (OMB).

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rule and related Notice(s) to 7 CFR Part 3015, Subpart V (48 FR 29115, June 24, 1983) this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Background

On January 21, 1988, the Department published a final rule which set timeframes for each State agency to request regional or national arbitration (please see 53 FR 1603). A State agency must now request regional arbitration within 28 calendar days of the date it receives the regional office's review findings. A State agency must request national arbitration within 28 calendar days of the date it receives the regional arbitrator's decision. The Department extends these periods if the 28th day falls on a Saturday, Sunday, or Federal or State holiday.

The final rule's deadline for requesting regional arbitration applies only to regional findings which a State agency received on or after February 22, 1988. The deadline for requesting national arbitration applies only to regional arbitrator's decisions which a State agency received on or after February 22, 1988.

Therefore, under the current system, error rates for the earlier periods would continue to be subject to change if a State agency chooses to seek arbitration on one or more cases in the future. With a time limit for requesting arbitration of cases from the earlier periods, the Department and the State agencies would possess stable error rates for those past periods and all issues as to whether errors existed in individual cases could be brought to closure. For this reason, the Department is proposing a time limit for arbitration requests concerning reviews not covered by the final rule.

According to this proposal, if a State agency had received the regional finding before February 22, 1988, the State agency would have to request regional arbitration by the 150th day after publication of the final rule. If a State agency had received the regional arbitrator's decision before February 22, 1988, the State agency would have to request national arbitration by the 150th day after the publication of the final rule.

The 150 day period is based on the standard 30 days for a final rule to become effective and a 120 day period for State agencies to prepare and submit their requests. However, the Department encourages State agencies to begin their examinations of regional findings and arbitration decisions as soon as possible. (§§ 275.3(c)(4)(i)(D) and 275.3(c)(4)(ii)(C)).

Implementation

The Department proposes that implementation of the arbitration timeframes would take place 150 days after publication of a final rule, as discussed above.

List of Subjects in 7 CFR Part 275

Administrative practice and procedure, Food stamps, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, Part 275 of Chapter II of Title 7, *Code of Federal Regulations* is proposed to be amended as follows.

1. The authority citation appearing after the table of contents for Part 275 continues to read as follows:

Authority: 7 U.S.C. 2011-2029.

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PART 275—PERFORMANCE REPORTING SYSTEM

2. In § 275.3, paragraphs (c)(4)(i)(D), and (c)(4)(ii)(C) are added to read as follows:

§ 275.3 Federal monitoring.

* * * * *

(c) *Validation of State Agency Error Rates.* * * *

(4) *Arbitration.* * * *

(i) *Regional Level.* * * *

(D) The State agency shall have 150 calendar days after publication of this proposed rule's final version to request regional office arbitration of regional office case findings which the State agency received before February 22, 1988.

(ii) *National Level.* * * *

(C) The State agency shall have 150 calendar days after publication of this proposed rule's final version to request national office arbitration of regional arbitration decisions which the State agency received before February 22, 1988.

* * * * *

Date: January 19, 1989.

Anna Kondratas,

Administrator.

[FR Doc. 89-1979 Filed 1-26-89; 8:45 am]

BILLING CODE 2410-30-M

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 5

[Docket No. 89-3]

Rules, Policies, and Procedures for Corporate Activities: Operating Subsidiaries, Changes in Equity Capital, Subordinated Debt, Conversions

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of the Comptroller of the Currency ("OCC") proposes to amend 12 CFR 5.34 Operating Subsidiaries, to describe the OCC's existing policies on imposing conditions on transactions between a bank and its subsidiaries. The proposed rule also amends 12 CFR 5.24, 5.46 and 5.47 by including timeframes for consummation after the OCC grants preliminary approval. In addition, a new § 5.36 will be added, to require national banks to notify the OCC of plans to make certain equity investments which are authorized by statute. These changes will assist the OCC in fulfilling its responsibility for maintaining the safety and soundness of national banks and the national banking system, and improve OCC efficiency.

DATES: Comments must be received on or before March 28, 1989.

ADDRESSES: Comments should be directed to: Docket No. 89-3, Communications Division, 5th Floor, 490 L'Enfant Plaza East, SW., Washington, DC 20219. Attention: Anne Bryant. Comments will be available for public inspection and photocopying at the same location.

FOR FURTHER INFORMATION CONTACT: Sheila G. Ogilvie, National Bank Examiner/Senior Licensing Policy and Systems Analyst, Bank Organization and Structure, (202) 447-1184, or Christopher Manthey, Senior Attorney, Legal Advisory Services Division, (202) 447-1880, Office of the Comptroller of the Currency, 490 L'Enfant Plaza East, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

Background

This proposed rule is part of the OCC's Corporate Activities Review and Evaluation (CARE) program. That program is described in 45 FR 66556, dated October 15, 1980, and involves a comprehensive review of the OCC's rules, policies, procedures and forms governing filings for corporate expansion and structural changes for national banks. The goals of the CARE program are to minimize costs and burdens on applicants, the OCC, and the public; to provide a better understanding of OCC policies; to modify or eliminate rules, policies, procedures and forms which are unnecessary or lead to inefficiencies; and to remove barriers to competition.

Discussion

Operating Subsidiaries

The operating subsidiary regulation (12 CFR 5.34) currently permits a national bank to acquire or establish an operating subsidiary or perform new activities in an operating subsidiary after 30 days from the date it notifies the OCC of its intentions. However, the 30-day period may be extended by the OCC if the bank's letter raises issues that require additional information or analysis. If the time period has been extended, the bank may not perform the new activities in an operating subsidiary until the OCC provides written approval authorizing such activities. The OCC uses the 30-day (or longer) time period to determine if the proposed activities are legally permissible for a national bank and to review the proposal for consistency with safe and sound banking practices. Where warranted, the OCC addresses legal or supervisory concerns by imposing conditions on the performance of the new activities in its written approval.

In the past, the OCC relied on its general authority to ensure the safe and sound operations of national banks, referred to in 12 CFR 5.34(d)(3), as the basis for imposing conditions on operating subsidiary activities. The proposed rule states plainly that the OCC may issue a written approval, subject to conditions, where legal or supervisory concerns are present, which are enforceable as conditions imposed in writing within the meaning of 12 U.S.C. 1818(b).

Time Frames

This proposed rule also amends 12 CFR 5.24, 5.46, and 5.47 by limiting the time between OCC approval and consummation of conversions, changes in equity capital, and issuances of subordinated debt. The proposed rule establishes time limits of six months for conversion transactions and 12 months for the issuance of subordinated debt and changes in equity capital. Approvals will automatically expire for transactions that are not consummated within the time limits, unless the OCC grants an extension.

The new time limits are consistent with OCC policy and practice for other corporate filings. Also, experience indicates that the time limits exceed the time taken by virtually all applicants to consummate those transactions. Therefore, the automatic expiration period will not affect most applicants, but will allow the OCC to purge abandoned filings. Extension of the time limit can be granted in unusual circumstances. OCC efficiency therefore will improve without any significant additional burden on applicants.

Equity Investments

This proposed rule also adds a new § 5.36, which requires notification to the OCC of certain proposed equity investments which are authorized by statute. The proposed rule operates in the same manner as 12 CFR 5.34, including proposed amendments, with regard to operating subsidiaries.

Investments would be approved, disapproved, or approved subject to supervisory conditions. The OCC believes that its duty to ensure the safety and soundness of national banks under 12 U.S.C. 1818(b), as well as its general supervisory authority over national banks under the National Bank Act, 12 U.S.C. 1 *et seq.*, are adequate legal authority to impose these supervisory requirements.

While national banks are presently permitted by statute to make a number of equity investments, the OCC finds it unnecessary at this time to require notice for every type of investment. Most investments are routine and have little danger of affecting a bank's safety and soundness. Some, such as Edge Act corporations, are adequately supervised by other regulatory agencies. Accordingly, the proposed rule is limited to equity investments in nonbank depository institutions and agricultural credit corporations, as well as any equity investments which may be authorized by statute in the future.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601) it is certified that this notice of proposed rulemaking, if adopted as a final rule, will not have a significant economic impact on a substantial number of small entities.

Executive Order 12291

The OCC has determined that this proposed rule is not classified as a "major rule" and therefore does not require a regulatory impact analysis.

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget under control number 1557-0014 for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collection of information should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, attention: Desk Officer for Comptroller of the Currency, with copies to the Comptroller of the Currency, Legislative and Regulatory Analysis, 5th Floor, 490 L'Enfant Plaza East, SW., Washington, DC 20219.

The collections of information in this regulation are in 12 CFR 5.24, 5.34, 5.46, and 5.47, and proposed new § 5.36. This information is required by the OCC to render decisions on the permissibility of proposed activities for operating subsidiaries, the safety and soundness of proposed equity investments, and to purge abandoned filings for changes in equity capital, subordinated debt, and conversions. This information will be used to assist the OCC in fulfilling its responsibility for maintaining the safety and soundness of national banks and the national banking system, and to improve OCC efficiency. The likely respondents are for-profit institutions.

No burden change is expected for §§ 5.24, 5.34, 5.46, or 5.47. Additional burden is imposed by proposed § 5.36, Other Equity Investments. OCC is requesting only the minimum amount of information necessary to review the proposed investment.

For § 5.36, OCC estimates that 10 responses will be received annually and that each response will require approximately four hours to prepare and submit. The burden on respondents should not vary considerably because of differences in bank activity, size, or complexity. Further, the information requested is the same information that prudent bank management and directors will have reviewed in conjunction with their analysis of the investment. The total burden increase attributable to § 5.36 is expected to be approximately 40 burden hours.

If this proposed rule is adopted as a final rule, the total number of responses attributable to OMB Control Number 1557-0014 will be 2,950 and the total burden hours will be 47,613. This reflects 10 additional responses and 40 additional burden hours for 12 CFR 5.36.

List of Subjects in 12 CFR Part 5

National Banks, Banking, Corporate Activities, Operating Subsidiaries, Conversions, Equity Capital, Equity Investments, Subordinated Debt.

Authority and Issuance

For the reasons set out in the preamble, Part 5 of Chapter I of Title 12 of the Code of Federal Regulations is proposed to be amended as set forth below:

PART 5—[AMENDED]

1. The authority citation for Part 5—Rules, Policies, and Procedures for Corporate Activities continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.*; 12 U.S.C. 93a.

2. In § 5.24, paragraph (c)(4) is revised to read as follows:

§ 5.24 Conversions.

* * * * *

(c) * * *

(4) *Commencement of business as national bank.* When all statutory requirements and other conditions have been met, the Office will issue a charter certificate. The charter will provide that the institution is authorized to commence business as a national bank as of a specified date. Conversions must occur within six months of preliminary approval. An extension of this period is generally not granted; however, in the event of extraordinary circumstances, a request for extension may be submitted to the appropriate district office of Multinational Banking in Washington, DC.

* * * * *

3. In 5.34, paragraph (d)(1)(ii) is revised, text from former (d)(1)(iii) is revised and redesignated as (d)(1)(iv), and new paragraphs (d)(1)(iii) and (d)(4) are added to read as follows:

§ 5.34 Operating subsidiaries.

* * * * *

(d) * * *

(1) * * *

(ii) The bank may acquire or establish an operating subsidiary or perform new activities in an existing operating subsidiary, after 30 days from the date the Office receives the bank's letter, unless otherwise notified by the Office, or in less than 30 days if so notified by the Office. The Office may extend the 30-day period if it determines that the bank's letter raises issues which require additional information or additional time for analysis. If the 30-day period is extended, the bank may acquire or establish an operating subsidiary, or may perform new activities in an existing operating subsidiary, only upon written approval by the Office.

(iii) The Office reviews the bank's proposal to determine if the proposed activities exceed those legally permissible for a national bank's operating subsidiary, and to ensure that the proposal is consistent with prudent banking principles and Office policy. The Office reserves the right to grant written approval subject to conditions when there are legal or supervisory concerns.

(iv) A bank may acquire or establish an operating subsidiary without notifying the Office provided: (A) The activities of the new subsidiary are limited to those activities previously reported by the bank in connection with the establishment or acquisition of a prior operating subsidiary; (B) The establishment or acquisition of the prior subsidiary was considered permissible by the Office; (C) The activities in which the new subsidiary will engage continue to be considered legally permissible by the Office; and (D) The activities will be conducted in accordance with any conditions imposed by the OCC in approving the conduct of these activities for any prior operating subsidiary of the bank.

* * * * *

(4) *Conditions imposed in writing.* In permitting a bank to acquire or establish an operating subsidiary or perform new activities in an existing operating subsidiary, the Office may impose one or more legal or supervisory conditions

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in connection with its approval. Any such condition shall be enforceable as a condition imposed in writing by the Office in connection with the granting of a request by a bank within the meaning of 12 U.S.C. 1818(b).

4. A new § 5.38 is added to read as follows:

§ 5.38 Other equity investments.

(a) *Authority.* 12 U.S.C. 24(7), 93a.

(b) *Rules of general applicability.* Sections 5.8, 5.9, 5.10, and 5.11 do not apply to national bank notifications of other equity investments.

(c) *Definition.* "Nonbank depository institution" means any institution which qualifies as an "insured institution" within the meaning of section 408(m) of the National Housing Act, 12 U.S.C. 1730a(m).

(d) *General.* National banks are authorized to make equity investments in various types of business organizations by 12 U.S.C. 24 (Seventh) and other statutes.

(e) *Policy and procedure.*—(1) *Notification.* A national bank intending to make an equity investment, pursuant to statutory authorization, in an agricultural credit corporation or nonbank depository institution, or other equity investments which may be authorized by statute after [effective date of final rule], shall submit a letter to the appropriate Deputy Comptroller. The letter must detail the proposed activities of the business in which the bank plans to invest. It must also discuss the financial and managerial resources and future prospects of that business, and must describe the financial capability of the bank to make the proposed investment. The Office may request any additional information it considers necessary to make a decision regarding the permissibility of the proposed investment.

(2) *Review period.* The bank may make the proposed investment after 30 days from the date the Office receives the bank's letter unless notified to the contrary, or in less than 30 days if notified by the Office. The Office will utilize the 30-day period to review the bank's proposed investment. The 30-day period may be extended upon notice to the bank if the bank's notification raises issues that require additional information or time for analysis by the Office. If the 30-day period is extended, the bank may make the proposed investment only upon written notification by the Office.

(3) *Conditions imposed in writing.* The Office may impose legal or supervisory conditions in connection with its review. Any such condition shall be enforceable as a condition imposed in writing by the OCC in connection with the granting of a request by bank within the meaning of 12 U.S.C. 1818(b).

5. In § 5.46, a new paragraph (g)(4) is added to read as follows:

§ 5.46 Changes in equity capital.

* * * * *

(g) * * *

(4) Changes in equity capital must occur within 12 months of preliminary approval. An extension of this period is generally not granted; however, in the event of extraordinary circumstances, a request for extension may be submitted to the appropriate district office or Multinational Banking in Washington, DC.

* * * * *

6. In § 5.47, a new paragraph (g)(3) is added to read as follows:

§ 5.47 Subordinated debt as capital.

* * * * *

(g) * * *

(3) Subordinated debt must be issued within 12 months of preliminary approval. An extension of this period is generally not granted; however, in the event of extraordinary circumstances, a request for extension may be submitted to the appropriate district office or Multinational Banking in Washington, DC.

* * * * *

Date: January 23, 1989.

Robert L. Clarke,

Comptroller of the Currency.

[FR Doc. 89-1964 Filed 1-26-89; 8:45 am]

BILLING CODE 4810-33-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Parts 541, 542, 543, 544, and 545

[No. 89-8]

Extension of Time Period for Board Action on Certain Outstanding Proposals

Date: January 11, 1989.

AGENCY: Federal Home Loan Bank Board.

ACTION: Proposed rules; extension of time period for board action.

SUMMARY: Pursuant to its regulatory review procedures, *see* Board Res. No. 88-209, 53 FR 12156 (April 21, 1988), the Federal Home Loan Bank Board ("Board") hereby gives notice that it is extending the time period for possible Board action on the following outstanding proposed regulations as outlined in **SUPPLEMENTARY INFORMATION.** The Board is taking this action in order to allow adequate time for consideration of a number of complex issues raised by these proposals. It is not soliciting additional comments on these proposals.

DATE: January 11, 1989. Time for Board action on the following proposals is extended until July 10, 1989.

FOR FURTHER INFORMATION CONTACT: Deborah Dakin, Regulatory Counsel, (202) 377-6445, Regulations and Legislation Division, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552 or the appropriate contact persons listed in the referenced **Federal Register** documents.

SUPPLEMENTARY INFORMATION: The following are outstanding proposals on which the comment period has been closed for more than six months but which the Board still has under active consideration for possible further action. The Board is hereby extending the time for possible final Board action on each of these proposals to July 10, 1989.

1. Corporate Governance Part I, adopted by the Board on September 13, 1985; 50 FR 38832 (September 25, 1985);

2. Corporate Governance Part II, adopted by the Board on November 22, 1985; 50 FR 52462 (December 24, 1985).

The Board notes that this action does not constitute a representation that the Board will take final action with respect to these proposals, only that it may do so within this extension of time. Moreover, this action carries no implication whatsoever with respect to the Board's view of the merits of the proposals listed here.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89-1924 Filed 1-26-89; 8:45 am]

BILLING CODE 6720-01-M

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12 CFR Part 574

[No. 89-32]

Acquisition of Control of Insured Institutions

Date: January 17, 1989.

AGENCY: Federal Home Loan Bank Board.

ACTION: Proposed rule; solicitation of comments.

SUMMARY: The Federal Home Loan Bank Board ("Board"), as operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC" or the "Corporation"), is proposing revisions to its regulations concerning the processing of applications filed with the Board for approval of the creation of savings and loan holding companies by insured institutions.

DATE: Comments must be received on or before March 28, 1989.

ADDRESS: Send comments to Director, Information Services Section, Office of Secretariat, Federal Home Loan Bank Board, 801 17th Street NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Howard C. Bluver, Attorney, (202) 377-7504; Kevin A. Corcoran, Deputy Director for Corporate Transactions, (202) 377-6962; V. Gerard Comizio, Director, (202) 377-6411, Corporate and Securities Division; or Julie L. Williams, Deputy General Counsel for Securities and Corporate Structure, (202) 377-6549, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: The Board is proposing revisions to its regulations concerning the processing of applications for the acquisition of control of insured institutions. The proposed revisions would provide for automatic approval of applications by insured institutions for approval of routine reorganizations involving the creation of savings and loan holding companies subject to specified requirements. Such applications would be automatically approved 30 calendar days after the filing of the application unless the Board or its delegate has either requested additional information from the applicant in writing, notified the applicant that the application is materially deficient and will not be processed, or denied the application. The revisions also provide for a corresponding streamlined approval for permission to organize an interim federal institution for insurance of accounts, for Federal Home Loan Bank Membership and merger of any interim institution that is used as a component of the reorganization transaction.

In order to qualify for automatic approval under the proposed revisions, an application must involve only the creation of a holding company by an insured institution and no other transaction incident thereto (other than use of an interim institution and merger with such interim), and the applicant company must not also be seeking any waivers, forebearances, or resolution of legal or supervisory issues. In addition, the capitalization of the holding company must not exceed the lesser of the amount that the insured institution in question could pay in dividends, or the amount that the institution could invest in its service corporation. In addition, the board of directors and executive officers of the new holding company must be comprised of persons who are, at the time of the reorganization, executive officers and directors of the institution, although they need not hold the same positions and all executive officers and directors of the institution need not also be executive officers and directors of the holding company.

In a policy statement dated August 12, 1988 (*See* 53 FR 31761 (August 19, 1988)), the Board provided guidance on the extent to which savings and loan holding companies should be required to contribute financial assistance to their subsidiary insured institutions and, in particular, whether a proposed acquiror of an insured institution would be required to execute a regulatory capital maintenance agreement as a condition to receiving approval of a proposed acquisition. For the reasons set forth in the policy statement, a proposed acquiror has the option of executing either (i) a regulatory capital maintenance agreement providing for a specified dollar cap on the amount of the acquiror's maintenance obligation, or (ii) a so-called "prenuptial" agreement, which provides for the transfer to the FSLIC of the right to vote the securities of the institution, remove the board of directors of the institution, cause additional securities of the institution to be issued to the FSLIC, or dispose of any or all of the securities of the institution owned by the acquiror, in the event the institution's capital level declines below a specified level. The Board's Office of Regulatory Activities ("ORA"), in Thrift Bulletin No. 5 dated October 19, 1988, issued guidelines on, among other things, the amount of the dollar cap that will generally be required in a regulatory capital maintenance agreement and, with respect to prenuptial agreements, the minimum capital level that must be maintained by the institution in order to avoid triggering the transfer to FSLIC of the various powers described above. Agreements that exceed the scope of these guidelines are considered to present significant policy issues that warrant consideration by the Board itself. Accordingly, in order to qualify for automatic approval under the proposed revisions, the Board is proposing that the proposed reorganization transaction not raise a significant policy issue as described in the Board's August 12, 1988 policy statement or the ORA guidelines of October 19, 1988. Thus, the proposed holding company in the reorganization would generally be required to submit, prior to consummation of the reorganization, either a "dollar capped" regulatory capital maintenance agreement or a "prenuptial" agreement that, in either case, is consistent with the Board's policy statement and the ORA guidelines.

In addition to the foregoing requirements, the Board also is proposing to require the holding company to file certain certifications and opinions with the insured institution's Supervisory Agent within a specified time before or after the consummation of the acquisition. These certifications and opinions are customarily required to be filed by holding companies completing the prior approval process under current Board regulations. The proposed requirements would be as follows:

(1) On the business day prior to the date of consummation of the acquisition, the chief financial officers of the holding company and the insured institution shall certify to the Supervisory Agent in writing that no material adverse events or material adverse changes have occurred with respect to the financial condition or operations of the holding company or the insured institution since the date of the financial statements submitted with the application;

(2) No later than thirty days from the date of consummation of the acquisition, the holding company shall file with the Supervisory Agent a certification by legal counsel stating the effective date of the acquisition, the exact number of shares of stock of the insured institution acquired by the holding company, and that the acquisition has been consummated in accordance with the provisions of all applicable laws and regulations and the application;

(3) No later than thirty days from the date of consummation of the acquisition, the holding company shall file with the Supervisory Agent an opinion from its independent auditors certifying that the transaction was consummated in accordance with generally accepted accounting principles; and

(4) No later than thirty days from the date of consummation of the acquisition, the holding company shall file with the Supervisory Agent a certification stating that the holding company will not cause the insured institution to deviate materially from the business plan submitted in connection with the application, unless prior written approval from the Supervisory Agent is obtained.

Finally, the proposal would require that the proposed acquisition be consummated within 120 days after the application is automatically approved pursuant to 12 CFR 574.7(a)(1).

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The Board believes that the proposed revisions would further expedite and streamline the application process under Part 574 by reducing substantially the processing period for routine holding company reorganization applications.

Commenters are invited to address all aspects of the proposal, including the conditions that would apply to automatically approved applications. Specifically, the Board seeks comment on whether such conditions should be included at all or whether the rules should be expanded, modified, or deleted in part. To the extent that deletion of a requirement is recommended, commenters are requested to address whether any substitute is necessary. Finally, commenters are asked to identify any requirements that should be promulgated in the form of supervisory guidance.

Finally, the Board notes that the proposal provides that in cases where the insured institution has converted from mutual to stock form, the institution's newly formed holding company will become subject to certain post-conversion requirements that are applicable to the institution itself pursuant to various sections of the Board's mutual to stock conversion regulations. This treatment of the holding company simply insures that creation of a holding company will not be used as a route to evade such post-conversion safeguards. These safeguards, which pertain to post-conversion acquisitions of an institution's stock, purchases and sale of conversion stock by the institution's officers and directors, registration of the stock under the Securities Exchange Act of 1934, the existence of market-makers in the institution's stock, and restrictions on certain stock repurchases, have customarily been imposed as conditions of approval of holding company applications where converted institutions reorganize into holding company structure. Treatment of this area in the regulation avoids the need for such a cumbersome conditioning process.

List of Subjects in 12 CFR Part 574

Administrative practice and procedure, Holding companies, Savings and loan associations, Securities.

Accordingly, the Board hereby proposes to amend Part 574, Subchapter D, Charter V, Title 12, *Code of Federal Regulations*, as set forth below.

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 574—ACQUISITION OF CONTROL OF INSURED INSTITUTIONS

1. The authority citation for Part 574 continues to read as follows:

Authority: Sec. 407, 48 Stat. 1260, as amended [12 U.S.C. 1730]; sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a).

2. Amend § 574.7 by adding new paragraphs (a)(1) and (a)(2) to read as follows:

§ 574.7 Determination by the corporation.

(a) *Acquisition by a company.* * * *

(1) Any application filed pursuant to § 574.6(a)(1) by an insured institution for approval of the creation of a savings and loan holding company by such insured institution, and related applications for permission to organize an interim federal institution, for insurance of accounts, for Federal Home Loan Bank membership, and for merger with such interim institution, shall be deemed to be approved 30 calendar days after such applications are properly filed in accordance with the procedures set forth herein, unless, prior to such date—

(i) The Corporation has requested additional information of the applicant in writing;

(ii) Notified the applicant that the application is materially deficient and will not be processed; or

(iii) Denied the application prior to that time; provided that—(A) The holding company will be capitalized in an amount not exceeding the lesser of—

(*1*) One-half of the greater of the insured institution's net income (as defined in 12 CFR 563c.12) for the current fiscal year or the average of the insured institution's net income (as defined in 12 CFR 563c.12) for the current fiscal year and not more than two of the immediately preceding fiscal years, or

(*2*) The amount the insured institution would be permitted to invest in its service corporation subsidiary pursuant to § 545.74(d) (if the institution is a federal association as defined in § 561.8) or pursuant to applicable state law (if the institution is a state-chartered insured institution as defined in § 561.1);

(B) The creation of the savings and loan holding company is the sole transaction contained in the application, and there are no other transactions requiring Corporation approval incident to the creation of the holding company (other than use of an interim institution and merger with such interim to effect the reorganization), and the holding company is not also seeking any waivers, forebearances, or resolution of legal or supervisory issues;

(C) The board of directors and executive officers of the holding company are comprised of persons who, at the time of acquisition, are executive officers and directors of the institution;

(D) The transaction does not raise a significant policy issue as described in the Board's Policy Statement on Regulatory Capital Maintenance Obligations of Acquirors of Insured Institutions, 53 FR 31761 (August 19, 1988), or the Office of Regulatory Activities' Guidelines on Net Worth Maintenance and Presuptial Agreements, TB 5 (October 19, 1988);

(E) And the holding company shall furnish the following information in accordance with the specified time frames—

(*1*) On the business day prior to the date of consummation of the acquisition, the chief financial officers of the holding company and the insured institution shall certify to the Supervisory Agent in writing that no material adverse events or material adverse changes have occurred with respect to the financial condition or operations of the holding company or the insured institution since the date of the financial statements submitted with the application;

(*2*) No later than thirty days from the date of consummation of the acquisition, the holding company shall file with the Supervisory Agent a certification by legal counsel stating the effective date of the acquisition, the exact number of shares of stock of the insured institution acquired by the holding company, and that the acquisition has been consummated in accordance with the provisions of all applicable laws and regulations and the application;

(*3*) No later than thirty days from the date of consummation of the acquisition, the holding company shall file with the Supervisory Agent an opinion from its independent auditors certifying that the transaction was consummated in accordance with generally accepted accounting principles; and

(*4*) No later than thirty days from the date of consummation of the acquisition, the holding company shall file with the Supervisory Agent a certification stating that the holding company will not cause the insured institution to deviate materially from the business plan submitted in connection with the application, unless prior written approval from the Supervisory Agent is obtained; and

(F) The proposed acquisition shall be consummated within 120 days after the application is automatically approved under this § 574.7(a)(1).

(2) To the extent that an institution reorganizing into holding company form is subject to provisions relating to its mutual to stock conversion imposed by 12 CFR 563b.3 (i), (c)(9), (c)(17), (c)(18), (c)(19) or (g)(1), such provisions shall be applicable to any holding company approved automatically pursuant to § 574.7(a)(1).

* * * * *

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89-1958 Filed 1-26-89; 8:45 am]

BILLING CODE 6720-01-M

12 CFR Part 574

[No. 89-40]

Acquisition of Control of Insured Institutions

Date: January 17, 1989.

AGENCY: Federal Home Loan Bank Board.

ACTION: Proposed rule; solicitation of comments.

SUMMARY: The Federal Home Loan Bank Board ("Board") is proposing to adopt a short-form application to be used by insured institutions for approval of routine reorganizations involving the creation of savings and loan holding companies.

DATE: Comments must be received on or before March 28, 1989.

ADDRESS: Send comments to the Director, Information Services Section, Office of Secretariat, Federal Home Loan Bank Board, 801 17th Street, NW., Washington, DC 20006. Comments will be available for public inspection at the above address.

FOR FURTHER INFORMATION CONTACT: Howard C. Bluver, Attorney, (202) 377-7504; Kevin A. Corcoran, Deputy Director for Corporate Transactions, (202) 377-6962; V. Gerard Comizio, Director, Corporate and Securities Division, (202) 377-6411; or Julie L. Williams, Deputy General Counsel for Securities and Corporate Structure, (202) 377-6549, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Federal Home Loan Bank Board, as operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC" or the "Corporation"), is proposing to adopt a new short-form application to be used by insured institutions for approval of routine reorganizations involving the creation of savings and loan holding companies. We note that the Board is also proposing amendments to its regulations that would provide for automatic approval of such applications on an expedited basis provided certain specified conditions are met.[1] The purpose of this proposal, however, is to further streamline the application process by limiting the required contents of routine reorganization applications to information that is necessary to enable the Corporation to make an informed decision on an application consistent with its statutory responsibility.

II. Routine Holding Company Reorganizations

During the past several years, the Board's staff has processed and approved a large number of applications by insured institutions to reorganize into holding company structures. As a result of its experience with simple reorganization applications, the Board is aware that such transactions usually do not present unusual structural issues or raise significant law or policy concerns. The reorganization is almost always accomplished through a reverse triangular merger transaction whereby an interim institution chartered under federal or state law is merged into the insured institution and each share of stock of the insured institution is exchanged for one share of stock of the new holding company.[2] Furthermore, the new holding company engages in no operations prior to consummation of the reorganization and its only significant asset immediately after the transaction is its investment in the insured institution subsidiary. Shareholders of the insured institution generally have the opportunity to vote to approve or disapprove the reorganization and can exercise dissenters' rights of appraisal under applicable law if they do not vote in favor of the reorganization.

Because the reorganization involves the acquisition of control of an insured institution by the new holding company, an application to obtain prior approval from the Corporation must be filed pursuant to the Savings and Loan Holding Company Act of 1967 (the "Holding Company Act").[3] The appropriate application under current Board regulations is Application H-(e)1.[4] This application requires detailed and often voluminous information on, among other things, the proposed transaction, the financial and managerial resources of the Applicant, the current business of the Applicant, and the future prospects of the Applicant. The application also requires the filing of detailed financial statements on both an historical and a pro forma basis and certain exhibits. The Board believes much of the information required in Application H-(e)1 is not necessary to enable the Corporation to make an informed decision on a simple reorganization application consistent with its congressionally mandated responsibility to investigate the qualifications of a potential acquiror and prevent the acquisition of control of an insured institution in circumstances that might result in injury to the insured institution. *See* H.R. Rep. No. 997, 90th Cong., 1st Sess. (1967). Therefore, the Board is proposing to adopt new Application H-(e)1-S to be used solely by insured institutions seeking approval of simple reorganizations involving the creation of savings and loan holding companies.

III. Eligibility for Use of Application H-(e)1-S

In order to be eligible to use Application H-(e)1-S, an insured institution must be proposing a holding company reorganization transaction that qualifies for automatic approval under the Board's proposed amendments to 12 CFR 574.7.[5] These proposed

[1] *See* the Board's proposal to amend 12 CFR 574.7 by adding new subsections (a)(1) and (2) thereto, together with the explanatory statement accompanying the proposal, which is published elsewhere in today's Federal Register.

[2] The shares of the new holding company issued to the former shareholders of the insured institution generally must be registered with the Securities and Exchange Commission ("SEC") under the Securities Act of 1933, as amended. Nevertheless, the SEC staff, in recognition of the fact that a simple reorganization presents relatively minimal risk to shareholders, has adopted a streamlined and expedited registration procedure for such transactions. SEC Staff Accounting Bulletin #50, which originally covered bank holding company formations only but is now applied to savings and loan holding company formations as well, permits a registrant to omit from the applicable registration statement audited financial statements and detailed statistical disclosure as long as certain conditions are satisfied. In addition, Instructions G to SEC Form S-4, which is the form utilized for most holding company formations, provides for the automatic effectiveness of the registration statement on the twentieth day after filing.

[3] The Holding Company Act prohibits any company, directly or indirectly, or acting in concert with one or more other persons, or through one or more subsidiaries, or through one or more transactions, from acquiring control of one or more insured institutions without the prior written approval of the Corporation. 12 U.S.C. 1730a(e)(1)(B) (1982).

[4] 12 CFR 574.6(a)(1).

[5] *See* footnote 1, *supra*.

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amendments provide for automatic approval of such applications 30 days after filing, as long as each condition specified in the proposed amendments are satisfied.

IV. Contents of Application H-(e)1-S

The Board's Office of Regulatory Activities, together with the Office of General Counsel, is currently considering the appropriate information to be included in Application H-(e)1-S. The objective of this effort is to streamline the application process by limiting the required contents of routine reorganization applications to information that is necessary to enable the Board to make an informed decision consistent with its statutory responsibility. In this regard, the staff has identified, on a preliminary basis, certain information, documents, and certifications described below that are proposed to be included in Application H-(e)1-S. Commenters are hereby invited to provide the Board with its views on whether the following information, documents, and certifications should be required in Application H-(e)1-S or whether certain individual items should be expanded, modified, or deleted in whole or in part:

1. A copy of the Registration Statement, including exhibits, filed or to be filed with the Securities and Exchange Commission pursuant to the Securities Act of 1933, as amended ("Securities Act"). If no such Registration Statement has been or will be filed, the Applicant would provide a copy of any materials, including proxy statements, furnished or to be furnished to shareholders in connection with the reorganization, together with a brief description of the facts relied upon for concluding that an exemption from registration is available under the Securities Act.

2. If consummation of the proposed reorganization will result in an amendment to the insured institution's Community Reinvestment Act statement, a copy of the statement as amended.

3. A certification that the proposed reorganization will have no effect on management interlocks compliance under the Depository Institutions Management Interlocks Act, 12 U.S.C. 3201–3207 (1982), the Savings and Loan Holding Company Act, 12 U.S.C. 1730a(i) (1982), or the regulations promulgated thereunder, 12 CFR 563f and 12 CFR 584.9.

4. A certification that the insured institution is eligible to file Application H-(e)1-S because the proposed reorganization transaction satisfies each of the conditions specified in 12 CFR 574.7(a) (1) and (2).

5. The following information and documents, but only in the event that such information and documents are not included in the Registration Statement or other materials furnished pursuant to Item 1 above:

(a) The information required by Item 4 of Application H-(e)1 relating to the details of the proposed transaction;

(b) A statement as to the reasons for proposing the reorganization;

(c) The information required by Item 5 of Application H-(e)1 relating to fees, commissions, and expenses;

(d) The information required by Item 6 of Application H-(e)1 relating to regulatory approval;

(e) A statement of capitalization as of a recently practicable date that shows the insured institution and the holding company on a historical basis, pro forma adjustments, if any, and the holding company on a pro forma basis;

(f) A description of the business intended to be done by the holding company for the twelve month period commencing with the filing of the Application;

(g) A description of the present dividend policy of the insured institution, and a description of proposed dividend policy of the insured institution and the holding company subsequent to the reorganization;

(h) A copy of any contracts or agreements pursuant to which the reorganization is to be accomplished;

(i) A copy of the charter and bylaws of the holding company; and

(j) A copy of any opinions of counsel or revenue rulings received by the insured institution or the holding company in connection with the reorganization.

6. A consolidated business plan using the format contained in Thrift Bulletin No.———— (, 1989).*

Initial Regulatory Flexibility Analysis

Pursuant to section 3 of the Regulatory Flexibility Act, 5 U.S.C. 603, the Board is providing the following initial regulatory flexibility analysis:

1. *Reasons, objectives, and legal bases underlying the proposed rules.* These elements have been discussed elsewhere in the SUPPLEMENTARY INFORMATION regarding the proposal.

2. *Small entities to which the proposed rules would apply.* The rule would apply to all acquirors of insured institutions.

3. *Impact of the proposed rules on small institutions.* The rule will affect all federal associations and their acquirors equally and will not have an adverse impact on small institutions.

4. *Overlapping or conflicting federal rules.* There are not known federal rules which duplicate, overlap, or conflict with the proposed rule.

5. *Alternatives to the proposed rule.* There are no alternatives that would be less burdensome than the proposal in addressing the concerns expressed in the SUPPLEMENTARY INFORMATION set forth above.

List of Subjects in 12 CFR Part 574

Administrative practice and procedure, Holding companies, Savings and loan associations, Securities.

Accordingly, the Board hereby proposes to amend Part 574, Subchapter D, Chapter V, Title 12, *Code of Federal Regulations*, as set forth below.

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 574—ACQUISITION OF CONTROL OF INSURED INSTITUTIONS

1. The authority citation for Part 574 continues to read as follows:

Authority: Sec. 407, 48 Stat. 1260, as amended (12 U.S.C. 1730); sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a).

2. Amend § 574.6 by adding a new paragraph (a)(2) to read as follows; and redesignating paragraphs (a)(2) through (a)(5) as paragraphs (a)(3) through (a)(6), respectively:

§ 574.6 Procedural requirements.

(a) *Form of application or notice.* * * *

(2) H-(e)1-S. Notwithstanding the provisions of paragraph (a)(1) of this section, an application filed under § 574.3(a) that satisfies each of the conditions for automatic approval specified in 12 CFR 574.7(a) (1) and (2), need only include the following information:

(i) A copy of the Registration Statement, including exhibits, filed or to be filed with the Securities and Exchange Commission pursuant to the Securities Act of 1933, as amended ("Securities Act"). If no such Registration Statement has been or will be filed, a copy of any materials, including proxy statements, furnished or to be furnished to shareholders in connection with the reorganization,

* Please note that the Board's Office of Regulatory Activities will be issuing shortly a Thrift Bulletin setting forth the format to be used in preparing a consolidated business plan. The Board is proposing that a business plan consistent with such format be included in the proposed short-form application.

should be provided, together with a brief description of the facts relied upon for concluding that an exemption from registration is available under the Securities Act;

(ii) If consummation of the proposed reorganization will result in an amendment to the insured institution's Community Reinvestment Act statement, a copy of the statement as amended;

(iii) A certification that the proposed reorganization will have no effect on management interlocks compliance under the Depository Institutions Management Interlocks Act, 12 U.S.C. 3201–3207 (1982), the Savings and Loan Holding Company Act, 12 U.S.C. 1730a(i) (1982), or the regulations promulgated thereunder, 12 CFR Part 563f and 12 CFR 584.9;

(iv) A certification that the insured institution is eligible to file Application H-(e)1-S because the proposed reorganization transaction satisfies each of the conditions specified in 12 CFR 574.7(a) (1) and (2);

(v) The following information and documents, but only in the event that such information and documents are not included in the Registration Statement or other materials furnished pursuant to paragraph (a)(2)(i) of this section—

(A) The information required by Item 4 of Application H-(e)1 relating to the details of the proposed transaction;

(B) A statement as to the reasons for proposing the reorganization;

(C) The information required by Item 5 of Application Form H-(e)1 relating to fees, commissions and expenses;

(D) The information required by Item 6 of Application Form H-(e)1 relating to regulatory approval;

(E) A statement of capitalization as of a recently practicable date that shows the insured institution and the holding company on a historical basis, pro forma adjustments, if any, and the holding company on a pro forma basis;

(F) a description of the business intended to be done by the holding company for the twelve month period commencing with the filing to the application;

(G) A description of the present dividend policy of the insured institution, and a description of the proposed dividend policy of the insured institution and the holding company subsequent to the reorganization;

(H) A copy of any contracts or agreements pursuant to which the reorganization is to be accomplished;

(I) A copy of the charter and bylaws of the holding company; and

(J) A copy of any opinions of counsel or revenue rulings received by the insured institution or the holding company in connection with the reorganization.

(vi) A consolidated business plan using the format contained in Thrift Bulletin No. ———— (, 1989).

* * * * * *

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89-1963 Filed 1-26-89; 8:45 am]

BILLING CODE 6725-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 182 and 184

[Docket No. 85N-0548]

Proposed Affirmation of GRAS Status of High Fructose Corn Syrup; Extension of Comment Period

AGENCY: Food and Drug Administration.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is extending for 90 days the period for submitting comments on the agency's proposal to affirm that the use of high fructose corn syrup as a direct human food ingredient is generally recognized as safe (GRAS).

DATE: Comments by April 6, 1989.

ADDRESS: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: John W. Gordon, Center for Food Safety and Applied Nutrition (HFF–334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–426–5487.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 7, 1988 (53 FR 44904), FDA issued a proposed rule that would affirm that the use of high fructose corn syrup as a direct human food ingredient is GRAS. The safety of this ingredient has been evaluated on the basis of six industry petitions and of the agency's comprehensive safety review of corn sugar, corn syrup, invert sugar, and sucrose. FDA gave interested persons until January 6, 1989, to submit comments.

The agency received two requests for a 90-day extension of the comment period. The requestors stated that this additional time is needed (1) to assemble relevant information concerning the GRAS status of other varieties of high fructose corn syrup and (2) to survey association members for comments and information about the proposal.

The agency believes that administrative economy will be served by granting this request, and thus that good cause for extending the comment period has been shown. Interested persons will have until April 6, 1989, to submit comments regarding the GRAS status of the use of high fructose corn syrup as a direct human food ingredient.

Interested persons may, on or before April 6, 1989, submit to the Dockets Management Branch (address above) written comments regarding the agency's proposal to affirm as GRAS the use of high fructose corn syrup as a direct human food ingredient. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 19, 1989.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 89-1807 Filed 1-26-89; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[EE–158–86, 160–86]

Excise and Income Taxes; 401(k) Arrangements Under the Tax Reform Act of 1986 and Nondiscrimination Requirements for Employee and Matching Contributions; Public Hearing on Proposed Regulations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed regulations relating to cash or deferred arrangements described in section 401(k) of the Internal Revenue Code of 1986 and new nondiscrimination rules for employee contributions and matching contributions made to employee plans contained in section 401(m) of the Code. Also included are sections 402(g), 414(g), 414(s), 415, 416 and 4979 of the Internal Revenue Code of 1986.

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DATES: The public hearing will be held on Tuesday, March 14, 1989, beginning at 10:00 a.m., and continue, if necessary, at the same time on Wednesday, March 15, 1989. Requests to speak and outlines of oral comments should be delivered or mailed by Tuesday, February 28, 1989.

ADDRESS: The public hearing will be held in the I.R.S. Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. The requests to speak and outlines or oral comments should be submitted to the Commissioner of Internal Revenue, Attention: CC:CORP:T:R (EE–158–88 and EE–160–88), Room 4429, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Angela D. Wilburn of the Regulations Unit, Office of the Assistant Chief Counsel (Corporate), Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, telephone 202–566–3935 (not a toll-free call).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations appearing in the **Federal Register** for Monday, August 8, 1988 (53 FR 29719).

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR Part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit, not later than Tuesday, February 28, 1989, an outline of the orgal comments to be presented at the hearing and the time they wish to devote to each subject.

Each speaker will be limited to 10 minutes for an oral presentation exclusive of the time consumed by questions from the panel for the government and answers to these questions.

Because of controlled access restrictions attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the speakers. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue.

Dale D. Goode,

Chief, Regulation Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 89–1945 Filed 1–26–89; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 938

Pennsylvania Permanent Regulatory Program; Public Comment Period and Opportunity for Public Hearing on Proposed Amendment

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE) Interior.

ACTION: Proposed rule.

SUMMARY: OSMRE is announcing receipt of a proposed amendment to the Pennsylvania permanent regulatory program (hereinafter referred to as the Pennsylvania program) under the Surface Mining Control and Reclamation Act of 1977. The amendment is intended to revise the Pennsylvania program to be consistent with the corresponding Federal regulations pertaining to coal preparation plants.

This notice sets forth the times and locations that the Pennsylvania program and the proposed amendment to that program are available for public inspection, the comment period during which interested persons may submit written comments on the revised amendment and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received on or before 4:00 p.m. on February 27, 1989, to ensure consideration in the rulemaking process. If requested, a public hearing on the amendment will be held at 9:00 a.m. on February 21, 1989. Requests to present testimony at the hearing must be received on or before 4:00 p.m. on February 13, 1989.

ADDRESSES: Written comments and requests to testify at the hearing should be mailed or hand delivered to Robert J. Biggi, Director, Harrisburg Field Office, at the address listed below. Copies of the Pennsylvania program, the revised proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requestor may receive, free of charge, one copy of the proposed revised amendment by contacting OSMRE's Harrisburg Field Office.

Office of Surface Mining Reclamation and Enforcement, Harrisburg Field Office, Harrisburg Transportation Center, Third Floor, Suite 3C, 4th and Market Streets, Harrisburg, Pennsylvania 17101, Telephone: (717) 782–4036

Office of Surface Mining Reclamation and Enforcement, Administrative Record Office, Room 5131, 1100 "L" Street, NW., Washington, DC 20240, Telephone: (202) 343–5492

Pennsylvania Department of Environmental Resources, Office of Environmental Energy Management, 10th Floor, Fulton Building, 3rd and Locust Streets, P.O. Box 3063, Harrisburg, Pennsylvania 17120, Telephone: (717) 787–4666

A public hearing, if held, will be at the Penn Harris Motor Inn and Convention Center at the Camp Hill Bypass and U.S. Routes 11 and 15, Camp Hill, Pennsylvania.

FOR FURTHER INFORMATION CONTACT: Robert J. Biggi, Director, Harrisburg Field Office, (717) 782–4036.

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary of the Interior conditionally approved the Pennsylvania program on July 31, 1982. Information regarding general background on the Pennsylvania program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Pennsylvania program can be found in the July 30, 1982 **Federal Register** (47 FR 33050–33083). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 938.11, 938.12, 938.15 and 938.16.

II. Discussion of Amendments

By letter dated December 5, 1988 (OSMRE Administrative Record No. PA 720), the Pennsylvania Department of Environmental Resources submitted an amendment to OSMRE for approval. The amendment revises Chapters 86, 88 and 89 of Title 25 *Pennsylvania Code* to cover coal preparation plants not previously subject to the provisions of the Pennsylvania program. Rule changes in these chapters are intended to be no less effective than Federal rule modifications (52 FR 17724, May 11, 1987) on coal preparation plants not previously regulated. The amendment to become effective at time of OSMRE approval.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSMRE is now seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Pennsylvania program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "**DATES**" or at locations other than the Harrisburg Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "**FOR FURTHER INFORMATION CONTACT**" by 4:00 p.m. on February 13, 1989. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSMRE officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment, and who wish to do so, will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSMRE representatives to discuss the proposed amendments may request a meeting at the OSMRE office listed under "**ADDRESSES**" by contacting the person listed under "**FOR FURTHER INFORMATION CONTACT.**" All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under "**ADDRESSES.**" A written summary of each meeting will be made part of the Administrative Record.

List of Subjects in 30 CFR Part 938

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Date: January 17, 1989.

Carl C. Close,

Assistant Director, Eastern Field Operations.

[FR Doc. 89–1909 Filed 1–26–89; 8:45 am]

BILLING CODE 4310–05–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 88–597, RM–5442]

Radio Broadcasting Services; Prescott Valley, AZ

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Prescott Valley Broadcasting Co., Inc., licensee of Station KIHX–FM, Channel 292A, Prescott Valley, Arizona, seeking the substitution of Channel 294C2 for Channel 292A and modification of its license accordingly. Reference coordinates utilized for this proposal are 34–27–32 and 112–21–37.

DATES: Comments must be filed on or before March 16, 1989, and reply comments on or before March 31, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner as follows: Prescott Valley Broadcasting Co., Inc., P.O. Box 26523, Prescott Valley, AZ 86312.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88–597, adopted November 30, 1988, and released January 23, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–1906 Filed 1–26–89; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 88–606, RM–5434]

Radio Broadcasting Services; Eureka, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed on behalf of Eureka Christian Broadcasting, Inc., permittee of Station KECU(FM), Channel 288A, Eureka, California, seeking the substitution of Channel 288C1 for Channel 288A and modification of its permit accordingly. Reference coordinates utilized for this proposal are 40–43–36 and 123–58–18.

DATES: Comments must be filed on or before March 17, 1989, and reply comments on or before April 3, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: James J. Popham, Esq., Hardy, Popham & Wirpel, 700 Camp Street, New Orleans, LA 70130.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88–606, adopted November 28, 1988, and released January 24, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800.

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2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-1967 Filed 1-26-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 88-606, RM-6382]

Radio Broadcasting Services; Brush, CO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Randall S. Jacobson, Receiver, licensee of Station KKDD(FM), Channel 298A, Brush, Colorado, seeking the substitution of Channel 298C1 for Channel 298A and modification of its license accordingly. Reference coordinates utilized for this proposal are 40-15-39 and 103-36-15.

DATES: Comments must be filed on or before March 17, 1989, and reply comments on or before April 3, 1989.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition, to filing comments with the FCC, interested parties should serve the petitioner as follows: Randall S. Jacobson, 1516 Mill Street, Brush, Colorado 80723.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88-606, adopted November 29, 1988, and released January 24, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-1968 Filed 1-26-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 88-608, RM-6430]

Radio Broadcasting Services; Austin-Crothersville, IN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Jacksy Radio Association to allot Channel 287A to Austin or Crothersville, Indiana. Although petitioner requested a hyphenated allotment, the proposal initially lacks sufficient information to justify its request. Channel 287A can be allotted to either community consistent with the minimum spacing requirements of § 73.207(b) of the Commission's Rules. Reference coordinates used for Channel 278A at Austin are 38-44-15 and 85-48-14. Those for Crothersville are 38-47-00 and 85-45-17.

DATES: Comments must be filed on or before March 16, 1989, and reply comments on or before March 31, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Jacksy Radio Association, Attn: James S. Brennan, 5125 West Tenth St., Indianapolis, IN 46227.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88-608, adopted November 30, 1988, and released January 23, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-1970 Filed 1-26-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 88-612, RM-6485]

Radio Broadcasting Services; Three Oaks, MI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by John Keeley, proposing the allotment of FM Channel 248A to Three Oaks, Michigan, as that community's first FM broadcast service. Concurrence of the Canadian government is required for the allotment of FM Channel 248A at Three Oaks at coordinates 41-48-00 and 86-39-00. There is a site restriction 3.6 kilometers west of the community.

DATES: Comments must be filed on or before March 17, 1989, and reply comments on or before April 3, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Doug Vernier, 1600 Picturesque Drive, Cedar Falls, Iowa 50613, (Consultant to the petitioner).

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88-612, adopted November 28, 1988, and released January 24, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-1969 Filed 1-26-89; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Reinitiation of Status Review, Northern Spotted Owl

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of reopening of status review.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces a reinitiation of the status review for the northern spotted owl, *Strix occidentalis caurina*. Comments, data, and new information on this species are requested.

DATES: Comments and information on the status of the northern spotted owl must be submitted by February 28, 1989.

ADDRESSES: Information, comments, or questions should be submitted to Mr. Marvin Plenert, Regional Director, U.S. Fish and Wildlife Service, 500 NE. Multnomah Street, Suite 1692, Portland, Oregon 97232. The information and comments will be available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service's Region 1 Office of Fish and Wildlife Enhancement at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Barry S. Mulder, Coordinator, Spotted Owl Issues, at the above address (503/231-6150 or FTS 429-6150).

SUPPLEMENTARY INFORMATION:

Background

The Endangered Species Act of 1973, as amended, (Act) (16 U.S.C. 1531 et seq.), requires certain findings for any petition to list, delist, or reclassify a species that is accepted for review in accordance with section 4(b)(3) of the Act. In accordance with the Act, the 12-month finding determines whether or not the action requested in a petition is warranted in light of the Service's status review and all other scientific information in its administrative record.

On December 17, 1987, the Service made a 12-month finding on two petitions to list the northern spotted owl under the Act (52 *FR* 48552; December 23, 1987). A finding was made that a proposed listing of the northern spotted owl was not warranted at that time. The Service noted, however, that due to the need for population trend information and other biological data, priority given to this species for further research and monitoring would continue to be high.

On May 5, 1988, the Sierra Club Legal Defense Fund filed suit on behalf of a number of environmental organizations in the U.S. District Court for the Western District of Washington, *Northern Spotted Owl v. Hodel*, No. C88-5732 (W.D. Wash. 1988), challenging the Service's finding on the listing petitions. In an order issued on November 17, 1988, the court concluded that the Service's finding was arbitrary and capricious or contrary to law, and remanded the matter back to the Service for further review. In an order issued on January 12, 1989, the court granted the Service's request to reopen the administrative record for the status review and petition finding for a period not to extend beyond February 28, 1989.

In accordance with the provisions of section 4(b)(1)(A) of the Act, the Service is required to make listing determinations solely on the basis of the best scientific and commercial data available. The Service believes that a considerable amount of new biological information has been collected and made available since December 1987 that should be considered in the review of the prsent status of the northern spotted owl.

The Service would appreciate any additional or new scientific data, comments, and suggestions from the public, other concerned public agencies, the scientific community, industry, or any interested party concerning the biological status of the northern spotted owl, *Strix occidentalis caurina*. The Service is most interested in any information from all sources about the past and present status and trends of both the northern spotted owl and its habitat.

Under the court's order of January 12, 1989, the Service has until May 1, 1989, to complete this additional status review, supplement the status review report, and submit to the court a new analysis and finding on the petition to list the northern spotted owl as endangered or threatened. As authorized by the court, the Service is announcing a public comment period for the purpose of receiving new informatiion and comments on whether the northern spotted owl should be listed as an endangered or threatened species. Information received on or before February 28, 1989, will be considered by the Service in making a new finding on the listing petitions.

Author

This notice was prepared by Mr. Barry S. Mulder, U.S. Fish and Wildlife Service, 500 N.E. Multnomah Street.

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Suite 1692, Portland, Oregon 97232 (503/231-6150 or FTS 429-6150).

Authority

The authority for this notice is the Endangered Species Act of 1973, as amended: Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411; Pub. L. 100-478, 102 Stat. 2306 (16 U.S.C. 1531 et seq.)

Dated: January 19, 1989.

Marvin L. Plissert,

Regional Director, Region 1, Fish and Wildlife Service.

[FR Doc. 89-3065 Filed 1-26-89; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register
Vol. 54, No. 17
Friday, January 27, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Renewal of Agricultural Advisory Committee for Trade

ACTION: Notice.

Notice is hereby given that the Secretary of Agriculture, after consultation with the United States Trade Representative, has renewed the following advisory committees; Agricultural Policy Advisory Committee for Trade, and nine separate Agricultrual Technical Advisory Committees for Trade in: Cotton, Dairy Products, Fruits and Vegetables, Grain and Feed, Livestock and Livestock Products, Oilseeds and Products, Poultry and Egs, Sweeteners, and Tobacco.

The purpose of these committees is to provide advice to the Secretary and the U.S. Trade Representative with respect to the trade policy of the United States pursuant to section 135(c) of the Trade Act of 1974 (Pub. L. 93-618), as amended by the Trade Agreements Act of 1979 (Pub. L. 96-39). Meetings of these committees with be open only to members of the committees in accordance with matters listed in section 552b(c) of the United States Code unless otherwise determined.

The renewal of such committees is in the public interest in connection with the duties of the Department imposed by the Trade Act of 1974, as amended by the Trade Agreements Act of 1979.

Issued at Washington, DC, this 19th day of January 1989.

John J. Franke, Jr.,

Assistant Secretary for Administration.

[FR Doc. 89-1910 Filed 1-26-89; 8:45 am]

BILLING CODE 3410-10-M

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of revision of Privacy Act Systems of Records.

SUMMARY: Notice is hereby given that the United States Department of Agriculture (USDA) is revising one of its Privacy Act (PA) Systems of Records and is deleting two of its PA Systems of Records maintained by the Cooperative State Research Service (CSRS).

EFFECTIVE DATE: This notice will be adopted without further publication in the **Federal Register** on March 28, 1989, unless modified by a subsequent notice to incorporate public comments. Comments must be received by the contact person listed below on or before February 27, 1989.

ADDRESSES: Interested persons may submit written comments to Stasia A.M. Hutchison, PA Coordinator, ARS, USDA, Room 331, Building 005, BARC-West, Beltsville, Maryland 20705; telephone (301) 344-3928, (FTS) 344-3928.

FOR FURTHER INFORMATION CONTACT: Stasia A.M. Hutchison, PA Coordinator, ARS, USDA, Room 331, Building 005, BARC-West, Beltsville, Maryland 20705; telephone (301) 344-3928, (FTS) 344-3928.

SUPPLEMENTARY INFORMATION: Pursuant to the PA, 5 U.S.C. 552a, USDA hereby takes the following action:

I. One system of records maintained by CSRS is being revised for the following reasons:

USDA/CSRS-1, "Current Research Information System." The purposes of this revision to the system of records are to (1) change the designation from USDA/SEA-11 to USDA/CSRS-1; (2) reflect organizational changes; (3) make clarifying stylistic changes; (4) identify changes in record system location and system manager; (5) indicate the authorities for maintaining the system; (6) add four routine uses of the records; (7) indicate that records will be retrieved by the name of the co-investigator; and (8) indicate the project information will be maintained for 2 years following the termination of the project.

II. Two systems of records maintained by CSRS are being deleted as follows:

(1) USDA/SEA-8, "Biographical Information—Office of Information." This system is being deleted because these records are no longer maintained by USDA.

(2) USDA/SEA-10, "Biographical Information on McIntire-Stennis Cooperative Forestry Act Advisory Council Members." This system is being deleted because the records are no longer retrievable by a personal identifier.

A "Report on New System" for each system of records, required by 5 U.S.C. 552a(r), as implemented by OMB Circular A-130, was sent to the President of the Senate, the Speaker of the House of Representatives, and the Office of Management and Budget on January 17, 1989.

Signed at Washington, DC, on January 17, 1989.

Richard E. Lyng,

Secretary.

Privacy Act System USDA/CSRS-1 Report

The purposes of this system of records revision are to change the designation from USDA/SEA-11 to USDA/CSRS-1; reflect organizational changes; make clarifying stylistic changes; and identify changes in the system location, authority for maintenance of the system, routine uses of the records, retrievability, retention and disposal, and system manager.

The authorities for maintaining this system of records are 5 U.S.C. 301; 7 CFR 2.7 and 2.56.

Use of this system, as established, should not result in infringement of any individual's right to privacy.

Access to these records will be limited to USDA employees who maintain the records and have a need for the records in the performance of their duties and subscribers of the Dialog Commercial Database Network.

Use of this system will have no effect upon privacy and other personal or property rights of individuals or on the preservation of the constitutional principles of federalism and separation of powers.

The records are stored in Government office buildings or locked offices and are maintained in file folders and on computer tapes.

The revised system of records will not be exempt from any provisions of the Privacy Act.

USDA/CSRS-1

SYSTEM NAME:

Current Research Information System (CRIS), USDA/CSRS.

BEST COPY AVAILABLE

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SYSTEM LOCATION:

CSRS, National Agricultural Library Building, 5th Floor, 10301 Baltimore Boulevard, Beltsville, Maryland 20705.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Scientists listed on research projects entered into the CRIS.

CATEGORIES OF RECORDS IN THE SYSTEM:

Research projects of USDA agencies and research projects of those State institutions receiving CSRS administered funds in support of research.

AUTHORITIES FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 7 CFR 2.7 and 2.58.

PURPOSE:

This information is made available for the documentation and reporting of research activities conducted by USDA agencies and by State institutions receiving CSRS administered funds for research.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records in this system may be disclosed: (1) To subscribers of the Dialog Commercial Database Network; (2) to contractors for preparation in a form that can be entered into the computer; (3) to the National Technical Information System; (4) to research scientists and Administrators of all Governmental agencies and affiliated institutions in connection with information retrieval requests in special subject areas; (5) to the Department of Justice when relevant and useful for the defense of suits against the United States or its officers or for the institution of suits for the recovery of claims by the USDA; (6) to an appropriate agency, whether Federal, State, or local, charged with the responsibility of investigating or prosecuting a violation of law or rule, regulation, or oder issued pursuant thereto, when information available indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation, or order issued pursuant to such statute; (7) in response to a request for discovery or appearance of a witness, to the extent that what is disclosed is relevant to the subject matter involved in a pending judicial or criminal proceeding or in response to a subpoena issued in a proceeding before a court or adjudicative body, to the extent that the records requested are relevant to the proceedings; and (8) to a congressional office in response to an inquiry from a congressional office made at the request of the individual to whom the record pertains.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on computer tapes at the USDA National Computer Center, Kansas City.

RETRIEVABILITY:

Records can be retrieved by name of project leader or co-investigator.

SAFEGUARDS:

Access to this system is limited to USDA employees and subscribers of the Dialog Commercial Database Network. The computer files and tapes will be kept in a safeguarded environment with access only by authorized personnel.

RETENTION AND DISPOSAL:

Financial and classification records are maintained indefinitely. Project information is maintained for 2 years following termination of the project.

SYSTEM MANAGER(S) AND ADDRESS:

Director, CRIS, National Agricultural Library Building, 5th Floor, 10301 Baltimore Boulevard, Beltsville, Maryland 20705.

NOTIFICATION PROCEDURE:

Any individual may request information regarding this system of records or information as to whether the system contains records pertaining to him from the System Manager.

RECORD ACCESS PROCEDURES:

Any individual may gain access to a record in the system that pertains to him by submitting a written request to the System Manager.

CONTESTING RECORD PROCEDURES:

Any individual may contest a record in the system that pertains to him by submitting pertinent written information to the System Manager.

RECORD SOURCE CATEGORIES:

Information in this system comes from USDA research agencies and State institutions receiving CSRS administered funds for research.

Privacy Act System USDA/SEA-9 Report

The purpose of this notice is to delete this system of records because the records are no longer maintained by USDA.

Privacy Act System USDA/SEA-10 Report

The purpose of this notice is to delete this system of records because the records are not retrievable by a personal identifier.

[FR Doc. 89-1911 Filed 1-26-89; 8:45 am]

BILLING CODE 3410-22-M

Agricultural Stabilization and Conservation Service Feed Grain Donations for the Colville Indian Reservation in Washington

Pursuant to the authority set forth in section 407 of the Agricultural Act of 1949, as amended (7 U.S.C. 1427) and Executive Order 11336, I have determined that:

1. The chronic economic distress of the needy members of the Colville Indian Reservation in Washington has been materially increased and become acute because of severe and prolonged drought, thereby creating a serious shortage of feed and causing increased economic distress. This reservation is designated for Indian use and is utilized by members of the Colville Indian Tribe for grazing purposes.

2. The use of feed grain or products thereof made available by the Commodity Credit Corporation (CCC) for livestock feed for such needy members of the Tribe will not displace or interfere with normal marketing of agricultural commodities.

3. Based on the above determinations, I hereby declare the reservation and grazing lands of the Tribe to be acute distress areas and authorize the donation of feed grain owned by the CCC to livestock owners who are determined by the Bureau of Indian Affairs, United States Department of the Interior, to be needy members of the Tribe utilizing such lands. These donations by the CCC may commence upon January 17, 1989, and shall be made available through May 15, 1989, or such other date as may be stated in a notice issued by the USDA.

Signed at Washington, DC, on January 23, 1989.

Milton Hertz,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 89-1977 Filed 1-26-89; 8:45 am]

BILLING CODE 3410-05-M

COMMISSION ON CIVIL RIGHTS

Mississippi Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights (CCR), that a meeting of the Mississippi Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 4:00 p.m. on February 16, 1989, at the Holiday Inn (Downtown), 200 E. Amite St., Jackson, MS 39201. The purpose of the meeting is to discuss the status of the Commission and the recent Regional SAC Chairs Conference in which the Mississippi Committee was represented; to hear a report on Civil Rights progress and/or problems; and to plan a project for fiscal year 1989.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Leslie Range, (601/352-0161) or Bobby Doctor, CCR staff at (202/523-5571). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact Mr. Doctor at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, January 17, 1989.

Melvin L. Jenkins,

Acting Staff Director.

[FR Doc. 89-1913 Filed 1-26-89; 8:45 am]

BILLING CODE 6335-01-M

Wyoming Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that the Wyoming Advisory Committee to the Commission will convene at 10:00 a.m. and adjourn at 2:00 p.m., on February 18, 1989 at the Casper Hilton Inn, 800 North Poplar, Casper, Wyoming 82601. The purpose of the meeting is to plan project activities for the new charter period and to discuss civil rights issues affecting the State of Wyoming.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committe Chairperson, Donald Tolin or Philip Montez, Director of the Western Regional Division (213) 894-3437, (TDD 213/894-0508). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, January 17, 1989.

Melvin L. Jenkins,

Acting Staff Director.

[FR Doc. 89-1914 Filed 1-26-89; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

[Docket No. 81258-8258]

Policies and Procedures for Resolution of Audit-Related Debts

ACTION: Policy statement.

SUMMARY: The Department of Commerce has established internal policies and procedures for handling the resolution and reconsideration of financial assistance audits which have resulted in or may result in the establishment of a debt (account receivable) for financial assistance awards. The procedures were established to protect the integrity of the audit resolution process, to ensure that aggressive actions are taken to collect the Government's claims, to eliminate the administrative burden of continuously reexamining settled issues, to provide appropriate due process safeguards for auditees and debtors and to implement provisions in the Federal Claims Collection Standards and Office of Management and Budget Circular A-50 (Revised), Audit Followup, applicable to the collection of debts.

EFFECTIVE DATE: September 28, 1988.

FOR FURTHER INFORMATION CONTACT: Barbara L. Spithas, Director, Office of Federal Assistance, Office of Finance and Federal Assistance, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC 20230, (202) 377-5817.

SUPPLEMENTARY INFORMATION: The policies and procedures described in this Notice apply to audit-related debts resulting from audits of recipients of grants and cooperative agreements which have included a notice of this policy with their audit report. This policy does not apply to procurement contracts, loans, or loan guarantees.

Each financial assistance recipient (hereafter the "auditee") that is the subject of an audit conducted by or for the Department shall have at least two opportunities to comment upon the findings and recommendations in the audit report and to submit additional documentary evidence to suport the auditee's positions. Unless the Inspector General of the Department determines that it is not in the best interest of the Government to send the draft report to the auditee, the auditee will be given 30 days from the transmittal of the draft audit report in which to sumbit written comments and documentary evidence. The auditee will then be given 30 days from the transmittal of the final audit report in which to submit written comments and documentary evidence. Based on review of the comments, arguments, and evidence available at the expiration of this time period, the Department will make a decision on the actions it will take as a result of the final audit report.

The Department's decisions to disallow costs under the award and to establish a debt (and any other decisions on nonfinancial issues) will be sent to the auditee in an "Audit Resolution Determination" letter. This letter will contain information on the procedures to be followed by the auditee to appeal the Department's decision.

The auditee may appeal an Audit Resolution Determination that it owes money or property to the Department by submission of a written notice of the appeal within 30 days after recept of the determination letter. The auditee must submit an explanation of its dispute with evidence which supports its position (or reference documents already submitted to the Department). The information should be sumbitted with the appeal notice. This appeal procedure is the last opportunity for auditees to submit to the Department arguments and evidence that dispute the validity of the audit-related debt.

The Department will make the decision on appeal of an audit-related debt within 30 days after receipt of the appeal and on the basis of the record existing at the expiration of the time limit for filing an appeal. The Department will issue a decision letter to the auditee. The decision on appeal shall be the final decision of the Department with respect to the amounts and merits of the debt. There are no other administrative appeals available in the Department concerning this matter.

An appeal of the Audit Resolution Determination does not prevent the establishment of the audit-related debt nor does it prevent the accrual of interest on the debt. If the Audit Resolution Determination is overruled or modified on appeal, appropriate corrective action will be taken retroactively. An appeal will stay the offset of funds owned by the auditee against funds due to the auditee.

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Authority: 5 U.S.C. app. 3 sec. 4 and 5 U.S.C 301.

Sonya G. Stewart
Director for Finance and Federal Assistance.
[FR Doc. 89-1932 Filed 1-26-89; 8:45 am]
BILLING CODE 3510-FS-M

National Institute of Standards and Technology

[Docket No. 81145-8348]

Proposed Federal Information Processing Standards Publication for Document Application Profile (DAP) for the Office Document Architecture (ODA) and Interchange Format Standard

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Request for comments.

SUMMARY: A Federal Information Processing Standard (FIPS) adopting the Document Application Profile (DAP) for the Office Document Architecture (ODA) and Interchange Format Standard is proposed for Federal agency use. The DAP was developed by the National Institute of Standards and Technology Workshop for Implementors of Open Systems Interconnection and is based on an international voluntary industry standard. This standard will facilitate the interchange of documents among different document systems.

Prior to submission of this proposed standard to the Secretary of Commerce for review and approval as a FIPS, it is essential to assure that consideration is given to the needs and views of manufacturers, the public, and State and local governments. The purpose of this notice is to solicit such views.

This proposed FIPS contains two sections: (1) An announcement section, which provides information concerning the applicability, implementation, and maintenance of the standard; and (2) a specifications section, which deals with the technical requirements of the standard. Only the announcement section of the standard is provided in this notice. Interested parties may obtain a copy of the technical specifications from the Standards Coordinator (ADP), Technology Building, Room B-64, National Institute of Standards and Technology, Gaithersburg, MD 20899, telephone (301) 975-3816.

DATE: Comments on this proposed FIPS must be received on or before April 27, 1989.

ADDRESS: Written comments concerning the adoption of this standard as a FIPS should be sent to: National Institute of Standards and Technology, ATTN: Proposed FIPS for DAP/ODA, Technology Building, Room B-154, Gaithersburg, MD 20899.

Written comments received in response to this notice will be made part of the public record and will be made available for inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Ms. Frances H. Nielsen, National Institute of Standards and Technology, Gaithersburg, MD 20899, telephone (301) 975-3365.

Date: January 23, 1989.
Raymond G. Kammer,
Acting Director.

Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Institute of Standards and Technology after approval by the Secretary of Commerce pursuant to section 111(d) of the Federal Property and Administrative Services Act of 1949 as amended by the Computer Security Act of 1987, Pub. L. 100-235.

Name of standards. Document Application Profile (DAP) for the Office Document Architecture (ODA) and Interchange Format Standard.

Category of standard. Software Standard, Document Description, Electronic Document Interchange.

Explanation. This Federal Information Processing Standard adopts the National Institute of Standards and Technology (NIST) Implementation Agreement for a Level 3 Document Application Profile (DAP) for the Office Document Architecture (ODA) and Interchange Format Standard. The DAP is a functional subset of the ODA standard and facilitates the interchange of documents among different document systems by specifying the constraints on document structure and content according to the rules of the ODA Standard. Several levels of DAPs are being developed by the standards community; level 3 applies to "desktop publishing" functionality used in document processing systems.

Developed by international standards organizations, the ODA Standard specifies rules for describing the logical and layout structures of documents as well as rules for specifying character, raster, and geometric content of documents, thus providing for the interchange of complex documents. The forms of the interchanged documents may be formatted form (i.e., for presentation such as printing, displaying), processable form (i.e., for further processing such as editing) and formatted processable (i.e., for both presentation and further processing). The ODA Standard was developed primarily by the International Organization for Standardization (ISO) and the Consultative Committee on International Telephone and Telegraph (CCITT). The Implementation Agreement for this DAP was reached by vendors and users of computer networks participating in the NIST Workshop for Implementors of Open Systems Interconnection.

Approving authority. Secretary of Commerce.

Maintenance agency. U.S. Department of Commerce, National Institute of Standards and Technology.

Cross index. a. International Organization for Standardization (ISO) 8613-1988, Information Processing—Text and Office Systems-Office Document Architecture (ODA) and Interchange Format Standard.

b. Stable On-going Implementation Agreements for Open Systems Interconnection Protocols, NIST Workshop for Implementors of Open Systems Interconnection, to be published.

Related documents. Related documents are listed in the Reference Section of the Document Application Profile.

Objectives. The primary objectives of this standard are:

—To promote interchange of documents between systems of different manufacturers,

—To facilitate the use of advanced technology by the Federal Government,

—To stimulate the development of commercial products compatible with the ODA Standard and with the Open Systems Interconnection (OSI) Standards,

—To contribute to the economic and efficient use of document processing system resources, and

—To avoid the proliferation of vendor-unique solutions.

Applicability. The ODA Document Application Profile (DAP) is intended to be used by Federal Government agencies when acquiring document/text processing systems. This FIPS applies to systems ranging from relatively simple wordprocessors to more complex document processors, such as "desktop publishing" systems. Each system acquired by Federal agencies shall include appropriate system-to-DAP and DAP-to-system translators, such that incoming datastreams are interpreted correctly and that outgoing datastreams are generated correctly. Use of the DAP is independent of the communications

used to transfer documents produced by these systems; that is, the DAP may be used within the existing framework of communication protocols.

Specifications. Document Application Profile (affixed).

Implementation. This standard is effective (six months after date of publication of final document in the Federal Register). For a period of twelve (12) months after the effective date, agencies are permitted to acquire alternative software which provides equivalent functionality to the Document Application Profile. Agencies are encouraged to use this standard for solicitation proposals for new document processing systems to be acquired after the effective date. This standard is mandatory for use in all solicitation proposals for new document processing products acquired twelve (12) months after the effective date.

Waivers. Under certain exceptional circumstances, the heads of Federal departments and agencies may approve waivers to Federal Information Processing Standards (FIPS). The head of such agency may redelegate such authority only to a senior official designated pursuant to section 3506(b) of Title 44, U.S. Code. Waivers shall be granted only when:

a. Compliance with a standard would adversely affect the accomplishment of the mission of an operator of a Federal computer system, or

b. Cause a major adverse financial impact on the operator which is not offset by Governmentwide savings.

Agency heads may act upon a written waiver request containing the information detailed above. Agency heads may also act without a written waiver request when they determine that conditions for meeting the standard cannot be met. Agency heads may approve waivers only by a written decison which explains the basis on which the agency head made the required finding(s). A copy of each such decision, with procurement sensitive or classified portions clearly identified, shall be sent to: National Institute of Standards and Technology; Attn: FIPS Waiver Decisions, Technology Building, Room B-154; Gaithersburg, MD 20899.

In addition, notice of each waiver granted and each delegation of authority to approve waivers shall be sent promptly to the Committee on Government Operations of the House of Representatives and the Committee on Governmental Affairs of the Senate and shall be published promptly in the Federal Register.

When the determination on a waiver applies to the procuremnet of equipment and/or services, a notice of the waiver determination must be published in the *Commerce Business Daily* as a part of the notice of soliciation for offers of an acquisition or, if the waiver determination is made after that notice is published, by amendment to such notice.

A copy of the waiver, any supporting documents, the document approving the waiver and any supporting and accompanying documents, with such deletions as the agency is authorized and decides to make under 5 U.S.C. 552(b), shall be part of the procurement documentation and retained by the agency.

Where to Obtain Copies. Copies of this publication are for sale by the National Technical Information Service, U.S. Department of Commerce, Springfield, VA 22161. When ordering, refer to Federal Information Processing Standards Publication _____ (FIPSPUB _____), and title. Specify microfiche, if desired. Payment may be made by check, money order, or NTIS deposit account.

[FR Doc. 89-1901 Filed 1-26-89; 8:45 am]
BILLING CODE 3510-CN-M

[Docket No. 81138-8238]

Proposed Changes in Requirements for Validation of FIPS Programming Language Processors

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice of proposed changes; request for comments.

SUMMARY: The NIST is considering removing the requirements for validation of language processors for the following high level programming language standards: FIPS PUB 68-2, BASIC; FIPS PUB 109, Pascal; and FIPS PUB 125, MUMPS. Agencies requiring the validation of language processors compilers may specify their own testing for conformance, or adopt other techniques for evaluating conformance.

No changes are planned for current requirements for validation of language processors for the following languages: FIPS PUB 21-2, COBOL; FIPS PUB 69-2, Fortran, and FIPS PUB 119, Ada. The NIST will continue to conduct validation tests for language processors implementing these standards. The NIST also plans to support validation of language processors for the programming language C when a FIPS for that language is issued.

Prior to final action to remove the requirements for validation of language processors for FIPS PUBS 68-2, 109, and 125, it is essential to assure that consideration is given to the needs and views of manufacturers, the public, and State and local governments. The purpose of this notice is to solicit such views.

Interested parties may obtain copies of FIPS PUBS 68-2, 109, and 125 from the National Technical Information Service, U.S. Department of Commerce, Springfield, VA 22161.

DATE: Comments on this proposed change must be received on or before April 27, 1989.

ADDRESS: Written comments concerning this change should be sent to: National Institute of Standards and Technology, ATTN: Validation of FIPS Programming Language Processors, Technology Building, Room B154, Gaithersburg, MD 20899.

Written comments received in response to this notice will be made part of the public record and will be made available for inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Ms. Mabel Vickers, National Institute of Standards and Technology, Gaithersburg, MD 20899, telephone (301) 975-3277.

Authority: 15 U.S.C. 278g-3.

Raymond G. Kammer,
Acting Director.

Date: January 23, 1989.

[FR Doc. 89-1903 Filed 1-26-89; 8:45 am]
BILLING CODE 3510-CN-M

National Fire Codes; Request for Proposals for Revision of Standards

AGENCY: National Institute of Standards and Technology, DOC.

ACTION: Notice of request for proposals.

SUMMARY: The National Fire Protection Association (NFPA) proposes to revise some of its fire safety standards and requests proposals from the public to amend existing NFPA fire safety standards. The purpose of this request is to increase public participation in the system used by NFPA to develop its standards. The publication of this notice of request for proposals by the National Institute of Standards and Technology (NIST) on behalf of NFPA is being undertaken as a public service; NIST does not necessarily endorse, approve, or recommend any of the standards referenced in the notice.

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DATES: Interested persons may submit proposals on or before the dates listed with the standards.

ADDRESS: Arthur E. Cote, P.E., Secretary, Standards Council, NFPA, Batterymarch Park, Quincy, Massachusetts 02269.

FOR FURTHER INFORMATION CONTACT: Arthur E. Cote, P.E., Secretary, Standards Council, at above address, (617) 770-3000.

SUPPLEMENTARY INFORMATION:

Background

The National Fire Protection Association (NFPA) develops fire safety standards which are known collectively as the National Fire Codes. Federal agencies frequently use these standards as the basis for developing Federal regulations concerning fire safety. Often, the Office of the Federal Register approves the incorporation by reference of these standards under 5 U.S.C. 552(a) and 1 CFR Part 51.

Request for Proposals

Interested persons may submit amendments, supported by written data, views, or arguments to Arthur E. Cote, P.E., Secretary, Standards Council, NFPA, Batterymarch Park, Quincy, Massachusetts 02269. Proposals should be submitted on forms available from the NFPA Standards Administration Office. Each person must include his or her name and address, identify the document and give reasons for the proposal. Proposals received before or by 5:00 P.M. local time on the closing date indicated will be acted on by the Committee. The NFPA will consider any proposal that it receives on or before the date listed with the standard.

At a later date, each NFPA Technical Committee will issue a Technical Committee Report which will include a copy of written proposals that have been received and an account of their disposition by the Committee. Each person who has submitted a written proposal will receive a copy of the report.

Dated: January 23, 1989.

Raymond G. Kammer,

Acting Director.

NFPA No. and Title—Proposal closing date:

NFPA 1-1987, Fire Prevention Code—July 14, 1989.

NFPA 10H-Proposed, Home Portable Fire Extinguishing Equipment—April 7, 1989.

NFPA 12A-1989, Halogenated Fire Extinguishing Agent Systems—September 15, 1989.

NFPA 13-1989, Installation of Sprinkler Systems—November 10, 1989.

NFPA 13D-1989, Sprinkler Systems in One- and Two-Family Dwellings & Mobile Homes—November 10, 1989.

NFPA 31-1987, Oil Burning Equipment—July 20, 1990.

NFPA 35-1987, Manufacture of Organic Coatings—July 15, 1990.

NFPA 36-1986, Solvent Extraction Plants—Open.

NFPA 45-1986, Fire Protection for Laboratories Using Chemicals—January 19, 1990.

NFPA 49-1975, Hazardous Chemicals Data—July 14, 1989.

NFPA 68-1988, Guide for Venting of Deflagrations—January 19, 1990.

NFPA 69-1986, Explosion Prevention Systems—January 19, 1990.

NFPA 79-1987, Industrial Machines—January 19, 1990.

NFPA 85B-1989, Prevention of Furnace Explosions in Natural Gas-Fired Multiple Burner Boiler Furnaces—September 1, 1989.

NFPA 85D-1989, Prevention of Furnace Explosions in Fuel Oil-Fired Multiple Burner Boiler-Furnaces—September 1, 1989.

NFPA 85E-1985, Prevention of Furnace Explosions in Pulverized Coal-Fired Multiple Burner Boiler-Furnaces—September 1, 1989.

NFPA 85F-1988, Installation and Operation of Pulverized Fuel Systems—September 1, 1989.

NFPA 171-1988, Visual Alerting Symbols for General Public Firesafety—July 14, 1989.

NFPA 171-1988, Firesafety Symbols for Architectural and Engineering Drawings—July 14, 1989.

NFPA 174-1988, Firesafety Symbols for Risk Analysis Diagrams—July 14, 1989.

NFPA 176-1988, Symbols for Fire Fighting Operations—July 14, 1989.

NFPA 204M-1985, Guide for Smoke and Heat Venting—July 14, 1989.

NFPA 220-1985, Standard Types of Building Construction—July 14, 1989.

NFPA 232-1986, Protection of Records—July 14, 1989.

NFPA 232AM-1986, Fire Protection for Archives and Records Centers—July 14, 1989.

NFPA 253-1988, Test Methods For Heat Release Rates of Materials—July 14, 1989.

NFPA 295-1985, Wildfire Control—July 14, 1989.

NFPA 298-1986, Air Operations for Forest, Brush and Grass Fires—July 14, 1989.

NFPA 297-1986, Telecommunications Systems—July 14, 1989.

NFPA 321-1987, Classification of Flammable and Combustible Liquids—July 14, 1989.

NFPA 325M-1984, Fire Hazard Properties of Flammable Liquids, Gases, and Volatile Solids—July 14, 1989.

NFPA 327-1987, Cleaning or Safeguarding Small Tanks and Containers—July 15, 1990.

NFPA 328-1987, Control of Flammable and Combustible Liquids and Gases in Manholes and Sewers—July 15, 1990.

NFPA 329-1987, Underground Leakage of Flammable and Combustible Liquids—July 15, 1990.

NFPA 385-1988, Storage of Flammable and Combustible Liquids on Farms and Isolated Construction Projects—Open.

NFPA 403-1988, Aircraft Rescue and Fire Fighting Services at Airports and Heliports—October 6, 1989.

NFPA 424M-1988, Airport/Community Emergency Planning—October 6, 1989.

NFPA 491M-1985, Hazardous Chemical Reactions—July 14, 1989.

NFPA 502-1987, Fire Protection for Limited Access Highways, Tunnels, Bridges, Elevated Railways and Air Right Structures—January 19, 1990.

NFPA 325M-1984, Fire Hazard Properties of Flammable Liquids, Gases, and Volatile Solids—July 14, 1989.

NFPA 327-1987, Cleaning or Safeguarding Small Tanks and Containers—July 15, 1990.

NFPA 328-1987, Control of Flammable and Combustible Liquids and Gases in Manholes and Sewers—July 15, 1990.

NFPA 329-1987, Underground Leakage of Flammable Combustible Liquids—July 15, 1990.

NFPA 385-1988, Storage of Flammable and Combustible Liquids on Farms and Isolated Construction Projects—Open.

NFPA 403-1988, Aircraft Rescue and Fire Fighting Services at Airports and Heliports—October 6, 1989.

NFPA 424M-1988, Airport/Community Emergency Planning—October 6, 1989.

NFPA 491M-1985, Hazardous Chemical Reactions—July 14, 1989.

NFPA 502-1987, Fire Protection for Limited Access Highways, Tunnels, Bridges, Elevated Railways and Air Right Structures—January 19, 1990.

NFPA 703-1985, Fire Retardant Treatments of Building Materials—July 14, 1989.

NFPA 801-1988, Facilities Handling Radioactive Materials—July 14, 1989.

NFPA 1001-1987, Fire Fighter Professional Qualifications—January 19, 1990.

NFPA 1004-1985, Fire Fighter Medical Technicians Professional Qualifications—July 14, 1989.

NFPA 1031-1987, Fire Inspector Professional Qualifications—July 14, 1989.

NFPA 1033-1987, Fire Investigator Professional Qualifications—July 19, 1990.

NFPA 1035-1987, Public Fire Educator Professional Qualifications—July 20, 1990.

NFPA 1126-Proposed, Pyrotechnics in the Performing Arts—April 3, 1989.

NFPA 1461-1988, Criteria for Accreditation of Fire Protection Education Programs—July 14, 1989.

NFPA 1963-1985, Screw Treads and Gaskets for Fire Hose Connections—July 14, 1989.

NFPA 1971-1986, Protective Clothing for Structural Fire Fighting—October 2, 1989.

[FR Doc. 89-1900 Filed 1-26-89; 8:45 am]

BILLING CODE 3510-13-M

[Notice 1]

National Fire Codes: Request for Comments on NFPA Technical Committee Reports

AGENCY: National Institute of Standards and Technology, DOC.

ACTION: Notice of request for comments.

SUMMARY: The National Fire Protection Association (NFPA) revises existing standards and adopts new standards twice a year. At its Fall Meeting in November or its Annual Meeting in May, the NFPA acts on recommendations made by its technical committees.

The purpose of this notice is to request comments on the technical reports which will be presented at NFPA's 1989 Fall Meeting. The publication of this notice by the National Institute of Standards and Technology (NIST) on behalf of NFPA is being undertaken as a public service; NIST does not necessarily endorse, approve, or recommend any of the standards referenced in the notice.

DATES: The Technical Committee Reports are available for distribution on January 27, 1989. Comments received on or before April 7, 1989 will be considered by the respective NFPA Committees before final action is taken on the proposals.

ADDRESS: The 1989 Fall Technical Committee Reports are available from NFPA, Publications Department, Batterymarch Park, Quincy, Massachusetts 02269. (The single copy price is $5.00 to cover postage and handling.) Comments on the reports should be submitted to Arthur E. Cote, P.E., Secretary, Standards Council, NFPA, Batterymarch Park, Quincy, Massachusetts 02269.

FOR FURTHER INFORMATION CONTACT: Arthur E. Cote, P.E., Secretary, Standards Council, at above address, (617) 770-3000.

SUPPLEMENTARY INFORMATION:

Background

Standards developed by the technical committees of the National Fire Protection Association (NFPA) have been used by various Federal agencies as the basis for Federal regulations concerning fire safety. The NFPA standards are known collectively as the National Fire Codes. Often, the Office of the Federal Register approves the incorporation by reference of these standards under 5 U.S.C. 552(a) and 1 CFR Part 51.

Revisions of existing standards and adoption of new standards are reported by the technical committees at the NFPA's Fall Meeting in November or at the Annual Meeting in May of each year. The NFPA invites public comment on its Technical Committee Reports.

Request for Comments

Interested persons may participate in these revisions by submitting written data, views, or arguments to Arthur E. Cote, P.E., Secretary, Standards Council, NFPA, Batterymarch Park, Quincy, Massachusetts 02269. Commentors may use the forms provided for comments in the Technical Committee Reports. Each person submitting a comment should include his or her name and address, identify the notice, and give reasons for any recommendations. Comments received on or before April 7, 1989 will be considered by the NFPA before final action is taken on the proposals.

Copies of all written comments received and the disposition of those comments by the NFPA committees will be published as the Technical Committee Documentation by September 22, 1989, prior to the Fall Meeting.

A copy of the Technical Committee Documentation will be sent automatically to each commentor. Action on the Technical Committee Reports (adoption or rejection) will be taken at the Fall Meeting, November 13-15, 1989, in Seattle, WA by NFPA members.

Dated: January 23, 1989.

Raymond G. Kammer,

Acting Director.

1989 Fall Meeting Technical Committee Reports

(P = Partial revision; W = Withdrawal; R = Reconfirmation; N = New; C = Complete Revision)

NFPA No.	Title	Action
10	Portable Extinguishers	P
10L	Fire Extinguishers, Portable Enabling Act.	P
14	Standpipe and Hose Systems.	P
17	Dry Chemical Extinguishing Systems.	P
17A	Wet Chemical Extinguishing Systems.	P
32	Drycleaning Plants	R
37	Combustion Engines and Gas Turbines.	P
46	Forest Products, Storage of.	R
50	Oxygen Systems, Bulk, at Consumer Sites.	P
53M	Fire Hazards in Oxygen-Enriched Atmospheres.	R
59A	Liquefied Natural Gas, Storage and Handling.	P
80	Fire Doors and Windows.	P
82	Incinerators, Waste and Linen Handling Systems & Equipment.	P
86	Ovens & Furnaces, Design, Locations & Equipment (86A/B Combined).	P
91	Blower and Exhaust Systems, Dust, Stock, Vapor.	P
99	Health Care Facilities	P
99B	Hypobaric Facilities	P
130	Fixed Guideway Transit Systems.	P
385	Flammable and Combustible Liquids, tank Vehicles for.	P
386	Flammable and Combustible Liquids, Portable Shipping Tanks.	R
501C	Recreational Vehicles	P
501D	Recreational Vehicle Parks	P
512	Truck Fire Protection	P
513	Motor Freight Terminals	P
650	Pneumatic Conveying Systems for Handling Combustible Mat.	R
704	Fire Hazards of Materials, Identification System.	P
820	Waste Water Treatment Plants.	N
850	Fossil Fueled Steam Electric Gen Plants.	P
901	Uniform Coding for Fire Protection.	P
902M	Fire Reporting Field Incident Manual.	P
1405	Fire Servicing Training	N
1991	Vapor Protective Suits for Hazardous Chemical Emergencies.	N
1992	Liquid Splash Protective Suits for Hazardous Chemical Emergencies.	N

[FR Doc. 89-1902 Filed 1-26-89; 8:45 am]

BILLING CODE 3510-13-M

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National Oceanic and Atmospheric Administration

Public Meeting on the Proposed Great Bay National Estuarine Research Reserve—Draft Management Plan

AGENCY: Marine and Estuarine Management Division, Office of Ocean and Coastal Resource Management Division, National Ocean Service, National Oceanic and Atmospheric Administration, Department of Commerce.

ACTION: Public meeting notice.

SUMMARY: Notice is hereby given that the Marine and Estuarine Management Division, of the Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce, will hold a public meeting for the purpose of receiving comments on the Draft Management Plan (DMP) prepared on the proposed designation of the Great Bay National Estuarine Research Reserve.

The hearing will be held on Friday, February 17, 1989 at 2:00 p.m. at the Department of Fish and Game, Fish & Game Headquarters Region 3, 37 Concord Road, Durham, New Hampshire.

The views of interested persons and organizations on the adequacy of the DMP are solicited, and may be expressed orally and/or in written statements. Presentations will be scheduled in advance and may be limited to a maximum of five (5) minutes. The time allotment may be extended before the meeting when the number of speakers can be determined. All comments received at the meeting will be considered in the preparation of the Final Management Plan.

The comment period for the DMP will close on Monday, February 27, 1989. All written comments received by this deadline will be considered in the preparation of the Final Management Plan. Copies of the DMP may be obtained from the Marine and Estuarine Management Division, Office of Ocean and Coastal Resource Management, NOAA, 1825 Connecticut Avenue, NW., Suite 714, Washington, DC 20235 (Telephone: 202/673–5122), and the Office of State Planning, 2½ Beacon Street, Concord, New Hampshire 03301 (Telephone 603/271–1752).

Thomas J. Maginnis,

Assistant Administrator for Ocean Services and Coastal Zone Management.

Date: January 19, 1989.

Federal Domestic Assistance Catalog Number 11.420 Coastal Zone Management Estuarine Sanctuaries.

[FR Doc. 89–1921 Filed 1–26–89; 8:45 am]

BILLING CODE 3510–08–M

Marine Mammals Permit Application; Burke Memorial Washington State Museum (P-405A)

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), the Endangered Species Act of 1973 (16 U.S.C. 1531–1544), and the National Marine Fisheries Service regulations governing endangered fish and wildlife permits (50 CFR Parts 217–222).

1. *Applicant:* Burke Memorial Washington State Museum, University of Washington, Seattle, Washington 98195.

2. *Type of Permit:* Scientific Research.

3. *Name and Number of Marine Mammals:* Unspecified number of all species of marine mammals.

4. *Type of Take:* Specimens will be taken as salvage from dead animals and may be imported for scientific purposes.

5. *Location of Activity:* Worldwide.

6. *Period of Activity:* 5 Years.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1335 East-West Highway, Rm. 7330, Silver Spring, Maryland; and

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California, 90731–7415.

Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way, NE., BIN C15700, Seattle, Washington 98115–0070;

Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, Alaska 99802;

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702;

Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Federal Building, Gloucester, Massachusetts 01930;

Office of Management Authority, U.S. Fish and Wildlife Service, 1375 K Street, NW., Room 703, Washington, DC 20005.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs.

Date: October 18, 1988.

Mr. Richard K. Robinson,

Chief, Permit Branch Office of Management Authority.

Date: November 14, 1988.

[FR Doc. 89–1904 Filed 1–26–89; 8:45 am]

BILLING CODE 3510–22–M

Denial of Marine Mammals Permit; Riviera Hotel (P434)

On December 7, 1988, notice was published in the **Federal Register** (53 FR 49341) that an application had been filed by the Riviera Hotel, 2901 S. Las Vegas Blvd., Las Vegas, Nevada 89109, for a permit to import and display three California sea lions (*Zalophus californianus*).

Notice is hereby given that on January 17, 1989, under the authority of the Marine Mammal Protection Act of 1972, as amended, (16 U.S.C. 1361 *et seq.*), and after having considered all pertinent information and facts, the National Marine Fisheries Service denied the above referenced permit application.

Documents submitted in connection with the application are available for inspection in the Office of Protected Resources and Habitat Programs, Room 7324, 1335 East-West Highway, Silver Spring, Maryland 20910. For further information contact Georgia Cranmore at (301) 427–2289.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs.

Date: January 23, 1989.

[FR Doc. 89–1905 Filed 1–26–89; 8:45 am]

BILLING CODE 3510–22–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in the People's Republic of China; Correction

January 23, 1989.

On page 50277 of the **Federal Register** notice published on December 14, 1988, correct footnote 1 to read:

In Categories 338–S/339–S, all tariff numbers except 6109.10.00.10, 6109.10.00.15, 6109.10.00.25, 6109.10.00.30, 6109.10.00.40, 6109.10.00.45, 6109.10.00.60, 6109.10.00.65.

James H. Babb,

Committee for the Implementation of Textile Agreements.

[FR Doc. 89–1930 Filed 1–26–89; 8:45 am]

BILLING CODE 3510–DR–M

Announcement of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the United Mexican States; Correction

January 23, 1989.

Beginning on page 52461, third column, of the **Federal Register** notice published on December 28, 1988, make the following changes:

Change "223pt.²" to "223"

Delete footnote ²

Footnote 8: delete 6103.42.20.20, add 6103.42.20.25, add 6203.42.20.90, add 6211.32.00.25

Footnote 12: add 4202.92.30.15, add 5601.10.10.00, add 5601.21.00.90

Footnote 17: add 6203.43.20.90, add 6203.49.10.90, add 6211.33.00.17

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89–1931 Filed 1–26–89; 8:45 am]

BILLING CODE 3510–DR–M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1989; Addition

AGENCY: Committee for Purchase From the Blind and Other Severely Handicapped.

ACTION: Addition to procurement list.

SUMMARY: This action adds to Procurement List 1989 a commodity to be produced by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: February 27, 1989.

ADDRESS: Committee for Purchase From the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557–1145.

SUPPLEMENTARY INFORMATION: On November 28, 1988, the Committee for Purchase From the Blind and Other Severely Handicapped published notice (53 FR 47850) of proposed addition to Procurement List 1989, which was published on November 15, 1988 (53 FR 46018).

Comments were received from a law firm representing the current contractor for this service. The commenter indicated that the company had previously received contracts for shelf stocking and custodial services at the Pensacola Naval Air Station Commissary. He related that the Committee had added the commissary shelf stocking service at the base to its Procurement List about two years ago and that the additional loss of the janitorial/custodial contract which represents 75% of the custodial portion of its current business would be a severe economic blow to the company.

The value of the firm's contract for the service proposed for addition represents about 5.9% of its total annual sales. The commissary shelf stocking for the Naval Air Station in Pensacola, Florida, was added to the Committee's Procurement List on October 30, 1986. The cumulative impact on the current contractor of the addition of both services to the Procurement List is about 10.8%. This is not considered to be serious adverse impact. After consideration of the material presented to it concerning the capability of a qualified workshop to provide this service at a fair market price and the impact of the addition on the current or most recent contractor, the Committee has determined that the service listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.6.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The action will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The action will not have a serious economic impact on any contractors for the service listed.

c. The action will result in authorizing small entities to provide the service procured by the Government.

Accordingly, the following service is hereby added to Procurement List 1989:

Janitorial/Custodial
Commissary Store
Naval Air Station
Pensacola, Florida

Beverly L. Milkman,

Executive Director.

[FR Doc. 89–1927 Filed 1–26–89; 8:45 am]

BILLING CODE 6820–33–M

Procurement List 1989; Additions and Deletions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to and deletions from procurement list.

SUMMARY: This action adds to and deletes from Procurement List 1989 commodities to be produced and services to be provided by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: February 27, 1989.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557–1145.

SUPPLEMENTARY INFORMATION: On September 16, October 7 and November 28, 1988, the Committee for Purchase From the Blind and Other Severely Handicapped published notices (53 FR 36091, 39497 and 47850) of proposed additions to and deletions from Procurement List 1989, which was published on November 15, 1988 (53 FR 46018).

Additions

No comments were received concerning the proposed additions to the Procurement List. After consideration of the material presented to it concerning capability of qualified workshops to produce the commodities and provide

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the services at a fair market price and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the commodities and services listed.

c. The actions will result in authorizing small entities to produce the commodities and provide the services procured by the Government.

Accordingly, the following commodities and services are hereby added to Procurement List 1989:

Commodities

Table, Coffee
7105–00–139–7573
7105–00–139–7601
(Requirements for Zone 1 only)
Table, End
7105–00–139–7598
(Requirements for Zone 1 only)
Table, Lamp
7105–00–139–7600
(Requirements for Zone 1 only)

Services

Grounds Maintenance, Air Route Traffic Control Center, Auburn, Washington
Grounds Maintenance and Sprinkler System Maintenance, Building 6450, Edwards Air Force Base, California
Janitorial/Custodial, Social Security Administration, Operations Building, Third and Fourth Floors, 6401 Security Boulevard, Baltimore, Maryland

Deletions

After consideration of the relevant matter presented, the Committee has determined that the services listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.6.

Accordingly, the following services are hereby deleted from Procurement List 1989:

Furniture Rehabilitation at the following locations: Altus Air Force Base, Oklahoma, Lawton, Oklahoma including Fort Sill
Oklahoma City, Oklahoma, plus 25-mile radius, including FAA and Tinker Air Force Base, San Antonio, Texas, plus 40-mile radius, Wichita Falls, Texas, including Sheppard Air Force Base

Beverly L. Milkman,
Executive Director.

[FR Doc. 89–1928 Filed 1–26–89; 8:45 am]
BILLING CODE 6820–33–M

Procurement List 1989; Proposed Additions and Deletions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to and deletions from procurement list.

SUMMARY: The Committee has received proposals to add to and delete from Procurement List 1989 a commodity to be produced and services to be provided by workshops for the blind and other severely handicapped.

Comments Must Be Received on or Before: February 27, 1989.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: E.R. Alley, Jr., (703) 557–1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodity and services listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodity and services to Procurement List 1989, which was published November 15, 1988 (53 FR 46018):

Commodity

Cushion, Seat, Vehicular
2540–00–831–6948

Services

Brick Joint Cleaning, Andersonville National Historic Site, Andersonville, Georgia
Janitorial/Custodial, Waterways Experiment Station, Vicksburg, Mississippi
Microfilming and Related Services, Internal Revenue Service, Western Region, Seattle, Washington
Reproduction Service, Headquarters, U.S. Marine Corps, Clarendon Square Office Building, 3033 Wilson Boulevard, Arlington, Virginia

Deletions

It is proposed to delete the following services from Procurement List 1989, which was published November 15, 1988 (53 FR 46018):

Commissary Warehouse Service, Maxwell Air Force Base, Alabama
Commissary Warehouse Service, Scott Air Force Base, Illinois

Beverly L. Milkman,
Executive Director.

[FR Doc. 89–1929 Filed 1–26–89; 8:45 am]
BILLING CODE 6820–33–M

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: 13–14 February 1989.

Time: 0830–1700 hours each day.

Place: Alexandria, Virginia.

Agenda: The 1989 Army Science Board Summer Study of International Cooperation and Data Exchange to Enhance the Army's Technology Base will hold its first meeting at U.S. Army Materiel Command Headquarters, Alexandria, VA. The purpose of this meeting is to validate the planned schedule of this study and to review the current status of the Army/DoD international technology program. The tentative schedule includes regular monthly meetings and data gathering field trips to European and Far Eastern nations. This meeting will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–3039/7046.

Sally A. Warner,
Administrative Officer, Army Science Board.

[FR Doc. 89–1692 Filed 1–26–89; 8:45 am]
BILLING CODE 3710–08–M

Army Science Board; Partially Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: 15–16 February 1989.

Time: 0830–1330 hours, 15 February (Open), 1330–1430 hours, (Closed), 1430–1700 hours, (Open), 0830–1200 hours, 16 February (Open).

Place: The Pentagon, Washington, DC.

Agenda: The Army Science Board Ad Hoc Subgroup on Army's Technology Base Strategy for the 1990's will hold its first meeting. Subjects to be discussed are: The Army Technology Base Master Plan, the current management structure and investment strategy for the Army Tech Base, Advanced Technology Transition Demonstrators (ATTD's) in the Army, results of the Board of Army Science and Technology (BAST) study on Strategic Technologies for the Army, and Technology Base management within the Army Materiel Command (AMC). The open portions of the meeting are open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–3039/7046.

Sally A. Warner,
Administrative Officer, Army Science Board.

[FR Doc. 89–1693 Filed 1–26–89; 8:45 am]
BILLING CODE 3710–08–M

DEPARTMENT OF ENERGY

Record of Decision on Special Isotope Separation Project, Idaho National Engineering Laboratory

AGENCY: Department of Energy DOE.

ACTION: Record of Decision, Special Isotope Separation Project (SIS).

SUMMARY: The DOE has decided to proceed with the construction and operation of the SIS production facility using the Atomic Vapor Laser Isotope Separation (AVLIS) technology and to select the Idaho National Engineering Laboratory (INEL) as the location for the SIS. The DOE has prepared this Record of Decision (ROD) pursuant to regulations of the Council on Environmental Quality (40 CFR Part 1505) and Implementing Procedures of the Department of Energy (52 F.R. 47662, Dec. 15, 1987).

FOR FURTHER INFORMATION CONTACT: Dr. Ralph G. Lightner, SIS Program Office, DP–7, U.S. Department of Energy, Washington, DC 20545.

Decision

The DOE has decided to proceed with the construction and operation of the SIS production facility using the AVLIS technology and to select the Idaho National Engineering Laboratory (INEL) as the location for the SIS. The INEL is located approximately 45 miles west of the City of Idaho Falls, Idaho. Site preparation activities for the SIS production facility will be initiated as soon as practical; however, significant physical construction of the SIS production plant will not be initiated until successful results of AVLIS plant performance verification testing at the Lawrence Livermore National Laboratory (LLNL) are obtained.

Basis for Decision

In determining to proceed to construct and operate the AVLIS SIS facility, DOE has, in compliance with the National Environmental Policy Act (NEPA) and its implementing regulations, weighed the programmatic need for the SIS facility against its environmental and other costs. DOE has considered: (1) The technology and production alternatives to the SIS Project; (2) the potential environmental consequences of constructing and operating the SIS Project at alternative sites; and (3) No Action, i.e., to not construct the SIS facility. Note that present practice for the production of weapon-grade plutonium would continue irrespective of whether or not the SIS facility is constructed and operated.

During the period between January and March 1988, DOE conducted a process readiness review for the purpose of designating a preferred laser isotope separation technology for the SIS facility. This culminated a several year process in which DOE investigated potential non-reactor based processes to adjust isotopic contents of plutonium. Subsequent to a NEPA review, DOE selected the AVLIS process as the preferred technology because it was the only technology ready to proceed to the definitive plant design phase. Development of AVLIS technology is proceeding at an acceptable pace at LLNL.

Regarding production alternatives, only the SIS production facility can provide the necessary contingency, technological diversity, and flexibility in meeting approved needs for nuclear defense materials. None of the weapon-grade plutonium production alternatives to the SIS Project was considered a reasonable alternative to the Proposed Action, as none would, either separately or in combination, provide the required contingency, technological diversity, and flexibility.

The DOE had previously designated the INEL as the preferred site for the SIS production facility because it would provide diversification of plutonium processing sites and a favorable labor climate. In deciding to proceed with the selection of the INEL for the SIS facility, DOE has considered and evaluated in the FEIS the potential environmental consequences of locating the project at each of three locations: the INEL; the Hanford Site near Richland, Washington; and the Savannah River Plant (SRP) near Aiken, South Carolina. The primary differences in potential environmental consequences associated with locating the SIS Project at the alternative locations are related to factors that include the geographic and demographic area surrounding each location and the origins, destinations, and transport distances for SIS materials and wastes. While quantitative differences in potential exposures and risks do exist, none was found to be clearly superior from an environmental perspective. The FEIS indicates that operation of the plant at any of the three alternative sites will not pose serious threats to the environment or public health and safety, nor give rise to significant adverse socioeconomic consequences.

The No Action alternative does not meet programmatic requirements as it requires a continued exclusive dependence for new nuclear defense materials on production reactors that are more than 35 years old, whose continued operation at high power and availability cannot be assured. While the present practice of recycling and recovery of weapon-grade plutonium form retirements or scrap will continue to be a major source of recycled weapon-grade material, it does not provide a contingent capability for the production of new material, if required.

Background

The DOE, in accordance with the Atomic Energy Act of 1954, as amended, and in subsequent legislation, is responsible for developing and maintaining the capability to produce special nuclear material and other materials required for defense programs of the United States. The nation's stockpile of weapon-grade plutonium physically resides in weapons held by the Department of Defense or in DOE inventories associated with nuclear material and nuclear weapons production, processing, and storage. Annually, the President approves a document entitled the Nuclear Weapons

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Stockpile Memorandum (NWSM) which takes into account the inventory of existing special nuclear material and other nuclear materials, including weapon-grade plutonium, and sets forth the future composition of the nuclear weapons stockpile required to defend the United States. The approval of the NWSM by the President and the subsequent authorization and appropriation of funds by Congress constitute the legal authority and mandate for DOE to produce the specified types and quantities of nuclear defense materials and weapons and to maintain the facilities and capabilities to do so.

To fulfill its responsibilities, DOE requires contingency in its production capability, technological diversity, and flexibility. Contingent capability or capacity is essential to ensure that approved needs for defense nuclear materials can be met without being dependent on any single facility. The age of the present DOE facilities requires that a prudent level of contingent production capability be initiated now so that future approved requirements can be met. Technological diversity will help ensure production capability that is not dependent on a single technology which would be susceptible to interruption or foreclosure by generic issues associated with that technology, such as those incurred by DOE's current total reliance on reactors for producing nuclear defense materials. Flexibility in DOE's production of defense nuclear materials is also required to provide an alternative source of weapon-grade plutonium when there are competing demands for tritium and plutonium production from the same production reactors or when approved requirements for weapon-grade plutonium may increase rapidly and extend beyond the capability of the existing sources.

During the last several years, the DOE has investigated potential nonreactor-based processes to adjust the isotopic content of plutonium which does not meet weapon-grade specifications (e.g., fuel-grade plutonium) to provide plutonium meeting weapon-grade specifications. In accordance with the Conference Report for FY 1987 Energy and Water Development Appropriations Acts (Public Law 99–141), DOE reviewed the AVLIS process being developed by LLNL and the Molecular Laser Isotope Separation (MLIS) process under development at the Los Alamos National Laboratory to establish the readiness of these two processes for deployment and to select the more suitable process for a possible production facility. In March 1988, DOE prepared an Environmental Assessment (DOE/EA–0298) to evaluate the differences in potential impacts between the AVLIS and MLIS technologies. DOE's Finding of No Significant Impact issued in April 1988 concluded that although there were quantitative and qualitative differences between the processes, no significantly different environmental impacts existed between the two processes and thus, selection of an SIS process for focusing development, demonstration, and design of a potential production plant was not a major Federal action significantly affecting the environment. Following this review, DOE selected the AVLIS process as the preferred technology for the SIS Project, and in October 1988, published its Notice of Intent to prepare an EIS for siting, constructing and operating a proposed SIS plant based on the AVLIS process technology [51 FR 39765].

As to follow-up to the technical readiness review conducted in early 1988, DOE initiated a decision-making process that included a site evaluation team to identify a preferred site for SIS plant design considerations. The site evaluation team considered such criteria as project cost and schedule; environmental, safety, and health impacts; human resources and workload; and socioeconomic considerations. Based on the findings of the site evaluation team, DOE designated the INEL as the preferred site.

DOE conducted an extended public scoping process (Oct. 1988 to March 2, 1987) and held two public scoping hearings during this scoping period (69 oral commentaries, 44 exhibits, and 99 written submittals were received by DOE). A *Draft Environmental Impact Statement, Special Isotope Separation Project, Idaho National Engineering Laboratory, Idaho Falls, Idaho* (DOE/EIS–0136D) was issued and a Notice of Availability was published in the **Federal Register** on February 19, 1988 [53 FR 5032]. More than 1500 copies of the Draft EIS were distributed to members of Congress, state and Federal agencies, and concerned individuals. DOE provided a 60-day public review period on the Draft EIS, between February 19, 1988, and April 21, 1988, that included six days of public hearings and generated 504 oral commentaries, 803 exhibits and 30 written submittals. DOE then issued and distributed more than 2100 copies of the Final EIS in early December 1988. The EPA Notice of Availability of the Final EIS was published in the **Federal Register** on December 16, 1988 [53 FR 50566]. DOE has considered and responded to the concerns of the public, state and federal officials that were raised throughout these public review periods by making changes or providing additional detail to relevant portions of Vol. 1 of the FEIS and/or making specific responses in Vol. 2, Public Comments and Responses. In addition, DOE has considered all comments received on the Final EIS in the preparation of this Record of Decision. DOE will continue to coordinate with interested members of the public and state and federal officials throughout the implementation of its decision.

Alternatives Considered

As described in the *Final Environmental Impact Statement, Special Isotope Separation Project, Idaho National Engineering Laboratory, Idaho Falls, Idaho* (DOE/EIS–0136), November 1988, DOE's preferred alternative is to construct and operate the SIS facility at the INEL. DOE has considered: (1) The technology and production alternatives to the SIS Project; (2) the potential environmental consequences of constructing and operating the SIS Project at alternative sites; and (3) No Action, i.e., to not construct the SIS facility. Present practice for the production of weapon-grade plutonium would continue irrespective of whether or not the SIS facility is constructed and operated.

In formulating the Proposed Action, DOE considered two major categories of alternatives. These categories of alternatives were technology alternatives to AVLIS and production alternatives for weapon-grade plutonium. The recovery and recycling of existing weapon-grade plutonium from retired weapons and acceleration of scrap recovery, while not true alternatives to production, were also evaluated.

Because of fundamental technical considerations, cost, or the need to carry out extensive research and development programs, only the MLIS process merited further consideration as an alternative to the AVLIS process. As discussed under "Background" in this Record and Decision, subsequent technical evaluations in response to a Congressional request concluded that only the AVLIS process was technically ready to proceed to the definitive plant design phase.

None of the weapon-grade plutonium production alternatives to the SIS Project was considered a reasonable alternative to the Proposed Action, as none would, either separately or in combination, provide the required contingency, technological diversity, and flexibility. The production alternatives considered in the FEIS included increased blending, use of a new fuel lattice in the reactors at the SRP, restart of the N-Reactor at the Hanford Site, conversion of the Washington Nuclear Project Unit 1, and construction and operation of a New Production Reactor.

The Special Isotope Separation Project would process DOE owned fuel-grade plutonium into weapon-grade plutonium using the AVLIS and supporting chemical processes. The AVLIS process uses precisely tuned visible laser light to selectively ionize, or excite, specific plutonium isotopes into a vapor stream. The ionized plutonium isotopes are then separated from the plutonium isotope of interest. Chemical processes are required to (1) prepare the AVLIS plutonium feed for processing, remove americium-241, and cast plutonium metal into forms that meet AVLIS processing requirements; (2) recover and, if required, purify the AVLIS plutonium products; and (3) recover and process the AVLIS separated byproducts.

Construction and operation of the SIS production facility at any of the three alternative sites would require a Laser Support Facility which would house the laser system, a Plutonium Processing Building, a stand-alone storage vault, and other support facilities. Construction and operation of the SIS Project would be integrated with existing support and waste management facilities at the alternative sites considered. The atmospheric emissions, liquid effluents, and solid radioactive and nonradioactive wastes resulting from operation would be essentially the same at each of the alternative sites. Operation of the SIS Project at any of the alternative sites considered would require the transport of plutonium feed and product material and the transport of TRU waste and, potentially, SIS generated by-product material. The quantities of material to be transported would all be the same except for the transport of plutonium feed material that would vary based on the amount of feed material already located at each of the alternative sites considered. Although there are different distances involved in the transport of materials and different distances with respect to the release point of SIS radiological emissions to the atmosphere relative to offsite populations, neither the total transport risks nor the potential offsite population exposures are significantly different among alternative SIS sites.

The use of land areas for the project would neither impact critical ecological habitats and habitats of endangered and threatened species nor impact known archaeological or historic resources. All atmospheric releases during construction and operation would be well below prescribed environmental standards and wastes generated during construction and operation would be minimized and managed in accordance with applicable environmental requirements. In addition to a spectrum of potential high-consequence accidents which were analyzed, a severe facility accident was considered in the EIS. The severe facility accident, which is considered to be a bounding impact analysis meeting the CEQ criteria stated in 40 CFR 1502.22, has a estimated probability of occurrence of less than 1×10^{-6} per year. Calculated offsite consequences for the severe accident are only a small fraction of the 25 rem criteria used by the U.S. Nuclear Regulatory Commission in the siting of commercial nuclear reactors (10 CFR 100).

The No Action alternative is a continuation of present DOE weapon-grade plutonium practice which includes the production of weapon-grade plutonium through blending of fuel-grade plutonium with newly produced plutonium of higher than weapon-grade plutonium and the continuation of recovery and recycle of existing weapon-grade plutonium. These practices would continue irrespective of whether or not DOE constructs and operates the SIS Project.

Environmentally Preferable Alternative

The No Action alternative is considered the "environmentally preferable alternative." Extensive analysis of the environmental consequences associated with the No Action alternative is presented in other EISs which are referenced in the SIS FEIS, sections 2.4 and 4.4. The environmental consequences associated with the construction and operation of the SIS Project would not occur with the No Action alternative. Consequences of the construction and operation of the SIS Project, although well within all applicable environmental requirements, would include utilization of previously disturbed and undisturbed land areas, habitat and wildlife loss or displacement, and small unavoidable population and occupational exposures to radioactive and nonradioactive materials. Although the No Action Alternative is the environmentally preferable alternative, it does not meet programmatic requirements for technological diversity, contingency, and flexibility in meeting approved needs for nuclear defense materials. For the three siting alternatives for the construction and operation of the SIS facility, the analysis in the FEIS indicated that none was clearly environmentally superior to the others.

Mitigation

DOE has considered all practicable means to avoid or minimize environmental harm from construction and operation of SIS at the INEL. In proceeding with the construction and operation of the SIS production facility, DOE is committed to complying with all applicable state and Federal environmental requirements and to mitigation measures required by DOE policy, law or regulation, as discussed in the EIS. For example, DOE will replace the Freons used in the laser electronic packages with other acceptable dielectric coolants as soon as they are available from commercial manufacturers in order to minimize impacts on stratospheric ozone depletion. Until such substitutes are available, ongoing engineering development to further reduce emissions, such as chillers and condensation systems to reduce Freon evaporation during refurbishments and vapor recovery systems for recycling will be employed.

Definitive design and operation will continue to emphasize waste minimization practices and ensure the segregation of mixed and hazardous wastes. Definitive design and administrative controls will also ensure that only nonradioactive and nonhazardous liquid effluents are discharged to the environment. The INEL will take all necessary measures to ensure that SIS hazardous and mixed wastes are handled and managed in accordance with all applicable requirements of the Resource Conservation and Recovery Act (RCRA) and the Idaho Hazardous Waste Management Act. Best management practices to reduce fugitive dust emissions and erosion (such as utilization of road base material and application of suppressants, routing of surface water runoff to temporary holding basins), and spill prevention measures during construction (including adherence to a Spill Prevention, Control and Countermeasures (SPCC) plan and provision for washdown areas surrounded by berms or channels for

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control of inadvertent runoff) will be implemented. Adherence to an SPCC plan and compliance with all applicable requirements of RCRA and the Idaho Hazardous Waste Management Act will also be ensured during operation of the SIS production facility.

Periodic inspections of excavations by a professional paleontologist will also be implemented to determine the significance of any paleontological resources encountered and any need for potential mitigation measures. Disturbed areas not affected by SIS operation would be revegetated. Administrative measures intended to mitigate environmental consequences include independent monitoring agreements funded by DOE between DOE and the State of Idaho and DOE and Idaho State University as a means of verifying DOE's environmental monitoring data; DOE's safety analysis program conducted in accordance with DOE Orders; monitoring programs to demonstrate compliance with radiation protection standards and DOE policies; and emergency preparedness planning, training and coordination with state and local officials to respond to emergencies on or outside the INEL.

Conclusion

The DOE has weighed the programmatic need to proceed with the construction and operation of the SIS facility against its potential environmental consequences and, after consideration of the benefits and impacts of alternatives as analyzed in the Final EIS, comments received on the EIS, and the anticipated benefits and costs associated with the proposed action and its alternatives, has decided to proceed with the construction and operation of the SIS facility at the INEL. To ensure that the environmental consequences of the SIS Project are minimized, DOE has committed to pursue mitigation measures during construction and operation that have been or will be incorporated into project planning, and will continue its interactions with Federal and State of Idaho regulatory agencies to ensure that actions are implemented in accordance with this Record of Decision and in compliance with all applicable regulatory requirements.

Issued at Washington, DC, this 19th day of January, 1989.

Donna Fitzpatrick,

Under Secretary, U.S. Department of Energy.

[FR Doc. 89-1982 Filed 1-26-89; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[ERA Docket No. 88-68-NG]

Michigan Consolidated Gas Co.; Order Amending Authorization To Import Natural Gas from Canada

AGENCY: Economic Regulatory Administration Department of Energy.

ACTION: Notice of Order Amending Authorization to Import Natural Gas from Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an order amending a Michigan Consolidated Gas Company (MichCon) authorization to import natural gas from Canada. The order issued in ERA Docket No. 88-68-NG authorizes MichCon to import up to 50,000 Mcf per day and a total of 14,248 MMcf over a three-year period beginning January 23, 1989, for the exchange, on an equivalent Btu basis, of natural gas for ethane.

A copy of this order is available for inspection and copying in the Natural Gas Division Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room in open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, January 19, 1989.

Constance L. Buckley,

Acting Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 89-1983 Filed 1-26-89; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER89-171-000, et al.]

Gulf States Utilities Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. Gulf States Utilities Company

[Docket No. ER89-171-000]

January 13, 1989.

Take notice that on December 19, 1988, Gulf States Utilities Company (GSU) tendered for filing the 1985 rate schedule for transmission service to the City of Lafayette, Louisiana. In its filing of December 19, 1988 GSU states that it had previously filed this rate schedule with the Louisiana Public Service Commission. GSU describes the rate levels contained in the 1985 rate schedule as based upon and identical to the transmission service rates in Docket No. ER82-375-000.

Comment date: January 26, 1989, in accordance with Standard Paragraph E at the end of this notice.

2. Nantahala Power & Light Company

[Docket No. ER89-138-000]

January 13, 1989.

Take notice that on December 9, 1988, Nantahala Power & Light Company (Nantahala) tendered for filing computations showing the calculation of the cost for the period July 1, 1987 to June 30, 1988 utilizing the billing format resulting from the New Fontana Agreement (NFA), the 1971 Apportionment Agreement as modified by the FERC, and the 1971 Power Purchase Contract with TVA.

Comment date: January 26, 1989, in accordance with Standard Paragraph E at the end of this notice.

3. Iowa Public Service Company

[Docket No. ER89-166-000]

January 17, 1989.

Take notice that Iowa Public Service Company on January 5, 1989, tendered for filing an executed Firm Capacity Sales Agreement dated August 16, 1988, whereby Iowa Public Service Company (IPS) will supply Interstate Power Company (IPW) with firm electric capacity and associated energy, commencing May 1, 1988 and ending on October 31, 1988. IPS requests that the negotiated Agreement be made effective as of May 1, 1988.

Comment date: January 30, 1989, in accordance with Standard Paragraph E at the end of this notice.

4. Tampa Electric Company

[Docket No. ER88-168-000]

January 17, 1989.

Take notice that on January 5, 1989, Tampa Electric Company (Tampa Electric) tendered for filing a Letter of Commitment providing for the sale by Tampa Electric to Seminole Electric Cooperative (Seminole) of 65 megawatts of capacity and energy. Tampa Electric states that the Letter of Commitment is submitted as a supplement to Service Schedule J (negotiated interchange service) under the existing agreement for interchange service between Tampa Electric and Seminole, designated as Tampa Electric Rate Schedule Ferc No. 22.

Tampa Electric proposes an effective date of January 1, 1989 for the commitment of capacity and energy, and therefore requests waiver of the Commission's notice requirements.

Copies of the filing have been served on Seminole and the Florida Public Service Commission.

Comment date: January 30, 1989, in accordance with Standard Paragraph E at the end of this notice.

5. Idaho Power Company

[Docket No. ER89-167-000]

January 17, 1989.

Take notice that on January 4, 1989, Idaho Power Company tendered for filing in compliance with the Commission's Order of October 7, 1978, a summary of sales made under the Company's 1st Revised FERC Electric Tariff, Volume No. 1 (Supersedes Original Volume No. 1) during September and October 1988, along with cost justification for the rate charged. This filing includes the following supplements: Utah Power & Light Company, Supplement No. 79; Sierra Pacific Power Company, Supplement No. 79; Pacific Power & Light Company, Supplement No. 28; Portland General Electric Company, Supplement No. 61; Montana Power Company, Supplement No. 58; Washington Water Power Company, Supplement No. 59; Southern California Edison Company, Supplement No. 44; Pacific Gas & Electric Company, Supplement No. 34; Puget Sound Power & Light Company, Supplement No. 35.

Comment date: January 30, 1989, in accordance with Standard Paragraph E at the end of this notice.

6. New York State Electric & Gas Corporation

[Docket Nos. ER88-508-000, ER88-520-000]

January 18, 1989.

Take notice that on January 6, 1989, New York State Electric & Gas Corporation (NYSEG) tendered for filing supplemental information requested by the Commission, after finding the agreement between NYSEG and GPU Service Corporation (GPU) for the interchange of excess energy (Docket No. ER88-508-000) and the amendment to NYSEG's agreements with Connecticut Light and Power Company, Central Hudson Gas & Electric Corporation, and the New York Power Authority for the sale of short-term energy (Docket No. ER88-520-000) were deficient with respect to the Commission's Regulations.

NYSEG requests that the 60-day filing requirements be waived and that June 1, 1988 be allowed as the effective date of the filing in Docket No. ER88-508-000 and that January 1, 1988 be allowed as the effective date for the filing in Docket No. ER88-520-000.

Comment date: January 30, 1989, in accordance with Standard Paragraph E at the end of this notice.

7. Oxbow Power Corporation

[Docket No. QF89-111-000]

January 19, 1989.

On December 30, 1988, Oxbow Power Corporation (Applicant), of 333 Elm Street, Dedham, MA 02026, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in North Tonawanda, New York. The facility will consist of an extraction/condensing steam turbine generator and a coal fired boiler. Thermal energy recovered from the facility will be used for industrial processes in the Occidental Chemical Corporation plant adjacent to the facility. The electric power production capacity of the facility will be 55,000 KW. The primary source of energy will be bituminous coal. Construction of the facility is scheduled to begin April 1989.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

8. Bonneville Pacific Corporation

[Docket No. QF85-644-001]

January 19, 1989.

On December 28, 1988, Bonneville Pacific Corporation (Applicant), of 257 East 200 South, Suite #800, Salt Lake City, Utah 84111, submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Santa Maria, California. The facility will consist of a combustion turbine generator and a heat recovery steam generator. Thermal energy recovered from the facility will be used in vegetable blanching process and food refrigeration. The net electric power production capacity will be 6500 KW. The primary energy source will be natural gas. Construction of the facility commenced March 1986.

By order issued February 11, 1986, the Commission granted certification of the facility as a cogeneration facility (34 FERC 62319).

The recertification is requested due to a change in the ownership of the facility from Santa Maria Associates to Bonneville Pacific Corporation and an increase in capacity from 7483 KW to 8500 KW.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

9. Southern California Edison Company

[Docket No. ER89-178-000]

January 19, 1989.

Take notice that on January 13, 1989, Southern California Edison (Edison) tendered for filing the Edison-Vernon LADWP Firm Transmission Service Agreement (Agreement) which has been executed by Edison and the City of Vernon, California (Vernon).

Under the Agreement, Edison agrees to make firm transmission service available to Vernon from February 1, 1989 through May 31, 1989, during certain hours, for Vernon's LADWP capacity and associated energy. Edison will be providing firm transmission service for up to 30 megawatts of capacity and associated energy.

Copies of this filing were served upon the Public Utilities Commission of the State of California and the City of Vernon, California.

Comment date: January 27, 1989, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-1953 Filed 1-26-89; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6872-004]

City of Ithaca, Surrender of Exemption

January 25, 1989.

Take notice that the City of Ithaca, exemptee for the Sixty Foot Dam Project

No. 6872, has requested that the exemption be terminated. The exemption for Project No. 6872 was issued on August 6, 1980. The project would have been located on the Six Mile Creek, in Tompkins County, New York. No construction has started.

The exemptee filed the request on January 9, 1989, and the exemption for Project No. 6872 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday, or holiday as described in 18 CFR 385.2007, in which case the exemption shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Lois D. Cashell,

Secretary.

[FR Doc. 89-1999 Filed 1-26-89; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 10308-001]

Skykomish River Hydro, WA; Surrender of Preliminary Permit

January 25, 1989

Take notice that Skykomish River Hydro, permittee for the Goblin Creek Project, located on Goblin Creek in Snohomish County, Washington, has requested that its preliminary permit be terminated. The preliminary permit was issued on October 6, 1987, and would have expired on September 30, 1990. The permittee states that analysis of the project did not indicate feasibility for development.

The permittee filed the request on December 23, 1988, and the preliminary permit for Project No. 10308 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Lois D. Cashell,

Secretary.

[FR Doc. 89-1999 Filed 1-26-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. MT89-23-001]

Colorado Interstate Gas Co.; Notice of Proposed Changes in FERC Gas Tariff Pursuant to Order No. 497

January 24, 1989.

Take notice that on December 30, 1988, Colorado Interstate Gas Company tendered the following tariff sheets for filing in the captioned docket pursuant to Order No. 497 and section 250.16 of the Commission's Regulations as part of its FERC Gas Tariff, Second Revised Volume No. 1-A:

First Revised Sheet No. 21, Superseding Original Sheet No. 21.
Second Revised Sheet No. 24, Superseding First Revised Sheet No. 24.
Second Revised Sheet No. 25, Superseding First Revised Sheet No. 25.
Second Revised Sheet No. 45, Superseding First Revised Sheet No. 45.

Any person desiring to be heard or to protest the subject filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC. 20426, in accordance with 18 CFR sections 385.214 and 385.211. All such motions or protests must be filed by January 27, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-1961 Filed 1-26-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RE81-63-001, et al.]

Duquesne Light Co., et al.; Application for Exemption

January 25, 1989.

In the matter of: Duquesne Light Company, Docket No. RE81-63-001; Metropolitan Edison Company, Docket No. RE81-81-001; Pennsylvania Electric Company, Docket No. RE81-15-001; Pennsylvania Power Company, Docket No. RE81-33-001; Pennsylvania Power & Light Company, Docket No. RE80-1-000; Philadelphia Electric Company, Docket No. RE80-3-000; and West Penn Power Company, Docket No. RR80-16-001.

Take notice that The Pennsylvania Public Utility Commission filed an application on December 29, 1988 on behalf of Duquesne Light Company, Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, Pennsylvania Power & Light Company, Philadelphia Electric Company, and West Penn Power Company (Applicants), for exemption from the requirements of Part 290 of the Federal Energy Regulatory Commission's (FERC) regulations. These regulations concern the collection and reporting of cost of service information under section 133 of the Public Utility Regulatory Policies Act (PURPA), Order No. 48 (44 FR 58887, October 11, 1979). Exemption is sought from the requirement to file on or prior to June 30, 1990 and biennially thereafter, information on the costs of providing electric service as specified in Subpart B, C, D, and E of Part 290.

Copies of the applications for exemption are on file with FERC and are available for public inspection. FERC's regulations require that said utility also apply to any state regulatory authority having jurisdiction over it to have the application published in any official state publication in which electric rate change applications are usually noticed, and that the utility publish a summary of the application in newspapers of general circulation in the affected jurisdiction.

Any person desiring to present written views, arguments, or other comments on the applications for exemption should file such information with the Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, DC 20426, on or before 45 days following the date this notice is published in the Federal Register. Within that 45 day period, such person must also serve a copy of such comments on: Mr. John A. Levin, Assistant Counsel, Pennsylvania Public Utility Commission, P.O. Box 3265, Harrisburg, PA 17120.

Lois Cashell,

Secretary.

[FR Doc. 89-1962 Filed 1-26-89; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in refunding to adversely affected parties $35,000 obtained as a result of a settlement which the DOE entered into with McClure Oil Company, a reseller-retailer of petroleum products located in Oklahoma. The money is being held in escrow following the settlement of enforcement proceedings brought by the DOE's Economic Regulatory Administration.

DATE AND ADDRESS: Comments must be filed within 30 days of publication of this notice in the Federal Register and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. All comments should conspicuously display a reference to case number KEF-0009.

FOR FURTHER INFORMATION CONTACT: Matthew E. Paul, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6602.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision sets forth procedures and standards that the DOE has tentatively formulated to distribute to adversely affected parties $35,000 plus accrued interest obtained by the DOE under the terms of a Consent Order entered into with McClure Oil Company (McClure). The funds were provided to the DOE by McClure to settle all claims and disputes between the firm and the DOE regarding the firm's compliance with the Federal Petroleum Price and Allocation Regulations in its sales of covered products during the period August 20, 1973, through January 27, 1981.

OHA has tentatively determined that a portion of the consent order funds should be distributed to firms and individuals that purchased covered products from McClure during the consent order period. In order to obtain a refund, each claimant will be required to submit a schedule of its monthly purchases of covered products from McClure and to demonstrate that it was injured by McClure's alleged regulatory violations. The specific requirements for proving injury are set forth in the following Proposed Decision and Order. Applications for Refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Residual funds in the McClure escrow account will be distributed in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986, Pub. L. No. 99-509, Title III.

Any member of the public may submit written comments regarding the proposed refund procedures. Such parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice. All comments received in this proceeding will be available for public inspection between 1:00 and 5:00 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue, SW., Washington, DC 20585.

Dated: January 23, 1989.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

January 23, 1989.

Name of Firm: McClure Oil Company
Date of Filing: November 19, 1985
Case Number: KEF-0009

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request the Office of Hearings and Appeals (OHA) to formulate and implement procedures for the distribution of funds obtained by the DOE as a result of the agency's enforcement of the Mandatory Petroleum Price and Allocation Regulations. *See* 10 CFR Part 205, Subpart V. Pursuant to the provisions of Subpart V, on November 19, 1985, the ERA filed a Petition for the Implementation of Special Refund Procedures to distribute funds received from McClure Oil Company (McClure) under the terms of a Stipulation and Agreed Final Judgment (Judgment) dated January 30, 1985. [1] In its Petition, the ERA requests that the OHA establish procedures to make refunds in order to remedy the effects of the alleged regulatory violations that were settled in the McClure Judgment.

I. Background

McClure purchased and resold refined petroleum products during the period of federal price controls. The firm was therefore subject to the Mandatory Petroleum Price and Allocation Regulations set forth at 6 CFR part 150 and 10 CFR Parts 210, 211, and 212. During the period of price controls, the ERA conducted an extensive audit of McClure's operations and, as a result of the audit, alleged that McClure had violated certain of the DOE's price and allocation regulations in its sales of motor gasoline, diesel fuel and propane. Settlement discussions were held, and on January 30, 1985, the ERA and McClure finalized a Judgment (No. 80E00083) that resolved issues pertaining to McClure's refined petroleum product operations during the period November 1, 1973, through March 31, 1974 (the Judgment period). Pursuant to the terms of the Judgment, McClure remitted a total of $35,000.00 (the Judgment fund) [2] to the DOE for distribution through Subpart V. These funds are being held in an interest-bearing escrow account maintained at the Department of the Treasury, pending a determination regarding their proper distribution.

II. Jurisdiction and Authority

The Subpart V regulations set forth general guidelines which may be used by the OHA in formulating and implementing a plan of distribution of funds received as a result of enforcement proceedings. The DOE policy is to use the Subpart V process to distribute such funds. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds, *see Office of Enforcement*, 8 DOE ¶ 82,597 (1981).

We have considered the ERA's petition that we implement a Subpart V proceeding with respect to the McClure Judgment fund and have determined that such a proceeding is appropriate. This Proposed Decision and Order sets forth the OHA's tentative plan to distribute these funds. Comments are solicited.

III. Proposed Refund Procedures

We propose to implement a two-stage refund process by which firms and individuals who purchased motor gasoline, diesel fuel and propane from McClure during the Judgment period may submit Applications for Refund in the initial stage. From our experience with Subpart V proceedings, we expect that potential applicants will fall into the following categories of McClure purchasers: (i) End-users, i.e. ultimate consumers; (ii) regulated entities, such as public utilities or cooperatives; and (iii) retailers, resellers, and refiners that resold McClure products.

In order to receive a refund, each claimant will be required to submit a schedule of its monthly purchases of McClure refined petroleum products during the Judgment period. If the product was not purchased directly from McClure, the claimant must provide a

[1] The Judgment resolved all matters in dispute arising from a June 2, 1977, Remedial Order issued to McClure and a subsequent Judgment dated September 11, 1980.

[2] This future consists of the $18,527.13 in overcharges and $16,372.87 in interest which accrued prior to McClure's payment to the DOE. For accounting purposes, the interest remitted by McClure shall be considered as additional principal. Upon completion of payment, the consent order fund equalled $35,000.00.

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statement setting forth its reasons for maintaining that the product originated with McClure.

In addition, a refiner, reseller, or retailer claimant, except one that chooses to utilize the injury presumptions set forth below, will be required to make a detailed showing that it was injured by the alleged overcharges. This showing will generally consist of two distinct elements. First, a claimant will be required to show that it maintained "banks" of unrecouped increased product costs (banked costs) in excess of the refund claimed.[8] Second, because a showing of banked costs alone is not sufficient to establish injury, a claimant must provide evidence that market conditions precluded it from increasing its prices to pass through the additional costs associated with the alleged overcharges. *See National Helium Corp./Atlantic Richfield Co.*, 11 DOE ¶ 85,257 (1984), *aff'd sub nom Atlantic Richfield Co. v. DOE*, 618 F. Supp. 1109 (D. Del. 1985). Such a showing could consist of a demonstration that the firm suffered a competitive disadvantage as a result of its purchases from McClure. *Id.; see also Sid Richardson Carbon and Gasoline Company and Richardson Products Company/Shupbach and Streitmatter Gas Company*, 14 DOE ¶ 85,180 (1986).

1. Presumptions for Refund Claims

Our experience also indicates that the use of certain presumptions permits claimants to participate in the refund process without incurring inordinate expense, and ensures that refund claims are evaluated in the most efficient manner possible. *See, e.g., Marathon Petroleum Company*, 14 DOE ¶ 85,209 (1986) (*Marathon*). Presumptions in refund cases are specifically authorized by the applicable DOE procedural regulations at 10 CFR 205.282(e). Accordingly, we propose to adopt the presumptions set forth below.

First, we will adopt a presumption that the alleged overcharges were dispersed equally in all of McClure's sales of motor gasoline, diesel fuel and propane during the Judgment period. In accordance with this presumption, refunds are to be made on a pro-rata or volumetric basis. In the absence of better information, a volumetric refund approach is appropriate because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices.

Under the volumetric approach, a claimant's allocable share of the Judgment fund is equal to the number of gallons purchased times the per gallon refund amount (plus an appropriate share of the interest which has accrued on the McClure Judgment fund).[9] In the present case, the per gallon refund amount is $0.02778. We derived this figure by dividing the Judgment funds by the approximate number of gallons of refined products subject to price and allocation controls sold by McClure during the Judgment period.[10] As in previous cases, we will establish a minimum refund amount of $15.00. The administrative costs of processing claims for amounts less than $15.00 outweigh the benefits of restitution in those instances. *See, e.g., Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985).[11]

In addition to the volumetric presumption, we also propose to adopt a number of presumptions regarding injury for claimants in each category listed below.

a. End-users

In accordance with prior Subpart V proceedings, we propose to adopt the presumption that an end-user or ultimate consumer of McClure regulated products whose business is unrelated to the petroleum industry was injured by the alleged overcharges settled by the Judgment. *See, e.g., Texas Oil and Gas Corp.*, 12 DOE ¶ 85,069 at 88,209 (1984) (*TOGCO*). Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the Judgment period, and were not required to keep records which justified selling price increases by reference to cost increases. Consequently, analysis of the impact of the alleged overcharges on the final prices of goods and services produced by members of this group would be beyond the scope of a special refund proceeding. *Id.* We therefore propose that end-users of McClure refined products need only document their purchase volumes from McClure during the Judgment period in order to make the requisite showing that they were injured by the alleged overcharges.

b. Regulated Firms and Cooperatives

We further propose that, in order to receive a full volumetric refund, a claimant whose prices for goods and services are regulated by a governmental agency, e.g., a public utility, or by the terms of a cooperative agreement, need only submit documentation of purchase volumes used by itself or, in the case of a cooperative, sold to its members.[12] A regulated firm or cooperative, however, will also be required to certify that it will: (i) pass through any refund received to its customers or member-customers; (ii) provide us with a full explanation of how it plans to accomplish the restitution; and (iii) certify that it will notify the appropriate regulatory body or membership group of its receipt of the refund. *See Marathon*, 14 DOE at 88,515; *Office of Special Counsel*, 9 DOE ¶ 82,538 at 85,203 (1982). The latter requirement assumes that a regulated firm or cooperative would have passed on any overcharges to its customers or member-customers through automatic rate adjustment mechanisms or the terms of a cooperative agreement. Thus, any refunds received by a regulated firm or cooperative should also be passed through to its customers or customer-members. Because we require these firms to pass refunds through to their customers or customer-members on a dollar-for-dollar basis, we do not require them to make a detailed demonstration of injury.

c. Refiners, Resellers, and Retailers Seeking Refunds of $5,000 or Less

We propose to adopt a small claims presumption under which a refiner, reseller, or retailer seeking a refund of $5,000 or less, exclusive of interest, will not be required to submit evidence of injury.[13] These applicants would only be required to document the volume of McClure covered products they purchased during the Judgment period. *See TOGCO*, at 88,207. As we have noted in numerous prior proceedings, considerable expense may be involved in gathering the types of data necessary to support a detailed claim of injury. In some cases, that expense might exceed a refund of $5,000 or less. Consequently, without simplified application procedures for small claims, many injured parties would effectively be denied an opportunity to obtain a refund. Furthermore, use of the small claims presumption allows the OHA to process a large number of routine refund claims in an efficient manner.[14]

d. Spot Purchasers

We propose to adopt a rebuttable presumption that a refiner, reseller or retailer that made only spot purchases from McClure did not suffer injury as a result of those purchases. Spot purchasers generally had considerable discretion as to the timing and market in which they made their purchases, and therefore would not have made spot market purchases from a firm at increased prices unless they were able to pass through the full amount of the firm's selling price to their own customers. *See Office of Enforcement*, 8 DOE ¶ 82,597 at 85,396–97 (1981). Accordingly, a spot purchaser claimant must submit specific and detailed evidence to rebut the spot purchaser presumption and to establish the extent to which it was injured as a result of its spot purchasers from McClure.[15]

e. Consignees

A consignee agent is a firm that distributed covered products pursuant to a contractual agreement with a refiner, under which the refiner retained title to the products, specified the price to be paid by the purchaser and paid the consignee a commission based upon the volume of covered products it distributed. 10 C.F.R. § 212.31 (definition of "consignee agent"). As in previous decisions, we propose to adopt the rebuttable presumption that consignees of McClure refined petroleum products were not injured as a result of their arrangement with their refiner/supplier. *See, e.g., Jay Oil Company*, 16 DOE ¶ 85,147 (1987). A consignee, however, may rebut this presumption of non-injury by establishing that "[its] sales volumes, and [its] corresponding commission revenues, declined due to the alleged uncompetitiveness of [the judgment firm's] practices. *See Gulf Oil Corp./C.F. Canter Oil Co.*, 13 DOE ¶ 85,386 at 88,962 (1986).

2. Allocation Claims

We may also receive claims based upon McClure's alleged failure to furnish petroleum products that it was obliged to supply under the DOE allocation regulations. *See* 10 C.F.R. Part 211. Any such applications will be evaluated with reference to the standards set forth in cases such as *Amoco*, 10 DOE at 88,220, and *OKC Corp./Town & Country Markets, Inc.*, 12 DOE ¶ 85,094 (1984). These standards generally require an allocation claimant to demonstrate the existence of a supplier/purchaser relationship with the consent order firm and the likelihood that the Judgment firm failed to furnish petroleum products that it was obliged to supply to the claimant under 10 CFR Part 211. In addition, the claimant should provide evidence that it had contemporaneously notified the DOE or otherwise sought redress from the alleged allocation violation. Finally, the claimant must establish that it was injured and document the extent of the injury.

3. Distribution of Product Funds Remaining After First Stage

We propose that any refined product funds that remain after all first stage claims have been decided be distributed in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA), Pub. L. 99–509, Title III. *See* Fed. Energy Guidelines ¶ 11,702 et seq. PODRA requires that the Secretary of Energy determine annually the amount of oil overcharge funds that will not be required to refund monies to injured parties in Subpart V proceedings and make those funds available to state governments for use in four energy conservation programs. PODRA, Sections 3003 (c) and (d). These responsibilities have been delegated to the OHA, and any refined product pool funds in the McClure Judgment escrow account that the OHA determines will not be needed to effect direct restitution to injured McClure customers will be distributed in accordance with the provisions of PODRA.

IV. Applications for Refund

Applications for Refund should not be filed at this time. Detailed procedures for filing Applications will be provided in a final Decision and Order. Before disposing of any of the funds received as a result of the McClure Judgment, we intend to publicize the distribution process in order to solicit comments on all aspects of the foregoing Proposed Decision and Order from interested parties. All comments must be filed within 30 days of the publication of this Proposed Decision in the Federal Register.

It is Therefore Ordered That:

The refund amount remitted to the Department of Energy by McClure Gas Company pursuant to Consent Order No. 720T00521, finalized on January 6, 1986, will be distributed in accordance with the foregoing Decision.

[FR Doc. 89–1964 Filed 1–26–89; 8:45 am]

BILLING CODE 6450–01–M

[8] Claimants who have previously relied upon their banked costs in order to be eligible to receive refunds in other special refund proceedings should subtract those refunds from the cumulative banked costs submitted in this proceeding. *See* Husky Oil Co./Metro Oil Products, Inc., 19 DOE ¶ 85,000 at 88,179 (1987).

[9] Because we realize that the impact on an individual claimant may have been greater than the volumetric amount, any purchaser may file a refund application based upon a claim that a specifically alleged overcharge amount should be used in considering its refund application. *See, e.g.*, Standard Oil Co. (Indiana)/Army and Air Force Exchange Service, 12 DOE ¶ 85,015 (1984).

[10] According to an FEA audit of McClure (Case No. FRA–1398), the firm sold a total of 1,250,897 gallons of covered products during the Judgment period. *See* June 28, 1977 Memorandum from James Martin, Area Manager, Oklahoma City, to Don Adair, Director, Compliance Division. Therefore, we divided $35,000 by 1,250,897 gallons to derive a volumetric refund amount of $0.02778 per gallon.

[11] Applicants claiming volumetric refunds must have purchased at least 540 gallons of refined products from McClure during the consent order period to be eligible for a refund.

[12] A cooperative's sales to non-members will be treated in the same manner as sales by other resellers. *See* Marathon, 14 DOE at 88,515.

[13] In order to qualify for a refund under the small claims presumption, a refiner, reseller or retailer must have purchased less than 179,999 gallons of McClure refined petroleum products during the consent order period.

[14] Under these proposed procedures, claimants who attempt to make a detailed showing of injury in order to support a refund claim but, instead, provide evidence that leads us to conclude that they passed through all of the alleged overcharges or are eligible for a refund of less than $5,000, will not be entitled to a $5,000 small claims presumption refund. Such claimant, however, will be eligible to receive a refund for the amount of injury that they demonstrate. *See* Union Texas Petroleum Corp./Arrow Enterprises, Inc., 15 DOE ¶ 85,087 (1986); Quaker State Oil Refining Corp./Campbell Oil Co., 15 DOE ¶ 85,089 (1986).

[15] In prior proceedings we have stated that refunds will be approved for spot purchasers who demonstrate that (i) they made the spot purchases for the purpose of ensuring a supply for their base period customers rather than in anticipation of financial advantage as a result of those purchases, and (ii) they were forced by market conditions to resell the product at a loss that was not subsequently recouped. *See* Quaker State Oil Refining Corp./Certified Gasoline Co., 14 DOE ¶ 85,055 (1986).

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–3510–9]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382–5076 or (202) 382–5075.

Availability of Environmental Impact Statements Filed January 16, 1989 Through January 20, 1989 Pursuant to 40 CFR 1506.9.

EIS No. 890011, Draft, COE, KS, Kansas River Commercial Dredging Project, Junction City to Kansas-Missouri State Line, Section 10 Permits, Douglas, Geary, Jefferson, Johnson, Leavenworth, Pottawatomie, Riley, Shawnee, Wabawnsee and Wyandotte Counties, KS, Due: March 17, 1989, Contact: Robert Smith (816) 426–2118.

EIS No. 890012, Final, BLM, AZ, Phoenix Resource Area Management Plan, Implementation, Apache, Navajo, Gila, Maricopa, Pima, Pinal, Santa Cruz and Yavapai Counties, AZ, Due: February 27, 1989, Contact: Don Ducote (602) 863–4464.

EIS No. 890013, DSuppl, FHW, TN, I–40/I–275 (formerly I–75) Interchange Connector Reconstruction to Henley Street and the Western Avenue Viaduct Replacement, Funding and 404 Permit, Knoxville, Knox County,

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TN, Due: March 13, 1989, Contact: Dennis C. Cook (615) 736–5394.

EIS No. 890014, Final, UPS, NY, Manhatten General Mail Facility Complex Development, Implementation, New York City, New York County, NY, Due: February 27, 1989, Contact: Charles Vidich (203) 285–7254.

EIS No. 890015, Final, FHW, MD, Calvert Road Closure and Replacement Crossing Construction, Funding and 404 Permit, Prince George's County, MD, Due: February 27, 1989, Contact: Herman Rodrigo (301) 962–4010.

Amended Notices

EIS No. 880373, DSuppl, USN, NC, Mid-Atlantic Electronic Warfare Range (WAEWR) Within Restricted Airspace R–5306A Establishment, Aircraft Noise Analysis, Beaufort, Carteret, Craven, Hyde and Pamlico Counties, NC, Due: February 2, 1989, Contact: Lt. Col. P. J. Lowery (919) 466–2343.

Published FR 11–10–88—Review period extended.

EIS No. 880433, Final, COE, WA, Lummi Bay Navigation Channel Improvements and Marina Construction, Implementation, Lummi Indian Reservation, Whatcom County, WA, Due: February 13, 1989, Contact: Richard Makinen (202) 272–0166.

Published FR 01–06–89—Review period extended.

Dated: January 24, 1989.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 89–1988 Filed 1–25–89; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–3511–1]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared January 9, 1989 through January 13, 1989 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382–5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 22, 1988 (53 FR 13316).

Draft EISs

ERP No.: DS–AFS–L61148–WA, Rating EC2, Okanogan National Forest, Land and Resource Management Plan, Additional Alternative, Implementation, Okanogan, Skagit, Whatcom and Chelan Counties, WA.

Summary: This document evaluates Alternative NC (No Change), which was developed from the Timber Management Plan in effect in 1979. Alternative NC does not incorporate all the provisions of the National Forest Management Act of 1976 and would not include the specific standards and guidelines for water quality protection. As such, EPA could not support the implementation of this alternative.

ERP No.: DS–AFS–L65104–OR, Rating EC2, Ochoco National Forest and Crooked River National Grassland, Land and Resource Management Plan, Additional Alternative and Management Requirements Analysis, Crook, Grant, Jefferson, Harney and Wheeler Counties, OR.

Summary: This document evaluates Alternative NC (No Change), which is essentially a continuation of the Timber Resource Plan developed in 1979. Alternative NC does not incorporate all the provisions of the National Forest Management Act of 1976 and would not include the specific standards and guidelines for water quality protection. As such, EPA could not support the implementation of this alternative.

ERP No.: DS–AFS–L65105–OR, Rating EO2, Siuslaw National Forest Land and Resource Management Plan, Additional Alternative and Management Requirements Analysis, Implementation, Benton, Lincoln, Lane, Coos, Polk, Yamill, Douglas and Tillamook Counties, OR.

Summary: This document evaluates a new Alternative NC (No Change), which was developed from a Timber Resource Plan approved in 1979. Alternative NC does not incorporate all the provisions of the National Forest Management Act of 1976 and would not include the specific standards and guidelines for water quality protection. As such, EPA could not support the implementation of this alternative.

ERP No.: D–COE–K36094–CA, Rating EO2, Dry Creek (Roseville), Northern California Streams Study, Flood Control Plan, Implementation, Sacramento County, CA.

Summary: EPA expressed environmental objections because the selected alternative would permanently eliminate 27.2 acres of mature streamside riparian forest. This document did not fully address alternatives that may be less-damaging to the environment, and inadequately addressed mitigation measures to compensate for the loss of riparian habitats.

ERP No.: DA–COE–L36007–00, Rating LO, McNary Lock and Dam Project, Juvenile Fish Loading and Holding Facility Expansion, Implementation, Umatilla County, OR and Benton County, WA.

Summary: EPA has no objections to the project as described in this document.

ERP No.: D–FHW–E40716–TN, Rating EC2, Kirby Parkway Construction, Split Oak Drive to Stage Road and Sycamore View Road Extension, Mullins Station Road to Kiry Parkway, Funding City of Memphis, Shelby County, TN.

Summary: EPA has concerns on the increased noise levels, wetland loss and decreased water quality. EPA has suggested that additional information on these impacts and/or mitigation is needed in the final EIS.

ERP No.: D–FHW–L40169–WA, Rating EC2, WA–18 Improvements, Auburn-Black Diamond Road to I–90, Funding and 404 Permit, King County, WA.

Summary: EPA is concerned about the effects on water quality, aquatic resources, and wetland resources. The indirect effects from development induced by the project are likely the most significant, however, very little discussion of indirect effects is included in this document. EPA has requested further analysis and disclosure of indirect effects and mitigation.

ERP No.: D–SCS–K36095–CA, Rating EC2, Upper Penitencia Creek Watershed Flood Damage Reduction Plan, Funding, Implementation and 404 Permit, Cities of San Jose and Milpitas, Santa Clara County, CA.

Summary: EPA expressed environmental concerns due to the loss of wetlands and riparian habitats, and requested that the final EIS commit to mitigation, measures to protect water quality, beneficial uses, fisheries, wetlands, and riparian habitats.

Final EISs

ERP No.: F–COE–G61003–TX, Brooke Army Medical Center Replacement Facility Construction, Implementation, Fort Sam Houston, Bexar County, TX.

Summary: EPA has no objections to the proposed action as described.

ERP No.: F–DOE–A84029–00, Superconducting Super Collider Construction and Operation, Site Selection, Arizona, Colorado, Illinois, Michigan, North Carolina, Tennessee and Texas.

Summary: EPA is generally satisfied with this document. EPA recommends DOE work with EPA's Dallas Regional Office and Texas State agencies for site specific activities.

Regulations

ERP No.: R–FCC–A99179–00, 47 CFR Part 1; Request for Declaratory Ruling; Radiofrequency Radiation Compliance (53 FR 40918).

Summary: EPA reiterated earlier comments concerning this proposal, and expressed opposition to alternative criteria proposed by other parties in the rulemaking.

Dated: January 24, 1989.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 89–1989 Filed 1–26–89; 8:45 am]

BILLING CODE 6560–50–M

[OPP–50675A; FRL–3510–4]

Receipt of Application for an Extension/Expansion of an Experimental Use Permit; Genetically Engineered Microbial Pesticide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received an application from Crop Genetics International (CGI) requesting an extension and expansion of their experimental use permit (EUP) for a genetically engineered microbial pesticide that was issued June 14, 1988. This extension/expansion of the current EUP issued under section 5 of the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136(c), would include five additional sites in four additional States and would extend the permit from April 1989 to December 1989. This microbial pesticide is unique in that it actually lives within the treated crop plants. The Agency has determined that the application may be of regional and national significance. Therefore, in accordance with 40 CFR 172.11(a), the Agency is soliciting public comments on this application.

DATE: Written comments must be received on or before February 27, 1989.

ADDRESSES: Comments in triplicate, should bear number OPP–50675A and be submitted to:

Information Services Section, Program Management and Support Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

In person bring comments to: Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment(s) concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked, will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment(s) that do not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. Information on the proposed test and all written comments will be available for public inspection in Rm. 236 at the Virginia address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail:

Phil Hutton, Product Manager (PM) 17, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

Office location and telephone number: Rm. 207, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703–557–2690).

SUPPLEMENTARY INFORMATION: An application for an extension and expansion of their current EUP has been received from Crop Genetics International of 7170 Standard Drive, Hanover, Maryland 21076. This EUP amendment would extend and expand the current EUP EPA File Symbol 58788–EUP–1. The proposed experiment involves the endophytic bacterium *Clavibacter xyli* subspecies *cynodontis* that has been genetically engineered to contain a delta-endotoxin gene obtained from *Bacillus thuringiensis* subspecies *kurstaki*. After inoculation, the endophytic bacterium grows within the corn plants and produces the pesticidal agent which is active against the larval stages of the European Corn Borer.

The purpose of the EUP amendment is to further assess the efficacy of the product in control of the European Corn Borer on corn plants, study the characteristics of the recombinant organism in the environment, and evaluate the effect of the organism on crop yield. CGI proposes to initiate the field tests in the spring of 1989. The proposed field test sites are: Ingleside, Queen Anne's County Maryland (1 site); Beltsville Agricultural Research Center, Prince Georges County, Maryland (1 site); Illiopolis, Sangamon County, Illinois (1 site); Stanton, Goodhue County, Minnesota (1 site), Hastings, Clay County, Nebraska (2 sites); Hooper, Dodge County, Nebraska (1 site). The sites are each approximately 1 to 7 acres in size; all are isolated and secured. Each site will consist of: (1) A central corn plant population arranged in blocks; (2) a plant-free barren zone containing plants to be monitored to detect dissemination of the test agent; (4) a security fence; and (5) a fallow zone surrounding the security fence.

Studies to be performed on all sites will: (1) Determine *Clavibacter xyli* subsp. *cynodontis/Bacillus thuringiensis* subsp. *kurstaki* recombinant levels in inoculated plants; (2) monitor any mechanical and natural spread of the recombinant organism to corn and other plant species; (3) monitor for the recombinant organism in plant residues; (4) monitor for the presence of the recombinant organism in runoff water and soil; and (5) compare yields of colonized and control corn plants. European Corn Borer control will be studied at each of the sites listed above.

As with the original EUP, the ARS-USDA cooperating scientists (at Beltsville) will examine the effects of recombinant colonization on: (1) Crop residue decomposition; (2) vesicular-arbuscular mycorrhizae associations; and (3) gram negative phylloplane bacterial populations.

According to the applicant, test sites will be monitored until the recombinant organism can no longer be detected in plant materials or soil. In the event that there is movement of the recombinant beyond the contained area, biocides will be employed to the extent necessary for control. At the completion of the tests, all plant debris will be decontaminated.

The labeling proposed by CGI that would govern the conduct of the experiment, states: Appliactors should ware protective clothing including goggles, dust mask, and gloves. Surfaces of planting equipment should be treated with 10% household bleach and wiped with paper towels after use. Dispose of unused material, paper towels, and rinse water by autoclaving or place in vessels containing 10% household bleach for disinfection prior to disposal. For use only in accordance with the terms and conditions of the EUP.

Following the review of the CGI application and any comments received in response to this notice, EPA will decide whether to issue or deny the EUP amendment request for extension and expansion of the current EUP program, and if issued, the conditions under which it is to be conducted. Any issuance of an EUP will be announced in the Federal Register.

Dated: January 14, 1989.

Anne Lindsay,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 89–1936 Filed 1–26–89; 8:45 am]

BILLING CODE 6560–50–M

BEST COPY AVAILABLE

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[OPP-30000/41C] (FRL-3510-3)

Linuron; Conclusion of the Special Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; Final determination to conclude special review.

SUMMARY: On August 17, 1988, EPA issued a Preliminary Determination to conclude the Special Review for pesticide products containing linuron (53 FR 31282). No comments were received on the Preliminary Determination, and this Notice announces EPA's Final Determination to conclude the Special Review of pesticide products containing linuron.

EFFECTIVE DATE: January 27, 1989.

FOR FURTHER INFORMATION CONTACT: By mail:

Laszlo J. Madaras, Special Review and Reregistration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 1006, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-5778).

SUPPLEMENTARY INFORMATION: Linuron is the common name for 3-(3,4-dichlorophenyl)-1-methoxy-1-methylurea. It is used mainly for pre-emergence and, in some crops or sites, postemergence control of certain troublesome broadleafed weeds and annual grasses on terrestrial food and non-food sites. Linuron is most commonly sold under the trade names Lorox, Linex, Afalon, and Sarclex.

The Special Review was initiated in 1984 based on laboratory data which indicated that linuron induced dose-related tumors in rats and in mice. These data and associated risks are discussed in the Notice of Special Review (September 20, 1984; 49 FR 37843).

Since the initiation of the Special Review, EPA has established Guidelines for Carcinogenic Risk Assessment (September 24, 1986; 51 FR 33992). Using these guidelines and additional data submitted subsequent to the initiation of the Special Review, the Agency determined that the weight of evidence suggested that linuron's carcinogenic potential in humans is weak and it should not be regulated as a carcinogen. The Agency also evaluated the other biological effect of potential concern (hematotoxicity) and concluded that adequate margins of safety existed and no regulatory action was warranted. These determinations resulted in the Agency's decision to conclude the Special Review of linuron without further regulatory action.

The Agency published its proposed decision to conclude the Special Review of linuron in the **Federal Register** of August 17, 1988 (53 31282). No public comments were received in response to this notice. The Agency is therefore concluding the Special Review of linuron effective with the publication of this Notice. In the future, if other data show that exposure to linuron may cause unreasonable adverse effects, the Agency may again review the risks and benefits of linuron use in the Special Review process.

The Agency has established a public docket for the linuron Special Review. This pubic docket will include this Notice; any other Notices pertinent to the linuron Special Review and the Agency's decision regarding the termination of the Special Review of linuron; and a current index of materials in the public docket. The docket is available for public inspection in Rm. 236, CM No. 2, 1921 Jefferson Davis Highway, Arlington, VA, between 8 a.m. and 4 p.m., Monday through Friday, except legal holidays.

Dated: January 5, 1989.

John A. Moore,

Acting Deputy Administrator.

[FR Doc. 89-1935 Filed 1-25-89; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 372

[OPTS-400023; FRL-3510-6]

Ethylene and Propylene; Toxic Chemical Release Reporting; Community Right-to-Know

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is denying petitions to delist ethylene and propylene from the list of toxic chemicals under section 313 of Title III of the Superfund Amendments and Reauthorization Act of 1986. The denial is based on the EPA's conclusion that both ethylene and propylene are high volume volatile organic compounds that contribute to the formation of tropospheric ozone and other hazardous air pollutants such as formaldehyde. As such, ethylene and propylene contribute to the acute and chronic health effects of these pollutants as well as to the ecological damage caused by ozone, and are thereby toxic chemicals for the purposes of section 313 reporting.

FOR FURTHER INFORMATION CONTACT: Robert Israel, Petition Coordinator, Emergency Planning and Community Right-to-Know Information Hotline, Environmental Protection Agency, Mail Stop OS-/120, 401 M St., SW., Washington, DC 20460, Toll free: 800-535-0202, In Washington, DC, and Alaska, 202-479-2449.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Statutory Authority

The response to the petitions is issued under section 313 (d) and (e)(1) of Title III of the Superfund Amendments and Reauthorization Act of 1986 (Pub. L. 99-499, "SARA" or "the Act"). Title III of SARA is also referred to as the Emergency Planning and Community Right-to-Know Act of 1986.

B. Background

Section 313 of SARA Title III requires certain facilities using toxic chemicals to report annually their environmental releases of such chemicals. Section 313 establishes an initial list of toxic chemicals that is composed of more than 300 chemicals and chemical categories. Any person may petition EPA to add chemicals to or delete chemicals from the list.

EPA issued a statement of petition policy and guidance in the **Federal Register** of February 4, 1987 (52 FR 3479), to provide guidance regarding the recommended content and format for submitting petitions. EPA must respond to petitions within 180 days either by initiating a rulemaking or by publishing an explanation of why the petition is denied.

II. Description of Petition

On July 13, 1988, EPA received petitions from the Chemical Manufacturers Association (CMA) to delete ethylene and propylene from the section 313 list of toxic chemicals. Since the two chemicals are similar in terms of their chemistry and commercial uses, EPA elected to review the two petitions simultaneously. The petitions were based on CMA's contention that ethylene and propylene are not toxic and do not meet the section 313 criteria for listing.

III. EPA's Toxicity Concerns for Ethylene and Propylene

Both ethylene and propylene belong to the category of chemicals known as "volatile organic compounds" (VOCs) which contribute significantly to air pollution problems. In particular, chemical reactions in the atmosphere of

ethylene and propylene (and other VOCs) contribute to the formation of ozone and to another air pollutants such as formaldehyde which have a direct and unequivocal negative impact on human health and environmental quality.

Ozone is a severe irritant affecting the mucus membranes of the nose and throat, and impairs the normal functioning of the lungs, especially in sensitive individuals such as asthma or allergy sufferers. Exposure also leads to impaired functioning of the immune system in animal tests. Available data suggest that ozone exposure may also lead to serious chronic health effects, including morphological changes to, and impaired functioning of, the lungs.

Ozone also has a severe impact on plant life; agricultural losses alone are estimated at $2 to $3 billion a year due to ozone damage.

In addition to EPA's primary concerns for the impacts of ethylene and propylene as VOCs, EPA's review of the direct health and environmental effects of ethylene and propylene also raised additional concerns. The available data are very limited and often of poor quality, and are not sufficient to draw firm conclusions as to the direct health and environmental effects of ethylene and propylene. However, there is suggestive evidence linking ethylene and propylene exposures to adverse health effects. Exposure to very low concentrations of ethylene led to developmental effects in rats in one study; propylene is of concern due to the possibility that it metabolizes in the body to propylene oxide, a suspected carcinogen. Both chemicals can be directly phytotoxic, although it is not clear if known or anticipated exposures might lead to actual damage.

IV. Explanation of Denial

EPA has determined that ethylene and propylene are VOCs that, due to their high volume of production and releases, contribute significantly enough to air pollution concerns to warrant their continued listing as toxic chemicals under section 313.

Ethylene and propylene are the two highest volume VOCs in production in the United States; annual production capacity is 36 billion pounds and 22 billion pounds, respectively. Estimates of annual emissions from industrial sources range from 36 to 62 million pounds per year of ethylene and 29 to 64 million pounds per year for propylene.

EPA's concerns center around the contribution these emissions make to air pollution problems. Ethylene and propylene emissions contribute to the formation of tropospheric ozone, one of the most intractable and widespread of the nation's environmental problems. The major component of smog, ozone causes serious respiratory problems, and has been implicated in widespread damage to crops and other vegetation. Ethylene and propylene emissions also contribute to the formation of formaldehyde and other hazardous air pollutants which present a serious health threat; formaldehyde emissions are suspected of contributing to cancer risk.

Because ethylene and propylene are very high volume chemicals with substantial emissions, they make a significant contribution to VOC-related air pollution. Hence, continued listing under section 313 is justified. It is not EPA's intention to include all VOC chemicals on the section 313 list; only those whose volume of use or emissions is large enough to raise substantial VOC concerns. Most high-volume VOC chemicals are already subject to reporting under section 313.

In addition to VOC concerns, which are the primary reasons for denying the petitions, EPA's review of the direct toxicity of ethylene and propylene suggested additonal serious developmental and other health effects of potential concern.

EPA has carefully considered the rationale for continued listing of ethylene and propylene under section 313. EPA considers the contribution made by the atmospheric chemical transformations of ethylene and propylene to ozone and other hazardous air pollutants to be of sufficient human health and environmental concern as to justify continuing to list these as "toxic" chemicals for the purposes of section 313 reporting. Specifically, by contributing to ozone pollution through chemical reactions, releases of ethylene and propylene meet the criteria of section 313(d)(2) for both acute and serious chronic health effects, as well as for ecotoxicity effects.

EPA has also concluded that reporting releases of ethylene and propylene under section 313 will provide useful information to the public, EPA and states from the point of view of both ozone and hazardous air pollutant. Specifically, the site-specific type of data collected under section 313 will be valuable for validating and improving current data on VOC emission types, quantities, and sources and will aid in conducting research and in designing regulations, guidelines and standards, in the manner envisioned in section 313(h).

While EPA may utilize other statutory mechanisms to obtain emissions data on individual toxic chemicals, VOCs or otherwise, section 313 reporting is an appropriate mechanism for continuing to collect data on ethylene and propylene as a means of improving the current understanding by EPA, states and the general public, of the quantities of emissions of these chemicals from manufacturing, processing and user sources.

Dated: January 17, 1989.

Susan F. Vogt,

Acting Assistant Administrator, Office of Pesticides and Toxic Substances.

[FR Doc. 89-1837 Filed 1-26-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC, Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-200052-003.

Title: Tampa Port Authority Terminal Lease Agreement.

Parties:

Tampa Port Authority.

Bay Terminal Stevedoring Co., Inc.

Synopsis: The Agreement extends the term of Agreement No. 224-200052, a terminal lease agreement, for an additional eleven month period from January 31, 1989, through December 31, 1989. All other terms and conditions of the original lease remain unchanged.

Agreement No.: 224-011049-003.

Title: Tampa Port Authority Terminal Lease Agreement.

Parties:

Tampa Port Authority.

Seagull Terminal & Stevedoring Co.

Synopsis: The Agreement extends the term of Agreement No. 224-011049, a terminal lease agreement, for an additional eleven month period from January 31, 1989 through December 31, 1989. All other terms and conditions of the original lease remain unchanged.

Agreement No.: 224-200117-001.

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Title: Port Authority of New York and New Jersey Terminal Agreement.
Parties:
The Port Authority of New York and New Jersey (Authority).
Atlantic Container Line BV (ACL).
Synopsis: The Agreement provides for ACL's lease of the Authority's container crane No. 282 at the Elizabeth Port Authority Marine Terminal. ACL will pay the Authority an annual rental sum of $252,588.32 for the use of the crane. The Agreement also allows for improvements and modifications to this crane.
Agreement No.: 224-200212.
Title: South Carolina State Ports Authority Terminal Agreement.
Parties:
South Carolina State Ports Authority (Authority).
South Atlantic Cargo Shipping, N.V. (SACS).
Synopsis: The Agreement provides that the Authority will grant SACS a three year license to use seven (7) acres of land at the Authority's North Charleston Terminal (facility) for parking and assembly of containers and other purposes incidental to its shipping operations. SACS agrees to pay the Authority a license fee of $960.00 per acre slot per month, wharfage at $1.25 per slot ton of cargo moving across the Authority's wharves, dockage at the published tariff rate and container crane hire at $500.00 per hour in straight time and $630.00 in overtime. The Authority also grants SACS license to use additional areas at the facility as the parties may agree.
Agreement No.: 224-200084-003.
Title: Tampa Port Authority Terminal Agreement.
Parties:
Tampa Port Authority.
G & C Stevedoring.
Synopsis: The Agreement extends the term of Agreement No. 224-200084, a terminal lease agreement for an additional eleven month period from January 31, 1989, through December 31, 1989. All other terms and conditions of the original lease remain unchanged.

By Order of the Federal Maritime Commission.
Joseph C. Polking,
Secretary.
Dated: January 23, 1989.

[FR Doc. 89-1804 Filed 1-26-89; 8:45 am]
BILLING CODE 6730-01-M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.
Agreement No.: 213-010788-004.
Title: Costa/Transatlantica/D'Amico Space Charter and Sailing Agreement.
Parties:
Costa Container Lines.
D'Amico Societa Di Navigazione per Azioni Compania Trasatlantica Espanola S.A.
Synopsis: The proposed modification would change the name of Costa Container Lines S.p.A. to Contship Container Lines, Ltd. It would also add Italia Di Navigazione S.p.A., as a party to the Agreement, and would further change the name of the Agreement from Costa/Trasatlantica/D'Amico Space Charter and Sailing Agreement to Costa/Trasatlantica/D'Amico/Italia Space Charter and Sailing Agreement.

By Order of the Federal Maritime Commission.
Joseph C. Polking,
Secretary.
Dated: January 24, 1989.

[FR Doc. 89-1960 Filed 1-26-89; 8:45 am]
BILLING CODE 6730-01-M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in section 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.
Agreement No.: 224-200213.
Title: Port of Houston Authority Terminal Agreement.
Parties:
Port of Houston Authority of Harris County, Texas.
Strachen Shipping Company (Strachan).
Filing Party: Algenita Scott Davis, Counsel, Port of Houston Authority, P.O. Box 2562, Houston, TX 77252-2562.
Synopsis: The agreement provides that Strachan will perform or have performed public marine terminal services, including freight handling and cargo loading/unloading, at the Port's Barbours Cut Transit Shed No. 2, Section B(West). The term of the agreement expires December 31, 1990.
Agreement No. 224-010888-002.
Title: Maryland Port Administration Terminal Agreement.
Parties: Maryland Port Administration (MPA) Atlantic Container Line (ACL).
Synopsis: The agreement amends the basic lease agreement to provide that MPA will offer a special credit of $50 per container for containers loaded/unloaded from ACL seagoing vessels and drayed to/from CONRAIL or CSX facilities in Baltimore. This credit applies only to containers moving in either direction by rail between the Port of Baltimore, and Louisville, Kentucky; Chicago, Illinois; or Detroit, Michigan. The credit expires on the termination date of the basic agreement and lease.

By order of the Federal Maritime Commission.
Joseph C. Polking,
Secretary.
Dated: January 24, 1989.

[FR Doc. 89-1960 Filed 1-26-89; 8:45 am]
BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

[Docket No. R-0656]

Private Sector Adjustment Factor

AGENCY: Board of Governors of the Federal Reserve System.
ACTION: Request for comment.

SUMMARY: The Board is requesting comment on proposed revisions to the methodology for computing the Private Sector Adjustment Factor ("PSAF"). The PSAF is a recovery of imputed costs that takes into account the taxes that would have been paid and the return on capital that would have been provided had the Federal Reserve's priced services been furnished by a private business firm. The Board is proposing the revisions to reduce the necessity for ad hoc adjustments and to respond to industry questions regarding the PSAF calculation.

DATES: Comments must be submitted on or before March 13, 1989.

ADDRESSES: Comments, which should refer to Docket No. R-0656, may be mailed to the Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551, Attention: Mr. William W. Wiles, Secretary; or may be delivered to Room B-2223 between 8:45 a.m. and 5:00 p.m. All comments received at the above address will be included in the public file and may be inspected at Room B-1122 between 8:45 a.m. and 5:15 p.m.

FOR FURTHER INFORMATION CONTACT: Clyde H. Farnsworth, Director (202/452-2787) or Paul Bettge, Program Leader (202/452-3174), Division of Federal Reserve Bank Operations; for the hearing impaired *only*: Telecommunications Device for the Deaf, Earnestine Hill or Dorothea Thompson (202/452-3544).

SUPPLEMENTARY INFORMATION:

Background

The Monetary Control Act of 1980 requires that fee schedules for the Federal Reserve's priced services include an allocation of imputed costs for "taxes that would have been paid and the return on capital that would have been provided had the services been furnished by a private business firm." These imputed costs are referred to as the PSAF. The methodology for deriving the PSAF has evolved since 1980 partly as a result of several extensive reviews including two public comment processes, two GAO reviews, and a review by a public accounting firm.

The current PSAF methodology uses the 25 largest privately owned bank holding companies ("BHCs") in a model to compute an average interest rate on short-term debt that is then applied to the value of Federal Reserve short-term priced service assets requiring financing. The BHC model also is used to calculate a three-year average long-term debt rate and a three-year average pretax rate of return on stockholders' equity that are applied to long-term depreciable priced services assets in proportion to the ratio of debt and equity, also computed from the BHC model. The methodology calls for the BHCs with the highest and lowest return on equity in the sample each year to be excluded to prevent distortions. Additional costs are then imputed, including estimates of sales taxes that would be paid on planned purchases and FDIC insurance that would be paid on clearing balances and other deposits held with the Federal Reserve. Finally, the expenses of the Board of Governors directly related to the development of priced services are estimated. All of these costs comprise the PSAF.

Discussion

Since June 1986, the Board has performed a thorough review of the System's method for calculating the PSAF. This review was initiated because the approved methodology, which uses a three-year average that includes the low 1987 average earnings for the 25 largest BHCs, would have produced a 1989 PSAF that was dramatically lower than that approved for 1988 (see Table 1). The Board believes that unusually low, or high, average earnings rates for any one year should not greatly affect estimates of the longer term, or normal, earnings rates for comprable private sector business firms for purposes of establishing prices.[1]

In addition to focusing on variability, the review addressed other areas of the PSAF where questions have been raised in recent years. These areas included the assets reported on the consolidated pro forma priced services balance sheet, the imputed capital structure, and the imputed FDIC assessment. In addition, the Board concluded that the BHC model is still the most appropriate basis for calculating components of the PSAF because BHCs offer services most comparable to those offered by the Federal Reserve Banks and view themselves as competitors of the Federal Reserve.

As a result of the review, the Board is proposing the following revisions to the methodology for calculating the PSAF:

Expanded Sample Size and Extended Sample Period

The Board proposes to expand the sample of bank holding companies used in the PSAF calculation from the 25 to the 50 largest privately-owned bank holding companies in each year [2] and to average the most recent five years of bank holding company data to determine the pretax return on equity, the long-term debt rate, and the ratio of long-term debt and equity used to compute the PSAF. The Board believes that this change will substantially reduce the volatility of the PSAF because each BHC will have a smaller impact on the overall average, and a longer time period smoothes aberrant results of any one year. It is anticipated that use of a larger sample and a longer sample period will decrease the frequency of ad hoc adjustments and eliminate the routine exclusion of the BHCs with the highest and lowest average return on equity each year. The larger sample size also allows for the inclusion of a number of regional correspondent banks and increases the geographical diversity of the group. Data analysis indicates that the impact of expanding the sample size and lengthening the time period does not introduce a systematic bias toward either a higher or lower PSAF over time (see Table 2).

Capital Adequacy

The Board proposes that the Federal Reserve meet the risk-based capital guideline of 8 percent capital to risk-weighted assets as approved by the Board for state member banks and bank holding companies, including in assets a computation of cash items in the process of collection ("CIPC") on a basis comparable to a commercial bank. Under the Board's proposal, however, net CIPC will continue to be included on the consolidated pro forma priced services balance sheet because the purpose of this balance sheet is to show only assets that need to be financed. Net CIPC represents float (the difference between total CIPC and deferred-availability cash items), which needs to be financed through priced services operations.

The Board believes that the current method for imputing equity capital, using the BHC sample data, also continues to be appropriate because sufficient equity capital is derived to finance long-term assets. The Federal Reserve imputes equity for priced services by assuming that long-term assets are financed by long-term debt and equity in the proportion of long-term debt and equity of the BHCs in the model. Using the proposed sample size and sample period, this imputation will result in over 70 percent of depreciable priced services assets being financed by equity. Given, however, the recent Board approval of a risk-based capital standard for state member banks and bank holding companies, the Board believes that the PSAF methodology should ensure that this derived amount of capital is sufficient to meet the risk-based capital guideline imposed on state

[1] As a result, in October 1988, the Board approved an interim PSAF using five-year average data to be applied to the prices of electronic and securities services as of January 1, 1989 (53 FR 44681, November 4, 1988). The 1988 PSAF was used for check services, which were repriced as of September 1, 1988 (53 FR 24148, June 27, 1988) (see Table 1).

[2] The sample size was changed once before, in 1984, following request for public comment (49 FR 11251, March 28, 1984). At that time, the sample was increased from the largest 12 BHCs to the largest 25 BHCs.

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member banks and bank holding companies. Using the equity amount imputed in the 1989 PSAF, the Federal Reserve has nearly three times the level of equity needed to meet the risk-based guideline. This is shown in Table 3 and reflects the calculation of CIPC similar to a commercial bank's CIPC.

In the past, some groups have suggested that the Federal Reserve should impute a level of equity on its pro forma priced services balance sheet sufficient to meet the current regulatory capital guideline of 6 percent capital, including equity, to total assets when CIPC is included, on a basis similar to that reported by BHCs. Under the Board's proposed methodology for imputing capital, Federal Reserve priced services equity capital would amount to 4.4 percent of total priced services assets (see Table 3). Because of the high percentage of depreciable assets that will be financed with equity and because of the strong risk-based capital computation noted above, the Board believes that the current methodology for imputing equity capital is appropriate and results in a level of equity capital that is sufficient to support priced services operations.

FDIC Insurance Assessment

The Board proposes to calculate the imputed FDIC insurance assessment on the basis required by the FDIC of a commercial bank. Currently, the Federal Reserve computes an imputed amount of FDIC insurance by applying the FDIC assessment rate to the projected level of clearing balances plus net CIPC. The proposed computation revision would apply the required FDIC assessment rate to projected clearing balances held with the Federal Reserve plus a projection of deferred credits on a basis similar to a commercial bank. Accordingly, the following deferred credits would be excluded: intra-System deferred credits that would otherwise be double-counted on a consolidated Federal Reserve balance sheet; deferred credits associated with nonpriced items, such as deferred credits to government agencies; and deferred credits associated with providing fixed availability or credit prior to receipt and processing of items.[5] The H.4.1 weekly statement of condition of the Reserve Banks reflects only the consolidation of Reserve Bank data. Accordingly, credits or fixed availability posted prior to receipt and processing of items, as well as nonpriced collection items, must be deducted from the H.4.1 data to derive deferred credits comparable to those reported by a commercial bank.

This change in methodology for computing the FDIC insurance and calculation of a consolidated priced CIPC amount, would result in an increase to the PSAF amount to be recovered. In 1988, the FDIC insurance amount would increase from $1.9 million to $4.1 million, an increase of $2.2 million (see Table 4).

By order of the Board of Governors of the Federal Reserve System, January 23, 1989.

William W. Wiles,

Secretary of the Board.

TABLE 1

[In millions of dollars, except as noted]

	PSAF using approved methodology	1988 PSAF		
		Methodology approved by the Board October 1988 [1]	Using approved methodology	Using proposed methodology
Amount	78.2	69.7	61.0	69.8.
Sample size	25 BHCs [2]	25 BHCs [2]	25 BHCs [2]	50 BHCs.
Sample period	3 Years	5 Years	3 Years	5 Years.
Pretax ROE	20.1 percent	16.8 percent	13.4 percent	14.8 percent.
Ratio of equity/equity + LT debt	62.8 percent	61.1 percent	61.1 percent	70.1 percent.
Imputed equity	240.7	245.6	244.5	280.8.
LT debt rate	9.7 percent	8.0 percent	9.0 percent	9.8 percent.
ST Debt rate	7.1 percent	8.6 percent	8.6 percent	8.5 percent.
Weighted average cost of capital	15.4 percent	13.8 percent	11.1 percent	12.6 percent.
Capital to be financed	417.2	445.2	445.2	445.2.
FDIC assessment	1.9	1.9	1.9	4.1.
Sales taxes	8.2	8.0	8.0	8.0.
Board of governors expenses	1.7	1.4	1.4	1.4.
Ratio of equity to risk-weighted assets		21.7 percent	21.8 percent	24.8 percent.

[1] As indicated in the Board's June 27, 1988, Federal Register notice, fees for the check collection service, generating approximately 75 percent of priced services revenue, were established using a PSAF based on the 1986 PSAF.

[2] Excludes BHCs with highest and lowest ROE. Averages are then based on data for the remaining 23 BHCs.

TABLE 2.—COMPARISON OF CHANGES IN SAMPLE SIZE AND PERIOD

	1971–1988	
	After-tax return on equity (percent)	Standard deviation [1] (percent)
25 BHCs; 3 yr average	11.2	2.8
25 BHCs; 5 yr average	11.5	2.0
50 BHCs; 3 yr average	11.2	1.4
50 BHCs; 5 yr average	11.5	1.1

[1] Standard deviation is a commonly used statistical measure of the variability of data around the average value. The lower the standard deviation, the less variability in the data.

TABLE 3.—RISK-BASED CAPITAL COMPUTATION BASED ON AVERAGE 1988 PRO FORMA PRICED SERVICES BALANCE SHEET

[In millions of dollars]

	Assets	Risk Weight	Weighted Assets
Reserves	$283.6	0.0	$0.0
Investments	2,077.9	0.0	0.0
CIPC	3,536.1	0.2	707.2
Receivables	29.6	0.2	5.9
Materials and supplies	7.1	1.0	7.1
Prepaid expenses	6.2	1.0	6.2
Premises	256.9	1.0	256.9
Furniture and equipment	137.8	1.0	137.8
Leases	1.1	1.0	1.1
Leaseholds	4.7	1.0	4.7
Total	$6,344.3		$1,130.9
Imputed equity for 1988	$245.6		
Capital to risk-weighted assets (percent)	21.73		
Capital to total assets (percent)	3.89		
Imputed equity with proposed Revisions to BHC sample	$280.6		
Capital to risk-weighted assets (percent)	24.83		
Capital to total assets (percent)	4.42		

TABLE 4.—COMPUTATION OF FDIC ASSESSMENT, 1988 PSAF DATA

[In millions of dollars]

	Current	Proposed
Clearing balances	$2,361.2	$2,361.2
CIPC [1]	432.9	3,536.1
Total Deposits	2,794.0	5,897.3
Percentage Deduction [2]	465.8	983.1
Remainder	2,328.2	4,914.2
Assessment	1.9	4.1

[1] As noted in the text, the computation of the FDIC insurance assessment currently uses net CIPC. The proposed methodology would use CIPC (representing credits either posted or deferred) stated on a basis similar to commercial banks.

[2] The Percentage Deduction represents 16% percent of Total Deposits, consistent with the FDIC instructions for subtracting one-sixth of demand deposits when computing the FDIC insurance assessment.

[FR Doc. 89-1085 Filed 1-26-89; 8:45 am]

BILLING CODE 6210-01-M

Capitol Bancorp, Ltd. et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)[8]) and § 225.21(a) of Regulation Y (12 CFR 225.21[a]) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 17, 1989.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Capitol Bancorp, Ltd.*, Lansing, Michigan; to engage *de novo* through its subsidiary, CNB Bancorp, Inc., Lansing, Michigan, in making, acquiring, and servicing loans or other extensions of credit for the company's account or for the account of others such as would be made for the purpose of mortgage corporation pursuant to § 225.25(b)(1) of the Board's Regulation Y.

B. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Puget Sound Bancorp*, Tacoma, Washington; to engage *de novo* through its subsidiary, Washington Capital Corporation, Seattle, Washington, in providing portfolio investment advice to institutional investors with respect to investments by such investors in real estate projects pursuant to § 225.25(b)(4) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, January 23, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-1950 Filed 1-26-89; 8:45 am]

BILLING CODE 6210-01-M

Fleet/Norstar Financial Group, Inc.; Application To Engage in Financial Guaranty Insurance Activities

Fleet/Norstar Financial Group, Inc., Providence, Rhode Island ("Applicant"), has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) ("BHC Act") and § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)), to acquire approximately 35 percent of the outstanding shares of Capital Guaranty Corporation, San Francisco, California ("Corporation"), through conversion of its present non-voting investment to a fully-voting investment.

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A wholly-owned subsidiary of Corporation, Capital Guaranty Insurance Company, provides financial guaranty insurance to bond issuers, including governmental, hospital, non-profit, educational and corporate issuers of bonds and similar financial obligations, and issues reinsurance contracts on financial guaranty contracts written by others. Corporation also provides post-issuance credit monitoring for obligations covered by financial guaranty contracts written by Capital Guaranty Insurance Company, as well as contracts written by unaffiliated third parties, through Corporation's wholly-owned subsidiary, Capital Guaranty Service Corporation.

Financial guaranty insurance is designed to enhance the marketability of certain debt obligations by reducing the risk of loss to the holders of the obligations through guaranteed payment of the obligation in the event a demand for payment is made under the financial guaranty contract. The Board has not previously approved the activity of financial guaranty insurance under section 4(c)(8) of the BHC Act.

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with Board approval, engage in any activity "which the Board after due notice and opportunity for hearing has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto." A particular activity may be found to meet the "closely related to banking" test if it is demonstrated that banks have generally provided the proposed activity; that banks generally provide services that are operationally or functionally so similar to the proposed activity so as to equip them particularly well to provide the proposed activity; or that banks generally provide services that are so integrally related to the proposed activity as to require their provision in a specialized form. *National Courier Ass'n v. Board of Governors*, 516 F.2d 1229, 1237 (D.C. Cir. 1975). In addition, the Board may consider any other basis that may demonstrate that the activity has a reasonable or close relationship to banking or managing or controlling banks. Board Statement Regarding Regulation Y, 49 *Federal Register* 806 (1984).

Applicant states that financial guaranty insurance activities are closely related to banking and are a proper incident thereto because (1) the proposed activities constitute an extension of credit, which is a classic banking function, and (2) banks in fact conduct the proposed activities in other forms and provide services that are operationally or functionally similar to the proposed activities so as to equip Applicant with the skills needed to provide the proposed activities through Corporation. Applicant contends that financial guaranty insurance contracts are the functional equivalent of letters of credit, citing *American Insurance Association v. Clarke*, 656 F. Supp. 404 (D.D.C. 1987), 854 F.2d 1405 (D.C. Cir. 1988), affirmed in part, vacated in part, No. 87-5128 (D.C. Cir. Jan. 6, 1989) (per curiam), in support of its contention. In addition, Applicant argues that Congress did not intend by Title VI of the Garn-St Germain Act (12 U.S.C. 1843(c)(8)) to restrict the Board's discretion to approve this type of activity because Congress did not treat other functionally equivalent forms of credit enhancement as restricted "insurance." In Applicant's view, the characterization of financial guaranty contracts as "insurance" under the laws of certain states is irrelevant to whether the Board retains discretion to approve this activity.

Applicant also contends that credit monitoring is closely related to banking because banks and other commercial lenders monitor a borrower's credit and financial condition throughout the life of the borrowing in order to reduce the lender's exposure. According to Applicant, credit-monitoring activities are permissible under a bank holding company's express authority to make, acquire or service loans or other extensions of credit for its own account or for the account of others, as well as Board precedent permitting bank holding companies to arrange, and to give advice with respect to, extensions of credit. *See* 12 CFR 225.25(b)(1). Applicant also analogizes credit monitoring to the permissible activities of operating a credit bureau, assisting in loan collections and providing information to third parties for a fee. *See* 12 CFR 225.25(b) (23) and (24); *Mellon Bank Corporation*, 74 Federal Reserve Bulletin 773 (1988); and *Reagan Bancshares, Inc.*, 72 Federal Reserve Bulletin 669 (1986).

In determining whether a particular activity is a proper incident to banking, the Board considers whether the performance of the activity by an affiliate of a holding company can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices.

Applicant maintains that its proposal would be pro-competitive and would enable it to provide greater convenience and increased services to customers. In addition to expanding the role of Applicant in an existing, though relatively small, market participant, Applicant will be able to broaden the base of experience for Corporation's targeted market of smaller regional issuers that are predominately located in the Western United States. Applicant also argues that the proposal would not result in adverse effects because abusive practices such as "tying" or conflict of interests are very remote possibilities under the proposed activities.

In publishing this proposal for comment, the Board does not take any position on issues raised by the proposal under the BHC Act. Notice of the proposal is published solely in order to seek the views of interested persons on the issues presented by the application and does not represent a determination by the Board that the proposal meets or is likely to meet the standards of the BHC Act.

Any request for a hearing on these questions must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of the reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of Boston.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than February 27, 1989.

Board of Governors of the Federal Reserve System, January 23, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-1866 Filed 1-26-89; 8:45 am]

BILLING CODE 6210-01-M

Sleepy Hollow Bancorp, Inc., et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3[c] of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than February 17, 1989.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Sleepy Hollow Bancorp, Inc.*, North Tarrytown, New York; to become a bank holding company by acquiring 100 percent of the voting shares of The First National Bank of North Tarrytown, North Tarrytown, New York.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Fostoria Bankshares, Inc.*, Fostoria, Iowa; to become a bank holding company by acquiring at least 80 percent of the voting shares of Farmers Savings Bank, Fostoria, Iowa.

Board of Governors of the Federal Reserve System, January 23, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-1867 Filed 1-26-89; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on January 13, 1989.

Social Security Administration

(Call Reports Clearance Officer on 301-965-4149 for copies of package)

1. Government Pension Questionnaire—0960-0160—The information is used to determine if an individual's Social Security benefit will be reduced because of the receipt of a government pension. Respondents: Individuals or households; Number of Respondents: 80,000; Frequency of Response: 1; Average burden per response: 5 minutes; Estimated Annual Burden: 6,667 hours.

2. Student's Statement Regarding Resumption of School Attendance—0960-0143—The information collected by this form issued by the Social Security Administration is used to verify the alleged attendance of a student who is receiving benefits based on school attendance. Respondents: Individuals or households; Number of Respondents: 133,000; Frequency of Response: 1; Average burden per response: 6 minutes; Estimated Annual Burden: 13,300 hours.

3. Letter to Employer Requesting Information About Wages Earned by Beneficiary—0960-0034—This letter is used by the Social Security Administration to collect information from an employer needed to establish the correct wages earned by a beneficiary. Respondents: Business or other for-—profit; Number of Respondents: 150,000; Frequency of *Response*: 1; Average burden per response: 5 minutes; Estimated Annual Burden: 12,500 hours.

4. Pre-1957 Military Service—Federal Benefit Questionnaire—0960-0120—The information is used to determine whether an individual with pre-1957 military service can be given wage credits for that period and be entitled to Social Security benefits. Respondents: Individuals or households; Number of Respondents: 56,000; Frequency of Response: 1; Average burden per response: 10 minutes; Estimated Annual Burden: 9,333 hours.

5. Quarterly Statistical Report on Recipients and Payments Under State-administered Assistance Programs for Aged, Blind and Disabled (Individuals and Couples) Recipients—0960-0130—This form is used by the Social Security Administration to provide Statistical data on recipients and assistance payments under the Supplemental Security Income (SSI) State-administered supplementation programs. Respondents: State or local governments; Number of Respondents: 23; Frequency of Response: 4; Average burden per response: 1 hour; Estimated Annual Burden: 92 hours.

6. Medical Cost Data—NEW—The information collected by this form is used by the Social Security Administration to determine if certain State agency budget requests are reasonable. Respondents: State or local governments; Number of Respondents: 54; Frequency of Response: 1; Average Burden Per Response: 1 hour; Estimated Annual Burden: 54 hours.

OMB Desk Officer: Justin Kopca

Health Care Financing Administration

(Call Reports Clearance Officer on 301-966-2088 for copies of package)

1. Statistical Report on Medical Care—0938-0345—The data reported in the HCFA-2082 are the basis of actuarial forecasts for Medicaid services utilization and costs; of analyses and cost savings estimates required for legislative initiatives relating to Medicaid; and for responding to requests for information from HCFA components, the Department, the public, the press, and the Congress. Respondents: State or local governments; Number of Respondents: 51; Frequency of Response: 1; Average Burden Per Response: 356; Estimated Annual Burden: 19,845 hours.

2. Refunding of Federal Share of overpayments made to Medicaid Providers—NEW—Overpayments are occasionally made to Medicaid Providers by State Medicaid agencies. States must refund shares of overpayments of HCFA after a 60-day recovery period. Documentation on out-of-business or bankrupt providers and the aging of overpayments during the recovery period are incremental burdens required by this regulation. Respondents: State or local Governments; Number of Respondents 57; Frequency of Response: 1; Average Burden Per Response: 2,600; Estimated Annual Burden: 148,200 hours.

OMB Desk Officer: Allison Herron

Office of the Secretary

(Call Reports Clearance Officer on 202-245-6511 for copies of package)

Medicare Beneficiary Survey—NEW—This request for information on beneficiary experience with the Medicare program will be used to identify potential inefficiencies which require more detailed review and corrective action. Respondents: Individuals or households; Number of Respondents: 640; Frequency of

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Response: 1; Average Burden per Response: 20 minutes; Estimated Annual Burden: 214 hours.

OMB Desk Officer: Shannah Koss-McCallum

As mentioned above, copies of the information collection clearance packages can be obtained by calling the Reports Clearance Officer, one of the following numbers:

PHS: (202) 245-2100
HCFA: (301) 966-2088
SSA: (301) 965-4149
OS: (202) 245-6511
FSA: (202) 253-5805
OHDS: (202) 472-4415

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address:

OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503

Dated: January 24, 1989.

James E. Larson,

Acting Deputy Assistant Secretary for Information Resources Management.

[FR Doc. 89-3029 Filed 1-26-89; 8:45 am]

BILLING CODE 4160-66-M

Food and Drug Administration

Request for Nominations for Representatives of Consumer and Industry Interests on Public Advisory Committees or Panels

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting nominations for consumer and industry representatives to serve on certain public advisory committees or panels in the Center for Devices and Radiological Health. Nominations will be accepted for current vacancies and for those that will or may occur during the next 18 months.

FDA has a special interest in ensuring that women, minority groups, the physically handicapped, and small businesses are adequately represented on advisory committees and, therefore, extends particular encouragement to nominations for appropriately qualified female, minority, and physically-handicapped candidates, and nominations from small businesses that manufacture medical devices subject to the regulations.

DATE: Nominations should be received by March 28, 1989, for vacancies listed in this notice.

ADDRESSES: All nominations and curricula vitae for consumer representatives shall be submitted in writing to Naomi Kulakow (address below).

All nominations and curricula vitae, which includes a nominee's office address and telephone number, for industry representatives shall be submitted in writing to Kay Levin (address below).

FOR FURTHER INFORMATION CONTACT: For Consumer Interests: Naomi Kulakow, Office of Consumer Affairs (HFE-40), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-5006.

For Industry Interests: Kay Levin, Center for Devices and Radiological Health (HFZ-30), Food and Drug Administration, 12720 Twinbrook Parkway, Rockville, MD 20857, 301-443-4016.

SUPPLEMENTARY INFORMATION: FDA is requesting nominations for members representing consumer and industry interests for the following vacancies listed below:

Committee or panel	Approximate date representative is needed	
	Consumer	Industry
1. Anesthesiology and Respiratory Therapy Devices Panel	No vacancy	Nov. 30, 1989.
2. Clinical Chemistry and Clinical Toxicology Devices Panel	Feb. 28, 1990	No vacancy.
3. Dental Products Panel	No vacancy	Oct. 31, 1989.
4. Device Good Manufacturing Practice Advisory Committee	May 31, 1990	May 31, 1990.
5. General and Plastic Surgery Devices Panel	No vacancy	Aug. 31, 1989.
6. General Hospital and Personal Use Devices Panel	do	Dec. 31, 1989.
7. Microbiology Devices Panel	Feb. 28, 1990	No vacancy.
8. Orthopedic and Rehabilitation Devices Panel	No vacancy	Aug. 31, 1989.
9. Radiologic Devices Panel	do	Jan. 31, 1990.
10. Technical Electronic Product Radiation Safety Standards Committee	Dec. 31, 1989	Dec. 31, 1989.

Functions

Medical Devices Panels

The functions of the medical devices panels are to (1) review and evaluate available data concerning the safety and effectiveness of devices currently in use, (2) advise the Commissioner of Food and Drugs (the Commissioner) regarding recommended classification of these devices into one of three regulatory categories, (3) recommend the assignment of a priority for the application of regulatory requirements for devices classified in the standards or premarket approval category, (4) advise on any possible risks to health associated with the use of devices, (5) advise on formulation of product development protocols and review premarket approval applications for those devices classified in the premarket approval category, (6) review classification of devices to recommend changes in classification as appropriate, (7) recommend exemption to certain devices from the application of portions of the act, (8) advise on the necessity to ban a device, and (9) respond to requests from the agency to review and make recommendations on specific issues or problems concerning the safety and effectiveness of devices.

The Dental Products Panel will function at times as a nonprescription drug advisory panel. As such, the panel reviews and evaluates available data concerning the safety and effectiveness of active ingredients, and combinations thereof, of various currently marketed nonprescription drug products for human use, the adequancy of their labeling, and advises the Commissioner on the promulgation of monographs establishing conditions under which these drugs are generally recognized as safe and effective and not misbranded. The panel also evaluates and recommends whether various prescription drug products should be changed to over-the-counter status. The panel also evaluates data and makes recommendations concerning the approval of new drug products for human use.

Device Good Manufacturing Practice Advisory Committee

The function of the Device Good Manufacturing Practice Advisory Committee is to review regulations for promulgation regarding good manufacturing practices governing the methods used in, and the facilities and controls used for, the manufacture, packing, storage, and installation of devices, and make recommendations regarding the feasibility and reasonableness of those proposed regulations. The committee also reviews and makes recommendations on proposed guidelines (e.g., Guideline on General Principles of Process Validation) developed to assist the medical device industry in meeting the good manufacturing practice requirements, and provides advice with regard to any petition submitted by a manufacturer for an exemption or variance from good manufacturing practice regulations.

Technical Electronic Product Radiation Safety Standards Committee

The function of the Technical Electronic Product Radiation Safety Standards Committee is to provide advice and consultation on the technical feasibility, reasonableness, and practicability of performance standards for electronic products to control the emission of radiation from such products. The committee may recommend electronic product radiation safety standards for consideration.

Consumer and Industry Representation

Medical Devices Panels

Section 513 of the Medical Device Amendments of 1976 (21 U.S.C. 360c) provides that each medical devices panel include as members one nonvoting representative of consumer interests and one nonvoting representative of interests of the device manufacturing industry.

Device Good Manufacturing Practice Advisory Committee

Section 520 of the Medical Device Amendments of 1976 (21 U.S.C. 360j) provides that the Device Good Manufacturing Practice Advisory Committee include as members two voting representatives of the general public and two voting representatives of interests of the device manufacturing industry.

Technical Electronic Product Radiation Safety Standards Committee

Section 358(f) of the Radiation Control for Health and Safety Act of 1968 (42 U.S.C. 263f(f)) provides that the Technical Electronic Product Radiation Safety Standards Committee include five members from the affected industries and five members from the general public, of which at least one shall be a representative of organized labor.

Nomination Procedures

Consumer Representatives

Any interested person may nominate one or more qualified persons as a member of a particular advisory committee or panel to represent consumer interests as identified in this notice. Self-nominations are also accepted. To be eligible for selection, the applicant's experience and/or education will be evaluated against Federal civil service criteria for the position to which the person will be appointed.

Nominations shall include a complete curriculum vitae of each nominee and shall state that the nominee is aware of the nomination, is willing to serve as a member, and appears to have no conflict of interest that would preclude membership. FDA will ask the potential candidates to provide detailed information concerning such matters as financial holdings, employment, and research grants and/or contracts to permit evaluation of possible sources of conflicts of interest. The nomination should state whether the nominee is interested only in a particular advisory committee or panel or in any advisory committee or panel. The term of office is between 3 and 4 years, depending on the appointment date.

Industry Representatives for Medical Devices Panels

Any organization in the medical device manufacturing industry wishing to participate in the selection of an appropriate member of a particular devices panel may nominate one or more qualified persons to represent industry interests. Persons who nominate themselves as industrial representatives for the devices panels will not participate in the selection process. It is, therefore, recommended that all nominations be made by someone with an organization or firm who is willing to participate in the selection process.

Nominations shall include a complete curriculum vitae of each nominee. The nomination should state whether the nominee is interested only in a particular advisory committee or panel or in any advisory committee or panel. The term of office is between 3 and 4 years, depending on the appointment date.

Device Good Manufacturing Practice Advisory Committee and Technical Electronic Product Radiation Safety Standards Committee

Any interested person may nominate one or more qualified persons to represent industry interest on these committees as identified in this notice. Self-nominations are also accepted. Nominations shall include a complete curriculum vitae of each nominee. The term of office is between 3 and 4 years, depending on the appointment date.

Selection Procedures

Consumer Representatives

Selection of members representing consumer interests is conducted through procedures which include use of a consortium of consumer organizations which has the responsibility for screening, interviewing, and recommending candidates for the agency's or department's selection. Candidates should possess appropriate qualifications to understand and contribute to the committee's work.

Industry Representatives for Medical Devices Panels

Regarding nominations for members representing the interests of the device manufacturing industry on the medical devices panels, a letter will be sent to each organization that has made a nomination, and to these organizations indicating an interest in participating in the selection process, together with a complete list of all such organizations and the nominees. This letter will state that it is the responsibility of each organization to consult with the others in selecting a single member representing industry interests for that particular committee within 60 days after receipt of the letter. If no individual is selected within 60 days, the agency will select the nonvoting member representing industry interests.

Device Good Manufacturing Practice Advisory Committee and Technical Electronic Product Radiation Safety Standards Committee

Regarding nominations for persons to represent industry interests on these committees, they shall be forwarded to the office of the Secretary of Health and Human Services for final selection.

This notice is issued under the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. App. I)) and 21 CFR Part 14, relating to advisory committees.

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Dated: January 19, 1989.
John M. Taylor,
Associate Commissioner for Regulatory Affairs.
[FR Doc. 89-1899 Filed 1-26-89; 8:45 am]
BILLING CODE 4160-01-M

Food and Drug Administration

Request for Nominations for Voting Members on Public Advisory Committees or Panels

AGENCY: Food and Drug Administration.
ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting nominations for voting members to serve on certain public advisory committees or panels in the Center for Devices and Radiological Health. Nominations will be accepted for current vacancies and those that will or may occur during the next 18 months.

FDA has a special interest in ensuring that women, minority groups, and the physically handicapped are adequately represented on advisory committees and, therefore, extends particular encouragement to nominations for appropriately qualified female, minority, and physically-handicapped candidates.

DATES: Because scheduled vacancies occur on various dates throughout each year, no cutoff date is established for the receipt of nominations. However, when possible, nominations should be received at least 6 months before the date of scheduled vacancies for each year, as indicated in this notice.

ADDRESSES: All nominations and curricula vitae for the medical devices panels shall be sent to Gordon C. Johnson, Center for Devices and Radiological Health (HFZ-70), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910.

All nominations and curricula vitae for the Device Good Manufacturing Practice Advisory Committee shall be sent to Sharon Kalokerinos, Center for Devices and Radiological Health (HFZ-332), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910.

All nominations and curricula vitae for the Technical Electronic Product Radiation Safety Standards Committee shall be sent to Arlene Underdonk, Center for Devices and Radiological Health (HFZ-83), Food and Drug Administration, 12720 Twinbrook Parkway, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Kay Levin, Center for Devices and Radiological Health (HFZ-20), Food and Drug Administration, 12720 Twinbrook Parkway, Rockville, MD 20857, 301-443-4016.

SUPPLEMENTARY INFORMATION: FDA is requesting nominations of voting members for vacancies listed below. If specific expertise is not indicated, individuals should have expertise relevant to the field of activity of the committee or panel.

1. *Anesthesiology and Respiratory Therapy Devices Panel:* Three vacancies occurring immediately, three vacancies occurring November 30, 1989; clinicians/researchers with demonstrated experience in the treatment of respiratory disorders with an emphasis on neonatal/pediatric problems and some work experience with new (experimental) therapies including high frequency ventilation and/or extracorporeal membrane oxygenation.

2. *Clinical Chemisty and Clinical Toxicology Devices Panel:* One vacancy occurring February 28, 1990; doctor of medicine or philosophy experienced with clinical chemistry, clinical toxicology, therapeutic drug monitoring, or genetic disease diagnostic devices.

3. *Dental Products Panel:* Three vacancies occurring immediately; individuals with expertise in dental devices, materials, or oral microbiology.

4. *Device Good Manufacturing Practice Advisory Committee:* One vacancy occurring May 31, 1990; one health professional employed in the human health care area. Areas of committee interest include quality assurance in manufacturing of medical devices to include application of the good manufacturing practice regulation to the production of computerized devices and in vitro diagnostics and problems associated with the use of medical devices.

5. *Ear, Nose, and Throat Devices Panel:* One vacancy occurring immediately, four vacancies occurring October 31, 1989; audiologists or otolaryngologists with experience in pediatrics.

6. *Gastroenterology-Urology Devices Panel:* One vacancy occurring immediately, two vacancies occurring December 31, 1989; interventional radiologist; urologist; nephrologist; lithotripsy specialist; clinician/biomedical engineer with experience in membrane transport and hemodialysis or other extracorporeal therapy.

7. *General and Plastic Surgery Devices Panel:* One vacancy occurring August 31, 1989; pathologist or general surgeon with a strong academic and clinical research orientation.

8. *General Hospital and Personal Use Devices Panel:* Two vacancies occurring immediately, two vacancies occurring December 31, 1989; clinical/biomedical engineer; surgical oncologist with experience in the use of various drug infusion regimes; general surgeon; internist; diabetologist; immunologist; or general practitioner.

9. *Hematology and Pathology Devices Panel:* One vacancy occurring February 28, 1989, four vacancies occurring February 28, 1990; individuals involved in the practice of medicine or clinical laboratory science familiar with clinical hematology and biotechnology.

10. *Immunology Devices Panel:* Two vacancies occurring February 28, 1990, one vacancy occurring February 28, 1990; immunologists with experience in allergies; medical oncologists with experience in tumor diagnosis and treatment.

11. *Microbiology Devices Panel:* Three vacancies occurring August 28, 1989, two vacancies occurring February 28, 1990; disease clinicians; individuals with expertise in antimicrobial susceptibility testing devices, and/or virology testing devices, and/or biotechnology.

12. *Neurological Devices Panel:* One vacancy occurring immediately; biomedical engineer.

13. *Obstetrics-Gynecology Devices Panel:* One vacancy occurring immediately, one vacancy occurring January 31, 1989; individuals with expertise in obstetrics and/or gynecology.

14. *Ophthalmic Devices Panel:* One vacancy occurring immediately, two vacancies occurring October 31, 1989; ophthalmologists and optometrists.

15. *Orthopedic and Rehabilitation Devices Panel:* One vacancy occurring immediately, four vacancies occurring August 31, 1989; orthopedic surgeons with expertise in joint structure and function, prosthetic ligament devices, or joint biomechanics and implants, or biomaterials engineers.

16. *Radiologic Devices Panel:* Three vacancies occurring immediately, one vacancy occurring January 31, 1989; radiologist; radiation oncologist; oncologist who is expert in hyperthermia; and hyperthermia specialist.

17. *Technical Electronic Product Radiation Safety Standards Committee:* Two vacancies occurring December 31, 1989; two members from a government agency, including State or Federal government (however, see paragraph below regarding qualifications).

Functions

Medical Devices Panels

The functions of the medical devices panels are to (1) review and evaluate available data concerning the safety and effectiveness of medical devices currently in use, (2) advise the Commissioner of Food and Drugs regarding recommended classification of these devices into one of three regulatory categories, (3) recommend the assignment of a priority for the application of regulatory requirements for devices classified in the standards or premarket approval category, (4) advise on any possible risks to health associated with the use of devices, (5) advise on formulation of product development protocols and review premarket approval applications for those devices classified in the premarket approval category, (6) review classification of devices to recommend changes in classification as appropriate, (7) recommend exemption to certain devices from the application of portions of the act, (8) advise on the necessity to ban a device, and (9) respond to requests from the agency to review and make recommendations on specific issues or problems concerning the safety and effectiveness of devices.

The Dental Products Panel will function at times as a nonprescription drug advisory panel. As such, the panel reviews and evaluates available data concerning the safety and effectiveness of active ingredients, and combinations thereof, of various currently marketed nonprescription drug products for human use, the adequacy of their labeling, and advises the Commissioner of Food and Drugs on the promulgation of monographs establishing conditions under which these drugs are generally recognized as safe and effective and not misbranded. The panel also evaluates and recommends whether various prescription drug products should be change to over-the-counter status. The panel also evaluates data and makes recommendations concerning the approval of new drug products for human use.

Device Good Manufacturing Practice Advisory Committee

The function of the Device Good Manufacturing Practice Advisory Committee is to review regulations for promulgation regarding good manufacturing practices governing the methods used in, and the facilities and controls used for, the manufacture, packing, storage, and installation of devices, and make recommendations regarding the feasibility and reasonableness of those proposed regulations. The committee also reviews and makes recommendations on proposed guidelines (e.g., Guideline on General Principles of Process Validation) developd to assist the medical device industry in meeting the good manufacturing practice requirements, and provides advice with regard to any petition submitted by a manufacturer for an exemption or variance from good manufacturing practice regulations.

Technical Electronic Product Radiation Safety Standards Committee

The function of the Technical Electronic Product Radiation Safety Standards Committee is to provide advice and consultation on the technical feasibility, reasonableness, and practicability of performance standards for electronic products to control the emission of radiation from such products. The committee may recommend electronic product radiation safety standards for consideration.

Qualifications

Medical Devices Panels

Persons nominated for membership on the medical devices panels shall have adequately diversified experience appropriate to the work of the panel in such fields as clinical and administrative medicine, engineering, biological and physical sciences, statistics, and other related professions. The nature of specialized training and experience necessary to qualify the nominee as an expert suitable for appointment may include experience in medical practice, teaching, and/or research relevant to the field of activity of the panel. The particular needs at this time for each panel are shown above. The term of office is between 3 and 4 years, depending on the appointment date.

Device Good Manufacturing Practice Advisory Committee

Persons nominated for membership on the Device Good Manufacturing Practice Advisory Committee should have expertise in any one or more of the following areas: quality assurance concerning manufacturing of medical devices and/or sterilization of medical devices during the manufacturing process. In addition, nominees should have experience with the use and application of medical devices. The particular needs for this committee are shown above. The term of office is between 3 or 4 years, depending on the appointment date.

Technical Electronic Product Radiation Safety Standards Committee

Persons nominated for the Technical Electronic Product Radiation Safety Standards Committee must be technically qualified by training and experience in one or more fields of science or engineering applicable to electronic product radiation safety. The particular needs for this committee are shown above. The term of office is between 3 and 4 years, depending on the appointment date.

Nomination Procedures

Any interested persons may nominate one or more qualified persons for membership on one or more of the advisory committees or panels. Self-nominations are also accepted. Nominations shall include a complete curriculum vitae of each nominee, current business address and telephone number, and shall state that the nominee is aware of the nomination, is willing to serve as a member, and appears to have no conflict of interest that would preclude membership. FDA will ask the potential candidates. to provide detailed information concerning such matters as financial holdings, employment, and research grants and/or contracts to permit evaluation of possible sources of conflict of interest.

This notice is issued under the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. App. I)) and 21 CFR Part 14, relating to advisory committees.

Dated: January 19, 1989.
John M. Taylor,
Associate Commissioner for Regulatory Affairs.
[FR Doc. 89-1899 Filed 1-26-89; 8:45 am]
BILLING CODE 4160-01-M

[Docket No. 88F-0403]

Takeda Chemical Industries, Ltd., Filing of Food Additive Petition

AGENCY: Food and Drug Administration.
ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a petition has been filed on behalf of Takeda Chemical Industries, Ltd., proposing that the food additive regulations be amended to provide for

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the safe use of 3-isocyanatomethyl-3,5,5-trimethylcyclohexylisocyanate trimer as a new cross-linking agent, and to change the use levels of components of the polyurethane-polyester resin-epoxy adhesives used in the production of high temperature laminates intended for use in contact with food.

FOR FURTHER INFORMATION CONTACT: Vir Anand, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 9B4118) has been filed on behalf of Takeda Chemical Industries, Ltd., c/o 1726 Rhode Island Avenue NW., Washington, DC 20036, proposing that § 177.1390 *Laminate structures for use at temperatures of 250 °F and above* (21 CFR 177.1390) be amended as follows: (1) in paragraph (c)(2)(vi)(*a*)(*3*), to increase the epoxy resin content from 5 percent to a maximum of 30 percent; (2) in paragraph (c)(2)(vi) (*a*)(*4*), to remove the 3 percent limit on the optional trimethoxysilane coupling agent; and (3) in paragraph (c)(2)(vi)(*b*), to provide for the optional use of 3-isocyanatomethyl-3,5,5-trimethylcyclohexylisocyanate trimer (CAS Reg. No. 53880-05-0) as an optional urethane cross-linking agent.

Additionally, FDA notes that the CAS Reg. No. [4098-71-9] for 3-isocyanatomethyl-3,5,5-trimethylcyclohexylisocyanate, which appeared in a final regulation published in the Federal Register of October 5, 1988 (53 FR 39063 at 39064), amending 21 CFR 177.1390, is incorrect. FDA will correct the CAS Reg. No. to read 53880-50-5 in a subsequent Federal Register document.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the Federal Register in accordance with 21 CFR 25.40(c).

Dated: January 10, 1989.

Richard Rank,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 89-1900 Filed 1-26-89; 8:45 am]

BILLING CODE 4160-01-M

Public Health Service

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Public Health Service (PHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on January 13, 1989.

(Call Reports Clearance Officer on 202-245-2100 for copies of package.)

1. NCHS Laboratory-Based Questionnaire Research—0920-0322—Questionnaires for one NCHS survey (National Health Interview Survey) and for three other questionnaire research projects will be developed using laboratory methods which combine the techniques of cognitive psychology and survey research to reduce measurement errors. Respondents: Individuals or households; Number of Respondents: 300; Number of Responses Per Respondent: 1; Average Burden Per Response: 1 hour; Estimated Annual Burden: 300 hours.

2. Study of Families with Multigenerational History of Alcoholism—NEW—NIAAA requires information on noninherited and genetic risk factors that determine alcoholism. To more closely examine these factors, NIAAA will study alcoholics with specific clinical characteristics and their relatives. Respondents: Individuals or households; Number of Respondents: 83; Number of Responses Per Respondent: 1; Average Burden Per Response: 13 hours; Estimated Annual Burden: 1,079 hours.

3. Cosmetic Raw Material Composition—0910-0353—Information provides FDA personnel, dermatologists, consumers and other concerned individuals with detailed information on the trade name raw materials used in cosmetic products. Respondents: Businesses or other for profit and small businesses or organizations; Number of Respondents: 40; Number of Responses Per Respondent: 10; Average Burden Per Response: 0.5 hours; Estimated Annual Burden: 200 hours.

4. Characteristics of Youth at Differential Risk for Substance Abuse: Comparisons Across Subjects Groups—NEW—The etiological factors associated with substance abuse are not well understood due to the insufficient collection of data on persons at high risk for substance abuse. This study will assess behavioral and developmental patterns of children at risk for substance abuse in order to identify these factors which contribute to substance abuse behavior in children. Respondents: Individuals or households; Number of Respondents: 900; Number of Responses Per Respondent: 1; Average Burden Per Response: 2.73 hours; Estimated Annual Burden: 2,626 hours.

5. Cosmetic Product Experience Reports—21 CFR Part 730—0910-0017—Experience data, when correlated with cosmetic product ingredient data, gives FDA scientists valuable insight into potentially unsafe cosmetic ingredients thereby improving FDA's ability to accomplish its mission of protecting consumers from injuries resulting from harmful ingredients in cosmetics. Respondents: Businesses or other for profit and small businesses or organizations; Number of Respondents: 125; Number of Responses Per Respondent: 1; Average Burden Per Response: 4.2 hours; Estimated Annual Burden: 525 hours.

6. The Scholarship Program for First-Year Students of Exceptional Financial Need (EFN)—0915-0028—The reporting and recordkeeping requirements ensure that funds are allocated to participating health professions schools according to statutory and regulatory requirements. The information supplied will help determine the number and types of scholarships each school will receive.

	No. of respondents	No. of hrs. per response	No. of responses per respondent
Application by School	300-325	.25	1
Maintenance of Student Ranking Criteria	300-325	.03	1
Maintenance of Students Records	300-325	.05	1
Total Annual Burden	104 Hours		

7. Teacher Questionnaire and Parental Consent Forms for the Study of the Long-Term Health Outcomes of Very Low Birthweight Infants—NEW—The U.S. has experienced a dramatic increase in the survival of low birthweight infants. These infants are known to be at risk for less than optimal neurodevelopmental outcomes. This study investigates the development of low birthweight children to identify the care and services which they will need. The teacher questionnaire will gather critically needed data on the utilization of special education services by VLBW infants at school age, their language learning and achievement problems. Respondents: Non-profit institutions; State or local governments; Number of Respondents: 2,100; Number of Responses Per Respondent: 1; Average Burden Per Response: .17 hours; Estimated Annual Burden: 360 hours.

OMB Desk Officer: Shannah Koss-McCallum.

Written comments and recommendations for the proposed information collections should be sent directly to the OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503.

Date: January 19, 1989.

Steven A. Groseman,

Deputy Assistant Secretary for Health (Planning and Evaluation).

[FR Doc. 89-1829 Filed 1-26-89; 8:45 am]

BILLING CODE 4160-17-M

Advisory Council; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), announcement is made of the following National Advisory Council scheduled to meet during the month of February 1989:

Name: National Advisory Council on Health Care Technology Assessment

Date and Time: February 17, 1989—8:00 a.m. to 4:00 p.m.

Place: Washington Court Hotel, Ball Room, 525 New Jersey Avenue, Northwest, Washington, DC.

Closed February 17, 3:30 p.m. to 4:00 p.m.

Open for remainder of the meeting.

Purpose: The Council is charged to provide advice to the Secretary and to the Director of the National Center for Health Services Research and Health Care Technology Assessment (NCHSR) with respect to the performance of health care technology assessment functions prescribed by Section 305 of the Public Health Service Act, as amended.

Agenda: The agenda will include the election of a chairman for the Council. There will also be a discussion of potential future Council activities. In addition, there will be a discussion of the Medicare Coverage recommendations. In closed session from 3:30 p.m. to 4:00 p.m., the Council will review technology assessment grant applications submitted to the NCHSR.

Anyone wishing to obtain a Roster of Members, Minutes of Meetings, or other relevant information should contact Mrs. Diana Dodd, National Center for Health Services Research and Health Care Technology Assessment, Room 18A20, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. Telephone (301) 443-3091.

Agenda items are subject to change as priorities dictate.

Dated: January 12, 1989.

Norman W. Weissman,

Acting Director, National Center for Health Services Research and Health Care Technology Assessment.

[FR Doc. 89-1965 Filed 1-26-89; 8:45 am]

BILLING CODE 4160-17-M

National Research Service Awards for Research in Primary Medical care; Delegation of Authority

Notice is hereby given that in furtherance of the delegation of authority to the Assistant Secretary for Health on July 20, 1979 (44 FR 46318), by the Secretary of Health, Education, and Welfare (predecessor of the Secretary of Health and Human Services), with Assistant Secretary for Health has delegated to the Administrator, Health Resources and Services Administration, with authority to redelegate, the authority under Title IV, section 487(d)(3), of the Pulbic Health Service Act (42 U.S.C 288(d) as amended, pertaining to National Research Service Awards for research in primary medical care, extending the one-half of one percent for payments under National Research Service Awards made for National Center for Health Services Research and Health Care Technology Assessment under Section 304(a)(3). This delegation also excluded the authority to promulgate regulations, submit reports to the President of the Congress, approve organizational changes at the division level and above, establish national advisory councils and boards, and select members of national advisory councils and boards.

Redelegation

Provision was made for all delegations and redelegations within the Public Health Service to contiue in effect provided they are consistent with this delegation.

Effective Date

This delegation was effective on January 17, 1989.

Dated: January 17, 1989.

Robert E. Windom,

Assistant Secretary for Health.

[FR Doc. 89-1895 Filed 1-26-89; 8:45 am]

BILLING CODE 4160-16-M

Office of the Assistant Secretary for Health; Section 319 of the Public Health Service Act; Delegation of Authority

Notice is hereby given that in furtherance of the delegation of authority to the Assistant Secretary for Health on January 14, 1981 (46 FR 10016) by the Secretary of Health and Human Services, the Assistant Secretary for Health has delegated all of the authorities under section 319 of the Public Health Service Act, as amended, pertaining to the functions assigned to the Health Resources and Services Administration for Public Health Emergencies to the Administrator, Health Resources and Services Administration, with authority to redelegate. The delegation excluded the authorities to issue regulations, to submit reports to the President and the Congress or a congressional committee, to establish advisory committees or councils, or to appoint members to advisory committees or councils.

Redelegation

Provision was made for all delegations and redelegations under Title III of the Public Health Service Act to continue in effect.

Effective Date

This delegation became effective on January 13, 1989.

Date: January 13, 1989.

Robert E. Windom,

Assistant Secretary for Health.

[FR Doc. 89-1896 Filed 1-26-89; 8:45 am]

BILLING CODE 4160-16-M

Statement of Organization, Functions, and Delegations of Authority

Part H of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services, Public Health Service (PHS), Chapter HG, Indian Health Service (IHS), (52 FR 47053-07, December 11, 1987) is amended to reflect establishment of substructure components within IHS, PHS.

Indian Health Service

Under *Chapter HG, Section HG.10, Organization and Functions,* delete the *Section HG.10, Organization and Functions* and insert the following *Section HG.10, Organization* and components:

Section HG.10, Organization. IHS is directed by a Director who is responsible to the Assistant Secretary

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for Health. IHS consists of the following major components:

Office of the Director (HGA);
Office of Administration and Management (HGA2);
Office of Planning, Evaluation and Legislation (HGA3);
Office of Tribal Activities (HGA4);
Office of Health Programs (HGA5);
Office of Environmental Health and Engineering (HGA6);
Office of Health Program Research and Development (HGA7);
Office of Information Resources Management (HGA8), and
IHS Area Offices (HGF).

After *HG.10. Organization*, insert the title *Section HG.20. Functions.*

After the title and statement for *Office of the Director (HGA)*, insert the following:

Communications Staff (HGA–1) The Staff: (1) Serves in an advisory capacity for general policy and program direction on the communications and public affairs focus for the IHS and coordinates communications activities with other health agencies; (2) provides support in policy and program direction and establishes and implements procedures for development, review and dissemination of communication materials; (3) conducts and coordinates communications and public affairs activities for the IHS within PHS and DHHS and with other public and private sector organizations; (4) develops and implements policies to establish and maintain productive media relations; (5) plans and directs programs designed to facilitate dissemination of health program/services information to and from IHS Headquarters, IHS Bureaus, IHS Service Units and Tribal components; and (6) coordinates implementation of the Freedom of Information Act for IHS.

Policy Review and Coordination Staff (HGA–3) The Staff: (1) Coordinates the review of policy issues, initiatives, and the resolution of differences within the Indian Health Service (IHS) related to them; (2) performs special assignments for the Director, some of which require responses by or coordination with other IHS or PHS offices; (3) analyzes and studies the background of problems, generates and evaluates options, and develops and implements new procedures and working policies to correct deficiencies; and (4) plans, organizes, and directs the Executive Secretariat of the IHS with primary responsibility for management of written communications to and from the Director.

Equal Employment Opportunity and Civil Rights Staff (HGA–4) The Staff: (1) Administers the IHS equal opportunity, civil rights and affirmative action programs in accordance with established DHHS and PHS policies; (2) monitors the personnel systems for General Schedule, PHS Commissioned Corps and Wage Schedule personnel and responds to complaints of employment discrimination; (3) develops and directs implementation of the provisions under the Civil Rights Act of 1964 (P.L. 88–352), and the Age Discrimination Act of 1975 (P.L. 94–135, 89 Stat. 728) as they apply to recipients of IHS funds; (4) in conjunction with the Division of Contracts and Grants Policy, promotes the awarding of contracts under section 8(a) of the Small Business Act; (5) participates in the formulation of IHS goals, policies, priorities and strategies as they affect professional health organizations and institutions of higher education; (6) serves as liaison to assess and ensure equitable application of IHS programs to its minority constituencies; and (7) develops EEO education and training programs for IHS managers, supervisors, counselors and employees.

After the title and statement for the *Office of Administration and Management (HGA2)* insert the titles and statements for the following:

Program Integrity and Ethics Staff (HGA3–2) The Staff: (1) Directs the investigation and resolution of allegations of impropriety, mismanagement of resources, abuse of authority, violations of Standards of Conduct or other forms of wrongdoing or mismanagement; (2) provides leadership and developing plans, provides guidance, and evaluates the agency personnel and physical security programs; (3) develops and evaluates the agency's Automated Information Systems (AIS) Security Program under the Computer Security Act of 1987 (P.L. 100–235); (4) develops policies and procedures to maintain integrity of contractor information; (5) provides focus for agencywide top management investigative capability including "hotline" cases; (6) develops policies and procedures and implements reviews concerning conflicts of interest matters, employee associations with regulated industries, employee financial interests and outside activities of employees; (7) decides nature of conflict, counsels, and trains employees on the avoidance of conflicts of interests; (8) advises IHS Agency management concerning corrective and remedial actions to be taken on investigatory findings and recommendations; (9) proposes, develops and implements standards, guidelines, procedures and systems for ensuring the integrity of Agency employees and programs; and, (10) maintains case files, extensive reference materials (e.g., laws, regulations and policy statements), and other data pertaining to integrity matters.

Division of Management Policy (HGA21) (1) Provides analysis and direction for management policies and procedures; (2) serves as principal advisor on IHS organization and management policy and provides guidance for establishment or modification of organizational structures, functions and delegations of authority; (3) conducts and coordinates the internal control reviews, management initiatives, issuances, reports and agreements management programs; (4) provides consultation and assistance in the development of directives and agreements; (5) serves as focus for liaison with PHS and DHHS for management policy; and (6) coordinates all reports for the Inspector General and the GAO, and other Federal internal audits for the agency.

Division of Administrative Services (HGA22) (1) Plans, develops and coordinates office services, records, supply, personal property and other administrative services to support the IHS Headquarters and field programs, and (2) provides guidance and assistance to IHS Headquarters and field in the development, planning and implementation of administrative functions and support services.

Division of Resources Management (HGA23) (1) Develops and prepares the budget for OMB submission and the President's budget for the Indian Health Service and Facilities Appropriation; (2) participates with DHHS and PHS officials in budget briefings for OMB and Congress; (3) distributes, coordinates and monitors resource allocations; and (4) in collaboration with the Office of Health Programs (OHP) and the tribes develops and implements budget, fiscal and accounting procedures and conducts review and analyses to ensure compliance in budget activities.

Division of Personnel Management (HGA24) (1) Provides personnel management advice and assistance on matters affecting the Indian Health Service as a whole or on matters arising from the field requiring headquarters action; (2) develops personnel management policies, programs, and reports; (3) within the headquarters servicing area, provides the full range of personnel management and personnel administration services including manpower planning and utilization, staffing, recruitment, compensation and classification, training, career development and upward mobility, labor and employee relations; (4) provides advice, consultation, and assistance to IHS management and tribal officials on personnel policy issues associated with the implementation of Pub. L. 93–638; (5) coordinates Commissioned Officer orders, billets, efficiency reports and promotions; (6) provides liaison for Commissioned Corps activities IHS-wide with Division of Commissioned Personnel, OASH; (7) develops and/or provides training and career development programs, and manages nominations for executive level training programs IHS-wide; (8) assures implementation of the Indian Preference policy in all personnel practices; and (9) represents IHS in personnel management matters within and outside the Department of Health and Human Services.

Division of Contracts and Grants Policy (HGA25) (1) Develops and issues policies and procedures pertaining to contract and grant programs throughout the IHS; (2) reviews and evaluates the effectiveness of established policies and procedures and recommends improvements; (3) conducts compliance reviews of IHS Area Office contract and grants offices, developing findings and recommendations for corrective action where appropriate; (4) reviews and provides comments on proposed legislation, regulations, directives and issuances; (5) reviews and makes recommendations on proposed contract documents such as Justification for Other than Full and Open Competition, waivers, appeals, deviations and determinations and findings which are required to be approved by the Director or Associate Directors of IHS, OASH and OS; (6) performs pre-award review and approval of contracts in excess of stated limits to be awarded by the IHS area offices, Office of Engineering Services on behalf of IHS, and IHS headquarters; (7) plans and develops special statistical studies, analyses and reports concerning all facets of IHS grant and contract activities, including responding to Congress, governmental and public information inquiries; (8) establishes and operates the IHS contract and grant information systems; (9) provides training, advice and technical consultation of IHS Area Offices on interpretation and application of contract and grant policies; (10) manages and coordinates the IHS Small and Disadvantaged business programs; (11) manages and promotes the achievement of applicable civil rights policies and objectives for IHS financial assistance; and (12) serves as IHS contact point for protest to the General Accounting Office or the General Services Administration Board of Contract Appeals.

Division of Acquisition and Grant Operations (HGA29) (1) Furnishes contracts and grants services for programmatic requirements to the Indian Health Service (IHS) headquarters components; (2) coordinate activities to ensure proper development of headquarters contract requirements and assistance programs; (3) implements acquisition and assistance policies and procedures, formulated by the Division of Contracts and Grants Policy, and develops necessary acquisition and assistance policies and procedures not otherwise established for IHS-wide use for grants and contracts under its cognizance; (4) executes grant and contract awards; (5) administers grants and contracts; (6) serves as liaison with the Division of Acquisition Management, OASH, for administrative acquisitions processed for IHS by that office; (7) provides cost advisory and audit resolution services to IHS Area Offices; and (8) coordinates responses to OIG and GAO reports and monitors implementation of OIG and GAO recommended procurement corrective actions.

After the title and statement for the *Office of Planning, Evaluation and Legislation (HGA3)*, add the titles and statements for the following:

Division of Program Evaluation and Policy Analysis (HGA32) (1) Serves as principal advisor on program evaluation and policy analysis; (2) provides liaison in communications between the agency, PHS and the Department on all matters involving evaluation and analysis of program performance; (3) establishes and maintains liaison with other Federal and non-Federal health organizations on matters of program evaluation and policy analysis; (4) provides technical assistance to support statistical, economical, operations research and other scientific analyses of policy questions; (5) directs all activities that compare costs of agency programs with their benefits/effectiveness; (6) identifies program performance data for use in the management and direction of IHS programs; (7) provides technical analysis trends and forecasts for national health services delivery systems for program management and decisionmaking; (8) monitors ongoing information systems for evaluation and analytical data for IHS programs; (9) analyzes impact of IHS programs to develop appropriate responses to need, demand, access, illness and disease; and (10) plans, conducts and directs health service research for IHS (other than biomedical, clinical and behavioral).

Division of Legislation and Regulations (HGA33) (1) Determines need for and develops plans for changes in legislation and regulations; (2) identifies legislative proposals in the Congress that impact IHS programs and activities and develops an agency position response for PHS and DHHS officials; (3) informs management and program officials of legislative and regulatory activities of other Federal agencies; (4) coordinates legislative and regulations activities with PHS and DHHS agencies that impact on the delivery of health services to Indians; (5) serves as liaison with the Office of the General Counsel for matters of litigation, regulations and legislation, and coordinates legal issues with the Office of the General Counsel, IHS, PHS, DHHS components, and other Federal agencies; (6) assures development and implementation of appeals process within the agency; and (7) assures proper clearance and processes of Federal Register documents.

Division of Program Statistics (HGA34) (1) Plans, develops, directs, coordinates and monitors statistical reporting systems and data bases for measuring health status and appraising program activities; (2) analyzes, maintains and publishes statistical data for demographics and morbidity of American Indian and Alaska Native populations; (3) develops methodologies to identify health status improvements and deficiencies and to forecast health services requirements; (4) provides statistical advice and information to IHS and PHS entities for policy formulation, budget preparation and justification, program planning and evaluation, health status assessment, health systems description, resource requirements and allocation, health research, etc.; (5) consults and advises other Federal and non-Federal organizations regarding statistical data, methodology and techniques related to American Indian and Alaska Native demographic and morbidity data; and (6) administers implementation of the Privacy Act and the Paperwork Reduction Act within IHS.

Division of Health Services Planning and Operations Research (HGA35) (1) Directs IHS program planning and operations research programs; (2) develops and oversees implementation of planning methodologies, techniques and procedures for the IHS Area Offices, service units and Tribes; (3) develops the strategy for Area-wide health services plan and oversees implementation of the plan; (4) develops

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policies and procedures for operational plans and other requirements related to DHHS and PHS priorities; (5) directs all activities related to design, development, implementation and evaluation of resource requirements and allocation methodologies models; (6) establishes and maintains liaison with other Federal and non-Federal health organizations within the area of resource allocation, health services planning and operations research; (7) formulates and guides analytical studies for operations research that examine factors affecting management decisions for the mode of health services delivery; (8) collaborates with other headquarters offices to develop and coordinate material to support budget presentations to PHS, DHHS, the OMB and the Congress; (9) directs and carries out IHS activities for the health services priority system; (10) provides technical assistance on design and optimum use of operations research technology, its expected contribution and limitation in key operational and managerial issues; (11) provides technical assistance to IHS and PHS components for health services planning, resource allocation and operations research initiatives; and (12) coordinates the updating of various PHS and departmental reports and documents related to health services delivery.

After the title and statement for the *Office of Tribal Activities ((HGA4)*, add the titles and statements for the following:

Division of Tribal Information Services (HGA42) (1) Provides timely information to tribal and IHS officials on subjects that include tribal health programs, American Indian and Alaska Native health issues, and resources available to Native Americans; (2) maintains accurate information on American Indian and Alaska Native tribes and communities, tribal health programs, and sources of information available to tribes; (3) develops and maintains supportive relationships with tribal governments, intertribal governing bodies, national American Indian and Alaska Native interest groups, and other groups and individuals active in American Indian and Alaska Native issues; (4) formulates and revises policies, administrative procedures, and guidelines supporting tribal information activities and oversees their implementation; (5) arranges meetings for tribal delegations at IHS Headquarters, analyzes the issues to be discussed, and follows-up each meeting, including tracking progress in honoring commitments made by IHS representatives; and (6) monitors and coordinates the timely development of IHS Headquarters correspondence to tribal officials and organizations regarding issues of concern to them.

Division of Community Services (HGA43) (1) Participates with tribes and tribal organizations in the formulation and implementation of policies which support American Indian and Alaska Native community development; (2) strengthens tribal capabilities to manage community health programs and administers funds for developing and expanding tribal health programs; (3) assists American Indian and Alaska Native communities to identify their health needs and to design health programs; (4) develops mechanisms for tribal leaders to share their expertise in health program management and self-determination activities; (5) provides technical assistance to American Indian and Alaska Native communities in developing their capability to influence health care delivery in their communities; (6) provides technical assistance to American Indian and Alaska Native communities in developing and mobilizing local service capabilities and other resources available for tribal health programs; and (7) supports development of tribal information systems which improve health care service delivery.

Division of Self-Determination Services (HGA44) (1) Implements legislation and authorities to support American Indian and Alaska Native self-determination; (2) formulates and revises policies, administrative procedures, and guidelines supporting American Indian and Alaska Native self-determination activities and oversees their implementation; (3) develops mechanisms for and oversees consultation with tribes and tribal organizations in the development of American Indian and Alaska Native health policies; (4) provides guidance and technical assistance to interpret American Indian and Alaska Native self-determination policies, administrative procedures and guidelines, and promotes their understanding by Federal and tribal officials; (5) assists the Associate Director, Office of Tribal Activities, and other IHS and tribal officials in resolving issues and solving problems regarding American Indian and Alaska Native self-determination; (6) evaluates Areas' compliance with IHS self-determination policies, administrative procedures and guidance; and (7) develops network with and provides guidance and support to Area Contract Proposal Liaison Officers.

After the title and statement for the *Office of Health Programs (HGA5)*, add the titles and statements for the following:

Division of Clinical and Preventive Services (HGA52) (1) Provides direction for health delivery activities; (2) coordinates logistics associated with the conduct of program reviews of IHS organizations; (3) advises on assessment findings for potential implication for IHS policy, plan, programs and operations; (4) develops quality of care evaluation criteria, standards of care, and guidance for the maintenance of the quality assurance program of IHS; (5) conducts monitoring activities to assess the quality of care provided by IHS; and (6) collaborates with budget and planning offices to develop material to support budget presentations to PHS, DHHS, the OMB and the Congress.

Division of Health Care Administration and Contract Health Services (HGA53) (1) Develops, coordinates and evaluates program standards, guides, plans and requirements for health care administration; (2) develops, coordinates and evaluates material, preventive and hospital services provided through contractual arrangements; (3) establishes and evaluates the implementation of standards and guidelines for quality assurance of direct hospital and health services and contract health services; (4) coordinates hospital care administration recruitment, assignment and career development; (5) establishes national standards of performance for contract health services and assesses performance against these standards; (6) develops allocations of contract health services funds; (7) coordinates appeals and reconsideration of denials of services to IHS beneficiaries; (8) plans and develops methods for identifying and obtaining health resources available through public and private sources and coordinates use of these resources; (9) serves as principal liaison with the Health Care Financing Administration (HCFA) for Medicare and Medicaid activities and establishes liaison and coordinates Medicaid activitie with States; (10) serves as principal liaison with Joint Commission on Accreditation of Hospitals (JCAH) and American Hospital Association for hospital accreditation and other activities applicable to IHS health care administration; (11) develops policy, plans, coordinates and directs third-party activities of IHS facilities, and coordinates and develops policy and plans for implementation of the Indian Health Care Improvement Act; and (12) coordinates development of the budget for health care administration and contract health services activities.

Division of Health Professions Recruitment and Training (HGA54) (1) Develops the IHS program to recruit, select, assign and retain health care professionals in accordance with policies and guidance provided by the Division of Personnel Management; (2) assesses IHS professional staffing needs; (3) provides research and analysis functions for Chief Medical Officers, Clinical Directors and senior clinicians; (4) manages continuing medical and scholarship education programs; and (5) coordinates activities and provides support for IHS clinical programs.

Division of Nursing (HGA55) (1) Plans, develops, coordinates, and evaluates nursing administration; (2) plans, develops, coordinates and evaluates clinical nursing practice; (3) plans, develops, coordinates, manages and evaluates nursing education; (4) establishes standards for nursing service; (5) provides professional guidance; (6) coordinates professional staff, including nursing recruitment, scholarship recipients, assignment and development to meet Service Unit, Area, and Tribal needs in accordance with policies and guidance provided by the Division of Personnel Management; (7) provides guidance in planning, developing and maintaining management information systems; and (8) prepares budgetary data, analysis and program evaluations.

After the title and statement for the *Office of Environmental Health and Engineering (HGA6)*, add the titles and statements for the following:

Division of Facilities Planning and Construction (HGA62) (1) Administers nationwide facilities engineering and construction programs for IHS health care facilities and personnel quarters in consultation with the Office of Engineering Service in the PHS Regions; (2) develops and coordinates program requirements for short- and long-range plans, designs and evaluations of health care facilities and personnel quarters; (3) develops, coordinates and evaluates technical standards, guides, plans and requirements for health care facilities construction requirements within IHS and PHS; (4) develops and coordinates IHS health care facility construction programs; (5) provides technical assistance and monitors IHS Area and tribal health care facilities planning and construction programs; (6) coordinates IHS activities related to intra- and interagency requirements for shared or cooperative health care facilities projects undertaken in cooperation with other Federal, State and regional planning organizations; (7) provides consultation to professional standards organizations; (8) provides technical assistance and consultation to tribal governments and Alaska Native corporations on the progress of health care facility planning, design and construction projects; and (9) develops material to support budget presentations to PHS, DHHS, and the OMB and the Congress.

Division of Facilities Management (HGA63) (1) Administers nationwide IHS facilities management programs, including facilities engineering, clinical engineering and real property management; (2) serves as principal advisor in providing engineering leadership, guidance and coordination of IHS facilities management activities; (3) develops and coordinates program requirements to implement facilities management programs that meet established IHS objectives, accreditation standards and Medicare/Medicaid requirements; (4) develops, coordinates and evaluates technical standards, guides, plans and requirements for operation maintenance, repair, alteration and improvement of IHS health care and supporting facilities; (5) plans, develops, coordinates and evaluates the IHS clinical engineering and biomedical equipment management activities; (6) provides technical engineering assistance and implements evaluation of Area and tribal facilities management programs; (7) plans, directs, and coordinates the acquisition, management and disposal of IHS-owned or leased real property and administers the Federal Buildings Fund for all General Services Administration (GSA) assigned space; and (8) represents IHS in facilities management matters with other Federal agencies and non-Federal organizations.

Division of Environmental Health (HGA64) (1) Administers a comprehensive environmental health program designed to maintain/improve the health of, and prevent disease among, the Native American people; (2) provides engineering and sanitation expertise, overall program leadership, guidance, and coordination, and serves as the principal IHS advisor on environmental health issues; (3) administers the Indian Sanitation Facilities Act (Public Law 86-121) and activities necessary to ensure IHS compliance with environmental protection and historic preservation legislation, as well as activities in community injury control, institutional environmental health and employee safety, emergency preparedness, technical assistance for operation and maintenance, and related program areas; (4) assess environmental and sanitation facilities conditions in Native American homes and communities, identifies and prioritizes needs, develops long/short-range plans and action programs in consultation with other IHS staff and tribal representatives, identifies resource requirements, prepares and justifies environmental health and sanitation facilities construction program budget requests, devises/implements environmental health and sanitation facilities construction resource allocation methodologies, and directs resource distribution; (5) develops, coordinates, and evaluates technical standards and prepares technical handbooks; (6) provides engineering and sanitation technical support to, and performs periodic evaluations of, IHS Area and tribal environmental health program activities; (7) coordinates environmental health staff utilization, training, and career development; (8) represents IHS on environmental health and sanitation facilities construction issues with other Federal, State, and local agencies, Native American tribes/organizations, professional organizations, and interested groups.

After the title and statement for the *Office of Health Program Research and Development (OHPRD) (HGA7)*, add the titles and statements for the following:

Division of Administrative Support (HGA72) Provides local administrative services for national research and development and local area service delivery, including finance, contracting and procurement, property and supply, personnel, facilities management and transportation.

Division of Health Services Systems (HGA73) (1) Develops methods to improve health services delivery; (2) provides specialized services for operations and systems analysis, evaluation methods and designs, planning methodology development and consultation and technical assistance for IHS and tribal programs, and (3) provides assistance for alternative policy and operations concept impact analysis and assessment.

Division of Human Resources Systems (HGA74) (1) Provides management systems analysis, consultation, technical assistance, education and training program and methodology development to IHS, tribal and Indian urban organizations, and (2) provides technical assistance, training and management developmental activities for all human resources systems development.

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Division of Medical Systems Research (HGA75) (1) Develops long-range medical services delivery research requirements for IHS; (2) conducts research to improve delivery of medical services to American Indians and Alaska Native populations; (3) and provides medical systems design, development and technical assistance.

Division of Health Information Systems Research and Development (HGA76) (1) Provides research and development of automated information systems for IHS-wide use in Patient Care and Program Management, within the IHS Information Systems Policy and priority framework; (2) serves as a demonstration and testing site for IHS and other data systems developed elsewhere than OHPRD; (3) provides Patient Care and Program data processing technical assistance to IHS and tribal components; (4) provides support to the transition of systems from development to operations status through certification testing and initial installations and provides initial supporting specifications and systems documentation and manuals; (5) evaluates the use of new patient care technologies and data processing products for potential IHS system applications, within the context of advanced health services delivery systems research, design and development activities of the OHPRD; (6) maintains technical liaison with the Veterans Administration (VA), Department of Defense and other state-of-the-art research and development activities involved in automated patient care support activities, and executes the IHS–VA interagency agreement; (7) coordinates ADP planning and procurement for OHPRD and contributes to IHS-wide ADP planning; and (8) provides to OHPRD components data processing services including computer operation, medical coding, data entry, information retrieval and analysis, office automation and telecommunications management.

Division of Health Services Delivery (HGA77) (1) Manages the direct and indirect health service delivery activities of the Office of Health Program Research and Development, Tucson, Arizona, including the Sells Service Unit, the Pasqua Yaqui HMO contract, environmental health and sanitation facilities construction program and the Tucson Urban Project; (2) assures comprehensive quality health services through direct, contract and tribal contract health services; (3) implements pilot projects, and critiques and conducts trials of health information systems, health services delivery methods and health services delivery protocols; and (4) provides demonstration sites for observation and training in health care delivery and health information systems.

After the title and statement for the *Office of Information Resources Management (OIRM) (HGA8)* insert the following:

Division of Data Processing Services (HGA82). (1) Provides staff assistance and advice to the Associate Director, OIRM; (2) provides interactive access to mainframe computer for retrieval, analysis, and manipulation of large data sets; (3) provides consultation, systems analysis, and design for new centralized information systems or modifications to existing systems; (4) provides programming services to implement centralized information systems; (5) sets standards for centralized hardware, software, and telecommunications equipment required for the transfer of data from/to distributed equipment and the IHS mainframe; (6) evaluates and reports on equipment and software for the processing of centralized information; (7) certifies functionality of software and controls the release of centralized system software; (8) provides systems management to maintain coordination and operation of centralized data systems; (9) provides/coordinates user training and technical assistance for centralized resources; (10) maintains software and documentation library and distributes manuals and literature concerning support for centralized products; and (11) provides for the maintenance of an AIS ADP security program for the IHS mainframe.

Division of Resource and Patient Management Systems (HGA83). (1) Provides staff advice and assistance to the Associate Director, OIRM; (2) develops IHS standards for hardware, software, data, telecommunications software and user documentation for distributed systems; (3) ensures that all RPMS applications meet design and programming standards; (4) provides requirements analyses, feasibility studies, and cost analyses, systems analysis, design and programming services for RPMS applications; (5) develops and maintains cost data, staffing data and implementation schedules for all IHS-wide RPMS distributed projects; (6) provide data communications software and protocols for IHS-wide distributed information systems; (7) designs, develops and operates the data communications network; (8) provides for the maintenance of an AIS ADP security program for distributed systems; (9) coordinates systems activities with Information Systems Advisory Committee, Professional Specialty Groups, Information Systems Coordinators and Tribal organizations; (10) serves as project manager for the design of all IHS-wide distributed application systems; (11) reviews RPMS project documentation for IHS-wide distributed data systems; reviews and evaluates technological development for applicability to RPMS requirements; (12) provides technical assistance and consultation on all aspects of the RPMS to Tribal contractors and to IHS Areas, IHS Service Units, facilities and disciplines; (13) develops and maintains RPMS information systems resources inventory; and (14) provides data dictionary, data base and name space creation, administration and management for IHS-wide distributed information systems.

After the titles for the *IHS Area Offices (HGF),* delete the statement in its entirety and substitute the following:

IHS Area Office (HGF). An Area Office is a bureau-level organization under the direction of a Director who reports to the Director, IHS. The Area Office carriers out the mission of the IHS in providing a system of health care unique to the Area population, and the Area Office Director supervises clinical directors who administer programs of direct care to the population. Although specific functions of an Area Office vary, every Area Office includes functions organized to support major categories of administrative management and clinical activities involved in:

Administration and Management—financial management, administrative and office services, contract/grant administration, procurement, personnel management, facilities management, management information systems; contract health care services, and equal employment opportunity;

Program Planning, Analysis and Evaluation Programs—program planning, statistical analysis, legislative initiatives, research and evaluation, health records, management information systems, and patient registration/third party collection;

Tribal Activity Programs—provisions of Public Law 93–638 Indian Self-Determination and Educational Assistance Act, health service delivery, community health representative services, urban health, alcoholism and substance abuse, and health education;

Health Programs—primary care, clinical activities, mental health, nursing services, dental services, health promotion and disease prevention, professional recruitment and community

services; the Joint Commission on Accreditation of Hospitals;

Environmental Health/Sanitation Facilities Construction Programs—environmental health and engineering/sanitation facilities construction programs for IHS Area Office;

Information Resources Management Programs—Automated data processing (ADP), ADP planning and operations, management information systems, office automation systems, voice and data telecommunications management.

After the title and statements for the IHS Area Offices, delete *Section HG.20, Order of Succession,* and *Section HB.30, Delegations of Authority,* and insert the following:

Section HG.30. Order of Succession. During the absence or disability of the Director, IHS, or in the event of a vacancy in that office, the first official listed below who is available shall act as Director, except that during a planned period of absence, the IHS Director may specify a different order of succession. The order of succession will be: (1) Deputy Director; (2) Director for Headquarters Operations; (3) Associate Director, Office of Health Programs; and (4) Associate Director, Office of Administration and Management.

Section HG.40. Delegations of Authority. All delegations and redelegations of authority made to IHS officials which were in effect immediately prior to this reoganization, and which are consistent with the reorganization effective January 4, 1988 shall continue in effect pending further redelegation.

Date: January 18, 1989.

Robert E. Windom, M.D.,

Assistant Secretary for Health.

[FR Doc. 89–1971 Filed 1–26–89; 8:45 am]

BILLING CODE 4160-16-M

Social Security Administration

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Social Security Administration publishes a list of information collection packages that have been submitted to the Office of Management and Budget (OMB) for clearance in compliance with Pub. L. 96–511, The Paperwork Reduction Act. The following clearance packages have been submitted to OMB since the last list was published in the **Federal Register** on January 13, 1989.

(Call Reports Clearance Officer on (301) 965–4149 for copies of package)

1. Representative Payee Report—0960–0068—The information is used to determine whether a representative payee has properly used a beneficiary's funds. The form SSA–623 is used to collect the information. The respondents are current representative payees.

Number of Respondents: 3,780,000
Frequency of Response: 1
Average Burden Per Response: 10.25 minutes
Estimated Annual Burden: 645,750 hours

2. Statement of Household Expenses and Contributions—0960–0456—The information collected on the form SSA–8011 is needed to determine the existence and amount of in-kind support and maintenance received by an applicant for or recipient of Supplemental Security Income (SSI) payments, and is used to determine the individual's eligibility and payment amount under this program. The respondents are members of an SSI applicant's or recipient's household.

Number of Respondents: 538,400
Frequency of Response: 1
Average Burden Per Response: 15 minutes
Estimated Annual Burden: 134,600 hours

3. Agency/Employer Questionnaire—(New Collection)—The information collected on the form SSA–4163 will be used to apply the pension offset to certain individuals receiving a State/Federal government pension and also receiving or applying for Social Security benefits. The respondents are State/Federal Agencies paying pensions to certain former employees.

Number of Respondents: 1,000
Frequency of Response: 1
Average Burden Per Response: 3 minutes
Estimated Annual Burden: 50 hours

4. Real Property Current Market Value Estimate—(New)—The information collected on the form SSA–2794 will be used by the Social Security Administration to determine the value of property owned by an applicant for, or recipient of, supplemental security income payments (or a person whose resources are deemed to such an individual). The respondents will be persons who are experienced in estimating the current market value of real property.

Number of Respondents: 10,125
Frequency of Response: 1
Average Burden Per Response: 20 minutes
Estimated Annual Burden: 3,375 hours

OMB Desk Officer: Justin Kopca.

Written comments and recommendations regarding these information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503.

Date: January 23, 1989.

Robert D. Marder,

Director, Office of Publications and Logistics Management.

[FR Doc. 89–1942 Filed 1–26–89; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Canon City District Grazing Advisory Board Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 463), that a meeting of the Canon City District Grazing Advisory Board will be held at 10 a.m., Friday, March 3, 1989, at the District Office of the Bureau of Land Management, 3170 East Main Street, Canon City, Colorado. The purpose of this meeting will be:

1. Prioritization of Range Improvement projects.

2. Initiate, conduct and settle business pertaining to the expenditure of Range Betterment Funds.

3. Update Board on status of ongoing resource management planning efforts in the Canon City District.

SUPPLEMENTARY INFORMATION: This meeting will be open to the public. Any member of the public may file with the Board a written statement concerning matters to be discussed. Minutes of the meeting will be made available for public inspection 30 days after the meeting.

FOR FURTHER INFORMATION CONTACT: Donnie R. Sparks, District Manager, Bureau of Land Management, 3170 East Main Street, Canon City, Colorado 81212 or telephone at (719) 275–0631.

Stuart L. Freer,

Associate District Manager.

[FR Doc. 89–1889 Filed 1–26–89; 8:45 am]

BILLING CODE 4310-JB-M

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[CO-070-09-4329-10-2416]

Grand Junction District Grazing Advisory Board Meeting

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of meeting of Grand Junction District Advisory Board.

SUMMARY: Notice is hereby given that a meeting of the Grand Junction District Grazing Advisory Board will be held on Thursday, March 16, 1989. The meeting will convene in the third floor conference room at the Bureau of Land Management Office, 764 Horizon Drive, Grand Junction, Colorado at 9 a.m.

SUPPLEMENTARY INFORMATION: The agenda for the meeting will include: (1) Introductions; (2) Minutes of the previous meeting; (3) Glenwood Springs Resource Area Rangeland Program Summary Update and associated grazing decisions; (4) Colorado Cattlemen/Colorado Woolgrowers upcoming field review of Glenwood Springs Resource Area RMP—five years of implementation; (5) Proposed Rangeland Monitoring Standards for Colorado; (6) Proposed process if drought continues through 1989; (7) Status of current project work; (8) Range Betterment Fund project proposals; (9) Advisory Board project proposals; (10) Public presentations; and (11) Arrangements for the next meeting.

The meeting is open to the public. Interested persons may make oral statements to the Board between 3 and 3:30 p.m., or file written statements for the Board's consideration. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, 764 Horizon Drive, Grand Junction, Colorado 81506 by March 14, 1989. Depending on the number of persons wishing to make oral statements, a per person time limit may be established by the District Manager.

Minutes of the Board Meeting will be maintained in the District Office and be available for public inspection and reproduction (during regular business hours) after thirty (30) days following the meeting.

Further information on the meeting may be obtained at the above address, or by calling (303) 243-6552.

Bruce Conrad,

District Manager, Grand Junction District.

[FR Doc. 89-1800 Filed 1-26-89; 8:45 am]

BILLING CODE 4310-JB-M

[Alaska AA-48648-U]

Proposed Reinstatement of a Terminated Oil and Gas Lease

In accordance with Title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97-451), a petition for reinstatement of oil and gas lease AA-48648-U has been received covering the following lands:

Copper River Meridian, Alaska

T. 11 N., R. 10 W.,
Sec. 24, SW¼NE¼.
(40 acres)

The proposed reinstatement of the lease would be under the same terms and conditions of the original lease, except the rental will be increased to $5 per acre per year, and royalty increased to 16⅔ percent. The $500 administrative fee and the cost of publishing this Notice have been paid. The required rentals and royalties accruing from AA-48648-U, the date of termination, have been paid.

Having met all the requirements for reinstatement of lease AA-48648-U as set out in section 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective July 1, 1988, subject to the terms and conditions cited above.

Dated: January 17, 1989.

Kay Kletka,

Chief, Branch of Mineral Adjudication.

[FR Doc. 89-1799 Filed 1-26-89; 8:45 am]

BILLING CODE 4310-JA-M

[Alaska AA-48673-W]

Proposed Reinstatement of a Terminated Oil and Gas Lease

In accordance with Title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97-451), a petition for reinstatement of oil and gas lease AA-48673-W has been received covering the following lands:

Copper River Meridian, Alaska

T. 12 N., R. 10 W.,
Sec. 23, SW¼SE¼.
(40 acres)

The proposed reinstatement of the lease would be under the same terms and conditions of the original lease, except the rental will be increased to $5 per acre per year, and royalty increased to 16⅔ percent. The $500 administrative fee and the cost of publishing this Notice have been paid. The required rentals and royalties accruing from July 1, 1988, the date of termination, have been paid.

Having met all the requirements for reinstatement of lease AA-48673-W as set out in section 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective July 1, 1988, subject to the terms and conditions cited above.

Kay Kletka,

Chief, Branch of Mineral Adjudication.

Dated: January 17, 1989.

[FR Doc. 89-1760 Filed 1-26-89; 8:45 am]

BILLING CODE 4310-JA-M

[MTM72921; MT-020-09-4212-12]

Realty Action—Exchange; Montana

AGENCY: Bureau of Land Management, Miles City District Office, Interior.

ACTION: Notice of Realty Action MTM-72921. Exchange of public and state lands in Wheatland, Golden Valley, Musselshell, Stillwater and Carbon Counties, Montana.

SUMMARY: The following described lands have been determined to be suitable for disposal by exchange under Section 206 of the Federal Land Policy and Management Act of 1976, 32 U.S.C. 1716.

Principal Meridian, Montana

T. 9 N., R. 12 E.,
Section 20, NW¼SE¼;
Section 28, S½NW¼;
Section 32, SE¼NE¼, NE¼SE¼.
T. 6 N., R. 15 E.,
Section 2, Lots 11 & 12.
T. 9 N., R. 15 E.,
Section 6, SE¼NE¼.
T. 8 N., R. 19 E.,
Section 6, Lots 4 & 5, SW¼NE¼, SE¼NW¼.
T. 11 N., R. 19 E.,
Section 35, E½E½.
T. 4 N., R. 22 E.,
Section 6, SE¼NE¼.
T. 10 N., R. 29 E.,
Section 12, N½NW¼.
Aggregating 754.34 acres of public land.

In exchange for those lands, the United States will acquire the following described lands from the Montana Department of State Lands.

Principal Meridian, Montana

T. 8 S., R. 28 E.,
Section 16, All.
T. 9 S., R. 27 E.,
Section 36, N½, E½SW¼, SE¼.
T. 9 S., R. 29 E.,
Section 16, All.
Aggregating 1040 acres of State lands.

DATES: For a period of 45 days from the date of this notice, interested parties may submit comments to the Bureau of Land Management at the address shown below. Any adverse comments will be evaluated by the BLM. Montana State Director who may sustain, vacate or modify this realty action. In the absence of any objections this realty action will become the final determination of the Department of the Interior.

FOR FURTHER INFORMATION CONTACT: Information related to the exchange, including the environmental assessment and land report is available for review at the Miles City District, Billings Resource Area Office, 810 E. Main, Billings, Montana 59105.

SUPPLEMENTARY INFORMATION: The publication of this notice segregates the public lands described above from settlement, sale, location, and entry under the public land laws, including the mining laws, but not from exchange pursuant to Section 206 of the Federal Land Policy and Management Act of 1976 for a period of 2 years from the date of first publication. The exchange will be made subject to:

1. A reservation to the United States of a right-of-way for ditches or canals in accordance with 43 U.S.C. 945.

2. The reservation to the United States of all minerals in the Federal lands being transferred.

3. All valid existing rights (e.g. rights-of-way, easements and leases of record).

4. Fair Market Value based on accepted appraisal methods.

5. The 2-year notifications to grazing lessees were received August 1, 1988, in accordance with 43 CFR 4110.4-2(b).

This exchange is consistent with Bureau of Land Management policies and the Billings RMP/EIS and has been discussed with state and local officials. The estimated intended time of the exchange is April 1989. The public interest will be served by completion of this exchange because it will enable the Bureau of Land Management to acquire lands with high public values, and will increase management efficiency of public lands in the area.

Date: January 13, 1989.

Mat Millenbach,

District Manager.

[FR Doc. 89-1973 Filed 1-26-89; 8:45 am]

BILLING CODE 4310-DN-M

[NV-930-09-4212-14; N-47519]

Realty Action; Elko County, NV

AGENCY: Bureau of Land Mangement, Interior.

ACTION: Notice of realty action, proposed direct sale of public lands.

SUMMARY: The following described public lands administered by the Bureau of Land Management have been proposed for disposal by direct sale to the City of Carlin under section 203 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701, 1713):

Mount Diablo Meridian, Nevada

T. 33 N., R. 52 E.,
Sec. 22, SW¼NE¼, N½NW¼, SE¼NW¼, E½NE¼SW¼NW¼, S½S½SW¼NW¼, SE¼NW¼, S½.
Containing 497.50 acres.

The increase in gold mining has created a need for additional land to accommodate the City of Carlin's growing commercial and residential demand. The sale of the identified lands to the City of Carlin is in the public interest and is in conformance with the Bureau's Elko Resource Management Plan as well as state and local planning.

The above described lands will be subject to an appraisal and would not be sold to the City of Carlin for less than the appraised fair market value. The mineral estate having no known mineral value would also be conveyed to the City for this sale. The lands will not be sold to the City of Carlin until the environmental assessment/land report has been completed and a subsequent Notice of Realty Action has been published in the **Federal Register**.

The described lands would be conveyed to the City of Carlin subject to the continued grazing use of 48 AUMs held by Lee and Betty Taylor and Melvin Jones Ranches. The rights of Lee and Betty Taylor to graze domestic livestock on the lands according to the terms and conditions of grazing authorization number 01567 for 32 AUMs shall cease on February 28, 1992. The rights of Melvin Jones Ranches to graze domestic livestock on the lands according to the terms and conditions of grazing authorization number 01545 for 16 AUMs shall cease on February 28, 1996. The City of Carlin is entitled to receive annual grazing fees from the identified parties not to exceed that which would be authorized under Federal grazing fees published annually in the **Federal Register**.

Publication of this notice in the **Federal Register** will segregate the subject lands from all appropriations under the public land laws, the mining laws, but not the mineral leasing laws. The segregation will terminate 270 days from the date of publication of this notice in the **Federal Register** upon publication of a Termination of Segregation.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Elko District Office, Bureau of Land Management, 3900 E. Idaho Street, Elko, Nevada 89801.

Date: January 19, 1989.

Rodney Harris,

District Manager.

[FR Doc. 89-1974 Filed 1-26-89; 8:45 am]

BILLING CODE 4310-HC-M

[NM-010-4212-13/GP9-0106; NM NM 39284]

Issuance of Exchange Conveyance Document; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The United States issued an exchange conveyance document to Louis Menyhert on September 8, 1988, for the surface estate in the following described land in Santa Fe County, New Mexico, pursuant to section 206 of the Act of October 21, 1976 (43 U.S.C. 1716):

New Mexico Principal Meridian

T. 17 N., R. 8 E.,
Sec. 24, E½NE¼, NE¼SE¼, and S½S½.
Containing 280.00 acres.

In exchange for the land described above, Louis Menyhert, et al., reconveyed to the United States the surface estate in the following described land in Taos County, New Mexico:

New Mexico Principal Meridian

T. 29 N., R. 9 E.,
Sec. 11, N½NE¼;
Sec. 12, N½, N½N½NW¼SE¼, NE¼SE¼, N½SE¼SE¼, SE¼SE¼SE¼;
Sec. 13, NE¼NE¼NE¼, S½NE¼NE¼, SE¼NE¼, SW¼NW¼, S½ (except for S½SE¼SW¼);
Sec. 24, all (except for N½NE¼NW¼, W½SE¼NE¼NW¼, E½SW¼NE¼NW¼);
Sec. 25, all.
T. 29 N., R. 10 E.,
Sec. 18, S½;
Sec. 19, all.
T. 31 N., R. 9 E.,
Sec. 10, SW¼NW¼, NW¼SW¼, SE¼SW¼, N½SE¼;
Sec. 24, all (except for 10 acres as surveyed).
T. 31 N., R. 10 E.,
Sec. 21, N½;
Sec. 22, N½ (except for 10 acres as surveyed)
Sec. 23, E½W½, E½.
T. 27 N., R. 11 E.,
Sec. 1, lots 1, 2, 3, 4, S½N½, SW¼, W½SE¼, NE¼SE¼, N½N½SE¼SE¼.
T. 30 N., R. 11 E.,
Sec. 19, lot 2, SE¼NW¼, SE¼;
Sec. 30, lots 1, 2, 3, 4, E½, E½W½.
T. 31 N., R. 11 E.,
Sec. 17, SW¼, NW¼SE¼, S½SE¼.
Containing 6,837.523 acres.

The purpose of the exchange was to enable BLM to acquire private land north and west of Taos which have high

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values for wildlife habitat, livestock grazing, and public recreation. Portions of the acquired land have been identified as critical winter elk habitat and buffer zone for the Rio Grande Wild and Scenic River. The public interest was served through completion of this exchange.

The values of Federal public land and the non-Federal land in the exchange were appraised at $750,000.00 and $690,000.00, respectfully. An equalization payment of $40.00 was paid to the United States.

Larry L. Woodard,
State Director.

Dated: January 12, 1989.

[FR Doc. 89-1701 Filed 1-25-89; 8:45 am]

BILLING CODE 4310-FB-M

[ID-943-89-4730-12]

Filing of Plats of Survey; Idaho

The plats of survey of the following described lands were officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 10:00 a.m., January 20, 1989.

The plat representing the retracement of the boundary between Idaho and Washington from Mile Post 59 to Mile Post 61, the dependent resurvey of a portion of the subdivisional lines, and the subdivision of certain sections, T. 46 N., R. 6 W., Boise Meridian, Idaho, Group No. 589, was accepted January 5, 1989.

This survey was executed to meet certain administrative needs of the Bureau of Indian Affairs.

The plat representing the dependent resurvey of a portion of the west boundary and subdivisional lines and the subdivision of certain sections, T. 9 S., R. 25 E., Boise Meridian, Idaho, Group No. 669, was accepted January 13, 1989.

The plat representing the dependent resurvey of a portion of the subdivisional lines and a portion of the meanders of the right bank of the Snake River, and the subdivision of section 11, T. 4 S., R. 2 E., Boise Meridian, Idaho, Group 723, was accepted January 18, 1989.

The plat representing the dependent resurvey of a portion of the subdivisional lines, the subdivision of section 4, and the survey of Parcels A and C of lot 20 in section 4, T. 15 S., R. 30 E., Boise Meridian, Idaho, Group No. 770, was accepted January 11, 1989.

These surveys were executed to meet certain administrative needs of this Bureau.

All inquiries about this land should be sent to the Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho, 83706.

Gary T. Ovlatt,
Acting Chief Cadastral Surveyor for Idaho.

January 20, 1989.

[FR Doc. 89-1917 Filed 1-26-89; 8:45 am]

BILLING CODE 4310-GG-M

[NV-930-89-4212-22]

Filing of Plats of Survey; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform the public and interested State and local government officials of the latest filing of Plats of Survey in Nevada.

EFFECTIVE DATES: Filings were effective at 10:00 a.m. on December 30, 1988.

FOR FURTHER INFORMATION CONTACT: Lacel Bland, Chief, Branch of Cadastral Survey, Bureau of Land Management (BLM), Nevada State Office, 850 Harvard Way, P.O. Box 12000, Reno, Nevada 89520, 702-784-5484.

SUPPLEMENTARY INFORMATION: The Plats of Survey of lands described below were officially filed at the Nevada State Office, Reno, Nevada on December 30, 1988.

Mount Diablo Meridian, Nevada

T. 45 N., R. 25 E.—Dependent Resurvey
T. 32 N., R. 44 E.—Supplemental Plat
T. 38 N., R. 62 E.—Supplemental Plat
T. 33 N., R. 70 E.—Supplemental Plat

All the plats were accepted on December 19, 1988. The dependent resurvey was executed to meet certain administrative needs of the Fish and Wildlife Service and the supplemental plats were executed to meet certain administrative needs of the BLM.

All of the above-listed plats are now the basic record for describing the lands for all authorized purposes. The plats will be placed in the open files in the BLM Nevada State Office and will be available to the public as a matter of information. Copies of the plats and related field notes may be furnished to the public upon payment of the appropriate fee.

Edward F. Spang,
State Director, Nevada.

[FR Doc. 89-1875 Filed 1-26-89; 8:45 am]

BILLING CODE 4310-HC-M

[ID-030-89-4332-09]

Public Review Period for USGS/USBM "Mineral Survey Reports"; Wilderness Study Areas; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Idaho, Bureau of Land Management (BLM), is requesting the public to review combined U.S. Geological Survey (USGS) and U.S. Bureau of Mines (USBM) "Mineral Survey Reports" which have been completed for preliminarily suitable Wilderness Study Areas (WSAs). If the public identifies significant differences in interpretation of the data presented in the reports or submits significant new minerals data for consideration, the Bureau of Land Management will request USGS/USBM evaluate these comments in relation to their final Mineral Survey Report. The BLM will consider the USGS/USBM evaluations as well as the Mineral Survey Report in developing final wilderness suitability recommendations. Copies of the WSA reports can be reviewed in BLM offices in Boise, Burley, Idaho Falls, Salmon, Shoshone, and Coeur d'Alene.

DATE: New information will be accepted on the reports enumerated in this notice until April 7, 1989.

ADDRESS: Send information on reports to: Deputy State Director for Minerals, BLM Idaho State Office, 3380 Americana Terrace, Boise, ID 83706.

FOR FURTHER INFORMATION CONTACT: Bob DeTar or Bill LaVelle, BLM Idaho State Office, Division of Mineral Resources, 3380 Americana Terrace, Boise, Idaho 83706, (208) 334-1160.

SUPPLEMENTARY INFORMATION: Section 603 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2785, directed the Secretary of the Interior to inventory lands having wilderness characteristics as described in the Wilderness Act of September 3, 1964, and from time to time report to the President his recommendations as to the suitability or non-suitability of each area for preservation as wilderness. The USGS and USBM are charged with conducting mineral surveys for areas that have been preliminarily recommended suitable for inclusion into the wilderness system, to determine the mineral values, if any, that may be present in such areas.

To ensure that all available minerals data are considered by the Bureau of Land Management prior to making its final wilderness suitability recommendations to the Secretary of the Interior, the State Director, Idaho is providing this public review and comment period. Usually there is a one to two year lag time between actual field work and final printing of a mineral survey report. New information may have been collected by the public during this lag time or the public may have a new interpretation of the data presented in the mineral survey reports. Any new data or new interpretations of data in the reports will be screened for its significance and validity by the Bureau of Land Management. Significant new minerals data or new interpretations of the minerals data will be forwarded to the U.S. Geological Survey and U.S. Bureau of Mines for further consideration. Evaluation received by the Bureau of Land Management from the U.S. Geological Survey and U.S. Bureau of Mines will be considered by the State Director in the final wilderness suitability recommendations.

Information requested from the public via this invitation are not limited to any specific energy or mineral resource. Information can be in the form of a letter and should be as specific as possible and include:

1. The name and number of the subject Wilderness Study Area and Mineral Survey Report.

2. Mineral(s) of interest.

3. A map or land description by legal subdivision of the public land surveys or protracted surveys showing the specific parcel(s) of concern within the subject Wilderness Study Area.

4. Information and documents that depict the new data or reinterpretation of data.

5. The name, address, and phone number of the person who may be contacted by technical personnel of the Bureau of Land Management, U.S. Geological Survey or U.S. Bureau of Mines assigned to review the information.

Geologic maps, cross sections, drill hole records and sample analyses, etc., should be included. Published literature and reports may be cited. Each comment should be limited to a specific Wilderness Study Area. All information submitted and marked confidential will be treated as proprietary data and will not be released to the Public without consent.

The following is a list of available Mineral Survey Reports by Wilderness Study Area (WSA) on which new information will be accepted.

WSA No.	Name	Report No.
ID-016-053	S. Fork Owyhee River.	Bulletin 1719-F.
ID-017-011	Jarbidge River.	Bulletin 1720-B.
ID-019-002	King Hill Creek.	Bulletin 1721-B.
ID-035-077	Henry's Lake.	Bulletin 1718-D.
ID-037-077	Worm Creek.	Open File Rpt 88-353.
ID-043-003	Eighteen Mile.	Bulletin 1716-B.
ID-045-012	Burnt Creek.	Bulletin 1716-C.
ID-046-013	Boulder Creek.	MF-1466-C.
ID-054-008A/B	Gooding City of Rocks.	Bulletin 1721-A.
ID-057-008	Sand Butte.	Bulletin 1721-C.
ID-057-010	Raven's Eye.	Bulletin 1721-C.
ID-111-017	Brunsau River.	Bulletin 1720-B.
ID-111-036A	Sheep Creek West.	Bulletin 1720-B.
[illegible]-044	Upper Deep Creek.	Bulletin 1719-G.

Reports available for review in BLM offices will not be available for sale or removal from the office. Copies of the listed reports may be purchased from: U.S. Geological Survey, Books and Open File Reports, Box 25425, Federal Center, Denver, CO 80225.

Bill R. LaVelle,
Deputy State Director for Mineral Resources.

January 18, 1989.

[FR Doc. 89-1918 Filed 1-26-89; 8:45 am]

BILLING CODE 4310-GG-M

[AZ-020-09-4214-10; A-9608]

Cancellation of Withdrawal Application; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Soil Conservation Service (SCS) U.S. Department of Agriculture has cancelled withdrawal application A-9608. The application effects 3,033.68 acres of public land in Maricopa County. This notice terminates the segregation imposed by this application and opens the land to the operation of the public land laws including the mining and mineral leasing laws.

EFFECTIVE DATE: February 13, 1989.

FOR FURTHER INFORMATION CONTACT: John Mezes, BLM Arizona State Office, P.O. Box 16563, Phoenix, Arizona 85014, (602) 241-5531.

SUPPLEMENTARY INFORMATION: The SCS, USDA, filed withdrawal application A-9608 on June 21, 1976, in support of the Harquahala Watershed Project. They stated the need would be temporary and the application would be cancelled upon issuance of a right-of-way to the Flood Control District. A right-of-way has been granted and a withdrawal is no longer required. The SCS has requested that withdrawal application A-9608 be cancelled.

Withdrawal application A-9608 is hereby cancelled in its entirety and the segregation imposed on the following described land is hereby terminated:

Gila and Salt River Meridian

T. 1 N., R. 6 W.,
Sec. 3, N½NW¼;
Sec. 4, E½;
Sec. 17, E½;
Sec. 20, All.
T. 2 N., R. 6 W.,
Sec. 6, E½SE¼;
Sec. 7, S½;
Sec. 17, N½;
Sec. 34, All.
T. 2 N., R. 9 W.,
Sec. 8, N½.

The area described aggregates 3,033.68 acres in Maricopa County.

John T. Mezes,
Chief, Branch of Lands and Minerals Operations.

[FR Doc. 89-1919 Filed 1-26-89; 8:45 am]

BILLING CODE 4310-GG-M

National Park Service

Management Policies

AGENCY: National Park Service, Interior.

ACTION: Notice of availability of final management policies.

SUMMARY: The National Park Service has reviewed and revised its policies for management of areas of the national park system. The revision was done in light of current directions from Congress and the administration as well as comments received from the general public.

EFFECTIVE DATE: Copies will be available on or after January 30, 1989.

FOR FURTHER INFORMATION CONTACT: Carol F. Aten, Chief, Office of Policy, National Park Service, P.O. Box 37127, MIB-MS1226, Washington, DC 20013-7127.

Copies of the *Management Policies* and a summary of comments received and responses will be mailed to all commentors. For all others interested, copies of the *Management Policies* may be obtained by writing:

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Office of Policy, National Park Service, P.O. Box 37127, MIB–MS1228, Washington, DC 20013–7127
Alaska Regional Office, National Park Service, 2525 Gambell Street, Room 107, Anchorage, AK 99503
Mid-Atlantic Regional Office, National Park Service, 143 South Third Street, Philadelphia, PA 19106
Midwest Regional Office, National Park Service, 1709 Jackson Street, Omaha, NE 68102
National Capital Parks, National Park Service, 1100 Ohio Drive, SW., Washington, DC 20242
North Atlantic Regional Office, National Park Service, 15 State Street, Boston, MA 02109–3572
Pacific Northwest Regional Office, National Park Service, 83 South King Street, Suite 212, Seattle, WA 98104
Rocky Mountain Regional Office, National Park Service, 12795 West Alameda Parkway, P.O. Box 25287, Lakewood, CO 80225
Southeast Regional Office, National Park Service, 75 Spring Street, SW, Atlanta, GA 30303
Southwest Regional Office, National Park Service, P.O. Box 728, Santa Fe, New Mexico 87504–0728
Western Regional Office, National Park Service, 450 Golden Gate Ave., Box 36063, San Francisco, CA 94102.

Copies of a summary of comments received and responses may be obtained from the Chief, Office of Policy, National Park Service, P.O. Box 37127, MIB–MS1228, Washington, DC 20013–7127.

SUPPLEMENTARY INFORMATION: The National Park Service has completed a comprehensive revision of policies on management of the national park system. The final product reflects response to the approximately 200 commentors who took advantage of the public review period to share their concerns. The new document represents an update of the 1978 Management Policies and includes the addition of a new chapter on Interpretation and Education; new policies throughout the document addressing Native American relationships; a revised section on new area criteria; expanded sections on research relating to both cultural and natural resources; new sections on land protection plans, museum objects an library materials, ethnographic resources, paleontologic resource management, cave management, submerged cultural resources, historic property leases and other topics. The chapter on concessions management and the sections on accessibility for disabled persons incorporates policy changes previously promulgated as Special Directives.

This document will be the primary vehicle for articulating guidance to National Park Service personnel concerning preservation and use of park system areas.

William Penn Mott,
Director
January 20, 1989.
[FR Doc. 89–1911 Filed 1–26–89; 8:45 am]
BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

A. 1. Parent Corporation: Anheuser-Busch Companies, Inc., One Busch Place, St. Louis, Missouri 63118.

2. Wholly-Owned Subsidiaries and State of Incorporation:

(1) Anheuser-Busch Inc., Missouri
(2) August A. Busch & Co., Incorporated, Texas
(3) August A. Busch & Co. of Massachusetts, Inc., Massachusetts
(4) August A. Busch & Co. of Florida, Inc., Florida
(5) Busch Properties, Inc., Delaware
(6) Consolidated Farms, Inc., Delaware
(7) Metal Container Corporation, Delaware
(8) Kingsmill Realty, Inc., Virginia
(9) Busch International Sales Corporation, Delaware
(10) St. Louis Refrigerator Car Company, Common Law, Massachusetts Business Trust (Unincorported)
(11) Manufacturers Railway Co., Missouri
(12) Manufacturers Cartage Co., Missouri
(13) MRS Redevelopment Corporation, Missouri
(14) MRS Transport Company, Texas
(15) Williamsburg Transport, Inc., Virginia
(16) Fairfield Transport, Inc., California
(17) Busch Entertainment Corporation, Delaware
(18) Container Recovery Corporation, Ohio
(19) Metal Label Corporation, Tennessee
(20) Busch Creative Services Corporation, Delaware
(21) SP Parks, Inc., Delaware
(22) Golden Eagle Distributing Company, Delaware
(23) Busch Agricultural Resources, Inc., Delaware
(24) Anheuser-Busch International, Inc., Delaware
(25) Anheuser-Busch Europe, Inc., Delaware
(26) Civic Center Corporation, Missouri
(27) Stadium Plaza Redevelopment Corporation, Missouri
(28) Broadway Redevelopment Corporation, Missouri
(29) Suffolk-Busch Development Corporation, Massachusetts
(30) Eagle Snacks, Inc., Delaware
(31) Anheuser-Busch Beverage Group, Inc., Delaware
(32) Nutri-Turf, Inc., Delaware
(33) Anheuser-Busch Asia, Inc., Delaware
(34) Campbell Taggart, Inc., Delaware
(35) A–B Sports, Inc., Delaware
(36) Anheuser-Busch Metal Corporation, Delaware
(37) Anheuser-Busch Investment Capital Corporation, Delaware
(38) BACI, Inc., Delaware
(39) BACI Holdings, Inc., Delaware
(40) InnoVen IV Corporation, Delaware
(41) Innervisions Productions, Inc., Missouri
(42) Busch Mechanical Services, Delaware
(43) Busch Media Group, Inc., Delaware
(44) Metal Container Corporation of California, California
(45) Busch Biotech, Inc., Delaware
(46) Pacific International Rice Mills, Inc., Delaware
(47) Adolphus, Inc., Florida
(48) Optimus, Inc., Delaware
(49) Busch Import/Export Company, Inc., Delaware
(50) BACI of Tennessee, Inc., Tennessee
(51) Anheuser-Busch World Trade Ltd., Delaware
(52) Litchfield Development Corporation, Delaware
(53) Horizon Beverage Company, California
(54) Garrard Holding Co., Delaware
(55) Garrard Leasing Company, Kentucky
(56) Busch Investment Corporation, Delaware
(57) Anheuser-Busch Entertainment Limited, Delaware
(58) A–B Contract Services Co., Delaware
(59) Rainbo Baking Company of Albuquerque, Delaware
(60) Colonial Baking Company of Atlanta, Delaware
(61) Colonial Baking Company of Augusta, Delaware
(62) Rainbo Bread Company of Aurora, Delaware
(63) Colonial Baking Company of Cedar Rapids, Delaware
(64) Colonial Baking Company of Chattanooga, Delaware
(65) Colonial Baking Company of Columbus, Delaware

(66) Rainbo Baking Company of Corpus Christi, Delaware
(67) Manor Baking Company of Dallas, Delaware
(68) Rainbo Bread Company, Delaware
(69) Colonial Baking Company of Des Moines, Delaware
(70) Rainbo Baking Company of El Paso, Delaware
(71) Evansville Colonial Baking Company, Delaware
(72) Rainbo Bakeries of San Joaquin Valley, Inc., Delaware
(73) Colonial Baking Company of Gulfport, Delaware
(74) Rainbo Baking Company of Harlingen, Delaware
(75) Rainbo Baking Company of Houston, Delaware
(76) Colonial Baking Company of Huntsville, Delaware
(77) Beta Baking Company, Delaware
(78) Colonial Baking Company of Indianapolis, Inc., Delaware
(79) Rainbo Baking Company of Johnson City, Delaware
(80) Manor Baking Company, Delaware
(81) Rainbo Baking Company of Lexington, Delaware
(82) Rainbo Baking Company of Louisville, Delaware
(83) Rainbo Baking Company of Lubbock, Delaware
(84) Colonial Baking Company of Memphis, Delaware
(85) Colonial Baking Company of Alabama, Delaware
(86) Colonial Baking Company of Muncie, Inc., Delaware
(87) Colonial Baking Company of Nashville, Delaware
(88) Rainbo Baking Company of Oklahoma City, Delaware
(89) Rainbo Baking Company of Phoenix, Delaware
(90) Rainbo Bakers, Inc., Delaware
(91) Rainbo Bread Company of Roanoke, Delaware
(92) Rockford Colonial Baking Company, Delaware
(93) Rainbo Baking Company of Scramento Valley, Delaware
(94) Rainbo Bread Company of St. Joseph, Delaware
(95) Colonial Baking Company of St. Louis, Delaware
(96) Rainbo Baking Company of San Antonio, Delaware
(97) Colonial Baking Company of Sprinfield, Delaware
(98) Kilpatricks Bakeries, Inc., Delaware
(99) Rainbo Baking Company of Tucson, Delaware
(100) Rainbo Baking Company of Tulsa, Delaware
(101) Rainbo Baking Company of Wichita, Delaware
(102) Eagle Crest Foods, Inc., Delaware
(103) Merico, Inc., Texas
(104) Arizona Baking Company of the Southwest, Delaware
(105) Bel-Art Advertising, Inc., Texas
(106) C-Trans, Inc., Texas
(107) Colonial Baking Company of Madison County, Delaware
(108) EG Bread, Inc., Delaware
(109) Hardin's Bakeries, Corporation, Mississippi
(110) Old American Pottery Company, Texas
(111) Rainbo Baking Company of Beaumont, Delaware
(112) Rainbo Baking Company of Waco, Delaware
(113) Roswell Baking Company, Delaware
(114) Rainbo Baking Company of Cincinnati, Delaware

B. Parent corporation, address of principal office and state of incorporation: International Multifoods Corporation, Multifoods Tower, 33 South Sixth Street, P.O. Box 2942, Minneapolis, MN 55402 (a Delaware Corporation).

2. Wholly owned subsidiaries which will participate in the operations, addresses of their respective principal offices and states of incorporation:

i. The Boston Sea Party of Bloomington, Inc., 7801 Xerxes Avenue South, Minneapolis, MN 55431 (a Delaware Corporation).

ii. The Boston Sea Party Restaurants, Inc., Multifoods Tower, 33 South Sixth Street, P.O. Box 2942, Minneapolis, MN 55402 (a Delaware Corporation).

iii. Centre Brands, Inc., 5225 Canyon Crest Drive, Building 400, Riverside, CA 92507 (a California Corporation).

iv. Fred's Frozen Foods, Inc., 2395 East Conner Street, R.R. 5, P.O. Box 44, Nobelsville, IN 46060 (an Indiana Corporation).

v. MINETCO—Minnesota International Export Trading Company, Inc., Multifoods Tower, 33 South Sixth Street, P.O. Box 2942, Minneapolis, MN 55402 (a Minnesota Corporation).

vi. Mister Donut of America, Inc., Multifoods Tower, 33 South Sixth Street, P.O. Box 2942, Minneapolis, MN 55402 (a Delaware Corporation).

vii. Multifoods Bakery Distributors, Inc., Multifoods Tower, 33 South Sixth Street, P.O. Box 2942, Minneapolis, MN 55402 (a Delaware Corporation).

viii. Multifoods Transportation, Inc., Multifoods Tower, 33 South Sixth Street P.O. Box 2942, Minneapolis, MN 55402 (a Delaware Corporation).

ix. Prepared Foods, Inc., Multifoods Tower, 33 South Sixth Street, P.O. Box 2942, Minneapolis, MN 55402 (a Delaware Corporation).

x. Prepared Foods, Inc., 5701 McNutt Road, P.O. Box 12910, El Paso, TX 79913 (a Texas Corporation).

xi. Pueringer Distributing, Inc., Rosewood Industrial Park, Box 187, Rice, MN 56367 (a Delaware Corporation).

xii. Rotanelli Foods, Inc., 2 Birch Street, New Rochelle, NY 10801 (a Delaware Corporation).

xiii. VSA, Inc., 11111–F East 53rd Avenue, Denver, CO 80239 (a Colorado Corporation).

xiv. Vendors Supply of America Corporation, Multifoods Tower, 33 South Sixth Street, P.O. Box 2942 Minneapolis, MN 55402 (a Delaware Corporation).

Noreta R. McGee,
Secretary.
[FR Doc. 89–1928 Filed 1–26–89; 8:45 am]
BILLING CODE 7035–01–M

[Ex Parte No. 431 (Sub No. 1)]

Adoption of the Uniform Railroad Costing System as a General Purpose Costing System for All Regulatory Costing Purposes

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed policy.

SUMMARY: In accordance with recommendations of the Railroad Accounting Principles Board, the Commission proposes to adopt the Uniform Railroad Costing System (URCS) as its General Purpose Costing System (GPCS). The use of URCS would be required in all statutory instances necessitating the use of a GPCS. Further, the Commission proposes to require the use of URCS costs for all other regulatory purposes in the Interstate Commerce Act.

DATES: Notices of intent to participate will be due February 16, 1989. Comments will be due March 20, 1989. Reply comments will be due 25 days thereafter.

ADDRESSES: An original and 15 copies of comments should be sent to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT:
Leslie J. Selzer, (202) 275–7627;
or
William T. Bono, (202) 275–7354. TDD for hearing impaired: (202) 275–1721.

SUPPLEMENTAL INFORMATION:
Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write to the Office of the Secretary, Room 2215, Interstate Commerce Commission Building, Washington, DC 20423, or telephone (202) 275–7428. The decision may be picked up from Dynamic Concepts, Inc., in Room 2229, at

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Commission headquarters, (202) 289-4357/4359. Assistance for the hearing impaired is available through TDD Services, (202) 275-1721.

This action will not significantly affect either the quality of the human environment or energy conservation. This proceeding will not have a significant impact on a substantial number of small entities.

Decided: January 23, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Andre, Lambeley, and Phillips. Commissioner Phillips commented with a separate expression.

Nanita R. McGee,

Secretary.

[FR Doc. 89-1925 Filed 1-26-89; 8:45 am]

BILLING CODE 7020-01-M

DEPARTMENT OF JUSTICE

Lodging of Consent Order Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent order in *United States v. City of Belvidere, et al.*, Civil Action No. 89-C20015 has been lodged with the United States District Court for the Northern District of Illinois on January 19, 1989. The proposed consent order concerns cleanup of a hazardous waste site known as the Belvidere Municipal No. 1 Landfill Site, which is located in Boone County, Illinois. The proposed consent order requires defendants to perform a cleanup at the Site, and pay certain United States Environmental Protection Agency costs.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent order. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. City of Belvidere, et al.*, D.J. Ref. 90-11-3-248.

The proposed consent ordermay be examined at the office of the United States Attorney and the Region V Office of the Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604. Copies of the consent order may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, Washington, DC 20530. A copy of the proposed consent order may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $16.40 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89-1920 Filed 1-26-89; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S-3504, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I:

Connecticut:
CT89-1 (Jan. 6, 1989) ..... p. 63.

New Jersey:
NJ89-2 (Jan. 6, 1989) ..... pp. 619-630, pp. 630-651.

New York:
NY89-4 (Jan. 6, 1989) ..... p. 713.
NY89-5 (Jan. 6, 1989) ..... p. 720.

Pennsylvania:
PA89-4 (Jan. 6, 1989) ..... p. 879.

Volume II:

New Mexico:
NM89-1 (Jan. 6, 1989) ..... p. 748.

Volume III:

Alaska:
AK89-1 (Jan. 6, 1989) ..... pp. 2-3.

Utah:
UT89-3 (Jan. 6, 1989) ..... pp. 354-359.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 23rd day of January 1989.

Robert V. Setera,

Acting Director, Division of Wage Determinations.

[FR Doc. 89-1743 Filed 1-26-89; 8:45 am]

BILLING CODE 4510-27-M

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

Federal Policy for the Protection of Human Subjects

AGENCY: Office of Science and Technology Policy, Executive Office of the President.

ACTION: Notice of Federal policy for protection of human subject; extension of comment period.

SUMMARY: On November 10, 1988, the Office of Science and Technology Policy, Executive Office of the President issued a Notice of Federal Policy for Protection of Human Subjects. The purpose of this new Notice is to extend the pertinent comment period to February 8, 1989. The Office of Science and Technology Policy intends to accept as the Final Model Federal Policy for the Protection of Human Subjects the common rule to be promulgated after consideration of public comment on the Notice of Proposed Rulemaking set forth in the November 10, 1988, issue of the **Federal Register** (at 53 FR 45600-45682). The proposed common rule was developed by the Interagency Human Subjects Coordinating Committee of the Federal Coordinating Council for Science, Engineering and Technology in response to public comment on the Notice of Proposed Model Policy for Department and Agency implementation published in the **Federal Register** on June 3, 1988 (53 FR 20204).

Note that the Central Intelligence Agency is required by Executive Order 12333 to conform to the guidelines issued by the Department of Health and Human Services (HHS).

DATES: To assure consideration, comments must now be received at the address listed below by the close of business on February 8, 1989.

ADDRESS: Please send comments or requests for additional information to: Dr. Joan P. Porter, Office for Protection from Research Risks, National Institutes of Health, Building 31, Room 4B09, Bethesda, MD 20892. Comments directed toward adoption of the common Federal Policy by a particular Department or Agency should clearly identify that Department or Agency. Comments should refer to specific sections in the proposed regulations. Comments received will be available for public inspection at the National Institutes of Health, Building 31, Room 4B09, Bethesda, Maryland, from 9:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Joan P. Porter, (301) 496-7005.

William R. Graham,

Director, Office of Science and Technology Policy, Executive Office of the President.

[FR Doc. 89-1862 Filed 1-26-89; 8:45 am]

BILLING CODE 4140-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Termination of Section 301 Investigation; Korea's Restrictions on Access to Its Wine Market

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of decision to terminate an investigation initiated under section 302 of the Trade Act of 1974, as amended, in response to a petition for action under section 301.

EFFECTIVE DATE: January 18, 1989.

SUMMARY: On June 11, 1986, the U.S. Trade Representative initiated an investigation of the Korean government's policies and practices affecting efforts to obtain fair and equitable access to the Korean wine market. On January 18, 1989, the United States and the Republic of Korea reached agreement on providing foreign manufacturers of wine and wine products non-discriminatory and equitable access to the Korean market for such products. In light of this agreement, the investigation related to possible action under section 301 of the Trade Act of 1974, as amended, has been terminated.

FOR FURTHER INFORMATION CONTACT: Gordana S. Earp, Director of Korean Affairs, U.S. Trade Representative, (202) 395-6813, or Catherine Field, Associate General Counsel, (202) 395-3432, Office of the U.S. Trade Representative, 600 17th Street, NW., Washington, DC.

SUPPLEMENTARY INFORMATION: On April 27, 1988, the wine Institute and Association of American Vintners filed a petition under section 302(a) of the Trade Act of 1974, as amended ("Trade Act"), alleging that the Government of the Republic of Korea engaged in acts, policies and practices that are unreasonable or discriminate against imports and burden or restict U.S. commerce. The import barriers complained of include, among others: (1) The combination of a 100 percent tariff applied to table wine and a quota on imports, creating a price escalation through the distribution system that prevents imported wine from being price competitive with domestically produced wine and other alcoholic beverages; (2) an absolute ban on imports of sparkling wine, wine coolers, brandy and dessert wines, and non-grape wines such as ciders; (3) labeling and packaging requirements, certification procedures, licensing and distribution restrictions and business capitalization requirements that impede access to the Korean market.

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Negotiations with the Government of the Republic of Korea resulted in a trade agreement, signed on January 18, 1989, which provides foreign wine manufacturers non-discriminatory and equitable access to the Korean market for wine and wine products. The agreement provides for reduction of customs tariffs to 35 percent effective July 1, 1989, and to 30 percent effective January 1, 1990. Further annual reductions will be made during the period from 1991 through 1993. In 1989, the quota on table wine and wine products including wine coolers has been doubled and the Korean market for these products will be totally liberalized effective January 1, 1990. Restrictions on imports of brandy and sparkling wines will be eliminated effective January 1, 1991. Labeling and testing requirements have been clarified. In addition, the agreement significantly liberalizes the importation and distribution system for imported wine and wine products.

Since the matters raised in this investigation have been resolved satisfactorily, the Trade Representative has terminated the investigation.

A. Jane Bradley,

Chairman, Section 301 Committee.

[FR Doc. 89-1908 Filed 1-25-89; 8:45 am]

BILLING CODE 3190-01-M

Trade Policy Staff Committee; Public Comments on U.S. Negotiations With the Government of Bolivia in the Context of the Accession of Bolivia to the General Agreement on Tariffs and Trade (GATT)

SUMMARY: Notice is hereby given that the Trade Policy Staff Committee (TPSC) is requesting written public comments on Bolivia's announced intention to accede to the GATT and on the bilateral negotiations that will accompany Bolivian accession. Comments received will be considered by the Executive Branch in developing the U.S. position and objectives for GATT examination of Bolivian accession and for the bilateral negotiations concerning the terms of its accession to the General Agreement.

1. Written Comments

The Chairwoman of the Trade Policy Staff Committee invites written public comments on the issues that will be addressed in the course of examination by the Contracting Parties to the GATT of the request by Bolivia for accession and during bilateral negotiations in the context of Bolivian accession to the GATT addressing the terms of its accession, including tariff concessions. The Committee is particularly interested in views on the impact of U.S. trade of Bolivian accession to the GATT, on specific bilateral issues covered by the provisions of the General Agreement that should be addressed in the accession negotiations, on items of specific interest to U.S. exporters to Bolivia and on the experiences of U.S. firms in trading with Bolivia.

All comments will be considered by the Executive Branch in developing the U.S. position and objectives for GATT examination of Bolivian accession and for bilateral negotiations concerning both the substantive terms of Bolivian accession and the establishment of a GATT schedule of tariff concessions.

Persons wishing to submit written comments should provide a statement, in twenty copies, by noon, Friday, February 10, 1989, to Carolyn Frank, TPSC Secretary, Office of the U.S. Trade Representative, Room 523, 600 17th Street NW., Washington, DC 20506.

2. Background

On October 7, 1989, the GATT Contracting Parties received Bolivia's request to accede to the General Agreement pursuant to Article XXXIII. A Working Party to examine this request, composed of interested GATT members was established. The Working Party will consider the application of Bolivia for full accession, examine its foreign trade regime, and submit to the GATT Council recommendations that may include a draft Protocol of Accession.

The Protocol of Accession that Bolivia negotiates with the Contracting Parties will set forth the agreed terms of Bolivia's GATT membership, including the relationship of its foreign trade regime to the Articles of the General Agreement. Aspects of a country's foreign trade regime that are normally examined in such negotiations include: licensing requirements, quantitative trade restrictions, subsidy practices, nontariff charges and taxes, customs valuation and classification procedures, and state trading practices and monopolies. In addition, as part of the accession process, Bolivia will also conduct bilateral negotiations with interested GATT members to formulate a schedule of tariff concessions that will become part of its Protocol of Accession. These concessions will consist of Bolivia's agreement to bind the tariffs applied to certain imports, restricting its ability to increase the tariff rate applied to those items without offering appropriate compensatory tariff concessions on other items.

The advantages to Bolivia of GATT membership are several. As a GATT member, Bolivia will enjoy a multilateral guarantee of unconditional most favored nation treatment from all other GATT contracting parties that is more comprehensive than that available through bilateral agreements. The bindings on tariffs maintained in the tariff schedules of other GATT contracting parties will be extended to Bolivian imports as obligations under the GATT, and Bolivia will enjoy the injury test on duty free trade involved in U.S. countervailing duty investigations. Bolivia will also have recourse to GATT procedures to protect itself from unfair or unreasonable trade actions by its trading partners. Through the dispute settlement provisions in the General Agreement, member countries are able to utilize a multilateral forum, largely independent of the political pressures influencing bilateral relationships, to resolve disputes. As an applicant for GATT contracting party status, Bolivia will also have the opportunity to participate in all aspects of the Uruguay Round of Multilateral Negotiations.

In return for these benefits, Bolivia will be expected to conduct its trade policies in accordance with the rules set out in the General Agreement and to establish its own schedule of tariff concessions.

3. Additional Information

Any questions with regard to the proposed accession of Bolivia to the GATT should be directed either to Cecilia Leahy Klein, Director for GATT Affairs (telephone: 202-395-3063), or Betsy Stillman, Director, Andean, African, and Least Developed Country Affairs (telephone: 202-395-5190), Office of the U.S. Trade Representative, 600 17th Street NW., Washington, DC 20506.

Sandra J. Kristoff,

Chairwoman, Trade Policy Staff Committee.

[FR Doc. 89-1976 Filed 1-26-89; 8:45 am]

BILLING CODE 3190-01-M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Northwest Conservation and Electric Power Plan 1988 Supplement

AGENCY: Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of extended consultation period.

SUMMARY: On December 7, 1988, the Council published a notice of hearings and deadline for written comment (53 FR 49369) on the 1988 Supplement, which, if adopted, will amend the 1986 Power Plan. The Council has determined, however, that there may be a need to schedule further consultations to clarify some of the underlying data that pertains to the Draft Supplement. Therefore, this document is to give you notice that the Council and its staff may initiate consultations to clarify written comments received during the public comment period on the 1988 Supplement until such time as the Council takes final action by adopting this amendment.

FOR FURTHER INFORMATION: Contact Bess Wong at 851 S.W. Sixth Avenue, Suite 1100, Portland, Oregon, 97204, or at (503) 222-5161, toll free 1-800-222-3355 in Idaho, Montana, and Washington or 1-800-452-2324 in Oregon.

Edward Sheets,

Executive Director.

[FR Doc. 89-1691 Filed 1-26-89; 8:45 am]

BILLING CODE 6820-BB-M

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Incorporated

January 23, 1989.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

Blackstone Target Term Trust, Inc.
Common Stock, $0.01 Par Value (File No. 7-4172)
Texas Air Corporation
6¾ Cum. Conv. Junior Pfd. Stock (File No. 7-4173)
Texas Air Corporation
6.50% Depositary Preferred Stock (File No. 7-4174)
Texas Air Corporation
12% Depositary Preferred Stock (File No. 7-4175)
Borden Chemicals & Plastics, L.P.
Depositary Units (File No. 7-4176)
EMC Corporation
Common Stock, $0.01 Par Value (File No. 7-4177)
Nuveen Premium Income Municipal Fund, Inc.
Common Stock, $0.01 Par Value (File No. 7-4178)
Sotheby's Holdings Inc.
Class A Common Stock, $0.01 Par Value (File No. 7-4179)
Southern Union Company
Common Stock, $1 Par Value (File No. 7-4180)
Sovran Financial Corporation
Common Stock, $5 Par Value (File No. 7-4181)
Anthem Electronics, Inc.
Common Stock, No Par Value (File No. 7-4182)
Timberland Company
Common Stock, $0.01 Par Value (File No. 7-4183)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before February 13, 1989, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-1972 Filed 1-26-89; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of reporting requirements submitted for review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATE: Comments should be submitted within 30 days of this publication in the **Federal Register**. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

Copies: Request for clearance (S.F. 83), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer: William Cline, Small Business Administration, 1441 L Street NW., Room 200, Washington, DC 20416, Telephone: (202) 653-8538

OMB Reviewer: Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Telephone: (202) 395-7340

Title: Certified Development Company Survey.

Form Number: SBA Form 1640.

Frequency: One time.

Description of Respondents: All development companies currently certified by SBA.

Annual Responses: 460.

Annual Burden Hours: 460.

Elizabeth Zaic,

Deputy Director, Office of Administrative Services.

Certified Development Company (CDC) Funding Source Survey

CDC Name: _____
CDC Certification No.: _____
Contact Name: _____
Phone No.: _____
Number of CDC employees (or full time equivalents:) ____
Address (correction only):

Public Law 100-590 requires SBA to prepare a report on the sources of funding used by CDCs. In order to collect the required information, this survey is split into 3 parts, each with its own specific instructions. Please read all instructions carefully as there are differences. All questions relate only to the legal entity that was certified by SBA. It does not relate to affiliates.

PART I. FUNDS USED TO DEFRAY OPERATING EXPENSES

Instructions: This portion of the survey focuses on the source(s) of funds a CDC has budgeted or projected to defray the administrative expenses of the CDC (i.e. not funds used for lending). The numbers provided should be for the *current* fiscal year.

CDC's current operating budget year (e.g. January 1, 1988–December 31, 1988): ____

The first column lists common sources with spaces provided to specify various components. It is necessary to segregate amounts from the same source if they have different restrictions. Use an attachment if additional space is needed.

The second column should be completed with the dollar amount received from the source (round to the nearest $1000). If no funds were received from a given source, indicate by "-0-", "none", or "N/A".

The third column, "%", requires calculation of the percentage of the total operating budget represented by each line item.

The fourth column, "Expiration date", should be filled out when funds are provided pursuant to a contract, memo of understanding, etc. Provide the month and year of expiration of the contract.

The fifth column requires a narrative description of any and all restrictions placed on funds by the provider of those funds. Use attachments if required. If any of the sources require that income related to their funds be returned to them, include that under "Restrictions".

CDC Survey: Part I

Sources	Amount	Percent	Expiration date	Restrictions
Federal Government				
I.A. Small Business Administration				
1. Title V (502/503/504 Fees)	$			xxxxxxxxxx
2. 7(a) (Packaging Fees)				xxxxxxxxxx
3. Other				xxxxxxxxxx
I.B. Housing and Urban Development				
1. CDBG				
New funds				
Repayment Receipts				
2. UDAG				
New funds				
Repayment Receipts				
3. Other (list)				
I.C. Economic Development Administration				
New funds				
Repayment Receipts				
I.D. Farmers Home Administration				
I.E. Other Federal Agencies (list)				
I.F. State Government (list)				
I.G. Local Government (e.g. COGs, etc.)				
I.H. Charitable/Non-profit organizations (list)				
I.J. Chamber of Commerce				
For-profit organizations (list)				
I.K. Other (list)				
Total		100		

Part II. Funds Used To Provide Financing

Instructions:

This portion of the survey focuses on the funds or financing a CDC receives or arranges that were used for direct assistance to borrowers or other recipients. The numbers provided should be as of the end of the *most recently completed* fiscal year.

Inclusive dates of fiscal year used to complete this Part. (e.g. January 1, 1988-December 31, 1988):

The first column lists common sources with spaces provided to specify various components. It is necessary to segregate amounts from the same source if they have different restrictions. Use an attachment if additional spacer is required.

The second column should contain the dollar amount received from the sources (round to the nearest $1000). If no funds were received from a given source indicate by "-0-", "none", or "N/A".

The third column, "%", requires calculation of the percentage of the year's total revenue represented by each line item.

The fourth column, "Expiration date", should be filled out when funds are provided pursuant to a contract, memo of understanding, etc. Provide the month and year of expiration of the contract.

The fifth column requires a narrative description of any and all restrictions placed on funds by the provider of those funds. Use attachments if required. If any of the sources require that income related to their funds be returned to them, include that under "Restrictions".

Sources	Amount	Percent	Expiration date	Restrictions
Federal Government				
I.A. Small Business Administration				
1. Title V (502/503/504 Fees)	$			xxxxxxxxxx
2. 7(a) (Packaging Fees)				xxxxxxxxxx
3. Other				xxxxxxxxxx
I.B Housing and Urban Development				
1. CDBG				
New funds				
Repayment Receipts				
2. UDAG				
New funds				
Repayment Receipts				
3. Other (list)				
I.C. Economic Development Administration				
New funds				
Repayment Receipts				
I.D. Farmers Home Administration				
I.E. Other Federal Agencies (list)				
I.F. State Government (list)				
I.G. Local Government (e.g. COGs, etc.) (list)				
I.H. Charitable/Non-profit organizations (list)				
I.J. Chamber of Commerce				
For-profit organizations (list)				
I.K. Other (list)				
Total		100		

III. Assistance Provided

Instructions: Provide information on all financings completed during the most recently ended fiscal year (identified in Part II above) and estimate your activity for the current fiscal year. If your projected activity for the current year is significantly greater or less than your actual activity for last year, please identify the line item at the end of this section and indicate the reason. Use an additional sheet if necessary.

Type	Last Fiscal Year		Current Year Estimate	
	Number	Amount	Number	Amount
III.A. Small Business Administration				
1. 502/504 approvals		$		$

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Type	Last Fiscal Year		Current Year Estimate	
	Number	Amount	Number	Amount
II. 7(a) approvals				
II.B. Economic Development Administration Revolving Loan Fund				
II.C. Other Revolving Loan Funds (List)				
II.D. Grants (List)				
II.E. Equity Injections (List)				
II.F. Other (List)				
Total				

[FR Doc. 89-1944 Filed 1-26-89; 8:45 am]
BILLING CODE 8025-01-M

Region IX Advisory Council meeting

The U.S. Small Business Administration Region IX Advisory Council, located in the geographical area of San Francisco, will hold a public meeting at 10:00 a.m. on Friday, February 3, 1989, 211 Main Street—5th Floor—Conference Room 543, San Francisco, California, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Office of District Director, U.S. Small Business Administration, 211 Main Street—4th Floor, San Francisco, California 94105, 415/974-0642.

Jeanette M. Faull,
Acting Director, Office of Advisory Councils.
January 23, 1989.

[FR Doc. 89-1894 Filed 1-26-89; 8:45 am]
BILLING CODE 8025-01-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Department Circular—Public Debt Series—No. 2-89]

Treasury Notes of January 31, 1991, Series V-1991

Washington, January 19, 1989.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $9,250,000,000 of United States securities, designated Treasury Notes of January 31, 1991, Series V-1991 (CUSIP No. 912827 XC 1), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Government accounts and Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Notes will be dated January 31, 1989, and will accrue interest from that date, payable on a semiannual basis on July 31, 1989, and each subsequent 6 months on January 31 and July 31 through the date that the principal becomes payable. They will mature January 31, 1991, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will be issued only in book-entry form in denominations of $5,000, $10,000, $100,000, and $1,000,000, and in multiples of those amounts. They will not be issued in registered definitive or in bearer form.

2.5. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR Part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the TREASURY DIRECT Book-Entry Securities System in 51 FR 18260, *et seq.* (May 16, 1986), apply to the Notes offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239-1500, prior to 1:00 p.m., Eastern Standard time, Wednesday, January 25, 1989. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Tuesday, January 24, 1989, and received no later than Tuesday, January 31, 1989.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $5,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tender are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 99.500. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders receive from Government accounts and Federal Reserve Bank will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations.

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public debt, whenever the tender was submitted. Settlement of Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in Section 3.5. must be made or completed on or before Tuesday, January 31, 1989. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Friday, January 27, 1989. In addition, Treasury Tax and Loan Note Option Depositaries may make payment for the Notes allotted for their own accounts and for accounts of customers by credit to their Treasury Tax and Loan Note Accounts on or before Tuesday, January 31, 1989. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in TREASURY DIRECT are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the note being purchased. In any such case, the tender form used to place the Notes allotted in TREASURY DIRECT must be completed to show all the information required thereon, or the TREASURY DIRECT account number previously obtained.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may, at any time, supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public

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announcement of such changes will be promptly provided.

9.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

Gerald Murphy,
Fiscal Assistant Secretary.

[FR Doc. 89-2064 Filed 1-25-89; 8:45 am]
BILLING CODE 4810-40-M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 17
Friday, January 27, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 53 FR 52575.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 11:30 a.m., January 27, 1989.

CHANGE IN THE MEETING: The closed Commission meeting scheduled to discuss Enforcement Matters has been cancelled.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, Secretary of the Commission.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 89-2044 Filed 1-25-89; 1:27 p.m.]
BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 53 FR 52575.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10:00 a.m., January 31, 1989.

CHANGE IN THE MEETING: The Commission has cancelled the open meeting previously scheduled to discuss applications for designations as contract markets for:

Japanese Yen Euro-Rate Differential Futures/Chicago Mercantile Exchange
Deutsche Mark Euro-Rate Differential Futures/Chicago Mercantile Exchange
Pound Sterling Euro-Rate Differential Futures/Chicago Mercantile Exchange

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, Secretary of the Commission.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 89-2045 Filed 1-25-89; 1:27 pm]
BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, February 2, 1989.

PLACE: 2033 K St., NW., Washington, DC, 5th Floor Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED: Proposed amendments of the Chicago Mercantile Exchange relating to the implementation of the Globex Trading System.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 89-2046 Filed 1-25-89; 1:27 pm]
BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, February 3, 1989.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 89-2047 Filed 1-25-89; 1:25 pm]
BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, February 10, 1989.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 89-2048 Filed 1-25-89; 1:28 pm]
BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, February 17, 1989.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 89-2049 Filed 1-25-89; 1:28 pm]
BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, February 24, 1989.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 89-2050 Filed 1-25-89; 1:28 pm]
BILLING CODE 6351-01-M

NATIONAL COUNCIL ON THE HANDICAPPED

Quarterly Meeting

AGENCY: National Council on Disability.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Council on Disability. This notice also describes the functions of the Council. Notice of this meeting is required under section 522(b)(10) of the "Government in Sunshine Act" (Pub. L. 94-409).

DATES:

Feb. 6, 1989, 9:00 a.m. to 4:30 p.m.
Feb. 7, 1989, 9:00 a.m. to 4:30 p.m.
Feb. 8, 1989, 8:30 a.m. to 4:30 p.m.
Feb. 9, 1989, 9:00 a.m. to 12:00 noon

LOCATION: Cathedral Hill Hotel, San Francisco, California.

FOR FURTHER INFORMATION CONTACT: National Council on Disability, 800 Independence Avenue, SW., Suite 814, Washington, DC 20591, (202) 267-3846, TDD: (202) 267-3232.

The National Council on Disability is an independent Federal agency comprised of 15 members appointed by the President of the United States and confirmed by the Senate. Established by the 95th Congress in Title VI of the Rehabilitation Act of 1973 (as amended by Pub. L. No. 95-602 in 1978), the Council was initially an advisory board within the Department of Education. In 1984, however, the Council was transformed into an independent agency by the Rehabilitation Act Amendments of 1984 (Pub. L. No. 98-221).

The Council is charged with reviewing all laws, programs, and policies of the Federal Government affecting disabled individuals and making such

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recommendations as it deems necessary to the President, the Congress, the Secretary of the Department of Education, the Commissioner of the Rehabilitation Services Administration, and the Director of the National Institute on Disability and Rehabilitation Research (NIDRR).

The meeting of the Council shall be open to the Public. The proposed agenda includes:

Report from the Chairperson and Executive Committee
Presentation on the Institute of Medicine Study on Prevention of Disability by Dr. Andrew Pope, Project Director
Update on the Family Conference—Dr. George Elias, Program Chairman
Status Report on the Living Arrangements for Severely Disabled Children and Youth Study—by Dr. Thomas Becker
Committee Meetings
Personal Assistance
Education Committee
Employment Committee
Prevention Committee
Technology Committee
NIDRR Committee
Communications Committee
Family Conference Committee
Forum On The Americans With Disabilities Act cosponsored by the California Foundation for Independent Living Centers
Roundtable Discussion on Americans With Disabilities Act
Long Term Care Forum—cosponsored by the ILRC San Francisco and the Mayor's Council on Disabilities.
Strategy Session on The Americans With Disabilities Act
Discussion of Unfinished and New Business

Records shall be kept of all Council proceedings and shall be available after the meeting for public inspection at the National Council on Disability.

Signed at Washington, DC on January 19, 1989.

Paul G. Hearne,
Executive Director.

[FR Doc. 89-2010 Filed 1-25-89; 10:48 am]
BILLING CODE 6820-MA-M

NUCLEAR REGULATORY COMMISSION

DATE: Friday, February 10, 1989.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Friday, February 10

2:00 p.m.
Oral Argument on Sanction Issue in Shoreham Proceedings (Public Meeting)

Note.—Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING): (301) 492-0292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 492-1661.

William M. Hill, Jr.,
Office of the Secretary.
January 25, 1989.

[FR Doc. 89-2060 Filed 1-25-89; 2:54 pm]
BILLING CODE 7590-01-M

PAROLE COMMISSION

(Department of Justice)

DATE AND TIME: Tuesday, February 7, 1989, 2:00 a.m., eastern standard time.

PLACE: 5550 Friendship Boulevard, Chevy Chase, Maryland 20815.

STATUS: Open—Meeting.

MATTERS TO BE CONSIDERED: The following matters have been placed on the agenda for the open Parole Commission meeting:

1. Adoption of minutes of previous Commission meeting.
2. Reports from the Chairman, Vice Chairman, Commissioners, Legal, Case Operations, and Administrative Section.
3. Consideration of establishment of National Home Detention/Community Sanction Program. (Discussion Only)
4. Consideration of adding cocaine addiction to Item F of salient factor score. (Discussion Only)
5. Consideration of amendments to the Commission manual as a result of the Anti Drug Abuse Act of 1988.
6. Proposal to modify the language regarding Special Curfew Parole Program in the Commission manual.
7. Consideration of regional handling of correspondence from members of Congress and other high officials.
8. Proposal to advise parolees of swift and certain sanctions for use of illegal drugs.
9. Consideration of whether bows and arrows in the possession of parolees are "dangerous weapons" as defined in 28 CFR 2.40(a)(11).
10. Consideration of the adoption of a policy that the Commission would not rely upon immunized, self-incriminating testimony in parole release or revocation decisions.
11. Proposal for modification of 28 CFR 2.44(b) to reflect that the Commission may place a warrant as a detainer against a parolee in pre-trial custody.
12. Consideration of the adoption of proposed rule changing "arson" to "fire" in 28 CFR 2.20, Chapter 3, section 301.
13. Discussion of American Correction Association Accreditation.

AGENCY CONTACT: Linda Wines Marble, Director, Case Operations and Program Development, United States Parole Commission (301) 492-5052.

Date: January 25, 1989.

Michael A. Stover,
General Counsel, U.S. Parole Commission.

[FR Doc. 89-2043 Filed 1-25-89; 8:45 am]
BILLING CODE 4410-01-M

POSTAL SERVICE

Board of Governors; Meeting

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 CFR 7.5) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice that it intends to hold a meeting at 8:30 a.m. on Tuesday, February 7, 1989, in Conference Room 102–B at the U.S. Postal Service Miami Field Division, 2200 Northwest 72nd Avenue, Miami, Florida 33152–9996. The meeting is open to the public. The Board expects to discuss the matters stated in the agenda which is set forth below. Requests for information about the meeting should be addressed to the Secretary of the Board, David F. Harris, at (202) 268–4800.

There will also be a session of the Board on Monday, February 6, 1989, but it will consist entirely of briefings and is not open to the public.

Agenda

Tuesday Session

February 7, 8:30 a.m. (Open)

1. Minutes of the Previous Meeting, January 9–10, 1989.
2. Remarks of the Postmaster General.
3. Officer Compensation. (Anthony M. Frank, Postmaster General)
4. Consideration of Board Resolution Establishing Special Committee on Personnel Practices. (Robert Setrakian, Chairman, Board of Governors)
5. Appointment of Committee Members. (Mr. Setrakian)
6. Consideration of Postal Rate Commission Opinion and Recommended Decision in Docket No. C87–2 (Complaint of American Newspaper Publishers Association). (Louis A. Cox, General Counsel)
7. Quarterly Report on National Service Performance. (Ann McK. Robinson, Consumer Advocate)
8. Quarterly Report on Financial Performance. (Comer S. Coppie, Senior Assistant Postmaster General, Finance Group)
9. Report on Affirmative Action Programs in the Miami Division. (Woodrow Conner, Miami Field Division General Manager/Postmaster)
10. Tentative Agenda for March 6–7, 1989, meeting in Washington, DC.

David F. Harris,
Secretary.

[FR Doc. 89-1981 Filed 1-24-89; 5:08 pm]
BILLING CODE 7710-12-M

Corrections

Federal Register
Vol. 54, No. 17
Friday, January 27, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

7 CFR Part 800

Shiplot Inspection Plan (Cu-Sum)

Correction

In proposed rule document 89-1194 beginning on page 3050 in the issue of Monday, January 23, 1989, make the following corrections:

1. On page 3055, in the 3rd column, under **Optional Component Sample Inspections**, in the 15th line, after "them" insert "as a".

2. On page 3056, in the third column, under **Summary**, in the fifth line, "probability that interior" should read "probability that inferior".

§ 800.86 [Corrected]

3. On page 3060, in § 800.86(c)(2), in table 15, after the heading "Heat-damaged (percent)" insert "[2]"; and after the heading "Total (percent)" insert "[2]".

4. On page 3061, in § 800.86(c)(2), in table 19, directly above the headings "Heat-damaged (percent)" and "Total (percent)" insert a heading which reads "Damaged Sunflower Seed".

5. On the same page, in § 800.86(c)(2), in table 21, directly above the headings "Heat-damaged (percent)" and "Total [1] (percent)" insert a heading which reads "Damaged kernels".

6. On the same page, in § 800.86(c)(2), in the same table, directly above the headings "Material other than wheat or rye (percent)" and "Total [2] (percent)" insert a heading which reads "Foreign material".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 5E3160/P457; FRL-3477-5]

Pesticide Tolerances for Dimethyl Tetrachloroterephthalate

Correction

In proposed rule document 88-28428 beginning on page 46098 in the issue of Wednesday, November 16, 1988, make the following correction:

§ 180.185 [Corrected]

On page 46099, in the second column, in § 180.185(a), in the table, under "Commodities", "(code)" should read "(cole)".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 7E3555/P445; FRL-3500-8]

Pesticide Tolerance for Thiophanate-Methyl

Correction

In proposed rule document 88-30084 beginning on page 53018 in the issue of Friday, December 30, 1988, make the following corrections:

1. On page 53018, in the first column, in the heading, the docket line should read as set forth above.

2. On the same page, in the third column, in the paragraph designated "3", in the eighth line, after the word "equivalent", "1" should read "to".

3. On page 53019, in the 1st column, in the 2nd complete paragraph, in the 18th line, "rates" should read "rats"; and in the 21st line, "of" should read "or".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 712 and 716

[OPTS-84029; FRL-3476-3]

Preliminary Assessment Information and Health and Safety Data Reporting; Addition of Chemicals

Correction

In rule document 88-26305 beginning on page 46279 in the issue of Wednesday, November 16, 1988, make the following correction:

On page 46279, in the third column, in the last line, "disphosphate" should read "diphosphate".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 799

[OPTS-42092A; FRL-3503-7]

Testing Consent Order on Alkyl Phthalates

Correction

In rule document 89-299 beginning on page 618 in the issue of Monday, January 9, 1989, make the following corrections:

1. On page 620, in the first column, under **V. Export Notification**, in the third line, after "DnBP," insert "DHP,".

2. On the same page, in the 3rd column, in reference (10), in the 11th line, "pp. 100-191" should read "pp. 180-191".

BILLING CODE 1505-01-D

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federal register

Friday
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Part II

Environmental Protection Agency

40 CFR Part 35

Cooperative Agreements and Superfund State Contracts for Superfund Response Actions; Interim Final Rule With Request for Comments

BEST COPY AVAILABLE

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ENVIRONMENTAL PROTECTION AGENCY

Office of Administration

40 CFR Part 35

[FRL-3429-6]

Cooperative Agreements and Superfund State Contracts for Superfund Response Actions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final rule with request for comments.

SUMMARY: This rule establishes the administrative requirements for CERCLA-funded cooperative agreements, and Superfund State Contracts. The rule establishes these requirements for States, political subdivisions thereof, and Federally-recognized Indian tribes. This regulation sets forth the pre-award, post-award, and after-the-grant requirements which are conditions for receiving a Superfund cooperative agreement or Superfund State Contract. This regulation is needed to implement CERCLA cost recovery requirements and ensure that recipients carefully track and document all costs.

DATES: *Effective Date:* This rule becomes effective January 27, 1989.

Compliance Date: This rule is effective for all CERCLA-funded cooperative agreements and Superfund State Contracts awarded after January 27, 1989. This rule also applies to amendments to existing agreements where the scope of work starts after the effective date of this rule.

Comments: Written comments must be submitted on or before April 27, 1989.

ADDRESSES: Written comments must be submitted to: Superfund Docket Clerk, Office of Emergency and Remedial Response (WH-548D), Room LG-100, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Comments on today's Interim Final Rule must identify the regulatory docket as follows: "Docket 104CA." Docket: Copies of materials relevant to this rulemaking are contained in the Superfund docket located in the Lower Garage (Room LG-100) at the U.S. Environmental Protection Agency, 401 M Street SW., Washington DC 20460. The docket is available for inspection by appointment only between the hours of 9:00 a.m. and 4:00 p.m. Monday through Friday, excluding Federal holidays. The docket phone number is (202) 382-3046. As provided in 40 CFR Part 2, a reasonable fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT: Richard A. Johnson, Office of Administration, PM-216F, U.S. Environmental Protection Agency, 499 South Capitol Street SW., Washington, DC 20460 at (202) 382-5296.

SUPPLEMENTARY INFORMATION: The contents of this preamble are as follows:

I. Background;
II. Description of Major Issues;
III. Supporting Information; and
IV. Impact Analyses.

I. Background

The Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) was enacted in 1980 and launched the nation's first centralized and substantial commitment to clean up hazardous waste sites. CERCLA, or Superfund, provided Federal authority and resources to respond directly to releases (or threatened releases) of hazardous substances that could endanger human health or the environment. The law also authorized enforcement action and cost recovery from those responsible for a release. The Superfund Amendments and Reauthorization Act (SARA) was enacted on October 17, 1986 and continued the program initiated by CERCLA by reauthorizing CERCLA for an additional five years. SARA strengthened and expanded the cleanup program and increased the size of the Hazardous Substance Superfund by $8.5 billion.

One of the vehicles EPA uses to conduct Superfund cleanup responses is a cooperative agreement, through which EPA authorizes recipients to perform the lead role for cleanup activities. Superfund cooperative agreements are unique among EPA cooperative agreements; the major difference is the cost recovery requirement. To expedite the process of recovering costs from parties responsible for a release, the Superfund program mandates site-specific tracking of costs incurred under cooperative agreements and maintenance of site-specific files to document such costs.

The Office of Management and Budget (OMB) recently revised OMB Circular A-102 by establishing a government-wide "common rule" which prescribes administrative requirements for Federal assistance awards to States, political subdivisions thereof, and Federally-recognized Indian Tribes. EPA is implementing the common rule through 40 CFR Part 31. However, as provided in 40 CFR 31.5, Part 31 does not supersede administrative provisions required by statute.

Consistent with this Part 31 exception, EPA is promulgating this interim final rule as 40 CFR Part 35, Subpart O to implement the cost recovery program under section 107 of CERCLA, as amended. Section 107 of CERCLA makes any person responsible for a release or threatened release of hazardous substances liable for all costs of removal or remedial action. EPA implements this statutory provision through its cost recovery program. To ensure an effective cost recovery program, Subpart O establishes specific uniform requirements which supplement those in Part 31 for Superfund cooperative agreements and Superfund State contracts (SSC's) in three ways.

The first way in which this subpart supplements Part 31 is that it provides requirements specific to CERCLA, as amended, which were not addressed in Part 31. For example, the regulation adds requirements for States to follow for non- State-lead responses. Second, this subpart includes requirements which, although addressed in Part 31, do not meet the minimum standards necessary to meet the goal of cost recovery. These minimum requirements have been included in this subpart in a modified form. For example, although Part 31 does address procurement procedures, recipients must follow the procurement requirements in § 35.6550 through § 35.6610 of this subpart when procuring products or services under Superfund cooperative agreements. Finally, this subpart references those existing 40 CFR Part 31 requirements which are applicable for recipients of CERCLA funds. For example, recipients must follow the allowable cost requirements contained in 40 CFR 31.22, which are referenced in § 35.6250(a)(2) of this subpart.

Those sections of Part 31 that Subpart O references which are applicable for CERCLA funded cooperative agreements and/or Superfund State Contracts are listed below:

- 31.3 Definitions.
- 31.6 Additions and exceptions: selected sections.
- 31.13 Principal statutory provisions applicable to EPA assistance awards.
- 31.20 Standards for financial management systems: source documentation and awarding agency review.
- 31.21 Payment: Basic standard, reimbursement, effect of program income, refunds, audit recoveries on payment, withholding payments, and cash depositories.
- 31.22 Allowable costs.
- 31.23 Period of availability of funds.
- 31.24 Matching or cost sharing: qualifications and exceptions, and valuation of donated services.
- 31.25 Program income.
- 31.26 Non-Federal audit.

- 31.30 Changes.
- 31.31 Real property.
- 31.34 Copyrights.
- 31.35 Subawards to debarred and suspended parties.
- 31.36 Procurement: Selected sections from procurement standards, contracting with MBE's/WBE's and small businesses, bonding requirements, and payment to consultants.
- 31.40 Monitoring by grantees.
- 31.41 Financial reporting.
- 31.42 Starting dates for records retention period and requirements for records access.
- 31.43 Enforcement.
- 31.44 Termination for convenience.
- 31.45 Quality assurance.
- 31.50 Closeout.
- 31.51 Labor disallowances and adjustments.
- 31.52 Collection of amounts due.
- 31.70 Disputes.

The requirements in this subpart do not apply to Technical Assistance Grants or CERCLA research and development grants, including Superfund Innovative Technology Evaluation (SITE) Demonstration cooperative agreements.

II. Description of Major Issues

A. The National Oil and Hazardous Substances Pollution Contingency Plan (NCP)

Although CERCLA, as amended, is the legislative initiative that provides for the cleanup of hazardous waste, the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) describes the guidelines and procedures for implementing CERCLA. The NCP is currently being revised to include the statutory requirements established by SARA. Subpart O references specific sections of CERCLA, as amended, in prescribing requirements. Upon final promulgation of the revised NCP, any terms defined in both this regulation and the NCP will be superseded by the definition found in the NCP.

B. Records Retention

Length of Retention

40 CFR Part 31 establishes a three-year records retention requirement for the recipients of assistance agreements (40 CFR 31.42). In addition, Part 31 specifies that if any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the three-year period, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular three-year period, whichever is later. Subpart O requires that recipients retain all records for ten years after the date of completion of all response actions at the site, or until any litigation, claim, negotiation, audit, cost recovery, or other action involving the records has been completed and all issues resolved, whichever is later. This requirement ensures that response action information remains available for a sufficient period to support government cost recovery cases. The ten-year requirement supersedes all Superfund guidance documents which specify a three-year retention period, including *State Superfund Financial Management and Recordkeeping Guidance*, dated January 1988. Subpart O also requires the recipient to obtain written approval from its EPA award official before disposing of any CERCLA records.

Method of Retention

Recipients may substitute microform copies for original supporting documentation for removal actions and remedial investigations, feasibility studies, designs, and any additional related activities (including financial and cost accounting records) undertaken pursuant to CERCLA. The microform copying must be performed in accordance with the technical regulations concerning micrographics of Federal Government records (36 CFR 1230 et seq.) and EPA records management procedures (EPA Order 2160). If the recipient decides to use microform copies, then the recipient must also perform microform copying of original documents periodically in the regular course of business, and may dispose of these records only upon EPA approval. Subpart O requires the recipient to obtain written approval from EPA before disposing of the original records which were used to make the microform copy. Records retention requirements specified in this subpart are applicable to mircoform.

C. Purchase of Property

Although Subpart O provides the recipient with an option for obtaining equipment with CERCLA funds, it is not EPA's intent to use the Hazardous Substance Superfund to finance large purchases of equipment indiscriminantly. Therefore, the recipient must meet stringent requirements before EPA will allow the purchase of equipment with CERCLA funds. EPA encourages the recipient to use its own funds to purchase equipment, and charge the cooperative agreement for its use. Although EPA must approve this usage rate, the recipient does not then have to comply with the other property standards or disposition requirements of this regulation, if the recipient buys the equipment with its own funds.

D. Superfund State Contracts (SSC's)

There are two types of Superfund State Contracts (SSC's). The first is a two-party SSC between EPA and the State which is required pursuant to CERCLA section 104 to obtain the State's CERCLA 104 assurances before a Federal-lead remedial action can begin. The second type of SSC is a three-party SSC between EPA, the State, and a political subdivision thereof, which is required before a political subdivision receives a cooperative agreement for remedial response at a site. In this instance, a three-party SSC is required before a political subdivision takes the lead for any phase of remedial response to ensure adequate State involvement during remedial response pursuant to section 121(f)(1) of CERCLA. Prior to a political subdivision taking the lead for remedial action, the three-party SSC must be amended to include the State's CERCLA 104 assurances, if not already provided in the SSC.

E. Non Site-Specific Cost Accounting

The recipient of CERCLA funds is required to account for costs on a site-specific basis by phase of activity. The recipient is not required to track expenses by site for pre-remedial or Core Program cooperative agreement activities. However, for pre-remedial activities (i.e. Preliminary Assessments and Site Inspections), the recipient is required to track expenses by a single Superfund account number designated specifically for the pre-remedial activity. In addition, the recipient is required to track site-specific technical hours spent for the pre-remedial activity. For Core Program activities, the recipient is required to track expenses by a single Superfund account number designated specifically for Core Program activities.

F. Credit for NPL sites

This regulation addresses requirements for obtaining credit in § 35.6270(c), which describes the requirements for expenditures incurred before a site is listed on the NPL and for those incurred after a site is listed on the NPL. Section 104(c)(5)(A) of CERCLA, as amended, grants credit for amounts expended by a State for remedial action at a NPL site pursuant to a contract or cooperative agreement. In addition, section 104(c)(5)(B) allows credit for expenses for remedial action at a site incurred before the site is listed on the NPL if the site is subsequently listed on the NPL, and the expenses are determined to be creditable.

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G. Federally-recognized Indian Tribes

CERCLA requires EPA to afford to Federally-recognized Indian Tribes substantially the same treatment as it would to States. However, in order to clarify the Superfund administrative requirements, the term "State" in this regulation does not mean "Federally-recognized Indian Tribe." Where a requirement applies only to a State, the term "State" is used, and where a requirement applies only to a Federally-recognized Indian Tribe, the term "Federally-recognized Indian Tribe" is used.

A Federally-recognized Indian Tribe may be the lead or support agency for a response and, under the terms of the statute, need not provide the section 104(c)(3) assurances with regard to remedial actions.

H. Financial Status Report

Although the Financial Status Report form (SF-269) does not request information by site and activity, the recipient must continue to provide financial information by site and activity in order to support cost recovery.

I. Support Agency Cooperative Agreements

Under the Superfund program, States and Federally-recognized Indian Tribes may receive funding to perform site-specific activities to support a Federal-lead response. Since the State or Federally-recognized Indian Tribe performs these activities as the support agency, the cooperative agreement which funds this assistance is termed a support agency cooperative agreement. This regulation codifies the requirements for recipients of support agency cooperative agreements in § 35.6000 through 35.6020 of this subpart. An example of support agency activities that may be funded under a cooperative agreement is the review and comment on technical data and reports relating to implementation of the remedy.

J. Non-Time-Critical Removals

Because there must be sufficient time to complete a cooperative agreement before a State or Federally-recognized Indian Tribe may take the lead, generally only non-time-critical removal actions will be eligible for cooperative agreements. Non-time-critical removals are those where, based on the site evaluation, the lead agency determines that a removal action is appropriate and that there is a planning period of more than six months available before on-site activities must begin.

K. Twenty-Year Waste Capacity

The regulation includes the assurance regarding availability of hazardous waste treatment and disposal facilities as required by CERCLA section 104(c)(9). EPA intends to issue guidance on this assurance in the near future.

III. Supporting Information

List of Subjects in 40 CFR Part 35

Accounting, Administrative practice and procedures, Financial administration, Grant programs (Cooperative agreements and Superfund State Contracts), Government procurement requirements, Property requirements, Reporting and recordkeeping requirements, Superfund.

IV. Impact Analyses

A. Federalism

As explained in E.O.12612, Federalism, States possess unique constitutional authority, resources, and competence. Under Federalism, States should be given the maximum administrative discretion possible with respect to national programs they administer. However, due to statutory cost recovery requirements and the need to carefully track all costs, Superfund recipients must comply with administrative requirements sufficient to meet the cost recovery provisions of CERCLA. Therefore, States must follow the additional requirements in this rule, which are absolutely crucial for effective cost recovery from parties responsible for release. Nonetheless, States will be able to follow their own procedures, such as for procurement, if they certify that their requirements meet the intent of our regulation.

B. Executive Order 12291

Executive Order No. 12291 requires that regulations be classified as "major" or "non-major" for purposes of review by the Office of Management and Budget (OMB). According to Executive Order No. 12291, "major" rules are regulations that are likely to result in:

(1) An annual adverse (cost) effect on the economy of $100 million or more; or

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government, or geographical regions; or

(3) Significant adverse effects on the competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule does not affect the amount of funds provided in the Superfund program, but rather modifies and updates administrative and procedural requirements. We do not believe that the rule will have an annual economic impact of $100 million or more, will increase costs or prices, or will adversely affect competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. For this reason, we have determined that this is not a major rule within the meaning of the Order, and therefore no formal Regulatory Impact Analysis is necessary. This interim final rule was submitted to the Office of Management and Budget for its review as required by Executive Order No. 12291.

C. Regulatory Flexibility Act of 1980

The Regulatory Flexibility Act (5 U.S.C. 605(b)) requires that, for each rule with "significant economic impact on a substantial number of small entities," an analysis be prepared describing the rule's impact on small entities and identifying any significant alternatives to the rule that would minimize the economic impact on small entities. We certify that this rule will not have a significant economic impact on a substantial number of small entities because the requirements in this regulation apply only to States, political subdivisions thereof, and Indian Tribes for administering Superfund response actions.

D. Paperwork Reduction Act

Sections 35.6055 (a) (1) through (a) (3) and (b) (1) through (b) (2); 35.6105 (a) (1) through (a) (5) and (b); 35.6250 (a) (1) and (b); 35.6300 (a) (3); 35.6315 (c); 35.6320 (a); 35.6340(a) (3); 35.6550 (b) (1) through (b) (3); 35.6565 (a) and (b); 35.6650; 35.6655; 35.6660; 35.6665; 35.6670; 35.6700; 35.6705; 35.6710; 35.6805; 35.6810; 35.6815 (d); 35.6860; and 35.6865 of this rule contain collection-of-information requirements. The information collection requirements in this interim final rule have been approved by the Office of Management and Budget (OMB) under the "Paperwork Reduction Act," 44 U.S.C. 3501 et seq. And assigned OMB control numbers 2010-0020. An Information Collection Request document has been prepared by EPA (ICR No. 1487) and a copy may be obtained from David Ogden, Information Policy Branch; EPA; 401 M St., SW. (PM-223); Washington, DC 20460 or by calling (202) 475-9498.

Public reporting burden for this collection of information is estimated to average 81 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Chief, Information Policy Branch, EPA, PM-223, 401 M St., SW., Washington, DC 20460 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements contained in this interim final rule.

Dated: January 9, 1989.

Lee M. Thomas,

Administrator.

Accordingly, the Administrator amends Chapter I, Part 35 of Title 40 of the Code of Federal Regulations as follows:

PART 35—STATE AND LOCAL ASSISTANCE

1. The authority citation for Part 35, appearing at the end of the table of contents, is removed.

2. A new Subpart O is added to read as follows:

Subpart O—Cooperative Agreements and Superfund State Contracts for Superfund Response Actions

General

35.6000 Authority.
35.6005 Purpose and scope.
35.6010 Eligibility.
35.6015 Definitions.
35.6020 Principal statutory provisions.
35.6025 Deviation from this subpart.

Pre-Remedial Response Cooperative Agreements

35.6050 Eligibility for pre-remedial cooperative agreements.
35.6055 State-lead pre-remedial cooperative agreements.
35.6060 Federally recognized Indian Tribe-lead preremedial cooperative agreements.

Remedial Response Cooperative Agreements

35.6100 Eligibility for remedial cooperative agreements.
35.6105 State-lead remedial cooperative agreements.
35.6110 Federally recognized Indian Tribe-lead remedial cooperative agreements.
35.6115 Political subdivision-lead remedial cooperative agreements.
35.6120 Twenty-year waste capacity.

Enforcement Cooperative Agreements

35.6150 Eligibility for enforcement cooperative agreements.
35.6155 State-lead enforcement cooperative agreements.

Removal Response Cooperative Agreements

35.6200 Eligibility for removal cooperative agreements.
35.6205 Removal cooperative agreements.

Financial Administration Requirements Under a Cooperative Agreement

35.6250 Standards for financial management systems.
35.6255 Period for availability of funds.
35.6260 Cost sharing.
35.6265 Payments.
35.6270 Recipient payment of response costs.
35.6275 Program income.

Personal Property Requirements Under a Cooperative Agreement

35.6300 General personal property acquisition and use requirements.
35.6305 Obtaining supplies.
35.6310 Obtaining equipment.
35.6315 Alternative methods for obtaining property.
35.6320 Usage rate.
35.6325 Title and EPA interest in CERCLA-funded property.
35.6330 Title to Federally-owned property.
35.6335 Property management standards.
35.6340 Disposal of CERCLA-funded property.
35.6345 Equipment disposal options.
35.6350 Disposal of Federally owned property.

Real Property Requirements Under a Cooperative Agreement

35.6400 Acquisition and transfer of interest.
35.6405 Use.

Copyright Requirements Under a Cooperative Agreement

35.6450 General requirements.

Use of Recipient Employees ("Force Account") Under a Cooperative Agreement

35.6500 General requirements.

Procurement Requirements Under a Cooperative Agreement

35.6550 Procurement system standards.
35.6555 Competition.
35.6560 Master list of debarred, suspended, and voluntarily excluded persons.
35.6565 Procurement methods.
35.6570 Use of the same engineer during subsequent phases of the project.
35.6575 Restrictions on types of contracts.
35.6580 Contracting with minority and women's business enterprises [MBE/WBE], small businesses, and labor surplus area firms.
35.6585 Cost and price analysis.
35.6590 Bonding and insurance.
35.6595 Contract provisions.
35.6600 Contractor claims.
35.6605 Privity of contract.
35.6610 Contracts awarded by a contractor.

Reports Required Under a Cooperative Agreement

35.6650 Quarterly progress reports.
35.6655 Notification of significant developments.
35.6660 Property inventory reports.
35.6665 Procurement reports.
35.6670 Financial reports.

Records Requirements Under a Cooperative Agreement

35.6700 Project records.
35.6705 Records retention.
35.6710 Records access.

Other Administrative Requirements for Cooperative Agreements

35.6750 Modifications.
35.6755 Monitoring program performance.
35.6760 Enforcement and termination for convenience.
35.6765 Non-Federal audit.
35.6770 Disputes.
35.6775 Exclusion of third-party benefits.
35.6780 Closeout.
35.6785 Collection of amounts due.
35.6790 High risk recipients.

Requirements for Administering a Superfund State Contract (SSC)

35.6800 General.
35.6805 Contents of an SSC.
35.6810 Assurances.
35.6815 Administrative requirements.
35.6820 Conclusion of the SSC.

Requirements for Core Program Cooperative Agreements

35.6850 Eligibility for Core Program Cooperative Agreements.
35.6855 General.
35.6860 Application requirements.
35.6865 Quarterly progress reports.
35.6870 Cost sharing.
35.6875 Payment to recipient.

Requirements for Support Agency Activities Under Cooperative Agreements

35.6900 Eligibility for support agency cooperative agreements.
35.6905 Allowable activities.
35.6910 Support agency cooperative agreement requirements.
35.6915 Cost sharing.
35.6920 Quarterly progress reports.

Subpart O—Cooperative Agreements and Superfund State Contracts for Superfund Response Actions

Authority: 42 U.S.C. 9601 et seq.

General

§ 35.6000 Authority.

This regulation is issued under section 104 CERCLA, 42 U.S.C. 9601 et seq.

§ 35.6005 Purpose and scope.

(a) This regulation codifies recipient requirements for administering CERCLA-funded cooperative agreements. This regulation also codifies requirements for administering Superfund State Contracts (SSC's) for non-State-lead remedial responses.

(b) The requirements in this regulation do not apply to Technical Assistance Grants (TAG's) or to CERCLA research and development grants, including the Superfund Innovative Technology Evaluation (SITE) Demonstration Program.

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(c) 40 CFR Part 31, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," establishes consistency and uniformity among Federal agencies in the administration of grants and cooperative agreements to State, local, and Federally recognized Indian tribal governments. For CERCLA-funded cooperative agreements, this subpart supplements the requirements contained in Part 31 for States, political subdivisions thereof, and Federally recognized Indian Tribes. This regulation references those sections of Part 31 that are applicable to CERCLA-funded cooperative agreements.

§ 35.6010 Eligibility.

This regulation applies to States, political subdivisions thereof, and Federally recognized Indian Tribes. Although section 126 of CERCLA provides that the governing body of a Federally recognized Indian Tribe shall be afforded substantially the same treatment as a State, in this subpart Federally recognized Indian Tribes are not included in the definition of State in order to clarify those requirements with which Federally recognized Indian Tribes must comply and those with which they need not comply.

§ 35.6015 Definitions.

(a) As used in this subpart, the following words and terms shall have the meanings set forth below:

(1) *Activity.* A set of tasks that together comprise a segment of the sequence of events undertaken in determining, planning, and conducting a response to a release or potential release of a hazardous substance. These include: pre-remedial (i.e. Preliminary Assessments and Site Inspections), remedial investigation/feasibility studies, remedial design, remedial action, removal, enforcement, and Core Program activities.

(2) *Allowable costs.* Those project costs that are: eligible, reasonable, necessary, and allocable to the project; permitted by the appropriate Federal cost principles; and approved by EPA in the cooperative agreement and/or Superfund State Contract.

(3) *Architectural or engineering (A/E) services.* Consultation, investigations, reports, or services for design-type projects within the scope of the practice of architecture or professional engineering as defined by the laws of the State or territory in which the recipient is located.

(4) *Award official.* The EPA official with the authority to execute cooperative agreements and Superfund State Contracts (SSC's) and take other actions authorized by EPA Orders.

(5) *Budget period.* The length of time EPA specifies in an cooperative agreement during which the recipient may expend or obligate Federal funds.

(6) *CERCLA.* The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 as amended by the Superfund Amendments and Reauthorization Act of 1986.

(7) *Change order.* A written order issued by a recipient, or its designated agent, to its contractor authorizing an addition to, deletion from, or revision of, a contract, usually initiated at the contractor's request.

(8) *Claim.* A demand or written assertion by a contractor seeking, as a matter of right, changes in contract duration, costs, or other provisions, which originally have been rejected by the recipient.

(9) *Closeout.* The final EPA or recipient actions taken to assure satisfactory completion of project work and to fulfill administrative requirements, including financial settlement, submission of acceptable required final reports, and resolution of any outstanding issues under the cooperative agreement and/or Superfund State Contract.

(10) *Community Relations Plan (CRP).* A management and planning tool outlining the specific community relations activities to be undertaken during the course of a response. It is designed to provide for two-way communication between the affected community and the agencies responsible for conducting a response action, and to assure public input into the decision-making process related to the affected communities.

(11) *Construction.* Erection, building, alteration, repair, remodeling, improvement, or extension of buildings, structures or other property.

(12) *Contract.* A written agreement between an EPA recipient and another party (other than another public agency) or between the recipient's contractor and the contractor's first tier subcontractor.

(13) *Contractor.* Any party to whom a recipient awards a contract.

(14) *Cooperative agreement.* A legal instrument EPA uses to transfer money, property, services, or anything of value to a recipient to accomplish a public purpose in which substantial EPA involvement is anticipated during the performance of the project.

(15) *Core Program Cooperative Agreement.* A cooperative agreement that provides funds to a State or Federally-recognized Indian Tribe to conduct CERCLA implementation activities that are not assignable to specific sites, but are intended to develop and maintain a State's ability to participate in the CERCLA response program.

(16) *Cost analysis.* The review and evaluation of each element of contract cost to determine reasonableness, allocability, and allowability.

(17) *Cost share.* The portion of allowable project costs that a recipient contributes toward completing its project (i.e., non-Federal share, matching share).

(18) *Equipment.* Tangible, nonexpendable, personal property having a useful life of more than one year and an acquisition cost of $5,000 or more per unit.

(19) *Excess property.* Any property under the control of a Federal agency that is not required for immediate or foreseeable needs and thus is a candidate for disposal.

(20) *Fair market value.* The amount at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts. Fair market value is the price in cash, or its equivalent, for which the property would have been sold on the open market.

(21) *Health and safety plan.* A plan that specifies the procedures that are sufficient to protect on-site personnel and surrounding communities from the physical, chemical, and/or biological hazards of the site. The health and safety plan outlines: (i) Site hazards; (ii) work areas and site control procedures; (iii) air surveillance procedures; (iv) levels of protection; (v) decontamination and site emergency plans; (vi) arrangements for weather-related problems; and (vii) responsibilities for implementing the health and safety plan.

(22) *In-kind contribution.* The value of a non-cash contribution (generally from third parties) to meet a recipient's cost sharing requirements in a cooperative agreement only. An in-kind contribution may consist of charges for real property and equipment or the value of goods and services directly benefiting the CERCLA-funded project.

(23) *Indian Tribe.* As defined by section 101(36) of CERCLA, any Indian Tribe, band, nation, or other organized group or community, including any Alaska Native Village but not including any Alaska Native regional or village corporation, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(24) *Lead agency.* The Federal agency, State agency, political subdivision, or Federally recognized Indian Tribe that has primary responsibility for planning and implementing a response action under CERCLA.

(25) *Minority Business Enterprise (MBE).* A business which is: (i) Certified as socially and economically disadvantaged by the Small Business Administration, (ii) certified as a minority business enterprise by a State or Federal agency, or (iii) an independent business concern which is at least 51 percent owned and controlled by minority group member(s). A minority group member is an individual who is a citizen of the United States and one of the following:

(A) Black American;

(B) Hispanic American (with origins from Puerto Rico, Mexico, Cuba, South or Central America);

(C) Native American (American Indian, Eskimo, Aleut, native Hawaiian), or

(D) Asian-Pacific American (with origins from Japan, China, the Philippines, Vietnam, Korea, Samoa, Guam, the U.S. Trust Territories of the Pacific, Northern Marianas, Laos, Cambodia, Taiwan or the Indian subcontinent).

(26) *National Priorities List (NPL).* EPA's list of the most serious uncontrolled or abandoned hazardous waste sites identified for possible long-term remedial action under Superfund. A site must be on NPL to receive money from the Trust Fund for remedial action. The list is based primarily on the score a site receives from the Hazard Ranking System.

(27) *Operation and maintenance (O&M).* Activities required to maintain the effectiveness of response actions. O&M is the sole responsibility of the State.

(28) *Personal property.* Property other than real property. It includes both supplies and equipment.

(29) *Political subdivision.* The unit of government that the State determines to have met the State's legislative definition of a political subdivision.

(30) *Potentially Responsible Party (PRP).* Any individual(s), or company(ies) identified as potentially liable under CERCLA for cleanup or payment for costs of cleanup of Hazardous Substance sites. PRPs may include individual(s) or company(ies) identified as having owned, operated, or in some other matter contributed wastes to Hazardous Substance sites.

(31) *Price analysis.* The process of evaluating a prospective price without regard to the contractor's separate cost elements and proposed profit. Price analysis determines the reasonableness of the proposed contract price based on adequate price competition, previous experience with similar work, established catalog or market price, law, or regulation.

(32) *Profit.* The net proceeds obtained by deducting all allowable costs (direct and indirect) from the price. (Because this definition of profit is based on applicable Federal cost principles, it may vary from many firms' definition of profit, and may correspond to those firms' definition of "fee.")

(33) *Project.* The activities or tasks EPA identifies in the cooperative agreement and/or Superfund State Contract.

(34) *Project officer.* The EPA official designated in the cooperative agreement as EPA's program contact with the recipient. Project officers are responsible for monitoring the project.

(35) *Project period.* The length of time EPA specifies in the cooperative agreement and/or Superfund State Contract for completion of all project work. It may be composed of more than one budget period.

(36) *Quality Assurance Project Plan.* A written document, associated with site sampling activities, which presents in specific terms the organization (where applicable), objectives, functional activities, and specific quality assurance and quality control activities designed to achieve the data quality objectives of a specific project(s) or continuing operation(s). The quality assurance project plan will be prepared by the responsible program office, regional office, laboratory, contractor, recipient of a cooperative agreement, or other organization. For an enforcement action, EPA must approve a Potentially Responsible Party's quality assurance project plan.

(37) *Real property.* Land, including land improvements, structures, and appurtenances thereto, excluding movable machinery and equipment.

(38) *Recipient.* Any State, political subdivision thereof, or Federally recognized Indian Tribe which has been awarded and has accepted an EPA cooperative agreement.

(39) *Services.* A recipient's in-kind or a contractor's labor, time, or efforts which do not involve the delivery of a specific end item, other than documents (e.g., reports, design drawing, specifications). This term does not include employment agreements or collective bargaining agreements. This term includes dismantling and demolition of buildings, ground improvements, and other real property structures, and the removal of such structures or portions of them, unless further work which will result in construction, alteration, or repair is contemplated at that location.

(40) *Small business.* A business as defined in section 3 of the Small Business Act, as amended (15 U.S.C. 632).

(41) *State.* The several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Commonwealth of Northern Marianas, and any territory or possession over which the United States has jurisdiction.

(42) *Statement of Work (SOW).* The portion of the cooperative agreement application and/or Superfund State Contract that describes the purpose and scope of activities and tasks to be carried out as a part of the proposed project.

(43) *Subcontractor.* Any first tier party that has a contract with the recipient's prime contractor.

(44) *Superfund State Contract (SSC).* A joint, legally binding agreement between EPA and another party to obtain the necessary assurances before a Federal-lead remedial action can begin at a site. In the case of a political subdivision-lead remedial response, a three-party SSC between EPA, the State, and political subdivision thereof, is required before a political subdivision takes the lead for any phase of remedial response to ensure State involvement pursuant to section 121(f)(1) of CERCLA, as amended. The SSC must be amended to provide the State's CERCLA 104 assurances before a political subdivision can take the lead for remedial action.

(45) *Supplies.* All tangible personal property other than equipment as defined in this subpart.

(46) *Support agency.* The State Agency or Federally recognized Indian Tribe that furnishes necessary data to the lead agency, reviews response data and documents, and provides other assistance as required by the lead agency during a response.

(47) *Task.* An element of a Superfund response activity.

(48) *Title.* The valid claim to property which denotes ownership and the rights of ownership, including the rights of possession, control, and disposal of property.

(49) *Unit acquisition cost.* The net invoice unit price of the property including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the property usable for the purpose for which it was acquired. Other charges.

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such as the cost of installation, transportation, taxes, duty, or protective in-transit insurance, shall be included or excluded from the unit acquisition cost in accordance with the recipient's regular accounting practices.

(50) *Value engineering.* A systematic and creative analysis of each contract term or task to ensure that its essential function is provided at the overall lowest cost.

(51) *Women's Business Enterprise (WBE).* A business which is certified as a Women's Business Enterprise by a State or Federal agency, or which meets the following definition. A women's business enterprise is an independent business concern which is at least 51 percent owned by a woman or women who also control and operate it. Determination of whether a business is at least 51 percent owned by a woman or women shall be made without regard to community property laws.

(b) Those words not defined in this section shall have the meanings set forth in 40 CFR 31.3.

§ 35.6020 Principal statutory provisions.

The recipient must comply with the Federal laws described in 40 CFR 31.13, and with other applicable statutory provisions.

§ 35.6025 Deviation from this subpart.

On a case-by-case basis, EPA will consider requests for exceptions to the non-statutory provisions of this regulation. Refer to the requirements regarding additions and exceptions described in 40 CFR 31.6 (b), (c), and (d).

Pre-Remedial Response Cooperative Agreements

§ 35.6050 Eligibility for pre-remedial cooperative agreements.

States and Federally recognized Indian Tribes may apply for pre-remedial response cooperative agreements.

§ 35.6055 State-lead pre-remedial cooperative agreements.

(a) *Pre-remedial application requirements.* To receive a pre-remedial cooperative agreement, the applicant must submit the following items to EPA:

(1) *Application form.* An "Application for Federal Assistance" (SF-424) for non-construction programs. Applications for additional funding need include only the revised pages. The application must include the following:

(i) *Budget sheets* (SF-424(c));

(ii) *A Statement of Work (SOW)* which must include a detailed description, by task, of activities to be conducted, the projected costs associated with each task, the number of products to be completed, and a quarterly schedule indicating when these products will be submitted to EPA; and

(iii) *Proposed project and budget periods.*

(2) *Evidence of compliance with intergovernmental review requirements.* The applicant must comply with 40 CFR Part 29, "Intergovernmental Review of the EPA Programs and Activities" and the "Notice of Supplemental Procedures for Establishing Start Dates of Comment Period for Activities Subject to Executive Order 12372" (48 FR 54602).

(3) *A list of sites* at which the applicant proposes to undertake pre-remedial tasks. If the recipient proposes to revise the list, the recipient may not incur costs on a new site until the project officer has approved the site.

(b) *Pre-remedial cooperative agreement requirements.* The recipient must comply with all special conditions in the cooperative agreement, and with the following requirements:

(1) *Health and safety plan.* (i) Before beginning field work, the recipient must have a site-specific health and safety plan in place providing for the protection of on-site personnel and area residents. This plan need not be submitted to EPA, but must be made available to EPA upon request.

(ii) The recipient's health and safety plan must comply with Occupational Safety and Health Administration (OSHA) 29 CFR 1910.120, entitled "Hazardous Waste Operations and Emergency Response," unless the recipient is a Federally recognized Indian Tribe which is exempt from OSHA requirements.

(2) *Quality assurance.* (i) The recipient must comply with the quality assurance requirements described in 40 CFR 31.45.

(ii) The recipient must have an EPA-approved non-site-specific quality assurance plan in place before beginning field work. The recipient must submit the plan to EPA in adequate time (generally 45 days) in order for approval to be granted before beginning field work.

(iii) The quality assurance plan must comply with the requirements regarding split sampling described in section 104(e)(4)(B) of CERCLA, as amended.

§ 35.6060 Federally recognized Indian Tribe-lead pre-remedial cooperative agreements.

The Federally recognized Indian Tribe must comply with all of the requirements described in § 35.6055 of this subpart except for the intergovernmental review requirements described in § 35.6055(a)(2).

Remedial Response Cooperative Agreements

§ 35.6100 Eligibility for remedial cooperative agreements.

States, Federally recognized Indian Tribes, and political subdivisions may apply for remedial response cooperative agreements.

§ 35.6105 State-lead remedial cooperative agreements.

(a) *Remedial application requirements.* To receive a remedial cooperative agreement, the applicant must submit the following items to EPA:

(1) *Application form,* as described in § 35.6055(a)(1) of this subpart, accompanied by the following:

(i) *Budget sheets* displaying costs by site and activity;

(ii) *A site-specific Statement of Work (SOW),* including estimated costs per task; and

(iii) *Proposed project and budget periods.*

(2) *Evidence of compliance with intergovernmental review requirements,* as described in § 35.6055(a)(2) of this subpart.

(3) *A site-specific Community Relations Plan* or an assurance that field work will not begin until one is in place. The Regional community relations coordinator must approve the Community Relations Plan before the recipient begins field work. The recipient must comply with the community relations requirements described in EPA policy and guidance, and in the National Contingency Plan (NCP).

(4) *A site-specific health and safety plan,* or an assurance that the applicant will have an EPA-accepted final plan before starting field work. Unless specifically waived by the award official, the applicant must have a site-specific health and safety plan in place providing for the protection of on-site personnel and area residents. The site-specific health and safety plan must comply with Occupational Safety and Health Administration (OSHA) 29 CFR 1910.120, entitled "Hazardous Waste Operations and Emergency Response," unless the recipient is a Federally recognized Indian Tribe exempt from OSHA requirements.

(5) *Quality assurance*—(i) *General.* If the project involves environmentally related measurements or data generation, the recipient must comply with the requirements regarding quality assurance described in 40 CFR 31.45.

(ii) *Quality assurance plan.* The applicant must have a separate quality assurance project plan/sampling plan for each site to be covered by the cooperative agreement. The applicant must submit the quality assurance project plan and sampling plan, which incorporates results of any site investigation performed at that site, to EPA with its cooperative agreement application. However, at the option of the EPA award official with program concurrence, the applicant may submit with its application a schedule for developing the detailed site-specific quality assurance plan. The recipient must submit the detailed site-specific plan to EPA in adequate time (generally 45 days) in order for approval to be granted before beginning field work. The recipient may not begin field work until the EPA approves the quality assurance plan.

(iii) *Split sampling.* The quality assurance plan must comply with the requirements regarding split sampling described in section 104(e)(4)(B) of CERCLA, as amended.

(b) *Remedial action cooperative agreement requirements: assurances.* The State must comply with all special conditions in the cooperative agreement. In addition, before beginning remedial action, the State must provide EPA with written assurances as specified below.

(1) *Operation and maintenance.* The State must provide an assurance that it will assume responsibility for the operation and maintenance of implemented remedial actions for the expected life of each such action.

(2) *Cost sharing.* The State must provide assurances for cost sharing as follows:

(i) *Privately-operated.* Where a facility was privately operated, whether privately or publicly owned, at the time of disposal, the State must provide 10 percent of the cost of the remedial action, if CERCLA-funded.

(ii) *Publicly-operated.* Where a facility was publicly operated by a State or political subdivision at the time of disposal of hazardous substances at the facility, the State must provide at least 50 percent of the cost of removal, remedial planning, and remedial action if the remedial action is CERCLA-funded.

(3) *Off-site storage, treatment, or disposal.* If offsite storage, destruction, treatment, or disposal is required, the State must assure the availability of a hazardous waste disposal facility that is in compliance with Subtitle C of the Solid Waste Disposal Act and is acceptable to EPA.

(4) *Property title and interest acquisition.* If appropriate, the State must assure EPA that it will take title to, acquire interest in, or accept transfer of such interest in real property acquired with CERCLA funds. See § 35.6400 of this subpart for additional information on property title and interest requirements.

§ 35.6110 Federally recognized Indian Tribe-lead remedial cooperative agreements.

(a) *Application requirements.* The Federally-recognized Indian Tribe must comply with all of the requirements described in § 35.6105(a) of this subpart, except for the intergovernmental review requirements described in § 35.6055(a)(2).

(b) *Cooperative agreement requirements.* (1) The Federally recognized Indian Tribe must comply with all special conditions in the cooperative agreement.

(2) If appropriate, the Federally-recognized Indian Tribe must assure EPA that it will take title to, acquire interest in, or accept transfer of such interest in real property acquired with CERCLA funds. See § 35.6400 of this subpart regarding information on property title and interest requirements.

§ 35.6115 Political subdivision-lead remedial cooperative agreements.

(a) *General.* If both the State and EPA agree, a political subdivision with the necessary capabilities and jurisdictional authority may assume lead responsibility for a site. The State and political subdivision must enter into a three-party Superfund State Contract (SSC) with EPA before a political subdivision can be awarded a cooperative agreement.

(b) *Three-party Superfund State Contract requirements.* The three-party SSC must specify the responsibilities of the signatories. By signing the SSC, the EPA, the State, and the political subdivision agree to:

(1) Ensure that the SSC specifies the substantial and meaningful involvement of the State as required by section 121 (f)(1) of CERCLA, as amended.

(2) Ensure that the three-party SSC includes the State's CERCLA 104 assurances at the time of remedial action, if the political subdivision is designated the lead for remedial action.

(3) Follow the appropriate administrative requirements regarding SSC's described in § 35.6805, 35.6815, and 35.6820 of this subpart.

(c) *Political subdivision cooperative agreement requirements.*—(1) *Application requirements.* To receive a remedial cooperative agreement, the political subdivision must prepare an application which includes the documentation described in § 35.6105(a)(1) through (a)(5).

(2) *Cooperative agreement requirements.* The political subdivision must comply with all special conditions in the cooperative agreement.

§ 35.6120 Twenty-year waste capacity.

After October 17, 1989, EPA will not enter into a cooperative agreement for a remedial action without an adequate assurance as required by section 104(c)(9) that there are hazardous waste treatment or disposal facilities that comply with Subtitle C of the Solid Waste Disposal Act that have adequate capacity for the destruction, treatment, or secure disposition of all hazardous wastes that are reasonably expected to be generated for 20 years after the date of the cooperative agreement.

Enforcement Cooperative Agreements

§ 35.6150 Eligibility for enforcement cooperative agreements.

States may apply for enforcement cooperative agreements.

§ 35.6155 State-lead enforcement cooperative agreements.

The State must comply with the requirements described in § 35.6105(a) (1) through (5) of this subpart. Assurances and provisions which apply to enforcement activities must be contained in the cooperative agreement. The CERCLA assurances described in § 35.6105(b) are not applicable for enforcement actions.

Removal Response Cooperative Agreements

§ 35.6200 Eligibility for removal cooperative agreements.

States and Federally recognized Indian Tribes may apply for non-time-critical removal cooperative agreements.

§ 35.6205 Removal cooperative agreements.

(a) The State must comply with the requirements described in § 35.6105(a) (1) through (5) of this subpart. Federally recognized Indian Tribes must comply with the requirements described in § 35.6105 (a)(1), and (a)(3) through (a)(5) of this subpart.

(b) The State is not required to share in the cost of a CERCLA-funded removal action, unless the removal is conducted at a site that was publicly operated by a State or political subdivision at the time of disposal of hazardous substances and a CERCLA-funded remedial action is ultimately undertaken at the site. In this situation, the State must share at least 50 percent in the cost of all removal, remedial planning, and remedial action costs at the time of the remedial action

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as described in § 35.6105(b)(2)(ii) of this subpart.

(c) Federally recognized Indian Tribes are never required to share in the cost of a CERCLA-funded removal action.

Financial Administration Requirements Under a Cooperative Agreement

§ 35.6260 Standards for financial management systems.

(a) *Accounting system standards.*—(1) *General.* The recipient's and its contractor's systems must track expenses by site and activity, according to object class. The systems must also provide control, accountability, and an assurance that funds, property, and other assets are used only for their authorized purposes. The recipient must allow an EPA review of the adequacy of the financial management system as described in 40 CFR 31.20(c).

(2) *Allowable costs.* The recipient's and its contractor's systems must comply with the appropriate allowable cost principles described in 40 CFR 31.22.

(3) *Pre-remedial.* The systems need not track expenses by site. However, all pre-remedial costs must be documented under a single Superfund account number designated specifically for the pre-remedial activity.

(4) *Accounting system control procedures.* Except as provided for in paragraph (a)(3) of this section, accounting system control procedures must ensure that accounting information is:

(i) Accurate, charging only costs attributable to the site and activity; and

(ii) Complete, recording and charging to individual sites and activities all costs attributable to the recipient's CERCLA effort.

(5) *Financial reporting.* The recipient's accounting system must use actual costs as the basis for all reports of direct site charges. The recipient must comply with the requirements for financial reporting contained in § 35.6670 of this subpart.

(b) *Recordkeeping system standards.* (1) The recipient must maintain a recordkeeping system that consists of complete site-specific files containing documentation of costs incurred.

(2) The recipient must provide this site-specific documentation to the EPA Regional Office upon request and within specified time frames (generally within 30 days of request).

(3) In addition, the recipient and the recipient's contractors must comply with the requirements regarding records described in §§ 35.6700, 35.6705, and 35.6710 of this subpart. The recipient must comply with the requirements regarding source documentation described in 40 CFR 31.20(b)(6).

(4) For the pre-remedial activity, the recordkeeping system must comply with the requirements described in paragraph (a)(3) of this section.

§ 35.6265 Period for availability of funds.

The recipient must comply with the requirements regarding the availability of funds described in 40 CFR 31.23.

§ 35.6269 Cost sharing.

The recipient may not use costs incurred at one site to meet the cost sharing obligation at another site. However, the recipient may apply excess credits from one site to the required cost-share at another site. See § 35.6270(c)(3) of this subpart for the requirements regarding the use of excess credits. The recipient must comply with the requirements regarding cost sharing described in 40 CFR 31.24.

§ 35.6285 Payments.

(a) *General.* In addition to the following requirements, the recipient must comply with the requirements regarding payment described in 40 CFR 31.21 (f) through (h).

(1) *Assignment of payment.* The recipient cannot assign the right to receive payments under the recipient's cooperative agreement. EPA will make payments only to the payee identified in the cooperative agreement.

(2) *Interest.* If the recipient earns interest on an advance of EPA funds, the recipient must return the interest unless the recipient is a State or State agency as defined under section 203 of the Intergovernmental Cooperation Act of 1968, or a tribal organization as defined under section 102, 103, or 104 of the Indian Self-Determination and Education Assistance Act of 1975 (Pub. L. 93-638).

(b) *Payment Method*—(1) *Letter of credit.* In order to receive payment by the letter of credit method, the recipient must comply with the requirements regarding letter of credit described in 40 CFR 31.20(b)(7) and 31.21(b). The recipient must attribute costs to specific sites and activities for drawdown purposes except for the pre-remedial activity.

(2) *Reimbursement.* If the recipient is unable to meet letter of credit requirements, EPA will pay the recipient by reimbursement. The recipient must comply with the requirements regarding reimbursement described in 40 CFR 31.21(d).

§ 35.6270 Recipient payment of response costs.

The recipient may pay for its share of response costs using cash, services, credits or any combination of these, as follows:

(a) *Cash.* The recipient may pay for its share of response costs in the form of cash.

(b) *Services.* The recipient may provide equipment and services to satisfy its cost share requirements under cooperative agreements. The recipient must comply with the requirements regarding in-kind and donated services described in 40 CFR 31.24 (b) and (c).

(c) *Credit*—(1) *General credit requirements.* Credits are limited to State expenses that EPA determines to be reasonable, documented, direct, out-of-pocket expenditures of non-Federal funds for remedial action. Credits are established on a site-specific basis. Only a State may claim credit.

(i) The State may claim credit for response activity expenditures or obligations incurred by the State or political subdivision between January 1, 1978 and December 11, 1980.

(ii) The State may claim credit for remedial action expenditures incurred by the State after October 17, 1986.

(iii) The State may not claim credit for removal actions taken after December 11, 1980.

(2) *Credit submission requirements*—(i) *Expenditures incurred before a site is listed on the NPL.* Although EPA may require additional documentation, the State must submit the following before EPA will approve the use of the credit:

(A) Specific amounts claimed for credit, by site (estimated amounts are unacceptable), based on supporting cost documentation;

(B) Units of government (State agency, county, local) that incurred the costs, by site;

(C) Description of the specific function performed by each unit of government at each site;

(D) Certification (signed by the State's fiscal manager or the financial director for each unit of government) that credit costs have not been previously reimbursed by the Federal government or any other party, and have not been used for matching purposes under any other Federal program or grant; and

(E) Documentation, if requested by EPA, to ensure the actions undertaken at the site are cost eligible and consistent with CERCLA, as amended, and the NCP requirements. This requirement does not apply for costs incurred before December 11, 1980.

(ii) *Expenditures incurred after a site is listed on the NPL.* A State may receive credit for remedial action expenditures after October 17, 1986, only if the State entered into a cooperative agreement before incurring costs at the site.

(3) *Use of credit.* The State must first apply credit at the site at which it was earned. With the approval of EPA, the State may use excess credit earned at one site for its cost share at another site. EPA will not reimburse excess credit.

(4) *Credit verification.* Credits are subject to verification by audit and technical review of actions performed at sites.

(d) *Advance match.* (1) A cooperative agreement entered into after October 17, 1986 cannot authorize a State to contribute funds during remedial planning and then apply those contributions to the remedial action cost share (advance match).

(2) A State may seek reimbursement for costs incurred under cooperative agreements which authorize advance match.

(3) Reimbursements are subject to the availability of appropriated funds.

(4) If the State does not seek reimbursement, EPA will apply the advance match to off-set the State's required cost share for remedial action at the site. The State may not use advance match for credit at any other site nor may the State receive reimbursement until the conclusion of CERCLA-funded remedial response activities.

(5) Claims for advance match are subject to verification by audit.

§ 35.6275 Program income.

The recipient must comply with the requirements regarding program income described in 40 CFR 31.25.

Personal Property Requirements Under a Cooperative Agreement

§ 35.6300 General personal property acquisition and use requirements.

(a) *General.* (1) Property may be acquired only when authorized in the cooperative agreement.

(2) The recipient must acquire the property during the approved project period.

(3) The recipient must:

(i) Charge property costs by site and activity;

(ii) Document the use of the property; and

(iii) Solicit and follow EPA's instructions on the disposal of any property purchased with CERCLA funds as specified in §§ 35.6340 and 35.6345 of this subpart.

(b) *Exception.* The recipient is not required to charge property costs by site under a pre-remedial or Core Program Cooperative Agreement.

§ 35.6305 Obtaining supplies.

To obtain supplies, the recipient must agree to comply with the requirements in §§ 35.6300, 35.6315(b), and 35.6325 through 35.6335 of this subpart.

§ 35.6310 Obtaining equipment.

To obtain equipment, the recipient must agree to comply with the requirements in § 35.6300 and §§ 35.6315 through 35.6350 of this subpart.

§ 35.6315 Alternative methods for obtaining property.

(a) *Purchase with recipient funds.* The recipient may purchase equipment with the recipient's own funds and may charge EPA a fee for using equipment on a CERCLA-funded project. The fee must be based on a usage rate, subject to the usage rate requirements in § 35.6320 of this subpart.

(b) *Borrow Federally owned property.* The recipient may borrow Federally owned property, with the exception of motor vehicles, for use on CERCLA-funded projects. The loan of the Federally owned property may only extend through the project period. At the end of the project period, or when the Federally owned property is no longer needed for the project, the recipient must return the property to the Federal Government.

(c) *Lease, use contractor services, or purchase with CERCLA funds.* To acquire equipment through lease, use of contractor services, or purchase with CERCLA funds, the recipient must conduct and document a cost comparison analysis to determine which of these methods of obtaining equipment is the most cost effective. In order to obtain the equipment, the recipient must submit documentation of the cost comparison analysis to EPA for approval. The recipient must obtain the equipment through the most cost effective method, subject to the requirements listed below:

(1) *Lease or rent equipment.* If it is the most cost effective method of acquisition, the recipient may lease or rent equipment, subject only to the requirements in § 35.6300 of this subpart.

(2) *Use contractor services.* (i) If it is the most cost effective method of acquisition, the recipient may hire the services of a contractor.

(ii) The recipient must obtain award official approval before authorizing the contractor to purchase equipment with CERCLA funds. (See § 35.6325 of this subpart regarding the title and vested interest of equipment purchased with CERCLA funds.) This does not apply for recipients who have used the sealed bids method of procurement.

(iii) The recipient must require the contractor to allocate the cost of the contractor services by site and activity.

(3) *Purchase equipment with CERCLA funds.* If equipment purchase is the most cost-effective method of obtaining the equipment, the recipient may purchase the equipment with CERCLA funds. To purchase equipment with CERCLA funds, the recipient must comply with the following requirements:

(i) The recipient must include in the cooperative agreement application a list of all items of equipment to be purchased with CERCLA funds, with the price of each item.

(ii) If the equipment is to be used on more than one site, the recipient must allocate the cost of the equipment by site and activity by applying a usage rate subject to the usage rate requirements in § 35.6320 of this subpart.

(iii) The recipient may not use CERCLA funds to purchase a transportable or mobile treatment system.

§ 35.6320 Usage rate.

(a) *Usage rate approval.* To charge EPA a fee for use of equipment purchased with recipient funds or to allocate the cost of equipment by site and activity, the recipient or the recipient's contractor must apply a usage rate. The recipient must submit documentation of the usage rate computation to EPA. EPA must approve the usage rate.

(b) *Usage rate application.* The recipient or the recipient's contractor must record the use of the equipment by site and activity and must apply the usage rate to calculate equipment charges by site and activity. For Core Program and pre-remedial activities, the recipient is not required to apply a usage rate.

§ 35.6325 Title and EPA interest in CERCLA-funded property.

(a) *EPA's interest in CERCLA-funded property.* EPA has an interest (the percentage of EPA's participation in the total award) in both equipment and supplies purchased with CERCLA funds.

(b) *Title in CERCLA-funded property.* Title in both equipment and supplies purchased with CERCLA funds vests in the recipient.

(1) *Right to transfer title.* EPA retains the right to transfer title of all property purchased with CERCLA funds to the Federal Government or a third party within 120 calendar days after project completion or at the time of disposal.

(2) *Equipment used as all or part of the remedy.* The following requirements apply to equipment used as all or part of the remedy:

(i) *Fixed in-place equipment.* EPA will relinquish its interest in the title to fixed

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in-place equipment after certifying that the remedy is functional and operational.

(ii) *Equipment that is an integral part of services to individuals.* EPA will relinquish its interest in equipment that is an integral part of services to individuals, such as pipes, lines, or pumps providing hookups for homeowners on an existing water distribution system, when EPA certifies that the remedy is functional and operational.

§ 35.6330 Title to Federally owned property.

Title to all Federally owned property vests in the Federal Government.

§ 35.6335 Property management standards.

The recipient and the recipient's contractor must comply with the following property management standards for property purchased with CERCLA funds. The recipient may use its own property management system if it meets the following standards.

(a) *Control.* The recipient must maintain:

(1) *Property records* for CERCLA-funded property which include the contents specified in § 35.6700(c) of this subpart.

(2) *A control system* which ensures adequate safeguards for prevention of loss, damage, or theft of the property. The recipient must make provisions for the thorough investigation and documentation of any loss, damage, or theft;

(3) *Procedures* to ensure maintenance of the property in good condition and periodic calibration of the instruments used for precision measurements;

(4) *Sales procedures* to ensure the highest possible return, if the recipient is authorized to sell the property;

(5) *Provisions for financial control and accounting* in the financial management system of all equipment; and

(6) *Identification* of all Federally owned property.

(b) *Inventory and reporting for CERCLA-funded equipment*—(1) *Physical inventory.* The recipient must conduct a physical inventory at least once every two years for all equipment except that which is part of the in-place remedy. The recipient must reconcile physical inventory results with the equipment records.

(2) *Inventory reports.* The recipient must comply with requirements for inventory reports set forth in § 35.6660 of this subpart.

(c) *Inventory and reporting for Federally owned property*—(1) *Physical inventory.* The recipient must conduct a physical inventory:

(i) Annually;

(ii) When the property is no longer needed; and

(iii) Within 90 days from the end of the project period.

(2) *Inventory reports.* The recipient must comply with requirements for inventory reports in § 35.6660 of this subpart.

§ 35.6340 Disposal of CERCLA-funded property.

(a) *Equipment.* For equipment which is no longer needed, or at the end of the project period, whichever is earlier, the recipient must:

(1) Analyze two alternatives: the cost of leaving the equipment in place, and the cost of removing the equipment and disposing of it in another manner.

(2) Document the analysis of the two alternatives in the inventory report. See § 35.6660 of this subpart regarding requirements for the inventory report.

(i) *If it is most cost-effective to remove* the equipment and dispose of it in another manner:

(A) If the equipment has a residual fair market value of $5,000 or more, the recipient must request disposition instructions from EPA in the inventory report. See § 35.6345 of this subpart for equipment disposal options.

(B) If the equipment has a residual fair market value of less than $5,000, the recipient may retain the equipment for the recipient's use on another CERCLA site. If, however, there is any remaining residual value at the time of final disposition, the recipient must reimburse the Hazardous Substance Superfund for EPA's vested interest in the current fair market value of the equipment at the time of disposition.

(ii) If it is most cost-effective to leave the equipment in place, recommend in the inventory report that the equipment be left in place.

(3) Submit the inventory report to EPA, even if EPA has stopped supporting the project.

(b) *Supplies.* (1) If supplies have an aggregate fair market value of $5,000 or more at the end of the project period, the recipient must take one of the following actions at the direction of EPA:

(i) Use the supplies on another CERCLA site and reimburse the original site for the fair market value of the supplies;

(ii) If both the recipient and EPA concur, keep the supplies and reimburse the Hazardous Substance Superfund for EPA's interest in the current fair market value of the supplies; or

(iii) Sell the supplies and reimburse the Hazardous Substance Superfund for EPA's interest in the current fair market value of the supplies, less any reasonable selling expenses.

(2) If the supplies remaining at the end of the project period have an aggregate fair market value of less than $5,000, the recipient may keep the supplies to use on another CERCLA site. If the recipient cannot use the supplies on another CERCLA site, then the recipient may keep or sell the supplies without reimbursing the Hazardous Substance Superfund.

§ 35.6345 Equipment disposal options.

The following disposal options are available:

(a) Use the equipment on another CERCLA site and reimburse the original site for the fair market value of the equipment;

(b) If both the recipient and EPA concur, keep the equipment and reimburse the Hazardous Substance Superfund, for EPA's interest in the current fair market value of the equipment;

(c) Sell the equipment and reimburse the Hazardous Substance Superfund for EPA's interest in the current fair market value of the equipment, less any reasonable selling expenses; or

(d) Return the equipment to EPA and, if applicable, EPA will reimburse the recipient for the recipient's proportionate share in the current fair market value of the equipment.

§ 35.6350 Disposal of Federally owned property.

When Federally owned property is no longer needed, or at the end of the project, the recipient must inform EPA that the property is available for return to the Federal Government. EPA will send disposition instructions to the recipient.

Real Property Requirements Under a Cooperative Agreement

§ 35.6400 Acquisition and transfer of interest.

(a) An interest in real property may be acquired only with prior approval of EPA.

(1) If a State or Federally recognized Indian Tribe acquires real property in order to conduct the response, the recipient with jurisdiction over the real property must agree to acquire and hold the necessary real property interest.

(2) If it is necessary for the Federal Government to acquire the interest in real property to permit conduct of the response, the State or Federally recognized Indian Tribe must agree to accept transfer of the acquired interest on or before the completion of the response action. States and Federally recognized Indian Tribes must follow the requirements in § 35.6105(b)(5) and 35.6110(b)(2) of this subpart. Political subdivisions must follow the requirements in § 35.6815(c) of this subpart.

(b) The State or Federally recognized Indian Tribe must comply with applicable Federal regulations for real property acquisition under assistance agreements contained in part 4 of this chapter.

§ 35.6405 Use.

The recipient must comply with the requirements regarding real property described in 40 CFR 31.31.

Copyright Requirements Under a Cooperative Agreement

§ 35.6450 General requirements.

The recipient must comply with the requirements regarding copyrights described in 40 CFR 31.34. The recipient must comply with the requirements regarding contract copyright provisions described in § 35.6595(b)(3) of this subpart.

Use of Recipient Employees ("Force Account") Under a Cooperative Agreement

§ 35.6500 General requirements.

(a) Force Account work is the use of the recipient's own employees or equipment for construction, construction-related activities (including architecture and engineering services), or repair or improvement to a facility. When using Force Account work, the recipient must demonstrate that the employees can complete the work as competently as, and more economically than, contractors, or that an emergency necessitates the use of the Force Account.

(b) Where the value of Force Account services exceeds $25,000, the recipient must receive written authorization for use from the award official.

Procurement Requirements Under a Cooperative Agreement

§ 35.6550 Procurement system standards.

(a) *Recipient standards*—(1) *Procurement system evaluation.*

(i) An applicant or recipient must evaluate its own procurement system to determine if the system meets the intent of the requirements of this subpart. After evaluating its procurement system, the applicant or recipient must complete the "Procurement System Certification" (EPA Form 5700-48) and submit the form to EPA with its application.

(ii) The certification will be valid for two years or for the length of the project period specified in the cooperative agreement, whichever is greater, unless the recipient substantially revises its procurement system or the award official determines that the recipient is not following the intent of the requirements in this part (see paragraph (a)(4) of this section regarding EPA right to review). If the recipient substantially revises its procurement system, the recipient must re-evaluate its system and submit a revised EPA Form 5700-48.

(2) *Certified procurement system.* Even if the applicant or recipient has certified that its procurement system meets the intent of the requirements of this subpart, the EPA award official retains the authority as stated in:

(i) Section 35.6585(d)(1)(iii), "Noncompetitive proposals," regarding award official authorization of noncompetitive proposals;

(ii) Section 35.6565(b), "Sealed bids (formal advertising)," regarding award official approval for the use of a procurement method other than sealed bidding for a construction award;

(iii) 40 CFR 31.36(b)(12), "Protests," regarding EPA review of protests; and

(iv) 40 CFR 31.36(g)(2)(ii), "Awarding Agency Review," regarding the review of proposed awards over $25,000 which are to be awarded to other than the apparent low bidder under a sealed bid procurement.

(3) *Noncertified procurement system.* If the applicant or recipient has not certified that its procurement system meets the intent of the requirements of this subpart, then the recipient must follow the requirements of this subpart and allow EPA preaward review of proposed procurement actions that will use EPA funds. In addition, the recipient with a noncertified procurement system must comply with the following requirements:

(i) The recipient's contractors and subcontractors must submit their cost or price data on EPA Form 5700-41, "Cost or Price Summary Format for Subagreements Under U.S. EPA Grants," or in another format which provides information similar to that required by EPA Form 5700-41. This specific requirement is an addition to the requirements regarding cost and price analysis described in § 35.6585 of this subpart.

(ii) When soliciting bids or proposals, the recipient must allow at least 30 days between public notice of the project and the deadline for receipt of bids or proposals. The recipient must publish the public notice in professional journals, newspapers, or publications of general circulation over a reasonable area.

(4) *EPA review.* EPA reserves the right to review any recipient's procurement system or procurement action under a cooperative agreement.

(5) *Code of conduct.* The recipient must comply with the requirements of 40 CFR 31.36(b)(3), which describes standards of conduct for employees, officers, and agents of the recipient.

(6) *Completion of contractual and administrative issues.* The recipient is responsible for the settlement and satisfactory completion in accordance with sound business judgement and good administrative practice of all contractual and administrative issues arising out of procurements under the cooperative agreement. EPA will not substitute its judgement for that of the recipient unless the matter is primarily a Federal concern. Violations of law will be referred to the local, State, tribal, or Federal authority having proper jurisdiction.

(7) *Selection procedures.* The recipient must have written selection procedures for procurement transactions.

(i) EPA may not participate in a recipient's selection panel except to provide technical assistance. EPA staff providing such technical assistance:

(A) Shall constitute a minority of the selection panel (limited to making recommendations on qualified offers and acceptable proposals based on published evaluation criteria) for the contractor selection process; and

(B) Are not permitted to participate in the negotiation and award of contracts.

(ii) When selecting a contractor, recipients:

(A) May not use EPA contractors to provide any support related to procuring a State contractor.

(B) May use the Corps of Engineers for review of State bidding documents, requests for proposals and bids and proposals received.

(8) *Award.* The recipient may award a contract only to a responsible contractor, as described in 40 CFR 31.36(b)(8), and must ensure that each contractor performs in accordance with all the provisions of the contract (see also § 35.6560 of this subpart regarding debarred and suspended contracts).

(9) *Protest procedures.* The recipient must comply with the requirements described in 40 CFR 31.36(b)(12) regarding protest procedures.

(10) *Reporting.* The recipient must comply with the requirements for procurement reporting contained in § 35.6665 of this subpart.

(11) *Intergovernmental agreements.* To foster greater economy and efficiency, recipients are encouraged to enter into State and local

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intergovernmental agreements for procurement or use of common goods and services.

(12) *Value engineering.* The recipient is encouraged to include value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions.

(b) *Contractor standards*—(1) *Disclosure requirements regarding Potentially Responsible Party relationships.* The recipient must require each prospective contractor to provide with its bid or proposal:

(i) Information on its financial and business relationship with all PRP's at the site, and with their parent companies, subsidiaries, affiliates, subcontractors, and current clients or attorneys and agents (this disclosure requirement encompasses past and anticipated financial and business relationships, including services related to any proposed or pending litigation, with such parties);

(ii) Certification that, to the best of its knowledge and belief, it has disclosed such information or no such information exists; and

(iii) A statement that it shall disclose immediately any such information discovered after submission of its bid or proposal or after award. The recipient shall evaluate such information and if a member of the contract team has a conflict of interest which prevents the team from serving the best interests of the recipient, the prospective contractor may be declared nonresponsible and the contract awarded to the next eligible bidder or offeror.

(2) *Conflict of interest*—(i) *Conflict of interest notification.* The contractor shall notify the recipient of any actual, apparent, or potential conflict of interest regarding any individual working on a contract assignment or having access to information regarding the contract. This notification shall include both organizational conflicts of interest and personal conflicts of interest. If a personal conflict of interest exists, the individual who is affected shall be disqualified from taking part in any way in the performance of the assigned work that created the conflict of interest situation.

(ii) *Contract provisions.* The recipient must incorporate the following provisions of their equivalents into all contracts:

(A) *Contractor data.* The contractor shall not provide data generated or otherwise obtained in the performance of contractor responsibilities under a contract to any party other than the recipient, EPA, or its authorized agents.

(B) *Employment.* The contractor shall not accept employment from any party other than the recipient or Federal agencies for work directly related to the site(s) covered under the contract for three years after the contract has terminated, or until any cost recovery action related to the site(s) is completed, whichever is longer. The recipient agency may exempt the contractor from this requirement through a written release. This release must include EPA concurrence.

(C) *Activity and cost documentation.* For six years after the contract has terminated, or until any cost recovery action related to the site(s) is completed, whichever is longer, the contractor shall provide witnesses and documentation of activities performed and costs incurred under the contract upon request to the recipient, EPA, or its authorized agents. The contractor shall be entitled to reasonable compensation for any such activities performed.

(3) *Certification of independent price determination.* The recipient must require that each contractor include in its bid or proposal a certification of independent price determination. This document certifies that no collusion, as defined by Federal and State antitrust laws, occurred during bid preparation.

§ 35.6565 Competition.

The recipient must conduct all procurement transactions in a manner providing maximum full and open competition.

(a) *Restrictions on competition.* Inappropriate restrictions on competition include the following:

(1) Placing unreasonable requirements on firms in order for them to qualify to do business;

(2) Requiring unnecessary experience and excessive bonding requirements;

(3) Noncompetitive pricing practices between firms or between affiliated companies;

(4) Noncompetitive awards to consultants that are on retainer contracts;

(5) Organizational conflicts of interest;

(6) Specifying only a "brand name" product, instead of allowing "an equal" product to be offered and describing the performance of other relevant requirements of the procurement; and

(7) Any arbitrary action in the procurement process.

(b) *Geographic and Federally recognized Indian Tribe preferences*—(1) *Geographic.* When conducting a procurement, the recipient must prohibit the use of statutorily or administratively imposed in-State or local geographical preferences in evaluating bids or proposals. However, nothing in this section preempts State licensing laws. In addition, when contracting for architectural and engineering (A/E) services, the recipient may use geographic location as a selection criterion, provided that when geographic location is used, its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

(2) *Federally recognized Indian Tribe.* If the project benefits Indians, the recipient must comply with the Indian Self-Determination and Education Assistance Act of 1975 (Pub. L. 93-638).

(c) *Written specifications.* The recipient's written specifications must include a clear and accurate description of the technical requirements and the qualitative nature of the material, product or service to be procured.

(1) This description must not contain features which unduly restrict competition, unless the features are necessary to:

(i) Test or demonstrate a specific thing;

(ii) Provide for necessary interchangeability of parts and equipment; or

(iii) Promote innovative technologies.

(2) The recipient must avoid the use of detailed product specifications if at all possible.

(d) *Public notice.* When soliciting bids or proposals, the recipient must give adequate (generally 30 days before receipt of bids or proposals) public notice of the proposed project. The recipient must publish the public notice in professional journals, newspapers, or publications of general circulation over reasonable area. Recipients with a non-certified procurement system must follow the public notice requirements described in § 35.6550(a)(3)(ii) of this subpart.

(e) *Prequalified lists.* Recipients may use prequalified lists of persons, firms, or products to acquire goods and services. The list must be current and include enough qualified sources to ensure maximum open and free competiton. Recipients must not preclude potential bidders from qualifying during the solicitation period.

§ 35.6569 Master list of debarred, suspended, and voluntarily excluded persons.

While evaluating bids or proposals, the recipient and its contractor must consult the most current "List of Parties Excluded from Federal Procurement or Nonprocurement Programs" to ensure that the firms submitting proposals are not prohibited from participation in

assistance programs. The recipient and its contractor must comply with the requirements regarding subawards to debarred and suspended parties described in 40 CFR 31.35.

§ 35.6565 Procurement methods.

The recipient must comply with the requirements for payment to consultants described in 40 CFR 31.36(j). In addition, the recipient must comply with the following requirements:

(a) *Small purchase procedures.* Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than $25,000 in the aggregate. If small purchase procurements are used, the recipient must obtain and document price or rate quotations from an adequate number of qualified sources.

(b) *Sealed bids (formal advertising).* (For a construction award, the recipient must obtain the award official's approval to use a procurement method other than the sealed bid method.) Bids are publicly solicited and a fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price.

(1) In order for the recipient to use the sealed bid method, the following conditions must be met:

(i) A complete, adequate, and realistic specification or purchase description is available;

(ii) Two or more responsible bidders are willing and able to compete effectively for the business; and

(iii) The procurement lends itself to a fixed-price contract and the selection of the successful bidder can be made principally on the basis of price.

(2) If the recipient uses the sealed bid method, the recipient must comply with the following requirements:

(i) Publicly advertise the invitation for bids and solicit bids from an adequate number of known suppliers, providing them sufficient time prior to the date set for opening the bids;

(ii) The invitation for bids, which must include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond;

(iii) Publicly open all bids at the time and place prescribed in the invitation for bids;

(iv) Award the fixed-price contract in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, the recipient shall consider factors such as discounts, transportation cost, and life cycle costs in determining which bid is lowest. The recipient may only use payment discounts to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and

(v) If there is a sound documented reason, the recipient may reject any or all bids.

(c) *Competitive proposals.* The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed-price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If the recipient uses the competitive proposal method, the following requirements apply:

(1) Recipients must publicize requests for proposals and all evaluation factors and must identify their relative importance. The recipient must honor any response to publicized requests for proposals to the maximum extent practical;

(2) Recipients must solicit proposals from an adequate number of qualified sources;

(3) Recipients must have a method for conducting technical evaluations of the proposals received and for selecting awardees;

(4) Recipients must award the contract to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and

(5) Recipients may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitor's qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. This method, where price is not used as a selection factor, may only be used in the procurement of A/E professional services. The recipient may not use this method to purchase other types of services even though A/E firms are a potential source to perform the proposed effort.

(d) *Noncompetitive proposals.* (1) The recipient may procure by noncompetitive proposals only when the award of a contract is infeasible under small purchase procedures, sealed bids or competitive proposals, and one of the following circumstances applies:

(i) The item is available only from a single source;

(ii) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation (a declaration of an emergency under State law does not necessarily constitute an emergency under the EPA Superfund program's criteria);

(iii) The award official authorized noncompetitive proposals; or

(iv) After solicitation of a number of sources, competition is determined to be inadequate.

(2) When using noncompetitive procurement, the recipient must conduct a cost analysis in accordance with the requirements described in § 35.6565 of this subpart.

§ 35.6570 Use of the same engineer during subsequent phases of the project.

(a) If the public notice clearly stated the possibility that the firm or individual selected could be awarded a contract for follow-on services and initial procurement complied with the procurement request of this subpart, the recipient of a CERCLA remedial response cooperative agreement may use the engineer procured to conduct any or all of the remedial investigation (RI), the feasibility study (FS), or design to perform follow-on engineering activities under the remedial response without going through the public notice and evaluation procedures.

(b) The recipient may also use the same engineer during subsequent phases of the project in the following cases:

(1) Where the recipient conducted the RI, FS, or design activities without EPA assistance but is using EPA funds for follow-on activities, the recipient may use the engineer for subsequent work provided the recipient certifies:

(i) That it complied with the procurement requirements in § 35.6505 of this subpart when it selected the engineer and the code of conduct requirements described in 40 CFR 31.36(b)(3).

(ii) That any EPA-funded contract between the engineer and the recipient meets all of the other provisions as described in the procurement requirements in this subpart.

(2) Where EPA conducted the RI, FS, or design activities but the recipient will assume the responsibility for subsequent phases of remedial response under a cooperative agreement, the recipient may use, with the award official's approval, EPA's engineer contractor without further public notice or evaluation provided the recipient follows the rest of the procurement requirements of this subpart to award the contract.

§ 35.6575 Restrictions on types of contracts.

(a) *Prohibited contracts.* The recipient's procurement system must not allow cost-plus-percentage-of-cost (e.g.,

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a multiplier which includes profit) or percentage-of-construction-cost types of contracts.

(b) *Removal.* Under a removal cooperative agreement, the recipient must award a fixed price contract (lump sum, unit price, or a combination of the two) when procuring contractor support, regardless of the procurement method selected, unless the recipient obtains the award official's prior written approval.

(c) *Time and material contracts.* The recipient may use time and material contracts only if no other type of contract is suitable, and if the contract includes a ceiling price that the contractor exceeds at its own risk.

§ 35.6580 Contracting with minority and women's business enterprises (MBE/WBE), small businesses, and labor surplus area firms.

(a) *Procedures.* The recipient must comply with the six steps described in 40 CFR 31.36(e)(2) to ensure that MBE's, WBE's and small businesses are used whenever possible as sources of supplies, construction, and services.

(b) *Labor surplus firms.* EPA encourages recipients to procure supplies and services from labor surplus area firms.

(c) *"Fair share" objectives.* It is EPA's policy that recipients award a fair share of contracts to small, minority and women's businesses. The policy requires that fair share objectives for minority and woman-owned business enterprises be negotiated with the States and/or recipients, but does not require fair share objectives be established for small businesses.

(1) Each recipient must establish an annual "fair share" objective for MBE and WBE use. A recipient is not required to attain a particular statistical level of participation by race, ethnicity, or gender of the contractor's owners or managers.

(2) If the recipient is awarded more than one cooperative agreement during the year, the recipient may negotiate an annual fair share for all cooperative agreements for that year. It is not necessary to have a fair share for each cooperative agreement. When a cooperative agreement is awarded to a recipient with which a "fair share" agreement has not been negotiated, the recipient must not award any contracts under the cooperative agreement until the recipient has negotiated a fair share objective with EPA.

§ 35.6585 Cost and price analysis.

(a) *General.* The recipient must conduct and document a cost or price analysis in connection with every procurement action including contract modification.

(1) *Cost analysis.* The recipient must conduct and document a cost analysis for all negotiated contracts over $25,000 and for all change orders regardless of price. A cost analysis is not required when adequate price competition exists and the recipient can establish price reasonableness. The recipient must base its determination of price reasonableness on a catalog or market price of a commercial product sold in substantial quantities to the general public, or on prices set by law or regulation.

(2) *Price analysis.* In all instances other than those described in (a)(1) of this section, the recipient must perform a price analysis to determine the reasonableness of the proposed contract price.

(b) *Profit analysis.* For each contract in which there is no price competition and in all cases in which cost analysis is performed, the recipient must negotiate profit as a separate element of the price. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

§ 35.6590 Bonding and insurance.

(a) *General.* The recipient must meet the requirements regarding bonding described in 40 CFR 31.36(h). The recipient must clearly and accurately state in the contract documents the bonds and insurance requirements, including the amounts of security coverage that a bidder or offeror must provide.

(b) *Indemnification.* When adequate pollution liability insurance is not available to the contractor, EPA may indemnify response contractors for liability related to damage from releases arising out of the contractor's negligent performance. The recipient must comply with the requirements regarding indemnification described in section 119 of CERCLA, as amended.

(c) *Accidents and catastrophic loss.* The contractor must provide insurance against accidents and catastrophic loss to manage any risk inherent in completing the project.

§ 35.6595 Contract provisions.

(a) *General.* Each contract must be a sound and complete agreement, and include the following provisions:

(1) Nature, scope, and extent of work to be performed;

(2) Time frame for performance;

(3) Total cost of the contract; and

(4) Payment provisions.

(b) *Other contract provisions.* Recipients' contracts must include the following provisions:

(1) *Energy efficiency.* A contract must comply with mandatory standards and policies on energy efficiency contained in the State's energy conservation plan which is issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94–163).

(2) *Violating facilities.* Contracts in excess of $100,000 must contain a provision which requires contractor compliance with all applicable standards, orders or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and EPA regulations (40 CFR Part 15) which prohibit the use of facilities included on the EPA List of Violating Facilities under nonexempt Federal contracts, grants or loans.

(3) *Patents, inventions, and copyrights.* All contracts must include notice of EPA requirements and regulations pertaining to reporting and patent rights under any contract involving research, developmental, experimental or demonstration work with respect to any discovery or invention which arises or is developed while conducting work under a contract. This notice shall also include EPA requirements and regulations pertaining to copyrights and rights to data contained in 40 CFR 31.34.

(4) *Labor standards.* (i) The recipient must include a copy of EPA Form 5720–4 ("Labor Standards Provisions for Federally Assisted Construction Contracts") in each contract for construction (as defined by the Secretary of Labor). The form contains the Davis-Bacon Act requirements (40 U.S.C. 276a–276a–7), the Copeland Regulations (29 CFR Part 3), the Contract Work Hours and Safety Standards Act Overtime Compensation (940 U.S.C. 327–333), and the nondiscrimination provisions in Executive Order 11246, as amended.

(ii) If the contract is solely for dismantling or demolition of buildings, ground improvements, and other real property structures, and the removal of such structures or portions of them, the Davis-Bacon Act does not apply unless further work will result in construction at that location, even though by separate contract.

(5) *Conflict of interest.* The recipient must include provisions pertaining to conflict of interest as described in § 35.6550(b)(2)(ii) of this subpart.

(c) *Model clauses.* The recipient must comply with the requirements regarding model contract clauses described in 40 CFR 33.1030.

§ 35.6600 Contractor claims.

(a) *General.* The recipient must conduct an administrative and technical review of each claim before EPA will consider funding these costs.

(b) *Claims settlement.* The recipient may incur costs (including legal, technical and administrative) to assess the merits of or to negotiate the settlement of a claim by or against the recipient under a contract, provided:

(1) The claim arises from work within the scope of the cooperative agreement;

(2) A formal cooperative agreement amendment is executed specifically covering the costs before they are incurred;

(3) The costs are not incurred to prepare documentation that should be prepared by the contractor to support a claim against the recipient; and

(4) The award official determines that there is a significant Federal interest in the issues involved in the claim.

(c) *Claims defense.* The recipient may incur costs (including legal, technical and administrative) to defend against a contractor claim for increased costs under a contract or to prosecute a claim to enforce a contract provided:

(1) The claim arises from work within the scope of the cooperative agreement;

(2) A formal cooperative agreement amendment is executed specifically covering the costs before they are incurred;

(3) Settlement of the claim cannot occur without arbitration or litigation;

(4) The claim does not result from the recipient's mismanagement;

(5) The award official determines that there is a significant Federal interest in the issues involved in the claim; and

(6) In the case of defending against a contractor claim, the claim does not result from the recipient's responsibility for the improper action of others.

§ 35.6605 Privity of contract.

Neither EPA nor the United States shall be a party to any contract nor to any solicitation or request for proposals.

§ 35.6610 Contracts awarded by a contractor.

A contractor must comply with the following provisions in the award of contracts (i.e., subcontracts). (This section does not apply to a supplier's procurement of materials to produce equipment, materials and catalog, off-the-shelf, or manufactured items.)

(a) The requirements regarding debarred, suspended, and voluntarily excluded persons in § 35.6560 of this subpart.

(b) The limitations on contract award in § 35.6550(a)(8) of this subpart.

(c) The requirements regarding minority and women's business enterprises, and small business in § 35.6580 of this subpart.

(d) The requirements regarding specifications in § 35.6555 (a)(6) and (c) of this subpart.

(e) The Federal cost principles in 40 CFR 31.22.

(f) The prohibited types of contracts in § 35.6575(a) of this subpart.

(g) The cost, price analysis, and profit analysis requirements in § 35.6585 of this subpart.

(h) The applicable provisions in § 35.6595 (b) and (c) of this subpart.

(i) The applicable provisions in § 35.6555(b)(2).

Reports Required Under a Cooperative Agreement

§ 35.6650 Quarterly progress reports.

(a) *Reporting frequency.* The recipient must submit progress reports quarterly. EPA may not require submission of progress reports more often than quarterly.

(b) *Content for pre-remedial, remedial, enforcement, and removal progress reports.* The quarterly progress report must contain the following information:

(1) An explanation of work accomplished during the reporting period, delays or other problems, if any, and a description of the corrective measures that are planned. For pre-remedial cooperative agreements, the report must include a list of the site-specific products completed and the number of technical hours spent to complete each product.

(2) A comparison of the percentage of the project completed to the project schedule, and an explanation of significant discrepancies.

(3) A comparison of the estimated funds spent to date to planned expenditures and an explanation of significant discrepancies. For pre-remedial cooperative agreements, the report should compare aggregated expenditures. For remedial, enforcement, and removal reports, the comparison must be on a per task basis.

(4) An estimate of the time and funds needed to complete the work required in the cooperative agreement, a comparison of that estimate to the time and funds remaining, and a justification for any increase.

§ 35.6655 Notification of significant developments.

Events may occur between the scheduled performance reporting dates which have significant impact upon the cooperative agreement-supported activity. In such cases, the recipient must inform the EPA project officer as soon as the following types of conditions become known:

(a) Problems, delays, or adverse conditions which will materially impair the ability to meet the objective of the award. This disclosure must include a statement of the action taken, or contemplated, and any assistance needed to resolve the situation.

(b) Favorable developments which enable meeting time schedules and objectives sooner or at less cost than anticipated or producing more beneficial results than originally planned.

§ 35.6660 Property inventory reports.

(a) *CERCLA-funded property*—(1) *Content.* The report must contain the following information:

(1) Classification and value of remaining supplies;

(ii) Description of all equipment purchased with CERCLA funds, including its current condition;

(iii) Verification of the current use and continued need for the equipment by site and activity;

(iv) Notification of any property which has been stolen or vandalized; and

(v) A request for disposition instructions for any equipment no longer needed on the project.

(2) *Reporting frequency.* The recipient must submit an inventory report to EPA at the following times:

(i) Within 90 days after completing any response activity at a site; and

(ii) When the equipment is no longer needed for any response activity at a site.

(b) *Federally owned property*—(1) *Content.* The recipient must include the following information for each Federally-owned item in the inventory report:

(i) Description;

(ii) Decal number;

(iii) Current condition; and

(iv) Request for disposition instructions.

(2) *Reporting frequency.* The recipient must submit an inventory report to the appropriate EPA property accountable officer at the following times:

(i) Annually, due to EPA on the anniversary date of the award;

(ii) When the property is no longer needed; and

(iii) Within 90 days after the end of the project period.

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§ 35.6585 Procurement reports.

(a) *Report for the Department of Labor (DOL).*—(1) *Content.* The recipient must notify the DOL Regional Office of Compliance, in writing, of each construction contract which has or is expected to have an aggregate value of over $10,000 within a 12-month period. The report must include the following:

(i) Construction contractor's name, address, telephone number, and employee identification number;

(ii) Award amount;

(iii) Estimated start and completion dates; and

(iv) Project number, name, and site location.

(2) *Reporting frequency.* The recipient must notify the DOL Office of Compliance within 10 calendar days after the award of each such construction contract. The recipient must submit a copy of the report to the EPA project officer.

(b) *Name of contractor.*—(1) *Content.* For construction contracts over $25,000, the recipient must submit the name of the contractor to the project officer.

(2) *Reporting frequency.* The recipient must submit the name of the contractor to the project officer within 10 calendar days after the award of each such construction contract.

(c) *Minority and women's business enterprises (MBE/WBE).*—(1) *Content.* The recipient must report on its use of MBE and WBE firms by submitting a completed Minority and Women's Business Utilization Report (SF-334) to the award official.

(2) *Reporting frequency.* The recipient must submit the MBE/WBE Utilization Report within 30 days after the end of each Federal fiscal quarter, regardless of whether the recipient awards a contract to an MBE or WBE during that quarter. Reporting commences with the recipient's award of its first contract and continues until they and their contractors have awarded their last contract for the activities or tasks identified in the cooperative agreement.

§ 35.6670 Financial Reports.

(a) *General.* The recipient must comply with the requirements regarding financial reporting described in 40 CFR 31.41.

(b) *Financial Status Report.*—(1) *Content.* (i) The Financial Status Report (SF-269) must include site and activity-specific financial information.

(ii) A final Financial Status Report (FSR) must have no unliquidated obligations. If any obligations remain unliquidated, the FSR is considered an interim report and the recipient must submit a final FSR to EPA after liquidating all obligations.

(2) *Reporting frequency.* The recipient must file a Financial Status Report as follows:

(i) Annually (unless the cooperative agreement requires quarterly or semi-annual reports in accordance with 40 CFR 31.41(b)(3)), due 90 days after the cooperative agreement anniversary date if annual reports are required; due 30 days after the reporting period if quarterly or semiannual reports are required;

(ii) Within 90 calendar days after completing each CERCLA-funded response activity at a site (submit the FSR only for each completed activity); and

(iii) Within 90 calendar days after termination or closeout of the cooperative agreement.

Records Requirements Under a Cooperative Agreement

§ 35.6700 Project records.

The recipient is responsible for maintaining project files as described below.

(a) *General.* The recipient must maintain project records by site and activity.

(b) *Financial records.* The recipient must maintain records which support the following items:

(1) Amount of funds received and expended; and

(2) Direct and indirect project cost.

(c) *Property records.* The recipient must maintain records which support the following items:

(1) Description of the property;

(2) Manufacturer's serial number, model number, or other identification number;

(3) Source of the property, including the assistance identification number;

(4) Information regarding whether the title is vested in the recipient or EPA;

(5) Unit acquisition date and cost;

(6) Percentage of EPA's interest;

(7) Location, use and condition (by site and by activity) and the date this information was recorded; and

(8) Ultimate disposition data, including the sales price or the method used to determine the price, or the method used to determine the value of EPA's interest for which the recipient compensates EPA in accordance with § 35.6340, 35.6345, and 35.6350 of this subpart.

(d) *Procurement records.*—(1) *General.* The recipient must maintain records which support the following items, and must make them available to the public:

(i) The reasons for rejecting any or all bids; and

(ii) The justification for a procurement made on a noncompetitively negotiated basis.

(2) *Procurements in excess of $25,000.* The recipient's records and files for procurements in excess of $25,000 must include the following information, in addition to the information required in paragraph (d)(1) of this section:

(i) The basis for contractor selection;

(ii) A written justification for selecting the procurement method;

(iii) A written justification for use of any specification which does not provide for maximum free and open competition;

(iv) A written justification for the choice of contract type; and

(v) The basis for award cost or price, including a copy of the cost or price analysis made in accordance with § 35.6585 of this subpart and documentation of negotiations.

(e) *Other records.* The recipient must maintain records which support the following items:

(1) Time and attendance records and supporting documentation;

(2) Documentation of compliance with statutes and regulations that apply to the project; and

(3) The number of site-specific technical hours spent to complete each pre-remedial product.

§ 35.6705 Records retention.

(a) *Applicability.* This requirement applies to all financial and programmatic records, supporting documents, statistical records, and other records which are required to be maintained by the terms of this subpart, program regulations, or the cooperative agreement, or are otherwise reasonably considered as pertinent to program regulations or the cooperative agreement.

(b) *Length of retention period.* The recipient and the recipient's contractor must retain all records for ten years following submission of the final Financial Status Report for the site, and must obtain written approval from the EPA award official before destroying any records. If any litigation, claim, negotiation, audit, cost recovery, or other action involving the records has been started before the expiration of the ten-year period, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular ten-year period, whichever is later.

(c) *Substitution of microform.* Microform copies may be substituted for the original records. The recipient must have written EPA approval before destroying original records. The microform copying must be performed in accordance with the technical regulations concerning micrographics of Federal Government records (36 CFR 1230 et seq.) and EPA records management procedures (EPA Order 2160 [1]).

(d) *Starting date of retention period.* The recipient and the recipient's contractor must comply with the requirements regarding the starting dates for records retention described in 40 CFR 31.42(c) (1) and (2).

§ 35.6710 Records access.

(a) *Recipient requirements.* The recipient must comply with the requirements regarding records access described in 40 CFR 31.42(e).

(b) *Availability of records.* The recipient must, with the exception of certain policy, deliberative, and enforcement documents which may be held confidential, ensure that all files are available to the public.

(c) *Contractor requirements.* The recipient's contractor must comply with the requirements regarding records access described in 40 CFR 31.36(i)(10).

Other Administrative Requirements for Cooperative Agreements

§ 35.6750 Modifications.

The recipient must comply with the requirements regarding changes to the cooperative agreement described in 40 CFR 31.30.

§ 35.6755 Monitoring program performance.

The recipient must comply with the requirements regarding program performance monitoring described in 40 CFR 31.40 (a) and (e).

§ 35.6760 Enforcement and termination for convenience.

The recipient must comply with the requirements regarding enforcement of the terms of an award and termination for convenience described in 40 CFR 31.43 and 31.44.

§ 35.6765 Non-Federal audit.

The recipient must comply with the requirements regarding non-Federal audits described in 40 CFR 31.26.

§ 35.6770 Disputes.

The recipient must comply with the requirements regarding dispute resolution procedures described in 40 CFR 31.70.

[1] Statement of available.

§ 35.6775 Exclusion of third-party benefits.

The cooperative agreement benefits only the signatories to the cooperative agreement.

§ 35.6780 Closeout.

(a) Closeout of a cooperative agreement can take place in the following situations:

(1) After the completion of all work for a response activity;

(2) After all activities under a cooperative agreement have been completed; or

(3) Upon termination of the cooperative agreement.

(b) The recipient must comply with the closeout requirements described in 40 CFR 31.50 and 31.51.

§ 35.6785 Collection of amounts due.

The recipient must comply with the requirements described in 40 CFR 31.52 regarding collection of amounts due.

§ 35.6790 High risk recipients.

If EPA determines that a recipient is not responsible, EPA may impose restrictions on the award as described in 40 CFR 31.12.

Requirements for Administering a Superfund State Contract (SSC)

§ 35.6800 General.

An SSC is required when either EPA or a political subdivision is the lead agency for a CERCLA response.

(a) *EPA-lead SSC.* (1) An SSC with a State or Federally recognized Indian Tribe is required before EPA initiates remedial action during an EPA-lead remedial response.

(2) The State or Federally recognized Indian Tribe must comply with the requirements decribed in §§ 35.6805, 35.6810, and 35.6815 of this subpart.

(b) *Three-party SSC (political subdivision-lead).* (1) An SSC is required before a political subdivision takes the lead for a remedial response.

(2) Both the State and the political subdivision must comply with the requirements described in §§ 35.6805, 35.6815, and 35.6820 of this subpart. In addition, the State must comply with the requirements described in § 35.6810 of this subpart.

§ 35.6805 Contents of an SSC.

The SSC must include the following provisions:

(a) *Purpose of contract,* which describes the activities to be conducted and the benefits to be derived by the signatories;

(b) *Negation of agency relationship* between the signatories, which states that no signatories of the SSC can represent or act on the behalf of any other signatory in any matter associated with the SSC;

(c) *Amendability of the SSC,* which states that any change in the SSC must be agreed to, in writing, by the signatories, except as provided elsewhere in the SSC;

(d) *Litigation,* which describes EPA's right to bring an action against any party for liability under sections 106 and 107 of CERCLA, as amended;

(e) *Sanctions for failure to comply with SSC terms;* which states that if the signatories fail to comply with the terms of the SSC, EPA may proceed under the provisions of section 104(d)(2) of CERCLA and may seek in the appropriate court of competent jurisdiction to enforce the SSC;

(f) *The CERCLA assurances,* as appropriate, as described in § 35.6810 of this subpart;

(g) *Cost share provisions,* which include an estimate of the total project costs and the basis for arriving at this figure, and the payment terms as negotiated by the signatories;

(h) *Site access.* The State is expected, to the extent of its legal authority, to secure access to the site and adjacent properties, as well as all rights-of-way and easements necessary to complete the response actions undertaken pursuant to the SSC;

(i) *Exclusion of third-party benefits,* which states that the SSC is intended to benefit only the signatories of the SSC, and extends no benefit or right to any third party not a signatory to the SSC; and

(j) *Any other provision* deemed necessary by all parties to facilitate the response activities covered by the SSC.

§ 35.6810 Assurances.

The SSC must include the following:

(a) *Operation and maintenance.* The State must provide an assurance that it will assume responsibility for the operation and maintenance of implemented remedial actions for the action's expected life. In addition, even if the political subdivision is designated as being responsible for O&M, the State must guarantee that it will assume any or all O&M activities in the event of default by the political subdivision.

(b) *Cost sharing.* The State must provide assurances for cost sharing as provided in paragraphs (b)(1) and (2) of this section. In addition, even if the political subdivision is providing the actual cost share, the State must guarantee payment of the cost share in the event of default by the political subdivision.

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(1) *Privately operated.* Where a facility was privately operated, whether privately or publicly owned, at the time of disposal, the State must provide 10 percent of the cost of the remedial action, if CERCLA-funded.

(2) *Publicly operated.* Where a facility was publicly operated by a State or political subdivision at the time of disposal of hazardous substances at the facility, the State must provide at least 50 percent of the cost of removal, remedial planning, and remedial action if the remedial action is CERCLA-funded.

(c) *Off-site storage, treatment, or disposal.* If offsite storage, destruction, treatment, or disposal is required, the State must assure the availability of a hazardous waste disposal facility that is in compliance with Subtitle C of the Solid Waste Disposal Act and is acceptable to EPA. The political subdivision may not provide this assurance.

(d) *Twenty-year waste capacity.* After October 17, 1989, EPA will not enter into an SSC for a remedial action without an adequate assurance as required by Section 104(c)(9) that there are hazardous waste treatment or disposal facilities that comply with Subtitle C of the Solid Waste Disposal Act that have adequate capacity for the destruction, treatment, or secure disposition of all hazardous wastes that are reasonably expected to be generated for 20 years after the date of the SSC.

(e) *Property title and interest acquisition.* If appropriate, the State or Federally-recognized Indian Tribe must assure EPA that it will take title to, acquire interest in, or accept transfer of such interest in real property acquired with CERCLA funds. The State must provide this assurance even if it intends to transfer this title to the political subdivision. See § 35.6400 of this subpart for additional information on property title and interest requirements.

§ 35.6915 Administrative requirements.

In addition to the requirements specified in § 35.6805, the State and/or political subdivision must comply with the following:

(a) *State review.* The State must review and comment on the response actions pursuant to the SSC.

(b) *Financial administration.* The State and/or political subdivision must comply with the following requirements regarding financial administration:

(1) *Payment.* The State may pay for its share of the costs of the response activities in cash or credit. If the political subdivision provides all or part of the cost share, the political subdivision may pay for those costs in cash or in-kind services. The State may not pay for its cost share using in-kind services, unless the State has entered into a support agency cooperative agreement with EPA. The use of the support agency cooperative agreement as a vehicle for providing cost share must be documented in the SSC. The payment must be provided during the course of the project. See § 35.6915 of this subpart for requirements concerning cost sharing under a support agency cooperative agreement.

(2) *Collection of amounts due.* The State and/or political subdivision must comply with the requirements described in 40 CFR 31.52(a) regarding collection of amounts due.

(3) *Failure to comply with negotiated payment terms.* Failure to comply with negotiated payment terms may be construed as default by the State on its required assurances, even if the political subdivision is responsible for providing all or part of the cost share (see § 35.6505(e) of this subpart).

(c) *Property.* If the State or Federally-recognized Indian Tribe is required to accept title, the following requirements concerning property must be met:

(1) *Equipment used as all or part of the remedy.* The following requirements apply to title and vested interest in equipment used as all or part of the remedy:

(i) *Fixed in-place equipment.* EPA will relinquish its vested interest in the title to fixed in-place equipment after certifying that the remedy is functional and operational.

(ii) *Equipment that is an integral part of services to individuals.* EPA will relinquish its vested interest in equipment that is an integral part of services to individuals, such as pipes, lines, or pumps providing hookups for homeowners on an existing water distribution system, when EPA certifies that the remedy is functional and operational.

(2) *Real property.* If it is necessary for the Federal Government to acquire the interest in real property to permit conduct of the response, the State or Federally recognized Indian Tribe must agree to accept transfer of the acquired interest on or before the completion of the response action even if the State intends to transfer title to the political subdivision. See the requirements in § 35.6810(e) of this subpart regarding the assurance for property title and interest acquisition.

(d) *Reports.* The State and/or political subdivision or Federally recognized Indian Tribe must comply with the following requirements regarding reports:

(1) *EPA-lead.* The nature and frequency of reports between EPA and the State or Federally recognized Indian Tribe will be specified in the SSC.

(2) *Political subdivision-lead.* The political subdivision must submit to the State a copy of the quarterly progress report which the political subdivision is required to submit to EPA in accordance with the requirements of its cooperative agreement. (See § 35.6950 for requirements regarding quarterly progress reports.)

(e) *Records.* The State and political subdivision or Federally recognized Indian Tribe must maintain records on a site-specific basis. The State and political subdivision must comply with the requirements regarding record retention described in § 35.6705 and the requirements regarding record access described in § 35.6710.

§ 35.6920 Conclusion of the SSC.

(a) The SSC remains in effect until either one of the following occurs:

(1) *SSC conclusion.* In order to conclude the SSC, the signatories must:

(i) Satisfactorily complete the response activities at the site;

(ii) Produce a final accounting of all project costs, including change orders and outstanding contractor claims; and

(iii) Submit all State cost share payments to EPA (see § 35.6810(b) regarding cost share assurances).

(2) *Termination of the SSC.* The State and political subdivision or Federally recognized Indian Tribe must comply with the requirements regarding enforcement of the terms of an award and termination for convenience described in 40 CFR 31.43 and 31.44.

(b) For remedial action, the SSC remains in effect until the final reconciliation of response costs ensures that both EPA and the State have satisfied the cost share requirement contained in section 104 of CERCLA, as amended. Overpayments in an SSC may not be used to meet the cost-sharing obligation at another site. Reimbursements for any overpayment made after reconciliation will be made to the payee identified in the SSC.

Requirements for Core Program Cooperative Agreements

§ 35.6900 Eligibility for Core Program Cooperative Agreements.

States and Federally recognized Indian Tribes may apply for Core Program cooperative agreements in order to conduct CERCLA implementation activities that are not assignable to specific sites, but are intended to develop and maintain a State's or Federally recognized Indian Tribe's ability to participate in the CERCLA response program.

§ 35.6905 General.

The recipient of a Core Program cooperative agreement must comply with the requirements regarding financial administration (§§ 35.6250 through 35.6275 of this subpart), property (§§ 35.6300 through 35.6450), procurement (§§ 35.6550 through 35.6610), reporting (§§ 35.6655 through 35.6670), records (§§ 35.6700 through 35.6710), and other administrative requirements under a cooperative agreement (§§ 35.6750 through 35.6780), described in this subpart. Recipients may not incur site-specific costs. Where these sections entail site-specific requirements, the recipient is not required to comply on a site-specific basis.

§ 35.6910 Application requirements.

To receive a Core Program cooperative agreement, the applicant must submit an application form ("Application for Federal Assistance," SF-424, for non-construction programs) to EPA. Applications for additional funding need include only the revised pages. The application must include the following:

(a) *A project workplan*—(b) *Intergovernmental review comments*, in accordance with §35.6055(a)(2) of this subpart (Federally recognized Indian Tribes need not comply with this requirement); and

(c) *Project and budget periods.* The budget period is one year, and may be extended incrementally, up to 12 months at a time, based on EPA approval of an amended workplan and budget. The project period will be determined in the cooperative agreement.

§ 35.6915 Quarterly progress reports.

(a) *Reporting frequency.* The recipient must submit progress reports quarterly on the activities delineated in the work plan. EPA may not require submission of progress reports more often than quarterly.

(b) *Content.* The quarterly progress report must contain the following information:

(1) An explanation of work accomplished during the reporting period, a description of problems, if any, and the corrective measures that are planned;

(2) A comparison of the estimate of funds spent to date to planned expenditures; and

(3) An estimate of the funds needed to complete the work required in the cooperative agreement, and a justification for any increase.

§ 35.6870 Cost sharing.

The recipient of a Core Program cooperative agreement must provide at least five percent of the direct and indirect costs of all activities covered by the Core Program cooperative agreement. The recipient must provide its cost share with non-Federal funds not used for matching purposes under any other cooperative agreement. The recipient may provide its share using in-kind contributions. The recipient may not use CERCLA State credits to offset any part of the recipient's required match for Core Program cooperative agreements. See § 35.6270 (c) and (d) regarding credit and advance match, respectively.

§ 35.6875 Payment to recipient.

The State or Federally-recognized Indian Tribe is not required to attribute costs to specific sites and activities for drawdown purposes for Core Program cooperative agreement costs.

Requirements for Support Agency Activities Under Cooperative Agreements

§ 35.6900 Eligibility for support agency cooperative agreements.

States and Federally-recognized Indian Tribes may apply for support agency cooperative agreements to ensure their meaningful and substantial involvement when EPA or a political subdivision has the lead for response activities, as specified in section 121(f)(1) of CERCLA.

§ 35.6905 Allowable activities.

Support agency activities are those activities conducted by a State or Federally-recognized Indian Tribe to ensure the State's or Federally-recognized Indian Tribe's meaningful and substantial involvement when it is the support agency at a Federal-lead site. The activities described in section 121(f)(1) of CERCLA, as amended, are eligible for funding under a support agency cooperative agreement.

§ 35.6910 Support agency cooperative agreement requirements.

(a) *Application requirements.* The applicant must comply with the requirements described in § 35.6105(a) (1), (2), (3), and (5) of this subpart.

(b) *Cooperative agreement requirements.* The recipient must comply with the requirements regarding financial administration 35.6250 through 35.6275 of this subpart), property 35.6300 through 35.6450), procurement 35.6550 through 35.6610), reporting 35.6655 through 35.6670), records 35.6700 through 35.6710), and other administrative requirements under a cooperative agreement 35.6750 through 35.6780) described in this subpart.

§ 35.6915 Cost sharing.

The requirements for cost sharing under a support agency cooperative agreement are the same as the cost sharing requirements of § 35.6105(b)(2) and § 35.6110(a) of this subpart. The State may use in-kind services as part of its cost share, as long as it is documented in the SSC (see § 35.6815(b) for SSC payment requirements).

§ 35.6920 Quarterly progress reports.

(a) *Reporting frequency.* The recipient must submit progress reports quarterly. EPA may not require submission of progress reports more often than quarterly.

(b) *Content.* The quarterly progress report must contain the following information:

(1) An explanation of work accomplished during the reporting period, a discription of problems, if any, and the corrective measures that are planned;

(2) A comparison of the estimate of funds spent to date to planned expenditures; and

(3) An estimate of the funds needed to complete the work required in the cooperative agreement, and a justification for any increase.

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Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 216

Regulations Governing the Taking of Marine Mammals Incidental to Commercial Fishing Operations; Advance Notice of Proposed Rulemaking and Proposed List of Fisheries

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 81140-8020]

Regulations Governing the Taking of Marine Mammals Incidental to Commercial Fishing Operations

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Advance notice of proposed rulemaking and proposed list of fisheries associated with exemption procedures.

SUMMARY: NOAA Fisheries intends to amend regulations governing the taking of marine mammals incidental to commercial fishing operations. These modifications, when promulgated, will implement the recent amendments to the Marine Mammal Protection Act of 1972 which require a program to be established through which commercial fishermen may be exempted from prohibitions against the incidental take of marine mammals in the course of commercial fishing activities. As required by the amendments, a proposed list of fisheries, categorized according to frequency of incidental take of marine mammals, is included in this notice. Comments are invited on the proposed list of exempted fisheries and on the general provisions of this exemption system.

DATES: The Final List of Fisheries and a rulemaking for implementing the interim exemption program for commercial fisheries will be published on or about March 23, 1989. Comments received before February 27, 1989 will be considered in developing subsequent rules and the Final List of Fisheries covered under the exemption system provided in section 114 of the MMPA.

ADDRESS: Send comments to or request a copy of the Marine Mammal Commission's letter from Dr. Nancy Foster, Director, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Herbert W. Kaufman, (Office of Protected Resources), 301-427-2319.

SUPPLEMENTARY INFORMATION:

Background

Before enactment of the amendments (Pub. L. 100-711)) to the Marine Mammal Protection Act (MMPA) on November 23, 1988, the MMPA prohibited the take of marine mammals incidental to commercial fishing unless authorized by a general incidental take permit or a small take exemption. Before a general permit could be issued, NOAA Fisheries was required to determine that the population stock from which a marine mammal was to be taken was within its optimum sustainable population (OSP) and that the marine mammal stock would not be disadvantaged by the incidental take. If these determinations could not be made because of the level of take that would occur or because a marine mammal stock could not be determined to be within its OSP, no permit could be issued for that particular marine mammal stock.

On January 28, 1988, NOAA Fisheries announced in the Federal Register (53 FR 2068), its intention to prepare an Environmental Impact Statement (EIS) on the proposed reissuance of domestic general permits (other than the general permit for incidental take of porpoise in the eastern tropical Pacific) that authorized commercial fishermen, primarily in west coast waters, to take marine mammals incidental to commercial fishing operations. These general permits were scheduled to expire on December 31, 1988. In addition, two small take exemptions issued under section 101(a)(4) of the MMPA in 1984 were scheduled to expire on that date. Public scoping meetings were held in Washington, DC (March 22, 1988) and San Francisco, CA (April 8, 1988). In preparing the draft EIS, NOAA Fisheries determined that there is insufficient information to determine whether most of the marine mammal stocks that interact with commercial fishing are within their OSP. This suggested that NOAA Fisheries would not be able to issue permits to authorize the incidental take of certain marine mammal stocks.

On February 16, 1988, the U.S. Court of Appeals for the District of Columbia Circuit in *Kokechik Fishermen's Ass'n v. the Secretary of Commerce*, 839 F.2d. 795 (D.C. Cir. 1988), issued a decision which further jeopardized NOAA Fisheries' ability to issue any general incidental take permits or small take exemptions. The court upheld a District Court decision setting aside the marine mannal incidental take permit issued in 1987 to the Japanese salmon driftnet fishery (52 FR 19874). The majority concluded, as did the lower court, that NOAA Fisheries is not authorized by the MMPA to issue a permit allowing the incidental take of a marine mammal species that is within its OSP—in this instance Dall's porpoise—if the permitted activity will also involve the occasional taking of other species of marine mammals for which no permit can be issued. As a result of the *Kokechik* decision and the fact that there is insufficient information to determine whether most marine mammal stocks are within OSP levels, NOAA Fisheries determined that some existing general permits or small take exemptions could not be reissued and that some new authorizations could not be issued for foreign or domestic fishing operations within the U.S. Exclusive Economic Zone.

On November 23, 1988, the President signed Pub. L. 100-711, reauthorizing and amending the MMPA. These amendments (section 114) replace existing provisions for granting incidental take authority to commercial fishermen with an interim exemption system valid until October 1, 1993. The primary objective of this new system is to provide a means to obtain reliable and accurate information about interactions between commercial fishermen and marine mammals while allowing commercial fishing operations to continue despite NOAA Fisheries' inability to make necessary OSP findings. The information collected would be used to develop a long-term program to manage incidental takings of marine mammals associated with commercial fisheries. As a preliminary step to establishing the exemption system, the amendments require the Secretary of Commerce (Secretary) to publish a list of fisheries along with the number of vessels or persons involved in each such fishery that have the following:

(I) A frequent incidental taking of marine mammals;

(II) An occasional incidental taking of marine mammals; or

(III) A remote likelihood of, or no known incidental taking of marine mammals.

The Secretary is required to publish a notice in the Federal Register and provide an opportunity for comments on this proposed list of fisheries within 60 days of the enactment of the MMPA amendments and to publish a final list within 120 days of the date of enactment. Changes to the list will be announced to the public through notice in the Federal Register; public comment will be solicited.

In order to engage lawfully in fisheries in categories I and II, owners of vessels must register with the Secretary to obtain an exemption to take marine mammals incidentally, must display or possess physical evidence of the exemption, and must submit periodic reports to NOAA Fisheries. In addition, vessels engaged in category I fisheries must take on board a natural resources observer if requested by the Secretary.

Fishing in a category I or II fishery without an exemption is a violation of the MMPA and owners and masters of comercial fishing vessels are subject to penalties under this provision of the law. Owners of vessels in category III fisheries are not required to register with the Secretary to obtain an exemption but they must report all lethal incidental takings.

As long as the owner of a vessel complies with exemption requirements, he and his master and crew are exempt from penalties under the MMPA for incidental takings of marine mammals (other than the taking of California sea otters and the intentional lethal taking of Steller sea lions, cetaceans, or marine mammals from depleted stocks) in a fishery to which the exemption applies. The exemption system will be available only to U.S. vessels or foreign vessels that have valid fishing permits issued under section 204(b) of the Magnuson Fishery Conservation and Management Act. Exemptions provided by section 114 are not available to vessels fishing in the yellowfin tuna purse seine fishery in the eastern tropical Pacific.

The Secretary is required to establish verification programs to substantiate the data submitted by fishermen. Verification will include education efforts regarding information to be reported, interviews with fishermen and other activities that will enable the Secretary to determine the reliability, the nature, type and extent of the incidental taking that occurs in a fishery.

Observers will be placed on board vessels participating in a category I fishery to monitor between 20 and 35 percent of the fishing operations by vessels in the fishery. The Secretary may exempt vessels from observer coverage for certain reasons, such as protecting the health and safety of the observer or ensuring the safe operation of the vessel. Observers will be prohibited from bringing a civil action under any law of the United States for injury, illness, disability or death incurred during service as an observer against the vessel or vessel owner unless caused by the willful misconduct of the vessel owner. This provision does not apply if the observer performs duties in service to the vessel.

The Secretary shall establish alternative observation programs to obtain statistically reliable information on category I fisheries for which the required level of observer coverage cannot be met or for any other fishery about which reliable information is not otherwise available. The alternative observation programs can include, but are not limited to, direct observation of fishing activities from vessels, airplanes, or points on shore.

If the Secretary finds that incidental takings are having an immediate and significant adverse effect on a marine mammal population or that more than 1,350 Steller sea lions or 50 northern fur seals will be lethally taken in one year, then he can issue emergency regulations to prevent, to the maximum extent practicable, further take. The Secretary must consult with the appropriate regional Fishery Management Council or State before taking such action. If the Secretary finds that incidental takings are not having an immediate and significant adverse impact but will likely have a significant adverse impact over a period of time longer than one year, then he must request a Fishery Management Council or State to take actions that will mitigate the adverse impact. The Secretary also has general authority to impose conditions and restrictions on exemptions that he issues.

The Secretary is also required to specify how catch data and other information will be reported and to establish an information management system to process and analyze data received from the verification programs and other sources. To protect the confidentiality of fishermen, the system will provide for public access to aggregated data only.

Finally the amendments in this section require the Secretary, in consultation with the Marine Mammal Commission, the States, the fishing industry, the general public, the regional Fishery Management Councils, and other Federal agencies, to recommend to Congress by January 1, 1992, a proposed system to govern the incidental taking of marine mammals after this section expires.

Consultation With the Marine Mammal Commission

As required by the amendments, NOAA Fisheries has consulted with the Marine Mammal Commission on the development of the lists of fisheries. The Commission was provided a copy of the proposed lists of fisheries and rationale as part of this consultation. Written comments and 3 reports discussing marine mammal/fisheries interactions were provided to NOAA Fisheries by the Commission. The Commission's letter has been made a part of the record and is available upon request (see address). The reports, "Workshop On Marine Mammal-Fisheries Interactions In The Northeastern Pacific" [NTIS PB80-17544]; "Workshop On Marine Mammal-Fisheries Interactions" [NTIS PB82-169507]; and "Workshop On Measures To Address Marine Mammal/Fisheries Interactions In California" [NTIS PB86-219060], are available from the U.S. Department of Commerce, National Technical Information Service, Springfield, VA 22161.

The Commission recommended that several changes be made to the proposed list of fisheries. NOAA Fisheries has decided not to make most of these changes at this time, but will consider these changes during the comment period. Therefore, public comment is specifically requested on the following quotations from the Commission's letter on the categorization of various fisheries:

> For the most part, the Commission has no information with which to disagree with the placement of fisheries into the three frequency categories proposed by the Service. However, there are a few instances in which we suggest modifications to the list. Most notably, we believe that the salmon gillnet fisheries * * * and the California gillnet fisheries for white sea bass and other species * * * proposed for listing in category II should be moved to category I. In making this suggestion, we note that these fisheries are very similar to other gillnet fisheries proposed for inclusion in category I and, as they occur in areas in which marine mammals are known to occur, are reasonably likely to take marine mammals with a similar frequency.
>
> * * * drawing analogies between fisheries can be helpful in classifying those fisheries for which few incidental take data are available. The Commission believes that the Service can and should use such analogies more than it apparently has in formulating the list. In particular, fisheries with potentially substantial incidental take rates have been placed in cateogry II because there currently is insufficient documentary evidence from observation of that fishery to support a category I listing. We therefore recommend the addition of a third criteria for listing under category I as follows: "by analogy with a fishery listed in category I, it is likely that a 'frequent' take of marine mammals occurs."
>
> * * * Recognizing that the incidental take of marine mammals within a fishery may be considerably higher in some locations or may be higher for certain segments of a fishing season, the Commission is concerned about categorizing fisheries based solely on fishery wide averages. The system for determining what constitutes a fishery or for classifying those fisheries must have enough flexibility to take into account such local or seasonal variations. For instance, if vessels have a high probability of taking marine mammals for one month of a six month season, the fishery should be listed as a category I fishery for at least part of the year. Similarly, local concentrations of incidental takes should be reflected either in how fisheries are listed or how they are classified.
>
> A further problem arises in the discussion of what constitutes "frequent," "occasional," and "remote likelihood" for purposes of categorizing fisheries. These definitions all

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are expressed in terms of the likelihood of an observer on a representative vessel witnessing the incidental take of a marine mammal during an "observer stint." What constitutes an observer stint, however, is unclear. The Commission believes that the Service should adopt definitions based upon a more precise standard. We therefore recommend that these terms be defined in terms of the likelihood of an individual vessel taking a marine mammal per fishing season or per year.

NOAA Fisheries will continue consulting with the Commission on the list of fisheries and other matters pertaining to the exemption process.

Schedule of Events

NOAA Fisheries provides the following tentative schedule to implement the exemption provisions of section 114:

March 23—(1) Day 120. Publication in Federal Register of final list of fisheries in assigned categories; (2) Publication Federal Register of an appropriate notice to implement section 114 of the MMPA and provide an opportunity for public comment; (3) Filing documents for NEPA findings in this proceeding;

March 27–April 14—(1) Public meetings with interested parties;

July 21—(1) Day 240. Exemption system implemented, enforcement begins; fishermen in categories I and II need exemptions to legally fish after this date.

Rationale for Categorization of Commercial Fisheries

At the time of publication of this notice, NOAA Fisheries had categorized 163 fisheries in which 128,688 vessels or persons participate in the Pacific, Atlantic (Atl) and Gulf of Mexico (GMX). This information is summarized in the following list, explained in the rationale, and itemized in Tables 1–6.

Category	Number of fisheries		Number of vessels or persons	
	Pacific	Atl/GMX	Pacific	Atl/GMX
I	11	3	2,048	155
II	25	3	20,518	1,040
III	76	45	24,040	80,088
Total	112	51	47,804	81,284

Tables 1 through 6 contain proposed lists of fisheries to be published for public comment as required by section 114(b)(1)(A) of the recently passed amended MMPA. Tables 1, 2 and 3 describe west coast fisheries, while Tables 4, 5 and 6 describe the east coast fisheries, including the Gulf of Mexico. The proposed lists identify and categorize fisheries according to their levels of frequency of incidental taking of marine mammals. Timely comments received on the proposed lists and categories will be considered in compiling the final list to be published by March 23, 1989.

Before completing these proposed lists, the agency held two public meetings, one in Seattle, WA, on December 16 and one in Washington, DC on December 19, at which the public was invited to comment on how the list should be developed. NOAA Fisheries also mailed a draft proposed list of fisheries to States, Regional Fishery Management Councils, environmental groups, fishing industry representatives and other interested parties. Comments received from these groups and during the public meetings were considered to the extent time allowed.

In compiling the proposed lists of fisheries, the agency was faced with two major tasks. First, it was necessary to identify all fisheries that would be eligible for the exemption provided by section 114. To ensure a sensible application of the provisions of the amendments, NOAA Fisheries identified commercial fisheries according to gear type, species of fish caught, geographic distribution or some combination of these. In many instances, fisheries were identified according to groupings used by State agencies for management purposes. The list is meant to include all fisheries operating in U.S. waters or under U.S. jurisdiction with the exception of Japanese salmon gillnet fisheries and the eastern tropical Pacific yellowfin tuna purse seine fishery which were explicitly excluded from the exemption provided in section 114.

The second major task was deciding in which of the three categories each fishery should be placed based on the frequency of incidental takings. The amendments establish three categories according to whether there is frequent incidental taking (category I), occasional incidental taking (category II) or a remote likelihood or no known incidental taking (category III). The Committee Reports (Senate Report 100–592 and House of Representatives 100–970) accompanying the amendments recognize that for the first year section 114 is in effect, the Secretary may not have adequate data necessary to determine accurately the placement of all fisheries into categories. Accordingly, these reports recommend six fisheries to be included in category I and two fisheries to be included in category III. NOAA Fisheries has included these fisheries in the recommended categories for the proposed list.

To categorize all other fisheries, it was necessary to interpret and define "frequent," "occasional," and "remote likelihood." NOAA Fisheries decided to define these terms based more on qualitative standards than quantitative ones due to the lack of reliable data documenting many commercial fishery interactions with marine mammals. NOAA Fisheries considered the Committee Reports and comments from those involved in the development of the amendments, including Congressional staff. As a result, NOAA Fisheries concluded that "frequent," "occasional" and "remote likelihood" were intended by Congress to be evaluated on the average frequency with which marine mammals are taken incidentally in a fishery. This interpretation would place observers on board vessels in fisheries where the likelihood of observing interactions with marine mammals would be maximized.

NOAA Fisheries therefore interprets Congressional intent to be that categorization of fisheries should not be based on the status of stocks of marine mammal species or the likelihood of a significant adverse impact on a species. Other actions, such as mitigating measures, voluntary placement of observers and alternative observation programs, are available under the amendments to address situations where incidental take may not be frequent but commercial fishing may be adversely affecting a marine mammal population or where there are critical research needs.

Using this interpretation, "frequent" is defined to mean that it is highly likely that more than one incidental taking will be noted during a standard observation period by an observer on a randomly selected vessel. "Occasional" is defined to mean that there is some likelihood that an incidental taking will be noted during a standard observation period by an observer on a randomly selected vessel, but that there is little likelihood that more than one incidental taking will be noted during the standard observation period. And, "remote likelihood" is defined to mean that it is highly unlikely that any incidental takings will be noted during a standard observation period by an observer on a randomly selected vessel.

For purposes of categorizing fisheries, NOAA Fisheries considered incidental taking to mean accidental entanglement and serious injury or death, as suggested by Committee Reports, and intentional takings to protect gear, catch or person. Intentional takings are included because the amendments expressly require vessels in category I and II fisheries to

report such takings and because these takings are the primary type of taking in several fisheries.

These definitions were applied to categorize fisheries according to the following guidelines. If sufficient documented information was available to estimate the frequency of incidental takings of marine mammals, such information was used in categorizing that fishery. If there was not sufficient documented information to estimate the frequency of incidental takings, the agency looked to other factors that would indicate the likelihood of incidental takings such as gear types, fishing techniques, species fished, areas fished and duration of a fishing season. If these factors indicated a likelihood of at least occasional incidental takings, but the frequency could not be estimated because of insufficient documented information, the fishery was placed in category II.

If available information or other factors indicated that the likelihood of incidental takings in a fishery would be so rare or exceptional as to be remote or non-existent, that fishery was placed in category III.

The definitions and criteria used in identifying and categorizing fisheries will be incorporated into the notice to be published by March 23, 1989.

The final list will be developed after considering comments received on this proposed list. The final list will be subject to revision at least on an annual basis during the five-year exemption period after notice and opportunity for public comment. NOAA Fisheries anticipates that as information becomes available, there will be a number of revisions made to the list.

The following sections discuss the specific criteria for placing fisheries in one of three categories designated by Congress.

Category I Fisheries—Tables 1 and 4

Tables 1 and 4 comprise the list of commercial fisheries conducted in U.S. waters that were considered to have frequent incidental takings of marine mammals. Fisheries were included in this list based on the following criteria:

(1) Committee Reports recommended that the fishery be placed in category I; or,

(2) There is sufficient documented information indicating a "frequent" incidental taking of marine mammals in the fishery.

Category I Fisheries Indicated by Committee Report

The Committee Report of the House of Representatives identified the Prince William Sound/Copper River set and drift gillnet fisheries, Unimak Pass and False Pass (Alaska Peninsula) salmon drift gillnet fisheries, Columbia River salmon drift gillnet fisheries, the Washington and Oregon thresher shark drift gillnet fishery, and the Bering Sea and Gulf of Alaska groundfish trawl fisheries as Category I fisheries. The Senate Committee Report affirmed the House of Representatives' list and added the Unimak Pass and False Pass purse seine salmon fishery. Not all of these fisheries would qualify as Category I fisheries under the second criterion above because there is not sufficient documented information to estimate accurately the frequency of incidental takings in all cases. However, NOAA Fisheries considers Congressional intent to be adequate justification for placing them in Category I in the proposed list for purposes of soliciting comments. Moreover, most of these fisheries were identified and jointly suggested to Congress by representatives of the environmental community and the fishing industry as category I fisheries. At the end of the first year, observer data should either verify or refute the placing of these fisheries in category I. These fisheries are briefly discussed below in terms of available information concerning incidental takings. After considering all available information, timely comments received, and any other pertinent factors, NOAA Fisheries may decide to recategorize some of these fisheries in the final list.

Matkin and Fay (1980) reported that approximately 1,000 marine mammals were entangled or killed in the Copper River Delta/Prince William Sound salmon drift gillnet fishery during the 1978 season. The approximate composition of the kill was 516 harbor seals, 333 northern sea lions, 10 Dall's porpoise, 44 harbor porpoise and 66 sea otters. Unpublished data collected by Wynne indicate that the levels of interaction probably were of the same order of magnitude in 1988.

There is not sufficient information available to estimate reliably the frequency of incidental takings in the Prince William Sound set gillnet fishery for salmon and the Alaska Peninsula (Unimak Pass and False Pass) drift gillnet fishery. However, northern sea lions, harbor seals and sea otters reside in the area and they are known to interact with similar gear in the Prince William Sound/Copper River drift gillnet fishery. Therefore there is a high potential for the taking of northern sea lions, sea otters and harbor seals in these fisheries.

The results of monitoring programs for the salmon gillnet fisheries in the Columbia River and adjacent waters were reported by Beach et al. (1985). Estimated harbor seal mortality in Grays Harbor, Willipa Bay and the Columbia River was 335 animals in 1980. In 1981, total mortality was projected for the Columbia River at 335 harbor seals. California sea lion mortality in the fishery ranged from 4 to 45 animals over the same period. In addition commercial fishermen frequently harass mammals away from their nets. Some of these animals entangle in the nets and drown, and others are killed after attempts to harass them away from fishing operations fail.

Committee Reports identified the Washington and Oregon drift gillnet fishery for thresher shark as a Category I fishery. NOAA Fisheries believes that these reports identified only part of this fishery. The California driftnet thresher shark fishery represents the southern end of this fishery and should be combined with the Washington/Oregon portion. Therefore, NOAA Fisheries has added the California extension of this fishery to Category I. The thresher shark is a highly migratory species that occurs along the entire west coast. The majority of the thresher shark fleet originates in California where they fish for swordfish as well as shark. The Washington and Oregon fishery is conducted largely by California fishermen who have followed the sharks north in the summer months. The drift gillnet fishery for thresher shark is a relatively young fishery that started around the Channel Islands in southern California in 1977. Miller et al. (1983) estimated that the fishery off of southern California killed between 600 and 1200 California sea lions between September 1980 and September 1981. In 1983, the State of California promulgated regulations to reduce the incidental mortality of California sea lions. As a result of the new regulations, and the 1983–84 El Nino event, the fishery moved offshore and extended to the north and billfish became an important target species. Since this shift, there have been too few observers placed to produce statistically reliable estimates of incidental marine mammal mortality. Diamond et al. (1987) reported that the redistribution of the fishing effort contributed to a reduction in the rate of California sea lion mortality but had moved the fishery into areas where it interacts with more species of marine mammals. Between Diamond et al. (1987) and preliminary unpublished data from the 1988 Washington and Oregon observer program, 15 different species of marine mammals have been observed taken in this fishery. Given the potential

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for this fishery to take large numbers of marine mammals and the diversity of marine mammal species known to have been taken in the fishery, NOAA Fisheries proposes that the entire west coast drift net fishery for thresher shark and swordfish be placed in Category I.

The Bering Sea/Gulf of Alaska groundfish trawl fishery interacts with 14 different species of marine mammals. Loughlin et al. (1983), Loughlin and Nelson (1985), and unpublished observer reports prepared annually by the NOAA Fisheries National Marine Mammal Laboratory, indicate that most of these were taken in the foreign and joint venture fisheries. Loughlin and Nelson (1986) estimated that 958 to 1,436 northern sea lions were killed in the Shelikof Strait fishery in 1982. However, mortalities decreased substantially in following years and the fishery has become largely domestic in nature. Unpublished data from Craig (Alaska Department of Fish and Game) indicate a low level of interaction between the domestic trawl fleet and marine mammals; only 4 northern sea lions were caught during 1,176 trawl hauls observed during the 1978 through 1988 seasons.

Observer data in the North Pacific groundfish trawl fishery indicate that the degree of interaction with marine mammals varies widely according to the time of year, location of the fishery, species of fish sought and the type of trawl gear used. NOAA Fisheries is interested in defining these segments as precisely as possible. This will enable NOAA Fisheries to more accurately identify those segments with frequent interactions and to develop appropriate mitigation measures, if necessary.

Melteff and Rosenberg (1984) indicated "frequent encounters" occur between the South Unimak (Unimak Pass and False Pass) salmon purse seine fishery and marine mammals. During 1987, however, the fishery lasted only 110 hours and reports submitted by Certificate of Inclusion holders and the State observer program indicated that entangling, seriously injuring, or killing a marine mammal in this fishery is highly unlikely.

Additional Category I Fisheries

NOAA Fisheries propose to include the following west coast fisheries to Category I: the Prince William Sound and Southern Bering Sea sablefish longline fisheries; the Washington marine set gillnet fishery for salmon in areas 4, 4A, and 4B; and the California halibut and angel shark set gillnet fishery. Two east coast fisheries are proposed to be included in Category I: the foreign mackerel trawl fishery and the Gulf of Maine gillnet fishery. These fisheries are being placed in Category I because "frequent" incidental taking of marine mammals has been documented.

Interactions between sablefish longline fisheries and killer whales in Prince William Sound have resulted in losses of fish reported to be as high as 25 percent of the catch. Similar sablefish/killer whale interactions are known to occur in the Southern Bering Sea south of 57 degrees North latitude and east of 170 degrees West longitude as well. To deter this depredation of catch, fishermen intentionally harass the whales and if harassment fails, some fishermen have attempted to kill the whales that depredate their catch. Such attempted killings are in violation of the MMPA. Dahlheim (1988) and unpublished studies by Matkin presume a mortality (based on the absence of known individuals) in Prince William Sound of three killer whales in 1985, three in 1986, one each in 1987 and 1988. Also, some mortalities are believed to have occurred in the Southern Bering Sea sablefish longline fishery. The available evidence indicates frequent intentional takings of killer whales in this fishery.

NOAA Fisheries proposes to include the Washington marine set gillnet fishery for salmon in Washington's Fisheries Management and Reporting Areas 4, 4A, and 4B in Category I. Available information, based on reports and observations, indicates there is a frequent incidental taking of marine mammals in this fishery.

The California Department of Fish and Game has been monitoring set net fisheries in near shore waters since 1982. From 1983 through 1985, the estimated mortality of California sea lions was between 2,207 and 3,427 annually and the estimated mortality of harbor seals increased from 634 to 1,695 animals per year (Hanan, et al. 1988). The California halibut and angel shark fisheries account for most of this mortality. These fisheries also take common dolphins, harbor porpoise, sea otters (which would not be authorized under the exemption system) and a small number of gray whales. Based on the high total number of documented takings and the number of vessels in these fisheries, there is sufficient indication that these fisheries have frequent incidental takings of marine mammals.

In East coast fisheries, the foreign mackerel trawl fishery listed in Table 4 is included as a category I fishery based on 100 percent observer coverage from 1984–88. During this period a total of 280 animals were killed at an observed rate of kill per day of 0.1 (or one every 10 days). The average observer trip was two weeks. This information documents a frequent incidental taking in this fishery.

The Gulf of Maine gillnet fishery listed in Table 4 is also being placed in category I based on reports and observations documented in Gilbert and Wynne (1987). This study documented that in one segment of the fishery at least 100 marine mammals were incidentally taken by 11–22 vessels over a fishing season. This information indicates a frequent incidental taking of marine mammals in this fishery.

Category II Fisheries—Tables 2 and 5

Tables 2 and 5 comprise the list of fisheries that have an "occasional incidental take of marine mammals." No Category II fisheries were identified in Congressional Reports on the amendments. These fisheries were included in this category based on the following criteria:

(1) There is information indicating an "occasional" incidental taking of marine mammals in the fishery; or

(2) In the absence of information indicating the frequency of incidental taking of marine mammals, there is a likelihood of at least an "occasional" incidental taking in the fishery based on factors such as gear type, fishing techniques, species fished, areas fished, or duration of fishing season.

A brief discussion of these fisheries follows.

Given the known incidence of marine mammals in the area, and that the salmon gillnet fisheries listed in Table 2 use gear similar to the gear observed by Matkin and Fay (1980) in the Copper River Delta and by Beach et al. (1985) in the Columbia River, there is some likelihood of an occasional incidental take of marine mammals. In addition there are reports indicating that incidental takes of marine mammals are more than a rare or exceptional event in most salmon gillnet fisheries. However, there is insufficient information to estimate reliably the frequency of the takes. Examples of reports in various salmon gillnet fisheries are discussed below.

The NOAA Fisheries Alaska Region documented six humpback whale entanglements, resulting in at least one mortality in the southeast Alaska drift gillnet fishery for salmon in 1987. This appears to be an anomalous year and may not be a reliable estimate of the frequency of incidental takes.

NOAA Fisheries Alaska Region has received reports that fishermen in the Yakutat set gillnet fishery for salmon occasionally shoot northern sea lions

(the amendments do not provide an exemption for such takings) and harbor seals to prevent loss of catch or damage of gear. This fishery also took a gray whale in 1988.

Twelve beluga whales were reported taken in 1988 in the Bristol Bay set and drift gillnet fisheries for salmon (Frost et al. 1984). But since few other published reports of interactions with salmon gillnet fisheries in Alaska, Washington, or Oregon are available, this information does not constitute sufficient justification to place this fishery in Category I.

Certificate of Inclusion holders have reported incidental marine mammal takes in the Puget Sound and Straits of Juan de Fuca salmon gillnet fishery but these reports are not sufficient to estimate reliably the actual frequency of incidental takings.

The gillnet fisheries for California white sea bass, yellowtail, and soupfin shark were placed in Category II because the gear is similar to the gear used in other fisheries with frequent incidental takings and there is known incidence of marine mammals in the areas fished. These fisheries use mesh sizes large enough to capture California sea lions and harbor seals. Hanan et al. (1988) estimated the total mortality of California sea lions and harbor seals in these fisheries to be small compared to the take in the halibut and angel shark fisheries. The white croaker and bonito/flying fish gillnets use smaller mesh but takes of marine mammals are reported and there is some likelihood of occasional incidental takings.

The salmon troll fisheries are included in Category II based on fishermen reports and the likelihood of at least an occasional intentional take to protect gear or catch. The entanglement of marine mammals is a rare event, but the loss of hooked fish to seals and sea lions occurs on at least an occasional basis. Fishermen use various methods, including firearms, to deter marine mammals from stealing hooked fish. When this type of deterrence has failed, fishermen have been known to shoot at and sometimes kill animals that continue to depredate their catch. Based on interviews with fishermen, Miller et al. (1983) reported that approximately 300 California sea lions were killed in the California salmon troll fishery in 1980. This information, however, is insufficient to conclude the frequency of incidental takings.

NOAA Fisheries proposes placing Alaskan salmon beach and purse seine fisheries (other than those in Unimak Pass) in Category II. Given the type of fishery and area fished there is a likelihood of at least occasional intentional takings in order to protect gear or catch.

The Hawaiian trolling rod-and-reel fishery is included in Category II based on the likelihood of frequent interactions with dolphins. The interactions reported are usually dolphins removing bait.

The California round haul fisheries are proposed for listing in Category II based on information from Miller et al. (1983) documenting at least an occasional mortality of several species of cetaceans.

The Alaska longline groundfish fishery has a likelihood of intentional takings to protect gear or catch similar to the Prince William Sound and southeastern Bering Sea longline fishery for sablefish. Also, based on gear type, fishermen reports, and other factors there is some likelihood of at least occasional entanglement of marine mammals. However, there is insufficient information to estimate the frequency of incidental takings.

The remainder of the west coast fisheries listed in Category II (the Metlakatla fishtrap fishery in Alaska, the handline and jig fisheries in Hawaii, the squid dip net fishery, and the aquaculture salmon fisheries) are included because available information from fishermen reports, studies (e.g. Miller et al. 1983 and Kuljis 1987), and other factors mentioned in criterion two indicate that marine mammals are at least occasionally intentionally taken by fishermen to protect gear and their catch from damage by marine mammals. Information is too sparse to document the frequency of incidental takings.

Certain east coast fisheries are also being proposed for Category II. The Southern New England, Mid-Atlantic offshore squid and Atlantic Ocean mackerel fisheries listed in Table 5, are placed in Category II because there is some information indicating that there is at least an occasional incidental taking of a variety of marine mammals. This is based on observer reports in joint venture operations. There were 33 reported takes of marine mammals from 1985–88 with a high of 20 in 1986. Consequently, these reports combined with the likelihood of at least occasional incidental takings based on the type of fishery and gear involved, justify inclusion of this fishery in Category II.

The Atlantic Ocean and Gulf of Mexico pelagic longline fisheries listed in Table 5 are proposed as Category II fisheries. Information collected by observers on the Japanese fleet of longliners operating in Northeast waters documented at least occasional incidental takings of marine mammals. Since this fleet is similar in most respects to other pelagic longliners, there is a likelihood of at least occasional incidental takings.

Category III Fisheries—Tables 3 and 6

Tables 3 and 6 comprise the list of fisheries that have been determined to have "a remote likelihood of or no known incidental taking of a marine mammal." These fisheries were included in Category II based on the following criteria:

(1) Committee Reports recommended that the fishery be placed in Category III;

(2) There is information indicating no more than a remote likelihood of an incidental taking of a marine mammal in one fishery; or

(3) In the absence of information indicating the frequency of incidental taking or where there is no known taking of marine mammals, other factors such as gear type, fishing techniques, species fished, areas fished, or duration of fishing season suggest no more than a remote likelihood of an incidental take.

In making this determination, the agency relied on the Senate Committee Report which stated that "fisheries such as the shrimp trawl fishery and menhaden purse seine fishery in the Atlantic Ocean and the Gulf of Mexico, where hundreds of thousands of sets or tows may result in a small total mortality of animals annually, would be placed in [Category III]" (Senate Committee Report, page 17).

There is no information available suggesting that the northern Bering Sea gillnet fisheries incidentally take marine mammals. Based on factors described in criterion 3 above, there is only a remote likelihood of a taking incidental to these fisheries.

The likelihood of incidental take of marine mammals in the other category III gillnet fisheries is remote because the seasons are extremely short (e.g. herring fisheries), the mesh size is too small to entangle (e.g. shad, smelt, and herring), or they are conducted in areas where mammals generally are not present (e.g. mullet).

Troll fisheries for species other than salmon rarely report losses of fish to marine mammals. Incidental take in troll fisheries usually occurs as intentional lethal removal of animals that are depredating catch and gear. Since troll fisheries identified in Table 3 have not reported fish losses and troll gear only rarely entangles a marine mammal, NOAA Fisheries believes that the likelihood that these fisheries will take a marine mammal is remote and proposes placing them in category III.

Marine mammal interactions have been documented for only a few of the

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round haul fisheries (including beach seines and throw nets) identified in Table 3. The likelihood of entanglement, serious injury, or mortality of marine mammals as a result of these interactions is remote. No marine mammal interactions have been reported from the remainder of the round haul fisheries identified in Table 3.

Marine mammal interactions have also been documented for longline fisheries, but the likelihood of entanglement or intentional takings is remote. More commonly, the mammals raid the baited hooks, diminishing the fishermen's efficiency.

With the exception of Alaska, the west coast trawl fisheries generally have a remote likelihood of incidentally taking a marine mammal. On rare occasions, marine mammals may become entrapped in trawl nets. In the Pacific whiting fishery observers have documented between 1 and 12 takings of marine mammals per year since 1976 by foreign and joint venture operations. Interactions tend to be with pinnipeds attempting to remove fish from the cod end as the net is retrieved (Miller et al. 1983). Fishermen generally are not bothered by this and few reports of intentional lethal removal are known. Since the likelihood of mortality, serious injury, or entanglement is remote NOAA Fisheries proposes placing these fisheries in Category III.

The nature of the gear or methods used in the remainder of the fisheries in Table 3 is such that the likelihood of entanglement, serious injury, or mortality of a marine mammal or intentional takings to protect gear or catch is remote.

For the following East coast fisheries, there have been reports and information concerning incidental takings in these fisheries, but based on factors mentioned in criterion (3) above there is only a remote likelihood of these takings.

The Gulf of Maine (GME) Tub Trawl identified in Table 6, is a bottom longline operation that occurs within 25 miles offshore. The interactions reported are usually seals robbing bait and fish from the hooks. But, there is only a remote likelihood of entanglement or intentional takings to protect gear or catch.

Only five vessels are licensed for the GME, Southern New England (SNE), Mid-Atlantic (MDA) Atlantic bluefin tuna purse seine fishery. In 1986, three humpback whales were reported taken by these vessels. This appears to be an anomalous event because there have been no other reports of marine mammals taken in other years. Since the season for this fishery is very short and the purse seines are relatively small compared to those used in other types of tuna fisheries, there is only a remote likelihood of incidental takings in this fishery.

There have been no reports of marine mammal mortalities in the GME Atlantic Herring Purse Seine and Fixed Gear fisheries. Marine mammals do become captured by gear in these fisheries, but because mesh size of nets used is small there is only a remote likelihood of entanglement. When marine mammals are captured in this gear, they are generally released without injury.

Based on gear type and areas fished, the GME, SNE and MDA coastal gillnet fisheries have only a remote likelihood of incidentally taking marine mammals. These fisheries take place within the lower reaches of the large river systems, or near the coastal embayments along the East Coast. The fisheries commonly occur in the spring during anadromous fish runs. Mammal abundance in the coastal areas is usually low at that time. A small gillnet fishery operates year-round in the Mid-Atlantic area for various pelagic fish species. The fine mesh nets do not entangle the larger mammal species that frequent the area.

Although there have been some reports of entanglement of marine mammals in gear used by SNE and MDA Trap and Pound Net fishery, the likelihood is remote. The reports of entanglement often involve decaying carcasses that have floated into the gear.

There have been periodic reports of marine mammals being entangled in lobster lines and gear over the past fifteen years in the Gulf of Maine/Southern New England inshore lobster pot fishery. However, given the large number of individual vessels, the nature of this fishery and the gear type used, the likelihood of incidental takings is remote.

The GME Atlantic salmon farming fishery is a growing industry along the coast of Maine. The marine mammal interactions involve seal interference with the pens. Non-harassing methods, such as double netting around the pens, have been used to protect fish to date. At this time, however, there does not appear to be more than a remote likelihood of entanglement or intentional takings of these marine mammals.

For the remaining fisheries listed in Table 6, there is only a remote likelihood of incidental takings based on gear type, the nature of these fisheries, and other factors listed in criterion 3 above.

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Proposed List of Fisheries Associated With Exemption Procedures

TABLE 1.—CATEGORY I, COMMERCIAL FISHERIES IN THE PACIFIC OCEAN

Fishery	Estimated number of vessels/ persons	Marine mammal species involved
Gillnet fisheries salmon:		
AK Prince William Sound drift gillnet	525	2, 6, 13, 14, and 15.
AK Prince William Sound set gillnet	17	2, 6, 13, and 15.
AK Peninsula drift gillnet	154	2, 6, 13, 15, and 30.
WA marine set gillnet in Areas 4, 4A, and 4B	66	6, 15, and 30.
WA, OR Lower Columbia River Region, Willipa Bay, Grays Harbor (includes rivers, estuaries, etc.) drift gillnet	914	2, 3, 6, and 30.
Other finfish:		
WA, OR, CA thresher shark and swordfish drift gillnet	909	2, 3, 6, 11, 14, 15, 16, 17, 18, 22, 23, 29, 30, 32, and 33.
CA California halibut and angel shark—set gillnet	788	3, 6, 13, 15, 16, and 30.
Long line/set line fisheries sablefish:		
AK Prince William Sound	25	25, 28.
AK Southern Bering Sea	66	25.
Trawl fisheries groundfish:		
AK Bering Sea/Gulf of Alaska	70	1, 2, 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, 25, and 32.
Purse seine fisheries salmon:		
AK South Unimak (False Pass and Unimak Pass)	102	1, 2, and 13.

TABLE 2.—CATEGORY II, COMMERCIAL FISHERIES IN THE PACIFIC OCEAN

Fishery	Estimated number of vessels/ persons	Marine mammal species involved
Gillnet fisheries salmon:		
AK Southeast Alaska drift gillnet	460	2, 6, 13, 14, 15, 25, 30, and 31.
AK Yakutat—set gillnet	154	2, 6, 13, 14, and 30.
AK Cook Inlet—set and drift gillnet	1,213	2, 6, 13, 15, and 26
AK Kodiak—set gillnet	174	2, 6, 13, and 15.
AK Peninsula—set gillnet	100	2, 6, 13, and 30.
AK Bristol Bay—set and drift gillnet	2,692	2, 6, 26, and 30.
WA Puget Sound Region, Hood Canal, Straits of Juan de Fuca (includes rivers, estuaries, etc.)—set and drift gillnet	3,900	1, 2, 3, 6, 14, 15, and 25.
WA coastal river gillnet	255	2, 3, and 6.
Other finfish:		
AK gillnets	6	Unknown.
CA gillnets for white sea bass, yellow tail, soupfin shark, white croaker, bonito/flying fish	144	3, 6, 13, 27, and 30
Troll fisheries:		
AK salmon	1,607	1, 2, 26, and 31.
WA, OR, CA salmon	4,727	2, 3, and 6.
HI trolling, rod and reel	903	20, 21, and 24.
Round haul (seine and lampara), beach seine, and throw net fisheries:		
AK salmon beach or purse seine	1,199	2, 13, and 15
CA herring purse seine	43	3, 6.
CA anchovy, mackerel, tuna purse seine	390	3, 27.
CA sardine purse seine	345	3, 27.
CA squid purse seine	80	3, 22, 23, and 27
Long line/Set line fisheries:		
AK groundfish	1,607	2, 31.
Pot, ring net, and trap fisheries:		
AK metlakatla fish trap	4	2, 6.
Handline and jig fisheries:		
HI deepsea bottomfish	434	12, 20.
HI tuna	144	12, 20, and 21.
Dip net fisheries:		
CA squid	10	3, 23.
Aquaculture, ranch pens:		
WA, OR salmon net pens	21	2, 3, and 6.
OR, WA/tribal salmon ranch	6	3, 6.

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TABLE 3.—CATEGORY III, COMMERCIAL FISHERIES IN THE PACIFIC OCEAN

Fishery	Estimated number of vessels/ persons	Marine mammal species involved
Gillnet fisheries:		
AK Kuskokwim, Yukon, Norton, Kotzebue salmon gillnets	1,800	15.
WA, OR Upper Columbia River Basin (above Bonneville Dam) salmon and other finfish gillnets	100	3.
AK, WA, OR, CA gillnets for herring, smelt, shad, sturgeon, bottom fish, mullet, perch, rockfish	2,592	2, 3, and 6.
HI gillnet	81	None documented.
Troll fisheries:		
Non-salmon troll fisheries AK North Pacific halibut AK bottom fish WA, OR, CA albacore, groundfish, bottom fish CA halibut	1,354	4, 6.
Guam tuna	<50	Non documented.
Commonwealth of the Northern Mariana Islands tuna	?	Do.
American Samoa tuna	?	Do.
Round haul (seine and lampara), beach seine, and throw net fisheries:		
AK herring beach or purse seine	550	13.
AK other finfish	9	None documented.
WA salmon purse seine	440	6, 14.
WA salmon reef net	53	6.
WA, OR herring, smelt, squid purse seine	100	3, 6.
WA beach seine all species	199	None documented.
HI purse seine	18	Do.
HI opelu/akule net	3	Do.
HI throw net, cast net	24	Do.
HI net unclassified	8	Do.
Western Pacific yellowfin tuna purse seine (South Pacific Tuna Treaty)	32	Do.
Long line/set line fisheries:		
AK, WA, OR North Pacific halibut	5,893	2, 4, 25, and 28.
WA, OR, CA groundfish, bottomfish	357	3, 4, 6, and 17.
CA shark/bonito	10	3.
HI ahi flagline	18	21, 24.
Trawl fisheries:		
AK food/bait herring	2	None documented.
AK, WA, OR, CA shrimp	382	Do.
WA, OR, CA groundfish, squid, smelt, bottomfish	585	2, 3, 6, 17, and 33.
CA California halibut	25	3.
CA sea cucumber	6	None documented.
Pot, ring net, and trap fisheries:		
AK shellfish—pot	1,533	13.
AK finfish—pot	>220	None documented.
WA, OR, CA sablefish—pot	178	4, 6.
WA, OR, CA dungeness crab	1,426	4, 6, 30, and 32.
WA, OR shrimp—pot	231	None documented.
CA lobster, prawns, shrimp, rock crab, fish—pot	608	Do.
OR, CA hagfish	7	Do.
HI lobster—trap	21	12.
HI crab—trap	5	None documented.
HI fish—trap	2	Do.
HI shrimp—trap	2	Do.
HI other—trap	6	Do.
Handline and jig fisheries:		
AK North Pacific halibut	68	Do.
AK other finfish	33	Do.
WA groundfish, bottomfish	679	4, 6.
HI aku boat, pole and line	17	None documented.
HI inshore handline	76	20.
Guam bottomfish	<50	None documented.
Commonwealth of the Northern Mariana Islands bottomfish	?	Do.
American Samoa bottomfish	?	Do.
Dip net fisheries:		
WA, OR smelt, herring	119	Do.
Harpoon fishery:		
CA swordfish	226	Do.
Pound fisheries:		
AK, Prince William Sound herring spawn on kelp	91	Do.
AK Southeast Alaska herring food/bait	1	Do.
WA herring—brush weir	1	Do.
WA herring spawn on kelp	4	Do.
Bait pens:		
WA, OR herring	12	6.
Dredge fishery:		
Coastwide scallop	106	Do.
Dive, hand/mechanical collection fisheries:		
AK abalone	23	Do.
AK dungeness crab	3	Do.
AK herring spawn on kelp	172	Do.
AK urchin and other fish/shellfish	19	Do.
AK clam hand shovel	64	Do.
AK clam mechanical/hydraulic fisheries	3	Do.
WA geoduck	37	4.

TABLE 3.—CATEGORY III, COMMERCIAL FISHERIES IN THE PACIFIC OCEAN—Continued

Fishery	Estimated number of vessels/ persons	Marine mammal species involved
WA, OR sea urchin, other clams, octopus, oysters, sea cucumbers, scallops	647	2, 6.
CA abalone	129	None documented.
CA sea urchin	800	Do.
HI squiding, spear	49	Do.
HI lobster diving	16	Do.
HI coral diving	2	Do.
HI handpick	85	Do.
Aquaculture, ponds:		
WA oyster farm	316	Do.
WA mussel/clam	224	Do.
WA, CA kelp	4	Do.
HI fish pond	3	Do.
Commercial passenger fishing vessel (charter boat) fisheries:		
WA, OR, CA all species	998	3, 6.
Other fisheries:		
HI	17	None documented.

TABLE 4.—CATEGORY I, COMMERCIAL FISHERIES IN THE ATLANTIC OCEAN

Fishery	Estimated number of vessels/ persons	Marine mammal species involved
Trawl fishery:		
SNE, MDA Foreign mackerel (1988, 3 countries)	15	16, 20, 22, 23, and 34.
Gillnet fisheries:		
GME groundfish	130	6, 15, 23, 31, 32, 34, 35, and 38.
GME mackerel	10	6, 23, 34, and 35.

TABLE 5.—CATEGORY II, COMMERCIAL FISHERIES IN THE ATLANTIC OCEAN AND GULF OF MEXICO

Fishery	Estimated number of vessels/ persons	Marine mammal species involved
Trawl fisheries:		
SNE, MDA offshore squid	20	16, 22, 23, and 34.
Atlantic Ocean mackerel	200	23, 16.
Longline:		
Atlantic Ocean and GMX tuna, shark, swordfish	820	22, 23, 24, 27, 31, 32, and 37.

TABLE 6.—CATEGORY III, COMMERCIAL FISHERIES IN THE ATLANTIC OCEAN AND GULF OF MEXICO—CONTINUED

Fishery	Estimated number of vessels/ persons	Marine mammal species involved
Trawl fisheries bottom:		
GME northern shrimp—trawl	320	None documented.
GA, SC whelk	25	Do.
GMX, SOA shrimp	18,292	20, 40.
Calico scallops	200	None documented.
Bluefish, croaker, flounder	550	Do.
Crab	400	Do.
Off bottom:		
GME, SNE groundfish	1,052	Do.
SNE, MDA mixed species	>1,000	Do.
GMX, SOA coastal herrings	5	36.
GMX butterfish	5	36.
Otter trawls:		
GME, SNE sea scallops	215	None documented.
Tub:		
GME tub trawl	46	6, 35.
Purse seine:		
GME, SNE, MDA menhaden	10	20.
GME, SNE, MDA Atlantic bluefin tuna	5	31.
GMX, SOA menhaden	97	20.

TABLE 6.—CATEGORY III, COMMERCIAL FISHERIES IN THE ATLANTIC OCEAN AND GULF OF MEXICO—CONTINUED—Continued

Fishery	Estimated number of vessels/ persons	Marine mammal species involved
FL west coast sardines	16	20.
GME Atlantic herring	30	6, 15, and 35.
Bottom longline and hook and line:		
GMX, SOA snapper-grouper and other reef fish	1,300	None documented.
Hook and line: GMX, SOA pelagics	1,446	Do.
Hook/line, harpoon: GME, SNE Atlantic bluefin tuna	26,218	Do.
Gillnet/harpoon: SNE, MDA swordfish	5	Do.
Gillnet:		
GME, SNE, MDA coastal shad, sturgeon	4,500	15, 20, and 32.
FL east coast, GMX pelagics king and spanish mackerel	271	20?
FL east coast shark	24	None documented.
SOA shad and sturgeon	15	20.
GMX, SOA coastal	4,000	None documented.
Fixed gear fisheries trap:		
SNE, MDA	50–60	6, 15, 31, 32, and 35.
FL east and west coast, TX stone crab	500	None documented.
GMX, SOA blue crab	300	40, 20.
GMX, SOA, CB spiny lobster	2,500	None documented.
GMX, SOA, CB reef fish	2,200	Do.
Stop seine, weirs: GME Atlantic herring	50–100	6, 15, 31, 32, 35, and 38.
Pot:		
GME, SNE inshore lobster	10,813	6, 31, 32, 36, and 39.
GME, SNE offshore lobster	2,902	None documented.
MDA crab	?	Do.
MDA black sea bass	30	Do.
Dredge fisheries:		
GME, SNE sea scallops	233	31.
SNE, MDA offshore clam	159	None documented.
GME mussel	?	Do.
MDA oyster	?	Do.
Haul seine: SOA, CB	150	None documented.
Pound net: MDA	250	Do.
Beach seine: CB	15	40.
Farming: GME Atlantic salmon	>30	6, 35.
Coastal shellfish: GME, SNE, MDA	?	None documented.

List of State Abbreviations Used in Table
- AK—Alaska
- CA—California
- FL—Florida
- GA—Georgia
- HI—Hawaii
- OR—Oregon
- SC—South Carolina
- TX—Texas
- WA—Washington

Acronyms and the Areas They Represent
- GME—Gulf of Maine—Canadian Border to Northern Massachusetts
- SNE—Southern New England—Southern Massachusetts to New York
- MDA—Mid Atlantic—New Jersey to Cape Hatteras, NC
- SOA—Southern Atlantic—South Carolina to Florida
- GMX—Gulf of Mexico—All Gulf States
- CB—Caribbean

SPECIES CODES FOR MARINE MAMMAL TAKEN IN COMMERCIAL FISHERIES

Species codes and common name	Scientific name
1. Northern fur seal	*Callorhinus ursinus.*
2. Northern sea lion	*Eumetopias jubatus.*
3. California sea lion	*Zalophus californianus.*
4. Undemified sea lion	
5. Walrus	*Odobenus rosmarus.*
6. Harbor seal	*Phoca vitulina.*
7. Spotted seal	*Phoca largs.*
8. Ringed seal	*Phoca hispida.*
9. Ribbon seal	*Phoca fasciata.*
10. Bearded seal	*Erignathus barbatus.*
11. Northern elephant seal	*Mirounga angustirostris.*
12. Hawaiian monk seal	*Monachus schauinslandi.*
13. Sea otter	*Enhydra lutris.*
14. Dall's porpoise	*Phocoenoides dalli.*
15. Harbor porpoise	*Phocoena phocoena.*
16. Common dolphin	*Delphinus delphis.*
17. Pacific whitesided dolphin	*Lagenorhynchus obliquidens.*

SPECIES CODES FOR MARINE MAMMAL TAKEN IN COMMERCIAL FISHERIES—Continued

Species codes and common name	Scientific name
18. Northern right whale dolphin	*Lissodelphis borealis.*
19. Striped dolphin	*Stenella coeruleoalba.*
20. Bottlenose dolphin	*Tursiops truncatus.*
21. Rough toothed dolphin	*Steno bredanensis.*
22. Risso's dolphin	*Grampus griseus.*
23. Pilot whale	*Globicephala sp.*
24. False killer whale	*Pseudorca crassidens.*
25. Killer whale	*Orcinus orca.*
26. Beluga whale	*Delphinapterus leucas.*
27. Unidentified small cetacean	
28. Sperm whale	*Physeter catodon.*
29. Beaked whales	*Ziphiidae.*
30. Gray whale	*Eschrichtius robustus.*
31. Humpback whale	*Megaptera novaeangliae.*
32. Minke whale	*Balaenoptera acutorostrata.*
33. Unidentified large cetacean	
34. Atlantic whitesided dolphin	*Lagenorhynchus acutus.*
35. Gray seal	*Halichoerus grypus.*
36. Spotted dolphin	*Stenella plagiodon.*
37. Saddleback dolphin	*Delphinus delphis.*
38. Northern right whale	*Eubalaena glacialis.*
39. Fin whale	*Balaenoptera physalus.*
40. Manatee	*Trichechus manatus.*

(Authority: 16 U.S.C. 1361 *et seq.*)

Date: January 19, 1989.

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Assistant Administrator for Fisheries, National Marine Fisheries Service.

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Part IV

Department of the Treasury

Comptroller of the Currency

12 CFR Part 3
Risk-Based Capital Guidelines; Final Rule

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DEPARTMENT OF THE TREASURY

Comptroller of the Currency

12 CFR Part 3

[Docket No. 89-2]

Risk-Based Capital Guidelines

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is amending 12 CFR Part 3 by adopting an Appendix A thereto which contains risk-based capital guidelines. The OCC's current capital regulations provide a disincentive to national banks holding low risk assets, because the same amount of capital is required to be held against those assets that must be maintained against a highly risky and high yielding asset. Furthermore, the current capital regulations, which are based on total assets, do not take account of a bank's off-balance sheet activities. The effect of the risk-based capital guidelines will be to individualize bank capital requirements by tying them to the riskiness of a particular bank's assets and off-balance sheet activities.

EFFECTIVE DATE: December 31, 1990.

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SUPPLEMENTARY INFORMATION:

Introduction

These final risk-based capital guidelines are derived from the risk-based capital proposal that the U.S. banking agencies published for public comment at 53 FR 8550, March 15, 1988. Portions of the proposal have been modified in response to the comments received from the public. A complete discussion of the issues raised by the commenters and the changes from the proposed guidelines is preceded by a brief overview of the final guidelines in this preamble.

These guidelines are supplemental to the existing capital requirements detailed in 12 CFR Part 3. The OCC is considering amendments to 12 CFR Part 3, and expects to publish a Notice of Proposed Rulemaking in the very near future. The amendments, which would become effective December 31, 1990, would implement a capital definition that is consistent with the definition in these risk-based capital guidelines and establish a new minimum capital-to-total assets requirement. Transitional arrangements will govern compliance with the risk-based capital guidelines until they are fully implemented on December 31, 1992. A brief explanation of the proposed amendments to Part 3 and a complete discussion of the OCC's transitional arrangements for the risk-based capital guidelines follow this overview of the final guidelines.

Background and Purpose

These final guidelines are consistent with the international framework for capital standards established in July 1988 by the Committee on Banking Regulations and Supervisory Practices (frequently referred to as the Cooke Committee or the Basle Supervisors Committee),[1] which meets under the auspices of the Bank for International Settlements in Basle, Switzerland. The international framework is also known as the Basle Agreement.

Efforts to develop a risk-based capital measure in the United States date back a number of years. The three U.S. banking agencies (the Federal Reserve Board, the Federal Deposit Insurance Corporation and the Office of the Comptroller of the Currency) first issued a risk-based capital proposal for public comment at 51 FR 10602, March 27, 1986. A majority of the public comments on the 1986 proposal expressed general support for the concept of basing a bank's capital requirement on the riskiness of its assets and off-balance sheet activities. Many commenters asserted, however, that without similar requirements for foreign competitors, the proposed requirements would put U.S. banks at a competitive disadvantage.

In light of those concerns, the U.S. banking agencies began working with the Bank of England on the development of a common approach. The OCC published a proposal based upon a joint U.S./U.K. risk-based capital agreement at 52 FR 23045, June 17, 1987. The scope of the international convergence effort expanded further when the Cooke Committee took the U.S./U.K. proposal under consideration and addressed the possibility of expanding the agreement to include all of the countries represented on the Committee.

As a result of the Cooke Committee's efforts, the international framework, upon which the guidelines are based, was developed. Thus, the final guidelines represent the culmination of efforts over several years to develop internationally consistent capital standards.

These final risk-based capital guidelines have a twofold purpose: To make capital requirements more sensitive to differences in risk profiles among banking organizations and to aid in making the definition of bank capital uniform internationally.

To achieve this purpose, the risk-based capital guidelines make several modifications to the current capital standard. First, the guidelines recognize the riskiness of assets by lowering capital requirements for some assets that clearly have less credit risk than others. Second, the guidelines recognize the risk inherent in off-balance sheet activities and require that banks hold capital against them. Third, the guidelines establish a definition of capital and a minimum risk-based capital standard that are consistent internationally, and place a greater emphasis on equity capital. A bank's risk-based capital ratio is obtained by dividing its capital base by its risk-weighted assets.

Differences Between the Risk-Based Capital Guidelines and the Existing Capital Standard

The following sections describe in greater detail the three areas in which the risk-based capital guidelines differ from the existing capital standard.

I. Assets are Risk-Weighted

Under the risk-based capital guidelines, assets are placed into one of four risk categories, based primarily on credit risk. To calculate a bank's minimum risk-based capital requirement, the face value of assets in each risk category is adjusted to reflect the relative riskiness of that category.

For example, assets in the first risk category, which includes cash, reserves at Federal Reserve Banks, and securities issued by the U.S. Government, have no credit risk and therefore carry a 0% risk-weight and require no capital.

Capital is required for assets in the remaining three risk categories. Capital is required for 20, 50, or 100 percent of the asset's face value, depending on the risk category in which the asset is placed. For example, an asset with a 20% risk weight requires only one-fifth the capital support of an asset with a 100% risk-weight. The asset risk weights for specific items are presented in Table 1 of Appendix A to 12 CFR Part 3.

[1] The Cooke Committee consists of representatives of the central banks and supervisory authorities from the Group of Ten countries (Belgium, Canada, France, Germany, Italy, Japan, Netherlands, Sweden, Switzerland, United Kingdom, United States), and Luxembourg.

II. Off-Balance Sheet Activities are Included

The second change from the existing capital standard is that the final risk-based capital guidelines take account of the credit risk exposure that results from off-balance sheet activities. The OCC followed the Cooke Committee framework in the treatment of off-balance sheet items.

Because of the contingent nature of off-balance sheet items, the guidelines take a two-step approach. In the first step, the face value of each off-balance sheet instrument is converted into an amount that permits it to be related to an on-balance sheet asset in terms of credit risk. This quantity is referred to as the instrument's "credit-risk equivalent" and is calculated by multiplying the notional principal amount of the off-balance sheet instrument by a credit conversion factor.

For example, a standby letter of credit serving as a financial guarantee exposes a bank to the same amount of credit risk as a loan to that customer. Therefore, it is assigned a credit conversion factor of 100%. Other off-balance sheet instruments entail less credit risk and, therefore, are assigned lower conversion factors—some as low as 0%.

In the second step, the credit-risk equivalent is placed into one of the four risk categories, based upon the obligor, collateral, or guarantee involved. For example, an off-balance sheet instrument with a credit conversion factor of 50% that is issued to an obligor who falls into the 50% risk category would require capital against 25% of the face amount of the instrument. The credit conversion factors are listed in Table 2 of Appendix A. The method for calculating the credit-risk equivalents for interest and exchange rate contracts is shown in Table 3 of Appendix A.

III. Capital is Redefined

These final risk-based capital guidelines also redefine capital. The elements of the new definition of capital are listed in Table 4 of Appendix A.

Capital instruments are divided into two tiers. Core (Tier 1) capital includes common equity, noncumulative perpetual preferred stock (excluding auction rate issues), and minority interests that are held by others in a bank's consolidated subsidiaries. Supplementary (Tier 2) capital includes, among other items, cumulative and limited-life preferred stock, mandatory convertible securities, subordinated debt, and the allowance for loan and lease losses. Tier 2 capital elements qualify as part of a bank's total capital base up to a maximum of 100% of that bank's Tier 1 capital.

Some Tier 2 capital elements, however, are subject to additional limitations. The loan loss reserve is limited to 1.25% of risk-weighted assets. Term subordinated debt and intermediate-term limited-life preferred stock are subject to a combined limit of 50% of Tier 1 capital. Moreover, these latter instruments, as well as other limited-life capital instruments, are amortized over the last five years of their term. Thus, for example, term subordinated debt with less than a year to maturity does not qualify as capital at all.

Further, some assets are deducted from capital. Intangibles, including goodwill, are deducted from Tier 1 capital unless they meet certain criteria. One exception is goodwill acquired through supervisory mergers of problem or failed depository institutions. The application of this exception is decided on a case-by-case basis and banks are made aware of the proper treatment of goodwill in conjunction with the OCC's merger approval. In contrast, majority investments in unconsolidated banking or finance subsidiaries are deducted from total capital. The Basle Agreement also requires the deduction of intentional reciprocal holdings of capital instruments by banks.

Transition Period and Minimum Capital Requirements

The final risk-based capital guidelines require banks to hold a minimum total risk-based capital ratio of 8% as of December 31, 1992. Of this 8%, half must be comprised of Tier 1 capital. However, a transition period is provided, beginning on December 31, 1990 and ending on December 30, 1992. No formal risk-based capital standard will be set prior to December 31, 1990. On that date, banks will be required to meet an interim minimum total risk-based capital ratio of 7.25%.

Banks should immediately begin monitoring their risk-based capital ratios and working toward achieving the interim and final minimum ratios. In the near future, the OCC will be providing guidance to assist banks in making a preliminary estimate of their risk-based capital ratio. In particular, a worksheet will be distributed that will assist small banks with less complex balance sheets in determining their conformance with the guidelines.

Any bank that has risk-based ratios of less than 4% Tier 1 capital and 8% total capital should begin planning for achieving those standards by December 31, 1992 as well as the interim ratio of 7.25% by December 31, 1990.

Furthermore, banks that at present have risk-based capital in excess of the 8% minimum should not take any action which would cause their risk-based capital ratio to fall below 8%.

During the transition period, there will be exceptions to the limitations on the use of Tier 2 capital instruments. In addition, some elements of capital will be grandfathered during the transition. Descriptions of the exceptions to the capital limitations and the grandfathered elements of capital are contained in section 4 of the final guidelines.

The OCC stresses that the 8% risk-based capital ratio is a minimum, and that most banks will be expected to maintain risk-based capital levels that exceed the 8% minimum. This ratio is considered a minimum because, while the risk-based capital standard focuses primarily on credit risk, a bank's capital base must also be available to absorb losses stemming from other types of risk, such as interest rate risk, operational risk, and asset concentrations. Therefore, the OCC will continue to assess both the quality of risk management systems and the level of overall risk in individual banks through the supervisory process, and will require additional capital when warranted. In addition, work will continue within the Cooke Committee on developing a common approach to assessing interest rate risk and exchange rate risk.

The OCC's assessment of overall capital adequacy takes into account these and other risks and involves a qualitative judgment made in conjunction with the OCC's supervision of national banks. This assessment involves analysis of the quality and level of earnings, the quality of loans and investments, the effectiveness of loan and investment policies, and management's overall ability to monitor and control risk. Thus, the assessment of a banking organization's capital adequacy goes far beyond a simple risk-based capital ratio. Nevertheless, the risk-based ratio provides bankers and examiners an important benchmark or starting point for the analysis of capital adequacy.

Proposed Leverage Constraint

In the near future, the OCC intends to propose amendments to its current leverage ratios in 12 CFR Part 3. If adopted, a minimum capital-to-total assets requirement (leverage constraint) will continue to be contained in 12 CFR Part 3. The proposed amendments would make the definition of capital in Part 3 consistent with that of the risk-based capital guidelines. In this respect, it is

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anticipated that the proposed leverage constraint will be based solely on a ratio of Tier 1 capital to total assets. These amendments to the existing capital requirements will provide a minimum level of capital below which no national bank may operate without a mandate to restore capital to an adequate level. Because of the redefinition of capital in the new leverage constraint, it is difficult to compare the current requirements to the new standard. However, it is anticipated that this new minimum leverage ratio will be lower than the current standard.

An amended form of the existing minimum capital requirements is being retained for two reasons. First, the risk-based capital guidelines are designed solely as a measure of credit risk; therefore, there are a number of other banking risks that are not addressed—*e.g.*, interest rate risk, operational risk and asset concentrations. Second, the existing capital requirement is based upon total rather than risk-adjusted assets, and therefore, eliminates the possibility for significant leverage which exists under the risk-based capital guidelines. This possibility exists because some assets receive a 0% risk weight under the guidelines and therefore require no capital.

The OCC believes that the combination of risk-based capital and the leverage constraint should produce a level of capital that adequately protects banks against losses. However, it is the opinion of the OCC that a bank's capital requirement should be related to the riskiness of its assets and off-balance sheet activities and, therefore, that the risk-based standard should be the primary focus in determining the adequacy of a bank's capital.

If adopted, the proposed amendments to 12 CFR Part 3 would become effective on December 31, 1990. In the interim, banks should maintain capital in accordance with the requirements for primary and total capital contained in the existing provisions of 12 CFR Part 3. In other words, until December 31, 1990, the capital requirements of national banks will not change; after December 31, 1990, if the proposed amendments are adopted, banks will be required to maintain a minimum capital ratio computed as a percentage of total assets, in addition to complying with the provisions of the risk-based capital guidelines.

Except for a few minor, mostly technical changes, the OCC's Interpretive Ruling 3.100 (*See* 12 CFR 3.100), which interprets the statutory phrase "capital and surplus" will remain unchanged. Thus, the proposed amendments to 12 CFR Part 3 would have no effect on a bank's lending limit or other activities that are statutorily constrained by the amount of a bank's "capital and surplus."

Summary of the Comment Letters and Changes from the Proposed Guidelines

The final guidelines include a number of changes from the proposed guidelines which appeared at 53 FR 8560, March 15, 1988. These changes were influenced, in part, by letters received during the comment period, which ended May 13, 1988.

The OCC received 122 comment letters, including 48 from multinational and regional banks and 25 from community banks. The remaining commenters were trade associations, investment bankers, government-sponsored agencies, Members of Congress, multilateral lending institutions, savings and loan associations, and various other groups representing the financial services industry.

The commenters discussed a number of issues, some of which precipitated changes to the final guidelines. The major issues regarding risk-based capital and the changes from the original proposal are discussed in the remainder of this preamble. The most significant changes from the proposed guidelines are: the assignment of certain mortgage loans to the 50% risk category; the elimination of the 10% risk category; the recognition of noncumulative perpetual preferred stock as a Tier 1 capital instrument; the expansion of the treatment of intangible assets; and the recognition of a group of industrialized countries whose central governments and banks should receive similar treatment under the risk-based capital system. These and other issues are discussed more fully below, and are arranged alphabetically within the following categories: I. General Issues, II. Balance Sheet Assets, III. Off-Balance Sheet Items, and IV. Capital Elements.

I. General Issues

Applicability—The proposed guidelines stated that the risk-based capital guidelines were intended to apply to all national banks, regardless of size. Although a number of the commenters expressed their agreement with that position, 11 suggested that the guidelines should apply only to larger banks. Commenters suggested a number of cutoffs based on asset size. The commenters' basic argument in support of exempting smaller banks from the risk-based capital guidelines was that the resultant reporting burden for those institutions would far outweigh any benefits that might be realized.

Although the OCC acknowledges this concern, the OCC believes that the risk-based capital guidelines should be applied to banks of all sizes. The risk-based capital measure is sensitive to the credit risk profiles of individual institutions and therefore, it represents an important element of the capital adequacy assessment process, regardless of a bank's size.

The OCC desires to minimize the reporting burden for those institutions with very strong risk-based capital ratios. For that reason, the proposal requested specific comment on the appropriate focus, based on asset size, of off-site data collection and monitoring efforts for risk-based capital. The comments received in response to that question will be given careful consideration during the process of developing the reporting and monitoring procedures. The details of those arrangements will be provided at a later date.

Average versus Period-end Figures—The OCC requested specific comment regarding whether average or period-end figures should be used in calculating the ratio. The proposed guidelines asked three questions: "(1) Should the ratio be calculated for average figures? (2) For which items used in calculating the ratio are average figures most important? (3) How can the burden involved in determining average figures be minimized?"

The OCC received 31 comments responding to these questions. While most agreed that average figures are philosophically better, the general sentiment was that the benefit gained by using average figures would not outweigh the reporting burden. Several commenters said that the fear of "window dressing" is overstated and that the examination process is sufficient to monitor this type of distortion.

The OCC recognizes the reporting burden that would be created by requiring the use of average figures for the calculation of the risk-based capital ratio. Therefore, period-end numbers will be used under these final guidelines, and issues such as "window dressing" will be addressed through the supervisory process. However, the final guidelines do permit the OCC to require a bank to compute its risk-based capital ratio on the basis of average, rather than period-end, risk-weighted assets in response to specific supervisory concerns.

The OCC believes that a risk-based capital ratio based upon average data is superior to one based upon period-end figures. It is the intention of the OCC

ultimately to incorporate the use of average data in the risk-based capital calculation, and banks are urged to develop systems that will provide this information.

Original versus Residual Maturity—In the proposed guidelines, the OCC requested specific comment regarding claims on foreign banks and loan commitments. The issue was whether these items should be risk-weighted based upon their original or residual maturity. Thirty-six commenters were strongly in favor of using residual maturity. Most focused on loan commitments, and argued that there is no direct relationship between maturity alone and the likelihood of a drawdown under an outstanding commitment. Twelve commenters asserted that the use of original maturity would require the development of new reporting systems, which would be an onerous and costly task.

After careful consideration of this issue, the OCC has determined that while it is appropriate to risk-weight claims on foreign banks on the basis of residual maturity, loan commitments should be risk-weighted according to their original maturity. It is the OCC's considered opinion that the longer the term of a commitment, the greater the risk of deterioration of the credit. In this light, original maturity is viewed as the most accurate means of assessing the inherent riskiness of a loan commitment for purposes of risk-based capital.

The OCC recognizes that many bank reporting systems do not currently reflect the original maturity of loan commitments. Therefore, until December 31, 1992, national banks will be permitted to use remaining maturity in determining the appropriate credit conversion factor for off-balance sheet loan commitments. This transitional rule is intended to provide all national banks with sufficient opportunity to make any necessary systems modifications.

Tandem Ratios—The proposal raised the possibility that the existing minimum capital requirements in 12 CFR Part 3 would not be replaced in favor of the risk-based capital guidelines, but rather would be supplemented by the new standard. Further, the proposed guidelines stated that if a leverage constraint should be retained, the definition of capital would be modified to be consistent with the one contained in the guidelines.

Sixteen commenters discussed whether the current capital requirements should remain in place alongside the new risk-based capital standard—*i.e.*, whether there should be "tandem capital ratios," with one being calculated as a percentage of total assets and the other based on a bank's risk-weighted assets. The majority of those commenters felt that the existing requirements should be phased out as quickly as possible to avoid what could be a burdensome system that might decrease the risk-reducing incentives offered by the risk-based capital system.

After careful consideration, the OCC has determined that it is best to retain some form of leverage constraint. The risk-based capital ratio is based strictly on credit risk, and thus might understate the amount of capital needed to safeguard a bank against its overall risk exposure. For example, the risk-based capital guidelines place some assets in a 0% risk category and create the possibility for significant leverage. The OCC is of the opinion that the guidelines should be the primary focus of the capital adequacy determination; however, the OCC also believes that any banking activity entails some risk, thereby requiring a certain base level of capital.

In this regard, the OCC intends to propose amendments to 12 CFR Part 3—its existing minimum capital requirement. The amendments, if adopted, would create a definition of capital that is identical to the definition in Appendix A to Part 3. It is anticipated that the proposed amendments to 12 CFR Part 3 will require all banks to maintain a minimum level of capital computed as a percentage of total assets, regardless of the bank's risk-based capital ratio. It is likely that the new leverage ratio will be lower than the current standard. If adopted, the proposed amendments would be effective on December 31, 1990, the same time the risk-based capital guidelines go into place. In the interim, all banks are required to maintain capital in accordance with the current provisions of Part 3 relating to primary and total capital.

II. Balance Sheet Assets

Claims on Foreign Banks—Under the proposed guidelines, claims on foreign banks with an original maturity of one year or less were placed in the 20% risk category; longer-term claims were placed in the 100% risk category. This treatment of longer-term claims on foreign banks suggested greater credit and/or transfer risk than similar claims on domestic banks.

Comments on this issue were received from ten of the nation's largest banks and three trade associations. All commenters resoundingly favored reducing the weight on longer term claims on foreign banks to 20%, at least for banks domiciled in countries that are parties to the Basle Agreement. Most commenters pointed out that the disparate treatment of foreign and domestic claims (the proposal placed all claims on domestic banks in the 20% risk category) was a departure from the earlier U.S./U.K. proposal, and was contradictory to the aim of the Basle Agreement, *i.e.*, establishing a level playing field for all international banks. In addition, the commenters felt that the adoption of parallel capital standards in each of the participating countries should narrow any perceived differences in the creditworthiness of foreign banks.

Several commenters suggested that by weighting longer-term claims on foreign banks five times more heavily than similar claims on domestic banks, the proposal implied that a long-term transaction with a prime European bank is more risky than an identical transaction with any domestic bank. As a result of this weighting disparity, the commenters claimed that banks would pay a higher price (in the form of increased capital) to transact business with foreign counterparties. The majority of the commenters felt that this would create an artificial incentive for banks to engage in transactions with domestic banks to the exclusion of foreign banks.

According to the commenters, a major consequence of this bias against foreign banks would be its effect on international funding markets. Interbank dealings in the global market would be unnecessarily disrupted and each nation's banking system would become more isolated. Barriers to the free flow of international funds would discourage healthy diversification and reduce important funding sources.

The commenters also noted that the proposed treatment of longer-term claims on foreign banks differs from the way in which the risk-based capital guidelines handle the loan portfolio, which is not weighted according to maturity or degree of transfer risk.

The OCC agreed with the majority of the commenters' conclusions and has drafted the final guidelines so as to avoid the problems created by placing a high risk weight on long-term claims on all foreign banks. Using the term "OECD-based country," which is defined in section 1(c)(15) of Appendix A,[2] and is derived from the Basle

[2] The term "OECD-based country" as defined in section 1(c)(15) of Appendix A, currently includes Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Japan, Luxembourg, Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, Turkey, United Kingdom, and United States, plus Saudi Arabia. These countries are hereinafter referred to as "OECD countries".

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Agreement, the final guidelines place a 20% risk weight on all claims on or guaranteed by a depository institution organized in one of these countries. Claims on depository institutions that are not organized in an OECD country are also placed in the 20% risk category if they have a remaining maturity of one year or less; otherwise, claims on or guaranteed by non-OECD depository institutions are placed in the 100% risk category.

Claims on Foreign Governments—Three commenters addressed the proposed treatment of claims on foreign governments. The proposal placed local currency claims on foreign central governments, to the extent the bank has local currency liabilities, in the 20% risk category. All other claims on foreign governments were deemed to entail and element of transfer risk and, therefore, were placed in the 100% risk category. Comments on this issue were received from two banks and a trade association.

Both of the banks felt that, at least for many countries, the level of transfer risk was insufficient to warrant placement in the 100% risk category. One bank further suggested that this treatment would result in competitive inequalities for U.S. banks when the European Common Market begins reciprocal treatment among European Economic Community banks. One bank proposed assigning all claims of central governments that are members of the Bank for International Settlements to the 20% risk category. The other bank recommended the development of a list of countries with assigned weightings, or the establishment of simple criteria from which a credit distinction could be drawn. The trade association responded in favor of the 100% risk weight, because they were pleased that claims on governments of industrialized countries were assigned an equal risk weighting with that of domestic commercial and industrial loans.

In accordance with the Basle Agreement, the OCC's final guidelines give identical treatment to all claims on OECD countries, as that term is defined in section 1(c)(15) of the final guidelines. As an example, securities issued by the central government of an OECD country receive a 0% risk weight.

This grouping of countries was chosen because it was felt that claims on these industrialized nations entail very little transfer risk. For countries outside the grouping, direct claims on their central governments and central banks, with a remaining maturity of one year or less, also are placed in the 0% risk category, to the extent they are denominated in the local currency and funded by local currency liabilities. Claims backed with a full faith and credit guarantee from the central government or central bank of a non-OECD country are also assigned to the 0% risk category if they meet these criteria. Otherwise, claims on the central government of a non-OECD country are assigned to the 100% risk category. Claims on the central bank of a non-OECD country that do not meet the criteria for assignment of a 0% risk weight are placed in the 20% risk category if the remaining maturity is one year or less, and the 100% risk category if the remaining maturity exceeds one year.

Financial Guarantee Insurance—The proposal placed claims guaranteed by domestic depository institutions in the 20% risk category. Generally speaking, this means that claims otherwise belonging in the 50% or 100% risk category which are supported by a financial guarantee-type standby letter of credit from an OECD depository institution are placed in the 20% risk category. Municipalities are among those entities whose obligations are traditionally backed by bank-issued standby letters of credit. The concessionary weight given to claims guaranteed by a bank is particularly important with municipal revenue bonds, which are otherwise placed in the 50% risk category; however, if a municipal revenue bond is supported by a standby letter of credit, it receives a 20% risk weight. Municipal revenue bonds frequently are supported by municipal bond insurance, rather than a standby letter of credit. Under the risk-based capital proposal, the fact that a municipal revenue bond is supported by financial guarantee insurance would not entitle it to preferential treatment.

The OCC received eight comment letters from entities in the municipal bond insurance business—seven insurance companies and one trade association. All eight of the commenters argued for similar treatment for municipal revenue bonds supported by financial guaranty insurance and municipal revenue bonds supported by standby letters of credit.

Several commenters pointed out that financial guarantee insurers receive ratings from national credit rating organizations, and that virtually all insurers receive the highest rating possible. Commenters suggested that the rating of the financial guarantor be incorporated into the risk weighting, and that only instruments guaranteed by insurers with the highest rating be placed in the 20% risk category.

After careful consideration of this issue, the OCC has decided not to give preferential risk weights to any guarantees or other commitments by private sector entities, other than depository institutions. Although a number of bank investments receive credit ratings, the risk-based capital guidelines are not presently designed to incorporate this type of credit allocation. Nevertheless, the OCC is sympathetic to the concerns raised by the fact that highly-rated insurers are not given preferential treatment in the guidelines and will work toward eradicating any inequities that arise from the disparate treatment.

Weight on Municipal Securities—Fifteen commenters, including commenters from the financial guarantee insurance industry discussed above, addressed the proposed risk categories for municipal securities. Seven commenters discussed the risk categories to which obligations of state and local governments were assigned, irrespective of any credit enhancement devices. Virtually all of the commenters agreed that 20% is the proper risk category for general obligations; however, several commenters objected to the placement of revenue bonds in the 50% risk category, claiming that neither the market nor the credit rating services make such a wide distinction.

The credit quality of a revenue bond is limited by the ability of the issuer to collect revenues from the project financed. Therefore, the OCC has retained the distinction between general obligations and revenue bonds. Risk categories are very broad measures of credit risk and should not be viewed as fine-tuned determinations of the riskiness of a particular asset or off-balance sheet activity.

Weight on Residential Mortgages—The proposed guidelines placed residential mortgages in the 100% risk category. This proposed weight represented a departure from the Basle Agreement, which placed residential mortgages in the 50% risk category. The departure resulted from the OCC's concern that a lower risk weight for residential mortgages might be perceived as credit allocation within the loan portfolio.

Forty-two commenters addressed this issue. The majority advocated assigning residential mortgages to a lower risk category, and justified this position by citing the superior credit quality of residential mortgages.

Commenters also stated that a 100% risk weight for residential mortgages would place U.S. banks at a competitive disadvantage. This disadvantage would result because, under the terms of the Basle Agreement, foreign banks would hold half as much capital against residential mortgages as U.S. banks.

Commenters pointed out that national banks compete with foreign depository institutions in both overseas and domestic real estate markets.

In addition, a number of commenters felt that domestic competitors from the thrift industry would have an edge, as savings and loans are generally allowed to operate with less capital than national banks. Commenters stated that this competitive disadvantage could ultimately have an adverse effect on the U.S. housing market.

While the OCC is still concerned about creating the perception of allocating credit within the loan portfolio, the agency agrees that a competitive disadvantage could result if national banks were required to hold more capital against residential mortgages than their competitors. The OCC further recognizes that a competitive disadvantage such as this could ultimately have an adverse impact on U.S. consumers. It is for these reasons that the OCC has decided to place residential mortgages in the 50% risk category.

In order to ensure that residential mortgages which are placed in the 50% risk category deserve this preferential treatment, the OCC has decided to require that these assets meet certain prudential qualifications before receiving a 50% risk weight. Thus, the mortgage must be a first lien on a one-to-four-family residential property. The residence may be rented or owner-occupied. The note secured by the mortgage must not be more than 90 days past due, on nonaccrual or restructured. The assignment of mortgages to the 50% risk category is based upon the presumption that banks will adhere to prudent underwriting standards with respect to the maximum loan-to-value ratio, the borrower's paying capacity and the long-term expectations for the real estate market in which it is lending. If, in the course of the supervisory process, it is determined that a bank has failed to do this, the OCC may require additional capital, increased reserves, or both. In all cases, residential property loans made for purposes of construction financing do not qualify for the 50% risk weight; however, this exclusion from the 50% risk category does not apply to loans made to individual purchasers for the construction of their own homes.

The proposed guidelines did not address the treatment of mortgage-backed securities. However, after careful consideration the OCC has decided to treat such instruments as if the bank has an interest in the underlying pool of mortgages. For mortgage-backed securities issued by government or government-sponsored agencies, the security is assigned to the risk category appropriate for a claim on the issuing entity, assuming the issuing agency guarantees the timely repayment of principal and interest. The guidelines set forth certain criteria that a mortgage-backed security must meet before it can be assigned to any risk category lower than 100%.

Privately-issued mortgaged-backed securities that meet the above-mentioned criteria are assigned to the highest risk category appropriate for any one of the underlying mortgages or securities in the pool. The OCC may, on a case-by-case basis, allow a bank to assign the security to the various risk categories in proportion to the respective risk weights that make up the security—that is, the security may be separated into its components for purposes of risk weighting. In order for a bank to proportionately risk weight a mortgage-backed security, it must obtain the necessary data on the underlying pool as of each reporting date. This information must be available to the bank for use in preparing the Report of Condition. If current data is unavailable, the entire security must be assigned to the highest risk weight appropriate for any underlying mortgage or security, based on the original or last-known composition of the pool.

Any class of a mortgage-backed security that, in the event of loss of principal or interest, incurs more than its pro rata share of loss without the whole mortgage-backed security issue being in default (*e.g.*, subordinated classes or residual interests) is to be assigned a risk weight of 100%. Furthermore, all stripped mortgage-backed securities, *i.e.*, interest only portions (IOs), principal only portions (POs), and similar instruments, are assigned to the 100% risk category, regardless of the issuer. While the OCC recognizes that these instruments can be used to hedge interest rate risk and does not wish to discount their appropriate use for this purpose, IOs and POs are assigned to the highest risk category because of their extreme price volatility, market risk, and otherwise inherent riskiness as a bank asset. As a measure for interest rate risk is perfected, the OCC may reconsider the assignment of these instruments to the 100% risk category.

Weight on Obligations of U.S. Government-sponsored Agencies—In the proposal, the OCC requested specific comment on the treatment of obligations of U.S. Government-sponsored agencies. These obligations include claims on, and portions of claims guaranteed by, U.S. Government-sponsored agencies, as well as claims collateralized with securities issued or guaranteed by U.S. Government-sponsored agencies. The proposed guidelines placed these obligations in the 20% risk category, a change from the previous proposal at 52 FR 23045, June 17, 1987, which placed obligations of U.S. Government-sponsored agencies in the 50% risk category.

Thirty-one commenters responded on this issue. While a number supported the proposed risk weight, the majority felt that the risk weight was to high. They stated that there should be no distinction between obligations of U.S. Government-sponsored agencies and obligations of the U.S. Government, because the former have the implied faith and credit of the U.S. Government.

A number of commenters particularly objected to the distinction between obligations of the Federal National Mortgage Association (FNMA) and the Federal Home Loan Mortgage Corporation (FHLMC), both of which are U.S. Government-sponsored agencies, and obligations of the Government National Mortgage Association (GNMA), which are guaranteed by the U.S. Government. These commenters claimed that such a distinction could have a negative effect on the housing markets.

After careful consideration of this issue as well as the proposed maturity break for claims on the U.S. Government, the OCC has determined that obligations of U.S. Government-sponsored agencies should remain in the 20% risk category. However, the 10% risk category has been eliminated and all obligations collateralized by securities issued or guaranteed by the U.S. Government or one of its agencies have been moved into the 20% category. This category also encompasses indirect holdings of pools of assets that represent direct claims on the U.S. Government and its agencies, *e.g.*, mutual funds and privately-issued mortgage-backed securities where the underlying assets are GNMA securities.

Weight on U.S. Government Securities—The proposed guidelines placed U.S. Government securities with a remaining maturity of 91 days or less in the 0% risk category and longer term U.S. Government securities in the 10% risk category. Fourteen commenters addressed this issue. Several supported the proposed weights, while the majority argued that no maturity distinction should be made. These commenters noted that U.S. Government securities carry no credit risk and, since the proposal does not address interest rate risk in general, it is inappropriate to do so for U.S. Government securities.

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After careful consideration of this issue, the OCC has placed all claims on or directly and unconditionally guaranteed by the U.S. Government and its agencies in the 0% risk category, regardless of maturity. This category would generally include all securities guaranteed by the U.S. Government or its agencies, including GNMA pass-through securities. Furthermore, the OCC has determined that it is appropriate to eliminate the 10% category altogether. Thus, portions of claims conditionally guaranteed or collateralized by securities issued or guaranteed by the U.S. Government or its agencies are included in the 20% risk category. This includes, for example, repurchase agreements, loans guaranteed by the Veterans Administration, and student loans on which the Department of Education acts as a reinsurer. Indirect holdings of direct claims on the U.S. Government and its agencies, *e.g.*, mutual funds and mortgage-backed securities, are also included in the 20% risk category.

Although a bank's interest rate risk profile is an important and appropriate supervisory concern, the OCC recognizes that the proposed treatment of longer-term U.S. Government securities did not fully address the concept of interest rate risk. Therefore, the OCC will continue to monitor interest rate risk through the supervisory process, and may require additional capital if warranted. In addition, work will continue within the Cooke Committee on developing a common approach to assessing interest rate risk.

III. Off-Balance Sheet Items

Credit Card Lines—Under the proposed guidelines, unused credit card lines were deemed to be short-term commitments with a 0% credit conversion factor, if the bank has the unconditional option to cancel the card at any time. Four commenters addressed this issue. The commenters recommended that, in addition to credit card lines, other open-end retail credit arrangements with similar characteristics be included in this category.

The OCC agrees that it is the nature of the credit line, rather than the actual device used to access the line, that should be used as the determinant for application of the risk-based capital guidelines. Therefore, the OCC has expanded the definition of credit card lines in section 3(b)(4)(iii) to include other related plans. Examples of arrangements that might be encompassed by this definition are overdraft checking plans and credit advances under a credit card plan accessed by check.

Commenters also recommended that open-end retail credit arrangements should receive a conversion factor of 0% to the extent they are unconditionally cancellable "in accordance with applicable law." In an effort to avoid inequities that could arise in states that have notice requirements before such credit arrangements can be cancelled, the OCC has adopted the recommended phraseology. However, to the extent state law makes open-end retail credit arrangements practically uncancellable, these items will be treated as long-term commitments and receive a credit conversion factor of 50%.

Interest Rate and Exchange Rate Contracts—Commenters addressed several different subjects within this issue:

(1) Risk Weights. Under the proposed guidelines, risk weights for interest rate and exchange rate contracts are determined by a two-step process. First, the notional principal amount of the item is converted into a balance sheet equivalent measure that approximates the amount of credit exposure involved. Second, the resulting credit equivalent amount is assigned to an appropriate risk category, based primarily on the identity of the counterparty, or where relevant, on the nature of the guarantee or the underlying collateral. However, the proposed guidelines specified that the maximum risk weight assigned to the credit equivalent amount of an interest rate or exchange rate contract is 50%, rather than 100% as previously stated at 52 FR 23045, June 17, 1987.

The OCC requested specific comment on the change. Seventeen commenters expressed their support for reducing the maximum risk weight for these contracts from 100% to 50%. However, three commenters felt that 50% was still overly harsh and suggested making the 20% risk category the maximum for all counterparties. Other commenters called for a 25% risk category for all contracts with foreign and domestic banks, regardless of maturity.

After careful consideration of the comments received on this subject, the OCC has extended the 20% risk category to include all claims, including interest rate and exchange rate contracts, on depository institutions incorporated in OECD countries. The OCC has incorporated this change in section 3(a)(2)(i) of the final guidelines.

(2) Netting. The proposed guidelines did not permit multiple contracts with a single counterparty to be netted in the calculation of risk-weighted credit equivalents for interest rate and foreign exchange rate contracts. Seventeen commenters argued that the practice has been sufficiently affirmed by legal opinions to merit recognition in the risk-based capital guidelines.

After consideration of the comments, the OCC has revised section 3(b)(5)(i) of the final guidelines to permit netting of multiple contracts with a single counterparty if they are subject to novation. This change encompasses only those contracts under which the gross obligations are replaced in law and fact by a single net obligation. In the future, the OCC, in conjunction with the other members of the Cooke Committee, may consider recognizing other forms of netting when their enforceability in bankruptcy proceedings is supported by authoritative legal opinions.

(3) Exempted Transactions. The proposed guidelines permitted banks to exclude exchange rate contracts with an original maturity of seven days or less from the calculation of the denominator of the risk-based capital ratio. The Cooke Committee subsequently agreed to extend this maturity cutoff to 14 calendar days. Although the OCC did not receive any specific comments on this issue, section 3(b)(5)(iv)(A) of the final guidelines was amended to give national banks the benefit of this concession.

Loan Strips—Several commenters requested clarification of the definition of loan strips. The OCC has done this under section 3(b)(1)(iii) of the final guidelines. The definition of loan strips has been narrowed to include only those loan strips that represent assets sold without recourse, and that mature before the underlying loan. This narrower definition excludes loan strips written such that the maturity of the transaction coincides with the maturity of the underlying loan. This second type of loan strip is tantamount to a loan participation, and therefore is generally excluded from the originating bank's risk-weighted assets.

Unfunded Participations—Under the proposed guidelines, letters of credit and commitments are assigned a risk weight on an amount net of participations. However, because these off-balance sheet items, as well as the participations sold in them, are unfunded, a participation is treated as a claim on the entity to which it was sold.

Five commenters argued that requiring the selling bank to treat the participation as a claim on the entity to which it was sold results in double counting, since the purchaser is also required to hold capital against the same item. Virtually all of the commenters addressing this issue felt that the proposed treatment would have the effect of inhibiting a constructive activity that diversifies risk.

This treatment of unfunded participations was intended to account for the contingency where the lead bank is called upon to advance funds to the beneficiary/counterparty and the participant is unable to reimburse the lead bank for its share of the advance. That risk is separate and distinct from the counterparty risk recognized by the capital requirement for the purchaser of the participation. Furthermore, since the initial off-balance sheet activity and the participation are unfunded, the participation can be viewed as a guarantee of a portion of the off-balance sheet item. Thus, since claims guaranteed by depository institutions in OECD countries receive a 20% risk weight, that portion of an item which has been participated to a depository institution in an OECD country should logically receive a risk weight of 20%. Therefore, the OCC considers the proposed treatment reasonable.

In the final analysis, even though the treatment of unfunded participations may not be as favorable as some commenters would wish to see, the sale of participations generally allows a lead bank to maintain less capital against an item in total, than if participating interests had not been sold.

Capital Elements

Allowance for Loan and Lease Losses—The proposed guidelines limited the amount of loan and lease loss reserves that qualify as Tier 2 capital to 1.25% of risk-weighted assets. Thirty-three commenters expressed concern that placing a limit on the allowance for loan and lease losses would create a disincentive for prudent reserving practices. Many also suggested that the allowance is equivalent to equity and should be included in Tier 1 rather than Tier 2.

The allowance for loan and lease losses is intended to absorb future losses. Although future losses may not be identified specifically at the time a provision is made, a presumption exists that losses are inherent in the loan and lease portfolio. The obvious link between the allowance and inherent losses in the loan and lease portfolio precludes it from qualifying as Tier 1 capital, which encompasses only the purest and most stable forms of capital. Furthermore, it is intended that the loan loss reserves which qualify for inclusion as Tier 2 capital will be general in nature. That is, any portion of the allowance for loan and lease losses which is ascribed to particular assets that have been identified as possessing a reasonable probability of some loss is not to be included as Tier 2 capital.

Allocated transfer risk reserves are an obvious example of loan loss reserves that are not general in nature and, therefore, do not qualify for inclusion as Tier 2 capital. They are reserves that have been established in accordance with section 905(a) of the International Lending Supervision Act of 1983 (12 U.S.C. 3907 and 3909) against certain assets whose value has been found by the U.S. banking agencies to have been impaired significantly by protracted transfer risk problems. Similarly, reserves for other real estate owned, since they are earmarked for a specific asset, do not qualify as Tier 2 capital.

Beyond the clearly identified specific loan loss reserves, it is difficult to distinguish between the portion of the loan loss reserve that is freely available to absorb future losses within the portfolio and the portion that reflects likely losses on existing problem or troubled loans. However, a bank that maintains a relatively large allowance for loan and lease losses usually has a relatively greater incidence of identified asset quality problems in its loan and lease portfolio, and in this situation the entire allowance for loan and lease losses cannot be considered to be a true general reserve for the purposes of risk-based capital. Therefore, a standard percentage limitation, based on total risk-weighted assets, is the most reasonable method of eliminating the bulk of the non-qualifying loan loss reserves from banks' capital calculations. The figure of 1.25% of risk-weighted assets was determined on the basis of historical data, after making appropriate adjustments for recent experience with large reserves against exposures to lesser-developed countries.

The OCC has determined that it is prudent to limit the portion of the allowance for loan and lease losses that may be counted as Tier 2 capital. The OCC will continue to participate in the Cooke Committee's effort to clarify the distinction between those portions of the allowance for loan and lease losses which should conceptually be regarded as part of capital and those which should not qualify. When a suitable definition is agreed, the OCC will reconsider the need for a standard percentage limitation in the guidelines.

Although some institutions may perceive the limit as a disincentive for prudent reserving practices, every national bank must still maintain an adequate allowance for loan and lease losses. The OCC will continue to enforce the standards for reserve adequacy on a case-by-case basis through the supervisory process.

Several commenters requested clarification of the treatment of the portion of the allowance for loan and lease losses that does not qualify as Tier 2 capital. In response to those inquiries, a footnote has been added to section 2(b)(1) of the final guidelines stating that any excess reserves, as well as allocated transfer risk reserves and reserves held against other real estate owned, are deducted from the gross sum of risk-weighted assets in computing the denominator of the risk-based capital ratio.

Goodwill and Other Intangibles—Under the proposed guidelines, all goodwill and other intangible assets were deducted from capital, with the exception of purchased mortgage servicing rights and certain goodwill acquired in connection with supervisory mergers with problem or failed banks. This treatment was similar to the OCC's existing capital-to-total assets requirements under 12 CFR Part 3, which includes only purchased mortgage servicing rights within the definition of primary capital.

Thirty-eight commenters addressed this issue. Most focused strictly on goodwill and all firmly supported the inclusion of goodwill, or at a minimum certain intangibles, in the proposed definition of capital. Several commenters recommended that intangible assets be included within the definition of capital, but limited to a certain percentage of Tier 1 capital. Strong arguments were given by a number of banks for the permanent grandfathering of existing goodwill. Commenters also urged that the OCC address these matters in a manner consistent with the Federal Reserve and the FDIC.

Intangible assets represent the excess of the purchase price over the fair market value of assets acquired in acquisitions accounted for under the purchase method of accounting. The excess amount is first allocated to identifiable intangibles (such as mortgage servicing rights, favorable leaseholds, and core deposit intangibles), with the remainder accounted for as goodwill.

The true market value of intangible assets is often difficult to ascertain, as it involves a number of assumptions which are subject to changes in general economic circumstances or to changes in an individual institution's future prospects. Experience has shown that the value of many intangibles declines when the condition of a bank deteriorates, the most critical point at which capital is needed. It is because of this inherent weakness in the value of

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certain intangibles that goodwill and most intangible assets cannot be relied upon for capital support, and therefore are not counted in the determination of capital adequacy.

The OCC recognizes that not all intangibles possess the same characteristics, and that some may be more acceptable in terms of the quality of the values they represent. Mortgage servicing rights were included within the definition of capital under the capital requirements of 12 CFR Part 3, and the proposed risk-based capital guidelines, because they possess attributes very similar to intangible assets. The OCC has determined that, rather than list the types of intangibles acceptable as capital, a more appropriate method is to define those attributes which make the intangible asset a more reliable support for capital.

In this regard, these final guidelines delineate in section 2(c)(3) the criteria an intangible asset must meet before it qualifies as Tier 1 capital. The principal considerations in evaluating intangibles for purposes of capital adequacy are based on the separability, marketability and certainty of a stream of cash flows. Furthermore, in order to limit a bank's reliance on intangibles as capital, the amount of intangible assets that qualify as Tier 1 capital are subject to a limit of 25% of total Tier 1 capital.

The criteria purposely avoid excluding by name any particular category of identifiable intangible. The OCC expects includable types of intangibles to encompass most mortgage servicing rights. Banks may include other intangible assets which meet the criteria. Goodwill does not meet the criteria and the exclusion of goodwill from capital in consistent with the capital requirements of the current 12 CFR Part 3.

Supervisory goodwill is the one exception to these criteria, and the OCC has expanded this exception in the final guidelines to include supervisory goodwill acquired in connection with assisted mergers with problem or failed depository institutions. In the proposed guidelines, this exception was limited to mergers with problem or failed banks.

While the final guidelines allow banks to include a potentially greater number of intangible assets within the definition of capital, all intangibles that were grandfathered under the previous capital standard must be deducted from capital after the transition period ends, as detailed in section 4 of the final guidelines. The OCC has determined that in view of this more liberral treatment of intangibles, and since intangibles that fail to meet the delineated criteria test are not reliable as a means of capital support, grandfathering of intangible assets is not justified after the transition period of the new guidelines.

Preferred Stock—Thirty-four commenters addressed the proposed treatment of the various forms of preferred stock. The OCC specifically sought comment concerning the distinction between long-term and intermediate-term preferred stock. The proposed placement of perpetual preferred stock in Tier 2 capital generated a significant amount of comment. The manner in which the commenters discussed preferred stock was broken down into perpetual and limited-life issues.

(1) Perpetual Preferred Stock. The commenters that addressed the proposal's placement of perpetual preferred stock in Tier 2 capital argued that those instruments are so close to common equity that they cannot justifiably be relegated to the status of supplementary capital. A consistent theme throughout the comment letters was that, from a regulator's capital adequacy point of view, perpetual preferred stock provides an equally effective cushion against losses as does an equivalent amount of common stock. A number of commenters stated that Generally Accepted Accounting Principles (GAAP), bank regulations, and securities regulations have long considered perpetual preferred stock a full-fledged component of equity.

Some commenters suggested that only noncumulative perpetual preferred stock should be allowed to qualify as Tier 1 capital. However, in arguing for the inclusion of preferred stock in Tier 1 capital, a number of commenters stated that noncumulative preferred stock will be difficult to market and is not a viable financing vehicle for banks.

Several commenters expressed concern over certain forms of variable rate perferred stock and observed that as a bank gets into trouble it has to pay higher dividends on its preferred stock. One commenter suggested that the problem with so-called auction rate preferred stock can be cured by requiring that dividends on Tier 1 capital instruments be tied to something other than the creditworthiness of the issuer. However, according to another commenter, recent issues of auction rate preferred stock have contained a feature permitting the issuer to fix the dividend period at one or more years.

In light of the comment letters and the amendments to the Basle Agreement, the OCC has determined that noncumulative perpetual preferred stock should be included as Tier 1 capital. All cumulative preferred stock, as well as those preferred stock instruments with a limited life, will continue to qualify as Tier 2 capital. All preferred stock having a dividend rate that is periodically reset in an auction-type process to reflect the creditworthiness of the issuer—*e.g.*, auction rate, remarketable and money market preferred stock—is included as Tier 2 capital only, regardless of whether dividends are cumulative or not. Furthermore, in order to meet the definition of perpetual preferred stock, the issue cannot be redeemed at the option of the holder of the instrument or have other provisions that would require future redemption of the stock.

The OCC believes that noncumulative perpetual preferred stock provides a degree of capital support so similar to common stock that it should not be excluded from Tier 1 capital. Notwithstanding commenters' arguments for including cumulative preferred stock in Tier 1, the OCC, the other federal banking agencies, and the signatories to the Basle Agreement reached a consensus that the accumulation of dividends has the potential of being a drain on future earnings; therefore, preferred stock instruments with a cumulative dividend feature are placed in Tier 2 capital.[3] By placing cumulative preferred stock in Tier 2, Tier 1 continues to be comprised of only the purest and most stable forms of capital. The OCC has revised section 2 of the guidelines to specifically include certain noncumulative preferred stock instruments in Tier 1 capital.

(2) Limited-Life Preferred Stock. When addressing the proposed distinction between long-term and intermediate-term preferred stock, the commenters were not as unified as they were in their response to the proposed treatment of perpetual preferred stock. A majority of those commenters felt that no distinction should be drawn based on the original maturity of an instrument. However, a strong minority stated that the proposed distinction was appropriate. Several commenters suggested that all limited-life preferred stock should be included in Tier 2 without limit.

The OCC has not changed its treatment of limited-life preferred stock instruments in the final guidelines; *i.e.*, preferred stock with an original maturity of 20 years or more qualifies as Tier 2 capital up to 100% of Tier 1, while preferred stock with an original maturity of less than 20 years, together with term subordinated debt, qualifies as Tier 2 capital up to 50% of Tier 1 capital. The OCC believes that this maturity distinction is a valid measure of the capital support that the instrument provides. As proposed, all limited-life capital instruments are discounted in the last five years to maturity.

[3] This treatment of preferred stock is consistent with the Federal Reserve Board's treatment for state member banks. The Federal Reserve's risk-based capital guidelines for bank holding companies allow certain cumulative preferred stock in Tier 1 capital. Historically, few national banks have used preferred stock as a source of capital; rather, the majority of the preferred stock issuances have been accomplished at the holding company level.

Executive Order 12291

It is certified that this final rule does not constitute a "major rule" and, therefore, does not require the preparation of a final regulatory impact analysis.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, it is certified that these changes will not have a significant economic impact on a substantial number of small entities. Accordingly, a final Regulatory Flexibility Analysis is not required.

List of Subjects in 12 CFR Part 3

National banks, Capital, Risk.

Authority and Issuance

For the reasons set forth in the preamble, Part 3 of Chapter I of Title 12 of the Code of Federal Regulations is amended as set fourth below.

PART 3—[AMENDED]

1. The authority citation for 12 CFR Part 3 is revised to read as follows:

Authority: 12 U.S.C. 93a, 161, 1818; and 12 U.S.C. 3907 and 3909.

2. A new Appendix A is added to Part 3 after § 3.100 to read as follows:

Appendix A—Risk-Based Capital Guidelines

Section 1. Purpose, Applicability of Guidelines, and Definitions.

(a) *Purpose.* (1) An important function of the Office of the Comptroller of the Currency ("OCC") is to evaluate the adequacy of capital maintained by each national bank. Such an evaluation involves the consideration of numerous factors, including the riskiness of a bank's assets and off-balance sheet items. This Appendix A implements the OCC's risk-based capital guidelines. The risk-based capital ratio derived from those guidelines is more systematically sensitive to the credit risk associated with various bank activities than is a capital ratio based strictly on a bank's total balance sheet assets. A bank's risk-based capital ratio is obtained by dividing its capital base (as defined in section 2 of this Appendix A) by its risk-weighted assets (as calculated pursuant to section 3 of this Appendix A). These guidelines were created within the framework established by the report issued by the Committee on Banking Regulations and Supervisory Practices in July 1988. The OCC believes that the risk-based capital ratio is a useful tool in evaluating the capital adequacy of all national banks, not just those that are active in the international banking system.

(2) The purpose of this Appendix A is to explain precisely (i) how a national bank's risk-based capital ratio is determined and (ii) how these risk-based capital guidelines are applied to national banks. The OCC will review these guidelines periodically for possible adjustments commensurate with its experience with the risk-based capital ratio and with changes in the economy, financial markets and domestic and international banking practices.

(b) *Applicability.* (1) The risk-based capital ratio derived from these guidelines is an important factor in the OCC's evaluation of a bank's capital adequacy. However, since this measure addresses only credit risk, the 6% minimum ratio should not be viewed as the level to be targeted, but rather as a floor. The final supervisory judgment on a bank's capital adequacy is based on an individualized assessment of numerous factors, including those listed in 12 CFR 3.10. As a result, it may differ from the conclusion drawn from an isolated comparison of a bank's risk-based capital ratio to the 6% minimum specified in these guidelines. In addition to the standards established by these risk-based capital guidelines, all national banks must maintain a minimum capital-to-total assets ratio in accordance with the provisions of 12 CFR Part 3.

(2) Effective December 31, 1990, these risk-based capital guidelines will apply to all national banks. In the interim, banks must maintain minimum capital-to-total assets ratios as required by 12 CFR Part 3, and should begin preparing for the implementation of these risk-based capital guidelines. In this regard, each national bank that does not currently meet the final minimum ratio established in section 4(b)(1) of this Appendix A should begin planning for achieving that standard.

(3) These risk-based capital guidelines will not be applied to federal branches and agencies of foreign banks.

(c) *Definitions.* For purposes of this Appendix A, the following definitions apply:

(1) "Allowances for loan and lease losses" means the balance of the valuation reserve on December 31, 1968, plus additions to the reserve charged to operations since that date, less losses charged against the allowance net of recoveries.

(2) "Associated company" means any corporation, partnership, business trust, joint venture, association or similar organization in which a national bank directly or indirectly holds a 20 to 50 percent ownership interest.

(3) "Banking and finance subsidiary" means any subsidiary of a national bank that engages in banking- and finance-related activities.

(4) "Cash items in the process of collection" means checks or drafts in the process of collection that are drawn on another depository institution, including a central bank, and that are payable immediately upon presentation in the country in which the reporting bank's office that is clearing or collecting the check or draft is located; U.S. Government checks that are drawn on the United States Treasury or any other U.S. Government or Government-sponsored agency and that are payable immediately upon presentation; broker's security drafts and commodity or bill-of-lading drafts payable immediately upon presentation in the United States or the country in which the reporting bank's office that is handling the drafts is located; and unposted debits.

(5) "Central government" means the national governing authority of a country; it includes the departments, ministries and agencies of the central government. This definition does not include the following: State, provincial, or local governments; commercial enterprises owned by the central government, which are entities engaged in activities involving trade, commerce or profit that are generally conducted or performed in the private sector of the United States economy; and non-central government entities whose obligations are guaranteed by the central government.

(6) "Commitment" means any arrangement that obligates a national bank to: (i) Purchase loans or securities; or (ii) extend credit in the form of loans or leases, participations in loans or leases, overdraft facilities, revolving credit facilities, or similar transactions.

(7) "Common stockholders' equity" means common stock, common stock surplus, undivided profits, capital reserves, adjustments for the cumulative effect of foreign currency translation and net of unrealized losses on non-current marketable equity securities.

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(8) "Conditional guarantee" means a contingent obligation of the United states Government or its agencies, or the central government of an OECD country, the validity of which to the beneficiary is dependent upon some affirmative action—e.g., servicing requirements—on the part of the beneficiary of the guarantee or a third party.

(9) "Depository institution" means a financial institution that engages in the business of banking; that is recognized as a bank by the bank supervisory or monetary authorities of the country of its incorporation and the country of its principal banking operations; that receives deposits to a substantial extent in the regular course of business; and that has the power to accept demand deposits. In the U.S., this definition encompasses all federally insured offices of commercial banks, mutual and stock savings banks, savings or building and loan associations (stock and mutual), cooperative banks, credit unions, and international banking facilities of domestic depository institution. Bank holding companies are excluded from this definition. For the purposes of assigning risk weights, the differentiation between OECD depository institutions and non-OECD depository institutions is based on the country of incorporation. Claims on branches and agencies of foreign banks located in the United States are to be categorized on the basis of the parent bank's country of incorporation.

(10) "Exchange rate contracts" include: Cross-currency interest rate swaps; forward foreign exchange rate contracts; currency options purchased; and any similar instrument that, in the opinion of the OCC, gives rise to similar risks.

(11) "Goodwill" means an intangible asset that represents the excess of the purchase price over the fair market value of tangible and identifiable intangible assets acquired in purchases accounted for under the purchase method of accounting.

(12) "Intangible assets" include, but are not limited to, purchased mortgage and credit card servicing rights, goodwill, favorable leaseholds, and core deposit value.

(13) "Interest rate contracts" include: Single currency interest rate swaps; basis swaps; forward rate agreements; interest rate options purchased; forward forward deposits accepted; and any similar instrument that, in the opinion of the OCC, gives rise to similar risks, including when-issued securities.

(14) "Novation" means a bilateral contract between two counterparties under which any obligation to each other to deliver a given currency on a given date is automatically amalgamated with all other obligations for the same currency and value date, legally substituting one single net amount for the previous gross obligations.

(15) "OECD-based country" means a member of the grouping of countries that are full members of the Organization of Economic Cooperation and Development, plus countries that have concluded special lending arrangements with the International Monetary Fund (IMF) associated with the IMF's General Arrangements to Borrow. These countries are hereinafter referred to as "OECD countries"

(16) "Original maturity" means, with respect to a commitment, the earliest possible date after a commitment is made on which it expires or is unconditionally cancellable at the option of the issuing bank.

(17) "Preferred stock" includes the following instruments: (i) "Convertible preferred stock," which means preferred stock that is mandatorily convertible into either common or perpetual preferred stock; (ii) "Intermediate-term preferred stock," which means preferred stock with an original maturity of at least five years, but less than 20 years; (iii) "Long-term preferred stock," which means preferred stock with an original maturity of 20 years or more; and (iv) "Perpetual preferred stock," which means preferred stock without a fixed maturity date that cannot be redeemed at the option of the holder, and that has no other provisions that will require future redemption of the issue. For purposes of these instruments, preferred stock that can be redeemed at the option of the holder is deemed to have an "original maturity" of the earliest possible date on which it may be so redeemed.

(18) "Public-sector entities" include states, local authorities and governmental subdivisions below the central government level in an OECD country. In the United States, this definition encompasses a state, county, city, town, or other municipal corporation, a public authority, and generally any publicly-owned entity that is an instrumentality of a state or municipal corporation. This definition does not include commercial companies owned by the public sector.[1]

(19) "Reciprocal holdings of bank capital instruments" means cross-holdings or other formal or informal arrangements in which two or more banking organizations swap, exchange, or otherwise agree to hold each other's capital instruments. This definition does not include holdings of capital instruments issued by other banking organizations that were taken in satisfaction of debts previously contracted, provided that the reporting national bank has not held such instruments for more than five years or a longer period approved by the OCC.

(20) "Replacement cost" means, with respect to interest rate and exchange rate contracts, the loss that would be incurred in the event of a counterparty default, as measured by the net cost of replacing the contract at the current market value. If default would result in a theoretical profit, the replacement value is considered to be zero. The mark-to-market process should incorporate changes in both interest rates and counterparty credit quality.

(21) "Residential properties" means houses, condominiums, cooperative units, and manufactured homes. This definition does not include boats or motor homes, even if used as a primary residence.

(22) "Risk-weighted assets" means the sum of total risk-weighted balance sheet assets and the total of risk-weighted off-balance sheet credit equivalent amounts. Risk-weighted balance sheet and off-balance sheet assets are calculated in accordance with Section 3 of this Appendix A

(23) "State" means any one of the several states of the United States of America, the District of Columbia, Puerto Rico, and the territories and possessions of the United States.

(24) "Subsidiary" means any corporation, partnership, business trust, joint venture, association or similar organization in which a national bank directly or indirectly holds more than a 50% ownership interest. This definition does not include ownership interests that were taken in satisfaction of debts previously contracted, provided that the reporting bank has not held the interest for more than five years or a longer period approved by the OCC.

(25) "Total capital" means the sum of a national bank's core (Tier 1) and qualifying supplementary (Tier 2) capital elements.

(26) "Unconditionally cancellable," means, with respect to a commitment-type lending arrangement, that the bank may, at any time, with or without cause, refuse to advance funds or extend credit under the facility.

(27) "United States Government or its agencies" means an instrumentality of the U.S. Government whose debt obligations are fully and explicitly guaranteed as to the timely payment of principal and interest by the full faith and credit of the United States Government.

(28) "United States Government-sponsored agency" means an agency originally established or chartered to serve public purposes specified by the United States Congress, but whose obligations are not explicitly guaranteed by the full faith and credit of the United States Government.

[1] See Definition (5), "Central government," for further explanation of commercial companies owned by the public sector

Section 2. Components of Capital.

A national bank's qualifying capital base consists of two types of capital—core (Tier 1) and supplementary (Tier 2).

(a) *Tier 1 Capital.* The following elements comprise a national bank's Tier 1 capital:

(1) Common stockholders' equity;

(2) Noncumulative perpetual preferred stock and related surplus; and [2]

(3) Minority interests in the equity accounts of consolidated subsidiaries.

(b) *Tier 2 Capital.* The following elements comprise a national bank's Tier 2 capital:

(1) Allowance for loan and lease losses, up to a maximum of 1.25% of risk-weighted assets,[3] subject to the transition rules in section 4(a)(2) of this Appendix A;

(2) Cumulative perpetual preferred stock, long-term preferred stock, convertible preferred stock, and any related surplus, without limit, if the issuing national bank has the option to defer payment of dividends on these instruments. For long-term preferred stock, the amount that is eligible to be included as Tier 2 capital is reduced by 20% of the original amount of the instrument (net of redemptions) at the beginning of each of the last five years of the life of the instrument;

(3) Hybrid capital instruments, without limit. Hybrid capital instruments are those instruments that combine certain characteristics of debt and equity, such as perpetual debt. To be included as Tier 2 capital, these instruments must meet the following criteria: [4]

(i) The instrument must be unsecured, subordinated to the claims of depositors and general creditors, and fully paid-up;

(ii) The instrument must not be redeemable at the option of the holder prior to maturity, except with the prior approval of the OCC;

(iii) The instrument must be available to participate in losses while the issuer is operating as a going concern (in this regard, the instrument must automatically convert to common stock or perpetual preferred stock, if the sum of the retained earnings and capital surplus accounts of the issuer shows a negative balance); and

(iv) The instrument must provide the option for the issuer to defer principal and interest payments, if

(A) The issuer does not report a net profit for the most recent combined four quarters, and

(B) The issuer eliminates cash dividends on its common and preferred stock.

(4) Term subordinated debt instruments, and intermediate-term preferred stock and related surplus are included in Tier 2 capital, but only to a maximum of 50% of Tier 1 capital. To be considered capital, term subordinated debt instruments must meet the requirements of 12 CFR 3.100(f)(1). Also, at the beginning of each of the last five years of the life of either type of instrument, the amount that is eligible to be included as Tier 2 capital is reduced by 20% of the original amount of that instrument (net of redemptions). [5]

(c) *Deductions From Capital.* The following items are deducted from the appropriate portion of a national bank's capital base when calculating its risk-based capital ratio.

(1) Deductions from Tier 1 capital:

(i) All goodwill is deducted from Tier 1 capital before the Tier 2 portion of the calculation is made, subject to the transition rules contained in section 4(a)(1)(ii) of this Appendix A; [6] and

(ii) Other intangible assets which do not meet the conditions established in section 2(c)(2) below, are deducted from Tier 1 capital before the Tier 2 portion of the calculation is made.

(2) Certain other intangible assets need not be deducted from Tier 1 capital, subject to the following conditions:

(i) The intangible assets must meet each of the following criteria:

(A) The intangible asset must be able to be separated and sold apart from the bank or from the bulk of the bank's assets;

(B) The market value of the intangible asset must be established on an annual basis through an identifiable stream of cash flows, and there must be a high degree of certainty that the asset will hold this market value notwithstanding the future prospects of the bank; and

(C) The bank must demonstrate that a market exists which will provide liquidity for the intangible asset;

(ii) Intangibles which are included as Tier 1 capital are limited to 25% of total Tier 1 capital and, for capital adequacy purposes, must be valued at the lower of either the current amortized book value or the current market value as established as part of the bank's annual audit.

(3) Deductions from total capital:

(i) Investments, both equity and debt, in unconsolidated banking and finance subsidiaries that are deemed to be capital of the subsidiary;[7] and

(ii) Reciprocal holdings of bank capital instruments.

Section 3. Risk Categories/Weights for On-Balance Sheet Assets and Off-Balance Sheet Items

The denominator of the risk-based capital ratio, *i.e.*, a national bank's risk-weighted assets,[8] is derived by assigning that bank's assets and off-balance sheet items to one of the four risk categories detailed in section 3(a) of this Appendix A. Each category has a specific risk weight. Before an off-balance sheet item is assigned a risk weight, it is converted to an on-balance sheet credit equivalent amount in accordance with section 3(b) of this Appendix A. The risk weight assigned to a particular asset or on-balance sheet credit equivalent amount determines the percentage of that asset/credit

[2] Preferred stock issues where the dividend is reset periodically based upon current market conditions and the bank's current credit rating, including but not limited to, auction rate, money market or remarketable preferred stock, are assigned to Tier 2 capital, regardless of whether the dividends are cumulative or noncumulative.

[3] The amount of the allowance for loan and lease losses that may be included in capital is based on a percentage of risk-weighted assets. A banking organization may deduct reserves for loan and lease losses in excess of the amount permitted to be included as capital, as well as allocated transfer risk reserves and reserves held against other real estate owned, from the gross sum of risk-weighted assets in computing the denominator of the risk-based capital ratio.

[4] Mandatory convertible debt instruments that meet the requirements of 12 CFR 3.100(e)(5), or that have been previously approved as capital by the OCC, are treated as qualifying hybrid capital instruments.

[5] Capital instruments may be redeemed prior to maturity and without the prior approval of the OCC, as long as the instruments are redeemed with the proceeds of, or replaced by, a like amount of a similar or higher quality capital instrument. However, the OCC must be notified in writing at least 30 days in advance of such redemption.

[6] The OCC may not require national banks to deduct goodwill that they acquire, or have previously acquired, in connection with supervisory mergers with problem or failed depository institutions. Generally, this determination will be made by the OCC on a case-by-case basis at the time of the merger approval.

[7] The OCC may require deduction of investments in other subsidiaries and associated companies, on a case-by-case basis.

[8] The OCC reserves the right to require a bank to compute its risk-based capital ratio on the basis of average, rather than period-end, risk-weighted assets when necessary to carry out the purposes of these guidelines.

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equivalent that is included in the denominator of the bank's risk-based capital ratio. Any asset deducted from a bank's capital in computing the numerator of the risk-based capital ratio is not included as part of the bank's risk-weighted assets.

Some of the assets on a bank's balance sheet may represent an indirect holding of a pool of assets, *e.g.*, mutual funds, that encompasses more than one risk weight within the pool. In those situations, the asset is assigned to the risk category applicable to the highest risk-weighted asset that pool is permitted to hold pursuant to its stated investment objectives. However, the minimum risk weight that may be assigned to such a pool is 20%. If, in order to maintain a necessary degree of liquidity, the fund is permitted to hold an insignificant amount of its investments in short-term, highly-liquid securities of superior credit quality (that do not qualify for a preferential risk weight), such securities generally will not be taken into account in determining the risk category into which the bank's holding in the overall pool should be assigned. More detail on the treatment of mortgage-backed securities is provided in section 3(a)(3)(iv) of this Appendix A.

(a) *On-Balance Sheet Assets.* The following are the risk categories/weights for on-balance sheet assets.

(1) *Zero percent risk weight.* (i) Cash, including domestic and foreign currency owned and held in all offices of a national bank or in transit. Any foreign currency held by a national bank should be converted into U.S. dollar equivalents.

(ii) Deposit reserves and other balances at Federal Reserve Banks.

(iii) Securities issued by, and other direct claims on, the United States Government or its agencies, or the central government of an OECD country.

(iv) That portion of assets directly and unconditionally guaranteed by the United States Government or its agencies, or the central government of an OECD country.[9]

(v) Local currency claims on or guaranteed by central governments and central banks in non-OECD countries, to the extent the bank has local currency liabilities in that country. Any amount of such claims that exceed the amount of the bank's local currency liabilities is assigned to the 100% risk category of section 3(a)(4) of this Appendix A, except in the case of claims on a central bank with a residual maturity of one year or less which would be assigned to the 20% risk category of section 3(a)(2).

(vi) Gold bullion held in the bank's own vaults or in another bank's vaults on an allocated basis, to the extent it is backed by gold bullion liabilities.

(vii) The book value of paid-in Federal Reserve Bank stock.

(2) *20 percent risk weight.* (i) All claims on depository institutions incorporated in an OECD country, and all assets backed by the full faith and credit of depository institutions incorporated in an OECD country. This includes the credit equivalent amount of participations in commitments and standby letters of credit sold to other depository institutions incorporated in an OECD country, but only if the originating bank remains liable to the customer or beneficiary for the full amount of the commitment or standby letter of credit. Also included in this category are the credit equivalent amounts of risk participations in bankers' acceptances conveyed to other depository institutions incorporated in an OECD country. However, bank-issued securities that qualify as capital of the issuing bank are not included in this risk category, but are assigned to the 100% risk category of section 3(a)(4) of this Appendix A.

(ii) Claims on depository institutions incorporated in a non-OECD country, as well as claims on the central bank of a non-OECD country, with a residual maturity of one year or less.

(iii) Cash items in the process of collection.

(iv) That portion of assets collateralized by the current market value of securities issued or guaranteed by the United States Government or its agencies, or the central government of an OECD country.

(v) That portion of assets conditionally guaranteed by the United States Government or its agencies, or the central government of an OECD country.

(vi) Securities issued by, or other direct claims on, United States Government-sponsored agencies.

(vii) That portion of assets guaranteed by United States Government-sponsored agencies.[10]

(viii) That portion of assets collateralized by the current market value of securities issued or guaranteed by United States Government-sponsored agencies.

(ix) Claims representing general obligations of any public-sector entity in an OECD country, and that portion of any claims guaranteed by any such public-sector entity. In the U.S., these obligations must meet the requirements of 12 CFR 1.3(g).

(x) Claims on, or guaranteed by, official multilateral lending institutions or regional development institutions in which the United States Government is a shareholder or contributing member.[11]

(xi) That portion of assets collateralized by the current market value of securities issued by official multilateral lending institutions or regional development institutions in which the United States Government is a shareholder or contributing member.

(xii) Assets collateralized by cash held in a segregated deposit account by the reporting national bank.

(3) *50 percent risk weight.* (i) Revenue obligations of any public-sector entity in an OECD country for which the underlying obligor is the public-sector entity, but which are repayable solely from the revenues generated by the project financed through the issuance of the obligations.

(ii) The credit equivalent amount of interest rate and exchange rate contracts, calculated in accordance with section 3(b)(5) of this Appendix A, that do not qualify for inclusion in a lower risk category.

(iii) Loans secured by first mortgages on one-to-four family residential properties, either owner-occupied or rented, provided that such loans are not more than 90 days past due, or on nonaccrual or restructured. It is presumed that such loans will meet prudent underwriting standards.

[9] For the treatment of privately-issued mortgage-backed securities where the underlying pool is comprised solely of mortgage-related securities issued by GNMA, *see infra* note 10.

[10] Privately issued mortgage-backed securities, *e.g.*, CMOs and REMICs, where the underlying pool is comprised solely of mortgage-related securities issued by GNMA, FNMA and FHLMC, will be treated as an indirect holding of the underlying assets and assigned to the 20% risk category of this section 3(a)(2). If the underlying pool is comprised of assets which attract different risk weights, *e.g.*, FNMA securities and conventional mortgages, the bank should generally assign the security to the highest risk category appropriate for any asset in the pool. However, on a case-by-case basis, the OCC may allow the bank to assign the security proportionately to the various risk categories based on the proportion in which the risk categories are represented by the composition cash flows of the underlying pool of assets. Before the OCC will consider a request to proportionately risk-weight such a security, the bank must have current information for the reporting date that details the composition and cash flows of the underlying pool of assets. Furthermore, before a mortgage-related security will receive a risk weight lower than 100%, it must meet the criteria set forth in section 3(a)(3)(iv) of this Appendix A.

[11] These institutions include, but are not limited to, the International Bank for Reconstruction and Development (World Bank), the Inter-American Development Bank, the Asian Development Bank, the African Development Bank, the European Investments Bank, the International Monetary Fund and the Bank for International Settlements

Furthermore, residential property loans that are made for the purpose of construction financing are assigned to the 100% risk category of section 3(a)(4) of this Appendix A; however, this exclusion from the 50% risk category does not apply to loans to individual purchasers for the construction of their own homes.

(iv) Privately-issued mortgage-backed securities, *i.e.*, those that do not carry the guarantee of a government or government-sponsored agency, fully secured by mortgages that, at the time of origination, qualify for this 50% risk weight under section 3(a)(3)(iii) above,[12] provided they meet the following criteria:

(A) The underlying assets must be held by an independent trustee that has a first priority, perfected security interest in the underlying assets for the benefit of the holders of the security;

(B) The holder of the security must have an undivided pro rata ownership interest in the underlying assets or the trust that issues the security must have no liabilities unrelated to the issued securities;

(C) The trust that issues the security must be structured such that the cash flows from the underlying assets fully meet the cash flows requirements of the security without undue reliance on any reinvestment income; and

(D) There must not be any material reinvestment risk associated with any funds awaiting distribution to the holder of the security.

(4) *100 percent risk weight.* All other assets not specified above, including, but not limited to:

(i) Claims on or guaranteed by depository institutions incorporated in a non-OECD country, as well as claims on the central bank of a non-OECD country, with a residual maturity exceeding one year.

(ii) All non-local currency claims on non-OECD central governments, as well as local currency claims on non-OECD central governments that are not included in section 3(a)(1)(v) of this Appendix A.

(iii) Any classes of a mortgage-backed security that can absorb more than their pro rata share of the principal loss without the whole issue being in default, *e.g.*, subordinated classes or residual interests, regardless of the issuer or guarantor.

(iv) All stripped mortgage-backed securities, including interest only portions (IOs), principal only portions (POs) and other similar instruments, regardless of the issuer or guarantor.

(v) Obligations issued by any state or any political subdivision thereof for the benefit of a private party or enterprise where that party or enterprise, rather than the issuing state or political subdivision, is responsible for the timely payment of principal and interest on the obligation, *e.g.*, industrial development bonds.

(vi) Claims on commercial enterprises owned by non-OECD and OECD central governments.

(vii) Any investment in an unconsolidated subsidiary that is not required to be deducted from total capital pursuant to section 2(c)(3) of this Appendix A.

(viii) Instruments issued by depository institutions incorporated in OECD and non-OECD countries that qualify as capital of the issuer.

(ix) Investments in fixed assets, premises, and other real estate owned.

(b) *Off-Balance Sheet Activities.* The risk weight assigned to an off-balance sheet activity is determined by a two-step process. First, the face amount of the off-balance sheet item is multiplied by the appropriate credit conversion factor specified in this section. This calculation translates the face amount of an off-balance sheet item into an on-balance sheet credit equivalent amount. Second, the resulting credit equivalent amount is then assigned to the proper risk category using the criteria regarding obligors, guarantors and collateral listed in section 3(a) of this Appendix A; however, collateral and guarantees are applied to the face amount of an off-balance sheet item, not the credit equivalent amount of such an item. The following are the credit conversion factors and the off-balance sheet items to which they apply.

(1) *100 percent credit conversion factor.* (i) Direct credit substitutes, including financial guarantee-type standby letters of credit that support financial claims on the account party.[13] The face amount of a direct credit substitute is netted against the amount of any participations sold in that item. The amount not sold is converted to an on-balance sheet credit equivalent and assigned to the proper risk category using the criteria regarding obligors, guarantors and collateral listed in section 3(a) of this Appendix A. Participations are treated as follows:

(A) If the originating bank remains liable to the beneficiary for the full amount of the standby letter of credit, in the event the participant fails to perform under its participation agreement, the amount of participations sold are converted to an on-balance sheet credit equivalent using a credit conversion factor of 100%, with that amount then being assigned to the risk category appropriate for the purchaser of the participation.

(B) If the participations are such that each participant is responsible only for its pro rata share of the risk, and there is no recourse to the originating bank, the full amount of the participations sold is excluded from the originating bank's risk-weighted assets;

(ii) Risk participations purchased in bankers' acceptances and participations purchased in direct credit substitutes;

(iii) Assets sold under an agreement to repurchase and assets sold with recourse,[14] to the extent that these assets are not reported on a national bank's statement of condition (this includes loan strips sold without direct recourse, where the maturity of the participation is shorter than the maturity of the underlying loan); and

(iv) Contingent obligations with a certain draw down, *e.g.*, legally binding agreements to purchase assets as a specified future date.

(v) Indemnification of customers whose securities the bank has lent as agent. If the customer is not indemnified against loss by the bank, the transaction is excluded from the risk-based capital calculation.[15]

[12] If all of the underlying mortgages in the pool do not qualify for the 50% risk weight, the bank should generally assign the entire value of the security to the 100% risk category of section 3(a)(4) of this Appendix A; however, on a case-by-case basis, the OCC may allow the bank to assign only the portion of the security which represents an interest in, and the cash flows of, nonqualifying mortgages to the 100% risk category, with the remainder being assigned a risk weight of 50%. Before the OCC will consider a request to risk weight a mortgage-backed security on a proportionate basis, the bank must have current information for the reporting date that details the composition and cash flows of the underlying pool of mortgages.

[13] For purposes of this section 3(b)(1)(i), a "financial guarantee-type standby letter of credit" is any letter of credit, or similar arrangement, however named or described, which represents an irrevocable obligation to the beneficiary on the part of the issuer (1) to repay money borrowed by or advanced to or for the account of the account party or (2) to make payment on account of any indebtedness undertaken by the account party, in the event that the account party fails to fulfill its obligation to the beneficiary. Performance-based standby letters of credit are defined differently in section 3(b)(2)(i), *infra* note 16.

[14] For risk-based capital purposes, the definition of the sale of assets with recourse, including one-to-four family residential mortgage loans, is the same as the definition contained in the Instructions for the preparation of the Consolidated Reports of Condition and Income (the Call Report).

[15] When a bank lends its own securities, the transaction is treated as a loan. When a bank lends its own securities or, acting as agent, agrees to indemnify a customer, the transaction is assigned to the risk weight appropriate to the obligor or

Continued

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(2) *50 percent credit conversion factor.* (i) Transaction-related contingencies including, among other things, performance bonds and performance-based standby letters of credit related to a particular transaction.[16] To the extent permitted by law or regulation, performance-based standby letters of credit include such things as arrangements backing subcontractors' and suppliers' performance, labor and materials contracts, and construction bids;

(ii) Unused portion of commitments, including home equity lines of credit, with an original maturity exceeding one year; [17] and

(iii) Revolving underwriting facilities, note issuance facilities, and similar arrangements pursuant to which the bank's customer can issue short-term debt obligations in its own name, but for which the bank has a legally binding commitment to either:

(A) Purchase the obligations the customer is unable to sell by a stated date; or

(B) Advance funds to its customer, if the obligations cannot be sold.

(3) *20 percent credit conversion factor.* (i) Trade-related contingencies. These are short-term self-liquidating instruments used to finance the movement of goods and are collateralized by the underlying shipment. A commercial letter of credit is an example of such an instrument.

(4) *Zero percent credit conversion factor.* (i) Unused commitments with an original maturity of one year or less;

(ii) Unused commitments with an original maturity of greater than one year, if:

(A) They are unconditionally cancelable,[18] and

(B) The bank has the contractual right to, and in fact does, make a separate credit decision based upon the borrower's current financial condition, before each drawing under the lending facility; and

(iii) Unused portion of retail credit card lines that are unconditionally cancellable in accordance with applicable law by the bank.

(5) *Interest rate and exchange rate contracts.* The credit equivalent amount of such contracts is the sum of two measures of credit exposure—current and potential credit exposure.

(i) *Current credit exposure*—The replacement cost of the contract reflects the current credit exposure, and is measured in U.S. dollars, regardless of the currency specified in the contract. A bank may net multiple contracts with a single counterparty only if those contracts are subject to novation.

(ii) *Potential credit exposure*—To complete the calculation of the on-balance sheet credit equivalent amount of a contract, an estimate of the potential increase in credit exposure over the remaining life of the contract is added on (the "add-on") to the contract's current credit exposure, including contracts with no current credit exposure. The add-on is calculated by multiplying the notional principal amount of the contract by one of the following credit conversion factors, as appropriate: [19]

(A) Interest rate contracts—

(I) Zero percent, if the contract has a remaining maturity of one year or less, and

(II) 0.5%, for contracts with a remaining maturity greater than one year;

(B) Exchange rate contracts—

(I) 1.0%, if the contract has a remaining maturity of one year or less, and

(II) 5.0%, for contracts with a remaining maturity greater than one year.

(iii) *Risk weighting*—The credit equivalent amount, which is derived from sections 3(b)(5) (i) and (ii) of this Appendix A, is then assigned to the proper risk category using the criteria regarding obligors, guarantors, and collateral listed in section 3(a) of this Appendix A.[20] However, the maximum risk weight assigned to the credit equivalent amount of an interest rate or exchange rate contract is 50%.

(iv) *Exceptions*—The following contracts are not subject to the above calculation and, therefore, are not considered part of the denominator of a national bank's risk-based capital ratio:

(A) Exchange rate contracts with an original maturity of 14 calendar days or less; and

(B) Any interest rate or exchange rate contract that is traded on an exchange requiring the daily payment of any variations in the market value of the contract.

Section 4. Implementation, Transition Rules, and Target Ratios

(a) *December 31, 1990 to December 30, 1992.* During this time period:

(1) All national banks are expected to maintain a minimum ratio of total capital (after deductions) to risk-weighted assets of 7.25%.

(i) Fifty percent of this 7.25% must be made up of Tier 1 capital; however, up to 10% of Tier 1 capital can be comprised of Tier 2 capital elements, before any deductions for goodwill. The amount of Tier 2 elements included in Tier 1 will not be subject to the sublimits on the amount of such elements in Tier 2 capital, with the exception of the allowance for loan and lease losses.

(ii) Goodwill that national banks have been allowed to count as capital as a result of the transition rules contained in 12 CFR 3.3 is grandfathered until December 31, 1992, but will be deducted from Tier 1 capital after that date.

(2) The allowance for loan and lease losses can be included in total capital up to a maximum of 1.5% of a bank's risk-weighted assets, including the portion that can be borrowed to make up Tier 1.

(3) Tier 2 capital elements that are not used as part of Tier 1 capital will qualify as part of a national bank's total capital base up to a maximum of 100% of the bank's Tier 1 capital.

(4) In addition to the standards established by these risk-based capital guidelines, all national banks must maintain a minimum capital-to-total assets ratio in accordance with the provisions of 12 CFR Part 3.

(b) *On December 31, 1992.* (1) All national banks are expected to maintain a minimum ratio of total capital (after deductions) to risk-weighted assets of 8.0%.

(2) Tier 2 capital elements qualify as part of a national bank's total capital base up to a maximum of 100% of that bank's Tier 1 capital.

(3) In addition to the standards established by these risk-based capital guidelines, all national banks must maintain a minimum capital-to-total assets ratio in accordance with the provisions of 12 CFR Part 3.

Table 1.—Summary of Risk Weights and Risk Categories

Category 1: Zero Percent

1. Cash (domestic and foreign).
2. Balances due from, and claims on, Federal Reserve Banks and central banks in other OECD countries.
3. Claims on, or unconditionally guaranteed by, the U.S. Government or its agencies, or other OECD central governments.[1]
4. Local currency claims on non-OECD central governments and central banks, to the extent the bank has local currency liabilities in that country.
5. Gold bullion held in the bank's own vaults or in another bank's vaults on an allocated basis, to the extent it is backed by gold bullion liabilities.
6. Federal Reserve Bank stock.

Category 2: 20 Percent

1. Portions of loans and other assets collateralized by securities issued or guaranteed by the U.S. Government or its agencies, or other OECD central governments.[2]
2. Portions of loans and other assets conditionally guaranteed by the U.S. Government or its agencies, or other OECD central governments.
3. Portions of loans and other assets collateralized by cash on deposit in the lending institution.
4. All claims (long- and short-term) on, or guaranteed by, OECD depository institutions.
5. Claims on, or guaranteed by, non-OECD depository institutions, including central banks, with a residual maturity of one year or less.
6. Cash items in the process of collection.
7. Securities and other claims on, or guaranteed by, U.S. Government-sponsored agencies.[3]
8. Portions of loans and other assets collateralized by securities issued by, or guaranteed by, U.S. Government-sponsored agencies.[4]
9. Claims that represent general obligations of, and portions of claims guaranteed by, public-sector entities in OECD countries, below the level of central government.
10. Claims on or guaranteed by official multilateral lending institutions or regional development institutions in which the U.S. Government is a shareholder or a contributing member.
11. Portions of loans and other assets collateralized with securities issued by official multilateral lending institutions or regional development institutions in which the U.S. Government is a shareholder or a contributing member.

Category 3: 50 Percent

1. Revenue bonds or similar obligations, including loans and leases, that are obligations of public sector entities in OECD countries, but for which the government entity is committed to repay the debt only out of revenues from the facilities financed.
2. Credit equivalent amounts of interest rate and exchange rate related contracts, except for those assigned to a lower risk category.
3. Assets secured by a first mortgage on a one-to-four family residential property that are not more than 90 days past due, on nonaccrual or restructured.

Category 4: 100 Percent

1. All other claims on private obligors.
2. Claims on non-OECD financial institutions with a residual maturity exceeding one year. Claims on non-OECD central banks with a residual maturity exceeding one year are included in this category unless they qualify for item 4 of Category 1.
3. Claims on non-OECD central governments that are not included in item 4 of Category 1.
4. Obligations issued by state or local governments (including industrial development authorities and similar entities) repayable solely by a private party or enterprise.
5. Premises, plant, and equipment; other fixed assets; and other real estate owned.
6. Investments in unconsolidated subsidiaries, joint ventures, or associated companies (unless deducted from capital).
7. Capital instruments issued by other banking organizations.
8. All other assets (including claims on commercial firms owned by the public sector).

Table 2—Credit Conversion Factors for Off-Balance Sheet Items

100 Percent Conversion Factor

1. Direct credit substitutes (general guarantees of indebtedness and guarantee-type instruments, including standby letters of credit serving as financial guarantees for, or supporting, loans and securities).
2. Risk participations in bankers acceptances and participations in direct credit substitutes (*e.g.*, standby letters of credit).
3. Sale and repurchase agreements and asset sales with recourse, if not already included on the balance sheet.
4. Forward agreements (*i.e.*, contractual obligations) to purchase assets, including financing facilities with *certain* drawdown.

50 Percent Conversion Factor

1. Transaction-related contingencies (*e.g.*, bid bonds, performance bonds, warranties, and standby letters of credit related to particular transactions).
2. Unused commitments with an original maturity exceeding one year.
3. Revolving underwriting facilities (RUFs), note issuance facilities (NIFs) and other similar arrangements.

20 Percent Conversion Factor

1. Short-term, self-liquidating trade-related contingencies, including commercial letters of credit.

Zero Percent Conversion Factor

1. Unused commitments with an original maturity of one year or less.
2. Unused commitments which are unconditionally cancellable at any time, regardless of maturity.

Table 3—Treatment of Interest Rate and Exchange Rate Contracts

The Current Exposure Method (described below) is utilized to calculate the "credit equivalent amounts" of these instruments. These amounts are assigned a risk weight appropriate to the obligor or any collateral or guarantee. However, the maximum risk weight is limited to 50 percent. Multiple contracts with a single counterparty may be netted if those contracts are subject to novation.

Residual maturity	Interest rate contracts	Exchange rate contracts
One year and less	Replacement Cost (RC).	RC+1.0% of total notional principal (NP).
Over one year	RC+0.5% of NP.	RC+5.0% of NP.

The following instruments will be excluded:

- Exchange rate contracts with an original maturity of 14 calendar days or less, and
- Instruments traded on exchanges and subject to daily margin requirements.

Table 4—Definition of Capital

Capital components are distributed between two categories (Tier 1 and Tier 2). Tier 2 capital elements will qualify as part of a bank's total capital base up to a maximum of 100% of that bank's Tier 1 capital. Beginning December 31, 1992, the minimum risk-based capital standard will be 8.0%.

Definition of Capital

Tier 1:

- Common stockholders' equity;

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collateral that is delivered to the lending or indemnifying institution or to an independent custodian acting on their behalf.

[16] For purposes of this section 3(b)(2)(i), a "performance-based standby letter of credit" is any letter of credit, or similar arrangement, however named or described, which represents an irrevocable obligation to the beneficiary on the part of the issuer to make payment on account of any default by the account party in the performance of a nonfinancial or commercial obligation. Participations in performance-based standby letters of credit are treated in accordance with the provisions of section 3(b)(1)(i)(A)(4)(B) of this Appendix A. Financial guarantee-type standby letters of credit are defined in section 3(b)(1)(i), *supra* note 13.

[17] Participations in commitments are treated in accordance with the provisions of section 3(b)(1)(i)(A)(4)(B) of this Appendix A. Until December 31, 1992, national banks will be permitted to use remaining maturity in determining the appropriate credit conversion factor for the unused portion of loan commitments.

[18] In the case of home equity lines of credit, the bank is deemed able to unconditionally cancel the commitment if it can, at its option, prohibit additional extensions of credit, reduce the credit line and terminate the commitment to the full extent permitted by relevant Federal law.

[19] No potential credit exposure is calculated for single currency floating/floating interest rate swaps; rather, the on-balance sheet credit equivalent of these contracts is evaluated solely on the basis of the amount of their current credit exposure.

[20] Interest rate and exchange rate contracts are an exception to the general rule of applying collateral and guarantees to the face value of off-balance sheet items. The sufficiency of collateral and guarantees is determined on the basis of the credit equivalent amount of interest rate and exchange rate contracts.

[1] For the purpose of calculating the risk-based capital ratio, a U.S. Government agency is defined as an instrumentality of the U.S. Government whose obligations are fully and explicitly guaranteed as to the timely repayment of principal and interest by the full faith and credit of the U.S. Government.

[2] Degree of collateralization is determined by current market value.

[3] For the purpose of calculating the risk-based capital ratio, a U.S. Government-sponsored agency is defined as an agency originally established or chartered to serve public purposes specified by the U.S. Congress but whose obligations are not explicitly guaranteed by the full faith and credit of the U.S. Government.

[4] Degree of collateralization is determined by current market value.

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- Noncumulative perpetual preferred stock and any related surplus; and
- Minority interests in the equity accounts of consolidated subsidiaries.

Tier 2:

- Cumulative perpetual, long-term and convertible preferred stock, and any related surplus; [1]
- Perpetual debt and other hybrid debt/equity instruments;
- Intermediate-term preferred stock and term subordinated debt (to a maximum of 50% of Tier 1 capital); and
- Loan loss reserves (to a maximum of 1.25% of risk-weighted assets).

Deductions from Capital:

From Tier 1:

- Goodwill and other intangibles, with the exception of identified intangibles that satisfy the criteria included in the guidelines.

From Total Capital:

- Investments in unconsolidated banking and finance subsidiaries;
- Reciprocal holdings of capital instruments

Transitional Definition

During a transition period beginning December 31, 1990, all national banks are expected to maintain a capital to risk-weighted asset ratio of 7.25%, of which at least 3.25 percentage points must consist of Tier 1 capital. In other words, during this period upon to approximately 4 percentage points of the 7.25% capital ratio may consist of Tier 2 capital. Also during this period, the sublimit on loan loss reserves will be 1.5% of risk-weighted assets.

Robert L. Clarke,

Comptroller of the Currency.

Date: December 21, 1988.

[FR Doc. 89-1689 Filed 1-26-89; 8:45 am]

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[1] The amount of long-term and intermediate-term preferred stock, as well as term subordinated debt that is eligible to be included as Tier 2 capital is reduced by 20% of the original amount of the instrument at the beginning of each of the last five years of the life of the instrument.

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Friday
January 27, 1989

Part V

Federal Reserve System

12 CFR Parts 208 and 225

Capital; Risk-Based Capital Guidelines; Final Rule

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FEDERAL RESERVE SYSTEM

12 CFR Parts 208 and 225

[Reg. H, Reg. Y; Docket No. R-0628]

Capital; Risk-Based Capital Guidelines

January 18, 1989.

AGENCY: Federal Reserve System.

ACTION: Final Risk-Based Capital Guidelines.

SUMMARY: Since the early 1980s, the Board of Governors of the Federal Reserve System has employed minimum supervisory leverage ratios of primary and total capital-to-total assets in assessing the capital adequacy of state-chartered banks that are members of the Federal Reserve System and bank holding companies (collectively, "banking organizations").

While these ratios of capital-to-total assets have served as useful tools for assessing capital adequacy, the Board has determined that there is a need for a measure that is more sensitive to the risk profiles of individual banking organizations. In this regard, the Board, together with the other U.S. Federal banking agencies, first proposed in early 1986, and again in 1987 in conjunction with the Bank of England, the adoption of a risk-based capital measure that took explicit account of board differences in risks among a banking organization's assets and off-balance sheet items.

The Board deferred action on these earlier proposals in order to participate in the development of a more broadly based capital framework that would be applicable to international banking organizations. As a result of consultations with supervisory authorities from certain major industrial countries, on March 1, 1988, the Federal Reserve issued for public comment a revised risk-based capital framework that superseded the previous proposals. The revised proposal was based upon a risk-based capital measure developed jointly by supervisory authorities from the 12 countries that are represented on the Basle Committee on Banking Regulations and Supervisory Practices.

The comment period for the Federal Reserve's proposal ended on May 13, 1988. The Board received comments that addressed various aspects of its proposal from over 180 respondents. Based upon the comments received, discussion with the other U.S. banking agencies, and further consultation with international supervisory authorities, the Board has made some modifications to its March 1988 proposal.

The Board is now issuing in final form its revised proposal as Risk-Based Capital Guidelines. The Board is issuing two sets of guidelines: one is applicable to state member banks, and the other is applicable to bank holding companies. The guidelines will be appended to the appropriate supervisory regulations for those organizations—for state member banks, the Board's Regulation H (12 CFR Part 208) and for the bank holding companies, Regulation Y (12 CFR Part 225).

The Board's adoption of these guidelines achieves important goals long sought by U.S. banking supervisors. First, it establishes a risk-based capital framework that is more sensitive than the current leverage ratios to risk factors, including off-balance sheet exposures. Second, it encourages international banking organizations to strengthen their capital positions. Finally, it mitigates a source of competitive inequity arising from different supervisory capital requirements across countries.

These guidelines represent a major step in the process of coordinating with regulatory authorities or other countries to establish appropriate capital standards for banking organizations, in accordance with the International Lending Supervision Act of 1983. In that regard, the Board notes that the regulatory authorities of the 12 major industrial countries intend to issue appropriate directives to those banking organizations falling under their supervision, in order to facilitate implementation of the risk-based capital framework on an international basis.

EFFECTIVE DATE: March 15, 1989. The framework for calculating risk-based capital ratios will take effect on March 15, 1989. As further detailed below, the minimum supervisory ratios reflected in the framework's transitional provisions become effective on December 31, 1990. The supervisory ratios in their final form become effective on December 31, 1992.

FOR FURTHER INFORMATION CONTACT: Richard Spillenkothen, Deputy Associate Director (202/452-3504), Roger Cole, Assistant Director (202/452-2618), Stephen M. Lovette, Manager (202/452-3822, Rhoger H. Pugh, Manager (202/728-5883), Norah Barger, Senior Financial Analyst (202/452-3402), or Kelly S. Shaw, Financial Analyst (202/452-3054), Division of Banking Supervision and Regulation, Board of Governors; or J. Virgil Mattingly, Deputy General Counsel (202/452-3430), or Michael J. O'Rourke, Senior Attorney (202/452-3286), Legal Division, Board of Governors; or Andrew Spindler, Vice President (212/720-5846), Betsy B. White, Vice President (212/720-5874), Donald E. Schmid, Manager (212/720-6011) or Jeffrey Bardos, Special Assistant (212/720-7962), Federal Reserve Bank of New York. For the hearing impaired *only*, Telecommunication Device for the Deaf, Earnestine Hill or Dorothea Thompson (202/452-3544).

SUPPLEMENTARY INFORMATION:

I. Supplementary Information and Background

A. Purpose and History of the Risk-Based Capital Guidelines

In 1986, and again in 1987 in conjunction with the Bank of England, the Federal banking agencies issued for public comment risk-based capital proposals applicable to U.S. banks and bank holding companies. The principal objectives of these early proposals were: (1) To develop more systematic procedures for factoring on- and off-balance sheet risks into supervisory assessments of capital adequacy; (2) to reduce disincentives to holding liquid, low-risk assets; and (3) to foster coordination among supervisory authorities from major industrial countries, many of which employ risk-sensitive capital measures.

These risk-based capital proposals were consistent with one of the major goals of the International Lending Supervision Act of 1983 ("ILSA"), 12 U.S.C. 3901 *et seq.*, which was to strengthen the bank regulatory framework by encouraging greater coordination among regulatory authorities in different countries. In addition to enhancing the banking agencies' authority to establish and enforce minimum levels of capital for U.S. banking organizations, this Act instructed those agencies to work with governments, central banks, and regulatory authorities of other countries to maintain and, where necessary, strengthen the capital positions of banking institutions involved in international lending.

The Federal Reserve deferred final action on the 1986 and 1987 proposals in order to participate in the development of a more broadly based capital framework that would be applicable to international banking organizations from the major industrial countries. In December 1987, the Basle Committee on Banking Regulations and Supervisory Practices ("Basle Supervisors' Committee") issued a consultative paper (the "Basle Accord") containing proposals for a risk-based capital framework.[1] The principal objectives of the framework were to achieve greater convergence in the measurement and assessment of capital adequacy internationally and to strengthen the capital positions of major international banking organizations. That document served as the basis for consultations and public comment in the Group of Ten ("G-10") countries.

Domestically, the vehicle for consultation and public comment took the form of proposed risk-based capital guidelines, which were based upon the December 1987 Basle Accord, and which the Federal Reserve issued for public comment on March 1, 1988. The comment period on the proposed guidelines formally ended May 13, 1988, although the Board continued to receive and consider comments after that date. Over 180 comment letters were received that addressed various aspects of the proposed guidelines.[2]

A number of changes were made to the December 1987 Basle Accord in light of comments received by both domestic and foreign banking authorities and as a result of consultations among the G-10 countries. The revised July 1988 Basle Accord that was endorsed by the central bank governors of the G-10 countries on July 11, 1988, reflects these changes.[3]

The Board is not issuing in final form its risk-based capital guidelines, revised in light of the public comments received in response to the March 1988 proposal, the ongoing consultative process among the G-10 countries, and discussions with the other U.S. banking agencies. The Board is issuing two sets of guidelines: one is applicable to state member banks and the other is applicable to bank holding companies. The guidelines will be appended to the appropriate supervisory regulations for those organizations—for state member banks, the Board's Regulation H (12 CFR Part 208) and for bank holding companies, Regulation Y (12 CFR Part 225).

These guidelines establish a systematic analytical framework that: (1) Makes regulatory capital requirements more sensitive to differences in risk profiles among banking organizations; (2) takes off-balance sheet exposures into explicit account in assessing capital adequacy; and (3) minimizes disincentives to holding liquid, low-risk assets.

The development of a risk-based framework in conjunction with supervisory officials from other industrial countries acknowledges the growing internationalization of major banking and financial markets throughout the world. The harmonization and strengthening of capital standards worldwide should contribute to a more stable and resilient international banking system and help mitigate a source of competitive inequality for international banks stemming from differences in national supervisory capital requirements.

In addition to international banks (to which the Basle Accord is specifically directed), the Federal Reserve is extending the application of the risk-based capital framework to all other U.S. banking organizations under its jurisdiction, regardless of size (as suggested in the March 1988 proposal). The Board believes that the underlying rationale behind the use of a risk-based capital approach applies to small domestic banking institutions as well as large international banking organizations.

The final guidelines contemplate, as did the March 1988 proposal, that the calculation of a risk-based capital ratio is only one step in evaluating capital adequacy. The focus of these guidelines is principally on broad categories of credit risk, although the risk-based framework does take some transfer risk considerations, as well as limited instances of interest rate and market risk, into account in assigning certain assets to risk categories. The measure does not take explicit account of other factors that can affect an organization's financial condition, such as overall interest rate exposure; liquidity, funding and market risks; the quality and level of earnings; investment or loan portfolio concentrations; the quality of loans and investments; the effectiveness of loan and investment policies; and management's overall ability to monitor and control other financial and operating risks. A complete assessment of capital adequacy must take account of each of these considerations including, in particular, the level and severity of problem and classified assets. Thus, the risk-based capital ratio is but one element in the assessment of overall capital adequacy, and the final supervisory judgment of an organization's capital adequacy may differ significantly from conclusions that might be drawn solely from the absolute level of the organization's risk-based capital ratio.

The guidelines, both for state member banks and bank holding companies, consist of a definition of capital, a system for assigning assets and off-balance sheet items to risk categories, a schedule for achieving a *minimum* risk-based capital ratio, and a phase-in period that provides for transitional arrangements. In light of the considerations just discussed, the Board expects that banking organizations will, as a general matter, operate with capital levels well above the minimum risk-based levels. As the Board previously has noted, this is particularly appropriate for banking organizations contemplating significant expansion proposals, as well as for institutions with high or inordinate levels of risk. In all cases, institutions should hold capital commensurate with the level and nature of the risks to which they are exposed.

B. Overview of the Final Risk-Based Capital Guidelines

The guidelines comprise four basic elements:

(1) An agreed definition of core or Tier 1 capital, consisting primarily of common stockholders' equity and certain categories of perpetual preferred stock, and a "menu" of internationally accepted items for supplementing core capital (supplementary or Tier 2 capital).

(2) A general framework for assigning assets and off-balance sheet items to broad risk categories and procedures for calculating a risk-based capital ratio.

(3) A schedule for achieving, by no later than the end of 1990, a minimum ratio of total capital-to-risk-weighted assets of 7.25 percent (of which at least 3.25 percentage points should be in the form of core capital elements) and, by no later than the end of 1992, a ratio of 8.0 percent (of which at least 4.0 percentage points should be in the form of core capital elements).

(4) Transitional arrangements and a phase-in period (running through the end of 1992) permitting banking organizations to include some supplementary capital elements in Tier 1 capital on a temporary basis and providing time to bring their capital positions into full comformity with the risk-based capital definitions and minimum supervisory standards.

C. Comments Received in Response to the March 1988 Proposal

As mentioned above, these final guidelines include a number of changes

[1] The Basle Supervisors' Committee is comprised of representatives of the central banks and supervisory authorities from the Group of Ten countries (Belgium, Canada, France, Germany, Italy, Japan, Netherlands, Sweden, Switzerland, the United Kingdom, and the United States), and Luxembourg.

[2] A summary of the comments received is contained in a memorandum distributed at the Federal Reserve's August 3, 1988, public meeting, at which the Board approved in principle certain revisions to the risk-based capital proposal.

[3] The Basle Accord is described in a paper prepared by the Basle Supervisors' Committee entitled "International Convergence of Capital Measurement and Capital Standards" dated July 1988.

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to the March 1988 proposed guidelines based, in part, on the public comments received by the Board. Most respondents expressed general support for the concept of a risk-based capital measure; however, many objected to specific aspects of the proposed ratios. In addition, some large institutions and bank trade associations opposed the Board's proposal to apply the risk-based framework to bank holding companies. Some respondents expressed the view that the risk-based capital proposal might adversely affect the ability of banking organizations to compete with nonbank financial institutions that are not subject to similar standards.

Specific comments on the framework covered the proposed capital definition, the treatment of assets and off-balance sheet activities, and the application of the framework. The principal concerns regarding the definition of capital focused on the treatment of perpetual preferred stock, loan loss reserves, and goodwill. Comments on risk weights addressed the proposed treatment of country exposures, claims on domestic central governments, claims on local governments, claims on international institutions, claims on government-sponsored agencies, claims backed by private sector financial guarantees, and residential mortgages. With respect to off-balance sheet items, the major comments related to the recognition of counterparty netting arrangements and the credit conversion factor for long-term foreign exchange rate contracts. Comments were received on the use of original, rather than remaining, maturity in both the assignment of risk weights to long-term claims on foreign banks and the assignment of credit conversion factors to commitments. Some commenters also addressed the use of average, versus period-end, data in calculating the risk-based capital ratio. Finally, a number of respondents commented on the relationship of the risk-based capital ratio to the Board's existing guidelines and policy statements, as well as the application of the risk-based framework to small banking organizations.

Sections II through V below describe modifications to the March 1988 proposal that the Board has adopted as a result of public comments received and changes incorporated into the July 1988 Basle Accord, or as part of the continuing consultative process within the Basle Supervisors' Committee (and with the other Federal banking agencies). Section II outlines revisions made to the definition of capital; Section III describes changes in the treatment of assets and off-balance sheet exposures; Section IV deals with the implementation of the risk-based framework; and Section V discusses the requirements for bank holding companies.

II. Definition of Capital

The final guideline set forth a definition of capital for state member banks that is substantially similar to that contained in the March proposal. This section reviews comments received on, and revisions made in, the treatment of three elements of capital—perpetual preferred stock, loan loss reserves, and term subordinated debt.

A. Perpetual Preferred Stock

Consistent with the December 1987 Basle Accord, the March 1988 proposed guidelines stated that for supervisory purposes capital would consist of two tiers: Tier 1 capital comprising core capital elements, and Tier 2 capital, comprising supplementary capital elements. Tier 1 capital was defined to include common stockholders' equity and disclosed reserves that represent after-tax retained earnings. Perpetual preferred stock was excluded from the definition of Tier 1 capital.

A large number of organizations argued that perpetual preferred stock should count as an element of Tier 1 capital. These organizations suggested that perpetual preferred stock, in terms of its ability to absorb losses, serves as a nearly perfect substitute for common equity because it is permanent, it is subordinate to deposits and general debt obligations, and preferred dividends can be deferred without triggering an act of default. Some respondents favored including only limited amounts of perpetual preferred stock within Tier 1, while others took the position that regulations should define the characteristics of preferred stock that may be of some supervisory concern and include those forms of preferred stock that do not possess such characteristics. Several organizations noted that perpetual preferred stock is the most expensive form of Tier 2 capital, and suggested that outstanding issues of such stock might be redeemed if not given Tier 1 treatment.

Consistent with the revised Basle Accord, the Board has modified its definition of Tier 1 capital for state member banks to include *noncumulative* perpetual preferred stock [6] in Tier 1 capital with no limitations. Cumulative preferred stock, however, remains in Tier 2 for banks. Perpetual preferred stock that has a noncumulative feature is a closer substitute for common stock than cumulative preferred stock since any dividend payments that have been waived do not represent a contingent claim on the issuer. Despite the inclusion of preferred stock in Tier 1, the Board believes that, from a supervisory standpoint, it is desirable that common shareholders' equity remain the dominant form of Tier 1 capital. Thus, state member banks are expected to avoid overreliance on preferred stock or any type of non-voting equity elements within Tier 1.[6]

The decision to include perpetual preferred stock in Tier 1 raises the question of whether there are some specific forms of preferred stock that possess features that do not warrant such favorable treatment. While the Board believes that reasonable amounts of noncumulative perpetual preferred stock should be included in Tier 1, it has determined that auction rate preferred stock (including so-called "Dutch auction" preferred stock) has certain features that do not allow it to fulfill the supervisory purposes of Tier 1 capital and, hence, has excluded such stock as a core capital element.[6]

Although auction rate preferred stock is not included in Tier 1, the guidelines do not prohibit the inclusion of floating rate or adjustable rate perpetual preferred stock in Tier 1 capital, so long as the yield on these instruments is based solely on general market interest rates and is not subject to an auction mechanism that requires or allows the rate to vary in relation to the financial standing or credit rating of the issuer.

B. Loan Loss Reserves

Recognizing that it is not always possible to distinguish clearly between general and specific reserves, the December 1987 Basle Accord proposed phasing in a limit on the amount of loan loss reserves includable in Tier 2 capital. By the end of 1992, the allowance for loan and lease losses included in Tier 2 capital cannot exceed 1.25 percent of weighted risk assets. The Board's March proposal treated the allowance for loan and lease losses as Tier 2 capital up to this limit, and, consistent with the Basle Accord, excluded from capital any specific reserve established against identified losses.

Comments received from U.S. banking organizations on the proposed treatment of loan loss reserves suggested including general reserves in Tier 1 and raising or eliminating the proposed limits on reserves. Banking organizations in other G–10 countries, on the other hand, expressed the view that certain types of reserves, such as those established against loans to developing countries, are not in fact freely available, and noted that in many G–10 countries such reserves are excluded from bank capital. These commenters accordingly argued for the exclusion of all such reserves from capital.

Under generally accepted accounting principles, the loan loss allowance in U.S. banking organizations takes the form of a valuation adjustment to the entire loan portfolio. These adjustments represent losses inherent or anticipated in the existing portfolio but not yet identified. Because capital is intended to serve as buffer against unanticipated losses, it would appear appropriate to place such reserves in Tier 2 subject to the limit contained in the Basle Accord. In addition, the amount of reserves includable in Tier 2 is generally consistent with the amount of loan loss reserves that historically were included in U.S. bank regulatory capital until 1987, when banking organizations established large reserves against country risk exposure.

During the transition period, the Basle Supervisor's Committee intends to continue to try to reach agreement on the types of reserves that are truly general in nature and, therefore, freely available to absorb losses anywhere in the portfolio. If an acceptable agreement is reached, then the Basle Accord and these guidelines would permit the inclusion of unlimited amounts of such general reserves within Tier 2. If an acceptable agreement is not reached, then the amount of general reserves includable in Tier 2 capital by the end of the transition period would be limited to 1.25 percent of weighted risk assets, as originally proposed in the Board's March 1988 proposal, and subsequently set forth in the revised July 1988 Basle Accord.

C. Term Subordinated Debt Instruments

The December 1987 Basle proposal included subordinated debt instruments with a fixed term to maturity as a limited element of Tier 2 capital but did not specify a minimum term to maturity for these instruments. Consistent with the Board's existing capital guidelines, the March 1988 proposal stated that subordinated debt issues and limited-life preferred stock must have a minimum original weighted average maturity of at least seven years to qualify for inclusion in Tier 2 capital.

The revised Basle Accord specifies that term debt instruments must have a minimum original term to maturity of over five years to qualify for inclusion in Tier 2. Accordingly, the final risk-based guidelines state that term subordinated debt instruments and intermediate-term preferred stock with an original average weighted maturity of at least five years are includable as limited elements within Tier 2 capital.

III. Risk Weights and Off-Balance Sheet Items

A. Treatment of Country Exposure

The December 1987 Basle proposal did not attempt to incorporate transfer risk. In general, claims on foreign governments and banks were treated alike without distinguishing among the countries involved and received less favorable risk weights that claims on similar domestic institutions. Banks in European Community ("EC") countries, however, were permitted to treat claims on institutions in member countries as domestic claims.

This aspect of the March proposal generally met with criticism from foreign banks and large U.S. banks, which noted that the treatment accorded to long-term claims on foreign banks and claims guaranteed by foreign banks might disrupt the interbank market and create disincentives for U.S. banks to convey risk participations to foreign banks. Some commenters also argued that the preferential treatment accorded banks in EC counties gave these institutions a competitive advantage in dealing with each other. Others argued for equal, low-risk treatment for claims on banks and governments from a group of countries identified as being of high credit quality, such as the signatories to the Basle Accord or members of the Organization for Economic Cooperation and Development ("OECD").

Taking into account these comments, and consistent with the revised July 1988 Basle Accord, these guidelines treat claims on governments and banks of a defined group of countries, which includes members of the OECD and countries that have concluded special lending arrangements with the International Monetary Fund ("IMF") associated with its General Arrangements to Borrow (the OECD-based group of countries) [7], in the same manner as they do claims on similar domestic institutions. Claims on central governments of other countries are assigned to the 100 percent risk category unless denominated in local currency and funded in local currency liabilities, in which case they may be treated the same as claims on domestic central governments. Short-term claims on banks domiciled in countries that do not belong to the OECD-based group of countries will receive the same 20 percent risk weight that claims on domestic banks do; however, long-term claims (remaining maturity of over one year) on the banks from these countries will receive a 100 percent risk weight.

B. Claims on Central Governments

The December 1987 Basle Accord assigned claims on domestic central governments (including claims guaranteed by domestic central governments or collateralized by their securities) to the zero or a low risk category to reflect the presumed absence of credit risk. National supervisors were granted discretion, however, to place some of these claims, including long-term claims, in a slightly higher risk category in order to capture a degree of market and interest rate risk. The guidelines propoeed in March, accordingly, assigned a zero percent risk weight to securities (direct obligations) issued by the U.S. Government with a remaining maturity of 91 days or less and a 10 percent risk weight to similar claims or over 91 days. A 10 percent risk weight also was assigned to all claims guaranteed by the U.S. Government or collateralized by its securities.

A number of respondents to the March proposal disagreed with the proposed method for incorporating interest rate risk because it did not take into account all assets, liabilities, and off-balance sheet transactions. Some commenters argued that all government obligations, long-and short-term, should be assigned to the zero percent risk category due to the absence of credit risk. Others expressed concern about the framework's lack of a more sophisticated approach to interest rate risk, arguing that placing long-term government bonds in the zero percent risk category could imply (incorrectly) that there are no risk to holding such instruments.

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[6] Perpetual preferred stock is defined as preferred stock that has no maturity date, that cannot be redeemed at the option of the holder of the instrument and that has no other provisions that will require future redemption of the issue.

[6] As discussed in Section V (B) below, the Board has limited the amount of perpetual preferred stock in Tier 1 for bank holding companies to 25 percent of total Tier 1 capital.

[6] The decision to exclude auction rate stock is discussed further in Section V (B).

[7] The OECD includes the following countries: Australia, Austria, Belgium, Canada, Denmark, the Federal Republic of Germany, Finland, France, Greece, Iceland, Ireland, Italy, Japan, Luxembourg, Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, Turkey, United Kingdom, and United States. Saudi Arabia has concluded special lending arrangements with the IMF associated with the Fund's General Arrangements to Borrow.

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In addition, some commenters opposed the proposed maturity split for government securities on the grounds that it would place them at a competitive disadvantage to banks in other G–10 countries. In this regard, respondents asserted that most G–10 countries intended to assign a zero percent risk weight to all claims on their domestic central governments, regardless of maturity. It should be noted that, in light of the recognition of transfer risk now incorporated in the Basle framework, the zero percent risk weight would apply not only to claims on the domestic central government, but also to claims on, and guaranteed by, foreign central governments of the OECD-based group of countries.

After careful consideration of all of the above factors and consultation with the other U.S. Federal banking agencies, the Board has decided to eliminate the distinction between long- and short-term OECD central government securities. The Board has decided to assign all such securities, as well as all claims unconditionally guaranteed by the full faith and credit of OECD central governments, to the lowest (zero percent) risk category. If the validity of the guarantee to the holder of the claim is dependent upon some affirmative action by the holder or a third party, then the guarantee is not considered unconditional. Thus, with respect to the United States, all direct U.S. Treasury obligations are assigned to the zero percent risk weight category. This category would generally include all securities with unconditional guarantees by the U.S. Government or its agencies intended to facilitate active trading in financial markets, including Government National Mortgage Association (GNMA) pass-through securities. Loans guaranteed by the U.S. Export-Import Bank (Exim Bank) would generally also be assigned to the zero percent risk category.

This approach has the benefit of restricting the lowest risk category to obligations of the central government in the form of direct claims on or claims unconditionally guaranteed by the central government. By eliminating the maturity break on central government securities, this approach also simplifies the framework.

Claims that are conditionally guaranteed by OECD central governments (including the U.S. Government and its agencies) are generally assigned to the 20 percent risk category. For example, in the case of the United States, such claims generally would include loans guaranteed under certain programs administered by the Veterans' Administration (VA) and the Federal Housing Administration (FHA). Student loans that are indirectly guaranteed or reinsured by the U.S. Government would also be assigned to the 20 percent risk category. In addition, all claims *collateralized* by securities issued by OECD-based central governments (including the U.S. Government and its agencies) will generally be assigned to the 20 percent risk category. The Board believes that this treatment is appropriate since, as a general matter, such secured claims on private counterparties are not in all respects equivalent from a risk standpoint to the direct holding of central government debt securities. Moreover, the Board believes that restricting the zero percent category to direct holdings of government securities and obligations unconditionally guaranteed by the government lessens supervisory concerns regarding the volume and riskiness of assets assigned the zero percent risk weight.

Assigning long-term direct government obligations to the zero percent risk category differs from past Board proposals, and should not be interpreted as suggesting that the holding of such instruments involves little or no risk. The Board's previous concerns about this treatment are mitigated by the retention of an overall leverage constraint (see Section IV (A)). Retaining a leverage ratio does, in fact, ensure a minimum capital charge for central government securities, together with all other assets, and precludes the possibility of excessive leveraging of the government securities portfolio. Moreover, examiners will continue to carefully scrutinize banking organizations' interest rate exposure and require that institutions with undue levels of interest rate risk strengthen their capital positions even though they may meet the minimum capital standards. In addition, the Federal Reserve will continue to work with the other domestic and international supervisory authorities to develop better procedures for measuring and assessing interest rate exposure.

C. Claims on the Non-Central (Local) Government Public Sector

The July 1988 revised Basle Accord continues to provide for national discretion in assigning risk weights to claims on domestic local governments to the risk categories. However, the framework generally assigns a standard 20 percent risk weight to claims on, or guaranteed by, foreign local governments of the OECD-based group of countries.

The Board's March 1988 proposal assigned a 20 percent risk weight to *general* obligation (full faith and credit) claims on a domestic local government, as well as to all claims guaranteed by the full faith and credit of a domestic local government. It also assigned a 50 percent risk weight to local domestic government *revenue* obligations for which the government entity is committed to repay the debt only with revenues from facilities financed, rather than from general tax funds. Consistent with the December 1987 Basle proposal, revenue obligations issued by local governments for the benefit of *private entities* that are committed to repay the principal and interest were accorded a 100 percent risk weight as were claims on, or guaranteed by, foreign local government entities.

Several commenters suggested that all public sector claims that a local government is committed to repay (including revenue bonds) receive a 20 percent risk weight. In their views, assigning a 20 percent or 50 percent risk weight to such obligations based on the source of repayment would create unwarranted distinctions among classes of state and municipal debt.

Upon consideration of all relevant factors, the Board has decided to retain the proposed risk weights for claims on domestic local governments and, consistent with the Basle framework, to extend the same treatment to similar claims on foreign local governments of the OECD-based group of countries. Also consistent with the Basle framework, a 100-percent risk weight is assigned to all claims on local government entities of countries that do not belong to the OECD-based group of countries.

Financial guaranty insurance industry commenters objected to an aspect of the March proposal related to the treatment accorded to local government revenue obligations. Consistent with the Basle framework, the proposal recognized bank, but not nonbank, guarantees of local government obligations (or of any other type of claim). The commenters argued that the proposal's preferential treatment for bank-issued guarantees creates an incentive for banks to hold local government revenue obligations backed by bank-issued standbys, which would have a 20-percent risk weight, rather than similar obligations backed by triple A-rated financial guaranty insurance companies, which would have a 50 percent or 100 percent risk weight, depending upon the nature of the underlying obligor.

Because the Basle Accord does not recognize nonbank private sector guarantees or take private sector credit ratings into account in assigning assets to risk categories, recognition of private sector financial guarantees for risk-based capital purposes, as urged by this group, would be inconsistent with the framework agreed upon by the G–10 countries. Accordingly, the final guidelines do not recognize such guarantees. Nonetheless, the treatment of private sector financial guarantees may be considered in the future in connection with international discussions on refinements to the risk-based capital framework.

D. International Institutions

The December 1987 Basle proposal granted national supervisory authorities discretion to assign a zero to 20 percent risk weight to claims on multilateral lending and regional development institutions and assigned a 100 percent risk weight to claims guaranteed by these organizations or collateralized by their securities. Several international organizations expressed concern that proposals of member countries to the Accord inconsistently assigned risk weights to claims on the same international institutions. Others supported a 20 percent risk weight for *all* such institutions, and requested that this treatment be extended to claims guaranteed by these entities and to claims collateralized by their securities.

These final guidelines reflect the revised Basle Accord's uniform 20 percent risk weight for claims on five multilateral development banks—the African Development Bank, the Asian Development Bank, the European Investment Bank, the Inter-American Development Bank, and the World Bank—as well as for claims guaranteed by these institutions or collateralized by their securities. As permitted by the revised Basle Accord, the final guidelines extend the same treatment to claims on similar institutions in which the U.S. is a shareholding or contributing member.

E. Government-Sponsored Agencies

The Board's March 1988 proposal assigned a preferential 20 percent risk weight to claims on U.S. Government-sponsored agencies to reflect their relatively low risk and what is viewed as their special relationship to the U.S. Government.[8] Of the comments received on this issue, about half, including some from government-sponsored agencies themselves, offered support for the proposed 20 percent risk weight; about half the commenters advocated a lower 10 percent risk weight.

Respondents that opposed a risk weight lower than 20 percent pointed out that government-sponsored agency securities lack the explicit full faith and credit backing of the U.S. Government. Respondents in favor of a lower risk weight contended that the market does not distinguish in a significant way between the level of risk associated with these obligations and the risk associated with long-term claims on the U.S. Government, which the proposal weighted at 10 percent. Several commenters opposed the differential between the 10 percent risk weight proposed for GNMA securities—which bear the full faith and credit guarantee of the U.S. Government—and the 20 percent risk weight assigned to Federal Home Loan Mortgage Corporation ("FHLMC") and Federal National Mortgage Association ("FNMA") securities—which do not explicitly bear such a guarantee—on the grounds that it would create tiering in the secondary mortgage market and raise mortgage costs for consumers.

In view of the structure of the Basle framework, the Board has determined to maintain the 20 percent risk weight for claims on all government-sponsored agencies. The Board continues to believe that the debt obligations of government-sponsored agencies should not be accorded the same treatment as other direct government obligations that carry the explicit U.S. Government guarantee. The Board notes that the 20 percent risk weight is much lower than the implied risk weight of 100 percent under the current leverage guidelines.

F. Mortgages and Mortgage-Backed Securities

1. Mortgages

The Board's March 1988 proposal assigned a 100 percent risk weight to loans secured by owner-occupied 1–4 family residential mortgages, rather than the preferential 50 percent risk weight proposed by the Basle Supervisors' Committee. In proposing not to apply the preferential weight, the Federal Reserve sought to avoid the appearance or reality of regulatory credit allocation among private sector borrowers.

Those commenters that addressed this issue overwhelmingly opposed the proposed 100 percent risk weight. Respondents stated that it would place U.S. banks at a competitive disadvantage in both domestic and foreign mortgage markets and cited the historically low default rate on residential mortgages as a justification for a lower risk weight.

Upon consideration of these comments, the Board has determined to assign a preferential risk weight of 50 percent to loans secured by owner-occupied 1–4 family residential mortgages. Consistent with the revised Basle Accord, the Board is extending this preferential risk weight to mortgages on 1–4 family residential properties that are rented as well. In this regard, the revised Basle Accord instructs national supervisory authorities to apply this preferential weight restrictively as to encompass only residential purposes; that is, it is not to apply to speculative property development. Moreover, national authorities are granted the latitude to develop strict prudential criteria for the application of this low risk weight. Accordingly, the guidelines assign a 50 percent risk weight only to loans secured by *first* liens on 1–4 family residential properties that are performing in accordance with their original terms and are not 90 days or more past due or carried in nonaccrual status.

The assignment of mortgages to the 50 percent risk category is based upon the presumption that banking organizations will adhere to prudent and conservative underwriting standards with respect to the maximum loan-to-value ratio, the borrower's paying capacity, and the long-term expectations for the real estate market in which they are lending. If, in the course of the supervisory process, it is determined that an organization has not adhered to such standards, the Federal Reserve may require additional capital, increased reserves, or both.

The treatment of 1–4 family residential mortgages also affects the risk weight assigned to the *undrawn* portion of home equity lines of credit. As is the case with other commitments, home equity loan commitments that a bank: (1) Can unconditionally cancel within one year [9]; and (2) reviews at

[8] Government-sponsored agencies are entities that were established or chartered by the U.S. Government to serve public purposes specified by the U.S. Congress but whose obligations do not carry the explicit full faith and credit guarantee of the U.S. Government.

[9] In the case of consumer home equity lines of credit secured by liens on 1–4 family residential property, a bank is deemed able to unconditionally cancel the line for purposes of this criterion if, at its option, the bank can prohibit additional extensions of credit, reduce the credit line, and terminate the line of full extent permitted by relevant Federal law. The Board has determined that this approach is appropriate in view of the preferential treatment that the Basle Accord grants home mortgages generally and in light of the Congressional purposes behind the Home Equity Loan Consumer Protection Act of 1988, which sets forth certain guidelines under which lenders may cancel or not make advances on home equity lines.

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least annually to determine whether or not they should be extended, are treated as short-term commitments. Short-term commitments are deemed to involve low risk and, therefore, are not assessed a capital charge. However, like other long-term commitments, the undrawn portion of long-term home equity lines of credit are converted at 50 percent. The resulting credit equivalent amount is then assigned a 50 percent risk weight if it is secured by a first lien or a 100 percent risk weight if it is secured by a junior lien.

2. Mortgage-Backed Securities

The Basle Accord does not specifically address certain instruments, such as mortgage-backed securities and the newly developed stripped mortgage-backed securities. Nonetheless, the Board has determined that within the context of the overall risk-based capital framework, it is appropriate to view privately-issued mortgage-backed securities, such as mortgage pass-through securities and collateralized mortgage obligations (CMOs), that meet certain criteria outlined in the guidelines as essentially indirect holdings of the underlying assets. Accordingly, such securities are generally assigned to the same risk weight appropriate to the highest risk-weighted asset in the underlying asset pool, except that in no case will these securities be assigned to the zero percent risk weight category,[10] which is reserved for *direct* claims on central governments. Privately-issued mortgage-backed securities that do not meet the specified criteria are assigned to the 100 percent risk weight category. Any classes of a mortgage-backed security that can absorb more than their *pro rata* share of the loss without the whole mortgage-backed security issue being in default, for example, so-called subordinated classes or residual interests, are also assigned to 100 percent risk weight regardless of the issuer or guarantor of the security.

Stripped mortgage-backed securities, including interest-only strips (IOs), principal-only strips (POs), and similar instrument, posess different structural characteristics from the typical mortgage-backed securities. These differing characteristics are reflected in the extreme price volatility and market risk that may be associated with these instruments. For this reason, the Board at this time has assigned these instruments, regardless of issuer or guarantor, to the 100 percent risk category.

Nonetheless, the Board recognizes that these instruments can be used to hedge risk and does not want to discourage their use for this purpose. Accordingly, examiners will take into account the manner in which an organization uses IOs and POs, as well as other instruments, in its hedging strategy before making an overall judgment on the organization's capital adequacy. While organizations will be encouraged to operate above minimum capital levels, organizations that have properly hedged their interest rate exposure will, other things being equal, be permitted to operate with lower levels of capital than those that are vulnerable to rate changes. The treatment of stripped mortgage-backed securities will also be considered in connection with efforts to develop a means for incorporating interest rate risk into the risk-based capital standard. These efforts will endeavor to recognize the risk-reducing (hedging) characteristics of these instruments when they are used properly. Finally, the treatment of IOs, POs, and similar instruments may also be considered in future discussions of the the Basle Supervisors' Committee intended to refine the risk-based capital framework.

G. Interest Rate and Foreign Exchange Rate Contracts

1. Netting

Consistent with the December 1987 Basle proposal, the proposed March guidelines did not recognize netting of interest and exchange rate contracts between counterparties for the purpose of calculating the risk-based capital ratio. The proposal indicated that this would not be done until legal opinion firmly established that such contracts may be offset.

Commenters on this issue unanimously asserted that netting reduces risk and that, therefore, some form of netting should be recognized. Of those that favored a specific netting arrangement, a majority endorsed netting by novation.[11] A number of commenters offered legal opinions that the legal efficacy of certain types of netting arrangements was less tenuous than it was characterized in the December 1987 Basle proposal.

The revised Basle Accord reflects the determination by the Basle Supervisors' Committee that novated contracts replace in law and in fact the contracts they have extinguished and that novation is the only form of netting legally enforcable at this time under the bankruptcy laws of all member countries.

Accordingly, these guidelines recognize netting by novation, but no other forms of netting, for the purpose of calculating credit equivalent amounts of interest and exchange rate contracts. The Federal Reserve will continue to work with the Basle Supervisors' Committee to assess the acceptability of various other forms of netting.

2. Conversion Factor for Long-Term Exchange Rate Contracts

Consistent with the December 1987 Basle Accord, the March guidelines proposed a 5 percent conversion factor for calculating potential future exposure of exchange rate contracts with a remaining maturity of over one year. U.S. and foreign bank commenters stated their view that the conversion factor was too high. They argued that it not only overstated the risks associated with such contracts, but also might hurt the competitiveness of banks in this market vis-a-vis other financial firms that are not subject to the same capital requirements. The Basle Supervisors' Committee decided against reducing this factor in light of the risks relating to the volatility of exchange rates and because currency swaps, unlike interest rate swaps, involve an exchange of principal on maturity. Accordingly, these guidelines retain the 5 percent conversion factor for long-term exchange rate contracts.

The Board notes that while this factor has not been reduced, rate contracts in general receive favorable treatment under the Basle framework. While direct extensions of credit to standard risk obligors are assigned a risk weight of 100 percent, credit equivalent amounts of rate contracts involving such obligors are assigned a preferential maximum risk weight of 50 percent on the grounds that most counterparties in these markets are of high credit quality. The Federal Reserve intends to monitor the quality of credits in these markets and, in the future, might consider, if circumstances so warrant, assigning a 100 percent risk weight to credit equivalent amounts of rate contracts.

H. Original Versus Remaining Maturity

The Board's March 1986 proposal, consistent with the December 1987 Basle Accord, assigned risk weights to claims on foreign banks and credit conversion factors for off-balance sheet loan commitment based, in part, on their *original* maturity. The action reflected the view that, other things being equal, the longer the term of a claim or commitment, the greater the risk. According to this vew, after a long-term claim or commitment has been extended, many events can occur to reduce the creditworthiness of the borrower. If such events do occur, the lending institution is subject to risks greater than those foreseen when the claim or commitment was originally extended, even if only a short amount of time remains under the facility.

U.S. commenters, however, disagreed with this view and overwhelmingly favored the use of *remaining* maturity which, they stated, reflects more accurately the risk associated with these transactions. Moreover, most respondents noted that their internal information systems were based on remaining maturity, and that maintenance of a separate system based on original maturity solely for risk-based capital purposes would entail substantial costs.

Partially in response to these concerns, the revised Basle Accord and the guidelines apply differential risk weights to claims on foreign banks domiciled in non-OECD countries based on their *remaining*, rather than original, maturity. The Basle Supervisors' Committee remained of the belief, however, that such treatment continued to be inappropriate for commitments. Consequently, the revised accord bases the credit conversion factors that apply to loan commitments on their *original* maturity, but allows banks to use *remaining* maturity until year-end 1992. The final guidelines provide for this transition rule so that those banking organizations that currently track loan commitments according to their remaining, rather than original, maturity will have sufficient time to adjust their internal information systems.

I. Average Versus Period-End Data

The Board's March 1986 proposal requested comment on whether the calculation of the risk-based ratio should be based on average or period-end data. Commenters on this issue overwhelmingly favored the use of average data in theory, on the ground that period-end figures could be misleading. However, many of these respondents, as well as those commenters that favored the use of period-end data, often cited the cost and impracticability of generating average data for all assets and off-balance sheet items. A number of respondents suggested that average data be used for some items and period-end data be used for others for the purpose of calculating the ratio. No consensus emerged, however, on the items for which average or period-end data was appropriate.

Under the guidelines, banking organizations will use period-end data to calculate the risk-based capital ratio. However, on a case-by-case basis, banking organizations may also be required to calculate ratios based on average balances when supervisory concerns render such a calculation appropriate. In addition, to the extent banking organizations have data on average balances that can be used to calculate risk-based ratios, the Federal Reserve will take such data into account.

It can be argued that average figures are preferable to period-end figures. On the other hand, the burden of requiring average figures will need to be assessed more fully. As more experience is gained with the measure, the Board may consider whether the use of average data should be required to a greater extent in the future.

IV. Application of the Framework

A. The Current Capital (Leverage) Guidelines

The Basle framework and the Board's guidelines provide for: (1) A transition period through the end of 1992 during which minimum risk-based capital standards will be phased into the existing supervisory system, and (2) interim target ratios that take effect at the end of 1990. As proposed in the March guidelines, the existing primary and total capital-to-*total* assets ratios (leverage ratios) will be retained at least until the initial risk-based capital supervisory ratios take effect at the end of 1990. The majority of commenters that addressed the issue of whether to retain the current capital guidelines favored abandoning the existing leverage ratios because their continued use could be confusing and would be unnecessary in light of the risk-based framework. However, several commenters advocated retaining the leverage ratios out of concern that the risk-based standard was too lenient; others argued that continued application of a leverage standard was appropriate until greater experience is gained with the risk-based ratio.

The Board has determined that retention of the current leverage ratios is desirable in order to maintain some constraint on banking organizations' overall leverage until the minimum risk-based ratios take effect. Even after this has occurred, moreover, the Board believes that retention of an overall leverage contraint is important since, in the absence of such a constraint and without a comprehensive measure for interest rate risk, the assignment of a significant volume of assets to the zero percent risk category under the risk-based capital framework could allow a banking organization to assume an unwarranted degree of leveraging and risk-taking. In light of these concerns, the Federal banking agencies have been working toward a common leverage guideline. Continued use of existing leverage ratios also will provide an element of continuity as transition is made to a risk-based framework.

In the Board's view, retention of the existing capital standards, at least initially, does not mean that well-capitalized organizations would not benefit from the introduction of a risk-based standard. Indeed, organizations in sound condition and with strong risk-based capital ratios could, with the concurrence of the Federal Reserve, be allowed to reduce their primary and total capital ratios, so long as their ratios remain fully consistent with their overall financial condition.

At the same time, the Board, together with the other Federal banking agencies, recognizes that different capital definitions for leverage and risk-based capital purposes carry with them the potential for confusion and perhaps an element of undue burden. Once the risk-based framework has been implemented, the Federal banking supervisors will consider proposing a revised leverage constraint that would replace the existing leverage guidelines at or before the end of 1990. It is contemplated that the definition of capital for the new leverage guidelines would be consistent with the risk-based capital definition and would be set at a lower level than the current capital-to-total assets standard.

B. Application to Small Banks

The Basle Accord applies only to internationally active banks, but it recognizes that each national supervisory authority may wish to apply the framework to a broader class of commercial banking organizations. The Federal Reserve believes that the risk-based capital guidelines should apply to all banks on a consolidated basis on the grounds that the principle of assessing capital adequacy against broad levels of risk exposure is relevant to all banks, regardless of size.

Nonetheless, the Federal banking agencies recognize that to a large extent the impact of these guidelines will predominantly fall on large banking

[10] Mortgage-backed securities issued or guaranteed by U.S. Government agencies or U.S. Government-sponsored agencies are assigned to the same risk weight as other claims issued or guaranteed by such agencies.

[11] Netting by novation is a contract between two counterparties under which any obligation to each other to deliver a given currency on a given date is automatically amalgamated with all other obligations for the same currency and value date, legally substituting one single net amount for the previous gross obligations.

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organizations and those with significant off-balance sheet exposures. Accordingly, the agencies solicited public comment on several options regarding the appropriate focus of off-site supervisory data collection and monitoring efforts. These options included focusing data collection and monitoring efforts on either all banking organizations, large banking organizations or institutions with significant off-balance sheet activities.

A majority of commenters on this issue recommended that supervisory data collection and monitoring efforts focus on organizations above some asset threshold or level of off-balance sheet exposure. This consensus reflected concern about the reporting burden that the proposed capital guidelines could place on small banks. Several multinational banking organizations and two respondents from the domestic public sector did, however, support industry-wide monitoring and data collection. A trade association for smaller institutions favored application of the standard to all banks, but urged that additional reporting requirements focus on institutions with assets in excess of $1 billion.

The Board remains of the opinion that the risk-based ratio should be applied to *all* banks, since all banks hold low, as well as high, risk assets and all banks may engage in off-balance sheet activities. Moreover, this approach would avoid the appearance of a dual standard for large and small institutions. The Board has also determined, however, that any additional reporting requirements for small institutions should be minimized. The Board, together with the other U.S. Federal banking agencies, intends to be guided by this principle in developing reporting forms that will allow for the monitoring of compliance with the risk-based capital standards, while minimizing the burden on small institutions.

V. Capital Requirements for Bank Holding Companies

A. Application

The terms and provisions of the Basle Accord, as noted above, apply to international *banks*, not to companies or entities that own banks. Of course, many international banking organizations conduct banking activities, as well as nonbanking financial business, in separate subsidiaries and affiliates. For this reason, and because the risks assumed by these entities can have a significant effect on the parent bank's overall financial strength, the Basle Accord states that the capital framework "is intended to be applied to banks on a consolidated basis, including subsidiaries undertaking banking and financial business." The Accord also indicates that the normal practice will be to consolidate subsidiaries with parent banks for the purpose of assessing the capital adequacy of banking groups.

As suggested by this approach, the extension of prudential supervision, including the application of capital standards and reporting requirements to banks on a consolidated basis, has long been encouraged by banking supervisory authorities as a way to strengthen an increasingly interdependent international financial system. As banking organizations open offices in other countries, the bank supervisors in these countries, or "host" supervisors, generally have oversight authority only for those offices of the organization that are located in the host country. However, the condition of these entities, as well as their potential impact on the host country's financial markets, are obviously affected by the health of the consolidated organization. Therefore, given the large role that foreign firms are increasingly playing in other countries' financial markets, host supervisory authorities want assurance that foreign banks operating in their country are adequately supervised on a consolidated, worldwide basis by home country supervisory authorities.

While the application of a risk-based capital framework to companies that own banks is clearly left to the discretion of national supervisory authorities, the Basle Accord does express concern that bank ownership structures or affiliations with other firms not be allowed to weaken the capital position of the bank or expose the bank to undue risks. The Basle Accord states that the Basle Supervisors' Committee will monitor developments and ownership structures in member countries "in order to ensure that the integrity of the capital of banks is maintained."

In issuing the March 1988 proposal for comment, the Board exercised its discretion to apply the Basle framework to bank holding companies on a consolidated basis. This is generally consistent with the treatment of holding companies under the Board's current primary and total capital adequacy guidelines, although the definition of bank holding company capital under the current guidelines differs somewhat from the definition of bank capital. The application of risk-based standards to holding companies is also consistent with the risk-based capital proposals issued for comment by the Board in 1986 and 1987.

The Board has long applied capital standards to bank holding companies on a consolidated basis in connection with both on-site inspections and in acting on bank holding company applications. The Board has applied minimum capital standards to bank holding companies on a consolidated basis because experience has shown that, as with a bank and its affiliates, the risks and problems in the holding company and its nonbank subsidiaries can have an impact on the condition of affiliated banks. In addition to this concern, consolidated supervision of capital adequacy is consistent with the Board's belief that the parent holding company should serve as a source of strength to its subsidiary banks. In evaluating bank holding company applications, capital adequacy is viewed as a particularly important indicator of the soundness of organizations seeking to expand their banking and nonbanking activities.

Furthermore, the practice of double leveraging—in which a holding company can borrow against and, in effect, replace a portion of its subsidiaries' equity capital with debt at the consolidated level—has confirmed over the years the need for some minimum capital standards for bank holding companies. Without such standards, excessive holding company borrowing or double leveraging could undermine the capital strength of the overall holding company as well as its subsidiary banks.

Application of capital standards to bank holding companies also is consistent with the fact that holding companies are frequently managed on a consolidated basis—indeed, the benefits from such integration are one of the key incentives for establishing holding companies—and, under generally accepted accounting standards, bank holding companies file financial statements that fully consolidate the assets, liabilities, income and losses of their bank and nonbank activities with the parent company.

In issuing the Board's risk-based capital proposal for public comment, the Board made clear that it retained the flexibility to exclude the assets of and investments in certain nonbank subsidiaries of the holding company from the calculation of the holding company's risk-based capital ratio. This would be done, for example, to facilitate functional regulation or to assure that the remainder of the holding company meets the Federal Reserve's minimum capital standards without reliance on

the capital resources invested in specified nonbank affiliates.

In response to the Board's risk-based capital proposal, many large multinational banking organizations and bank trade associations opposed application of the framework to bank holding companies. Only a small number of the regional banking organizations took issue with this aspect of the proposal.

The respondents that opposed application of the capital standards to bank holding companies argued that: (1) Consolidated capital ratios are unnecessary if nonbank subsidiaries are functionally regulated and subject to firewalls designed to protect affiliated banks; (2) the holding company structure is unique to the United States and, therefore, consolidated risk-based capital requirements would constitute a competitive disadvantage for U.S. banking organizations; (3) such requirements could induce increased holding company risk-taking; and (4) applying capital standards to holding companies could imply an undesirable extension of the federal safety net to parent companies and nonbank affiliates.

The Board remains of the belief that companies that own insured depository institutions should have adequate capital and, in particular, that bank holding companies as presently structured should be subject to minimum capital standards. First, as noted, double leveraging can affect the capital that is, in fact, available at the holding company level to support the subsidiaries. Second, with regard to nonbanking activities, adequate firewalls may not currently exist between banks and all their affiliates. The Board believes that it is appropriate to *first* ensure that adequate firewalls are in place and sufficient capital exists in the nonbank subsidiaries to fully protect affiliated banks *before* exempting, as a general policy, certain affiliates from minimum consolidated capital standards.

In light of the above factors, the Board has decided to retain its existing policy of applying capital standards, including a risk-based capital framework similar to that set forth in the Basle Accord, to bank holding companies on a consolidated basis. However, the Board also has adopted a flexible framework at the holding company level that will facilitate functional regulation and the prudent expansion of bank holding company powers, while at the same time assuring a minimum level of capital for companies whose principal function is the ownership of banking institutions. Through these guidelines, the Board retains the latitude to deduct from a banking organization's consolidated capital, investments in certain nonbank subsidiaries, *provided that* strong firewalls, adequate nonbank capital, and any other protections the Board deems necessary are first put in place to safeguard the health of affiliated banks. If such a deduction is warranted, the nonbank subsidiary's assets also would be excluded from the holding company's consolidated capital calculation.

B. Definition of Capital for Bank Holding Companies

In implementing a risk-based capital framework for bank holding companies, the Board has adopted a definition of capital for bank holding companies that differs somewhat from the definition contained in the final guidelines for state member banks. These differences, which are discussed in greater detail below, involve the inclusion of cumulative perpetual preferred stock in Tier 1 for bank holding companies and the treatment of goodwill. Also discussed below is a general approach for deducting investments in certain designated subsidiaries from the capital and assets of the bank holding company. The Board believes that applying a similar, but not identical, framework to holding companies provides a reasonable degree of flexibility to these companies in structuring their capital bases and raising additional capital, while maintaining the integrity and adequacy of minimum holding company capital requirements.

1. Perpetual Preferred Stock

The treatment of perpetual preferred stock for bank holding companies differs somewhat from the treatment accorded to banks. As with banks, noncumulative perpetual preferred stock has been included in Tier 1 capital of bank holding companies, but subject to certain limitations discussed below. In addition, in light of the comments received and further consideration of the issues involved, the Board has decided that bank holding companies also should be allowed to include *cumulative* preferred stock in Tier 1. While cumulative preferred dividends can only be deferred, the deferral can last as long as necessary to enable the organization to regain its financial health. Moreover, supervisors have the authority to prohibit the resumption of preferred, as well as common, dividends until they are satisfied that resumption of such payments is in the best interest of the institution.

While the Board believes that cumulative perpetual preferred stock should be included in Tier 1 for bank holding companies, it does not believe that such instruments, as a matter of general policy, should be viewed as a perfect substitute for common equity. First, it is very difficult, if not impossible, to issue new common stock if there exist large dividend arrearages on preferred stock that must be repaid before common shareholders can receive dividends. Second, preferred dividends, unlike common dividends, are often fixed or set in relation to an external market index, rather than based upon the bank's earnings. Third, the prior claim on earnings associated with many forms of preferred stock gives these instruments some of the characteristics of debt obligations. Finally, most forms of preferred stock lack voting rights under normal circumstances. In light of these and other considerations, the guidelines specify that, in the aggregate, the total amount of perpetual preferred stock (the sum of both cumulative and noncumulative preferred) included in Tier 1 capital be limited to 25 percent of the sum of all core capital elements.

The practical impact of this limitation on the current composition of bank holding company capital is likely to be minimal since, at present, the amount of perpetual preferred stock in major U.S. bank holding companies, most of which is cumulative, is generally consistent with the limitation. Moreover, amounts of perpetual preferred stock in excess of the Tier 1 limit can be included in Tier 2 without any sublimits within that tier. This treatment recognizes the value of perpetual preferred stock in a bank holding company's capital structure and provides flexibility to holding companies in raising additional capital. At the same time, it establishes provisions that limit the substitution of preferred for common stock and protects the integrity of the holding company's common equity capital base.

Paralleling the policy for banks (see Section II (A)), the policy for bank holding companies disallows auction rate perpetual preferred stock (including so-called "Dutch auction" preferred stock)—whether cumulative or noncumulative—from Tier 1. The Board has determined that certain unique features of auction rate preferred stock do not allow it to fulfill adequately the supervisory purpose of Tier 1 capital, and hence must be excluded from treatment as a core capital element.

Auction-rate preferred stock refers to those types of preferred stock (including money market and remarketable preferred) where the dividend is reset periodically based to some degree upon the banking organization's current credit rating. A number of supervisory

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concerns stem from this type of instrument. If sufficient buyers are not interested in holding the stock at the maximum rate at which it can be offered, the auction is said to have failed. This, in itself, can raise questions about the issuer's financial standing and subject the issuer to pressure from unhappy or unwilling investors to repurchase the outstanding stock. In addition, the very fact that the preferred stock dividend yield can rise when a banking organization's financial condition or credit rating is deteriorating can exacerbate the institution's financial difficulties. In light of these considerations, the Board believes that the auction rate features of such preferred shares render them inconsistent with the notion of Tier 1 instruments as the highest quality form of capital. Auction-rate perpetual preferred stock continues to qualify as an element of Tier 2 capital.

2. Goodwill

The Board's March 1988 proposal stated that all good will carried on the balance sheet of a bank holding company would be deducted from its Tier 1 capital after December 31, 1992, and that any goodwill acquired after March 12, 1988, would be deducted immediately. The proposal also stated that goodwill in existence before March 12, 1988, would be "grandfathered" during the transition period but would be deducted from Tier 1 capital after December 31, 1992.

Banking organizations strongly opposed the proposed deduction of good will for several reasons. First, they argued that good will has realizable value. Second, they stated their belief that the deduction would place banking organizations at a competitive disadvantage relative to nonbank competitors in bidding for acquisitions. Third, they argued that the deduction would hamper the process of domestic banking consolidation by effectively eliminating purchase accounting as a viable method of consummating mergers and acquisitions. Many respondents also indicated that the deduction of goodwill is contrary both to generally accepted accounting principles and existing Board policy. Because of these concerns, several commenters argued that at least a limited amount of goodwill (generally, 25 percent) should be allowed in Tier 1 capital. They viewed this "cap" on goodwill as consistent with the Board's existing policy of closely monitoring goodwill in excess of 25 percent of tangible primary capital.

In the Board's view, the uncertainty often associated with determining the future benefits and useful lives of certain intangible assets, especially goodwill, raises significant supervisory concerns. During periods of financial adversity some intangibles may not provide the degree of support that is normally expected from an organization's assets. In this regard, goodwill—which represents the excess of the purchase price over the fair market value of tangible, as well as identifiable intangible, assets acquired in a purchase accounting transaction—in particular raises concerns. As indicated above, the Board's proposal will exclude from capital only goodwill. Purchased mortgage servicing rights and other identifiable intangibles will not be deducted automatically from the capital base under the revised Basle Accord as they would have been under earlier risk-based capital proposals.

Since good will represents the capitalization of anticipated future earnings over and above what is implied by the fair market value of tangible and identifiable intangible assets acquired, the Board is of the view that its eventual exclusion from capital does not seem unreasonable. If the expected superior future earnings materialize, they will be taken into retained earnings and thereby reflected in capital. Supervisory experience suggests that when organizations are under serious financial strain and need to draw upon their capital base, goodwill is not generally a source of financial strength.

Accordingly, the Board has determined to adhere to its March proposal to grandfather existing goodwill for the transition period, but to deduct all new goodwill—and, after 1992, *all* goodwill—from a holding company's Tier 1 capital. While this represents a departure from the initial capital guidelines promulgated by the Board in 1985, it is generally consistent with the Basle framework and the approach the Board has been employing in acting on major bank holding company acquisitions. In this connection, the Board will retain its existing policy that organizations undertaking significant expansion, either through internal growth or acquisitions, are expected to have strong capital positions substantially above minimum levels without significant reliance on intangibles, particularly goodwill.

3. Investments in Designated Subsidiaries

The Board's application of a risk-based capital measure to bank holding companies is intended to accommodate functional regulation and the expansion of holding company powers. To accomplish this objective, as indicated in the March 1988 proposal, the guidelines allow the Board to deduct investments in certain subsidiaries from the parent organization's capital and to exclude the assets of these subsidiaries from the parent's consolidated assets, provided that strong firewalls, adequate nonbank capital, and any other protections the Board deems necessary are first put in place to safeguard affiliated banks. This exclusion is designed to ensure that the parent bank holding company maintains a level of capital, exclusive of the resources invested in such subsidiaries, that is sufficient to support its bank and other nonbank subsidiaries.

Accordingly, the risk-based capital guidelines for bank holding companies specifically allow for the exclusion of the parent's investments in, and the assets of, designated subsidiaries from the calculation of the holding company's capital ratio. For this purpose, aggregate capital investments (that is, the sum of any equity or debt capital investments and other instruments that are deemed to be capital) in these subsidiaries will be deducted from the parent banking organization's total capital components. Advances (that is, loans, extensions of credit, guarantees, commitments, or any other forms of credit exposure) to such subsidiaries that are not deemed to be capital will generally not be deducted from capital. Rather, such investments will normally be included in the parent banking organization's consolidated assets and assigned to the 100 percent risk category, unless such obligations are backed by recognized collateral or guarantees, in which case they will be assigned to the risk category appropriate to such collateral or guarantees. These other extensions of credit may, however, be deducted from the parent's capital if, in the judgment of the Federal Reserve, the risks stemming from such advances are comparable to the risks associated with capital investments, or if the advances involve other risk factors that warrant such an adjustment to capital for supervisory purposes. These other factors could include, for example, the absence of collateral support for these advances. In assessing the overall capital adequacy of a banking organization, the Board will, as noted above, also consider the fully consolidated capital position of the organization.

In general, when investments in subsidiary are deducted from a parent banking organization's capital, the subsidiary's assets will also be excluded from the assets of the parent banking organization in order to assess the

latter's capital adequacy. If the subsidiary's assets are consolidated with the parent banking organization for financial reporting purposes, this adjustment will involve excluding the subsidiary's assets on a line-by-line basis from the consolidated parent organization's assets. The parent banking organization's capital ratio will then be calculated on a consolidated basis with the exception that the assets of the excluded subsidiary will not be consolidated with the remainder of the parent banking organization.

The Board has considered the most equitable way in which to implement these deductions within the context of the revised Basle Accord. That Accord states that the "deduction for such investments will be made against the total capital base." The Board recognizes that several formulae could be devised which would be consistent with this provision. The Board has determined, at least as an initial matter and as a general approach, that the most equitable method for implementing such deductions is to deduct one-half (50 percent) of the aggregate amount of deductible investments from the parent banking organization's Tier 1 capital and one-half (50 percent) from the parent's Tier 2 capital. However, the Federal Reserve may, on a case-by-case basis, deduct a proportionately greater amount from Tier 1 if the risks associated with the subsidiary so warrant. If the amount deductible from Tier 2 capital exceeds actual Tier 2 capital, the excess would be deducted from Tier 1 capital. Bank holding companies' risk-based capital ratios, net of these deductions, must exceed the minimum standards set forth above.

This method for deducting capital investments is generally consistent with the Basle Accord's instruction to deduct such investments from total capital, as well as with the structure of the overall capital framework, which permits equal amounts of Tier 1 and Tier 2 capital. Nonetheless, the Board will examine the utilization of this general approach over time as it is implemented by bank holding companies, and is prepared to reassess this method should circumstances so warrant.

C. Exemption for Small Bank Holding Companies

The Board's March 1988 proposal indicated that bank holding companies with less than $150 million in consolidated assets would generally be exempt from the calculation and analysis of risk-based ratios on a consolidated holding company basis under the same terms and conditions as provided in the Board's existing primary and total capital, leverage-based guidelines. That is, to qualify for the exemption, such companies may not be engaged in nonbank activities involving significant leverage or have significant amounts of debt outstanding to members of the general public. In such instances, the leverage capital requirements would apply only to the subsidiary banks, which are required to maintain a total capital-to-total assets ratio of 7 percent.

Two trade organizations representing smaller institutions argued that the asset size threshold for purposes of this exemption should be raised to $500 million, in order to reflect the effect of inflation on bank asset growth since the Board initially adopted the small bank holding company exemption.

The Board adopted its liberalized policy for assessing financial factors in small one-bank holding companies in March 1980 in order to facilitate the transfer of ownership in small banks. In pertinent part, this policy allows an applicant involved in the formation of a small bank holding company (total assets of $150 million or less) to borrow up to 75 percent of the purchase price of the bank being acquired provided the applicant satisfies certain other requirements. When the Board adopted its leverage-based capital guidlines in December 1981, it decided to continue this policy and specifically exempted bank holding companies with consolidated assets of $150 million or less from meeting the minimum capital guidelines on a consolidated basis. If such companies were to be consolidated, a significant number could have very low capital ratios due to the amount of leverage at the parent level.

The Board believes that raising the $150 million threshold would run counter to a basic objective of both the leverage and the risk-based capital guidelines, which is to encourage consolidated banking organizations to strengthen their capital positions. That is, if this threshold were raised, a larger number of companies would be able to utilize the small bank holding company liberalized debt guidelines to borrow against the equity of their subsidiary banks. This could put significant pressure on bank subsidiaries to increase their dividends to service parent company borrowings, and, in the absense of consolidated capital ratios, could materially reduce the holding companies' consolidated capital bases. Accordingly, consistent with the existing leverage-based capital guidelines, the risk-based guidelines retain the $150 million cutoff.

VI. Regulatory Flexibility Act Analysis

The Federal Reserve Board certifies that adoption of these guidelines would not have a significant economic impact on a substantial number of small business entities, in this case small banking organizations, in accord with the spirit and purposes of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) While all commercial banking organizations would presumably be required to make some revisions to their reporting procedures to permit supervisory monitoring of risk-based capital ratios, the Board, in conjunction with the other Federal banking agencies, intends to adopt, after an opportunity for public comment, reporting procedures designed to lessen the burden on small institutions. In addition, these guidelines would generally not apply to bank holding companies with consolidated assets less than $150 million.

The guidelines are designed primarily to take account of those practices, such as the increased use of off-balance sheet risk and the decline in the holdings of low-risk, liquid assets, which have been engaged in primarily by certain larger banking organizations. Moreover, rather than requiring all banking organizations to raise additional capital, the guidelines are directed at institutions whose capital positions are less than fully adequate in relation to their risk profiles.

List of Subjects

12 CFR Part 208

Banks, Banking, Capital adequacy, Federal Reserve System, Reporting and recordkeeping requirements, State member banks.

12 CFR Part 225

Banks, Banking, Capital adequacy, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, State member banks.

For the reasons set out in this notice, and pursuant to the Board's authority under section 5(b) of the Bank Holding Company Act of 1956 (12 U.S.C. 1844(b)), and section 910 of the International Lending Supervision Act of 1983 (12 U.S.C. 3909), the Board amends 12 CFR Parts 208 and 225 as follows:

PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM

1. The authority citation for Part 208 continues to read as follows:

Authority: 12 U.S.C. 248, 321–338, 486, 1814, 3907, 3909, and 15 U.S.C. 781(i).

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2. The Board revises § 208.13 of Part 208 to read as follows:

§ 208.13 Capital adequacy.

The standards and guidelines by which the capital adequacy of state member banks will be evaluated by the Board are set forth in Appendix A to Part 208 for risk-based capital purposes, and in Appendix B to the Board's Regulation Y, 12 CFR Part 225, with respect to the ratios relating capital to total assets.

3. The Board adds an Appendix A to Part 208 to read as set forth below.

APPENDIX A TO PART 208: Capital Adequacy Guidelines for State Member Banks: Risk-Based Measure

I. Overview

The Board of Governors of the Federal Reserve System has adopted a risk-based capital measure to assist in the assessment of the capital adequacy of state member banks.[1] The principal objectives of this measure are to: (i) Make regulatory capital requirements more sensitive to differences in risk profiles among banks; (ii) factor off-balance sheet exposures into the assessment of capital adequacy; (iii) minimize disincentives to holding liquid, low-risk assets; and (iv) achieve greater consistency in the evaluation of the capital adequacy of major banks throughout the world.[2]

The risk-based capital guidelines include both a definition of capital and a framework for calculating weighted risk assets by assigning assets and off-balance sheet items to broad risk categories. A bank's risk-based capital ratio is calculated by dividing its qualifying capital (the numerator of the ratio) by its weighted risk assets (the denominator).[3] The definition of qualifying capital is outlined below in section II, and the procedures for calculating weighted risk assets are discussed in Section III. Attachment I illustrates a sample calculation of weighted risk assets and the risk-based capital ratio.

The risk-based capital guidelines also establish a schedule for achieving a minimum supervisory standard for the ratio of qualifying capital to weighted risk assets and provide for transitional arrangements during a phase-in period to facilitate adoption and implementation of the measure at the end of 1992. These interim standards and transitional arrangements are set forth in section IV.

The risk-based guidelines apply to all state member banks on a consolidated basis. They are to be used in the examination and supervisory process as well as in the analysis of applications acted upon by the Federal Reserve. Thus, in considering an application filed by a state member bank, the Federal Reserve will take into account the bank's risk-based capital ratio, the reasonableness of its capital plans, and the degree of progress it has demonstrated toward meeting the interim and final risk-based capital standards.

The risk-based capital ratio focuses principally on broad categories of credit risk, although the framework for assigning assets and off-balance sheet items to risk categories does incorporate elements of transfer risk, as well as limited instances of interest rate and market risk. The risk-based ratio does not, however, incorporate other factors that can affect a bank's financial condition. These factors include overall interest rate exposure; liquidity, funding and market risks; the quality and level of earnings; investment or loan portfolio concentrations; the quality of loans and investments; the effectiveness of loan and investment policies; and management's ability to monitor and control financial and operating risks.

In addition to evaluating capital ratios, an overall assessment of capital adequacy must take account of these other factors, including, in particular, the level and severity of problem and classified assets. For this reason, the final supervisory judgment on a bank's capital adequacy may differ significantly from conclusions that might be drawn solely from the level of its risk-based capital ratio.

The risk-based capital guidelines establish *minimum* ratios of capital to weighted risk assets. In light of the considerations just discussed, banks generally are expected to operate well above the minimum risk-based ratios. In particular, banks contemplating significant expansion proposals are expected to maintain strong capital levels substantially above the minimum ratios and should not allow significant diminution of financial strength below these strong levels to fund their expansion plans. Institutions with high or inordinate levels of risk are also expected to operate well above minimum capital standards. In all cases, institutions should hold capital commensurate with the level and nature of the risks to which they are exposed. Banks that do not meet the minimum risk-based standard, or that are otherwise considered to be inadequately capitalized, are expected to develop and implement plans acceptable to the Federal Reserve for achieving adequate levels of capital within a reasonable period of time.

The Board will monitor the implementation and effect of these guidelines in relation to domestic and international developments in the banking industry. When necessary and appropriate, the Board will consider the need to modify the guidelines in light of any significant changes in the economy, financial markets, banking practices, or other relevant factors.

II. Definition of Qualifying Capital for the Risk-Based Capital Ratio

A bank's qualifying total capital consists of two types of capital components: "core capital elements" (comprising Tier 1 capital) and "supplementary capital elements" (comprising Tier 2 capital). These capital elements and the various limits, restrictions, and deductions to which they are subject, are discussed below and are set forth in Attachment II.

To qualify as an element of Tier 1 or Tier 2 capital, a capital instrument may not contain or be covered by any covenants, terms, or restrictions that are inconsistent with safe and sound banking practices.

Redemptions of permanent equity or other capital instruments before stated maturity could have a significant impact on a bank's overall capital structure. Consequently, a bank considering such a step should consult with the Federal Reserve before redeeming any equity or debt capital instrument (prior to maturity) if such redemption could have a material effect on the level or composition of the institution's capital base.[4]

A. The Components of Qualifying Capital

1. *Core capital elements (Tier 1 capital).* The Tier 1 component of a bank's qualifying capital must represent at least 50 percent of qualifying total capital and may consist of the following items that are defined as core capital elements:

(i) Common stockholders' equity.

(ii) Qualifying noncumulative perpetual preferred stock (including related surplus).

(iii) Minority interest in the equity accounts of consolidated subsidiaries.

Tier 1 capital is generally defined as the sum of the core capital elements less goodwill.[5] (See section II (B) below for a more detailed discussion of the treatment of goodwill, including an explanation of certain limited grandfathering arrangements.)

a. *Common stockholders' equity.* Common stockholders' equity includes: common stock; related surplus; and retained earnings, including capital reserves and adjustments for the cumulative effect of foreign currency translation, net of any treasury stock.

b. *Perpetual preferred stock.* Perpetual preferred stock is defined as preferred stock that does not have a maturity date, that cannot be redeemed at the option of the holder of the instrument, and that has no other provisions that will require future redemption of the issue. In general, preferred stock will qualify for inclusion in capital only if it can absorb losses while the issuer operates as a going concern (a fundamental characteristic of equity capital) *and* only if the issuer has the ability and legal right to defer or eliminate preferred dividends.

The only form of perpetual preferred stock that state member banks may consider as an element of Tier 1 capital is noncumulative perpetual preferred. While the guidelines allow for the inclusion of noncumulative perpetual preferred stock in Tier 1, it is desirable from a supervisory standpoint that voting common stockholders' equity remain the dominant form of Tier 1 capital. Thus, state member banks should avoid overreliance on preferred stock or non-voting equity elements within Tier 1.[6]

Perpetual preferred stock in which the dividend is reset periodically based, in whole or in part, upon the bank's current credit standing (that is, auction rate perpetual preferred stock, including so-called Dutch auction, money market, and remarketable preferred) will not qualify for inclusion in Tier 1 capital.[7] Such instruments, however, qualify for inclusion in Tier 2 capital.

c. *Minority interest in equity accounts of consolidated subsidiaries.* This element is included in Tier 1 because, as a general rule, it represents equity that is freely available to absorb losses in operating subsidiaries. While not subject to an explicit sublimit within Tier 1, banks are expected to avoid using minority interest in the equity accounts of consolidated subsidiaries or an avenue for introducing into their capital structures elements that might not otherwise qualify as Tier 1 capital or that would, in effect, result in an excessive reliance on preferred stock within Tier 1.

2. *Supplementary capital elements (Tier 2 capital).* The Tier 2 component of a bank's qualifying total capital may consist of the following items that are defined as supplementary capital elements:

(i) Allowance for loan and lease losses (subject to limitations discussed below).

(ii) Perpetual preferred stock and related surplus (subject to conditions discussed below).

(iii) Hybrid capital instruments (as defined below) and mandatory convertible debt securities.

(iv) Term subordinated debt and intermediate-term preferred stock, including related surplus (subject to limitations discussed below).

The maximum amount of Tier 2 capital that may be included in a bank's qualifying total capital is limited to 100 percent of Tier 1 capital (net of goodwill).

The elements of supplementary capital are discussed in greater detail below.[8]

a. *Allowance for loan and lease losses.* Allowances for loan and lease losses are reserves that have been established through a charge against earnings to absorb future losses on loans or lease financing receivables. Allowances for loan and lease losses exclude "allocated transfer risk reserves," [9] and reserves created against identified losses.

During the transition period, the risk-based capital guidelines provide for reducing the amount of this allowance that may be included in an institution's total capital. Initially, it is unlimited. However, by year-end 1990, the amount of the allowance for loan and lease losses that will qualify as capital will be limited to 1.5 percent of an institution's weighted risk assets. By the end of the transition period, the amount of the allowance qualifying for inclusion in Tier 2 capital may not exceed 1.25 percent of weighted risk assets.[10]

b. *Perpetual preferred stock.* Perpetual preferred stock, as noted above, is defined as preferred stock that has no maturity date, that cannot be redeemed at the option of the holder, and that has no other provisions that will require future redemption of the issue. Such instruments are eligible for inclusion in Tier 2 capital without limit.[11]

c. *Hybrid capital instruments and mandatory convertible debt securities.* Hybrid capital instruments include instruments that are essentially permanent in nature and that have certain characteristics of both equity and debt. Such instruments may be included in Tier 2 without limit. The general criteria hybrid capital instruments must meet in order to qualify for inclusion in Tier 2 capital are listed below:

(1) The instrument must be unsecured; fully paid-up; and subordinated to general creditors and must also be subordinated to claims of depositors.

(2) The instrument must not be redeemable at the option of the holder prior to maturity, except with the prior approval of the Federal Reserve. (Consistent with the Board's criteria for perpetual debt and mandatory convertible securities, this requirement implies that holders of such instruments may not accelerate the payment of principal except in the event of bankruptcy, insolvency, or reorganization.)

(3) The instrument must be available to participate in losses while the issuer is operating as a going concern. (Term subordinated debt would not meet this requirement.) To satisfy this requirement, the instrument must convert to common or perpetual preferred stock in the event that the accumulated losses exceed the sum of the retained earnings and capital surplus accounts of the issuer.

(4) The instrument must provide the option for the issuer to defer interest payments if: (a) The issuer does not report a profit in the preceding annual period (defined as combined profits for the most recent four quarters), and (b) the issuer eliminates cash dividends on common and preferred stock.

Mandatory convertible debt securities in the form of equity contract notes that meet the criteria set forth in 12 CFR Part 225, Appendix B, also qualify as unlimited elements of Tier 2 capital. In accordance with that appendix, equity commitment notes issued prior to May 15, 1985 also qualify for inclusion in Tier 2.

d. *Subordinated debt and intermediate-term preferred stock.* The aggregate amount of term subordinated debt (excluding mandatory convertible debt) and intermediate-term preferred stock that may be treated as supplementary capital is limited to 50 percent of Tier 1 capital (net of goodwill). Amounts in excess of these limits may be issued and, while not included in the ratio calculation, will be taken into account in the overall assessment of a bank's funding and financial condition.

Subordinated debt and intermediate-term preferred stock must have an original weighted average maturity of at least five years to qualify as supplementary capital. (If the holder has the option to require the issuer to redeem, repay, or repurchase the instrument prior to the original stated maturity, maturity would be defined, for risk-based capital purposes, as the earliest possible date on which the holder can put the instrument back to the issuing bank.)

In the case of subordinated debt, the instrument must be unsecured and must clearly state on its face that it is not a deposit and is not insured by a Federal agency. To qualify as capital in banks, debt must be subordinated to general creditors and claims of depositors. Consistent with current regulatory requirements, if a state member bank wishes to redeem subordinated debt before the stated maturity, it must receive prior approval of the Federal Reserve.

e. *Discount of supplementary capital instruments.* As a limited-life capital

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[1] Supervisory ratios that relate capital to total assets for state member banks are outlined in Appendix B to Part 225 of the Federal Reserve's Regulation Y, 12 CFR Part 225.

[2] The risk-based capital measure is based upon a framework developed jointly by supervisory authorities from the countries represented on the Basle Committee on Banking Regulations and Supervisory Practices (Basle Supervisors' Committee) and endorsed by the Group of Ten Central Bank Governors. The framework is described in a paper prepared by the BSC entitled "International Convergence of Capital Measurement," July 1988.

[3] Banks will initially be expected to utilize period-end amounts in calculating their risk-based capital ratios. When necessary and appropriate, ratios based on average balances may also be calculated on a case-by-case basis. Moreover, to the extent banks have data on average balances that can be used to calculate risk-based ratios, the Federal Reserve will take such data into account.

[4] Consultation would not ordinarily be necessary if an instrument were redeemed with the proceeds of, or replaced by, a like amount of a similar or higher quality capital instrument and the organization's capital position is considered fully adequate by the Federal Reserve.

[5] During the transition period and subject to certain limitations set forth in section IV below, Tier 1 capital may also include items defined as supplementary capital elements.

[6] The Federal Reserve's capital guidelines for bank holding companies limit the amount of perpetual preferred stock that may be included in Tier 1 to 25 percent of Tier 1. (See 12 CFR Part 225, Appendix A.)

[7] Adjustable rate noncumulative perpetual preferred stock (that is, perpetual preferred stock in which the dividend rate is not affected by the issuer's credit standing or financial condition but is adjusted periodically according to a formula based solely on general market interest rates) may be included in Tier 1.

[8] The Basle capital framework also provides for the inclusion of "undisclosed reserves" in Tier 2. As defined in the framework, undisclosed reserves represent accumulated after-tax retained earnings that are not disclosed on the balance sheet of a bank. Apart from the fact that these reserves are not disclosed publicly, they are essentially of the same quality and character as retained earnings, and, to be included in capital, such reserves must be accepted by the bank's home supervisor. Although such undisclosed reserves are common in some countries, under generally accepted accounting principles (GAAP) and long-standing supervisory practice, these types of reserves are not recognized for state member banks.

[9] Allocated transfer risk reserves are reserves that have been established in accordance with Section 905(a) of the International Lending Supervision Act of 1983, 12 U.S.C. 3904(a), against certain assets whose value U.S. supervisory authorities have found to be significantly impaired by protracted transfer risk problems.

[10] The amount of the allowance for loan and lease losses that may be included in Tier 2 capital is based on a percentage of gross weighted risk assets. A bank may deduct reserves for loan and lease losses in excess of the amount permitted to be included in Tier 2 capital, as well as allocated transfer risk reserves, from the sum of gross weighted risk assets and use the resulting net sum of weighted risk assets in computing the denominator of the risk-based capital ratio.

[11] Long-term preferred stock with an original maturity of 20 years or more (including related surplus) will also qualify in this category as an element of Tier 2. If the holder of such an instrument has a right to require the issuer to redeem, repay, or repurchase the instrument prior to the original stated maturity, maturity would be defined, for risk-based capital purposes, as the earliest possible date on which the holder can put the instrument back to the issuing bank.

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instrument approaches maturity it begins to take on characteristics of a short-term obligation. For this reason, the outstanding amount of term subordinated debt and any long- or intermediate-life, or term, preferred stock eligible for inclusion in Tier 2 is reduced, or discounted, as these instruments approach maturity: one-fifth of the original amount, less any redemptions, is excluded each year during the instrument's last five years before maturity.[15]

f. *Revaluation reserves.* Such reserves reflect the formal balance sheet restatement or revaluation for capital purposes of asset carrying values to reflect current market values. In the United States, banks for the most part, follow GAAP when preparing their financial statements, and GAAP generally does not permit the use of market-value accounting. For this and other reasons, the Federal banking agencies generally have not included unrealized asset values in capital ratio calculations, although they have long taken such values into account as a separate factor in assessing the overall financial strength of a bank.

Consistent with long-standing supervisory practice, the excess of market values over book values for assets held by state member banks will generally not be recognized in supplementary capital or in the calculation of the risk-based capital ratio. However, all banks are encouraged to disclose their equivalent or premises (building) and equity revaluation reserves. Such values will be taken into account as additional considerations in assessing overall capital strength and financial condition.

B. Deductions from Capital and Other Adjustments

Certain assets are deducted from a bank's capital for the purpose of calculating the risk-based capital ratio.[16] These assets include:

(i) Goodwill—deducted from the sum of core capital elements.

(ii) Investments in banking and finance subsidiaries that are not consolidated for accounting or supervisory purposes and, on a case-by-case basis, investments in other designated subsidiaries or associated companies at the discretion of the Federal Reserve—deducted from total capital components.

(iii) Reciprocal holdings of capital instruments of banking organizations—deducted from total capital components.

1. *Goodwill and other intangible assets.*—a. *Goodwill.* Goodwill in an intangible asset that represents the excess of the purchase price over the fair market value of identifiable assets acquired less liabilities assumed in acquisitions accounted for under the purchase method of accounting. State member banks generally have not been allowed to include goodwill in regulatory capital under current supervisory policies. Consistent with this policy, all goodwill in state member banks will be deducted from Tier 1 capital.[17]

b. *Other intangible assets.* The Federal Reserve is not proposing, as a matter of general policy, to deduct automatically any other intangible assets from the capital of state member banks. The Federal Reserve, however, will continue to monitor closely the level and quality of other intangible assets—including purchased mortgage servicing rights, leaseholds, and core deposit value—and take them into account in assessing the capital adequacy and overall asset quality of banks.

Generally, banks should review all intangible assets at least quarterly and, if necessary, make appropriate reductions in their carrying values. In addition, in order to conform with prudent banking practice, an institution should reassess such values during its annual audit. Banks should use appropriate amortization methods and assign prudent amortization periods for intangible assets. Examiners will review the carrying value of these assets, together with supporting documentation, as well as the appropriateness of including particular intangible assets in a bank's capital calculation. In making such evaluations, examiners will consider a number of factors, including:

(1) The reliability and predictability of any cash flows associated with the asset and the degree of certainty that can be achieved in periodically determining the asset's useful life and value;

(2) The existence of an active and liquid market for the asset; and

(3) The feasibility of selling the asset apart from the bank or from the bulk of its assets.

While all intangible assets will be monitored, intangible assets (other than goodwill) in excess of 25 percent of Tier 1 capital (which is defined net of goodwill) will be subject to particularly close scrutiny, both through the examination process and by other appropriate means. Whenever necessary—in particular, when assessing applications to expand or to engage in other activities that could entail unusual or higher-than-normal risks—the Board will, on a case-by-case basis, continue to consider the level of an individual bank's tangible capital ratios (after deducting all intangible assets), together with the quality and value of the bank's tangible and intangible assets, in making an overall assessment of capital adequacy.

Consistent with long-standing Board policy, banks experiencing substantial growth, whether internally or by acquisition, are expected to maintain strong capital positions substantially above minimum supervisory levels, without significant reliance on intangible assets.

2. *Investments in certain subsidiaries.* The aggregate amount of investments in banking or finance subsidiaries [18] whose financial statements are not consolidated for accounting or bank regulatory reporting purposes will be deducted from a bank's total capital components.[19] Generally, investments for this purpose are defined as equity and debt capital investments and any other instruments that are deemed to be capital in the particular subsidiary.

Advances (that is, loans, extensions of credit, guarantees, commitments, or any other forms of credit exposure) to the subsidiary that are not deemed to be capital will generally not be deducted from a bank's capital. Rather, such advances generally will be included in the bank's consolidated assets and be assigned to the 100 percent risk category, unless such obligations are backed by recognized collateral or guarantees, in which case they will be assigned to the risk category appropriate to such collateral or guarantees. These advances may, however, also be deducted from the bank's capital if, in the judgment of the Federal Reserve, the risks stemming from such advances are comparable to the risks associated with capital investments or if the advances involve other risk factors that warrant such an adjustment to capital for supervisory purposes. These other factors could include, for example, the absence of collateral support.

Inasmuch as the assets of unconsolidated banking and finance subsidiaries are not fully reflected in a bank's consolidated total assets, such assets may be viewed as the equivalent of off-balance sheet exposures since the operations of an unconsolidated subsidiary could expose the bank to considerable risk. For this reason, it is generally appropriate to view the capital resources invested in these unconsolidated entities as primarily supporting the risks inherent in these off-balance sheet assets, and not generally available to support risks or absorb losses elsewhere in the bank.

The Federal Reserve may, on a case-by-case basis, also deduct from a bank's capital, investments in certain other subsidiaries in order to determine if the consolidated bank meets minimum supervisory capital

[15] For example, outstanding amounts of these instruments that count as supplementary capital include: 100 percent of the outstanding amounts with remaining maturities of more than five years; 80 percent of outstanding amounts with remaining maturities of four to five years; 60 percent of outstanding amounts with remaining maturities of three to four years; 40 percent of outstanding amounts with remaining maturities of two to three years; 20 percent of outstanding amounts with remaining maturities of one to two years; and 0 percent of outstanding amounts with remaining maturities of less than one year. Such instruments with a remaining maturity of less than one year are excluded from Tier 2 capital.

[16] Any assets deducted from capital in computing the numerator of the ratio are not included in weighted risk assets in computing the denominator of the ratio.

[17] An exception is made for those state member banks that have acquired goodwill in connection with supervisory mergers with troubled or failed depository institutions and that were given explicit authority to include such goodwill in capital under the then-existing capital policy. Consistent with this approach, state member banks will be allowed to include such goodwill in Tier 1 capital for risk-based capital purposes.

[18] For this purpose, a banking and finance subsidiary generally is defined as any company engaged in banking or finance in which the parent institution holds directly or indirectly more than 50 percent of the outstanding voting stock, or which is otherwise controlled or capable of being controlled by the parent institution.

[19] An exception to this deduction would be made in the case of shares acquired in the regular course of securing or collecting a debt previously contracted in good faith. The requirements for consolidation are spelled out in the instructions to the commercial bank Consolidated Reports of Condition and Income (Call Report).

requirements without reliance on the resources invested in such subsidiaries.

The Federal Reserve will not automatically deduct investments in other consolidated subsidiaries or investments in joint ventures and associated companies.[20] Nonetheless, the resources invested in these entities, like investments in unconsolidated banking and finance subsidiaries, support assets not consolidated with the rest of the bank's activities and, therefore, may not be generally available to support additional leverage or absorb losses elsewhere in the bank. Moreover, experience has shown that banks stand behind the losses of affiliated institutions, such as joint ventures and associated companies, in order to protect the reputation of the organization as a whole. In some cases, this has led to losses that have exceeded the investments in such organizations.

For this reason, the Federal Reserve will monitor the level and nature of such investments for individual banks and, on a case-by-case basis may, for risk-based capital purposes, deduct such investments from total capital components, apply an appropriate risk-weighted capital charge against the bank's proportionate share of the assets of its associated companies, require a line-by-line consolidation of the entity (in the event that the bank's control over the entity makes it the functional equivalent of a subsidiary), or otherwise require the bank to operate with a risk-based capital ratio above the minimum.

In considering the appropriateness of such adjustments or actions, the Federal Reserve will generally take into account whether:

(1) The bank has significant influence over the financial or managerial policies or operations of the subsidiary, joint venture, or associated company;

(2) The bank is the largest investor in the affiliated company; or

(3) Other circumstances prevail that appear to closely tie the activities of the affiliated company to the bank.

3. *Reciprocal holdings of banking organizations' capital instruments.* Reciprocal holdings of banking organizations' capital instruments (that is, instruments that qualify as Tier 1 or Tier 2 capital) [21] will be deducted from a bank's total capital components for the purpose of determining the numerator of the risk-based capital ratio.

Reciprocal holdings are cross-holdings resulting from formal or informal arrangements in which two or more banking organizations swap, exchange, or otherwise agree to hold each other's capital instruments. Generally, deductions will be limited to intentional cross-holdings. At present, the Board does not intend to require banks to deduct non-reciprocal holdings of such capital instruments.[22] [23]

III. Procedures for Computing Weighted Risk Assets and Off-Balance Sheet Items

A. Procedures.

Assets and credit equivalent amounts of off-balance sheet items of state member banks are assigned to one of several broad risk categories, according to the obligor, or, if relevant, the guarantor or the nature of the collateral. The aggregate dollar value of the amount in each category is then multiplied by the risk weight associated with that category. The resulting weighted values from each of the risk categories are added together, and this sum is the bank's total weighted risk assets that comprise the denominator of the risk-based capital ratio. Attachment I provides a sample calculation.

Risk weights for all off-balance sheet items are determined by a two-step process. First, the "credit equivalent amount" of off-balance sheet items is determined, in most cases by multiplying the off-balance sheet item by a credit conversion factor. Second, the credit equivalent amount is treated like any balance sheet asset and generally is assigned to the appropriate risk category according to the obligor, or, if relevant, the guarantor or the nature of the collateral.

In general, if a particular item qualifies for placement in more than one risk category, it is assigned to the category that has the lowest risk weight. A holding of a U.S. municipal revenue bond that is fully guaranteed by a U.S. bank, for example, would be assigned the 20 percent risk weight appropriate to claims guaranteed by U.S. banks, rather than the 50 percent risk weight appropriate to U.S. municipal revenue bonds.[24]

The terms "claims" and "securities" used in the context of the discussion of risk weights, unless otherwise specified, refer to loans or debt obligations of the entity on whom the claim is held. Assets in the form of stock or equity holdings in commercial or financial firms are assigned to the 100 percent risk category, unless some other treatment is explicitly permitted.

B. Collateral, Guarantees, and Other Considerations

1. *Collateral.* The only forms of collateral that are formally recognized by the risk-based capital framework are: Cash on deposit in the bank; securities issued or guaranteed by the central governments of the OECD-based group of countries[25], U.S. Government agencies, or U.S. Government-sponsored agencies; and securities issued by multilateral lending institutions or regional development banks. Claims fully secured by such collateral are assigned to the 20 percent risk weight category.

The extent to which qualifying securities are recognized as collateral is determined by their current market value. If a claim is only partially secured, that is, the market value of the pledged securities is less than the face amount of a balance sheet asset or an off-balance sheet item, the portion that is covered by the market value of the qualifying collateral is assigned to the 20 percent risk category, and the portion of the claim that is not covered by collateral in the form of cash or a qualifying security is assigned to the risk category appropriate to the obligor or, if relevant, the guarantor. For example, to the extent that a claim on a private sector obligor is collateralized by the current market value of U.S. Government securities, it would be placed in the 20 percent risk category, and the balance would be assigned to the 100 percent risk category.

[20] The definition of such entities is contained in the instructions to the commercial bank Call Report. Under regulatory reporting procedures, associated companies and joint ventures generally are defined as companies in which the bank owns 20 to 50 percent of the voting stock.

[21] See 12 CFR Part 225, Appendix A for instruments that qualify as Tier 1 and Tier 2 capital for bank holding companies.

[22] Deductions of holdings of capital securities also would not be made in the case of interests in "stable and" investments that comply with the Board's Policy Statement on Nonvoting Equity Investments, 12 CFR 225.143. In addition, holdings of capital instruments issued by other banking organizations but taken in satisfaction of debts previously contracted would be exempt from any deduction from capital.

[23] The Board intends to monitor non-reciprocal holdings of other banking organizations' capital instruments and to provide information on such holdings to the Basle Supervisors' Committee as called for under the Basle capital framework.

[24] An investment in shares of a fund whose portfolio consists solely of various securities or money market instruments that, if held separately, would be assigned to different risk categories, is generally assigned to the risk category appropriate to the highest risk-weighted security or instrument that the fund is permitted to hold in accordance with its stated investment objectives. However, in no case will indirect holdings through shares in such funds be assigned to the zero percent risk category. For example, if a fund is permitted to hold U.S. Treasuries and commercial paper, shares in that fund would generally be assigned the 100 percent risk weight appropriate to commercial paper, regardless of the actual composition of the fund's investments at any particular time. Shares in a fund that may invest only in U.S. Treasury securities would generally be assigned to the 20 percent risk category. If, in order to maintain a necessary degree of short-term liquidity, a fund is permitted to hold an insignificant amount of its assets in short-term, highly liquid securities of superior credit quality that do not qualify for a preferential risk weight, such securities will generally not be taken into account in determining the risk category into which the bank's holding in the overall fund should be assigned. Regardless of the composition of the fund's securities, if the fund engages in any activities that appear speculative in nature (for example, use of futures, forwards, or option contracts for purposes other than to reduce interest rate risk) or has any other characteristics that are inconsistent with the preferential risk weighting assigned to the fund's investments, holdings in the fund will be assigned to the 100 percent risk category. During the examination process, the treatment of shares in such funds that are assigned to a lower risk weight will be subject to examiner review to ensure that they have been assigned an appropriate risk weight.

[25] The OECD-based group of countries comprises all full members of the Organization for Economic Cooperation and Development (OECD), as well as countries that have concluded special lending arrangements with the International Monetary Fund (IMF) associated with the Fund's General Arrangements to Borrow. The OECD includes the following countries: Australia, Austria, Belgium, Canada, Denmark, the Federal Republic of Germany, Finland, France, Greece, Iceland, Ireland, Italy, Japan, Luxembourg, Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, Turkey, the United Kingdom, and the United States. Saudi Arabia has concluded special lending arrangements with the IMF associated with the Fund's General Arrangements to Borrow.

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2. *Guarantees.* Guarantees of the OECD and non-OECD central governments, U.S. Government agencies, U.S. Government-sponsored agencies, state and local governments of the OECD-based group of countries, multilateral lending institutions and regional development banks, U.S. depository institutions, and foreign banks are also recognized. If a claim is partially guaranteed, that is, coverage of the guarantee is less than the face amount of a balance sheet asset or an off-balance sheet item, the portion that is not fully covered by the guarantee is assigned to the risk category appropriate to the obligor or, if relevant, to any collateral. The face amount of a claim covered by two types of guarantees that have different risk weights, such as a U.S. Government guarantee and a state guarantee, is to be apportioned between the two risk categories appropriate to the guarantors.

The existence of other forms of collateral or guarantees that the risk-based capital framework does not formally recognize may be taken into consideration in evaluating the risks inherent in a bank's loan portfolio—which, in turn, would affect the overall supervisory assessment of the bank's capital adequacy.

3. *Mortgage-backed securities.* Mortgage-backed securities, including pass-throughs and collateralized mortgage obligations (but not stripped mortgage-backed securities), that are *issued or guaranteed* by a U.S. Government agency or U.S. Government-sponsored agency are assigned to the risk weight category appropriate to the issuer or guarantor. Generally, a privately-issued mortgage-backed security meeting certain criteria set forth in the accompanying footnote,[32] is treated as essentially an indirect holding of the underlying assets, and assigned to the same risk category as the underlying assets, but in no case to the zero percent risk category. Privately-issued mortgage-backed securities whose structures do not qualify them to be regarded as indirect holdings of the underlying assets are assigned to the 100 percent risk category. During the examination process, privately-issued mortgage-backed securities that are assigned to a lower risk weight category will be subject to examiner review to ensure that they meet the appropriate criteria.

While the risk category to which mortgage-backed securities is assigned will generally be based upon the issuer or guarantor or, in the case of privately-issued mortgage-backed securities, the assets underlying the security, any class of a mortgage-backed security that can absorb more than its *pro rata* share of loss without the whole issue being in default (for example, a so-called subordinate class or residual interest), is assigned to the 100 percent risk category. Furthermore, all stripped mortgage-backed securities, including interest-only strips (IOs), principal-only strips (POs), and similar instruments are also assigned to the 100 percent risk weight category, regardless of the issuer or guarantor.

4. *Maturity.* Maturity is generally not a factor in assigning items to risk categories with the exception of claims on non-OECD banks, commitments, and interest rate and foreign exchange rate contracts. Except for commitments, short-term is defined as one year or less *remaining* maturity and long-term is defined as over one year *remaining* maturity. In the case of commitments, short-term is defined as one year or less *original* maturity and long-term is defined as over one year *original* maturity.[34]

C. Risk Weights

Attachment III contains a listing of the risk categories, a summary of the types of assets assigned to each category and the weight associated with each category, that is, 0 percent, 20 percent, 50 percent, and 100 percent. A brief explanation of the components of each category follows.

1. *Category 1: zero percent.* This category includes cash (domestic and foreign) owned and held in all offices of the bank or in transit and gold bullion held in the bank's own vaults or in another bank's vaults on an allocated basis, to the extent it is offset by gold bullion liabilities.[35] The category also includes all direct claims (including securities, loans, and leases) on, and the portions of claims that are directly and unconditionally guaranteed by, the central governments [36] of the OECD countries and U.S. Government agencies,[37] as well as all direct local currency claims on, and the portions of local currency claims that are directly and unconditionally guaranteed by, the central governments of non-OECD countries, to the extent that the bank has liabilities booked in that currency. A claim is not considered to be unconditionally guaranteed by a central government if the validity of the guarantee is dependent upon some affirmative action by the holder or a third party. Generally, securities guaranteed by the U.S. Government or its agencies that are actively traded in financial markets, such as GNMA securities, are considered to be unconditionally guaranteed.

2. *Category 2: 20 percent.* This category includes cash items in the process of collection, both foreign and domestic; short-term claims (including demand deposits) on, and the portions of short-term claims that are guaranteed [38] by, U.S. depository institutions [39] and foreign banks [40]; and long-term claims on, and the portions of long-term claims that are guaranteed by, U.S. depository institutions and OECD banks.[41]

This category also includes the portions of claims that are conditionally guaranteed by OECD central governments and U.S. Government agencies, as well as the portions of local currency claims that are conditionally guaranteed by non-OECD central governments, to the extent that the bank has liabilities booked in that currency. In addition, this category includes claims on, and the portions of claims that are guaranteed by, U.S. Government-sponsored [42] agencies and claims on, and the portions of claims guaranteed by, the International Bank for Reconstruction and Development (World Bank), the Interamerican Development Bank, the Asian Development Bank, the African Development Bank, the European Investment Bank, and other multilateral lending institutions or regional development banks in which the U.S. Government is a shareholder or contributing member. General obligation claims on, or portions of claims guaranteed by the full faith and credit of, states or other political subdivisions of the U.S. or other countries of the OECD-based group are also assigned to this category.[43]

This category also includes the portions of claims (including repurchase agreements) collateralized by cash on deposit in the bank; by securities issued or guaranteed by OECD central governments, U.S. Government agencies, or U.S. Government-sponsored agencies; or by securities issued by multilateral lending institutions or regional development banks in which the U.S. Government is a shareholder or contributing member.

3. *Category 3: 50 percent.* This category includes loans fully secured by first liens [44] on 1–4 family residential properties [45], either owner-occupied or rented, provided that such loans have been made in accordance with prudent underwriting standards, including a conservative loan-to-value ratio; [46] are performing in accordance with their original terms; and are not 90 days or more past due or carried in nonaccrual status.[47] Also included in this category are privately-issued mortgage-backed securities provided that: (1) The structure of the security meets the criteria described in section III (B)(3) above; (2) if the security is backed by a pool of conventional mortgages, *each* underlying mortgage meets the criteria described above in this section for eligibility for the 50 percent risk weight category at the time the pool is originated; and (3) if the security is backed by privately-issued mortgage-backed securities, *each* underlying security qualifies for the 50 percent risk category. Privately-issued mortgage-backed securities that do not meet these criteria or that do not qualify for a lower risk weight are generally assigned to the 100 percent risk weight category.

Also assigned to this category are *revenue* (non-general obligation) bonds or similar obligations, including loans and leases, that are obligations of states or other political subdivisions of the U.S. (for example, municipal revenue bonds) or other countries of the OECD-based group, but for which the government entity is committed to repay the debt with revenues from the specific projects financed, rather than from general tax funds.

Credit equivalent amounts of interest rate and foreign exchange rate contracts involving standard risk obligors (that is, obligors whose loans or debt securities would be assigned to the 100 percent risk category) are included in the 50 percent category, unless they are backed by collateral or guarantees that allow them to be placed in a lower risk category.

4. *Category 4: 100 percent.* All assets not included in the categories above are assigned to this category, which comprises standard risk assets. The bulk of the assets typically found in a loan portfolio would be assigned to the 100 percent category.

This category includes long-term claims on, or guaranteed by, non-OECD banks, and all claims on non-OECD central governments that entail some degree of transfer risk.[48] This category also includes all claims on foreign and domestic private sector obligors not included in the categories above (including loans to nondepository financial institutions and bank holding companies); claims on commercial firms owned by the public sector; customer liabilities to the bank on acceptances outstanding involving standard risk claims [49]; investments in fixed assets, premises, and other real estate owned; common and preferred stock of corporations, including stock acquired for debts previously contracted; commercial and consumer loans (except those assigned to lower risk categories due to recognized guarantees or collateral and loans for residential property that qualify for a lower risk weight); mortgage-backed securities that do not meet criteria for assignment to a lower risk weight (including any classes of mortgage-backed securities that can absorb more than their *pro rata* share of loss without the whole issue being in default); and all stripped mortgage-backed and similar securities.

Also included in this category are industrial development bonds and similar obligations issued under the auspices of states or political subdivisions of the OECD-based group of countries for the benefit of a private party or enterprise where that party or enterprise, not the government entity, is obligated to pay the principal and interest, and all obligations of states or political subdivisions of countries that do not belong to the OECD-based group.

The following assets also are assigned a risk weight of 100 percent if they have not been deducted from capital: investments in unconsolidated companies, joint ventures or associated companies; instruments that qualify as capital issued by other banking organizations; and any intangibles, including grandfathered goodwill.

D. Off-Balance Sheet Items

The face amount of an off-balance sheet item is incorporated into the risk-based capital ratio by multiplying it by a credit conversion factor. The resultant credit equivalent amount is assigned to the appropriate risk category according to the obligor, or, if relevant, the guarantor or the nature of the collateral.[50] Attachment IV sets

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[32] A privately-issued mortgage-backed security may be treated as an indirect holding of the underlying assets provided that: (1) The underlying assets are held by an independent trustee and the trustee has a first priority, perfected security interest in the underlying assets on behalf of the holders of the security; (2) either the holder of the security has an undivided *pro rata* ownership interest in the underlying mortgage assets or the trust or single purpose entity (or conduit) that issues the security has no liabilities unrelated to the issued securities; (3) the security is structured such that the cash flow from the underlying assets in all cases fully meets the cash flow requirements of the security without undue reliance on any reinvestment income; and (4) there is no material reinvestment risk associated with any funds awaiting distribution to the holders of the security. In addition, if the underlying assets of a mortgage-backed security are composed of more than one type of asset, for example, U.S. Government-sponsored agency securities and privately-issued pass-through securities that qualify for the 50 percent risk category, the entire mortgage-backed security is generally assigned to the category appropriate to the highest risk-weighted asset underlying the issue. Thus, in this example, the security would receive the 50 percent risk weight appropriate to the privately-issued pass-through securities.

[34] Through year-end 1992, remaining, rather than original, maturity may be used for determining the maturity of commitments.

[35] All other holdings of bullion are assigned to the 100 percent risk category.

[36] A central government is defined to include departments and ministries, including the central bank, of the central government. The U.S. central bank includes the 12 Federal Reserve Banks, and the stock held in these banks as a condition of membership is assigned to the zero percent risk category. The definition of central government does not include state, provincial, or local governments or commercial enterprises owned by the central government. In addition, it does not include local government entities or commercial enterprises whose obligations are guaranteed by the central government, although any claims on such entities guaranteed by central governments are placed in the same general risk category as other claims guaranteed by central governments. OECD central governments are defined as central governments of the OECD-based group of countries; non-OECD central governments are defined as central governments that do not belong to the OECD-based group countries.

[37] A U.S. Government agency is defined as an instrumentality of the U.S. Government whose obligations are fully and explicitly guaranteed as to the timely payment of principal and interest by the full faith and credit of the U.S. Government. Such agencies include the Government National Mortgage Association (GNMA), the Veterans Administration (VA), the Federal Housing Administration (FHA), the Export-Import Bank (Exim Bank), the Overseas Private Investment Corporation (OPIC), the Commodity Credit Corporation (CCC), and the Small Business Administration (SBA).

[38] Claims guaranteed by U.S. depository institutions and foreign banks include risk participations in both bankers acceptances and standby letters of credit, as well as participations in commitments, that are conveyed to other U.S. depository institutions or foreign banks.

[39] U.S. depository institutions are defined to include branches (foreign and domestic) of federally-insured banks and depository institutions chartered and headquartered in the 50 states of the United States, the District of Columbia, Puerto Rico, and U.S. territories and possessions. The definition encompasses banks, mutual or stock savings banks, savings or building and loan associations, cooperative banks, credit unions, and international banking facilities of domestic banks. U.S.-chartered depository institutions owned by foreigners are also included in the definition. However, branches and agencies of foreign banks located in the U.S., as well as all bank holding companies, are excluded.

[40] Foreign banks are distinguished as either OECD banks or non-OECD banks. OECD banks include banks and their branches (foreign and domestic) organized under the laws of countries (other than the U.S.) that belong to the OECD-based group of countries. Non-OECD banks include banks and their branches (foreign and domestic) organized under the laws of countries that do not belong to the OECD-based group of countries. For this purpose, a bank is defined as an institution that engages in the business of banking; is recognized as a bank by the bank supervisory or monetary authorities of the country of its organization or principal banking operations; receives deposits to a substantial extent in the regular course of business; and has the power to accept demand deposits. Claims on, and the portions of claims that are guaranteed by, a non-OECD central bank are treated as claims on, or guaranteed by, a non-OECD bank, except for local currency claims on, and the portions of local currency claims that are guaranteed by, non-OECD central bank that are funded in local currency liabilities. The latter claims are assigned to either the zero percent risk category.

[41] Long-term claims on, or guaranteed by, non-OECD banks and all claims on bank holding companies are assigned to the 100 percent risk category, as are holdings of bank-issued securities that qualify as capital of the issuing banks.

[42] For this purpose, U.S. Government-sponsored agencies are defined as agencies originally established or chartered by the Federal government to serve public purposes specified by the U.S. Congress but whose obligations are *not explicitly* guaranteed by the full faith and credit of the U.S. Government. These agencies include the Federal Home Loan Mortgage Corporation (FHLMC), the Federal National Mortgage Association (FNMA), the Farm Credit System, the Federal Home Loan Bank System, and the Student Loan Marketing Association (SLMA). Claims on U.S. Government-sponsored agencies include capital stock in a Federal Home Loan Bank that is held as a condition of membership in that bank.

[43] Claims on, or guaranteed by, states or other political subdivisions of countries that do not belong to the OECD-based group of countries are placed in the 100 percent risk category.

[44] If a bank holds the first and junior lien(s) on a residential property and no other party holds an intervening lien, the transaction is treated as a single loan secured by a first lien for the purpose of determining the loan-to-value ratio.

[45] The types of properties that qualify as 1–4 family residences are listed in the instructions to the commercial bank Call Report.

[46] The loan-to-value ratio is based upon the most current appraised value of the property. All appraisals must be made in a manner consistent with the Federal banking agencies' real estate appraisal guidelines and with the bank's own appraisal guidelines.

[47] Residential property loans that do not meet all the specified criteria or that are made for the purpose of speculative property development are placed in the 100 percent risk category.

[48] Such assets include all non-local currency claims on, or guaranteed by, non-OECD central governments and those portions of local currency claims on, or guaranteed by, non-OECD central governments that exceed the local currency liabilities held by the bank.

[49] Customer liabilities on acceptances outstanding involving non-standard risk claims, such as claims on U.S. depository institutions, are assigned to the risk category appropriate to the identity of the obligor or, if relevant, the nature of the collateral or guarantees backing the claims. Portions of acceptances conveyed as risk participations to U.S. depository institutions or foreign banks are assigned to the 20 percent risk category appropriate to short-term claims guaranteed by U.S. depository institutions and foreign banks.

[50] The sufficiency of collateral and guarantees for off-balance sheet items is determined by the market value of the collateral or the amount of the guarantee in relation to the face amount of the item, except for interest and foreign exchange rate contracts, for which this determination is made in relation to the credit equivalent amount. Collateral and guarantees are subject to the same provisions noted under Section III (B).

Continued

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forth the conversion factors for various types of off-balance sheet items.

1. *Items with a 100 percent conversion factor.* A 100 percent conversion factor applies to direct credit substitutes, which include guarantees, or equivalent instruments, backing financial claims, such as outstanding securities, loans, and other financial liabilities, or that back off-balance sheet items that require capital under the risk-based capital framework. Direct credit substitutes include, for example, financial standby letters of credit, or other equivalent irrevocable undertakings or surety arrangements, that guarantee repayment of financial obligations such as: commercial paper, tax-exempt securities, commercial or individual loans or debt obligations, or standby or commercial letters of credit. Direct credit substitutes also include the acquisition of risk participations in bankers acceptances and standby letters of credit, since both of these transactions, in effect, constitute a guarantee by the acquiring bank that the underlying account party (obligor) will repay its obligation to the originating, or issuing, institution.[41] (Standby letters of credit that are performance-related are discussed below and have a credit conversion factor of 50 percent.)

The full amount of a direct credit substitute is converted at 100 percent and the resulting credit equivalent amount is assigned to the risk category appropriate to the obligor or, if relevant, the guarantor or the nature of the collateral. In the case of a direct credit substitute in which a risk participation [42] has been conveyed, the full amount is still converted at 100 percent. However, the credit equivalent amount that has been conveyed is assigned to whichever risk category is lower: the risk category appropriate to the obligor, after giving effect to any relevant guarantees or collateral, or the risk category appropriate to the institution acquiring the participation. Any remainder is assigned to the risk category appropriate to the obligor, guarantor, or collateral. For example, the portion of a direct credit substitute conveyed as a risk participation to a U.S. domestic depository institution or foreign bank is assigned to the risk category appropriate to claims guaranteed by those institutions, that is, the 20 percent risk category.[43] This approach recognizes that such conveyances replace the originating bank's exposure to the obligor with an exposure to the institutions acquiring the risk participations.[44]

In the case of direct credit substitutes that take the form of a syndication as defined in the instructions to the commercial bank Call Report, that is, where each bank is obligated only for its *pro rata* share of the risk and there is no recourse to the originating bank, each bank will only include its *pro rata* share of the direct credit substitute in its risk-based capital calculation.

Financial standby letters of credit are distinguished from loan commitments (discussed below) in that standbys are irrevocable obligations of the bank to pay a third-party beneficiary when a customer (account party) *fails to repay* an outstanding loan or debt instrument (direct credit substitute). Performance standby letters of credit (performance bonds) are irrevocable obligations of the bank to pay a third-party beneficiary when a customer (account party) *fails to perform* some other contractual non-financial obligation.

The distinguishing characteristic of a standby letter of credit for risk-based capital purposes is the combination of irrevocability with the fact that funding is triggered by some failure to repay or perform an obligation. Thus, any commitment (by whatever name) that involves an *irrevocable* obligation to make a payment to the customer or to a third party in the event the customer *fails to repay* an outstanding debt obligation or *fails to perform* a contractual obligation is treated, for risk-based capital purposes, as respectively, a financial guarantee standby letter of credit or a performance standby.

A loan commitment, on the other hand, involves an obligation (with or without a material adverse change or similar clause) of the bank to fund its customer *in the normal course* of business should the customer seek to draw down the commitment.

Sale and repurchase agreements and asset sales with recourse (to the extent not included on the balance sheet) and forward agreements also are converted at 100 percent. The risk-based capital definition of the sale of assets with recourse, including the sale of 1-4 family residential mortgages, is the same as the definition contained in the instructions to the commercial bank Call Report. So-called "loan strips" (that is, short-term advances sold under long-term commitments without direct recourse) are defined in the instructions to the commercial bank Call Report and for risk-based capital purposes as assets sold with recourse.

Forward agreements are legally binding contractual obligations to purchase assets with *certain* drawdown at a specified future date. Such obligations include forward purchases, forward forward deposits placed,[45] and partly-paid shares and securities; they do not include commitments to make residential mortgage loans or forward foreign exchange contracts.

Securities lent by a bank are treated in one of two ways, depending upon whether the lender is at risk of loss. If a bank, as agent for a customer, lends the customer's securities and does not indemnify the customer against loss, then the transaction is excluded from the risk-based capital calculation. *If*, alternatively, a bank lends its own securities or, acting as agent for a customer, lends the customer's securities and indemnifies the customer against loss, the transaction is converted at 100 percent and assigned to the risk weight category appropriate to the obligor, to any collateral delivered to the lending bank, or, if applicable, to the independent custodian acting on the lender's behalf.

2. *Items with a 50 percent conversion factor.* Transaction-related contingencies are converted at 50 percent. Such contingencies include bid bonds, performance bonds, warranties, standby letters of credit related to particular transactions, and performance standby letters of credit, as well as acquisitions of risk participations in performance standby letters of credit. Performance standby letters of credit represent obligations backing the performance of nonfinancial or commercial contracts or undertakings. To the extent permitted by law or regulation, performance standby letters of credit include arrangements backing, among other things, subcontractors' and suppliers' performance, labor and materials contracts, and construction bids.

The unused portion of commitments with an *original* maturity exceeding one year,[46] including underwriting commitments, and commercial and consumer credit commitments also are converted at 50 percent. Original maturity is defined as the length of time between the date the commitment is issued and the earliest date on which: (1) The bank can, at its option, unconditionally (without cause) cancel the commitment,[47] *and* (2) the bank is scheduled to (and as a normal practice actually does) review the facility to determine whether or not it should be extended. Such reviews must continue to be conducted at least annually for such a facility to qualify as a short-term commitment.

Commitments are defined as any legally binding arrangements that obligate a bank to extend credit in the form of loans or leases; to purchase loans, securities, or other assets; or to participate in loans and leases. They also include overdraft facilities, revolving credit, home equity and mortgage lines of credit, and similar transactions. Normally, commitments involve a written contract or agreement and a commitment fee, or some other form of consideration. Commitments are included in weighted risk assets regardless of whether they contain "material adverse change" clauses or other provisions that are intended to relieve the issuer of its funding obligation under certain conditions. In the case of commitments structured as syndications, where the bank is obligated solely for its *pro rata* share, only the bank's proportional share of the syndicated commitment is taken into account in calculating the risk-based capital ratio.

Facilities that are unconditionally cancellable (without cause) at any time by the bank are not deemed to be commitments, provided the bank makes a separate credit decision before each drawing under the facility. Commitments with an original maturity of one year or less are deemed to involve low risk and, therefore, are not assessed a capital charge. Such short-term commitments are defined to include the unused portion of lines of credit on retail credit cards and related plans (as defined in the instructions to the commercial bank Call Report) if the bank has the unconditional right to cancel the line of credit at any time, in accordance with applicable law.

Once a commitment has been converted at 50 percent, any portion that has been conveyed to other U.S. depository institutions or OECD banks as participations in which the originating bank retains the full obligation to the borrower if the participating bank fails to pay when the instrument is drawn, is assigned to the 20 percent risk category. This treatment is analogous to that accorded to conveyances of risk participations in standby letters of credit. The acquisition of a participation in a commitment by a bank is converted at 50 percent and assigned to the risk category appropriate to the account party obligor or, if relevant, the nature of the collateral or guarantees.

Revolving underwriting facilities (RUFs), note issuance facilities (NIFs), and other similar arrangements also are converted at 50 percent regardless of maturity. These are facilities under which a borrower can issue on a revolving basis short-term paper in its own name, but for which the underwriting banks have a legally binding commitment either to purchase any notes the borrower is unable to sell by the roll-over date or to advance funds to the borrower.

3. *Items with a 20 percent conversion factor.* Short-term, self-liquidating trade-related contingencies which arise from the movement of goods are converted at 20 percent. Such contingencies generally include commercial letters of credit and other documentary letters of credit collateralized by the underlying shipments.

4. *Items with a zero percent conversion factor.* These include unused portions of commitments with an original maturity of one year or less,[48] or which are unconditionally cancellable at any time, provided a separate credit decision is made before each drawing under the facility. Unused portions of lines of credit on retail credit cards and related plans are deemed to be short-term commitments if the bank has the unconditional right to cancel the line of credit at any time, in accordance with applicable law.

E. Interest Rate and Foreign Exchange Rate Contracts

1. *Scope.* Credit equivalent amounts are computed for each of the following off-balance sheet interest rate and foreign exchange rate instruments:

I. Interest Rate Contracts
- A. Single currency interest rate swaps.
- B. Basis swaps.
- C. Forward rate agreements.
- D. Interest rate options purchased (including caps, collars, and floors purchased).
- E. Any other instrument that gives rise to similar credit risks (including when-issued securities and forward deposits accepted).

II. Exchange Rate Contracts
- A. Cross-currency interest rate swaps.
- B. Forward foreign exchange contracts.
- C. Currency options purchased.
- D. Any other instrument that gives rise to similar credit risks.

Exchange rate contracts with an original maturity of fourteen calendar days or less and instruments traded on exchanges that require daily payment of variation margin are excluded from the risk-based ratio calculation. Over-the-counter options purchased, however, are included and treated in the same way as the other interest rate and exchange rate contracts.

2. *Calculation of credit equivalent amounts.* Credit equivalent amounts are calculated for each individual contract of the types listed above. To calculate the credit equivalent amount of its off-balance sheet interest rate and exchange rate instruments, a bank sums these amounts:

(1) The mark-to-market value [49] (positive values only) of each contract (that is, the current exposure); and

(2) An estimate of the potential future credit exposure over the remaining life of each contract.

The potential future credit exposure on a contract, including contracts with negative mark-to-market values, is estimated by multiplying the notional principal amount by one of the following credit conversion factors, as appropriate:

[In percent]

Remaining maturity	Interest rate contracts	Exchange rate contracts
One year or less	0	1.0
Over one year	0.5	5.0

Examples of the calculation of credit equivalent amounts for these instruments are contained in Attachment V.

Because exchange rate contracts involve an exchange of principal upon maturity, and exchange rates are generally more volatile than interest rates, higher conversion factors have been established for foreign exchange contracts than for interest rate contracts.

No potential future credit exposure is calculated for single currency interest rate swaps in which payments are made based upon two floating rate indices, so-called floating/floating or basis swaps; the credit exposure on these contracts is evaluated solely on the basis of their mark-to-market values.

3. *Risk weights.* Once the credit equivalent amount for interest rate and exchange rate instruments has been determined, that amount is assigned to the risk weight category appropriate to the counterparty, or, if relevant, the nature of any collateral or guarantees.[50] However, the maximum weight that will be applied to the credit equivalent amount of such instruments is 50 percent.

4. *Avoidance of double counting.* In certain cases, credit exposures arising from the interest rate and exchange instruments covered by these guidelines may already be reflected, in part, on the balance sheet. To avoid double counting such exposures in the assessment of capital adequacy and, perhaps, assigning inappropriate risk weights, counterparty credit exposures arising from the types of instruments covered by these guidelines may need to be excluded from balance sheet assets in calculating banks' risk-based capital ratios.

5. *Netting.* Netting of swaps and similar contracts is recognized for purposes of calculating the risk-based capital ratio *only* when accomplished through netting by novation.[51] While the Federal Reserve encourages any reasonable arrangements designed to reduce the risks inherent in these transactions, other types of netting arrangements are not recognized for purposes of calculating the risk-based ratio at this time.

IV. Minimum Supervisory Ratios and Standards

The interim and final supervisory standards set forth below specify *minimum* supervisory ratios based primarily on broad credit risk considerations. As noted above, the risk-based ratio does not take explicit account of the quality of individual asset portfolios or the range of other types of risks to which banks may be exposed, such as interest rate, liquidity, market or operational risks. For this reason, banks are generally expected to operate with capital positions above the minimum ratios. This is particularly true for institutions that are undertaking significant expansion or that are exposed to high or unusual levels of risk.

Upon adoption of the risk-based framework, any bank that does not meet the

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[41] Credit equivalent amounts of acquisitions of risk participations are assigned to the risk category appropriate to the account party obligor, or, if relevant, the nature of the collateral or guarantees.

[42] That is, a participation in which the originating bank remains liable to the beneficiary for the full amount of the direct credit substitute if the party that has acquired the participation fails to pay when the instrument is drawn.

[43] Risk participations with a remaining maturity of over one year that are conveyed to non-OECD banks are to be assigned to the 100 percent risk category, unless a lower risk category is appropriate to the obligor, guarantor, or collateral.

[44] A risk participation in bankers acceptances conveyed to other institutions is also assigned to the risk category appropriate to the institution acquiring the participation or, if relevant, the guarantor or nature of the collateral.

[45] Forward forward deposits accepted are treated as interest rate contracts.

[46] Through year-end 1992, remaining maturity may be used for determining the maturity of off-balance sheet loan commitments; thereafter, original maturity must be used.

[47] In the case of consumer home equity or mortgage lines of credit secured by liens on 1-4 family residential properties, the bank is deemed able to unconditionally cancel the commitment for the purpose of this criterion if, at its option, it can prohibit additional extensions of credit, reduce the credit line, and terminate the commitment to the full extent permitted by relevant Federal law.

[48] Through year-end 1992, remaining maturity may be used for determining term to maturity for off-balance sheet loan commitments; thereafter, original maturity must be used.

[49] Mark-to-market values are measured in dollars, regardless of the currency or currencies specified in the contract, and should reflect changes in both interest rates and counterparty credit quality.

[50] For interest and exchange rate contracts, sufficiency of collateral or guarantees is determined by the market value of the collateral or the amount of the guarantee in relation to the credit equivalent amount. Collateral and guarantees are subject to the same provisions noted under section III(B).

[51] Netting by novation, for this purpose, is a written bilateral contract between two counterparties under which any obligation to each other to deliver a given currency on a given date is automatically amalgamated with all other obligations for the same currency and value date, *legally* substituting one single net amount for the previous gross obligations.

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interim or final supervisory ratios, or whose capital is otherwise considered inadequate, is expected to develop and implement a plan acceptable to the Federal Reserve for achieving an adequate level of capital consistent with the provisions of these guidelines or with the special circumstances affecting the individual institution. In addition, such banks should avoid any actions, including increased risk-taking or unwarranted expansion, that would lower or further erode their capital positions.

A. Minimum Risk-Based Ratio After Transition Period

As reflected in Attachment VI, by year-end 1992, all state member banks should meet a minimum ratio of qualifying total capital to weighted risk assets of 8 percent, of which at least 4.0 percentage points should be in the form of Tier 1 capital net of goodwill. (Section II above contains detailed definitions of capital and related terms used in this section.) The maximum amount of supplementary capital elements that qualifies as Tier 2 capital is limited to 100 percent of Tier 1 capital net of goodwill. In addition, the combined maximum amount of subordinated debt and intermediate-term preferred stock that qualifies as Tier 2 capital is limited to 50 percent of Tier 1 capital. The maximum amount of the allowance for loan and lease losses that qualifies as Tier 2 capital is limited to 1.25 percent of gross weighted risk assets. Allowances for loan and lease losses in excess of this limit may, of course, be maintained, but would not be included in a bank's total capital. The Federal Reserve will continue to require banks to maintain reserves at levels fully sufficient to cover losses inherent in their loan portfolios.

Qualifying total capital is calculated by adding Tier 1 capital and Tier 2 capital (limited to 100 percent of Tier 1 capital) and then deducting from this sum certain investments in banking or finance subsidiaries that are not consolidated for accounting or supervisory purposes, reciprocal holdings of banking organization capital securities, or other items at the direction of the Federal Reserve. These deductions are discussed above in section II(B).

B. Transition Arrangements

The transition period for implementing the risk-based capital standard ends on December 31, 1992.[24] Initially, the risk-based capital guidelines do not establish a minimum level of capital. However, by year-end 1990, banks are expected to meet a minimum interim target ratio for qualifying total capital to weighted risk assets of 7.25 percent, at least one-half of which should be in the form of Tier 1 capital. For purposes of meeting the 1990 interim target, the amount of loan loss reserves that may be included in capital is limited to 1.5 percent of weighted risk assets and up to 10 percent of a bank's Tier 1 capital may consist of supplementary capital elements. Thus, the 7.25 percent interim target ratio implies a minimum ratio of Tier 1 capital to weighted risk assets of 3.6 percent (one-half of 7.25) and a minimum ratio of core capital elements to weighted risk assets ratio of 3.25 percent (nine-tenths of the Tier 1 capital ratio).

[24] The Basle capital framework does not establish an initial minimum standard for the risk-based capital ratio before the end of 1990. However, for the purpose of calculating a risk-based capital ratio prior to year-end 1990, no sublimit is placed on the amount of the allowance for loan and lease losses includable in Tier 2. In addition, this framework permits, under temporary transition arrangements, a certain percentage of a bank's Tier 1 capital to be made up of supplementary capital elements. In particular, supplementary elements may constitute 25 percent of a bank's Tier 1 capital (before the deduction of goodwill) up to the end of 1990; from year-end 1990 up to the end of 1992, this allowable percentage of supplementary elements in Tier 1 declines to 10 percent of Tier 1 (before the deduction of goodwill). Beginning on December 31, 1992, supplementary elements may not be included in Tier 1. The amount of subordinated debt and intermediate-term preferred stock temporarily included in Tier 1 under these arrangements will not be subject to the sublimit on the amount of such instruments includable in Tier 2 capital. Goodwill must be deducted from the sum of a bank's permanent core capital elements (that is, common equity, noncumulative perpetual preferred stock, and minority interest in the equity of unconsolidated subsidiaries) plus supplementary items that may temporarily qualify as Tier 1 elements for the purpose of calculating Tier 1 (net of goodwill), Tier 2, and total capital.

ATTACHMENT I.—SAMPLE CALCULATION OF RISK-BASED CAPITAL RATIO FOR STATE MEMBER BANKS

Example of a bank with $6,000 in total capital and the following assets and off-balance sheet items:

Balance Sheet Assets:	
Cash	$5,000
U.S. Treasuries	20,000
Balances at domestic banks	5,000
Loans secured by first liens on 1–4 family residential properties	5,000
Loans to private corporations	65,000
Total Balance Sheet Assets	$100,000
Off-Balance Sheet Items:	
Standby letters of credit ("SLCs") backing general obligation debt issues of U.S. municipalities ("GOs")	$10,000
Long-term legally binding commitments to private corporations	20,000
Total Off-Balance Sheet Items	30,000

This bank's total capital to *total assets* (leverage) ratio would be: ($6,000/$100,000)=6.00%

To compute the bank's weighted risk assets:

1. Compute the credit equivalent amount of each off-balance sheet ("OBS") item

OBS item	Face value		Conversion factor		Credit equivalent amount
SLCS backing municipal GOs	$10,000	×	1.00	=	$10,000
Long-term commitments to private corporations	20,000	×	0.50	=	10,000
2. Multiply each balance sheet asset and the credit equivalent amount of each OBS item by the appropriate risk weight.					
0% Category:					
Cash	$ 5,000				
U.S. Treasuries	20,000				
	25,000	×	0	=	0
20% Category:					
Balances at domestic banks	5,000				
Credit equivalent amounts of SLCs backing GOs of U.S. municipalities	10,000				
	15,000	×	.20	=	$3,000

OBS item	Face value		Conversion factor		Credit equivalent amount
50% Category:					
Loans secured by first liens on 1–4 family residential properties	5,000	×	.50	=	2,500
100% Category:					
Loans to private corporations	65,000				
Credit equivalent amounts of long-term commitments to private corporations	10,000				
	75,000	×	1.00	=	75,000
Total risk-weighted assets					80,500

This bank's ratio of total capital to weighted risk assets (risk-based capital ratio) would be: ($6,000/$80,500)=7.45%

ATTACHMENT II.—SUMMARY DEFINITION OF QUALIFYING CAPITAL FOR STATE MEMBER BANKS* USING THE YEAR-END 1992 STANDARDS

Components	Minimum requirements after transition period
Core Capital (Tier 1):	Must equal or exceed 4% of weighted risk assets.
Common stockholders' equity	No limit.
Qualifying noncumulative perpetual preferred stock	No limit; banks should avoid undue reliance on preferred stock in Tier 1.
Minority interest in equity accounts of consolidated subsidiaries	Banks should avoid using minority interests to introduce elements not otherwise qualifying for Tier 1 capital.
Less: Goodwill [1]	
Supplementary Capital (Tier 2):	Total of Tier 2 is limited to 100% of Tier 1.[2]
Allowance for loan and lease losses	Limited to 1.25% of weighted risk assets.[2]
Perpetual preferred stock	No limit within Tier 2.
Hybrid capital instruments and equity contract notes	No limit within Tier 2.
Subordinated debt and intermediate-term preferred stock (original weighted average maturity of 5 years or more).	Subordinated debt and intermediate-term preferred stock are limited to 50% of Tier 1;[2] amortized for capital purposes as they approach maturity.
Revaluation reserves (equity and building)	Not included; banks encouraged to disclose; may be evaluated on a case-by-case basis for international comparisons; and taken into account in making an overall assessment of capital.
Deductions (from sum of Tier 1 and Tier 2):	
Investments in unconsolidated subsidiaries	
Reciprocal holdings of banking organizations' capital securities	
Other deductions (such as other subsidiaries or joint ventures) as determined by supervisory authority.	On a case-by-case basis or as a matter of policy after formal rulemaking.
Total Capital (Tier 1+Tier 2–Deductions	Must equal or exceed 8% of weighted risk assets.

*See discussion in section II of the Guidelines for a complete description of the requirements for, and the limitations on, the components of qualifying capital.
[1] All goodwill, except previously grandfathered goodwill approved in supervisory mergers, is deducted immediately.
[2] Amounts in excess of limitations are permitted but do not qu alify as capital.
[3] Amounts in excess of limitations are permitted but do not qualify as capital.

Attachment III—Summary of Risk Weights and Risk Categories for State Member Banks

Category 1: Zero Percent

1. Cash (domestic and foreign) held in the bank or in transit.
2. Balances due from Federal Reserve Banks (including Federal Reserve Bank stock) and central banks in other OECD countries.
3. Direct claims on, and the portions of claims that are unconditionally guaranteed by, the U.S. Treasury and U.S. Government agencies [1] and the central governments of other OECD countries, and local currency claims on, and the portions of local currency claims that are unconditionally guaranteed by, the central governments of non-OECD countries including the central banks of non-OECD countries), to the extent that the bank has liabilities booked in that currency.
4. Gold bullion held in the bank's vaults or in another's vaults on an allocated basis, to the extent offset by gold bullion liabilities.

[1] For the purpose of calculating the risk-based capital ratio, a U.S. Government agency is defined as an instrumentality of the U.S. Government whose obligations are fully and explicitly guaranteed as to the timely payment of principal and interest by the full faith and credit of the U.S. Government.

Category 2: 20 Percent

1. Cash items in the process of collection.
2. All claims (long- or short-term) on, and the portions of claims (long- or short-term) that are guaranteed by, U.S. depository institutions and OCED banks.
3. Short-term claims (remaining maturity of one year or less) on, and the portions of short-term claims that are guaranteed by, non-OECD banks.
4. The portions of claims that are conditionally guaranteed by the central governments of OECD countries and U.S. Government agencies, and the portions of local currency claims that are conditionally guaranteed by the central governments of non-OECD countries, to the extent that the bank has liabilities booked in that currency.
5. Claims on, and the portions of claims that are guaranteed by, U.S. Government-sponsored agencies.[2]

[2] For the purpose of calculating the risk-based capital ratio, a U.S. Government-sponsored agency is defined as an agency originally established or chartered to serve public purposes specified by the U.S. Congress but whose obligations are not *explicitly* guaranteed by the full faith and credit of the U.S. Government.

6. General obligation claims on, and the portions of claims that are guaranteed by the full faith and credit of, local governments and political subdivisions of the U.S. and other OECD local governments.
7. Claims on, and the portions of claims that are guaranteed by, official multilateral lending institutions or regional development banks.
8. The portions of claims that are collateralized [3] by securities issued or guaranteed by the U.S. Treasury, the central governments of other OECD countries, U.S. Government agencies, U.S. Government-sponsored agencies, or by cash on deposit in the bank.
9. The portions of claims that are collateralized [3] by securities issued by official multilateral lending institutions or regional development banks.
10. Certain privately-issued securities representing indirect ownership of mortgage-backed U.S. Government agency or U.S. Government-sponsored agency securities.
11. Investment in shares of a fund whose portfolio is permitted to hold only securities

[3] The extent of collateralization is determined by current market value.

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that would qualify for the zero or 20 percent risk categories.

Category 3: 50 Percent

1. Loans fully secured by first liens on 1–4 family residential properties that have been made in accordance with prudent underwriting standards, that are performing in accordance with their original terms, and are not past due or in nonaccrual status, and certain privately-issued mortgage-backed securities representing indirect ownership of such loans. (Loans made for speculative purposes are excluded.)

2. Revenue bonds or similar claims that are obligations of U.S. state or local governments, or other OECD local governments, but for which the government entity is committed to repay the debt only out of revenues from the facilities financed.

3. Credit equivalent amounts of interest rate and foreign exchange rate related contracts, except for those assigned to a lower risk category.

Category 4: 100 Percent

1. All other claims on private obligors.

2. Claims on, or guaranteed by, non-OECD foreign banks with a remaining maturity exceeding one year.

3. Claims on, or guaranteed by, non-OECD central governments that are not included in item 3 of Category 1 or item 4 of Category 2; all claims on non-OECD state or local governments.

4. Obligations issued by U.S. state or local governments, or other OECD local governments (including industrial development authorities and similar entities), repayable solely by a private party or enterprise.

5. Premises, plant, and equipment; other fixed assets; and other real estate owned.

6. Investments in any unconsolidated subsidiaries, joint ventures, or associated companies—if not deducted from capital.

7. Instruments issued by other banking organizations that qualify as capital—if not deducted from capital.

8. Claims on commercial firms owned by a government.

9. All other assets, including any intangible assets that are not deducted from capital.

Attachment IV—Credit Conversion Factors for Off-Balance Sheet Items for State Member Banks

100 Percent Conversion Factor

1. Direct credit substitutes. (These include general guarantees of indebtedness and all guarantee-type instruments, including standby letters of credit backing the financial obligations of other parties.)

2. Risk participations in bankers acceptances and direct credit substitutes, such as standby letters of credit.

3. Sale and repurchase agreements and assets sold with recourse that are not included on the balance sheet.

4. Forward agreements to purchase assets, including financing facilities, on which drawdown is *certain*.

5. Securities lent for which the bank is at risk.

50 Percent Conversion Factor

1. Transaction-related contingencies. (These include bid bonds, performance bonds, warranties, and standby letters of credit backing the nonfinancial performance of other parties.)

2. Unused portions of commitments with an original maturity [1] exceeding one year, including underwriting commitments and commercial credit lines.

3. Revolving underwriting facilities (RUFs), note issuance facilities (NIFs), and similar arrangements.

20 Percent Conversion Factor

1. Short-term, self-liquidating trade-related contingencies, including commercial letters of credit.

Zero Percent Conversion Factor

1. Short-term self-liquidating trade-related contingencies, including commercial letters of credit.

Zero Percent Conversion Factor

1. Unused portions of commitments with an original maturity [1] of one year or less, or which are unconditionally cancellable at any time, provided a separate credit decision is made before each drawing.

Credit Conversion for Interest Rate and Foreign Exchange Contracts

The total replacement cost of contracts (obtained by summing the positive mark-to-market values of contracts) is added to a measure of future potential increases in credit exposure. This future potential exposure measure is calculated by multiplying the total notional value of contracts by one of the following credit conversion factors, as appropriate:

Remaining maturity	Interest rate contracts (percent)	Exchange rate contracts (percent)
One year or less	0	1.0
Over one year	0.5	5.0

No potential exposure is calculated for single currency interest rate swaps in which payments are made based upon two floating rate indices, that is, so called floating/floating or basis swaps. The credit exposure on these contracts is evaluated solely on the basis of their mark-to-market value. Exchange rate contracts with an original maturity of fourteen days or less are excluded. Instruments traded on exchanges that require daily payment of variation margin are also excluded. The only form of netting recognized is netting by novation.

[1] Remaining maturity may be used until year-end 1992.

ATTACHMENT V.—CALCULATION OF CREDIT EQUIVALENT AMOUNTS INTEREST RATE AND FOREIGN EXCHANGE RATE RELATED TRANSACTIONS FOR STATE MEMBER BANKS

Type of Contract (remaining maturity)	Potential Exposure: National principal (dollars)	x	Potential exposure conversion factor	=	Potential exposure (dollars)	+ Current Exposure: Replacement Cost [1]	Current exposure (dollars) [2]	=	Credit equivalent amount (dollars)
(1) 120-day forward foreign exchange	5,000,000		.01		50,000	100,000	100,000		150,000
(2) 120-day forward foreign exchange	6,000,000		.01		60,000	−120,000			60,000
(3) 3-year single-currency fixed/floating interest rate swap	10,000,000		.005		50,000	200,000	200,000		250,000
(4) 3-year single-currency fixed/floating interest rate swap	10,000,000		.005		50,000	−250,000			50,000
(5) 7-year cross-currency floating/floating interest rate swap	20,000,000		.05		1,000,000	−1,300,000			1,000,000
Total	51,000,000								1,510,000

[1] These numbers are purely for illustration.
[2] The larger of zero or a positive mark-to-market value.

ATTACHMENT VI.—SUMMARY

	Transitional arrangements for State member banks: Initial	Transitional arrangements for State member banks: Year-end 1990	Final arrangement—Year-end 1992
1. Minimum standard of total capital to weighted risk assets.	None	7.25%	8.0%
2. Definition of Tier 1 capital	Common equity, qualifying noncum. perpetual preferred stock, minority interests, *plus* supplementary elements [1] *less* goodwill.	Common equity, qualifying noncum. perpetual preferred stock, minority interests, *plus* supplementary elements [2] *less* goodwill.	Common equity, qualifying noncum. perpetual preferred stock, and minority interests *less* goodwill.
3. Minimum standard of Tier 1 capital to weighted risk assets.	None	3.625%	4.0%
4. Minimum standard of stockholders' equity to weighted risk assets.	None	3.25%	4.0%
5. Limitations on supplementary capital elements:			
a. Allowance for loan and lease losses.	No limit within Tier 2	1.5% of weighted risk assets	1.25% of weighted risk assets.
b. Qualifying perpetual preferred stock.	No limit within Tier 2	No limit within Tier 2	No limit within Tier 2.
c. Hybrid capital instruments and equity contract notes.	No limit within Tier 2	No limit within Tier 2	No limit within Tier 2.
d. Subordinated debt and intermediate term preferred stock.	Combined maximum of 50% of Tier 1	Combined maximum of 50% of Tier 1	Combined maximum of 50% of Tier 1.
e. Total qualifying Tier 2 capital	May not exceed Tier 1 capital	May not exceed Tier 1 capital	May not exceed Tier 1 capital.
6. Definition of total capital	Tier 1 *plus* Tier 2 *less*: —reciprocal holdings of banking organizations' capital instruments. —investments in unconsolidated subsidiaries.	Tier 1 *plus* Tier 2 *less*: —reciprocal holdings of banking organizations' capital instruments. —investments in unconsolidated subsidiaries.	Tier 1 *plus* Tier 2 *less*: —reciprocal holdings of banking organizations' capital instruments. —investments in unconsolidated subsidiaries.

[1] Supplementary elements may be included in Tier 1 up to 25% of the sum of Tier 1 plus goodwill.
[2] Supplementary elements may be included in Tier 1 up to 10% of the sum of Tier 1 plus goodwill.

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL

1. The authority citation for Part 225 continues to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1843(c)(8), 1844(b), 3106, 3108, 3907, 3909.

Appendix A to Part 225 [Redesignated as Appendix B to Part 225]

2. The Board amends the Appendices to Part 225 by redesignating the current Appendix A as Appendix B and adding a new Appendix A to read as set forth below.

3. The Board amends the redesignated Appendix B to Part 225 by adding at the end of the title to Appendix B ": Leverage Measure".

Appendix B to Part 225 [Redesignated as Appendix C to Part 225]

4. The Board redesignates the current Appendix B as Appendix C.

Appendix A to Part 225—Capital Adequacy Guidelines for Bank Holding Companies: Risk-Based Measure

I. Overview

The Board of Governors of the Federal Reserve System has adopted a risk-based capital measure to assist in the assessment of the capital adequacy of bank holding companies ("banking organizations"). [1] The principal objectives of this measure are to: (i) Make regulatory capital requirements more sensitive to differences in risk profiles among banking organizations; (ii) factor off-balance sheet exposures into the assessment of capital adequacy; (iii) minimize disincentives to holding liquid, low-risk assets; and (iv) achieve greater consistency in the evaluation of the capital adequacy of major banking organizations throughout the world. [2]

The risk-based capital guidelines include both a definition of capital and a framework for calculating weighted risk assets by assigning assets and off-balance sheet items to broad risk categories. An institution's risk-based capital ratio is calculated by dividing its qualifying capital (the numerator of the ratio) by its weighted risk assets (the denominator). [3] The definition of qualifying capital is outlined below in section II, and the procedures for calculating weighted risk assets are discussed in section III. Attachment I illustrates a sample calculation of weighted risk assets and the risk-based capital ratio.

The risk-based capital guidelines also establish a schedule for achieving a minimum supervisory standard for the ratio of qualifying capital to weighted risk assets and provide for transitional arrangements during a phase-in period to facilitate adoption and implementation of the measure at the end of 1992. These interim standards and transitional arrangements are set forth in section IV.

The risk-based guidelines apply on a consolidated basis to bank holding companies with consolidated assets of $150 million or more. For bank holding companies with less than $150 million in consolidated assets, the guidelines will be applied on a bank-only basis unless: (a) The parent bank holding company is engaged in nonbank activity involving significant leverage; [4] or (b) the parent company has a significant amount of outstanding debt that is held by the general public.

The risk-based guidelines are to be used in the inspection and supervisory process as well as in the analysis of applications acted upon by the Federal Reserve. Thus, in considering an application filed by a bank holding company, the Federal Reserve will take into account the organization's risk-based capital ratio, the reasonableness of its capital plans, and the degree of progress it has demonstrated toward meeting the interim and final risk-based capital standards.

The risk-based capital ratio focuses principally on broad categories of credit risk,

[1] Supervisory ratios that relate capital to total assets for bank holding companies are outlined in Appendix B of this part.

[2] The risk-based capital measure is based upon a framework developed jointly by supervisory authorities from the countries represented on the Basle Committee on Banking Regulations and Supervisory Practices (Basle Supervisors' Committee) and endorsed by the Group of Ten Central Bank Governors. The framework is described in a paper prepared by the BSC entitled "International Convergence of Capital Measurement," July 1988.

[3] Banking organizations will initially be expected to utilize period-end amounts in calculating their risk-based capital ratios. When necessary and appropriate, ratios based on average balances may also be calculated on a case-by-case basis. Moreover, to the extent banking organizations have data on average balances that can be used to calculate risk-based ratios, the Federal Reserve will take such data into account.

[4] A parent company that is engaged in significant off-balance sheet activities would generally be deemed to be engaged in activities that involve significant leverage.

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although the framework for assigning assets and off-balance sheet items to risk categories does incorporate elements of transfer risk, as well as limited instances of interest rate and market risk. The risk-based ratio does not, however, incorporate other factors that can affect an organization's financial condition. These factors include overall interest rate exposure; liquidity, funding and market risks; the quality and level of earnings; investment or loan portfolio concentrations; the quality of loans and investments; the effectiveness of loan and investment policies; and management's ability to monitor and control financial and operating risks.

In addition to evaluating capital ratios, an overall assessment of capital adequacy must take account of these other factors, including, in particular, the level and severity of problem and classified assets. For this reason, the final supervisory judgment on an organization's capital adequacy may differ significantly from conclusions that might be drawn solely from the level of the organization's risk-based capital ratio.

The risk-based capital guidelines establish *minimum* ratios of capital to weighted risk assets. In light of the considerations just discussed, banking organizations generally are expected to operate well above the minimum risk-based ratios. In particular, banking organizations contemplating significant expansion proposals are expected to maintain strong capital levels substantially above the minimum ratios and should not allow significant diminution of financial strength below these strong levels to fund their expansion plans. Institutions with high or inordinate levels of risk are also expected to operate above minimum capital standards. In all cases, institutions should hold capital commensurate with the level and nature of the risks to which they are exposed. Banking organizations that do not meet the minimum risk-based standard, or that are otherwise considered to be inadequately capitalized, are expected to develop and implement plans acceptable to the Federal Reserve for achieving adequate levels of capital within a reasonable period of time.

The Board will monitor the implementation and effect of these guidelines in relation to domestic and international developments in the banking industry. When necessary and appropriate, the Board will consider the need to modify the guidelines in light of any significant changes in the economy, financial markets, banking practices, or other relevant factors.

II. Definition of Qualifying Capital for the Risk Based Capital Ratio

An institution's qualifying total capital consists of two types of capital components: "core capital elements" (comprising Tier 1 capital) and "supplementary capital elements" (comprising Tier 2 capital). These capital elements and the various limits, restrictions, and deductions to which they are subject, are discussed below and are set forth in Attachment II.

To qualify as an element of Tier 1 or Tier 2 capital, a capital instrument may not contain or be covered by any convenants, terms, or restrictions that are inconsistent with safe and sound banking practices.

Redemptions of permanent equity or other capital instruments before stated maturity could have a significant impact on an organization's overall capital structure. Consequently, an organization considering such a step should consult with the Federal Reserve before redeeming any equity or debt capital instrument (prior to maturity) if such redemption could have a material effect on the level or composition of the organization's capital base.[8]

A. The Components of Qualifying Capital

1. *Core capital elements (Tier 1 capital).* The Tier 1 component of an institution's qualifying capital must represent at least 50 percent of qualifying total capital and may consist of the following items that are defined as core capital elements:

(i) Common stockholders' equity.

(ii) Qualifying perpetual preferred stock (including related surplus), subject to certain limitations described below.

(iii) Minority interest in the equity accounts of consolidated subsidiaries.

Tier 1 capital is generally defined as the sum of the core capital elements less goodwill.[9] (See section II(B) below for a more detailed discussion of the treatment of goodwill, including an explanation of certain limited grandfathering arrangements.)

a. *Common stockholders' equity.* Common stockholders' equity includes: common stock; related surplus; and retained earnings, including capital reserves and adjustments for the cumulative effect of foreign currency translation, net of any treasury stock.

b. *Perpetual preferred stock.* Perpetual preferred stock is defined as preferred stock that does not have a maturity date, that cannot be redeemed at the option of the holder of the instrument, and that has no other provisions that will require future redemption of the issue. In general, preferred stock will qualify for inclusion in capital only if it can absorb losses while the issuer operates as a going concern (a fundamental characteristic of equity capital) *and* only if the issuer has the ability and legal right to defer or eliminate preferred dividends.

Perpetual preferred stock in which the dividend is reset periodically based, in whole or in part, upon the banking organization's current credit standing (that is, auction rate perpetual preferred stock, including so-called Dutch auction money market, and remarketable preferred) will not qualify for inclusion in Tier 1 capital.[7] Such instruments, however, qualify for inclusion in Tier 2 capital.

For bank holding companies, both cumulative and noncumulative perpetual preferred stock qualify for inclusion in Tier 1. However, the aggregate amount of such stock (whether cumulative or noncumulative) that may be included in a holding company's Tier 1 is limited to one-third of the sum of core capital elements, excluding the perpetual preferred stock (that is, items (i) and (iii) above). Stated differently, the aggregate amount may not exceed 25 percent of the sum of all core capital elements, including perpetual preferred stock (that is, items (i), (ii) and (iii) above). Any perpetual preferred stock outstanding in excess of this limit may be included in Tier 2 capital without any sublimits within that Tier (see discussion below).

The limits on preferred stock are consistent with the Board's long-standing view that common equity should remain the dominant form of a banking organization's capital structure. In addition to these limits, the Board believes that, in general, banking organizations should avoid overreliance on other nonvoting equity instruments in their Tier 1 capital.

c. *Minority interest in equity accounts of consolidated subsidiaries.* This element is included in Tier 1 because, as a general rule, it represents equity that is freely available to absorb losses in operating subsidiaries. While not subject to an explicit sublimit within Tier 1, banking organizations are expected to avoid using minority interest in the equity accounts of consolidated subsidiaries as an avenue for introducing into their capital structures elements that might not otherwise qualify as Tier 1 capital or that would, in effect, result in an excessive reliance on perferred stock within Tier 1.

2. *Supplementary capital elements (Tier 2 capital).* The Tier 2 component of an institution's qualifying total capital may consist of the following items that are defined as supplementary capital elements:

(i) Allowance for loan and lease losses (subject to limitations discussed below).

(ii) Perpetual preferred stock and related surplus (subject to conditions discussed below).

(iii) Hybrid capital instruments (as defined below), perpetual debt, and mandatory convertible debt securities.

(iv) Term subordinated debt and intermediate-term preferred stock, including related surplus (subject to limitations discussed below).

The maximum amount of Tier 2 capital that may be included in an organization's qualifying total capital is limited to 100 percent of Tier 1 capital (net of goodwill).

The elements of supplementary capital are discussed in greater detail below.[6]

[8] Consultation would not ordinarily be necessary if an instrument were redeemed with the proceeds of, or replaced by, a like amount of a similar or higher quality capital instrument and the organization's capital position is considered fully adequate by the Federal Reserve. In the case of limited-life Tier 2 instruments, consultation would generally be obviated if the new security is of equal or greater maturity than the one it replaces.

[9] During the transition period and subject to certain limitations set forth in Section IV below, Tier 1 capital may also include items defined as supplementary capital elements.

[7] Adjustable rate perpetual preferred stock (that is, perpetual preferred stock in which the dividend rate is not affected by the issuer's credit standing or financial condition but is adjusted periodically according to a formula based solely on general market interest rates) may be included in Tier 1 up to the limits specified for perpetual preferred stock.

[6] The Basle capital framework also provides for the inclusion of "undisclosed reserves" in Tier 2. As defined in the framework, undisclosed reserves represent accumulated after-tax retained earnings that are not disclosed on the balance sheet of a banking organization. Apart from the fact that these reserves are not disclosed publicly, they are essentially of the same quality and character as

(Continued

a. *Allowance for loan and lease losses.* Allowances for loan and lease losses are reserves that have been established through a charge against earnings to absorb future losses on loans or lease financing receivables. Allowances for loan and lease losses exclude "allocated transfer risk reserves," [9] and reserves created against identified losses.

During the transition period, the risk-based capital guidelines provide for reducing the amount of this allowance that may be included in an institution's total capital. Initially, it is unlimited. However, by year-end 1990, the amount of the allowance for loan and lease losses that will qualify as capital will be limited to 1.5 percent of an institution's weighted risk assets. By the end of the transition period, the amount of the allowance qualifying for inclusion in Tier 2 capital may not exceed 1.25 percent of weighted risk assets.[10]

b. *Perpetual preferred stock.* Perpetual preferred stock, as noted above, is defined as preferred stock that has no maturity date, that cannot be redeemed at the option of the holder, and that has no other provisions that will require future redemption of the issue. Such instruments are eligible for inclusion in Tier 2 capital without limit.[11]

c. *Hybrid capital instruments, perpetual debt, and mandatory convertible debt securities.* Hybrid capital instruments include instruments that are essentially permanent in nature and that have certain characteristics of both equity and debt. Such instruments may be included in Tier 2 without limit. The general criteria hybrid capital instruments must meet in order to qualify for inclusion in Tier 2 capital are listed below:

(1) The instrument must be unsecured; fully paid-up and subordinated to general creditors. If issued by a bank, it must also be subordinated to claims or depositors.

(2) The instrument must not be redeemable at the option of the holder prior to maturity, except with the prior approval of the Federal Reserve. (Consistent with the Board's criteria for perpetual debt and mandatory convertible securities, this requirement implies that holders of such instruments may not accelerate the payment of principal except in the event of bankruptcy, insolvency, or reorganization.)

(3) The instrument must be available to participate in losses while the issuer is operating as a going concern. (Term subordinated debt would not meet this requirement.) To satisfy this requirement, the instrument must convert to common or perpetual preferred stock in the event that the accumulated losses exceed the sum of the retained earnings and capital surplus accounts of the issuer.

(4) The instrument must provide the option for the issuer to defer interest payments if: a) the issuer does not report a profit in the preceding annual period (defined as combined profits for the most recent four quarters), *and* b) the issuer eliminates cash dividends on common and preferred stock.

Perpetual debt and mandatory convertible debt securities that meet the criteria set forth in 12 CFR Part 225, Appendix B, also qualify as unlimited elements of Tier 2 capital for bank holding companies.

d. *Subordinated debt and intermediate-term preferred stock.* The aggregate amount of term subordinated debt (excluding mandatory convertible debt) and intermediate-term preferred stock that may be treated as supplementary capital is limited to 50 percent of Tier 1 capital (net of goodwill). Amounts in excess of these limits may be issued and, while not included in the ratio calculation, will be taken into account in the overall assessment of an organization's funding and financial condition.

Subordinated debt and intermediate-term preferred stock must have an original weighted average maturity of at least five years to qualify as supplementary capital.[12] (If the holder has the option to require the issuer to redeem, repay, or repurchase the instrument prior to the original stated maturity, maturity would be defined, for risk-based capital purposes, as the earliest possible date on which the holder can put the instrument back to the issuing banking organization.)

In the case of subordinated debt, the instrument must be unsecured and must clearly state on its face that it is not a deposit and is not insured by a Federal agency. Bank holding company debt must be subordinated in right of payment to all senior indebtedness of the company.

e. *Discount of supplementary capital instruments.* As a limited-life capital instrument approaches maturity it begins to take on characteristics of a short-term obligation. For this reason, the outstanding amount of term subordinated debt and any long- or intermediate-life, or term, preferred stock eligible for inclusion in Tier 2 is reduced, or discounted, as these instruments approach maturity: one-fifth of the original amount, less any redemptions, is excluded each year during the instrument's last five years before maturity.[13]

f. *Revaluation reserves.* Such reserves reflect the formal balance sheet restatement or revaluation for capital purposes of asset carrying values to reflect current market values. In the United States, banking organizations, for the most part, follow GAAP when preparing their financial statements, and GAAP generally does not permit the use of market-value accounting. For this and other reasons, the Federal banking agencies generally have not included unrealized asset values in capital ratio calculations, although they have long taken such values into account as a separate factor in assessing the overall financial strength of a banking organization.

Consistent with long-standing supervisory practice, the excess of market values over book values for assets held by bank holding companies will generally not be recognized in supplementary capital or in the calculation of the risk-based capital ratio. However, all banking organizations are encouraged to disclose their equivalent of premises (building) and equity revaluation reserves. Such values will be taken into account as additional considerations in assessing overall capital strength and financial condition.

B. Deductions from Capital and Other Adjustments

Certain assets are deducted from an organization's capital for the purpose of calculating the risk-based capital ratio.[14] These assets include:

(i) Goodwill—deducted from the sum of core capital elements. (See discussion below of limited grandfathering of bank holding company goodwill during the transition period.)

(ii) Investments in banking and finance subsidiaries that are not consolidated for

retained earnings, and, to be included in capital, such reserves must be accepted by the banking organization's home supervisor. Although such undisclosed reserves are common in some countries, under generally accepted accounting principles (GAAP) and long-standing supervisory practice, these types of reserves are not recognized for banking organizations in the United States. Foreign banking organizations seeking to make acquisitions or conduct business in the United States would generally be expected to disclose publicly at least the degree or reliance on such reserves in meeting supervisory capital requirements.

[9] Allocated transfer risk reserves are reserves that have been established in accordance with Section 905(a) of the International Lending Supervision Act of 1983, 12 U.S.C. 3904(a), against certain assets whose value U.S. supervisory authorities have found to be significantly impaired by protracted transfer risk problems.

[10] The amount of the allowance for loan and lease losses that may be included in Tier 2 capital is based on a percentage of gross weighted risk assets. A banking organization may deduct reserves for loan and lease losses in excess of the amount permitted to be included in Tier 2 capital, as well as allocated transfer risk reserves, from the sum of gross weighted risk assets and use the resulting net sum of weighted risk assets in computing the denominator of the risk-based capital ratio.

[11] Long-term preferred stock with an original maturity of 20 years or more (including related surplus) will also qualify in this category as an element of Tier 2. If the holder of such an instrument has a right to require the issuer to redeem, repay, or repurchase the instrument prior to the original stated maturity, maturity would be defined, for risk-based capital purposes, as the earliest possible date on which the holder can put the instrument back to the issuing banking organization.

[12] Unsecured term debt issued by bank holding companies prior to March 12, 1989, and qualifying as secondary capital at the time of issuance would continue to qualify as an element of supplementary capital under the risk-based framework, subject to the 50 percent of Tier 1 capital limitation. Bank holding company term debt issued on or after March 12, 1989, must be subordinated in order to qualify as capital.

[13] For example, outstanding amounts of these instruments that count as supplementary capital include: 100 percent of the outstanding amounts with remaining maturities of more than five years; 80 percent of outstanding amounts with remaining maturities of four to five years; 60 percent of outstanding amounts with remaining maturities of three to four years; 40 percent of outstanding amounts with remaining maturities of two to three years; 20 percent of outstanding amounts with remaining maturities of one to two years; and 0 percent of outstanding amounts with remaining maturities of less than one year. Such instruments with a remaining maturity of less than one year are excluded from Tier 2 capital.

[14] Any assets deducted from capital in computing the numerator of the ratio are not included in weighted risk assets in computing the denominator of the ratio.

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accounting or supervisory purposes, and investments in other designated subsidiaries or associated companies at the discretion of the Federal Reserve—deducted from total capital components (as described in greater detail below).

(iii) Reciprocal holdings of capital instruments of banking organizations—deducted from total capital components.

1. *Goodwill and other intangible assets*—a. *Goodwill.* Goodwill is an intangible asset that represents the excess of the purchase price over the fair market value of identifiable assets acquired less liabilities assumed in acquisitions accounted for under the purchase method of accounting. Any goodwill carried on the balance sheet of a bank holding company after December 31, 1992, will be deducted from the sum of core capital elements in determining Tier 1 capital for ratio calculation purposes. Any goodwill in existence before March 12, 1988, is "grandfathered" during the transition period and is not deducted from core capital elements until after December 31, 1992. However, bank holding company goodwill acquired as a result of a merger or acquisition that was consummated on or after March 12, 1988, is deducted immediately.[16]

b. *Other intangible assets.* The Federal Reserve is not proposing, as a matter of general policy, to deduct automatically any other intangible assets from the capital of bank holding companies. The Federal Reserve, however, will continue to monitor closely the level and quality of other intangible assets—including purchased mortgage servicing rights, leaseholds, and core deposit value—and take them into account in assessing the capital adequacy and overall asset quality of banking institutions.

Generally, banking organizations should review all intangible assets at least quarterly and, if necessary, make appropriate reductions in their carrying values. In addition, in order to conform with prudent banking practice, an organization should reassess such values during its annual audit. Banking organizations should use appropriate amortization methods and assign prudent amortization periods for intangible assets. Examiners will review the carrying value of these assets, together with supporting documentation, as well as the appropriateness of including particular intangible assets in a banking organization's capital calculation. In making such evaluations, examiners will consider a number of factors, including:

(1) The reliability and predictability of any cash flows associated with the asset and the degree of certainty that can be achieved in periodically determining the asset's useful life and value;

(2) The existence of an active and liquid market for the asset; and

(3) The feasibility of selling the asset apart from the banking organization or from the bulk of its assets.

While all intangible assets will be monitored, intangible assets (other than goodwill) in excess of 25 percent of Tier 1 capital (which is defined net of goodwill) will be subject to particularly close scrutiny, both through the inspection process and by other appropriate means. Whenever necessary—in particular, when assessing applications to expand or to engage in other activities that could entail unusual or higher-than-normal risks—the Board will, on a case-by-case basis, continue to consider the level of an individual organization's tangible capital ratios (after deducting all intangible assets), together with the quality and value of the organization's tangible and intangible assets, in making an overall assessment of capital adequacy.

Consistent with long-standing Board policy, banking organizations experiencing substantial growth, whether internally or by acquisition, are expected to maintain strong capital positions substantially above minimum supervisory levels, without significant reliance on intangible assets.

2. *Investments in certain subsidiaries.*—a. *Unconsolidated banking or finance subsidiaries.* The aggregate amount of investments in banking or finance subsidiaries [17] whose financial statements are not consolidated for accounting or regulatory reporting purposes, regardless of whether the investment is made by the parent bank holding company or its direct or indirect subsidiaries, will be deducted from the consolidated parent banking organization's total capital components.[17] Generally, investments for this purpose are defined as equity and debt capital investments and any other instruments that are deemed to be capital in the particular subsidiary.

Advances (that is, loans, extensions of credit, guarantees, commitments, or any other forms of credit exposure) to the subsidiary that are not deemed to be capital will generally not be deducted from an organization's capital. Rather, such advances generally will be included in the parent banking organization's consolidated assets and be assigned to the 100 percent risk category, unless such obligations are backed by recognized collateral or guarantees, in which case they will be assigned to the risk category appropriate to such collateral or guarantees. These advances may, however, also be deducted from the consolidated parent banking organization's capital if, in the judgment of the Federal Reserve, the risks stemming from such advances are comparable to the risks associated with capital investments or if the advances involve other risk factors that warrant such an adjustment to capital for supervisory purposes. These other factors could include, for example, the absence of collateral support.

Inasmuch as the assets of unconsolidated banking and finance subsidiaries are not fully reflected in a banking organization's consolidated total assets, such assets may be viewed as the equivalent of off-balance sheet exposures since the operations of an unconsolidated subsidiary could expose the parent organization and its affiliates to considerable risk. For this reason, it is generally appropriate to view the capital resources invested in these unconsolidated entities as primarily supporting the risks inherent in these off-balance sheet assets, and not generally available to support risks or absorb losses elsewhere in the organization.

b. *Other subsidiaries and investments.* The deduction of investments, regardless of whether they are made by the parent bank holding company or by its direct or indirect subsidiaries, from a consolidated banking organization's capital will also be applied in the case of any subsidiaries, that, while consolidated for accounting purposes, are not consolidated for certain specified supervisory or regulatory purposes, such as to facilitate functional regulation. For this purpose, aggregate capital investments (that is, the sum of any equity or debt instruments that are deemed to be capital) in these subsidiaries will be deducted from the consolidated parent banking organization's total capital components.[18]

Advances (that is, loans, extensions of credit, guarantees, commitments, or any other forms of credit exposure) to such subsidiaries that are not deemed to be capital will generally not be deducted from capital. Rather, such advances will normally be included in the parent banking organization's consolidated assets and assigned to the 100 percent risk category, unless such obligations are backed by recognized collateral or guarantees, in which case they will be assigned to the risk category appropriate to such collateral or guarantees. These advances may, however, be deducted from the consolidated parent banking organization's capital if, in the judgment of the Federal Reserve, the risks stemming from such advances are comparable to the risks associated with capital investments or if such advances involve other risk factors that

[16] Goodwill acquired by a subsidiary bank in connection with a merger with a troubled or failed depository institution that regulatory authorities have specifically allowed the bank to include in its capital will generally not be deducted from the core capital elements of its parent bank holding company.

[17] For this purpose, a banking and finance subsidiary generally is defined as any company engaged in banking or finance in which the parent institution holds directly or indirectly more than 50 percent of the outstanding voting stock, or which is otherwise controlled or capable of being controlled by the parent institution.

[17] An exception to this deduction would be made in the case of shares acquired in the regular course of securing or collecting a debt previously contracted in good faith. The requirements for consolidation are spelled out in the instructions to the Consolidated Financial Statements for Bank Holding Companies (FR Y-9C Report).

[18] Investments in unconsolidated subsidiaries will be deducted from both Tier 1 and Tier 2 capital. As a general rule, one-half (50 percent) of the aggregate amount of capital investments will be deducted from the bank holding company's Tier 1 capital and one-half (50 percent) from its Tier 2 capital. However, the Federal Reserve may, on a case-by-case basis, deduct a proportionately greater amount from Tier 1 if the risks associated with the subsidiary so warrant. If the amount deductible from Tier 2 capital exceeds actual Tier 2 capital, the excess would be deducted from Tier 1 capital. Bank holding companies' risk-based capital ratios, net of these deductions, must exceed the minimum standards set forth in section IV.

warrant such an adjustment to capital for supervisory purposes. These other factors could include, for example, the absence of collateral support.[19]

In general, when investments in a consolidated subsidiary are deducted from a consolidated parent banking organization's capital, the subsidiary's assets will also be excluded from the consolidated assets of the parent banking organization in order to assess the latter's capital adequacy.[20]

The Federal Reserve may also deduct from a banking organization's capital, on a case-by-case basis, investments in certain other subsidiaries in order to determine if the consolidated banking organization meets minimum supervisory capital requirements without reliance on the resources invested in such subsidiaries.

The Federal Reserve will not automatically deduct investments in other unconsolidated subsidiaries or investments in joint ventures and associated companies.[21] Nonetheless, the resources invested in these entities, like investments in unconsolidated banking and finance subsidiaries, support assets not consolidated with the rest of the banking organization's activities and, therefore, may not be generally available to support additional leverage or absorb losses elsewhere in the banking organization. Moreover, experience has shown that banking organizations stand behind the losses of affiliated institutions, such as joint ventures and associated companies, in order to protect the reputation of the organization as a whole. In some cases, this has led to losses that have exceeded the investments in such organizations.

For this reason, the Federal Reserve will monitor the level and nature of such investments for individual banking organizations and may, on a case-by-case basis, deduct such investments from total capital components, apply an appropriate risk-weighted capital charge against the organization's proportionate share of the assets of its associated companies, require a line-by-line consolidation of the entity (in the event that the parent's control over the entity makes it the functional equivalent of a subsidiary), or otherwise require the organization to operate with a risk-based capital ratio above the minimum.

In considering the appropriateness of such adjustments or actions, the Federal Reserve will generally take into account whether:

(1) The parent banking organization has significant influence over the financial or managerial policies or operations of the subsidiary, joint venture, or associated company;

(2) The banking organization is the largest investor in the affiliated company; or

(3) Other circumstances prevail that appear to closely tie the activities of the affiliated company to the parent banking organization.

3. *Reciprocal holdings of banking organizations' capital instruments.* Reciprocal holdings of banking organizations' capital instruments (that is, instruments that qualify as Tier 1 or Tier 2 capital) will be deducted from an organization's total capital components for the purpose of determining the numerator of the risk-based capital ratio.

Reciprocal holdings are cross-holdings resulting from formal or informal arrangements in which two or more banking organizations swap, exchange, or otherwise agree to hold each other's capital instruments. Generally, deductions will be limited to intentional cross-holdings. At present, the Board does not intend to require banking organizations to deduct non-reciprocal holdings of such capital instruments.[22] [23]

III. Procedures for Computing Weighted Risk Assets and Off-Balance Sheet Items

A. Procedures

Assets and credit equivalent amounts of off-balance sheet items of bank holding companies are assigned to one of several broad risk categories, according to the obligor, or, if relevant, the guarantor or the nature of the collateral. The aggregate dollar value of the amount in each category is then multiplied by the risk weight associated with that category. The resulting weighted values from each of the risk categories are added together, and this sum is the banking organization's total weighted risk assets that comprise the denominator of the risk-based capital ratio. Attachment I provides a sample calculation.

Risk weights for all off-balance sheet items are determined by a two-step process. First, the "credit equivalent amount" of off-balance sheet items is determined, in most cases, by multiplying the off-balance sheet item by a credit conversion factor. Second, the credit equivalent amount is treated like any balance sheet asset and generally is assigned to the appropriate risk category according to the obligor, or, if relevant, the guarantor or the nature of the collateral.

In general, if a particular item qualifies for placement in more than one risk category, it is assigned to the category that has the lowest risk weight. A holding of a U.S. municipal revenue bond that is fully guaranteed by a U.S. bank, for example, would be assigned the 20 percent risk weight appropriate to claims guaranteed by U.S. banks, rather than the 50 percent risk weight appropriate to U.S. municipal revenue bonds.[24]

The terms "claims" and "securities" used in the context of the discussion of risk weights, unless otherwise specified, refer to loans or debt obligations of the entity on whom the claim is held. Assets in the form of stock or equity holdings in commercial or financial firms are assigned to the 100 percent risk category, unless some other treatment is explicitly permitted.

B. Collateral, Guarantees, and Other Considerations

1. *Collateral.* The only forms of collateral that are formally recognized by the risk-based capital framework are: cash on deposit in a subsidiary lending institution; securities issued or guaranteed by the central governments of the OECD-based group of countries,[25] U.S. Government agencies, or U.S. Government-sponsored agencies; and securities issued by multilateral lending institutions or regional development banks. Claims fully secured by such collateral are assigned to the 20 percent risk category.

The extent to which qualifying securities are recognized as collateral is determined by their current market value. If a claim is only partially secured, that is, the market value of the pledged securities is less than the face amount of a balance sheet asset or an off-

[19] In assessing the overall capital adequacy of a banking organization, the Federal Reserve may also consider the organization's fully consolidated capital position.

[20] If the subsidiary's assets are consolidated with the parent banking organization for financial reporting purposes, this adjustment will involve excluding the subsidiary's assets on a line-by-line basis from the consolidated parent organization's assets. The parent banking organization's capital ratio will then be calculated on a consolidated basis with the exception that the assets of the excluded subsidiary will not be consolidated with the remainder of the parent banking organization.

[21] The definition of such entities is contained in the instructions to the Consolidated Financial Statements for Bank Holding Companies. Under regulatory reporting procedures, associated companies and joint ventures generally are defined as companies in which the banking organization owns 20 to 50 percent of the voting stock.

[22] Deductions of holdings of capital securities also would not be made in the case of interstate "stake out" investments that comply with the Board's Policy Statement on Nonvoting Equity Investments, 12 CFR 225.143. In addition, holdings of capital instruments issued by other banking organizations but taken in satisfaction of debts previously contracted would be exempt from any deduction from capital.

[23] The Board intends to monitor non-reciprocal holdings of other banking organizations' capital instruments and to provide information on such holdings to the Basle Supervisors' Committee as called for under the Basle capital framework.

[24] An investment in shares of a fund whose portfolio consists solely of various securities or money market instruments that, if held separately, would be assigned to different risk categories, is generally assigned to the risk category appropriate to the highest risk-weighted security or instrument that the fund is permitted to hold in accordance with its stated investment objectives. However, in no case will indirect holdings through shares in such funds be assigned to the zero percent risk category. For example, if a fund is permitted to hold U.S. Treasuries and commercial paper, shares in that fund would generally be assigned the 100 percent risk weight appropriate to commercial paper, regardless of the actual composition of the fund's investments at any particular time. Shares in a fund that may invest only in U.S. Treasury securities would generally be assigned to the 20 percent risk category. If, in order to maintain a necessary degree of short-term liquidity, a fund is permitted to hold an insignificant amount of its assets in short-term, highly liquid securities of superior credit quality that do not qualify for a preferential risk weight, such securities will generally not be taken into account in determining the risk category into which the banking organization's holding in the overall fund should be assigned. Regardless of the composition of the fund's securities, if the fund engages in any activities that appear speculative in nature (for example, use of futures, forwards, or option contracts for purposes other than to reduce interest rate risk) or has any other characteristics that are inconsistent with the preferential risk weighting assigned to the fund's investments, holdings in the fund will be assigned to the 100 percent risk category. During the examination process, the treatment of shares in such funds that are assigned to a lower risk weight will be subject to examiner review to ensure that they have been assigned an appropriate risk weight.

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balance sheet item, the portion that is covered by the market value of qualifying collateral is assigned to the 20 percent risk category, and the portion of the claim that is not covered by collateral in the form of cash or a qualifying security is assigned to the risk category appropriate to the obligor or, if relevant, the guarantor. For example, to the extent that a claim on a private sector obligor is collateralized by the current market value of U.S. Government securities, it would be placed in the 20 percent risk category and the balance would be assigned to the 100 percent risk category.

2. *Guarantees.* Guarantees of the OECD and non-OECD central governments, U.S. Government agencies, U.S. Government-sponsored agencies, state and local governments of the OECD-based group of countries, multilateral lending institutions and regional development banks, U.S. depository institutions, and foreign banks are also recognized. If a claim is partially guaranteed, that is, coverage of the guarantee is less than the face amount of a balance sheet asset or an off-balance sheet item, the portion that is not fully covered by the guarantee is assigned to the risk category appropriate to the obligor or, if relevant, to any collateral. The face amount of a claim covered by two types of guarantees that have different risk weights, such as a U.S. Government guarantee and a state guarantee, is to be apportioned between the two risk categories appropriate to the guarantors.

The existence of other forms of collateral or guarantees that the risk-based capital framework does not formally recognize may be taken into consideration in evaluating the risks inherent in an organization's loan portfolio—which, in turn, would affect the overall supervisory assessment of the organization's capital adequacy.

3. *Mortgage-backed securities.* Mortgage-backed securities, including pass-throughs and collateralized mortgage obligations (but not stripped mortgage-backed securities), that are *issued or guaranteed* by a U.S. Government agency or U.S. Government-sponsored agency are assigned to the risk weight category appropriate to the issuer or guarantor. Generally, a privately-issued mortgage-backed security meeting certain criteria set forth in the accompanying footnote [35] is treated as essentially an indirect holding of the underlying assets, and is assigned to the same risk category as the underlying assets, but in no case to the zero percent risk category. Privately-issued mortgage-backed securities whose structures do not qualify them to be regarded as indirect holdings of the underlying assets are assigned to the 100 percent risk category. During the inspection process, privately-issued mortgage-backed securities that are assigned to a lower risk weight category will be subject to examiner review to ensure that they meet the appropriate criteria.

While the risk category to which mortgage-backed securities is assigned will generally be based upon the issuer or guarantor or, in the case of privately-issued mortgage-backed securities, the assets underlying the security, any class of a mortgage-backed security that can absorb more than its *pro rata* share of loss without the whole issue being in default (for example, a so-called subordinated class or residual interest), is assigned to the 100 percent risk category. Furthermore, all stripped mortgage-backed securities, including interest-only strips (IOs), principal-only strips (POs), and similar instruments, are also assigned to the 100 percent risk weight category, regardless of the issuer or guarantor.

4. *Maturity.* Maturity is generally not a factor in assigning items to risk categories with the exception of claims on non-OECD banks, commitments, and interest rate and foreign exchange rate contracts. Except for commitments, short-term is defined as one year or less *remaining* maturity and long-term is defined as over one year *remaining* maturity. In the case of commitments, short-term is defined as one year or less *original* maturity and long-term is defined as over one year *original* maturity.[37]

C. Risk Weights

Attachment III contains a listing of the risk categories, a summary of the types of assets assigned to each category and the risk weight associated with each category, that is, 0 percent, 20 percent, 50 percent, and 100 percent. A brief explanation of the components of each category follows.

1. *Category 1: zero percent.* This category includes cash (domestic and foreign) owned and held in all offices of subsidiary depository institutions or in transit and gold bullion held in either a subsidiary depository institution's own vaults or in another's vaults on an allocated basis, to the extent it is offset by gold bullion liabilities.[38] The category also includes all direct claims (including securities, loans, and leases) on, and the portions of claims that are directly and unconditionally guaranteed by, the central governments [39] of the OECD countries and U.S. Government agencies,[40] as well as all direct local currency claims on, and the portions of local currency claims that are directly and unconditionally guaranteed by, the central governments of non-OECD countries, to the extent that subsidiary depository institutions have liabilities booked in that currency. A claim is not considered to be unconditionally guaranteed by a central government if the validity of the guarantee is dependent upon some affirmative action by the holder or a third party. Generally, securities guaranteed by the U.S. Government or its agencies that are actively traded in financial markets, such as GNMA securities, are considered to be unconditionally guaranteed.

2. *Category 2: 20 percent.* This category includes cash items in the process of collection, both foreign and domestic; short-term claims (including demand deposits) on, and the portions of short-term claims that are guaranteed by,[41] U.S. depository

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[35] A privately-issued mortgage-backed security may be treated as an indirect holding of the underlying assets provided that: (1) The underlying assets are held by an independent trustee and the trustee has a first priority, perfected security interest in the underlying assets on behalf of the holders of the security; (2) either the holder of the security has an undivided *pro rata* ownership interest in the underlying mortgage assets or the trust or single purpose entity (or conduit) that issues the security has no liabilities unrelated to the issued securities; (3) the security is structured such that the cash flow from the underlying assets in all cases fully meets the cash flow requirements of the security without undue reliance on any reinvestment income; and (4) there is no material reinvestment risk associated with any funds awaiting distribution to the holders of the security. In addition, if the underlying assets of a mortgage-backed security are composed of more than one type of asset, for example, U.S. Government-sponsored agency securities and privately-issued pass-through securities that qualify for the 50 percent risk weight category, the entire mortgage-backed security is generally assigned to the category appropriate to the highest risk-weighted asset underlying the issue, but in no case to the zero percent risk category. Thus, in this example, the security would receive the 50 percent risk weight appropriate to the privately-issued pass-through securities.

[36] Through year-end 1992, remaining, rather than original, maturity may be used for determining the maturity of commitments.

[37] All other holdings of bullion are assigned to the 100 percent risk category.

[38] A central government is defined to include departments and ministries, including the central bank, of the central government. The U.S. central bank includes the 12 Federal Reserve Banks, and stock held in these banks as a condition of membership is assigned to the zero percent risk category. The definition of central government does not include state, provincial, or local governments; or commercial enterprises owned by the central government. In addition, it does not include local government entities or commercial enterprises whose obligations are guaranteed by the central government, although any claims on such entities guaranteed by central governments are placed in the same general risk category as other claims guaranteed by central governments. OECD central governments are defined as central governments of the OECD-based group of countries; non-OECD central governments are defined as central governments of countries that do not belong to the OECD-based group of countries.

[39] A U.S. Government agency is defined as an instrumentality of the U.S. Government whose obligations are fully and explicitly guaranteed as to the timely payment of principal and interest by the full faith and credit of the U.S. Government. Such agencies include the Government National Mortgage Association (GNMA), the Veterans Administration (VA), the Federal Housing Administration (FHA), the Export-Import Bank (Exim Bank), the Overseas Private Investment Corporation (OPIC), the Commodity Credit Corporation (CCC), and the Small Business Administration (SBA).

[40] Claims guaranteed by U.S. depository institutions and foreign banks include risk participations in both bankers acceptances and standby letters of credit, as well as participations in commitments, that are conveyed to U.S. depository institutions or foreign banks.

institutions [42] and foreign banks [43]; and long-term claims on, and the portions of long-term claims that are guaranteed by, U.S. depository institutions and OECD banks.[44]

This category also includes the portions of claims that are conditionally guaranteed by OECD central governments and U.S. Government agencies, as well as the portions of local currency claims that are conditionally guaranteed by non-OECD central governments, to the extent that subsidiary depository institutions have liabilities booked in that currency. In addition, this category also includes claims on, and the portions of claims that are guaranteed by, U.S. Government-sponsored agencies [45] and claims on, and the portions of claims guaranteed by, the International Bank for Reconstruction and Development (World Bank), the Interamerican Development Bank, the Asian Development Bank, the African Development Bank, the European Investment Bank, and other multilateral lending institutions or regional development banks in which the U.S. Government is a shareholder or contributing member. General obligation claims on, or portions of claims guaranteed by the full faith and credit of, states or other political subdivisions of the U.S. or other countries of the OECD-based group are also assigned to this category.[46]

This category also includes the portions of claims (including repurchase agreements) collateralized by cash on deposit in the subsidiary lending institution; by securities issued or guaranteed by OECD central governments, U.S. Government agencies or U.S. Government-sponsored agencies; or by securities issued by multilateral lending institutions or regional development banks in which the U.S. Government is a shareholder or contributing member.

3. *Category 3: 50 percent.* This category includes loans fully secured by first liens [47] on 1–4 family residential properties,[48] either owner-occupied or rented, provided that such loans have been made in accordance with prudent underwriting standards, including a conservative loan-to-value ratio; [49] are performing in accordance with their original terms; and are not 90 days or more past due or carried in nonaccrual status.[50] Also included in this category are privately-issued mortgage-backed securities provided that: (1) The structure of the security meets the criteria described in section III(B)(3) above; (2) if the security is backed by a pool of conventional mortgages, *each* underlying mortgage meets the criteria described above in this section for eligibility for the 50 percent risk weight category at the time the pool is originated; and (3) if the security is backed by privately-issued mortgage-backed securities, *each* underlying security qualifies for the 50 percent risk category. Privately-issued mortgage-backed securities that do not meet these criteria or that do not qualify for a lower risk weight are generally assigned to the 100 percent risk weight category.

Also assigned to this category are *revenue* (non-general obligation) bonds or similar obligations, including loans and leases, that are obligations of states or other political subdivisions of the U.S. (for example, municipal revenue bonds) or other countries of the OECD-based group, but for which the government entity is committed to repay the debt with revenues from the specific projects financed, rather than from general tax funds.

Credit equivalent amounts of interest rate and foreign exchange rate contracts involving standard risk obligors (that is, obligors whose loans or debt securities would be assigned to the 100 percent risk category) are included in the 50 percent category, unless they are backed by collateral or guarantees that allow them to be placed in a lower risk category.

4. *Category 4: 100 percent.* All assets not included in the categories above are assigned to this category, which comprises standard risk assets. The bulk of the assets typically found in a loan portfolio would be assigned to the 100 percent category.

This category includes long-term claims on, and the portions of long-term claims that are guaranteed by, non-OECD banks, and all claims on non-OECD central governments that entail some degree of transfer risk.[51] This category also includes all claims on foreign and domestic private sector obligors not included in the categories above (including loans to nondepository financial institutions and bank holding companies); claims on commercial firms owned by the public sector; customer liabilities to the bank on acceptances outstanding involving standard risk claims; [52] investments in fixed assets, premises, and other real estate owned; common and preferred stock of corporations, including stock acquired for debts previously contracted; commercial and consumer loans (except those assigned to lower risk categories due to recognized guarantees or collateral and loans for residential property that qualify for a lower risk weight); mortage-backed securities that do not meet criteria for assignment to a lower risk weight (including any classes of mortgage-backed securities that can absorb more than their *pro rata* share of loss without the whole issue being in default); and all stripped mortgage-backed and similar securities.

Also included in this category are industrial development bonds and similar obligations issued under the auspices of states or political subdivisions of the OECD-based group of countries for the benefit of a

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[42] U.S. depository institutions are defined to include branches (foreign and domestic) of federally-insured banks and depository institutions chartered and headquartered in the 50 states of the United States, the District of Columbia, Puerto Rico, and U.S. territories and possessions. The definition encompasses banks, mutual or stock savings banks, savings or building and loan associations, cooperative banks, credit unions, and international banking facilities or domestic banks. U.S.-chartered depository institutions owned by foreigners are also included in the definition. However, branches and agencies of foreign banks located in the U.S., as well as all bank holding companies, are excluded.

[43] Foreign banks are distinguished as either OECD banks or non-OECD banks. OECD banks include banks and their branches (foreign and domestic) organized under the laws of countries (other than the U.S.) that belong to the OECD-based group of countries. Non-OECD banks include banks and their branches (foreign and domestic) organized under the laws of countries that do not belong to the OECD-based group of countries. For this purpose, a bank is defined as an institution that engages in the business of banking; is recognized as a bank by the bank supervisory or monetary authorities of the country of its organization or principal banking operations; receives deposits to a substantial extent in the regular course of business; and has the power to accept demand deposits. Claims on, and the portions of claims that are guaranteed by, a non-OECD central bank are treated as claims on, or guaranteed by, a non-OECD bank, except for local currency claims that are guaranteed by, a non-OECD central bank that are funded in local currency liabilities. The latter claims are assigned to the zero percent risk category.

[44] Long-term claims on, or guaranteed by, non-OECD banks and all claims on bank holding companies are assigned to the 100 percent risk category, as are holdings of bank-issued securities that qualify as capital of the issuing banks.

[45] For this purpose, U.S. Government-sponsored agencies are defined as agencies originally established or chartered by the Federal government to serve public purposes specified by the U.S. Congress but whose obligations are *not explicitly* guaranteed by the full faith and credit of the U.S. Government. These agencies include the Federal Home Loan Mortgage Corporation (FHLMC), the Federal National Mortgage Association (FNMA), the Farm Credit System, the Federal Home Loan Bank System, and the Student Loan Marketing Association (SLAM). Claims on U.S. Government-sponsored agencies include capital stock in a Federal Home Loan Bank that is held as a condition of membership in that Bank.

[46] Claims on, or guaranteed by, states or other political subdivisions of countries that do not belong to the OECD-based group of countries are placed in the 100 percent risk category.

[47] If a banking organization holds the first and junior lien(s) on a residential property and no other party holds an intervening lien, the transaction is treated as a single loan secured by a first lien for the purpose of determining the loan-to-value ratio.

[48] The types of properties that qualify as 1–4 family residences are listed in the instructions to the FR Y–9C Report.

[49] The loan-to-value ratio is based upon the most current appraised value of the property. All the appraisals must be made in a manner consistent with the Federal banking agencies' real estate appraisal guidelines and with the banking organization's own appraisal guidelines.

[50] Residential property loans that do not meet all the specified criteria or that are made for the purpose of speculative property development are placed in the 100 percent risk category.

[51] Such assets include all non-local currency claims on, and the portions of claims that are guaranteed by, non-OECD central governments and those portions of local currency claims on, or guaranteed by, non-OECD central governments that exceed the local currency liabilities held by subsidiary depository institutions.

[52] Customer liabilities on acceptances outstanding involving non-standard risk claims, such as claims on U.S. depository institutions, are assigned to the risk category appropriate to the identity of the obligor or, if relevant, the nature of the collateral or guarantees backing the claims. Portions of acceptances conveyed as risk participations to U.S. depository institutions or foreign banks are assigned to the 20 percent risk category appropriate to short-term claims guaranteed by U.S. depository institutions and foreign banks.

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private party or enterprise where that party or enterprise, not the government entity, is obligated to pay the principal and interest, and all obligations of states or political subdivisions of countries that do not belong to the OECD-based group.

The following assets also are assigned a risk weight of 100 percent if they have not been deducted from capital: investments in unconsolidated companies, joint ventures or associated companies; instruments that qualify as capital issued by other banking organizations; and any intangibles, including grandfathered goodwill.

D. Off-Balance Sheet Items

The face amount of an off-balance sheet item is incorporated into the risk-based capital ratio by multiplying it by a credit conversion factor. The resultant credit equivalent amount is assigned to the appropriate risk category according to the obligor, or, if relevant, the guarantor or the nature of the collateral.[43] Attachment IV sets forth the conversion factors for various types of off-balance sheet items.

1. *Items with a 100 percent conversion factor.* A 100 percent conversion factor applies to direct credit substitutes, which include guarantees, or equivalent instruments, backing financial claims, such as outstanding securities, loans, and other financial liabilities, or that back off-balance sheet items that require capital under the risk-based capital framework. Direct credit substitutes include, for example, financial standby letters of credit, or other equivalent irrevocable undertakings or surety arrangements, that guarantee repayment of financial obligations such as: commercial paper, tax-exempt securities, commercial or individual loans or debt obligations, or standby or commercial letters of credit. Direct credit substitutes also include the acquisition of risk participations in bankers acceptances and standby letters of credit, since both of these transactions, in effect, constitute a guarantee by the acquiring banking organization that the underlying account party (obligor) will repay its obligation to the originating, or issuing, institution.[44] (Standby letters of credit that are performance-related are discussed below and have a credit conversion factor of 50 percent.)

The full amount of a direct credit substitute is converted at 100 percent and the resulting credit equivalent amount is assigned to the risk category appropriate to the obligor or, if relevant, the guarantor or the nature of the collateral. In the case of a direct credit substitute in which a risk participation[45] has been conveyed, the full amount is still converted at 100 percent. However, the credit equivalent amount that has been conveyed is assigned to whichever risk category is lower: the risk category appropriate to the obligor, after giving effect to any relevant guarantees or collateral, or the risk category appropriate to the institution acquiring the participation. Any remainder is assigned to the risk category appropriate to the obligor, guarantor, or collateral. For example, the portion of a direct credit substitute conveyed as a risk participation to a U.S. domestic depository institution or foreign bank is assigned to the risk category appropriate to claims guaranteed by those institutions, that is, the 20 percent risk category.[46] This approach recognizes that such conveyances replace the originating banking organization's exposure to the obligor with an exposure to the institutions acquiring the risk participations.[47]

In the case of direct credit substitutes that take the form of a syndication, that is, where each banking organization if obligated only for its *pro rata* share of the risk and there is no recourse to the originating banking organization, each banking organization will only include its *pro rata* share of the direct credit substitute in its risk-based capital calculation.

Financial standby letters of credit are distinguished from loan commitments (discussed below) in that standbys are irrevocable obligations of the banking organization to pay a third-party beneficiary when a customer (account party) *fails to repay* an outstanding loan or debt instrument (direct credit substitute). Performance standby letters of credit (performance bonds) are irrevocable obligations of the banking organization to pay a third-party beneficiary when a customer (account party) *fails to perform* some other contractual non-financial obligation.

The distinguishing characteristic of a standby letter of credit for risk-based capital purposes is the combination of irrevocability with the fact that funding is triggered by some failure to repay or perform an obligation. Thus, any commitment (by whatever name) that involves an *irrevocable* obligation to make a payment to the customer or to a third party in the event the customer *fails to repay* an outstanding debt obligation or *fails to perform* a contractual obligation is treated, for risk-based capital purposes, as respectively, a financial guarantee standby letter of credit or a performance standby.

A loan commitment, on the other hand, involves an obligation (with or without a material adverse change or similar clause) of the banking organization to fund its customer *in the normal course* of business should the customer seek to draw down the commitment.

Sale and repurchase agreements and asset sales with recourse (to the extent not included on the balance sheet) and forward agreements also are converted at 100 percent.[48] So-called "loan strips" (that is, short-term advances sold under long-term commitments without direct recourse) are treated for risk-based capital purposes as assets sold with recourse and, accordingly, are also converted at 100 percent.

Forward agreements are legally binding contractual obligations to purchase assets with *certain* drawdown at a specified future date. Such obligations include forward purchases, forward forward deposits placed,[49] and partly-paid shares and securities; they do not include commitments to make residential mortage loans or forward foreign exchange contracts.

Securities lent by a banking organization are treated in one of two ways, depending upon whether the lender is at risk of loss. If a banking organization, as agent for a customer, lends the customer's securities and does not indemnify the customer against loss, then the transaction is excluded from the risk-based capital calculation. If, alternatively, a banking organization lends its own securities or, acting as agent for a customer, lends the customer's securities and indemnifies the customer against loss, the transaction is converted at 100 percent and assigned to the risk weight category appropriate to the obligor, to any collateral delivered to the lending banking organization, or, if applicable, to the independent custodian acting on the lender's behalf.

2. *Items with a 50 percent conversion factor.* Transaction-related contingencies are converted at 50 percent. Such contingencies include bid bonds, performance bonds, warranties, standby letters of credit related to particular transactions, and performance standby letters of credit, as well as acquisitions of risk participation in performance standby letters of credit. Peformance standby letters of credit represent obligations backing the performance of nonfinancial or commercial contracts or undertakings. To the extent permitted by law or regulation, performance standby letters of credit include arrangements backing, among other things, subcontractors' and suppliers' performance,

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[43] The sufficiency of collateral and guarantees for off-balance sheet items is determined by the market value of the collateral or the amount of the guarantee in relation to the face amount of the item, except for interest and foreign exchange rate contracts, for which this determination is made in relation to the credit equivalent amount. Collateral and guarantees are subject to the same provisions noted under section II(B).

[44] Credit equivalent amounts of acquisitions of risk participations are assigned to the risk category appropriate to the account party obligor, or, if relevant, the nature of the collateral or guarantees.

[45] That is, a participation in which the originating banking organization remains liable to the beneficiary for the full amount of the direct credit substitute if the party that has acquired the participation fails to pay when the instrument is drawn.

[46] Risk participations with a remaining maturity of over one year that are conveyed to non-OECD banks are to be assigned to the 100 percent risk category, unless a lower risk category is appropriate to the obligor, guarantor, or collateral.

[47] A risk participation in bankers acceptances conveyed to other institutions is also assigned to the risk category appropriate to the institution acquiring the participation or, if relevant, the guarantor or nature of the collateral.

[48] In regulatory reports and under GAAP, bank holding companies are permitted to treat some asset sales with recourse as "true" sales. For risk-based capital purposes, however, such assets sold with recourse and reported as "true" sales by bank holding companies are converted at 100 percent and assigned to the risk category appropriate to the underlying obligor, or, if relevant the guarantor or nature of the collateral, provided that the transactions meet the definition of assets sold with recourse, including the sale of 1–4 family residential mortgages, that is contained in the instructions to the commercial bank Consolidated Reports of Condition and Income (Call Report).

[49] Forward forward deposits accepted are treated as interest rate contracts.

labor and materials contracts, and construction bids.

The unused portion of commitments with an *original* maturity exceeding one year,[50] including underwriting commitments, and commercial and consumer credit commitments also are converted at 50 percent. Original maturity is defined as the length of time between the date the commitment is issued and the earliest date on which: (1) The banking organization can, at its option, unconditionally (without cause) cancel the commitment; [51] and (2) the banking organization is scheduled to (and as a normal practice actually does) review the facility to determine whether or not it should be extended. Such reviews must continue to be conducted at least annually for such a facility to qualify as a short-term commitment.

Commitments are defined as any legally binding arrangements that obligate a banking organization to extend credit in the form of loans or leases; to purchase loans, securities, or other assets; or to participate in loans and leases. They also include overdraft facilities, revolving credit, home equity and mortgage lines of credit, and similar transactions. Normally, commitments involve a written contract or agreement and a commitment fee, or some other form of consideration. Commitments are included in weighted risk assets regardless of whether they contain "material adverse change" clauses or other provisions that are intended to relieve the issuer of its funding obligation under certain conditions. In the case of commitments structured as syndications, where the banking organization is obligated solely for its *pro rata* share, only the banking organization's proportional share of the syndicated commitment is taken into account in calculating the risk-based capital ratio.

Facilities that are unconditionally cancellable (without cause) at any time by the banking organization are not deemed to be commitments, provided the banking organization makes a separate credit decision before each drawing under the facility. Commitments with an original maturity of one year or less are deemed to involve low risk and, therefore, are not assessed a capital charge. Such short-term commitments are defined to include the unused portion of lines of credit on retail credit cards and related plans (as defined in the instructions to the FR Y-9C Report) if the banking organization has the unconditional right to cancel the line of credit at any time, in accordance with applicable law.

Once a commitment has been converted at 50 percent, any portion that has been conveyed to U.S. depository institutions or OECD banks as participations in which the originating banking organization retains the full obligation to the borrower if the participating bank fails to pay when the instrument is drawn, is assigned to the 20 percent risk category. This treatment is analogous to that accorded to conveyances of risk participations in standby letters of credit. The acquisition of a participation in a commitment by a banking organization is converted at 50 percent and assigned to the risk category appropriate to the account party obligor or, if relevant, the nature of the collateral or guarantees.

Revolving underwriting facilities (RUFs), note issuance facilities (NIFs), and other similar arrangements also are converted at 50 percent regardless of maturity. These are facilities under which a borrower can issue on a revolving basis short-term paper in its own name, but for which the underwriting organizations have a legally binding commitment either to purchase any notes the borrower is unable to sell by the roll-over date or to advance funds to the borrower.

3. *Items with a 20 percent conversion factor.* Short-term, self-liquidating trade-related contingencies which arise from the movement of goods are converted at 20 percent. Such contingencies generally include commercial letters of credit and other documentary letters of credit collateralized by the underlying shipments.

4. *Items with a zero percent conversion factor.* These include unused portions of commitments with an original maturity of one year or less,[52] or which are unconditionally cancellable at any time, provided a separate credit decision is made before each drawing under the facility. Unused portions of lines of credit on retail credit cards and related plans are deemed to be short-term commitments if the banking organization has the unconditional right to cancel the line of credit at any time, in accordance with applicable law.

E. Interest Rate and Foreign Exchange Rate Contracts

1. *Scope.* Credit equivalent amounts are computed for each of the following off-balance sheet interest rate and foreign exchange rate instruments:

I. Interest Rate Contracts
- A. Single currency interest rate swaps.
- B. Basis swaps.
- C. Forward rate agreements.
- D. Interest rate options purchased (including caps, collars, and floors purchased).
- E. Any other instrument that gives rise to similar credit risks (including when-issued securities and forward forward deposits accepted).

II. Exchange Rate Contracts
- A. Cross-currency interest rate swaps.
- B. Forward foreign exchange contracts.
- C. Currency options purchased.
- D. Any other instrument that gives rise to similar credit risks.

Exchange rate contracts with an original maturity of fourteen calendar days or less and instruments traded on exchanges that require daily payment of variation margin are excluded from the risk-based ratio calculation. Over-the-counter options purchased, however, are included and treated in the same way as the other interest rate and exchange rate contracts.

2. *Calculation of credit equivalent amounts.* Credit equivalent amounts are calculated for each individual contract of the types listed above. To calculate the credit equivalent amount of its off-balance sheet interest rate and exchange rate instruments, a banking organization sums these amounts:

(1) The mark-to-market value [53] (positive values only) of each contract (that is, the current exposure); and

(2) An estimate of the potential future credit exposure over the remaining life of each contract.

The potential future credit exposure on a contract, including contracts with negative mark-to-market values, is estimated by multiplying the notional principal amount by one of the following credit conversion factors, as appropriate:

Remaining maturity	Interest rate contracts (percent)	Exchange rate contracts (percent)
One year or less	0	1.0
Over one year	0.5	5.0

Examples of the calculation of credit equivalent amounts for these instruments are contained in Attachment V.

Because exchange rate contracts involve an exchange of principal upon maturity, and exchange rates are generally more volatile than interest rates, higher conversion factors have been established for foreign exchange contracts than for interest rate contracts.

No potential future credit exposure is calculated for single currency interest rate swaps in which payments are made based upon two floating rate indices, so-called floating/floating or basis swaps; the credit exposure on these contracts is evaluated solely on the basis of their mark-to-market values.

3. *Risk weights.* Once the credit equivalent amount for interest rate and exchange rate instruments has been determined, that amount is assigned to the risk weight category appropriate to the counterparty, or, if relevant, the nature of any collateral or guarantees.[54] However, the maximum weight

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[50] Through year-end 1992, remaining maturity may be used for determining the maturity of off-balance sheet loan commitments; thereafter, original maturity must be used.

[51] In the case of consumer home equity or mortgage lines of credit secured by liens on 1–4 family residential properties, the bank is deemed able to unconditionally cancel the commitment for the purpose of this criterion if, at its option, it can prohibit additional extensions of credit, reduce the credit line, and terminate the commitment to the full extent permitted by relevant Federal law.

[52] Through year-end 1992, remaining maturity may be used for determining term to maturity for off-balance sheet loan commitments; thereafter, original maturity must be used.

[53] Mark-to-market values are measured in dollars, regardless of the currency or currencies specified in the contract, and should reflect changes in both interest rates and counterparty credit quality.

[54] For interest and exchange rate contracts, sufficiency of collateral or guarantees is determined by the market value of the collateral or the amount of the guarantee in relation to the credit equivalent amount. Collateral and guarantees are subject to the same provisions noted under section II (B).

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that will be applied to the credit equivalent amount of such instruments is 50 percent.

4. *Avoidance of double counting.* In certain cases, credit exposures arising from the interest rate and exchange instruments covered by these guidelines may already be reflected, in part, on the balance sheet. To avoid double counting such exposures in the assessment of capital adequacy and, perhaps, assigning inappropriate risk weights, counterparty credit exposures arising form the types of instruments covered by these guidelines may need to be excluded from balance sheet assets in calculating banking organizations' risk-based capital ratios.

5. *Netting.* Netting of swaps and similar contracts is recognized for purposes of calculating the risk-based capital ratio *only* when accomplished through netting by novation.[46] While the Federal Reserve encourages any reasonable arrangements designed to reduce the risks inherent in these transactions, other types of netting arrangements are not recognized for purposes of calculating the risk-based ratio at this time.

IV. Minimum Supervisory Ratios and Standards

The interim and final supervisory standards set forth below specify *minimum* supervisory ratios based primarily on broad credit risk considerations. As noted above, the risk-based ratio does not take explicit account of the quality of individual asset portfolios or the range of other types of risks to which banking organizations may be exposed, such as interest rate, liquidity, market or operational risks. For this reason, banking organizations are generally expected to operate with capital positions well above the minimum ratios. This is particularly true for institutions that are undertaking significant expansion or that are exposed to high or unusual levels of risk.

Upon adoption of the risk-based framework, any organization that does not meet the interim or final supervisory ratios, or whose capital is otherwise considered inadequate, is expected to develop and implement a plan acceptable to the Federal Reserve for achieving an adequate level of capital consistent with the provisions of these guidelines or with the special circumstances affecting the individual organization. In addition, such organizations should avoid any actions, including increased risk-taking or unwarranted expansion, that would lower or further erode their capital positions.

A. Minimum Risk-Based Ratio After Transition Period

As reflected in Attachment VI, by year-end 1992, all bank holding companies [48] should meet a minimum ratio of qualifying total capital to weighted risk assets of 8 percent, of which at least 4.0 percentage points should be in the form of Tier 1 capital. (Section II above contains detailed definitions of capital and related terms used in this section.) The maximum amount of supplementary capital elements that qualifies as Tier 2 capital is limited to 100 percent of Tier 1 capital net of goodwill. In addition, the combined maximum amount of subordinated debt and intermediate-term preferred stock that qualifies as Tier 2 capital is limited to 50 percent of Tier 1 capital net of goodwill. The maximum amount of the allowance for loan and lease losses that qualifies as Tier 2 capital is limited to 1.25 percent of gross weighted risk assets. Allowances for loan and lease losses in excess of this limit may, of course, be maintained, but would not be included in an organization's total capital. The Federal Reserve will continue to require bank holding companies to maintain reserves at levels fully sufficient to cover losses inherent in their loan portfolios.

Qualifying total capital is calculated by adding Tier 1 capital and Tier 2 capital (limited to 100 percent of Tier 1 capital) and then deducting from this sum certain investments in banking or finance subsidiaries that are not consolidated for accounting or supervisory purposes, reciprocal holdings of banking organizations' capital securities, or other items at the direction of the Federal Reserve. The conditions under which these deductions are to be made and the procedures for making the deductions are discussed above in section II(B).

B. Transition Arrangements

The transition period for implementing the risk-based capital standard ends on December 31, 1992.[47] Initially, the risk-based capital guidelines do not establish a minimum level of capital. However, by year-end 1990, banking organizations are expected to meet a minimum interim target ratio for qualifying total capital to weighted risk assets of 7.25 percent, at least one-half of which should be in the form of Tier 1 capital. For purposes of meeting the 1990 interim target, the amount of loan loss reserves that may be included in capital is limited to 1.5 percent of weighted risk assets and up to 10 percent of an organization's Tier 1 capital may consist of supplementary capital elements. Thus, the 7.25 percent interim target ratio implies a minimum ratio of Tier 1 capital to weighted risk assets of 3.6 percent (one-half of 7.25) and a minimum ratio of core capital elements to weighted risk assets ratio of 3.25 percent (nine-tenths of the Tier 1 capital ratio).

ATTACHMENT I.—SAMPLE CALCULATION OF RISK-BASED CAPITAL RATIO FOR BANK HOLDING COMPANIES

Example of a banking organization with $8,000 in total capital and the following assets and off-balance sheet items:

Balance Sheet Assets:	
Cash	$5,000
U.S. Treasuries	20,000
Balances at domestic banks	5,000
Loans secured by first liens on 1–4 family residential properties	5,000
Loans to private corporations	65,000
Total Balance Sheet Assets	$100,000
Off-Balance Sheet Items:	
Standby letters of credit ("SLCs") backing general obligation debt issues of U.S. municipalities ("GOs")	$10,000

[46] Netting by novation, for this purpose, is a written bilateral contract between two counterparties under which any obligation to each other to deliver a given currency on a given date is automatically amalgamated with all other obligations for the same currency and value date, *legally* substituting one single net amount for the previous gross obligations.

[48] As noted in Section I above, bank holding companies with less than $150 million in consolidated assets would generally be exempt from the calculation and analysis of risk-based ratios on a consolidated holding company basis, subject to certain terms and conditions.

[47] The Basle capital framework does not establish an initial minimum standard for the risk-based capital ratio before the end of 1990. However, for the purpose of calculating a risk-based capital ratio prior to year-end 1990, no sublimit is placed on the amount of the allowance for loan and lease losses includable in Tier 2. In addition, this framework permits, under temporary transition arrangements, a certain percentage of an organization's Tier 1 capital to be made up of supplementary capital elements. In particular, supplementary elements may constitute 25 percent of an organization's Tier 1 capital (before the deduction of goodwill) up to the end of 1990; from year-end 1990 up to the end of 1992, this allowable percentage of supplementary elements in Tier 1 declines to 10 percent of Tier 1 (before the deduction of goodwill). Beginning on December 31, 1992, supplementary elements may not be included in Tier 1. The amount of subordinated debt and intermediate-term preferred stock temporarily included in Tier 1 under these arrangements will not be subject to the sublimit on the amount of such instruments includable in Tier 2 capital. While the transitional arrangements allow an organization to include supplementary elements in Tier 1 on a temporary basis, the amount of perpetual preferred stock that may be included in a bank holding company's Tier 1—both during and after the transition period—is, as described in section II(A), based solely upon a specified percentage of the organization's permanent core capital elements (that is, common equity, perpetual preferred stock, and minority interest in the equity of consolidated subsidiaries), not upon total Tier 1 elements that temporarily include Tier 2 items. Once the amount of supplementary items that may temporarily qualify as Tier 1 elements is determined, goodwill must be deducted from the sum of this amount and the amount of the organization's permanent core capital elements for the purpose of calculating Tier 1 (net of goodwill), Tier 2, and total capital.

ATTACHMENT I.—SAMPLE CALCULATION OF RISK-BASED CAPITAL RATIO FOR BANK HOLDING COMPANIES—Continued

Long-term legally binding commitments to private corporations	20,000
Total Off/Balance Sheet Items	$30,000

This bank holding company's total capital to *total* assets (leverage) ratio would be: ($6,000/$100,000)=6.00%.
To compute the bank holding company's weighted risk assets:
1. Compute the credit equivalent amount of each off-balance sheet ("OBS") item.

OBS item	Face value		Conversion factor		Credit equivalent amount
SLCS backing municipal GOs	$10,000	×	1.00	=	$10,000
Long-term commitments to private corporations	$20,000	×	0.50	=	$10,000
2. Multiply each balance sheet asset and the credit equivalent amount of each OBS item by the appropriate risk weight.					
0% Category:					
Cash	5,000				
U.S. Treasuries	20,000				
	25,000	×	0	=	0
20% Category:					
Balances at domestic banks	5,000				
Credit equivalent amounts of SLCs backing GOs of U.S. municipalities	10,000				
	15,000	×	.20	=	$3,000
50% Category:					
Loans secured by first liens on 1–4 family residential properties	5,000	×	.50	=	$2,500
100% Category:					
Loans to private corporations	65,000				
Credit equivalent amounts of long-term commitments to private corporations	10,000				
	$75,000	×	1.00	=	75,000
Total Risk-weighted Assets					80,500

This bank holding company's ratio of total capital to weighted risk assets (risk-based capital ratio) would be: ($6,000/$80,500)=7.45%

ATTACHMENT II.—SUMMARY DEFINITION OF QUALIFYING CAPITAL FOR BANK HOLDING COMPANIES* (USING THE YEAR-END 1992 STANDARDS)

Components	Minimum requirements after transition period
Core Capital (Tier 1)	Must equal or exceed 4% of weighted risk assets.
Common stockholders' equity	No limit.
Qualifying cumulative and noncumulative perpetual preferred stock.	Limited to 25% of the sum of common stock, minority interests, and qualifying perpetual preferred stock.
Minority interest in equity accounts of consolidated subsidiaries.	Organizations should avoid using minority interests to introduce elements not otherwise qualifying for Tier 1 capital.
Less: Goodwill [1]	
Supplementary Capital (Tier 2)	Total of Tier 2 is limited to 100% of Tier 1.[2]
Allowance for loan and lease losses	Limited to 1.25% of weighted risk assets.[3]
Perpetual preferred stock	No limit within Tier 2.
Hybrid capital instruments, perpetual debt, and mandatory convertible securities.	No limit within Tier 2.
Subordinated debt and intermediate-term preferred stock (original weighted average maturity of 5 years or more)	Subordinated debt and intermediate-term preferred stock are limited to 50% of Tier 1;[2] amortized for capital purposes as they approach maturity.
Revaluation reserves (equity and building)	Not included; organizations encouraged to disclose; may be evaluated on a case-by-case basis for international comparisons; and taken into account in making an overall assessment of capital.
Deductions (from sum of Tier 1 and Tier 2):	
Investments in unconsolidated subsidiaries	As a general rule, one-half of the aggregate investments will be deducted from Tier 1 capital and one-half from Tier 2 capital.[4]
Reciprocal holdings of banking organizations' capital securities	
Other deductions (such as other subsidiaries or joint ventures) as determined by supervisory authority	On a case-by-case basis or as a matter of policy after formal rulemaking.
Total Capital (Tier 1+Tier 2-Deductions)	Must equal or exceed 8% of weighted risk assets.

* See discussion in section II of the guidelines for a complete description of the requirements for, and the limitations on, the components of qualifying capital.
[1] Goodwill on books of bank holding companies before March 12, 1988, would be "grandfathered" for the transition period.
[2] Amounts in excess of limitations are permitted but do not qualify as capital.
[3] Amounts in excess of limitations are permitted but do not qualify as capital.
[4] A proportionately greater amount may be deducted from Tier 1 capital if the risks associated with the subsidiary so warrant.

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Attachment III—Summary of Risk Weights and Risk Categories for Bank Holding Companies

Category 1: Zero Percent

1. Cash (domestic and foreign) held in subsidiary depository institutions or in transit.
2. Balances due from Federal Reserve Banks (including Federal Reserve Bank stock) and central banks in other OECD countries.
3. Direct claims on, and the portions of claims that are unconditionally guaranteed by, the U.S. Treasury and U.S. Government agencies [1] and the central governments of other OECD countries, and local currency claims on, and the portions of local currency claims that are unconditionally guaranteed by, the central governments of non-OECD countries (including the central banks of non-OECD countries), to the extent that subsidiary depository institutions have liabilities booked in that currency.
4. Gold bullion held in the vaults of a subsidiary depository institution or in another's vaults on an allocated basis, to the extent offset by gold bullion liabilities.

Category 2: 20 Percent

1. Cash items in the process of collection.
2. All claims (long- or short-term) on, and the portions of claims (long- or short-term) that are guaranteed by, U.S. depository institutions and OECD banks.
3. Short-term claims (remaining maturity of one year or less) on, and the portions of short-term claims that are guaranteed by, non-OECD banks.
4. The portions of claims that are conditionally guaranteed by the central governments of OECD countries and U.S. Government agencies, and the portions of local currency claims that are conditionally guaranteed by the central governments of non-OECD countries, to the extent that subsidiary depository institutions have liabilities booked in that currency.
5. Claims on, and the portions of claims that are guaranteed by, U.S. Government-sponsored agencies.[2]
6. General obligation claims on, and the portions of claims that are guaranteed by the full faith and credit of, local governments and political subdivisions of the U.S. and other OECD local governments.
7. Claims on, and the portions of claims that are guaranteed by, official multilateral lending institutions or regional development banks.
8. The portions of claims that are collateralized [3] by securities issued or guaranteed by the U.S. Treasury the central governments of other OECD countries, U.S. Government agencies, U.S. Government-sponsored agencies, or by cash on deposit in the subsidiary depository institution.
9. The portions of claims that are collateralized [3] by securities issued by official multilateral lending institutions or regional development banks.
10. Certain privately-issued securities representing indirect ownership of mortgage-backed U.S. Government agency or U.S. Government-sponsored agency securities.
11. Investments in shares of a fund whose portfolio is permitted to hold only securities that would qualify for the zero or 20 percent risk categories.

Category 3: 50 Percent

1. Loans fully secured by first liens on 1–4 family residential properties that have been made in accordance with prudent underwriting standards, that are performing in accordance with their original terms, and are not past due or in nonaccrual status, and certain privately-issued mortgage-backed securities representing indirect ownership of such loans. (Loans made for speculative purposes are excluded.)
2. Revenue bonds or similar claims that are obligations of U.S. state or local governments, or other OECD local governments, but for which the government entity is committed to repay the debt only out of revenues from the facilities financed.
3. Credit equivalent amounts of interest rate and foreign exchange rate related contracts, except for those assigned to a lower risk category.

Category 4: 100 Percent

1. All other claims on private obligors.
2. Claims on, or guaranteed by, non-OECD foreign banks with a remaining maturity exceeding one year.
3. Claims on, or guaranteed by, non-OECD central governments that are not included in item 3 of Category 1 of item 4 of Category 2; all claims on non-OECD state or local governments.
4. Obligations issued by U.S. state of local governments, or other OECD local governments (including industrial development authorities and similar entities), repayable solely by a private party or enterprise.
5. Premises, plant, and equipment; other fixed assets; and other real estate owned.
6. Investments in any unconsolidated subsidiaries, joint ventures, or associated companies—if not deducted from capital.
7. Instruments issued by other banking organizations that qualify as capital—if not deducted from capital.
8. Claims on commercial firms owned by a government.
9. All other assets, including any intangible assets that are not deducted from capital.

Attachment IV—Credit Conversion Factors for Off-Balance Sheet Items for Bank Holding Companies

100 Percent Conversion Factor

1. Direct credit substitutes. (These include general guarantees of indebtedness and all guarantee-type instruments, including standby letters of credit backing the financial obligations of other parties.)
2. Risk participations in bankers acceptances and direct credit substitutes, such as standby letters of credit.
3. Sale and repurchase agreements and asset sold with recourse that are not included on the balance sheet.
4. Forward agreements to purchase assets, including financing facilities, on which drawdown is *certain*.
5. Securities lent for which the banking organization is at risk.

50 Percent Conversion Factor

1. Transaction-related contingencies. (These include bid bonds, performance bonds, warranties, and standby letters of credit backing the nonfinancial performance of other parties.)
2. Unused portions of commitments with an original maturity [1] exceeding one year, including underwriting commitments and commercial credit lines.
3. Revolving underwriting facilities (RUFs), note issuance facilities (NIFs), and similar arrangements.

20 Percent Conversion Factor

1. Short-term, self-liquidating trade-related contingencies, including commercial letters of credit.

Zero Percent Conversion Factor

1. Unused portions of commitments with an original maturity [1] of one year or less, or which are unconditionally cancellable at any time, provided a separate credit decision is made before each drawing.

Credit Conversion for Interest Rate and Foreign Exchange Contracts

The total replacement cost of contracts (obtained by summing the positive mark-to-market values of contracts) is added to a measure of future potential increase in credit exposure. This future potential exposure measure is calculated by multiplying the total notional value of contracts by one of the following credit conversion factors, as appropriate:

Remaining Maturity	Interest Rate Contracts (percent)	Exchange Rate Contracts (percent)
One year or less	0	1.0
Over one year	0.5	5.0

No potential exposure is calculated for single currency interest rate swaps in which payments are made based upon two floating rate indices, that is, so called floating/floating or basis swaps. The credit exposure on these contracts is evaluated solely on the basis of their mark-to-market value. Exchange rate contracts with an original maturity of fourteen days or less are excluded. Instruments traded on exchanges that require daily payment of variation margin are also excluded. The only form of netting recognized is netting by novation.

[1] For the purpose of calculating the risk-based capital ratio, a U.S. Government agency is defined as an instrumentality of the U.S. Government whose obligations are fully and *explicitly* guaranteed as to the timely payment of principal and interest by the full faith and credit of the U.S. Government.

[2] For the purpose of calculating the risk-based capital ratio, a U.S. Government-sponsored agency is defined as an agency originally established or chartered to serve public purposes specified by the U.S. Congress but whose obligations are not explicitly guaranteed by the full faith and credit of the U.S. Government.

[3] The extent of collateralization is determined by current market value.

[1] Remaining maturity may be used until year-end 1992.

ATTACHMENT V—CALCULATION OF CREDIT EQUIVALENT AMOUNTS INTEREST RATE AND FOREIGN EXCHANGE RATE RELATED TRANSACTIONS FOR BANK HOLDING COMPANIES

Type of contract (remaining maturity)	Potential exposure: Notional principal (dollars)	x	Potential exposure conversion factor	=	Potential exposure (dollars)	+ Current exposure: Replacement cost [1]	Current exposure (dollars) [2]	= Credit equivalent amount (dollars)
(1) 120-day forward foreign exchange	5,000,000		.01		50,000	100,000	100,000	150,000
(2) 120-day forward foreign exchange	6,000,000		.01		60,000	−120,000	0	60,000
(3) 3-year single-currency fixed/floating interest rate swap	10,000,000		.005		50,000	200,000	200,000	250,000
(4) 3-year single currency fixed/floating interest rate swap	10,000,000		.005		50,000	−250,000	0	50,000
(5) 7-year cross-currency floating/floating interest rate swap	20,000,000		.05		1,000,000	−1,300,000	0	1,000,000
Total	$51,000,000							$1,510,000

[1] These numbers are purely for illustration.
[2] The larger of zero or a positive mark-to-market value.

ATTACHMENT VI.—SUMMARY

	Transitional arrangements for bank holding companies: Initial	Transitional arrangements for bank holding companies: Year-end 1990	Final arrangement—Year-end 1992
1. Minimum standard of total capital to weighted risk assets.	None	7.25%	8.0%.
2. Definition of Tier 1 capital	Common equity, qualifying cum. and noncum. perpetual preferred stock,[1] and minority interests, *plus* supplementary elements,[2] *less* goodwill.[3]	Common equity, qualifying cum. and noncum. perpetual preferred stock,[1] and minority interests, *plus* supplementary elements,[2] *less* goodwill.[3]	Common equity, qualifying cum. and noncum. perpetual preferred stock,[1] and minority interests, *less* goodwill.[3]
3. Minimum standard of Tier 1 capital to weighted risk assets.	None	3.625%	4.0%.
4. Minimum standard of stockholders' equity to weighted risk assets.	None	3.25%	4.0%.
5. Limitations on supplementary capital elements:			
a. Allowance for loan and lease losses.	No limit within Tier 2	1.5% of weighted risk assets	1.25% of weighted risk assets.
b. Perpetual preferred stock	No limit within Tier 2	No limit within Tier 2	No limit within Tier 2.
c. Hybrid capital instruments, perpetual debt, and mandatory convertibles.	No limit within Tier 2	No limit within Tier 2	No limit within Tier 2.
d. Subordinated debt and intermediate term preferred stock.	Combined maximum of 50% of Tier 1	Combined maximum of 50% of Tier 1	Combined maximum of 50% of Tier 1.
e. Total qualifying Tier 2 capital	May not exceed Tier 1 capital	May not exceed Tier 1 capital	May not exceed Tier 1 capital.
6. Definition of total capital	Tier 1 *plus* Tier 2 *less*: —reciprocal holdings of banking organizations' capital instruments. —investments in unconsolidated subsidiaries.[4]	Tier 1 *plus* Tier 2 *less*: —reciprocal holdings of banking organizations' capital instruments. —investments in unconsolidated subsidiaries.[4]	Tier 1 *plus* Tier 2 *less*: —reciprocal holdings of banking organizations' capital instruments —investments in unconsolidated subsidiaries.[4]

[1] Perpetual preferred stock is limited within Tier 1 to 25% of the sum of common stockholders' equity, qualifying perpetual preferred stock, and minority interests.
[2] Supplementary elements may be included in the Tier 1 up to 25% of the sum of Tier 1 plus good will.
[3] See the guidelines for discussion of relevant definitions and grandfathering arrangements for goodwill.
[4] Supplementary elements may be included in Tier 1 up to 10% of the sum of Tier 1 plus goodwill.
[5] As a general rule, one-half (50%) of the aggregate amount of investments will be deducted from Tier 1 capital and one-half (50%) from Tier 2 capital. A proportionally greater amount may be deducted from Tier 1 capital if the risks associated with the subsidiary so warrant.

Board of Governors of the Federal Reserve System, January 18, 1989.
William W. Wiles,
Secretary of the Board.

[FR Doc. 89-1587 Filed 1-26-89; 8:45 am]
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Part VI

Environmental Protection Agency

40 CFR Part 133
Amendment to the Secondary Treatment Regulation: Percent Removal Requirements During Dry Weather Periods for Treatment Works Served by Combined Sewers; Final Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 133

[FRL-3429-7]

Amendment to the Secondary Treatment Regulation: Percent Removal Requirements During Dry Weather Periods for Treatment Works Served by Combined Sewers

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule amends that portion of the EPA's secondary treatment regulation concerning the percent removal requirements during dry weather periods for treatment works served by combined sewers.

The secondary treatment regulation, originally promulgated in 1973, requires treatment works to meet both concentration-based effluent limitations for five-day biochemical oxygen demand (BOD_5) and total suspended solids (TSS) as well as an 85 percent removal requirement for these pollutants. The percent removal requirement was established to encourage municipalities to correct excessive infiltration and inflow (I/I) in their sewer systems and to prevent intentional dilution of the wastewater. When the regulation was amended in June 1985 to set separate limits for equivalent treatment (i.e., trickling filters and waste stabilization ponds), a 65 percent removal requirement was included for equivalent treatment facilities. Additionally, in June 1985, the Agency amended the regulation to allow additional flexibility in applying the percent removal requirements for separate sewer systems. The current regulation allows adjustment of the percent removal requirements during wet and dry weather periods for treatment works served by separate sewers provided that the treatment works meet certain criteria defined in § 133.103(d), "Less Concentrated Influent Wastewater for Separate Sewers." The current regulation also includes a provision authorizing adjustments to the percent removal requirements for treatment works served by combined sewers, but only during wet weather periods § 133.103(a)). It does not apply to treatment works served by combined sewers during dry weather periods.

After further consideration concerning the reference to 40 CFR 35.2005(b)(16) found in the proposed rule; it has been determined that the more specific reference is to 40 CFR 35.2005(b)(28). The final rule has been revised accordingly.

Today's rule amends the percent removal requirements to allow adjustments during dry weather periods for treatment works served by combined sewers, because nonexcessive infiltration can dilute the influent wastewater of treatment works served by combined sewers, just as it does for treatment works served by separate sewers.

This rule allows treatment works served by combined sewers an opportunity to request adjustments in the percent removal requirements for dry weather provided that the permittee meets the requirements specified in § 133.103(e).

DATES: In accordance with 40 CFR Part 23 (50 FR 7268, February 21, 1985), this regulation shall be considered issued for purposes of judicial review at 1:00 p.m. Eastern time on February 10, 1989. This regulation shall become effective February 27, 1989.

Under section 509(b)(1) of the Clean Water Act, judicial review of this regulation can be made only by filing a petition for review in the United States Court of Appeals within 120 days after the regulation is considered issued for purposes of judicial review. Under section 509(b)(2) of the Clean Water Act, the requirements in this regulation may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

The record for the final rule will be available for public review at the EPA Public Information Reference Unit, Room 2904 (EPA Library).

FOR FURTHER INFORMATION CONTACT: Randy Revetta, Office of Municipal Pollution Control (WH-595), Environmental Protection Agency, Washington, DC 20460, 202-382-7370.

SUPPLEMENTARY INFORMATION:

A. The EPA's Previous Actions on the Percent Removal Requirements

On August 17, 1973, the Agency defined the secondary treatment requirements for treatment works as the achievement of 30 mg/l BOD_5 and 30 mg/l TSS and 85 percent removal of those pollutants on a 30 day average (40 CFR 133.102 (a) and (b)). The Agency based these limits on what were previously believed to be typical treatment works influent concentrations of 200 mg/l for BOD_5 and TSS. In addition, the Agency included a provision in § 133.103(a) of the original secondary treatment regulation allowing adjustment of the 85 percent removal requirement during wet weather periods for treatment works served by combined sewers.

In response to information that in some cases the 85 percent removal requirement resulted in forcing advanced treatment levels on some treatment works with dilute influent wastewater, the Agency, on November 16, 1983 issued a Federal Register notice soliciting public comment on a number of options for amending the percent removal requirement (48 FR 52256). Based on the public comments received in response to the notice, the Agency proposed an amendment to the percent removal requirement on September 20, 1984 that would authorize a mofication of the percent removal requirement for treatment works served by separate sewers if they demonstrated: (1) That they consistently met their concentration-based limitations; (2) that to meet the percent removal requirement, the treatment works would have to meet significantly more stringent concentration-based limitations; and (3) that the less concentrated influent wastewater to the treatment works was not a result of excessive infiltration and inflow (49 FR 37010).

In response to public comments, the Agency modified the title to read, "Less Concentrated Influent Wastewater for Separate Sewers." In addition, the EPA determined that the final amendment should apply to both the 85 and the new 65 percent removal requirements for equivalent treatment. The final amendment was published in the Federal Register on June 3, 1985 (50 FR 23282).

B. Challenge to the Final Amendment

On September 16, 1985, the City of New York filed a petition to review the percent removal amendment for separate sewers: *City of New York* v. *Environmental Protection Agency*, No. 85-4142 (2d Cir. 1985). New York, which has combined sewers, pointed out that treatment works served by combined sewers should also be eligible for adjustment of the percent removal requirements during dry weather periods. This was based on the concern that nonexcessive infiltration can dilute the influent wastewater of treatment works served by combined sewers just as it does for treatment works served by separate sewers.

C. Settlement Agreement

On January 7, 1988, the Agency and the City of New York filed a settlement agreement with the court. Today's rule is in fulfillment of the obligation under the consent decree. In the settlement agreement, the Agency agreed to initiate

and take final action on a rulemaking proceeding concerning whether the secondary treatment regulation should be amended to allow the permit-issuing authority to establish alternative percentage removal requirements for treatment works served by combined sewer systems during dry weather periods.

The agreement provided that such final Agency action may either be:

(1) the promulgation of an amendment to the secondary treatment regulation addressing the percentage removal requirements during dry weather periods for treatment works served by combined sewers; or

(2) a decision not to amend the secondary treatment regulation with a written explanation for the decision.

D. Background on Adjustment of the Percent Removal Requirement

1. Correction of Infiltration and Inflow

Under section 201(g)(3) of the Clean Water Act (33 U.S.C. 1281(g)(3)) and EPA's construction grant regulations (40 CFR 32.2005(b)(16), (28), (29) and 35.2120, grants for the construction of treatment works cannot be made unless an applicant has demonstrated that the sewer system is not, or will not be, subject to excessive infiltration and inflow ("I/I"). For the purposes of EPA's construction grants program, the Agency has defined "excessive I/I" as quantities of I/I that can be economically eliminated from a sewer system. Excessive I/I is determined from a cost-effectiveness analysis that compares the costs of correcting the I/I conditions (plus the costs of transporting and treating the remaining I/I) to the total costs of the alternative—transporting and treating all of the I/I.

Further definition of the individual components of I/I may be found in 40 CFR 35.2005(b) (28) and (29) titled "Nonexcessive infiltration" and "Nonexcessive inflow."

Theoretically, the percent removal requirements impose more stringent levels of treatment than the concentration-based limits for BOD_5 and TSS until the municipality corrects the causes of the less concentrated wastewater in the sewer system. This regulatory approach is based on the assumption that a municipality can take corrective measures to reduce I/I that are less costly than providing additional hydraulic capacity in the sewer system and at the treatment plant.

In 1973, the Agency believed that from 70 to 100 percent of the excessive I/I problem could be corrected through cost-effective sewer system rehabilitation. However, subsequent information ("Evaluation of Infiltration/Inflow Program" unpublished draft technical reports, 1979 and 1980) indicated that sewer rehabilitation is far less effective than formerly expected. In fact, cost-effective sewer rehabilitation was found to remove only up to 40 percent of the estimated infiltration. Accordingly, even large expenditures for the correction of I/I could produce only a small ultimate reduction of infiltration. As a result influent BOD_5 and TSS concentrations have often remained below 200 mg/l even after cost-effective correction of excessive infiltration sources.

2. Expected Influent Concentration Under Allowable I/I Conditions

The Agency has determined that the correction of excessive infiltration is likely to be unsuccessful for sewer systems with a dry weather base flow of up to 120 gallons per capita per day (gpcd). This figure is based on the following typical values: 70 gpcd domestic wastewater flow, 10 gpcd commercial and small industrial wastewater flow, and 40 gpcd nonexcessive infiltration flow. Please note that the 120 gpcd figure includes dry weather inflow (non-rainfall induced) which is considered a minimal contributory factor to the total dry weather flow and furthermore, is indistinguishable as a separate flow component. If the dry weather base flow within the sewer system is less than 120 gpcd, no further infiltration correction work is required. The 120 gpcd figure is only a threshold value, and permittees may determine that even higher values of infiltration are nonexcessive through a cost-effective evaluation on a case-by-case sewer system basis.

3. Excessive-Nonexcessive Flow Study

In 1974 the Agency used historical records from water utilities to determine that the average non-consumptive water usage (i.e., water returned to the sewer system) in the United States is approximately 70 gpcd for domestic flows and 10 gpcd for commercial and small industrial flows. These estimates were used for the cost-effectiveness guidelines promulgated by EPA as part of the construction grant regulations (40 CFR Part 35).

The difference between the total dry weather base flow used for construction grant funding purposes, 120 gpcd, and 80 gpcd (i.e. 70+10) is the portion attributable to nonexcessive infiltration (e.g., 40 gpcd). The Agency reviewed data from numerous I/I analyses and sewer system evaluation studies and determined that the typical value for nonexcessive infiltration nationwide is 1500 galloons per day per inch diameter per mile of sewer (gpdim). The 1500 gpdim value was used in the construction grant program (Program Requirements Memorandum 78-10, March 17, 1978) as the threshold value to determine where more extensive sewer system evaluation would be required (i.e., infiltration less than 1500 gpdim was considered nonexcessive and did not require any further sewer system analysis). Using the estimated national averages for pipe diameters and length of pipe per capita, 1500 gpdim converts to 40 gpcd for nonexcessive infiltration.

Using 40 gpcd for nonexcessive infiltration, 10 gpcd for commercial and small industrial flow, and 70 gpcd for domestic flow, the total dry weather base flow calculated by the Agency for municipal wastewater treatment plants (i.e., wastewater plus nonexcessive infiltration) equals 120 gpcd (70+10+40). Data used for this calculation did not distinguish between separate and combined sewer systems and in fact were for both types of systems.

E. Treatment Works Served by Combined Sewers

Combined sewers are sewer systems designed to convey stormwater (mostly from street curb inlets and area drains) in addition to domestic sanitary sewage and commercial and small industrial wastewater. During storm events, combined sewer systems are subject to large increases in flow due to either rainwater or snowmelt that enters the system. Combined sewer systems are generally operated to convey the maximum feasible amount of combined wastewater and stormwater to the treatment works. The excess, which is often the larger portion of the flow during storms, is discharged from the system at several overflow points before reaching the treatment plant. The dramatic storm-related increase in flow which can occur at treatment plants served by combined sewer systems led to the inclusion of § 133.103(a) in the original secondary treatment regulations to allow either adjustment or suspension of the percent removal requirements during wet weather periods.

F. Determination of Nonexcessive Flow in Combined Sewers During Dry Weather Conditions

In fulfillment of the Settlement Agreement, the Agency analyzed § 133.103(d) of the secondary treatment regulation to determine if the language in that section should apply to systems with combined sewers as well as separate sewers.

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The Agency's analysis of § 133.103(d) centered specifically on the provision requiring that the less concentrated influent wastewater not result from excessive I/I. Section 133.103(d) relies on definitions of excessive I/I, nonexcessive infiltration, and nonexcessive inflow found in 40 CFR 35.2005(b) (16), (28) and (29). According to those definitions infiltration is nonexcessive if the average dry weather base flow to the treatment works (i.e., wastewater plus infiltration) is less than 120 (gpcd), or if that portion of the dry weather base flow attributed to infiltration (40 gpcd) cannot be economically and effectively eliminated.

G. Threshold Value for Combined Sewers During Dry Weather Conditions

The Agency believes that the threshold value of 120 gpcd should be applied to treatment works served by combined sewers during dry weather conditions for the following reasons. First, as discussed above in Section D.3 ("Excessive-Nonexcessive Flow Study"), the 120 gpcd value was derived in a study that examined both combined and separate sewers. Secondly, the Agency compared the 120 gpcd figure with data from: (1) 1980 Agency study, "Evaluation of the Infiltration/Inflow Program" (final draft report (EPA-68-01-4913)); and (2) field measurements of wastewater flows developed from sewer system studies conducted by private contractors and submitted to the Agency. These data support the 120 gpcd figure as a valid threshold for either combined or separate sewer systems. The Agency believes, therefore, that the 120 gpcd limit should apply equally to treatment works served by either separate or combined sewers during dry weather.

Exclusion From the 120 gpcd Threshold of Industrial Discharges that Cause Interference

Today's rule provides that a permittee may not obtain a modification of its percent removal requirements if its less concentrated influent is due either to excessive infiltration or clear water industrial discharges or a combination of both. The Agency recognizes that less concentrated influent to municipal sewer systems does not necessarily, but in some instances may, hydraulically overload a treatment works in addition to diluting the influent. If less concentrated influent to a treatment works is caused in whole or in part by clear water industrial discharges, then the Agency expects the treatment works to control such discharges rather than seek a modification of its percent removal requirements. Local sewer ordinances, as directed by the pretreatment regulations (40 CFR Part 403; 54 FR 1580), should be enforced to prevent such hydraulic overloading.

The Agency is primarily concerned with clear water industrial discharges. The Agency considers clear water industrial discharges to include, but not be limited to, noncontact cooling water discharges or other discharges which do not contain pollutants in sufficient quantity to otherwise be of concern.

H. Applying the Amendment

Today's rulemaking applies only during dry weather periods for treatment works served by combined sewers. To obtain an adjustment in the percent removal requirements during dry weather under the rule, treatment works served by combined sewers must satisfy three conditions. First, the treatment works must consistently meet its permit effluent concentration limitations, but the percent removal requirements cannot be met due to less concentrated influent wastewater. Second, significantly more stringent effluent concentration than required by the concentration-based standards must be met to comply with the percent removal requirements and, third, the less concentrated influent wastewater must not result from either excessive infiltration or clear water industrial discharges to the system.

If the average dry weather base flow (i.e., the total of the wastewater flow plus infiltration) in a combined sewer system is less than the 120 gpcd threshold value, infiltration is assumed to be nonexcessive. However, sewer systems with average dry weather flows greater than 120 gpcd may also have nonexcessive infiltration if this is demonstrated on a case-by-case basis (i.e., the infiltration can not be cost-effectively reduced). A permittee would have the opportunity to demonstrate on a case-by-case basis that its combined sewer system is not subject to excessive infiltration even if the average total dry weather base flow exceeds the 120 gpcd threshold value.

I. Response to Comments on the Proposed Amendment to the Percent Removal Requirements

This section of the preamble addresses the comments received on the September 17, 1987 notice.

(1) One commenter suggested that the limiting value for nonexcessive infiltration for combined sewers should be set higher than 40 gallons per capita per day (gpcd). This comment was based on a concern that the limiting value is derived from estimated national averages for pipe diameters and lengths, but the average pipe diameter in a combined sewer system is significantly larger than the average diameter in a separately sewered drainage area. Therefore, the commenter believes that the 40 gpcd understates the expected average per capita infiltration into combined sewers.

The regulation has been revised to reflect this comment. Indeed, the typical value for the nonexcessive infiltration, nationwide, is 1500 gallons per day per inch diameter per mile of sewer (gpdim) and, by using the estimated national averages for pipe diameters and lengths of pipe per capita, the 1500 gpdim converts to 40 gpcd for nonexcessive infiltration. Because the data used for this calculation did not distinguish between separate and combined systems, and in fact were for both types of systems, either 1500 gpdim or 40 gpcd may be used as the threshold value for nonexcessive infiltration determination.

A permittee would have the opportunity to demonstrate, on a case-by-case basis, that its combined sewer system is not subject to excessive infiltration as follows:

Option A. Demonstrate that infiltration is less than 40 gpcd. If it is higher than 40 gpcd, then demonstrate that it is not cost effective to remove it; or,

Option B. Demonstrate that infiltration is less than 1500 gpdim. If it is higher than 1500 gpdim, then demonstrate that it is not cost effective to remove it.

(2) One commenter suggested that a limiting nonexcessive gpcd total flow should include normal dry weather inflow such as vehicle, street, sidewalk washing, lawn watering and other dry weather surface runoff.

No data were presented during the comment period to contradict the Agency's belief that normal dry weather inflow to combined sewers is negligible. The threshold value for infiltration, 40 gpcd or 1500 gpdim, was developed based upon a study of both separate and combined sewers during dry weather and would thus reflect any normal dry weather inflow into combined sewers.

(3) A concern was raised whether the proposed rule would take into account those municipalities that previously demonstrated non-excessive I/I under the September 27, 1978 construction grant regulations.

Permittees who performed studies demonstrating nonexcessive I/I under the September 27, 1978 construction grant regulations may be able to use the same studies to support an application for a lower percent removal requirement. Permittees wishing to apply for a lower percent removal

requirement or a mass loading limit in place of percent removal requirements must demonstrate to the Regional Administrator or State Director that their less concentrated influent wastewater does not result from either excessive infiltration or clear water industrial discharges during dry weather. The Regional Administrator or State Director will, on a case-by-case basis, determine if the data presented by the permittee, including studies performed at some time in the past, are sufficient for the demonstration.

(4) Another commenter asked if the threshold value of 120 gpcd should be checked under low groundwater conditions to minimize inflow from cellar drains, etc., during dry weather.

The threshold value should not be checked under low groundwater conditions. The determination of excessive infiltration is based on the highest average daily flow recorded over a 7 to 14 day period during a period of seasonal high groundwater.

(5) Also raised was the issue of how a permittee is treated if the 120 gpcd check is passed, but the 275 gpcd check is not, or vice-versa.

The 275 gpcd check applies to wet weather flow in a separate sewer system and has nothing to do with dry weather flow in a combined sewer system. If a POTW service area consists of both separate and combined sewers then the separate sewer subsystem must meet both the 120 gpcd and the 275 gpcd while the combined sewer subsystem must meet the 120 gpcd or other threshold values as demonstrated on a case-by-case basis.

(6) It was noted that the presence of less concentrated influent, at acceptable flows, does not necessarily constitute a hydraulic overload to the system as indicated in Section F.4 of the preamble to the September 17, 1987 notice.

The Agency recognizes that the discharge of less concentrated influent to municipal sewer systems does not necessarily constitute a hydraulic overload, but may in some instances hydraulically overload a treatment works in addition to diluting the influent.

(7) Concern was expressed about the use of the term "clear water" as too vague and suggested that it should not be used.

The Agency considers clear water industrial discharges to include, but not be limited to, non-contact cooling water discharges or other discharges which do not contain pollutants in sufficient quantity to otherwise be of concern.

(8) A recommendation was made that one area which should be addressed with respect to dry weather conditions during summer months in urban areas is the illegal opening of fire hydrants and legal fire hydrant sprinkle caps. The commenter maintains that these sources may significantly increase flow and decrease the influent strength.

The illegal opening of fire hydrants is a controllable source of inflow to combined sewers and is not justification for reduced percent removal requirements. As noted earlier, the 120 gpcd includes normal dry weather inflow into combined sewers. Permittees having uncontrollable sources of inflow have the option of demonstrating that flow above 120 gpcd can not be cost effectively eliminated.

(9) A comment was received concerning the construction of a storage tunnel to capture the overflow from combined sewers during a storm. The commenter was concerned whether the days of release of captured wastewater should be considered as dry weather or wet weather days.

Section 133.103(a) in the original secondary treatment regulation allows either adjustment or suspension of the percent removal requirements during wet weather periods for combined sewers. Today's rulemaking, new § 133.103(e) allows adjustment of percent removal requirements for treatment works served by combined sewers during dry weather under certain conditions. The permit-issuing authority will ultimately establish the applicability of wet weather or dry weather days on an individual basis. The permittee would then have the opportunity to apply for adjustment under either § 133.103 (a) or (e), consistent with the permit-issuing authority's determination regarding which sub-section applies.

(10) Concern was raised that the terms "wet weather" and "dry weather" are not defined.

Neither the proposed rule, nor the existing regulations define the terms dry weather and wet weather because any attempt to describe these terms, with respect to intensity and/or frequency parameters, would only limit the application of such a regulation on a national level. Each permittee has the opportunity to demonstrate dry weather and wet weather conditions on a case-by-case basis.

(11) It was also noted that the option of a mass loading limit should apply to the regulation for combined sewers during wet weather periods, § 133.103(a), and that same amendment should include references to §§ 133.102(a)(4)(iii) and 133.105(e)(1)(iii) regarding the adjustment of percent removal requirements.

These comments refer to technical changes to an existing regulation and are beyond the scope of today's rulemaking.

J. Regulatory Reviews

1. Executive Order 12291

Executive Order 12291 requires EPA and other agencies to perform regulatory impact analyses of major regulations. Major rules are those that impose a cost on the economy of $100 million or more annually or have certain other economic impacts. This regulation is not a major rule because it meets none of the criteria of a major rule as set forth in Section 1(b) of the Executive Order. The rule has been submitted to the Office of Management and Budget (OMB) for review.

2. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, EPA must submit a copy of any proposed rule that contains a collection of information requirements to the Director of OMB for review and approval. The Agency determined that this regulation does not contain information collection requirements.

3. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, requires EPA and other agencies to prepare an initial regulatory flexibility analysis for all regulations that have a significant impact on a substantial number of small entities. No regulatory flexibility analysis is required, however, where the head of an Agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Since this regulation allows permitting authorities to adjust the percent removal requirements for communities served by combined sewers, the operation and maintenance costs of existing facilities may be reduced. However, the estimates of ultimate benefits (i.e., cost reductions) that will accrue as a result of this amendment are uncertain. The uncertainty stems largely from insufficient flow data for communities with combined sewer systems. Although the quantification of costs and benefits is not possible, the Agency believes that this rule will result in cost savings. Accordingly, the Administrator certifies, pursuant to 5 U.S.C. 605(b), that this final regulation will not have a significant impact on a substantial number of small entities.

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List of Subjects in 40 CFR Part 133

Treatment works, waste treatment and disposal, Water pollution control.

Date: January 19, 1989.

Lee M. Thomas,

Administrator.

For the reasons set forth in the preamble, EPA is amending 40 CFR Part 133 as follows:

PART 133—SECONDARY TREATMENT REGULATION

1. The authority citation for Part 133 continues to read as follows:

Authority: Sections 301(b)(1)(B), 304(d)(10), 304(d)(4), 308, and 501 of the Federal Water Pollution Control Act as amended by the Federal Water Pollution Control Act Amendments of 1972, the Clean Water Act of 1977, and the Municipal Wastewater Treatment Construction Grant Amendments of 1981; 33 U.S.C. 1311(b)(1)(B), 1314(d) (1) and (4), 1318, and 1361; 86 Stat. 819, Pub. L. 92-500; 91 Stat. 1567, Pub. L. 95-217; 86 Stat. 1623, Pub. L. 97-117.

2. Section 133.103 is amended by adding a new paragraph (e) to read as follows:

§ 133.103 Special considerations.

* * * * *

(e) Less concentrated influent wastewater for combined sewers during dry weather. The Regional Administrator or, if appropriate, the State Director is authorized to substitute either a lower percent removal requirement or a mass loading limit for the percent removal requirements set forth in §§ 133.102(a)(3), 133.102(a)(4)(iii), 133.102(b)(3), 133.105(a)(3), 133.105(b)(3) and 133.105(a)(1)(iii) provided that the permittee satisfactorily demonstrates that: (1) The treatment works is consistently meeting, or will consistently meet, its permit effluent concentration limits, but the percent removal requirements cannot be met due to less concentrated influent wastewater; (2) to meet the percent removal requirements, the treatment works would have to achieve significantly more stringent effluent concentrations than would otherwise be required by the concentration-based standards; and (3) the less concentrated influent wastewater does not result from either excessive infiltration or clear water industrial discharges during dry weather periods. The determination of whether the less concentrated wastewater results from excessive infiltration is discussed in 40 CFR 35.2005(b)(28), plus the additional criterion that either 40 gallons per capita per day (gpcd) or 1500 gallons per inch diameter per mile of sewer (gpdim) may be used as the threshold value for that portion of the dry weather base flow attributed to infiltration. If the less concentrated influent wastewater is the result of clear water industrial discharges, then the treatment works must control such discharges pursuant to 40 CFR Part 403.

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January 27, 1989

Part VII

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 9, 14, 15, and 52
Federal Acquisition Regulation (FAR); Unbalanced Offers, First Article Test Pricing; Proposed Rule

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 9, 14, 15, and 52

Federal Acquisition Regulation (FAR); Unbalanced Offers, First Article Test Pricing

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are considering changes to FAR Parts 9, 14, 15, and 52 to provide notice to offerors and guidance to Government contracting personnel concerning unbalanced bids and proposals.

COMMENTS: Comments should be submitted to the FAR Secretariat at the address shown below on or before March 28, 1989 to be considered in the formulation of a final rule.

ADDRESS: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW., Room 4041, Washington, DC 20405.

Please cite FAR Case 88-60 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Margaret A. Willis, FAR Secretariat, Room 4041, GS Building, Washington, DC 20405, (202) 523-4755.

SUPPLEMENTARY INFORMATION:

A. Background

A series of decisions of the General Accounting Office has indicated a need to amend regulations and clarify existing policy regarding unbalanced prices for separately priced contract line items. Changes are proposed to the FAR which would put offerors on notice regarding the policy on balanced bids and proposals, and provide contracting officers guidance on detecting unbalanced offers and what actions may be taken when an offer has been determined to be unbalanced. The policies would not apply to small purchase procedures.

B. Regulatory Flexibility Act

The proposed revisions may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, because it may affect how quickly a small business firm can recoup certain costs. An Initial Regulatory Flexibility Analysis (IRFA) has been prepared and submitted to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the FAR Secretariat. Comments from small businesses concerning the affected FAR sections will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite FAR Case 88-610 pertaining to First Article Test Pricing.

C. Paperwork Reduction Act.

The Paperwork Reduction Act does not apply because the proposed changes will not increase or decrease any reporting or recordkeeping requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, et seq.

List of Subjects in 48 CFR Parts 9, 14, 15, and 52

Government procurement.

Dated: January 17, 1989.

Harry S. Rosinski,

Acting Director, Office of Federal Acquisition and Regulatory Policy.

Therefore, it is proposed that 48 CFR Parts 9, 14, 15, and 52 be amended as set forth below:

1. The authority citation for Parts 9, 14, 15, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2473(c).

PART 9—CONTRACTOR QUALIFICATIONS

2. Section 9.308 is amended by adding paragraph (j) to read as follows:

9.308 Solicitation requirements.

* * * * *

(j) Inform offerors that the prices for first articles and first article tests in relation to production quantities shall not be materially unbalanced (see 15.814) if first article test items or tests are to be separately priced.

PART 14—SEALED BIDDING

3. Section 14.404-2 is amended by redesignating existing paragraphs (g) through (k) as (h) through (l); and by adding a new paragraph (g) to read as follows:

14.404-2 Rejection of individual bids.

* * * * *

(g) Any bid may be rejected if the prices for any line items or subline items are materially unbalanced (see 15.814).

* * * * *

4. Section 14.407-2 is amended by designating the existing text as paragraph (a) and by adding a new paragraph (b) to read as follows:

14.407-2 Responsible bidder—responsibleness of price.

* * * * *

(b) The price analysis shall consider whether bids are materially unbalanced (see 15.814).

PART 15—CONTRACTING BY NEGOTIATION

5. Section 15.814 is added to read as follows:

15.814 Unbalanced offers.

(a) Offers shall also be analyzed to determine whether they are unbalanced with respect to prices or separately priced line items. This is particularly important when evaluating the relationship of the price for first article tests or test items to the price for the production units, and in evaluating the prices for options in relationship to the prices for the basic requirement.

(b) An offer is mathematically unbalanced if it is based on prices which are significantly less than cost for some contract line items and significantly overstated in relation to cost for others. An offer is materially unbalanced if it is mathematically unbalanced, and if—

(1) There is a reasonable doubt that the offer would result in the lowest overall cost to the Government, even though it is the lowest evaluated offer; or

(2) The offer is so grossly unbalanced that its acceptance would be tantamount to allowing an advance payment.

(c) Offers that are materially unbalanced may be rejected.

(d) Depending on the nature of the acquisition, contracting officers may need to use either price analysis or cost analysis techniques, or a combination of the two techniques, to determine if offers are materially unbalanced. The following are examples of techniques that can be used to determine if an offer is unbalanced. Although these examples specifically relate to first article testing, they may also be used for other procurements where unbalanced offers may be of concern.

(1) Compare all offers to determine if the offerors have significantly higher prices for the first articles than for the production units. The comparison

should consider whether the Government or the contractor will perform the first article test.

(2) For an individual offer, compare the relationship of first article prices to prices for production items. The cost to the offeror for first articles may be estimated (i) by comparing the total price offered, including the first article to an alternate proposal by the same offeror which does not include first article testing (see 9.308(d)); or (ii) if cost data has been submitted, by reviewing certain elements of cost to determine, for instance, whether manufacturing and special tooling, and test equipment costs, are prorated among the first articles and the production units, or are only applied to the first articles. If cost data is not available, it may be necessary for contracting officers to estimate contractor costs.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

5. Section 52.214-10 is amended by removing in the title of the provision the date "(APR 1985)" and inserting in its place the date "(JAN 1989)"; and by adding paragraph (e) to read as follows:

52.214-10 Contract Award—Sealed Bidding.

* * * * *

(e) The Government may reject a bid as nonresponsive if the prices bid are materially unbalanced between line items or subline items. A bid is materially unbalanced when it is based on prices significantly less than cost for some work and prices which are significantly overstated in relation to cost for other work, and if there is a reasonable doubt that the bid will result in the lowest overall cost to the Government even though it may be the low evaluated bid, or if it is so unbalanced as to be tantamount to allowing an advance payment.

* * * * *

6. Section 52.215-16 is amended by removing in the title of the provision the date "(APR 1985)" and inserting in its place the date "(JAN 1989)"; and by adding paragraph (g) to read as follows:

52.215-16 Contract Award.

* * * * *

(g) The Government may determine that an offer is unacceptable if the prices proposed are materially unbalanced between line items or subline items. An offer is materially unbalanced when it is based on prices significantly less than cost for some work and prices which are significantly overstated in relation to cost for other work, and if there is a reasonable doubt that the offer will result in the lowest overall cost to the Government, even though it may be the low evaluated offer, or it is so unbalanced as to be tantamount to allowing an advance payment.

* * * * *

52.217-5 [Amended]

7. Section 52.217-5 is amended by removing in the title of the provision the date "(JUN 1988)" and inserting in its place the date "(JAN 1989)"; by removing the designation "(a)" from paragraph (a); and by removing paragraph (b).

[FR Doc. 89-1888 Filed 1-25-89; 8:45 am]

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Part VIII

Department of Labor

Employment Standards Administration, Wage and Hour Division, and Office of the Secretary

29 CFR Parts 1 and 5

Procedures for Predetermination of Wage Rates; Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction and to Certain Nonconstruction Contracts; Final Rule

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DEPARTMENT OF LABOR

Employment Standards Administration

Wage and Hour Division

Office of the Secretary

29 CFR Parts 1 and 5

Procedures for Predetermination of Wage Rates; Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction and to Certain Nonconstruction Contracts

AGENCY: Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Final rule.

SUMMARY: The Department of Labor (DOL) is revising the regulations governing the use of semiskilled "helpers" on federally-financed and assisted construction contracts subject to the Davis-Bacon and Related Acts (DBRA). This rule makes final the regulations for determining when the use of a helper classification will be found by DOL to be prevailing in an area to allow its use on construction projects subject to DBRA prevailing wage requirements. This rule also implements other regulations, previously issued as final regulations but not yet implemented because of court orders, concerning use of helpers on such projects.

EFFECTIVE DATE: After the injunction against implementation of some provisions of this regulation is lifted by the U.S. District Court for the District of Columbia, a notice will be published in the Federal Register providing an effective date 60 days thereafter.

FOR FURTHER INFORMATION CONTACT: Paula V. Smith, Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Room S-3502, 200 Constitution Avenue NW., Washington, DC 20210. Telephone: (202) 523-8305. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On August 19, 1987, DOL published in the Federal Register (52 FR 31306) proposed revisions to the regulations on labor standards applicable to federally-financed and assisted construction contracts subject to the prevailing wage standards of DBRA (29 CFR Parts 1 and 5). The proposal was intended to allow contractors to expand their use of semiskilled helpers on DBRA projects at wages lower than those required to be paid to skilled journeymen if the use of the helper classification was found to be a prevailing practice on construction projects in the area. This proposal resulted from DOL's reexamination of revised regulations previously issued in 1982 (47 FR 23644; 23658), which had been enjoined in a lawsuit filed by the AFL-CIO (*Building and Construction Trades Department, AFL-CIO, et al.*, v. *Donovan, et al.*, 712 F.2d 611 (D.C. Cir. 1983)).

Public comments were invited for 60 days on several proposed methods for determining if the use of a helper classification prevailed in an area. The comment period was subsequently extended for 30 additional days, and closed on November 18, 1987 (52 FR 36473; October 16, 1987). Approximately 2,000 comments were received on the proposal, which included submissions from the Building and Construction Trades Department, AFL-CIO ("BCTD"), the Laborers' International Union, individual trade unions (primarily locals from Texas, Oklahoma, and Georgia), The Associated General Contractors of America (AGC), The Associated Builders and Contractors, Inc. (ABC), the National Association of Home Builders, the Construction Committee of the Business Roundtable, the U.S. Chamber of Commerce, the American Subcontractors Association, the National Association of Manufacturers, the National Elevator Industry, Inc. (and 26 member firms), the Sheet Metal and Air Conditioning Contractors' National Association, the U.S. Small Business Administration (SBA), the U.S. Department of Energy (DOE), the American Farm Bureau Federation, individual contractors, and individuals. This document provides the text of the final rule of the method selected and explains the reasons for that selection and for any changes from the proposal that were made in response to the comments received.

Background

DOL attempted to implement helper rules in May 1982. [*See* 47 FR 23644, 23658 (May 28, 1982); 47 FR 32070 (July 26, 1982).] Among other provisions, lower paid helpers would have been allowed on DBRA projects under a broad definition of duties and in a maximum ratio of two helpers for three journeymen whenever the helper classification was "identifiable" in an area. The rules were enjoined by the U.S. District Court for the District of Columbia in a lawsuit brought by the BCTD and a number of individual unions [(*Building and Construction Trades Department, AFL-CIO, et al.*, v. *Donovan, et al.*, 543 F. Supp. 1252, 553 F. Supp. 352).

On appeal, the Court of Appeals for the District of Columbia Circuit upheld DOL's authority to allow an expanded use of helpers and approved the regulatory definition of a helper's duties (*Building and Construction Trades Department, AFL-CIO, et al.*, v. *Donovan, et al.*, 712 F.2d 611). However, that ruling required that the regulations be modified to require that DOL first find the use of a particular helper classification *prevailing* in an area (rather than identifiable) before it may be used. The court concluded that allowing a lower paid helper classification to be used on DBRA work when that classification was only "identifiable" would result in payment of less than prevailing wages for some work, which is prohibited by the Act. The court did not rule on the remaining helper provisions. *Certiorari* was denied by the Supreme Court (46 U.S. 1089).

The District Court subsequently issued an order which lifted the injunction on the definition of helper but continued the injunction against all the other helper provisions, and stated that DOL could "submit to this court reissued regulations governing the use of helpers, and if these regulations conform to the decision of the court of appeals, they will be approved." (*Building and Construction Trades Department, AFL-CIO, et al.*, v. *Donovan, et al.*, 102 CCH Labor Cases para. 34, 646.

DOL reexamined the enjoined provisions to the extent required by the court rulings and on August 19, 1987, issued a new proposal with necessary revisions (52 FR 31306). Comments were invited on two primary alternatives, and three subordinate alternatives, for determining if the use of a helper classification prevailed, as follows:

Option A: This option, patterned after the codified regulatory standards for determining the prevailing *wage* for a given classification, provided a decision rule that proceeded in two steps:

(1) If the prevailing *journeyman* wage is set by the "majority rule" (29 CFR 1.2(a)(1); more than 50 percent of the journeymen are paid the same rate), then the practice followed by those contractors whose rates prevail for the journeymen is also deemed the prevailing practice for determining whether a helper classification prevails, or,

(2) If no majority journeyman rate exists and the prevailing wage is set by the "weighted average rule" (29 CFR 1.2(a)(1); the average of the wages paid to the journeymen, weighted by the total journeymen in the classification), then the total number of workers in the classification employed by contractors using helpers (journeymen plus helpers) will be compared to the total number of

workers in the classification employed by contractors *not* using helpers (journeymen only); the practice covering the larger number of workers will decide whether a helper classification prevails.

Option B: Compare the total number of workers (journeymen plus helpers) in the classification employed by contractors using helpers to the total number of workers in the classification employed by contractors not using helpers (classification only). The practice which covers the majority of the workers will in all cases determine whether use of a helper classification prevails. (This is the same as step 2 of Option A.)

Options C, D, and E: The preamble to the proposal also invited comments on three additional alternatives considered in formulating the proposal, namely, count by: (C) the number of projects on which helpers are employed; (D) the dollar value of construction projects on which helpers are employed; and (E) the number of contractors employing helpers.

The notice of proposed rulemaking proposed no changes to the helper definition promulgated in 1982. It was repeated in the preamble of the 1987 proposal for informational purposes only, as follows:

Section 5.2 Definitions

* * * * *

(n) The terms apprentice, trainee, and helper are defined as follows:

* * * * *

(4) A "helper" is a semi-skilled worker (rather than a skilled journeyman mechanic) who works under the direction of and assists a journeyman. Under the journeyman's direction and supervision, the helper performs a variety of duties to assist the journeyman such as preparing, carrying and furnishing materials, tools, equipment, and supplies and maintaining them in order; cleaning and preparing work areas; lifting, positioning, and holding materials or tools; and other related, semi-skilled tasks as directed by the journeyman. A helper may use tools of the trade at and under the direction and supervision of the journeyman. The particular duties performed by a helper vary according to area practice.

* * * * *

Summary of Comments

Issue: Methodology for determining if helpers "prevail"—proposed Options A through E.

Comments

SBA stated that Option A should be adopted, because it most closely conforms to the court's mandate in the underlying litigation and would more likely survive any possible court challenge. SBA noted that since Option A is specifically supported by existing Davis-Bacon case law, in particular the precedential ruling of DOL's Wage Appeals Board in *Fry Brothers Corp.*, WAB Case No. 76-6 (June 14, 1977), whereas Option B could produce anomalous results in wage determinations, the importance of implementing a workable helper rule weighs in favor of selecting an approach which is legally sound. (The Wage Appeals Board ruled in *Fry Brothers Corp.* that if the union journeyman rate is found prevailing for a classification, the union practice of not using helpers must also be found prevailing for purposes of Davis-Bacon wage determinations regardless of how many helpers are employed by nonunion contractors in the area.) SBA suggested that to the extent Option B deviates from the principles established in *Fry Brothers Corp.*, grounds could exist for the court to again enjoin the rules. SBA also postulated that the number of instances where the choice between Option A and Option B would make a difference should not be large. Normally either the unionized journeymen will substantially outnumber their nonunion counterparts, or vice versa, so that the number of helpers will make no material difference; or, no majority rate will prevail in either direction so that the "weighted average" rule would achieve the same results under either Option A or Option B, SBA asserted.

DOE noted Option A's consistency with established practices for determining prevailing wages, as opposed to Option B being inconsistent with such practices. DOE considered Options C, D, and E to be unacceptable because they all use criteria that are substantially removed from the number of *employees* (and thus don't consider the extent of the practice of using helpers) performing the work of a craft in a specific area.

The Business Roundtable favored Option A on the grounds that it would be more easily administered and would therefore be put into effect more rapidly.

Most of the major business and industry groups commenting (including Chamber of Commerce, AGC, ABC) stated a preference for Option B because it takes the number of helpers into consideration in all cases and may more often result in helpers prevailing, but without providing any detailed rationale to support their particular views. For example, while ABC characterized Option B as more accurate and fairer than Option A, ABC urged expeditious selection of the option which would best yield "prevailing" helper classifications and best withstand judicial review. The Chamber of Commerce argued that fewer journeymen are used where helpers are employed, which would give an advantage under Option A to journeymen on projects where helpers are not employed. Several of these industry commenters and others made the observation, in distinguishing between Options A and B, that Option A is supported by past precedential rulings of DOL's Wage Appeals Board (particularly citing *Fry Brothers Corp.*), and for this reason was more legally defensible than Option B. Furthermore, the ABC and the American Subcontractors Association (ASA), like the SBA, expressed the view that there would be little practical difference between the results in Options A and B.

AGC noted that Option B was the same as Option A under the weighted average method of Option A, but suggested that B has an advantage by concentrating on the actual number of workers in a classification using helpers as the primary criterion for determining area practice, in contrast to the other, more indirect indicators of area practice found in options C through E which do not include a weighting factor based on total employment in a classification.

Proposed Options C (projects), D (dollar value), and E (contractors) generated no substantial support in the comments (American Farm Bureau Federation recommended C or E; National Association of Home Builders preferred E over B; ASA found C and E "acceptable," but faulted them for not having any precedential basis in prior administrative practices; ABC, ASA, and the Chamber of Commerce considered D to be totally unacceptable). ABC suggested that Options C and E are more consistent with the word "prevailing" than either A or B. Many of the comments suggested that linking the method to projects, dollar value of construction, or contractors would establish an area practice by relating it to a variable that may have little or no relationship to the actual use of helpers in an area.

The BCTD and Laborers Union asserted that the proposed statistical formulas will result in recognition of a helper classification when it is merely an *identifiable*, rather than prevailing, area practice, which would be contrary to the court rulings on the challenged 1982 regulations. To illustrate, the BCTD contended that if only one helper worked on a project with 100 journeymen, compared to another 100 journeymen working on projects where no helpers were employed, the proposed formula would recognize helpers as prevailing since the majority of workers in the classification (101 out to 201 or

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80.2 percent) are employed on a project with a helper, yet the helper would constitute less than ½ of 1 percent of the total workers working in the classification. Likewise, the BCTD suggested another example under which 20 helpers, working with 30 journeymen, compared to 40 journeymen on projects with no helpers, would yield "prevailing" helpers yet helpers would comprise roughly 20 percent of the total workers in the classification. Moreover, under the scenario, the *majority of journeymen*, 40 compared to 30 (or over 62 percent) would have been working on projects without any helpers.

The BCTD and Laborers Union also commented that the method for determining if a helper classification prevails should include conducting task-oriented, duties-based area practice surveys (an analysis of the prevailing craft content of work performed by the helpers in the area employed in the classification proposed to be recognized), since the definition of "helper" provides that "the particular duties performed by a helper vary according to area practice." Furthermore, they argue that the methodology should take into account locally prevailing practices concerning how semiskilled laborer classifications are used, contending that the duties to be performed by proposed "helpers" are the same in many cases as those performed by laborers. In this regard, the Laborers Union included with its comments copies of DOL's current general wage determinations to demonstrate the numerous laborer classifications that are currently recognized throughout the country as "prevailing" under DBRA, allegedly already performing the same duties proposed to be performed by helpers. However, no explanation of how laborers meet the helper definition or description of their duties was provided. The BCTD and Laborers Union also stated that DOL's rulemaking expressly recognized that new, lower paid helpers would substitute for currently prevailing laborers since the Regulatory Impact Analysis stated that such a substitution effect could occur in the estimate of annual cost savings.

The BCTD recommended an alternative method for determining if helpers prevail which would compare the total number of workers found in a prevailing area practice survey to be *classified* as "helper" as defined in the regulations, to the total number of laborers and mechanics other than "helpers" (regardless of classification title) performing the same helper-type duties; the classification practice which covers the majority of the workers would determine whether to issue a helper classification. Under this approach, a helper classification would be recognized as prevailing only if the majority of the workers who performed helper-type duties were expressly classified by contractors as "helpers".

The BCTD expressed an additional concern that helpers will displace (i.e., substitute for) formally-registered apprentices and trainees and destroy the union apprenticeship system. In contrast to the BCTD's view that the method for determining prevailing helpers should consider helpers separately from all other classifications that perform the same helper type duties, the BCTD suggested that all subjourneymen classifications should be *combined* with helpers when applying the two-helpers-for-three-journeymen ratio limitation (i.e., two helpers, apprentices, and/or trainees *combined* for every three journeymen in the contractor's workforce).

AGC suggested that determining the prevalence of helpers in an area should not be difficult if primary consideration is given to the work actually performed by helpers as defined in the regulations, as distinguished from the title of the worker's craft or trade. AGC stated that both union and open shop contractors may use laborers as helpers; in a union setting laborers often work under the supervision of carpenters, bricklayers, cement masons and other trades, while in an open shop setting the use of helpers and laborers under the supervision of skilled craftsmen can be unlimited. AGC recommended that the regulations emphasize that position or job title is not controlling in identifying "helpers".

ABC and the Business Roundtable stated there was an increasing trend in recently negotiated collective bargaining agreements to create new semiskilled union job classifications which fall within the definition of "helper," although they often are not so named. These commenters suggested that DOL recognize such "subjourneymen" classifications as actually consisting of helpers, where appropriate, and count such workers as helpers in determining whether helper classifications prevail in a given area.

Although commenters were requested to provide specific information and documentation concerning local practices of using helpers, no such information was received.

Discussion

Before addressing the specific options, it is necessary to address first the issue raised by the BCTD and Laborers Union of whether area practice surveys of the precise duties performed need be routinely conducted prior to determining whether a helper classification prevails in a locality.

Historically, the Department permitted the use of a helper classification only if the helper performed duties which were separate and distinguishable from those of journeymen and other classifications in the wage determination (helpers could not generally use "tools of the trade"). The new regulatory definition of "helper" approved by the courts allows a helper's duties to overlap with the duties performed by journeymen, so long as the work is performed under a journeyman's supervision. The new definition therefore differentiates a helper primarily in terms of whether the helper is performing under the direction and supervision of a journeyman, a supervisory-based distinction rather than the former task-oriented one. (*See* 712 F.2d at 622–623, "While some distinction between skilled and semiskilled tasks would be retained, the essential functional distinction would not be the nature of the task done but rather the subordinate position of the helper vis-a-vis a journeyman." * * *; Id., at 626, "The central objection to the Secretary's new regulation is that it would no longer define the "classes' of laborers and mechanics by the tasks a particular employee does, but rather in large part by whether he or she is acting under the supervision of a journeyman." * * *; Id., at 627, "We see nothing inherently task-oriented about the term 'classes.'" * * *; Id., at 628, "" * * we are unwilling to read the fairly ambiguous legislative references to a task-based classification system in such a way as to vitiate the clearly expressed congressional purpose to have federal wages mirror those prevailing in the area." * * *; Id., at 629, "We simply say that the core concept of that term—that those things within the class be differentiable from those things outside of it—is not weakened by a definition that makes the common element supervision by journeymen rather than use of tools." * * *; Id., at 630, "The Secretary's definition here is not clearly unreasonable or on its face impossible to enforce. First, the distinction between supervised and supervising personnel is a common one in the labor field. It is thus not a completely untested distinction nor one that has proven impossible to draw. * * *")

In view of the Court of Appeals' broad endorsement of the expanded definition of a helper's duties, which permits overlap with the duties of journeymen and distinguishes helpers on the basis of subordinate/supervisory distinctions vis-a-vis the journeymen rather than on the *former* basis of differentiating between classes by craft content and the particular duties performed, it is DOL's position that there is no need to conduct routine, detailed area practice surveys to determine the precise and specific craft content of helper classifications, as suggested by the union comments. Thus, under DOL's proposed approaches, data on helpers would be collected in the normal course of wage surveys. If required, any functional analysis of a helper's duties would be based on follow-up inquiries to survey respondents who indicated that they used helper classifications to assist journeymen. The WD–10 survey forms would be redesigned to include the general helper definition, and respondents would be advised to utilize the definition in reporting employees as helpers in the survey. Questions as to whether a particular duty is within the scope of a helper classification or as to whether workers have properly been counted as helpers would be resolved if necessary during the wage survey process, or after the wage determination has been issued through standard investigation procedures that include area practice surveys, where appropriate.

Such an approach is currently followed with respect to all other classifications. We do not presently conduct detailed area practice surveys to determine the precise duties of every classification when issuing wage determinations. Only when a question of fact arises as to which craft performs a particular duty (i.e., work which may have been traditionally performed by employees in one classification is also performed by workers in another classification *and at a different wage rate*), is the need for an area practice survey indicated. For example, carpentry work may include the installation of drywall. A wage survey may disclose that a classification of "drywall hanger" is also performing a *significant portion* of the drywall work in the area. To accurately determine the prevailing wage for drywall work, an area practice survey is conducted in conjunction with the wage survey. "This may take the form of *simply analyzing the list of subcontractors submitted along with the classification and wage data provided by each, or it may involve a telephone or mail survey to clarify the duties of each carpenter.* Once this additional information is gathered, wage rates for all those doing drywall work, whether classified as carpenter or drywall hanger, may be used in the usual way to compute the prevailing rate." (DB Wage Determinations Manual of Operations, pp. 40–41; emphasis added.)

Conducting routine, detailed area practice surveys as suggested would also be impractical and precluded by limited available program resources. Finally, in our efforts to achieve practical implementation of the helper regulations, we have also had to consider the responsibilities imposed upon federal agencies under the Paperwork Reduction Act, and have given necessary weight to the conern that a significant increase in the response burdens for collecting information that details the particular duties performed by helpers during wage and area practice surveys would likely produce an adverse chilling effect on voluntary participation in future wage surveys.

With respect to the union comments that the helper definition overlaps the duties of laborers, the current proposal, as envisioned in the earlier rulemaking, was never intended to disrupt existing established local practices, long recognized by the Department, concerning the use of laborers in the construction industry, and on DBRA projects, nor was it intended to disrupt the apprenticeship system. Rather, the proposal was intended to respond to a real problem, documented by industry representatives, that federal construction practices under DBRA did not permit the widespread practice of using semiskilled helpers to do craft work, with the result that federally required wages were significantly higher than the wages actually being paid in the private sector for some construction work (*see*, 712 F.2d at 628; 629–630). As SBA noted in its comments, the general prohibition against the use of helpers on DBRA work often meant that contractors on federal projects were forced to classify and pay their helpers at higher journeyman rates in order to continue using their customary labor force, or use their higher paid journeymen to perform lesser-skilled tasks normally performed by their helpers, either of which proposition increased the contractor's cost on DBRA work above what would have been incurred on private, non-DBRA work. DOL's Preliminary Regulatory Impact Analysis estimated that these increased costs range from $422 million to $610 million per year. Once the existing restrictions prohibiting the use of helpers are lifted and the new helper regulations are implemented, contractors will be provided the flexibility to restructure their workforces *on DBRA* projects in a manner (as currently done in the private sector) that will allow semiskilled employees formerly prohibited under DBRA from performing any work of a trade to perform duties that overlap those of journeymen in the craft, including the use of tools of the trade under the direction and supervision of the journeymen.

However, upon review, we have determined that it is highly unlikely that helpers will substitute for laborers as the Preliminary Regulatory Impact Analysis suggested may occur. (See the related discussion below on the Regulatory Impact and Flexibility Analyses.) We view, both in the context of traditional Davis-Bacon administration as well as in the current rulemaking, the laborer classification to be distinctly different from the helper category. It has been our experience that laborers, by and large, are not semiskilled workers, do not typically perform tasks using the tools of the trade that overlap those performed by workers in the skilled trades, and do not typically *directly assist* such workers in the skilled trades under a journeyman's direct supervision within the meaning intended by the helper definition. Nor have any of the commenters submitted evidence that laborers do meet these aspects of the helper definition. The fact that many of the union laborer classifications are presently recognized by DOL as prevailing under current practices to perform duties that are separate and distinct from journeymen in the skilled trades is not directly relevant to the prospective determinations that will be made, under the revised regulations, of whether there is a prevailing practice to utilize helpers whose duties overlap those of journeymen in performing semiskilled tasks in the skilled trades under the journeymen's direction and supervision. It is the problem with respect to these workers, and not laborers, which the regulation was intended to address. The so-called "helper" and "tender" classifications contained in union laborer agreements are not intermediate classifications within the skilled trades; i.e., a "carpenter tender," for example, is normally an unskilled employee whose duties are prescribed in the *laborers'* union agreement, rather than an *intermediate* (semiskilled) classification of *carpenter*.

While there may be some overlap between *a portion* of the duties contained in the helper definition and those to be performed by laborers in some areas with respect to certain "set-

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up," material handling, and other tasks that do not involve the performance of semiskilled tasks of the trade under a journeyman's direct supervision. It is DOL's view that, for the most part, laborer classifications will not generally meet the definition set forth for the helper classification. Accordingly, extensive studies and detailed analyses of locally-prevailing, fine distinctions between the particular duties performed by laborers and those performed by helpers, as suggested by the BCTD and Laborers Union, should not generally be required.

The BCTD's recommended alternative approach would compare all those workers found to be *classified* as "helper" to all other semiskilled classifications (with other titles) that perform the same helper-type duties (e.g., laborers (if appropriate), "tenders," apprentices, trainees, etc.), and the predominant classification practice, covering the specified helper duties determined through area practice surveys, would determine whether to issue a helper classification.

The unions' argument misses the point. As the Court of Appeals recognized, the helper definition abandons the prior DOL practice of focusing on the tasks performed, which did not permit more than one classification to perform the same work. The current definition emphasizes instead that helpers work under the direction and supervision of a journeyman, to assist that journeyman. The definition clearly contemplates, by stating that helpers may (i.e., are permitted to) use the tools of the trade, that there will be more than one classification permitted to perform the same duties. Thus, the question is not what classification prevails with respect to specific duties, but whether the practice of using helpers prevails. This is what the proposal was intended to determine, by counting the number of workers in a craft working on projects with helpers, and comparing that to the number of workers in the craft on projects without helpers.

Furthermore, the approach suggested by the BCTD is not feasible for several reasons. First, conducting the suggested area practice surveys to determine the specified helper duties in each locality would not be practical for the reasons of resource limitations noted earlier. Second, the approach is logically inconsistent. While in the first step the area practice survey would attempt to prescribe the precise prevailing craft content of the helper classification based on actual duties performed, in the second step nomenclature or job title alone would be the determining factor for whether to allow a helper classification. Third, such a practice, if feasible, would logically need to weigh helpers separately against *each* of these groups, with the result that no single job title would comprise a majority. And, fourth, such an approach would be a departure from established practices in DBRA administration which generally link all of the wages paid for certain given work (with the exception of apprentices and trainees), irrespective of the name for the job used by individual contractors. (As noted above in the discussion regarding carpenters versus drywall hangers, ". . . wage rates for all those doing drywall work, *whether classified as carpenter or drywall hanger*, may be used in the usual way to compute the prevailing rate [for drywall *work*]." Manual, pp. 40–41, emphasis added.)

Finally, the concept of counting laborers against helpers to determine which prevails simply does not accomplish the intended purpose of allowing helpers to be utilized to assist journeymen where the practice of using them to perform craft work prevails. The question is not whether workers denominated as helpers prevail in relation to some other classification, such as laborers; the question is whether the practice of using helpers prevails, i.e., is it the predominant practice in the area to use helpers.

To determine whether the practice of using helpers prevails, the proposed statistical formulas in Options A and B utilize a representative weighting mechanism for determining the prevailing practice based on the actual number of workers employed on projects in a particular craft. The formulas link the number of helpers to the number of journeymen with whom the helpers are associated since, under the approved definition, a helper must work under the direction of, and be supervised by, the journeymen. Thus, the proposed formulas will determine if the prevailing *practice* on projects in an area is for helpers to work with and under the supervision of journeymen (according to the definition), by counting the number of workers on those projects who do the work in that craft.

Under the Option A formula, outlined above, where there is a "majority" rate, the practices regarding use of helpers of those contractors who paid the majority rate would prevail. For example, if the majority wage is a collectively bargained wage rate, then the practices of union contractors would prevail, and helpers would not be permitted where they are not permitted under the applicable collective bargaining agreements. If the majority rate is a rate paid by open shop contractors, the open shop practice would prevail. If there is any question regarding whether the use of helpers prevails among contractors who paid the majority rate, then the method in the second step of Option A would be applied to those contractors who paid the majority rate to determine if the use of helpers prevails.

Where there is no "majority" journeyman rate and the weighted average rule controls, then it is likely that the projects surveyed will be predominantly open shop or a mixture of open shop and union projects. While extreme examples can be hypothesized under any decision rule, it is our view that, because of the widespread use of helpers among open shop contractors, it is highly unlikely that this decision rule would result in recognizing helpers as prevailing where they are only "identifiable". BLS data on employment levels within the various construction trade occupations indicated that, in 1984, in the industry as a whole (union and open shop sectors), 15 percent of the workers were helpers and 41 percent were journeymen, with the remainder representing other classifications including laborers (Preliminary Regulatory Impact Analysis, 52 FR 31360). The State of Wisconsin Department of Industry, Labor and Human Resources commented that current employment estimates in Wisconsin indicate that almost all open shop employers, and more than one-half of all unionized employers, utilize helpers in Wisconsin. ABC represented that almost 75 percent of all construction in the United States is performed today by the open shop sector, where a clearly widespread use of helpers exists. Furthermore, DOL's current operating procedures for determining if the survey data are adequate to sustain a calculation of the prevailing *wage* for a classification will ensure that helpers are not recognized as prevailing where they are only "identifiable." (If the number of employees in a classification for whom survey wage data are obtained is limited, DOL will not issue a determination of the prevailing wage unless data on at least six workers is received from three or more contractors, none of which accounts for 60 percent or more of total reported employment, if the overall survey "usable response rate" is less than 50 percent. DB Wage Determinations Manual of Operations, pp. 61–63.)

On the other hand, we agree with some of the commenters' observation

that Option B is more susceptible to the assertion that the rule could allow for the use of helpers where they are only "identifiable," since Option B counts workers in every case and gives no consideration to the practice in areas where union rates clearly dominate by the majority rule for the journeymen in the classification. Moreover, Option B could produce various anomalies in the wage determination process, such as a union-negotiated journeyman rate drawn from a collective bargaining agreement under which helpers are not allowed, coupled with an open shop helper at a wage level which bears no reasonable relationship to the journeyman rate; or a *semiskilled* helper wage rate lower than a union-negotiated wage rate for an *unskilled* laborer on the same wage determination.

Upon consideration of all the relevant comments submitted and the rulings of the courts in the litigation, DOL has determined that Option A should be adopted in lieu of all others for the following reasons. Where a majority of contractors in a geographic area is found to be paying a single rate for given work, the Davis-Bacon prevailing wage process should not alter that practice with respect to work covered by the law. Under well-established DBRA principles, wage determinations should reflect as accurately as possible what is actually being paid in the local area, to satisfy the statutory purpose of ensuring that wages on federal construction projects "mirror" those that are locally prevailing (712 F.2d at 624). Option A will better achieve these results than Option B, by avoiding the potential disruptions of locally prevailing practices that could occur under the anomalies produced by Option B in the circumstances cited above. In those areas where union workers dominate with respect to a particular journeyman classification, Option A diminishes the likelihood of producing results found objectionable by the courts—namely, undercutting the prevailing wage rate by underclassification in union-dominated areas (712 F.2d at 624–626; 630). Since, as the court observed, wage rates and classification practices are two sides of the same coin and "must be fixed in tandem to ensure that a given wage is paid for given work" (712 F.2d at 628), if the prevailing wage rates for particular classifications in an area are derived from collective bargaining agreements, the prevailing wage process must ensure that the corresponding classifications of work to be observed under a DBRA wage determination are consistent with the job classifications upon which the prevailing wage rates were based. (*See, Fry Brothers Corp.*, WAB Case No. 76–6 (June 14, 1977).) Thus, in areas where union workers dominate with respect to a journeyman classification, and the union practice does not permit helpers, the methodology for finding if helpers prevail should not allow for the recognition of helpers in those areas. To quote in pertinent part from the Court of Appeals decision in *Building and Construction Trades Department, AFL–CIO* v. *Donovan*, 712 F.2d 611 (1983):

> To take a simplified example, suppose that unions dominate the construction industry in a certain city and require that any worker using carpenters' tools be a journeyman carpenter or apprentice. Nevertheless, suppose that one or two nonunion firms in the city use lower paid carpenter's helpers to rough-cut beams. In that case, a federal project that permitted workers who rough-cut beams to be termed "carpenter's helpers," because such a classification could be "identified" in the city, would not be paying the wage prevailing for the corresponding class of workers in that city. The prevailing wage for that kind of work would actually be the union wage of journeyman carpenters or apprentices. (712 F.2d at 624–625)
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> We have concluded that the Secretary's identifiable-classification regulation would virtually ensure underclassification in union-dominated areas. At least where the Secretary has not found the use of helpers as provided for in the new rules to be a nearly universal practice, . . . he is barred from allowing work that is "prevailing" categorized in one job classification to be placed in a lower paid classification merely because such a practice can be "identified" in the area. (712 F.2d at 625–626)
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> the new regulation, as modified by the requirement that the classification prevail in an area before it may be used, is an entirely logical response to the problem of federal construction practice not reflecting the widespread, but not universal, practice of using helpers. The new regulation would lower the current federal wages for the most part in those *nonunion areas* where they are significantly above the wages paid in the area. . . . *In the union areas of the country where helpers are little used, they would not be allowed on federal projects. Thus, the new regulation would be narrowly aimed at correcting the federal practice in areas where it has not worked well, and would not result in a wholesale reduction in journeyman wages.* (712 F.2d at 630; emphasis added)

When there is no singular or majority wage rate (and corresponding practice) found prevailing in an area, the second step, or weighted average rule, of Option A provides an appropriate mechanism for determining whether there is a prevailing practice of using a helper classification on projects by using a weighting factor that is based on the actual number of workers employed in a particular classification.

In addition to their arguments discussed at length above, the unions contend that Options A and B are defective in allowing helpers to prevail where they do not comprise the majority of workers in a classification. To support their views, the unions used the example in which helpers would be found to prevail although they constitute only 20 percent of the total workers in the classification. Again, it must be reiterated that the question is whether there is a prevailing practice of utilizing helpers, *not* whether they prevail in relation to journeymen or laborers or some other classification. For example, if contractors on every project in an area utilized helpers, the practice of utilizing helpers would be universal, even if many more journeymen than helpers were utilized. In fact, these regulations themselves would permit only two helpers to be employed for every three journeymen on Davis-Bacon projects. Under the unions' approach, the Department would be prohibited from finding that helpers prevail, even in an area where there is a universal practice to observe this ratio.

The ABC, on the other hand, suggested counting only the number of helpers, and not journeymen, and permitting helpers wherever there is a "substantial area practice." In our view this approach would be contrary to the Court of Appeals' requirement that helpers be found to prevail before they can be utilized on Davis-Bacon projects. ABC suggested as alternatives, Option C (count projects on which helpers are used) or Option E (count contractors employing helpers). These are not acceptable approaches, however, because they fail to give necessary weight to the size of a project or a contractor's workforce. Option D would weight projects by dollar volume, a factor which is very difficult to determine and may bear little relationship to the size of the workforce. In our view, the number of workers actually employed in a craft is the appropriate weighting factor.

A number of commenters stated that there are other workers who perform similar duties to helpers on a project, and that they should be considered helpers in determining whether helpers prevail. As discussed above, it is our experience that laborers do not normally function as helpers and it is not our intention to upset established practices regarding the use of laborers. In addition, apprentices and trainees, since they are separately defined in the regulations, are not helpers. However,

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we have observed that use of other sub-journeymen classifications, such as "improvers" or "learners," sometimes is found in the union sector. Such workers will be counted as helpers in determining whether helpers prevail if they conform to the "helper" definition.

Finally, DOL has determined upon review that in order to obtain a more accurate assessment of total employment in a particular classification, it will be necessary to include, for counting purposes only, *all* workers who work in the classification, including apprentices and trainees. Accordingly, a clarifying revision is added to section 1.7(d)(2) to provide that the total number of workers in the classification employed by contractors utilizing helpers (all journeymen, helpers, apprentices, and trainees) will be compared to the total number of workers in the classification employed by contractors not utilizing helpers (journeymen, plus apprentices and trainees, if any), and the practice covering the majority of the workers in such classification will determine whether to issue a helper rate. Since apprentices and trainees are defined separately in the regulations (29 CFR 5.2(n) (1) and (2)), and prevailing wage rates are not determined by DOL for apprentices and trainees (the contractor derives the rates required to be paid on DBRA work by applying the appropriate percentage progression in the approved training programs to the applicable wage determination rate for the journeyman), the wage rates paid to apprentices and trainees will not be included in determining the prevailing wage rate for the helper classification (just as the journeymen rates are similarly not so included). With the added clarification, Option A is adopted as proposed.

Issue: Conformance Procedures

Comments

The BCTD objected to the special criteria in proposed section 5.5(a)(1)(ii)(A) under which helper classifications and wage rates could be "conformed" (i.e., added to a wage determination after the wage determination has been issued) if a particular wage determination did not contain a helper classification. As proposed, this section provided, as did the rule promulgated in 1982, that helper rates could be conformed without regard to the longstanding requirement, applicable to all other conformance actions, that the work of a proposed classification to be conformed not be performed by another classification already listed in the wage determination. In addition, a provision was added as a result of the court of appeals decision to require that helper classifications may be conformed only where they prevail in the area covered by the wage determination. The BCTD argued that the first provision will permit conformance of less-than-prevailing classifications if a helper is allowed to perform work performed by another classification in the wage determination (i.e., the journeyman). Secondly, according to the BCTD, the proviso would grant authority to contracting officers to determine if a helper classification prevails in an area without reference to any guidelines or criteria for making such a determination. Under this scheme, the BCTD suggested that a contracting officer could undercut prevailing wage determinations issued by DOL which, presumably, has already determined that use of the helper classification is not a prevailing practice in the area covered by the wage determination (otherwise DOL would have recognized the helper classification as prevailing in the first place and included it in the wage determination issued).

The AGC objected to the provision in the existing conformance procedures which requires that conformed wage rates bear a "reasonable relationship" to the wage rates contained in the wage determination. As applied to conformance of a proposed helper classification, this requirement may raise helper wage rates beyond what is actually paid. AGC suggested that since the helper classification is a low-skilled, entry-level position, helper wage rates are likely to be much lower and this should be recognized when helper wage rates are conformed.

Discussion

The conformance procedure is intended to provide a practical solution to the need for adding classifications and wage rates in cases where a published wage determination does not contain a particular classification that a contractor and the contracting agency find necessary to perform the government contract. The procedure provides for the Wage and Hour Administrator to review, approve, modify, or disapprove every proposed additional classification action.

The new helper definition contemplates that a helper's duties may overlap to some extent with the duties of journeymen. The conformance procedure, therefore, contains an exception from the normal rule for conformance of helpers, in order to permit adding a helper classification despite the fact that some of the duties to be performed by the helper may also be performed by journeymen in the classification. To do otherwise would mean a helper classification could never be conformed.

This provision will not permit conformance of less-than-prevailing helper classifications as alleged by the BCTD. One of the criteria for approval of helper conformances requires, as a prerequisite, that the helper classification prevail in the area where the work is performed.

The BCTD comment that the procedures grant new authority to contracting officers to enable them to undercut prevailing wage determinations issued by DOL is unfounded. The Wage-Hour Administrator must approve every proposed conformance action. The Administrator will be barred from approving a helper conformance if evidence is not submitted demonstrating that the helper classification prevails, taking into consideration the principles set forth in § 1.7.

The BCTD comment that any wage determination issued by DOL that does not contain a particular helper classification can be presumed to mean that the helper classification does not prevail oversimplifies the issues. Not all wage determinations are the result of extensive wage surveys, and not all counties are surveyed each year. A practical solution is needed for adding prevailing helper classifications to wage determinations, such as through conformance, for the areas that have not recently been surveyed at the time a request is made to add a helper classification to a wage determination. On the other hand, if a survey has recently been conducted and a determination made that helpers do not prevail, conformance of an additional helper classification will not be approved.

With respect to AGC's comments, prevailing pay relationships are generally found to be in direct proportion to the skill levels required and the difficulty of the duties peformed in the various classifications. The helper classification, as defined, is a *semiskilled* classification, as opposed to an *unskilled* classification or a *skilled* mechanic's classification. Thus, as a general statement, prevailing rates for *semiskilled* helpers would be expected in most cases to be between the lowest rate listed on a wage determination for an *unskilled* laborer classification and the higher rate listed for the skilled journeyman mechanic in the classification which the helper is assisting. Absent a contrary prevailing

area practice, it is not likely that we will find helper wage rates lower than rates prevailing in an area for unskilled work (with the exception of rare instances where the union laborer rate prevails in combination with open shop rates prevailing for the skilled trades). Therefore, the requirement that conformed wage rates bear a "reasonable relationship" to the wage rates contained in the wage determination should not, contrary to AGC's assertion, raise helper wage rates to levels above what is actually being paid to helpers in a community. In any event, the requirement that the rates bear a "reasonable relationship" has always been an integral part of the conformance process.

Accordingly, § 5.5(a)(1)(ii)(A) is adopted as proposed.

Issue: Ratio Limitation on the Use of Helpers; Variances.

The enjoined 1982 regulations contained a numerical limitation on the use of helpers: two helpers for every three journeymen, or not more than 40 percent of the total number of helpers and journeymen, in the contractor's work force on the job site. (A one-helper-to-five-journeymen ratio was originally proposed, but was raised to 2:3 in the final rule in response to public comments that 1:5 was too restrictive and would not reflect the actual number of helpers used in the industry.)

Helpers employed in excess of this ratio would be required to be paid the applicable journeyman's (or laborer's, where appropriate) wage rate for the work actually performed. To insure that this ratio did not disrupt existing established local practices in areas where DBRA wage determinations currently contain helper classifications without any limitation on the number permitted, the preamble to the regulations provided that DOL would consider requests for variances from the ratio limitation prior to bid opening on a contract, if supported by a showing that the DBRA wage determination for the type of construction in effect in the area *before* the effective date of the final helper regulations contained a helper classification, and that there was a practice in the area of utilizing such helpers in that classification on DBRA projects in excess of the two-for-three ratio.

The ratio and variance provisions were not open for comment in the current rulemaking. Comments were previously invited on a proposed ratio in 1981, and a final ratio was adopted in 1982 after consideration of the public comments received. In the litigation, the district court enjoined the implementation of all the new regulations governing the use of helpers, including the ratio. However, the appeals court declined to rule on the helper provisions other than the expanded definition of duties and the provision that a helper classification need only be "identifiable" in an area to be used, on the grounds that the district court had not provided any significant discussion of the issues involved. Because the appeals court did not set aside the district court's injunction on the ratio, which had been enjoined as a part of the total helper package which was overturned, the district court's subsequent order, among other things, continued the injunction against the ratio.

The preamble to the 1987 Notice of Proposed Rulemaking (NPRM) included a discussion of the ratio and variance provision, and stated that the Department intended to implement them as final rules, as previously provided in the 1982 regulations, once the related helper provisions in the NPRM were finalized.

While several comments were submitted which took issue with either the mechanical operation of the ratio or variance provisions, and/or suggested the 2:3 ratio be dropped or revised to other numerical limits (which were similar to the comments received during the 1981–1982 rulemaking), DOL cannot at this time implement any of the suggested changes without further notice-and-comment rulemaking. Accordingly, as explained in the preamble to the 1987 NPRM, the 2:3 ratio contained in the enjoined 1982 regulations is being implemented in this final rule. In addition, to assure that the ratio does not disrupt existing established local practices in areas where wage determinations currently contain helper classifications without restriction as to the number permitted, interested parties (which would include contracting agencies), may request, prior to bid opening on a contract, a variance from the ratio provision pursuant to section 5.14 of the regulations. Such variances will be considered for the applicable helper classification(s) upon a showing that the wage determination for the type of construction in effect in the area prior to the effective date of these regulations contains one or more helper classifications, and that there was a practice in the area of utilizing such helpers on Davis-Bacon projects in excess of a ratio of two to every three journeymen in the classification.

Issue: Use of wage data from projects covered by DBRA when determining whether helpers prevail.

Comments

AGC observed that under current policy and practices, projects covered by DBRA constitute most or all of the data base for surveys in heavy and highway construction. (Under 29 CFR 1.3(d)(1965), data from projects subject to DBRA are not used when determining prevailing wages for building or residential wage determinations, unless there is insufficient private construction from which to determine prevailing wages; data from DBRA projects are used in compiling wage rate data for heavy and highway wage determinations, because of the extensive public funds expended, and the limited privately-funded work, in heavy and highway construction.) AGC postulated that if this practice were continued under the new rules for determining if helpers prevail, the prior restrictive helper policy on DBRA work would be perpetuated into future heavy and highway wage determinations. Similarly, where DBRA projects are included for building or residential wage determinations (due to insufficient data from private work), the same results would occur. AGC suggested that where DBRA projects are the source of wage and area practice data, helpers should be permitted for subsequent DBRA construction "where helper type of work has been found to prevail in a classification." However, AGC offered no insight on how that determination could be made.

Discussion

The regulation on use of DBRA projects in wage surveys was not open for comments during the current rulemaking. No valid approach has been suggested which would justify DOL using some separate data base for determining if helpers prevail that differs from the data sources used to establish the prevailing wages in an area. However, if future experience under the new helper rules indicates further rulemaking is needed to adapt the Act's implementation to changing prevailing area practices, DOL would not be precluded from considering further rulemaking initiatives.

Executive Order 12291; Regulatory Flexibility Act

Regulatory Impact and Flexibility Analyses

The Department prepared a preliminary regulatory impact and regulatory flexibility analysis in

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connection with the proposed helper regulations published on August 14, 1981 (46 FR 41444; 46 FR 41456). A final regulatory impact and regulatory flexibility analysis was prepared and summarized in the May 28, 1982 publication of the helper regulations (47 FR 23644; 47 FR 23658). The Department updated its analysis of the helper provisions in connection with the proposed rule published on August 10, 1987 (52 FR 31368). The updated analysis estimated that the annual cost savings to be realized from implementing the helper regulations ranged from midpoint estimates of $422 million (helpers substitute for laborers and journeymen) to $610 million (helpers substitute for journeymen only), and projected that the changes would have a substantial beneficial impact on small contractors. Several comments were received regarding the analysis from individuals, labor organizations, contractors, and the Chief Counsel for Advocacy of the Small Business Administration. Some commenters stated their belief that the cost savings estimates were inflated while others suggested they were understated; some questioned whether the estimated savings would be passed through to the end user (owner or government); and others questioned various assumptions in the analysis regarding productivity and the disaggregated approach to the wage bill estimates. SBA's Chief Counsel for advocacy concurred with DOL's views that the regulations would have a significant beneficial impact on small businesses, and would also result in significant savings to the nation's taxpayers.

The Department, as set forth above in the discussion of comments received, has concluded that of the regulatory alternatives available, Option A is the most consistent with the stated objective of the statute.

However, the Department has concluded upon review that the references in the analysis to the effect that helpers may substitute for laborers are not correct. As noted above, laborers would not generally meet the definition for the helper classification. Further, under the Option A method for determining if the use of a helper classification prevails, prevailing pay relationships in the industry will make it highly unlikely that such a substitution effect could occur. For example, where the majority rate prevails for the journeyman and union rates are found prevailing in the area, the decision rule is not likely to produce a finding of prevailing helpers. Furthermore, it has been our experience in the open shop sector as well as in the union sector that prevailing pay relationships in the industry are found to be in direct proportion to skill levels, and semiskilled helper rates are above the unskilled laborer's rate. Thus, we anticipate that this will continue to be the case if there is no majority rate under Option A and the weighted average rule is utilized. As also noted above in the discussion of comments on the conformance procedures, the helper classification, as defined, is a semiskilled classification, as opposed to an unskilled laborer classification or a skilled mechanic's classification. Thus, there will be no economic incentive for contractors to replace laborers with helpers. The economic incentive could only exist if the wage determination issued contained open shop rates for the journeyman and helper classifications, coupled with a union laborer rate that is higher than the helper rate. With rate exceptions, such a situation would not occur, since it is our experience that where there is an open shop journeyman rate it is almost never the case that there is a union laborers rate.

Accordingly, the Department is withdrawing the portion of the analysis which contains estimates of cost savings for where helpers substitute for both laborers and journeymen (Table II and the related discussion, 52 FR 31370). The Department is adopting the primary analysis published with the proposal as the Department's final regulatory impact analysis.

As indicated in the preliminary analysis, the results of the analysis represent the upper limit in potential cost savings from the proposed options. The analysis assumes the determination of whether helpers prevail is, in all cases, determined by the practice covering the majority of the workers reported in the survey (the second half of Option A), rather than the practice of particular contractors whose wage rates establish the prevailing wage (the first half of Option A). Data limitations prevented estimation of the effects on construction cost savings when the practices of contractors whose wage rates establish prevailing wages also determine helper utilization. However, a review of prevailing wage determinations issued under DBRA indicates that roughly 35% of the general wage determinations issued and 20% of the individual project wage determinations issued contain rates based exclusively on collective bargaining agreements. To the extent that such collective bargaining agreements establish the prevailing wages under DBRA, and do not provide for the use of a helper classification, the estimate of cost savings would be reduced accordingly.

Copies of the complete analysis may be obtained from the Wage and Hour Division at the address and telephone number listed above under **FOR FURTHER INFORMATION CONTACT.**

Paperwork Reduction Act

The information collection requirements contained in section 5.5(a)(1)(ii) of Part 5 were previously approved by the Office of Management and Budget under the Paperwork Reduction Act and assigned OMB control number 1215-0140.

Conclusion

The Solicitor of Labor has determined, in accordance with Executive Order 12291, that this regulation is clearly within the authority delegated to the Secretary of Labor by the Davis-Bacon Act (40 U.S.C. 276a et seq.), Reorganization Plan No. 14 of 1950 (5 U.S.C. Appendix), and the Copeland Act (40 U.S.C. 276c) as well as 5 U.S.C. 301, 29 U.S.C. 259, and the laws listed in Appendix A of Part 1 and Section 5.1(a) of Part 5. The Solicitor, as set forth above in the discussion of the major issues, has determined that this regulation is consistent with the Congressional intent of the Davis-Bacon and related Acts that wage determinations issued under those Acts reflect the rates prevailing on similar construction in the locality, that such wage determinations be incorporated in contracts subject to those Acts, and that contractors performing work on Federal and federally assisted construction projects subject to those Acts pay their workers at least the prevailing wages established by the Secretary of Labor in accordance with industry classification and wage practices.

Dates of Applicability

Certain provisions of this regulation are currently under injunction by the U.S. District Court for the District of Columbia. Accordingly, copies of this regulation are being submitted to the Court for review and approval prior to final implementation, pursuant to the Court's decision of December 21, 1984. Once the injunction is lifted, a notice will be published in the **Federal Register** providing an effective date 60 days thereafter. The provisions of the revised rule will then take effect as follows:

The revisions to section 1.7(d) of Part 1 shall be applicable only as to wage determinations issued based on wage surveys completed on or after the date of implementation of this revised rule.

The revisions to sections 5.2 and 5.5 of Part 5 shall be applicable only as to contracts entered into pursuant to invitations for bids issued or negotiations concluded on or after the date of implementation of this revised rule. None of the revisions herein shall be applicable to any contract entered into prior to such date.

This document was prepared under the direction and control of Paula V. Smith, Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.

List of Subjects

29 CFR Part 1

Administrative practice and procedures, Government contracts, Labor, Minimum wages, Wages.

29 CFR Part 5

Administrative practice and procedure, Government contracts, Investigations, Labor, Minimum wages, Penalties, Reporting and recordkeeping requirements, Wages.

Accordingly, 29 CFR Parts 1 and 5 are amended as set forth below.

Concurrent with the publication of this final rule, the final helper rules previously published in the **Federal Register** on May 28, 1982 (47 FR 23644; 23658) and subsequently deferred (*see* 47 FR 32070, July 26, 1982; 48 FR 19366, April 29, 1983) are hereby withdrawn.

Signed at Washington, DC, on this 24th day of January, 1989.

Dennis E. Whitfield,

Acting Secretary of Labor.

Alan C. McMillan,

Acting Assistant Secretary for Employment Standards.

Paula V. Smith,

Wage and Hour Division.

PART 1—PROCEDURES FOR PREDETERMINATION OF WAGE RATES

1. The authority citation for Part 1 continues to read as follows:

Authority: 5 U.S.C. 301; R.S. 161, 64 Stat 1267; Reorganization Plan No. 14 of 1950, 5 U.S.C. Appendix; 29 U.S.C. 259; 40 U.S.C. 276a–276a–7; 40 U.S.C. 276c; and the laws listed in Appendix A of this Part.

2. Section 1.7 is amended by adding a new paragraph (d) to read as follows:

§ 1.7 Scope of consideration.

* * * * * *

(d) The use of "helpers", "apprentices" and "trainees" is permitted in accordance with Part 5 of this subtitle. Wage rates for semi-skilled classifications of helpers will be issued when the classifications are prevailing in the area. In determining whether use of a particular helper classification prevails in the area, the Administrator will follow the criteria set forth in paragraphs (d)(1) and (d)(2) of this section.

(1) If the prevailing wage for a particular journeyman classification is a wage that is paid to the majority of the journeymen in the classification as defined in § 1.2(a)(1) of this part, then the practice followed by those contractors whose rates are adopted as prevailing for the journeyman shall also be deemed the prevailing practice in determining whether to issue a helper classification. Any ambiguity with regard to such practice, will be resolved by following the rule in paragraph (d)(2) of this section with respect to those contractors.

(2) If the prevailing wage for a particular journeyman classification is the average of the wages paid to the journeymen, weighted by the total number of journeymen in the classification as defined in § 1.2(a)(1) of this part, then the total number of workers in the classification employed by contractors utilizing helpers (journeymen plus apprentices, trainees, and helpers as defined in § 5.2(n)(4) of this chapter) on reported projects will be compared to the total number of workers in the classification employed by contractors not utilizing helpers (journeymen plus apprentices and trainees as defined in § 5.2(n)(4) of this chapter), and the practice which covers the majority of such workers shall be deemed the prevailing practice in determining whether to issue a helper classification.

PART 5—LABOR STANDARDS PROVISIONS APPLICABLE TO CONTRACTS COVERING FEDERALLY FINANCED AND ASSISTED CONSTRUCTION (ALSO LABOR STANDARDS PROVISIONS APPLICABLE TO NONCONSTRUCTION CONTRACTS SUBJECT TO THE CONTRACT WORK HOURS AND SAFETY STANDARDS ACT)

Subpart A—Davis Bacon and Related Acts Provisions and Procedures

3. The authority citation for Part 5 continues to read as follows:

Authority: 40 U.S.C. 276a–276a–7; 40 U.S.C. 276c; 40 U.S.C. 327–332; Reorganization Plan No. 14 of 1950, 5 U.S.C. Appendix; 5 U.S.C. 301; 29 U.S.C. 259; and the statutes listed in § 5.1(a) of this part.

4. Section 5.2 is amended by revising paragraph (n) introductory text and by adding paragraph (n)(4) to read as follows:

§ 5.2 Definitions.

* * * * * *

(n) The terms apprentice, trainee, and helper are defined as follows:

* * * * * *

(4) A "helper" is a semi-skilled worker (rather than a skilled journeyman mechanic) who works under the direction of and assists a journeyman. Under the journeyman's direction and supervision, the helper performs a variety of duties to assist the journeyman such as preparing, carrying and furnishing materials, tools, equipment, and supplies and maintaining them in order; cleaning and preparing work areas; lifting, positioning, and holding materials or tools; and other related, semi-skilled tasks as directed by the journeyman. A helper may use tools of the trade at and under the direction and supervision of the journeyman. The particular duties performed by a helper vary according to area practice.

* * * * * *

5. Section 5.5 is amended by revising paragraph (a)(1)(ii)(A) and adding a new paragraph (a)(4)(iv), to read as follows:

§ 5.5 Contract provisions and related matters.

(a) * * *

(1) * * *

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following crieria have been met:

(1) Except with respect to helpers as defined in 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and

(4) With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed.

* * * * * *

(4) * * *

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(iv) *Helpers.* Helpers will be permitted to work on a project if the helper classification is specified on an applicable wage determination or is approved pursuant to the conformance procedure set forth in § 5.5(a)(1)(ii). The allowable ratio of helpers to journeymen employed by the contractor or subcontractor on the job site shall not be greater than two helpers for every three journeymen (in other words, not more than 40 percent of the total number of journeymen and helpers in each contractor's or in each subcontractor's own work force employed on the job site). Any worker listed on a payroll at a helper wage rate, who is not a helper as defined in 29 CFR 5.2(n)(4), shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any helper performing work on the job site in excess of the ratio permitted shall be paid not less than the applicable journeyman's (or laborer's, where appropriate) wage rate on the wage determination for the work actually performed.

* * * * *

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Friday
January 27, 1989

Part IX

Department of Defense

48 CFR Parts 204, 219, and 252
Federal Acquisition Regulation Supplement; Small Business Competitiveness Demonstration Program; Interim Rule and Request for Comments

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DEPARTMENT OF DEFENSE

48 CFR Parts 204, 219, and 252

Federal Acquisition Regulation Supplement; Small Business Competitiveness Demonstration Program

AGENCY: Department of Defense (DoD).

ACTION: Interim rule and request for comments.

SUMMARY: The Defense Acquisition Regulatory Council is revising Department of Defense Federal Acquisition Regulation Supplement (DFARS) Parts 204, 219, and 252 to further implement FAR Subpart 19.10 and the December 22, 1988 joint Office of Federal Procurement Policy (OFPP) and Small Business Administration (SBA) interim policy directive and test plan implementing Title VII of the "Business Opportunity Development Reform Act of 1988", Pub. L. 100-656 (53 FR 52880).

DATES: *Effective:* This rule is effective for all affected solicitations issued on or after January 1, 1989.

Comments: Comments on the interim rule should be submitted to the address shown below not later than February 27, 1989, to be considered in the formulation of a final rule.

ADDRESS: Interested parties should submit written comments to: Defense Acquisition Regulation Council, ATTN: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, ODASD(P)/DARS, % OASD(P&L) (MRS), Room 3D139, The Pentagon, Washington, DC 20301-3062. Please cite DAR Case 88-322 in all correspondence related to this subject.

FOR FURTHER INFORMATION CONTACT: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, telephone (202) 697-7266.

SUPPLEMENTARY INFORMATION:

A. Background

Title VII of the "Business Opportunity Development Reform Act of 1988" seeks to test the effectiveness of eliminating set-asides in certain industry groups through the establishment of a new program, entitled the "Small Business Competitiveness Demonstration Program." The program has two primary objectives: (1) To demonstrate whether small business firms in certain industry groups can compete successfully on an unrestricted basis for Federal contracts; and (2) to demonstrate whether targeted pooling and management techniques can expand Federal contract opportunities for small business in industry categories where such opportunities historically have been low despite adequate numbers of small business contractors in the economy. DoD has been identified as a participant in the demonstration.

For purposes of the expansion portion of the demonstration program, DoD has targeted the following industries:

Standard industrial classification (SIC)	SIC code
(1) Pharmaceutical preparations	2834
(2) Ammunition, except for small arms	3483
(3) Ordnance and accessories, not elsewhere classified (NEC)	3489
(4) Turbines and turbine generator sets	3511
(5) Aircraft engines and engine parts	3724
(6) Space vehicle equipment, NEC	3769
(7) Tanks and tank components	3795
(8) Search and navigation equipment	3812
(9) Communication services, NEC	4899
(10) Petroleum products, NEC	5172

B. Regulatory Flexibility Act

As stated in the joint policy directive (53 FR 52880), the Office of Federal Procurement Policy and the Small Business Administration will prepare the appropriate regulatory flexibility analysis upon completion of the first quarterly review under the Program.

C. Paperwork Reduction Act

The necessary approvals are being obtained by the Office of Federal Procurement Policy and the Small Business Administration.

D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense to issue this coverage. This action is necessary in order to implement Pub. L. 100-656 and the Small Business Competitiveness Demonstration Program.

List of Subjects in 48 CFR Parts 204, 219 and 252

Government procurement, small business procurement.

Charles W. Lloyd,

Executive Secretary, Defense Acquisition Regulatory Council.

Therefore, 48 CFR Parts 204, 219 and 252 are amended as follows:

1. The authority citation for 48 CFR Parts 204, 219 and 252 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and DoD FAR Supplement 201.301.

PART 204—ADMINISTRATIVE MATTERS

204.670-2 [Amended]

2. Section 204.670-2 is amended by adding between the definition "Contracting Office" and the definition "Nonprofit Institution" the definition reading: " 'Emerging Small Business', as used in this part, is as defined in FAR 19.1002."

3. Section 204.671-5 is amended by adding in paragraph (d) under "Item D4A" following "Code E" a new paragraph reading: "Code Y—Enter this code if the action resulted from an emerging small business set-aside (219.1070-2)."; by removing in paragraph (e) "Item E2 through E8: Reserved"; and by adding in paragraph (e) following "Code N" new paragraphs entitled "Item E2, Item E3, and Item E4"; to read as follows:

204.671-5 Instructions for completion of DD Form 350.

* * * * *

(e) *Part E, DD Form 350.*

* * * * *

Item E2, Small Business Competitiveness Demonstration Program Test. The Small Business Competitiveness Demonstration Program is set forth in FAR 19.10.

Code Y—Enter this code for any action in either the four designated industry groups or the ten targeted industry categories awarded as a result of a solicitation issued on or after January 1, 1989, except when Item B13 is coded 6, 7 or 8.

Code N—Enter this code for actions other than those above.

Item E3, Small Business Size. Complete only when Item E2 is coded Y and the contract action is awarded to a small business. Enter the code of the size range that includes the size of the business as represented by the contractor.

Code	Employees	Code	Annual gross revenues
A	99 or fewer	M	$1 million or less.
B	51- 100	N	Over $1M-$2M.
C	101- 250	P	Over $2M-$3.5M.
D	251- 500	R	Over $3.5M-$5M.
E	501- 750	S	Over $5M-$10M.
F	751-1000	T	Over $10M-$17M.
G	Over 1000	U	Over $17 million.

Item E4, Emerging Small Business. Complete this item only if Item E2 is coded Y and the contracting action is for one of the designated industry groups. Otherwise, leave blank.

Code Y—Enter this code if the contractor is an emerging small business concern.

Code N—Otherwise, enter this code.

Item E5 through E8: Reserved.

* * * * *

204.672-2 [Amended]

4. Section 204.672-2 is amended by adding in paragraph (a) at the end of the second sentence the words "including any actions for which an Individual Contract Action Report (DD Form 350) may have been prepared pursuant to 204.675."

204.672-5 [Amended]

5. Section 204.672-5 is amended by adding in paragraph (e) a new second sentence in the paragraph entitled "Line E1" reading: "If the action is an emerging small business set-aside, use the code which is appropriate for the set-aside method used."

6. Sections 204.675 and 204.675-1 through 204.675-3, are added to read as follows:

204.675 Individual Contract Reporting of Actions $25,000 or Less in the Four Designated Industry Groups Under the Small Business Competitiveness Demonstration Program.

204.675-1 General.

The four designated industry groups in the Small Business Competitiveness Demonstration Program are set forth in FAR 19.1005(a). For the procurement of a service in any of the four designated industry groups, the Small Business Competitiveness Demonstration Act of 1988, Pub. L. 100-656, requires reporting of each award of $25,000 or less in the same manner as if the purchase were in excess of $25,000.

204.675-2 Procedures.

(a) During the term of the Program, each contracting action obligating or deobligating $25,000 or less for services within any of the four designated industry groups shall be reported on an Individual Contract Action Report (DD Form 350) except as indicated in 204.671-3(d).

(b) This requirement is in addition to the reporting requirement at 204.672, Monthly Contracting Summary of Actions $25,000 or Less (DD Form 1057).

204.675-3 Instructions for Completion of the DD Form 350.

(a) Except as noted in (b) and (c) below, complete the DD Form 350 in accordance with the instructions at 204.671-5.

(b) Leave Items B5B, B5E, B5F, B5G, B10, B11, C4, C6, C11, C12, D4E, and D7 blank. Leave Items C-8 and C-9 blank when small purchase procedures are used.

(c) Contracting actions using small purchase procedures shall code the following items as shown below. (These codes do not appear on the DD Form 350).

Item B13, Kind of Contract Action

Code 9—Small Purchase Procedures. Enter this code to report an action using small purchase procedures as defined in FAR Part 13.

Item D4A, Type of Small Business Set-Aside

Code Y—Enter this code if the action resulted from an Emerging Small Business Set-Aside (219.1070-2).

Code Z—Small Business-Small Purchase Set-Aside. Enter this code if the acquisition was reserved exclusively for small business concerns pursuant to FAR 13.105.

PART 219—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

7. A new Subpart 219.10, consisting of sections 219.1005 and 219.1070 through 219.1071, is added to read as follows:

Subpart 219.10—Small Business Competitiveness Demonstration Program

Sec.

219.1005 Applicability.
219.1070 Procedures.
219.1070-1 Designated industry groups.
219.1070-2 Emerging small business set-aside.
219.1071 Solicitation provisions and contract clauses.

Subpart 219.10—Small Business Competitiveness Demonstration Program

219.1005 Applicability.

(b) For DoD, the targeted industry categories are:

Standard industrial classification (SIC)	SIC code
(1) Pharmaceutical preparations	2834
(2) Ammunition, except for small arms	3483
(3) Ordnance and accessories, not elsewhere classified (NEC)	3489
(4) Turbines and turbine generator sets	3511
(5) Aircraft engines and engine parts	3724
(6) Space vehicle equipment, NEC	3769
(7) Tanks and tank components	3795
(8) Search and navigation equipment	3812
(9) Communication services, NEC	4899
(10) Petroleum products, NEC	5172

219.1070 Procedures.

219.1070-1 Designated industry groups.

(a) Solicitations for acquisitions in any of the four designated industry groups issued from January 1, 1989 through December 31, 1992 that have an anticipated dollar value greater than $25,000 shall not be considered for small business set-asides under FAR Subpart 19.5 unless otherwise directed. However, acquisitions in the designated industry groups shall continue to be considered for placement under the 8(a) program (see FAR Subpart 19.8) and for small disadvantaged business set-asides (see DFARS 219.502-72).

(b) After periodic review of DoD performance, DoD may direct reinstatement of the use of small business set-asides as necessary to meet prescribed goals. Military departments and defense agencies shall not reinstate small business set-asides unless directed by DoD.

When use of small business set-asides is suspended for the four designated industry groups—

(1) The procedures under 219.501(g), and (g)(70) through (g)(73) are waived;

(2) The exceptions at 219.502-72(b) (1), (2), and (3) do not apply and the acquisitions shall be considered for small disadvantaged business set-asides; and

(3) The evaluation preference at 219.7001 shall not be applied.

(d) The small purchase exception at FAR 19.303(a) does not apply to acquisitions under this program. All written requests for quotations shall include applicable SIC code and size standard.

219.1070-2 Emerging small business set-aside.

(a) Acquisitions in the four designated industry groups with an estimated value of $25,000 or less shall be set aside for emerging small businesses (ESBs), provided that the contracting officer determines that there is a reasonable expectation of obtaining offers from two or more responsible emerging small businesses that will be competitive in terms of market price, quality and delivery. If no such reasonable expectation exists, the contracting officer shall proceed in accordance with FAR 13.105, FAR Subpart 19.5 or FAR Subpart 19.8.

(b) If the contracting officer proceeds with the ESB set-aside and receives a quotation from only one ESB at a reasonable price, the contracting officer shall make the award. If there is no quote from an ESB or the quote is not at a reasonable price, then the contracting

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officer shall cancel the ESB set-aside and proceed in accordance with FAR 13.105 of FAR Subpart 19.5.

219.1070-3 Identification and reporting.

(a) The face of each award made pursuant to the program shall contain a statement that the award is being issued pursuant to the Small Business Competitiveness Demonstration Program.

(b) For reporting requirements, see 204.670.

219.1071 Solicitation provisions and contract clauses.

(a) The contracting officer shall insert in full text the clause at 252.219-7012, Small Business Concern Representation for the Small Business Competitiveness Demonstration Program, in all solicitations in the four designated industry groups. Where requests for a quotation are solicited orally, the contracting officer shall obtain the necessary information.

(b)(1) The contracting officer shall insert in full text the clause at 252.219-7013, Notice of Emerging Small Business Set-Aside, in all solicitations and resulting contracts set aside for emerging small businesses in accordance with 219.1070-2.

(2) When using other than small purchase procedures, the contracting officer shall insert the clause at FAR 52.219-14 in all solicitations and resulting contracts set aside for emerging small businesses.

(c) In an unrestricted procurement in the four designated industry groups, the clause at 252.219-7007, "Notice of Evaluation Preference for Small Disadvantaged Business Concerns," shall not be inserted.

(d) The contracting officer shall insert in full text the provision at 252.219-7014, Small Business Size Representation for Targeted Industry Categories Under the Small Business Competitiveness Demonstration Program, in all solicitations issued in each of the ten targeted industry categories under the Small Business Competitiveness Demonstration Program that are expected to result in a contract award in excess of $25,000.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

8. Sections 252.219-7012, 252.219-7013, and 252.219-7014 are added to read as follows:

252.219-7012 Small business concern representation for the Small Business Competitiveness Demonstration Program.

As prescribed at 219.1071(a), insert the following provision in full text in all solicitations issued by the participating agencies under the Small Business Competitiveness Demonstration Program for the four designated industry groups.

Small Business Concern Representation for the Small Business Competitiveness Demonstration Program (Jan. 1989)

(a) *Definition.*

"Emerging small business", as used in this solicitation, means a small business concern whose size is no greater than 50 percent of the numerical size standard applicable to the standard industrial classification code assigned to a contracting opportunity.

(b) Complete only if the Offeror is a small business or an emerging small business, indicating its size range.

Offeror's number of employees for the past twelve months *or* Offeror's average annual gross revenue for the last three fiscal years. (Check one of the following.)

No. of employees	Average annual gross revenues
50 or fewer	$1 million or less.
51-100	$1,000,001-$2 million.
101-250	$2,000,001-$3.5 million.
251-500	$3,500,001-$5 million.
501-750	$5,000,001-$10 million.
751-1,000	$10,000,001-$17 million.
Over 1,000	Over $17 million.

(End of provision)

252.219-7013 Notice of Emerging Small Business Set-Aside.

As prescribed at 219.1071(b), insert the following provision in full text in all solicitations restricted to emerging small businesses pursuant to 219.1070-2.

Notice of Emerging Small Business Set-Aside (Jan. 1989)

Offers of quotations under this acquisition are solicited from emerging small business concerns only. Offers that are not from an emerging small business shall not be considered and shall be rejected.

(End of provision)

252.219-7014 Small business size representation for targeted industry categories under the Small Business Competitiveness Demonstration Program.

As prescribed at 219.1071(c), insert the following provision in full text in all solicitations issued in each of the ten targeted industry categories under the Small Business Competitiveness Demonstration Program that is expected to result in a contract award in excess of $25,000.

Small Business Size Representation for Targeted Industry Categories Under the Small Business Competitiveness Demonstration Program (Jan. 1989)

Complete only if the Offeror has certified itself under the clause at FAR 52.219-1 to be a small business concern under the size standards of this solicitation.

Offeror represents and certifies as follows:

Offeror's number of employees for the past twelve months or Offeror's average annual gross revenue for the last three fiscal years. (Check one of the following.)

No. of employees	Average annual gross revenues
50 or fewer	$1 million or less.
51-100	$1,000,001-$2 million.
101-250	$2,000,001-$3.5 million.
251-500	$3,500,001-$5 million.
501-750	$5,000,001-$10 million.
751-1,000	$10,000,001-$17 million.
Over 1,000	Over $17 million.

(End of provision)

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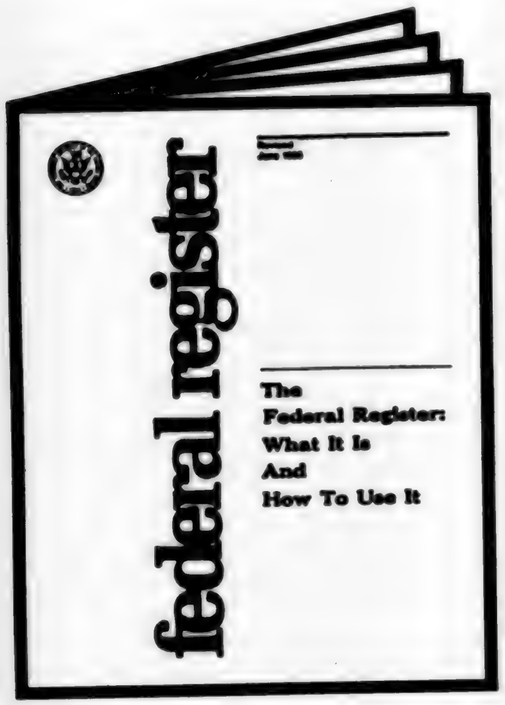
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Rules and Regulations

Federal Register
Vol. 54, No. 18
Monday, January 30, 1989

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 272 and 273

[Amdt. No. 300]

Food Stamp Program; Prerelease Applications from Residents of Institutions

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This rule finalizes the proposed rule published on October 14, 1987 and will implement a provision of the Anti-Drug Abuse Act of 1986 (Pub. L. 99–570, enacted on October 27, 1986). The provision allows certain individuals in public institutions applying for Supplemental Security Income (SSI) the opportunity to also apply for Food Stamp Program benefits by completing a single application for SSI and food stamps before they are released from institutions.

EFFECTIVE DATE: This final action is effective March 1, 1989, and is to be implemented no later than May 1, 1989.

FOR FURTHER INFORMATION CONTACT: Questions regarding this rulemaking should be addressed to Judith M. Seymour, Certification Rulemaking Section, Eligibility and Monitoring Branch, Program Development Division, Food Stamp Program, Food and Nutrition Service, 3101 Park Center Drive, Alexandria, Virginia 22302, or by telephone at (703) 756–3429.

SUPPLEMENTARY INFORMATION:

Classification

Executive Order 12291 and Secretary's Memorandum 1512–1

This final action has been reviewed under Executive Order 12291 and Secretary's Memorandum No. 1512–1 and has been classified as non-major. The rule will not result in an annual economic impact of more than $100 million or major increases in costs or prices, nor will it have a significant adverse effect on competition, employment, productivity, investment, or foreign trade. Further, the rule is unrelated to the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rule and related Notice to 7 CFR Part 3015, Subpart V (48 FR 29115), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

This final rule has also been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (Pub. L. 96–354, Stat. 1164 September 19, 1980). Anna Kondratas, Administrator of the Food and Nutrition Service, has certified that this action does not have a significant economic impact on a substantial number of small entities. This action would affect certain individuals in public institutions and the State and local agencies which administer the Food Stamp Program.

Paperwork Reduction Act

This rulemaking does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Background

On October 14, 1987 the Department published a proposed rule at 52 FR 38104 to change Food Stamp Program regulations to reflect section 11006 of the Anti-Drug Abuse Act of 1986. Section 11006 of that Act amends section 1631 of the Social Security Act (42 U.S.C. 1383) to require the Secretaries of the Department of Health and Human Services and the Department of Agriculture to develop a procedure under which an individual, scheduled for release from a public institution, who applies for SSI benefits will also be permitted to apply for participation in the Food Stamp Program prior to the discharge or release from the institution by executing a single application. In May 1987, the Social Security Administration (SSA) issued national instructions in the Program Operations Manual System Transmittal No. 14 SI 01801 instructing SSI staff how to handle prerelease applicants. In addition, SSI instructed its field offices to inform institutions of the prerelease program. When a public institution has entered into an agreement with SSA for the prerelease program, then applicants can apply for SSI and food stamps together.

While SSA implemented section 11006 of Pub. L. 99–570 in May 1987, it was necessary to propose changes to the Food Stamp Program regulations since the time between an institutionalized individual's application for food stamps made prior to release and his/her subsequent release from the institution could be significantly longer than the 30-day application processing time allowed under section 11(e)(3) of the Food Stamp Act. To address this problem the October 14, 1987 rule proposed defining the date of application for an institutionalized individual as the date of the individual's release from the institution. The Department accepted comments on the proposed rulemaking through December 14, 1987. Sixteen letters were received which addressed the provision of the proposed rule. The major concerns raised by the commenters are discussed below. Comments which are unclear, technical in nature, or which address issues not related to the final rulemaking process are not discussed. An explanation of the rationale of the rule is contained in the preamble of the proposed rule. For a full understanding of the provisions of this final rule the reader should refer to the preamble of the proposed rule.

Application Processing Procedures

Under the proposed rule residents of public institutions who apply for SSI prior to their release from the institution under SSA's Prerelease Program for the Institutionalized would be permitted to apply for food stamps at the same time they apply for SSI. SSA would then forward such applications to the local office of the food stamp State agency. Applications would be processed in accordance with the normal (30-day) application processing standard of 7

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CFR 273.2(g) or the expedited service (5-day) standard of 7 CFR 273.2(i) as appropriate. For determining application processing time frames, under the proposed rule the date of application for prerelease applicants was defined as the date of release of the individual from the institution.

While the majority of commenters supported the proposal to define the date of application as the date the applicant is released from the institution, some commenters suggested that the date of application should be defined as the date the State agency receives notification of the applicant's release. One commenter expressed the belief that the application date should be the later of the applicant's release from the institution or the date the State agency receives notification of the applicant's release. The Department has elected to retain the date of release as the date of application for institutionalized applicants. The Department believes that defining the date of application as suggested by the commenters could result in a delay in processing the application since notice to the State agency could be delayed long after release. This would be inconsistent with the intent of the legislation, which is to ensure that prerelease applicants receive assistance upon release or as soon as possible thereafter.

One commenter suggested that the Department provide a specific time frame for timely notification of State agencies by SSA, or as an alternative, that SSA agree to a written standard for timely notification. Another commenter, expressing the belief that processing time frames (including the time frames for expedited service) should begin when the applicant notifies the correct certification office of his or her release, suggested placing responsibility for notification on the applicant. The Department has elected not to include a specific time frame for notification of the State agency in this rule and has also elected not to place the burden of notification on the applicant since SSA has advised the Department that its field offices will notify the local office of the food stamp State agency of the impending release of the applicant from the institution. This procedure will ensure that the State agency will know when to process the application and issue food stamp benefits. This notification will occur before the applicant is released and thus will result in more rapid processing than if the applicant notified SSA after release. To further assist the applicant, SSA staff has indicated that SSA, in addition to notifying the State agency of the release, will provide the applicant with a referral listing the proper food stamp office address and telephone number.

Two commenters expressed concern that the time frames provided by the proposed rule would not always ensure prompt service for needy prerelease applicants. One commenter felt that it would be an intolerable hardship for persons with little income to wait up to 30 days after release from the institution for food stamp assistance. Public Law 99-570 does not modify or otherwise amend the time within which benefits must be made available to applicants. The existing 30 day and five day expedited service provisions are applicable and should provide proper benefit delivery to prerelease applicants. Furthermore, the Department does not believe the proposed procedures would result in a hardship since, as explained in the preamble to the proposed rule, it is anticipated that most prerelease applicants will be eligible for application processing under the five-day standards for expedited service. Another commenter felt that regardless of the date of the filing of an application, an applicant who is a resident of a public institution should be given an Authorization to Participate (ATP) card on the same day that he/she is released from the institution. The Department does not feel such a requirement is feasible since all State agencies do not have the capability of issuing an ATP immediately. Also, additional information may be required to determine eligibility and benefit levels.

A few commenters wanted the rule to require SSA to hold all applications until the individuals are released. Upon release SSA would then forward the applications to the correct local office. The Department feels that following this procedure would delay the processing of the applications and has made no changes in the final rule in this area. SSA field offices anticipate completion and forwarding of the prerelease applications within one working day consistent with the time frame for completion and forwarding of the application as provided in the joint processing provisions at 7 CFR 273.2(k)(1)(i). This is a procedure to which both SSA and State agencies have become accustomed. Moreover, the Department believes that it is administratively easier to review an application, set up a case record and identify what, if any, information is required to complete the application processing for one case at a time rather than for several cases together. Handling each case separately almost certainly will result in more expeditious processing of each case when an applicant is released. One commenter stated that the State agency needs to know if an applicant's SSI application is denied. SSA has directed its field offices to notify State agencies when a prerelease application is disallowed by SSA. In addition, State agencies will be able to determine the status of SSI applications through the State Data Exchange System. Another commenter said that prerelease food stamp applications should be held in a pending status no longer than 12 months. In most cases, a determination on an SSI application will be made within 12 months. Therefore the Department believes that it is not necessary to include an express provision in Food Stamp Program rules with respect to the time period an application may be held in pending status prior to the date of application. Action on the food stamp application will automatically follow action on the SSI application.

SSI/Food Stamp Single Application

Public Law 99-570 provides that the individuals in institutions applying for SSI and food stamp benefits complete a single application for SSI and food stamps before they are released from institutions. Commenters had various comments regarding the use of the single SSI/Food Stamp Program application. The commenters expressed the belief that State agencies should have the option of continued use of their current combined form or of a form which meets State agencies' individual needs. There are no changes in this area in the final rule. The Department has no discretion with respect to the single form since Pub. L. 99-570 mandates that SSA develop a single application. SSA and FNS are currently in the process of developing a single application which will contain all of the information needed to determine eligibility for both programs. Until development of the single application is completed and the form is distributed to SSA offices, the current application processing procedures of 7 CFR 273.2(k) will remain in effect.

Several commenters asked that the rule specify that the application information reflect the applicant's post-release circumstances so that the State agency has sufficient information to determine eligibility. These commenters were concerned that there might not be sufficient information on the application form completed prior to release. While the Department understands this concern, it does not believe it is possible to require SSA to include all information necessary to determine eligibility since all the information may not be known at the time SSI staff takes the application. The State agency should obtain whatever additional information is available from SSA at the time of release or if necessary contact the applicant/institution to obtain needed information. For example, the Department expects that information as to the applicant's address and living expenses will almost always not be known at the time of the interview in the institution. Since this is an area which the State agencies will have to handle on a case-by-case basis, no requirements on how to handle it have been included in this final rule.

Miscellaneous Comments

Several commenters were concerned that the proposed rule failed to define the term "public institution". These commenters felt that a definition of the individuals and institutions affected by this rulemaking should be included. The Department has not included a definition in this final rule. Since the Prerelease Program for the Institutionalized is administered by the Social Security Administration and the initial phase of the application process will be conducted by SSI personnel, it is SSA's definition of "public institution" which is relevant. The definition of "public institution" used by SSA (see 20 CFR 416.201) is very broad, based on that agency's interpretation of the applicable statute and legislative history. A Food Stamp State agency which has questions on whether residents from a particular type of public institution are subject to the provisions of this rule should contact the Social Security Field Office that services its area.

One commenter wanted the Department to indicate in the final rule that "cashout" States are exempt from these rules.

Current Food Stamp Program regulations at 7 CFR 273.2(b)(2)(iii) and 273.20 state that no individual who receives SSI benefits and resides in the States of California or Wisconsin is eligible to receive food stamp benefits. SSI payments in these States have been specifically increased to include the value of the food stamp allotment. Instructions issued by SSA for implementing the prerelease process also state that individuals in cashout States are ineligible for food stamps. The Department feels that it would be unnecessary to restate in this rule the prohibition against receipt of food stamp benefits by SSI recipients in cashout States since the prohibition is currently stated in the regulations governing the Food Stamp Program, and SSA and food stamp staff administering the provisions of the rule are already aware of the prohibition.

One commenter brought to the Department's attention that under the provision of 7 CFR 273.10(a)(1) State agencies have the option to use either calendar months or fiscal months to determine the eligibility and benefit levels of program applicants in general. To eliminate the inconsistency between procedures for prerelease applicants and applicants in general, the Department in this final rule, has deleted the word "calendar" from the new provisions at 7 CFR 273.10(a)(1)(i) regarding prerelease applicants.

Implementation

In the October 14, 1987 proposed rule, the Department proposed that State agencies implement the rule on the first day of the first month which begins 30 days after publication of the final rule.

The Department received two comments on the time frame proposed for implementing this rule. The commenters felt that the 30-day time frame was inadequate and that an implementation date of 90 days was needed to implement regulations. One commenter stated that a 90-day implementation period is necessary to complete the notice and comment requirements mandated by its State Administrative Procedures Act. The other commenter stated that additional time is needed to modify State automated systems and to communicate new policies to certification staff. After considering the commenters' concerns, the Department has changed the implementation time frame to 90 days. Prerelease applicants will not be adversely affected by this change since SSA is currently accepting and forwarding prerelease applications to food stamp State agencies and this rule simply streamlines application processing procedures. Therefore, the provisions of this rule will be implemented by State agencies on the first day of the first month which begins 90 days after the publication of this final rule.

Another commenter stated that SSA should delay sending prerelease applications until the State agency had implemented the final regulations. This is now a moot point. The provisions of Pub. L. 99-570 regarding prerelease applications were effective upon enactment and thus required implementation prior to the publication of this final rule. As explained earlier in this preamble, SSA and food stamp State agencies are currently accepting applications from prerelease applicants under interim procedures developed by local SSI offices and food stamp State agencies.

List of Subjects

7 CFR Part 272

Alaska, Civil rights, Food stamps, Grant programs-social programs, Reporting and recordkeeping requirements.

7 CFR Part 273

Administrative practice and procedure, Aliens, Claims, Food stamps, Fraud, Grant programs-social programs, Penalties, Reporting and recordkeeping requirements, Social Security, Students.

Accordingly, 7 CFR Parts 272 and 273 are amended as follows:

1. The authority citation for Parts 272 and 273 continues to read as follows:

Authority: 7 U.S.C. 2011-2029.

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

2. In § 272.1, a new paragraph (g)(104) is added to read as follows:

* * * * * *

§ 272.1 General terms and conditions.

(g) *Implementation.* * * *

(104) *Amendment No. 300.* State agencies shall implement the requirements of this rulemaking no later than May 1, 1989.

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

3. In § 273.1, paragraphs (e) (1) through (5) are redesignated as paragraphs (e)(1) (i) through (v), the introductory text of paragraph (e) is redesignated as paragraph (e)(1), and a new paragraph (e)(2) is added to read as follows:

§ 273.1 Household concept.

* * * * * *

(e) *Residents of institutions.* * * *

(2) Residents of public institutions who apply for SSI prior to their release from an institution under the Social Security Administration's Prerelease Program for the Institutionalized (42 U.S.C. 1383 (j)) shall be permitted to apply for food stamps at the same time they apply for SSI. These prerelease applicants shall be processed in accordance with the provisions in § 273.2(c), (g), (i), (j), and (k), § 273.10(a) and § 273.11(i), as appropriate.

* * * * * *

4. In § 273.2:

a. The second sentence of paragraph (c)(1) is revised, a new sentence is added between the second and third

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sentences, and a new sentence is added at the end of (c)(1).

b. The first sentence of paragraph (g)(1) is revised and a new sentence is added at the end of the paragraph.

c. A new sentence is added to paragraph (i)(3)(i) between the first and second sentences.

d. The eleventh sentence of paragraph (j)(1)(iv) is revised, and a new sentence added between the eleventh and twelfth sentences.

e. Two new sentences are added to paragraph (j)(2)(i) between the first and second sentences.

f. Paragraphs (k)(1)(i)(D) through (k)(1)(i)(O) are redesignated as paragraphs (k)(1)(i)(E) through (P), respectively and a new paragraph (k)(1)(i)(D) is added.

g. The first sentence of newly redesignated paragraph (k)(1)(i)(F) is revised, and four new sentences are added between the third and fourth sentences.

h. A new sentence is added to the end of newly redesignated paragraph (k)(1)(i)(I).

i. The second sentence of newly redesignated paragraph (k)(1)(i)(J) is amended by adding the words "unless the applicant is a resident of a public institution as described in § 273.1(e)(2)." to the end of the sentence.

The revisions and additions read as follows:

§ 273.2 Application processing.

* * * * *

(c) *Filing an application.*

(1) *Houshold's right to file.* * * * The length of time a State agency has to deliver benefits is calculated from the date the application is filed in the food stamp office designated by the State agency to accept the household's application, except when a resident of a public institution is jointly applying for SSI and food stamps prior to his/her release from an institution in accordance with § 273.1(e)(2). Residents of public institutions who apply for foods stamps prior to their release from the institution shall be certified in accordance with § 273.2(g)(1) or § 273.2(i)(3)(i), as appropriate. * * * When a resident of an institution is jointly applying for SSI and food stamps prior to leaving the institution, the filing date of the application to be recorded by the State agency on the application is the date of release of the applicant from the institution.

* * * * *

(g) *Normal processing standard—(1) Thirty day processing.* The State agency shall provide eligible households that complete the initial application process an opportunity to participate as soon as possible, but no later than 30 calendar days following the date the application was filed, except for residents of public institutions who apply jointly for SSI and food stamp benefits prior to release from the institution in accordance with § 273.1(e)(2). * * * For residents of public institutions who apply for food stamps prior to their release from the institution in accordance with § 273.1(e)(2), the State agency shall provide an opportunity to participate as soon as possible, but not later than 30 calendar days from the date of release of the applicant from the institution.

* * * * *

(i) *Expedited Service.* * * *

(3) *Processing standards.* * * *

(i) *General.* * * * For a resident of a public institution who applies for benefits prior to his/her release from the institution in accordance with § 273.1(e)(2) and who is entitled to expedited service, the date of filing of his/her application is the date of release of the applicant from the institution. * * *

* * * * *

(j) *PA, GA and categorically eligible households.* * * *

(1) *Applicant PA households.* * * *

(iv) * * * Except for residents of public institutions who apply jointly for SSI and food stamp benefits prior to their release from a public institution in accordance with § 273.1(e)(2), benefits shall be paid from the beginning of the period for which PA or SSI benefits are paid, the original food stamp application date, or December 23, 1985 whichever is later. Residents of public institutions who apply jointly for SSI and food stamp benefits prior to their release from the institution shall be paid benefits from the date of their release from the institution. * * *

(2) *Categorically eligible households.*

(i) * * * Residents of public institutions who apply jointly for SSI and food stamp benefits prior to their release from the institution in accordance with § 273.1(e)(2), shall not be categorically eligible upon a finding by SSA of potential SSI eligibility prior to such release. These individuals shall be considered categorically eligible at such time as a final SSI eligibility determination has been made and the individual has been released from the institution. * * *

* * * * *

(k) *SSI households.* * * *

(1) *Initial application and eligibility determination.* * * *

(i) * * *

(D) The SSA staff shall complete joint SSI and food stamp applications for residents of public institutions in accordance with § 273.1(e)(2). For such applicants, the SSA staff shall use a joint SSI and food stamp application prescribed by both FNS and SSA.

* * * * *

(F) Except for applications taken in accordance with paragraph (k)(1)(i)(D) of this section, the State agency shall make an eligibility determination and issue food stamp benefits to eligible SSI households within 30 days following the date the application was received by the SSA. * * * The State agency shall make an eligibility determination and issue food stamp benefits to a resident of a public institution who applies jointly for SSI and food stamps within 30 days following the date of the applicant's release from the institution. Expedited processing time standards for an applicant who has applied for food stamps and SSI prior to release shall also begin on the date of the applicant's release from the institution in accordance with § 273.2(i)(3)(i). SSA shall notify the State agency of the date of release of the applicant from the institution. If, for any reason, the State agency is not notified on a timely basis of the applicant's release date, the State agency shall restore benefits in accordance with § 273.17 to such applicant back to the date of release. * * *

* * * * *

(I) * * * This provision does not apply to applications described in paragraph (k)(1)(i)(D) of this section.

* * * * *

5. In § 273.10:

a. A new sentence is added to the end of paragraph (a)(1)(i).

b. The first and second sentences of paragraph (a)(1)(ii) are revised.

The revisions and additions read as follows:

§ 273.10 Determining household eligibility and benefit levels.

(a) *Months of application—(1) Determination of eligibility and benefit levels.* * * *

(i) * * * Applicant households consisting of residents of a public institution who apply jointly for SSI and food stamps prior to release from the public institution in accordance with § 273.1(e)(2) will have their eligibility determined for the month in which the applicant household was released from the institution.

(ii) A household's benefit level for the initial months of certification shall be based on the day of the month it applies for benefits and the household shall receive benefits from the date of application to the end of the month unless the applicant household consists of residents of a public institution. For households which apply for SSI prior to their release from a public institution in accordance with § 273.1(e)(2), the benefit level for the initial month of certification shall be based on the date of the month the household is released from the institution and the household shall receive benefits from the date of the household's release from the institution to the end of the month. * * *

* * * * *

6. In § 273.11, paragraph (i), (j) and (k) are redesignated as paragraphs (j), (k) and (l), respectively and a new paragraph (i) is added to read as follows:

§ 273.11 Action on households with special circumstances.

* * * * *

(i) *Prerelease applicants.* A household which consists of a resident or residents of a public institution(s) which applies for SSI under SSA's Prerelease Program for the Institutionalized shall be allowed to apply for food stamp benefits jointly with their application for SSI prior to their release from the institution. Such households shall be certified in accordance with the provisions of § 273.1(e), § 273.2(c), (g), (i), (j) and (k), and § 273.10(a), as appropriate.

* * * * *

Anna Kondratas,

Administrator.

Date: January 19, 1989.

[FR Doc. 89-2068 Filed 1-27-89; 8:45 am]

BILLING CODE 3410-30-M

Agricultural Marketing Service

7 CFR Part 907

[Navel Orange Reg. 685]

Navel Oranges Grown in Arizona and Designated Part of California; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 685 establishes the quantity of California-Arizona navel oranges that may be shipped to market during the period January 27 through February 2, 1989. Such action is needed to balance the supply of fresh navel oranges with the demand for such oranges during the period specified due to the marketing situation confronting the orange industry.

DATES: Regulation 685 (§ 907.985) is effective for the period January 27, 1989, through February 2, 1989.

FOR FURTHER INFORMATION CONTACT: Jacquelyn R. Schlatter, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2528-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 447-5120.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order 907 (7 CFR Part 907), as amended, regulating the handling of navel oranges grown in Arizona and designated part of California. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended, hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of the use of volume regulations on small entities as well as larger ones.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 125 handlers of California-Arizona navel oranges subject to regulation under the navel orange marketing order, and approximately 4,065 producers in California and Arizona. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of California-Arizona navel oranges may be classified as small entities.

This action is consistent with the marketing policy for 1988-89 adopted by the Navel Orange Administrative Committee (Committee). The Committee met publicly on January 24, 1989, in Visalia, California, to consider the current and prospective conditions of supply and demand and recommended by a 10 to 1 vote, a quantity of navel oranges deemed advisable to be handled during the specified week. The Committee reports that the demand for navel oranges is fair.

Based on consideration of supply and market conditions, and the evaluation of alternatives to the implementation of prorate regulations, the Administrator of the AMS has determined that this final rule will not have a significant economic impact on a substantial number of small entities.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared policy of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. To effectuate the declared purposes of the Act, it is necessary to make this regulatory provision effective as specified, and handlers have been apprised of such provision and the effective time.

List of Subjects in 7 CFR Part 907

Arizona, California, Marketing agreements and orders, Navel, Oranges.

For the reasons set forth in the preamble, 7 CFR Part 907 is amended as follows:

PART 907—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

1. The authority citation for 7 CFR Part 907 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Section 907.985 is added to read as follows:

Note.—This section will not appear in the Code of Federal Regulations.

§ 907.985 Navel Orange Regulation 685.

The quantity of navel oranges grown in California and Arizona which may be handled during the period January 27, 1989, through February 2, 1989, are established as follows:

(a) District 1: 1,479,000 cartons;

(b) District 2: 221,000 cartons;

(c) District 3: unlimited cartons;

(d) District 4: unlimited cartons.

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Dated: January 25, 1989.

Charles R. Brader,

Director, Fruit and Vegetable Division.

[FR Doc. 89-2072 Filed 1-26-89; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 910

[Lemon Reg. 650]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 650 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 225,000 cartons during the period January 29 through February 4, 1989. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

DATES: Regulation 650 (§ 910.950) is effective for the period January 29 through February 4, 1989.

FOR FURTHER INFORMATION CONTACT: Beatrix Rodriguez, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523, South Building, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 447-5697.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory action to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 85 handlers of lemons grown in California and Arizona subject to regulation under the lemon marketing order and approximately 2500 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of California-Arizona lemons may be classified as small entities.

This regulation is issued under Marketing Order No. 910, as amended (7 CFR Part 910) regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act (the "Act," 7 U.S.C. 601-674), as amended. This action is based upon the recommendation and information submitted by the Lemon Administrative Committee (Committee) and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This regulation is consistent with the marketing policy for 1988-89. The Committee met publicly on January 24, 1989, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and unanimously recommended a quantity of lemons deemed advisable to be handled during the specified week. The Committee reports that demand for lemons is fair.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary, in order to effectuate the declared purposes of the Act, to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

For the reasons set forth in the preamble, 7 CFR Part 910 is amended as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR Part 910 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Section 910.950 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 910.950 Lemon Regulation 650.

The quantity of lemons grown in California and Arizona which may be handled during the period January 29, 1989, through February 4, 1989, is established at 225,000 cartons.

Dated: January 25, 1989.

Charles R. Brader,

Director, Fruit and Vegetable Division.

[FR Doc. 89-2073 Filed 1-26-89; 8:45 am]

BILLING CODE 3410-02-M

FEDERAL RESERVE SYSTEM

12 CFR Parts 207, 220, 221 and 224

[Regulations G, T, U and X]

Securities Credit Transactions; List of Marginable OTC Stocks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; determination of applicability of regulations.

SUMMARY: The List of Marginable OTC Stocks is comprised of stocks traded over-the-counter (OTC) that have been determined by the Board of Governors of the Federal Reserve System to be subject to the margin requirements under certain Federal Reserve regulations. The List is published four times a year by the Board as a guide for lenders subject to the regulations and the general public. This document sets forth additions to or deletions from the previously published List which was effective November 14, 1988, and will serve to give notice to the public about the changed status of certain stocks.

EFFECTIVE DATE: February 13, 1989.

FOR FURTHER INFORMATION CONTACT: Peggy Wolffrum, Securities Regulation Analyst, Division of Banking Supervision and Regulation, (202) 452-2781. For the hearing impaired *only*, Earnestine Hill or Dorothea Thompson, Telecommunications Device for the Deaf (TDD) (202) 452-3544, Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION: Set forth below are stocks representing additions to or deletions from the Board's List of Marginable OTC Stocks. This supersedes the last List which was effective November 14, 1988. Additions and deletions for that List were published at 53 FR 43678, October 28, 1988. A copy of the complete List incorporating these additions and deletions is available from the Federal Reserve Banks.

The List of Marginable OTC Stocks includes those stocks that meet the criteria in Regulations G, T and U (12 CFR Parts 207, 220 and 221, respectively). This determination also effects the applicability of Regulation X (12 CFR Part 224). These stocks have the degree of national investor interest, the depth and breadth of market, and the availability of information respecting the stock and its issuer to warrant regulation in the same fashion as exchange-traded securities. The List also includes any stock designated under an SEC rule as qualified for trading in the national market system (NMS security). Additional OTC stocks may be designated as NMS securities in the interim between the Board's quarterly publications. They will become automatically marginable at broker-dealers upon the effective date of their NMS designation. The names of these stocks are available at the Board and the Securities and Exchange Commission and will be incorporated into the Board's next quarterly List.

The requirements of 5 U.S.C. 553 with respect to notice and public participation were not followed in connection with the issuance of this amendment due to the objective character of the criteria for inclusion and continued inclusion on the List specified in 12 CFR 207.6(a) and (b), 220.17(a) and (b), and 221.7(a) and (b). No additional useful information would be gained by public participation. The full requirements of 5 U.S.C. 553 with respect to deferred effective date have not been followed in connection with the issuance of this amendment because the Board finds that it is in the public interest to facilitate investment and credit decisions based in whole or in part upon the composition of this List as soon as possible. The Board has responded to a request by the public and allowed a two-week delay before the List is effective.

List of Subjects

12 CFR Part 207

Banks, Banking, Credit, Federal Reserve System, Margin, Margin requirements, National Market System (NMS Security), Reporting and recordkeeping requirements, Securities.

12 CFR Part 220

Banks, Banking, Brokers, Credit, Federal Reserve System, Margin, Margin requirements, Investments, National Market System (NMS Security), Reporting and recordkeeping requirements, Securities.

12 CFR Part 221

Banks, Banking, Credit, Federal Reserve System, Margin, Margin requirements, National Market System (NMS Security), Reporting and recordkeeping requirements, Securities.

12 CFR Part 224

Banks, Banking, Borrowers, Credit, Federal Reserve System, Margin, Margin requirements, Reporting and recordkeeping requirements, Securities.

Accordingly, pursuant to the authority of sections 7 and 23 of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78g and 78w), and in accordance with 12 CFR 207.2(k) and 207.6(c) (Regulation G), 12 CFR 220.2(s) and 220.17(c) (Regulation T), and 12 CFR 221.2(j) and 221.7(c) (Regulation U), there is set forth below a listing of deletions from and additions to the Board's List of Marginable OTC Stocks:

Deletions From List

Stocks Removed for Failing Continued Listing Requirements

Amerford International Corp.
$.05 par common
Associated Hosts, Inc.
$.10 par common
Banks of Mid-America, Inc.
$2.50 par cumulative convertible preferred
Bolt Technology Corporation
No par common
Cabot Medical Corporation
Warrants (expire 01-16-89)
Central Realty Investors, Inc.
$1.00 par common
Cermetek Microelectronics, Inc.
$.01 par common
Citipostal Inc.
$.04 par common
Classic Corporation
$.01 par common
Compuscan, Inc.
$.10 par common
Convenient Food Mart, Inc.
$.10 par common
Convergent Solutions, Inc.
Warrants (expire 05-15-92)
Develcon Electronics Ltd.
No par common
Digitext, Inc.
$.01 par common
DMI Furniture, Inc.
$.10 par common
Dyansen Corporation
Class A, warrants (expire 12-30-88)
Elexis Corporation
$.01 par common
Evergood Products Corp.
$.01 par common
First Commerce Bancshares, Inc. (Nebraska)
$1.00 par common
First Federal Savings Bank (Tennessee)
$1.00 par common
Gardenamerica Corporation
No par common
Hodgson Houses, Inc.
$.01 par common
Hosposable Products, Inc.
Class A, warrants (expire 01-07-00)
HPSC, Inc.
Warrants (expire 01-15-89)
Independent Bankshares, Inc. (Texas)
$1.25 par common
J.P.M. Industries, Inc.
Class A, no par common
Marine Petroleum Trust
$1.00 par units of beneficial interest
Mars Stores, Inc.
$.50 par common
Medmaster Systems, Inc.
$.01 par common
Meyers Parking System, Inc.
$.10 par common
Michaels, J., Inc.
$1.00 par common
Microbiological Sciences, Inc.
$.10 par common
Multi-Local Media Corporation
$.01 par common
Nahama & Weagant Energy Corp.
No par common
National Bancshares Corporation of Texas
$5.00 par common
10% convertible subordinated debentures
Old Republic International Corporation
Series F, $4.00 par convertible exchangeable preferred
Pyramid Oil Company
No par common
Realamerica Co.
$1.00 par common
Redken Laboratories, Inc.
$.50 par common
Repco Incorporated
$1.00 par common
Rockwood Holding Company
$1.00 par common
Southwest Airlines Co.
Warrants (expire 06-25-00)
Suburban Bankshares, Inc.
Class A, $.10 par common
T.R.V. Minerals Corporation
No par common
Taylor, S. Companies, Inc.
$.001 par common
Tinsley Laboratories, Inc.
No par common
Transducer Systems, Inc.
No par common
Triangle Industries Inc.
Class A, $1.00 par common
$1.00 par cumulative convertible junior preferred
Trustcorp, Inc.
Series A, $2.90 par cumulative convertible preferred
Tucker Holding Company, Inc.
$.10 par common
U.S. Shelter Corporation
$1.00 par common
Waterford Glass Group, Plc.
American Depository

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Receipts representing 10 ordinary shares
Xebec
No par common

Stocks Removed For Listing On A National Securities Exchange Or Being Involved In An Acquisition

Acuson Corporation
$.001 par common
Advanced Genetic Sciences, Inc.
$.01 par common
Air Cargo Equipment Corp.
$1.00 par common
Alleco Inc.
$1.00 par common
9½% convertible subordinated debentures
Alliance Imaging Inc.
$.01 par common
American Consulting Corp., Inc.
$.01 par common
Bankvermont Corporation
$1.00 par common
Benzer PLC
American Depository Receipts
Berkshire Hathaway Inc.
$5.00 par common
Buehler International, Inc.
$.01 par common
Cable TV Industries
No par common
Canrad, Inc.
$.75 par common
Centerre Bancorporation
$10.00 par common
Citizens Financial Group, Inc.
$1.00 par common
City Savings Bank of Meriden (Connecticut)
$1.00 par common
Convergent, Inc.
$.01 par common
Cullum Companies, Inc.
$1.00 par common
Cypress Semiconductor Corp.
$.01 par common
Delta Woodside Industries, Inc.
$.01 par common
Downey Designs International, Inc.
$.01 par common
East Weymouth Savings Bank
$1.00 par common
Entertainment Publications, Inc.
No par common
Entre Computer Centers, Inc.
$.01 par common
Farmers Group, Inc.
$1.00 par common
First Federal Savings & Loan Association of Kalamazoo
$.01 par common
First NH Banks, Inc.
$1.00 par common
Golden Valley Microwave Foods, Inc.
$.01 par common
Gotaas-Larson Shipping Corp.
$1.00 par common
Graphic Packaging Corporation
$.01 par common
Groff Industries, Inc.
$.50 par common
Guaranty National Corporation
$1.00 par common
Harvard Industries, Inc.
$.10 par common
HHB Systems, Inc.
$.01 par common
Hyponex Corporation
$.10 par common
Indian Head Banks, Inc. (New Hampshire)
$5.00 par common
Intertan, Inc.
$1.00 par common
Kimmins Corporation
$.01 par common
London House, Inc.
$.10 par common
Longview Fibre Company
$7.50 par common
Magma Copper Company
Class B, $.01 par common
Metropolitan Consolidated Industries, Inc.
$.10 par common
Minstar, Inc.
$.10 par common
Morgan, Olmstead, Kennedy & Gardner Capital Corporation
$.01 par common
National City Corporation
$4.00 par common
Nevada National Bancorporation
$.06% par common
Orion Research Inc.
$.10 par common
Regis Corporation
$.05 par common
Resource Pension Shares 1
$.01 par shares of beneficial interest
Resource Pension Shares 2
$.10 par shares of beneficial interest
Resources Pension Shares 3
$.10 par shares of beneficial interest
Restaurant Management Services, Inc.
$.10 par common
Richmond Hill Savings Bank
$1.00 par common
Service Merchandise Company, Inc.
$.50 par common
Shawmut National Corporation
$.01 par common
Sierra Capital Realty Trust IV
No par common
Somerset Bancorp, Inc.
$2.50 par common
Southernnet, Inc.
$.01 par common
Thetford Corporation
$.25 par common
Unibancorp, Inc.
$5.00 par common
Viking Freight, Inc.
No par common
VM Software, Inc.
$.01 par common
Vulcan Packaging Inc.
No par common
Wilton Enterprises, Inc.
$.10 par common

Additions To The List

3-D Systems, Inc.
No par common
American Steel & Wire Corporation
$.20 par common
Banc One Corporation
Series B, no par convertible preferred
BHA Group, Inc.
Class B, $.01 par common
Bird Incorporated
$1.65 cumulative convertible preferred
Bliss & Laughlin Industries, Inc.
$.01 par common
California State Bank
No par common
Caroline First Corporation
$1.00 par common
Centennial Savings Bank
$1.00 par common
Community Bancorp, Inc.
$.01 par common
Computer Components Corporation
$.01 par common
Warrants (expire 06-16-91)
Continental Savings of America (California)
$1.11 par common
Del Electronics Corp.
$.10 par common
Eastco Industrial Safety Corp.
$.01 par common
E.R.C. Environmental & Energy Services Co., Inc.
$.05 par common
F.F.O. Financial Group, Inc.
$.10 par common
Fidelity Savings Association (Pennsylvania)
$1.00 par common
First Financial Caribbean Corporation
$1.00 par common
FLS Holdings, Inc.
Series A, $.01 par convertible preferred
FMS Financial Corporation
$.10 par common
Garnet Resources Corporation
$.01 par common
Genex Corporation
$.60 par convertible preferred
Genus, Inc.
No par common
GNW Financial Corporation
$.01 par common
Henley Group, Inc., The
$.05 par common
Hingham Institution for Savings
$1.00 par common
Homeowners Group, Inc.
$.01 par common
Homestyle Buffet, Inc.
$.01 par common
Horizon Gold Shares, Inc.
$.01 par common
Imagine Films Entertainment, Inc.
Warrants (expire 07-30-93)
IMCO Recycling Inc.
$.10 par common
Ironstone Group, Inc.
$.01 par common
Key Production Company, Inc.
$.25 par common
Kimmins Environmental Service Corp.
9% convertible subordinated debentures
LEP Group, Plc.
American Depository Receipts
Lindsay Manufacturing Company
$1.00 par common
Logic Devices, Inc.
No par common
Lyphomed, Inc.
5¼% convertible subordinated debentures
Mallon Resources Corporation
$.01 par common
Management Technologies, Inc.
$.01 par common
Medical Devices, Inc.
$.10 par common
Metcalf & Eddy Companies, Inc.
$.01 par common
Metro Bancshares, Inc.
$.01 par common
Midwest Grain Products, Inc.

No par common
New England Bancorp, Inc.
$.25 par common
Nu-West Industries, Inc.
$.01 par common
$100 par convertible preferred
Office Depot, Inc.
$.01 par common
O.I. Corporation
$.10 par common
Otisville Biopharm, Inc.
Warrants (expire 05-28-90)
Ovex Fertility Corp.
$.01 par common
P & F Industries, Inc.
$10.00 par convertible preferred
Pacific Agricultural Holdings, Inc.
No par common
Pacific Bancorporation
$1.88 par common
Pentech International, Inc.
$.01 par common
Precision Standard, Inc.
$.0001 par common
Prima Energy Corporation
$.015 par common
Prime Bancorp, Inc.
$1.00 par common
Provident Life & Accident Insurance Company of America
Class A, $1.00 par common
Quadra Logic Technologies, Inc.
No par common
Rainbow Technologies, Inc.
$.001 par common
RF & P Corporation
Non-voting, dividend obligations, $.50 par common
Satellite Information Systems Company
No par common
Showbiz Pizza Time, Inc.
$.10 par common
Softsel Computer Products, Inc.
$.01 par common
Timberjack Corporation
$.01 par common
Tompkins, PLC.
American Depository Receipts
Total Energold Corporation
No par common
Tyco Toys, Inc.
Warrants (expire 06-07-93)
VMS Strategic Land Fund II
$.01 par common
VSB Bancorp, Inc.
$.01 par common
Wainwright Bank & Trust Company
$1.00 par common
Wellington Leisure Products, Inc.
$.01 par common
Williams, A. L., Corporation, The
7.25% convertible subordinated debentures
World-Wide Technology, Inc.
$.01 par common

By order of the Board of Governors of the Federal Reserve System, acting by its Staff Director of the Division of Banking Supervision and Regulation pursuant to delegated authority (12 CFR 265.2(c)(16)), January 27, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89-2007 Filed 1-27-89; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL HOME LOAN BANK BOARD

12 CFR PARTS 544 and 552

[No. 88-1570]

Charter and Bylaw Amendments; Delegations of Authority

Date: December 30, 1988.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: As part of a number of pending and proposed rulemaking projects designed to streamline and otherwise improve various aspects of the Board's applications process,[1] the Federal Home Loan Bank Board ("Board"), as operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC"), is amending the provisions of 12 CFR Parts 544 and 552 regarding delegations of authority to grant or deny preliminary approval of charter amendments and to approve or deny bylaw amendments to delegate authority to the Principal Supervisory Agent to (i) grant or deny preliminary approval of charter amendments pursuant to 12 CFR 544.2(d) for mutual associations and 12 CFR 552.4(e) for stock associations, and (ii) approve or deny bylaw amendments pursuant to 12 CFR 544.5(c) for mutual associations and 12 CFR 552.5(d) for stock associations; provided, that charter and bylaw amendments do not include anti-takeover provisions and do not raise a significant issue of law or policy. Any charter or bylaw amendment not eligible to be processed under this delegation of authority may be acted upon by the Office of General Counsel.

In connection with the amendments to 12 CFR Part 544 and 552 regarding delegations of authority, the Board also amends the relevant provisions of those Parts regarding filing requirements and procedures for charter and bylaw amendments.

EFFECTIVE DATE: January 30, 1989.

FOR FURTHER INFORMATION CONTACT: Kevin L. Petrasic, Staff Attorney, (202) 377-6452, Corporate and Securities Division, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: Under 12 CFR 544.2 and 552.4, and pursuant to Board Resolution No. 86-719,[2] federal mutual and stock associations, respectively, are required to obtain preliminary approval of charter amendments that differ from the preapproved amendments listed in 12 CFR 544.2(b) and 552.4(b). Likewise, under 12 CFR 544.5 and 552.5, and pursuant to Board Resoluton No. 86-719, federal mutual and stock associations, respectively, are required to obtain approval for bylaw amendments that are inconsistent with the provisions of 12 CFR 544.5(b) and 552.6 through 552.6-4. Currently, to obtain such approvals, a federal association is required to file an application to amend its charter and/or bylaws with the association's Supervisory Agent. Immediately upon filing, the Supervisory Agent is required to forward promptly a copy of the application to the Director of the Office of District Banks, who then forwards the application to the Office of General Counsel. Thereafter, the Supervisory Agent is required to make a recommendation on the application, to approve or deny in whole or in part, to the Director of the Office of District Banks. Upon receipt of the application, the Office of General Counsel determines whether the amendment would be in conformity with the provisions of 12 CFR 544.2 or 552.4, if the application involves a charter amendment, or whether it is not inconsistent with the provisions of 12 CFR 554.5 or 552.6 through 552.6-4, if it involves a bylaw amendment. The Office of General Counsel then generally prepares and signs a letter

[1] *See* Application Processing Guidelines, 52 FR 39064 (October 20, 1987) (setting forth the Board's policy statement on applications processing guidelines); Acquisition of Securities of Converting and Converted Insured Institutions, 52 FR 42091 (November 3, 1987) (delegating authority to the General Counsel or his designee to approve routine applications filed pursuant to 12 CFR 563b.3(i)(3)); Acquisition of Control of Insured Institutions; Procedural Requirements, 52 FR 48519 (December 23, 1987) (revising filing procedures and time frames for public notification and sufficiency determinations for applications, notices and rebuttal filings filed pursuant to 12 CFR Part 574); Holding Company Indebtedness, 52 FR 49381 (December 31, 1987) (revising the time frame for the processing of debt applications and delegating authority to the Supervisory Agent to approve or deny most debt applications); Restrictions on Repurchase of Stock of Recently Converted Insured Institutions, 53 FR 2477 (January 28, 1988) (preapproving certain requests for waiver of the regulatory restrictions on repurchases of stock by recently converted insured institutions); Acquisition of Control of Insured Institutions; Delegations of Authority and Technical Amendments, 53 FR 33104 (expanding the authority of the Principal Supervisory Agents to approve and disapprove certain change of control notices and applications under 12 CFR Part 574, and certain other technical amendments to streamline 12 CFR Part 574); Policy Statement on Merger-Conversions, ___ FR ___ (restating and clarifying the Board's position on merger-conversions); Preapproved Securities Brokerage Service Corporation Activities, ___ FR ___ (proposed preapproval of certain securities brokerage service corporation activities).

[2] Resolution No. 86-719 (July 15, 1986), repealing *inter alia* Resolution No. 83-206 (April 8, 1983).

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either approving or denying the application that is then returned to the Office of District Banks, which also executes the letter.

In order to streamline this process, the Board is adopting 12 CFR 544.2(d), 544.5(c), 552.4(e) and 552.5(d) so that applications for approval of charter and bylaw amendments may be granted or denied by a federal association's Principal Supervisory Agent, *provided* that they (i) do not have the effect of rendering more difficult or discouraging a merger, tender offer, or proxy contest, the assumption of control by a holder of a larger block of the association's stock, or the removal of incumbent management (hereinfater, "Anti-takeover Amendments"), or (ii) do not involve a significant issue of law or policy. In addition, applications for approval of charter or bylaw amendments that include Anti-takeover Amendments or that involve a significant issue of law or policy may be acted upon by the Office of General Counsel, which will have delegated authority to either approve or deny such proposed amendments. As appropriate, e.g., for amendments presenting policy issues of potentially broad precedential effect, the Office of General Counsel will refer proposed amendments to the Board for a determination.

If an applicant believes its application is eligible to be processed under delegated authority by the Principal Supervisory Agent pursuant to either of these provisions, the applicant should submit to the Principal Supervisory Agent, together with the proposed amendments, a brief description of the proposed charter and/or bylaw amendments including a statement indicating that the amendment does not include any Anti-takeover Amendments and does not involve a significant issue of law or policy. Such statement should be clearly marked "Statement Regarding Eligibility for Processing Under Delegated Authority." Although failure to provide such a statement will not cause the application to be deemed deficient, it may cause delay in processing the application until a determination is made by the Supervisory Agent as to whether the application may be processed under delegated authority. In addition, filing an application with the suggested statement will remove the necessity of concurrently filing the application with the Office of General Counsel. However, if the Supervisory Agent determines that the application includes an Anti-takeover Amendment or involves a significant issue of law or policy, contrary to an applicant's statement of delegated authority, then the application will be immediately forwarded to the Office of General Counsel to avoid further delays in processing. Failure to file properly with the Office of General Counsel at the outset will cause the applicable time frames for review not to commence until the application is received from the District Bank. Thus, an applicant that is uncertain as to whether a charter or bylaw amendment may include an Anti-takeover Amendment or involve a significant issue of law or policy is strongly encouraged to contact either its Supervisory Agent or the Office of General Counsel for guidance on the issue prior to filing an application so as to avoid unnecessary delays in processing the application.

As a general matter, Anti-takeover Amendments that will cause an application for approval not to be processed under delegated authority include *but are not limited to* (i) establishing supermajority approval requirements for specified corporate transactions, (ii) establishing a supermajority vote to cancel an existing or proposed supermajority provision, (iii) establishing a supermajority vote to amend an association's charter, (iv) reducing an existing or proposed supermajority vote requirement if a transaction involves a related party to the association, e.g., an insider or 5 percent or more shareholder, (v) issuing poison pill preferred stock or establishing shareholders' rights plans, *i.e.*, the creation of a class of stock or the issuance of options to management that will serve to discourage prospective acquiror's of the association's stock, (vi) establishing employee benefit, stock ownership, or stock option plans that provide a means to defend against a takeover attempt, (vii) provisions that unreasonably restrict the ability of the shareholders to remove the current board of directors or that unreasonably restrict the ability of the shareholders to call a special meeting, (viii) establishing a supermajority vote requirement, or requiring the consent of management, for a large shareholder to vote those shares that it owns that exceed a designated percentage of the outstanding stock of the association, (ix) establishing fair price provisions for an association's stock that would make it more expensive for a prospective acquiror of an association's stock to purchase a controlling interest of the association without the cooperation of current management, (x) limiting the shareholders' ability to nominate directors and to introduce new business proposals at a shareholders' meeting, and (xi) requiring a supermajority shareholder vote to remove a director.

In addition, a charter or bylaw amendment will be considered to involve a significant issue of law or policy if it contains unique, novel, complex, or nationally precedential issues of law or policy. Examples in this area include provisions attempting to limit the liability of directors for breaches of certain types of fiduciary duties, and officer and director indemnification provisions that do not conform to the requirements of 12 CFR 545.121.

The standard of review for applications for approval of charter and bylaw amendments is not changed as a result of these amendments. All routine charter amendments filed with the Supervisory Agent may be granted preliminary approval so long as such amendments do not differ in any material respect from the charter amendments granted preliminary approval under 12 CFR 552.4(b) or other law or regulation, including the indemnification provisions of 12 CFR 545.121. In addition, all routine bylaw amendments that are not materially inconsistent with the provisions of 12 CFR 552.6 through 552.6–4 may be approved by the Principal Supervisory Agent. Thus, for example, an applicant filing an application to adopt an indemnification provision in its charter or bylaws may be eligible to receive approval for the application from the Principal Supervisory Agent, provided, that such provision does not differ *materially* from the requirements of 12 CFR 545.121.[3]

The amendments to 12 CFR Parts 544 and 552 also include an appeal procedure that an applicant may utilize if it feels that the Principal Supervisory Agent has erroneously denied its application. In this regard, if an application delegated to the Principal Supervisory Agent is denied, the applicant may, within 30 days after notification of the Principal Supervisory Agent's decision, file a request for review with the Office of General Counsel. Upon receipt of such a request, which should include a copy of the application and indicate the specific reasons why the Principal Supervisory Agent's denial is contended to be erroneous, the Office of General Counsel will have 60 days to review the application to determine whether to approve or deny the amendment. If the Office of General Counsel does not deny the appeal within such 60 day period, then the appeal request and the amendment shall be deemed to be automatically approved.

Finally, in connection with the aforementioned amendments to 12 CFR Parts 544 and 552, the Board is adopting 12 CFR 554.2(e), 552.4(f) and 552.5(e) regarding the filing requirements for applications for approval of charter and bylaw amendments.

The foregoing changes are effective January 30, 1989 and are applicable to applications filed after such date.

Because this change is nonsubstantive, the Board finds that observance of the notice and comment period pursuant to 5 U.S.C. 553(b) and 12 CFR 508.11 and the 30-day delay of effective date pursuant to 5 U.S.C. 553(d) and 12 CFR 508.14 is unnecessary and contrary to the public interest.

List of Subjects in 12 CFR Parts 544 and 552

Reporting and recordkeeping requirements, Savings and loan associations, Securities.

Accordingly, the Board hereby amends Parts 544 and 552, Subchapter C, Chapter V, Title 12, Code of Federal Regulations, as set forth below.

* * * * *

SUBCHAPTER C—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 544—CHARTER AND BYLAWS

1. The authority citation for Part 544 continues to read as follows:

Authority: Sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 402, 403, 407, 48 Stat. 1250, 1260, as amended (12 U.S.C. 1725, 1726, 1730); Reorg. Plan No. 3 of 1947; 12 FR 4981, 3 CFR, 1943–1948 Comp., p. 1071.

2. Amend § 544.2 by adding paragraph (d) to read as follows:

§ 544.2 Charter amendments.

* * * * *

(d) *Delegations of authority.—(1) Actions by the Principal Supervisory Agent.* The Principal Supervisory Agent is authorized to grant or deny preliminary approval, in whole or in part, of any application for a charter amendment filed under this section: Provided, that the following conditions are met:

(i) The application does not include proposals that would render more difficult or discourage a merger, tender offer, or proxy contest, the assumption of control by a holder of a large block of the association's stock, or the removal of incumbent management; and

(ii) The application does not involve a significant issue of law or policy.

(2) *Appeal.* Denial of an application by a Principal Supervisory Agent pursuant to paragraph (d)(1) of this section may be appealed to the Corporation under the following procedures: Within 30 days after notification of the Principal Supervisory Agent's decision as provided herein, the applicant must file a request for review with the Office of General Counsel, addressed to the Corporate and Securities Division, Office of General Counsel, 1700 G Street, NW., Washington, DC 20552, with a copy of such request to the appropriate Principal Supervisory Agent. The appeal request should include the application for charter amendment as originally filed with the Supervisory Agent, a copy of the Principal Supervisory Agent's letter denying preliminary approval of the application, and should indicate the specific reasons why the Principal Supervisory Agent's denial is contended to be erroneous. Failure to file an appeal within the time permitted under this section will constitute a waiver of any objection to the Principal Supervisory Agent's determination. Upon proper filing of an appeal request, including a complete application, as determined by the Office of General Counsel, the Office of General Counsel shall have 60 calendar days to determine whether to approve or deny the appeal. If the Office of General Counsel does not approve or deny the appeal request within the 60-day period, the appeal request shall be deemed to be automatically approved following the 60th day after the appeal was properly filed.

(3) *Actions by the General Counsel.* The General Counsel, or designee, is authorized to take the following actions:

(i) Grant or deny, in whole or in part, preliminary approval of any application for a charter amendment filed under this section; and

(ii) Approve or deny a request for appeal filed pursuant to paragraph (d)(2) of this section.

3. Further amend § 544.2 by adding paragraph (e) to read as follows:

§ 544.2 Charter amendments.

* * * * *

(e) *Filing requirements.* Application for preliminary approval of any amendment to the charter of a federal mutual association (other than amendments for which preliminary approval is granted pursuant to paragraph (b) of this section) that is eligible to be processed under delegated authority pursuant to paragraph (d) of this section, shall be made by filing the original and one copy of the proposed amendment, along with a statement regarding eligibility for processing under delegated authority, with the Supervisory Agent at the Federal Home Loan Bank of which the institution is a member. Such statement should consist of a brief description of the proposed amendment and a statement that such amendment does not:

(i) Render more difficult or discourage a merger, tender offer, or proxy contest, the assumption of control by a holder of a large block of the association's stock, or the removal of incumbent management, or

(ii) Involve a significant issue of law or policy.

If a proposed amendment is not eligible to be processed under delegated authority pursuant to paragraph (d) of this section, then the original and one copy of the proposed amendment should be filed with the Corporate and Securities Division, Office of General Counsel, 1700 G Street, NW., Washington, DC 20552, with a copy to the Supervisory Agent.

4. Amend § 544.5 by adding paragraph (c) to read as follows:

§ 544.5 Federal mutual association bylaws.

* * * * *

(c) *Delegations of authority.—(1) Actions by the Principal Supervisory Agent.* The Principal Supervisory Agent is authorized to approve or deny, in whole or in part, any application for a bylaw amendment filed under this section: Provided, that the following conditions are met:

(i) The application does not include proposals that would render more difficult or discourage a merger, tender offer or proxy contest, the assumption of control by a holder of a large block of the association's stock, or the removal of incumbent management; and

(ii) The application does not involve a significant issue of law or policy.

(2) *Appeal.* Denial of an application by a Principal Supervisory Agent pursuant to paragraph (c)(1) of this section may be appealed to the Corporation under the following procedures: Within 30 days after notification of the Principal Supervisory Agent's decision as provided herein, the applicant must file a request for review

[3] This particular provision is referenced due to the fact that in the past there has been considerable confusion among applicants as to what type of wording is acceptable for an indemnification charter or bylaw amendment. In this regard, although the precise language of 12 CFR 545.121 need not be adopted for a charter or bylaw amendment to be approved by the Principal Supervisory Agent, any such amendment should not exceed the limitations set forth in 12 CFR 545.121, with the exception that officers, directors and employees of wholly-owned subsidiaries also may be included within the scope of permissible indemnification.

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with the Office of General Counsel, addressed to the Corporate and Securities Division, Office of General Counsel, 1700 G Street, NW., Washington, DC 20552, with a copy of such request to the appropriate Principal Supervisory Agent. The appeal request should include the application for bylaw amendment as originally filed with the Supervisory Agent, a copy of the Principal Supervisory Agent's letter denying approval of the application, and a statement of the specific reasons why the Principal Supervisory Agent's denial is contended to be erroneous. Failure to file an appeal within the time permitted under this section will constitute a waiver of any objection to the Principal Supervisory Agent's determination. Upon proper filing of an appeal request, including a complete application, as determined by the Office of General Counsel, the Office of General Counsel shall have 60 calendar days to determine whether to approve or deny the appeal. If the Office of General Counsel does not approve or deny the appeal request within the 60 day period, then the appeal request shall be deemed to be automatically approved following the 60th day after the appeal was properly filed.

(3) *Actions by the General Counsel.* The General Counsel, or designee, is authorized to take the following actions:

(i) Approve or deny, in whole or in part, any application for a bylaw amendment filed under this section; and

(ii) Approve or deny a request for appeal filed pursuant to paragraph (c)(2) of this section.

5. Further amend § 544.5 by adding paragraph (d) to read as follows:

§ 544.5 Federal mutual association bylaws.

* * * * *

(d) *Filing requirements.* Application for preliminary approval of any amendment to the bylaws of a federal mutual association that is inconsistent with paragraph (b) of this section and that is eligible to be processed under delegated authority pursuant to paragraph (c) of this section shall be made by filing the original and one copy of the proposed amendment, along with a statement regarding eligibility for processing under delegated authority, with the Supervisory Agent at the Federal Home Loan Bank of which the institution is a member. Such statement should consist of a brief description of the proposed amendment and a statement that such amendment does not:

(i) Render more difficult or discourage a merger, tender offer, or proxy contest, the assumption of control by a holder of a large block of the association's stock, or the removal of incumbent management, or

(ii) Involve a significant issue of law or policy.

If a proposed amendment is not eligible to be processed under delegated authority pursuant to paragraph (c) of this section, then the original and one copy of the proposed amendment should be filed with the Corporate and Securities Division, Office of General Counsel, 1700 G Street, NW., Washington, DC 20552, with a copy to the Supervisory Agent.

PART 552—INCORPORATION, ORGANIZATION, AND CONVERSION OF FEDERAL STOCK ASSOCIATIONS

1. The authority citation for Part 552 continues to read as follows:

Authority: Sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 258, as amended (12 U.S.C. 1425(a)); sec. 5B, 47 Stat. 727, as added by sec. 4, 80 Stat. 824, as amended (12 U.S.C. 1425b); secs. 2, 5, 48 Stat. 128, 132, as amended (12 U.S.C. 1462, 1464); secs. 401–403, 405–407, 48 Stat. 1255–1257, 1258–1260, as amended (12 U.S.C. 1724–1726, 1728–1730); sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–1948 Comp., p. 1071.

2. Amend § 552.4 by adding paragraph (e) to read as follows:

§ 552.4 Charter amendments.

* * * * *

(e) *Delegations of authority*—(1) *Actions by the Principal Supervisory Agent.* The Principal Supervisory Agent is authorized to grant or deny preliminary approval, in whole or in part, of any application for a charter amendment filed under this section: Provided, that the following conditions are met:

(i) The application does not include proposals that would render more difficult or discourage a merger, tender offer, or proxy contest, the assumption of control by a holder of a large block of the association's stock, or the removal of incumbent management; and

(ii) The application does not involve a significant issue of law or policy.

(2) *Appeal.* Denial of an application by a Principal Supervisory Agent pursuant to paragraph (e)(1) of this section may be appealed to the Corporation under the following procedures: Within 30 days after notification of the Principal Supervisory Agent's decision as provided herein, the applicant must file a request for review with the Offices of General Counsel, addressed to the Corporate and Securities Division, Office of General Counsel, 1700 G Street, NW., Washington, DC 20552, with a copy of such request to the appropriate Principal Supervisory Agency. The appeal request should include the application for charter amendment as originally filed with the Supervisory Agent, a copy of the Principal Supervisory Agent's letter denying preliminary approval of the application, and a statement of the specific reasons why the Principal Supervisory Agent's denial is contended to be erroneous. Failure to file an appeal within the time permitted under this section will constitute a waiver of any objection to the Principal Supervisory Agent's determination. Upon proper filing of an appeal request, including a complete application, as determined by the Office of General Counsel, the Office of General Counsel shall have 60 calendar days to determine whether to approve or deny the appeal. If the Office of General Counsel does not approve or deny the appeal request within the 60-day period, then the appeal request shall be deemed to be automatically approved following the 60th day after the appeal was properly filed.

(3) *Actions by the General Counsel.* The General Counsel, or designee, is authorized to take the following actions:

(i) Grant or deny, in whole or in part, preliminary approval of any application for a charter amendment filed under this section; and

(ii) Approve or deny a request for appeal filed pursuant to paragraph (e)(2) of this section.

3. Further amend § 552.4 by adding paragraph (f) to read as follows:

§ 552.4 Charter amendments.

* * * * *

(f) *Filing requirements.* Application for preliminary approval of any amendment to the charter of a federal stock association (other than amendments for which preliminary approval is granted pursuant to paragraph (b) of this section) that is eligible to be processed under delegated authority pursuant to paragraph (e) of this section shall be made by filing the original and one copy of the proposed amendment, along with a statement regarding eligibility for processing under delegated authority, with the Supervisory Agent at the Federal Home Loan Bank of which the institution is a member. Such statement should consist of a brief description of the proposed amendment and a statement that such amendment does not:

(i) Render more difficult or discourage a merger, tender offer, or proxy contest, the assumption of control by a holder of a large block of the association's stock, or the removal of incumbent management, or

(ii) Involve a significant issue of law or policy.

If a proposed amendment is not eligible to be processed under delegated authority pursuant to paragraph (e) of this section, then the original and one copy of the proposed amendment should be filed with the Corporate and Securities Division, Office of General Counsel, 1700 G Street, NW., Washington, DC 20552, with a copy to the Supervisory Agent.

4. Amend § 552.5 by adding paragraph (d) to read as follows:

§ 552.5 Bylaws.

* * * * *

(d) *Delegations of authority*—(1) *Actions by the Principal Supervisory Agent.* The Principal Supervisory Agent is authorized to approve or deny, in whole or part, any application for a bylaw amendment filed under this section: Provided, that the following conditions are met:

(i) The application does not include proposals that would render more difficult or discourage a merger, tender offer, or proxy contest, the assumption of control by a holder of a large block of the association's stock, or the removal of incumbent management; and

(ii) The application does not involve a significant issue of law or policy.

(2) *Appeal.* Denial of an application by a Principal Supervisory Agent pursuant to paragraph (d)(1) of this section may be appealed to the Corporation under the following procedures: Within 30 days after notification of the Principal Supervisory Agent's decision as provided herein, the applicant must file a request for review with the Office of General Counsel, addressed to the Corporate and Securities Division, Office of the General Counsel, 1700 G Street NW., Washington, DC 20552, with a copy of such request to the appropriate Principal Supervisory Agent. The appeal request should include the application for bylaw amendment as originally filed with the Supervisory Agent, a copy of the Principal Supervisory Agent's letter denying approval of the application, and a statement of the specific reasons why the Principal Supervisory Agent's denial is contended to be erroneous. Failure to file an appeal within the time permitted under this section will constitute a waiver of any objection to the Principal Supervisory Agent's determination. Upon proper filing of an appeal request, including a complete application, as determined by the Office of General Counsel, the Office of General Counsel shall have 60 calendar days to determine whether to approve or deny the appeal. If the Office of General Counsel does not approve or deny the appeal request within the 60-day period, then the appeal request shall be deemed to be automatically approved following the 60th day after the appeal was properly filed.

(3) *Actions by the General Counsel.* The General Counsel, or designee, is authorized to take the following actions:

(i) Approve or deny, in whole or in part, any application for a bylaw amendment filed under this section; and

(ii) Approve or deny a request for appeal filed pursuant to paragraph (d)(2) of this section.

5. Further amend § 552.5 by adding paragraph (e) to read as follows:

§ 552.5 Bylaws.

* * * * *

(e) *Filing requirements.* Application for preliminary approval of any amendment to the bylaws of a federal stock association that is inconsistent with §§ 552.6 through 552.6–4 and that is eligible to be processed under delegated authority pursuant to paragraph (d) of this section, shall be made by filing the original and one copy of the proposed amendment, along with a statement regarding eligibility for processing under delegated authority, with the Supervisory Agent at the Federal Home Loan Bank of which the institution is a member. Such statement should consist of a brief description of the proposed amendment and a statement that such amendment does not:

(i) Render more difficult or discourage a merger, tender offer, or proxy contest, the assumption of control by a holder of a large block of the association's stock, or the removal of incumbent management, or

(ii) Involve a significant issue of law or policy.

If a proposed amendment is not eligible to be processed under delegated authority pursuant to paragraph (d) of this section, then the original and one copy of the proposed amendment should be filed with the Corporate and Securities Division, Office of General Counsel, 1700 G Street NW., Washington, DC 20552, with a copy to the Supervisory Agent.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89–1922 Filed 1–27–89; 8:45 am]

BILLING CODE 6720–01–M

12 CFR Part 563

[No. 89–10]

Criminal Referrals; Money Laundering Crimes

Date: January 11, 1989.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule; miscellaneous conforming and technical amendments.

SUMMARY: The Federal Home Loan Bank Board ("Board"), as operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC"), is amending its regulations in order to correct typographical and other technical errors and to promote consistent use of phrases throughout the regulations.

EFFECTIVE DATE: January 30, 1989.

FOR FURTHER INFORMATION CONTACT: John Downing, Assistant Director, Office of Enforcement, (202) 653–2604, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: On March 29, 1988, the Board adopted final amendments to its Criminal Referral regulation (12 CFR 563.18(d)) to revise its description of bank bribery, add a requirement to report money laundering related crimes, modify the regulation to ease the filing requirement when no suspect can be identified, and eliminate overlap between the criminal referral requirement and the Board's regulation requiring that records be kept of certain external crimes. 53 FR 11242 (April 6, 1988). In order to achieve consistency throughout and to clarify the regulation, the Board is now amending 12 CFR 563.18(d)(1)(ii), by substituting the term "known factual basis" for "substantial factual basis." In addition, the Board is correcting typographical errors in 12 CFR 563.18 (d)(2)(i) and (d)(4).

Pursuant to 12 CFR 508.11 and 508.14, the Board finds that, because of the minor, technical nature of these corrective amendments, notice and public procedure are unnecessary, as is the 30-day delay of the effective date.

List of Subjects in 12 CFR Part 563

Bank deposit insurance, Currency, Investments, Reporting and recordkeeping requirements, Savings and loan associations.

Accordingly, the Board hereby amends Part 563, Subchapter D, Chapter V, Title 12, Code of Federal Regulations, as set forth below.

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SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 563—OPERATIONS

1. The authority citation for Part 563 continues to read as follows:

Authority: Sec. 1, 47 Stat. 725, as amended (12 U.S.C. 1421 *et seq.*); sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 5B, 47 Stat. 727, as added by sec. 4, 80 Stat. 824, as amended (12 U.S.C. 1428b); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 401–407, 48 Stat. 1256–1260, as amended (12 U.S.C. 1724–1730); sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a); sec. 1204, 101 Stat. 662 (12 U.S.C. 3806); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR 1943–1948 Comp., p. 1071.

§ 563.18 [Amended]

2. Amend § 563.18 by revising paragraphs (d)(1)(ii), (d)(2)(i) and (d)(4) to read as follows:

* * * * *

(d) *Reports of crimes, suspected crimes, and unexplained losses.*

(1) * * *

(ii) If those acts involve actual or anticipated losses of more than $1,000 and the institution has a known factual basis for identifying a suspect or group of suspects;

* * * * *

(2) *Filing of reports.* * * *

(i) Embezzlement, employee larceny, check-kiting operation, fraud, attempted fraud, unexplained loss, or other known or suspected misapplication of funds or other things of value belonging to an insured institution or entrusted to its care;

* * * * *

(4) *Notification of the Board of Directors.* The chief executive officer of the insured institution or his designee shall notify the board of directors concerning any report filed pursuant to paragraph (d)(2) of this section by the institution or a service corporation in which it has an ownership interest not later than its next regularly scheduled meeting following the filing of the report. If the chief executive officer is suspected of being involved in the violation, the next ranking officer shall notify the institution's Board.

* * * * *

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89–1023 Filed 1–27–89; 8:45 am]

BILLING CODE 6720–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88–ANE–32; Amdt. 39–6082]

Airworthiness Directives; Allison Gas Turbine Division, General Motors Corp., Allison Model 250–B17; –C20, –C20R, and –C30 Series Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action published in the **Federal Register** and makes effective as to all persons an amendment adopting a new airworthiness directive (AD) which was previously made effective by individual priority letter as to all known U.S. owners and operators of certain Allison Model 250–B17, –C20, –C20R, and –C30 series engines, incorporating Bendix gas producer fuel controls listed in the attached appendix, installed in aircraft certificated in any category. This AD requires that the affected Bendix gas producer fuel controls listed by part number and serial number in the attached appendix be removed from service within the next ten (10) operating hours after the effective date of this AD, unless already accomplished. This AD is needed to prevent possible engine over-temperature condition, loss of throttle response, or unscheduled power increase.

DATES: Effective March 1, 1989, as to all persons except those persons to whom it was made immediately effective by priority letter AD 88–17–01, issued August 15, 1988, which contained this amendment.

Compliance—Within the next ten (10) operating hours after the effective date of this AD.

Incorporation by Reference—Approved by the Director of the Federal Register as of March 1, 1989.

ADDRESSES: The applicable commercial engine bulletin may be obtained from Allison Gas Turbine Division, General Motors Corporation, P.O. Box 420, Indianapolis, Indiana 46206–0420; telephone (317) 230–4088.

A copy of the alert commercial engine bulletin is contained in the Rules Docket at the Office of Regional Counsel, Federal Aviation Administration, ATTN: Rules Docket No. 88–ANE–32, 12 New England Executive Park, Burlington, Massachusetts 01803, and may be examined weekdays, except federal holidays, between 8:00 a.m. and 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Ty D. Krolicki, Chicago Aircraft Certification Office, Propulsion Branch, ACE–140C, FAA, 2300 East Devon Avenue, Des Plaines, Illinois 60016; telephone 312–694–7032.

SUPPLEMENTARY INFORMATION: On August 15, 1988, priority letter AD No. 88–17–01, was issued and made effective immediately as to all known U.S. owners and operators of certain Allison Model 250–B17, –C20, –C20R, and –C30 series engines. The priority letter AD 88–17–01 requires that the affected Bendix gas producer fuel controls listed by part number and serial number in the attached appendix be removed from service within the next ten (10) operating hours after the effective date of the AD, but not later than October 1, 1988, unless already accomplished.

AD action was prompted by the discovery, during an audit inspection at the Bendix facility in Rocky Mount, North Carolina, that several of these fuel controls were experiencing excessive control gas pressure leakage. During the ensuing investigation, it was determined that the assembly procedure for installing an internal control bellows was improper and resulted in excessive control gas pressure leakage. Consequently, it became possible to obtain an unwanted fuel flow shift which could result in an engine over-temperature condition, a loss of throttle response, or an unscheduled engine power increase. Allison has determined that the above improper assembly is limited to seventy-six (76) units recently manufactured at the Rocky Mount facility.

The attached appendix contains corrections for two (2) serial numbers included in the priority letter AD 88–17–01.

AD action was necessary to prevent possible engine over-temperature condition, loss of throttle response, or unscheduled power increase.

Since it was found that immediate corrective action was required, notice and public procedure thereon were impracticable and contrary to public interest, and good cause existed to make the AD effective immediately by individual priority letter AD 88–17–01, issued August 15, 1988, as to all known U.S. owners and operators of certain Allison Model 250–B17, –C20, –C20R, and –C30 series engines. These conditions still exist, and this AD is hereby published in the **Federal Register** as an amendment to § 39.13 of Part 39 of the Federal Aviation Regulations to make it effective as to all persons.

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or

on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Conclusion

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT"**.

List of Subjects in 14 CFR Part 39

Engines, Air transportation, Aircraft, Aviation safety, Incorporation by reference.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) amends Part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding to § 39.13 the following new airworthiness directive (AD):

Allison Gas Turbine Division, General Motors Corporation (Allison): Applies to Allison Model 250–B17, –C20, –C20R, and –C30 series engines, incorporating Bendix gas producer fuel controls listed in the attached appendix, installed in aircraft certificated in any category.

Compliance is required as indicated, unless already accomplished.

To prevent possible engine over-temperature, loss of throttle response, or unscheduled power increase accomplish the following:

(a) Remove from service within the next ten (10) operating hours after the effective date of this AD, the affected Bendix gas producer fuel controls listed by part number and serial number in the attached appendix and replace with a serviceable part.

Notes:

(1) Out-of-service affected Bendix gas producer fuel controls, listed by part number and serial number in the attached appendix, may be returned to service upon the incorporation of Allison Alert Commercial Engine Bulletin (CEB) titled "Engine, Fuel and Control, Inspection of Certain Bendix Fuel Control Bellows Assemblies," dated August 1, 1988, with applicability as follows:

Engine Model	Bulletin Number
250–C20 Series	CEB–A–1272
250–B17 Series	TP CEB–A–1231
250–C30 Series	CEB–A–73–3042
250–C20R Series	CEB–A–73–4006

(2) Those affected Bendix gas producer fuel controls incorporating the above-cited Allison Alert CEB are identified by a green mark on the cylinder portion of the self-locking cap nut and either the letter "A" or the letter "B" in the "LESS ISSUE" block of the data plate.

(b) Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where this AD can be accomplished.

(c) Upon request, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, Chicago Aircraft Certification Office, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60016.

(d) upon submission of substantiating data by an owner or operator through an FAA Airworthiness Inspector, the Manager, Chicago Aircraft Certification Office, may adjust the compliance time specified in this AD.

Allison Alert CEB titled "Engine, Fuel and Control, Inspection of Certain Bendix Fuel Control Bellows Assemblies", dated August 1, 1988, identified and described in this document, is incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1). All persons affected by this directive who have not already received this document from the manufacturer may obtain copies upon request to Allison Gas Turbine Division, General Motors Corporation, P.O. Box 420, Indianapolis, Indiana 46206–0420. This document may also be examined at the Office of the Assistant Chief Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, Room 311, Rules Docket Number 88–ANE–32, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

This amendment becomes effective March 1, 1989 as to all persons except those persons to whom it was made immediately effective by individual priority letter AD 88–17–01, issued August 15, 1988, which contained this amendment.

Issued in Burlington, Massachusetts, on December 7, 1988.

Arthur J. Pidgeon,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

Appendix

AD 88–17–01

Bendix Fuel Controls:

Bendix Part No.:
2524644–26 (Allison 23033917)
Serial No.:
87241174 87490092 88041524 88090122
87370001 88041515 88090107 88090124
[1] 87430041 88041516 88090110 88090125
87430042 88041517 88090112 88090126
[1] 87430044 88041518 88090114 88090128
87430045 88041519 88090116 88090129
87490081 88041520 88090118 88090130
87490082 88041521 88090119 88090131
87490083 88041522 88090120
87490084 88041523 88090121

Bendix Part No.:
2524654–23 (Allison 23036660)
Serial No.:
87251235
87460078

Bendix Part No.:
2524886–10 (Allison 23033919)
Serial No.:
87430052 87430055 87490102
87430053 87490101 87490104

Bendix Part No.:
2524922–6 (Allison 23033849)
Serial No.:
87370010
88090143
88090144

Bendix Part No.:
2524957–3 (Allison 23030614)
Serial No.:
84250105

Bendix Part No.:
2524986–2 (Allison 23038954)
Serial No.:
87490095
87490098

Bendix Part No.:
2549032–2 (Allison 23037275)
Serial No.:
87430056 87430063 88090154 88090163
87430057 87430065 88090155 88090165
87430059 88090147 88090156 88090166
87430060 88090149 88090157 88130236
87430061 88090151 88090158 88130249
87430062 88090152 88090160 88130250

[FR Doc. 89–1995 Filed 1–27–89; 8:45 am]

BILLING CODE 4910–13–M

[1] These Serial Nos. corrected from Priority Letter AD 88–17–01 by this Final Rule.

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14 CFR Part 39

[Docket No. 88-NM-210-AD; Amdt. 39-6129]

Airworthiness Directives; Empresa Brasileira de Aeronautica, S.A. (EMBRAER) Model EMB-120 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to EMBRAER Model EMB-120 series airplanes, which requires replacing two standard nuts with self-locking nuts to secure the No. 1 and No. 2 auxiliary generator control voltage sensor wires to the connecting bars at relays K0035 and K0036. This amendment is prompted by a report of the loss of essential systems in an airplane during flight. This condition, if not corrected, could result in the loss of essential navigation systems, such as the Attitude Heading Reference System (AHRS) and Electronic Flight Instrument System (EFIS).

EFFECTIVE DATE: February 15, 1989.

ADDRESSES: The applicable service information may be obtained from EMBRAER, 276 SW. 34th Street, Fort Lauderdale, Florida 33315. This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or FAA, Central Region, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia.

FOR FURTHER INFORMATION CONTACT: Mr. A. E. Clark, Aerospace Engineer, Atlanta Aircraft Certification Office, Systems & Equipment Branch, FAA, Central Region, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia 30349; telephone (404) 991-3020.

SUPPLEMENTARY INFORMATION: A single occurrence of loss of essential systems has been reported by an operator of a Model EMB-120 series airplane. The loss of the systems was short term in that the systems were recycled and returned to normal operation. Subsequent investigation revealed loose nuts on the connections of the No. 1 and No. 2 auxiliary generator voltage sensor wires that attach to the two auxiliary generator contactor connecting bars. This poor wire connection resulted from the loosening of the installed standard (non-locking) nuts, due to vibration. The poor connection caused a DC power system transient condition that, in turn, resulted in the AHRS flags and loss of the attitude information on the EFIS display. This condition, if not corrected, could cause continuing random transients, especially during turbulence, that could leave only the standby attitude and magnetic compass available for continuing flight.

EMBRAER has issued Service Bulletin 120-024-0031, dated October 21, 1988, which describes procedures for modification of the connection of the voltage sensor wires to the connecting bars at K0035 and K0036 by removing the existing standard nuts and installing self locking nuts (P/N 9161-05), tightened to a torque value of 22 to 26 inch pounds. The service bulletin also describes procedures for the installation of a placard on the left-hand relay box cover specifying the use of self-locking nuts in the connection assembly. The Brazilian CTA, which is the airworthiness authority for Brazil, has issued a Brazilian Airworthiness Directive 88-11-04, dated November 17, 1988, requiring compliance with this service bulletin.

This airplane model is manufactured in Brazil and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this situation is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD requires the replacement of two standard nuts with self-locking nuts to secure the No. 1 and No. 2 auxiliary generator control voltage sensor wires to the connecting bars at relays K0035 and K0036, and installation of a placard, in accordance with the service bulletin previously described.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required).

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Empresa Brasileira de Aeronautica, S.A. (Embraer):

Applies to the Model EMB-120 series airplanes, as listed in Embraer Service Bulletin 120-024-0031, dated October 21, 1988, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent the loss of essential navigation systems, accomplish the following:

A. Within the next 25 hours time-in-service after the effective date of this AD, accomplish the following, in accordance with Embraer Service Bulletin 120-024-0031, dated October 21, 1988:

1. Install self-locking nuts, P/N LN9161-05, to secure the No. 1 and No. 2 auxiliary generator control voltage sensor wires to the connecting bars at relays K0035 and K0036.

2. Install placard 120-47147-001 on the left-hand relay box cover. The placard shall state, "USE LN9161-05 NUTS FOR K0035 AND K0036 IN PLACE OF ORIGINAL NUTS. SEE MAINTENANCE MANUAL 24-52-00."

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Atlanta Aircraft Certification Office, FAA, Central Region.

Note.—The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Atlanta Aircraft Certification Office.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to EMBRAER, 276 SW. 34th Street, Fort Lauderdale, Florida 33315. This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or FAA, Central Region, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia.

This amendment becomes effective February 15, 1989.

Issued in Seattle, Washington, on January 18, 1989.

Steven B. Wallace,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-1902 Filed 1-27-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 88-NM-206-AD; Amdt. 39-6128]

Airworthiness Directives; McDonnell Douglas Model DC-9-81, -82, -83, -87, and MD-88 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revises, publishes in the Federal Register, and makes effective as to all persons an amendment adopting a new airworthiness directive (AD), portions of which were previously made effective as to all known U.S. owners and operators of McDonnell Douglas Model DC-9-81, -82, -83, -87, and MD-88 series airplanes by individual telegrams. This AD requires a functional test of the horizontal stabilizer takeoff position indicator assembly, a check of the flap and center of gravity indicator dial bonding strength, and replacement of the horizontal stabilizer takeoff position indicator assembly, if necessary. This action is prompted by a report of erroneous inputs to the horizontal stabilizer takeoff position indicator assembly from the center of gravity indicator dial, which caused the assembly to compute an incorrect longitudinal trim position for takeoff. This condition, if not corrected, could result in an incorrect horizontal stabilizer position, which could result in the airplane taking off in an unsafe configuration. This action revises the telegraphic AD by revising certain procedures to be followed for the functional test and bond strength check, revising the interval for the repetitive functional test, providing service information references, and providing for an optional terminating action.

EFFECTIVE DATE: February 15, 1989.

Portions of this AD were effective earlier to all recipients of Telegraphic AD T88-25-51, issued December 16, 1988.

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director of Publications, CL-100 (54-60). This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Stacho, Aerospace Engineer, Systems and Equipment Branch, ANM-131L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (213) 988-5338.

SUPPLEMENTARY INFORMATION: On December 16, 1988, the FAA issued telegraphic AD T88-25-51, applicable to McDonnell Douglas Model DC-9-81, -82, -83, -87, and MD-88 series airplanes, which requires a functional test of the horizontal stabilizer takeoff position indicator assembly, a check of the flap and center of gravity indicator dial bonding strength, and, if necessary, replacement of the horizontal stabilizer takeoff position indicator assembly. That action was prompted by a report that, during takeoff, a Model DC-9-80 series airplane did not rotate with normal elevator control column displacement and required a considerable length of runway to become airborne. Investigation revealed that the center of gravity indicator dial, part number 9034504-517, which is part of the gear assembly, part number 3952203-501, was found to be loose and able to slip, giving erroneous inputs to the horizontal stabilizer takeoff position indicator assembly. This can cause the indicator to compute an incorrect longitudinal trim position for takeoff. If the flight crew were to set the horizontal stabilizer to an incorrect longitudinal trim position, the airplane may not be configured correctly for takeoff. A loose flap indicator dial has also been found on an in-service Model DC-9-80 series airplane, which could also result in an incorrect longitudinal trim position. (The center of gravity and flap indicator dials are adhesively bonded to the internal gears of the horizontal stabilizer takeoff position indicator assembly.) This condition, if not corrected, could result in an incorrect horizontal stabilizer position, which could result in the airplane taking off in an unsafe takeoff configuration.

Since issuance of AD T88-25-51, several affected operators contacted the FAA for approval of alternate means of compliance to some provisions of the AD. Some operators requested that they be allowed to functionally test the horizontal stabilizer takeoff position indicator assembly *daily* instead of prior to the first flight of each day, as required by paragraph A. of AD T88-25-51. Some operators requested that plus or minus ½ degree be allowed in the longitudinal trim display tolerance, instead of the plus or minus ¼ degree tolerance required by paragraph A. of AD T88-25-51. Finally, some operators requested that, if the indicator dials did not show signs of loose bonding, they be allowed to re-rig the horizonal stabilizer takeoff position indicator assembly, instead of replace it, if it did not meet the 6 plus or minus ½ degree requirement during the functional test.

The FAA concurs that conducting the functional test of the horizontal stabilizer position indicator assembly daily, allowing a plus or minus ½ degree tolerance on the longitudinal trim display, and re-rigging the assembly if no loose dials were found, would provide acceptable means of compliance with the requirements of AD T88-25-51. The final rule has therefore been revised to reflect this.

The FAA has reviewed and approved McDonnell Douglas Alert Service Bulletin A27-304, Revision 1, dated December 23, 1988, which provides specific instructions for checking the indicator dial bonding strength, and modification instructions for securing the indicator dials to the wheels of the horizontal stabilizer takeoff position indicator assembly. Since the bonding check instructions in the McDonnell Douglas service bulletin are more explicit than those in AD T88-25-51, those instructions have been incorporated in this final rule. The accomplishment instructions of the service bulletin reference McDonnell Douglas Service Rework Drawing

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SR09270010, which provides a means to attach the plastic dial indicator strips to the wheels of the horizontal stabilizer takeoff position indicator assembly with screws at each end of the strips. The final rule has been revised to permit incorporation of this modification described in McDonnell Douglas Service Rework Drawing SR09270010 as an optional terminating action for the requirements of this AD.

Since a situation existed, and still exists, that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The Federal Aviation Administration has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required).

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By revising Telegraphic AD T88-25-51, issued December 16, 1988, as follows:

McDonnell Douglas: Applies to McDonnell Douglas Model DC-9-81, -82, -83, -87, and MD-88 series airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished.

To ensure that the airplane horizontal stabilizer is configured correctly for takeoff, accomplish the following:

A. Within 5 calendar days after the effective date of this AD and daily thereafter, perform a functional test of the horizontal stabilizer takeoff position indicator assembly by selecting a center of gravity setting of 13 and a flap setting of 8, and verifying that the longitudinal trim is correctly displayed as 6 plus or minus ¼ degrees. If the longitudinal trim displayed is not correct, check the adhesive bond strength of the center of gravity and flap indicator dials as indicated in paragraph B., below.

1. If both indicator dials are firmly bonded to their respective wheels, re-rig the horizontal stabilizer takeoff position indicator assembly in accordance with McDonnell Douglas MD-80 Maintenance Manual, Chapter 27-40-12, step 3, paragraph A. "Test Module."

2. If either the flap or center of gravity indicator dials show signs of loose bonding, or if the assembly cannot be re-rigged to bring it within tolerance, replace the horizontal stabilizer takeoff position indicator assembly prior to further flight.

B. Within 25 calendar days after the effective date of this AD and thereafter at intervals not to exceed 25 days, accomplish both of the following:

1. Check the center of gravity and flap indicator dial adhesive bond strength in accordance with the "Accomplishment Instructions," with the exception of paragraphs F and J, of McDonnell Douglas Service Bulletin A27-304, Revision 1, dated December 23, 1988. If the indicator dials are dislodged or loosened, replace the horizontal stabilizer takeoff position indicator assembly prior to further flight.

2. Perform an adjustment/test of the horizontal stabilizer takeoff position indicator assembly in accordance with McDonnell Douglas MD-80 Maintenance Manual, Chapter 27-40-12, step 3, paragraph A. "Test Module." If the adjustment/test is not successful, check the adhesive bond strength of the center of gravity and flap indicator dials as indicated in paragraph B.1., above.

a. If both indicator dials are firmly bonded to their respective wheels, re-rig the horizontal stabilizer position indicator assembly in accordance with McDonnell Douglas MD-80 Maintenance Manual, Chapter 27-40-12, step 3, paragraph A. "Test Module."

b. If either the flap or center of gravity indicator dials show signs of loose bonding, or if the assembly cannot be re-rigged to bring it within tolerance, replace the horizontal stabilizer takeoff position indicator assembly prior to further flight.

C. Modification of the flap and center of gravity dial indicators in the horizontal stabilizer takeoff position indicator assembly, in accordance with "Repair Action II" of McDonnell Douglas Service Rework Drawing SR09270010, New, dated December 17, 1988, constitutes terminating action for the requirements of this AD.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with inspection requirements of this AD.

E. An alternate means of compliance or adjustment of the compliance time which provides an acceptable level of safety may be used when approved by the Manager, Los Angeles Aircraft Office, FAA, Northwest Mountain Region.

Note.—The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Los Angeles Aircraft Certification Office.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer, may obtain copies upon request to McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director of Publications, CL-100 (54-60). These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

This amendment revises Telegraphic AD T88-25-51, issued December 16, 1988.

This amendment becomes effective February 15, 1989.

Portions of this amendment were effective earlier to all recipients of Telegraphic AD T88-25-51, issued December 16, 1988.

Issued in Seattle, Washington, on January 18, 1989.

Steven B. Wallace,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-1991 Filed 1-27-89; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 422

[Reg. No. 22]

Organizations and Procedures; Updating and Correcting Rules; Hearings and Appeals Procedures; Disclosure of Information

AGENCY: Social Security Administration, HHS.

ACTION: Final rule.

SUMMARY: We are correcting and updating Subparts C and E of Part 422 of the Social Security regulations. Subpart C describes the organization and procedures of the Office of Hearings and Appeals (OHA) of the Social Security Administration (SSA). Subpart E describes the availability of information and records from SSA under the Freedom of Information Act (FOIA) provisions.

DATES: These regulations are effective January 30, 1989. We will consider any comments received by March 31, 1989. We will revise and republish these regulations if public comments warrant.

ADDRESS: Comments should be submitted to the Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, MD 21235, or delivered to the Office of Regulations, 3-B-4 Operations Bldg., 6401 Security Blvd., Baltimore, MD 21235, between 8:00 a.m. and 4:30 p.m. on regular business days. Comments may be inspected during these same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Charles H. Campbell, Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (301) 965-1794.

SUPPLEMENTARY INFORMATION:

Amendments to Subpart C

Pursuant to 5 U.S.C. 552(a), we have published in the Federal Register information about the organization and functions of each component of SSA. Subpart C of Part 422 describes the organization and functions of OHA. It provides general information concerning hearings by administrative law judges, review by the Appeals Council, and review by the Federal courts. For detailed information regarding the administrative and judicial review procedures, the regulations found in 20 CFR 404.900 *et seq.*, 416.1400 *et seq.*, and 410.610 *et seq.* should be consulted.

We are amending Subpart C as some of the information contained in this subpart is no longer correct. For example, the current subpart refers to the Bureau of Hearings and Appeals. As of January 5, 1970, the name of this SSA component was changed to the Office of Hearings and Appeals. See 44 FR 17218 *et seq.* (March 21, 1979). We are making these and other similar nonsubstantive changes in Subpart C for reasons of consistency and conformity.

Most of these amendments involve correction of—(1) OHA's mailing address, (2) several cross-references to CFR sections, and (3) out-dated terms and titles. These amendments also involve—(1) deletion of a regulatory provision defining a "presiding officer," a title no longer used to designate the OHA hearing officer who is an administrative law judge appointed pursuant to 5 U.S.C. 3105, (2) deletion of inaccurate provisions that concern beneficiary reimbursement hearings under Part B of title XVIII, (3) updating the requirements with respect to the dollar amounts "in controversy" for the various appeals conducted under titles XI and XVIII of the Act, and (4) the inclusion of additional categories of title XVIII determinations which can be appealed.

Amendments to Subpart E

Subpart E of Part 422 describes the procedures by which a person may request from SSA information or records under the FOIA disclosure provisions codified at 5 U.S.C. 552. These Subpart E provisions supplement SSA's FOIA disclosure rules under Part 401 of this chapter and the rules under 45 CFR 5.1 *et seq.*, which state what material may be disclosed.

We are amending three Subpart E sections to shift the FOIA implementation responsibility within SSA from the Office of Information to the Office of Public Inquiries. In addition, the Director of the Office of Public Inquiries is now the SSA Freedom of Information Officer, and he or she has responsibility for releasing or denying requests for information. This change was made because the scope of the duties and responsibilities of the Office of Public Inquiries made it the SSA organizational component best suited to handle the growing and increasingly complex workload of disclosure requests being filed under the FOIA provisions.

Regulatory Procedures

The Department, even when not required by statute, as a matter of policy generally follows the Administrative Procedure Act notice of proposed rulemaking and public comment procedures specified in 5 U.S.C. 553 in the development of its regulations. The Administrative Procedure Act provides exceptions to its notice and public comment procedures when an agency finds there is good cause for the dispensing of such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest. We have determined that, under 5 U.S.C. 553(b), good cause exists for waiver of notice of proposed rulemaking and public comment procedures on this regulation, since opportunity for public comment is unnecessary. The reasons why prior notice and comment are unnecessary are the following: First, most of the changes are technical in nature and involve nomenclature changes, the correction of inaccurate cross-references and other information, and the deletion of obsolete information. Second, while we are specifying additional decisions under title XI and title XVIII that can be appealed, these additions simply reflect statutory jurisdictional provisions which must be followed and public comment would have no purpose. Third, the shifting of implementation responsibility from one component to another component within the agency does not require public comment, since this comes within the scope of agency management and the rule provides information for the guidance of the public as required by 5 U.S.C. 552(a)(1)(A). None of these regulations reflects implementation of policy changes.

Executive Order 12291

The Secretary has determined that this is not a major rule under Executive Order 12291, since these revisions are largely technical changes and do not involve any costs. Therefore, a regulatory impact analysis is not required.

Paperwork Reduction Act

These final regulations impose no reporting/recordkeeping requirements subject to Office of Management and Budget clearance.

Regulatory Flexibility Act

We certify that these regulations will not have a significant economic impact on a substantial number of small entities, because the regulations simply involve the correction of terms, cross-references and other information, and the transfer of the FOIA disclosure function from one SSA component to another. Consequently, a regulatory flexibility analysis, as provided in Pub. L. 96-354, the Regulatory Flexibility Act, is not required.

(Catalog of Federal Domestic Assistance Programs; No. 13.802 Social Security—Disability Insurance; No. 13.803 Social Security—Retirement Insurance; No. 13.805 Social Security—Survivors Insurance; No. 13.806 Special Benefits for Disabled Miners; No. 13.807 Supplemental Security Income.)

List of Subjects in 20 CFR Part 422

Administrative practice and procedure, Freedom of information, Organization and functions (government agencies), Social Security.

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Dated: September 1, 1988.

Dorcas R. Hardy,

Commissioner of Social Security.

Approved: October 6, 1988.

Otis R. Bowen,

Secretary of Health and Human Services.

Part 422 of Chapter III of Title 20 of the Code of Federal Regulations is amended as follows:

PART 422—ORGANIZATION AND PROCEDURES

1. The Subpart title and authority citation for Subpart C are revised to read as follows:

Subpart C—Procedures of the Office of Hearings and Appeals

Authority: Secs. 205, 221, 1102, 1869, and 1871 of the Social Security Act; 42 U.S.C. 405, 421, 1302, 1395ff, and 1395hh; Sec. 413(b) of the Federal Mine Safety and Health Act of 1977; 30 U.S.C. 923(b).

§§ 422.201, 422.203, 422.205, and 422.210 [Amended]

2. In 20 CFR 422.201, 422.203(b), and 422.205(a), remove the word "Bureau" from the phrase "Bureau of Hearings and Appeals" and add in its place the word "Office".

3. In 20 CFR 422.201, 422.205(f), and 422.210(c) remove the title "a presiding officer" or "presiding officer's" and add in its place the title "an administrative law judge" or "administrative law judge's", as appropriate.

4. In 20 CFR 422.203(b)(1) and 422.205(a) remove the mailing address "P.O. Box 2516, Washington, D.C. 20013" and add in its place the mailing address "P.O. Box 3200, Arlington, VA 22203".

5. In the list below, for each section paragraph indicated in the left column, remove the section cross-reference and government agency title from wherever it appears in the section paragraph and add the correct cross-reference and agency title indicated in the right column.

Section paragraph (20 CFR)	Remove	Add
422.201(a)	404.917 through 404.955	404.929 through 404.963.
422.201(b)	416.1425 through 416.1474	416.1429 through 416.1463.
422.203(a)(3)	405.1531	498.40.
	405.1501(c) and (f)	498.5.
422.203(b)(2)	405.1502(b)(2), (c), (d)(2), and (e)	498.3(b) and (c).
	405.1530, 405.1531	498.40.
	405.2060	417.260.
422.205(a)	Bureau of Health Insurance (as well as the Bureau of Quality Assurance in the case of a determination regarding an end-stage renal disease treatment facility).	Health Care Financing Administration or, as appropriate, the Office of the Inspector General.
	1862(d)(3)	1128(b)(6).
	405.1532	498.42.
	404.949	404.968.
	416.1462	416.1468.
	405.1502 and 405.2061	498.82 and 417.261.
422.205(b)	404.947	404.967 or 404.969.
	416.1463 or 416.1464	416.1467 or 416.1469.
	405.2061	417.261 or 473.46.
422.205(d)	405.1583 (first reference)	498.82 or 1001.128.
	405.1563 (second reference)	498.83.
	Health, Education, and Welfare	Health and Human Services.
422.210(c)	Health, Education, and Welfare	Health and Human Services.

§ 422.201 [Amended]

6. Section 422.201 is amended by revising paragraphs (c) and (d) to read as follows:

* * * * *

(c) Title XVIII of the Act, 42 CFR 405.720 through 405.750, 498.17, 498.40 through 498.95, 417.260 through 417.263, 473.40 through 473.46, and 1001.128. For regulations relating to hearings under title XVIII for a provider of services dissatisfied with the intermediary's determination as to the amount of program reimbursement due to or from the provider, see 42 CFR 405.1809 through 405.1890. Such hearings are conducted by a hearing officer designated by the intermediary or by the Provider Reimbursement Review Board, as appropriate.

(d) Part B of title IV of the Federal Mine Safety and Health Act of 1977 as amended, §§ 410.630 through 410.670.

7. Section 422.203 is amended by revising paragraphs (a)(1)(iii), (a)(2)(ii), and (c) and by removing paragraph (d) to read as follows:

§ 422.203 Hearings.

(a) * * *

(1) * * *

(iii) As to entitlement under Part A or Part B of title XVIII of the Act, or as to the amount of benefits under Part A of such title XVIII (where the amount in controversy is $100 or more); or of health services to be provided by a health maintenance organization without additional costs (where the amount in controversy is $100 or more); or as to the amount of benefits under Part B of title XVIII (where the amount in controversy is $500 or more); or as to a determination by a peer review organization (PRO) under title XI (where the amount in controversy is $200 or more); or as to certain determinations made under section 1154, 1842(1), 1866(f)(2), or 1879 of the Act; any party to such a determination may, pursuant to the applicable section of the Act, file a written request for a hearing on the determination. After a reconsidered determination of a claim for benefits under Part B of title IV (Black Lung benefits) of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 921 through 925), a party to the determination may file a written request for hearing on the determination.

* * * * *

(2) * * *

(ii) A determination terminating an agreement with a provider of services, such institution, facility, agency, or clinic may, pursuant to section 1866 of the Act, file a written request for a hearing on the determination.

* * * * *

(c) *Hearing decision or other action.* Generally, the administrative law judge will either decide the case after hearing (unless hearing is waived) or, if appropriate, dismiss the request for hearing. With respect to a hearing on a determination under paragraph (a)(1) of this section, the administrative law judge may certify the case with a recommended decision to the Appeals Council for decision. If the determination on which the hearing request is based relates to the amount of benefits under Part A or B of title XVIII

of the Act, to health services to be provided by a health maintenance organization without additional costs, or to PRO determinations, the administrative law judge shall dismiss the request for hearing if he or she finds that the amount in controversy is less than $100 for appeals arising under Part A or concerning health maintenance organization benefits; less than $200 for appeals arising from PRO determinations; and less than $500 for appeals arising under Part B. Hearing decisions must be based on the evidence of record, under applicable provisions of the law and regulations and appropriate precedents.

8. Section 422.210 is amended by revising the section title and paragraph (a) to read as follows:

§ 422.210 Judicial review.

(a) *General.* A claimant may obtain judicial review of a decision by an administrative law judge if the Appeals Council has denied the claimant's request for review, or of a decision by the Appeals Council when that is the final decision of the Secretary. A claimant may also obtain judicial review of a reconsidered determination, or of a decision of an administrative law judge, where, under the expedited appeals procedure, further administrative review is waived by agreement under §§ 404.926, 410.629d, or 416.1426 of this chapter or 42 CFR 405.718a–e as appropriate. For judicial review as to the amount of benefits under Part A or Part B of title XVIII of the Social Security Act, or of health services to be provided by a health maintenance organization without additional cost, the amount in controversy must be $1,000 or more as provided under section 1869(b) and section 1876(c)(5)(B) of the Act. For judicial review of a determination by a PRO, the amount in controversy must be $2,000 or more. An institution or agency may obtain judicial review of a decision by the Appeals Council that it is not a provider of services, or of a decision by the Appeals Council terminating an agreement entered into by the institution or agency with the Secretary (see section 1866(b)(2) of the Act). The Social Security Act does not provide for a right to judicial review of a final decision of the Secretary regarding the status of an entity which is not a "provider of services", such as an independent laboratory. Providers of services or other persons may seek judicial review of a final administrative determination made pursuant to section 1128(b)(6) of the Act. There are no amount-in-controversy limitations on these rights of appeal.

* * * * *

Subpart E—Availability of Information and Records to the Public

9. The authority citation for Subpart E is revised to read as follows:

Authority: Secs. 205, 1102, 1106, and 1871 of the Social Security Act; 42 U.S.C. 405, 1302, 1306, and 1395hh; Sec. 413(b) of the Federal Mine Safety and Health Act of 1977; 30 U.S.C. 923(b), 5 U.S.C. 552 and 552a, 8 U.S.C. 1360, 26 U.S.C. 6103.

§§ 422.426, 422.428, 422.444, and 422.445 [Amended]

10. In §§ 422.426, 422.428, 422.444 and 422.445, remove the phrase "Office of Information" where it appears and add in its place the phrase "Office of Public Inquiries".

[FR Doc. 89–2031 Filed 1–27–89; 8:45 am]

BILLING CODE 4190–11–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 635

[FHWA Docket No. 87–15]

RIN 2125–AB87

Construction and Maintenance; Contract Procedures; Standardized Contract Clauses

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The FHWA is revising its regulations on contract procedures to implement the provision mandated by section 111(c) of the Surface Transportation and Uniform Relocation Assistance Act (STURAA) of 1987 which became law on April 2, 1987. Section 111(c) amends section 112 of Title 23, United States Code (23 U.S.C.), to direct the Secretary of Transportation to issue regulations establishing and requiring certain standardized contract clauses in all Federal-aid highway contracts unless otherwise provided for by State law. The standardized contract clauses will provide for the equitable adjustment of contract terms: (1) Where site conditions differ from those indicated in the contract, (2) where work has been suspended by order of the contracting agency (other than a suspension of work caused by the fault of the contractor or by weather), and (3) where there are significant changes in the character of the work specified in the contract.

EFFECTIVE DATE: May 1, 1989. The provisions contained in this final rule apply to all Federal-aid contracts authorized to proceed with the construction stage on or after May 1, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. William A. Weseman, Chief, Construction and Maintenance Division, (202) 366–0392 or Mrs. Kathleen Markman, Office of the Chief Counsel, (202) 366–0780. Office hours are from 7:45 a.m. to 4:15 p.m., ET, Monday through Friday, except for legal holidays.

SUPPLEMENTARY INFORMATION: Under the Federal-aid highway program, federally assisted projects are generally constructed by private contractors under contract to the State highway agencies (SHAs) or local governmental agencies. Payment to the contractors is based on the amount of work performed in accordance with the terms of the contract. The FHWA reimburses the statutory Federal share of the costs to the SHAs as the projects are constructed and the costs are incurred. The plans, specifications, and estimates (PS&E) are prepared by the SHAs or their representatives. Due to the nature of subsurface conditions, highway construction, and conditions under which the work is performed, the geotechnical engineer and the designer cannot always accurately determine and describe in the contract documents all the subsurface or latent conditions existing at project sites. Consequently, in some instances the subsurface conditions encountered during construction may be different from those described in the geotechnical reports or indicated in the plans. These unanticipated conditions may cause a change in construction costs.

There also may be situations which develop during construction requiring the contracting agency (SHA or local governmental agency) to order the contractor to slow down or stop the progress of construction through no fault of the contractor and not due to weather conditions. These situations may occur, for example, when a defect in the design is found and the contracting agency needs time to study the problem and correct the design or when a third party, not part of the Federal-aid contract, does not perform as originally anticipated. These slowdowns or stoppages in the work may cause a change in construction costs.

There also may be situations encountered during construction which require the contracting agency to make alterations in the design. When these

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occur, the contract quantities are normally changed to reflect the alteration, and the contract is modified accordingly. Some of these alterations could significantly increase or decrease the contractor's production costs, in addition to providing a change in the amount of work required by the contract.

The unanticipated variations in contract costs caused by any of the above mentioned situations may in some instances add up to sizable amounts of money and constitute an additional risk to either the contractor or contracting agency. In those States where the contracting agency shifts the responsibility of such costs to the contractor, the contract documents normally do not provide for a mechanism to allow the contracting agency to legally adjust the contract to recover a savings due to a decrease in costs or to compensate the contractor for an increase. Thus, the contracting agency does not normally recover for the decreases, and the contractor can only recover for the increases by either anticipating such costs and increasing the amount bid by including a contingency amount in the bid or by submitting a claim. Claims and the possible resulting litigation process can be quite lengthy and costly and often yield unsatisfactory results for both parties. On the other hand, the contractor's contingency amount when included in the bid may exceed any actual additional costs, and may result in an unreasonable windfall for the contractor, and may unnecessarily increase the construction costs to the public.

Previous FHWA policy did not mandate any specific contract provisions to address resolution of these situations, but encouraged the adoption of contract language, such as clauses 104.02 and 108.07 of the 1984 American Association of State Highway and Transportation Officials (AASHTO) "Guide Specifications for Highway Construction" (available from AASHTO, 444 North Capitol Street NW., Suite 225, Washington, DC 20001). These clauses provided for an equitable adjustment of the contract terms in the event of unanticipated variations in contract costs. Section 111(c) of the STURAA of 1987, Pub. L. 100-17, 101 Stat. 132 and 147, however, made it a requirement for the Secretary of Transportation to develop and require to be included in Federal-aid contracts, unless otherwise provided for by State law, a standardized contract clause addressing the equitable adjustment of the contract terms for differing site conditions, material changes in the scope of work, and suspensions of work ordered by the contracting agency other than those caused by the fault of the contractor or by weather.

The requirements contained in section 111(c) of the STURAA of 1987 were originally considered for adoption by the 99th Congress (H.R. 3129), but a bill was never enacted because the House and Senate Committees conferees were unable to reach agreement. A similar bill, subsequently considered and adopted by the 100th Congress, was accompanied by only an abbreviated House Committee Report. Therefore, the 1988 House Committee Report (H.R. Rep. No. 665, 99th Congress, 2d Sess. 8-11(1988)) is the primary legislative history of section 111(c). The final rule takes into consideration the congressional intent as shown in this House Committee Report, the comments received by the FHWA on the Notice of Proposed Rulemaking (NPRM), and other available published information.

Section 111(c) of the STURAA of 1987 applies to all projects approved by the FHWA under Section 106 of Title 23, United States Code (23 U.S.C. 106, Plans, Specifications, and Estimates). However, section 106 provides that PS&E's administered under section 117 of Title 23, United States Code (23 U.S.C. 117, Certification Acceptance) are exempted from the FHWA approval requirements. Therefore, the provisions of section 111(c) of STURAA of 1987, do not apply to projects administered under an approved certification acceptance plan.

Highway contractor organizations have long voiced their support for standardized changed conditions clauses. They have felt that contractors should not have to assume the risk for the possibility of differing site conditions, significant changes in the character of the work, or suspensions of work for the convenience of the contracting agency. The 1988 House Committee Report articulated this same view in stating that contractors should be able to bid a project with the expectation of being compensated for all the acceptable work which is performed in accordance with the terms of the contract. In addition, the report indicates that a standardized arrangement would provide more uniformity among the States and eliminate much of the frustration being experienced by contractors who deal with several States at the same time.

An NPRM was published in the Federal Register on December 1, 1987, at 52 FR 45645, in which the FHWA requested comments on the proposed regulation. Originally, comments were to be received by February 1, 1988; however, pursuant to a request received, the comment period was extended to March 1, 1988, by notice published in the Federal Register on February 10, 1988, at 53 FR 3897.

Discussion of Comments

General

Thirty-one written comments were received in the docket. Of the 31 comments, 5 were from private contractors and contractor organizations. The remaining 26 comments were from SHAs. All the contractors and contractor organizations favored the proposed rule and recommended minor revisions. Ten of the SHAs indicated a strong objection to the rule.

Several commenters revealed apprehension and concern that the proposed regulation will result in a constant flow of notifications from the contractors in an attempt to convert unit price, competitively bid contracts into cost-plus contracts. A comment was also made to the effect that the competitive bidding process will be deteriorated, reducing quality and increasing costs. The FHWA knows of no factual information to support the statements made by these commenters. On the contrary, there are a number of States which are presently using similar specifications. These States have not reported major problems in the administration of such provisions in their contracts.

Several questions were raised in regard to the future administration of the projects containing the standardized contract clauses such as the type of written notices to be used, allowable costs, etc. As with any other specification, SHA's are expected to handle the administration of the standardized contract clauses according to their standard administrative procedures, such as those contained in SHAs construction manuals and by other sections of the SHAs' standard specifications dealing with methods of payments, variations in the work, etc.

Several commenters disagreed with the statement made in the preamble of the NPRM in regard to the possible economic impacts of the regulation. The preamble indicated that the regulation should have a positive economic impact because it "should: (1) Reduce the construction costs in general by reducing the uncertainties which the contractor must price during the bidding process, (2) reduce the number of claims reaching litigation thus reducing the legal expenses of both the contractors and contracting agencies, and (3) promote a better working relationship between the contractors and contracting agencies." The commenters indicated that, contrary to be preamble, the regulation will have an adverse economic impact and will most likely increase the construction costs of Federal-aid projects. Some commenters suggested delaying the implementation of the final rule until the adverse effects of the action are studied in greater detail. Another commenter indicated that the regulation will increase the number of claims that reach litigation.

The statement regarding the positive effects of the rule originated with the House Public Works Committee Bill (H.R. 3129) Report. The FHWA does not have information which would support for rebut this statement. Nevertheless, the possible economic impacts of the regulation were considered and it was concluded that, even if the number of claims increased, the resultant increase in project costs would most likely not be sufficient to trigger a full regulatory evaluation. A full regulatory evaluation recommended by some commenters was, therefore, not considered warranted.

Some commenters suggested amending the regulation to indicate that if the contractor disagrees with the amount of the adjustment as determined by the engineer, the contractor would be allowed to perform the work on a force account basis. It is not intented that the regulation preempt force account procedures provided by State specifications. Force account is a viable procedure to reimburse the contractor for contract adjustments, as appropriate. It is the FHWA policy, however, that the use of force account be keep to a minimum. Normally, force account is considered satisfactory when the extent of the work cannot be quantified with any degree of accuracy or an agreement cannot be reached with the contractor on appropriate unit proces for work to be performed.

Several commenters suggested revising the term "equitable adjustment" mainly because the term could be subject to several different interpretations and could lead to litigation. It is agreed that the adjective "equitable" does not add any substance to the regulation since any adjustments to the contract proposed by the engineer should, in effect, be fair and representative of the cost of the increased or decreased work. Therefore, the word "equitable" has been deleted and only the term adjustment is used in the final rule.

Several commenters requested assurances from the FHWA that Federal funds will participate on all amounts paid to contractors under the proposed regulation. Standard Federal-aid policy does not provide for such blanket participation. Federal participation on adjustments made under the standardized contract clauses will be considered on its own merits as is normally done with other proposed adjustments in Federal-aid highway projects.

A comment was made to explicitly exclude any reimbursement for loss of anticipated profits. The final rule includes language which clarifies that no reimbursement will be made for loss of anticipated profits. This position is consistent with longstanding FHWA policy to not participate in loss of anticipated profits.

Some commenters expressed their opinions as to what should constitute the basis for extra compensation and/or contract time. It is not the intention of the regulation to specify the type of contract adjustment to be allowed in any one specific situation. Any contract adjustment should be justifiable and fair compensation for increases or decreases caused by the changed contract conditions.

One commenter expressed a concern regarding use of the standardized clauses in a contract with end-result specifications. The concern was that a contractor who underestimates a project where differing site conditions are later found would be able to offset his/her misjudgment. There may be situations in which a differing site condition found during construction could present a contractor the opportunity to attempt recovery from bidding errors and/or wrong assumptions made during the bidding of the project. For this reason, it is incumbent upon the SHAs to assure a careful and detailed review of all apparent low bids to detect any unbalancing and/or bidding errors. The use of good contract administration methods and engineering judgment is essential for the successful administration of any project to assure that contract adjustments, whether an increase or decrease, reflect only the changed condition and do not constitute an unwarranted monetary gain or loss to the contractor.

One commenter suggested amending the regulation to make reference to the Contract Disputes Act of 1978 (Pub. L. 95-563, 92 Stat. 2383) to allow the contractors to carry any dispute beyond the engineer's decision. The Contract Disputes Act of 1978 is only applicable to Direct Federal procurement contracts; thus, it does not apply to Federal-aid contracts which are administered by the SHAs or the local governmental agencies. Further, the engineer is expected to render a fair decision closely representing the differential in costs caused by the changed contract condition. In the event of a subsequent dispute, since the engineer's decision is an administrative action, the contractor may still resort to the judicial system.

One commenter suggested making provision in the regulation to cover instances where the SHA would consider it appropriate to provide for an allocation of risks in the contract. Upon consideration of the suggestion, and a reexamination of the statutory authority of the Secretary, it was determined that the Secretary lacks the authority to waive the requirements of section 111(c) for any one project. The final rule must, therefore, be applicable to every Federal-aid highway project approved under 23 U.S.C. 106.

Several commenters suggested including permissive language in the final rule which would permit the SHAs to make changes in the standardized contract clauses to accommodate the language in their respective standard specifications. Other commenters indicated that section 111(c) requires the Secretary to only establish guidelines to be used by the States in the preparation of the clauses to be used in Federal-aid highway contracts. It is the clear intent of Congress, based on an objective reading of the statutes and the conference report, that standardized contract clauses be utilized by all States, unless otherwise provided for by State statute. The States' option to adopt a clause or clauses different from the one established by the Secretary or to not adopt a clause at all was clearly established by Congress in the Limitation of Applicability of section 111(c).

Section 111(c) does not place any limitation on the timing of the enactment of State statutes requiring or excluding the inclusion of the standardized contract clauses. Likewise, the final rule permits the States to enact and make effective such State statutes at any time. Thus, the standardized contract clauses, established under this rule, shall be inserted by the SHAs in Federal-aid contracts approved under 23 U.S.C. 106 until otherwise provided for by State statute.

Nearly half of the SHAs have already adopted changed conditions clauses. Many of them use language similar to the 1984 AASHTO "Guide Specifications for Highway Construction" or to the Federal

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Acquisition Regulations (FAR). In order to provide as much continuity as possible, and in keeping with the principles of federalism, the standardized contract clauses of the final rule have been developed following closely, where possible, the language of both the AASHTO Guide Specifications and the FAR. (The FAR is contained in 48 CFR Parts 1 to 99, and may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. The FAR is mandatory only for contracts for which the Federal Government is the contracting agency. This is not the situation in the Federal-aid highway program; therefore, compliance with the FAR is not a requirement.)

In 1988, AASHTO adopted and published new Guide Specifications which contain language that is very similar to that contained in the clauses of the final rule. The differences between the final rule and the new AASHTO Guide Specifications are in the area of impact costs (generally not recognized by AASHTO) and editorial changes by AASHTO needed for conformance to the language in other sections of the Guide Specifications. (Impacts costs, also known as "ripple damages," are increased costs attributable to the changed contract conditions but are not part of the changed work.)

Section 635.131(a)(1)

One commenter suggested deleting the words "latent" and "unknown" from the regulation. These words are used to mean hidden to the naked eye, not known at the time of bidding, and as such have not been deleted.

Several commenters suggested not recognizing impact costs. Section 635.131(a)(1), as published in the NPRM, provided for impact costs. Upon a re-examination of the committee report, it is agreed that the congressional purpose "to take at least some of the gamble on subsurface conditions out of the bidding" can be accomplished with the least amount of federalism impact if impact costs are not recognized as a mandatory contract adjustment item. In addition, the congressional mandate is to produce and require a clause addressing the differing site conditions in an equitable manner. It is felt this mandate can be accomplished without mandating the inclusion of impact costs. For these reasons, the final rule contains a new optional paragraph, § 635.131(a)(1)(iv) which excludes impact costs from consideration. Since several of the SHAs presently recognize impact costs in their assessment of differing site conditions and in keeping with the principle of Executive Order 12612 on "Federalism," it is the intention that this final rule not preclude the continuation of such practice. These SHAs, therefore, have the option to continue to recognize impact costs as provided for in their standard specifications and contract procedures by deleting paragraph 635.131(a)(1)(iv).

The language of § 635.131(a)(1), as contained in the final rule, clarifies that either party to the contract is entitled to request an adjustment due to a differing site condition. The adjustment may be to fairly compensate the contractor or benefit the State; however, no adjustment in favor of the contractor will be allowed unless the contractor notifies the contracting agency in writing prior to performance of the affected work or disturbing the alleged differing site conditions. The language of § 635.131(a)(1) as contained in the NPRM was also revised to clarify that the contractor will be notified of the engineer's determination. Several editorial changes were made as well.

Section 635.131(a)(2)

Several commenters suggested that impact costs not be recognized. Unlike the differing site conditions clause in this instance, the FHWA believes that it must provide for the impact costs and effects of State-mandated suspensions or delays of work in order to accomplish the congressional intent. Therefore, the clause was not changed as suggested by the commenters.

Several commenters suggested that § 635.131(a)(2) be clarified to indicate that it only applies to written suspensions of work and/or delays. The clause has been amended to clarify that the suspensions and delays affected by the clause are those in writing.

Conversely, other commenters recommended adding a provision for constructive suspensions and delays (where the contracting agency causes a suspension or delay due to action or inaction, without issuing a written suspension order). As discussed in the NPRM, it is not the intention of the regulation to expand this clause to include such suspensions and delays. However, some of the SHAs presently recognize constructive suspensions and delays as well as those in writing. For this reason, the final rule does not preclude the continuation of such practice and SHAs, thus, have the option to recognize constructive suspensions and delays as they may choose in their standard specifications and contract administration procedures. Such coverage would, of course, be in addition to that provided by the written suspensions and delays provisions of this section.

One commenter suggested amending the regulation to clarify that the suspensions of work clause applies only if the suspension affects the controlling operation and is not caused by the contractor or a third party. It was also suggested that no additional compensation be provided for any suspensions or delays during a reasonable period of time necessary to evaluate and respond to any "differing site conditions" found. The regulation has been written on the basis that the effects of any suspension or delay ordered in writing by the contracting agency will be evaluated in accordance with recognized and accepted methods. Such methods normally make use of the contractor's planned construction schedule and take into consideration any effects on the controlling operation(s). It is not intended that the regulation exclude suspensions or delays caused by third parties if these are the result of a written instruction by the contracting agency. The delays caused by third parties or a differing site condition are to be considered and evaluated on their own merits on a case-by-case basis.

With a few exceptions, the suspensions of work clause in the 1988 AASHTO Guide Specifications is similar to the FAR. The main difference is that AASHTO does not recognize "constructive suspensions." The FAR does. The suspensions of work clause of the final rule, as previously discussed, follows the AASHTO approach and does not recognize constructive suspensions.

The clause is consistent with both AASHTO and the FAR in not allowing the recovery of profit on any additional costs caused by the suspension or delay, and requiring that suspensions must be for unreasonable periods. Thus, recognized suspension periods would not include brief customary suspensions inherent to highway construction for reasons such as the collection of material samples, testing of materials, approvals of shop drawings and material sources, etc., and other reasonable and customary suspensions necessary for the orderly supervision of construction by the contracting agency.

As previously noted, the language of § 635.131(a)(2) as contained in the NPRM has been revised in the final rule to clarify that suspensions will be in writing. Also to clarify that the contractor will be notified of the engineer's determination, to delete the engineer's reasons to suspend work because this is normally addressed by

SHAs in other portions of their standard specifications, and to make general editorial changes.

Section 635.131(a)(3)

Many commenters indicated that the regulation contained several undefined terms which may result in controversy and litigation. Others recommended that § 635.131(a)(3) be modified to specify the threshold increase or decrease that would justify a request for an adjustment to the contract based on changed production costs. The majority of these commenters suggested a threshold of 20 to 25 percent change in the quantity of a major item of work. The AASHTO Guide Specifications defines a major item of work as an item whose total original contract cost exceeds 10 percent of the total original contract amount.)

The NPRM explained that a threshold amount had not been included in the regulation because this is normally defined in the contracting agencies' standard specifications. However, upon further consideration and in view of the comments received, the final rule now includes a definition for the term "significant change" which incorporates threshold amounts.

Although the 1988 AASHTO Guide Specifications do not contain a written definition for "significant change" they do contain a recommendation that a threshold amount of 25 percent change in the quantity of a major item of work be used to denote such changes. It also sets a cap of 25 percent maximum change in the contract unit prices. The FAR, on the other hand does not establish a cap amount on unit prices and specifies the threshold amounts at 15 percent of the quantity of any item of work.

The approach used in the final rule is similar to AASHTO in that a threshold amount of 25 percent change in the quantity of a major item of work is specified. However as in the FAR, a cap on the amount of change in the unit price has not been established. In addition, the final rule clarifies that the term "significant change" also applies to situations when the character of the changed work differs materially in kind or nature from the work as originally proposed.

Section 635.131(a)(3) as published in the NPRM provided for impact costs to the extent that the impacted work is part of the contract. This is in accordance with the congressional intent in the Conference Report and is not changed in the final rule.

The NPRM noted that the standardized clause in § 635.131(a)(3) was not intended to cover constructive change orders. (A constructive change order occurs when the contracting agency causes a change but does not issue a written order.) Several commenters agreed that the clause should not provide for constructive changes, but at least one commenter suggested adding such a provision. The clause has been amended in the final rule to clarify that the changes affected by the standardized clause are only those in writing. However, several SHAs presently recognize constructive changes as well as those in writing. The final rule does not preclude the continuation of such a practice. Those SHAs may continue to recognize constructive changes as provided for in their standard specifications and contract administration procedures in addition to the written changes of work as provided for in § 635.131(a)(3).

Additional changes to § 635.131(a)(3) as it appeared in the NPRM include deletion of the terms "material" and "scope" and the substitution in their place of the terms "significant" and "character." The term "material" was changed to clarify the title of the clause. The work "scope" was changed to read "character" to avoid conflict with the States' standard specifications.

In addition, § 635.131(a)(3) was amended to clarify the exclusion of reimbursement for loss of anticipated profits. Several other changes, editorial in nature, were also made for clarification.

Section 635.131(b)

Some commenters interpreted section 111(c) of the STURRA of 1987 to allow the SHAs to adopt, by State statute, language of their choice for any of the three clauses without a determination by the Division Administrator that the State clauses are comparable to the clauses contained in the final rule and took exception to the requirement as it was presented in the NPRM. Upon further consideration and reexamination of the committee report and the provisions of section 111(c) of the STURRA of 1987, the commenters' interpretation that the Division Administrator's determination of comparability is not necessary was found to have merit. The final rule reflects this determination. States may adopt any language for the standardized contract clauses or prohibit any one or more of the clauses as long as it is done under the mandate of a specific State statute concerning changed contract conditions. Such clause or clauses, however, must be in conformance with 23 U.S.C., 23 CFR, and other Federal statutes and regulations as appropriate and will be subject to the Division Administrator's approval as part of the PS&E.

The FHWA has determined that this document does not contain a major rule under Executive Order 12291 or a significant regulation under the regulatory policies and procedures of the Department of Transportation. This rulemaking action has been prepared in order to implement a statutory mandate. That mandate requires the imposition of new requirements on State and local governments with the inclusion of standardized contract clauses in all Federal-aid highway contracts unless the State has developed and implemented, by statute, language of its choice for any of the clauses or adopts or has adopted a statute which does not permit inclusion of such clause or clauses. A full regulatory evaluation is not required because of the ministerial nature of this action. However, potential regulatory impacts have been addressed, as appropriate, in the development of this final rule.

Under the criterin of the Regulatory Flexibility Act (Pub. L. 96-354), the FHWA hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the final rule does not have sufficient federalism implications to warrant the preparation of a federalism assessment.

In consideration of the foregoing, the FHWA hereby amends Part 635, Subpart A of Chapter I of Title 23, Code of Federal Regulations, as set forth below.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

List of Subjects in 23 CFR Part 635

Government contracts, Grant programs-transportation, Highway and roads.

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Issued on January 23, 1989.

Robert E. Farris,

Federal Highway Administrator.

The FHWA hereby amends 23 CFR Part 635, Subpart A, as follows:

PART 635—CONSTRUCTION AND MAINTENANCE

Subpart A—Contract Procedures

1. The authority citation for Part 635 continues to read as follows:

Authority: 23 U.S.C. 112, 113, 114, 117, 120, and 315; 31 U.S.C. 6505; 42 U.S.C. 3334, 4601 *et seq.*; 49 CFR 1.48(b).

2. Part 635, Subpart A is amended by adding a new § 635.131 to read as follows:

§ 635.131 Differing site conditions, suspensions of work and significant changes in the character of work.

(a) Except as provided in paragraph (b) of this section, the following contract clauses shall be made part of, and incorporated in, each highway construction project approved under 23 U.S.C. 106:

(1) *Differing site conditions.* (i) During the progress of the work, if subsurface or latent physical conditions are encountered at the site differing materially from those indicated in the contract or if unknown physical conditions of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in the work provided for in the contract, are encountered at the site, the party discovering such conditions shall promptly notify the other party in writing of the specific differing conditions before they are disturbed and before the affected work is performed.

(ii) Upon written notification, the engineer will investigate the conditions, and if he/she determines that the conditions materially differ and cause an increase or decrease in the cost or time required for the performance of any work under the contract, an adjustment, excluding loss of anticipated profits, will be made and the contract modified in writing accordingly. The engineer will notify the contractor of his/her determination whether or not an adjustment of the contract is warranted.

(iii) No contract adjustment which results in a benefit to the contractor will be allowed unless the contractor has provided the required written notice.

(iv) No contract adjustment will be allowed under this clause for any effects caused on unchanged work. (This provision may be omitted by the SHAs at their option.)

(2) *Suspensions of work ordered by the engineer.* (i) If the performance of all or any portion of the work is suspended or delayed by the engineer in writing for an unreasonable period of time (not originally anticipated, customary, or inherent to the construction industry) and the contractor believes that additional compensation and/or contract time is due as a result of such suspension or delay, the contractor shall submit to the engineer in writing a request for adjustment within 7 calendar days of receipt of the notice to resume work. The request shall set forth the reasons and support for such adjustment.

(ii) Upon receipt, the engineer will evaluate the contractor's request. If the engineer agrees that the cost and/or time required for the performance of the contract has increased as a result of such suspension and the suspension was caused by conditions beyond the control of and not the fault of the contractor, its suppliers, or subcontractors at any approved tier, and not caused by weather, the engineer will make an adjustment (excluding profit) and modify the contract in writing accordingly. The engineer will notify the contractor of his/her determination whether or not an adjustment of the contract is warranted.

(iii) No contract adjustment will be allowed unless the contractor has submitted the request for adjustment within the time prescribed.

(iv) No contract adjustment will be allowed under this clause to the extent that performance would have been suspended or delayed by any other cause, or for which an adjustment is provided for or excluded under any other term or condition of this contract.

(3) *Significant changes in the character of work.* (i) The engineer reserves the right to make, in writing, at any time during the work, such changes in quantities and such alterations in the work as are necessary to satisfactorily complete the project. Such changes in quantities and alterations shall not invalidate the contract nor release the surety, and the contractor agrees to perform the work as altered.

(ii) If the alterations or changes in quantities significantly change the character of the work under the contract, whether or not changed by any such different quantities or alterations, an adjustment, excluding loss of anticipated profits, will be made to the contract. The basis for the adjustment shall be agreed upon prior to the performance of the work. If a basis cannot be agreed upon, then an adjustment will be made either for or against the contractor in such amount as the engineer may determine to be fair and equitable.

(iii) If the alterations or changes in quantities do not significantly change the character of the work to be performed under the contract, the altered work will be paid for as provided elsewhere in the contract.

(iv) The term "significant change" shall be construed to apply only to the following circumstances:

(A) When the character of the work as altered differs materially in kind or nature from that involved or included in the original proposed construction or

(B) When a major item of work, as defined elsewhere in the contract, is increased in excess of 125 percent or decreased below 75 percent of the original contract quantity. Any allowance for an increase in quantity shall apply only to that portion in excess of 125 percent of original contract item quantity, or in case of a decrease below 75 percent, to the actual amount of work performed.

(b) The provisions of this section shall be governed by the following:

(1) Where State statute does not permit one or more of the contract clauses included in paragraph (a) of this section, the State statute shall prevail and such clause or clauses need not be made applicable to Federal-aid highway contracts.

(2) Where the State highway agency has developed and implemented one or more of the contract clauses included in paragraph (a) of this section, such clause or clauses, as developed by the State highway agency may be included in Federal-aid highway contracts in lieu of the corresponding clause or clauses in paragraph (a) of this section. The State's action must be pursuant to a specific State statute requiring differing contract conditions clauses.

[FR Doc. 89-2039 Filed 1-27-89; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8236]

Allocation and Apportionment of Deduction for State Income Taxes; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to temporary regulations.

SUMMARY: This document contains a correction to the **Federal Register** publication for Monday, December 12, 1988, beginning at 53 FR 49873 of the temporary regulations (T.D. 8236). The temporary regulations relate to the allocation and apportionment of deductions for state income taxes in computing taxable income from sources inside and outside the United States.

FOR FURTHER INFORMATION CONTACT: David F. Chan of the Office of Associate Chief Counsel (International), (202) 634-5404 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On December 12, 1988, temporary regulations relating to the allocation and apportionment of deductions for state income taxes in computing taxable income from sources inside and outside the United States were published in the **Federal Register** (53 FR 49873). The text of the temporary regulations served as the text of the proposed regulations cross-referenced in the Notice of Proposed Rulemaking in the Proposed Rules section of the same issue of the **Federal Register**.

Need for Correction

As published, the temporary rules contain typographical errors which may prove to be misleading and are in need of correction.

Correction of Publication

Accordingly, the publication of the temporary rules (T.D. 8236), which was the subject of FR Doc. 88-28460 (53 FR 49873), is corrected as follows:

1. In the preamble, under the heading "DISCUSSION", in subheading "Section 1.861-8", on page 49873, column 2, line 2, the language "reserving paragraph (e)(b) of § 1.861-8," should read "reserving paragraph (e)(6) of § 1.861-8,'".

§ 1.861-8T [Corrected]

2. On page 49875, column 1, the next printed line immediately following the conclusion of § 1.861-8T(e)(6)(iii) should read "* * * * *".

Dale D. Goode,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 89-2067 Filed 1-27-89; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 931

New Mexico Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Final rule.

SUMMARY: OSMRE is announcing approval of an amendment to the New Mexico permanent regulatory program (hereinafter referred to as the New Mexico program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment pertains to cultural and historic resources. The amendment revises the State program to be consistent with the corresponding Federal regulations.

EFFECTIVE DATE: January 30, 1989.

FOR FURTHER INFORMATION CONTACT: Robert H. Hagen, Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 625 Silver Avenue, SW., Suite 310, Albuquerque, NM 87102; Telephone (505) 766-1486.

SUPPLEMENTARY INFORMATION:

I. Background

On December 31, 1980, The Secretary of the Interior conditionally approved the New Mexico program. Information regarding the general background for the New Mexico program, including the Secretary's findings, the disposition of comments, and detailed explanation of the conditions of approval of the New Mexico program can be found in the December 31, 1980 **Federal Register** (45 FR 86459). Actions taken subsequent to the approval of the New Mexico program are found in 30 CFR 931.12, 931.13, 931.15, and 931.16.

II. Discussion of the Amendment

In accordance with the provisions of 30 CFR 732.17(f), the Director of OSMRE on June 9, 1987, notified New Mexico of certain changes necessary to ensure that the approved regulatory program remained no less stringent than SMCRA and no less effective than the revised Federal regulations concerning the protection of cultural and historic resources.

In response to one of the requirements of OSMRE's June 9, 1987, letter, New Mexico on September 1, 1988, submitted to OSMRE a proposed amendment to **Coal Surface Mining Commission** (CSMC) Rule 80-1 (Administrative Record No. NM-441). The proposed amendment concerns written permit findings for cultural and historic resources.

OSMRE announced receipt of the proposed amendment in the November 2, 1988, **Federal Register** (53 FR 44202) and, in the same notice, opened the public comment period and provided an opportunity for a public hearing on the substantive adequacy of the proposed amendment. The public comment period closed on December 2, 1988. The public hearing, scheduled for November 28, 1988, was not held because no one requested an opportunity to testify.

III. Director's Findings

The Director finds, in accordance with SMCRA and 30 CFR 732.15 and 732.17, that the amendment submitted by New Mexico on September 1, 1988, meets the requirements of SMCRA and 30 CFR Chapter VII as discussed below. The Director is approving the rule with the provision that it be fully promulgated in a form identical to that submitted to and reviewed by OSMRE and the public. New Mexico proposes to revise CSMC Rule 80-1, Section 11-19, to add a new subsection (p). This new subsection would require the Director of the New Mexico Mining and Minerals Division (MMD) to make a written permit finding showing that he has taken into account the effect of the proposed permitting action on properties listed on and eligible for listing on the National Register of Historic Places. This finding would be supported by inclusion of appropriate permit conditions or changes in the operation plan protecting historic resources, or documentation that no additional protective measures were necessary.

Except for the inclusion of State-specific references, SCMC Rule 80-1-11-19(p) is identical to the corresponding Federal rule at 30 CFR 773.15(c)(11). Therefore, the Director finds that it is no less effective than the Federal rule.

IV. Summary and Disposition of Comments

OSMRE did not receive any public comments in response to its November 2, 1988, **Federal Register** notice, and it did not hold a public hearing because no one requested an opportunity to provide testimony.

Pursuant to section 503(b) of SMCRA and the implementing regulations at 30 CFR 732.17(h)(11), OSMRE solicited comments from various Federal agencies with an actual or potential interest in the New Mexico program. In response, the Bureau of Land Management (BLM) requested that the

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word "and" be replaced by the word "or" in the phase "properties listed on and eligible for listing on the National Register of Historic Places." OSMRE did not pursue this comment with New Mexico because New Mexico's proposed rule is identical to the Federal counterpart which will be interpreted in the manner desired by the BLM.

Pursuant to 30 CFR 732.17(h)(4), OSMRE solicited comments from the State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation. The SHPO for New Mexico recommended that CSMC Rule 80-1-11-19 reference the consultation conducted between the New Mexico SHPO and the MMD under their existing Memorandum of Understanding (MOU). OSMRE did not require that MMD revise its proposed rule because the Federal counterpart regulation contains no such requirement to reference SHPO/regulatory authority MOU's. The fact that the proposed rule does not reference the MOU has no impact on the existing MOU nor should it affect the continued coordination and consultation by the SHPO and MMD on permitting matters concerning historical properties. Consultation with the SHPO is required by CSMC Rule 80-1-3-12(e).

V. Director's Decision

Based on the above finding, the Director is approving the proposed amendment submitted by New Mexico on September 1, 1988. The Federal regulations at 30 CFR Part 931 that codify decisions concerning the New Mexico program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

National Environmental Policy Act. The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

Executive Order No. 12291 and the Regulatory Flexibility Act. On July 12, 1984, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for action directly related to approval or conditional approval of State regulatory programs. Therefore, for this action, OSMRE is exempt from the requirement to prepare a regulatory impact analysis, and this action does not require regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules would be met by the State.

Paperwork Reduction Act. This rule does not contain information collection requirements which require approval by the OMB, 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 931

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Date: January 23, 1989.

Robert E. Beidl,

Deputy Director, Office of Surface Mining Reclamation and Enforcement.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below.

PART 931—NEW MEXICO

1. The authority citation for Part 931 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. The authority citations for §§ 931.10, 931.11, 931.12, and 931.15 are removed.

3. Section 931.15 is amended by adding a new paragraph (g) to read as follows:

§ 931.15 Approval of amendments to State regulatory program.

* * * * *

(g) The following amendment submitted on September 1, 1988 is approved effective January 30, 1989 provided New Mexico adopts the regulation in a form identical to that submitted to OSMRE: Addition of New Mexico Coal Surface Mining (CSMC) Rule 80-3-22-39(p), to require a finding for permit approval regarding historic and cultural resources.

[FR Doc. 89-1908 Filed 1-27-89; 8:45 am]

BILLING CODE 4310-05-M

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30 CFR Part 935

Ohio Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Final rule.

SUMMARY: OSMRE is announcing the approval of Program Amendment Number 33 to the Ohio regulatory program (hereinafter referred to as the Ohio program) approved under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment revises the State regulations concerning coal exploration to improve their clarity and add specificity to the State's operational procedures.

EFFECTIVE DATE: January 30, 1989.

FOR FURTHER INFORMATION CONTACT: Ms. Nina Rose Hatfield, Director, Columbus Field Office, Office of Surface Mining Reclamation and Enforcement, Room 202, 2242 South Hamilton Road, Columbus, Ohio 43232; Telephone: (614) 866-0578.

SUPPLEMENTARY INFORMATION:

I. Background on the Ohio Program

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio program. Information on the general background of the Ohio program submission, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program, can be found in the August 10, 1982, **Federal Register** (47 FR 34688). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 935.11, 935.12, 935.15, and 935.16.

II. Submission of Amendments

By letter dated March 8, 1988 (Administrative Record No. OH-1019), the Ohio Department of Natural Resources, Division of Reclamation (Ohio) submitted Program Amendment Number 33, which revises Rule 1501:13-4-02 of the Ohio Administrative Code (OAC). On July 1, 1988 (Administrative Record No. OH-1066), Ohio submitted further revisions to OAC 1501:13-4-02(B)(1)(b) and (B)(1)(c).

OSMRE announced receipt of the March 8, 1988, proposed amendment in the **Federal Register** on April 11, 1988 (53 FR 11667) and, in the same notice, opened the public comment period and provided opportunity for a public hearing on its adequacy. Following receipt of the July 1, 1988, revisions, OSMRE reopened the public comment period for an additional 15 days on August 8, 1988 (53 FR 29746). A summary of the comments received and their disposition appears in the section of this notice entitled "Summary and Disposition of Comments."

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning Program Amendment No. 33.

1. OAC 1501:13-4-02(B)(1)(b)

The proposed revision would require that each exploration notice include the name, address, and telephone number of the individual who will be present or *or* (rather than "and" as in the previous language of this provision) responsible for exploration activities.

The corresponding Federal regulation at 30 CFR 772.11(b)(2) contains language identical to that of the previous State rule. However, the preamble to this rule, originally promulgated as 30 CFR 776.11(b), indicates that its intent was to require information identifying the specific individual, e.g., foreman, corporate agent, or other representative of the applicant, whom the inspector or other representative of the regulatory authority could contact directly for inspection, enforcement and other purposes. (See 44 FR 15018, March 13, 1979.)

By letter dated June 28, 1988 (Administrative Record No. OH-1066), Ohio explains that this responsible individual is often not the same person (usually the driller) who is actually present at the exploration site on a continuous basis. There is nothing in the preamble to the Federal rule to indicate that OSMRE intended to require that the designated contact person (responsible individual) actually be present on-site at all times. In fact, given the limited nature of much exploration activity, good management practices would often dictate otherwise. Furthermore, like 30 CFR 772.11(b)(1), OAC 1501:13-4-02 (B)(1)(a) requires the same identifying information of the applicant, who is ultimately responsible for the exploration operation.

Therefore, the Director finds that, provided the designated responsible individual is readily accessible and can be easily contacted by the person who is actually present onsite, the proposed change is no less effective than the Federal rule.

2. OAC 1501:13-4-02(B)(1)(c)

To improve consistency in terminology, Ohio is replacing "area" with "site" when referencing the location of exploration activities. Since this is a nonsubstantive wording change, the Director finds that it will not render the rule less effective than its Federal counterpart at 30 CFR 772.11.

3. OAC 1501:13-4-02(C)(1)

As revised, this rule would require that the person conducting the exploration operation give telephone notice on the date of commencement of any exploration activities to the Ohio Division of Reclamation district office having jurisdiction over the exploration area.

The Federal counterpart at 30 CFR 772.11 does not require such notice. However, under 30 CFR 730.5 and 730.11(b), States are not necessarily limited to the procedures and requirements contained in the Federal rules. Therefore, since the change does not conflict with any Federal requirement, the Director finds that the revised rule is no less effective than its Federal counterpart.

4. OAC 1501:13-4-02(C)(1)(a)

As revised, this rule would allow the Chief to exempt exploratory operations involving only drilling activities from being considered a substantial disturbance of the land surface unless those activities would affect lands designated as unsuitable for coal mining operations.

The corresponding Federal rules in 30 CFR Part 772 contain no such exemption. However, as discussed below, it does allow drilling to be considered a nonsubstantial disturbance under certain circumstances. The preamble to the Federal definition of "substantially disturb" in 30 CFR 701.5 specifies that the determination of whether drilling activities would result in substantial disturbance must be made either on a case-by-case basis, using the definition of "substantially disturb" as guidance, or through guidelines supplementing the State program. (See 48 FR 40624, September 8, 1983.) All guidelines must be consistent with the definition of "substantially disturb" to be no less effective than the Federal rules.

In the June 28, 1988, administrative record accompanying this amendment, Ohio establishes guidelines for use in determining whether a disturbance would be substantial. These guidelines are vague and lacking in definitive criteria, but, properly interpreted, they are not inconsistent with the Federal or State definitions. However, Ohio further states in this document that it intends to consider the construction of roads to facilitate drilling to be a nonsubstantial disturbance since such roads would only be used for a short duration.

The Director finds this statement to be inconsistent with the definition of "substantially disturb." As discussed at length in the preamble to this definition (48 FR 40624, September 8, 1983), the revised Federal rule did not intend to categorically exclude drilling operations. Indeed, the preamble clearly states that "usually such a substantial disturbance would occur when drilling is combined with other activities (e.g., * * * construction of roads to a drilling site or the removal of vegetation and topsoil for the drill pad, in addition to the drilling itself)." Depending on site-specific environmental conditions, these activities may not always result in substantial disturbance; however, the categorical exclusion intended by Ohio is clearly inconsistent with the Federal rule. Any exclusion of roads constructed for drilling operations must be based on their environmental impact, not the extent to which they are used. Negative environmental impacts of roads are usually related more to their construction and maintenance than to their degree of use.

The Director agrees with Ohio that drilling is usually the least environmentally disruptive form of exploration; however, it does not follow, as Ohio implies, that drilling is therefore a nonsubstantial disturbance. Minimization of environmental impacts is desirable and a purpose of SMCRA, but minimization alone does not justify a determination of no substantial disturbance. The decision as to whether a particular activity would create a substantial disturbance must be based on the absolute impacts which would result from that disturbance, not on how those impacts compare with the impacts which would be caused if differing methodology were used.

Therefore, the Director finds that the rule change itself, which allows, but does not require, Ohio to consider drilling to be a nonsubstantial disturbance, is no less effective than the Federal rule, provided Ohio interprets this rule in a manner consistent with this finding.

5. OAC 1501:13-4-02(E)(2)

This proposed revision provides that notices of intent to explore shall expire on the first anniversary of the date of issuance unless a request for renewal is filed with the Ohio Division of Reclamation at least 60 days prior to the expiration date. Although the corresponding Federal rule at 30 CFR 772.11 does not specify when a notice of intent to explore expires, under 30 CFR 730.5 and 730.11 States may adopt procedures and requirements in addition to those contained in SMCRA and the Federal rule. Therefore, since the Ohio provision does not conflict with any Federal requirement, the Director finds

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that the revision is not inconsistent with section 512 of SMCRA and will not render the State rule less effective than 30 CFR 772.11.

IV. Summary and Disposition of Comments

Public Comments

The comment period and opportunity to request a hearing announced in the April 11, 1988, **Federal Register** ended on May 11, 1988. The public comment period was reopened in the August 8, 1988, **Federal Register** and ended on August 23, 1988. No public comments were received and the scheduled public hearing was not held as no one requested an opportunity to provide testimony.

Agency Comments

Pursuant to section 503(b) of SMCRA and the implementing regulations at 30 CFR 732.17(h)(11)(i), comments were solicited from various Federal agencies with an actual or potential interest in the Ohio program. Only the Soil Conservation Service of the U.S. Department of Agriculture provided comments, the disposition of which is summarized below:

1. *Comment:* The guidelines criterion concerning barren areas, which states that the creation of such areas will be minimized, should be revised to require that areas with slopes greater than two percent be regraded to the original contour and reseeded with a permanent pasture mixture.

Response: This comment has not been adopted since it would be a performance standard, not a criterion for determining whether a proposed activity would constitute a substantial disturbance, which is the purpose of the guidelines.

2. *Comment:* Erosion during and after construction of roads for access by drilling equipment may be a major disturbance.

Response: The Director agrees. As discussed in Finding 4, he is requiring the State to determine whether road construction would constitute a substantial disturbance on the basis of actual and potential environmental impact, rather than the extent to which the road would be used, as originally proposed.

3. *Comment:* OAC 1501: 13–4–02(B)(1)(h) should be revised to allow the notice of intent to explore to include either a statement that the exploration operations will not substantially disturb the ground surface or a plan to reclaim significant disturbances, rather than just the former as is currently required.

Response: The commenter's suggestion would impermissably weaken this rule by allowing persons to substantially disturb the land's surface without first obtaining an exploration permit. Therefore, it has not been adopted.

4. *Comment:* Drill holes created by coal exploration should be sealed after drilling so as to protect aquifers and prevent future dumping of waste materials.

Response: The Ohio program already contains this provision. OAC 1501: 13–4–02(E)(2) and 13–8–01(G) require that all coal exploration operations comply with the requirements of OAC 1501: 13–0–02, which requires that each hole drilled be cased, sealed, or otherwise managed as approved by the Chief to prevent acid or other toxic drainage from entering ground or surface waters.

5. *Comment:* Any slurry or brine created from exploration drilling should be contained in the immediate area and/or removed from the site and disposed of in an approved manner.

Response: Neither the State nor the Federal rules include this standard. However, both do require compliance with all State and Federal requirements concerning water quality, which should achieve the result desired by the commenter. Also, OAC 1501: 13–4–02(B)(1)(g) requires that notices of intent include a description of the practices to be followed to reclaim the area and to prevent adverse environmental impacts, and OAC 1501: 13–8–01(I) requires that coal exploration operations be conducted in a manner which minimizes disturbance of the prevailing hydrologic balance in accordance with OAC 1501: 13–0–04.

6. *Comment:* Where a substantial disturbance determination has been made, a plan to control erosion, establish permanent vegetation and preserve water quality should be prepared.

Response: OAC 1501: 13–4–02(B)(2)(a) already contains this requirement.

V. Director's Decision

Based on the findings discussed above, the Director is approving Program Amendment Number 33 as submitted on March 8 and July 1, 1988, with the partial exception of the revision of OAC 1501: 13–4–02(C)(1)(a) as discussed in Finding 4. As provided by 30 CFR 732.17 (a) and (g), any provisions that are not approved by the Director may not be implemented as part of the Ohio program.

This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to conform their programs with the Federal standards without delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

National Environmental Policy Act

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need to be prepared on this rulemaking.

Executive Order 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSMRE an exemption from Sections 3, 4, and 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a regulatory impact analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subject in 30 CFR Part 935

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Date: January 23, 1989.

Robert E. Boldt,

Deputy Director, Office of Surface Mining Reclamation and Enforcement.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 935—OHIO

1. The authority citation for Part 935 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. In § 935.15, a new paragraph (ii) is added to read as follows:

§ 935.15 Approval of regulatory program amendments.

* * * * *

(ii) Except as noted herein, the following amendment concerning coal exploration activities, as submitted to OSMRE on March 8 and July 1, 1988, is approved effective January 30, 1989. Program Amendment Number 33, which consists of revisions of the following paragraphs of Rule 13–4–02 of Chapter 1501 of the Ohio Administrative Code: (B)(1)(b), (B)(1)(c), (C)(1), (C)(1)(a) (except to the extent that Ohio has indicated it intends to interpret this paragraph as authorizing the regulatory authority to determine whether road construction constitutes a substantial disturbance on the basis of the degree to which the road would be used rather than the potential environmental impact of the actual construction and its aftermath, and (E)(2).

[FR Doc. 89–1907 Filed 1–27–89; 8:45 am]
BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGDS–88–025]

Drawbridge Operation Regulations; Roanoke Sound, NC

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the North Carolina Department of Transportation, the Coast Guard is changing the regulations governing the operation of the U.S. 64/264 drawbridge across the Roanoke Sound at mile 2.8, in Manteo, North Carolina, by restricting the number of bridge openings during boating season. The bridge currently is required to open on signal. The changes to this regulation are, to the extent practical and feasible, intended to provide for regularly scheduled drawbridge openings to help reduce motor vehicle traffic delays and congestion on the roads and highways linked by this drawbridge.

EFFECTIVE DATE: These regulations become effective on March 1, 1989.

FOR FURTHER INFORMATION CONTACT: Ann B. Deaton, Bridge Administrator, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, VA 23704–5004, (804) 398–6222.

SUPPLEMENTARY INFORMATION: On June 28, 1988, the Coast Guard published a notice of proposed rulemaking in the **Federal Register** (53 FR 24323) concerning the U.S. 64/264 bridge across the Roanoke Sound at Manteo, North Carolina. Interested persons were given until August 12, 1988, to submit comments on the proposed rule. The Commander, Fifth Coast Guard District, also published the proposal as a Public Notice on July 11, 1988, which gave interested persons until August 5, 1988, to submit comments. Four comments were received.

Drafting Information

The drafters of these regulations are Linda L. Gilliam, Project Officer, and LCDR Robin K. Kutz, Project Attorney.

Discussion of Rule and Comments

The North Carolina Department of Transportation has requested that the U.S. 64/264 drawbridge across the Roanoke Sound at mile 2.8, in Manteo, North Carolina, be required to open only on the hour, between 7:00 a.m. and 7:00 p.m., daily, from May 1 to October 31. The current regulations require the draw to open on signal for the passage of vessels. This request was made to alleviate highway congestion caused by excessive bridge openings. A proposed rule restricting drawbridge openings during the requested time frame was published in the **Federal Register** (53 FR 24323) on June 28, 1988, and the proposal was announced in a Public Notice dated July 11, 1988.

Four comments were received. Three responses were from private citizens offering no objection to the proposed rule, and the fourth response was from S.C. Loveland Co., Inc., a commercial waterway user of the Roanoke Sound. S.C., Loveland Co., Inc., of Philadelphia, PA, in a letter dated July 27, 1988, expressed their opinion that tug and barge operators should not be restricted and should be allowed on demand passage through the bridge. This regulation omits on demand passage for commercial vessels because they cause a significant number of bridge openings at the Roanoke Sound Bridge. A review of the drawlogs revealed that from May 1, 1988, through October 31, 1988, from 7:00 a.m. to 7:00 p.m., the drawbridge opened 495 times for the passage of commercial vessels and 2,015 times for the passage of pleasure vessels. Even though the number of drawbridge openings for commercial vessels was lower than that for pleasure vessels, restricting commercial vessels is warranted since the 495 random openings were significant enough to cause highway traffic congestion across the drawbridge. Further, the North Carolina Department of Transportation held a public meeting with the Town of Manteo and was informed by local spokesmen and council members that if commercial vessel traffic was not restricted, highway traffic congestion would continue.

S.C. Loveland's comment to the rule has been considered, and it is felt that restricting on demand openings for commercial vessels from May 1 to October 31 will not overly burden commercial vessel operators. This conclusion is based on the fact that this regulation will only remain in effect until the completion of the fixed highway bridge now being constructed adjacent to the existing drawbridge across the Roanoke Sound. The new bridge is scheduled for completion in about 1½ years, at which time the drawbridge will be removed. Also, the regulations are only in effect for six months out of the year, and do provide hourly openings during daylight hours. The regulations are adopted as proposed, subject only to minor editorial changes to improve readability.

Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the final rule does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment. Although the rule does impact the North Carolina Department of Transportation, which operates the bridge, the effect is entirely positive. In fact, these regulations were requested by the Department.

Economic Assessment

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). While the final rule may have some economic impact on commercial navigation, the impact is expected to be minimal. Therefore, a full regulatory evaluation is considered unnecessary. This conclusion is based on the fact that the regulation will only be in effect until completion of the fixed highway bridge now being constructed across the Roanoke Sound adjacent to the existing bridge. This regulation will be removed once the new bridge is opened to highway traffic. Since the economic impact of these regulations is expected to be minimal, the Coast Guard certifies that they will not have a significant impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

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Regulations

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05[g].

2. Section 117.838 is revised to read as follows:

§ 117.838 Roanoke Sound.

(a) The draw of the U.S. 64/264 bridge, mile 2.8, at Manteo, NC, shall open on signal, except that between May 1 through October 31, from 7:00 a.m. to 7:00 p.m., the draw must open only on the hour for the passage of vessels.

(b) To accommodate approaching vessels, the hourly opening may be delayed up to 10 minutes past the hour.

(c) Public vessels of the United States and any vessel in an emergency involving danger to life or property shall be passed at any time.

Dated: January 12, 1989.

A.D. Breed,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 89-2084 Filed 1-27-89; 8:45 am]

BILLING CODE 4910-14-M

VETERANS ADMINISTRATION

38 CFR Part 4

Systemic Diseases, Temporary Total Evaluations Based on Periods of Hospitalization or Surgery, Regular Schedular Assignment of a Total Evaluation Based on Total Industrial Impairment

AGENCY: Veterans Administration.

ACTION: Final rule.

SUMMARY: The Veterans Administration (VA) has amended the Schedule for Rating Disabilities by adding Melioidosis, acquired immunodeficiency syndrome (AIDS), AIDS Related Complex (ARC), and human immunodeficiency virus (HIV) Antibody Positive; by amending the rating criteria for evaluation of other systemic diseases; by broadening the definition of surgery for assignment of a temporary total evaluation under § 4.30; by clarifying what constitutes 21 days of hospitalization under § 4.29; by providing that when the main criterion for assignment of a total evaluation is total industrial impairment (in mental disorders), such total evaluation will be assigned without resort to the individual unemployability provisions of § 4.16; and by inserting revised psychiatric nomenclature in § 4.124a to conform with a recent revision to § 4.132. These changes are necessary to clarify certain eligibility criteria and are intended as a periodic update of the schedule for rating disabilities required by law.

EFFECTIVE DATE: These regulations are effective March 1, 1989.

FOR FURTHER INFORMATION CONTACT: Robert M. White, Chief, Regulations Staff, Compensation and Pension Service, Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420 (202) 233-3005.

SUPPLEMENTARY INFORMATION: On pages 18099-18101 of the **Federal Register** of May 20, 1988, the VA published proposed rules to amend the Schedule for Rating Disabilities. A correction was published on page 19856 of the **Federal Register** of May 31, 1988. Interested persons were invited to submit comments, suggestions, or objections regarding the proposed rules by June 20, 1988. Two service organizations and one individual submitted comments.

One commenter expressed concern with proposed Diagnostic Code 6353, HIV Antibody Positive (no underlying disease). It was suggested that it be amended to read, "HIV Antibody Positive or other clinical evidence of its presence," as several reports suggest "Antibody Positive" may not always be detectable by current clinical procedures, but is present nevertheless. We do not concur. The proposed rule reflects both the currently available technology and the current understanding of the disease process. While it is true that there are individuals with false negative tests, there are no clinical findings which would differentiate such an individual from one with a true negative test.

That commenter also objected to the proposed change to DC 6305, Filariasis, providing for a 10% evaluation as the requirements conflict with those currently in effect for a 30% evaluation. We concur. The requirements for a 10% evaluation have been deleted from the final rule; however, we reserve the right to propose this matter again at a future date. The proposed changes in terminology are retained.

The same commenter also had no objection to the authorized absence periods cited in § 4.29, but felt they conflicted with the sentence in the preamble which stated that a temporary release approved by an attending physician as part of the treatment plan will not be considered an absence. It was requested that we insert that sentence in the rule. While we concur with the request to insert the sentence in the rule, we do not concur that there is a conflict between the authorized absence periods and the sentence as not all temporary releases are approved as part of a veteran's treatment. Those that are so approved must be certified to that effect. We are amending § 4.29(a) to include the sentence from the preamble of the proposal.

Another commenter felt the premise set forth for the change to § 4.29 was excellent, but that the proposed changes were deficient in that they did not encompass authorized absences of less than 4 days or more than 14 days. We concur and are amending § 4.29(a) (1) and (2) accordingly.

We are restoring the words "Veterans Administration" before the word "expense" in the introductory paragraph of § 4.29 as they were inadvertently dropped in the proposed rule.

A third commenter objected to the proposed change to § 4.30 requiring one month of convalescence for a temporary total evaluation suggesting it is in conflict with 38 U.S.C. 3011(c)(2). We do not concur as the cited law refers to the commencement of payment pursuant to § 4.29 when hospitalization begins and ends within the same calendar month.

That commenter also suggested that a note be inserted following the rating criteria for brucellosis to provide that residuals involving the joints, heart and other body organs and systems be rated separately or in accordance with the current 50 percent and lesser evaluations, whichever would provide the greater evaluation. We do not concur as the current rule provides that complications such as arthritis, endocarditis, uveitis, etc., may be rated separately from and in addition to the evaluations for the residuals of the disease itself.

The same commenter suggested that consideration be given to placing histoplasmosis in the rating schedule. As our proposed rules did not involve histoplasmosis, consideration is not in order at this time; however, we will consider the matter in the future.

It was additionally pointed out that the proposed rules did not include amendments to Appendices A, B, and C of 38 CFR Part 4. Because the appendices were not amended to conform with some previous rule changes, we are planning to do a separate, complete updating of the appendices in the near future.

We appreciate the comments and suggestions of those who responded to

publication of the proposed rules. The proposed rules are adopted with the amendments noted above. The final rules are set forth below.

The Administrator hereby certifies that these final regulations will not have a significant impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612. The reason for this certification is that these regulations would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), these regulations are exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, the VA has determined that these final regulations are non-major for the following reasons:

(1) They will not have an annual effect on the economy of $100 million or more.

(2) They will not cause a major increase in costs or prices.

(3) They will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Catalog of Federal Domestic Assistance Program numbers are 64.104 and 64.109.

List of Subjects in 38 CFR Part 4

Handicapped, Pensions, Veterans.

Approved: December 21, 1988.

Thomas K. Turnage,

Administrator.

38 CFR Part 4, Schedule for Rating Disabilities, is amended as follows:

PART 4—[AMENDED]

1. The authority citation for Part 4 continues to read as follows:

Authority: 72 Stat. 1125; 38 U.S.C. 355.

2. In § 4.16, paragraph (c) is added to read as follows:

§ 4.16 Total disability ratings for compensation based on unemployability of the individual.

* * * * *

(c) The provisions of paragraph (a) of this section are not for application in cases in which the only compensable service-connected disability is a mental disorder assigned a 70 percent evaluation, and such mental disorder precludes a veteran from securing or following a substantially gainful occupation. In such cases, the mental disorder shall be assigned a 100 percent schedular evaluation under the appropriate diagnostic code.

§ 4.29 [Amended]

3. In § 4.29(g), remove the words "§ 3.321(b)" where they appear and add, in their place, the words "§ 3.321(b)(1)".

4. In § 4.29, the introductory text, paragraph (a) and the first sentence of paragraph (c) are revised to read as follows:

§ 4.29 Ratings for service-connected disabilities requiring hospital treatment or observation.

A total disability rating (100 percent) will be assigned without regard to other provisions of the rating schedule when it is established that a service-connected disability has required hospital treatment in a Veterans Administration or an approved hospital for a period in excess of 21 days or *hospital observation at Veterans Administration expense* for a service-connected disability for a period in excess of 21 days.

(a) Subject to the provisions of paragraphs (d), (e), and (f) of this section this increased rating will be effective the first day of continuous hospitalization and will be terminated effective the last day of the month of hospital discharge (regular discharge or release to non-bed care) or effective the last day of the month of termination of treatment or observation for the service-connected disability. A temporary release which is approved by an attending Veterans Administration physician as part of the treatment plan will not be considered an absence.

(1) An authorized absence in excess of 4 days which begins during the first 21 days of hospitalization will be regarded as the equivalent of hospital discharge effective the first day of such authorized absence. An authorized absence of 4 days or less which results in a total of more than 8 days of authorized absence during the first 21 days of hospitalization will be regarded as the equivalent of hospital discharge effective the ninth day of authorized absence.

(2) Following a period of hospitalization in excess of 21 days, an authorized absence in excess of 14 days or a third consecutive authorized absence of 14 days will be regarded as the equivalent of hospital discharge and will interrupt hospitalization effective on the last day of the month in which either the authorized absence in excess of 14 days or the third 14 day period begins, except where there is a finding that convalescence is required as provided by paragraph (e) or (f) of this section. The termination of these total ratings will not be subject to § 3.105(e) of this chapter.

* * * * *

(c) The assignment of a total disability rating on the basis of hospital treatment or observation will not preclude the assignment of a total disability rating otherwise in order under other provisions of the rating schedule, and consideration will be given to the propriety of such a rating in all instances and to the propriety of its continuance after discharge. * * *

* * * * *

5. In § 4.30, introductory text is added and paragraphs (a), (a)(1), (a)(2) and (a)(3) are revised to read as follows:

§ 4.30 Convalescent ratings.

A total disability rating (100 percent) will be assigned without regard to other provisions of the rating schedule when it is established by report at hospital discharge (regular discharge or release to non-bed care) or outpatient release that entitlement is warranted under paragraph (a) (1), (2) or (3) of this section effective the date of hospital admission or outpatient treatment and continuing for a period of 1, 2, or 3 months from the first day of the month following such hospital discharge or outpatient release. The termination of these total ratings will not be subject to § 3.105(e) of this chapter. Such total rating will be followed by appropriate schedular evaluations. When the evidence is inadequate to assign a schedular evaluation, a physical examination will be scheduled and considered prior to the termination of a total rating under this section.

(a) Total ratings will be assigned under this section if treatment of a service-connected disability resulted in:

(1) Surgery necessitating at least one month of convalescence (Effective as to outpatient surgery March 1, 1989.)

(2) Surgery with severe postoperative residuals such as incompletely healed surgical wounds, stumps of recent amputations, therapeutic immobilization of one major joint or more, application of a body cast, or the necessity for house confinement, or the necessity for continued use of a wheelchair or crutches (regular weight-bearing prohibited). (Effective as to outpatient surgery March 1, 1989.)

(3) Immobilization by cast, without surgery, of one major joint or more. (Effective as to outpatient treatment March 10, 1978.)

* * * * *

6. In § 4.88a, diagnostic codes 6305, 6309, 6314, 6316 are revised and diagnostic codes 6316, 6351, 6352, and

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6353 are added so that the revised and added material reads as follows:

§ 4.88a Schedule of ratings-systemic diseases.

. . . . . .

6305 Filariasis:	
Initial infection with severe lymphangitis or lymphadenitis	100
Chronic, with repeated recurrences and tendency to severe multiple involvement of extremities and genitalia or severe lymphadenitis	100
Chronic, with repeated recurrences and beginning permanent deformity of one or more extremities or genitalia or moderate lymphadenitis	60
Chronic, following any recurrence, symptomatic	30
With subsidence of symptoms following only one attack	0
Note.—The following ratings of this code may be combined among themselves to cover multiple involvements but are not to be combined with the preceding ratings of this code.	
Permanent deformity of an extremity or of the genitalia:	
Severe	60
Moderate	30
Mild	10
. . . . .	
6309 Rheumatic fever:	
As established active generalized disease with constitutional symptoms	100
Note.—Rate residuals under the appropriate cardiac, musculoskeletal, neurological or other diagnostic code, e.g., 7000, 5002 or 8105.	
. . . . .	
6314 Beriberi:	
Pronounced, with long history of limited nourishment, edema, weakness, cardiac enlargement or murmurs, peripheral neuropathy or other manifestations not responding to therapy	100
Severe form, with some of the above precluding more than strictly sedentary activity	60
Moderately severe form, with some of the above precluding more than ordinary activity	30
Moderate residuals	10
. . . . .	
6316 Brucellosis (Malta or undulant fever):	
As active incapacitating febrile disease (initial or recurrent episode) with arthritis, endocarditis, uveitis or other complications	100
Chronic forms:	
Severe, with frequent febrile episodes	50
Moderately severe, with febrile episodes not more frequently than once in 3 months	30
Moderate, with infrequent febrile episodes, but with fatigability, moderate depression, etc	10
Rate complications, as arthritis, endocarditis, uveitis, etc., separately.	
. . . . .	
6318 Melioidosis:	
Pronounced, with persistent cough, weakness, emaciation, central nervous system involvement or other residuals of military dissemination	100
For less severe residuals rate under appropriate system.	
. . . . .	
6351 Acquired immunodeficiency syndrome (AIDS):	
6352 AIDS Related Complex (ARC):	
Note.—Rate underlying disease(s) analogous to an appropriate diagnostic code for the affected body system. Evaluations may be assigned from 0 to 100 percent using an evaluation for the analogous diagnostic code selected.	
6353 HIV Antibody Positive (no underlying disease)	0
. . . . .	

§ 4.124a [Amended]

7. In the first chart, "Organic Diseases of the Central Nervous System," in the second paragraph under diagnostic code 8045, remove the words "non-psychotic organic brain syndrome" where they appear and add, in their place, the words "dementia associated"; in the second paragraph under diagnostic code 8040, remove the words "non-psychotic organic brain syndrome" where they appear and add, in their place, the words "multi-infarct dementia".

8. In "The Epilepsies" under the paragraph titled, "Mental Disorders in Epilepsies:," remove the words "non-psychotic organic brain syndrome" where they appear and add, in their place, the word "dementia".

[FR Doc. 89-2003 Filed 1-27-89; 8:45 am]
BILLING CODE 8320-01-M

38 CFR Part 21

Use of Educational Assistance Benefits as a Part of a Vocational Rehabilitation Program

AGENCY: Veterans Administration.

ACTION: Final regulatory amendments.

SUMMARY: The Department of Defense Authorization Act, 1985, established an educational assistance program under Chapter 30, Title 38, United States Code. One of the law's provisions allows an otherwise eligible veteran to elect payment at the rates provided under this program for training which the veteran is pursuing as a part of a vocational rehabilitation program. These final regulatory amendments implement this provision of law.

EFFECTIVE DATE: These amendments are effective October 19, 1984, the date upon which the program authorized under Chapter 30, Title 38, United State Code became law.

FOR FURTHER INFORMATION CONTACT: Morris Triestman, Rehabilitation Consultant, Policy and Program Development (226A), Vocational Rehabilitation and Education Service, Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420 (202) 233-2686.

SUPPLEMENTARY INFORMATION: At pages 30314 through 30317 of the **Federal Register** of August 11, 1988, the Veterans Administration [VA] published proposed regulatory amendments which implement statutory provisions allowing an otherwise eligible veteran to elect payment at the rates provided under Chapter 30 for training which the veteran is pursuing as a part of a vocational rehabilitation program. Interested persons were given 30 days in which to submit their comments, suggestions, or objections to the proposed regulatory amendments. No comments, suggestion, or objections were received. Since no comments, suggestions, or objections were received, these amendments are adopted as final.

These final amendments do not meet the criteria for major rules as contained in Executive Order 12291, Federal Regulation. These amendments will not have a $100 million annual effect on the economy, will not cause a major increase in costs or prices, and will not have any other significant effects on the economy.

The regulations contained herein will better acquaint eligible veterans, vocational training and rehabilitation facilities, and the public at large with the way these provisions will be implemented. Moreover, the VA finds that good cause exists for making these rules, like the sections of law which they implement, retroactive to the date the educational assistance program authorized under Pub. L. 98-525 becomes effective. A delayed effective date would be contrary to statutory design, would complicate implementation of these provisions of law, and might result in denial of a benefit to a veteran who is entitled by law to that benefit.

The Administrator certifies that these final amendments will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. Pursuant to 5 U.S.C. 605(b), these final amendments are therefore exempt from the initial and final regulatory flexibility analyses requirements of section 603 and 604. The reasons for this certification are that the proposed regulations simply implement and interpret statutory provisions. These changes only concern the eligibility and participation of individual veterans under the vocational rehabilitation program.

(The Catalog of Federal Domestic Assistance Number is 64.116.)

List of subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs, Loan programs, Reporting requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: December 15, 1988.

Thomas K. Turnage,
Administrator.

38 CFR Part 21 is amended as set forth below:

PART 21—[AMENDED]

1. Section 21.22 is amended by revising paragraph (a) introductory text and the authority citation following paragraph (a)(2), to read as follows:

§ 21.22 Nonduplication—Federal programs.

(a) *Allowances.* A service-disabled veteran who is eligible for benefits under Chapter 31, may not receive a subsistence allowance or elect payment of an allowance at the educational assistance rate under Chapter 30 or Chapter 34 pursuant to § 21.264 if the veteran:

. . . . . .

(Authority: 38 U.S.C. 1781; Pub. L. 98-525)

. . . . . .

2. Section 21.78 is amended by revising paragraph (b)(3), (b)(4) introductory text, (b)(4)(ii) and the authority citation, to read as follows:

§ 21.78 Approving more than 48 months of rehabilitation.

. . . . . .

(b) * * *

(3) The veteran previously used education benefit entitlement under other programs administered by the VA, and the additional period of assistance to be provided under Chapter 31 which the veteran needs to become employable will result in more than 48 months being used under all VA education programs, under these conditions the number of months necessary to complete the program may be authorized under Chapter 31, provided that the length of the extension will not result in authorization of more than 48 months under Chapter 31 alone.

(Authority: 38 U.S.C. 1795)

(4) A veteran in an approved Chapter 31 program has elected payment of benefits at the Chapter 30 or Chapter 34 educational assistance rate. The 48 month limitation may be exceeded only:

. . . . . .

(ii) If the veteran is in a course on a term, quarter, or semester basis which began before the 36 month limitation on Chapter 30 entitlement or 45 month limitation on Chapter 34 entitlement was reached, and completion of the course will be possible by permitting the veteran to complete the training under Chapter 31.

(Authority: 38 U.S.C. 1413, 1795; Pub. L. 98-525)

3. Section 21.146 is amended by revising paragraph (d) to read as follows:

§ 21.146 Tutorial assistance.

. . . . . .

(d) *Payment at the Chapter 30 or Chapter 34 rate.* If a veteran has elected payment at the educational assistance rate payable under Chapter 30 or Chapter 34, he or she may not be provided individualized tutorial assistance under provision of Chapter 31. (See § 21.334.)

(Authority: 38 U.S.C. 1508(f); Pub. L. 98-525)

4. Section 21.254 is amended by revising paragraph (b)(1) and the authority citation following paragraph (b)(4), to read as follows:

§ 21.254 Supportive services.

. . . . . .

(b) * * *

(1) Subsistence allowance, or payment of an allowance at the educational assistance rate paid under Chapter 30 or Chapter 34 for similar training;

. . . . . .

(Authority: 38 U.S.C. 1504(a), 1508(f); Pub. L. 98-525)

. . . . . .

5. Section 21.256 is amended by revising paragraph (e)(2) and adding an authority citation, to read as follows:

§ 21.256 Incentives for employers.

. . . . . .

(e) * * *

(2) Notwithstanding any other provisions of these regulations, if the program in which the veteran is participating meets the criteria for approval of on-job training under Chapter 30 or Chapter 34, the veteran may be paid educational assistance under Chapter 30 or Chapter 34 to the extent that he or she has remaining eligibility and entitlement under Chapter 30 or Chapter 34. (See § 21.264)

(Authority: 38 U.S.C. 1508(f), 1516(b); Pub. L. 98-525)

. . . . . .

6. Section 21.260 is amended by revising paragraph (a) and the authority citation, to read as follows:

§ 21.260 Subsistence allowance.

(a) *General.* A veteran in a rehabilitation program under Chapter 31 will receive a monthly subsistence allowance at the rates specified in paragraph (b) of this section, unless he or she has elected to receive payment at the rate of the monthly educational assistance allowance payable under Chapter 30 or Chapter 34 for similar training. See § 21.164 of this part for election of payment at the Chapter 30 or Chapter 34 rate, § 21.4136 of this part for payment at Chapter 34 rates, and §§ 21.7136, 21.7137, and 21.7138 of this part for payment at Chapter 30 rates.

(Authority: 38 U.S.C. 1508(a), 1508(f); Pub. L. 98-525)

. . . . . .

7. Section 21.264 is amended by revising the section heading, paragraph (a) introductory text, (a)(1), (a)(2), the authority citation following paragraph (a)(3), (b)(1) and the authority citation following paragraph (b)(3), (c) introductory text and the authority citation following paragraph (c)(3) (iii), (d) and the authority citation, to read as follows:

§ 21.264 Election of payment at the Chapter 30 or Chapter 34 educational assistance rate.

(a) *Eligibility.* A veteran who applies for, and is found entitled to training or education under Chapter 31, may elect to receive payment at the educational allowance rate and other assistance furnished under Chapter 30 or Chapter 34, for similar training in lieu of a subsistence allowance, provided the following criteria are met:

(1) The veteran has remaining eligibility for, and entitlement to educational assistance under Chapter 30 or Chapter 34;

(2) The veteran enrolls in a program of education or training approved for benefits under Chapter 30 or Chapter 34;

. . . . . .

(Authority: 38 U.S.C. 1508(f); Pub. L. 98-525)

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(b) * * *

(1) Chapter 30 or Chapter 34 eligibility or entitlement ends earlier;

* * * * *

(Authority: 38 U.S.C. 1508(f); Pub. L. 98-525)

(c) *Services precluded.* A veteran entitled to vocational rehabilitation training or education who elects payment at the educational assistance rate payable under Chapter 30 and Chapter 34 shall be provided the same training and rehabilitation services as other veterans under Chapter 31, but may not be provided:

* * * * *

(Authority: 38 U.S.C. 1508(f); Pub. L. 98-525)

(d) *Chapter 30 or Chapter 34 provisions applicable.* A veteran who has elected payment at the Chapter 30 or Chapter 34 educational assistance rate must meet the same terms and conditions as other veterans pursuing similar training under these programs.

(Authority: 38 U.S.C. 1508(f); Pub. L. 98-525)

8. Section 21.268 is amended by revising paragraph (b), to read as follows:

§ 21.268 Employment adjustment allowance.

* * * * *

(b) *Reelection of subsistence allowance.* A veteran who has elected payment at the Chapter 30 or Chapter 34 educational assistance allowance rate may be paid an employment adjustment allowance only if he or she reelects subsistence allowance to become effective no later than the day following completion of the period of rehabilitation to the point of employability.

(Authority: 38 U.S.C. 1508(f); Pub. L. 98-525)

* * * * *

9. Section 21.272 is amended by revising paragraph (b)(1) and adding an authority citation following paragraph (b)(3), to read as follows:

§ 21.272 Veteran-student services.

* * * * *

(b) * * *

(1) Need of the veteran to augment the subsistence allowance or payment made by the Chapter 30 or Chapter 34 rate;

* * * * *

(Authority: 38 U.S.C. 1504(a)(4), 1508(f), 1668; Pub. L. 98-525)

* * * * *

10. Section 21.276 is amended by revising paragraphs (d), (e), and (g), to read as follows:

§ 21.276 Incarcerated veterans.

* * * * *

(d) *Halfway house.* A subsistence allowance may be paid to a veteran pursuing a rehabilitation program while residing in a halfway house as a result of a felony conviction even though all of the veteran's living expenses are paid by a non-VA Federal, State, or local government program.

(Authority: 38 U.S.C. 1508(a))

* * * * *

(e) *Work-release program.* A subsistence allowance may be paid to a veteran in a work-release program as a result of a felony conviction.

* * * * *

(g) *Payment of allowance at the rates paid under Chapter 30 or Chapter 34.* A veteran incarcerated for a felony conviction or a veteran in a halfway house or work-release program who elects payment at the educational assistance rate paid under Chapter 30 or Chapter 34 shall be paid in accordance with the provisions of law applicable to other incarcerated veterans training under Chapter 30 or Chapter 34.

(Authority: 38 U.S.C. 1508(f), 1780(a); Pub. L. 98-525)

* * * * *

11. Section 21.320 is amended by revising paragraph (b)(3) and the authority citation, and paragraph (d)(3) and the authority citation, to read as follows:

§ 21.320 Awards for subsistence allowance and authorization of rehabilitation services.

* * * * *

(b) * * *

(3) The veteran elects payment at the educational assistance allowance rate, in which case the commencing date of payment is determined under provisions applicable to commencement of payment under Chapter 30 or Chapter 34.

(Authority: 38 U.S.C. 1508(a), 1508(f); Pub. L. 98-525)

* * * * *

(d) * * *

(3) A veteran has elected payment at the educational assistance rate paid under Chapter 30 or Chapter 34. The ending date of the award is determined under regulations applicable to termination of training under Chapter 30 or Chapter 34.

(Authority: 38 U.S.C. 1508(a), 1508(f); Pub. L. 98-525)

12. Section 21.330 is amended by revising paragraph (a) and the authority citation, to read as follows:

§ 21.330 Apportionment.

(a) *General.* Where in order, the VA will apportion subsistence allowance in accordance with § 3.451 of this title, subject to the limitations of § 3.458 of this title. If the veteran is in receipt of benefits at the Chapter 34 rate, apportionments shall be in accordance with § 21.4140 of this part. If the veteran is in receipt of benefits at the Chapter 30 rate, the VA will not apportion these benefits.

(Authority: 38 U.S.C. 3107(c); Pub. L. 98-525)

* * * * *

13. Section 21.334 is amended by revising the section heading, paragraph (a) and the authority citation, (b) introductory text, (b)(1), the authority citation following paragraph (b)(2), (c) introductory text, (c)(2), (c)(3), the authority citation following paragraph (c)(4), (d)(1), (d)(2) and the authority citation, and by adding paragraph (e), to read as follows:

§ 21.334 Election of payment at the Chapter 30 or Chapter 34 rate.

(a) *Election.* When the veteran elects payment of an allowance at the Chapter 30 or Chapter 34 rate, the effective dates for commencement, reduction, and termination of the allowance shall be in accordance with §§ 21.4130 through 21.4135 and § 21.1042(a)(2) of this part under Chapter 34, and §§ 21.7130 through 21.7135 and § 21.70509(a) of this part under Chapter 30.

(Authority: 38 U.S.C. 1508(f), 1780; Pub. L. 98-525

(b) *Election of payment at the Chapter 30 or Chapter 34 rate subsequent to induction into a rehabilitation program.* Election of payment at the Chapter 30 or Chapter 34 rate subsequent to induction into training is permissible under provisions of § 21.264 (a) and (b). The effective date of the election is the latest of the following dates:

(1) The commencing date determined under the provisions of § 21.4131 of this part in the case of a veteran who has elected payment at the Chapter 34 rate or determined under § 21.7131 of this part in the case of a veteran who has elected payment at the Chapter 30 rate; or

* * * * *

(Authority: 38 U.S.C. 1508(f); Pub. L. 98-525)

(c) *Reelection of subsistence allowance subsequent to induction.* If a veteran reelects subsistence allowance under provisions of § 21.264(b) of this part, the effective date of change is earliest of the following:

* * * * *

(2) The veteran's Chapter 30 or Chapter 34 delimiting date;

(3) The day after exhaustion of Chapter 30 or Chapter 34 entitlement; or

* * * * *

(Authority: 38 U.S.C. 1508(f); Pub. L. 98-525)

(d) * * *

(1) *Payment at the Chapter 30 or Chapter 34 rate.* If an otherwise eligible veteran elects payment at the Chapter 30 or Chapter 34 rate during a period between periods of instruction, the effective date of the election shall be the first day of the next period of instruction.

(2) *Subsistence allowance.* If an otherwise eligible veteran reelects subsistence allowance during leave or between periods of instruction following election of payment at the Chapter 30 and Chapter 34 rate, the effective date of the change will be the date of the reelection or the beginning of the next period of training, whichever is to the veteran's benefit.

(Authority: 38 U.S.C. 1508(f), Pub. L. 98-525)

(e) *Effect of Chapter 34 program termination.* (1) Since Chapter 34 benefits are not payable beyond December 31, 1989, any previous election of benefits at that rate is terminated as of that date;

(2) A veteran entitled to Chapter 30 benefits based on his or her Chapter 34 eligibility as of December 31, 1989, and whose election of Chapter 34 benefits is terminated as of that date under paragraph (e)(1) of this section must, if the individual desires payment at the Chapter 30 rate, elect such payment.

(Authority: 38 U.S.C. 1411(a); Pub. L. 98-525)

14. Section 21.340 is amended by revising paragraph (c) and the authority citation, to read as follows:

§ 21.340 Introduction.

* * * * *

(c) *Election of benefits at the Chapter 30 or Chapter 34 rate.* If a veteran elects to receive an allowance paid at the Chapter 30 or Chapter 34 rate, the effect of absences is determined in the same manner as provided in §§ 21.4204 and 21.4205 of this part for Chapter 34 or §§ 21.7139 and 21.7154 of this part for Chapter 30.

(Authority: 38 U.S.C. 1508(f), 1510; Pub. L. 98-525)

[FR Doc. 89-2001 Filed 1-27-89; 8:45 am]

BILLING CODE 8320-01-M

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38 CFR Part 21

Veterans Education; Waiver of the 85-15 Percent Ratio Requirement

AGENCY: Veterans Administration.

ACTION: Final regulations.

SUMMARY: Generally, the law and the Code of Federal Regulations prohibit the Veterans Administration (VA) from approving new enrollments under many of the education programs which the VA administers when the VA finds that 85 percent or more of the students enrolled are having all or part of their tuition, fees, or other charges paid to or for them by the educational institution or the VA. There is provision for waiver of this requirement. However, the pertinent regulation is not clear as to who has the authority to grant this waiver. This regulation corrects this.

EFFECTIVE DATE: December 20, 1988.

FOR FURTHER INFORMATION CONTACT: William G. Susling, Jr., Acting Assistant Director for Education Policy and Program Administration (225C), Vocational Rehabilitation and Education Service, Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420 (202) 233-2668.

SUPPLEMENTARY INFORMATION: On pages 27533 and 27534 of the **Federal Register** of July 21, 1988, there was published a proposal to amend 38 CFR Part 21 of clarify that the Director, Vocational Rehabilitation and Education Service, has the authority to waive the prohibition on approving new enrollments under many of the education programs which the VA administers when the VA finds that 85 percent or more of the students enrolled are having all or part of their tuition, fees, or other charges paid to or for them by the educational institution or the VA. Interested people were given 32 days to submit comments, objections or suggestions. The VA received no comments, objections or suggestions. Accordingly, the agency is making the amended regulation final.

The VA has determined that this amended regulation does not contain a major rule as that term is defined by E.O. 12291, entitled Federal Regulation. The regulation will not have a $100 million annual effect on the economy, and will not cause a major increase in costs or prices for anyone. It will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Administrator of Veterans Affairs has certified that this amended regulation will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. Pursuant to 5 U.S.C. 605(b), the amended regulation, therefore, is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made because this change simply specifies the VA official who is authorized to exercise waiver authority. It does not change that authority. Moreover, it has been the agency's administrative experience that fewer than five educational institutions apply each year to the Director, Vocational Rehabilitation and Education Service, for a waiver. Many of these are not small entities. Even though a slight increase in this number can be expected as enrollements under the Montgomery GI Bill—Active Duty increase, the VA does not think that the number of small entities affected by this proposal will be substantial. There will be no significant economic impact on a substantial number of other small entities, i.e., small businesses and small governmental jurisdictions.

The Catalog of Federal Domestic Assistance number for the program affected by this regulation is 64.111.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs—education, Loan program—education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: December 20, 1988.

Thomas K. Turnage,

Administrator.

PART 21—[AMENDED]

30 CFR Part 21, Vocational Rehabilitation and Education, § 21.4201 is amended by revising the first two sentences of paragraph (f)(1), and paragraphs (f)(1)(ii) and (h) to read as follows:

§ 21.4201 Restrictions on enrollment; percentage of students receiving financial support.

* * * * *

(f) * * *

(1) Schools must submit to the VA all calculations needed to support the exemption found in paragraph (c)(4) of this section. If the school is organized on a term, quarter, or semester basis, it shall make that submission no later than 30 days after the beginning of the first term for which the school wants the exemption to apply. * * *

* * * * *

(ii) Until such time as the total number of veterans and eligible persons receiving assistance under chapters 30, 31, 32, 34, 35 or 36, title 38, United States Code, who are enrolled in the educational institution offering the

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course, equals more than 35 percent of the total student enrollment at the educational institution (computed separately for the main campus and any branch or extension of the institution). At that time procedures contained in paragraph (f)(2) of this section shall apply.

(Authority: 38 U.S.C. 1673(d); Pub. L. 98-525)

* * * * *

(h) *Waivers.* Schools which desire a waiver of the provisions of paragraph (a) of this section for a course where the number of full-time equivalent students receiving VA education benefits equals or exceeds 85 percent of the total full-time equivalent enrollment in the course may apply for a waiver to the Director, Vocational Rehabilitation and Education Service, through the Director of the VA field station of jurisdiction. When applying, a school must submit sufficient information to allow the Director, Vocational Rehabilitation and Education Service, to judge the merits of the request against the criteria shown in this paragraph. This information and any other pertinent information available to the VA shall be considered in relation to these criteria:

(1) Availability of comparable alternative educational facilities effectively open to veterans in the vicinity of the school requesting a waiver.

(2) Status of the school requesting a waiver as a developing institution primarily serving a disadvantaged population. The school should enclose a copy of its notice from the Department of Education that the school is eligible to be considered for a grant under the Strengthening Institutions Program or the Special Needs Program, if applicable. Otherwise the school should submit data sufficient to allow the Director, Vocational Rehabilitation and Education Service, to judge whether the school is similar to institutions which the Department of Education considers to be eligible to apply for a grant under these programs. The pertinent criteria and data categories are published in Title 34, Code of Federal Regulations, Chapter VI, Part 624, Subpart A; Part 625, Subpart A; and Part 626, Subpart A. The requirements of those criteria that a school be a "public or nonprofit" institution need not be met.

(3) Previous compliance history of the school, including such factors as false or deceptive advertising complaints, enrollment certification timeliness and accuracy, and amount of school liability indebtedness to the VA.

(4) General effectiveness of the school's program in providing educational and employment opportunities to the particular veteran population it serves. Factors to be considered should include the percentage of veteran-students completing the entire course, ratio of educational and general expenditures to full-time equivalency enrollment, etc.

(Authority: 38 U.S.C. 1673(d); Pub. L. 94-502, Pub. L. 95-202)

[FR Doc. 89-2000 Filed 1-27-89; 8:45 am]

BILLING CODE 8320-01-M

38 CFR Part 21

Veterans Education; Forfeiture of Education Benefits

AGENCY: Veterans Administration.

ACTION: Final regulations.

SUMMARY: A veteran can forfeit his or her education benefits by engaging in subversive activities or, in limited circumstances, committing fraud or treasonable acts. The regulation concerning forfeiture of education benefits indicates that forfeiture is governed by various Veterans Administration (VA) regulations. However, the regulations which are referenced do not deal with forfeiture. This amended regulation corrects that error.

EFFECTIVE DATE: December 23, 1988.

FOR FURTHER INFORMATION CONTACT: William G. Susling, Jr., Acting Assistant Director for Education Policy and Program Administration (225C), Vocational Rehabilitation and Education Service, Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue NW, Washington, DC 20420 (202) 233-2568.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 10, 1986, (53 FR 27054), there was published a proposal to amend 38 CFR Part 21 to state the correct regulations which govern a veteran's forfeiture of educational assistance allowance. Interested people were given 30 days to submit comments, suggestions or objections. The VA received no comments, suggestions or objections. Accordingly, the agency is making the amended regulation final.

The VA has determined that this amended regulation does not contain a major rule as that term is defined by E.O. 12291, entitled Federal Regulation. The regulation will not have a $100 million annual effect on the economy, and will not cause a major increase in costs or prices for anyone. It will have no significant adverse effects on competition employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Administrator of Veterans Affairs has certified that this amended regulation will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory flexibility Act (RFA), 5 U.S.C. 601-612. Pursuant to 5 U.S.C. 605(b), the amended regulation, therefore, is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made because the regulation affects only individuals. It will have no significant economic impact on small entites, i.e., small businesses, small private and nonprofit organizations and small governmental jurisdictions.

The Catalog of Federal Domestic Assistance number for the program affected by this regulation is 64.111.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: December 23, 1988.

Thomas K. Turnage,

Administrator.

PARTS 21—[AMENDED]

38 CFR Part 21 is amended by revising § 21.4007 to read as follows:

§ 21.4007 Forfeiture.

The rights of a veteran or eligible person to receive educational assistance allowance or special training allowance are subject to forfeiture under the provisions of §§ 3.900, 3.901 (except paragraph (c)), 3.902 (except paragraph (c)), 3.903, 3.904, 3.905 and 19.2 of this chapter.

(Authority: 38 U.S.C. 3503, 3504 and 3505)

[FR Doc. 89-2002 Filed 1-27-89; 8:45 am]

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 270

[SW-FRL-3463-6]

Amendment to Requirements for Hazardous Waste Incinerator Permits

AGENCY: Environmental Protection Agency (EPA)

ACTION: Final rule.

SUMMARY: Today's rule clarifies the requirements of 40 CFR 270.62(d), which describes procedures for permitting existing hazardous waste incineration facilities under the Resource Conservation and Recovery Act (RCRA).

The amendments to 40 CFR 270.62(d) will make it very clear that existing incineration facilities must either conduct a trial burn or submit other information as specified in § 270.19 (a) or (c) before a permit can be written for that facility.

DATES: This regulation becomes effective March 1, 1989.

FOR FURTHER INFORMATION CONTACT: Sonya Stelmack, Assistance Branch, Office of Solid Waste (OS-343), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, Phone (202) 382-4206, or the RCRA Hotline (800) 424-9346 (or 382-3000 in the Washington, DC, metropolitan area).

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background
II. Response to Comments
III. State Authority
IV. Effective Date
V. Regulatory Analysis

I. Background

EPA issued a proposed rule in the **Federal Register** on June 21, 1988 (53 FR 23342), to clarify the intent of the regulatory language in 40 CFR 270.62(d). Specifically, the Agency wished to clarify that permit conditions for existing hazardous waste incinerators must be based on pre-permit trial burn results under § 270.19(b) or other data submitted by the applicant as specified in § 270.19(c), unless the applicant is not required to conduct a trial burn pursuant to an exemption under § 270.19(a). "Incinerators" are defined in 40 CFR Part 260 as "* * * any enclosed device using controlled flame combustion that neither meets the criteria for classification as a boiler nor is listed as an industrial furnace."

EPA promulgated § 270.19 on April 1, 1983 (48 FR 14239), to require that the Part B of a permit application for incinerators include one of the following: (1) Sufficient information submitted under § 270.19(a) to obtain an exemption from compliance with the performance standards in § 264.343 and the operating conditions in § 264.345; (2) a trial burn plan or the results of a trial burn under § 270.19(b), including all required determinations, in accordance with § 270.62; or (3) information in lieu of a trial burn under § 270.19(c) that is sufficient to determine compliance with performance standards and develop operating conditions under §§ 264.343 and 264.345, respectively.

In the proposal for this rulemaking, EPA stated its belief that § 270.19 (a) and (c) are explicit as to what information is required prior to issuance of a permit, but the Agency recognized that language in § 270.62(d) is potentially ambiguous as to what must be accomplished under § 270.19(b) prior to issuing a permit. Specifically, the Agency stated its concern that a loose interpretation of § 270.62(d) might lead a Regional Administrator or State Director to set a date for submittal of trial burn after the permit is issued. This strained interpretation of § 270.62(d) might lead one to think that permits can be written under § 270.19(b) based on the submission of a trial burn plan instead of the results of the trial burn, contrary to the intended meaning of § 270.62(d). Although the Agency is making this clarification to the actual language of § 270.62(d) in a final rule, EPA believes that the intended meaning of § 270.62(d) has been clear since § 270.62(d) was promulgated.

Today the Agency is promulgating final regulations identical to those proposed. The amendments to § 270.62(d) make it very clear that existing incineration facilities must (1) conduct a trial burn and submit the trial burn results prior to permit issuance, or (2) submit other information as specified in § 270.19 (a) or (c) before a permit can be written for that facility. Should a permit applicant submit trial burn results under § 270.19(b), permit conditions must be established using the trial burn results. Conversely, if the applicant submits other information under § 270.19 (a) or (c), the permit must be based on that information.

II. Response to Comments

The Agency received only one comment, which requested that EPA clarify whether this rule is applicable to permits that are already final. In response to the commenter's concerns, EPA has decided that today's rule, which will become effective 30 days after final promulgation, is applicable only to pending and future permit applications and permits. Accordingly, should a hazardous waste incinerator owner not have a final permit decision issued as of the effective date of this rule or should a hazardous waste incinerator owner seek, after the effective date of this rule, a permit modification which requires a trial burn, the incinerator will be subject to these requirements, i.e., the trial burn must be completed prior to permit issuance or permit modification.

III. State Authority

A. Applicability of Rule in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. (See 40 CFR Part 271 for the standards and requirements for authorization.) Following authorization, EPA retains enforcement authority under sections 3008, 3013, and 7003 of RCRA, although authorized States have primary enforcement responsibility.

Prior to the Hazardous and Solid Waste Amendments of 1984 (HSWA), a State with final authorization administered its hazardous waste program entirely in lieu of EPA administering the Federal program in that State. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities in the State that the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obliged to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by HSWA take effect in authorized States at the same time that they take effect in unauthorized States. EPA is directed to carry out those requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, HSWA applies in authorized States in the interim.

B. Effect on State Authorization

Today's rule promulgates clarifying regulations that will not be effective in authorized States since the regulations will not be imposed pursuant to the Hazardous and Solid Waste Amendments of 1984. Thus, the regulations will be effective only in those States that do not have final authorization.

40 CFR 271.21(e)(2) requires States that have final authorization to modify their programs to reflect Federal program changes and to subsequently submit the modification to EPA for approval. The deadline by which the State must modify its program to adopt this final regulation will be determined by today's date, in accordance with

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§ 271.21(e). These deadlines can be extended in certain cases (40 CFR 271.21(e)(3)). Once EPA approves the modification, the State requirements become Subtitle C RCRA requirements.

States that submit their official application for final authorization less than 12 months after the effective date of these standards are not required to include standards equivalent to these standards in their application. However, the State must modify its program by the deadlines set forth in § 271.21(e). States that submit official applications for final authorization 12 months after the effective date of these standards must include standards equivalent to these standards in their application. 40 CFR 271.3 sets forth the requirements a State must meet when submitting its final authorization application.

In authorized States, this rule will not be applicable until the State revises its program to adopt equivalent regulations under State law. However, because EPA is only clarifying current regulatory language, the Agency assumes that these requirements are already in effect in most States and, therefore, a simplified application will be allowed for the program revision necessitated by this final rule. In order to maintain authorization, a State's revision application may consist of a certification by the State Attorney General that he/she interprets his/her State's existing regulations in the manner described in this rule. Otherwise, the State's regulations must be amended to reflect the clarification set forth in this rule. If a State Attorney General cannot certify that he/she interprets his/her State's existing regulations in the manner described in the rule or if the State fails to make necessary regulatory amendments, that State's program will be less stringent than the Federal program and will be out of compliance with the RCRA's requirements for authorized State programs.

IV. Effective Date

This final rule will be effective 30 days after promulgation. Section 3010(b) of RCRA provides that regulations concerning permits for the treatment, storage, or disposal of hazardous waste shall take effect six months after the date of promulgation. However, section 3010(b)(1) provides for a shorter period if the Agency finds that the regulated community does not need six months to comply with the next regulation. Since this rule merely clarifies a requirement that is already in effect and the regulated community should already be in compliance, EPA believes that good cause exists to make this rule effective less than six months after promulgation.

V. Regulatory Analysis

A. Regulatory Impact Analysis

Under Executive Order 12291, EPA must determine whether a regulation is "major" and thus whether EPA must prepare and consider a Regulatory Impact Analysis in connection with the rule. Today's final rule clarifies existing requirements and is not major because it will not result in an annual effect on the economy of $100 million or more, nor will it result in an increase in cost or prices to industry. There will be no adverse impact on the ability of the U.S. based enterprise to compete with foreign based enterprises in domestic or export markets. Therefore, the Agency does not believe a Regulatory Impact Analysis is required for today's rule. This final rule has been submitted to the Office of Management and Budget (OMB) for review in accordance with Executive Order 12291.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, at the time an agency publishes any proposed or final rule, it must prepare a regulatory flexibility analysis that describes the impact of the rule on small entities unless the Administrator certifies that the rule will not have a significant economic impact on a substantial number of small entities. Today's final rule merely clarifies a requirement that is already in effect. It does not impose any additional requirements on or effect the compliance burdens of the regulated community. Therefore, pursuant to 5 U.S.C. 601(b), I certify that this regulation will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 270

Administrative practice and procedure, Hazardous waste, Reporting and recordkeeping requirements, Permit modification procedures, Waste treatment and disposal.

Date: January 19, 1989.

Lee M. Thomas,

Administrator.

40 CFR Part 270 is amended as follows:

PART 270—EPA ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM

1. The authority citation for Part 270 continues to read as follows:

Authority: Secs. 1006, 2002, 3005, 3007, 3010, and 7004 of the Solid Waste and Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912, 6925, 6927, 6939, and 6974).

2. Section 270.62 is amended by revising paragraph (d) to read as follows:

§ 270.62 Hazardous waste incinerator permits.

* * * * *

(d) For the purpose of determining feasibility of compliance with the performance standards of § 264.343 of this chapter and of determining adequate operating conditions under § 264.345 of this chapter, the applicant for a permit for an existing hazardous waste incinerator must prepare and submit a trial burn plan and perform a trial burn in accordance with § 270.19(b) and paragraphs (b)(2) through (b)(9) of this section or, instead, submit other information as specified in § 270.19(c). Applicants submitting information under § 270.19(a) are exempt from compliance with §§ 264.343 and 264.345 and, therefore, are exempt from the requirement to conduct a trial burn. Applicants who submit trial burn plans and receive approval before submission of a permit application must complete the trial burn and submit the results, specified in paragraph (b)(6), with Part B of the permit application. If completion of this process conflicts with the date set for submission of the Part B application, the applicant must contact the Director to establish a later date for submission of the Part B application or the trial burn results. Trial burn results must be submitted prior to issuance of the permit. When the applicant submits a trial burn plan with Part B of the permit application, the Director will specify a time period prior to permit issuance in which the trial burn must be conducted and the results submitted.

[FR Doc. 89-1760 Filed 1-27-89; 8:45 am]
BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 22

Common Carrier Public Mobile Services Information Not Necessary To File Renewals on Microfiche

January 24, 1989.

AGENCY: Federal Communications Commission.

ACTION: Notice on effectiveness.

SUMMARY: On November 16, 1988, the Commission released a *Report and Order*, CC Docket No. 88-161, FCC 88-339, published on December 5, 1988, 53 FR 48908 *(Report and Order)* which amended § 22.6 of the Commission's Rules to require that filings of more than 5 pages be submitted on microfiche.

The *Report and Order* stated that the information collection contained in the rule changes were subject to review by the Office of Management and Budget (OMB) and that a public notice would be issued announcing their effective date. *Id.*, at para. 31. OMB has not completed its review of the information collection changes pertaining to the microfiche filing requirement. Therefore, those renewal applications, FCC Form 405, filed on or before March 1, 1989, the filing deadline, for Public Land Mobile non-wireline common carriers do not have to be filed on microfiche.

FOR FURTHER INFORMATION CONTACT: Sandra Donnell, (202) 632-6450. Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89-1952 Filed 1-27-89; 8:45 am]
BILLING CODE 6712-01-M

VOL 54 ISS 18 JA 30 1989 UMI

Proposed Rules

Federal Register
Vol. 54, No. 18
Monday, January 30, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88-ASW-22]

Airworthiness Directives; Aerospatial (Societe Nationale Industrielle Aerospatiale (SNIAS)) Model AS 350 and AS 355 Series Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to amend an existing airworthiness directive (AD) which requires repetitive inspections, rework, or replacement, as necessary, of main rotor head components, main gearbox suspension struts, and landing gear ground resonance components on Aerospatiale Model AS 350 and AS 355 series helicopters. This proposed amendment is needed to change the repetitive inspection interval to correspond with the service bulletins and the master servicing recommendations (MSR) standard repetitive inspection interval referenced in the service bulletins. The proposed amendment would result in reduced maintenance impacts and eliminate unnecessary operational costs.

DATE: Comments must be received on or before March 1, 1989.

ADDRESSES: Comments on the proposal may be mailed in duplicate to: Rules Docket, Office of the Assistant Chief Counsel, FAA, Forth Worth, Texas 76193-0007, or delivered in duplicate to Office of the Assistant Chief Counsel, 4400 Blue Mound Road, Room 156, Building 3B, Forth Worth, Texas. Comments must be marked: Docket No. 88-ASW-22. Comments may be inspected at the above location between the hours of 8 a.m. and 4:30 p.m. weekdays, except Federal holidays.

The applicable service information may be obtained from Aerospatiale Helicopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053-4005, or may be examined in the Regional Rules Docket.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Mathias, FAA, Rotorcraft Standards Staff, Fort Worth, Texas 76193-0111, telephone (817) 624-5123.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Commmunications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the FAA before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Office of Assistant Chief Counsel for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of the proposed AD, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: Comments to Docket No. 88-ASW-22. The postcard will be date/time stamped and returned to the commenter.

Amendment 39-5517 (52 FR 13233; April 22, 1987), AD 86-15-10, currently requires repetitive inspections of the main rotor head components, main gearbox suspension bars, and ground resonance prevention system components at 300-hour intervals on Aerospatiale Model AS 350 and AS 355 helicopters. Since issuing Amendment 39-5517, the FAA has received reports of confusion and unnecessary costs caused by the difference in the 300-hour inspection interval of Amendment 39-5517 and the 400-hour inspection interval in Aerospatiale Service Bulletins 01.17a or 01.14a, incorporated by reference into Amendment 39-5517.

After reviewing the basis for the 300-hour inspection interval of Amendment 39-5517 and the service history since issuing Amendment 39-5517, the FAA has determined the 300-hour inspection interval could be extended to 400 hours without adversely impacting safety. Therefore, the FAA is proposing to amend Amendment 39-5517 by changing the inspection interval of paragraph (c) to 400 hours' time in service on all Aerospatiale Model AS 350 and AS 355 helicopters.

This proposed amendment is relieving in nature and imposes no additional burden on any person.

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this proposed regulation involves 477 helicopters, and it is estimated that no cost will be incurred as a result of this proposal. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal; and (4) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

PART 39—AIRWORTHINESS DIRECTIVES

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the FAR as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.85.

§ 39.13 [Amended]

2. By amending Amendment 39-5517 (52 FR 13233; April 22, 1987), AD 86-15-10, by revising paragraph (c) to read as follows:

Aerospatiale: Applies to Aerospatiale Model AS 350 and AS 355 series helicopters certificated in any category.

Compliance is required as indicated, unless already accomplished.

* * * * *

(c) Repeat the inspections and rework of paragraphs (a) and (b) in intervals not to exceed 400 hours' time in service.

* * * * *

Issued in Fort Worth, Texas, on January 12, 1989.

James D. Erickson,
Acting Manager, Rotocraft Directorate, Aircraft Certification Service.

[FR Doc. 89-1999 Filed 1-27-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 88-NM-209-AD]

Airworthiness Directives; Aerospatiale Model ATR-42 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to revise an existing airworthiness directive (AD), applicable to Aerospatiale Model ATR-42 series airplanes, which currently requires modification of the propeller brake electronic control wiring. That action was prompted by reports of electrical interference causing the brake to engage prior to command. This proposal would require adding a relay to the propeller brake control unit to maintain the electrical power supply, and replacing the push button switch with a two-position mechanical switch. This action is prompted by reports of electrical interference causing the brake to engage prior to command, incomplete brake locking due to interruption of the power supply, and unlocking of the propeller brake due to non-latching of the push button switch. This condition, if not corrected, could lead to overheating of the propeller brake and damage to the engine.

DATES: Comments must be received no later than March 27, 1989.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 88-NM-209-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse Cedex 03, France. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Robert McCracken, Standardization Branch, ANM-113; telephone (206) 431-1979. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington, 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 88-NM-209-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

On June 23, 1988, the FAA issued AD 88-14-06, Amendment 39-5967 (53 FR 25134; July 5, 1988), applicable to Aerospatiale Model ATR-42 series airplanes, that requires modification of the propeller brake electronic control wiring. That action was prompted by reports of electrical interference causing the brake to engage prior to command. This condition, if not corrected, could result in an unsymmetrical drag/thrust on landing and/or damage to the propeller brake and engine.

Sine issuance of that AD, there have been additional reports of electrical interference causing the brake to engage prior to command, even though the modification required by the existing AD (Modification 1551) had been installed on the airplane. Additionally, on certain airplanes that have accomplished the required modification, there have been reports of the brake locking in the mid-position, due to loss of electrical power. There have also been reports of the brake unlocking approximately 10 seconds after locking, due to a faulty switch on the propeller brake control panel. This condition, if not corrected, could lead to overheating of the propeller brake and damage to the engine.

Aerospatiale has issued Service Bulletin ATR42-61-0014, Revision 2, dated November 15, 1988, which describes procedures to add one relay to the brake control unit and to modify associated wiring.

Aerospatiale has also issued Service Bulletin ATR42-61-0010, Revision 3, dated December 19, 1988, which describes procedures to replace the pushbutton switch with a two-position mechanical swtich.

The Direction Générale de L'Aviation Civile (DGAC), which is the airworthiness authority of France, has classified both service bulletins as mandatory and has issued Airworthiness Directives 88-147-015 (B) and 87-156-008(B) Revision 1, both dated November 16, 1988, addressing these subjects.

Since issuance of AD 88-14-06, Aerospatiale has issued Revision 1 to Service Bulletin ATR42-61-0016, dated September 1, 1988, to include additional procedures concerning the optional removal of the prop brake.

This airplane model is manufactured in France and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of this same type design registered in the United States, an AD is proposed which would amend AD 88-14-06, Amendment 39-5967, to require modification of the propeller brake control unit and replacement of the pushbutton switch with a two-position mechanical switch, in accordance with the service bulletins previously mentioned. This proposal would also revise paragraph B. of the existing AD to reflect Revision 1 of Aerospatiale Service Bulletin ATR42-

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61-0016 for propeller brake removal procedures.

It is estimated that 38 airplanes of U.S. registry would be affected by this AD, that it would take approximately 11 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. The required parts will be provided by the manufacturer at no cost to the operator. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $16,720.

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because few, if any Aerospatiale Model ATR-42 series airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By revising AD 88-14-06, Amendment 39-5967 (53 FR 25134; July 5, 1988), as follows:

Aerospatiale: Applies to certain ATR-42 series airplanes, as listed in Aerospatiale Service Bulletins ATR42-61-0010, Revision 2, dated June 21, 1988; ATR42-61-0013, Revision 1, dated December 8, 1987; and ATR42-61-0014, Revision 2, dated November 15, 1988, certificated in any category. Compliance is required within 100 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent the propeller brake from overheating and causing damage to the engine, accomplish the following.

A. For airplanes listed in Aerospatiale Service Bulletin No. ATR42-61-0013, Revision 1, dated December 8, 1987: Modify the propeller brake electronic control wiring, in accordance with this service bulletin.

B. For airplanes listed in Aerospatiale Service Bulletin No. ATR42-61-0014, Revision 2, dated November 15, 1988: Modify the propeller brake control unit, in accordance with this service bulletin.

C. For the airplanes listed in Aerospatiale Service Bulletin No. ATR42-61-0010, Revision 3, dated December 19, 1988: Replace the pushbutton switch with a two-position mechanical switch, in accordance with this service bulletin.

D. As an alternative to paragraph A., B., and C., above, operators may remove the propeller brake from the airplane in accordance with Aerospatiale Service Bulletin No. ATR42-61-0010, Revision 1, dated September 1, 1988.

E. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note.—The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Standardization Branch, ANM-113.

F. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Aerospatiale, 316 Route de Bayonne, 31060 Toulouse Cedex 03, France. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on January 19, 1989.

Steven B. Wallace,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-1908 Filed 1-27-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 88-NM-213-AD]

Airworthiness Directives; Aerospatiale Model ATR42-200 and -300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to Aerospatiale Model ATR42-200 and -300 series airplanes, which would require a one-time inspection and replacement, if necessary, of certain outboard bearings of the main wheel assemblies. This proposal is prompted by reports of bearing failure. This condition, if not corrected, could result in loss of a main landing gear wheel and partial loss of control of the airplane.

DATES: Comments must be received no later than March 27, 1989.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 88-NM-213-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Robert McCracken, Standardization Branch, ANM-113; telephone (206) 431-1979. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals

contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 88-NM-213-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

The Direction Générale de L'Aviation Civile (DGAC), which is the airworthiness authority of France, in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on Aerospatiale Model ATR42 series airplanes. There have been numerous reports of bearing failure due to certain defective bearings installed in the main landing gear wheel assemblies on Model ATR42 series airplanes. The subject bearings were manufactured during a specific period, and are marked with date code "JV". This condition, if not corrected, could result in loss of a main landing gear wheel and partial loss of control of the airplane while on the ground.

Aerospatiale has issued Service Bulletin Number ATR42-32-0018, Revision 2, dated November 15, 1988, which describes procedures for a one-time inspection of the outboard bearings of the main wheel assemblies for Part Number L910349, date code "JV", and replacement of those bearings with bearings not having the "JV" date code. The Aerospatiale service bulletin references Loral Service Bulletins ATR42-32-40-7 and ATR42-32-40-8 for identification, inspection, and replacement procedures. The DGAC has classified the Aerospatiale service bulletin as mandatory and has issued an Airworthiness Directive No. 88-135-014(B) addressing this subject.

This airplane model is manufactured in France and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require a one-time inspection of the outboard bearings of the main wheel assemblies for "JV"-coded bearings, and replacement of these bearings, if necessary.

It is estimated that 38 airplanes of U.S. registry would be affected by this AD, that it would take approximately 2 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Required parts will be provided by the manufacturer at no charge. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $3,040.

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because of the minimal cost of compliance per airplane ($80). A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Aerospatiale: Applies to all Model ATR42-200 and -300 series airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent loss of a main landing gear wheel due to defective bearings, accomplish the following:

A. Within 30 days after the effective date of this AD, inspect outboard bearings, Part Number (P/N) Loral L910349, of the Loral main landing gear wheels, P/N 5006856, 5006856-1, 5006856-2 and 5006856-3, and replace those having a "JV" date code, in accordance with Aerospatiale Service Bulletin ATR42-32-0018, Revision 2, dated November 15, 1988, and Loral Service Bulletin ATR42-32-40-8. Perform torqueing of the main gear axle nut, in accordance with Loral Service Bulletin ATR42-32-40-7.

B. Alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note.—The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Standardization Branch, ANM-113.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on January 18, 1989.

Steven B. Wallace,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-1904 Filed 1-27-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 88-NM-208-AD]

Airworthiness Directives; Aerospatiale Model ATR-42-300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

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SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to Aerospatiale Model ATR-42-300 series airplanes, which would require repetitive inspections of the engine fuel supply single- and double-shrouded hoses for leakage of fuel, and repair, if necessary. This proposal is prompted by a report of fuel leakage from the fuel hose located between the fuel heater and the nacelle intermediate frame. This condition, if not corrected, could lead to a fuel fire in the nacelle.

DATES: Comments must be received no later than March 27, 1989.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 88-NM-208-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Robert McCracken, Standardization Branch, ANM-113; telephone (206) 431-1979. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 88-NM-208-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

The manufacturer has reported one incident of fuel leakage from the fuel hose located between the fuel heater and the nacelle intermediate frame on an Aerospatiale Model ATR-42 series airplane. It is suspected that improper torqueing of the fuel line caused a break in the fuel line. The FAA has determined that the existing design of this fuel line assembly makes improper torqueing likely. This condition, if not corrected, could lead to a fuel fire in the nacelle.

Aerospatiale has issued Service Bulletin ATR42-28-0012, dated September 9, 1988, which describes procedures for repetitive inspections for fuel leakage in the engine fuel supply single- and double-shrouded hoses.

Aerospatiale has also issued Service Bulletin ATR42-28-0013, Revision 1, dated December 12, 1988, which describes procedures for modification of the engine fuel supply hoses. Installation of this modification would terminate the need for the repetitive visual inspection described above.

The Direction Générale de L'Aviation Civile (DGAC), which is the airworthiness authority of France, has not classified these service bulletins as mandatory; however, the FAA has determined that, since this condition involves a potential fire hazard, all U.S.-registered Model ATR-42 series airplanes must be repetitively inspected until the modification is accomplished.

This airplane model is manufactured in France and type certificated in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require repetitive inspections of the engine fuel supply hoses, and modification, if necessary, in accordance with the previously mentioned service bulletin.

It is estimated that 38 airplanes of U.S. registry would be affected by this AD, that it would take approximately 3 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $4,560, for the initial inspection. Optional replacement of the fuel line is estimated to cost $1,120 per airplane for parts.

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because few, if any, Model ATR-42-300 series airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Aerospatiale: Applies to Model ATR42-300 series airplanes, up to and including Serial Number 128, which have not been modified in accordance with Service Bulletin ATR42-28-0013, Revision 1, dated December 12, 1988, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent a fuel fire in the nacelle, accomplish the following:

A. Within 300 flight hours after the effective date of this AD and thereafter at intervals not to exceed 300 flight hours, and at each engine removal/installation, inspect the engine fuel supply hoses for fuel leakage in accordance with Aerospatiale Service Bulletin ATR42-28-0012, dated September 9, 1988. If leakage is found, before further flight, repair or replace the leaking fuel line, in accordance with the service bulletin.

B. Replacement of the engine fuel supply hoses, in accordance with Aerospatiale Service Bulletin ATR42-28-0013, dated September 9, 1988, constitutes terminating action for the repetitive inspections required by paragraph A., above.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note.—The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Standardization Branch, ANM-113.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modification required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on January 18, 1989.

Steven B. Wallace,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-1998 Filed 1-27-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 75

[Airspace Docket No. 88-ACE-12]

Proposed Alteration of Jet Route J-148; Nebraska

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to change the description of Jet Route J-148 located in the vicinity of O'Neill, NE. The J-148 proposal would extent that route direct to Mason City, IA. Pilots normally request that routing and are radar vectored from O'Neill to Mason City. This action would provide a charted route between these points thereby reducing controller workload.

DATES: Comments must be received on or before March 13, 1989.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Central Region, Attention: Manager, Air Traffic Division, Docket No. 88-ACE-12, Federal Aviation Administration, 601 East 12th Street, Federal Building, Kansas City, MO 64106.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9250.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addresed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 88-ACE-12." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 75 of the Federal Aviation Regulations (14 CFR Part 75) to alter the description of Jet Route J-148, located in the vicinity of O'Neill, NE, by extending that route from O'Neill to Mason City, IA. This action would reduce controller workload. Section 75.100 of Part 75 of the Federal Aviation Regulations was republished in Handbook, 7400.6D dated January 4, 1988.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routing amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major role" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 75

Aviation safety, Jet routes.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 75 of the Federal Aviation Regulations (14 CFR Part 75) as follows:

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PART 75—ESTABLISHMENT OF JET ROUTES AND AREA HIGH ROUTES

1. The authority citation for Part 75 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 75.100 [Amended]

2. Section 75.100 is amended as follows:

J-148 [Amended]

By removing the words "to O'Neill, NE." and substituting the words "O'Neill, NE; to Mason City, IA."

Issued in Washington, DC, on January 17, 1989.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 89-1983 Filed 1-27-89; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 416

[Reg. No. 16]

Supplemental Security Income for the Aged, Blind, and Disabled; Residence and Citizenship

AGENCY: Social Security Administration, HHS.

ACTION: Proposed rule.

SUMMARY: We are proposing rules regarding the treatment of aliens legalized under Pub. L. 99-603, the Immigration Reform and Control Act of 1986, for Supplemental Security Income (SSI) purposes. These proposed rules provide that aliens granted lawful temporary resident status under section 245A of the Immigration and Nationality Act (INA), as added by section 201 of Pub. L. 99-603, are considered to be permanently residing in the United States under color of law. The proposed rules also set out the proof to be provided by certain seasonal agricultural workers who are granted lawful temporary resident status under section 210 of the INA, as added by section 302 of Pub. L. 99-603, to establish that they are lawfully admitted to the United States for permanent residence for SSI purposes.

DATE: To be sure that your comments are considered, we must receive them no later than March 31, 1989.

ADDRESSES: Comments should be submitted in writing to the Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, MD 21203, or delivered to 3-A-3 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, between 8:00 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during these same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Dave Smith, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, Telephone 301-965-1758.

SUPPLEMENTARY INFORMATION: Section 1614(a)(1)(B) of the Social Security Act provides that to be eligible for SSI benefits an individual must be a citizen or an alien either lawfully admitted for permanent residence or permanently residing in the United States under color of law.

Section 416.1615 of the current regulations sets out the proof an alien must provide to show that he or she is lawfully admitted to the United States for permanent residence. Section 416.1618 of regulations, recently published at 52 FR 21936 (June 10, 1987), provides that an alien is permanently residing in the United States under color of law if he or she is in the United States with the knowledge and permission of the Immigration and Naturalization Service (INS) and INS does not contemplate enforcing the alien's departure.

Section 201 of Pub. L. 9-603 added section 245A to the Immigration and Nationality Act (INA), which provides that beginning not later than May 5, 1987, aliens who have continuously resided in the United States illegally since before January 1, 1982, can apply for and may be granted lawful temporary resident status. We propose to amend § 416.1618(b) to provide that aliens granted such lawful temporary resident status under section 245A are to be considered aliens permanently residing in the United States under color of law. The proposed rule also sets out the documentation which the alien can provide as proof that he or she has been granted lawful temporary resident status.

Public Law 99-603 provides that aliens granted lawful temporary resident status generally are barred from participation in Federal programs of financial assistance for 5 years from the date the status was granted. SSI is specifically exempted from the definition of financial assistance for purposes of this prohibition. The legislative history is clear that Congress intended aliens legalized under Pub. L. 99-603 to be able to establish eligibility for SSI benefits (H.R. Rep. No. 682, Part I, 99th Cong., 2d Sess. 74 (1986)).

Section 210 of the INA, as added by section 302 of Pub. L. 99-603, provides that certain seasonal agricultural workers can apply for and be granted lawful temporary resident status. Section 210 specifically provides that these aliens are to be considered as lawfully admitted to the United States for permanent residence for purposes other than immigration. Therefore, we propose to amend § 416.1615(a)(4) to set out the proof which these aliens must provide to establish that they are lawfully admitted to the United States for permanent residence for SSI purposes.

Section 416.1615(a)(4) of the above-cited regulations published on June 10, 1987, contained an incorrect reference to INS documentation procedures for purposes of section 245 of the INA. Section 416.1615(a)(1) of these proposed rules corrects that documentation requirement by describing the forms of Alien Registration Receipt Cards necessary to show lawful permanent resident status.

Regulatory Procedures

Executive Order No. 12291

The proposed rules reflect several sections of Pub. L. 99-603 pertaining to certain aliens granted temporary resident status in the United States. Although the changes being announced in this document may result in costs that exceed the $100 million threshold established under Executive Order 12291 for performing a regulatory impact analysis, the costs result from the legislative provisions, not from the regulation. Therefore, a regulatory impact analysis is not required.

Paperwork Reduction Act of 1980

These proposed regulations impose no new reporting or recordkeeping requirements subject to Office of Management and Budget clearance.

Regulatory Flexibility Act

We certify that these proposed regulations, if promulgated, will not have a significant economic impact on a substantial number of small entities because they affect only individuals and States. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96-354, the Regulatory Flexibility Act, is not required.

(Catalog of Federal Domestic Assistance Program No. 13.807, Supplemental Security Program)

List of Subjects in 20 CFR Part 416

Administration practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Supplemental Security Income.

Dated: August 24, 1988.

Dorcas R. Hardy,

Commissioner of Social Security.

Approved: October 3, 1988.

Otis R. Bowen,

Secretary of Health and Human Services.

Part 416 of Chapter III of title 20 of the Code of Federal Regulations is amended as follows:

PART 416—[AMENDED]

1. The authority citation for Subpart P of Part 416 continues to read as follows:

Authority: Secs. 1102, 1614(a)(1)(B) and (e), and 1631 of the Social Security Act; 42 U.S.C. 1302, 1382c(a)(1)(B) and (e), and 1383; sec. 502 of Pub. L. 94-241, 90 Stat. 268.

2. In § 416.1615, paragraph (a) is amended by revising (a)(1) and (4) to read as follows:

§ 416.1615 How to prove you are lawfully admitted for permanent residence in the United States.

(a) * * *

(1) An Alien Registration Receipt Card (Immigration and Naturalization (INS) Form I-151 or I-551, including temporary I-551's which are stamped in a passport or on Form I-94 (Arrival-Departure Record) for aliens admitted under sections 204, 206, or 245 of the Immigration and Nationality Act);

* * * * *

(4) INS Form I-688 which shows that you have been granted lawful temporary resident status under section 210 of the Immigration and Nationality Act.

* * * * *

3. In § 416.1618, paragraph (b) is amended by revising the introductory text, by revising (b)(15), by redesignating (b)(16) as (b)(17), and by adding a new (b)(16), and paragraph (d)(2) and the introductory text of paragraph (d)(3) are revised to read as follows:

§ 416.1618 When you are considered permanently residing in the United States under color of law.

* * * * *

(b) *Categories of aliens who are permanently residing in the United States under color of law.* Aliens who are permanently residing in the United States under color of law are listed below. None of the categories includes applicants for an Immigration and Naturalization status other than those applicants listed in paragraph (b)(6) of this section or those covered under paragraph (b)(17) of this section. None of the categories allows SSI eligibility for nonimmigrants, for example, students or visitors. Also listed are the most common documents that the Immigration and Naturalization Service provides to aliens in these categories.

* * * * *

(15) Aliens whose deportation has been withheld pursuant to section 243(h) of the Immigration and Nationality Act (8 U.S.C. 1253(h)). We ask for an order from an immigration judge showing that deportation has been withheld;

(16) Aliens granted lawful temporary resident status pursuant to section 245A of the Immigration and Nationality Act (8 U.S.C. 1255a). We ask for INS form I-688 showing that status; or

* * * * *

(d) * * *

* * * * *

(2) If you give us any of the documents listed in paragraphs (b)(1), (2), (3), (4), (8), (9), (11), (12), (13), (15), or (16) of this section, we will pay you benefits if you meet all other eligibility requirements. We will contact the Immigration and Naturalization Service to verify that the document you give us is currently valid.

(3) If you give us any of the documents listed in paragraphs (b)(5), (6), (7), (10), or (14) of this section, or documents that indicate that you meet category (17), or any other information to prove you are permanently residing in the United States under color or law, we will contact the Immigration and Naturalization Service to verify that the document or other information is currently valid. We must also get information from the Immigration and Naturalization Service as to whether that agency contemplates enforcing your departure. We will apply the following rules:

* * * * *

[FR Doc. 89-2030 Filed 1-27-89; 8:45 am]

BILLING CODE 4190-11-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 946

Virginia Regulatory Program; Remining

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule; notice to suspend final decision on proposed amendments.

SUMMARY: OSMRE is suspending decisionmaking action and publication of final rules to amend the Virginia regulatory program. The State has requested more time to make revisions and gather additional supporting information to its regulations for remining. When the new supporting documentation is received, another comment period will be announced to address that material together with the existing proposed amendments.

DATES: Final action for the proposed amendments listed in this notice is suspended until further notice.

FOR FURTHER INFORMATION CONTACT: Mr. W. Russell Campbell, Acting Director, Big Stone Gap Field Office, Office of Surface Mining Reclamation and Enforcement, P.O. Box 626, Room 220, Powell Valley Square Shopping Center, Route 23, Big Stone Gap, Virginia 24219; Telephone: (703) 523-4303.

SUPPLEMENTARY INFORMATION: Virginia has submitted amendments to its permanent regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA) as indicated in the list set forth below. Virginia is now preparing revisions and additional information having intricately related parts to the proposed amendments on that list. Therefore, OSMRE is suspending action on these amendments beyond the time limit considered to be within common administrative procedures. This notice is intended to avoid confusion about the status of comments already received on the proposed amendments.

The proposed amendments, and revisions and additional information to be received are all intended to establish alternate standards for permitting, bonding, and reclamation on surface coal mining and reclamation operations which affect remine areas established before the effective date of SMCRA. Proposed amendments and dates affected by the suspension are indicated below. Comments already received on the proposed amendments will be considered in future rulemaking; however, OSMRE encourages all interested parties to comment on the entire package.

Comments on the following proposed amendments will be considered together with related revisions and new information:

Rules	Federal Register citation	Date published
Proposed amendments to the Virginia Permanent Regulatory Program.	53 FR 5002	Feb. 13, 1988.

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Rules	Federal Register citation	Date published
Proposed amendments to the Virginia Permanent Regulatory Program.	53 FR 30450	Aug. 12, 1988.

Further notice to solicit comments on revisions and additional information to the Virginia permanent regulatory program will be provided at a later date.

List of Subjects in 30 CFR Part 948

Intergovernmental relations, Surface Mining, Surface Mining Reclamation and Enforcement Office, Underground mining.

Date: January 18, 1989.

Carl C. Close,

Assistant Director, Eastern Field Operations.

[FR Doc. 89-3083 Filed 1-27-89; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 47

[DoD Directive 1000.20]

Active Duty Service Determinations for Civilian or Contractural Groups

AGENCY: Department of Defense.

ACTION: Proposed rule.

SUMMARY: 32 CFR Part 47 was last published on August 20, 1963 (48 FR 38818). Formerly titled "Demonstrations of Active Military Service and Discharge: Civilian or Contractual Personnel," it implemented Pub. L. 95-202 and established DoD policy and procedures to determine whether the civilian employment or contractual services of a civilian or contractual group shall be considered active military service for the purpose of laws administered by the Veterans Administration. This document clarifies the factors used by the DoD Civilian/Military Service Review Board and the Secretary of the Air Force (DoD Executive Agent for this program) in making administrative determinations of active duty service for the purpose of VA benefits under Pub. L. 95-202. Changes and clarifications stem from a Federal Court determination that the Department of Defense had failed to clarify factors and criteria in their implementing directive concerning Pub. L. 95-202.

DATE: Comments must be received by March 1, 1989.

ADDRESSES: Office of the Assistant Secretary of Defense (Force Management and Personnel), the Pentagon, Room 3E764, Washington, DC 20301-4000.

FOR FURTHER INFORMATION CONTACT: Colonel R.E. Nitzche, telephone 202-697-7197.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 47

Military personnel.

Accordingly, 32 CFR Part 47 is proposed to be revised as follows:

PART 47—ACTIVE DUTY SERVICE DETERMINATIONS FOR CIVILIAN OR CONTRACTURAL GROUPS

Sec.
47.1 Purpose.
47.2 Applicability.
47.3 Definitions.
47.4 Responsibilities.
47.5 Policy.
47.6 DoD Civilian Military Service Review Board and Advisory Panel.
47.7 Application Procedures.
Appendix—Instructions for Submitting Group Applications Under Public Law 95-202.

Authority: 38 U.S.C. 106 note.

§ 47.1 Purpose.

This part implements section 401, Pub. L. 95-202. It directs the Secretary of the Air Force to determine if an establish group of civilian employees or contract workers provided service to the U.S. Armed Forces in a manner considered "active duty." It establishes the DoD Civilian/Military Service Review Board and Advisory Panel, assigns responsibilities, develops policy, prescribes application procedures for groups and individuals, and clarifies the factors used to determine of active duty service.

§ 47.2 Applicability.

This part applies to the Office of the Secretary of Defense, the Secretaries of the Military Departments, and by agreement with the Secretary of Transportation, the Commandant of the U.S. Coast Guard. It also applies to any group application considered under Pub. L. 95-202 after the effective date of this directive and to any individual who applies for discharge documents as a member of a group recognized by the Secretary of the Air Force.

§ 47.3 Definitions.

Armed Conflict. A prolonged period of sustained combat involving members of the U.S. Armed Forces against a foreign belligerent. The term connotes more than a military engagement of limited duration or for limited objectives and involves a significant use of military and civilian forces. Examples of armed conflict are World Wars I and II and the Korean and Vietnam Conflicts. Examples of military actions that are not armed conflicts are the incursion into Lebanon in 1958 and the peacekeeping force there in 1983 and 1984, the incursions into the Dominican Republic in 1965 and Libya in 1986, and the intervention into Grenada in 1983.

Civilian or Contractual Group. An organization similarly situated to the Women's Air Forces Service Pilots (a group of federal civilian employees attached to the U.S. Army Force in World War II). Those organization members rendered service to the U.S. Armed Forces of the United States during a period of armed conflict in a capacity, which was then considered civilian employment with the Armed Forces or the result of a contract with the U.S. Government, to provide direct support to the Armed Forces.

Recognized Group. A group whose service the Secretary of the Air Force has administratively has determined to have been "active duty for the purposes of all laws administered by the Veterans Administrations (VA);" i.e., VA benefits under 38 U.S.C. 101.

Similarly Situated: A civilian or contractual group is "similarly situated" to the Women's Air Forces Service Pilots, when it existed as an identifiable group at the time the service was being rendered to the U.S. Armed Forces during a period of armed conflict. Persons who individually provided support through civilian employment or contract but who were not members of an identifiable group at the time the services were rendered are not "similarly situated" to the Women's Air Forces Service Pilots of World War II.

§ 47.4 Responsibilities.

(a) *The Secretary of the Air Force.* As the designated Executive Agent of the Secretary of Defense for the administration of section 401, Pub. L. 95-202, the Secretary of the Air Force shall:

(1) Establish the DoD Civilian/Military Service Review Board and the Advisory Panel.

(2) Appoint as board president a member, or employee, of the Air Force in grade O-6 and/or GM-15 or higher

(3) Request the Secretary of Transportation to appoint an additional voting member from the U.S. Coast Guard, when the board is considering the application of a group claiming active Coast Guard service.

(4) Provide a recorder and assistant to maintain the records of the board and administer the functions of this part.

(5) Provide non-voting legal advisors and historians.

(6) Publish notices of group applications and other Pub. L. 95-202 announcements in the **Federal Register.**

(7) Consider the rationale and recommendations of the DoD Civilian/Military Service Review Board.

(8) Determine whether the service rendered by a civilian or contractual group shall be considered active duty service to the U.S. Armed Forces for all laws administered by the Veterans Administration.

(9) Notify the following persons in writing, when a group determination is made (if the Secretary disagrees with the rationale or recommendations of the board, the Secretary shall provide the decision and reasons for it in writing to these persons):

(i) The applicant(s) for the group.

(ii) The Administrator of Veterans Affairs.

(iii) The Secretaries of the Army and Navy.

(iv) The Assistant Secretary of Defense (Force Management and Personnel (FM&P)).

(v) The Secretary of Transportation (when a group claims active Coast Guard service).

(b) *The Assistant Secretary of Defense (Force Management and Personnel (ASD(FM&P))* shall:

(1) Appoint a primary and an alternate member in the grade of O-6 and/or GM-15 to the DoD Civilian/Military Service Review Board.

(2) Exercise oversight over the Military Departments and the U.S. Coast Guard for compliance with the provisions of this part and in the issuance of discharge documents and casualty reports to members of recognized groups.

(c) *The Secretaries of the Army, Navy, and Air Force and the Commandant of the Coast Guard* shall:

(1) Appoint a primary and an alternate member in the grades of O-6 and/or GM-15 from their respective Military services to the board.

(2) Process applications for discharge documents from individuals claiming membership in a recognized group in accordance with applicable laws, directives, the Secretarial rationale and instrument effecting a group determination, and any other instruction of the board.

(3) Determine whether the applicant was a member of a recognized group after considering the individual's evidence of membership, and verifying the Military service, against available Government records.

(4) Issue a DD Form 214, "Certificate of Release or Discharge from Active Duty," and a DD Form 256, "Honorable Discharge Certificate," or a DD Form 257, "General Discharge Certificate," as appropriate, consistent with 32 CFR Parts 45 and 41, and the implementing documents of the appropriate statutes of the Military Department concerned or the Department of Transportation, and instructions of the DoD Civilian/Military Service Review Board.

(5) Issue a DD Form 1300, "Report of Casualty," or equivalent document in accordance with DoD Instruction 1300.9 [1] if a verified member was killed during the period of active duty service.

(6) Ensure that each DD Form 214, "Certificate of Release or Discharge from Active Duty," and each DD Form 1300, "Report of Casualty," have the following statement entered in the "Remarks" section: "This document, issued under Pub. L. 95-202 (38 U.S.C. 106 Note), administratively establishes active duty service for the purposes of Veterans Administration benefits."

(7) Determine the equivalent military pay grade, when required by the Veterans Administration. For the purpose of Veterans Administration benefits, a pay grade is needed only in cases when an individual was killed, or received service-connected injuries or disease, during the recognized period of active duty service. A DD Form 1300, or equivalent, shall be issued with the equivalent pay grade annotated for a member who died during the recognized period of service. A DD Form 214 shall not include pay grade, unless the Veterans Administration requests that a grade determination shall be made. Determinations of equivalent grade shall be based on the following criteria in order of importance:

(i) Officially recognized organizational grade or equivalent rank.

(ii) The corresponding rank for civilian pay grade.

(iii) If neither paragraph (c)(7)(i) nor (ii) of this section applies, only one of three grades may be issued: O-1, E-4, or E-1. Selection depends on the nature of the job performed, the level of supervision exercised, and the military to which the individual was entitled.

(8) Adjudicate applicant challenges to the period of active duty service, characterization of service, or other administrative aspects of the discharge documents issued.

[1] Copies may be obtained, if needed, from the U.S. Naval Publication and Forms Center, Attn: Code 1062, 5801 Tabor Avenue, Philadelphia, PA 19120.

§ 47.5 Policy.

(a) A determination of active duty service is made on the extent to which the group was under the control of the U.S. Armed Forces in support of a military operation, or mission, during an armed conflict. The extent of control exerted over the group must be similar to that exerted over military personnel and shall be determined by, but not necessarily limited to, the following factors:

(1) *Uniqueness of Service.* Civilian service (civilian employment or contractual service) is a vital element of the war-fighting capability of the Armed Forces. Civilian service during a period of armed conflict is not necessarily equal to active Military service, even when performed in a combat zone. Service must be beyond that generally performed by civilian employees and must be occasioned by unique circumstances. For civilian service to be recognized under this Part, the following factors must be present:

(i) The group was created or organized specifically to fill a wartime need.

(ii) If the application is based on service in a combat zone, the mission of the group in a combat zone substantially must have been different from the mission of similar groups not in a combat zone.

(2) *Organizational Authority Over the Group.* The concept of military control is reinforced if the military command authority determines that the structure of the civilian organization, the location of the group, the mission and activities of the group, and the staffing requirements shall include the length of employment and pay grades of the members of the group.

(3) *Integration into the Military Organization.* Integrated civilian groups are subject to the regulations, standards, and control of the military command authority. Examples include:

(i) Exchanging of military courtesies.

(ii) Wearing of military clothing, insignia, and devices.

(iii) Assimilation of the group into the military organization structure.

(iv) Emoluments associated with military personnel; i.e., the use of commissaries and exchanges, and membership in military clubs. A group fully integrated into the military would give the impression that the members of the group were military, except that they were paid and accounted for as civilians. Integration into the military may lead to an expectation by members of the group that the service of the group imminently would be recognized as

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active military service. Such integration militates in favor or recognition.

(4) *Subject to Military Discipline.* During past armed conflicts, U.S. military commanders sometimes restricted the rights or liberties of civilian members as if they were military members. Examples include:

(i) Placing members under a curfew.

(ii) Requiring members to work extended hours or unusual shifts.

(iii) Changing duty assignments and responsibilities.

(iv) Restricting proximity travel to and from the military installation.

(v) Imposing dress and grooming standards. Consequences for noncompliance might include a loss of some privilege, dismissal from the group, or trial under military law. Such military discipline militates in favor of recognition.

(5) *Subject to Military Justice.* Military members are subject to the military criminal justice system. During times of war, "persons serving with or accompanying an Armed Force in the field" are subject to the military criminal justice code. Some groups may have been treated as if they were military and subjected to court-martial jurisdiction to maintain discipline. Such treatment militates in favor of recognition.

(b) Other factors that may be considered in determining whether the service of a civilian or contractual group is equivalent to active duty service shall include:

(1) *Alliance with the Armed Forces for Protection.* A group that aligns itself with the Armed Forces and submits to military control for its own well-being is not deemed to have provided service to the Armed Forces tantamount to active duty Military Service, even though the group may have been:

(i) Armed by the U.S. military for defensive purposes.

(ii) Routed by the U.S. military to avoid the enemy.

(iii) Instructed by the U.S. military for the defense of the group when attacked by, or in danger of attack by, the enemy, or

(iv) Otherwise submitted themselves to the U.S. military for sustenance and protection.

(2) *Permitted to Resign.* The ability of members to resign at will and without penalty militates against military control. Penalty may direct and severe, such as confinement, or indirect and moderate, such as difficult and costly transportation from an overseas location.

(3) *Prohibition against Members of the Group Joining the Armed Forces.* Organizations formed to serve in a military capacity to overcome the operation of existing law or treaty militates in favor of recognition under Pub. L. 95–202. During World Wars I and II some persons could not be members of the United States Armed Forces. Women, for example, were prohibited by law from serving in the Armed Forces. Other persons were prohibited by treaty from being military members.

(4) *Benefits Already Provided Members of a Group.* Recognition of a group's service by agencies of the Federal, State, or local government does not militate in favor of recognition under this Part.

(c) *Eligibility for Consideration.* To be eligible to apply for consideration under Pub. L. 95–202 and this Part, a group must have been:

(1) Similarly situated to the Women's Air Forces Service Pilots of World War II.

(2) Rendered service to the U.S. Armed Forces in a civilian employment or contractual service capacity.

(3) Rendered that service during a period of armed conflict.

(d) *Reconsideration.* Groups previously denied a favorable Secretarial determination under the law, shall be reconsidered under this Part if the group submits evidence that is new, relevant, and substantive. Any request that the Board determines does not provide new, relevant, and substantive evidence shall be returned to the applicant with the reasons for nonacceptance.

(e) *Counsel Representation.* Neither the Department of Defense nor the Department of Transportation shall provide counsel representation or defray the cost of such on any matters covered by this part.

§ 47.6 DoD Civilian and/or Military Service Review Board and Advisory Panel.

(a) *Organization and Management.* (1) The Board shall consist of a president from the Department of the Air Force and one representative from the Office of the Secretary of Defense, the Departments of the Army, Navy, and Air Force, and the U.S. Coast Guard (when the group claims active Coast Guard service). Each member shall have one vote except that the president shall vote only to break a tie. The president and two voting members shall constitute a quorum.

(2) The advisory panel shall act as a nonvoting adjunct to the board. It shall consist of historians selected by the Secretaries of the Military Departments and, if required, by the Secretary of Transportation. The respective Military Departments and the Department of Transportation shall ensure that the advisory panel is provided with administrative and legal support.

(b) *Functions.*

(1) The board shall meet in executive session at the call of the president and shall limit its reviews to:

(i) Written submissions by an applicant on behalf of a civilian or contractual group.

(ii) Written report(s) prepared by the Advisory Panel.

(iii) Any other relevant written information available.

(iv) Factors established in this Part for determining active duty service.

(2) The board shall return to the applicant any application that does not meet the eligibility criteria established in § 47.5(c). The board only needs to state the reasons why the group is ineligible for consideration under this Part.

(3) If the board determines that an application is eligible for consideration under the provisions of § 47.5(c), the board shall provide the Secretary of the Air Force a recommendation on the active duty service determination for the group and the rationale for that recommendation that shall include, but not be limited to, a discussion of the factors listed in § 47.5.

(i) No factors shall be established that require automatic recognition. Neither the board nor the Secretary shall be bound by any quantitative methodology of weighting factors in reaching a decision.

(ii) Prior group determinations do not bind the board or the Secretary. The board and the Secretary shall fully and impartially consider each group on its own merit in relation to the factors listed in § 47.5.

§ 47.7 Application procedures.

(a) *Submitting group applications.* Applications on behalf of a civilian or contractual group shall be submitted to the Secretary of the Air Force using the instructions at the Appendix to this part.

(b) *Processing group applications.* (1) When received, the recorder shall review the application for sufficiency and either return it for more information or accept it for consideration and announce acceptance in the **Federal Register.**

(2) The recorder shall send the application to the appropriate advisory panel for historical review and analysis.

(3) When received, the recorder shall send the advisory panel's report to the applicant for comment. The applicant's comments shall be referred to the advisory panel if significant disagreement requires resolution. Additional comments from the historians also shall be referred to the applicant for comment.

(4) The DoD Civilian/Military Service Review Board shall consider the group application as established in § 47.6.

(5) After a Secretarial decision the recorder shall notify the applicant of the decision and announce it in the **Federal Register.**

(c) *Submitting Individual Applications.* When a group is recognized, individual members may apply to the appropriate Military Department, or to the Coast Guard, for discharge documents. Submit applications on DD Form 2168, "Application for Discharge of Member or Survivor of Member of Group Certified to Have Performed Active Duty with the Armed Forces of the United States." An application on behalf of a deceased or incompetent member submitted by the next of kin must be accompanied by proof of death or incompetence.

Appendix—Instructions for Submitting Group Applications Under Public Law 95–202

In submitting a group application:

(1) Define the group to include the time period that your group provided service to the U.S. Armed Forces.

(2) Show the relationship that the group had with the U.S. Armed Forces, the manner in which members of the group were employed, and the services the members of the group provided to the U.S. Armed Forces.

(3) Address each of the factors in § 47.5 of this part.

(4) Substantiate and document the application. (The burden of proof rests with the applicant.)

Send completed group applications to: Secretary of the Air Force (SAF/MRC), DoD Civilian/Military Service Review Board, Washington, DC 20330–1000.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

January 25, 1989.

[FR Doc. 89–2067 Filed 1–27–89; 8:45 am]

BILLING CODE 3810–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–3511–5]

Approval and Promulgation of Implementation Plans; Ohio State Implementation Plan; Extension of Comment Period

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Notice of extension of the public comment period.

SUMMARY: USEPA is giving notice that the public comment period for a notice of proposed rulemaking published November 16, 1988 (53 FR 46094), has been extended 30 days. This notice proposed to disapprove a revision to the Ohio State Implementation Plan, which would allow the ATEC Industries, Incorporated's architectural aluminum extrusion coating line to meet the volatile organic compounds (VOC) limitation of 3.5 pounds of VOC per gallon coating, minus water, as required by Ohio Administrative Code (OAC) 3745–21–09(U)(1)(a)(iii), on a monthly volume-weighted average in lieu of the daily volume-weighted average required by OAC Rule 3745–21–09(B). This source is located in Mahoning, Ohio. USEPA is taking this action based on an extension request by a commentor.

DATE: Comments are now due on or before January 16, 1989.

FOR FURTHER INFORMATION CONTACT: Uylaine E. McMahan, Air and Radiation Branch (5AR–26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886–6031.

Date: January 13, 1989.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 89–2024 Filed 1–27–89; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 52

[FRL–3510–8]

Approval and Promulgation of Implementation Plans; Wisconsin State Implementation Plan; Extension of Comment Period

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Notice of extension of the public comment period.

SUMMARY: USEPA is giving notice that the public comment period for a notice of proposed rulemaking published December 2, 1988 (53 FR 48654), has been extended 30 days. This notice proposed to disapprove a revision to the Wisconsin State Implementation Plan, which would allow a temporary relaxation from Wisconsin's volatile organic compound reasonably control technology regulations for a General Motors facility located in Janesville, Wisconsin. USEPA is taking this action based on an extension request by a commentor.

DATE: Comments are now due on or before January 31, 1989.

FOR FURTHER INFORMATION CONTACT: Uylaine E. McMahan, Air and Radiation Branch (5AR–26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886–6031.

Dated: January 13, 1989.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 89–2022 Filed 1–27–89; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 52

[FRL–3511–4]

Approval and Promulgation of Implementation Plans; Wisconsin State Implementation Plan; Extension of Comment Period

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Notice of extension of the public comment period.

SUMMARY: USEPA is giving notice that the public comment period for a notice of proposed rulemaking published December 6, 1988 (53 FR 49209), has been extended 30 days. This notice proposed to disapprove a revision to the Wisconsin State Implementation Plan, which would allow for a site-specific reasonably available control technology determination for volatile organic compounds emissions from two miscellaneous metal parts and products spray coating lines at General Electric Company, Medical Systems. This source is located in Milwaukee, Wisconsin. USEPA is taking this action based on an extension request by a commentor.

DATE: Comments are now due on or before February 6, 1989.

FOR FURTHER INFORMATION PLEASE CONTACT: Uylaine E. McMahan, Air and Radiation Branch (5AR–26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886–6031.

Date: January 13, 1989.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 89–2023 Filed 1–27–89; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 300

[FRL-3509-1]

Clarification of the Intent To Delete the New Castle Steel Site, New Castle, DE, From the National Priorities List

AGENCY: Environmental Protection Agency (EPA).

ACTION: Clarification.

SUMMARY: Due to the possible confusion created by the differing dates, and in order to ensure a full period of thirty days for comment, EPA announces that an additional two weeks of public comment, beginning from the date of this clarification notice, will be allowed on EPA's "Notice of Intent to Delete the New Castle Steel Site from the National Priorities List", 53 FR 36869, September 22, 1988. Comments should be provided to the address for the Regional Docket specified below.

DATE: Comments concerning the site may be submitted for two weeks from the date of this clarification notice.

ADDRESSES: Comments may be mailed to the Regional Docket. Comprehensive information on the site is maintained and available through the EPA Regional Docket Clerk.

The Regional Docket is located at the U.S. EPA Region III office and is available for viewing by appointment only from 9:00 a.m. to 4:00 p.m. Monday through Friday, excluding holidays. Requests for copies of the information from the Regional public docket should be directed to the EPA Region III docket office.

Addresses for the Regional and Local Docket office are:

U.S. EPA Region III, 841 Chestnut Building, Philadelphia, PA 19107
Wilmington Library, 10th & Market Streets, Wilmington, DE 19801
DNREC, 715 Grantham Lane, New Castle, DE 19720.

FOR FURTHER INFORMATION CONTACT: Barbara Brown at (215) 597-8593.

For background information on the site contact: Randy Sturgeon, DELMARVA/DC/WV CERCLA, Remedial Enforcement Section (3HW16), U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107, (215) 597-0978.

SUPPLEMENTARY INFORMATION: The Environmental Protection Agency (EPA) Region III issues this clarification notice on the public comment period provided for the New Castle Steel Site in its "Notice of Intent to Delete the New Castle Steel Site from the National Priorities List", 53 FR 36869, September 22, 1988. EPA's "Notice of Intent" of September 22, 1988, stated that a local notice had been published announcing a thirty (30) day public comment period on the deletion package, starting on October 6, 1988, and concluding on October 24, 1988. EPA's local notice, published in local papers, appeared on September 22, 1988, and announced a period for public comment ending on October 21, 1988.

Date: January 11, 1989.

Stanley L. Laskowski,

Acting Regional Administrator.

[FR Doc. 89-1791 Filed 1-27-89; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 400 and 405

[BERC-432-P]

Medicare Program; Criteria and Procedures for Making Medical Services Coverage Decisions That Relate to Health Care Technology

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish in regulations generally applicable criteria and procedures for HCFA decisions as to whether and under what circumstances specific health care technologies could be considered "reasonable" and "necessary" and therefore covered under Medicare. It would provide for more openness and streamlining of the decisionmaking process through increased public participation and expedited review of new breakthrough technologies. It expands upon the description of the process used in reaching coverage decisions that was published in the Federal Register on April 29, 1987 (52 FR 15560).

DATE: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5:00 p.m. on March 31, 1989.

ADDRESS: Mail comments to the following address:

Health Care Financing Administration, Department of Health and Human Services, Attention: BERC-432-P, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309-G, Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, DC, or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

In commenting, please refer to BERC-432-P. Comments received timely will be available for public inspection as they are received, generally beginning approximately three weeks after publication of a document, in Room 309-G of the Department's offices at 200 Independence Ave., SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (phone 202-245-7890).

If you wish to submit comments on the information collection requirements contained in this proposed rule, you may submit comments to: Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3002, New Executive Office Building, Washington, DC 20503, Attention: Desk Officer for HCFA.

FOR FURTHER INFORMATION CONTACT: Sam Della Vecchia, (301) 966-5316.

SUPPLEMENTARY INFORMATION: Under the Medicare program, the benefits available to eligible beneficiaries are called *covered* services and include those medical supplies and procedures that are referred to as "items". Medicare program funds cannot generally be used to pay for services furnished to Medicare beneficiaries that are not covered under the Social Security Act (the Act). This proposed rule deals primarily with issues related to coverage of services, rather than to payment for services; that is, with determining the services to be paid for as benefits under the Medicare program rather than the method or level of payment. The primary statutory basis for these coverage decisions appears in section 1862(a)(1)(A) of the Act, which prohibits payment under the Medicare program for any expenses incurred for services "which are not reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member."

This proposed rule is being published to establish in regulations generally applicable criteria and procedures for determining whether a service is "reasonable" and "necessary" under the Medicare program; to set forth the coverage decisionmaking process that we propose to include in regulations; and to summarize and provide an analysis of the public comments that we received in response to the April 29, 1987 notice (52 FR 15560) that announced our current process for making coverage decisions.

That notice was published in accordance with the terms of an agreement settling a lawsuit, *Jameson* v. *Bowen*, C.A. No. CV-F-83-547-REC (E.D. Cal.). Under the settlement, we agreed to publish for public comment a description of the process we use to make Medicare coverage decisions. We invited the public to comment on the coverage process currently in use and specifically to comment on procedures allowing for public input into the coverage decisionmaking process if appropriate. The notice described the current process only, because of the limited time available for meeting the court deadline of May 1, 1987 for publication of the notice. In publishing that notice, we also solicited comments on how the current process could be improved.

These regulations are intended to clarify our coverage decisions policy and improve the method for making national coverage decisions. In addition, they are intended to assure that Federal funds are expended only for medical services that are appropriate to meet an individual's medical needs. We believe that it is important to set forth these policies and procedures in regulations since decisions on coverage can have a bearing on the availability of a medical service. Further, some groups, including the Health Industry Manufacturers Association (HIMA), have urged us to make public the process for national coverage decisions since they argue that these decisions directly affect the diffusion of new technology.

In addition, we believe it is important that beneficiaries understand fully the considerations underlying program coverage decisions. Finally, the Administrative Conference of the United States, in a December 30, 1986 Federal Register publication (51 FR 46987), recommended, in part, that more "openness and regularity" be introduced into the process for issuing national coverage decisions pertaining to new medical technologies and procedures.

In view of the significant considerations noted above, we propose to establish in regulations generally applicable criteria and procedures for determining coverage of specific health care technologies under the Medicare program; and to invite public comment on them. We are soliciting comments on all aspects of the Medicare coverage process including:

- The criteria for coverage decisions, including cost-effectiveness, and their application.
- The identification and selection of health care technologies for national coverage decisions.
- Methods for assuring appropriate public participation in the various phases of the technology assessment process.
- The length of time required for review.
- The relationship between determinations by Public Health Service (PHS) agencies, including the Food and Drug Administration (FDA) and the Office of Health Technology Assessment (OHTA) and Medicare coverage decisions.

We have explained in much detail our current process for making coverage decisions, as well as the changes that we propose to make to this process. To assist readers in referencing sections contained in this proposed rule, we are providing a table of contents below:

I. Medicare Coverage—General
A. Statutory Basis
B. Implementation of the Law
II. The Current Process for Making National Coverage Decisions
A. Referral and Identification of Coverage Issues for National Decisions
B. Criteria for Selection of Coverage Issues for National Decisions
C. HCFA Analysis
1. General
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III. Regulation Provisions of this Proposed Rule
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B. Definitions of Commonly Used Terms
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V. Contractor Functions and the Claims Process
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C. Issue Contractor Criteria for Making Decisions
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F. Composition of HCFA Physicians Panel
G. Time Frame for Process
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I. Coverage Exclusions Deter Research
J. Interim Payments during the Coverage Decisions Process
K. Carrier Screens
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N. Equipment and Coverage for Long Term Disabilities
O. Confidentiality of Data
VII. Proposed Uncodified Changes to the Current Coverage Decisions Process
A. HCFA Physicians Panel
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VIII. Regulatory Impact Statement
IX. Information Collection Requirements
X. Responses to Comments on this Proposed Rule
List of Subjects

In addition, because of the many agencies and terms that we reference by an acronym in this proposed rule, we have listed those acronyms and their corresponding terms in alphabetical order below:

ADAMHA—Alcohol, Drug Abuse and Mental Health Administration
ALJ—Administrative Law Judge
BERC—Bureau of Eligibility, Reimbursement and Coverage, HCFA
CDC—Centers for Disease Control
CMP—Competitive Medical Plan
DME—Durable medical equipment
FDA—Food and Drug Administration
FFDCA—Federal Food, Drug, and Cosmetic Act
HCFA—Health Care Financing Administration
HHA—Home health agency
HHS—Health and Human Services, Department of
HIMA—Health Industry Manufacturers Association
HMO—Health maintenance organization

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HRSA—Health Resources and Services Administration
NCI—National Cancer Institute
NIH—National Institutes of Health
OHTA—Office of Health Technology Assessment
OMAR—Office of Medical Applications of Research
OMB—Office of Management and Budget
PHS—Public Health Service
PMA—Premarket approval application
ProPAC—Prospective Payment Assessment Commission
PROs—Utilization and Quality Control Peer Review Organizations
PRRB—Provider Reimbursement Review Board
RFA—Regulatory Flexibility Act
SMI—Supplementary Medical Insurance (Part B of the Medicare Program)
SNF—Skilled nursing facility
TAG—Coverage/Payment Technical Advisory Group

I. Medicare Coverage—General

A. Statutory Basis

The Medicare program was established by Congress in 1965 with the enactment of title XVIII of the Social Security Act (the Act). The program provides payment for certain medical services for persons 65 years of age or over, disabled beneficiaries, and persons with end-stage renal disease. The program currently covers 28.6 million aged and almost three million disabled individuals.

The Medicare program consists of two separate but complementary insurance programs, a Hospital Insurance Program, known as Part A, and a Supplementary Medical Insurance program, known as Part B. Although Part A is called hospital insurance, covered benefits also include medical services furnished in skilled nursing facilities (SNFs) or by home health agencies (HHAs) and hospices. For purposes of the Medicare program, we refer to these institutional entities as "providers". These providers must be certified as qualified providers of services and must sign an agreement to participate in the program. Part B covers a wide range of medical services and supplies such as those furnished by physicians or others in connection with physicians' services, outpatient hospital services, outpatient physical therapy and occupational therapy services, and home health services. Physicians' services covered under Part B include visits to patients in the home, office, hospital, and other institutions. Part B also covers certain drugs and biologicals that cannot be self-administered, diagnostic x-ray and laboratory tests, purchase or rental of durable medical equipment, ambulance services, prosthetic devices, and certain medical supplies.

While the Medicare law provides coverage for the broad categories of benefits described above, it also places general and categorical limitations on the coverage of the services furnished by certain health care practitioners, such as dentists, chiropractors, and podiatrists, and it specifically excludes some categories of services from coverage, such as cosmetic surgery, personal comfort items, custodial care, routine physical checkups, and services that are not reasonable and necessary for diagnosis or treatment of an illness or injury. The statute also provides direction as to the manner in which payment is made for Medicare services, the rules governing eligibility for services, and the health, safety, and quality standards to be met by institutions providing services to Medicare beneficiaries.

The Medicare law does not, however, provide an all-inclusive list of specific items, services, treatments, procedures, or technologies covered by Medicare. Thus, except for the examples of durable medical equipment in section 1861(n) of the Act, and some of the medical and other health services listed in sections 1861(s) and 1862(a) of the Act, the statute does not specify medical devices, surgical procedures, or diagnostic or therapeutic services that should be either covered or excluded from coverage.

The intention of Congress, at the time the Medicare law was enacted in 1965, was that Medicare would provide health insurance to protect the elderly or disabled from the substantial costs of acute health care services, principally hospital care. The law was designed generally to cover services ordinarily furnished by hospitals, SNFs, and physicians licensed to practice medicine. Congress understood that questions as to coverage of specific services would invariably arise and would require a specific decision of coverage by those administering the program. Thus, it vested in the Secretary the authority to make those decisions. Section 1862(a)(1)(A) of the Act states: "Notwithstanding any other provisions of this title, no payment may be made under Part A or Part B for any expenses incurred for items or services which * * * are not reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member." This is a key provision since the words "notwithstanding any other provision of this title * * *" make this an overriding exclusion that may be applicable in a given situation despite the existence of provisions that would otherwise permit coverage. Thus, while Congress provided for the coverage of services such as inpatient hospital care and physicians' services, coverage for those services is prohibited unless they are "reasonable" and "necessary".

B. Implementation of the Law

Historically, HCFA has interpreted section 1862(a)(1)(A) of the Act to exclude from Medicare coverage those medical and health care services that are not demonstrated to be safe and effective by acceptable clinical evidence. However, current regulations are general and we have not defined the terms "reasonable" and "necessary", nor have we described in regulations a process for how these terms must be applied. (See Medicare regulations at 42 CFR 405.310(k)(1).)

In practice, Medicare contractors (that is, fiscal intermediaries, carriers, health maintenance organizations (HMOs), competitive medical plans (CMPs), and Utilization and Quality Control Peer Review Organizations (PROs)) are charged with the responsibility to assure that payments are made only for services that are covered under Medicare Part A or Part B. (See section V below for a further description of contractor functions.) Therefore, they must determine whether a particular service is covered under Medicare in the course of adjudicating a Medicare claim or conducting utilization and quality review.

Our policy on the implementation of section 1862(a)(1)(A) of the Act is set forth in Part A Intermediary Letter 77–4 and Part B Intermediary Letter 77–5 (January 1977). These documents translate the statutory terms "reasonable" and "necessary" into a test as to whether the service in question is "safe" and "effective" and not "experimental"; that is, whether the service has been proven safe and effective based on authoritative evidence, or alternatively, whether the service is generally accepted in the medical community as safe and effective for the condition for which it is used. For Medicare coverage purposes, the term "experimental" is used synonymously with the term "investigational". Further guidelines for contractors administering the program are contained in the Intermediary (HCFA Pub. 13–3), Carrier (HCFA Pub. 14–3), and Utilization and Quality Control Peer Review Organization (HCFA Pub. 19) manuals. These manuals are updated periodically through the instruction issuance process and comprise the primary source of information from HCFA central office to the contractors on claims adjudication and utilization and quality review.

In addition to these general guidelines, we have issued over 200 specific national Medicare coverage decisions on individual health care technologies. The term "national coverage determination" refers to a coverage decision that HCFA makes and issues as national policy. The term "health care technology" refers to any discrete and identifiable regimen or modality used to diagnose or treat illness, prevent disease, maintain patient well-being, or facilitate the provision of health care services. These technologies range from practices that appear to be obsolete or of questionable effectiveness to new technologies, recently introduced into medical practice, still in an experimental stage, or that are new applications of established technologies. We publish national coverage decisions on health care technologies in the Medicare Coverage Issues Manual (HCFA Pub. 6), and may also publish these decisions in other HCFA program manuals or as HCFA Rulings in the Federal Register. National coverage decisions are binding on our contractors and must be applied.

II. The Current Process for Making National Coverage Decisions

This section expands upon the description of the *current* process we use in making national coverage decisions that was published in the Federal Register on April 29, 1987 (52 FR 15560).

A. Referral and Identification of Coverage Issues for National Decisions

The process for determining whether a health care technology or service is covered has been in place for many years. Over time, certain refinements and revisions have been made in that process, but the basic structure has remained the same. Decisions on coverage are made mostly by carriers, fiscal intermediaries, and PROs that contract with the Secretary to review and adjudicate claims for Medicare services. (Section V of this preamble describes the functions of Medicare contractors.) We estimate that almost 400 million individual claims were processed by our carriers and intermediaries in fiscal year 1987. Most of the individual claims processed by Medicare contractors do not raise serious questions about coverage. However, a small number of services (usually 29 to 30 per year) are the subject of a national coverage decisionmaking and technology assessment process.

Coverage issues of national significance regarding health care technologies are raised in a variety of ways. Some are raised by individual Medicare beneficiaries, physicians, equipment manufacturers, public officials, professional associations, or government entities. Other coverage issues are raised during our ongoing review of current medical literature. However, most coverage issues are brought to our attention by our program's contractors.

If a contractor cannot resolve a coverage question satisfactorily, or believes a national coverage decision may be necessary, the issue is referred to HCFA central office through a HCFA regional office. In general, the more expensive a service is or promises to become, either in an individual case or in the aggregate, or the more prone it is to raising public health and safety concerns, the more likely it is to be referred to HCFA central office. Also, the more likely a service is to be subject to overutilization or other abuse, the more likely it is that the contractor will seek our guidance on a coverage policy. A frequent source of contractor referrals is the Coverage/Payment Technical Advisory Group (TAG). The TAG, which is made up of medical directors and other officers of the carriers and intermediaries, meets every six to eight weeks with HCFA staff to discuss its experience with various coverage and payment issues, and to discuss with us the disposition of specific coverage questions, including the need for a national coverage decision when appropriate.

B. Criteria for Selection of Coverage Issues for National Decisions

When a coverage question arises regarding a health care technology, the issue is referred to the Bureau of Eligibility, Reimbursement and Coverage (BERC) within HCFA. BERC may identify a service or technology for our centralized coverage process if there are no statutory bars to coverage of the service and one or more of the following conditions is present: (1) The service represents a significant advance in medical science; (2) the service can be described as a new product (that is, a device, drug, or procedure for which there is no similar technology already covered under Medicare); (3) the service is likely to be used in more than one region of the country; (4) the service is likely to represent a significant expense to the Medicare program; (5) the service has the potential for rapid diffusion and application; (6) there is substantial disagreement among experts regarding the safety, effectiveness, or appropriateness of a service; (7) the service has been treated inconsistently by contractors and a conflict can be resolved only by a national decision; or (8) the service was "commonly accepted" by the medical profession in the past or a national decision to cover the service was made previously, but appears to have become outmoded or questions about its safety and effectiveness have been raised.

After preliminary analysis, BERC may conclude that the coverage issue does not meet any of the criteria specified above and that a national coverage decision is not appropriate or necessary for that specific health care technology. If BERC concludes that a national coverage decision is not appropriate or necessary, the individual or organization that requested a national coverage decision is informed of the basis of the conclusion. In addition, if the request for a national coverage decision was made by one of our contractors, BERC may provide information to contractors as to the opinion of other third party payors, specialty societies, or recognized medical authorities regarding the appropriateness of coverage of the health care technology in question. However, that information, in the absence of a national coverage decision is not binding on the contractors who retain the discretion to cover or not cover, taking into account the circumstances of the individual case. For example, a contractor may question whether a new surgical procedure to treat a rare medical condition should be covered. BERC may decide that a national coverage decision is not necessary since only a few patients are likely to ever need the procedure. However, as part of its analysis, it may learn that the procedure is considered experimental by other third party payors and various specialty societies. The contractor would be informed that a national coverage decision will not be made and also informed that the procedure is considered experimental by other entities. The contractor also would be informed that the information is not binding and that coverage could be provided if the contractor determines that the procedure is reasonable and necessary in a particular case.

C. HCFA Analysis

1. General

HCFA has used various methods for seeking medical and scientific advice in determining whether a health care technology is reasonable and necessary. The fundamental test has been whether the technology is safe and effective or commonly accepted by the medical community. They have included, at one time or another, the use of PHS advisory

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councils, ad hoc groups of representative physicians, and various forms of consultation and liaison with national medical associations. At present, a structured process of review and assessment involves HCFA central office staff physicians, PHS representatives, a contractor medical advisory group, and the medical community.

2. Initial Consideration—Background Papers

If BERC determines that consideration should be given to issuing a national coverage decision for a specific health care technology, BERC conducts a medical literature search, meets with interested parties (proponents and opponents) as needed, determines the status of any FDA action, and prepares a background summary on the service.

The background paper stresses the information obtained from the medical literature search and the administrative aspects of the issue. Current Medicare coverage guidelines are discussed, as well as any information obtained regarding published decisions by other groups involved in technology assessment.

3. HCFA Physicians Panel

The next step in the process involves presenting the background paper to the HCFA Physicians Panel for review. This Panel, a group composed of staff physicians and other health professionals in HCFA's central office and counterparts from PHS, meets approximately once every six to eight weeks. These sessions are designed to permit the free exchange of ideas among knowledgeable staff within the Department and are not open to the public. The HCFA Physicians Panel serves in a purely advisory role to BERC. Although BERC utilizes the Panel's expertise in determining whether to develop a coverage question as a national policy, BERC retains responsibility for making judgments about referring items to PHS for further study and for making recommendations on coverage for the approval of the HCFA Administrator.

Upon weighing background information and medical literature, the Panel may recommend to BERC that the service should be: (1) Referred to PHS (specifically to the Office of Health Technology Assessment (OHTA) in the National Center for Health Services Research and Health Care Technology Assessment (the National Center), Office of the Assistant Secretary for Health) on either an "inquiry" basis, or for a full assessment as to safety and effectiveness; or (2) that no national coverage decision be made at that time.

A recommendation to refer an issue to OHTA on an inquiry basis may be made if the Panel is uncertain that there is sufficient evidence available to warrant a full assessment, or if only limited information is needed in the context of specific questions. Upon receipt of an inquiry, OHTA typically gathers background information from other PHS and governmental agencies and conducts a more indepth review of the medical literature than the BERC staff is able to do. OHTA contacts FDA for information on the regulatory status of the health care technology, if appropriate, and the National Institutes of Health (NIH), the Centers for Disease Control (CDC), and other agencies for information on its medical and scientific status.

The information gathered by OHTA is then forwarded to BERC. The response generally includes a brief statement of the steps taken in obtaining the information and of the organizations consulted. It responds to all questions raised by BERC, but does not include a recommendation as to coverage or noncoverage.

The following parameters are among the major considerations by the Panel in recommending that an issue be referred to OHTA on an assessment basis:

- The issue is of such importance, that a national coverage decision will likely be required upon completion of the assessment;
- The technology involves significant expenditures for Medicare, that is, the technology has the potential for rapid diffusion in a large patient population or the technology is very expensive on a per case basis;
- The data base appears adequate, that is, there is sufficient scientific evidence to permit conclusions regarding safety and effectiveness (The definition of adequacy will vary according to the nature and course of the disease and the difficulty or complexity of the intervention in conducting clinical trials.); and
- FDA has accepted the technology if it consists of drugs, biologics, or medical devices.

The Panel may recommend that a national coverage decision not be made at that time. In that case, the individual contractor would continue to make coverage decisions on a case-by-case basis. In general, this recommendation is made if the issue involves a new or emerging technology or practice for which it appears there is limited clinical data on which to base a firm coverage decision or when claims have been received from few contractor areas. Coverage decisions in these situtations are best made by the contractor's medical staff, taking into account the unique circumstances of the individual case as well as local standards of care.

D. PHS Assessment Process

When HCFA initiates an assessment by referring an issue to OHTA for a coverage recommendation, OHTA announces the assessment in the **Federal Register**, allowing a 90-day period for public comment. OHTA collects information from a wide variety of sources, including medical literature, Federal agencies, clinical medical specialty groups, and manufacturers associations. All relevant information is analyzed and synthesized in order to develop conclusions regarding the safety and clinical effectiveness of the subject technology. OHTA then prepares an assessment report that contains the information on which a coverage recommendation is based. That report forms the basis for a PHS coverage recommendation that is submitted to HCFA in conjunction with the report. After HCFA makes its coverage decision, the OHTA report is made available to the public.

Note.—PHS has informed HCFA that a revised set of guidelines for this process is being prepared, and this material will, after appropriate internal review, be made available for subsequent public comment.

1. Drugs and Biologicals

Questions regarding coverage of drugs and biologicals are rarely referred to PHS since we have determined as a matter of national policy that drugs or biologicals approved for marketing by FDA are safe and effective when used for indications specified in their labeling. In addition, FDA-approved drugs also may be covered when used for indications other than those specified on their labeling as long as FDA has not specified such use as non-approved. Coverage of non-labeled uses is determined by our contractors taking into consideration the generally accepted medical practice in the community. Treatment Investigational New Drugs (INDs) are approved by FDA but are still considered experimental and not covered by Medicare. Drugs that have not received FDA approval for marketing are considered experimental or investigational and are not covered except for certain cancer drugs distributed by the National Cancer Institute (NCI).

Under its Cancer Therapy Evaluaton, the Division of Cancer Treatment within NCI, in cooperation with FDA, approves

and distributes certain drugs for use in treating terminally ill cancer patients. One gorup of these drugs, designated as Group C drugs, unlike other drugs distributed by the NCI, are not limited to use in clinical trials for the purpose of testing their efficacy. In view of NCI controls on their distribution and use, Group C drugs are covered by Medicare if all other applicable coverage requirements are satisfied.

In accordance with section 202(k)(1)(A) of the Medicare Catastrophic Coverage Act of 1988 (Pub. L. 100-360, enacted July 1, 1988), the Secretary must conduct a study and report to Congress by January 1, 1990 on the possibility of covering certain experimental drugs and biologicals (for example, those used in the treatment of cancer or in immunosuppressive therapy) as outpatient drugs under the Medicare program. Consequently, we are interested in receiving comments on our position concerning Treatment INDs.

2. Devices

FDA approval for the marketing of a medical device will not necessarily lead to a favorable coverage recommendation, particularly if FDA requirements have been met by means of a notice issued under section 510(k) of the Federal Food, Drug, and Cosmetic Act (FFDCA) (21 U.S.C. 360(k)), rather than by means of a premarket approval application (PMA) made under section 515 of the FFDCA. This is because a section 510(k) notice generally does not involve clinical data showing safety and effectiveness. Only limited safety and effectiveness data are generally required by FDA for purposes of a section 510(k) notice. FDA findings of safety and effectiveness focus on the labeled use of a device only, while our decisions may focus on other uses of a device under average conditions of use (that is, other than in a clinical setting).

In accordance with paragraphs (a)(2)(C) and (a)(3)(A) of section 513 of the FFDCA (21 U.S.C. 360c) regarding PMAs, FDA determines the safety and effectiveness of a device by "weighing any probable benefit to health from the use of the device against any probable risk of illness or injury from such use," and effectiveness "on the basis of well-controlled investigations, including clinical investigations where appropriate, * * * from which investigations it can fairly and responsibly be concluded by qualified experts that the device will have the effect that it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in the labeling of the device."

E. Criteria for Making National Coverage Decisions

After considering OHTA's recommendation, HCFA decides whether or not the service should be covered. During the decisionmaking process, a number of issues must be considered, in interpreting the "reasonable" and "necessary" requirements of the Medicare statute. In making national coverage decisions, HCFA interprets the term "reasonable" and "necessary" contained in section 1862(a)(1)(A) of the Act to mean that a service is safe, effective, non-investigational, and appropriate. Not all of the criteria are necessarily pertinent to every coverage issue and each criterion is not necessarily given equal consideration in reaching a final decision. Because of the complexity and variety of issues involved in making coverage decisions, we do not think it is possible, or advisable, to try to set quantitative standards or develop a formula for the application of these criteria.

The criteria are identified below by major headings, with a brief description of each criterion and a detailed, although not exhaustive, list of questions that we try to answer under each criterion. These questions illustrate how the particular criterion is applied. Because it is often impossible to identify absolute benchmarks, it is frequently useful in making these decisions to compare the service in question with other available diagnostic or therapeutic approaches.

1. Safety and Effectiveness

A service may be determined to be safe and effective if it is generally accepted in the medical community as safe and effective. Contrary evidence, however, may support a conclusion that the service is not safe and effective for some or all conditions.

The standards for safety and effectiveness are less stringent when evaluating breakthrough medical or surgical procedures. The more severe and life threatening the disease process, the more acceptable a relatively less safe technology may be when no safer or more effective technologies are available. However, such coverage may have certain limitations, for example, setting, patient selection criteria, or provision to later revise a coverage policy based on subsequent data collection. Medical devices, drugs, and biologicals that have been accepted for marketing by FDA are considered safe and effective for Medicare coverage purposes when used for the conditions prescribed in the labeling.

What is the likelihood that use of the service will cause harm to beneficiaries? Can it be applied safely to a larger proportion of the population than available alternatives? What is the severity of any risks associated with its use? How does the risk associated with this service compare with that of other services designed to accomplish the same or similar purposes? How does the risk associated with this service compare with the severity of the medical condition it is designed to diagnose or treat? What is the source and nature of the evidence to support the safety of this service? How confident are we of our conclusions? What is the likelihood that the service will produce the health benefit it was designed to accomplish? What are the expected outcomes on the morbidity and mortality of beneficiaries to whom it is furnished? What are the indications for its use? Is it equally effective for all indications? How do these outcomes compare with those of available alternatives? If the purpose of the service is diagnostic, is it significantly more accurate or less invasive than available alternatives? If its purpose is therapeutic, is it significantly more reliable or less painful, or does it provide faster healing than available alternatives? How does the effectiveness of this service compare with the severity of the illness or injury it is designed to diagnose or cure? What is the source and nature of the evidence to support the effectiveness of this service? How confident are we of our conclusions? If we are considering a device, has it been approved for marketing by FDA?

If so, what type of review did the device receive (PMA or section 510(k))? Are there any limitations or restrictions on the use of the device? Should the device be used only for certain medical indications?

2. Experimental or Investigational

A service that is furnished for research purposes in accordance with predetermined rules is considered experimental or investigational. A drug (except for certain cancer drugs), biological product, or device that is subject to FDA approval and has not been approved for marketing by FDA is considered experimental or investigational. Except for certain breakthrough medical or surgical procedures, a service that is not used widely because there is inadequate evidence of safety and effectiveness is considered experimental or investigational.

Has the service been generally accepted by the medical community,

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and has it emerged from the research stage? Has the drug or biological been used independently or in connection with a medical device approved for marketing by FDA?

3. Appropriateness

A service is considered appropriate if it is furnished in a setting commensurate with the patient's medical needs and condition, and furnished by qualified personnel.

Will the service raise questions of a health and safety nature relating to the appropriate setting? Does use or provision of the service require special qualifications or training?

Among the many relevant considerations, safety and effectiveness are the key factors for our review. Thus, if a health care technology "failed" either of these two criteria, we would decide not to cover it. On the other hand, while the fact that it "passed" both of these tests would clearly have a major influence on our thinking, there are other considerations that affect whether and how broadly a technology might be covered.

Virtually no technology is absolutely without risk or totally effective in all cases. As a general rule in making these coverage decisions, the greater the risk, the greater the need for proven effectiveness. We have noted the interrelationship between the criteria of safety and effectiveness and the nature and severity of the medical condition being treated. Thus, for example, the more severe and life-threatening the condition, the more likely we are to cover a treatment for which clinical effectiveness has not been proven to the usual point of acceptability to us, if there are no other safe and effective treatments available. Similarly, as the level of demonstrated effectiveness drops, the lower is the threshold of acceptable risk.

F. Publication of National Coverage Decisions

HCFA generally requests OHTA's review of any new Medicare coverage instruction that is derived from the OHTA assessment process before its publication. HCFA publishes national coverage decisions in the Medicare Coverage Issues Manual (HCFA Pub. 6). In some cases, HCFA may also publish a coverage decision in other HCFA manuals or as a HCFA Ruling in the **Federal Register**. HCFA makes national coverage decisions available through the issuance of a manual instruction or the publication of a HCFA Ruling in the **Federal Register**. We would also rely on the various medical specialty societies and organizations to disseminate further this information to their members through their organizations' journals and publications.

Additionally, a listing of all manual instructions (which includes national coverage decisions) will be published in a quarterly **Federal Register** notice in accordance with section 4035(c) of the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100-203). Section 4035(c) requires us to publish quarterly notices that list all manual instructions, interpretative rules, statements of policy, and guidelines of general applicability that implement the Medicare and Medicaid programs.

G. Reevaluation and Reconsideration of National Coverage Decisions

In addition to assessing new services, we might reevaluate a service that is already excluded or covered under the Medicare program. This might occur, for instance, if in a previous assessment, PHS suggests a reevaluation of a service at a later date. The publication of new clinical studies in the medical literature may prompt reevaluation of a service especially if the findings are not consistent with the existing coverage policy. The decison to reevaluate might also occur if a service is considered obsolete. Instances such as these come to our attention in a variety of ways; for example, from other third party payors, through ongoing review of medical literature, or from HCFA central and regional office staff. In all of these instances, the same coverage assessment process is followed as is described above for evaluation of new services, except that if the decision is to withdraw coverage of a service, we would publish a notice for comment in the **Federal Register** announcing that intent.

At any time after publication of a Medicare coverage instruction, interested parties may request reconsideration and submit evidence demonstrating that a reassessment of that coverage decision is warranted. A reassessment would ordinarily only be done if there is acceptable information or evidence available that was not available at the time the most recent assessment was performed. In particular, since an extensive medical literature search was performed in preparation for the initial decision, the documentation for reconsideration would ordinarily include evidence published later than that available at the time of the initial coverage decision. As discussed above, certain types of evidence carry more weight than others in making an assessment of safety and effectiveness. This would also be true of evidence submitted for reconsideration of a coverage decision.

III. Regulation Provisions of this Proposed Rule

A. Reason for Codifying the Coverage Decisions Process

Although the process by which we make Medicare coverage decisons on health care technology has been in place for many years, we believe there are segments of the population that may still benefit from a complete description of the coverage decisionmaking process. We also believe the process should be more open and that the review of breakthrough technologies should be streamlined. It is for these reasons that we are now presenting the coverage decisions process as a public document.

B. Definitions of Commonly Used Terms

We would define the terms "effective", "experimental", "health care technology", "national coverage decision", and "safe" for the purposes of coverage of health care technology under the Medicare program (§ 400.202). These definitions would not apply to the activities of other organizational components of the Department.

C. Cost-effectiveness as an Additional Criterion for Medicare Coverage of Medically Reasonable and Necessary Services

In section II. E. of the preamble, we identified the criteria we currently apply when making national coverage decisions (safety, effectiveness, experimental or investigational considerations, and appropriateness). Also, for each criterion we provided a detailed, although not exhaustive, list of questions we consider in reaching a national coverage decision. In section V. C. of the preamble, we identified and explained the criteria that Medicare contractors currently apply when making coverage decisions in the absence of national coverage decisions by HCFA. In addition to these criteria, we propose that HCFA and Medicare contractors consider the cost-effectiveness of a service when making coverage decisions (§ 405.380). Traditionally, HCFA has interpreted the terms "reasonable and necessary" contained in section 1862(a)(1)(A) of the Act to mean that a service is safe, effective, and widely accepted in the medical community. HCFA is including cost-effectiveness as a proposed criterion because we believe considerations of cost are relevant in deciding whether to expand or continue coverage of technologies, particularly in the context of the current explosion of high-cost medical technologies. We believe the requirement of section 1862(a)(1) that a covered service be "reasonable" encompasses the authority to consider cost as a factor in making Medicare coverage determinations.

The proper role for cost-effectiveness considerations is an important matter. Cost-effectiveness is one of several potential factors to be weighed in a given situation. In many cases, it may have no bearing at all on our conclusion. However, if a service were to be viewed as marginal with respect to safety and effectiveness, but expensive in comparison with available covered alternatives, we think that cost-effectiveness considerations are appropriate. In this instance, however, outright exclusion from coverage might not be appropriate. To clarify the use of cost-effectiveness as a criterion for coverage as compared to using cost-effectiveness as a criterion for a payment decision, we offer the following example of one possible use of cost-effectiveness as a criterion for a payment decision. Consider the case of a service that is closely comparable with respect to the risks associated with its use and its effectiveness to another already covered service, but the new service is substantially more expensive than the one that is already covered. In this situation, we may wish to cover the new service, while providing the results of our cost-effectiveness evaluation to the payment policy staff and/or Medicare contractors for their use in establishing payment levels. For example, when a claim is filed for durable medical equipment containing features of a nature that are not required by a patient's condition, or when there exists a reasonably feasible and medically appropriate alternative pattern of care that is less costly than that furnished, the amount payable is based on the reasonable cost of the least expensive alternative treatment that appropriately meets the patients' needs.

Formal cost-effectiveness analysis is an analytic tool that seeks to compare the incremental cost with the additional effectiveness of the procedure or technology. Beneficial effects are usually quantified in nonmonetary terms (for example, increased years of life or reduced infection rates per patient), while costs or savings (both medical and nonmedical) are expressed in dollars. We are aware that cost-effectiveness analysis is a complex field that suffers from data limitations and the inability to quantify some costs. Specifically, for many new technologies, accurate measures of patient benefits or economic impacts (for example, incremental hospital costs) are imprecise because the device or procedure has not been used on many patients. Furthermore, even when data are available, methodological difficulties (for example, selecting a method for projecting future costs) and inherent subjectivity can seriously hamper analysis.

We may not consider cost-effectiveness in every coverage decision. For example, if there is a significant breakthrough or lifesaving technology for which there is no comparable alternative, we could not attempt a comparison to other available technologies since none exist. Another example is consideration of the provisions of section 1861(t)(2) of the Act (as added by section 202(a)(2)(C) of Pub. L. 100-360). That section provides Medicare Part B coverage of outpatient prescription drugs, biological products, and insulin which are not presently covered as part of, or as incident to, other covered services. Coverage for this new benefit is effective for drugs used in immunosuppressive therapy and drugs that are intravenously administered to an individual in the home beginning January 1, 1990, and for other covered outpatient prescription drugs beginning January 1, 1991. Specifically, section 1834(c)(5)(C) of the Act (as added by section 202(b)(4) of Pub. L. 100-360), prohibits the exclusion from coverage or denial of payment of a covered outpatient drug or class of outpatient drugs, or of any specific use of such a drug for a specific indication, unless the exclusion is based on a finding by the Secretary that the use is not safe and effective. We believe the Act precludes the application of the cost-effectiveness criterion to covered outpatient drugs, and we do not plan to apply the cost-effectiveness criterion to those drugs, although we request comment on the issue.

We believe that a disciplined effort to assess systematically the cost-effectiveness of technologies under coverage review will be useful. We propose to use a flexible definition of cost-effectiveness that encompasses a wide range of impacts: Cost-effectiveness means having improved health outcomes for Medicare patients that justify additional expenditures. In this regard, we would consider a technology cost-effective if, based on analysis, it demonstrated one of the following results:

- It is less costly and at least as effective as an alternative covered technology.
- It is more effective and more costly than a covered alternative, but improved health outcomes justify additional expenditures.
- It is less effective and less costly than an existing alternative, but is a viable alternative for some patients.

To establish the cost-effectiveness of any intervention, we propose to follow a standard set of analytical steps that are well accepted among economists. These steps are:

- Identify the relevant alternative technologies to which the current intervention is to be compared.
- Identify all the relevant outcomes from the alternative technologies and, when possible, quantify them. These may include clinical outcomes such as reduced morbidity and mortality, or qualitative outcomes such as reduced pain, enhanced personal well being, vigor, etc.
- Identify all the relevant costs expected (both Medicare and non-Medicare) from the interventions, including direct medical costs or savings and indirect costs such as enhanced productivity for the disabled, transportation, etc. These will generally be valued in dollars at standard levels relevant to the Medicare program (for example, Part B charge payments or Part A DRG outlays).
- Consider nonquantifiable factors. Since all technology impacts cannot be fit into a conventional cost-effectiveness formula, the range of nonquantifiable factors (for example, ease of use, and access to ambulatory setting) should be described and considered as modifiers of the analysis.

We believe the regular application of these principles by HCFA, as well as by those proposing new technologies for coverage, would vastly improve our knowledge base and be a deterrent to coverage of procedures that may be costly, but have little or no impact on improving health outcomes. To aid in this process, HCFA's Office of Research and Demonstrations is planning a study to develop an approach for collecting and analyzing primary and secondary data for cost-effectiveness considerations. Based on this study and a review of other existing studies and models, a methodology would also be developed for making periodic policy decisions based on cost-effectiveness considerations. We specifically invite the public to comment on cost-effectiveness methodologies that could be appropriate for Medicare's use.

D. Procedures for Medicare Contractors in Making Coverage Decisions

We would establish a new § 405.381 and outline the procedures Medicare contractors would follow in making

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coverage decisions. The regulations would set forth contractor responsibilities, including the review of individual claims and making coverage decisions in the absence of national coverage decisions by HCFA.

E. HCFA Procedures for Making National Coverage Decisions

We have set forth the key criteria and procedures in the coverage decisions process (§§ 405.380 and 405.382) by which, under section 1862(a)(1)(A) of the Act, we make coverage decisions that are national in their scope and application. As stated earlier, our purpose is to clarify and inform the public regarding the grounds on which we conclude that a national coverage decision is warranted, the sources of information we use in making these decisions, and the public's opportunity to participate in the process and be informed of its results.

F. Carrier Coverage Process

We are proposing a process for carriers to use in developing utilization review policy. This process would include notifying the appropriate groups of a proposed policy and the need for and basis of establishing it and soliciting comments from them prior to its implementation.

G. Conforming Changes

We also would amend the title and authority citation to Part 405, Subpart D to conform to the new sections being added.

IV. Relationship With Other Agencies

Following is a broad overview of the mission of other agencies and a description of our relationship with them as it applies to the coverage decisionmaking process.

A. Food and Drug Administration

FDA protects the public health of the nation as it may be impaired by foods, drugs, biological products, cosmetics, medical devices, radiological products, poisons, pesticides, and food additives. FDA's regulatory functions are to assure that: Foods are safe, pure, and wholesome; drugs, medical devices, and biological products are safe and effective; cosmetics are harmless; all of the above are honestly and informatively packaged; and that exposure to potentially injurious radiation is minimized. The participation of FDA is critical to the Medicare coverage process since, as discussed earlier, FDA approval of drugs, devices, and equipment must precede Medicare coverage in many cases. FDA staff regularly attend HCFA Physicians Panel meetings in an advisory capacity. Likewise, we monitor FDA advisory panel meetings and attend those that relate to potential Medicare coverage issues.

B. Prospective Payment Assessment Commission (ProPAC)

ProPAC was established by Congress when legislation authorizing implementation of the Medicare prospective payment system was enacted. ProPAC was established as a permanent, independent commission with responsibilities related to monitoring and making recommendations relative to improvements in the prospective payment system.

ProPAC has two primary responsibilities. The first is to recommend annually to the Secretary of HHS the appropriate percentage change in Medicare payments for inpatient hospital care. The second is to consult with and recommend to the Secretary necessary changes in classification and weighting of diagnosis-related groups (DRGs) based on scientific evidence available on the impact of new technologies. All national coverage decisions that potentially affect prospective payment rules or rates are routinely referred to ProPAC for its review and comment prior to publishing the decisions as notices in the Federal Register and later as instructions in the Medicare Coverage Issues Manual (HCFA Pub. 6) or other HCFA manuals, or as HCFA Rulings in the Federal Register.

C. National Institutes of Health

NIH serves as the principal biomedical research agency of the Federal Government. Through the support and promotion of biomedical research, NIH seeks to improve the health of the American people by: Increasing the understanding of the processes underlying human health, disability, and disease; advancing knowledge concerning the health effects of interactions between man and the environment; developing methods of preventing, detecting, diagnosing, and treating disease; and disseminating research results for critical review and, ultimately, medical application. In the pursuit of this mission, NIH supports biomedical and behavioral research in this country and abroad, conducts research in its own laboratories, trains promising young researchers, and promotes the acquisition and distribution of medical knowledge.

With its budget for development of new technologies and treatment, NIH is a major supporter of clinical trials, a key component of the technology assessment process. NIH also sponsors and coordinates consensus development conferences through its Office of Medical Applications of Research (OMAR). These conferences are routinely attended by HCFA staff because they deal with technologies that, for the most part, have passed the investigational stage and have diffused into practice. OMAR directs questions on technologies being investigated for Medicare coverage to the knowledgeable institute where the latest available information on that issue can be synthesized quickly. OMAR staff regularly attend our Physicians Panel meetings and inform Panel members of current and future consensus conferences on various topics that might be of interest to the Medicare population. HCFA and OHTA staff often exchange information with NIH staff on current medical developments. Further, OHTA often uses NIH resources as a source of expert opinion on various services under study.

V. Contractor Functions and the Claims Process

A. General

As explained above, the Medicare program covers many medical and health care services, supplies, and procedures in use today, subject to established coverage criteria—the exclusions and limitations in the statute, regulations, and administrative instructions described in section I of this preamble. The claims review process for the Medicare program is designed to identify services that may not be covered. Resolving these issues is usually a matter of deciding whether the service, either in or by itself or under the specific circumstances of a particular use, satisfies the established coverage criteria.

B. Contractor Functions

The separation of the Medicare program into an institutional component (Part A) and a noninstitutional component (Part B) was patterned after a program alignment used by Blue Cross/Blue Shield Associations in paying for services to their subscribers. In order to assure that the Federal health insurance program would benefit from the longstanding experience of health insurance carriers in the private sector, the Secretary decided that most claims-processing and administrative functions for both Part A and Part B of Medicare should be handled by public or private insurance organizations (commercial insurers or Blue Cross/Blue Shield Associations) acting as fiscal agents or contractors for the Medicare program.

The contractors responsible for the administration of hospital insurance or Part A benefits are termed fiscal intermediaries. The major role of the intermediaries is to review and pay claims submitted by providers (such as hospitals, SNFs, and HHAs) for covered services furnished to beneficiaries. The intermediary makes payments for inpatient services under the prospective payment system and makes payments for outpatient services by reviewing submitted cost reports and making reasonable cost determinations following policies set by HCFA.

Under Part B, the contractors are called carriers. Since Part B services are reimbursed primarily on a reasonable charge (as opposed to reasonable cost or the prospective payment system) basis, one of the major functions of carriers is to determine the reasonable charges in their respective areas for each medical care service paid for under the program. Carriers also are responsible for reviewing and paying claims to or on behalf of beneficiaries for the services provided.

The functions performed by Medicare fiscal intermediaries and carriers include utilization review, beneficiary hearing and appeals, professional relations, and statistical activities, in addition to claims review and processing. Currently, there are 48 carriers, 57 intermediaries, and some HMOs and CMPs under contract with HCFA that perform reviews and process claims for their Medicare members. In addition to these contractors, we also contract with PROs.

Before describing the functions of PROs, it is necessary to provide a brief history of utilization review under Medicare. In designing the Medicare program, Congress was concerned about controlling the costs of the program and ensuring that Medicare beneficiares received only those services that were medically necessary. However, Congress also wanted to assure that judgements regarding the medical necessity of specific services would be based on the specific knowledge, skills, and experience that only physicians and related health practitioners could provide. Therefore, Congress initially required that hospitals and SNFs have utilization review committees, staffed by physicians, to review the admissions, duration of stay and professional services furnished to Medicare beneficiaries according to the criteria of medical necessity and most efficient use of available health facilities and services. In 1972, Congress amended the Medicare law to improve the medical review function by establishing a utilization review program that relied upon organizations (Professional Standards Review Organizations (PSROs)) outside of the individual facilities serving Medicare beneficiaries.

In order to improve further the conduct of medical review of Medicare claims, Congress enacted the Peer Review Improvement Act in 1982 and required the Secretary to contract with PROs, which are private entities composed of licensed physicians in a geographical area who are engaged in the practice of medicine and surgery and who represent the practicing physicians in that area. Currently there are 54 PROs. Subject to the terms of its contract, a PRO is responsible for the review of specified professional activities in its area for which payment may be made by Medicare, for the purpose of determining whether: (1) The services are or were reasonable and medically necessary; (2) the quality of the services meets or met professionally recognized standards of health care; and (3) services that are proposed to be furnished or were furnished on an inpatient basis, could be provided effectively on an outpatient basis.

C. Criteria and Procedures for Contractor Coverage Decisions

Contractors make Medicare coverage decisions within parameters set by statutory authority, regulations, and program instructions prepared by HCFA to implement regulations and statutory authority.

If we have issued a national coverage decision, contractors are bound by that decision. If no national coverage decision has been issued, a contractor must decide whether the service in question appears to be reasonable and necessary and therefore covered by Medicare.

As stated previously most of the individual claims processed by Medicare contractors do not raise serious questions about coverage. When questions of coverage do arise, they relate primarily to whether the service was medically necessary for the individual and was furnished in an appropriate manner and setting, rather than to broader coverage issues. Even when a claim for a new, or otherwise questionable, service is received, the contractor is authorized to make reasonable and necessary decisions with respect to the service, in the absence of applicable national policy. These decisions are usually made in consultation with the contractor's own medical staff and local medical specialty groups. It should be noted that, since each contractor makes decisions only for Medicare claims that are submitted to it, coverage of a particular service may vary among contractors. In fact, coverage decisions made by the same contractor may appear to vary from claim to claim reflecting relevant differences in the circumstances in which the service is furnished or the need of the particular patient for that service. This variation is consistent with the legislative intent that the administration of the Medicare program take into account both differences in local medical practice and the types of treatment feasible individual patient situations.

Over time, written guidelines have been issued to Medicare contractors to assist them in making initial decisions as to whether, in individual cases, services are reasonable and necessary and therefore covered under Medicare. In addition to considering the criteria that must be considered when making any coverage decision (that is, the service must be safe and effective, not experimental, and appropriate), Medicare contractors must determine whether the service under consideration is—

- Medically necessary in the particular case and the duration and frequency of the use or application of the service are medically appropriate;
- Furnished in accordance with accepted standards of medical practice; and
- Furnished in a setting appropriate to the patient's medical needs and condition (such as inpatient care at a hospital or SNF, outpatient care at a hospital or physician's office, or home care).

D. Appeals Procedures

Sections 1155, 1869, 1876, 1878 and 1879 of the Act authorize administrative and judicial review for beneficiaries and providers (in certain cases) to challenge certain adverse coverage decisions. Since certain parts of these sections are now under review, a detailed description of their application is not being presented. Refer to the specific sections of the Act for information or appeals procedures.

VI. Analysis of and Responses to Public Comments for April 29, 1987 Notice

In response to the April 29, 1987 notice that we published in the **Federal Register**, we received 62 timely items of correspondence. Of these, 30 were identical letters from health professionals and administrators in facilities providing rehabilitation

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services, two others were from rehabilitation professionals, 10 were from professional associations or councils, six where from Medicare providers (including three from the same provider), three were from law firms, three were from medical equipment suppliers, and one each was from a medical consultant, a management firm, a State Governor, a State office for the handicapped, a Medicaid State agency, and a private individual.

HCFA also received two letters from the Administrative Conference of the United States, one of which enclosed an informational outline of a study of the Medicare coverage decision process that the Administrative Conference has commissioned.

Several of the comments referred to the coverage of or payment for specific services. Because the inent of the notice was to describe the general coverage decisionmaking process and to solicit comments on that process, we have not responded to those comments on the coverage or payment of specific services in this proposed rule.

A. Inconsistent Medicare Contractor Decisions

Comment: Forty of the 62 commenters (including the 30 identical pieces of correspondence) suggested that Medicare contractors should not have the discretion they currently have in making coverage decisions. They argued that inconsistencies between the differenct contractors lead to inequitable treatment of beneficiaries.

Response: We are aware that coverage of a particular service may vary among contractors. This variation is to be expected, we believe, in view of Congressional intent that the Medicare program be administered to some extent by numerous contractors who could make decentralized determinations and take into account differences in local medical practice. We also note that decisions with respect to some services may appear to vary because what is medically necessary for one patient may not be medically necessary for another. Further, we cannot develop guidelines that are sufficiently detailed to encompass all possible coverage decisions. However, in view of the number and consistency of the comments on this issue, we believe that we must take certain steps to improve consistency in contractor coverage decisions. First and foremost, we expect the publication of this proposed rule and subsequent final rule to reduce significantly the inconsistency in contractor coverage decisions, since, as described in greater detail in our responses to other comments below, we are proposing to define the terms "safe" and "effective" (§ 400.202) when used in the context of making a national coverage decison on any health care technology, and to specify the criteria and procedures to be applied by contractors in making coverage decision (§§ 405.380 and 405.381). We also propose to convene annually the medical directors and other officers of all our carriers, intermediaries, and PROs, as well as representatives of our regional offices, to review all aspects of the coverage process including recently issued national coverage decisions. Finally, we are proposing a process for contractors to follow in developing utilizaiton review policy. This should facilitate greater consistency in the standards and criteria used by all carriers and the program which they follow.

B. Define "Reasonable", "Necessary", and "Experimental"

Comment: Several commenters recommended that we define the terms "reasonable," "necessary," "experimental," and other commonly used terms.

Response: We partially agree with the commenters and we have included several definitions in these proposed regulation (§ 400.202) as these terms relate to health care technology. Although we do not define specifically the terms "reasonable" and "necessary," we do specify the criteria that a health care technology would have to meet in order to be considered reasonable and necessary, as well as how the criteria would be applied in the coverage decisionmaking process. We believe that the uniform application of these definitions and criteria by our contractors would reduce inconsistencies in their coverage decisions. We also believe it is important to define in regulations the terms "safe" and "effective," since our definitions differ slightly from those of FDA. That difference has not been clearly stated in the past, giving the public the impression that an FDA finding that a device is safe and effective should be a sufficient basis for Medicare coverage. As discussed in this preamble, safety and effectiveness are not the only criteria applied when deciding whether a given technology can be considered reasonable and necessary. Further, FDA findings of safety and effectiveness focus on the labeled use of a device only, while our decisions may focus on other uses of a device under average conditions of use.

C. Issue Contractor Criteria for Making Decisions

Comment: Several commenters recommended that we issue contractor criteria for making coverage decisions.

Response: In view of the comments that inconsistencies in coverage decisions among Medicare contractors are related in part to a lack of clear criteria, we propose to define the criteria and their application in regulations (§§ 405.380 and 405.381).

D. Coverage Criteria

Comment: One commenter, in recommending that our coverage criteria be explicit, also suggested that we specify that neither experimental status nor cost is a criterion on which coverage decisions are made. It was argued that we cannot use criteria for coverage that extend beyond what the medical experts think are reasonable and necessary for an individual's medical needs, and that the statute does not authorize us to deny coverage of a service on the basis that it is experimental or not cost-effective.

Response: We believe that experimental services cannot be considered reasonable and necessary since, by definition, their safety and effectiveness are not established. As discussed in this preamble, the reasonable and necessary language of the law permits the inclusion of costs as a criterion in making Medicare coverage decisions. We invite comments on the issue of cost-effectiveness.

E. Absence of Public Input and Comment in the Coverage Process

Comment: Several commenters suggested that the public be given the opportunity to provide input at every step of the coverage process, while others focused their requests for public input on selected steps only.

Response: While we are in basic agreement with the value of public input, we are concerned that public input at every step of the process through notice and comment in the **Federal Register** would delay significantly a process that many of the same commenters argue is already too lengthy. We are interested in receiving public comment on this issue and specific suggestions on how to balance these two conflicting objectives. Our responses to suggestions for public input at specific points in the process follow.

Comment: It was suggested that the public should have the opportunity to petition us to consider a service for a coverage decision and that we routinely publish the agendas of HCFA Physicians Panel meetings.

Response: Under our current process, requests from the general public are handled in the same manner as any other request for a coverage decision and, if they meet our criteria for a national coverage decision, may be placed on the agenda of the HCFA Physicians Panel for its consideration. We agree that routine publication of the Panel agenda would be desirable. While the fact that we frequently add agenda items 3 to 4 weeks before the meeting precludes providing timely notification to the public through the **Federal Register**, we plan to identify other more appropriate and timely vehicles for announcing upcoming HCFA Physicians Panel meeting agenda to the public.

Comment: Commenters expressed concern that there is no assurance that knowledgeable professionals are involved in the process and suggested that a health professional familiar with the particular area of health care be a member of the Panel. Other commenters suggested that HCFA Physicians Panel meetings be open to public participation.

Response: As described earlier, the HCFA Physicians Panel has regular representation from the medical and scientific experts at FDA and NIH to contribute specialized knowledge on all agenda items. In response to the comments that the Panel meetings be open to the public, we believe that the current HCFA Physicians Panel process should be modified. We do believe the functioning of the Panel could be improved by allowing some public input. We propose to permit the presentation, by interested parties, of information related to agenda items prior to deliberations by the Panel. We believe this process would assure that the Panel hear from, and have the ability to submit questions to, a health professional familiar with the particular area of consideration, while continuing to allow it the necessary benefits of a closed decisionmaking opportunity.

Comment: It was suggested we solicit public comments on OHTA assessments and coverage recommendations before we make a final coverage decision.

Response: We are opposed to this suggestion because we believe it would lead to considerable delay in a final decision on Medicare coverage with no real benefit. The public is given considerable notice and opportunity to provde input to OHTA during OHTA's assessment process. OHTA's recommendations to HCFA, based on that information, are only a portion of the material that is considered by HCFA in arriving at its final decisions on coverage of a specific service. It is at the time of a HCFA decision, not OHTA recommendation, that public comment would have the greatest value for both the commenters and HCFA. As discussed below, HCFA does solicit public comment on its Medicare coverage decisions through the **Federal Register** when the benefit of public input is sufficient to outweigh the substantial delay of making a final decision.

Comment: It was also suggested that we make available through public notice and comment all coverage decisions on health care technology before issuing them in HCFA manuals.

Response: We are opposed to this procedure affecting all coverage decisions, primarily because it would routinely result in substantial delay in the issuance of final coverage decisions. As noted, we do seek public comment before finalizing a Medicare coverage decision when we believe that the value gained from the public comment process outweighs the delay in making a final decision. We also have requested comment on our decisions when controversy in the scientific community is intense and the impact of the decision on the public and medical community is profound (for example, coverage of heart transplants). Otherwise, we count on gaining the public's views on coverage issues through the opportunity provided in the OHTA assessment process, as well as through public participation prior to the HCFA Physician Panel deliberations. We believe this approach would provide a mechanism for informing the public of national coverage decisions on health care technology without involving the extensive delay associated with formal notice and comment rulemaking.

Comment: Two commenters suggested that we publish coverage decisions on health care technology in medical journals and other publications of the health care industry since our manual instructions are not readily available to beneficiaries, practitioners, and providers.

Response: We agree that our decisions should be more readily available. Therefore, in addition to the publication of quarterly notices in the **Federal Register** listing coverage decisions (§ 405.382(g)), we propose to make national coverage decisions available to the public as soon as they are issued through the **Federal Register**.

The various medical specialty societies and organizations can disseminate this information to their members through the various journals and publications of their organizations. Also, we are prepared to work closely with national organizations representing beneficiaries and physicians to apprise these organizations of our coverage decisions and to work with them to develop effective means to inform their constituencies about national coverage decisions and Medicare coverage policy in general.

F. Composition of HCFA Physicians Panel

Comment: One commenter suggested that a representative of FDA be a member of the Physicians Panel. Another commenter suggested that a representative from the prepaid health care industry be added.

Response: At the present time, FDA and NIH staff routinely attend HCFA Physicans Panel meetings and actively participate in discussions. We do not believe that a representative from the prepaid health care industry needs to be added to the Panel since we do not specifically include representatives of provider groups. The Physicians Panel is composed of staff physicians and other health professionals in HCFA's central office and counterparts from PHS who have had experience with a variety of health care delivery systems.

G. Time Frame for Process

Comment: Several commenters suggested that each step in the process of making national coverage decisions be limited to a certain number of days. One commenter also suggested that we establish a two track review system that distinguishes technologies that have had Federal review based on documentation of safety and effectiveness from technologies with no such review and that the time frame for these two tracks be different. The commenter suggested reviewing devices accepted by FDA following review of a PMA or a section 510(k) application supported by clinical data on a faster track.

Response: We do not believe it would be feasible to place time limitations on each step of the process. Generally, we cannot anticipate the documentation needs that may apply at the various stages of the process or predict the time required to gather documentation at each stage. Moreover, the data that must be reviewed and analyzed vary so widely from issue to issue that it is not possible to establish standard time frames. Also, the level of evidence for safety and effectiveness may vary, depending on whether a device or procedure is a treatment of last resort or otherwise involves new lifesaving techniques. We do, however, agree that our coverage decisionmaking could be expedited if the service under consideration has received, or is soon expected to receive, FDA acceptance under the PMA or the section 510(k) processes. In that regard, it is our

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intention to expedite assessments for breakthrough, well-researched devices and procedures.

H. Improving Coordination with FDA.

Comments: One commenter suggested that for FDA-regulated technologies, HCFA and OHTA review begin when the FDA advisory panel approves a technology since this panel decision indicates a high likelihood of FDA approval. The commenter believes that by starting HCFA and OHTA reviews at the point of approval by the FDA advisory panel, delays would be reduced and agency decisionmaking would be better coordinated.

Response: We agree with this suggestion but only under certain circumstances. First, we do not believe that we should review automatically every technology that is favorably reviewed by an FDA advisory panel since in many cases some of these technologies do not meet our criteria for consideration of a national coverage decision. Second, not all manufacturers would be interested in having their technology subjected to the Medicare coverage process.

Consequently, we prefer to consider for a national coverage decision only those technologies selected by us or referred to us by physicians, manufacturers, or other interested parties. We are prepared to begin that review following a favorable FDA advisory panel recommendation, or earlier if warranted, by placing the issue on the agenda of the next available HCFA Physicians Panel meeting. Also, so that we can better coordinate our national coverage decisionmaking process with FDA, we plan to meet with them on a quarterly basis to discuss issues of mutual concern and to facilitiate our review of technologies under FDA review that potentially may affect the Medicare beneficiary population. We wish to note that we have considered some services for a national coverage decision before they received formal FDA approval. For example, we requested assessments of magnetic resonance imaging and automatic implantable cardioverter/defibrillators many months before they were approved for marketing by FDA.

I. Coverage Exclusions Deter Research

Comment: One commenter suggested that the exclusion of coverage for a service deters further research into the application of that service, making it more difficult to accumulate the data needed for reconsideration or reevaluation.

Response: We recognize that further research may be discouraged if a service is excluded from Medicare coverage, but we cannot approve procedures or devices lacking evidence of safety and effectiveness simply in order to provide a basis for developing that evidence. This approach would be contrary to the statutory provision that we pay only for a service that is determined to be "reasonable" and "necessary".

J. Interim Payments during the Coverage Decisions Process

Comment: One commenter suggested that we establish an interim coverage status allowing payment for certain technologies during the coverage decisions process.

Response: We are opposed to providing, on an interim basis, a national coverage decision of any service during our coverage decisions process because to do so could pose serious legal and practical problems under section 1862(a)(1)(A) of the Act. Section 1862(a)(1)(a) precludes Medicare payment for a service unless it is reasonable and necessary. We believe that reaching an interim decision, which would effectively require us to determine that the service was reasonable and necessary would, as a practical matter, require us to undertake a level of full review virtually tantamount to the review required for making a final national coverage decision before we have the benefit of considering all relevant factors. This procedure would be cumbersome, redundant, and potentially confusing to the public. Moreover, it would place an undue burden on the Medicare program, which could essentially be required to surmount a higher hurdle by finding on full review that a service it has approved on an interim basis as reasonable and necessary does not now meet that standard. On the other hand, we also are opposed to issuing interim noncoverage instructions, since to do so could eliminate the availability of potentially valuable services to our beneficiaries when there may be some credible indications that the service may meet the reasonable and necessary criteria, at least in particular circumstances. Consequently, we believe the prudent approach to the interim coverage of issues under national consideration is to leave the decisionmaking in the hands of the local contractors, who can take into account local medical practice and the unique circumstances of an individual case.

K. Carrier Screens

Comment: Several commenters raised the issue of contractor "screens" and objected to the use of screens for coverage decisions and denials without explanations or requests for additional information. Others objected to the fact that they are generally unaware of these screens and their medical rationale and thus are unable to tailor their services to beneficiaries to comply with screens that comport with good medical practice.

Response: In order to facilitate claims processing and identify possible overutilization, Medicare contractors have developed "screens". These screens alert the contractor that services or procedures performed by a provider have exceeded a treatment norm set by the contractor; that is, it does not fall within a certain predetermined range. When this occurs, the claim for services can then be reviewed more intensely to determine if further medical evidence is necessary to process the claim properly. In general, carriers seek physician consultation from appropriate specialities when developing screens. The policy and related documentation requirements are then communicated to physicians prior to implementing them.

We received comments that some contractors may be developing or applying the screens inappropriately. We therefore have proposed a process for contractors that would involve the local medical community in the development of utilization review policy (§ 405.383(a)). This proposed process would apply to the development of new utilization review policy only; it would not apply to any existing utilization review policy. The local medical community would be notified of the type of information that would be required to be submitted with a claim for any service subject to review. However, they would not be informed of certain operational parameters of the policy, such as the number of claims over a given period of time that would be paid without manual review, since to do so could encourage over-utilization based on the knowledge that claims would not be reviewed.

In response to the concerns that some claims are denied inappropriately, we propose to prohibit the denial of claims that are the subject of medical review in accordance with a utilization review policy without review of all relevant information submitted with the claim (§ 405.383(b)).

L. Monitoring Contractor Performance

Comment: One Commenter recommended that we leave our current process unchanged and direct our attention to the reeducation of claims processors and the careful monitoring of our contractors.

Response: We have not accepted this comment. The claims processing personnel of our contractors are educated on an ongoing basis and our contractor evaluation process undergoes constant scrutiny and revision when needed.

M. Physician Review of Adverse Decisions

Comment: One commenter asked for clarification of the following statement on page 15561 of the April 29, 1987 Federal Register: "Only a physician can make an adverse determination and only after consulation with the attending physician." It is unclear to the commenter whether this requirement applies only to PRO decisions or to decisions made by other contractors as well. The commenter believes the requirement should apply to all contractors and all aspects of review under the Medicare program.

Response: We regret that the notice was not clear concerning this statement. The statement as written relates only to PRO decisions and is based on section 1154(a)(2) of the Act. The issue is complicated by the fact that PRO medical necessity decisions are binding on the carriers and intermediaries. However, not all denials are made by the PROs. Except for PRO decisions, there is no statutory requirement that only a physician can make an adverse decision. However, in practice, any claim initially denied by carrier or intermediary review staff generally will be reviewed by qualified medical review staff using written guidelines developed by a physician if the denial is appealed or the claim is resubmitted with additional documentation. We believe this process is a reasonable one since mandatory physician review of all denials by carriers and intermediaries would be prohibitively expensive.

N. Equipment and Coverage for Long Term Disabilities

Comment: Several commenters complained that the program does not cover and pay for the latest equipment needed by the long-term disabled individual.

Response: It is not clear why commenters believe that long-term disabled individuals are denied the benefits of the latest and best technology by the Medicare program. Our program regulations for the coverage of durable medical equipment (DME) and other medical supplies are the same for all Medicare beneficiaries, whether they are among the long-term disabled, the chronically ill, or the acutely ill. It is true, however, that new equipment might not be covered by Medicare as soon as it is introduced. At a minimum, equipment that requires marketing approval by the FDA must receive that approval. In addition, DME must be shown to meet the Medicare program's definition of DME, that is, equipment that (1) can withstand repeated use, (2) is primarily and customarily used to serve a medical purpose, (3) generally is not useful to a person in the absence of an illness or injury, and (4) is appropriate for use in the home.

With respect to the concerns expressed about our alleged willingness to pay for the "best" equipment available (which, in many circumstances, is the most expensive), our policy is a rather straightforward one, and one that we believe does not require revision. An item of durable medical equipment may have certain convenience or luxury features that make it more expensive than a standard item; that is, one which will adequately meet the medical needs of the patient. The reasonable charge for the more expensive item cannot exceed the reasonable charge for the item that is adequate for the patient's medical needs. We will base the reasonable charge for a covered service on the more expensive model only when the special features of the more expensive model are medically reasonable and necessary for the beneficiary.

O. Confidentiality of Data

Comment: One commenter recommended that we publish our policies on confidentiality to facilitate submission of sensitive, not-yet-published research data that document safety and effectiveness.

Response: HCFA regulations regarding the Freedom of Information Act appear in 42 CFR Part 401 and supplement the more general Department regulations that appear at 45 CFR Part 5. These regulations implement Executive Order 12600, "Predisclosure Notification Procedures for Confidential Commercial Information", signed June 23, 1987.

In accordance with these regulations, to facilitate the identification of confidential commercial material, organizations are encouraged to mark relevant sections of submitted material (individual pages, reports, charts, etc.) as "confidential". Blanket statements claiming that all submitted material is confidential should be avoided. Instead, organizations should clearly mark all specific portions of submitted material that in fact contain confidential commercial information.

VII. Proposed Uncodified Changes to the Current Coverage Decisions Process

As a result of our assessment of necessary revisions and in response to the public comments we received on the April 29, 1987 Federal Register notice, we propose to make the following changes in our coverage decisionmaking process, which we believe do not require codification in the Code of Federal Regulations (CFR).

A. HCFA Physicians Panel

We propose to identify appropriate vehicles for announcing the date, and agenda of upcoming HCFA Physicians Panel meetings.

B. Improved Coordination and Communication

We propose to convene an annual meeting of the medical directors and other officers of all our carriers, intermediaries, HMOs, CMPs, and PROs as well as representatives of our regional offices, to review all aspects of the coverage process including recently issued national coverage decisions. This should facilitate and reduce any inconsistencies in the implementation of national coverage decisions and allow for the identification of additional issues for which national coverage decisions may be warranted. We also plan to meet with FDA on a quarterly basis to discuss issues of mutual concern and to facilitate our review of health care technologies under their review that may potentially impact on the Medicare beneficiary population.

VIII. Regulatory Impact Statement

Executive Order (E.O.) 12291 requires us to prepare and publish an initial regulatory impact analysis for any proposed regulation that meets one of the E.O. criteria for a "major rule", that is, that would be likely to result in : an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, government agencies, or geographic regions; or, significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In addition, we generally prepare an initial regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), unless the Secretary certifies that a proposed regulation would not have a significant economic impact on a substantial number of small entities. Also, section 1102(b) of the

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Social Security Act requires the Secretary to prepare a regulatory impact analysis if the proposed rule may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis also must conform to the provisions of section 606 of the RFA.

This proposed regulation would specify the process through which we make decisions as to whether to cover particular services under Medicare. These decisions are published in the Medicare Coverage Issues Manual and may be published in other HCFA manuals or as HCFA Rulings in the **Federal Register**. This proposed regulation would foster the careful consideration of available scientific and medical information in the coverage determination process. Accordingly, it would serve to ensure that all Medicare coverage determinations are consistent with our statutory obligations. The coverage decision process set forth in this proposed rule would thus of itself, neither promote nor hinder any specific economic outcomes (as opposed to any particular coverage decision, which might have a substantial economic impact). Furthermore, most provisions of this proposed rule conform to the Medicare coverage determination process that has been in place for many years. Therefore this proposed regulation, in itself, would have no direct effect on the economy or on Federal or State expenditures, and no threshold criteria under E.O. 12291 would be exceeded. Consequently, an initial regulatory impact analysis has not been prepared. In addition, we have determined, and the Secretary certifies, that this proposed rule would not have a significant economic impact on a substantial number of small entities, and this proposed rule would not have a significant impact on the operations of a substantial number of small rural hospitals. We have, therefore, not prepared an initial regulatory flexibility analysis.

IX. Information Collection Requirements

These proposed changes do not impose information collection requirements. Consequently, they need not be reviewed by the Office of Management and Budget (OMB) under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

X. Responses to Comments on this Proposed Rule

Because of the large number of comments we receive on proposed regulations, we cannot acknowledge or respond to them individually. However, in preparing the final rule, we will consider all comments received timely and respond to the major issues in the preamble to that rule.

List of Subjects

42 CFR Part 400

Grant programs—health, Health facilities, Health maintenance organizations (HMO), Medicaid, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 405

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Nursing homes, Reporting and recordkeeping requirements, Rural areas, X-rays.

For the reasons set forth in the preamble, 42 CFR Chapter IV would be amended as follows:

I. 42 CFR Part 400, Subpart B, is amended as set forth below:

PART 400—INTRODUCTION; DEFINITIONS

Subpart B—Definitions

1. The authority citation for Part 400 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh) and 44 U.S.C. Chapter 35.

§ 400.200 [Amended]

2. Section 400.200 is amended by adding the definition of "PHS" in alphabetical order to read as follows:

* * * * *

"PHS" stands for the Public Health Service.

* * * * *

3. Section 400.202 is amended by adding the definitions of "Effective", "Experimental", "Health care technology", "National coverage decision", and "Safe" in alphabetical order to read as follows:

§ 400.202 Definitions specific to Medicare.

* * * * *

"Effective" means the probability of benefit to individuals in a defined population from a medical technology applied for a given medical problem under average conditions of use.

* * * * *

"Experimental" means a technology that should be confined to a research setting under which human or animal subjects are assigned, in accordance with predetermined rules. A technology that is experimental is not considered safe or effective.

"Health care technology" refers to any discrete and identifiable regimen or modality used to diagnose or treat illness, prevent disease, maintain patient well-being, or facilitate the provision of health care services.

* * * * *

"National coverage decision" as it relates to health care technology means a statement of national policy under section 1862(a)(1) of the Act regarding the coverage status of a specific service made by HCFA. The term has the same meaning as "national coverage determination" that appears in section 1869(b)(3) of the Act.

* * * * *

"Safe" means a judgement of the acceptability of relative risk in a specified situation.

* * * * *

II. 42 CFR Part 405, Subpart C, is amended as set forth below:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

Subpart C—Exclusions, Recovery of Overpayment, Liability of a Certifying Officer, Suspension of Payment, and Coverage Decisions

1. The authority citation for Subpart C is revised to read as follows:

Authority: Secs. 1102, 1862, 1871, and 1887 of the Social Security Act as amended (42 U.S.C. 1302, 1395y, 1395hh, and 1395xx).

2. The title of Subpart C is revised to read as follows: Subpart C—Exclusions, Recovery of Overpayment, Liability of a Certifying Officer, Suspension of Payment, and Coverage Decisions.

3. A new undesignated center leading and new §§ 405.380 through 405.383 are added to read as follows:

Criteria and Procedures For Making Medical Services Coverage Decisions That Relate To Health Care Technology

§ 405.380 Criteria for Medicare coverage of reasonable and necessary services.

(a) *General rules and process.* (1) For purposes of this section, the use of the word "services" means health care technologies as defined in §405.202.

(2) In the absence of statutory bars, a service is covered by Medicare (under section 1862(a)(1) of the Act) only if the service is reasonable and necessary for the diagnosis or treatment of illness or injuryor to improve the functioning of a malformed body member. In determining whether this coverage requirement is met, a service is considered reasonable and necessary with reference to the following criteria if—

(i) The service if safe and effective.

(ii) The service is not experimental or investigational.

(iii) The service is cost-effective.

(iv) The service is appropriate.

(3) HCFA makes national coverage decisions in accordance with § 405.382. Medicare carriers, intermediaries HMOs, CMPs, and PROs make coverage decisions, in the absence of national coverage decisions by HCFA, in accordance with § 405.381.

(b) *Application of the criteria for making coverage decisions.* Among the criteria described in paragraph (a) of this section for making coverage decisions, safety and effectiveness are the key criteria. A service that is determined not to be safe and effective is not covered regardless of whether it satisfies the other criteria. A service that is determined to be safe and effective may or may not be covered depending on whether the other criteria are met. In determining whether the criteria are met, we will consider the following:

(1) *Safety and effectiveness.* (i) A service may be determined to be safe and effective if it is generally accepted in the medical community as safe and effective in the setting and for the condition for which it is used, or proven to be safe and effective based on authoritative evidence.

(ii) Even if a service is generally accepted in the medical community as safe and effective for some conditions, evidence may support a conclusion that the service has not been shown to be safe and effective for all conditions, and in these cased Medicare does not cover the service for those conditions.

(iii) To be considered safe and effective, a service must be furnished in a setting commensurate with the patient's medical needs and condition.

(iv) To be considered safe and effective, a service must be furnished by personnel who are qualified to furnished the service by virtue of education, training, experience, certification, or licensure.

(v) When evaluating breakthrough medical or surgical procedures, the standards for safety and effectiveness are less stringent. The more severe and life threatening the illness or injury process for which a particular treatment is applied, the more acceptable a relatively less safe technology may be when no safer or more effective technologies are available. In these cases, treatments whose clinical effectiveness has not been conclusively demonstrated may be determined to be reasonable and necessary if no safer or more effective treatments are available. However, in certain cases, we may provide for coverage but impose such limitations as facility or patient selection criteria, or a provision to later revise a coverage policy based on subsequent data collection.

(vi) Medical devices that have been approved for marketing by FDA on the basis of a premarket approval application (under 21 U.S.C. 360c) or a section 510(k) application submitted with clinical data are considered safe and effective for Medicare purposes when used for the conditions prescribed, recommended, or suggested in the labeling of the devices.

(vii) Drugs and biologicals approved for marketing by FDA are considered safe and effective for Medicare purposes when used for indications specified in their labeling.

(2) *Experimental or investigational considerations.* (i) A service that is furnished for research purposes in accordance with predetermined rules is considered experimental or investigational and is not covered by Medicare.

(ii) Except for certain drugs used in treating terminally ill cancer patients that are identified as Group C cancer drugs distributed by the National Cancer Institute, a drug or biological product that has not been approved under a new drug application for marketing by FDA is considered experimental or investigational by HCFA and is not covered by Medicare.

(iii) A medical device that has not been approved by FDA (under 21 U.S.C. 360k) is considered experimental or investigational and is not covered by Medicare.

(iv) A service, other than breakthrough medical or surgical procedures described in paragraph (b)(1)(v) of this section, that is not used widely because there is inadequate evidence of safety and effectiveness is considered experimental or investigational and is not covered by Medicare.

(3) *Cost-effectiveness.* A technology is considered cost-effective if it is—

(i) Very expensive to the program, but provides significant medical benefits not otherwise available;

(ii) Less costly and at least as effective as an alternative covered intervention;

(iii) More effective and more costly than a covered alternative, but the added benefit is significant enough to justify the added cost; and

(iv) Less effective and less costly than an existing alternative, but a viable alternative for some patients.

(4) *Appropriateness.* (i) A service is considered appropriate if it is furnished in a setting commensurate with the patient's medical needs.

(ii) A service is considered appropriate if it is furnished by qualified personnel.

§ 405.381 Procedures for Medicare carriers, intermediaries, HMOs, CMPs, and PROs in making coverage decisions.

(a) *Presence of a national coverage decision.* In their review of claims for payment, Medicare contractors (carriers, intermediaries, HMOs, CMPs, and PROs) are bound by the statute, regulations, and all HCFA administrative coverage issuances, including all national coverage decisions.

(b) *Absence of a national coverage decision.* In the absence of a national coverage decision, Medicare contractors determine whether the service in question appears to be reasonable and necessary and, therefore, covered in accordance with § 405.380(a)(2).

(c) *Referral of a national coverage decision.* If a Medicare contractor identifies a service for which there appears to be questions of possible national significance in accordance with § 405.382(a), but for which there is no applicable HCFA national coverage decision, the contractor must refer the service to HCFA for review in accordance with guidelines issued to them by HCFA.

(d) *PRO medical necessity determinations.* Medicare carriers and intermediaries are bound by medical necessity determinations of local PROs, under section 1154 of the Act and Part 466 of this title with respect to the application or use of a covered service in a particular case and with respect to services for which HCFA has not issued a national coverage decision.

(e) *Other considerations.* In applying the criteria for making coverage decisions described in § 405.380(a) in individual cases, Medicare carriers, intermediaries, HMOs, and CMPs may specifically consider, among other factors, whether the service is—

(1) Medically necessary in the particular case and whether the amount, duration and frequency of use or application of the service are medically appropriate;

(2) Furnished in accordance with accepted standards of medical practice; and

(3) Furnished in a setting appropriate to the patient's medical needs and condition (such as inpatient care at a hospital or SNF, outpatient care at a hospital or physician's office, or home care).

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§ 405.382 HCFA procedures for making national coverage decisions.

This section sets forth the procedures and criteria that HCFA uses to implement section 1862(a)(1)(A) of the Act by making national coverage decisions regarding whether, and to what extent, specific medical services are covered under Medicare.

(a) *Identification of health care technologies.* HCFA may identify a specific health care technology for which a national coverage decision is made under this section if there are no statutory bars to coverage of the service and one or more of the following factors is present:

(1) The service is likely to be used in more than one region of the country.

(2) The service is likely to represent a significant expense to the Medicare program.

(3) The service has the potential for rapid diffusion and application.

(4) There is substantial disagreement among experts regarding the safety, effectiveness, or appropriateness involved in the use of a service.

(5) The service represents a significant advance in medical science.

(6) The service represents a new product, that is, a device, drug, or procedure for which there is no similar technology already covered under Medicare.

(7) The service has been subject to inconsistent coverage decisions by contractors or regional offices and a conflict can only be resolved by a national decision.

(8) The service that was "commonly accepted" by the medical profession has become outmoded or otherwise not in the public's interest.

(b) *HCFA Physicians Panel.* HCFA secures background information and expert opinion from qualified medical and professional sources regarding the criteria set forth in § 405.380. HCFA presents this information to the HCFA Physicians Panel for a recommendation regarding whether to refer the issue to PHS on an inquiry basis or for a full assessment, or whether to leave the coverage judgment to the discretion of the individual Medicare contractor. The Panel is an internal advisory organization, composed of physicians and other health professionals in HCFA's Central Office and counterparts from PHS, that periodically meets in closed session. Presentations by interested parties may be made prior to the Panel's closed meeting.

(c) *PHS process for inquiries and assessments.* When HCFA refers an issue to PHS as an—

(1) Inquiry, PHS researches the issue and forwards any available information on that issue to HCFA.

(2) Assessment, PHS researches the issue, publishes a notice in the **Federal Register** and seeks public comment, consults as necessary with professional individuals and organizations, performs the necessary analysis and assessment, formulates a recommendation as to Medicare coverage and a rationale for that recommendation, and forwards it to HCFA for a coverage decision, as needed.

(d) *HCFA decision regarding coverage.* After review of PHS' recommendation and any other material that HCFA deems appropriate, HCFA decides whether to issue a national coverage decision. If it decides to issue a decision, it announces that decision and the rationale for it under § 405.382(g).

(e) *Notification to requesting party.* HCFA notifies in writing any party that requests its final coverage decision and supporting rationale.

(f) *Right to reconsideration of a national coverage decision.* Any party may request a reconsideration of a determination that a national coverage decision is not warranted under paragraph (a) of this section.

(g) *HCFA announcement of national coverage decisions.* HCFA announces national coverage decisions that relate to health care technology through—

(1) Issuances in the Coverage Issues Manual (HCFA Pub. 6), other HCFA manuals to Medicare contractors, and as HCFA Rulings in the **Federal Register** (when appropriate); and

(2) Quarterly notices published in the **Federal Register** that list all Medicare manual instructions including national coverage decisions.

(h) *HCFA reevaluation of a national coverage decision.* (1) HCFA may reevaluate a service for which a national coverage decision has been made under this section. A reevaluation ordinarily occurs only when significant new information or evidence becomes available that was not available at the time the previous national coverage decision was made.

(2) If HCFA determines under paragraph (g)(1) of this section that coverage of a service, for which a national coverage decision has been made under this section, should be withdrawn, it publishes, in the **Federal Register**, for notice and comment that the service is no longer covered.

§ 405.383 Development of utilization review policy.

(a) When developing utilization review policy to identify claims for services that may need review for medical necessity prior to payment, Medicare carriers and intermediaries must solicit comments (and allow at least a 30-day comment period) from the local medical community (for example, State medical associations or specialty societies) on such factors as appropriate clinical indications and settings for the services under consideration. Upon receipt of comments, carriers and intermediaries must notify the local medical community 30 days before implementing the policy of their responses to the comments, the final policy, and the documentation requirements. The operational parameters of the policy however, will not be disclosed.

(b) Claims subject to medical review in accordance with utilization review policy may not be denied without review of all relevant information submitted with the claim.

(Catalog of Federal Domestic Assistance Program, No. 13.773, Medicare Hospital Insurance; No. 13.774, Medicare Supplementary Medical Insurance)

Dated: September 2, 1988.

William L. Roper,

Administrator, Health Care Financing Administration.

Approved: December 15, 1988.

Otis R. Bowen,

Secretary.

[FR Doc. 89-1865 Filed 1-27-89; 8:45 am]

BILLING CODE 4120-01-M

DEPARTMENT OF DEFENSE

48 CFR Parts 219, 225, and 252

Department of Defense Federal Acquisition Regulation Supplement; Implementation of Section 1207 of Pub. L. 99-661 and Section 806 of Pub. L. 100-180; Contracting With Small Disadvantaged Business Concerns

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule (extension of comment period).

SUMMARY: The Defense Acquisition Regulatory (DAR) Council is considering a revision to the Defense Federal Acquisition Regulation Supplement (DFARS), Parts 219, 225, and 252, Contracting with Small Disadvantaged Business Concerns. DFARS coverage was published as a proposed rule for public comment on December 8, 1988 (53 FR 49577). The original date for receipt of public comments was January 9, 1989. The DAR Council has decided to extend the period for public comment on this proposed coverage until February 9, 1989 to accommodate the requests of several interested parties.

DATE: Comments should be received on or before February 9, 1989 to ensure their consideration in formulating a final rule. Please cite DAR Case 88-69 in all correspondence related to this issue.

ADDRESS: Interested parties should submit written comments to: Defense Acquisition Regulatory Council, ATTN: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, ODASD(P)/DARS, c/o OASD (P&L) (M&RS), Room 3D139, The Pentagon, Washington, DC 20301-3062.

FOR FURTHER INFORMATION CONTACT: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, (202) 697-7266.

Charles W. Lloyd,

Executive Secretary, Defense Acquisition Regulatory Council.

[FR Doc. 89-2012 Filed 1-27-89; 8:45 am]

BILLING CODE 3810-01-M

GENERAL SERVICES ADMINISTRATION

48 CFR Part 517

[GSAR Notice No. 5-236]

General Services Administration Acquisition Regulation; Multiyear Contracting and Options

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice invites comments on a proposed change to the General Services Administration Acquisition Regulation (GSAR) that would incorporate the substance of class deviations that authorize (1) not including FAR clauses 52.217-1 and 52.217-2 when issuing multiyear contracts, as authorized in the Federal Property and Administrative Services Act, for maintenance and repair of fixed equipment in federally-owned buildings, utility service or leases of real property, and (2) incorporating options in elevator/escalator maintenance contracts that provide an initial 3-year maintenance period with two options of 3 years each.

DATE: Comments are due in writing on or before March 1, 1989.

ADDRESS: Comments should be addressed to Ms. Marjorie Ashby, Office of GSA Acquisition Policy and Regulations (VP), 18th & F Streets, NW., Room 4026, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Shirley Scott, Office of GSA Acquisition Policy and Regulations, (202) 523-4765.

SUPPLEMENTARY INFORMATION:

A. Background

The Director, Office of Management and Budget, by memorandum December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. This exemption applies to this proposed rule.

B. Regulatory Flexibility Act

The GSA certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The proposed regulation would authorize not including a limitation of price and contractor obligation or cancellation of items clause in GSA multiyear contracts authorized by the Federal Property and Administrative Services Act. If the contract is no longer needed or funds are not available to complete the contract, the contract would be terminated for convenience and the contractor paid for services rendered in accordance with the termination clause in the contract. The proposed rule would also provide for award of 3-year elevator/escalator maintenance contracts that include two options of 3 years each (a total of 9 years). Contractors will be able to make greater commitment and investment in the maintenance contracts. Based on the above, no regulatory flexibility analysis has been prepared.

C. Paperwork Reduction Act

This proposed rule does not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501, et seq.

List of Subjects in 48 CFR Part 517

Government procurement.

It is proposed that 48 CFR Part 517 be amended as follows:

PART 517—SPECIAL CONTRACTING METHODS

1. The authority citation for 48 CFR Part 517 continues to read as follows:

Authority: 40 U.S.C. 486(c).

2. Subpart 517.1 is added to read as follows:

Subpart 517.1—Multiyear Contracting

517.105 Solicitation provisions and contract clauses.

Inclusion of FAR clauses 52.217-1, Limitations of Price and Contractor Obligations, and 52.217-2, Cancellation of Items, is not required for multiyear contracts authorized by the Federal Property and Administrative Services Act for maintenance and repair of fixed equipment in Federally-owned buildings and utility services.

Subpart 517.2—Options

3. Section 517.204 is added to read as follows:

517.204 Contracts.

When a repair and alterations contract consists primarily of the remodeling (refurbishing or replacement) of elevators/escalators in Federally-owned buildings, the contracting officer may include a 3-year requirement for maintenance of the elevator/escalator equipment to be replaced/remodeled. The contracting officer may also include up to two options of 3 years each for elevator/escalator maintenance (total of 9 years).

Dated: January 16, 1989.

Richard H. Hopf, III,

Associate Administrator for Acquisition Policy.

[FR Doc. 89-1916 Filed 1-27-89; 8:45 am]

BILLING CODE 6820-61-M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Ch. II

[FRA Docket No. RSCG-3; Notice No. 4]

Grade Crossing Signal System Safety

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Advance notice of proposed rulemaking; extension of comment deadline.

SUMMARY: On November 23, 1988, FRA published in the **Federal Register** an Advanced Notice of Proposed Rulemaking (ANPRM) (53 FR 47554) on grade crossing signal system safety and scheduled a public hearing to be held on December 14, 1988. Because all interested parties could not be heard in one day, the public hearing was extended to two days and rescheduled for December 19 and 20, 1988. The deadline for filing written comments in this proceeding remained January 4, 1989.

In responding to a request by the Association of American Railroads, FRA extended the comment period to January 17, 1989 for receipt of written comments in this proceeding.

The Brotherhood of Railway Signalmen has requested a further extension of 45 days in which to provide

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additional information. In an effort to provide interested parties with as much time as possible to provide information in this proceeding, FRA is extending the comment period to February 1, 1989. No further extensions will be granted in this proceeding.

DATES: Written comments must be received by close of business on February 1, 1989. Comments received after that date will be considered to the extent possible without incurring additional delay or expense.

ADDRESSES: Written comments should be addressed to the Docket Clerk, Office of Chief Counsel, RCC–30, Room 8201, Federal Railroad Administration, 400 Seventh Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Mark Tessler, Office of Chief Counsel, Federal Railroad Administration, 400 Seventh Street, SW., Washington, DC 20590 (telephone: (202) 366–0628).

Issued in Washington, DC, on January 23, 1989.

John H. Riley,

Administrator.

[FR Doc. 89–2190 Filed 1–27–89; 8:45 am]

BILLING CODE 4910–06–M

Notices

Federal Register
Vol. 54, No. 18
Monday, January 30, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 89–005]

Receipt of Permit Applications for Release into the Environment of Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: By this notice, we are advising the public that four applications for permits to release genetically engineered organisms into the environment are being reviewed by the Animal and Plant Health Inspection Service. The applications have been submitted in accordance with 7 CFR Part 340, which regulates the introduction of certain genetically engineered organisms and products.

FOR FURTHER INFORMATION CONTACT: Mary Petrie, Document Control Officer, Biotechnology, Biologics, and Environmental Protection, Biotechnology Permit Unit, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 847, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–5874.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR Part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There is Reason to Believe Are Plant Pests," require a person to obtain a permit before introducing (importing, moving interstate, or releasing into the environment) in the United States, certain genetically engineered organisms and products that are considered "regulated articles." The regulations set forth procedures for obtaining a permit for the release into the environment of a regulated article, and for obtaining a limited permit for the importation or interstate movement of a regulated article.

Pursuant to these regulations, APHIS has received the following applications to release genetically engineered organisms into the environment, which are being reviewed by the Agency:

Application No.	Date Received	Organism	Field Test Location
88–344–07	12–09–88	Genetically engineered tomato plants	California.
88–351–12	12–16–88	Genetically engineered	California.
88–351–13	12–16–88	Genetically engineered cotton plants	Mississippi.
88–355–01	12–20–88	Genetically engineered *Clavibacter xyli* subsp *cynodontis*	Nebraska, Minnesota, Illinois, Maryland.

Done at Washington, DC, this 24th day of January 1989.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89–2053 Filed 1–27–89; 8:45 am]

BILLING CODE 3410–34–M

Soil Conservation Service

Finding of No Significant Impact; Perry County Airport RC&D Measure, OH

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Perry County Airport RC&D Measure, Perry County, Ohio.

FOR FURTHER INFORMATION CONTACT: Joseph C. Branco, State Conservationist, Soil Conservation Service, Federal Building, 200 North High Street, Room 522, Columbus, Ohio 43215, telephone: (614)–469–6962.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impact on the environment. As a result of these findings, Joseph C. Branco, State Conservationist, has determined that the preparation and review of an environmental impact statement is not needed for this project.

This measure concerns a plan for critical area treatment along 150 feet of the airport runway that is unstable. Planned works of improvement include the installation of an underground drain to intercept the seepage causing the landslip, regrading the slip area, and reseeding approximately one acre.

The Notice of Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, state, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Joseph C. Branco.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.901—Resource Conservation and Development Program—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials.)

Joseph C. Branco,

State Conservationist.

January 19, 1989.

[FR Doc. 89–2056 Filed 1–27–89; 8:45 am]

BILLING CODE 3410–16–M

BEST COPY AVAILABLE

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DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census
Title: 1990 Decennial Census—Reinterview and Reconciliation Questionnaire
Form Number: D-806
Type of Request: New
Burden: 77,927 hours
Number of Respondents: 1,558,556
AVG Hours Per Response: 3 minutes
Needs And Uses: Data from this survey are used by the Bureau of the Census to assure the quality of information collected during the 1990 Decennial Census of Population.
Affected Public: Individuals or households
Frequency: One-time
Respondent's Obligation: Mandatory
OMB Desk Officer: Francine Picoult, 395-7340

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room H6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Francine Picoult, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: January 24, 1989.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 89-2082 Filed 1-27-89; 8:45 am]

BILLING CODE 3510-07-M

National Institute of Standards and Technology

[Docket No. 90101-9001]

Delegation of Authority for Waivers for Federal Information Processing Standards (FIPS), and of Procedures for Waivers for FIPS

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice of delegation of authority for waivers for FIPS, and of procedures for processing waivers for FIPS.

SUMMARY: Under section 111(d) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759(d) as amended by the Computer Security Act of 1987, the Secretary of Commerce has delegated to the heads of Executive Departments and Agencies the authority to waive FIPS. The Secretary's memorandum notifying departments and agencies of this action, and the procedures for processing waivers to FIPS are provided in this notice.

DATE: Effective November 14, 1988.

ADDRESS: National Institute of Standards and Technology, ATTN: FIPS Waiver Decisions, Building 225, Room B154, Gaithersburg, MD 20899.

FOR FURTHER INFORMATION CONTACT: Shirley Radack, (301) 975-2833.Q04

Date: January 24, 1989.

Raymond G. Kammer,

Acting Director.

November 14, 1988.

Memorandum to the Heads of Executive Departments and Agencies

Subject: Procedures for Waivers for the Federal Information Processing Standards (FIPS)

Under Section 111(d) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759(d)) as amended by the Computer Security Act of 1987, I am authorized to approve standards for Federal computer systems, and to determine the extent to which such standards, which are issued as Federal Information Processing Standards (FIPS), should be compulsory and binding.

It has been necessary from time to time to waive the use of these compulsory FIPS when compliance would adversely affect the accomplishment of an agency's mission or cause a major adverse financial impact on the agency which is not offset by Governmentwide savings. For some previously issued FIPS, I have already delegated to the heads of agencies the authority to waive the standards under certain conditions. However, for other FIPS I have retained the waiver authority.

The provisions of the Computer Security Act of 1987 clarify the conditions for the delegation of waiver authority to the heads of departments and agencies. I think that these officials are best able to make the decisions about the impact of standards on agency mission and costs, and that the efficiency of Government operations would be improved if these officials had the authority to waive standards when necessary.

Therefore, I hereby delegate to you the authority to waive, under the conditions specified in the attached procedures, previously issued and all subsequent FIPS that are compulsory for Federal agency use in the acquisition and management of computers and related telecommunications systems. You may redelegate this authority only to a senior official designated pursuant to section 3506(b) of title 44 of the U.S. Code. The procedures for waiving these previously issued mandatory FIPS are attached.

If you have any questions regarding this change, please contact James H. Burrows, Room B154 Technology Building; National Institute of Standards and Technology; Gaithersburg, MD 20899.

C. William Verity,

Secretary of Commerce.

Attachment

Procedures for Waivers for the Federal Information Processing Standards (FIPS)

Under certain exceptional circumstances, the heads of Federal departments and agencies may approve waivers to Federal Information Processing Standards (FIPS). The head of such agency may redelegate such authority only to a senior official designated pursuant to section 3506(b) of Title 44, U.S. Code. Waivers shall be granted only when:

a. Compliance with a standard would adversely affect the accomplishment of the mission of an operator of a Federal computer system, or

b. Cause a major adverse financial impact on the operator which is not offset by Governmentwide savings.

Agency heads may act upon a written waiver request containing the information detailed above. Agency heads may also act without a written waiver request when they determine that conditions for meeting the standard cannot be met. Agency heads may approve waivers only by a written decision which explains the basis on which the agency head made the required finding(s). A copy of each such decision, with procurement sensitive or classified portions clearly identified, shall be sent to: National Institute of Standards and Technology; ATTN: FIPS Waiver Decisions, Technology Building, Room B-154; Gaithersburg, MD 20899.

In addition, notice of each waiver granted and each delegation of authority to approve waivers shall be sent promptly to the Committee on Government Operations of the House of Representatives and the Committee on Governmental Affairs of the Senate and shall be published promptly in the **Federal Register**.

When the determination on a waiver applies to the procurement of equipment and/or services, a notice of the waiver determination must be published in the *Commerce Business Daily* as a part of the notice of solicitation for offers of an acquisition or, if the waiver determination is made after that notice is published, by amendment to such notice.

A copy of the waiver, any supporting documents, the document approving the waiver and any supporting and accompanying documents, with such deletions as the agency is authorized and decides to make under 5 U.S.C. Sec. 552(b), shall be part of the procurement documentation and retained by the agency.

[FR Doc. 89-2035 Filed 1-27-89; 8:45 am]

BILLING CODE 3510-CW-M

Malcolm Baldrige National Quality Award's Panel of Judges; Public Meeting

AGENCY: National Institute for Standards and Technology, DoC.

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App., notice is hereby given that there will be a meeting of the Panel of Judges of the Malcolm Baldrige National Quality Award from Thursday, February 9, through Friday, February 10, 1989. The Panel of Judges is composed of nine members prominent in the field of quality management and appointed by the Secretary of Commerce. The purpose of this meeting is to review criteria and processes for the 1989 Award.

DATES: The meeting will convene February 9, 1989 at 8:30 a.m. and adjourn at approximately 1:00 p.m. on February 10, 1989.

ADDRESS: The meeting will be held at the Radisson Hotel, 711 Northwest 72nd Avenue, Miami, Florida 33126.

FOR FURTHER INFORMATION CONTACT: Dr. Curt W. Reimann, Associate Director for Quality Programs, National Institute for Standards and Technology, Gaithersburg, Maryland 20899, telephone number (301) 975-2036.

SUPPLEMENTARY INFORMATION: The public is invited to attend this meeting and the Chairperson will entertain comments or questions at an appropriate time during the meeting. Any person wishing to attend the meeting should inform Curt Reimann at the address shown above.

Ray Kammer,

Acting Director.

Date: January 23, 1989.

[FR Doc. 89-2036 Filed 1-27-89; 8:45 am]

BILLING CODE 3510-13-M

National Oceanic and Atmospheric Administration

Mid-Atlantic Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Mid-Atlantic Fishery Management Council will convene a public meeting on February 15, 1989, at 1 p.m., and adjourn in the afternoon on February 16 at the Tidewater Inn, Dover Street, Easton, MD, to discuss proposed amendments to the Magnuson Fishery Conservation and Management Act, as well to discuss other fishery management and administrative matters. The public meeting may be lengthened or shortened depending upon progress of the agenda. The Council may convene a closed session [not open to the public) to discuss personnel and/or national security matters.

For further information, contact John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, 300 South New Street, Room 2115, Federal Building, Dover, DE 19901-6790; telephone: (302) 674-2331.

Date: January 24, 1989.

Joe P. Clem,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89-2070 Filed 1-27-89; 8:45 am]

BILLING CODE 3510-22-M

South Atlantic Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The South Atlantic Fishery Management Council and its Committees will convene public meetings at the Jekyll Island Club, 371 Riverview Drive, Jekyll Island, GA, February 21-24, 1989, to discuss shrimp, scallops, spiny lobster, snapper/grouper, mackerel, and other fishery management business. Also, the Council's Executive, Finance, Statement of Organization, Practices, and Procedures (SOPPs), and Law Enforcement Committees will convene public meetings; the Council's Personnel Committee will convene a closed session (not open to the public).

A detailed agenda will be available to the public on or about February 8, 1989. For further information contact Carrie R. F. Knight, Public Information Specialist, South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407; telephone: (803) 571-4366.

Date: January 24, 1989.

Joe P. Clem,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89-2071 Filed 1-27-89; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF EDUCATION

[CFDA No. 84.031G]

Notice Inviting Applications for New Awards Under the Endowment Challenge Grant Program for Fiscal Year 1989

Purpose: Provide grants to eligible institutions of higher education so they can establish or increase their endowment funds.

Eligibility: Potential applicants, including current grantees under any of the programs authorized by Title III of the Higher Education Act, are advised that a notice was published in the **Federal Register** on December 19, 1988, 53 FR 50980-50990, informing interested parties how to be designated as eligible to receive Endowment Challenge Grant funds.

Deadline For Transmittal Of Applications: June 9, 1989.

Applications Available: April 11, 1989.

Available Funds: $12,696 million.

Estimated Range of Awards: Regular Grants: $50,000-$500,000. Large Grants: Over $1,000,000.

Estimated Average Size Awards: Regular Grants: $256,000. Large Grants: $1,744,000.

Estimated Number of Awards: 20 to 30.

Project Period: 240 months.

Fundraising Period: 18 months.

Applicable Regulations: The Endowment Challenge Grant Program Regulations, 34 CFR Part 628.

For Applications Or Information Contact: Ms. Anne Price-Collins, Chief, Challenge Grant and Endowment Branch, U.S. Department of Education, 400 Maryland Avenue SW., Room 3042, ROB-3, Washington, DC 20202, Telephone: (202) 732-3335. Applications will be sent to those institutions designated as eligible under the Title III Programs.

Program Authority: 20 U.S.C. 1065a.

Dated: January 18, 1989.

Kenneth D. Whitehead,

Assistant Secretary for Postsecondary Education.

[FR Doc. 89-2052 Filed 1-27-89; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[ERA Docket No. 88-65-NG]

Hadson Gas Systems, Inc.; Order Extending Blanket Authorization to Import Natural Gas; Correction

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Correction of docket number.

SUMMARY: The **Federal Register** notice of the Order issued in this docket published January 9, 1989, 54 FR 660, incorrectly referenced the docket number. The **Federal Register** notice should be changed to read: The order issued in ERA Docket 88-65-NG authorizes Hadson Gas Systems, Inc. to import up to 50 Bcf of Canadian natural gas for two years beginning March 3, 1989.

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Issued in Washington, DC, January 25, 1989.

Anthony Como,

Acting Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 89-2097 Filed 1-27-89; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 88-43-NG]

Tennessee Gas Pipeline Co.; Order Amending an Authorization To Import Natural Gas from Canada and Granting Interventions

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of order amending authorization to import natural gas.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an order amending an existing import authorization previously granted to Tennessee Gas Pipeline Company (Tennessee) in DOE/ERA Opinion and Order No. 131, (Order 131) issued June 19, 1986, to extend, for two years, beginning on the date of first delivery after the issuance date of the order, the blanket-type import authority that is a part of Tennessee's negotiated long-term gas supply contact for which Order Nos. 131 granted an import authorization term ending October 31, 2000.

A copy of this order is available for inspection and copying in the Natural Gas Division Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal Holidays.

Issued in Washington, DC, January 19, 1989.

Constance L. Buckley,

Acting Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 89-2098 Filed 1-27-89; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. CP89-626-000, et al.]

Paiute Pipeline Co., et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Paiute Pipeline Company

[Docket No. CP89-626-000]

January 19, 1989.

Take notice that on January 17, 1989, Paiute Pipeline Company (Paiute), P.O. Box 94197, Las Vegas, Nevada 89193-4197, filed in Docket No. CP89-626-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Harvey's Resort Hotel/Casino (Harvey's Resort) under the authorization issued in Docket No. CP87-309-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Paiute would perform the proposed transportation service for Harvey's Restort, a end-user of natural gas, pursuant to a transportation service agreement dated November 14, 1988, under Paiute's Rate Schedule IT-1. It is stated that the term of the service agreement is from November 14, 1988, and shall continue in effect for a period extending for a primary term to and including October 31, 1991, and month to month thereafter. Paiute proposes to transport on a peak day up to 590 MMBtu; on an average day 300 MMBtu; and on an annual basis 109,500 MMBtu of natural gas for Harvey's Resort. Paiute proposes to receive the gas for Harvey's Resort account at the point of receipt at the interconnection between the facilities of Paiute and Northwest Pipeline Corporation at the Idaho-Nevada border. Paiute would transport and redeliver the gas to Southwest Gas Corporation-Northern Nevada (Southwest), a local distribution company, for the account of Harvey's Resort at the Stateline City Gas No. 1 delivery point located in Douglas County, Nevada. It is stated that the natural gas transported under the transportation service agreement may be received on behalf of Harvey's Resort or any local distribution company or affiliate of Harvey's Resort which has an appropriate contractual arrangement with Harvey's Resort. Paiute understands that Harvey's Resort has entered into a service agreement with Southeast. Paiute asserts that no new facilities are required to implement the proposed service.

It is explained that the proposed service is currently being performed pursuant to the 120-day self-implementing provision of § 284.223(a)(1) of the Regulations. Paiute commenced such self-implementing service on November 17, 1988, as reported in Docket No. ST89-1360-000.

Comment date: March 6, 1989, in accordance with Standard Paragraph G at the end of this notice.

2. Northwest Pipeline Corporation

[Docket No. CP89-644-000]

January 19, 1989.

Take notice that on January 17, 1989, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP89-644-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations for authorization to transport natural gas for the account of Natural Gas Clearinghouse, Inc. (NGCH), a marketer of natural gas, under Northwest's blanket certificate issued in Docket No. CP86-578-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northwest proposes to transport on an interruptible basis up to 200,000 MMBtu of natural gas on a peak day, 2,000 MMBtu on an average day and 730,000 MMBtu on an annual basis for NGCH. Northwest states that it would perform the transportation service for NGCH under Northwest's Rate Schedule TI-1 for a primary term continuing until October 31, 1990, and continue on a monthly basis thereafter. Northwest indicates that it would transport the gas from various existing receipt points on Northwest's system in Rio Blanco and La Plata Counties, Colorado; San Juan and Rio Arriba Counties, New Mexico; and Lincoln and Sweetwater Counties, Wyoming to various delivery points in the states of Colorado, Utah, and Wyoming.

It is explained that the service has commenced under the automatic authorization provisions of § 284.223 of the Commission's Regulations as reported in Docket No. ST89-1597. Northwest indicates that no new facilities would be necessary to provide the subject service.

Comment date: March 6, 1989, in accordance with Standard Paragraph G at the end of this notice.

3. Tennessee Gas Pipeline Company

[Docket No. CP89-642-000]

January 19, 1989.

Take notice that on January 17, 1989, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP89-642-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide a transportation service for O & R Energy Development, Inc. (O & R), a marketer, under the blanket certificate issued in Docket No. CP87-115-000 on June 16, 1987, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Tennessee states that pursuant to a transportation agreement dated October 18, 1988, as amended, under its Rate Schedule IT, it proposes to transport up to 50,000 dekatherms (dt) per day equivalent of natural gas for O & R. Tennessee states that it would transport the gas from receipt points located in the states of Louisiana, Mississippi, New York, Ohio, Pennsylvania, Texas, and West Virginia, and deliver such gas to various points off Tennessee's system, points located in multiple states.

Tennessee advises that service under § 284.223(a) commenced November 1, 1988, as reported in Docket No. ST89-1074 (filed December 1, 1988). Tennessee further advises that it would transport 50,000 dt on an average day and 18,250,000 dt annually.

Comment date: March 6, 1989, in accordance with Standard Paragraph G at the end of this notice.

4. United Gas Pipe Line Company

[Docket No. CP89-616-000]

January 19, 1989.

Take notice that on January 13, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP89-616-000, a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under its blanket certificate issued in Docket No. CP88-6-000, pursuant to section 7 of the Natural Gas Act, for Victoria Gas Corporation (Victoria), a marketer, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

United proposes to transport up to a maximum of 103,000 MMBtu of natural gas per day for Victoria from specific receipt points in various states to specific delivery points in various states. United anticipates transporting up to 103,000 MMBtu on a peak day and average day, and 37,595,000 MMBtu annually for Victoria. United explains that service commenced November 21, 1988, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89-1492.

Comment date: March 6, 1989, in accordance with Standard Paragraph G at the end of this notice.

5. Paiute Pipeline Company

[Docket No. CP89-623-000]

January 23, 1989.

Take notice that on January 17, 1989, Paiute Pipeline Company (Paiute), P.O. Box 94197, Las Vegas, Nevada 89193-4197, filed in Docket No. CP89-623-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Gold Fields Operating Co.—Chimney Creek, a subsidiary of Gold Fields Mining Corporation (Gold Fields), an end-user, under the blanket certificate issued in Docket No. CP87-309-000 on August 31, 1988, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Paiute states that pursuant to a transportation agreement dated November 14, 1988, unders its Rate Schedule IT-1, it proposes to transport up to 1,250 MMBtu per day equivalent of natural gas for Gold Fields. Paiute states that it would receive the gas at the interconnection between Paiute and Northwest Pipeline Corporation at the Idaho-Nevada border and would transport and redeliver the gas at the Gold Fields delivery point in Humboldt County, Nevada.

Paiute advises that service under § 284.223(a) commenced November 7, 1988, as reported in Docket No. ST89-1359 (filed December 19, 1988). Paiute estimates that it would transport 750 MMBtu on an average day and 275,000 MMBtu annually.

Comment date: March 9, 1989, in accordance with Standard Paragraph G at the end of this notice.

6. Williams Natural Gas Company

[Docket No. CP89-613-000]

January 23, 1989.

Take notice that on January 13, 1989, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP89-613-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to provide transportation service on behalf of EnMark Gas Corporation (EnMark), under WNG's blanket certificate issued in Docket No. CP86-631-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

WNG requests authorization to transport, on an interruptible basis, up to a maximum of 186,500 MMBtu of natural gas per day for EnMark from receipt points located in Kansas, Oklahoma and Wyoming to delivery points located in Kansas and Texas. WNG anticipates transporting, on an average day 50,000 MMBtu and an annual volume of 18,250,000 MMBtu.

WNG states that the transportation of natural gas for EnMark commenced December 1, 1988, as reported in Docket No. ST89-1565-000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations and the blanket certificate issued to WNG in Docket No. CP86-631-000.

Comment date: March 9, 1989, in accordance with Standard Paragraph G at the end of this notice.

7. Paiute Pipeline Company

[Docket No. CP89-627-000]

January 23, 1989.

Take notice that on January 17, 1989, Paiute Pipeline Company (Paiute), P.O. Box 94197, Las Vegas, Nevada 89193-4197, filed in Docket No. CP89-627-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Sierra Pacific Power Company (Sierra Pacific), an end-user and local distribution company, under the blanket certificate issued in Docket No. CP87-309-000 on August 31, 1988, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Paiute states that pursuant to a transportation agreement dated November 14, 1988, under its Rate Schedule IT-1, it proposes to transport up to 90,000 MMBtu per day equivalent of natural gas for Sierra Pacific. Paiute states that it would receive the gas at the interconnection between Paiute and Northwest Pipeline Corporation at the Idaho-Nevada border and would transport and deliver the gas to Sierra Pacific at seven delivery points identified in the transportation agreement.

Paiute advises that service under § 284.223(a) commenced November 17, 1988, as reported in Docket No. ST89-1362 (filed December 19, 1988). Paiute estimates that it would transport 10,700 MMBtu on an average day and 3,900,000 MMBtu annually.

Comment date: March 9, 1989, in accordance with Standard Paragraph G at the end of this notice.

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8. United Gas Pipe Line Company

[Docket No. CP89-615-000]

January 23, 1989.

Take notice that on January 13, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations in Docket No. CP89-615-000, to provide interruptible transportation service on behalf of Loutex Energy, Inc., a producer and marketer of natural gas, under United's blanket certificate issued in Docket No. CP88-6-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

United states that the Interruptible Gas Transportation Agreement T1-21-1970, dated November 17, 1988, proposes to transport a maximum daily quantity of 480,236 MMBtu and that service commenced December 13, 1988, as reported in Docket No. ST89-1497, pursuant to § 284.223(a) of the Commission's Regulations.

Comment date: March 9, 1989, in accordance with Standard Paragraph G at the end of this notice.

9. Paiute Pipeline Company

[Docket No. CP89-625-000]

January 23, 1989.

Take notice that on January 17, 1989, Paiute Pipeline Company (Paiute), P.O. Box 94197, Las Vegas, Nevada 89193-4197, filed in Docket No. CP89-625-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for United Engine & Machine Company (United), an end-user, under the blanket certificate issued in Docket No. CP87-309-000 on August 31, 1988, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Paiute states that pursuant to a transportation agreement dated November 14, 1988, under its Rate Schedule IT-1, it proposes to transport up to 400 MMBtu per day equivalent of natural gas for United. Paiute states that it would receive the gas at the interconnection between Paiute and Northwest Pipeline Corporation at the Idaho-Nevada border and would transport and deliver the gas to Southwest Gas Corporation-Northern Nevada (a local distribution company) at the Carson City, Nevada, Gate No. 3 delivery point for the account of United. Paiute advises that service under § 284.223(a) commenced November 17, 1988, as reported in Docket No. ST89-1357 (filed December 19, 1988). Paiute estimates that it would transport 285 MMBtu on an average day and 103,000 MMBtu annually.

Comment date: March 9, 1989, in accordance with Standard Paragraph G at the end of this notice.

10. Tennessee Gas Pipeline Company

[Docket No. CP89-601-000]

January 23, 1989.

Take notice that on January 12, 1989, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP89-601-000 a request, pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205), for authorization to provide a transportation service for Seagull Marketing Services, Inc. (Seagull), a marketer, under Tennessee's blanket certificate issued in Docket No. CP87-115-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Tennessee states that pursuant to a transportation agreement dated November 28, 1988, as amended November 29, 1988, it proposes to transport natural gas for Seagull, on an interruptible basis, from receipt points located in Texas, Louisiana, Mississippi and offshore Louisiana to delivery points located at (1) Ripley, Tappah County, Mississippi, and (2) three points of interconnection with Texas Eastern Transmission Corporation in Tallula, Issaquena County, Mississippi; Bloom, Scioto County, Ohio; and Colbert, Colbert County, Alabama. Tennessee anticipates transporting 250,000 Dt. on both average and peak days, which would result in 91,250,000 Dt. being transported annually. Tennessee advises that the transportation service commenced on December 2, 1988, as reported in Docket No. ST89-1499, pursuant to § 284.223(a)(1) of the Commission's Regulations.

Comment date: March 9, 1989, in accordance with Standard Paragraph G at the end of this notice.

11. Kerr-McGee Corporation

[Docket No. CI78-47-001]

January 23, 1989.

Take notice that on December 23, 1988, Kerr-McGee Corporation (Kerr-McGee) of P.O. Box 25861, Oklahoma City, Oklahoma 73125, filed an application pursuant to section 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder requesting that the Commission amend its certificate in Docket No. CI78-47 to add the acreage from the ten other certificates listed in the Appendix and delete the acreage from those ten other certificates, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Kerr-McGee states that it has recently entered into a settlement with Natural Gas Pipeline Company of America (NGPL). As part of the settlement, Kerr-McGee and NGPL have terminated all of their contracts and entered into a new gas purchase agreement dated December 1, 1988, that supersedes all prior contracts. Kerr-McGee requests that this new gas purchase agreement be accepted as a supplement to its Rate Schedule No. 149 and that its existing NGPL rate schedules listed in the Appendix be consolidated into Rate Schedule No. 149.

Comment date: February 9, 1989, in accordance with Standard Paragraph J at the end of this notice.

Appendix

Rate Schedule No.	Docket No.	Location
46	G-11020	S.E. Carnrick Field, Texas County, Oklahoma.
66	CI65-605	Indian Basin, Eddy County, New Mexico.
132	CI76-6	West Cameron Block 543, Offshore Louisiana.
149	CI78-47	South Marsh Island Block 142 Field, Offshore Louisiana.
150	CI78-48	East Cameron Block 34, Offshore Louisiana.
169	CI80-144	Vermilion Blocks 276 and 287, Offshore Louisiana.
173	CI80-459	High Island A-414, Offshore Texas.
174	CI80-508	South Marsh Island 142-B, Offshore Louisiana.
175	CI80-509	West Cameron Blocks 115 and 116, Offshore Louisiana.
176	CI80-510	South Marsh Island 265, Offshore Louisiana.
191	CI85-151	Vermilion 277, Offshore Louisiana.

12. Paiute Pipeline Company

[Docket No. CP89-622-000]

January 23, 1989.

Take notice that on January 17, 1989, Paiute Pipeline Company (Paiute), P.O. Box 94197, Las Vegas, Nevada 89193-4197, filed in Docket No. CP89-622-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for

authorization to transport natural gas on behalf of Harrah's Club d/b/a Harrah's Lake Tahoe Resort (Harrah's), an end user, under its blanket authorization issued in Docket No. CP87-309-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Paiute would perform the proposed interruptible transportation service for Harrah's, pursuant to an interruptible transportation service agreement dated November 14, 1988 (Agreement No. 14). The transportation agreement is effective for a primary term to and including October 31, 1991, and shall continue month to month thereafter unless terminated by thirty days written notice by either party. Paiute proposes to transport approximately 720 MMBtu of natural gas on a peak day; on an average day approximately 370 MMBtu; and on an annual basis 134,000 MMBtu of natural gas for Harrah's. Paiute proposes to receive the subject gas at the interconnection between the facilities of Paiute and Northwest Pipeline Corporation at the Idaho-Nevada border. Paiute will transport and redeliver the gas to Southwest Gas Corporation-Northern Nevada , a local distribution company, for the account of Harrah's at the Stateline City Gate No. 1 delivery point located in Douglas County, Nevada.

It is explained that the proposed service is currently being performed pursuant to the 120-day self implementing provision of § 284.223(a)(1) of the Commission's Regulations. Paiute commenced such self-implementing service on November 17, 1988, as reported in Docket No. ST89-1363-000.

Comment date: March 9, 1989, in accordance with Standard Paragraph G at the end of this notice.

13. Algonquin Gas Transmission Company

[Docket No. CP88-167-001]

January 23, 1989.

Take notice that on January 12, 1989, Algonquin Gas Transmission Company (Algonquin), 1284 Soldiers Field Road, Boston, Massachusetts 02135, filed an application in Docket No. CP88-167-001, pursuant to section 7 of the Natural Gas Act and the rules and regulations of the Federal Energy Regulatory Commission (Commission), so as to amend its application for a certificate of public convenience and necessity authorizing Algonquin to (1) render a transportation service for a primary term of twenty years pursuant to proposed Rate Schedule X-34 to be filed as part of Algonquin's FERC Gas Tariff Original Volume No. 2 and (2) construct and operate certain required facilities, all, as more fully set forth in the request on file with the Commission and open to public inspection.

Algonquin states that its original application and this amendment involve transportation of natural gas to be used as fuel at the Town of Braintree Electric Light Department (Braintree) 96 Megawatt Potter Electric Generating Station.

More Specifically, Algonquin seeks authorization in this Amendment to:

(1) Provide interruptible transportation service to Boston Gas Company ("Boston Gas") up to 21,660 MMBtu per day under proposed Rate Schedule X-34 in lieu of firm transportation service originally proposed to be provided to Braintree.

(2) Establish a new delivery point to Boston Gas in lieu of a delivery point to Braintree in the vicinity of Braintree's Potter Generating Station. Such delivery point is at the same location as originally proposed for Braintree.

(3) Construct and operate 2.2 miles of 16-inch pipeline and a meter station at the new delivery point in lieu of more extensive facilities originally proposed.

The changes in service and facilities proposed in this amendment result from Braintree's decision to purchase its supply from Boston Gas instead of finalizing its agreement to purchase its supply of natural gas from Connecticut Natural Gas Corporation as originally proposed. The change in the supply receipt point and the change from firm to interruptible transportation service by Algonquin results in:

Substantial reduction in facility requirements.

Substantial reduction in facility cost.

Lower rates ultimately paid by Braintree. The lower rate benefit is offset to some extent by the reduction in supply availability to Braintree compared to the original proposal.

Comment date: February 13, 1989, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

14. Questar Pipeline Company

[Docket No. CP89-621-000]

January 23, 1989.

Take notice that on January 17, 1989, Questar Pipeline Company (Questar), 79 South State Street, P.O. Box 11450, Salt Lake City, Utah 84147, filed in Docket No. CP89-621-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under the blanket certificate issued in Docket No. CP86-650-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Questar proposes to transport natural gas on an interruptible basis for Westinghouse Electric Corporation (Westinghouse). Questar explains that service commenced December 15, 1988, under § 284.223(a) of the Commission's Regulations. Questar explains that the peak day quantity would be 1,000 MMBtu, the average daily quantity would be 655 MMBtu, and that the annual quantity would be 239,075 MMBtu. Questar explains that it would recieve natural gas for Westinghouse's account at receipt points located in Utah and Wyoming. United states that it would redeliver the gas at delivery points located in Utah.

Comment date: March 9, 1989, in accordance with Standard Paragraph G at the end of this notice.

15. Natural Gas Pipeline Company

[Docket No. CP89-630-000]

January 23, 1989.

Take notice that on January 17, 1989, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP89-630-000 a request pursuant to §§ 157.205 and 284.223(b) of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on an interruptible basis for Mitchell Marketing Company (Mitchell), a marketer of natural gas, under its blanket certificate issued in Docket No. CP86-582-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Natural states that it proposes to transport natural gas for Mitchell between a point of receipt in Texas and numerous delivery points located in Texas and Illinois.

Natural further states that the maximum daily, average and annual quantities that it would transport for Mitchell would be 20,000 MMBtu equivalent of natural gas (plus any additional quantities accepted pursuant to the overrun provisions of Natural's Rate Schedule ITS), 15,000 MMBtu equivalent of natural gas and 5,475,000 MMBtu equivalent of natural gas, respectively.

Natural indicates that in a filing made with the Commission on January 17, 1989, it reported that transportation service for Mitchell had begun on

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December 1, 1988 under the 120-day automatic authorization provisions of § 284.223(a).

Comment date: March 9, 1989, in accordance with Standard Paragraph G at the end of this notice.

16. Texas Eastern Transmission Corporation

[Docket No. CP89-599-000]

January 23, 1989.

Take notice that on January 12, 1989 Texas Eastern Transmission Corporation (TETCO), Post Office Box 2521, Houston, Texas 77252, filed in Docket No. CP89-599-000 a request pursuant to §§ 157.205 and 157.212 of the Federal Energy Regulatory Commission's (Commission) Regulations under the Natural Gas Act and TETCO's blanket certificate issued in Docket No. CP82-535-000 pursuant to section 7 of the Natural Gas Act for authorization to construct a new sales measuring station (M&R Station No. 2672) and to establish such measuring station as an additional point of delivery under its existing Rate Schedule SGS and I-B Service Agreement with the City of Lebanon, Tennessee (Lebanon), all as more fully set forth in the application on file with the Commission and open to public inspection.

TETCO states that the proposed new point of delivery to Lebanon will be located in Wilson County, Tennessee. TETCO will construct, own and operate the new measuring station. TETCO further states that the estimated cost of the station is $94,745 and that Lebanon will reimburse TETCO for the total cost of the station.

It is stated that TETCO and Lebanon are preparing and will execute a superseding Service Agreement providing for the delivery to Lebanon of quantities of natural gas presently certificated for sale under TETCO's Rate Schedule SGS and I-B which will establish a Maximum Daily Delivery Obligation (MDDO) of 5,967 dekatherms (dth) per day for the new delivery point.

TETCO states there will be no change in MDDO at the other existing delivery point in the superseding Service Agreement, nor any increase in the total contract quantities. The natural gas quantities delivered to Lebanon will be utilized as general system supply by Lebanon.

Further, TETCO states that the addition of M&R Station No. 2672 will have no effect on TETCO's peak day or annual deliveries and the total contract quantities deliverable under the Service Agreement will not be changed. TETCO asserts that the instant proposal would be accomplished without detriment or disadvantage to TETCO's other customers.

Comment date: March 9, 1989, in accordance with Standard Paragraph G at the end of this notice.

17. Panhandle Eastern Pipe Line Company

[Docket No. CP89-632-000]

January 23, 1989.

Take notice that on January 17, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-632-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Amgas, Inc. (Amgas), a marketer, under the blanket certificate issued in Docket No. CP86-585-000 on November 20, 1987, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Panhandle states that pursuant to a transportation agreement dated November 15, 1988, under its Rate Schedule PT, it proposes to transport up to 308 dekatherms (dt) per day equivalent of natural gas for Amgas from points of receipt listed in Exhibit "A" of the agreement to delivery points also listed in Exhibit "A", which transportation service may involve interconnections between Panhandle and various transporters. Panhandle states that it would receive the gas at various existing points on its system in Texas, Oklahoma, Kansas, Colorado, Wyoming, and Illinois, and that it would transport and redeliver the gas, less fuel used and unaccounted for line loss, for Amgas' account to Central Illinois Light Company in Sangamon County, Illinois.

Panhandle advises that service under § 284.223(a) commenced on December 1, 1988, as reported in Docket No. ST89-1636. Panhandle further advises that it would transport 100 dt on an average day and 36,500 dt annually.

Comment date: March 9, 1989, in accordance with Standard Paragraph G at the end of this notice.

18. Paiute Pipeline Company

[Docket No. CP89-624-000]

January 23, 1989.

Take notice that on January 17, 1989, Paiute Pipeline Company (Paiute), P.O. Box 94197, Las Vegas, Nevada 89193-4197, filed in Docket No. CP89-624-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to provide an interruptible transportation service for Eagle-Picher Minerals, Inc. (Eagle-Picher), an end-user, under Paiute's blanket certificate issued in Docket No. CP87-309-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Paiute states that, pursuant to a transportation agreement dated November 14, 1988, under its Rate Schedule IT-1, it proposes to transport up to 2,000 MMBtu equivalent of natural gas per day on a peak day for Eagle-Picher from the point of receipt at the interconnection between the facilities of Paiute and Northwest Pipeline Corporation at the Idaho-Nevada border. It is stated that Paiute will transport and redeliver the gas to Southwest Gas Corporation-Northern Nevada, a local distribution company, for the account of Eagle-Picher at the Eagle-Picher No. 1 delivery point located in Washoe County, Nevada, and the Eagle-Picher No. 2 delivery point located in Pershing County, Nevada. Paiute states that no new facilities will need to be constructed to provide the transportation service. Paiute advises that service under § 284.223(a) commenced November 17, 1988, as reported in Docket No. ST89-1361. Paiute estimates that it will transport approximately 1,280 MMBtu equivalent of natural gas on an average day and approximately 467,000 MMBtu equivalent of natural gas on an annual basis for Eagle-Picher.

Comment date: March 9, 1989, in accordance with Standard Paragraph G at the end of this notice.

19. Northern Natural Gas Company Division of Enron Corp.

[Docket No. CP89-592-000]

January 23, 1989.

Take notice that on January 11, 1989, Northern Natural Gas Company, Division of Enron Corp. (Northern), 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP89-592-000 an application pursuant to section 7(b) of the Natural Gas Act and Part 157 of the Commission's Regulations for an order authorizing Northern to partially abandon firm sales service to a utility customer, Kansas Power and Light Company (KP&L), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is indicated that KP&L advised Northern that it desires to reform its service agreement for Rate Schedule PL-1 firm sales service, which agreement expired by its own terms on April 30, 1988, to reflect reduced entitlements from 4,898 Mcf per day to 100 Mcf per day. Northern requests that the reduced entitlements of 100 Mcf per day be authorized effective May 1, 1988. Northern states that KP&L has executed a new PL-1 service agreement reflecting the 100 Mcf per day contract demand level effective May 1, 1988. Northern also states that no abandonment of facilities is proposed.

Comment date: February 13, 1989, in accordance with Standard Paragraph F at the end of this notice.

20. Texas Gas Transmission Corporation

[Docket No. CP89-610-000]

January 23, 1989.

Take notice that on January 13, 1989, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP89-610-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to partially abandon jurisdictional sales service provided to Columbia Gas Transmission Corporation (Columbia), all as more fully set forth in application which is on file with the Commission and open to public inspection.

Texas Gas states that by letter dated September 28, 1988, Columbia served Texas Gas with 30 days notice of its intention to abandon 133,000 MMBtu per day of its Contract Demand (CD) pursuant to the automatic provisions of § 157.21 of the Commission's Regulations as set forth in Order No. 490. Texas Gas further states that the sale to Columbia has been made under Texas Gas' Rate Schedule CDL-4 pursuant to a Service Agreement dated July 1, 1988. The Service Agreement was for a primary term of 20 years from the effective date of November 1, 1988, with a provision for extension on a year-to-year basis after the expiration of the primary term, unless such agreement was terminated by either party upon twelve months prior written notice. The Service Agreement was approved in Docket No. CP88-115 and authorized a sale of up to 295,856 MMBtu per day to Columbia.

It is stated that Texas Gas seeks authority to abandon the 133,000 MMBtu per day, which would result in Columbia's firm sales CD being reduced from a current level of 295,856 MMBtu per day to 162,856 MMBtu per day. On November 1, 1988, Texas Gas and Columbia entered into a new service agreement that reflects the reduced CD level. No abandonment of facilities is required in connection with the proposed partial abandonment of sales service to Columbia.

Texas Gas states that since Columbia has chosen to abandon the subject service pursuant to Order No. 490, indicating to Texas Gas that it has procured other supply alternatives to replace that portion of the Texas Gas sale and has correspondingly relieved itself of any obligations to pay Texas Gas a demand charge to reserve such service, Texas Gas submits that the authorization requested herein is required by the public convenience and necessity. Without such authority, Texas Gas states that it cannot prudently contract for and apply to the Commission for authority to transfer the capacity and service abandoned by Columbia to other firm sales or transportation customers who have indicated an interest in receiving service from Texas Gas.

Comment date: February 13, 1989, in accordance with Standard Paragraph F at the end of this notice.

21. Natural Gas Pipeline Company of America

[Docket No. CP89-607-000]

January 23, 1989.

Take notice that on January 13, 1989, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois, 60148, filed in Docket No. CP89-607-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to provide transportation service on behalf of Cornerstone Production Corporation (Cornerstone), under Natural's blanket certificate issued in Docket No. CP86-582-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Natural requests authorization to transport, on an interruptible basis, up to a maximum of 100,000 MMBtu of natural gas per day (plus any additional volumes accepted pursuant to the overrun provision's of Natural's Rate Schedule ITS) for Cornerstone from receipt points located in Texas, offshore Texas, Louisiana and offshore Louisiana to delivery points located in Louisiana and Texas. Natural anticipates transporting, on an average day 35,000 MMBtu and an annual volume of 12,775,000 MMBtu.

Natural states that the transportation of natural gas for Cornerstone commenced December 1, 1988, as reported in Docket No. ST89-1725-000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations and the blanket certificate issued to Natural in Docket No. CP86-582-000.

Comment date: March 9, 1989, in accordance with Standard Paragraph G at the end of the notice.

22. Texas Gas Transmission Corporation

[Docket No. CP89-609-000]

January 23, 1989.

Take notice that on January 13, 1989, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP89-609-000 a request pursuant to §§ 157.205 and 284.223 (2)(b) of the Commission's Regulations under the Natural Gas Act for authorization to provide an interruptible transportation service for Atlas Gas Marketing Inc. (Atlas) under Texas Gas's blanket certificate issued in Docket No. CP86-686-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open for public inspection.

Texas Gas states that it would transport, on an interruptible basis, up to a maximum of 15,000 MMBtu of natural gas per day for Atlas. Texas Gas states that various receipt points would be located in Louisiana, Tennessee, Kentucky, Illinois, Arkansas, Ohio, and Indiana, and the delivery points would in Ohio. Texas Gas indicates that the total volume of gas to be transported for Atlas on a peak day would be 15,000 MMBtu; on an average day would be 4,000 MMBtu; and on an annual basis would be 1,460,000 MMBtu. Texas Gas indicates it would perform the proposed transportation service for Atlas pursuant to a service agreement dated November 11, 1988, between Texas Gas and Atlas.

Texas Gas states it commenced the transportation of natural gas for Atlas on November 11, 1988, at Docket No. ST89-1383-000 for a 120-day period pursuant to § 284.223(a)(1) of the Commission's Regulations. Texas Gas states that it proposes to continue this service in accordance with §§ 284-221 and 284.223. Texas Gas indicates that it proposes no new facilities in order to provide this transportation service.

Comment date: March 9, 1989, in accordance with Standard Paragraph G at the end of this notice.

23. Texas Gas Transmission Corporation

[Docket No. CP89-606-000]

January 23, 1989.

Take notice that on January 13, 1989, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP89-606-000 a request pursuant to §§ 157.205 and 284.223 of the

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Commission's Regulations under the Natural Gas Act for authorization to provide an interruptible transportation service for Woodward Marketing Inc. (Woodward) under the blanket certificate issued in Docket No. CP88-686-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Texas Gas requests authorization to transport on a peak day up to 40,000 MMBtu of natural gas for Energy Buyers, with an estimated average daily quantity of 5,000 MMBtu. On an annual basis, Woodward estimates a volume of up to 1,825,000 MMBtu.

It is stated that transportation service for Woodward commenced November 29, 1988, under the 120-day automatic provisions of § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89-1384.

Comment date: March 9, 1989, in accordance with Standard Paragraph G at the end of this notice.

24. Panhandle Eastern Pipe Line Company

[Docket No. CP89-640-000]

January 23, 1989.

Take notice that on January 17, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-640-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Amgas, Inc. (Amgas), a marketer, under the blanket certificate issued in Docket No. CP86-585-000 on November 20, 1987, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission an open to public inspection.

Panhandle states that pursuant to a transportation agreement dated November 2, 1988, under its Rate Schedule PT, it proposes to transport up to 70 dekatherms (dt) per day equivalent of natural gas for Amgas from points of receipt listed in Exhibit "A" of the agreement to delivery points also listed in Exhibit "A", which transportation service may involve interconnections between Panhandle and various transporters. Panhandle states that it would receive the gas at various existing points on its system in Texas, Oklahoma, Kansas, Colorado, Wyoming, and Illinois, and that it would transport and redeliver the gas, less fuel used and unaccounted for line loss, for Amgas' account to Central Illinois Light Company in Sangamon County, Illinois.

Panhandle advises that service under § 284.223(a) commenced on December 1, 1988, as reported in Docket No. ST89-1032. Panhandle further advises that it would transport 15 dt on an average day and 5,475 dt annually.

Comment date: March 9, 1989, in accordance with Standard Paragraph G at the end of this notice.

25. United Gas Pipe Line Company

[Docket No. CP89-643-000]

January 23, 1989.

Take notice that on January 17, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP89-643-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to provide transportation service on behalf of Arkla Energy Marketing Company (Arkla), under United's blanket certificate issued in Docket No. CP88-6-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

United requests authorization to transport, on a firm basis, up to a maximum of 206,000 MMBtu of natural gas per day for Arkla from receipt points located in Louisiana, Mississippi and Texas to delivery points located in Alabama, Florida, Louisiana, Mississippi and Texas. United anticipates transporting, on an average day 206,000 MMBtu and an annual volume of 75,190,000 MMBtu.

United states that the transportation of natural gas for commenced November 16, 1988, as reported in Docket No. ST89-1595-000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations and the blanket certificate issued to United in Docket No. CP88-6-000.

Comment date: March 9, 1989, in accordance with Standard Paragraph G at the end of this notice.

26. Texas Gas Transmission Corporation

[Docket No. CP89-659-000]

January 23, 1989.

Take notice that on January 18, 1989, Texas Gas Transmission Corporation, (Texas Gas) 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP89-659-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas under its blanket authorization issued in Docket No. CP88-686-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file iwth the Commission and open to public inspection.

Texas Gas proposes to transport natural gas on an interruptible basis for Western Kentucky Gas Resources d/b/a NRG Corporation (Western-NRG). Texas Gas explains that the service commenced December 1, 1988, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89-1361. Texas Gas proposes to transport on a peak day up to 110,000 MMBtu; on an average day up to 50,000 MMBtu; and on an annual basis up to 1,825,000 MMBtu. Texas Gas proposes to receive the subject gas from various points of receipt in Louisiana, Kentucky, Texas, Offshore Louisiana, Tennessee, Illinois, Ohio, and Indiana. Texas Gas states that Louisville Gas & Electric and GenCrop.

Comment date: March 9, 1989, in accordance with Standard Paragraph G at the end of this notice.

27. Tennessee Gas Pipeline Company

[Docket No. CP89-626-000]

January 23, 1989.

Take notice that on January 17, 1989, Tennessee Gas Pipeline Company (Applicant), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP89-626-000 a request pursuant to § 157.205 and 284.223 of the Commission Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to provide a transportation service for Union Texas Petroleum Corporation (Union Texas) under Applicant's blanket certificate issued in Docket No. CP87-115-000 on June 18, 1987, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the commission and open to public inspection.

Applicant proposes, pursuant to a transportation agreement dated October 24, 1988, as amended October 24, 1988, to transport natural gas for Union Texas from points of receipt located in offshore Louisiana and the State of Louisiana. It is stated that points of delivery are interconnections with ANR Pipeline Company located at Chalkley, offshore Louisiana; Trunkline Gas Company at Kinder, Jefferson Davis Parish, Louisiana; Consolidated Edison Company of New York at White Plains, Westchester County, New York; Nashville Gas Company at Nashville #2, Davidson County, Tennessee; and Mississippi Fuel Company at Stafford Springs, Jasper County, Mississippi. Applicant further states that the maximum daily and average daily quantities are 100,000 dekatherms (dt) and 365,000,000 dt on an annual basis. Applicant states that service under § 284.223(a) commenced November 1, 1988, as reported in Docket No. ST89-1073 filed December 1, 1988.

Comment date: March 9, 1989, in accordance with Standard Paragraph G at the end of this notice.

28. Northern Natural Gas Company Division of Enron Corp.

[Docket No. CP89-631-000]

January 23, 1989.

Take notice that on January 17, 1989, Northern Natural Gas Company, Division of Enron Corp., (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP89-631-000, an application pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authority to transport natural gas on behalf of Amoco Production Company (Amoco), a producer of natural gas, all as more fully set forth in the application on file with the Commission and open to public inspection.

Northern proposes to transport up to 500,000 MMBtu of natural gas per day for Amoco, on an interruptible basis, pursuant to a Transportation Service Agreement dated November 29, 1988 (Agreement). Northern states that the service would be provided under its IT-1 Rate Schedule for an initial term of ten (10) years and month to month thereafter. Northern further states that the Agreement provides for it to receive gas on behalf of Amoco at various existing points of receipt along its system and deliver such gas to fifty (50) existing points of delivery along its system. The average day and annual transportation quantities are expected to 375,000 MMBtu and 182,500,000 MMBtu, respectively. Northern advises that the service commenced on November 29, 1988, as reported in Docket No. ST89-1419-000, pursuant to § 284.223(a) of the Commission's Regulations.

Comment date: March 9, 1989, in accordance with Standard Paragraph G at the end of the notice.

29. Panhandle Eastern Pipe Line Company

[Docket No. CP89-583-000]

January 24, 1989.

Take notice that on January 10, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-583-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Mountain Iron and Supply Company (Mountain Iron), under the certificate issued in Docket No. CP86-585-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Panhandle indicates that it proposes to transport up to 300 dt. per day on an interruptible basis, on behalf of Mountain Iron pursuant to a Transportation Agreement dated October 24, 1988 between Panhandle and Mountain Iron. The Transportation Agreement provides Panhandle to receive gas from various existing points of receipt on its system in Texas, Oklahoma, Kansas, Colorado, Wyoming, and Illinois. Panhandle also indicates that it will transport and redeliver subject gas, less fuel used and unaccounted for line loss, to Central Illinois Light Company (CILCO) in Tazewell, Edgar, Mouthrie, Douglas, Vermilion, Logan, Champaign, Sangamon, Peria, and Knox Counties, Illinois.

Panhandle estimates that the volume of gas to be transported on an average day 200 dt and 73,000 dt., respectively. Panhandle further indicates it commenced their service on December 1, 1988, as reported in Docket No. ST89-1514-000.

Comment date: March 10, 1989, in accordance with Standard Paragraph G at the end of this notice.

30. United Gas Pipe Line Company

[Docket No. CP89-614-000]

January 24, 1989.

Take notice that on January 13, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP89-614-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas for Texaco Gas Marketing (Texaco) a marketer, under United's blanket certificate issued in Docket No. CP88-6-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

United proposes to transport up to 206 billion Btu equivalent of natural gas per day on an interruptible basis for Texaco. United states it would receive the gas at an existing points of receipt in Mississippi and onshore and offshore Louisiana, and redeliver the gas for the account of Texaco at existing interconnections located in the states of Flordia, Mississippi, Alabama, and Louisiana. United states it commenced service for Texaco under § 284.223(a) on December 19, 1988, as reported in Docket No. ST89-1374.

Comment date: March 10, 1989, in accordance with Standard Paragraph G at the end of this notice.

31. Panhandle Eastern Pipe Line Company

[Docket No. CP89-662-000]

January 24, 1989.

Take notice that on January 18, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-662-000 a request pursuant to §§ 157.205(b) and 284.223 of the Regulations under the Natural Gas Act for authorization to provide a transportation service for Indiana Gas Company (Indiana), under the certificate issued in Docket No. CP86-585-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request with the Commission and open to public inspection.

Panhandle states that it proposes to transport natural gas for Indiana from various receipt points located in Texas, Oklahoma, Kansas, Colorado, Wyoming and Illinois. Panhandle further states that the maximum daily and annual quantities that it would transport for Western would be 38,572 dekatherms and 14,078,780 dekatherms, respectively.

Panhandle indicates that in a filing made with the Commission in Docket ST89-1432, it reported that transportation service for Indiana commenced on November 1, 1988 under the 120-day automatic authorization provisions of § 284.233(a).

Panhandle states that it believes the self-implementing transportation portion of this transaction would cease prior to the expiration of the notice period to be established for this application. For this reason, Panhandle has requested a waiver of § 284.223(a) of the Commission's Regulations which permits self-implementing transportation for blanket certificate transportation transactions for only a 120-day period, so that it may be permitted to continue the transportation of gas on behalf of Indiana on a self-implementing basis until the end of the 45-day notice period established for this application.

Comment date: March 10, 1989, in accordance with Standard Paragraph G at the end of this notice.

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32. Williams Natural Gas Company

[Docket No. CP89-665-000]

January 25, 1989.

Take notice that on January 18, 1989, Williams Natural Gas Company (Williams), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP89-665-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Rangeline Corporation (Rangeline), a marketer, under its blanket authorization issued in Docket No. CP89-631-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Williams would perform the proposed interruptible transportation service for Rangeline, pursuant to an interruptible transportation service agreement dated December 1, 1988 (Reference No. TR-A0037). The transportation agreement is effective for a term until May 1, 1989. Williams proposes to transport approximately 675 MMBtu of natural gas on a peak and average day; and on an annual basis 246,375 MMBtu of natural gas for Rangeline. Williams proposes to receive the subject gas at various points located in the states of Kansas and Oklahoma for delivery to various points on Williams' pipeline system located in the states of Kansas and Missouri.

It is explained that the proposed service is currently being performed pursuant to the 120-day self implementing provision of § 284.223(a)(1) of the Commission's Regulations. Williams commenced such self-implementing service on December 1, 1988, as reported in Docket No. ST89-1665-000.

Comment date: March 13, 1989, in accordance with Standard Paragraph G at the end of this notice.

33. ANR Pipeline Company

[Docket No. CP89-648-000]

January 25, 1989.

Take notice that on January 17, 1989, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP89-648-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under the blanket certificate issued in Docket No. CP87-532-000 pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

ANR proposes to transport natural gas on a firm basis for General Motors Corporation (General Motors). ANR explains that service commenced December 6, 1988 under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89-1661. ANR further explains that the peak day quantity would be 5,100 dekatherms, the average daily quantity would be 5,100 dekatherms, and that the annual quantity would be 1,861,500 dekatherms. ANR explains that it would receive natural gas for General Motors' account from points of receipt in Louisiana and offshore Louisiana. ANR states that the points of delivery are located in the state of Wisconsin.

Comment date: March 13, 1989, in accordance with Standard Paragraph G at the end of this notice.

34. Tennessee Gas Pipeline Company

[Docket No. CP89-653-000]

January 25, 1989.

Take notice that on January 18, 1989, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP89-653-000 a request pursuant to §§ 157.205, 157.211 and 284.223 of the Regulations under the Natural Gas Act for authorization to provide a transportation service for Tenneco Oil Company (Tenneco Oil), a producer, and to certificate, prior to commencement of the transportation service, a delivery point under the certificate issued in Docket No. CP87-115-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Tennessee states that it proposes to transport natural gas for Tenneco Oil from various receipt points located offshore Louisiana and offshore Texas, to a delivery point located at Tennessee's milepost 523M-2901+1.27 miles, on Tenneco Oil's platform located at Ship Shoal Block 168B, offshore Louisiana. Tennessee further states that it has installed a ball-valve in a pre-existing meter and requests certificate authorization to use this meter to deliver gas to Tenneco Oil.

Tennessee indicates that the maximum daily, average daily and annual quantities that it would transport for Tenneco Oil would be 1,559 dt equivalent of natural gas, 1,559 dt equivalent of natural gas and 569,035 dt equivalent of natural gas, respectively. Tennessee proposes to provide the transportation service to Tenneco Oil under Tennessee's Rate Schedule IT.

Comment date: March 13, 1989, in accordance with Standard Paragraph G at the end of this notice.

35. ANR Pipeline Company

[Docket No. CP89-650-000]

January 25, 1989.

Take notice that on January 17, 1989, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP89-650-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under the blanket certificate issued in Docket No. CP87-532-000 pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

ANR proposes to transport natural gas on an interruptible basis for Western Gas Processors, Ltd. (Western). ANR explains that service commenced December 3, 1988 under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89-1666. ANR further explains that the peak day quantity would be 40,000 dekatherms, the average daily quantity would be 40,000 dekatherms, and that the annual quantity would be 14,600,000 dekatherms. ANR explains that it would receive natural gas for Western's account from Colorado Interstate Gas Company in Beaver County, Oklahoma. ANR states that it would deliver the gas to Natural Gas Pipeline Company of America in Beaver County, Oklahoma.

Comment date: March 13, 1989, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Standard Paragraph

J. Any person desiring to be heard or make any protest with reference to said filings should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 89-2037 Filed 1-27-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TM89-1-1-001 and RP88-205-004]

Alabama-Tennessee Natural Gas Co.; Proposed Changes in FERC Gas Tariff

January 25, 1989.

Take notice that on January 17, 1989, Alabama-Tennessee Natural Gas Company (Alabama-Tennessee), Post Office Box 918, Florence, Alabama, 35631, tendered for filing Substitute First Revised Sheet No. 4A to its FERC Gas Tariff, First Revised Volume No. 1. Such tariff sheet is proposed to become effective January 1, 1989.

Alabama-Tennessee states that the filing is made pursuant to the Commission's order issued January 11, 1989 in Docket Nos. RP88-205-001, *et al.* and adjusts the currently effective take-or-pay surcharge rates to its customers to reflect increases in the amount being billed to its by Tennessee Gas Pipeline. Alabama-Tennessee further states that such filing is being made pursuant to § 26.1(a) of its tariff.

Alabama-Tennessee is amortizing the increased take-or-pay costs over a thirty-six (36) month period. According to Alabama-Tennessee, that is the maximum amortization period allowed by this Commission in FERC Docket No. RP88-191.

Alabama-Tennessee has requested any necessary waivers of the Commission's Regulations in order to permit the tariff sheets to become effective as proposed.

Alabama-Tennessee states that copies of the tariff filing have been mailed to all of its jursisdictional customers and effected State Regulatory Commissions.

Any person desiring to be heard or to protest said filing should filed a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rule 211 or Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR §§ 385.211 and 385.214). All such motions or protests should be filed on or before February 1, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding.

Any person wishing to become a party to the proceeding must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-2099 Filed 1-27-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP85-122-017 and RP87-30-021]

Colorado Interstate Gas Co.; Compliance Filing

January 25, 1989.

Take note that on January 17, 1989 Colorado Interstate Gas Company ("CIG") submitted revised tariff sheets to its FERC Gas Tariff.

CIG states that this filing is made in compliance with the requirements of the Commission's Opinion Nos. 290 and 290A, as well as the July 1, 1988 letter order and the November 29, 1988 Order Denying Appeal From Staff Action. According to CIG the instant tariff sheets reflect establishment of a Modified Fixed Variable form of rate design and make other rate design and tariff changes for prospective application.

CIG states that it has sought judicial review of the requirement that it establish a modified fixed variable form of rate design and that it reserves its right to adjust the rates reflected in the instant filing consistent with the ultimate outcome of the pending appeal.

CIG further states that the modified fixed variable form of rate design reflected in the instant filing is predicated upon D-2 nominations submitted by its customers pursuant to Opinion No. 290-A. CIG notes that it sought rehearing of that requirement of Opinion No. 290-A, which the Commission denied in Opinion No. 290-B in which CIG was also required to make certain tariff modifications. CIG has appealed Opinion No. 290-B and states that it reserves the right to adjust the instant filing to reflect the ultimate disposition of that appeal.

CIG states the instant filing eliminates Rate Schedule PR-1 in its entirety for the locked in period July 14, 1987 through August 3, 1988.

CIG states that it has complied with the requirement of Opinion Nos. 290 and 290-A that it eliminate its fixed cost minimum commodity bill applicable to Natural Gas Pipeline Company of America. Because CIG has appealed this

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aspect of Opinion Nos. 290 and 290-A CIG protests the requirement that it make this filing pending final judicial resolution of the minimum bill issue. Should it prevail in the pending litigation, such that the minimum bill is not required to be eliminated, CIG reserves its right to withdraw the portion of this filing eliminating the minimum bill, and to substitute in lieu thereof tariff sheets: (1) Reflecting continuation of the minimum bill, (2) making appropriate rate adjustments consistent with continuation of the fixed cost minimum commodity bill, and (3) establishing any surcharge that may be required. CIG further states that it reserves the right to file tariff sheets reflecting elimination of the minimum bill volumes and reflecting the resultant reallocation of costs based upon the elimination of the minimum bill provision at such time as the mandate issues in the recent decision in *ANR Pipeline Co., v. FERC*, Nos. 87-1340 and 88-1030 (D.C. Cir. December 13, 1988), and to reflect an appropriate surcharge to recover reallocated costs retroactive to the effective date of the rates contained in the instant filing.

CIG states that because the issue of whether the minimum bill should be eliminated retroactively rather than prospectively is pending judicial review, CIG states that it reserves the right to establish an appropriate surcharge retroactive to whatever retroactive date that the minimum bill may ultimately be required to be eliminated.

CIG states that because other aspects of Opinion Nos. 290 and 290-A are pending judicial review CIG states that it reserves the right to modify the instant filing based upon the ultimate outcome of such pending judicial review or final Commission action.

Copies of this filing are being served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before Feb. 1, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89-2100 Filed 1-27-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-3-25-000]

Mississippi River Transmission Corp.; Tariff Filing

January 25, 1989.

Take notice that on January 13, 1989, Mississippi River Transmission Corporation (MRT) tendered for filing Thirtieth Revised Sheet No. 4 to its FERC Gas Tariff, Second Revised Volume No. 1 to be effective February 1, 1989.

MRT states that its filing is being submitted to comply with the Commission's Order No. 483 issued on November 10, 1987, which revised its regulations applicable to the purchased gas cost adjustment (PGA) filings of interstate pipelines. In accordance with the Transition Rules contained in § 154.310(c)(5)(iii) of the regulations, the instant filing reflects termination of MRT's currently effective Surcharge Adjustments effective February 1, 1989. New Surcharge Adjustments will not be applicable until June 1, 1989, the effective date of MRT's Annual PGA filing.

MRT states that the overall cost impact of the Surcharge Adjustment eliminations on its jurisdictional customers is a decrease of approximately $1.9 million for the four-month period. The impact of the instant filing on MRT's Rate Schedule CD-1 is an increase of 6.0 cents per Mcf in the Demand D-1 rate, an increase of 2.19 cents per Mcf in the Demand D-2 rate, and a decrease of 7.22 cents in the Commodity rate. MRT states the single part rate under Rate Schedule SGS-1 reflects a decrease of 4.45 cents per Mcf.

MRT states that copies of its filing have been served on all jurisdictional customers and interested state commissions. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before February 1, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-2101 Filed 1-27-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TA89-1-50-001 and TF89-5-50-001]

Northern Natural Gas Co; Filing

January 24, 1989

Take notice that on January 13, 1989, Northern Natural Gas Company (Northern) filed Sixty Fourth Revised Sheet No. 4b (in Docket No. TA89-1-50-001) and Substitute Sixty Fourth Revised Sheet No. 4b (in Docket No. TF89-5-50-001) as part of its FERC Gas Tariff, Third Revised Volume No. 1, to be effective January 1, 1989.

Nothern states that these tariff sheets correct a sequencing error in the pagination of its FERC Gas Tariff.

Northern states that copies of this filing have been mailed to each of its gas utility customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1988)). All such motions of protests should be filed on or before January 31, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-2102 Filed 1-27-89; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3511-5]

Announcement of a Request for Applications for Superfund Research

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability.

SUMMARY: A request for applications (RFA #NPIR-003-89) is available. The purpose of the RFA is to solicit grant proposals which will result in the development of innovative, cost-effective methods for biodegradation of hazardous organic wastes at Superfund sites. The Agency has $1,500,000 available and expects to support 10 to 15 proposals.

(Section 209, Superfund Amendments and Reauthorization Act, 1986).

DATE: Applications must be received no later than May 1, 1989, to be considered for funding.

ADDRESS: Copies of the RFA may be obtained from: U.S. Environmental Protection Agency, ORD Publications, 26 West Martin Luther King Drive, Cincinnati, Ohio 45268, Phone: 513-569-7562.

FOR FURTHER INFORMATION CONTACT: Questions relating to the RFA may be directed to Mr. Donald Carey at: U.S. Environmental Protection Agency, Research Grants Staff, RD-675, 401 M Street SW., Washington, DC 20460, Phone: 202-382-7445.

Clarice Gaylord,

Director, RGS.

Roger Corlesi,

Director, OER.

[FR Doc. 89-2027 Filed 1-27-89; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3511-9]

Science Advisory Board, Clean Air Scientific Advisory Committee, Clinical Lab Review Subcommittee; Open Meeting

SUMMARY: Pursuant to the Federal Advisory Committee Act, Pub. L. 92-463, notice is hereby given of a public meeting of the Clinical Lab Review Subcommittee of the Clean Air Scientific Advisory Committee (CASAC) of the Environmental Protection Agency's Science Advisory Board. The meeting will be held from 10 a.m. to 5 p.m. on February 9, 1989, in the Old Well Room, Carolina Inn, Cameron Avenue and Columbia Street, Chapel Hill, North Carolina 27514. A writing session of the subcommittee will be held on February 10, 1989, in the South Parlor Room of the Carolina Inn. The starting time will be announced at the close of the meeting on February 9, 1989.

Purpose: The purpose of the meeting is to allow the Subcommittee to review and provide its advice to the Agency on the EPA's clinical research program. The Subcommittee will review the Clinical Lab Research Program Document and respond to oral presentations of Agency staff.

Availability of the Document: The Clinical Lab Research Program Document may be obtained from Mr. David Kleffman, Acting Director, Environmental Health Research Staff, Office of Health Research (RD-683), U.S. EPA, 401 M Street SW., Washington, DC 20460, (202) 382-5893, (FTS) 382-5893.

FOR FURTHER INFORMATION CONTACT: The meeting is open to the public. Any member of the public wishing further information concerning the meeting should contact Mr. Robert Flaak, Environmental Scientist and Executive Secretary, Clean Air Scientific Advisory Committee, Science Advisory Board (A-101F), U.S. EPA, Washington, DC 20460, (202) 382-2552, (FTS) 382-2552. Seating at the meeting is limited and will be on a first come basis.

Donald G. Barnes,

Director, Science Advisory Board.

Date: January 19, 1989.

[FR Doc. 89-2025 Filed 1-27-89; 8:45 am]

BILLING CODE 6560-50-M

[FRL 3511-3]

Zenith Chemical Co. Site; Notice of Proposed Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed settlement.

SUMMARY: Under section 122(h) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the Environmental Protection Agency (EPA) has agreed to settle claims for response costs at the Zenith Chemical Company Site, Dalton, Georgia, with KEM Manufacturing. EPA will consider public comments on the proposed settlements for thirty (30) days. EPA may withdraw from or modify the proposed settlements should such comments disclose facts or considerations which indicated the proposed settlements are inappropriate, improper or inadequate. Copies of the proposed settlements are available from: Ms. Carolyn McCall, Investigations Support Clerk, Investigation and Cost Recovery Unit, Site Investigation and Support Branch, Waste Management Division, U.S. EPA, Region IV, 345 Courtland St., NE., Atlanta, Ga 30365, 404-347-5059.

Written comments may be submitted to the person above by thirty (30) days from date of publication.

Date: January 13, 1989.

Joe R. Franzmathes,

Acting Regional Administrator

[FR Doc. 89-2026 Filed 1-27-89; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3509-4]

Approval of Connecticut's NPDES Program To Regulate Federal Facilities

AGENCY: Environmental Protection Agency.

ACTION: Notice of approval of the State of Connecticut's request for authority to administer the National Pollutant Discharge Elimination System (NPDES) and Pretreatment programs with respect to Federal Facilities.

SUMMARY: On January 9, 1989, the Environmental Protection Agency (EPA) approved the State of Connecticut's request to include regulation of Federal Facilities under its State water pollution permit program responsibility. Previously the State had been approved to administer the NPDES and Pretreatment programs for facilities other than Federal Facilities.

FOR FURTHER INFORMATION CONTACT: Michael Fedak, Water Management Division, U.S. Environmental Protection Agency, J.F.K. Federal Building, Boston, MA 02203, (617) 565-3493.

SUPPLEMENTARY INFORMATION: In 1977 Congress amended section 313 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) to authorize States to regulate Federally owned or operated facilities under their water pollution control programs. Prior to the amendment, States, including those authorized pursuant to section 402(b) of the Clean Water Act to participate in the NPDES program, were precluded from regulating Federal Facilities.

With the passage of the 1977 amendments, EPA has been authorizing States to administer the NPDES program over Federal Facilities in approved States. Today's **Federal Register** notice is to announce the approval of the State of Connecticut's request to assume NPDES authority over Federal Facilities.

In support of its application to assume NPDES authority over Federal Facilities, the State of Connecticut has submitted to EPA copies of the relevant statutes and regulations. The State has also submitted a statement by the Attorney General certifying that the State has adequate legal authority to regulate Federal Facilities. EPA has concluded, upon reviewing all of these submitted materials, that the State has adequate authority to apply its approved State

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NPDES and Pretreatment programs to Federal Facilities. The Regional Administrator has determined that this is not a substantial revision to Connecticut's program and therefore does not require publication of a proposal with public notice and opportunity for comment.

Federal Register Notice of Approval of State NPDES Programs or Modifications

EPA will provide Federal Register notice of any action by the Agency approving or modifying a State NPDES program. The following table will provide the public with an up-to-date list of the status of NPDES permitting authority throughout the country.

	Approved State NPDES permit program	Approved to regulate Federal facilities	Approved State pretreatment program
Alabama	10/19/79	10/19/79	10/19/79
Arkansas [1]	11/01/86	11/01/86	11/01/86
California	05/14/73	05/05/78	
Colorado [1]	03/27/75		
Connecticut	09/26/73	01/09/89	06/03/81
Delaware	04/01/74		
Georgia	06/28/74	12/09/78	03/12/81
Hawaii	11/28/74	06/01/79	09/12/83
Illinois [1]	10/23/77	09/20/79	
Indiana	01/01/75	12/09/78	
Iowa	06/10/78	06/10/78	06/03/81
Kansas	06/28/74	06/26/85	
Kentucky [1]	09/30/83	09/30/83	09/30/83
Maryland	09/05/74	11/10/87	09/30/85
Michigan	10/17/73	12/09/78	06/07/83
Minnesota [1]	06/30/74	12/09/78	07/16/79
Mississippi	05/01/74	01/28/83	05/13/82
Missouri	10/30/74	06/26/79	06/03/81
Montana [1]	06/10/74	06/23/81	
Nebraska	06/12/74	11/02/79	09/07/84
Nevada	09/19/75	06/31/78	
New Jersey [1]	04/13/82	04/13/82	04/13/82
New York	10/28/75	06/15/80	
North Carolina	10/19/75	09/28/84	06/14/82
North Dakota	06/13/75		
Ohio	03/11/74	01/28/83	07/27/83
Oregon [1]	09/26/73	03/02/79	03/12/81
Pennsylvania	06/30/78	06/30/78	
Rhode Island [1]	09/17/84	09/17/84	09/17/84
South Carolina	06/10/75	09/26/80	04/09/82
Tennessee	12/28/77		06/15/83
Utah [1]	07/07/87	07/07/87	07/07/87
Vermont	03/11/74		09/16/82
Virgin Island	06/30/74		
Virginia	03/31/75	02/09/82	
Washington	11/14/73		09/30/86
West Virginia [1]	05/10/82	05/10/82	05/10/82
Wisconsin	02/04/74	11/26/79	12/24/80
Wyoming	01/30/75	06/16/81	

[1] State approved to issue general permits.

Review Under the Regulatory Flexibility Act and Executive Order 12291

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, EPA is required to prepare a Regulatory Analysis for all rules which may have a significant impact on a substantial number of small entities. The approval of the Connecticut NPDES permit program to administer Federal Facilities merely transfers responsibility for administration of these facilities from the Federal to the State government. No new substantive requirements are established by this action. Therefore, this notice does not have a significant impact on a substantial number of small entities. It therefore does not trigger the requirement of a Regulatory Flexibility Analysis.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Michael R. Deland,

Regional Administrator, Region I.

[FR Doc. 89-2028 Filed 1-27-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

[Docket No. 89-01]

Jugolinija; Possible Violations; Order of Investigation

Jugolinija is a vessel operating common carrier which operates non-conference container service from United States Ports and Points to Mediterranean and Middle East Ports and Points.

It appears that Jugolinija engaged in violations of sections 10(b)(1), 10(b)(3) and 10(b)(11) of the Shipping Act of 1984 ("Act" or "1984 Act"), 46 U.S.C. app. 1709(b)(1), 1700(b)(3) and 1709(b)(11), involving Jugolinija's foodstuffs and grocery rates to the Middle East from the United States during the period March 1985 through August 1987. It appears that on 539 shipments during that period, Jugolinija knowingly and willfully undercharged a single shipper by $570,404. It also appears that during that period, Jugolinija may have provided this shipper free transportation of empty containers from the Middle East to Italy as a concession for shipments from the United States to the Middle East in violation of sections 10(b)(3) and 10(b)(11) of the Act.

Now therefore it is ordered, that pursuant to sections 10, 11, and 13 of the 1984 Act, 46 U.S.C. app. 1709, 1710 and 1712, an investigation is hereby instituted to determine:

(1) Whether Jugolinija violated section 10(b)(1) of the Act, by charging, demanding, collecting or receiving greater, less or different compensation for the transportation of foodstuffs and grocery items from the United States to Middle East destinations than the rates and charges specified in its applicable tariff on file with the Commission during the period from March 1985 through August 1987; and whether such violations were knowing and willful;

(2) Whether Jugolinija violated section 10(b)(3) of the Act by extending or denying to any person any privilege, concession, equipment, or facility in connection with: (i) The transportation of foodstuffs and grocery items from the United States to Middle East destinations during the period from March 1985 through August 1987; and (ii) the transportation of empty shipper leased containers; and whether such violations were knowing and willful;

(3) Whether Jugolinija violated section 10(b)(11) of the Act by giving any undue or unreasonable preference or advantage to any particular person, locality, or description of traffic, in connection with: (i) The transportation of foodstuffs and grocery items from the United States to Middle East destinations during the period from March 1985 through August 1987; or (ii) the transportation of empty shipper leased containers; and whether such violations were knowing and willful;

(4) Whether, in the event Jugolinija is found to have violated section 10(b)(1), 10(b)(3) or 10(b)(11) of the Act, civil penalties should be assessed and, if so, the amount of such penalties;

(5) Whether, in the event Jugolinija is found to have violated section 10(b)(1) or 10(b)(3) of the Act, its tariffs should be suspended pursuant to section 13 of the Act;

(6) Whether, in the event Jugolinija is found to have violated section 10(b)(1), 10(b)(3), or 10(b)(11) of the Act, an appropriate cease and desist order should be issued;

It is further ordered, that a public hearing be held in this proceeding and that this matter be assigned for hearing before an Administrative Law Judge of the Commission's Office of Administrative Law Judges at a date and place to be hereafter determined by the Administrative Law Judge in compliance with Rule 61 of the Commission's Rules of Practice and Procedure, 46 CFR 502.61;

It is further ordered, that Jugolinija is designated Respondent in this proceeding;

It is further ordered, that the Commission's Bureau of Hearing Counsel is designated a party to this proceeding;

It is further ordered, that notice of this Order be published in the Federal Register, and a copy be served on parties of record;

It is further ordered, that other persons having an interest in participating in this proceeding may file petitions for leave to intervene in accordance with Rule 72 of the Commission's Rules of Practice and Procedure, 46 CFR 502.72;

It is further ordered, that all further notices, orders, and/or decisions issued by or on behalf of the Commission in this proceeding, including notice of the time and place of hearing or prehearing conference, shall be served on parties of record;

It is further ordered, that in accordance with Rule 61 of the Commission's Rules of Practice and Procedure, the initial decision of the Administrative Law Judge shall be issued by January 18, 1990, and the final decision of the Commission shall be issued by May 18, 1990.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 89-2063 Filed 1-27-89; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

January 24, 1989.

Background

Notice is hereby given of final approval of proposed information collection(s) by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.9 (OMB Regulation on Controlling Paperwork Burdens on the Public).

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Frederick J. Schroeder—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202-452-3822)

OMB Desk Officer—Gary Waxman—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503 (202-395-7340)

Final approval under OMB delegated authority of the extension, without revision, of the following report:

Report Title: Report of Claims on Selected Foreign Countries by U.S. Branches and Agencies of Foreign Banks
Agency Form Number: FR 2029B
OMB Docket Number: 7100-0064.
Frequency: Semiannually.
Reporters: U.S. branches and agencies of foreign banks
Annual Reporting Hours: 330
Estimated Number of Respondents: 55
Estimated Average Hours per Response: 3

Small businesses are not affected.
General Description of Report:
This information collection is voluntary (12 U.S.C. 3105(b)) and is given confidential treatment (5 U.S.C. 552(b)(4)).

U.S. branches and agencies of foreign banks report their claims on foreign countries semiannually. The Federal Reserve System provides the data to the Bank for International Settlements for the semi-annual survey of the maturity of bank lending.

Final approval under OMB delegated authority of a revision to the following report:

Report Title: Domestic Finance Company Report of Consolidated Assets and Liabilities
Agency Form Number: FR 2248.
OMB Docket Number: 7100-0005
Frequency: Monthly
Reporters: Domestic finance companies
Annual Reporting Hours: 2,045
Estimated Number of Respondents: 142
Estimated Average Hours per Response: 1.1 hours, except 1.4 hours in March, June, September, and December.

Small businesses are affected.
General Description of Report:
This information collection is voluntary (12 U.S.C. 225(a)) and is given confidential treatment (5 U.S.C. 552(b)(4)).

This report collects information on major categories of consumer and business credit extended by domestic finance companies and on major short-term liabilities outstanding. The key revision is the addition of five supplemental items that seek date on securitized financing receivables. Specifically, the new items request the outstanding balances of installment credit extended by the finance company that have been packaged and sold and included as collateral for an asset-backed security. The data on the report are used by the Federal Reserve for assessing aggregate credit market activity.

Board of Governors of the Federal Reserve System, January 24, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89-2014 Filed 1-27-89; 8:45 am]

BILLING CODE 6210-01-M

Bank of New England Corp., Boston, MA; Proposal to Underwrite and Deal in Debt Securities to a Limited Extent

Bank of New England Corporation, Boston, Massachusetts, has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act, ("BHC Act") (12 U.S.C. 1843(c)(8)) and § 225.23(a) of the Board's Regulation Y (12 CFR 225.23(a)), for permission for its subsidiary BNE Capital Markets, Inc., Boston, Massachusetts ("BNE Capital"), to underwrite and deal in, to a limited degree, all types of debt securities, including without limitation: (i) Corporate debt securities (including debt securities that are convertible into equity securities); (ii) asset backed securities that are secured by or represent interests in loans (both secured and unsecured), receivables and other forms of debt instruments: and (iii) governmental debt, including Canadian securities.

BNE Capital is currently authorized to underwrite and deal in, to a limited extent, 1-4 family mortgage backed securities, consumer-receivable-related securities, commercial paper and municipal revenue bonds ("ineligible securities"). *Bank of New England Corporation,* 74 Federal Reserve Bulletin 133 (1988). BNE Capital is also authorized to underwrite and deal in U.S. government securities pursuant to § 225.25(b)(16) of the Board's Regulation Y (12 CFR 225.25(b)(16)).

BNE Capital would underwrite and deal in debt securities within the framework of limitations established by the Board for the previously approved ineligible securities underwriting in *Citicorp, J.P. Morgan & Co. Incorporated and Bankers Trust New York Corporation,* 73 Federal Reserve Bulletin 473 (1987), *aff'd sub nom., Securities Industry Association* v. *Board of Governors of the Federal Reserve System,* 839 F.2d 47 (2d Cir. 1988), *cert. denied,* 108 S.Ct. 2830 (1988). These limitations include a 5 percent gross revenue limitation to ensure the company's ineligible underwriting and dealing would not result in a violation of section 20 of the Glass-Steagall Act (12 U.S.C. 377). Accordingly, under this application the amount of gross revenue BNE Capital would receive from the proposed new ineligible activity and the previously approved ineligible activity would not exceed, in the aggregate, 5 percent of the total gross revenues of BNE Capital.

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with Board approval, engage in an activity "which the Board after due notice and opportunity for hearing has determined (by order or regulation) to be so closely related to banking as to be a proper incident thereto." The Board has previously determined that the proposed underwriting and dealing in all

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types of debt securities is closely related and a proper incident to banking, subject to conditions. *J.P. Morgan & Co. Inc., et al.*, 75 Federal Reserve Bulletin (Order dated January 18, 1989).

Any request for a hearing on this application must comply with § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)).

The application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of Boston.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than February 21, 1989.

Board of Governors of the Federal Reserve System, January 24, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89-2018 Filed 1-27-89; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 89N-0026]

Animal Drug Export; Yohimbine Hydrochloride Injection for Deer

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Wildlife Laboratories, Inc., has filed an application requesting approval for the export of the animal drug Antagonil® (yohimbine hydrochloride) Sterile Injection for use in the deer family to Canada.

ADDRESS: Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Beverly E. Bartolomeo, Center for Veterinary Medicine (HFV-142), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-2555.

SUPPLEMENTARY INFORMATION: The Drug Export Amendments Act of 1986 (Pub. L. 99-660) (section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382)) provides that FDA may approve applications for the export of drugs that are not currently approved in the United States. The approval process is governed by section 802(b) of the act. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Wildlife Laboratories, Inc., P.O. Box 6938, Fort Collins, CO 80525, has filed an application requesting approval for the export of the animal drug Antagonil® (yohimbine hydrochloride) Sterile Injection for the deer family, to Canada. The drug is intended as an antagonist to xylazine immobilization of free-ranging or confined members of the deer family (Cervidae). The application was received and filed in the Center for Veterinary Medicine on January 19, 1989, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by February 9, 1989, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802, Pub. L. 99-660 (21 U.S.C. 382)) and under authority delegated to the Commission of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.44).

Dated: January 19, 1989.

Robert C. Livingston,

Deputy Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 89-2121 Filed 1-27-89; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 88N-0387]

Public Meeting; Seafood Safety as Related to Cooked and Processed Seafood

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA), Mid-Atlantic Region, is announcing a public meeting with the seafood industry and other interested persons to discuss a number of agency concerns relating to public health aspects of cooked and processed seafood.

DATE: The meeting will be held on Tuesday, February 14, 1989, from 9:30 a.m. to 3:30 p.m. Interested persons who will be unable to attend the meeting may submit written comments on the issues outlined in this notice within 60 days.

ADDRESSES: The meeting will be held in a conference room at the Quality Inn, 5801 Baltimore National Pike, Baltimore, MD. Submit written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, referencing the docket number found in the heading of this notice.

FOR FURTHER INFORMATION CONTACT: Jo-Ann Maguire, Food and Drug Administration (HFR-MA1), 900 U.S. Customhouse, 2d and Chestnut Sts., Philadelphia, PA 19106-2973, 215-597-0124.

SUPPLEMENTARY INFORMATION: The meeting is being sponsored by FDA's Mid-Atlantic Regional Office, in accordance with 21 CFR 10.65(b), to discuss with the seafood industry and other interested persons the agency's concerns, raised by its inspectional and analytical findings, relating to cooked and processed seafood.

Issues to be discussed will include:

1. Microbiological contamination of ready-to-eat or heat-and-serve seafood products.

2. Public health concerns relating to these products.

3. Improved processing practices for these products.

4. Strategies for protecting the consumer from associated health risks.

FDA is inviting all interested persons to participate in this meeting. Interested persons who will be unable to attend the meeting may submit to the Dockets Management Branch (address above) written comments that set forth their views on the issues outlined in this notice.

Dated: January 23, 1989.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 89-2040 Filed 1-27-89; 8:45 am]

BILLING CODE 4160-01-M

Public Health Service

Health Resources and Services Administration; Delegation of Authority; Bureau Directors

Notice is hereby given that in furtherance of the delegation of authority to the Administrator, Health Resources and Services Administration, on January 13, 1989, by the Assistant Secretary for Health, the Administrator has delegated all of the authorities delegated to the Administrator under section 319 of the Public Health Service Act (42 U.S.C. 247(d)), as amended, pertaining to Public Health Emergencies, to the Health Resources and Services Administration's Bureau Directors, without authority to redelegate, for the functions assigned to their bureaus.

Redelegation

Provision was made for delegations and redelegations under Title III of the Public Health Service Act to continue in effect.

Effective Date

This delegation became effective on January 13, 1989.

Date: January 13, 1989.

John H. Kelso,

Acting Administrator.

[FR Doc. 89-2041 Filed 1-27-89; 8:45 am]

BILLING CODE 4160-15-M

Health Resources and Services Administration; Delegation of Authority; Director, Bureau of Maternal and Child Health and Resources Development

Notice is hereby given that in furtherance of the delegation of authority to the Administrator, Health Resources and Services Administration, on January 18, 1989, by the Assistant Secretary for Health, the Administrator has delegated all of the authorities under Title XIX, Part D, of the Public Health Service Act, as amended, pertaining to the Immunosuppressive Drug Therapy Block Grant, to the Director, Bureau of Maternal and Child Health and Resources Development, with authority to redelegate, excluding the authorities to issue regulations, to submit reports to Congress or a congressional committee, to establish advisory committees and councils, and to appoint members to advisory committees and councils.

Redelegation

Provision was made for all previous delegations and redelegations under Title XIX of the Public Health Service Act to continue in effect.

Effective Date

This delegation became effective on January 18, 1989.

Date: January 18, 1989.

John H. Kelso,

Acting Administrator.

[FR Doc. 89-2042 Filed 1-27-89; 8:45 am]

BILLING CODE 4160-15-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

[Docket No. N-89-1917; FR 2606]

Unutilized and Underutilized Federal Buildings and Real Property Determined by HUD To Be Suitable for Use for Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: This notice identifies unutilized and underutilized Federal property determined by HUD to be suitable for possible use for facilities to assist the homeless.

DATE: January 30, 1989.

ADDRESS: For further information, contact Morris Bourne, Director, Transitional Housing Development Staff, Room 9140, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 755-9075; TDD number for the hearing- and speech-impaired (202) 426-0015. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988, court order in *National Coalition for the Homeless v. Veterans Administration*, D.C.D.C. No. 88-2503-OG, HUD publishes a notice, on a weekly basis, identifying Federal buildings and real property determined by HUD to be suitable for use for facilities to assist the homeless. The first notice was published on January 9, 1989 (54 FR 667). Today's notice is for the purpose of announcing that no additonal properties have been determined suitable this week.

Dated: January 23, 1989.

James E. Schoenberger,

General Deputy Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 89-1980 Filed 1-27-89; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Privacy Act of 1974; Revision of Notice of System of Records

Pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a), notice is hereby given that the Department of the Interior is revising a notice describing a system of records maintained by the Office of Administrative Services in the Office of the Secretary. All changes being published are editorial in nature, and reflect organization changes and other minor administrative revisions which have occurred since the publication of the material in the **Federal Register** on July 15, 1986 (51 FR 25612). The revised notice is published in its entirety below.

Since these changes do not involve any new or intended use of the information in the system of records, the notice shall be effective on January 30, 1989. Additional information regarding these revisions may be obtained from the Department Privacy Act Officer, Office of the Secretary (PMI), room 2242, Main Interior Building, U.S. Department of the Interior, Washington, DC 20240.

Oscar W. Mueller, Jr.,

Director, Office of Management Improvement.

Date: January 23, 1989.

INTERIOR/OR-51

SYSTEM NAME:

Property Accountability and Control System—Interior, Office of the Secretary—51.

SYSTEM LOCATION:

Property Management Section, Branch of Office Services, Division of General Services, Office of Administrative Services (PMO), Office of the Secretary, U.S. Department of the Interior, Washington, D.C. 20240.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals designated as Custodial Officers in the Office of the Secretary, Other Departmental Offices, and Independent Agencies, Councils, and Commissions who are provided administrative support and who are

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charged with the care, utilization, recordkeeping, etc., for property assigned to them.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records system contains computer identification codes for each Custodial Officer and descriptive data about each piece of property (excluding supplies) assigned.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

40 U.S.C. 483

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary use of the records is the internal control of property assigned to offices. Disclosures outside the Department are (1) to the U.S. Department of Justice or in a proceeding before a court or adjudicative body when (a) the United States, the Department of the Interior, a component of the Department, or, when represented by the government, an employee of the Department is a party to litigation or anticipated litigation or has an interest in such litigation, and (b) the Department of the Interior determines that the disclosure is relevant or necessary to the litigation and is compatible with the purpose for which the records were compiled, (2) of information indicating a violation or potential violation of a statute regulation, rule, order or license, to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violation or for enforcing or implementing the statute, rule, regulation, order or license, (3) to respond to General Accounting Office audits, and (4) to a Member of Congress from the record of an individual in response to an inquiry made at the request of that individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

SOTRAGE:

Records are maintained on computer media.

RETRIEVABILITY:

System is indexed by code assigned to each Custodial Officer or by various property system codes.

SAFEGUARDS:

Maintained with safeguards meeting the Computer Security Guidelines for Implementing the Privacy Act of 1974 and the Computer Security Act of 1987.

SAFEGUARDS:

Maintained with safeguards meeting the Computer Security Guidelines for Implementing the Privacy Act of 1974 and the Computer Security Act of 1987.

RETENTION AND DISPOSAL:

Retained and disposed of in accordance with General Records Schedule No. 3, Item No. 10a.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Property Management Section, Branch of Office Services, Office of Administrative Services, U.S. Department of the Interior, Washington, D.C. 20240.

NOTIFICATION PROCEDURE:

A written and signed request stating that the requester seeks information concerning records pertaining to him/her. See 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

Submit requests to the System Manager. The request must be in writing, signed by the requester, and meet the content requirements of 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

A petition for amendment shall be addressed to the System Manager and must meet the requirements of 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Custodial Officer who is assigned the property by code.

[FR Doc. 89-2058 Filed 1-27-89; 8:45 am]

BILLING CODE 4310-WA-M

Bureau of Indian Affairs

Request for Applications for Planning of Detention Centers

January 13, 1989.

ACTION: Extension of application deadline for planning of detention facilities.

SUMMARY: This notice extends the deadline for filing applications for Planning of New Institutions for construction or renovation of detention facilities in Indian country. The notice requesting applications was published in the **Federal Register** on December 9, 1988, (Vol. 53 No. 237 Page 49796) and set the deadline at 45 days after the publication of the notice (January 23, 1989). This notice extends the deadline to February 13, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Warren D. LeBeau, Staff Assistant-Detention, Division of Law Enforcement Services, (602) 629-5406 or Mr. Robert Montoya, Facility Management and Construction Center, (505) 766-2846.

Ross O. Swimmer,

Assistant Secretary—Indian Affairs.

[FR Doc. 89-2008 Filed 1-27-89; 8:45 am]

BILLING CODE 4310-02-M

Description of Lands To Be Held in Trust for the Pechanga Band of Luiseno Mission Indians of the Pechanga Reservation, CA

December 29, 1988.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of lands to be held in trust and made part of the Pechanga Reservation.

This notice is published in the exercise of authority delegated from the Secretary of the Interior to the Assistant Secretary—Indian Affairs at 209 DM 8.1.

SUMMARY: This notice is published pursuant to section 2 of the Act of August 8, 1988, Pub. L. 100-381, 102 Stat. 807. Pursuant to section 1 of the act, title to the following described land was declared to be held in trust by the United States for the use and benefit of the Pechanga Band of Luiseno Mission Indians of California, and such land was declared to be a part of the Pechanga Indian Reservation.

San Bernadino Meridian, Riverside County, California.

Lot "E" of the Little Temecula Rancho, more particularly described as follows: "Commencing at a stake marked 'T .5' of the Little Temecula Rancho, so called and known, and running thence North 52 degrees 45 minutes East, 3,500 feet; thence North 52 degrees 40 minutes West; thence South 42 degrees 40 minutes West, 3,436 feet and thence South 47 degrees 20 minutes East 2,679.84 feet to the place of the beginning, containing two hundred thirty-five (235) acres of land, and also from the water appurtenant to said parcel of land, including the water from the spring on the public land which is situated adjoining the Southwesterly line of said specifically described tract, which comprises all that part of said Little Temecula Rancho set off and allotted to William Wolf by decree dated April 14, 1982. Together with the tenements, hereditaments and appurtenances thereto belonging, or in anywise appertaining; and also all their estate, right, title and interest, at law and equity therein and thereto, including the rents, issues and profits thereof."

W.P. Ragsdale,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 89-2009 Filed 1-27-89; 8:45 am]

BILLING CODE 4310-02-M

Minerals Management Service

Outer Continental Shelf Advisory Board; North, Mid-, and South Atlantic Regional Technical Working Groups; Nominations

AGENCY: Minerals Management Service, Interior.

ACTION: Recruitment of Discretionary Members for North, Mid-, and South Atlantic Regional Technical Working Groups.

SUMMARY: The Atlantic Outer Continental Shelf (OCS) Region is accepting nominations to fill discretionary member vacancies on the North, Mid-, and South Atlantic Regional Technical Working Group (RTWG) Committees. Technical expertise is needed in the areas of marine biology/oceanography, ecology/environment, and fisheries management.

Nomination packages should consist of a letter explaining the nominee's qualifications and how the individual would contribute to the effectiveness of the RTWG Committees, and a current resume or biographical profile.

DATE: The deadline for receipt of nominations is March 1, 1989.

ADDRESSES: Nomination packages should be submitted to RTWG Coordinator, Atlantic OCS Region, Minerals Management Service, 1951 Kidwell Drive, Suite 601, Vienna, 22182.

FOR FURTHER INFORMATION CONTACT: Angela Calos, RTWG Coordinator, Atlantic OCS Region at the above address; telephone (703) 285-2165, (FTS) 285-2165.

SUPPLEMENTARY INFORMATION: The RTWG's are part of the OCS Advisory Board and were established to advise the Minerals Management Service (MMS) Diector on technical matters of regional concern regarding offshore prelease and postlease sale activities. The RTWG membership consists of representatives from Federal agencies, the Coastal States of Maine through Florida, the petroleum industry, and other private interests. The RTWG discretionary members serve a 2-year term. Each RTWG committee meets at least twice a year.

Appointments will be made by the Secretary of the Interior with the objective of achieving a balance of viewpoint and a range of technical expertise of regional OCS activities.

Date: January 18, 1989.

Bruce G. Weetman,

Regional Director, Atlantic OCS Region.

[FR Doc. 89-2006 Filed 1-27-89; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

National Park System Advisory Board; Administrative Extension

Notice is hereby given in accordance with the Federal Advisory Committee Act, Pub. L. 92-463, section 14, that the National Park Service Advisory Board has been extended administratively through December 31, 1990.

The Board is presently a statutory board established by the Historic Sites Act of 1935 (16 U.S.C. 463, as amended) to "advise the Secretary on matters relating to the National Park System, to other related areas, and to the administration of this Act * * * "(Historic Sites Act)"; and a 1976 amendment to the Act extended the Board by statute to January 1, 1989. Having found the Board to be of considerable value to the Department, I am taking this action to assure that its function will continue for an additional year beyond the legislative expiration date. I expect that the Congress will have made a determination to statutorily extend the Board well before December 31, 1989.

Donald Paul Hodel,

Secretary of the Interior.

[FR Doc. 89-2069 Filed 1-27-89; 8:45 am]

BILLING CODE 4310-MR-M

DEPARTMENT OF JUSTICE

Information Collections Under Review

January 25, 1989.

The Office of Management and Budget (OMB) has been sent the following proposals for the collection of information for review under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories. Each entry contains the following information: (1) The title of the form or collection; (2) the agency form number, if any, and the applicable component of the Department sponsoring the collection; (3) how often the form must be filled out or the information is collected; (4) who will be asked or required to respond, as well as a brief abstract; (5) an estimate of the total number of respondents and the amount of time estimated for an average respondent to respond; (6) an estimate of the total public burden (in hours) associated with the collection; and, (7) an indication as to whether section 3504(h) of Pub. L. 96-511 applies. Comments and/or suggestions regarding the item(s) contained in this notice, especially those regarding the estimated response time, should be directed to the OMB reviewer, Mr. Sam Fairchild, on (202) 395-7340 and to the Department of Justice's Clearance Officer, Mr. Larry E. Miesse, on (202) 633-4312. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should so notify the OMB reviewer and the DOJ Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Larry E. Miesse, DOJ Clearance Officer, SPS/JMD/5031 CAB, Department of Justice, Washington, DC 20530.

Revision of a Currently Approved Collection

(1) Report of Public Safety Officer's Death.

(2) OJP Admin form 3650/6. Bureau of Justice Assistance, Office of Justice Programs.

(3) One-time.

(4) State or local governments, Federal agencies or employees. This form is filed by agency of public safety officer killed in the line of duty with the Bureau of Justice Assistance as part of claim for survivors' benefits under the Public Safety Officers' Benefits Act.

(5) 320 respondents at 2.03 hours per response.

(6) 650 estimated annual burden hours.

(7) Not applicable under section 3504(h).

(1) Claim for Death Benefit.

(2) OJP Admin form 3650/5. Bureau of Justice Assistance, Office of Justice Programs.

(3) One time.

(4) Individuals or households. Form is filed by survivors of a public safety officer killed in the line of duty to obtain benefits under the Public Safety Officers' Benefits Act.

(5) 320 respondents at 1.05 hours per response.

(6) 336 estimated annual public burden hours.

BEST COPY AVAILABLE

(7) Not applicable under section 3504(h).

Reinstatement of a Previously Approved Collection for Which Approval Has Expired

(1) The Jail Inmate Survey.
(2) SIJ–43, SIJ–50. Bureau of Justice Statistics.
(3) Other, quinquennially (approximate).
(4) Individuals or households. State or local governments. Data used to profile jail inmates, determine trends in inmate characteristics, examine criminal and substance abuse history as it relates to criminal activity, to develop data on conditions of inmate housing and its effects, and to report on the victims of crime as described by jail inmates.
(5) 6,400 respondents at .75 hours each.
(6) 4,800 estimated annual public burden hours.
(7) Not applicable under section 3504(h).

Larry E. Miesse,
Department Clearance Officer, Department of Justice.

[FR Doc. 89–2075 Filed 1–27–89; 8:45 am]
BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D–7590 et al.]

Proposed Exemptions; Restated Profit Sharing Plan and Trust Agreement of Anesthesiologists Associated of Rome, P.A., et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Regulations and Interpretations, Room N–5671, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N–5507, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Restated Profit Sharing Plan and Trust Agreement of Anesthesiologists Associated of Rome, P.A. (the Plan) Located in Rome, Georgia

[Application No. D–7300]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(a)(2) of the Code and in accordance with the procedures set forth in ERISA Procedures 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed cash sale by the Plan of certain real property located in Rome, Georgia to Park Professional Place (the Partnership), a partnership which is a party in interest with respect to the Plan; provided that all terms of such transaction are at least as favorable to the Plan as those which the Plan could obtain in an arm's-length transaction with an unrelated party.

Summary of Facts and Representations

1. The Plan is a defined contribution plan with 20 participants and toal assets of $378,177 as of April 30, 1988. The Plan is sponsored by the Anesthesiologists Associated of Rome, P.A. (the Employer), a Georgia professional association engaged in a specialty medical practice in Rome, Georgia. The trustees of the Plan are Larry R. Cauthen, M.D. (Dr. Cauthen), Louise S. Hajosy, M.D., and Elaine L. Hajosy, M.D. (collectively, the Trustees). The Partnership is a Georgia general partnership whose partners (the Partners) are the Trustees and William Atha, M.D. Each of the Partners is a shareholder/employee of the Employer except Dr. Cauthen, a former shareholder/employee who remains as a Trustee.

2. Among the Plan's assets is a parcel of land (the Land) located at 13–A John Maddox Drive in Rome, Georgia. The Land features approximately eighty feet of street frontage and constitutes approximately one-third of an acre. The Plan acquired the Land in an unimproved state and has leased it continuously to the Partnership under a net lease (the Lease) effective July 7, 1972. The Lease provides for an initial term of fifteen years, renewable for up two additional terms of five years each.

The Lease includes provisions which authorize the Partnership's construction of improvements on the Land and state that ownership of any such improvements would pass to the Plan upon expiration or termination of the Lease. Pursuant to such provisions, the Partnership constructed a medical office building and parking lot (the Improvements) on the Land and immediately commenced leasing the Improvements and subleasing the Land (the Sublease) to the Employer. The

Employer occupies the Land and the Improvements as its principal place of business. The Employer represents that the Lease and the Sublease were exempt until June 30, 1984 from the prohibitions of section 406 of the Act by virtue of section 414 of the Act.[1]

The Lease and Sublease have continued after June 30, 1984. In order to terminate the ongoing Lease and Sublease, the Trustees propose to sell the Land to the Partnership. Since the Lease has become unenforceable due to the expiration of the protections afforded by section 414 of the Act on June 30, 1984, the Partnership recognizes that the Plan has acquired a property interest in the Improvements as a result of such expiration and that the Partnership's proposed purchase of the Land must include the purchase of the Plan's interest (the Interest) in the Improvements. The Trustees are requesting an exemption to permit such sale transaction under the terms and conditions described herein.

3. The Partnership will pay the Plan a cash purchase price for the Land and the Interest and will bear all costs and expenses related to the sale transaction. For the Plan's fee simple interest in the Land, the purchase price will be the greater of $30,000 or the appraised fair market value of the Land on the sale date. As of June 3, 1988, the fair market value of the unencumbered fee simple title in the Land was $30,000, according to Charles E. Griffin, Sr. (Griffin), an independent professional real estate appraiser in Rome, Georgia. Another independent professional real estate appraiser, Ben Lucas (Lucas) of Rome, Georgia, also determined that the Land had a fair market value of $30,000 as of August 23, 1988.

For the Interest, the proposed purchase price will be cash in the amount of no less than the fair market value of the Interest. In order to determine the nature and value of the Interest, the Trustees appointed the First Bank of Rome, Georgia (the Bank), which represents that it is independent of and unrelated to the Employer and the Partnership except as trustee of a defined benefit plan maintained by the Employer. The Bank was also appointed to oversee the consummation of the proposed transaction to ensure, if the exemption is granted, that the transaction proceeds as described herein.

The Bank represents that after research and consultation with legal counsel over the application of Georgia law, it has determined that the nature of the Interest, which the Plan acquired as of June 30, 1984, as properly characterized as a reversionary interest in the Improvements rather than a fee simple interest therein. According to Joseph W. Walker, SRA, MAI (Walker), a professional real estate appraiser in Atlanta, Georgia, the fair market value of the Interest is appropriately determined by discounting the present fair market value of the Improvements over the remaining term under the Lease by the applicable prevailing mortgage rate. The Bank represents that it has determined that this is the proper method of calculating the purchase price of the Interest and that it will ensure that the Plan is appropriately and adequately compensated in the proposed transaction for its property interest in the Improvements under applicable Georgia law. According to Lucas, the Improvements has a fair market value of $71,100 as of August 23, 1987. The Employer represents that the calcuation of the purchase price of the Interest will be based on a fair market valuation of the Improvements of no less than $71,100. Therefore, it is proposed that the Employer pay the Plan a total cash purchase price for its interests in the Land and Improvements in the amount of (1) the greater of the Land's fair market value as of the sale date or $30,00 plus (2) no less than $71,100 discounted over the Lease's remaining term by the prevailing applicable mortgage rate as determined by the Bank.

4. The Bank represents that it has also investigated and considered whether the Plan has received fair market rentals under the Lease for its interests in the Land and the Improvements since June 30, 1984. The Bank maintains that there should have been an upward adjustment of the rentals paid to the Plan under the Lease as of June 30, 1984, the date on which the Interest arose in favor of the Plan, but that there was no such upward adjustment made by the parties. For this reason, the Bank represents that it undertook to determine the amount in which rentals paid to the Plan since June 30, 1984 have been deficient and has determined such deficiency to be in the amount of $4,677 as of October 28, 1988. The Partnership agrees, as part of the proposed transaction, to pay the Plan the difference between the rentals actually paid to the Plan and the fair market rentals which the Plan should have been paid for the period commencing July 1, 1984 to the date of the proposed sale transaction, such amount to be cash of no less than $4,677, together with interest on such amount at a rate determined by the Bank to be appropriate to compensate the Plan for lost income on the rental underpayment.

5. The Department is not proposing herein any exemptive relief with respect to the continuation of the Lease after June 30, 1984 to the date of the proposed sale transaction. Accordingly, within 60 days of the publication in the **Federal Register** of a final grant of the exemption proposed herein, if granted, the Partnership will pay to the Internal Revenue Service all excise taxes which are applicable under section 4975(a) of the Code by reason of the continuation of the subject lease arrangements past June 30, 1984.

6. In summary, the applicants represent that the criteria of section 408(a) of the Act are satisfied in the proposed transaction for the following reasons: (1) The Plan will receive cash for (a) the full fee simple title in the Land in the amount of the Land's fair market value as of the date of the sale transaction, in no event less than $30,000, and (b) the fair market value of the Interest in an amount no less than $71,100 discounted over the remaining term of the Lease by the prevailing applicable mortgage rate as determined by the Bank; (2) The Plan will recover back rent due under the Lease, representing the difference between rentals actually paid to the Plan and the fair market rentals which should have been paid, plus interest thereon; (3) The Partnership will pay all costs and expenses related to the proposed transaction; (4) The proposed transaction will terminate an ongoing prohibited transaction, the continuation of the Lease after June 30, 1984; (5) The Bank will oversee the proposed transaction to ensure that it proceeds as described herein; and (6) The Bank has determined that the proposed transaction will constitute an appropriate disposition of the Plan's property interests in the Land and Improvements as determined in accordance with applicable state law and that the proposed terms of the sale reflect the appropriate valuation of those interests.

For Further Information Contact: Ronald Willett of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Telephone Real Estate Equity Trust (the Trust). Located in New York, NY

[Application No. D–7745]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act

[1] The Department expresses no opinion as to whether the Lease and Sublease satisfied the requirements of section 414 of the Act.

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and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code shall not apply to: (1) the past and continued leasing of commercial office space (Lease One and Lease Two) in One Riverwalk Place (the Property), located in San Antonio, Texas, by One Riverwalk Center Joint Venture (the Joint Venture), an entity in which the Trust indirectly owns a 74 percent interest, to Smith, Barshop, Stouffer and Millsap, Inc. (Smith Barshop), a party in interest with respect to the Trust and employee benefit plans participating in the Trust (the Plans); (2) the proposed amendments, renewals or extensions by the Joint Venture to Smith Barshop of Lease One and Lease Two; and (3) the proposed leasing of commercial office space (the Future Leases)[1] in the Property to other persons or entities that may be parties in interest with respect to the Trust and the Plans (except for fiduciaries with respect to the Property)[2] including amendments, renewals or extensions by the Joint Venture of such Future Leases, provided that the terms and conditions of any Leases subject to this exemption are at least as favorable to the Trust as those which the Trust could obtain in arm's-length transactions with unrelated parties; and provided further that any such Leases, including any amendments, renewals or extensions thereof, are approved on behalf of the Trust by Eastdil Advisers, Inc. (Eastdil).

Effective Date: If granted, this proposed exemption will be effective June 2, 1982 with respect to Lease One and January 1, 1987 with respect to Lease Two. In addition, this proposed exemption will be temporary in nature and will not apply to any Leases which are originated after five years from the date on which the Final Grant of this proposed exemption is published in the **Federal Register**.

Summary of Facts and Representations

1. The parties involved in the subject transactions are as follows:

a. The Trust is a group trust qualified under section 401(a) of the Code pursuant to Revenue Ruling 81–100. The Trust is utilized for the investment, on an undivided basis, of certain real estate assets of its participating plans. The Plans are employee benefit plans established by seven regional holding companies resulting from the reorganization of AT&T and its subsidiaries pursuant to the Plan of Reorganization approved by the United States District Court for the District of Columbia in the matter of *United States v. Western Electric Co., Inc., et al.* (Civil Action No. 82–0192). The assets of predecessor entities to the Plans were formerly held in the Bell System Pension Plan Trust (the BSPP) and the Bell System Management Plan Trust (the BSMPP). On January 1, 1984, the trusts for the BSPP and the BSMPP were merged into the Bell System Trust (the BST). Substantially all of the non-real estate assets in the BST were transferred to a new AT&T trust. The BST, which retained the real estate assets, was amended and restated as the Trust. As of January 1, 1986, the Trust covered approximately 1,226,000 participants. As of December 31, 1987, the Trust had assets having an approximate fair market value of $3.99 billion.

b. AT&T, the named fiduciary of the Trust, is a corporation organized and incorporated in the State of New York with its headquarters located in New York City. AT&T's business objective is to meet customer needs, both within the United States and in foreign markets, for voice and data information movement and management. AT&T, through several lines of business, provides a wide variety of national and international telecommunications services. AT&T also designs, manufactures, markets and services transmission and switching equipment, central office products, apparatus for use in residential and business markets, computers and products and services sold primarily to the Department of Defense and related agencies. The primary business of the seven regional holding companies and their subsidiaries, which maintain plans participating in the Trust, is the furnishing of exchange telecommunications and exchange access services within specific geographic areas. The regional holding companies are also active in the provision of advanced mobile communications services as well as publishing and marketing of telecommunications equipment.

c. Eastdil is a Delaware corporation and a New York City-based investment adviser registered under the Investment Advisers Act of 1940, as amended. Eastdil is a wholly owned subsidiary of Eastdil Realty, Inc. Eastdil was incorporated in 1978 for the purpose of investing in and managing real estate assets for large pension plans. Eastdil manages approximately $1 billion in pension plan assets primarily on an individual account basis but also on a pooled basis. Investments made by Eastdil on behalf of such plans consist mostly of multitenant commercial and industrial properties. As of December 31, 1987, Eastdil was managing approximately $450 million of the assets of the Trust. Eastdil is totally unrelated to the parties involved in the subject transactions.

d. Rivertel (Rivertel) is a Delaware corporation wholly-owned by the Trust and exempt from Federal income taxation under section 501(c)(2) of the Code. Rivertel was organized by Eastdil as investment manager for the Trust for the purpose of holding the Trust's interest in the Joint Venture described herein, to collect the income therefrom and to distribute such income to the Trust. All of the officers and directors of Rivertel are employees of Eastdil. As trustee on behalf of the Trust, all of the stock of Rivertel is held by State Street Bank and Trust Company, a Massachusetts banking corporation with its principal office in Boston, Massachusetts.

e. The Joint Venture is an entity formed on November 19, 1981 by and between Rivertel and Riverwalk Center Joint Venture (RCJV). The Joint Venture was formed to take title to, operate, lease, dispose of and otherwise deal with the Property, the sole asset of the Joint Venture. The Joint Venture maintains its principal office at 1900 One Riverwalk Place, 700 North St. Mary's Street, San Antonio, Texas. Rivertel has a 74 percent equity interest in the Joint Venture. RCJV, the other coventurer which holds a 26 percent equity interest in the Joint Venture, is an entity comprised of two other joint ventures. To the best of Eastdil's knowledge, neither RCJV nor any of its Joint Venture partners has ever been a party in interest with respect to the Trust or any of the participating Plans.

f. Smith Barshop is a full service law firm with fourteen attorneys. Its sole office is located in the building comprising the Property. Smith Barshop leases office space in the Property from the Joint Venture. By virtue of performing legal services for the Joint Venture, Smith Barshop has become a party in interest with respect to the Trust and the Plans under section 3(14) of the Act. Smith Barshop has no discretionary authority or responsibility with respect to the Property. In addition, Smith Barshop has no affiliation with Eastdil.

2. Among the assets that are indirectly owned by the Trust is the Property which consists of an eighteen-story commercial office building and adjacent parking lot. The Property is located at 700 North St. Mary's Drive, San Antonio, Texas and contains 283,623 square feet. The Property is the sole asset of the Joint Venture. RCJV was responsible for the development, construction and ownership of the Property prior to the formation of the Joint Venture. Upon the formation of the Joint Venture in November 1981, Rivertel contributed $17.2 million in cash. RCJV contributed the Property and $1.1 million in cash. The Property is not currently encumbered by a mortgage.

3. The Joint Venture Agreement provides under section 6.2 that all leases of space in the Property must be in form and substance satisfactory to Rivertel and all tenants must be satisfactory in all respects to Rivertel. Section 6.2 of the Joint Venture Agreement also requires that all leases must be submitted to Rivertel at least ten business days prior to the anticipated execution date thereof and Rivertel has the right to approve or disapprove of such leases in its sole discretion. Based upon the Joint Venture Agreement, approximately 70 percent of the office space in the Property is leased, primarily to unrelated parties. Aside from the Smith Barshop Leases which are described below, to the best of Eastdil's knowledge, no other parties in interest lease space in the Property.

4. On June 2, 1982, the Joint Venture entered into a lease agreement with Davis and Smith Incorporated, a law firm which became known as Smith Barshop in 1986. Lease One provided for occupancy beginning August 1, 1982 with respect to the leased premises and was to terminate on July 31, 1987. Smith Barshop was also given options to renew such lease for two five year terms on practically the same terms and conditions as provided in Lease One.

Under Lease One, Smith Barshop leased approximately 6,672 rentable square feet of office space or approximately 2.5 percent of the space in the Property. The base rental was subject to periodic upward adjustments that were proportionate to increases in the operating expenses and real estate taxes associated with the Property. The Joint Venture was also permitted to terminate Lease One if Smith Barshop engaged in an "event of default" which included the nonpayment of rent.

5. After arm's-length negotiations between Smith Barshop and the Joint Venture, the parties entered into Lease Two effective January 1, 1987. The demised premises under Lease Two constitute the entire tenth floor of the Property and total 14,671 rentable square feet of office space or approximately 5.6 percent of the rentable space in the Property. Lease Two will terminate on December 31, 1991, unless sooner amended, terminated or extended by the Joint Venture. Lease Two provides that the Joint Venture may terminate such lease upon an "event of default" which is defined in a manner substantially similar to the definition of the term as in Lease One. Lease Two also provides for periodic upward rental adjustments representing a proportionate share of the Property's operating expenses and real estate taxes.

6. In view of the party in interest relationship existing between Smith Barshop and Rivertel, Eastdil requests exemptive relief from the Department with respect to Lease One and Lease Two. Eastdil also requests prospective exemptive relief for the continuation of the present leasing arrangement existing between Smith Barshop and the Joint Venture under Lease Two. Eastdil represents that rentals under both Leases have been paid in a timely manner and Smith Barshop has otherwise complied with the terms of such Leases.

7. According to Eastdil, the Leases, which were standard commercial leases typically used by Lessees in the Property, were negotiated and entered into in arm's-length transactions between the Joint Venture and Smith Barshop. Eastdil, on behalf of Rivertel, reviewed, approved and has monitored the terms of each Lease. Eastdil represents that the rental rates provided for in the Leases were, at the time each was entered into, not less than the fair rental value of the demised space and comparable to the rental rates paid by lessees in the Property and in other similar buildings in the area at such time. Eastdil further states that the other terms and conditions of the Leases have also been comparable to those of similar leases of space in the Property and in similar commercial buildings in the San Antonio, Texas area entered into at such time. In addition, it is Eastdil's judgment as an experienced real estate manager that Smith Barshop is an excellent lessee for the Property.

8. Eastdil also requests exemptive relief, on a prospective basis, for any lease to a party in interest with respect to the Trust or any participating Plan. AT&T, Eastdil and other fiduciaries with respect to the Property will be specifically precluded from leasing space in the Property. Each such Future Lease will, in form and substance, be a standard commercial lease generally used by lessees in the Property. Each Future Lease will be for a fixed term that will be negotiated on an arm's-length basis on behalf of the Trust by Eastdil. The terms and conditions of any such Future Lease will also be comparable to those of similar leases of space in the Property and in similar buildings in the area entered into at such time.

9. Eastdil further requests exemptive relief for prospective amendments, extensions, or renewals of Lease Two and the Future Leases. However, before any amendments, extensions or renewals of the Leases can be made, they must be reviewed, approved, negotiated and monitored by Eastdil. Eastdil must also make a prior determination that such amendments, renewals and extensions are in the best interests of the Trust and the Plans. In addition, the terms and conditions thereof must be comparable to the terms and conditions then negotiated with regard to similar Leases of space in the Property and in similar commercial office buildings in the San Antonio, Texas area and reflect common industry practice. Finally, Eastdil represents that it will apply the same standards of review and professional judgment it has applied previously with regard to possible amendments, extensions and renewals associated with Lease Two and the Future Leases.

10. Eastdil states that its request for prospective exemptive relief is necessitated by practical business considerations stemming from the large seize of the Trust and the Plans and the large number of parties in interest who deal with them. Eastdil maintains that Rivertel requires the ability to negotiate and enter into Leases of the Property in the ordinary course of business. Eastdil also represents that the requested prospective relief for amendments, renewals or extensions of Lease Two and the Future Leases will provide Rivertel with additional flexibility which will expand the potential value of lease transactions involving the Property, thereby increasing the investment return to the Trust.

11. In summary, it is represented that the subject transactions have satisfied or will satisfy the statutory criteria for an exemption under section 408(a) of the Act because: (a) Lease One and Lease Two were negotiated in arm's-length transactions on behalf of the Trust by Eastdil, an independent fiduciary of the Trust which is unrelated to Smith Barshop; (b) any amendments, renewals or extensions of Lease Two and any

[1] Lease One, Lease Two and the Future Leases are collectively referred to as the Leases.

[2] The term "fiduciary", as used here, includes the American Telephone and Telegraph Company (AT&T) and its affiliates and Eastdil Advisers, Inc. and its affiliates.

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Future Leases of the Property with parties in interest with respect to the Trust, including amendments, renewals or extensions thereof, will require the review, approval, negotiation and monitoring by Eastdil; (c) the Leases that are subject to this proposed exemption will continue to be standard commercial office leases which are utilized generally for all lessees of the Property and which reflect common industry practices; and (d) the rentals under the Leases will continue to be no less than the fair market rental values of the demised premises at the times of their executions.

For Further Information Contact: Ms. Jan D. Broady of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Mead Retirement Master Trust (the Trust) Located in Dayton, Ohio

[Application No. D–7709]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to (1) the proposed sale by the Trust of certain real property located in Michigan (the Timberlands), including certain timber rights pertaining thereto, to the Mead Corporation (Mead), a party in interest with respect to the Trust; and (2) the proposed sale by the Trust of all outstanding common stock of Copmead, Inc. to Mead; provided that all terms of such transactions are at least as favorable to the Trust as those which the Trust could obtain in arm's-length transactions with unrelated parties.

Summary of Facts and Representations

1. Mead is an Ohio publicly-owned corporation with its principal office in Dayton, Ohio. Mead and its subsidiary entities sponsor several employee pension benefit plans (the Plans), the assets of which are commingled for investment purposes in the Trust, which is exempt from taxation under section 501(a) of the Code. The trustee of the Trust is the Wachovia Bank and Trust Company, N.A. (the Trustee), a national banking association with its principal place of business in Winston-Salem, North Carolina. All control over the investment of the Trust's assets is exercised by Mead through its Investment Policy Committee (IPC), which develops investment policies and procedures, implements investment programs and monitors designated activities of the Trust.

2. Among the assets of the Plans in the Trust are the Timberlands, which constituted approximately 4.3 percent of the total assets in the Trust as of December 31, 1987. The Timberlands consist of approximately 429,000 acres of land located in the Upper Peninsula of Michigan, together with certain timber and timber rights with respect to such land. The Timberlands were acquired and are owned by Copmead, Inc. (Copmead), Lamead, Inc., USMead. Inc., and Michland, Inc. (together, the Timberland Companies), each of which is a tax-exempt title-holding company of which the Trust owns 100 percent of the issued and outstanding common stock. The sole and stated purpose of each of the Timberland Companies is the ownership of the Timberlands on behalf of the Trust.

Since the acquisitions of the Timberlands in 1966 and 1982, the Timberland Companies have leased the Timberlands (the Leases) either to Escanaba Paper Company (Escanaba), a wholly-owned subsidiary of Mead, or to Mead and Upper Peninsula Land Company (UPLCo) as joint lessees. UPLCo is a partnership between Escanaba and another wholly-owned Mead subsidiary, the UPL Corporation. Mead represents that the acquisitions and the Leases of the Timberlands by the Timberland Companies on behalf of the Trust satisfy the requirements of section 408(e) of the Act relating to "qualifying employer real property" and, therefore, are exempt from the prohibitions of section 406 of the Act.[4]

3. Under the Leases, Mead and its subsidiaries actively manage the Timberlands on a continuous basis. However, Mead represents that the separate ownership of the Timberlands among the Timberland Companies constitutes an impediment to efficient management of the Timberlands. Mead maintains that the future efficient management of the Timberlands will require greater management flexibility in an ongoing program of sales, purchases and trades among the Timberland parcels to consolidate some tracts with parcels not presently owned and to dispose of other parcels which are either too remote for users or have greater economic value for uses other than timber cutting. In order to enable a more efficient management of the Timberlands, Mead has expressed a desire to purchase the Timberlands from the Trust. Concurrently, the members of the IPC have expressed an interest in selling the Timberlands in order to achieve for the Trust greater liquidity and flexibility of investment. Therefore, Mead is proposing to purchase the Timberlands from the Timberland Companies and is requesting an exemption to permit such transaction under the terms and conditions described herein.[5]

4. According to Mead's representations, on March 5, 1987 the IPC authorized its chairman, William W. Wommack (Mr. Wommack) to represent the Trust in negotiations with Mead representatives regarding a proposed sale of the Timberlands. Mead maintains that Mr. Wommack's extensive experience in finance and investment figured prominently in this authorization. Mr. Wommack is the retired vice-chairman of the board of directors of Mead and prior to his retirement in 1981, he served as Mead's Chief Strategic Officer. Mead represents that because the Timberlands constitute a long-term fixed investment of the Trust, the IPC determined that in any sale of the Timberlands the Trust must receive a price which includes the present value of future economic benefits under the Leases, benefits which are summarized as (1) the current income streams under the Leases, and (2) the fair market value of the Timberlands at the expiration of the Leases. According to Mead's representations, after extensive discussion and analysis Mr. Wommack and representatives of Mead reached agreement on an appropriate method for valuation of each of these economic factors in order to determine an appropriate purchase price. Mead represents that, based on this agreement, the parties have determined an appropriate purchase price for the Timberlands (the Determination). Mead proposes to pay the Timberland Companies cash for their interests in the Timberland in an amount established in accordance with the Determination.

5. Mead maintains that the Determination largely reflects the position proposed on behalf of the Trust and notes that the Determination was reviewed, approved and in part suggested by Rogers, Casey and Barksdale, Inc., an investment advisory and research firm providing specialized financial and consulting services to tax-exempt entities. Mead also represents that the Trustee reviewed the Determination and found it to be appropriate. The Determination includes a study commissioned by IPC from Salomon Brothers, Inc. on the appropriateness of various calculations involved in the Determination and Mead represents that the parties also consulted with the investment banking firm of Smith Barney, Harris, Upham and Company and reviewed long range forecasts of inflation and real returns on Treasury Bonds.

Appraisals of the Timberlands were conducted by George Banzhaf and Company (Banzhaf), a commercial real property appraisal firm based in Milwaukee, Wisconsin which is represented to have extensive experience in appraisals of timber property in Michigan's Upper Peninsula. Mead represents that Mr. Wommack and representatives of Mead carefully reviewed the appraisals and discussions with the Banzhaf representatives and agreed to user Banzhaf's appraisals in the Determination for calculating the Timberlands' present fair market value and the real growth rate of their future value. Mead represents that the Determination also includes specific valuations of the Leases' income streams and the Timberlands' residual, or post-Lease, values to the Trust. The Trust's total investment in the Timberlands is $14.1 million and calculations made as of January 1, 1988 pursuant to the Determination result in a proposed purchase price of $43,744,060. The purchase price will be adjusted upward as of the sale date to account for rentals accrued on and after January 1, 1988 and to reflect the reinvestment potential of the purchase price as of January 1, 1988.

6. Mead represents that the proposed transaction will consist of Mead's cash purchase of the Timberlands directly from all of the Timberland Companies except Copmead. Mead's purchase of that portion of the Timberlands owned by Copmead will be accomplished by means of Mead's cash purchase of all of the common stock of Copmead. Mead explains that during the negotiations over the proposed Timberlands sale there wre 69,000 outstanding shares of sinking-fund preferred stock (the Copmead Preferred) which Copmead had sold to unrelated parties in 1982 after its purchase of certain Timberlands property and which, by its terms, required that any transfer of Copmead real property assets be approved by the holders of the Copmead Preferred. Mead represents that the transfer of the Copmead common stock originally was proposed in lieu of the transfer of Copmead assets in order to avoid this procedural obstacle and the potential objections of the Copmead Preferred holders. The transaction proposed herein remains structured as a transfer of Copmead common stock even though the Copmead Preferred has been redeemed by Copmead and is no longer outstanding. Mead represents that the proposed transfer of the Copmead common stock will be tantamount to a transfer of the Copmead-owned Timberlands and that either of these transfers would accomplish the same economic result: the transfer of ownership of the Copmead-owned Timberlands from Copmead to Mead.

7. In summary, the applicant represents that the proposed transaction satisfies the criteria of section 408(a) of the Act for the following reasons: (1) The Trust, through the Timberland Companies, will receive a cash purchase price for the Timberlands in the amount of no less than the Timberlands' fair market values including the present value of future economic benefits under the Leases; (2) the Trust is represented in the Determination, which defines the proposed transaction, by Mr. Wommack, who has extensive experience in finance and investment; (3) the Determination has been reviewed and approved by the Trustee on behalf of the Trust; (4) the Trust's position and the valuation methods in the Determination were reviewed on behalf of the Trust and approved by the investment advisory and research firm of Rogers, Casey and Barksdale, Inc., which specializes in financial and consulting services to tax-exempt entities; (5) The final purchase price will be adjusted as of the sale date to refelct rentals accrued under the Leases and to reflect the reinvestment potential of the purchase price as of that date; and (6) The proposed transaction will achieve for the Trust greater liquidity and flexibility of investment.

For Further Information Contact: Ronald Willett of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

The Lincoln Savings Bank, FSB (Lincoln) Located in New York, New York

[Application No. D–7627]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply to the sale by Lincoln of its subordinated capital notes (the Notes) to the Keogh Plans (the Keoghs) and Simplified Employee Plans (the SEPs) for which Lincoln serves as custodian or trustee, and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply to the sale by Lincoln of the Notes to the individual retirement accounts (the IRAs) for which Lincoln serves as custodian or trustee, provided the Keoghs, IRAs and SEPs pay no more than the fair market value of the Notes on the date of the sale.[6]

Summary of Facts and Representations

1. Lincoln is a federally-chartered stock savings bank the deposits of which are insured by the Federal Deposit Insurance Corporation (FDIC), primarily involved in providing retail bank and residential and commercial lending services in the New York City area. Lincoln was organized in 1866 as a New York State chartered mutual savings bank and converted to a federal charter in 1983. As of June 30, 1988, Lincoln had total assets of $2.6 billion, deposits of $2.3 billion and stockholder equity of $139.5 million. Lincoln was acquired by a wholly-owned subsidiary of Unicorp American Corporation (Unicorp) on December 31, 1987 and converted to a federal stock savings bank. The conversion was supervised and approved by the Federal Home Loan Bank Board (FHLBB) and the FDIC. In connection with the acquisition, the Unicorp subsidiary purchased all of the outstanding stock of Lincoln for $135 million and $15 million aggregate principal amount of Lincoln's subordinated debentures.

2. Lincoln is in the process of registration with the FHLBB for the sale of up to $30 million of the Notes, which are unsecured subordinated general obligations of Lincoln. The Notes are being offered for sale to the general public and to all existing Lincoln depositors. Lincoln also intends to offer

[4] The Department expresses no opinion as to whether the Timberlands constitute "qualifying employer real property" or whether the acquisitions and Leases of the Timberlands satisfy the requirements of section 408(e) of the Act.

[5] The Department is proposing exemptive relief herein solely for Mead's proposed purchase of the Timberlands and is not proposing any exemptive relief with respect to the Trust's acquisitions of the Timberlands or the Leases to Mead.

[6] Pursuant to 29 CFR 2510.3–2(d), there is no jurisdiction with respect to the IRAs under Title I of the Act. However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

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the Notes to the Keoghs, SEPs and IRAs for which it acts as trustee or custodian.

3. Lincoln currently acts as custodian and/or trustee for 22,443 IRA customers, 1,271 Keoghs and 65 SEPs with assets, in the aggregate, of approximately $219,600,000. These assets represent slightly less than 10% of the total deposits held by Lincoln. Lincoln has no discretionary authority with respect to investment of IRA, Keogh and SEP assets. All investments are made at the direction of the account holder within the range of investment alternatives permitted by the plan documents. Lincoln represents that no single IRA, Keogh or SEP account will be permitted to invest more than 25% of the assets of such account in the Notes in connection with the offering by Lincoln.

4. The Notes will be issued in registered form in minimum amounts of $2,500, without limitation on the size of incremental amounts thereof. Interest will be paid monthly, on the first business day of each month. The Notes will mature on dates offered by Lincoln of at least 7 and not more than 15 years from the date of issue. The pricing supplements to the offering circular will contain information as to the maturities then offered by Lincoln.

5. The Notes will be redeemable at the option of Lincoln, at any time after three years from the date of issuance, at the following redemption prices: 102% of the principal amount if redeemed during the fourth year after the date of issuance; 101% of the principal amount if redeemed during the fifth year after issuance; and 100% of the principal amount if redeemed thereafter, in each case with accrued interest to the date of payment. No redemption may be made without the prior written consent of the FHLBB or if, after giving effect to such redemption, Lincoln would fail to meet its then applicable regulatory capital requirements. The Notes are subordinated to other debts of Lincoln including deposit accounts.

6. The Notes will be sold by certain officers and other full-time employees of Lincoln. Written orders for the Notes will be solicited at the Bank's executive offices and at all branch offices. No commissions will be paid to such employees for offering and selling Notes and no fees or commissions will be payable to Lincoln by any purchaser of the Notes, including the IRAs, Keoghs and SEPs. Lincoln may also elect to offer all or a portion of the Notes through underwriters or dealers, although it does not currently intend to do so. The offering of the Notes will terminate no later than October 1, 1989 unless previously terminated or extended (subject to FHLBB approval) by Lincoln, and is not subject to any minimum amount of Notes being sold. It is anticipated that Lincoln will offer the Notes in three series in the aggregate principal amount of $10,000,000 each during the one year period of registration.

7. The interest payable on the Notes will be at a fixed rate established by Lincoln. The rate offered on the Notes will be based upon then-existing market conditions. It is currently anticipated that the Notes will bear interest at rates between 11% and 13% per annum. The interest on Notes acquired by Lincoln's IRAs, Keoghs and SEPs will be the same as the interest rate on Notes from the same series sold to the other Lincoln depositors and the general public. The terms and conditions of the Notes issued will be the same for IRAs, Keoghs and SEPs as for all other Lincoln depositors and the general public. The interest rate on the Notes at the time of issuance will be higher than that paid by Lincoln at that time on any of its certificates of deposit. The Notes will be transferrable by purchasers. Each purchaser of a Note will have the right to rescind his or her purchase within three business days from the date the order to purchase is received by Lincoln.

8. In summary, the applicant represents that the proposed transaction satisfies the criteria of section 408(a) of the Act and section 4975(c)(2) of the Code because: (1) All decisions to purchase the Notes are to be made by the IRA, Keogh and SEP account holders or fiduciaries other than Lincoln, which will have no discretion over such decision; (2) no fees or commissions will be paid with respect to the transaction; (3) no more than 25% of the assets of any IRA, Keogh or SEP account will be invested in the Notes; and (4) the Notes will be offered to the Keoghs, IRAs and SEPs at the same interest rates, terms and conditions as to other Lincoln depositors and the general public.

For Further Information Contact: Gary H. Lefkowitz of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 25th day of January 1989.

Robert J. Doyle,

Director of Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 89-2061 Filed 1-27-89; 8:45 am]

BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 89-5; Exemption Application No. D-7386]

Grant of Individual Exemptions; Truman Arnold Co. Profit Sharing Plan and Trust

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of pendency were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 406(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Truman Arnold Company Profit Sharing Plan and Trust (the Plan) Located in Texarkana, Texas

[Prohibited Transaction Exemption 89-5; (Exemption Application No. D-7386)

Exemption

The restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the past contribution of two buildings to the Plan and leaseback of the buildings by Truman Arnold Companies (the Employer), nor to the agreement by the Employer and Mr. Truman Arnold to indemnify the Plan against any decline in the market value of the buildings, provided that the terms of the transactions were at least as favorable to the Plan as those obtainable in an arm's-length transaction with an unrelated person at the time the transactions were entered into.

For a more complete statement of the facts and respresentations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on November 10, 1988 at 53 FR 45626.

Effective Date: June 1, 1988.

For Further Information Contact: Alan H. Levitas of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 25th day of January 1989.

Robert J. Doyle,

Director of Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 89-2062 Filed 1-27-89; 8:45 am]

BILLING CODE 4510-29-M

MONITORED RETRIEVABLE STORAGE REVIEW COMMISSION

Meeting

ACTION: Notice of meeting.

SUMMARY: The Monitored Retrievable Storage Review Commission, pursuant to its authority under Subtitle A of Pub. L. 100-203, the Nuclear Waste Policy Amendments Act of 1987, will hold an additional public hearing in Atlanta, Georgia to obtain the views of the public on the need for a monitored retrievable storage (MRS) facility as part of the nation's nuclear waste management system. To date, the Commission has held public hearings in Washington, DC; Denver, Colorado; San Francisco, California; and Atlanta, Georgia. An additional hearing is being scheduled to accommodate all of the people who requested to testify in Atlanta, Georgia. This notice announces the date and location of the hearing, provides procedures for participating in the hearing, and lists some of the issues that participants may want to address in their remarks.

DATES: The date, location, and time of the hearing is:

—February 16, 1989 in Atlanta, Georgia at the Westin Plaza, Peachtree and International Boulevard, Atlanta, GA 30343 (404-659-1400), from 9:00 a.m. to 5:00 p.m. and,

—February 17, 1989 in Atlanta, Georgia at the Westin Plaza, Peachtree and International Boulevard, Atlanta, GA 30343 (404-659-1400), from 9:00 a.m. to 5:00 p.m.

ADDRESSES: Requests to testify should be made in writing to Ms. Paula N. Alford, Director, External Affairs, MRS Review Commission, 1825 K Street NW., Suite 318, Washington, DC 20006. Requests to testify must be received no later than February 6, 1989. The written request should specify the following: Name, title, organization and telephone number of the person who will be testifying; name, title, organization, and telephone number of the person to contact regarding the testimony if different from the presenter; and length of time desired to present testimony.

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Interested persons may submit written comments in lieu of testifying until February 17, 1989. An original and five copies should be submitted to the Monitored Retrievable Storage Review Commission, 1825 K Street, NW., Suite 318, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Ms. Paula N. Alford, Director, External Affairs, MRS Review Commission, 1825 K Street, NW., Suite 318, Washington, DC 20006. (202) 653-5361.

SUPPLEMENTARY INFORMATION: The Monitored Retrievable Storage Review Commission was established by the Nuclear Waste Policy Amendments Act of 1987 (Pub. L. 100-203) and charged with the responsibility "to evaluate the need for a monitored retrievable storage facility as a part of the nation's nuclear waste management system." The Commission was directed to prepare a report to Congress by June 1, 1989. That date was subsequently extended to November 1, 1989. (Pub. L. 100-507).

In carrying out its mission, the Commission decided to study the work which has been done to date in this field and to hear from all interested persons who wish to make their views known to the Commission. To achieve this goal, the Commission held a series of public briefings in July, 1988 in which certain agencies and organizations involved with the issue of monitored retrievable storage participated. In August and September, 1988 the Commission held additional briefings with the Department of Energy and the Nuclear Regulatory Commission, which were announced in the **Federal Register**. Subsequently, in December, 1988 and January, 1989 the Commission held a series of public hearings in Washington, DC; Denver, Colorado; San Francisco, California; and Atlanta, Georgia. These hearings were also noticed in the **Federal Register**, and announcements were mailed to approximately 6,000 individuals and organizations nationwide. Because time did not permit the Commission to hear from all persons requesting to testify in Atlanta, the Commission has decided to schedule another hearing session.

The purpose of the hearing announced in this notice is to continue the Commission's efforts to solicit the views of any interested persons on whether the Commission should recommend that a monitored retrievable storage facility for spent nuclear fuel be included as part of an integrated nuclear waste management program. It should be noted, however, that the Commission was not asked by the U.S. Congress and does not intend to address siting of an MRS. That will be the Department of Energy's (DOE) responsibility if the Congress decides to permit DOE to proceed with the MRS after receiving the Commission's recommendations.

The Commission encourages any interested person to make his or her views known during the public hearings, either through attendance at a meeting or in writing. The Commissioners will consider the information received when it develops its recommendations and report to Congress.

To accommodate all persons requesting to testify and to allow time for questions from the Commissioners, a time limit will be placed on scheduled oral presentations. The amount of time permitted for each oral presentation will depend on the number of requests that the Commission receives. Those testifying will be notified of time constraints following receipt of their written requests. Persons testifying are asked to provide five copies of their testimony and any accompanying slides or other documentation five days in advance of their presentation to the MRS Review Commission, 1825 K Street NW., Suite 318, Washington, DC 20006. Persons testifying are also asked to bring 75 copies at the time of their testimony.

In addition to oral presentations scheduled in advance, the Commission will provide time at the hearing to hear the views of interested persons on a first come, first served basis. Participants in this part of the hearing do not need to notify the Commission in advance of their plan to attend, but they will be required to appear between 9:00 am and 12:00 noon on February 16, 1989 to sign up for five minutes during the time allotted.

Participants during both parts of the hearing should be prepared to answer questions from the Commission. A transcript of the hearings will be made.

Issues

In the legislation creating the Monitored Retrievable Storage Review Commission, Congress directed the Commission to address a number of issues in its evaluation and recommendation to Congress on the need for an MRS. The Commission has since identified additional issues that should be considered in its evaluation. Some of these issues are set forth below to focus the discussions during the public hearings. Interested persons may wish to address them in their written statements or oral remarks but need not limit their comments to them.

1. Are there specific reasons why an MRS facility should or should not be built, assuming a suitable site can be found for the facility? Consider, for example:

—Need for the facility;
—Public health and safety;
—Environmental impacts;
—Safeguards/national security;
—Transportation issues such as public health, safety and environmental effects; routing; inspection, enforcement and emergency preparedness capabilities along the routes; and the possible need for new transportation facilities;
—Predictability and reliability of the national system for the disposal of radioactive waste;
—Potential effect of the MRS facility on repository design and construction; waste package design, fabrication and standardization; and waste preparation;
—Ability of the Secretary of the U.S. Department of Energy to fulfill contractual commitments to accept spent fuel for disposal; and
—Economic issues such as the costs of building and operating an MRS compared to the costs of continued storage of spent fuel at reactors, the cost of an MRS facility to electric utility ratepayers and taxpayers and the equitable distribution of such costs; the economic consequences of siting a MRS facility on the area in which an MRS might be located; and the advisability and possible methods of trying to mitigate economic and fiscal consequences in siting an MRS.

2. Some of the proposed MRS facility functions include serving as a hub for spent fuel transportation, temporary spent-fuel storage for up to 15,000 metric tons of heavy metal (MTHM), manufacturing concrete casks in which spent fuel would be stored, and preparing the spent fuel for disposal (including consolidating fuel rods and placing the fuel in the appropriate disposal containers). If an MRS facility were to be built and operated, what functions should be carried out at the facility?

3. One alternative to an MRS facility is continued at-reactor storage. Are there other viable alternatives that should be considered? What are the advantages and disadvantages of the alternatives?

4. The 1987 Amendments to the National Waste Policy Act (NWPA) place the following restrictions on the site selection, construction, and operation of an MRS facility:

—Construction of the MRS may not begin until the NRC has issued a license for the construction of the repository;
—Construction of the MRS or acceptance of waste (i.e., spent fuel or high level waste) at the MRS is prohibited during such time as the repository license is revoked by the NRC or construction of the repository ceases;
—The total quantity of waste at the MRS cannot exceed 10,000 MTHM until the repository first accepts waste;
—The quantity of waste at the MRS may not, in any case, exceed 15,000 MTHM.

The principal purpose of the restrictions is to assure that the MRS facility does not become a *de facto* repository. Are the restrictions necessary if an MRS is built? Are they appropriate? Are they adequate? If an MRS is built, are there other ways to achieve the objective?

5. When considering whether to include an MRS facility in the national nuclear waste program, what weight should be given to subjective factors such as program predictability and reliability, program flexibility, and public confidence that the national nuclear waste program will be successful?

Jane A. Axelrad,
Executive Director and General Counsel.
January 25, 1989.
[FR Doc. 89-2060 Filed 1-27-89; 8:45 am]
BILLING CODE 6820-BE-M

NATIONAL CREDIT UNION ADMINISTRATION

Public Information Collection Requirement Submitted to OMB for Review

Date: January 24, 1989.

The National Credit Union Administration has submitted the following public information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission may be obtained by calling the NCUA Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the NCUA Clearance Officer, NCUA, Administrative Office, Room 7344, 1776 G Street, Washington, DC 20456.

National Credit Union Administration

OMB Number: 3133-0067.
Form Number: NCUA 5310.
Type of Review: Revision/Renewal.
Title: Corporate Credit Union Monthly Report.
Description: Federally insured corporate credit unions are required to make periodic reports of financial condition to the National Credit Union Administration. The information is used to monitor liquidity needs, and provide a basis for developing policy and determining the potential impact of economic developments on the well being of the corporate system. Most non-federally insured corporate credit unions voluntarily participate in the reporting process.
Respondents: Federally insured and other corporate credit unions.
Estimated Number of Respondents: 30.
Estimated Burden Hours per Response: 1 hour.
Frequency of Response: Monthly.
Estimated Total Reporting Burden: 360 hours.
Clearance Officer: Wilmer A. Theard, (202) 682-8700, National Credit Union Administration, Room 7344, 1776 G Street, Washington, DC 20456.
OMB Reviewer: Gary Waxman (202) 3905-7340, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Becky Baker,
Secretary of the NCUA Board.
[FR Doc. 89-2017 Filed 1-27-89; 8:45 am]
BILLING CODE 7535-01-M

NATIONAL SCIENCE FOUNDATION

Permit Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit issued under the Antarctic Conservation Act of 1978, Pub. L. 95-541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice of permit issued.

FOR FURTHER INFORMATION CONTACT: Charles E. Myers, Permit Office, Division of Polar Programs, National Science Foundation, Washington, DC 20550.

SUPPLEMENTARY INFORMATION: On December 15, 1988, the National Science Foundation published a notice in the **Federal Register** of a permit application received. A permit was issued to the following individual on January 19, 1989: William J.L. Sladen.

Charles E. Myers,
Permit Office, Division of Polar Programs.
[FR Doc. 89-2107 Filed 1-27-89; 8:45 am]
BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-317 and 50-318]

Baltimore Gas and Electric Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of amendments to Facility Operating Licenses DPR-53 and DPR-69 issued to the Baltimore Gas and Electric Company (the licensee) for operation of the Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, located in Calvert County, Maryland. The proposed amendments, submitted via the application dated March 15, 1988, as modified on December 2, 1988 and supplemented on June 3, 1988 and January 13, 1989, would modify the operations line management senior reactor operator (SRO) license requirements of Technical Specification 6.2.2, "Unit Staff."

Need for Environmental Impact Statement

The Commission has found that the proposed amendments will not result in any additional significant environmental impact and has, therefore, determined not to prepare an environmental impact statement.

Environmental Assessment

Identification of the Proposed Amendments

Currently, Technical Specification (TS) 6.2.2.g required that the General Supervisor-Nuclear Operations (GS-NO) hold an SRO license. In accordance with a September 1, 1988 split of the duties of the GS-NO between the GS-NO and the Assistant General Supervisor-Nuclear Operations (AGS-NO), the licensee has proposed the following changes to TS 6.2.2.g: (1) Modify the requirement that the GS-NO hold an SRO license to a new requirement that the GS-NO hold or have held an SRO license at Calvert Cliffs, and (2) add a new requirement which requires that the AGS-NO hold an SRO license.

Need for the Proposed Action

These changes are requested to permit better flexibility in shifting qualified personnel among management positions while, at the same time, ensuring that the detailed level of knowledge needed to directly supervise the safe operation of the plant is maintained.

Alternatives to the Proposed Action

Since we have concluded that the environmental effects of the proposed

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action are negligible, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested action. This would not significantly reduce the environmental impacts of plant operation and would result in reduced operational flexibility.

Alternative Use of Resources

This action does not involve the use of resources not previously considered by the Commission in the "Final Environmental Statement Relating to Operation of Calvert Cliffs Nuclear Power Plant, Units 1 and 2" dated April 1973.

Environmental Impact of the Proposed Amendments

These proposed changes are basically administrative in nature and are provided to facilitate the splitting of the GS–NO's roles between the GS–NO and AGS–NO.

Consequently, these proposed changes pose neither radiological nor non-radiological impacts upon the environment. The day-to-day operation of the plant shall continue to be directly supervised by a manager who holds an SRO license. This constitutes no change in the level of safety exercised in plant operations. Furthermore, the Plant Operations and Safety Review Committee shall continue to include a member with an SRO license which ensures that all nuclear safety matters will continue to be reviewed by a member who has a current detailed level of knowledge of plant operation.

Therefore, the Commission has determined that these proposed amendments pose no significant environmental impact.

Agencies and Persons Consulted

None.

Finding of No Significant Impact

Based on the aforementioned environmental assessment, the Commission has determined that the proposed amendments will not have a significant effect on the quality of the human environment.

For further details with respect to his action see: (1) The applications for license amendments dated March 15, 1988 and December 2, 1988, and (2) the licensee's supplemental letters dated June 3, 1988 and January 13, 1989. These documents are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC, and at the Calvert County Library, Prince Frederick, Maryland.

Dated at Rockville, Maryland, this 25th day of January 1989.

For the Nuclear Regulatory Commission.

Joseph D. Neighbors,

Acting Director, Project Directorate I–1, Division of Reactor Projects I/II.

[FR Doc. 89–3079 Filed 1–27–89; 8:45 am]

BILLING CODE 7590–01–M

(Docket Nos. 50–317 and 50–318)

Baltimore Gas and Electric Co., Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC or the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR–53 and DPR–69, issued to the Baltimore Gas and Electric Company, (the licensee), for operation of the Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, respectively, which are located in Calvert County, Maryland. The proposed amendments, submitted via the license application dated June 9, 1988, as supplemented on October 25 and November 17, 1988 would change the Units 1 and 2 Technical Specifications (TS) 5.6.1, "Criticality-Spent Fuel," and 5.6.2, "Criticality-New Fuel," to increase the maximum U–235 fuel enrichment limit from 4.1 to 5.0 weight percent and also, reduce the TS 5.6.2 maximum limit on the effective multiplication factor (K_{eff}) from 0.98 to 0.95. Additional information concerning expected core burnup levels was provided in a December 28, 1988 letter.

This assessment shall also apply to any changes proposed in the reactor core U–235 enrichment limit, up to and including 5.0 weight percent, and to proposed increases in the average level of irradiation of fuel discharged from the reactors up to a batch average discharge burnup limit of 60,000 MWD/MT.

Need for Environmental Impact Statement

The Commission has found that the proposed amendments constitute no additional significant environmental impact and as has, therefore, determined not to prepare an environmental impact statement.

Environmental Assessment

Identification of Proposed Amendments

Currently, the maximum permitted enrichment limit for (1) stored new and spent fuel and (2) fuel in the reactor core at Calvert Cliffs Units 1 and 2 is 4.1 weight percent U–235. The licensee is in the process of shifting its core design to incorporate higher enrichment fuel assemblies to support full 24-month operating cycles. The first Unit 1 24-month cycle commenced in Spring 1988, with a reload planned for April 1990, while the first Unit 2 24-month cycle is nearing its March 1989 completion date. These first 24-month cycle cores were transitional designs provided to economically utilize the lower enrichment fuel (4.0 to 4.85 weight percent U–235) located onsite that had already experience irradiation and burnup during the previous 18-month cycles at each unit. Subsequent to the use of this lower enrichment fuel, the licensee intends to utilize cores with up to 5.0 weight percent U–235 enrichment levels to better support 24 months of continuous power operation without refueling. Consequently, the licensee has proposed changes to increase the U–235 enrichment limits in TS 5.6.1, "Criticality-Spent Fuel," and TS 5.6.2, "Criticality-New Fuel," from 4.1 to 5.0 weight percent.

In addition, the licensee has proposed to restrict the maximum value of K_{eff} to a limit of 0.95, vice the current limit of 0.98, and add the full flood condition to the various densities of unborated water conditions that are assumed in determining K_{eff}. The reduction of the maximum limit for K_{eff} for fully flooded conditions was proposed solely to place the Calvert Cliffs TS limits on new fuel criticality in full accord with the NRC guidance provided in Section 9.1.1., "New Fuel Storage," of the Standard Review Plan (NUREG–0800). This restrictive change would provide more conservative criticality determinations for new fuel storage than those currently required by TS.

Need for the Proposed Amendments

The proposed changes are needed to allow the licensee to support future 24-month full power operating cycles.

Environmental Impact of the Proposed Amendments

The Commission has completed its evaluation of the proposed revisions to the TS and the proposed increase in the burnup limits for the fuel. The staff has concluded that such changes would not adversely affect plant safety. The proposed changes have no significant adverse effects upon the probability of any analyzed accident. The increased burnup may alter slightly the mix of fission products that could be released in the event of a serious accident but such small changes would not significantly affect the consequences of said serious accidents. In addition, no changes would result in the types or amounts of any radiological effluents that may be released offsite. Finally, these changes would not contribute to any significant increase in individual or cumulative occupational radiation exposure.

Regarding the potential non-radiological impact of reactor operation with higher enrichment fuel and increased levels of irradiation, the proposed changes involve systems located within the restricted area, as defined in 10 CFR Part 20. They do not affect non-radiological plant effluents and have no other non-radiological environmental impact.

The potential environmental impact resulting from the transportation of higher fuel enrichment and burnup levels is discussed in the staff assessment entitled, "NRC Assessment of the Environmental Effects of Extended Fuel Enrichment and Irradiation," which was published in the **Federal Register** on August 11, 1988 (53 FR 30355) in connection with the Shearon Harris Nuclear Power Plant, Unit 1, Environmental Assessment and Finding of No Significant Impact. As indicated therein, the environmental cost contribution of the transportation, due to the increases in the fuel enrichment up to 5% and irradiation limits up to 60,000 MWD/MT are either unchanged or may, in fact, be reduced from those summarized in Table S–4 as set forth in 10 CFR 51.52(c). These findings are applicable to these amendments for the Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2.

Therefore, the Commission concludes that the proposed amendments pose no significant radiological or non-radiological environmental impact.

Alternatives to the Proposed Amendments

Since the Commission concluded that there are no significant environmental effects that would result from the proposed changes, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested fuel enrichment and burnup increases. This would not reduce environmental impact of plant operation and would result in reduced operational flexibility.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the "Final Environmental Statement Related to the Operation of Calvert Cliffs Nuclear Power Plant, Units 1 and 2," dated April 1973.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult with other agencies or persons.

Finding of No Significant Impact

Based upon the foregoing environmental assessment, we conclude that the proposed amendments will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see (1) the application for license amendments dated June 9, 1988, as supplemented on October 25 and November 17, 1988, and (2) the licensee's letter of December 28, 1988, which are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC and at the Calvert County Library, Prince Frederick, Maryland.

Dated at Rockville, Maryland, this 25th day of January 1989.

For the Nuclear Regulatory Commission.

Joseph D. Neighbors,

Acting Director, Project Directorate I–1, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 89–2077 Filed 1–27–89; 8:45 am]

BILLING CODE 7590–01–M

Receipt of U.S. Department of Energy's Site Characterization Plan for Yucca Mountain, Nevada Site

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of receipt of the Department of Energy's Site Characterization Plan for Yucca Mountain, Nevada Site.

SUMMARY: The Nuclear Regulatory Commission (NRC) has received for review and comment the Department of Energy's (DOE) Site Characterization Plan (SCP) for the Yucca Mountain, Nevada candidate site for a permanent geologic repository for high-level radioactive waste (HLW). Section 113(b) of the Nuclear Waste Policy Act of 1982 (NWPA) requires that the SCP provide "a general plan for site characterization activities" to be conducted. The purpose of site characterizaton is to collect pertinent geological and other information necessary to evaluate whether the site is suitable for a permanent geologic repository and, if found suitable, to provide DOE with data adequate to prepare and support a license application seeking from the NRC authorization to construct such a repository

As part of the pre-license application phase of the repository licensing process established by NWPA and the Nuclear Waste Policy Amendments Act of 1987 (NWPAA), the NRC is required to review and comment upon DOE's SCP, and in accord with 10 CFR 60.16, "DOE shall defer the sinking of such shafts until such time as there has been an opportunity for Commission comments thereon to have been solicited and considered by DOE." NRC anticipates completion of the review in a seven-month timeframe, culminating in issuance to DOE of a Site Characterization Analysis (SCA) with respect to the SCP, as well as such additional comments as may be warranted.

During its review of the SCP, the NRC will provide an opportunity for the State of Nevada and for affected local governments and Indian Tribes to present their views on the SCP and their suggestions with respect to comments thereon which may be made by the NRC. In addition, NRC staff will be made available to consult with the affected parties upon their written request pursuant to Subpart C of 10 CFR Part 60

At the time of issuance of the SCA, a notice of availability of the SCA and a request for public comment will be published in the **Federal Register**. Copies of the SCA and of the comments received will be made available at NRC's Public Document Room (PDR) located at 2120 L Street, NW., Lower Level, Washington, DC 20555 and local Public Document Rooms (LPDRs), located at the James R. Dickinson Library, Special Collections Department, University of Nevada-Las Vegas, 4505 Maryland Parkway, Las Vagas, Nevada 89154 and University Library, Government Publications Department, University of Nevada-Reno, Reno, Nevada 89557.

Copies of the SCP may be obtained from DOE by contacting: Stephen H. Kale, Associate Director, Office of Facilities Siting and Development, Office of Civilian Radioactive Waste Management, U.S. Department of Energy, RW–20, 1000 Independence Avenue, SW., Washington, DC 20585 or Carl P. Gertz, Project Manager, Yucca Mountain Project Office, U.S. Department of Energy, Box 98518, Las Vegas, Nevada 89193–8518.

NRC has made copies of the SCP available for public inspection in its PDR and LPDRs.

FOR FURTHER INFORMATION CONTACT: John J. Linehan, Director, Repository Licensing and Quality Assurance Project Directorate, Division of High-Level Waste Management, Office of Nuclear Material Safety and Safeguards, U.S.

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Nuclear Regulatory Commission, Washington, DC 20555.

Dated at Rockville, Maryland, this 23rd day of January 1989.

For the Regulatory Commission.

Hugh L. Thompson, Jr.,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 89-2001 Filed 1-27-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-317 and 50-318]

Baltimore Gas and Electric Co.; Consideration of Issuance of Amendments to Facility Operating Licenses and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating Licenses Nos. DPR-53 and DPR-69, issued to the Baltimore Gas and Electric Company (the licensee), for operation of the Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, located in Calvert County, Maryland.

The proposed amendments would provide a one time extension of four weeks beyond the end of the required surveillance interval for the performance of Type B and C local leak rate tests on containment penetrations as provided in Technical Specification 4.6.1.2.d. The proposed change reflects the operating cycle change from 18 months to 24 months and allows the testing frequency to change from a 24 month interval to the interval corresponding to the forthcoming refueling outage.

This proposed TS revision is in response to the licensee's application for amendments dated December 14, 1988.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By March 1, 1989, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene, which must include a list of the contentions that are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, Gelman Building 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Robert A. Capra: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to D. A. Brune, Jr., General Counsel, Baltimore Gas and Electric Company, P.O. Box 1475, Baltimore, Maryland 21203, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

If a request for a hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards considerations in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated December 14, 1988, which is available for public inspection at the Commission's Public Document Room, Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the Local Public Document Room, Calvert County Library, Prince Frederick, Maryland.

Dated at Rockville, Maryland, this 25th day of January 1989.

For The Nuclear Regulatory Commission.

Joseph D. Neighbors,

Acting Director, Project Directorate I-1, Division of Reactor Projects I/II.

[FR Doc. 89-2080 Filed 1-27-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-338 and 50-339]

Virginia Electric and Power Co.; Consideration of Issuance of Amendments to Facility Operating Licenses and Proposed No Significant Hazards; Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating Licenses No. NPF-4 and NPF-7, issued to the Virginia Electric and Power Company (the licensee), for operation of the North Anna Power Station, Units No. 1 and No. 2 (NA-1&2) located in Louisa County, Virginia.

The amendments would revise the NA-1&2 Technical Specifications (TS) 3/4.9.10, Refueling Operations Water Level—Reactor Vessel, to allow control rod movement with the requirement of 23 feet of water above the irradiated fuel assemblies within the reactor pressure vessel. The proposed amendments remove the ambiguity associated with control rod latching and unlatching operations where control rods are raised (with the upper internals package installed) for weight or drag testing.

The proposed amendments would clarify the existing TS 3.9.10 by breaking it into two parts: TS 3.9.10.1 would address fuel assembles and assure that at least 23 feet of water will be maintained over the top of the reactor pressure vessel flange in Mode 6 during movement of fuel assembles within containment. References to control rod evolutions would be deleted. A new TS, 3.9.10.2, would be added to address control rod evolutions in Mode 6 and require at least 23 feet of water be maintained over the top of irradiated fuel assemblies within the reactor pressure vessel. This is consistent with the existing basis for the specification.

On April 1, 1987, the licensee submitted a proposed TS change for NA-1&2 which revised the applicability of TS 3.9.10, "Refueling Operations Water Level—Reactor Vessel," to conform to Standard Technical Specifications for Westinghouse Pressurized Water Reactors, NUREG-452, Rev. 3. The change was approved by the NRC on May 23, 1988 by issuance of License Amendment Nos. 102 and 89 for NA-1&2, respectively. As discussed in the NRC Safety Evaluation, the change allowed the removal of vessel internal assemblies with less than the specified water level but still required 23 feet of water above the reactor pressure vessel flange whenever fuel assemblies or control rods are moved.

The upcoming 1989 refueling outage for NA-2, currently scheduled to begin February 10, 1989, is the first refueling outage which will be conducted under the revised TS. In preparation of the upcoming refueling, and subsequent discussion with the NRC staff, it was determined that the wording of the revised TS appeared to preclude a refueling evoluation that had previously been considered by the licensee to be routine. Current NA-1&2 refueling procedures and equipment design are based on this evolution.

Specifically, although not the intent of the TS, the wording could be interpreted to mean that weight/drag testing of control rods during unlatching/latching operations (i.e., movement) would require 23 feet of water above the reactor pressure vessel flange. The licensee believes these control rod unlatching/latching evolutions directly support and are part of the reactor vessel upper internals removal/installation evolutions. Until now, the licensee's normal refueling sequence has required the water level to be lowered to 23 feet above the top to the fuel assemblies within the reactor vessel for removal/installation of the upper internals package and maintained at that level during control rod unlatching/latching. The licensee believes that evolution is acceptable, as is, and should not now be precluded because of this rewording of the TS in May 1988.

Once the concern was identified, the license worked with the NRC staff in the fourth quarter of 1988 to determine the appropriate mechanism for correctly interpreting or clarifying TS 3.9.10. The licensee worked in good faith, attempting to resolve the issue in an efficient manner. After several discussions with the NRC staff, the licensee submitted a letter on December 23, 1988 requesting concurrence with the licensee's interpretation of the TS as described above. On January 4, 1989 the licensee was informed by the NRC staff that the appropriate mechanism to resolve the issue would be to submit a TS change.

Because the guidance to submit a TS change was received on January 4, 1989, and the NA-2 refueling outage is scheduled to commence February 10, 1989, insufficient time remains for publication of the 30 day notice in the **Federal Register.** Therefore, the licensee has requested that the change be processed in an exigent manner.

The licensee believes that appropriate and timely actions were taken prior to, and including the licensee's submittal for, an exigent TS change dated January 13, 1989. The licensee worked with the appropriate NRC staff to understand and define the scope of the TS in question. In addition, the licensee attempted to obtain clarification in December 1988 and acted promptly when notified in early January 1989 that the licensee's effort to obtain clarifiation was not the appropriate vehicle to resolve the issue and that a TS change would be required. In summary, the licensee believed that these actions constitute a best effort at obtaining resolution in a timely manner and that sufficient justification has been presented to permit exigent processing of the requested TS change.

The Commission has made a proposed determination that the amendment request involves no significant hazards considerations. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The proposed change does not involve a significant hazards consideration as defined in 10 CFR 50.92 because operation of NA-1&2 in accordance with this change would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated. This change does not alter the conditions or assumptions of the accident anaylsis or the basis of the current TS. Fuel handling operations during refueling are unchanged and the refueling water level requirement remains consistent with the accident analysis assumptions in the UFSAR concerning the minimum required water level. Therefore the probability and the consequences of the fuel handling accident are not increased.

(2) Create the possibility of a new or different kind of accident from any accident previously identified. This change does not alter the conditions or assumptions of the accident analysis or the basis of the current TS. Fuel handling operations during refueling are unchanged and therefore the fuel handling accident evaluated in the UFSAR remains bounding in terms of the type of accidents that may occur and a new and different kind of accident is not created.

(3) Involve a significant reduction in a margin of safety. This change does not alter the conditions or assumptions of the accident analysis or the basis of the current TS. Fuel handling operations during refueling are unchanged and the

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refueling water level requirement remains consistent with the assumptions of the accident analysis. Consequently, the margin of 10 CFR Part 100 dose limits is not reduced.

Accordingly, the Commission proposes to determine that this change does not involve significant hazards considerations.

The Commission is seeking public comments on this proposed determination. Any comments received within 15 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of the **Federal Register** notice.

Written comments may also be delivered to Room P-216, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland from 8:15 a.m. to 5:00 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By March 1, 1989, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rule of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requestion leave of the Board up to fifteen (15) days prior to the first pre-hearing conference scheduled in the proceeding, but such as amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene, which must include a list of the contentions that are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendments under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendments are issued before the expiration of 30-days, the Commission will make a final determination on the issue of no significant hazards considerations. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards considerations, the Commission may issue the amendments and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendments.

If the final determination is that the amendment request involves significant hazards considerations, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 15-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendments before the expiration of the 15-day notice period, provided that its final determination is that the amendments involve no significant hazards considerations. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Herbert N. Berkow: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Michael W. Maupin, Esq., Hunton and Williams, P.O. Box 1535, Richmond, Virginia 23212.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendments dated January 13, 1989, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the Local Public Document Room, The Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

Dated at Rockville, Maryland, this 25th day of January, 1989.

For the Nuclear Regulatory Commission.

Leon B. Engle,

Project Manager, Project Directorate II-2, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

FR Doc. 89-2078 Filed 1-27-89; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

January 23, 1989.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

MNC Financial Inc.
Common Stock, $2.50 Par Value (File No. 7-4166)
Public Service of New Hampshire
Warrants expiring 10/15/91 (File No. 7-4167)
Winchell Donut Houses
Common Stock, No Par Value (File No. 7-4168)
Pacificorp
Common Stock, $3.25 Par Value (File No. 7-4169)
MCN Corporation
Common Stock, $.01 Par Value (File No. 7-4170)
Homefed Corporation
Common Stock, $.01 Par Value (File No. 7-4171)

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before February 13, 1989, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-2055 Filed 1-27-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-26482; File No. SR-NASD-88-54]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Position and Exercise Limits of the Rules Applicable to Options Trading

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 2, 1988, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing to amend section 3 of Appendix E to Article III, section 33 of the NASD Rules of Fair Practice ("Appendix E") to permit automatic exemptions from position and exercise limits contained in sections 3 and 4 of Appendix E for fully hedged equity options for a two year pilot program period. In addition, the NASD is proposing technical amendments to section 3 of Appendix E to clarify that the position and exercise limits contained in sections 3 and 4 are applicable to conventional stock options and exchange-traded index options.[1]

[1] Under the proposed rule change, the position limits applicable to exchange-traded index options are those established by the "exchange on which the option trades."

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change provides for a two year pilot program during which certain fully hedged equity option positions will be automatically exempt from the position and exercise limits for equity options set forth in Appendix E. The purpose of the proposed rule change is to increase position and exercise limits for equity options by creating a limited exemption for the four most commonly used hedged positions for a two year period. The proposed rule change will permit *bona fide* hedgers to take equity option positions that are twice the exchange's and the NASD's currently stated limits of 3,000, 5,500, and 8,000 contracts, depending on the number of shares of the underlying security outstanding and/or the underlying security's trading volume.

During the two year pilot program, the NASD is proposing to automatically exempt from equity option position and exercise limits, those option accounts that have established one of the four most commonly used options hedged positions on a one-for-one basis (*i.e.*, one hundred shares of stock for one option contract). The four most commonly used hedged positions are long stock and short call, long stock and long put, short stock and long call, and short stock and short put. In addition, no change is being proposed to Section 4 of Appendix E with the result that exercise limits will continue to correspond to position limits. Thus, members or persons associated with members will be allowed to exercise, during any five consecutive business days, the same number of contracts set forth as the position limit for that option.

The proposed rule change is substantively identical to those filed by the American, Pacific, and Philadelphia Stock Exchanges, as well as the Chicago

Board Options Exchange ("options exchanges") and subsequently approved by the Commission.[6] In order to make the NASD's options rules consistent with those of the options exchanges, the NASD has determined to file the above-referenced rule change with the Commission.

In addition, the NASD is proposing to amend Section 3 of Appendix E to clarify that the position and exercise limits contained in Sections 3 and 4 are applicable to conventional stock options and exchange-traded index options. Because it was never the NASD's intention to exclude conventional stock options and exchange-traded index options from the position and exercise limit provisions of Appendix E, the NASD is proposing to amend Appendix E to specifically include these types of options within its provisions.

Because the proposed rule changes are designed to make the position and exercise limits of Appendix E more consistent with those of the options exchanges and to clarify that both conventional and exchange-traded index options are included in the position and exercise limits, the NASD believes the proposed rule amendments are consistent with the provisions of section 15A(b)(6) under the Act which provides, in pertinent part, that the rules of an association be designed to "remove impediments to and perfect the mechanism of a free and open market and a national market system."

B. Self-Regulatory Organization's Statement on Burden on Competition

The Association believes that the proposed rule changes do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by February 21, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Jonathan G. Katz,

Secretary.

January 23, 1989.

[FR Doc. 89-2054 Filed 1-27-89; 8:45 am]

BILLING CODE 8010-01-M

[6] *See* Securities and Exchange Act Release No. 23738 (May 24, 1986), 53 FR 20201, order approving SR-AMEX-87-13, SR-CBOE-87-27, and SR-PHLX-87-32; and Securities and Exchange Act Release No. 23611 (June 10, 1986), 53 FR 23621, order approving SR-PSE-86-9.

[9] 17 CFR 200.30-3(a)(12) (1988).

[Release No. 34-26463; File No. SR-NYSE-88-44]

Self-Regulatory Organizations; Proposed Rule Change by New York Stock Exchange, Inc. Relating to Rate Increases Affecting Listing Fees

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on December 30, 1988, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is instituting listing fee increases and an advance billing schedule affecting initial and continued listing fees.[1] In addition, a maximum annual fee is being established and the maximum listing fee for stock splits is being reduced. These fees will be changed commencing January 1, 1989.[2]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

The purpose of this change is to offset in part the increased costs of supplying services provided by the Exchange. These costs include manpower, systems, and utilities associated with providing marketplace services.

(2) Statutory Basis

The basis under the Act for the proposed rule change is section 6(b)(4) permitting the rules of an Exchange to provide for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange has not solicited written comments regarding the proposed change, and no unsolicited written comments have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing For Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Branch, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by February 21, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

January 23, 1989.

[FR Doc. 89-2094 Filed 1-27-89; 8:45 am]

BILLING CODE 8010-01-M

[1] The advanced billing schedule will be phased in for listed companies over a three-year period.

[2] Exhibits II-IV of the Exchange's filing, which detail the amended fee schedules and billing procedures, are available for inspection in the Public Reference Branch at Commission headquarters in Washington, DC.

[Release No. 34-26487; File No. SR-NYSE-88-33]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change

On October 20, 1988, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Commission, pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder,[1] copies of a proposed rule change to impose allocation restrictions on a specialist unit that either loses its registration in a specialty stock as a result of a performance improvement action or disciplinary proceedings or voluntarily withdraws its registration in a specialty stock due to an impending performance improvement or disciplinary action.

Notice of the proposal together with its terms of substance was provided by the issuance of a Commission release (Securities Exchange Act Release No. 26278, November 14, 1988) and by publication in the **Federal Register** (53 FR 46962). No comments were received in connection with the proposal.

Under the proposal, a specialist unit would be prohibited from applying for new listings for a six month period ("Allocation Prohibition")[2] immediately following the reallocation of the unit's specialty stock as a result of:

(1) A performance improvement action in which the Exchange finds that the unit failed to meet certain performance requirements provided for in NYSE Rule 103A[3];

(2) Proceedings under NYSE Rule 475, which authorizes the Exchange to prohibit or limit a member's access to Exchange services and Rule 476, which provides for the commencement of disciplinary proceedings for violations of Exchange rules and practices and certain other infractions; or

(3) A voluntary recission of a unit's registration in a specialty stock due to a possible reallocation of the specialty stock under Rules 103A, 475, or 476.

After the initial six month allocation restriction period, the specialist unit will be permitted to apply for new listings during the following six months, only if the unit demonstrates that it has undertaken adequate measures to address the circumstances surrounding the reallocation of its stock.[4] In the event the Exchange staff determines that the unit's corrective measures did not adequately address the circumstances surrounding the reassignment of the unit's stock, the unit would not be permitted to apply for new listings at that time.[5] A unit could, however, apply for another new listing at a later date during the second six month period; however, the submission of an application for a new listing would trigger an Exchange review of the unit's corrective measures. At the conclusion of the second six month restriction period, the specialist unit's eligibility to participate in the Exchange's allocation process would be fully restored.

The Exchange indicates that the new policy is designed to complement the Exchange's proposed new Allocation Policy,[6] which provides standards to be considered by the Allocation Committee in awarding new stocks but which does not specifically restrict a specialist unit's ability to receive new allocations following the reassignment or withdrawal of registration in a specialty stock due to an actual or anticipated disciplinary or performance improvement action. The Exchange further indicates that the policy is intended to complement NYSE Rule 103A, which, as noted above, provides for the reallocation of one or more of a unit's specialty stocks for substandard performance. The Exchange believes that it would be inappropriate for a specialist unit to receive a new listing during a period of time immediately following the loss of its registration in a stock pursuant to a reallocation proceeding. In addition, the Exchange maintains that there should be no distinction between a unit that loses its registration in a stock as a result of a

[1] 15 U.S.C. 78s(b)(1) and 17 CFR 240.19b-4.

[2] *See* SR-NYSE-88-33, Exhibit A ("Exhibit A").

[3] Pursuant to Rule 103A, specialist units are evaluated on a quarterly basis utilizing a combination of subjective and objective performance measures. The rule authorizes the Exchange to reallocate one or more of a unit's registered securities where the unit consistently fails to meet minimum performance requirements contained in the rule. *See* Securities Exchange Act Release No. 25681 (May 9, 1988), 53 FR 27287

[4] The determination of whether a unit may apply for new listings during this second six month period will be made by the Exchange staff in consultation with Floor Directors. In making this determination, the Exchange staff will have the discretion to consider, among other things, whether the unit hired additional manpower, including back office personnel, changes in the unit's professional staff, whether the unit implemented more stringent supervisory procedures, and its dealer participation rates in its specialty stock.

[5] Even if the Exchange allows a unit to apply for a new allocation during this second six month period, the unit's disciplinary history, which will include a record of both the allocation restriction and the circumstances surrounding the reallocation of the unit's stock, will be provided to the Exchange Allocation Committee.

[6] *See* SR-NYSE-88-32, Noticed in Securities Exchange Act Release No. 26277 (November 14, 1988), 53 FR 46850.

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performance improvement or disciplinary action and a unit that voluntarily cancels its registration in a registered stock because of the potential reallocation of a stock.[7] Accordingly, the Exchange believes that the proposal will prevent a unit from avoiding the proposed allocation restrictions by negotiating a settlement of a pending action.

Finally, the Exchange believes that the proposal is consistent with section 6(b) of the Act in that it will enhance its ability to ensure the fair allocation of securities to specialist units and to prevent the allocation of securities to specialist units whose performance is below acceptable standards.

After careful consideration, the Commission believes that the proposal to impose allocation restrictions on certain specialist units is consistent with the Act and therefore has determined to approve the filing. In particular, the Commission believes, as the Exchange maintains, that a specialist unit whose performance leads to the reallocation of a specialty stock should not be allowed to participate in the allocation process until it demonstrates that its performance has improved. In this regard, the Commission believes that the initial six month allocation prohibition period should provide the unit with sufficient time to develop and implement the necessary corrective measures to rectify the deficiencies which lead to the reassignment of its specialty stock. The success of the unit's improvement initiatives during this period will determine whether it will be permitted to apply for new listings during the second six month period.[8]

Further, the allocation restriction policy will act as an incentive for improved specialist performance. Because the unit will be precluded from applying for new allocations during the allocation prohibition and conditionally prohibited for the following six months, the Commission believes that a unit will find it advantageous to avoid the consequences of a reallocation of an assigned security and subsequent imposition of the allocation restrictions by maintaining quality markets in its assigned securities as well as complying with Exchange rules and policies.

Under the proposal, the reallocation and subsequent imposition of the allocation restrictions is not a permanent impediment to a unit's future allocation success. In the event that a unit's specialty stock is reallocated and the restriction period triggered, the unit has, as noted above, six months to institute the necessary reforms to correct its deficiencies. The unit could only be restricted for an additional six month period if the Exchange staff finds that the unit has not taken adequate steps to resolve the circumstances giving rise to the reallocation. Accordingly, at most, a unit could only be precluded from applying for new allocations for a twelve month period. The Commission does not believe a potential twelve month allocation bar for units that have had stocks reallocated is too restrictive. Rather, we strongly believe it is consistent with investor protection, the public interest and the maintenance of fair and orderly markets to impose temporary allocation restrictions on specialists who have had a specialty stock reallocated due to poor performance and/or disciplinary action.

Finally, the Commission believes that the safeguards provided for in the procedures governing performance improvement and disciplinary proceedings will ensure that a specialist unit subject to the allocation restrictions will receive proper notice and the opportunity to defend its performance prior to the imposition of the allocation restrictions. For the reasons noted above, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6 and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above mentioned proposed rule change be, and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: January 24, 1989.

[FR Doc. 89-2103 Filed 1-27-89; 8:45 am]

BILLING CODE 8010-01-M

[7] In addition, the Exchange notes that the new policy is designed to address Commission concerns highlighted in the Commission's 1987 Market Break Report regarding NYSE specialist performance. *See* Securities Exchange Act Release No. 26278, November 14, 1988, 53 FR 46862.

[8] In this regard, we note that the steps identified as factors that may be considered by the Exchange staff in reviewing a unit's improvement efforts should serve as guidelines for the unit to consider when developing its improvement initiatives.

[Release No. 34-26484; File No. SR-PSE-88-23]

Self-Regulatory Organizations; Pacific Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to a Policy for Allocating Booth Space on the PSE Options Trading Floor

On October 11, 1988 the Pacific Stock Exchange, Inc. ("PSE" or "Exchange"), submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] a proposed rule change to adopt a policy for the allocation of booth space on the PSE options trading floor.

The proposed rule change was noticed in Securities Exchange Act Release No. 26206 (November 9, 1988), 53 FR 46175 (November 16, 1988). No comments were received on the proposed rule change.

The PSE's proposed booth allocation policy consists of two components, the booth allocation formula and booth utilization guidelines. The booth allocation formula will be used to determine the number of booths to which PSE member firms will be entitled, while the booth utilization guidelines will be used to determine whether allocated booths are being sufficiently utilized. Pursuant to the utilization guidelines booths which are not sufficiently utilized are subject to forefeiture and reassignment, notwithstanding any entitlement pursuant to the booth allocation formula.

The booth allocation formula is comprised of three components: (1) Monthly trades, (2) monthly contracts, and (3) number of employees. The three components are averaged to obtain the percentage of existing PSE booths to which each member firm is entitled (*e.g.*, If a particular firm executed 17.53% of the Exchange's monthly contracts, 16.16% of the monthly trades, and employed 9.45% of the floor personnel that firm would be entitled to 14.38% of PSE options trading floor booth space (17.53 + 16.16 + 9.45/3 = 14.38)). The booth figures for both clearing firms and retail/stock execution firms are compiled on a monthly as well as quarterly basis, and a rolling six-month evaluation is used for purposes of determining the allocation (or reallocation) of booth space. In this regard, if a firm requests additional booth space based on, for example, an unanticipated increase in monthly

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 240.19b-4 (1988).

trades, the Exchange would base reallocation on the figures from the six months immediately preceding the request. The next six-month evaluation or booth space would then be based upon the date on which booths were reallocated pursuant to the member firm request.

Initially, booth space for clearing firms and retail/stock execution firms will be calculated pursuant to the booth allocation formula; however, the clearing firms' percentages will be separated and adjusted to reflect the current percentage of booth space which clearing firms utilize.[3] Thus, if a clearing firm is entitled to 30% of 200 booths available on the options floor (60 booths) that firm would be allocated only 38 booths (63.3% of 60=38). Moreover, the residual of the total 200 booths, after adjusting for current clearing firm utilization, will be divided amongst the retail/stock execution firms according to the percentage of the original 200 booths to which such firms are entitled pursuant to the booth allocation formula.[4]

The evaluation of booth utilization is based on several criteria listed below in order of priority: (1) Effective utilization of booth by the staff of the member firm leasing the booth (occupied at least 50% of the trading day); (2) at least one operational phone; (3) member firm support equipment (i.e. order machines); (4) interrogation devices; and (5) a minimum of three to five working voice lines; not including any second party lines. The evaluation of booth space utilization does not include a firm's use of the space for trade matching or any other type of trading support operation that may be carried out effectively elsewhere.[5]

The PSE options floor booth allocation policy consists also of several subordinate issues. First, both formal and informal subleasing of booth space by one member to another member firm is prohibited. Thus, subleasing does not constitute effective booth utilization pursuant to the booth utilization guidelines. However, a member firm may allow another member firm to install, pursuant to written Exchange approval, either a single phone or drop line in its booth space. However, Exchange approved phones or drop lines also will not be considered in evaluating booth utilization of the member firm allocated the booth space. Second, physical alterations of a booth are made at the expense of the member firm leasing the booth and requires the Exchange's prior approval. The member firm must return the booth to its original condition upon vacating the space. Third, booth space vacated for any reason and booth space occupied by a member firm that merges with another member firm automatically will revert back to the Exchange. The surviving member firm of a merger will be given a higher degree of consideration for the reallocation of booth space. Fourth, a member firm may request additional booth space based upon the anticipation of increased volume. After a period not to exceed six months, the Exchange will evaluate the requesting member firm's booth space to determine if the additional allocated space is being sufficiently utilized pursuant to the booth utilization guidelines. Finally, the Exchange reserves the right to maintain or recall 5% of the total booth space available in order to satisfy any new or additional requests for booth space on the options trading floor.

The PSE states that the proposed options floor booth allocation policy is designed to provide a fair and equitable procedure for allocating approximately 200 both spaces to member firms on the Exchange's options trading floor. The Exchange notes that because a majority of these booths are presently leased to member firms, the increasing requests by member firms for additional booth space on the Exchange's options floor substantially outnumber the present available booth space. The Exchange also notes that many of the presently vacated booths are located in non-prime areas,[6] and that there are a number of booth spaces which are not being effectively utilized by member firms. The PSE suggests that member firm unwillingness to vacate underutilized booth space for reallocation to other member firms that have shown a substantial business need for more booth space necessitates the formulation of a policy that would allocate the booth space on the Exchange's options floor based on a member firm's utilization of such booth space.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6 and the rules and regulations thereunder. More specifically, the Commission believes it is appropriate for the PSE, in connection with its recent review of options floor booth space and existing allocation policy, to revise such policy so as to take into consideration historical trading data (number of trades and contracts) and the number of employees used to support each operation, thereby providing a more fair and equitable procedure for allocating options floor booth space. In this regard, the Commission notes that it is logical to provide the majority of booth space to those member firms who execute the majority of monthly trades and contracts.

In addition, the Commission believes that an Exchange policy which provides for the recall of underutilized booth space and the reallocation of such space to member firms that have shown a substantial business need for more booth space may help provide additional depth and liquidity to PSE options by providing more active member firms prime area space from which to execute additional options transactions. In this regard, the Commission believes that the PSE's decision to identify and establish priorities for five specific factors the Exchange will consider with regard to effective use of booth space allocated to member firms is reasonable given the limited booth space available on the PSE floor the specification of criteria for judging booth utilization, and the establishment of procedures to appeal exchange decisions concerning booth utilization.[7]

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[8] that the proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Dated: January 23, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-2095 Filed 1-27-89; 8:45 am]

BILLING CODE 8010-01-M

[3] Presently, PSE clearing firms utilize approximately 63.3% of the booth space to which they are entitled.

[4] Assuming there is a 15% residual of the total 200 booths and that a retail/stock execution firm was entitled to 11% of the original 200 booths, that firm is now entitled to an additional 1.65% of the 200 booths (11% of 15% = 1.65%).

[5] The PSE has indicated that booth utilization analyses will be performed no more frequently than on a quarterly basis. Telephone conversation between Craig Carberry, Director, Options Compliance, PSE, and Joseph Furey, Division of Market Regulation, SEC, dated January 9, 1989.

[6] Prime area is defined as a booth either near a trading crowd, near active posts, or near a central passageway.

[7] *See* Letter from Craig R. Carberry, Director, Options Compliance, PSE, to Joseph Furey, Branch Chief, Division of Market Regulation, SEC, dated January 20, 1989.

[8] 15 U.S.C. 78s(b)(2) (1982).

[9] 17 CFR 200.30-3(a)(12) (1988).

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[Release No. 34-26478; File No. SR-PHLX-88-37]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to French Franc Option Specifications

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 thereunder [2] the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") on November 18, 1988, submitted to the Securities and Exchange Commission ("SEC" or "Commission") a proposal to increase the unit of trading of the French franc foreign currency options from 125,000 francs to 250,000 francs and to modify the minimum fractional change for dealing on the Exchange in French franc option contracts from $.00005 to $.00002.

The proposed rule change was published for comment in Securities Exchange Act Release No. 26346 (December 7, 1988), 53 FR 50146. No comments were received on the proposed rule change.

The purpose of the proposed rule change is to make the size of the unit of trading in the French franc option contract comparable to the dollar value of other foreign currency option contracts traded on the Exchange.[3] Currently, the dollar value of the French franc option contract is substantially smaller than other foreign currency option contracts traded on the PHLX.[4] Additionally, the Exchange proposes to modify the minimum fractional change for dealing on the Exchange in French franc option contracts from $.00005 to $.00002. This proposed change, along with the doubling of French franc option size, would decrease the minimum premium change from the equivalent of $6.25 per tick to $5.00 per tick which is more comparable to transactions in over-the-counter French franc currency options.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchange, and, in particular, the requirements of section 6 [5] and the rules and regulations thereunder. Specifically, the Commission finds that the proposed rule change is consistent with section 6(5)(5) of the Act because it is designed to facilitate transactions in French franc foreign currency options contracts by allowing the Exchange to trade options on the French franc with a dollar range of contract comparable with other foreign currency option contracts and with fractional transaction changes comparable with off-exchange French franc options. The proposed rule change will thereby maintain the liquidity of the primary and derivative markets for the French franc by facilitating arbitrage, spread and other hedging opportunities between foreign currency options and inter-bank markets. Although increasing the unit of trading on French franc options will increase the maximum position size that can be accumulated in this option, this position size is commensurate with the maximum allowable position sizes in other foreign currency options.

It therefore is ordered, pursuant to section 19(b)(2) of the Act,[6] that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Dated: January 19, 1989.

Jonathan G. Kets,

Secretary.

[FR Doc. 89-2090 Filed 1-27-89; 8:45 am]

BILLING CODE 8010-01-M

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240. 19b-4 (1988).

[3] The PHLX proposes to initiate trading and open French franc foreign currency options series respecting units of trading of 250,000 French francs in puts and calls with both American and European style expirations commencing on February 13, 1989. In order to prevent investor confusion the PHLX proposes not to continue to add French franc foreign currency options contracts series with units of trading of 125,000 francs after the February 1989 expiration. The PHLX proposes to continue to trade those open and outstanding French franc options series with units of trading of 125,000 francs until their expiration in December, 1989.

[4] For example, a French franc foreign currency option contract of 125,000 francs represents a U.S. dollar value at current spot of $20,511.00 whereas the comparable ECU contract dollar value, is $72,337.80 the Japanese yen contract dollar value is $40,862.50 the Canadian dollar contract is $40,705.00 and the Australian dollar contract is $41,055.00.

[5] 15 U.S.C. 78f (1982).

[6] 15 U.S.C. 78s(b)(2) (1982).

[7] 17 CFR 200.30-3(a)(12) (1988).

[Release No. IC-16767/812-7076]

Alger American Fund; Application

January 23, 1989.

AGENCY: Securities and Exchange Commission (the "Commission").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

Applicants: The Alger American Fund (the "Fund") and certain life insurance companies and their variable life insurance separate accounts investing in the Fund (collectively, "Applicants").

Relevant 1940 Act Sections: Exemption requested pursuant to section 6(c) of the 1940 Act from sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act and Rules 6e-2(b)(15) and 6e-3(T)(b)(15) thereunder.

Summary of Application: Applicants seek an order to the extent necessary to permit shares of the Fund to be sold to and held by variable annuity and variable life insurance separate accounts of both affiliated and unaffiliated life insurance companies.

Filing Date: The application was filed July 20, 1988 and was amended on October 26, 1988 and January 10, 1989.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on the application or ask to be notified if a hearing is ordered. Any requests must be received by the Commission by 5:30 p.m. on February 13, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the Commission, along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. The Alger American Fund, 75 Maiden Lane, New York, New York 10038.

FOR FURTHER INFORMATION CONTACT: Cindy J. Rose, Financial Analyst (202) 272-2058, or Clifford Kirsch, Special Counsel (202) 272-2061, (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the Commission's Public Reference Branch in person or the Commission's commercial copier (800) 231-3282 (in Maryland (301) 253-4300).

Applicants' Representations

1. The Fund, an open-end, diversified, management investment company organized as a Massachusetts business trust, consists of four separate portfolios. The Fund has agreed to offer and sell its shares to the separate accounts of Skandia Life America Corporation in connection with the issuance of variable annuity contracts.

2. The Fund intends to offer its shares to registered separate accounts of other insurance companies ("participating insurance companies"), which may be affiliated or unaffiliated, issuing variable annuity contracts or variable life insurance contracts.

3. The application states that Rules 6e-2 and 6e-3(T) under the 1940 Act provide partial exemptions from sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act with respect to certain variable life insurance contracts. However, Rule 6e-2(b)(15) precludes mixed and shared funding and Rule 6e-3(T)(b)(15) precludes shared funding. The application states that "mixed funding" means that one management investment company funds both variable annuity and variable life insurance separate accounts. "Shared funding" means that one management investment company funds the separate accounts of unaffiliated life insurance companies. Applicants propose that the relief granted by Rules 6e-2(b)(15) and 6e-3(T)(b)(15) from sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act be extended to a class of life insurance companies and their separate accounts offering variable life insurance contracts to the extent necessary to permit shares of the Fund to be sold in connection with both mixed and shared funding, subject to the conditions set forth in the application and summarized below.

4. Applicants state that Rules 6e-2(b)(15) and 6e-3(T)(b)(15) recognize that it is unnecessary to apply the prohibitions of section 9(a) to the potentially large number of individuals wo may be employed by an insurance company where those individuals have no connection with the portfolio investment company funding the separate account. This rationale would seem to be equally applicable where the portfolio investment company engages in mixed and shared funding. Applicants submit that denying the availability of these exemptions in the context of mixed and shared funding would serve no regulatory purpose.

5. To the extent the Commission continues to interpret the 1940 Act to require pass-through voting privileges, participating insurance companies will vote shares of the Fund held in their separate accounts for which no timely voting instructions from contract holders are received, as well as shares they own, in the same proportion as those shares for which voting instructions are received. Applicants state that Rules 6e-2 and 6e-3(T) provide an exemption from this pass-through voting requirement in limited situations. The Commission recognized the necessity of the exemption from the pass-through voting requirements "to assure the solvency of the life insurer and the performance of its contractual obligations by enabling an insurance regulatory authority or the life insurer to act when certain proposals reasonably could be expected to increase the risks undertaken by the life insurer." These considerations are no less important or necessary when a participating insurance company funds its separate accounts through a management investment company which engages in mixes and shared funding. The application states that shared or mixed funding in no way compromises the goals of insurance regulatory authorities or the Commission.

6. The application states that mixed and shared funding may encourage competition, product variation and lower charges for the benefit of the public at large. It will also benefit contract holders by eliminating the cost of establishing and administering separate portfolio investment companies.

7. The Fund's portfolios will be managed in pursuit of their stated objectives and consistent with their policies; the Fund's portfolios will not be managed to favor or disfavor a particular type of variable annuity or variable life insurance contract or participating life insurance company.

Applicants Conditions

If the requested order is granted, Applicants agree to the following conditions:

1. A majority of the Fund's Board of Trustees will consist of persons who are not "interested persons" of the Fund, as defined by section 2(a)(19) of the 1940 Act, except that if this condition is not met by reason of the death, disqualification, or bona fide resignation of any Trustee, then the operation of this condition shall be suspended (a) for a period of 45 days if the vacancy or vacancies may be filled by the Fund's Board; (b) for a period of 60 days if a vote of shareholders is required to fill the vacancy or vacancies; or (c) for such longer period as the Commission may prescribe by Order upon application.

2. The Fund's Board of Trustees will monitor events in order to identify the existence of any material irreconcilable conflict which may arise between the interests of the owners of all separate accounts investing in the Fund and to determine what action, if any, should be taken in response to such conflicts.

3. Participating insurance companies and the Fund's investment manager shall report any potential or existing conflicts to the Fund's Board of Trustees. Participating insurance companies and the Fund's investment manager will be responsible for assisting the Fund's Board in carrying out its responsibilities under these conditions by providing the Board will all information reasonably necessary for the Board to consider any issues raised. This includes, but is not limited to, an obligation by each participating insurance company to inform the Board whenever voting instructions of contract holders are disregarded and on all other matters referred to in this application as conditions. The responsibility to report such information and conflicts and to assist the Fund's Board of Trustees will be a contractual obligation of all participating insurance companies under their agreements governing participation in the Fund.

4. When it is determined by a majority of the Fund's Board of Trustees, or a majority of its disinterested members that a material irreconcilable conflict exists, the relevant participating insurance companies shall, at their expense and to the extent reasonably practicable (as determined by a majority of the disinterested members of the Board), take whatever steps are necessary to eliminate the irreconcilable material conflict, including: (1) Withdrawing the assets allocable to some or all of the separate accounts from the Fund or any portfolio and reinvesting such assets in a different investment medium, which may include another portfolio of the Fund, or submitting the question whether such segregation should be implemented to a vote of all affected contract holders and, as appropriate, segregating the assets of any appropriate group (i.e., annuity contract holders or life insurance contract holders of one or more participating insurance companies) that vote in favor of such segregation, or offering to the affected contract holders the option of making such a change; and (2) establishing a new registered management investment company or managed separate account. If a material irreconcilable conflict arises because of a participating insurance company's decision to disregard contract holders voting instructions and that decision represents a minority position or would preclude a majority vote, the participating insurance company may be required, at the Fund's election, to withdraw its separate account's investment in the Fund. The responsibility to take remedial action in the event of a determination by the Fund's Board of the existence of a material irreconcilable conflict, and to bear the cost of such remedial action, will be a contractual obligation of all participating insurance companies under their agreements governing participation

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in the Fund and this responsibility will be carried out with a view only to the interest of contract holders. A majority of the disinterested members of the Fund's Board of Trustees shall determine whether any proposed action adequately remedies any material irreconcilable conflict, but in no event will the Fund be required to establish a new funding medium for any variable annuity or variable life insurance contract. No insurer will be required to establish a new funding medium for any variable annuity or variable life insurance contract if an offer to do so has been declined by the vote of a majority of contract holders adversely affected by the irreconcilable material conflict. No penalty will be imposed by the Fund on any participating insurance company's separate account for withdrawing assets from the Fund (or any portfolio of the Fund) in the event of a material irreconcilable conflict.

5. The determination by the Fund's Board of Trustees of the existence of an irreconcilable material conflict and its implications shall be promptly made known in writing to all participating insurance companies.

6. The participating insurance companies or the Fund's investment manager shall at least annually submit to the Fund's Board of Trustees such reports, materials or data as the Trustees may reasonably request so that the Trustees of the Fund may fully carry out the obligations imposed upon them by the conditions contained in this application and said reports, materials and data shall be submitted more frequently if deemed appropriate by the Board of Trustees. The obligations of the participating insurance companies to provide these reports, materials and data to the Fund's Board of Trustees when it so reasonably requests, shall be a contractual obligation of all participating insurance companies under their agreement governing participation in the Fund.

7. All reports received by the Fund's Board of Trustees with respect to potential or existing conflicts, and all Board action with regard to its determination of the existence of a conflict, notification of participating insurance companies of the existance of a conflict, and determination of whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the meetings of the Fund's Board of Trustees or other appropriate records, and such minutes or other records will be made available to the Commission upon request.

8. Participating insurance companies will provide pass-through voting privileges to all contract holders to the extent that the Commission continues to interpret the 1940 Act to require pass-through voting. Each participating insurance company will vote shares of the Fund held in its separate accounts for which no timely voting instructions from contract holders are received, as well as shares its owns, in the same proportion as those shares for which voting instructions are received. Participating insurance companies shall be responsible for assuring that each of their separate accounts investing in the Fund calculates voting privileges in a manner consistent with other variable annuity or variable life insurance separate accounts. The obligation to vote the Fund's shares and to calculate voting privileges as provided in the application shall be a contractual obligation of all participating insurance companies under their agreements governing participation in the Fund.

9. The Fund shall disclose in its prospectus that (1) the Fund is intended to be a funding vehicle for all types of variable annuity and variable life insurance contracts offered by various insurance companies, (2) material irreconcilable conflicts of interest may possibly arise, and (3) the Fund's Board of Trustees will monitor events in order to identify the existence of any material irreconcilable conflicts and determime what action, if any, should be taken in response to such conflicts. The Fund will notify all participating insurance companies that prospectus disclosure regarding the potential risks of mixed and shared funding may be appropriate.

10. If and to the extent Rule 6e–2 or 6e–3(T) is amended, or Rule 6e–3 is adopted, to provide exemptive relief from any provision of the 1940 Act or the rules promulgated under the 1940 Act with respect to mixed or shared funding on terms and conditions materially different from any exemptions granted in the Order requested in this application, then the Applicants shall take such steps as may be necessary to comply with Rule 6e–2 or 6e–3(T), as amended, or Rule 6e–3, as adopted, to the extent such rules are applicable.

11. The Fund will comply with all provisions of the 1940 Act requiring voting by shareholders, and in particular the Fund will comply with section 16(c) of the 1940 Act (although the Fund is not one of the trusts described in section 16(c) of the 1940 Act) as well as with sections 16(a) and, if and when applicable, 16(b) as undertaken by the Fund pursuant to its registration statement (File No. 33–21722). Further, the Fund will act in accordance with the Commission's interpretation of the requirements of section 16(a) with respect to periodic elections of directors and with whatever rules the Commission may promulgate with respect thereto.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–2093 Filed 1–27–89; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–16774; File No. 812–7024]

Prospect High Yield Mezzanine Fund, Inc., et al.; Application

January 24, 1989.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 ("1940 Act").

Applicants: Prospect High Yield Mezzanine Fund, Inc. ("Company") and Prospect Management Company, Inc. ("Investment Adviser").

Relevant 1940 Act Sections: Order requested (i) pursuant to sections 6(c), 57(a)(4), 57(c) and 57(i) and Rule 17d–1 permitting certain joint transactions; and (ii) pursuant to sections 6(c), 57(a)(4) and 57(i) and Rule 17d–1 permitting the acquisition of certain interim investments.

Summary of Application: Applicants request an order to permit the purchase of securites by the Company in certain joint transactions in which the Investment Adviser or an affiliate thereof is a participant, and to permit the Company to acquire one or more initial, interim investments from the Investment Adviser or an affiliate thereof.

Filing Dates: The application was filed on April 29, 1988, and amended on December 29, 1988, and January 19, 1989.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the Commission by 5:30 p.m. on February 21, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the Commission, along with proof of service by affidavit, or, in the case of an attorney-at-law, by certificate. Request notification of the date of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary of the Commission, 450 5th Street NW., Washington, DC 20549; Applicants, 667 Madison Avenue, New York, New York 10021.

FOR FURTHER INFORMATION CONTACT: Thomas C. Mira, Staff Attorney (202) 272–3047, or Brion R. Thompson, Branch Chief (202) 272–3016 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the Commission's Public Reference Branch in person or the Commission's commercial copier (800) 231–3282 (in Maryland (301) 258–4300).

Applicants' Representations

1. The Company, a newly-formed Maryland corporation, intends to issue publicly traded securities and to apply to list its common stock on the New York Stock Exchange ("NYSE"). The Company will elect to be regulated as a business development company pursuant to section 54 of the 1940 Act and, thus, will be subject to sections 55 through 65 of the 1940 Act.

2. The Company has been designed primarily to provide an opportunity for individuals to participate in "mezzanine" level debt and preferred stock and related equity securities and common stock investments issued by "eligible portfolio companies" (as defined in section 2(a)(46) of the 1940 Act) in connection with leveraged buy-outs and other corporate reorganizations. Applicants believe these investments, which are not generally available to individuals, provide an attractive investment when pooled in an investment vehicle that offers professional management.

3. The Company's investment objective will be to provide a high current return and an opportunity for significant capital appreciation through investment in mezzanine debt and other securities. Investments will be primarily in preferred stock, subordinated debt (including the mezzanine portion of traditional leveraged acquisitions), private placements of debt with equity components, partial buy-outs, convertible debt, senior debt and other forms of mezzanine financing with equity participations in the forms of straight equity, options, warrants and other equity securities ("Mezzanine Investments"). A limited portion of the Company's investments may consist of "bridge investments" with a term of twelve months or less which are expected to facilitate or lead to the consummation of Mezzanine Investments. The Company does not intend to restrict either its Temporary Investments (defined below) or Mezzanine Investments issued in connection with acquisitions to those acquisitions approved by the board of directors of the target company.

4. The Company intends to invest 70% of its total assets in Mezzanine Investments in companies ("Managed Companies") in which Prospect Affiliates (defined below) have a "meaningful equity investment" (as contemplated by the Company's investment guidelines, which are set forth fully in the application) and to which the Company will make available "significant managerial assistance" (as defined in section 2(a)(47) of the 1940 Act). The term "Prospect Affiliates" includes Prospect Group Inc., the Investment Adviser and any other affiliated person of the Investment Adviser. The Company may invest up to 30% of its total assets in Mezzanine Investments in companies ("Non-Managed Companies") in which Prospect Affiliates will not own more than 25% of the equity securities, of which the Prospect Affiliates will not exercise controlling influence over the management or policies, and to which the Company may, but will not be required to, make available the type of managerial assistance referred to in section 2(a)(47)(A) of the 1940 Act. In any event, of this 30%, the Company will at all times undertake to invest 15% of its assets in Non-Managed Companies in which Prospect Affiliates do not own any securities. Investments in Managed Companies and Non-Managed Companies will generally have the characteristics decribed in paragraphs (1) through (3) of section 55(a) of the 1940 Act. The Mezzanine Investments in Non-Managed Companies will be made as soon as they are identified but may be acquired either before or after making investments in Managed Companies.

5. In addition, the Company may invest 15% of its total assets in high yield securities and, pending the initial selection by the Investment Adviser of suitable Mezzanine Investments, up to 100% of its total assets in a combination of high yield securities and other securities (collectively, "Temporary Investments") in compliance with section 55 of the 1940 Act. Temporary Investments may also be held pending reinvestment of the proceeds from sales or other dispositions of Mezzanine Investments in other suitable Mezzanine Investments. Although up to 100% of the Company's total assets from time to time may be invested in Temporary Investments, at least 85% of these assets will always be available to make Mezzanine Investments. Neither the Investment Adviser nor the Sub-Adviser (defined below) will co-invest with the Company or have joint participations in the companies in which Temporary Investments are made. Thus, Applicants acknowledge that the requested order will not extend to the Temporary Investments.

6. The Company has filed a registration statement under the Securities Act of 1933 with respect to an offering of 11.5 million shares of common stock. The ultimate size of the offering will be determined prior to effectiveness of the Company's registration. The minimum investment will be 500 shares (approximately $5,000), except that the minimum investment for individual retirement accounts will be 200 shares.

7. The board of directors of the Company will consist of at least five directors, a majority of whom will not be "interested persons" within the meaning of the 1940 Act ("Independent Directors"). It is presently contemplated that the board will include five Independent Directors and three affiliates of the Investment Adviser ("Interested Directors"). Interested Directors will not participate in any way in approving Mezzanine Investments by the Company.

8. The Investment Adviser is a newly organized corporation wholly-owned and controlled by The Prospect Group, Inc. ("Prospect"). Prospect is primarily engaged in acquiring controlling or significant equity interests in small and medium-sized companies and in operating such companies. The Investment Adviser has applied for registration under the investment Advisers Act of 1940 ("Advisers Act"). The Investment Adviser will be responsible for selection of all Mezzanine Investments to be made by the company and will perform other functions normally performed by an investment adviser to a business development company. The Investment Adviser will receive a monthly fee at an annual rate not to exceed 1.50% of the average monthly net assets of the company. The Investment Adviser will not receive a performance based fee.

9. Putnam Management Company, which is a registered investment adviser under the Advisers Act, will act as Sub-Adviser to the Company pursuant to a sub-advisory agreement between the Investment Adviser and the Sub-Adviser. The Sub-Adviser will serve for the limited purpose of identifying, managing and liquidating Temporary Investments for the company, including

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determination of whether market conditions warrant a temporary "defensive" strategy, pending investments in Mezzanine Investments. At no additional cost to the Company, the Investment Adviser will pay the Sub-Adviser a fee based on the percentage of net assets of the Company invested in Temporary Investments.

10. Since the Company will apply to list its shares on the NYSE, the Company will comply with the various requirements of the NYSE for listed companies. Because state securities laws recognize the standards imposed by the NYSE as conditions of listing, listing on the NYSE will relieve the Company of any requirement to impose suitability standards. Applicants undertake to disclose in the offering prospectus risk factors associated with investment in the Company's shares and the fact that the investment may not be "suitable" for investors who do not meet certain minimum net worth and income tests. In addition, to assure that later purchasers are apprised of the risks and suitability concerns, the Company will include in its annual "risk statements" (to be issued pursuant to section 64 of the 1940 Act) a statement that investments in the Company may not be suitable for investors not meeting the minimum tests. The Company will also issue quarterly reports to shareholders that will enumerate risk factors and reiterate that investment in the Company's shares is not suitable for certain investors.

11. The company will retain outside legal counsel for the Independent Directors to assist them in exercising their fiduciary duties and independent investment bankers ("Investment Bankers") to assist the Independent Directors in evaluating the continued appropriateness of, and compliance with, the Company's investment guidelines ("Guidelines"). To ensure that the proposed Investment Bankers are independent, no Investment Banker will be an "affiliate person" of the Company, any Prospect Affiliate or any company in which the Company holds Mezzanine Investments ("Portfolio Company") or an "affiliated person" of such "affiliated person", within the meaning of the 1940 Act, and no Investment Banker will have had, at any time since the beginning of the last two fiscal years, a material business or professional relationship with the Company (other than as consultant to the Independent Directors), other Prospect Affiliates or any Portfolio Company. For these purposes, a material business or professional relationship will be deemed not to exist so long as the investment banking fees received by any Investment Banker from the Company, Prospect Affiliates or any Portfolio Companies during the two most recent fiscal years (other than fees to be paid in connection with a review of the Guidelines and related transactions) represent, in the aggregate, (i) less than 10% of the total amount of investment banking fees paid or incurred by the Company and Prospect Affiliates during the two year period and (ii) no more than 3% (with respect to an entity) or 1% (with respect to an individual), as the case may be, of the total amount of investment banking fees earned by such Investment Banker during the same period.

12. Investment Bankers will assist the Independent Directors in four principal areas. First, while the Independent Directors will consider quarterly the continuing appropriateness of the Guidelines, at least annually, Investment Bankers will assist the Independent Directors in determining whether use of the Guidelines continues to be in the best interest of the Company and its shareholders and does not involve overreaching on the part of any party concerned. It is anticipated that in providing this assistance, Investment Bankers will discuss with the Independent Directors similar mezzanine-type transactions not involving Prospect or any of its affiliates. Second, with respect to any acquisition which the Investment Adviser certifies as meeting the Guidelines, and which would represent more than 10% of the value of the company's total assets, the Independent Directors will consult with Investment Bankers before the acquisition is effected. In these cases, the Company will not make the proposed acquisition unless the Independent Directors, with assistance of Investment Bankers, determine that the investment meets the applicable Guidelines. Third, if any proposed acquisition (regardless of size) does not meet the Guidelines, Investment Bankers will assist the Independent Directors in determining whether the terms of the transaction (including the consideration to be paid) are reasonable and fair to the shareholders of the Company, whether they involve overreaching on the part of any person concerned, and whether the proposed transaction is consistent with the interests of the shareholders and with the policy of the Company as recited in its registration statement and reports filed under the federal securities laws. Finally, at least annually, the Independent Directors will review with Investment Bankers each transaction completed since the last such review, other than those approved prior to acquisition as described above, and Investment Bankers will assist the Independent Directors in determining whether these transactions have met the Guidelines, as certified by the Investment Adviser.

13. Applicants request an order pursuant to sections 6(c), 57(a)(4) and 57(i) of the 1940 Act and Rule 17d–1 thereunder, permitting the purchase of securities by the Company in joint transactions in which a Prospect Affiliate is a participant and which would otherwise be prohibited under section 57(a)(4) of the 1940 Act and Rule 17d–1. The Guidelines have been established for the Company's Mezzanine Investments subject to approval by the Independent Directors. These Guidelines, which are based on criteria utilized for institutional mezzanine funds, will inform prospective investors of the parameters for the Company's investments, and, the Applicants believe, will limit potential conflicts of interest (as with institutional funds which co-invest with their organizers) by delineating specific categories of eligible investments. If, over time, it is determined appropriate to make changes in the Guidelines, as a result of changes in the structure of Mezzanine Investments or otherwise, any such changes would require the approval of a majority of the Independent Directors. The Applicants undertake not to change the Guidelines until an amendment to this order is obtained from the Commission.

14. Before the Company makes an investment a majority of the Independent Directors must determine that a Mezzanine Investment meets the applicable Guidelines. For proposed Mezzanine Investments that do not meet the Guidelines, determinations as to several factors must be made by the Independent Directors before any such investment is made.

15. Co-investments by the Company and a Prospect Affiliate will be subject to the following terms and conditions:

Conditions

(i) Each Mezzanine Investment made by the Company will have to meet, in the determination of a majority of the Independent Directors, as described below, the Guidelines for Mezzanine Investments or be approved by a majority of the Independent Directors;

(ii) Each Mezzanine Investment that is structured by a Prospect Affiliate (as well as transactions involving Non-Managed Companies in which both the Company and a Prospect Affiliate

invest) and approved for investment by the Company, except for certain *de minimis* investments of less than $7.5 million which are structured by a Prospect Affiliate, would be brought to the attention of the Independent Directors for review, subject to condition (iv) below. If the Independent Directors determine that the investment meets the applicable Guidelines (with the assistance of Investment Bankers as discussed above for Guideline investments that represent more than 10% of the Company's total assets), the investment would be eligible, subject to diversification requirements under applicable tax law, for investment by the Company, and the investment will be acquired by the Company to the extent that the Company has available funds sufficient to make the acquisition. If there are presented to the Independent Directors more investments than the Company has available funds to acquire, the Independent Directors will have to determine, with the advice of the Investment Adviser, the order of priority of investments. If a proposed investment does not meet the Guidelines, the Independent Directors will have to determine that the investment is appropriate for the Company in light of its objective and does not involve overreaching of the Company and then determine whether to acquire the investment for the Company;

(iii) Prior to committing to a particular investment that does not meet the Guidelines, the Independent Directors would be required to determine (with the assistance of Investment Bankers as discussed above) that (a) the terms of the transaction (including the consideration to be paid) are reasonable and fair to the shareholders of the Company (and do not involve overeaching on the part of any person concerned) and (b) the proposed transaction is consistent with the interests of the shareholders of the Company and is consistent with the policy of the Company as recited in its registration statement and reports filed under the federal securities laws;

(iv) The Interested Directors in their capacity as directors will not (a) participate in the deliberations or approval of any investment by the Company or (b) receive and comment on information with respect to any potential investments;

(v) Neither the Sub-Adviser nor any of its affiliates will participate in a transaction in which the Company invests unless the participation is permitted by the 1940 Act or any separate exemption obtained thereunder;

(vi) To the extent a Prospect Affiliate purchases Mezzanine Investments to be acquired by the Company, the terms of purchase (including terms as to purchase price, settlement date, registration rights (if any) and other rights provided to the purchasers of the Mezzanine Investments) will have to be on terms no more favorable than those available to the Company;

(vii) If a Prospect Affiliate elects to sell a security that is also held by the Company, notice of the proposed sale will be given to the Directors of the Company at the earliest practicable time, and the Company will be given the opportunity to participate in the sale on a proportionate basis. The Company will participate in the sale if the Independent Directors determine that it is in the best interests of the Company; provided, however, that the Interested Directors in their capacity as directors of the Company will not participate in these deliberations. The Company will maintain in its records the basis of any decision whether to participate in a sale;

(viii) The Independent Directors will consider on a quarterly basis the continuing appropriateness of the Guidelines. In this regard, the Independent Driectors will consider whether use of the Guidelines continues to be in the best interests of the Company and its shareholders and does not involve overreaching affecting the Company or its shareholders on the part of any party concerned. At least annually, the Independent Directors will consult with Investment Bankers who will assist the Independent Directors in evaluating the continued appropriateness of the Guidelines;

(ix) At least annually, the Independent Directors will review, with the Investment Bankers, all investments which the Investment Adviser had certified as meeting the Guidelines in order to determine whether the investments in fact met the Guidelines (except investments regarding which, in accordance with condition (ii) above, the Independent Directors, with the assistance of Investment Bankers, have previously made such a determination); and

(x) The Independent Director will maintain the records required by section 57(f)(3) of the 1940 Act and will comply with section 57(h), and each of the Applicants will otherwise maintain all records required by the 1940 Act.

16. Applicants further request an order under sections 6(c), 57(a)(4), 57(c) and 57(i) of the 1940 Act and Rule 17d–1 thereunder, permitting the Company to engage in the acquisition of certain investments which would otherwise be prohibited by sections 57(a)(1) and 57(a)(4) of the 1940 Act and Rule 17d–1. It is contemplated that a substantial period of time will elapse between the filing of the application and consummation of the public offering of the shares, and the time when the Company receives the proceeds from their sale. During this period, it is expected that investment opportunities suitable for the Company may come to the attention of the Investment Adviser. The Company will not have the funds to make these investments during this period and these investment opportunities could be lost to the Company if not then acquired. Therefore, it is proposed that a Prospect Affiliate acquire these investments in the first instance with a view to transferring them to the Company, subject to the various conditions to which Applicants have consented.

17. Any investment acquired by the Company pursuant to the terms of the exemption requested herein will (i) be a Mezzanine Investment which has been determined by the Independent Directors to meet the Guidelines or (ii) have been approved in advance by a majority of the Independent Directors. The Prospect Affiliate will hold any such investment on behalf of the Company until the public sale of the shares, after which the Company, subject to the approval described above, may acquire the investments from the Prospect Affiliate at the lesser of (i) the value of the investment at the time it is acquired by the Company and (ii) the cost to the Prospect Affiliate of purchasing and carrying the investment (reduced by the amount of any dividends or interest received by the Prospect Affiliate with respect to the investment). Carrying costs will consist of interest charges computed at the lower of (i) the prime commercial lending rate charged by Morgan Guaranty Trust Company of New York during the period from the date the Prospect Affiliate acquires the investment until the date the Company acquires the investment and (ii) the effective cost of borrowings by the Prospect Affiliate during the period. The effective cost of borrowings by the Prospect Affiliate is its actual "average cost of funds", which it calculates on a monthly basis by dividing its consolidated financing expenses by the total cost of borrowings during the period.

18. The Company may acquire any of these investments within 90 days after the closing of its public offering. The

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market value of the investments will be determined by the Independent Directors. The Company will not be obligated to acquire any investment if the acquisition is not approved by the Independent Directors or if the public offering of the shares is not consummated. In determining whether to approve any such investment for the Company, the Independent Directors will consider the terms of the transaction under the standards set forth in conditions (i) through (x) with respect to co-investments, and the Independent Directors will further consider the fact that the acquisition of the investment may cause the Company to incur carrying costs. If the Company does not acquire the investments, the Prospect Affiliate will retain the investments for its own account. If the acquisition of the investments is approved by the Independent Directors, the Prospect Affiliate must transfer each Mezzanine Investment so acquired on behalf of the Company to the Company in its entirety following the sale of the shares to the public. Each investment and its costs will be disclosed in the Company's prospectus or a supplement thereto.

Applicants' Legal Conclusions

1. Applicants submit that the request for an order permitting the co-investments by the Company and any Prospect Affiliate is consistent with the provisions, policies and purposes of the 1940 Act, and that the participation of the Company will be on a basis no less advantageous than that of any other participant. In addition, Applicants submit that through an equity participation, representation on the board of directors and involvement in a variety of functions including strategic planning, the Company and the Investment Adviser and other Prospect Affiliates will be able to make available significant managerial assistance to the companies in which Applicants co-invest.

2. Applicants further submit that the statutory standards of sections 6(c), 57(a)(4), 57(c) and 57(i) and the standards of Rule 17d-1 are satisfied. A Prospect Affiliate will acquire investments suitable for the Company within its investment objective and policies, hold the investments for the Company during an interim period and then sell the investments to the Company at the lower of market value or cost (which may include carrying charges). Based on the nature of these investments, Applicants submit that the granting of the requested order will benefit the Company by permitting it to acquire investments it might otherwise not be able to acquire. Because the Prospect Affiliate will retain the investments for its own account if the acquisition is not approved by the Independent Directors or the public offering of the shares is not consummated, Applicants submit that there will be no incentive for overreaching or unfairness with respect to the Company and that the transactions are not potentially subject to the abuses sections 57(a)(1) and 57(a)(4) of the 1940 Act and Rule 17d-1 were designed to prevent. Moreover, any possibility for abuse will be ameliorated by disclosure of the proposed co-investments in the Company's prospectus. The Prospect Affiliate will acquire these investments for the benefit of the Company as, in effect, its nominee and will bear the risk of decline in value of these investments but not benefit from any increase in value between the time of investment and the purchase of the investment by the Company. Accordingly, Applicants believe it is appropriate for the Company to pay carrying costs on the terms set forth above.

If the requested order is granted, Applicants agree to the following additional conditions:

Conditions

(i) Any investments made by a Prospect Affiliate on behalf of the Company before the public offering of the shares is consummated and the Company has received the proceeds from the sale of the shares will be acquired on the terms described above.

(ii) The Applicants undertake that no changes will be made in the Guidelines or the conditions until any necessary amendment to the requested order is obtained from the Commission.

(iii) The Company undertakes to retain outside legal counsel for the Independent Directors to assist them in exercising their fiduciary duties and Investment Bankers to assist the Independent Directors from time to time (at least annually) in evaluating the continued appropriateness of, and compliance with, the Guidelines.

(iv) The Company represents that at least 15% of its assets will be invested in Non-Managed Companies in which the Prospect Affiliates do not own any securities.

(v) Applicants undertake to require in the initial public offering specified minimum investments and to disclose in the offering prospectus risk factors associated with investment in the shares and the fact that the investment may not be "suitable" for investors who do not meet minimum net worth and income tests.

(vi) The Company undertakes to include in its annual "risk statements" (to be issued pursuant to Section 64 of the 1940 Act) a statement that investments in the Company may not be suitable for investors not meeting the minimum tests. The Company will also issue quarterly reports to shareholders that will enumerate risk factors and reiterate that investment in the shares is not suitable for certain investors.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-2091 Filed 1-27-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-16799; File No. 812-7169]

Prudential Insurance Co. of America et al.; Application

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of filing application for an order under the Investment Company Act of 1940 ("1940 Act").

Applicants: The Prudential Insurance Company of America ("The Prudential"), The Prudential Individual Variable Contract Account ("Account"), and the Pruco Securities Corporation ("Prusec") (collectively "Applicants").

Relevant 1940 Act Sections: Exemption requested under section 6(c) of the Investment Company Act of 1940 ("1940 Act") from sections 2(a)(32), 22(c), 26(a)(2)(c), 27(c)(1), 27(c)(2), and 27(d) of the 1940 Act and Rule 22c-1 thereunder. Applicants seek an order to the extent necessary to permit the issuance of variable annuity contracts providing for a recapturable bonus equal to 1% of certain purchase payments and the deduction of a mortality and expense risk charge from the assets of the Account.

Filing Date: The application was filed November 8, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on February 17, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request

notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. The Prudential and other Applicants, Prudential Plaza, Newark, NJ 07101, Attention: John P. Gualtieri, Jr.

FOR FURTHER INFORMATION CONTACT: Jeffrey M. Ulness, Attorney, at (202) 272-2026 or Clifford E. Kirsch, Special Counsel, at (202) 272-2061 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who may be contacted at (800) 231-3282 (in Maryland (301) 258-4300)).

Applicants' Representations

1. The Prudential, a mutual life insurance company, established the Account under New Jersey law on October 12, 1982, for the purpose of funding variable annuity contracts. The Account is registered under the Act as a unit investment trust. The Prudential intends to use the Account to fund a new variable annuity contract (the "Contract").

2. The Account currently has twelve subaccounts, nine of which are available for investment under this Contract. Each subaccount will invest in shares of a corresponding portfolio of The Prudential Series Fund, Inc. (the "Series Fund"). The Series Fund is a Maryland corporation registered under the Act as an open-end, diversified management investment company.

4. The Prudential imposes two administrative charges: (1) An annual maintenance charge of $30 which is assessed if an owner's Contract fund is less than $10,000 on a Contract anniversary or at the time of a full withdrawal; and (2) a daily administrative charge which is deducted from the assets of the subaccounts at an annual rate of 0.20%. These charges compensate The Prudential for expenses incurred in administering the Contracts. These expenses include the costs of issuing the Contract, maintaining necessary systems and records, and providing reports. The Prudential does not anticipate a profit from these charges. These charges may not be increased. Applicants represent that their deduction meets the standard of Rule 26a-1 under the Act.

5. The Prudential deducts a daily charge from the assets of the subaccounts at an annual rate of 1.00% for its assumption of certain mortality and expense risks under the contracts. Of this 1.00% charge, 0.70% is allocated to mortality risks. The mortality risks borne by the Prudential include: the obligation to make the monthly annuity payments for the life of the annuitant; the provision of a death benefit if the annuitant dies prior to the annuity date which may be greater than the value of the Contract; and the provision of annuity rates guaranteed in the Contracts. The remaining portion of this charge (0.30%) is allocated to the expense risk. The Prudential assumes the expense risk that the deduction of the administrative charges may prove insufficient to cover the actual costs of administering the Contracts.

6. The Prudential does not assess a sales charge for purchase payments made under the Contract if the owner does not withdraw those payments within 6 Contract years. If the owner surrenders all or withdraws part of a purchase payment under the Contract within the first 6 Contract years, The Prudential will reduce the amount payable to the owner by a contingent deferred sales charge equal to 7%¢ in the first 3 Contract years and declining by 1% each year for 3 years thereafter. After a purchase payment has remained in the Contract fund for 6 Contract years, no contingent deferred sales charge is assessed against the withdrawal of purchase payments in any contract year of an amount up to 10% of the owner's contract fund as of the date of the first withdrawal in that Contract year.

The Recapturable Bonus

7. The Prudential will, during the first 3 Contract years and in Contract years thereafter at The Prudential's discretion, add an additional amount, as a bonus, of 1% to every purchase payment made under the Contract. That additional amount will be allocated to the selected investment options in the same manner as the purchase payment. The Prudential reserves the right to limit its payment of such additional amounts to $1,000 under a particular Contract in each Contract year. The additional amount will not be subject to state or local premium taxes.

8. Applicants state that additional amounts paid by The Prudential would be recapturable by The Prudential as follows. If the Contract owner makes a withdrawal within the first 6 Contract years that consists in part of a withdrawal of purchase payments, as opposed to earnings, The Prudential will recapture the 1% additional amount it paid on the portion of the purchase payment or payments withdrawn. Investment earnings are deemed to be withdrawn before purchase payments. Purchase payments are deemed to be withdrawn on a first-in, first-out basis. Applicants state that unlike the deferred sales load applicable under the Contracts, which is not imposed on withdrawals of purchase payments up to 10%¢ of the Contract fund each year, any withdrawal of a purchase payment within the first 6 Contract years following the payment will result in recapture of the additional amount.

9. Applicants state that Contract owners do not have a vested interest in the principal amount of any additional amount until 6 Contract years from the date of payment have elapsed, and that until such time the additional amount belongs to The Prudential.

10. Applicants represent that the bonus provision involves none of the abuses to which sections 2(a)(32), 22(c), 26(a)(2)(c), 27(c)(1), 27(c)(2), and 27(d) of the 1940 Act and Rule 22c-1 thereunder, were directed. Applicants also state that the 1% additional amount provision will be attractive to and in the interest of investors as it will permit Contract owners to put 101% of their purchase payments to work for them in the selected investment options. Applicants further explain that the investment experience attributable to the bonus provision will always be retained by the Contract owner and the principal amounts of the bonus will also be retained if the purchase payment is not withdrawn for at least 6 Contract years.

The Mortality and Expense Risk Charge

11. The Prudential represents that the mortality and expense risk charge is a reasonable charge to compensate it for the assumption of mortality and expense risks.

12. The Prudential represents that the charge of 1.00% for mortality and expense risks is within the range of industry practice with respect to comparable annuity products. This representation is based upon The Prudential's analysis of publicly available information about similar industry products, taking into consideration such factors as current charge levels, the existence of charge levels guarantees, and guaranteed annuity rates. The Prudential will maintain at its executive office, available to the Commission, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, its comparative survey.

13. Applicants state that the contingent deferred sales charge may be insufficient to cover the expenses incurred in selling the Contracts. To the extent that the contingent deferred sales charge fails to cover distribution

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expenses. The Prudential will pay these expenses from its general assets which may include proceeds from the mortality and expense risk charge. The Prudential has concluded that there is a reasonable likelihood that this proposed distribution financing arrangement will benefit the Account and the Contract owners. The basis for this conclusion is set forth in a memorandum which will be maintained by The Prudential at its executive office and will be available to the Commission.

15. The Prudential represents that the Account will only invest in open-end management investment companies which have undertaken to have a board of directors, a majority of whom are not interested in persons of the open-end management company, formulate and approve any plan pursuant to Rule 12b-1 under the Act to finance distribution expenses.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

January 23, 1989.

[FR Doc. 89-2089 Filed 1-27-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-16771; 812-7105]

Prudential Mutual Fund Management, Inc. et al; Application

January 23, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("Act").

Applicant: Prudential Mutual Fund Management, Inc. ("PMF"), Prudential Mutual Fund Distributors, Inc. ("PMFD") and Prudential-Bache Securities Inc. ("Prudential-Bache"), on behalf of the Prudential-Bache Mutual Funds (collectively, "Applicants").

Relevant 1940 Act Sections: Applicants request an order amending a prior order that previously granted exemptions pursuant to section 6(c) of the Act from the provisions of section 22(d) of the Act.

Summary of Application: The Applicants seek an order, pursuant to section 6(c) of the 1940 Act, amending an existing order of the SEC dated August 21, 1985, Investment Company Act Release No. 14687 ("Prior Order"). The proposed amendment would extend the exemptive relief granted by the Prior Order to Prudential-Bache to apply to PMF, PMFD and to any existing or future registered mutual fund for which Prudential-Bache or PMF serves as manager or administrator and for which Prudential-Bache or PMFD serves as distributor.

Filing Date: The application was filed on August 24, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on February 16, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant(s) with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, One Seaport Plaza, New York, New York 10292.

FOR FURTHER INFORMATION CONTACT: Cecilia C. Kalish, Staff Attorney (202) 272-3035 or Karen L. Skidmore, Branch Chief at (202) 272-3023 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who can be contacted at (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. Applicants state that the Prior Order provides exemptive relief from the provisions of section 22(d) of the Act to the extent necessary to permit the waiver of a contingent deferred sales charge ("CDSC") in connection with redemptions by the Bache Group, Inc. Voluntary Employee Retirement Savings Account Plan ("Plan"), and that the exemptive relief provided by the Prior Order extends to all existing and future registered open-end management investment companies (i) for which Prudential-Bache serves as manager or administrator, and (ii) for which Prudential-Bache serves as distributor.

2. Applicants request that the SEC issue an order amending the Prior Order to extend the exemptive relief provided to apply to PMF, PMFD and to any existing or future registered open-end management investment company (i) for which either Prudential-Bache or PMF serves as manager or administrator, and (ii) for which Prudential-Bache or PMFD serves as distributor (the "Prudential-Bache Mutual Funds").

3. Applicants represent that, since the Prior Order was granted, there has been an internal reorganization of Prudential-Bache and its affiliates pursuant to which (i) PMF has succeeded Prudential-Bache as the manager or administrator of certain Prudential-Bache Mutual Funds relying on the Prior Order, and (ii) PMFD has succeeded Prudential-Bache as the distributor for certain Prudential-Bache Mutual Funds relying on the Prior Order. Applicants further represent that the sole purpose of the present application is to amend the Prior Order to reflect the new management, administrative and distribution arrangements that have resulted from this reorganization.

Applicants' Condition

Applicants agree that all waivers of a CDSC in connection with redemptions by the Plan of shares of one of the Prudential-Bache Mutual Funds will continue to conform to all of the conditions imposed on such waivers by the Prior Order, including compliance with the provisions of Rule 22d-1 under the Act. Therefore, Applicants assert that the exemptions requested would be appropriate in the public interest and consistent with the protection of investors.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-2090 Filed 1-27-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-16768; 812-7155]

WNC Housing Tax Credit Fund, L.P.; Application

January 23, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("1940 Act").

Applicants: WNC Housing Tax Credit Fund, L.P., a California limited partnership (the "Partnership"), and its managing general partner, WNC Resources, Inc., a California corporation (the "Managing General Partner").

Relevant 1940 Act Sections: Exemption requested under section 6(c) of the 1940 Act from all provisions of the 1940 Act.

Summary of Application: The Partnership, formed to invest in other limited partnerships which will own and operate apartment complexes to be qualified for the low income housing tax credit under the Internal Revenue Code of 1986, and the Managing General Partner seek an order exempting the Partnership from all provisions of the 1940 Act in connection with the Partnership's proposed offering of units of limited partnership interest in the Partnership.

Filing Date: The application was filed on October 20, 1988, and an amendment to the application was filed on January 23, 1989.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on the application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on February 17, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, c/o WNC Resources, Inc., 548 South Bay Front, Drawer GG, Newport Beach, California 92662.

FOR FURTHER INFORMATION CONTACT: H.R. Hallock, Jr., Special Counsel, at (202) 272-3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who can be contacted at (800) 231-3282 (in Maryland (301) 258-4300).

Applicants' Representations

1. The Partnership was formed September 15, 1988, to invest in other limited partnerships ("Local Limited Partnerships"), which, in turn, will engage in the ownership and operation of apartment complexes, the ownership of which is expected to generate certain credits allowable under the Internal Revenue Code of 1986 for investments in low-income housing projects. The Partnership's objectives are to provide tax benefits in the form of tax credits which Qualified Investors, as defined in the Partnership's prospectus (the "Prospectus"), may use to offset their Federal income tax liability, to preserve and protect the Partnership's capital, to provide long-term capital appreciation through increases in the values of the apartment complexes and to provide cash distributions from sale or refinancing transactions.

2. On October 19, 1988, the Partnership filed a registration statement under the Securities Act of 1933, pursuant to which the Partnership intends to offer publicly 3,000 units of limited partnership interest ("Units") at $2,500 per Unit. Purchasers of Units will become limited partners ("Limited Partners") of the Partnership.

3. Although the Partnership's direct control over the management of each apartment complex will be limited, the Partnership's ownership of interests in Local Limited Partnerships shall, in an economic sense, be tantamount to direct ownership of the apartment complexes themselves. The Partnership will normally acquire at least a 90% interest in the profits, losses and tax credits of the Local Limited Partnerships. However, in certain cases, at the discretion of the Managing General Partner, the Partnership may acquire a lesser interest in a Local Limited Partnership. In such cases, the Partnership will normally acquire at least a 50% interest in the profits, losses and tax credits of the Local Limited Partnership.

4. The Partnership will be controlled by the Managing General Partner and Wilfred N. Cooper, its general partners (the "General Partners"), pursuant to the Partnership's partnership agreement (the "Partnership Agreement"). The Limited Partners, consistent with their limited liability status, will not be entitled to participate in the control of the business of the Partnership. Limited Partners owning a majority of the Units will have the right to amend the Partnership Agreement (subject to certain limitations), to remove any General Partner and elect a replacement therefor and to dissolve the Partnership. In addition, under the Partnership Agreement, each Limited Partner is entitled to review all books and records of the Partnership at any and all reasonable times.

5. All proceeds of the public offering of Units will initially be placed in an escrow account with American Interstate Bank ("Escrow Agent"). Pending release of offering proceeds to the Partnership, the Escrow Agent will deposit escrowed funds in accordance with instructions from the Managing General Partner in short-term United States Government securities, securities issued or guaranteed by the United States Government and certificates of deposit or time or demand deposits in commerical banks. Upon receipt of a prescribed minimum number of subscriptions, funds in escrow will be released to the Patnership and held in trust pending investment in Local Limited Partnerships.

Applicants' Legal Analysis

1. The exemption of the Partnership from all provisions of the 1940 Act is both necessary and appropriate in the public interest, because: (a) Investment in low and moderate income housing in accordance with the national policy expressed in Title IX of the Housing and Urban Development Act of 1968 is not economically suitable for private investors without the tax and organizational advantages of the limited partnership form; (b) the limited partnership form provides the only means of bringing private equity capital into such housing, particularly because public investors typically consider investment in low and moderate income housing programs as involving greater risk than real estate investment generally; and (c) the limited partnership form insulates each limited partner from personal liability and limits financial risk incurred by the limited partner to the amount he has agreed to invest in the program, while also allowing the limited partner to claim on his individual tax return his proportionate share of the credits, income and losses from the investment.

2. The Partnership will operate in accordance with the purposes and criteria set forth in Investment Company Act Release No. 8456 (August 9, 1974) ("Release No. 8456"). The final paragraph of Release No. 8456 contemplates that the exemptive power of the SEC under section 6(c) may be applied to two-tier partnerships which engage in the kind of activities in which the Partnership will engage, that is, "two-tier partnerships that invest in limited partnerships engaged in the development and building of housing for low and moderate income persons * * *" The release lists two conditions, designed for the protection of investors, which must be satisfied in order to qualify for such an exemption: (1) "interests in the issuer should be sold only to persons for whom investments in limited profit essentially tax-shelter, investments would not be unsuitable * * *"; and (2) "requirements for fair dealing by the general partner of the issuer with the limited partners of the issuer should be included in the basic

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organizational documents of the company."

3. Any subscriptions for Units must be approved by the Managing General Partner, which approval shall be conditioned upon representations as to suitability to the investment for each subscriber. Such investor suitability standards provide, among other things, that investment in the Partnership is suitable only for an investor who either (1) has a net worth (exclusive of home, furnishings and automobiles) of at least $50,000 and an annual gross income of not less than $30,000 or (2) irrespective of annual income, has a net worth (exclusive of home, furnishings and automobiles) of at least $75,000, or is purchasing in a fiduciary capacity for a person or entity having such net worth and annual gross income as set forth in clause (1) for such net worth as set forth in clause (2). Transfer of Units will be permitted only if the transferee meets the same suitability standards as had been imposed upon the transferor Limited Partner.

4. The Partnership Agreement and Prospectus contain numerous provisions designed to insure fair dealing by the General Partners with the Ilmited Partners. All compensation to be paid to the General Partners and their affiliates is specified in the Patnership Agreement and Prospectus and no compensation will be payable to the General Partners or any of their affiliates unless so specified. The fees and other forms of compensation that will be paid to the General Partners and their affiliates will not have been negotiated at arm's length; however, all such compensation is believed to be fair and on terms no less favorable to the Partnership than would be the case if such arrangements had been made with independent third parties. Further, the Partnership believes that such compensation meets all applicable guidelines necessary to permit the Units to be offered and sold in the State of California and in states which adhere to the guidelines comprising the statement of policy adopted by the North American Securities Administrators Association, Inc. applicable to real estate programs in the form of limited partnerships.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-2092 Filed 1-27-89; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

National Small Business Development Center Advisory Board; Public Meeting

The National Small Business Development Center Advisory Board will hold a public meeting on Monday, March 20th and Tuesday, March 21st 1989, from 9:00 a.m. to 12:00 noon in the Administrator's Conference Room on the tenth floor, at the Small Business Administration, 1441 L Street NW., Washington, DC.

The purpose of the meeting is to discuss such matters as may be presented by Advisory Board Members, staff, of the U.S. Small Business Administration, or others present.

For futher information, write or call Hardy Patten, SBA, Room 317, U.S. Small Business Administration, 1441 L Street NW., Washington, DC 20416, telephone (202) 653-6315.

Jeannette Faull,

Acting Director, Office of Advisory Councils.

[FR Doc. 89-2104 Filed 1-27-89; 8:45 am]

BILLING CODE 8025-01-M

[Application No. 02/02-0627]

Bishop Capital II, L.P.; Application for a Licensee To Operate as a Small Business Investment Company

Notice is hereby given of the filing of an application with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1989)) by Bishop Capital II, L.P. (the Applicant), 58 Park Place, Newark, New Jersey 07102, for a license to operate as a limited partnership small business investment company (SBIC) under the provisions of the Small Business Investment Act of 1958, as amended (the Act) (15 U.S.C. 661 *et seq.*), and the Rules and Regulations promulgated thereunder.

The formation and licensing of a limited partnership SBIC is subject to the provisions of § 107.4 of the SBA Regulations.

The proposed general partner, manager and limited partners of the Applicant are as follows:

Name and address	Relationship	Ownership (percent)
ICN Associates, 58 Park Place, Newark, New Jersey 07102.	General Partner/ Manager.	1
Charles J. Irish, 270 Henderson Street, Jersey City, New Jersey 07302.	General Partner of ICN Associates.	
Nic P. Neumann, 6 Mustang Terrace, Warren, New Jersey 07060.	General Partner of ICN Associates.	
Donald S. Chadwick, 3 River Oaks Drive, Rutherford, New Jersey 07070.	General Partner of ICN Associates.	

ICN Associates (ICN), the Applicant's general partner, is a general partnership organized under the laws of the State of New Jersey for the sole purpose of managing the Applicant. The general partners of ICN Associates, directly or indirectly, will invest not less than $200,000 in the Applicant.

At this time, no person, corporation, partnership, trust or other entity owns or proposes to own, directly or indirectly, ten percent or more of the Limited Partnership Units issued or to be issued by the Applicant. There will be no more than 35 beneficial owners of Limited Partnership Units at the completion of the initial financing.

The Applicant, a New Jersey limited-partnership, will begin operations with $1.2 million (minimum) to $5.0 million (maximum) initial partnership capital, which will be raised by means of a private placement of limited partnership units, and will operate principally in the State of New Jersey. In addition, the general partner of the Applicant, ICN, will invest an amount equal to one percent of the total amount invested by the Applicant's limited partners.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed general partner, manager, as well as the limited partners of the Applicant, and the probability of successful operation of the Applicant in accordance with the Act and Regulations.

Notice is further given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed SBIC to the Deputy Associate administrator for Investment, Small Business Administration, 1441 "L" Street NW., Washington, DC 20416.

A copy of this notice shall be published in a newspaper of general circulation in Newark, New Jersey.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

Dated: January 24, 1989.

[FR Doc. 89-2105 Filed 1-27-89; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

Office of the Secretary

[Public Notice No. 1092]

Brownsville, TX; Application for Bridge Permit

Notice is hereby given that the Department of State has received an application for a permit authorizing construction of a bridge across the Rio Grande River from the City of Brownsville, Texas to H. Matamoros, Tamaulipas, Mexico. The application has been filed jointly by the City of Brownsville and Cameron County, Texas.

The Department's jurisdiction with respect to this application is based upon Executive Order 11423, dated August 16, 1968, and the International Bridge Act of 1972 (Pub. L. 92-434, 86 Stat. 731, 33 U.S.C. 535 approved September 26, 1972).

As required by E.O. 11423, the Department of State is circulating this application to concerned agencies for comment.

Interested persons may submit their views regarding the application in writing by March 1, 1989 to Mr. Kenneth R. Propp, Office of the Legal Adviser, Economic, Business and Communications Affairs, Room 6420, U.S. Department of State, 2201 C Street, NW., Washington , DC 20520.

The application and related documents made part of the record to be considered by the Department of State in connection with this application are available for inspection and copying in the Office of the Assistant Legal Advisor for Economic, Business and Communications Affairs during normal business hours.

Any questions relating to this notice may be addressed to Mr. Propp at the above address (202) (627-7770).

Date: January 18, 1989.

Ted A. Borek,

Assistant Legal Adviser, Economic, Business and Communications Affairs.

[FR Doc. 89-2016 Filed 1-27-89; 8:45 am]

BILLING CODE 4710-10-M

DEPARTMENT OF TRANSPORTATION

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q during the Week Ended January 20, 1989

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et seq.*). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket No. 46075

Date Filed: January 19, 1989.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: February 16, 1989.

Description: Application of United Air Lines, Inc. pursuant to section 401 of the Act and Subpart C of the Regulations applies for an amendment of its certificate of public convenience and necessity for Route 130 in order to authorize United to provide round-trip foreign air transportation of passengers, property, and mail (1) between the U.S. and Korea via Japan, and (2) between the U.S. and the Philippines via Japan.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 89-2076 Filed 1-27-89; 8:45 am]

BILLING CODE 4910-62-M

Federal Aviation Administration

Approval of Noise Compatibility Program; Amarillo International Airport, Amarillo, TX

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by the city of Amarillo, Texas, under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193) and 14 CFR Part 150. These findings are made in recognition of the description of Federal and nonfederal responsibilities in Senate Report No. 96-52 (1980). On July 7, 1988, the FAA determined that the noise exposure maps submitted by the city of Amarillo, Texas, under Part 150 were in compliance with applicable requirements. On November 25, 1988, the Administrator approved the noise compatibility program. All of the recommendations of the program were approved.

EFFECTIVE DATE: The effective date of the FAA's approval of the Amarillo International Airport noise compatibility program is November 25, 1988.

FOR FURTHER INFORMATION CONTACT: Donald C. Harris, Department of Transportation, Federal Aviation Administration, Fort Worth, Texas 76193-0612, (817) 624-5609. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the noise compatibility program for Amarillo International Airport, effective November 25, 1988.

Under section 104(a) of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatible land uses within the area covered by the noise exposure maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulations (FAR) Part 150 is a local program, not a Federal Program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR Part 150 program recommendations is measured according to the standards expressed in Part 150 and the Act and is limited to the following determinations:

a. The noise compatibility program was developed in accordance with the provisions and procedures of FAR Part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and preventing the introduction of additional noncompatible land uses;

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c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other power and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in FAR Part 150, § 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implemention of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where Federal funding is sought, requests for project grants must be submitted to the FAA Airports Division Office in Forth Worth, Texas.

The City of Amarillo, Texas, submitted to the FAA on December 21, 1987, the noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from August 14, 1985, through November 17, 1987. The Amarillo International Airport noise exposure maps were determined by FAA to be in compliance with applicable requirements on June 7, 1988. Notice of this determination was published in the Federal Register on July 22, 1988.

The Amarillo International Airport study contains a proposed noise compatability program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion to the year 1991. It was requested that the FAA evaluate and approve this material as a noise compatibility program as described in section 104(b) of the Act. The FAA began its review of the program on July 22, 1988, and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such a program within the 180-day period shall be deemed to be an approval of such a program.

The submitted program contained 3 proposed actions for noise mitigation on and off the airport. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR Part 150 have been satisifed. The overall program, therefore, was approved by the Administrator effective November 25, 1988.

Outright approval was granted for all of the specific program elements. The city will adopt new regulations to control the development of land uses within the identified noise contours, institute a noise complaint officer to record all noise complaints received from citizens, and monitor the aircraft types and numbers of operations for review and update of the program. These determinations are set forth in detail in a Record of Approval endorsed by the Administrator on November 25, 1988. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available at the FAA office listed above and at the administrative offices of the city of Amarillo, Texas.

Issued in Fort Worth, Texas, January 6, 1989.

Wm. Jack Sumner,

Manager, Airports Division.

[FR Doc. 89-2021 Filed 1-27-89; 8:45 am]

BILLING CODE 4910-13-M

[Summary Docket No. PE-89-3]

Petition for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before February 20, 1989.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Petition Docket No. _____, 800 Independence Avenue SW., Washington, DC 20591.

FOR FURTHER INFORMATION: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on January 24, 1989.

Clara Thieling,

Acting Manager, Program Management Staff, Office of the Chief Counsel.

Petitions for Exemption

Docket No.: 25757.
Petitioner: Skywings Flight Training.
Regulations Affected: 14 CFR 141.65.
Description of Relief Sought: To allow petitioner to exercise examining authority for flight instruction and air transport pilot written tests.

Docket No.: 25810.
Petitioner: BAE Aviation, Inc.
Regulations Affected: 14 CFR 43.3 and 43.7.
Description of Relief Sought/ Disposition: To allow petitioner to acquire various Viscount aircraft parts from Jadepoint Engineering Ltd., U.K., a British CAA-certificated Viscount repair station. The subject parts have not been maintained or approved for return to service by persons prescribed by §§ 43.3 and 43.7 and are intended to be installed on U.S. Part 125 operator's Viscount aircraft.
DENIAL, January 12, 1989, Exemption No. 5009.

Docket No.: 25625.
Petitioner: Swiss Air Transport Company, Ltd.

Sections of the FAR Affected: 14 CFR 91.27(c), 91.173 (c) and (d), and 45.11; and Part 43, Appendix B, paragraphs (a) and (d).
Description of Relief Sought/ Disposition: To allow petitioner to operate without keeping an FAA Form 337 on board its aircraft which have been modified by installation of fuel tanks in the passenger or baggage compartment. Also, to allow operation of petitioner's U.S.-registered aircraft without having an identification plate secured to the fuselage exterior and, with respect to its U.S.-registered aircraft manufactured before March 7, 1988, without displaying the aircraft model designation and builder's serial number on the aircraft exterior. In addition, to extend this relief to all Part 121 operators.
PARTIAL GRANT, January 6, 1989, Exemption No. 5007.

Docket No.: 051CE.
Petitioner: Beech Aircraft Corporation.
Sections of the FAR Affected: 14 CFR SFAR-41C 5(e)(k).
Description of Relief Sought/ Disposition: Petition for exemption from the aisle width requirements of SFAR 41C-5(e)(k) for Serial Numbers FA-1 through FA-111.
DENIAL, January 5, 1989, Exemption No. 4934.

[FR Doc. 89-1997 Filed 1-27-89; 8:45 am]

BILLING CODE 4910-13-M

Federal Railroad Administration

Petitions for Exemption or Waiver; Lamoille Valley Railroad et al.

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that eight railroads have petitioned the Federal Railroad Administration (FRA) for a waiver of compliance with the provisions of the Hours of Service Act (83 Stat. 464, Pub. L. 91-169, 45 U.S.C. 64a(e)).

The Hours of Service Act currently makes it unlawful for a railroad to require specified employees to remain on duty for a period in excess of 12 hours. However, the Hours of Service Act contains a provision that permits a railroad which employs not more than 15 employees who are subject to the statute to seek an exemption from the 12-hour limitation.

Lamoille Valley Railroad (LVRC)

FRA Waiver Petition Docket No. HS-88-25

The LVRC seeks this exemption so that it may permit certain employees to remain on duty not more than 16 hours in any 24-hour period. The LVRC states that it is not its intention to employ a train crew over 12 hours per day under normal operating conditions, but that, if granted, this exemption would help its operation if it encountered unusual operating conditions or circumstances. The LVRC provides service on over 96 miles of track from a connection with the Canadian Pacific Railway at St. Johnsbury, Vermont to a connection with the Central Vermont Railway at Fonda Junction, Vermont. In addition, this carrier interchanges cars with the Twin State Railroad at St. Johnsbury. The Lamoille Valley Railroad and the Twin State Railroad are wholly owned subsidiaries of the Northern Vermont Corporation. The Lamoille Valley and Twin States operations are based at Morrisville, Vermont.

The petitioner indicates that granting the exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts that it employs not more than 15 employees and has demonstrated good cause for granting this exemption.

Twin State Railroad (TWIN)

FRA Waiver Petition Docket No. HS-88-29

The TWIN seeks this exemption so that it may permit certain employees to remain on duty not more than 16 hours in any 24-hour period. The TWIN states that it is not its intention to employ a train crew over 12 hours per day under normal operating conditions, but that, if granted, this exemption would help the TWIN's operation if it encountered unusual operating conditions or circumstances. The TWIN provides freight service on over 27 miles of track between St. Johnsbury, Vermont and Whitefield, New Hampshire. Interchange is made with the Lamoille Valley and the Canadian Pacific Railway at St. Johnsbury. The Lamoille Valley and the Twin State Railroad are wholly owned subsidiaries of the Northern Vermont Corporation. The Twin State and Lamoille Valley operations are based out of Morrisville, Vermont.

The petitioner indicates that granting the exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts that it employs not more than 15 employees and has demonstrated good cause for granting this exemption.

Arizona Eastern Railway Company (AER)

FRA Waiver Petition Docket No. HS-88-30

The AER seeks this exemption so that it may permit certain employees to remain on duty not more than 16 hours in any 24-hour period. The AER states that it is not its intention to employ a train crew over 12 hours per day under normal operating conditions, but that, if granted, this exemption would help its operation if it encountered unusual operating conditions or circumstances. The AER is a subsidiary of the Kyle Railways. The petitioner states that maintenance has been deferred on this line for several years, therefore requiring the major part of the line to be operated at speed of 10 miles per hour maximum.

The petitioner indicates that granting the exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts that it employs not more than 15 employees and has demonstrated good cause for granting this exemption.

Port of Palm Beach Railroad (PPBD)

FRA Waiver Petition Docket No. HS-88-31

The PPBD seeks this exemption so that it may permit certain employees to remain on duty not more than 16 hours in any 24-hour period. The PPBD states that it is not its intention to employ a train crew over 12 hours per day under normal operating conditions, but that, if granted, this exemption would help its operation if it encountered unusual operating conditions or circumstances. The PPBD provides industrial switching service on over 4 miles of track in and around the Port of Palm Beach, Florida.

The petitioner indicates that granting the exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts that it employs not more than 15 employees and has demonstrated good cause for granting this waiver.

West Virginia Railroad Maintenance Authority South Branch Valley Railroad (SBVR)

FRA Waiver Petition Docket No. HS-88-32

The SBVR seeks this exemption so that it may permit certain employees to remain on duty not more than 16 hours in any 24-hour period. The SBVR states that it is not its intention to employ a train crew over 12 hours per day under normal operating conditions, but that, if granted, this exemption would help its operation if it encountered unusual operating conditions or circumstances.

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The SBVR provides service on over 52 miles of track from a connection with the CSX Rail Transportation at Green Spring, West Virginia to Petersburg, West Virginia. Operations are based at Moorefield, West Virginia.

The petitioner indicates that granting the exemption is in the public interest and will not adversely effect safety. Additionally, the petitioner asserts that it employs not more than 15 employees and has demonstrated good cause for granting this exemption.

Moscow, Camden & San Augustine Railroad (MCSA)

FRA Waiver Petition Docket No. HS–88–33

The MCSA seeks this exemption so that it may permit certain employees to remain on duty not more than 16 hours in any 24-hour period. The MCSA states that it is not its intention to employ a train crew over 12 hours per day under normal operating conditions, but that, if granted, this exemption would help its operation if it encountered unusual operating conditions or circumstances. The MCSA operates from a connection with the Southern Pacific Transportation Company at Moscow, Texas to Camden, Texas a distance of over 6 miles.

The petitioner indicates that granting the exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts that it employs not more than 15 employees and has demonstrated good cause for granting this exemption.

Mississippi Delta Railroad (MSDR)

FRA Waiver Petition Docket No. HS–88–34

The MSDR seeks this exemption so that it may permit certain employees to remain to duty not more than 16 hours in any 24 hour period. The MSDR states that it is not its intention to employ a train crew over 12 hours per day under normal operating conditions, but that, if granted, this exemption would help its operation if it encountered unusual operating conditions or circumstances. The MSDR provides service on over 29 miles of track between a connection with the Illinois Central at Swan Lake, Mississippi and Jonestown, Mississippi.

The petitioner indicates that granting the exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts that it employs not more than 15 employees and has demonstrated good cause for granting this exemption.

Oregon, California & Eastern Railway Company (OCE)

FRA Waiver Petition Docket Number HS–88–30

The OCE seeks this exemption so that it may permit certain employees to remain on duty not more than 16 hours in any 24-hour period. The OCE states that it is not its intention to employ a train crew over 12 hours per day under normal operating conditions, but that, if granted, this exemption would help its operation if it encountered unusual operating conditions or circumstances. The OCE provides service on over 65 miles of track from connections with the Burlington Northern and Southern Pacific Transportation Company at Klamath Falls to Bly, Oregon.

The petitioner indicates that granting the exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts that it employs not more than 15 employees and has demonstrated good cause for granting this exemption.

Interested persons are invited to participate in these proceedings by submitting written views and comments. FRA has not scheduled an opportunity for oral comment since the facts do not appear to warrant it. If any interested party desires an opportunity for oral comment, he or she should notify FRA, in writing, before the end of the comment period and specify the basis for his or her request. Any communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number HS–87–20) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

Communications received before March 15, 1989, will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All comments received will be available for examination both before and after the closing date for comments during regular business hours (9 a.m.–5 p.m.) in Room 8201, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

Issued in Washington, DC on January 13, 1989.

J.W. Walsh,

Associate Administrator for Safety.

[FR Doc. 89–2033 Filed 1–27–89; 8:45 am]

BILLING CODE 4910-06-M

Petitions for Exemption or Waiver; Union Pacific Railroad et al.

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that four railroads have petitioned the Federal Railroad Administration (FRA) for a waiver of compliance with certain requirements of the regulations entitled, Hours of Service of Railroad Employees (49 CFR Part 228).

Union Pacific Railroad

Missouri Pacific Railroad

Missouri-Kansas-Texas Railroad

FRA Waiver Petition Docket Numbers HS–88–25, HS–88–27 and HS–88–28, respectively

The three railroads collectively known as the Union Pacific Railroad System (UPRR) seek a permanent waiver of compliance with 49 CFR 228.9(a)(1), which requires that "Records maintained under this part shall be—

(1) Signed by the employee whose time on duty is being recorded or, in the case of train and engine crews, signed by the ranking crew member * * *"

The UPRR seeks this waiver of the regulation insofar as the FRA interprets the regulation to require train dispatchers to manually sign train sheets. In lieu of actual signature, the UPRR desires to permit their train dispatchers to electronically sign on and off duty by typing their first initial, middle initial, last name, time on duty and time off duty at their work station cathode-ray tube. Software edit checks will be provided to inhibit entry of a time other than the correct time. Access to the work station terminals is controlled by the dispatchers and by restricted access to the facility, which UPRR believes will prevent unauthorized data entries. In addition, UPRR asserts that the hours-of-service log is maintained in such a manner that an entry, once made, cannot be changed.

The UPRR presently employs 300 train dispatchers throughout the System located at Cheyenne, WY; Kansas City, KS; Kansas City, MO; North Platte, NE; Little Rock, AR; Portland, OR; Salt Lake City, UT; Sacramento, CA and Spring, TX, who are subject to the requirement that they manually sign train sheets pursuant to § 228.9(a)(1). Although these train dispatchers now are located throughout the system, they will be relocated to a central dispatching function in Omaha, NE; beginning on April 2, 1989. The carrier contends that the regulation prevents continued modernization and productivity

improvements resulting from UPRR's record keeping system.

Metro-North Commuter Railroad (MNCW)

FRA Waiver Petition Docket Number HS–88–35

The MNCW seeks a permanent waiver of compliance with 49 CFR 228.17(a)(5), which requires that "Each carrier shall keep—

(5) Identification of enginemen and conductors and their times on duty."

The MNCW states that it seeks this waiver because on an average weekday, MNCW operates 663 trains; on Saturdays 273 trains; and on Sunday 263 trains. Due to the volume of trains, there is insufficient space on the train dispatchers' Record of Train Movements to record the names of the enginemen and conductors plus their times on duty. MNCW further states that the train dispatcher's workload obtaining required information and recording of same interferes with the dispatchers's other duties of routing of trains in multiple track territory, issuance of authorities and removal of tracks from service for maintenance. The carrier states that the required information is available through the Crew Dispatchers' Office upon request.

Interested persons are invited to participate in these proceedings by submitting written views and comments. FRA has not scheduled an opportunity for oral comment since the facts do not appear to warrant it. If any interested party desires an opportunity for oral comment, he or she should notify FRA, in writing, before the end of the comment period and specify the basis for his or her request. Any communications concerning these proceedings should identify the appropriate docket number (here, Waiver Petition Docket Number HS–88–26, Waiver Petition Docket Number HS–88–27, Waiver Petition Docket Number HS–88–28 or Waiver Petition Docket Number HS–88–35) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street SW., Washington, DC, 20590.

Communications received before March 15, 1989 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All comments received will be available for examination both before and after the closing date for comments during regular business hours (9 a.m.–5 p.m.) in Room 8201, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

Issued in Washington, DC, on January 13, 1989.

J. W. Walsh,

Associate Administrator for Safety.

[FR Doc. 89–2032 Filed 1–27–89; 8:45 am]

BILLING CODE 4910-06-M

National Highway Traffic Safety Administration

Denial of Motor Vehicle Defect Petition; Frederick Lawrence White, Jr. et al.

This notice sets forth the reasons for the denial of a petition submitted to the National Highway Traffic Safety Administration (NHTSA) under section 124 of the National Traffic and Motor Vehicle Safety Act of 1966, as amended (15 U.S.C. 1381 *et seq.*).

On August 11, 1988, Mr. Frederick Lawrence White, Jr., and Mr. Benjamin L. Staponski, Jr., petitioned NHTSA requesting a defect investigation into an alleged safety problem involving leaking hydraulic fluid from the front brake caliper inlet fitting on certain 1986 and 1987 General Motors (GM) "B" car models produced at the Fairfax assembly plant in Kansas City, Kansas. These models include Chevrolet Caprice sedans and wagons, Pontiac Parisienne sedans and wagons, and Buick wagons. The petitioners allege that GM shipped unsafe vehicles, with obvious brake fluid leaks, in violation of Motor Vehicle Safety Standards.

After review of the information provided by the petitioners and by GM, it is concluded that neither NHTSA or GM has discovered any information that would support a conclusion that there is a safety problem with the brake system on the subject vehicles.

A field survey commissioned by GM showed that vehicles in service were not likely to suffer from leaking brakes. This survey was conducted to investigate whether the brake systems on vehicles, which had been identified by the petitioners as either having had leaks or as having had an out of specification inlet fitting bolt torque at the time of their inspections, had either manifested any brake performance problem related to the inlet fitting, if the owners had identified any brake leak condition in use, or if the vehicles' brake system did in fact leak. The reported results show that with 99 percent confidence, at least 99.9 percent of the vehicles would exhibit an average fluid volume displacement of less than 1.13 millicubic inches. None of the ten vehicles reportedly showed any visual evidence of leaks at the caliper inlet fitting, none of them had been repaired for a brake leak at that fitting, and none had been subject to any other repair which would require removal of the fitting.

Analysis of the Office of Defects Investigation computer records for reports of the alleged defect on the subject vehicles revealed no complaints of the alleged defect. GM stated in its response to NHTSA's information request letter that it also has no owner complaints, field reports, accidents, or product liability lawsuits for the alleged defect in the subject vehicles.

There was no violation of Federal Motor Vehicle Safety Standards since there is no standard setting acceptable levels of leakage from hydraulic brake systems. The petitioners were advised of this at a meeting with NHTSA held on August 24, 1988.

Since no safety-related defect trend was discovered, further commitment of resources to determine whether such a trend may exist does not appear to be warranted. This petition was denied.

Authority: Sec. 124, Pub. L. 93–492, 88 Stat. 1470 (15 U.S.C. 1410a); delegations of authority at 49 CFR 1.50 and 501.8.

Issued on January 25, 1989.

George L. Parker,

Associate Administrator for Enforcement.

[FR Doc. 89–2038 Filed 1–27–89; 8:45 am]

BILLING CODE 4910-59-M

VETERANS ADMINISTRATION

Agency Information Collection Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) The responsible department or staff office; (2) the title of the collection(s); (3) the agency form number(s), if applicable; (4) a description of the need and its use; (5) how often the information collection must be completed, if applicable; (6) who will be required or asked to report; (7) an estimate of the number of responses; (8) an estimate of the total number of hours needed to respond; and (9) an indication of whether section 3504(h) of Pub. L. 96–511 applies.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from John Turner, Department of Veterans Benefits (203C), Veterans Administration, 810

Vermont Avenue NW., Washington, DC 20420 (202) 233–2744.

Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503, (202) 395–7316.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before March 1, 1989.

Dated: January 19, 1989.

By direction of the Administrator.

Frank E. Lalley,

Director, Office of Information Management and Statistics.

Extension

1. Department of Veterans Benefits.
2. Request for Supplies.
3. VA Form 28–1905m.
4. This form is used to inform the VA of the supplies the veteran needs to continue his or her vocational rehabilitation program and to certify that the supplies are required, not merely desired, by the veteran.
5. On occasion.
6. Individuals or households; Businesses or other for-profit; Non-profit institutions; Small businesses or organizations.
7. 1,000 responses.
8. 1,000 hours.
9. Not applicable.

[FR Doc. 89–2019 Filed 1–27–89; 8:45 am]

BILLING CODE 8320-01-M

Agency Information Collection Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) The responsible department or staff office; (2) the title of the collection(s); (3) the agency form number(s), if applicable; (4) a description of the need and its use; (5) how often the information collection must be completed, if applicable; (6) who will be required or asked to report; (7) an estimate of the number of responses; (8) an estimate of the total number of hours needed to respond; and (9) an indication of whether section 3504(h) of Pub. L. 96–511 applies.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Patti Viers, VA Clearance Officer (732), Veterans Administration, 810 Vermont Avenue NW, Washington, DC 20420 (202) 233–3172.

Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503; (202) 395–7316.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before March 1, 1989.

Dated: January 18, 1989.

By direction of the Administrator.

Frank E. Lalley,

Director, Office of Information Management and Statistics.

Revision

1. Department of Memorial Affairs.
2. Application for Standard Government Monument for Installation in a Private, Local or State Veterans Cemetery.
3. VA Form 40–1330.
4. The form is used to apply for a Government provided monument for unmarked graves of eligible veterans and their dependents. The information is used to evaluate an applicant's claim for the monument.
5. On occasion.
6. Individuals or households.
7. 300,000 responses.
8. 75,000 hours.
9. Not applicable.

[FR Doc. 89–2020 Filed 1–27–89; 8:45 am]

BILLING CODE 8320-01-M

Agency Information Collection Under OMB Review

AGENCY: Veterans' Administration.

ACTION: Notice.

The Veterans' Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) The responsible department or staff office; (2) the title of the collection(s); (3) the agency form number(s), if applicable; (4) a description of the need and its use; (5) how often the information collection must be completed, if applicable; (6) who will be required or asked to report; (7) an estimate of the number of responses; (8) an estimate of the total number of hours needed to respond; and (9) an indication of whether section 3504(h) of Pub. L. 96–511 applies.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from John Turner, Department of Veterans' Benefits (203C), Veterans' Administration, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233–2744.

Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395–7316.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before March 1, 1989.

Dated: January 17, 1989.

By direction of the Administrator.

Frank E. Lalley,

Director, Office of Information Management and Statistics.

Extension

1. Department of Veterans' Benefits.
2. Compliance Inspection Report.
3. VA Form 26–1830.
4. This form is used by fee compliance inspectors to report the acceptability of residential construction and its conformity with standards prescribed by law for new housing proposed as security for guaranteed loans. Because compliance inspections are a common practice in the housing industry, only one burden hour is shown for reporting purposes.
5. On occasion.
6. Individuals or households; Small businesses or organizations.
7. 225,000 responses.
8. 1 hour.
9. Not applicable.

[FR Doc. 89–2013 Filed 1–27–89; 8:45 am]

BILLING CODE 8320-01-M

Advisory Committee on Health-Related Effects of Herbicides; Meeting

The Veterans Administration gives notice under the provisions of Pub. L. 92–463 that a meeting of the Advisory Committee on Health-Related Effects of Herbicides will be held in Room 119 of the Veterans Administration Central Office, 810 Vermont Avenue NW., Washington, DC, on March 16, 1989, at 8:30 a.m.

The Committee will (1) review and make appropriate recommendations relative to the Veterans

Administration's programs to assist Vietnam veterans who were exposed to herbicides; such recommendations may concern the information delivery system and outreach efforts, scheduling of Agent Orange-related examinations, essential follow-up activities, and other related matters; (2) advise the Administrator on VA Agent Orange-related programs, programs of the Federal Government, and State programs which are designed to assist veterans exposed to herbicides, and simultaneously, will minimize duplication of VA and other federal programs concerned with the Agent Orange issues; (3) receive and review information from veterans service organizations regarding services provided by the Veterans Administration to Vietnam veterans concerned about the possible adverse health effects of exposure to herbicides; (4) review and comment on proposals for research on the possible health effects of exposure to herbicides; and (5) serve as a forum for individual veterans to inform the Veterans Administration of their views on policy issues and on the operation of Agency programs designed to assist veterans exposed to herbicides and dioxins in Vietnam. The meeting will be open to the public up to the seating capacity of the room.

Minutes of the proceedings and rosters of the Committee members may be obtained from Mr. Donald Rosenblum, Agent Orange Projects Office (10B/AO), Department of Medicine and Surgery, Veterans Administration Central Office, Washington, DC 20420. (Telephone: (202) 233–4117).

Dated: January 11, 1989.

By direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 89–2034 Filed 1–27–89; 8:45 am]

BILLING CODE 8320-01-M

VOL 54 ISS 18 JA 30 1989 UMI

Sunshine Act Meetings

Federal Register
Vol. 54, No. 18
Monday, January 30, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:00 p.m. on Tuesday, January 24, 1989, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the application of TVB Acquisition Bank, Fruitland, Idaho, a proposed new bank in organization, for consent to merge, under its charter and with the title "Treasure Valley Bank," with Treasure Valley Bank, Fruitland, Idaho, and for consent to establish the eight branches of Treasure Valley Bank as branches of the resultant bank.

The Board also considered matters relating to: (1) An administrative enforcement proceeding; (2) the possible closing of certain insured banks; (3) the Corporation's liquidation activities; and (4) a request for financial assistance pursuant to section 13(c) of the Federal Deposit Insurance Act.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2, (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550-17th Street, NW., Washington, DC.

Dated: January 25, 1989.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 89-2160 Filed 1-26-89; 1:51 pm]

BILLING CODE 6714-01-M

FEDERAL MARITIME COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: January 19, 1989—54 FR 2257.

PREVIOUSLY ANNOUNCED DATE AND TIME OF THE MEETING: January 25, 1989—10:00 a.m.

CHANGE IN THE MEETING: Addition of Item 3 in the Closed Session:

3. Docket No. 81-11—Fifty Mile Container Rule—Compliance with Federal Maritime Commission Cease and Desist Order.

CONTACT PERSON FOR MORE INFORMATION: Joseph C. Polking, Secretary, (202) 523-5725.

Joseph C. Polking,

Secretary.

[FR Doc. 89-2159 Filed 1-26-89; 1:51 pm]

BILLING CODE 6730-01-M

MARINE MAMMAL COMMISSION

TIME AND DATE: As previously noticed in the **Federal Register** of 24 October 1988, the Marine Mammal Commission and its Committee of Scientific Advisors on Marine Mammals will meet in executive session on Thursday, February 23, 1989, from 8:30 a.m. to 10:00 a.m. They will meet in public on Thursday, February 23, from 10:00 a.m. to 5:00 p.m., on Friday, February 24, from 9:00 a.m. to 5:00 p.m., and on Saturday, February 25, from 9:00 a.m. to 1:00 p.m.

PLACE: Doubletree Hotel at Fisherman's Wharf, 2 Portola Plaza, Monterey, California 93940.

STATUS: The executive session will be closed to the public. All other portions of the meeting will be open to public observation. Public participation will be allowed if time permits and such participation is determined to be desirable by the Chairman.

MATTERS TO BE CONSIDERED: While the Commission and Committee will meet in public session to discuss a broad range of marine mammal issues, key topics for discussion will be: actions to be taken as a result of amendments to the Marine Mammal Protection Act; marine mammal/fisheries interactions; the tuna/porpoise issue; the Southern sea otter; international whaling; bowhead whales; Hawaiian monk seals; West Indian manatees; marine debris; recovery plans for endangered whales; and other relevant marine mammal issues.

CONTACT PERSON FOR MORE INFORMATION: Ms. Marian Graham, Administrative Officer, Marine Mammal Commission, 1625 I Street, NW., Washington, DC 20006. (202) 653-6237.

Date: January 25, 1989.

John R. Twiss, Jr.,

Executive Director.

[FR Doc. 89-2175 Filed 1-26-89; 1:51 pm]

BILLING CODE 6820-31-M

Corrections

Federal Register
Vol. 54, No. 18
Monday, January 30, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF EDUCATION

Institutional Quality Control Pilot Project

Correction

In notice document 88-29665 appearing on page 52387 in the issue of Tuesday, December 27, 1988, make the following correction:

In the first column, under **EFFECTIVE DATE**, in the second and third lines, "on or before February 10, 1989" should read "45 days after publication in the **Federal Register**".

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP87-75-001 et al.]

Tennessee Gas Pipeline Co. et al.; National Gas Certificate Filings

Correction

In notice document 89-1219 beginning on page 2202 in the issue of Thursday, January 19, 1989, make the following corrections:

1. On page 2203, in the first column, under **2. Williams Natural Gas Company**, the bracketed information should read as follows:

[Docket No. CP89-529-000]

2. On page 2211, in the first column, under **29. Williams Natural Gas Company**, the bracketed information should read as follows:

[Docket No. CP89-554-000]

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW-FRL-3493-1]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Denial

Correction

In proposed rule document 88-28955 beginning on page 50550, in the issue of Friday, December 16, 1988, make the following corrections:

1. On page 50553, in Table 1, under "Prim. lagoon", the seventh entry should be correctly aligned and should read "4,320".

2. On the same page, under Table 1, in the third column, in the second line, after "for", "1982" should read "1961".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

31 CFR Part 103

Amendment to the Bank Secrecy Act Regulations Relating to Domestic Currency Transactions

Correction

In rule document 89-1344 beginning on page 3023 in the issue of Monday, January 23, 1989, make the following correction:

On page 3023, in the second column, the text of the **DATE** paragraph should read "These amendments are effective February 22, 1989."

BILLING CODE 1505-01-D

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federal register

Monday
January 30, 1989

Part II

Department of Transportation

Coast Guard

46 CFR Part 170 et al.
Small Passenger Vessel Inspection and Certification; Notice of Proposed Rulemaking

VOL 54 ISS 18 JA 30 1989 UMI

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 170, 171, 173, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, and 185

[CGD 85-060]

RIN 2115-AC22

Small Passenger Vessel Inspection and Certification

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to revise the regulations governing small passenger vessels which are in Title 46, Code of Federal Regulations, Parts 175 through 187 (Subchapter T). Subchapter T contains the regulations for the inspection and certification of small passenger vessels including requirements on construction, outfitting of lifesaving and fire protection equipment, machinery and electrical installations, and operations. The term "small passenger vessel" generally includes any vessel of less than 100 gross tons carrying more than six passengers.

The regulations in Subchapter T were initially developed in the late 1950's and early 1960's. Significant changes have occurred within the past twenty years affecting the small passenger vessel fleet including: Statutory changes, increases in physical vessel size and passenger capacity, increase in the services offered by the owners and managing operators of small passenger vessels, expansion of vessel routes, and technological advances. Consequently, Subchapter T needs to be updated to reflect these changes.

DATES: Comments must be received on or before May 30, 1989.

ADDRESSES: Written comments should be submitted to The Executive Secretary, Marine Safety Council (G-LRA-2/3600)(CGD 85-060), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593-0001. Comments may be delivered to and will be available for inspection or copying, and the materials referenced in this notice will be available for examination and copying, at the Marine Safety Council (G-LRA-2), Room 3600, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001, (202) 267-1477, between 8 a.m. and 3 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: LCDR William P. Cummins, Project Manager, Office of Merchant Marine Safety, Security, and Environmental Protection, (G-MVI), phone (202) 267-1181.

SUPPLEMENTARY INFORMATION: This notice contains a complete revision of Title 46, Code of Federal Regulations, Subchapter T. Subchapter T, consisting of Parts 175 through 187, contains the regulations governing the inspection and certification of small passenger vessels. A small passenger vessel is defined by Title 46, United States Code, Section 2101 as a vessel of less than 100 gross tons carrying more than six passengers. The approximately 4800 vessels which are categorized as small passenger vessels comprise the largest category of commercial vessels subject to inspection in the United States.

Both the Coast Guard and the small passenger vessel industry have realized the need for and the importance of revising the regulations contained in Subchapter T for several years. The last major revision of the subchapter was made in 1963. The Coast Guard has made numerous minor revisions to the regulations since that time, but these revisions have not been sufficient to keep abreast of the many changes affecting the small passenger vessel fleet in the last 20 years.

Although the Coast Guard has periodically reviewed the regulations in Subchapter T in the past, the present effort to revise the regulations was initiated in 1982, and a regulatory docket was established in 1985. Alternatives to a complete revision of Subchapter T were considered. First, the Coast Guard could continue to use the existing regulations. However, because the regulations are outdated, it is necessary to extensively use informal policy. This situation is unsatisfactory since not everyone building and operating small passenger vessel is aware of such policy. Second, individual problems, such as those caused by statutory changes, could be corrected by separate regulatory projects under individual dockets. However, the process to completely make all the necessary changes on an individual basis would be unnecessarily duplicative, more lengthy, and result in more inconsistencies than a complete revision.

Therefore, the Coast Guard is proposing to revise the entire Subchapter T at this time. Proposed regulations for Parts 175 to 185, which include inspection, certification, design, and equipment requirements, are contained in this notice. Proposed revisions of the manning regulations for small passenger vessels are being developed separately under docket CGD 85-060A but in coordination with this project.

As part of this proposal to revise Subchapter T, the Coast Guard is also proposing to revise portions of 46 CFR Subchapter S, Subdivision and Stability, which affect small passenger vessels. Parts 170, 171, and 173 of Subchapter S are proposed to be revised.

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

Requests For Comments

Interested persons are invited and encouraged to participate in this proposed rulemaking by submitting written views, data, or arguments. As discussed later in this preamble, the Coast Guard considered input from many sources to develop proposed regulations which would best address both the safety and operational needs of small passenger vessels. However, due to the variety of vessels that comprise the small passenger vessel fleet and their various needs, it is difficult to adequately address all situations and analyze the effect the proposed regulations would have on all vessels. Consequently, the Coast Guard seeks input on all aspects of the proposed regulations from vessel owners, operators, architects, and builders, and from consumers, equipment and material vendors, insurers, surveyors, and other persons involved with small passenger vessels. Comments concerning the proposed regulations, including additional costs they may impose upon the small passenger vessel industry, are requested.

Persons submitting comments should include their name and address, reference this notice (CGD 85-060), give the specific section of the proposed regulations to which each comment applies, and include supporting documents or sufficient detail to indicate the reason for each comment. Persons desiring an acknowledgment that their comments were received should include a stamped, self-addressed envelope or postcard. This proposal may be changed in light of the comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal.

Public Hearings

The Coast Guard plans to hold public hearings on this rulemaking in Washington, DC, New Orleans, LA, and San Francisco, CA. Hearings may be held in other locations if requested in writing by interested persons who can demonstrate that other opportunities to make an oral presentation will aid this rulemaking. Comments on hearings on this rulemaking must be received prior to March 1, 1989. Details of the times, dates, and locations of hearings will be published in the Federal Register.

Drafting Information

The principal persons involved in the drafting of this proposal are LCDR William P. Cummins, Project Manager, LCDR Mark G. VanHaverbeke, Project Analyst, Office of Merchant Marine Safety, Security, and Environmental Protection, and CDR Gerald A. Gallion, Project Attorney, Office of Chief Counsel.

Background

History of Regulations

The regulations in Subchapter T were initially developed in the late 1950's as an outgrowth of the booming boating industry and the recognized need for improved safety aboard small passenger vessels. During 1951 the motorboats JACK and PELICAN were lost resulting in 11 and 45 deaths, respectively. Investigations into the accidents concluded that if such vessels were required by law to be inspected for certification the JACK would not have been certificated due to its poor material condition and the PELICAN would have been limited to carrying about 30 persons (there were 62 persons aboard at the time of the accident). These and other accidents prompted Congress to pass the "Small Passenger Vessel Act" of 1956 (Pub. L. 84-519) requiring the inspection and certification of vessels of 65 feet or less in length, measuring more than 15 but less than 100 gross tons, and carrying more than 6 passengers. Public Law 84-519 was codified in the United States Code in 46 U.S.C. 390.

Under the authority of the Secretary of Treasury, the U.S Coast Guard was directed to develop regulations to carry out the law. The initial regulations applicable to small passenger vessels subject to Pub. L. 84-519 were promulgated in Title 46, Code of Federal Regulations, Subchapter T, in the Federal Register of October 5, 1957 (22 FR 7949). The initial regulations took effect on June 1, 1958. Based on experience gained with the initial inspection and certification of more than 4,000 small passenger vessels, significant changes were made to Subchapter T on September 29, 1960, as published in the Federal Register (25 FR 9315).

In 1963 the scope of the regulations in Subchapter T was broadened to include vessels of more than 65 feet in length, measuring less than 100 gross tons, and carrying one or more passengers (28 FR 9733). Such vessels were required to be inspected and certificated annually under the authority of 46 U.S.C. 404. By including these small vessels under Subchapter T the need for referencing several subchapters when determining the applicable requirements for these small vessels was eliminated, and the regulations for all small passenger vessels were grouped into one subchapter.

The grouping of two classes of small passenger vessels with different inspection authorities, 46 U.S.C. 390 and 46 U.S.C 404, under one set of inspection regulations resulted in the Coast Guard establishing two statutorily recognized categories of vessels within Subchapter T. The division was necessary because of differences in the inspection laws governing the two categories of small passenger vessels. Although the governing laws have changed, the distinction between the two categories remains in Subchapter T today. The two categories are T-S vessels, which include small passenger vessels of not more than 65 feet in length carrying more than 6 passengers, and T-L vessels, which include those of more than 65 feet in length carrying one or more passengers.

Although many of the requirements are the same, Subchapter T contains many differing requirements for each vessel category, reflecting vessel size, potential passenger carrying capacity, and operating conditions. Due to original differences in 46 U.S.C. 390 and 46 U.S.C 404, T-S vessels are issued a Certificate of Inspection (COI) valid for three years following completion of a triennial inspection, while T-L vessels are issued a COI valid for one year following an annual inspection. Additionally, a T-S vessel is required to undergo two annual reinspections during the life of its COI.

Public Law 84-519 intended that the regulations promulgated thereunder provide a standard of safety for weekend fishermen on party fishing boats, sightseers on small excursion boats, and possibly small ferries. The vessels to be regulated were of various designs, often principally owned by individuals or families, and normally operated on a tight budget. They usually operated out of a single port and, for the most part, would be inspected and certificated by a single Officer in Charge, Marine Inspection (OCMI). In an attempt to equitably regulate such a diverse group of vessels, many having operated safely for years, the Coast Guard developed regulations which were flexible. They were purposely written so that local peculiarities and differing types of vessels and operations could be equitably accounted for by the local OCMI when applying the regulations. For the most part, the regulations had different requirements for each vessel type, reflecting vessel size, potential passenger carrying capacity, and potential operating conditions.

The regulations gave the local Officers in Charge, Marine Inspection, a great deal of discretion to set the safety standards for small passenger vessels built and operated in their zones. This was in recognition of the small size and limited operating areas of most small passenger vessels. Since the OCMI had knowledge of local operating conditions, such as weather and sea conditions, the availability of harbors of safe refuge, search and rescue facilities, and other specialized local knowledge, the regulations were structured to give the OCMI maximum flexibility to set standards that were appropriate to the prevalent conditions. The OCMI decided which of the local factors impacted upon vessel operations and safety, and then set appropriate standards as allowed by the regulations.

Several minor revisions have been made to Subchapter T since it underwent its last major revision in 1963. However, the minor revisions have not kept abreast of the numerous changes which have occurred affecting the small passenger vessel fleet since the early 1960's. The regulations generally remain satisfactory for the type of vessels that they were initially written for, including party fishing boats, small excursion boats, and small ferries. However, numerous other types of small passenger vessels are now regulated by Subchapter T including large overnight cruise vessels, very large excursion vessels, dynamically supported craft, and vessels which may operate in several Coast Guard marine inspection zones throughout the year. In addition, both statutory changes and technological advances have affected the construction, equipping, and operation of small passenger vessels.

Small Passenger Vessel Fleet

Statistics in this section show the large number and variety of vessels which presently comprise the small passenger vessel fleet. The large number and variety both contribute to the need

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to revise Subchapter T and complicate the revision process. Most of the statistics in this section and throughout the preamble were obtained from the U.S. Coast Guard Marine Safety Information System (MSIS) in late 1987. Information from the MSIS was also used in completing the regulatory evaluation.

The service of small passenger vessels currently operating includes ferries, excursion boats used for sightseeing and dinner cruises, overnight cruise boats, party fishing (head) boats, charter fishing boats, dive boats, crew boats for the offshore oil industry many of which also carry freight, passenger barges, and submersibles. Small passenger vessels are now propelled by a variety of means including: Diesel engines; gasoline inboard, inboard/outboard, and outboard motors; electric motors; cable pull; mule tow; sail; and steam engines.

An MSIS data capture in July, 1987 indicated there were 4744 vessels certificated under Subchapter T. Of the 4744 vessels, 3657 were classed as T–S vessels, i.e., of not more than 65 feet in length, and 1087 were T–L vessels, i.e., of more than 65 feet in length. Twenty-two vessels were greater than 150 feet in length.

Eleven hundred thirty-three vessels were certificated with oceans routes, 1553 with coastwise routes, 1063 with lakes, bays, and sounds routes, and 975 with Great Lakes or rivers routes.

The maximum number of passengers that small passenger vessels are permitted to carry varies from 7 to over 1300. The passenger carrying capacity of the total small passenger vessel fleet is 303,000.

Fifty percent of the existing small passenger vessel fleet has been built since 1970. Approximately 165 new vessels have entered the small passenger vessel fleet every year since that date.

Reason for Revision

The following events, which have occurred since the initial promulgation of the regulations, necessitate a complete revision of Subchapter T.

1. *Statutory Changes.* Subchapter T needs to be revised to reflect the statutory changes originally made by Pub. L. 96–378 and now codified in Title 46 of the U.S. Code. This change placed all vessels measuring less than 100 gross tons carrying more than 6 passengers under the inspection authority of a single statute, 46 U.S.C. 390. Section 390 was subsequently repealed by Pub. L. 98–89 of August 26, 1983. Pub. L. 98–89 revised, consolidated, and enacted certain laws related to vessels and seamen as Subtitle II of Title 46, United States Code, "Shipping." The authority for the inspection and certification of small passenger vessels was relocated to and is now found in 46 U.S.C. 3301(6).

As a result of the changes originally made by Pub. L. 96–378, there is no longer a statutory authority separating small passenger vessels into two categories. However, the T–S and T–L categories still exist in Subchapter T. Additionally, the T–L vessel designation in Subchapter T is now incorrect in that it still classifies a vessel carrying one or more passengers as a small passenger vessel while the law states that the criterion is more than six passengers.

2. *Increase in Vessel Size and Capacity.* Another reason for modifying Subchapter T is so that it will better reflect the needs of the increasingly larger physical size of small passenger vessels. A review of the data on small passenger vessels indicates a general trend toward larger vessels. In 1964, the first year that statistics were available which separated small passenger vessels by T–S and T–L categories, there were 3809 small passenger vessels. Of these, 175 or 4.6%, were classified as T–L vessels. As of July 30, 1987, the number of T–L vessels had risen to 1087 vessels, or 24% of the total number of small passenger vessels. While the T–S and T–L categories primarily reflect a vessel's length, T–L vessels also generally have a greater passenger capacity than T–S vessels.

In addition, there is an increasing number of vessels characterized as "very large" small passenger vessels by the U.S. Coast Guard Navigation and Vessel Inspection Circular No. 11–83 (NVIC 11–83). Such vessels are under 100 gross tons yet are of more than 79 feet in length. There are now approximately 840 small passenger vessels of more than 79 feet in length, including some that are of more than 200 feet in length and carry more than 1000 passengers.

NVIC 11–83 discusses such "very large" small passenger vessels that have overnight accommodations for more than 50 passengers. The hazards involved with the operation of these large overnight cruise vessels are different than those faced by most small passenger vessels. There are now about 18 vessels of this type. One "very large" small passenger vessel, which was recently certificated, is of more than 240 feet in length and carries 125 overnight passengers.

A primary reason for the vast increase in the number of T–L vessels, especially "very large" small passenger vessels, has been the development and increased use of various design innovations. These innovations result in the gross tonnage of a vessel being less than that of a passenger vessel of comparable size which would have to be inspected under 46 CFR Subchapter H (Passenger Vessels). Subchapter H contains the regulations for the inspection and certification of vessels of at least 100 gross tons carrying passengers.

Boat builders are gaining more expertise in the use of the various exemptions, reductions, and other devices which are used in the basic tonnage formula to lower gross tonnage. The use of these innovations is not only to place a vessel under the inspection standards of Subchapter T, which are in most instances significantly less stringent than the standards of Subchapter H, but also to allow the vessel to be manned with the lesser crew complement permitted on small passenger vessels.

The existing regulations in Subchapter T were not developed considering the hazards and risks associated with the operation of these "very large" small passenger vessels. Compliance with the existing regulations in Subchapter T alone does not provide an adequate level of safety from the hazards and risks caused by the physical size, passenger capacity, and operations of "very large" small passenger vessels.

3. *Changing Scope of Operation.* While vessels have been getting larger, their trades have also often changed. Public Law 84–518 intended that the regulations promulgated thereunder provide a standard of safety for weekend fishermen, sightseers, and possibly small ferries. The vessels to be regulated principally operated out of a single port and, for the most part, were inspected and certificated by a single OCMI. Most of the vessels continued to operate in the marine inspection zone where their original inspection for certification was completed. Because of the very localized nature of most small passenger vessels when the regulations were initially developed, the regulations were intentionally made flexible. They were purposely written in this manner so that local peculiarities and different types of vessels and operations could be equitably accounted for by local officials when applying the regulations.

However, the environment in which small passenger vessels operate has changed dramatically. A sizeable number of these vessels no longer operate out of one port, especially those in seasonal passenger trades, and local considerations are of less importance to most of these operations. Vessels built for operation in one OCMI zone or for a particular type of operation, are for various reasons changing operations

and operating in other OCMI zones or other trades. There are now also more small passenger vessels engaged in international voyages which are required to comply with the International Convention for Safety of Life at Sea.

Because of the changing scope of operations, the flexibility built into the original regulations now often causes inconsistencies. The standards applied in one port are not the same as those applied in another; even the standards within a marine inspection zone vary as OCMIs change. The Coast Guard's ability to consistently apply and enforce the regulations will be enhanced by development of a single set of standards more applicable to all small passenger vessels.

4. *Technological Advances.* Subchapter T does not presently address many technological advances which have occurred since the regulations were initially promulgated. Such advances have helped improve the operational capability and safety of a vessel. Examples include improvements in fire protection equipment such as Halon systems and the development and proven use of smoke detectors, gasoline vapor detectors, bilge level alarms, and improved electrical cable insulations. Industry has responded to many recent advances by developing industrial standards and codes, not presently addressed in Subchapter T, which will help ensure uniform and safe design, construction, and installation of equipment and materials used aboard small passenger vessels. There has also been a significant cost reduction in many types of equipment due to technological advances and increased use of such equipment including Halon fire extinguishing systems, radar, LORAN, and inflatable liferafts. A piece of equipment, such as LORAN, was prohibitively more expensive and more difficult to use several years ago than today. The regulations need to be revised to reflect these technological changes by, in some cases, allowing the use of certain equipment now prohibited and, in other cases, requiring the installation of equipment not previously available or feasible to install on a small passenger vessel.

5. *Development in Hull Materials and Vessel Designs.* The use of fiber reinforced plastic (FRP) and aluminum has significantly increased in the last 25 years. Approximately 16 percent of all small passenger vessels now have FRP hulls and 21 percent have aluminum hulls. Of the vessels built within the last three years, 29 percent have FRP hulls and 26 percent have aluminum hulls. When the regulations were initially promulgated, almost all small passenger vessels were built completely of steel or wood.

Additionally, the present regulations do not appropriately address the unique design and operating characteristics and capabilities of many vessels which twenty years ago were considered novel craft but which have become much more common and accepted. Included among these vessels are dynamically supported craft (DSC) such as hydrofoils, air cushion vessels, and surface effect ships. Certain high speed planing and semi-planing vessels may also be considered DSC. Presently, the U.S. Coast Guard Marine Safety Information System lists 4 hydrofoils, 1 air cushion vessel, and 5 surface effect ships as certificated small passenger vessels. Additionally, there are approximately 130 multihull vessels certificated as small passenger vessels, of which 25 may be dynamically supported when underway due to their speed capability and size. The number of such vessels used to carry passengers is expected to greatly increase in the future.

Since Subchapter T was written primarily for displacement hulls, it is difficult to apply many areas of the existing regulations to DSC. Builders and owners have increasingly asked the Coast Guard to accept the design of DSC under the equivalency provision of existing 46 CFR 175.15 on the basis that particular equipment, apparatus, or arrangements required by Subchapter T are unreasonable or impracticable for a DSC. In each case, the parties requesting Coast Guard approval of design or equipment are required to demonstrate that proposed alternatives would provide a degree of safety that meets or exceeds the minimum standards in Subchapter T. Such equivalencies are usually based on compliance with the International Maritime Organization's "Code of Safety for Dynamically Supported Craft" (DSC Code), as well as classification, society rules and DSC standards of other governments. Because DSC are not specifically addressed in Subchapter T, the inconvenience of demonstrating equivalency is an increasingly burdensome task for industry and the Coast Guard. For this reason, and because DSC are no longer considered novel craft due to their wide acceptance and increasing number, Subchapter T should be revised to specifically address dynamically supported craft.

6. *Vessel Casualties.* Following investigations of numerous casualties involving inspected small passenger vessels, the National Transportation Safety Board (NTSB) and Coast Guard investigators have recommended many revisions to the existing regulations in Subchapter T which they believe would help prevent casualties or alleviate damages and injuries from future casualties. The Coast Guard agrees with many of the investigation recommendations that have been made. A study of the existing regulations, National Transportation Safety Board reports, and Coast Guard vessel casualty reports reveals that the existing regulations do not provide an appropriate level of protection from the safety hazards and risks that many small passenger vessels are subject to today. The primary areas of concern are lifesaving equipment, fire protection standards, manning, and vessel operations.

Casualty Data. As part of the project to revise Subchapter T, data on casualties involving small passenger vessels was reviewed looking for the repeated occurrence of certain types of casualties which may have been mitigated by changes in the regulations. The casualty information presented below is a summary of the data for inspected small passenger vessels from 1981 through 1986. This six year period is used because the Coast Guard's Commercial Casualty Data Base and the Personnel Casualty Data Base, from which the information was obtained, were first used in 1981. These systems provide more reliable casualty information than available from data systems used in previous years. The casualty figures which follow reflect reported casualties over the six year period with interpolation necessary in some cases. Their accuracy may be affected by the failure to report some casualties.

The data presented only includes marine casualties which are required to be reported to the Coast Guard by 46 U.S.C. 6101 and 46 CFR 4.05–1 of Subchapter T. Casualties must be reported to the Coast Guard if they involve groundings, loss of maneuvering capability, an occurrence affecting the seaworthiness of a vessel, a loss of life, injury causing incapacitation for more than 72 hours, or any casualty resulting in more than $25,000 in property damage.

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1981–1986 SMALL PASSENGER VESSEL CASUALTIES

Nature	Number of casualties	Deaths	Injuries
Casualties involving total loss of a vessel with accompanying deaths and injuries:			
Collision	9	1	2
Sank/Broke Up/Fire (while moored)	8	0	0
Explosion/Fire (other than while moored)	8	0	0
Flooding/Foundering (6 had wood hulls)	11	9	4
Capsizing	4	0	3
Unknown	2	0	0
Grounding	2	3	0
Total	44	13	9
Casualties materially affecting a vessel (including total loss) with accompanying deaths and injuries:			
Collision	156	2	57
Explosion/Fire	74	0	11
Capsizing/Foundering/Flooding/Swamping	126	13	11
Grounding	182	1	9
Material failure—to machinery, structure, control and navigating systems	248	1	5
Steering	43	0	0
Disabled	34	0	0
Other	42	6	0
Total	907	23	94

1981–1986 TOTAL DEATHS INVOLVING SMALL PASSENGER VESSELS

[Includes deaths from casualties materially affecting a vessel]

Nature	Number
Diving accident involving person transported to dive site by small passenger vessel	38
Fall into water	29
Suffocation	12
Disappearance	8
Natural cause	5
Other (incl. falls on board, burns, falling objects, crushed)	22
Total	112

Significant Casualties. Several casualties have occurred in the past twenty years which individually have had a significant impact on this proposal. A large number of lives were lost or put at risk during those casualties, or extensive property damage occurred. The NTSB, Coast Guard Marine Boards of Investigation, and/or individual Coast Guard investigators made recommendations which impact this proposal. A summary of some of the casualties, which resulted in recommendations that were considered in developing proposed changes to Subchapter T, follows. Unless otherwise stated, all the vessels cited were inspected small passenger vessels.

COMET. The COMET was a 48 foot, 15 gross ton, party fishing boat. At 8:00 a.m. on May 19, 1973, the vessel foundered and sank in heavy seas off Point Judith Harbor, Rhode Island. The water temperature was 48 °F. Of the 27 persons on board, 11 were rescued, 12 drowned, and 4 are missing. The COMET was not inspected by the Coast Guard at the time of the casualty although it was required to have been.

DIXIE LEE II. The DIXIE LEE II was a 42 foot, 19 gross ton, charter fishing vessel. At 4:25 p.m. on June 6, 1977, the vessel capsized during a sudden, severe thunderstorm. Of the 27 persons on board, 14 persons were rescued, 12 persons died, and 1 is missing. The vessel suffered only minor damage, was refloated, and returned to service.

FANTASY ISLANDER. The FANTASY ISLANDER was a 42 foot, 14 gross ton, wooden vessel. At 3:45 p.m. on September 4, 1984, the vessel caught on fire on Peace River, Punta Gorda, Florida. The 37 persons aboard entered the water and were rescued by boats in the vicinity. There were no injuries but the vessel was totally destroyed.

FINALISTA 100. The FINALISTA 100 was an 84 foot, 96 gross tons, wooden hull vessel. At 4:00 a.m. on October 23, 1982, the vessel burned and sank while operating 37 miles southwest of Point Buchon, California after a fire started in the vessel's machinery space. The water temperature was 50 °F to 60 °F. All 43 persons on board were saved.

FISH-N-FOOL. The FISH-N-FOOL was a 55 foot, 69 gross ton, chartered fishing vessel. At 1:00 p.m. on February 5, 1987, the vessel capsized while off of Baja California Norte, Mexico, and sank in 59 °F water. Of the 12 persons aboard, 2 were rescued, 2 died, and 8 are missing.

JOAN LA RIE III. The JOAN LA RIE III was a 50 foot, 29 gross ton, charter fishing vessel. At 11:46 a.m. on October 24, 1982, the vessel was swamped by a large wave and sank about 8.5 miles east of Manasquan, New Jersey, while returning from a fishing trip. The water temperature was 53 °F. Of the 22 persons on board, 6 persons drowned and 2 are missing. Property loss was estimated at $20,000.

MERRY JANE. The MERRY JANE was a 64 foot, 66 gross ton, charter fishing boat. At 4:11 a.m. on February 8, 1986, while the vessel was approaching Bodega Bay, California, the vessel was broached and heeled sharply to starboard resulting in 19 of of the 51 persons onboard being thrown or falling into the water. Nine of those persons drowned and one is missing.

PEARL C. The PEARL C. was a 31 foot, 14 gross ton, charter fishing vessel. At 8:51 p.m. on September 13, 1976, the vessel capsized while being towed across the Columbia River Bar, near Astoria, Oregon. Of the 10 persons aboard, 2 persons were rescued, 1 person drowned, and 7 persons are missing. The vessel was a total loss.

PILGRIM BELLE. The PILGRIM BELLE was a 192 foot, 96 gross ton, vessel with overnight accommodations for 104 passengers and 25 crew members. It was certificated for a lakes, bays, and sounds route along the east coast of the United States and coastwise along the New Jersey shore. At 4:20 p.m. on July 28, 1985, the vessel ran aground in Vineyard Sound, Massachusetts. One hundred persons were evacuated directly onto other vessels in the area. No deaths or injuries occurred. $357,000 in property damage occurred.

SAN MATEO. The SAN MATEO was a 46 foot, 14 gross ton, charter fishing vessel. At 10:00 a.m. on February 16, 1983, the vessel capsized while crossing a bar at the entrance to Morro Bay Harbor, California. All 32 persons on board were thrown into the water. Three persons were seriously injured. All persons were quickly rescued by nearby harbor patrol and Coast Guard vessels. The vessel was destroyed.

YANKEE. The YANKEE is a 136 foot, 425 gross tons, passenger vessel, inspected under Subchapter H, which is permitted to operate on lakes, bays, and sounds. The Yankee is similar in physical size to many "very large" small passenger vessels with overnight accommodations. At 3:53 p.m. on July 2, 1983, the YANKEE collided with a Liberian freight ship, the HARBEL TAPPER, in dense fog in Rhode Island Sound. Two of the Yankee's 139 passengers were injured. The YANKEE sustained $26,000 in damages and was temporarily out of service. The HARBEL TAPPER, an 8,000 gross ton ship, sustained $25,000 in damages.

7. *Reference Changes.* During the past twenty-five years, many references cited in the existing regulations have changed. New publications have superseded the original publications and, in some cases, new standards have been developed. The existing references need to be updated and the addresses for listed organizations corrected. Additionally, several industry standards exist which may be suitable for incorporation by reference into the regulations. In some cases, industry standards are more current and better suited for particular types of vessels than existing regulations.

8. *Extensive Policy Guidance.* For many of the same reasons that Subchapter T needs to be revised, the Coast Guard has issued a myriad of policy decisions at the local, district, and headquarters level on the technical interpretation and enforcement of Subchapter T. The policies have been promulgated in Navigation and Vessel Inspection Circulars (NVICs), the Coast Guard Marine Safety Manual, policy file memos from the Commandant (G–MTH), and letters. Differences in local policies have created many inconsistencies among inspection zones.

Local policy determination, while acceptable in 1958, creates inconsistencies and economic hardship when a vessel built in one marine inspection zone, operates during the summer in another zone, and spends the winter season in a third zone. Additionally, differences in local standards may put a builder in one zone at an economic disadvantage when bidding against a builder in another zone which has a different policy.

Development of Proposed Regulations

In developing the proposed regulations the laws governing small passenger vessels, Coast Guard policy on enforcement of the existing regulations, and recommendations stemming from casualty investigations were considered. Additionally, comments on and suggested revisions to the existing regulations made by Coast Guard field units and individuals and organizations involved in the small passenger vessel industry were evaluated.

Coast Guard Field Input

Since the initial promulgation of Subchapter T, Coast Guard district offices, marine safety offices, and marine inspection offices have periodically recommended revising various requirements of the small passenger vessel regulations. Field units submitted recommendations to the Commandant usually based on specific problems they were experiencing with the application, adequacy, or burden of particular requirements to vessels within their local inspection zones. Numerous comments were also submitted when, in 1982, the Commandant initiated a review of Subchapter T by soliciting recommended changes to the regulations from field units.

Industry Input

Owners and managing operators of small passenger vessels have provided indirect input to this proposed rulemaking through the numerous requests for equivalents and appeals of requirements made under the existing §§ 175.15–1 and 175.30–15 of Subchapter T. Many proposals accepted as part of an appeal or equivalency determination have been incorporated into this proposed rulemaking.

The expressed concerns of the National Association of Passenger Vessel Owners (NAPVO), as well as other industry organizations, that the structural fire protection requirements of Subchapter T are often too onerous resulted in the initiation of Coast Guard Docket CGD 85–021. NAPVO is a trade association of approximately 330 small passenger vessel owners who operate primarily excursion boats, dinner cruise boats, and ferries. The small passenger vessel organizations were primarily concerned about the application of the structural fire protection requirements of 46 CFR Subchapter H (Passenger Vessels) to vessels carrying more than 150 passengers.

On April 8, 1985, the Coast Guard published in the **Federal Register** (50 FR 13837) a request for comment and notice of meeting on fire protection standards for small passenger vessels under CGD 85–021. The public meeting was held on April 17, 1985. Eighteen individuals involved with the small passenger vessel industry attended the public meeting. Eight separate letters containing numerous comments from individuals and organizations involved with small passenger vessels were submitted in response to the request for comments. The written comments and those received at the public meeting covered a much larger range of regulatory topics than was originally intended by the scope of CGD 85–021.

Because of the broad range of comments received under CGD 85–021 and for the other reasons discussed above in *Reason for Revision*, the Coast Guard decided to initiate a complete revision of Subchapter T under CGD 85–080. Consequently, CGD 85–021 was cancelled on December 24, 1985. Comments received under CGD 85–021 were transferred to CGD 85–080 and were considered in the development of this proposed rulemaking.

Discussion of Proposed Regulations

A detailed discussion of the proposed regulations is contained below. Topics which affect the contents of more than one part of the regulations proposed to be revised, such as organization, authority, reference changes, and dynamically supported craft, are discussed first. Significant changes to each individual part in Subchapter T, and to Parts 170, 171, and 173 of Subchapter S, are then discussed along with the reasons for the changes. For the convenience of the reader, the proposed changes to each part are discussed in numerical order with the changes to Part 170 of Subchapter S discussed first and the proposed changes to Part 185 of Subchapter T discussed last.

Significant changes specifically discussed in this preamble may cause an increased or decreased burden on small passenger vessel owners or may result in administrative changes. Also discussed are revisions being proposed in order to reflect current policy, incorporate acceptable standards, and provide consistency with existing, comparable regulations in other subchapters.

Comments submitted under cancelled docket, CGD 085–021, and other recommendations received by the Commandant are also discussed in this section if they provided significant input for the development of this proposal.

Distribution and derivation tables are included at the end of this section. The distribution table shows where each section of the existing regulations would go in the revised regulations. The derivation table shows where each

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section of the proposed regulations originates.

Organization

The basic organization of the proposed revised Subchapter T remains the same as the existing regulations. The part numbers and topics remain the same except for Parts 176 and 179. Parts 178 and 179 are reserved in the existing Subchapter T. Under the proposed regulations, Part 178 contains regulations on intact stability and seaworthiness. Part 179 discusses subdivision, damage stability, and watertight integrity. These parts had originally been dedicated to stability and subdivision prior to November 4, 1983.

Except for Part 180 (Lifesaving), the general order and topic of subparts, sections, and paragraphs in the proposed subchapter is basically unchanged from the existing subchapter. However, the outdated numbering system of the existing regulations is revised to correspond to the revised CFR numbering system. Each section (§) number includes the number of the part followed by a period and a sequential number.

Consolidation of Regulations

The Coast Guard is presently making an effort to consolidate vessel inspection requirements by subject matter into functional subchapters of 46 CFR. Each major topic would be addressed in a single subchapter applicable to almost all vessels. Existing functional subchapters include Subchapter F (Marine Engineering), Subchapter J (Electrical Engineering), and Subchapter S (Subdivision and Stability). The functional subchapters allow streamlining of regulations and elimination of redundant material. Other functional subchapters planned include 46 CFR Subchapters K (Fire Protection) and W (Lifesaving).

The Coast Guard is making an exception to the development of functional subchapters for Subchapter T. The Coast Guard is proposing that almost all the regulations applicable to small passenger vessels be contained within Subchapter T, as they were previously. Subchapter T is an exception for several reasons. The size of the small passenger vessel fleet, its ownership and management system, and the workload it generates for the Coast Guard necessitate the availability of a convenient and ready reference for use by both the public and Coast Guard personnel. Small passenger vessels are usually owned by small entities which are often without the financial capabilities or expertise to research and evaluate numerous functional subchapters. Additionally, the standards in the proposed regulations are designed to meet the specific needs of small passenger vessels. If small passenger vessels had to comply with functional subchapters, detailed regulations would have to be included in them on lifesaving equipment, fire protection, electrical equipment, etc., for small passenger vessels resulting in the functional subchapters being needlessly complicated for small passenger vessel owners and operators.

Consequently, the Coast Guard is proposing to move the stability and subdivision regulations affecting most small passenger vessels from Subchapter S to Subchapter T. The proposed changes to Subchapter S are included as a part of this rulemaking.

Additionally, under docket CGD 85-080A, the Coast Guard is proposing that the manning regulations affecting small passenger vessels be moved from 46 CFR Part 15 to Part 186 of Subchapter T, where they were located prior to October, 1987.

Notwithstanding the above, the Coast Guard still intends to require certain small passenger vessels to comply with portions of functional subchapters including stability, machinery, and electrical, as well as with certain Subchapter H regulations applicable to passenger vessels. Many small passenger vessels are under 100 gross tons only because of extensive tonnage reductions and exemptions. Inclusion of appropriate regulations to sufficiently cover such vessels in Subchapter T would require excessive space and would duplicate detailed, acceptable regulations contained in the functional subchapters. Additionally, these vessels will generally be the larger ones whose owners, managing operators, and builders have the expertise to use and comply with applicable portions of the functional subchapters. This proposal will include authority for the Commandant to determine when compliance with such additional regulations is required.

Authority Changes

Public Law 98-89 of August 26, 1983, codified numerous laws relating to vessels and seamen and enacted Subtitle II of Title 46, U.S. Code, into positive law. Its purpose was to revise and consolidate then existing laws without making substantive changes. This necessitates the updating of the regulations throughout Title 46 of the Code of Federal Regulations, including Subchapter T, which contain authority citations and references to the laws which were repealed by Pub. L. 98-89. Consequently, this proposal reflects the current authority citations and statutory references for the regulations proposed, including citation to 46 U.S.C. 3306 as the primary authority to regulate small passenger vessels.

Applicability

Proposed § 175.110 details the general applicability of Subchapter T. While the proposed rules apply to both new and existing small passenger vessels, an existing vessel may, with some exceptions, comply with the new regulations or the applicable construction, arrangement, and equipment regulations in effect prior to the effective date of the proposed regulations. Proposed § 175.400 defines a new vessel and an existing vessel.

A section in each part of the proposed regulations, except Parts 175 and 176, describes how that part applies to existing vessels. Where necessary, the basis of the application for certain new requirements to existing vessels is explained in the discussion of the proposed rules for each part in this preamble.

Breakpoints

The hazards and risks created by the operation of a small passenger vessel varies greatly depending on length, total passenger capacity, existence of overnight accommodations, number of decks, service, route, machinery, etc. Consequently, the Coast Guard has developed a graduated system of regulations with increasingly more stringent requirements for a vessel or operation which presents increasingly greater safety hazards or risks. Breakpoints were developed to determine when a vessel is subject to particular regulations. Most breakpoints were originally mandated by Congress, established to comply with the intent of law, or result from an international convention. Examples of breakpoints presently existing in Subchapter T include 26 feet, 65 feet, 49 passengers, and 150 passengers.

Because of familiarity, most of the existing breakpoints were retained in the proposed regulations. Any new requirements included in the proposed regulations were generally added within the framework of the existing breakpoints. This was done to limit the number of additional breakpoints and to minimize the complexity of the regulations. New breakpoints included in the proposed regulations include: "more than 400 passengers" and "with overnight accommodations." Although not used in existing Subchapter T, these breakpoints are used in other existing

regulations and Coast Guard policy. The application of the new breakpoints is explained in this preamble in the discussion of the regulations where the new breakpoints are used.

Dynamically Supported Craft

The proposed rules contain specific requirements for the design, construction, equipment, and operation of dynamically supported craft (DSC) which vary from those for conventional vessels. The proposed DSC regulations are primarily based on the International Maritime Organization's "Code of Safety for Dynamically Supported Craft" (IMO Code) adopted by IMO Resolution A.373(x) on November 14, 1977. The standards of other nations and classification societies, and standards developed by the Coast Guard were also considered during the drafting of these proposed changes to Subchapter T. The proposal would require the same design and operational standards for U.S. dynamically supported craft as is currently required for DSC of other countries. The sources of many of the proposed DSC regulations are listed in the Reference column of the Derivative Table in this preamble.

The Coast Guard participated in the development of the IMO Code, supports its philosophy, and has urged builders and designers of DSC to adopt portions of the IMO Code to show equivalent levels of safety to conventional vessel regulations. The IMO Code was intended to be self-contained so that compliance with it would ensure that a DSC would have the same level of safety as a vessel which complies with the International Convention for the Safety of Life at Sea. Additionally, the IMO Code urges governments to develop their own specific requirements regulating DSC based on the IMO Code itself.

While many of the requirements in the IMO Code are specific to DSC, others are general in nature and, in fact, are applicable to all small passenger vessels. Accordingly, many of the general requirements from the IMO Code are incorporated in these proposed regulations for application to all small passenger vessels. The methods, designs, or arrangements required by such general requirements are already common practice for most vessels. Hence, the cost of imposing them on all vessels is expected to be minimal. An example of a general requirement in the IMO Code which the Coast Guard proposes to be applied to all small passenger vessels is the requirement that exit doors be capable of being operated from inside and outside the space served (IMO Code 4.3.3).

Recognizing the unique design and operational characteristics of DSC, the proposed regulations specifically applicable to DSC are a compilation of safety tradeoffs designed to provide an equivalent level of safety to that of conventional displacement vessels. For example, requirements for structural fire protection are reduced while more attention is given to passenger evacuation time and primary lifesaving equipment.

Below is a general discussion of the reasons for and effects of primary regulations applicable to DSC.

1. *Vessels included as dynamically supported craft.* The definitions of DSC in proposed § 175.400(c) are adopted from the definitions used in the IMO Code. As proposed, a vessel is considered a DSC if it can be supported by other than hydrostatic forces as a conventional, displacement hull vessel is supported and if its maximum speed divided by the square root of the vessel's length times acceleration due to gravity is greater than or equal to 0.9 (that is where $v/\sqrt{gL}>0.9$). The Coast Guard may also consider using other means of defining a DSC which may better reflect the physical feature of a DSC such as a speed displacement coefficient as follows: $Fn\nabla = v/\sqrt{g\nabla^{1/3}}$. Air cushion vessels, hydrofoil vessels, and sidewall vessels are DSC. Some high speed catamarans and high speed monohull vessels may also meet the definition of DSC and, due to their size, speed, and dynamically supported operations, are subject to safety hazards comparable to the hazards to which air cushion vessels, hydrofoils, and side wall vessels are subject.

2. *Number of passengers.* The IMO Code is applicable to DSC carrying more than 12 but less than 450 passengers. The 12 passenger breakpoint was used in drafting the IMO Code to coincide with the definition of a passenger vessel in the Safety of Life at Sea Convention (SOLAS). However, specific DSC provisions of this proposal would apply to all DSC carrying more than 6 passengers. Under this proposal, a DSC may carry not more than 400 passengers. The 400 passenger limit, in contrast to the 450 passenger limit recommended by the IMO Code, is used to minimize breakpoints. Four hundred is presently used as a breakpoint for subdivision requirements.

3. *Fire protection.* Under this proposal, a DSC carrying not more than 150 passengers must comply with more fire protection requirements than a similar capacity conventional vessel. Included are requirements for structural fire protection bulkheads around machinery spaces and operating stations, reduced fire loads, prohibition of gasoline engines, and the protection of fuel injection pipes from hot oil. These requirements are designed to decrease the risk of fire on a DSC in recognition of the inability to operate a fixed firemain system when in the dynamically supported mode of operation.

The structural fire protection requirements for a DSC carrying more than 150 passengers would be less stringent than the requirements for a similar capacity conventional vessel. If a DSC were to comply with all the structural fire protection requirements for a conventional small passenger vessel carrying more than 150 passengers, the weight of the vessel would make operations in the dynamically supported mode infeasible. A DSC must therefore comply with other requirements, indicated below, to maintain a level of safety equivalent to that on a conventional small passenger vessel.

4. *Operations manual.* The proposal would require an operations manual on each DSC that explains and lists the operational restrictions of the DSC and the procedures by which these restrictions are to be complied with.

5. *Limited operating radius.* The proposal restricts the operation of a DSC to within 100 miles of shore, which is the limit also imposed by the IMO Code. Other factors will also limit the route and time of operations of a DSC. Environmental conditions limit the route of a DSC more than the route of a conventional vessel. For example, exceeding certain wind velocity, sea state, or speed yaw limits may result in unacceptable control characteristics, motions, vibration, structural loads, or structural fatigue. Maintenance services and emergency assistance must also be available in the operating area of a DSC.

6. *Failure mode and effects analysis.* Prior to initial certification of a DSC, an analysis would be required for each type of machinery and its associated control system. This analysis is necessary due to the high speed rotating machinery on DSC and the damage and injury which may occur on DSC if machinery fails while the vessel is in a dynamically supported mode. The analysis is intended to be performance oriented allowing the many unique machinery installations possible on a DSC to be suitably addressed. Presently, an analysis is normally generated by DSC designers. Therefore, this proposal is not expected to add additional costs to the purchase price of a DSC.

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7. Requirements for navigation and communications equipment. The operating speed of DSC makes the proposed additional equipment for navigation, including radar and fathometers, necessary. An individual on watch on a DSC has less time to react to visual and audible input than on most other vessels and has greater need for electronic aids. As recommended by the IMO Code, most DSC would have to maintain a continuous radio watch in order to receive weather reports and emergency notices, and to maintain contact with other vessels while navigating in a congested area.

8. Specific requirements for operating compartments. Because of the speed of DSC and the importance of maintaining a proper attitude with respect to the surface of the water, the crew members on watch in the operating station of a DSC must not be distracted from their duties or be susceptible to injury under normal or emergency conditions. For these reasons, DSC designers must position the controls, instruments, seating, and communications equipment in the operating station to allow the crew members to properly discharge their responsibilities without undue difficulty.

9. Requirements for means of escape. This proposal contains specific requirements for means of escape and a minimum evacuation time on DSC. Some of the proposed requirements for exits are new to the regulations but follow commonly accepted practice. Because structural fire protection requirements on DSC are directly tied to passenger evacuation time, evacuation time must be determined in the design stage to permit evaluation of the structural fire protection boundaries during plan review.

10. Requirements for passenger seating. The proposed requirements include seats for all passengers, seatbelts, and adjustable chairs that must lock in position. These are necessary because of possible rough rides while traveling at high speeds in heavy weather and transitioning between the dynamically supported mode and the displacement mode.

11. Bilge system. A DSC may not be required to fully comply with the bilge pump and piping requirements contained in Subpart E of proposed Part 182 if the vessel has a high degree of subdivision and compartmentation.

12. Stability. This proposal requires that a DSC meet the stability standards applicable to other small passenger vessels, based on the vessel's route, length, number of passengers being carried, and number of decks, when operating in the displacement mode. Compliance with such standards for intact stability, damage stability, and subdivision is necessary for safety when the DSC is in the displacement mode of operation.

DSC must also have satisfactory stability when operating in the dynamically supported mode. Although a number of standards for DSC designs exist, there is no comprehensive standards suitable for all DSC designs. The British Government has standards for air cushion vehicles, the International Maritime Organization has standards for hydrofoil vessels, and the U.S. Navy has a design standard which is well suited for surface effect ships. Due to the diversity of designs and operating principles of DSC, and the limited experiences with DSC, it is necessary to evaluate their stability in the dynamically supported mode on an individual basis. This proposal allows the owner of a DSC to propose acceptable stability standards for operations in the dynamically supported mode based on acceptable standards of other organizations or service trials and individual calculations for the vessel.

Although an increase in the number of DSC is expected, there are not enough DSC operating as small passenger vessels in the United States today to reliably determine the cost the proposed regulations will have on owners. Comments are therefore specifically requested on the cost of the proposals involving DSC from persons that operate or build DSC or contemplate doing so.

Specific Provisions For Large Vessels

Three provisions in the present regulations give the OCMI and Commandant authority to impose regulations in excess of Subchapter T when appropriate. In the past few years, an increasing number of vessels have been built to which application of additional requirements under these provisions has been appropriate.

1. Existing § 175.05–1(b) authorizes the OCMI to require any vessel carrying more than 150 passengers to comply with requirements in Subchapter H (Passenger Vessels), Subchapter P (Manning), Subchapter F (Marine Engineering), and Subchapter J (Electrical) of this chapter, which the OCMI considers appropriate. The manning requirements, previously in Subchapter P, were recently revised and moved to Subchapter B.

2. Existing § 175.05–15 provides that the Commandant shall prescribe regulations, in addition to those in Subchapter T, if the Commandant determines that the gross tonnage of a vessel has been reduced below 100 gross tons by the extensive use of exemptions, reductions, or other devices in the tonnage formulation. If it were not for the extensive use of reductions and exemptions, such a vessel would have had to comply with Subchapter H which generally contains more stringent standards than Subchapter T.

3. Existing § 177.10–5 states that vessels which carry more than 150 passengers shall meet the structural fire protection requirements of Subchapter H (Passenger Vessels). However, the OCMI is given the discretion as to how to apply those structural fire protection requirements.

The OCMI is allowed discretion under §§ 175.05–1(b) and 177.10–5 because the OCMI is the most familiar with the local route of a vessel and associated hazards. However, many vessels today operate in more than one inspection zone. The discretion authorized to account for local differences now often results in significant inconsistencies among vessels operating in the same area. The inconsistencies occur because the vessels were certificated in different inspection zones where the OCMIs imposed different regulations. The Coast Guard has received numerous comments from small passenger vessel owners and managing operators complaining about such inconsistencies. To counter such inconsistencies, the Coast Guard has promulgated policy guidance to Coast Guard field units and the small passenger vessel industry on the application of §§ 175.05–1(b), 175.05–15, and 177.10–5. Policy guidance has been issued in the form of policy letters, the Coast Guard Marine Safety Manual, and Navigation and Vessel Inspection Circular (NVIC) 11–83, "Regulations for Very Large 46 CFR Subchapter T Vessels". The Coast Guard is proposing to incorporate much of this guidance into regulation thereby making the provisions of the guidance mandatory and reducing the discretion of the local OCMI. This will help reduce the serious problems with inconsistencies among inspection zones.

By incorporating this policy guidance into regulation, the Coast Guard would reduce but not eliminate the discretion of both the OCMI and Commandant in regulating small passenger vessels. Reducing the discretion is necessary to limit inconsistencies, but some discretion is still necessary to address unique situations.

NVIC 11–83

As stated in NVIC 11–83, the Coast Guard has found that designers of most small passenger vessels of more than 79 feet in length and of less than 100 gross tons used one or more of the special

provisions or interpretations of the basic gross tonnage formulation so that such vessels weigh less than 100 gross tons. In certain circumstances, the safety hazards to which such a "very large" small passenger vessel is subject may be offset by restrictions on the use of the vessel. Examples of when this may be true are when the vessel operates on restricted routes or when the vessel does not carry passengers in overnight accommodations. However, the Coast Guard has found that in most instances where a "very large" small passenger vessel has overnight accommodations for more than 50 passengers, increased safety hazards exist necessitating imposition of requirements in addition to those in Subchapter T, as authorized by existing § 175.05–15.

The Coast Guard published in NVIC 11–83 a list of regulations the Commandant often makes applicable to vessels of less than 100 gross tons, of more than 79 feet in length, and which have accommodations for more than 50 overnight passengers. The addftional regulations are contained in Subchapter F (Marine Engineering), Subchapter H (Passenger Vessels), Subchapter J (Electrical Engineering), and Subchapter S (Subdivision and Stability) of Title 46 of the Code of Federal Regulations.

As part of the project to revise Subchapter T, the Coast Guard reviewed NVIC 11–83 and found that, after four years of use, the guidelines in the circular are useful and most of the listed regulations applicable. Consequently, the Coast Guard has incorporated the contents of NVIC 11–83 into the proposed rules as indicated below.

Most of the regulations listed in NVIC 11–83 are proposed in this notice to be applicable to vessels of more than 65 feet in length which have overnight accommodations for more than 49 passengers. The length criteria has been reduced from 79 feet used in NVIC 11–83 to 65 feet to minimize the number of breakpoints in the regulations. Sixty-five feet will remain the primary breakpoint routinely used to classify separate regulations for large and small vessels inspected under Subchapter T. It was a breakpoint initially established by law and upon which the existing T–S and T–I vessel determinations are made. The overnight accommodations criterion is reduced from more than 50 passengers to more than 49 passengers also to minimize the number of breakpoints. The existing Subchapter T uses more than 49 passengers in several places including for stability purposes and for prescribing the number of fire and bilge pumps. More than 50 passengers is not presently used as a breakpoint in regulation.

Some of the structural fire protection regulations of Subchapter H listed in NVIC 11–83 have been found to inadequately address the needs of the affected small passenger vessels, often resulting in excessive requirements. Consequently, new structural fire protection regulations are proposed in Subchapter T which would adequately cover these "very large" small passenger vessels with overnight accommodations for more than 49 passengers.

Alternative Standards for Small Vessels

The proposed regulations authorize specific alternative standards for vessels of not more than 65 feet in length and carrying not more than 12 passengers. Under the proposal such vessels may comply with certain standards and recommended practices published by the American Boat and Yacht Council (ABYC) and certain recreational boating safety regulations contained in 33 CFR Subchapter S, instead of fully complying with all standards in Subchapter T. Compliance with the cited ABYC and recreational boating safety regulations is not required by the proposed regulations but allowed as an alternative to other requirements. This proposal would facilitate the conversion of stock boats, primarily designed for recreational boating and charterboat service, to small passenger vessel service. The specific sections of the proposed rules discussing this alternative are §§ 182.130, and 183.130.

This proposal is based on a recommendation by the National Marine Manufacturers Association (NMMA) submitted to the Coast Guard under CGD 85–021. The NMMA is a trade association serving the recreational boating industry with approximately 380 boat manufacturers and 790 equipment and material manufacturers and vendors as members. The NMMA is concerned that, under existing Subchapter T, a vessel which carries only a limited number of passengers, i.e. not more than 12 passengers, must meet the same requirements as a vessel which may carry up to 49 passengers. Many of the vessels built by NMMA member manufacturers are used as crewed charterboats and for demise charters. These vessels may have accommodations for up to 12 passengers. The NMMA believes that many of the regulations in Subchapter T should not be applicable to vessels of the size and type of service of those built by their members. These vessels, often certified by the association as complying with strict standards, including ABYC standards and 33 CFR Subchapter S (Recreational Vessels) regulations, do not comply with many of the regulations in Subchapter T. However, the NMMA believes, because of their own strict standards, which in some areas are in excess of Subchapter T, and because of proven safe operation of the vessels built by their members, that those vessels are also safe to operate as small passenger vessels.

The NMMA proposed that Subchapter T be revised to contain a separate part with specific regulations for chartered vessels, used as bareboat or with crew, carrying not more than 12 passengers. Other parts of the subchapter would be dedicated to other vessel types. The recommended charter vessel regulations contained much of the present Subchapter T regulations and also incorporated certain ABYC standards and recreational vessel regulations.

The Coast Guard agrees that there are sufficient differences in some aspects of design, arrangement, and outfitting between a vessel carrying not more than 12 passengers and one carrying not more than 49 passengers to consider alternative requirements for vessels carrying not more than 12 passengers. However, the Coast Guard disagrees that special consideration should be given to charter vessels alone. The structural fire protection, outfitting of lifesaving and fire protection equipment, machinery and electrical arrangements, etc., on a small passenger vessel should not be based on the method by which a passenger arranges to use the vessel. Rather, such requirements must be based on the size of the vessel and its route. Additionally, the dedication of individual parts of Subchapter T to each type, or even a combination of types, of small passenger vessels would result in inefficient duplication.

Twelve passengers provides a satisfactory breakpoint for the establishment of alternative requirements for smaller vessels for a few reasons. As pointed out by the NMMA, vessels designed and used for charter service are usually equipped with accommodations for more than six passengers and usually up to no more than twelve passengers. Additionally, a small passenger vessel on an international voyage carrying more than twelve passengers is subject to the provisions of the International Convention for the Safety of Life at Sea (SOLAS).

The Coast Guard is also proposing that, in addition to the 12 passenger limitation, compliance with the alternative standards be allowed only for those vessels of not more than 65

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feet in length. As the size of a vessel increases, the complexity and number of systems aboard the vessel increases. Vessels of more than 65 feet in length must fully comply with the regulations in Parts 182 and 183 to adequately protect the vessel from the hazards associated with the increased number and complexity of systems found on those vessels.

46 CFR Subchapter S—Subdivision and Stability

Subchapter S currently contains the subdivision and stability rules for all inspected vessels including small passenger vessels. This proposal moves most of the stability and seaworthiness requirements for small passenger vessels from Subchapter S into Subchapter T for the purpose of consolidating most regulations applicable to small passenger vessels into one inspection subchapter. The intact stability, subdivision, and damage stability standards for small passenger vessels that are more than 65 feet in length, carrying more than 150 passengers, carrying 12 or more passengers on an international voyage, or have more than one deck above the bulkhead deck exclusive of the pilot house would remain in Subchapter S to avoid duplication of the requirements which are also applicable to other inspected vessels. Additionally, the intact stability requirements for small passenger vessels propelled by sail would remain in Subchapter S.

The proposal also revises some of the existing regulations applicable to small passenger vessels, which would remain in Subchapter S, to reflect current Coast Guard policy. The proposed changes in Subchapter S only effect small passenger vessels and sailing school vessels, which are presently required to comply with the stability criteria for small passenger vessels propelled by sail. Other changes to existing regulations in Subchapter S will be addressed under another regulatory docket in the future.

Specific proposed changes to Subchapter S are discussed below in this section of the preamble. Changes to regulations proposed to be moved from Subchapter S to Subchapter T are discussed in the sections of this preamble entitled *Part 178—Intact Stability and Seaworthiness*, and *Part 179—Subdivision, Damage Stability, and Seaworthiness*.

Part 170—Stability Requirements for All Inspected Vessels

Section 170.001 Applicability. Proposed § 170.001 revises the applicability of Subchapter S so that only vessels contracted for on or after the effective date of the final rules under this docket would have to comply with the proposed changes to the subchapter. Vessels contracted before that date may be constructed in accordance with the regulations in effect on the date of the signing of the contract.

Section 170.055(h)(1) Definition of LBP. The proposed addition to existing § 170.055(h)(1) allows the Commanding Officer of the Coast Guard Marine Safety Center to include large underwater projections, such as bulbous bows, in the LBP (length between perpendicular) of a small passenger vessel. Inclusion of such underwater projections is necessary in determining watertight bulkhead spacing to better reflect the increased length of a vessel below the waterline and the actual possibility of damage below the waterline. Projections which contribute more than 2% of the underwater volume of the vessel are normally included in the LBP. Few small passenger vessels are expected to have such projections.

The title, "Commanding Officer, U.S. Coast Guard Marine Safety Center," is used in the proposed change to § 170.055(h)(1), other proposed revisions in Subchapter S, and in Parts 177, 178, and 179 of the proposed Subchapter T. When the Coast Guard Merchant Marine Technical Offices (mmt) were disestablished in 1986, the responsibilities of the Commander (mmt) were transferred to the Commanding Offices of the Coast Guard Marine Safety Center. However, the title, "Commander (mmt)," used in sections of Subchapter S which are not addressed in this proposal, will not be replaced with the title, "Commanding Officer, U.S. Coast Guard Marine Safety Office," at this time.

Section 170.090 Assumed weight and vertical center of gravity of each person. Proposed paragraphs (c) and (d) contain standard values to be used for the vertical center of gravity, weight, and location of passengers when performing loading calculations. This proposal incorporates Coast Guard policy which uses the average weight and center of gravity for a standing adult. The absence of such values in existing regulations results in inconsistencies among naval architects designing small passenger vessels.

Sections 170.105(b)(1) and 170.160(b)(1) Small vessel exclusion. The text of existing §§ 170.105(b)(1) and 170.160(b)(1) is deleted because the applicable requirements for the vessels addressed there have been placed in proposed Subchapter T.

Section 170.170 Inclusion of rails and canopies in the projected lateral area, and permitting the angle of heel to the deck edge on sailing vessels. The proposed changes to the definitions of certain parameters in the metacentric height formula in existing § 170.170 incorporate long-standing policy. That policy interprets the projected area of a small passenger vessel as including any areas of the vessel profile which can be fitted with canvas, such as railings or canopies. The current regulations do not address this point, although the Coast Guard has applied this interpretation as a practical matter. Railings and canopies must be included in the projected area because they are frequently blocked off with canvas dodgers or plastic wind screens to protect passengers.

Some small passenger vessels that are sailing vessels have had to limit the number of passengers they can carry because the angle of heel when applying the critera for metacentric height (GM) in existing § 170.170 is presently limited to one-half of the freeboard of a vessel including a sailing vessel. The existing criteria were initially developed for flush deck, mechanically powered vessels of ordinary proportions and form that carry cargo below the main deck. The proposed rules allow sailing vessels to be heeled up to the deck edge when applying the criteria in § 170.170 because a sailing vessel normally has a greater range of stability and a greater angle of downflooding than the type vessel for which the criteria were initially developed.

Section 170.173 (e) and (f) Alternative righting energy criteria: The proposed changes to existing § 170.173 allow, for the purpose of consistency, the same righting energy criteria that has been applied to vessels of unusual proportion and form in the past to be used as an alternative for small passenger vessels. A Coast Guard policy allowing the relaxation of requirements for vessels that operate only on protected waters is also formalized in this proposal. The proposed criteria have histories of satisfactory results and recognize that vessels can be safely operated on protected routes with less stability than is required for exposed routes. As these relaxations have been routinely allowed as a matter of policy, there will not be a monetary benefit from this regulation change.

Part 171—Special Rules Pertaining to Vessels Carrying Passengers

Subpart B "Small Vessels." Subpart B is proposed to be deleted. The simplified stability test for sailing vessels in § 171.035 of existing Subpart B does not consider the full range of stability that a sailing vessel has as it heels to the downflooding or extremis angle. Even in protected and partially protected waters, there are squalls that arise quickly that can cause a sailing vessel to heel further than its deck edge. The Coast Guard believes that the sailing vessel criterion of existing § 171.055 or § 171.057 should be used to check all sailing vessels, regardless of their size, for their full range of stability.

The remainder of the provisions of Subpart B are contained in proposed Part 178 of Subchapter T.

Section 171.050(b) Rail crowding criteria. Proposed § 171.050(b) incorporates existing policy for vessels, used for excursions such as to view parades or for sightseeing, on which a large number of passengers may move to the railings for better viewing. The passenger criteria in existing § 170.050 considers passenger heeling but not to the extent considered by this proposal. Technical evaluation has shown that vessels affected by this proposal are capable of being loaded in manners not adequately addressed by current criteria. Compliance with the proposed requirement would probably result in the stability analysis required for certification taking an additional hour of time.

Sections 171.055 (d)(1), (d)(2), (e)(4)(ii), and (g)(1) Small passenger sailing vessels. The existing sailing vessel stability criteria have been criticized by many naval architects and sailors as being too stringent for small vessels because they make such vessels difficult to maneuver in light air. Similar to the sailing school vessel regulations, the proposed regulations in § 171.055 contain graphs so that the stability numerals can be reduced in exchange for higher angles of downflooding and vanishing stability. These proposed regulations do not impose any additional costs. Under the proposal small passenger vessels which are sailing vessels have the option of using the existing criteria or the new criteria. Some vessels may benefit from the proposed changes since they may be able to carry more sail or be more maneuverable using the proposed criteria.

Section 171.070 (e)(1) and (e)(2) Spacing of main watertight bulkheads. The proposed revisions to § 171.070 state that a small passenger vessel carrying more than 12 passengers on an international voyage must comply with the existing regulations indicated. This change incorporates requirements of the International Convention for Safety of Life at Sea, 1974, which small passenger vessels on an international voyage must comply with. Consequently, there are no costs resulting from this proposed change.

Section 171.076 Bottom damage requirements for longitudinally subdivided vessels. Proposed § 171.076 would allow longitudinal subdivision and double bottoms to be used in lieu of transverse bulkheads to meet Type II subdivision requirements. Under the current regulations, only transverse bulkheads are sufficient to meet the subdivision requirements. The proposed standard will provide designers with greater flexibility while maintaining the current level of safety against collisions and groundings.

Section 171.077 Damage stability requirements for multihull vessels. Proposed § 171.077 incorporates existing Coast Guard policy defining the extent of damage which a multihull vessel is assumed to incur for the purpose of determining subdivision requirements. It describes the analysis necessary to demonstrate equivalency to Type II subdivision. The existing regulations are not directly applicable to multihull vessels. This proposal does not impose any additional costs.

Section 171.080(d)(5) Range of stability and righting energy in damaged conditions. Proposed § 171.080(d)(5) establishes standards for approving a small passenger vessel's range of stability in the damaged condition which are similar to international standards. The existing requirement to have 2 inches of positive GM in the equilibrium condition does not ensure that small passenger vessels will survive in this condition. Analysis has shown that launching survival craft would capsize some vessels which meet the current criteria. The proposed criteria are less severe than those which are now being applied for an equilibrium angle of heel of greater than 7 degrees. Existing regulations allow the Commanding Officer of the Marine Safety Center to approve a vessel's range of stability in the damaged condition if the equilibrium angle of heel is greater than 7 degrees. Some Merchant Marine Technical Offices (mmt) previously imposed criteria more severe than those of the proposal when they determined that greater stability than was required by regulation was necessary on a vessel with an equilibrium angle of heel of 7 degrees or less.

An estimated 5% of the vessels subject to proposed § 171.080(d)(5) would have to have additional fixed ballast or bulkheads, beyond those required by existing regulations, to comply with the proposal. The additional bulkheads or ballast would cost approximately $5000 per vessel.

Sections 171.114, 171.119, 171.124, and 171.140 through 171.155. The requirements of existing §§ 171.114, 171.119, 171.124, and 171.140 through 171.155 are contained in Parts 178 and 179 of the proposed Subchapter T.

46 CFR Subchapter T

Part 175—General Provisions

Section 175.110 General applicability. This section revises existing §§ 175.05–1, 175.05–2, and 175.05–3 to better reflect 46 U.S.C. 3301, 3302, and 3306. The proposed applicability section does not include offshore supply vessels as does existing § 175.05–2. Offshore supply vessels will be specifically addressed in proposed rules being developed under a separate rulemaking (CGD 82–004, RIN 2110–AA77).

Section 175.200 Gross tonnage as criterion for requirements. This section remains basically intact as in existing § 175.05–15. It is included to inform builders and owners that the Commandant may prescribe regulations in addition to or in place of those in Subchapter T if the Commandant determines that a small passenger vessel, which has measured under 100 gross tons only because of extensive use of exemptions, reductions, or other devices in the gross tonnage formulation, may be subjected to safety hazards or risks that regulations in Subchapter T do not adequately address.

While these proposed rules eliminate much of the need for existing § 175.05–15, small passenger vessels may be built in the future of a size or passenger carrying capacity which creates a safety hazard or risk that is not adequately addressed by these proposed regulations.

Section 175.400 Definitions. Many definitions have been revised to make editorial changes and clarify the existing meaning of terms. Definitions of words such as "passenger" have been revised to agree with statute. Another significant change is that "sailing vessel" now includes both vessels which are propelled only by sail and auxiliary sail vessels. Auxiliary sail vessels are no longer separately defined since they are not treated differently by the regulations.

Several new definitions are added to define terms which exist in the present regulations, which are not presently defined, and which experience shows need to be defined. Such terms include

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"dripproof", " gross tonnage", "watertight", and "weathertight".

Several new terms are added which are used in the proposed regulations but are not used in the existing regulations. An "operating station" is defined. This term is used in several new sections and replaces the terms pilothouse or bridge in existing sections since those existing terms are inappropriate for many small passenger vessels.

A "dynamically supported craft", along with several terms associated with dynamically supported craft, are defined. The definitions are adopted from the IMO "Code of Safety for Dynamically Supported Craft". Dynamically supported craft is also abbreviated "DSC".

Section 175.530 Alternative standards. This proposed section would allow owners or managing operators of certain conventional, displacement hull vessels to choose to comply with all the specific regulations for a dynamically supported craft (DSC). This alternative would allow conventional vessels carrying more than 150 but not more than 400 passengers to meet the reduced structural fire protection requirements of a DSC if the owner feels it is advantageous to do so. Hence, a DSC would not be given an economic advantage solely because of the regulations. However, an owner choosing to use this alternative would have to comply with all the applicable specific requirements for a DSC including additional plan and analysis submittal, operations manual, possible route restrictions, operating requirements, etc.

Part 176—Certificate of Inspection

Section 176.100 When required. This section revises existing §§ 176.01–1 and 176.01–3 by deleting the references to T–S and T–L vessels, and more importantly, by requiring that a vessel be in compliance with the terms of its Certificate of Inspection at all times in accordance with 46 U.S.C. 3313. Existing § 176.01–1 states that a T–S vessel need not comply with its COI when carrying not more than 6 passengers. Proposed § 176.114 would alleviate hardships caused by this legal restriction.

Section 176.103 Description. This section adds to the present § 176.01–5 by stating that the maximum number of passengers that a vessel may carry in overnight accommodation spaces will be indicated on its Certificate of Inspection (COI). This is necessary because many regulations are based on that number and because passengers should be aware of how many passengers a vessel is authorized to carry in overnight accommodation spaces.

Section 176.107 Period of validity. The Coast Guard proposes in this section that Certificates of Inspection be valid on all small passenger vessels, except those with SOLAS Certificates, for a period of three years.

46 U.S.C. 3307 requires that all small passenger vessels be inspected at least once every three years. However, existing Subpart 176.01 requires that vessels of more than 65 feet in length be inspected and reissued a COI every year as previously required by 46 U.S.C. 404. The three year inspection period is proposed to comply with the intent of Pub. L. 96–378, as now codified in 46 U.S.C. 3307, to provide more uniform requirements for all small passenger vessels, and to decrease the administrative burden on both industry and the Coast Guard. Under the proposed § 176.500, all vessels would be required to undergo a reinspection at yearly intervals during the term of a COI. Although the scope of a reinspection is the same as a triennial inspection for certification, the administrative work and the detail of a reinspection is somewhat less than that for a triennial inspection, and the total time involved is less.

Section 176.114 Special endorsement for carrying six or less passengers. This proposed section would allow the owner of a vessel to request to have the certificate of inspection endorsed to permit operation of the vessel in accordance with the laws and regulations applicable to an uninspected passenger vessel when carrying six or less passengers. The endorsement would require the vessel to be maintained and outfitted in accordance with the requirements of its COI except for manning and route. This would allow vessels to be operated competitively on the same route and with the same manning as uninspected vessels.

Section 176.600 Drydock and internal structural examination intervals. This rulemaking proposes to extend the interval between drydockings and internal structural examinations to two years for all vessels operating in salt water. Except for wooden vessels the existing fresh water drydocking interval of five years is retained for vessels operating in fresh water at least nine months in any twelve month period. The interval for wooden hull vessels would be two years regardless of the waters on which operated.

Presently the drydock interval for all vessels is 18 months except for the 5 year intervals prescribed for vessels in exclusive fresh water service and the 36 month intervals for partial fresh water service.

The proposed two year period will allow owners to easily schedule exams around the normally seasonal operations of most small passenger vessels. The present 18 month drydock interval for most vessels often forces owners and operators to take their vessels out of the water during the peak operating season. This interval also forces many owners to repeatedly request the 6 month drydock extensions that the OCMI is authorized to grant. The average annual savings for the whole small passenger vessel fleet due to this change, including the decreased drydock period for wooden hull boats in freshwater service, is approximately $293,000 based on an average drydocking cost of $500.00 per vessel. The interval for wooden hull vessels in fresh water service has been decreased because fresh water accelerates deterioration of wood due to rot.

A thorough discussion of drydock intervals is contained in the Notice of Proposed Rulemaking and the Interim Final Rule on Intervals for Drydocking on Inspected Vessels published in the **Federal Register** on May 30, 1986 (51 FR 19720) and October 23, 1987 (52 FR 39683), respectively. Because of the ongoing project to revise Subchapter T, the Interim Final Rule did not affect the drydock intervals for small passenger vessels. However, much of the discussion in the preambles for both the NPRM and the interim final rules are relevant to small passenger vessels.

Section 176.808 Lifesaving. This section contains proposed inspection requirements for lifesaving equipment for an inspection for certification. Other sections in Subpart H contain inspection requirements for other types of equipment and systems. Most of proposed Subpart H incorporates existing regulations. However, § 176.808(a)(1) requires that rescue boats and launching appliances be tested and inspected in accordance with Subchapter W. 46 CFR Subchapter W is a functional subchapter on lifesaving equipment being developed under Coast Guard Docket 84–069, RIN 2115–AB72. Additional information on Subchapter W is contained in the discussion of proposed Part 180 in this preamble.

Part 177—Construction and Arrangement

Subpart A—General Provisions. The proposed regulations in this part would not be applicable to existing vessels except by choice of an owner or for new construction or modifications made to an existing vessel. Repairs or replacements-in-kind would not have to be made in compliance with these proposed requirements, but they would have to meet the requirements effective when the vessel was built. However, the owner could choose to meet these proposed requirements for repairs or replacements-in-kind.

Subpart B—Plans and Information Required. Proposed Subpart B lists more plans required to be submitted to the OCMI for approval than does existing Subpart 177.05 which it would replace. However, all the plans listed may not be applicable to a particular vessel. In most cases, the plans in the proposed list only amplify the plans which are currently required by existing regulations and are, in practice, already required by the OCMI or needed by the builder for construction of the vessel. Consequently, additional costs as a result of this part of the proposed rules is expected to be minimal.

Coast Guard policy requires that the Commanding Officer of the Coast Guard Marine Safety Center (MSC) approve all structural fire protection and general arrangement plans for small passenger vessels carrying more than 150 passengers in excursion service or more than 50 passengers on overnight voyages. This policy was recently instituted to minimize inconsistencies in the application of requirements to such vessels. To coincide with the breakpoints in this proposal, this policy will be revised to require the MSC to approve all structural fire protection and general arrangement plans for small passenger vessels carrying more than 150 passengers in excursion service or which have overnight accommodations for more than 49 passengers.

Proposed § 177.202(a) requires that all plans still be submitted to the OCMI. However, the OCMI will forward those plans to the MSC which are required by policy or regulation to be approved by the MSC, unless the OCMI allows an owner to submit plans directly to the MSC as authorized by proposed § 177.202(c). The proposed plan submittal requirements ensure that the OCMI is aware of the request for plan approval of a vessel the OCMI may certify, and that plans for a vessel the MSC may approve do not conflict with plans for the vessel the OCMI may approve.

Subpart C—Hull Structure, Proposed Subpart C would require compliance with the design requirements of industry standards which are incorporated by reference. The proposed subpart informs builders and owners of exactly what standards may be used for structural design. The 5 year rule in existing § 177.10–1 is retained except that only vessels of not more than 65 feet may be approved under it. Analysis techniques are now available which may be used to determine the adequacy of all hull designs. It is especially important to determine the adequacy of hull design of larger vessels because of their size, passengers carried, and service. Proposed § 177.340 is a result of the variety of structural analysis techniques which now allow an owner to use any satisfactory, systematic analysis to prove certain vessels are structurally adequate. Computers and modern analysis techniques, such as finite element methods, are now routinely used in naval architecture.

The proposal also contains specific structural design requirements for dynamically supported craft and sailing vessels.

Subpart D—Fire Protection. In developing Subpart D, including the structural fire protection bulkhead and deck requirements, the normal arrangements, uses, and fire risks of large excursion vessels were considered. Bulkhead and deck requirements were then developed considering the new fire protection equipment requirements being proposed in Part 181 including fixed gas fire extinguishing systems and detecting systems, and the proposed requirements for means of escape and muster and embarkation stations.

The existing requirements of Subchapter H, the structural fire protection requirements of the International Convention for the Safety of Life at Sea (1974), shoreside building codes, and the U.S. Coast Guard Navigation and Vessel Inspection Circular No. 6–80 (NVIC 6–80, "Guide to Structural Fire Protection Aboard Merchant Vessels") were considered in determining the most appropriate requirements for small passenger vessels.

This proposed subpart contains regulations designed to minimize or prevent the spread of fire through the reduction or elimination of combustible material, and the separation of fire sources from other parts of a vessel by fire boundaries. Existing § 177.10–5 contains the only structural fire protection regulations for small passenger vessels. Except for vessels carrying more than 150 passengers and fiber reinforced plastic vessels, the existing regulations are limited and only require that fire hazards be minimized insofar as is reasonable and practicable, hot exhausts be suitably insulated, and flammable liquid lockers be lined with metal. Vessels carrying more than 150 passengers must presently comply with the structural fire protection requirements of Subpart 72.05 of Subchapter H (Passenger Vessels) as determined to be applicable by the OCMI. In accordance with existing § 177.10–5(a–1), fiber reinforced plastic vessels, carrying not more than 150 passengers, must presently be constructed of fire retardant resins which meet MILSPEC R–21607.

Although the small passenger vessel fleet generally has a satisfactory fire safety record, especially in comparison with uninspected vessels, sufficient significant fires have occurred since the structural fire protection regulations in existing Subchapter T were promulgated to necessitate the regulations proposed in this subpart.

1. Coast Guard records show the following statistics involving fires on small passenger vessels from 1981 to 1986:

Total fire casualties—87;
Vessels which were a total loss due to fire—10 (11% of all fires);
Fires occurring in machinery spaces—50 (57% of all fires);
Fires on wood hull vessels–28 (32% of all fires);
Fires on FRP vessels–25 (28% of all fires).

2. As noted above, 32% of all fires occurred on wood hull vessels and 28% occurred on FRP vessels. Wood hull vessels also compose 32% of the small passenger vessel fleet, but FRP vessels compose only 20% of the fleet. The National Transportation Safety Board has made many recommendations involving fire protection as a result of casualties involving small passenger vessels. These have been examined, and many of their recommendations have been incorporated in the proposed regulations.

3. Subchapter H structural fire protection requirements were developed primarily for large passenger vessels and do not adequately address the fire risks involved with most small passenger vessels carrying more than 150 passengers which operate today. The number of such small passenger vessels has increased since initial promulgation of the Subchapter T.

Proposed § 177.400 contains general arrangement and outfitting requirements designed to reduce fire risks on all vessels. The proposed section combines applicable general arrangement and outfitting requirements located in existing § 177.10–5 and other sections of the existing Subchapter T, with several new requirements based on accepted industry standards.

Proposed § 177.400(e) is a new requirement for vapor barriers to cover insulation in spaces such as machinery spaces and paint lockers. Vapor barriers are considered necessary to maintain the fire resistance of insulation when the

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insulation is exposed to combustible vapors or liquid which can permeate the insulation. Saturated insulation can not only add to the fire load of a space but can defeat the insulating qualities of the material. Similar provisions are contained in the 1974 International Convention for the Safety of Life at Sea, as amended.

Proposed § 177.400(g) limits paint thickness to 0.075 inches on interior surfaces of enclosed and partially enclosed spaces. Existing Subchapter T does not address paint thickness. However, §§ 72.05–15(e) and 72.05–45 of Subchapter H, which are applicable to small passenger vessels carrying more than 150 passenger and "very large" small passenger vessels with overnight accommodations for more than 49 passengers, limit paint to a reasonable thickness. Existing § 177.10–5 does require fire hazards to be minimized, which would also include excessive buildup of combustible paint. To minimize inconsistencies, it is necessary to limit the maximum paint thickness on interior surfaces to the allowed thickness of combustible veneer and approved Interior Finishes found in § 164.012 of 46 CFR Subchapter Q (Equipment, Construction, and Materials: Specifications and Approval).

Proposed § 177.400(h) requires that all mattresses comply with the Department of Commerce flammability standards for mattresses (16 CFR Part 1632, Subpart A) to minimize fire hazards. New mattresses that do not meet the proposed flammability standard can not legally be sold in the United States. A small passenger vessel owner purchasing a new mattress complying with the proposed requirement would save money compared to the current requirement in existing § 177.30–7(b), that mattresses be covered with a material which has been treated to give it fire resistant properties. Since the only mattresses for sale are those complying with the proposed rule, the owner will no longer have to buy a treated covering. Proposed 177.400(h) prohibits the use of polyurethane foam mattresses. Polyurethane foam has been found to give off highly toxic fumes when exposed to fire. Mattresses not made with polyurethane are readily available. The economic impact of this prohibition is expected to be minimal.

Proposed Subpart D also contains separate sections on structural fire protection addressing the fire risks associated with vessels of different sizes and types of operation. The proposed rule uses the breakpoints in existing Subchapter T and NVIC 11–83. One comment submitted under CGD 85–021 recommended that a graduated system be developed. This proposal contains a graduated system for structural fire protection regulations based on a vessel's passenger capacity and the number of overnight accommodations for passengers. Structural fire protection requirements for dynamically supported craft are also proposed.

Proposed § 177.420 contains structural fire protection requirements for vessels carrying not more than 150 passengers or with overnight accommodations for not more than 49 passengers. It requires that when vessels are constructed of fiber reinforced plastic, including composite construction of fiber reinforced plastic and wood, the resin used must have a flame spread of not more than 100. The flame spread is determined by testing in accordance with the American Society of Testing Material (ASTM) Standard E–84, "Standard Test Method for Burning Characteristics of Building Material," or Underwriters Laboratories, Inc. (UL) Standard 723, "Test for Surface Burning Characteristics of Building Materials". The test must be performed by an independent testing laboratory acceptable to the Coast Guard. Test standards ASTM E–84 and UL 723 are identical. Reference is made to both throughout as an aid to anyone trying to locate acceptable material, since a material may be tested and marked to either standard.

The allowable flame spread rating of 100 is equal to that of red oak. Requiring that resin have a spread of 100 would allow the use of readily available, industrial grade FRP resins which provide adequate fire retardation.

Proposed § 177.420(c) mandates a maximum flame spread for vertical and horizontal surfaces within 3 feet of cooking appliances. The proposal also prohibits draperies, curtains, or free hanging fabrics from being fitted within three feet of cooking appliances. This proposed regulation was adopted from industry standards NFPA 701 and ABYC Project A–3–70 and is consequently expected to have limited economic impact. Vessel owners are already required to minimize the amount of combustible material within close distance of cooking appliances under the mandate of existing § 177.10–5(a).

Proposed §§ 177.430 through 177.439 contain specific structural fire protection regulations for vessels carrying more than 150 passengers which do not have overnight accommodations for more than 49 passengers. This includes large daytime excursion or tour vessels, dinner cruise vessels, and ferries. Presently, such vessels must comply with structural fire protection regulations in Subchapter H (Passenger Vessels), as determined appropriate by the cognizant OCMI. A common complaint from the small passenger vessel industry is that the regulations in Subchapter H are applied inconsistently by various OCMIs, although vessels may be of common design and operate in the same area. With the incorporation of specific structural fire protection rules in Subchapter T, inconsistencies should decrease. Exceptions to the proposed rules would only be allowed when equivalencies are accepted by the Commandant under proposed § 175.540, or the OCMI determines under proposed § 175.550 that departure from specific requirements is necessary due to unusual circumstances or arrangements and that an equivalent level of safety is provided.

Proposed § 177.430 contains tables for use in determining the minimum structural fire protection requirements for bulkheads and decks on vessels carrying more than 150 passengers. These tables require certain bulkheads and decks in various types of spaces to have a minimum fire rating. The proposed tables are similar to tables in Subchapter H, however, the number of tables has been reduced from four to two in comparison to Subchapter H. The number of categories of spaces has also been reduced from 13 in Subchapter H to 11 in the proposed requirements. For instance, the three different categories of accommodation spaces in Subchapter H have been reduced to two categories of accommodation spaces in this proposal; high risk accommodation spaces (Type 4) and low risk accommodation space (Type 5). The difference between the spaces would be the amount of combustible material permitted in them; a low risk accommodation space would be permitted to have only one-half the amount of combustible materials permitted in a high risk accommodation space.

The proposed tables in § 177.430 (c) and (d) would permit a reduction in the structural fire protection boundary requirements between an adjoining accommodation space and a service space, compared to Subchapter H. This is in recognition of the decreased fire risk on vessels such as tour vessels and ferries, which normally have reduced amounts of combustible furnishings. This concept is employed in Subchapter H with graduated structural fire protection requirements for larger spaces and for spaces with more combustible material. The required standard of some decks and bulkheads

has been reduced in comparison with Subchapter H because of the requirements in Part 181 for detecting systems and for fixed gas fire extinguishing systems.

Proposed § 177.432(b) establishes a maximum fire load for individual high risk accommodation spaces, high risk service spaces, and control spaces of 6.0 lb/ft². The fire load is based on the weight of all combustible materials, furnishings, veneers, etc., in a space, except Coast Guard approved Interior Finishes and UL listed coatings and sheathings for use in fire resistant construction, as explained below.

Proposed § 177.432(c) allows ceiling and acoustical tiles, coatings and sheathings, and linings listed or approved by an independent testing laboratory, to be used instead of having to be Coast Guard approved as presently required by Subchapter H. However, these materials still must meet flame spread rating and smoke development rating requirements in accordance with specific American Society of Testing Materials (ASTM) or Underwriters Laboratories Inc. (UL) test standards. The Coast Guard has received numerous complaints from industry stating that Coast Guard approved materials are difficult to obtain and more costly than industrial grade material which provides an equivalent level of safety in comparison to approved materials. The Coast Guard agrees with these arguments and intends to allow use of acceptable and more readily available industrial grade material. The proposed requirements of paragraphs (c)(4) and (c)(5) of § 177.432 will further encourage use of material meeting the requirement of 46 CFR 164.012 or UL listed materials by not requiring these materials to be included in the fire load calculations of § 177.432(b).

However, the Coast Guard is proposing to retain the requirement that structural fire protection bulkhead material and all insulation be Coast Guard approved noncombustible material, because the proven fire rating of such materials is necessary to ensure that fire control boundaries are adequate.

Proposed § 177.432(g) contains standards for deck covering on vessels carrying more than 150 passengers. Previously, these vessels were required to comply with § 72.05–10 (n) through (q) of Subchapter H. Section 72.05–10 requires carpeting to be wool or equivalent to wool in fire-resistive qualities if used in stairways or corridors, and permits any carpet in a large public space with combustible furnishings (type 7 space). These proposed requirements would require carpet to be wool or have a flame spread rating of 75 or less and a smoke developed rating of 100 or less when tested to ASTM E–84 or UL 723. This incorporates current policy contained in NVIC 6–80 which allows carpet with a flame spread rating of 75 or less and a smoke developed rating of 100 or less, when tested to ASTM E–84 or UL 723, to be considered equivalent to wool in fire-resistive qualities. The proposed regulations would also allow carpets and rugs tested to ASTM E–648, "Test for Critical Radiant Flux of Floor Covering Systems Using a Radiant Heat Energy Source," to be used if the critical radiant flux was not less than 0.45 watts per square centimeter and the specific optical density is not more than 450 when tested to ASTM E–662, "Test for Specific Optical Density of Smoke Generated by Solid Materials". These test methods are widely used in the carpet industry and it is expected that carpet meeting this proposal would be readily available to the small passenger vessel industry. These carpets and rugs would have to be included in the fire load calculations as combustible materials since they will in fact burn. Wooden deck coverings for dance floors would be permitted as a leveling or finishing material, if not more than ⅜ of an inch in thickness.

Proposed § 177.432(h) revises the existing regulations by requiring furniture and drapes to comply with certain industrial standards. By specifying minimum standards for furnishings, the requirements for bulkheads and decks can be reduced without compromising safety. Industry standards are used so that vessel builders and owners have a much wider range of products to choose from than if the more restrictive requirement in Subchapter H for fire resistant furnishings is applied. Proposed § 177.432(h) includes a requirement that upholstered furniture meet the National Fire Protection Association (NFPA) Standard 260B. This standard is currently recommended as the industry standard by the Business and Institutional Furniture Manufacturer's Association. The standard was originally developed by the National Bureau of Standards for the Consumer Product Safety Commission.

Proposed § 177.434 contains requirements for windows and air ports in fire control boundaries on vessels carrying more than 150 passengers. The requirements contained in Subchapter H would be applied to windows in interior fire control boundaries. The requirements would allow an owner to choose glass meeting the requirements in Subchapter H or glass that is listed by UL under the category "Fire Window Frames and Glazing Materials" in interior B-Class bulkheads. Windows, in fire control boundaries, adjacent to embarkation stations, muster stations, escape routes and survival craft would be required to have glass meeting an A-Class fire protection standard or be fitted with shutters of steel or equivalent material operable from outside the space. A-Class glass is a relatively new product which has passed the standard fire test for A-Class construction.

Subchapter H presently requires that windows opening onto embarkation stations be fitted with wire inserted glass. The similar use of wire inserted glass would not be allowed on small passenger vessels under this proposal because the Coast Guard believes that wire inserted glass does not provide adequate structural fire protection. Shutters or A-Class or equivalent windows are necessary to maintain the fire integrity of windows and air ports in way of embarkation or muster stations, escape routes, or survival craft.

Proposed § 177.436 contains requirements for decorative doors and doors in fire control bulkheads used on a vessel carrying more than 150 passengers. These requirements would limit a single door to not more than 48 inches in width and includes provisions for hose ports fitted in doors in fire control bulkheads. The proposed requirements would also establish standards for the installation of horizontal doors in decks. These requirements are based upon similar requirements contained in the National Fire Protection Association (NFPA) Standard 101 "Life Safety Code", and are considered necessary due to the number of such arrangements that have been permitted on small passenger vessels in the last several years. Many of the requirements of Subchapter H for doors in fire control bulkheads have been incorporated in these proposed regulations because doors, if not properly designed, constructed, installed, and fitted can degrade the fire resistive properties of fire control boundaries in which they are fitted.

Proposed § 177.438 contains requirements for stairs, stairtowers, elevators, and ladders on vessels carrying more than 150 passengers. The Coast Guard is concerned that not enough attention has been paid to passenger evacuation on small passenger vessels with high passenger densities. The minimum tread width in a stairway or stairtower is therefore being proposed to be increased to 36 inches. If the stairway will serve more than 120

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passengers, the minimum stairway tread width would be increased by 0.3 inches for each additional passenger. This proposal incorporates concepts from NFPA 101. Many of the requirements contained in Subchapter H have been included here in different updated format.

Proposed § 177.439 contains new requirements for vessels carrying more than 150 passengers that have a balcony or other opening in a deck in a passenger accommodation space. These openings create a two level space with a large volume and large total combustible load. The proposal requires that for § 177.430 to be applicable, an opening that creates a two level space must be large enough so that a person on either level of the space can see a fire in any portion of the space. This would be achieved by allowing a partial deck to be limited to 80 percent of the available area. This would prevent decks, which have openings between them which are too small to allow complete viewing of one level from the other level of the space, from being considered balconies. Otherwise, decks with small opening between them might be labeled as balconies and thus circumvent the requirements for decks which are contained in proposed § 177.430. The concept of the proposed requirements was drawn from NFPA 101 which has stringent requirements for spaces containing balconies. Part of those requirements is the ability of persons in the space to be able to exit from the space without changing levels. This would help prevent passengers from becoming trapped on one level by a fire on the other level. Proposed § 177.500(f) requires that the number and dimensions of the means of escape be such that two-thirds of passengers on each level be able to exit from that level, if a stairway is contained within the space, otherwise the requirements for means of escape would not differ from other spaces.

Proposed § 177.440 would require that small passenger vessels with overnight accommodations for more than 49 passengers be required to meet the structural fire protection requirement of § 72.05 of Subchapter H. This is currently the guidance contained in NVIC 11–83.

Proposed § 177.450 requires dynamically supported craft to have fire control boundaries for machinery spaces, galleys, and control stations. The degree of protection would be dependent upon the evacuation time as determined by calculations in the design stage and confirmed by an evacuation demonstration after construction. Fire control boundaries would be required to be rated at three times the evacuation time plus seven minutes but not less than 30 minutes, which is the international standard contained in the IMO "Code of Safety for Dynamically Supported Craft."

The proposed regulations in Subpart D are based on the minimal structural fire protection regulations in existing Subchapter T, the detailed structural fire protection requirements in Subchapter H, established policy used to reasonably apply the existing regulations to small passenger vessels, and allowances for acceptable shoreside material. These four components of proposed Subpart D combine to provide an adequate level of safety which may be readily achieved by most small passenger vessels. Additionally, the proposed fire control boundaries and allowances for the use of shoreside materials are estimated to provide a savings of $12,000 in the construction of the average small passenger vessel carrying more than 150 passengers.

Subpart E—Escape and Muster Station Requirements. Proposed § 177.500 revises the requirements for means of escape from spaces in small passenger vessels primarily by clarifying the existing requirements in § 177.15–1. Present policy and requirements from the IMO Code for Dynamically Supported Craft and from 46 CFR Subchapter H, which should be applicable to all passenger vessels, are also incorporated into the proposed regulations. The incorporation of such requirements from Subchapter H and the IMO Code is not expected to require modifications to most small passenger vessel designs. Where modifications are necessary, added construction costs are expected to be small. The proposed regulations emphasize that regardless of the required minimum number or arrangement of means of escape from a space, the actual number and dimensions of means of escape must be adequate to allow rapid egress in an emergency for the maximum number of persons allowed to normally occupy a space.

Proposed § 177.500(h) specifies that the width of a door used as a means of escape from a space which is designed to hold more than 49 passengers must be at least 32 inches, and that the sum of the width of all doors for the space must be at least 0.3 inches times the number of passengers for which the space is designed. The existing regulations do not contain any requirements on the size of doors used as means of escape. The proposed door size was determined based on egress studies conducted by other organizations and the fact that persons evacuating a vessel in an emergency may be wearing lifejackets. The proposal is similar to requirements for emergency egress in the National Fire Protection Code Standard 101, "Life Safety Code." The National Transportation Safety Board recommended the establishment of criterion for the number of persons that can safely exit through a standard door following the collision of two small passenger vessels, JACK W and JAMEY DOWNEY, in Lower New York Bay on June 22, 1987. Both vessels serve as passenger ferries and carry 149 and 105 passengers respectively.

Since most existing vessels already comply with the proposed requirement for minimum door size, the proposal is expected to be of minimal cost to the small passenger vessel industry. However, the requirement is necessary to ensure that on all small passenger vessels which have enclosed spaces for a large number of persons, in which there is a significant chance of crowding and panic in an emergency, doors with a minimum width are provided for escape.

Proposed § 177.500(m) prohibits vertical ladders, except on vessels of not more than 65 feet in length, as a second means of escape from passenger accommodation spaces, because of the varying physical conditions of passengers; vertical ladders are allowed for crew accommodation spaces and work spaces. Proposed § 177.500(r) revises existing § 177.15–1(b)(2) by requiring only one means of escape from a space with maximum dimensions of less than 12 feet, under certain conditions, except that a vertical ladder and deck scuttle are prohibited from serving as the only means of escape from an accommodation space. Stairways would be allowed.

Proposed § 177.500(q) states that windows or windshields may be used as one of the two required means of escape only on vessels of not more than 65 feet in length, and only when a person, exiting directly through the opening, would step onto a deck, platform, etc., and would not have to go directly into the water. This incorporates present policy at many Coast Guard field units and expands on the requirement of existing § 177.15–1(a). The additional requirements are proposed to allow an escaping person to first be able to reach an open deck to evaluate the situation and take appropriate action before being forced into the water. However, on vessels without closed cabins, such as open boats, the only means of escape would be to go directly overboard. On vessels of more than 65 feet in length, which often carry a large number of persons, there should be, and usually is, sufficient room to provide at least two normal, well marked exits which can be safely used by passengers of a variety of physical capabilities.

The small passenger vessel industry is expected to incur only minimal costs as a result of the proposed revision to existing § 177.15–1 because most vessels are already designed to comply with the proposed requirements.

Proposed § 177.510 is a new requirement for designated survival craft embarkation stations on vessels carrying more than 150 passengers or which have overnight accommodations for more than 49 passengers, and which are equipped with survival craft.

Proposed § 177.520 is a new requirement for muster stations on vessels carrying more than 150 passengers or with overnight accommodations for more than 49 people. Dependent upon the space available and the arrangement of the vessel, an embarkation station may also serve as a muster station. Muster stations must be protected by fire control boundaries in compliance with proposed § 177.430. A minimum area is required for muster stations so that passengers have sufficient room to don lifejackets without being overly crowded or panicking. The largest passenger accommodation space is excluded from being a muster station to ensure that the minimum area required for a muster station is available if a fire starts in the largest accommodation space. Vessels with main vertical zone bulkheads would be required to have muster stations in each zone so that a fire in one zone would not envelop all of the muster stations.

The proposed requirements for designated embarkation stations and muster stations is similar to requirements that the Coast Guard is considering including in the Notice of Proposed Rulemaking for Subchapter W for large passenger vessels. Designated muster stations and embarkation stations are necessary to organize the orderly abandonment of large numbers of persons in survival craft. Muster stations also ensure that passengers have a protected location to go to in the event of a fire and where they can wait for the fire to be extinguished, rescued, or embarkation into survival craft. The stations would have to be indicated on plans for new vessels required to be submitted by proposed § 177.202, in a station bill if required by proposed § 185.514, and in a passenger safety bill if required by proposed § 185.515. The locations of the stations would also have to be announced in the passenger safety orientation required by proposed § 185.506.

Subpart F—Ventilation. Proposed § 177.600(b) requires that all ventilation openings, for enclosed and partially enclosed spaces, must be located above the main deck and not penetrate the hull or bulwark of a vessel. This requirement is proposed because water from rough seas or even wakes can easily flood through vent openings located below the main deck of a vessel, such as vent openings which penetrate the hull of a vessel. Specific vent heights are not proposed due to the various arrangements, sizes, and routes of small passenger vessels. However, under proposed § 177.600(b) the OCMI may require closure devices to prevent the entry of water through any vent if the OCMI believes the location of the vent opening may subject the vessel to flooding. The OCMI may allow an owner to raise the height of the vent opening instead of requiring closure devices.

Most OCMIs presently require that vent openings be arranged to minimize flooding. Therefore, this proposal is not expected to impose any additional cost on small passenger vessel owners.

Proposed § 177.600(c) requires that all interior spaces have a positive means for denying air to a space in the event of a fire. This may necessitate a damper to isolate the supply or weathertight covers, and a means of securing the fans in forced ventilation systems that supply a particular space. This proposal incorporates the requirements of 46 CFR 72.05–50(i).

Proposed § 177.600 (e) and (f) revise the existing ventilation requirement for enclosed accommodation spaces to require that such spaces be mechanically ventilated unless it can be specifically shown that a natural system will provide adequate ventilation in all ordinary weather conditions. However, all enclosed passenger spaces where smoking is allowed must be mechanically ventilated.

Proposed § 177.610 establishes ventilation duct requirements for vessels carrying more than 150 passengers. These requirements are designed to limit the passage of flame, smoke, and hot gases throughout the vessel's ventilated spaces, which minimizes the spread of the fire and allows more time to fight the fire before the vessel has to be abandoned. Also, by limiting the spread of flame, smoke, and hot gases, there is less risk to the health of the passengers and crew. The ventilation duct requirements are based on those in Subchapter H and in NVIC 6–80 ("Guide to Structural Fire Protection Aboard Merchant Vessels"), suitably modified for small passenger vessels.

Subpart G—Crew accommodations. Proposed § 177.700 contains more specific guidance than existing § 177.25–1 does on when overnight accommodations for crew members must be provided. As is present Coast Guard policy, the proposal requires that satisfactory overnight accommodations must be provided whenever a vessel is authorized to operate more than 12 hours out of a 24 hour period without a crew change.

Subpart H—Passenger Accommodations. Proposed § 177.800 contains specific requirements for all passenger accommodation spaces on a vessel. Proposed § 177.810 contains specific requirements for overnight accommodation spaces for passengers. Passenger overnight accommodation spaces include cabins, staterooms, berthing areas, or other spaces, containing beds or bunks allowing passengers to rest for extended periods. They may include single person staterooms or large, multibunk berthing areas. Overnight accommodation spaces do not include spaces which contain only seats, including reclining seats, even if passengers may remain in them overnight. The existing regulations only contain specific requirements, other than for seat arrangements, for passenger lounge areas including overnight and day accommodations located below the main deck. However, due to the size, arrangement, and passenger capacity of most passenger spaces, the requirements applicable to spaces below the main deck should generally also be applicable to passenger spaces on or above the main deck. Many OCMIs presently apply most of the requirements of existing § 177.30–7 to all passenger spaces, and most vessels already comply with these requirements throughout the vessel. Consequently, the expected cost of this change is minimal.

Proposed § 177.840 contains the toilet requirements in existing § 177.30–5, except that it allows the use of portable toilet facilities only on vessels of not more than 65 feet in length carrying not more than 49 passengers.

Subpart I—Rails and Guards. Proposed § 177.900 contains the same requirements as existing § 177.35–1 in regards to minimum rail height and locations with one notable exception. The minimum required rail height on ferries and vessels engaged in excursion operations is proposed to be reduced to 39½ inches. This is to align the small passenger vessel requirement with that of the 1974 SOLAS Convention which

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recognizes 39¼ inches as the minimum height normally necessary for safety. Owners may experience a slight cost saving due to this proposed change. The proposed regulations on rails also contains specific guidance on the application of the minimum rail height and location requirements and incorporates existing Coast Guard policy. Excursion trips are defined to include, but not be limited to, sightseeing trips, dinner and party cruises, and overnight cruises. Rails are required to be higher on ferries and excursion vessels because of the large number of passengers, greater percentage of children, and greater percentage of persons not familiar with boats, who are carried on such vessels.

The proposed rail regulations delete the requirement for evenly spaced rails since even spacing has been determined not to be a major safety consideration. However, the 12 inch maximum spacing in the existing regulations is retained.

Proposed § 177.900(a) contains a new performance standard, which incorporates existing policy in the Coast Guard Marine Safety Manual, requiring that rails be able to withstand the cumulative load of all persons who may rely on them for support. Additionally, a requirement for stanchions located at a maximum distance apart of 7 feet is proposed.

To avoid confusion, the proposed rules do not use the term "sport fishing," used in existing § 177.35–1(d). Instead, the proposed rules allow 30 inch rails to be installed in way of a person fishing from a fixed seat who is secured in the seat by a restraining device. The reduced rail height is only allowed in the vicinity of the fixed fishing seat. Higher rails, lifelines, etc., would be required to be put above the 30 inch rail when a person is not fishing from the fixed seat.

Proposed § 177.900(d) revises existing § 177.35–1(e) by stating that, on a vessel where persons or cargo are routinely discharged in a seaway, the OCMI may allow alternatives to the required rails only where such rails would actually interfere with loading and unloading. Gates or removable rails, chains, etc., must be provided for discharge operations whenever possible. Vessels affected by this proposal may include dive boats and pilot boats.

Proposed Subpart J. Proposed Subpart J contains performance standards for windows not presently existing in Subchapter T. The proposed rules require all glazing material to be made of material, such as safety glass, which will not break into dangerous fragments. These new requirements incorporate current Coast Guard policy, provisions of the IMO Code for Dynamically Supported Craft, and shoreside building requirements. As this type of glass is generally used by the makers of marine windows and portlights and included in the specifications for larger vessels, the cost of the proposed requirement will be negligible. Windows and portholes must also be capable of withstanding the maximum load to which they may be subjected. Window design pressures may be determined from a recognized standard, such as ISO Standard 3903–1977, or they may be certified by the window manufacturer. Because of the necessity for good visibility, specific requirements are included for visibility from windows at the operating station. A minimum light transmission rating is also proposed to help ensure adequate visibility and control unlimited use of tinted windows.

Part 178—Intact Stability and Seaworthiness

Part 178 is a new part containing intact stability and seaworthiness requirements for small passenger vessels. This proposal moves most of the stability and seaworthiness requirements for small passenger vessels, which are presently in 46 CFR Subchapter S, into Subchapter T for the purpose of consolidating most regulations applicable to small passenger vessels in one inspection subchapter. The intact stability standards for small passenger vessels that are more than 65 feet in length, carrying more than 150 passengers, carrying 12 or more passengers on an international voyage, have more than one deck above the bulkhead deck, exclusive of the pilot house, or which are sailing vessels, would remain in 46 CFR Subchapter S to avoid duplication of the requirements which are also applicable to vessels regulated by other subchapters.

In addition to moving regulations that pertain only to small passenger vessels from Subchapter S, the proposed regulations revise some of the existing regulations applicable to small passenger vessels to reflect current Coast Guard policy and to correct some problems with the application of existing regulations.

Section 178.320 Intact stability requirements. Proposed §§ 178.310 and 178.320 require that a simplified proof test be performed on all small passenger vessels, except those which must undergo a stability test as specified in Subchapter S, unless specifically dispensed with by the OCMI. Existing § 171.030 requires that a simplified stability proof test need only be conducted on vessels of not more than 65 feet in length carrying more than 49 passengers or on any other vessel whose stability is questioned by the OCMI. However, as allowed by existing § 171.030(a)(2), many OCMIs now require all small passenger vessels to demonstrate that they have sufficient stability, either by the simplified proof test or by inclining and subsequent calculations. The proposed change emphasizes that the stability of all small passenger vessels should be evaluated, not just those carrying more than 49 passengers or of more than 65 feet in length, due to the variety of hull forms and outfitting found on small passenger vessels today. The estimated cost of a simplified stability proof test is approximately $200 per vessel.

Section 178.340 Intact stability standards for pontoon vessels in protected waters. Proposed § 178.340 incorporates policy currently in the Coast Guard Marine Safety Manual which provides a simplified means of testing the intact stability of pontoon vessels of not more than 65 feet in length, carrying not more than 150 passengers, and operating in protected waters. The simplified test in existing regulations is only applicable to monohull vessels.

Section 178.450 Calculation of Drainage Area. Proposed § 178.450 revises the existing drainage requirements for both well deck and cockpit vessels contained in 46 CFR Subchapter S and contains a required drainage area formula that accounts for:

(1) The volume susceptible to entraining water;

(2) The height of the deck above the waterline;

(3) The operating area; and

(4) The area of the weathertight superstructure.

The proposed regulation still distinguishes between cockpit vessels that operate on protected or partially protected waters and other vessels. The cockpit vessel on protected waters is considered immune to taking "green water" over the side and needs only to be able to drain rain and spray. However, because a vessel on partially protected waters may periodically experience sea conditions similar to those found on exposed waters, comments are requested on the possible need for a cockpit vessel on partially protected waters to have the same drainage area proposed for a vessel on exposed waters.

There have been many complaints from small passenger vessel owners and architects over the years about the existing drainage area requirements for cockpit and well deck vessels. The existing drainage area requirement for well deck vessels, being directly proportional to the length and height of the bulwark, fails to take into account the deck volume susceptible to entraining water or the effect of deck houses on free surface area. The difference between a well deck vessel and a cockpit vessel in the existing rules can be a matter of inches of deck length and minimal in the volume susceptible to entraining water, yet the freeing port/scupper areas required for each type of vessel can be several hundred percent different.

The cost of this proposed drainage area requirement change is considered negligible because the amount of drainage required can be incorporated into the design and construction of a new vessel. The benefit of the proposed change is that deck drainage will more accurately reflect the amount of water that may be entrained on a vessel.

Section 178.510 Fixed ballast. Proposed § 178.510 contains requirements concerning ballast installed to comply with stability regulations. The proposal incorporates the requirements of § 170.235 of Subchapter S and includes a new requirement that solid ballast installed forward of the collision bulkhead be installed and arranged to prevent damage to the collision bulkhead during a collision.

The proposal requires that ballast, installed to meet stability requirements, be both solid and fixed, since such ballast provides a permanent and verifiable quantity of ballast. The stability of a vessel can be more easily and safely maintained with solid fixed ballast than with liquid ballast. However, solid ballast can pose a danger if it is stowed forward of the collision bulkhead in a manner that may cause the collision bulkhead to fail in a collision, an example of which would be concrete forming a solid structural connection between the stem of a vessel and its collision bulkhead.

Part 179–Subdivision, Damage Stability, and Watertight Integrity

Part 179 is a new part containing proposed subdivision, damage stability, and watertight integrity requirements for small passenger vessels. This proposed rule moves the applicable existing subdivision, damage stability, and watertight integrity requirements of 46 CFR Subchapter S into Subchapter T.

Sections 179.210 and 179.212 Watertight bulkhead requirements. Proposed §§ 179.210 and 179.212 contain the existing requirements for watertight bulkheads on small passenger vessels. Due to the inherent hazards of operating a vessel, and the need to protect passengers, crew, cargo, and the vessel itself, all vessels need some degree of flooding protection. Consideration was given to requiring collision bulkheads on vessels not presently required to have them and to increasing subdivision requirements. Due to the relatively high cost of providing a one compartment standard of subdivision or sufficient foam flotation on vessels of not more than 65 feet in length and carrying not more than 49 passengers, the Coast Guard has not included any increase in the subdivision requirements in the proposed rules. Available casualty history does not appear to justify the increase in cost. However, comments are requested on the possibility of extending the watertight bulkhead and subdivision requirements to vessels not presently required to comply with such requirements.

Section 179.310(b)(1). Proposed § 179.310(b)(1) contains a specific requirement for the location of a collision bulkhead with a bulbous bow which comprises more than 2 percent of the underwater volume of the vessel. Two percent of the underwater volume is being proposed as a reasonable limit, to exclude small projections which do not contribute significantly to the overall buoyancy. This proposal also revises the definition of length for the purposes of Part 179 so that large underwater projections forward of the forward perpendicular or aft of the aft perpendicular are considered in locating watertight bulkheads. These proposed changes consider the effects that underwater projections such as bulbous bows have on damage stability. The current regulations do not address such projections.

Section 179.330 Watertight doors. Proposed § 179.330 expands the existing regulations in 46 CFR Subchapter S to clarify the Coast Guard's policy on watertight doors, particularly as to allowable location. This proposed section formalizes policy which allows watertight doors in machinery space bulkheads where it can be reasonably assumed that such doors will be kept closed, and which requires special approval by the Commandant in non-machinery spacebulkheads. Watertight doors in subdivision bulkheads present a particular hazard on small passenger vessels because of the relatively small size of compartments and the rapidity with which they can flood. The noise and heat associated with machinery provides a natural incentive to keep doors closed. This proposed regulation imposes no additional costs on small passenger vessels.

Section 179.340 Trunks. Proposed § 179.340 incorporates requirements for trunks on large passenger vessels which are currently applied to vessels of more than 65 feet in length or carrying more than 150 passengers. For the purposes of proposed Part 179, a trunk is a large, enclosed passageway through any deck or bulkhead of a vessel, which would include passageways referred to as tunnels on certain vessels. This proposed regulation is necessary because some existing small passenger vessels have trunks and the number of small passenger vessels built with trunks is expected to increase.

Section 179.360 Watertight integrity. Proposed § 179.360 expands the existing regulations in 46 CFR Subchapter S to clarify the requirements for weathertight and watertight doors and hatches, particularly to prevent entrapping water within enclosed superstructures. The proposed regulation does not impose any additional cost and will, by defining which openings must be watertight or weathertight, lead to fewer misconceptions about what is required for watertight integrity.

The Coast Guard has received general comments on the tripping hazard posed by the coaming required by § 171.124 of Subchapter S and which is included in proposed § 179.360. The coamings are required to prevent water on a deck from flowing into the superstructure or hull of a vessel, where the water would cause a reduction in stability. Even vessels operating on protected waters can have water on deck from the wake of other vessels.

The Coast Guard is considering revising the coaming requirement. Specific comments are requested on the coaming requirement and information on accidents caused by coamings. Comments should also address the risk of downflooding on a vessel and if the elimination or reduction in height of required coamings would effect that risk.

Part 180–Lifesaving Appliances and Arrangements

Organization of Part 180. The lifesaving equipment requirements are proposed as a completely revised Part 180. The structure of proposed Part 180 is designed to parallel a new functional subchapter being developed under Coast Guard Docket 84–069, 46 CFR Subchapter W (Part 199). Subchapter W will contain lifesaving equipment requirements for large inspected vessels. This parallel structure will allow for easy comparison of the requirements for both types of vessels. For example, the requirements for Emergency Positicn

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Indicating Radio Beacons (EPIRBs) are in § 180.64 of this proposal. EPIRB requirements in Subchapter W will be in proposed § 199.64. Requirements for lifejackets are in § 180.71 of this proposal, and will be in proposed § 199.71 of Subchapter W.

The proposed regulations contain references to Subchapter W in several places including §§ 176.808, 180.10, 180.150, 180.175(g), and 180.210(c). Requirements similar to those intended to be published in the Notice of Proposed Rulemaking for Subchapter W are presently contained in Part 75 (Lifesaving Equipment) of Subchapter H. Subchapter H contains the regulations for vessels of at least 100 gross tons carrying passengers. If the final rules for Subchapter W are not published prior to publication of the final rules under this docket, the Coast Guard intends to replace the references to Subchapter W contained in this proposal with references to Subchapter H as an interim measure.

Section 180.10 "Very large" small passenger vessels with overnight accommodations for more than 49 passengers and small passenger vessels on international voyages. As in other parts proposed in this notice, small passenger vessels on international voyages and "very large" small passenger vessels with overnight accommodations for more than 49 passengers would have to meet the requirements for large passenger vessels. These requirements are presently located in Subchapter H and will be proposed for inclusion in Subchapter W. The International Convention on the Safety of Life at Sea, 1974, (SOLAS) mandates the increased standards for small passenger vessels on international voyages. Small passenger vessels on international voyages must presently comply with SOLAS lifesaving equipment regulations which parallel the regulations of Subchapter H.

Even though "very large" small passenger vessels with overnight accommodations for more than 49 passengers may measure at a gross tonnage of less than 100, they are not of the type initially contemplated as being regulated under Subchapter T. They are more closely related to the vessels and services covered under proposed Subchapter W. This proposed regulation is not a significant change since "very large" small passenger vessels with overnight accommodations for more than 50 passengers are usually required to comply with Subchapter H, in accordance with NVIC 11–83.

Section 180.15 Applicability to existing vessels. The proposed regulations in Part 180, except for §§ 180.78(a)(4) and 180.210, would apply to all existing small passenger vessels. Existing vessels must comply with the following new requirements for lifesaving equipment when applicable for the size and route of the vessel: Inflatable survival craft, survival craft stowage and launching requirements, satellite EPIRBs (including on vessels operating within 20 miles of a harbor of safe refuge), and the elimination of the use of combination flares. Proposed § 180.15 contains phase-in periods for these new requirements applicable to existing vessels.

Five years after the effective date of the rules, vessels older than 10 years on that date would have to comply with the new survival craft requirements. Vessels between 5 and 10 years old would have to comply by the time the vessel reaches the tenth anniversary of its keel-laying date. The purpose of this phase-in period is to spread the demand for new liferafts and inflatable buoyant apparatus over several years, so that manufacturers can produce the equipment without over-burdening their production capabilities. The phase-in plan also results in older vessels being equipped with improved lifesaving equipment first. An informal analysis of casualties indicates that older small passenger vessels are more likely to be involved in casualties than newer vessels.

Section 180.64 EPIRBs. For vessels in ocean or coastwise route, the regulations proposed in § 180.64 would require the use of Federal Communications Commission (FCC) Type Accepted float-free EPIRBs operating on the dedicated satellite frequency of 406.025 MHz. The present regulations require Class A EPIRBs operating on 121.5/243 MHz, and allow an exemption for vessels operating within 20 miles of a harbor of safe refuge. The elimination of the 20 mile exemption is proposed since rapid alerting and location of vessels in distress in this region is as necessary as it is further out at sea. The 406 MHz satellite EPIRB not only provides improved alerting and locating over conventional EPIRBs operating on 121.5/243 MHz, but also avoids most of the false alarm problems on those frequencies. Final rules permitting the manufacture and sale of such beacons have been developed by the Federal Communications Commission (FCC) and are expected to be published soon in the **Federal Register**. These beacons should be readily available in 1989. The approximate cost of such beacons is presently $1450.00. However, as availability and demand increases the price is expected to decrease.

The JOAN LaRIE III casualty is an example of why the exemption for vessels operating within 20 miles of a harbor of safe refuge is being proposed for elimination. The JOAN LaRIE III was approximately 8.5 nautical miles offshore when it suddenly capsized. No distress message was sent over the VHF–FM radiotelephone and there was apparently no EPIRB on board. A rescue operation was started immediately only because the sudden disappearance of the vessel was noted on the radar of a Brazilian freighter which happened to be close by and investigated. Had it not been for the proximity of the freighter, it might have been several more hours before a search and rescue operation was started. Other casualties, including the COMET casualty, also indicate the need for EPIRBs on all coastwise and ocean route vessels. The survivors from the COMET were found by a passing yacht 4½ hours after the vessel sank. Both the NTSB and a Coast Guard Marine Board of Investigation have recommended elimination of the exemption to the EPIRB requirement for vessels operating within 20 miles of a harbor of safe refuge.

The Coast Guard recognizes that many owners and operators have 121.5/243 MHz EPIRBs in compliance with the present regulations, and that this equipment has a long service life. Therefore, proposed § 180.15(c) would allow 121.5/243 MHz Class A (float-free) EPIRBs that are installed on or before the effective date of the final rules to be carried for about 6 years. This Class A EPIRB phase-out period is identical to the phase-out period included in the final rule, published in the **Federal Register** of August 17, 1988 (53 FR 31004), for the installation of EPIRBs on fishing vessels, fish processing, and fish tender vessels. The Notice of Proposed Rulemaking for the installation of EPIRBs on fishing vessels, fish processing, and fish tender vessels, published in the **Federal Register** of September 3, 1987 (52 FR 33448), proposed a phase-out period of 10 years; however comments supported a shorter period.

Although conventional 121.5/243 MHz Class A EPIRBs would be acceptable for the proposed 6 year phase-out period, there are a number of problems with these EPIRBs. The 121.5/243 MHz system has a serious false alarm problem. Although "COSPAS/SARSAT" search and rescue satellites are designed to receive 121.5 MHz signals, 121.5/243 MHz EPIRBs are not designed as "satellite EPIRBs" and their coverage area and alert and locate ability is significantly inferior to that of the 406 MHz satellite EPIRB. Comments are requested as to whether a shorter phase-in period should be required for small passenger vessels.

Section 180.68 Distress flares. Proposed § 180.68 contains some changes to the present requirements for flares in § 180.35.

As in the existing regulations, small passenger vessels on ocean, coastwise, or Great Lakes routes would be required to carry 12 distress flares. However, the combination flare and smoke signals allowed by existing § 180.35–5(a)(2), and approved under 46 CFR Subpart 160.023, would no longer be acceptable to meet the requirements for distress flares. Existing combination signals could continue to be used until their expiration dates have been passed. These signals have significantly lower flare and smoke emission time than the other flares listed in proposed § 180.68. In addition, they have been found to eject hot slag as they burn, which can be a minor hazard. Hand flares approved under 46 CFR Subpart 160.021 must pass a test in which they are burned over liquid heptane without igniting the heptane. Flares approved using this test have a reduced likelihood of starting a fire due to hot dripping slag.

A small passenger vessel on an ocean or coastwise route would be required to have six hand held red flares and six orange smoke signals, as allowed by the existing regulations, or 12 rocket parachute flares as required on a passenger vessel an ocean or coastwise route by existing Subchapter H and as will be proposed in Subchapter W. A small passenger vessel on a Great Lakes route would be required to have six hand held red flares and six orange smoke signals, 12 rocket parachute flares, or 12 hand held red flares as required on a passenger vessel on a Great Lakes route by existing Subchapter H and as will be proposed in Subchapter W.

The Coast Guard received one comment under CGD 021–85 that vessels on river routes should not be required to carry flares. Vessels on river routes often operate in unpopulated areas where flares may be needed to signal for help in an emergency. However, under this proposal, small passenger vessels on lakes, bays, and sounds or rivers would only be required to have six flares because of the increased chance of such vessels being spotted from shore within a short time period and because they are more accessible to rescue facilities compared to vessels on coastwise or ocean routes.

The proposed changes would result in a minor cost saving to vessels on lakes, bays, and sounds and river routes due to the decreased number of flares required.

Section 180.71 Lifejackets. In this proposal, the commonly used term "lifejacket" replaces the term "life preserver" used in existing Subchapter T. The term "lifejacket" will also be used in Subchapter W. The Coast Guard intends to change the references to life preservers in 46 CFR Subchapter Q, Subparts 160.002, 160.005, and 160.055, to life jackets.

Proposed § 180.71(b) would require all vessels carrying passengers to carry a number of child-size lifejackets equal to at least 10% of the number of passengers permitted on board, or such greater number as necessary to provide a lifejacket for each person smaller than the lower size limit of the adult lifejackets. This proposed regulation would state the requirement for child-size life preservers more clearly than in existing Subchapter T. Proposed § 180.71(b) would permit vessels to omit the child-size lifejackets if the vessel does not carry persons smaller than the lower size limit of the adult lifejackets. This proposal means that child-size lifejackets well in excess of 10% of the total number of passengers permitted on board, may be required for a vessel that carries a large number of children on infrequent occasions, or for a vessel that does not normally monitor the number of children carried.

The proposed regulation is a clarification of present requirements for small passenger vessels. Present regulations in § 180.25–5(a) require "an approved adult type life preserver for each person carried. In addition, * * * a number of approved life preservers suitable for children equal to at least 10 percent of the total number of persons carried". The Coast Guard interprets this regulation as requiring a child-size life preserver for each child carried, even if more than 10% of the persons on board are children.

Adult lifejackets are not necessarily suitable for any and all children. If the lifejacket is too big for a child, it may come off easily, it may unacceptably hinder the ability of the child to climb steps or otherwise maneuver, or its buoyancy may be too low on the child's body causing the child to float with the head under water. The Coast Guard has worked on the problem by testing some adult lifejackets on children. Some were found to be satisfactory for children over 75 pounds. Recognizing that future "adult universal" size lifejackets may be approved for persons smaller than 90 pounds, the regulations proposed in this notice refer to the lower size limit of the lifejacket.

Comments on the issue of lifejackets for children are invited. Comments suggesting alternative approaches should consider the need to provide appropriate flotation devices for all children carried, as well as the problems that are experienced by operators in complying with the requirement.

Section 180.78 Stowage of lifejackets. Proposed § 180.78(a)(4) would require lifejackets stowed more than 7 feet above the deck to have a means for quick release, capable of operation by a person standing on the deck. This is a requirement of the present regulations for large passenger vessels (46 CFR 75.40–20(b)) and also in proposed Subchapter W, but it does not now appear in Part 180. Existing § 180.25–10(a) requires lifejackets to be stowed in places convenient to the persons on board. No significant cost increase is expected to result from this proposed rule because vessels with lifejacket stowage above 7 feet would probably already have to have a means for release by a person on deck in order to meet the present "convenient" standard.

Section 180.110 Embarkation ladders. Proposed § 180.110 requires an embarkation ladder at embarkation stations if the distance from the embarkation deck to the vessel's lightest operating waterline is more than 10 feet. This is expected to affect only a very small number of vessels with high freeboards. The ladder is necessary to safely get from the embarkation deck to the water level on high freeboard vessels. The approximate cost of a satisfactory embarkation ladder is $900. This proposal is similar to a requirement in proposed Subchapter W for large inspected vessels.

Section 180.130 Survival craft stowage. Under proposed § 180.130(a), each survival craft would have to be stowed in an automatic float-free launching arrangement so that if a vessel sinks or capsizes the survival craft would float off its stowage location. Existing regulations do not require a float-free arrangement for life floats and buoyant apparatus on a small passenger vessel. Existing Subpart 180.20 requires each life float and buoyant apparatus to be held in place either by lashings which can be easily released, or by a hydrostatic release unit in a float-free arrangement. If lashings are used, the survival craft would probably remain on the vessel if the vessel suddenly capsized or sank.

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Other inspection subchapters require float-free launching arrangements for inflatable survival craft. Additionally, when inflatable survival craft are installed aboard small passenger vessels, they are normally installed in a float-free arrangement. However, existing Part 180 does not specify the method of stowing inflatable survival craft since they are not now required to be carried on small passenger vessels. Navigation and Vessel Inspection Circular (NVIC) 1–83 (Painters for Life Floats and Buoyant Apparatus) and NVIC 4–86 (Hydraulic Release Units for Liferafts, Life Floats, and Buoyant Apparatus, and Alternate Float-Free Arrangement) strongly recommend that lifefloats and buoyant apparatus be stowed in float-free arrangements.

A review of casualties, including the JOAN LA RIE II, DIXIE LEE II, PEARL C, and FISH-N-FOOL, resulted in the determination that float-free arrangements are necessary for all survival craft. A greater loss of life would probably have occurred if survival craft had not floated free when the cited vessels capsized.

The proposed float-free requirement could be complied with by the use of an approved hydrostatic release unit, a crib made of pipe stanchions, or similar arrangements. A hydrostatic release unit must be approved in accordance with the requirements of 46 CFR Subpart 160.062. Subpart 160.062 describes the procedures for the approval of hydraulic releases. Hydrostatic release unit is the commonly used term for a hydraulic release. The term hydrostatic release unit will be used in Subchapter W, and the Coast Guard intends to use the more common term in a revision to Subpart 160.062.

Under proposed § 180.130(c), with the exception of survival craft of not more than 200 pounds in weight, a survival craft must not require lifting from its stowed position in order to be launched. This proposal is a result of recommendations made following investigations of the MERRY JANE, FINALISTA 100, and CAPT. JIM casualties where persons aboard these vessels had difficulty launching survival craft due to the weight of the craft. Existing § 180.20–1(a)(6) presently limits the weight of survival craft to 400 pounds. This weight appears excessive based on the cited casualties.

An approved survival craft heavier than 200 pounds could be stowed aboard a vessel so that it could be launched by using davits or other arrangements which would allow the sliding or dropping of the craft into the water without having to be lifted by persons.

Comments are specifically requested on whether or not any lifting should be permitted to launch a survival craft of even as much as 200 pounds. As many as 3 persons could be needed to lift a survival craft this heavy due to the shape of some craft. A more realistic limitation on the weight of a survival craft which does not need mechanical assistance for launching may be 100 pounds.

The cost to a vessel owner of providing survival craft stowage which complies with proposed § 180.130 will vary depending on the type of survival craft and the arrangement of a vessel. Costs will include both the stowage arrangement and any necessary local strengthening of decks or other modifications. The owners of fifty percent of the vessels required to have survival craft are expected to incur a cost of approximately $500 per vessel to comply. The cost for most other vessels to comply is expected to be less than $500.

Section 180.150 Survival craft launching arrangements. Proposed § 180.150 would require a launching appliance for each survival craft whose embarkation station is located on a deck at least 15 feet above the waterline, or which is boarded prior to being placed in the water. A launching appliance for an inflatable liferaft or inflatable buoyant apparatus could be a davit and winch, an inflatable escape slide, or anything else approved as an equivalent by the Commandant to safely and efficiently transport survivors from the vessel and into the survival craft in the water. The proposed requirement is similar to one in existing Subchapter H and which will be proposed for inclusion in Subchapter W.

The requirement for survival craft launching appliances will not apply to most small passenger vessels because the embarkation deck on most vessels is close to the water. Most vessels can be properly designed and arranged to avoid having to install launching appliances. However, the owner of one of the few small passenger vessels, required to have launching appliances by the proposed regulations, is expected to incur a cost of approximately $30,000 to comply with proposed § 180.150 for a group of six davit-launched liferafts.

Subpart E—Survival craft. Revised survival craft requirements are proposed in Subpart E of Part 180 (§§ 180.200 through 180.210). Under § 180.202, each small passenger vessel on an oceans route except when operating in certain areas at specified times of the year, would be required to have inflatable liferafts of an aggregate capacity which will accommodate the total number of persons permitted on board. The section would allow life floats to be substituted for inflatable liferafts in certain areas at the indicated times of the year. These ocean areas and times of the year have been chosen to include waters where the mean low water temperature for each month approximately equals or exceeds 59 °F (15 °C). The boundaries for these areas have been chosen to correspond with established boundaries for Coast Guard Marine Inspection Zones, insofar as is possible, along with some common geographic breakpoints included in Certificate of Inspection route endorsements. Marine Inspection Zone boundaries are established under 33 CFR Part 3. Comments are specifically requested on the appropriateness of the proposed boundaries for reduced survival craft.

The present regulations require small passenger vessels on an ocean route to carry sufficient life floats for all persons on board. The shortcomings of the present regulations are that they do not provide adequate survival equipment in cold water. Life floats only provide something for persons in the water to hang on to. A few people may be able to stand on the platform in the middle of the life float, and be immersed approximately waist-deep. No protection is provided for wind and waves. Search and rescue data suggest that unprotected persons in the water will start to die of immersion hypothermia or its complications after two hours in 59 °F (15 °C) water. Seven or eight hours is about the maximum expected survival time in waters of this temperature. Expected survival times drop in lower water temperatures. Even with adequate notification, rescue operations in ocean waters can extend for several hours, depending upon how close rescue resources are. Liferafts provide out-of-the-water flotation and protection from wind and waves for survivors of casualties in cold and rough waters, thereby reducing deaths due to immersion hypothermia and drowning.

Under a proposal submitted as a result of CGD 085–21, the National Marine Manufacturers Association recommended that vessels carrying not more than 12 passengers operating on an inland or coastwise route, which have positive buoyancy when fully flooded or swamped, not be required to have survival craft. Although persons could hold onto a capsized vessel or stay in a flooded vessel which has positive buoyancy, such a vessel would not provide protection from wind, waves, and hypothermia. Additionally, a vessel with positive buoyancy may still need

survival craft in the event that a fire caused the abandonment of the vessel.

The U.S. Lifesaving Manufacturers Association (USLMA) commented under CGD 85–021 that all small passenger vessels should be required to carry survival craft which will allow all persons permitted aboard a vessel to stay out of the water. The Coast Guard does agree with the USLMA's concern that persons be protected from hypothermia, and the proposed regulations address that concern while also considering the cost of such regulations on the small passenger vessel industry and the public. The ideal situation would be to have such survival craft on all vessels, but it is not economically feasible to do so.

Comments on alternatives to inflatable liferafts and buoyant apparatus which would protect persons from hypothermia are specifically requested.

Under proposed § 180.204, each vessel in coastwise or Great Lakes service would be required to have inflatable buoyant apparatus of an aggregate capacity which will accommodate the total number of persons permitted on board. The section would allow for substitution of buoyant apparatus for the inflatable buoyant apparatus in certain areas at the indicated times of the year. Inflatable buoyant apparatus are similar to inflatable liferafts, except that they have no canopy, and carry only a limited amount of survival equipment. This makes them less expensive than inflatable liferafts for operators to buy and maintain. They provide out-of-the-water flotation for survivors, but the lack of a canopy means that there is no protection from wind and waves. Nevertheless, these devices should be adequate for vessels on coastwise or Great Lakes voyages which will typically be closer than ocean voyage vessels to other vessels and shore-based rescue facilities. As for ocean voyage vessels, coastwise vessels may substitute a device of lesser lifesaving capabilities in warmer waters. For coastwise voyages, this is the (rigid) buoyant apparatus, a device similar to a life float, but lacking the life float's platform for supporting survivors partially out of the water. As for ocean voyage vessels, the times and places for the substitution are based on a 59 °F (15 °C) mean low water temperature. The boundaries extend further north in the summer and fall months, since coastal waters are warmer than open ocean waters in these months.

The present regulations for coastwise vessels require buoyant apparatus for all persons on board. Only 50% capacity is required on the Great Lakes or on a coastwise voyage within 20 miles of a harbor of safe refuge. The OCMI may authorize carriage of fewer buoyant apparatus if the vessel operates within one mile of shore.

The proposed regulations for ocean, coastwise or Great Lakes voyages would provide out-of-the-water flotation for survivors of casualties in cold and rough waters, thereby reducing deaths due to immersion hypothermia. The change is consistent with findings of shortcomings of survival craft in National Transportation Safety Board and Coast Guard investigations of casualties involving the FISH-N-FOOL, PILGRIM BELLE, COMET, YANKEE, SAN MATEO, JOAN LaRIE III, DIXIE LEE II, and PEARL C.

Under proposed §§ 180.206 and 180.208, each vessel carrying more than 150 passengers in lakes, bays, and sounds service or in river service must be provided with inflatable buoyant apparatus of an aggregate capacity which will accommodate the total number of persons permitted on board, during those periods of the year when the normal temperature of the water is less than 50° F (15° C) in the area where the vessel operates. Reductions would be allowed for vessels operating in warmer waters, for vessels carrying no more than 150 passengers, and for vessels operating within one mile of shore. Proposed §§ 180.206 and 180.208 are intended to fulfill an obligation under a provision in the 1984 Coast Guard Authorization Act which required the Secretary of Transportation to proceed vigorously with efforts to develop improved lifesaving equipment for use on passenger ferries (Pub. L. 98–557). Ferries are typically large capacity vessels. As proposed, the requirement would not be restricted to ferries. Other vessels of a similar capacity should be required to meet similar requirements, even if they are not in ferry service.

In order to certificate small passenger vessels in Great Lakes service, lakes, bays, and sounds service, or in river service, each OCMI would establish the times of the year when the waters within the OCMI's zone normally equal or exceed 50° F (15° C). These determinations would be based on whatever reliable hydrographic data is available for those waters. There is no intent to imply the need to continuously monitor actual water temperatures in order to comply with this proposal.

In the current regulations, 46 CFR 180.10–30(b) provides for substitution of dinghies, dories, skiffs, etc. for primary lifesaving equipment (buoyant apparatus or life floats). This substitution would continue to be permitted under proposed § 180.200(b), if the boat meets the safe loading and flotation requirements which the Coast Guard currently requires for recreational boats. Because such boats would not provide survival platforms equivalent to inflatable life rafts or inflatable buoyant apparatus, substitution for inflatable life rafts or inflatable buoyant apparatus would not be permitted.

The proposed regulations would not continue to permit up to two ring life buoys to be substituted for a similar capacity in buoyant apparatus and life floats. The substitution now appears in 46 CFR 180.10–30(d). Under the "grandfather clause" in proposed § 180.15(a), existing vessels could continue to use substituted ring life buoys until they are required to retrofit survival craft under proposed § 180.15(b)(1).

Approximate cost for survival craft at the present time are as follows: From $3500 for a 6 person inflatable liferaft to $6,000 for a 25 person inflatable liferaft; from $4500 for a 16 person inflatable buoyant apparatus to $5600 for a 45 person inflatable buoyant apparatus; from $500 for a 6 person lifefloat to $1240 for a 22 person lifefloat; from $480 for a 10 person buoyant apparatus to $1200 for a 22 person buoyant apparatus. The required annual servicing cost for inflatable liferafts is approximately $20 per person capacity of the raft, and the servicing cost for inflatable buoyant apparatus is approximately $10 per person capacity.

Section 180.210 Rescue boats. Proposed § 180.210 would require a rescue boat on a small passenger vessel of more than 65 feet in length unless the OCMI determines that the vessel meets three specific performance criteria. Existing § 180.10–35 requires a rescue boat on a vessel of more than 65 feet in length unless the OCMI determines that the vessel is of such design and operating characteristics that the vessel provides a satisfactory rescue platform. The proposed regulation includes more specific performance standards, compared to the existing regulations, as to when the design and operating characteristics of a vessel might make a rescue boat unnecessary. An OCMI may consider a rescue boat unnecessary on a vessel of more than 65 feet in length if:

(1) The vessel can be easily maneuvered alongside a person in the water;

(2) The vessel has a low freeboard, a platform (including a satisfactory portable platform) or a similar arrangement so that the crew can pull the person from the water; and

(3) The master or mate can easily see the person in the water from the

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operating station while the vessel approaches the person.

The proposed regulation also authorizes the OCMI to require a rescue boat on a vessel of not more than 65 feet in length which can not satisfactorily serve as a rescue platform. The existing requirement for a rescue boat only applies to a vessel of more than 65 feet in length. This change would give the OCMI the option to require a rescue boat on the few vessels of not more than 65 feet in length that, even with their small size, are not adequately arranged or maneuverable to serve as a rescue platform, or which are involved in operations which would prevent the rapid recovery of a person in the water. An example of a small vessel which may need a rescue boat is a dive vessel that cannot get underway to assist a passenger who had entered the water for diving or snorkeling and cannot return to the vessel. Five fatalities involving diving accidents occurred from 1983 through 1987, in one marine inspection zone alone, which may have been prevented by the use of a rescue boat. The victims had been transported to the dive site by small passenger vessels of not more than 65 feet in length.

Rescue boats on vessels of more than 65 feet in length would be required to be installed and arranged as will be proposed in Subchapter W. The requirements in proposed Subchapter W primarily incorporate the regulations on rescue boats contained in the International Convention for the Safety of Life at Sea, 1974. Under this proposal, approved inflatable boats could be used as rescue boats. Rescue boats on vessels of not more than 65 feet in length would have to be satisfactory to the cognizant OCMI. This would allow the OCMI to consider the size, arrangement, and operation of such smaller vessels when requiring a suitable rescue boat.

Part 181—Fire Protection Equipment

Subpart A—General Provisions. The regulations proposed in this part would not apply to existing vessels except as noted in § 181.115. Proposed § 181.115(b) requires that an existing vessel with a hull or machinery space boundary bulkhead composed of or sheathed on the interior in fiber reinforced plastic (FRP) must comply with proposed § 181.400, which contains requirements for fixed gas fire extinguishing systems and fire detecting systems. A separate fire detecting system would not be required if a fixed gas extinguishing system capable of automatic discharge upon heat detection is installed. Such systems can be easily installed on most FRP small passenger vessels.

The only other small passenger vessels, in addition to those composed of FRP, which would be required to have fixed gas extinguishing systems are vessels with gasoline machinery or with paint lockers, which are presently required to have such systems by existing § 181.20–1.

The discussion in the preamble of proposed Subpart D of Part 181 includes the general need for fixed gas fire extinguishing systems and fire detecting systems. Because of the significant benefit of having such systems, consideration was given to requiring fixed gas fire extinguishing systems and fire detecting systems on all existing vessels. However, retrofitting all existing vessels would have a substantial cost impact on the small passenger vessel industry. Casualty data was therefore analyzed to see which existing vessels have the greatest need for fixed systems. This analysis showed FRP small passenger vessels suffered a disproportionate share of the number of and monetary damage from fires. Thirty-four percent of all machinery space fires on small passenger vessels, from 1981 through 1986, occurred on FRP vessels although FRP vessels comprise only 20 percent of the small passenger vessel fleet. That is a fleet percentage to fire percentage ratio of 1.7:1. In comparison, the fleet percentage to fire percentage ratio for wooden small passenger vessels is 1.25:1. The ratios for vessels made of steel or aluminum are much lower. Only FRP small passenger vessels would be required to have fixed gas fire protection systems and fire detecting systems because the risk of such vessels having machinery space fires, and hence the cost-benefit ratio, is significantly greater than for vessels composed of other materials.

Proposed § 181.115(c) requires that existing vessels, which use gasoline or other fuels having a flash point of 110°F or lower, comply with the requirement of proposed § 181.400(j) to install a flammable vapor detection system. The general need for such systems is explained in the discussion in the preamble of proposed Subpart D of Part 181.

Existing small passenger vessels would not have to install fixed gas extinguishing systems, fire detecting systems, or flammable vapor detection systems until 3 years after the effective date of the final rules.

Subpart C—Fire Main System. Proposed § 181.300 increases the existing required flow rate from the fire pump on a vessel of more than 65 feet in length from 50 gallons per minute (gpm) at 60 psi at the pump outlet to 80 gpm at 50 psi delivered simultaneously at the two highest hydrants on the vessel. The new requirements are considered to better provide for a vessel's needs for fire fighting. The simultaneous flow is required to ensure that sufficient coverage can be provided from a lead hose and backup hose when at least two hydrants are required on a vessel. Recommended fire fighting practice includes the use of a lead hose and a backup hose.

A vessel of not more than 65 feet in length carrying more than 49 passengers would be required to have a power driven fire pump that delivers 50 psi in sufficient volume to provide an effective stream of water from a fire hose attached to the highest hydrant. The current requirement for such a vessel is only for an effective stream from a hose at the highest hydrant. This proposal gives an owner a specific requirement which can be used to properly design the fire main system. A pressure of 50 psi should be sufficient to provide an adequate stream of water for fire fighting on most vessels of not more than 65 feet in length.

Under the proposed rules, the power driven fire pump must be capable of both remote and local operation. Remote operation is necessary to ensure a fire pump can be started quickly in event of a fire. Presently, on most vessels, a person must go into the unmanned engineroom, locate the pump, make sure necessary piping is properly arranged, and then start the pump. This wastes valuable time, possibly allowing a fire to enlarge. Also, with limited crew and no assurance that the required deckhands have any training in engineering practices, requiring the capability of remote operation of the fire pump is the best way to ensure that fire fighting water will be readily available and that the crew will be able to perform other fire fighting tasks.

Proposed § 181.320 requires all fire hose nozzles to be combination type nozzles capable of supplying a solid stream and a spray pattern. Combination nozzles are not presently required but are being proposed to provide both straight streams and fog streams necessary to fight fires of different types. All other inspected vessels are presently required to have combination nozzles. The proposed rules require that all nozzles on vessels of more than 65 feet in length be Coast Guard approved; smaller vessels would not be required to have approved nozzles. The only nozzles approved by the Coast Guard, under 46 CFR Subchapter Q, are combination nozzles.

Subpart D—Fixed Fire Extinguishing and Detecting Systems. Proposed § 181.400 specifies the required fire protection, detecting, and extinguishing equipment for certain spaces on small passenger vessels depending on the use of the space, the number of passengers carried, and the nature of service. The proposed rules contain an important increase in the fire fighting capability of small passenger vessels. Existing § 181.20–1 requires the installation of a fixed carbon dioxide fire extinguishing system in: Machinery and fuel tank spaces of all vessels using gasoline or other fuel having a flash point of 110 °F or lower, paint and oil rooms and similar hazardous spaces, and inaccessible cargo spaces used for combustible cargo. In addition to retaining the requirements of existing § 181.20–1, proposed § 181.400(a) requires a fixed gas extinguishing system in all machinery spaces containing main propulsion machinery, internal combustion engines of over 50 hp, or oil fired boilers.

Prior to proposing the requirements for fixed gas fire extinguishing systems, all reported machinery space fires on small passenger vessels during the period 1981–1986 were evaluated. During that period there were fifty machinery space fires reported to the Coast Guard, which represents 57 percent of the reported fires. The number of actual fires may be higher since all fires are not required to be reported. Of the 50 reported fires, 5 resulted in the total loss of the vessel. In 21 of the fires, a fixed gas fire extinguishing system probably would have resulted in a significant reduction in damage to the vessel by preventing the spread of the fire once it was discovered. The remaining fires were either quickly extinguished with portable fire extinguishers or went out on their own.

As a result of the M/V PILGRIM BELLE casualty in 1985, the NTSB recommended that a fixed gas fire extinguishing system be required in the machinery space of all small passenger vessels with overnight accommodations for more than 50 passengers. Coast Guard investigators have also recommended fixed gas fire extinguishing systems in the machinery space of small passenger vessels following fires in those spaces on three other vessels.

Under existing §§ 175.05–1(b) and 175.05–15, the OCMI and Commandant may require certain vessels to be equipped with fixed gas fire extinguishing systems and detecting systems in accordance with Subchapter H when the size of the vessel, nature of voyages, and/or the hazards involved are incompatible with the existing requirements. NVIC 11–83 notes that a vessel with overnight accommodations for more than 50 passengers should normally be required to comply with the fixed gas fire extinguishing system and detecting system requirements of Subchapter H. Halon systems are not addressed in current regulations; the present policy guidance regarding these systems is contained in NVIC 6–72, Change 1, Guide to Fire Fighting Equipment Aboard Merchant Vessels.

In developing the proposed requirements for fixed gas fire extinguishing systems, the following requirements and recommendations for other vessels were considered: 46 CFR Subchapter H (Passenger Vessels), 1974 Safety of Life at Sea Convention, NVIC 5–86 ("Voluntary Standards for U.S. Uninspected Commercial Fishing Vessels"), NVIC 6–72 ("Guide to Fire Fighting Equipment Aboard Merchant Vessels"), National Fire Protection Association Standard 101 ("Life Safety Code"), and Canadian regulations for small passenger vessels.

Proposed § 181.400(b) discusses alternatives and exceptions to the requirement for a fixed gas fire extinguishing system that complies with proposed § 181.410. Proposed § 181.410 contains the design, installation, and testing requirements for custom engineered systems. Proposed § 181.410(b)(2) would permit the use of pre-engineered Halon systems, which were originally developed for recreational vessels, in a normally unoccupied space if the volume of the space is not more than 1200 cubic feet. The largest size, pre-engineered system presently approved is only capable of protecting a space of not more than 1200 cubic feet. The terms "custom engineered" and "pre-engineered" are derived from industry standards and are defined in proposed § 175.400.

Proposed § 181.400(b)(3) allows a B–II portable fire extinguisher to substitute for a required fixed system for paint lockers and spaces containing flammable liquid stores with a volume of not more than 200 cubic feet.

Proposed § 181.400 also requires fire detecting systems to provide early detection of fires, allowing time for evacuation and effective fire fighting. A fire detecting system would be required in:

1. A normally unoccupied machinery space containing propulsion machinery, an internal combustion engine of over 50 hp, gasoline powered machinery, or an oil fired boiler, if the machinery space is not fitted with an automatically actuated fixed gas fire extinguishing system capable of automatic discharge upon heat detection;
2. Each accommodation space and service space on a vessel carrying more than 150 passengers;
3. Each accommodation space and service space on a vessel with overnight accommodations for more than 49 passengers and/or carrying more than 400 passengers; and
4. An enclosed vehicle space.

The proposal requires modular independent smoke detecting units, which comply with UL Standard 217 for recreational vehicles, for berthing spaces on vessels with overnight accommodations for not more than 49 passengers. Finally, on vessels with overnight accommodations for more than 49 passengers or carrying more than 400 passengers, the proposal requires independent heat detectors for the activation of fixed fire extinguishing systems over all grills, broilers, and deep fat fryers.

Proposed § 181.400(j) requires that all vessels using gasoline, or any fuel with a flash point of 110° F or lower, be equipped with a flammable vapor detection system complying with Underwriters Laboratories standards. These detectors are necessary to detect volatile vapors which may result in explosion and fire. Three of the four persons injured in reported fuel related fires and explosions on small passenger vessels during the period 1981–1986 were on gasoline powered vessels. One of the injuries occurred due to the explosion and fire on the M/V QUINSIPPI at Zuring, IL in 1982. The QUINSIPPI had actually been equipped with a vapor detector; however, after the detector alarm sounded several times the master assumed the detector was defective and turned it off when he could not detect any gasoline leak or buildup. Properly used flammable vapor detectors may have prevented all three of the casualties and saved more than $50,000 in damages. The estimated cost of a vapor detection system for the average gasoline powered vessel is $200.

Subpart E—Portable Fire Extinguishers. Proposed § 181.500(a) allows the selection of Halon portable fire extinguishers which are not addressed in existing Subchapter T. It also requires that the number of portable extinguishers for accommodation spaces be based on the area of the space, as is the requirement of Subchapter H for large passengers vessels.

Subpart F—Additional Equipment. Proposed § 181.610 requires all vessels to have three buckets capable of being

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used for fire fighting instead of the portable hand fire pump required by existing § 181.10–5. Numerous Coast Guard field units have reported that the portable hand pumps are unsatisfactory for fire fighting. Presently, a portable hand bilge pump may also serve as a fire pump, but the combination pump many owners use to serve as both a bilge and a fire pump is unsatisfactory for fire fighting. Buckets are considered to be more beneficial than portable hand fire pumps because they can actually provide a greater water volume, are less expensive, and are maintenance free.

Part 182—Machinery Installations

General. The basic format and contents of proposed Part 182 is unchanged from the existing regulations except:

(1) Requirements for gasoline and diesel machinery installations, not including ventilation requirements, are combined to eliminate redundancy; and

(2) The materials tables for independent gasoline and diesel fuel tanks in the existing regulations are combined with limitations on use included in footnotes.

Subpart B—Propulsion Machinery. Proposed § 182.200 requires that all engines be provided with at least two means for stopping the engines under any operating conditions. Diesel and gas turbine engines rated at 300 horsepower or more would also be required to have an emergency overspeed shut down device. This proposal reflects the requirements of paragraph 9.2.3 of the IMO "Code of Safety for Dynamically Supported Craft" (IMO Code). However, as incorporated here, its application is not limited to dynamically supported craft as it is a safety feature beneficial to all engine installations regardless of vessel type. The economic impact of this requirement is expected to be insignificant as a majority of engines are currently equipped with adequate shutdowns. Most classification society rules also require an emergency overspeed shutdown device on large engines on classed vessels. Although few small passenger vessels are classed, classification society rules provide acceptable guidance for machinery installations on small passenger vessels.

Subpart C—Auxiliary Machinery. Proposed § 182.320 incorporates current policy and applicable regulations in Subchapter F on hot water heaters and pressure vessels which are presently applied to small passenger vessels. This proposal allows the installation of moderately sized, electric hot water heaters which meet Underwriters Laboratories Inc. standards. This proposal imposes no additional costs on small passenger vessel owners.

Subpart D—Specific Machinery Requirements. Proposed § 182.410(b) regulates the design, construction, and materials used for machinery containing high energy rotating parts. This provision was incorporated from paragraph 9.1.3 of the IMO "Code of Safety for Dynamically Supported Craft." As incorporated here, these requirements are not limited to DSC, but apply to all engine installations, regardless of vessel type.

Proposed § 182.420 revises the requirements on air cooled engine installations. Existing Part 182 limits air cooled engine installations to gasoline auxiliary engines on open deck and diesel auxiliary and propulsion engines above and below deck. However, current policy, expressed in Volume II of the Marine Safety Manual, paragraph 10 A.2.j, permits air cooled auxiliary and propulsion gasoline engines that meet ABYC Project P–10. This policy applies to all vessels although Project P–10 was intended only for small craft. Therefore, proposed § 182.420 would allow an air cooled, gasoline auxiliary engine to be located on a weather deck of any vessel, but only in an enclosed or partially enclosed space on a vessel of not more than 65 feet in length carrying not more than 12 passengers, and only if the engine installation complies with ABYC Project P–10. An air cooled, gasoline propulsion engine, regardless of its location, would only be allowed on a vessel of not more than 65 feet in length carrying not more than 12 passengers, and only if the engine installation complies with ABYC Project P–10.

Proposed § 182.422 incorporates current regulations in Subchapter F and existing policy for keel cooler and grid cooler installations. The existing regulations do not address such installations.

Proposed § 182.425 differentiates between requirements pertaining to wet and dry exhaust systems. Due to their higher operating temperature, dry exhaust systems must meet standards more stringent than standards for wet exhaust systems. Existing regulations do not differentiate between wet and dry exhaust systems. As a result, certain standards, which should only apply to dry exhaust systems, are unnecessarily applied to all exhaust installations. Such standards include stringent bulkhead penetration and other insulation requirements. These requirements would be revised to apply only to dry exhaust systems. Nonmetallic flexible hose is permitted by existing Part 182 in both wet and dry exhaust systems. The revision proposes permitting nonmetallic exhaust hose only for wet exhaust systems, consistent with current policy and ABYC Project P–1. Materials listed in ABYC Project P–1 would be accepted. These revisions to the engine exhaust cooling requirements are expected to provide a cost savings of $200 for a vessel equipped with a water cooled exhaust system.

Proposed § 182.440(a)(1) and Table 182.440(a)(1) allow aluminum alloys 5052 and 5083 of ASTM B209 to be accepted as materials for independent fuel tanks. The existing tables on independent tank materials, Tables 182.15–25(a)(1) and 182.20–25(a)(1), only specifically allow the use of aluminum alloy 5086. The proposal is consistent with current policy although the alloys are not listed in the existing tank material tables. The maximum capacity of an independent tank built with the tabulated thicknesses in proposed Table 182.440(a)(1) is 400 gallons. Above 400 gallons, tanks must be designed with a factor of safety of four on the ultimate strength of the material used, with a design head of not less than 4 feet of liquid above the top of the tank. This is consistent with current policy and the requirements for independent tanks constructed under Part 58 of Subchapter F, and recognizes that large tanks must be individually designed to ensure adequate strength.

Proposed § 182.440(a)(7) allows independent fuel tanks with horizontal dimensions exceeding 30 inches to be installed either without any baffles, or with baffles which are more than 30 inches apart, if design calculations show that baffles located at intervals of not more than 30 inches are not necessary. The existing regulations require that an independent fuel tank have baffles at intervals of not more than 30 inches if the tank exceeds 30 inches in any horizontal dimension. An estimated cost savings of $100 is expected for each vessel having tanks which would not be required to have baffles under this proposed regulation.

Proposed § 182.455 accepts U.S.C.G Types A1, A2, B1, and B2 flexible hoses for fuel line applications subject to operating pressures of less than 5 psi. The final rule on fuel system standards for recreational boats, published May 27, 1987 (52 FR 19726), discusses the four fuel hose types. Although the recently published requirements do not limit the use of Types A1, A2, B1, and B2 flexible hoses to 5 psi for recreational boats, the proposed 5 psi limitation for these hoses on small passenger vessels is consistent with current policy. This will allow owners and managing operators to more easily procure off-the-shelf flexible hoses and will provide an approximate

$30 savings over a wire-reinforced, flexible hose which would otherwise be required by proposed § 182.455(a)(2)(ii) and is now required by §§ 182.15–40(a)(3) and 182.20–40(a)(2)(ii).

Proposed § 182.455(a)(2)(v) requires that a flexible hose assembly in a fuel line, which includes the hose, cover, and fittings, meet the Society of Automotive Engineers (SAE) standard, SAE J1942—"Hose and Hose Assemblies for Marine Applications," or be specifically approved by the Commandant. Standard SAE J1942 is presently in a draft form and is expected to be published as an accepted standard by the Society of Automotive Engineers prior to promulgation of the final rule under this docket. Existing §§ 182.15–40(a)(3) and 182.20–40(a)(2) require that a flexible hose cover be determined to be self-extinguishing in accordance with ASTM Specification D1692, which is no longer valid, and that the hose assembly withstand a free burning gasoline test. Proposed SAE J1942 includes a fire test requirement as well as many of the other requirements for flexible hoses in proposed § 182.455(a)(2). Flexible hoses which would meet SAE J1942 are expected to be widely available. If proposed SAE J1942 is not adopted prior to issuance of the final rule under this docket, the Coast Guard intends to require nonmetallic flexible hose assemblies to meet the requirements of 46 CFR 56.60–25(c) of this chapter.

Subpart E—Bilge & Ballast Systems. Proposed § 182.500 requires that vessels of more than 65 feet in length with overnight accommodations for more than 49 overnight passengers, and vessels of more than 65 feet in length carrying more than 150 passengers, comply with the bilge system requirements of 46 CFR Subchapter F (§§ 56.50–50 and 56.50–55), with the exception of emergency bilge pump requirements. This proposal incorporates provisions of NVIC 11–83. The application of Subchapter F regulations to vessels carrying more than 150 passengers is based on current § 175.05–1(b) which allows the OCMI to apply Subchapter F to vessels carrying more than 150 passengers. This revision will ensure consistent treatment among OCMI zones and provides a more adequate level of safety for "very large" small passenger vessels with overnight accommodations for more than 49 passengers and large daytime excursion vessels than do the specific bilge requirements proposed in Subchapter T. Compliance with the Subchapter F regulations would cost approximately $400 more per vessel than compliance with the specific Subchapter T bilge requirements.

Proposed § 182.520 would revise existing § 182.25–10. The existing regulations require that vessels of not more than 65 feet in length be equipped with a portable hand bilge pump. The Coast Guard has received several comments on the inadequacy of portable hand pumps. Under the proposed regulation, power pumps would be allowed as an alternative when portable and fixed hand pumps are required. Where a power pump used as an alternative to a hand pump serves as the second required pump on a vessel, it must be supplied by a source of power independent of the other power bilge pump.

Vessels of not more than 65 feet in length and carrying not more than 49 passengers, other than ferry vessels, would be allowed to use fixed electric, submersible pumps to serve as the power bilge pump required by proposed Table 182.520(a). Submerged electric bilge pumps are not specifically authorized by the existing regulations. These pumps are often the preferred option of builders and have proven successful in certain applications. The acceptance of electric submersible bilge pumps reflects current policy of many OCMIs and satisfactory experience with such pumps. The use of such pumps may result in a cost savings of $150 per vessel.

The proposed rules address catamaran type hulls by incorporating current policy. Provided the bilge pumps are of suitable capacity and are located separately in each hull, only two bilge pumps will be required where the fire pump is cross connected with the bilge system and each bilge pump is capable of dewatering the opposite hull through permanent piping.

Proposed § 182.530 requires that bilge level alarms be installed in all unattended machinery spaces located below the deepest load waterline on vessels of at least 26 feet in length. Review of casualties indicate that a contributing cause of many sinkings and founderings is undetected flooding. In many cases, early detection of flooding would have saved a vessel. The National Transportation Safety Board has recommended that bilge level alarms be required on certain small passenger vessels. The net cost for such an installation is estimated to be between $200 and $400 per vessel.

Subpart F—Steering Requirements. Proposed Subpart F contains new requirements for minimum rudder swing times, a rudder angle indicator for certain vessels, electrical requirements, and rudder stops. Existing steering regulations in Part 182 do not adequately address the variety of steering arrangements found on small passenger vessels. Existing regulations further fail to give sufficient guidance as to what constitutes a "suitable steering apparatus." The expanded steering requirements in the proposed rules give specific guidance for safe design and installation of steering systems. These revisions reflect current safety standards for steering systems and are, for the most part, consistent with steering systems presently being designed for small passenger vessels. Most existing vessels already meet the proposed requirements. However, proposed § 182.610 includes a new requirement for a rudder angle indicator on vessels of more than 65 feet in length with power-driven steering gear. Small passenger vessels are presently not required to have rudder angle indicators. A review of steering casualties on all vessels with power actuated steering shows that a rudder angle indicator provides the initial indication of a casualty. The proposed requirement is consistent with regulations presently requiring rudder angle indicators on vessels comparable in size to small passenger vessels of more than 65 feet in length, including offshore supply vessels and sailing school vessels. The proposed steering system requirements are expected to result in only minor cost increases for most vessels. A vessel of more than 65 feet in length is expected to have an estimated cost increase of $150 primarily due to the rudder angle indicator requirements.

Subpart G—Piping Systems. Proposed Subpart G addresses the materials used in and the installation of piping systems. The proposal contains a tiered set of requirements that range from materials being acceptable to the OCMI for non-vital systems under 150 psi to invoking Subchapter F, Subpart 56.60, for vital systems on vessels of more than 65 feet in length with overnight accommodations for more than 49 passengers and on all vessels carrying more than 150 passengers. Several OCMIs currently impose similar standards and the economic impact of the proposal should be negligible.

Existing Subpart 182.40 addresses nonmetallic piping materials. In the proposed rules, the requirements on nonmetallic piping materials section have been retained in § 182.720, and a new section, § 182.730, on nonferrous metallic piping materials has been developed from existing regulations in Subchapter F, with modifications to reflect current policy on the use of

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aluminum piping. Proposed § 182.730 is not expected to create a significant economic burden as the majority of the requirements reflect existing Coast Guard policy and small passenger vessel industry practices on the use of nonferrous metallic piping.

Part 183—Electrical Installations

General. Proposed Part 183 updates the existing electrical regulations by providing requirements more appropriate for the sophisticated electrical systems found on small passenger vessels today and incorporates current policies and practices which have been accepted by the Coast Guard. To eliminate some redundancy, similar regulations in the existing Subpart 183.06, "Electrical Installations Operating at Potentials of Less Than 50 Volts," and existing Subpart 183.10, "Electrical Installations Operating at Potentials of 50 Volts or More," have been consolidated.

Section 183.310 Power Sources. Proposed § 183.310 requires that each vessel which relies on electricity to power its ship's service loads, have two sources of electrical power capable of providing power to certain essential loads. The combination of a generator or alternator driven by the main engine, and a battery, would meet this requirement. This proposed requirement is intended to prevent the failure of one power source from disabling a vessel. The cost to comply with this proposed requirement varies for each vessel. Most small passenger vessels of not more than 65 feet in length presently comply with the proposed requirement. For instance, a vessel with battery started propulsion machinery with an alternator to charge the battery would comply. A small passenger vessel with a large generator for ship's service loads may have to have a second generator at a cost of more than $1,000. However, since most larger small passenger vessels being built today are being equipped with two generators, the actual cost to the small passenger vessel industry of this requirement is considered minimal.

Sections 183.322 and 183.324 Multiple generators and dual-voltage generators. Proposed §§ 183.322 and 183.324 address the installation of multiple generators and dual voltage generators. The requirements are written to ensure that the operation of multiple generators does not jeopardize a vessel or persons onboard. A dual-voltage generator is required to have its neutral grounded at the switchboard to ensure that the ground voltage can be properly monitored. Since most small passenger vessels already comply with the proposed requirements, the actual cost to the small passenger industry of these requirements is considered minimal.

Section 183.340 Cable and Wiring Requirements. Proposed § 183.340 would replace existing §§ 183.05–40, 183.05–45, 183.05–50, and 183.10–20. This new section incorporates present practices and Coast Guard policy on the installation and use of cable and wire. The Coast Guard has received numerous comments recommending that the existing regulations be revised to reflect such policies and practices. The proposed regulation allows use of cable constructed to National Electrical Code standards, Underwriters Laboratories listed marine cable, or any cable constructed in accordance with § 111.60 of 46 CFR Subchapter J (Electrical). This proposal eliminates the outdated tables in existing Subchapter T on maximum current carrying capacities for cable and incorporates by reference electrical industry standards. The proposed section is expected to impose no additional cost on the small passenger vessel industry.

Section 183.354 Battery installation. Proposed § 183.354 contains requirements for three, different size battery categories. This new section is necessary because battery systems of the size not adequately regulated by the existing Subchapter T are being installed on the larger small passenger vessels being built today. Compliance with the proposed regulations, primarily adopted from 46 CFR Subchapter J (Electrical), will decrease the hazards associated with larger battery systems. This regulation is only expected to increase costs on new small passenger vessels which have large battery installations. Most vessels built with small or moderate installations already comply with the proposed regulations for these battery installations.

Section 183.360 Semiconductor rectifier systems. Proposed § 183.360 contains new requirements for semiconductor rectifier systems (SCR). The use of SCRs in the marine environment is becoming common practice. The proposed requirements ensure that the installation of these systems in vital circuits does not jeopardize a system's integrity or the safety of persons.

Section 183.380 Overcurrent Protection. Proposed § 183.380 changes the requirements for lighting branch circuit protection. The present requirements limit lighting branch circuit breakers to 15 amperes. The proposed regulations allow for lighting branch circuits to utilize 30 ampere circuit breaker protection. This reflects present electrical industry standards and the National Electrical Code.

Section 183.410 Lighting fixtures. Proposed § 183.410 contains more specific requirements for lighting fixtures than the existing regulations. Existing § 183.05–35 only states that lights on vessels with electrical installations operating at potentials of less than 50 volts must be of types listed by, or types equal to those listed by, Underwriters Laboratories or other recognized testing laboratories. The proposed regulations list specific requirements that a lighting fixture on a small passenger vessel, regardless of the electrical system, must meet. General safety installation requirements, such as securing of fixtures and protection of exposed globes and lenses, which lighting fixtures on small passenger vessels should and do normally meet, are adopted in this proposal from § 111.75–20 of Subchapter J. The proposal does retain the current requirement, contained in existing § 183.10–20(1), that lighting fixtures on a vessel with electrical installations operating at potentials of 50 volts or more meet UL Standard 595, "Standard for Marine Type Electrical Lighting Fixtures," or be constructed in accordance with the requirements of other recognized testing laboratories.

A lighting fixture in an electrical system of more than 50 volts need not be listed by Underwriters Laboratories, but an owner must show the fixture complies with UL 595. UL 595 contains separate requirements for both interior and exterior lighting on a vessel. The Coast Guard has received comments that interior lighting should be allowed to meet UL Standard 57, "Electric Lighting Fixtures." UL 57 does not provide for the vibration and movement that fixtures are subject to on vessels. However, lighting fixtures listed under UL 57 may be used in interior spaces on a vessel if an owner can show that the fixture also complies with the requirements of UL 595.

Section 183.430 Portable lights. Proposed § 183.430 requires that each vessel be equipped with at least two portable battery lights. Existing § 184.30–1 only requires that each vessel have a suitable number of lights. Requiring a specific, minimum number of lights will help eliminate inconsistencies and ensure that vessels are adequately equipped. On most vessels, at least two portable lights would be necessary upon failure of primary lighting.

Section 183.432 Emergency lighting. Proposed § 183.432 requires, on a vessel of more than 65 feet in length,

emergency lighting capable of providing sufficient lighting to allow persons to get to open decks from all accommodation spaces, machinery spaces, and workspaces on the vessel. Existing § 180.30–5 only requires that emergency lighting be fitted along the line of escape on a vessel having lounge areas below the main deck. However, emergency lighting is especially necessary on larger vessels where flashlights would provide insufficient lighting because of vessel size or the number of passengers carried. This proposal therefore requires that vessels of more than 65 feet in length have emergency lighting for escape from all spaces. Vessels of not more than 65 feet in length would only be required to have the emergency lighting presently required. This proposal is not expected to have a significant cost impact on the industry since most vessels are presently equipped with satisfactory emergency lighting.

Section 183.510 Propulsion engine control systems. Proposed § 183.510 contains new requirements for controlling propulsion engines. It requires that a vessel have a means for shutting down a propulsion engine at each location where a propulsion engine can be started or its speed controlled. The means to shut down must be independent of the speed control. Pilothouse control units normally comply with this requirement.

Proposed § 183.510 also requires that a vessel with only one propulsion engine have a backup means of controlling the propulsion engine in addition to pilothouse control. A mechanical linkage propulsion control system that has a disconnect device fitted at the engine to disconnect the remote control, with an efficient means to operate the engine locally, would meet this requirement. A twin engine vessel with independent remote propulsion controls would not need backup means of controlling the engines. The proposed requirements help ensure that a vessel will not be disabled due to a single fault of a propulsion engine control system.

Part 184—Vessel Control and Miscellaneous Systems and Equipment

Section 184.115 Applicability to existing vessels. The regulations proposed in this part would apply to existing vessels except as noted in § 184.115. Most of the requirements in proposed Part 184 are contained in the existing regulations. New requirements being proposed for inclusion in Part 184 were evaluated for need and cost to determine whether they should be applicable to existing vessels. An existing vessel would not have to comply with §§ 184.402(d), 184.404, 184.406, 184.408, 184.410, and 184.602 of this part unless the OCMI specifically requires compliance. This provision is included because some OCMIs presently require the installation of electronic navigational equipment on certain vessels due to the route and service of those vessels, and the weather and vessel traffic conditions within a particular marine inspection zone.

Due to the need to ensure that all passengers can be properly advised in emergency situations, the new requirement for a public address (PA) system, in proposed § 184.610, would be applicable to existing vessels. However, so that an owner has sufficient time to plan for the installation and cost of a PA system, a phase in period for PA systems on existing vessels is proposed.

An existing vessel would also have to comply with the new requirement for a first aid kit in proposed § 184.710.

Sections 184.210 and 184.220 Heating and cooking equipment. Proposed §§ 184.210 and 184.220 were primarily developed from existing § 183.10–45 (Electric heating and cooking equipment (50 volts or more)). The requirements in existing § 183.10–45 are safety provisions that generally should be applicable to all heating and cooking equipment, not just electrical heating and cooking equipment. American Boat and Yacht Council (ABYC), National Fire Protection Association (NFPA), and Underwriters Laboratories (UL) standards were considered in developing the proposed regulations. These two proposed sections are expected to have negligible cost impact since most vessels already comply with these standards.

Section 184.240 Gas cooking systems. No regulations are included in proposed § 184.240 in this notice. The Coast Guard intends to place final rules developed under Coast Guard docket 83–013, "Carriage and Use of Liquefied and Non-liquefied Gas as Cooking Fuels on Vessels Carrying Passengers," in this section. Final rules under CGD 83–013 are expected to be published by January 1989.

Section 184.300 Ground tackle and mooring lines. The requirements in proposed § 184.300 are basically the same as in existing § 184.10–1. The Coast Guard has received several comments recommending that specific guidance be provided in the regulations on anchoring equipment. However, the size and type of anchors, cables, and hawsers necessary to safely anchor or moor a vessel vary significantly and are dependent on many factors. No single table or guide could fairly cover each possible situation. Therefore, the Coast Guard is proposing that the owner be responsible for determining how best to outfit a vessel with ground tackle and mooring lines, subject to the approval of the OCMI. Numerous industry standards and classification society rules are available as guidelines.

Subpart D—Navigation Equipment. Proposed Subpart D contains new requirements for certain navigational equipment including a lighted compass, radar, fathometer, and an electronic position fixing device. This equipment is designed to improve the safety of navigation and reduce the risks of collisions, groundings, and other navigational casualties.

Much of the navigation equipment being proposed is presently required to be installed only on inspected vessels of at least 1600 gross tons. The navigational equipment is required on vessels of at least 1600 gross tons due to the inherent risks of operating such large vessels. There are also many inherent risks in operating small passenger vessels due to the number of passengers carried, operating areas, and the increased size of the vessels. As with vessels of at least 1600 gross tons, the inherent risk of operating many small passenger vessels can be reduced by the installation and use of electronic navigational equipment.

A review of small passenger vessel casualties for the period 1981–1986 showed several casualties in which equipment that the Coast Guard is proposing to require was installed aboard the involved vessels at the time of the casualties. The installed equipment would have aided the masters of these vessels in avoiding the casualties if the equipment had been properly used.

When Subchapter T regulations were initially promulgated, electronic equipment such as radar, LORAN, and fathometers, was unavailable or prohibitively expensive. However, with improved technology and mass production, costs have decreased and availability has increased, making it practical for many owners to voluntarily outfit their vessels with state of the art equipment.

1. Section 184.402 Compasses. Proposed § 184.402, which replaces existing § 184.20–1, contains new requirements that, when compasses are required, they be mounted at the operating station when a vessel is underway and that they be illuminated when the vessel is authorized to operate at night. These requirements would incorporate standard, safe marine practices to ensure that all small

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passenger vessels follow such practices. Because most vessels already have a lighted and mounted compass, the cost of these proposed regulations is negligible.

2. Section 184.404 Radar. Proposed § 184.404 requires marine radar systems on certain vessels. Existing Subchapter T does not require radar for any vessel. The Coast Guard determined that four classes of vessels would most benefit from a radar system, when the cost of such a system is considered, due to their route, nighttime operations, and size or number of passengers. The four classes include "very large" small passenger vessels with overnight accommodations for more than 49 passengers; vessels operating on oceans, coastwise, and Great Lakes routes carrying more than 49 passengers; vessels carrying more than 150 passengers; and DSC certified for nighttime or restricted visibility operations. The risk of collision or other casualty due to improper navigation would be decreased if radar is installed and properly used on the four classes of vessels addressed by this proposal.

As a result of the PILGRIM BELLE casualty, the National Transportation Safety Board (NTSB) recommended that "very large" small passenger vessels with overnight accommodations for more than 49 passengers operating on any route other than rivers, be equipped with a gyrostabilized radar. The Coast Guard does not believe that the benefits of a gyrostabilized radar on a small passenger vessel would outweigh the cost. However, the Coast Guard is proposing that all "very large" small passenger vessels with overnight accommodations for more than 49 passengers be equipped with radar which need not be gyrostabilized. The Coast Guard is proposing that even the "very large" small passenger vessels operating on river routes have radars to decrease the risks involved in navigating long stretches of rivers in restricted visibility.

Similarly, vessels operating on oceans, coastwise, or Great Lakes routes and carrying more than 49 passengers, and all vessels carrying more than 150 passengers, face increased risks as a result of their routes and size. Vessels certificated to operate on oceans, coastwise, or Great Lakes routes often do so at night or may encounter unexpected restricted visibility conditions or poor weather. Such vessels primarily include party fishing boats and crew boats. Vessels carrying more than 150 passengers are normally large vessels with less maneuverability than smaller vessels. Consequently, they would benefit from earlier warning of impending collisions as well as improved navigational ability. A vessel operating on an oceans, coastwise, or Great Lakes route carrying more than 49 passengers, or carrying more than 150 passengers on any route, but which does not have overnight accommodations for more than 49 passengers, would not be required to have radar if the OCMI determines that the operation of the vessel involves minimal navigational risk due to such factors as limited vessel traffic in the area or limited risk of sudden reduced visibility.

Proposed § 184.404 also requires radar on all dynamically supported craft certificated for nighttime or restricted visibility operations as does the IMO "Code of Safety for Dynamically Supported Craft."

Since most existing vessels affected by this proposal are already fitted with radar at the option of the owner, proposed § 184.404 is expected to be of minimal cost to the small passenger vessel industry. An estimated 82% of vessels carrying more than 49 passengers on an ocean, coastwise, or Great Lakes route are presently equipped with radar. An estimated 67% of vessels carrying more than 150 passengers regardless of route are equipped with radar. The average cost of a marine radar system acceptable under this proposal, including installation, which would probably be installed on a "very large" small passenger vessel or a small passenger vessel carrying more than 150 passengers, is $3000.

3. Section 184.409 Fathometers. Proposed § 184.409 requires a fathometer on all vessels of more than 65 feet in length and each DSC, except an air cushion vehicle. Subchapter T does not presently require fathometers. A fathometer is a relatively inexpensive navigational device that can improve the safety of navigation. As a result of the PILGRIM BELLE grounding, the NTSB recommended that all passenger vessels on routes other than rivers be equipped with fathometers. The Coast Guard does agree that properly used fathometers could prevent many groundings. This proposal is expected to have minimal economic impact since more than 50% of vessels of more than 65 feet in length are equipped with fathometers. The average cost of an acceptable fathometer, including installation, is $200.

4. Section 184.410 Electronic position fixing devices. Proposed § 184.410 requires each vessel on a oceans route to be equipped with an electronic position fixing device capable of providing accurate fixes for the area in which the vessel operates. Electronic position fixing equipment enables a vessel to accurately locate its position in all weather conditions. An acceptable device could include a LORAN receiver, a satellite navigation receiver, or another device which provides accurate fixes for the area in which the vessel operates. This proposed requirement is expected to have a minimal cost impact on the small vessel industry since most vessels in ocean service are presently outfitted with electronic position fixing devices. The average cost of a LORAN unit, including installation, is $700.00.

Section 184.506 Emergency broadcast placard. Proposed § 184.506 requires a placard to be placed next to all radiotelephones to direct a person unfamiliar with radio procedures on the use of the radio in an emergency. This requirement would apply to new and existing vessels. The requirement was proposed by the NTSB as a result of the FANTASY ISLANDER casualty when a person unfamiliar with radio procedures had to make an emergency broadcast. The proposed contents of the placard were derived from the Vessel Safety Manual published by the North Pacific Fishing Vessel Owner's Association and Field Operation Bulletin No. 2 of the Federal Communications Commission. The estimated cost of the proposed placard is $10.00.

Section 184.602 Internal communications. Proposed § 184.602 (a) and (b) are new requirements for a permanently installed, fixed means of communications between the operating station and the location where a backup means of controlling the propulsion machinery is accomplished or where auxiliary steering means are located. This would ensure that the person in charge of navigating the vessel is able to communicate with the person manning a backup control station required by proposed § 183.510 or the auxiliary steering stations required by proposed § 182.600(c). Satisfactory voice communication would be acceptable instead of a fixed system on many vessels. Additionally, the proposed requirements would not be applicable to twin screwed vessels with pilothouse control for both engines. Since most small passenger vessels are twin screwed, these proposals for internal communication would only apply to a small number of small passenger vessels. Means of communication which would satisfy the proposed requirements range from a simple sound tube to a three way, talk-back speaker system which would cost approximately $1500.00 on the size vessel which would have to comply.

Proposed § 182.600(c) would replace existing § 184.35–1 without any substantive changes being made.

Section 184.610 Public address (PA) systems. Proposed Section 184.610 requires a PA System on certain vessels. This proposed requirement would be applicable to existing vessels. This requirement is based on NTSB and Coast Guard recommendations as a result of the casualties involving the PILGRIM BELLE, YANKEE, MISSISSIPPI QUEEN, and other vessels. On vessels with more than one deck, it is often very difficult for the master to quickly and adequately notify all passengers of an emergency situation without a PA system. For the same reason, a PA system will be required on vessels which have only one passenger deck but on which passengers may be sleeping in separate compartments. A PA system, which may be used to sound the general alarm required by proposed § 183.550, is necessary to quickly arouse and advise such passengers. A PA system would also help ensure all passengers hear the passenger safety orientation required by proposed § 185.506.

Under the proposal, small passenger vessels of not more than 65 feet carrying not more than 49 passengers would not be required to have a PA system, even if the vessel is otherwise required to have one, if the OCMI determines that all passengers can satisfactorily hear public announcements made from the operating station. A bullhorn may also be acceptable as the PA system on a vessel of not more than 65 feet in length.

The estimated average cost of a PA system on a vessel of not more than 65 feet is $100.00; on a vessel of more than 65 feet it is $500.00. Many small passenger vessels are already equipped with PA systems hence the total cost of this proposed requirement on the small passenger vessel industry is reduced.

Section 184.710 First aid kit. Proposed § 184.710 requires a first aid kit on all new and existing small passenger vessels. This requirement is based on recommendations from Coast Guard personnel and the public, as well as from a casualty investigation. A first aid kit is necessary on small passenger vessels for use in treating minor injuries, especially those which occur while a vessel is underway and other first aid assistance is not readily available.

The Coast Guard previously considered a separate rulemaking requiring first aid kits but decided not to propose a change unless crew members were required to be trained in first aid. On October 16, 1987, the Coast Guard published an Interim Final Rule under CGD 81–059 (52 FR 38623) requiring applicants for issuance of original licenses to complete first aid and CPR courses.

The Coast Guard approved first aid kit, which may be used to comply with this proposal, is well equipped for most first aid needs and is specifically designed for the marine environment. An owner may make a first aid kit or choose any of a number of kits available on the market that contain equipment equivalent to or in excess of the Coast Guard kit equipment. The approximate cost of a Coast Guard approved first aid kit is $65.00.

Part 185—Operations

Section 185.115 Applicability to existing vessels. The regulations in this part would apply to existing vessels except as noted in § 185.115. Most of the requirements in proposed Part 185 are contained in existing regulations. Other proposed requirements are mandated by present law and are applicable to existing vessels, but have not previously been incorporated in regulations. Other proposed regulations are based on recommendations following casualty investigations and involve operational requirements for which compliance would result in the same costs for new or existing vessels.

Proposed § 185.115(b) allows the use of certain existing markings on equipment until such markings are no longer legible so that significant cost would not be incurred just to comply with minor changes in the contents or size of such markings.

Proposed § 185.115 (a) and (c) allow phase-in periods for existing vessels permitting sufficient time to comply with certain requirements including:

(1) Radar observers and operating manuals for dynamically supported craft;

(2) Station bills and passenger safety bills;

(3) Lifejacket placards; and

(4) Retroreflective tape on ring buoys and rescue boats.

Sections 185.280 and 185.282 Logbooks. Proposed § 185.280 incorporates the requirements of 46 U.S.C. 11301 that every vessel on a foreign voyage, except on voyages to Canada, maintain an official logbook. The requirements of the law are repeated in the proposed regulation for the convenience of the master.

Proposed § 185.282 requires that a vessel of more than 65 feet in length with overnight accommodations for more than 49 passengers, which is not on a foreign voyage, maintain a log or record, which need not be an official logbook, to make entries of tests and inspections required by law or regulation. This proposed regulation incorporates relevant provisions of NVIC 11–83 and 46 CFR 78.37–3(c). Since most large overnight passenger vessels already maintain such records for their own purposes, this regulation is expected to have little economic impact

Section 185.304 Navigation underway. Proposed § 185.304 contains new requirements designed to ensure the safe navigation of a vessel. As a result of the PILGRIM BELLE casualty, the NTSB recommended that the Coast Guard require that masters and officers on vessels which have overnight accommodations for more than 49 passengers and operate on other than river routes to comply with navigation procedures similar to those found at 33 CFR 164.11. 33 CFR 164.11 contains navigational procedures applicable to vessels of 1600 or more gross tons operating on U.S. navigable waters. The existing regulations in 33 CFR 164.11 simply mandate procedures which most masters routinely perform and which are considered to be prudent seamanship. Because of the risks associated with carrying passengers, the Coast Guard is proposing that requirements in 33 CFR 164.11 applicable to small passenger vessels be incorporated into Subchapter T to ensure masters and watchstanding officers on small passenger vessels are aware of their responsibilities. Since the proposed requirements actually incorporate procedures that should presently be practiced by all masters and deck officers, no economic impact is expected.

Section 185.410 Watchmen. Proposed § 185.410 modifies the existing requirements for patrolmen to better correspond with the statutory requirement of 46 U.S.C. 8102(a) (Watchmen). Section 8102(a) of Title 46 states "The owner, charterer, or managing operator of a vessel carrying passengers during the nighttime shall keep a suitable number of watchmen in the vicinity of the cabins or staterooms and on each deck to guard against and give alarm in case of fire or other danger." Existing § 185.22.1 requires roving patrolmen only when passenger lounge areas below the main deck are occupied.

Proposed § 185.410(a) reiterates the specific statutory requirement for a small passenger vessel of more than 65 feet in length with overnight accommodations for more than 150 passengers. Hence, a watchman would have to be stationed on each deck on such very large small passenger vessels. Other small passenger vessels are only required by proposed § 185.410(b) to

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have a suitable number of watchmen patrol throughout a vessel during the nighttime. A vessel owner must determine the number of watchmen suitable for the vessel. The OCMI will consider this number when placing minimum manning requirements on the vessel's COI. For most small passenger vessels one crew member on watch, assigned to periodically patrol throughout the vessel, would be sufficient.

The Coast Guard interprets the statutory requirements of 46 U.SC. 8102(a) to permit a roving watchman, as long as each deck is patrolled because:

(1) The size of such vessels allows a single watchman to rapidly patrol a vessel and guard against and give alarm in case of a fire or other danger; and

(2) The proposed requirements in Part 181 for fixed extinguishing systems, fire or smoke detecting systems, and fire alarms, and in Part 182 for bilge level alarms, allow remote monitoring for emergency conditions aboard the vessel.

The proposed requirement for a watchman will not increase the operating cost for most small passenger vessels since a crew member already on watch can be used to periodically patrol the vessel. Most masters already have such patrols conducted, even for above deck spaces, for safety purposes. The proposed requirement would result in increased costs for a small passenger vessel of more than 65 feet in length with overnight accommodations for more than 150 passengers since a watchman would have to be stationed on each deck. However, a survey of vessels in the Marine Safety Information System did not reveal any existing small passenger vessels which have overnight accommodations for more than 150 passengers.

Section 185.502 Crew and passenger lists. Proposed § 185.502 is a new requirement based on 46 U.S.C. 3502 as well as recommendations made by both the NTSB and Coast Guard Marine Boards of Investigation. 46 U.S.C. 3502 requires the owner, charterer, managing operator, or master, or individual in charge to keep a correct list of passengers that embark and disembark from day to day on:

(1) Vessels arriving from foreign ports (except at U.S. Great Lakes ports from Canadian Great Lakes ports);

(2) Seagoing vessels in the coastwise trade; and

(3) Passenger vessels making voyages of more than 300 miles on the Great Lakes except from a Canadian to a United States port.

The NTSB and Coast Guard Marine Boards of Investigations recommended the preparing and depositing ashore of a list of passengers and crew before a small passenger vessel gets underway as a result of the following casualties: JOAN LA RIE III, YANKEE, FISH-N-FOOL, MERRY JANE, and SAN MATEO.

During the search and rescue operation involving these five casualties there were difficulties in determining how many persons may have been missing. Similar difficulties have occurred following many other casualties.

In consideration of 46 U.S.C 3502 and the five casualties mentioned above, the Coast Guard is proposing that the master of a vessel on certain voyages prepare or have prepared a list of the names of all persons aboard including crew, passengers, and non-paying guests. Recommendations have been made that names and addresses of persons be recorded. To minimize the record keeping burden, the proposed regulations only require that the names of persons be recorded since that is the primary information needed in an emergency. Additional information may be recorded if desired. The primary purpose of the list is to identify the number and names of persons on a vessel in an emergency, although 46 U.S.C 3502 provides that lists and counts prepared under the section are open to the inspection of designated officials of the Coast Guard and the Customs Service at all times.

A crew and passenger list would be prepared for vessels departing on an oceans voyage, a coastwise voyage, or a Great Lakes voyage except a ferry operating on the Great Lakes on a voyage of less than 30 minutes, overnight voyages by any vessel with overnight accommodations, and any other vessels arriving from a foreign port except a Canadian port. The list would be required to be deposited ashore, prior to a vessel leaving its berth, either by being hand carried or by radio or other electronic transmission. The list could be left in a well marked lock box at the vessel's departure dock, at an office which is readily identifiable with the vessel such as a company office or a port captain's office at or near the dock, or at another location of which the owner notifies the OCMI.

As a result of the YANKEE casualty, a recommendation was made that a list of names be made and delivered ashore for all vessels making voyages on bays and sounds. The proposed regulations do not require a crew and passenger list for all vessels on such routes because of the large number of passengers making such voyages and the large cost of recording such passengers, the normally rapid response time for emergencies in most bays and sounds, and the shorter distance a vessel normally goes from a harbor of safe refuge when operating only in bays and sounds. However, comments are specifically requested on the possible need for passenger lists for operations on all bays and sounds or specific bays and sounds which may present hazards similar to many Great Lakes or coastwise routes.

Vessels like the YANKEE, which carry passengers in overnight accommodation spaces, would be required to prepare crew and passenger lists whenever on overnight voyages, regardless of the route, because of the distances they often operate from emergency services on such voyages.

Comments are specifically requested on the appropriateness of requiring crew and passenger lists for most small passenger vessels operating on the Great Lakes especially in consideration of 46 U.S.C. 3502 which only mandates such lists for vessels on voyages of more than 300 miles. Lists for such vessels are proposed based on NTSB recommendations and the hazardous sea conditions periodically experienced on the Great Lakes.

The cost of this proposal, which has partially been mandated by law, is significant. The estimated cost of preparing the proposed required list is $7.80 per year for each person that a small passenger vessel is permitted to carry.

Section 185.504 Passenger count. Proposed § 185.504 requires that the master of a vessel, except those subject to § 185.502, keep a correct, written count of the number of passengers who are received or embark on the vessel and are delivered or disembark the vessel. This proposal also reflects the requirements of 46 U.S.C. 3502. Although neither the law nor the proposed regulation require that a written record of the count be kept ashore, the depositing of a trip plan ashore including the number and names of people aboard the vessel, prior to departure, is a normal safe boating practice. The requirement for a passenger count is not considered to impose any additional costs to vessel owners because:

(1) The records kept by vessel owners on the number of passengers carried for revenue purposes may be used to comply with the requirement; and

(2) A passenger count is presently required by statute.

Section 185.506 Passenger safety orientation. Proposed § 185.506 requires that before a vessel gets underway with passengers, an audible announcement must be made to the passengers about

safety procedures and equipment aboard the vessel. Existing § 185.25–1(d) gives the master of a small passenger vessel the option of making a safety orientation announcement before getting underway or providing placards which show passengers the location of life preservers, the proper method of donning them, the type and location of all lifesaving devices carried, and the location and contents of the required emergency checkoff list. The existing rule, published in the Federal Register on February 19, 1980 (45 FR 11108), was prompted by the multiple loss of life upon the sinking of the small passenger vessel PEARL C.

Since publication of the existing rule, the NTSB and Coast Guard Marine Boards of Investigation have repeatedly recommended that passenger safety orientations be required to be made by a public announcement and, in some cases, include the actual demonstration of the donning of lifejackets. The recommendations were made as a result of several casualties including, but not limited, to the SAN MATEO, JOAN LA RIE III, MERRY JANE and the FISH-N-FOOL.

In all but one of these casualties, public announcements were not made nor were suitable placards provided in accordance with the existing regulations.

The Coast Guard agrees that placards alone are insufficient to help ensure passengers are aware of safety procedures and equipment on a small passenger vessel. Placards may often be ignored or go unnoticed by passengers. Information more applicable to the passenger clientele aboard a small passenger vessel for a particular voyage can be better presented in public announcement than by placards. Public announcements would also ensure that passengers will be better prepared to respond to the instructions of crew in an emergency.

The Golden Gate Fishermen's Association, which represents commercial passenger fishing vessels and marine recreational anglers in Northern California, has strongly urged the Coast Guard to make public safety orientation announcements mandatory.

In response to the notice of proposed rulemaking on the existing regulation on safety orientation (43 FR 28426), five comments were received alleging that a safety orientation announcement would create fear and panic among passengers. The Coast Guard replied then, and continues to emphasize, that each passenger must be provided with basic information regarding emergency procedures and lifesaving equipment. Fear and panic are more logically a result of lack of information about, familiarity with, and understanding of vessel operations and available equipment. Audible public announcements and demonstrations are the best way to ensure knowledge and familiarity.

The revised safety orientation regulation in this notice would be applicable to all small passenger vessels. The Coast Guard realizes there are many factors which affect the ease of making safety orientation announcements on the many different types of small passengers vessels. The proposed rule requires that "suitable" public announcements be made covering specific topics. The length and detail of the announcement may vary depending on the type of vessel, equipment, route, and passengers. In view of the time a demonstration would take, a demonstration of the proper donning of a lifejacket is required only on vessels going on an ocean or coastwise voyage or transiting a regulated navigation area. Although demonstrations are encouraged, announcements on other vessels need only include simple verbal instructions on donning of a lifejacket with reference to the lifejacket placard which would be required by proposed § 185.516.

Because mandatory public announcements should not cause any appreciable delay in a small passenger vessel getting underway, the cost of this proposed requirement to the small passenger vessel industry is expected to be minimal.

Section 185.508 Wearing of lifejackets. Proposed § 185.508 requires that the master ensure that passengers don lifejackets under certain conditions. This proposed regulation is based upon recommendations of the NTSB following the PEARL C, SAN MATEO, and MERRY JANE casualties. Passengers and crew members suddenly entered the water as a result of the capsizing or near capsizing of these vessels as they crossed hazardous bars. If passengers had been required to wear lifejackets on the MERRY JANE and PEARL C, 18 deaths may have been prevented.

The emergency checkoff list required to be posted on a small passenger vessel by existing § 185.25–5 contains the statement: "Have passengers put on life preservers if the going becomes very rough or you are about to cross a hazardous bar." This statement on the checkoff list serves to remind the crew and passengers of the type of situations when lifejackets should be worn. However, existing Subchapter T does not contain a specific requirement on when lifejackets must be worn.

The master of a vessel is primarily responsible for operational decisions affecting the safety of the vessel and its passengers. This normally includes the responsibility to determine when sea conditions or the condition of the vessel are hazardous enough to require the donning of lifejackets to decrease possible risks. However, certain conditions are predictably hazardous enough to require the donning of lifejackets.

Proposed § 185.508(a) requires a master to have passengers don lifejackets when such possible hazardous conditions exist. Such hazardous conditions include: Transiting a bar or inlet through dangerous swells or breaking waves; severe weather; a fire or flooding which could lead to evacuating the vessel; and when the vessel is being towed.

Consideration was given to proposing that passengers also be required to don lifejackets when a small passenger vessel is within a regulated navigation area under certain conditions, as designated in 33 CFR Part 165, Subpart F. Coast Guard District Commanders would designate the conditions and areas. However, since District Commanders are already authorized by 33 CFR 165.11(b) to establish operating conditions for vessels in an area which is determined to have hazardous conditions, it is not necessary to repeat this authorization in Subchapter T.

The cost of the requirements in proposed § 185.508 to the small passenger vessel industry would be negligible, since the regulation would impose no additional equipment or time requirements on a vessel.

Section 185.510 Emergency instructions. Proposed § 185.510 requires the posting of an Emergency Instructions placard with contents similar to those in the recommended emergency checkoff list required by existing § 185.25–1(b). The proposed regulation emphasizes that the emergency instructions must address the particular needs of each individual vessel. Recommended emergency checkoff lists posted on an existing vessel will be acceptable as emergency instructions under the proposed regulation providing the lists contain instructions applicable to the vessel.

Section 185.514 Station bill. Proposed § 185.514 requires a crew station bill on certain large vessels. This proposal mandates that "very large" small passenger vessels with overnight accommodations for more than 49 passengers comply with the requirements of 46 CFR Subpart 78.13 on the content of a station bill, assignment

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of duties, emergency signals, an emergency squad, and instructions. Compliance with 46 CFR Subpart 78.13 is necessary due to the length of the voyage and actual size of such vessels, the number of passengers and crew members, and the complexity of bilge, fire protection, and lifesaving systems. Presently, NVIC 11–83 indicates that the requirements of 46 CFR 78.13 are normally applied to "very large" small passenger vessels with overnight accommodations for more than 50 passengers.

Other small passenger vessels, which do not normally sail on overnight voyages, should also have station bills for the crew because of their size and complexity. Station bills can be required by the OCMI or the Commandant on such vessels under existing § 175.05–1(b) or § 175.05–15(b). Requiring, by regulation, that specific vessels have station bills will reduce the inconsistencies that occur among marine inspection zones. The number of crew members on a vessel is a primary factor in determining what vessel needs a crew station bill.

On a vessel with a small crew, the master should be able to direct the actions of the other crew members in an emergency, providing that the crew members have been properly trained and instructed. With small crews, each crew member may have to perform a variety of functions, and it would be impractical to specify all those functions on one station bill. For vessels with larger crews, a station bill is both beneficial and necessary. As crew size increases, it becomes more difficult for the master to assign duties to each crew member as an emergency occurs. With a large crew, greater specialization of response action is also possible. Therefore, the Coast Guard is proposing that a station bill be posted on all vessels of more than 65 feet in length with a required crew of more than four persons, including the master. A station bill on such vessels will reduce confusion and the time it takes crew members to respond in an emergency.

The contents of the station bill for a vessel with a crew of four persons would not be as detailed as the bill for a "very large" small passenger vessel with overnight accommodations for more than 49 passengers. Four crew members was chosen as the breakpoint since most vessels with four crew members include two licensed individuals, who should be qualified in emergency response, and two deckhands. As the number of crew members increases above four, the percentage of crew qualified in emergency response decreases and the need for assigned responsibilities increases.

Section 185.515 Passenger safety bill. Proposed § 185.515 requires a passenger safety bill and proposed § 185.516 requires instructions on lifejacket use to be posted in passenger staterooms or cabins on "very large" small passenger vessels with overnight accommodations for more than 49 passengers. Vessels which are subject to 46 CFR Subchapter H, including small passenger vessels to which NVIC 11–83 is applicable, must presently have stateroom notices on emergency actions and lifejacket use for passengers. The NTSB emphasized the need for such notices following the YANKEE—HARPER TAPPER collision in 1983. The required contents of passenger safety bills, listed in proposed § 185.515, are more applicable to "very large" small passenger vessels than the contents of stateroom notices required by § 78.47–7 of Subchapter H.

Section 185.516 Lifejacket placards. Proposed § 185.516 requires that lifejacket placards be posted in conspicuous places on all small passenger vessels. The lifejacket placards are needed to help orient passengers in the use of lifejackets. The estimated cost of this requirement for each small passenger vessel is $10.00.

Section 185.518 Inflatable liferaft placard. Proposed § 185.518 requires that, on each vessel equipped with inflatable liferafts, instruction placards on the use of the rafts be posted on each raft and in conspicuous places in the vessel. This proposal is a new requirement only for those vessels which would be required, for the first time, to have inflatable liferafts by proposed Subpart E of Part 160. Existing § 185.25–7 requires the posting of instruction placards in conspicuous places on all vessels equipped with liferafts. Additionally, all approved liferafts are required to have instructions posted on them in accordance with 46 CFR 160.051–8(b).

The posting of instruction placards for liferafts in conspicuous places is necessary so that passengers and crew can become familiar with the rafts prior to an emergency. However, on vessels where rafts are stowed in areas accessible to passengers and where the instruction placards on the raft containers are readily visible, additional placards in other locations on the vessel may not be necessary. The estimated cost of this requirement on applicable small passenger vessels is $10.00 per vessel.

Sections 185.520 and 185.524 Drills, instructions, and training. Proposed §§ 185.520 and 185.524 revise existing § 185.25–10 (Drills) by providing minimum standards for training and drills. Presently, masters on all small passenger vessels are required to conduct drills and instructions to ensure all crew members are familiar with their duties. NVIC 11–83 states that 46 CFR 78.17, which contains specific fire and boat drill requirements, is normally applied to "very large" small passenger vessels with overnight accommodations for more than 50 passengers.

Proposed § 185.520(b) includes minimum intervals at which abandon ship drills must be held on vessels having more than four survival craft and on "very large" small passenger vessels with overnight accommodations for more than 49 passengers. The masters of other vessels must still determine how often such drills are necessary on their vessels, but it is still mandatory to periodically hold drills. Four survival craft is used as a breakpoint since as a vessel exceeds that number it becomes increasingly more difficult for a master to direct an evacuation and evacuation takes more time. Therefore, it becomes more imperative that each crew member know his job. Establishing these minimum intervals will give the master a baseline to determine what drill interval is sufficient for his vessel.

Proposed § 185.520(c) specifies what an abandon ship drill must include. It also requires the summoning of passengers on any vessel on an overnight voyage in order to give the crew experience handling passengers in an emergency, as well as to provide passengers a better safety orientation.

Proposed § 185.520(e) requires the actual use of rescue boats, when installed, during periodic man overboard drills. These proposed regulations on abandon ship, man overboard, and fire drills do not impose any new cost to small passenger vessels since the proposed regulations only list minimum standards for drills presently required.

Section 185.602—Hull Markings. Proposed § 185.602 contains some requirements not presently contained in Subchapter T. Proposed paragraph (b) of this section requires draft or loading marks on all vessels on which a stability analysis must be done under Parts 170 and 171 of Subchapter S in accordance with proposed § 178.310.

Draft marks are presently required only on a small passenger vessel of at least 79 feet in length, the keel of which was laid on or after July 21, 1968, on a foreign voyage. Draft marks or loading marks are necessary to assist the master in ensuring a small passenger vessel complies with the draft and trim requirements listed on the vessel's stability letter. This requirement is expected to cost approximately $80.00 per vessel.

Paragraph (d) of proposed § 185.602 requires that a small passenger vessel with more than one passenger deck post, at the entranceways to upper decks, any limits imposed by the vessel's stability letter on the number of passengers allowed on those decks. This proposed requirement incorporates the existing policy of many OCMIs and is not expected to impose any cost on the small passenger vessel industry.

Section 185.604 Lifesaving equipment markings. Proposed § 185.604 requires changes in the size of markings on some lifesaving equipment. The same lifesaving markings will be required by proposed Subchapter W.

This section proposes that each rescue boat and ring buoy be marked with retroreflective material to improve the ability to locate rescue boats and ring buoys in darkness. This requirement will also be included in proposed Subchapter W. The retroreflective material is expected to cost approximately $29.00 per rescue boat and $12.00 per ring buoy. Equipment on existing vessels would not have to be marked with the proposed markings until existing markings are no longer legible.

Under the proposal, retroreflective material would have to be installed on lifejackets, rescue boats, and ring lifebuoys in accordance with the arrangements specified by a proposed International Maritime Organization (IMO) resolution. The resolution, entitled "Installation of Reflective Tape on Lifesaving Equipment," is expected to be adopted by IMO in November, 1989. The advantage of incorporating this resolution by reference is that it will contain easily understood drawings indicating the required arrangement for retroreflective material.

The arrangement of retroreflective material required by the proposed IMO resolution is very similar to the arrangement of retroreflective material required on life preservers by existing § 160.25–25 and as recommended by the U.S. Coast Guard Navigation and Vessel Inspection Circular (NVIC) 01–87. If the proposed resolution is not adopted prior to issuance of the final rule under this docket, the Coast Guard intends to include specific regulations in Subchapter T on the arrangement of retroreflective tape based on existing § 160.25–25 and NVIC 01–87.

Subpart G—Operational Readiness. This subpart proposes minimum standards for the care of lifesaving equipment. It requires that owners and managing operators have the manufacturer's instruction manuals for certain lifesaving equipment manufactured after the effective date of the regulations available for use. Vessels of more than 65 feet in length must have the manuals aboard, since such vessels have sufficient storage space and may often go on extended voyages on which a master may need the instructions on the repair or maintenance of equipment. Specific maintenance and inspection intervals, which owners and managing operators should already be following as good marine practice, are also proposed. This proposed section imposes no additional costs itself as the cost of maintaining any new equipment required on a small passenger vessel, such as an inflatable liferaft, has been calculated in the cost of the equipment.

Distribution Table

The following is a distribution table indicating where existing requirements in Subchapters S and T have been moved to, or if they have been deleted, by this proposal. Since Subchapter T is proposed to be completely revised, all existing requirements of Subchapter T are listed in this table. However, only those requirements of Subchapter S actually proposed to be relocated or deleted have been listed.

In the left column of the distribution table, designated "Old Section", are listed the existing subparts, sections, or paragraphs of Subchapters S and T that are being revised. In the right column, designated "New Section", is listed the location of the proposed requirement that pertains to the existing (old) subpart, section, or paragraph. If the Coast Guard proposes that the contents of an existing subpart, section, or paragraph be deleted, the reason for such deletion is indicated in the new section column by the words unnecessary, obsolete, or unsatisfactory.

Old section	New section
Subchapter S	
170.105(b)(1)	Unnecessary.
170.160(b)(1)	Unnecessary.
170.173(d)	170.173(f).
171.020	Unnecessary.
171.030(a)	178.310(a).
171.030(b)	178.320(a).
171.030 (c), (d), (e), (f), (g), (h).	178.330 (c), (d), (e), (f), (g), (h).
171.035	Unsatisfactory.
171.040(a)(1)	179.210.
171.040(a)(2)	179.212.
171.040(a)(3)	179.220.
171.040(b)	179.310.
171.040(c)	179.320(b).
171.043	179.220.
171.050	171.050(a).
171.110(b)	Unnecessary.
171.114	179.320 (c), (d).
171.115(b)	Unnecessary.
171.119	179.350.
171.124	179.360.
171.130(b)	Unnecessary.
171.140	178.410.
171.145	178.420; 178.450.
171.150	178.430; 178.450.
171.155	178.440.
Subchapter T	
175.01–1	175.100.
175.01–3	175.900.
175.05–1(a)	175.110.
175.05–1(b)	Unnecessary.
175.05–1(c)	175.120.
175.05–1(d)	185.256.
175.05–1(e)	Unnecessary.
175.05–2	Unnecessary.
175.05–3	175.110.
175.05–5 (a)–(c), (e)	Unnecessary.
175.05–5(d)	175.112.
1705–05–15	175.200.
175.07–1	175.122.
175.10–1 to 175.10–40	175.400.
175.15–1	175.540.
175.20–1	175.500.
175.20–5	175.510.
175.25–1	175.550.
175.27–1	175.600.
175.27–5	175.600(c)(2).
175.27–20	Obsolete.
175.30–1	175.560.
175.35–1	Unnecessary.
176.01–1	176.100.
176.01–3	176.100.
176.01–5	176.103.
176.01–10	176.105.
176.01–15	176.107.
176.01–20	176.110.
176.01–25	176.113.
176.01–27	176.202.
176.01–30	176.204.
176.01–35	176.120.
176.01–40	176.302.
176.01–45	176.310.
176.05–1	176.400.
176.05–5	176.402.
176.05–10(a)	176.404.
176.05–10(b)	Unnecessary.
176.10–1	176.500.
176.10–5	176.502.
176.15–1	176.600.
176.15–5	176.610.
176.15–10	176.612 (a), (b).
176.20–1	176.700 (a), (b).
176.20–5	176.700(d).
176.25–1	176.800.
176.25–5	176.802.
176.25–10	176.804.
176.25–15	176.806.
176.25–20	176.808.
176.25–22	176.808.
176.25–25	176.810.
176.25–27	176.810.
176.25–30	176.812.
176.25–32	176.812.
176.25–35	176.814.
176.25–40	176.816.
176.25–45	176.818.
176.25–50	176.830.
176.30–1	176.540.
176.35–1	176.900; 176.920
176.35–5	175.400.
176.35–10	175.400.
176.35–15	175.910.
176.35–20	176.920(d).
176.35–25	176.302.
176.35–30	176.910 (c), (d); 176.920(d).
177.01–1	177.115.
177.01–5	177.100.
177.05–1	177.202.

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Old section	New section
177.05–3	177.202.
177.05–5	177.210.
177.10–1(a)	177.300; 177.310.
177.10(1)(b)	177.320.
177.10–5	177.400.
177.13–1	Unnecessary.
177.15–1	177.500.
177.20–1	177.500 (a), (b).
177.20–5	177.600 (d), (e).
177.25–1	177.720.
177.30–1	177.820.
177.30–5	177.840.
177.30–7	177.400(h); 177.800; 177.810.
177.35–1	177.900.
177.35–5	177.920.
177.35–10	177.840.
177.35–15	177.960.
180.01–1	Unnecessary.
180.01–5	Unnecessary.
180.05–1(a)	175.800.
180.05–1(b)	Unnecessary.
180.05–5(a)	180.25(a).
180.05–5(b)	180.72.
180.10–1(a)	180.200.
180.10–1(b)	Obsolete.
180.10–5	180.202; 180.204.
180.05–15	180.204.
180.10–20	180.206.
180.10–25	180.208.
180.10–30	180.200.
180.10–35	180.210.
180.15–1	180.175 (c), (e).
180.15–5	180.175(f).
180.15–10	180.175(f)(2).
180.20–1	180.130; 180.137; 180.175(f).
180.20–5	180.604.
180.25–1	180.71.
180.25–5	180.71.
180.25–10	180.76.
180.25–15	180.604.
180.25–20	180.75.
180.25–25	180.904(i).
180.30–1	180.70.
180.30–5	180.70.
180.30–10	180.70.
180.35–1	180.66.
180.35–5	180.66.
180.35–10	180.66(d).
180.40–1	180.64.
181.01–1(a)	Unnecessary.
181.01–1(b)	181.115.
181.01–5	Unnecessary.
181.05–1	175.800.
181.05–5	181.120.
181.10–1	181.300 (a), (b), (c), (d).
181.10–5	181.810.
181.15–1	181.310(a).
181.15–5 (a), (b)	181.310(a).
181.15–5(c)	181.310(b).
181.15–10 (a), (g)	181.320(a).
181.15–10 (b), (e)	181.320 (b), (c).
181.15–10(c)	181.320(c).
181.15–10 (d), (f)	181.320 (b), (c).
181.20–1	181.400(a).
181.20–5(a)	181.400(a); 181.410(a).
181.20–5(b)	181.400(a)(2).
181.20–10	181.410(f).
181.20–15 (a), (c)	181.410(b).
181.30–15(d)	185.812(a).
181.20–20	181.410(d).
181.20–25	181.410(f).
181.20–30	181.410(c).
181.20–35	177.800(b); 182.460(a)(1); 182.465(h).
181.25–1	181.400(f).
181.25–5	181.430.
181.30–1	181.500.
181.30–5	181.510.
181.30–10 (a), (b)	181.520.
181.30–10(c)	Unnecessary.
181.30–12	181.500(d).
181.35–1	181.600.
182.01–1	182.115.
182.01–5	182.100.
182.05–1	182.200.
182.05–5	182.220.
182.10–1	182.300.
182.10–5	182.310; 182.330.
182.15–1	182.400.
182.15–5	182.405; 182.410.
182.15–7	182.415.
182.15–10	182.420.
182.15–15	182.425.
182.15–20	182.420; 182.430.
182.15–25	182.440.
182.15–30	182.445.
182.15–35	182.450.
182.15–40	182.455.
182.15–45	182.460.
182.20–1	182.400.
182.20–5(a)	182.410(a).
182.20–5(b)	182.410(c).
182.20–10	182.420.
182.20–15	182.425.
182.20–20	182.430.
182.20–22	182.435.
182.20–25	182.440.
182.20–30	182.445.
182.20–35	182.450.
182.20–40	182.455.
182.20–45	182.465.
182.20–50	182.470.
182.25–1	182.500.
182.25–5	182.510.
182.25–10	182.520.
182.25–15	182.540.
182.30–1	182.600(c).
182.30–5	182.600(e); 182.620 (b), (c).
182.35–1	177.400(c).
182.40–1	182.720.
182.40–5	182.710.
182.40–10	182.720.
183.01–1	Unnecessary.
183.01–5	183.100.
183.01–10	Unnecessary.
183.01–15	175.800.
183.05–1	Unnecessary.
183.05–5	183.320(c).
183.05–10	183.320.
183.05–15	183.330.
183.05–20	183.350; 183.362; 183.354.
183.05–25	183.360(i).
183.05–30	183.380.
183.05–35	183.210 (b), (c); 183.410.
183.05–40	Unnecessary.
183.05–45	183.340.
183.05–50	183.340.
183.10–1	Unnecessary.
183.10–5	183.320.
183.10–10	183.210; 183.330.
183.10–15	183.330.
183.10–20	183.340.
183.10–25	183.360.
183.10–30	183.370.
183.10–35	183.380.
183.10–40	183.390.
183.10–45(a)	184.210.
183.10–45(b)	184.220.
183.10–50	183.390.
184.01–1	Unnecessary.
184.01–5	184.100.
184.05–1	184.200.
184.10–1	184.202.
184.20–1	184.402.
184.25–1	184.502.
184.30–1	183.430.
184.30–5	183.432.
184.35–1	184.602(c).
184.40–1	180.72.
184.40–5	180.72.
184.40–10	180.78(b).
184.40–15	176.606 (a)(2), (d), (f).
185.01–1	Unnecessary.
185.01–5	185.100.
185.05–1	185.900; 185.910
185.10–1	185.402.
185.12–1	176.306.
185.15–1	Subpart B of Part 185.
185.17–1	185.370.
185.18–1	185.250.
185.20–1	185.310.
185.20–10	185.320.
185.20–15	185.330.
185.20–20	185.340.
185.20–25	185.350.
185.20–30	185.360.
185.20–35	185.420.
185.22–1	185.410.
185.25–1	185.510.
185.25–5	185.512.
185.25–7	185.518.
185.25–10	185.520(a).
185.25–15	185.530.
185.25–20	185.722(b); 185.726(d).
185.30–1	185.602(a).
185.30–5	185.604.
185.30–10	185.604(g).
185.30–15	185.606.
185.30–20	185.608.
185.20–25	185.610.
185.30–30	185.604(c).

Derivative Table

The following is a derivative table of the proposed and corresponding existing regulations in Subchapters S and T. In the left column, designated "New Section", are proposed paragraphs, sections, and subparts of this rulemaking. In the middle column, designated "Old Section", is the paragraph, section, or subpart of Subchapters S and T where the regulation listed in the left column is currently published. If the word "Revised" is included, it indicates the proposal contains a change in the current rule other than a minor change involving grammar, format, elimination of archaic language, or authority and reference citations which do not affect the basic requirements of a section. For certain new sections there are no corresponding existing sections because the requirement being proposed would be established by this rulemaking. These sections and subparts have the word "New" listed in the "Old Section" column. The right column, "Reference", lists sources used in developing the proposed regulations. The list of references is not all inclusive. It does not contain policy letters and investigation reports which are not readily available for review. Sources listed in the right column are abbreviated as follows:

(1) "CGD" means Coast Guard Regulatory Docket;

(2) "NVIC" means U.S. Coast Guard Navigation and Vessel Inspection Circular;

(3) "MSM" means the U.S. Coast Guard Marine Safety Manual;

(4) "IMO" means the International Maritime Organization's Code of Safety for Dynamically Supported Craft;

(5) "SOLAS" means the International Convention for the Safety of Life at Sea, 1974; and

(6) "Subch." means the specified subchapter from Chapter I of Title 46 of the Code of Federal Regulations.

Other abbreviations include references listed in § 175.600 of the proposed regulations. Individual numbers listed refer to specific sections in Title 46 of the Code of Federal Regulations unless preceded by another title designation.

New section	Old section	Reference
Subchapter S:		
170.055(h)(1)	New	
170.055(u)	New	46 U.S.C. 2101.
170.090(c), (d).	New	
170.173(a)(3), (a)(4).	New	
170.173(d), (e).	New	
170.173(f)	170.173(d)	
170.010(o)	New	46 U.S.C. 2101.
171.050(a)	171.050	
171.050(b)	New	
171.055 Graphs (f), (g), (h), (i), (j).	New	Graphs 173.063(a), (b), (c), (d), (e).
171.076	New	
171.077	New	
171.080(d)(5)	New	
Subchapter T:		
175.100	175.01–1(a), Revised.	
175.110	175.05–1, 175.053, Revised.	46 U.S.C. 3301–3303.
175.112	175.05–5(d), Revised.	
175.120	175.05–1(c)	
175.122	175.07–1	
175.124	New	IMO Annex, 175.15–1.
175.200	175.05–15	
175.400	175.10, Revised.	46 U.S.C. 2101; IMO; Subch. F, H, J, S.
175.500	175.20–1	
175.510	175.20–5	
175.530	New	
175.540	175.15–1	
175.550	175.25–1	
175.580	175.30–1	
175.600	175.27–1, Revised.	
175.800	175.10–1, 175.10–2, Revised.	
175.900	175.01–3	
176.100	176.01–1, 176.01–3, Revised.	46 U.S.C. 3311, 3313.
176.103	176.01–5, Revised.	
176.105	176.01–10	
176.107	176.01–15, Revised.	46 U.S.C. 3307.
176.110	176.01–20, Revised.	IMO.
176.112	New	
176.113	176.01–25, Revised.	IMO.
176.114	New	
176.116	New	
176.120	176.01–35	
176.202	176.01–27	46 U.S.C. 3313.
176.204	176.01–30	
176.302	176.01–40, 176.01–27(d), 176.35–25.	
176.306	185.12–1	
176.310	176.01–45	
176.400	176.05–1	
176.402	176.05–1, Revised.	46 U.S.C. 3305.
176.402(e)(8)	New	IMO.
176.404	176.05–10	
176.500	176.10–1	
176.502	176.10–2	
176.600	176.15–1, Revised.	
176.610	176.15–5, Revised.	
176.612(a), (b).	176.15–10	
176.612(c)	New	
176.630	New	
176.670	176.15–1(a)	
176.700(a), (b).	176.20–1, Revised.	NVIC 11–83; 78.33.
176.700(c)	New	
176.700(d)	176.20–5	
176.702	New	
176.704	New	NVIC 11–83; 78.33.
176.710	176.25–1(c), Revised.	
176.600	176.25–1	
176.602	176.25–5, Revised.	MSM.
176.604	176.25–10, Revised.	
176.606	176.25.15, Revised.	
176.608	176.25–20, 176.25–22, Revised.	
176.610	176.25–25, Revised.	
176.612	176.25–30, Revised.	
176.614	176.25–35, Revised.	
176.616	176.25–40	
176.618	176.25–45	
176.630	176.25–50	
176.640	176.30–1	
176.900(a), (b).	176.35–1(a), (b).	
176.900(c), (d), (e).	176.35–1(c), (d), (e), 176.35–20.	
176.910	176.35–15, 176.35–30.	
176.920(a), (b).	176.35–1(c), (d), (e).	
176.920(c), (d).	176.35–20	
176.930	New	SOLAS Ch. 1, Reg. 5, MSM II–9.I.1.
176.932	New	MSM II–9.I.2.b.
177.100	177.01–1	
177.115	177.115, Revised.	
177.140	New	Subch. H.
177.202	177.05–1, Revised.	IMO; Subch. H.
177.206	New	
177.210	177.05–5, Revised.	
177.300	177.10–1(a), Revised.	
177.310	177.10–1(a), Revised.	
177.315	New	
177.320	New	IMO 3.1–3.6.
177.330	177.10–1(a), Revised.	169.309(b), (c).
177.340	177.10–1(b)	
177.400	177.10–5, 177.30–7(b), 182.35.	
177.400(a)	177.10–5(a)	
177.400(b)	177.10–5(b), Revised.	
177.400(c)	182.35–1, Revised.	ABYC A–3–70, NFPA 701.
177.400(d)	177.10–5(c)	
177.400(e)	New	
177.400(f)	177.30–7(d), Revised.	
177.400(g)	New	
177.400(h)	177.30–7(b), Revised.	
177.420(a), (b).	177.10–5(a–1), Revised.	NVIC 8–87.
177.420(c)	177.10–5(b), Revised.	
177.430(a)	177.10–5, Revised.	
177.430(b)	New	Subch. H.
177.432	New	Subch. H, NVIC 5–80.
177.434	New	Subch. H.
177.436	New	Subch. H, NFPA 436.
177.438	New	Subch. H.
177.439	New	NFPA 101.
177.440	New	NVIC 11–83.
177.450(a)	New	
177.450(b)	New	IMO 7.2.
177.500	177.15–1, Revised.	IMO 4.3, NFPA 101.
177.510	New	
177.520	New	
177.550	New	IMO 4.3.3, 4.3.4, 4.3.5, 4.3.6.
177.560	New	IMO 4.4.1, 4.4.2, 4.4.3, 7.2.5.
177.600	177.20–1, 177.20–5, 181.20–35, 182.15–45, Revised.	72.05–50(i).
177.610	New	Subpart 72.15, NVIC 8–80.
177.620	New	
177.700	177.25–1, Revised.	
177.710	New	
177.720	177.25–1	
177.730	New	NVIC 11–83.
177.800(a), (b), (c).	177.30–7, Revised.	
177.800(d), (e).	New	IMO 4.1.
177.800(f)	New	NVIC 11–83; 72.25–10v.
177.800(g)	New	
177.810(a)	New	
177.810(b), (c), (d).	177.30–7, Revised.	
177.820	177.30–1, Revised.	IMO 4.2.
177.840	177.30–5(a), Revised.	

New section	Old section	Reference
177.900	177.35–1, Revised.	MSM II–10.A.6, SOLAS.
177.920	177.35–5	
177.940	177.35–10	
177.960	177.35–15	
177.970	New	
177.1010	New	IMO 4.1.4, 14.6.
177.1020	New	
177.1030	New	IMO 14.2.1.
177.1110	New	IMO 14.2.1, .3.
177.1112	New	IMO 14.3.
177.1114	New	IMO 14.4.
177.1116	New	IMO 14.5.
178.115	New	170.001; 171.801.
178.125	New	IMO 2.
178.210	New	170.110; 170.120; NVIC 10–83.
178.220	New	170.110.
178.230	New	170.120.
178.310	New	171.020.
178.320	New	171.030.
178.330	New	171.030.
178.340	New	MSM IV–6.D.3.b.
178.410	New	171.140.
178.420	New	171.145.
178.430	New	171.150.
178.440	New	171.155.
178.450	New	
178.510	New	170.235.
179.115	New	170.001.
179.210	New	171.040; 171.060.
179.212	New	171.040; 171.060.
179.220	New	171.043.
179.230	New	171.050.
179.240	New	170.245.
179.310	New	171.040; 171.065.
179.320	New	171.040(a); 171.114.
179.330	New	170.255; 170.270; 171.114; MSM IV–8.I.
179.340	New	171.113.
179.350	New	171.119.
179.360	New	171.124.
179.400	New	171.105–171.109.
180.10	New	SOLAS; NVIC 11–83.
180.15	New	
180.25(a)	180.05–5a	
180.25(b)	New	
180.64	180.40–1	
180.69	180.35–1 to 180.35–3.	
180.70	180.30–1 to 180.30–10.	
180.71	180.25–1 to 180.25–10, 180.25–20.	
180.72	New	
180.75	180.25–20	
180.79	180.25–10, Revised.	
180.110	New	
180.130	180.20–1, Revised.	
180.137	180.20–1, Revised.	
180.150	New	Subch. H, W.
180.175	180.15–1	Subch. H, W.
180.200	180.10–30, Revised.	
180.202	180.10–5, Revised.	
180.204	180.10–5, 180.10–15.	
180.206	180.10–20	
180.208	New	
180.209	New	IMO 8.2.
180.210	180.10–35, Revised.	
181.115	181.01–10(b), Revised.	
181.120	181.05–5	
181.300(a), (b), (c), (d).	181.10–1(a), (b), (c), (d), (e), Revised.	
181.300(e), (f).	New	
181.310(a)	181.15–1	
181.310(b)	New	
181.320(a)	181.15–10(a), (g).	
181.320(b)	181.15–10(c), (d).	
181.320(c)	181.15–10(b), (d).	
181.320(d)	181.15–10(d)(2), (e).	
181.400(a)	181.20–1(a), Revised.	
181.400(a)(1)	New	
181.400(a)(2)	181.20–5(b), Revised.	
181.400(b)	New	
181.400(c)	New	
181.400(d)	New	
181.400(e)	New	NVIC 11–83.
181.400(f)	181.25–1, Revised.	
181.400(g)	New	
181.410(a)	181.20–5, Revised.	NVIC 6–72.
181.410(b)	181.20–15, Revised.	
181.410(c)	181.20–30, Revised.	
181.410(d)	181.20–20, Revised.	
181.410(e)	New	
181.410(f)	181.20–10, 181.20–25, Revised.	
181.410(g)	New	NVIC 6–72.
181.420	New	
181.425	New	
181.430	181.25–5, Revised.	
181.440	181.25–5, Revised.	
181.450	New	
181.460	New	
181.470	New	
181.480	New	
181.500	181.30, Revised.	
181.510	181.30–5	
181.520	181.30–10(a), (b).	
181.600	181.35–1	
181.610	181.10–5, Revised.	
182.100	182.01–5	
182.115	182.01–1, Revised.	
182.130	New	
182.200(a)	182.05–1	
182.200(b)	New	IMO 9.2.3.
182.210	New	IMO 9.1.7.
182.220	182.05–5	
182.300	182.10–1	
182.310(a), (b), (c).	182.10–5(a), (b), (c).	
182.320	New	54.01–5; 53–01–10.
182.330	182.15–5(d)	
182.400	182.15–1, 182.20–1.	
182.405(a)	182.15–5(c)	
182.405(b)	New	IMO.
182.410(a), (c).	182.15–5(a), (b), 182.20–5.	
182.410(b), (d).	New	IMO 8.
182.410(e), (f).	New	
182.415	182.15–7	
182.420	182.15–10, 182.15–20, 182.20–10, Revised.	MSM II 10.A.j; ABYC P–10.
182.422	New	56.50–95.
182.423	New	
182.425	182.15–15, 182.20–15, Revised.	ABYC P–2.
182.430	182.15–20, 182.20–20, Revised.	
182.435	182.20–22	
182.440	182.15–25, 182.20–25, Revised.	
182.445	182.15–30, 182.20–30, Revised.	
182.450	182.15–35, 182.20–35, Revised.	
182.455	182.15–40, 182.20, 40, Revised.	33 CFR 183.
182.458	New	ABYC H–25–86.
182.460	182.15–45, Revised.	
182.465	182.20–45, Revised.	
182.470	182.20–50, Revised.	
182.500	182.25–1, Revised.	NVIC 11–83.
182.510	182.25–5, Revised.	
182.520	182.25–10, Revised.	
182.530	New	
182.540	182.25–15	
182.600(a)	New	
182.600(b)	New	NVIC 11 83.
182.600(c)	182.30–1, 182.30–5(a).	
182.610	New	
182.620(a)	New	
182.620(b), (c).	182.30–5(a), (b).	
182.630	New	IMO 5.11..2.
182.700	New	
182.710	182.40–5, Revised.	
182.715	New	
182.720	182.40–1, 182.40–10, Revised.	NVIC 11–83.
182.730	New	56.60–95.
183.100	183.01–5, Revised.	
183.115	New	
183.130	New	
183.140	New	Subch. J, NEC.
183.200	183.01–6, Revised.	
183.210	183.05–35	
183.220	New	
183.310	New	
183.312	New	NVIC 11–83; 111.10.
183.318	New	NVIC 11–83; 111 10.

New section	Old section	Reference
183.320	183.05–5, 183.05–10, 183.10–5, Revised.	
183.330	183.05–15, 183.10–15.	
183.340	183.05–40, 183.05–45, 183.05–50, 183.10–20, Revised.	
183.350	183.05–20, Revised.	
183.352	New	111.15.
183.354	New	111.15.
183.360	New	111.33.
183.370	183.05–50(d), 183.10–30, Revised.	
183.380	183.05–25, 183.05–30, 183.10–25, 183.10–35, 183.10–40, Revised.	
183.390	183.10–50, Revised.	
183.410	183.05–35, 183.10–20(j), Revised.	
183.420	New	Navigation Rules.
183.430	184.30–1, Revised.	
183.432	184.30–5, Revised.	NVIC 11–83; IMO Code 12.7.
183.434	New	NVIC 11–83; 111.75–16.
183.440	New	IMO 17.1.4.
183.510	New	
183.520	New	
183.530	New	33 CFR 183.
183.540	New	
183.550	New	NVIC 11–83; 113.25.
184.100	184.01–5	
184.115	New	
184.200	184.05–1(a), Revised.	
184.202	184.05–1(c)	
184.210	183.10–45(a), Revised.	
184.220	183.10–45(b), Revised.	
184.240	New	CGD 83–013.
184.300	184.10–1	IMO 6.
184.310	New	IMO 6.
184.402(a), (b).	184.20–1	
184.402(c), (d).	New	
184.404	New	
184.406	New	
184.408	New	
184.410	New	
184.412	New	
184.420	185.20–35	
184.430	New	
184.502	184.25–1	
184.506	New	
184.602(a), (b), (d).	New	
184.602(c)	184.35–1	
184.602(e), (f).	New	IMO 14.7.
184.610	New	
184.620	New	IMO 15.
184.702	New	
184.704	New	
184.710	New	
184.720	New	NVIC 11–83.
185.100	185.01–5	
185.115	New	
185.202	New	4.05–1.
185.204	New	4.05–5.
185.206	New	4.05–10.
185.207	New	4.05–12.
185.208	New	NVIC 11–83; 78.33.
185.210	New	4.05–12.
185.220	New	4.05–15.
185.230	New	4.05–20.
185.240	New	4.05–25.
185.250	185.19–1, Revised.	46 U.S.C. 2303, 2304.
185.260	New	Subpart 4.04, 46 U.S.C. 2306.
185.280	New	NVIC 11–83; 46 U.S.C. 11301; Subpart 78.37.
185.282	New	NVIC 11–83; 78.37–3(c)
185.304	New	33 CFR 164.11.
185.306	New	78.10–1.
185.310	185.20–1	
185.320	185.20–10, Revised.	
185.330	185.20–15, Revised.	NVIC 11–83; 78.15.
185.340	185.20–20, Revised.	
185.350	185.20–25	
185.352	182.15–45(d), Revised.	
185.356	175.05–1(d)	
185.360	185.20–30, Revised.	
185.370	185.17–1	
185.402	185.10–1	
185.410	185.22–1, Revised.	46 U.S.C. 8102.
185.420	185.25–10, Revised.	IMO 17.2.
185.430	New	IMO 13.8.7.
185.432	New	IMO 4.4.2(c)
185.502	New	46 U.S.C. 3502.
185.504	New	46 U.S.C. 3502.
185.506	185.25–1(d), Revised.	
185.508	New	
185.510	185.25–1(a), (b), (c).	
185.512	185.25–5, Revised.	
185.514	New	NVIC 11–83; 78.13.
185.515	New	NVIC 11–83; 78.47–47.
185.516	New	NVIC 11–83; 78.47–47.
185.518	185.25.7, Revised.	160.051.
185.520	185.25–10	NVIC 11–83; 78.17–50.
185.524	185.25–10	NVIC 11–83; 78.17–50; IMO 17.5.3.
185.530	185.25–15	
185.602(a)	185.30–1	
185.602(b), (c), (d), (e).	New	NFPA 101.
185.604	185.30–5, 185.30–10, 185.30–30, 180.20–5, 180.25–15, 180.25–25, Revised.	
185.606	185.30–15	
185.608	185.30–20	
185.610	185.30–25	
185.612(a), (c).	181.20–15(d), Revised.	78.47–15.
185.612(b), (d)–(h).	New	NVIC 11–83; 78.47.
185.700	New	
185.702	New	
185.704	New	
185.720	New	
185.722(a)	New	
185.722(b)	185.25–20(a)	
185.724	New	
185.726	185.25–20(b), Revised.	
185.730	New	160.051–8; 160.076, 160.077.
185.740	New	160.062.
185.800	New	IMO 17.1.4, 17–3.
185.810	New	IMO 1.8.1.
185.812	New	IMO 1.8.2, 1.8.3, 17.1.4, 17.2.
185.900	185.05–1(a)	
185.910	185.05–1(b)	

Draft Evaluation

The Coast Guard has conducted a detailed evaluation of the costs and benefits of the proposed changes affecting small passenger vessel owners, the public, and the Coast Guard. The average annual cost to the small passenger vessel industry of the proposed changes is estimated to be $8.5 million per year in 1987 dollars. Included in the total average annual cost are increased costs from proposed requirements as well as monetary benefits primarily due to cost savings from:

1. Reduced fire damage due to increased fire protection equipment;
2. Extended drydocking intervals;
3. Reduced structural fire protection requirements;
4. Greater flexibility in the choice of structural fire protection materials and piping materials; and
5. Reduced insurance premiums from fixed total flooding fire extinguishing systems, fire detecting systems, and smoke detecting systems.

The proposed regulations would result in an overall increased cost, for the initial purchase and outfitting of a new, small passenger vessel, of approximately $1500 to $94,000 per vessel depending upon the vessel's operation and number of passengers permitted to be carried. The total net present value of the proposed changes is $85 million.

Time phasing and discounting were used to determine the Net Present Value (NPV) and Average Annual Cost (AAC). Discounting recognizes that future costs or benefits are not worth the same amount at the present time, and that the relationship between monetary values at different points in time is the interest rate or discount factor. The NPV is the total value of all future costs and

benefits from this proposal on the effective date of the regulations. To calculate the NPV the regulations were assumed to be effective for a planning period of 100 years. Each year's expected yearly cost was multiplied by a discount factor and summed over all years of the planning period. The AAC is the NPV discounted over all the years of the planning period, producing equal annual costs. For the evaluation the average life of a small passenger vessel was estimated to be twenty-five years.

More than 70 individual changes from the existing regulations were identified in this proposal as being monetary cost/benefit items. The most significant of these items were:

1. Liferafts and inflatable buoyant apparatus ($5.6 million AAC);

2. Passenger/crew lists ($1.04 million AAC);

3. Category 1 EPIRBs for vessels on oceans and coastwise routes ($0.4 million AAC); and

4. Fixed total flooding fire extinguishing systems in machinery spaces ($0.37 million AAC).

A discussion of the individual cost or monetary benefit of many proposed changes is included in the Discussion of Proposed Regulations. Tables listing the primary changes proposed in this notice, which would result in a cost or monetary benefit to a small passenger vessel owner, are also included below. For the convenience of the reader, a cost and monetary benefit table is provided for four sample small passenger vessels which vary by length, passenger capacity, route, and accommodation type. The estimated cost of the proposed changes, which are listed in the tables, are based on information from small passenger vessel owners, builders, equipment vendors, and marine equipment catalogs, and include estimated initial outfitting costs and the annual recurring costs. Outfitting costs include the initial purchase price and installation charge for new equipment. Recurring costs include annual maintenance and service cost, annual labor cost for making passenger and crew lists, and an annual pro rata replacement cost for the cited equipment based on a ten year life expectancy, minus any quantifiable monetary benefit from annual cost savings due to reduced insurance premiums, reduced material costs, reduced number of drydockings, etc. Estimated increased costs are listed without parentheses; cost savings are placed within parentheses. Comments are requested on the costs stated throughout this preamble.

TABLE OF COSTS AND MONETARY BENEFITS FOR A NEW VESSEL OF NOT MORE THAN 65 FEET IN LENGTH CARRYING 23 PASSENGERS WITHOUT OVERNIGHT ACCOMMODATIONS ON AN OCEANS ROUTE

Cite 46 CFR and Requirement	Outfitting Cost (Benefit)	Recurring Cost (Benefit)
176.600 Drydock		(360)
178.320 Simp. stab. test	$200	
180.64 Category 1 EPIRB	1,150	115
180.202 Liferaft	8,595	540
181.400 Fixed ext. in mach	1,150	[1](309)
181.610 Fire buckets	30	3
182.430 Wet exhaust	(200)	(20)
182.440 Independ. tank batt	(100)	(10)
182.455 Flexible hose	(30)	(3)
182.520 Submers. bilge pump	(150)	(15)
182.530 Bilge alarm	200	[1]0
184.506 Broadcast placard	10	1
184.610 PA system	100	10
184.710 First aid kit	65	7
185.502 Passenger/crew list		205
185.516 Lifejacket placard	10	1
185.604 Retroreflective tape	24	2
Totals	11,054	467

[1] Value includes estimated annual monetary benefit from insurance savings and a decrease in fire or flooding damage.

TABLE OF COSTS AND MONETARY BENEFITS FOR A NEW VESSEL OF MORE THAN 65 FEET IN LENGTH CARRYING 310 PASSENGERS WITHOUT OVERNIGHT ACCOMMODATIONS ON A LAKE, BAY, AND SOUND ROUTE

Cite 46 CFR and Requirement	Outfitting Cost (Benefit)	Recurring Cost (Benefit)
171.050 Rail crowd. criteria	$25	
171.080 Damage stab. survival	5,000	
176.600 Drydock		($100)
177.430 Fire boundaries, load	(11,132)	(1,113)
180.206 Inflat. buoyant app.	40,600	3,100
181.300 60 GPM fire pump	200	20
181.400 Fixed ext. in mach.	5,906	[1](606)
181.400 Galley grease extr.	4,000	400
181.400 Accom. smoke detect.	6,344	[1](401)
182.430 Wet exhaust	(200)	(20)
182.455 Flexible hose	(30)	(3)
182.500 Subch. F bilge req.	400	40
182.530 Bilge alarm	400	[1]20
182.610 Steering requirement	150	15
184.404 Radar	3,000	300
184.408 Fathometer	200	20
184.506 Broadcast placard	10	1
184.610 PA system	500	50
184.710 First aid kit	65	7
185.514 Station bill	20	2
185.516 Lifejacket placard	10	1
185.602 Hull markings	80	8
185.604 Retroreflective tape	24	2
Totals	55,582	1,651

[1] Value includes estimated annual monetary benefit from insurance savings and a decrease in fire or flooding damage.

TABLE OF COSTS AND MONETARY BENEFITS FOR A NEW VESSEL OF NOT MORE THAN 65 FEET IN LENGTH CARRYING 57 PASSENGERS WITHOUT OVERNIGHT ACCOMMODATIONS ON A RIVER ROUTE

Cite 46 CFR and Requirement	Outfitting Cost (Benefit)	Recurring Cost (Benefit)
176.600 Drydock		[1]$60
181.300 50 PSI fire pump	$200	20
181.400 Fixed ext. in mach.	1,150	[2](159)
181.610 Fire buckets	30	3
182.430 Wet exhaust	(200)	(20)
182.440 Independ. tank batt	(100)	(10)
182.455 Flexible hose	(30)	(3)
182.530 Bilge alarms	200	[2]0
184.506 Broadcast placard	10	1
184.610 PA system	100	10
184.710 First aid kit	65	7
185.516 Lifejacket placard	10	1
185.604 Retroreflective tape	24	2
Totals	1,459	(66)

[1] Increased cost listed is for a wooden hull vessel due to the decrease in the drydock interval from 5 years to 2 years. Vessels with other hull types would not incur any cost or benefit since their required drydock interval for fresh water operations would remain 5 years.

[2] Value includes estimated monetary benefit from insurance savings and a decrease in fire or flooding damage.

TABLE OF COSTS AND MONETARY BENEFITS FOR A NEW VESSEL OF MORE THAN 65 FEET IN LENGTH CARRYING 102 PASSENGERS IN OVERNIGHT ACCOMMODATIONS ON A COASTWISE ROUTE

Cite 46 CFR and Requirement	Outfitting Cost (Benefit)	Recurring Cost (Benefit)
171.080 Damage stab. survival	$5,000	
176.600 Drydock		($170)
180.64 Category 1 EPIRB	1,450	145
180.110 Embarkation ladder	900	90
180.204 Inflat. buoyant app.	0	[1]0
181.300 60 GPM fire pump	200	20
181.400 Fixed ext. in mach.	13,440	[2](3,230)
181.400 Galley grease extr.	4,000	400
181.400 Int. fire detec/alrm.	30,000	[2](1,500)
182.200 Overspeed trip	1,000	100
182.430 Wet exhaust	(200)	(20)
182.455 Flexible hose	(30)	(3)
182.530 Bilge alarms	400	[2]20
182.610 Steering requirement	150	15
184.404 Radar	0	[1]0
184.408 Fathometer	0	[1]0
184.506 Broadcast placard	10	1
184.610 PA system	500	50
184.710 First aid kit	65	7
185.502 Passenger/crew list		908
185.514 Station bill	20	2
185.516 Lifejacket placard	10	1
185.602 Hull markings	80	8
185.604 Retroreflective tape	24	2
Totals	57,019	(2,155)

[1] No cost listed for item since it is presently installed on all applicable vessels or is required under existing § 175.05–15.

[2] Value includes estimated monetary benefit from insurance savings and a decrease in fire or flooding damage.

The small passenger vessel industry would incur a direct, average annual cost of $8.5 million as a result of this rulemaking. Although the direct cost may be considered large, the need for and benefits of the proposed regulations justify the cost.

The primary benefit of the proposed regulations is that they are expected to reduce the number of lives lost, and injuries and property damage sustained, as a result of casualties involving small passenger vessels. This primary benefit can not be readily calculated in monetary terms. Some of the requirements proposed by this rulemaking for which the full monetary benefit of the requirement can not be easily quantified include: liferafts and inflatable buoyant apparatus, EPIRBs, fixed total flooding fire extinguishing systems, fire detecting systems, and passenger and crew lists.

Based on available small passenger vessel casualty data from 1981 to 1986, the proposed requirements for inflatable liferafts and buoyant apparatus are expected to save two lives per year. The proposed requirement that passengers be required to wear lifejackets under certain conditions is also expected to save two lives per year. The valuation of human life is quite difficult and often undesirable. However, to compare the benefit of the proposed requirements for liferafts and inflatable buoyant apparatus, and the wearing of lifejackets under certain conditions, to the average annual cost of this rulemaking, the value of a human life must be estimated. Economists have estimated the value of a human life ranges from a minimum of $1 million to $11 million. If a human life is estimated to have a monetary value of at least $2.125 million, the benefit to cost ratio of the proposed requirements would be one. The average annual cost of this rulemaking would be reduced from $8.5 million to no cost due to the four lives expected to be saved per year from these lifesaving equipment requirements alone.

Fortunately, a United States small passenger vessel carrying a large number of passengers has not been involved to date in a major casualty resulting in a significant number of injuries or deaths. As available statistics indicate, the average size of small passenger vessels is increasing. As the average size increases, the risk of having a catastrophic casualty also increases.

The existing regulations do not adequately address the continual increase in the number of persons being carried on small passenger vessels today. This continual increase emphasizes the need for the proposed regulations. One casualty involving a small passenger vessel carrying a large number of passengers, which involves a large fire or results in passengers entering the water, would dramatically increase the number of lives saved by equipment and procedures required by the proposed regulations. The number of lives saved by the proposed regulations for survival craft and the donning of lifejackets alone would be much more than the estimated average, based on recent casualty data, of four lives per year.

The proposals for liferafts and inflatable buoyant apparatus are based on the recognition of the potential for a tragic accident involving a large number of passengers as well as the number of deaths which have occurred in the past. Because of the high cost of survival craft, alternatives to the proposed requirements were extensively considered. The proposed regulations for survival craft were determined to be the best balance of number of persons at risk, the threat due to hypothermia, and cost.

The proposal to require Category 1 EPIRBs on all small passenger vessels presently required to have EPIRBs, as well as on vessels on coastwise routes within 20 miles of a harbor of safe refuge, is based upon the improved signals that the new Category 1 EPIRBs transmit and recognition that many casualties occur close to shore without an adequate distress signal being transmitted. The proposed requirements for Category 1 EPIRBs would improve rescue response by reducing delays and increasing the accuracy of the signal location. The costs to search and rescue units would be decreased because such units would have to spend less time responding and also because of an expected reduction in the number of false alarms which must be tracked down. False alarms from Category 1 EPIRBs are less likely and easier to trace than from the presently required Class A EPIRBs. These benefits of the proposed requirement for Category 1 EPIRBs are difficult to quantify.

The proposal that fixed total flooding fire extinguishing systems be installed in enclosed machinery spaces on all vessels was based upon the large number of casualties involving machinery space fires and the relatively inexpensive cost of these systems for most small passenger vessels. The monetary benefit of such systems due to reduced fire damage and insurance premiums, which can be quantified, has been included in the average annual cost. Some insurance industry estimates indicate that fixed total flooding fire extinguishing systems actually "pay for themselves" in three to ten years due to reduced insurance premiums. Smoke detecting systems also result in reduced insurance premiums.

Smoke detecting systems are considered essential for ensuring early detection of a fire, which leads to more organized and effective firefighting and evacuation responses. Organized and effective responses are of particular concern for the vessels subject to the proposed requirement for smoke detecting systems, which includes vessels carrying more than 150 passengers, because of the large numbers of people at risk. The installation of these detecting systems is

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also considered necessary in order to allow reduced structural fire protection. A monetary benefit from smoke detecting systems due to reduced fire damage can not be determined. However, a rapid response to one fire detected by smoke detecting systems aboard a small passenger vessel carrying more than 150 passengers would justify the expense of such systems.

The proposed regulations for passenger and crew lists stem from requirements in the law. The need for such lists is bolstered by recommendations from NTSB and Coast Guard casualty reports. The lists will provide search and rescue personnel with the number and identity of persons missing in the event of a casualty. Often in such situations these details are difficult to determine with any degree of certainty which makes it difficult to determine when to suspend a search. The monetary benefit of such lists is difficult to estimate but such lists would reduce the time it takes for search and rescue personnel to determine how many persons are missing and result in more efficient use of resources.

A draft evaluation has been prepared and placed in the rulemaking docket. The evaluation contains information on the methodology and data sources used in determining costs and benefits, details on the costs and benefits of each change, alternatives to proposed changes, costs for sample small passenger vessels, and a profile of the small passenger fleet and its casualty history. For information concerning inspecting and copying the draft evaluation, refer to **ADDRESSES** above. Copies may also be received by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.**

Based on the draft evaluation, the proposed regulations are considered to be non-major under Executive Order 12291 and nonsignificant under the Department of Transportation regulatory polices and procedures (44 FR 11034, February 26, 1979).

Environmental Impact

This rulemaking has been thoroughly reviewed by the Coast Guard and it has been determined to be categorically excluded from further environmental documentation in accordance with section 2.B.2.c and 2.B.2.1 of Commandant Instruction (COMDTINST) M16475.1B. A categorical Exclusion Determination statement has been prepared and has been placed in the rulemaking docket.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 601 through 612), the Coast Guard must consider whether this rule is likely to have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses which are not dominant in their field and which would otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

A large percentage of small passenger vessels are owned or managed by small entities. The annual costs per passenger capacity (using the maximum number of passengers permitted to be carried as indicated on a vessel's Certificate of Inspection) ranges from $5 for a vessel of not more than 65 feet in length carrying more than 49 passengers on a river route to $70 for a vessel of more than 65 feet in length, which has overnight accommodations for more than 49 passengers, on a coastwise route. As the passenger capacity increases on each type of vessel, the cost per passenger decreases. Existing vessels have lower costs since they need not comply with some proposed regulations and are allowed delayed retrofitting of equipment required by other proposed regulations.

To evaluate the impact the proposed regulations would have on an owner of a small passenger vessel, the increase in ticket prices that an owner would have to charge for trips on four sample vessels, which are most representative of the small passenger fleet, was determined. An owner of the following sample vessels could recover the cost of the proposed regulations by increasing the passenger ticket price by the indicated amount if the vessel made 100 trips per year at 50% capacity:

Vessel	Price increase
1. Not more than 65 feet in length, carrying 57 passengers, on a river route	$0.03
2. More than 65 feet, carrying 310 passengers, on a lakes, bays and sounds, route	0.65
3. Not more than 65 feet in length carrying 23 passengers, on an oceans route	1.90

The owner of an average "very large" small passenger vessel of more than 65 feet in length having overnight accommodations for 102 passengers, on a coastwise route, could recover the costs of the proposed regulations by increasing the charge to a passenger by $1.93 if the vessel made 32 trips per year at 50% capacity. The estimated cost of a ticket for a 1 week trip on such vessels is more than $700 per week.

Small passenger vessel owners would need to increase the charge to each passenger carried on a voyage a minimal amount to recover the costs of these proposed regulations. The three cents ticket price increase for the vessel on a rivers route is considered to be insignificant. The ticket price increase of a $1.90 for the vessel on an oceans route and of $0.65 for the vessel on a lakes, bays, and sounds route is also considered to be insignificant since the existing ticket price for a trip on such a vessel may be as much as $25 for a day trip. The estimated per ticket price increases for the average vessel on an oceans route is expected to be less than 8% of the present ticket price. Ninety percent ($1.72) of the cost increase for a vessel on an oceans route is due to the proposed requirement for liferafts alone. The estimated per ticket price increase for the average vessel on a lakes, bays, and sounds route is expected to be less than 5% of the present ticket price. The average vessel on an oceans route or a lakes, bays, and sounds route usually operates at a higher usage level than the 100 trips per year at 50% capacity, which was assumed for the price increase calculations. The increase in ticket price for the average vessel on a coastwise route, which does not carry more than 49 passengers in overnight accommodations, will be less than the price increase for a similar vessel on an ocean route. The $1.93 ticket price increase for the vessel carrying 102 passengers in overnight accommodations is also considered insignificant since the price increase is estimated to be less than 1% of the average ticket price for a trip on such a vessel.

In addition to the four sample vessels, the effect of the proposed regulations on other vessel categories was also considered to determine which type of small passenger vessel the regulations would have the greatest impact on. The type of vessel for which the regulations would have the greatest cost impact are vessels on oceans or coastwise routes which are permitted to carry only a few more passengers than the maximum of six which may be carried on uninspected vessels. This group of vessels is primarily composed of sport fishing vessels, which carry passengers on chartered trips. Some of these are only operated on a part time basis. The owners of vessels operated part time would be impacted the most since such vessels make only a limited number of trips from which they can recover the cost of the proposed regulations. The exact number of sport fishing vessels operated on a part time basis is unknown but estimated to be small.

The reason that the sport fishing vessels are impacted the most by the regulations is because approximately 80 percent of the cost increase for a vessel operating on an oceans, coastwise, or Great Lakes route is due to the proposed requirement for liferafts and inflatable buoyant apparatus. The per passenger impact of the requirement for inflatable survival craft increases as the passenger capacity of a vessel decreases.

Smaller capacity survival craft, which would be installed on a sport fishing vessel, cost more on a per person basis than large capacity survival craft. To estimate the cost impact of the proposed regulations on a sport fishing vessel, which is operated only part time, a vessel was assumed to make only 40 trips per year with an average of 8 passengers per trip. Based on these assumptions, the owner of a sport fishing vessel operated on a part time basis, could recover the cost of the proposed regulations by increasing the individual passenger ticket price by $3.50 or the vessel charter price by $28 per trip. Sport fishing vessels commonly charge $350 to $400 for each trip chartered. An increase of $28 would be a 7% increase; an amount which should not have a significant impact on the owners of sport fishing vessels.

Based on the minimal amount an owner of a small passenger vessel would have to increase a passenger ticket price to recover the cost of the proposed regulations, as discussed above, the Coast Guard has determined that this proposed rulemaking will not have a significant economic impact on a substantial number of small entities.

Federalism

This proposed rulemaking has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Paperwork Reduction Act

This rulemaking contains information collection requirements in the following sections of 46 CFR: 176.105(a), 176.202, 176.204, 176.302, 176.308, 176.310, 176.500(a), 176.612, 176.700, 176.704, 176.710, 176.810(b), 176.920(c), 176.930, 176.932(b), 177.202, 177.330(b), 177.340, 177.610(e), 178.210, 178.220, 178.230, 181.610, 182.460(e), 182.610, 183.320, 184.420, 184.508, 185.202, 185.206, 185.208, 185.220, 185.230, 185.260, 185.280, 185.282, 185.304(c), 185.402, 185.502, 185.504, 185.508 185.510, 185.514, 185.515, 185.516, 185.518, 185.602, 185.604, 185.606, 185.608, 185.610, 185.612, 185.702, 185.704(c), 185.810.

The information collection requirements have been submitted to the Office of Management and Budget (OMB) for review under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) Persons desiring to comment on these regulations should submit their comments to: Office of Regulatory Policy, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, ATTN: Desk Officer, Coast Guard. Persons submitting comments to OMB are also requested to submit a copy of their comments to the Coast Guard as indicated under ADDRESSES.

List of Subjects

46 CFR Part 170

Marine safety, Reporting and recordkeeping requirements, Vessels.

46 CFR Part 173

Marine safety, Vessels.

46 CFR Part 175

Marine safety, Passenger vessels, Reporting and recordkeeping requirements.

46 CFR Part 176

Fire prevention, Marine safety, Passenger vessels, Reporting and recordkeeping requirements.

46 CFR Parts 171, 177, 178, 179, 180, 182

Marine safety, Passenger vessels.

46 CFR Part 181

Fire prevention, Marine safety, Passenger vessels.

46 CFR Part 183

Electric power, Marine safety, Passenger vessels.

46 CFR Part 184

Communications equipment, Marine safety, Navigation (water), Passenger vessels.

46 CFR Part 185

Alcohol and alcoholic beverages, Drugs, Hazardous materials, Marine safety, Navigation (water), Passenger vessels, Reporting and recordkeeping requirements.

Proposed Rules

In consideration of the foregoing, the Coast Guard proposes to amend Parts 170, 171, and 173 of Title 46, Code of Federal Regulations, Subchapter S to read as follows:

SUBCHAPTER S—SUBDIVISION AND STABILITY

PART 170—STABILITY REQUIREMENTS FOR ALL INSPECTED VESSELS

1. The authority citation for Part 170 is revised to read as follows:

Authority: 46 U.S.C. 2104, 3306, and 3703; 49 CFR 1.46.

§ 170.001 [Amended]

2. Section 170.001 is amended by removing the date of January 3, 1984 in paragraphs (a) and (b) and inserting in its place the date of [insert effective date of regulations].

3. Section 170.055 is amended by adding a sentence to paragraph (h)(1) and adding paragraph (v) to read as follows:

§ 170.055 Definitions concerning a vessel.

* * * * *

(h) * * *

(1) * * * The commanding Officer, U.S. Coast Guard Marine Safety Center, may include the length or a portion of the length of the underwater projections in the value used for the LBP for the purposes of this subchapter for a small passenger vessel which has underwater projections extending forward of the forwardmost point or aft of the aftermost point on the deepest waterline of the vessel. The length or a portion of the length of projections which contribute more than 2 percent of the underwater volume of the vessel is normally added to the actual LBP.

* * * * *

(v) "Small passenger vessel" means a vessel of less than 100 gross tons carrying more than six passengers, as defined in § 175.400 of this chapter.

§ 170.075 [Amended]

4. Section 170.075 is amended in paragraph (b), by removing the citation "§ 171.030(b)(2)" and adding, in its place, "§ 176.320" and by removing the citation "§ 171.043" and adding, in its place, "with § 179.220."

5. Section 170.090 is amended by adding paragraphs (c) and (d) to read as follows:

§ 170.090 Calculations.

* * * * *

(c) For calculations required by this subchapter for a small passenger vessel, the assumed average weight of each person included in the loading conditions must be at least 160 pounds (72.5 kilograms), located with a vertical

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center of gravity of 3 feet (0.9 meter) above the deck.

(d) Unless otherwise indicated in the vessel's stability booklet, stability letter, or stability details on its Certificate of Inspection, for calculations required by this subchapter for a small passenger vessel, passengers must be assumed to crowd all decks above the main deck to a density of 3 square feet per person.

§ 170.105 [Amended]

6. Section 170.105 is amended by removing paragraph (b)(1) and by redesignating paragraphs (b)(2) through (b)(5) as paragraphs (b)(1) through (b)(4), respectively.

§ 170.160 [Amended]

7. Section 170.160 is amended by removing paragraph (b)(1) and by redesignating paragraphs (b)(2) through (b)(4) as paragraphs (b)(1) through (b)(3), respectively.

8. Section 170.170 is amended by revising the definition of certain functions in the GM equation in paragraph (a) to read as follows:

§ 170.170 Calculations required.

(a) * * *

$P = .006 + (L/14.200)^2$ tons/ft^2 . . . for ocean service, Great Lakes winter service except for a small passenger vessel operating within 20 miles of a harbor of safe refuge on a route the OCMI determines is partially protected, or service on exposed waters.

$P = .055 + (L/1309)^2$ metric tons/ft^2 . . . for ocean service, Great Lakes winter service except for a small passenger vessel operating within 20 miles of a harbor of safe refuge on a route the OCMI determines is partially protected, or service on exposed waters.

* * * * *

A = projected lateral area in square feet (square meters) of the portion of the vessel and deck cargo above the waterline. For a small passenger vessel the area includes lateral areas which may be enclosed by items such as canvas or glass.

* * * * *

T = the lesser of either 14 degrees heel or, the angle of heel in degrees at which one-half the freeboard to the freeboard deck is immersed. For a sailing vessel that is a small passenger vessel, T = the lesser of either 14 degrees or the angle of heel in degrees to the deck edge.

* * * * *

9. Section 170.173 is amended by revising paragraphs (a)(1) and (a)(2), adding paragraphs (a)(3) and (a)(4), redesignating paragraph (d) as paragraph (f), and adding new paragraphs (d) and (e) to read as follows:

§ 170.173 Criterion for vessels of unusual proportion and form.

(a) * * *

(1) Paragraph (b) or (c) of this section if the maximum righting arm occurs at an angle of heel less than or equal to 30 degrees;

(2) Paragraph (b) of this section if the maximum righting arm occurs at an angle of heel greater than 30 degrees;

(3) Paragraph (b), (c), or (d) of this section, if it is a small passenger vessel operating on exposed or partially protected waters; or

(4) Paragraph (b), (c), (d) or (e) of this section, if it is a small passenger vessel operating on protected waters.

* * * * *

(d) each vessel must have—

(1) An area under each righting arm curve of at least 15 foot-degrees up to the lesser of the following angles:

(i) The angle of maximum righting arm;

(ii) The angle of downflooding; or

(iii) 40 degrees;

(2) An angle of downflooding of at least 25 degrees.

(3) An angle of vanishing stability of at least 40 degrees.

(e) Each vessel must have—

(1) An area under each righting arm curve of at least 10 foot-degrees up to the least of the following angles:

(i) The angle of maximum righting arm;

(ii) The angle of downflooding; or

(iii) 40 degrees.

(2) An angle of downflooding of at least 20 degrees.

(3) An angle of vanishing stability of at least 30 degrees.

* * * * *

PART 171—SPECIAL RULES PERTAINING TO VESSELS CARRYING PASSENGERS

1. The authority citation for Part 171 is revised to read as follows:

Authority: 46 U.S.C. 2104, 3306, and 3703; 49 CFR 1.46.

2. The table of contents for Part 171 is amended by:

a. Removing §§ 171.02, 171.030, 171.035, 171.040, and 171.043 under Subpart B;

b. Removing § 171.114 under Subpart E;

c. Removing § 171.119 under Subpart F;

d. Removing § 171.124 under Subpart G;

e. Removing §§ 171.140, 171.145, 171.150, and 171.155 under Subpart H; and

f. Revising the heading for Subpart B and adding two new sections to Subpart C to read as follows:

* * * * *

Subpart B—Reserved

Subpart C—Large Vessels

Sec.

* * * * *

171.076 Bottom damage requirements in lieu of Type II subdivision.

171.077 Subdivision requirements of multihull small passenger vessels.

* * * * *

3. Section 171.010 is amended by redesignating paragraphs (m) and (n) as paragraphs (n) and (o), respectively, and by adding paragraph (m) to read as follows:

§ 171.010 Definitions.

* * * * *

(m) "Small passenger vessel" means a vessel of less than 100 gross tons carrying more than six passengers, as defined in § 175.400 of this chapter.

* * * * *

Subpart B—[Reserved]

4. Subpart B consisting of §§ 171.020 through 171.043, is removed and reserved.

5. Section 171.045 is amended by adding paragraph (f), to read as follows:

§ 171.045 Specific applicability.

* * * * *

(f) A small passenger vessel which is a sailing or an auxiliary sailing vessel.

6. Section 171.050 is amended by designating the existing text as paragraph (a) and adding paragraphs (b) and (c) to read as follows:

§ 171.050 Intact stability requirements for a mechanically propelled or nonself-propelled vessel.

* * * * *

(b) A small passenger vessel, on which passengers are not prevented from crowding to the outboard rails by the arrangement of the vessel, must be shown by design calculations to have a metacentric height (GM) in each condition of loading and operation that is not less than the value given by the following equation, using the distribution of passengers determined by the equations in paragraph (c) of this section:

$GM = ((R)(N)) / ((K)(W)(\tan of T))$

Where—

N = total number of passengers;

W = displacement of vessel in long tons;

T = 14 degrees or the angle of heel at which the deck edge is first submerged, whichever is least;

R = distance in feet from the centerline of the vessel to the outboard rail minus 3.28 feet (1 meter); and

K = 14 passengers/long ton (13.8 passengers/metric ton), based on 160 pounds/person.

(c) In determining the GM of a small passenger vessel, to which paragraph (b) of this section applies, the distribution of passengers used in the loading condition on each deck of the vessel must be determined by the following equations:

$N_1 = A_1/D$

$N_2 = (2)A_2/D$

$N_3 = (3)A_3/D$

•

•

•

$N_i = (i)A_i/D$

Where—

i = the number of decks on the vessel to which passengers have access;

$A_1, A_2, A_3 . . ., A_i$ = Area of lowest, 2nd, 3rd, . . ., ith deck; $N_1, N_2, N_3, . . ., N_i$ = No. of passengers on lowest, 2nd, 3rd, . . ., ith deck; and

$D = (A_1 + (2)A_2 + (3)A_3 + . . . + (i)A_i)/N$.

7. Section 171.055 is amended by:

a. Adding graphs 171.055(f), 171.055(g), 171.055(h), 171.055(i), and 171.055(j); and

b. Revising the coefficients in paragraphs (d)(1), (d)(2), and (g)(1) and by revising paragraph (e)(4)(ii) to read as follows:

§ 171.055 Intact stability requirements for a monohull sailing vessel or a monohull auxiliary sailing vessel.

* * * * *

(d) * * *

(1) * * *

Where—

X = 1.0 long tons/sq.ft. (10.9 metric tons/sq. meter);

Y = 1.1 long tons/sq.ft. (12.0 metric tons/sq. meter) except, for a small passenger vessel, Y = Y value determined from graph 171.055(f) multiplied by the multiplier determined from graph 171.055(j); and Z = 1.25 long tons/sq.ft. (13.7 metric tons/sq. meter) except, for a small passenger vessel, Z = Z value determined from graph 171.055(g) multiplied by the multiplier determined from graph 171.055(j).

(2) * * *

Where—

X = 1.5 long tons/sq.ft. (16.4 metric tons/sq. meter);

Y = 1.7 long tons/sq.ft. (18.6 metric tons/sq. meter) except, for a small passenger vessel, Y = Y value determined from graph 171.055(h) multiplied by the multiplier determined from graph 171.055(j); and Z = 1.9 long tons/sq.ft. (20.8 metric tons/sq. meter) except, for a small passenger vessel, Z = Z value determined from graph 171.055(i) multiplied by the multiplier determined from graph 171.055(j).

(e) * * *

(4) * * *

(ii) On a small passenger vessel, the area under the assumed heeling arm curve between 0 degrees and the angle of downflooding must be equal to the area under the righting arm curve between the same limits.

* * * * *

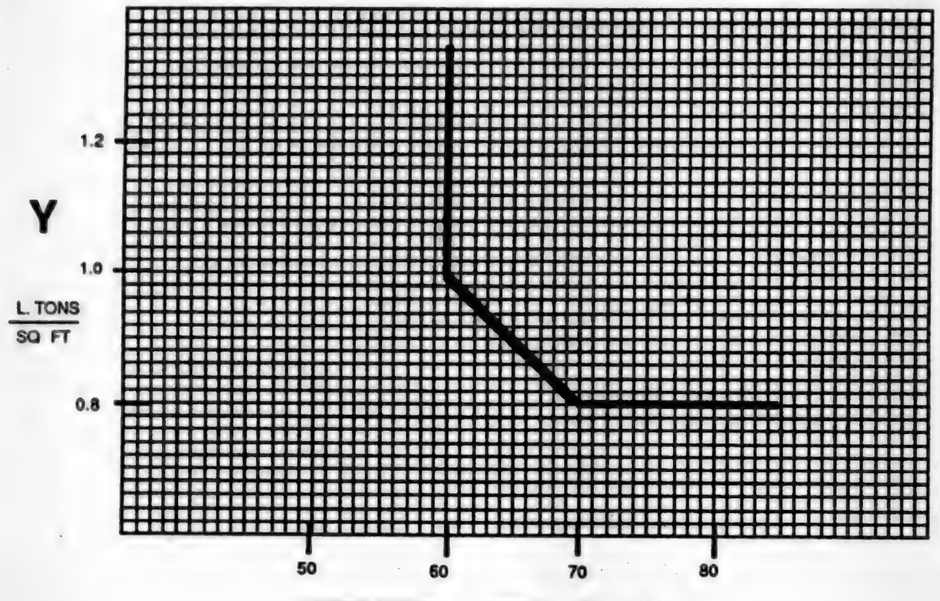
(g) * * *

(1) The downflooding angle when computing HZB; or

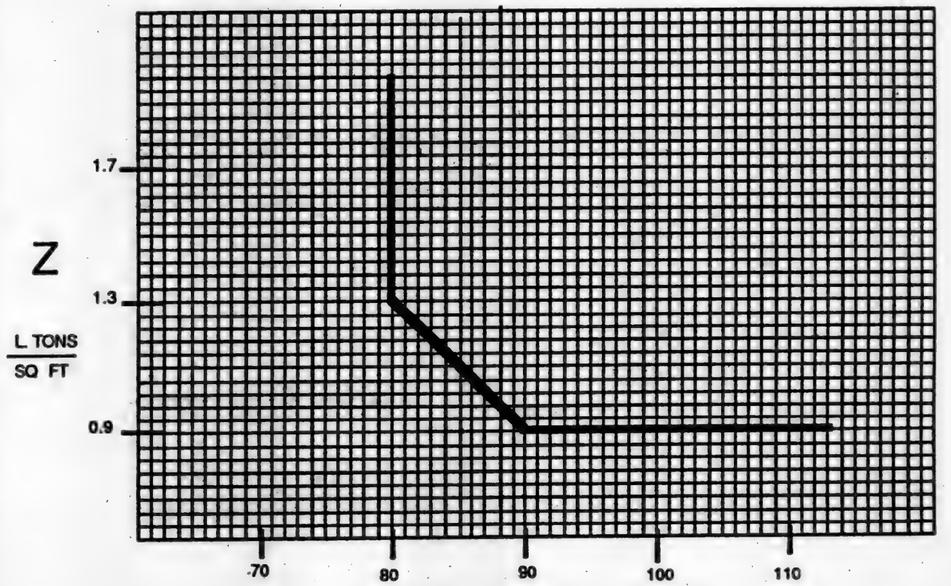
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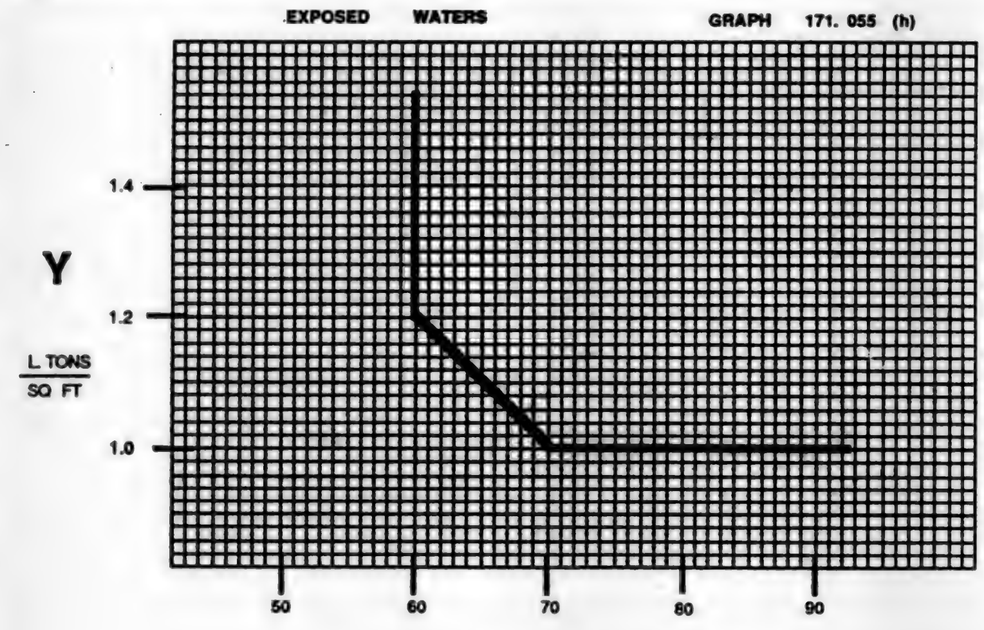
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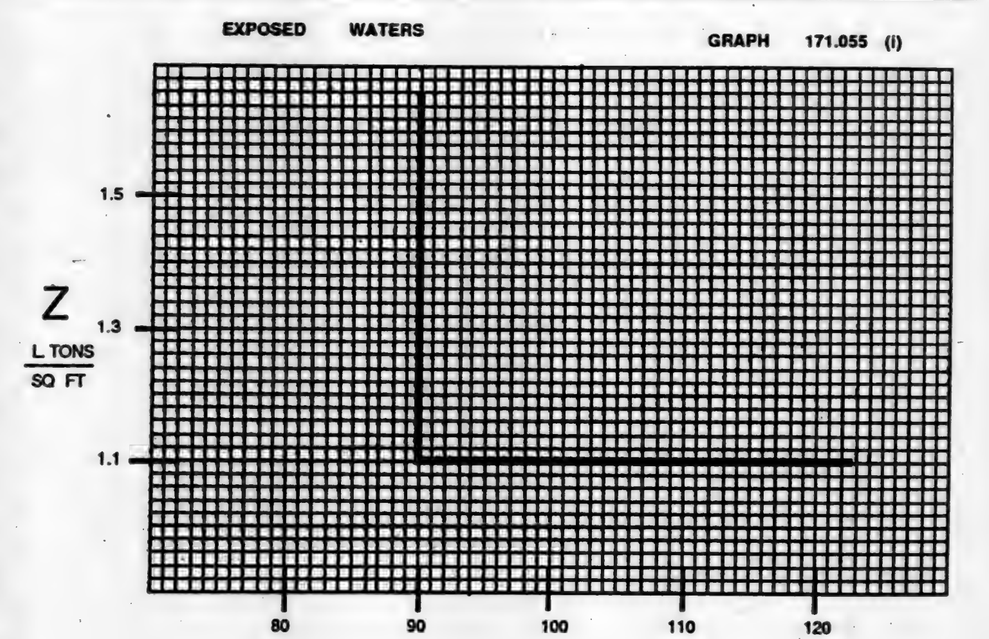
PROTECTED OR PARTIALLY PROTECTED GRAPH 171.055 (f)



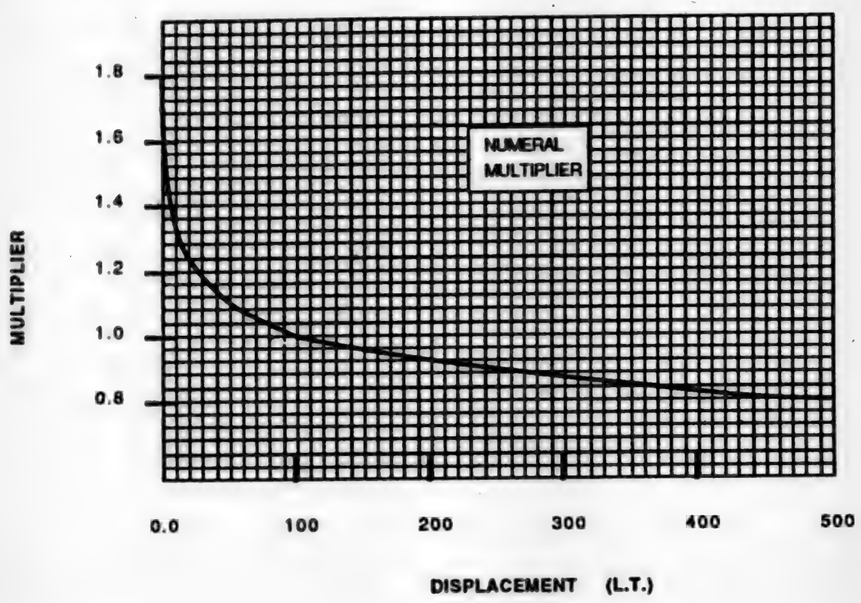
PROTECTED OR PARTIALLY PROTECTED GRAPH 171.055 (g)




EXPOSED WATERS
GRAPH 171. 055 (h)
Y
L TONS
SQ FT
1.4
1.2
1.0
50
60
70
80
90
DOWNFLOODING ANGLE (degrees)


EXPOSED WATERS
GRAPH 171.055 (i)
Z
L TONS
SQ FT
1.5
1.3
1.1
80
90
100
110
120
RANGE OF STABILITY (degrees)

GRAPH 171.055 (j)



BILLING CODE 4910-14-C

8. Section 171.070 is amended by revising paragraphs (e)(1) introductory text and (e)(2) introductory text to read as follows:

§ 171.070 Subdivision requirements—Type II.

* * * * *

(e) * * *

(1) If the LBP of the vessel is 143 feet (43.5 meters) or more, or the vessel makes international voyages with more than 12 passengers, each main transverse watertight bulkhead must be at least 10 feet (3 meters) plus 3 percent of the vessel's LBP from—

* * * * *

(2) If the LBP of the vessel is less than 143 feet (43.5 meters), and the vessel does not make international voyages with more than 12 passengers, each main transverse watertight bulkhead must be not less than 10 percent of the vessel's LBP or 6 feet (1.8 meters), whichever is greater, from—

* * * * *

9. Section 171.076 is added to read as follows:

§ 171.076 Bottom damage requirements in lieu of Type II subdivision.

(a) *Alternative.* In lieu of meeting the Type II subdivision requirements of §§ 171.070 through 171.073 of this part, a small passenger vessel fitted with longitudinal bulkheads, or a double bottom which is at least 90 inches (76.2 cm) above the bottom plate, may meet the standard of flooding specified in Table 171.070(a). Only those spaces subject to bottom damage need be considered subject to flooding.

(b) *Character of damage.* To meet the one compartment standard in Table 171.070(a), design calculations must show that the vessel can survive damage at any location between main transverse bulkheads, including damage to a longitudinal bulkhead. To meet the two compartment standard in Table 171.070(a), design calculations must show that a vessel can survive bottom damage at any location between alternate main transverse watertight bulkheads, including the intersection of a main transverse bulkhead and a longitudinal bulkhead.

(c) *Extent of damage.* The extent of damage which a vessel must be able to survive, as required by paragraph (b) of this section, must include the most disabling penetration up to and including a penetration having the following dimensions:

(1) Longitudinal extent: 0.1 LBP but not less than 6 feet (1.8 meters) for a vessel less than 143 feet (43.5 meters); 10 feet (3.05 meters) + 0.03 LBP for a vessel greater than or equal to 143 feet (43.5 meters) or on an international voyage carrying more than 12 passengers.

(2) Transverse extent: B/3.

(3) Vertical extent: 30 inches (76.2 cm) or B/15, whichever is greater, measured from the bottom shell plate.

(d) *Permeability.* When doing calculations required by paragraph (b) of this section, the permeability of each space must be taken from Table 171.080(c).

(e) *Survival criteria.* A vessel is presumed to survive bottom damage if it meets the survival criteria in § 171.080(d) of this part.

10. Section 171.077 is added to read as follows:

§ 171.077 Subdivision requirements for multihull small passenger vessels.

(a) A multihull small passenger vessel must comply with the requirements of this section.

(b) For a vessel required to meet a one compartment standard of subdivision, the compartments forward of the collision bulkhead must be considered flooded both symmetrically and asymmetrically. Aft of the collision bulkhead, the transverse extent of side damage must be 20% of the total buoyant beam at or below the deepest waterline, including any buoyant cross structure.

(c) For a vessel required to meet a two compartment standard of subdivision at the bow, the two forward compartments in both hulls must be considered flooded both symmetrically and asymmetrically. Aft of that, the transverse extent of side damage must be 20% of the total buoyant beam at or below the deepest waterline, including any buoyant cross structure, and the longitudinal extent of side damage must be in accordance with the Standard of Flooding in Table 171.070(a).

(d) The bottom damage standard of § 171.076 is applicable to a multihull small passenger vessel except that, for the purposes of this section, B is the total buoyant beam at or below the deepest waterline.

11. Section 171.080 is amended by adding a new paragraph (d)(5) to read as follows:

§ 171.080 Damage stability standards for vessels with Type I or Type II subdivision.

* * * * *

(d) * * *

(5) For a small passenger vessel:

(i) The range of positive stability beyond equilibrium in the damaged condition must be at least 15 degrees;

(ii) The maximum positive righting arm within 15 degrees of equilibrium must be at least 4 inches (0.1 meter); and

(iii) The positive righting energy within 15 degrees of equilibrium must be at least 2.62 ft-deg (0.015 m-rad).

§ 171.110 [Amended]

12. In § 171.110, paragraph (b) is removed.

§ 171.114 [Removed]

13. Section 171.114 is removed.

§ 171.115 [Amended]

14. In § 171.115, paragraph (b) is removed.

§ 171.119 [Removed]

15. Section 171.119 is removed.

16. Section 171.120 is revised to read as follows:

§ 171.120 Specific applicability.

A vessel of at least 100 gross tons must comply with § 171.122 of this subpart.

§ 171.124 [Removed]

17. Section 171.124 is removed.

§ 171.130 [Amended]

18. In § 171.130, paragraph (b) is removed.

§§ 171.140, 171.145, 171.150, and 171.155 [Removed]

19. Sections 171.140, 171.145, 171.150, and 171.155 are removed.

PART 173—SPECIAL RULES PERTAINING TO VESSEL USE

1. The authority citation for Part 173 is revised to read as follows:

Authority: 46 U.S.C. 2104, 3306, and 3703; 49 CFR 1.46.

2. The cited sections or paragraphs of Part 173, listed in Column 1 of this paragraph, are amended by removing the existing reference, listed in Column 2, in the cited section or paragraph and adding in its place the new reference listed in Column 3.

Column 1 Cite	Column 2 Existing Reference	Column 3 New Reference
173.054(a)(1)	171.040(a)(1)	179.210(a) of this chapter.
173.054(b)(1)	171.040(a)(1)	179.210(a) of this chapter.

Column 1 Cite	Column 2 Existing Reference	Column 3 New Reference
173.054(b)(2)	171.043	179.220 of this chapter.
173.063(a)	171.035	170.170, 171.050, and 171.055.
173.063(d)	171.035 (d) through (h)	179.300 and 178.310 of this chapter.

15. The cited sections or paragraphs of Part 173, listed in Column 1 of this paragraph, are amended by adding the corresponding phrase, listed in Column 2, to the end of the cited section or paragraph.

Column 1 Cite	Column 2 New Phrase
173.059	"or §§ 179.320, 179.330, and 179.340 of this chapter."
173.060(a)	"or § 179.350 of this chapter."
173.061	"or § 179.360 of this chapter."
173.062	"or Subpart D of Part 178 of this chapter."

The Coast Guard also proposes to revise Title 46, Code of Federal Regulations, Subchapter T, consisting of Parts 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, and 185 to read as follows:

SUBCHAPTER T—SMALL PASSENGER VESSELS (UNDER 100 GROSS TONS)

PART 175—GENERAL PROVISIONS

Sec.
175.100 Purpose.
175.110 General applicability.
175.112 Specific applicability for individual parts.
175.120 Vessels on an international voyage.
175.122 Load lines.
175.200 Gross tonnage as a criterion for requirements.
175.400 Definitions of terms used in this subchapter.
175.500 Conduct of an inspection for certification.
175.510 Notice of deficiencies and requirements.
175.530 Alternative standards.
175.540 Equivalents.
175.550 Special consideration.
175.560 Appeals.
175.600 Incorporation by reference.
175.800 Approved equipment and material.
175.900 OMB control numbers.

Authority: 46 U.S.C. 2104, 3306, 5115, 6101; 49 CFR 1.46.

§ 175.100 Purpose.

The purpose of this subchapter is to implement applicable sections of Subtitle II of Title 46, United States Code, which require the inspection and certification of small passenger vessels.

§ 175.110 General applicability.

(a) Except as provided in paragraph (b) of this section, this subchapter applies to each vessel of less than 100 gross tons carrying more than six passengers.

(b) This subchapter does not apply to:

(1) A vessel operating exclusively on inland waters which are not navigable waters of the United States;

(2) A vessel which is laid up, dismantled, or out of commission;

(3) An oceanographic research vessel;

(4) A boat forming part of a vessel's lifesaving equipment and which is not used for carrying passengers except in emergencies or during emergency drills;

(5) A vessel of a foreign country which is a party to the "International Convention for the Safety of Life at Sea" to which the United States Government is currently a party and which has on board a current valid Passenger Ship Safety Certificate; or

(6) A vessel of a foreign country, whose government has inspection laws approximating those of the United States and which by its laws accords similar privileges to vessels of the United States, which has on board a current valid certificate of inspection, permitting the carrying of passengers, issued by its government.

§ 175.112 Specific applicability for individual parts.

At the beginning of certain parts of this subchapter, a more specific application is given for all or particular portions of the part. This application sets forth the type, size, service, or age of a vessel to which certain portions of the part apply or particular dates by which an existing vessel must comply with certain portions of the part.

§ 175.120 Vessels on an international voyage.

A mechanically propelled vessel, except a dynamically supported craft, which carries more than 12 passengers on an international voyage must comply with the applicable requirements of the current "International Convention for Safety of Life at Sea," to which the United States is party, as well as this subchapter.

§ 175.122 Load lines.

A vessel of 79 feet in length or over, the keel of which was laid or which was at a similar stage of construction on or after July 21, 1968, and which is on a foreign voyage, is subject to load line assignment, certification, and marking under Subchapter E (Load Lines) of this chapter.

§ 175.200 Gross tonnage as criterion for requirements.

(a) The regulations in this subchapter take into account the vessel's length, passenger capacity, construction, equipment, intended service, and operating area. The criterion for application of this subchapter is the gross tonnage of the vessel. When the Commandant determines that the gross tonnage of a particular vessel, which is attained by exemptions, reductions, or other devices in the basic gross tonnage formulation, will circumvent or be incompatible with the application of specific regulations for a vessel of such physical size, the Commandant shall prescribe the regulations to be made applicable to the vessel.

(b) When the Commandant determines that the gross tonnage is not a valid criterion for the use of certain regulations based on the relative size of the vessel, the owner will be informed of the determination and of the regulations applicable to the vessel. The vessel must be brought into compliance with all additional requirements before a Certificate of Inspection is issued.

§ 175.400 Definitions of terms used in this subchapter.

(a) Terms used in this subchapter are defined in paragraph (b) of this section except that terms relating to dynamically supported craft are defined in paragraph (c) of this section. The number in brackets after certain terms describing areas on a vessel refers to the applicable column and row number where that area is listed in Tables 177.430(c) and (d) of Part 177 of this subchapter.

(b) General terms.

"Accommodation space" means a space used as a:

(1) Public space;
(2) Hall;
(3) Dining room and messroom;
(4) Lounge or cafe;
(5) Public sales room;
(6) Overnight accommodation space;
(7) Barber shop or beauty parlor;
(8) Office or conference room;
(9) Washroom or toilet space;
(10) Medical treatment room or dispensary; or
(11) Game and hobby room.

"Balcony" means a partial deck within an accommodation space open to the deck below.

"Beam" or "B" means the maximum width of a vessel from:

(1) Outside of planking to outside of planking on wooden vessels; and

(2) Outside of frame to outside of frame on all other vessels.

"Bulbous bow" means a design of bow in which the forward underwater frames ahead of the forward perpendicular are swelled out at the forefoot into a bulbous formation.

"Bulkhead deck" means the uppermost deck to which watertight bulkheads and the watertight shell extend.

"Cable" means single or multiple insulated conductors with an outer protective jacket.

"Cargo space" [9] means a:

(1) Cargo hold;
(2) Refrigerated cargo space;
(3) Cargo oil tank;
(4) Product or chemical tank; or
(5) A trunk leading to or from a space listed above.

"Char length" means the numeric value in inches assigned to a material when tested in accordance with NFPA 260B by an independent laboratory.

"Coast Guard District Commander" or "District Commander" means an officer of the Coast Guard designated as such by the Commandant to command all Coast Guard activities within a district.

"Coastwise" means a route which is not more than 20 nautical miles offshore on any of the following waters:

(1) Any ocean;
(2) The Gulf of Mexico;
(3) The Caribbean Sea;
(4) The Gulf of Alaska; or,
(5) Such other similar waters as may be designated by a Coast Guard District Commander.

"Continuous B-Class ceiling" means an approved structural ceiling composed of B-Class panels that terminate only at an approved A-Class or B-Class bulkhead.

"Control station" [1] means a space containing:

(1) An emergency source of power;
(2) Navigating and radio equipment and which is normally manned;
(3) Centralized fire control or detection equipment, such as fixed extinguishing system controls; or
(4) Machinery controls separated from a machinery space.

"Cockpit vessel" means a vessel with an exposed recess in the weather deck extending not more than one-half of the length of the vessel measured over the weather deck.

"Commandant" means the Commandant of the Coast Guard or an authorized representative of the Commandant.

"Corrosion-resistant material" or "corrosion-resistant" means made of one of the following materials:

(1) Silver;
(2) Copper;
(3) Brass;
(4) Bronze;
(5) Aluminum alloys with a copper content of no more than 0.4 percent;
(6) Copper-nickel;
(7) Plastics; or
(8) A material, which when tested in accordance with ASTM B–117 for 200 hours, does not show pitting, cracking, or other deterioration.

"Crew accommodation space" means an accommodation space designated for the use of crew members and which passengers are normally not allowed to occupy.

"Critical radiant flux" means the numeric value assigned to a material when tested in accordance with ASTM E–648 by an independent laboratory.

"Custom engineered" means, when referring to a fixed gas fire extinguishing system, a system that is designed for a specific space requiring individual calculations for the extinguishing agent volume, flow rate, piping, etc., for the space.

"Distribution panel" means an electrical panel which receives energy from the switchboard and distributes the energy to energy consuming devices or other panels.

"Draft" means the vertical distance from the molded baseline of a vessel amidships to the waterline.

"Dripproof" means enclosed equipment so constructed or protected that falling drops of liquid or solid particles striking the enclosure at any angle from 0 to 15 degrees downward from the vertical do not interfere with the operation of the equipment. A National Electrical Manufacturers Association type 1 enclosure with a dripshield is considered to be dripproof.

"Embarkation station" means the place on the vessel from which a survival craft is boarded.

"Existing vessel" means a vessel which is not a new vessel.

"Exposed waters" is a term used in connection with stability criteria and means:

(1) Waters, except the Great Lakes, more than 20 nautical miles from a harbor of safe refuge and other waters which the Officer in Charge, Marine Inspection, determines to present special hazards due to weather or other circumstances;

(2) Those portions of the Great Lakes more than 20 nautical miles from a harbor of safe refuge from October 1 of one year through April 15 of the next year (winter season); and

(3) Those waters less than 20 nautical miles from a harbor of safe refuge that the OCMI determines are not partially protected.

"Ferry" means a vessel that:

(1) Operates in other than ocean or coastwise service;

(2) Operates on a short run on a frequent schedule between two points over the most direct water route; and

(3) Offers a public service of a type normally attributed to a bridge or tunnel.

"Fiber reinforced plastic" means plastics reinforced with fibers or strands of some other material.

"Fire control boundary" means a deck or bulkhead meeting the requirements for A-Class, B-Class, or C-Class construction in accordance with § 177.430 of this chapter.

"Fire load" means a measure in pounds per square foot equaling the weight of all combustible material in a compartment divided by the floor area of that compartment.

"Flame spread" means the numeric value assigned to a material when tested in accordance with ASTM E–84 or UL 723 by an independent laboratory.

"Flash point" means the temperature at which a liquid gives off a flammable vapor when using the Pensky-Martens Closed Cup Tester method in accordance with ASTM D–93.

"Float-free" launching or arrangement means that method of launching a survival craft whereby the survival craft is automatically released from a sinking vessel and is ready for use.

"Flush deck vessel" means a vessel with a continuous weather deck located at the uppermost sheer line of the hull.

"Freeing port" means any direct opening through the vessel's bulwark or hull to drain water overboard.

"Galley" means a space containing appliances with cooking surfaces which may exceed 250° F, such as ovens, griddles, and deep fat fryers.

"Great Lakes" means a route on the waters of any of the Great Lakes, except that for the purposes of Parts 178 and 179 of this subchapter, "Great Lakes" means both the waters of the Great Lakes and of the St. Lawrence River as far east as a straight line drawn from Cap de Rosiers to West Point, Anticosti Island, and west of a line along the 63rd meridian from Anticosti Island to the north shore of the St. Lawrence River.

"Gross tonnage" and "gross tons" is an indicator of a vessel's approximate volume as determined in accordance with Part 69 of this chapter (Measurement of Vessels) and recorded on the vessel's Certificate of Admeasurement.

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"Hardwood" means any wood with a specific gravity, ovendry volume, of not less than 0.80.

"High risk accommodation space" [4] means an accommodation space with a fire load of more than 3.0.

"High risk service space" [6] means a space used as a:

(1) Motion picture projection room;

(2) Galley;

(3) Large laundry or drying room;

(4) Garbage or trash disposal storage area;

(5) Paint or lamp locker;

(6) Cleaning gear locker or small storeroom in an accommodation area; or

(7) Mail or baggage room;

"Independent laboratory" means a laboratory accepted under § 159.010 of this chapter.

"Inflatable" survival craft or lifejacket means one which depends upon non-rigid, gas filled chambers for buoyancy, and which is normally kept uninflated until ready for use.

"Interior finish" has the same meaning as used in § 164.012 of this chapter.

"International voyage" means a voyage:

(1) From a country to which the present International Convention for Safety of Life at Sea (SOLAS Convention) applies to a port outside such country or conversely;

(2) A voyage between the continental United States and Hawaii or Alaska; and

(3) A voyage between Hawaii and Alaska.

A country, as used in this definition, includes every territory for the international relations of which a contracting government to the convention is responsible or for which the United Nations are the administering authority. The term territory includes the Commonwealth of Puerto Rico, all possessions of the United States, and all lands held by the United States under a protectorate or mandate. For the purposes of this subchapter, vessels are not considered as being on an "international voyage" when solely navigating the Great Lakes and the St. Lawrence River as far east as a straight line drawn from Cap de Rosiers to West Point, Anticosti Island and, on the north side of Anticosti Island, the 63rd meridian.

"Lakes, bays, and sounds" means a route on any of the following waters:

(1) A lake other than the Great Lakes;

(2) A bay;

(3) A sound; or

(4) Such other similar waters as may be designated by a Coast Guard District Commander.

"Launching appliance" means a device for transferring a survival craft or rescue boat from its stowed position safely to the water. For a launching appliance using a davit, the term includes the davit, winch and falls.

"Length" means:

(1) The straight line horizontal measurement from the forwardmost part to the aftermost part of a vessel, or of a specifically designated deck or area of a vessel, measured parallel to the centerline and from end to end over the deck excluding sheer; or

(2) For the purposes of Part 179 of this subchapter, the "length" of a vessel with a bulbous bow means the larger of the length as defined in the first paragraph of this definition or the straight line horizontal measurement from the forwardmost tip of the bulbous bow to the aftermost part of the vessel measured parallel to the centerline.

Bow sprits, bumpkins, rudders, outboard motor brackets, handles, and other similar fittings, attachments, and extensions are not included in the "length" of a vessel.

"Length between perpendiculars" or "(LBP)" means the horizontal distance measured between perpendiculars taken at the forwardmost and aftermost points on the waterline corresponding to the deepest operating draft.

"Lining" means a bulkhead panel.

"Low risk accommodation space" [5] means an accommodation space with a fire load of not more than 3.0.

"Low risk service space" [7] means a space used as a:

(1) Small pantry with only a microwave or other low heat appliance;

(2) Main pantry or storeroom including connecting alleyways and stairs;

(3) Small laundry or drying room containing only a tub, washing machine, and/or household type electic dryer; or

(4) Workshop which is not part of a machinery space;

"Machinery space" [8] means a space including a trunk, alleyway, stairway, or duct to such a space, that contains:

(1) Propulsion machinery of any type;

(2) Steam or internal combustion machinery;

(3) Oil transfer equipment;

(4) Electrical motors of more than 10 hp;

(5) Refrigeration equipment; or

(6) One or more oil-fired boilers or heaters.

"Main horizontal zone" means a vehicle space which is separated from the remainder of the vessel by horizontal fire control boundaries required by the structural fire protection requirements of this subchapter.

"Main transverse watertight bulkhead" means a transverse bulkhead that must be maintained watertight in order for the vessel to meet the damage stability and subdivision requirements of this subchapter.

"Main vertical zone" means that section of a vessel into which the hull, superstructure, and deckhouse are required to be divided by vertical fire control boundaries required by the structural fire protection requirements of this subchapter.

"Major conversion" means a conversion of a vessel that, as determined by the Commandant:

(1) Alters the dimensions of the vessel including but not limited to gross tonnage, length, breadth, or height;

(2) Substantially increases the passenger carrying capacity of the vessel; or

(3) Adds or modifies overnight accommodation spaces for passengers so that the total number of passengers that can be accommodated in such spaces changes from not more than 49 to more than 49.

"Marine inspector" or "inspector" means any person from the civilian or military branch of the Coast Guard assigned by an Officer in Charge, Marine Inspection, or the Commandant to perform duties with respect to the inspection, enforcement, and administration of vessel safety and navigation laws and regulations.

"Master" means the individual having command of the vessel and who is the holder of a valid license which authorizes the individual to serve as master of a small passenger vessel.

"Muster station" means the place on a vessel where crew and passengers assemble in an emergency including during fires or when preparing to board survival craft.

"New vessel" means a vessel:

(1) The initial construction of which began on or after [insert effective date of regulations];

(2) Which was issued an initial Certificate of Inspection on or after [insert six months after effective date of regulations];

(3) Which underwent a major conversion which was initiated on or after [insert effective date of regulations];

(4) Which underwent a major conversion which was completed and for which an amended Certificate of Inspection was issued on or after [insert six months after effective date of regulations];

(5) Which had its authorized route on its Certificate of Inspection, increased by the cognizant OCMI from a route of lesser severity to a route of greater severity, on or after [insert effective date of regulations]; or

(6) Which, on or after [insert effective date of regulations], had the maximum number of passengers it is permitted to carry increased, on its Certificate of Inspection, from a smaller number of passengers to:

(i) More than 49 passengers;

(ii) More than 150 passengers;

(iii) More than 400 passengers;

(iv) More than 600 passengers;

(v) More than 800 passengers; or

(vi) More than 1,000 passengers.

"Noncombustible material" means any material approved under § 164.009 of this chapter.

"Nonself-propelled vessel" means a vessel which does not have installed means of propulsion including propulsive machinery, masts, spars, or sails.

"Oceans" means a route which is more than 20 nautical miles offshore on any of the following waters:

(1) Any ocean;

(2) The Caribbean Sea;

(3) The Gulf of Mexico; or

(4) Such other similar waters as may be designated by a Coast Guard District Commander.

"Officer In Charge, Marine Inspection," or "OCMI" means an officer of the Coast Guard designated as such by the Commandant and who, under the direction of the Coast Guard District Commander, is in charge of a marine inspection zone, described in Part 1 of this chapter, for the performance of duties with respect to the inspections, enforcement, and administration of vessel safety and navigation laws and regulations.

"Open boat" means a vessel not protected from entry of water by means of a complete weathertight deck, or by a combination of a partial weathertight deck and superstructure which is structurally suitable for the waters upon which the vessel operates.

"Open deck" [10] means a deck that is permanently open to the weather on one or more sides and, if covered, any spot on the overhead is less than 15 feet from the nearest opening to the weather.

"Operating station" means the principal steering station on the vessel from which the licensed individual on duty normally navigates the vessel.

"Overnight accommodations" or "overnight accommodation space" means an accommodation space for use by passengers or by crew members, which has one or more berths, including beds or bunks, for passengers or crew members to rest for extended periods. Staterooms, cabins, and berthing areas are normally overnight accommodation spaces. Overnight accommodations do not include spaces which contain only seats, including reclining seats, even if passengers remain in the seats overnight provided the seats are not intended to be used for long periods of rest.

"Partially protected waters" is a term used in connection with stability criteria and means:

(1) Waters not more than 20 nautical miles from a harbor of safe refuge, unless determined by the OCMI to be exposed waters;

(2) Those portions of rivers, estuaries, harbors, lakes, etc., which the OCMI determines not to be protected waters; and

(3) Waters of the Great Lakes from April 16 through September 30 of the same year (summer season).

"Passenger" means an individual carried on a vessel except:

(1) The owner or representative of the owner;

(2) The master or a crewmember engaged in the business of the vessel who has not contributed consideration for carriage and who is paid for services;

(3) An employee of the owner of the vessel engaged in the business of the owner, except when the vessel is operating under a demise charter;

(4) An employee of the demise charterer of the vessel engaged in the business of the demise charterer;

(5) A guest on board a vessel being operated only for pleasure who has not contributed consideration for carriage on board; or

(6) An individual on board a towing vessel of at least 50 gross tons who has not contributed consideration for carriage on board.

"Passenger accommodation space" means an accommodation space designated for the use of passengers.

"Pilothouse control" means that controls to start and stop the engines and control the direction and speed of the propeller of the vessel are located at the operating station.

"Protected waters" is a term used in connection with stability criteria and means sheltered waters presenting no special hazards such as most rivers, harbors, lakes, etc., and which is not exposed waters or partially protected waters.

"Pre-engineered" means, when referring to a fixed gas fire extinguishing system, a system that is designed and tested to be suitable for installation as a complete unit in a space of a set volume, regardless of the vessel installed on, without modification.

"Rivers" means a route on any of the following waters:

(1) A river;

(2) A canal; or

(3) Such other similar waters as may be designated by a Coast Guard District Commander.

"Sailing vessel" means a vessel principally equipped for propulsion by sail even if the vessel has an auxiliary means of propulsion.

"Scupper" means a pipe or tube of at least 1¼ inches in diameter leading from a deck or cockpit to drain water overboard.

"Service space" means a high risk service space or a low risk service space.

"Sheathing" means a covering on a bulkhead or bulkhead panel.

"Ship's service loads" means services necessary for maintaining the vessel in normal operational and habitable conditions. These loads include, but are not limited to, safety, lighting, ventilation, navigational, and communications loads.

"Short international voyage" means an international voyage where:

(1) The vessel is not more than 200 nautical miles from a port or place in which the passengers and crew could be placed in safety; and

(2) The total distance between the last port of call in the country in which the voyage began and the final port of destination does not exceed 600 nautical miles.

"Smoke developed rating" means the numeric value assigned to a material when tested in accordance with ASTM E-84 or UL 723 by an independent laboratory.

"Specific optical density" means the numeric value assigned to a material when tested in accordance with ASTM E-662 by an independent laboratory.

"Stairtower" [3] means a fully enclosed group of stairways located one above another.

"Stairway" [3] means an inclined means of escape between two decks.

"Standard fire test" means a test in which a specimen is exposed in a test furnace to temperatures corresponding to the standard time-temperature curve. The specimen must resemble, as closely as possible, the intended construction and include, where appropriate, at least one joint. The standard time-temperature curve is defined by a smooth curve drawn through the following points, starting at ambient temperature:

(1) At the end of 05 minutes—556 °C (1,033 °F);

(2) At the end of 10 minutes—659 °C (1,218 °F);

(3) At the end of 15 minutes—718 °C (1,324 °F);

(4) At the end of 30 minutes—82. °C (1,509 °F); and

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(5) At the end of 60 minutes—925 °C (1,697 °F).

"Steel or equivalent material" means steel or any noncombustible material which, by itself or due to insulation provided, has structural and integrity properties equivalent to steel at the end of the standard fire test.

"Stepped main vertical zone" means a main vertical zone in which the main vertical zone bulkhead is not in a continuous plane on adjoining decks.

"Survival craft" means a lifeboat, rigid liferaft, inflatable liferaft, life float, inflatable buoyant apparatus, buoyant apparatus, or a small boat carried aboard a vessel in accordance with § 180.200(b) of this subchapter.

"Switchboard" means an electrical panel which receives power from a generator, battery, or other electrical power source and distributes power directly or indirectly to all equipment supplied by the generating plant.

"Trunk" means a vertical shaft or duct for the passage of pipes, wires, or other devices except that for the purposes of Part 179 of this subchapter, "trunk" means a large enclosed passageway through any deck or bulkhead of a vessel.

"Vehicle space" [9] means a space not on an open deck, for the carriage of motor vehicles with fuel in their tanks, into and from which such vehicles can be driven and to which passengers have access.

"Veneer" means a thin covering of combustible material on bulkheads, bulkhead panels, or furniture.

"Vessel" includes every description of watercraft or other artificial contrivance, used or capable of being used as a means of transportation on water, to which this subchapter applies.

"Vessel of the United States" means a vessel documented or numbered under the laws of the United States, the states of the United States, Guam, Puerto Rico, the Virgin Islands, American Samoa, the District of Columbia, the Northern Mariana Islands, and any other territory or possession of the United States.

"Watertight" means designed and constructed to withstand a static head of water without any leakage, except that "watertight" for the purposes of electrical equipment means enclosed so that equipment does not leak when a stream of water from a hose with a nozzle one inch in diameter that delivers at least 65 gallons per minute is played on the enclosure from any direction from a distance of ten feet for five minutes.

"Weather deck" means a deck which is partially or completely exposed to the weather from above or from at least two sides, except that for the purposes of Parts 178 and 179 of this subchapter, "weather deck" means the uppermost deck exposed to the weather to which a weathertight sideshell extends.

"Weathertight" means that water will not penetrate into the unit in any sea condition, except that "weathertight equipment" means equipment constructed or protected so that exposure to a beating rain will not result in the entrance of water.

"Well deck vessel" means a vessel with a weather deck fitted with solid bulwarks that impede the drainage of water over the sides or a vessel with an exposed recess in the weather deck extending more than one-half of the length of the vessel measured over the weather deck.

"Wire" means an individual insulated conductor without an outer protective jacket.

"Work space" means a space, not normally occupied by a passenger, in which a crew member performs work and includes, but is not limited to, a galley, operating station, or machinery space.

(c) Dynamically Supported Craft terms.

"Dynamically supported craft" or "DSC" means a vessel which:

(1) Is operable on or above the water surface;

(2) Has characteristics so different from those of a conventional displacement vessel that alternative measures must be used to achieve a level of safety equivalent to that required by laws and regulations primarily developed for conventional displacement vessels;

(3) The weight of, or a significant part thereof, is balanced in one mode of operation by other than hydrostatic forces; and

(4) Is able to operate at speeds such that the function $v/\sqrt{gL}$ is equal to or greater than 0.9, where "v" is the maximum speed in feet per second, "L" is the waterline length in feet, and "g" is acceleration due to gravity (i.e. 32.2 feet per second^2) or using other consistent units of measurement of "v", "L", and "g".

Air cushion vessels, hydrofoil vessels, and sidewall vessels are DSC. High speed catamarans and high speed monohull vessels may also be DSC if they meet the DSC definition.

"Air cushion vehicle" means a DSC for which the whole or significant part of the vessel's weight can be supported, whether at rest or in motion, by a continuously generated cushion of air dependent for its effectiveness on the proximity of the surface over which the DSC operates. Hovercraft are air cushion vehicles.

"High speed catamaran" means a planing or semi-planing vessel with twin hulls, some of the weight of which may be carried by dynamic lift.

"High speed monohull" means a planing or semi-planing vessel, some of the weight of which may be carried by dynamic lift.

"Hydrofoil vessel" means a DSC which is supported above the water surface in normal operating conditions by hydrodynamic forces generated on foils.

"Sidewall vessel" means an air-cushion vehicle whose walls extending along the sides are permanently immersed hard structures. Surface effect ships (SES) and air cushion catamarans are sidewall vessels.

"Worst intended conditions" means the specified environmental conditions within which the intentional operation of a vessel is permitted by the Certificate of Inspection. It includes parameters such as the worst conditions of wind force, allowable wave height including unfavorable combinations of length and direction of waves, minimum air temperature, speed yaw limits, visibility and depth of water for safe operation, and other parameters as the OCMI may require in considering the type of vessel in the area of operation.

§ 175.506 Conduct of an inspection for certification.

(a) Upon receipt of a written application for inspection, the Officer in Charge, Marine Inspection, assigns a marine inspector to inspect the vessel for compliance with this subchapter at a time and place mutually agreed upon by the OCMI and the owner or managing operator.

(b) The owner, managing operator, or a representative thereof shall be present during the inspection.

§ 175.510 Notice of deficiencies and requirements.

(a) If during the inspection of a vessel, the vessel or its equipment is found not to conform to the requirements of law or the regulations in this subchapter, the marine inspector will point out deficiencies observed and discuss all requirements with the owner, managing operator, or master. Normally, the marine inspector will list all such requirements which have not been completed and present the list to the owner, managing operator, or master.

(b) In any case where further clarification of or reconsideration of any requirement placed against the vessel is desired, the owner or managing operator may discuss the matter with the Officer in Charge, Marine Inspection.

§ 175.530 Alternative standards.

The owner of a vessel which does not meet the definition of a dynamically supported craft in § 175.400(c) of this part may request that the vessel be inspected for certification under the regulations in this subchapter for dynamically supported craft if the vessel:

(a) Carries not more than 400 passengers;

(b) Does not have overnight accommodations for passengers; and

(c) Operates not more than 100 miles from a harbor of safe refuge.

§ 175.540 Equivalents.

(a) The Commandant may accept in substitution for a required arrangement, fitting, appliance, apparatus, equipment, calculation, information, or test an equivalent that is as effective as that required by the regulations and is consistent with the intent of the requirements and the minimum safety standards specified in this subchapter. Requests for equivalents must be submitted to the Commandant via the cognizant OCMI and Coast Guard District Commander. If necessary, the Commandant may require engineering evaluations and tests to demonstrate the equivalence of the substitute.

(b) A dynamically supported craft may be allowed to operate in excess of the restrictions in this subchapter on the number of passengers and the route permitted for a DSC if the Commandant accepts the design, construction, arrangements, fittings, appliances, apparatus, equipment, calculations, and information on the vessel as being as effective as and consistent with the intent of the requirements and the minimum safety standards specified in this subchapter. Requests to operate a DSC under the provisions of this paragraph must be submitted to the Commandant via the cognizant OCMI and Coast Guard District Commander.

(c) The Commandant may approve a novel lifesaving appliance or arrangement as an equivalent if it has performance characteristics at least equivalent to the appliance or arrangement required under this part, and:

(1) Is evaluated and tested under IMO Resolution A.520(13), "Code of Practice for the Evaluation, Testing and Acceptance of Prototype Novel Lifesaving Appliances and Arrangements"; or

(2) Has successfully undergone evaluation and tests that are substantially equivalent to those recommendations.

§ 175.550 Special consideration.

In applying the provisions of this subchapter, the Officer in Charge, Marine Inspection, may give special consideration to departures from the specific requirements when unusual circumstances or arrangements warrants such departures and an equivalent level of safety is provided. The OCMI of each marine inspection zone in which the vessel is permitted to operate must approve any special consideration granted to a vessel.

§ 175.560 Appeals.

Any person aggrieved by any decision or action of any Officer in Charge, Marine Inspection, may appeal the decision or action to the Coast Guard District Commander having jurisdiction, and to the Commandant under the provisions of § 2.01-70 of this chapter.

§ 175.600 Incorporation by reference.

(a) In this subchapter portions or the entire text of certain industrial and government agency standards and specifications are referred to as the governing requirements for materials, equipment, tests, or procedures to be followed. These standards and specification requirements specifically referred to in this subchapter are the governing requirements for the subject matters covered unless specifically limited, modified, or replaced by other regulations in this subchapter.

(b) Materials are incorporated by reference into this subchapter with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a). To enforce any edition other than the one listed in paragraph (c) of this section, notice of the change must be published in the Federal Register and the material made available to the public. All approved material is on file at the Office of the Federal Register, Washington, DC and at the U.S. Coast Guard, Merchant Vessel Inspection Division, 2100 Second Street, SW., Washington, DC 20593-0001, and is available from the sources indicated in paragraph (c) of this section.

(c) The materials approved for incorporation by reference in this subchapter, and the sections affected, are:

American Bureau of Shipping (ABS), 45 Eisenhower Dr., Paramus, NJ 07652

Rules for Building and Classing Steel Vessels Under 61 Meters (200 Ft) in Length (1983); 177.300; 183.360

Rules for Building and Classing Reinforced Plastic Vessels (1978); 177.300

Rules for Building and Classing Aluminum Vessels (1975), 177.300

American Boat and Yacht Council (ABYC), P.O. Box 747, 405 Headquarters Dr., Suite 3, Millersville, MD 21108-0747

A-3-70—Recommended Practices and Standards Covering Galley Stoves; 184.200

A-7-70—Recommended Practices and Standards Covering Boat Heating Systems; 184.200

A-16-83—Electric Navigation Lights; 183.130

A-22-78—Marine CNG—Compressed Natural Gas Systems;

E-1-72—Bonding of Direct Current System; 183.130

E-8-85—AC Electrical Systems; 183.130

E-9-85—DC Electrical System Under 50 Volts; 183.130

H-2-81—Ventilation, Gasoline Boats; 182.130; 182.460

H-22-86—Electrically Operated Bilge Pumps; 182.130; 182.500

H-24-84—Fuel Systems—Gasoline; 182.130; 182.440; 182.445; 182.450; 182.455

H-25-86—Portable Fuel Systems for Flammable Liquids; 182.130; 182.458

H-32-81—Ventilation—Diesel Boats; 182.130; 182.465; 182.470

H-33-84—Fuel Systems—Diesel; 182.130; 182.440; 182.445; 182.450; 182.455

P-1-86—Installation of Exhaust Systems for Propulsion and Auxiliary Engines; 177.400; 182.130; 182.425; 182.430

P-4-74—Liquid Cooled Marine Engines; 182.130; 182.430

P-10-74—Air Cooled Marine Engines; 182.130; 182.430

American National Standards Institute (ANSI), United Engineering Center, 345 East 47th St., New York, NY 10017

A 17.1-1984—American Standard Safety Code for Elevators, Dumbwaiters, Escalators, and Moving Walks; 183.540

B 31.1-1986—American National Standard Code for Pressure Piping, Power Piping; 182.710

Z 26.1-1983—Safety Glazing Materials For Glazing Motor Vehicles Operating on Land Highways; 177.1030

American Society for Testing and Materials (ASTM), 1916 Race St., Philadelphia, PA 19103

B-117-73—Method of Salt Spray (Fog) Testing; 175.400

D-93-80—Flash Point By Pensky-Martens Closed Cup Tester; 175.400

E-84-81—Test for Surface Burning Characteristics of Building Materials; 175.400; 177.432(c), (g)

E-648-78—Test for Critical Radiant Flux of Floor Covering Systems Using a Radiant Heat Energy Source; 175.400; 177.432(g)

E-662-79—Test for Specific Optical Density of Smoke Generated by Solid Materials; 175.400; 177.432(g)

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Australian Transport Advisory Council, Australian Government Publishing Service, Canberra, Australia
Australia Shipping Law Code Section 5, Sub-section J, as amended to August 1, 1984; 177.300
Institute of Electrical and Electronics Engineers, Inc. (IEEE), IEEE Service Center, 445 Hoes Lane, Piscataway, N.J. 08854
Standard 45–1983—Recommended Practice for Electrical Installations on Shipboard; 183.340
International Maritime Organization (IMO), Publications Section, 4 Albert Embankment, London SE1 7SR, England
Proposed Resolution on the Installation of Reflective Tape on Lifesaving Equipment, (IMO approval expected in November, 1988); 165.604
Lloyd's Register of Shipping, Manor Royal, Crawley, West Sussex, RH10 2 QN, England
Rules and Regulations for the Classification of Yachts and Small Craft (as amended through May 11, 1983); 177.300
National Fire Protection Association (NFPA), 60 Batterymarch Park, Quincy, MA 02269
17–1988—Dry Chemical Extinguishing Systems; 181.425
17A–1988—Wet Chemical Extinguishing Systems; 181.425
70–1987—National Electrical Code
Section 250-95, 183.370
Section 310-13, 183.340
Section 310-15, 183.340
Article 430, 183.320
260B–1983—Method of Test For Determining Resistance of Mock-up Upholstered Furniture Material Assemblies to Ignition by Smoldering Cigarettes; 178.400, 177.432(h)
302–1984—Pleasure and Commercial Motor Craft Chapter 6; 184.200
306–1984—Control of Gas Hazards on Vessels; 176.710
701–1977—Methods of Fire Tests For Flame-Resistant Textiles and RM Films; 177.432(h)
1963–1965—Screw Threads and Gaskets for Fire Hose Connections; 181.320
Naval Publications and Forms Center, Customer Service Code 1052, 5801 Tabor Ave., Philadelphia, PA 19120
Military Specification MIL-P-21929B (1970)—Plastic Material, Cellular Polyurethane, Foam-in-Place, Rigid (2 and 4 pounds per cubic foot); 179.240
Society of Automotive Engineers, 400 Commonwealth Drive, Warrendale, PA 15096-0001
SAE J1942—Hose and Hose Assemblies for Mariner Applications, (date of standard to be inserted upon publication which is expected prior to the final rule); 182.455
Underwriters Laboratories Inc. (UL), 333 Pfingsten Road, Northbrook, IL 60062
UL 19–1978—Woven Jacketed, Rubber Lined Fire Hose; 181.320
UL 174–1983—Standard for Household Electric Stowage Tank Water Heaters; 182.320
UL 217–1986—Standard for Single and Multiple Station Smoke Detectors; 161.450
UL 466A–1978—Electric Wire Connectors and Soldering Lugs For Use With Copper Conductors; 183.340
UL 489–1986—Molded—Case Circuit Breakers and Circuit Breaker Enclosures; 183.380
UL 595–1980—Marine Type Electric Lighting Fixtures; 183.410
UL 710–1984—Grease Extractors for Exhaust Ducts; 181.425
UL 723–1983—Test for Surface Burning Characteristics of Building Materials; 175.400; 177.432(c), (g)
UL 1058–1984—Halogenated Agent Fire Extinguishing System Units; 181.410(g)
UL 1102–1980—Nonintegral Marine Fuel Tanks; 182.440
UL 1110–1976—Marine Combustible Gas Indicators; 181.480
UL 1453–1982—Electric Booster and Commercial Storage Tank Water Heaters; 182.320

§ 175.600 Approved equipment and material.

(a) Equipment and material that is required by this subchapter to be approved or of an approved type, must have been manufactured and approved in accordance with the design and testing requirements in Subchapter Q of this chapter or as otherwise specified by the Commandant.

(b) Notice regarding equipment approvals is published in the **Federal Register**. Coast Guard publication COMDTINST M 16714.3, "Equipment Lists, Items Approved, Certificated or Accepted under Marine Inspection and Navigation Laws," lists approved equipment by type and manufacturer. COMDTINST M 16714.3 may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

§ 175.900 OMB control numbers.

(a) This section lists the control numbers assigned to information collection and recordkeeping requirements in this subchapter by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). The Coast Guard intends that this section comply with the requirements of 44 U.S.C. 3507(f) which requires that agencies display a current control number assigned by the Director of OMB for each approved agency information collection requirement.

(b) The following control numbers have been assigned to the sections indicated: (Control numbers as assigned by OMB for all information collection and recordkeeping requirements of this subchapter will be included in the final rule.)

Currently Assigned OMB Control Number

Section
176.105(a)
176.202
176.204
176.302
176.306
176.310
176.500(a)
176.612
176.700
176.704
176.710
176.810(b)
176.920(c)
176.930
176.932(b)
177.202
177.330(b)
177.340
177.810(c)
178.210
178.220
178.230
181.410
182.400(e)
182.410
183.320
184.420
184.506
185.202
185.208
185.208
185.220
185.230
185.260
185.280
185.282
185.304(c)
185.340(c)
185.402
185.502
185.504
185.506
185.510
185.514
185.515
185.516
185.518
185.602
185.604
185.606
185.608
185.610
185.612
185.702
185.704(c)
185.610

PART 176—INSPECTION AND CERTIFICATION

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176.612 Notice and plans required.
176.630 Tailshaft examinations.
176.670 Extension of examination intervals.

Subpart G—Repairs and Alterations

176.700 Permission for repairs and alterations.
176.702 Installation tests and inspections.
176.704 Breaking of safety valve seals.
176.710 Inspection and testing for gas hazards.

Subpart H—Material Inspections

176.800 Inspection standards.
176.802 Hull.
176.804 Machinery.
176.808 Electrical.
176.809 Lifesaving.
176.810 Fire protection.
176.812 Pressure vessels and boilers.
176.814 Steering systems.
176.816 Miscellaneous systems and equipment.
176.818 Sanitary inspection.
176.830 Unsafe practices.
176.840 Additional tests and inspections.

Subpart I—International Convention for Safety of Life at Sea, 1974

176.900 Applicability.
176.910 Passenger Ship Safety Certificate.
176.920 Exemptions.
176.930 Equivalents.
176.932 Equivalency for voyages to the Bahamas.

Authority: 46 U.S.C. 2104, 3308, 49 CFR 1.46.

Subpart A—Certificate of Inspection

§ 176.100 When required.

(a) A vessel to which this subchapter applies may not be operated without having on board a valid U.S. Coast Guard Certificate of Inspection.

(b) Except as noted in § 176.114 of this subpart, each vessel inspected and certificated under the provisions of this subchapter must, during the tenure of the certificate, be in full compliance with the terms of the certificate.

(c) If necessary to prevent delay of the vessel, a temporary Certificate of Inspection may be issued pending the issuance and delivery of the regular Certificate of Inspection. The temporary certificate must be carried in the same manner as the regular certificate and is considered the same as the regular Certificate of Inspection which it represents.

(d) A vessel on a foreign voyage between a port in the United States and a port in a foreign country, whose Certificate of Inspection expires during the voyage, may lawfully complete the voyage without a valid Certificate of Inspection provided the voyage is completed within 30 days of expiration and the certificate did not expire within 15 days of sailing on the foreign voyage from a U.S. port.

§ 176.103 Description.

The Certificate of Inspection issued to a vessel describes the vessel, the route which it may travel, the minimum manning requirements, the survival and rescue craft carried, the minimum fire extinguishing equipment and lifejackets required to be carried, the maximum number of passengers and total persons which may be carried, the number of passengers the vessel may carry in overnight accommodation spaces, the name of the owner and managing operator, and such other conditions of operations as may be determined by the Officer in Charge, Marine Inspection.

§ 176.105 How to obtain or renew.

(a) A Certificate of Inspection is obtained or renewed by making application for an initial or periodic inspection on Form CG 3752, Application for Inspection of U.S. Vessel, to the Coast Guard Officer in Charge, Marine Inspection, of the marine inspection zone in which the inspection is to be made. Form CG–3752 may be obtained at any U.S. Coast Guard Marine Safety Office or Marine Inspection Office.

(b) The application for initial inspection of a vessel being newly constructed or converted must be submitted prior to the start of the construction or conversion.

(c) The construction, arrangement, and equipment of each vessel must be acceptable to the cognizant OCMI as a prerequisite of the issuance of the initial Certificate of Inspection. Acceptance is based on the information, specifications, drawings and calculations available to the OCMI and on the successful completion of an initial inspection for certification.

(d) A Certificate of Inspection is renewed by the issuance of new Certificate of Inspection.

(e) The condition of the vessel and its equipment must be acceptable to the cognizant OCMI as a prerequisite to the Certificate of Inspection renewal. Acceptance is based on the condition of the vessel as found at the periodic inspection for certification.

§ 176.107 Period of validity.

(a) A Certificate of Inspection is issued for a period of three years except that the Certificate of Inspection is issued for a period of one year for a vessel which is also issued a SOLAS Passenger Vessel Safety Certificate under § 176.910.

(b) A Certificate of Inspection may be suspended and withdrawn or revoked by the Officer in Charge, Marine Inspection, at any time for noncompliance with the requirements of this subchapter.

§ 176.110 Routes permitted.

(a) The area of operation for each vessel is designated by the Officer in Charge, Marine Inspection, and recorded on its Certificate of Inspection. Each area of operation, referred to as a route, is described on the Certificate of Inspection under the major headings "oceans," "coastwise," "Great Lakes," "lakes, bays, and sounds," or "rivers," as applicable. Further limitations imposed or extensions granted are described by reference to bodies of waters, geographical points, distance from geographical points, distances from land, depths of channel, seasonal limitations, etc.

(b) The maximum allowable distance a dynamically supported craft (DSC) may operate from a harbor of safe refuge is designated by the OCMI, after assessing the operating provisions made as required by § 185.800 of this subchapter, but may not be more than 100 nautical miles.

(c) The maximum allowable distance a vessel, inspected in accordance with the alternative standards authorized by § 175.530 of this subchapter, may operate from a harbor of safe refuge is designated by the OCMI, after assessing the operating provisions made as required by § 185.800 of this subchapter, but may not be more than 100 nautical miles.

(d) Operation of a vessel on a route of lesser severity than those specifically described or designated on the Certificate of Inspection is permitted unless expressly prohibited on the Certificate of Inspection. The general order of severity of routes is: "oceans," "coastwise," "Great Lakes," "lakes, bays, and sounds," and "rivers." The OCMI may prohibit a vessel from operating on a route of lesser severity than the primary route a vessel is

authorized to operate on if local conditions necessitate such a restriction.

(e) Nonself-propelled vessels are prohibited from operating on an "oceans" or "coastwise" route unless the Commandant approves such a route.

(f) When designating a permitted route for a vessel, the OCMI may consider:

(1) Requirements of this subchapter for which compliance is based on the route of the vessel; and

(2) The performance capabilities of the vessel based on design, scantlings, stability, subdivision, propulsion, and other characteristics.

§ 176.112 Total persons permitted.

The cognizant Officer in Charge, Marine Inspection, determines the total number of persons permitted to be carried on a vessel. In determining the total number of persons permitted to be carried, the OCMI may consider stability restrictions and subdivision requirements of the vessel, the vessel's route, general arrangement, means of escape, lifesaving equipment, the minimum manning requirements, and the maximum number of passengers permitted in accordance with § 176.113 of this subpart.

§ 176.113 Passengers permitted.

(a) The maximum number of passengers permitted to be carried on a vessel is determined by the cognizant Officer in Charge, Marine Inspection, except that the maximum number permitted shall be not more than that allowed by the requirements of this section.

(b) The maximum number of passengers permitted on any vessel, except a DSC, may be the greatest number permitted by the length of rail criterion, deck area criterion, or fixed seating criterion described in this paragraph.

(1) *Length of rail criterion.* One passenger may be permitted for each 30 inches of rail space available to the passengers at the periphery of each deck. The following rail space may not be used in determining the maximum number of passengers permitted:

(i) Rail space in congested areas unsafe for passengers, such as near anchor handling equipment or line handling gear, in the way of sail booms, running rigging, or paddle wheels, or along pulpits;

(ii) Rail space on stairways; and

(iii) Rail space where persons standing in the space would block the vision of the licensed individual operating the vessel.

(2) *Deck area criterion.* One passenger may be permitted for each 10 square feet of deck area available for the passengers' use. In computing such deck area, the areas occupied by the following shall be excluded:

(i) Concession stands;

(ii) Toilets and washrooms;

(iii) Companionways, stairways, etc.;

(iv) Spaces occupied by and necessary for handling lifesaving equipment, anchor handling equipment or line handling gear, or in the way of sail booms or running rigging;

(v) Spaces below deck which are unsuitable for passengers or which would not normally be used by passengers;

(vi) Interior passageways less than 30 inches wide and passageways on open deck less than 18 inches wide;

(vii) Bow pulpits and swimming platforms; and

(viii) Deck areas in way of paddle wheels.

(3) *Fixed seating criterion.* One passenger may be permitted for each 18 inches of width of fixed seating provided. Regulations covering the installation of fixed seating are contained in § 177.820 of this subchapter. Each sleeping berth used in determining the total number of passengers the vessel may carry in overnight accommodation spaces may be counted as only one seat.

(c) Where seats are provided in one passenger space and are not provided in other passenger spaces, the number of passengers permitted on a vessel may be the sum of the number permitted by the seating criterion for the space having seats and the number permitted by the deck area criterion for the space having no seats.

(d) For a vessel operating on short runs on protected waters such as a ferry, the Officer in Charge, Marine Inspection, may give special consideration to increases in passenger allowances.

(e) The maximum number of passengers permitted on a DSC must be determined by the fixed seating criterion but not more than 400 passengers may be permitted.

§ 176.114 Special endorsement for carrying six or less passengers.

The cognizant OCMI may permit a vessel to operate in accordance with the laws and regulations applicable to an uninspected vessel when the vessel is carrying six or less passengers by endorsing the vessel's Certificate of Inspection to allow such operation. When carrying six or less passengers, the vessel must be maintained and outfitted in compliance with the terms and conditions of its Certificate of Inspection except for the minimum manning and route restrictions.

§ 176.116 Dynamically supported craft.

(a) A dynamically supported craft (DSC) may not be operated unless:

(1) It is in compliance with the specific requirements for DSC in this subchapter, including the total number of passengers permitted by § 176.113(d) and the route permitted by § 176.110 of this subchapter; or

(2) It is granted an equivalency under § 175.540(b) of this subchapter; and

(3) The cognizant OCMI has endorsed the vessel's Certificate of Inspection with:

(i) A statement that the vessel complies with the requirements of 46 CFR Subchapter T applicable to dynamically supported craft;

(ii) For a vessel on an international voyage, a statement that the vessel complies with the provisions of the IMO Code of Safety for Dynamically Supported Craft; and

(iii) The date of approval of the vessel's Dynamically Supported Craft Operating Manual required by § 185.810 of this subchapter and a statement that the vessel must comply with the provisions of the operating manual.

(b) A vessel may not be operated under the alternative standards in § 175.530(a) of this subchapter, which allows certain vessels which are not dynamically supported craft to be certificated under the regulations in this part for dynamically supported craft, unless the cognizant OCMI has endorsed the vessel's Certificate of Inspection with:

(1) A statement that the vessel complies with the requirements of 46 CFR Subchapter T applicable to DSC in accordance with the alternative standards authorized by § 175.530(a) of this subchapter; and

(2) The date of approval of the vessel's operating manual required by § 185.810 of this subchapter and a statement that the vessel must comply with the provisions of the operating manual.

§ 176.120 Certificate of inspection amendment.

(a) An amended Certificate of Inspection may be issued at any time by any Officer in Charge, Marine Inspection. The amended Certificate of Inspection replaces the original, but the expiration date remains the same as that of the original. An amended Certificate of Inspection may be issued to authorize and record a change in the dimensions, gross tonnage, owner, managing operator, manning, persons permitted, route permitted, conditions of operation, or equipment of a vessel, from that specified in the current Certificate of Inspection.

(b) A request for an amended Certificate of Inspection shall be made to the Officer in Charge, Marine Inspection, by the owner or managing operator of the vessel at any time there is a change in the character of a vessel or in its route, equipment, ownership, operation, etc., as specified in its current Certificate of Inspection.

(c) The OCMI may require an inspection prior to the issuance of an amended Certificate of Inspection.

Subpart B—Special Permits and Certificates

§ 176.202 Permit to proceed.

(a) When a vessel is not in compliance with its Certificate of Inspection or fails to comply with a regulation of this subchapter, the Officer in Charge, Marine Inspection, may permit the vessel to proceed to another port for repair if in the judgment of the OCMI the trip can be completed safely even if the Certificate of Inspection of the vessel has expired or is about to expire.

(b) Form CG–948, "Permit to Proceed to Another Port for Repairs," is issued by the OCMI to the owner, managing operator, or the master of the vessel stating the conditions under which the vessel may proceed to another port. The permit is issued only upon the written application of the owner, managing operator, or master, and after the vessel's Certificate of Inspection is surrendered to the OCMI.

(c) A vessel may not carry passengers when operating in accordance with a permit to proceed.

§ 176.204 Permit to carry excursion party.

(a) The Office in Charge, Marine Inspection, may permit a vessel to engage in a temporary excursion operation with a greater number of persons and/or on a more extended route than permitted by its Certificate of Inspection when, in the opinion of the OCMI, the operation can be undertaken safely.

(b) Upon the written application of the owner or managing operator of the vessel, the OCMI may issue a "Permit To Carry Excursion Party", Form CG–949, to indicate his permission to carry an excursion party. The OCMI will indicate on the permit the conditions under which it is issued, the number of persons the vessel may carry, the crew required, any additional lifesaving or safety equipment required, the route for which the permit is granted, and the dates on which the permit is valid.

(c) The permit acts as a temporary, one-time supplement to the vessel's Certificate of Inspection and must be carried with the Certificate of Inspection. A vessel operating under a permit to carry an excursion party must be in full compliance with the terms of its Certificate of Inspection as supplemented by the permit.

(d) The OCMI may require an inspection prior to the issuance of a permit to carry an excursion party.

Subpart C—Posting of Certificates, Permits, and Stability Letters

§ 176.302 Certificates and permits.

The Certificate of Inspection, SOLAS Certificates, a Permit to Proceed, and a Permit to Carry Excursion Party must be posted under glass or other suitable transparent material in a conspicuous place on the vessel where observation by passengers is likely. If posting of certificates is impracticable, such as on open boats, the certificates shall be kept on board in a weathertight container to be shown on demand.

§ 176.306 Stability letter.

When, in accordance with § 178.210 of this subchapter, a vessel must be provided with a stability letter, the stability letter must be posted under glass or other suitable transparent material at the operating station of the vessel. If posting is impracticable, the stability letter must be kept on board in a weathertight container to be shown on demand.

§ 176.310 Certification expiration date stickers.

(a) A vessel that is issued a Certificate of Inspection under the provisions of this subchapter must not be operated without a valid Certification Expiration Date Sticker affixed to the vessel on a place that is:

(1) On a glass or smooth metal surface from which the sticker may be removed without damage to the vessel;

(2) Readily visible to each passenger prior to boarding the vessel and to patrolling Coast Guard law enforcement personnel; and

(3) Acceptable to the Coast Guard marine inspector.

(b) The Coast Guard marine inspector may require the placement of more than one sticker in order to insure compliance with paragraph (a)(2) of this section.

(c) A Certification Expiration Date Sticker indicates the date upon which the vessel's Certificate of Inspection expires and is provided by the Officer in Charge, Marine Inspection, in the number required, upon issuance or renewal of the Certificate of Inspection.

Subpart D—Inspection for Certification

§ 176.400 General.

An inspection is required before the issuance of a Certificate of Inspection. Such an inspection for certification is not made until after receipt of the application for inspection required by § 176.105 of this subchapter.

§ 176.402 Initial inspection for certification.

(a) Before construction is started or prior to the initiation of the initial inspection of an existing vessel being converted to a small passenger vessel, the owner of the vessel must submit plans, manuals, and calculations indicating the proposed arrangement, construction, and operations of the vessel, to the Officer in Charge, Marine Inspection, for approval. The plans, manuals, and calculations required to be submitted and the disposition of these plans are set forth in Subpart B of Part 177 of this subchapter.

(b) The initial inspection is conducted to determine that the vessel and its equipment comply with applicable regulations and that the vessel was built or converted in accordance with approved plans, manuals, and calculations. Additionally, during the inspection the materials, workmanship, and condition of all parts of the vessel and its machinery and equipment are checked to determine if the vessel is satisfactory in all respects for the service intended.

(c) The owner or managing operator of a vessel shall ensure that the vessel complies with the laws and regulations applicable to the vessel and that the vessel is otherwise satisfactory for the intended service. The initial inspection may include an inspection of the following items:

(1) The arrangement, materials, and scantlings of the structure including the hull and superstructure, yards, masts, spars, rigging, sails, piping, main and auxiliary machinery, pressure vessels, steering apparatus, electrical installations, lifesaving appliances, fire detecting and extinguishing equipment, pollution prevention equipment, and all other equipment;

(2) Sanitary conditions and fire hazards; and

(3) Certificates and operating manuals including certificates issued by the Federal Communications Commission.

(d) During an initial inspection for certification the owner or managing operator shall conduct all tests and make the vessel available for all applicable inspections discussed in this

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paragraph, and in Subpart H of this part, to the satisfaction of the OCMI.

(1) The installation of each rescue boat launching appliance and each other survival craft launching appliance must be inspected and tested as required by § 71.20-20(a)(1) of Subchapter W of this chapter.

(2) The installation of each rescue boat, liferaft, inflatable buoyant apparatus, and launching appliance must be inspected to determine that it meets each condition of its approval, as listed on its Certificate of Approval (Form CGHQ-10030).

(3) Machinery, fuel tanks, and pressure vessels must be inspected and tested as required by Part 182 of this subchapter.

(4) A stability test or a simplified stability test must be conducted when required by § 170.175 of this chapter or § 178.320 of this subchapter.

(5) Watertight bulkheads must be tested as required by Part 179 of this subchapter.

(6) Firefighting systems must be tested as required by Part 181 of this subchapter.

(7) A demonstration of the effects of a failure on a dynamically supported craft must be conducted when required by the OCMI.

(8) An evacuation demonstration must be conducted on a dynamically supported craft to verify that the vessel complies with § 177.560 of this subchapter. The evacuation demonstration must consist of:

(i) A full abandon ship drill using the total number of persons permitted on the vessel; or

(ii) A series of evacuations from each individual space on the vessel using the maximum number of persons permitted to occupy the space.

§ 176.604 Subsequent inspections for certification.

An inspection for renewal of a Certificate of Inspection normally includes inspection and testing of the structure, machinery, equipment, and on a sailing vessel, rigging and sails. The owner or managing operator shall conduct all tests as required by the marine inspector, and make the vessel available for all specific inspections required by Subpart H of this part. The inspection is conducted to determine if the vessel is in satisfactory condition, fit for the service intended, and complies with the applicable regulations in this subchapter.

Subpart E—Reinspection

§ 176.500 When required.

(a) The owner or managing operator shall make a vessel available for reinspections within 60 days of each anniversary of the date of issuance of the Certificate of Inspection during each triennial inspection period. The owner or managing operator shall contact the OCMI to arrange for a reinspection to be conducted at a time and place acceptable to the OCMI.

(b) In addition to the requirements of paragraph (a) of the section, a reinspection may be made at such other times as may be required by the cognizant OCMI.

§ 176.502 Scope.

(a) In general, the scope of the reinspection is the same as the inspection for certification but in less detail unless it is determined that a major change has occurred since the last inspection for certification.

(b) During a reinspection a marine inspector may examine all accessible parts of the vessel's hull, machinery, and equipment with particular emphasis on lifesaving and firefighting equipment to check for satisfactory condition.

Subpart F—Hull and Tailshaft Examinations

§ 176.600 Drydock and internal structural examination intervals.

(a) The owner or managing operator shall make a vessel available for drydock examinations and internal structural examinations required by this section.

(b) A vessel making an international voyage must undergo a drydock examination and an internal structural examination once every 12 months.

(c) Except as provided in paragraphs (d) through (f) of this section, a vessel not making an international voyage must undergo a drydock examination and an internal structural examination as follows:

(1) A vessel that operates in salt water more than three months in any 12 month period since the last examinations must undergo a drydock examination and an internal structural examination at least once every two years; and

(2) A vessel that operates in salt water not more than three months in any 12 month period since the last examinations must undergo a drydock examination and an internal structural examination at least once every five years.

(d) A vessel with a wooden hull must undergo a drydock examination and an internal structural examination at least once every two years regardless of the type of water in which it operates.

(e) Whenever damage or deterioration to hull plating or structural members, which may affect the seaworthiness of a vessel, is discovered, the OMCI may conduct an internal structural examination in any affected space including fuel tanks, and require the vessel to be drydocked or otherwise taken out of service to further assess the extent of the damage and to effect permanent repairs.

(f) A vessel on a voyage between a port in the United States and a port in a foreign country, which becomes due for a drydock examination or an internal structural examination during the voyage, may lawfully complete the voyage prior to the examination being conducted provided that:

(1) The vessel must undergo the required examination upon completion of the voyage to the United States but not later than 30 days after the examination was due; and

(2) A vessel which is due for an examination within 15 days of sailing on a foreign voyage from a United States port must undergo the required examination before sailing.

(g) Whenever a vessel is drydocked or hauled out in excess of the requirements of this section, a marine inspector may examine the vessel.

§ 176.610 Scope of drydock and internal structural examinations.

(a) A drydock examination conducted in compliance with § 176.600 (a), (b), or (c) of this subpart must be conducted while the vessel is hauled out of the water or placed in a drydock or slipway. During the examination all accessible parts of the vessel's underwater body and all through-hull fittings, including the hull plating and planking, appendages, propellers, shafts, bearings, rudders, sea chests, sea valves, and sea strainers must be examined. Sea chests, sea valves, and sea strainers must be opened for examination.

(b) An internal structural examination conducted in compliance with § 176.600 (a), (b), or (c) of this subpart may be conducted while the vessel is afloat or out of the water and consists of a complete examination of the vessel's main strength members, including the major internal framing, the hull plating and planking, voids, and ballast, cargo, and fuel oil tanks. Where the internal framing, plating, or planking of the vessel is concealed, sections of the lining, ceiling or insulation may be removed or the parts otherwise probed or exposed so that the inspector may be satisfied as to the condition of the hull structure. Fuel oil tanks need not be cleaned out and internally examined if the marine inspector is able to determine by external examination that the general condition of the tanks is satisfactory.

§ 176.612 Notice and plans required.

(a) Whenever a vessel is to be hauled out or placed in a drydock or slipway in compliance with § 176.600 of this subpart or to undergo major repairs or alterations affecting the safety or seaworthiness of the vessel, the owner or managing operator shall report the same, together with the nature of any repairs or alterations contemplated, as far in advance as practicable, to the OCMI in order that a marine inspector may conduct an appropriate examination.

(b) Whenever a vessel is hauled out or placed in a drydock or slipway in excess of the requirements of this subpart, for the purpose of minor repairs or maintenance, such as changing a propeller, painting, or cleaning the hull, no report need be made to the OCMI.

(c) The owner or managing operator of each vessel that holds a Load Line Certificate shall make plans showing the vessel's scantlings available to the Coast Guard marine inspector whenever the vessel undergoes a drydock examination or internal structural examination or whenever repairs or alterations affecting the safety or seaworthiness of the vessel are made to the vessel's hull.

§ 176.630 Tailshaft examinations.

The marine inspector may require any part or all of the propeller shafting to be drawn for examination of the shafting and stern bearing of a vessel whenever the condition of the shafting and bearings are in question. The inspector may conduct a visual examination and may require nondestructive testing of the tailshaft if necessary.

§ 176.670 Extension of examination intervals.

The Commandant may authorize extensions of the intervals between drydock examinations and internal structural examinations. Requests for extensions must be submitted via the cognizant OCMI and Coast Guard District Commander.

Subpart G—Repairs and Alterations

§ 176.700 Permission for repairs and alterations.

(a) Repairs or alterations to the hull, machinery, or equipment which affect the safety of the vessel must not be made without the approval of the Officer in Charge, Marine Inspection, except during an emergency. When repairs are made during an emergency, the owner, managing operator, or master shall notify the OCMI as soon as practicable after such repairs or alternations are made. Repairs or alterations which affect the safety of the vessel include but are not limited to the replacement, repair, or refastening of deck or hull planking, plating, and structural members; repair of plate or frame cracks; repair or replacement of electrical wiring, fuel lines, tanks, boilers, and other pressure vessels; alterations affecting stability; and repair or alteration of lifesaving, fire detecting, or fire extinguishing equipment.

(b) The owner or managing operator shall submit drawings, sketches, or written specifications describing the details of any proposed alterations to the OCMI. The OCMI must approve a proposed alteration before work is started.

(c) Drawings are not required to be submitted for repairs or replacements in kind.

(d) The OCMI may require an inspection and testing whenever a repair or alteration is undertaken.

§ 176.702 Installation tests and inspections.

Whenever a launching appliance, survival craft, rescue boat, fixed fire extinguishing equipment, machinery, fuel tank, or pressure vessel is installed aboard a vessel after completion of the initial inspection for certification of the vessel, as replacement equipment or as a new installation, the owner or managing operator shall conduct the tests and make the vessel ready for the inspections required by § 176.402(d) to the satisfaction of the OCMI.

§ 176.704 Breaking of safety valve seals.

The owner, managing operator, or master shall notify the cognizant OCMI as soon as practicable after the seal on a boiler safety valve on a vessel is broken.

§ 176.710 Inspection and testing for gas hazards.

(a) The provisions of NFPA 306, "Control of Gas Hazards on Vessels," should be used as a guide in ensuring confined spaces on a vessel are suitable for entering.

(b) Until an inspection has been conducted to determine that the operations can be undertaken safely in accordance with the procedures of paragraph (c) of this section, no alterations, repairs, or other operations involving riveting, welding, burning, or other fire-producing actions may be made aboard a vessel:

(1) Within or on the boundaries of fuel tanks; or

(2) To pipelines, heating coils, pumps, fittings, or other appurtenances connected to fuel tanks.

(c) An inspection required by paragraph (b) of this section must be conducted as required by this paragraph.

(1) In ports or places in the United States or its territories and possessions, a marine chemist certificated by the National Fire Protection Association shall conduct the inspection. However, if the services of such certified marine chemist are not reasonably available, the Officer in Charge, Marine Inspection, upon the recommendation of the vessel owner or managing operator, may authorize another person to inspect the particular vessel. If the inspection indicates that the operations can be undertaken safely, a certificate setting forth this fact in writing shall be issued by the certified marine chemist or the authorized person before the work is started. The certificate must include any requirements necessary to reasonably maintain safe conditions in the spaces certified throughout the operation, including any precautions necessary to eliminate or minimize hazards that may be present from protective coatings or residues from cargoes.

(2) When not in a port or place in the United States or its territories and possessions, and when a marine chemist or a person authorized by the Officer in Charge, Marine Inspection, is not reasonably available, the master shall conduct the inspection and enter the results of the inspection in the vessel's logbook.

(d) The owner, managing operator, or master shall obtain a copy of certificates issued by the certified marine chemist or the other person authorized by the OCMI, and shall ensure that all conditions on the certificates are observed and that the vessel is maintained in a safe condition. The owner, managing operator, or master shall maintain a safe condition on the vessel by requiring full observance, by persons under his control, of all requirements listed in the certificate.

Subpart H—Material Inspections

§ 176.800 Inspection standards.

(a) A vessel is inspected for compliance with the standards required by this subchapter. Machinery, equipment, materials, and arrangements not covered by standards in this subchapter may be inspected in

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accordance with standards acceptable to the Officer in Charge, Marine Inspection, as good marine practice.

(b) In the application of inspection standards due consideration must be given to the hazards involved in the operation permitted by a vessel's Certificate of Inspection. Thus, the standards may vary in accordance with the vessel's area of operation or any other operational restrictions or limitations.

(c) The published standards of classification societies and other recognized safety associations may be used as a guide in the inspection of vessels insofar as such standards do not conflict with the requirements of this subchapter.

§ 176.802 Hull.

(a) At each initial and subsequent inspection for certification of a vessel, the owner or managing operator shall be prepared to conduct tests and have the vessel ready for inspections of the hull structure and its appurtenances, including the following:

(1) Inspection of all accessible parts of the exterior and interior of the hull, the watertight bulkheads, and weather decks;

(2) Inspection and operation of all watertight closures in the hull, decks, and bulkheads;

(3) Inspection of the condition of the superstructure, masts, and similar arrangements constructed on the hull, and on a sailing vessel all spars, standing rigging, running rigging, blocks, fittings, and sails;

(4) Inspection of all railings and bulwarks and their attachment to the hull structure;

(5) Inspection to ensure that guards or rails are provided in dangerous places;

(6) Inspection and operation of all weathertight closures above the weather deck and the provisions for drainage of sea water from the exposed decks; and

(7) Inspection of all interior spaces to ensure that they are adequately ventilated and drained, and that means of escape are adequate and properly maintained.

(b) The vessel must be afloat for at least a portion of the inspection as required by the marine inspector.

(c) When required by the marine inspector, a portion of the inspection must be conducted while the vessel is underway so that the working of the hull can be observed.

§ 176.804 Machinery.

At each initial and subsequent inspection for certification of a vessel, the owner or managing operator shall be prepared to conduct tests and have the vessel ready for inspections of machinery, fuel, and piping systems, including the following:

(a) Operation of the main propulsion machinery both ahead and astern;

(b) Operational test and inspection of engine control mechanisms including primary and alternate means of starting machinery;

(c) Inspection of all machinery essential to the routine operation of the vessel including generators and cooling systems;

(d) External inspection of fuel tanks and inspection of tank vents, piping, and pipe fittings;

(e) Inspection of all fuel systems;

(f) Operational test of all valves in fuel lines by operating locally and at remote operating positions;

(g) Operational test of all overboard discharge and intake valves and watertight bulkhead pipe penetration valves;

(h) Operational test of the means provided for pumping bilges including testing to ensure that the bilge pump can simultaneously pump bilges and charge the fire main, if applicable; and

(i) Test of machinery alarms including bilge alarms.

§ 176.806 Electrical.

At each initial and subsequent inspection for certification of a vessel, the owner or managing operator shall be prepared to conduct tests and have the vessel ready for inspection of electrical equipment and systems, including the following:

(a) Inspection of all cable as far as practicable without undue disturbance of the cable or electrical apparatus;

(b) Test of circuit breakers by manual operation;

(c) Inspection of fuses including ensuring the ratings of fuses are suitable for the service intended;

(d) Inspection of rotating electrical machinery essential to the routine operation of the vessel;

(e) Inspection of all generators, motors, lighting fixtures and circuit interrupting devices located in spaces or areas which may contain flammable vapors;

(f) Inspection of batteries for condition and security of stowage;

(g) Operational test of electrical apparatus, which operates as part of or in conjunction with a fire detection or alarm system installed on board the vessel, by simulating, as closely as practicable, the actual operation in case of fire; and

(h) Operational test of all emergency electrical systems.

§ 176.808 Lifesaving.

(a) At each initial and subsequent inspection for certification of a vessel, the owner or managing operator shall be prepared to conduct tests and have the vessel ready for inspections of lifesaving equipment and systems, including the following:

(1) Tests of each rescue boat and each rescue boat launching appliance and survival craft launching appliance in accordance with § 71.25–15 of Subchapter H of this chapter;

(2) Inspection of each lifejacket, work vest, and marine buoyant device;

(3) Inspection of each inflatable liferaft and inflatable lifejacket to determine that it has been serviced under § 185.730 of this chapter; and

(4) Inspection of each hydrostatic release unit to determine that it has been serviced as required by § 185.740 of this chapter.

(b) Each item of lifesaving equipment determined by the marine inspector to not be in serviceable condition must be repaired or replaced.

(c) Each item of lifesaving equipment with an expiration date on it must be replaced if the expiration date has passed.

(d) The owner or managing operator shall destroy, in the presence of the marine inspector, each lifejacket, other personal flotation device, and other lifesaving device found to be defective and incapable of repair.

(e) At each initial and subsequent inspection for certification of a vessel, the vessel must be equipped with an adult size lifejacket for each person authorized. The vessel must also be equipped with child-size lifejackets equal to at least 10 percent of the maximum number of passengers permitted to be carried unless children are prohibited from being carried aboard the vessel.

(f) Lifejackets, work vests, and marine buoyant devices may be marked with the date and marine inspection zone to indicate that they have been inspected and found to be in serviceable condition by a marine inspector.

(g) The marine inspector may require that an abandon ship or man overboard drill be held at each initial and subsequent inspection for certification under simulated emergency conditions to be specified by the inspector.

§ 176.810 Fire protection.

(a) At each initial and subsequent inspection for certification, the owner or managing operator shall be prepared to conduct tests and have the vessel ready for inspection of its fire protection equipment, including the following:

(1) Inspection of each hand portable fire extinguisher, semi-portable fire extinguisher, and fixed gas fire extinguishing system to check for excessive corrosion and general condition;

(2) Inspection of piping, controls, and valves, and the inspection and testing of alarms and ventilation shutdowns, for each fire extinguishing system and detecting system to determine that the system is in operating condition;

(3) Operation of the fire main system and checking of the pressure at the most remote and highest outlets;

(4) Testing of each firehose to a test pressure equivalent to its maximum service pressure;

(5) Checking of each cylinder containing compressed gas to ensure it has been tested and marked in accordance with § 147.60 of this chapter; and

(6) Testing or renewal of flexible connections on semi-portable extinguishers and fixed gas extinguishing systems in accordance with § 147.65 of this chapter.

(b) The owner, managing operator, or a qualified servicing facility must conduct the tests and inspections required in Tables 176.810 (b)(1) and (b)(2) of this part at least once every twelve months. The owner or managing operator must provide satisfactory evidence of the required servicing to the marine inspector. If any of the equipment or records have not been properly maintained, a qualified servicing facility may be required to perform the required tests, inspections, and necessary maintenance.

(c) The owner, managing operator, or master shall destroy, in the presence of the marine inspector, each fire hose found to be defective and incapable of repair.

(d) The marine inspector may require that a fire drill be held at each initial and subsequent inspection for certification under simulated emergency conditions to be specified by the inspector.

TABLE 176.810(b)(1).—PORTABLE EXTINGUISHERS

Type unit	Test
Foam	Discharge. Clean hose and inside of extinguisher thoroughly. Recharge.
Carbon dioxide	Weigh cylinders. Recharge if weight loss exceeds 10% of weight of charge. Inspect hose and nozzle to be sure they are clear.
Dry chemical (cartridge—operated type)	Examine pressure cartridge and replace if end is punctured or if cartridge is otherwise determined to have leaked or to be in unsuitable condition. Inspect hose and nozzle to see they are clear. Insert charged cartridge. Be sure dry chemical is free-flowing (not caked) and chamber contains full charge.
Dry chemical (stored pressure type)	See that pressure gauge is in operating range. If not, or if seal is broken, weigh or otherwise determine that full charge of dry chemical is in extinguisher. Recharge if pressure is low or if dry chemical is needed.
Halon 1211 or Halon 1301	See that pressure gauge, if provided, is in operating range. Recharge if pressure is low. Weigh cylinder. Recharge if weight loss exceeds 10% of weight of charge. Inspect hose and nozzle to ensure they are clear.

TABLE 176.810(b)(2).—FIXED SYSTEMS

Type system	Test
Carbon dioxide or Halon 1301	Weigh cylinders. Recharge if weight loss exceeds 10% of weight of charge. Test time delays, alarms, and ventilation shutdowns with CO_2 or other nonflammable gas.

§ 176.812 Pressure vessels and boilers.

(a) Periodic inspection and testing requirements for pressure vessels are contained in Subpart 61.10 of this chapter.

(b) Periodic inspection and testing requirements for boilers are contained in Subpart 61.05 of this chapter.

§ 176.814 Steering systems.

At each initial and subsequent inspection for certification the owner or managing operator shall test the steering systems of the vessel and make them available for inspection to the extent necessary to determine that they are in suitable condition and fit for the service intended. Servo-type power systems, such as orbitrol systems, must be tested in the manual mode, with hydraulic pumps secured, to determine if the system can be smoothly operated by a single person.

§ 176.816 Miscellaneous systems and equipment.

At each initial and subsequent inspection for certification the owner or managing operator shall test and make available for inspection all items in the ship's outfit, such as ground tackle, navigation lights and equipment, markings, placards, etc., which are required to be carried by the regulations in this subchapter, as necessary to determine that they are fit for the service intended.

§ 176.818 Sanitary inspection.

At each inspection for certification and at every other vessel inspection quarters, toilet and washing spaces, galleys, serving pantries, lockers, etc., may be examined to determine that they are serviceable and in a sanitary condition.

§ 176.830 Unsafe practices.

(a) At each inspection for certification and at every other vessel inspection all observed unsafe practices, fire hazards, and other hazardous situations must be corrected and all required guards and protective devices must be in satisfactory condition.

(b) At each inspection for certification and at every other vessel inspection the bilges and other spaces may be examined to see that there is no accumulation of oil or other matter which might create a fire hazard.

§ 176.840 Additional tests and inspections.

The OCMI may require that a vessel and its equipment undergo any additional test or inspection deemed necessary to determine that the vessel and its equipment are suitable for the service in which they are to be employed.

Subpart I—International Convention for Safety of Life at Sea, 1974

§ 176.900 Applicability.

(a) Except as otherwise provided in this subpart, a mechanically propelled

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vessel of the United States, which carries more than 12 passengers on an international voyage must be in compliance with the applicable requirements of the International Convention for Safety of Life at Sea to which the United States Government is currently a party (SOLAS Convention).

(b) The SOLAS Convention does not apply to a vessel solely navigating the Great Lakes and the St. Lawrence River as far east as a straight line drawn from Cap de Rosiers to West Point, Anticosti Island and, on the north side of Anticosti Island, the 63rd Meridian.

§ 176.910 Passenger Ship Safety Certificate.

(a) A vessel, which carries more than 12 passengers on an international voyage except a voyage between the continental United States and Hawaii or Alaska or a voyage between Hawaii and Alaska, must have a valid SOLAS Convention Passenger Ship Safety Certificate. The Commandant issues the Passenger Ship Safety Certificate after receiving notification from the cognizant OCMI that the vessel complies with the applicable SOLAS Convention regulations.

(b) The route specified on the Certificate of Inspection and the Passenger Ship Safety Certificate must agree.

(c) A SOLAS Convention Passenger Ship Safety Certificate is issued for a period of not more than 12 months.

(d) The Passenger Ship Safety Certificate may be withdrawn, revoked, or suspended at any time when the vessel is not in compliance with applicable SOLAS Convention requirements.

§ 176.920 Exemptions.

(a) In accordance with Regulation 4, Chapter I (General Provisions) of the International Convention for Safety of Life at Sea, 1974, the Commandant may exempt a vessel, which is not normally engaged on an international voyage but which in exceptional circumstances is required to undertake a single international voyage, from any of the requirements of the regulations of the SOLAS Convention provided that the vessel complies with safety requirements which are adequate in the Commandant's opinion for the voyage which is to be undertaken.

(b) In accordance with Regulation 1, Chapter II–1 (Construction—Subdivision and Stability, Machinery and Electrical Installations), Regulation 1, Chapter II–2 (Construction—Fire Protection, Fire Detection and Fire Extinction), and Regulation 2, Chapter III (Life Saving Appliances and Arrangements) of the SOLAS Convention, the Commandant may exempt a vessel, which does not proceed more than 20 miles from the nearest land, from any of the specific requirements of Chapters II–1, II–2, and III of the SOLAS Convention if he considers that the sheltered nature and conditions of the voyage are such as to render the application of such requirements unreasonable or unnecessary.

(c) The Commandant may exempt a vessel from requirements of the regulations of the SOLAS Convention in accordance with paragraphs (a) and (b) of this section upon a written request from the owner or managing operator submitted via the cognizant OCMI and Coast Guard District Commander.

(d) When the Commandant grants an exemption to a vessel in accordance with this section, the Commandant will issue an Exemption Certificate describing the exemption. An Exemption Certificate is not valid for longer than the period of the Passenger Ship Safety Certificate to which it refers.

§ 176.930 Equivalents.

In accordance with Regulation 5, Chapter I (General Provisions) of the SOLAS Convention, the Commandant may accept an equivalent to a particular fitting, material, appliance, apparatus, or any particular provision required by the SOLAS Convention regulations if satisfied that such equivalent is at least as effective as that required by the regulations. An owner or managing operator of a vessel may submit a request for the acceptance of an equivalent to a particular provision required by the SOLAS Convention regulations. The Commandant will indicate the acceptance of an equivalent on the vessel's SOLAS Convention Passenger Ship Safety Certificate.

§ 176.932 Equivalency for voyages to the Bahamas.

(a) The Commandant may determine that a vessel of the United States, other than a DSC, operating on voyages between the east coast of Florida and the Bahamas and not more than 30 miles from land, complies with requirements equivalent to those SOLAS requirements made applicable by § 176.900 of this subpart if the vessel:

(1) Complies with all other applicable provisions of this subchapter;

(2) Is certificated to carry not more than 49 passengers;

(3) Is certificated to operate on an ocean route not more than 100 miles from shore;

(4) Is equipped with a LORAN C set and a fathometer;

(5) Is equipped with two fixed bilge pumps which may be combination bilge/fire pumps; and

(6) Is equipped with inflatable liferafts of an aggregate capacity which will accommodate the total number of persons permitted on board.

(b) An owner or managing operator of a vessel may request the equivalency determination in paragraph (a) of this section by following the procedures in § 175.540 of this subchapter. The Commandant will indicate the equivalency determination on the vessel's SOLAS Convention Passenger Ship Safety Certificate.

PART 177—CONSTRUCTION AND ARRANGEMENT

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Authority: 46 U.S.C. 2104, 3306; 49 CFR 1.46.

Subpart A—General Provisions

§ 177.100 General requirement.

The construction and arrangement of a vessel must allow the safe operation of the vessel in accordance with the terms of its certificate of inspection giving consideration to provisions for a seaworthy hull, protection against fire, means of escape in case of a sudden unexpected casualty, guards and rails in hazardous places, ventilation of enclosed spaces, and necessary facilities for passengers and crew.

§ 177.115 Applicability to existing vessels.

(a) Except as otherwise required by paragraph (b) of this section, an existing vessel must comply with the regulations in this part or with the construction and arrangement regulations which were applicable to the vessel on [insert date of day before effective date of regulations].

(b) New construction or arrangements, regulated by this part, made to an existing vessel on or after [insert effective date of regulations] must comply with the regulations of this part. Repairs or maintenance conducted on an existing vessel, resulting in no changes to the original construction or arrangement of the vessel, must comply with the regulations in this part or the regulations applicable to the vessel on [insert date of day before effective date of regulations].

Subpart B—Plans

§ 177.202 Plans and information required.

(a) Except as provided in paragraph (b) of this section and § 177.210 of this part, the owner of a vessel requesting initial inspection for certification shall, prior to the start of construction if practicable, submit for approval to the cognizant Officer in Charge, Marine Inspection, at least two copies of the following plans, manuals, analysis, and calculations that are applicable to the vessel as determined by the OCMI:

(1) Midship section;

(2) Outboard profile;

(3) Inboard profile;

(4) Arrangement of decks;

(5) Machinery installation;

(6) Electrical installation including:

(i) Elementary one-line diagram of the power system, supported by cable lists, bills of materials, and other information including:

(A) Type and size of generators and prime movers;

(B) Type and size of generator cables, bus-tie cables, feeders, and branch circuit cables;

(C) Power, lighting, and interior communication panelboards with number of circuits and rating of energy consuming devices;

(D) Type and capacity of storage batteries; and

(E) Rating of circuit breakers and switches, interrupting capacity of circuit breakers, and rating and setting of overcurrent devices;

(ii) Electrical plant load analysis; and

(iii) For a vessel of more than 65 feet in length with overnight accommodations for more than 49 passengers, an overcurrent protective device coordination analysis if the information required by paragraph (a)(6)(i) of this section is not considered adequate by the OCMI to review the electrical system of the vessel;

(7) Lifesaving equipment locations and installation;

(8) Ventilation diagrams;

(9) Engine exhaust diagram;

(10) Fire main system plans and calculations;

(11) Fixed gas fire extinguishing system plans and calculations;

(12) Fire detecting system and smoke detecting system plans;

(13) Sprinkler system plans and calculations;

(14) Portable fire extinguisher types, sizes and locations;

(15) Structural fire protection details and the fire load calculations of accommodation and service spaces;

(16) Escape routes for fire or flooding and muster stations;

(17) Fuel tanks;

(18) Piping systems including: Firemain, bilge, ballast, hydraulic, sanitary, compressed air, combustible and flammable liquids, vents, soundings, and overflows;

(19) Hull penetrations and shell connections;

(20) Lines and offsets, curves of form, cross curves of stability, and tank capacities including size and location on vessel;

(21) Masts, including integration into the ship's structure, on sailing vessels;

(22) Rigging plan showing sail areas and centers of effort as well as the arrangement, dimensions, and connections of the standing rigging for sailing vessels;

(23) Steering and steering control;

(24) Marine sanitation device model number, approval number, connecting wiring and piping;

(25) Propulsion and propulsion control; and

(26) For a dynamically supported craft:

(i) Evacuation plan in accordance with § 177.560 of this part;

(ii) Operating manual in accordance with § 185.810 of this subchapter;

(iii) An analysis of occurrences resulting in total failure of steering, thruster, or stabilization systems, the need for outside assistance, dangerous degradation of the handling or strength of the vessel, or other unsafe conditions;

(iv) Any standards used to design the vessel's structure;

(v) Data supporting the safety of the design obtained, as appropriate, from calculations, tests, and trials;

(vi) A fatigue loading analysis, including identification of structural areas susceptible to fatigue failure, and an inspection plan to monitor those areas;

(vii) A statement of the sea state and wind conditions which will require cessation of operations and the historical frequency of the occurrence of these conditions in the anticipated operating area;

(viii) A statement of the most severe wind and sea conditions historically encountered in the anticipated operating

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area, and the frequency of occurrence of those conditions; and

(ix) A statement of unique loading conditions, such as wakes of passing vessels or wind conditions in operating areas where sea states will not be limiting.

(b) For a vessel of not more than 65 feet in length, except a dynamically supported craft, the owner may submit specifications, sketches, photographs, line drawings or written descriptions instead of any of the required drawings, provided the required information is adequately detailed and acceptable to the Officer in Charge, Marine Inspection.

(c) When authorized by the OCMI, an owner may submit any plans, manuals, or calculations, required to be submitted to the OCMI by this part, to the Commanding Officer, U.S. Coast Guard Marine Safety Center.

(d) For a vessel, the construction of which was begun prior to approval of the plans and information required by paragraphs (a) and (b) of this section, the OCMI may require any additional plans and information, manufacturers' certifications of construction, testing including reasonable destructive testing, and inspections, which the OCMI determines is necessary to verify that the vessel complies with the requirements of this subchapter.

§ 177.210 Plans for sister vessels.

(a) Plans are not required for a vessel which is a sister vessel, provided:

(1) Approved plans for the original vessel are on file at the U.S. Coast Guard Marine Safety Center (MSC) or in the files of the cognizant Officer in Charge, Marine Inspection;

(2) The owner of the plans authorizes their use for the new construction of the sister vessel;

(3) The regulations used for the original plan approval have not changed since the original approval; and

(4) There are no major modifications to any of the systems to be used.

(b) If approved plans of the original vessel are not on file at the MSC or with the OCMI, the vessel owner must submit plans as described in § 177.202 of this subpart.

Subpart C—Hull Structure

§ 177.300 Structural design.

Except as otherwise allowed by this subpart, a vessel must comply with the structural design requirements of one of the following standards appropriate for the hull material of the vessel:

(a) Wooden hull vessels: Rules and Regulations for the Classification of Yachts and Small Craft, Lloyd's Register of Shipping (Lloyd's);

(b) Steel hull vessels:

(1) Rules and Regulations for the Classification of Yachts and Small Craft, Lloyd's; or

(2) Rules for Building and Classing Steel Vessels Under 61 Meters (200 Ft) in Length, American Bureau of Shipping (ABS);

(c) Fiber reinforced plastic vessels:

(1) Rules and Regulations for the Classification of Yachts and Small Craft, Lloyd's; or

(2) Rules for Building and Classing Reinforced Plastic Vessels, ABS;

(d) Aluminum hull vessels:

(1) Rules and Regulations for the Classification of Yachts and Small Craft, Lloyd's;

(2) For a vessel of more than 100 feet in length: Rules for Building and Classing Aluminum Vessels, ABS; or

(3) For a vessel of not more than 100 feet in length: Rules for Building and Classing Steel Vessels Under 61 Meters (200 Feet) in Length, ABS, with the appropriate conversions from the ABS Rules for Building and Classing Aluminum Vessels;

(e) Ferrocement hull vessels: Australian Transport Advisory Council Shipping Laws Code Section 5, Subsection J.

§ 177.310 Satisfactory service as a design basis.

When scantlings for the hull, deckhouse, and frames of a vessel of not more than 65 feet in length differ from those specified by the standards listed in § 177.300 of this subpart, and the owner can demonstrate that a vessel approximating the same size, power, and displacement has been built to such scantlings, and has performed satisfactorily in the same service insofar as structural adequacy is concerned for a period of at least 5 years, such scantlings may be approved by the OCMI instead of the scantlings required by the applicable standards specified in § 177.300.

§ 177.315 Vessels of not more than 65 feet in length carrying not more than 12 passengers.

The scantlings for a vessel of not more than 65 feet in length carrying not more than 12 passengers may be approved by the OCMI if the builder of the vessel establishes to the satisfaction of the OCMI that the design and construction of the vessel is adequate for the intended service.

§ 177.320 Dynamically supported craft.

The structural design of dynamically supported craft may be approved by the Commandant based on the route and anticipated operating conditions of the vessel.

§ 177.330 Sailing vessels.

The design, materials, and construction of masts, posts, yards, booms, bowsprits, and standing rigging on a sailing vessel must be suitable for the intended service. The hull structure must be adequately reinforced to ensure sufficient strength and resistance to plate buckling. Detailed calculations on the strength of the mast, post, yards, booms, bowsprits, and standing rigging may be required by the OCMI.

§ 177.340 Alternate design considerations.

When the structure of vessel is of novel design, unusual form, or special materials, which cannot be reviewed or approved under § 177.300, § 177.310, § 177.315 or § 177.320 of this subpart, the structure may be approved by the Commandant when it can be shown by systematic analysis based on engineering principles that the structure provides adequate safety and strength. The owner must submit detailed plans, material component specifications, and design criteria, including the expected operating environment, resulting loads on the vessel, and design limitations for such vessel, to the OCMI.

Subpart D—Fire Protection

§ 177.400 General arrangement and outfitting.

(a) *Fire hazards to be minimized.* The general construction of the vessel must be such as to minimize fire hazards insofar as it is reasonable and practicable.

(b) *Combustibles insulated from heated surfaces.* Internal combustion engine exhausts, boiler and galley uptakes, and similar sources of ignition must be kept clear of and suitably insulated from combustible material. Dry exhaust systems for internal combustion engines on wooden or fiber reinforced plastic vessels must be installed in accordance with American Yacht and Boat Council Standard P-1.

(c) *Separation of Machinery and Fuel Tank Spaces from Accommodation Spaces.*

(1) Except as otherwise provided in this section, machinery and fuel tank spaces must be separated from accommodation spaces by boundaries which prevent the passage of vapors.

(2) A watertight engine box may be accepted as a substitute for vaportight boundaries.

(d) *Paint and flammable liquid lockers.* Paint and flammable liquid lockers must be constructed of steel or equivalent material, or wholly lined with steel or equivalent material.

(e) *Vapor barriers.* Vapor barriers must be provided where insulation of any type is used in spaces where flammable and combustible liquids or vapors are present, e.g. machinery spaces and paint lockers.

(f) *Waste receptacles.* Waste receptacles must be constructed of noncombustible materials with no openings in the sides or bottom.

(g) *Paint.* Paint thickness on the interior surfaces of any enclosed or partially enclosed space must not exceed 0.075 inch. Nitrocellulose or other highly flammable or noxious fume producing paints or lacquers must not be used.

(h) *Mattresses.* All mattresses must comply with 16 CFR Part 1632, Subpart A, the U.S. Department of Commerce Standard for Mattress Flammability (FF 4-72.16). Polyurethane foam mattresses are prohibited.

§ 177.420 Structural fire protection for vessels carrying not more than 150 passengers or with overnight accommodations for not more than 49 passengers.

(a) *Applicability.* A vessel carrying not more than 150 passengers and a vessel with overnight accommodations for not more than 49 passengers must comply with the requirements of this section.

(b) *Fiber reinforced plastic.* When the hull, decks, deckhouse, or superstructure of a vessel is partially or completely constructed of fiber reinforced plastic, including composite construction, the resin used must have a flame spread of not more than 100.

(c) *Cooking areas.* Vertical or horizontal surfaces within three feet of cooking appliances must have a flame spread rating of not more than 75. Curtains, draperies, or free hanging fabrics must not be fitted within three feet of cooking or heating appliances.

§ 177.430 Fire control boundaries for vessels carrying more than 150 passengers.

(a) *Applicability.* A vessel carrying more than 150 passengers, without overnight accommodations for more than 49 passengers, must comply with the requirements of this section.

(b) *Type, location, and construction of fire control bulkheads and decks.* (1) The hull, structural bulkheads, columns and stanchions, superstructures, and deckhouses must be composed of steel or equivalent material.

(2) Bulkheads and decks must be classed as A-60, A-30, A-15, A-0, B-15, B-0, or C.

(i) A-Class bulkheads or decks must be composed of steel or equivalent material, suitably stiffened and made intact with the main structure of the vessel, such as the shell, structural bulkheads, and decks. They must be so constructed that, if subjected to the standard fire test, they are capable of preventing the passage of smoke and flame for 1 hour. In addition, they must be so insulated with approved structural insulation, bulkhead panels, or deck covering that within the time listed below the average temperature on the unexposed side does not rise more than 250 °F (139 °C) above the original temperature, nor would the temperature at any one point, including any joint, rise more than (181 °C) 325 °F above the original temperature:

A-60 Class	60 minutes.
A-30 Class	30 minutes.
A-15 Class	15 minutes.
A-0 Class	0 minutes.

(ii) B-Class bulkheads must be constructed of noncombustible materials and made intact from deck to deck, or to the ceiling as provided in paragraph (b)(6) of this section, and to shell or other boundaries. They must be so constructed that, if subjected to the standard fire test, they are capable of preventing the passage of flame for one-half hour. In addition, their insulation value must be such that within the time listed below the average temperature of the unexposed side does not rise more than 250 °F (139 °C) above the original temperature, nor does the temperature at any one point, including any joint, rise more than 405 °F (225 °C) above the original temperature:

B-15 Class	15 minutes.
B-0 Class	0 minutes.

(iii) C-Class bulkheads and decks must be composed of noncombustible materials.

(3) The hull, superstructure, and deck houses of a vessel, except for a vehicle space on a vehicle ferry, must be subdivided by bulkheads into main vertical zones which:

(i) Are not more than 131 feet in length on any one deck; and

(ii) May have small horizontal steps, provided the steps:

(A) Do not exceed 10 feet; and

(B) Are of A-60 Class construction.

(4) Main vertical zone bulkheads must be of at least A-30 Class construction or meet the requirements of paragraph (c) of this section, whichever is greater.

(5) Vehicle decks on a vehicle ferry may be subdivided by main horizontal zones instead of main vertical zones.

(6) A B-Class bulkhead need not extend above an approved continuous B-Class ceiling.

(7) Where B-15 Class bulkhead panels are required to extend above the ceiling to the deck above, or beyond the lining to the shell, the portion of the bulkhead panel within the void space need only meet B-0 class requirements.

(8) Where B-Class bulkhead panels are used, all four edges of the panel must be retained by a continuous frame of steel or equivalent material on both sides of the panel offering an overlap of not less than ¾ inch.

(9) Ceiling or lining panels must be retained by continuous flanges of steel or equivalent material on the exposed side of the panel offering an overlap of not less than ¾ inch on each panel. Material incidental to the installation of the panels must be approved noncombustible material.

(10) Any sheathing, furring, or holding pieces incidental to the securing of structural insulation must be of approved noncombustible material.

(11) Where linings or bulkhead panels are framed away from the shell or structural bulkheads, the deck within the void space so formed need only meet A-0 Class requirements.

(12) Penetrations in A-Class fire control boundaries for electrical cables, pipes, trunks, ducts, etc. must be constructed to prevent the passage of flame and smoke for one hour. In addition, the penetration must be designed or insulated so that it will withstand the same temperature rise limits as the boundary penetrated.

(13) Penetrations in B-Class fire control boundaries for electrical cables, pipes, trunks, ducts, etc. must be constructed to prevent the passage of flame for 30 minutes. In addition, the penetration must be designed or insulated so that it will withstand the same temperature rise limits as the boundary penetrated.

(c) *Bulkhead requirements.* The minimum requirements for bulkheads between various spaces must be as noted in Table 177.430(c).

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TABLE 177.430(c)

Spaces	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
Control Station (1)	B-0	A-0	A-0	A-30	A-15	A-60	A-0	A-60	A-60	A-0	A-0
Passageway (2)		C	A-0	B-15	B-0	A-0	A-0	A-0	A-15	A-0	A-0
Stairway (3)			A-0	A-15	A-0	A-15	A-0	A-30	A-15	A-0	A-0
High Risk Accommodation Space (4)				A-15	B-15	A-30	A-30	A-60	A-30	A-15	A-0
Low Risk Accommodation Space (5)					B-0	A-15	A-0	A-30	A-0	A-0	A-0
High Risk Service Space (6)						A-0	A-0	A-0	A-15	A-15	A-0
Low Risk Service Space (7)							C	A-0	A-0	A-0	A-0
Machinery Space (8)								A-0	A-0	A-15	A-0
Cargo or Vehicle space (9)									A-0	A-0	A-0
Open Deck, Embarkation, or Muster Station (10)										A-0	A-0
Voids, Fuel Tanks, or Water Tanks (11)											A-0

(d) *Deck requirements.* The minimum requirements for decks between the various spaces must be as noted in Table 177.430(d).

TABLE 177.430(d)

Space below, Space above	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
Control Space (1)	A-0	A-15	A-0	A-30	A-0	A-0	A-0	A-0	A-0	A-0	A-0
Passageway (2)	A-0	A-0	A-0	A-0	A-0	A-0	A-0	A-0	A-0	A-0	A-0
Stairways (3)	A-0	A-0	A-0	A-0	A-0	A-0	A-0	A-0	A-0	A-0	A-0
High Risk Accommodation Space (4)	A-60	A-30	A-30	A-60	A-15	A-30	A-15	A-30	A-30	[1] A-0	A-0
Low Risk Accommodation Space (5)	A-15	A-0	A-15	A-0	A-0	A-0	A-0	A-0	A-0	A-0	A-0
High Risk Service Space (6)	A-60	A-30	A-30	A-60	A-15	A-30	A-30	A-30	A-30	[1] A-0	A-0
Low Risk Service Space (7)	A-15	A-0	A-15	A-0	A-0	A-0	A-0	A-0	A-0	A-0	A-0
Machinery Space (8)	A-60	A-60	A-60	A-60	A-30	A-30	A-30	A-0	A-30	[1] A-0	A-0
Cargo or Vehicle Space (9)	A-60	A-30	A-30	A-30	A-0	A-0	A-0	A-0	A-0	[1] A-0	A-0
Open Deck, Embarkation, or Muster Station (10)	A-0	A-0	A-0	A-0	A-0	A-0	A-0	A-0	A-0	A-0	A-0
Voids, Fuel Tanks, or Water Tanks (11)	A-0	A-0	A-0	A-0	A-0	A-0	A-0	A-0	A-0	A-0	A-0

[1] Decks forming boundaries for a muster station or an embarkation station must be of at least A-60 class construction.

§ 177.432 Fire load and outfitting on vessels carrying more than 150 passengers.

(a) *Applicability.* A vessel carrying more than 150 passengers, without overnight accommodations for more than 49 passengers, must comply with the requirements of this section.

(b) *Fire load of accommodation spaces.*

(1) The maximum fire load of a high risk accommodation space must not be more than 6.0.

(2) The maximum fire load of a low risk accommodation space must not be more than 3.0.

(3) Fire load calculations must include all integral, free standing, or loose combustible material intended for use or storage in a space such as deck coverings, carpets, rugs, furniture, upholstery, draperies, ceiling material not tested under § 164.006 of this chapter, combustible insulation, fiberglass window boxes, and lifesaving equipment.

(c) *Ceilings, linings, trim, veneers, and decorations.*

(1) Ceilings, linings, and any furring incidental to their installation, in a control station, accommodation space, service space, stairway, stairtower, or passageway must be of noncombustible material, except as provided in paragraphs (c)(2) and (c)(3) of this section.

(2) Combustible acoustical material listed by Underwriters Laboratories for use in fire resistant construction, and having a flame spread rating of not more than 20 and a smoke developed rating of not more than 10 when tested in accordance with ASTM E-84 or UL 723, may be used in ceilings in any service space, control station, or accommodation space except stairways or stairtowers. These materials may not be used in lieu of required structural insulation and must be included in the fire load calculations of the space.

(3) Gypsum wallboard listed by Underwriters Laboratories for use in fire resistant construction and having a flame spread rating of not more than 20 and a smoke developed rating of not more than 10, when tested in accordance with ASTM E-84 or UL 723, may be used as a lining in any accommodation space, service space, or control station. These materials may not be used in lieu of required structural insulation, and their facing material must not be of more than 0.075 inches in thickness. Only noncombustible material, except paint in compliance with § 177.400(g), may be added to the face of gypsum wallboard.

(4) Except as provided in paragraphs (c)(5) or (c)(6) of this section, interior finishes including veneers, trim, and moldings used in an accommodation space, service space, stairway, stairtower, passageway or concealed spaces such as behind linings or ceilings, must be approved under § 164.012 of this chapter but need not be included in the fire load calculations of the space.

(5) Interior finishes of not more than 0.075 inches in thickness, listed by Underwriters Laboratories as coatings and sheathings, with a flame spread rating of not more than 20 and a smoke developed rating of not more than 10, when tested in accordance with ASTM E-84 or UL 723, may be used in an accommodation space, service space, stairway, stairtower, passageway, or concealed spaces such as behind linings or ceilings in lieu of material approved under § 164.012 of this chapter. These coatings and sheathings need not be included in the fire load calculations of the space.

(6) Bulkheads, linings, and ceilings in a high risk accommodation space may have a combustible veneer of not more than 0.075 inches in thickness. These combustible veneers must be included in the fire load calculations of the space and must not be used or extend into concealed spaces, such as behind ceilings or linings or between bulkheads.

(7) Interior finishes of more than 0.075 inches in thickness must be of noncombustible material.

(d) *Draft stops.* Draft stops must be fitted not more than 45 feet apart in a concealed space above a ceiling or between a lining and the shell of a vessel. Draft stops must be of A-Class or B-Class construction and be fitted in a vertical position.

(e) *Combustible material in concealed spaces.* Limited amounts of combustible materials, such as wiring insulation, sound deadening inserts for piping, and cable ties, are permitted in concealed spaces in any accommodation space, service space, or control station except as otherwise prohibited by this section.

(f) *Use of combustible insulation.*

(1) Combustible insulation must not be used for structural insulation in fire control boundaries.

(2) Insulation and all material incidental to its installation, installed in an accommodation space, service spaces, or control station for any purpose, must be noncombustible material, except as provided in paragraph (f)(3) of this section.

(3) Combustible insulation may be installed in a cargo space, refrigerated storeroom, or individual refrigerator box or used for pipe and machinery covering or lagging within a machinery space. Foamed insulation must have a flame spread rating of not more than 25.

(g) *Deck coverings.*

(1) A deck within any accommodation space, service space, or a control station may not be covered with any material of more than 3/8 inch in thickness for leveling purposes or by a hardwood deck covering of more than 3/8 inch in thickness. An approved noncombustible material may be used in any thickness. Materials approved under § 164.006 of this chapter must be used in approved thicknesses.

(2) Rugs, carpets, and flooring used in an accommodation space or service space must:

(i) Be wool;

(ii) Have a flame spread rating of not more than 75 and a smoke developed rating of not more than 100, when tested to ASTM E-84 or UL 723 by an independent laboratory; or

(iii) Withstand a critical radiant flux of not less than 0.45 when tested to ASTM E-648, and have a specific optical density of not more than 450 when tested to ASTM E-662. The test must be conducted by an independent laboratory and the specific optical density value used for evaluation must be the higher of the flaming and non-flaming values measured during the tests.

(3) Rugs, carpets, and flooring used in stairways, passageways, and stairtowers must comply with paragraph (g)(2) of this section except that the critical radiant flux withstood must not be less than 0.81.

(4) Rugs and carpets must not extend up the bulkhead more than four inches above a deck.

(h) *Furniture and furnishing requirements.*

(1) Case furniture such as lockers, counters, desks, and cabinets must be composed of approved noncombustible material or of hardwood. Surfacing materials must have a flame spread rating of not more than 100 or be hardwood.

(2) Free standing furniture such as chairs, sofas, tables, etc. must be constructed with frames of approved noncombustible material or hardwood. Surfacing materials must have a flame spread rating of not more than 100 or be hardwood.

(3) Upholstered seating must have a char length of not more than 1½ when tested to NFPA 260B by an independent laboratory.

(4) All draperies, curtains, and free hanging materials, must meet the large and small scale test standards of NFPA 701.

§ 177.434 Windows and air ports in fire control boundaries on vessels carrying more than 150 passengers.

(a) A vessel carrying more than 150 passengers, without overnight accommodations for more than 49 passengers, must comply with the requirements of this section.

(b) Windows or air ports must be of glass of at least 1/4 inch in thickness. The use of other glazing material such as polycarbonate sheets may be approved for specific installations by the Commandant.

(c) Windows or air ports in bulkheads adjacent to passageways must not extend below a point 36 inches above the deck.

(d) Windows or air ports in A-Class bulkheads must be fitted with frames of steel or equivalent material. Glazing beads or angles of steel or equivalent material must be installed to hold glass in place in windows or air ports in a fire control boundary in event of a fire if:

(1) Where a steel frame is used, it is not arranged to retain the glass in place; or

(2) A frame of aluminum or other material with low melting point is used.

(e) A window or air port which is adjacent to an embarkation station, muster station, escape route, or survival craft stowage must be:

(1) Of A-Class construction; or

(2) Fitted with shutters, operable from outside the space, of steel or equivalent material.

(f) A window installed in an internal fire control boundary must comply with the requirements of § 72.05-30 of this chapter, except that fire window frames and glazing material listed by Underwriters Laboratories may be used in B-Class bulkheads.

(g) Windows in doors in fire control boundaries must comply with the requirements of paragraphs (b) through (f) of this section.

§ 177.436 Doors on vessels carrying more than 150 passengers.

(a) A door, other than a watertight door, on a vessel carrying more than 150 passengers, without overnight accommodations for more than 49 passengers, must meet the requirements of this section.

(b) A door in a fire control boundary must meet the following requirements:

(1) A door must be capable of operation from either side by one person;

(2) A door in an accommodation space, stairway, stairtower, passageway, or control station must open in the direction of escape, where practicable;

(3) Combustible veneers may be used on doors subject to the same restrictions as the fire control boundary in which the doors are fitted;

(4) Door frames must be of rigid construction and provide at least a ½ inch overlap at the sides and top, except:

(i) Double doors capable of independent operation and latching may have a clearance between the doors of not more than ⅛ inch. However, if one door must always be closed first, an astragal strip of at least ½ inch overlap must be provided for the second door; and

(ii) A double swing door, may have a clearance of not more than ⅛ inch at the top and sides;

(5) The maximum width of an individual door must not exceed 48 inches; and

(6) Hose ports, if fitted, must be in the lower corner of the door opposite the hinge so a hose may pass through the doorway when the door is open and still allow the door to close over the hose. The hose port should be approximately 6 inches square. A hinged or pivoted steel or equivalent material cover must be fitted in the opening, equipped to allow easy and automatic operation of the hinged cover.

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(c) Doors in A–Class fire control boundaries must meet the following additional requirements:

(1) A door in a bulkhead required to be A–60, A–30, or A–15 Class must be of hollow steel or equivalent material construction, solidly filled with approved structural insulation, and capable of meeting the requirements of an A–15 Class bulkhead;

(2) A door in a bulkhead required to be A–0 Class must be of solid or hollow steel or equivalent material construction, and capable of meeting the requirements of an A–0 Class bulkhead;

(3) A door must have a latch with a minimum throw of ¾ inch;

(4) A door must not have vent grilles or louvers;

(5) A door must not be undercut more than ½ inch above the door sill or deck covering. Rugs and carpets must not pass through doorways, but linoleum and similar deck coverings may;

(6) A door in a stairtower, stairway, and main vertical zone bulkhead must meet the following additional requirements:

(i) A door must be of the self-closing type capable of closing against a 3½ degree list of the vessel; and

(ii) A hold back mechanism for a door must allow the door to be released locally, upon a signal from a control station, and upon disruption of the power system. Holdback hooks are not allowed;

(7) A horizontal door may close a stairway provided it meets the following requirements:

(i) The door must be self-closing with a closure time of not less that 5 seconds and not more than 10 seconds, and be capable of closing against a 3½ degree list of the vessel;

(ii) A hold back mechanism for a door must allow the door to be released locally, upon a signal from a control station, and upon disruption of the power system. Holdback hooks are not allowed;

(iii) The forces required to fully open the door must not exceed 5 pounds to release the latch, 10 pounds to set the door in motion, and 5 pounds to open the door to the width of the stairway; and

(iv) The door latch must be capable of keeping the door closed when a pressure of 0.01 psi is applied to the underside of the door.

(8) Double swing doors must not be used in any bulkhead except between a food preparation space, such as a galley or pantry, and a messroom or dining room; and

(9) A door opening onto weather decks must meet the requirements of paragraphs (c)(1) or (c)(2) of this section or may be composed of hardwood of not less than 1¾ inches in thickness.

(d) A door in B–Class bulkhead must meet the following requirements:

(1) A door must be of solid or hollow steel or equivalent material construction, or must be of noncombustible material and be specifically approved by the Commandant;

(2) A door must have a latch with a minimum throw of 3/8 inch;

(3) A door must not be undercut more than 1 inch above the door sill or deck covering. Rugs and carpets must not pass through doorways but linoleum and similar coverings may; and

(4) A door may have a vent grille or louver in the lower half of the door, with an area of not more than 2.0 square feet, made of noncombustible material.

(e) A door in a C–Class bulkhead must be of noncombustible material.

(f) A door used for decorative purposes, and which is not required to comply with paragraphs (b) through (e) of this section, must be constructed of noncombustible material or hardwood, must not interfere with the normal operation of the required doors, and must open in the same direction as the required doors. Decorative doors must not be used in stairways or stairtowers.

§ 177.438 Stairtowers, stairways, ladders, and elevators on vessels carrying more than 150 passengers.

(a) Stairtowers, stairways, landings, ladders, and elevators on a vessel carrying more than 150 passengers, without overnight accommodations for more than 49 passengers, must comply with the requirements of this section.

(b) Stairways, stairtowers, ladders, elevators, and landings must be composed of steel and be of sufficient strength to sustain a load of 100 pounds per square foot with a safety factor of 4 in the design.

(c) A stairway or stairtower must be fitted with handrails on both sides at a vertical height above the tread at its nosing of between 33 and 36 inches. A stairway or stairtower of more than 66 inches in width must also be fitted with a center handrail.

(d) A handrail fitted in a stairtower, stairway, landing, ladder, or elevator must be constructed of noncombustible material.

(e) A stairway or stairtower must be clear of all obstructions other than handrails.

(f) Curved, spiral, or winding stairways are not permitted without the specific approval of the Commandant.

(g) Differences in the depth of tread or height of riser of stairs in different flights of stairs in a stairway or stairtower must be minimized. In an individual flight of stairs in a stairway or stairtower, the depth of the tread and the height of riser of each stair must be the same.

(h) In a stairway or stairtower, the sum of the riser height and tread depth must be at least 17 inches and not more than 18 inches. A stairway or stairtower having treads less than 10 inches in depth must have a nosing of one inch in width or other means to provide the equivalent room on the tread.

(i) Landings for stairways and stairtowers must meet the following requirements:

(1) A clear landing having an area at least equal to the square of the tread width must be provided at the top and bottom of each stairway; and

(2) Any interruption or change of direction in a stairway must be accomplished by means of an intermediate landing of a width and length at least equal to the tread width of the stairway.

(j) A stairway or stairtower must not have an angle of inclination from the horizontal of more than 40 degrees.

(k) An elevator shaft and a stairtower must have a door at each deck served.

(l) A stairway serving only two decks must have a door installed at one deck complying with the requirements of § 177.436 (b) and (c) of this chapter, except in an accommodation space where the stairway serves a balcony and is fully contained within the same space as the balcony.

(m) Each main vertical zone must be served by at least one stairtower, so that a person may escape, from any accommodation space or any other space where persons may be normally quartered or employed, to all other decks having any such spaces within the same main vertical zone, without coming out of the stairtower enclosure. Each stairtower must give access to a muster station or, if a muster station does not extend to the portion of the vessel in which the stairtower is located, to at least one weather deck from which a muster station may be reached by means of stairways. Where a stairtower is accessible from two main vertical zones, it may be considered as the required stairtower for both main vertical zones provided all boundaries of the stairtower meet main vertical zone boundary requirements contained in § 177.430 of this chapter.

(n) The minimum tread width of a stairway or stairtower must be 0.3 inch for each person served, but must not be less than 36 inches.

(1) The minimum tread width of a stairway or stairtower must be determined for each deck considering only those persons on that deck, except as provided in paragraph (n)(3) of this section. Once a minimum tread width has been established at any deck, it must not be decreased in the direction of escape.

(2) In determining the number of persons served, a space must be considered to contain at least the number of persons as follows:

(i) Passenger overnight accommodation spaces: Designed capacity;

(ii) Crew overnight accommodation spaces: Two-thirds designed capacity;

(iii) Accommodation spaces having fixed seating for passengers: Maximum seating capacity;

(iv) Lounges, club rooms, etc.: A person for every 10 square feet of deck area; and

(v) Work spaces: Occupancy under normal operating conditions.

(3) If a stairway forms part of a normal embarkation or debarkation route, the number of persons using the stairway for that purpose must be used in determining the minimum tread width.

(4) If more than one stairtower serves a main vertical zone, the number of persons in that main vertical zone may be distributed among the stairtowers.

§ 177.439 Balconies on vessels carrying more than 150 passengers.

(a) A vessel carrying more than 150 passengers must meet the requirements of this section.

(b) An accommodation space containing a balcony or which has an opening creating two levels within the space must meet the following requirements:

(1) The aggregate area of balconies or partial decks within the space must not be more than 80 percent of the total area of the lowest deck in the space;

(2) The maximum fire load of a high risk accommodation space containing a balcony or partial deck must not be more than 3.0; and

(3) The maximum fire load of a low risk accommodation space containing a balcony or partial deck must not be more than 1.5.

(c) Balconies or partial decks are not permitted on more than one level within an accommodation space.

§ 177.440 Structural fire protection for vessels with overnight accommodations for more than 49 passengers.

A vessel with overnight accommodations for more than 49 passengers must comply with § 72.05 of this chapter.

§ 177.450 Structural fire protection for dynamically supported craft.

(a) *Applicability.* A dynamically supported craft may comply with the requirements of this section instead of the requirements of §§ 177.420, 177.430, 177.432, 177.434, 177.436, and 177.438 of this subchapter.

(b) *Structural fire protection.* (1) The hull, decks, deckhouse, and superstructure must be of approved noncombustible material, except that fiber reinforced plastic material may be used with the specific approval of the Commandant.

(2) Furniture, furnishings, veneers, interior finish, rugs, carpets, and ceiling and acoustical tiles must comply with the applicable requirements in § 177.432 of this part.

(3) The boundaries of machinery spaces, galleys, and control stations must be designed to prevent the passage of flame and smoke in the standard fire test for a period of at least three times the evacuation time of the vessel plus seven minutes, but for not less than 30 minutes. Insulation or bulkhead/ceiling panels used for this purpose must be of an approved type.

Subpart E—Escape and Muster Station Requirements

§ 177.500 Means of escape.

(a) Except as otherwise provided in this section, each space accessible to passengers or used by the crew on a regular basis, must have at least two means of escape, one of which must not be a watertight door.

(b) The two required means of escape must be widely separated and, if possible, at opposite ends or sides of the space to minimize the possibility of one incident blocking both escapes.

(c) At least one means of escape from each space must provide a satisfactory route to an embarkation station on a vessel required to have survival craft and to a muster station required by § 177.520 of this subpart.

(d) Subject to the restrictions of this section, means of escape may include normal exits and emergency exits, passageways, stairways, ladders, deck scuttles, and windows.

(e) The number and dimensions of the means of escape from each space must be sufficient for rapid evacuation in an emergency for:

(i) Passenger overnight accommodation spaces: Designed capacity;

(ii) Crew overnight accommodation spaces: Two-thirds of designed capacity;

(iii) Passenger accommodation spaces having fixed seating: Maximum seating capacity;

(iv) Passenger accommodation spaces for which the capacity is not based on fixed seating: A person for every 10 square feet of deck area; and

(v) Work spaces: Occupancy under normal operating conditions.

(f) The number and dimensions of the means of escape from an accommodation space, with a balcony with a stairway within the space, must also permit not less than two-thirds of the persons on each level to exit on that level.

(g) The dimensions of a means of escape must be such as to allow easy movement of persons when wearing lifejackets. There must be no protrusions in means of escape which could cause injury, ensnare clothing, or damage lifejackets.

(h) The minimum clear opening of a door used for a means of escape from a space which is designed for more than 49 passengers must be at least 32 inches in width. The sum of the width of all doors used as means of escape from such a space must be at least 0.3 inch times the number of passengers for which the space is designed.

(i) A dead end passageway or the equivalent, of more than 40 feet in length, is prohibited.

(j) The maximum allowable travel distance from the most remote point in a space to the nearest means of escape must not be more than 150 feet.

(k) Each door, hatch, or scuttle, used as a means of escape, must be capable of being opened by one person, from either side, in both light and dark conditions. The method of opening a means of escape must be obvious, rapid, and of adequate strength. Handles and securing devices must be permanently installed and not capable of being easily removed. A door, hatch or scuttle must open toward the expected direction of escape from the space served.

(l) A means of escape which is not readily apparent to a person from both inside and outside the space, must be adequately marked.

(m) A vertical ladder and deck scuttle may not be used as a means of escape except:

(1) On a vessel of not more than 65 feet in length, a vertical ladder and a deck scuttle may be used as one of the means of escape from a passenger accommodation space; and

(2) As one of the required means of escape from any crew accommodation space or workspace.

(n) Each vertical ladder, used as a means of escape, must have rungs that are:

(1) At least 16 inches in width;

(2) Not more than 12 inches apart, but uniformly spaced for the length of the ladder with 4½ inches clearance above each rung; and

(3) At least 3 inches from the nearest permanent object in back of the ladder.

(o) When a deck scuttle serves as a means of escape, it must be fitted with a quick-acting release and a holdback to hold the scuttle in an open position.

(p) Footholds, handholds, ladders, etc., provided to aid escape, must be suitable for use in emergency conditions, of rigid construction, and permanently fixed in position, unless they can be folded, yet brought into immediate service in an emergency.

(q) On a vessel of not more than 65 feet in length, a window or windshield of sufficient size and proper accessibility may be used as one of the required means of escape from an enclosed space, provided it:

(1) Does not lead directly overboard;

(2) Can be opened or is designed to be kicked or pushed out; and

(3) Is suitably marked.

(r) Only one means of escape is required from a space where:

(1) The maximum dimension of a space is less than 12 feet;

(2) There is no source of fire in the space such as a stove, heater, etc.;

(3) The means of escape is located as far as possible from a machinery space or fuel tank; and

(4) If an accommodation space, the single means of escape does not include a deck scuttle or a ladder.

(s) Alternative means of escape from spaces may be provided if acceptable to the cognizant OCMI.

§ 177.510 Embarkation stations.

(a) A vessel carrying more than 150 passengers or with overnight accommodations for more than 49 passengers, which is equipped with survival craft, must have at least one designated survival craft embarkation station and any additional embarkation stations necessary so that an embarkation station is readily accessible from each accommodation space and work space.

(b) Each embarkation station must be arranged to allowed the safe boarding of survival craft.

§ 177.520 Muster stations.

(a) A vessel carrying more than 150 passengers, or with overnight accommodations for more than 49 passengers, must have designated muster stations, the number and arrangements of which must comply with this section, except that the following vessels are not required to have muster stations:

(1) A vessel on which the fire load of each accommodation space is not more than 1.5 and all machinery and high risk service spaces are separated from the remainder of the vessel by A-60 fire control boundaries; or

(2) A dynamically supported craft.

(b) The aggregate size of muster stations must:

(1) Be adequate to accommodate all passengers while wearing lifejackets; and

(2) Provide a minimum of 6 square feet per passenger.

(c) The largest accommodation space on a vessel must not be designated as a muster station, except as permitted by paragraph (d) of this section, to ensure that one casualty does not hinder the passengers' ability to seek refuge and prepare for evacuation.

(d) If a vessel is divided by main vertical zone bulkheads, muster stations must be designated in each main vertical zone. A designated muster station may be the largest accommodation space in each main vertical zone.

(e) A muster station must be close to an embarkation station and readily accessible from accommodation spaces and work spaces.

(f) An embarkation station may also serve as a muster station.

§ 177.530 Additional requirements for dynamically supported craft.

(a) In addition to the requirements set forth in § 177.500 of this subpart, a means of escape for a dynamically supported craft must meet the requirements of this section.

(b) Notices must be provided to direct passengers to means of escape.

(c) Each of the two means of escape, required by § 177.500(a) of this part, must lead to an embarkation station.

(d) Each door or hatch used as a means of escape on a DSC must be capable of opening even with persons crowding against one side of the door.

(e) The closing, latching, and locking arrangement for normal exits must be such that it is readily apparent to the appropriate crew member when the doors are closed and in a safe operational condition, either in direct view or by an indicator.

§ 177.540 Evacuation time for dynamically supported craft.

(a) The owner of a dynamically supported craft shall submit an evacuation plan, including a description of the provisions for evacuation and proposed evacuation procedures, to the Officer in Charge, Marine Inspection, prior to the start of construction.

(b) If the OCMI considers it necessary, the owner must calculate an evacuation time to ensure that the structural fire protection required by § 177.450 of this part is adequate. In the absence of more reliable data, the calculated evacuation time is the greater of.

(1) The time necessary to launch and make a survival craft ready for embarkation, plus allowing 5 seconds per person as the time to fill the survival craft to its required capacity; or

(2) Allowing 10 seconds per person as the time necessary to launch, make ready for embarkation, and fill the survival craft.

(c) The inability to simultaneously prepare survival craft for launching and loading during an evacuation must be considered when calculating the evacuation time for a DSC.

(d) The evacuation time determined from the evacuation demonstration, required by § 176.402(d)(8) of this subchapter, must verify that the fire control boundaries on the vessel are suitably insulated to meet the requirements of § 177.450(b)(3) of this part.

Subpart F—Ventilation

§ 177.600 Ventilation of enclosed and partially enclosed spaces.

(a) An enclosed or partially enclosed space within a vessel must be adequately ventilated in a manner suitable for the purpose of the space and as further required by this subpart.

(b) Ventilation openings serving enclosed or partially enclosed spaces, including openings in ventilation ducts and pipes, ventilators, louvers, etc., must:

(1) Be above the main deck;

(2) Not penetrate the hull or bulwarks of the vessel; and

(3) When determined necessary by the OCMI, be fitted with closure devices suitable for preventing the entry of water in adverse weather conditions.

(c) Suitable means including a manual damper, automatic damper, or vent cover, must be provided in an accessible location, outside the space served by the ventilation duct, for shutting off the passage of air through the ventilation duct in the event of fire.

(d) A power ventilation system must be capable of being shut down from outside the space the system is serving.

(e) An enclosed crew accommodation space and any other space occupied by a crew member on a regular basis, must be ventilated by a power ventilation system unless a natural system will provide adequate ventilation, in all ordinary weather conditions, to the satisfaction of the OCMI.

(f) An enclosed passenger accommodation space must be ventilated by a power ventilation system unless smoking is prohibited, and it can be shown that a natural system will provide adequate ventilation, in all ordinary weather conditions, to the satisfaction of the OCMI.

(g) An exhaust duct over a frying vat or a grill must be fitted with an automatic damper that will close in event of a fire.

§ 177.610 Ventilation ducts on vessels carrying more than 150 passengers.

(a) A ventilation duct, which for the purposes of this section includes any type of piping, chamber, or conduit used for ventilation, on a vessel carrying more than 150 passengers must meet the requirements of this section.

(b) A ventilation duct, and materials incidental to its installation, must be made of noncombustible material.

(c) A ventilation duct must not serve more than one main vertical zone; penetrations of main vertical zone bulkheads must be minimized.

(d) A ventilation duct penetrating an A-Class or B-Class fire control boundary must meet the following requirements:

(1) A ventilation duct must meet the same requirements relative to the passage of smoke and flame as the fire control boundary penetrated;

(2) A steel duct penetrating an A-Class fire control boundary must be of at least 11 USSG, and a steel duct penetrating a B-Class bulkhead or deck must be of at least 16 USSG;

(3) A duct which is not steel must be fitted with a steel sleeve at each A-Class or B-Class fire control boundary penetrated. The sleeves must extend at least 18 inches on each side of the penetration and be of the same thickness required for steel ducts;

(4) A duct penetrating a main vertical zone bulkhead must be fitted with a fire damper at the main vertical zone bulkhead;

(5) A duct penetrating an A-Class fire control boundary and opening into a space formed by that boundary must be equipped with a fire damper;

(6) Except for a main vertical zone bulkhead, a steel duct penetrating an A-Class fire control boundary with no opening into the space formed by the boundary need not be fitted with a fire damper provided the duct is at least 11 USSG throughout that space; and

(7) A duct penetrating an insulated fire control boundary must be fitted with insulation of the same type and thickness as the boundary penetrated for a distance of at least 12 inches on the insulated side of the boundary. A fire damper blade need not be insulated.

(e) Fire dampers, where required by this section, must comply with the following requirements:

(1) A fire damper and casing must be at least 11 USSG and have a gap of not more than ⅛ inch between the blade and casing;

(2) A fire damper must close against the draft in the duct and be accessible for periodic inspection by means of a hinged or bolted plate in the duct;

(3) Fire damper springs, blades, and hinges must be of stainless steel construction or of steel suitably coated to prevent corrosion; and

(4) Fire dampers must be capable of manual operation from outside the space served, be fitted with an indicator showing whether the damper is open or closed, and be marked with red letters of at least ½ inch in height stating "VENTILATION FIRE DAMPER."

(f) A ventilation duct serving a stairtower must not serve another space.

(g) A stairway or a stairtower must not serve as an air return for another space.

(h) Except as allowed by § 177.436(d)(4), a duct or other opening in a bulkhead or ceiling designed for the passage of air from an accommodation space to a passageway is prohibited.

§ 177.620 Ventilation of machinery and fuel tank spaces.

Ventilation systems for spaces containing gasoline or diesel machinery or fuel tanks must comply with the requirements of Part 182 of this subchapter in addition to the requirements of this subpart.

Subpart G—Crew Accommodations

§ 177.700 When required.

Overnight accommodations for crew members must be provided in compliance with this part on a vessel which is authorized to operate more than 12 hours in a 24 hour period without a crew change, and on all other vessels with crew members living on board.

§ 177.710 Location.

The deck above a crew accommodation space must not be located below the deepest load waterline.

§ 177.720 Arrangement.

A crew accommodation space must be of sufficient size, adequate construction, and with suitable equipment to provide for the protection and accommodation of the crew in a manner practicable for the size, facilities, and service of the vessel.

§ 177.730 Crew accommodations on vessels of more than 65 feet in length with overnight accommodations for more than 49 passengers.

A crew accommodation space on a vessel of more than 65 feet in length with overnight accommodations for more than 49 passengers must comply with §§ 72.20–10 (a), (b), (d), and (e); 72.20–15; 72.20–20(c)(1); 72.20–25 (a) and (d); 72.20–30; 72.20–35; 72.20–45; 72.20–50; and 72.20–55 of this chapter.

Subpart H—Passenger Accommodations

§ 177.800 General requirements.

(a) The height of ceilings in a passenger accommodation space, including aisles and passageways, must be at least 74 inches, but may be reduced at the sides of a space to allow for camber, wiring, ventilation ducts, and piping.

(b) A passenger accommodation space must be maintained to minimize fire and safety hazards and to preserve sanitary conditions. Aisles must be kept clear of obstructions.

(c) Covered metal trash containers must be provided in passenger accommodation spaces.

(d) A passenger accommodation space must not contain:

(1) Electrical equipment, high temperature parts, pipelines, rotating assemblies, or any other item which could injure a passenger, unless such an item is adequately shielded or isolated; and

(2) An operating control unless the operating control is so protected and located that operation by a crew member will not be impeded by a passenger during normal or emergency operations.

(f) The deck above a passenger accommodation space must be located above the deepest load waterline.

(g) A variation from a requirement of this subpart may be authorized by the Officer in Charge, Marine Inspection, for an unusual arrangement or design provided there is no significant reduction of space, accessibility, safety, or sanitation.

§ 177.810 Overnight accommodations.

(a) Berths and overnight accommodation spaces must meet the requirements of this section on a vessel authorized to carry passengers in overnight accommodation spaces.

(b) A berth must be provided for each passenger authorized to be carried in overnight accommodation spaces. Each berth must measure at least 74 inches by 24 inches and have at least 24 inches of clear space above.

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(c) Berths must not be located more than three high and must be constructed of wood, fiberglass or metal. A berth located more than 60 inches above the deck must be fitted with a suitable aid for access.

(d) The construction and arrangement of berths and other furniture must allow free and unobstructed access to each berth. Each berth must be immediately adjacent to an aisle leading to a means of escape from the accommodation space. An aisle alongside a berth must be at least 24 inches wide. An aisle joining two or more aisles in an overnight accommodation space must be at least 42 inches wide.

§ 177.820 Seating.

(a) A seat must be provided for each passenger permitted in a space for which the fixed seating criterion in § 176.113(b)(3) of this subchapter has been used to determine the number of passengers permitted and for each passenger on a dynamically supported craft.

(b) A seat must be constructed to minimize the possibility of injury and avoid trapping occupants.

(c) Installation of seats must provide for ready escape.

(d) Seats, including fixed, temporary, or portable seats, must be installed as follows:

(1) An aisle of not more than 15 feet in length must be not less than 24 inches in width.

(2) An aisle of more than 15 feet in length must be not less than 30 inches in width.

(3) Where seats are in rows, the distance from seat front to seat front must be not less than 30 inches and the seats must be secured to a deck or bulkhead.

(4) Seats used to determine the number of passengers permitted, in accordance with § 176.113(b)(3) of this subchapter, must be secured to the deck, bulkhead, or bulwark by permanent or temporary means.

(e) A seat on a dynamically supported craft must be designed, constructed, and arranged as follows:

(1) A seat must not have any hard edges or dangerous projections;

(2) An adjustable, folding, or rotatable seat, if installed, must be provided with a locking mechanism which must lock automatically in either the stowed or ready position when the control is released;

(3) A seat must not move or distort under normal service conditions but may distort under abnormal loads, in which case the risk of injury to occupants or persons thrown against them must be minimized; and

(4) A seat facing another or on a row end must be fitted with a safety belt unless it is demonstrated to the satisfaction of the cognizant Officer in Charge, Marine Inspection, that it is unnecessary. The OCMI may require other seats to be equipped with safety belts if considered necessary due to possible rapid acceleration and deceleration of the vessel.

§ 177.840 Washrooms and toilets.

(a) *When required.* A vessel, except a vessel on a run of not more than 30 minutes, must be provided with toilets and wash basins as required by this section.

(b) *Vessels authorized to carry not more than 49 passengers.* At least one toilet must be installed in a space separate from other spaces.

(c) *Vessels authorized to carry more than 49 passengers.* One toilet for every 50 passengers permitted to be carried, but not less than two toilets, must be provided. Toilets must be in separate spaces for men and women. One wash basin must be provided in or immediately adjacent to each toilet space.

(d) *Installation.* Toilets and wash basins must be fitted with fixed plumbing, except that on a vessel of not more than 65 feet in length, carrying not more than 49 passengers, a portable toilet, adequately secured to a deck or bulkhead, is acceptable.

Subpart I—Rails and Guards

§ 177.900 Deck rails.

(a) Except as otherwise provided in this section, rails or equivalent protection must be installed near the periphery of all decks of a vessel accessible to passengers and crew. The rails must be capable of withstanding the cumulative load of all persons who may rely on them for support. Equivalent protection to rails may include lifelines, wire rope, chains, and bulwarks, which provide strength and support equivalent to fixed rails. Deck rails must include a top rail of a minimum height and lower courses or equivalent protection as required by this section.

(b) Where space limitations make deck rails impractical for areas designed for crew use only, such as at narrow catwalks in way of deckhouse sides, hand grabs may be substituted.

(c) The height of top rails required by paragraph (a) of this section must be as follows:

(1) Rails on passenger decks of a ferry and of a vessel engaged in excursion trips, including but not limited to sightseeing trips, dinner and party cruises, and overnight cruises, must be at least 39½ inches high.

(2) Rails on a vessel subject to the 1966 International Convention on Loadlines must be at least 39½ inches high.

(3) Rails, other than those noted in paragraphs (c) (1) and (2) of this section, must be at least 36 inches high.

(4) A temporary rail of at least 30 inches high may be installed in way of a fixed seat used for fishing, if the seat is equipped with a restraining device such as a seat belt, where it can be shown that a higher rail would interfere with a person fishing from the fixed seat. A rail complying with the requirements of paragraphs (c) (1), (2), and (3) of this section as applicable, must be reinstalled when the fixed fishing seat is not in use.

(d) Where the principal business of the vessel requires the discharge of persons or cargo in a seaway, such as on pilot boats and dive boats, the OCMI may accept alternatives to the rails required in paragraphs (c) (1), (2), and (3) of this section for those areas of a deck where passengers or cargo are discharged and for which removable rails, lifelines, or chains would hinder discharge operations.

(e) Sailing vessels, open boats, and other vessels not specifically covered elsewhere in this section, must have rails of a minimum height or equivalent protection as considered necessary by the Officer in Charge, Marine Inspection, based on the vessel's operation, route, and seating arrangement.

(f) Rails or lifelines must be permanently supported by stanchions at intervals of not more than 7 feet. Stanchions must be bolted through or welded to the deck.

(g) The space below a top rail around the periphery of a deck, required by paragraph (a) of this section, must be provided with guards as required by this paragraph.

(1) On passenger decks of a ferry or of a vessel on an excursion trip the following must be installed:

(i) Bulwarks;

(ii) Chain link fencing or wire mesh which has links or mesh of not more than 4 inches in diameter; or

(iii) Bars, slats, rail courses, or an equivalent spaced at intervals of not more than 4 inches.

(2) On a vessel subject to the 1966 International Convention on Loadlines, rail courses, or an equivalent, must be installed so that there is not an open space higher than 9 inches from the deck to the first rail course or equivalent.

(3) Except where otherwise required by paragraphs (g)(1) and (g)(2) of this section, rail courses or an equivalent must be installed between the required top rail and the deck so that no open space exists which is more than 12 inches high.

(h) Rails required by paragraph (a) of this section must be permanently installed except that the following rails may be removable:

(1) Rails in way of embarkation stations and boarding locations;

(2) Rails over 30 inches high in way of fishing seats addressed by paragraph (c)(4) of this section; and

(3) Rails on a vessel when the service of the vessel is routinely changed, as determined by the OCMI, and the required top rail height varies depending on the service of the vessel at a particular time.

§ 177.920 Storm rails.

Suitable storm rails or hand grabs must be installed where necessary in passageways, at deckhouse sides, and at ladders and hatches.

§ 177.940 Guards in vehicle spaces.

On a vessel authorized to carry a vehicle, suitable chains, cables, or other barriers must be installed at the end of vehicle runways. In addition, temporary rails or equivalent protection must be installed in way of vehicle ramps, in compliance with § 177.900 of this part, when the vessel is underway.

§ 177.960 Guards for exposed hazards.

An exposed hazard, such as gears or rotating machinery, must be properly protected by a cover, guard, or rail.

§ 177.970 Piping protection.

Piping, including valves, pipe fittings and flanges, conveying vapor, gas, or liquid, the temperature of which exceeds 150 °F, must be suitably insulated where necessary to prevent injuries.

Subpart J—Window Construction and Visibility

§ 177.1010 Safety glazing materials.

Glass and other glazing material used in windows must be of material which will not break into dangerous fragments if fractured.

§ 177.1020 Strength.

Windows, port holes, and their means of attaching to the hull or deck house, must be capable of withstanding the maximum load from wave and wind conditions they are expected to encounter due to their location on the vessel and the authorized route of the vessel.

§ 177.1030 Operating station visibility.

(a) Windows and other openings at the operating station must be of sufficient size and properly located to provide an adequate view for safe navigation in all operating conditions.

(b) Glass or other glazing material used in windows at the operating station must have a light transmission of not less than 70 percent according to Test 2 of ANSI Z26.1, "Safety Glazing Materials for Glazing Motor Vehicles Operating on Land Highways," and must comply with Test 15 of ANSI Z26.1 for Class I Optical Deviation.

Subpart K—Operating Station Arrangement in Dynamically Supported Craft (DSC)

§ 177.1110 DSC operating station visibility.

The operating station of a dynamically supported craft must be equipped to ensure a sufficient number of windows are kept clear so that the crew has adequate visibility to operate the vessel in all expected operating conditions including icing conditions. A single mechanical failure must not reduce visibility to the extent that the craft cannot be safely brought to rest. The cognizant Officer in Charge, Marine Inspection, may require a demonstration that adequate visibility is available and can be maintained for the proper operation of the vessel.

§ 177.1112 Seat design and arrangement.

(a) The design and arrangement of the operating station on a DSC, and the relative positions of the primary and emergency controls and seats, must be such that each operating crew member, with the crew member seated and any adjustable controls suitably adjusted, may:

(1) Without interference, produce full and unrestricted movement of each control which he is responsible for operating, both separately and with all practical combinations of movement of other controls; and

(2) At all control positions exert adequate control forces for the operation to be performed.

(b) Once adjusted for the occupant, a seat in an operating station of a DSC must not require further adjustment for the occupant to reach any control needed for normal or emergency condition.

(c) A seat from which a DSC may be operated must be provided with a safety belt, unless it is demonstrated to the satisfaction of the OCMI that it is unnecessary.

§ 177.1114 Instruments.

(a) The crew must be able to view instruments necessary for the safe operation of a DSC with minimum effort from their seated position during all expected operating conditions.

(b) Instruments essential for the safe operation of the craft must be clearly marked with operational limits and the range of normal operation.

§ 177.1116 Lighting.

The lighting of an operating station on a DSC must be arranged to ensure:

(a) A general intensity of illumination under normal conditions which allows the efficient performance of duties;

(b) That instruments and controls are adequately illuminated in the event of the loss of normal lighting so that the vessel may be safely navigated; and

(c) That there are no reflections on window glass.

PART 178—INTACT STABILITY AND SEAWORTHINESS

Subpart A—General Provisions

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178.220 Stability booklet.
178.230 Stability letter or Certificate of Inspection stability details.

Subpart C—Intact Stability Standards
178.310 Applicability based on length, passenger capacity, and propulsion.
178.320 Intact stability requirements for mechanically propelled and nonself-propelled vessels.
178.330 Simplified stability proof test.
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Subpart D—Drainage of Weather Decks
178.410 Drainage of flush deck vessels.
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178.450 Calculation of drainage area.

Subpart E—Special Installations
178.510 Fixed ballast.

Authority: 46 U.S.C. 2104, 3306; 49 CFR 1.46.

Subpart A—General Provisions

§ 178.115 Applicability to existing vessels.

An existing vessel must comply with the regulations in this part or with the intact stability and seaworthiness regulations that were applicable to the vessel on [insert date of the day before the effective date of the regulations].

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§ 178.125 Stability standards for dynamically supported craft.

(a) A dynamically supported craft must meet the stability requirements of this part and Part 170 of this subchapter, applicable to the vessel based on the route, length, number of decks, and number of passengers permitted to be carried, while operating in the displacement mode.

(b) The stability of a DSC while operating in the dynamically supported mode will be approved by the Commandant on an individual basis with due regard for the route and service of the vessel. A DSC may be designed to meet stability standards for DSC published by the U.S. Navy, recognized classification societies, governments, or other standard setting organizations, upon specific approval of the Commandant.

(c) The stability of a DSC in the dynamically supported mode of operation may be evaluated by the Commandant based on service trials and calculations, the type and extent of which must be acceptable to the Commandant. When required by the cognizant OCMI, the owner of a DSC shall submit to the OCMI, or directly to the Commandant when authorized by the OCMI, a written proposal for evaluating the stability of the DSC in the dynamically supported mode of operation. The proposal must address any unusual features of the design of the DSC considering all pertinent factors which may affect the design and operation of the vessel, including, but not limited to: The speed of the craft, the worst expected sea state and winds to be encountered, movement of passengers, loss of lift, changes in consumables, guidance for the master, and the effect of speed on the ability to survive damage after a collision.

Subpart B—Stability Instructions for Operating Personnel

§ 178.210 Stability information.

(a) A stability booklet, stability letter, or stability details indicated on the Certificate of Inspection is required on certain vessels, in accordance with paragraph (b) or (c) of this section, so that the master has sufficient information about loading restrictions and their meaning, stability calculations and their assumptions, and operating guidelines, to ensure compliance with the applicable intact and damage stability regulations of this chapter.

(b) A vessel which, in compliance with § 178.310 of this part, meets the appropriate requirements of Subchapter S of this chapter, must have an approved stability booklet, a stability letter issued by the OCMI or the Commanding Officer, U.S. Coast Guard Marine Safety Center, or stability details on the vessel's Certificate of Inspection. The form in which the stability information must be contained, that is, a stability booklet, a stability letter, or stability details on the Certificate of Inspection, will be as determined by the Commanding Officer, U.S. Coast Guard Marine Safety Center.

(c) The OCMI may place stability details on the Certificate of Inspection of a vessel of not more than 65 feet in length, which, in compliance with § 178.310 of this part, meets the applicable requirements of § 178.320 of this part, when the OCMI determines specific stability restrictions are necessary for the safe operation of the vessel.

§ 178.220 Stability booklet.

When the Commanding Officer, U.S. Coast Guard Marine Safety Center, determines, in accordance with § 178.210(b) of this subpart, that a vessel must have a stability booklet, the booklet must be prepared in accordance with § 170.110 of this chapter, and submitted through the OCMI for approval by the Commanding Officer, U.S. Coast Guard Marine Safety Center.

§ 178.230 Stability letter or Certificate of inspection stability details.

When the OCMI or the Commanding Officer, U.S. Coast Guard Marine Safety Center, determines, in accordance with § 178.210 of this subpart, that a vessel must have a stability letter or stability details indicated on it's Certificate of Inspection, the following applicable information, and the necessary calculations used to determined that information, must be submitted to the OCMI for his approval when § 178.210(c) of this subpart is applicable, and for the approval of the Commanding Officer, Marine Safety Center, when § 178.210(b) of this subpart is applicable:

(a) Allowable number of passengers and crew on each deck;

(b) Deepest waterline drafts;

(c) Location of watertight bulkheads and openings in watertight bulkheads;

(d) Explanation of the vessel's subdivision;

(e) Location of openings that must be closed in case of a collision;

(f) Location and amount of fixed ballast;

(g) Location and details of foam flotation material; and

(h) Maximum weight of portable equipment permitted on the vessel including diving equipment.

Subpart C—Intact Stability Standards

§ 178.310 Applicability based on length, passenger capacity, and propulsion.

(a) A vessel of not more than 65 feet in length, except a sailing vessel, must meet the applicable requirements of § 178.320 of this subchapter or of §§ 170.170, 170.173, and 171.050 of Subchapter S of this chapter, if:

(1) Carrying not more than 150 passengers on a domestic voyage;

(2) Carrying not more than 12 passengers on an international voyage; or

(3) It has not more than one deck above the bulkhead deck, exclusive of a pilot house.

(b) The following vessels must meet the appropriate requirements of §§ 170.170, 170.173, 171.050, 171.055, and 171.057 of Subchapter S of this chapter:

(1) A vessel of more than 65 feet in length;

(2) A sailing vessel;

(3) A vessel carrying more than 150 passengers;

(4) A vessel carrying more than 12 passengers on an international voyage; and

(5) A vessel with more than 1 deck above the bulkhead deck exclusive of a pilot house.

§ 178.320 Intact stability requirements for mechanically propelled and nonself-propelled vessels.

(a) A vessel, except a pontoon vessel operating on protected waters, must undergo a simplified stability proof test in accordance with § 178.330 of this subpart in the presence of a Coast Guard marine inspector.

(b) A pontoon vessel operating on protected waters must undergo a simplified stability proof test in accordance with § 178.340 of this subpart in the presence of a Coast Guard marine inspector.

(c) The OCMI may allow the simplified stability proof test in § 178.330 of this part to be dispensed with for a vessel carrying not more than 49 passengers where it can be established that, due to the form, arrangement, construction, number of decks, route, and operating restrictions of the vessel, the vessel's stability can be safely determined without such a test.

(d) A vessel whose stability is questioned by the OCMI must be shown by design calculations to meet the applicable stability criteria of §§ 170.170, 170.173, and 171.050 of this chapter in each condition of loading and operation.

§ 178.330 Simplified stability proof test.

(a) This section contains the procedures for conducting a simplified stability proof test, required by § 178.320(a) of this subpart, and the maximum limits of heel allowed during such a test.

(b) A simplified stability proof test is conducted to determine if a vessel, as built and operated, has a minimum level of initial stability. Failure of the simplified test does not necessarily mean that the vessel lacks stability for the intended route, service, and operating condition, but that calculations or other methods must be used to evaluate the stability of the vessel.

(c) A vessel must be in the conditions specified in this paragraph when a simplified stability proof test is performed.

(1) The construction of the vessel must be complete in all respects.

(2) Ballast, if necessary, must be in compliance with § 178.510 and must be on board and in place.

(3) Fuel and water tanks must be approximately three-quarters full.

(4) A weight equal to the total weight of all passengers, crew, and other loads permitted on the vessel must be onboard and distributed so as to provide normal operating trim and to simulate the vertical center of gravity causing the least stable condition that is likely to occur in service. Unless otherwise specified, weight and vertical center of gravity is assumed to be as follows for a simplified stability proof test:

(i) The weight of one person is considered to be 160 pounds except the weight of one person is considered to be 140 pounds if the vessel always carries women and children, and operates exclusively on protected waters;

(ii) The vertical center for the simulated weight of passengers, crew, and other loads must be at least 2.5 feet above the deck; and

(iii) If the vessel carries passengers on diving excursions, the total weight of diving gear must be included in the test as follows:

(A) The total weight of individual diving gear for each passenger carried is assumed to be 80 pounds, which includes the weight of scuba tanks, harness, regulator, weight belt, wet suit, mask, and other personal diving equipment;

(B) The weight of any air compressors carried; and

(C) Other portable equipment carried.

(5) If a vessel has non-return closures on cockpit scuppers or on weather deck drains, the closures must be kept open during the test.

(d) A vessel must not exceed the limitations in paragraph (e) of this section, when subjected to the greater of the following heeling moments:

$M_s = (W)(B)/6$; or

$M_w = (P)(A)(H)$

where:

M_s = passenger heeling moment in foot-pounds;

W = the total passenger weight using 160 pounds per passenger, or, if the vessel will always carry women and children and operate exclusively on protected waters, 140 pounds per passenger may be used;.

B = the maximum transverse distance in feet of a deck that is accessible to passengers;

M_w = wind heeling moment in foot-pounds;

P = wind pressure of:

(1) 7.5 pounds/square foot for operation on protected waters;

(2) 10.0 pounds/square foot for operation on partially protected waters; and

(3) 15.0 pounds/square foot for operation on exposed waters.

A = area, in square feet, of the projected lateral surface of the vessel above the waterline (including each projected area of the hull, superstructure and area bounded by railings and structural canopies).

H = height, in feet, to the center of area (A) above the waterline, measured up from the waterline.

(e) A vessel must not exceed the following limits of heel when doing the simplified stability proof test:

(1) On a flush deck or well deck vessel, not more than one-half of the freeboard may be immersed, except that, on a well deck vessel that operates on protected waters and has non-return scuppers or deck drains, the full freeboard may be immersed if the full freeboard is not more than one-quarter of the distance from the waterline to the gunwale.

(2) On a cockpit vessel, the maximum allowable immersion is calculated from the following equation:

(i) On exposed waters—

$i = f(2L - 1.5L')/4L$

(ii) On protected or partially protected waters—

$i = f(2L - L')/4L$

where:

i = maximum allowable immersion in feet;

f = freeboard in feet;

L = length of the weather deck, in feet; and

L' = length of cockpit in feet.

(3) On an open boat, not more than one-quarter of the freeboard may be immersed.

(4) In no case may the angle of heel exceed 14 degrees.

(f) The limits of heel must be measured at:

(1) The point of minimum freeboard; or

(2) At a point three-quarters of the vessel's length from the bow if the point of minimum freeboard is aft of this point.

(g) When demonstrating compliance with paragraph (e) of this section, the freeboard must be measured as follows:

(1) For a flush deck or well deck vessel, the freeboard must be measured to the top of the weatherdeck at the side of the vessel; and

(2) For a cockpit vessel or for an open boat, the freeboard must be measured to the top of the gunwale.

(h) A ferry must also be tested in a manner acceptable to the OCMI to determine whether the trim or heel during loading or unloading will submerge the deck edge. A ferry passes this test if the deck edge is not submerged during loading or unloading of the vessel with the total number of passengers and the maximum vehicle weight permitted.

§ 178.340 Stability standards for pontoon vessels on protected waters.

(a) This section contains design limits and the procedures for conducting a simplified stability proof test, required by § 178.320(b) of this subpart, for a pontoon vessel of not more than 65 feet in length operating on protected waters.

(b) A simplified stability proof test is conducted to verify if a vessel, as built and operated, has a minimum level of initial stability. Failure of the simplified test does not necessarily mean that the vessel lacks stability for the intended route, service, and operating condition, but that calculations or other methods must be used to evaluate the stability of the vessel.

(c) The portion of the deck accessible to passengers on a pontoon vessel must not extend beyond the outboard edge of either pontoon.

(d) A pontoon vessel that has more than 2 pontoons or has decks higher than 6 inches above the pontoons must meet a stability standard acceptable to the Commanding Officer, U.S. Coast Guard Marine Safety Center.

(e) A pontoon vessel must be in the condition described in § 178.330(c) of this subpart when the simplified stability proof test is performed, except that the simulated load of passengers, crew, and other weights is initially centered on the vessel so that there is no trim and heel is minimized.

(f) A pontoon vessel has the minimum acceptable level of initial stability if it meets the following:

(1) With the simulated load located at the extreme outboard position of the deck on the side with the least initial freeboard, the remaining exposed cross-

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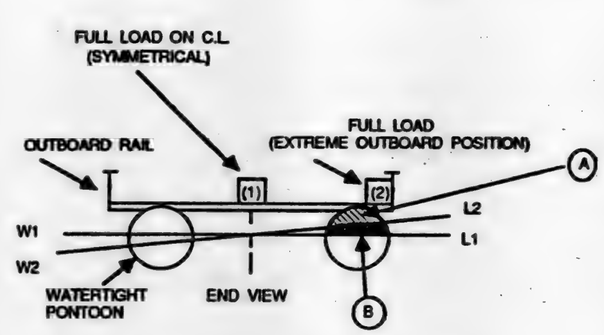
sectional area of the pontoon on that side must be equal to or greater than the cross-sectional area submerged due to the load shift, as indicated in figure 178.340(f)(1); and

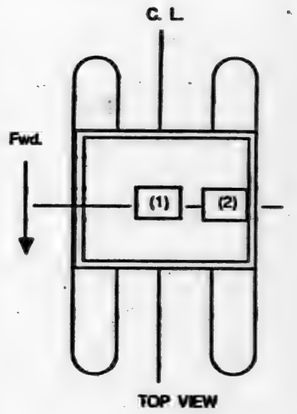
(2) With the simulated load located on the centerline at the extreme fore or aft end of the deck, whichever position is further from the initial position of the load, the top of the pontoon must not be submerged at any location, as indicated in figure 178.340(f)(2).

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FIGURE 178.340(f)(1)

TRANSVERSE STABILITY STANDARD





W1 L1 = WATER LINE FOR FULL LOAD SYMMETRICAL, ATHWARTSHIP LOADING.

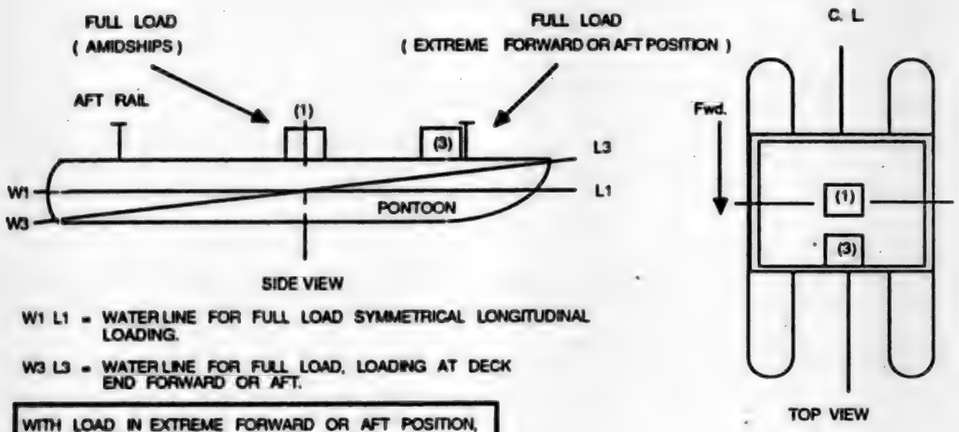
W2 L2 = WATER LINE FOR FULL LOAD, EXTREME OUTBOARD LOADING.

WITH LOAD IN EXTREME OUTBOARD POSITION, POSITION (2), AREA (A) MUST BE EQUAL TO OR GREATER THAN AREA (B).

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FIGURE 178.340(f)(2)

LONGITUDINAL STABILITY STANDARD



W1 L1 = WATERLINE FOR FULL LOAD SYMMETRICAL LONGITUDINAL LOADING.

W3 L3 = WATERLINE FOR FULL LOAD, LOADING AT DECK END FORWARD OR AFT.

WITH LOAD IN EXTREME FORWARD OR AFT POSITION, TOP OF PONTOON MUST NOT BE SUBMERGED.

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Subpart D—Drainage of Weather Decks

§ 178.410 Drainage of flush deck vessels.

(a) Except as provided in paragraph (b) of this section, the weather deck on a flush deck vessel must be watertight and have no obstruction of overboard drainage.

(b) Each flush deck vessel may have solid bulwarks in the forward one-third length of the vessel if:

(1) The bulwarks do not form a well enclosed on all sides; and

(2) The foredeck of the vessel has sufficient sheer to ensure drainage aft.

§ 178.420 Drainage of cockpit vessels.

(a) Except as follows, the cockpit on a cockpit vessel must be watertight:

(1) A cockpit may have companionways if the companionway openings have watertight doors, or weathertight doors and coamings which meet § 179.360 of this subchapter.

(2) A cockpit may have ventilation openings along its inner periphery if:

(i) The vessel operates only on protected or partially protected waters;

(ii) The ventilation openings are located as high as possible in the side of the cockpit; and

(iii) The height of the ventilation openings are not more than 2 inches.

(b) The cockpit deck of a cockpit vessel that operates on exposed or partially protected waters must be at least 10 inches above the deepest load waterline unless the vessel complies with:

(1) The intact stability requirements of §§ 171.070, 170.073, 171.050, 171.055, and 171.057 of this chapter;

(2) The Type II subdivision requirements in § 171.070 of this chapter; and

(3) The damage stability requirements in § 171.080 of this chapter.

(c) The cockpit deck of a cockpit vessel that does not operate on exposed or partially protected waters must be located as high above the deepest load waterline as practicable.

(d) Scuppers or freeing ports for the cockpit deck of a cockpit vessel must:

(1) Be located to allow rapid clearing of water in all probable conditions of list and trim;

(2) Have a combined drainage area of at least the area required by § 178.450 of this subpart; and

(3) If the deck is less than 10 inches above the deepest load waterline of the vessel, be fitted with non-return closures.

§ 178.430 Drainage of well deck vessels.

(a) The weather deck on a well deck vessel must be watertight.

(b) Except as provided in paragraph (c) of this section, the area required on a well deck vessel for drainage of the well formed by the bulwarks must be determined as required by this paragraph.

(1) If a vessel operates on exposed or partially protected waters, it must have at least 100 percent of the drainage area required by § 178.450 of this subpart.

(2) If a vessel operates only on protected or partially protected waters, it need only have 50 percent of drainage area required by § 178.450 of this subpart if the vessel meets the following requirements for a vessel that operates on exposed waters:

(i) The intact stability requirements of §§ 170.070, 170.073, 171.050 and 171.055 of this chapter;

(ii) The subdivision requirements of § 171.070 of this chapter; and

(iii) The damage stability requirements of § 171.080 of this chapter.

(3) If a vessel operates only on protected waters, the freeing port area must be at least equal to the scupper area required by § 178.450 for a cockpit of the same size as the well.

(c) The freeing ports on a well deck vessel must be located to allow rapid clearing of water in all probable conditions of list and trim.

(d) The deck of a welldeck vessel that operates on exposed or partially protected waters must be at least 10 inches above the deepest load waterline unless the vessel complies with:

(1) The intact stability requirements of §§ 170.070, 170.073, 171.050, 171.055, and 171.057 of this chapter;

(2) The Type II subdivision requirements in § 171.070 of this chapter; and

(3) The damage stability requirements in § 171.080 of this chapter.

§ 178.440 Drainage of open boats.

The deck within the hull of an open boat must drain to the bilge. Overboard drainage of the deck is not permitted.

§ 178.450 Calculation of drainage area.

The drainage area required on a vessel must be computed using the following formula:

Required drainage area in inch^2 = Volume Factor × Effective Deck Area

where:

Volume Factor
- = 0.1 for a cockpit vessel operating on protected and partially protected waters having drainage openings fitted with non-return closures, and
- = 0.6b^2/(b+f−K) but no less than 0.1 for a cockpit vessel operating on exposed waters and all other vessels regardless of their route, where:
  - b = average height in feet of the bulwark above the deck as determined in accordance with § 178.330(g);
  - f = height of the freeboard above the deepest waterline in feet; and
  - K = 3.0 feet for vessels operating on exposed waters;
    2.0 feet for vessels operating on partially protected waters; and
    1.0 feet of vessels operating on protected waters; and

Effective Deck Area = D–H

where:
- D = total deck area of the cockpit or well deck measured in feet^2, including the deck area of the superstructure; and
- H = any area of weathertight superstructure within the cockpit or well deck area measured in feet^2 which extends vertically at least as high as the deck in which the cockpit is located or the top of the bulwark which forms the well.

Subpart E—Special Installations

§ 178.510 Fixed ballast.

(1) Any ballast used to comply with the requirements of Parts 170, 171, 178, and 179 of this chapter must be:

(1) Of the solid fixed type;

(2) Stowed in a manner that prevents shifting of the ballast; and

(3) Installed to the satisfaction of the OCMI.

(b) Solid fixed ballast may not be located forward of the collision bulkhead unless the installation and arrangement of the ballast and the collision bulkhead minimizes the risk of the ballast penetrating the bulkhead in a collision.

(c) Ballast may not be removed from a vessel or relocated unless approved by the OCMI except that ballast may be temporarily moved for a vessel examination or repair if it is replaced to the satisfaction of the OCMI.

PART 179—SUBDIVISION, DAMAGE STABILITY AND WATERTIGHT INTEGRITY REQUIREMENTS

Subpart A—General Provisions

Sec.
179.115 Applicability to existing vessel.

Subpart B—Subdivision and Damage Stability Requirements

179.210 Collision bulkhead.
179.212 Watertight bulkheads for subdivision.
179.220 Location of watertight bulkheads for subdivision.
179.230 Damage stability requirements.
179.240 Foam flotation material.

Subpart C—Watertight Integrity Requirements

179.310 Collision bulkheads.
179.320 Watertight bulkheads.
179.330 Watertight doors.
179.340 Trunks.

179.350 Openings in the side of a vessel below the bulkhead or weather deck.
179.360 Watertight integrity.

Subpart D—Special Requirements for Vessels on International Voyages

179.400 Bulkhead spacing and required double bottoms.

Authority: 46 U.S.C. 2104, 3306; 49 CFR 1.46.

Subpart A—General Provisions

§ 179.115 Applicability to existing vessel.

An existing vessel must comply with the regulations in this part or with the subdivision, damage stability, and watertight integrity regulations that were applicable to the vessel [insert date of the day before the effective date of regulations].

Subpart B—Subdivision and Damage Stability Requirements

§ 179.210 Collision bulkhead.

(a) A vessel of more than 65 feet in length must have a collision bulkhead.

(b) A vessel of not more than 65 feet in length must have a collision bulkhead if:

(1) Carrying more than 49 passengers;

(2) Operating on an oceans route;

(3) Operating on exposed waters on a coastwise route; or

(4) Of more than 40 feet in length and operating on a coastwise route.

(c) A double-ended ferry required to have a collision bulkhead must have a collision bulkhead at each end of the vessel.

§ 179.212 Watertight bulkheads for subdivision.

(a) A vessel of not more than 65 feet in length, carrying more than 49 passengers and not more than 150 passengers, must comply with § 179.220 of this subpart. If the vessel is designed to comply with the appropriate intact stability requirements of §§ 170.170, 170.173, 171.050 and 171.055 of this chapter, the vessel must comply with the requirements of §§ 171.070 through 171.073 of this chapter for Type II subdivision instead of § 179.220.

(b) A vessel of more than 65 feet in length or carrying more than 150 passengers must comply with the requirements of §§ 171.070 through 171.073 of this chapter for Type II subdivision.

(c) A vessel that carries more than 12 passengers on an international voyage must meet the requirements of §§ 171.070 through 171.073 of this chapter for Type II subdivision.

§ 179.220 Location of watertight bulkheads for subdivision.

(a) The maximum distance between adjacent main transverse watertight bulkheads on a vessel, required by § 179.212(a) of this subpart to comply with this section, must not be more than the smaller of the following:

(1) One-third of the length of the bulkhead deck; or

(2) The distance given by the following equation:

$l = ((F)(f)(L))/D$

where:

l = the maximum length of the bulkhead deck in feet between adjacent main transverse watertight bulkheads;

f = the effective freeboard in feet calculated for each pair of adjacent bulkheads in accordance with paragraph (b) of this section;

L = length in feet;

F = the floodable length factor from Table 179.220.

D = the depth in feet, measured amidships at a point one-quarter of the maximum beam out from the centerline, from the inside of the bottom planking or plating to the level of the top of the bulkhead deck at side as shown in Figure 179.220(a).

(b) The effective freeboard for each compartment is calculated by the following equation:

$f = (a + b)/2$

where:

f = the effective freeboard in feet.

a = the freeboard in feet measured:

(1) at the forward main transverse watertight bulkhead; and

(2) from the deepest waterline to:

(i) the top of the bulkhead deck on a flush deck vessel; or

(ii) if a vessel has a stepped bulkhead deck, the line shown in Figure 179.220(b); or

(iii) if a vessel has an opening port light below the bulkhead deck, the line shown in Figure 179.220(c).

b = the freeboard in feet measured:

(1) at the aft main transverse watertight bulkhead; and

(2) from the deepest waterline to:

(i) the top of the bulkhead deck on a flush deck vessel; or

(ii) if a vessel has stepped bulkhead deck, the line shown in Figure 179.220(b); or

(iii) if a vessel has an opening port light below the bulkhead deck, the line shown in Figure 179.220(c).

TABLE 179.220—TABLE OF FLOODABLE LENGTH FACTORS

(d/L) × 100	F
0 to 15	0.33
20	.34
25	.36
30	.38
35	.43
40	.48
45	.54
50	.61
55	.63
60	.58
65	.53
70	.48
75	.44
80	.40
85	.37
90 to 100	.34

(1) Where:

d = distance in feet from the midpoint of the compartment to the forwardmost point on the bulkhead deck excluding sheer; and

L = length in feet measured over the bulkhead deck; and (2) Intermediate values of floodable length factor may be obtained by interpolation.

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Figure 179.220(a)

Transverse Location for Measuring Depth (D)

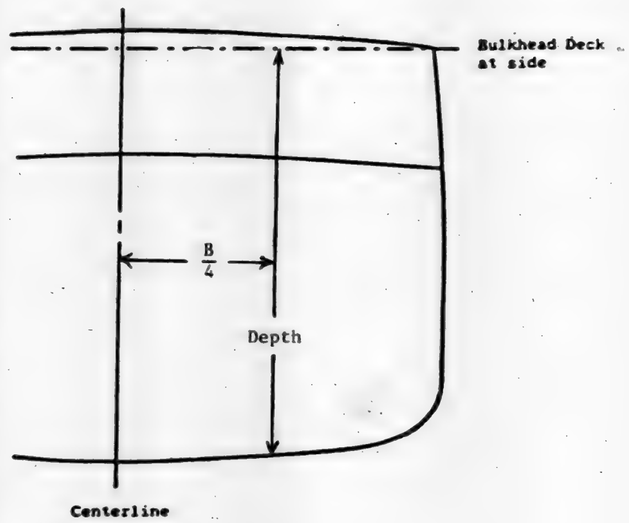
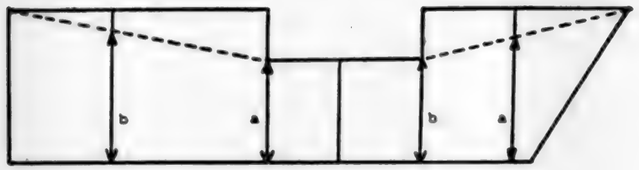


Figure 179.220(b)

Freeboard Measurement-

Vessel with a Stepped Bulkhead Deck



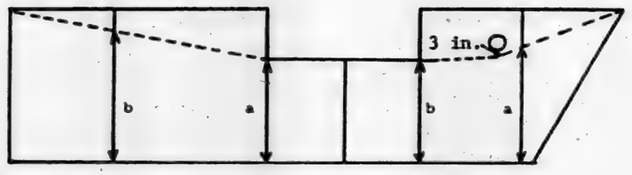
(a and b shown for two sample compartments)

Figure 179.220(c)

Freeboard Measurement-

Vessel with a Stepped Bulkhead Deck and

a Port Light Below the Bulkhead Deck



(a and b shown for two sample compartments)

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§ 179.230 Damage stability requirements.

A vessel which, in accordance with § 179.212 of this subpart, must meet the requirements of §§ 171.070 through 171.073 of this chapter for Type II subdivision must meet the damage stability requirements of § 171.080 of this chapter.

§ 179.240 Foam flotation material.

(a) Foam may only be installed as flotation material on a vessel of not more than 65 feet in length, carrying not more than 150 passengers, when approved by the OCMI.

(b) If foam is installed as flotation material on a vessel, the owner shall ensure that the following tests are conducted and requirements are met, to the satisfaction of the OCMI:

(1) All foam must comply with MIL-P-21929B including the requirements for fire resistance;

(2) Foam may be installed only in void spaces that are free of ignition sources, unless the foam complies with the requirements of 33 CFR 183.114;

(3) Foam may be installed adjacent to fuel tanks only if the boundary between the tank and the space has double continuous fillet welds;

(4) The structure enclosing the foam must be strong enough to accommodate the buoyancy of the foam;

(5) Piping and cables must not pass through foamed spaces unless they are within piping and cable ways accessible from both ends;

(6) Blocked foam must:

(i) Be used in each area that may be exposed to water; and

(ii) Have a protective cover, approved by the OCMI, to protect it from damage;

(7) A water submergence test must be conducted on the foam for a period of at least 7 days to demonstrate to the satisfaction of the OCMI that the foam has adequate strength to withstand a hydrostatic head equivalent to that which would be imposed if the vessel were submerged to its bulkhead deck.

(8) The effective buoyancy of the foam must be determined at the end of the submergence test required by paragraph (b)(7) of this section. The effective buoyancy or 55 pounds per cubic foot, whichever is less, must be used in determining the location of watertight bulkheads for subdivision required by § 179.212 of this part; and

(9) The owner must obtain sample foam specimens during installation of the foam and determine the density of the installed foam.

Subpart C—Watertight Integrity Requirements

§ 179.310 Collision bulkheads.

(a) Each collision bulkhead required by § 179.210 of this part, must be constructed in accordance with § 179.320 of this subpart, except that a collision bulkhead:

(1) Must extend to the deck above the bulkhead deck for service on other than protected or partially protected waters, and

(2) Must not be fitted with any type of penetration or opening except as allowed elsewhere in this subchapter.

(b) The forward collision bulkhead on a vessel of more than 65 feet in length or carrying more than 150 passengers must be:

(1) Located at least 5 percent but not more than 15 percent of the LBP from the forward perpendicular, or for vessels with bulbous bows extending forward of the forward perpendicular and contributing more than 2 percent of the underwater volume of the vessel, located at least 5 percent but not more than 15 percent of the LBP from the mid-length of such extension; and

(2) Installed in a single plane, with no recess or step, up to the bulkhead deck;

(c) The after collision bulkhead on a double-ended ferry of more than 65 feet in length or carrying more than 150 passengers must be:

(1) At least 5 percent but not more than 15 percent of the LBP from the after perpendicular; and

(2) Installed in a single plane, with no recess or step, at least up to the bulkhead deck.

§ 179.320 Watertight bulkheads.

(a) Each watertight bulkhead must be of sufficient strength to be capable of remaining watertight with a head of water to the top of the bulkhead.

(b) Each watertight bulkhead must extend to the bulkhead deck and be installed in one plane without steps or recesses insofar as is reasonable and practicable. Any steps or recesses permitted must comply with the applicable subdivision requirements in this subchapter.

(c) The number of penetrations in a watertight bulkhead must be minimized. A penetration in a watertight bulkhead must be as high and as far inboard in the bulkhead as practicable, and made watertight.

(d) Sluice valves are not permitted in watertight bulkheads.

§ 179.330 Watertight doors.

(a) Except as permitted in paragraph (b) of this section, watertight doors are not permitted in bulkheads required by §§ 179.210 or 179.212 of this subpart unless:

(1) The door separates a machinery space from an accommodation space and, in the judgment of the OCMI, the door will be kept closed except when a person is passing through the door, or

(2) The Commandant determines that, due to the arrangements of the vessel, the door will be kept closed except when a person is passing through the door.

(b) Watertight doors are permitted in any bulkhead on a vessel that operates only in the offshore oil industry.

(c) A hinged watertight bulkhead door must be fitted with a quick-action closing device operable from both sides of the door and indicator lights at the operating station showing whether the door is open or closed. Sliding watertight doors must meet the requirements of Subpart H of Part 170 of this chapter.

(d) No more than one watertight door may be fitted in a watertight bulkhead, and it must be located as high and as far inboard as practicable.

§ 179.340 Trunks.

Where trunks are installed, they must comply with the requirements of § 179.360(a)(1) of this part and § 171.113 of this chapter.

§ 179.350 Openings in the side of a vessel below the bulkhead or weather deck.

(a) On a vessel operating on exposed or partially protected waters, an opening port light is not permitted below the weather deck unless the sill of the port light is at least 30 inches above the deepest load waterline.

(b) A port light must have an inside, hinged dead cover regardless of whether the port light is or is not capable of being opened.

(c) Except for engine exhausts, each inlet or discharge pipe that penetrates the hull below a line drawn parallel to and at least 6 inches above the deepest load waterline must have means to prevent water from entering the vessel if the pipe fractures or otherwise fails.

(d) A positive action valve or cock that is located as close as possible to the hull is an acceptable means for complying with paragraph (b) of this section.

(e) If an inlet or discharge pipe is inaccessible, the means for complying with paragraph (b) of this section must be a shut-off valve that is:

(1) Operable from the weather deck or any other accessible location above the bulkhead deck; and

(2) Labeled at the operating point for identity and direction of closing.

(f) Any connecting device or valve in a hull penetration must not be cast iron.

(g) Each plug cock in an inlet or discharge pipe must have a means, other than a cotter pin, to prevent its loosening or removal from the body.

§ 179.360 Watertight integrity.

(a) A hatch exposed to the weather must be watertight, except that the following hatches may be weathertight:

(1) A hatch on a watertight trunk that extends at least 12 inches above the weather deck;

(2) A hatch in a cabin top; and

(3) A hatch on a vessel that operates only on protected waters.

(b) A hatch cover must:

(1) Have securing devices; and

(2) Be attached to the hatch frame or coaming by hinges, captive chains, or other devices of substantial strength to prevent its loss.

(c) A hatch cover that provides access to accommodation spaces must be operable from either side.

(d) Except as provided in paragraph (e) of this section, a weathertight door with permanent watertight coamings that comply with the height requirements in Table 179.360 must be provided for each opening located in a deck house or companionway that:

(1) Gives access into the hull or into an enclosed superstructure; and

(2) Is located in:

(i) A cockpit;

(ii) A well; or

(iii) An exposed location on a flush deck vessel.

(e) If an opening in a location specified in paragraph (d) of this section is provided with a hinged watertight door, the height of the watertight coaming need only be sufficient to accommodate the door.

TABLE 179.360.—HEIGHT OF COAMING VS. ROUTE

Route	Height of coaming
	in
Exposed or partially protected.	6 inches (15.2 centimeters).
Protected	3 inches (7.6 centimeters).

Subpart D—Special Requirements for Vessels on International Voyages

§ 179.400 Bulkhead spacing and required double bottoms.

A vessel on an international voyage, carrying more than 12 passengers must:

(a) Have its main transverse watertight bulkheads separated as required by § 171.070(e)(1) of this chapter; and

(b) Be fitted with double bottoms meeting the requirements of §§ 171.105, 171.106, 171.108 and 171.109 of this chapter.

PART 180—LIFESAVING EQUIPMENT AND ARRANGEMENTS

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Sec.

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Authority: 46 U.S.C. 2104, 3306; 49 CFR 1.46.

Subpart A—General Provisions

§ 180.10 Applicability to vessels on an international voyage and vessels of more than 65 feet in length with overnight accommodations for more than 49 passengers.

A vessel on an international voyage, and a vessel of more than 65 feet in length with overnight accommodations for more than 49 passengers, must meet the requirements in Subchapter W of this chapter for passenger vessels in the same service, instead of the requirements of this part.

§ 180.15 Applicability to existing vessels.

An existing vessel must comply with the requirements of this part except as otherwise specified by this section.

(a) Before [insert date 5 years after effective date] or 10 years after the vessel's keel was laid or the vessel was at a similar stage of construction, whichever is later, an existing vessel may comply with the requirements in effect for the vessel prior to [insert effective date] for the number and type of survival craft, stowage arrangements, and launching appliances for survival craft.

(b) On or before [insert date 5 years after effective date] or 10 years after the vessel's keel was laid or the vessel was at a similar stage of construction, whichever is later, an existing vessel must:

(1) Be equipped with the number of survival craft required for its route under § 180.202, § 180.204, § 180.206, § 180.208, or § 180.209 of this part, as applicable; and

(2) Comply with the stowage and launching appliance requirements for survival craft in §§ 180.130 through 180.150, inclusive, of this part.

(c) Each inflatable liferaft, inflatable buoyant apparatus, life float, and buoyant apparatus on the vessel on [insert effective date], may be used to meet the requirements of this part for those survival craft as long as the survival craft is continued in use on the vessel, and is in good and serviceable condition.

(d) When any lifesaving equipment on a vessel is replaced or a vessel undergoes repairs, alterations, or modifications of a major character involving replacement of, or any addition to, the existing lifesaving equipment, each new piece of lifesaving equipment must meet this part.

(e) A combination flare and smoke distress signal approved under § 160.023 of this chapter may be used on an existing vessel until the expiration date of the distress signal but no later than [insert 3 years after effective date] as one of the distress signals required by § 180.268 of this part.

(f) Until [insert date 6 years after effective date], a Coast Guard approved 121.5/243 MHz Class A EPIRB may be used to meet the requirement for an EPIRB under § 180.64(a) of this part. Each Class A EPIRB carried under this paragraph must have been installed on the vessel on or before [insert effective date]. Each Class A EPIRB replaced after [insert effective date] must be replaced with an EPIRB meeting § 180.64(a) of this part.

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(g) An existing vessel on a coastwise route operating not more than 20 nautical miles from a harbor of safe refuge need not comply with § 160.64 until [insert 6 years after effective date].

(h) An existing vessel need not comply with § 160.78(a)(4) of this part.

(i) An existing vessel must comply with § 160.210 of this part or the regulations for rescue boats that were applicable to the vessel on [insert date of day before effective date of regulations].

§ 160.25 Additional requirements.

(a) Each item of lifesaving equipment carried on board a vessel but not required under this part, must be approved by the Commandant.

(b) The Officer in Charge, Marine Inspection, may require a vessel to carry specialized or additional lifesaving equipment if:

(1) The OCMI determines the conditions of the voyage render the requirements of this part inadequate; or

(2) The vessel is operated in Arctic, Antarctic, or other severe conditions not covered under this part.

Subpart B—Emergency Communications

§ 160.64 Emergency Position Indicating Radiobeacons (EPIRB).

(a) *Oceans and coastwise routes.* A vessel on an oceans or coastwise route must have on board a Federal Communications Commission (FCC) Type Accepted Category 1, float-free, automatically activated, 406 MHz Satellite Emergency Position Indicating Radio Beacon (EPIRB).

(b) *Great Lakes routes.* A vessel on a Great Lakes route, not required to carry an EPIRB under paragraph (a) of this section, must have on board:

(1) A Federal Communications Commission (FCC) Type Accepted Category 1, float-free, automatically activated, 406 MHz Satellite Emergency Position Indicating Radio Beacon (EPIRB); or

(2) A Class C EPIRB installed in a readily accessible location, at or near the operating station.

§ 160.66 Distress flares.

(a) *Oceans and coastwise routes.* A vessel on an oceans or coastwise route must carry either:

(1) Twelve rocket parachute flares approved under Subpart 160.036 of this chapter; or

(2) Six hand red flare distress signals approved under Subpart 160.021 of this chapter, and six hand orange smoke distress signals approved under Subpart 160.037 of this chapter.

(b) *Great Lakes route.* A vessel on a Great Lakes route must carry either:

(1) Twelve rocket parachute flares approved under Subpart 160.036 of this chapter; or

(2) Twelve hand red flare distress signals approved under Subpart 160.021 of this chapter; or

(3) Six hand red flare distress signals approved under Subpart 160.021 of this chapter, and six hand orange smoke distress signals approved under Subpart 160.037 of this chapter.

(c) *Lakes, bays, and sounds, or rivers routes.* A vessel on a lakes, bays, and sounds, or rivers route must carry either:

(1) Six rocket parachute flares approved under Subpart 160.036 of this chapter; or

(2) Six hand red flare distress signals approved under Subpart 160.021 of this chapter; or

(3) Three hand red flare distress signals approved under Subpart 160.021 of this chapter, and three hand orange smoke distress signals approved under Subpart 160.037 of this chapter.

(c) *Exemption: vessels on short runs.* A vessel operating on short runs limited to approximately 30 minutes away from the dock is not required to carry distress flares under this section.

(d) *Stowage.* Each flare carried to meet this section must be stowed in one of the following:

(1) A portable watertight container, which includes a container complying with § 160.021–6 of this chapter, carried at the operating station;

(2) A portable magazine chest secured above the freeboard deck, away from heat, in the vicinity of the operating station. An acceptable magazine chest is described in Subpart 160.036 of this chapter.

Subpart C—Life Buoys and Lifejackets

§ 160.70 Ring life buoys.

(a) A vessel must have one or more ring life buoys as follows:

(1) A vessel of not more than 26 feet in length must carry a minimum of one life buoy of not less than the 20 inch size;

(2) A vessel of more than 26 feet in length, but not more than 65 feet, must carry a minimum of one life buoy of at least the 24 inch size; and

(3) A vessel of more than 65 feet in length must carry a minimum of three life buoys of not less than the 24 inch size.

(b) Each ring life buoy on a vessel must:

(1) Be approved under Subpart 160.050 of this chapter;

(2) Be readily accessible;

(3) Be stowed in a way that it can be rapidly cast loose;

(4) Not be permanently secured in any way; and

(5) If on a vessel on an ocean or coastwise route, be orange in color.

(c) At least one ring life buoy must be fitted with a buoyant lifeline. The lifeline must:

(1) Be of at least 60 feet in length;

(2) Be non-kinking;

(3) Have a diameter of at least $\frac{5}{16}$ of an inch;

(4) Have a breaking strength of at least 1,124 pounds; and

(5) Be of a dark color if synthetic, or of a type certified to be resistant to deterioration from ultraviolet light.

(d) A vessel must carry one floating waterlight, unless it is limited to daytime operation, in which case no floating waterlight is required.

(1) Each floating waterlight must be approved under Subpart 161.010 of this chapter.

(2) Each ring life buoy with a floating waterlight must have a lanyard of at least 3 feet but of not more than 6 feet in length securing the waterlight to the ring life buoy.

§ 160.71 Lifejackets.

(a) An adult lifejacket must be provided for each person permitted on board a vessel.

(b) In addition, a number of child-size lifejackets equal to at least 10% of the number of passengers permitted on board must be provided, or such greater number as necessary to provide a lifejacket for each person being carried that is smaller than the lower size limit of the adult lifejackets provided to meet this section. However, child-size lifejackets are not required if the vessel does not carry persons smaller than the lower size limit of the adult lifejackets.

(c) On dynamically supported craft, a number of lifejackets equal to at least 5% of the total number of persons permitted on board the vessel must be provided in addition to the lifejackets required by paragraph (a) of this section.

(d) Each lifejacket must be approved under either Subpart 160.002, Subpart 160.005, or Subpart 160.055 of this chapter.

§ 160.72 Personal flotation devices carried in addition to lifejackets.

(a) Equipment carried under this section is not acceptable in lieu of any portion of the required number of approved lifejackets and must not be substituted for the approved lifejackets required to be worn during drills and emergencies.

(b) Wearable marine buoyant devices which include "ski vests", "boating vests", and "fishing vests", approved under Subpart 160.064 of this chapter, may be carried as additional equipment.

(c) Buoyant work vests approved under Subpart 160.053 of this chapter may be carried as additional equipment for use of persons working near or over the water.

(d) Commercial hybrid personal flotation devices (PFD) approved under Subpart 160.077 of this chapter may be carried as additional equipment for use of persons working near or over the water. Each commercial hybrid PFD must be:

(1) Used, stowed, and maintained in accordance with the procedures set out in the manual required for these devices under § 160.077–29 of this chapter and any limitation(s) marked on them; and

(2) Of the same or similar design and have the same method of operation as each other hybrid PFD carried on board.

§ 160.75 Lifejacket lights.

(a) Each lifejacket carried on a vessel on an oceans, coastwise, or Great Lakes route, must have a lifejacket light approved under Subpart 161.012 of this chapter. Each lifejacket light must be securely attached to the front shoulder area of the lifejacket.

(b) Notwithstanding the requirements of paragraph (a) of this section, lifejacket lights are not required for lifejackets on:

(1) Ferries; and

(2) Vessels with Certificates of Inspection endorsed only for routes that do not extend more than 20 miles from a harbor of safe refuge.

§ 160.76 Stowage of lifejackets.

(a) *General.* Unless otherwise stated in this section, lifejackets must be distributed in convenient places throughout accommodation spaces.

(1) Each lifejacket kept in a stowage container for lifejackets must not be capable of being locked. If practicable, the container must be designed to allow the lifejackets to float free.

(2) Each lifejacket kept in a stowage container must be readily available.

(3) Each lifejacket stowed overhead must be supported in a manner which allows quick release for distribution.

(4) If lifejackets are stowed more than 7 feet above the deck, a means for quick release must be provided and must be capable of operation by a person standing on the deck.

(5) Each child-size lifejacket must be stowed in a location which is appropriately marked and separated from adult lifejackets so the child-size lifejackets are not mistaken for adult lifejackets.

(b) *Additional personal flotation devices.* The stowage locations of the personal flotation devices carried in addition to lifejackets under § 160.72 of this part, must be separate from the lifejackets, and such as not to be easily confused with that of the lifejackets.

Subpart D—Survival Craft Arrangements and Equipment

§ 160.110 Survival craft embarkation ladders.

An embarkation ladder, approved under Subpart 160.017 of this chapter, must be at each embarkation station if the distance from the embarkation deck to the vessel's lightest operating waterline is more than 10 feet.

§ 160.130 Stowage of survival craft.

(a) Each survival craft must be:

(1) Secured to the vessel by a painter with a float-free link permanently attached to the vessel except that a float-free link is not required if the vessel operates only on waters not as deep as the length of the painter.

(2) Stowed so that when the vessel sinks the survival craft floats free and, if inflatable, inflates automatically;

(3) Stowed in a way that permits manual release from its securing arrangements;

(4) Ready for immediate use so that two crew members can carry out preparations for embarkation and launching in less than 5 minutes;

(5) Provided with means to prevent shifting;

(6) Stowed in a way that neither the survival craft nor its stowage arrangements will interfere with the embarkation and operation of any other survival craft at any other launching station;

(7) Fully equipped as required under this part; and

(8) Stowed, as far as practicable, in a position sheltered from breaking seas and protected from damage by fire and explosion.

(b) A hydrostatic release unit used in a float-free arrangement must be approved under Subpart 160.062 of this chapter.

(c) A mechanical, manually operated device to assist in launching a survival craft must be provided if:

(1) The survival craft weighs more than 200 pounds; and

(2) The survival craft requires lifting to be launched.

§ 160.137 Stowage of life floats and buoyant apparatus.

(a) In addition to meeting § 160.130 of this part, each life float and buoyant apparatus must be stowed as required under this section.

(b) The float-free link required by § 160.130(a)(1) of this subpart must be:

(1) Certified to meet Subpart 160.073 of this chapter;

(2) Of proper strength for the size of the life float or buoyant apparatus as indicated on its identification tag; and

(3) Secured to the painter at one end and to the vessel on the other end.

(c) The means used to attach the float-free link to the vessel must:

(1) Have a breaking strength of at least the breaking strength of the painter;

(2) If synthetic, be of a dark color or of a type certified to be resistant to deterioration from ultraviolet light; and

(3) If metal, be corrosion resistant.

(d) If the life float or buoyant apparatus does not have a painter attachment fitting, a means for attaching the painter must be provided by a wire or line which:

(1) Encircles the body of the device;

(2) Will not slip off;

(3) Has a breaking strength which is at least the strength of the painter; and

(4) If synthetic, is of a dark color or is of a type certified to be resistant to deterioration from ultraviolet light.

(e) If the vessel carries more than one life float or buoyant apparatus in a group with each group secured by a single painter:

(1) The combined weight of each group of life floats and buoyant apparatus must not exceed 200 pounds;

(2) Each life float and buoyant apparatus must be individually attached to the painter by a line meeting § 160.175(f)(3) (ii), (iii), and (iv) of this part and long enough that each life float or buoyant apparatus can float without contacting any other life float or buoyant apparatus in the group; and

(3) The strength of the float-free link under paragraph (b)(2) of this section and the strength of the painter under § 160.175(f)(3)(ii) of this part must be determined by the combined capacity of the group of life floats and buoyant apparatus.

(f) Life floats and buoyant apparatus must not be stowed in tiers more than four feet high. When stowed in tiers, the separate units must be kept apart by spacers.

§ 160.150 Survival craft launching appliances.

A launching appliance which complies with the installation and arrangement requirements for launching appliances in Subchapter W of this chapter must be provided for each survival craft when either:

(a) The embarkation station for the survival craft is on a deck more than 15 feet above the waterline; or

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(b) The survival craft is boarded prior to being placed in the water.

§ 180.175 Survival craft equipment.

(a) *General.* Each item of survival craft equipment must be of good quality, and efficient for the purpose it is intended to serve. Unless otherwise stated in this section, each item of equipment carried, whether required under this section or not, must be secured by lashings, stored in lockers, compartments, brackets, or have equivalent mounting or storage arrangements which do not:

(1) Reduce survival craft capacity;

(2) Reduce space available to the occupants;

(3) Interfere with launching, recovery, or rescue operations; or

(4) Adversely affect seaworthiness of the survival craft.

(b) *Inflatable liferafts.* Each inflatable liferaft must have one of the following equipment packs as shown by the markings on its container:

(1) Limited Service;

(2) SOLAS B Pack;

(3) SOLAS A Pack; or

(4) Ocean Service.

(c) *Life floats.* Each life float must be fitted with a lifeline, pendants, two paddles, a painter, and a light.

(d) *Inflatable buoyant apparatus.* Each inflatable buoyant apparatus must be fitted with a lifeline, a painter, and a light.

(e) *Buoyant apparatus.* Each inflatable buoyant apparatus must be fitted with a lifeline, pendants, a painter, and a light.

(f) *Equipment specifications for life floats, buoyant apparatus, and inflatable buoyant apparatus.* The equipment required for lifefloats, buoyant apparatus, and inflatable buoyant apparatus must meet the following specifications:

(1) *Lifeline and pendants.* The lifeline and pendants must be as furnished by the manufacturer with the approved life float or buoyant apparatus. Replacement lifelines and pendants must meet the requirements in Subpart 160.010 of this chapter.

(2) *Paddle.* Each paddle must be of at least 4 feet in length and buoyant.

(3) *Painter.* The painter must:

(i) Be of at least 100 feet in length, but not less than 3 times the distance between the deck where the life float or buoyant apparatus it serves is stowed and the lowest load waterline of the vessel;

(ii) Have a breaking strength of at least 1,500 pounds, except that if the capacity of the life float or buoyant apparatus is 50 persons or more, the breaking strength must be at least 3,000 pounds;

(iii) Be of a dark color if synthetic, or of a type certified to be resistant to deterioration from ultraviolet light; and

(iv) Be stowed in such a way that it runs out freely when the life float or buoyant apparatus floats away from the sinking vessel.

(4) *Light.* The light must be a floating waterlight, or on an inflatable buoyant apparatus, an approved liferaft canopy light may be substituted. A floating waterlight must be approved under Subpart 161.010 of this chapter. The floating waterlight must be attached to the life float or buoyant apparatus by a 12-thread manila, or equivalent, lanyard of at least 18 feet in length.

(g) *Other survival craft.* If survival craft other than inflatable liferafts, life floats, inflatable buoyant apparatus, and buoyant apparatus are carried on the vessel, such as lifeboats or rigid liferafts, they must be installed, arranged, and equipped as required under Subchapter W of this chapter for passenger vessels on the same route.

Subpart E—Number and Type of Survival Craft

§ 180.200 Survival craft—general.

(a) Each survival craft on a vessel must meet one of the following:

(1) For an inflatable liferaft, Subpart 160.051 of this chapter. Each inflatable liferaft on a vessel on an oceans route must have a capacity of 6 persons or more. Inflatable liferafts may be substituted for inflatable buoyant apparatus, life floats, or buoyant apparatus required under this section;

(2) For a life float, Subpart 160.027 of this chapter. Life floats may be substituted for buoyant apparatus required under this section;

(3) For a buoyant apparatus, Subpart 160.010 of this chapter; and

(4) An inflatable buoyant apparatus must be approved by the Commandant. Inflatable buoyant apparatus may be substituted for life floats or buoyant apparatus required under this section.

(b) If the vessel carries a small boat or boats, the capacity of these boats may be counted toward required buoyant apparatus or life float capacity. Such boats must meet the applicable requirements for safe loading and flotation in 33 CFR Part 183, and must meet the stowage, launching, and equipment requirements in this part for the survival craft they replace.

§ 180.202 Survival craft—vessels on oceans routes.

A vessel on an oceans route must be provided with inflatable liferafts of an aggregate capacity which will accommodate the total number of persons permitted on board. Life floats may be substituted for inflatable liferafts in the following areas at the indicated times of the year:

(a) Gulf of Mexico, Caribbean Sea, and Atlantic Ocean, south of Cape Hatteras, North Carolina (approximately 34°15′ N latitude); year round.

(b) Atlantic Ocean, south of the intersection of the Virginia-Maryland boundary with the coastline (approximately 38°01.6′ N latitude); May through November, inclusive.

(c) Atlantic Ocean, south of Tom's River, New Jersey (approximately 39°57′ N latitude); June through October, inclusive.

(d) Atlantic Ocean, south of 42°06′ N latitude; July through September, inclusive.

(e) Atlantic Ocean, south of Great Bears Head, Massachusetts (approximately 42°55′ N latitude); August and September, inclusive.

(f) Pacific Ocean, south and east of a line which is drawn 255° True from San Mateo Point, California (approximately 33°25.5′ N latitude, 117°35.7′W longitude); May through December, inclusive.

(g) Pacific Ocean, south of the mouth of the Santa Maria River California (approximately 34°58.3′ N latitude, 120°39′ W longitude); July through December, inclusive.

(h) Pacific Ocean, south of Point Reyes, California (approximately 38° N latitude); September.

(i) Pacific Ocean, voyages originating in the state of Hawaii and the Pacific Island territories belonging to the United States, south of 40° N latitude; year round.

§ 180.204 Survival craft—vessels on coastwise and Great Lakes route.

A vessel on a coastwise or Great Lakes route must be provided with inflatable buoyant apparatus of an aggregate capacity which will accommodate the total number of persons permitted on board. In the following areas at the indicated times of the year, buoyant apparatus may be substituted for inflatable buoyant apparatus:

(a) Gulf of Mexico, Caribbean Sea, and Atlantic Ocean, south of Cape Hatteras, North Carolina (approximately 34°59.6′ N latitude); year round.

(b) Atlantic Ocean, south of the intersection of the Virginia-Maryland boundary with the coastline (approximately 38°01.6′ N latitude); May through November, inclusive.

(c) Atlantic Ocean, south and west of a line which is drawn bearing 150° True from Watch Hill Light, Rhode Island; June through October, inclusive.

(d) Atlantic Ocean, south of 44°35′ N latitude; July through September, inclusive.

(e) Pacific Ocean, south and east of a line which is drawn 255° True from San Mateo Point, California (33°25.5′ N latitude, 117°35.7′ W longitude); March through December, inclusive.

(f) Pacific Ocean, south of the mouth of the Santa Maria River, California (approximately 34°58.3′ N latitude, 120°39′W longitude; June through December, inclusive.

(g) Pacific Ocean, Drakes Bay, California and south of Point Reyes, California (38° N latitude); September.

(h) Pacific Ocean, voyages originating in the state of Hawaii and the Pacific Island territories belonging to the United States, south of 40° N latitude; year round.

(i) Great Lakes; during the time of the year when the OCMI determines that the normal mean water temperature in the area where the vessel operates is at least 59 °F (15 °C).

§ 180.206 Survival craft—vessels on lakes, bays, and sounds routes.

(a) *Vessels carrying more than 150 passengers.* Except as provided in paragraph (b) of this section, a vessel carrying more than 150 passengers on a lakes, bays, and sounds route must be provided with:

(1) During the time of the year when the OCMI determines that the normal mean water temperature in the area where the vessel is operating is less than 59 °F (15 °C), inflatable buoyant apparatus of an aggregate capacity which will accommodate the total number of persons permitted on board; and

(2) During the time of the year when the OCMI determines that the normal mean water temperature in the area where the vessel is operating is at least 59 °F (15 °C), buoyant apparatus of an aggregate capacity which will accommodate 30% of the total number of persons permitted on board.

(b) *Vessels carrying more than 150 passengers, operating within 1 mile of shore.* A vessel carrying more than 150 passengers on a lakes, bays, and sounds route, and operating within 1 mile of shore, must be provided with buoyant apparatus of an aggregate capacity which will accommodate the total number of persons permitted on board during the time of the year when the OCMI determines that the normal mean water temperature in the area where the vessel is operating is less than 59 °F (15 °C). No survival craft are required during the time of the year when the OCMI determines that the normal mean water temperature in the area where the vessel is operating is at least 59 °F (15 °C).

(c) *Vessels carrying not more than 150 passengers.* Except as provided in paragraph (d) of this section, a vessel carrying not more than 150 passengers on a lakes, bays, and sounds route must be provided with buoyant apparatus of an aggregate capacity which will accommodate 30% of the total number of persons permitted on board.

(d) *Vessels carrying not more than 150 passengers, operating within 1 mile of shore.* No survival craft are required on a vessel carrying not more than 150 passengers on a lakes, bays, and sounds route, and operating within 1 mile of shore.

§ 180.208 Survival craft—vessels on a river routes.

(a) *Vessels carrying more than 150 passengers.* Except as provided in paragraph (c) of this section, a vessel carrying more than 150 passengers on a river route must be provided with:

(1) During the time of the year when the OCMI determines that the normal mean water temperature in the area where the vessel is operating is less than 59 °F (15 °C), inflatable buoyant apparatus of an aggregate capacity which will accommodate the total number of persons permitted on board; and

(2) During the time of the year when the OCMI determines that the normal mean water temperature in the area where the vessel is operating is at least 59 °F (15 °C), buoyant apparatus of an aggregate capacity which will accommodate 10% of the total number of persons permitted on board.

(b) *Vessels carrying not more than 150 passengers, operating within 1 mile of shore.* No survival craft are required on a vessel carrying not more than 150 passengers on a river route operating within 1 mile of shore.

§ 180.209 Survival craft—dynamically supported craft.

In addition to the survival craft required by § 180.202, § 180.204, § 180.206, or § 180.208 of this part based on the vessel's route and number of passengers permitted to be carried, a dynamically supported craft must carry additional survival craft for not less than 10 percent of the total number of persons the vessel is carrying.

§ 180.210 Rescue boats.

(a) A vessel of more than 65 feet in length must carry at least one rescue boat unless the OCMI determines that:

(1) The vessel is sufficiently maneuverable, arranged, and equipped to allow the crew to recover a helpless person from the water;

(2) Recovery of the helpless person can be observed from the operating station; and

(3) The vessel does not regularly engage in operations that restrict its maneuverability.

(b) A vessel of not more than 65 feet in length is not required to carry a rescue boat unless:

(1) The vessel carries passengers on an open or partially enclosed deck, and

(2) The OCMI determines that the vessel is designed, arranged, or involved in operations so that the vessel itself cannot serve as an adequate rescue craft.

(c) On a vessel of more than 65 feet in length, a required rescue boat and its installation must meet the requirements in Subchapter W of this chapter for a rescue boat on a passenger vessel on the same route. On a vessel of not more than 65 feet in length, a required rescue boat must be acceptable to the OCMI.

PART 181—FIRE PROTECTION EQUIPMENT

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Authority: 46 U.S.C. 2104, 3306; 49 CFR 1.46.

Subpart A—General Provisions

§ 181.115 Applicability to existing vessels.

(a) Except as otherwise required by paragraphs (b), (c), and (d) of this section, an existing vessel must comply with the regulations in this part or the fire protection equipment regulations applicable to the vessel on [insert date of day before effective date of regulations].

(b) An existing vessel with a hull or a machinery space boundary bulkhead or deck, composed of or sheathed on the interior in fiber reinforced plastic, must comply with the requirements of § 181.400 of this part on or before [insert date 3 years after effective date of regulations].

(c) An existing vessel equipped with machinery which uses gasoline or other fuels having a flash point of 110 °F or lower must comply with the requirements of § 181.400(j) of this part on or before [insert date 3 years after effective date of regulations].

(d) New installations of fire protection equipment on an existing vessel, that are completed to the satisfaction of the cognizant OCMI on or after [insert effective date of regulations], must comply with the regulations of this part. Replacement of existing equipment installed to comply with the fire protection regulations applicable to the vessel on [insert date of day before effective date of regulations] need not comply with the regulations in this part.

§ 181.120 Equipment installed but not required.

Fire extinguishing and detecting equipment installed on a vessel in excess of the requirements of §§ 181.400 and 181.500 of this part must be of an approved type and comply with the installation requirements of this part. However, the Commandant may accept fire protection or detecting equipment, which is of a type not contemplated by the regulations in this part, if it improves the safety of the vessel.

Subpart B—[Reserved]

Subpart C—Fire Main System

§ 181.300 Fire pumps.

(a) A self-priming, power-driven fire pump must be installed on a vessel of not more than 65 feet in length carrying more than 49 passengers, and on a vessel of more than 65 feet in length.

(b) On a vessel of not more than 65 feet in length, the fire pump must be capable of delivering water from the highest hydrant at a pitot tube pressure of 50 psi in sufficient volume to ensure an effective stream is discharged from a nozzle on a fire hose attached to the hydrant as required by § 181.320 of this section.

(c) On a vessel of more than 65 feet in length, the fire pump must be capable of delivering water simultaneously from the two highest hydrants, or from both branches of the fitting if the highest hydrant has a siamese fitting, at a pitot tube pressure of 50 psi and a flow rate of 50 gpm.

(d) A fire pump may be driven by a propulsion engine. A fire pump must be permanently connected to the fire main and may be connected to the bilge system to meet the requirements of § 182.520 of this subchapter.

(e) A fire pump must be capable of both remote operation from the operating station and local, manual operation at the pump.

(f) The cross-sectional area of the pipes leading from the pump must not be less than the discharge area of the pump.

§ 181.310 Fire main and hydrants.

(a) A vessel which has a power-driven fire pump must have a sufficient number of fire hydrants to reach any part of the vessel using a single length of fire hose.

(b) Piping, valves, and fittings in a fire main system must comply with Subpart G of Part 182 of this subchapter.

§ 181.320 Fire hoses and nozzles.

(a) A fire hose with a nozzle must be attached to each fire hydrant at all times.

(b) Each fire hose on a vessel of more than 65 feet in length must:

(1) Be lined commercial fire hose that conforms to UL 19;

(2) Be 50 feet in length and 1½ inches in diameter; and

(3) Have fittings of brass or other suitable corrosion-resistant material which comply with NFPA 1963.

(c) Each fire hose on a vessel of not more than 65 feet in length must:

(1) Comply with paragraphs (b)(1) and (b)(3) of this section or be garden type hose of not less than ⅝ inch nominal inside diameter;

(2) Be of one piece not less than 25 feet and not more than 50 feet in length; and

(3) If of the garden type, be of a good commercial grade constructed of an inner rubber tube, plies of braided fabric reinforcement and an outer rubber cover or of equivalent material, and of sufficient strength to withstand the maximum pressure which can be produced by the fire pump. All fittings on the hose must be of suitable corrosion-resistant material.

(d) Each nozzle must be of corrosion-resistant material and be capable of providing a solid stream or spray pattern. A nozzle on a vessel of more than 65 feet in length must be of an approved type.

Subpart D—Fixed Fire Extinguishing and Detecting Systems

§ 181.400 Where required.

(a) The following spaces must be equipped with a Halon or carbon dioxide fixed gas fire extinguishing system, in compliance with § 181.410 of this part, except as otherwise allowed by paragraph (b) of this section:

(1) A space containing propulsion machinery;

(2) A space containing an internal combustion engine of more than 50 hp;

(3) A space containing an oil fired boiler;

(4) A space containing gasoline powered machinery or any machinery powered by a fuel with a flash point of 110 °F or lower;

(5) A space containing a fuel tank with gasoline or any other fuel with a flash point of 110 °F or lower;

(6) A space containing combustible cargo inaccessible during the voyage;

(7) A paint locker; and

(8) A space containing flammable liquid stores.

(b) System types, alternatives, and exceptions.

(1) A fixed gas fire extinguishing system, which is capable of automatic discharge upon heat detection, may only be installed in a normally unoccupied space with a gross volume of not more than 6000 cubic feet.

(2) A pre-engineered Halon fixed gas fire extinguishing system must be in compliance with § 181.420 of this part and may only be installed in a normally unoccupied machinery space, a paint locker, or a space containing flammable liquid stores, which has a gross volume of not more than 1200 cubic feet.

(3) A B–II portable fire extinguisher installed outside the space may be substituted for a fixed gas fire extinguishing system in a space containing flammable liquid stores or a paint locker with a volume of not more that 200 cubic feet.

(4) A space which is so open to the atmosphere that a fixed gas fire extinguishing system would be ineffective, as determined by the OCMI, is not required to have a fixed gas fire extinguishing system.

(c) The following spaces must be equipped with an approved fire detecting system, in compliance with § 181.460 of this part, except when a fixed gas fire extinguishing system which is capable of automatic discharge upon heat detection is installed or when the space is manned:

(1) A space containing propulsion machinery;

(2) A space containing an internal combustion engine of more than 50 hp;

(3) A space containing an oil fired boiler;

(4) A space containing gasoline powered machinery or any machinery powered by a fuel with a flash point of 110 °F or lower; and

(5) A space containing a fuel tank with gasoline or any other fuel with a flash point of 110 °F or lower.

(d) A galley on a vessel with overnight accommodations for more than 49 passengers, and on a vessel carrying more than 400 passengers, must have a grease extraction hood in compliance with § 181.425 of this section fitted over all grills, broilers, and deep fat fryers.

(e) An overnight accommodation space on a vessel with overnight accommodations for not more than 49 passengers must be fitted with an independent modular smoke detecting and alarm unit in compliance with § 181.450 of this section.

(f) A vessel carrying more than 150 passengers must be fitted with a smoke actuated, fire detecting system in compliance with § 181.460 of this part in accommodation spaces and service spaces.

(g) A vessel with overnight accommodations for more than 49 passengers, and a vessel carrying more than 400 passengers, must be fitted with a fire detecting system in compliance with § 181.460, and a manual alarm system in compliance with § 181.470 of this part, in accommodation spaces and service spaces.

(h) An enclosed vehicle space must be fitted with an automatic sprinkler system; and

(1) A smoke actuated, fire detecting system in compliance with § 181.460 of this part; or

(2) A smoke detecting system in compliance with § 181.465 of this part.

(i) A partially enclosed vehicle space must be fitted with:

(1) A manual sprinkler system in compliance with § 181.430 of this part; or

(2) An automatic sprinkler system in compliance with § 181.440 of this part.

(j) A machinery space containing propulsion machinery or an internal combustion engine which uses gasoline or other fuel having a flash point of 110 °F or lower must be equipped with a flammable vapor detection system in compliance with § 181.480 of this part.

§ 181.410 Fixed gas fire extinguishing systems.

(a) *General.* (1) A fixed gas fire extinguishing system aboard a vessel must be approved by the Commandant, and be custom engineered to meet the requirements of this section unless the system meets the requirements of § 181.420 of this part.

(2) System components must be listed and labeled by an independent laboratory. A component from a different system, even if from the same manufacturer, must not be used unless included in the approval of the installed system.

(3) System design and installation must be in accordance with the Marine Design, Installation, Operation, and Maintenance Manual approved for the system by the Commandant.

(4) A fixed gas fire extinguishing system may protect more than one space. The quantity of extinguishing agent must be at least sufficient for the space requiring the greatest quantity as determined by the requirements of paragraphs (f)(4) and (g)(2) of this section.

(b) *Controls.* (1) Controls and valves for operation of a fixed gas fire extinguishing system must be:

(i) Located outside the space protected by the system; and

(ii) Not located in a space that might be inaccessible in the event of fire in the space protected by the system.

(2) Except as provided in paragraph (c)(2) of this section, release of an extinguishing agent into a space must require operation of two distinct controls.

(3) A system must have local manual controls at the storage cylinders capable of releasing the extinguishing agent. In addition, a normally manned space must have remote controls for releasing the extinguishing agent at the primary exit from the space.

(4) Remote controls must be located in a break-glass enclosure to preclude accidental discharge.

(5) Valves and controls must be of an approved type and protected from damage or accidental activation. A pull cable used to activate the system controls must be located in conduit.

(6) A system protecting more than one space must have a manifold with a normally closed stop valve for each space protected.

(7) A gas actuated valve or device must be capable of manual override at the valve or device.

(8) A system, which has more than one storage cylinder for the extinguishing agent and which relies on pilot cylinders to activate the primary storage cylinders, must have at least two pilot cylinders. Local manual controls, in compliance with paragraph (b)(3) of this section, must be provided to operate the pilot cylinders but are not required for the primary storage cylinders.

(9) A system protecting a manned space must be fitted with an approved time delay and alarm arranged to require the alarm to sound for at least 20 seconds or the time necessary to escape from the space, whichever is greater, before the agent is released into the space. Alarms must be conspicuously and centrally located. The alarm must be powered by the extinguishing agent.

(10) A device must be provided to automatically shut down power ventilation serving the protected space and engines which draw intake air from the protected space prior to release of the extinguishing agent into the space.

(11) Controls and storage cylinders must not be in a locked space unless the key is in a break-glass-type box conspicuously located adjacent to the space.

(c) *Storage space.* (1) Except as provided in paragraph (c)(2) of this section, a storage cylinder for a fixed gas extinguishing system must be:

(i) Located outside the space protected by the system; and

(ii) Not located in a space that might be inaccessible in the event of a fire in the space protected by the system.

(2) A normally unoccupied space of less than 6000 cubic feet may have the storage cylinders located within the space protected. When the storage cylinders are located in the space:

(i) The system must be capable of automatic operation by a heat actuator within the space; and

(ii) Have manual controls in compliance with paragraph (b) of this section except for paragraphs (b)(2) and (b)(3).

(3) A space containing a storage cylinder must be maintained at a temperature within the range from −20 °F (−30 °C) to 130 °F (55 °C) or at another temperature as listed by the independent laboratory and stated in the manufacturer's approved manual.

(4) A storage cylinder must be securely fastened, supported, and protected against damage.

(5) A storage cylinder must be accessible and capable of easy removal

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for recharging and inspection. Provisions must be available for weighing each storage cylinder in place.

(6) Where subject to moisture, a storage cylinder must be installed to provide a space of at least 2 inches between the deck and the bottom of the storage cylinder.

(7) A Halon 1301 storage cylinder must be stowed in an upright position unless otherwise listed by the independent laboratory. A carbon dioxide cylinder may be inclined not more than 30 degrees from the vertical, unless fitted with flexible or bent siphon tubes, in which case they may be inclined not more than 80 degrees from the vertical.

(8) Where a check valve is not fitted on an independent storage cylinder discharge, a plug or cap must be provided for closing the outlet resulting from storage cylinder removal.

(9) Each storage cylinder must meet the requirements of § 147.60 of this chapter.

(10) A storage cylinder space must have doors which open outwards or be fitted with kickout panels installed in each door.

(d) *Piping.* (1) A pipe, valve, or fitting of ferrous material must be protected inside and outside against corrosion unless otherwise approved by the Commandant. Aluminum or other low melting material must not be used for a component of a fixed gas fire extinguishing system except as specifically approved by the Commandant.

(2) A distribution line must extend at least 2 inches beyond the last orifice and be closed with a cap or plug.

(3) Piping, valves, and fittings must be securely supported, and where necessary, protected against damage.

(4) Drains and dirt traps must be fitted where necessary to prevent the accumulation of dirt or moisture and located in accessible locations.

(5) Piping must be used for no other purpose except that it may be incorporated with the fire detecting system.

(6) Piping passing through accommodation spaces must not be fitted with drains or other openings within such spaces.

(7) Installation test requirements for carbon dioxide systems. The distribution piping of a carbon dioxide fixed gas extinguishing system must be tested as required by this paragraph, upon completion of the piping installation, using only carbon dioxide, compressed air, or nitrogen gas.

(i) Piping between a storage cylinder and a stop valve in the manifold must be subjected to a pressure of 1,000 psi, except as permitted in paragraph (d)(7)(iii) of this section. Without additional gas being introduced to the system, the pressure drop must not exceed 300 psi after two minutes.

(ii) A distribution line to a space protected by the system must be subjected to a test similar to that described in paragraph (d)(7)(i) of this section except the pressure used must be 600 psi. For the purpose of this test, the distribution piping must be capped within the space protected at the first joint between the nozzles and the storage cylinders.

(iii) A small independent system protecting a space such as a paint locker may be tested by blowing out the piping with air at a pressure of not less than 100 psi instead of the tests prescribed in the paragraphs (d)(7)(i) and (d)(7)(ii) of this section.

(8) Installation test requirements for Halon 1301 systems. The distribution piping of a Halon 1301 fixed gas extinguishing system must be tested, as required by this paragraph, upon completion of the piping installation, using only carbon dioxide, compressed air, or nitrogen.

(i) When pressurizing the piping, pressure must be increased in small increments. Each joint must be subjected to a soap bubble leak test, and all joints must be leak free.

(ii) Piping between the storage cylinders and the manifold stop valve must be subjected to a leak test conducted at the maximum allowable working pressure at 130 °F (55 °C). Without additional gas being added to the system, there must be no loss of pressure over a two minute period after thermal equilibrium is reached.

(iii) Distribution piping between the manifold stop valve and the first nozzle in the system must be capped and pneumatically tested for a period of 10 minutes at 150 psi. At the end of 10 minutes, the pressure drop must not exceed 10% of the test pressure.

(e) *Pressure relief.* When required by the OCMI, spaces which are protected by a fixed gas fire extinguishing system and which are relatively air tight, such as refrigeration spaces, paint lockers, etc., must be provided with suitable means for relieving excessive pressure within the space when the agent is released.

(f) *Specific requirements for carbon dioxide systems.* A custom engineered fixed gas fire extinguishing system, which uses carbon dioxide as the extinguishing agent, must meet the requirements of this paragraph.

(1) Piping, valves, and fittings must have a bursting pressure of not less than 6,000 psi. Piping, in nominal sizes of not more than ¾ inch, must be at least Schedule 40 (standard weight), and in nominal sizes of over ¾ inch, must be at least Schedule 80 (extra heavy).

(2) A pressure relief valve or equivalent set to relieve at between 2,400 and 2,800 psi must be installed in the distribution manifold to protect the piping from overpressurization.

(3) Nozzles must be approved by the Commandant.

(4) When installed in a machinery space, paint locker, a space containing flammable liquid stores, or a space with a fuel tank, a fixed carbon dioxide system must meet the following requirements.

(i) The quantity of carbon dioxide to be provided by the system for a space (in pounds) must not be less than the gross volume of the space divided by the appropriate factor noted in Table 181.410(f)(4)(i). If fuel can drain from a space being protected to an adjacent space or if the spaces are not entirely separate, the volume of both spaces must be used to determine the quantity of carbon dioxide to be provided. The carbon dioxide must be arranged to discharge into both such spaces simultaneously.

TABLE 181.410(f)(4)(i)

Factor	Gross volume of space in cubic feet	
	Over	Not over
15		500
16	500	1,600
18	1,600	4,500
20	4,500	50,000
22	50,000	

(ii) The minimum size of a branch line to a space must be as noted in Table 181.410(f)(4)(ii).

TABLE 181.410(f)(4)(ii)

Maximum quantity of carbon dioxide required (pounds)	Minimum nominal pipe size (inches).	Maximum quantity of carbon dioxide required (pounds)	Minimum nominal pipe size (inches)
100	⅛	2,500	2½
225	¼	4,450	3
300	1	7,100	3½
600	1¼	10,450	4
1,000	1½	15,000	4½

(iii) Distribution piping within a space must be proportioned from the distribution line to give proper supply to the outlets without throttling.

(iv) The number, type, and location of discharge outlets must provide uniform distribution of carbon dioxide throughout a space.

(v) The area of each discharge outlet must not exceed 65 percent nor be less than 35 percent of the nominal cylinder outlet area or the area of the supply pipe, whichever is smaller. The nominal cylinder outlet area (in square inches) is determined by multiplying the factor 0.0022 by the total capacity (in pounds) of all carbon dioxide cylinders in the system, except in no case must the outlet area be of less than 0.110 square inch.

(vi) The discharge of at least 85 percent of the required amount of carbon dioxide must be completed within two minutes.

(5) When installed in an enclosed ventilation system for rotating electrical propulsion equipment a fixed carbon dioxide system must meet the following requirements.

(i) The quantity of carbon dioxide (in pounds) must be sufficient for initial and delayed discharges as required by this paragraph. The initial discharge must be equal to the gross volume of the system divided by 10 for ventilation systems having a volume of less than 2,000 cubic feet, or divided by 12 for ventilation systems having a volume of at least 2,000 cubic feet. In addition, there must be sufficient carbon dioxide available to permit delayed discharges to maintain at least a 25 percent concentration until the equipment can be stopped. If the initial discharge achieves this concentration until the equipment is stopped, a delayed discharge is not required.

(ii) The piping sizes for the initial discharge must be in accordance with Table 181.410(f)(4)(ii) and the discharge of the required amount must be completed within two minutes.

(iii) Piping for the delayed discharge must not be less than ½ inch nominal pipe size, may be incorporated with the initial discharge piping, and need not meet specific requirement for discharge rate.

(6) When installed in a cargo space a fixed carbon dioxide system must meet the following requirements.

(i) The number of pounds of carbon dioxide required for each space in cubic feet must be equal to the gross volume of the space in cubic feet divided by 30;

(ii) System piping must be of at least ¾ inch.

(iii) No specific discharge rate is required.

(g) *Specific requirements for Halon 1301 systems.*

(1) A custom engineered fixed gas fire extinguishing system, which uses Halon 1301, must comply with the applicable sections of UL Standard 1058 and the requirements of this paragraph.

(2) The Halon 1301 quantity and discharge requirements of UL 1058 apply, with the exception that the Halon 1301 design concentration must be 6 percent at the lowest ambient temperature expected in the space. If the lowest temperature is not known, a temperature of 0 degrees F must be assumed.

(3) Each storage cylinder in a system must have the same pressure and volume.

(4) Computer programs used in designing systems must have been approved by an independent laboratory.

§ 181.420 Pre-engineered Halon fixed gas fire extinguishing systems.

(a) A pre-engineered Halon fixed gas fire extinguishing system must:

(1) Be approved by the Commandant;

(2) Be capable of manual actuation from outside the space in addition to automatic actuation by a heat detector; and

(3) Automatically shut down all power ventilation systems and all engines that draw intake air from within the protected space.

(b) A vessel on which a pre-engineered fixed gas system is installed must have the following equipment at the operating station:

(1) A light to indicate the discharge of Halon;

(ii) An audible alarm to sound upon the discharge; and

(iii) A means to reset devices used to automatically shut down ventilation systems and engines as required by paragraph (a)(3) of this section.

§ 181.425 Galley hood fire extinguishing systems.

(a) A grease extraction hood required by § 181.400 of this part must meet UL 710.

(b) A grease extraction hood must be equipped with a pre-engineered dry or wet chemical fire extinguishing system meeting the applicable sections of NFPA 17 or 17A, and must be listed by an independent laboratory.

§ 181.430 Manual sprinkler systems.

A manual sprinkling system must meet the requirements of § 76.23 of this chapter.

§ 181.440 Automatic sprinkler systems.

An automatic sprinkling system must meet the requirements of § 76.25 of this chapter.

§ 181.450 Independent modular smoke detecting units.

(a) An independent modular smoke detecting unit must:

(1) Meet Underwriters Laboratories Standard 217 and be listed as a "Single Station Smoke Detector—Also suitable for use in Recreational Vehicles";

(2) Contain an independent power source; and

(3) Alarm on low power.

§ 181.460 Fire detecting systems.

A fire detecting system must be of an approved type and be installed in accordance with § 76.27 of this chapter.

§ 181.465 Smoke detecting systems.

A smoke detecting system must be of an approved type and be installed in accordance with § 76.33 of this chapter.

§ 181.470 Manual alarm systems.

A manual alarm system must meet the requirements in § 76.35 of this chapter.

§ 181.480 Flammable vapor detection systems.

(a) A flammable vapor detection system must meet UL 1110 and be approved by an independent laboratory.

(b) Procedures for checking the proper operation of a flammable vapor detection system must be posted at the operating station. The system must be self-monitoring and include a ground fault indication alarm.

(c) A flammable vapor detection system must be operational for 30 seconds prior to engine startup and continue sensing so long as the engine runs.

(d) A flammable vapor detection system must provide a visual and audible alarm at the operating station.

(e) A sensor must be located above the expected bilge water level in the following locations:

(1) The lowest part of a machinery space;

(2) The lowest part of a space containing a fuel tank when separate from the machinery space; and

(3) Any other location when required by the cognizant Officer in Charge, Marine Inspection.

(f) A flammable vapor detection system must be installed so as to permit calibration in a vapor free atmosphere.

(g) Electrical connections, wiring, and

components for a flammable vapor detection system must comply with Part 183 of the chapter.

(h) An operation and maintenance manual for the flammable vapor detection system must be kept onboard.

Subpart E—Portable Fire Extinguishers

§ 181.500 Required number, type, and location.

(a) Each portable fire extinguisher on a vessel must be of an approved type.

The minimum number of portable fire extinguishers required on a vessel must be acceptable to the Officer in Charge, Marine Inspection, but must be not less than the minimum number required by Table 181.500(a) and other provisions of this section.

TABLE 181.500(a)

Space protected	Minimum number extinguishers required	Type extinguisher permitted		CG class
		Medium	Min. size	
Operating station	1	Halon	2½ lb	B-I, C-I
		CO_2	4 lb	
		Dry chemical	2 lb	
Machinery space	1	Foam	2½ gals	B-I
		Halon	2½ lb	
		CO_2	4 lb	
Open vehicle deck	1 for every 10 vehicles	Dry chemical	2 lb	B-II
		Foam	2½ gals	
		Halon	10 lb	
		CO_2	15 lb	
		Dry chemical	10 lb	
Accommodation space over 500 square feet.	1 for each 2,500 square feet or fraction thereof.	Halon	10 lb	A-II
		CO_2	15 lb	
		Dry chemical	10 lb	
Galley, pantry, concession stand	1	Foam	2½ gals	B-II
		Halon	10 lb	
		CO_2	15 lb	
		Dry chemical	10 lb	

(b) A machinery space with a volume of more than 3,000 cubic feet containing main propulsion machinery, internal combustion engines of over 50 hp, or oil fired boilers must also have one B–II portable fire extinguisher located outside the entrance to the space.

(c) A vehicle deck without a fixed sprinkler system and exposed to weather must have one B–II portable fire extinguisher for every five vehicles, located near an entrance to the space.

(d) The Officer in Charge, Marine Inspection, may permit the use of a larger portable fire extinguisher, or a semiportable fire extinguisher, in lieu of those required by this section.

(e) The frame or support of each B–V fire extinguisher permitted by paragraph (d) of this section must be welded or otherwise permanently attached to a bulkhead or deck.

§ 181.520 Installation and location.

Portable fire extinguishers must be located conveniently to the space protected. The installation and location must be to the satisfaction of the Officer in Charge, Marine Inspection.

Subpart F—Additional Equipment

§ 181.600 Fire axe.

A vessel of more than 65 feet in length must have at least one fire axe located in or adjacent to the operating station.

§ 181.610 Fire bucket.

A vessel must have at least three 2½ gallon buckets, with an attached lanyard satisfactory to the OCMI, placed so as to be easily available during an emergency. The words "FIRE BUCKET" must be stenciled in a contrasting color on each bucket.

PART 182—MACHINERY INSTALLATION

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Authority: 46 U.S.C. 2104, 3306; 49 CFR 1.46.

Subpart A—General Provisions

§ 182.100 Intent.

This part contains requirements for the design, construction, installation, and operation of propulsion and auxiliary machinery, piping and pressure systems, steering apparatus, and associated safety systems. Machinery and equipment installed on each vessel must be suitable for the vessel and its operation and for the purpose intended. All machinery and equipment must be installed and maintained in such a manner as to afford adequate protection against fire, explosion, machinery failure, and personnel injury.

§ 182.115 Applicability to existing vessels.

(a) Except as otherwise required by paragraph (b) of this section, an existing vessel must comply with the regulations in this part or with the regulations on machinery, bilge and ballast system equipment, steering apparatus, and piping systems or components that were applicable to the vessel on [insert date of day before effective date of regulations].

(b) New installations on existing vessels of machinery, bilge and ballast system equipment, steering equipment, and piping systems or components that are completed to the satisfaction of the cognizant OCMI on or after [effective date of regulations] must comply with the regulations of this part.

§ 182.130 Alternative standards.

A vessel, other than a dynamically supported craft, propelled by gasoline or diesel internal combustion engines, of not more than 65 feet in length carrying not more than 12 passengers, may comply with all of the following requirements instead of complying with the requirements of this part in their entirety:

(a) The following specific requirements in this part:

(1) Auxiliary boilers, hot water heaters, and all unfired pressure vessels must comply with Subpart C;

(2) Gasoline engines must comply with § 182.415;

(3) Bilge systems must comply with § 182.500;

(4) Steering systems must comply with Subpart F; and

(b) The following American Boat and Yacht Council (ABYC) Projects and regulations in 33 CFR Subchapter S (Boating Safety) where applicable:

(1) H–2—"Ventilation, Gasoline Boats," or 33 CFR 183 Subpart K—"Ventilation";

(2) H–22—"Electrically Operated Bilge Pumps";

(3) H–24—"Fuel Systems—Gasoline", or 33 CFR Part 183, Subpart J—"Fuel System";

(4) H–25—"Portable Fuel Systems for Flammable Liquids";

(5) H–32—"Ventilation—Diesel Boats";

(6) H–33—"Fuel Systems—Diesel";

(7) P–1—"Installation of Exhaust Systems for Propulsion and Auxiliary Engines";

(8) P–4—"Liquid Cooled Marine Engines"; and

(9) P–10—"Air Cooled Marine Engines".

Subpart B—Propulsion Machinery

§ 182.200 General.

(a) Propulsion machinery must be suitable in type and design for propulsion requirements of the hull in which it is installed and capable of operating at constant marine load under such requirements without exceeding its designed limitations.

(b) All engines must have at least two means for stopping the engine(s) under any operating conditions. The fuel oil shutoff required at the engine by § 182.455(b)(4) will satisfy one means of stopping the engine. A diesel or gas turbine engine rated at 300 hp or more must additionally be provided with an emergency overspeed shutdown device connected, where possible, directly to the engine shaft.

§ 182.210 Failure mode and effects analysis for dynamically supported craft.

A failure mode and effects analysis must be carried out, to the satisfaction of the Officer in Charge, Marine Inspection, for each type of machinery and associated controls installed in a dynamically supported craft. In cases where faults can occur without being detected during routine checks of the machinery, the analysis must take into account the possibility of faults occurring simultaneously or consecutively.

§ 182.220 Installations.

(a) Except as otherwise provided in this section, propulsion machinery installations must comply with the provisions of this part.

(b) The requirements for machinery and boilers for steam and electrically propelled vessels are contained in applicable regulations in Subchapter F (Marine Engineering) and Subchapter J (Electrical Engineering) of this chapter.

(c) Propulsion machinery of an unusual type for small passenger vessels must be given separate consideration and must be subject to such requirements as determined necessary by the Officer in Charge, Marine Inspection. These unusual types of propulsion machinery include:

(1) Gas turbine machinery installations;

(2) Air screws;

(3) Hydraulic jets; and

(4) Machinery installations using propulsion and lift devices.

Subpart C—Auxiliary Machinery

§ 182.300 General.

Auxiliary machinery must be suitable in type and design for the purpose intended.

§ 182.310 Installations.

(a) Auxiliary machinery of the internal combustion piston type must comply with the provisions of this part.

(b) Auxiliary machinery of the steam or gas turbine type will be given separate consideration and may be subject to applicable requirements of Subchapter F (Marine Engineering) of this chapter as determined necessary by the Officer in Charge, Marine Inspection.

(c) Auxiliary boilers and heating boilers and their associated piping and fittings will be given separate consideration and will be subject to such requirements as determined by the OCMI. These requirements must be as specified in applicable regulations in Subchapter F (Marine Engineering) of this chapter except that heating boilers must be tested or examined every three years.

§ 182.320 Hot water heaters.

(a) A hot water heater must meet the requirements of Parts 52 and 63 of this chapter if rated at more than 100 psig (689 kPa) or 250 °F (121 °C).

(b) A hot water heater must meet the requirements of Parts 53 and 63 of this chapter if rated at not more than 100 psig (689 kPa) and 250 °F (121 °C), except that an electric hot water heater is also acceptable if it:

(1) Has a capacity of not more than 120 gallons (454 liters);

(2) Has a heat input of not more than 58.6 kilowatts (200,000 Btu per hour);

(3) Is listed by Underwriters' Laboratories under UL Standard 174 or 1453; and

(4) Is protected by a pressure/temperature relief device.

§ 182.330 Pressure vessels.

All unfired pressure vessels must be installed to the satisfaction of the Officer in Charge, Marine Inspection. The requirements for design, construction, and original testing of such unfired pressure vessels are found in

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Subchapter F (Marine Engineering) of this chapter.

Subpart D—Specific Machinery Requirements

§ 182.400 Applicability.

(a) This subpart applies to all propulsion and auxiliary machinery installations of the internal combustion piston type.

(b) Requirements of this subpart that are only applicable to engines which use gasoline, or other fuel having a flashpoint of 110 °F or lower, are specifically designated.

(c) Requirements of this subpart that are only applicable to engines which use diesel fuel, or other fuel having a flashpoint of more than 110 °F, are specifically designated.

(d) Where no specific gasoline or diesel designation exists, the requirements of this subpart are applicable to both types of engines.

§ 182.405 Fuel restrictions.

(a) The use of liquefied and non-liquefied flammable gases, such as propane, methane, butane, or natural gas, as fuel for an internal combustion engine is prohibited on all vessels.

(b) The use of gasoline as fuel for an internal combustion engine is prohibited on dynamically supported craft.

§ 182.410 General requirements.

(a) Starting motors, generators, and any spark producing device must be mounted as high above the bilges as practicable. Electrical equipment in spaces, compartments, or enclosures that contain gasoline fueled machinery or gasoline fuel tanks must be explosionproof, intrinsically safe, or ignition protected for use in a gasoline atmosphere as required by § 183.530 of this subchapter.

(b) The design, construction, and materials used for machinery must minimize the probability of failure resulting in hazard to the vessel or occupants. The design and installation of machinery containing high energy rotating parts must consider the likelihood of ejection of high energy debris in the event of failure. Where practicable, the debris must be contained either within the machinery or by an external guard.

(c) Gauges to indicate cooling water discharge temperature and lubricating oil pressure must be provided for all propulsion engines. The gauges must be readily visible at the operating station. When an engine is water cooled and its exhaust pipe is cooled by a separate water cooling system, a suitable warning, visible or audible at the operating station, must be provided to indicate any failure of water flow in the exhaust system. In addition, upon consideration of the design, type of machinery, and service of a dynamically supported craft, the Officer in Charge, Marine Inspection, may require that propulsion or lift machinery be provided with warning and protection devices to monitor, where applicable, machinery r.p.m., torque, and exhaust gas temperature, and which will activate if approved operating limitations are exceeded.

(d) In dynamically supported craft, arrangements must be provided for an alarm, or to slow the engine to a safe speed, in the event of the lubricating oil pressure falling to a dangerously low level as defined by the engine manufacturer. Automatic shut-down of the engine must only be activated by conditions which could lead to complete breakdown, fire, or explosion.

(e) An enclosed machinery space containing a gasoline engine must be fitted with a flammable vapor detection system in compliance with § 181.480 of this subchapter.

(f) Where diesel engines are arranged to be started, reversed, or controlled by compressed air, the arrangement of the air compressor, air receiver, and air starting system must be designed to minimize the risk of fire and explosion.

§ 182.415 Carburetors.

(a) All carburetors except the downdraft type must be equipped with integral or externally fitted drip collectors of adequate capacity and arranged so as to permit ready removal of fuel leakage. Externally fitted drip collectors, must be covered with flame screens. Drip collectors, where practicable, should automatically drain back to engine air intakes.

(b) All gasoline engines must be equipped with an acceptable means of backfire flame control. The following are acceptable means of backfire flame control for gasoline engines:

(1) A backfire flame arrester approved and marked under § 162.041 of this chapter. The flame arrester must be secured to the air intake in accordance with the manufacturer's instructions.

(2) An engine air and fuel induction system which provides adequate protection from propagation of backfire flame to the atmosphere equivalent to that provided by an approved backfire flame arrester. An air and fuel induction system, operated without an approved backfire flame arrester, must be approved and marked under § 162.042 of this chapter.

(3) Flames caused by engine backfire exiting from any attachment to the carburetor or the engine air induction system must be dispersed to the atmosphere outside the vessel in a manner that will not endanger the vessel, persons on board, or nearby vessels and structures. All attachments must be of metallic construction with connections which prevent flame propagation and are firmly secured to withstand vibration, shock, and engine backfire. Such installations do not require formal approval and labeling, but will be accepted on the basis of compliance with this subpart.

(4) An engine air induction system on a vessel with an integrated engine-vessel design must be approved, marked, and tested under § 162.043 of this chapter.

§ 182.420 Engine cooling.

(a) Except as otherwise provided in paragraphs (b), (c), (d), and (e) of this section, all engines must be water cooled and meet the requirements of this paragraph.

(1) The engine head, block, and exhaust manifold must be water jacketed and cooled by water from a pump which operates whenever the engine is operating.

(2) A suitable hull strainer must be installed in the circulating water intake line of an engine cooling water system.

(3) A closed fresh water system may be used to cool the engine.

(4) Air cooled radiators must not be used for propulsion engine cooling systems.

(b) An engine water cooling system on a vessel of not more than 65 feet in length carrying not more than 12 passengers, may comply with the requirements of ABYC Project P–4, "Liquid Cooled Marine Engines," instead of the requirements of paragraph (a) of this section.

(c) On a vessel of not more than 65 feet in length carrying not more than 12 passengers, a propulsion gasoline engine may be air cooled when in compliance with the requirements of ABYC Project P–10, "Air Cooled Marine Engines."

(d) An auxiliary gasoline engine may be air cooled when:

(1) It has a self-contained fuel system and it is installed on an open deck; or

(2) On a vessel of not more than 65 feet in length carrying not more than 12 passengers, it is in compliance with the requirements of ABYC Project P–10, "Air Cooled Marine Engines."

(e) A propulsion or auxiliary diesel engine may be air cooled when installed:

(1) On an open deck;

(2) In an enclosed or partially enclosed space for which ventilation is provided which complies with the requirement of § 182.465(b) of this part, and other necessary safeguards are taken so as not to endanger the vessel; or

(3) On a vessel of not more than 65 feet in length carrying not more than 12 passengers, in compliance with the requirements of ABYC Project P-10, "Air Cooled Marine Engines."

§ 182.422 Keel cooler installations.

(a) A keel cooler installation used for engine cooling must have a shutoff valve in the keel cooler piping which penetrates the shell, located as near the shell plating as practicable, except where:

(1) The penetration is forward of the collision bulkhead; or

(2) The keel cooler is integral with the ship's hull such that the cooler tubes are welded directly to the hull of the vessel with the hull forming part of the tubes and all of the following are complied with:

(i) The cooler structure is fabricated from material of the same quality as the hull plating;

(ii) The material of the cooler structure is the same thickness as the hull plating to which it is attached, except that, in the case of half round pipe, lesser thickness may be used if specifically approved by the OCMI. In any case the structure, with the exception of the hull proper, need not exceed three-eighths of an inch in thickness;

(iii) The flexible connections in such a keel cooler system are above the deepest load waterline;

(iv) Full penetration welds are employed in the fabrication of the structure and its attachment to the hull; and

(v) The forward end of the structure is faired to the hull with the horizontal length of the fairing not less than four times the height of the structure.

(b) The thickness of the inlet and discharge connections, outboard of the shutoff valves required by paragraph (a) of this section, must be at least Schedule 80.

(c) Approved metallic flexible connections may be located below the deepest load waterline if the keel cooler system is a closed loop below the waterline and its vent terminates above the waterline.

(d) Fillet welds may be used in the attachment of channels and half round pipe sections to the bottom of the vessel.

(e) Short lengths of approved nonmetallic flexible hose, fixed by hose clamps, may be used at machinery connections for a keel cooler installation provided that:

(1) The clamps are of a corrosion resistant metallic material;

(2) The clamps do not depend on spring tension for their holding power; and

(3) Two clamps are used on each end of the hose or one hose clamp is used and the pipe ends are expanded or beaded to provide a positive stop against hose slippage.

§ 182.423 Grid cooler installations.

(a) Hull penetrations for grid cooler installations must be made through a cofferdam or at a seachest.

(b) Grid coolers must be suitably protected against damage from debris and grounding by recessing the unit into the hull or by the placement of protective guards.

(c) Each grid cooler hull penetration must be equipped with a shutoff valve.

§ 182.425 Engine exhaust cooling.

(a) Except as otherwise provided in this paragraph, all engine exhaust pipes must be water cooled.

(1) Vertical dry exhaust pipes are permissible if installed in compliance with §§ 177.400(b) and 177.970 of this subchapter.

(2) Horizontal dry exhaust pipes are permitted only if:

(i) They do not pass through living or berthing spaces;

(ii) They terminate above the deepest load waterline;

(iii) They are so arranged as to prevent entry of cold water from rough or boarding seas;

(iv) They are constructed of corrosion resisting material at the hull penetration; and

(v) They are installed in compliance with §§ 177.400(b) and 177.970 of this subchapter.

(b) The exhaust pipe cooling water system must comply with the requirements of this paragraph.

(1) Water for cooling the exhaust pipe must be obtained from the engine cooling water system or a separate engine driven pump.

(2) Water for cooling the exhaust pipe, other than a vertical exhaust, must be injected into the exhaust system as near to the engine manifold as practicable. The water must pass through the entire length of the exhaust pipe.

(3) The part of the exhaust system between the point of cooling water injection and the engine manifold must be water-jacketed or effectively insulated and protected in compliance with §§ 177.400(b) and 177.970 of this subchapter.

(4) Vertical exhaust pipes must be water-jacketed or suitably insulated between the engine manifold and the spark arrester required by § 182.430(g) of this part.

(5) When the exhaust cooling system is separate from the engine cooling system, a visual or audible warning device must be installed at the operating station to indicate any failure of water flow in the exhaust cooling system.

(6) A suitable hull strainer must be installed in the circulating water intake line for the exhaust cooling system.

(c) Engine exhaust cooling systems built in accordance with the requirements of American Boat and Yacht Council Project P-1, "Installation of Exhaust Systems for Propulsion and Auxiliary Machinery," will be considered as meeting the requirements of this section.

§ 182.430 Engine exhaust pipe installation.

(a) Exhaust piping must contain a minimum number of bends or elbows. Exhaust gas must not leak from the piping or any connections. The piping must be properly supported by hangers or blocks. In the case of dry exhaust systems all hangers and blocks must be non-combustible.

(b) The exhaust piping must be so arranged as to prevent backflow of water from reaching engine exhaust ports under normal conditions.

(c) Pipes used for wet exhaust lines must be Schedule 80 or corrosion-resistant material and adequately protected from mechanical damage. Materials listed in ABYC Project P-1 comply with the requirements of this paragraph.

(d) Where flexibility is necessary, a section of flexible metallic hose may be used. Nonmetallic hose may be used for wet exhaust systems provided it is especially adapted to resist the action of oil, acid, and heat, and has a wall thickness sufficient to prevent collapsing or panting.

(e) Where an exhaust pipe passes through a watertight bulkhead the watertight integrity of the bulkhead must be maintained. Non-combustible packing must be used in bulkhead penetration glands for dry exhaust systems. A wet exhaust pipe may be welded to a steel bulkhead in way of a penetration and a fiberglass wet exhaust pipe may be fiberglassed to a fiberglass reinforced plastic bulkhead if suitable arrangements are provided to relieve the stresses resulting from the expansion of the exhaust piping.

(f) Where a dry exhaust pipe passes through a combustible bulkhead or partition, the pipe must be installed in compliance with § 177.400(b) of this subchapter.

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(g) Vertical exhaust piping must be fitted with a spark arrester except that exhaust piping from an engine fitted with a turbocharger need not be fitted with a spark arrester provided all exhaust gasses pass through the turbine wheel and no by-pass is installed around the turbocharger. Spark arresters must be supported by suitable steel hangers and must be lagged with fire resistant material. A clearance of at least 9 inches must be maintained between the spark arrester and any woodwork.

(h) Protection must be provided in compliance with § 177.970 of this subchapter at such locations where persons or equipment might come in contact with an exhaust pipe.

(i) Arrangements must be made to provide access to the exhaust piping throughout its length.

(j) The design of all exhaust systems must ensure minimum risk of damage to structure or components and injury to personnel. No exhaust may be discharged into the cushion of a surface effect type dynamically supported craft.

(k) Where an exhaust pipe penetrates any structure, adequate insulation or shielding must be provided.

(l) Exhaust piping must not be positioned such that failure or leakage could adversely affect the normal operation of controls.

(m) An exhaust pipe discharge must be so located that exhaust gases cannot re-enter the vessel.

(n) An exhaust pipe discharge located less than 3 inches above the deepest load waterline must be fitted with means to prevent the ingress of water.

(o) An exhaust installation subject to pressures in excess of 15 pounds per square inch gauge or having exhaust pipes passing through living or working spaces must meet the material requirements of Part 56 of Subchapter F (Marine Engineering) of this chapter.

(p) Engine exhaust installations built in accordance with the requirements of ABYC Project P–1, "Installations of Exhaust Systems for Propulsion and Auxiliary Machinery," will be considered as meeting the requirements of this section.

§ 182.435 Integral fuel tanks.

(a) Gasoline fuel tanks must be independent of the hull.

(b) Diesel fuel tanks may not be built integral with the hull of a vessel unless the hull is made of:

(1) Steel;

(2) Aluminum; or

(3) Fiber reinforced plastic when:

(i) Sandwich construction is not used; or

(ii) Sandwich construction is used with only a core material of closed-cell, polyvinyl chloride.

(c) During the initial inspection for certification of a vessel, integral fuel tanks must withstand a hydrostatic pressure test of 5 pounds per square inch, or the maximum pressure head to which they may be subjected in service, whichever is greater.

§ 182.440 Independent fuel tanks.

(a) *Materials and construction.* Independent fuel tanks must be designed and constructed of materials in compliance with the requirements of this paragraph.

(1) The material used and the minimum thickness allowed must be as indicated in Table 182.440(a)(1), except that other materials which provide equivalent safety may be approved for use under paragraph (a)(2) of this section. Tanks having a capacity of more than 150 gallons must be designed to withstand the maximum head to which they may be subjected in service, but in no case may the thickness be less than that specified in Table 182.440(a)(1).

TABLE 182.440(a)(1)

Material	ASTM specification (latest edition)	Thickness in inches and gage number [1] vs. tank capacities for—		
		1 to 80 gallon tank	More than 80 and not more than 150 gallon tank	Over 150 [4] gallon tank
Nickel-copper	B127, hot rolled sheet or plate	0.037 (USSG 20 [2])	0.050 (USSG 18)	0.107 (USSG 12).
Copper-nickel [3]	B122, UNS alloy C71500	0.045 (AWG 17)	0.057 (AWG 15)	0.128 (AWG 8).
Copper [3]	B152, UNS alloy C11000	0.057 (AWG 15)	0.081 (AWG 12)	0.182 (AWG 5).
Copper-silicon [3]	B96, alloys A, B, and C	0.051 (AWG 16)	0.064 (AWG 14)	0.144 (AWG 7).
Steel or iron [5]		0.0747 (MSG 14)	0.1046 (MSG 12)	0.1793 (MSG 7).
Aluminum [6]	B209, alloy 5052, 5083, 5086	0.250 (USSG 3)	0.250 (USSG 3)	0.250 (USSG 3).

[1] The gage numbers used in this table may be found in many standard engineering reference books. The letters "USSG" stand for "U.S. Standard Gage," which was established by the act of March 3, 1892 (15 U.S.C. 208), for sheet and plate iron and steel. The letters "AWG" stand for "American Wire Gage" (or Brown and Sharpe Gage) for nonferrous sheet thickness. The letters "MSG" stand for "Manufacturers' Standard Gage" for sheet steel thickness.

[2] Nickel-copper not less than 0.031 inch (USSG 22) may be used for tanks up to 30-gallon capacity.

[3] Acceptable only for gasoline service.

[4] Gasoline fuel tanks constructed of iron or steel, which are less than 3/16-inch thick, shall be galvanized inside and outside by the hot dip process. Tanks intended for use with diesel oil shall not be internally galvanized. Stainless steel tanks are not included in this category.

[5] Anodic to most common metals. Avoid dissimilar metal contact with tank body.

[6] Tanks over 400 gallons shall be designed with a factor of safety of four on the ultimate strength of the material used with a design head of not less than 4 feet of liquid above the top of the tank.

(2) Materials other than those listed in Table 182.440(a)(1) must be approved by the Commandant. An independent tank using material approved by the Commandant under this paragraph must meet the testing requirements of UL Standard 1102. Testing may be accomplished by an independent laboratory or by the fabricator if witnessed by a marine inspector.

(3) Tanks with flanged-up top edges which may trap and hold moisture are prohibited.

(4) Openings for fill pipes, vent pipes, and machinery fuel supply pipes, and openings for fuel level gauges, where used, must be on the topmost surfaces of tanks. Tanks may not have any openings in bottoms, sides, or ends, except for:

(i) An opening fitted with a threaded plug or cap installed for tank cleaning purposes; and

(ii) In a diesel fuel tank, the opening for the supply piping.

(5) All tank joints must be welded or brazed. Lap joints may not be used.

(6) Nozzles, flanges, or other fittings for pipe connections must be welded or brazed to the tank. Tank openings in way of pipe connections must be properly reinforced where necessary. Where fuel level gauges are used, the flanges to which gauge fittings are attached must be welded or brazed to the tank. No tubular gauge glasses or trycocks may be fitted to gasoline fuel tanks.

(7) A tank exceeding 30 inches in any horizontal dimension must be:

(i) Fitted with vertical baffle plates at intervals not exceeding 30 inches, which meet paragraph (a)(8) of this section, to provide strength and to control the excessive surge of fuel; or

(ii) Designed so that the vessel's stability is not adversely affected by the tank dynamic conditions as shown by calculations required by paragraph (a)(9) of this section.

(8) Baffle plates, where required, must be of the same material and not less than the minimum thickness required in the tank walls and must be connected to the tank walls by welding or brazing. Limber holes at the bottom and air holes at the top of all baffles must be provided.

(9) For a tank exceeding 30 inches in any horizontal dimension, which does not have baffle plates at intervals not exceeding 30 inches, the owner must submit calculations to the OCMI demonstrating the structural adequacy of the tank in a fully loaded static condition and in a worst case dynamic (sloshing) condition.

(10) Iron or steel diesel fuel tanks must not be galvanized on the interior. Galvanizing, paint, or other suitable coating must be used to protect the outside of iron and steel diesel fuel tanks and the inside and outside of iron and steel fuel gasoline tanks.

(b) *Location and installation.* Independent fuel tanks must be located and installed in compliance with the requirements of this paragraph.

(1) Fuel tanks must be located in, or as close as practicable to, machinery spaces.

(2) Fuel tanks and fittings must be so installed as to permit examination, testing, or removal for cleaning with minimum disturbance to the hull structure.

(3) Fuel tanks must be adequately supported and braced to prevent movement. The supports and braces must be insulated from contact with the tank surfaces with a non-abrasive and non-absorbent material.

(4) All fuel tanks must be electrically bonded to a common ground.

(c) *Tests.* Independent fuel tanks must be tested in compliance with the requirements of this part prior to being used to carry fuel.

(1) Prior to installation, tanks vented to the atmosphere must be hydrostatically tested to, and must withstand, a pressure of 5 pounds per square inch or 1½ times the maximum pressure head to which they may be subjected in service, whichever is greater. A standpipe of 11½ feet in height attached to the tank may be filled with water to accomplish the 5 pounds per square inch test. Permanent deformation of the tank will not be cause for rejection unless accompanied by leakage.

(2) After installation of the fuel tank on a vessel, the complete installation must be tested in the presence of a marine inspector to a head not less than that to which the tank may be subjected in service. Fuel may be used as the testing medium.

(3) All tanks not vented to the atmosphere must be constructed and tested in accordance with § 182.330 of this part.

(d) *Alternative procedures.* A gasoline powered vessel of not more than 65 feet in length carrying not more than 12 passengers, with independent gasoline fuel tanks built in accordance with ABYC Project H–24 or 33 CFR Part 183, Subpart J, or with independent diesel fuel tanks built in accordance with ABYC Project H–33 will be considered as meeting the requirements of this section.

§ 182.445 Fill and sounding pipes for fuel tanks.

(a) Fill pipes for fuel tanks must be not less than 1½ inches nominal pipe size.

(b) There must be a means of accurately determining the amount of fuel in each fuel tank either by sounding, through a separate sounding pipe or a fill pipe, or by an installed marine type fuel gauge.

(c) Where sounding pipes are used, their openings must be at least as high as the opening of the fill pipe and they must be kept closed at all times except during sounding.

(d) Fill pipes and sounding pipes must be so arranged that overflow of liquid or vapor cannot escape to the inside of the vessel.

(e) Fill pipes and sounding pipes must run as directly as possible, preferably in a straight line, from the deck connection to the top of the tank. Such pipes must terminate on the weather deck and must be fitted with shutoff valves, watertight deck plates, or screw caps, suitably marked for identification. Gasoline fill pipes and sounding pipes must extend to within one-half of their diameter from the bottom of the tank. Diesel fill pipes and sounding pipes may terminate at the top of the tank.

(f) A vessel of not more than 65 feet carrying not more than 12 passengers, with a gasoline fuel system built in accordance with ABYC Project H–24 or 33 CFR Part 183, Subpart J, or with a diesel fuel system built in accordance with ABYC Project H–33 will be considered as meeting the requirements of this section.

(g) Where a flexible fill pipe section is necessary, suitable flexible tubing or hose having high resistance to salt water, petroleum oils, heat and vibration, may be used. Such hose must overlap metallic pipe ends at least 1½ times the pipe diameter and must be secured at each end by two clamps of corrosion resistant metal. Clamps depending solely on the spring tension of the metal must not be used. The flexible section must be accessible and as near the upper end of the fill pipe as practicable. When the flexible section is a nonconductor of electricity, the metallic sections of the fill pipe separated thereby must be joined by a conductor for protection against static spark when filling.

§ 182.450 Vent pipes for fuel tanks.

(a) Each fuel tank must be fitted with a vent pipe connected to the highest point of the tank.

(b) The net cross-sectional area of the vent pipe for gasoline fuel tanks must be not less than that of ¾ inch O.D. tubing (0.035 inch wall thickness, 20 gauge), except that, where provision is made to fill the tanks under pressure, the net cross-sectional area of the vent pipe must be not less than that of the fill pipe.

(c) The minimum net cross-sectional area of the vent pipe for diesel fuel tanks must be as follows:

(1) Not less than the cross-sectional area of ⅝ inch O.D. tubing (0.035-inch wall thickness, 20 gauge), if the fill pipe terminates at the top of the tank;

(2) Not less than the cross-sectional area of ¾ inch O.D. tubing (0.035-inch wall thickness, 20 gauge), if the fill pipe extends into the tank; and

(3) Not less than the cross-sectional area of the fill pipe if provision is made to fill the tank under pressure.

(d) The discharge ends of fuel tank vent pipes must terminate on the hull exterior as high above the waterline as practicable and remote from any hull openings, or they must terminate in U-bends as high above the weather deck as practicable and as far as practicable from openings into any enclosed spaces. Vent pipes terminating on the hull exterior must be installed or equipped to prevent the accidental contamination of the fuel by water under normal operating conditions.

(e) The discharge ends of fuel tank vent pipes must be fitted with removable flame screens or flame arresters. The flame screens must consist of a single screen of corrosion resistant wire of at least 30x30 mesh. The flame screens or flame arresters must be of such size and design as to prevent reduction in the net cross-sectional area of the vent pipe and

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permit cleaning or renewal of the flame screens or arrester elements.

(f) A vessel of not more than 65 feet in length carrying not more than 12 passengers, with fuel gasoline tank vents built in accordance with ABYC Project H–24, or 33 CFR Part 183, Subpart J, or with diesel fuel tank vents built in accordance with ABYC Project H–33 will be considered as meeting the requirements of this section.

(g) Where a flexible vent pipe section is necessary, suitable flexible tubing or hose having high resistance to salt water, petroleum oils, heat and vibration, may be used. Such hose must overlap metallic pipe ends at least 1½ times the pipe diameter and must be secured at each end by two clamps of corrosion resistant metal. Clamps depending solely on the spring tension of the metal must not be used. The flexible section must be accessible and as near the upper end of the vent pipe as practicable.

§ 182.455 Fuel piping.

(a) *Materials and workmanship.* The materials and construction of fuel lines, including pipe, tube, and hose, must comply with the requirements of this paragraph.

(1) Fuel lines must be annealed tubing of copper, nickel-copper, or copper-nickel having a minimum wall thickness of 0.035 inch except that:

(i) Diesel fuel piping of other materials such as seamless steel pipe or tubing which provides equivalent safety may be used;

(ii) Diesel fuel piping of aluminum is acceptable on aluminum hull vessels provided it is installed outside the machinery space and is a minimum of Schedule 80 wall thickness; and

(iii) Flexible hose may be used for the purpose of flexibility in accordance with the provisions of paragraph (a)(2) this section.

(2) Flexible hose must comply with the following requirements:

(i) Flexible hose may only be used in lengths of not more than 30 inches, at a pressure not to exceed the manufacturer's rating;

(ii) Flexible hose runs must be visible, easily accessible, and must not penetrate watertight bulkheads;

(iii) Flexible hose must be fabricated with an inner tube and a cover of synthetic rubber or other suitable material reinforced with wire braid;

(iv) Flexible hose must be provided with suitable compression type connection fittings and have a high resistance to saltwater, petroleum oils, and vibration;

(v) A flexible hose assembly must meet SAE Standard J1942 or be specifically approved by the Commandant;

(vi) USCG Type A1, A2, B1, or B2 flexible hose may be accepted in accordance with 33 CFR Part 183, Subpart J, for applications subject to operating pressures of not more than 5 psi;

(vii) Flexible hose used for alcohol-gasoline blend fuels must meet the permeability requirements specified in 33 CFR Part 183, Subpart J; and

(viii) Flexible hose designed for use with hose clamps must be installed with two clamps, at both ends of the hose, which:

(A) Do not rely on the spring tension of the clamp for compressive force; and

(B) Are installed beyond the bead or flare or over the serrations of the mating spud, pipe, or hose fitting.

(3) Tubing connections and fittings must be of nonferrous drawn or forged metal of the flared type except that flareless fittings of the nonbite type may be used when the tubing system is of nickel-copper or copper-nickel. When making tube connections, the tubing must be cut square and flared by suitable tools. Tube ends must be annealed before flaring.

(4) Cocks are prohibited except for the solid bottom type with tapered plugs and union bonnets.

(5) Valves for gasoline fuel lines must be of a suitable nonferrous type.

(b) *Installation.* The installation of fuel lines, including pipe, tube, and hose, must comply with the requirements of this paragraph.

(1) Gasoline fuel lines must be connected at the top of the fuel tank and run at or above the level of the tank top to a point as close to the engine connection as practicable except that lines below the level of the tank top are permitted if equipped with anti-siphon protection.

(2) Diesel fuel lines may be connected to the fuel tank at or near the bottom of the tank.

(3) Fuel lines must be accessible, protected from mechanical injury, and effectively secured against excessive movement and vibration by the use of soft nonferrous metal straps which have no sharp edges and are insulated to protect against corrosion. Where passing through bulkheads, fuel lines must be protected by close fitting ferrules or stuffing boxes. All fuel lines and fittings must be accessible for inspection.

(4) Shutoff valves, installed so as to close against the fuel flow, must be fitted in the fuel supply lines, one at the tank connection and one at the engine end of the fuel line to stop fuel flow when servicing accessories. The shutoff valve at the tank must be operable from outside the tank compartment, preferably from an accessible position on the weather deck.

(5) A loop of copper tubing or a short length of flexible hose must be installed in the fuel supply line at or near the engines. The flexible hose must meet the requirements of paragraph (a)(2) of this section.

(6) Fuel injector pipes on dynamically supported craft must be positioned or screened to avoid fuel impingement on hot surfaces in the event of leakage or fracture of the pipe. Where this is not practicable, the Officer in Charge, Marine Inspection, may require the installation of double-walled fuel injection pipes which are designed to ensure that any leakage is safely drained.

(7) A suitable metal marine type strainer, meeting the requirements of the engine manufacturer, must be fitted in the fuel supply line in the engine compartment. Strainers must be leak free. Strainers must be of the type opening on top for cleaning screens. A drip pan fitted with flame screen must be installed under gasoline strainers. Fuel filter and strainer bowls must be highly resistant to shattering due to mechanical impact and resistant to failure due to thermal shock. Fuel filters fitted with plastic bowls must be approved by the Commandant, protected from mechanical damage, and fitted with a flame shield.

(8) All accessories installed in the fuel line must be independently supported.

(9) Outlets in gasoline fuel lines which would permit drawing fuel below deck, for any purpose, are prohibited.

(10) Valves for removing water or impurities from diesel fuel in watertraps or strainers are permitted. These valves must be provided with caps or plugs to prevent fuel leakage.

(11) Where a fuel return line is necessary and engine fuel is supplied by more than one tank, a fuel return line must be provided for each tank. Where valves are used in the return line they must have a positive means of control so that they cannot be inadvertently secured against the fuel return.

(c) *Alternative procedures.* A gasoline powered vessel of not more than 65 feet carrying not more than 12 passengers, with a fuel system built in accordance with ABYC Project H–24 or 33 CFR Part 183, Subpart J, or a diesel powered vessel of not more than 65 feet in length carrying not more than 12 passengers, with a fuel system built in accordance with ABYC Project H–33, will be considered as meeting the requirements of this section.

§ 182.458 Portable fuel systems.

(a) Portable fuel systems, including portable tanks and related fuel lines and accessories, are prohibited except where used for outboard motor installations.

(b) The design, construction and stowage of portable tanks and related fuel lines and accessories must meet the requirements of ABYC Project H–25, "Portable Fuel Systems for Flammable Liquids."

§ 182.460 Ventilation of spaces containing gasoline machinery or fuel tanks.

(a) A space containing gasoline machinery or fuel tanks must have a ventilation system which complies with this section and consists of:

(1) For an enclosed space:

(i) At least two natural ventilation supply ducts located at one end of the space and which extend to the lowest part of the space or to the bilge on each side of the space; and

(ii) A mechanical exhaust system consisting of at least two ventilation exhaust ducts located at the end of the space opposite from where the supply ducts are fitted, which extend to the lowest part or the bilge of the space on each side of the space, and which are led to one or more powered exhaust blowers; and

(2) For a partially enclosed space, at least one ventilation duct installed in the forepart of the space and one ventilation duct installed in the afterpart of the space, or as otherwise required by the OCMI. Ducts for partially enclosed spaces must have cowls or scoops as required by paragraph (i) of this section.

(b) A mechanical exhaust system required by paragraph (a)(1)(ii) of this section must be such as to assure the air changes as noted in Table 182.460(b) depending upon the size of the space.

TABLE 182.460(b)

Size of Space in Cubic Feet		Minutes per air change
Over—	Not over—	
0	500	2
500	1,000	3
1,000	1,500	4
1,500		5

(c) An exhaust blower motor may not be installed in a duct, and if mounted in any space required to be ventilated by this section, must be located as high above the bilge as practicable. Blower blades must be nonsparking with reference to their housings.

(d) Where a fixed gas fire extinguishing system is installed in a space, all powered exhaust blowers for the space must automatically shut down upon release of the extinguishing agent.

(e) Exhaust blower switches must be located outside of any space required to be ventilated by this section, and must be of the type interlocked with the starting switch and the ignition switch so that the blowers are started before the engine starter motor circuit or the engine ignition is energized. A red warning sign at the switch must state that the blowers must be operated prior to starting the engines for the time sufficient to insure at least one complete change of air in the space served.

(f) The area of the ventilation ducts must be sufficient to limit the air velocity to a maximum of 2,000 feet per minute. A duct may be of any shape, provided that in no case will one cross sectional dimension exceed twice the other.

(g) A duct must be so installed that ordinary collection of water in the bilge will not block vapor flow.

(h) A duct must be of rigid permanent construction, which does not allow any appreciable vapor flow except through normal openings, and made of the same material as the hull or of non-combustible material. The duct must lead as directly as possible from its intake opening to its terminus and be securely fastened and supported.

(i) A supply duct must be provided at its intake opening with a cowl or scoop having a free area not less than twice the required duct area. When the cowl or scoop is screened, the mouth area must be increased to compensate for the area of the screen wire. A cowl or scoop must be kept open at all times except when the weather is such as to endanger the vessel if the openings are not temporarily closed.

(j) Dampers may not be fitted in a supply duct.

(k) A duct opening may not be located where the natural flow of air is unduly obstructed, adjacent to possible sources of vapor ignition, or where exhaust air may be taken into a supply duct.

(l) Provision must be made for closing all supply duct cowls or scoops and exhaust duct discharge openings for a space protected by a fixed gas extinguishing system. All closure devices must be readily available and mounted in the vicinity of the vent.

(m) A vessel of not more than 65 feet in length carrying not more than 12 passengers, with ventilation installations in accordance with American Boat and Yacht Council Project H–2, "Ventilation—Gasoline Boats," or 33 CFR Subchapter S, Subpart K, "Ventilation Systems," will be considered as meeting the requirements of this section.

§ 182.465 Ventilation of spaces containing diesel machinery.

(a) A space containing diesel machinery must be fitted with adequate dripproof ventilators, trunks, louvers, etc., to provide sufficient air for proper operation of main engines and auxiliary engines.

(b) Air-cooled propulsion and auxiliary diesel engines installed below deck, as permitted by § 182.420 of this part, must be fitted with air supply ducts or piping from the weather deck. The ducts or piping must be so arranged and supported to be capable of safely sustaining stresses induced by weight and engine vibration and to minimize transfer of vibration to the supporting structure. Prior to installation of ventilation system for such engines, plans or sketches showing machinery arrangement including air supplies, exhaust stack, method of attachment of ventilation ducts to the engine, location of spark arresting mufflers and capacity of ventilation blowers must be submitted to the Officer in Charge, Marine Inspection, for approval.

(c) A space containing diesel machinery must be fitted with at least two ducts to furnish natural or powered supply and exhaust ventilation. One duct must extend to a point near the bottom of the space, and be so installed that the ordinary collection of water in the bilge will not block air flow in the duct. Where powered ventilation is installed, the duct extending near the bottom of the space must be the exhaust. The total inlet area and the total outlet area of each ventilation duct may not be less than one square inch for each foot of beam of the vessel. These minimum areas must be increased as necessary when the ducts are considered as part of the air supply to the engines.

(d) A duct must be of rigid permanent construction, which does not allow any appreciable vapor flow except through normal openings, and made of the same material as the hull or of non-combustible material. The duct must lead as directly as possible from its intake opening to its terminus and be securely fastened and supported.

(e) A supply duct must be provided with a cowl or scoop having a free area not less than twice the required duct area. When the cowl or scoop is screened, the mouth area must be increased to compensate for the area of the screen wire. A cowl or scoop must be kept open at all times except when the weather is such as to endanger the vessel if the openings are not temporarily closed.

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(f) Dampers may not be fitted in a supply duct.

(g) A duct opening may not be located where the natural flow of air is unduly obstructed, adjacent to possible sources of vapor ignition, or where exhaust air may be taken into a supply duct.

(h) Provision must be made for closing all supply duct cowls or scoops and exhaust duct discharge openings for a space protected by a fixed gas extinguishing system. All closure devices must be readily available and mounted in the vicinity of the vent.

(i) A vessel of not more than 65 feet in length carrying not more than 12 passengers, with ventilation installations in accordance with American Boat and Yacht Council Project H–32, "Ventilation—Diesel Boats," will be considered as meeting the requirements of this section.

§ 182.470 Ventilation of spaces containing diesel fuel tanks.

(a) Unless provided with ventilation which complies with § 182.465 of this part, a space containing a diesel fuel tank and no machinery must meet the requirements of this paragraph.

(1) A space of 500 cubic feet or more in volume must have a gooseneck vent of not less than 2½ inches in diameter.

(2) A space of less than 500 cubic feet in volume must have a gooseneck vent of not less than 1½ inches in diameter.

(b) Vent openings may not be located adjacent to possible sources of vapor ignition.

(c) A vessel of not more than 65 feet in length carrying not more than 12 passengers, with ventilation installations in accordance with American Boat and Yacht Council Project H–32, "Ventilation—Diesel Boats," will be considered as meeting the requirements of this section.

Subpart E—Bilge and Ballast Systems

§ 182.500 General.

(a) A vessel must be provided with a satisfactory arrangement for draining any watertight compartment, other than small buoyancy compartments, under all practical conditions. Sluice valves are not permitted in watertight bulkheads.

(b) A vessel of not more than 65 feet in length carrying not more than 12 passengers may meet the requirements of American Boat and Yacht Council Project H–32 in lieu of the requirements of this subpart provided that each watertight compartment, other than small buoyancy compartments and the compartment forward of the collision bulkhead, is provided with means to dewater.

(c) A vessel of more than 65 feet in length with overnight accommodations for more than 49 passengers, and a vessel of more than 65 feet in length carrying more than 150 passengers, must meet:

(1) Section 56.50–50 of this chapter, with the exception of § 56.50–50(f), instead of § 182.510 of this subpart; and

(2) Section 56.50–55 of this chapter, disregarding Note 1 in Table 56.50–55, instead of § 182.520 of this subpart.

(d) Special consideration may be given to a vessel, such as a dynamically supported craft, that has a high degree of subdivision and utilize numerous small buoyancy compartments. Where the probability of flooding of the space is limited to external hull damage, compartment drainage may be omitted provided it can be shown by stability calculations, submitted to the OCMI, that the safety of the vessel will not be impaired.

§ 182.510 Bilge piping system.

(a) A vessel of at least 26 feet in length must be provided with individual bilge lines and bilge suctions for each watertight compartment, except that the space forward of the collision bulkhead need not be fitted with a bilge suction line when the arrangement of the vessel is such that ordinary leakage may be removed from this compartment by the use of a hand portable bilge pump or other equipment, and such equipment is provided.

(b) A bilge pipe in a vessel of not more than 65 feet in length must be not less than 1 inch nominal pipe size. A bilge pipe in a vessel of more than 65 feet in length must be not less than 1½ inches nominal pipe size. A bilge suction must be fitted with a suitable strainer having an open area not less than three times the area of the bilge pipe.

(c) Except when individual pumps are provided for separate spaces, individual bilge suction lines must be led to a central control point or manifold and provided with a stop valve at the control point or manifold and a check valve at some accessible point in the bilge line. A stop-check valve located at a control point or manifold will meet the requirements for both a stop valve and a check valve.

(d) A bilge pipe piercing the collision bulkhead must be fitted with a screw-down valve located on the forward side of the collision bulkhead and operable from the weather deck, or, if it is readily accessible under service conditions, a screw-down valve without a reach rod may be fitted to the bilge line on the after side of the collision bulkhead.

§ 182.520 Bilge pumps.

(a) A vessel must be provided with bilge pumps in accordance with Table 182.520(a).

TABLE 182.520(a)

Number of passengers	Length of vessel	Bilge pumps required	Min. capacity required per pump (gal. per minute)
Any number	More than 65 feet	2 fixed power pumps	50 GPM.
More than 49 passengers and all ferry vessels.	Not more than 65 feet	1 fixed power pump and	25 GPM.
		1 portable hand pump	10 GPM.
Not more than 49 passengers (other than ferry vessels).	26 feet up to 65 feet	1 fixed power pump and	10 GPM.
		1 portable hand pump or	5 GPM.
		1 fixed hand pump and	10 GPM.
		1 portable hand pump	5 GPM.
	Less than 26 feet	1 portable hand pump	5 GPM.

(b) A portable hand bilge pump must be:

(1) Capable of pumping water, but not necessarily simultaneously, from all watertight compartments; and

(2) Provided with suitable suction and discharge hoses capable of reaching the bilges of each watertight compartment.

(c) Each fixed power bilge pump must be self-priming. It may be driven off the main engine or other source of power. It must be permanently connected to the bilge manifold and may also be connected to the fire main. If of sufficient capacity, a power bilge pump may also serve as a fire pump.

(d) Where two fixed power bilge pumps are installed, they must be driven by different sources of power. If one pump is driven off the main engine in a single propulsion engine installation, the other must be independently driven. In a twin propulsion engine installation, each pump may be driven off a different propulsion engine.

(e) A submersible electric bilge pump may only be use as a power bilge pump required by Table 182.520(a) on a vessel, other than a ferry, of not more than 65 feet in length, carrying not more than 49 passengers, provided that:

(1) The pump is listed by Underwriters Laboratories Inc. or another independent laboratory;

(2) The pump is used to dewater not more than one watertight compartment;

(3) The pump is permanently mounted;

(4) The pump is equipped with a strainer which can be readily inspected and cleaned without removal;

(5) The pump discharge line is suitably supported; if flexible hose is used, the hose does not penetrate any required watertight bulkheads;

(6) The opening in the hull for the pump discharge is place as high above the waterline as possible; and

(7) A positive shutoff valve is installed at the hull penetration.

(f) A flexible tube or hose may be used instead of fixed pipe for the discharge line of a submersible electric bilge pump provided the hose or tube does not pentrate any required watertight bulkheads and is:

(1) Of substantial construction suitable for the intended use; and

(2) Highly resistance to salt water, petroleum oil, heat, and vibration.

(g) If a fixed hand pump is used to comply with Table 182.520(a) of this section, it must be permanently connected to the bilge system.

(h) On a vessel of not more than 65 feet in length, a power-driven fire pump required by § 181.300 of this subchapter may serve as a fixed power bilge pump required by this subpart, provided it has the minimum flow rate required by Table 182.520(a) of this section.

(i) On a vessel of more than 65 feet in length, a power-driven fire pump required by § 181.300 of this subchapter may serve as one of the two fixed power bilge pumps required by this subpart, provided:

(1) The bilge and fire pump systems are interconnected;

(2) The dedicated bilge pump is capable of pumping the bilges at the same time the fire/bilge pump charges the firemain; and

(3) Stop valves and check valves are installed in the piping to isolate the systems during simultaneous operation and prevent possible flooding through the bilge system.

(j) A catamaran vessel must be equipped with bilge pumps for each hull, as if each hull is a separate vessel, in accordance with Table 182.520(a) of this section, except where:

(1) One primary pump is located in each hull;

(2) Each primary pump is driven by an independent source of power; and

(3) The bilge system is permanently cross-connected between hulls.

§ 182.530 Bilge level alarms.

(a) On a vessel of at least 26 feet in length, a visual and audible alarm must be provided at the operating station to indicate high bilge level in all normally unattended machinery spaces located below the deepest load waterline.

(b) A visual indicator must be provided at the operating station to indicate when any automatic bilge pump is operating.

§ 182.540 Ballast systems.

(a) Ballast piping must not be installed in any compartment integral with the hull of a wooden vessel. Where the carriage of liquid ballast in such a vessel is necessary, suitable ballast tanks, structurally independent of the hull, must be provided.

(b) Fixed ballast must comply with the requirements of Part 178 of this subchapter.

Subpart F—Steering Systems

§ 182.600 General.

(a) Except as provided in paragraph (b) of this section, a self-propelled vessel must comply with the provisions of this subpart.

(b) A vessel of more than 65 feet in length with overnight accommodations for more than 49 passengers must meet the applicable requirements for steering systems in Subchapters F and J of this chapter.

§ 182.610 Main steering gear.

(a) A vessel must be provided with a main steering gear that is:

(1) Of adequate strength and capable of steering the vessel at all service speeds;

(2) Designed to operate at maximum astern speed without being damaged or jammed; and

(3) Capable of moving the rudder from 35 degrees on one side to 30 degrees on the other side in not more than 28 seconds with the vessel moving ahead at maximum service speed.

(b) Control of the main steering gear must be provided from the operating station, including control of any necessary ancillary device (motor, pump, valve, etc.). If a power-driven main steering gear is used, a visual means to indicate operation of the power units must be provided at the operating station.

(c) The main steering gear must be designed so that transfer from the main steering gear or control to the auxiliary means of steering, required by § 182.620 of this subpart, can be achieved rapidly. Any tools or equipment necessary to make the transfer must be readily available. Instructions for transfer procedures must be posted at the location where transfer is carried out.

(d) Instantaneous short circuit protection for electrical power and control circuits, sized and located in accordance with §§ 111.93–11 (d) and (e) of this chapter, must be provided. Overload protection is prohibited.

(e) An independent rudder angle indicator must be provided at the operating station on a vessel of more than 65 feet in length which has a power-driven steering gear.

(f) A vessel that has duplicate steering gear power units, including pumps, reservoirs, motors, power circuits, piping, and valves, may use one of the power units to serve other equipment if:

(1) Controls for the other equipment are located at the operating station;

(2) Full power is available to the steering system when the other equipment is not in operation; and

(3) The other equipment can be readily isolated from the steering system, and instructions are posted at the isolation point as to procedure.

(g) The operating station must be arranged to permit the person steering to have the best possible all around vision.

(h) Power-driven steering systems must be arranged to automatically resume operation, without reset, when power is restored after a power failure.

(i) A manual means must be provided to center and steady the rudder(s) in an emergency.

(j) Strong and effective rudder stops must be provided to prevent jamming and damage to the rudder and its fittings. These stops may be structural or internal to the main steering gear. Power operated steering gear must have a means, such as a limit switch, to stop the gear before it reaches the stops. The limiting device must operate independent of the steering gear controls.

(k) Main steering gear consisting of cables, chains, rods, and similar non-hydraulic means must have buffers or

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springs to relieve the steering gear of shocks to the rudder.

(l) All switches, valves, levers, and other devices for operating the steering gear must be clearly and permanently marked to show their purpose and operation.

§ 182.620 Auxiliary means of steering.

(a) Except as provided in paragraph (c) of this section, a vessel must be provided with an auxiliary means of steering that is:

(1) Of adequate strength;

(2) Capable of moving the rudder from 15 degrees on one side to 15 degrees on the other side in not more than 60 seconds with the vessel at one-half its maximum service speed ahead, or 7 knots, whichever is greater; and

(3) Controlled from a location that permits safe maneuvering of the vessel and does not expose the person operating the auxiliary means of steering to extreme danger during normal or heavy weather operation.

(b) A suitable hand tiller may be acceptable as the auxiliary means of steering where satisfactory to the Officer in Charge, Marine Inspection.

(c) An auxiliary means of steering need not be provided if:

(1) The main steering gear and its controls are provided in duplicate;

(2) Multiple screw propulsion, with independent pilothouse control for each screw, is provided, and the vessel is capable of being steered using pilothouse control;

(3) No regular rudder is fitted and steering action is obtained by a change of setting of the propelling unit; or

(4) Where a rudder and hand tiller are the main steering gear.

§ 182.630 Special provisions for dynamically supported craft.

(a) In the displacement mode, a dynamically supported craft must comply with §§ 182.600 through 182.620 of this subpart or be provided with equivalent vessel control to the satisfaction of the Officer in Charge, Marine Inspection.

(b) Means to override any remote or automatic controls associated with the dynamically supported mode, and necessary for steering in the displacement mode, must be provided.

(c) Failure of power systems or control systems associated with steering in the dynamically supported mode must be visually and audibly alarmed at the operating station.

(d) To the greatest extent practicable, single failures in the steering system or other directional control systems on a DSC must not cause unsafe or uncontrolled reversion to the displacement mode.

Subpart G—Piping Systems

§ 182.700 General.

Materials used in piping systems must meet the requirements of this subpart and be otherwise acceptable to the Officer in Charge, Marine Inspection.

§ 182.710 Piping for vital systems.

(a) Vital systems are those systems which are vital to a vessel's survivability and safety. For the purpose of this part the following are vital systems:

(1) Fuel system;

(2) Fire main, CO_2, and Halon system.

(3) Bilge system;

(4) Steering system;

(5) Propulsion system and its necessary auxiliaries and controls;

(6) Ship's service and emergency electrical generation system and its necessary auxiliaries; and

(7) A marine engineering system identified by the Officer in Charge, Marine Inspection, as being crucial to the survival of the vessel or to the protection of the personnel on board.

(b) For the purpose of this part, a system not identified in paragraph (a) of this section is a non-vital system.

(c) Piping used in a vital system on a vessel of more than 65 feet in length with overnight accommodations for more than 49 passengers, or on a vessel carrying more than 150 passengers, must meet Subpart 56.00 of this chapter.

(d) Piping used in a vital system on a vessel, other than a vessel to which paragraph (c) of this section applies, must:

(1) Be composed of ferrous materials except when:

(i) Nonmetallic piping materials are permitted by § 182.720 of this subpart; or

(ii) Nonferrous metallic piping materials are permitted by § 182.730 of this subpart; and

(2) If subject to a pressure of more than 150 psi, be designed, fabricated, and inspected in accordance with the principles of ANSI B31.1 or other industry standard acceptable to the Commandant.

§ 182.715 Piping subject to more than 150 psi in non-vital systems.

Piping subject to more than 150 psi in a non-vital system must be designed, fabricated, and inspected in accordance with the principles of ANSI B31.1 or other industry standard acceptable to the Commandant.

§ 182.720 Nonmetallic piping materials.

(a) Nonmetallic piping materials on a vessel of more than 65 feet in length with overnight accommodations for more than 49 passengers, or carrying more than 150 passengers, must meet the requirements of § 56.60-25 of this chapter. On all other vessels rigid nonmetallic materials may be used only in non-vital systems and in accordance with paragraphs (b) and (c) of this section. Flexible nonmetallic materials may be used in pneumatic control systems.

(b) Nonmetallic piping must not be used in gasoline or diesel fuel systems. Flexible nonmetallic hose may be used where permitted by § 182.455 of this part.

(c) Where rigid nonmetallic material is permitted for use in piping systems by this section, the restrictions in this paragraph apply.

(1) Penetrations of required watertight decks and bulkheads by any rigid plastic pipe are prohibited, except when each penetration is accomplished using an acceptable metallic fitting, welded or otherwise attached to the bulkhead or deck by an accepted method and one or more metallic shutoff valves are installed adjacent to the through deck or through bulkhead fitting.

(2) If only one metallic shutoff value is installed it must be operable from above the bulkhead deck. If two valves are installed, one on either side of the bulkhead, the valves need not be operable from above the bulkhead deck provided immediate access to both is possible. Where both plastic and metallic pipes are used in a bulkhead penetrating system and where the two materials exist entirely on opposite sides of the bulkhead, a shutoff valve must be installed at the bulkhead in the metallic part of the system with the valve being capable of operation from above the bulkhead deck or locally if immediate access is possible.

(3) Protection from mechanical damage must be specifically considered and all protective covering or shields must be installed to the satisfaction of the Officer in Charge, Marine Inspection.

(4) Through hull fittings and shutoff valves must be metallic. In the case of nonmetallic hulls, materials which will afford an equal degree of safety and heat resistivity as that afforded by the hull may be approved.

(5) The material specification must show that the rigid nonmetallic material possesses characteristics adequate for its intended service and environment and must be approved for use by the Officer in Charge, Marine Inspection.

§ 182.730 Nonferrous metallic piping materials.

(a) Nonferrous metallic piping materials are acceptable for use in the following:

(1) Non-vital systems;

(2) Aluminum fuel piping, if of a minimum of schedule 80 wall thickness on an aluminum hulled vessel and located outside the machinery space;

(3) Aluminum bilge, ballast, and firemain piping on an aluminum hulled vessel; and

(4) Other uses specifically accepted by the Officer in Charge, Marine Inspection.

(b) Where nonferrous metallic material is permitted for use in piping systems by this subpart, the restrictions in this paragraph apply:

(1) Provisions must be made to protect piping systems using aluminum alloys in high risk fire areas due to the low melting point of aluminum alloys.

(2) Provisions must be made to prevent or mitigate the effect of galvanic corrosion due to the relative solution potentials of copper and aluminum and their alloys, when used in conjunction with each other, with steel, or with other metals and their alloys, when an electrolyte is present.

(3) A suitable thread compound must be used in making up threaded joints in aluminum pipe to prevent seizing. Pipe in the annealed temper must not be threaded;

(4) The use of alloys with a copper content exceeding 0.6 percent is prohibited.

(5) The use of cast aluminum alloys in hydraulic fluid power systems must be in accordance with the requirements of § 56.30-15(e) of this chapter.

PART 183—ELECTRICAL INSTALLATIONS

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Authority: 46 U.S.C. 2104, 3306; 49 CFR 1.46.

Subpart A—General Provisions

§ 183.100 Intent.

This part contains requirements for the design, construction, installation, and operation of electrical equipment and systems including power sources, lighting, motors, miscellaneous equipment, and safety systems.

§ 183.115 Applicability to existing vessels.

(a) Except as otherwise required by paragraph (b) of this section, an existing vessel must comply with the regulations in this part or with the regulations on electrical installations, equipment, and material applicable to the vessel [insert date of the day before the effective date of regulations] and the following specific sections of this part: §§ 183.420 and 183.430.

(b) On an existing vessel, new installations of electrical equipment and material, and the repair of cable and wire, that are completed to the satisfaction of the cognizant OCMI on or after [insert effective date of regulations] must comply with this part.

§ 183.130 Alternative standards.

(a) A vessel, other than a dynamically supported craft, of not more than 65 feet in length carrying not more than 12 passengers, may comply with the following requirements instead of complying with the requirements of this part in their entirety:

(1) Section 183.420 of this part; and

(2) The following American Boat and Yacht Council Inc. (ABYC) Projects where applicable:

(i) E–1, Bonding of Direct Current Systems;

(ii) E–8, AC Electrical Systems on Boats;

(iii) E–9, DC Electrical Systems on Boats; and

(iv) A–16, Electric Navigation Lights.

(b) A vessel with an electrical installation operating at less than 50 volts may meet 33 CFR 183.430 instead of § 183.340 of this part.

Subpart B—General Requirements

§ 183.200 General design, installation, and maintenance requirements.

Electrical equipment on a vessel must be installed and maintained to:

(a) Provide services necessary for safety under normal and emergency conditions;

(b) Protect passengers, crew, other persons, and the vessel from electrical hazards, including fire, caused by or originating in electrical equipment, and electrical shock;

(c) Minimize accidental personnel contact with energized parts; and

(d) Prevent electrical ignition of flammable vapors.

§ 183.210 Protection from wet and corrosive environments.

(a) Electrical equipment used in one of the following locations must be dripproof:

(1) A machinery space;

(2) A location normally exposed to splashing, water washdown, or other wet conditions within a galley, a laundry, or a public washroom or toilet room that has a bath or shower; or

(3) Another space with a similar moisture level.

(b) Electrical equipment exposed to the weather must be watertight.

(c) Electrical equipment exposed to salt water must be corrosion-resistant.

§ 183.220 General safety provisions.

(a) Electrical equipment and installations must be suitable for the roll, pitch, and vibration of the vessel underway.

(b) All equipment, including switches, fuses, lampholders, etc., must be suitable for the voltage utilized.

(c) Receptacle outlets of the type providing a grounded pole or a specific direct current polarity must be of a configuration that will not permit improper connection.

(d) All electrical equipment and circuits must be clearly marked and identified.

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(e) Any cabinet, panel, box, or other enclosure containing more than one source of power must be fitted with a sign warning persons of this condition and identifying the circuits to be disconnected.

Subpart C—Power Sources and Distribution Systems

§ 183.310 Power sources.

(a)(1) Each vessel that relies on electricity to power the following loads must have at least two sources of electricity to power these loads:

(i) The vital systems listed in § 182.710 of this subchapter;

(ii) Interior lighting except for decorative lights;

(iii) Steering systems;

(iv) Communication systems including a required public address system;

(v) Navigation equipment and lights;

(vi) Fire protection equipment; and

(vii) Bilge pumps.

(2) Except as provided in § 183.312 of this part, a vessel with batteries of adequate capacity and a generator or alternator, driven by a propulsion engine, complies with the requirement in paragraph (a)(1) of this section.

(b) Where a generator driven by a propulsion engine is utilized as a source of electrical power, a vessel speed change or throttle movement must not interrupt power to any ship's service load.

§ 183.312 Power sources on vessels more than 65 feet in length with overnight accommodations for more than 49 passengers.

A vessel of more than 65 feet in length with overnight accommodations for more than 49 passengers must have:

(a) An electrical power supply which complies with the requirements of Subpart 111.10 of this chapter; and

(b) A final emergency power source with sufficient capacity to power the loads listed in § 112.15–5 of this chapter.

§ 183.320 Generators and motors.

(a) Each generator and motor must be:

(1) In a location that is accessible, adequately ventilated, and as dry as practicable; and

(2) Mounted above the bilges to avoid damage by splash and to avoid contact with low lying vapors.

(b) Each generator and motor must be designed for an ambient temperature of 50 °C (122 °F) except that:

(1) If the ambient temperature in the space where a generator or motor will be located will not exceed 40 °C under normal operating conditions, the generator or motor may be designed for an ambient temperature of 40 °C; and

(2) A generator or motor designed for 40 °C may be used in 50 °C ambient locations provided the generator or motor is derated to 80 percent of the full load rating, and the rating or setting of the overcurrent devices is reduced accordingly.

(c) A voltmeter and an ammeter, which can be used for measuring voltage and current of a generator that is in operation, must be provided for a generator rated at 50 volts or more. For each alternating-current generator, a means for measuring frequency must also be provided. Additional control equipment and measuring instruments must be provided, if needed, to ensure satisfactory operation of each generator.

(d) Each generator and motor on a vessel of not more than 65 feet in length must have a nameplate attached to it indicating:

(1) The manufacturer's name;

(2) Its rating in volts and amperes or volts and watts;

(3) When intended for connection in a normally grounded configuration, the grounding polarity; and

(4) For a generator or motor derated in accordance with paragraph (b)(2) of this section, the derated capacity.

(e) Each generator on a vessel of more than 65 feet in length must have a nameplate attached to it indicating:

(1) The manufacturer's name, generator type, and frame designation;

(2) Output in kilowatts or horsepower rating;

(3) Kind of rating (continuous, overload, etc.);

(4) Amperes at rated load, voltage, and frequency;

(5) Number of phases, if applicable;

(6) Type of winding (DC);

(7) When intended for connection in a normally grounded configuration, the grounding polarity; and

(8) For a generator derated in accordance with paragraph (b)(2) of this section, the derated capacity.

(f) Each motor on a vessel of more than 65 feet in length must have a nameplate attached to it containing the information required by Article 430 of NFPA 70, "National Electrical Code."

§ 183.322 Multiple generators.

When a vessel uses two or more generators to supply ship's service loads, as required by § 183.310(a) of this part, the following requirements must be met:

(a) Each generator must have an independent power source; and

(b) The generator circuit breakers must be interlocked to prevent the generators from being simultaneously connected to the switchboard except for the circuit breakers of a generator operated in parallel with another generator when the installation meets §§ 111.05–13, 111.12–11(f), 111.30–19(a), and 111.30–25(d) of this chapter.

§ 183.324 Dual-voltage generators.

When a dual-voltage generator is installed on a vessel:

(a) The neutral of a dual-voltage system must be solidly grounded at the switchboard and be accessible for checking the insulation resistance of the generator to ground before the generator is connected to the bus; and

(b) Ground detection must be provided that:

(1) For an alternating current system, meets § 111.05–27 of this chapter; and

(2) For a direct current system, meets § 111.05–29 of this chapter.

§ 183.330 Distribution panels and switchboards.

(a) Each distribution panel and switchboard must be in as dry a location as practicable, accessible, adequately ventilated, and protected from falling debris and dripping or splashing water.

(b) Each distribution panel or switchboard must be totally enclosed and of the dead front type.

(c) Each switchboard must have non-conductive handrails.

(d) Each switchboard must be fitted with a dripshield.

(e) Distribution panels and switchboards which are accessible from the rear must be protected to prevent a person from accidentally contacting energized parts.

(f) Working space must be provided in front of each main distribution panel and switchboard and in the rear of each main distribution panel and switchboard that is accessible from the rear.

(g) Non-conducting mats or grating must be provided on the deck in front of each switchboard and, if accessible from the rear, on the deck in the rear of the switchboard.

(h) All uninsulated current-carrying parts must be mounted on noncombustible, non-absorbent, high-dielectric insulating material.

(i) Equipment mounted on a hinged door of an enclosure must be constructed or shielded so that a person will not accidentally contact live parts of the door mounted equipment when the door is open and the circuit energized.

(j) Switchboards and distribution panels must be adequately sized for the expected loads.

§ 183.340 Cable and wiring requirements.

(a) Wire, when used in systems greater than 50 volts, must be in a conduit or other enclosure. Conduit used to protect wire shall have drain holes to prevent the build up of condensation.

(b) All cable and wire must:

(1) Have stranded copper conductors with sufficient current-carrying capacity for the circuit in which they are used;

(2) Be installed in a manner to avoid or reduce interference with radio reception and compass indication;

(3) Be protected from the weather;

(4) Be supported in such a manner as to avoid chafing or other damage;

(5) Not be installed with sharp bends;

(6) Be protected by metal coverings or other suitable means if in areas subject to mechanical abuse;

(7) Be suitable for low temperature and high humidity if installed in refrigerated compartments;

(8) Not be located in a tank unless the cable provides power to equipment in the tank; and

(9) Have sheathing or wire insulation compatible with the fluid in a tank when installed in compliance with paragraph (b)(8) of this section.

(c) Conductors in power and lighting circuits must be No. 14 AWG or larger. Conductors in control and indicator circuits must be No. 22 AWG or larger.

(d) Cable and wire for power and lighting circuits must:

(1) Meet Section 310–13 of the NFPA Publication No. 70, "National Electrical Code," except that asbestos insulated cable and dry location cables can not be used;

(2) Be listed by Underwriters Laboratories Inc. as UL Boat or UL Marine cable; or

(3) Meet §111.60 of this chapter.

(e) Cable or wire serving vital systems listed in § 182.710 of this subchapter or emergency loads must be routed as far as practicable from high risk fire areas such as galleys, laundries, and machinery spaces.

(f) Cable or wire serving duplicated equipment must be separated so that a casualty that affects one cable does not affect the other.

(g) Each connection to a conductor or terminal part of a conductor that is larger than No. 10 AWG must be made within an enclosure and have:

(1) A pressure-type connector on each conductor;

(2) A solder lug on each conductor;

(3) A splice made with a pressure-type connector to a flexible lead or conductor; or

(4) A splice that is soldered, brazed, or welded to a flexible lead or conductor.

(h) Each connection to a conductor or a terminal part of a conductor that is No. 10 AWG or smaller must be made within an enclosure and:

(1) Meet paragraph (g) of this section; or

(2) Have clamps or screws with terminal plates that have turned lugs or other suitable means to capture the terminal.

(i) A connector or lug of the set screw type must not be used with a stranded conductor smaller than No. 14 AWG except if there is a non-rotating follower that travels with the set screw and makes pressure contact with the conductor.

(j) Each pressure-type wire connector and lug must meet UL 486A.

(k) Each terminal block must have 6–32 terminal screws or larger.

(l) Wire connectors utilized in conjunction with screw-type terminal blocks must be of the captive type such as the ring or the flanged spade type.

(m) A cable must not be spliced in:

(1) A hazardous location; or

(2) In another location except:

(i) A cable installed in a subassembly may be spliced to a cable installed in another subassembly;

(ii) For a vessel receiving alterations, a cable may be spliced to extend a circuit;

(iii) A cable having a large size or exceptional length may be spliced to facilitate its installation; and

(iv) A cable may be spliced to replace a damaged section of the cable if, before replacing the damaged section, the insulation resistance of the remainder of the cable is measured, and it is determined that the condition of the insulation is unimpaired.

(n) All material in a cable splice must be chemically compatible with all other material in the splice and with the materials in the cable.

(o) Ampacities for conductors must meet Section 310–15 of NFPA 70, "National Electrical Code," or IEEE Standard 45, as appropriate.

(p) Conductors must be sized so that the voltage drop at the load terminals does not exceed 10 percent.

(q) Each armored cable metallic covering must:

(1) Be electrically continuous; and

(2) Be grounded at each end of the run to:

(i) The metallic hull; or

(ii) The common ground plate on nonmetallic vessels; and

(3) Have final sub-circuits grounded at the supply end only.

(r) A portable or temporary electric cord or cable must be constructed and used in compliance with the requirements of § 111.60–13 of this chapter for a flexible electric cord or cable.

§ 183.350 Batteries, general.

(a) Where provisions are made for charging batteries, there must be natural or induced ventilation to dissipate the gases generated.

(b) Each battery must be located as high above the bilge as practicable and be secured to protect against shifting with the roll and pitch of the vessel.

(c) Batteries must have free space above them for accessibility and removal.

(d) Connections must be made to battery terminals with permanent type connectors. Spring clips or other temporary type clamps are prohibited.

(e) Batteries must be mounted in trays lined with, or constructed of, lead or other material which is resistant to damage by the electrolyte.

(f) Battery chargers must have an ammeter connected in the charging circuit.

(g) If the batteries are not adjacent to a distribution panel or switchboard which distributes power to the lighting, motor, and appliance circuits, the battery lead must be fused at the battery.

§ 183.352 Battery categories.

(a) *Large.* A large battery installation is one connected to a battery charger having an output of more than 2 kw computed from the highest possible charging current and the rated voltage of the battery installation.

(b) *Moderate.* A moderate battery installation is one connected to a battery charger having an output of between 0.2 kw and 2 kw computed from the highest possible charging current and the rated voltage of the battery installation.

(c) *Small.* A small battery installation is one connected to a battery charger having an output of less than 0.2 kw computed from the highest possible charging current and the rated voltage of the battery installation.

§ 183.354 Battery installations.

(a) *Large batteries.* Each large battery installation must be in a room used only for batteries or in a box on deck. Electric equipment in a battery room must be approved by an independent laboratory for Class I, Division 1, Group B hazardous locations and meet subpart 111.105 of this chapter.

(b) *Moderate batteries.* Each moderate battery installation must be in a room used only for batteries, in a box on deck, or in a box or locker in another space which is well ventilated and protected from falling objects.

(c) *Small batteries.* Each small battery installation must be located in a well

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ventilated space and protected from falling objects. A small battery installation must not be in a closet, storeroom, or similar space.

§ 183.360 Semiconductor rectifier systems.

(a) Each semiconductor rectifier system must have an adequate heat-removal system that prevents overheating.

(b) Where a semiconductor rectifier system is used in a propulsion system or in other vital systems it must:

(1) Have a current limiting circuit;

(2) Have external overcurrent protection; and

(3) Meet Section 35.84.4 of the American Bureau of Shipping's "Rules for Building and Classing Steel Vessels."

§ 183.370 System and equipment grounding.

(a) All metallic enclosures and frames of electrical equipment must be permanently grounded to the hull on a metallic vessel. On a nonmetallic vessel the enclosures and frames of electrical equipment must be bonded together to a common ground by a normally non-current-carrying conductor. Metallic cases of instruments and secondary windings of instrument transformers must be grounded.

(b) If a grounded distribution system is provided, there must be only one connection to ground, regardless of the number of power sources. This ground connection must be at the switchboard or at the common ground plate, which must be accessible.

(c) On a nonmetallic vessel where a ground plate is provided for radio equipment, it must be connected to the common ground.

(d) On a metallic vessel a grounded alternating-current system must be grounded to the hull. On a nonmetallic vessel the neutral must be connected to the common ground.

(e) Equipment grounding conductors must be sized in accordance with Section 250-95 of the NFPA 70, "National Electrical Code."

(f) Each insulated grounding conductor of a cable must be identified by one of the following means:

(1) A green braid or green insulation;

(2) Stripping the insulation from the entire exposed length of the grounding conductor; or

(3) Marking the exposed insulation of the grounding conductor with green tape or green adhesive labels.

(g) A vessel's hull must not carry current as a conductor except for the following systems:

(1) Impressed current cathodic protection systems; or

(2) Battery systems for engine starting.

(h) Cable armor must not be used to ground electrical equipment or systems.

(i) Receptacle outlets and attachment plugs for portable lamps, tools, and similar apparatus operating at 100 volts or more, must have a grounding pole and a grounding conductor in the portable cord.

(j) Each nonmetallic mast and top mast must have a lightning ground conductor.

§ 183.380 Overcurrent protection.

(a) Overcurrent protection must be provided for each ungrounded conductor for the purpose of opening the electric circuit if the current reaches a value that causes an excessive or dangerous temperature in the conductor or conductor insulation.

(b) A conductor of a control, interlock, or indicator circuit, such as a conductor for an instrument, pilot light, ground detector light, or potential transformer, must be protected by an overcurrent device.

(c) Each generator must be protected by an overcurrent device set at a value not exceeding 115 percent of the generator full-load rating.

(d) All circuits other than steering system circuits must be protected against both overload and short circuit.

(e) Each steering gear feeder circuit must be protected by a circuit breaker that meets the requirements of § 111.93-11 (d) and (e) of this chapter.

(f) Each lighting branch circuit must be protected against overcurrent either by fuses or circuit breakers rated at not more than 30 amperes.

(g) Conductors must be protected in accordance with their current-carrying capacities. If the allowable current-carrying capacity does not correspond to a standard device size, the next larger overcurrent device may be used provided it does not exceed 150% of the conductor current-carrying capacity.

(h) Overcurrent devices must be installed to protect motor conductors and control apparatus against overcurrent due to short circuits or ground faults. These devices must be capable of carrying the starting current of the motor.

(i) An emergency switch must be provided in the normally ungrounded main supply conductor from a battery. The switch must be located as close to the battery as practicable.

(j) The grounded conductor of a circuit must not be disconnected by a switch or circuit breaker, unless the ungrounded conductors are simultaneously disconnected.

(k) Disconnect means must be provided on the supply side of and adjacent to all fuses for the purpose of de-energizing the fuses for inspection and maintenance purposes.

(l) If the disconnect means is not within sight of the equipment that the circuit supplies, means must be provided for locking the disconnect device in the open position.

(m) Fuses must be of the cartridge type only and be listed by Underwriters Laboratories or another independent laboratory.

(n) Each circuit breaker must meet UL 489 and be of the manually reset type designed for:

(1) Inverse time delay;

(2) Instantaneous short circuit protection; and

(3) Switching duty if the breaker is used as a switch.

(o) Each circuit breaker must indicate whether it is in the open or closed position.

§ 183.390 Shore power.

A vessel with an electrical system operating at more than 50 volts, which has provision for shore power, must meet the following:

(a) A shore power connection box or receptacle must be permanently installed at a convenient location;

(b) A cable connecting the shore power connection box or receptacle to the switchboard or main distribution panel must be permanently installed;

(c) A circuit breaker must be provided at the switchboard or main distribution panel for the shore power connection; and

(d) The circuit breaker, required by paragraph (c) of this section, must be interlocked with the vessel's power sources so that shore power and the vessel's power sources may not be operated simultaneously.

§ 183.392 Radiotelephone installations.

A separate circuit, with overcurrent protection at the main distribution panel, must be provided for each radiotelephone installation.

Subpart D—Lighting Systems

§ 183.410 Lighting fixtures.

(a) Each lighting fixture globe, lens, or diffuser must have a high strength guard or be made of high strength material, except in an accommodation space, radio room, galley, or similar space where it is not subject to damage.

(b) A lighting fixture may not be used as a connection box for a circuit other than the branch circuit supplying the fixture.

(c) A lighting fixture must be installed as follows:

(1) Each fixture must comply with § 183.200 of this part.

(2) Each lighting fixture and lampholder must be fixed. A fixture must not be supported by the screw shell of a lampholder.

(3) Each pendant-type lighting fixture must be suspended by and supplied through a threaded, rigid conduit stem.

(4) Each tablelamp, desklamp, floorlamp, or similar equipment must be secured in place so that it cannot be displaced by the roll or pitch of the vessel.

(d) A lighting fixture in an electrical system operating at more than 50 volts must comply with the requirements of UL 595.

§ 183.420 Navigation lights.

(a) A vessel of not more than 65 feet in length must have navigation lights that are in compliance with the applicable navigation rules except that the OCMI may exempt a vessel, which is restricted to operating on a short, restricted route from sunrise to sunset in good visibility, from this requirement.

(b) A vessel of more than 65 feet in length must have navigation lights that are in compliance with § 111.75-17(d) of this chapter except that the OCMI may exempt a vessel, which is restricted to operating on a short, restricted route from sunrise to sunset in good visibility, from this requirement.

§ 183.430 Portable lights.

Each vessel must be equipped with at least two portable battery lights. One of these lights must be located at the operating station and the other at the access to the propulsion machinery space.

§ 183.432 Emergency lighting.

(a) A vessel of not more than 65 feet in length must have adequate emergency lighting fitted along the line of escape to the main deck from all passenger accommodation spaces located below the main deck.

(b) A vessel of more than 65 feet in length, and a dynamically supported craft, must have adequate emergency lighting for passageways, stairways, and escape trunks in passenger accommodation spaces, crew accommodation spaces, machinery spaces, and all other spaces which may be routinely occupied by persons. The emergency lighting must be sufficient to allow passengers and crew to find their way to open decks.

(c) The emergency lighting required by paragraphs (a) and (b) of this section must automatically actuate upon failure of the main lighting system. If a vessel is not equipped with a single source of power for emergency lighting, it must have individual battery powered lights which:

(1) Are automatically actuated upon loss of normal power;

(2) Are not readily portable;

(3) Are connected to an automatic battery charger; and

(4) Have sufficient capacity for 6 hours of continuous operation.

(d) A vessel of more than 65 feet in length with overnight accommodations for more than 49 passengers must have an emergency lighting system which complies with Part 112 of this chapter.

§ 183.434 Lifeboat and liferaft floodlights on vessels more than 65 feet in length with overnight accommodations for more than 49 passengers.

Each vessel of more than 65 feet in length with overnight accommodations for more than 49 passengers must have floodlights for illuminating the stowage position and embarkation station of lifeboats and liferafts. These floodlights must meet the requirements of § 111.75-16 of this chapter.

§ 183.440 Searchlight on dynamically supported craft.

A dynamically supported craft certificated for nighttime operation shall be equipped with a searchlight controllable from the vessel's operating station and suitable for the vessel's route.

Subpart E—Miscellaneous Systems and Requirements

§ 183.510 Propulsion engine control systems.

(a) A vessel must have:

(1) Two means of controlling each propulsion engine which are independent of each other;

(2) A means at each propulsion engine of readily disconnecting the remote engine control linkage to permit local operation; or

(3) On a multiple engine vessel, an independent means of controlling each propulsion engine.

(b) A vessel must have a reliable means for shutting down a propulsion engine, which is independent of the engine's speed control, at every location where the propulsion engine can be controlled.

(c) A propulsion engine control system, including pilothouse control, must be designed so that a loss of power to the control system does not result in an increase in shaft speed or propeller pitch.

§ 183.520 Lifeboat winches.

Each electric power-operated lifeboat winch must meet §§ 111.95 and 160.015 of this chapter.

§ 183.530 Hazardous areas.

(a) Electrical equipment in a machinery space with gasoline engines must be explosionproof or ignition-protected, or be part of an intrinsically safe system.

(b) Electrical equipment in paint lockers used to store paint, oil, turpentine, or other flammable liquids must be explosionproof or be part of an intrinsically safe system.

(c) Explosionproof equipment and intrinsically safe systems must meet the requirements of § 111.105 of this chapter.

§ 183.540 Elevators.

Each electric power, control, and interlock circuit of an elevator on a vessel must meet the requirements of ANSI A17.1.

§ 183.550 General alarm system on vessels of more than 65 feet in length with overnight accommodations for more than 49 passengers.

(a) A vessel of more than 65 feet in length with overnight accommodations for more than 49 passengers must have a general alarm which meets the requirements of Subpart 113.25 of this chapter.

(b) The public address system required by § 184.610 of this subchapter may be utilized to sound the general alarm signal.

PART 184—VESSEL CONTROL AND MISCELLANEOUS SYSTEMS AND EQUIPMENT

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Authority: 46 U.S.C. 2104, 3306; 49 CFR 1.46.

Subpart A—General Provisions

§ 184.100 General requirement.

Vessel control systems and other miscellaneous systems and equipment required by this part must be suitable for the purposes intended.

§ 184.115 Applicability to existing vessels.

(a) An existing vessel need not comply with §§ 184.402(d), 184.404, 184.406, 184.408, 184.410, and 184.602 of this part unless the OCMI specifically requires compliance due to the route or service of the vessel.

(b) An existing vessel need not comply with the requirements of § 184.610 of this part until [insert date 5 years after effective date of regulations] or 10 years after its keel was laid or the vessel was at a similar stage of construction, whichever is later.

(c) An existing vessel need not comply with the requirements of § 184.710 of this part until [insert date of day 1 year after effective date of regulations].

Subpart B—Cooking and Heating

§ 184.200 General.

Cooking and heating equipment must be suitable for marine use. Equipment designed and installed in accordance with ABYC Standards A–3 and A–7 or NFPA 302, except as provided in § 184.202 of this subpart, complies with this requirement.

§ 184.202 Restrictions.

(a) The use of gasoline for cooking, heating, or lighting is prohibited on all vessels.

(b) Except as provided by § 184.240, the carriage or use of liquefied or non-liquefied gases and certain flammable liquids as ships' stores is prohibited by Part 147 of this chapter.

§ 184.210 Heating equipment.

(a) Each heater must be so constructed and installed as to prevent the hanging from it of items such as towels and clothing.

(b) Each electric space heater must be provided with a thermal cutout to prevent overheating.

(c) Each heater element of an electric space heater must be of an enclosed type, and the element case or jacket must be made of a corrosion resistant material.

§ 184.220 Cooking equipment.

(a) Doors on a cooking appliance must be provided with heavy duty hinges and locking devices to prevent accidental opening in heavy seas.

(b) A cooking appliance must be installed to prevent movement in heavy seas.

(c) For a grill or similar type of cooking appliance, means must be provided to collect grease or fat and to prevent its spillage on wiring or the deck.

(d) Grab rails must be installed on a cooking appliance when determined by the OCMI to be necessary for safety.

(e) Sea rails, with suitable barriers to prevent accidental movement of cooking pots, must be installed on a cooking range.

(f) Electric connections for a cooking appliance must be dripproof.

§ 184.240 Gas systems.

[Final rules developed under Coast Guard Docket 83–013, Carriage and Use of Liquefied and Non-liquefied Gas as Cooking Fuels on Vessels Carrying Passengers, will be inserted in this section.]

Subpart C—Mooring and Towing Equipment

§ 184.300 Ground tackle and mooring lines.

A vessel must be fitted with ground tackle and mooring lines necessary for the vessel to be safely anchored and moored. The ground tackle and mooring lines provided must be satisfactory for the size of the vessel, the waters on which the vessel operates, and other operating hazards.

§ 184.310 Towing dynamically supported craft.

(a) A dynamically supported craft must be suitably equipped to make the vessel capable of being towed safely in the worst intended operating conditions at a maximum towing speed satisfactory to the OCMI.

(b) The towing arrangements and all eyebolts, fairleads, and bitts must be so constructed and attached to the hull that if they are damaged, the watertight integrity of the vessel will not be impaired.

Subpart D—Navigation Equipment

§ 184.402 Compasses.

(a) Except as otherwise provided in this section, every vessel must be fitted with a suitable magnetic compass designed for marine use.

(b) The following vessels need not be fitted with a compass:

(1) A vessel on a rivers route;

(2) A nonself-propelled vessel; and

(3) A vessel operating on short restricted routes on lakes, bays, and sounds.

(c) When a vessel is underway, a compass required by paragraph (a) of this section, must be mounted at the operating station.

(d) Except on a vessel limited to daytime operations, the compass must be illuminated.

§ 184.404 Radar.

(a) The following self-propelled vessels must be fitted with a general marine radar system for surface navigation with a radar screen mounted at the operating station:

(1) A vessel of more than 65 feet in length with overnight accommodations for more than 49 passengers;

(2) A vessel with an oceans, coastwise, or Great Lakes route carrying more than 49 passengers, except a vessel operated on a short restricted route when the OCMI has determined that a radar is not necessary due to the vessel's route and local weather conditions;

(3) A vessel carrying more than 150 passengers, except a vessel operated on a short restricted route when the OCMI has determined that a radar is not necessary due to the vessel's route and local weather conditions; and

(4) A dynamically supported craft when certificated for nighttime or restricted visibility operation.

(b) The radar and its installation must be suitable for the intended speed and route of the vessel.

§ 184.406 Speed indicating devices for dynamically supported craft.

A DSC must be fitted with a means for indicating speed along its track. The OCMI may waive this requirement when he concludes that the vessel's route and worst intended operating conditions do not require such a device.

§ 184.408 Fathometers.

A vessel of more than 65 feet in length and a DSC, except an air cushion vehicle, must be fitted with a fathometer unless the vessel or DSC operates on a short restricted route for which the OCMI has determined that a fathometer is not necessary.

§ 184.410 Electronic position fixing devices.

A vessel on an oceans route must be equipped with an electronic position fixing device, capable of providing accurate fixes for the area in which the vessel operates, to the satisfaction of the OCMI.

§ 184.412 Equipment for night operation of dynamically supported craft.

A DSC must be equipped with any additional equipment which the OCMI determines is necessary for operating the vessel at night.

§ 184.420 Charts and nautical publications.

(a) As appropriate for the intended voyage, a vessel must carry adequate and up-to-date:

(1) Charts of large enough scale to make safe navigation possible;

(2) U.S. Coast Pilot or similar publication;

(3) Coast Guard Light List;

(4) Tide tables published by the National Ocean Service; and

(5) Current tables published by the National Ocean Service, or a river current publication issued by the U.S. Army Corps of Engineers or a river authority.

(b) Extracts from the publications listed above for the areas to be transited may be provided instead of the complete publication.

Subpart E—Radio

§ 184.502 Requirements of the Federal Communications Commission.

A vessel must comply with the applicable requirements for radio telegraph, radiotelephone, and EPIRB installations, including the requirements for a station license and installation certificates to be issued by the Federal Communications Commission, as set forth in 47 CFR Part 80.

§ 184.506 Emergency broadcast placard.

A durable placard must be posted next to all radiotelephone installations with the following instructions and information, specific to the individual vessel, indicated on it:

Emergency Broadcast Procedures

(1) Make sure your radiotelephone is on.

(2) Select 156.8 mHz (channel 16 VHF) or 2182 kHz. (Channel 16 VHF and 2182 kHz on SSB are for emergency and calling purposes only.)

(3) Press microphone button and, speaking slowly—clearly—calmly, say:

"MAYDAY—MAYDAY—MAYDAY" for situations involving Immediate Danger to Life and Property; and

"PAN PAN—PAN PAN—PAN PAN" for urgent situations where there is No Immediate Danger to Life or Property.

(4) Say: "THIS IS (INSERT VESSEL'S NAME), (INSERT VESSEL'S NAME), (INSERT VESSEL'S CALL SIGN), OVER."

(5) Release the microphone button briefly and listen for acknowledgment. If no one answers, repeat steps 3 & 4.

(6) If there is no acknowledgment, or if the Coast Guard or another vessel responds, say: "MAYDAY" or "PAN PAN", (INSERT VESSEL'S NAME)."

(7) DESCRIBE YOUR POSITION using latitude and longitude coordinates, LORAN coordinates, or range and bearing form a known point.

(8) STATE THE NATURE OF THE DISTRESS.

(9) GIVE NUMBER OF PERSONS ABOARD AND THE NATURE OF ANY INJURIES.

(10) ESTIMATE THE PRESENT SEAWORTHINESS OF YOUR VESSEL.

(11) BRIEFLY DESCRIBE YOUR VESSEL: (INSERT LENGTH, COLOR, HULL TYPE, TRIM, MASTS, POWER, ANY ADDITIONAL DISTINGUISHING FEATURES).

(12) Say: "I WILL BE LISTENING ON CHANNEL 16/2182."

(13) End message by saying: "THIS IS (INSERT VESSEL'S NAME & CALL SIGN)."

(14) If your situation permits, stand by the radio to await further communication with the Coast Guard or another vessel. If no answer, repeat, then try another channel.

Subpart F—Control and Internal Communication Systems

§ 184.602 Internal communication systems.

(a) A vessel equipped with pilothouse control must have a fixed means of two-way communication from the operating station to the location where the means of controlling the propulsion machinery, required by §§ 183.510(a)(1) or 183.510(a)(2) of this subchapter, is located.

(b) A vessel equipped with auxiliary means of steering, required by § 182.620 of this subchapter, must have a fixed means of two-way communication from the operating station to the location where the auxiliary means of steering is controlled.

(c) When the propulsion machinery of a vessel cannot be controlled from the operating station, an efficient communication system must be provided between the operating station and the propulsion machinery space.

(d) When the locations addressed in paragraphs (a), (b), and (c) of this section are sufficiently close together, direct voice communication satisfactory to the cognizant OCMI is acceptable instead of the required fixed means of communications.

(e) A means of communication must be provided to enable the crew members of a dynamically supported craft to communicate with each other, from all spaces where crew members work and the crew accommodation spaces, in an emergency.

(f) A means of communication must be provided on a dynamically supported craft between the operating station and spaces where any machinery essential to the safe operation of the vessel can be controlled.

§ 184.610 Public address systems.

(a) A dynamically supported craft, a vessel with more than one passenger deck, and a vessel with overnight accommodations must have a public address system, operable from the operating station, except that a public address system is not required on a vessel of not more than 65 feet in length and carrying not more than 49 passengers if a public announcement made from the operating station without electronic amplification can be heard, to the satisfaction of the OCMI, throughout the passenger accommodation spaces during normal operating conditions.

(b) On a vessel of not more than 65 feet in length, a battery powered bullhorn may serve as the public address system if audible throughout the passenger accommodation spaces of a vessel and provided that the batteries are connected to a battery charger when not in use to keep the batteries at a fully charged level.

(c) On a vessel of more than 65 feet in length, the public address system must be a fixed installation and be audible throughout all accommodation spaces and other spaces normally manned by crew members.

§ 184.620 Stabilization systems on dynamically supported craft.

(a) A stabilization system on a DSC which is designed to control the attitude

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of the vessel, including heel, trim, course, and height, or to stabilize its motion, including roll, pitch, yaw, and heave, must be approved by the cognizant OCMI.

(b) A stabilization system on a DSC, including an automatic stabilization system, must be controllable at the operating station.

(c) When not in use or upon system failure, the directional control and stabilizing devices of a stabilization system on a DSC must revert to and remain in neutral position without affecting other vessel controls or the ability to put the craft into the displacement mode.

(d) A DSC with an automatic stabilization system must be fitted with:

(1) Automatic safety controls capable of putting the vessel into the displacement mode if a condition impairing safety arises; and

(2) means at the operating station to override and cancel the override of an automatic safety control.

Subpart G—Miscellaneous

§ 184.703 Oil pollution prevention equipment and procedures.

A vessel must comply with the applicable design, equipment, personnel, procedures, and record requirements of 33 CFR Parts 151, 155, and 156.

§ 184.704 Marine sanitation devices.

A vessel with installed toilet facilities must have a marine sanitation device in compliance with 33 CFR Part 159.

§ 184.710 First aid kits.

A vessel must carry a first aid kit approved under § 160.041 of this chapter or a kit with equivalent contents, instructions, and markings. The contents must be stowed in a suitable container, easily visible and readily available to the crew.

§ 184.720 Emergency equipment on vessels more than 65 feet in length with overnight accommodations for more than 49 passengers.

A vessel of more than 65 feet in length with overnight accommodations for more than 49 passengers must carry emergency equipment in compliance with the requirements of § 77.30 of this chapter.

PART 185—OPERATIONS

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Authority: 46 U.S.C. 2104, 3306, 6101, 7701, 6105; 49 CFR 1.46.

Subpart A—General Provisions

§ 185.100 General requirement.

A vessel must be operated in accordance with applicable laws and regulations and in such a manner as to afford adequate precaution against hazards which might endanger the vessel and the persons being transported.

§ 185.115 Applicability to existing vessels.

(a) An existing vessel need not comply with the requirements of § 185.602(b) of this part until completion of the next drydock of the vessel, required by § 176.600 of this subchapter, after [insert effective date of regulations].

(b) An existing vessel need not comply with the requirements of §§ 185.604 and 185.610 of this part, where the size and contents of the markings required by §§ 185.604 and 185.610 vary from the size and contents of required markings on lifesaving equipment, watertight doors, and watertight hatches on the vessel prior to [insert effective date of regulations], until the existing markings are no longer legible as determined by the cognizant OCMI.

(c) An existing vessel need not comply with the requirements of §§ 185.514, 185.515, 185.516, and 185.604(j) of this part until completion of the next inspection for certification after [insert effective date of regulations].

(d) An existing vessel, which is a dynamically supported craft, need not comply with the requirements of §§ 185.430 and 185.810 of this part until

[insert date of day one year after effective date].

Subpart B—Marine Casualties and Voyage Records

§ 185.202 Notice of casualty.

The owner, agent, master, or person in charge of a vessel involved in a marine casualty shall give notice as soon as possible to the nearest Coast Guard Marine Safety or Marine Inspection Office whenever the casualty involves any of the following:

(a) All accidental groundings and any intentional grounding which also meet any of the other reporting criteria or creates a hazard to navigation, the environment, or the safety of the vessel;

(b) Loss of main propulsion or primary steering, or any associated component or control system, the loss of which causes a reduction of the maneuvering capabilities of the vessel. Loss means that systems, component parts, subsystems, or control systems do not perform the specified or required function;

(c) An occurrence materially and adversely affecting the vessel's seaworthiness or fitness for service or route, including but not limited to fire, flooding, or failure or damage to fixed fire extinguishing systems, lifesaving equipment, auxiliary power generating equipment, or bilge pumping systems;

(d) Loss of life;

(e) Injury which requires professional medical treatment beyond first aid and, in the case of a person engaged or employed on board a vessel in commercial service, which renders the individual unfit to perform routine vessel duties;

(f) An occurrence not meeting any of the above criteria but resulting in damage to property in excess of $25,000. Damage cost includes the cost of labor and material to restore the property to the service condition which existed prior to the casualty, but does not include the cost of salvage, cleaning, gas freeing, drydocking, or demurrage.

(g) A vessel is excluded from the requirements of paragraphs (d) and (e) of this section with respect to the death or injury of shipyard or harbor workers when such accidents are not the result of either a vessel casualty (e.g. collision) or a vessel equipment casualty (e.g. cargo boom failure) and are subject to the reporting requirements of the Occupational Safety and Health Administration under 29 CFR Part 1904.

§ 185.204 Substance of marine casualty notice.

The notice required in § 185.202 must include the name and official number of the vessel involved, the name of the vessel's owner or agent, the nature and circumstances of the casualty, the locality in which it occurred, the nature and extent of injury to persons, and the damage to property.

§ 185.206 Written report of marine casualty.

(a) In addition to the notice required by § 185.202, the owner, master, agent, or person in charge of the vessel shall, within five days, report in writing to the Officer in Charge, Marine Inspection, at the port in which the casualty occurred or nearest the port of first arrival. The written report required for vessel or personnel accidents must be made on Form CG–2692.

(b) If filed without delay, the Form CG–2692 may also provide the notice required by § 185.202.

§ 185.207 Alcohol or drug use by individuals directly involved in casualties.

(a) For each marine casualty required to be reported by § 185.202 of this part, the owner, agent, master, or person in charge of the vessel shall determine whether there is any evidence of alcohol or drug use by individuals directly involved in the casualty.

(b) The owner, agent, master, or person in charge of the vessel shall include in the written report, Form CG 2692, submitted for the casualty information which:

(1) Identifies those individuals for whom evidence of drug or alcohol use, or evidence of intoxication, has been obtained and,

(2) Specifies the method used to obtain such evidence, such as personal observation of the individual, or by chemical testing of the individual.

(c) An entry shall be made in the official log book if carried, pertaining to those individuals for whom evidence of intoxication is obtained. The individual must be informed of this entry and the entry must be witnessed by a second person.

(d) If an individual directly involved in a casualty refuses to submit to, or cooperate in, the administration of a timely chemical test, when directed by a Coast Guard commissioned, warrant, or petty office, or any other law enforcement officer authorized to obtain a chemical test under Federal, state, or local law, or by the owner, agent, master, or person in charge, this fact shall be noted in the official log book, if carried, and in the written report (Form CG 2692), and shall be admissible as evidence in any administrative proceeding.

§ 185.208 Damage to pressure vessels.

The owner, managing operator, or master must report damage to a boiler or unfired pressure vessel, which renders further use of the item unsafe until repairs are made, to the OCMI as soon as practicable after the damage occurs.

§ 185.220 Records of a voyage resulting in a marine casualty.

The owner, agent, master, or person in charge of any vessel involved in a marine casualty shall retain such voyage records as are maintained by the vessel, such as both rough and smooth deck and engine room logs, bell books, navigation charts, navigation work books, compass deviation cards, gyro records, stowage plans, records of draft, aids to mariners, night order books, radiograms sent and received, radio logs, crew and passenger lists and counts, articles of shipment, official logs, and other material which might be of assistance in investigating and determining the cause of the casualty. The owner, agent, master, other officer, or person responsible for the custody thereof, shall make these records available upon request, to a duly authorized investigating officer, administrative law judge, officer or employee of the Coast Guard.

§ 185.230 Report of accident to aid to navigation.

Whenever a vessel collides with a lightship, buoy, or other aid to navigation under the jurisdiction of the Coast Guard, or is connected with any such collision, the person in charge of such vessel shall report the accident to the nearest Officer in Charge, Marine Inspection. No report on Form CG 2692 is required unless one or more of the results listed in § 185.202 occurs.

§ 185.240 Reports when state of war exists.

During the period when a state of war exists between the United States and any foreign nation, communications in regard to casualties or accidents must be handled with caution and the reports must not be made by radio or by telegram.

§ 185.250 Assistance required.

(a) The master of a vessel involved in a collision, accident, or other casualty, shall render all practicable and necessary assistance to persons affected by the collision, accident, or casualty to the extent possible without serious danger to his or her own vessel or persons aboard. The master shall also give his or her name, address, and the identification of his or her vessel to any person injured and to the owner of any property damaged.

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(b) The master of a vessel shall render assistance to any individual found at sea in danger of being lost, so far as the master can do so without serious danger to the master's vessel or individuals on board.

§ 185.290 Reports of potential vessel casualty.

(a) An owner, charterer, managing operator, or agent of a vessel shall immediately notify either of the following Coast Guard offices if there is reason to believe the vessel is lost or imperiled:

(1) The Coast Guard district rescue coordination center (RCC) cognizant over the area in which the vessel was last operating; or

(2) The Coast Guard search and rescue authority nearest to where the vessel was last operating.

(b) Reasons for belief that a vessel is in distress include, but are not limited to, lack of communication with or nonappearance of the vessel.

(c) The owner, charterer, managing operator, or agent notifying the Coast Guard under paragraph (a) of this section, shall:

(1) Provide the name and identification number of the vessel, the names or number of individuals on board, and other information that may be requested by the Coast Guard; and

(2) Submit written confirmation within 24 hours to the Coast Guard facility to which unwritten notice was given of the possibility of the vessel being in distress.

§ 185.292 Official logbook for foreign voyages.

(a) Every vessel on a voyage from a port in the United States to a foreign port except to a port in Canada, or vice versa, must have an official logbook.

(b) The master shall make or have made in the official logbook the following entries:

(1) Each legal conviction of a seaman of the vessel and the punishment inflicted;

(2) Each offense committed by a seaman of the vessel for which it is intended to prosecute or to enforce under a forfeiture, together with statements about reading the entry and the reply made to the charge as required by 46 U.S.C. 10502;

(3) Each offense for which punishment is inflicted on board and the punishment inflicted;

(4) A statement of the conduct, character, and qualifications of each seaman of the vessel or a statement that the master declines to give an opinion about that conduct, character, and qualifications;

(5) Each illness of or injury to a seaman of the vessel, the nature of the illness or injury, and the medical treatment;

(6) Each death on board, with the cause of death, and if a seaman, the information required by 46 U.S.C. 10702;

(7) Each birth on board, with the sex of the infant and name of the parents;

(8) Each marriage on board, with the names and ages of the parties;

(9) The name of each seaman who ceases to be a crewmember (except by death), with the place, time, manner, and the cause why the seaman ceased to be a crewmember;

(10) The wages due to a seaman who dies during the voyage and the gross amount of all deductions to be made from the wages;

(11) The sale of the property of a seaman who dies during the voyage, including a statement of each article sold and the amount received for the property; and

(12) When a marine casualty occurs, a statement about the casualty and the circumstances under which it occurred, made immediately after the casualty when practicable to do so.

§ 185.292 Logbook for vessels of more than 65 feet in length with overnight accommodations for more than 49 passengers.

Except for a vessel required to have an official logbook by § 185.290 of this part, the owner, managing operator, or master of a vessel of more than 65 feet in length with overnight accommodations for more than 49 passengers shall supply logs or records in any form, which will be considered to take the place of the Official Logbook and may be used for the purpose of making entries therein as required by law or regulations in this subchapter. Such logs or records shall be kept available for review by a marine inspector for a period of one year after the date to which the records refer.

Subpart C—Miscellaneous Operating Requirements

§ 185.304 Navigation underway.

(a) The master of a vessel underway shall ensure that:

(1) The movement of the vessel is under the direction and control of the master or a mate at all times;

(2) The individual who directs and controls the movement of the vessel is competent to perform that duty and, when necessary, knows:

(i) The magnetic variation and deviation of the area being transited and the vessel's gyrocompass error;

(ii) The current velocity and direction of the area being transited;

(iii) The predicted set and drift of the area being transited; and

(iv) The tidal state of the area being transited;

(3) If a pilot other than a member of the vessel's crew is employed, the pilot is informed of the draft, maneuvering characteristics, and peculiarities of the vessel and of any abnormal circumstances on the vessel that may affect its safe navigation; and

(4) The equipment required by this part is maintained in operable condition.

(b) The individual directing the movement of the vessel shall:

(1) Ensure that an individual whom the master has determined is competent to steer the vessel is at the helm of the vessel at all times;

(2) Set the vessel's speed with consideration for:

(i) The prevailing visibility and weather conditions;

(ii) The proximity of the vessel to fixed shore and marine structures;

(iii) The comparative proportions of the vessel and the channel;

(iv) The density of marine traffic;

(v) The damage that might be caused by the vessel's wake;

(vi) The strength and direction of the current; and

(vii) Any local vessel speed limit;

(3) Ensure that rudder orders are executed as given;

(4) Ensure that engine speed and direction orders are executed as given;

(5) Correctly apply magnetic variation and deviation and gyrocompass errors; and

(6) Evaluate the danger of each closing visual or each closing radar contact.

(c) The master of a vessel of more than 65 feet in length with overnight accommodations for more than 49 passengers shall, in addition to the requirements of paragraph (a) of this section, ensure that:

(1) The individual directing and controlling the movement of the vessel periodically fixes or has another competent individual fix the vessel's position as necessary for the voyage;

(2) The position of the vessel at each fix is plotted on an adequate chart of the area and the individual directing the movement of the vessel is informed of the vessel's position;

(3) Electronic and other navigational equipment, external fixed aids to navigation, geographic reference points, and hydrographic contours are used when fixing the vessel's position;

(4) Buoys alone are not used to fix the vessel's position; and

(5) The vessel's anchors are ready for letting go when navigating in a congested area or a narrow channel.

§ 185.306 Passengers excluded from operating station.

The master shall, while the vessel is underway, exclude passengers from the operating station of a vessel carrying more than 150 passengers or which is of more than 65 feet in length with overnight accommodations for more than 49 passengers.

§ 185.310 Compliance with provisions of Certificate of Inspection.

The master of a vessel shall ensure that all of the provisions of the Certificate of Inspection are strictly adhered to; however, the master may divert from the route prescribed in the Certificate of Inspection or take such other steps as deemed necessary and prudent to assist vessels in distress or for other similar emergencies.

§ 185.320 Steering gear, controls, and communication system tests.

The master of a vessel shall have examined and tested the steering gear, signaling whistle, propulsion controls, and communication systems of the vessel within 12 hours of getting underway for a voyage, except that such examination and testing need not be conducted more than once in any 24 hour period.

§ 185.330 Hatches and other openings.

(a) Except when operating on lakes, bays, and sounds, or river routes in calm weather, all hatches and openings in the hull of a vessel must be kept tightly closed except when being used.

(b) All watertight doors in subdivision bulkheads must be kept tightly closed during the navigation of the vessel except when being used for transit between compartments.

§ 185.340 Vessels carrying vehicles.

(a) Automobiles or other vehicles must be stowed in such a manner as to permit both passengers and crew to get out and away from the vehicles freely in the event of fire or other disaster. The decks, where necessary, must be distinctly marked with painted lines to indicate the vehicle runways and the aisle spaces.

(b) The master shall take any necessary precautions to see that automobiles or other vehicles have their motors turned off and their emergency brakes set when the vessel is underway, and that the motors are not started until the vessel is secured to the landing. In addition, a vehicle at each end of a line of vehicles or next to a loading ramp must have its wheels securely blocked, while the vessel is being navigated.

(c) The master shall have appropriate "NO SMOKING" signs posted and shall take all necessary precautions to prevent smoking or carrying of lighted or smoldering cigars, cigarettes, etc., in the deck area assigned to automobiles or other vehicles.

(d) The master shall, prior to getting underway, ensure that vehicles are properly distributed consistent with the guidance in the vessel's stability letter and Certificate of Inspection, if applicable.

§ 185.350 Fueling of vessels using fuel having a flash point of 110 °F or lower (gasoline, etc.).

A vessel must not take on fuel having a flash point of 110 °F or lower when passengers are on board.

§ 185.352 Ventilation of gasoline machinery spaces.

The mechanical exhaust for the ventilation of a gasoline machinery space, required by § 182.460(a)(1)(ii) of this subchapter, must be operated:

(1) Prior to starting gasoline engines for the time sufficient to insure at least one complete change of air in the space served; and

(2) While gasoline machinery in the space is operating.

§ 185.356 Carriage of hazardous materials.

A vessel must not be used to transport a hazardous material, listed in 49 CFR 172.101, in commerce unless that material is handled and transported in accordance with 49 CFR Parts 171 through 176.

§ 185.360 Use of auto pilot.

Whenever an automatic pilot is used the master shall ensure that:

(a) It is possible to immediately establish manual control of the vessel's steering;

(b) A competent person is ready at all times to take over steering control; and

(c) The changeover from automatic to manual steering and vice versa is made by, or under the supervision of, the master or the mate on watch.

§ 185.370 Reckless or negligent operation.

A person shall not operate a vessel subject to the provisions of this subchapter in a negligent manner which endangers the life, limb, or property of any person. Violations of this section involving use which is grossly negligent, subject the violator, in addition to any other penalties, to the criminal penalties prescribed in 46 U.S.C. 2302.

Subpart D—Crew Requirements

§ 185.402 Licenses.

The licensed individuals employed upon any vessel subject to the provisions of this subchapter shall have their licenses in their possession and available for examination at all times when the vessel is operating.

§ 185.410 Watchmen.

(a) The owner, charterer, or managing operator of a vessel of more than 65 feet in length with overnight accommodations for more than 150 passengers shall, when carrying passengers during the nighttime, whether or not the vessel is underway, keep a suitable number of watchmen in the vicinity of the cabins or staterooms and on each deck to guard against and give alarm in case of a fire or other danger.

(b) Except when paragraph (a) of this section is applicable, the owner, charterer, or managing operator of a vessel carrying passengers shall have a suitable number of watchmen patrol throughout the vessel during the nighttime, whether or not the vessel is underway, to guard against and give alarm in case of a fire or other danger.

§ 185.420 Crew training.

Upon first being employed on the vessel and at least once every two months, each crew member on board the vessel must be instructed as to the duties that the crew member is expected to perform in an emergency including, but not limited to, the emergency instructions listed on the emergency instruction placard required by § 185.510 of this part and, when applicable, the duties listed in the station bill required by § 185.514 of this part.

§ 185.430 Qualified radar observer on DSC.

A crew member required to operate a radar set on a DSC shall hold a valid license endorsement as a radar observer issued under § 10.480 of this chapter.

§ 185.432 Crew member at embarkation stations on DSC.

A crew member, other than the master, must be positioned at each embarkation station on a dynamically supported craft whenever passengers are boarding survival craft.

Subpart E—Preparations for Emergencies

§ 185.502 Crew and passenger list.

(a) The owner, charterer, managing operator, or master of the following vessels shall keep a correct list of the

names of all persons which embark and disembark from the vessel.

(1) A vessel making an oceans, coastwise, or Great Lakes voyage other than a ferry on a Great Lakes voyage of less than 30 minutes;

(2) A vessel, with overnight accommodations for passengers, making an overnight voyage; and

(3) A vessel arriving from a foreign port except at a United States Great Lakes port from a Canadian Great Lakes port.

(b) The list required by paragraph (a) of this section must be prepared prior to departing on a voyage and deposited ashore in a well marked location at the vessel's normal berthing location or with a representative of the owner or managing operator of the vessel.

§ 185.504 Passenger count.

The master of a vessel, except a vessel listed in § 185.502, shall keep a correct, written count of all passengers received and delivered.

§ 185.506 Passenger safety orientation.

(a) Before getting underway on a voyage, the master of a vessel shall ensure that suitable public announcements are made informing all passengers of the below information when applicable:

(1) General explanation of emergency and evacuation procedures;

(2) Location of emergency exits, muster stations, and survival craft embarkation areas;

(3) Stowage location of lifejackets;

(4) Proper method of donning and adjusting lifejackets of the type(s) carried on the vessel including a demonstration of the proper donning of a lifejacket prior to beginning an oceans or coastwise voyage;

(5) The location of the instruction placards for lifejackets and other lifesaving devices;

(6) That all passengers will be required to don lifejackets when possible hazardous conditions exist as directed by the master but that passengers may don lifejackets whenever they feel it necessary;

(7) Possible hazardous conditions that may require the donning of lifejackets;

(8) The type and location of all other lifesaving devices carried on the vessel;

(9) The location and contents of the "Emergency Instructions" required by § 185.510; and

(10) If the vessel is operating under the special endorsement authorized by § 176.114 of this subchapter.

(b) The master of a vessel shall ensure that a passenger, who boards the vessel on a voyage after the initial public announcement has been made as required by paragraph (a) of this section, is also informed of the information in paragraph (a).

§ 185.508 Wearing of lifejackets.

(a) The master of a vessel shall require passengers to don lifejackets when possible hazardous conditions exist including, but not limited to:

(1) When transiting hazardous bars and inlets;

(2) During severe weather;

(3) In event of flooding, fire, or other events which may possibly call for evacuation; and

(4) When the vessel is being towed.

(b) When evaluating the need to require the donning of lifejackets, the master shall consider the size of the vessel and the location of the passengers on the vessel.

§ 185.510 Emergency instructions.

(a) Except as otherwise provided in this section, the master shall prepare and post durable emergency instruction placards in conspicuous places accessible to the crew and passengers.

(b) Except when in the judgment of the cognizant Officer in Charge, Marine Inspection, the operation of a vessel does not present one of the hazards listed, the emergency instruction placard must contain not less than the applicable portions of the "Recommended Emergency Instructions" listed in § 185.512 of this subpart. The emergency instructions must be further designed to address the particular equipment, arrangement, and operation of each individual vessel.

(c) When in the judgment of the cognizant Officer in Charge, Marine Inspection, a vessel has no suitable mounting surface, the emergency instructions need not be posted but must be carried aboard the vessel and be available to the crew and passengers for familiarization.

§ 185.512 Recommended emergency instruction placard.

Emergency Instructions

(1) *Rough weather at sea, crossing hazardous bars, or flooding.*

(i) Close all watertight and weathertight doors, hatches, and airports to prevent taking water aboard or further flooding in the vessel.

(ii) Keep bilges dry to prevent loss of stability due to water in bilges. Use power driven bilge pump, hand pump, and buckets to dewater.

(iii) Align fire pumps to use as bilge pump if possible.

(iv) Check all intake and discharge lines, which penetrate the hull for leakage.

(v) Passengers must remain seated and evenly distributed.

(vi) Passengers must don lifejackets if the going becomes very rough, you are about to cross a hazardous bar, or when otherwise instructed by the master.

(vii) Never abandon the vessel unless actually forced to do so.

(viii) If assistance is needed follow the procedures on the emergency broadcast placard posted by the radiotelephone.

(ix) Prepare survival craft (life floats, (inflatable) rafts, (inflatable) buoyant apparatus, boats) for launching.

(2) *Man overboard.*

(i) Throw a ring buoy overboard as close to the person as possible.

(ii) Post a lookout to keep the person overboard in sight.

(iii) Launch rescue boat and maneuver to pick up person in the water, or maneuver the vessel to pick up the person in the water.

(iv) Have crew member put on lifejacket, attach a safety line to him, and have him stand by to jump into the water to assist the person overboard if necessary.

(v) If person is not immediately located, notify Coast Guard and other vessels in vicinity by radiotelephone.

(vi) Continue search until released by Coast Guard.

(3) *Fire*

(i) Cut off air supply to fire—close hatches, ports, doors, ventilators, etc. and shutoff ventilation system.

(ii) Cut off electrical system supplying affected compartment if possible.

(iii) Immediately use portable fire extinguishers at base of flames for flammable liquid or grease fires or water for fires in ordinary combustible materials. Do not use water on electrical fires.

(iv) If fire is in machinery spaces, shut off fuel supply and ventilation and activate fixed extinguishing system if installed.

(v) Maneuver vessel to minimize effect of wind on fire.

(vi) If unable to control fire, immediately notify the Coast Guard and other craft in the vicinity by radiotelephone.

(vii) Move passengers away from fire, have them put on lifejackets, and if necessary, prepare to abandon the vessel.

§ 185.514 Station bill.

(a) A station bill must be posted by the master on a vessel of more than 65 feet in length having:

(1) Overnight accommodations for more than 49 passengers; or

(2) A Certificate of Inspection requiring more than four crew members, including the master.

(b) The station bill must be posted at the operating station and in conspicuous locations in crew accommodation spaces.

(c) A vessel of more than 65 feet in length with overnight accommodations for more than 49 passengers must comply with the requirements of § 78.13 of this chapter in regards to the content of a station bill, the duties of the crew, emergency signals, an emergency squad, and instructions.

(d) Except when paragraph (c) of this section is applicable, the station bill of a vessel of more than 65 feet in length required to have more than four crew members, must set forth the special duties and duty station of each crew member for various emergencies. The duties must, as far as possible, be comparable with the regular work of the individual. The duties must include at least the following and any other duties necessary for the proper handling of a particular emergency:

(1) The closing of hatches, airports, watertight doors, vents, scuppers, and valves for intake and discharge lines which penetrate the hull, the stopping of fans and ventilating systems, and the operating of all safety equipment;

(2) The preparing and launching of survival craft and rescue boats;

(3) The extinguishing of fire; and

(4) The mustering of passengers including the following:

(i) Warning the passengers;

(ii) Seeing that they are dressed and have put on their lifejackets.

(iii) Assembling the passengers and directing them to their appointed stations; and

(iv) Keeping order in the passageways and stairways and generally controlling the movement of the passengers.

§ 185.515 Passenger safety bill.

(a) A passenger safety bill must be posted by the master in each passenger cabin or stateroom on a vessel of more than 65 feet in length with overnight accommodations for more than 49 passengers.

(b) Each passenger safety bill required by this section must list:

(1) The muster stations aboard the vessel;

(2) The embarkation station and the number and location of the survival craft to which each occupant of the space is assigned;

(3) The fire and emergency signal and the abandon ship signal;

(4) Essential action that must be taken in an emergency; and

(5) If immersion suits are provided for passengers, the location of the suits and illustrated instructions on the method of donning the suits.

§ 185.516 Lifejacket placards.

(a) Placards containing instructions for the donning and use of the lifejackets aboard the vessel must be posted in conspicuous places which are regularly accessible to the crew and passengers unless the OCMI determines that there is no suitable mounting surface aboard the vessel.

(b) Lifejacket placards must be posted in each passenger cabin or stateroom on a vessel of more than 65 feet in length with overnight accommodations for more than 49 passengers.

§ 185.518 Inflatable liferaft placards.

(a) Every vessel equipped with an inflatable liferaft must have posted in conspicuous places which are regularly accessible to the crew and passengers, and by each raft, approved placards containing instructions for launching and inflating inflatable liferafts for the information of persons on board. The number and location of such placards for a particular vessel must be acceptable to the Officer in Charge, Marine Inspection.

(b) Under the requirement in § 160.051-6(c)(1) of this chapter, the manufacturer of approved inflatable liferafts is required to provide approved placards containing such instructions with each liferaft.

§ 185.520 Abandon ship and man overboard instructions and drills.

(a) The master shall conduct sufficient drills and give sufficient instructions to ensure that all crew members are familiar with their duties in an emergency.

(b) On a vessel which requires more than four survival craft to accommodate the total number of persons permitted on board, and on a vessel of more than 65 feet in length with overnight accommodations for more than 49 passengers, abandon ship drills must be conducted as follows:

(1) An abandon ship drill must be conducted on the vessel at least once each week;

(2) Each member of the crew shall participate in at least one abandon ship drill each month; and

(3) If more than 25% of the crew have not participated in an abandon ship drill on board that particular vessel in the previous month, a drill must be conducted before the vessel leaves port.

(c) Each abandon ship drill must include:

(1) Summoning of the crew to report to assigned stations and prepare for assigned duties;

(2) Summoning of passengers on a vessel on an overnight voyage to muster stations or embarkation stations and ensuring that they are made aware of how the order to abandon ship will be given;

(3) Checking to see that passengers and crew are suitably dressed;

(4) Checking to see that lifejackets are correctly donned;

(5) Operation of any davits used for launching liferafts; and

(6) Instruction on the automatic and manual deployment of survival craft.

(d) An abandon ship drill must, as far as practicable, be conducted as if there were an actual emergency.

(e) Each rescue boat must be launched with its assigned crew aboard and maneuvered in the water as if during an actual man overboard situation:

(1) Once each month, if reasonable and practicable; but

(2) At least once every 3 months.

(f) Onboard training in the use of davit-launched liferafts must take place at intervals of not more than 4 months on a vessel with a davit-launched liferaft. Whenever practicable, this must include the inflation and lowering of a liferaft. If a special liferaft intended for training purposes only is used, and is not part of the vessel's lifesaving equipment, the special liferaft must be conspicuously marked.

§ 185.524 Fire fighting training and fire drills.

(a) The master shall conduct such fire drills as are necessary to make sure that all members of the crew are familiar with their duties in case of a fire.

(b) Each fire drill must include:

(1) Summoning of passengers on a vessel on an overnight voyage to muster or embarkation stations;

(2) Summoning of the crew to report to assigned stations and to prepare for and demonstrate assigned duties; and

(3) Instruction in the use of fire extinguishers and any other fire fighting equipment on board.

(c) Each fire drill must, as far as practicable, be conducted as if there were an actual emergency.

§ 185.530 Responsibilities of licensed individuals.

Nothing in the emergency instructions or a station bill required by this subpart exempts any licensed individual from the exercise of good judgment in an emergency situation.

Subpart F—Markings Required

§ 185.602 Hull markings.

(a) A vessel must be marked as required by Part 67 of this chapter.

(b) A vessel which complies with the requirements of §§ 170.170, 170.173, 171.050, 171.055, and 171.057 of this chapter, in accordance with § 178.310 of this subchapter, must:

(1) Have permanent draft marks at each end of the vessel; or

(2) Have permanent loading marks placed on each side of the vessel forward, amidships, and aft to indicate the maximum allowable draft and trim.

(c) A loading mark required by paragraph (b)(2) of this section must be a horizontal line of at least 8 inches in

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length and 1 inch in height, with its upper edge passing through the point of maximum draft. The loading mark must be painted in a contrasting color to the sideshell paint.

(d) On a vessel on which the number of passengers permitted on upper decks is limited by stability criteria, as indicated by the vessel's stability letter, the maximum number of passengers allowed on the upper decks must be indicated by a durable marking of at least one inch numbers and letters at the entranceway to each such deck.

§ 185.504 Lifesaving equipment markings.

(a) The name of a vessel must be plainly marked or painted in letters and numbers at least 3 inches high:

(1) On each side of the bow of each rescue boat; and

(2) On each life float and buoyant apparatus.

(b) Each lifejacket, immersion suit, and ring lifebuoy must be marked in block capital letters with the vessel's name.

(c) The name of the vessel must be plainly marked or painted on each Emergency Position Indicating Radio Beacon (EPIRB), except on an EPIRB in an inflatable liferaft.

(d) The number of persons capacity must be plainly marked or painted on each side of the bow of each rescue boat in letters and numbers at least 1.5 inches high.

(e) The number of persons capacity must be plainly marked or painted on each life float and buoyant apparatus in letters and numbers at least 1.5 inches high. This number must:

(1) Be the number of persons the device is equipped for; and

(2) Not be greater than the number of persons the device is approved for as shown on its nameplate.

(f) The number of persons each inflatable liferaft is permitted to accommodate must be marked or painted on the inflatable liferaft container in letters and numbers at least 1.5 inches high.

(g) Each container for lifejackets and immersion suits must be marked in letters and numbers at least 2 inches high with the number and identification of the items stowed inside and their sizes.

(h) The name of the vessel must be plainly marked or painted on each oar and paddle.

(i) Each lifejacket must be marked with Type I retroreflective material approved under Subpart 164.018 of this chapter. The arrangement of the retroreflective material must be as specified by IMO Resolution [number to be inserted when adopted by IMO], "Installation of Reflective Tape on Lifesaving Equipment" except that retroreflective material applied prior to [insert adoption date of resolution] is acceptable until replacement is necessary.

(j) Each rescue boat and ring life buoy must be marked with Type II retroreflective material approved under Subpart 164.018 of this chapter. The arrangement of the retroreflective material must be as specified by IMO Resolution [number to be inserted when adopted by IMO], "Installation of Reflective Tape on Lifesaving Equipment."

§ 185.508 Escape hatches and emergency exits.

All escape hatches and other emergency exits used as means of escape must be marked on both sides using at least 1-inch letters: "Emergency Exit, Keep Clear", unless such markings are deemed unnecessary by the Officer in Charge, Marine Inspection.

§ 185.508 Fuel shutoff valves.

Remote fuel shutoff stations must be marked in at least 1-inch letters indicating purpose of the valve and direction of operation.

§ 185.510 Watertight doors and watertight hatches.

Watertight doors and watertight hatches must be marked on both sides in at least 1-inch letters: "Watertight Door—Keep Closed" or "Watertight Hatch—Keep Closed", unless such markings are deemed unnecessary by the Officer in Charge, Marine Inspection.

§ 185.512 Fire protection equipment.

(a) Complete but simple instructions for the operation of a fixed gas fire extinguishing system must be located in a conspicuous place at or near each pull box and stop valve control and in the space where the extinguishing agent cylinders are stored. If the storage cylinders are separate from the protected space, the instructions must also include a schematic diagram of the system and instructions detailing alternate methods of releasing the extinguishing agent should the local manual release or stop valve controls fail to operate. Each control valve to a distribution line must be marked to indicate the space served.

(b) An alarm for a fixed gas fire extinguishing system must be clearly and conspicuously marked "WHEN ALARM SOUNDS-VACATE AT ONCE. CARBON DIOXIDE (HALON) BEING RELEASED."

(c) Each distribution line valve of a fixed gas fire extinguishing system and the fire main, must be plainly, conspicuously, and permanently marked indicating the space served.

(d) A manual fire alarm box must be clearly and conspicuously marked "IN CASE OF FIRE BREAK GLASS."

(e) An alarm for an automatic fire detecting system or a manual alarm system must be clearly and conspicuously marked "FIRE ALARM".

(f) An alarm for an automatic sprinkler system must be clearly and conspicuously marked "SPRINKLER ALARM".

(g) An alarm bell for a smoke detecting system must be clearly and conspicuously marked "SMOKE DETECTION ALARM".

(h) A control cabinet or space containing valves, manifolds, or controls for any fixed gas fire extinguishing system must be clearly and conspicuously marked "CARBON DIOXIDE (HALON) FIRE EXTINGUISHING APPARATUS", or as otherwise required by the cognizant Officer in Charge, Marine Inspection.

Subpart G—Operational Readiness, Maintenance, and Inspection of Lifesaving Equipment

§ 185.700 Operational readiness.

(a) Except as provided in § 185.702 of this subpart, each launching appliance and each survival craft and rescue boat on a vessel must be in good working order and ready for immediate use before the vessel leaves port and at all times when the vessel is underway.

(b) Each deck where survival craft or rescue boats are stowed or boarded must be kept clear of obstructions that would interfere with the boarding and launching of the survival craft or rescue boat.

§ 185.702 Maintenance.

(a) The manufacturer's instructions for onboard maintenance of survival craft, rescue boats, and launching appliances, manufactured on or after [insert effective date of regulations], must be onboard a vessel of more than 65 feet in length and readily available for a vessel of not more than 65 feet in length. The instructions must also be readily available at each inspection for certification and reinspection. The instructions must include the following:

(1) Checklists for use when carrying out the inspections required under this subpart;

(2) Maintenance and repair instructions;

(3) A schedule of periodic maintenance;

(4) A diagram of lubrication points with the recommended lubricants;

(5) A list of replaceable parts;

(6) A list of sources of spare parts; and

(7) A log for records of inspections and maintenance.

(b) The owner or managing operator shall make sure that maintenance is carried out in accordance with the instructions required under paragraph (a) of this section.

(c) The OCMI may accept, instead of the instructions required under paragraph (a) of this section, a shipboard planned maintenance program that includes the items listed in that paragraph.

§ 185.704 Maintenance of falls.

(a) Each fall used in a launching appliance on a vessel must be turned end for end at intervals of not more than 30 months.

(b) Each fall must be renewed when necessary due to deterioration or at intervals of not more than 5 years, whichever is earlier.

(c) Each fall must have a corrosion resistant tag with the following permanently marked on it:

(1) The date the new fall was installed; and

(2) If the fall has been turned end for end, the date it was turned.

§ 185.720 Weekly maintenance and inspections.

The following tests and inspections must be carried out weekly on a vessel:

(a) Each survival craft, rescue boat, and launching appliance must be visually inspected to ensure its readiness for use;

(b) Each rescue boat engine must be run ahead and astern for not less than 3 minutes, unless the ambient temperature is below the minimum temperature required for starting the engine; and

(c) Each battery for rescue boat engine starting must be brought up to full charge at least once each week if:

(1) The battery is of a type that requires recharging; and

(2) The battery is not connected to a device that keeps it continuously charged.

§ 185.722 Monthly inspections.

(a) Each survival craft, rescue boat, and launching appliance on a vessel must be inspected monthly, using the applicable checklist when required under § 185.702, to make sure it is complete and in good order.

(b) Each Emergency Position Indicating Radiobeacon (EPIRB), other than an EPIRB in an inflatable liferaft, must be tested monthly, using the integrated test circuit and output indicator to determine that it is operative.

§ 185.724 Quarterly inspections.

(a) Each winch control apparatus of a launching appliance on a vessel, including motor controllers, emergency switches, master switches, and limit switches, must be examined once in each three months.

(b) The examination required by paragraph (a) of this section must include the removal of drain plugs and the opening of drain valves to make sure that enclosures are free of water.

§ 185.726 Annual inspections.

(a) Each rescue boat must be stripped, cleaned, and thoroughly inspected and repaired at least once each year, including emptying and cleaning of each fuel tank, and refilling it with fresh fuel.

(b) Each davit, winch, fall and other launching appliance must be thoroughly inspected and repaired once each year.

(c) Each item of lifesaving equipment with an expiration date must be replaced during the annual inspection and repair if the expiration date has passed.

(d) Each battery used in an item of lifesaving equipment, except inflatable survival craft equipment, must be replaced during the annual inspection if the expiration date of the battery has passed. The expiration date of the battery may be marked on the battery or the owner or managing operator may have a record of the expiration date from the manufacturer of a battery marked with a serial number.

(e) Except for a storage battery used in a rescue boat, each battery without an expiration date indicated on it or for which the owner or managing operator does not have a record of the expiration date, used in an item of lifesaving equipment, must be replaced during the annual inspection.

(f) The requirements in this section do not relieve the master of the requirement under § 185.700 to keep the equipment ready for immediate use.

§ 185.730 Servicing of inflatable liferafts, inflatable buoyant apparatus, inflatable lifejackets and inflated rescue boats.

(a) Each inflatable liferaft, inflatable buoyant apparatus, inflatable lifejacket, and hybrid inflatable lifejacket or work vest must be serviced:

(1) Within 12 months of its initial packing; and

(2) Within 12 months of each subsequent servicing, except when servicing is delayed until the next scheduled inspection of the vessel, provided that the delay does not exceed 5 months.

(b) Each inflatable liferaft and inflatable buoyant apparatus must be serviced:

(1) Whenever the container of the raft is damaged, or the straps or seal are broken; and

(2) In accordance with the servicing procedure under Subpart 160.051 of this chapter.

(c) Each inflatable lifejacket must be serviced in accordance with the servicing procedure under Subpart 160.076 of this chapter.

(d) Each hybrid inflatable lifejacket or work vest must be serviced in accordance with the servicing procedure under Subpart 160.077 of this chapter.

(e) Repair and maintenance of inflated rescue boats must be in accordance with the manufacturer's instructions. All repairs must be made at a servicing facility approved by the Commandant, except for emergency repairs carried out on board the vessel.

§ 185.740 Periodic servicing of hydrostatic release units.

(a) Each hydrostatic release unit must be serviced:

(1) Within 12 months of its manufacture and within 12 months of each subsequent servicing, except when servicing is delayed until the next scheduled inspection of the vessel, provided that the delay does not exceed 5 months; and

(2) In accordance with the repair and testing procedures under Subpart 160.062 of this chapter.

(b) The springs of each spring-tensioned gripe used with a hydrostatic release unit must be renewed when the unit is serviced and tested.

Subpart H—Dynamically Supported Craft Operations

§ 185.800 Operating requirements.

(a) The owner or managing operator of a dynamically supported craft shall ensure, to the satisfaction of the OCMI, that:

(1) Maintenance services with necessary equipment are available for a DSC within its area of operation;

(2) The area of operation of the DSC is within range of watercraft or aircraft which have adequate emergency equipment and which can rapidly and adequately respond to a request for assistance from the DSC;

(3) The DSC receives reliable, current weather forecasts for its area of operation;

(4) Passenger terminals are properly arranged and have adequate safety provisions so that they may be safely used by the DSC; and

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(5) Vessel traffic in the area of operation of the DSC can be safely controlled through visual sighting, radio contact, traffic separation schemes, or other traffic control means as necessitated by the traffic volume in the area.

(b) The owner or managing operator of a DSC shall establish restrictions or provisions relating to position fixing and operating at night or in restricted visibility, including the use of radar or other electronic aids to navigation, as appropriate.

(c) When a DSC is required to have a radiotelephone or radiotelegraph by 47 CFR Part 80, a continuous radio watch must be maintained, and the vessel must be able to continuously maintain radiocommunications with its base terminal or other shore radio stations.

(d) The master of a DSC shall use reliable, current weather forecasts in determining whether to delay or cancel the commencement of a particular voyage, or alter the route of the vessel.

§ 185.810 Operating manual.

Each DSC must have on board an operating manual, approved by the cognizant OCMI, which includes adequate information and guidance to enable the vessel to be operated and maintained safely. The operating manual must contain the information required by § 185.812 of this subpart and be updated as necessary.

§ 185.812 Contents of operating manual.

(a) The operating manual of a DSC must contain at least the following information:

(1) Worst intended conditions within which the DSC may operate;

(2) Permissible conditions of loading, including maximum weight, center of gravity position, and distribution of load;

(3) Any loading procedures necessary to comply with the permissable conditions of loading;

(4) Procedures for checking the integrity of buoyancy compartments;

(5) Any limitation regarding the operation of the vessel;

(6) Information regarding the handling of the craft including:

(i) Limitations on yawing and turning;

(ii) Stopping in normal and emergency conditions;

(iii) Stability about three axes in the dynamically supported mode and stability in the displacement mode;

(iv) Effects and means of controlling trim;

(v) Conditions which may lead to plough in;

(vi) Lift power limitations;

(vii) Controllability during transition from one operating surface of mode to another;

(viii) The effect of varying sea conditions;

(ix) Maximum safe speed for different conditions; and

(x) Minimum water depth required for operation in all modes;

(7) Details of buoyancy, stability, and subdivision likely to be of direct practical use to the crew in an emergency;

(8) Maximum permissible towing speeds and towing loads where applicable;

(9) Instructions on maintaining adequate fuel reserves;

(10) Action in the event of reasonably foreseeable emergencies;

(11) Precautions for avoiding a fire and the method of operating equipment intended to prevent, detect, extinguish, or control a fire;

(12) Procedures for the evacuation of passengers and the use of lifesaving equipment;

(13) Maintenance procedures and a preventative maintenance schedule;

(14) A list of accessible harbors of safe refuge along the vessel's route specifying those which have adequate transportation and communication facilities;

(15) A list of radio frequencies for use in routine communications between the DSC and its base terminal and for other radio stations in the vessel's area of operation that may be used in an emergency;

(16) Any restrictions or provisions established by the owner or managing operator relating to navigation including position fixing, operating at night or in restricted visibility, and the use of radar or other electronic navigation equipment;

(17) Training established to ensure maintenance of crew competence in regard to operation and emergency procedures; and

(18) Restrictions on working hours and rest periods for the crew.

(b) The operating manual of a DSC must indicate those portions which:

(1) Are only advisory and included to assist the master in safely operating the vessel; and

(2) Are mandatory and which non-compliance with would be a violation of the terms of the vessel's Certificate of Inspection.

Subpart I—Penalties

§ 185.900 Penalty for violations.

Violation of the provisions of this subchapter subject the violator to the applicable penalty provisions of Subtitle II of Title 46, United State Code.

§ 185.910 Revocation and suspension.

An individual holding a license, certificate of registry, or merchant mariner's document who commits an act of misconduct, negligence, or incompetence, or who violate or fails to comply with this subchapter or any other law or regulation intending to promote marine safety, is subject to proceedings under the provisions of 46 U.S.C. 7703 and Part 5 of this chapter with respect to suspension or revocation of a license, certificate, or document.

Signed: September 9, 1988.

M. J. Schiro,

Captain, U.S. Coast Guard, Acting Chief, Office of Marine Safety, Security and Environmental Protection.

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Part III

Department of Energy

Office of Conservation and Renewable Energy

10 CFR Part 435

Energy Conservation Voluntary Performance Standards for Commercial and Multi-Family High Rise Residential Buildings; Mandatory for New Federal Buildings; Interim Rule

VOL 54 ISS 18 JA 30 1989 UMI

DEPARTMENT OF ENERGY

Office of Conservation and Renewable Energy

10 CFR Part 435

[Docket No. CAS-RM-79-112-C]

Energy Conservation Voluntary Performance Standards for New Commercial and Multi-Family High Rise Residential Buildings; Mandatory for New Federal Buildings

AGENCY: U.S. Department of Energy.

ACTION: Interim rule.

SUMMARY: In accordance with Title III of the Energy Conservation and Production Act, the U.S. Department of Energy (DOE) is developing energy conservation performance standards for new buildings. The law provides that the standards will be voluntary for new non-Federal buildings, but will be mandatory for new Federal buildings.

Today, after due consideration of public comment, DOE is promulgating interim energy conservation performance standards for new commercial and multi-family high rise residential buildings. Within 180 days of the promulgation date, Federal agencies are required to design all future Federal commercial and multi-family high rise residential buildings in accordance with the interim standards or show that their current standards satisfy the energy efficiency requirements of the interim standards. The interim standards do not regulate the design of non-Federal buildings, although DOE recommends the use of the standards to the design professions as guidelines for the design of energy conserving buildings.

EFFECTIVE DATE: July 31, 1989.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION: Today, the Department of Energy (DOE) is promulgating interim energy conservation voluntary performance standards as required by the Energy Conservation Standards for New Buildings Act of 1976, as amended (Act), 42 U.S.C. Section 6831 *et seq.* The Federal agencies are required to design new Federal commercial and multi-family high rise residential buildings in accordance with the energy efficiency requirements prescribed by the interim voluntary energy performance standards. The standards do not regulate non-Federal construction, however DOE recommends the use of the interim standards to the design professions and owners and operators of commercial and multi-family high rise residential buildings as guidelines for the design of energy conserving buildings.

Prior to the promulgation of the interim standards, DOE published, on May 6, 1987, a Notice of Proposed Rulemaking (NOPR) (52 FR 17061 *et seq.*) in the **Federal Register**. The NOPR announced DOE's intention to promulgate interim voluntary standards for new Federal commercial and multi-family high rise residential buildings and provided for a ninety day public comment period and three public hearings. The comment period closed on August 4, 1987.

In response to public comment and with the availability of additional technical information, DOE made revisions to the proposed interim standards.

The interim standards represent a significant Federal effort to assist the private sector in developing energy conservation standards without regulatory intrusion. Congress has directed Federal agencies to regulate their own design practice instead of someone else's by setting an example that may be transferred to the private sector by adoption of similar standards.

For this reason, the interim standards issued today are presented in the format of commercial standards instead of a Federal regulation. A more conventional regulatory format could easily serve to regulate Federal design practices but it would not be as easy to transfer to private sector design practices. To facilitate such transferability, DOE has used the commercial standards format for the interim standards that can be better understood and more readily used in the private sector. Also, for the same reason the interim standards contain extensive explanatory material not normally included in Federal standards.

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I. Background

Originally enacted on August 14, 1976 as Title III of the Energy Conservation and Production Act, Pub. L. 94-385, 90 Stat. 1144 *et seq.*, 42 U.S.C. 6831, the Act required the Department of Housing and Urban Development (HUD) to develop, promulgate, implement and enforce compliance with performance standards to improve the energy efficiency of all new buildings in the nation. On August 4, 1977, the Act was amended by Section 304(a), 42 U.S.C. 7154, of the Department of Energy Organization Act, Pub. L. 95-91, 91 Stat. 565 *et seq.*, which transferred from HUD to DOE the responsibility to develop and promulgate the standards. The amendments to the Act did not change HUD's implementation responsibilities.

In November 1979, DOE published proposed performance standards in the **Federal Register**, 44 FR 66120 (November 28, 1979). The notice was controversial and generated over 1,800 comments totalling 40,000 pages. The comments included technical and other substantive criticisms of the performance standards.

Less than a year after the publication of the proposed standards, the Act was again amended. Section 326, 94 Stat. 1649, of the Housing and Community Development Act of 1980, Pub. L. 96-399 (October 8, 1980) required that DOE promulgate interim standards by August 1, 1981 and extended the promulgation date of the final standards to April 1, 1983. The interim standards were only to apply to new Federal buildings. In addition, the Act required demonstration projects to be conducted in at least two geographical areas.

In August 1981, Congress again amended the Act. Subtitle D of Title 10 of the Omnibus Reconciliation Act of 1981, Pub. L. 97-35, 95 Stat. 621, amended the Act to create the term "voluntary performance standards", eliminated the provision for a possible statutory sanction for noncompliance, added a provision that, except for Federal buildings, "voluntary standards will be developed solely as guidelines to provide technical assistance for the design and construction of energy efficient buildings", and extended the deadline for DOE to furnish reports on the demonstration projects to Congress.

The legislative changes that have taken place since the original 1976 enactment required DOE to make fundamental changes to the compliance aspects of the standard regulatory approach which Congress had earlier directed the Department to take. DOE retains the responsibility for developing performance standards to achieve the maximum practicable improvements in energy efficiency and use of non-depletable resources for all new buildings. However, these standards now serve a dual purpose. The performance standards serve one purpose for the Federal sector where the standards prescribe mandatory design requirements. For non-Federal buildings, voluntary performance standards serve only as guidelines for the purpose of providing technical assistance for the design and construction of energy efficient buildings. Accordingly, the performance standards serve a second purpose of providing sound technical information and examples of efficient design practices for voluntary use in the private sector.

On August 20, 1986, the Department published in the **Federal Register** (51 FR 29754) proposed interim mandatory energy conservation performance standards for new Federal residential buildings. These proposed Federal residential standards were the first of three proposed interim standards; the second being the interim standards for commercial and high rise residential buildings being promulgated today. The Department also intends to publish voluntary interim standards for new non-Federal sector residential housing sometime in the future. DOE has completed a research project with the American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc. (ASHRAE) that has culminated in recommendations being made to both DOE and ASHRAE on new residential building standards.

Following promulgation of these interim standards, DOE will undertake a demonstration project that will at minimum include an analysis of the impact of the standards on the design, construction costs, and the energy savings, including the types of energy to be realized from utilizing these energy standards. In addition, DOE will analyze the impact on residential builders, especially small builders and the impact of construction costs on the ability of low-and-moderate-income persons to purchase or rent units in such buildings.

The Act requires that the demonstration program has a duration of at least one year and that within 180 days of its completion, a report of the results from the demonstration program be sent to the Congress. The Act also requires that the standards be reviewed on a non-specific periodic basis and revised according to more recent information and research.

II. Description of the Interim Standards

A. Summary of the Interim Standards

The interim rule establishes interim energy conservation voluntary performance standards for the design of new commercial and multi-family high rise residential buildings. The interim standards reflect DOE's attempt to simplify compliance, incorporate an improved understanding of building component interactions that affect energy use, ensure architectural and engineering design flexibility, and encourage consideration of energy conserving design measures in the earliest stages of the design of commercial and multi-family high rise residential buildings.

The format is similar, but not identical, to that proposed in ANSI/ASHRAE/IES Standard 90.1P recommended for the design of new commercial buildings by the American Society of Heating Refrigerating and Air-Conditioning Engineers, Inc. and the Illuminating Engineering Society of North America (IES). Both the DOE interim standards and the proposed ANSI/ASHRAE/IES Standard 90.1P were developed based on a joint DOE/ASHRAE research project that culminated with the publication of the research findings in the **Federal Register** on January 26, 1984. (49 FR 3245 *et seq.*). Since the completion of the research project, the DOE and ASHRAE/IES

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standards have followed a parallel track. ASHRAE/IES have provided, through their committee structure, much of the technical expertise that has been necessary in the development of the standards. DOE has provided complementary expertise and research results and has also been responsible for the majority of the technical analysis.

The format used is intended by DOE to facilitate the voluntary use of the interim standards by designers. DOE believes that the interim standards will make more obvious the interaction between the requirements for different building subsystems, permit increased designer flexibility, and produce more energy efficient and cost-effective commercial and multi-family high rise residential buildings.

The research employed to develop the interim standards comprised five major elements performed sequentially but with considerable overlap: (1) Evaluation of ANSI/ASHRAE/IES Standard 90A–1980 and the identification of its problem areas; (2) basic research to develop improvements; (3) the test for energy conservation and economic effectiveness, (4) the formulation of a Draft Standard that would provide the basis for proposed interim standards for Federal use concurrent with promoting its voluntary use in the private sector, and (5) extensive analysis of the provisions of the Draft Standard followed by additional research in key areas such as envelopes and lighting.

The provisions of ANSI/ASHRAE/IES Standard 90A–1980, the baseline standards, were evaluated by conducting a careful line by line review of the language, by investigating reported problems encountered in the application of the standards, and by rigorous testing of its energy and economic implications on 10 test buildings. This testing involved applying ANSI/ASHRAE/IES Standard 90A–1980 to ten real building designs. Plans for the buildings were re-configured for compliance with both ANSI/ASHRAE/IES Standard 90–75 and 90A–1980 in each of eight cities. DOE–2.1B, a computerized and verified analysis and research tool developed by DOE and widely used by building design groups, was used to evaluate and identify potential cost-effective improvements to ANSI/ASHRAE/IES Standard 90A–1980.

This evaluation of energy and economic impacts revealed numerous areas where the standards could be improved. Envelope requirements did not address the real energy issues in modern buildings and restricted designer flexibility. Many of the most important energy consumption determinants, such as external building orientation and configuration, glass placement, shading, and the need to match the envelope design to internal loads, were entirely ignored. The major problem associated with HVAC systems centered on system selection. Something needed to be done to encourage the selection of the most cost-effective and energy-efficient systems during the design process. In addition, a better way to apply the air transport factor to system design was needed. Also, the need to modify the lighting system requirements became apparent, with the more obvious changes being in the areas of compliance complexity and lower lighting power densities.

Following completion of the Draft Standard, DOE and ASHRAE/IES separately followed a path of additional research. Throughout this period, which began in 1984, DOE and ASHRAE/IES have jointly shared the information created from new research, public comments received on proposed drafts, and the rationale and analysis supporting responses to comments. Therefore, the DOE interim standards and the ANSI/ASHRAE/IES Standard 90.1P contain many similarities. However, the interim standards are written primarily for Federal agencies and are provided only as voluntary guidelines for the non-Federal sectors.

The interim standards contain minimum requirements that are mandatory for Federal agencies only. As such, the heads of Federal construction agencies must, within 180 days of today's promulgation, either adopt the interim standards or indicate that the standards currently in use by their agency meet or exceed the interim standards. In addition, Federal agencies are bound by the provisions of Subpart A of 10 CFR Part 436 that require the head of each Federal agency responsible for the construction of Federal buildings to assure that the decision-making process for the design of new buildings employs a specified methodology for estimating and comparing the life-cycle cost of Federal buildings and for determining life-cycle cost-effectiveness.

A more detailed description of the interim standards is presented below, together with discussion of certain specific comments from members of the public, as well as identification of technical changes that have been made to the proposed version of the interim standards.

B. Section by Section Analysis of the Interim Standards (With Major Technical Changes)

1. Section 435.097: Purpose

Section 435.097: The interim standards are designed to achieve the maximum practicable improvements in energy efficiency and increases in the use of non-depletable sources of energy. In addition, Federal agencies adopting energy conservation standards for new building construction must comply with Subpart A of 10 CFR Part 436, which requires that construction be life-cycle cost-effective.

These regulations provide that, except in the case of Federal buildings, use of the interim standards is voluntary. However, DOE recommends use of these interim standards for the design of energy efficient non-Federal new commercial and multi-family high rise residential buildings. The interim standards promulgated today will be used by a Federal agency for the design of a new commercial building or a multi-family residential building, of three or more stories, constructed by or for the use of a Federal agency.

2. Section 435.098: Scope

Section 435.098 provides that the design requirements do not apply to a commercial building or spaces within a commercial building with high process loads, manufactured homes, single family residences, and low-rise multi-family residential buildings of less than three stories.

In the proposed interim standards, buildings used for industrial purposes and spaces within buildings used for industrial and commercial processes that have substantial energy requirements unrelated to space conditioning and lighting were exempted. Many who commented felt that the terms industrial purpose and process were insufficiently defined. The Section has been rewritten by stating the conditions under which spaces used for industrial purposes and processes would be exempted.

Preliminary results of the analysis, conducted in developing the proposal, indicated that compliance with the provisions of the proposed interim standards will provide a range of 15% to 30% in annual energy savings to Federal agencies constructing office buildings, and smaller but still significant savings will be realized in other types of commercial building categories.

3. Section 435.099: General Definitions and Acronyms

Section 435.099 provides a listing of all the general definitions and acronyms used in the text of the proposed interim standards. Several definitions and acronyms have been added since the proposed interim standards were published. The additions were made in response to public comment requesting further clarification of terms used in the interim standards.

4. Section 435.100: Explanation of Numbering System for Standards

Section 435.100 provides an explanation of the unique numbering system used in the interim standards. The interim standards uses a combination of numbering systems employed by the Code of Federal Regulations and a system commonly used by voluntary standards organizations. The headings of each section will have a number, such as 435.100 which identifies the Service Water Heating Systems section. This number designates the section as a proposed section of Chapter II of Title of the Code of Federal Regulations. Within each section, a decimal system more common to the building industry is used, such as 9.4.2. This number identifies a specific subsection in Proposed Section 435.109. For purposes of clarity, the first five digits are dropped from the subsection number.

5. Section 435.101: Implementation and Compliance Procedures for Federal Agencies

This section prescribes the process for meeting the requirements of the proposed rule. It imposes the requirements of the interim standards on each Federal agency responsible for the construction of a Federal commercial or multi-family high rise residential building. The section does not necessarily apply to those in the non-Federal sector proposing to use the interim standards. It imposes both design requirements and a life-cycle costing requirement. The design requirements call for the designer to apply the general and specific Principles of Effective Energy Building Design, employ the minimum criteria for good practice prescribed in each proposed section from 3.0 through 10.0 and select an appropriate design compliance method.

The alternative compliance methods that a designer may choose from include prescriptive, system performance, and building energy cost budget or energy budget methods. The section provides suggested selection criteria for use of each of the paths. This criteria is merely instructional and the designer/builder has the option of the most suitable choice.

1. The prescriptive alternative specifies criteria for particular building elements, such as the attributes of the building envelope, lighting power allowances for specific building types, or the types of controls that must be used for HVAC system control.

2. The system performance alternative specifies criteria for the design of the load reduction, energy distribution, and energy-using and transfer systems of buildings. For lighting it provides a procedure for determining lighting power densities for specific spaces and areas. For the building exterior envelope, this section considers a number of factors important to energy conserving thermal and daylighting envelope design across a range of building functions and climates.

3. The two building energy alternatives provide for a building design whose calculated annual energy consumption is less than or equal to the calculated consumption of a building that meets the prescriptive or system performance requirements, but which does not meet the specific requirements of those compliance paths.

Section 435.101 also permits an interchangeable approach that permits a designer to select between the prescriptive and system performance methods. The selection of a compliance method requires consideration of the advantages and disadvantages of each method. The prescriptive alternative affords simplicity of calculations at the expense of design flexibility. The prescriptive criteria method requires the minimum amount of calculation and effort to achieve compliance, but permits only a few trade-offs or optimization procedures.

The system performance criteria can be the method of choice when a more innovative design is required, or when the prescriptive method does not provide the necessary flexibility. It requires some increased (manual) calculation compared with the prescriptive method. This method is expected to be particularly useful in locations where high electric demand or peak fuel consumption carry a high economic or social burden. This method requires the incorporation of lighting and HVAC controls to insure that, even though peak use is specified, the duration of use is also within acceptable bounds.

The building energy methods allow compliance with even the most innovative design concepts to meet the proposed interim standards. However, in most cases, it will require the use of a computer energy simulation program to model building energy use in accordance with the building loads and the proposed schedules of operation. The building energy methods are not interchangeable with the other compliance methods. Once selected, one or the other must be used consistently throughout the design process.

The widespread use of prescriptive criteria tends to inhibit the design of innovative and creative building subsystems since detailed component specifications are the basis of the criteria. The building energy methods of compliance are far more flexible, even though they are more demanding in terms of computations. However, the rapid promulgation of suitable micro-processor-based building energy programs is making this procedure suitable for an increasingly large number of smaller buildings.

The interim standards have already been analyzed for life-cycle cost-effectiveness and have been found to be cost-effective for the buildings tested. However, at the present time there is an additional life-cycle costing requirement that applies only to Federal agencies. It provides that:

> The head of each Federal agency responsible for the construction of Federal buildings shall also assure that the decision-making process for the design of the building shall employ the methodology for estimating and comparing the life-cycle cost of Federal buildings and for determining life-cycle cost-effectiveness prescribed in Subpart A of 10 CFR Part 436.

The language in Paragraph 1.1.2 of this Section merely calls attention to the existing Federal agency life-cycle costing requirements of Subpart A of 10 CFR Part 436. It does not add additional life-cycle costing requirements.

6. Section 435.102: Principles of Effective Energy Building Design

This section establishes the fundamental principles of energy conserving design practices and presents design strategies to help accomplish the objectives. It addresses the interactions among systems, a concept that is in fact ignored by component-based or system-based energy standards. The section was added to provide a framework for good design practices. It reflects DOE's recognition that the ultimate objective of energy efficient design requires a designer to make careful evaluations of energy requirements and use good professional judgment. The criteria found in § 435.102 are not minimum

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requirements; rather they are guidance to the designer. The section provides the designer with additional information on the kinds of actions needed to develop an energy conserving building design.

The principles encouraging good design practice are stated as follows:

- Minimize the impact on functional requirements.
- Reduce loads.
- Reclaim waste energy where possible.
- Use non-depletable sources of energy where possible.
- Improve transport system efficiency.
- Improve energy using system efficiency.
- Control operation and scheduling of systems.
- Optimize the interaction of the above.

The design procedures and specific strategies that would be used to accomplish the conservation objectives that underlie the above principles are presented sequentially so as to roughly parallel the building design process. The specific strategies are found in each subsequent section.

7. Section 435.103: Lighting

This proposed section identifies the scope of the lighting requirements, principles for effective lighting design, minimum lighting criteria and the procedures for complying with either the prescriptive or system performance lighting requirements.

3.1 General. This subsection identifies the types of rooms, spaces and areas of a building that are included by the interim standards. Basically, only interior spaces, building exteriors and grounds where lighting is energized through the building's electrical service are covered by the standards. There are several exceptions to the types of spaces covered and a few of these, such as building exteriors and roads and grounds, and outdoor processing facilities, have been amended.

This subsection also identifies the Building or Facility Lighting Power Allowance for a proposed design, the procedures by which designers can take credit for Daylighting, and the requirements for compliance with the lighting section.

3.2 Principles of Design. The principles to be applied with respect to lighting include such strategies as:

- Reduction of actual demand load rather than just the apparent connected load.
- Use of more efficient lamps with appropriate luminous efficacy, life expectancy, spectrum distribution and color rendering characteristics. Also consideration of light distribution, glare control and visual characteristics.
- Use of more efficient ballasts for fluorescent and HID lamps.
- Use of luminaires with heat removal and heat recovery capabilities.
- Illumination required for tasks limited to the location of the task and from a direction that minimizes glare.
- Appropriate use of indirect lighting with schemes that create reasonably uniform ceiling luminances.
- Reduction of light absorption.
- Consideration of appropriate uses for daylighting, local task lighting or ambient lighting together with the proper use of controls.
- Limitations on the use of lower efficiency lamps.

Several editorial comments were made on this section and the majority of them included in the interim standards.

3.3 Minimum Requirements. Minimum requirements have been specified for the use of the following:

- Lighting controls; and
- Fluorescent lamp ballasts.

Lighting requirements for Exterior Lighting power have shifted to the prescriptive compliance path of Section 3.4. If the system performance path is chosen by a designer, Section 3.5 refers to the applicable exterior lighting subsection in Section 3.4 for criteria. The minimum requirements have been revised significantly from an editorial standpoint. The revisions will simplify the compliance process. Revisions include clarification of the compliance process, a reduction in the number of tables, and a straightforward explanation of the prescriptive and system performance compliance paths.

3.4 Prescriptive Compliance Alternative. This subsection provides a prescriptive procedure for determining the upper power limits for illumination systems installed inside and on the exterior of new commercial and multi-family high rise residential buildings. It also serves as a basis for calculating the lighting heat gain and energy usage of buildings. This method prescribes a maximum allowable unit power density for lighting by building type, for a limited number of building types as listed in specified tables. There is no recognition of specific makeup of spaces and activities within the building. The procedure is not to be used as a lighting design procedure but as a method of determining the lighting power limit.

Several editorial changes have been made on this subsection. The most prominent is the deletion of two subsections. The two, Lighting Equipment and Lamp Efficiency, were judged to be lacking in solid and documentable information. Although some felt that the proposed requirements were too stringent and others felt they were too lax, parties on both sides of the issue felt that the subsections were not appropriately placed in the prescriptive criteria. DOE has revised the principles section (3.2) to reflect the benefits of using luminaire and ballast efficiencies in the design of buildings and has placed the proposed tables in an attachment to the section as examples.

3.5 System Performance Compliance Alternative. This subsection spells out a system performance procedure for determining the upper lighting power limits for buildings, roads and grounds. It also provides a basis for calculating the lighting heat gain and energy usage of individual rooms, spaces and areas as well as the total building. The procedure used in this subsection is known as the Unit Power Density procedure and it establishes the lighting power limit for building interiors plus the lighting power allowance for building exteriors and roads/grounds. Once the lighting power limit for a building has been determined, the designer shall strive to design lighting systems that will provide effective and pleasing visual environment without exceeding the lighting power limit. No specific comments were raised on this section.

8. Section 435.104: Auxiliary Systems and Equipment

This section identifies the scope, principles and minimum requirements for auxiliary systems and equipment in buildings.

4.1 General. Even though their impact upon the internal loads of most buildings is usually limited, design principles and minimum requirements for auxiliary systems and equipment were found to be useful. DOE received three comments requesting the deletion of the entire section, but still believes the requirements are necessary. The minimum requirements for transportation and freeze protection systems and retail food and food service refrigeration are important because they effect significant energy using systems not covered elsewhere by standards. For example, the standards require that food refrigeration systems match capacity with loads and not be oversized, and also require heat recovery from such systems and apply them to space conditioning use where applicable.

4.2 Principles of Design. The principles of effective energy conserving design that are applicable to this system are contained in § 435.102, Principles of Effective Energy Conserving Building Design.

4.3 Minimum Requirements. The minimum requirements for auxiliary systems and equipment cover:

- Transportation systems;
- Freeze protection systems; and
- Retail food and food service refrigeration.

Minor changes have been made to paragraph 4.3.3.2 revising energy (heat) recovery requirements.

9. Section 435.105: Building Envelope

This section identifies the scope, design principles, minimum requirements, prescriptive and system performance methods for building envelopes.

5.1 General. The building envelope requirements of this subsection are for determining compliance with the interim standards. They are not intended to replace the building loads calculations procedures in publications such as the *ASHRAE Handbook, 1985 Fundamentals Volume.*

5.2 Principles of Design. The principles to be applied with respect to building envelope include such strategies as:

- Balancing of building loads between and among the internal and external loads.
- Control of conduction and convection.
- Control of radiation.
- Control of internal loads.
- Balancing and minimizing the thermal impact of equipment and appliances.
- Control of high ventilation loads.

DOE believes that the principles are an important feature of the envelope section of the interim standards because they provide designers with additional information on energy conservation strategies that cannot be quantified as part of the standards. In order to strengthen the principles section, DOE has made several editorial changes as suggested by those who commented. The most significant change was the deletion of paragraph 5.2.1.6.1. This paragraph was a description of how balance points are an integral part of building design. Several who commented on the interim standards found the paragraph extraneous and out of context, therefore it has been dropped.

5.3 Minimum Requirements. Minimum requirements for the building envelope have been set for the following:

- Overall Thermal Transmittance (U_o) of the Building Envelope Above Grade Assembly;
- A new paragraph on the Thermal Transmittance (R) of Each Individual Path of the Envelope Assembly;
- Thermal Transmittance (U_i) of an Individual Path through an Envelope Assembly, including Fenestration;
- Gross Area of Envelope Components;
- Shading Coefficients;
- Air Leakage and Moisture Migration; and
- Shell Buildings.

Several editorial changes were suggested by those who commented on the proposed interim standards. DOE appreciates the diligence with which these changes have been offered and has made many of the changes in the text.

5.4 Prescriptive Compliance Alternative. This subsection requires the use of Alternate Component Packages (ACP) that prescribe precalculated minimum criteria for elements of the exterior envelope of new commercial and multi-family high rise residential buildings in locations having less than 15,000 heating degree days (base 65 °F). The criteria consider variations important to thermal envelope design including fenestration, shading, thermal mass, daylighting, internal loads and climate ranges.

Several changes have been made to the ACP tables based on public comments and new research. The tables have been updated based on new available reserved data on thermal mass. These changes have primarily been for colder climates. In addition, the format of the ACP tables has been changed to allow all relevant information for a climate area to be placed on one table. In the proposed standards, the user would have had to refer to several tables. The language in this section has been modified to correspond with the new format of the ACP tables.

DOE received several comments that the Receptacle Power Densities in Table 5.4–30 (now Table 5.4–32) were too low based on the fact that U.S. buildings are equipped with an increasing number of electronic products. DOE was cognizant of this fact when the research to develop the interim standards was conducted and incorporated some sensitivity into its research. Based on the findings of its research it still believes that the receptacle power densities are adequate.

5.5 System Performance Compliance Alternative. This subsection provides a number of criteria important in energy conserving thermal envelope systems design across a range of building functions and climates. The system performance approach requires the application of specified criteria for the following factors:

- Roof Thermal Transmittance;
- Floor Thermal Transmittance;
- Thermal Transmittance for Walls Below Grade;
- Thermal Transmittance for Opaque Walls Enclosing Conditioned Spaces Exposed to Interior Unconditioned Spaces;
- External Wall Criteria for Heating and Cooling;
- Wall Heating and Cooling Compliance Values;
- Constraints on thermal transmittance values;
- Lighting and equipment power densities;
- Daylighting; and
- Thermal mass.

DOE received one comment complaining that the roof values are too low. DOE has analyzed the material provided in support of this comment and does not believe the commenter's recommendations are supported by the cited study because it does not provide enough relevant information on which to base the change. DOE, through its own research, believes that the roof values used correspond to good practice and are readily achievable.

10. Section 435.106: Electric Power and Distribution

This section identifies the scope, design principles, minimum requirements for the electric power and distribution system. Included are specific requirements for electrical distribution systems, transformers, electric motors, and operation and maintenance systems. It should be noted that the section has undergone many editorial changes. These changes reflect the amendments offered by those who commented. They were made to clarify the language used in the section. For example, language has been added to clarify electrical distribution requirements of multi-tenant buildings. Another modification clarifies the standards to be used in rating different types of electrical motors.

6.1 General. Emergency systems do not have to comply with the requirements of this section.

6.2 Principles of Design. The specific design principles to be applied with respect to electric power and distribution systems include such strategies as:

- Consideration of the sizing of transformers and generating units to assure that they are close to the actual anticipated load.
- Minimization of the use of distribution system transformers.
- Submetering of tenant facilities.

6.3 Minimum Requirements. Minimum electric power and

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distribution requirements have been set for the following:

- Submetering of electrical distribution systems;
- Transformers;
- Electric motors; and
- Operation and maintenance of electrical systems.

11. Section 435.107: Heating, Ventilation and Air-Conditioning (HVAC) Systems

This section establishes the scope, design principles, minimum requirements, and prescriptive compliance requirements for heating, ventilating and air conditioning systems.

7.1 General. This subsection sets forth the design and performance requirements for building heating, ventilation, and cooling systems.

7.2 Principles of Design. The principles to be applied with respect to Heating, Ventilating and Air Conditioning (HVAC) systems include such strategies as:

- Control of equipment and high ventilation loads.
- Separating HVAC systems so as to serve areas which are expected to operate on different schedules, or have different temperature or humidity problems, etc.
- Sequencing of zone cooling and heating.
- Integration of air or water economizer cycles where appropriate.
- Provision of controls that permit systems to operate in either occupied or unoccupied modes.
- Design of energy transport systems to use the most efficient means possible from a priority list of options.

New paragraphs on radiant heating and energy recovery have been added to the principles of design because radiant heating can often be more effective than convective heating systems in some applications and for areas with high ceilings and for spot heating. Systems that recover heat can be used in place of larger systems that require more fossil fuel.

7.3 Minimum Requirements. Minimum requirements for the building's HVAC System have been set for the following:

- Calculation Procedures;
- System and Equipment Sizing;
- Separate Air Distribution Systems;
- Temperature Controls;
- Off-hour Controls;
- Humidity Controls; and
- Materials and Construction.

Please note that Tables 7.3–1, Minimum Pipe Insulation, and 7.3–2, Minimum Duct Insulation, have been revised to reflect updated information.

7.4 Prescriptive Compliance Alternative. This subsection provides the criteria for the design of the HVAC Systems using the prescriptive path. Prescriptive criteria is provided for the following:

- Zone controls;
- Economizer controls; and
- System design requirements.

A new § 7.4.6, System Temperature Reset Controls has been added.

12. Section 435.108: Heating, Ventilation, and Air-Conditioning (HVAC) Equipment

This section states the scope, design principles, minimum requirements, prescriptive and system performance methods for heating, ventilating and air conditioning equipment.

8.1 General. This subsection establishes design and performance requirements for HVAC equipment. It should be noted that while equipment efficiencies for 1984, 1988, and 1992 have been considered for this section, the rule requires Federal agencies to use the more stringent 1992 equipment efficiencies. HVAC equipment that meet the 1992 efficiencies are already on the market. By employing the more stringent efficiencies, the standards require that Federal agencies become a model for equipment energy efficiency.

8.2 Principles of Design. The principles to be applied with respect to HVAC Equipment include such strategies as:

- Allowance for HVAC equipment operation at the highest efficiency rates.
- Ascertainment of the rate of energy inputs and the heating or cooling outputs of all HVAC equipment.

8.3 Minimum Requirements. Minimum requirements for the building's HVAC Equipment have been set for the following:

- Equipment performance;
- Field assembled equipment and components;
- Equipment controls;
- Comfort heating equipment; and
- Maintenance.

As part of the section, minimum efficiencies have been established for a wide variety of HVAC options. These tables have been significantly changed since the publication of the proposed interim standards to reflect the provisions for residential HVAC equipment in the National Appliance Energy Conservation Act of 1987 and are based on public comment.

13. Section 435.109: Service Water Heating Systems

This section identifies the scope, design principles, minimum requirements, and prescriptive compliance method for service water heating systems and equipment.

9.1 General. This subsection establishes design and performance requirements for service water heating systems.

9.2 Principles of Design. The principles to be applied with respect to service water heating systems and equipment include such strategies as:

- Designing showerheads to balance user comfort with energy savings.
- Strategic location of water heaters.
- Use of heat exchangers to prevent high temperature condensate from turning to steam when returning to pump tanks.

9.3 Minimum Requirements. Minimum requirements for the building's service water heating systems and equipment have been set for the following:

- Sizing of systems;
- Equipment efficiencies;
- Piping insulation;
- Heat traps;
- Equipment temperature controls;
- Swimming pool water heaters;
- Combination service water heating/space heating equipment;
- Use of waste heat, solar energy and thermal storage;
- Equipment efficiencies of electric water heaters; and
- Additional equipment efficiency measures.

14. Section 435.110: Energy Management

This section identifies the scope, design principles and minimum requirements for energy management systems.

10.1 General. This subsection describes the general building data, the construction data and equipment data that must be provided to the building owner to foster good operation and management practices.

10.2 Principles of Design. Design principles and strategies include:

- Installation of energy management control systems with measurements at key points.
- Optimizing the design with careful system selection, realistic load predictions and full control provisions.
- Programming all loops and control actions so that building loads are satisfied while minimizing simultaneous use of heating and cooling energy.

10.3 Minimum Requirements. Minimum requirements have been set for the following:

- Energy measurement capability;
- Energy measurement instrumentation;
- HVAC System Controls;
- Central Monitoring and Control Systems;
- Completion Requirements;
- Energy Performance Testing; and
- Construction Documentation Data.

The Energy Management Section differs significantly from standards that are being reviewed by private sector organizations. It has much more stringent metering, monitoring, and testing requirements. This was done to provide agencies with information necessary to assure the building is operated at its designed efficiency and permit prompt identification and quantification of problems. It will also ensure that Federal agencies have the information on new buildings to meet their reporting responsibilities under Executive Order 12003 (June 20, 1977) and the National Energy Conservation Act of 1978, Pub. L. 95–619.

15. Section 435.111: Building Energy Cost Compliance Alternative

This section sets forth the requirements for using one of two alternative methods of whole building performance compliance. This alternative, as opposed to the one found in § 435.112, uses local monthly energy costs as a basis. It is particularly effective for builders of speculative or tenant occupied buildings. Compliance under this building energy path requires detailed energy analyses of the proposed design (referred to as the "design energy cost") and comparison against an energy cost budget. Compliance is achieved when the estimated design energy cost is less than or equal to the energy cost budget. Section 435.111 provides instructions for determining the budget and for calculating energy analysis of prototype or reference building designs configured to meet the prescriptive or systems requirements of the standards. It should be noted that the language in this section has been considerably revised since the publication of the proposed interim standards. The changes are editorial. They have been made to clarify the intent and compliance procedures of the section.

This approach allows a designer maximum flexibility in the design process, while ensuring that the building is designed to consume no more energy than is allowed under the other compliance paths. This path provides an opportunity for the energy conservation benefits of innovative designs, materials, and equipment to be used when they cannot be evaluated adequately under either the prescriptive or system performance procedures.

Building energy compliance analyses are not required for proposed designs that meet either the prescriptive or system performance compliance paths. This compliance path is one of four alternative paths. It may be used as an alternative for those designs that fail to meet either the prescriptive or system requirements of the ten previous sections.

Designers are encouraged to employ the proposed building energy compliance path set forth in this section for evaluating proposed design alternatives, in preference to using the prescriptive and system performance paths. Using this path enables the designer to establish the relative effectiveness of each design alternative in saving energy, thus providing a reliable energy basis upon which the building owner and designer may select one design over another.

16. Section 435.112: Building Energy Compliance Alternative

This section is constructed under the same basic approach as that found in § 435.111. It too provides an alternative path for compliance with the interim standards that allows flexibility in the design of buildings. However, compliance under this section is demonstrated by showing that the calculated annual energy usage for the proposed building design is equal to or less than a calculated design energy use target.

A life-cycle cost economic analysis is required to evaluate alternative fuel sources and energy reduction strategies. This analysis is used to determine the feasible alternatives for energy sources of the design's HVAC systems, service hot water and process loads. Fuel sources selected for the proposed design and prototype or reference buildings are determined by considering the energy cost and other cost and benefits that occur during the expected economic life of the alternative. The procedures set forth in Subpart A of 10 CFR Part 436 are used to make the determination. Once the analysis is completed, the user is directed to compare the total life-cycle cost of each energy source alternative. The alternative with the lowest total life-cycle cost must be chosen as the energy source for the proposed use. During the compliance process, when the proposed design is compared to the prototype or reference building, the same subsystems and fuel sources are used so that the subsystems of each correspond.

Table 12–1 contains fuel conversion factors for computing the energy budget for and the design annual energy use of the proposed design. In this compliance alternative, energy consumption is measured at the building five foot line for all fuels, therefore "site" rather than "source" conversion factors are specified for certain fuels in Table 12–1. This was done on the assumption that, in the equivalent energy consumption path, the comparison of proposed designs and prototype and reference buildings, with similar subsystems and fuel types, minimizes the influence of the conversion number. In addition, it was felt that architects and engineers were more familiar with "site" factors. However, it has been the policy of the Department to use "source" conversion factors when conducting national policy studies on fuel use and energy savings potential and when measuring the impact of energy conservation programs. This has been done because "site" factors do not account for the conversion and transmission losses inherent in the use of some fuels. This policy will continue with respect to national studies.

The same basic procedures used in § 435.111 are also used in § 435.112 with some minor exceptions. The design is defined by the energy that would be consumed within the five foot line of a proposed building per square foot over a 24 hour, 365-day year and specified operating hours. The estimated design energy use is then compared to a calculated energy use target determined by calculating the annual energy usage for a prototype or reference building that is configured to comply with the standards.

The approach would normally be favored by governmental entities and large owners who would be interested in tracking energy use over the life of a building.

III. Summary of Public Comment Received on the May 6, 1987, Notice of Proposed Rulemaking (NOPR) and DOE Responses

A. Summary

On May 6, 1987, DOE issued a Notice of Public Rulemaking (52 FR 17051 *et seq.*) to afford the public an opportunity to comment on the proposed interim standards for new commercial and multi-family high rise buildings. At the close of a 90 day comment period, DOE had received responses from 135 individuals, firms, and organizations. Many of the comments indicated a favorable response to the format used and the fact that DOE developed interim standards that were parallel and of similar technical content to those standards being developed by private sector organizations. Because most of those who commented had multiple comments, total comments numbered approximately 630. The comments dealt primarily with specific sections of the interim standards, although there were

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some general comments. These comments are discussed below.

B. General Comments

1. Time Extension

DOE received three comments requesting an extension of the comment period. Those who commented indicated that the complexity of the proposed interim standards prevented an in-depth review and therefore requested additional time.

DOE Response: DOE considered an extension of time, but declined because of the relatively few number of requests indicating that most who wished to comment had sufficient time. Comments were received by all three requesting time extensions.

2. DOE Interim Standards vs. ANSI/ASHRAE/IES Standard 90.1P

DOE received sixteen comments related to the differences between the proposed interim standards and the proposed ANSI/ASHRAE/IES Standard 90.1P. Several who commented suggested that DOE employ the same consensus review and comment process used by ASHRAE. Another questioned the use of DOE standards as model energy codes. Many of those who commented suggested that DOE wait until the ANSI/ASHRAE/IES Standard 90.1P is finalized and then promulgate that standard verbatim. Finally, one person who commented suggested that DOE should be completely different from the ANSI/ASHRAE/IES standard because of the "controversy" surrounding that standard.

DOE Response: The interim standards are promulgated under a system adopted by the Federal government for all public rulemakings. This system dictates that any or all individuals or organizations are invited to provide comment on a Federal rulemaking.

It is not DOE's intention that the interim standards become model energy codes. Rather, they are established as guidelines from which model energy codes may be developed. As has been stated previously, the interim standards are mandatory only for Federal agencies and voluntary for the non-Federal sector.

DOE intends that the interim standards be complementary to the private sector standards established by voluntary industry organizations such as ASHRAE and IES. It does so because it believes that the nation is better served by consistent energy conservation standards. However, it recognizes that federal construction practice is somewhat different than that found in private industry. For example, financing processes and laws governing federal construction and building operation are quite different and require some unique considerations. Therefore, the DOE interim standards will not be the exact parallel of those standards prepared exclusively for other sectors.

Finally, DOE believes that the lengthy process to develop the interim standards was very valuable and that the interim standards are practical tools to help save energy. The computer aids that will be provided to interested entities as technical support documents greatly enhance the "usability" of the standards.

3. Practicality of Interim Standards

Six who commented questioned the practicality of the proposed interim standards. One said compliance was impossible. Others said it was overly complicated and would increase first-costs of buildings. Finally, another said it favored designs using natural gas for heating and was unfair to electricity.

DOE Response: The standards were prepared from an analytical standpoint. It was DOE's intention to address the complex interactions within a building, especially those within the building envelope and lighting systems. It was also important to develop several compliance paths in order to increase designer flexibility. This has led to standards that appear far more complex than earlier prescriptive standards. In fact the standards can be far less complicated because the designer must only choose one compliance path and because DOE has prepared several computer programs to assist in making the standard calculations of each component section.

4. "Site" vs. "Source" Energy

DOE received four comments on this issue. Three who commented favored "site" over "source" energy; the other preferred "source". The person opposed said that "site" favored electricity as a fuel.

DOE Response: DOE believes that the original decision to use life-cycle costing to select HVAC, service water heating, and process equipment fuels in § 12.0 remains valid. For this compliance alternative, it is also appropriate to only consider energy as it is delivered to within the five-foot line of the building site. Therefore, fuel selection is held constant for both the Prototype or Reference Building and the Proposed Design when determining compliance.

5. General Comments—Section 435.98

a. Process Energy Exception

DOE received four comments questioning the exclusion of buildings from the interim standards whose energy loads were not primarily for occupant comfort and sanitation purposes. Most of those who commented were confused by the wording used in the exclusion.

DOE Response: It is DOE's intent to include energy related to occupant comfort on sanitation (service hot water) with exceptions only where that criteria will result in significant impact on operations in the building that fall outside the intended scope of the interim standards. Section 435.98 has been revised to clarify the exclusion.

6. General Comments—Section 435.101

a. Standard Reporting Procedures

A comment was received requesting DOE to provide standardized reporting procedures for Federal agencies in their adoption of the interim standards.

DOE Response: The statutory mandate under which DOE promulgated the interim standards does not cover enforcement. Adoption and enforcement of the interim standards by Federal construction agencies is the responsibility of the heads of those agencies.

b. Cost-Effectiveness of the Interim Standards

DOE received four comments suggesting that language in § 435.101 be amended to require that the standards be life-cycle cost-effective as well as require the maximum practicable energy savings.

DOE Response: DOE agrees that cost-effectiveness is an important part of new building design criteria. However, its mandate was to establish standards that promoted energy savings to the maximum extent practicable. In conducting the research that led to the formulation of the interim standards, one requirement was that the redesigned buildings being tested have a life-cycle cost equal to or lower than a building designed to existing industry standards. Therefore, DOE believes that the interim standards do consider cost-effectiveness in their make-up. Additionally, as was mentioned previously, Federal agencies are required by Subpart A of 10 CFR Part 436 to conduct life-cycle cost analyses on each new building project. This requirement is listed in Section 435.101, paragraph 1.1.3.

7. General Comments—Section 435.103

a. Support for Proposed Lighting Standards

DOE received several comments on the general requirement levels of the lighting standards found in § 435.103. An equal number of those who commented felt that the standards were appropriate given current technology and design skills, as were those who were opposed to the levels. Those in favor cited several examples of designs that easily met the criteria. Those opposed mostly agreed that the levels were achievable given current technology, but that the skill level of most lighting designers was such that the lighting standards could not be universally met. Several of those opposed suggested the use of existing Illuminating Engineers Society of North America guidelines or that additional research be conducted.

DOE Response: DOE agrees that many of the key components of optimal lighting designs, given current technology, are still missing. These include more information on spectral composition of lamplight, a more thorough knowledge of lamp and ballast efficiencies and lighting maintenance, and the proper use of automatic lighting controls. However, DOE believes that the minimum levels specified in the interim standards for current implementation are well within the capability of lighting designers. Therefore, with few modifications, the minimum levels will stand as written.

b. Proposed 1992 Lighting Levels

In its proposed interim standards, DOE published minimum lighting levels for both 1987 and 1992. Several who commented were opposed to the use of 1992 levels as technically impractical and unsubstantiable. Others who commented were in favor of the 1992 levels. In fact, one who commented opposed the use of 1987 levels and would prefer that DOE utilize the proposed 1992 levels immediately.

DOE Response: DOE will retain the 1992 lighting levels in its interim standards. It is convinced that the levels are currently achievable by good designers with current technology and will certainly be broadly achievable beyond 1993 under programs of continued industry and professional education. However, in the interest of those opposed, DOE will change the effective date to 1993 and address the issue in-depth during the demonstration program phase that will follow today's publication of the interim standards.

c. Lighting Controls

DOE received several comments about lighting controls and switching requirements, and the credits allowed for automatic lighting controls. A few who commented stated that the number of switches to be required per unit of electricity was not economical. Others disagreed with requirements for switch and control placement. Still others disagreed with the ballast control requirements.

A few who commented felt that the credits for controls allowed in proposed Table 3.3–3 were excessive. Others commented that areas equipped with automatic controls should have manual override switches for individual work centers.

DOE Response: DOE believes that the lighting control requirements are equitable and has not made any changes to the number of controls required. It has, however, provided for some additional lighting control options and has made editorial changes to the standards where appropriate on the requirements and control placement. DOE also believes that the ballast efficacy factors are appropriate and has not made any changes to that subsection.

Based on research conducted by DOE at its Lawrence Berkeley Laboratory, DOE disagrees with the comment that the credits given for lighting controls in proposed Table 3.3–3 were excessive. Properly used with fluorescent lamps, controls can have a great effect on energy consumption. DOE does agree that controls used in conjunction with incandescent lamps are not as effective and therefore has not given credit for controls on incandescent lamps in new Table 3.3–1. DOE disagrees in concept with the comment on manual overrides because excessive manual overrides can diminish the expected energy conservation effect of the automatic controls. DOE has made some editorial changes that more clearly delineate the placement of manual controls to ease the concerns of the commenters.

d. Power Adjustment Factors

One commenter requested the addition of Power Adjustment Factor credits (proposed Table 3.3–4) for energy saving lamps, high efficiency conventional ballasts and electronic ballasts.

DOE Response: The purpose of the Power Adjustment Factor is to give credit for use of daylighting and other lighting strategies in the design of buildings. Since the interim standards are minimum standards, it is expected that the designer will use more efficient lighting and ballast technologies as they are cost beneficial.

e. Unit Lighting Power Allowances

Several comments were received in regard to proposed Table 3.4–3 (now Table 3.4–1), Unit Lighting Power Allowance, including a request to eliminate factory spaces, to reverse the allowances for fast food and leisure food dining, to provide better definitions for the building categories listed, and to place the lighting allowances at the minimum possible for maximum energy conservation.

DOE Response: DOE has eliminated the factory requirements as they may represent high process energy space which has been exempted from these interim standards. Please consult § 435.098, General Definitions and Acronyms for more information. DOE has further redefined the building categories found in Table 3.4–3 (now Table 3.4–1) by combining four retail building types into one category, retaining the mall concourse category, and adding a service establishment category. The building areas for each type now range up to 250,000 ft^2 rather than 35,000 ft^2. The lighting power allowances have been adjusted to reflect the new space categories. Also Unit Lighting Power allowances have been added for the year 1993 so that Table 3.4–1 would be consistent with the Unit Power Densities of § 3.5, the system performance criteria. DOE has not reversed the allowances for fast food and leisure dining as suggested because it believes that the order is correct.

f. Interior and Exterior Lighting Tradeoffs

Several comments were made concerning the tradeoffs between interior and exterior lighting found in proposed paragraph 3.4.4.2.

DOE Response: This language has been amended to consolidate all exterior lighting allowances into a single budget. Tradeoffs between interior and exterior allowances are still not allowed in an effort to keep exterior lighting at minimum necessary energy usage and so that interior lighting levels not suffer because of higher exterior levels.

8. General Comments—Section 435.105

a. Minimum Requirements in Envelope Section Not Regulatory Guidance

DOE received a few comments that stated that § 5.3 was a "philosophical engineering discourse" rather than minimum requirements.

DOE Response: DOE disagrees; while it is true that the section runs through several fundamentals of physics and

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engineering. It also contains specific minimum requirements for the items listed above.

b. Use of °F (degrees Fahrenheit) vs. F° (Fahrenheit degrees)

Several who commented were opposed to the use of F° throughout the text of Section 5.0 and the rest of the proposed interim standards. Most were opposed because F° is not used in common building and design practice, although it may be proper in a physics laboratory.

DOE Response: DOE agrees to make the change throughout the interim standards to maintain consistency in terminology and avoid confusion within the professions that will apply and implement the standards.

c. Buildings in Climates Greater Than 15,000 HDD65

DOE received several comments on the requirements for buildings designed for colder climates. Several suggested that the U_o values found in the envelope section for such buildings were incorrect. Others requested specific requirements for buildings over 10,000 HDD65 and 20,000 HDD65. A couple pointed out that the tables found in the system performance criteria section (Tables 5.5–1 through 5.5–4) did not have values for the colder climates. Another requested that skylights not be allowed in communities above 50 degrees north latitude.

DOE Response: DOE realizes that the specifications for colder climates were not complete in the proposed interim standards. In response, it has strengthened several paragraphs to correct the problems. Table 5.3–5, the requirements for locations with heating degree-days greater than 15,000, has been amended. Included as part of the amendment was a prohibition of skylights in locations of greater than 15,000 HDD65. Also, Tables 5.5–1 through 5.5–4 have been modified. Unfortunately, the lack of weather data for the colder climates prevents the adoption of more specific requirements.

d. Thermal Mass Credits

DOE received a few comments about the thermal mass credits. Some were in favor of retaining the credits and others were opposed. Most asked how the credits were determined.

DOE Response: There is a reference to the research that established the credits in Appendix D to § 435.105 entitled, "Rules for External Wall Criteria". The thermal mass analysis was documented in the peer reviewed paper "The Effects of Thermal Mass Exterior Walls on the Heating and Cooling Loads in Commercial Buildings" by Wilcox, et al., published in the proceedings of Thermal Performance of the Exterior Envelopes of Buildings III, DOE/ASHRAE/BTECC, December 1985, pp. 1187–1224.

The analysis of thermal mass effects was performed using the same buildings, operating assumptions, internal gain assumptions, and glazing characteristics as were used to study insulation, glazing U-value, glazing shading coefficient, daylighting and all the other aspects of the building envelope. Great care was taken to ensure that the analysis was consistent. DOE sees no reason to remove the only thermal mass aspect from the interim standards.

e. Vapor Retarders

One person who commented suggested more detailed specifications for vapor retarders.

DOE Response: DOE believes that the current criteria are adequate when viewed in conjunction with the referenced material for a national standard. Local climatic conditions may warrant more detailed criteria, but such criteria should not be imposed nationally.

f. Shell Buildings

Two comments were received which indicated that lighting power densities and equipment power densities for shell buildings, found in proposed Table 5.3–4 were too low.

DOE Response: They have been modified in the interim standards.

9. General Comments—Section 435.106

a. Opposition to Inclusion of Section

Several who commented on this section were opposed to one entire section of the interim standards being devoted to electric power. Their reasons included the belief that electricity had been treated differently than other fuels and that check-metering should be required for other fuel uses.

DOE Response: Because electrical energy is such a critical ingredient in our way of life, we must consider every means of conserving its use. The almost complete reliance on electrical energy by building subsystems is recognized by this separate section. The treatment is not intended to be discriminatory since other types of equipment are addressed in other sections of the interim standards. DOE has included requirements for other fuel types, including sub-metering requirements for natural gas, oil and steam, in §§ 8.0, 9.0, and 10.0. It believes the requirements of the interim standards have been designed to minimize burden and maximize benefits.

The technical provision for check-metering is intended to facilitate energy management and not to encourage a building owner to act as a utility and charge tenants for service. Such provisions do not constitute submetering, which may be in conflict with some local regulatory requirements. DOE also believes there is informational value to check-metering even where permanent metering is not warranted.

Metering and measurement are essential to the proper operation of the building, as well as for checking on energy consumption. While the interim standards do not and cannot address operation, they do attempt to provide the operator with the proper tools for good operation and maintenance. Not all operators and owners will operate the building systems in the most appropriate way but the increasing sophistication on the part of occupants and tenants is causing owners to be more aware of the need for proper operating practice.

b. Transformer Requirements

A few who commented found the transformer requirements of paragraph 6.3.2 burdensome. This paragraph recommends that transformer efficiency shall be considered in electrical distribution systems.

DOE Response: Transformers are a part of most such systems. Their no-load and part-load losses can be significant and should not be ignored.

c. Electric Motors

A couple who commented indicated that the electric motors covered by the interim standards serve a variety of applications and that some of the electric motors covered serve purposes that are inappropriate for energy efficient motors. They recommended that a section be added to address performance and use requirements other than efficiency to determine the choice of motor.

DOE Response: The purpose of the table is to provide minimum efficiency standards for motors and not to require high efficiency motors, therefore the section was not changed. However, reference has been made to a National Electrical Manufacturers Association publication for detailed design guidance.

10. General Comments—Section 435.107

a. Zoned Space Conditioning

A few who commented felt that DOE should recognize the benefits of zonal space conditioning for HVAC system design.

DOE Response: The interim standards in no way preclude zonal systems. In fact, zonal systems inherently meet the provisions of § 435.107, as they provide separate air distribution systems to every zone. The purpose of the section is to discourage the use of large central systems serving zones with very different load characteristics and in that way actually encourages zonal systems.

b. Insulation Levels

A few who commented felt that insulation levels for piping and ductwork found in § 435.107 were below economic levels and should be increased.

DOE Response: The insulation requirements were based on an economic analysis to determine the insulation thickness that results in the lowest life-cycle cost. For example, Table 7.3–1 is a table of minimum insulation thicknesses listed as a function of fluid temperature range and nominal pipe size. For each fluid temperature range, a conductivity range is specified on which thicknesses in the Table were based. The conductivities represent a broad range of commercially available insulation products, including fiberglass and expanded foam.

c. Thermal Storage Systems for Comfort Cooling

One who commented on this section suggested that DOE was missing a conservation opportunity by not making more use of thermal storage systems for comfort cooling.

DOE Response: DOE has recognized the benefits of thermal storage systems for cooling and recommends, but does not require, them in § 435.108.

d. Economizer Cycles

A couple of commenters suggested that DOE investigate the increase in energy use caused by increased fan transport energy and the elimination of heat reclaimed from the building, based on its economizer cycle and variable air volume systems requirements.

One who commented suggested that an enthalpy economizer will show very little use in most of the country and if temperature controlled units are used, humidity control is completely lost. Another who commented felt that air economizer systems are not cost-effective for units smaller than 5,000 cfm. It was suggested that units with supply capacity of less than 3,000 cfm or total cooling capacity of less than 90,000 Btu/h should be changed to 5,000 cfm or 134,000 Btu/h.

DOE Response: DOE believes economizers are the most generally applicable and effective energy conservation measure to take advantage of cool and cold weather cooling requirements characteristic of commerical buildings. Heat recovery systems are only effective when heating loads occur simultaneously with cooling loads. Economizers reduce energy consumption both during cold weather and during mild weather when heating loads do not exist due to the generally high internal loads.

DOE agrees in part with the comment on enthalpy economizers and has revised the economizer control section to allow calculations to determine whether an enthalpy economizer is practical and useful in particular situations.

In regard to the comment on air economizers, economizer controls are readily and relatively inexpensively obtained for the size range required. For most unitary products of this size range, economizers are factory installed options. DOE determined that economizers would therefore be cost-effective in most applications.

e. Oversizing of Systems

A few who commented found that in setting design conditions, no penalty is given for maximizing of set-back and set-up temperature, therefore reasonable oversizing of the HVAC system is necessary. One who commented felt that an exception should be allowed for oversizing equipment in a building where planned future expansion could be better served from an existing system.

DOE Response: The only oversizing permitted is the 10% safety factor of § 7.3.1.9. The allowed 30% factor of § 7.3.1.10 is not oversizing but rather a simple and commonly used method for calculating pickup loads. Pickup is a load that a system must be designed to meet if setback is used and reasonable warmup times are to be achieved.

If a future expansion is designed at the time of the HVAC system design, then it could be considered part of the design load and not oversizing. However, it is believed that specific exceptions for future expansion would be too vague to be enforceable; the scope and timing of expansion could not be tightly designed.

11. General Comments—Section 435.108

a. Uniform Equipment Standards

It was felt by several that DOE should strive to establish equipment efficiency requirements at an acceptable high and uniform level, regardless of the equipment's fuel source. Accordingly, the interim standards should not attempt to dictate the type of energy or fuel selection for a particular application.

DOE Response: There seems to be the belief of some respondents that the interim standards discriminate against electric energy. DOE believes that the contrary is true. The interim standards recognize the almost complete reliance of building systems on electrical energy and provides equitable treatment for consideration of all energy sources. Because electric energy is such a key ingredient to our way of life, we need to consider means to conserve its use for long-term needs. Such conservation will certainly be required as these buildings go through their 40- to 50-year lifetimes, and varying degrees of energy scarcity are experienced.

b. Agreement with NAECA

Many who commented urged that the interim standards be revised to comply with the provisions of the National Appliance Energy Conservation Act (NAECA) of 1987.

DOE Response: The interim standards are now based on the provisions of NAECA.

c. DOE Use of 1992 Efficiency Requirements

In its interim standards, DOE has chosen to set efficiency levels at 1992 minimum levels. This means that DOE has chosen to forego 1988 levels for more stringent standards. A few who commented objected to these levels.

DOE Response: DOE contends that the standards are primarily for use by Federal agencies and that these agencies should become models for the rest of the nation and design the most efficient buildings possible in a life-cycle cost-effective manner. Since equipment bearing the 1992 efficiencies are currently available and considered cost-effective, Federal agencies are required to meet these efficiencies in all new construction. Because the standards are voluntary for the non-Federal sector, a choice can be made to utilize the 1988 equipment efficiencies found in proposed private sector standards.

d. Equipment Omitted From Interim Standards

DOE received several comments about equipment that have seemingly been omitted from the interim standards.

DOE Response: There is no intent to encourage or discourage the use of specific classes of equipment. Rather, those types of equipment not specifically included in § 435.108 may qualify under either of the two Energy Budget compliance paths, §§ 11.0 or 12.0.

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e. Electric Resistance Heating

A few who commented felt that electric resistance heating was unfairly singled out because the only recommended use of electric resistance heat was as a supplement to heat pump operation.

DOE Response: In practice, any type (oil, gas, electric) fuel could be used to supplement heat pump operation and should be regulated to maximize system efficiency. Revisions have been made to the standards that allow the use of electric resistance heating in selected primary situations and that allow other electric, gas, and oil furnaces to supplement heat pump operation.

12. General Comments—Section 435.109

a. Minimum Service Hot Water Performance

Several comments were received concerning the minimum performance tables found in this section. Those who commented suggested that the service water heating standards comply with the provisions of the National Appliance Energy Conservation Act of 1987.

DOE Response: DOE agrees and has made the appropriate changes.

b. Standby Loss Requirements

DOE received a comment that the standby loss requirements in Table 9.3–1 for residential oil water heaters are far too stringent.

DOE Response: Current research results indicate that the levels of stringency are well below the current state-of-the-art, that substantial improvement in efficiency can be made, and that the efficiency requirements of the interim standards are defensible.

c. Heat Pump Water Heaters

Several comments were received that requested the elimination of requirements that a heat pump water heater be used in all applications of electric water heater where supply temperatures are under 145 °F.

DOE Response: The interim standards make no assumptions about the cost of electricity. Data and analysis reviewed by DOE show that heat pump water heaters can yield substantial improvements in efficiency compared to resistance heat that are almost always economical. Clearly, there are some conditions in which heat pump water heaters will not make economic sense, but no general prescriptions for such situations have been found.

d. Thermostat Controls

DOE received a few comments on the requirements for thermostatic controls for service water heating. One comment suggested that § 9.3.4.1 is a meaningless requirement; all automatic water heaters have temperature controls adjustable through a range of settings.

Other comments indicated concern that lowering water temperature would increase the likelihood of the production of organisms that cause diseases such as Legionnaires' Disease.

DOE Response: The requirement stands because some water heaters are incapable of settings as low as 90 °F. DOE believes that the low settings will provide substantial energy savings for most types of non-residential buildings. For residential dwelling water heaters that rarely are capable of settings below 110 °F, an exception is provided.

DOE agrees that the issues of health and safety are important and has raised the required thermostat settings to conform with health and safety standards.

e. Removable Showerhead Flow Restrictors

DOE received a comment advocating that the restrictions on using removable showerhead flow restrictors, in § 9.3.4.2, be amended to allow for their use. The rationale was that this requirement would eliminate the major portion of all showerheads manufactured today.

DOE Response: Since this is a design standard for Federal buildings, DOE will not make the change. DOE believes the potential for removal is so great that removable flow restrictors cannot be counted on unless some vandal-proof feature is required.

13. General Comments—Section 435.110

a. Minimum Requirements

DOE received a few comments concerning the requirements of this section, including a few that recommended that either additional guidance be provided on the use of central monitoring and control systems, or that the section be deleted. Other comments requested that DOE temper its requirements for post-construction testing for small buildings.

DOE Response: DOE has taken these comments under consideration and will examine them and other requirements of this section during the required demonstration period following promulgation of the Interim Standards.

b. Metering Requirements

DOE received a few comments that the metering requirements of § 435.110 are not apropos. The first of these deals is the misconception that DOE is exceeding its mandate by addressing utility metering. The second concerns the use of individual tenant meters; unless the individual tenant meters are required for billing purposes, the commenter felt that the additional expense for meters in government facilities is generally not justified. Finally, it is suggested that some smaller buildings be exempted from the requirement for cost reasons.

DOE Response: There seems to be a misunderstanding about the metering process required by § 435.110. It is not the intention of DOE to try to regulate utility meters. Rather it is DOE's intent to have each "distinct utility-provided fuel source" metered. The purpose of the system is to measure and record delivered energy so as to identify when and where design energy use is being significantly exceeded and to permit timely corrective action to be taken. Such meters will be used in analyzing and reporting energy use.

With respect to tenant metering, when tenants are of a single Federal agency and no separate billing is required, the agency is free to define tenants to avoid unjustified cost/benefit results.

Finally, DOE agrees that metering some small buildings would be overly costly and has amended the interim standards accordingly.

c. DOE Training for Federal Agencies

Throughout the comments, but most prominently in those comments directed towards § 435.110, requests were made for simplification of the compliance process.

DOE Response: As mentioned earlier, DOE intends to make available easy-to-use computer programs that will help in determining compliance with the lighting, envelope, HVAC, and service hot water sections of the interim standards. In addition, DOE would like to provide further guidance through educational workshops, seminars, etc. It is presently preparing a plan for the required demonstration program and will link its educational planning to the demonstration.

d. Exemption for Fossil Fuel Equipment

A few who commented requested revision to §§ 10.3.1 and 10.3.2 which require individual meters for fossil fuel equipment. The comments suggested that requiring individual meters for fossil fuel equipment in high rise apartment buildings is impractical and will slant installations to electric equipment.

DOE Response: DOE believes that the proposed metering is consistent with that for other fuels in the standard and has made no change in this requirement.

14. General Comments—Section 435.111

a. Deletion of § 435.111 and/or § 435.112

Several who commented suggested that DOE eliminate § 435.111, the "Building Energy Cost Compliance Alternative." Others commenting on § 435.112, the "Building Energy Compliance Alternative," suggest that DOE eliminate that section and leave only § 435.111. The disagreements center around the perceived reasons for the inclusion of two separate energy paths in the interim standards and the basis for each. Those who disagree with the use of § 435.111 see it as intended primarily for builders of speculative or tenant-occupied buildings. Compliance under this alternative uses local monthly energy costs as a basis. Their contention is that while the alternative does provide for more design flexibility, the annual energy cost calculations ignore life-cycle costs. Others contend that the alternative discriminates against electricity because it appears to be based on "source" energy.

Those suggesting that § 435.112 be retained and § 435.111 deleted, present counter-arguments. They contend that DOE should focus on developing a method of accounting for the energy lost in the production and transmission of each form of energy. Others complain that it will take a sophisticated computer user to contend with either path.

DOE Response: DOE disagrees with the basis for all these comments. It contends that neither path discriminates against any fuel types. Rather it has presented two different compliance alternatives, each that provides maximum design flexibility, that are easy-to-use, and that provide similar criteria no matter which alternative is chosen.

b. Modeling of Cogeneration

DOE received a comment on the modeling of cogeneration when using this section. The proposed interim standards did not permit the sale of energy off-site that was supplied by either cogeneration or renewable energy sources as a credit. It was contended that the paragraph will effectively eliminate the use of cogeneration and renewable energy systems power in new building design.

DOE Response: DOE has not changed its provision and contends that the section allows the use of cogeneration and renewable energy sources and it only precludes using the proceeds from resale of electricity as a means of offsetting energy consumption costs for the building.

c. Prototype Building Requirements

Several who commented oppose the § 11.5 requirements for a Prototype Building. The typical comment was that a Prototype Building will generally give an unrealistic comparison with the Proposed Design of the building. Most suggested that the use of the Reference Building only is more appropriate.

DOE Response: DOE believes that the Prototype Building default assumptions are needed to maintain consistency and to provide a standard means of comparison for all designers.

15. General Comments—Section 435.112

a. Update Life-Cycle Cost Requirements

It has been suggested by a couple who commented that DOE should amend its life-cycle cost procedures, 10 CFR Part 436, to include the necessary provisions for non-government buildings.

DOE Response: The life-cycle cost procedures, 10 CFR Part 436, are developed and intended for use by the Federal government only. They are part of the requirements of DOE's Federal Energy Management Program. DOE has no intention of incorporating a methodology for non-government buildings. It suggests that private sector use of this section base its life-cycle cost analysis on accepted procedures for private sector construction.

IV. Technical Support Documents: Micro-Computer Programs That Will Ease the Use of the Interim Standards

Along with the interim standards DOE will issue several technical support documents that will assist the users of the interim standards in determining compliance. Each program will be an exact duplicate of the requirements and the compliance calculations contained in the relevant sections of the interim standards. The computer programs include the following:

- Lighting Program, inclusive of the prescriptive path, system performance path, and the lighting requirements for roads and grounds;
- Two (2) Envelope Programs, one each for the prescriptive path (ACP Tables) and for the system performance path; and
- HVAC and Service Hot Water Program, inclusive of prescriptive requirements (there is no system performance path for these areas).

The technical support documents will be available from: National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161.

The computer programs have been written in the "C" computer language. The compiled versions of the programs will be provided on a 5¼ inch computer diskette, which will be accompanied by a user's manual. The programs will run on any MS–DOS compatible micro-computer, requiring only the MS–DOS operating system. A listing of the source code will also be provided on request to DOE.

To run the programs, the following equipment will be needed:

- An IBM–PC, –XT, or –AT; COMPAQ; or MS–DOS compatible micro-computer with at least 256K RAM memory, and a double-sided, double-density floppy disk drive or a double-sided, double-density floppy disk drive and a hard disk;
- A monochrome or color monitor;
- An 8087 or 80287 or equivalent math coprocessor (optional); and
- MS–DOS operating system, version 2.0 or later.

V. Procedural Requirements

A. National Environmental Policy Act

DOE prepared and issued on May 6, 1987, concurrently with the proposed interim standards, an Environmental Assessment (EA) of the proposed interim standards under the Implementing Regulations of the Council of Environmental Quality (CEQ) (40 CFR Parts 1500–1800) and the National Environmental Policy Act of 1969 (NEPA), as amended, (Pub. L. 91–190, 4221 *et seq.*), which requires agencies to conduct environmental assessments when their regulations constitute a significant Federal action. A *Finding of No Significant Impact* was issued in the Federal Register at 52 FR 17224 *et seq.* on May 6, 1987. The Environmental Assessment concluded that no significant impacts will result to the indoor or outdoor environments from implementing the Interim Voluntary Performance Standards for New Commercial and Multi-family High Rise Residential Buildings that are mandatory for Federal agencies. Based upon the findings in the Environmental Assessment, DOE determined the proposed interim standards do not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of NEPA.

EPA Review: As required by section 7(a)(2), 15 U.S.C. 776(c)(2), of the Federal Energy Administration Act of 1974, 15 U.S.C. 761 *et seq.*, a copy of this proposed rule was submitted to the Administrator of the Environmental Protection Agency for comments on the impact of the interim rule on the quality of the environment. The following comments were provided:

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The U.S. Environmental Protection Agency (EPA) supports the general goal of the rulemaking, which is to identify measures by which energy can be conserved. EPA has some specific comments concerning the potential environmental effects from radon within structures built to comply with DOE's performance standards.

The President signed the Indoor Radon Abatement Act on October 28, 1988. This law established a national goal that "air within buildings in the United States should be as free of radon as the ambient air outside of the buildings" and places a wide variety of new requirements on the EPA Administrator toward meeting this goal.

Several of the requirements established by the Act create areas of common interest between EPA and DOE with respect to the Interim Final Rule:

- Section 304 (Model Construction Standards and Techniques) requires the Administrator to "develop model construction standards and techniques for controlling radon levels within new buildings." This section also requires the Administrator to "work to ensure that organizations responsible for developing national model building codes * * * adopt the Agency's model standards and techniques." EPA believes that the DOE standards constitute a "national model building code."
- Section 309 (Study of Radon in Federal Buildings) requires all Federal agencies owning buildings to "conduct a study for the purpose of determining the extent of radon contamination in such buildings." This section also requires the Administrator to "identify and compile a list of areas * * * which have a high probability of including Federal buildings which have elevated levels of radon." This section also requires the Administrator to provide to the departments or agencies conducting studies guidance and related information concerning methods for reducing radon levels.

The public good is best served if EPA's radon related requirements and DOE's conservation requirements mesh smoothly. While these are not mutually exclusive requirements, there is no assurance that the pursuit of one will necessarily result in the accomplishment of the other. DOE's standards were initially developed before EPA's radon protection mandate was established by law. EPA recommends that the appropriate staffs of both agencies engage in some dialogue to ensure that DOE's standards do not result in construction requirements that later have to be modified to conform to EPA radon reduction guidance.

B. Executive Order No. 12291

Section 3 of Executive Order No. 12291, 46 FR 13193, February 19, 1981, requires that DOE determine whether a proposed rule is a "major rule" as defined by Section 1(b) of that Order, and prepare a preliminary regulatory impact analysis for rules which fall within that definition.

DOE prepared an "Economic Analysis," 52 FR 17065, May 6, 1987, wherein DOE reviewed the proposed Final Interim Rule. DOE has determined that the rule will not have an annual effect on the national economy of $100 million or more, nor certain other effects listed in the Order, and that the Final Interim Rule is not a "major rule" within the meaning of the Order.

The rule was submitted to the Director of the Office of Management and Budget for a 10-day review period as required by section 3(c)(3) of Executive Order No. 12291. The Director has concluded his review under that Executive Order.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 603, 604) requires DOE to calculate the effect its rulemaking will have on small businesses in the nation. DOE analyzed the small business impacts the rule would have, including its impacts upon manufacturers of building and construction materials and equipment, architects, builders, construction companies and utilities.

In accordance with the findings of Chapter 3 of the Economic Analysis, 52 FR 17065, May 6, 1987, DOE certifies that the Interim Energy Conservation Standards for New Commercial and Multi-Family High Rise Residential Buildings will not have significant impact on a substantial number of small entities.

D. Paperwork Reduction Act

No information collection or record keeping requirements are imposed on the public by the Final Interim Rule. Accordingly, authorizations are not required under the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*, as amended, or its implementing regulations, 5 CFR Part 122.

E. Federalism Effects

Executive Order 12612, 52 FR 41685 (October 30, 1987), requires that regulations or rules be reviewed for any substantial direct effects on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among various levels of government. If there are sufficient "substantial direct effects," then Executive Order 12612 requires preparation of a Federalism Assessment to be used in all decisions involved in promulgating and implementing a regulation or a rule. Sections 2 through 5 of Executive Order 12612 set forth the principles, criteria, and requirements to be used in preparing a Federalism Assessment.

The principal impacts of today's rule will be on commercial and multi-family high rise residential buildings constructed by the Federal government. These interim standards are being promulgated pursuant to legislation that states "except in the case of Federal buildings, voluntary performance standards shall be developed solely as guidelines for the purpose of providing technical assistance for the design and construction of energy efficient buildings." Therefore, the rule will not have a substantial direct effect on the States, the relationship between the States and Federal government, or distribution of the power and responsibilities among various levels of government.

F. Section 32 of the Federal Energy Administration Act of 1974

The interim rule references several building industry standards and requires building designers to use these standards in order to comply with the interim standards. As required by Section 32, 15 U.S.C. 788, of the Federal Energy Administration Act of 1974, 15 U.S.C. 761 *et seq.*, DOE must identify, by name, the organization that promulgated such standards and state whether the organization complied with the participatory requirements specified in the section.

The building industry standards referenced in the rule are listed below:

ANSI/NFPA 1970, National Electric Code, National Fire Protection Association, Quincy, MA 02269, 1987 revision.

ANSI/ASHRAE Standard 55–1981, Thermal Environmental Conditions for Human Occupancy, American Society of Heating, Refrigerating, and Air Conditioning Engineers, Inc., Atlanta, GA, 1981.

ARI Standard 310–87, Packaged Terminal Air Conditioners, Air Conditioning & Refrigeration Institute, Arlington, VA 22209, 1987.

ARI Standard 360–87, Packaged Terminal Heat Pumps, Air Conditioning & Refrigeration Institute, Arlington, VA 22209, 1987.

ANSI/AHAM RAC–1–1982, Room Air Conditioners, Association of Home Appliance Manufacturers, Chicago, IL 60606, 1982.

ARI Standard 240–86, Air Source Unitary Heat Pump Equipment, Air Conditioning & Refrigeration Institute, Arlington, VA 22209, 1986.

ARI Standard 320–86, Water Source Heat Pumps, Air Conditioning & Refrigeration Institute, Arlington, VA 22209, 1986.

ANSI/IEEE 112–1984, Polyphase Induction Motors and Generators, Test Procedures for, Institute of Electrical and Electronics Engineers, New York, NY 10017, 1984.

ANSI/NEMA MG 1–87, Motors and Generators, National Electrical Manufacturers Association, Washington, DC 20037, 1987.

NEMA MG 10–83, Energy Guide for Selection and Use of Polyphase Motors, National Electrical Manufacturers Association, Washington, DC 20037, 1983.

ANSI C82.3–1984, Fluorescent Lamp Ballasts, Methods of Measurement of, American National Standards Institute, New York, NY 10018, 1984.

IES LM–41–1985, Approved Method For Photometric Testing of Indoor Fluorescent Luminaires, Illuminating Engineering Society of North America, New York, NY 10017, 1985.

IES LM–10–1983, Approved Method for Photometric Testing of Indoor Luminaires Using High-Intensity Discharge Lamps or Incandescent Filament Lamps, Illuminating Engineering Society of North America, New York, NY 10017, 1983.

IES LM–46–1985, Approved Method for Photometric Testing of Indoor Luminaires Using High-Intensity Discharge Lamps or Incandescent Filament Lamps, Illuminating Engineering Society of North America, New York, NY 10017, 1985.

IES LM–35–1985, Approved Method for Photometric Testing of Floodlights Using Incandescent Filament or Discharge Lamps, Illuminating Engineering Society of North America, New York, NY 10017, 1985.

ASTM C177–85, Test Method for Steady-State Heat Flux Measurements and Thermal Transmission Properties by Means of the Guarded-Hot-Plate Apparatus, American Society of Testing and Measurement, Philadelphia, PA 19103, 1985.

ASTM C518–85, Test Method for Steady-State Heat Flux Measurements and Thermal Transmission Properties by Means of the Heat Flow Meter Apparatus, ASTM, Philadelphia, PA 19103, 1985.

ASTM C236–80, Test Method for Steady-State Thermal Performance of Building Assemblies by Means of a Guarded Hot Box, ASTM, Philadelphia, PA 19103, 1980.

ASTM C976–82, Test Method for Thermal Performance of Building Assemblies by Means of a Calibrated Hot Box, ASTM, Philadelphia, PA 19103, 1982.

ASTM E283–84, Test Method for Rate of Air Leakage Through Exterior Windows, Curtain Walls, and Doors, ASTM, Philadelphia, PA 19103, 1984.

ANSI/AAMA 101–1985, Aluminum Prime Windows and Sliding Glass Doors, American Architectural Manufacturers Association, Des Plaines, IL 60018, 1985.

ASTM D4099–83, Specification for Poly (Vinyl Chlorids) (PVC) Prime Windows, ASTM, Philadelphia, PA 19103, 1983.

ANSI/NWMA I.S.2–83, Wood Window Units, National Wood Window and Door Association (formerly the National Woodwork Manufacturers Association), Des Plaines, IL 60018, 1983.

ANSI/NWMA I.S.3–83, Wood Sliding Patio Doors, National Wood Window and Door Association (formerly the National Woodwork Manufacturers Association), Des Plaines, IL 60018, 1983.

ASHRAE Standard 62–1981, Ventilation for Acceptable Indoor Air, American Society of Heating, Refrigerating, and Air Conditioning Engineers, Inc., Atlanta, GA, 1981.

Commercial and Industrial Insulation Standards, Midwest Insulation Contractors Association, 2017 South 139th Circle, Omaha, NE 68144, 1983.

ASTM C335–84, Test Method for Steady-State Heat Transfer Properties of Horizontal Pipe Insulation, ASTM, Philadelphia, PA 19103, 1984.

HVAC Duct Construction Standards—Metal and Flexible, 1st Ed., Sheet Metal and Air Conditioning Contractors National Association, Vienna, VA 22180, 1985.

HVAC Duct Leakage Test Manual, 1st Ed., Sheet Metal and Air Conditioning Contractors Association, Vienna, VA 22180, 1985.

Fibrous Glass Duct Construction Standard, 5th Ed., Sheet Metal and Air Conditioning Contractors Association, Vienna, VA 22180, 1979.

ARI Standard 210–81, Unitary Air-Conditioning Equipment, Air Conditioning & Refrigeration Institute, Arlington, VA 22209, 1981.

ARI Standard 340–86, Commercial and Industrial Unitary Heat Pump Equipment, Air Conditioning & Refrigeration Institute, Arlington, VA 22209, 1986.

ARI Standard 360–86, Commercial and Industrial Unitary Air-Conditioning Equipment, Air Conditioning & Refrigeration Institute, Arlington, VA 22209, 1986.

ARI Standard 365–87, Commercial and Industrial Unitary Air-Conditioning Condensing Units, Air Conditioning & Refrigeration Institute, Arlington, VA 22209, 1987.

ARI Standard 590–86, Reciprocating Water-Chilling Packages, Air Conditioning & Refrigeration Institute, Arlington, VA 22209, 1986.

ARI Standard 550–86, Centrifugal or Rotary Water-Chilling Packages, Air Conditioning & Refrigeration Institute, Arlington, VA 22209, 1986.

ANSI A112.18.1M–1979, Finished and Rough Brass Plumbing Fixtures, American National Standards Institute, New York, NY 10018, 1979.

CTI Standard—201 (86), Certification Standard for Commercial Water Cooling Towers, Cooling Tower Institute, P.O. Box 73383, Houston, TX 77273, 1986.

ARI Standard 325–86, Ground Water-Source Heat Pumps, Air Conditioning & Refrigeration Institute, Arlington, VA 22209, 1985.

ARI Standard 210/240–84, Unitary Air-Conditioning and Air Source Heat Pump Equipment; Addendum 210/240–84, Air Conditioning & Refrigeration Institute, Arlington, VA 22209, 1984.

AGA Z21.13–82, Gas-Fired Low-Pressure Steam and Hot Water Boilers; Addenda Z21.13A–1983, American Gas Association, Cleveland, OH 44131, 1982.

ASME PTC 4.1–64, Steam Generating Units; Addendum PTC 4.1A–68, Addendum PTC 4.1B–69 (R–1985), New York, NY 10017, 1964.

U.L. 795–73, Commercial-Industrial Gas-Heating Equipment (R–1986), Underwriters Laboratories, Northbrook, IL 60062, 1973.

ANSI/U.L. 726–75, Oil-Fired Boiler Assemblies (R–1986), Underwriters Laboratories, Northbrook, IL 60062, 1975, revised 1986.

H.I. Testing & Rating Standard for Heating Boilers, Hydronics Institute, Berkeley Heights, NJ 07922, 1982.

AGA Z21.47–83, Gas-Fired Central Furnaces (Except Direct Vent and Separated Combustion System Furnaces); Addenda Z21.47A–1985, Addenda Z21.47B–1986, American Gas Association, Cleveland, OH 44131, 1983, 1986.

U.L. 727–86, Oil-Fired Central Furnaces, Underwriters Laboratories, Northbrook, IL 60062, 1986.

AGA Z83.8–85, Gas Unit Heaters; Addenda Z83.8A–1986, American Gas Association, Cleveland, OH 44131, 1985.

AGA Z83.9–86, Gas-Fired Duct Furnaces, American Gas Association, Cleveland, OH 44131, 1986.

U.L. 731–75, Oil-Fired Unit Heaters (R–1985), Underwriters Laboratories, Northbrook, IL 60062, 1975, revised 1985.

DOE finds that while each of the organizations listed promulgates its standards in a manner that allows for the response and critique of interested persons, none of the organizations follows procedures that meet all of the specific requirements of Section 32.

List of Subjects in 10 CFR Part 435

Architects, Building code officials, Buildings, Energy conservation, Energy conservation building performance standards, Engineers, Federal buildings and facilities, Housing, Insulation, and Voluntary performance standards.

In consideration of the foregoing, the Department of Energy hereby amends Part 435 of Chapter II of Title 10 of the Code of Federal Regulations by adding a new Subpart A as set forth below:

Dr. John R. Berg,

Assistant Secretary, Conservation and Renewable Energy.

10 CFR Part 435 is amended as follows:

PART 435—ENERGY CONSERVATION VOLUNTARY PERFORMANCE STANDARDS FOR NEW BUILDINGS; MANDATORY FOR FEDERAL BUILDINGS

1. The authority citation for 10 CFR Part 435 is revised to read as follows:

Authority: Energy Conservation Standards for New Buildings Act of 1976, as amended, (42 U.S.C. 6831–6870), enacted as Title III of the Energy Conservation and Production Act; (42 U.S.C. 6201 *et seq.*); (42 U.S.C. 6255); section 545, National Energy Conservation Policy Act; Department of Energy Organization Act, (42 U.S.C. 7101 *et seq.*).

2. A new Subpart A, consisting of §§ 435.97 through 435.112, is added to 10 CFR Part 435 to read as follows:

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Subpart A—Voluntary Performance Standards for New Commercial and Multi-Family High Rise Residential Buildings; Mandatory for Federal Buildings

Sec.
435.97 Purpose.
435.98 Scope.
435.99 General definitions and acronyms.
435.100 Explanation of numbering system for standards.
435.101 Implementation and compliance procedures for Federal agencies.
435.102 Principles of effective energy building design.
435.103 Lighting.
435.104 Auxiliary systems and equipment.
435.105 Building envelope.
435.106 Electric power and distribution.
435.107 Heating, ventilation and air-conditioning (HVAC) systems.
435.108 Heating, ventilation, and air-conditioning (HVAC) equipment.
435.109 Service water heating systems.
435.110 Energy management.
435.111 Building energy cost compliance alternative.
435.112 Building energy compliance alternative.

Subpart A—Voluntary Performance Standards for New Commercial and Multi-Family High Rise Residential Buildings; Mandatory for Federal Buildings

§ 435.97 Purpose.

(a) This subpart establishes energy conservation voluntary performance standards for the design of new commercial and multi-family high rise residential buildings. The voluntary performance standards are designed to achieve the maximum practicable improvements in energy efficiency and increases in the use of non-depletable sources of energy.

(b) The voluntary performance standards will be used by Federal agencies for the design of new Federal commercial and multi-family high rise residential buildings.

(c) Except in the case of new commercial and multi-family high rise residential buildings, which are Federal buildings, voluntary performance standards prescribed under this subpart are developed solely as guidelines for the purpose of providing technical assistance for the design of energy efficient buildings.

§ 435.98 Scope.

(a) The voluntary performance standards for new commercial and multi-family high rise residential buildings apply to the design of a new commercial or multi-family high rise residential building, except for the following:

(1) A building constructed and developed for residential occupancy, unless the building is a multi-family high rise residential building with 3 or more stories;

(2) Heating, cooling, ventilating, or service hot water requirements for those spaces where processes occur for purposes other than occupant comfort and sanitation, and which impose thermal loads in excess of 5% of the loads that would otherwise be required for occupant comfort and sanitation without the process;

(3) Envelope requirements for those spaces where heating or cooling requirements are excepted in paragraph (a)(2) of this section;

(4) Lighting for tasks not listed or encompassed by areas or activities listed in Table 3.5–1; and

(5) Buildings that are composed entirely of spaces listed in paragraphs (a) (2), (3), and (4) of this section.

§ 435.99 General definitions and acronyms.

(a) For the purpose of this subpart:

"Accessible (as applied to equipment)" means admitting close approach; not guarded by locked doors, elevation, or other effective means. (See also *Readily Accessible.*)

"Adjusted Lighting Power" means lighting power, ascribed to a luminaire(s), that has been reduced by deducting a lighting power control credit based on use of an automatic control device.

"Annual Fuel Utilization Efficiency" means the ratio of annual output energy to annual input energy that includes any non-heating season pilot input loss.

"Air Conditioning, Comfort" means treating air to control its temperature, relative humidity, cleanliness, and distribution to meet the comfort requirements of the occupants of the conditioned space. Some air conditioners may not accomplish all of these controls.

"Ambient Lighting" means lighting that produces general illumination throughout an area.

"Area Factor" means a multiplying factor that adjusts the base unit power density (UPD) for spaces of various sizes to account for the impact of room configuration on lighting power utilization.

"Automatic" means a self-acting, operating by its own mechanism, when actuated by some impersonal influence, such as, a change in current strength, pressure, temperature or mechanical configuration. (See also *Manual.*)

"Ballast" means a device used with an electric-discharge lamp to obtain the necessary circuit conditions (voltage, current, and wave form) for starting and operating.

"Ballast Efficacy Factor—Fluorescent" means the ratio of the relative light output to the power input in watts, at specified test conditions, expressed as a percent.

"Ballast Factor" means the ratio of a commercial ballast lamp lumens to a reference ballast lamp lumens, used to correct the lamp lumen output from rated to actual.

"Boiler Capacity" means the rated heat output in Btu/h of the boiler, at the design inlet and outlet conditions and rated fuel/energy input.

"British Thermal Unit" means approximately the amount of heat required to raise the temperature of one pound of water from 59 °F to 60 °F.

"Building" means any new structure to be constructed that includes provision for a heating or cooling system, or both, or for a hot water system.

"Building Code" means a legal instrument which is in effect in a state or unit of general purpose local government, the provisions of which must be adhered to if a building is to be considered to be in conformance with law and suitable for occupancy and use.

"Building Design" means the architectural and engineering drawings and specifications used for the construction of a new building.

"Building Energy Cost" means the computed annual energy cost of all purchased energy for the building, calculated using the methods of Section 435.111 of these standards.

"Building Envelope" means the elements of a building that enclose conditioned spaces through which thermal energy may be transferred to or from the exterior or to or from unconditioned spaces.

"Building Type" means the classification of a building by usage. In this regulation the following classifications of buildings are defined by these uses:

(1) "Assembly" means a building or structure for the gathering together of persons, such as auditoriums, churches, dance halls, gymnasiums, theaters, museums, passenger depots, sports facilities, and public assembly halls.

(2) "Health and Institutional" means a building or structure for the purpose of providing medical treatment, confinement or care, and sleeping facilities such as hospitals, sanitariums, clinics, orphanages, nursing homes, mental institutions, reformatories, jails, and prisons.

(3) "Hotel/Motel" means a building or structure for transient occupancy, such as resorts, hotels, motels, barracks, and dormitories.

(4) "Multi-Family" means a building or structure containing three or more dwelling units. (See *Dwelling Units*, and *Multi-Family Dwelling.*)

(5) "Office (Business)" means a building or structure for office, professional, or service type transactions, such as medical offices, banks, libraries, and business offices, including governmental office buildings.

(6) "Restaurant" means a building or a structure for the consumption of food or drink, including fast food, coffee shops, cafeterias, bars, and restaurants.

(7) "Retail (Mercantile)" means a building or a structure for the display and sale (wholesale or retail) of merchandise, such as shopping malls, food markets, auto dealerships, department stores, and specialty shops. (See also *Retail Establishments.*)

(8) "School (Educational)" means a building or structure for the purpose of instruction, such as schools, colleges, universities, and academies.

(9) "Warehouse (Storage)" means a building or structure for storage, such as aircraft hangers, garages, warehouses, storage buildings, and freight depots.

"Check Metering" means measurement instrumentation for the supplementary monitoring of energy (electric, gas, oil, etc.) consumption, in addition to the revenue metering furnished by the utility, to isolate the various categories of energy use to permit conservation and control.

"Coefficient of Performance—Cooling" means the ratio of the rate of heat removal to the rate of energy input in consistent units, for a complete cooling system or factory assembled equipment, as tested under a nationally recognized standard or designated operating conditions.

"Coefficient of Performance, Heat Pump—Heating" means the ratio of the rate of heat delivered to the rate of energy input, in consistent units, for a complete heat pump system under designated operating conditions. When checking compliance with the heat pump equipment COP's listed in the tables in Section 435.106.

"Combined Thermal Transmittance Values" (See *Thermal Transmittance, Overall.*)

"Commercial Building" means a building other than a residential building, including any building developed for industrial or public purposes.

"Conditioned Floor Area" means the area of the conditioned space measured at floor level from the interior surfaces of the walls.

"Conditioned Space" means a volume within a building that is designed to be heated and/or cooled, directly or indirectly.

"Connected Lighting Power" means the power required to energize luminaires and lamps installed and connected to the building electrical service, in watts.

"Control Loop, Local" means a control system consisting of a sensor, a controller, and a controlled device.

"Cooled Space" means an enclosed area within a building that has a refrigeration system whose sensible capacity exceeds 5 $Btu/h \cdot ft^2$ or is capable of maintaining space dry bulb temperatures of 90 °F or less at design cooling conditions.

"Daylight Sensing Control" means a device that automatically regulates the power input to electric lighting near the fenestration to maintain the desired workplace illumination, thus taking advantage of direct or indirect sunlight.

"Dead Band (Dead Zone)" means the range of values within which an input variable can be varied without initiating any noticeable change in the output variable.

"Default Assumption" means the value of an input used in a calculation procedure when a value is not entered by the designer.

"Degree-Day" means a unit, based upon temperature difference and time, used in estimating fuel consumption and specifying nominal heating load of building in winter. For any day, when the mean temperature is less than a reference temperature, typically 65 °F, there are as many Degree-Days as Fahrenheit degrees difference in temperature between the mean temperature for the day and the reference temperature.

"Degree Day, Cooling" means a unit, based upon temperature difference and time, used in estimating cooling energy consumption. For any one day, when the mean temperature is more than a reference temperature, typically 65 °F, there are as many Degree Days as degrees Fahrenheit temperature difference between the mean temperature for the day and the reference temperature. Annual Cooling Degree Days (CDD) are the sum of the degree days over a calendar year.

"Degree Day, Heating" means a unit, based upon temperature difference and time, used in estimating heating energy consumption. For any one day, when the mean temperature is less than a reference temperature, typically 65 °F, there are as many Degree Days as degrees Fahrenheit temperature difference between the mean temperature for the day and the reference temperature. Annual Heating Degree Days (HDD) are the sum of the degree days over a calendar year.

"Demand (Electric)" means the rate at which electric energy is delivered to or by a system, part of a system, or a piece of equipment; expressed in kilowatts, kilovoltamperes; or other suitable units at a given instant or averaged over any designated period.

"Design Conditions" means the exterior and interior environmental parameters specified for air conditioning and electrical design for a facility.

"Design Energy Consumption" means the computed annual energy usage of a proposed building design.

"Design Energy Costs" means the computed annual energy expenditures of a proposed building design.

"Dwelling Unit" means a single housekeeping unit comprised of one or more rooms providing complete, independent living facilities for one or more persons including permanent provisions for living, sleeping, eating, cooking, and sanitation.

"Economizer, Air" means a ducting arrangement and automatic control system that allows a cooling supply fan system to supply outside air to reduce or eliminate the need for mechanical refrigeration during mild or cold weather.

"Economizer, Water" means a system by which the supply air of a cooling system is cooled directly and/or indirectly by evaporation of water, or by other appropriate fluid, in order to reduce or eliminate the need for mechanical refrigeration.

"Efficiency, HVAC System" means the ratio of the useful energy output (at the point of use) to the energy input in consistent units for a designated time period, expressed in percent.

"Emergency System (Back Up System)" means a system which exists for the purpose of operating in the event of failure of a primary system.

"Energy" means the capability for doing work; having several forms that may be transformed from one to another, such as thermal (heat), mechanical (work), electrical, and chemical.

"Energy Cost" means the annual cost of energy by unit and type of energy.

"Energy Cost Budget" means the maximum allowable computed annual energy expenditure for a proposed building.

"Energy Efficiency Ratio" means the ratio of net equipment cooling capacity in Btu/h to total rate of electric input in watts under designated operating conditions. When consistent units are used, this ratio becomes equal to COP. (See also *Coefficient of Performance.*)

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"Energy Management System" means a control system designed to monitor the environment and the use of energy in a facility and to adjust the parameters of local control loops to conserve energy while maintaining a suitable environment.

"Energy, Recovered" (See *Recovered Energy*.)

"Enthalpy" means a thermodynamic property of a substance defined as the sum of its internal energy plus the quantity PV/J, where P=pressure of the substance, V=its volume, and J=the mechanical equivalent of heat; formerly called total heat and heat content.

"Exterior Envelope" (See *Building Envelope*.)

"Fenestration" means any light-transmitting section in a building wall or roof. The fenestration includes glazing material, which may be glass or plastic; framing, mullions, muntins, and dividers; external shading devices; internal shading devices, and integral (between-glass) shading devices.

"Federal Agency" means any department, agency, corporation, or other entity or instrumentality of the executive branch of the Federal Government, including the United States Postal Service, the Federal National Mortgage Association, and the Federal Home Loan Mortgage Corporation.

"Federal Building" means any building to be constructed by, or for the use of, any Federal Agency which is not legally subject to State or local building codes or similar requirements.

"Footcandle" means the unit of illuminance on a surface one square foot in area on which there is a uniformly distributed flux of one lumen, or the illuminance produced on a surface all points of which are at a distance of one foot from a directionally uniform point source of one candela.

"General Lighting" means lighting designed to provide illumination throughout an area, exclusive of any provision for special local requirements.

"Gross Floor Area" means the sum of the areas of the several floors of the building, including basements, mezzanine and intermediate-floored tiers and penthouses of headroom height, measured from the exterior faces of exterior walls or from the centerline of walls separating buildings, but excluding covered walkways, open roofed-over areas, porches and similar spaces, pipe trenches, exterior terraces or steps, chimneys, roof overhangs, and similar features.

"Gross Lighted Area" means the sum of the total lighted areas of a building measured from the inside of the perimeter walls, for each floor of the building.

"Gross Roof Area" means the total surface of the roof assembly exposed to the outside air, including all roof/ceiling and skylight components through which heat may flow between indoor and outdoor environments, excluding service openings.

"Gross Exterior Wall Area" means the total surface of the wall assembly exposed to the outside air and enclosing a heated or cooled space consisting of opaque surfaces, including between floor spandrels, peripheral edges of flooring and window areas including sash and door areas but excluding vents, grilles, and pipes.

"HVAC System" means the equipment distribution network and terminals that provide either collectively or individually the processes of heating, ventilating, and/or air conditioning to a building.

"HVAC System Efficiency" (See *Efficiency, HVAC System*.)

"Heat" means the form of energy that is transferred by virtue of a temperature difference or a change in state of a material.

"Heat Capacity" means the amount of heat necessary to raise the temperature of a given mass one degree. Numerically the mass multiplied by the specific heat.

"Heated Space" means a volume within a building which is provided with a positive supply of thermal energy by a system whose output capacity either exceeds 10 Btu/h-ft ^{2} or is capable of maintaining a space dry-bulb temperature of 50 °F or more at design building conditions.

"Heating System Performance Factor" means the total heating output of a heat pump during its normal annual usage period for heating, in Btu, divided by the total electric energy input during the same period, in watt-hours.

"Heat Trap" means a device coupled to the inlet and outlet of a water heater that effectively restricts the natural tendency of hot water to rise in the vertical pipe during periods of standby.

"Humidistat" means an automatic control device responsive to changes in humidity.

"Illuminance" means the density of the luminous flux incident on a surface. It is the quotient of the luminous flux multiplied by the area of the surface when the latter is uniformly illuminated. (See also *Footcandle*.)

"Industrial Process" means any manufacturing or other process whose energy requirements are not primarily intended to contribute to the heating, cooling, lighting, ventilation, or service hot water energy load requirements of the building.

"Infiltration" means the uncontrolled inward air leakage through cracks and crevices in any building element and around windows and doors of a building.

"Insolation" means the rate of solar energy incident on a unit area with a given orientation.

"Integrated Part-Load Value" means a single number figure of merit for airconditioning and heat pump equipment based on weighted operation at a set of less than full capacities for the equipment.

"Lighting Power Budget" means the lighting power, in watts, allowed for an interior or exterior area or activity.

"Lighting Power Control Credit" means the amount of interior connected lighting power which may be added to the Interior Lighting Power Allowance for lights in a space which is turned off or dimmed by automatic control devices.

"Lumen" means SI unit of luminous flux. Radiometrically, it is determined from the radiant power. Photometrically, it is the luminous flux emitted within a unit solid angle (one steradian) by a point source having a uniform luminous intensity of one candela.

"Lumen Maintenance Control" means a device that senses the illumination level and causes an increase/decrease of illuminance to maintain a preset illumination level.

"Luminaire" means a complete lighting unit consisting of a lamp or lamps together with the parts designed to distribute the light, to position and protect the lamps, and to connect the lamps to the power supply.

"Luminaire Efficiency" means the ratio of luminous flux (lumens) emitted by a luminaire to that emitted by the lamp or lamps used therein.

"Manual (Non-Automatic)" means action requiring personal intervention for its control. As applied to an electric controller, non-automatic control does not necessarily imply a manual controller, but only that personal intervention is necessary. (See *Automatic*.)

"Marked Rating" means the design load operating conditions of a device as shown by the manufacturer on the nameplate or otherwise marked on the device.

"Minimum Life Cycle Cost Methodology" means the methodology specified in Subpart A of 10 CFR Part 436.

"Motor Efficiency, Nominal" means the median efficiency occurring in a population of motors of the same manufacturer and rating.

"Multi-Family High Rise Residential Building" means a residential building containing three or more dwelling units

and is designed to be 3 or more stories above grade.

"Multi-Family Low Rise Residential Building" means a residential building containing three or more dwelling units and is designed not to exceed two stories above grade.

"Non-Depletable Energy Sources" means sources of energy, excluding minerals, derived from incoming solar radiation; thermal chemical or electrical energy derived directly from conversion of incident solar radiation; wind, waves and tides, lake, or pond thermal differences; and energy derived from the internal heat of the earth.

"Occupancy Sensor" means a device that detects the presence or absence of people within an area and causes lighting, equipment, and/or appliances to be adjusted accordingly.

"Opaque Areas" means all exposed areas of a building envelope which enclose conditioned space, except fenestration areas and building service openings, such as vents, grilles, and pipes.

"Orientation" means the directional placement of a building on a building site with reference to the building's longest horizontal axis, or, if none, with reference to the designated main entrance.

"Outdoor (Outside) Air" means air taken from the exterior of the building that has not been previously circulated through the building. (See also *Ventilating Air*.)

"Ozone Depletion Factor" means a relative measure of the potency of chemicals in depleting stratospheric ozone. The ozone depletion factor potential depends upon the chlorine and the bromine content and atmospheric lifetime of the chemical. The depletion factor potentials are normalized such that the factor for CFC–11 is set equal to unity and the factors for the other chemicals indicate their potential relative to CFC–11.

"Packaged Terminal Air-Conditioner" means a factory-selected wall sleeve and separate unencased combination of heating and cooling components, assemblies or sections, intended for mounting through the wall to serve a single room or zone. It includes heating capability by hot water, steam, or electricity.

"Packaged Terminal Heat Pump" means a PTAC capable of using the refrigeration system in a reverse cycle or heat pump mode to provide heat.

"Piping" means a system for conveying fluids, including pipes, valves, strainers, and fittings.

"Plenum" means an enclosure that is part of the air handling system and is distinguished by having a very low air velocity. A plenum often is formed in part or in total by portions of the building.

"Power" means, in connection with machines, the time rate of doing work; in connection with the transmission of energy of all types, the rate at which energy is transmitted; in inch-pound units, is measured in watts (W) or British thermal units per hour (Btu/h).

"Power Adjustment Factor" means a modifying factor that adjusts the effective connected lighting power of a space to account for the use of energy conserving lighting control devices.

"Power Factor" means the ratio of total watts to the root-mean-square (RMS) volt amperes.

"Prescribed Assumption" means a fixed value of an input to the standard calculation procedure.

"Process Energy" means energy consumed in support of a manufacturing, industrial, or commercial process, other than the maintenance of comfort and amenities for the occupants of a building.

"Process Load" means the calculated or measured time-integrated load on a building resulting from the consumption or release of process energy.

"Proposed Design" means a prospective design for a building that is to be evaluated for compliance.

"Prototype Building" means a generic building design of the same size and occupancy type as the proposed design, which complies with the prescriptive requirements of the standards and has prescribed assumptions used to generate the energy budget concerning shape, orientation, HVAC, and other system designs.

"Public Facility Restroom" means a restroom used by the transient public.

"Radiant Comfort Heating" means a system in which temperatures of room surfaces are adjusted to control the rate of heat loss by radiation from occupants.

"Readily Accessible" means capable of being reached quickly for operation, renewal, or inspections, without requiring those to whom ready access is requisite to climb over or remove obstacles or to resort to portable ladders, chairs, and so on. (See also *Accessible*.)

"Recooling" means lowering the temperature of air that has been previously heated by a heating system.

"Recovered Energy" means energy utilized which would otherwise be wasted (not contributing to a desired end use) from an energy utilization system.

"Reference Building" means a specific building design that has the same form, orientation and basic systems as the proposed design and meets all the criteria of the prescriptive compliance method.

"Reflectance" means the ratio of the light reflected by a surface to the light incident upon it.

"Reheating" means raising the temperature of air that has been previously cooled either by a refrigeration or an economizer system.

"Reset" means adjustment of the controller set point to a higher or lower value automatically or manually.

"Residential" means any structure which is constructed and developed for residential occupancy.

"Retail Establishments" means, for the purpose of determining lighting power limit, buildings, the primary functions of which are designed to be:

(1) Type A—Jewelry Merchandising, where the minute display and examination of merchandise is critical.

(2) Type B—Fine Merchandising: Fine apparel and accessories, china, crystal and silver, art galleries, etc., where the detailed display and examination of merchandise is important.

(3) Type C—Mass Merchandising, where focused display and detailed examination of merchandise is important.

(4) Type D—General Merchandising: General apparel, variety, stationery, books, sporting goods, hobby, cameras, gift, luggage, etc., where general display and examination of merchandise are adequate.

(5) Type E—Food & Miscellaneous: Bakeries, hardware and housewares, grocery, appliances and furniture, etc., where appetizing appearance is important.

(6) Type F—Service Establishments, where functional performance is important.

"Roof" means those portions of the building envelope including all opaque surfaces, fenestration, doors, and hatches which are above conditioned space and which are horizontal or tilted at less than 45° from horizontal. (See also *Walls*.)

"Room Air Conditioner" means an encased assembly designed as a unit to be mounted in a window or through a wall, or as a console. It is designed primarily to provide free delivery of conditioned air to an enclosed space, room, or zone. It includes a prime source of refrigeration for cooling and dehumidification and means for circulating and cleaning air, and may also include means for ventilating and heating.

"Seasonal Energy Efficiency Ratio" means the total cooling output of an air conditioner during its normal annual

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usage period for cooling, in Btu/h, divided by the total electric energy input during the same period, in watt-hours, as determined by 10 CFR, Part 430.

"Service Systems" means all energy-using or distributing components in a building that are operated to support the occupant or process functions housed therein, including HVAC, service water heating, illumination, transportation, cooking or food preparation, laundering or similar functions.

"Service Water Heating" means the supply of hot water for purposes other than comfort heating and process requirements.

"Service Water Heating Demand" means the maximum design rate of water withdrawal from a service water heating system in a designated period of time (usually an hour or a day).

"Shading Coefficient" means the ratio of solar heat gain through fenestration, with or without integral shading devices, to that occurring through unshaded ⅛ inch thick clear, double strength glass.

"Shell Building" means a building for which the envelope is designed and/or constructed prior to knowing the occupancy type. (See also *Speculative Building.*)

"Speculative Building" means a building for which the envelope is designed and/or constructed prior to the design of the lighting and/or HVAC systems. A speculative building differs from a shell building in that the intended occupancy is known for the speculative building. (See also *Shell Building.*)

"Standard Calculation Procedure" means an energy simulation model, and a set of input assumptions, that produce estimates of annual energy consumption for heating, cooling, ventilation, lighting, and other uses and that account for the dynamic thermal performance of the building.

"System" means a combination of equipment and/or controls, accessories, interconnecting means, and terminal elements by which energy is transformed so as to perform a specific function, such as HVAC, service water heating, or illumination.

"Tandem Wiring" means pairs of luminaires operating with one lamp in each luminaire powered from a single two-lamp ballast contained in the other luminaire.

"Task Lighting" means lighting that provides illumination for specific visual functions and is directed to a specific surface or area.

"Task Location" means an area of the space where significant visual functions are performed and where lighting is required above and beyond that required for general ambient use.

"Terminal Element" means a device by which the transformed energy from a system is finally delivered; *i.e.*, registers, diffusers, lighting fixtures, faucets, etc.

"Thermal Conductance" means the constant time rate of heat flow through unit area of a body induced by a unit temperature difference between the surfaces, Btu/ft²·h·°F or Btu/h·°F. It is reciprocal of thermal resistance. (See *Thermal Resistance.*)

"Thermal Mass" means materials with mass heat capacity and surface area capable of affecting building loads by storing and releasing heat as the interior and/or exterior temperature and radiant conditions fluctuate. (See also *Wall Heat Capacity.*)

Thermal Mass Wall Insulation Position:

(1) "Exterior Insulation Position" means a wall having all or nearly all of its mass exposed to the room air with the insulation on the exterior of that mass.

(2) "Integral Insulation Position" means a wall having mass exposed to both room and outside air, with substantially equal amounts of mass on the inside and outside of the insulation layer.

(3) "Interior Insulation Position" means a wall not meeting either of the above definitions, particularly a wall having most of its mass external to an insulation layer.

"Thermal Resistance" means the reciprocal thermal conductance; 1/C as well as 1/h, 1/U, h·ft²·°F/Btu.

"Thermal Transmittance" means the overall coefficient of heat transfer from air to air. It is the time rate of heat flow per unit area under steady conditions from the fluid on the warm side of the barrier to the fluid on the cold side, per unit temperature difference between the two fluids, Btu/h·ft²·°F.

"Thermal Transmittance, Overall" means the gross overall (area weighted average) coefficient of heat transfer from air to air for a gross area of the building envelope, Btu/h·ft²·°F. The thermal transmittance (U^o) value applies to the combined effect of the time rate of heat flows through the various parallel paths, such as windows, doors, and opaque construction areas, comprising the gross area of one or more building envelope components, such as walls, floors, or roof/ceiling.

"Thermostat" means an automatic control device responsive to temperature.

"Unconditioned Space" means a volume within a building that is not designed to be directly or indirectly heated and/or cooled. (See *Conditioned Space.*)

"Unit Power Density" means the floor area designated for a specific occupancy, function, or activity expressed in W/ft².

"Unitary Cooling Equipment" means one or more factory-made assemblies which normally include an evaporator or cooling coil, a compressor and condenser combination, and may include a heating function as well.

"Unitary Heat Pump" means one or more factory-made assemblies which normally include an indoor conditioning coil, compressor(s) and outdoor coil or refrigerant-to-water heat exchanger, including means to provide both heating and cooling functions.

"Unlisted Space" means the difference in area between the gross lighted area and the sum of all listed spaces.

"Variable Air Volume (VAV) HVAC System" means HVAC systems that control the dry-bulb temperature within a space by varying the volume of supply air to the space.

"Ventilation" means the process of supplying or removing air by natural or mechanical means to or from any space. Such air may or may not have been conditioned.

"Ventilation Air" means that portion of supply air which comes from outside (outdoors) plus any recirculated air that has been treated to maintain the desired quality of air within a designated space. (See also *Outdoor Air.*)

"Visual Task" means those details and objects that must be seen for the performance of a given activity, and includes the immediate background of the details or objects.

"Voluntary Performance Standards" means an energy consumption goal or goals to be met without specification of the method, materials, and processes to be employed in achieving that goal or goals, but including statements of the requirements, criteria and evaluation methods to be used, and any necessary commentary.

"Walls" means those portions of the building envelope enclosing conditioned space including all opaque surfaces, fenestration and doors, which are vertical or tilted at an angle of 45° from horizontal or greater. (See also *Roof.*)

"Wall Heat Capacity" means the sum of the products of the mass of each individual material in the wall per unit area of wall surface times its individual specific heat, Btu/F. (See *Thermal Mass.*)

"Watt" means a unit of power. One watt is produced when one ampere, flows at an amp of one volt (unity power factor). (See also *Power.*)

"Zone" means a space or group of spaces within a building with heating, cooling, and/or lighting requirements sufficiently similar so that desired conditions can be maintained throughout by a single controlling device.

(b) For definitions not found in paragraph (a) of this section, the 1986 edition of "Terminology of Heating and Ventilation, Air-Conditioning, and Refrigeration" as published by the American Society of Heating, Refrigeration, and Air-Conditioning Engineers, Inc. (ASHRAE) shall apply to these standards.

(c) For purposes of this subpart, the acronyms and abbreviations shall have the following meanings:

A_o—Total Building Floor Area.
$A_{wall,\ roof,\ etc.}$—Area of a Specific Building component.
AAMA—American Aluminum Manufacturers Association.
ACP—Alternative Component Package.
AF—Area Factor.
AFUE—Annual Fuel Utilization Efficiency.
AHAM—Association of Home Appliance Manufacturers.
ALP—Adjusted Lighting Power.
ANSI—American National Standards Institute.
ARI—Air-Conditioning and Refrigeration Institute.
ASHRAE—American Society of Heating, Refrigeration and Air Conditioning Engineers, Inc.
ASME—American Society of Mechanical Engineers.
ASTM—American Society for Testing and Materials.
Btu—British Thermal Unit.
Btu/h—British Thermal Units Per Hour.
C—Thermal Conductance.
C_c—Cooling Criteria.
CDD—Cooling Degree-Days.
CDD50—Cooling Degree-Days Base 50 °F.
CDD65—Cooling Degree-Days Base 65 °F.
CDH—Cooling Degree-Hours.
CDH80—Cooling Degree-Hours Base 80 °F.
CEEU—Cost Equivalent Energy Units.
cfm—Cubic Feet Per Minute.
CFR—Code of Federal Regulations.
CLP—Connected Lighting Power.
COP—Coefficient of Performance.
CU—Coefficient of Utilization.
DOE—U.S. Department of Energy.
DR—Average Daily Temperature Range for Warmest Month.
EER—Energy Efficiency Ratio.
ELPA—Exterior Lighting Power Allowance.
EPD—Equipment Power Density.
°F—Degrees-Fahrenheit
GLA—Gross Lighted Building Area.
HC—Heat Capacity.
HDD—Heating Degree-Days.
HDD50—Heating Degree-Days Base 50 °F.
HDD65—Heating Degree-Days Base 65 °F.
HI—Hydronics Institute.
HID—High Intensity Discharge.
hp—Horsepower (force).
HPS—High Pressure Sodium.
HSPF—Heating System Performance Factor.
HVAC—Heating, Ventilating and Air Conditioning.
IEEE—Institute of Electrical and Electronics Engineers, Inc.
IES—Illuminating Engineering Society of North America.
ILPA—Interior Lighting Power Allowance.
IPLV—Integrated Part Load Value.
ILD—Internal Load Density.
IRF—Internal Reflecting Film.
ISSC—Internal Shading System Coefficient.
K_s—Daylighting Factor.
kVA—Kilo-Volts Amperes.
kW—Kilo-Watts.
LPB—Lighting Power Budget.
LPCC—Lighting Power Control Credits.
LS—Listed Space.
NWMA—National Woodwork Manufacturers Association.
o.c.—On Center.
OLA—Occupant Load Adjustment.
OMB—U.S. Office of Management and Budget.
P_b—Base Unit Lighting Power Allowance.
PAF—Power Adjustment Factor.
PF—Projection Factor.
PTAC—Packaged Terminal Air-Conditioner.
R—Thermal Resistance.
r—Thermal Resistivity.
S_{hs}—Shading Horizontal Adjustment Factor.
SC—Shading Coefficient.
SEER—Seasonal Energy Efficiency Ratio.
U_o—Average Thermal Transmittance.
UL—Underwriter's Laboratories, Inc.
ULPA—Unit Lighting Power Allowance.
UPD—Unit Power Density.
VAV—Variable Air Volume.
VCP—Visual Comfort Probability.
VDT—Visual Display Terminal.
VLT—Visible Light Transmittance.
VSEW—Vertical Surface of the Facade.
W.C.—Water Column.
W—Watts.
W/ft²—Watts Per Square Foot.
W/lin.ft—Watts Per Linear Foot.
W_h—Window Height.
WWR—Window Wall Ratio.
WYEC—Weather Year for Energy Conservation Calculations.

§ 435.100 Explanation of numbering system for standards.

(a) For purposes of this subpart, a derivative of two different numbering systems will be used.

(1) For the purpose of designating a section, the system employed in the Code of Federal Regulations (CFR) will be employed. The number "435," which signifies Part 435, Chapter II of Title 10, Code of Federal Regulations, is used as a prefix for all section headings. The suffix is a two or three digit number beginning with ".97." For example, the lighting section of the standards is numbered § 435.103.

(2) Within each section, a numbering system common to many national voluntary consensus standards is used. This system was chosen because of its commonality among the buildings industry. A decimal system is used to denote sections and subsections. For example, § 9.4.2 refers to section 9, subsection 4, paragraph 2.

(b) The hybrid numbering system is used for two purposes:

(1) The use of the Code of Federal Regulation's numbering system allows the researcher using the CFR easy access to the standards.

(2) The use of the second system allows the builder, designer, architect or engineer easy access because they are used to the system employed.

(c) To avoid confusion in the use of the two systems, § 435.101 through § 435.112, the substantive technical sections of the standards, have been numbered so that the last two digits in the suffix designate the section. For example, once the reader enters the body of § 435.105: Building Envelope, the number "5" is used to designate the section. References throughout the standard do not employ the "435" prefix but rather refer to the section by the single or double digit numbers from 1–12.

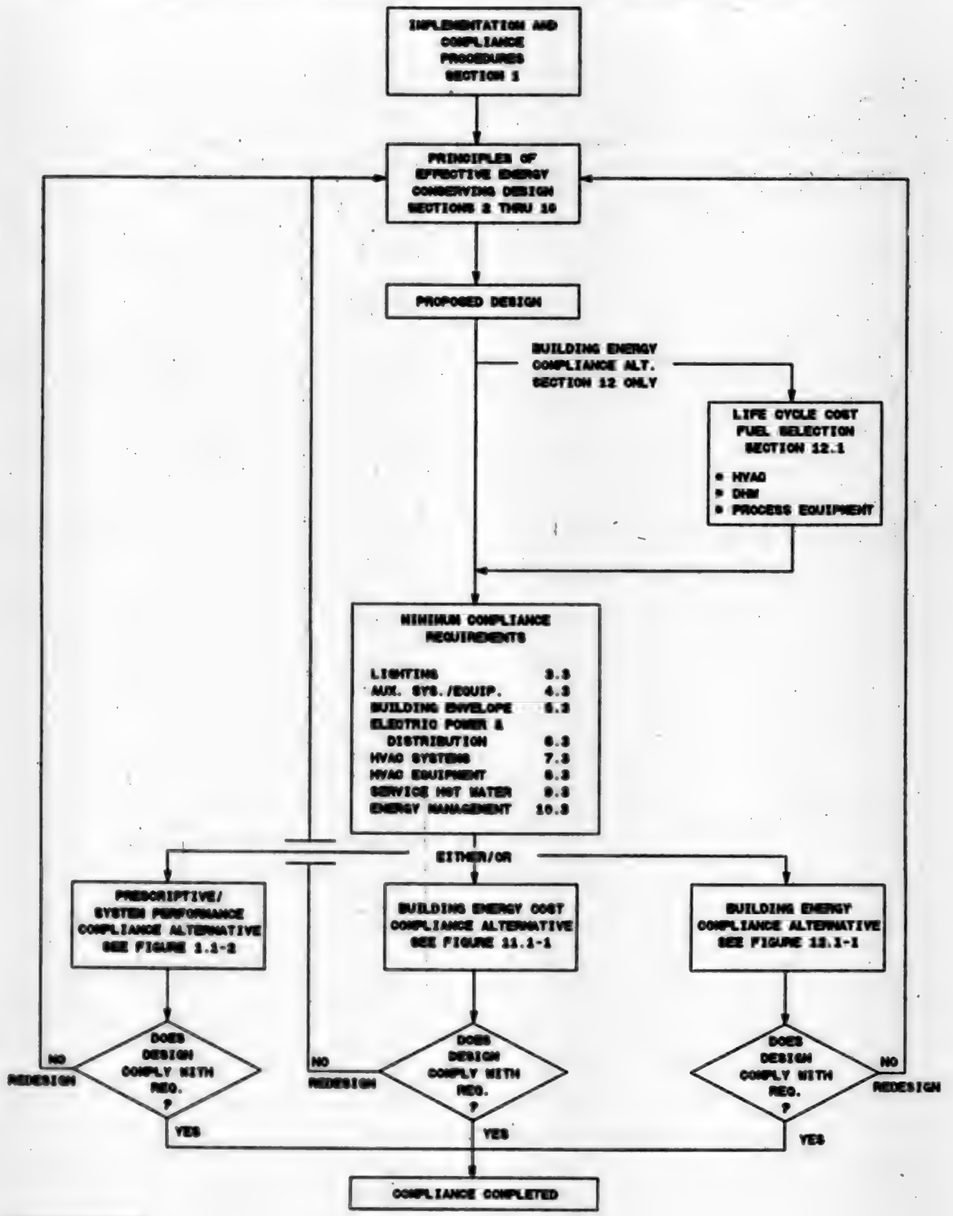
§ 435.101 Implementation and compliance procedures for Federal agencies.

Alternative methods of achieving compliance are illustrated in Figure 1.1–1.

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Figure 1.1-1 Alternative Methods of Achieving Compliance



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1.1 Compliance

1.1.1 The head of each Federal agency responsible for the construction of Federal buildings shall adopt such procedures as may be necessary to assure that the design of the building shall:

1.1.1.1 be undertaken in a manner that provides for appropriate consideration of the Principles of Effective Energy Building Design prescribed in §§ 2.0, 3.2, 4.2, 5.2, 6.2, 7.2, 8.2, 9.2 and 10.2;

1.1.1.2 comply with the minimum requirements of §§ 3.3, 4.3, 5.3, 6.3, 7.3, 8.3, 9.3 and 10.3; and

1.1.1.3 meet or exceed, based upon the analysis of life-cycle cost-effectiveness required by § 1.1.2 below, the following additional requirements:

1.1.1.3.1 the lighting design shall meet either the prescriptive requirements of § 3.4 or the system performance requirements of § 3.5,

1.1.1.3.2 the building envelope design shall meet either the prescriptive requirements of Section 5.4 or the system performance requirements of Section 5.5, and

1.1.1.3.3 the heating, ventilating and air conditioning systems design shall meet the prescriptive requirements of Section 7.4, and

1.1.1.3.4 the service water heating systems design shall meet the prescriptive requirements of Section 9.4.

1.1.2 In lieu of meeting the provisions of Section 1.1.1 above, the building design shall meet the criteria of the building energy method of Section 11.0 or 12.0, Building Energy Compliance Alternatives I and II.

1.1.3 The head of each Federal agency responsible for the construction of Federal buildings shall also assure that the decision-making process for the design of the building shall employ the methodology for estimating and comparing the life-cycle cost of Federal buildings and for determining life-cycle cost-effectiveness prescribed in Subpart A of 10 C.F.R. Part 436.

1.2 General Approach to Compliance

1.2.1 The standards, in addition to minimum requirements, establish three alternate methods to determine whether the design has achieved compliance.

1.2.2 There are several alternative methods of achieving compliance provided for in the standards:

1.2.2.1 Prescriptive (Sections 3.4, 5.4, 7.4 and 9.4),

1.2.2.2 System Performance (Sections 3.5 and 5.5), or

1.2.2.3 Building Energy (Section 11.0 or 12.0).

1.2.2.4 The criteria established for each of the methods allow for designs that are roughly equivalent in terms of energy conservation. The equivalency of the methods can be demonstrated by designing a building using the Prescriptive approach, then modeling the building using either the System Performance or Building Energy criteria calculation procedures and comparing results.

1.2.3 Compliance with these standards shall be demonstrated by meeting the set of minimum requirements defined in Sections 3.2, 3.3, 4.2, 4.3, 5.2, 5.3, 6.2, 6.3, 7.2, 7.3, 8.2, 8.3, 9.2, 9.3, 10.2, and 10.3 and one of the alternative methods.

1.3 How To Select a Compliance Method

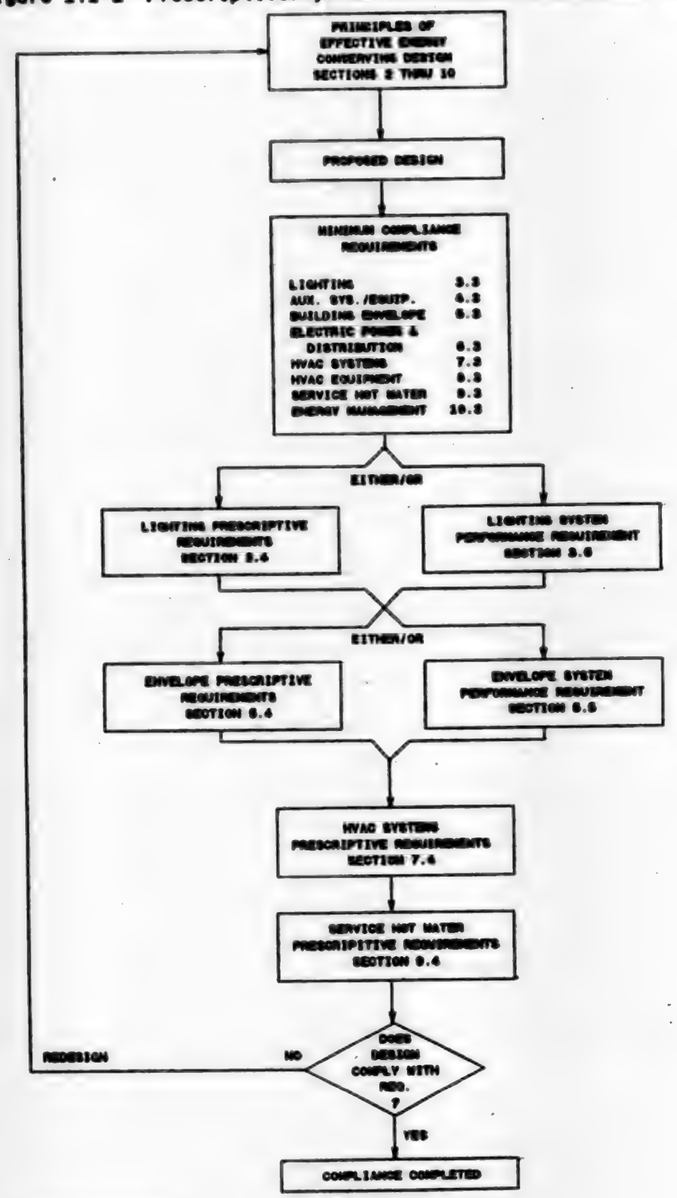
1.3.1 Use the Prescriptive method when the minimum amount of calculation and effort to achieve compliance is of primary concern. Its requirements can be readily specified in construction documents and are easily reviewed by building code enforcement authorities. The Prescriptive method permits few trade-offs or optimization procedures, but does permit several energy-effective and cost-effective alternate construction options to be used. See Figure 1.1–2.

1.3.2 Use the System Performance method when more innovative design is required, or when the Prescriptive method does not provide the necessary design flexibility. It requires more manual calculations than the Prescriptive method. See Figure 1.1–2

1.3.3 Use either of the Building Energy methods (Sections 11.0 or 12.0) when the most innovative design concepts are being considered. The Building Energy methods allow the trade-off of energy among the building systems as long as the total calculated design annual energy consumption does not exceed the limit prescribed. It will, in general, require the use of a computer program to simulate the operation of the various systems and to model building design energy use in accordance with the building loads and the proposed schedules of operation. See Figures 11–1 and 12–1.

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Figure 1.1-2 Prescriptive/System Performance Compliance Alternatives



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§436.102 Principles of effective energy building design.

2.1 General

2.1.1 This section complements the other sections of the standards by providing general principles of effective building design. The intention of this section is to provide ideas on how to improve the integration of the building's major energy using subsystems in a cost-effective manner without compromising the building's intended functional use or internal environmental conditions. In addition, more narrowly focused principles are included in sections 3.0 through 10.0.

2.1.2 To comply with the principles of effective design, designers shall use their professional judgment to identify the building's most significant energy requirements and select appropriate solutions from the general strategies found in this section and the more specific strategies found in sections 3.0 through 10.0.

2.2 Identification of Significant Energy Requirements

2.2.1 Before energy design strategies can be developed for a commercial or multi-family high rise residential building, a clear picture of its most significant energy requirements must be developed. The basic approach to achieving an energy conscious design is to improve the energy efficiency of the building by shifting or reducing loads, improving transport systems, and providing efficient environmental systems and controls. This is accomplished by first determining which aspects of the building's energy requirements are the most significant, those that would result in the largest annual energy costs to the building owner if energy conserving strategies were otherwise not applied. For example, for a given building, the largest annual energy cost component may be lighting, followed by cooling, heating, and ventilation, respectively. In this example electricity would be the major energy source. Therefore, peak time-rates of energy use (i.e., peak power demands), as well as direct energy use, would have to be included in any energy analysis. Consideration of peak demands will reduce the requirement for oversizing of energy systems in the building and will also have the added impact of helping to reduce the need for additional, low utilization peak capacity on utility grids.

2.2.2 Once the most significant cost components of the building's energy requirements have been determined, apply the strategies and design solutions listed below and those that appear in each of the following sections of the standards. In the example noted above, lighting solutions would be addressed first, followed by cooling, heating, and then ventilation.

2.2.3 Research results indicate that the most significant energy uses for any given commercial or multi-family high rise residential building are generally not accurately identifiable by professional intuition. Therefore, use shall be made of one of the several available analysis tools, some of which are microcomputer-based.

2.3 General Solution Strategies

2.3.1 Consider energy efficiency from the initiation of the building design process, since design improvements are most easily and effectively made at that time. Seek the active participation of members of the design team early in the design process, including the owner, architect, engineer, and builder, if possible. Consider building attributes such as building function, form, orientation, window/wall ratio, and HVAC system types early in the design process. Each has major energy implications. These considerations most likely will result in solutions that minimize both construction and operation costs, including energy demand charges.

2.3.2 Address the building's energy requirements in the following sequence: minimize impact of the building functional requirements; minimize loads; improve the efficiency of distribution and conversion systems; and integrate building subsystems into an efficient whole. Each of these is discussed below.

2.3.2.1 Minimize impact of functional requirements by identifying major areas that offer energy efficiency opportunities based on the building's functional use, human occupancy requirements, and site characteristics. These areas will vary considerably from building to building depending upon function and service requirements, and shall be considered when applying the criteria of these standards.

2.3.2.2 Minimize loads by analyzing the external and internal loads to be imposed on building energy-using subsystems, both for peak-load and part-load conditions. Include a determination of how the building relates to its external environment in the analysis, either adaptively or defensively. Consider changes in building form, aspect ratio, and other attributes that reduce, redistribute, or delay (shift) loads.

2.3.2.3 Improve subsystems by analyzing the diversified energy and demand (power) requirements of each energy-using subsystem serving the functional requirements of the building. Consider static and dynamic efficiency of energy conversion and energy transport subsystems and include consideration of opportunities to reclaim, redistribute and store energy for later use.

2.3.2.4 Alternative ways to integrate systems into the building will be accomplished by considering both power and time components of energy use. Identify, evaluate, and design each of these components to control the overall design energy consumption. The following shall be considered when integrating major building subsystems:

2.3.2.4.1 Address more than one problem when developing design solutions, and make maximum use of building components already present for non-energy reasons (e.g., windows, structural mass);

2.3.2.4.2 Examine design solutions that consider time since sufficient energy may already be present from the environment (e.g., solar heat, night cooling) or from internal equipment (e.g., lights, computers) but available at different times than needed. Thus, active (heat pumps with water tanks) and passive (building mass) storage techniques may be considered;

2.3.2.4.3 Examine design solutions that consider anticipated space utilization. For example, in large but relatively unoccupied spaces, task or zone heating may be considered. Transporting energy (light and heat) from locations of production and availability to locations of need shall be considered instead of the purchase of additional energy;

2.3.2.4.4 Never reject waste energy at temperatures usable for space conditioning or other practical purposes, without calculating the economic benefit of energy recovery;

2.3.2.4.5 Consider design solutions that provide more comfortable surface temperatures or increase availability of controlled daylight in buildings in which human occupancy is a primary function;

2.3.2.4.6 Use design solutions that are easily understood as they have a greater probability of use by building occupants; and

2.3.2.4.7 Where the functional requirements of the building may change, the installed environmental system should be designed to be adaptable to meet functional changes that can be anticipated as well as providing flexibility to meet indeterminate future changes in use, occupancy or other functions.

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§ 435.109 Lighting.

3.1 General

3.1.1 This section contains principles of design, a set of minimum requirements, and two alternative compliance procedures, prescriptive and systems performance, for the design of building lighting and lighting control systems, and includes provisions for daylighting credit. The procedures in this section are solely for use in establishing lighting design budgets and are not intended for use as lighting design procedures.

3.1.2 *Scope.* The following are covered by this section:

3.1.2.1 Interior spaces of buildings;

3.1.2.2 Building exteriors and exterior areas, such as entrances, exits, and loading docks; and

3.1.2.3 Roads, grounds, parking, and other exterior areas where lighting is energized through the building electrical service.

3.1.3 *Exemptions.* The following are exempt from these standards:

3.1.3.1 Outdoor manufacturing, commercial greenhouses, and processing facilities;

3.1.3.2 Lighting power for theatrical production studios and stages, television broadcasting studios, audio-visual presentation, and entertainment facilities in spaces such as stages, hotel ballrooms, nightclubs, discos, and casinos, and where lighting is an essential technical element for the function performed;

3.1.3.3 Specialized luminaires for medical and dental purposes;

3.1.3.4 Outdoor athletic facilities;

3.1.3.5 Lighting power for display lighting required for art exhibits or displays in galleries, museums and monuments;

3.1.3.6 Exterior lighting for public monuments;

3.1.3.7 Special lighting needs for research;

3.1.3.8 Lighting power for lighting used solely for indoor plant growth during the hours of 10:00 p.m. to 6:00 a.m.;

3.1.3.9 Emergency lighting that is automatically "off" during normal operation;

3.1.3.10 High risk security areas or any area identified by local ordinances or regulations or by security or safety personnel as requiring additional lighting;

3.1.3.11 Lighting power densities for spaces with enhanced lighting specifically designed for primary use by the visually impaired, hard of hearing, or for senior citizens;

3.1.3.12 Lighting for signs;

3.1.3.13 Store-front exterior-enclosed display windows in retail facilities; and

3.1.3.14 Lighting for dwelling units.

3.1.4 *Building Lighting Power Allowance.* The lighting power allowance for a building consists of the Exterior Lighting Power Allowance (ELPA), in accordance with Section 3.3, plus the Interior Lighting Power Allowance (ILPA) in accordance with Section 3.4 or 3.5. This lighting power allowance is the upper limit to which the building can be designed, based on the criteria of the compliance alternative chosen.

3.1.4.1 The prescriptive criteria in Section 3.4 provides a single compliance procedure based on calculating a lighting budget by building type or major area type within which a designer can flexibly design a lighting solution. To obtain credit for specific lighting energy conservation measures, use Section 3.5, Section 11.0, or Section 12.0.

3.1.4.2 The systems performance criteria in Section 3.5 provides a more complex compliance procedure based on calculating a lighting budget by activity or spaces within which the designer can flexibly design a lighting solution and receive credit for energy conserving controls and daylighting measures. To receive credit for more complex lighting conservation measures use Section 11.0 or 12.0.

3.1.5 *Credit for Daylighting.* Daylighting credit, for reduced use of electric lighting energy resulting from the use of automatic lighting control devices in conjunction with fenestration (e.g., windows and skylights), may be taken if the systems performance alternative in Section 3.5 is chosen. However, if such daylighting credit is to be applied to other building subsystems, such as use of additional fenestration area, Section 11.0 or 12.0 must be used. Thermal credit provisions for daylighting are found in Section 5.0.

3.1.6 *Compliance.* A building shall be considered in compliance with this Section if the following conditions are met:

3.1.6.1 The minimum requirements of Section 3.3 are met;

3.1.6.2 The exterior lighting power to be installed is not greater than the Exterior Lighting Power Allowance (ELPA), calculated using Equation 3.3–1;

3.1.6.3 The interior lighting power to be installed is not greater than the Interior Lighting Power Allowance (ILPA), based on either the Prescriptive Criteria in Section 3.4 or the Systems Performance Criteria in Section 3.5.

3.1.6.4 Tradeoffs between ILPA and ELPA are not allowed. Tradeoffs of the interior Lighting Power Budgets (LPB) among interior spaces are allowed as long as the total Connected Lighting Power (CLP) within the building does not exceed the Interior Lighting Power Allowance (ILPA) and Lighting Power Control Credits (LPCC) are used only for connected lighting power in those spaces for which credit is claimed. Tradeoffs of exterior lighting power budgets among exterior areas are allowed as long as the total Connected Lighting Power (CLP) of exterior lighting does not exceed the Exterior Lighting Power Allowance (ELPA) and the allowance for the building exterior surfaces is not exceeded.

3.1.7 *Multi-Building Facilities.* The total lighting power allowances for each building in a multi-building facility shall be calculated separately.

3.2 Principles of Design

3.2.1 The lighting system is designed to provide a productive, safe, and pleasing visual environment for the intended use of the space. However, lighting is both a major energy end use in commercial buildings (especially in office buildings) and a major contributor to internal loads by increasing cooling loads and decreasing heating loads. Therefore, it is important to produce a design that meets the lighting functional criteria of the space as well as one that minimizes energy use. Recommended maintained illuminance levels for visual tasks and surrounding lighted areas are included in the *IES Lighting Handbook, Applications (1983) or Reference (1985).* Principles of energy conserving design within that context are described below.

3.2.2 The following Design Concepts shall be considered in the design of lighting that is both energy efficient and visually effective.

3.2.2.1 Energy use is determined by the lighting load (demand power) and its duration of use (time). Minimize the actual demand load rather than just the apparent connected load, and control the load rather than just switching, if switching may adversely affect the quality of the luminous environment.

3.2.2.2 Consider daylighting along with the proper use of controls so that the savings from electric lighting can be realized. Design should be sensitive to window glare, sudden changes in luminances, and general use acceptance of controls. Window treatment (blinds, drapes and shades) and glazing should be carefully selected to control direct solar penetration and luminance extremes while still maintaining view and daylight penetration.

3.2.2.3 Design lighting systems so that illumination required for tasks is primarily limited to the location of the task and from a direction that will minimize direct glare and veiling reflections on the task. For example, the ideal positioning of work stations is between the rows of ceiling-mounted luminaires with the direction of view parallel to the primary task. In densely-occupied work spaces, uniform distribution of general lighting may be most appropriate. Where supplementary task illumination is necessary, general or ambient illumination should not be lower than a third of the luminance required for the task. This will help maintain luminance rates that are visually comfortable.

3.2.2.4 Use task lighting, whenever possible, to accommodate the need for higher lighting levels due to task visual difficulty, glare, intermittently changing requirements, or individual visual differences (poor and aging eyesight).

3.2.2.5 Group similar activities so high illuminance or special lighting for particular tasks are localized in certain rooms or areas, and so that less efficient fixtures required for critical glare control do not have to be installed uniformly when they are only required sparsely.

3.2.2.6 When indirect lighting is appropriate, use schemes that create reasonably uniform ceiling luminances. If this is achieved, work spaces may be located anywhere and occupants may face in any direction without being subject to excessive veiling reflection on the tasks. The indirect system may allow more effective use of the space than other types of lighting systems. However, indirect lighting systems generally have lower utilization factors, and may require increased ceiling height to provide uniform ceiling luminance.

3.2.2.7 Use lighting controls throughout that maintain proper lighting levels when and where it is needed but also allow reductions in lighting when tasks are less critical, or spaces are not fully occupied. The designer must consider user acceptance of control strategies to maximize energy efficiency.

3.2.2.8 Use lower levels of ambient lighting in situations such as merchandising, where the contrast between accent lighting and ambient lighting is critical. Accent lighting shall not exceed five (5) times the ambient level. Consider fewer, more effectively-accented displays, rather than more ineffectively-accented ones.

3.2.3 The following guidelines identify Fixture and Lamp selection strategies to be considered in the selection of luminaires and lamps for inclusion in an energy efficient, visually-effective design:

3.2.3.1 Consider the use of more efficient equipment with appropriate distribution, glare control and visual characteristics. Utilize fixture designs that will provide high lighting efficiency while meeting the other lighting objectives of the installation.

3.2.3.2 Review visual comfort probability (VCP) data, available from manufacturers, for specific luminaires when minimizing discomfort glare is a criterion.

3.2.3.3 Consider luminaire construction that minimizes light loss due to dirt collection.

3.2.3.4 Investigate the use of dimmers to reduce energy consumption when the system is new and capable of providing more light than the average depreciated design value.

3.2.3.5 Use more efficient lamps with appropriate luminous efficacy, life expectancy and spectrum distribution and color rendering characteristics.

3.2.3.6 Use more efficient ballasts for fluorescent and HID lamps with appropriate ballast factors, power factor, noise rating, starting and restarting characteristics.

3.2.3.7 Use luminaires with heat removal and heat recovery capabilities, thereby allowing the lighting equipment to operate more efficiently at a lower ambient temperature.

3.2.3.8 Limit the use of lower efficiency lamps, such as incandescent, to only those applications where their color, lumens or distribution characteristics cannot be duplicated by other sources. Due to their lower efficiency, the use of "extended service" incandescent lamps should be limited to those applications where fixtures are difficult to reach and/or maintenance costs for revamping will be excessive.

3.2.4 Space Design

3.2.4.1 It is important to carry through on the lighting design when completing the interior design. Reduce light absorption by encouraging the use of lighter finishes, particularly on ceilings, walls and partitions. Select colors and surface materials so that their reflectance values are within the ranges recommended by the IES. This will aid the efficient use of light and help to provide comfortable luminance ratios.

3.2.4.2 In offices with visual display terminals (VDT) that are susceptible to reflections, it may be necessary to use reflectances for some room surfaces at the low end of the recommended ranges to reduce unwanted reflections on the screens. Where practical, treat the screens of VDTs with anti-glare materials to avoid veiling reflection.

3.3 Minimum Requirements

3.3.1 Lighting Controls.

3.3.1.1 All lighting shall be provided with manual, automatic, or programmable controls.

3.3.1.1.1 *Exception to Section 3.3.1.1:*

(a) controls for emergency or exit lighting.

3.3.1.2 *Minimum Number of Lighting Controls.* Each space enclosed by walls or ceiling-height partitions shall be provided with control(s) that, together or alone are capable of controlling all lights within that space, excluding those requiring continuous operation for security purposes.

3.3.1.2.1 The minimum number of controls shall not be less than:

(a) One lighting control for each space; and

(b) One lighting control for each task or group of task locations within an area of 450 ft² or less.

3.3.1.2.2 *Equivalent Number of Controls.* The minimum number of controls may be reduced, by using an equivalent number of controls from Table 3.3–1, where control types listed in Table 3.3–1 are used. However, the minimum number of controls may not be reduced to less than one control for each 1500 W of connected lighting power.

Table 3.3-1
Equivalent Number of Controls

TYPE OF CONTROL	EQUIVALENT NUMBER OF CONTROLS
Manually operated on-off switch	1
Occupancy sensor	2
Timer-Programmable from the space being controlled	2
Three Level, including off, step control or pre-set dimming	2
Four level, including off, step control or pre-set dimming	3
Automatic or continuous dimming	3

3.3.1.2.3 *Exceptions to Section 3.3.1.2:*

(a) Lighting control requirements for spaces that must be used as a whole, such as public lobbies of office buildings, hotels, and hospitals; retail and department stores and warehouses, storerooms, and service corridors under centralized supervision, shall be controlled by a lesser number of controls, but not less than one control for each 1500 W of connected lighting power, or a total of three (3) controls, whichever is greater. Lighting in such

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spaces shall be controlled in accordance with the work activities.

(b) Hotel and motel guest rooms shall have one or more master controls at the main entry door that turn off all permanently wired lighting fixtures and lighting and television receptacles. For multiple room suites, controls at the entry of each room, in lieu of a master switch, will meet these requirements.

3.3.1.3 Controls provided for task areas, if readily accessible, may be mounted as part of the task lighting luminaire.

3.3.1.4 Control of the same load from more than one location shall not be credited as additional control points.

3.3.1.5 All lighting controls shall be readily accessible to personnel occupying or using the space. Exceptions are automatic controls, programmable controls, lighting for safety hazards and security, controls requiring trained operators, and those controls for spaces that must be used as a whole.

3.3.1.6 Exterior lighting shall be automatically controlled by timer, photocell, or combination of timer and photocell. Timers shall be of the automatic type or otherwise capable of adjustment for seven days and for seasonal daylight schedule variations. All time-controllers shall be equipped with back-up mechanisms to keep time during a four hour power outage.

3.3.1.7 When the building is served by an energy management system, programmable controls, shared tenant services that affect interior environments, or "intelligent building" systems, provisions shall be made to incorporate lighting controls into the system if a separate automatically-controlled lighting system is not provided.

3.3.2 Fluorescent Lamp Ballasts.

3.3.2.1 Fluorescent lamp ballasts shall have a ballast efficacy factor not less than that shown in Table 3.3–2.

3.3.2.1.1 *Exception to 3.3.2.1:* Ballasts not included in Table 3.3–2 and ballasts designed for use with dimming controls are excluded from these criteria.

Table 3.3-2
Fluorescent Ballast For Efficacy Factors*

NUMBER OF LAMPS	LAMP TYPE	NOMINAL OPERATIONAL INPUT VOLTAGE	DESIGN STARTING TEMPERATURE	INPUT FREQUENCY	MAX. LAMP OPERATING TEMPERATURE	MIN. BALLAST EFFICIENCY FACTOR
1	4 ft rapid start	120 or 277	>40 °F	60Hz	<1000 m amp	1.805
2	4 ft rapid start	120	>40 oF	60Hz	<1000 m amp	1.060
2	4 ft rapid start	277	>40 °F	60Hz	<1000 m amp	1.050
2	8 ft slimline	120 - 277	>40 °F	60Hz	<1000 m amp	0.570
2	8 ft high output, rapid start	120 - 277	<40 °F	60Hz	<1000 m amp	0.390

* For ballasts not specifically designed for use with dimming controls.

3.3.2.2 The Ballast Efficacy Factor shall be calculated in accordance with Equation 3.3–1:

$$BEF = \frac{BF}{\text{Power Input}}$$

Equation 3.3–1

Where:
BEF = Ballast Efficacy Factor.
BF = Ballast Factor, expressed as a percent.
Power Input = Total Wattage of combined lamps and ballasts

3.3.2.2.1 Tests for ballast factor and power input shall be in accordance with *ANSI Standard C–82.2–1984* "Method of Measurement for Fluorescent Lamp Ballasts", using "Standard" F40T1240A, F96T12 75 watt, or F96T12H0 110 watt lamps.

3.3.2.3 One-lamp or three-lamp fluorescent luminaires shall be tandem-wired to eliminate unnecessary use of single lamp ballasts if they are: used for general lighting; recess mounted within ten feet center-to-center of each other; or pendant or surface mounted within 1 ft of each other, and within the same room. Tandem wiring consists of pairs of luminaires operating with one lamp in a luminaire powered from a single two-lamp ballast contained in a second luminaire.

3.3.2.3.1 *Exception to Section 3.3.2.3:* (a) Three-lamp ballasts may be used.

3.3.2.4 Fluorescent lamp ballasts shall have a power factor equal to or greater than 80%.

3.3.2.4.1 *Exception to 3.3.2.4:* Ballasts for circline and compact fluorescent lamps and low wattage, high intensity discharge lamps of less than 100 watts.

3.4 Lighting—Prescriptive Compliance Alternative

3.4.1 Purpose

3.4.1.1 This subsection provides a prescriptive procedure for determining an exterior lighting power allowance and the Interior Lighting Power Allowances for illumination systems installed in six types of new buildings. It is intended for use with buildings having simple lighting requirements and where the minimum amount of calculation and effort to achieve compliance is of primary concern. For other building types, to receive credit for switching, daylighting, or other trade-offs, or to receive credit for lighting optimization, use Section 3.5, Section 11.0, or Section 12.0.

3.4.1.2 This section also serves as the basis for calculating the skylight area in Section 5.3.9.6, and may be used for estimating the lighting heat gain for calculating the internal load density in Equation 5.4–1 and Section 5.5.6.2.

3.4.2 General

3.4.2.1 This method for compliance prescribes a total allowable Unit Lighting Power Allowance (ULPA) for interior lighting for the building type/area as listed in Table 3.4–1. There is no recognition of specific makeup of spaces and activities within the building.

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Table 3.4-1
Prescriptive Unit Lighting Power Allowance (ULPA), W/ft²

BUILDING TYPE/AREA FUNCTION	Gross Lighted Area Ranges						Effective Date
	0 to 2,000 ft²	2,001 to 10,000 ft²	10,001 to 25,000 ft²	25,001 to 50,000 ft²	50,001 to 250,000 ft²	> 250,000 ft²	
Food Service							
Fast Food/Cafeteria	1.50	1.38	1.34	1.32	1.31	1.30	1988
	0.92	0.85	0.82	0.81	0.81	0.80	1993
Leisure Dining/Bar	2.20	1.91	1.71	1.56	1.46	1.40	1988
	1.60	1.56	1.52	1.48	1.44	1.40	1993
Offices	1.90	1.81	1.72	1.65	1.57	1.50	1988
	1.40	1.34	1.27	1.22	1.16	1.11	1993
Retail[1]							
Retail General	3.30	3.08	2.83	2.50	2.28	2.10	1988
	2.70	2.52	2.32	2.05	1.87	1.72	1993
Mall Concourse							
Multi-Store Service	1.60	1.58	1.52	1.46	1.43	1.40	1988
	0.69	0.68	0.65	0.63	0.61	0.60	1993
Service Establishment	2.70	2.37	2.08	1.92	1.80	1.70	1988
	2.81	2.03	1.78	1.65	1.54	1.46	1993
Garages	0.30	0.28	0.24	0.22	0.21	0.20	1988
	0.25	0.24	0.23	0.22	0.21	0.20	1993
Schools							
Pre-elementary	1.80	1.80	1.72	1.65	1.57	1.50	1988
	1.33	1.33	1.27	1.22	1.16	1.11	1993
Jr. High/High School	1.90	1.90	1.88	1.83	1.76	1.70	1988
	1.40	1.40	1.39	1.35	1.30	1.26	1993
Technical/Vocational	2.40	2.33	2.17	2.01	1.84	1.70	1988
	1.77	1.72	1.60	1.49	1.36	1.26	1993
Warehouse/Storage	0.80	0.66	0.56	0.48	0.43	0.40	1988
	0.60	0.50	0.42	0.36	0.32	0.30	1993

Notes:
1. Includes general, merchandising and display lighting.

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3.4.3 Exterior Lighting Power Allowance

3.4.3.1 Building exteriors and exterior areas, as defined in Section 3.1.2.2, and roads, grounds, parking, and other exterior areas, defined in Section 3.1.2.3, shall have a lighting power density not to exceed the Exterior Lighting Power Allowance (ELPA), which is the sum of the allowances for each of the areas listed above, as calculated by Equation 3.4–1 using unit power densities from Table 3.4–2.

Table 3.4-2
Exterior Lighting Unit Power Density

AREA DESCRIPTION	UNIT POWER DENSITY (UPD)
Exit (with or without canopy)	25 W/lin. ft of door opening
Entrance (without canopy)	30 W/lin. ft of door opening
Entrance (with canopy)	
High Traffic (retail, hotel, airport, theater, etc.)	10 W/ft² of canopied area
Light Traffic (hospital, office, school, etc.)	6 W/ft² canopied area
Loading area	0.40 W/ft²
Loading door	20 W/lin. ft of door opening
Building Exterior Surfaces/Facades	0.25 W/ft² of surface area to be illuminated
Storage and non-manufacturing work areas	0.20 W/ft²
Other activity areas for casual use such as picnic grounds, gardens, parks, and other landscaped areas	0.10 W/ft²
Private driveways/walkways	0.10 W/ft²
Public driveways/walkways	0.15 W/ft²
Private parking lots	0.12 W/ft²
Public parking lots	0.18 W/ft²

$$ELPA = \Sigma\, DO_i\, UPD_{Di} + \Sigma\, A_i\, UPD_{Ai} = \Sigma\, [(DO_1 \times UPD_{D1} \ldots + DO_n \times UPD_{Dn}) + (A \times UPD_{A1} \ldots A_n \times UPD_{An})]$$

Equation 3.4–1

Where:
ELPA = Exterior lighting power allowance, in Watts.
i = numerical subscript (1,2, ... n) for each occurrence of exterior openings or exterior areas of the building.
n = total number of occurrences of exterior openings or areas of the building.
DO_i = Door opening, linear feet.
UPD_D = Unit power density for the door, W/lin. ft, from Table 3.4–2.
UPD_A = Unit power density for the area in W/ft², from Table 3.4–2.
A = Exterior area in ft².

3.4.4 Interior Lighting Power Allowance

3.4.4.1 The Interior Lighting Power Allowance (ILPA) shall be calculated using the prescriptive Unit Lighting Power Allowances (ULPA) in Table 3.4–1. First, determine if the predominant function of the proposed building is one of the six building types listed in Table 3.4–1. If not, Section 3.5, 11.0, or 12.0 must be used. Next, determine whether the proposed design has secondary functions that are 10% or more of the gross lighted area of the building and are listed in Table 3.4–1. If so, the designer has the option of using the predominant building function to calculate the ILPA or using the calculation method for multiple-use buildings in Section 3.4.4.1.2 below.

3.4.4.1.1 If the proposed building has only one function, has no secondary functions with 10% or more of the gross lighted area, or the designer chooses to determine the ILPA based on only one function, Equation 3.4–2 shall be used to determine the building ILPA. First, select the appropriate building type in Table 3.4–1, and the appropriate column for the Gross Lighted Area (GLA) of the proposed building. This value is the Unit Lighting Power Allowance (ULPA). Determine the ILPA by multiplying the ULPA by the GLA as shown in Equation 3.4–2.

$$ILPA = ULPA \times GLA$$

Equation 3.4–2

Where:
ILPA = Interior Lighting Power Allowance, in Watts.
ULPA = Unit Lighting Power Allowance, in W/ft², from Table 3.4–1.
GLA = Gross Lighted Area of the Proposed Building, in ft².

3.4.4.1.2 If a building design has more than one function listed in Table 3.4–1, such as an office building with parking and retail stores, with more than 10% of the gross lighted area, Equation 3.4–3 may be used to calculate the building Interior Lighting Power Allowance (ILPA). First, determine the gross lighted area of the building (GLA) and the gross lighted area for each qualifying secondary function (GLA_i) in the building. Select the ULPA from Table 3.4–1 under the column corresponding to the gross lighted area of the entire proposed building and multiply it by the gross lighted area of that function. Sum the products to determine the building ILPA, as shown in Equation 3.4–3 below.

$$ILPA = ULPA_p\, GLA_p + \Sigma\, (ULPA_i\, GLA_i) = [ULPA_p\, GLA_p + (ULPA_a\, GLA_a + ULPA_a\, GLA_a \ldots ULPA_n\, GLA_n)]$$

Equation 3.4–3

Where:
i = numerical subscript (1,2, ... n) for each secondary function with 10% or more of the gross lighted area of the building.
n = number of secondary functions.
ILPA = Interior Lighting Power Allowance, in Watts.
$ULPA_p$ = Unit Lighting Power Allowance of the predominant function based on the gross lighted area of the entire building, from Table 3.4–1, in W/ft².
$ULPA_i$ = Unit Lighting Power Allowance of qualifying secondary functions based on the gross lighted area of the entire building, from Table 3.4–1, in W/ft².
GLA_p = Gross lighted area of the predominant function of the proposed building.
GLA_i = Gross lighted area of each qualifying secondary function.

3.4.4.3 *Lighting compliance in partially defined speculative buildings.* For defined functions in partially defined speculative buildings, the total connected lighting power shall not exceed the interior lighting power allowance for that portion of the building. When determining the ILPA for those cases, the gross lighted area of the entire building must be used.

3.5 Lighting—System Performance Compliance Alternative

3.5.1 Purpose

3.5.1.1 This subsection provides a procedure for determining the maximum lighting power allowance for buildings, roads and grounds. It allows the designer to take credit for the use of daylighting and other lighting controls. It also serves as a basis for estimating the lighting heat gain and lighting energy use for Section 5.0.

3.5.2 General

3.5.2.1 The total Connected Lighting Power (CLP) in a building, including permanently installed lighting plus supplemental or task related lighting provided by movable fixtures or plug-in luminaires, shall not exceed the Interior Lighting Power Allowance (ILPA). A Lighting Power Control Credit (LPCC), taken for individual spaces, may only be utilized for credit to connected lighting power in those spaces for which credit is claimed.

3.5.2.2 *Compliance for lighting in partially defined speculative buildings.* The total connected lighting power of lighting designs of defined areas of partially defined speculative buildings

shall not exceed the interior lighting power allowance for those areas of the building for which lighting has been designed.

3.5.3 The Lighting Power Budget (LPB) of each interior space shall be determined in accordance with Equation 3.5-1.

LPB=(A×UPD$_b$×AF)+LPCC

Equation 3.5-1

Where:

LPB=Lighting power budget of the space, in watts

A$_s$=Area of the room at the horizontal lighted working plane, ft^2

UPD$_b$=Base Unit Power Density, W/ft^2, (Table 3.5-1)

AF=Area factor of the room. (Figure 3.5-1)

LPCC=Lighting Power Control Credit, as determined by § 3.5.6

3.5.3.1 The room area (A) shall be calculated from the inside dimensions of the room.

3.5.3.2 The Base Unit Power Density (UPD) shall be selected from Table 3.5-1. For applications to areas or activities other than those given, select values for similar areas or activities.

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TABLE 3.5-1
BASE UPD (P$_b$) FOR AREA/ACTIVITY

AREA/ACTIVITY	1989 UPD	1989 NOTE	1993 UPD	1993 NOTE
COMMON ACTIVITY AREAS				
Auditorium	1.6	(d)	1.4	(d)
Corridor	0.8	(a)	0.8	(a)
Classroom/Lecture Hall	2.0		1.0	
Elec/Mech Equipment Room				
General	0.7	(a)	0.7	(a)
Control Rooms	1.5	(a)	1.5	(a)
Food Service				
Fast Food/Cafeteria	1.3		0.8	
Leisure Dining	2.5	(c)	1.4	(c)
Bar/Lounge	2.5	(c)	1.3	(c)
Kitchen	1.4		1.4	
Recreation/Lounge	0.7		0.5	
Stairs				
Active Traffic	0.6		0.6	
Emergency Exit	0.4		0.4	
Toilet & Washroom	0.8		0.5	
Garage				
Auto/Pedestrian Circulation	0.3		0.25	
Parking Area	0.2		0.2	
Laboratory	2.3		2.2	
Library				
Audio Visual	1.1		1.1	
Stack Area	1.5		1.5	
Card File & Cataloging	1.6		0.8	
Reading Area	1.9		1.0	
Lobby (General)				
Reception & Waiting	1.0		0.55	
Elevator Lobbies	0.8		0.4	
Atrium (Multi-Story)				
First 3 Floors	0.7		0.4	
Each Additional Floor	0.2		0.15	
Locker Room & Shower	0.8		0.6	
Offices				
Enclosed offices of less than 900 ft^2 and all open plan offices w/out partitions or w/partitions lower than 4.5 ft below ceiling.		(h)		(h)
Reading, Typing and Filing	1.8	(g)	1.3	(g)
Drafting	2.6	(g)	2.2	(g)
Accounting	2.1	(g)	1.8	(g)
Open plan offices, 900 ft^2 or larger, w/medium height partitions 3.5 to 4.5 ft below ceiling.		(h)		(h)
Reading, Typing and Filing	1.9	(a)	1.5	(a)
Drafting	2.9	(a)	2.6	(a)
Accounting	2.4	(a)	2.1	(a)
Open plan offices, 900 ft^2 or larger, w/partitions higher higher than 3.5 ft below ceiling.		(h)		(h)
Reading, Typing and Filing	2.2	(a)	1.7	(a)
Drafting	3.4	(a)	3.0	(a)
Accounting	2.7	(a)	2.4	(a)
Common Activity Areas				
Conference/Meeting Room	1.8	(d)	1.3	(d)
Computer/Office Equipment	2.1		2.1	
Filing, Inactive	1.0		1.0	
Mail Room	1.8		1.8	
Shop (Non-Industrial)				
Machinery	2.5		2.5	
Electrical/Electronic	2.5		2.5	
Painting	1.6		1.6	
Carpentry	2.3		2.3	
Welding	1.2		1.2	
Storage & Warehouse				
Inactive Storage	0.3		0.2	
Active Storage, Bulky	0.3		0.3	
Active Storage, Fine	1.0		0.9	
Material Handling	1.0		1.0	
Unlisted Space	0.2		0.2	

TABLE 3.5-1 (Continued)
BASE UPD (P_b) FOR AREA/ACTIVITY

AREA/ACTIVITY SPECIFIC BUILDINGS	1989 UPD	1989 NOTE	1993 UPD	1993 NOTE
Airport, Bus and Rail Station				
Baggage Area	0.8		0.75	
Concourse/Main Thruway	0.9		0.45	
Ticket Counter	2.5		1.3	
Waiting & Lounge Area	1.2		0.6	
Bank				
Customer Area	1.0		0.8	
Banking Activity Area	2.8		2.2	
Barber & Beauty Parlor	2.0		1.6	
Church, Synagogue, Chapel				
Worship/Congregational	2.3		1.3	
Preaching & Sermon/Choir	2.7		1.8	
Dormitory				
Bedroom	1.0		0.6	
Bedroom with Study	1.3		1.3	
Study Hall	1.8		0.9	
Fire & Police Department				
Fire Engine Room	0.7		0.7	
Jail Cell	0.8		0.4	
Hospital/Nursing Home				
Corridor	1.3	(a)	0.9	(a)
Dental Suite/Exam/Treat	1.6		1.4	
Emergency	2.3		2.0	
Laboratory	1.9		1.7	
Lounge/Waiting Room	0.9		0.6	
Medical Supplies	2.4		2.4	
Nursery	2.0		1.6	
Nurse Station	2.1		1.8	
Occu./Physical Therapy	1.6		1.4	
Patient Room	1.4		0.9	
Pharmacy	1.7		1.5	
Radiology	2.1		1.8	
Surgical & O.R. Suites				
General Area	2.1		1.8	
Operating Room	7.0		6.0	
Recovery	3.0		2.0	
Hotel/Conference Center				
Banquet Room/Multipurpose	2.4	(d)	1.4	(d)
Bathroom/Powder Room	1.2		0.6	
Guest Room	1.4		0.7	
Public Area	1.1		0.8	
Exhibition Hall	2.6		1.3	
Conference/Meeting	1.8	(d)	1.5	(d)
Lobby	1.9		1.3	
Reception Desk	2.4		2.4	
Laundry				
Washing	0.9		0.6	
Ironing & Sorting	1.3		1.3	
Museum & Gallery				
General Exhibition	1.9		1.2	
Inspection/Restoration	3.9		3.0	
Storage (Artifacts)				
Inactive	0.6		0.25	
Active	0.7		0.5	
Post Office				
Lobby	1.1		0.8	
Sorting & Mailing	2.1		2.1	
Service Station/Auto Repair	1.0		0.8	
Theater				
Performance Arts	1.5		1.1	
Motion Picture	1.0		0.75	
Lobby	1.5		1.0	
Retail Establishments				
(Merchandising & Circulation Area)				
Applicable to all lighting, including accent and display lighting, installed in merchandising and circulation areas				
Type A	5.6	(e)	6.0	(e)
Type B	3.2	(e)	2.9	(e)
Type C	3.3	(e)	2.7	(e)
Type D	3.0	(e)	2.5	(e)
Type E	2.8	(e)	2.4	(e)
Type F	2.7	(e)	2.6	(e)
Mall Concourse	1.4		0.6	
Retail Support Area				
Tailoring	2.1		2.1	
Dressing/Fitting Rooms	1.4		1.1	

TABLE 3.5-1 (Continued)
BASE UPD (P_b) FOR AREA/ACTIVITY

AREA/ACTIVITY INDOOR ATHLETIC AREAS	1989 UPD	1989 NOTE (b)	1993 UPD	1993 NOTE (b)
Seating Area, All Sports	0.4		0.4	
Badminton				
Club	0.5		0.5	
Tournament	0.8		0.8	
Basketball/Volleyball				
Intramural	0.8		0.8	
College	1.3		1.3	
Professional	1.9		1.9	
Bowling				
Approach Area	0.5		0.5	
Lanes	1.1		1.1	
Boxing or Wrestling (platform)				
Amateur	2.4		2.4	
Professional	4.8		4.8	
Gymnasium				
General Exercising & Recreation Only	1.0		1.0	
Handball/Racquetball/Squash				
Club	1.3		1.3	
Tournament	2.6		2.6	
Hockey, Ice				
Amateur	1.3		1.3	
College or Professional	2.6		2.6	
Skating Rink				
Recreational	0.6		0.6	
Exhibition/Professional	2.6		2.6	
Swimming				
Recreational	0.9		0.9	
Exhibition	1.5		1.5	
Underwater	1.0		1.0	
Tennis				
Recreational (Class III)	1.3		1.3	
Club/College (Class II)	1.9		1.9	
Professional (Class I)	2.6		2.6	
Tennis, Table				
Club	1.0		1.0	
Tournament	1.6		1.6	

NOTES:
(a) Area Factor of 1.0 shall be used for these spaces.
(b) Area Factor of 1.0 shall be used for all indoor athletic spaces.
(c) Base UPD includes lighting power required for clean-up purpose.
(d) A 1.5 adjustment factor is applicable for multi-functional spaces
(e) See Section 11.0 - Definitions for Classification of Retail Facilities
(f) These Standards do not prescribe UPD for dwelling units.
(g) Area factor shall not exceed 1.55.
(h) Minimum of 90% of all work stations shall be enclosed with partitions of the height prescribed.

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3.5.3.3 The Area Factor (AF) shall be determined from Figure 3.5-1 based on the floor area and ceiling height of the room. Rooms with identical ceiling height and activities, and with similar size may be treated as a group. The AF of such a group of rooms shall be determined from the average area of the rooms.

Equation 3.5-2 gives the formula used in developing Figure 3.5-1.

$$AF = 0.2 + 0.8 \exp. - \left[\left[\frac{10.21 \times (CH - 2.5)}{\sqrt{A_r}} - 1 \right] \times \mathrm{Ln}\,(0.9) \right]$$

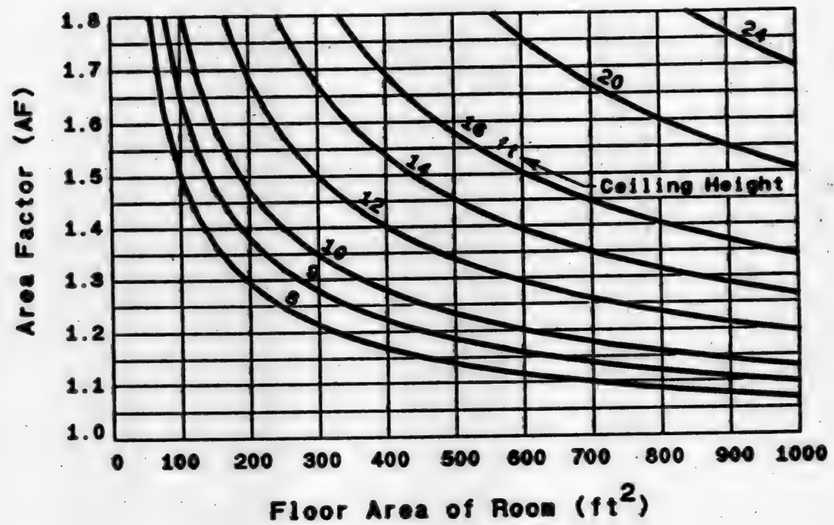
Equation 3.5-2

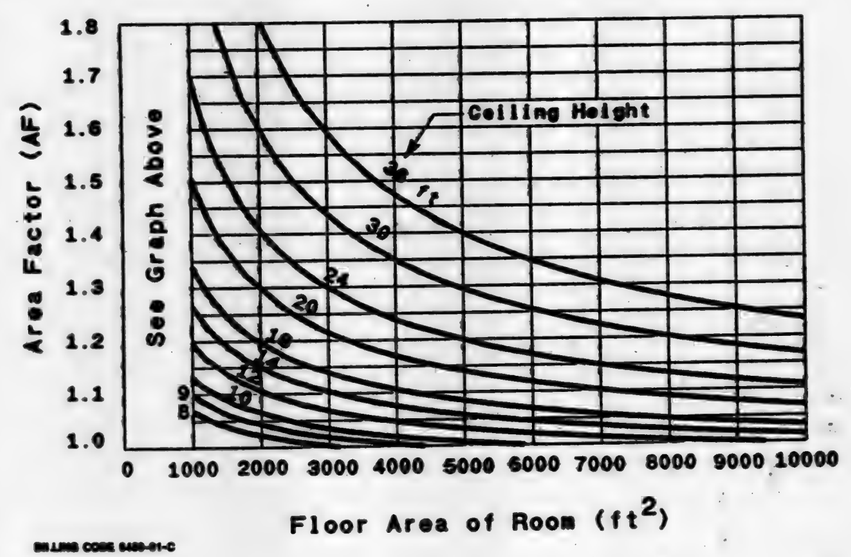
Where:
AF = Area Factor
CH = Ceiling Height
A_r = Floor Area of Room, ft²

If AF < 1.0 then AF = 1.0
If AF > 1.8 then AF = 1.8

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Figure 3.5-1 Base Unit Power Density Area Factor





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3.5.4 Special Spaces and Activities.

3.5.4.1 Multi-Function Rooms.

3.5.4.1.1 For rooms serving multi-functions, such as hotel banquet/meeting rooms and office conference/presentation rooms, an adjustment factor of 1.5 times the base UPD may be used if a supplementary lighting system is actually installed to serve the secondary function of the room and the design meets the following conditions:

(a) The installed power for the supplementary system shall not be greater than 33% of the adjusted LPB calculated for that room; and

(b) Independent controls shall be installed for the supplementary lighting system.

3.5.4.2 Simultaneous Activities.

3.5.4.2.1 In rooms containing multiple simultaneous activities, such as a large general office having separate accounting and drafting areas within the same room, the LPB for the rooms shall be the weighted average of the activities in proportion to the areas being served.

3.5.4.3 Indoor Sports.

3.5.4.3.1 The floor area of indoor sports activities areas shall be considered as the area within the playing boundaries of the sport, plus the floor area 10 ft beyond the playing boundaries, not to exceed the total floor area of the indoor room less the spectator seating area.

3.5.5 *Calculation of Interior Lighting Power Allowance.* The system performance Interior Lighting Power Allowance (ILPA) shall be calculated in accordance with Equation 3.5–3. The ILPA shall include a 0.20 W/ft^2 allowance for unlisted spaces.

$$ILPA = (LPB_1 \times LS_1 + LPB_2 \times LS_2 \text{ ——} LPB_n \times LS_n) + 0.2\ W/ft^2 \times (\text{Unlisted Space})$$

Equation 3.5–3

Where:

ILPA = Interior Lighting Power Allowance, W/ft^2

$$\text{Unlisted space} = (GLA - \sum_{i=1}^{n} LS_{i\ldots n}),\ ft^2$$

GLA = Gross Lighted Area, ft^2

LPB = Lighting Power Budget, Watts

LS = Listed Space Area, ft^2

3.5.6 Lighting Power Controls Credit and Power Adjustment Factor

3.5.6.1 When calculating the ULPA in this section, the connected power for lights automatically controlled by daylighting sensors, occupancy sensor, programmable timing controls, or lumen maintenance controls may be reduced by factoring control credits on a specific area by area basis. This credit is termed the Lighting Power Controls Credit (LPCC) and shall be determined in accordance with Equation 3.5–4:

$$LPCC = CLP \times PAF$$

Equation 3.5–4

Where:

LPCC = Lighting Power Controls Credit, Watts

CLP = Connected Lighting Power for the luminaires controlled by the automatic control device, Watts

PAF = Power Adjustment Factor, from Table 3.5–2

The adjusted lighting power (ALP) is then equal to CLP minus the LPCC.

3.5.6.2 The Lighting Power Controls Credit is limited to the specific luminaires controlled by the automatic control device.

3.5.6.2.1 Only one adjustment factor may be used for each building space or luminaire, and 50% or more of the controlled luminaire shall be within the applicable space to qualify for the power adjustment factor.

3.5.6.2.2 Controls shall be installed in series with the lights and in series with all manual switching devices in order to qualify for an adjustment factor.

3.5.6.2.3 When sufficient daylight is available, daylight sensing controls shall be capable of reducing electrical power consumption for lighting, continuously or in steps, to 50% or less of maximum power consumption.

3.5.6.2.4 Daylight sensing controls shall control all luminaires to which the power adjustment factor is applied and that direct a minimum of 50% of their light output into the daylight zone.

3.5.6.2.5 Occupancy sensors located in daylighted spaces should be installed in conjunction with a manual ON switch, or photocell override for ON.

3.5.6.2.6 Programmable timing controls used for credit in conjunction with Table 3.5–2 shall be:

Table 3.5–2
Power Adjustment Factor (PAF)

AUTOMATIC CONTROL DEVICE(S)	POWER FACTOR*
(1) Occupancy sensor	0.30
(2) Daylight Sensing control/zone dimming	0.30
(3) Daylight Sensing multiple step dimming	0.30
(4) Daylight Sensing ON/OFF	0.10
(5) Lumen maintenance	0.10

* = Power Adjustment Factor cannot be used for incandescent fixtures.

(a) Programmable for different schedules for occupied and unoccupied days;

(b) Accessible for temporary override by occupants of individual zones, spaces or tasks, with automatic return to the original schedules; and

(c) Capable of keeping time during power outages for a minimum of four hours.

§ 435.104 Auxiliary systems and equipment.

4.1 General

This section contains a few minimum requirements for auxiliary systems and equipment. Because auxiliary systems and equipment vary greatly among buildings, the section is not more comprehensive.

4.2 Principles of Design

4.2.1 Energy recovery should be used when coincident thermal and refrigeration loads of similar magnitude are expected.

4.2.2 Consideration shall be given to the use of waste heat, energy recovery or heat tape systems to conserve energy.

4.3 Minimum Requirements

4.3.1 Transportation Systems.

4.3.1.1 Automatic elevator and/or conveyor systems shall incorporate schedule controls and efficient motor controls, such as solid state control devices.

4.3.2 Freeze Protection System.

4.3.2.1 Boilers or water heaters used for purposes such as freeze protection in fire protection storage vessels and defrosting sidewalks and driveways shall meet the efficiency requirements of sections 8.3 or 9.3 when they operate in excess of 750 hours per year.

4.3.3 Retail Food and Food Service Refrigeration.

4.3.3.1 Refrigeration systems containing multiple compressors shall have compressors sized to optimally match capacity with loads.

4.3.3.2 Variable speed shall be considered.

§ 435.105 Building Envelope.

5.1 General

5.1.1 This section contains requirements for the energy conscious design of building envelopes. It sets principles of good envelope design, and provides a set of minimum requirements and two alternative compliance paths—prescriptive and system performance.

5.1.2 *Compliance.* A building shall be considered in Compliance with this section if the following conditions are met:

5.1.2.1 The minimum requirements of Section 5.3 are met;

5.1.2.2 The design of the building envelope complies with either the prescriptive criteria of Section 5.4 or the system performance criteria of Section 5.5. For the design of buildings with high internal heat gains, unusual operating schedules, or that incorporate innovative design strategies, consideration shall be given to using the compliance paths set forth in Sections 11.0 or 12.0.

5.1.3 The prescriptive compliance alternative of Section 5.4 provides requirements for buildings designed to take advantage of perimeter daylighting, thermal mass, high performance glazings, and fenestration shading. The designer is allowed to make trade-offs between thermal mass, wall insulation, amount of fenestration, shading coefficients, shading projections, thermal transmittance of the glazing, daylighting for several different climate locations.

5.1.4 The systems performance compliance alternative of Section 3.5 provides calculation procedures that give credit for the benefits of more complex energy conserving envelope designs.

5.1.5 Information on thermal properties, performance of building envelope sections and components, and heat transfer shall be obtained from the *ASHRAE Handbook, 1985 Fundamentals Volume.* When information is not available from this source, the data shall be obtained from laboratory or field test measurements conducted in accordance with *ASTM Standard C–177–85,* "Standard Test Method for Steady-State Thermal Transmission Properties by Means of the Guarded Hot Plate," *ASTM Standard C–518–85,* "Steady-State Thermal Transmission Properties by Means of the Heat Flow Meter," *ASTM Standard C–236–80,* "Standard Test Method for Steady-State Thermal Performance of Building Assemblies by Means of a Guarded Hot Box," and *ASTM Standard C–976–82,* "Thermal Performance of Building Assemblies By Means of a Calibrated Hot Box."

5.1.6 *Daylighting Credit.* In this section, daylighting credit for reduced energy use resulting from the use of automatic lighting control devices in conjunction with fenestration, is given only for space heating and cooling loads. Credit for the reduced use of electric lighting energy is calculated in Section 3.5.6. If daylighting credit for reduced electric lighting energy use is desired to be applied to other building systems, such as more fenestration area, Section 11.0 or 12.0 should be used.

5.1.7 The requirements of this section are not intended to replace building loads calculation procedures.

5.2 Principles of Design

5.2.1 Building Loads

5.2.1.1 Building loads result from sources external and internal to the building. (1) External loads, from outdoor temperature, humidity, wind, and insolation, fluctuate daily and seasonally. (2) Internal loads from the activities conducted within the building, including heating and moisture produced by the occupants, lights, and process equipment (e.g., appliances, computers) vary with internal activities. Improving energy efficiency in a building depends on achieving a balance between and among the internal and external loads. The building design should, therefore, offset gains and losses of heat, light, and moisture between the interior and exterior of the building, among interior spaces, and over-time, (daily, seasonally, and annually).

5.2.1.2 This balance of loads can be most efficiently achieved if the building envelope is viewed as, and designed to be, a controlled membrane rather than an immutable barrier. The typical design of a modern building has considered the building envelope to be a fixed barrier that restricts heat and air flow to the maximum extent possible. This will not usually yield the most energy efficient building.

5.2.1.3 The desired goal of the energy design of the building envelope shall be to produce a controlled membrane that allows or prevents heat, light, and moisture flow to achieve a balance between internal and external loads. Thus the envelope becomes an integral part of the building's environmental conditioning systems.

5.2.1.4 To achieve control of the building envelope as a membrane, and to simultaneously achieve occupant comfort in the perimeter zones, many of the traditional building skin components must be used (insulation, mass, caulking and weather stripping). However, other concepts shall also be considered to temper supply air or utilize waste heat in exhaust air to temper envelope conditions, such as operable solar shading devices, and the integration of glazing systems with the HVAC distribution system.

5.2.1.5 Control of External Loads

5.2.1.5.1 Control of Conduction

(a) Controlled conductivity may be considered through the careful use of insulation, sensible (mass) or phase-change storage and movable insulation at levels which minimizes net heating and cooling loads on a time integrated (annual) basis.

(b) Unintentional or uncontrolled thermal bridges shall be minimized and considered in energy related calculations since they can radically alter the conductivity of a building envelope. Examples include wall studs, balconies, ledges, and extensions of building slabs.

5.2.1.5.2 Control of Infiltration (Heat Loss or Gain)

(a) Infiltration shall be minimized and all efforts to achieve a zero level shall be taken. This will minimize fan energy consumption in pressurized buildings during occupied periods and heat loss (or unwanted heat gain in warm climates) during unoccupied periods. Infiltration reduction shall be accomplished through design details that enhance the fit and integrity of building envelope joints in a way that may be readily achieved during building construction. This includes infiltration control by caulking, weather stripping, vestibule doors and/or revolving doors with construction meeting or exceeding accepted specifications.

(b) The quantity of mechanical ventilation must vary with the need, with recommended values at any given time equal to that required by ASHRAE Standard 62–1981. Higher levels of ventilation (e.g., economizers) shall be considered to substitute for mechanical cooling.

(c) Operable windows may be considered to allow for occupant controlled ventilation. When using operable windows, the design of the building's mechanical system must be carefully executed to minimize unnecessary HVAC energy consumption, and building operators must be cautioned about the improper use of the operable windows.

(d) Non-mechanical ventilation can be enhanced in the shape of the building as well as the physical elements of the building envelope, such as cupolas.

(e) For hotels and high rise dwelling units and other systems having exhaust totalling 3000 cfm or more, with annual operation in excess of 3000 hours and within 200 linear ft of simultaneous make-up air equipment, they shall incorporate energy recovery or treatment to ASHRAE 62–1981 quality levels and reuse exhaust air when allowed by code.

5.2.1.5.3 Control of Radiated Heat Losses and Gains

(a) Capability for occupant radiant comfort shall be maintained regardless of whether the building envelope is

designed to be a static or dynamic membrane. Opaque surfaces shall be designed so that the *average* inside surface temperatures will remain within 5 °F of room temperature in the coldest anticipated weather (i.e., winter design conditions), and the coldest inside surface will remain within 25 °F of the room temperature.

(b) In a building with time-varying internal heat generation, thermal mass may be considered for controlling radiant comfort. In the perimeter zone, thermal mass is more effective when it is positioned internal to the envelope insulation.

(c) The effective control of solar radiation is critical to the design of energy-efficient buildings due to the high level of internal heat production already present in most commercial building types. In some climates, the lighting energy consumption savings due to daylighting techniques can be greater than the heating and cooling energy penalties from additional glazed surface area, provided that the building envelope is properly designed for daylighting and lighting controls are installed and used. In other climates they may not. Daylighting designs are most effective if direct solar beam radiation is not allowed to cause glare in building spaces.

(d) The transparent portions of the building envelope shall be designed to prevent solar radiant gain above that necessary for effective daylighting and solar heating. On south-facing facades, the use of low shading coefficients is generally not as effective as external physical shading devices in achieving this balance. Light shelves offer a very effective means of admitting daylight while shading the view glazing and simultaneously allowing occupants to manipulate interior shading devices (draperies, blinds) without eliminating day light.

(e) The solar spectrum contains a range of wavelengths including visible and infrared (heat). Designers shall consider which portion of the spectrum to admit into the building. For example, low emissivity, high-visible-transmittance glazings may be considered for the effective control of radiant heat gains and losses. For shading control designers may consider the careful use of vegetation that can block excess gain, year-around or seasonally depending on the plant species chosen.

5.3 Minimum Requirements

5.3.1 Overall Thermal Transmittance (U_o)

5.3.1.1 The overall thermal transmittance of the building envelope above grade assembly shall be calculated as follows:

$$U_o = \Sigma U_i A_i / A_o = (U_1 A_1 + U_2 A_2 + \ldots + U_n A_n) / A_o$$

Equation 5.3-1

Where:

U_o = the area weighted average thermal transmittance of the gross area of the building envelope assembly, e.g., the exterior wall assembly including fenestration and doors; roofs and ceiling assembly; or the floor assembly, Btu/h-ft²-°F.

A_o = the gross area of the envelope assembly, ft².

U_i = the thermal transmittance of each individual path of the envelope assembly (see Section 5.3.2). $U_i = 1/R_i$ (where R_i is the total resistance to heat flow of an individual path through an envelope assembly).

A_i = the area of each individual element of the envelope assembly, ft².

5.3.2 *Thermal Resistance of Below Grade Components (R)*

5.3.2.1 In calculating the thermal resistance of all below grade components, the thermal performance of the adjacent ground shall be excluded.

5.3.2.2 *Slabs*

5.3.2.2.1 The R-value required for slabs refers only to the insulation materials. Insulative continuity shall be maintained in the design of slab edge insulation systems. Continuity shall be maintained from the wall insulation through the slab/wall/footing intersection to the body of the slab edge insulation.

5.3.2.2.2 Slab-on-grade floors shall have insulation around the perimeter of the floor with the thermal resistance (R_m) of the insulation specified in accordance with Figure 5.5–2. The slab insulation specified shall extend either in a vertical plane downward from the top of the slab for the minimum distance shown or downward to the bottom of the slab then in a horizontal plane beneath the slab or outward from the building for the minimum distance shown. The horizontal length, or vertical depth, of insulation required varies from 24 in. to 48 in. depending upon the R-value selected. For heated slabs, an R of 2 shall be added to the thermal resistance required.

5.3.2.2.3 Vertical insulation shall not be required to extend below the foundation footing. There are no insulation requirements for slabs in locations having less than 3,000 HDD65 or for footings extending less than 18 in. below grade.

5.3.2.2.4 The dimensional requirements for horizontal insulation refers to the insulation materials only. Horizontal applications shall have a thermal break in the slab edge that provides continuity between the wall insulation on the slab and the horizontal insulation.

Below Grade Walls

5.3.2.3.1 The R-value required for Below Grade Walls refers to the overall R-value of the wall assembly excluding air film coefficients and the thermal performance of the adjacent ground.

5.3.3 Thermal Transmittance (U_i) of an Envelope Assembly

5.3.3.1 The thermal transmittance of each envelope assembly shall be determined with due consideration of all major series and parallel heat flow paths through the elements of the assembly. Compression of insulation shall be considered in determining the thermal resistance.

5.3.3.2 The thermal transmittance of opaque assemblies U_i shall be determined using a series path procedure that corrects parallel paths, such as insulation and studs in a wall cavity or the roof assembly shown in Figure 5.3–1. Table 5.3–1 prescribes the procedure to be used for Subsections 5.3.3.2.1 and 5.3.3.2.2.

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Figure 5.3-1
Example of Total Resistance of an Envelope Assembly Including Series Resistance and Parallel Path Equivalent Resistance Elements

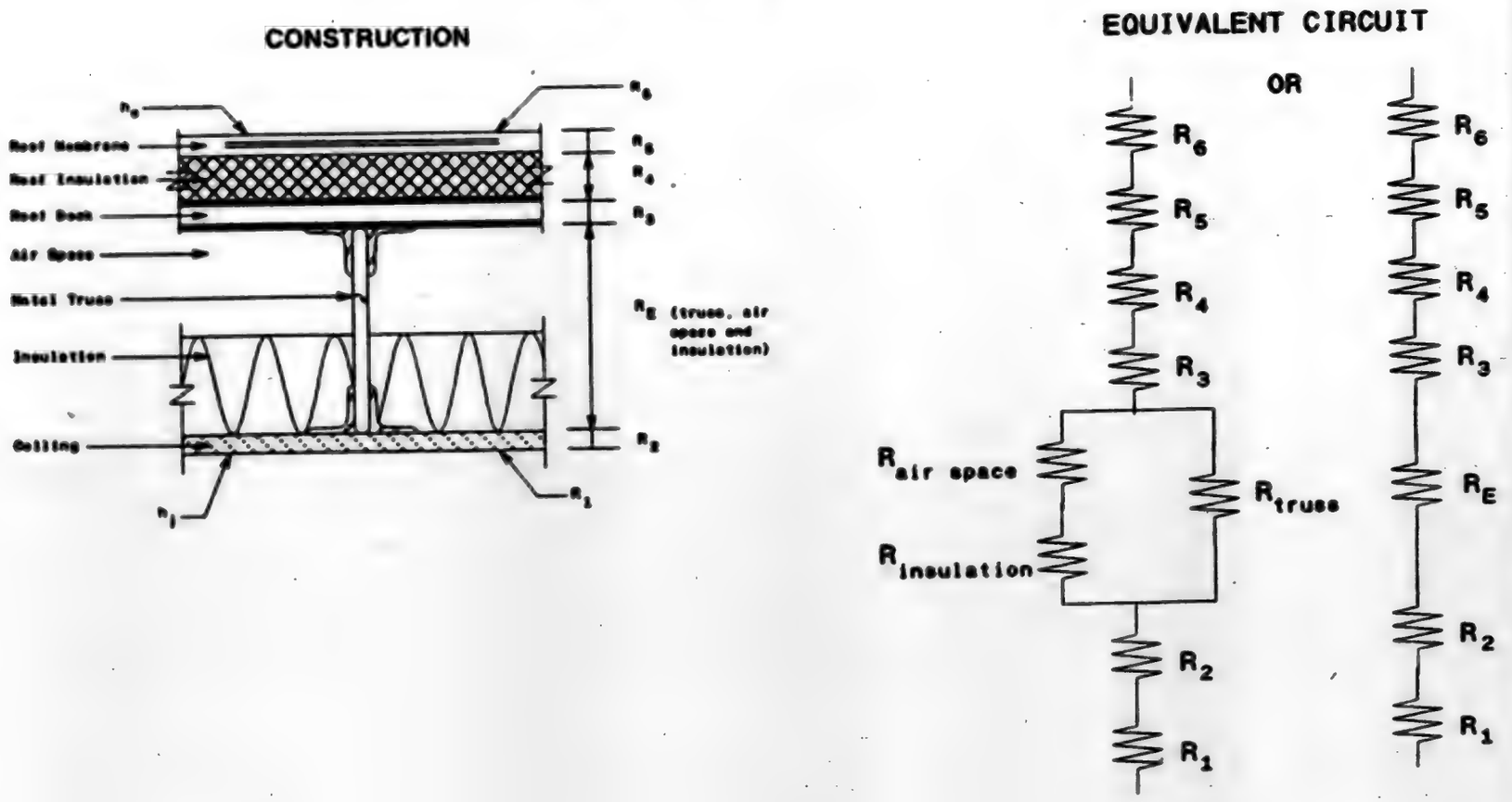


Table 5.3-1
Calculation Procedures for Thermal Transmittance
Through Opaque Envelope Assemblies

Material Attached To Thermal Bridge Material	Thermal Bridge Material	Calculation Procedure(s)
Metal	Metal	Thermal Bridges Sheet Metal Construction, 5.3.3.2.1 (d)
Metal	Non-Metal	Parallel/Series 5.3.3.2.2
Non-Metal	Metal	Case Specific Correction 5.3.3.2.1 (b), or 5.3.3.2.1 (c)
Non-Metal	Non-Metal	Parallel/Series 5.3.3.2.2

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5.3.3.2.1 For envelope assemblies containing metal framing, the U_i shall be determined by using one of the following methods:

(a) Results from laboratory or field test measurements, using one of the procedures specified in Section 5.1.5.

(b) For non-metal surfaces attached to metal framing, where data from tests conducted using procedures specified in Section 5.1.5, such as those provided in Tables 5.3–2 and 5.3–3, is available, the total resistance of the series path may be calculated using Equations 5.3–2a and 5.3–2b, and illustrated in Figure 5.3–1:

Table 5.3-2

Parallel Path Correction Factors[1]

Bridged R-Value	0	5	10	15	20	25	30	35	40	45	50	55
Correction Factor	1.0	0.96	0.92	0.88	0.85	0.81	0.79	0.76	0.73	0.71	0.69	0.67

1. Table 5.3-2 values are based upon metal trusses with 4 ft spacing that penetrate the insulation, and 0.66 in. diameter crossmembers every 1 ft.

Table 5.3-3
Wall Sections With Metal Stops
Parallel Path Correction Factors

Size of Members	Gauge of Stud	Spacing of Framing, In.	Cavity Insulation R-Value	Correction Factor
2 X 4	18-16	16 o.c.	R-11	0.50
2 X 4	18-16	24 o.c.	R-11	0.60
2 X 6	18-16	16 o.c.	R-19	0.40
2 X 6	18-16	24 o.c.	R-19	0.45

$$U_i = 1/R_t$$

Equation 5.3–2a

$$R_t = R_i + R_e$$

Equation 5.3–2b

Where:

R_t = the total resistance of the envelope assembly

R_i = the resistance of the series elements (for i=1 to n), excluding the parallel path element(s)

R_e = the equivalent resistance of the element containing the parallel path, the value of R_e is:

R_e = (R-value of insulation) × F_c

Equation 5.3–2c

Where:

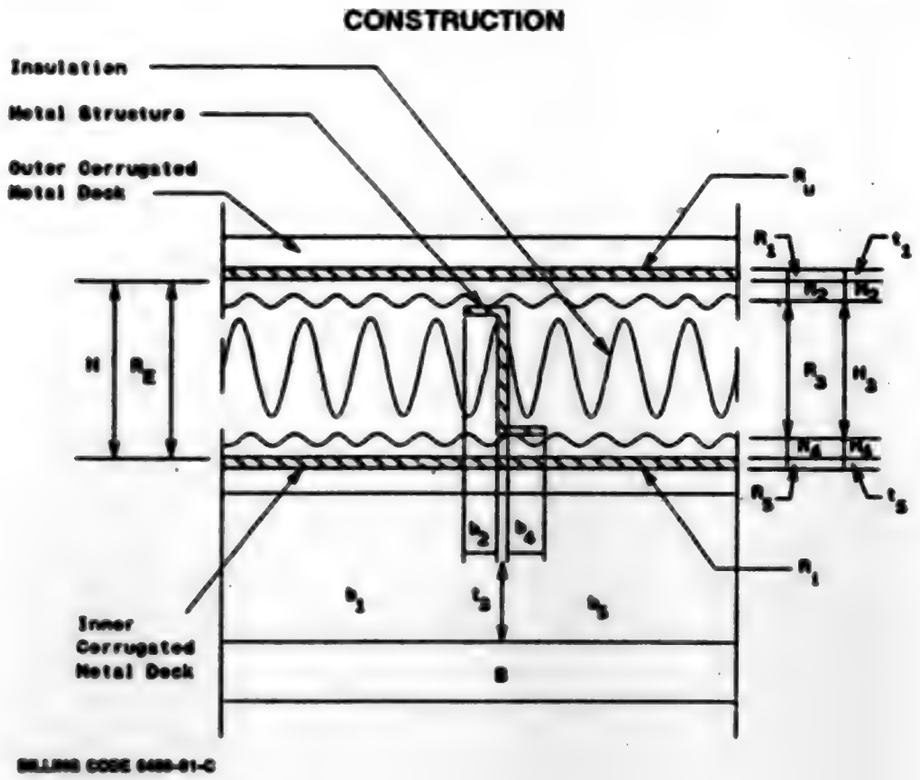
F_c = the correction factor from Table 5.3–2 or Table 5.3–3.

(c) For elements other than those covered in item (b) above, the zone method described in Chapter 23 of the *ASHRAE Handbook, 1985 Fundamentals Volume* shall be used. The equations on pages 23.13 and 23.14 shall be used.

(d) For sheet metal construction, internally insulated with an internal metal structure bonded on one or both sides to a metal skin or covering (see Figure 5.3–2), the following steps shall be used to calculate the U-value of the envelope construction.

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Figure 5.3-2
A Generalized Built-Up Sheet Metal
Construction and Corresponding Resistance Network



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(1) First, calculate the resistance of the thermal bridge R_{TB} as follows:

$$R_{TB}=R_i+R_s+R_3+R_4+R_o$$

Equation 5.3-3

(i) Where R_4, the effective mean flow path along the outer metal surface, is calculated by:

$$R_1 = \frac{1}{2 \times L \sqrt{h_1 k_1 T_1}} - \frac{1}{B \times L \times h_1}$$

Equation 5.3-4

(ii) And if it occurs, the resistance of insulation (R_2) between the outer metal surface and the metal structural member is calculated by:

$$R_2 = \frac{1}{k \times L \left[\frac{b_2}{H_2} + \frac{2}{\pi}\right]}$$

Equation 5.3-5

(iii) And, the resistance of the structural member (R_3) is calculated by:

$$R_3 = \frac{h_3}{L \times t_3 \times k_3}$$

Equation 5.3-6

(iv) And if it occurs, the resistance of insulation (R_4) between the inner metal surface and the purlin flange is calculated by:

$$R_4 = \frac{1}{k \times L \left[\frac{b_4}{H_4} + \frac{2}{\pi}\right]}$$

Equation 5.3-7

(v) And finally, the effective mean flow path along the inner metal surface (R_5) is calculated by:

$$R_5 = \frac{1}{2 \times L \sqrt{h_5 k_5 T_5}} - \frac{1}{B \times L \times h_5}$$

Equation 5.3-8

Where:
L=total length
h=coefficient of heat transfer
k=thermal conductivity
T=temperature
B=total width
H=partial height
t=thickness of sheet metal

(2) Then calculate the parallel path resistance of the homogeneous insulation R_H as follows:

$$R_H = \frac{\Sigma \left[\frac{H}{K}\right]}{B \times L}$$

Equation 5.3-9

(3) Then obtain the overall construction resistance R_C by combining R_H and R_{TB} as two parallel resistances:

$$R_C = \frac{R_{TB} \times R_H}{R_{TB} + R_H}$$

Equation 5.3-10

(4) Then add the inside and outside surface resistances R_i and R_o to get the total resistance R_{TOT}:

$$R_{TOT}=R_C+R_i+R_o$$

Equation 5.3-11

(5) The total area resistance m_{TOT} is then calculated by:

$$m_{TOT}=R_{TOT} \times B \times L$$

Equation 5.3-12

(6) And finally, obtain the U-value by:

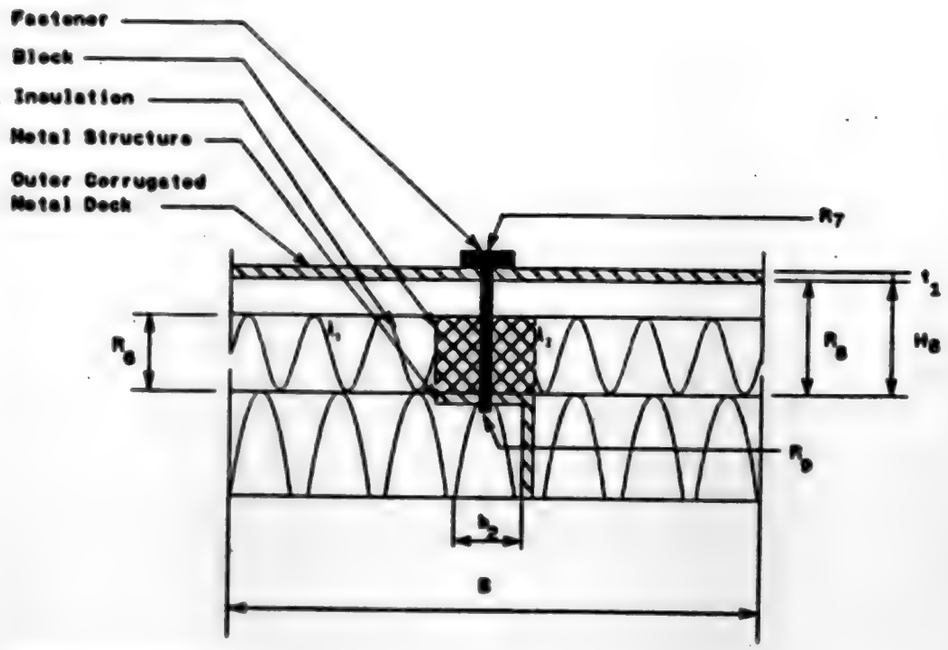
$$U = \frac{1}{m_{TOT}}$$

Equation 5.3-13

(7) Where additional resistances are introduced in the construction, introduce them in lieu of the above (R_o and R_4) resistances. An example of this would be the calculation of both a metallic fastener and a block of higher thermal conductivity material between the outer sheet metal and the internal structural member as shown in Figure 5.3-3. In this case the original R_4 is re-calculated by first calculating the thermal bridge R_{STB} as follows:

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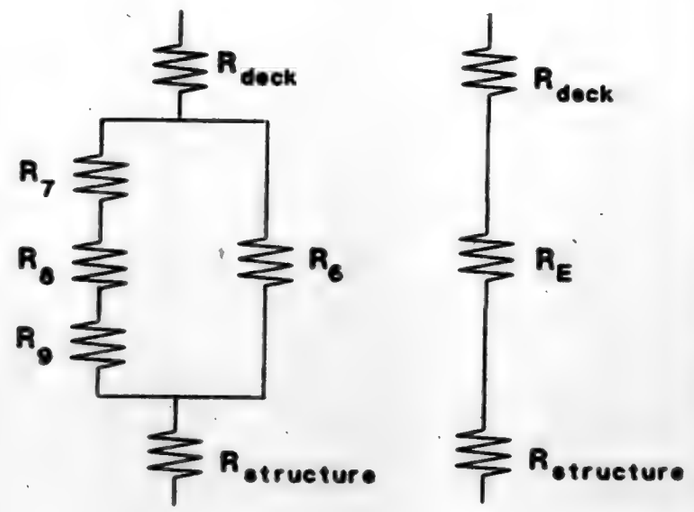
Figure 5.3-3
Detail of Heat Transfer From a Metal Surface to a Structure Through a Metal Fastener and Insulating Block With Corresponding Resistance Network



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$$R_{TH} = R_T + R_a + R_e$$

Equation 5.3-14

(i) Where the resistance of the heads of number (N) of fasteners per length (L), adjusting for surface resistance in common with the sheet metal surface, is calculated by:

$$R_T = \frac{1}{N \times \Sigma \times \pi \times \lambda_t \times t_t \times f(\beta r_1, \infty)} - \frac{1}{a_t \times B \times L}$$

Equation 5.3-15

Where:

N = the number of fasteners in Length L.

f = the function of $B\tau$ for different values of the ratio r_2/r_1 given in Figure 5.3-4.

$$\beta = \sqrt{} = \frac{\sqrt{}}{\lambda x t}$$

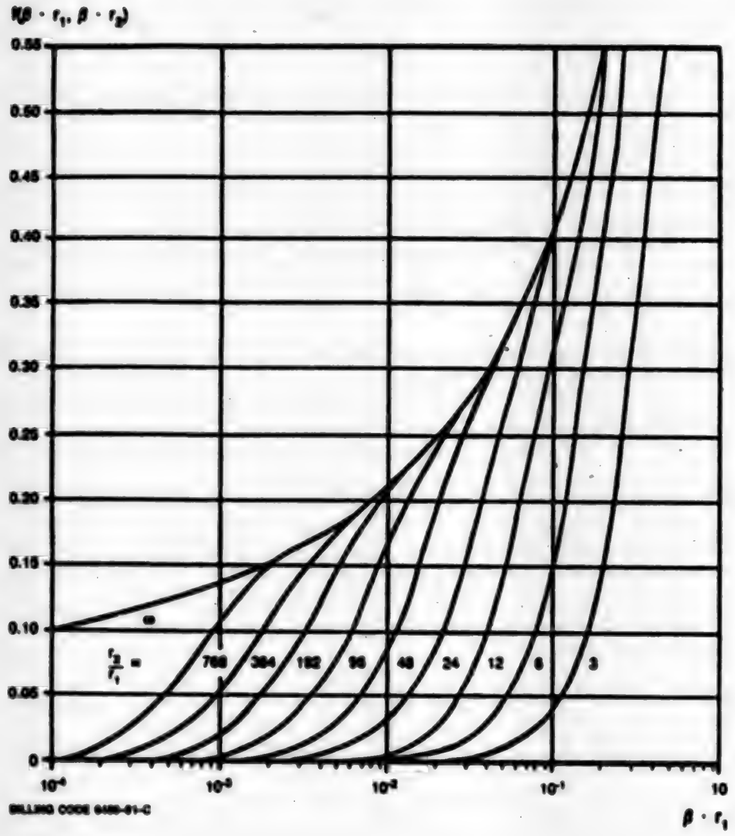
r_1 = the radius of the fastener shank.

r_2 = the outer radius of the fastener head.

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Figure 5.3-4 – The Function (f) Given as a Function of βr and for Different Values of the Ratio, r_1/r_2



(ii) And, the resistance of the shank of the fastener is calculated by:

$$R_s = \frac{H_s}{N \times \lambda \times \pi \times r_1^2}$$

Equation 5.3-16

(iii) And, finally, the resistance of the connection to the internal structural member is calculated by:

$$R_9 = \frac{l_n \times \frac{b_2}{r_1}}{N \times 2\pi \times t}$$

Equation 5.3-17

(iv) Then calculate the resistance of the block of higher thermal conductivity material as follows:

$$R_6 = \frac{1}{L_1 \left[1 \frac{b}{H_B} + 2 \frac{2}{\pi} \right]}$$

Equation 5.3-18

Where:

$\lambda_1 > \lambda_2$

(v) Then obtain the resistance to be used in lieu of the original R_6 by:

$$R_2 = \frac{R_{TB} \times R_6}{R_{TB} + R_6}$$

Equation 5.3-19

5.3.3.2.2 For envelope assemblies containing Non-Metal Framing, the U_i shall be determined from one of the laboratory or field test measurements specified in Section 5.1.5 or from the ASHRAE series-parallel method. Formulas in Chapter 23, page 23.2 of the *ASHRAE Handbook, 1985 Fundamentals Volume*, shall be used for these calculations.

5.3.3.3 The thermal transmittance of fenestration assemblies shall be corrected to account for the presence of sash, frames, edge effects and spacers in multiple-glazed units.

If thermal transmittances of sash and frames are known, Equation 5.3-1 shall be used, otherwise the thermal transmittance offenestration assemblies shall be calculated as follows:

$U_{wf} = \Sigma\, U_{fi} \times F_{f,i} \times A_i / A_{wf} =$
$(U_{f,1} \times F_{f,1} \times A_1 + U_{f,2 \ldots n} \times F_{f,2 \ldots n} \times A_2 + \ldots$
$+ U_{f,n} \times F_{f,n} \times A_n) / A_{wf}$

Equation 5.3-20

Where:

A_i = area of ith fenestration assembly
i = numerical subscript (1,2, . . . n) refers to each of the various fenestration assemblies present in the wall
n = the number of fenestration assemblies in the wall assembly.
U_{wf} = the overall thermal transmittance of the fenestration assembly, including sash and frames, Btu/h-ft²°F.
U_g = the thermal transmittance of the central area of the fenestration excluding edge effects, spacers in multiple-glazed units, and the sash and frame, Btu/h-ft²°F.
$F_{f,i}$ = framing adjustment factor for sash, frames, etc.
A_{wf} = the area of all fenestration including glazed portions, sash, frames, etc.

5.3.3.3.1 Values for U_g shall be the winter value obtained from the glazing manufacturer's test data or from Table 13 or Figure 14 of Chapter 27 of the *ASHRAE Handbook, 1985 Fundamentals Volume*. Values for F_f shall be obtained from the frame manufacturer's test data or from the average adjustment factor for a particular product in Table 13, Part C, in Chapter 27 of the *ASHRAE Handbook, 1985 Fundamentals Volume*. For glass products with a U value of 0.45 or less, use the F_f for triple insulated glazing. Alternatively, values of the U_g°F product may be used from manufacturer's test data for open window and frame assemblies tested as a unit provided that the tests referenced edge-effects and windspeed are accounted for winter tested U-values are used.

5.3.4 Gross Area of Envelope Components

5.3.4.1 The gross area of a roof assembly consists of the total surface of the roof assembly exposed to outside air or unconditioned spaces. The roof assembly shall include all roof/ceiling components through which heat may flow between indoor and outdoor environments including skylight surfaces, but excluding service openings.

5.3.4.1.1 For thermal transmittance purposes, when return air ceiling plenums are employed, the roof/ceiling assembly shall not include the thermal resistance of the ceiling, or the plenum space, as part of the total thermal resistance of the assembly.

5.3.4.2 The gross area of a floor assembly over outside or unconditioned space consists of the total surface of the floor assembly exposed to the outside air or an unconditioned space. The floor assembly shall include all floor components through which heat may flow between indoor and outdoor or unconditioned space environments.

5.3.4.3 The gross area of exterior walls enclosing a heated or cooled space is measured on the exterior and consists of the opaque wall including between floor spandrels, peripheral edges of flooring, window areas including sash and door areas, but excluding vents, grilles and pipes.

5.3.5 Shading Coefficients

5.3.5.1 The Shading Coefficient (SC) for fenestration shall be obtained from Chapter 27 of the *ASHRAE Handbook, 1985 Fundamentals Volume* or from manufacturers' test data. For the prescriptive or system performance envelope compliance calculations in Sections 5.4 and 5.5, a factor, SC_x, is used. SC_x is the Shading Coefficient of the fenestration, including internal and external shading devices, but excluding the effect of external shading projections, which is calculated separately. The shading coefficient used for louvered shade screens shall be determined using a profile angle of 30°, as found in Table 41, Chapter 27 of the *ASHRAE Handbook, 1985 Fundamentals Volume*.

5.3.6 Wall Heat Capacity

5.3.6.1 Heat capacity in Btu/°F-ft², shall be determined as the product of the average wall weight in lb/ft² and the weighted average specific heat of the wall component in Btu/lb.°F.

5.3.6.2 If the wall system is defined as having exterior insulation only the properties of the wall elements inside of the insulation layer shall be used in determining the wall heat capacity.

5.3.6.3 For walls with integral insulation, all of the elements of the entire wall system may be used in the calculation of the wall heat capacity.

5.3.7 Air Leakage and Moisture Migration

5.3.7.1 The requirements of this subsection apply only to those locations separating the outdoors from interior building conditioned space. Compliance with the criteria for air leakage through building components shall be determined by *ASTM E 283–1984*, "Standard Method of Test Rate of Air Leakage Through Exterior Windows, Curtain Walls and Doors."

5.3.7.2 Air Leakage Requirements for Fenestration and Doors

5.3.7.2.1 Fenestration meeting the following standards for air leakage is acceptable:

(a) *ANSI/AAMA 101–85*, "Aluminum Prime Windows."

(b) *ASTM D–4099–83*, "Specifications for Poly(VinylChloride) (PVC) Prime Windows."

(c) *ANSI/NWMA I.S. 2–80*, "Wood Window Units (Improved Performance Rating Only)."

5.3.7.2.2 Sliding Doors shall meet one of the following standards for air leakage:

(a) *ANSI/AAMA 101–85*, "Aluminum Sliding Glass Doors."

(b) *NWMA I.S. 3–83*, "Wood Sliding Patio Doors."

5.3.7.2.3 Commercial entrance swinging or revolving doors shall limit air leakage to a rate not to exceed 1.25 cfm/ft² of door area, at standard test conditions.

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5.3.7.2.4 Residential swinging doors shall limit air leakage to a rate not to exceed 0.5 cfm/ft² of door area, at standard test conditions.

5.3.7.2.5 Where spaces have regular high volume traffic through the building envelope, such as retail store entrances and loading bays, estimates of air leakage for HVAC system design shall be based on air exchange by traffic flow.

5.3.7.2.6 To reduce infiltration due to stack-effect draft in multi-story buildings, the use of vestibules or revolving doors on all primary entries and exits shall be considered.

5.3.7.3 Air Leakage Requirements for Exterior Envelope Joints and Penetrations.

5.3.7.3.1 Exterior joints, cracks, and holes in the building envelope, such as those around window or door frames, between wall and foundation, between wall and roof, through wall panels at penetrations of utility services or other service entry through walls, floors, and roofs, between wall panels, particularly at corners and changes in orientation, between wall and floor, where floor penetrates wall, around penetrations of chimney, flue vents, or attic hatches, shall be caulked, gasketed, weather stripped, or otherwise sealed.

5.3.7.4 Moisture Migration Requirements for Exterior Envelopes

5.3.7.4.1 The building envelope shall be designed to prevent moisture migration that leads to deterioration in insulation performance of the building.

5.3.7.4.2 Vapor retarders shall be considered to prevent moisture from collecting within the envelope. Designs should incorporate the principles of *ASHRAE Handbook, 1985 Fundamentals Volume*, Chapter 21, "Moisture in Building Construction."

5.3.8 Shell Buildings

5.3.8.1 The following conditions shall be assumed if determination of building envelope compliance occurs prior to the determination of lighting power density, equipment power density, or fenestration shading device characteristics:

5.3.8.1.1 *Lighting Power Density and Equipment Power Density.* For Section 5.4, the total power density shall be assumed to be those listed in Table 5.3-4. For Section 5.5, the values in Table 5.3-4 shall be assumed to be apportioned as ⅔ lighting and ⅓ for other equipment. Note that these are not recommended design values, but are for compliance purposes only.

Table 5.3-4
Assumed Internal Loads For Shell And Speculative Buildings

Shell Buildings	3.0 w/ft²	2.25 w/ft²	1.50 w/ft²
Speculative Buildings	Use the LPDs from Table 5.5-1 and the average equipment power density from Table 5.5-1C.		

5.3.8.1.2 *Fenestration shading devices.* Only those shading devices that are part of the design when it is being evaluated for compliance shall be considered when determining compliance.

5.3.8.1.3 *Day lighting controls for electric lighting.* Only those controls that are part of the design when it is being evaluated for compliance shall be considered when determining compliance.

5.3.9 Buildings Located in Climates With Greater Than 15,000 HDD Base 65 °F.

5.3.9.1 For locations with a heating degree-day base (HDD) 65 °F greater than 15,000, the envelope criteria listed in Table 5.3-5 shall apply, and the window wall ratio (WWR) shall be less than or equal to 0.20.

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Table 5.3-5
Requirements For Locations With
Heating Degree-Days Base 65 °F Greater Than 15,000

Envelope Statement	Maximum U Value	Minimum R Value	Notes
U_o opaque wall for buildings with ≥ 12,000 ft² of gross floor area [1,3]	0.053		See 5.3.3.2
U_o opaque wall for buildings with < 12,000 ft² of gross floor area [2,3]	0.040		
U fenestration	0.450		Use Eq 5.3-20
U roof	0.024		
Floor over unconditioned spaces[4]	0.023		See 5.3.3.2
Wall below grade[5]		18	

Slab-on-grade:

Position	Minimum Insulation Distance, in.	Minimum R Value: Unheated Slab	Minimum R Value: Heated Slab
Horizontal	48	15	17
Vertical	48	6	8

Skylights: Not allowed for locations with HDD65 greater than 15,000.

Footnotes for Table 5.3-5:

1. For window to wall ration, WWR ≤ 0.20. Shall include corrections for parallel paths within the envelope assembly. For WWR > 0.20, see Footnote (3).
2. For window to wall ratio, WWR ≤ 0.15. Shall include corrections for parallel paths within the envelope assembly. For WWR > 0.15, see Footnote (3).
3. The window to wall ratio and the stated U-values for opeque wall and fenestration may be increased or decreased provided that the combined thermal wall transmittance shall not exceed 0.125 for buildings ≥ 12,000 ft², and 0.091 for buildings < 12,000 ft².
4. Including pile-supported floors and elevated floors.
5. Installed on the exterior of perimeter foundation walls for heated foundations.

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VOL
54
ISS
18
JA
30
1989
UMI

5.3.10 Daylight Credits for Skylights.

5.3.10.1 Skylights used in conjunction with automatic lighting controls for daylighting can significantly reduce the lighting energy consumption, thereby more than offsetting the increase in envelope heat transfer.

5.3.10.2 When determining building roof compliance, daylight credits for skylights may be used if the criteria of this subsection are met.

5.3.10.3 Skylights for which daylight credit is taken may be excluded from the calculation of the overall thermal transmittance value (U_w) of the roof assembly, if all of the following conditions are met:

5.3.10.3.1 The opaque roof thermal transmittance U_o value does not exceed the value determined within the selected Alternate Component Package (ACP) table for the prescriptive method or by Equation 5.5-1 for the systems performance method.

5.3.10.3.2 Skylight areas, including framing, as a percentage of the roof area do not exceed the values specified in Tables 5.3-6A and 5.3-6B for building sites located within the climate ranges listed in the two Tables, where Visible Light Transmittance (VLT) is the transmittance of a particular glazing material over the visible portion of the solar spectrum. Skylight areas shall be interpolated between visible light transmittance values of 0.75 and 0.50, only.

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Table 5.3-6a

(VLT = 0.75)

Maximum Percent Skylight Area for Given Conditions of Lighting Power Density, Light Level (fc), HDD65 and CDH80

BUILDING LOCATION		LIGHT LEVEL IN (fc)	Range of Lighting Power Density (W/ft^2)				
HDD65	CDH80		<1.00	1.01-1.50	1.51-2.00	2.01-2.50	>2.50
0-3000	0-10000	30	2.3	3.1	3.9	4.7	4.7
		50	3.1	4.3	5.5	6.7	6.7
		70	4.3	5.5	6.7	7.9	7.9
0-3000	>10000	30	2.2	2.8	3.4	4.0	4.0
		50	2.3	3.1	3.9	4.7	4.7
		70	2.9	4.1	5.3	6.5	6.5
>3000	ALL	30	2.3	3.4	4.5	5.6	5.6
		50	2.5	4.0	5.5	7.0	7.0
		70	2.8	4.6	6.4	8.2	8.2

Table 5.3-6b
(VLT = 0.50)
Maximum Percent Skylight Area for Given Conditions of Lighting Power Density, Light Level (fc), HDD65 and CDH80

BUILDING LOCATION		LIGHT LEVEL IN FC	Range of Lighting Power Density (W/ft^2)				
HDD65	CDH80		<1.00	1.0-1-1.50	1.51-2.00	2.01-2.50	>2.50
0-3000	0-10000	30	3.6	4.8	6.0	7.2	7.2
		50	4.8	6.6	8.4	10.2	10.2
		70	6.6	8.4	10.2	12.0	12.0
0-3000	>10000	30	3.3	4.2	5.1	6.0	6.0
		50	3.6	4.8	6.0	7.2	7.2
		70	4.2	6.0	7.8	9.6	9.6
>3000	ALL	30	3.6	5.1	6.6	8.1	8.1
		50	3.9	6.0	8.1	10.2	10.2
		70	4.2	6.9	9.6	12.3	12.3

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5.3.10.3.3 The skylight area associated with daylight credit can be taken is the area under each skylight whose dimension in each direction (centered on the skylight) is equal to the skylight dimension in that direction plus a distance equal to the floor to ceiling height.

5.3.10.3.4 Skylight areas that overlap areas that have already taken daylight credit (perimeter window areas or other skylight areas) do not again take daylight credit.

5.3.10.3.5 All electric lighting fixtures within skylight areas are controlled by daylight-activated automatic lighting controls.

5.3.10.3.6 For buildings located in climates that have less than 8000 HDD65, the overall thermal transmittance of the skylight assembly, including framing, is less than or equal to 0.7 Btu/h-ft ^{2}-°F. For locations greater than 8000 HDD65, the overall thermal tranamittance of the skylight assembly, including framing, is less than or equal to 0.45 Btu/h-ft ^{2}-°F.

5.3.10.3.7 Skylight curbs have thermal transmittance (U) values no greater than 0.21 Btu/h-ft ^{2}-°F.

5.3.10.3.8 The infiltration coefficient of the skylights does not exceed 0.05 cfm/ft ^{2}.

5.3.10.4 Skylight areas in Tables 5.3–6A and 5.3–6B may be increased by 50% if a shading device is used that blocks over 50% of the solar gain during the peak cooling design condition.

5.3.10.5 Areas for vertical glazing in clerestories and roof monitors shall be included in the wall fenestration calculation.

5.3.10.6 For shell buildings, the permitted skylight area from Tables 5.3–6A and 5.3–6B shall be based on a light level of 30 fc and a lighting power density (LPD) of less than 1 W/ft ^{2}.

5.3.10.7 For speculative buildings, the permitted skylight area from Tables 5.3–6A and 5.3–6B shall be based on the unit lighting power allowance from Table 3.4–1 and an illuminance level as follows:

5.3.10.7.1 For LPD less than or equal to 1.0 W/ft ^{2}, use 30 fc;

5.3.10.7.2 For LPD greater than 1.0 W/ft ^{2} and less than 2.5 W/ft ^{2}, use 50 fc; and

5.3.10.7.3 For LPD greater than 2.5 W/ft ^{2}, use 70 fc.

5.3.10.8 Buildings with roof assembly devices that cannot be evaluated under this subsection shall be evaluated using the Building Energy Compliance Methods of Section 11.0 or 12.0.

5.4 Building Envelope—Prescriptive Compliance Alternative

5.4.1 General.

5.4.1.1 This section provides a simple compliance path using precalculated prescriptive requirements for selected exterior envelope configurations of new buildings.

5.4.1.2 The Alternate Component Packages (ACP), found in this subsection, provide design criteria for use with the following options:

5.4.1.2.1 "Base Case"—buildings with envelopes designed without perimeter daylighting.

5.4.1.2.2 "Perimeter Daylighting"—buildings with envelopes that use additional fenestration area by incorporating automatic lighting controls in the perimeter zone to permit the use of daylighting in lieu of electric lighting. This ACP is not available for those climates that do not usually require space cooling by means of mechanical refrigeration.

(a) This daylighting credit is in addition to the increased lighting power allowance provided in Section 3.5. Some perimeter daylighting options allow a greater proportion of fenestration area due to the increased visible and decreased thermal transmittances of high performance glazings in combination with automatic lighting controls.

5.4.1.3 Each ACP provides a limited number of complying combinations of building variables for a set of climate ranges. The criteria, such as maximum percent fenestration, were calculated using the system performance criteria of Section 5.5. Values were chosen from within climate and other variable ranges for the most restrictive results, to ensure compliance of any combination of values within those ranges. Thus, for most climate locations and envelope parameters, the prescriptive criteria may be slightly more stringent than the system performance criteria of Section 5.5.

5.4.1.4 Both the base and perimeter daylight cases have two or three fenestration U-value ranges depending on the climate.

5.4.2 Compliance.

5.4.2.1 The envelope design of the building being evaluated is in compliance with the prescriptive criteria of this section provided that:

5.4.2.1.1 The minimum requirements of Section 5.3 are met.

5.4.2.1.2 All envelope thermal transmittance (U) values are less than or equal to those chosen from the ACP Table selected for roofs, opaque walls, walls next to unconditioned spaces, and floors over unconditioned spaces.

5.4.2.1.3 The percentage of fenestration of the combined gross wall area is less than or equal to the value permitted for internal load range and glazing in the selected ACP Table.

5.4.2.1.4 Slab-on-grade floors have insulation around the perimeter of the floor with the thermal resistance (R_u) of the insulation as listed in the ACP table. The slab insulation specified shall extend either in a vertical plane downward from the top of the slab for the minimum distance shown or downward to the bottom of the slab then in a horizontal plane beneath the slab or outward from the building for the minimum distance shown. The horizontal length, or vertical depth, of insulation required varies from 24 in. to 48 in. depending upon the R-value selected. For heated slabs, an R of 2 shall be added to the thermal resistance required.

(a) Vertical insulation shall not be required to extend below the foundation footing.

(b) There are no insulation requirements for slabs in locations having less than 3,000 HDD65 or for footings extending less than 18 in. below grade.

5.4.2.1.5 The thermal resistance of the below-grade wall assembly must be greater than or equal to that listed in the ACP table, or the heat loss calculated in accordance with Chapter 25 of the *ASHRAE Handbook, 1985 Fundamentals* shall be less than or equal to that of a wall below grade having a thermal resistance equal to that specified in Figure 5.5–3. No insulation is required for climates with less than 3,000 HDD65 or for those portions of walls more than one story below grade.

5.4.3 Procedure for Using the Alternate Component Packages (ACP).

5.4.3.1 The prescriptive envelope criteria for each of 30 climate ranges are contained in Tables 5.4–2 through 5.4–31.

5.4.3.2 The following steps shall be used to determine compliance with these prescriptive envelope criteria.

5.4.3.2.1 Determine appropriate climate range using either (a) or (b) below.

(a) From Table 5.4–1, select the appropriate ACP Table based on the climate for the building site. The main climate variables that are needed for the proper selection of an ACP Table are cooling degree-days base 65 °F (CDD65), heating degree-days base 50 °F (HDD50), and annual average daily incident of solar radiation on the east or west vertical surface of the facade, Btu/ft ^{2}/day (VSEW). For certain climate ranges this must be augmented by cooling degree-hours base 60 °F (CDH60).

(1) This data, for a specific building location, may be acquired from the U.S. Weather Service of the National

Oceanic and Atmospheric Administration or the local weather bureau. The column designated "ACP Table No." in Table 5.4-1 contains the table number of the appropriate ACP Table.

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Table 5.4-1
Climate Data Grouped by ACP Tables

ACP Table Number	HDD50 Range	CDD65 Range	VSEV Range	CDH80 Range	Example Cities
5.4-2	0	3001-4500	>800		Barbers Point, Hilo, Honolulu, Lihue
5.4-3	0	>4500	>845		Guantanamo Bay, Kwajalein, San Juan, Wake Island
5.4-4	1-1000	0-1150	560-845		Arcata, North Bend
5.4-5	1-1000	0- 300	>845		Oakland, San Francisco, Santa Maria, Sunnyville
5.4-6	1-1000	301-1150	>845		El Toro, Long Beach, Los Angeles, San Diego
5.4-7	1-1000	1151-2000	560-845		Atlanta, Augusta, Birmingham, Cherry Point, Greenville
5.4-8	1-1000	1151-2000	>845		Fresno, Red Bluff, Sacramento
5.4-9	1-1000	2001-3250	560-845		Charleston, Houston, Jackson, Montgomery, New Orleans
5.4-10	1-1000	2001-3250	>845	0-18000	Austin, Bakersfield, El Paso, Fort Worth, Tallahassee, Tempe
5.4-11	1-1000	2001-3250	>845	>18000	China Lake, Las Vegas, Tucson
5.4-12	1-1000	3251-4500	>845	0-18000	Brownsville, Corpus Christi, Miami, Orlando, West Palm Beach
5.4-13	1-1000	3251-4500	>845	>18000	Laredo, Phoenix, Yuma
5.4-14	1001-1750	0- 500	560-845		Olympia, Portland, Salem, Seattle/Tacoma, Whidbey Island
5.4-15	1001-1750	501-1150	560-845		Asheville, Medford
5.4-16	1001-1750	1-1150	>845		Prescott, Winslow, Yucca
5.4-17	1001-1750	1151-2000	560-845		Charlotte, Chattanooga, Knoxville, Norfolk, Raleigh, Richmond
5.4-18	1001-1750	1151-2000	>845		Albuquerque, Lubbock, Oklahoma City, Roswell, Tucumcari
5.4-19	1001-1750	2001-3250	560-845		Fort Smith, Memphis, Tulsa
5.4-20	1751-2600	0-1150	560-845		Baltimore, Boston, Columbus, Harrisburg, New York, Washington
5.4-21	2601-3200	0-1150	560-845		Akron, Chicago, Detroit, Hartford, Indianapolis, Pittsburgh
5.4-22	1751-3200	0-1150	>845		Boise, Colorado Springs, Denver, Reno, Salt Lake City
5.4-23	1751-3200	1151-2000	560-845		Evansville, Lexington, Louisville, Saint Louis, Springfield
5.4-24	1751-3200	1151-2000	>845		Dodge City, Grand Junction
5.4-25	3201-4000	0-1150	560-845		Albany, Buffalo, Concord, Des Moines, Milwaukee, Rapid City
5.4-26	4001-5000	0-1150	560-845		Bangor, Cutbank, Huron, Minneapolis, Rochester, Sioux Falls
5.4-27	3201-4000	0-1150	>845		Casper, Cheyenne, Ely, North Platte, Scottsbluff
5.4-28	4001-5000	0-1150	>845		Bryce, Eagle, Rock Springs
5.4-29	5001-6500	0-1150	560-845		Bismarck, Duluth, Fargo, Glasgow, International Falls
5.4-30	1-6500	< 100	<560		Adak, Anchorage, Juneau, Kodiak, Yakutat
5.4-31	>6500	< 100	<560		Bethel, Fairbanks, King Salmon, Nome, Summit

ALTERNATE COMPONENT PACKAGES FOR:

HDD65 = 0
CDD65 = 3001 - 4500
YSEB = > 845

Barbers Point HI
Hilo HI
Honolulu HI
Lihue HI

TABLE 5.4-2

INTERNAL LOAD DENSITY (ILD) RANGE	PROJECTION FACTOR (PF)	SHADING COEFF RANGE (SCs)	BASE CASE Unf: 1.15 to 0.82	BASE CASE Unf: 0.81 to 0	BASE CASE Unf: N/A	PERIMETER DAYLIGHTING Unf: 1.15 to 0.82	PERIMETER DAYLIGHTING Unf: 0.81 to 0	PERIMETER DAYLIGHTING Unf: 0.81 to 0 VLT ≥ SC	OPAQUE WALL Uow: LIGHT WEIGHT WALL	OPAQUE WALL Uow: MASS WALL
0 - 1.60	0.000 - 0.249	1.000 - 0.71	17	18		19	19	20		
		0.700 - 0.60	21	20		24	24	24		
		0.599 - 0.50	26	24		29	28	28		
		0.499 - 0.36	31	30		36	34	35		
		0.379 - 0.25	41	40		48	46	47		
		0.249 - 0.00	67	62		77	72	74		
	0.250 - 0.499	1.000 - 0.71	22	21		26	25	26		
		0.700 - 0.60	26	27		33	31	32		
		0.599 - 0.50	33	33		39	37	39		
		0.499 - 0.36	41	39		48	45	47		
		0.379 - 0.00	66	63		66	61	65		
	0.500 +	1.000 - 0.71	29	28		34	32	33		
		0.700 - 0.60	36	36		42	41	42		
		0.599 - 0.50	44	43		61	49	60		
		0.499 - 0.00	64	61		65	59	61		
1.61 - 3.00	0.000 - 0.249	1.000 - 0.71	14	13		23	21	23		
		0.700 - 0.60	17	17		30	27	29		
		0.599 - 0.50	21	20		33	32	34		
		0.499 - 0.36	26	24		41	39	41		
		0.379 - 0.25	36	34		55	52	54		
		0.249 - 0.00	52	50		66	63	64		
	0.250 - 0.499	1.000 - 0.71	15	15		29	26	28		
		0.700 - 0.60	20	22		37	35	36		
		0.599 - 0.50	26	27		44	42	45		
		0.499 - 0.36	34	32		55	51	54		
		0.379 - 0.00	51	49		73	68	72		
	0.500 +	1.000 - 0.71	24	25		36	36	38		
		0.700 - 0.60	30	30		49	46	49		
		0.599 - 0.50	36	34		66	55	58		
		0.499 - 0.00	46	42		71	66	70		
3.01 - 5.00	0.000 - 0.249	1.000 - 0.71	11	10		20	19	22		
		0.700 - 0.60	13	13		25	24	27		
		0.599 - 0.50	16	16		30	29	32		
		0.499 - 0.36	20	19		37	35	36		
		0.379 - 0.25	27	26		51	47	50		
		0.249 - 0.00	43	40		70	72	69		
	0.250 - 0.499	1.000 - 0.71	14	14		27	25	27		
		0.700 - 0.60	18	17		34	33	35		
		0.599 - 0.50	22	21		41	38	43		
		0.499 - 0.36	28	25		51	47	52		
		0.379 - 0.00	46	34		66	65	66		
	0.500 +	1.000 - 0.71	18	18		35	33	37		
		0.700 - 0.60	23	22		45	43	46		
		0.599 - 0.50	28	27		54	51	54		
		0.499 - 0.00	44	42		71	69	70		

Uow (NC(S))	NC RANGE	PCT FEN	INT INS	EXT INS
1.00	NC ≥ 5	17	1.00	1.00
	NC ≥ 10	17	1.00	1.00
	NC ≥ 15	17	1.00	1.00
	NC ≥ 5	77	1.00	1.00
	NC ≥ 10	77	1.00	1.00
	NC ≥ 15	77	1.00	1.00

Uow (NC(S))	NC RANGE	PCT FEN	INT INS	EXT INS
1.00	NC ≥ 5	14	1.00	1.00
	NC ≥ 10	14	1.00	1.00
	NC ≥ 15	14	1.00	1.00
	NC ≥ 5	85	1.00	1.00
	NC ≥ 10	85	1.00	1.00
	NC ≥ 15	85	1.00	1.00

Uow (NC(S))	NC RANGE	PCT FEN	INT INS	EXT INS
1.00	NC ≥ 5	11	1.00	1.00
	NC ≥ 10	11	1.00	1.00
	NC ≥ 15	11	1.00	1.00
	NC ≥ 5	88	1.00	1.00
	NC ≥ 10	88	1.00	1.00
	NC ≥ 15	88	1.00	1.00

Daylight Sensing Controls

	Min R-Value	Max Uo
ROOF:		0.084
WALL BELOW GRADE:	0	
WALL ADJACENT TO UNCOND SPACE:		1.00
UNHEATED SLAB OR GRADE:	24" 36" 48"	
Horizontal	0 0 0	
Vertical	0 0 0	
FLOOR OVER UNCOND SPACE:		1.10

ALTERNATE COMPONENT PACKAGES FOR:

HDD65 = 0
CDD65 = > 4500
YSEB = > 845

Guantanamo Bay CU
Kwajalein Island
Koror Island
San Juan PR
Saba Island

TABLE 5.4-3

INTERNAL LOAD DENSITY (ILD) RANGE	PROJECTION FACTOR (PF)	SHADING COEFF RANGE (SCs)	BASE CASE Unf: 1.15 to 0.82	BASE CASE Unf: 0.81 to 0	BASE CASE Unf: N/A	PERIMETER DAYLIGHTING Unf: 1.15 to 0.82	PERIMETER DAYLIGHTING Unf: 0.81 to 0	PERIMETER DAYLIGHTING Unf: 0.81 to 0 VLT ≥ SC	OPAQUE WALL Uow: LIGHT WEIGHT WALL	OPAQUE WALL Uow: MASS WALL
0 - 1.60	0.000 - 0.249	1.000 - 0.71	14	14		17	16	17		
		0.700 - 0.60	19	18		21	21	22		
		0.599 - 0.50	23	22		28	26	28		
		0.499 - 0.36	29	28		33	32	33		
		0.379 - 0.25	42	39		48	46	47		
		0.249 - 0.00	81	72		98	82	85		
	0.250 - 0.499	1.000 - 0.71	20	19		23	22	23		
		0.700 - 0.60	26	25		30	29	30		
		0.599 - 0.50	33	31		37	36	37		
		0.499 - 0.36	41	39		48	45	48		
		0.379 - 0.00	62	55		73	66	68		
	0.500 +	1.000 - 0.71	27	26		31	30	31		
		0.700 - 0.60	35	34		41	39	40		
		0.599 - 0.50	45	42		53	49	50		
		0.499 - 0.00	59	54		70	63	65		
1.61 - 3.00	0.000 - 0.249	1.000 - 0.71	12	12		19	19	21		
		0.700 - 0.60	16	15		25	24	26		
		0.599 - 0.50	19	19		31	30	32		
		0.499 - 0.36	24	23		40	38	40		
		0.379 - 0.25	35	33		60	54	56		
		0.249 - 0.00	66	60		100	93	100		
	0.250 - 0.499	1.000 - 0.71	16	16		27	26	28		
		0.700 - 0.60	22	21		30	34	36		
		0.599 - 0.50	27	26		45	42	45		
		0.499 - 0.36	34	32		50	53	57		
		0.379 - 0.00	51	47		87	77	82		
	0.500 +	1.000 - 0.71	22	22		37	35	38		
		0.700 - 0.60	29	28		50	46	48		
		0.599 - 0.50	37	36		65	58	61		
		0.499 - 0.00	48	45		83	74	78		
3.01 - 5.00	0.000 - 0.249	1.000 - 0.71	9	9		17	17	19		
		0.700 - 0.60	12	12		23	22	25		
		0.599 - 0.50	15	14		29	27	31		
		0.499 - 0.36	18	18		36	34	36		
		0.379 - 0.25	26	25		55	50	55		
		0.249 - 0.00	49	46		100	86	90		
	0.250 - 0.499	1.000 - 0.71	13	12		24	23	27		
		0.700 - 0.60	18	18		32	31	34		
		0.599 - 0.50	23	23		41	38	43		
		0.499 - 0.36	30	25		54	49	54		
		0.379 - 0.00	38	38		80	71	78		
	0.500 +	1.000 - 0.71	17	17		34	32	36		
		0.700 - 0.60	22	22		46	42	47		
		0.599 - 0.50	28	27		60	54	59		
		0.499 - 0.00	36	34		77	69	75		

Uow (NC(S))	NC RANGE	PCT FEN	INT INS	EXT INS
1.00	NC ≥ 5	14	1.00	1.00
	NC ≥ 10	14	1.00	1.00
	NC ≥ 15	14	1.00	1.00
	NC ≥ 5	85	1.00	1.00
	NC ≥ 10	85	1.00	1.00
	NC ≥ 15	85	1.00	1.00

Uow (NC(S))	NC RANGE	PCT FEN	INT INS	EXT INS
1.00	NC ≥ 5	12	1.00	1.00
	NC ≥ 10	12	1.00	1.00
	NC ≥ 15	12	1.00	1.00
	NC ≥ 5	83	1.00	1.00
	NC ≥ 10	83	1.00	1.00
	NC ≥ 15	83	1.00	1.00

Uow (NC(S))	NC RANGE	PCT FEN	INT INS	EXT INS
1.00	NC ≥ 5	9	1.00	1.00
	NC ≥ 10	9	1.00	1.00
	NC ≥ 15	9	1.00	1.00
	NC ≥ 5	88	1.00	1.00
	NC ≥ 10	88	1.00	1.00
	NC ≥ 15	88	1.00	1.00

Daylight Sensing Controls

	Min R-Value	Max Uo
ROOF:		0.057
WALL BELOW GRADE:	0	
WALL ADJACENT TO UNCOND SPACE:		1.00
UNHEATED SLAB OR GRADE:	24" 36" 48"	
Horizontal	0 0 0	
Vertical	0 0 0	
FLOOR OVER UNCOND SPACE:		1.10

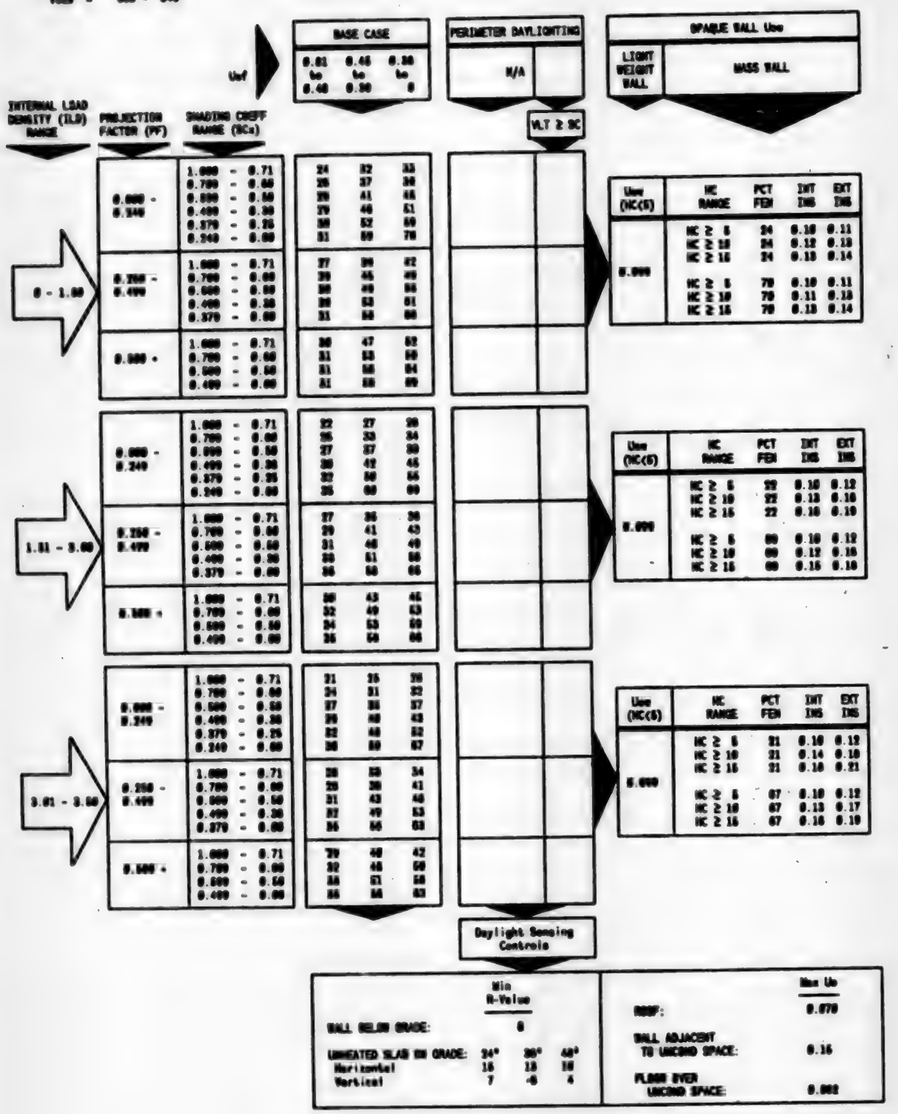
VOL 54 ISS 18 JA 30 1989 UMI

ALTERNATE COMPONENT PACKAGES FOR:

HDD65 = 1 - 1999
CDD65 = 0 - 1150
YSEF = 500 - 845

Arcata CA
North Bend OR

TABLE 5.4-4

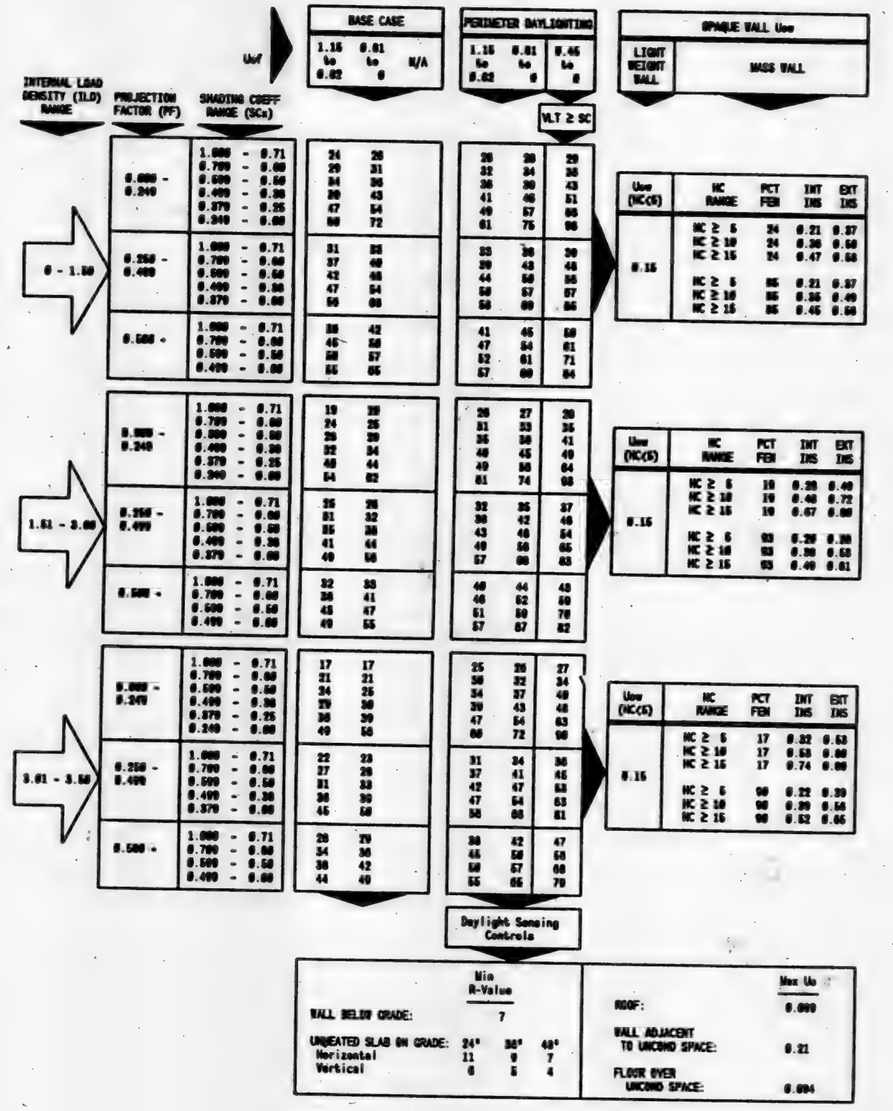


ALTERNATE COMPONENT PACKAGES FOR:

HDD65 = 1 - 1000
CDD65 = 0 - 300
YSEF =) 845

Oakland CA
Point Mugu CA
San Francisco CA
Santa Maria CA
Sunnyville CA

TABLE 5.4-5



ALTERNATE COMPONENT PACKAGES FOR:

HDD65 = 1 - 1000
CDD65 = 301 - 1150
VSER =) 845

El Toro CA
Long Beach CA
Los Angeles CA
San Diego CA

TABLE 5.4-6

Use

INTERNAL LOAD DENSITY (ILD) RANGE	PROJECTION FACTOR (PF)	SHADING COEFF RANGE (SCs)	BASE CASE 1.15 to 0.82	BASE CASE 0.81 to 0	BASE CASE N/A	PERIMETER DAYLIGHTING 1.15 to 0.82	PERIMETER DAYLIGHTING 0.81 to 0	PERIMETER DAYLIGHTING 0.81 to 0 (VLT ≥ SC)
0 - 1.00	0.000 - 0.249	1.000 - 0.71	10	10		21	21	21
		0.700 - 0.60	23	23		30	30	29
		0.600 - 0.50	37	37		38	31	31
		0.400 - 0.36	53	53		43	37	36
		0.370 - 0.35	63	64		47	39	38
		0.340 - 0.00	66	67		70	73	70
	0.250 - 0.499	1.000 - 0.71	14	14		27	27	26
		0.700 - 0.60	30	30		34	34	33
		0.600 - 0.50	43	43		46	40	41
		0.400 - 0.36	56	57		61	64	66
	0.500 +	1.000 - 0.71	22	22		35	35	34
		0.700 - 0.60	36	36		43	44	46
		0.600 - 0.50	46	47		61	62	63
		0.400 - 0.00	55	56		68	68	64
1.01 - 3.00	0.000 - 0.249	1.000 - 0.71	14	14		21	21	22
		0.700 - 0.60	16	16		26	26	27
		0.600 - 0.50	21	22		31	31	33
		0.400 - 0.36	35	36		47	47	49
		0.370 - 0.35	44	44		60	60	62
		0.340 - 0.00	54	54		72	74	76
	0.250 - 0.499	1.000 - 0.71	19	19		37	37	38
		0.700 - 0.60	34	34		44	44	45
		0.600 - 0.50	39	39		61	49	52
		0.400 - 0.36	48	48		64	65	66
		0.370 - 0.00	56	56		68	68	68
	0.500 +	1.000 - 0.71	25	25		44	44	46
		0.700 - 0.60	31	31		52	53	54
		0.600 - 0.50	37	37		63	63	64
		0.400 - 0.00	46	44		63	64	67
3.01 - 5.00	0.000 - 0.249	1.000 - 0.71	12	12		19	19	21
		0.700 - 0.60	15	15		24	24	26
		0.600 - 0.50	18	17		30	29	31
		0.400 - 0.36	21	21		35	36	38
		0.370 - 0.35	29	30		46	48	50
		0.340 - 0.00	46	44		69	70	75
	0.250 - 0.499	1.000 - 0.71	16	16		29	29	30
		0.700 - 0.60	20	19		33	32	35
		0.600 - 0.50	23	23		38	36	40
		0.400 - 0.36	36	36		46	46	48
		0.370 - 0.00	46	46		68	68	68
	0.500 +	1.000 - 0.71	30	30		41	42	44
		0.700 - 0.60	35	35		49	49	51
		0.600 - 0.50	37	37		62	63	64
		0.400 - 0.00	46	44		63	64	67

Use (WC/S)	WC RANGE	PCT FEN	INT INS	EXT INS
0.23	WC ≥ 6	18	0.00	0.00
	WC ≥ 10	18	0.00	0.00
	WC ≥ 15	18	0.00	0.00
	WC ≥ 6	75	0.48	0.00
	WC ≥ 10	75	0.00	0.00
	WC ≥ 15	75	0.00	0.00

Use (WC/S)	WC RANGE	PCT FEN	INT INS	EXT INS
0.23	WC ≥ 6	14	0.00	0.00
	WC ≥ 10	14	0.00	0.00
	WC ≥ 15	14	0.00	0.00
	WC ≥ 6	75	0.00	0.00
	WC ≥ 10	75	0.00	0.00
	WC ≥ 15	75	0.00	0.00

Use (WC/S)	WC RANGE	PCT FEN	INT INS	EXT INS
0.23	WC ≥ 6	12	0.00	0.00
	WC ≥ 10	12	0.00	0.00
	WC ≥ 15	12	0.00	0.00
	WC ≥ 6	75	0.72	0.00
	WC ≥ 10	75	0.00	0.00
	WC ≥ 15	75	0.00	0.00

OPAQUE WALL Use

LIGHT WEIGHT WALL	MASS WALL

Daylight Sensing Controls

	Min R-Value
WALL BELOW GRADE:	0
UNHEATED SLAB ON GRADE: 24"	0
Horizontal 36"	0
Vertical 48"	0

	Max Us
ROOF:	0.10
WALL ADJACENT TO UNCOND SPACE:	0.00
FLOOR OVER UNCOND SPACE:	0.10

ALTERNATE COMPONENT PACKAGES FOR:

HDD65 = 1 - 1000
CDD65 = 1101 - 2000
VSER = 800 - 845

Atlanta GA
Birmingham AL
Cape Hatteras NC
Cherry Point NC
Greenville SC

TABLE 5.4-7

Use

INTERNAL LOAD DENSITY (ILD) RANGE	PROJECTION FACTOR (PF)	SHADING COEFF RANGE (SCs)	BASE CASE 1.15 to 0.82	BASE CASE 0.81 to 0	BASE CASE N/A	PERIMETER DAYLIGHTING 1.15 to 0.82	PERIMETER DAYLIGHTING 0.81 to 0	PERIMETER DAYLIGHTING 0.81 to 0 (VLT ≥ SC)
0 - 1.50	0.000 - 0.249	1.000 - 0.71	19	20		21	22	23
		0.700 - 0.60	24	25		26	27	28
		0.600 - 0.50	28	29		30	32	33
		0.400 - 0.36	32	35		35	36	39
		0.370 - 0.35	41	45		44	48	50
		0.340 - 0.00	56	64		60	69	70
	0.250 - 0.499	1.000 - 0.71	25	28		26	29	30
		0.700 - 0.60	30	32		33	34	36
		0.600 - 0.50	35	38		38	42	42
		0.400 - 0.36	41	45		44	48	50
		0.370 - 0.00	56	57		64	61	63
	0.500 +	1.000 - 0.71	31	33		34	37	38
		0.700 - 0.60	38	41		41	45	46
		0.600 - 0.50	43	47		47	52	53
		0.400 - 0.00	48	58		53	60	62
1.51 - 3.00	0.000 - 0.249	1.000 - 0.71	15	15		21	21	23
		0.700 - 0.60	19	19		25	27	29
		0.600 - 0.50	22	22		30	31	33
		0.400 - 0.36	30	27		35	37	39
		0.370 - 0.35	33	35		43	48	51
		0.340 - 0.00	47	62		59	66	71
	0.250 - 0.499	1.000 - 0.71	20	20		27	28	30
		0.700 - 0.60	24	25		33	35	37
		0.600 - 0.50	28	29		38	40	43
		0.400 - 0.36	33	36		43	48	50
		0.370 - 0.00	42	45		53	61	64
	0.500 +	1.000 - 0.71	25	26		34	36	38
		0.700 - 0.60	30	32		40	44	46
		0.600 - 0.50	35	37		46	51	54
		0.400 - 0.00	41	44		52	59	63
3.01 - 5.50	0.000 - 0.249	1.000 - 0.71	13	13		20	20	22
		0.700 - 0.60	16	16		24	25	27
		0.600 - 0.50	19	19		28	30	32
		0.400 - 0.36	22	23		33	35	38
		0.370 - 0.35	28	30		41	45	49
		0.340 - 0.00	41	45		65	64	69
	0.250 - 0.499	1.000 - 0.71	18	17		25	27	29
		0.700 - 0.60	20	21		31	33	35
		0.600 - 0.50	24	25		35	38	41
		0.400 - 0.36	28	30		41	45	49
		0.370 - 0.00	36	38		58	57	62
	0.500 +	1.000 - 0.71	21	22		32	34	36
		0.700 - 0.60	26	27		36	41	45
		0.600 - 0.50	30	32		43	48	52
		0.400 - 0.00	36	38		49	58	61

Use (WC/S)	WC RANGE	PCT FEN	INT INS	EXT INS
0.16	WC ≥ 6	19	0.21	0.00
	WC ≥ 10	19	0.31	0.00
	WC ≥ 15	19	0.40	0.42
	WC ≥ 6	78	0.20	0.27
	WC ≥ 10	78	0.27	0.00
	WC ≥ 15	78	0.36	0.00

Use (WC/S)	WC RANGE	PCT FEN	INT INS	EXT INS
0.16	WC ≥ 6	15	0.22	0.04
	WC ≥ 10	15	0.00	0.43
	WC ≥ 15	15	0.45	0.47
	WC ≥ 6	71	0.29	0.29
	WC ≥ 10	71	0.29	0.00
	WC ≥ 15	71	0.00	0.46

Use (WC/S)	WC RANGE	PCT FEN	INT INS	EXT INS
0.16	WC ≥ 6	13	0.22	0.34
	WC ≥ 10	13	0.32	0.43
	WC ≥ 15	13	0.46	0.48
	WC ≥ 6	69	0.30	0.29
	WC ≥ 10	69	0.30	0.00
	WC ≥ 15	69	0.40	0.41

OPAQUE WALL Use

LIGHT WEIGHT WALL	MASS WALL

Daylight Sensing Controls

	Min R-Value
WALL BELOW GRADE:	7
UNHEATED SLAB ON GRADE: 24"	11
Horizontal 36"	0
Vertical 48"	0

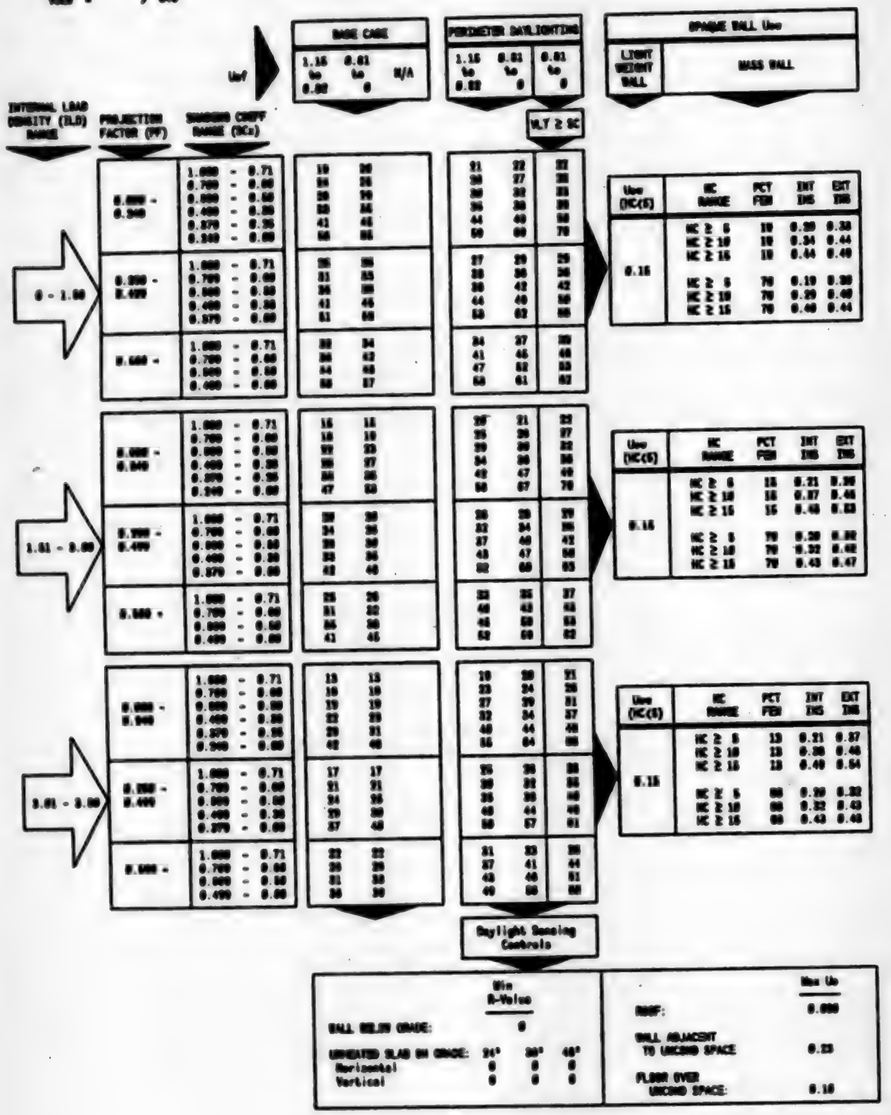
	Max Us
ROOF:	0.000
WALL ADJACENT TO UNCOND SPACE:	0.21
FLOOR OVER UNCOND SPACE:	0.005

TABLE 5.4-8

ALTERNATE COMPONENT PACKAGES FOR:

HDD65 = 1 - 1000
CDD65 = 1101 - 3000
VSEW =) 845

Fresno CA
Redbluff CA
Sacramento CA



	Min R-Value
WALL BELOW GRADE:	0
UNHEATED SLAB ON GRADE: 24" Horizontal	0
UNHEATED SLAB ON GRADE: 36" Horizontal	0
UNHEATED SLAB ON GRADE: 48" Horizontal	0
UNHEATED SLAB ON GRADE: 24" Vertical	0
UNHEATED SLAB ON GRADE: 36" Vertical	0
UNHEATED SLAB ON GRADE: 48" Vertical	0

	Max Uo
ROOF:	0.080
WALL ADJACENT TO UNCOND SPACE:	0.23
FLOOR OVER UNCOND SPACE:	0.18

TABLE 5.4-9

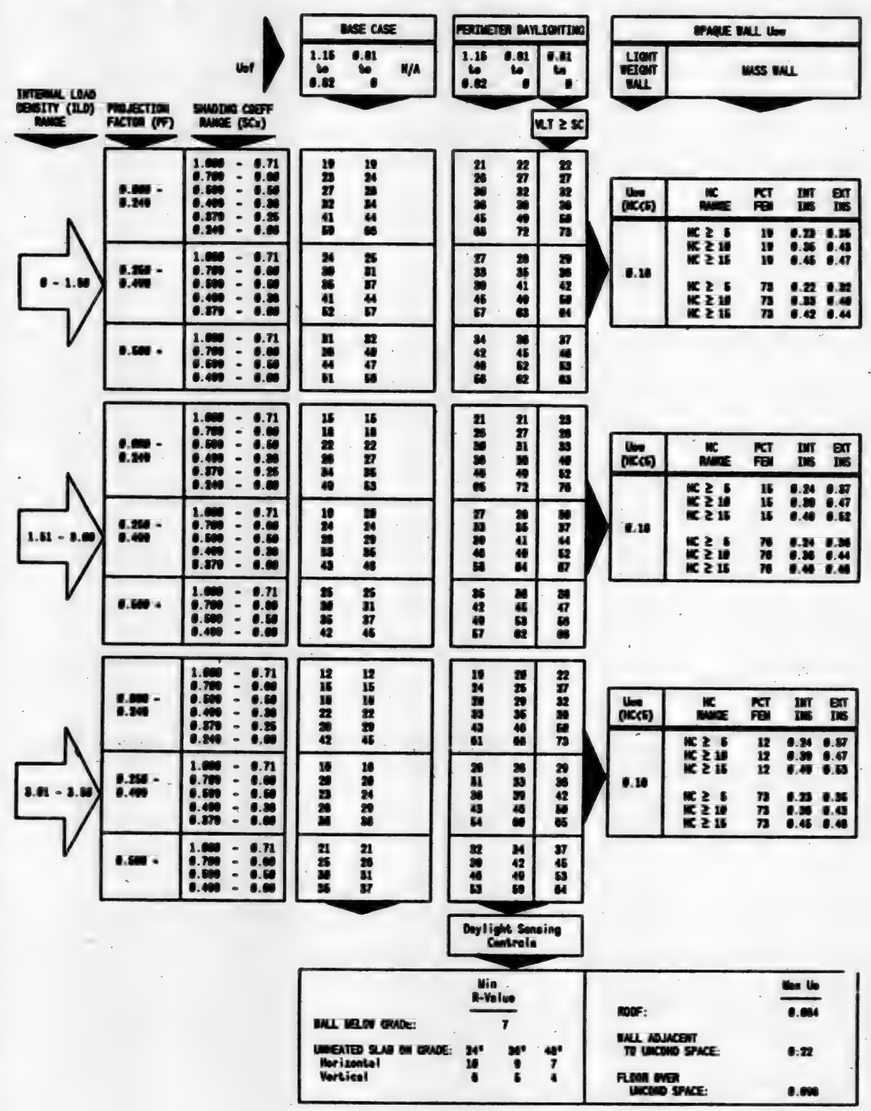
ALTERNATE COMPONENT PACKAGES FOR:

HDD65 = 1 - 1000
CDD65 = 1001 - 3250
VSEW = 840 - 845

Baton Rouge LA
Charleston SC
Columbia SC
Houston TX
Jackson MS

Lake Charles LA
Little Rock AR
Macon GA
Meridian MS
Mobile AL

Montgomery AL
New Orleans LA
Port Angeles TX
Savannah GA
Shreveport LA



	Min R-Value
WALL BELOW GRADE:	7
UNHEATED SLAB ON GRADE: 24" Horizontal	10
UNHEATED SLAB ON GRADE: 36" Horizontal	9
UNHEATED SLAB ON GRADE: 48" Horizontal	7
UNHEATED SLAB ON GRADE: 24" Vertical	6
UNHEATED SLAB ON GRADE: 36" Vertical	5
UNHEATED SLAB ON GRADE: 48" Vertical	4

	Max Uo
ROOF:	0.064
WALL ADJACENT TO UNCOND SPACE:	0.22
FLOOR OVER UNCOND SPACE:	0.096

ALTERNATE COMPONENT PACKAGES FOR:

HDD65 = 1 - 1999
CDD65 = 2001 - 3250
YSEF = > 845

Abilene TX
Apalachicola FL
Austin TX
Bakersfield CA
Daytona Beach FL

Del Rio TX
El Paso TX
Fort Worth TX
Jacksonville FL
San Antonio TX

Shereon TX
Tallahassee FL
Tampa FL
Waco TX
Wichita Falls TX

TABLE 5.4-10

INTERNAL LOAD DENSITY (ILD) RANGE	PROJECTION FACTOR (PF)	SHADING COEFF RANGE (SCx)	Unf BASE CASE 1.15 to 0.88 / 0.81 to 0 / N/A	PERIMETER DAYLIGHTING 1.15 to 0.82 / 0.81 to 0 / 0.81 to 0	VLT ≥ SC	OPAQUE WALL Uow LIGHT WEIGHT WALL	OPAQUE WALL Uow MASS WALL
0 - 1.00	0.000 - 0.249	1.000 - 0.71	19 19	31 31 30			
		0.700 - 0.60	23 24	28 27 27			
		0.599 - 0.50	27 28	26 31 32			
		0.499 - 0.35	34 34	34 37 36			
		0.379 - 0.25	43 43	43 46 46			
		0.249 - 0.00	58 58	60 60 70			
	0.250 - 0.499	1.000 - 0.71	19 19	37 38 39			
		0.700 - 0.60	24 25	32 35 35			
		0.599 - 0.50	34 37	37 41 41			
		0.499 - 0.35	48 44	43 48 49			
		0.379 - 0.00	58 56	68 61 62			
	0.500 +	1.000 - 0.71	31 33	84 38 37			
		0.700 - 0.60	37 40	40 44 45			
		0.599 - 0.50	43 47	46 51 52			
		0.499 - 0.00	68 68	62 68 61			
1.01 - 3.00	0.000 - 0.249	1.000 - 0.71	18 18	30 31 32			
		0.700 - 0.60	22 23	28 30 31			
		0.599 - 0.50	27 28	26 33 34			
		0.499 - 0.35	33 34	34 37 38			
		0.379 - 0.25	41 46	43 48 49			
		0.249 - 0.00	47 53	60 60 73			
	0.250 - 0.499	1.000 - 0.71	18 18	30 33 33			
		0.700 - 0.60	24 25	32 34 36			
		0.599 - 0.50	28 29	37 40 42			
		0.499 - 0.35	33 35	43 46 48			
		0.379 - 0.00	41 46	56 61 64			
	0.500 +	1.000 - 0.71	24 26	33 36 37			
		0.700 - 0.60	30 32	40 43 44			
		0.599 - 0.50	36 37	46 49 52			
		0.499 - 0.00	41 44	52 56 68			
3.01 - 3.50	0.000 - 0.249	1.000 - 0.71	12 13	20 20 21			
		0.700 - 0.60	15 16	25 24 26			
		0.599 - 0.50	17 19	27 29 31			
		0.499 - 0.35	22 25	32 34 37			
		0.379 - 0.25	29 30	40 45 46			
		0.249 - 0.00	41 45	56 66 70			
	0.250 - 0.499	1.000 - 0.71	16 17	25 28 30			
		0.700 - 0.60	20 21	32 32 36			
		0.599 - 0.50	24 25	35 38 41			
		0.499 - 0.35	30 30	40 45 48			
		0.379 - 0.00	36 38	50 57 62			
	0.500 +	1.000 - 0.71	21 22	31 33 36			
		0.700 - 0.60	26 28	37 41 44			
		0.599 - 0.50	31 33	43 48 52			
		0.499 - 0.00	36 38	48 56 61			

Uow (HC/S)	HC RANGE	PCT FEN	INT INS	EXT INS
0.15	HC ≥ 6	10	0.17	0.26
	HC ≥ 10	10	0.22	0.32
	HC ≥ 16	10	0.29	0.36
	HC ≥ 6	70	0.17	0.23
	HC ≥ 10	70	0.21	0.30
	HC ≥ 16	70	0.27	0.32
0.15	HC ≥ 6	15	0.17	0.26
	HC ≥ 10	15	0.23	0.33
	HC ≥ 16	15	0.32	0.36
	HC ≥ 6	72	0.17	0.24
	HC ≥ 10	72	0.23	0.32
	HC ≥ 16	72	0.30	0.35
0.16	HC ≥ 6	12	0.17	0.28
	HC ≥ 10	12	0.23	0.36
	HC ≥ 16	12	0.32	0.38
	HC ≥ 6	70	0.17	0.24
	HC ≥ 10	70	0.22	0.32
	HC ≥ 16	70	0.29	0.36

Daylight Sensing Controls

	Min R-Value			Max Un
WALL BELOW GRADE:	7			ROOF: 0.057
UNHEATED SLAB ON GRADE:	24"	36"	48"	WALL ADJACENT TO UNCOND SPACE: 0.22
Horizontal	10	9	7	
Vertical	8	6	4	FLOOR OVER UNCOND SPACE: 0.100

ALTERNATE COMPONENT PACKAGES FOR:

HDD65 = 1 - 1999
CDD65 = 2001 - 3250
YSEF = > 845
CDH65 = > 10000

China Lake CA
Daggett CA
Las Vegas CA
Tucson AZ

TABLE 5.4-11

INTERNAL LOAD DENSITY (ILD) RANGE	PROJECTION FACTOR (PF)	SHADING COEFF RANGE (SCx)	Unf BASE CASE 1.15 to 0.82 / 0.81 to 0 / N/A	PERIMETER DAYLIGHTING 1.15 to 0.82 / 0.81 to 0 / 0.81 to 0	VLT ≥ SC	OPAQUE WALL Uow LIGHT WEIGHT WALL	OPAQUE WALL Uow MASS WALL
0 - 1.00	0.000 - 0.249	1.000 - 0.71	17 17	18 19 19			
		0.700 - 0.60	21 22	23 23 24			
		0.599 - 0.50	25 26	27 28 29			
		0.499 - 0.35	34 31	32 34 35			
		0.379 - 0.25	38 42	42 45 46			
		0.249 - 0.00	59 65	65 70 71			
	0.250 - 0.499	1.000 - 0.71	22 23	24 25 26			
		0.700 - 0.60	28 29	30 31 32			
		0.599 - 0.50	33 34	35 37 38			
		0.499 - 0.35	39 42	42 45 48			
		0.379 - 0.00	51 58	55 60 61			
	0.500 +	1.000 - 0.71	29 30	31 33 33			
		0.700 - 0.60	35 38	39 41 42			
		0.599 - 0.50	42 45	45 49 50			
		0.499 - 0.00	58 64	64 69 68			
1.01 - 3.00	0.000 - 0.249	1.000 - 0.71	14 14	18 19 20			
		0.700 - 0.60	17 17	22 23 25			
		0.599 - 0.50	20 21	27 28 30			
		0.499 - 0.35	25 25	33 34 36			
		0.379 - 0.25	33 34	43 45 48			
		0.249 - 0.00	50 54	65 71 75			
	0.250 - 0.499	1.000 - 0.71	18 18	24 25 26			
		0.700 - 0.60	23 23	30 31 33			
		0.599 - 0.50	27 28	36 37 40			
		0.499 - 0.35	33 34	43 46 48			
		0.379 - 0.00	43 46	56 61 65			
	0.500 +	1.000 - 0.71	24 24	32 33 35			
		0.700 - 0.60	29 31	39 41 43			
		0.599 - 0.50	35 37	46 49 52			
		0.499 - 0.00	42 45	55 60 63			
3.01 - 3.50	0.000 - 0.249	1.000 - 0.71	12 12	17 17 19			
		0.700 - 0.60	15 16	21 22 24			
		0.599 - 0.50	17 18	25 26 28			
		0.499 - 0.35	21 22	31 32 36			
		0.379 - 0.25	28 29	40 43 46			
		0.249 - 0.00	44 46	61 67 72			
	0.250 - 0.499	1.000 - 0.71	15 16	23 23 25			
		0.700 - 0.60	20 20	28 29 32			
		0.599 - 0.50	23 24	34 35 38			
		0.499 - 0.35	28 29	40 43 46			
		0.379 - 0.00	37 39	53 58 62			
	0.500 +	1.000 - 0.71	20 21	29 31 33			
		0.700 - 0.60	25 26	37 39 42			
		0.599 - 0.50	30 31	44 46 50			
		0.499 - 0.00	36 38	52 58 61			

Uow (HC/S)	HC RANGE	PCT FEN	INT INS	EXT INS
0.17	HC ≥ 6	17	0.19	0.24
	HC ≥ 10	17	0.24	0.31
	HC ≥ 16	17	0.29	0.33
	HC ≥ 6	71	0.19	0.24
	HC ≥ 10	71	0.24	0.31
	HC ≥ 16	71	0.29	0.33
0.17	HC ≥ 6	14	0.19	0.25
	HC ≥ 10	14	0.24	0.31
	HC ≥ 16	14	0.30	0.34
	HC ≥ 6	75	0.19	0.25
	HC ≥ 10	75	0.24	0.31
	HC ≥ 16	75	0.30	0.34
0.17	HC ≥ 6	12	0.19	0.25
	HC ≥ 10	12	0.24	0.31
	HC ≥ 16	12	0.30	0.34
	HC ≥ 6	72	0.19	0.25
	HC ≥ 10	72	0.25	0.32
	HC ≥ 16	72	0.31	0.36

Daylight Sensing Controls

	Min R-Value			Max Un
WALL BELOW GRADE:	8			ROOF: 0.049
UNHEATED SLAB ON GRADE:	24"	36"	48"	WALL ADJACENT TO UNCOND SPACE: 0.25
Horizontal	0	0	0	
Vertical	0	0	0	FLOOR OVER UNCOND SPACE: 0.13

V

ALTERNATE COMPONENT PACKAGES FOR:

HDD65 = 1 - 1000
CDD65 = 3551 - 4500
YSEF =) 845
CDH65 = 0 - 10000

Brownsville TX
Corpus Christi TX
Kingsville TX
Miami FL
Orlando FL

Rest Palm Beach FL

TABLE 5.4-12

Uwf

BASE CASE		
1.15 to 0.82	0.81 to 0	N/A

PERIMETER DAYLIGHTING		
1.15 to 0.82	0.81 to 0	0.81 to 0
		VLT ≥ SC

OPAQUE WALL Uow	
LIGHT WEIGHT WALL	MASS WALL

INTERNAL LOAD DENSITY (ILD) RANGE	PROJECTION FACTOR (PF)	SHADING COEFF RANGE (SCx)	BASE CASE	PERIMETER DAYLIGHTING		OPAQUE WALL Uow	
						LIGHT WEIGHT WALL	MASS WALL
0 - 1.00	0.000 - 0.249	1.000 - 0.71	15 15	18 17 18			
		0.700 - 0.60	20 19	22 22 20			
		0.600 - 0.50	34 33	27 27 26			
		0.400 - 0.36	39 39	34 34 34			
		0.370 - 0.25	41 40	46 46 46			
		0.240 - 0.00	74 70	66 66 66			
	0.250 - 0.499	1.000 - 0.71	21 20	24 24 24			
		0.700 - 0.60	27 26	31 30 31			
		0.600 - 0.50	36 32	36 37 36			
		0.400 - 0.36	41 40	46 46 47			
		0.370 - 0.00	86 87	89 86 87			
	0.500 +	1.000 - 0.71	35 37	32 31 32			
		0.700 - 0.60	36 35	42 41 42			
		0.600 - 0.50	47 44	87 60 81			
		0.400 - 0.00	87 84	87 83 86			
1.01 - 3.00	0.000 - 0.249	1.000 - 0.71	13 12	19 19 21			
		0.700 - 0.60	16 16	25 24 25			
		0.600 - 0.50	30 29	36 37 40			
		0.400 - 0.36	34 33	45 45 46			
		0.370 - 0.25	41 38	97 86 96			
	0.250 - 0.499	1.000 - 0.71	17 17	27 26 28			
		0.700 - 0.60	22 22	35 34 36			
		0.600 - 0.50	27 26	45 41 44			
		0.400 - 0.36	34 33	55 52 55			
		0.370 - 0.00	48 47	79 73 79			
	0.500 +	1.000 - 0.71	25 22	36 35 37			
		0.700 - 0.60	30 29	48 46 49			
		0.600 - 0.50	37 35	60 57 60			
		0.400 - 0.00	67 65	78 71 76			
3.01 - 8.00	0.000 - 0.249	1.000 - 0.71	10 10	18 17 20			
		0.700 - 0.60	13 13	23 22 25			
		0.600 - 0.50	16 16	30 27 31			
		0.400 - 0.36	19 18	35 34 36			
		0.370 - 0.25	27 26	61 46 53			
		0.240 - 0.00	46 46	90 81 90			
	0.250 - 0.499	1.000 - 0.71	14 13	24 24 27			
		0.700 - 0.60	17 17	32 31 34			
		0.600 - 0.50	21 21	40 36 43			
		0.400 - 0.36	27 26	51 46 53			
		0.370 - 0.00	36 37	73 66 76			
	0.500 +	1.000 - 0.71	18 18	33 32 35			
		0.700 - 0.60	23 23	44 42 46			
		0.600 - 0.50	29 28	56 53 57			
		0.400 - 0.00	36 35	71 67 73			

Uow (HC/S)	HC RANGE	PCT FEN	INT INS	EXT INS
0.40	HC ≥ 5	15	0.01	0.70
	HC ≥ 10	15	0.00	0.00
	HC ≥ 15	15	0.00	0.00
	HC ≥ 5	88	0.05	0.00
	HC ≥ 10	88	0.00	0.00
	HC ≥ 15	88	0.00	0.00

Uow (HC/S)	HC RANGE	PCT FEN	INT INS	EXT INS
0.40	HC ≥ 5	13	0.01	0.70
	HC ≥ 10	13	0.00	0.00
	HC ≥ 15	13	0.00	0.00
	HC ≥ 5	88	0.07	0.00
	HC ≥ 10	88	0.00	0.00
	HC ≥ 15	88	0.00	0.00

Uow (HC/S)	HC RANGE	PCT FEN	INT INS	EXT INS
0.40	HC ≥ 5	10	0.01	0.70
	HC ≥ 10	10	0.00	0.00
	HC ≥ 15	10	0.00	0.00
	HC ≥ 5	88	0.07	0.00
	HC ≥ 10	88	0.00	0.00
	HC ≥ 15	88	0.00	0.00

Daylight Sensing Controls

	Min R-Value	Max Uo
ROOF:		0.004
WALL BELOW GRADE:	0	
WALL ADJACENT TO UNCOND SPACE:		0.00
UNHEATED SLAB ON GRADE: 24" / 36" / 48"		
Horizontal	0 / 0 / 0	
Vertical	0 / 0 / 0	
FLOOR OVER UNCOND SPACE:		0.20

ALTERNATE COMPONENT PACKAGES FOR:

HDD65 = 1 - 1000
CDD65 = 3150 - 4500
YSEF =) 845
CDH65 =) 10000

Laredo TX
Phoenix AZ
Yuma AZ

TABLE 5.4-13

Uwf

BASE CASE		
1.15 to 0.82	0.81 to 0	N/A

PERIMETER DAYLIGHTING		
1.15 to 0.82	0.81 to 0	0.81 to 0
		VLT ≥ SC

OPAQUE WALL Uow	
LIGHT WEIGHT WALL	MASS WALL

INTERNAL LOAD DENSITY (ILD) RANGE	PROJECTION FACTOR (PF)	SHADING COEFF RANGE (SCx)	BASE CASE	PERIMETER DAYLIGHTING		OPAQUE WALL Uow	
						LIGHT WEIGHT WALL	MASS WALL
0 - 1.00	0.000 - 0.249	1.000 - 0.71	15 15	17 17 17			
		0.700 - 0.60	19 19	22 21 22			
		0.600 - 0.50	23 23	27 26 27			
		0.400 - 0.36	29 28	33 33 34			
		0.370 - 0.25	41 40	47 46 46			
		0.240 - 0.00	75 72	86 83 86			
	0.250 - 0.499	1.000 - 0.71	20 20	23 23 24			
		0.700 - 0.60	25 25	30 30 30			
		0.600 - 0.50	32 31	37 36 37			
		0.400 - 0.36	40 40	47 46 47			
		0.370 - 0.00	59 57	89 86 88			
	0.500 +	1.000 - 0.71	27 27	31 31 32			
		0.700 - 0.60	35 35	41 40 41			
		0.600 - 0.50	44 43	51 50 51			
		0.400 - 0.00	56 55	87 84 86			
1.01 - 3.00	0.000 - 0.249	1.000 - 0.71	12 12	19 19 20			
		0.700 - 0.60	16 16	24 24 26			
		0.600 - 0.50	19 19	30 29 32			
		0.400 - 0.36	24 24	38 37 40			
		0.370 - 0.25	34 33	65 63 67			
		0.240 - 0.00	62 59	100 92 100			
	0.250 - 0.499	1.000 - 0.71	17 17	25 25 28			
		0.700 - 0.60	22 21	34 33 36			
		0.600 - 0.50	27 26	42 41 44			
		0.400 - 0.36	34 33	55 52 56			
		0.370 - 0.00	49 47	88 76 81			
	0.500 +	1.000 - 0.71	23 22	36 35 37			
		0.700 - 0.60	29 28	47 46 49			
		0.600 - 0.50	36 36	66 57 61			
		0.400 - 0.00	47 45	77 73 78			
3.01 - 8.00	0.000 - 0.249	1.000 - 0.71	10 10	17 17 19			
		0.700 - 0.60	13 12	22 22 25			
		0.600 - 0.50	15 15	27 27 30			
		0.400 - 0.36	19 19	34 34 38			
		0.370 - 0.25	27 26	51 48 54			
		0.240 - 0.00	46 46	91 84 96			
	0.250 - 0.499	1.000 - 0.71	13 13	24 23 26			
		0.700 - 0.60	17 17	31 30 34			
		0.600 - 0.50	21 21	39 38 42			
		0.400 - 0.36	27 26	50 48 53			
		0.370 - 0.00	36 37	74 70 77			
	0.500 +	1.000 - 0.71	16 17	33 32 35			
		0.700 - 0.60	23 23	43 42 46			
		0.600 - 0.50	29 28	55 53 58			
		0.400 - 0.00	37 36	72 68 74			

Uow (HC/S)	HC RANGE	PCT FEN	INT INS	EXT INS
0.35	HC ≥ 5	15	0.41	0.50
	HC ≥ 10	15	0.51	0.00
	HC ≥ 15	15	0.00	0.02
	HC ≥ 5	88	0.43	0.54
	HC ≥ 10	88	0.00	0.00
	HC ≥ 15	88	0.05	0.00

Uow (HC/S)	HC RANGE	PCT FEN	INT INS	EXT INS
0.35	HC ≥ 5	12	0.41	0.50
	HC ≥ 10	12	0.51	0.00
	HC ≥ 15	12	0.00	0.02
	HC ≥ 5	92	0.43	0.54
	HC ≥ 10	92	0.00	0.00
	HC ≥ 15	92	0.00	0.70

Uow (HC/S)	HC RANGE	PCT FEN	INT INS	EXT INS
0.35	HC ≥ 5	10	0.41	0.40
	HC ≥ 10	10	0.00	0.00
	HC ≥ 15	10	0.00	0.01
	HC ≥ 5	91	0.42	0.53
	HC ≥ 10	91	0.05	0.05
	HC ≥ 15	91	0.05	0.00

Daylight Sensing Controls

	Min R-Value	Max Uo
ROOF:		0.045
WALL BELOW GRADE:	0	
WALL ADJACENT TO UNCOND SPACE:		0.42
UNHEATED SLAB ON GRADE: 24" / 36" / 48"		
Horizontal	0 / 0 / 0	
Vertical	0 / 0 / 0	
FLOOR OVER UNCOND SPACE:		0.28

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ALTERNATE COMPONENT PACKAGES FOR:

HDD65 = 1001 - 1750
CDD65 = 0 - 500
VSEF = 500 - 845

Astoria OR
Olympia WA
Portland OR
Salem OR
Seattle WA

Whidbey Island WA

TABLE 5.4-14

INTERNAL LOAD DENSITY (ILD) RANGE	PROJECTION FACTOR (PF)	SHADING COEFF RANGE (SCx)	Uwf	BASE CASE 0.01 to 0.40	BASE CASE 0.45 to 0.90	BASE CASE 0.95 to 0	PERIMETER DAYLIGHTING 0.01 to 0.40	PERIMETER DAYLIGHTING 0.45 to 0.90	PERIMETER DAYLIGHTING 0.95 to 0
0 - 1.50	0.000 - 0.249	1.000 - 0.71		34	31	33			
		0.709 - 0.60		36	37	39			
		0.599 - 0.50		37	41	44			
		0.499 - 0.38		39	46	50			
		0.379 - 0.25		40	52	58			
		0.249 - 0.00		42	59	70			
	0.250 - 0.499	1.000 - 0.71		37	39	41			
		0.709 - 0.60		39	44	48			
		0.599 - 0.50		40	48	54			
		0.499 - 0.38		41	53	60			
		0.379 - 0.00		42	60	67			
	0.500 -	1.000 - 0.71		39	40	40			
		0.709 - 0.60		41	51	56			
		0.599 - 0.50		42	56	66			
		0.499 - 0.00		43	60	68			
1.51 - 3.00	0.000 - 0.249	1.000 - 0.71		32	37	38			
		0.709 - 0.60		34	42	44			
		0.599 - 0.50		35	46	49			
		0.499 - 0.38		36	49	54			
		0.379 - 0.25		37	54	61			
		0.249 - 0.00		38	61	69			
	0.250 - 0.499	1.000 - 0.71		35	38	41			
		0.709 - 0.60		36	43	47			
		0.599 - 0.50		37	48	53			
		0.499 - 0.38		38	51	58			
		0.379 - 0.00		39	56	66			
	0.500 -	1.000 - 0.71		36	36	36			
		0.709 - 0.60		38	40	43			
		0.599 - 0.50		39	44	50			
		0.499 - 0.00		40	48	56			
3.01 - 5.00	0.000 - 0.249	1.000 - 0.71		31	35	38			
		0.709 - 0.60		34	38	41			
		0.599 - 0.50		35	39	42			
		0.499 - 0.38		36	41	46			
		0.379 - 0.25		37	47	51			
		0.249 - 0.00		38	56	66			
	0.250 - 0.499	1.000 - 0.71		33	35	38			
		0.709 - 0.60		35	38	42			
		0.599 - 0.50		36	42	46			
		0.499 - 0.38		37	46	52			
		0.379 - 0.00		38	52	62			
	0.500 -	1.000 - 0.71		34	33	34			
		0.709 - 0.60		36	36	40			
		0.599 - 0.50		37	40	46			
		0.499 - 0.00		38	44	52			

PERIMETER DAYLIGHTING: N/A

VLT ≥ SC

OPAQUE WALL Uow: LIGHT WEIGHT WALL | MASS WALL

Uow	HC RANGE	PCT FEN	INT INS	EXT INS
0.090	HC ≥ 5	24	0.10	0.15
	HC ≥ 10	24	0.11	0.19
	HC ≥ 15	24	0.12	0.24
	HC ≥ 5	70	0.10	0.14
	HC ≥ 10	70	0.11	0.19
	HC ≥ 15	70	0.12	0.23
0.090	HC ≥ 5	22	0.10	0.17
	HC ≥ 10	22	0.13	0.23
	HC ≥ 15	22	0.15	0.30
	HC ≥ 5	60	0.10	0.16
	HC ≥ 10	60	0.11	0.22
	HC ≥ 15	60	0.13	0.27
0.090	HC ≥ 5	21	0.10	0.17
	HC ≥ 10	21	0.12	0.24
	HC ≥ 15	21	0.14	0.30
	HC ≥ 5	56	0.10	0.17
	HC ≥ 10	56	0.11	0.23
	HC ≥ 15	56	0.13	0.29

Daylight Sensing Controls

	Min R-Value
WALL BELOW GRADE:	0
UNHEATED SLAB ON GRADE: 24"	10
UNHEATED SLAB ON GRADE: 36"	13
UNHEATED SLAB ON GRADE: 48"	10
Horizontal	
Vertical	7 6 4

	Max Uo
ROOF:	0.064
WALL ADJACENT TO UNCOND SPACE:	0.14
FLOOR OVER UNCOND SPACE:	0.057

ALTERNATE COMPONENT PACKAGES FOR:

HDD65 = 1001 - 1750
CDD65 = 501 - 1150
VSEF = 500 - 845

Asheville NC
Medford OR

TABLE 5.4-15

INTERNAL LOAD DENSITY (ILD) RANGE	PROJECTION FACTOR (PF)	SHADING COEFF RANGE (SCx)	Uwf	BASE CASE 0.01 to 0.40	BASE CASE 0.45 to 0.90	BASE CASE 0.95 to 0	PERIMETER DAYLIGHTING 0.01 to 0.40	PERIMETER DAYLIGHTING 0.45 to 0.90	PERIMETER DAYLIGHTING 0.95 to 0
0 - 1.50	0.000 - 0.249	1.000 - 0.71		28	24	25	22	26	27
		0.709 - 0.60		24	29	30	25	31	33
		0.599 - 0.50		28	34	36	27	36	38
		0.499 - 0.38		29	39	41	30	41	44
		0.379 - 0.25		33	47	51	33	50	55
		0.249 - 0.00		38	61	69	35	63	72
	0.250 - 0.499	1.000 - 0.71		25	31	32	28	33	35
		0.709 - 0.60		26	37	39	29	40	42
		0.599 - 0.50		31	42	45	31	45	49
		0.499 - 0.38		33	48	52	34	50	56
		0.379 - 0.00		36	57	63	37	59	67
	0.500 -	1.000 - 0.71		29	39	41	30	41	46
		0.709 - 0.60		32	46	49	33	48	53
		0.599 - 0.50		34	51	56	35	53	60
		0.499 - 0.00		36	57	63	37	59	67
1.51 - 3.00	0.000 - 0.249	1.000 - 0.71		18	20	20	22	27	28
		0.709 - 0.60		21	25	25	26	32	34
		0.599 - 0.50		24	29	30	29	37	40
		0.499 - 0.38		27	34	35	32	43	46
		0.379 - 0.25		32	42	45	36	52	58
		0.249 - 0.00		36	56	63	41	67	77
	0.250 - 0.499	1.000 - 0.71		22	28	27	27	34	36
		0.709 - 0.60		26	32	33	31	41	44
		0.599 - 0.50		29	37	39	33	46	51
		0.499 - 0.38		32	43	46	36	53	60
		0.379 - 0.00		37	53	57	40	62	71
	0.500 -	1.000 - 0.71		27	33	34	31	43	46
		0.709 - 0.60		31	40	42	35	50	55
		0.599 - 0.50		33	46	48	37	56	63
		0.499 - 0.00		36	52	56	39	62	71
3.01 - 5.00	0.000 - 0.249	1.000 - 0.71		16	18	18	22	28	27
		0.709 - 0.60		19	22	22	25	31	33
		0.599 - 0.50		22	25	26	28	36	39
		0.499 - 0.38		25	30	31	31	42	45
		0.379 - 0.25		29	36	40	35	51	57
		0.249 - 0.00		36	52	57	40	65	75
	0.250 - 0.499	1.000 - 0.71		20	23	23	26	33	35
		0.709 - 0.60		24	28	29	30	40	43
		0.599 - 0.50		26	33	34	32	45	50
		0.499 - 0.38		29	38	40	35	51	58
		0.379 - 0.00		34	47	51	39	61	70
	0.500 -	1.000 - 0.71		24	29	30	31	41	45
		0.709 - 0.60		28	35	37	34	48	54
		0.599 - 0.50		31	41	43	36	54	61
		0.499 - 0.00		34	47	50	38	60	70

VLT ≥ SC

OPAQUE WALL Uow: LIGHT WEIGHT WALL | MASS WALL

Uow	HC RANGE	PCT FEN	INT INS	EXT INS
0.10	HC ≥ 5	28	0.11	0.15
	HC ≥ 10	28	0.13	0.19
	HC ≥ 15	28	0.15	0.20
	HC ≥ 5	72	0.11	0.14
	HC ≥ 10	72	0.13	0.17
	HC ≥ 15	72	0.14	0.18
0.10	HC ≥ 5	18	0.11	0.17
	HC ≥ 10	18	0.14	0.22
	HC ≥ 15	18	0.18	0.24
	HC ≥ 5	77	0.11	0.15
	HC ≥ 10	77	0.13	0.19
	HC ≥ 15	77	0.15	0.20
0.10	HC ≥ 5	18	0.11	0.17
	HC ≥ 10	18	0.15	0.23
	HC ≥ 15	18	0.18	0.26
	HC ≥ 5	75	0.11	0.15
	HC ≥ 10	75	0.13	0.19
	HC ≥ 15	75	0.15	0.20

Daylight Sensing Controls

	Min R-Value
WALL BELOW GRADE:	0
UNHEATED SLAB ON GRADE: 24"	15
UNHEATED SLAB ON GRADE: 36"	12
UNHEATED SLAB ON GRADE: 48"	10
Horizontal	
Vertical	7 5 4

	Max Uo
ROOF:	0.053
WALL ADJACENT TO UNCOND SPACE:	0.10
FLOOR OVER UNCOND SPACE:	0.064

ALTERNATE COMPONENT PACKAGES FOR:

HDD65 = 1001 - 1750
CDD65 = 1 - 1150
VSEW =) 845

Prescott AZ
Winslow AZ
Yuma Pinte AV

TABLE 5.4-16

Use

INTERNAL LOAD DENSITY (ILD) RANGE	PROJECTION FACTOR (PF)	SHADING COEFF RANGE (SCa)	BASE CASE 0.01 to 0.40	BASE CASE 0.45 to 0.30	BASE CASE 0.30 to 0	PERIMETER DAYLIGHTING 0.01 to 0.40	PERIMETER DAYLIGHTING 0.45 to 0	PERIMETER DAYLIGHTING 0.30 to 0 (VLT ≥ SC)
0 - 1.50	0.000 - 0.240	1.000 - 0.71	18	17	17	17	19	19
		0.700 - 0.60	18	21	21	20	23	24
		0.600 - 0.50	21	24	25	22	27	28
		0.490 - 0.36	24	29	30	25	31	33
		0.370 - 0.25	30	36	38	29	38	42
		0.240 - 0.00	35	50	54	36	50	60
	0.250 - 0.490	1.000 - 0.71	19	22	23	21	25	26
		0.700 - 0.60	23	27	28	24	30	31
		0.600 - 0.50	26	32	34	27	34	37
		0.490 - 0.36	30	37	39	30	40	43
		0.370 - 0.00	35	46	49	34	46	53
	0.500 +	1.000 - 0.71	24	29	30	25	31	33
		0.700 - 0.60	27	34	36	28	37	40
		0.600 - 0.50	30	38	40	31	42	46
		0.490 - 0.00	35	45	48	34	46	53
1.51 - 3.00	0.000 - 0.240	1.000 - 0.71	13	13	14	17	19	20
		0.700 - 0.60	15	17	17	20	23	25
		0.600 - 0.50	18	20	20	22	26	29
		0.490 - 0.36	20	25	26	25	31	34
		0.370 - 0.25	25	30	31	30	39	44
		0.240 - 0.00	33	43	46	37	48	52
	0.250 - 0.490	1.000 - 0.71	16	16	16	21	24	26
		0.700 - 0.60	19	22	22	24	29	32
		0.600 - 0.50	22	26	26	27	34	37
		0.490 - 0.36	25	30	31	30	40	44
		0.370 - 0.00	30	38	40	34	46	50
	0.500 +	1.000 - 0.71	20	20	20	25	31	34
		0.700 - 0.60	23	26	27	28	35	39
		0.600 - 0.50	25	30	32	31	42	46
		0.490 - 0.00	30	38	40	34	46	55
3.01 - 5.00	0.000 - 0.240	1.000 - 0.71	11	11	11	15	17	18
		0.700 - 0.60	13	14	14	18	21	24
		0.600 - 0.50	15	17	17	21	25	28
		0.490 - 0.36	18	20	20	24	29	33
		0.370 - 0.25	22	26	27	28	37	42
		0.240 - 0.00	28	38	40	35	48	53
	0.250 - 0.490	1.000 - 0.71	14	15	15	20	23	25
		0.700 - 0.60	17	19	19	23	28	31
		0.600 - 0.50	19	22	22	25	32	36
		0.490 - 0.36	22	25	27	28	37	43
		0.370 - 0.00	27	33	35	33	46	54
	0.500 +	1.000 - 0.71	17	19	20	26	31	33
		0.700 - 0.60	21	24	25	29	37	40
		0.600 - 0.50	23	28	30	32	42	46
		0.490 - 0.00	28	36	38	34	46	55

OPAQUE WALL Use

Use (HC/S)	HC RANGE	PCT FEN	INT INS	EXT INS
0.11	HC ≥ 6	15	0.13	0.17
	HC ≥ 10	15	0.14	0.21
	HC ≥ 15	15	0.17	0.33
	HC ≥ 6	60	0.11	0.16
	HC ≥ 10	60	0.14	0.30
	HC ≥ 15	60	0.16	0.21
0.11	HC ≥ 6	12	0.12	0.19
	HC ≥ 10	12	0.15	0.25
	HC ≥ 15	12	0.20	0.27
	HC ≥ 6	62	0.12	0.17
	HC ≥ 10	62	0.15	0.23
	HC ≥ 15	62	0.16	0.33
0.11	HC ≥ 6	11	0.12	0.19
	HC ≥ 10	11	0.16	0.26
	HC ≥ 15	11	0.21	0.26
	HC ≥ 6	60	0.12	0.17
	HC ≥ 10	59	0.15	0.22
	HC ≥ 15	59	0.16	0.24

Daylight Sensing Controls

	Min R-Value			Max Us
WALL BELOW GRADE:	0			
UNHEATED SLAB ON GRADE:	24°	36°	48°	
Horizontal	15	12	10	
Vertical	7	5	4	
ROOF:				0.056
WALL ADJACENT TO UNCOND SPACE:				0.10
FLOOR OVER UNCOND SPACE:				0.066

ALTERNATE COMPONENT PACKAGES FOR:

HDD65 = 1001 - 1750
CDD65 = 1151 - 2000
VSEW = 56° - 845

Charlotte NC
Chattanooga TN
Greensboro NC
Knoxville TN
Nashville TN

Norfolk VA
Patuxent MD
Raleigh NC
Richmond VA
Roanoke VA

TABLE 5.4-17

Use

INTERNAL LOAD DENSITY (ILD) RANGE	PROJECTION FACTOR (PF)	SHADING COEFF RANGE (SCa)	BASE CASE 0.01 to 0.40	BASE CASE 0.45 to 0.30	BASE CASE 0.30 to 0	PERIMETER DAYLIGHTING 0.01 to 0.40	PERIMETER DAYLIGHTING 0.45 to 0	PERIMETER DAYLIGHTING 0.30 to 0 (VLT ≥ SC)
0 - 1.50	0.000 - 0.240	1.000 - 0.71	18	18	18	18	20	20
		0.700 - 0.60	20	22	22	21	24	25
		0.600 - 0.50	23	26	26	24	28	30
		0.490 - 0.36	26	30	31	26	33	35
		0.370 - 0.25	32	39	40	34	43	46
		0.240 - 0.00	41	56	59	43	60	66
	0.250 - 0.490	1.000 - 0.71	21	23	24	23	26	27
		0.700 - 0.60	25	28	29	27	31	33
		0.600 - 0.50	28	33	34	30	37	39
		0.490 - 0.36	32	39	41	34	43	46
		0.370 - 0.00	38	50	52	40	54	58
	0.500 +	1.000 - 0.71	25	30	30	28	33	34
		0.700 - 0.60	30	36	37	32	40	42
		0.600 - 0.50	34	42	44	36	46	49
		0.490 - 0.00	38	49	51	40	53	58
1.51 - 3.00	0.000 - 0.240	1.000 - 0.71	13	14	14	18	20	21
		0.700 - 0.60	16	17	17	22	24	27
		0.600 - 0.50	19	21	21	25	29	31
		0.490 - 0.36	22	25	25	29	34	37
		0.370 - 0.25	28	32	33	35	44	49
		0.240 - 0.00	37	47	49	45	62	70
	0.250 - 0.490	1.000 - 0.71	17	18	19	23	26	28
		0.700 - 0.60	21	23	23	27	32	35
		0.600 - 0.50	24	27	27	31	37	41
		0.490 - 0.36	28	32	33	35	44	49
		0.370 - 0.00	34	41	43	41	55	63
	0.500 +	1.000 - 0.71	21	24	24	28	33	36
		0.700 - 0.60	26	29	30	33	40	45
		0.600 - 0.50	29	34	36	37	47	52
		0.490 - 0.00	33	41	42	41	56	61
3.01 - 5.00	0.000 - 0.240	1.000 - 0.71	11	12	12	17	18	20
		0.700 - 0.60	14	14	15	20	23	25
		0.600 - 0.50	16	17	17	23	27	30
		0.490 - 0.36	19	21	21	27	32	36
		0.370 - 0.25	24	27	28	33	41	47
		0.240 - 0.00	32	40	42	42	58	68
	0.250 - 0.490	1.000 - 0.71	14	15	15	22	24	27
		0.700 - 0.60	18	19	19	25	30	34
		0.600 - 0.50	20	23	23	29	35	39
		0.490 - 0.36	24	27	28	33	41	47
		0.370 - 0.00	29	35	36	38	52	60
	0.500 +	1.000 - 0.71	18	20	20	26	31	35
		0.700 - 0.60	22	24	25	31	38	43
		0.600 - 0.50	25	29	29	34	44	50
		0.490 - 0.00	29	34	35	38	51	58

OPAQUE WALL Use

Use (HC/S)	HC RANGE	PCT FEN	INT INS	EXT INS
0.12	HC ≥ 6	10	0.14	0.18
	HC ≥ 10	10	0.17	0.22
	HC ≥ 15	10	0.19	0.24
	HC ≥ 6	66	0.14	0.18
	HC ≥ 10	66	0.18	0.21
	HC ≥ 15	66	0.19	0.23
0.12	HC ≥ 6	13	0.14	0.20
	HC ≥ 10	13	0.18	0.25
	HC ≥ 15	13	0.20	0.29
	HC ≥ 6	70	0.14	0.18
	HC ≥ 10	70	0.17	0.23
	HC ≥ 15	70	0.20	0.25
0.12	HC ≥ 6	11	0.14	0.20
	HC ≥ 10	11	0.19	0.27
	HC ≥ 15	11	0.24	0.30
	HC ≥ 6	66	0.14	0.19
	HC ≥ 10	66	0.17	0.23
	HC ≥ 15	66	0.20	0.25

Daylight Sensing Controls

	Min R-Value			Max Us
WALL BELOW GRADE:	0			
UNHEATED SLAB ON GRADE:	24°	36°	48°	
Horizontal	13	11	9	
Vertical	6	5	4	
ROOF:				0.068
WALL ADJACENT TO UNCOND SPACE:				0.17
FLOOR OVER UNCOND SPACE:				0.074

ALTERNATE COMPONENT PACKAGES FOR:

HDD65 = 1001 - 1750
CDD65 = 1151 - 3000
VSEF = 500 - 845

Albuquerque NM
Amarillo TX
Lubbock TX
Oklahoma City OK
Roswell NM
Truth or Consequences NM
Tucumcari NM

TABLE 5.4-10

INTERNAL LOAD DENSITY (ILD) RANGE	PROJECTION FACTOR (PF)	SHADING COEFF RANGE (SCx)	BASE CASE Unf: 0.01 to 0.40	BASE CASE Unf: 0.40 to 0.30	BASE CASE Unf: 0.30 to 0	PERIMETER DAYLIGHTING Unf: 0.01 to 0.40	PERIMETER DAYLIGHTING Unf: 0.40 to 0	PERIMETER DAYLIGHTING Unf: 0.30 to 0	VLT ≥ SC
0 - 1.50	0.000 - 0.249	1.000 - 0.71	14	15	16	15	17	17	
		0.700 - 0.60	17	18	19	18	21	22	
		0.599 - 0.50	19	21	22	19	24	25	
		0.499 - 0.40	22	25	27	22	28	30	
		0.399 - 0.35	25	28	30	25	32	34	
		0.349 - 0.00	30	34	37	30	38	41	
	0.250 - 0.499	1.000 - 0.71	16	18	21	18	20	23	
		0.700 - 0.60	21	24	27	23	26	29	
		0.599 - 0.50	24	27	31	26	30	34	
		0.499 - 0.40	27	31	35	30	34	39	
		0.399 - 0.35	31	36	40	34	39	44	
		0.349 - 0.00	36	41	46	39	45	50	
	0.500 +	1.000 - 0.71	17	19	22	19	22	25	
		0.700 - 0.60	22	25	28	24	28	31	
		0.599 - 0.50	25	29	33	28	32	36	
		0.499 - 0.40	29	33	38	32	37	42	
		0.399 - 0.35	33	38	43	37	42	48	
		0.349 - 0.00	38	44	50	43	49	56	
1.51 - 3.00	0.000 - 0.249	1.000 - 0.71	11	12	12	15	16	18	
		0.700 - 0.60	14	15	15	18	20	22	
		0.599 - 0.50	16	17	18	20	23	25	
		0.499 - 0.40	19	20	21	23	26	29	
		0.399 - 0.35	21	23	25	26	30	33	
		0.349 - 0.00	25	28	30	30	35	39	
	0.250 - 0.499	1.000 - 0.71	13	14	15	19	22	24	
		0.700 - 0.60	16	18	19	22	25	28	
		0.599 - 0.50	19	21	22	25	28	32	
		0.499 - 0.40	22	24	26	28	32	36	
		0.399 - 0.35	25	28	30	32	36	41	
		0.349 - 0.00	29	33	36	36	41	46	
	0.500 +	1.000 - 0.71	16	17	18	21	24	27	
		0.700 - 0.60	19	21	23	26	29	33	
		0.599 - 0.50	22	25	27	29	33	37	
		0.499 - 0.40	25	28	31	33	37	42	
		0.399 - 0.35	28	32	35	37	42	47	
		0.349 - 0.00	32	37	41	42	47	53	
3.01 - 5.00	0.000 - 0.249	1.000 - 0.71	10	10	10	14	15	17	
		0.700 - 0.60	12	13	13	16	18	21	
		0.599 - 0.50	14	15	15	18	21	24	
		0.499 - 0.40	16	18	18	21	24	27	
		0.399 - 0.35	18	20	21	24	27	31	
		0.349 - 0.00	21	24	25	27	31	35	
	0.250 - 0.499	1.000 - 0.71	12	13	14	17	20	22	
		0.700 - 0.60	14	15	17	20	23	26	
		0.599 - 0.50	16	17	19	22	25	29	
		0.499 - 0.40	18	20	21	24	28	32	
		0.399 - 0.35	21	23	24	27	31	35	
		0.349 - 0.00	24	27	29	31	35	40	
	0.500 +	1.000 - 0.71	15	16	17	20	23	26	
		0.700 - 0.60	17	19	21	24	27	31	
		0.599 - 0.50	19	21	23	26	30	34	
		0.499 - 0.40	21	24	26	29	33	38	
		0.399 - 0.35	24	27	29	32	37	42	
		0.349 - 0.00	27	31	34	36	41	47	

OPAQUE WALL Use

LIGHT WEIGHT WALL	MASS WALL

Use (HC(S))	HC RANGE	PCT FEN	INT INS	EXT INS
0.11	HC ≥ 5	14	0.12	0.16
	HC ≥ 10	14	0.14	0.21
	HC ≥ 15	14	0.17	0.22
	HC ≥ 5	54	0.11	0.16
	HC ≥ 10	54	0.14	0.19
	HC ≥ 15	54	0.16	0.21

Use (HC(S))	HC RANGE	PCT FEN	INT INS	EXT INS
0.11	HC ≥ 5	11	0.12	0.18
	HC ≥ 10	11	0.15	0.23
	HC ≥ 15	11	0.19	0.28
	HC ≥ 5	57	0.12	0.17
	HC ≥ 10	57	0.15	0.21
	HC ≥ 15	57	0.17	0.25

Use (HC(S))	HC RANGE	PCT FEN	INT INS	EXT INS
0.11	HC ≥ 5	10	0.12	0.18
	HC ≥ 10	10	0.15	0.24
	HC ≥ 15	10	0.20	0.30
	HC ≥ 5	54	0.12	0.17
	HC ≥ 10	54	0.15	0.22
	HC ≥ 15	54	0.19	0.28

Daylight Sensing Controls

	Min R-Value		
WALL BELOW GRADE:	0		
UNHEATED SLAB ON GRADE:	24"	36"	48"
Horizontal	14	11	9
Vertical	7	5	4

	Max Un
ROOF:	0.080
WALL ADJACENT TO UNCOND SPACE:	0.17
FLOOR OVER UNCOND SPACE:	0.070

ALTERNATE COMPONENT PACKAGES FOR:

HDD65 = 1001 - 1750
CDD65 = 2001 - 3250
VSEF = 500 - 845

Fort Smith AR
Memphis TN
Tulsa OK

TABLE 5.4-10

INTERNAL LOAD DENSITY (ILD) RANGE	PROJECTION FACTOR (PF)	SHADING COEFF RANGE (SCx)	BASE CASE Unf: 0.01 to 0.40	BASE CASE Unf: 0.40 to 0.30	BASE CASE Unf: 0.30 to 0	PERIMETER DAYLIGHTING Unf: 0.01 to 0.40	PERIMETER DAYLIGHTING Unf: 0.40 to 0	PERIMETER DAYLIGHTING Unf: 0.30 to 0	VLT ≥ SC
0 - 1.50	0.000 - 0.249	1.000 - 0.71	14	15	15	16	17	17	
		0.700 - 0.60	17	19	19	19	21	22	
		0.599 - 0.50	20	22	22	22	25	26	
		0.499 - 0.40	24	26	27	25	29	31	
		0.399 - 0.35	28	30	32	29	33	36	
		0.349 - 0.00	33	36	38	34	38	41	
	0.250 - 0.499	1.000 - 0.71	18	20	20	20	22	23	
		0.700 - 0.60	22	25	25	24	27	29	
		0.599 - 0.50	25	28	28	27	31	34	
		0.499 - 0.40	29	32	33	31	35	38	
		0.399 - 0.35	33	37	38	35	40	44	
		0.349 - 0.00	37	42	44	40	45	50	
	0.500 +	1.000 - 0.71	23	25	25	25	28	30	
		0.700 - 0.60	28	31	32	30	34	37	
		0.599 - 0.50	32	36	37	34	38	42	
		0.499 - 0.40	36	41	44	38	43	48	
		0.399 - 0.35	41	46	50	43	48	54	
		0.349 - 0.00	46	52	57	48	54	61	
1.51 - 3.00	0.000 - 0.249	1.000 - 0.71	11	11	11	15	16	18	
		0.700 - 0.60	13	14	14	18	20	22	
		0.599 - 0.50	16	17	17	20	22	25	
		0.499 - 0.40	19	20	20	23	25	28	
		0.399 - 0.35	24	27	27	27	30	33	
		0.349 - 0.00	30	34	35	32	36	40	
	0.250 - 0.499	1.000 - 0.71	14	15	15	18	20	21	
		0.700 - 0.60	17	18	19	21	24	27	
		0.599 - 0.50	20	22	22	24	27	30	
		0.499 - 0.40	24	27	27	27	30	33	
		0.399 - 0.35	28	31	32	30	34	38	
		0.349 - 0.00	33	37	38	34	38	43	
	0.500 +	1.000 - 0.71	18	19	19	22	25	27	
		0.700 - 0.60	22	24	24	26	30	33	
		0.599 - 0.50	25	28	29	30	34	38	
		0.499 - 0.40	29	32	34	34	38	43	
		0.399 - 0.35	33	37	39	38	43	48	
		0.349 - 0.00	38	43	45	43	48	55	
3.01 - 5.00	0.000 - 0.249	1.000 - 0.71	9	9	9	14	14	17	
		0.700 - 0.60	11	11	11	17	18	21	
		0.599 - 0.50	13	14	14	20	21	25	
		0.499 - 0.40	15	16	17	23	26	30	
		0.399 - 0.35	18	22	22	29	34	40	
		0.349 - 0.00	21	25	25	30	36	41	
	0.250 - 0.499	1.000 - 0.71	12	12	12	18	19	22	
		0.700 - 0.60	14	15	15	22	24	28	
		0.599 - 0.50	17	18	18	25	28	33	
		0.499 - 0.40	20	22	22	29	34	40	
		0.399 - 0.35	25	29	29	35	44	53	
		0.349 - 0.00	31	36	37	42	52	63	
	0.500 +	1.000 - 0.71	15	16	16	22	25	29	
		0.700 - 0.60	18	19	20	27	31	36	
		0.599 - 0.50	21	23	23	30	36	43	
		0.499 - 0.40	24	26	28	35	43	52	
		0.399 - 0.35	28	31	33	41	51	62	
		0.349 - 0.00	33	37	39	48	60	73	

OPAQUE WALL Use

LIGHT WEIGHT WALL	MASS WALL

Use (HC(S))	HC RANGE	PCT FEN	INT INS	EXT INS
0.13	HC ≥ 5	14	0.14	0.20
	HC ≥ 10	14	0.18	0.25
	HC ≥ 15	14	0.22	0.27
	HC ≥ 5	62	0.14	0.20
	HC ≥ 10	62	0.18	0.24
	HC ≥ 15	62	0.21	0.26

Use (HC(S))	HC RANGE	PCT FEN	INT INS	EXT INS
0.13	HC ≥ 5	11	0.15	0.21
	HC ≥ 10	11	0.19	0.27
	HC ≥ 15	11	0.24	0.30
	HC ≥ 5	65	0.14	0.20
	HC ≥ 10	65	0.18	0.26
	HC ≥ 15	65	0.23	0.29

Use (HC(S))	HC RANGE	PCT FEN	INT INS	EXT INS
0.13	HC ≥ 5	9	0.15	0.22
	HC ≥ 10	9	0.19	0.28
	HC ≥ 15	9	0.24	0.31
	HC ≥ 5	61	0.15	0.21
	HC ≥ 10	61	0.19	0.28
	HC ≥ 15	61	0.23	0.29

Daylight Sensing Controls

	Min R-Value		
WALL BELOW GRADE:	7		
UNHEATED SLAB ON GRADE:	24"	36"	48"
Horizontal	12	10	8
Vertical	6	5	4

	Max Un
ROOF:	0.058
WALL ADJACENT TO UNCOND SPACE:	0.19
FLOOR OVER UNCOND SPACE:	0.063

ALTERNATE COMPONENT PACKAGES FOR:

HDD65 = 1751 - 9000
CDD65 = 0 - 1150
VSEP = 040 - 045

Baltimore MD
Boston MA
Charleston WV
Columbus OH
Covington KY

Dayton OH
Harrisburg PA
Lewiston ID
Newark NJ
New York NY

New York (LAG) NY
Philadelphia PA
Redmond OR
Washington DC
Yakima WA

TABLE 5.4-20

INTERNAL LOAD DENSITY (ILD) RANGE	PROJECTION FACTOR (PF)	SHADING COEFF RANGE (SCa)	BASE CASE Unf: 0.00 to 0.40	0.45 to 0.80	0.30 to 0	PERIMETER DAYLIGHTING 0.00 to 0.40	0.45 to 0	0.30 to 0 (VLT ≥ SC)
0 - 1.50	0.000 - 0.249	1.000 - 0.71	22	26	27	23	27	29
		0.700 - 0.60	25	30	32	26	32	34
		0.600 - 0.50	27	34	37	28	36	38
		0.400 - 0.30	30	39	42	30	40	42
		0.370 - 0.25	35	46	51	35	46	47
		0.240 - 0.00	39	54	63	39	54	52
	0.250 - 0.499	1.000 - 0.71	28	33	35	27	34	37
		0.700 - 0.60	29	38	41	28	38	40
		0.600 - 0.50	31	42	46	31	43	46
		0.400 - 0.30	33	48	52	33	47	53
		0.370 - 0.00	38	62	68	36	62	61
	0.500 +	1.000 - 0.71	30	38	43	30	41	45
		0.700 - 0.60	33	46	49	33	46	52
		0.600 - 0.50	34	49	54	34	49	60
		0.400 - 0.00	38	62	68	35	63	61
1.51 - 3.00	0.000 - 0.249	1.000 - 0.71	20	23	23	24	28	29
		0.700 - 0.60	23	28	27	27	33	36
		0.600 - 0.50	25	30	32	29	37	40
		0.400 - 0.30	28	36	37	32	41	46
		0.370 - 0.25	32	43	46	35	46	55
		0.240 - 0.00	36	57	66	36	56	66
	0.250 - 0.499	1.000 - 0.71	24	30	29	26	33	37
		0.700 - 0.60	27	36	36	31	44	44
		0.600 - 0.50	30	39	40	33	44	48
		0.400 - 0.30	33	43	46	35	49	50
		0.370 - 0.00	36	58	65	36	55	65
	0.500 +	1.000 - 0.71	26	35	37	32	42	47
		0.700 - 0.60	30	40	43	34	47	54
		0.600 - 0.50	32	43	48	36	51	59
		0.400 - 0.00	36	58	64	36	55	65
3.01 - 5.50	0.000 - 0.249	1.000 - 0.71	18	19	20	23	27	28
		0.700 - 0.60	21	23	24	25	32	34
		0.600 - 0.50	23	27	28	29	36	39
		0.400 - 0.30	26	31	33	31	41	45
		0.370 - 0.25	30	38	41	34	47	54
		0.240 - 0.00	36	49	55	39	57	67
	0.250 - 0.499	1.000 - 0.71	23	25	26	27	34	37
		0.700 - 0.60	25	30	31	30	39	44
		0.600 - 0.50	26	34	36	33	43	49
		0.400 - 0.30	30	39	42	35	48	55
		0.370 - 0.00	34	48	51	36	54	64
	0.500 +	1.000 - 0.71	26	31	33	31	41	46
		0.700 - 0.60	28	36	39	34	46	53
		0.600 - 0.50	32	41	44	36	50	58
		0.400 - 0.00	34	48	56	36	54	64

OPAQUE WALL Uow

LIGHT WEIGHT WALL	MASS WALL

Uow (HCCS)	HC RANGE	PCT FEN	INT INS	EXT INS
0.000	HC ≥ 5	22	0.000	0.12
	HC ≥ 10	22	0.11	0.15
	HC ≥ 15	22	0.12	0.16
	HC ≥ 5	03	0.000	0.11
	HC ≥ 10	03	0.10	0.13
	HC ≥ 15	03	0.11	0.14
0.000	HC ≥ 5	20	0.000	0.14
	HC ≥ 10	20	0.11	0.17
	HC ≥ 15	20	0.13	0.18
	HC ≥ 5	03	0.000	0.12
	HC ≥ 10	00	0.10	0.14
	HC ≥ 15	00	0.11	0.15
0.000	HC ≥ 5	10	0.000	0.14
	HC ≥ 10	10	0.11	0.16
	HC ≥ 15	10	0.13	0.19
	HC ≥ 5	07	0.000	0.12
	HC ≥ 10	07	0.10	0.14
	HC ≥ 15	07	0.11	0.15

Daylight Sensing Controls

	Min R-Value
WALL BELOW GRADE:	0
UNHEATED SLAB ON GRADE: 24"	17
36"	14
48"	11
Horizontal	8
Vertical	6
	4

	Max Uo
ROOF:	0.056
WALL ADJACENT TO UNCOND SPACE:	0.13
FLOOR OVER UNCOND SPACE:	0.068

ALTERNATE COMPONENT PACKAGES FOR:

HDD65 = 2001 - 8200
CDD65 = 0 - 1150
VSEP = 040 - 045

Akron OH
Allentown PA
Burlington IA
Chicago IL
Detroit MI

Erie PA
Hartford CT
Indianapolis IN
Omaha NE
Pittsburgh PA

Providence RI
South Bend IN
Spokane WA
Toledo OH
Youngstown OH

TABLE 5.4-21

INTERNAL LOAD DENSITY (ILD) RANGE	PROJECTION FACTOR (PF)	SHADING COEFF RANGE (SCa)	BASE CASE Unf: 0.00 to 0.40	0.45 to 0.80	0.30 to 0	PERIMETER DAYLIGHTING 0.00 to 0.40	0.45 to 0	0.30 to 0 (VLT ≥ SC)
0 - 1.50	0.000 - 0.249	1.000 - 0.71	21	26	28	21	27	29
		0.700 - 0.60	24	30	33	23	31	34
		0.600 - 0.50	25	34	37	25	34	38
		0.400 - 0.30	28	37	41	28	37	42
		0.370 - 0.25	29	41	47	27	40	47
		0.240 - 0.00	29	48	54	28	44	53
	0.250 - 0.499	1.000 - 0.71	25	32	35	24	33	37
		0.700 - 0.60	28	35	41	26	37	41
		0.600 - 0.50	27	39	44	27	39	45
		0.400 - 0.30	28	42	48	27	41	48
		0.370 - 0.00	28	45	53	29	44	52
	0.500 +	1.000 - 0.71	27	36	42	28	38	43
		0.700 - 0.60	26	41	47	27	41	48
		0.600 - 0.50	29	44	51	26	43	50
		0.400 - 0.00	28	48	54	29	44	53
1.51 - 3.00	0.000 - 0.249	1.000 - 0.71	19	23	23	22	27	29
		0.700 - 0.60	22	27	28	24	32	34
		0.600 - 0.50	24	30	32	26	35	39
		0.400 - 0.30	26	34	37	28	38	43
		0.370 - 0.25	28	40	44	30	43	49
		0.240 - 0.00	32	47	54	32	49	57
	0.250 - 0.499	1.000 - 0.71	28	28	30	25	33	37
		0.700 - 0.60	28	30	36	27	36	43
		0.600 - 0.50	28	36	40	29	40	47
		0.400 - 0.30	28	40	45	30	43	50
		0.370 - 0.00	31	46	52	32	47	55
	0.500 +	1.000 - 0.71	25	34	37	25	30	45
		0.700 - 0.60	29	39	43	29	42	50
		0.600 - 0.50	30	42	47	29	45	53
		0.400 - 0.00	32	46	52	32	47	55
3.01 - 5.50	0.000 - 0.249	1.000 - 0.71	18	20	21	22	27	29
		0.700 - 0.60	20	24	25	24	31	34
		0.600 - 0.50	22	28	29	26	34	38
		0.400 - 0.30	25	31	34	27	36	43
		0.370 - 0.25	28	37	41	30	43	49
		0.240 - 0.00	36	45	51	32	48	57
	0.250 - 0.499	1.000 - 0.71	21	29	32	25	33	38
		0.700 - 0.60	24	30	32	27	37	42
		0.600 - 0.50	25	33	37	28	40	46
		0.400 - 0.30	27	36	40	30	43	50
		0.370 - 0.00	28	43	48	32	47	55
	0.500 +	1.000 - 0.71	25	31	34	28	34	44
		0.700 - 0.60	27	36	39	29	42	49
		0.600 - 0.50	29	39	44	30	44	53
		0.400 - 0.00	30	43	48	31	47	58

OPAQUE WALL Uow

LIGHT WEIGHT WALL	MASS WALL

Uow (HCCS)	HC RANGE	PCT FEN	INT INS	EXT INS
0.000	HC ≥ 5	21	0.004	0.10
	HC ≥ 10	21	0.002	0.12
	HC ≥ 15	21	0.000	0.12
	HC ≥ 5	04	0.005	0.10
	HC ≥ 10	04	0.000	0.11
	HC ≥ 15	04	0.006	0.12
0.000	HC ≥ 5	19	0.006	0.11
	HC ≥ 10	19	0.006	0.13
	HC ≥ 15	19	0.10	0.14
	HC ≥ 5	07	0.003	0.10
	HC ≥ 10	07	0.000	0.11
	HC ≥ 15	07	0.006	0.12
0.000	HC ≥ 5	10	0.000	0.11
	HC ≥ 10	10	0.007	0.14
	HC ≥ 15	10	0.10	0.15
	HC ≥ 5	07	0.000	0.10
	HC ≥ 10	07	0.000	0.12
	HC ≥ 15	07	0.006	0.12

Daylight Sensing Controls

	Min R-Value
WALL BELOW GRADE:	10
UNHEATED SLAB ON GRADE: 24"	17
36"	14
48"	11
Horizontal	8
Vertical	6
	4

	Max Uo
ROOF:	0.054
WALL ADJACENT TO UNCOND SPACE:	0.13
FLOOR OVER UNCOND SPACE:	0.047

ALTERNATE COMPONENT PACKAGES FOR:

HDD65 = 1751 - 3200
CDD65 = 0 - 1150
VSEW =) 845

Boise ID
Cedar UT
Clayton NM
Colorado Springs CO
Denver CO

Goodland KS
Lovelock NV
Mount Shasta CA
Pueblo CO
Reno NV

Salt Lake City UT
Tonopah NV
Winnemucca NV

TABLE 5.4-22

Unf

BASE CASE		
0.00 to 0.40	0.45 to 0.30	0.30 to 0

PERIMETER DAYLIGHTING		
0.00 to 0.40	0.45 to 0	0.30 to 0

VLT ≥ SC

OPAQUE WALL Uow	
LIGHT WEIGHT WALL	MASS WALL

INTERNAL LOAD DENSITY (ILD) RANGE | PROJECTION FACTOR (PF) | SHADING COEFF RANGE (SCx)

ILD RANGE	PF	SC	BASE CASE			PERIMETER DAYLIGHTING			OPAQUE WALL Uow	
									LIGHT WEIGHT WALL	MASS WALL
0 - 1.50	0.000 - 0.249	1.000 - 0.71	32	34	36	33	36	37		
		0.700 - 0.60	35	39	41	35	39	43		
		0.600 - 0.50	37	53	56	38	35	46		
		0.499 - 0.36	38	56	61	38	39	52		
		0.379 - 0.25	33	45	49	33	48	62		
		0.249 - 0.00	37	54	82	37	55	85		
	0.250 - 0.499	1.000 - 0.71	36	51	53	37	38	38		
		0.700 - 0.60	39	57	60	39	39	42		
		0.599 - 0.50	42	61	66	42	43	47		
		0.499 - 0.36	44	68	68	44	47	53		
		0.379 - 0.00	47	62	89	38	53	81		
	0.500 -	1.000 - 0.71	31	50	41	31	48	44		
		0.700 - 0.60	33	44	48	33	48	51		
		0.600 - 0.50	35	48	54	35	49	58		
		0.499 - 0.00	37	53	60	37	53	82		
1.51 - 3.00	0.000 - 0.249	1.000 - 0.71	35	38	31	33	36	38		
		0.700 - 0.60	32	35	38	33	38	38		
		0.600 - 0.50	35	39	36	35	41	45		
		0.499 - 0.36	38	41	44	32	48	54		
		0.379 - 0.25	38	52	58	40	58	68		
		0.249 - 0.00								
	0.250 - 0.499	1.000 - 0.71	35	36	37	28	34	38		
		0.700 - 0.60	37	32	38	31	38	43		
		0.600 - 0.50	38	38	38	34	44	48		
		0.499 - 0.36	33	41	44	36	48	55		
		0.379 - 0.00	37	48	54	39	55	64		
	0.500 -	1.000 - 0.71	38	38	35	32	41	45		
		0.700 - 0.60	32	38	41	35	47	53		
		0.600 - 0.50	34	44	47	37	51	58		
		0.499 - 0.00	37	48	54	38	55	85		
3.01 - 3.50	0.000 - 0.249	1.000 - 0.71	17	18	18	22	26	27		
		0.700 - 0.60	18	23	28	26	31	33		
		0.600 - 0.50	22	36	38	28	35	36		
		0.499 - 0.36	25	38	31	31	39	44		
		0.379 - 0.25	36	48	53	36	47	53		
		0.249 - 0.00				40	57	67		
	0.250 - 0.499	1.000 - 0.71	21	23	24	27	33	36		
		0.700 - 0.60	24	28	28	30	38	42		
		0.600 - 0.50	27	41	46	32	43	47		
		0.499 - 0.36	34	48	58	34	47	53		
		0.379 - 0.00	37	62	89	36	53	81		
	0.500 -	1.000 - 0.71	31	38	41	31	48	44		
		0.700 - 0.60	33	48	54	33	48	51		
		0.600 - 0.50	35	48	58	35	49	58		
		0.499 - 0.00	37	53	60	37	53	82		

Uow (HC≤5)	HC RANGE	PCT FEN	INT INS	EXT INS
0.092	HC ≥ 5	22	0.10	0.13
	HC ≥ 10	22	0.11	0.15
	HC ≥ 15	22	0.12	0.16
	HC ≥ 5	65	0.000	0.12
	HC ≥ 10	65	0.10	0.13
	HC ≥ 15	65	0.11	0.14

Uow (HC≤5)	HC RANGE	PCT FEN	INT INS	EXT INS
0.092	HC ≥ 5	19	0.10	0.14
	HC ≥ 10	19	0.12	0.16
	HC ≥ 15	19	0.14	0.19
	HC ≥ 5	66	0.000	0.12
	HC ≥ 10	66	0.11	0.14
	HC ≥ 15	66	0.12	0.16

Uow (HC≤5)	HC RANGE	PCT FEN	INT INS	EXT INS
0.092	HC ≥ 5	17	0.10	0.15
	HC ≥ 10	17	0.12	0.19
	HC ≥ 15	17	0.14	0.20
	HC ≥ 5	67	0.000	0.13
	HC ≥ 10	67	0.11	0.15
	HC ≥ 15	67	0.12	0.16

Daylight Sensing Controls

	Min R-Value		
WALL BELOW GRADE:	0		
UNHEATED SLAB ON GRADE:	24"	36"	48"
Horizontal	10	14	19
Vertical	7	8	4

	Max Uo
ROOF:	0.052
WALL ADJACENT TO UNCOND SPACE:	0.15
FLOOR OVER UNCOND SPACE:	0.040

ALTERNATE COMPONENT PACKAGES FOR:

HDD65 = 1751 - 3200
CDD65 = 1151 - 2900
VSEW = 650 - 845

Columbia MO
Evansville IN
Lexington KY
Louisville KY
Saint Louis MO

Springfield IL
Topeka KS

TABLE 5.4-23

Unf

BASE CASE		
0.01 to 0.40	0.45 to 0.30	0.30 to 0

PERIMETER DAYLIGHTING		
0.01 to 0.40	0.45 to 0	0.30 to 0

VLT ≥ SC

OPAQUE WALL Uow	
LIGHT WEIGHT WALL	MASS WALL

INTERNAL LOAD DENSITY (ILD) RANGE | PROJECTION FACTOR (PF) | SHADING COEFF RANGE (SCx)

ILD RANGE	PF	SC	BASE CASE			PERIMETER DAYLIGHTING			OPAQUE WALL Uow	
									LIGHT WEIGHT WALL	MASS WALL
0 - 1.50	0.000 - 0.249	1.000 - 0.71	17	19	19	18	20	21		
		0.700 - 0.60	20	23	23	21	25	28		
		0.600 - 0.50	22	28	27	24	29	31		
		0.499 - 0.36	25	31	32	27	34	38		
		0.379 - 0.25	28	38	41	31	42	48		
		0.249 - 0.00	37	54	58	38	57	63		
	0.250 - 0.499	1.000 - 0.71	21	24	25	22	27	28		
		0.700 - 0.60	24	30	30	28	32	34		
		0.600 - 0.50	27	34	36	29	37	40		
		0.499 - 0.36	30	40	42	31	43	47		
		0.379 - 0.00	35	49	52	36	52	57		
	0.500 -	1.000 - 0.71	25	31	32	27	33	36		
		0.700 - 0.60	29	37	39	30	40	43		
		0.600 - 0.50	31	42	45	33	45	49		
		0.499 - 0.00	34	48	52	38	52	57		
1.51 - 3.00	0.000 - 0.249	1.000 - 0.71	14	15	15	18	21	22		
		0.700 - 0.60	17	19	19	22	25	27		
		0.600 - 0.50	19	22	22	25	30	32		
		0.499 - 0.36	22	28	27	28	35	38		
		0.379 - 0.25	27	33	35	33	44	49		
		0.249 - 0.00	36	47	58	48	59	66		
	0.250 - 0.499	1.000 - 0.71	18	20	20	23	27	29		
		0.700 - 0.60	21	24	25	27	33	36		
		0.600 - 0.50	24	29	29	30	36	42		
		0.499 - 0.36	27	33	35	33	44	49		
		0.379 - 0.00	32	42	44	38	54	62		
	0.500 -	1.000 - 0.71	22	25	26	27	34	37		
		0.700 - 0.60	25	31	32	31	41	45		
		0.600 - 0.50	28	36	37	34	47	52		
		0.499 - 0.00	32	41	44	37	53	81		
3.01 - 3.50	0.000 - 0.249	1.000 - 0.71	13	13	13	17	19	21		
		0.700 - 0.60	14	16	16	20	24	26		
		0.600 - 0.50	17	19	19	23	28	31		
		0.499 - 0.36	19	22	23	26	33	37		
		0.379 - 0.25	24	29	30	31	41	47		
		0.249 - 0.00	31	41	43	38	56	66		
	0.250 - 0.499	1.000 - 0.71	15	17	17	22	25	28		
		0.700 - 0.60	18	21	21	25	31	35		
		0.600 - 0.50	21	24	25	28	38	48		
		0.499 - 0.36	24	29	30	31	41	47		
		0.379 - 0.00	29	38	38	35	51	59		
	0.500 -	1.000 - 0.71	19	21	22	26	32	36		
		0.700 - 0.60	22	26	27	29	38	44		
		0.600 - 0.50	25	34	32	32	44	51		
		0.499 - 0.00	28	36	37	35	58	59		

Uow (HC≤5)	HC RANGE	PCT FEN	INT INS	EXT INS
0.11	HC ≥ 5	17	0.11	0.15
	HC ≥ 10	17	0.13	0.18
	HC ≥ 15	17	0.15	0.19
	HC ≥ 5	65	0.11	0.14
	HC ≥ 10	65	0.13	0.17
	HC ≥ 15	65	0.14	0.18

Uow (HC≤5)	HC RANGE	PCT FEN	INT INS	EXT INS
0.11	HC ≥ 5	14	0.11	0.16
	HC ≥ 10	14	0.14	0.20
	HC ≥ 15	14	0.17	0.22
	HC ≥ 5	66	0.11	0.15
	HC ≥ 10	66	0.13	0.18
	HC ≥ 15	66	0.15	0.19

Uow (HC≤5)	HC RANGE	PCT FEN	INT INS	EXT INS
0.11	HC ≥ 5	12	0.11	0.16
	HC ≥ 10	12	0.14	0.21
	HC ≥ 15	12	0.17	0.23
	HC ≥ 5	66	0.11	0.15
	HC ≥ 10	66	0.13	0.18
	HC ≥ 15	66	0.15	0.19

Daylight Sensing Controls

	Min R-Value		
WALL BELOW GRADE:	0		
UNHEATED SLAB ON GRADE:	24"	36"	48"
Horizontal	15	13	10
Vertical	7	8	4

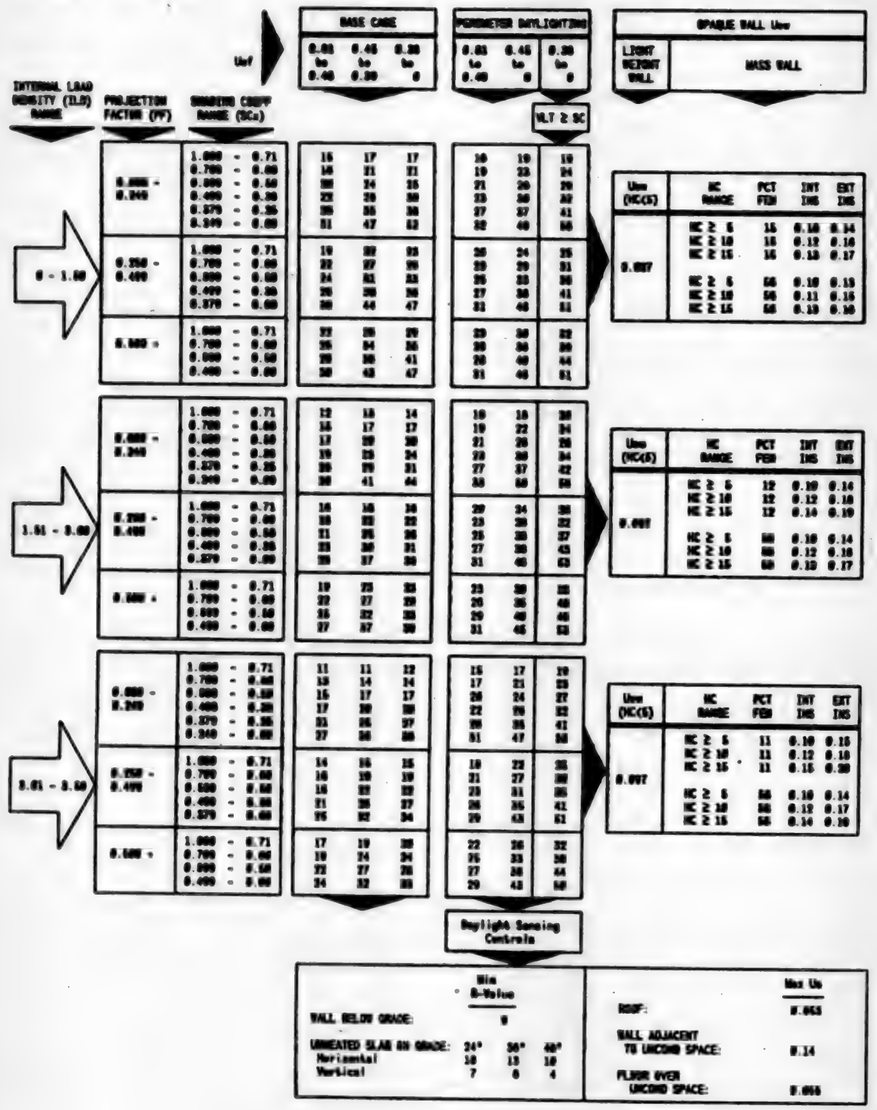
	Max Uo
ROOF:	0.050
WALL ADJACENT TO UNCOND SPACE:	0.15
FLOOR OVER UNCOND SPACE:	0.050

ALTERNATE COMPONENT PACKAGES FOR:

HDD65 = 1751 - 3000
CDD65 = 1151 - 2000
VSEW =) 845

Dodge City KS
Grand Junction CO

TABLE 5.4-94



	Min R-Value		
WALL BELOW GRADE:	9		
UNHEATED SLAB ON GRADE:	24"	36"	48"
Horizontal	10	13	10
Vertical	7	6	4

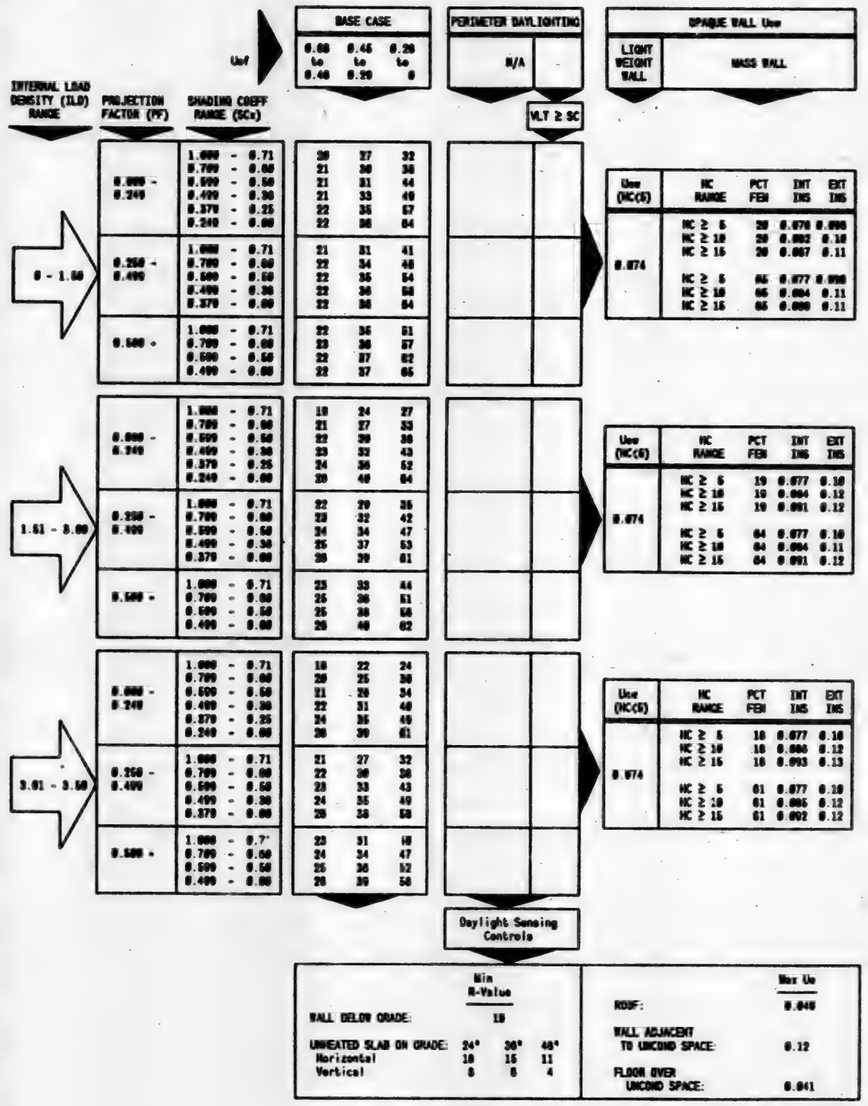
	Max Uo
ROOF:	0.065
WALL ADJACENT TO UNCOND SPACE:	0.14
FLOOR OVER UNCOND SPACE:	0.066

ALTERNATE COMPONENT PACKAGES FOR:

HDD65 = 3201 - 6000
CDD65 = 0 - 1150
VSEW = 600 - 845

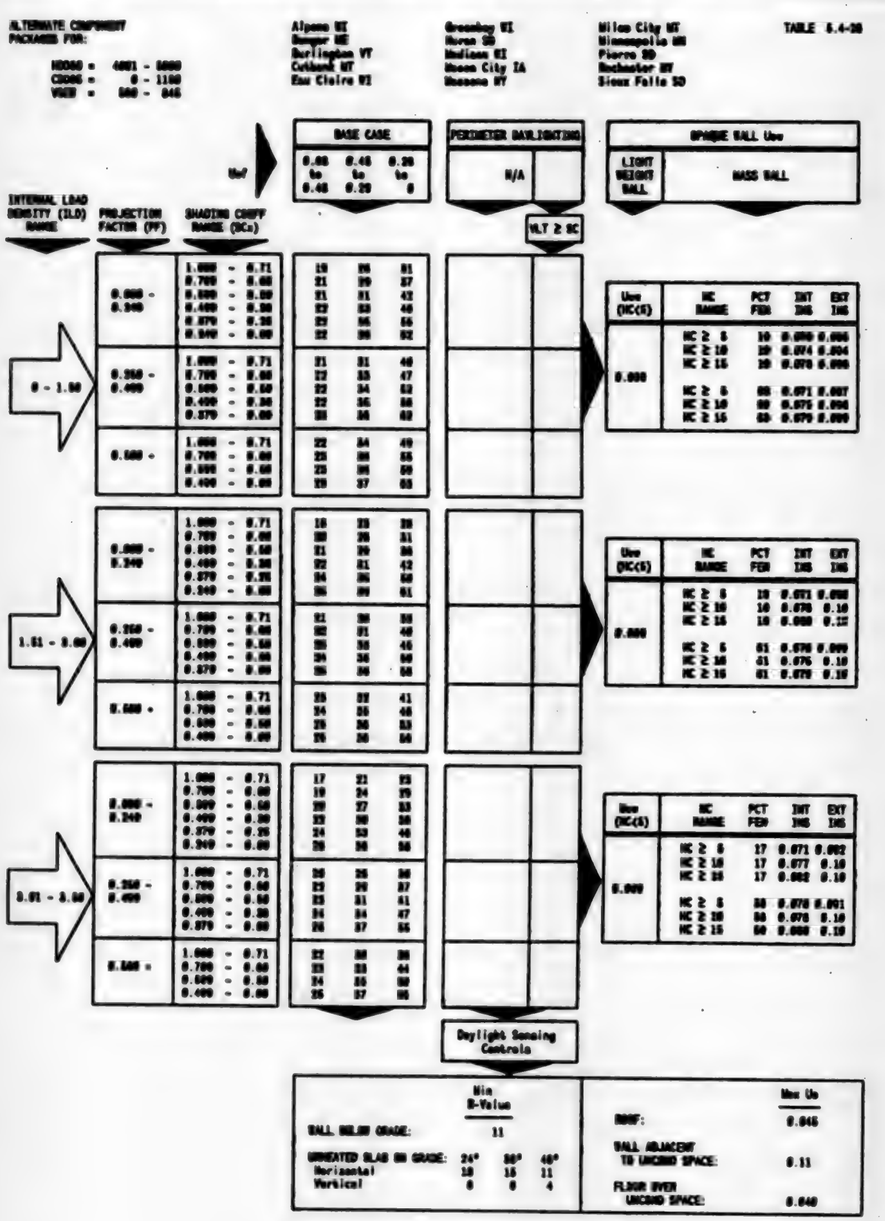
Albany NY
Buffalo NY
Concord NH
Des Moines IA
Grand Island NE
Grand Rapids MI
Great Falls MT
Milwaukee WI
Missoula MT
Portland ME
Rapid City SD
Rochester MN
Sheridan WY
Sioux City IA
Syracuse NY

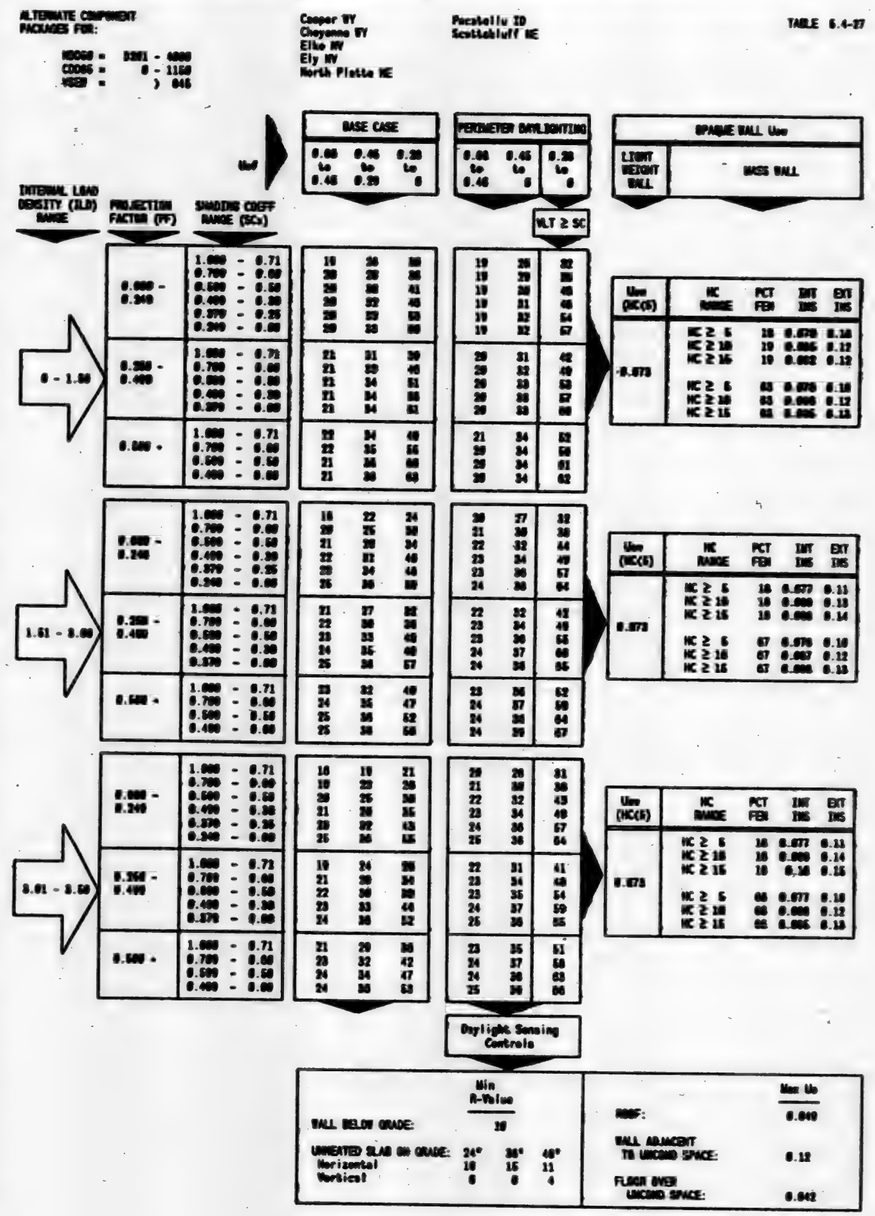
TABLE 5.4-95



	Min R-Value		
WALL BELOW GRADE:	19		
UNHEATED SLAB ON GRADE:	24"	36"	48"
Horizontal	18	15	11
Vertical	8	6	4

	Max Uo
ROOF:	0.048
WALL ADJACENT TO UNCOND SPACE:	0.12
FLOOR OVER UNCOND SPACE:	0.041


ALTERNATE COMPONENT PACKAGES FOR:
HDD65 = 4001 - 6000
CDD65 = 0 - 1150
HSID = 840 - 845
Alpena MI
Bangor ME
Burlington VT
Cutbank MT
Eau Claire WI
Greenbay WI
Huron SD
Madison WI
Mason City IA
Massena NY
Milan City MT
Minneapolis MN
Pierre SD
Rochester MN
Sioux Falls SD
TABLE 5.4-26
BASE CASE
0.00 to 0.40
0.40 to 0.20
0.20 to 0
PERIMETER DAYLIGHTING
N/A
OPAQUE WALL Uow
LIGHT WEIGHT WALL
MASS WALL
INTERNAL LOAD DENSITY (ILD) RANGE
PROJECTION FACTOR (PF)
SHADING COEFF RANGE (SCx)
VLT ≥ SC
0 - 1.50
1.51 - 3.00
3.01 - 5.00
0.000 - 0.249
0.250 - 0.499
0.500 +
Uow (HC(S))
HC RANGE
PCT PEN
INT INS
EXT INS
0.000
0.073
0.142
HC ≥ 5
HC ≥ 10
HC ≥ 15
Daylight Sensing Controls
Min R-Value
WALL BELOW GRADE: 11
UNHEATED SLAB ON GRADE: 24" 36" 48"
Horizontal 10 15 11
Vertical 0 0 4
Max Uo
ROOF: 0.045
WALL ADJACENT TO UNCOND SPACE: 0.11
FLOOR OVER UNCOND SPACE: 0.040

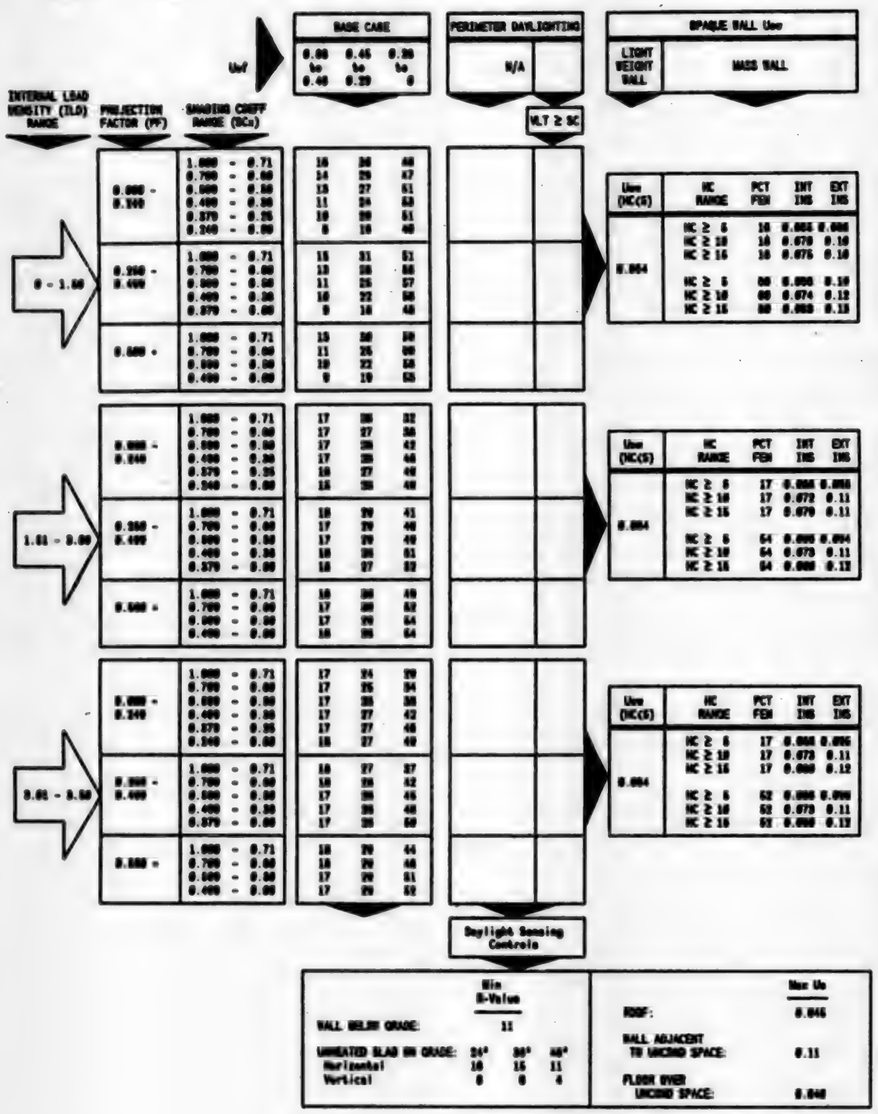

ALTERNATE COMPONENT PACKAGES FOR:
HDD65 = 6001 - 8000
CDD65 = 0 - 1150
HSID =) 845
Casper WY
Cheyenne WY
Elko NV
Ely NV
North Platte NE
Pocatello ID
Scottsbluff NE
TABLE 5.4-27
BASE CASE
0.00 to 0.40
0.40 to 0.20
0.20 to 0
PERIMETER DAYLIGHTING
0.00 to 0.40
0.40 to 0
0.20 to 0
OPAQUE WALL Uow
LIGHT WEIGHT WALL
MASS WALL
INTERNAL LOAD DENSITY (ILD) RANGE
PROJECTION FACTOR (PF)
SHADING COEFF RANGE (SCx)
VLT ≥ SC
0 - 1.50
1.51 - 3.00
3.01 - 5.00
0.000 - 0.249
0.250 - 0.499
0.500 +
Uow (HC(S))
HC RANGE
PCT PEN
INT INS
EXT INS
0.073
0.142
HC ≥ 5
HC ≥ 10
HC ≥ 15
Daylight Sensing Controls
Min R-Value
WALL BELOW GRADE: 10
UNHEATED SLAB ON GRADE: 24" 36" 48"
Horizontal 10 15 11
Vertical 0 0 4
Max Uo
ROOF: 0.040
WALL ADJACENT TO UNCOND SPACE: 0.12
FLOOR OVER UNCOND SPACE: 0.042

ALTERNATE COMPONENT PACKAGES FOR:

HDD65 = 4001 - 5000
CDD65 = 0 - 1150
VSEF =) 846

Bryce UT
Eagle CO
Rock Springs WY

TABLE 5.4-28



	Min R-Value
WALL BELOW GRADE:	11
UNHEATED SLAB ON GRADE:	24" / 36" / 48"
Horizontal	10 / 15 / 11
Vertical	0 / 0 / 4

	Max Uo
ROOF:	0.046
WALL ADJACENT TO UNCOND SPACE:	0.11
FLOOR OVER UNCOND SPACE:	0.048

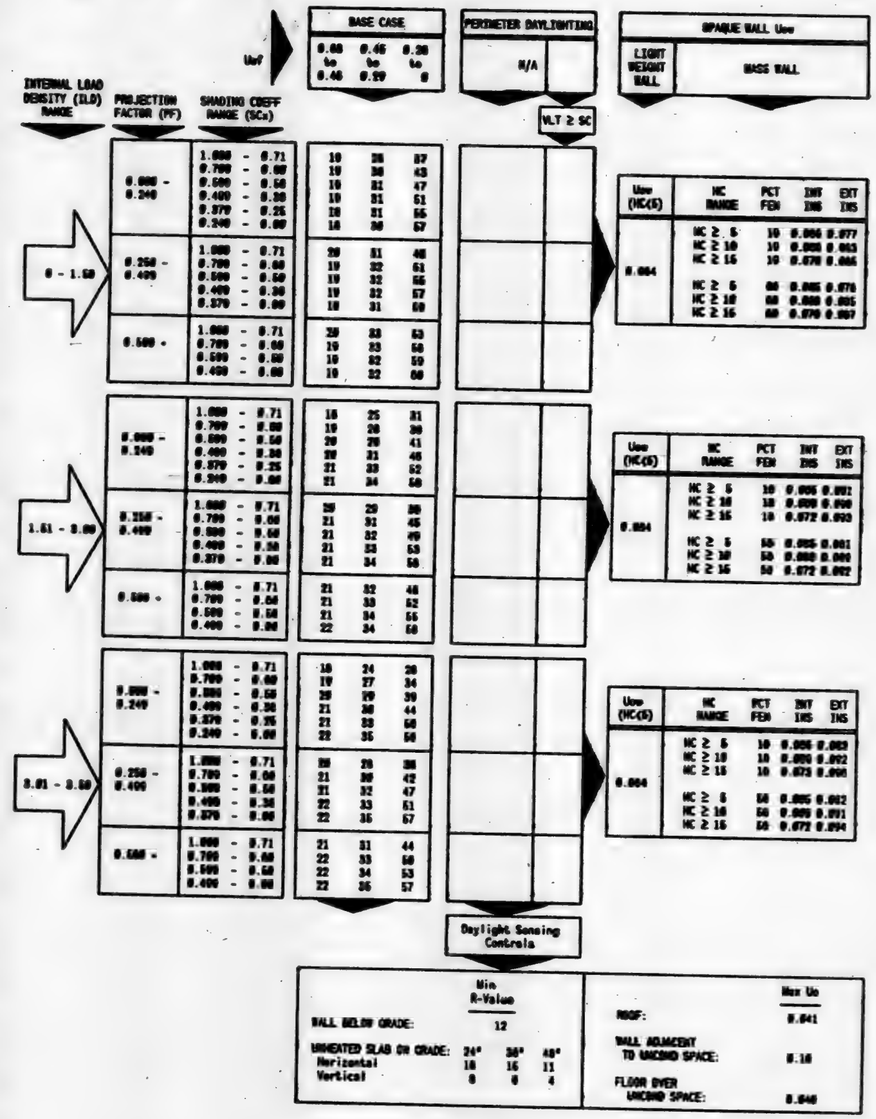
ALTERNATE COMPONENT PACKAGES FOR:

HDD65 = 5001 - 6500
CDD65 = 0 - 1150
VSEF = 500 - 845

Bismarck ND
Caribou ME
Duluth MN
Fargo ND
Glasgow MT

International Falls MN
Minot ND
Sault Sainte Marie MI

TABLE 5.4-29



	Min R-Value
WALL BELOW GRADE:	12
UNHEATED SLAB ON GRADE:	24" / 36" / 48"
Horizontal	10 / 15 / 11
Vertical	0 / 0 / 4

	Max Uo
ROOF:	0.041
WALL ADJACENT TO UNCOND SPACE:	0.10
FLOOR OVER UNCOND SPACE:	0.040

ALTERNATE COMPONENT PACKAGES FOR:

HDD65 = 1 - 6500
CDD65 = < 100
VSEF = < 500

Adak AK
Anchorage AK
Annette AK
Juneau AK
Kodiak AK

Talkeetna AK

TABLE 6.4-30

INTERNAL LOAD DENSITY (ILD) RANGE	PROJECTION FACTOR (PF)	SHADING COEFF RANGE (SCx)	Uwf	BASE CASE	PERIMETER DAYLIGHTING	VLT ≥ SC	OPAQUE WALL Uow: LIGHT WEIGHT WALL	OPAQUE WALL Uow: MASS WALL
0 - 1.50	0.000 - 0.249	1.000 - 0.71 0.700 - 0.60 0.599 - 0.50 0.499 - 0.38 0.379 - 0.25 0.249 - 0.00		17 29 45 15 26 50 15 26 55 14 27 55 13 25 53 13 23 46			0.000	HC ≥ 5: 17 0.000 0.071 HC ≥ 10: 17 0.000 0.070 HC ≥ 15: 17 0.071 0.070 HC ≥ 5: 55 0.007 0.073 HC ≥ 10: 55 0.000 0.070 HC ≥ 15: 55 0.072 0.000
	0.250 - 0.499	1.000 - 0.71 0.700 - 0.60 0.599 - 0.50 0.499 - 0.38 0.379 - 0.00		16 30 53 15 28 50 14 27 57 14 25 50 13 23 53				
	0.500 +	1.000 - 0.71 0.700 - 0.60 0.599 - 0.50 0.499 - 0.00		15 29 58 14 27 52 14 26 57 13 24 54				
1.51 - 3.00	0.000 - 0.249	1.000 - 0.71 0.700 - 0.60 0.599 - 0.50 0.499 - 0.38 0.379 - 0.25 0.249 - 0.00		17 27 39 17 25 44 17 25 46 16 26 50 16 27 53 15 26 51			0.000	HC ≥ 5: 17 0.000 0.074 HC ≥ 10: 17 0.070 0.002 HC ≥ 15: 17 0.073 0.004 HC ≥ 5: 55 0.000 0.075 HC ≥ 10: 55 0.070 0.002 HC ≥ 15: 55 0.073 0.004
	0.250 - 0.499	1.000 - 0.71 0.700 - 0.60 0.599 - 0.50 0.499 - 0.38 0.379 - 0.00		17 29 47 17 29 51 16 28 53 16 28 54 15 27 53				
	0.500 +	1.000 - 0.71 0.700 - 0.60 0.599 - 0.50 0.499 - 0.00		17 29 53 16 29 55 16 28 56 16 27 55				
3.01 - 5.00	0.000 - 0.249	1.000 - 0.71 0.700 - 0.60 0.599 - 0.50 0.499 - 0.38 0.379 - 0.25 0.249 - 0.00		20 30 41 20 31 47 19 32 51 19 32 55 19 32 56 18 31 50			0.000	HC ≥ 5: 20 0.000 0.070 HC ≥ 10: 20 0.070 0.004 HC ≥ 15: 20 0.073 0.007 HC ≥ 5: 62 0.000 0.070 HC ≥ 10: 62 0.070 0.004 HC ≥ 15: 62 0.074 0.007
	0.250 - 0.499	1.000 - 0.71 0.700 - 0.60 0.599 - 0.50 0.499 - 0.38 0.379 - 0.00		20 32 50 20 33 55 19 33 58 19 33 60 19 32 61				
	0.500 +	1.000 - 0.71 0.700 - 0.60 0.599 - 0.50 0.499 - 0.00		20 33 57 19 33 62 19 32 62				

Daylight Sensing Controls

	Min R-Value			Max Uo
WALL BELOW GRADE:	12			ROOF: 0.041
UNHEATED SLAB ON GRADE:	24"	36"	48"	WALL ADJACENT TO UNCOND SPACE: 0.10
Horizontal	18	15	11	
Vertical	0	0	4	FLOOR OVER UNCOND SPACE: 0.040

ALTERNATE COMPONENT PACKAGES FOR:

HDD65 = > 6500
CDD65 = < 100
VSEF = < 500

Bethel AK
Big Delta AK
Fairbanks AK
Gulkana AK
King Salmon AK

McGrath AK
Nome AK
Summit AK

TABLE 6.4-31

INTERNAL LOAD DENSITY (ILD) RANGE	PROJECTION FACTOR (PF)	SHADING COEFF RANGE (SCx)	Uwf	BASE CASE	PERIMETER DAYLIGHTING	VLT ≥ SC	OPAQUE WALL Uow: LIGHT WEIGHT WALL	OPAQUE WALL Uow: MASS WALL
0 - 1.50	0.000 - 0.249	1.000 - 0.71 0.700 - 0.60 0.599 - 0.50 0.499 - 0.38 0.379 - 0.25 0.249 - 0.00		16 30 40 15 28 45 14 27 54 13 25 54 12 23 50 11 20 43			0.053	HC ≥ 5: 16 0.053 0.005 HC ≥ 10: 16 0.055 0.000 HC ≥ 15: 16 0.060 0.007 HC ≥ 5: 57 0.053 0.000 HC ≥ 10: 57 0.060 0.074 HC ≥ 15: 57 0.060 0.074
	0.250 - 0.499	1.000 - 0.71 0.700 - 0.60 0.599 - 0.50 0.499 - 0.38 0.379 - 0.00		15 29 55 14 27 50 13 25 55 12 23 52 12 21 47				
	0.500 +	1.000 - 0.71 0.700 - 0.60 0.599 - 0.50 0.499 - 0.00		14 27 57 13 25 55 12 23 52 12 22 48				
1.51 - 3.00	0.000 - 0.249	1.000 - 0.71 0.700 - 0.60 0.599 - 0.50 0.499 - 0.38 0.379 - 0.25 0.249 - 0.00		17 27 41 16 27 46 16 27 48 15 26 49 15 25 48 14 24 46			0.063	HC ≥ 5: 17 0.053 0.000 HC ≥ 10: 17 0.055 0.072 HC ≥ 15: 17 0.057 0.072 HC ≥ 5: 62 0.053 0.000 HC ≥ 10: 62 0.060 0.074 HC ≥ 15: 62 0.057 0.073
	0.250 - 0.499	1.000 - 0.71 0.700 - 0.60 0.599 - 0.50 0.499 - 0.38 0.379 - 0.00		16 28 46 16 27 50 15 26 53 15 26 50 14 24 48				
	0.500 +	1.000 - 0.71 0.700 - 0.60 0.599 - 0.50 0.499 - 0.00		16 27 51 15 26 52 15 26 51 14 25 50				
3.01 - 5.00	0.000 - 0.249	1.000 - 0.71 0.700 - 0.60 0.599 - 0.50 0.499 - 0.38 0.379 - 0.25 0.249 - 0.00		18 29 42 16 28 48 16 28 51 17 29 53 17 29 54 16 28 52			0.063	HC ≥ 5: 18 0.053 0.000 HC ≥ 10: 18 0.055 0.074 HC ≥ 15: 18 0.057 0.074 HC ≥ 5: 66 0.054 0.000 HC ≥ 10: 66 0.055 0.073 HC ≥ 15: 66 0.057 0.072
	0.250 - 0.499	1.000 - 0.71 0.700 - 0.60 0.599 - 0.50 0.499 - 0.38 0.379 - 0.00		16 30 50 16 30 53 16 30 55 17 29 55 17 28 54				
	0.500 +	1.000 - 0.71 0.700 - 0.60 0.599 - 0.50 0.499 - 0.00		18 30 54 18 30 56 17 29 56 17 29 55				

Daylight Sensing Controls

	Min R-Value			Max Uo
WALL BELOW GRADE:	16			ROOF: 0.031
UNHEATED SLAB ON GRADE:	24"	36"	48"	WALL ADJACENT TO UNCOND SPACE: 0.087
Horizontal	18	15	11	
Vertical	0	0	4	FLOOR OVER UNCOND SPACE: 0.040

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(b) From the list of cities in Appendix 5A, "List of Cities and Climate Data", which contains data for 234 cities, select the closest city climatologically to the building site. If the site is not one of the cities listed or if the climate at the site differs significantly from a listed adjacent city, obtain the information from the weather bureau or other reliable source and use (a) above. The column designated "ACP Table No." contains the table number of the appropriate ACP Table.

(c) For information purposes only, the climate data used to develop the ACP tables for the above-grade wall section are shown in Table 5.4–32. The criteria for all other envelope sections was based on the most stringent level for the cities listed in the ACP Table.

5.4.3.2.2 Determination of Maximum Allowable Percent Fenestration.

(a) Using the appropriate ACP Table, determine the maximum allowable percent fenestration. The maximum allowable percent fenestration is the total area of fenestration assemblies divided by the total gross exterior wall area, considering all elevations of the building. Determining the maximum allowable percent fenestration requires the following five steps:

(1) Based on the Internal Load Density (ILD) for the proposed design, select one of the three Internal Load Ranges as the point of entry to the tables. Note for ILD's greater than 3.5 W/ft ^{2} use the 3.5 W/ft ^{2} range. For shell buildings, see procedures in Section 5.3.8. Determine the ILD of the proposed design, based on the sum of the Internal Lighting Power Allowance (ILPA), the Equipment Power Density (EPD) and Occupant Load Adjustment (OLA), as shown in Equation 5.4–1.

$$ILD = ILPA + EPD + OLA$$

Equation 5.4–1

Where:

The Internal Lighting Power Allowance (ILPA) shall be:

1. The building average Internal Lighting Power Allowance (ILPA) of the design building in W/ft ^{2} as determined in Section 3.4 or 3.5;

2. The average of the Lighting Power Budgets (LPB) for all activity areas within 15 ft of each exterior wall based on the procedures specified by the Systems Performance Criteria of Section 3.5.3, or

3. The actual lighting power density of the proposed design in W/ft ^{2}, either the building average or the average of the lighting power within 15 ft of each exterior wall.

Note.—The lighting prescriptive path, Section 3.4, does not provide lighting values for health, assembly, multi-family high rise, and hotel/motel buildings type occupancies. Use the 1.51 to 3.0 range of Internal Load Density for health and assembly buildings; and the 0 to 1.5 range for multi-family high rise and hotel/motel buildings.

The Equipment Power Density (EPD) shall be either:

1. The building average receptacle power density selected from Table 5.4–33 in W/ft ^{2}; or

Table 5.4-33
Average Receptacle Power Densities

BUILDING TYPE	W/ft^2
1. Assembly	.0.25
2. Office	.0.75
3. Retail	.0.25
4. Warehouse	.0.10
5. School	.0.50
6. Hotel/Motel	.0.25
7. Restaurant	.0.10
8. Health	.1.00
9. Multi-Family	.0.75

2. The actual average receptacle power density for all activity areas within 15 ft of each exterior wall in W/ft ^{2}, considering diversity. For determining compliance in Tables 5.4–2 through 5.4–31, the actual average receptacle power densities calculated by this method that exceed 1.0 W/ft ^{2} shall be limited to 1.0 W/ft ^{2} in Equation 5.4–1.

The Occupant Load Adjustment (OLA) shall be either:

1. 0.0 W/ft^2. This recognizes the assumed occupant sensible load of 0.6 W/ft^2 that is built into the ACP tables; or

2. A positive or negative difference between the actual occupant load and 0.6 W/ft^2 if the design building has a larger or smaller occupant load.

(2) *Select external shading projection factor (PF).* If no external shading projections are used in the proposed design, select the column designated Projection Factor=0.000—0.249. If external shading projections are used, determine the average area weighted projection factor on the window in accordance with Equation 5.4–2. Then select the appropriate column in the ACP Table.

$$PF = P_e/H$$

Equation 5.4–2

Where:

PF=Average area weighted projection factor

P_e=External horizontal shading projection depth, in. or ft

H=Sum of height of the fenestration and the distance from the top of the fenestration to the bottom of external shading projection in units consistent with P_e.

(3) Select the Shading Coefficient of the fenestration (SC_w) including internal, integral, and external shading devices, but excluding the effect of external shading projections (PF). This includes curtains, shades, or blinds. Reference *ASHRAE Handbook, 1985 Fundamentals Volume*, Chapter 27.

(4) Select one of the daylighting options, either:

1. Base Case, no daylighting; or

2. Perimeter Daylighting (automatic daylight controls for lighting system must be used). This option is not available in some locations.

(5) Select appropriate fenestration type. For most options, this is determined by the thermal transmittance value (U_w) of the fenestration assembly. For some fenestration options, the visible light transmittance (VLT) of the fenestration should not be less than the shading coefficient of the glazed portion of the fenestration assembly, not considering any shading devices. The ranges generally correspond to single glazing, double glazing, triple glazing and high performance glazing incorporating low emissivity coatings/films or more than two glazing layers. Each ACP table includes at most, three ranges of glazing U-value.

5.4.4.2.3 *Determine the Maximum U_w for the Opaque Wall Assembly.* In the appropriate ACP Table the Maximum U_w for the opaque wall assembly is determined using the following steps:

(a) For a lightweight wall assembly, heat capacity (HC) less than 5 Btu/ft^2·°F, use the value indicated. This U_w is constant over all internal load ranges.

(b) To use the mass wall adjustment, the following additional steps are necessary:

(1) Select the same internal load range as that used in determining the

Table 5.4-32
Climate Data Used for ACP Tables

ACP TABLE	Exterior Facades									Roof			Wall, Floor, Slab
	HDD50	HDD65	VSN	VSEW	VSS	CDD50	CDD65	CDH80	DR	HDD65	CDD65	CDH80	HDD65
5.4-2	0	0	557	817	805	8494	3019	1112	11.0	0	4150	4537	0
5.4-3	0	0	609	1092	977	10869	5396	10167	9.7	0	6160	16217	0
5.4-4	582	5020	407	724	926	1038	1	0	8.9	5020	1	0	5020
5.4-5	157	2922	453	909	1102	2792	82	23	16.4	3238	73	204	3238
5.4-6	3	1494	482	962	1146	4456	472	136	14.1	1577	834	2391	1577
5.4-7	569	2556	461	826	996	5277	1788	3614	15.2	2882	1825	6272	3220
5.4-8	381	2753	444	987	1185	4274	1171	7315	34.6	2884	1930	14404	2884
5.4-9	435	2194	467	796	925	5722	2005	5249	16.4	3091	2055	8450	3091
5.4-10	699	2708	476	862	996	5844	2378	12065	20.2	3049	2299	14487	3049
5.4-11	409	2444	468	1091	1312	6222	2782	26739	27.4	2444	2782	26739	2573
5.4-12	33	532	511	881	974	8288	3312	9757	17.1	874	3652	15512	889
5.4-13	65	842	532	900	936	8827	4130	25225	21.6	782	4186	37892	1382
5.4-14	1080	5226	350	588	782	1357	29	145	12.3	5550	79	466	5550
5.4-15	1531	4893	405	814	1005	2681	568	4081	32.9	4893	568	4081	4893
5.4-16	1477	4462	473	1090	1334	3385	895	3973	24.0	4802	1041	11568	4802
5.4-17	1261	3760	449	810	994	4274	1298	3642	17.4	4192	1183	3306	4192
5.4-18	1633	4423	469	1105	1361	3942	1257	5705	25.3	3825	1834	8878	4423
5.4-19	1034	3259	460	806	935	5319	2069	7807	19.2	3732	2072	10065	3732
5.4-20	2323	5877	373	790	1091	2370	449	3285	31.2	6665	228	2390	6665
5.4-21	2983	6727	363	758	1064	2094	363	1595	25.3	6514	698	1794	6727
5.4-22	1947	5583	419	909	1153	2395	556	2073	16.2	6471	486	6366	6471
5.4-23	1839	4509	446	812	962	4115	1311	4170	20.4	5201	1388	5212	5448
5.4-24	2280	5131	450	942	1196	4008	1384	7186	26.0	5701	1221	6147	5701
5.4-25	3492	7560	363	704	957	1629	221	1513	30.8	7817	328	1771	7817
5.4-26	4583	8397	380	708	942	2026	365	913	20.9	8351	774	3739	8941
5.4-27	3683	7666	432	1014	1350	1650	157	1317	30.1	7617	495	2699	7666
5.4-28	4709	9288	445	1063	1386	899	4	69	30.0	9288	4	69	9288
5.4-29	5087	9282	359	640	858	1399	119	246	21.0	10535	119	167	10535
5.4-30	3562	8913	280	434	652	124	0	0	9.9	10540	0	0	10540
5.4-31	6843	11992	270	499	860	330	4	6	15.4	14868	3	0	14868

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maximum allowable percent fenestration.

(2) Select the mass wall heat capacity (HC) and insulation position. If the wall insulation is positioned internal to or integral with the wall mass, use the column headed Interior/Integral Insulation. If the wall insulation is positioned external to the wall mass use the column headed Exterior Insulation. For HC less than 5 Btu/ft²·°F this adjustment table cannot be used. At this step you will have two choices of U_w that are keyed to a small or large percent fenestration. This represents the full range of U_w values allowed.

(3) Select or interpolate the appropriate maximum U_w for the opaque wall based on the maximum allowable percent fenestration determined in Section 5.4.4.2.2 or the actual building percent fenestration whichever value is lower. The U_w shall be determined by straight line interpolation for fenestration percentages between the smallest and largest values listed. If the design building percentage fenestration is less than the smallest value listed, select the U_w for the largest percentage fenestration listed.

5.4.4.2.4 *Determine Other Envelope Criteria.* In each ACP table, the criteria for roof, wall adjacent to unconditioned space, wall below grade (first story only), floor over unconditioned space, and slab-on-grade floors, shall be met. For heated slabs on grade, the R-value shall be the R-value for the unheated slab-on-grade plus 2.0. For skylights, the daylight credit procedure presented in Section 5.3.10 shall be used.

5.5 Building Envelope—System Performance Compliance Alternative

5.5.1 Roof Thermal Transmittance Criteria

5.5.1.1 Any building that is heated and/or mechanically cooled shall have an overall thermal transmittance value (U_w) for the gross area of the roof assembly not greater than the value determined by Equation 5.5–1. The provisions of Section 5.3 shall be followed in determining acceptable combinations of materials that will meet the required U_w values of Equation 5.5–1.

$$U_w = 1/(5.3 + 1.8\times10^{-3}\times HDD65 + 1.3\times10^{-3}\times CDD65 + 2.6\times10^{-4}\times CDH80)$$

Equation 5.5–1

5.5.1.2 Equation 5.5–1 applies only for climate locations with HDD65 less than or equal to 15,000. For climate locations with HDD65 greater than 15,000, see subsection 5.3.9, Table 5.3–5.

5.5.1.2.1 *Exceptions to Section 5.5.1.2:*

(a) any building that is only heated shall have an overall thermal transmittance value (U_w) for the gross area of the roof assembly less than or equal to the value determined by Equation 5.5–1 with CDD65 and CDH80 set equal to zero; and

(b) any building that is only mechanically cooled shall have an overall thermal transmittance value (U_w) for the gross area of the roof assembly less than or equal to the value determined by Equation 5.5–1 with HDD65 set equal to zero.

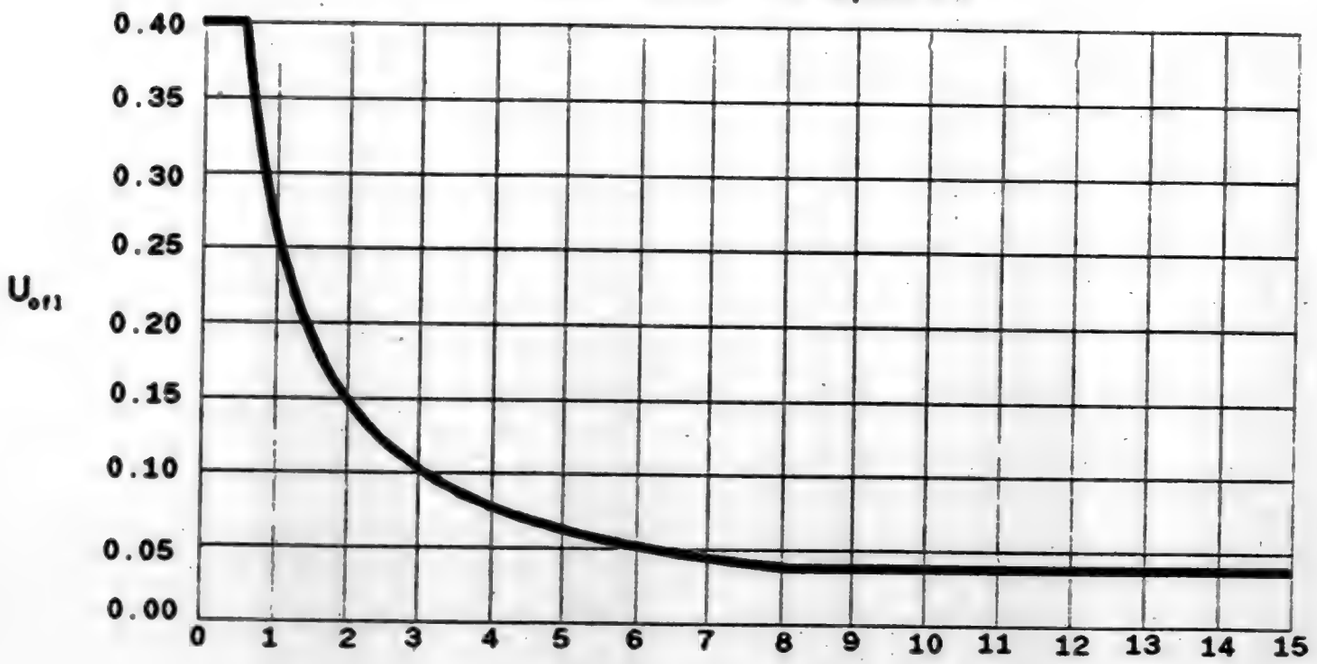
5.5.2 Floor Thermal Transmittance Criteria

5.5.2.1 The floors of any building that is heated and/or mechanically cooled shall meet the following thermal criteria:

5.5.2.1.1 Floors of conditioned spaces over unconditioned spaces shall have a thermal transmittance (U_w) not greater than that specified in Figure 5.5–1.

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Figure 5.5-1
Maximum Overall Thermal Transmittance for Floors of Conditioned Spaces Over Unconditioned Spaces



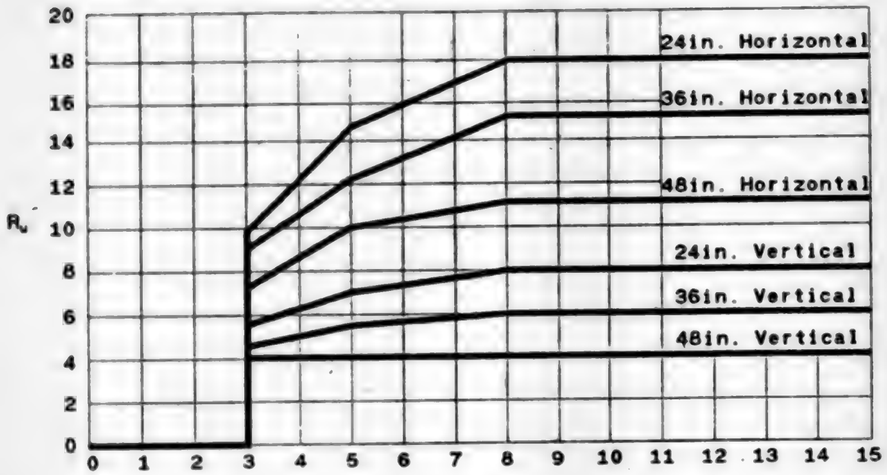
Note:
for HDD65 ≤ 550, U_{ofl} = 0.40
for 550 < HDD65 ≤ 8000, U_{ofl} = 1/[0.840 + 0.00302 x HDD65]
for 8000 < HDD65 < 15000, U_{ofl} = 0.04
for HDD65 ≥ 15000, see Table 5.3-5

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5.5.2.1.2 Slab-on-grade floors shall have insulation around the perimeter of the floor with the thermal resistance (R_u) of the insulation as specified in Figure 5.5-2. The insulation specified in Figure 5.5-2 shall extend either in a vertical plane downward from the top of the slab for the minimum distance shown or downward to the bottom of the slab for the minimum distance shown then in a horizontal plane beneath the slab. The horizontal length, or vertical depth, of insulation required varies from 24 in. to 48 in. depending upon the R-value selected. For heated slabs, an R of 2 shall be added to the thermal resistance required in Figure 5.5-2.

Figure 5.5-2
Thermal Resistance for Unheated Slab on Grade



Note: for HDD65 ≤ 3000, $R_u = 0$
for 3000 > HDD65 > 15000, see graph above
for HDD65 ≥ 15000, see Table 5.3-5

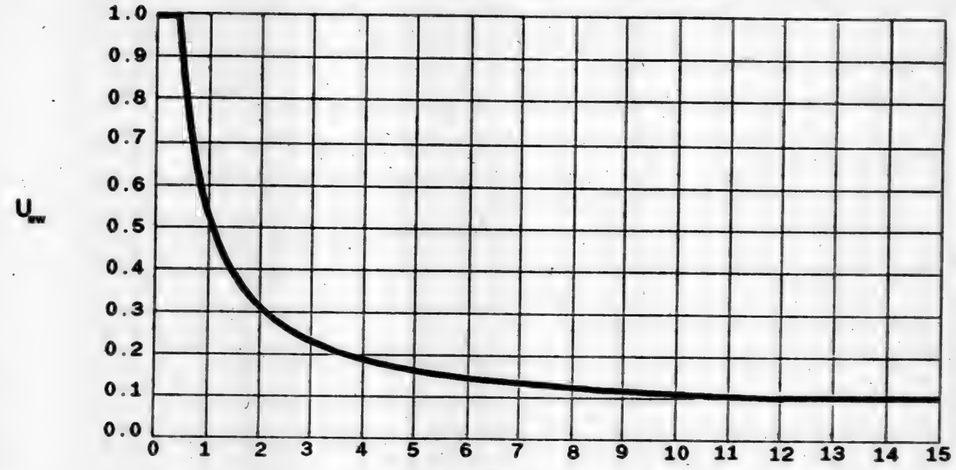
R values for heated slab-on-grade = R unheated + 2;
$R_h = R_u + 2$

(a) Vertical insulation is not required to extend below the foundation footing. There are no insulation requirements for slabs in locations having less than 3,000 HDD65 for footings extending less than 18 in. below grade.

5.5.3 Thermal Transmittance Criteria For Opaque Walls Enclosing Conditioned Spaces Exposed to Interior Unconditioned Spaces

5.5.3.1 All opaque walls enclosing conditioned spaces exposed to interior unconditioned spaces shall have an overall thermal transmittance (U_{ow}) not greater than the value specified in Figure 5.5-3.

Figure 5.5-3
Maximum Overall Thermal Transmittance of Opaque Wall Sections With HC < 7



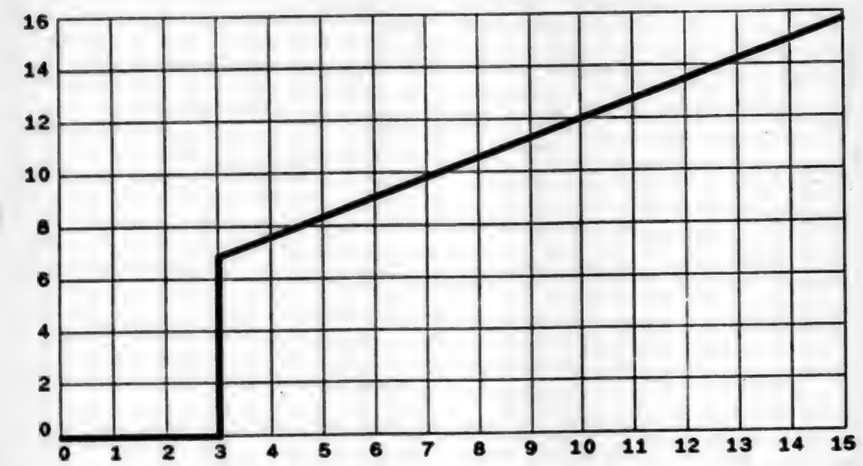
Note: for HDD65 ≤ 540, $U_{ow} = 1.0$
for 540 < HDD65 < 15000, $U_{ow} = 0.0528 + 510.9/HDD65$
for HDD65 ≥ 15000, see Table 5.3-5

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5.5.4 Thermal Resistance Criteria for Exterior Wall Insulation Below Grade

5.5.4.1 The thermal resistance (R) of the wall assembly shall be greater than, or equal to the insulation level specified in Figure 5.5–4, or the heat loss calculated in accordance with Chapter 25 of the *ASHRAE Handbook, 1985 Fundamentals Volume* shall be less than, or equal to that of a wall below grade having a thermal resistance equal to that specified in Figure 5.5–4. No insulation is required for climate locations with less than 3,000 HDD65 for those portions of walls more than one story below grade.

Figure 5.5–4
Thermal Resistance of Wall
First Story Below Grade



Note: for HDD65 ≤ 3000, R = 0
for 3000 < HDD65 < 15000, R = 4.5 + 0.00075 x HDD65
for HDD65 ≥ 15000, see Table 5.3-5

5.5.5 External Wall Criteria for Heating and Cooling

5.5.5.1 The external wall heating criteria (WC_h) and cooling criteria (WC_c) represent limits on cumulative annual heating and cooling energy flux attributable to transmission and solar gain. These limits accommodate variation in internal load and wall heat capacity. They shall be determined for a building envelope design using Equations 5.5–2 and 5.5–6 in Attachment 5B, "Equations to Determine External Wall Heating and Cooling Criteria (WC_c and WC_h) and to Determine Compliance (C_i and H_i) With the Criteria."

5.5.6 Wall Heating and Cooling Compliance Values

5.5.6.1 The wall heating compliance value H_i and the wall cooling compliance value C_i are estimates of the cumulative annual heating and cooling energy flux attributable to heat transmission and solar gains. These estimates consider the effects of variations in internal load and wall heat capacity. They shall be calculated using Equations 5.5–2 and 5.5–6 in Attachment 5B.

5.5.6.3 Applying the Criteria

5.5.6.3.1 The wall criteria shall be applied as follows:

(a) For all buildings that are heated and mechanically cooled, the sum of the calculated wall heating and cooling compliance values, H_i and C_i, for all orientations of the proposed design, as determined in Section 5.5.6, shall not exceed the sum of the corresponding wall criteria for all orientations for wall heating (WC_h) and wall cooling (WC_c).

(b) For buildings that are only heated, the sum of the calculated wall heating compliance values, H_i, for all orientations of the proposed design, as determined in Section 5.5.6, shall not exceed the sum of the corresponding wall heating criterion WC_h for all orientations.

(c) For buildings that are only mechanically cooled, the sum of the calculated cooling compliance values, C_i, for all orientations of the proposed design, as determined from Section 5.5.6, shall not exceed the sum of the corresponding wall cooling criteria, WC_c for all orientations.

5.5.6.4 Constraints on Thermal Transmittance Values

5.5.6.4.1 The compliance calculation procedure in Section 5.5.6.3 allows great flexibility in selecting values for envelope components as long as the overall criteria are met. In calculating compliance, two constraints are imposed on thermal transmittance values for opaque wall assemblies and fenestration assemblies comprising the U_o term, as follows:

(a) *Opaque Wall Assemblies:* The opaque portion of walls with heat capacity (HC) less than 7 Btu/ft²·°F shall have an overall thermal transmittance (U_{ow}) not greater than the value specified in Figure 5.5–4. Procedures, specified in Section 5.3, shall be used to determine acceptable combinations of materials that meet the required value.

(b) *Fenestration Assemblies:* The overall thermal transmittance (U_{wf}) of fenestration assemblies shall not exceed 0.81 Btu/h·ft²·°F for all locations with more than 3000 HDD65 if the fenestration area exceeds 10% of the total wall area exposed to the outside air. Thermal transmittance for the fenestration shall be determined using the calculation procedures in Section 5.3.1 and shall include the effects of sash, frames, edge effects, and spacers for multiple-glazed units.

5.5.6.5 Constraint on Daylighting Credit

5.5.6.5.1 For a given orientation, daylight credit may be used in Equations 5.5–2 and 5.5–6 only for that portion of the fenestration that is less than or equal to 65% of the gross wall area of the orientation.

5.5.6.6 Lighting Power Density

5.5.6.6.1 The Lighting Power Density used in calculating the compliance value shall be:

(a) The building average unit Interior Lighting Power Allowance of the proposed design in W/ft² as specified in Section 3.0;

(b) The average of the Lighting Power Budgets for all activity areas within 15 ft of each exterior wall based on the procedures set forth in Section 5.3; or

(c) The actual lighting power density of the proposed design in W/ft², either building average or average of the lighting power within 15 ft of each exterior wall.

5.5.6.7 Equipment Power Density

5.5.6.7.1 The equipment power density used in determining compliance shall be either:

(a) The "Average Receptacle Power Densities" from Table 5.4–32, or

(b) The actual average Equipment Unit Power Density, considering diversity, either building average or average in the activity areas within 15 ft of each exterior wall, not to exceed 1 W/ft².

5.5.6.8 Occupancy Loads

5.5.6.8.1 An occupancy load of 0.6 W/ft² is assumed. If the occupancy loads in the building design are different from this value, use the larger value.

BILLING CODE 6450-01-M

Attachment 5A
List of Cities and Climate Data

NO	CITY	STATE	HDD50	HDD65	VSH	VSEV	VSS	CDD50	CDD65	CDH80	DR	NO HRS T<55	8AM-4PM 55≤T≤69	ACP TABLE
Alabama														
28	Birmingham	AL	765	2882	464	789	908	5182	1825	6272	17.5	720	760	5.4- 7
143	Mobile	AL	164	1580	486	816	919	6478	2419	7479	16.6	408	774	5.4- 9
145	Montgomery	AL	491	2261	462	823	981	5821	2116	8473	19.5	609	734	5.4- 9
Alaska														
2	Adak	AK	3562	8913	280	434	652	124	0	0	9.9	2754	156	5.4-30
9	Anchorage	AK	5301	10540	272	538	926	236	0	0	13.8	2398	521	5.4-30
10	Annette Island	AK	2545	7277	285	482	739	756	12	0	10.1	2169	719	5.4-30
24	Bethel	AK	8285	13449	252	453	789	312	0	0	14.3	2555	347	5.4-31
25	Big Delta	AK	9355	14069	249	527	989	777	16	25	19.0	2141	606	5.4-31
76	Fairbanks	AK	9841	14414	241	492	919	922	19	8	18.2	2083	682	5.4-31
93	Gulkana	AK	8865	13866	257	522	943	498	4	6	18.5	2225	615	5.4-31
105	Juneau	AK	4223	9350	254	410	642	348	0	0	12.7	2367	540	5.4-30
106	King Salmon	AK	6843	11992	270	499	860	330	4	6	15.4	2395	502	5.4-31
109	Kodiak	AK	3775	8896	276	509	852	360	6	0	10.6	2519	384	5.4-30
132	McGrath	AK	9967	14868	246	467	841	578	3	0	15.9	2265	596	5.4-31
152	Nome	AK	9061	14418	242	478	871	119	0	0	9.0	2710	210	5.4-31
208	Summit	AK	9210	14530	247	488	893	155	0	0	13.6	2616	298	5.4-31
231	Yakutat	AK	4486	9714	247	402	650	248	0	0	9.3	2471	439	5.4-30
Arizona														
163	Phoenix	AZ	90	1382	488	1116	1310	7830	3647	34521	21.2	373	746	5.4-13
171	Prescott	AZ	1477	4462	473	1090	1334	3385	895	3973	24.0	1021	725	5.4-16
218	Tucson	AZ	178	1601	500	1112	1280	6822	2769	19657	21.9	399	716	5.4-11
229	Winslow	AZ	1695	4603	471	1092	1338	3708	1141	7347	27.7	1130	634	5.4-16
234	Yuma	AZ	43	782	493	1151	1330	8921	4186	37892	23.5	247	697	5.4-13
Arkansas														
79	Fort Smith	AR	1149	3394	462	842	1005	5307	2077	10413	22.4	925	547	5.4-19
121	Little Rock	AR	912	3091	465	831	981	5351	2055	8450	17.5	865	626	5.4- 9
California														
12	Arcata	CA	582	5020	407	724	926	1038	1	0	8.9	1396	1509	5.4- 6
19	Bakersfield	CA	305	2194	474	1053	1211	5879	2294	15447	28.9	645	848	5.4-10
48	China Lake	CA	409	2444	468	1091	1312	6222	2782	26739	27.4	582	772	5.4-11
58	Daggett	CA	237	1916	475	1102	1309	6516	2720	22302	27.0	472	841	5.4-11
71	El Toro	CA	32	1577	486	977	1163	4764	834	2391	22.3	215	1474	5.4- 6
82	Fresno	CA	492	2700	459	1029	1199	5070	1803	13085	31.8	780	785	5.4- 8
122	Long Beach	CA	54	1483	482	956	1144	4947	900	1616	16.1	263	1502	5.4- 6
123	Los Angeles	CA	3	1494	482	962	1146	4456	472	136	14.1	145	1849	5.4- 6
146	Mount Shasta	CA	1947	5583	419	909	1153	2395	556	2073	16.2	1544	756	5.4-22
156	Oakland	CA	157	2922	453	909	1102	2792	82	23	16.4	770	1905	5.4- 5
167	Point Mugu	CA	8	2193	477	936	1131	3435	145	70	12.3	209	2146	5.4- 5
176	Red Bluff	CA	589	2884	428	951	1177	5110	1930	14404	29.3	860	810	5.4- 8
185	Sacramento	CA	381	2753	444	987	1185	4274	1171	7315	34.6	834	990	5.4- 8
191	San Diego	CA	2	1275	490	950	1121	4865	662	383	11.5	102	1911	5.4- 6
192	San Francisco	CA	186	3238	454	941	1146	2496	73	204	20.2	782	1796	5.4- 5
194	Santa Maria	CA	138	3041	476	950	1128	2663	92	513	20.9	414	2016	5.4- 5
209	Sunnyvale	CA	142	2708	456	947	1145	3112	204	421	16.9	610	1794	5.4- 5
Colorado														
50	Colorado Springs	CO	2587	5996	435	976	1321	2557	491	2075	24.0	1357	725	5.4-22
62	Denver	CO	2652	6083	428	971	1321	2611	567	2934	25.5	1329	739	5.4-22
68	Eagle	CO	4232	8317	432	976	1296	1480	90	1008	35.6	1650	660	5.4-28
86	Grand Junction	CO	2616	5701	438	1003	1303	3611	1221	6147	27.4	1383	518	5.4-24
175	Pueblo	CO	2223	5285	442	992	1309	3384	971	5899	27.5	1077	720	5.4-22
Connecticut														
95	Hartford	CT	2953	6277	384	646	834	2857	706	2197	23.7	1459	598	5.4-21
Delaware														
227	Wilmington	DE	2133	5084	414	726	921	3602	1078	2188	17.2	1289	617	5.4-20

C.1

NO	CITY	STATE	HDD50	HDD65	VSH	VSEV	VSS	CDD50	CDD65	CDH80	DR	NO HRS T<55	8AM-4PM 55≤T≤69	ACP TABLE
District of Columbia														
223	Washington	DC	2004	4828	419	724	905	3734	1083	3592	18.6	1205	657	5.4-20
Florida														
11	Apalachicola	FL	163	1366	508	887	971	6967	2695	8289	14.3	322	778	5.4-10
60	Daytona	FL	81	787	503	860	953	7404	2635	5252	14.8	177	641	5.4-10
104	Jacksonville	FL	206	1357	495	849	943	7045	2721	7488	16.4	354	674	5.4-10
136	Miami	FL	3	185	527	874	936	9338	4045	9166	12.4	55	259	5.4-12
160	Orlando	FL	33	532	511	881	974	8288	3312	9757	17.1	131	571	5.4-12
211	Tallahassee	FL	307	1721	495	845	944	6462	2401	7323	16.1	421	747	5.4-10
212	Tampa	FL	37	575	518	890	974	7985	3047	8905	14.9	147	592	5.4-10
224	West Palm Beach	FL	0	177	519	846	906	9203	3904	10324	13.1	22	308	5.4-12
Georgia														
15	Atlanta	GA	866	3070	467	807	930	4837	1566	3799	17.6	915	749	5.4- 7
16	Augusta	GA	664	2584	468	803	933	5458	1904	6904	21.3	690	774	5.4- 7
128	Macon	GA	514	2330	476	822	939	5769	2111	8097	18.7	667	787	5.4- 9
196	Savannah	GA	410	1967	474	805	926	6112	2194	6308	16.6	529	725	5.4- 9
Hawaii														
22	Barbers Point	HI	0	3	592	978	965	9314	3842	3617	11.2	1	97	5.4- 2
97	Hilo	HI	0	0	557	817	805	8494	3019	1112	11.0	0	153	5.4- 2
98	Honolulu	HI	0	0	588	953	932	9625	4150	4537	9.8	0	69	5.4- 2
120	Lihue	HI	0	2	567	895	893	9219	3746	1912	9.6	0	140	5.4- 2
Idaho														
30	Boise	ID	2276	5667	399	916	1228	2828	744	4512	28.9	1542	647	5.4-22
117	Lewiston	ID	2015	5426	370	729	988	2709	645	4121	29.7	1467	748	5.4-20
166	Pocatello	ID	3404	7075	405	935	1262	2330	526	3293	32.8	1681	546	5.4-27
Illinois														
47	Chicago	IL	3000	6151	402	729	936	3339	1015	3190	16.6	1426	613	5.4-21
144	Moline	IL	3085	6250	405	736	959	3204	894	2808	19.5	1357	640	5.4-21
207	Springfield	IL	2490	5448	422	768	962	3675	1158	4038	20.2	1260	600	5.4-23
Indiana														
75	Evansville	IN	1948	4625	426	736	890	4063	1265	4288	18.4	1141	611	5.4-23
80	Fort Wayne	IN	3023	6145	395	664	826	3096	743	1629	17.7	1400	601	5.4-21
101	Indianapolis	IN	2624	5620	407	692	851	3430	951	2263	18.0	1375	602	5.4-21
204	South Bend	IN	3038	6280	396	690	857	2917	684	1840	21.1	1415	635	5.4-21
Iowa														
35	Burlington	IA	3009	6094	419	802	1030	3393	1002	2598	17.1	1354	649	5.4-21
63	Des Moines	IA	3275	6447	413	788	1027	3116	812	2383	17.5	1423	667	5.4-25
130	Mason City	IA	4311	7735	400	783	1053	2708	658	1882	20.8	1548	610	5.4-26
202	Sioux City	IA	3608	6750	406	794	1064	3326	993	3488	18.6	1438	602	5.4-25
Kansas														
66	Dodge City	KS	2280	5131	450	942	1196	4008	1384	7186	26.0	1252	637	5.4-24
84	Goodland	KS	2757	6090	434	935	1228	3047	905	5147	26.3	1358	625	5.4-22
215	Topeka	KS	2458	5201	434	837	1068	4120	1388	5212	22.3	1192	608	5.4-23
Kentucky														
56	Covington	KY	2154	5030	408	687	843	3656	1057	2638	18.3	1316	661	5.4-20
119	Lexington	KY	1921	4649	425	729	872	3904	1157	2853	15.6	1211	618	5.4-23
126	Louisville	KY	1851	4539	424	727	883	4144	1357	4716	17.6	1192	636	5.4-23
Louisiana														
25	Baton Rouge	LA	237	1573	488	806	889	6682	2543	8814	17.2	440	677	5.4- 9
113	Lake Charles	LA	214	1455	489	795	864	6849	2615	7883	14.8	396	668	5.4- 9
148	New Orleans	LA	179	1392	497	838	923	6840	2578	7380	15.1	324	789	5.4- 9
201	Shreveport	LA	447	2265	484	843	954	6022	2365	10039	18.1	687	697	5.4- 9
Maine														
21	Bangor	ME	4132	7998	378	693	950	1853	243	454	21.5	1721	669	5.4-26
38	Caribou	ME	5297	9483	357	649	922	1410	121	203	18.1	1862	692	5.4-29
169	Portland	ME	3531	7305	376	643	856	1946	245	399	19.6	1604	665	5.4-25

C.2

NO	CITY	STATE	HDD50	HDD65	VSN	VSEV	VSS	CDD50	CDD65	CDH80	DR	NO HRS T<55	8AM-4PM 55≤T≤69	ACP TABLE
Maryland														
20	Baltimore	MD	2020	4946	419	739	932	3683	1134	3825	18.6	1268	593	5.4-20
161	Patuxent	MD	1418	4002	429	758	943	4180	1289	2966	12.9	1118	729	5.4-17
Massachusetts														
31	Boston	MA	2416	5775	387	659	849	2810	695	1601	16.5	1495	713	5.4-20
Michigan														
7	Alpena	MI	4282	8164	371	661	862	1928	335	894	17.3	1707	695	5.4-26
64	Detroit	MI	2799	5997	390	676	858	3199	922	2238	18.8	1406	632	5.4-21
78	Flint	MI	3471	6917	379	641	811	2502	473	921	18.1	1563	634	5.4-25
87	Grand Rapids	MI	3392	6777	390	688	872	2680	590	1461	22.2	1562	622	5.4-25
195	Sault Sainte Marie	MI	5087	9282	359	640	858	1399	119	246	21.0	1838	733	5.4-29
216	Traverse City	MI	3934	7654	369	642	818	2193	438	1124	21.0	1651	679	5.4-25
Minnesota														
67	Duluth	MN	5797	9918	355	633	886	1511	157	258	20.0	1882	650	5.4-29
102	International Falls	MN	6414	10535	351	669	962	1473	119	167	22.0	1870	656	5.4-29
140	Minneapolis	MN	4563	8060	380	709	972	2751	775	2509	20.7	1620	566	5.4-26
181	Rochester	MN	4544	8100	383	691	927	2360	442	590	18.8	1584	652	5.4-26
Mississippi														
103	Jackson	MS	546	2424	481	833	942	5927	2330	8789	17.2	646	640	5.4- 9
135	Meridian	MS	546	2446	480	811	905	5723	2148	9508	20.2	613	719	5.4- 9
Missouri														
51	Columbia	MO	2225	4994	431	790	972	3940	1234	4242	21.5	1189	633	5.4-23
186	Saint Louis	MO	2111	4860	432	797	983	4193	1467	5379	18.7	1124	616	5.4-23
206	Springfield	MO	1839	4509	446	812	982	4115	1311	4170	20.4	1215	544	5.4-23
Montana														
26	Billings	MT	3627	7156	380	814	1160	2544	598	2695	25.6	1650	617	5.4-25
57	Cutbank	MT	4718	8961	357	768	1150	1368	117	702	27.6	1834	672	5.4-26
65	Dillon	MT	4140	8210	386	838	1187	1564	159	784	28.6	1814	639	5.4-26
83	Glasgow	MT	5082	8828	361	752	1115	2272	543	2642	26.0	1688	570	5.4-29
88	Great Falls	MT	3728	7454	366	776	1133	2199	450	1886	26.7	1684	641	5.4-25
96	Helena	MT	3926	7817	372	771	1098	1911	328	1771	28.3	1784	651	5.4-25
118	Lewistown	MT	4027	8089	368	753	1084	1629	216	1270	29.8	1740	673	5.4-26
138	Miles City	MT	4435	7989	374	800	1156	2694	773	4364	26.9	1588	565	5.4-26
142	Missoula	MT	3492	7560	363	704	957	1629	221	1513	30.8	1843	658	5.4-25
Nebraska														
85	Grand Island	NE	3315	6477	420	843	1115	3309	996	4580	24.5	1431	611	5.4-25
155	North Platte	NE	3447	6905	419	880	1183	2731	715	3468	26.2	1514	592	5.4-27
159	Omaha	NE	2981	5968	414	806	1066	3618	1130	3883	19.6	1355	586	5.4-21
197	Scottsbluff	NE	3335	6900	413	861	1168	2603	693	3745	28.3	1457	620	5.4-27
Nevada														
72	Elko	NV	3345	7178	420	1000	1332	1997	355	4065	37.8	1540	569	5.4-27
73	Ely	NV	3683	7666	432	1014	1350	1650	157	1317	30.1	1529	683	5.4-27
116	Las Vegas	NV	449	2399	456	1136	1417	6567	3043	26408	25.5	604	719	5.4-11
125	Lovelock	NV	2638	5845	418	1094	1452	2813	745	6659	34.7	1358	606	5.4-22
178	Reno	NV	2181	5841	428	1068	1401	2180	365	4059	39.3	1306	752	5.4-22
214	Tonopah	NV	2308	5652	427	1130	1502	2742	611	3777	28.4	1257	660	5.4-22
228	Winnemucca	NV	2774	6471	418	1014	1350	2264	486	6366	41.0	1383	608	5.4-22
233	Tucca Flats	NV	1664	4802	450	1112	1399	3378	1041	11568	35.9	1004	670	5.4-16
New Hampshire														
54	Concord	NH	3742	7425	375	630	824	2254	443	1865	22.6	1533	683	5.4-25
New Jersey														
114	Lakehurst	NJ	2174	5265	407	712	917	3299	915	3019	20.5	1312	645	5.4-20
151	Newark	NJ	2027	4956	406	710	912	3556	1009	2487	17.7	1325	644	5.4-20

NO	CITY	STATE	HDD50	HDD65	VSN	VSEV	VSS	CDD50	CDD65	CDH80	DR	NO HRS T<55	8AM-4PM 55≤T≤69	ACP TABLE
New Mexico														
5	Albuquerque	NM	1633	4423	469	1105	1361	3942	1257	5705	25.3	1148	703	5.4-18
49	Clayton	NM	2138	5176	457	1019	1310	3122	685	2093	20.0	1150	770	5.4-22
184	Roswell	NM	1008	3686	490	1081	1280	4536	1539	11135	26.1	825	677	5.4-18
217	Truth or Consequences	NM	1074	3592	488	1113	1326	4457	1500	6882	23.4	889	744	5.4-18
219	Tucumcari	NM	1344	3922	470	1046	1300	4451	1554	8424	26.9	914	710	5.4-18
New York														
4	Albany	NY	3488	6770	395	719	942	2812	619	1308	19.7	1487	605	5.4-25
27	Binghampton	NY	3885	7397	370	592	733	2373	410	672	18.5	1657	662	5.4-25
34	Buffalo	NY	3213	6721	371	609	746	2476	509	779	19.2	1571	697	5.4-25
131	Massena	NY	4583	8397	380	708	942	2026	365	913	20.9	1674	627	5.4-26
149	New York (Central Pk)	NY	1986	5022	392	650	817	3273	834	911	12.5	1335	790	5.4-20
150	New York (LAG)	NY	1986	5022	392	650	817	3273	834	911	12.5	1335	790	5.4-20
182	Rochester	NY	3482	6995	374	622	771	2557	595	1642	20.1	1612	608	5.4-25
210	Syracuse	NY	3448	6856	371	611	764	2579	513	926	20.2	1521	730	5.4-25
North Carolina														
13	Asheville	NC	1407	4203	449	782	946	3442	763	1298	21.1	1083	915	5.4-15
37	Cape Hatteras	NC	635	2745	460	819	972	4978	1613	2039	10.0	765	820	5.4- 7
43	Charlotte	NC	1086	3412	456	809	968	4698	1549	4299	19.6	892	777	5.4-17
45	Cherry Point	NC	569	2556	461	826	996	5277	1788	3614	15.2	690	757	5.4- 7
90	Greensboro	NC	1261	3760	449	810	994	4274	1298	3642	17.4	1018	718	5.4-17
174	Raleigh	NC	1131	3509	445	774	935	4485	1389	3697	16.5	918	740	5.4-17
North Dakota														
29	Bismarck	ND	5196	8992	371	766	1114	2175	496	2067	27.8	1724	556	5.4-29
77	Fargo	ND	5582	9242	371	751	1077	2388	573	2288	22.2	1730	546	5.4-29
141	Minot	ND	5336	9178	358	724	1059	2064	431	1570	24.5	1800	581	5.4-29
Ohio														
3	Akron	OH	2881	6172	396	664	812	2845	661	1100	17.3	1460	680	5.4-21
53	Columbus	OH	2424	5493	401	671	819	3195	789	2268	22.6	1375	708	5.4-20
59	Dayton	OH	2573	5549	408	696	855	3367	868	1346	17.1	1388	611	5.4-20
213	Toledo	OH	3132	6514	393	676	853	2791	698	1794	17.8	1500	652	5.4-21
232	Youngstown	OH	3129	6557	383	624	760	2593	546	1128	21.4	1523	679	5.4-21
Oklahoma														
157	Oklahoma City	OK	1417	3825	465	875	1053	4901	1834	8878	20.8	980	733	5.4-18
220	Tulsa	OK	1429	3732	453	820	991	5244	2072	10065	19.7	983	591	5.4-19
Oregon														
14	Astoria	OR	1080	5226	350	588	782	1357	29	145	12.3	1571	1236	5.4-14
133	Medford	OR	1531	4893	405	814	1005	2681	568	4081	32.9	1442	749	5.4-15
154	North Bend	OR	629	4678	392	740	977	1429	2	0	11.8	1351	1553	5.4- 4
170	Portland	OR	1151	4577	364	647	841	2321	272	1086	22.8	1421	1060	5.4-14
177	Redmond	OR	2535	6665	395	835	1127	1573	228	2390	34.4	1631	695	5.4-20
187	Salem	OR	1128	4926	373	680	874	1849	172	1224	29.3	1499	916	5.4-14
Pennsylvania														
6	Allentown	PA	2692	5760	401	682	864	3105	698	1146	17.0	1335	710	5.4-21
18	Avoca	PA	2931	6236	389	646	811	2823	652	1547	19.7	1505	705	5.4-21
74	Erie	PA	3006	6426	384	646	792	2527	472	378	14.8	1532	716	5.4-21
94	Harrisburg	PA	2302	5251	404	687	864	3518	992	2860	20.1	1342	648	5.4-20
162	Philadelphia	PA	2044	4923	408	701	889	3661	1065	3172	17.1	1286	646	5.4-20
165	Pittsburgh	PA	2773	5907	392	642	780	2989	648	1040	19.0	1426	700	5.4-21
Rhode Island														
172	Providence	RI	2610	6022	393	677	874	2756	693	1284	16.8	1429	684	5.4-21
South Carolina														
41	Charleston	SC	435	2194	467	796	925	5722	2005	5249	16.4	570	767	5.4- 9
52	Columbia	SC	694	2666	467	816	953	5613	2110	8541	19.5	741	705	5.4- 9
91	Greenville	SC	907	3220	459	814	971	4563	1400	3494	17.7	866	851	5.4- 7

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NO	CITY	STATE	HDD50	HDD65	VSH	VSEV	VSS	CDD50	CDD65	CDH80	DR	NO HRS T<55	NO HRS 55≤T≤69	ACP TABLE
South Dakota														
106	Huron	SD	4820	8351	390	789	1044	2718	774	3739	24.5	1630	545	5.4-26
166	Pierre	SD	4028	7358	392	822	1147	3079	934	5262	24.2	1564	557	5.4-26
175	Rapid City	SD	3672	7229	394	819	1142	2581	663	3477	28.2	1530	572	5.4-25
203	Sioux Falls	SD	4240	7683	394	778	1078	2811	779	3029	20.2	1553	599	5.4-26
Tennessee														
44	Chattanooga	TN	1252	3595	444	738	869	4652	1541	5079	17.6	1050	684	5.4-17
108	Knoxville	TN	1283	3818	446	762	898	4455	1514	3840	17.8	1076	783	5.4-17
134	Memphis	TN	1034	3259	460	806	935	5319	2069	7807	19.2	865	851	5.4-19
147	Nashville	TN	1165	3609	443	749	863	4583	1552	5078	18.2	897	749	5.4-17
Texas														
1	Abilene	TX	792	2714	494	924	1066	5968	2416	13206	21.5	760	648	5.4-10
8	Amarillo	TX	1592	4331	471	1013	1253	6113	1377	6763	23.9	1109	680	5.4-18
17	Austin	TX	271	1735	503	877	972	6873	2862	14093	19.3	564	664	5.4-10
32	Brownsville	TX	35	642	547	908	908	8531	3664	12218	14.8	191	422	5.4-12
35	Corpus Christi	TX	106	889	529	906	946	8200	3508	13109	17.2	249	543	5.4-12
61	Del Rio	TX	186	1397	511	903	1008	7376	3112	14870	19.8	474	732	5.4-10
70	El Paso	TX	522	2605	503	1133	1306	5617	2225	13224	21.3	660	735	5.4-10
81	Fort Worth	TX	605	2354	485	875	994	6174	2448	13682	20.5	673	772	5.4-10
99	Houston	TX	195	1346	490	805	883	7215	2891	10569	18.2	352	703	5.4- 9
107	Kingsville	TX	49	874	527	881	902	8302	3652	15512	19.2	260	523	5.4-12
115	Laredo	TX	65	842	532	900	936	8827	4130	25225	21.4	286	598	5.4-13
126	Lubbock	TX	1173	3643	488	1070	1267	4754	1749	9827	25.1	917	743	5.4-18
127	Lufkin	TX	370	1846	492	848	942	6667	2668	11737	21.5	478	681	5.4-10
137	Midland	TX	634	2573	504	1079	1247	5695	2159	11177	25.9	698	729	5.4-10
168	Port Arthur	TX	167	1416	497	824	900	6888	2662	8837	17.4	384	697	5.4- 9
189	San Angelo	TX	538	2110	503	944	1076	6522	2619	14621	20.6	641	619	5.4-10
190	San Antonio	TX	261	1579	510	878	955	7170	3013	13841	20.1	462	690	5.4-10
200	Sherman	TX	699	2708	476	862	996	5844	2378	12065	20.2	785	721	5.4-10
221	Waco	TX	488	2166	495	874	972	6676	2879	15658	21.1	651	622	5.4-10
226	Wichita Falls	TX	984	3049	480	911	1077	5708	2299	14487	18.8	802	725	5.4-10
Utah														
33	Bryce Canyon	UT	6709	9288	445	1063	1386	899	4	69	30.0	1660	861	5.4-28
40	Cedar City	UT	5592	5888	447	1054	1342	2802	624	3119	27.1	1392	629	5.4-22
188	Salt Lake City	UT	5570	5975	422	975	1266	3011	941	7030	29.1	1426	586	5.4-22
Vermont														
36	Burlington	VT	4211	7932	382	698	925	2118	365	490	18.3	1697	637	5.4-26
Virginia														
153	Norfolk	VA	1185	3609	443	792	984	4636	1586	4554	15.0	1014	685	5.4-17
179	Richmond	VA	1322	3895	430	745	923	4225	1323	4021	17.6	996	716	5.4-17
188	Roanoke	VA	1520	4192	433	763	946	3986	1183	3306	19.0	1148	713	5.4-17
Washington														
158	Olympia	WA	1546	5550	351	619	819	1550	79	466	26.4	1577	985	5.4-14
198	Seattle/Tacoma	WA	1382	5281	350	621	828	1683	106	256	16.5	1700	982	5.4-14
205	Spokane	WA	2983	6727	363	758	1064	2094	363	1595	25.3	1669	840	5.4-21
225	Whidbey Island	WA	1179	5274	344	630	878	1403	22	7	14.8	1671	1169	5.4-14
230	Yakima	WA	2323	5877	373	790	1091	2570	449	3285	31.2	1413	705	5.4-20
West Virginia														
42	Charleston	WV	1816	4587	409	667	798	3712	1008	3054	20.8	1215	704	5.4-20
Wisconsin														
88	Eau Claire	WI	4751	8285	376	683	923	2545	603	1898	18.2	1565	661	5.4-26
89	Greenbay	WI	4310	8039	380	696	947	2172	426	957	22.1	1604	651	5.4-26
112	La Crosse	WI	3838	7243	366	701	957	2786	716	2121	18.9	1568	644	5.4-25
129	Madison	WI	4009	7466	391	717	955	2559	542	1329	19.1	1511	658	5.4-26
139	Milwaukee	WI	3586	7121	396	724	961	2427	487	1013	17.1	1587	698	5.4-25

NO	CITY	STATE	HDD50	HDD65	VSH	VSEV	VSS	CDD50	CDD65	CDH80	DR	NO HRS T<55	NO HRS 55≤T≤69	ACP TABLE
Wyoming														
39	Casper	WY	3824	7617	403	961	1343	2177	495	2699	29.8	1670	535	5.4-27
46	Cheyenne	WY	3435	7218	416	906	1267	1963	271	1040	26.4	1618	608	5.4-27
183	Rock Springs	WY	4407	8391	411	1012	1395	1698	207	702	29.1	1828	552	5.4-28
199	Sheridan	WY	3605	7366	387	806	1133	2074	360	2105	30.8	1650	574	5.4-25
Other Locations Outside U.S.A.														
92	Guantanamo Bay	CU	0	0	612	1045	1018	11071	5596	18452	15.5	0	17	5.4- 3
110	Koror Island	PW	0	0	662	890	827	11435	5960	14548	9.5	0	0	5.4- 3
111	Kwajalein Island	PW	0	0	678	961	888	11635	6160	16217	8.2	0	0	5.4- 3
195	San Juan	PR	0	0	608	963	931	10648	5173	11563	12.7	0	14	5.4- 3
222	Wake Island	PW	0	0	609	1002	977	10869	5394	10167	9.7	0	0	5.4- 3

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ATTACHMENT 5B TO SECTION 435.105
EQUATIONS TO DETERMINE EXTERNAL WALL HEATING AND COOLING CRITERIA
AND
TO DETERMINE COMPLIANCE WITH THE CRITERIA

5B.1 Equations and Coefficients

This attachment contains the external wall equations for use in determining external wall heating and cooling criteria (WC_h and WC_c) and for determining compliance (H_j and C_j) with the criteria for north, east, south and west orientations. For NE, NW, SW and SE orientations, WC_h, WC_c, H_j and C_j shall be determined by treating half of each wall area as though it faces each of the adjacent cardinal directions, e.g., treat NE as half north and half east.

Equations 5.5-2 and 5.5-6 are statistical regression equations that correlate envelope cooling and heating loads, respectively, from thermal transmission and solar gains, as modified by internal gain and mass, to the physical components of the envelope. Seven individual terms are identified for both cooling and heating that correlate variables with physical meaning such as U-values, internal gains, and weather related variables. They are as follows:

1. CLU, CLUO, CLXUO: Terms that correlate cumulative annual cooling loads with thermal transmittance of the wall.
2. CLM: Term that correlates cumulative annual cooling loads with heat capacity of the wall.
3. CLG: Term that correlates cumulative annual cooling loads with internal gains from occupant light and equipment.
4. CLS: Term that correlates cumulative annual cooling loads with incident solar gains.
5. CLC: Term that correlates cumulative annual cooling loads with climate variables for a specific location.
6. HLU, HLUO, HLXUO: Terms that correlate cumulative annual heating loads with thermal transmittance of the wall.
7. HLM: Term that correlates cumulative annual heating loads with heat capacity of the wall.
8. HLG: Term that correlates cumulative annual heating loads with internal gains from occupants, lights, and equipment.
9. HLS: Term that correlates cumulative annual heating loads with incident solar gains.

10. HLC: Term that correlates cumulative annual heating loads with climate variables for a specific location.

The cooling and heating equations with their coefficients follow.

Cooling Equation

$$WC_c \text{ or } C_j = CLU_i + CLUO_i + CLXUO_i + CLM_j + CLG_i + CLS_i + CLC_i$$

Equation 5.5-2

Where:

i = for each orientation

j = for each wall mass construction type for the orientation

$$CLU = FO \times U_{ow} \times [\, CU1 \times CDH80 + CU2 \times CDH80^2 + CU3 \times (VS \times CDH80)^2 + CU4 \times DR \,]$$

$$CLUO = FC \times UOC \times [\, CUO1 \times EA \times VS \times CDD50 + CUO2 \times G + CUO3 \times G^2 \times EA^2 \times VS \times CDD50 + CUO4 \times G^2 \times EA^2 \times VS \times CDD65 \,]$$

$$CLXUO = FC \times 1/UOC \times [\, CXUO1 \times EA \times VS \times CDD50 + CXUO2 \times EA \times (VS \times CDD50)^2 + CXUO3 \times G \times CDD50 + CXUO4 \times G^2 \times EA^2 \times VS \times CDD50 + CXUO5 \times G^2 \times CDD65 \,]$$

$$CLM = FO_j \times CMC_i \times [\, CM1 + CM2 \times EA \times VS \times CDD50 + CM3 \times EA \times VS \times CDD65 + CM4 \times EA^2 \times VS \times CDD50 + CM5 \times G^2 \times CDD65 + CM6 \times G \times CDD50 + CM7 \times G \times CDD65 + CM8 \times G \times EA \times VS \times CDD50 \,]$$

$$CLG = FC \times (G \times [\, CG1 + CG2 \times CDD50 + CG3 \times EA \times (VS \times CDD50)^2 + CG4 \times EA^2 \times VS \times CDD50 + CG5 \times CDD65 + CG6 \times CDD50^3 + CG7 \times CDD65^3 \,] + G^2 \times [\, CG8 \times EA \times VS \times CDD50 + CG9 \times EA^2 \times VS \times CDD50 \,])$$

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$$CLB = PC \times (EA \times [CB1 + CB2 \times VB \times CDD50 + CB3 \times (VB \times CDD50)^2 + CB4 \times VB \times CDD65 + CB5 \times (VB \times CDD65)^2] + EA^2 \times [CB6 + CB7 \times (VB \times CDD65)^2])$$

$$CLC = PC \times [CC1 \times CDD50 + CC2 \times CDD50^2 + CC3 \times CDH80 + CC4 \times CDH80^2 + CC5 \times CDD65 + CC6 \times (VB \times CDD65)^2 + CC7 \times VB \times CDD50 + CC8 \times (VB \times CDD50)^2 + CC9 \times (VB \times CDH80)^2 + CC10 \times VB + CC11 \times DR + CC12 \times DR^2 + CC13]$$

NOTE: The coefficients for various orientations in the equations listed above are found in Table 5B-2. If WC_c or C_1 is less then 0.0, WC_c or C_1 is set equal to 0.0.

Where:

Climate Data

CDD50 = Cooling degree-days base 50 °F

CDD65 = Cooling degree-days base 65 °F

CDH80 = Cooling degree-hours base 80 °F

DR = Average daily temperature range for warmest month.

VB = Annual average daily incident solar energy on facade under consideration, Btu/ft^2/day.

Building Data

PC = Wall area (opaque and glazed) of zone under consideration divided by total wall area (opaque and glazed) of all zones.

FO = Opaque wall area of zone under consideration divided by total wall area (opaque and glazed) of all zones. If multiple mass constructions are present, the FO_j is calculated for each construction j and used to form the area weighted mass correction.

U_{OW} = Area average U-value of opaque walls (including those of mass construction) in zone under consideration.

UOC = Area average U-value of wall (opaque and glazed, evaluated under cooling conditions) in zone under consideration. UOC is equal to UOH.

WWR = Window wall ratio for zone under consideration; defined as fenestration area divided by total wall area (opaque and glazed).

EA = Effective aperture fraction for zone under consideration, where:

$$EA = WWR \times SC_x \times S_{ec}$$

Equation 5.5-3

Where:

S_{ec} = The cooling adjustment factor for horizontal external shading projections:

For $0.0 \leq PF \leq 0.5$ from Equation 5.4-1

For the north orientation:

$$S_{ec} = 1 - 0.4 \times PF$$

Equation 5.5-3a

For the east, south and west orientations:

$$S_{ec} = 1.0 - 1.4877 \times PF + 1.0489 \times PF^2$$

Equation 5.5-3b

G = Effective internal gain (W/ft^2) for zone under consideration, where:

$$G = E_p + L_p \times (1 - R_c \times K_d) + O_l$$

Equation 5.5-4

Where:

L_p = Lighting power, from Section 5.5.7.4

E_p = Equipment power, from Section 5.5.7.5

R_c = The ratio of the electric lights in the same space served by the orientation that have automatic controls for daylighting.

O_l = Occupant load adjustment, from Section 5.5.7.6

$$K_d = 5.871 (WWR \times VLT \times S_{ec}) - 13.311 (WWR \times VLT \times S_{ec})^2$$

Equation 5.5-4a

If (MAR x VLT x θ_{oc}) > 0.22, then K_d = 0.647

Where:

MAR = As defined above, but not to exceed a maximum value of 0.65 in Equation 5.5-4a, per Section 5.5.7.3.

VLT = Visible light transmittance of the glazing material, as defined in Section 5.5.2.1, including any shading devices present that modify the visible transmittance of the glazing material.

CMC = Mass correction (Cooling Delta Load Factor) from Equation 5.5-5. If multiple mass constructions are present, each CMC_j is evaluated separately and combined by area weighting. If the U-value of the mass wall is less than 0.05, then U_{ow} = 0.05 shall be used to calculate the CMC. If the value of HC is greater than 20, then HC = 20 shall be used to calculate the CMC.

COOLING DELTA LOAD FACTOR EQUATIONS

Equation 5.5-5 is used to predict the Cooling Delta Load Factor values.

CMC = Cooling Delta Load Factor =

$$\left| 1 - e^{-CP_1(HC-1)} \right| \left| CP_2 + CP_3 U - \frac{CP_4}{1 + (CP_5 + CP_6 U)e^{-(CP_7+CP_8U^2)(HC-1)}} \right| \left| \frac{1.0}{0.7} \right|$$

Equation 5.5-5

Where:

HC = Wall Heat Capacity (Btu/ft$^{2\cdot}$°F).

U = Wall U-Value (Btu/h/ft$^{2\cdot}$°F).

A = (Cooling degree-hours base 80 °F)/10000 + 2 (°F·h).

B = (Daily Range)/10 + (°F).

Where:

CP_1 = C_5

CP_2 = $C_{15}/B^3 + C_{16}/(A^2B^2)+C_{17}$

CP_3 = $C_1/A^3 + C_2B^3 + C_2B^3 + C^3/(A^2\sqrt{B}) + C_4$

CP_4 = $C_{12}/(A^2B^2) + C_{13}/B^3 + C_{14}$

CP_5 = C_{18}

CP_6 = $C_6 LN(A)\sqrt{B} + C_7$

LN = Natural Logarithm

CP_7 = $C_{19}/(A^2B^2) + C_{20}/(AB) + C_{21}A^2/\sqrt{B} + C_{22}$

CP_8 = $C_8/(A^2B^2) + C_9/(AB) + C_{10}A^2/\sqrt{B} + C_{11}$

The coefficients C1 through C22 are taken from the following table, Table 5B-1.

HEATING EQUATION

$$MC_h \text{ or } H_1 = \Sigma (HLU_i + HLUO_i + HLXUO_i + HLM_i + HLG_i + HLS_i + HLC_i)$$

Equation 5.5-6

Where:

i = for each orientation

j = for each wall mass construction type for the orientation

HLU = $FO \times U_{OW} \times$ [HU1 x HDD50 + HU2 x (VS x HDD65)^2]

HLUO = FC x UOH x [HUO1 x HDD50 + HUO2 x HDD65 + HUO3 x EA x VS x HDD65]

HLXUO = FC x ((1/UOH) x [HXUO1 x EA x (VS x HDD50)^2 + HXUO2 x EA x (VS x HDD65)^2] + (1/UOH^2) x [HXUO3 x EA^2 x VS x HDD65])

HLM = $FO_j \times HMC_j \times$ [HM1 + HM2 x G x UOH x HDD65 + HM3 x G^2 x EA^2 x VS x HDD50 + HM4 x UOH x EA x VS x HDD65 + HM5 x UOH x HDD50 + HM6 x EA x (VS x HDD65)^2 + HM7 x EA^2 x VS x HDD65/UOH]

$$HLG = FC \times (G \times [HG1 \times HDD65 + HG2 \times UOH \times HDD65 + HG3 \times EA \times VS \times HDD65 + HG4 \times EA^2 \times VS \times HDD50] \times G^2 \times [HG5 \times HDD65 + HG6 \times EA^2 \times VS \times HDD65 \ 1_{(h)}$$

$$HLB = FC \times (EA \times [HB1 \times VS \times HDD65 + HB2 \times (VS \times HDD50)^2] + EA^2 \times [HB3 \times VS \times HDD50 + HB4 \times VS \times HDD65])$$

$$HLC = FC \times [HC1 + HC2 \times HDD65 + HC3 \times HDD65^2 + HC4 \times VS^2 + HC5 \times VS \times HDD50 + HC6 \times VS \times HDD65 + HC7 \times (VS \times HDD50)^2]$$

NOTE: The coefficients for various orientations in the equations listed above are found in Table 5B-4. If HC_h or H_1 is less than 0.0, HC_h or H_1 is set equal to 0.0.

Where:

Climate Data

HDD50 = Heating degree-days base 50 °F.

HDD65 = Heating degree-days base 65 °F.

VS = Annual average daily incident solar energy on facade under consideration, Btu/ft^2-day.

Building Data

FC = Wall area (opaque and glazed) of zone under consideration divided by total wall area (opaque and glazed) of all zones.

FO = Opaque wall area of zone under consideration divided by total wall area (opaque and glazed) of all zones. If multiple mass constructions are present, the FO_j is calculated for each and used to form the area weighted mass correction.

U_{ow} = Area average U-value of opaque walls (including those of mass construction) in zone under consideration.

UOH = Area average U-value of wall (opaque and glazed, evaluated under heating conditions) in zone under consideration. UOH is equal to UOC.

WWR = Window wall ratio for zone under consideration; defined as fenestration area divided by total wall area (opaque and glazed).

EA = Effective aperature fraction for zone under consideration.

$$EA = WWR \times SC_x \times S_{eh}$$

Equation 5.5-7

Where:

For $0.0 \leq PF \leq 0.5$, from Equation 5.4-1:

For the north orientation:

$$S_{eh} = 1 - 0.3 \times PF$$

Equation 5.5-7a

For the east, south and west orientation:

$$S_{eh} = 1 - 0.986 \times PF + 0.4513 \times PF^2$$

Equation 5.5-8

G = Effective internal gain (W/ft^2) for zone under consideration.

$$G = E_p + L_p \times (1 - R_c \times K_d) + O_l$$

Equation 5.5-8

Where:

L_p = Lighting power, from Section 5.5.7.4.

E_p = Equipment power, from Section 5.5.7.5.

O_l = Occupant load adjustment, from Section 5.5.7.6

R_c = The ratio of the electric lights in the space served by the orientation that have automatic controls for daylighting.

$$K_d = 5.871 (WWR \times VLT \times S_{eh}) - 13.311 (WWR \times VLT \times S_{eh})^2$$

Equation 5.5-8a

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If MAR x VLT x S_{sh} > 0.22, then K_d = 0.647

Where:

MAR = As defined above, but not to exceed a maximum value of 0.65 in Equation 5.5-8a per Section 5.5.7.3.

VLT = Visible light transmittance of the glazing material, as defined in Section 5.5.2.1 including any shading devices present that modify the visible transmittance of the glazing material.

MMC = Mass correction from Equation 5.5-9. If multiple mass constructions are present, each MMC_j is evaluated separately and combined by area weighting. If the U-value of the mass wall is greater than 0.40, then U_{ou} = 0.4 shall be used to calculate the MMC. If the U-value of the mass wall is less than 0.05, then U_{ou} = 0.05 shall be used to calculate the MMC. If the value of HC is greater than 20, then HC = 20 shall be used to calculate the MMC.

HEATING DELTA LOAD FACTOR EQUATION:

Equation 5.5-9 is used to predict the heating Delta Load Factor values.

MMC = Heating Delta Load Factor =

$$\left|1 - e^{-HP_1(HC-1)}\right| \left| HP_2 + HP_3U - \frac{HP_4}{1 + (HP_5 + HP_6U)e^{-(HP_7+HP_8U^2)(HC-1)}} \right| \frac{1.0}{0.7}$$

Equation 5.5-9

Where:

HC = Wall Heat Capacity (Btu/ft^{2}·°F)

U = Wall U-Value (Btu/h·ft^{2}·°F)

A = (Heating degree-days base 65 °F/100 + 2 (°F·days)

Where:

HP_1 = H_6

HP_2 = $H_{14}LN(A)+H_{15}$

LN = Natural Logarithm

HP_3 = $H_1A^3+H_2A^2+H_3/\sqrt{A}+H_4\sqrt{A}+H_5$

HP_4 = $H_{11}A^2+H_{12}/A^2+H_{13}$

HP_5 = H_{16}

HP_6 = H_7A+H_8

HP_7 = H_{17}/A^3+H_{18}

HP_8 = H_9/A^3+H_{10}

The coefficients H1 through H18 are taken from the following table, Table 5B-3.

58.2 Determining Heating and Cooling Criteria Using Equations in Section 58.1

To determine the wall thermal criteria for a building design, the following inputs to the equations in Section 58.1 shall be used.

(1) **Aspect Ratio.** An aspect ratio of 2:1 with longer dimensions facing east and west.

(2) **Shading.** No use of external shading projections or screens.

(3) **Daylight Controls.** No use of automatic daylight controls for the lighting system.

(4) **Internal Gain (G).** The sum of the lighting power density (L_p), the equipment power density (E_p) and the occupant load adjustment (O_L), or 3.0 W/ft^2, whichever is smaller, shall be used. In determining L_p, the value of R_c and VLT shall be set equal to 0.0 in Equations 5.5-4 and 5.5-8.

(5) **Wall Area Factor, Opaque and Glazed (FC).** The combined opaque and glazed area for the orientation for the building design, divided by the total wall area (opaque and glazed) of all orientations, shall be used. Note that if one changes the wall area or floor area in a zone, this changes the geometry of the building. The criteria and compliance values will change for all zones because both values for each zone are weighted by the relative size of that zone.

(6) **Window Wall Ratio (WWR).** The smaller of the values of WWR_c and WWR_h determined from (a) and (b) below shall be used.

(a) Using the value for internal gain (G) determined in (4) above, the WWR_c for cooling by interpolation of

the results of (a) and (b) below, shall be determined using Equation 5.5-10:

Where: WWR_{g0} is the window to wall ratio at 0.0 W/ft^2 internal load (G = 0.0 W/ft^2).

WWR_{g30} is the window to wall ratio at 3.0 W/ft^2 internal load (G = 3.0 W/ft^2).

$$WWR_c = WWR_{g0} - (G / 3.0) \times (WWR_{g0} - WWR_{g30})$$

Equation 5.5-10

For G = 0.0:

If CDD50 x VSEW < 8,000,000, then Equation 5.5-11 shall be used.

$$WWR_{g0} = 0.48 - (CDD50 \times VSEW \times 1.625 \times 10^{-8})$$

Equation 5.5-11

If CDD50 x VSEW ≥ 8,000,000, then Equation 5.5-12 be used:

$$WWR_{g0} = 0.34$$

Equation 5.5-12

For G = 3.0:

If CDD50 x VSEW < 8,000,000, then Equation 5.5-13 shall be used:

$$WWR_{g30} = 0.28 - (CDD50 \times VSEW \times 5.0 \times 10^{-9})$$

Equation 5.5-13

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If CDD50 x VSEV ≥ 8,000,000, then Equation 5.5-14 shall be used:

$$WWR_{b30} = 0.24$$

Equation 5.5-14

(b) The WWR_h for heating shall be determined using Equation 5.5-15 or Equation 5.5-16.

If HDD65 < 4000, then Equation 5.5-15 shall be used:

$$WWR_h = 0.4 - (HDD65 \times 2.5 \times 10^{-5})$$

Equation 5.5-15

If HDD65 ≥ 4000, then Equation 5.5-16 shall be used:

$$WWR_h = 0.3$$

Equation 5.5-16

(7) Opaque Wall Area Factor (FO). The value of FO shall be determined from Equation 5.5-17.

$$FO = FC \times (1 - WWR)$$

Equation 5.5-17

(8) Shading Coefficient (SC_x). The value of SC_x shall be determined from (a) or (b) below, or as shown in Figure 5B-3.

(a) If the heating degree-days base 65 °F for the building location is ≤ to 3000, either Equation 5.5-18 or Equation 5.5-19 shall be used:

If CDD50 x VSEV < 4,000,000, then Equation 5.5-18 shall be used:

$$SC_x = 0.85 - (CDD50 \times VSEV \times 8.75 \times 10^{-8})$$

Equation 5.5-18

If CDD50 x VSEV ≥ 4,000,000, then Equation 5.5-19 shall be used:

$$SC_x = 0.5$$

Equation 5.5-19

(b) If the heating degree days base 65 °F for the building location is > 3000, either Equation 5.5-20 or Equation 5.5-21 shall be used:

If CDD50 x VSEV < 4,000,000, then Equation 5.5-20 shall be used:

$$SC_x = 0.85 - (CDD50 \times VSEV \times 1.25 \times 10^{-7})$$

Equation 5.5-20

If CDD50 x VSEV ≥ 4,000,000, then Equation 5.5-21 shall be used:

$$SC_x = 0.35$$

Equation 5.5-21

(9) External Shading Projection (S_{eh}). The value of S_{eh} shall be set equal to 0.0.

(10) Opaque Wall U-Value (U_{OW}). The value of U_{OW} shall be determined from either Equation 5.5-22 or Equation 5.5-23, as shown in Figure 5B-4.

If HDD65 < 196, then Equation 5.5-22 shall be used:

$$U_{OW} = 1.0$$

Equation 5.5-22

If HDD65 ≥ 196, then Equation 5.5-23 shall be used:

$$U_{Ow} = 42.787 \times HDD65^{(-0.712)}$$

Equation 5.5-23

(11) Heat Capacity of Opaque Wall (HC). The value of HC shall be set equal to 1.0.

(12) Fenestration Assembly U-Value (U_{Of}). The value of U_{Of} shall be determined from either Equation 5.5-24, 5.5-25, or 5.5-26; or as shown in Figure 5B-5.

If HDD65 < 3000, then Equation 5.5-24 shall be used:

$$U_{Of} = 1.15$$

Equation 5.5-24

If HDD ≥ 3000 and HDD65 < 7500, then Equation 5.5-25 shall be used:

$$U_{Of} = 0.81 - [(HDD65 - 3000) \times 8.0 \times 10^{-5}]$$

If HDD ≥ 7500, then Equation 5.5-26 shall be used:

$$U_{Of} = 0.45$$

Equation 5.5-26

(13) For all other inputs to the equations in Section 5B.1, the values for the building envelope design under consideration shall be used.

Table 5B-1
COOLING DELTA LOAD COEFFICIENTS

COEFFICIENT LABEL	INSULATION POSITION		
	EXTERIOR	INTEGRAL	INTERIOR
C1	220.724503	139.105667	181.616776
C2	-.056589	-.033991	-.055196
C3	-118.835388	-10.326704	-34.158966
C4	-13.674420	-20.867386	-25.591934
C5	.236381	.283862	.081029
C6	.959588	.305851	1.418998
C7	-.255004	.022622	.432421
C8	-905.677979	-307.943848	-1882.926758
C9	425.191895	80.209610	443.195801
C10	-2.510600	.049955	.430200
C11	-43.387955	-5.989545	-28.285065
C12	-259.723389	-11.396114	-63.562256
C13	-33.975525	.366851	20.844650
C14	20.488235	30.253494	9.817521
C15	-26.209152	8.833706	24.459824
C16	-241.173386	-22.254623	-70.337494
C17	18.897781	29.329697	9.884280
C18	-.353790	-.023878	-.116646
C19	156.305634	63.322754	326.344727
C20	-74.098999	-16.334656	-77.635498
C21	.445363	-.011114	-.074788
C22	7.496696	1.295576	5.204088

TABLE 58-2 (Continued)
COOLING COEFFICIENTS

	NORTH	EAST	SOUTH	WEST
CC1	0.002747	0	0.010349	0.001865
CC2	0	0.318928E-06	-0.304413E-06	0
CC3	-0.000348	0.000319	0.00024	0.000565
CC4	0.122123E-07	-0.775318E-07	-0.271443E-07	-0.544380E-07
CC5	0.012112	0.011894	0.013248	0.009236
CC6	0.104027E-11	-0.622661E-12	-0.205178E-11	0
CC7	-0.124013E-04	-0.706280E-05	-0.165377E-04	-0.602685E-05
CC8	0	0	0.820869E-12	0
CC9	-0.375797E-13	0.606235E-13	0.197598E-13	0.389425E-13
CC10	0.030056	0.023121	0.0265	0.01704
CC11	0	0	-0.271026	-0.244274
CC12	0.002138	0.001103	0.006368	0.007323
CC13	-12.8674	-13.16522	-18.271	-10.1285

Table 58-3
HEATING DELTA LOAD COEFFICIENTS

COEFFICIENT LABEL	INSULATION POSITION		
	EXTERIOR	INTEGRAL	INTERIOR
H1	.000006	.000007	.000006
H2	-.001537	-.001799	-.001492
H3	13.388575	15.116148	19.831360
H4	1.933217	2.105596	1.457923
H5	-11.896660	-13.305299	-15.562034
H6	.464317	.183966	.071887
H7	.009447	.025504	.026392
H8	-.099954	.045871	.775432
H9	-1223.396240	-622.080078	.200792
H10	-.945353	-.519158	-.637875
H11	-.000067	-.000069	-.000007
H12	3.858493	4.137914	2.424339
H13	7.582887	6.238024	7.980392
H14	-.777369	-.771123	-.169907
H15	9.014718	7.722863	8.585447
H16	.200680	.208271	-.038589
H17	206.638214	105.984894	3.139744
H18	.257293	.198297	.186262

TABLE 58-2
COOLING COEFFICIENTS

	NORTH	EAST	SOUTH	WEST
CU1	0.001539	0.003315	0.003153	0.00321
CU2	-0.308548E-07	-0.896618E-07	-0.712993E-07	-0.810530E-07
CU3	0.799493E-13	0.379280E-13	0.183083E-13	0.339810E-13
CU4	-0.079647	0.163114	0.286458	0.11178
CH1	0.32314	0.515262	0.71477	0.752643
CH2	0.153060E-05	0.138197E-05	0.161630E-05	0.142228E-05
CH3	-0.204322E-05	-0.160240E-05	-0.211063E-05	-0.197938E-05
CH4	-0.753665E-06	-0.767849E-06	-0.664430E-06	-0.740067E-06
CH5	-0.100472E-05	0	0.801057E-05	0.315193E-05
CH6	0.366708E-04	0.356503E-04	0.448106E-04	0.296012E-04
CH7	-0.673045E-04	-0.640938E-04	-0.000119	-0.786719E-04
CH8	-0.238335E-07	-0.472534E-07	-0.497469E-07	0
CU01	-0.651094E-05	-0.838669E-05	-0.888996E-05	-0.756465E-05
CU02	-1.040207	-1.507235	-1.512625	-1.238545
CU03	-0.438254E-05	-0.278628E-05	-0.231352E-05	-0.412567E-05
CU04	0.126580E-04	0.809874E-05	0.736219E-05	0.106712E-04
CXU01	0.103744E-05	0.119338E-05	0.118588E-05	0.123251E-05
CXU02	-0.132180E-12	-0.134656E-12	-0.116252E-12	-0.138002E-12
CXU03	0.275554E-04	0.202621E-04	0.202365E-04	0.236964E-04
CXU04	0.974090E-07	0.117514E-06	0.939207E-07	0.136276E-06
CXU05	-0.118247E-04	-0.909694E-05	-0.909192E-05	-0.111077E-04
CG1	0.891286	0.583368	0.393756	0.948654
CG2	0.001479	0.001931	0.002081	0.001662
CG3	-0.552042E-12	-0.282139E-12	-0.284766E-12	-0.455720E-12
CG4	0.252311E-05	0.370821E-05	0.430536E-05	0.591511E-05
CG5	-0.001151	-0.001745	-0.001864	-0.00153
CG6	0.195243E-11	0	-0.296055E-11	0.316358E-11
CG7	-0.835805E-11	0.101089E-10	0.330027E-10	0
CG8	0.141022E-05	0.753875E-06	0.713300E-06	0.970752E-06
CG9	-0.238887E-05	-0.164961E-05	-0.163927E-05	-0.197363E-05
CS1	46.9871	33.9683	18.32016	29.3089
CS2	0.348091E-04	0.374118E-04	0.340490E-04	0.502498E-04
CS3	0	0	0.271313E-11	0
CS4	-0.166409E-04	0.694779E-05	-0.282181E-04	-0.277158E-04
CS5	0.842765E-11	0	-0.304677E-11	0.291137E-11
CS6	-56.5446	0	26.9954	14.9771
CS7	-0.134764E-10	-0.588097E-11	-0.650089E-11	-0.789218E-11

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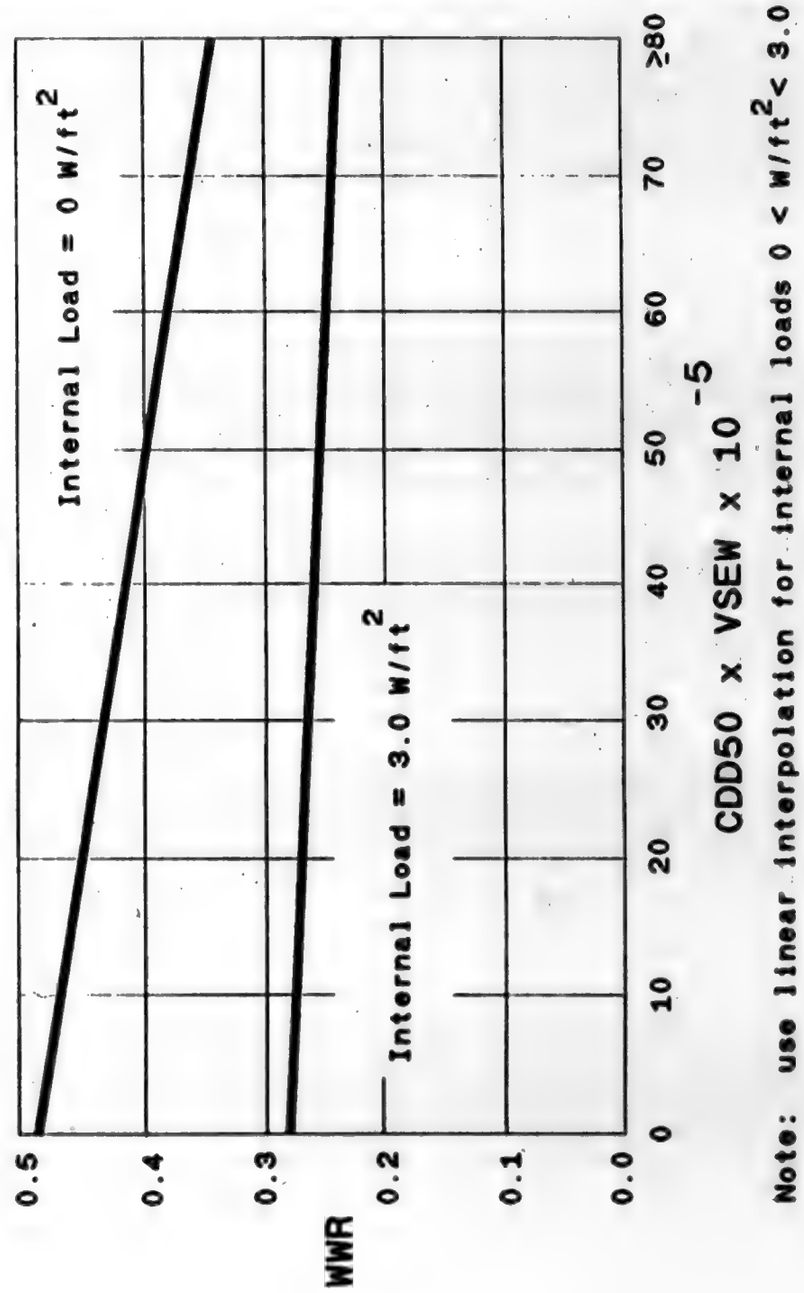
Table 5B-4
HEATING COEFFICIENTS

	NORTH	EAST	SOUTH	WEST
HU1	0.006203	0.007691	0.006044	0.006672
HU2	-0.135868E-11	-0.571616E-12	-0.268998E-12	-0.435663E-12
HH1	0.531005	0.545732	0.837901	0.616936
HH2	0.000152	0.000107	0.000208	0.00015
HH3	-0.531826E-06	-0.106191E-06	-0.682531E-06	-0.264566E-06
HH4	-0.773813E-06	-0.147870E-05	0.211938E-05	-0.457827E-06
HH5	-0.000712	-0.000484	-0.001042	-0.000625
HH6	0.334859E-12	0.495762E-13	0.770190E-13	0.737105E-13
HH7	0.239071E-06	0.275045E-06	-0.389887E-06	0
HU01	0.004943	0.008683	0.009028	0.008566
HU02	0.013686	0.011055	0.010156	0.01146
HU03	-0.110178E-04	-0.868956E-05	-0.732317E-05	-0.898665E-05
HXU01	0.126940E-11	0.785644E-13	-0.282023E-12	0.304904E-13
HXU02	-0.730582E-12	-0.810900E-13	0.745599E-13	-0.747184E-13
HXU03	0.197090E-06	0.194026E-06	0.987587E-07	0.195776E-06
HG1	-0.001051	-0.000983	-0.000981	-0.000948
HG2	-0.001063	-0.00093	-0.000815	-0.000975
HG3	0.299013E-05	0.262269E-05	0.241880E-05	0.249976E-05
HG4	0.749049E-06	-0.111056E-05	-0.216687E-05	-0.856049E-06
HG5	0.000109	0.934310E-04	0.975523E-04	0.862389E-04
HG6	-0.555914E-06	-0.315801E-06	-0.260999E-06	-0.291334E-06
HS1	-0.218248E-04	-0.209216E-04	-0.210885E-04	-0.202049E-04
HS2	0.339179E-11	0.190500E-11	0.148388E-11	0.218215E-11
HS3	-0.653253E-05	-0.223413E-04	-0.184726E-04	-0.240488E-04
HS4	0.223087E-04	0.241331E-04	0.245412E-04	0.230538E-04
HC1	-0.106468	-5.19297	-3.66743	-5.29681
HC2	0.00729	0.007684	0.007175	0.007672
HC3	-0.297600E-06	-0.307837E-06	-0.264192E-06	-0.307127E-06
HC4	0.201569E-05	0.630350E-05	0.332112E-05	0.643491E-05
HC5	0.129061E-04	0.477552E-05	0.325089E-05	0.485233E-05
HC6	-0.128594E-04	-0.618539E-05	-0.463086E-05	-0.625101E-05
HC7	0.275861E-11	0.820051E-12	0.438148E-12	0.809106E-12

Figure 5B-1

Maximum Window to Wall Ratio

Cooling



Note: use linear interpolation for internal loads 0 < W/ft^2 < 3.0

Figure 5B-2

Maximum Window to Wall Ratio

Heating

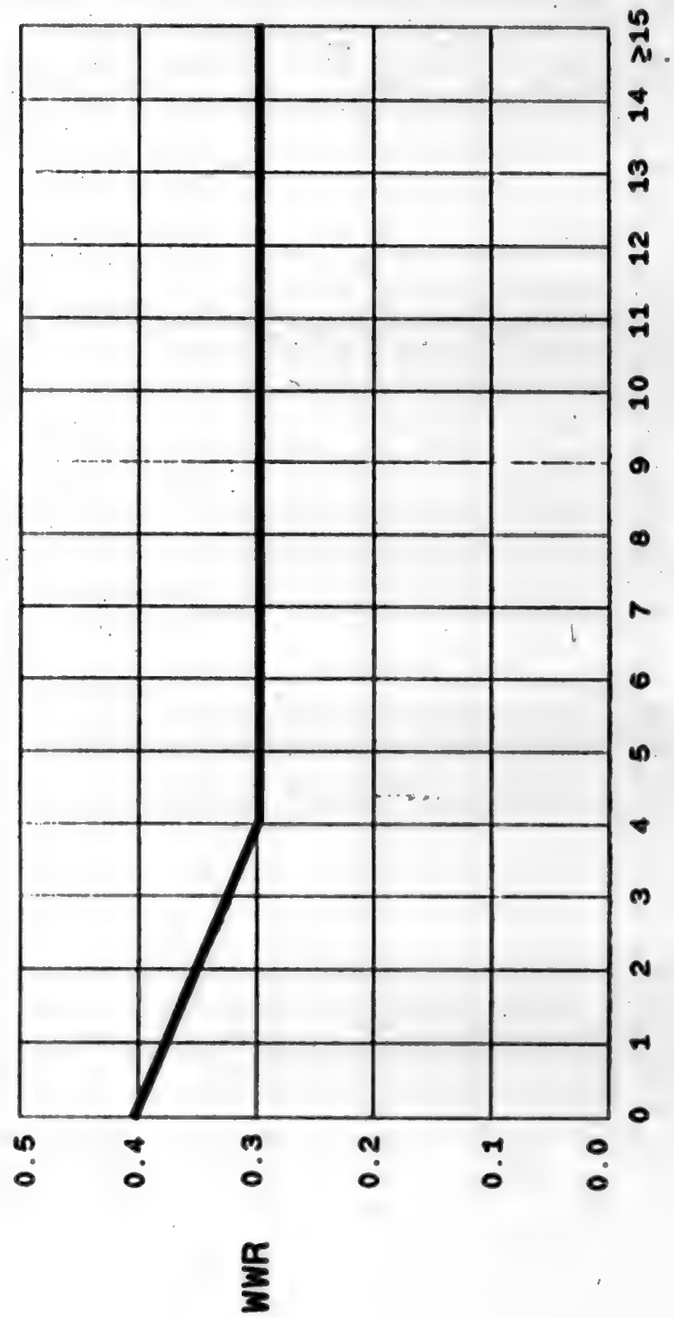


Figure 5B-3

Maximum Shading Coefficient

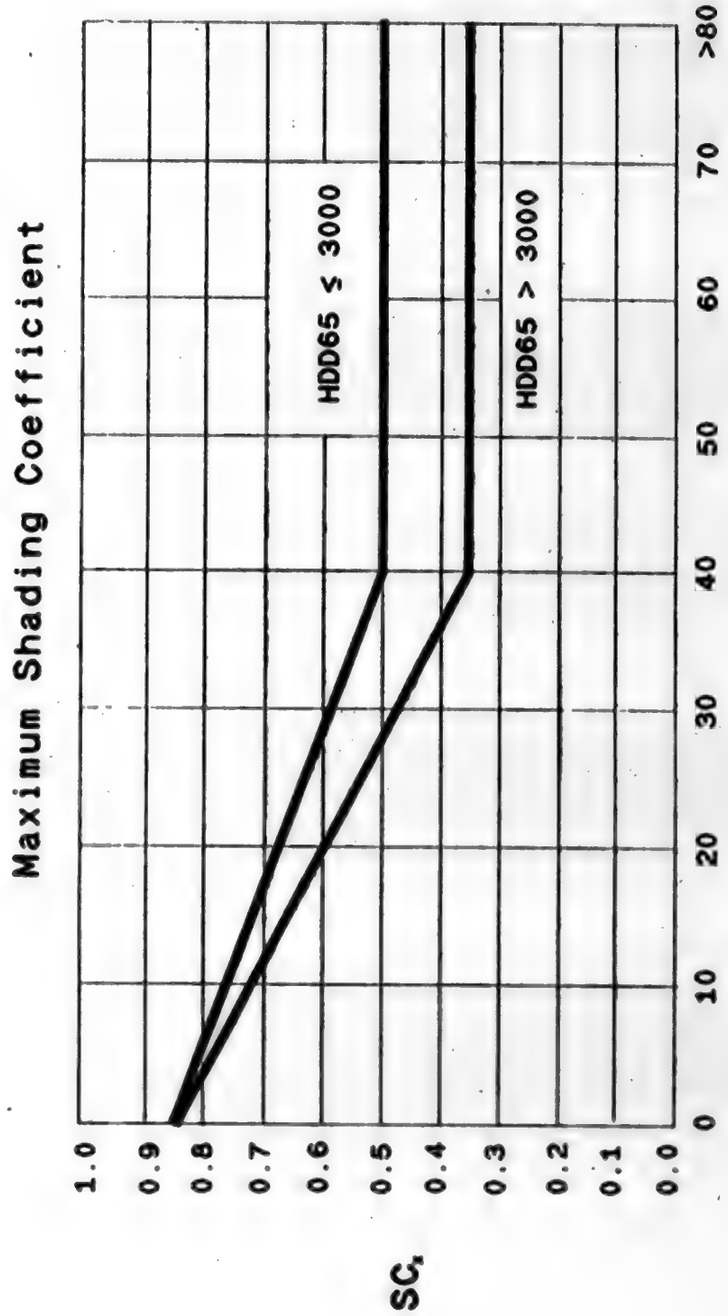
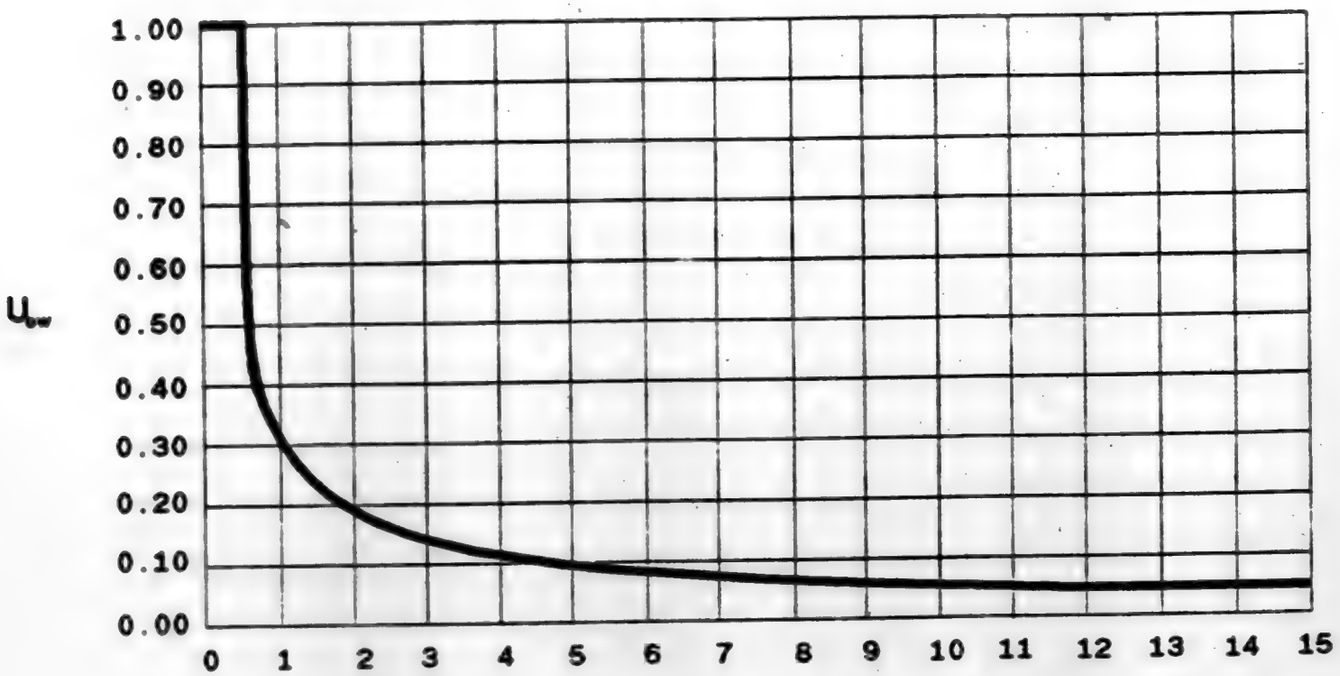


Figure 5B-4

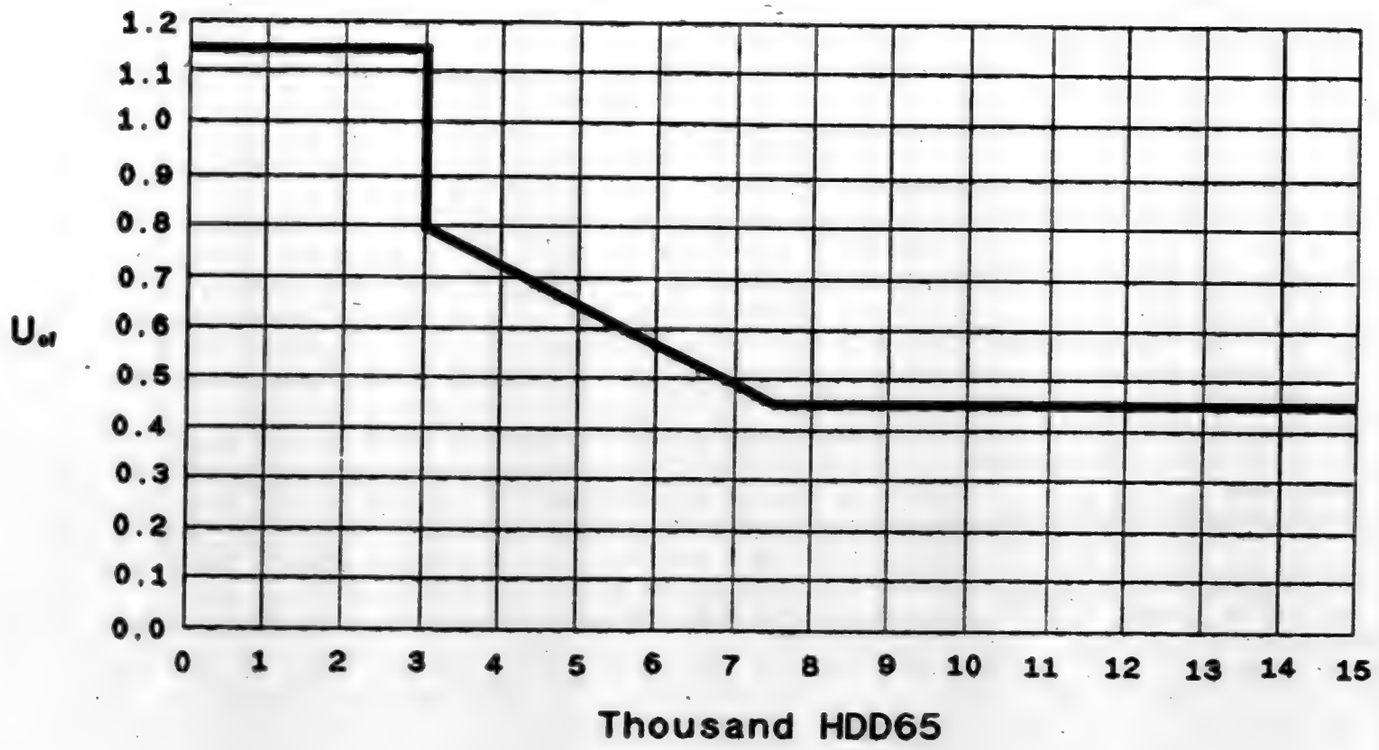
Overall Thermal Transmittance of Opaque Wall Sections



Note: for HDD65 < 196, $U_{ow} = 1.0$
for 196 ≤ HDD65 ≤ 15000, $U_{ow} = 42.787/HDD65^{0.712}$

Figure 5B-5

Maximum Overall Thermal
Transmittance of Fenestration Assemblies



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Attachment SC to § 435.185 Bibliography

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Volume 2: Description of the Development Process: Appendix A: Envelope Research Documentation.

Volume 3: Description of the Testing Process: Appendix B: Envelope Compliance Code Documentation.

Volume 4: Documentation of Test Results: (Each in 3 volumes): A: Small Office Building (Branch Bank); B: Medium Office Building; C: Large Office Building; D: Retail Store (Anchor Store); E: Strip Store; F: Apartment House; G: Hotel; H: Warehouse; I: Assembly Building (Church); J: School.

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§ 435.106 Electric power and distribution.

6.1 General

6.1.1 This section contains minimum requirements for all building electrical systems, except required emergency systems.

6.1.2 A building shall be considered in compliance with this section if the minimum requirements of Section 6.3 are met.

6.2 Principles of Design

6.2.1 Electric Distribution Systems

6.2.1.1 Transformers and generating units shall be sized as close as possible to the actual anticipated load (i.e., oversizing is to be avoided so that fixed thermal losses are minimized).

6.2.1.2 Distribution of electric power at the highest practical voltage and load selection at the maximum power factor consistent with safety shall be considered. The use of distribution system transformers shall be minimized.

6.2.1.3 Tenant submetering can be one of the most cost-effective energy conservation measures available. A large portion of the energy use in tenant facilities occurs simply because there is no economic incentive to conserve.

6.3 Minimum Requirements

6.3.1 Electrical Distribution System

6.3.1.1 All commercial or multi-family high rise residential buildings, having designed connected electric service over 250 kVA, shall have electrical energy consumption check metered on the basis of usage category or tenant occupancy, depending on conditions defined below. For buildings that are occupied by multiple tenants, the metering shall be per tenant, if the tenant has a connected load of 100 kVA or more. HVAC and service hot water systems, shared among tenants, need not meet this requirement but shall be separately metered.

6.3.1.2 The electrical power feeders for each facility for which check-metering is required shall be by tenant and shall be subdivided in accordance with the following categories:

6.3.1.2.1 Lighting and receptacle outlets;

6.3.1.2.2 HVAC and service water heating systems and equipment; and

6.3.1.2.3 Special occupant equipment or systems of more than 20 kW, such as elevators, computer rooms, kitchens, printing equipment, and baling presses.

6.3.1.2.4 *Exception to Section 6.3.1.2:* (a) 10% or less of the loads on a feeder may be from another usage category.

6.3.1.3 The power feeders for each category shall contain portable or permanent submetering prior to or within any primary or secondary distribution panels. Such provisions shall include a separate compartment or panel of adequate size and design to house the necessary voltage and current transformers. An accessible means of attaching clamp-on meters or split-core current transformers shall be provided.

6.3.1.4 The locations of these points of measurement may be central or distributed throughout the building, as appropriate to the layout of the building. A minimum arrangement shall provide a safe method for access to the enclosures through which feeder conductors pass, and have sufficient space to attach clamp-on or split-core current transformers. These enclosures may be separate compartments or combined with electrical cabinets serving another function. Enclosures so furnished shall be identified by available measuring function. A preferred arrangement would include kWh meters and demand registers, or a means to transmit such information to a building energy management control system.

6.3.1.5 In multiple-tenant buildings, where designed connected electrical service is over 250 kVA, each tenant space having a total connected load of more than 100 kVA shall have provision made to permit check-metering of the total tenant load. If the building is served by a common HVAC system, the HVAC loads need not be check metered for each tenant.

6.3.2 Transformers

6.3.2.1 All permanently wired transformers, that are part of the building electrical distribution system, except utility-owned transformers, shall be selected to minimize the combination of no-load, part-load, and full-load losses, without compromising the electrical system operating and reliability requirements.

6.3.2.2 If the total capacity of the transformers exceeds 300 kVA, a calculation of total estimated annual operating costs of the transformer losses shall be made. This calculation shall be based on estimated hours of transformer operation at projected part-load and full-load conditions, and the associated transformer core and coil losses. If appropriate data for projecting this calculation is unavailable, use Form 6.3–1 "Transformer Loss Calculation Estimate" as a basis for making the estimate. The calculations made in accordance with this section shall be used to compare among types of transformers and configurations available to the designer to balance energy costs with necessary operating flexibility, reliability (redundancy), and safety. The projected annual energy costs for the losses of the selected arrangement shall be retained as part of the electrical design documentation.

FORM 6.3-1
TRANSFORMER LOSS CALCULATION ESTIMATE

Transformer Number _____
Rated Temperature Rise _____
Cooling Medium _____

1.	kVA	x	2.	0.	=	3.	kW x 8760h	=	4.	kWh
(Full-load Rating)		x	(No load Loss)		=	(No load kW)	x 8760h	=	(Annual no load Loss)	
5.	h	x	0.1	x		6.	kW	=	7.	kWh
(Annual h of operation @ 10% to 50% of load)		x	0.1	x		(Rated full load coil losses)		=	(Annual part load @ 10% to 50%)	
8.	h	x	0.5	x		9.	kW	=	10.	kWh
(Annual h of operation @ 50% to 80% of load)		x	0.5	x		(Rated full load coil losses)		=	(Annual part load @ 50% to 80%)	
11.	h	x	0.8	x		12.	kW	=	13.	kWh
(Annual h of operation @ 80% to 100% of load*)		x	0.8	x		(Rated full load coil losses)		=	(Annual part load @ 80% to 100%)	
					Total	=	14.			kWh
									(Total annual full and part load losses)	
15.	kWh	x				16.	$ /kWh	=	17.	$
(Total annual full and part load losses)		x				(Average cost of electricity per kWh)		=	(Total annual cost of transformer losses)	

* If transformers are expected to operate regularly (by means of external cooling) at ratings above full-load kVA, a more precise loss calculation procedure is required.

6.3.3 Electric Motors

6.3.3.1 All permanently wired polyphase motors of 1 hp or more serving the building, shall meet the requirements of this section. Motors expected to operate more than 500 hours per year shall have a minimum acceptable nominal full-load motor efficiency no less than that shown in Table 6.3–1.

6.3.3.1.1 Table 6.3–1 applies to motors having nominal 1200, 1800, or 3600 RPM; with open, drip-proof, or TEFC enclosures. Other motor types are exempted from the minimum efficiency requirements of these standards.

6.3.3.1.2 Motor efficiency ratings shall be based on a statistically valid quality control procedure conforming with *ANSI/IEEE 112–1984, Test Method B (Dynamometer)* using *NEMA MG 1–1987* (MG 1–12.54 and MG 1–12.55) for motors below 500 hp. For motors 500 hp and above, *ANSI/IEEE 112–1984, Test Method B or Method F* (Equivalent Circuit Calculation), shall be used.

6.3.3.1.3 Values listed in Table 6.3–1 are nominal efficiencies. Minimum motor efficiencies shall not be less than the corresponding values provided in *NEMA MG 1–12.54.*

TABLE 6.3-1
MINIMUM ACCEPTABLE FULL-LOAD MOTOR EFFICIENCIES FOR SINGLE SPEED POLYPHASE MOTORS[1]

HORSEPOWER	MINIMUM RATED EFFICIENCY PERCENT
1-4	78.5
5-9	86.0
10-19	85.5
20-49	88.5
50-99	90.2
100-124	91.7
125 and above	92.4

1 Motors operating more than 750 hours per year are likely to be cost-effective with efficiencies greater than those listed. The more efficient motors are classified by most manufacturers as "high-efficiency," and are presently available for common applications with typical nominal efficiencies of: 5hp, 89.5%; 10hp, 91.0%; 50hp, 94.1%; 100hp, 95.1%; 200hp, 96.2%. Guidance for evaluating the cost effectiveness of high efficiency motor applications is given in NEMA MG 10-83 (name).

6.3.3.1.4 Motor efficiency shall be tested using a statistically valid quality control procedure conforming with the *IEEE 112A, Test Method B (1978)* (Dynmometer) fan motors E below 500 hp, or *Test Method F (1978)* (Equivalent Circuit Calculation) based on no-load measurements for motors 500 hp and larger.

6.3.3.2 Motor nameplates shall list the minimum and the nominal full-load motor efficiencies and the full-load power factor.

6.3.3.3 Full-load motor power factor for three-phase motors can be calculated from nameplate data by Equation 6.3–1:

% Power Factor=(hp × 745 × 100)/(nominal efficiency × full-load amps × rated voltage ×$3^{0.5}$).

Equation 6.3–1

6.3.3.4 Motor horsepower rating shall not exceed 125% of the calculated maximum load being served, or the next larger standard motor size if a standard rating does not fall within this range.

6.3.4 Operation and Maintenance of Electrical Systems

6.3.4.1 The designer shall specify that building owners be provided with written information that provides basic data relating to the design, operation, and maintenance of the electrical distribution system for the building. This shall include:

6.3.4.1.1 a single-line diagram of the "as-built" building electrical system;

6.3.4.1.2 schematic diagrams of electrical control systems (other than HVAC, covered elsewhere);

6.3.4.1.3 manufacturers' operating and maintenance manuals on active electrical equipment; and

6.3.4.1.4 the Transformer Loss Calculation Estimate if required by Section 6.3.2.2.

§ 435.107 Heating, Ventilation, and Air-Conditioning (HVAC) systems.

7.1 General

7.1.1 This section contains minimum and prescriptive requirements for the design of HVAC systems. It is recommended that the designer evaluate other energy conservation measures that may be applicable to the proposed design.

7.1.2 A building shall be considered in compliance with this section if the following conditions are met:

7.1.2.1 The minimum requirements of Section 7.3 are met; and

7.1.2.2 The HVAC system design complies with the prescriptive criteria of section 7.4. For the design of HVAC systems that incorporate innovative or alternate design strategies, the compliance paths set forth in Section 11.0 or 12.0 should be used.

7.2 Principles of Design

7.2.1 Control of Equipment Loads

7.2.1.1 The thermal impact of equipment and appliances shall be minimized by use of hoods, radiation shields, or other confining techniques, and by use of controls to assure that such equipment is turned off when not needed. In addition, major heat-generating equipment shall, where practical, be located where it can balance other heat losses. For example, computer centers or kitchen areas could be located in the north or northwest perimeter areas of buildings depending on climate and prevailing wind directions. In addition, heat recovery shall be specifically considered for this equipment.

7.2.2 HVAC System Design

7.2.2.1 Separate HVAC systems shall be considered to serve areas expected to operate on widely differing operating schedules or design conditions. For instance, systems serving office areas should generally be separate from those serving retail areas. When a single system serves a multi-tenant building, provisions shall be made to shut-off or set-back the heating and cooling to each area independently.

7.2.2.2 Spaces with relatively constant and weather-independent loads may be served with systems separate from those serving perimeter spaces. Areas with special temperature or humidity requirements, such as computer rooms, shall be served by systems separate from those serving areas that require comfort heating and cooling only, alternatively, these areas shall be served by supplementary or auxiliary systems.

7.2.2.3 The supply of zone cooling and heating shall be sequenced to prevent the simultaneous operation of heating and cooling systems for same space. Where this is not possible due to ventilation or air circulation requirements, air quantities shall be reduced as much as possible before reheating, recooling, or mixing hot and cold air streams. Finally, supply air temperature shall be reset to extend economizer operations and to reduce reheat, recool, or mixing losses.

7.2.2.4 Systems serving areas with significant internal heat gains (lighting, equipment, and people), especially interior zones with little or no exposure to outside air, shall be designed to take advantage of mild or cool weather conditions to reduce cooling energy if heat recovery systems are not used. These systems, called air or water economizers, shall be designed to

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provide a partial reduction in cooling loads even when mechanical cooling must be used to provide the remainder of the load. Economizer controls shall be integrated with the mechanical cooling (leaving air temperature) controls so that mechanical cooling is only operated when necessary and so supply air is not overcooled to a temperature below the desired supply temperature. The systems and controls shall be designed so that economizer operation does not increase heating energy use. For instance, single fan dual duct or multizone systems that use the same mixed air plenum for both heating and cooling supplies shall not be used.

7.2.2.5 Controls shall be provided to allow systems to operate in an occupied mode and an unoccupied mode. In the occupied mode, controls shall provide for a gradually changing control point as system demands change from cooling to heating. In the unoccupied mode, ventilation and exhaust systems shall be shut off if possible, and comfort heating and cooling systems shall be shut off except to maintain "setback" space conditions. The setback conditions shall be the minimum and maximum levels required to prevent damage to the building or its contents and provide for a reasonable morning pick-up period. Note however that night setback may not conserve energy in buildings with large amounts of thermal mass.

7.2.2.6 In areas where diurnal temperature swings and humidity levels permit, the judicious coupling of air distribution systems and building structural mass may be considered to allow the use of night-time precooling to reduce the use of day-time mechanical cooling.

7.2.2.7 High ventilation, such as in hospital operating rooms, can impose enormous heating and cooling loads on HVAC equipment. In these cases, consideration shall be given to the use of recirculating filtered and cleaned air, rather than 100% outside air, and pre-heating outside air with solar systems or reclaimed heat from other sources.

7.2.3 Energy Transport Systems

7.2.3.1 Energy shall be transported by the most energy efficient means possible. The following options, are listed in order of efficiency from the (most efficient) lowest energy transport burden to the highest:

7.2.3.1.1 Electric Wire or Fuel Pipe.

7.2.3.1.2 Two-Phase Fluid Transfer (Steam or Refrigerant).

7.2.3.1.3 Single-Phase Liquid Fluid (Water, Glycol, Etc.), and

7.2.3.1.4 Air.

7.2.3.2 The distribution system shall be selected to complement other system parameters such as control strategies, storage capabilities, and conversion and utilization system efficiencies.

7.2.3.3 Steam Systems

7.2.3.3.1 Provisions for seasonal or "non-use time" shutdown shall be incorporated.

7.2.3.3.2 The venting of steam and ingestion of air shall be minimized with the design directed toward full vapor performance.

7.2.3.3.3 Subcooling shall generally be prevented.

7.2.3.3.4 Condensate shall be returned to boilers or source devices at the highest possible temperature.

7.2.3.4 Water Systems

7.2.3.4.1 Design flow quantity shall be minimized by designing for the maximum practical temperature differential.

7.2.3.4.2 Flow quantity shall be varied with load where possible.

7.2.3.4.3 Designs shall be for lowest practical pressure rise (or drop).

7.2.3.4.4 Operating and idle control modes shall be provided.

7.2.3.4.5 When locating equipment, the critical pressure path shall be identified and the runs sized for minimum practical pressure drop.

7.2.3.5 Air Systems

7.2.3.5.1 Air flow quantity shall be minimized by careful load analysis and an effective distribution system. If the psychometric nature of the application allows, the supply air quantity shall vary with the sensible load (i.e., VAV systems). The fan pressure requirement shall be held to the lowest practical value. Fan pressure shall be avoided as a source for control power.

7.2.3.5.2 Each fan system shall be designed and controlled to reduce mechanical cooling requirements by taking advantage of favorable weather conditions.

7.2.3.5.3 "Normal" and "idle" control modes shall be provided for the fan systems as well as the psychometric systems.

7.2.3.5.4 Duct run distances shall be as short as possible, and the runs on the critical pressure path sized for minimum practical pressure drop.

7.2.4 Radiant Heating

7.2.4.1 Radiant heating systems shall be considered in lieu of convective or all-air heating systems to heat areas which experience infiltration loads in excess of two (2) air changes per hour at design heating conditions.

7.2.4.2 Radiant heating systems should be considered for areas with high ceilings, for spot heating, and for other applications where radiant heating may be more energy efficient than convective or all-air heating systems.

7.2.5 Energy Recovery

7.2.5.1 Systems that recover energy should be considered when rejected fluid is of adequate temperature and a simultaneous need for energy exists for a significant number of operating hours.

7.3 Minimum Requirements

7.3.1 Calculation Procedures

7.3.1.1 Heating and cooling system design loads for the purpose of sizing systems and equipment shall be determined in accordance with the procedures described in the *ASHRAE Handbook, 1985 Fundamentals Volume*, or a similar computation procedure. The design parameters specified in sections 7.3.1.2 through 7.3.1.10 shall be used for calculational purposes only and are not requirements or recommendations for operating setpoints.

7.3.1.2 *Indoor Design Conditions.* Indoor design temperature and humidity conditions for general comfort applications shall be in accordance with the comfort criteria established in *ANSI/ASHRAE Standard 55–1981*, "Thermal Environmental Conditions for Human Occupancy," and/or Chapter 8 of the *ASHRAE Handbook, 1985 Fundamentals Volume*, except that winter humidification and summer dehumidification are not required.

7.3.1.2.1 *Exceptions to Section 7.3.1.2:*

(a) Health care institutions and similar facilities where the indoor conditions may not be appropriate for the health and safety of occupants; and

(b) Where special room temperature and/or humidity conditions are required by a process or procedure, other than comfort, such as rooms used for surgery or data processing.

7.3.1.3 *Outdoor Design Conditions.* Outdoor design conditions shall be selected for listed locations from the *ASHRAE Handbook, 1985 Fundamentals Volume*, from the columns of 99% values for heating design and 2.5% values for cooling design. Local weather data from the National Weather Service of the National Oceanic and Atmospheric Administration based on the same 99% and 2.5% values (or statistically similar annualized values such as 0.2% winter and 0.5% summer) may be used.

7.3.1.3.1 *Exception to Section 7.3.1.3:*

(a) Where necessary to assure the prevention of damage to the building or to material and equipment within the building, the median of annual extremes for heating and 1% column for cooling may be used.

7.3.1.4 *Ventilation.* Outdoor air ventilation rates shall be selected from section 6.1 of *ASHRAE Standard 62–1981*, "Ventilation for Acceptable Indoor Air Quality."

7.3.1.4.1 *Exception to Section 7.3.1.4:*

(a) Outdoor air quantities, exceeding those shown in *ASHRAE Standard 62–1981*, required because of special occupancy or process requirements, source control of air contamination, or local codes.

7.3.1.5 *Infiltration.* Infiltration for heating and cooling design loads shall be calculated by the procedures in the *ASHRAE Handbook, 1985 Fundamentals Volume*, or a similar computation procedure.

7.3.1.6 *Envelope.* Building envelope heating and cooling loads shall be based on envelope characteristics, such as thermal conductance, shading coefficient and air leakage, consistent with the values used in the proposed building design to demonstrate compliance with section 5.0.

7.3.1.7 *Lighting.* Lighting loads shall be based on proposed design lighting levels or power budgets consistent with section 3.0. Lighting may be ignored for heating load calculations.

7.3.1.8 *Other Loads.* Other HVAC system loads, such as those due to people and equipment, shall be based on design data compiled from at least one of the following sources:

7.3.1.8.1 Actual information based on the intended use of the building;

7.3.1.8.2 Published data from manufacturers' technical publications and from technical society publications such as the *ASHRAE Handbook, 1987 HVAC Systems Applications Volume;*

7.3.1.8.3 Alereza, "Estimates of Recommended Heat Gains Due to Commercial Appliances and Equipment," *ASHRAE Transactions 90 (Pt. 2A), 25–28* (1984);

7.3.1.8.4 Default values to be used in determining the design energy budget in section 11.0 or 12.0 taken from Tables 11–2, 11–3, 11–4 and 11–6; and

7.3.1.8.5 Other data based on designer's experience of expected loads and occupancy patterns.

7.3.1.8.6 *Exception to Section 7.3.1.8:*

(a) Internal heat gains may be ignored for heating load calculations.

7.3.1.9 *Safety Factor.* Design loads may, at the designer's option, be increased by as much as 10% to account for unexpected loads or changes in space usage.

7.3.1.10 *Pick-up Loads.* Transient loads such as warm-up or cool-down loads that occur after off-hour setback or shutoff, may be calculated from basic principles, based on the heat capacity of the building and its contents, the degree of setback, and desired recovery time, or may be assumed to be up to 30% for heating and 10% for cooling of the steady-state design loads.

7.3.2 System and Equipment Sizing

7.3.2.1 HVAC systems and equipment shall be sized to provide no more than the space and system loads require, as calculated in accordance with section 7.3.1.

7.3.2.1.1 *Exceptions to Section 7.3.2.1:*

(a) Equipment capacity may exceed the design load if the equipment selected is the smallest size needed to meet the load within available options of equipment;

(b) Equipment whose capacity exceeds the design load may be specified if calculations demonstrate that oversizing can be shown not to increase annual energy use;

(c) Stand-by equipment may be installed if controls and devices are provided that allow stand-by equipment to operate automatically only when the primary equipment is not operating;

(d) Multiple units of the same equipment type, such as multiple chillers and boilers, with combined capacities exceeding the design load may be specified to operate concurrently only if controls are provided that sequence or otherwise optimally control the operation of each unit based on cooling or heating load;

(e) For unitary equipment with both heating and cooling capability, only one function, either the heating or the cooling, need meet the requirements of this subsection. Capacity for the other function shall be, within available equipment options, the smallest size necessary to meet the load; and

(f) For buildings complying with section 11.0 or 12.0, equipment of higher capacity than the design load may be specified if the oversized equipment is modeled in the building energy analysis of the proposed design and the proposed design complies with the standards.

7.3.3 Separate Air Distribution Systems

7.3.3.1 Zones in a building that are expected to operate non-concurrently for 750 or more hours per year shall either be served by separate air distribution systems, or off-hour controls shall be provided in accordance with section 7.3.5.3.

7.3.3.2 Zones with special process temperature and/or humidity requirements shall be served by separate air distribution systems from those serving zones requiring only comfort heating and/or cooling, or supplementary provisions shall be included to allow the primary systems to be specifically controlled for comfort purposes only.

7.3.3.2.1 *Exception to Section 7.3.3.2:*

(a) Zones, requiring comfort heating and/or cooling, that are served by a system primarily used for process temperature and humidity control, need not be served by a separate system if the total supply air to these zones is no more than 25% of the total system supply air, or the zones total conditioned floor area is less than 1000 ft².

7.3.3.3 Zones having substantially different heating or cooling load characteristics, such as perimeter zones in contrast to interior zones, shall not be served by a single multiple zone air distribution system.

7.3.4 Temperature Controls

7.3.4.1 *System Control.* Each HVAC system shall include at least one temperature control device.

7.3.4.2 *Zone Controls.* The supply of heating and/or cooling energy to each zone shall be controlled by an individual thermostat located within the zone.

7.3.4.2.1 *Exceptions to Section 7.3.4.2:*

(a) Independent perimeter systems may serve multiple zones of the primary/interior system with the following limitations:

(1) The perimeter system shall include at least one thermostatic control zone for each major building exposure having exterior walls facing only one orientation for 50 contiguous feet or more; and

(2) The perimeter system heating and/or cooling supply shall be controlled by thermostat controls located within the zone(s) served by the system; and

(b) A dwelling unit may be considered a single zone.

7.3.4.3 Zone thermostats used to control comfort heating shall be capable of being set, locally or remotely, by adjustment or selection of sensors, down to 55 °F.

7.3.4.4 Zone thermostats used to control comfort cooling shall be capable of being set, locally or remotely, by adjustment or selection of sensors, up to 85 °F.

7.3.4.5 Zone thermostats used to control both heating and cooling shall be capable of providing a temperature range or dead band of at least 5 °F within which the supply of heating and cooling energy to the zone is shut off or reduced to a minimum.

7.3.4.5.1 *Exceptions to Section 7.3.4.5:*

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(a) For buildings complying with Section 11.0 or 12.0, dead band controls are not required if, in the building energy analysis, heating and cooling thermostat setpoints are set to the same value between 70 °F and 75 °F and assumed to be constant throughout the year;

(b) Special occupancy, special usage or construction code requirements where dead band controls are not appropriate, adjustable single setpoint thermostats may be used; and

(c) Thermostats that require manual changeover between heating and cooling modes.

7.3.5 Off-hour Controls

7.3.5.1 Each HVAC system shall have automatic control setback and/or shutdown of equipment during periods of non-use or alternate use of the spaces served by the system.

7.3.5.1.1 *Exceptions to Section 7.3.5.1:*

(a) Systems serving areas expected to operate continuously;

(b) Where equipment with a full load demand of 2kW (6826 Btu/h) or less may be controlled by readily accessible manual off-hour controls;

(c) Where setback or shutdown will not result in a decrease in overall building energy use.

7.3.5.2 Outside air supply and/or exhaust systems shall be equipped with motorized or gravity dampers or other means of automatic volume shutoff or reduction during periods of non-use or alternate use of the spaces served by the system.

7.3.5.2.1 *Exceptions to Section 7.3.5.2:*

(a) Individual ventilation systems when design air flow is 3000 cfm or less;

(b) Systems that operate continuously;

(c) When restricted by code, such as at combustion air intakes; or

(d) When gravity and other non-electrical ventilation systems may be controlled by readily accessible manual damper controls.

7.3.5.2.2 Dampers may be required in some climates to prevent equipment damage due to freezing and/or to provide proper warm-up control.

7.3.5.3 Systems that serve areas that operate non-concurrently for 750 or more hours per year shall have isolation devices and controls for shut off or set back of heating and cooling to each zone independently. Isolation is not required for zones expected to operate continuously or expected to be inoperative only when all other zones are inoperative.

7.3.5.3.1 For buildings where occupancy patterns are not known at the time of system design, isolation areas may be predesignated.

7.3.5.3.2 Zones may be grouped into a single isolation area providing the total conditioned floor area does not exceed 25,000 ft^2 per group nor include more than one floor.

7.3.6 Humidity Control

7.3.6.1 If a system maintains specific relative humidities by adding moisture, a humidistat shall be provided.

7.3.6.2 If comfort humidification is provided, the system shall be designed to prevent the use of fossil fuel or electricity to maintain relative humidity in excess of 30%.

7.3.6.3 If comfort dehumidification is provided, the system shall be designed to prevent the use of fossil fuel or electricity to reduce relative humidity below 60%.

7.3.7 Materials and Construction

7.3.7.1 Insulation required by Section 7.3.7.2 and 7.3.7.3 shall be suitably protected from damage. Insulation shall be installed in accordance with the *Midwest Insulation Contractors Association "Commercial and Industrial Insulation Standards,"* 1983.

7.3.7.2 *Piping Insulation.* All HVAC system piping installed to serve buildings and within buildings shall be thermally insulated in accordance with Table 7.3-1.

BILLING CODE 6560-01-M

Table 7.3-1
Minimum Pipe Insulation (In.)[1]

Fluid Design Operating Temperature Range, °F	Insulation Conductivity		Nominal Pipe Diameter (In.)					
	Conductivity Range Btu*in./F°h*ft²	Mean Rating Temperature °F	Runouts[2] up to 2	1 and less	1-1/4 to 2	2-1/2 to 4	5 & 6	8 and up
Heating Systems (Steam, Steam Condensate, & Hot Water)								
351-450	0.32-0.34	250	1.5	2.5	2.5	3.0	3.5	3.5
251-350	0.29-0.31	200	1.5	2.0	2.5	2.5	3.5	3.5
201-250	0.27-0.30	150	1.0	1.5	1.5	2.0	2.0	3.5
141-200	0.25-0.29	125	0.5	1.5	1.5	1.5	1.5	1.5
105-140	0.24-0.28	100	0.5	1.0	1.0	1.0	1.5	1.5
Domestic and Service Hot Water Systems[3]								
105-140	0.24-0.28	100	0.5	1.0	1.0	1.5	1.5	1.5
Cooling Systems (Chilled Water, Brine, & Refrigerant)[4]								
40-55	0.23-0.27	75	0.5	0.5	0.75	1.0	1.0	1.0
Below 40	0.23-0.27	75	1.0	1.0	1.5	1.5	1.5	1.5

1. For minimum thicknesses of alternative insulation types, see Section 7.3.7.2.2.
2. Runouts to individual terminal units not exceeding 12 ft in length.
3. Applies to recirculating sections of service or domestic hot water systems and first 8 ft from storage tank for non-recirculating systems.
4. The required minimum thicknesses do not consider water vapor transmission and condensation. Additional insulation and/or vapor retarders may be required to limit water vapor transmission and condensation.

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7.3.7.2.1 *Exceptions to Section 7.3.7.2:*

(a) For manufacturer installed piping within HVAC equipment tested and rated in accordance with Section 8.3;

(b) For piping conveying fluids at temperatures between 55 °F and 105 °F;

(c) For piping conveying fluids that have not been heated or cooled through the use of fossil fuels or electricity; and

(d) When calculations demonstrate that heat gain and/or heat loss to or from piping without insulation will not increase building energy use.

7.3.7.2.2 *Alternative Insulation Types.* Insulation thicknesses in Table 7.3–1 are based on insulation with thermal conductivities listed in Table 7.3–1 for each fluid operating temperature range, rated in accordance with *ASTM C 335–84*, "Test Method for Steady-State Heat Transfer Properties of Horizontal Pipe Insulations," at the mean temperature listed in the table. For insulating materials having conductivities more than of those shown in the Table 7.3–1 for the applicable fluid operating temperature range and at the mean rating temperature shown, when rounded to the nearest 1/100th Btu/h·°F·ft², the minimum thickness shall be determined in accordance with Equation 7.3–1:

$$T = PR \times [(1 + t/PR)^{K/k} - 1]$$

Equation 7.3–1

Where:

T = minimum insulation thickness for material with conductivity K, in.

PR = pipe actual outside radius, in.

t = insulation thickness from Table 7.3–1, in.

K = conductivity of alternate material at the mean rating temperature indicated in Table 7.3–1 for the applicable fluid temperature range, Btu·in./h·°F·ft²

k = the lower value of conductivity listed in Table 7.3–1 for the applicable fluid temperature range, Btu·in./h·°F·ft²

7.3.7.3 *Air Handling System Insulation.* All air handling ducts, plenums, and other enclosures installed as part of an HVAC air distribution system shall be thermally insulated in accordance with Table 7.3–2 (This table comes from Section 1005 of the 1985 Uniform Mechanical Code).

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Table 7.3-2
Minimum Duct Insulation[1]

Duct Location	Cooling[2]		Heating[3]	
	Annual Cooling Degree Days Base 65 °F	Insulation R-value[4] ft²·h·°F/Btu	Annual Heating Degree Days Base 65 °F	Insulation R-value[4] ft²·h·°F/Btu
Exterior of building	below 500	3.3	below 1500	3.3
	500 to 1150	5.0	1500 to 4500	5.0
	1151 to 2000	6.5	4501 to 7500	6.5
	above 2000	8.0	above 7500	8.0
Inside of building envelope or in unconditioned spaces[7]				
TD[5] <=15		None Requ'd		None Req'd
40 >= TD[5] > 15	----	3.3	----	3.3
TD[5] > 40	----	5.0[6]	----	5.0[6]

1. Insulation R-values shown are for the insulation as installed and do not include film resistance. The required minimum thicknesses do not consider water vapor transmission and condensation. Additional insulation and/or vapor retarders may be required to limit vapor transmission and condensation. For ducts which are designed to convey both heated and cooled air, duct insulation shall be as required by the most restrictive condition. Where exterior walls are used as plenum walls, wall insulation shall be as required by the most restrictive condition of this Section or Section 5.0.
2. Cooling ducts are those designed to convey mechanically heated air or return ducts in such systems.
3. Heating ducts are those designed to convey mechanically heated air or return ducts in such systems.
4. Insulation resistance measured on a horizontal plane in accordance with ASTM C518-85 at a mean temperature of 75 °F at the installed insulation thickness.
5. TD is defined as the temperature difference at design conditions (see Section 7.3.1) between the space within which the duct is located and the design air temperature in the duct.
6. Insulation resistance for runnouts to terminal devices less than 10 feet in length need not exceed 3.3 ft²·h·°F/Btu.
7. Unconditioned spaces include crawl spaces and attics.

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7.3.7.3.1 *Exception to section 7.3.7.3:* Duct insulation is not required in any of the following cases:

(a) Manufacturer installed plenums, casings or ductwork furnished as a part of HVAC equipment tested and rated in accordance with section 8.3; and

(b) When calculations demonstrate that heat gain and/or heat loss to or from ducts without insulation will not increase building energy use.

7.3.7.4 *Duct Construction.* All air handling ductwork and plenums shall be constructed, erected and tested in accordance with the following Sheet Metal and Air Conditioning Contractors National Association (SMACNA) Standards: *HVAC Duct System Design Manual, 1988; HVAC Duct Leakage Test Manual, 1985;* and *Fibrous Glass Construction Standards,* 5th edition, 1979.

7.3.7.4.1 Ductwork designed to operate at static pressure differences greater than 3 in. W.C. shall be leak tested and conform with the following requirements of the *HVAC Duct Leakage Manual, 1985:* Test procedures shall be in accordance with those outlined in section 5.0 of the manual, or equivalent; test reports shall be provided in accordance with section 6.0 of the manual, or equivalent; the tested duct leakage class at a test pressure equal to the design duct pressure class rating shall be equal to or less than leakage class 6 as defined in section 4.1 of the manual. Leakage testing may be limited to representative sections of the duct system but in no case shall such tested sections include less than 25% of the total installed duct area for the designated pressure class.

7.3.7.4.2 Where supply ductwork designed to operate at static pressure differences from ¼ in. to 2 in. W.C. are located outside of the conditioned space, including return plenums, joints shall be sealed in accordance with Seal Class C, as defined in the SMACNA manuals referenced above. Pressure sensitive tape shall not be used as the primary sealant for such ducts designed to operate at 1 in. W.C. pressure difference or greater.

7.3.8 Completion Requirements

7.3.8.1 An operating and maintenance manual shall be provided to the building owner. The manual shall include basic data relating to the operation and maintenance of HVAC systems and equipment. Required routine maintenance actions shall be clearly identified. Where applicable, HVAC controls information such as diagrams, schematics, control sequence descriptions, and maintenance and calibration information shall be included.

7.3.8.2 Air system balancing shall be accomplished in a manner to minimize throttling losses and then fan speed shall be adjusted to meet design flow conditions. Balancing procedures shall be in accordance with those established by the National Environmental Balancing Bureau (NEBB), the Association of Air Balancing Council (AABC), or similar procedures.

7.3.8.2.1 *Exception to section 7.3.8.2:*

(a) Damper throttling may be used for air system balancing with fan motors of 1 hp or less, or if throttling results in no greater than ⅛ hp fan horsepower draw above that required if the fan speed were adjusted.

7.3.8.3 Hydronic system balancing shall be accomplished in a manner to minimize throttling losses and then the pump impeller shall be trimmed or pump speed shall be adjusted to meet design flow conditions.

7.3.8.3.1 *Exceptions to section 7.3.8.3:* Valve throttling may be used for hydronic systems balancing under any of the following conditions:

(a) Pumps with pump motors of 10 hp and less;

(b) If throttling results in pump horsepower draw no greater than 3 hp above that required if the impeller were trimmed;

(c) To reserve additional pump pressure capability in open circuit piping systems subject to fouling. Valve throttling pressure drop shall not exceed that expected for future fouling; or

(d) Where it can be shown that throttling will not increase overall building energy use.

7.3.8.4 HVAC control systems shall be tested to assure that control elements are calibrated, adjusted, and in proper working condition.

7.4 Heating, Ventilation and Air-Conditioning (HVAC) Systems—Prescriptive Compliance Alternative

7.4.1 Zone Controls

7.4.1.1 Zone thermostatic and humidistatic controls shall be capable of operating in sequence, the supply of heating and cooling energy to the zone. The controls shall prevent:

7.4.1.1.1 Reheating (heating air that is cooler than system mixed air);

7.4.1.1.2 Recooling (cooling air that is warmer than system mixed air);

7.4.1.1.3 Mixing or the simultaneous supply of air that has been previously mechanically heated and air that has been previously cooled, either by mechanical refrigeration or by economizer systems; and

7.4.1.1.4 Other simultaneous operation of heating and cooling systems to one zone.

7.4.1.2 *Exceptions to Section 7.4.1.1:*

7.4.1.2.1 Variable air volume systems that, during periods of occupancy, are designed to reduce the air supply to each zone to a minimum before reheating, recooling, or mixing during periods of occupancy. The minimum volume setting shall be no greater than the larger of the following:

(a) 30% of the peak supply volume;

(b) The minimum volume required to meet the ventilation requirements of Section 7.3.1.4; and

(c) 0.4 cfm/ft² of conditioned zone area. In addition, supply air temperatures shall be automatically reset based on representative building loads or outside air temperature by at least 25% of the difference between the design supply air and room air temperature. Zones expected to experience relatively constant loads, such as interior zones, shall be designed for the fully reset supply temperature. Supply air reset control is not required if calculations demonstrate that it increases overall building energy use;

7.4.1.2.2 Zones where special pressurization relationships or cross-contamination requirements are such that variable air volume systems are impractical, such as some areas of hospitals and laboratories. In these cases, systems shall include automatic supply air reset controls in accordance with section 7.4.1.2.1 above;

7.4.1.2.3 At least 75% of the energy for reheating or providing warm air in mixing systems is provided from site-recovered energy that would otherwise be wasted, or from non-depletable energy sources;

7.4.1.2.4 Zones where specific humidity levels are required to satisfy process needs, such as computer rooms and museums (see section 7.3.3.2); and

7.4.1.2.5 Zones with a peak supply air quantity of 300 cfm or less.

7.4.2 Economizer Controls

7.4.2.1 Each fan system shall be designed to take advantage of favorable weather conditions to reduce mechanical cooling requirements. The system shall include either of the following:

7.4.2.1.1 A temperature or enthalpy air economizer system that is capable of automatically modulating outside air and return air dampers to provide up to 85% outside air for cooling; or

7.4.2.1.2 A water economizer system that is capable of cooling supply air by direct and/or indirect evaporation. The system shall be designed and controlled to be able to provide 100% of the system cooling load at outside air temperatures of 50 °F dry-bulb/45 °F wet-bulb and below. Each economizer system shall be capable of providing partial cooling even when additional mechanical cooling is required to meet the remainder of the cooling load.

7.4.2.1.3 *Exceptions to Section 7.4.2.1:*

(a) Individual fan/cooling units with supply capacity of less than 3,000 cfm or a total cooling capacity less than 90,000 Btu/h. The total capacity of such units per building complying by this exception shall not exceed 600,000 Btu/h per building or 10% of the total installed cooling capacity, whichever is larger;

(b) Systems with air or evaporatively cooled condensers and for which one of the following is true:

(1) The system is located where the quality of the air, as defined in *ASHRAE Standard 62–1981,* is so poor as to require extensive treatment of the air, and

(2) Calculations indicate that the use of outdoor air cooling affects the operation of other systems, such as humidification, dehumidification, and supermarket refrigeration systems and will increase overall building energy use;

(c) Calculations demonstrate that the overall building energy use for alternative designs, such as internal/external zone heat recovery systems, are less than those for an economizer system;

(d) The system is located where the outdoor summer wet-bulb design condition (2.5% occurrence, *ASHRAE Handbook, 1985 Fundamentals Volume)* is more than 72 °F and annual HDD65 are less than 2,000;

(e) Systems that serve envelope dominated spaces whose design space sensible cooling load, excluding transmission and infiltration loads, is less than or equal to transmission and infiltration losses at an outdoor temperature of 60 °F;

(f) Systems serving residential spaces including hotel/motel rooms;

(g) Cooling systems for which 75% of its annual energy consumption is provided by site-recovered energy that would otherwise be wasted, or from non-depletable energy sources; and

(h) The zone(s) served by the system each have operable openings (windows, doors, etc.), the openable area of which is greater than 5% of the conditioned floor area. This exception applies only to spaces open to and within 20 ft of the operable openings. Automatic controls shall be provided that lockout system mechanical cooling when outdoor air temperatures are less than 60 °F.

7.4.2.2 Economizer systems shall be capable of providing partial cooling even when additional mechanical cooling is required to meet the remainder of the cooling load.

7.4.2.2.1 *Exceptions to Section 7.4.2.2.*

(a) Direct expansion systems may include controls to reduce the quantity of outside air as required to prevent coil frosting at the lowest step of compressor unloading. Individual direct expansion units that have a cooling capacity of 160,000 Btu/h or less may use economizer controls that preclude economizer operation whenever mechanical cooling is required simultaneously; and

(b) Systems in climates with less than 750 average hours per year between 8 a.m. and 4 p.m. when the ambient dry bulb temperatures are between 55 °F and 69 °F inclusive. See Attachment 5A for climate data for 234 U.S. cities.

7.4.2.3 System design and economizer controls shall be such that economizer operation does not increase the building heating energy use during normal operation.

7.4.2.3.1 *Exception to section 7.4.2.3:*

(a) At least 75% of the energy for heating is provided from site-recovered energy that would otherwise be wasted, or from non-depletable energy sources.

7.4.3 Fan System Design Requirements.

7.4.3.1 The following design criteria apply to all HVAC fan systems used for comfort heating, ventilating and/or cooling. For the purposes of this subsection, the energy demand of a fan is the sum of the demand of all fans that are required to operate at design conditions to supply air from the heating and/or cooling source to the conditioned space(s) and return it back to the source or exhaust it to the outdoors.

7.4.3.1.1 *Exceptions to section 7.4.3.1:*

(a) Systems with total fan system motor horsepower of 10 hp or less;

(b) Unitary equipment for which the energy used by the fan is considered in the efficiency ratings of Section 8.0; and

(c) Total fan energy demand need not include the additional power required by air treatment or filtering systems with final pressure drops in excess of 1 in. W.C.

7.4.3.2 Constant Volume Fan Systems.

7.4.3.2.1 For supply and return fan systems that provide a constant air volume whenever the fans are operating, the power required for the combined fan system at design conditions shall not exceed 0.8 W/cfm of supply air.

7.4.3.3 Variable Air Volume (VAV) Fan Systems.

7.4.3.3.1 For supply and return fan systems that vary system air volume automatically as a function of load, the power required by the motors for the combined system at design conditions shall not exceed 1.25 W/cfm.

7.4.3.3.2 Individual VAV fans with motors 75 hp and larger shall include controls and devices necessary for the fan motor to control demand to no more than 50% of design wattage at 50% of design air volume, based on manufacturer's test data.

7.4.4 Pumping System Design Criteria.

7.4.4.1 The following design criteria apply to all HVAC pumping systems used for comfort heating and/or cooling. For the purposes of this section, the energy demand of a pumping system is the sum of the demand of all pumps that are required to operate at design conditions to supply fluid from the heating and/or cooling source to the conditioned space(s) or heat transfer device(s) and return it to the source.

7.4.4.1.1 *Exception to section 7.4.4.1:*

(a) Systems with total pump system motor horsepower of 10 hp or less.

7.4.4.2 *Friction Rate.* Piping systems shall be designed at a design friction pressure loss rate of no more than 4.0 ft of water per 100 equivalent ft of pipe. Lower friction rates may be required for proper noise or corrosion control.

7.4.4.3 *Variable Flow.* Pumping systems that serve control valves designed to modulate or step open and close as a function of load, shall be designed for variable fluid flow. The system shall be capable of reducing flow to 50% of design flow or less. Flow may be varied by one of several methods, including, but not limited to, variable speed driven pumps, staged multiple pumps, or pumps riding their characteristic performance curves.

7.4.4.3.1 *Exceptions to section 7.4.4.3:*

(a) Systems where a minimum flow greater than 50% of the design flow is required for the proper operation of equipment served by the system, such as chillers;

(b) Systems that serve no more than one control valve;

(c) Where the overall building energy use resulting from an alternative design, such as a constant flow/variable temperature pumping system, is no more than those from a variable flow system; and

(d) Systems that include supply temperature reset controls in accordance with section 7.4.5.2 without exception.

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7.4.5 System Temperature Reset Controls.

7.4.5.1 *Air Systems.* Systems supplying heated or cooled air to multiple zones shall include controls that automatically reset supply air temperatures by representative building loads or by outside air temperature. Temperature shall be reset by at least 25% of the design supply-air-to-room-air temperature difference. Zones that are expected to experience relatively constant loads, such as interior zones, shall be designed for the fully reset supply temperature.

7.4.5.1.1 *Exceptions to section 7.4.5.1:*
(a) Systems which comply with section 7.4.1 without using exceptions in sections 7.4.1.2.1 or 7.4.1.2.2; and
(b) Where it can be shown that supply air temperature reset increases overall building annual energy costs.

7.4.5.2 *Hydronic Systems.* Systems supplying heated and/or chilled water to comfort conditioning systems shall include controls that automatically reset supply water temperatures by representative building loads (including return water temperature) or by outside air temperature. Temperature shall be reset by at least 25% of the design supply-to-return water temperature difference.

7.4.5.2.1 *Exceptions to section 7.4.5.2:*
(a) Systems that comply with section 7.4.4.3 without exception;
(b) Where it can be shown that supply temperature reset increases overall building annual energy use;
(c) Systems for which supply temperature reset controls cannot be implemented without causing improper operation of heating, cooling, humidification, or dehumidification systems; or
(d) Systems with less than 600,000 Btu/h design capacity.

§ 436.108 Heating, ventilation and air-conditioning (HVAC) equipment.

8.1 General

8.1.1 This section contains minimum requirements for fundamental to good practice and/or the minimum acceptable state-of-the-art in energy efficient HVAC equipment.

8.1.2 A building shall be considered in compliance with this section if the minimum requirements of Section 8.3 are met.

8.2 Principles of Design

8.2.1 The rate of energy input(s) and the heating or cooling output(s) of all HVAC products shall be ascertained. This information shall be based on equipment in new condition, and shall cover full load, partial load, and standby conditions. The information shall also include performance data for modes of equipment operation and at ambient conditions as specified in the minimum equipment performance requirements below.

8.2.2 Source Systems

8.2.2.1 To allow for HVAC equipment operation at the highest efficiencies, conversion devices shall be matched to load increments, and operation of modules shall be sequenced. Oversized or large scale systems shall never be used to serve small seasonal loads (e.g., a large heating boiler to serve a summer service water heating load). Specific "low load" units shall be incorporated in the design where prolonged use at minimal capacities is expected.

8.2.2.2 Storage techniques should be used to level or distribute loads that vary on a time or spatial basis to allow operation of a device at maximum (full-load) efficiency.

8.2.2.3 All equipment shall be the most efficient (or highest COP) practical, at both design and reduced capacity (part-load) operating conditions.

8.2.2.4 Fluid temperatures for heating equipment shall be as low as practical and for cooling equipment as high as practical, while meeting loads and minimizing flow quantities.

8.3 Minimum Requirements

8.3.1 Equipment Efficiency

8.3.1.1 *Minimum Equipment Efficiency.* Equipment shall have a minimum efficiency at the specified rating conditions, not less than the values shown in Tables 8.3–1 through 8.3–10. Minimum efficiencies for equipment using chlorofluorocarbons (CFCs) refrigerants reflect the assumption that the use of certain refrigerants may be restricted because of ozone layer depletion concerns.

8.3.1.2 Data furnished by the equipment supplier or certified under a nationally-recognized certification program or rating procedure may be used to satisfy these requirements.

8.3.1.3 Integrated Part-Load Value (IPLV) is the descriptor for part-load efficiency for certain types of equipment. The IPLVs are found in the referenced ARI Standards. Compliance with minimum efficiency requirements specified for certain HVAC equipment shall include compliance with part-load requirements as well as standard or full-load requirements.

8.3.1.4 If nationally-recognized test procedures for combined equipment are not available, efficiencies for service water heating shall be determined using data provided by equipment and component manufacturers, employing reasonable assumptions concerning uncertain parameters.

8.3.1.5 Omission of minimum performance requirements for certain classes of HVAC equipment does not preclude use of such equipment where appropriate.

8.3.2 Field Assembled Equipment and Components

8.3.2.1 Where components, such as indoor or outdoor coils, from more than one manufacturer are used as parts of a cooling or heating unit, it shall be the responsibility of the system designer to specify component efficiencies, which when combined will provide equipment that is in compliance with the requirements of these standards, based on data provided by the component manufacturers.

8.3.2.2 Total on-site energy input to the equipment shall be determined by combining the energy inputs to all components, elements, and accessories including but not limited to compressor(s), internal circulating pump(s), condenser-air fan(s), evaporative-condenser cooling water pump(s), purge devices, viscosity control heaters, and controls.

8.3.2.3 *Heat-Operated Water Chilling Package.* Double-effect, heat-operated water chilling packages shall be used in lieu of single-effect equipment, due to their higher efficiency, except where the energy input is from low temperature waste-heat or non-depletable energy sources.

8.3.3 Equipment Controls

8.3.3.3 Heat pumps equipped with supplementary resistance heaters for comfort heating shall be installed with a control to prevent heater operation when the heating load can be met by the heat pump. A two-stage room thermostat, that controls the supplementary heat on its second stage, will meet this requirement. Supplementary heater operation is permitted where it can be shown that supplementary heating reduces energy use. Supplementary heater operation is permitted during short transient periods of less than 15 minutes during defrost cycles.

8.3.3.3.1 Controls shall provide a means of activating the supplementary heat source on an emergency basis and a visible indicator shall be provided to indicate the emergency heat status.

8.3.3.4 *Cooling Equipment Auxiliary Controls.* Evaporator coil frosting and excessive compressor cycling at part-load conditions shall not be controlled

by use of either hot gas by-pass or evaporator pressure regulator control.

8.3.4 Comfort Heating Equipment

8.3.4.1 The designer shall obtain data and information from the manufacturer of electric resistance comfort heating equipment regarding full-load and part-load energy consumption of the heating equipment over the range of voltages at which the equipment is intended to operate. All auxiliaries required for the operation of the heater equipment such as, but not limited to fans, pumps, viscosity control heaters, fuel handling equipment, and blowers shall be included in the energy input data provided by the manufacturer(s).

8.3.5 Maintenance

8.3.5.1 Provisions shall be made to provide necessary preventive maintenance information to maintain efficient operation of all HVAC equipment.

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Table 8.3-1
Standard Rating Conditions and Minimum Performance
Unitary Air Conditioners and Heat Pumps - Air-Cooled, Electrically-Operated
<135,000 Btu/h Cooling Capacity - Except Packaged Terminal and Room Air Conditioners

Reference Standards	Category	Phases	Subcategory & Rating Condition (Outdoor Temps. °F)	Minimum Performance
	<65,000 Btu/h		Seasonal Rating[1]	
ARI 210-81	Cooling Capacity	1	Split-System	10.0 SEER
ARI 240-81	Cooling Mode		Single-Package	9.7 SEER
ARI 210/ 240-84	<65,000 Btu/h		Standard Rating (95 db)	
	Cooling Capacity	3	Split-System & Single-Pkg.	9.5 EER
	Cooling Mode		Integrated Part-Load Value (80 db)	
			Split-System & Single-Pkg.	8.5 IPLV
	≥65,000 <135,000 Btu/h		Standard Rating (95 db)	8.9 EER
	Cooling Mode	All	Integrated Part-Load Value (80 db)	8.3 IPLV
	<65,000 Btu/h		Seasonal Rating[1]	
	Cooling Capacity	1	Split-Systems	6.6 HSPF
	Heating Mode (Heat Pumps)		Single-Package	6.6 HSPF
	<65,000 Btu/h		Split-System & Single Pkg.	
	Cooling Capacity	3	High Temp. Rating (47db/43wb)	3.0 COP
	Heating Mode		Low Temp. Rating (17db/15/wb)	2.0 COP
	≥65,000 <135,000 Btu/h		Split-System & Single Pkg.	
	Cooling Capacity	All	High Temp. Rating (47db/45wb)	3.0 COP
	Heating Mode		Low Temp. Rating (17db/15wb)	2.0 COP

1. To be consistent with National Appliance Energy Conservation Act of 1987 (Pub. L. 100-12)

Table 8.3-2
Standard Rating Conditions and Minimum Performance
Unity Air Conditioners and Heat Pumps - Evaporatively-Cooled, Electrically-Operated - Cooling Mode
<135,000 Btu/h Cooling Capacity - Except Packaged Terminal and Room Air Conditioners

Reference Standards	Category	Rating Condition °F Indoor Temp.	Outdoor Temp.	Minimum Performance
	<65,000 Btu/h	Standard Rating		
ARI 210-81	Cooling Capacity	80db/67wb	95db/75wb	9.3 EER
	<65,000 Btu/h	Integrated Part-Load Value (80db/67wb)		8.5 IPLV
ARI 210/ 270-84	≥65,000 <135,000 Btu/h	Standard Rating		
		80db/67wb	95db/75wb	10.5 EER
CTI 201 (86)	≥65,000 <135,000 Btu/h	Integrated Part-Load Value (80db/67wb)		9.7 IPLV

Table 8.3-3
Standard Rating Conditions & Minimum Performance
Water-Cooled Air Conditioners and Heat Pumps -Cooling Mode
<135,000 Btu/h Cooling Capacity - Electrically-Operated

Reference Standard	Category	Rating Condition °F Indoor Air	Entering Water	Minimum Performance
Water-Source Heat Pumps ARI 320-86 CTI 201 (86)	<65,000 Btu/h Cooling Capacity	Standard Rating 80db/67wb	85	9.3 EER
		Low Temperature Rating 80db/67wb	75	10.2 EER
	≥65,000 <135,000 Btu/h Cooling Capacity	Standard Rating 80db/67wb	85	10.5 EER
Groundwater-Cooled Heat Pumps ARI 325-85	<135,000 Btu/h Cooling Capacity	Standard Rating 70 F Entering Water		11.0 EER
		Low Temperature Rating 50 F Entering Water		11.5 EER
Water-Cooled Unitary Air Conditioners ARI 210-81 ARI 210/240-84 CTI 201 (86)	<65,000 Btu/h Cooling Capacity	Standard Rating 80db/67wb	85	9.3 EER
		Integrated Part-Load Value 75 F Entering Water		8.3 IPLV
	≥65,000 <135,000 Btu/h Cooling Capacity	Standard Rating 80db/67wb	85	10.5 EER

Table 8.3-4a
Standard Rating Conditions and Minimum Performance
Packaged Terminal Air Conditioners and Heat Pumps
Air-Cooled, Electrically-Operated

Reference Standards	Category	Subcategory & Rating Condition (Outdoor Temps. °F)	Minimum Performance
ARI 310-87	PTAC's & PTAC H.P.'s[2] Cooling Mode	Standard Rating (95 db)	10.0-(.16 x Cap. (Btu/h)/1000) EER
		Low Temp. Rating (82 db)[1]	12.2-(.20 x Cap. (Btu/h)/1000) EER
ARI 380-87	PTAC H.P.'s - Heating Mode	Standard Rating (47db/43wb)	2.7 COP

1. For multi-capacity equipment the minimum performance shall apply to each capacity step provided and allowed by the controls.
2. If the unit's capacity is less than 7000 Btu/h, use 7000 Btu/h in the calculation. If the unit's capacity is greater than 15000 Btu/h, use 15000 Btu/h in the calculation.

Table 8.3-4b
Standard Rating Conditions & Minimum Performance
Room Air Conditioners and Room Air Conditioner Heat Pumps

Reference ANSI/AHAM RAC-1-82	Category	Minimum Performance[1]
	Without Reverse Cycle and With Louvered Sides	
	< 6000 Btu/h	8.0 EER
	≥ 6000 < 8000 Btu/h	8.5 EER
	≥ 8000 < 14000 Btu/h	9.0 EER
	≥ 14000 < 20000 Btu/h	8.8 EER
	≥ 20000 Btu/h	8.2 EER
	Without Reverse Cycle and Without Louvered Sides	
	< 6000 Btu/h	8.0 EER
	≥ 6000 < 20000 Btu/h	8.5 EER
	≥ 20000 Btu/h	8.0 EER
	With Reverse Cycle and With Louvered Sides	8.5 EER
	With Reverse Cycle, Without Louvered Sides	8.0 EER

1. To be consistent with National Appliance Energy Conservation Act of 1987 (Pub. L. 100-12).

Table 8.3-5
Standard Rating Conditions and Minimum Performance
Water-Source and Groundwater-Source Heat Pumps - Electrically-Operated
<135000 Btu/h Cooling Capacity

Reference Standards	Rating Condition °F[1]	Minimum Performance
Water-Source Heat Pumps ARI 320-86 CTI 201 (86)	Standard Rating 70 F Entering Water[2]	3.8 COP
Groundwater-Source Heat Pumps ARI 325-85	1. High Temperature Rating 70 F Entering Water[2]	3.4 COP
	2. Low Temperature Rating 50 F Entering Water[2]	3.0 COP

1. Air entering indoor section 70db/60wb (max.).
2. Water Flow Rate Per Manufacturer's Specifications.

Table 8.3-6
Standard Rating Conditions and Minimum Performance
Large Unitary Air Conditioners and Heat Pumps - Electrically-Operated
≥ 135,000 BTU/H Cooling Capacity

Category/ Reference Standards	Efficiency Rating	Minimum Performance	
Air Conditioners	EER	≤ 760,000 Btu/h	> 760,000 Btu/h
Air-Cooled ARI 360-65	IPLV	7.5	
Air Conditioners	EER	9.6	
Water/Evap.-Cooled	IPLV	9.0	
ARI 360-85, CTI 201 (86)			
Heat Pumps			
-Air-Cooled - Cooling	EER	≤ 760,000 Btu/h	> 760,000 Btu/h
	IPLV	7.5	
-Air-Cooled - Heating	COP (47 °F)	2.9	
ARI 340-86	COP (17 °F)	2.0	
Condensing Units	EER	9.9	
Air Cooled ARI 365-87	IPLV	11.0	
Condensing Units	EER	12.9	
Water/Evap.-Cooled ARI 365-87, CTI 201 (86)	IPLV	12.9	

1. For units that have a heating section, deduct 0.2 from all required EER's and IPLV's.
2. Condensing unit requirements are based on single-number ratings defined in paragraph 5.1.3.2 of ARI Standard 365-87.

Table 8.3-7
Standard Rating Conditions and Minimum Performance
Water-Chilling Packages - Water- and Air-Cooled - Electrically-Operated

Reference Standards	Category	Efficiency Rating	Minimum Performance
	Water - Cooled		
ARI 550-86 &	≥ 300 tons	COP	5.2[1]
ARI 590-86		IPLV	5.3[1]
CTI 201 (86)	≥ 150 Tons < 300 tons	COP	4.2
		IPLV	4.5
	< 150 tons	COP	3.8
		IPLV	3.9
	Air-Cooled With Condenser		
	≥ 150 tons	COP	2.5
		IPLV	2.5
	< 150 tons	COP	2.7
		IPLV	2.8
	Condenserless, Air-Cooled		
	All Capacities	COP	3.1
		IPLV	3.2

1. Where R-22 or CFC refrigerants with equivalent ozone depletion factors are used these requirements are reduced to 4.7 COP and 4.8 IPLV (see Section 8.3.1.1)

NOTE: The levels above are minimum performance levels. Better energy efficiencies may be available, and their use is encouraged.

Table 8.3-8
Standard Rating Conditions and Minimum Performance
Boilers: Gas- and Oil-Fired

Reference	Category	Rating Condition	Minimum Performance
DOE Test Procedure 10 CFR, Part, 30 App N	Gas-Fired <300,000 Btu/h	Seasonal Rating	AFUE 80%[1,3]
	Oil-Fired <300,000 Btu/h	Seasonal Rating	AFUE 80%[1]
AGA Z21.13-82 H.I. Htg. Boiler Std. 86 ASME PTC4.1-64 U.L. 795-73	Gas-Fired ≤300,000 Btu/h	1. Max. Rated Cap.[2] Steady-State	E_c[4] 80%
		2. Min. Rated Cap.[2] Steady-State	E_c[4] 80%
U.L. 726-75 H.I. Htg. Boiler Std. 86 ASME PTC 4.1-64	Oil-Fired ≥300,000 Btu/h	1. Max. Rated Cap.[2] Steady-State	E_c[4] 83%
		2. Min. Rated Cap.[2] Steady-State	E_c[4] 83%
H.I. Htg. Boiler Std. 86 ASME PTC 4.1-64	Oil-Fired (Residual) ≥300,000 Btu/h	1. Max. Rated Cap.[2] Steady-State	E_c[4] 83%
		2. Min. Rated Cap.[2] Steady-State	E_c[4] 83%

1. To be consistent with National Appliance Energy Conservation Act of 1987 (Pub. L. 100-12).
2. Provided and allowed by the controls.
3. Except for gas-fired steam boilers for which minimum AFUE is 75%.
4. E_c = combustion efficiency, 100% - flue losses.

Table 8.3-9
Standard Rating Conditions and Minimum Performance
Warm-Air Furnaces and Combination Warm-Air Furnaces/Air-Conditioning Units

Reference	Category	Rating Condition	Minimum Performance
DOE Test Procedure 10 CFR, Part 30 App. N	Gas-Fired <225,000 Btu/h	Seasonal Rating	AFUE 78%[1,3]
	Oil-Fired <225,000 Btu/h	Seasonal Rating	AFUE 78%[1]
AGA Z21.47-83	Gas-Fired ≥225,000 Btu/h	1. Max. Rated Cap.[2] Steady-State	E_t[4] 80%
		2. Min. Rated Cap.[2] Steady-State	E_{t4} 78%
U.L. 727-86	Oil-Fired ≥225,000 Btu/h	1. Max. Rated Cap.[2] Steady-State	E_t[4] 81%
		2. Min. Rated Cap.[2] Steady-State	E_t[4] 81%

1. To be consistent with National Appliance Energy Conservation Act of 1987 (Pub. L. 100-12).
2. Provided and allowed by the controls.
3. Minimum performance requirements for furnaces <45,000 Btu/h capacity are to be established by DOE under Pub. L. 100-12.
4. E_t = thermal efficiency, 100% - flue losses.

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Table 8.3-10
Warm Air Duct Furnaces and Unit Heaters

Reference	Category	Rating Conditions	Minimum Performance
AGA Z83.9-86	Duct Furnaces	1. Max. Rated Cap.[1]	E_t[2]
	Gas-Fired	Steady-State	78%
		2. Min. Rated Cap.[1]	E_t[2]
		Steady-State	75%
AGA Z83.8-85	Unit Heaters	1. Max. Rated Cap.[1]	E_t[2]
	Gas-Fired	Steady-State	78%
		2. Min. Rated Cap.[1]	E_t[2]
		Steady-State	75%
U.L 731-75	Unit Heaters	1. Max. Rated Cap.[1]	E_t[2]
	Oil-Fired	Steady-State	81%
		2. Min. Rated Cap.[1]	E_t[2]
		Steady-State	78%

1. Provided and allowed by the controls.
2. E_t = thermal efficiency, 100% - flue losses.

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§ 435.109 Service water heating systems.

9.1 General

9.1.1 This section contains minimum and prescriptive requirements for the design of Service Water Heating Systems.

9.1.2 A building shall be considered in compliance with this section if the following conditions are met:

9.1.2.1 The minimum requirements of section 9.3 are met; and

9.1.2.2 The Service Water Heating System design complies with the prescriptive criteria of section 9.4.

9.2 Principles of Design

9.2.1 Showerheads shall be designed to provide and maintain user comfort and energy savings. They should not use removable flow restricting inserts to meet flow limitation requirements.

9.2.2 Point of use water heaters shall be considered where their use will reduce energy consumption and is life cycle cost effective.

9.2.3 High temperature condensate, when returned to condensation pump tanks or other vented tanks, will have a certain portion flashed into steam, thus wasting energy. To conserve this energy, a heat exchanger shall be considered for use in the condensate return line to heat or preheat the service water, cool the condensate, and prevent flashing.

9.2.4 Storage may be used to optimize heat recovery when the flow of heat to be recovered is out of phase with the demand for heated water, or when energy use for water heating can be shifted to take advantage of off-peak rates.

9.3 Minimum Requirements

9.3.1 Sizing of Systems

9.3.1.1 Service water heating system design loads for the purpose of sizing and selecting systems shall be determined in accordance with the procedures described in chapter 54 of the *ASHRAE Handbook, 1987 HVAC Systems and Applications Volume*, or a similar computation procedure.

9.3.2 Equipment Efficiency

9.3.2.1 All water heaters and hot water storage tanks shall meet the criteria of Table 9.3-1. Where multiple criteria are listed, all criteria shall be met. Where no criteria are provided, no requirements need be met.

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Table 9.3-1
Standard Rating Conditions & Minimum Performance of Water Heating Equipment

Type	Fuel	Storage Capacity (Gal)	Input Rating	Applicable Test Procedure	Minimum Performance		
					DOE Rating	Eff.	Loss
Storage Water Heaters	Electric	≤120	≤12 kW	DOE Test Procedures, 1985 Code of Federal Regulations Title 10, Part 430	EF	-	-
					≥0.95-0.00132V		
		>120	(or) >12 kW	ANSI C72.1 - 1972	-	-	SL
					-	-	<1.9 W/ft^2
	Gas	≤100	≤75,000 Btu/h	DOE Test Procedures, 1985 Code of Federal Regulations Title 10, Part 430	EF	-	-
					≥0.62-0.0019V	-	-
		>100	(or) >75,000 Btu/h	ANSI Z21.10.3-1984 Gas Water Heaters w/Addenda Z21.10.3a-1985	-	E_t	SL
					-	77%	<1.3+ 38/V
	Oil		≤75,000 Btu/h	DOE Test Procedures, 1985 Code of Federal Regulations Title 10, Part 430	EF		-
					≥0.59-0.0019V		-
		≤50	≤105,000 Btu/h (or)		>0.59-0.0019V		
		>50	>105,000 Btu/h		-	E_c	SL
					-	83%	>1.3+ 38/V

Table 9.3-1
Standard Rating Conditions & Minimum Performance of Water Heating Equipment (Cont.)

Class	Type: Fuel	Type: Capacity	Type: Input Rating	Applicable Test Procedure	Minimum Performance	
Unfired Storage	1	All Volume	All Inputs		-	HL
					-	<6.5 Btu/h·ft^2
Instantaneous[2]	Gas	-	All Inputs	ANSI Z21.10.3-1984	E_t	-
					80%	-
	Distill Oil	-	All Inputs		E_c	-
					83%	-
Pool	Gas/ Oil	-	All Inputs	ANSI Z21.56-1986	E_t	-
					78%[c]	-

Notes for Table 9.3-1:
Terms Defined:
1. EF = Energy factor, overall heater efficiency by DOE Test Procedure
   E_t = Thermal efficiency with 70 °F, ΔT
   E_c = Combustion efficiency, 100% - flue loss when smoke = 0 (trace is permitted)
   SL = Standby loss based on 80 °F, ΔT or in % per hour based on nominal 90 °F, ΔT
   HL = Heat loss of tank surface area
   V = Storage volume in gallons

2. An instantaneous water heater is a device with an input rate greater than 4000 Btu/h per gallon of water stored and less than 10 gallons at storage capacity.

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9.3.2.1.1 *Exception to section 9.3.2.1*
(a) storage water heaters and hot water storage tanks having more than 800 gallons of storage capacity need not meet the standby loss (SL) or heat loss (HL) requirements of Table 9.3–1 if the tank surface area is thermally insulated to R–12.5 and if a standing pilot light is not used.

9.3.2.2 *Heat Traps.* Storage water heaters not equipped with integral heat traps and having vertical pipe risers shall be installed with heat traps on both the inlet and outlets. The heat trap shall be installed directly, or as close as possible to the outlet fittings. Circulating systems need not employ heat traps.

9.3.2.2.1 A heat trap may take the form of a bent piece of tubing that forms a loop of 360 degrees; an arrangement of pipe fittings, such as elbows, connected so that the inlet and outlet piping make vertically upward runs just before turning downward to connect to the water heater's inlet and outlet fittings; a commercially available heat trap; or any other type that effectively restricts the natural tendency of hot water to rise in the vertical pipe during standby periods.

9.3.2.2.2 When the water heater outlet is directly horizontal out of the tank, or is piped with an elbow on the vertical outlet and then downward, this piping arrangement itself is effectively a heat trap and a separate heat trap is not then needed.

9.3.3 Piping Insulation

9.3.3.1 For circulating systems, piping insulation shall conform to the requirements of Table 7.3–1 or an equivalent level as calculated in accordance with Equation 7.3–1.

9.3.3.2 For non-circulating systems, the first 8 ft of piping from a storage system that is maintained at a constant temperature shall be insulated in accordance with Table 7.3–1, or an equivalent level as calculated in accordance with Equation 7.3–1. Systems without a heat trap to prevent circulation due to natural convection shall be considered circulating systems.

9.3.4 Controls

9.3.4.1 *Temperature.* Service water heating systems shall be equipped with temperature controls capable of adjustment from 90 °F to a temperature setting compatible with intended use, except for systems serving residential dwelling units may be equipped with controls capable of adjustment down to 110 °F only. (See *ASHRAE Handbook, 1987 Systems and Applications Volume*, Chapter 54, Table 3).

9.3.4.1.1 Where temperatures higher than 120 °F are required at certain outlets for a particular intended use, separate remote heaters or booster heaters shall be installed for those outlets unless it can be shown by calculation that either energy is not saved by the application of this requirement or that the total cost over the life of the equipment is not reduced.

9.3.4.1.2 *Circulating Hot Water Systems and Heated Pipes.* Systems designed to maintain temperatures in hot water pipes, including circulating hot water systems and heat tape on water pipes, shall be equipped with automatic controls that can be set to turn off the system when hot water is not required.

9.3.5 Equipment and Control Requirements for the Conservation of Hot Water

9.3.5.1 Showers used for other than safety reasons shall limit the maximum hot water discharge to 2.75 gpm when tested according to *ANSI A112.18.1M–1979*, "Finished and Rough Brass Plumbing Fixtures". The designer shall evaluate the use of lower flow showerheads than 2.75 gpm, particularly for heavily used facilities. Removable flow restricting inserts shall not be used in showerheads to meet this criterion. When flow restricting inserts are used as a component part of a showerhead, they shall be mechanically retained at the point of manufacture. [Mechanically retained means a pushing or pulling force to remove the flow restricting insert at 8 pounds or more.] This requirement shall not apply to showerheads that will cause water to leak significantly from areas other than the spray face, if the flow restricting insert were removed.

9.3.5.2 Lavatories in public restrooms, with the exception of lavatories for physically handicapped persons, shall be equipped with devices that:

9.3.5.2.1 Limit the flow of hot water to either:
(a) A maximum of 0.5 gpm;
(b) 0.75 gpm if a device or fitting is used that limits the period of water discharge, such as a foot switch, fixture occupancy sensor; or
(c) 2.5 gpm if equipped with a self-closing valve;

9.3.5.2.2 Either be equipped with a foot switch or occupancy sensor or similar device or limit delivery with a self-closing valve or a foot switch to a maximum of 0.25 gallons of hot water for circulating systems;

9.3.5.2.3 Limits delivery with a self-closing valve or a foot switch to a maximum of 0.50 gallons for non-circulating systems; and

9.3.5.2.4 Limits the outlet temperature to a maximum 110 °F.

9.3.6 Swimming Pools

9.3.6.1 *Pool Heaters.* All pool heaters shall meet the criteria of Table 9.3–1 and be equipped with a readily accessible "on-off" switch to allow system shut-off without adjusting the thermostat setting and, when applicable, allow restarting without manually relighting the pilot light.

9.3.6.2 *Pool Covers.* Outdoor heated swimming pools shall be equipped with a pool cover. However, pools deriving over 70% of the energy for heating from non-depletable sources or from recovery of energy that would otherwise be wasted (computed over an operating season) need not be equipped with pool covers.

9.3.6.3 *Time Switches.* Time switches shall be installed on all swimming pool pumps and all electric swimming pool heaters. These switches shall allow for the shutdown of heaters during hours of peak utility demand except as is necessary in peak period operation to maintain water in a clear and sanitary condition in keeping with applicable public health standards.

9.3.6.3.1 *Exceptions to section 9.3.5.3:*
(a) Where public health standards require 24 hour operation of pumps; and
(b) Pumps are required to operate solar pool heating systems.

9.4 Service Hot Water Heating Systems—Prescriptive Compliance Alternative

9.4.1 Combination Service Water Heating/Space Heating Equipment

9.4.1.1 Water heaters used for combination service water and space heating shall meet the appropriate minimum efficiency requirements of both section 8.3 and 9.3.

9.4.1.2 Combination space heating and service water heating equipment shall only be used when at least one of the following conditions is met:

9.4.1.2.1 where the annual space heating energy use is less than 50% of the annual service water heating energy use;

9.4.1.2.2 where the energy input or storage volume of the combined boiler or water heater is less than twice the size of the smaller of the separate boilers or water heaters otherwise required;

9.4.1.2.3 where calculations show that the combined system uses no more energy than separate systems that meet the requirements of sections 8.3 and 9.3; or

9.4.1.2.4 where the input to the combined boiler is less than 150,000 Btu/h.

9.4.1.3 Combination function equipment (space heating, service water heating, cooling, etc.) shall comply with minimum efficiency requirements in accordance with nationally recognized test procedures. Where such procedures are not available for particular equipment designs, compliance shall be determined based on the function representing the maximum annual energy consumption, using data provided by equipment and component manufacturers.

9.4.2 Additional Equipment Efficiency Measures

9.4.2.1 *Electric Water Heaters.* In applications where water temperatures not greater than 145 °F are required, an economic evaluation shall be made on the potential benefit of using an electric heat pump water heater(s) instead of electric resistance water heater(s). The analysis shall compare the extra costs of the heat pump unit with the benefits in reduced energy costs, less increased maintenance costs, over the estimated service life of the heat pump water heater.

9.4.2.1.1 *Exception to section 9.4.2.1:*
(a) Electric resistance water heaters used in conjunction with site-recovered or non-depletable energy sources or off-peak heating with thermal storage.

9.4.2.2 *Gas-Fired Water Heaters.* All gas-fired storage water heaters that use indoor air for combustion or draft hood dilution and that are installed in a conditioned room shall be equipped with a vent damper unless the water heater is already so equipped. Unless the water heater has an available electrical supply, the installation of such a vent damper shall not require an electrical connection. The vent damper shall be listed as meeting appropriate ANSI standards and shall be installed in accordance with manufacturer's instructions and local codes.

9.4.2.2.1 *Exception to section 9.4.2.2:*
(a) where the cost of the damper exceeds the value of reduced energy costs over the damper's lifetime.

9.4.3 Use of Waste Heat, Solar Energy, and Thermal Storage

9.4.3.1 An evaluation shall be made of the potential for the use of condenser heat, waste energy, solar energy, or off-peak heating with thermal storage to reduce water heating energy cost.

9.4.3.2 Storage shall be used to optimize heat recovery when the flow of heat to be recovered is out of phase with the demand for heated water, or when energy use for water heating can be shifted to take advantage of off-peak rates.

§ 435.110 Energy management.

10.1 General

10.1.1 This section contains minimum requirements for building energy management systems. It describes the energy measurement, control, testing and documentation that shall be provided to the building owner. The intent is to minimize energy use by providing the building operator with design, construction and equipment data, along with a means of testing the completed facility.

10.1.2 A building shall be considered in compliance with this section if the minimum requirements of Section 10.3 are met.

10.2 Principles of Design

10.2.1 Energy Management Control Systems

10.2.1.1 An energy management control system is critical to the effective management of building energy. Energy management systems require measurements at key points in the building system and must be capable of part-load operation recognition and be equipped with controls to match system capacity to load demands.

10.2.1.2 Controls cannot correct inadequate source equipment, poorly selected components, or mismatched systems. Energy efficiency requires a design that is optimized by realistic loads prediction, careful system selection, and full control provisions.

10.2.2 Building Operating Documentation

10.2.2.1 The building construction drawings and specifications must show system types, sizes, performance criteria, controls, and materials intended for use prior to construction. The system designer shall provide or specify that documentation be provided for the education and guidance of the building operator showing the actual elements that have been installed, how they have been installed, how they performed during testing, and how they operate as a system in the completed facility. Since minimum energy use is the ultimate goal, operating procedures are one of the major factors in controlling energy use in buildings. The activities of building occupants and operators can result in differences as great as two to one in the energy consumption of essentially similar buildings. While neither the designer nor these standards can control the way the building is actually operated, the designer shall contribute to the education and guidance of the building operator by including this documentation in the contract specifications.

10.2.2.2 The building operator shall be provided with the following:

10.2.2.2.1 As-built drawings and specifications;

10.2.2.2.2 Operating manuals with a schematic diagram, sequence of operation and system operating criteria for each and all systems installed;

10.2.2.2.3 Where the building systems are complex, a comprehensive balancing and testing program and report to demonstrate the energy performance capabilities of the system; and

10.2.2.2.4 Maintenance manuals with complete information for all major components in the facility.

10.3 Minimum Requirements

10.3.1 Each distinct utility-provided energy service shall be metered. This shall apply to central and individual tenant meters. Such meters shall be located, or arranged, so that the meter can be visually monitored.

10.3.2 Each distinct commercially-provided energy service shall have a system to measure and record the amount of energy being delivered, based on the energy content.

10.3.3 The energy delivery systems shall be arranged to allow individual measurement of occupant lighting and outlet services, production processes, auxiliary systems, service water heating, space heating, space cooling, and HVAC delivery systems.

10.3.4 Provisions shall be made for the measurement of energy inputs and outputs (flow, temperature, pressure, etc.) to determine equipment energy consumption and/or installed performance capabilities and efficiencies of all heating, cooling, and HVAC delivery systems equipment, greater than 20 kVA or 60,000 Btu/h energy input.

10.3.5 Energy Measurement Instrumentation

10.3.5.1 In buildings or tenant areas with electric service greater than 150 kVA or fuel use greater than 500,000 Btu/h, energy use shall be measured for electrical lighting, miscellaneous power outlets, HVAC systems and equipment, service hot water, and process loads and when the peak use of:

10.3.5.1.1 Production processes, including manufacturing, computers, laundries, kitchens, etc., is greater than 100 kVA or 300,000 Btu/h;

10.3.5.1.2 Auxiliary systems and service water heating is greater than 100 kVA or 300,000 Btu/h;

10.3.5.1.3 Space heating (including reheat) is greater than 100 kVA or 300,000 Btu/h;

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10.3.5.1.4 Space cooling is greater than 100 kVA or 300,000 Btu/h; and

10.3.5.1.5 HVAC delivery systems is greater than 100 kVA or 300,000 Btu/h.

10.3.5.1.6 *Exception to section 10.3.5.1:*

(a) When there is an energy service for only 2 of the 6 categories listed, a single measurement may be made for the larger of the two energy services and the second use determined by subtraction from the primary service measurements.

10.3.6 HVAC System Controls

10.3.6.1 The designer shall designate, specify, or otherwise show in the construction documents the type of controls and control systems needed. This shall include a description or sequence of control of the system's operational procedures.

10.3.6.2 Controls may be electric, pneumatic, electronic, or direct digital. Control action may be "on/off", or proportional that can use manual, automatic, or remote reset and can have rate of action or derivative action compensation as designated by the designer. Control devices may be provided by the manufacturers of equipment or by the field installers, but all shall be compatible with the design sequence of control. The designer shall designate accuracy and long term requirements for controls.

10.3.6.3 All primary energy conversion equipment such as boilers, heat exchangers, refrigeration units, furnaces and heat pumps shall have a load activated local control loop for each piece of equipment. Controls for multiple equipment shall integrate the individual control units or provide system control for all the units.

10.3.6.4 All energy delivery systems shall have a local control loop for each system.

10.3.6.5 Energy consuming systems or components with a peak use greater than 1 kW or 3,500 Btu/h shall be provided with a means of shut-off when occupancy or weather conditions do not require its operation.

10.3.6.6 The control equipment provided for local control loops except for "on/off" and self-contained sensor devices shall be arranged so that sensing, control action, and control setting variables can be read or tested at the device.

10.3.6.7 Control loops for terminal unit zones with less than 24 hours per day or 7 days per week occupancy shall have separate control points for day and night heating and cooling. The devices shall be capable of local resetting, and have provisions for remote management system selection of the occupied or unoccupied heating or cooling mode of operation.

10.3.7 Central Monitoring and Control Systems

10.3.7.1 A central monitoring and control system shall be provided in any building or submetered tenant space exceeding 40,000 ft² in gross floor area.

10.3.7.2 The minimum energy management requirements for such a system shall be to:

10.3.7.2.1 Read and retain daily totals for all energy measurement instruments;

10.3.7.2.2 Total all energy values weekly and record and retain values placed on a summary report;

10.3.7.2.3 Record and plot hourly outdoor and indoor temperatures against real time and summarize and report for each year in a format compatible with degree-days or bin temperature;

10.3.7.2.4 Based on time schedules, turn on or off any HVAC or service water heating system or equipment;

10.3.7.2.5 Based on time schedules, turn on or off major building lighting and occupancy power circuits;

10.3.7.2.6 Reset local loop control systems for HVAC equipment;

10.3.7.2.7 Monitor and verify operation of heating, cooling and energy delivery systems;

10.3.7.2.8 Monitor and verify operation of lighting and occupant power, auxiliary and service hot water systems;

10.3.7.2.9 Provide readily accessible override controls so that time-based HVAC and lighting controls may be temporarily overridden during off hours; and

10.3.7.2.10 Provide optimum start/stop for HVAC systems.

10.3.8 Completion Requirements

10.3.8.1 The building construction documents shall describe the requirements for placing all energy management systems in operation. This includes check-out procedures and all controls and metering equipment operational information.

10.3.8.2 The building construction documents shall describe the requirements for balancing and check-out procedures for all HVAC systems and equipment. All HVAC system balancing shall be required to be accomplished in a manner to minimize throttling losses. In air systems, fan speeds shall be required to be adjusted to meet design conditions. Water systems shall be required to be proportionally adjusted to minimize throttling losses and then corrected to design flow conditions by trimming the pump impeller or changing pump speed. The design specifications shall state that a pump shall not be brought to final flow conditions by valving.

10.3.8.3 The building construction documents shall describe the requirements for control system testing to assure that control elements are calibrated, ranges adjusted, set points ascertained, and full travel of moveable elements assured. All elements in the control system shall be tested with the system in operation.

10.3.9 Energy Performance Testing

10.3.9.1 The building construction documents shall describe the requirements for determining building energy performance in the completed, operational building.

10.3.9.2 The building energy performance testing shall be performed in winter for heating and in summer for cooling. These tests shall ascertain the in-site capabilities of all HVAC systems and equipment. Internal building loads shall be accounted for in assessing cooling performance. Heating performance shall be determined during unoccupied night time periods during winter weather. If any internal load, such as lighting, contributes to building heating, such loads shall be accounted for in assessing heating performance.

10.3.9.3 Energy use measurements shall be made for the overall building system while HVAC system performance is being tested. Each energy management and control system shall be used to determine energy use for:

10.3.9.3.1 Utility energy;

10.3.9.3.2 Commercial service energy;

10.3.9.3.3 Occupant lighting and receptacle power;

10.3.9.3.4 Production process energy;

10.3.9.3.5 Auxiliary systems and service water heating energy;

10.3.9.3.6 Space heating energy;

10.3.9.3.7 Space cooling energy; and

10.3.9.3.8 HVAC delivery system energy.

10.3.9.3.9 Test periods shall be at least six (6) hours in duration. Hourly outdoor and indoor temperatures, solar intensity during a day test, and wind speed during a night test shall be recorded.

10.3.9.4 The building energy performance test data shall, at minimum, measure energy use and outdoor temperatures hourly for each test period.

10.3.10 Documentation Data Requirements

10.3.10.1 As-built information shall be provided for all the following energy-related features of the building:

10.3.10.1.1 Thermal and solar/optical transmission characteristics of the building envelope, including infiltration;

10.3.10.1.2 The operating characteristics of the HVAC, lighting, and service water heating equipment and systems;

10.3.10.1.3 Internal heat gain contributed by equipment and processes; and

10.3.10.1.4 The operating characteristics of controls.

10.3.10.2 A summary report shall be provided outlining the design basis data for the building envelope, the internal heat gains, the weather extremes, major heating/cooling equipment sizes and sequence of operation.

10.3.10.3 The construction documents shall require that shop drawings, schematic diagrams, control sequence, maintenance manuals, and operating instructions, with data on all HVAC, auxiliary equipment and service water heating systems be provided to the owner.

10.3.10.4 A system balancing report shall be provided that follows National Environmental Balancing Bureau or the Association of Air Balancing Council formats with an extra section summarizing the energy-related values gathered during balancing.

10.3.10.5 An energy performance test report shall be provided showing all the data gathered during the energy performance tests. The results shall be presented in a format that provides convenient comparison with design values.

§ 435.111 Building energy cost compliance alternative.

11.1 General

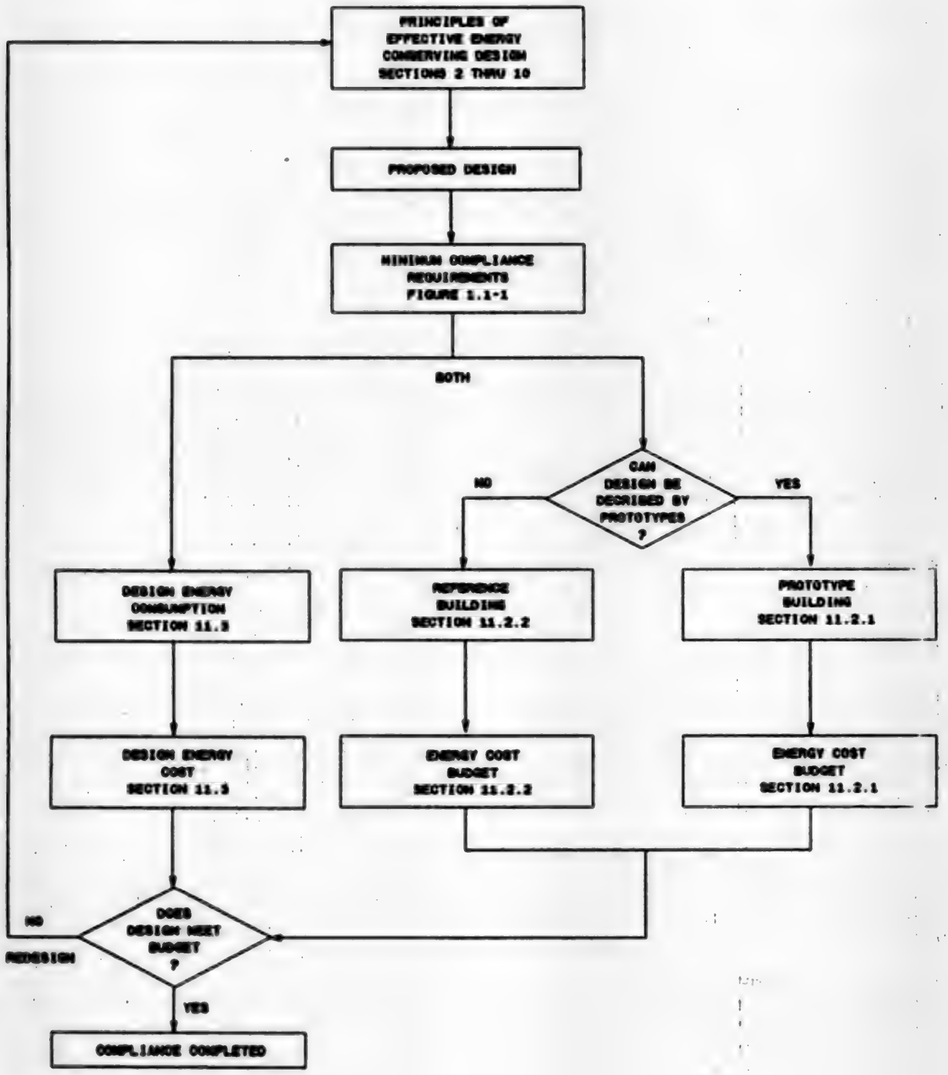
11.1.1 This section provides an alternative compliance path that allows greater flexibility in the design of energy efficient buildings using an annual energy cost method. Energy cost is used as the common denominator in determining compliance. Using unit costs rather than units of energy or power such as Btu, kWh or kW allows the energy use contribution of different fuel sources at different times to be added and compared. This path allows for innovation in designs, materials, and equipment, such as daylighting, passive solar heating, heat recovery, better zonal temperature control, thermal storage, and other applications of off-peak electrical energy, that cannot be adequately evaluated by the prescriptive or system performance alternatives found in sections 3.4, 3.5, 5.4, 5.5, and 7.4. This compliance path is intended for design comparisons only and is not intended to be used to either predict, document, or verify annual energy consumption or annual energy costs.

11.1.2 The Building Energy Cost Compliance Alternative is to be used in lieu of the prescriptive or system performance methods and in conjunction with the minimum requirements found in sections 3.3, 4.3, 5.3, 6.3, 7.3, 8.3, 9.3 and 10.3.

11.1.3 *Compliance.* Compliance under this method requires detailed energy analyses of the entire Proposed Design, referred to as the Design Energy Consumption; an estimate of annual energy cost for the proposed design, referred to as the Design Energy Cost; and comparison against an Energy Cost Budget. Compliance is achieved when the estimated Design Energy Cost is less than or equal to the Energy Cost Budget (see Figure 11–1). This section provides instructions for determining the Energy Cost Budget and for calculating the Design Energy Consumption and Design Energy Cost. The Energy Cost Budget shall be determined through the calculation of monthly energy consumption and energy cost of a Prototype or Reference Building design configured to meet the requirements of sections 3.0 through 10.0.

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Figure 11-1 Building Energy Cost Compliance Alternative



BILLING CODE 6450-01-C

11.1.4 Designers are encouraged to employ the Building Energy Cost Budget compliance method set forth in this section for evaluating proposed design alternatives in preference to using the prescriptive/system methods. The Building Energy Cost Budget establishes the relative effectiveness of each design alternative in energy cost savings, providing an energy cost basis upon which the building owner and designer may select one design over another. This Energy Cost Budget is the highest allowable calculated Energy Cost Budget for a specific building design. Other alternative designs are likely to have lower annual energy costs and life cycle costs than those that minimally meet the Energy Cost Budget.

11.1.5 The Energy Cost Budget is a numerical target for annual energy cost. It is intended to assure neutrality with respect to choices of HVAC system type, architectural design, fuel choice, etc., by providing a fixed, repeatable budget target that is independent of any of these choices wherever possible (i.e., for the prototype buildings). The Energy Cost Budget for a given building size and type will vary only with climate, the number of stories, and the choice of simulation tool. The specifications of the prototypes are necessary to assure repeatability, but have no other significance. They are not recommended energy conserving practice, or even physically reasonable practice for some climates or buildings, but represent a reasonable worst case of energy cost resulting from compliance with the spirit and the letter of sections 3.0 through 10.0.

11.2 Determination of the Annual Energy Cost Budget

11.2.1 The annual Energy Cost Budgets shall be determined in accordance with the Prototype Building Method in section 11.2.5, or the Reference Building Method in section 11.2.5. Both methods calculate an annual Energy Cost by summing the 12 monthly Energy Cost Budgets. Each monthly Energy Cost Budget is the product of the monthly Building Energy Consumption of each type of energy used multiplied by the monthly Energy Cost per unit of energy for each type of energy used.

11.2.2 The Energy Cost Budget shall be determined in accordance with Equation 11–1 as follows:

$$ECB = ECB_{Jan} + \ldots ECB_{m} + \ldots + ECB_{Dec}$$

Equation 11–1

Based on:

$$ECB_{m} = BECON_{m1} \times ECOS_{m1} + \ldots + BECON_{mi} \times ECOS_{mi}$$

Equation 11–2

Where:

ECB = The annual Energy Cost Budget
ECB_{m} = The monthly Energy Cost Budget
$BECON_{mi}$ = The monthly Budget Energy Consumption of the ith type of energy
$ECOS_{mi}$ = The monthly Energy Cost, per unit of the ith type of energy

11.2.3 The monthly Energy Cost Budget shall be determined using current rate schedules or contract prices available at the building site for all non-depletable types of energy purchased. These costs shall include demand charges, rate blocks, time of use rates, interruptable service rates, delivery charges, taxes, and all other applicable rates for the type, location, operation, and size of the proposed design. The monthly Budget Energy Consumption shall be calculated from the first day through the last day of each month, inclusive.

11.2.4 The Energy Cost Budget, Design Energy Consumption and Design Energy Cost calculations are applicable only for determining compliance with these standards. They are not predictions of actual energy consumption or costs of the proposed building after construction. Actual experience will differ from these calculations due to variations such as occupancy, building operation and maintenance, weather, energy use not covered by these standards, changes in energy rates between design of the building and occupancy, and precision of the calculation tool.

11.2.5 Prototype Building Procedure

11.2.5.1 The Prototype Building procedure shall be used for all building types listed below. For mixed-use buildings the Energy Cost Budget is derived by allocating the floor space of each building type within the floor space of the prototype building. For buildings not listed below, the Reference Building procedure of section 11.2.5 shall be used.

11.2.5.1.1 Prototype buildings include:

(a) Assembly;
(b) Office (Business);
(c) Retail (Mercantile);
(d) Warehouse (Storage);
(e) School (Educational);
(f) Hotel/Motel;
(g) Restaurant;
(h) Health/Institutional; and
(i) Multi-Family.

11.2.5.2 Use of the Prototype Building to Determine the Energy Cost Budget

11.2.5.2.1 Determine the building type of the Proposed Design using the categories in section 11.2.5.1. Using the appropriate Prototype Building characteristics from Tables 11–1 through 11–8, the building shall be simulated using the same gross floor area and number of floors for the Prototype Building as in the Proposed Design.

11.2.5.2.3 The form, orientation, occupancy and use profiles for the Prototype Building shall be fixed as described in section 11.5.3. Envelope, lighting, other internal loads and HVAC systems and equipment shall meet the prescriptive or system requirements of section 3.0 through 10.0 and are standardized inputs.

11.2.6 Reference Building Method

11.2.6.1 The Reference Building procedure shall be used only when the Proposed Design cannot be represented by one or a combination of the Prototype Building listed in Section 11.2.5.1 or the assumptions for the Prototype Building in Section 11.5, such as occupancy and use-profiles, do not reasonably represent the Proposed Design.

11.2.6.2 Use of the Reference Building to Determine the Energy Cost Budget

11.2.6.2.1 Each floor shall be oriented in the same manner for the Reference Building as in the Proposed Design. The form, gross and conditioned floor areas of each floor and the number of floors shall be the same as in the Proposed Design. All other characteristics, such as lighting, envelope and HVAC systems and equipment, shall meet the prescriptive/system requirements of Section 3.0 through 10.0.

11.2.7 Calculation Procedure and Simulation Tool

11.2.7.1 The Prototype or Reference Buildings shall be modeled using the criteria of section 11.5 and section 11.6. The modeling shall use a climate data set appropriate for both the site and the complexity of the energy conserving features of the design. ASHRAE Weather Year for Energy Calculations (WYEC) data or bin weather data shall be a default choice.

11.3 Determination of the Design Energy Consumption and Design Energy Cost

11.3.1 The Design Energy Consumption shall be calculated by modeling the Proposed Design using the same methods, assumptions, climate data, and simulation tool as were used to establish the Energy Cost Budget, except as explicitly stated in 11 5. The Design Energy Cost shall be calculated per Equation 11–3. If the Proposed Design includes cogeneration or non-depletable energy sources designed for the sale of energy off-site, then energy

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cost and income resulting from outside sales shall not be used to reduce the Design Energy Costs. Such systems shall be modeled as operating to supply energy needs of the Proposed Design only.

$DECOS = DECOS_{mo} + \ldots DECOS_{mo} \ldots + DECOS_{mo}$

Equation 11–3

Based on:

$DECOS_{mo} = DECON_{mo} \times ECOS_{mo} + \ldots + DECON_{mo} \times ECOS_{mo}$

Equation 11–4

Where:

DECOS = The annual Design Energy Cost

$DECOS_{mo}$ = The monthly Design Energy Cost

$ICON_{mo}$ = The monthly Design Energy Consumption of the ith type of energy

$ECOS_{mo}$ = The monthly Energy Cost per unit of the ith type of energy

The $DECON_{mo}$ shall be calculated from the first day through the last day of the month, inclusive.

11.4 Compliance

11.4.1 If the Design Energy Cost is less than or equal to the Energy Cost Budget, and all of the minimum requirements of sections 3.0 through 10.0 are met, the Proposed Design complies with the standards.

11.5 Standard Calculation Procedure

11.5.1 The Standard Calculation Procedure consists of methods and assumptions for calculating the Energy Cost Budget for the Prototype or Reference Building and the Design Energy Consumption and Design Energy Cost of the Proposed Design. In order to maintain consistency between the Energy Cost Budget and the Design Energy Cost, the input assumptions to be used are stated below. These inputs shall be used to determine the Energy Cost Budget and the Design Energy Consumption.

11.5.2 Prescribed assumptions shall be used without variation. Default assumptions shall be used unless the designer can demonstrate that a different assumption better characterizes the building's energy use over its expected life. No modified default assumptions shall be used in modeling both the Prototype or Reference Building and the Proposed Design unless the designer demonstrates clear cause to do otherwise. Special procedures for speculative buildings are discussed in section 11.5.9. Shell buildings may not use section 11.0.

11.5.3 Orientation and Shape

11.5.3.1 The Prototype Building shall consist of the same number of stories, and gross and conditioned floor area as the Proposed Design, with equal area per story. The building shape shall be rectangular, with a 2.5:1 aspect ratio. The long dimensions of the building shall face East and West. This is intended to provide an energy budget that can be met even if there are unfavorable site constraints. The fenestration shall be uniformly distributed in proportion to exterior wall area.

11.5.3.2 Floor-to-floor height for the Prototype Building shall be 13 ft except for dwelling units in hotels/motels and multi-family high rise residential buildings where floor-to-floor height shall be 9.5 ft.

11.5.3.3 The Reference Building shall consist of the same number of stories, and gross floor area for each story as the Proposed Design. Each floor shall be oriented in the same manner as the Proposed Design. The geometric form shall be the same as the Proposed Design.

11.5.4 Internal Loads

11.5.4.1 The systems and types of energy specified in this section are intended only as constraints in calculating the Energy Cost Budget. They are not intended as either requirements or recommendations for either systems or the type of energy to be used in the Proposed Design or for calculation of Design Energy Cost.

11.5.4.2 Internal loads for multi-family high rise residential buildings are presented in Table 11–1. These assumptions shall be prescribed assumptions. Internal loads for other building types shall be modeled as noted in this subsection.

11.5.4.2.1 Occupancy

(a) Occupancy schedules shall be Default Assumptions. The same assumptions shall be made in computing Design Energy Consumption as were used in calculating the Energy Cost Budget.

(b) Table 11–2, Occupancy Density, establishes the density, in ft^2/person of conditioned floor area, to be used for each building type. Table 11–3, Building Schedule Percentage Multipliers, establishes the percentage of total occupants in the building by hour of the day for each building type.

11.5.4.2.2 Lighting

(a) Interior Lighting Power Allowance (ILPA), for calculating the Energy Cost Budget shall be determined from section 3.0. The lighting power used to calculate the Design Energy Consumption shall be the actual adjusted power for lighting in the Proposed Design. If the lighting controls in the Proposed Design are more effective at saving energy than those required by section 3.3, the actual installed lighting power shall be used along with the schedules reflecting the action of the controls to calculate the Design Energy Consumption. This actual installed lighting power shall not be adjusted by the Power Adjustment Factors listed in Table 3.5–2.

(b) Lighting energy profiles are shown in Table 11–3 that establish the percentage of the lighting load switched-on in each Prototype or Reference Building by hour of the day. These profiles are default assumptions and can be changed when calculating the Energy Cost Budget to provide, for example, a 12 hour rather than an 8 hour work day.

11.5.4.2.3 Receptacles

(a) Receptacle loads and profiles are default assumptions. The same assumptions shall be made in calculating Design Energy Consumption as were used in calculating the Energy Cost Budget.

(b) Receptacle loads include all general service loads that are typical in a building. These loads exclude any process electrical usage and HVAC primary or auxiliary electrical usage. Table 11–4, Receptacle Power Densities, establishes the density, in W/ft^2, to be used for each building type. The receptacle energy profiles shall be the same as the lighting energy profiles in Table 11–3. This profile establishes the percentage of the receptacle load that is switched on by hour of the day and by building type.

11.5.5 Building Exterior Envelope

11.5.5.1 Insulation and Glazing

11.5.5.1.1 The insulation and glazing characteristics of the Prototype and Reference Building envelope shall be determined by using the first column under "Base Case", with no assumed overhangs for the appropriate Alternate Component Tables (ACP) in section 5.0, as defined by climate range. The insulation and glazing characteristics from this ACP are Prescribed Assumptions for Prototype and Reference Buildings for calculating the Energy Cost Budget. In calculating the Design Energy Consumption of the Proposed Design, the envelope characteristics of the Proposed Design shall be used.

11.5.5.2 Infiltration

11.5.5.2.1 For Prototype and Reference Buildings, infiltration assumptions shall be prescribed assumptions for calculating the Energy Cost Budget and default assumptions for the Design Energy Consumption.

Infiltration shall impact perimeter zones only.

11.5.5.2.2 When the HVAC system is switched "on", no infiltration shall be assumed. When the HVAC system is switched "off", the infiltration rate for buildings with or without operable windows shall be assumed to be 0.038 cfm/ft^2 of gross exterior wall. Hotels/motels and multi-family high rise residential buildings shall have infiltration rates of 0.038 cfm/ft^2 of gross exterior wall area at all times.

11.5.5.3 Envelope and Ground Absorptivities

11.5.5.3.1 For Prototype and Reference Buildings, absorptivity assumptions shall be prescribed assumptions for computing the Energy Cost Budget and default assumptions for computing the Design Energy Consumption. The solar absorptivity of opaque elements of the building envelope is assumed to be 70%. The solar absorptivity of ground surfaces is assumed to be 80% (20% reflectivity).

11.5.5.4 Window Management

11.5.5.4.1 For the Prototype and Reference Building, window management drapery assumptions shall be prescribed assumptions for setting the Energy Cost Budget. No draperies shall be the default assumption for computing the Design Energy Consumption. Glazing is assumed to be internally shaded by medium-weight draperies, closed one-half time. The draperies shall be modeled by assuming that one-half the area in each zone is draped and one-half is not. If manually-operated draperies, shades, or blinds are to be used in the Proposed Design, the Design Energy Consumption shall be calculated by assuming they are effective over one-half the glazing area in each zone.

11.5.5.5 Shading

11.5.5.5.1 For Prototype and Reference buildings and the Proposed Design, shading by permanent structures, terrain, and vegetation shall be taken into account for computing energy consumption, whether or not these features are located on the building site. A permanent fixture is one that is likely to remain for the life of the Proposed Design.

11.5.6 HVAC Systems and Equipment

11.5.6.1 The specifications and requirements for the HVAC systems of the Prototype and Reference Buildings shall be those in Table 11–5, HVAC Systems for Prototype and Reference Buildings. For the calculation of the Design Energy Consumption, the HVAC systems and equipment of the Proposed Design shall be used.

11.5.6.2 The systems and types of energy presented in Table 11–5 are intended only as constraints in calculating the Energy Cost Budget. They are not intended as either requirements or recommendations for either systems or the type of energy to be used in the Proposed Building or for the calculation of the Design Energy Cost.

11.5.6.3 HVAC Zones

11.5.6.3.1 HVAC zones for calculating the Energy Cost Budget of the Prototype or Reference Building shall consist of at least four perimeter and one interior zones per floor. Prototype Buildings shall have one perimeter zone facing each cardinal direction. The perimeter zones of Prototype and Reference Buildings shall be 15 ft in width, or one-third the narrow dimension of the building, when this dimension is between 30 ft and 45 ft inclusive, or one-half the narrow dimension of the building when this dimension is less than 30 ft. Zoning requirements shall be a default assumption for calculating the Energy Cost Budget. For multi-family high rise residential buildings, the prototype building shall have one zone per dwelling unit. The proposed design shall have one zone per unit unless zonal thermostatic controls are provided within units; in this case, two zones per unit shall be modeled. Building types such as assembly or warehouse may be modeled as a single zone if there is only one space.

11.5.6.3.2 For calculating the Design Energy Consumption, no fewer zones shall be used than were in the Prototype and Reference Buildings. The zones in the simulation shall correspond to the zones provided by the controls in the Proposed Design. Thermally similar zones, such as those facing one orientation on different floors, may be grouped together for the purposes of either the Design Energy Consumption or Energy Cost Budget simulation.

11.5.6.4 Equipment Sizing and Redundant Equipment

11.5.6.4.1 For calculating the Energy Cost Budget of Prototype or Reference Buildings, HVAC equipment shall be sized to meet the requirements of section 7.3.2, without using any of the exceptions. The size of equipment shall be that required for the building without process loads considered. The designer shall determine the final equipment sizing including the process loads by separate calculations. Redundant and/or emergency equipment need not be simulated if it is controlled so that it will not be operated during normal operations of the building. The designer shall document the installation of process equipment and the size of process loads.

11.5.6.4.2 For calculating the Design Energy Consumption, actual air flow rates and installed equipment size shall be used in the simulation, except that excess capacity provided to meet process loads need not be modeled if the process load was not modeled in setting Energy Cost Budget. Equipment sizing in the simulation of the Proposed Design shall correspond to the equipment actually selected for the design and the designer shall not use equipment sized automatically by the simulation tool.

11.5.6.4.3 Redundant and/or emergency equipment need not be simulated if it is controlled to not be operated during normal operations of the building.

11.5.7 Service Water Heating

11.5.7.1 The service water loads for Prototype and Reference Buildings are defined in terms of Btu/h per person in Table 11–6. The service water heating loads from Table 11–6 are prescribed assumptions for multi-family high rise residential buildings and default assumptions for all other buildings. The same service water heating load assumptions shall be made in calculating Design Energy Consumption as were used in calculating the Energy Cost Budget.

11.5.7.2 The service water heating system, including piping losses for the Prototype Building, shall be modeled using the methods of the *ASHRAE Handbook, 1987 HVAC Systems and Applications Volume* using a system that meets all requirements of section 9.0. The service water heating equipment for the Prototype or Reference Building shall be either natural gas or #2 fuel oil, if natural gas is not available at the site, or an electric heat pump.

11.5.7.3 *Exception to section 11.5.7:*

11.5.7.3.1 If electric resistance service water heating is preferable to an electric heat pump when analyzed according to the criteria of section 9.3.7.1 or when service water temperatures exceeding 145 °F are required for a particular application, electric resistance water heating may be used.

11.5.8 Controls

11.5.8.1 All occupied conditioned spaces in the Prototype, Reference and Proposed Design Buildings in all climates shall be simulated as being

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both heated and cooled. The assumptions in this subsection are prescribed assumptions. If the Proposed Design does not include equipment for cooling or heating, the Design Energy Consumption shall be determined by the specifications for calculating the Energy Cost Budget as described in Table 11–7.

11.5.8.2 *Exceptions to section 11.5.8:*

11.5.8.2.1 If a building is to be provided with only heating or cooling, both the Prototype or Reference Building and the Proposed Design shall be simulated, using the same assumptions. If such an assumption is made, the analysis shall show that the building interior temperature meets the comfort criteria of *ANSI/ASHRAE 55–1981* "Thermal Environmental Conditions for Human Occupancy," at least 98% of the occupied hours during the year.

11.5.8.2.2 If warehouses are not intended to be mechanically cooled, both the Energy Cost Budget and Design Energy Consumption shall be modeled assuming no mechanical cooling; and

11.5.8.2.3 In climates where winter design temperature (97.5% occurrence) is greater than 59 °F, space heating need not be modeled.

11.5.8.3 Space temperature controls for the Prototype or Reference Building, except multi-family high rise residential buildings shall be set at 70 °F for space heating and 75 °F for space cooling with a deadband per section 7.3.4.5. The system shut off during off-hours shall be according to the schedule in Table 11–3, except that the heating system shall cycle on if any space should drop below the night setback setting of 55 °F. There shall be no similar setpoint during the cooling season. Lesser deadband ranges may be used in calculating the Design Energy Consumption.

11.5.8.3.1 *Exceptions to section 11.5.8.3:*

(a) Setback shall not be modeled in determining either the Energy Cost Budget or Design Energy Cost if setback is not realistic for the Proposed Design, such as 24 hour/day operations. Health facilities need not have night setback during the heating season;

(b) Hotel/motels and multi-family high rise residential buildings shall have a night setback temperature of 60 °F from 11:00 p.m. to 6:00 a.m. during the heating season; and

(c) If deadband controls are not to be installed, the Design Energy Cost shall be calculated with both heating and cooling thermostat setpoints set to the same value between 70 °F and 75 °F inclusive, assumed to be constant for the year.

11.5.8.3.2 For multi-family buildings, the thermostat schedule for the dwelling units shall be as in Table 11–8.

(a) The Prototype Building shall use the single zone schedule. The Proposed Design shall use the two-zone schedule only if zonal thermostatic controls are provided. For Proposed Designs that use heat pumps employing supplementary heat, the controls used to switch on the auxiliary heat source during morning warm-up periods shall be simulated accurately. The thermostat assumptions for multi-family high-rise buildings are prescribed assumptions.

11.5.8.4 When providing for outdoor air ventilation in calculating the Energy Cost Budget, controls shall be assumed to close the outside air intake to reduce the flow of outside air to 0 cfm during setback and unoccupied periods. Ventilation using inside air may still be required to maintain scheduled setback temperature. Outside air ventilation, during occupied periods, shall be as required by *ASHRAE Standard 62–1981*, "Ventilation for Acceptable Indoor Air," or the Proposed Design, whichever is greater.

11.5.8.5 If humidification is to be used in the Proposed Design, the same level of humidification and system type shall be used in the Prototype or Reference Building. If dehumidification requires subcooling of supply air, then reheat for the Prototype or Reference Building shall be from recovered waste heat such as condenser waste heat.

11.5.9 Speculative Buildings

11.5.9.1 Lighting

11.5.9.1.1 The interior lighting power allowance (ILPA) for calculating the Energy Cost Budget shall be determined from Table 3.4–1. The Design Energy Consumption may be based on an assumed adjusted lighting power for future lighting improvements.

(a) The assumption about future lighting power used to calculate the Design Energy Consumption must be documented so that the future installed lighting systems may be in compliance with these standards. Documentation must be provided to enable future lighting systems to use either the Prescriptive method of section 3.4 or the Systems Performance method of section 3.5.

(b) Documentation for future lighting systems that use the Prescriptive method of section 3.4 shall be stated as a maximum adjusted lighting power for the tenant spaces. The adjusted lighting power allowance for tenant spaces shall account for the lighting power provided for the common areas of the building.

(c) Documentation for future lighting systems that use the System Performance method of section 3.5 shall be stated as a required lighting adjustment. The required lighting adjustment is the whole building lighting power assumed in order to calculate the Design Energy Consumption minus the ILPA value from Table 3.4–1 that was used to calculate the Energy Cost Budget. When the required lighting adjustment is less than zero, a complete lighting design must be developed for one or more representative tenant spaces, demonstrating acceptable lighting within the limits of the assumed lighting power allowance.

11.5.9.2 HVAC Systems and Equipment

11.5.9.2.1 If the HVAC system is not completely specified in the plans, the Design Energy Consumption shall be based on reasonable assumptions about the construction of future HVAC systems and equipment. These assumptions shall be documented so that future HVAC systems and equipment may be in compliance with these standards.

11.6 The Simulation Tool

11.6.1 Annual energy consumption shall be simulated with a multi-zone, 8760 hours per year building energy model. The model shall account for:

11.6.1.1 The dynamic heat transfer of the building envelope such as solar and internal gains;

11.6.1.2 Equipment efficiencies as a function of load and climate;

11.6.1.3 Lighting and HVAC system controls and distribution systems by simulating the whole building;

11.6.1.4 The operating schedule of the building including night setback during various times of the year; and

11.6.1.5 Energy consumption information at a level necessary to determine the Energy Cost Budget and Design Energy Cost through the appropriate utility rate schedules.

11.6.2 While the simulation tool should simulate an entire year on an hour by hour basis (8760 hours), programs that approximate this dynamic analysis procedure and provide equivalent results are acceptable.

11.6.3 Simulation tools shall be selected for their ability to simulate accurately the relevant features of the building in question, as shown in the tool's documentation. For example, a single zone model shall not be used to simulate a large, multi-zone building, and a steady-state model such as the degree-day method shall not be used to simulate buildings when equipment efficiency or performance is significantly affected by the dynamic patterns of weather, solar radiation, and occupancy. Relevant energy-related features shall be addressed by a model

such as daylighting, atriums or sunspaces, night ventilation or thermal storage, chilled water storage or heat recovery, active or passive solar systems, zoning and controls of heating and cooling systems, and ground-coupled buildings. In addition, models shall be capable of translating the Design Energy Consumption into energy cost using actual utility rate schedules with the coincidental electrical demand of a building. Examples of public domain models capable of handling such complex building systems and energy cost translations available in the United States are DOE–2.1C and BLAST 3.0 and in Canada, Energy Systems Analysis Series.

11.6.4 All simulation tools shall use scientifically justifiable documented techniques and procedures for modeling building loads, systems, and equipment. The algorithms used in the program shall have been verified by comparison with experimental measurements, loads, systems, and equipment.

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TABLE 11-1
MULTI-FAMILY HIGH RISE RESIDENTIAL BUILDING SCHEDULES
(INTERNAL LOADS PER DWELLING UNIT Btu/h)

One-Zone Dwelling Unit

HOUR	OCCUPANTS		LIGHTS	EQUIPMENT	
	SENSIBLE	LATENT	SENSIBLE	SENSIBLE	LATENT
1	300	260	0	750	110
2	300	260	0	750	110
3	300	260	0	750	110
4	300	260	0	750	110
5	300	260	0	750	110
6	300	260	0	750	110
7	300	260	980	1250	190
8	210	200	840	2600	420
9	100	80	0	1170	180
10	100	80	0	1270	190
11	100	80	0	1270	190
12	100	80	0	2210	330
13	100	80	0	2210	330
14	100	80	0	1270	190
15	100	80	0	1270	190
16	100	80	0	1270	190
17	100	80	0	1270	190
18	300	260	0	3060	450
19	300	260	0	3360	500
20	300	260	960	1490	220
21	300	260	960	1490	220
22	300	260	960	1490	220
23	300	260	960	1060	160
24	300	260	960	1060	160

Two-Zone Dwelling Unit

HOUR	BEDROOMS & BATHROOMS					OTHER ROOMS				
	OCCUPANTS		LIGHTS	EQUIPMENT		OCCUPANTS		LIGHTS	EQUIPMENT	
	Sensible	Latent	Sensible	Sensible	Latent	Sensible	Latent	Sensible	Sensible	Latent
1	300	260	0	100	20	0	0	0	650	90
2	300	260	0	100	20	0	0	0	650	90
3	300	260	0	100	20	0	0	0	650	90
4	300	260	0	100	20	0	0	0	650	90
5	300	260	0	100	20	0	0	0	650	90
6	300	260	0	100	20	0	0	0	650	90
7	200	180	680	200	40	100	80	300	1050	150
8	110	120	240	200	40	100	80	600	2400	380
9	0	0	0	100	20	100	80	0	1070	160
10	0	0	0	100	20	100	80	0	1170	170
11	0	0	0	100	20	100	80	0	1170	170
12	0	0	0	100	20	100	80	0	2110	310
13	0	0	0	100	20	100	80	0	2110	310
14	0	0	0	100	20	100	80	0	1170	170
15	0	0	0	100	20	100	80	0	1170	170
16	0	0	0	100	20	100	80	0	1170	170
17	0	0	0	100	20	100	80	0	1170	170
18	0	0	0	100	20	300	260	0	2960	430
19	0	0	0	100	20	300	260	0	3260	480
20	100	80	320	300	60	200	180	640	1190	160
21	100	80	320	300	60	200	180	640	1190	160
22	150	130	480	700	90	150	130	480	790	130
23	300	260	640	410	70	0	0	320	650	90
24	300	260	640	410	70	0	0	320	650	90

TABLE 11-2
OCCUPANCY DENSITY

BUILDING TYPE	CONDITIONED FLOOR AREA Ft^2/PERSON
Assembly	50
Office	275
Retail	300
Warehouse	15000
School	75
Hotel/Motel	250
Restaurant	100
Health/Institutional	200
Multi-family High Rise Residential	2 per unit[1]

Heat generation: Btu/h per person: 250 Btu/h per person sensible, and 190 Btu/h per person latent.

1. See Table 11-1

TABLE 11-3
BUILDING SCHEDULE PERCENTAGE MULTIPLIERS

		1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24
ASSEMBLY	WEEKDAY:	0	0	0	0	0	0	0	0	20	20	20	20	80	80	80	80	80	80	20	20	20	20	10	0
OCCUPANCY	SATURDAY:	0	0	0	0	0	0	0	0	20	20	20	20	60	60	60	60	60	60	60	60	60	80	10	0
	SUNDAY:	0	0	0	0	0	0	0	0	10	10	10	10	10	70	70	70	70	70	70	70	70	70	20	0
ASSEMBLY	WEEKDAY:	0	0	0	0	0	0	40	40	40	75	75	75	75	75	75	75	75	75	75	75	75	75	25	0
LTNG & RECEP	SATURDAY:	0	0	0	0	0	0	0	30	30	50	50	50	50	50	50	50	50	50	50	50	50	50	0	0
	SUNDAY:	0	0	0	0	0	0	0	30	30	30	30	30	65	65	65	65	65	65	65	65	65	65	0	0
ASSEMBLY	WEEKDAY:	OFF	OFF	OFF	OFF	OFF	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON	OFF
HVAC	SATURDAY:	OFF	OFF	OFF	OFF	OFF	OFF	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON	OFF
	SUNDAY:	OFF	OFF	OFF	OFF	OFF	OFF	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON	OFF
ASSEMBLY	WEEKDAY:	0	0	0	0	0	0	0	0	0	5	5	35	5	5	5	5	5	0	0	0	0	0	0	0
SWH	SATURDAY:	0	0	0	0	0	0	0	0	0	5	5	20	0	0	0	0	0	0	0	65	30	0	0	0
	SUNDAY:	0	0	0	0	0	0	0	0	0	5	5	10	0	0	0	0	0	0	0	65	30	0	0	0
OFFICE	WEEKDAY:	0	0	0	0	0	0	0	10	20	95	95	45	45	95	95	95	95	95	30	10	10	10	0	0
OCCUPANCY	SATURDAY:	0	0	0	0	0	0	0	10	10	30	30	30	30	10	10	10	10	10	0	0	0	0	0	0
	SUNDAY:	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
OFFICE	WEEKDAY:	0	0	0	0	0	0	10	30	90	90	90	90	80	90	90	90	90	90	30	30	20	20	0	0
LTNG & RECEP	SATURDAY:	0	0	0	0	0	0	10	10	30	30	30	30	15	15	15	15	15	15	0	0	0	0	0	0
	SUNDAY:	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
OFFICE	WEEKDAY:	OFF	OFF	OFF	OFF	OFF	OFF	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON	OFF	OFF	OFF	OFF	OFF	OFF
HVAC	SATURDAY:	OFF	OFF	OFF	OFF	OFF	OFF	OFF	ON	ON	ON	ON	ON	ON	ON	OFF	OFF	OFF	OFF	OFF	OFF	OFF	OFF	OFF	OFF
	SUNDAY:	OFF	OFF	OFF	OFF	OFF	OFF	OFF	OFF	OFF	OFF	OFF	OFF	OFF	OFF	OFF	OFF	OFF	OFF	OFF	OFF	OFF	OFF	OFF	OFF
OFFICE	WEEKDAY:	0	0	0	0	0	0	0	15	30	35	35	45	55	50	30	30	40	20	20	10	15	5	0	0
SWH	SATURDAY:	0	0	0	0	0	0	0	10	10	20	15	20	15	15	10	10	10	0	0	0	0	0	0	0
	SUNDAY:	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0

TABLE 11-3 (Continued)
BUILDING SCHEDULE PERCENTAGE MULTIPLIERS

		1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24
RETAIL	WEEKDAY:	0	0	0	0	0	0	0	10	20	50	50	70	70	70	70	80	70	50	50	30	30	0	0	0
OCCUPANCY	SATURDAY:	0	0	0	0	0	0	0	10	20	50	60	80	80	80	80	80	80	60	20	20	20	10	0	0
	SUNDAY:	0	0	0	0	0	0	0	0	0	10	20	20	40	40	40	40	40	20	10	0	0	0	0	0
RETAIL	WEEKDAY:	0	0	0	0	0	0	0	20	50	90	90	90	90	90	90	90	90	90	60	60	50	0	0	0
LTNG & RECEP	SATURDAY:	0	0	0	0	0	0	0	10	30	60	90	90	90	90	90	90	90	90	50	30	30	10	0	0
	SUNDAY:	0	0	0	0	0	0	0	0	0	10	40	40	60	60	60	60	60	40	20	0	0	0	0	0
RETAIL	WEEKDAY:	OFF	OFF	OFF	OFF	OFF	OFF	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON	OFF	OFF	OFF
HVAC	SATURDAY:	OFF	OFF	OFF	OFF	OFF	OFF	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON	OFF	OFF
	SUNDAY:	OFF	OFF	OFF	OFF	OFF	OFF	OFF	OFF	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON	OFF	OFF	OFF	OFF	OFF
RETAIL	WEEKDAY:	0	0	0	0	0	0	0	10	20	30	40	55	60	60	45	40	45	45	40	30	30	0	0	0
SWH	SATURDAY:	0	0	0	0	0	0	0	15	20	25	40	50	55	55	45	45	45	45	40	35	25	20	0	0
	SUNDAY:	0	0	0	0	0	0	0	0	0	10	25	30	35	35	30	30	35	30	20	0	0	0	0	0
WAREHOUSE	WEEKDAY:	0	0	0	0	0	0	0	15	70	90	90	90	50	85	85	85	20	0	0	0	0	0	0	0
OCCUPANCY	SATURDAY:	0	0	0	0	0	0	0	0	20	20	20	20	10	10	10	10	0	0	0	0	0	0	0	0
	SUNDAY:	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
WAREHOUSE	WEEKDAY:	0	0	0	0	0	0	0	40	70	90	90	90	90	90	90	90	90	0	0	0	0	0	0	0
LTNG & RECEP	SATURDAY:	0	0	0	0	0	0	0	0	10	25	25	25	10	10	10	10	0	0	0	0	0	0	0	0
	SUNDAY:	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
WAREHOUSE	WEEKDAY:	OFF	OFF	OFF	OFF	OFF	OFF	OFF	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON	OFF	OFF	OFF	OFF	OFF	OFF	OFF
HVAC	SATURDAY:	OFF	OFF	OFF	OFF	OFF	OFF	OFF	OFF	ON	ON	ON	ON	ON	ON	ON	ON	OFF	OFF	OFF	OFF	OFF	OFF	OFF	OFF
	SUNDAY:	OFF	OFF	OFF	OFF	OFF	OFF	OFF	OFF	OFF	OFF	OFF	OFF	OFF	OFF	OFF	OFF	OFF	OFF	OFF	OFF	OFF	OFF	OFF	OFF
WAREHOUSE	WEEKDAY:	0	0	0	0	0	0	0	5	25	35	35	45	55	50	35	50	15	0	0	0	0	0	0	0
SWH	SATURDAY:	0	0	0	0	0	0	0	0	0	10	10	15	0	0	0	0	0	0	0	0	0	0	0	0
	SUNDAY:	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0

TABLE 11-3 (Continued)
BUILDING SCHEDULE PERCENTAGE MULTIPLIERS

		1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24
SCHOOL	WEEKDAY:	0	0	0	0	0	0	0	5	75	90	90	80	80	80	80	45	15	5	15	20	20	10	0	0
OCCUPANCY	SATURDAY:	0	0	0	0	0	0	0	0	10	10	10	10	10	0	0	0	0	0	0	0	0	0	0	0
	SUNDAY:	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
SCHOOL	WEEKDAY:	0	0	0	0	0	0	0	30	85	95	95	95	80	80	80	70	50	50	35	35	35	30	0	0
LTNG & RECEP	SATURDAY:	0	0	0	0	0	0	0	0	15	15	15	15	15	0	0	0	0	0	0	0	0	0	0	0
	SUNDAY:	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
SCHOOL	WEEKDAY:	OFF	OFF	OFF	OFF	OFF	OFF	OFF	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON
HVAC	SATURDAY:	OFF	OFF	OFF	OFF	OFF	OFF	OFF	OFF	ON	ON	ON	ON	ON	OFF	OFF	OFF	OFF	OFF	OFF	OFF	OFF	OFF	OFF	OFF
	SUNDAY:	OFF	OFF	OFF	OFF	OFF	OFF	OFF	OFF	OFF	OFF	OFF	OFF	OFF	OFF	OFF	OFF	OFF	OFF	OFF	OFF	OFF	OFF	OFF	OFF
SCHOOL	WEEKDAY:	0	0	0	0	0	0	0	5	30	55	60	70	75	80	60	60	5	5	15	20	20	20	0	0
SUN	SATURDAY:	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
	SUNDAY:	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
HOTEL/MOTEL	WEEKDAY:	90	90	90	90	90	90	70	40	40	20	20	20	20	20	20	30	50	50	50	70	70	80	90	90
OCCUPANCY	SATURDAY:	90	90	90	90	90	90	70	50	50	30	30	30	30	30	30	30	30	50	60	60	60	70	70	70
	SUNDAY:	70	70	70	70	70	70	70	70	50	50	50	30	30	20	20	20	30	40	40	60	60	80	80	80
HOTEL/MOTEL	WEEKDAY:	20	15	10	10	10	20	40	50	40	40	25	25	25	25	25	25	25	25	60	80	90	80	60	30
LTNG & RECEP	SATURDAY:	20	20	10	10	10	10	30	30	40	40	30	25	25	25	25	25	25	25	60	70	70	70	60	30
	SUNDAY:	30	30	20	20	20	20	30	40	40	30	30	30	30	20	20	20	20	20	50	70	80	60	50	30
HOTEL/MOTEL	WEEKDAY:	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON
HVAC	SATURDAY:	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON
	SUNDAY:	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON
HOTEL/MOTEL	WEEKDAY:	20	15	15	15	20	25	50	60	55	45	40	45	40	35	30	30	30	40	55	60	50	55	45	25
SUN	SATURDAY:	20	15	15	15	20	25	40	50	50	50	45	50	50	45	40	40	34	40	55	55	50	55	40	30
	SUNDAY:	25	20	20	20	20	30	50	50	50	55	50	50	40	40	30	30	30	40	50	50	40	50	40	20

TABLE 11-3 (Continued)
BUILDING SCHEDULE PERCENTAGE MULTIPLIERS

		1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24
RESTAURANT	WEEKDAY:	15	15	5	0	0	0	0	5	5	5	20	50	80	70	40	20	25	50	80	80	80	50	35	20
OCCUPANCY	SATURDAY:	30	25	5	0	0	0	0	0	0	5	20	45	50	50	35	30	30	30	70	90	70	65	55	35
	SUNDAY:	20	20	5	0	0	0	0	0	0	0	0	20	25	25	15	20	25	35	55	65	70	35	20	20
RESTAURANT	WEEKDAY:	15	15	15	15	15	20	40	40	60	60	90	90	90	90	90	90	90	90	90	90	90	90	50	30
LTNG & RECEP	SATURDAY:	20	15	15	15	15	15	30	30	60	60	80	80	80	80	80	80	80	90	90	90	90	90	50	30
	SUNDAY:	20	15	15	15	15	15	30	30	50	70	70	70	70	70	70	70	60	60	60	60	60	60	50	30
RESTAURANT	WEEKDAY:	ON	ON	ON	OFF	OFF	OFF	OFF	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON
HVAC	SATURDAY:	ON	ON	ON	OFF	OFF	OFF	OFF	OFF	OFF	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON
	SUNDAY:	ON	ON	ON	OFF	OFF	OFF	OFF	OFF	OFF	OFF	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON
RESTAURANT	WEEKDAY:	20	15	15	0	0	0	0	60	55	45	40	45	40	35	30	30	30	40	55	60	50	55	45	25
SWH	SATURDAY:	20	15	15	0	0	0	0	0	0	50	45	50	50	45	40	40	35	40	55	55	50	55	40	30
	SUNDAY:	25	20	20	0	0	0	0	0	0	0	50	50	40	40	30	30	30	40	50	50	40	50	40	20
HEALTH	WEEKDAY:	0	0	0	0	0	0	0	10	50	80	80	80	80	80	80	80	80	50	30	30	20	20	0	0
OCCUPANCY	SATURDAY:	0	0	0	0	0	0	0	10	30	40	40	40	40	40	40	40	40	10	10	0	0	0	0	0
	SUNDAY:	0	0	0	0	0	0	0	0	5	5	5	5	5	5	5	5	5	0	0	0	0	0	0	0
HEALTH	WEEKDAY:	0	0	0	0	0	0	0	50	90	90	90	90	90	90	90	90	90	30	30	30	30	30	0	0
LTNG & RECEP	SATURDAY:	0	0	0	0	0	0	0	20	40	40	40	40	40	40	40	40	40	40	10	0	0	0	0	0
	SUNDAY:	0	0	0	0	0	0	0	0	10	10	10	10	10	10	10	10	0	0	0	0	0	0	0	0
HEALTH	WEEKDAY:	0	0	0	0	0	0	0	15	55	65	75	80	70	80	75	70	60	40	15	15	15	5	0	0
SWH	SATURDAY:	0	0	0	0	0	0	0	0	15	25	25	25	20	20	20	20	20	5	0	0	0	0	0	0
	SUNDAY:	0	0	0	0	0	0	0	0	0	15	15	15	15	15	15	0	0	0	0	0	0	0	0	0
HEALTH	WEEKDAY:	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON
HVAC	SATURDAY:	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON
	SUNDAY:	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON
MULTI-FAMILY	WEEKDAY:	0	0	0	5	5	5	80	70	50	40	20	20	25	25	50	50	70	70	35	20	15	15	5	0
SWH SYSTEM	SATURDAY:	0	0	0	0	0	0	20	45	50	50	35	30	30	30	70	90	70	65	55	35	30	25	5	0
	SUNDAY:	0	0	0	0	0	0	0	20	25	25	15	20	25	35	55	65	70	35	20	20	20	20	5	0

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NOTES FOR TABLE 11-3

1 Reference: Recommendations for Energy Conservation Standards and Guidelines for New Commercial Buildings, Vol. III, App. A Pacific Northwest Laboratory, PNL-4870-8, 1983."

2 Table 11-3 contains multipliers for converting the nominal values for building occupancy (Table 11-2), receptacle power density (Table 11-4), service hot water (Table 11-6), and lighting energy (Section 3.4 or 3.5) into time series data for estimating building loads under the Standard Calculation Procedure.

For each standard building profile there are three series - one each for weekdays, Saturday and Sunday. There are 24 elements per series. These represent the multiplier that should be used to estimate building loads from 12 a.m. to 1 a.m. (series element #1) through 11 p.m. to 12 a.m. (series element #24). The estimated load for any hour is simply the multiplier from the appropriate standard profile multiplied by the appropriate value from the tables cited above.

3 The Building HVAC System Schedule listed in Table 11-3 lists the hours when the HVAC system shall be considered "on" or "off" in accordance with Section 11.5.5.2.

TABLE 11-4
RECEPTACLE POWER DENSITIES

BUILDING TYPE	W/ft^2 OF CONDTIONED FLOOR AREA
Assembly	0.25
Office	0.75
Retail	0.25
Warehouse	0.1
School	0.5
Hotel/Motel	0.25
Restaurant	0.1
Health	1.0
Multi-Family High Rise Residential	Included in Lights and Equipment portions of Table 11-1

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TABLE 11-5
HVAC SYSTEMS OF PROTOTYPE AND REFERENCE BUILDINGS[1, 2]

BUILDING/SPACE OCCUPANCY	SYSTEM NO. (TABLE 11-7)	REMARKS (TABLE 11-7)
Assembly		
a. Churches (any size)	1	
b. ≤50,000 ft² or ≤3 floors	1 or 3	Note 1
c. >50,000 ft² or >3 floors	3	
Office		
a. ≤20,000 ft²	1	
b. >20,000 ft² and either ≤3 floors or ≤75,000 ft²	4	
c. >75,000 ft² or >3 floors	5	
Retail		
a. ≤50,000 ft²	1 or 3	Note 1
b. >50,000 ft²	4 or 5	Note 1
Warehouse	1	Note 1
Schools		
a. ≤75,000 ft² or ≤3 floors	1	
b. >75,000 ft² or >3 floors	3	
Hotel/Motel		
a. ≤3 stories	2 or 7	Note 5, 7
b. >3 stories	6	Note 6
Restaurant	1 or 3	Note 1
Health		
a. Nursing Home (any size)	2 or 7	Note 7
b. ≤15,000 ft²	1	
c. >15,000 ft² and ≤50,000 ft²	4	Note 2
d. >50,000 ft²	5	Note 2, 3
Multi-Family High Rise Residential >3 stories	7	

1 Space and Service Water Heating budget calculations shall be made using both electricity and natural gas. The Energy Cost Budget shall be the lower of these two calculations. If natural gas is not available at the rate, electricity and #2 fuel oil shall be used for the budget calculations.

2 The systems and energy types presented in this Table are not intended as requirements or recommendations for the proposed design. Floor areas below are the total conditioned floor areas for the listed occupancy type in the building. The number of floors indicated below is the total number of occupied floors for the listed occupancy type.

TABLE 11-6
SERVICE HOT WATER QUANTITIES

Building Type	Btu/Person-hour[1]
1. Assembly	215
2. Office	175
3. Retail	135
4. Warehouse	225
5. School	215
6. Hotel/Motel	1110
7. Restaurant	390
8. Health	135
9. Multi-Family High Rise Residential	1700[2]

1. This value is the number to be multiplied by the percentage multipliers of the building profile schedules in Table 11-4. See Table 11-2 for occupancy levels.

2 Total hot water use per dwelling unit for each hour shall be 3400 Btu/h times the multi-family high rise residential building SWH system multiplier from Table 11-3.

TABLE 11-7
HVAC SYSTEM DESCRIPTION FOR PROTOTYPE AND REFERENCE BUILDINGS[1, 2]

HVAC COMPONENT	SYSTEM #1	SYSTEM #2	SYSTEM #3	SYSTEM #4
System Description	Packaged rooftop single zone, one unit per zone	Packaged terminal air conditioner with space heater or heatpump, one heating/ cooling unit per zone	Air handler per zone with central plant	Packaged rooftop VAV w/perimeter reheat
Fan System Design supply circulation rate	Note 9	Note 10	Note 9	Note 9
Supply fan total static pressure	1.3 in. W.C.	N/A	2.0 in. W.C.	3.0 in. W.C.
Combined supply fan, motor, and drive efficiency	40%	N/A	50%	45%
Supply fan control	Constant volume	Fan Cycles with call for heating or cooling	Constant volume	VAV w/forward curved centrifugal fan and variable inlet vanes
Return fan total static pressure	N/A	N/A	0.6 in. W.C.	0.6 in. W.C.
Combined return fan, motor, and drive efficiency	N/A	N/A	25%	25%
Return fan control	N/A	N/A	Constant volume	VAV w/forward curved centrifugal fan and discharge dampers
Cooling System	Direct expansion air cooled	Direct expansion air cooled	Chilled water (Note 11)	Direct expansion air cooled
Heating System	Furnace, heatpump, or electric resistance (Note 8)	Heatpump w/electric resistance auxiliary or air conditioner w/space heater (Note 8)	Hot water (Note 8, 12)	Hot water (Note 12) or electric resistance (Note 8)
Remarks	Drybulb economizer per Section 7.4.3 (barometric relief)	No economizer	Drybulb economizer per Section 7.4.3	Drybulb economizer per Section 7.4.3 Minimum VAV setting per 7.4.3 exception 1. Supply air reset by zone of greatest cooling demand.

Notes:

1. The systems and energy types presented in this Table are not intended as requirements or recommendations for the proposed design.

2. For numbered notes see end of Table 11-7.

TABLE 11-7, (Continued)
HVAC SYSTEM DESCRIPTION FOR PROTOTYPE AND REFERENCE BUILDINGS[1]

HVAC COMPONENT	SYSTEM #5	SYSTEM #6	SYSTEM #7
System Description	Built-up central VAV with perimeter reheat	Four-pipe fan coil per zone with central plant	Water source heat pump
Fan System Design supply circulation rate	Note 9	Note 9	Note 10
Supply fan total static pressure	4.0 in. W.C.	0.5 in. W.C.	0.5 in. W.C.
Combined supply fan, motor, and drive efficiency	55%	25%	25%
Supply fan control	VAV w/air-foil centrifugal fan and AC frequency variable speed drive	Fan cycles w/call for heating or cooling	Fan cycles w/call for heating or cooling
Return fan total static pressure	1.0 in. W.C.	N/A	N/A
Combined return fan, motor, and drive efficiency	30%	N/A	N/A
Return fan control	VAV with air-foil centrifugal fan and AC frequency variable speed drive	N/A	N/A
Cooling System	Chilled water (Note 11)	Chilled water (Note 11)	Closed circuit, centrifugal centrifugal blower type cooling tower sized per Note 11. Circulating pump sized for 2.7 GPM per ton.
Heating System	Hot water (Note 12) or electric resistance (Note 8)	Hot water (Note 12) or electric resistance (Note 8)	Electric or natural draft fossil fuel boiler (Note 8)
Remarks	Drybulb economizer per Section 7.4.3 Minimum VAV setting per Section 7.4.4.3 Supply air reset by zone of greatest cooling demand.	No economizer	Tower fans and boiler cycled to maintain circulating water temperature between 60 and design tower leaving water temperature.

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TABLE 11-7
NUMBERED NOTES FOR TABLE 11-7
HVAC SYSTEM DESCRIPTIONS FOR PROTOTYPE AND REFERENCE BUILDINGS

NOTES:

1. For occupancies such as restaurants, assembly and retail which are part of a mixed use building which, according to Table 11-7, includes a central chilled water plant (systems 3, 5, or 6), chilled water system type 3 or 5, as indicated in the Table, shall be used.

2. Constant volume may be used in zones where pressurization relationships must be maintained by code. VAV shall be used in all other areas, in accordance with Section 7.4.4.3.

3. Provide run-around heat recovery systems for all fan systems with minimum outside air intake greater than 75%. Recovery effectiveness shall be 0.60.

4. If a warehouse is not intended to be mechanically cooled, both the Energy Cost Budgets and Design Energy Costs, may be calculated assuming no mechanical cooling.

5. The system listed is for guest rooms only. Areas such as public areas and back-of-house areas shall be served by system 4. Other areas such as offices and retail shall be served by the systems listed in Table 11-7 for these occupancy types.

6. The system listed is for guest rooms only. Areas such as public areas and back-of-house areas shall be served by system 5. Other areas such as offices and retail shall be served by systems listed in Table 11-7 for these occupancy types.

7. System 2 shall be used for the Energy Cost Budget calculation except in areas with design heating outside air temperatures less than 10 °F.

8. Prototype energy budget cost calculations shall be made using both electricity and natural gas. If natural gas is not available at the site, electricity and #2 fuel oil shall be used. The Energy Cost Budget shall be the lower of these results. Alternately, the Energy Cost Budget may be based on the fuel source that minimizes total operating, maintenance, equipment, and installation costs for the prototype over the building lifetime. Equipment and installation cost estimates shall be prepared using professionally recognized cost estimating tools, guides, and techniques. The methods of analysis shall conform to those of Subpart A of 10 CFR 436. Energy costs shall be based on actual costs to the building as defined in this Section.

9. Design supply air circulation rate shall be based on a supply air to room air temperature difference of 20 °F. A higher supply air temperature may be used if required to maintain a minimum circulation rate of 4.5 air changes per hour or 15 cfm per person at design conditions to each zone served by the system. If return fans are specified, they shall be sized from the supply fan capacity less the required minimum ventilation with outside air, or 75% of the supply air capacity, whichever is larger. Except where noted, supply and return fans shall be operated continuously during occupied hours.

10. Fan Energy when included in the efficiency rating of the unit as defined in Section 7.4.4.3 need not be modeled explicitly for this system. The fan shall cycle with calls for heating or cooling.

11. Chilled water systems shall be modeled using a reciprocating chiller for systems with total cooling capacities less than 175 tons, and centrifugal chillers for systems with cooling capacities of 175 tons or greater. For systems with cooling of 600 tons or more, the Energy Cost Budget shall be calculated using two centrifugal chillers lead/lag controlled. Chilled water pumps shall be sized using a 12 °F temperature rise, from 44 °F to 56 °F, operating at 75 feet of head and and 65% combined impeller and motor efficiency. Condenser water pumps shall be sized using a 10 °F temperature rise, operating at 60 feet of head and 60% combined impeller and motor efficiency. The cooling tower shall be an open circuit, centrifugal blower type sized for the larger of 85 °F leaving water temperature or 10 °F approach to design wetbulb temperature. The tower shall be controlled to provide a 65 °F leaving water temperature whenever weather conditions permit, floating up to design leaving water temperature at design conditions. Chilled water supply temperature shall be reset in accordance with Section 7.4.6.2.

12. Hot water system shall include a natural draft fossil fuel or electric boiler per Note 8. The hot water pump shall be sized based on a 30 °F temperature drop, for 180 °F to 150 °F, operating at 60 feet of head and a combined impeller and motor efficiency of 60%. Hot water supply temperature shall be reset in accordance with Section 7.4.6.2.

TABLE 11-8
THERMOSTAT SETTINGS FOR MULTI-FAMILY HIGH-RISE BUILDINGS

TIME OF DAY	SINGLE ZONE DWELLING UNIT		TWO ZONE DWELLING UNIT			
			BEDROOMS/BATHROOMS		OTHER ROOMS	
	HEAT	COOL	HEAT	COOL	HEAT	COOL
Midnight - 6 a.m.	60	78	60	78	60	85
6 a.m. - 9 a.m.	70	78	70	78	70	78
9 a.m. - 5 p.m.	70	78	60	85	70	78
5 p.m. - 11 p.m.	70	78	70	78	70	78
11 p.m. - Midnight	60	78	60	78	60	78

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§ 435.112 Building energy compliance alternative.

12.1 General

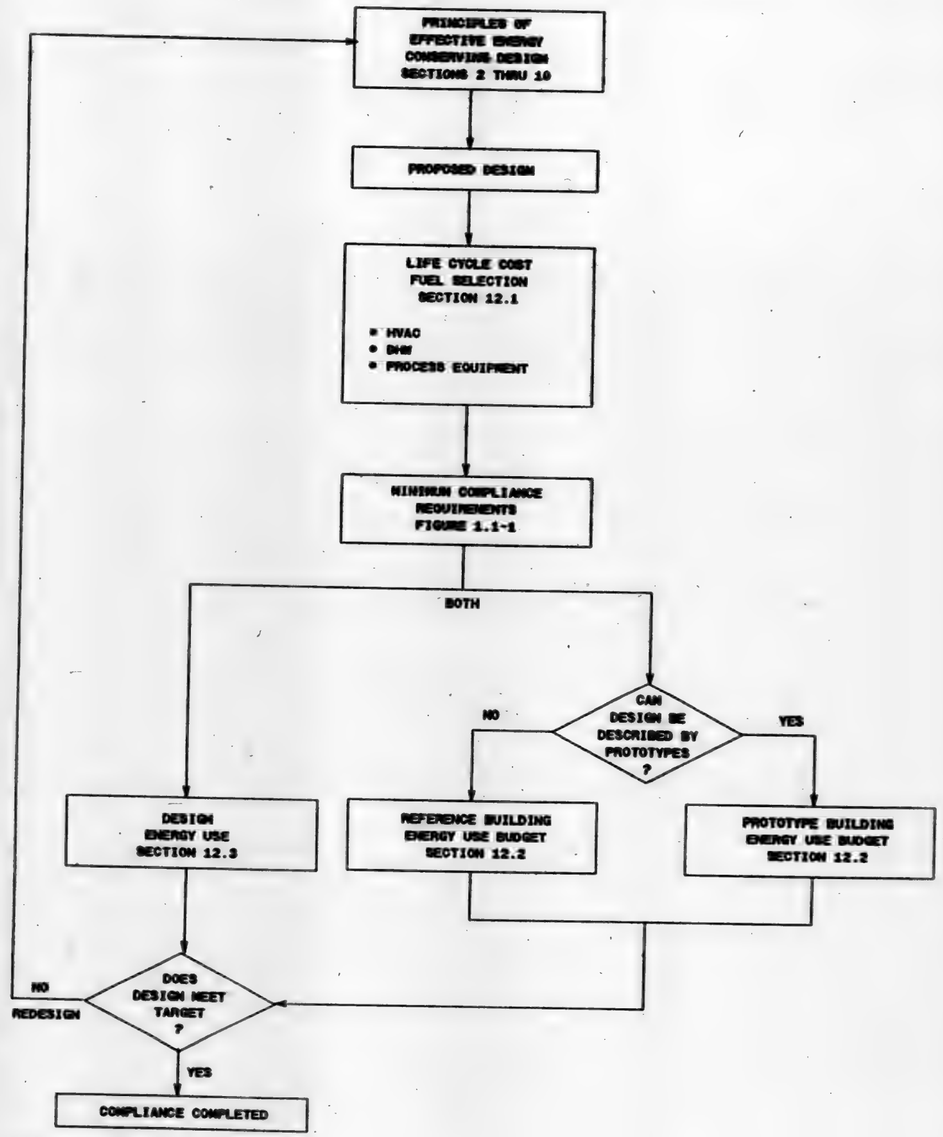
12.1 This section provides an alternative path for compliance with the standards that allow for greater flexibility in the design of energy efficient buildings using an annual energy target method. This path, as does the path used in section 11.0, provides an opportunity for the use of innovative designs, materials, and equipment such as daylighting, passive solar heating, heat recovery, and thermal storage as well as other applications of off-peak electrical energy where they cannot be adequately evaluated by the prescriptive or system performance methods found in sections 3.4, 3.5, 5.4, 5.5, 7.4., and 9.4.

12.1.2 The Building Energy Use Budget Target alternative may be used as an option to the Building Energy Cost Budget method in Section 11.0 and is to be used in lieu of the prescriptive and system performance methods and in conjunction with sections 3.3, 4.3, 5.3, 6.3, 7.3, 8.3, 9.3 and 10.3.

12.1.3 Compliance under this section is demonstrated by showing that the calculated annual energy usage for the Proposed Design is less than or equal to a calculated Energy Use Budget. (See Figure 12-1). A life-cycle cost economic analysis is required to evaluate alternative fuel sources and energy reduction strategies. The procedures in this chapter are intended only for establishing design compliance, and are not intended to be used either to predict, document or verify annual energy consumption or annual energy costs.

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Figure 12-1 Building Energy Compliance Alternative



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12.1.4 Compliance under the Building Energy Use Budget method requires a detailed energy analysis, using a conventional simulation tool, of the Proposed Design. A life-cycle cost analysis shall be used to select the fuel source for the HVAC systems, service hot water, and process loads from available alternatives. The Annual Energy Consumption of the Proposed Design with the life-cycle cost-effective fuel selection is calculated to determine the modeled energy consumption, called the Design Energy Use.

12.1.5 The Design Energy Use is defined as the energy that is consumed within the five foot line of a proposed building per ft^2 over a 24 hour day, 365-day year period and specified operating hours. The calculated Design Energy Use is then compared to a calculated Energy Use Budget.

12.1.6 *Compliance.* The Energy Use Budget is determined by calculating the annual energy usage for a Reference or Prototype Building that is configured to comply with the provisions of Section 11.0 for such buildings, except that the fuel source(s) of the Prototype or Reference Building shall be the same life-cycle cost-effective source(s) selected for the Proposed Design. If the Design Energy Use is less than or equal to the Energy Use Budget then the proposed design complies with these standards.

12.1.7 This section provides instructions for determining the Design Energy Use and for calculating the Energy Use Budget. The Energy Use Budget is the highest allowable calculated annual energy consumption for a specified building design. Designers are encouraged to design buildings whose Design Energy Use is lower than the Energy Use Budget. Incorporated in this section is an optional life-cycle cost economic analysis procedure that may be used by the designer to examine the economic feasibility of all energy design alternatives and to produce a more optimum design.

12.2 Determination of the Annual Energy Budget

12.2.1 The Energy Use Budget shall be calculated for the appropriate Prototype or Reference Building in accordance with the procedures prescribed in section 11.2 with the following exceptions: The Energy Use Budget shall be stated in units of Btu/ft^2 yr and the simulation tool shall segregate the calculated energy consumption by fuel type producing an Energy Use Budget for each fuel (the fuel selections having been made by a life cycle cost analysis in determining the proposed design).

12.2.2 The Energy Use Budget (EUB) is calculated similarly for the Reference or Prototype Building using the following equation:

$$EUB = EUB_1 \times f_1 + EUB_2 \times f_2 + \ldots\ldots + EUB_i \times f_i$$

Equation 12-1

Where EUB_1, EUB_2, . . . EUB_i are the calculated annual energy targets for each fuel used in the Reference or Prototype building and f_1, f_2, . . . f_i are the energy conversion factors given in Table 12-1. In lieu of case by case calculation of the Energy Use Budget, the designer may construct Energy Use Budget tables for the combinations of energy source(s) that may be considered in a set of project designs, such as electric heating, electric service water, and gas cooling or oil heating, gas service water and electric cooling. The values in such optional Energy Use Budget tables shall be equal to or less than the corresponding Energy Use Budgets calculated on a case by case basis according to this section. Energy Use Budget tables shall be constructed to correspond to the climatic regions and building types in accordance with provisions for Prototype or Reference Building models in Section 11.0 of these standards.

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TABLE 12-1
FUEL CONVERSION FACTORS FOR COMPUTING DESIGN ANNUAL ENERGY USES

FUELS	CONVERSION FACTOR
Electricity	3412 Btu/kilowatt hour
Fuel Oil	138,700 Btu/gallon
Natural Gas	1,031,000 Btu/1000 ft^3
Liquified Petroleum (including Propane and Butane)	95,500 Btu/gallon
Anthracite Coal	28,300,000 Btu/short ton
Bituminous Coal	24,580,000 Btu/short ton
Purchased Steam and Steam from Central Plants	1,000 Btu/Pound
High Temperature or Medium Temperature Water from Central Plants	Use the heat value based on the water actually delivered at the building five foot line

NOTE: At specific locations where the energy source Btu content varies significantly from the value presented above then the local fuel value may be used provided there is supporting documentation from the fuel source supplier stating this actual fuel energy value and verifying that this value will remain consistent for the foreseeable future. The fuel content for fuels not given above shall be determined from the best available source.

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12.3 Determination of the Design Energy Use

12.3.1 The Design Energy Use shall be calculated by modeling the Proposed Design using the same methods, assumptions, climate data, and simulation tool as were used to establish the Energy Use Budget, but with the design features that will be used in the final building design. The simulation tool used shall segregate the calculated energy consumption by fuel type giving an annual Design Energy Use for each fuel. The sum of the Design Energy Uses multiplied by the fuel conversion factors in Table 12–1 yields the Design Energy Use for the proposed design:

$$DEU = DEU_1 \times f_1 + DEU_2 \times f_2 + \ldots + DEU_i \times f_i$$

Equation 12–2

Where f_1, f_2, . . . f_i are the fuel conversion factors in Table 12–1.

12.3.2 Required Life Cycle Cost Analysis for Fuel Selection

12.3.2.1 Fuel sources selected for the Proposed Design and Prototype or Reference buildings shall be determined by considering the energy cost and other costs and benefits that occur during the expected economic life of the alternative.

12.3.2.2 The designer shall use the procedures set forth in Subpart A of 10 CFR Part 436 to make this determination. The fuel selection life cycle cost analysis shall include the following steps:

12.3.2.2.1 Determine the feasible alternatives for energy sources of the Proposed Design's HVAC systems, service hot water, and process loads.

12.3.2.2.2 Model the Proposed Design including the alternative HVAC and service water systems and conduct an annual energy analysis for each fuel source alternative using the simulation tool specified in this section. The annual energy analysis shall be computed on a monthly basis in conformance with section 11.0 of these standards with the exception that all process loads shall be included in the calculation. Separate the output of the analysis by fuel type.

12.3.2.2.3 Determine the unit price of each fuel using information from the utility or other reliable local source. During rapid changes in fuel prices it is recommended that an average fuel price for the previous twelve months be used in lieu of the current price. Calculate the annual energy cost of each energy source alternative in accordance with procedures in Section 11.0 for the Design Energy Cost. Estimate the initial cost of the HVAC and service water systems and other initial costs such as energy distribution lines and service connection fees associated with each fuel source alternative. Estimate other costs and benefits for each alternative including, but not necessarily limited to, annual maintenance and repair, periodic and one time major repairs and replacements and salvage of the energy and service water systems. Cost estimates shall be prepared using professionally recognized cost estimating tools, guides and techniques.

12.3.2.2.4 Perform a life cycle cost analysis using the procedure specified in section 12.3.2.

12.3.2.2.5 Compare the total life cycle cost of each energy source alternative. The alternative with the lowest total life-cycle cost shall be chosen as the energy source for the proposed design.

12.4 Compliance

12.4.1 Compliance with this section is demonstrated if the Design Energy Use is equal to or less than the Energy Use Budget.

$$DEU < EUB$$

Equation 12–3

12.4.2 The energy consumption shall be measured at the building five foot line for all fuels. Energy consumed from non-depletable energy sources and heat recovery systems shall not be included in the Design Energy Use calculations. The thermal efficiency of fixtures, equipment, systems or plants in the proposed design shall be simulated by the selected calculation tool.

12.5 Standard Calculation Procedure

12.5.1 The Standard Calculation Procedure consists of methods and assumptions for calculating the Energy Use Budgets for Prototype and Reference Buildings and the Design Energy Use for the Proposed Design. In order to maintain consistency between the Energy Use Budgets and the Design Energy Use, the input assumptions stated in section 11.5 are to be used.

12.5.2 The terms Energy Cost Budget and Design Energy Cost or Consumption used in section 11.0 correlate to Energy Use Budget and Design Energy Use, respectively, in section 12.0.

12.6 The Simulation Tool

12.6.1 The criteria established in Section 11.0 for the selection of a simulation tool shall be followed when using the compliance path prescribed in Section 12.0.

12.7 Life Cycle Cost Analysis Criteria

12.7.1 The following life cycle cost criteria applies to the fuel selection requirements of this chapter and to option life cycle cost analyses performed to evaluate energy conservation design alternatives. The fuel source(s) selection shall be made in accordance with the requirements of Subpart A of 10 CFR Part 436. The implementation calculations for the methodology of Subpart A of 10 CFR Part 436 is provided in *National Bureau of Standards Handbook 135* entitled "Life Cycle Cost Manual for the Federal Energy Management Program." When performing life cycle cost analyses of optional energy conservation opportunities the designer may use the life cycle cost procedures of *Subpart A of 10 CFR Part 436 or OMB Circular A–94* or an equivalent procedure that meets the assumptions listed below:

12.7.1.1 The economic life of the Prototype Building and Proposed Design shall be 25 years. Anticipated replacements or renovations of energy related features and systems in the Prototype or Reference Building and Proposed Design during this period shall be included in their respective life cycle cost calculations.

12.7.1.2 The designer shall follow established professional cost estimating practices when determining the costs and benefits associated with the energy related features of the Prototype or Reference Building and Proposed Design.

12.7.1.3 All costs shall be expressed in current dollars. General inflation shall be disregarded. Differential escalation of prices (prices estimated to rise faster or slower than general inflation) for energy used in the life cycle cost calculations shall be those in effect at the time of the life cycle cost calculations as published by the Department of Energy's Energy Information Administration.

12.7.1.4 The economic effects of taxes, depreciation and other factors not consistent with the practices of *Subpart A of 10 CFR Part 436* shall not be included in the life cycle cost calculation.

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federal register

Monday
January 30, 1989

Part IV

Department of Agriculture
African Development Foundation
Commission on the Bicentennial of the United States Constitution
Federal Home Loan Bank Board
Inter-American Foundation
Peace Corps

Nonprocurement Debarment and Suspension; Final Rules

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DEPARTMENT OF AGRICULTURE

7 CFR PART 3017

FEDERAL HOME LOAN BANK BOARD

12 CFR PART 516

PEACE CORPS

22 CFR PART 310

INTER-AMERICAN FOUNDATION

22 CFR PART 1006

AFRICAN DEVELOPMENT FOUNDATION

22 CFR PART 1508

COMMISSION ON THE BICENTENNIAL OF THE UNITED STATES CONSTITUTION

45 CFR PART 2016

Nonprocurement Debarment and Suspension

AGENCIES: Department of Agriculture, African Development Foundation, Commission on the Bicentennial of the United States Constitution, Federal Home Loan Bank Board, Inter-American Foundation, Peace Corps.

ACTION: Final rule.

SUMMARY: This final common rule establishes among the Federal agencies shown above a uniform system of nonprocurement debarment and suspension which 27 other agencies already adopted. The 27 other Federal agencies promulgated an identical final common rule on May 26, 1988. The rules are required under Executive Order 12549 of February 18, 1986. The rules are intended to prevent waste, fraud, and abuse in Federal nonprocurement transactions.

EFFECTIVE DATE: March 1, 1989.

FOR FURTHER INFORMATION CONTACT: See agency-specific preambles for the contact person for each agency.

SUPPLEMENTARY INFORMATION: As part of the Administration's initiatives to curb fraud, waste, and abuse, on February 18, 1986, President Reagan signed Executive Order 12549, "Debarment and Suspension." It was published on February 21, 1986 (51 FR 6370–6371). The Executive Order established governmentwide effect for an agency's nonprocurement debarment or suspension action.

Section 6 of the Executive Order directed the Office of Management and Budget (OMB) to issue guidelines governing implementation of the Order, and section 3 of the Executive Order directed the departments and agencies to promulgate final rules, consistent with these guidelines. On May 26, 1988, 27 agencies issued a final common rule (53 FR 19161–19211), consistent with OMB's guidelines. The common preamble for that publication provides full background for the promulgation of the Executive Order and the history of the common rulemaking.

This second common rulemaking includes the Department of Agriculture and various small Federal agencies which did not participate in the May 26, 1988 publication. On October 20, 1987, the Department of Agriculture published a proposed rule, the same day as 24 of the 27 agencies which co-signed the first common rulemaking. The Department of Agriculture and the 27 agencies shared a common public docket.

The other small Federal agencies which are participating in this second common rule did not issue a prior proposed rule. These agencies have concluded that publication of a notice of proposed rulemaking is unnecessary because the common rulemaking was subjected to extensive public scrutiny. OMB published proposed and final guidelines and 27 agencies issued proposed rules for comments. Therefore, these agencies have decided, for good cause under 5 U.S.C. 553(b)(B), not to publish a proposed rulemaking and to join the governmentwide final common rule.

Text of the Common Rule

The text of the common rule as adopted by the agencies in this document appears below.

PART—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Subpart A—General

Sec.
___.100 Purpose.
___.105 Definitions.
___.110 Coverage.
___.115 Policy.

Subpart B—Effect of Action

___.200 Debarment or suspension.
___.205 Ineligible persons.
___.210 Voluntary exclusion.
___.215 Exception provision.
___.220 Continuation of covered transactions.
___.225 Failure to adhere to restrictions.

Subpart C—Debarment

___.300 General.
___.305 Causes for debarment.
___.310 Procedures.
___.311 Investigation and referral.
___.312 Notice of proposed debarment.
___.313 Opportunity to contest proposed debarment.
___.314 Debarring official's decision.
___.315 Settlement and voluntary exclusion.
___.320 Period of debarment.
___.325 Scope of debarment.

Subpart D—Suspension

___.400 General.
___.405 Causes for suspension.
___.410 Procedures.
___.411 Notice of suspension.
___.412 Opportunity to contest suspension.
___.413 Suspending official's decision.
___.415 Period of suspension.
___.420 Scope of suspension.

Subpart E—Responsibilities of GSA, Agency and Participants

___.500 GSA responsibilities.
___.505 [Agency] responsibilities.
___.510 Participants' responsibilities.

Appendix A to Part ___—Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

Appendix B to Part ___—Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

Authority: Executive Order 12549 (citation to Agency rulemaking authority).

Subpart A—General

§ ___.100 Purpose.

(a) Executive Order 12549 provides that, to the extent permitted by law, Executive departments and agencies shall participate in a governmentwide system for nonprocurement debarment and suspension. A person who is debarred or suspended shall be excluded from Federal financial and nonfinancial assistance and benefits under Federal programs and activities. Debarment or suspension of a participant in a program by one agency shall have governmentwide effect.

(b) These regulations implement section 3 of Executive Order 12549 and the guidelines promulgated by the Office of Management and Budget under section 6 of the Executive Order by:

(1) Prescribing the programs and activities that are covered by the governmentwide system;

(2) Prescribing the governmentwide criteria and governmentwide minimum due process procedures that each agency shall use;

(3) Providing for the listing of debarred and suspended participants, participants declared ineligible (see definition of "ineligible" in § ___.105(i)), and participants who have voluntarily excluded themselves from participation in covered transactions;

(4) Setting forth the consequences of a debarment, suspension, determination of ineligibility, or voluntary exclusion; and

(5) Offering such other guidance as necessary for the effective implementation and administration of the governmentwide system.

(c) Although these regulations cover the listing of ineligible participants and the effect of such listing, they do not prescribe policies and procedures governing declarations of ineligibility.

§ ___.105 Definitions.

(a) *Adequate evidence.* Information sufficient to support the reasonable belief that a particular act or omission has occurred.

(b) *Affiliate.* Persons are affiliates of each another if, directly or indirectly, either one controls or has the power to control the other, *or* a third person controls or has the power to control both. Indicia of control include, but are not limited to: interlocking management or ownership, identity of interests among family members, shared facilities and equipment, common use of employees, or a business entity organized following the suspension or debarment of a person which has the same or similar management, ownership, or principal employees as the suspended, debarred, ineligible, or voluntarily excluded person.

(c) *Agency.* Any executive department, military department or defense agency or other agency of the executive branch, excluding the independent regulatory agencies.

(d) *Civil judgment.* The disposition of a civil action by any court of competent jurisdiction, whether entered by verdict, decision, settlement, stipulation, or otherwise creating a civil liability for the wrongful acts complained of; or a final determination of liability under the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801–12).

(e) *Conviction.* A judgment of conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, including a plea of nolo contendere.

(f) *Debarment.* An action taken by a debarring official in accordance with these regulations to exclude a person from participating in covered transactions. A person so excluded is "debarred."

(g) *Debarring official.* An official authorized to impose debarment. The debarring official is either:

(1) The agency head, or

(2) An official designated by the agency head.

(h) *Indictment.* Indictment for a criminal offense. An information or other filing by competent authority charging a criminal offense shall be given the same effect as an indictment.

(i) *Ineligible.* Excluded from participation in Federal nonprocurement programs pursuant to a determination of ineligibility under statutory, executive order, or regulatory authority, other than Executive Order 12549 and its agency implementing regulations; for example, excluded pursuant to the Davis-Bacon Act and its implementing regulations, the equal employment opportunity acts and executive orders, or the environmental protection acts and executive orders. A person is ineligible where the determination of ineligibility affects such person's eligibility to participate in more than one covered transaction.

(j) *Legal proceedings.* Any criminal proceeding or any civil judicial proceeding to which the Federal Government or a State or local government or quasi-governmental authority is a party. The term includes appeals from such proceedings.

(k) *Nonprocurement List.* The portion of the *List of Parties Excluded from Federal Procurement or Nonprocurement Programs* compiled, maintained and distributed by the General Services Administration (GSA) containing the names and other information about persons who have been debarred, suspended, or voluntarily excluded under Executive Order 12549 and these regulations, and those who have been determined to be ineligible.

(l) *Notice.* A written communication served in person or sent by certified mail, return receipt requested, or its equivalent, to the last known address of a party, its identified counsel, its agent for service of process, or any partner, officer, director, owner, or joint venturer of the party. Notice, if undeliverable, shall be considered to have been received by the addressee five days after being properly sent to the last address known by the agency.

(m) *Participant.* Any person who submits a proposal for, enters into, or reasonably may be expected to enter into a covered transaction. This term also includes any person who acts on behalf of or is authorized to commit a participant in a covered transaction as an agent or representative of another participant.

(n) *Person.* Any individual, corporation, partnership, association, unit of government or legal entity, however organized, except: foreign governments or foreign governmental entities, public international organizations, foreign government owned (in whole or in part) or controlled entities, and entities consisting wholly or partially of foreign governments or foreign governmental entities.

(o) *Preponderance of the evidence.* Proof by information that, compared with that opposing it, leads to the conclusion that the fact at issue is more probably true than not.

(p) *Principal.* Officer, director, owner, partner, key employee, or other person within a participant with primary management or supervisory responsibilities; or a person who has a critical influence on or substantive control over a covered transaction, whether or not employed by the participant. Persons who have a critical influence on or substantive control over a covered transaction are:

(1) Principal investigators.

(q) *Proposal.* A solicited or unsolicited bid, application, request, invitation to consider or similar communication by or on behalf of a person seeking to participate or to receive a benefit, directly or indirectly, in or under a covered transaction.

(r) *Respondent.* A person against whom a debarment or suspension action has been initiated.

(s) *State.* Any of the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency of a State, exclusive of institutions of higher education, hospitals, and units of local government. A State instrumentality will be considered part of the State government if it has a written determination from a State government that such State considers that instrumentality to be an agency of the State government.

(t) *Suspending official.* An official authorized to impose suspension. The suspending official is either:

(1) The agency head, or

(2) An official designated by the agency head.

(u) *Suspension.* An action taken by a suspending official in accordance with these regulations that immediately excludes a person from participating in covered transactions for a temporary period, pending completion of an investigation and such legal, debarment, or Program Fraud Civil Remedies Act proceedings as may ensue. A person so excluded is "suspended."

(v) *Voluntary exclusion or voluntarily excluded.* A status of nonparticipation or limited participation in covered transactions assumed by a person pursuant to the terms of a settlement.

§ ___.110 Coverage.

(a) These regulations apply to all persons who have participated, are currently participating or may reasonably be expected to participate in transactions under Federal nonprocurement programs. For purposes of these regulations such transactions

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will be referred to as "covered transactions."

(i) *Covered transaction.* For purposes of these regulations, a covered transaction is a primary covered transaction or a lower tier covered transaction. Covered transactions at any tier need not involve the transfer of Federal funds.

(ii) *Primary covered transaction.* Except as noted in paragraph (a)(2) of this section, a primary covered transaction is any nonprocurement transaction between an agency and a person, regardless of type, including: Grants, cooperative agreements, scholarships, fellowships, contracts of assistance, loans, loan guarantees, subsidies, insurance, payments for specified use, donation agreements and any other nonprocurement transactions between a Federal agency and a person. Primary covered transactions also include those transactions specially designated by the U.S. Department of Housing and Urban Development in such agency's regulations governing debarment and suspension.

(ii) *Lower tier covered transaction.* A lower tier covered transaction is:

(A) Any transaction between a participant and a person other than a procurement contract for goods or services, regardless of type, under a primary covered transaction.

(B) Any procurement contract for goods or services between a participant and a person, regardless of type, expected to equal or exceed the Federal procurement small purchase threshold fixed at 10 U.S.C. 2304(g) and 41 U.S.C. 253(g) (currently $25,000) under a primary covered transaction.

(C) Any procurement contract for goods or services between a participant and a person under a covered transaction, regardless of amount, under which that person will have a critical influence on or substantive control over that covered transaction. Such persons are:

(*1*) Principal investigators.

(*2*) Providers of federally-required audit services.

(2) *Exceptions.* The following transactions are not covered:

(i) Statutory entitlements or mandatory awards (but not subtier awards thereunder which are not themselves mandatory), including deposited funds insured by the Federal Government;

(ii) Direct awards to foreign governments or public international organizations, or transactions with foreign governments or foreign governmental entities, public international organizations, foreign government owned (in whole or in part) or controlled entities, entities consisting wholly or partially of foreign governments or foreign governmental entities;

(iii) Benefits to an individual as a personal entitlement without regard to the individual's present responsibility (but benefits received in an individual's business capacity are not excepted);

(iv) Federal employment;

(v) Transactions pursuant to national or agency-recognized emergencies or disasters;

(vi) Incidental benefits derived from ordinary governmental operations; and

(vii) Other transactions where the application of these regulations would be prohibited by law.

(b) *Relationship to other sections.* This section describes the types of transactions to which a debarment or suspension under the regulations will apply. Subpart B, "Effect of Action," § ___.200, "Debarment or suspension," sets forth the consequences of a debarment or suspension. Those consequences would obtain only with respect to participants and principals in the covered transactions and activities described in § ___.110(a). Sections ___.325, "Scope of debarment," and ___.420, "Scope of suspension," govern the extent to which a specific participant or organizational elements of a participant would be automatically included within a debarment or suspension action, and the conditions under which affiliates or persons associated with a participant may also be brought within the scope of the action.

(c) *Relationship to Federal procurement activities.* Debarment and suspension of Federal procurement contractors and subcontractors under Federal procurement contracts are covered by the Federal Acquisition Regulation (FAR), 48 CFR Subpart 9.4.

§ ___.115 Policy.

(a) In order to protect the public interest, it is the policy of the Federal Government to conduct business only with responsible persons. Debarment and suspension are discretionary actions that, taken in accordance with Executive Order 12549 and these regulations, are appropriate means to implement this policy.

(b) Debarment and suspension are serious actions which shall be used only in the public interest and for the Federal Government's protection and not for purposes of punishment. Agencies may impose debarment or suspension for the causes and in accordance with the procedures set forth in these regulations.

(c) When more than one agency has an interest in the proposed debarment or suspension of a person, consideration shall be given to designating one agency as the lead agency for making the decision. Agencies are encouraged to establish methods and procedures for coordinating their debarment or suspension actions.

Subpart B—Effect of Action

§ ___.200 Debarment or suspension.

(a) *Primary covered transactions.* Except to the extent prohibited by law, persons who are debarred or suspended shall be excluded from primary covered transactions as either participants or principals throughout the executive branch of the Federal Government for the period of their debarment or suspension. Accordingly, no agency shall enter into primary covered transactions with such debarred or suspended persons during such period, except as permitted pursuant to § ___.215.

(b) *Lower tier covered transactions.* Except to the extent prohibited by law, persons who have been debarred or suspended shall be excluded from participating as either participants or principals in all lower tier covered transactions (see § ___.110(a)(1)(ii)) for the period of their debarment or suspension.

(c) *Exceptions.* Debarment or suspension does not affect a person's eligibility for:

(1) Statutory entitlements or mandatory awards (but not subtier awards thereunder which are not themselves mandatory), including deposited funds insured by the Federal Government;

(2) Direct awards to foreign governments or public international organizations, or transactions with foreign governments or foreign governmental entities, public international organizations, foreign government owned (in whole or in part) or controlled entities, and entities consisting wholly or partially of foreign governments or foreign governmental entities;

(3) Benefits to an individual as a personal entitlement without regard to the individual's present responsibility (but benefits received in an individual's business capacity are not excepted);

(4) Federal employment;

(5) Transactions pursuant to national or agency-recognized emergencies or disasters;

(6) Incidental benefits derived from ordinary governmental operations; and

(7) Other transactions where the application of these regulations would be prohibited by law.

§ ___.205 Ineligible persons.

Persons who are ineligible, as defined in § ___.105(i), are excluded in accordance with the applicable statutory, executive order, or regulatory authority.

§ ___.210 Voluntary exclusion.

Persons who accept voluntary exclusions under § ___.315 are excluded in accordance with the terms of their settlements. [Agency] shall, and participants may, contact the original action agency to ascertain the extent of the exclusion.

§ ___.215 Exception provision.

[Agency] may grant an exception permitting a debarred, suspended, or voluntarily excluded person to participate in a particular covered transaction upon a written determination by the agency head or an authorized designee stating the reason(s) for deviating from the Presidential policy established by Executive Order 12549 and § ___.200 of this rule. However, in accordance with the President's stated intention in the Executive Order, exceptions shall be granted only infrequently. Exceptions shall be reported in accordance with § ___.505(a).

§ ___.220 Continuation of covered transactions.

(a) Notwithstanding the debarment, suspension, determination of ineligibility, or voluntary exclusion of any person by an agency, agencies and participants may continue covered transactions in existence at the time the person was debarred, suspended, declared ineligible, or voluntarily excluded. A decision as to the type of termination action, if any, to be taken should be made only after thorough review to ensure the propriety of the proposed action.

(b) Agencies and participants shall not renew or extend covered transactions (other than no-cost time extensions) with any person who is debarred, suspended, ineligible, or voluntarily excluded, except as provided in § ___.215.

§ ___.225 Failure to adhere to restrictions.

Except as permitted under § ___.215 or § ___.220 of these regulations, a participant shall not knowingly do business under a covered transaction with a person who is debarred or suspended, or with a person who is ineligible for or voluntarily excluded from that covered transaction. Violation of this restriction may result in disallowance of costs, annulment or termination of award, issuance of a stop work order, debarment or suspension, or other remedies, as appropriate. A participant may rely upon the certification of a prospective participant in a lower tier covered transaction that it and its principals are not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction (see Appendix B), unless it knows that the certification is erroneous. An agency has the burden of proof that such participant did knowingly do business with such a person.

Subpart C—Debarment

§ ___.300 General.

The debarring official may debar a person for any of the causes in § ___.305, using procedures established in §§ ___.310 through § ___.314. The existence of a cause for debarment, however, does not necessarily require that the person be debarred; the seriousness of the person's acts or omissions and any mitigating factors shall be considered in making any debarment decision.

§ ___.305 Causes for debarment.

Debarment may be imposed in accordance with the provisions of §§ ___.300 through § ___.314 for:

(a) Conviction of or civil judgment for:

(1) Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction;

(2) Violation of Federal or State antitrust statutes, including those proscribing price fixing between competitors, allocation of customers between competitors, and bid rigging;

(3) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, or obstruction of justice; or

(4) Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of a person.

(b) Violation of the terms of a public agreement or transaction so serious as to affect the integrity of an agency program, such as:

(1) A willful failure to perform in accordance with the terms of one or more public agreements or transactions;

(2) A history of failure to perform or of unsatisfactory performance of one or more public agreements or transactions; or

(3) A willful violation of a statutory or regulatory provision or requirement applicable to a public agreement or transaction.

(c) Any of the following causes:

(1) A nonprocurement debarment by any Federal agency taken before March 1, 1989, the effective date of these regulations or a procurement debarment by any Federal agency taken pursuant to 48 CFR Subpart 9.4;

(2) Knowingly doing business with a debarred, suspended, ineligible, or voluntarily excluded person, in connection with a covered transaction, except as permitted in § ___.215 or § ___.220;

(3) Failure to pay a single substantial debt, or a number of outstanding debts (including disallowed costs and overpayments, but not including sums owed the Federal Government under the Internal Revenue Code) owed to any Federal agency or instrumentality, provided the debt is uncontested by the debtor or, if contested, provided that the debtor's legal and administrative remedies have been exhausted; or

(4) Violation of a material provision of a voluntary exclusion agreement entered into under § ___.315 or of any settlement of a debarment or suspension action.

(d) Any other cause of so serious or compelling a nature that it affects the present responsibility of a person.

§ ___.310 Procedures.

[Agency] shall process debarment actions as informally as practicable, consistent with the principles of fundamental fairness, using the procedures in §§ ___.311 through ___.314.

§ ___.311 Investigation and referral.

Information concerning the existence of a cause for debarment from any source shall be promptly reported, investigated, and referred, when appropriate, to the debarring official for consideration. After consideration, the debarring official may issue a notice of proposed debarment.

§ ___.312 Notice of proposed debarment.

A debarment proceeding shall be initiated by notice to the respondent advising:

(a) That debarment is being considered;

(b) Of the reasons for the proposed debarment in terms sufficient to put the respondent on notice of the conduct or transaction(s) upon which it is based;

(c) Of the cause(s) relied upon under § ___.305 for proposing debarment;

(d) Of the provisions of §§ ___.311 through ___.314, and any other [Agency] procedures, if applicable,

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governing debarment decisionmaking; and

(e) Of the potential effect of a debarment.

§ ____.313 Opportunity to contest proposed debarment.

(a) *Submission in opposition.* Within 30 days after receipt of the notice of proposed debarment, the respondent may submit, in person, in writing, or through a representative, information and argument in opposition to the proposed debarment.

(b) *Additional proceedings as to disputed material facts.* (1) In actions not based upon a conviction or civil judgment, if the debarring official finds that the respondent's submission in opposition raises a genuine dispute over facts material to the proposed debarment, respondent(s) shall be afforded an opportunity to appear with a representative, submit documentary evidence, present witnesses, and confront any witness the agency presents.

(2) A transcribed record of any additional proceedings shall be made available at cost to the respondent, upon request, unless the respondent and the agency, by mutual agreement, waive the requirement for a transcript.

§ ____.314 Debarring official's decision.

(a) *No additional proceedings necessary.* In actions based upon a conviction or civil judgment, or in which there is no genuine dispute over material facts, the debarring official shall make a decision on the basis of all the information in the administrative record, including any submission made by the respondent. The decision shall be made within 45 days after receipt of any information and argument submitted by the respondent, unless the debarring official extends this period for good cause.

(b) *Additional proceedings necessary.* (1) In actions in which additional proceedings are necessary to determine disputed material facts, written findings of fact shall be prepared. The debarring official shall base the decision on the facts as found, together with any information and argument submitted by the respondent and any other information in the administrative record.

(2) The debarring official may refer disputed material facts to another official for findings of fact. The debarring official may reject any such findings, in whole or in part, only after specifically determining them to be arbitrary and capricious or clearly erroneous.

(3) The debarring official's decision shall be made after the conclusion of the proceedings with respect to disputed facts.

(c) (1) *Standard of proof.* In any debarment action, the cause for debarment must be established by a preponderance of the evidence. Where the proposed debarment is based upon a conviction or civil judgment, the standard shall be deemed to have been met.

(2) *Burden of proof.* The burden of proof is on the agency proposing debarment.

(d) *Notice of debarring official's decision.* (1) If the debarring official decides to impose debarment, the respondent shall be given prompt notice:

(i) Referring to the notice of proposed debarment;

(ii) Specifying the reasons for debarment;

(iii) Stating the period of debarment, including effective dates; and

(iv) Advising that the debarment is effective for covered transactions throughout the executive branch of the Federal Government unless an agency head or an authorized designee makes the determination referred to in § ____.215.

(2) If the debarring official decides not to impose debarment, the respondent shall be given prompt notice of that decision. A decision not to impose debarment shall be without prejudice to a subsequent imposition of debarment by any other agency.

§ ____.315 Settlement and voluntary exclusion.

(a) When in the best interest of the Government, [Agency] may, at any time, settle a debarment or suspension action.

(b) If a participant and the agency agree to a voluntary exclusion of the participant, such voluntary exclusion shall be entered on the Nonprocurement List (see Subpart E).

§ ____.320 Period of debarment.

(a) Debarment shall be for a period commensurate with the seriousness of the cause(s). Generally, a debarment should not exceed three years. Where circumstances warrant, a longer period of debarment may be imposed. If a suspension precedes a debarment, the suspension period shall be considered in determining the debarment period.

(b) The debarring official may extend an existing debarment for an additional period, if that official determines that an extension is necessary to protect the public interest.

However, a debarment may not be extended solely on the basis of the facts and circumstances upon which the initial debarment action was based. If debarment for an additional period is determined to be necessary, the procedures of §§ ____.311 through ____.314 shall be followed to extend the debarment.

(c) The respondent may request the debarring official to reverse the debarment decision or to reduce the period or scope of debarment. Such a request shall be in writing and supported by documentation. The debarring official may grant such a request for reasons including, but not limited to:

(1) Newly discovered material evidence;

(2) Reversal of the conviction or civil judgment upon which the debarment was based;

(3) Bona fide change in ownership or management;

(4) Elimination or other causes for which the debarment was imposed; or

(5) Other reasons the debarring official deems appropriate.

§ ____.325 Scope of debarment.

(a) *Scope in general.* (1) Debarment of a person under these regulations constitutes debarment of all its divisions and other organizational elements from all covered transactions, unless the debarment decision is limited by its terms to one or more specifically identified individuals, divisions or other organizational elements or to specific types of transactions.

(2) The debarment action may include any affiliate of the participant that is specifically named and given notice of the proposed debarment and an opportunity to respond (see §§ ____.311 through ____.314).

(b) *Imputing conduct.* For purposes of determining the scope of debarment, conduct may be imputed as follows:

(1) *Conduct imputed to participant.* The fraudulent, criminal or other seriously improper conduct of any officer, director, shareholder, partner, employee, or other individual associated with a participant may be imputed to the participant when the conduct occurred in connection with the individual's performance of duties for or on behalf of the participant, or with the participant's knowledge, approval, or acquiescence. The participant's acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

(2) *Conduct imputed to individuals associated with participant.* The fraudulent, criminal, or other seriously improper conduct of a participant may be imputed to any officer, director, shareholder, partner, employee, or other individual associated with the participant who participated in, knew of, or had reason to know of the participant's conduct.

(3) *Conduct of one participant imputed to other participants in a joint venture.* The fraudulent, criminal, or other seriously improper conduct of one participant in a joint venture, grant pursuant to a joint application, or similar arrangement or with the knowledge, approval, or acquiescence of these participants. Acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

Subpart D—Suspension

§ ____.400 General.

(a) The suspending official may suspend a person from any of the causes in § ____.405 using procedures established in §§ ____.410 through ____.413.

(b) Suspension is a serious action to be imposed only when:

(1) There exists adequate evidence of one or more of the causes set out in § ____.405, and

(2) Immediate action is necessary to protect the public interest.

(c) In assessing the adequacy of the evidence, the agency should consider how much information is available, how credible it is given the circumstances, whether or not important allegations are corroborated, and what inferences can reasonably be drawn as a result. This assessment should include an examination of basic documents such as grants, cooperative agreements, loan authorizations, and contracts.

§ ____.405 Causes for suspension.

(a) Suspension may be imposed in accordance with the provisions of §§ ____.400 through ____.413 upon adequate evidence:

(1) To suspect the commission of an offense listed in § ____.305(a); or

(2) That a cause for debarment under § ____.305 may exist.

(b) Indictment shall constitute adequate evidence for purposes of suspension actions.

§ ____.410 Procedures.

(a) *Investigation and referral.* Information concerning the existence of a cause for suspension from any source shall be promptly reported, investigated, and referred, when appropriate, to the suspending official for consideration. After consideration, the suspending official may issue a notice of suspension.

(b) *Decisionmaking process.* [Agency] shall process suspension actions as informally as practicable, consistent with principles of fundamental fairness, using the procedures in § ____.411 through § ____.413.

§ ____.411 Notice of suspension.

When a respondent is suspended, notice shall immediately be given:

(a) That suspension has been imposed;

(b) That the suspension is based on an indictment, conviction, or other adequate evidence that the respondent has committed irregularities seriously reflecting on the propriety of further Federal Government dealings with the respondent;

(c) Describing any such irregularities in terms sufficient to put the respondent on notice without disclosing the Federal Government's evidence;

(d) Of the cause(s) relied upon under § ____.405 for imposing suspension;

(e) That the suspension is for a temporary period pending the completion of an investigation or ensuing legal, debarment, or Program Fraud Civil Remedies Act proceedings;

(f) Of the provisions of § ____.411 through § ____.413 and any other [Agency] procedures, if applicable, governing suspension decisionmaking; and

(g) Of the effect of the suspension.

§ ____.412 Opportunity to contest suspension.

(a) *Submission in opposition.* Within 30 days after receipt of the notice of suspension, the respondent may submit, in person, in writing, or through a representative, information and argument in opposition to the suspension.

(b) *Additional proceedings as to disputed material facts.* (1) If the suspending official finds that the respondent's submission in opposition raises a genuine dispute over facts material to the suspension, respondent(s) shall be afforded an opportunity to appear with a representative, submit documentary evidence, present witnesses, and confront any witness the agency presents, unless:

(i) The action is based on an indictment, conviction or civil judgment, or

(ii) A determination is made, on the basis of Department of Justice advice, that the substantial interests of the Federal Government in pending or contemplated legal proceedings based on the same facts as the suspension would be prejudiced.

(2) A transcribed record of any additional proceedings shall be prepared and made available at cost to the respondent, upon request, unless the respondent and the agency, by mutual agreement, waive the requirement for a transcript.

§ ____.413 Suspending official's decision.

The suspending official may modify or terminate the suspension (for example, see § ____.320(c) for reasons for reducing the period or scope of debarment) or may leave it in force. However, a decision to modify or terminate the suspension shall be without prejudice to the subsequent imposition of suspension by any other agency or debarment by any agency. The decision shall be rendered in accordance with the following provisions:

(a) *No additional proceedings necessary.* In actions: based on an indictment, conviction, or civil judgment; in which there is no genuine dispute over material facts; or in which additional proceedings to determine disputed material facts have been denied on the basis of Department of Justice advice, the suspending official shall make a decision on the basis of all the information in the administrative record, including any submission made by the respondent. The decision shall be made within 45 days after receipt of any information and argument submitted by the respondent, unless the suspending official extends this period for good cause.

(b) *Additional proceedings necessary.* (1) In actions in which additional proceedings are necessary to determine disputed material facts, written findings of fact shall be prepared. The suspending official shall base the decision on the facts as found, together with any information and argument submitted by the respondent and any other information in the administrative record.

(2) The suspending official may refer matters involving disputed material facts to another official for findings of fact. The suspending official may reject any such findings, in whole or in part, only after specifically determining them to be arbitrary or capricious or clearly erroneous.

(c) *Notice of suspending official's decision.* Prompt written notice of the suspending official's decision shall be sent to the respondent.

§ ____.415 Period of suspension.

(a) Suspension shall be for a temporary period pending the completion of an investigation or ensuring legal, debarment, or Program Fraud Civil Remedies Act proceedings, unless terminated sooner by the suspending official or as provided in paragraph (b) of this section.

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(b) If legal or administrative proceedings are not initiated within 12 months after the date of the suspension notice, the suspension shall be terminated unless an Assistant Attorney General or United States Attorney requests its extension in writing, in which case it may be extended for an additional six months. In no event may a suspension extend beyond 18 months, unless such proceedings have been initiated within that period.

(C) The suspending official shall notify the Department of Justice of an impending termination of a suspension, at least 30 days before the 12-month period expires, to give that Department an opportunity to request an extension.

§ ____.420 Scope of suspension.

The scope of a suspension is the same as the scope of a debarment (see § ____.325), except that the procedures of §§ ____.410 through ____.413 shall be used in imposing a suspension.

Subpart E—Responsibilities of GSA, Agency and Participants

§ ____.500 GSA responsibilities.

(a) In accordance with the OMB guidelines, GSA shall compile, maintain, and distribute a list of all persons who have been debarred, suspended, or voluntarily excluded by agencies under Executive Order 12549 and these regulations, and those who have been determined to be ineligible.

(b) At a minimum, this list shall indicate:

(1) The names and addresses of all debarred, suspended, ineligible, and voluntarily excluded persons, in alphabetical order, with cross-references when more than one name is involved in a single action;

(2) The type of action;

(3) The cause for the action;

(4) The scope of the action;

(5) Any termination date for each listing; and

(6) The agency and name and telephone number of the agency point of contact for the action.

§ ____.505 [Agency] responsibilities.

(a) The agency shall provide GSA with current information concerning debarments, suspensions, determinations of ineligibility, and voluntary exclusions it has taken. Until February 18, 1989, the agency shall also provide GSA and OMB with information concerning all transactions in which [Agency] has granted exceptions under § ____.215 permitting participation by debarred, suspended, or voluntarily excluded persons.

(b) Unless an alternative schedule is agreed to by GSA, the agency shall advise GSA of the information set forth in § ____.500(b) and of the exceptions granted under § ____.215 within five working days after taking such actions.

(c) The agency shall direct inquiries concerning listed persons to the agency that took the action.

(d) Agency officials shall check the Nonprocurement List before entering covered transactions to determine whether a participant in a primary transaction is debarred, suspended, ineligible, or voluntarily excluded (Tel. #).

(e) Agency officials shall check the Nonprocurement List before approving principals or lower tier participants where agency approval of the principal or lower tier participant is required under the terms of the transaction, to determine whether such principals or participants are debarred, suspended, ineligible, or voluntarily excluded.

§ ____.510 Participants' responsibilities.

(a) *Certification by participants in primary covered transactions.* Each participant shall submit the certification in Appendix A to this Part for it and its principals at the time the participant submits its proposal in connection with a primary covered transaction, except that States need only complete such certification as to their principals. Participants may decide the method and frequency by which they determine the eligibility of their principals. In addition, each participant may, but is not required to, check the Nonprocurement List for its principals (Tel. #). Adverse information on the certification will not necessarily result in denial of participation. However, the certification, and any additional information pertaining to the certification submitted by the participant, shall be considered in the administration of covered transactions.

(b) *Certification by participants in lower tier covered transactions.* (1) Each participant shall require participants in lower tier covered transactions to include the certification in Appendix B to this part for it and its principals in any proposal submitted in connection with such lower tier covered transactions.

(2) A participant may rely upon the certification of a prospective participant in a lower tier covered transaction that it and its principals are not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction by any Federal agency, unless it knows that the certification is erroneous. Participants may decide the method and frequency by which they determine the eligibility of their principals. In addition, a participant may, but is not required to, check the Nonprocurement List for its principals and for participants (Tel. #).

(c) *Changed circumstances regarding certification.* A participant shall provide immediate written notice to [Agency] if at any time the participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances. Participants in lower tier covered transactions shall provide the same updated notice to the participant to which it submitted its proposal.

Appendix A to Part —Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

Instructions for Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

4. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implemeting Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List (Tel. #).

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/ proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Appendix B to Part—Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List (Tel. #).

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department of agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Adoption of the Common Rule

The adoption of the common rule by the agencies in this document appears below.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 3017

FOR FURTHER INFORMATION CONTACT: Larry Wilson, Director, Office of Finance and Management, (202) 447–8345.

ADDITIONAL SUPPLEMENTARY INFORMATION:

Background

Executive Order (E.O.) 12549, "Debarment and Suspension," was signed by President Reagan on February 18, 1986, and was published on February 21, 1986 (51 FR 6370–6371). On the same day, the Office of Management and

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Budget (OMB) published proposed guidelines on coverage, Governmentwide criteria, and minimum due process procedures (51 FR 6372–6379). OMB issued final guidelines on May 26, 1987, which were then published on May 29, 1987 (52 FR 20360–20369). Section 3 of the E.O. 12549 required Executive departments and agencies to issue regulations implementing E.O. 12549 that were consistent with the OMB guidelines.

On October 20, 1987, 20 Executive departments and agencies published a proposed common rule which implemented the final OMB guidelines (52 FR 39035–39042). Instead of joining the proposed common rule, USDA published a proposed rule in Part 3015 that was consistent with the OMB guidelines. In the proposed regulation, USDA consolidated some of the provisions included in the OMB guidelines and added USDA specific internal procedures.

On May 26, 1988, 27 Executive departments and agencies published a final common rule (53 FR 19159–19211). Upon reconsideration of the issue of joining the common rule, USDA is publishing this final rule which follows the text of the final common rule published on May 26, 1988. USDA's scope is limited to domestic assistance transactions and USDA has added material to reflect generally internal organization and procedures, which was included in the USDA October proposed rule. This final rule is published in newly created Part 3017 in order to be consistent with the common rule format and numbering scheme.

The comments received by USDA in response to its proposed rule were addressed in the preamble to the final common rule.

Summary of Additional Provisions

Definition of agency. USDA has amended the definition of "agency" in § 3017.105 of the common rule by adding paragraph (c)(1). USDA has a decentralized nonprocurement debarment and suspension system. Paragraph (c)(1) is intended to make clear, that when used in the context of USDA internal procedures or requirements, any organizational unit of the U.S. Department of Agriculture that has been delegated authority by the Secretary of Agriculture to carry out primary covered transactions is an agency.

Decentralized debarring and suspending official. USDA will have decentralized debarring and suspending officials. The debarring and suspending officials will be at the Under Secretary, Assistant Secretary, or agency head levels in USDA. The authority to act as a debarring or suspending official cannot be delegated below the agency head level. In § 3017.105, paragraphs (g)(2)(i), (g)(3), (t)(2)(i), and (t)(3) have been added to specify the USDA levels of authority that can impose debarment and suspension.

Appeals. USDA has provided for an administrative appeal by the debarred or suspended participant. Consequently, the following have been added to the common rule:

—In § 3017.105, paragraph (w) has been added to indicate that the appeals officer would be any administrative law judge of USDA's Office of Administrative Law Judges.

—§ 3017.515 is added to set out the appeal procedure for participants debarred or suspended by USDA agencies.

Scope. In § 3017.110, paragraph (a)(3) is added to point out that this rule's coverage only extends to domestic assistance transactions. Debarment or suspension of purchasers of timber is governed by Subpart C, Part 223, Title 36.

Investigation and referral. Section 3017.311, under debarment, and § 3017.410, under suspension, have been amended by adding paragraphs to the common rule that specify USDA internal procedures as follows:

—Paragraphs § 3017.311(a) and § 3017.410(a)(1) allow USDA agencies to decide the appropriate resources to be used in conducting an investigation concerning a proposed debarment or suspension.

—Paragraphs § 3017.311(b) and § 3017.410(a)(2) has been added to state the minimum documentation which USDA agencies must provide to the debarring or suspending officials when referring information on proposed debarment or suspension actions.

—Paragraphs § 3017.311(c) and § 3017.410(a)(3) make the debarring and suspending officials responsible for deciding whether to initiate the proposed debarment or the suspension after reviewing the documentation provided in support of the action.

—Paragraphs § 3017.311(d) and § 3017.410(a)(4) state the Office of the General Counsel's (OGC) responsibility for reviewing the documentation referred to the debarring or suspending official for legal sufficiency and for coordinating any actions with the Department of Justice.

Notices. USDA specific requirements for notices have been added to § 3017.312, § 3017.314, § 3017.411, and § 3017.413 as follows:

—Paragraph § 3017.312(a)(1) adds that information on the specific debarment action proposed is to be included in the notice of proposed debarment.

—Paragraphs § 3017.314(d)(3) and § 3017.413(c)(1) and concluding text at the end of § 3017.312 and § 3017.411 are added to state that the notice of proposed debarment and notice of suspension are to be signed by the debarring or suspending official taking the action and are to be transmitted by certified mail, return receipt requested. The amendments also say that OGC will be consulted on all proposed actions prior to the notice being sent to the respondent.

—Paragraph § 3017.413(c)(1) has also been added to set out the minimum provisions USDA agencies must include in a suspension notice to the respondent.

Debarring and suspending officials' decisions. Provisions concerning USDA debarring and suspending officials' decisions have been added to § 3017.314 and § 3017.413 as follows:

—Paragraphs § 3017.314(a)(1) and § 3017.413(a)(2) are added to state the debarments and suspensions will be considered decided where the respondent(s) fail(s) to timely provide any submission in opposition.

DOJ advice on additional proceedings. USDA has added the following internal procedures on how the suspending official should proceed when the Department of Justice (DOJ) has advised against additional proceedings to determine disputed facts:

—In § 3017.412, paragraphs (b)(1)(ii) (A) and (B) have been added to provide that the suspending official will (1) determine, based on DOJ advice and after coordination with OGC, that the substantial interests of the Federal Government in pending or contemplated legal proceedings that are based on the same facts as the suspension would be prejudiced, and (2) only continue the suspension if he/she determines, after consultation with OGC, that there is enough evidence to proceed without using the facts that DOJ has advised would prejudice DOJ's contemplated proceedings.

—In § 3017.413, paragraph (a)(1) has been added to provide that the USDA suspending official shall stop the suspension immediately when additional proceedings to determine disputed facts have been denied on the basis of DOJ advice. USDA also reserves the right to proceed with the suspension when DOJ completes its legal proceedings or is satisfied that the suspension will no longer prejudice their proceedings.

Period of suspension. Paragraph § 3017.415(c)(1) has been added to specify that the suspending official shall notify OGC who will notify DOJ of the impending termination of a suspension.

USDA agency responsibilities. The following provisions have been added to delineate specific USDA agency responsibilities:

—Paragraph § 3017.505(b)(1) has been added to state that all communication with the General Services Administration (GSA) regarding additions, deletions, or changes to the Nonprocurement List shall be in writing.

—Paragraph § 3017.505(f) is added to require USDA agencies to provide the Office of Finance and Management (OFM) with copies of information provided to GSA on debarred, suspended, voluntarily excluded, and ineligible persons and information concerning exceptions.

—Paragraph § 3017.505(g) has been added to provide that USDA agencies shall notify GSA and OFM in writing of debarment or suspension decisions overturned on appeal under § 3017.515.

Impact Analysis

Executive Order 12291

Executive Order 12291 requires that a regulatory impact analysis be prepared for "major" rules which are defined in the Order as any rule that has an annual effect on the national economy of $100 million or more, or certain other specified effects. We do not believe that this regulation will have an annual economic impact of $100 million or more or the other effects listed in the Order. For this reason, we have determined that this regulation is not a major rule within the Meaning of the Order.

Regulatory Flexibility Act of 1980

The Regulatory Flexibility Act (5 U.S.C. 605(b)) requires that, for each rule with a "significant economic impact on a substantial number of small entities," an analysis be prepared describing the rule's impact on small entities and identifying any significant alternatives to the rule that would minimize the economic impact on small entities.

We certify that this regulation will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

We certify that this rule does not impose any reporting or recordkeeping requirements under the Paperwork Reduction Act of 1980, 44 U.S.C. Chapter 35.

List of Subjects in 7 CFR Part 3017

Grant programs (Agriculture), Debarment and suspension.

Issued at Washington, DC.
January 19, 1989.
Peter C. Myers,
Deputy Secretary.

Accordingly, Title 7 of the Code of Federal Regulations is amended as follows:

1. Part 3017 is added to read as set forth below:

PART 3017—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Subpart A—General

Sec.
3017.100 Purpose.
3017.105 Definitions.
3017.110 Coverage.
3017.115 Policy.

Subpart B—Effect of Action

3017.200 Debarment or suspension.
3017.205 Ineligible persons.
3017.210 Voluntary exclusion.
3017.215 Exception provision.
3017.220 Continuation of covered transactions.
3017.225 Failure to adhere to restrictions.

Subpart C—Debarment

3017.300 General.
3017.305 Causes for debarment.
3017.310 Procedures.
3017.311 Investigation and referral.
3017.312 Notice of proposed debarment.
3017.313 Opportunity to contest proposed debarment.
3017.314 Debarring official's decision.
3017.315 Settlement and voluntary exclusion.
3017.320 Period of debarment.
3017.325 Scope of debarment.

Subpart D—Suspension

3017.400 General.
3017.405 Causes for suspension.
3017.410 Procedures.
3017.411 Notice of suspension.
3017.412 Opportunity to contest suspension.
3017.413 Suspending official's decision.
3017.415 Period of suspension.
3017.420 Scope of suspension.

Subpart E—Responsibilities of GSA, Agency and Participants

3017.500 GSA responsibilities.
3017.505 USDA responsibilities.
3017.510 Participants' responsibilities.
3017.515 Appeal of debarment or suspension decisions.
Appendix A to Part 3017—Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transaction.
Appendix B to Part 3017—Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions.

Authority: 5 U.S.C. 301; E.O. 12549, 51 FR 6370, 3 CFR 1986 Comp., p. 189.

Cross Reference: For additional information, see related documents published at 52 FR 20360, May 29, 1988; 53 FR 19160, May 26, 1988; and 53 FR 34774, September 6, 1988.

2. Part 3017 is further amended as follows:

a. "[Agency]" is removed and "USDA" is added wherever "[Agency]" appears.

b. Section 3017.105 is amended by adding paragraphs (c)(1), (g)(2)(i), (g)(3), (t)(2)(i), (t)(3), (w), and (x) to read as follows:

§ 3017.105 Definitions.

* * * * * *

(C) * * *

(1) A USDA agency, when used in the context of USDA internal procedures or requirements, is any organizational unit of the U.S. Department of Agriculture with authority delegated in 7 CFR Part 2 to carry out primary covered transactions under USDA programs.

* * * * * *

(g) * * *

(2) * * *

(i) In USDA, the authority to act as a debarring official is not delegated below the agency head level.

(3) In USDA, each Under Secretary, Assistant Secretary, or agency head who has been delegated authority in Part 2 of this title to carry out a covered transaction is authorized to act as a debarring official in connection with such covered transaction.

* * * * * *

(t) * * *

(2) * * *

(i) In USDA, the authority to act as a suspending official is not delegated below the agency head level.

(3) In USDA, each Under Secretary, Assistant Secretary, or agency head who has been delegated authority in Part 2 of this title to carry out a covered transaction is authorized to act as a suspending official in connection with such covered transaction.

* * * * * *

(w) *Appeals officer.* Any administrative law judge of the Office of Administrative Law Judges, Department of Agriculture.

(x) *USDA.* U.S. Department of Agriculture.

C. Section 3017.110 is amended by adding paragraph (a)(3) to read as follows:

§ 3017.110 Coverage

* * * * * *

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(a) * * *

(3) *Department of Agriculture covered transactions.* These Department of Agriculture regulations apply only to the Department's domestic assistance covered transactions (whether by a Federal agency, recipient, subrecipient, or intermediary) including, except as noted in paragraph (a)(2) of this section: Grants, cooperative agreements, scholarships, fellowships, loans, loan guarantees, subsidies, insurance, payments for specified use, and donation agreements; subawards, subcontracts, and transactions at any tier that are charged as direct or indirect costs, regardless of type (including subtier awards under awards which are statutory entitlement or mandatory awards).

* * * * *

d. Section 3017.311 is amended by adding paragraphs (a) through (d) at the end of the undesignated paragraph to read as follows:

§ 3017.311 Investigation and referral.

* * * * *

(a) The decision to utilize agency personnel, the Office of Inspector General (OIG), or other appropriate resources to conduct the investigation and develop the documentation required by paragraph (b) of this section is the responsibility of the agency possessing the information.

(b) Basic documentation shall be developed that includes but is not limited to:

(1) The name of the specific respondent(s) against whom the action is being proposed or taken;

(2) The reason(s) for proposing the debarment;

(3) The specific cause(s) for debarment from § 3017.305;

(4) A short narrative stating the facts and/or describing other evidence supporting the reason(s) for the need to debar;

(5) The recommended time period for the debarment;

(6) The potential effect and/or consequences that the debarment will have on the respondent(s);

(7) Copies of any relevant support documentation identified under this section.

(c) The debarring official shall be responsible for deciding whether or not to proceed with the action.

(d) The Office of the General Counsel (OGC) is responsible for:

(1) Reviewing the documentation and notices for legal sufficiency, and

(2) Providing any necessary coordination with the Department of Justice (DOJ).

e. Section 3017.312 is amended by adding paragraph (a)(1) and by adding concluding text to the section to read as follows:

§ 3017.312 Notice of proposed debarment.

* * * * *

(a) * * *

(1) Information on the specific debarment action proposed must be given.

* * * * *

In USDA, the notice to the respondent shall be signed by the debarring official and transmitted by certified mail, return receipt requested. OGC will be consulted on all proposed debarment actions prior to the notice being sent to the respondent.

f. Section 3017.314 is amended by adding paragraphs (a)(1) and (d)(3) to read as follows:

§ 3017.314 Debarring official's decision.

(a) * * *

(1) In USDA debarment actions where respondent(s) fail(s) to timely provide any submission in opposition, the action will be considered decided.

* * * * *

(d) * * *

(3) In USDA, the notice to the respondent shall be in writing, signed by the debarring official, and transmitted by certified mail, return receipt requested. The OGC will be consulted on all debarment actions prior to the notice being sent to the respondent.

g. Section 3017.410 is amended by adding paragraphs (a) (1) through (4) to read as follows:

§ 3017.410 Procedures.

(a) * * *

(1) The decision to utilize agency personnel, OIG or other appropriate resources to conduct the investigation and develop the documentation required by paragraph (a)(2) of this section is the responsibility of the agency possessing the information.

(2) Basic documentation shall be developed that includes but is not limited to:

(i) The name of the specific respondent(s) against whom the suspension is to be taken;

(ii) The reason(s) for proposing the suspension;

(iii) The specific cause(s) for suspension from § 3017.405;

(iv) A short narrative stating the facts and/or describing other evidence supporting the reason(s) for the suspension;

(v) The recommended time period for the suspension;

(vi) The potential effect and/or consequences that the suspension will have on the respondent(s);

(vii) Copies of any relevant support documentation identified under this section.

(3) The suspending official shall be responsible for deciding whether or not to proceed with the suspension.

(4) OGC is responsible for:

(i) Reviewing the documentation and notice for legal sufficiency, and

(ii) Providing any necessary coordination with DOJ.

* * * * *

h. Section 3017.411 is amended by adding concluding text at the end of the section to read as follows:

§ 3017.411 Notice of suspension.

* * * * *

In USDA, the notice to the respondent shall be signed by the suspending official and transmitted by certified mail, return receipt requested. OGC will be consulted on all proposed suspension actions prior to the notice being sent to the respondent.

i. Section 3017.412 is amended by adding paragraphs (b)(1)(ii) (A) and (B) to read as follows:

§ 3017.412 Opportunity to contest suspension.

* * * * *

(b) * * *

(1) * * *

(ii) * * *

(A) In USDA, such determination shall be made by the suspending official, after coordination with OGC.

(B) In USDA, the suspending official shall continue the suspension only if he/she determines, after consultation with OGC, that there is enough evidence to proceed without using the facts that DOJ has advised would prejudice the contemplated legal proceedings. If there is not such evidence, the suspension shall be terminated immediately without prejudice.

* * * * *

j. Section 3017.413 is amended by adding paragraphs (a) (1) and (2) and (c)(1) to read as follows:

§ 3017.413 Suspending official's decision.

* * * * *

(a) * * *

(1) In USDA, the suspending official shall terminate the suspension immediately when additional proceedings to determine disputed facts have been denied on the basis of DOJ advice. The agency, however, reserves the right to proceed with the suspension when DOJ completes its legal proceedings or is satisfied that the suspension no longer will prejudice DOJ's proceedings.

(2) In USDA suspension actions, where the respondent(s) fail(s) to timely provide any submission in opposition, the action will be considered decided.

* * * * *

(c) * * *

(1) In USDA, the notice to the respondent shall be signed by the suspending official and transmitted by certified mail, return receipt requested. OGC will be consulted on all proposed suspension actions prior to the notice being sent to the respondent. The notice shall include the following:

(i) Reference to the previously issued notice of suspension;

(ii) The reason(s) for the action taken in this notice.

(iii) The effective date(s) of the suspension taken in this notice and, where appropriate, the period of the suspension;

(iv) Advice that the suspension is effective for covered transactions throughout the executive branch of the Federal Government unless an agency head or a designee authorized by an agency head makes a determination referred to in § 3017.215.

k. Section 3017.415 is amended by adding paragraph (c)(1) to read as follows:

§ 3017.415 Period of suspension.

* * * * *

(c) * * *

(1) The suspending official shall notify OGC which will notify DOJ of the impending termination of a suspension.

l. Section 3017.505 is amended by adding paragraphs (b)(1), (f), and (g) to read as follows:

§ 3017.505 USDA responsibilities.

* * * * *

(b) * * *

(1) Each communication with GSA regarding additions, deletions, or changes to the Nonprocurement List shall be in writting.

* * * * *

(f) USDA agencies shall provide the Office of Finance and Management (OFM) with a copy of any information provided to GSA pursuant to this section.

(g) USDA agencies shall notify GSA and OFM, in writing, of debarment or suspension decisions overturned on appeal under § 3017.515.

m. Section 3017.515 is added to read as follows:

§ 3017.515 Appeal of debarment or suspension decisions.

(a) If a decision to debar or suspend is made by a debarring or suspending official under § 3017.314 or § 3017.413, the respondent may appeal the decision to the Office of Administrative Law Judges (OALJ) by filing the appeal, in writing, to the Hearing Clerk, OALJ, United States Department of Agriculture, Washington, DC 20250. The appeal must be filed within 30 days of receiving the decision and it must specify the basis of the appeal. The decision of a debarring or suspending official under § 3017.314 or § 3017.413 may be vacated by the assigned appeals officer if the officer determines that the decision is:

(1) Not in accordance with law;

(2) Not based on the applicable standard of evidence; or

(3) Arbitrary and capricious and an abuse of discretion.

(b) The appeals officer will base his/her decision solely upon the administrative record.

(c) Within 90 days of the date the appeal is filed with USDA's OALJ Hearing Clerk, the appeals officer will notify, in writing, the respondent(s) and the debarring or suspending official, who took the action being appealed, of his/her decision in the appeal. The notice must specify the reason(s) for the decision made by the appeals officer.

(d) The appeals officer's decision is final and is not appealable within USDA.

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 516

[Res. No.: 89-65]

Date: January 25, 1989.

FOR FURTHER INFORMATION CONTACT: Caroline Morris, Office of General Counsel, Legal Counsel Division, (202) 377-6431.

List of Subjects in 12 CFR Part 516

Administrative practice and procedure, Debarment and suspension (nonprocurement), Fraud, Reporting and recordkeeping requirements.

Title 12 of the Code of Federal Regulations is amended as set forth below.

By the Federal Home Loan Board.

John M. Buckley,

Secretary.

1. Part 516 is added to read as set forth at the end of the common preamble.

PART 516—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Subpart A—General

Sec.
516.100 Purpose.
516.105 Definitions.
516.110 Coverage.
516.115 Policy

Subpart B—Effect of Action

516.200 Debarment or suspension.
516.205 Ineligible persons.
516.210 Voluntary exclusion.
516.215 Exception provision.
516.220 Continuation of covered transactions.
516.225 Failure to adhere to restrictions.

Subpart C—Debarment

516.300 General.
516.305 Causes for debarment.
516.310 Procedures.
516.311 Investigation and referral.
516.312 Notice of proposed debarment.
516.313 Opportunity to contest proposed debarment.
516.314 Debarring official's decision.
516.315 Settlement and voluntary exclusion
516.320 Period of debarment.
516.325 Scope of debarment.

Subpart D—Suspension

516.400 General.
516.405 Causes for suspension.
516.410 Procedures.
516.411 Notice of suspension.
516.412 Opportunity to contest suspension.
516.413 Suspending official's decision.
516.415 Period of suspension.
516.420 Scope of suspension.

Subpart E—Responsibilities of GSA, Agency and Participants

516.500 GSA responsibilities.
516.505 Board responsibilities.
516.510 Participants' responsibilities.

Appendix A to Part 516—Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

Appendix B to Part 516—Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

Authority: E.O. 12549, 12 U.S.C. 1437(a).

Cross Reference: For additional information, see related documents published at 52 FR 20360, May 29, 1987; 53 FR 19160, May 26, 1988; and 53 FR 34474, September 6, 1988.

2. Part 516 is further amended as follows:

a. "[Agency]" is removed and "Board" is added wherever "[Agency]" occurs.

b. Section 516.105 is amended by adding paragraph (w) to read as follows:

§ 516.105 Definitions.

* * * * *

(w) *Board.* Federal Home Loan Bank Board.

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PEACE CORPS

22 CFR Part 310

FOR FURTHER INFORMATION CONTACT: John. K. Scales, 202–254–3114 (FTS 254–3114).

List of Subjects in 22 CFR Part 310

Debarment and suspension (nonprocurement).

Title 22 of the Code of Federal Regulations is amended as set forth below.

Loret Miller Ruppe,

Director.

1. Part 310 is added to read as set forth at the end of the common preamble.

PART 310—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Subpart A—General

Sec.
310.100 Purpose.
310.105 Definitions.
310.110 Coverage.
310.115 Policy.

Subpart B—Effect of Action

310.200 Debarment and suspension.
310.205 Ineligible persons.
310.210 Voluntary exclusion.
310.215 Exception provision.
310.220 Continuation of covered transactions.
310.225 Failure to adhere to restrictions.

Subpart C—Debarment

310.300 General.
310.305 Causes for debarment.
310.310 Procedures.
310.311 Investigation and referral.
310.312 Notice of proposed debarment.
310.313 Opportunity to contest proposed debarment.
310.314 Debarring official's decision.
310.315 Settlement and voluntary exclusion.
310.320 Period of debarment.
310.325 Scope of debarment.

Subpart D—Suspension

310.400 General.
310.405 Causes for suspension.
310.410 Procedures.
310.411 Notice of suspension.
310.412 Opportunity to contest suspension.
310.413 Suspending official's decision.
310.415 Period of suspension.
310.420 Scope of suspension.

Subpart E—Responsibilities of GSA, Agency and Participants

310.500 GSA responsibilities.
310.505 Peace Corps responsibilities.
310.510 Participants' responsibilities.
Appendix A to Part 310—Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions.
Appendix B to Part 310—Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions.

Authority: Executive Order 12549, 22 U.S.C. 2503.

Cross Reference: For additional information, see related documents published at 52 FR 20360, May 29, 1987; 53 FR 19160, May 26, 1988; and 53 FR 34474, Sept. 6, 1988.

2. Part 310 is further amended by removing "[Agency]" and adding "Peace Corps" whenever "[Agency]" occurs.

INTER-AMERICAN FOUNDATION

22 CFR Part 1006

FOR FURTHER INFORMATION CONTACT: Charles Berk at 703–841–3812.

List of Subjects in 22 CFR Part 1006

Debarment and suspension (nonprocurement).

Title 22 of the Code of Federal Regulations is amended as set forth below.

Charles M. Berk,

General Counsel.

1. Part 1006 is added to read as set forth at the end of the common preamble.

PART 1006—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Subpart A—General

Sec.
1006.100 Purpose.
1006.105 Definitions.
1006.110 Coverage.
1006.115 Policy.

Subpart B—Effect of Action

1006.200 Debarment or suspension.
1006.205 Ineligible persons.
1006.210 Voluntary exclusion.
1006.215 Exception provision.
1006.220 Continuation of covered transactions.
1006.225 Failure to adhere to restrictions.

Subpart C—Debarment

1006.300 General.
1006.305 Causes for debarment.
1006.310 Procedures.
1006.311 Investigation and referral.
1006.312 Notice of proposed debarment.
1006.313 Opportunity to contest proposed debarment.
1006.314 Debarring official's decision.
1006.315 Settlement and voluntary exclusion.
1006.320 Period of debarment.
1006.325 Scope of debarment.

Subpart D—Suspension

1006.400 General.
1006.405 Causes for suspension.
1006.410 Procedures.
1006.411 Notice of suspension.
1006.412 Opportunity to contest suspension.
1006.413 Suspending official's decision.
1006.415 Period of suspension.
1006.420 Scope of suspension.

Subpart E—Responsibilities of GSA, Agency and Participants

1006.500 GSA responsibilities.
1006.505 Inter-American Foundation responsibilities.
1006.510 Participants' responsibilities.
Appendix A to Part 1006—Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions
Appendix B to Part 1006—Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

Authority: Executive Order 12549, 22 U.S.C. 209f.

Cross Reference: For additional information, see related documents published at 52 FR 20360, May 29, 1987; 53 FR 19160, May 26, 1988; and 53 FR 34474, September 6, 1988.

2. Part 1006 is further amended by removing "[Agency]" and adding "Inter-American Foundation" wherever "[Agency]" occurs.

AFRICAN DEVELOPMENT FOUNDATION

22 CFR Part 1508

FOR FURTHER INFORMATION CONTACT: Paul S. Magid, (202) 673–3916.

List of Subjects in 22 CFR Part 1508

Administrative practice and procedure, Grant programs—foreign relations, Grants administration, Debarment and suspension (nonprocurement).

Title 22 of the Code of Federal Regulations is amended as set forth below.

Leonard H. Robinson, Jr.,

President.

1. Part 1508 is added to read as set forth at the end of the common preamble.

PART 1508—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Subpart A—General

Sec.
1508.100 Purpose.
1508.105 Definitions.
1508.110 Coverage.
1508.115 Policy.

Subpart B—Effect of Action

1508.200 Debarment or suspension.
1508.205 Ineligible persons.
1508.210 Voluntary exclusion.
1508.215 Exception provision.

1508.220 Continuation of covered transactions.
1508.225 Failure to adhere to restrictions.

Subpart C—Debarment

1508.300 General.
1508.305 Causes for debarment.
1508.310 Procedures.
1508.311 Investigation and referral.
1508.312 Notice of proposed debarment.
1508.313 Opportunity to contest proposed debarment.
1508.314 Debarring official's decision.
1508.315 Settlement and voluntary exclusion.
1508.320 Period of debarment.
1508.325 Scope of debarment.

Subpart D—Suspension

1508.400 General.
1508.405 Causes for suspension.
1508.410 Procedures.
1508.411 Notice of suspension.
1508.412 Opportunity to contest suspension.
1508.413 Suspending official's decision.
1508.415 Period of suspension.
1508.420 Scope of suspension.

Subpart E—Responsibilities of GSA, Agency and Participants

1508.500 GSA responsibilities.
1508.505 African Development Foundation responsibilities.
1508.510 Participants' responsibilities.
Appendix A to Part 1508—Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions
Appendix B to Part 1508—Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

Authority: Executive Order 12549, Section 506(a)(4) of Title V of the International Security and Development Cooperation Act of 1980 (Pub. L. 96–533).

Cross Reference: For additional information, see related documents published at 52 FR 20360, May 29, 1987; 53 FR 19160, May 26, 1988; and 53 FR 34474, Sept. 6, 1988.

2. Part 1508 is further amended by removing "[Agency]" and adding "African Development Foundation" wherever "[Agency]" occurs.

COMMISSION ON THE BICENTENNIAL OF THE UNITED STATES CONSTITUTION

45 CFR Part 2016

FOR FURTHER INFORMATION CONTACT: Patrick O'Meara, Director of Administration, (202) 653–5326.

List of Subjects in 45 CFR Part 2016

Debarment and suspension (nonprocurement), Grant programs, Grants administration, Reporting and recordkeeping requirements.

Title 45 of the Code of Federal Regulations is amended by adding a new Part 2016 as set forth below:

Ronald Trowbridge,

Acting Staff Director.

1. Part 2016 is added to read as set forth at the end of the common preamble.

PART 2016—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Subpart A—General

Sec.
2016.100 Purpose.
2016.105 Definitions.
2016.110 Coverage.
2016.115 Policy.

Subpart B—Effect of Action

2016.200 Debarment or suspension.
2016.205 Ineligible persons.
2016.210 Voluntary exclusion.
2016.215 Exception provision.
2016.220 Continuation of covered transactions.
2016.225 Failure to adhere to restrictions.

Subpart C—Debarment

2016.300 General.
2016.305 Causes for debarment.
2016.310 Procedures.
2016.311 Investigation and referral.
2016.312 Notice of proposed debarment.
2016.313 Opportunity to contest proposed debarment.
2016.314 Debarring official's decision.
2016.315 Settlement and voluntary exclusion.
2016.320 Period of debarment.
2016.325 Scope of debarment.

Subpart D—Suspension

2016.400 General.
2016.405 Causes for suspension.
2016.410 Procedures.
2016.411 Notice of suspension.
2016.412 Opportunity to contest suspension.
2016.413 Suspending official's decision.
2016.415 Period of suspension.
2016.420 Scope of suspension.

Subpart E—Responsibilities of GSA, Agency, and Participants

2016.500 GSA responsibilities.
2016.505 Commission responsibilities.
2016.510 Participant's responsibilities.
Appendix A to Part 2016—Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions
Appendix B to Part 2016—Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

Authority: Executive Order 12549; Pub. L. 98–101, as amended; and Title V of Pub. L. 99–194.

Cross Reference: For additional information, see related documents published at 52 FR 20360, May 29, 1987; 53 FR 19160, May 26, 1988; and 53 FR 34474, September 6, 1988.

2. Part 2016 is further amended as follows:

a. "[Agency]" is removed and "Commission" is added wherever "[Agency]" occurs.

b. Section 2016.105 is amended by adding paragraph (w) to read as follows:

§ 2016.105 Definitions.

* * * * *

(w) *Commission.* Commission on the Bicentennial of the United States Constitution.

[FR Doc. 89–2066 Filed 1–27–89; 8:45 am]

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Part V

Department of Transportation

Research and Special Programs Administration

Revision of the Emergency Response Guidebook; Notice of Public Meetings and Request for Comments

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DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Revision of the Emergency Response Guidebook; Notice of Public Meetings; Request for Comments

AGENCY: Research and Special Programs Administration (RSPA), Department of Transportation (DOT).

ACTION: Notice of public meetings; request for comments.

SUMMARY: This notice advises interested persons that RSPA will conduct a series of public meetings to discuss revisions to the "1987 Emergency Response Guidebook" (DOT P 5800.4), and solicits comments on questions posed in this notice.

DATES: *Public Meetings.* Public meetings will be held on February 22, 1989, May 2, 1989, and June 28, 1989 from 9:30 a.m. to 5:00 p.m. in room 3200 of the Nassif Building, 400 Seventh Street SW., Washington, DC, 20590. Additional meetings addressing technical issues (e.g. specific guide pages, evacuation distances) will also be held at a later date, to be determined. Any person planning to attend the public meetings should notify John C. Hess (DHM-51) by telephone or in writing, at least two weeks in advance of each meeting date.

Comments: Comments should be submitted on or before June 13, 1989.

ADDRESSES: *Comments.* Written comments should be submitted to the Office of Hazardous Materials Transportation (DHM-51), Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590. Persons wishing to receive confirmation of the receipt of their comments should include a self-addressed stamped postcard.

FOR FURTHER INFORMATION CONTACT: John C. Hess, Research and Special Programs Administration (DHM-51), 400 Seventh Street SW., Washington, DC 20590; (202) 366-4474.

SUPPLEMENTARY INFORMATION:

Background

The Hazardous Materials Transportation Act (HMTA) (Pub. L. 93-633) empowers the Secretary of Transportation to issue and enforce regulations deemed necessary to ensure the safe transport of hazardous materials. In addition, the HMTA directs the Secretary of Transportation to provide law enforcement and firefighting personnel with technical information and advice for meeting emergencies connected with the transportation of hazardous materials.

The "Emergency Response Guidebook" (ERG) was developed by RSPA for use by emergency services personnel and provides guidance for initial response to hazardous materials incidents. Since 1980, it has been the goal of RSPA for all emergency response vehicles, including firefighting, police, and rescue squad vehicles, to carry a copy of the ERG. To accomplish this, RSPA has published three editions of the ERG and has distributed over 2.5 million copies to emergency services agencies, without charge.

RSPA is initiating the revision process for the 1990 edition of the ERG and actively solicits comments from interested parties, especially those who have used the ERG during hazardous materials incidents. Issues which have been brought to the attention of RSPA and which are discussed below include: (1) Public participation in the ERG revision process, (2) the use of the Chemical Transportation Emergency Center (CHEMTREC) as the point of contact for emergency assistance, (3) the scope and applicability of the ERG, (4) recommendations on protective clothing, (5) health effects of short and/or long-term exposure to hazardous materials, (6) consistency among sources of technical information, (7) assumptions used to calculate isolation and evacuation distances, (8) protection of the public by in-place sheltering, and (9) distribution of the ERG to emergency services organizations.

Discussion of Issues

Public Participation in the Revision Process

This solicitation for comments and notice of public meetings is part of an on-going public process to revise the ERG. The last page of the 1987 ERG contains the following statement:

> Constructive comments concerning this ERG are solicited; in particular, comments concerning its use in handling incidents involving hazardous materials.

The ERG was developed in cooperation with representatives of other Federal agencies and a number of private sector organizations including the International Association of Fire Chiefs, the International Association of Fire Fighters, the International Association of Chiefs of Police, the Fire Marshals Association of North America, the National Fire Protection Association, the Chemical Manufacturers Association, the Institute of Makers of Explosives, and the Association of American Railroads. The issues raised by participants were discussed and decisions made by RSPA concerning the final content of the ERG.

The International Association of Fire Fighters (IAFF) has asserted, however, that "The DOT ERG has never had public review other than through an 'unofficial' and very unbalanced advisory committee."

Application of the ERG—Initial Action or Response

The introduction to the 1987 ERG includes the following statement:

> This guidebook was developed for use by fire fighters, police and emergency services personnel. It is a guide for initial action to be taken to protect yourselves and the general public when you are called to handle incidents involving hazardous materials. The information given is intended to provide guidance primarily during the initial phases of an incident * * *.

Further, the ERG's introductory comments concerning the use of water and other control agents for fires and spills state:

> The guidebook is not intended for use during the cleanup phase for spilled materials, nor should you use it to determine your compliance with any regulations. You should be familiar with this guidebook before you actually need to use it in an emergency.

In the introduction to the Initial Isolation/Evacuation Tables for Selected Hazardous Materials, the ERG states:

> This table is useful only for the first 20-30 minutes of an incident involving volatile hazardous liquids or gases shipped in drums, cylinders, bulk or multiple container loads. There are several good reasons for suggesting that the use of the table be limited specifically to the initial phase of a no-fire spill incident during transport.

Despite these statements, there have been concerns expressed about possible confusion regarding the definition of the word, "initial". In correspondence to the National Transportation Safety Board (NTSB), the IAFF stated, "While it is our understanding that the Board believes 'initial response' is limited to the first 15 minutes of an incident, there is nothing in the ERG to alert emergency responders to this interpretation * * *. The Board's interpretation has no basis in fact for the manner in which the ERG is actually utilized."

Use of CHEMTREC as the Contact for Emergency Assistance

RSPA has included the toll-free telephone number of CHEMTREC on each of the ERG's guide pages, as the contact for emergency assistance. CHEMTREC, operating since 1971, receives calls 24 hours a day, seven days a week to provide immediate advice on the nature of products and steps to be taken in handling the early stages of a problem. CHEMTREC then notifies the shippers of the material involved to solicit more detailed information and appropriate follow-up, including on-scene assistance when feasible. CHEMTREC is operated by the Chemical Manufacturers Association (CMA). RSPA also includes the telephone number of the National Response Center (NRC) in the ERG. NRC is funded by various Federal agencies, including RSPA, and is operated by the U.S. Coast Guard. The NRC's primary function is to receive notifications required by Federal Law and Regulations from those responsible for releases of hazardous substances into the environment and to provide technical information and guidance to Federal On-Scene Coordinators (U.S. Coast Guard or Environmental Protection Agency (EPA) officials). The 1987 ERG contains a special notice concerning these reporting requirements and also states, "Communication with CHEMTREC does not constitute compliance with this [reporting] requirements. Direct notification of the National Response Center * * * satisfies this requirement. CHEMTREC will, if requested, connect a caller directly to the NRC so that he may report a hazardous substance release."

The IAFF objects to the inclusion of the CHEMTREC telephone number in the ERG, having stated:

> The primary function of CHEMTREC has been to identify and provide a communication link between emergency personnel, such as fire fighters, with shippers and manufacturers * * *. It is important to note that we fully concur with OHMT's past assessment that having a single contact is a vital element to reduce confusion during emergency incidents. However, the time has come to change that sole contact telephone to the Environmental Protection Agency's [sic] National Response Center * * * Like CHEMTREC, the NRC telephone number is a toll-free number that is staffed seven days a week, 24 hours a day. While the NRC has the capability to immediately patch has caller into CHEMTREC's informational and referral service, utilizing the NRC has other valuable functions not performed by CHEMTREC. Notification of the NRC serves many vital functions, including permitting federal involvement to proceed in a timely and effective manner. Unfortunately, CHEMTREC does not routinely notify any federal agency of hazardous materials incidents, possibly precluding necessary federal intervention.

Recommendations on Personal Protective Clothing

RSPA defines "fire fighters' protective clothing (structural)" in the 1987 ERG as "* * * protection to restrict inhalation of, ingestion of, or skin contact with hazardous vapors, liquids and solids", and references the OSHA Fire Brigades Standard (29 CFR 1910.156) as a minimum standard. The 1987 ERG specifically cautions, "This turnout clothing may not provide adequate protection from poisonous vapors or liquids encountered during hazardous materials incidents." Some ERG guide pages indicate that "structural firefighter's protective clothing will provide limited protection" while other pages caution, "structural firefighter's protective clothing is not effective with these materials".

The IAFF has objected to the ERG's mention of structural firefighting protective clothing, stating, "The ERG's position that limited exposure wearing structural fire fighting protective clothing may be achieved without any health risks is erroneous." The IAFF has also asserted, "* * * the ERG acts more like an excuse for emergency response personnel to intervene and attempt to mitigate hazardous materials emergencies without proper protective clothing and equipment."

Consistency Among Technical information Sources

RSPA is aware of the existence of several sources of technical information concerning the handling of hazardous materials incidents by emergency responders. Accordingly, drafts of the 1987 edition of the ERG were reviewed with such groups as the Bureau of Explosives of the Association of American Railroads and the National Fire Protection Association, both of which also publish information concerning hazardous materials emergency response. Since these organizations reviewed drafts of the ERG, the first response advice in their publications is generally the same as in the ERG.

There have been concerns expressed however, about potential harm or confusion resulting from conflicting advice from different sources being given to emergency responders. The NTSB has recommended that DOT should:

> Investigate the adequacy and consistency of hazardous materials emergency guides and other advice available to local officials for us in controlling hazardous materials released during transportation, and take necessary steps to assure that they provide sufficient and consistent guidance and advice to help local officials control hazardous materials spills quickly and effectively.

The IAFF has also stated that, "The fact also remains that there are serious difficulties and contradictions in the ERG with other materials."

Assumptions Used in Calculating Evacuation and Isolation Distances

The 1987 ERG includes initial isolation/evacuation tables for certain hazardous materials whose vapors behave like poison gases. The introduction to the table cautions the user that "The table is useful only for the first 20-30 minutes of an incident * * *." The 1987 ERG further states that the development of the isolation and evacuation distances was based on parameters which, "* * * more than 75 percent of the time, regardless of the season, or time of day, in the continental U.S.A., * * * serves to predict mostly conservative values for down- and cross-wind concentrations."

Concerns have been raised by interested individuals about the dispersion modeling techniques used to make these calculations. In written comments to the U.S. House of Representatives' Committee on Government Operations, Dr. Ronald Koopman of the Lawrence Livermore National Laboratory states that the source and dispersion models used by DOT "* * * either overpredicts the hazard zones for some materials or underpredicts hazard distances for some other materials."

Dr. Koopman concluded:

> * * * if there were an accidental release, there would be the problem of industrial or emergency response personnel believing that an evacuation distance highly conservative when in fact people evacuated to that distance could be exposed to lethal concentrations.

The Committee on Government Operations recommended that "At the very minimum, DOT should consider presenting a range of estimates based on analyses from different appropriate models. This range of estimates would further indicate the uncertainty of DOT's recommended evacuation distances," and that "DOT should more carefully explain the uncertainties associated with the evacuation distances used in its ERG, especially its reliance upon the Gaussian model."

Protection of the Public by In-Place Sheltering

The 1987 ERG states that, "Evacuation is by itself, a process with significant risk for the persons being evacuated. Therefore, sheltering-in-place should always be a first consideration * * *". The Federal Emergency Management Agency (FEMA) and EPA sponsored a

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conference in November 1988 concerning sheltering-in-place as a strategy for public protection during hazardous materials incidents. Statements by researchers and field practitioners indicated that additional guidance on sheltering-in-place should be included in the ERG.

Distribution of the ERG

RSPA used a network of State agencies to distribute over 1,000,000 copies of the 1987 ERG to various emergency services organizations. Additionally, RSPA routinely directs other (non-emergency response) requests for copies of the 1987 ERG to known commercial suppliers. Informal comments received by RSPA have indicated that certain jurisdictions have experienced difficulty in receiving copies of the 1987 ERG or that some jurisdictions or agencies may have restricted distribution of the 1987 ERG among their emergency services agencies.

Request for Comments

Comments are solicited on the preceding discussion of concerns and on the following questions. Supporting data and analyses will enhance the value of comments submitted.

1. Has CHEMTREC provided accurate and timely assistance to emergency responders during hazardous materials incidents?

2. Has the NRC provided accurate and timely assistance to emergency responders during hazardous materials incidents?

3. Should the ERG continue to list the CHEMTREC telephone number as the contact for information for emergency responders or should the NRC telephone number be listed instead of or in addition to the CHEMTREC telephone number?

4. Have emergency responders experienced a problem of inconsistent guidance between the ERG and other sources of technical information? If so, is the ERG at fault and in what way could the ERG be revised to reduce this inconsistency?

5. Have emergency responders experienced confusion or difficulty in understanding the scope or purpose of the ERG? If so, in what way could the ERG be revised to reduce this difficulty?

6. Have emergency responders experienced confusion or difficulty in understanding the application of the ERG? If so, in what way could the ERG be revised to reduce this difficulty?

7. What revisions should be made to the ERG's Table for Initial Isolation/Evacuation Distances for Selected Hazardous Materials, or to the assumptions which drive the calculation of its recommended distances?

8. What guidelines for sheltering-in-place should be considered for inclusion in the ERG?

9. Have emergency responders experienced difficulty understanding the capabilities of chemical protective clothing, and the limitations of structural firefighter's protective clothing in hazardous materials incidents? If so, in what way can the ERG be revised to improve understanding?

10. Has any identification number (ID No.) been incorrectly assigned to a material (Name or Material)?

11. Has any identification number/material been assigned to the "wrong" guide page?

12. Are the responses on each guide page appropriate for the material assigned to the guide page?

13. Should all DOT placards be displayed in the Table of Placards (e.g. Chlorine, Oxygen)?

14. Should the United Nations Class or Division number be displayed at the bottom of each placard in the Table of Placards?

15. Have emergency responders experienced difficulty with legibility of the ERG's print style, its format or its durability?

16. Have emergency response agencies experienced difficulty in obtaining copies of the ERG for their vehicles?

Issued in Washington, DC on January 24, 1989 under authority delegated in 49 CFR Part 106, Appendix A.

Alan I. Roberts,

Director, Office of Hazardous Materials Transportation.

[FR Doc. 89-2074 Filed 1-27-89; 8:45 am]

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federal register

Monday
January 30, 1989

Part VI

Department of Education

34 CFR Parts 245, 246, and 247
Women's Educational Equity Act Program; Notice of Proposed Rulemaking

VOL 54 ISS 18 JA 30 1989 UMI

DEPARTMENT OF EDUCATION

34 CFR Parts 245, 246, and 247

Women's Educational Equity Act Program

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations for the Women's Educational Equity Act (WEEA) Program. These proposed regulations implement the changes mandated by statutory amendments, include new regulations for projects of local significance, and effect other revisions based on a thorough review of the current regulations for the purpose of deregulation. These proposed regulations will not affect fiscal year 1989 awards, but will govern WEEA projects beginning in fiscal year 1990.

DATE: Comments must be received on or before March 16, 1989.

ADDRESSES: All comments concerning these proposed regulations should be addressed to M. Patricia Goins, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202-6245.

A copy of any comments that concern information collection requirements should also be sent of the Office of Management and Budget at the address listed in the Paperwork Reduction Act Section of this preamble.

FOR FURTHER INFORMATION CONTACT: Mrs. Alice T. Ford, Women's Educational Equity Act Program, 400 Maryland Avenue, SW. (Room 2053, FOB-6), Washington, DC 20202-6438. (202) 732-4351.

SUPPLEMENTARY INFORMATION: The purpose of the Women's Educational Equity Act (WEEA) Program is to: (1) Provide equity for women—including girls—at all levels of education, (2) financially assist educational agencies and institutions in meeting all requirements of Title IX of the Education Amendments of 1972 (relating to nondiscrimination on the basis of sex in federally assisted educational programs), and (3) promote educational equity for women who suffer multiple discrimination, bias or stereotyping based on sex and race, ethnic origin, disability, or age. Funds are provided through grants and contracts for projects of national, statewide, or general significance (referred to in this preamble as projects of general significance) that could be disseminated widely and replicated in a variety of settings. Projects of general significance include challenge grants, not to exceed $40,000 each, for projects to develop new dissemination and replication strategies and innovative approaches to achieving the purposes of the WEEA.

Funds may also be provided for projects of local significance, if the appropriation for the WEEA Program exceeds a statutorily specified amount. In that case, the Secretary has the option of using the excess funds for projects of general significance, projects of local significance, or both.

The WEEA Program has been reauthorized and amended by the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988—Pub. L. 100-297. The amendments lower to $4.5 million the appropriation threshold for funding projects of local significance and include, in selecting recipients for funding, a priority for applications from applicants that have not been previously funded.

General Changes in These Proposed Regulations

- The proposed regulations would redesignate and revise the exiting regulations and divide them into three separate parts of Title 34 of the Code of Federal Regulations (CFR). General requirements applicable both to projects of general significance and to projects of local significance would be contained in Part 245. Part 246 would contain additional provisions applicable only to projects of general significance, and Part 247 would contain additional provisions applicable only to projects of local significance.
- The proposed regulations implement new requirements of the Hawkins-Stafford Amendments of 1988—Pub. L. 100-297.
- The proposed regulations would delete unnecessary or unduly burdensome requirements from the current regulations, clarify the provisions of the regulations, and remove duplicative requirements—such as those that duplicate EDGAR.
- The proposed regulations would revise priorities the Secretary may establish for funding in any given year.

Specific Changes in These Proposed Regulations

The specific changes incorporated into this notice of proposed rulemaking (NPRM) include the following:

- The proposed regulations would eliminate provisions detailing the amounts of stipends. These amounts are not specified in the Act. Their elimination would allow applicants more flexibility in proposing rates for stipends that the Secretary would then examine on a case-by-case basis under provisions of EDGAR.
- The proposed regulations would delete the ranking process used by the Secretary in evaluating applications. The process is already covered by EDGAR (34 CFR 75.217(c)).
- The proposed regulations revise the additional factors in § 745.20(b) of the current regulations that are used in making award decisions. The proposed regulations include only those factors that the statute requires be considered in selecting applications for funding—i.e., geographic distribution and special consideration for applications from applicants that have not previously received assistance under this program.
- The proposed regulations make the cost principles referenced in 34 CFR 74.174 (relating to nonprofit organizations) applicable to awards to individuals, except that individuals may not use an indirect cost rate to charge overhead.
- The proposed regulations would replace the priorities in §§ 745.24 through 745.27 of the current regulations regarding projects of general significance with priorities for projects that address several issues and perceived needs currently affecting women's achievement of educational equity. Each year the Secretary could specify one or more of the following as priorities for projects of general significance:

—Projects to develop and test model programs and materials concerning Title IX compliance.
—Projects to increase the interest and participation of women in instructional courses in mathematics, science, and computer science.
—Projects to reduce the rate at which women drop out of educational institutions and to encourage women to resume their education.
—Projects to expand guidance and counseling programs to enable women to become more aware of and knowledgeable about careers in which women have not significantly participated.
—Projects to enhance opportunities for educational achievement by economically disadvantaged women.
—Projects to enhance opportunities for women who suffer multiple discrimination based on sex and race, ethnic origin, age, or disability.

- The proposed regulations incorporate the new statutory requirement that the Secretary, in selecting award recipients, give special consideration to applications from applicants that have not previously received WEEA funds. Ten additional points would be awarded to these applications.
- Although the criteria the Secretary uses to evaluate applications for projects of general significance would remain essentially the same as in the current regulations, the proposed regulations make the following changes:

—The criterion for plan of operation would emphasize the soundness of the management plan of a proposed project.
—In the criterion under which the Secretary determines the quality of the director and staff of a proposed project, the Secretary would delete, as unnecessary, many of the specific subfactors in the current regulations.

- The proposed regulations add provisions for projects of local significance. Proposed new Part 247, together with the general provisions in proposed Part 245, would contain those regulatory provisions the Secretary regards as necessary to govern these types of projects, including the priorities from which the Secretary may select projects of local significance and the criteria used to evaluate applications for these projects. Also included would be a provision implementing the statutory requirement that in any year funds become available for projects of local significance, the Secretary allocates at least 75 percent of the funds to LEAs.

Significant Aspects of These Proposed Regulations

In proposing these regulations, the Secretary wishes to draw the attention of readers to several matters:

Projects of Local Significance. The Act does not automatically authorize awards each year for projects of local significance. Rather, the Act specifies that the Secretary may make these types of awards if the appropriation for the overall program in any given year exceeds $4.5 million. Even if that threshold amount is met, the Secretary has the discretion under the law to determine how much, if any, of an appropriation above $4.5 million will be awarded for projects of local significance.

Provisions of the Statute. The Secretary does not find it necessary to repeat in these proposed regulations every provision of the statute authorizing the program. Nonetheless, statutory requirements not repeated are in effect, and the Secretary urges users of the regulations to familiarize themselves with all applicable requirements.

Girls, Women, and Adult Women. Unless the Act specifies that a requirement or activity applies only to "adult women" (defined in proposed § 245.11(b)(5)(ii)), the term "women" in these proposed regulations is intended to include girls.

Open Meeting Requirement. The proposed regulations require that a local educational agency hold an open meeting regarding the contents of its application, and certify in its application that the meeting was held. These requirements were previously contained in the Education Department General Administrative Regulations (EDGAR) and added to the WEEA regulations in 1987 through a notice in the Federal Register (*See* 52 FR 27805).

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the Executive Order.

Executive Order 12606

These regulations will have a positive impact on the family and are consistent with the requirements of Executive Order 12606—The Family. These regulations strengthen the authority and participation of parents in the education of their children. For example, the regulations specifically require that a local educational agency hold an open meeting regarding the contents of its application to give parents and the public in general an opportunity to testify or otherwise comment on the contents.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations will not have significant economic impact on a substantial number of small entities. This program provides assistance to local educational agencies, State agencies, public or nonprofit agencies, organization, or institutions, and individuals.

These proposed regulations describe the program and establish minimal application requirements. They will not have a significant economic impact on small entities participating in the program.

Paperwork Reduction Act 1980

Sections 246.31 through 246.36 and 247.31 through 247.37 contain information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of this section to the Office of Management and Budget (OMB) for review.

(44 U.S.C. 3504(h))

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, Room 3002, New Executive Office Building, Washington, DC 20503; Attention: James F. Houser.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 2053, FOB-6, 400 Maryland Avenue SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, the Secretary invites comment on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Parts 245, 246, and 247

Education, Government contracts, Grant programs—education, Reporting and recordkeeping requirements, Sex discrimination.

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Dated: January 24, 1989.

Lauro F. Cavazos,

Secretary of Education.

(Catalog of Federal Domestic Assistance Number 84.083, Women's Educational Equity Act Program)

The Secretary proposes to amend Title 34 of the Code of Federal Regulations by redesignating Part 745 as Part 245, revising redesignated Part 245, and adding new Parts 246 and 247 to read as follows:

PART 245—WOMEN'S EDUCATIONAL EQUITY ACT PROGRAM—GENERAL PROVISIONS

Subpart A—General

Sec.

245.1 What is the Women's Educational Equity Act Program?
245.2 Who is eligible for an award?
245.3 Are men and boys eligible to participate in projects and activities?
245.4 What regulations apply?
245.5 What definitions apply?

Subpart B—What Kinds of Projects and Activities May the Secretary Fund?

245.10 What kinds of projects may the Secretary fund?
245.11 What kinds of activities may the Secretary fund?
245.12 How does the Secretary establish priorities?

Subpart C—How Does One Apply for an Award?

245.20 How must a local educational agency satisfy the requirement for an open meeting certification?
245.21 What assurance must an application include?

Subpart D—What Conditions Must be Met by a Recipient?

245.40 What costs are allowed?
245.41 What cost principles apply to individuals?

Authority: 20 U.S.C. 3041–3045, unless otherwise noted.

Subpart A—General

§ 245.1 What is the Women's Educational Equity Act Program?

(a) The Women's Educational Equity Act Program provides funds for projects designed to do one or more of the following:

(1) Promote educational equity for women in the United States.

(2) Promote educational equity for women who suffer multiple discrimination, bias, or stereotyping based on—

(i) Sex; and

(ii) Race, ethnic origin, disability, or age.

(3) Enable educational agencies and institutions to meet the requirements of Title IX of the Education Amendments of 1972 (relating to nondiscrimination on the basis of sex in federally assisted educational programs).

(b) Unless otherwise specified, as used in this part—and in 34 CFR Parts 246 and 247—the term "women" includes girls.

(c) The Secretary may provide funds under this program in the form of a grant or contract.

(Authority: 20 U.S.C. 3041(b), 3042(a))

§ 245.2 Who is eligible for an award?

The following are eligible to receive awards under the Women's Educational Equity Act Program:

(a) Public agencies, institutions, and organizations.

(b) Nonprofit private agencies, institutions, and organizations, including student and community groups.

(c) Individuals.

(Authority: 20 U.S.C. 3042(a))

§ 245.3 Are men and boys eligible to participate in projects and activities?

Nothing in this part or in 34 CFR Parts 246 or 247 shall be construed as prohibiting men and boys from participating in any project or activity assisted under the Women's Educational Equity Act Program.

(Authority: 20 U.S.C. 3043(c))

§ 245.4 What regulations apply?

The following regulations apply to the Women's Educational Equity Act Program:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals and Nonprofit Organizations), for grants to institutions of higher education, hospitals, and nonprofit organizations.

(2) 34 CFR Part 75 (Direct Grant Programs), Part 77 (Definitions that Apply to Department Regulations), Part 78 (Education Appeal Board), and Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(3) 34 CFR Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and local Governments) for grants to State and local governments, including Indian Tribal governments.

(b) The Federal Acquisition Regulation (FAR) in 48 CFR Chapter 1 and the Department of Education Acquisition Regulation (EDAR) in 48 CFR Chapter 34.

(c) The regulations in 34 CFR Parts 246 and 247, as appropriate.

(d) The regulations in this Part 245.

(Authority: 20 U.S.C. 3041–3045)

§ 245.5 What definitions apply?

(a) The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Award
Budget
Contract
EDGAR
Grant
Local educational agency
Nonprofit
Private
Project
Public
Secretary
State

(b) *Other definitions.* The following definitions also apply to this part:

"Act" means the Women's Educational Equity Act, as amended.

"Educational equity for women" means—

(1) Full and fair participation by women in educational programs and in American society generally; and

(2) The ability of women to choose freely—without limitation based on sex—among benefits and opportunities in educational institutions, programs, and curricula.

"Title IX" means Title IX of the Education Amendments of 1972 (Pub. L. 92–318).

(Authority: 20 U.S.C. 3041–3045)

Subpart B—What Kinds of Projects and Activities May the Secretary Fund?

§ 245.10 What kinds of projects may the Secretary fund?

(a) The Secretary provides Federal funds for projects of general significance (34 CFR Part 246).

(b) If funds appropriated for the Women's Educational Equity Act Program exceed an amount specified in section 4002(b) of the Act, the Secretary may also provide funds for projects of local significance (34 CFR Part 247).

(Authority: 20 U.S.C. 3042).

§ 245.11 What kinds of activities may the Secretary fund?

(a) The Secretary awards at least one grant or contract each fiscal year for the performance of each of the activities described in paragraph (c) of this section.

(b) The Secretary awards funds for demonstration, developmental, and dissemination activities designed to provide, advance, ensure, or achieve educational equity for women at all levels of education.

(c) Activities described in paragraph (b) of this section may include, but are not restricted to the following:

(1) Development—if materials are commercially unavailable—and evaluation of curricula, textbooks, and other educational materials.

(2) Model training programs for educational personnel.

(3) Research and development projects.

(4) Guidance and counseling activities, including the development of nondiscriminatory tests.

(5)(i) Educational activities to increase opportunities for women, including continuing educational activities and programs for underemployed and unemployed adult women.

(ii) As used in paragraph (c)(5)(i) of this section, "adult" refers to women who—

(A) Have attained the age of 16; and

(B) Are no longer in school.

(6) Expansion and improvement of educational programs and activities for women in vocational education, career education, physical education, and educational administration.

(Authority: 20 U.S.C. 3042(a))

§ 245.12 How does the Secretary establish priorities?

(a) Each year, in a notice published in the **Federal Register**, the Secretary establishes separate priorities for projects of general significance and projects of local significance. The Secretary selects one or more priorities for each category of projects, from among the following:

(1) The priorities in § 246.11.

(2) The priorities in § 247.11.

(b)(1) Applicants may submit applications under one or more selected priorities. Applicants must identify the priorities under which they wish to compete in their applications.

(2) Applications under a priority compete against other applications under that priority for funds allocated to the priority.

(c) (1) An applicant may propose a project that is not under a priority, but is within the scope of the authorized activities described in § 245.11. These applications compete for funds not allocated to any priority.

(2) If an applicant fails to identify a priority, the application competes with other applications that are not under a selected priority.

(d)(1) Each year the Secretary may select one or more of the priorities established for general grants to apply to small grants.

(2) In any year that the Secretary establishes priorities for small grants, the procedures in paragraphs (a) through (c) of this section apply.

(Authority: 20 U.S.C. 3045)

Subpart C—How Does One Apply for an Award?

§ 245.20 How must a local educational agency satisfy the requirement for an open meeting certification?

An applicant that is a local educational agency shall—

(a) Give reasonable notice of the general public's opportunity to testify or otherwise comment at an open meeting regarding the subject matter of the application;

(b) Hold the open meeting;

(c) Consider comments obtained at the meeting in developing the final application; and

(d) Certify in the application submitted to the Secretary that the LEA has held an open meeting regarding the application, as required by this section.

(Authority: 20 U.S.C. 3386)

§ 245.21 What assurance must an application include?

In addition to meeting the other requirements in this part, and as appropriate, Parts 246 and 247, an application must include an assurance that the applicant, if selected for an award, would administer or supervise the project or activity for which the applicant seeks Federal financial assistance under the program.

(Authority: 20 U.S.C. 3043(a))

Subpart D—What Conditions Must be Met by a Recipient?

§ 245.40 What costs are allowed?

In addition to the costs allowed in EDGAR, the Secretary allows project funds to be used for the following:

(a) The payment of stipends, travel costs, and child care to persons who participate in training under the project and to persons who participate in field-testing of materials and programs developed under the project if—

(1) Provision of these payments was included in the application;

(2) The applicant demonstrates to the Secretary's satisfaction that the payments are necessary to achieve the objectives of the project; and

(3) Participants who receive stipends are not otherwise paid for the time during which they participate in the training or testing.

(b) The costs of tuition and fees for participants in a training activity under the project if—

(1) Provision for these costs was included in the application; and

(2) The applicant demonstrates to the Secretary's satisfaction that payment of the costs is necessary to achieve the objectives of the project.

(Authority: 20 U.S.C. 3042(a))

§ 245.41 What cost principles apply to individuals?

The cost principles referenced in 34 CFR 74.174 (Cost Principles for other Nonprofit Organizations) apply to an individual who receives a grant under this program, except that an individual may not use an indirect cost rate.

(Authority: 20 U.S.C. 3042(a))

PART 246—WOMEN'S EDUCATIONAL EQUITY ACT PROGRAM—PROJECTS OF GENERAL SIGNIFICANCE

Subpart A—General

Sec.

246.1 What are projects of general significance under the Women's Educational Equity Act Program?
246.2 Who is eligible for an award?
246.3 What regulations apply?

Subpart B—What Kinds of Projects and Activities May the Secretary Fund?

246.10 What kinds of projects and activities may the Secretary fund?
246.11 What priorities may the Secretary select?

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make an Award?

246.30 How does the Secretary evaluate an application?
246.31 Selection criterion: Need.
246.32 Selection criterion: Impact.
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246.35 Selection criterion: Innovative approach.
246.36 What additional factors does the Secretary consider in selecting projects for funding?

Authority: 20 U.S.C. 3041–3045, unless otherwise noted.

Subpart A—General

§ 246.1 What are projects of general significance under the Women's Educational Equity Act Program?

Under the Women's Educational Equity Act Program—Projects of General Significance, the Secretary provides Federal funds to projects—

(a) That address one or more purposes of the Act;

(b) That are likely to—

(1) Have national or statewide significance; or

(2) Be of significance to women generally; and

(c) Whose potential impact is not confined to a local area.

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implement and operate the project successfully; (5 points)

(c) The time to be spent on the project by the director and staff is sufficient to carry out the project activities. (3 points) and

(d) The applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping conditions. (3 points)

(Authority: 20 U.S.C. 3045)

§ 246.35 Selection criterion: Innovative approach. (5 points)

The Secretary determines the extent to which the proposed project uses a new or untried approach to achieving some aspect of educational equity for women.

(Authority: 20 U.S.C. 3044, 3045)

§ 246.36 What additional factors does the Secretary consider in selecting projects for funding?

(a) In addition to the criteria in §§ 246.31 through 246.34—and, if appropriate, the criterion in § 246.35—the Secretary, in selecting projects for funding gives special consideration to—

(1) Applications submitted by applicants that have not received assistance under this part or Part C of Title IX of the Elementary and Secondary Education Act of 1965, and

(2) Applications from applicants on the basis of geographical distribution.

(b) The Secretary awards ten additional points to each project that is eligible for consideration under paragraph (a)(1) of this section.

(Authority: 20 U.S.C. 3043(b); 3045)

PART 247—WOMEN'S EDUCATIONAL EQUITY ACT PROGRAM—PROJECTS OF LOCAL SIGNIFICANCE

Subpart A—General

Sec.

247.1 What are projects of local significance under the Women's Educational Equity Act Program?
247.2 Who is eligible for an award?
247.3 What regulations apply?

Subpart B—What Kinds of Activities May the Secretary Fund?

247.10 What kinds of activities may the Secretary fund?
247.11 What priorities may the Secretary select?

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make an Award?

247.30 How does the Secretary evaluate an application?
247.31 Selection criterion: Need.
247.32 Selection criterion: Impact.
247.33 Selection criterion: Plan of operation.
247.34 Selection criterion: Qualification of staff.
247.35 Selection criterion: Cooperation and commitment.
247.36 Selection criterion: Budget and cost effectiveness.
247.37 Selection criterion: Evaluation.
247.38 What is the maximum period of an award?

Subpart E—What Conditions Must Be Met by a Recipient?

247.40 What portion of costs must a recipient contribute?

Authority: 20 U.S.C. 3041–3045, unless otherwise noted.

Subpart A—General

§ 247.1 What are projects of local significance under the Women's Educational Equity Act Program?

Under the Women's Educational Equity Act Program—Projects of Local Significance, the Secretary provides Federal funds to pay a portion of the costs of establishing and operating special programs and projects of local significance that provide equal opportunities for both sexes.

(Authority: 20 U.S.C. 3042(a)(2))

§ 247.2 Who is eligible for an award?

(a) The types of entities listed in 34 CFR 245.2 are eligible to receive awards under the Women's Educational Equity Act Program—Projects of Local Significance.

(b) Each year the Secretary allocates at least 75 percent of the funds available for these types of projects for awards to local educational agencies (LEAs).

(Authority: 20 U.S.C. 3042(a)(2))

§ 247.3 What regulations apply?

The following regulations apply to the Women's Educational Equity Act Program—Projects of Local Significance:

(a) The regulations in 34 CFR Part 245.

(b) The regulations in this Part 247.

(Authority: 20 U.S.C. 3041–3045)

Subpart B—What Kinds of Activities May the Secretary Fund?

§ 247.10 What kinds of activities may the Secretary fund?

Under the Women's Educational Equity Act Program—Projects of Local Significance, the Secretary provides Federal funds for the following kinds of activities:

(a) The kinds of activities described or listed in 34 CFR 245.11.

(b) Activities incident to achieving compliance with Title IX.

(c) Other special activities designed to achieve the purposes of the Act.

(Authority: 20 U.S.C. 3042(a)(2))

§ 247.11 What priorities may the Secretary select?

In establishing priorities for funding each year, according to 34 CFR 245.12, the Secretary may select one or more of the following:

(a) Projects to help LEAs and other educational agencies and institutions meet the requirements of Title IX of the Education Amendments of 1972.

(b) Projects to develop—if materials are commercially unavailable—and adapt to local needs, curricula, textbooks, and other educational materials that will promote educational equity.

(c) Projects to develop and implement training programs, counseling programs, or other programs designed to enhance the skills of women in mathematics, science, and computer science.

(d) Projects to develop and implement guidance and counseling programs designed to—

(1) Increase the knowledge and awareness of women regarding non-traditional career options and opportunities for women; and

(2) Provide information on educational and other requirements for women entering those careers.

(Authority: 20 U.S.C. 3045)

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make an Award?

§ 247.30 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application for Federal financial assistance for a project of local significance on the basis of the criteria in §§ 247.31 through 247.37.

(b) The Secretary awards up to 100 points for these criteria.

(c) The maximum possible score for each criterion is indicated in parentheses.

(Authority: 20 U.S.C. 3045)

§ 247.31 Selection criterion: Need. (10 points)

The Secretary determines the extent to which—

(a) The proposed project addresses needs that are central to the purposes of the Act; (5 points) and

(b) The applicant documents that there are severe and significant needs to be addressed in the local community, agency, or institution to be served. (5 points) and

(Authority: 20 U.S.C. 3045)

(Authority: 20 U.S.C. 3042(a)(1))

§ 246.2 Who is eligible for an award?

(a) The types of entities listed in 34 CFR 245.2 are eligible to receive awards under the Women's Educational Equity Act Program—Projects of General Significance.

(b) In addition to the types of entities referred to in paragraph (a) of this section, a consortium of these entities is eligible to receive a challenge grant.

(Authority: 20 U.S.C. 3042(a))

§ 246.3 What regulations apply?

The following regulations apply to the Women's Educational Equity Act Program—Projects of General Significance:

(a) The regulations in 34 CFR Part 245.

(b) The regulations in this Part 246.

(Authority: 20 U.S.C. 3041–3045)

Subpart B—What Kinds of Projects and Activities May the Secretary Fund?

§ 246.10 What kinds of projects and activities may the Secretary fund?

Under the Women's Educational Equity Act Program—Projects of General Significance, the Secretary provides Federal funds for the following kinds of activities:

(a) *General grants or contracts.* The Secretary may provide assistance through a general grant or award a contract for one or more of the kinds of activities described or listed in 34 CFR 245.11.

(b) (1) *Challenge grants.* The Secretary may provide assistance through a challenge grant for projects designed to develop innovative approaches to achieving the purposes of the Act.

(2) These approaches may include, but are not restricted to the following:

(i) Comprehensive plans for implementation of equity programs at every educational level.

(ii) Innovative approaches to school-community partnerships.

(iii) New dissemination and replication strategies.

(Authority: 20 U.S.C. 3042, 3044)

§ 246.11 What priorities may the Secretary select?

In establishing priorities for funding each year according to 34 CFR 245.12, the Secretary may select one or more of the following:

(a) Projects to develop and test model programs and materials that could be used by local educational agencies and other entities in meeting the requirements of Title IX.

(b) Projects to develop new educational programs, training programs, counseling programs, or other programs, designed to increase the interest and participation of women in instructional courses in mathematics, science, and computer science.

(c) Projects to develop new educational programs, training programs, counseling programs, or other programs, or to expand existing model programs, designed to accomplish the following:

(1) Reduce the rate at which women drop out of formal education.

(2) Encourage women dropouts to resume their education.

(d) Projects to develop or expand guidance and counseling programs designed to increase the knowledge and awareness of women regarding opportunities in careers in which women have not significantly participated.

(e) Projects to develop new educational programs or expand existing model educational programs designed to enhance opportunities for educational achievement by economically disadvantaged women.

(f) Projects to develop new educational programs or expand existing model educational programs designed to enhance opportunities for educational achievement by women who suffer multiple discrimination on the basis of sex and race, ethnic origin, age, or disability.

(Authority: 20 U.S.C. 3045)

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make an Award?

§ 246.30 How does the Secretary evaluate an application?

(a) (1) The Secretary evaluates an application on the basis of the criteria in §§ 246.31 through 246.34.

(2) The Secretary awards up to 100 points for these criteria.

(b) (1) In the case of an application for a challenge grant under 34 CFR Part 245, the Secretary also applies the criterion in 34 CFR 246.35.

(2) The Secretary awards up to five additional points for this criterion.

(c) The maximum possible score for each criterion is indicated in parentheses.

(Authority: 20 U.S.C. 3045)

§ 246.31 Selection criterion: Need. (20 points)

The Secretary determines the extent to which—

(a) The proposed project addresses a need or needs that—

(1) Are central to one or more of the purposes of the Act; (8 points) and

(2) Have magnitude and significance; (8 points) and

(b) The applicant has sufficient knowledge of other projects dealing with this need or these needs and demonstrates convincingly that the proposed project would not duplicate the other projects. (4 points)

(Authority: 20 U.S.C. 3045)

§ 246.32 Selection criterion: Impact. (24 points)

The Secretary determines the extent to which—

(a) The objectives of the proposed project are realistic; (8 points)

(b) The strategy and activities proposed to implement the project are likely to accomplish the project's objectives; (8 points) and

(c) The proposed project holds promise of making a substantial contribution toward attaining one or more of the purposes of the Act. (8 points)

(Authority: 20 U.S.C. 3043, 3045)

§ 246.33 Selection criterion: Plan of operation. (40 points)

The Secretary determines the extent to which—

(a) The management plan proposed by the applicant—

(1) Is likely to be effective for implementing the proposed project and achieving the project's objectives; (10 points)

(2) Provides for adequate and appropriate allocation of resources; (5 points) and

(3) Contains realistic schedules; (5 points)

(b) The budget proposed by the applicant is adequate and provides for costs that are reasonable in relation to the objectives of the project; (10 points) and

(c) The policies and procedures provided by the applicant for evaluating the proposed project are likely to ensure adequate evaluation including, if appropriate, an evaluation or estimate of the potential for continued significance following completion of the grant period. (10 points)

(Authority: 20 U.S.C. 3043, 3045)

§ 246.34 Selection criterion: Qualifications of staff. (16 points)

The Secretary determines the extent to which—

(a) The director of the proposed project has the qualifications and capability to conduct the project successfully; (5 points)

(b) The staff of the project has the qualifications and capability to

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§ 247.32 Selection criterion: Impact. (10 points)

The Secretary determines the extent to which—

(a) The project will help educational agencies or institutions meet the requirements of Title IX or otherwise provide educational equity in the local community, agency or institution to be served; (5 points)

(b) The project will increase the knowledge and commitment of administration, faculty, staff, students, parents, and the public to the needs and issues addressed by the project. (5 points)

(Authority: 20 U.S.C. 3045)]

§ 247.33 Selection criterion: Plan of operation. (22 points)

The Secretary determines the extent to which—

(a) The project's objectives are clear and related to the needs identified in the application; (8 points)

(b) The applicant's strategies and activities are feasible and are likely to address the identified needs successfully; (8 points)

(c) The applicant has an effective management plan that ensures proper management and administration of the project, including realistic schedules and adequate allocation of resources and personnel to achieve each objective; (6 points) and

(d) The applicant demonstrates how it will provide equal access and treatment for eligible project participants who are members of groups that suffer multiple discrimination, bias, or stereotyping based on sex and race, ethnic origin, age, or disability. (8 points)

(Authority: 20 U.S.C. 3045)

§ 247.34 Selection criterion: Qualifications of Staff. (20 points)

The Secretary determines the extent to which—

(a) The project director and staff have the qualifications and the capability to conduct the project successfully; (10 points)

(b) The time to be spent on the project by the director and staff is sufficient to carry out project activities; (5 points) and

(c) The applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping conditions. (5 points)

(Authority: 20 U.S.C. 3045)

§ 247.35 Selection criterion: Cooperation and commitment. (12 points)

The Secretary determines the extent to which—

(a) There is involvement and cooperation in the planning and implementation of the project by appropriate community groups, such as parent-teacher groups, that could contribute to the project's success; (3 points)

(b) There is support for the project and commitment to the success of the project by the top administration of the applicant; (3 points)

(c) The project's activities and management of those activities will be centrally placed in the agency or institution and will be an integral part of the agency's or institution's ongoing activities; (3 points) and

(d) The applicant plans to incorporate the proposed project into the permanent policies and practices of the agency or institution following completion of the grant period. (3 points)

(Authority: 20 U.S.C. 3045)

§ 247.36 Selection criterion: Budget and cost effectiveness. (8 points)

The Secretary determines the extent to which the budget for the project is adequate to support the project activities. (8 points)

(Authority: 20 U.S.C. 3045)

§ 247.37 Selection criterion: Evaluation. (8 points)

The Secretary determines the extent to which—

(a) The policies and procedures provided by the applicant for evaluating the proposed project are likely to ensure adequate evaluation including, if appropriate, an evaluation or estimate of the potential for continued significance following completion of the grant period (4 points) and

(b) The methods of evaluation, to the extent possible, are objective and produce data that are quantifiable. (4 points)

(Authority: 20 U.S.C. 3043, 3045)

§ 247.38 What is the maximum period of an award?

A project of local significant may receive Federal funds for a period that does not exceed two years.

(Authority: 20 U.S.C. 3042(a)(2))

Subpart E—What Conditions Must be Met by a Recipient?

§ 247.40 What portion of costs must a recipient contribute?

(a) If selected for funding under the Women's Educational Equity Act Program—Projects of Local Significance, an LEA shall contribute the following share of approved costs:

(1) In the first year of the project, 20 percent.

(2) In the second year of the project, if applicable, 40 percent.

(b) If selected for funding under the Women's Educational Equity Act Program—Projects of Local Significance, an entity other than an LEA shall contribute the following share of approved costs:

(1) In the first year of the project, 10 percent.

(2) In the second year of the project, if applicable, 20 percent.

(Authority: 20 U.S.C. 3042(a)(2)).

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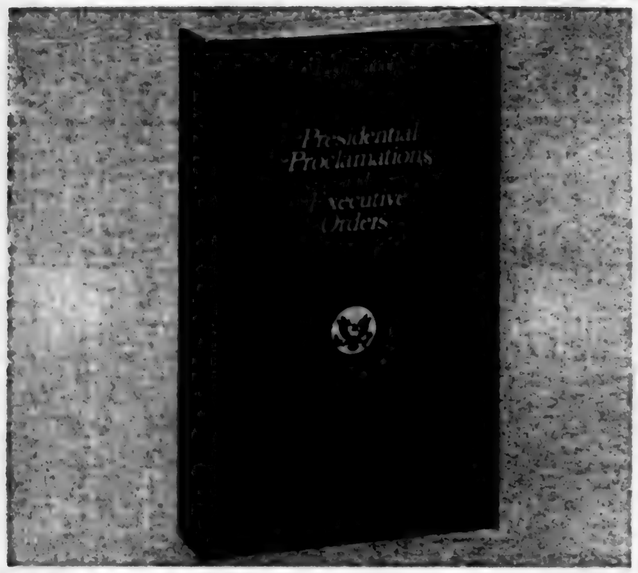
*The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

*No amendments to this volume were promulgated during the period July 1, 1986 to June 30, 1988. The CFR volume issued as of July 1, 1986, should be retained.

*The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 630

Absence and Leave; Voluntary Leave Transfer Program

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management is establishing a 5-year voluntary leave transfer program that permits Federal employees to donate annual leave for the use of other Federal employees in medical or family medical emergency situations. This rule sets forth procedures under which a potential leave recipient may submit an application to his or her employing agency and establishes rules for agencies to administer the program. This program was authorized by Pub. L. 100–566, the "Federal Employees Leave Sharing Act of 1988," and will terminate on October 31, 1993.

DATES: This interim rule becomes effective on January 31, 1989 and will expire on October 31, 1993; comments must be received on or before April 3, 1989.

ADDRESS: Comments may be sent or delivered to Barbara L. Fiss, Assistant Director for Pay and Performance Management, Personnel Systems and Oversight Group, U.S. Office of Personnel Management, Room 7H28, 1900 E Street, NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Martha Hoehn, (202) 632–5050.

SUPPLEMENTARY INFORMATION: Public Law 100–566, the "Federal Employees Leave Sharing Act of 1988," directs the Office of Personnel Management (OPM) to establish by regulation a 5-year experimental program under which the unused accrued annual leave of officers or employees of the Federal Government may be transferred for use by other officers or employees who need such leave because of a medical emergency. This authority will terminate on October 31, 1993. The program established by these regulations will replace the temporary leave transfer program established under Pub. L.'s 100–202 and 100–440.

These interim regulations incorporate some of the suggestions made in comments OPM received on the interim regulations governing the fiscal year 1988 temporary leave transfer program (53 FR 7325, March 8, 1988, and 53 FR 14775, April 26, 1988). The major differences between the voluntary leave transfer program authorized by Pub. L. 100–566 and the temporary leave transfer program authorized by Pub. L.'s 100–202 and 100–440 are the following:

Definition of "medical emergency." Under the new law and interim regulations, an employee experiencing a "medical emergency" (including a medical condition of a family member) is eligible to become a leave recipient under the voluntary leave transfer program. In addition, the interim regulations define the term "family member." Previously, an employee experiencing a "personal emergency" was eligible to participate in the temporary leave transfer program, and the term "family member" was not defined. (See §§ 630.901(a) and 630.902.)

Agency response time for applications to become a leave recipient. The new law and interim regulations now require an agency to make a determination on an application to become a leave recipient and provide written notice to the applicant of its determination within 10 days (excluding Saturdays, Sundays, and legal public holidays). Previously, the response time for agencies was 30 days. (See § 630.905 (d) and (e).)

Interagency leave transfer. The interim regulations now require the employing agency of the leave recipient to accept the transfer of annual leave from a donor employed in another agency if (1) the leave donor is a "family member" of the leave recipient; (2) the leave recipient's employing agency determines that the amount of annual leave donated within the agency may not be sufficient to meet the needs of the leave recipient; or (3) in the judgment of the leave recipient's employing agency, acceptance of leave transferred from another agency would further the purpose of the voluntary leave transfer program. Previously, interagency transfer of leave was at the discretion of the leave recipient's employing agency and was permitted only when the leave recipient's employing agency determined that the amount of annual leave donated within the agency may not be sufficient to meet the needs of the leave recipient. (See § 630.906(f).)

Accrual of annual and sick leave. The new law and interim regulations limit the amount of annual and sick leave a leave recipient may accrue while using transferred leave to 5 days of annual and 5 days of sick leave, for use *after* the medical emergency terminates. Previously, there was no limit on the accrual of leave by a leave recipient. (See § 630.907.)

Waiver of limitations on donation of annual leave. The new law and interim regulations permit a waiver of the limitations on the amount of annual leave an employee may donate to a leave recipient in a given leave year. The interim regulations require each agency to establish written criteria for waiving these limitations in unusual circumstances. Previously, these limitations could not be waived. (See § 630.908(c).)

Options for restoration of leave. Under the new law and interim regulations, leave donors may elect to have unused donated annual leave restored during the current leave year or during the following leave year. In addition, leave donors may elect to donate restored leave in whole or part to another leave recipient. (See § 630.911(e).)

Finally, the new law and interim regulations require agencies to implement the new voluntary leave transfer program by April 30, 1989. Until an agency implements its new program, the current temporary leave transfer program authorized by Pub. L.'s 100–202 and 100–440 remains in effect. (See §§ 630.903 and 630.914.)

Pursuant to section 553(b)(3)(B) and (d)(3) of title 5, United States Code, I find that good cause exists for waiving the general notice of proposed rulemaking and for making this amendment effective in less than 30 days. The notice and the 30-day delay in the effective date are being waived because of the need to facilitate the

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implementation of the voluntary leave transfer program by Federal agencies.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will affect only Federal employees and agencies.

List of Subjects in 5 CFR Part 630

Government employees.

U.S. Office of Personnel Management.
Constance Horner,
Director.

Accordingly, OPM is amending Part 630 of Title 5 of the Code of Federal Regulations as follows:

PART 630—ABSENCE AND LEAVE

1. The authority citation for Part 630 is revised to read as set forth below:

Authority: 5 U.S.C. 6311; § 630.303 also issued under 5 U.S.C. 6133(a); § 630.501 and Subpart F also issued under E.O. 11228; Subpart G also issued under 5 U.S.C. 6305; Subpart H issued under 5 U.S.C. 6326; Subpart I also issued under 5 U.S.C. 6332 and Pub. L. 100-566.

2. In Part 630, Subpart I is revised to read as follows:

* * * * *

Subpart I—Voluntary Leave Transfer Program

Sec.
630.901 Purpose and applicability.
630.902 Definitions.
630.903 Administrative procedures.
630.904 Application to become a leave recipient.
630.905 Approval of application to become a leave recipient.
630.906 Transfer of annual leave.
630.907 Accrual of annual and sick leave.
630.908 Limitations on donation of annual leave.
630.909 Use of transferred annual leave.
630.910 Termination of medical emergency.
630.911 Restoration of transferred annual leave.
630.912 Prohibition of coersion.
630.913 Records and reports.
630.914 Continuation of temporary leave transfer program.
630.915 Termination of voluntary leave transfer program.

Subpart I—Voluntary Leave Transfer Program

§ 630.901 Purpose and applicability.

(a) *Purpose.* The purpose of this subpart is to set forth procedures and requirements for a voluntary leave transfer program under which the unused accrued annual leave of one agency officer or employee may be transferred for use by another agency officer or employee who needs such leave because of a medical emergency.

(b) *Applicability.* This subpart applies to officers and employees to whom subchapter I of chapter 63 of title 5, United States Code, applies.

§ 630.902 Definitions.

"Agency" means—

(a) An "Executive agency," as defined in 5 U.S.C. 105;

(b) A "military department," as defined in 5 U.S.C. 102; or

(c) Any other entity of the Federal Government that employs officers or employees to whom subchapter I of chapter 63 of title 5, United States Code, applies. "Agency" does not include the Central Intelligence Agency; the Defense Intelligence Agency; the National Security Agency; the Federal Bureau of Investigation; or any other Executive agency or unit thereof, as determined by the President, whose principal function is the conduct of foreign intelligence or counterintelligence activities.

"Employee" has the meaning given that term in 5 U.S.C. 6301(2), excluding an individual employed by the government of the District of Columbia.

"Family member" means the following relatives of the employee:

(a) Spouse, and parents thereof;

(b) Children, including adopted children, and spouses thereof;

(c) Parents;

(d) Brothers and sisters, and spouses thereof; and

(e) Any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.

"Leave donor" means an employee whose voluntary written request for transfer of annual leave to the annual leave account of a leave recipient is approved by his or her own employing agency.

"Leave recipient" means a current employee for whom the employing agency has approved an application to receive annual leave from the annual leave accounts of one or more leave donors.

"Medical emergency" means a medical condition of an employee or a family member of such employee that is likely to require an employee's absence from duty for a prolonged period of time and to result in a substantial loss of income to the employee because of the unavailability of paid leave.

"Paid leave status under subchapter I" means the administrative status of an employee while the employee is using annual or sick leave accrued or accumulated under subchapter I of chapter 63 of title 5, United States Code.

"Transferred leave status" means the administrative status of an employee while the employee is using transferred leave under this subpart.

§ 630.903 Administrative procedures.

Each Federal agency shall establish procedures to administer the voluntary leave transfer program established by the Office of Personnel Management under Public Law 100-566 and this subpart by April 30, 1989.

§ 630.904 Application to become a leave recipient.

(a) An employee may make written application to his or her employing agency to become a leave recipient. If an employee is not capable of making application on his or her own behalf, a personal representative of the potential leave recipient may make written application on his or her behalf.

(b) Each application shall be accompanied by the following information concerning each potential leave recipient:

(1) The name, position title, and grade or pay level of the potential leave recipient;

(2) The reasons why transferred leave is needed, including a brief description of the nature, severity, and anticipated duration of the medical emergency, and if it is a recurring one, the approximate frequency of the medical emergency affecting the potential leave recipient;

(3) Certification from one or more physicians, or other appropriate experts, with respect to the medical emergency, if the potential leave recipient's employing agency so requires; and

(4) Any additional information that may be required by the potential leave recipient's employing agency.

(c) If the potential leave recipient's employing agency requires that a potential leave recipient obtain certification from two or more sources under paragraph (b)(3) of this section, the potential leave recipient's employing agency shall ensure, either by direct payment to the expert involved or by reimbursement, that the potential leave recipient is not required to pay for the expenses associated with obtaining certification from more than one source.

§ 630.905 Approval of application to become a leave recipient.

(a) The potential leave recipient's employing agency shall review an application to become a leave recipient under procedures established by the employing agency for the purpose of determining that the potential leave recipient is or has been affected by a "medical emergency," as defined in § 630.902 of this part.

(b) Before approving an application to become a leave recipient, the potential leave recipient's employing agency shall determine that the absence from duty without available paid leave because of the medical emergency is (or is expected to be) at least 80 hours (or, in the case of a part-time employee or an employee with an uncommon tour of duty, the average number of hours of work in the employee's biweekly scheduled tour of duty).

(c) In making a determination as to whether a "medical emergency" is likely to result in a substantial loss of income, an agency shall not consider factors other than whether the absence from duty without available paid leave is (or is expected to be) at least 80 hours.

(d) If the application is approved, the employing agency shall notify the leave recipient (or the personal representative who made application on behalf of the leave recipient), within 10 days (excluding Saturdays, Sundays, and legal public holidays) after the date the application was received (or the date the employing agency established its administrative procedures, if that date is later), that—

(1) The application has been approved; and

(2) Other employees of the leave recipient's employing agency may request the transfer of annual leave to the account of the leave recipient.

(e) If the application is not approved, the employing agency shall notify the applicant (or the personal representative who made application on behalf of the potential leave recipient), within 10 days (excluding Saturdays, Sundays, and legal public holidays) after the date the application was received (or the date the employing agency established its administrative procedures, if that date is later)—

(1) That the application has not been approved; and

(2) Of the reasons for its disapproval.

§ 630.906 Transfer of annual leave.

(a) An employee may submit a voluntary written request to his or her own employing agency that a specified number of hours of his or her accrued annual leave be transferred from his or her annual leave account to the annual leave account of a specified leave recipient. Except as provided in paragraph (f) of this section, annual leave may be transferred only to a leave recipient employed by the leave donor's employing agency.

(b) Except as provided in paragraph (d) of this section and subject to the limitations on the amount of annual leave that may be donated by a leave donor under § 630.908 of this part, all or any portion of the annual leave requested under paragraph (a) of this section may be transferred to the annual leave account of the specified leave recipient under procedures established by the leave recipient's employing agency.

(c) An agency having employees who earn and use annual leave on the basis of an uncommon tour of duty shall establish procedures for administering the transfer of annual leave to or from such employees under this subpart.

(d) A leave recipient's employing agency shall not transfer annual leave to a leave donor's immediate supervisor.

(e) Annual leave transferred under this section may be substituted retroactively for periods of leave without pay (LWOP) or used to liquidate an indebtedness for advanced annual or sick leave granted on or after a date fixed by the leave recipient's employing agency as the beginning of the period of medical emergency for which LWOP or advanced annual or sick leave was granted.

(f) A leave recipient's employing agency shall accept the transfer of annual leave from leave donors employed by one or more other agencies when—

(1) A family member of a leave recipient is employed by another agency and requests the transfer of annual leave to the leave recipient;

(2) In the judgment of the leave recipient's employing agency, the amount of annual leave transferred from leave donors employed by the leave recipient's employing agency may not be sufficient to meet the needs of the leave recipient; or

(3) In the judgment of the leave recipient's employing agency, acceptance of leave transferred from another agency would further the purpose of the voluntary leave transfer program.

(g) The employing agency of a leave donor who wishes to donate annual leave to a leave recipient in another agency shall verify the availability of annual leave in the leave donor's annual leave account, determine that the amount of annual leave to be donated does not exceed the limitations under § 630.908 of this part, and ascertain that the leave recipient's employing agency has made any determination that may be required under paragraph (f) of this section. Upon satisfying these requirements, the leave donor's employing agency shall—

(1) Reduce the amount of annual leave credited to the leave donor's annual leave account, as appropriate; and

(2) Notify the leave recipient's employing agency in writing of the amount of annual leave to be credited to the leave recipient's annual leave account.

§ 630.907 Accrual of annual and sick leave.

(a) Except as otherwise provided in this section, while an employee is in a transferred leave status, annual and sick leave shall accrue to the credit of the employee at the same rate as if the employee were then in a paid leave status under subchapter I of chapter 63 of title 5, United States Code, except that—

(1) The maximum amount of annual leave that may be accrued by an employee while in a transferred leave status in connection with any particular medical emergency may not exceed 40 hours (or, in the case of a part-time employee or an employee with an uncommon tour of duty, the average number of hours of work in the employee's weekly scheduled tour of duty); and

(2) The maximum amount of sick leave that may be accrued by an employee while in a transferred leave status in connection with any particular medical emergency may not exceed 40 hours (or, in the case of a part-time employee or an employee with an uncommon tour of duty, the average number of hours of work in the employee's weekly scheduled tour of duty).

(b) Any annual or sick leave accrued by an employee under this section—

(1) Shall be credited to annual or sick leave account, as appropriate, separate from any leave account of the employee under subchapter I of chapter 63 of title 5, United States Code; and

(2) Shall not become available for use by the employee, and may not otherwise be taken into account under subchapter I of chapter 63 of title 5, United States Code, until, under paragraph (c) of this section, it is transferred to the appropriate leave account of the employee under subchapter I of chapter 63 of title 5, United States Code.

(c) Any annual or sick leave accrued by an employee under this section shall be transferred to the appropriate leave account of the employee under subchapter I of chapter 63 of title 5, United States Code, effective as of the beginning of the first applicable pay period beginning after the date on which the employee's medical emergency

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terminates as described in § 630.910(a)(2) and (3) of this part.

(d) If the employee's medical emergency terminates as described in § 630.910(a)(1) of this part, no leave shall be credited to the employee under this section.

§ 630.908 Limitations on donation of annual leave.

(a) In any one leave year, a leave donor may donate no more than a total of one-half of the amount of annual leave he or she would be entitled to accrue during the leave year in which the donation is made.

(b) In the case of a leave donor who is projected to have annual leave that otherwise would be subject to forfeiture at the end of the leave year under 5 U.S.C. 6304(a), the maximum amount of annual leave that may be donated during the leave year shall be the lesser of—

(1) One-half of the amount of annual leave he or she would be entitled to accrue during the leave year in which the donation is made; or

(2) The number of hours remaining in the leave year (as of the date of the transfer) for which the leave donor is scheduled to work and receive pay.

(c) Each agency shall establish written criteria for waiving the limitations on donating annual leave under paragraphs (a) and (b) of this section in unusual circumstances. Any such waiver shall be documented in writing.

§ 630.909 Use of transferred annual leave.

(a) A leave recipient may use annual leave transferred to his or her annual leave account under § 630.908 of this part in the same manner and for the same purposes as if he or she had accrued the annual leave under 5 U.S.C. 6303, except that any annual or sick leave accrued or accumulated (prior to the date the application to become a leave recipient was approved) and available for use during the medical emergency must be exhausted before any transferred annual leave may be used.

(b) The approval and use of transferred annual leave shall be subject to all of the conditions and requirements imposed by chapter 63 of title 5, United States Code, Part 630 of this chapter, and the employing agency on the approval and use of annual leave accrued under 5 U.S.C. 6303, except that transferred annual leave may accumulate without regard to the limitation imposed by 5 U.S.C. 6304(a).

(c) Transferred annual leave may not be—

(1) Transferred to another leave recipient under this subpart, except as provided in § 630.911(e)(3) of this part;

(2) Included in a lump-sum payment under 5 U.S.C. 5551 or 5552; or

(3) Made available for recredit under 5 U.S.C. 6306 upon reemployment by a Federal agency.

§ 630.910 Termination of medical emergency.

(a) The medical emergency affecting a leave recipient shall terminate—

(1) When the leave recipient's Federal service is terminated;

(2) At the end of the biweekly pay period in which the leave recipient's employing agency receives written notice from the leave recipient or from a personal representative of the leave recipient that the leave recipient is no longer affected by a medical emergency;

(3) At the end of the biweekly pay period in which the leave recipient's employing agency determines, after written notice and opportunity for the leave recipient (or, if appropriate, a personal representative of the leave recipient) to answer orally or in writing, that the leave recipient is no longer affected by a medical emergency; or

(4) At the end of the biweekly pay period in which the leave recipient's employing agency receives notice that the Office of Personnel Management has approved an application for disability retirement for the leave recipient under the Civil Service Retirement System or the Federal Employees' Retirement System.

(b) The leave recipient's employing agency shall continuously monitor the status of the medical emergency affecting the leave recipient to ensure that the leave recipient continues to be affected by a medical emergency.

(c) When the medical emergency affecting a leave recipient terminates, no further requests for transfer of annual leave to the leave recipient may be granted, and any unused transferred annual leave remaining to the credit of the leave recipient shall be restored to the leave donors under § 630.911 of this part.

§ 630.911 Restoration of transferred annual leave.

(a) Under procedures established by the leave recipient's employing agency, any transferred annual leave remaining to the credit of a leave recipient when the medical emergency terminates shall be restored, as provided in paragraphs (b) and (c) of this section and to the extent administratively feasible, by transfer to the annual leave accounts of leave donors who, on the date leave restoration is made, are employed by a Federal agency and subject to chapter 63 of title 5, United States Code.

(b) The amount of unused transferred annual leave to be restored to each leave donor shall be determined as follows:

(1) Divide the number of hours of unused transferred annual leave by the total number of hours of annual leave transferred to the leave recipient;

(2) Multiply the ratio obtained in paragraph (b)(1) of this section by the number of hours of annual leave transferred by each leave donor eligible for restoration under paragraph (a) of this section; and

(3) Round the result obtained in paragraph (b)(2) of this section to the nearest increment of time established by the leave donor's employing agency to account for annual leave.

(c) If the total number of eligible leave donors exceeds the total number of hours of annual leave to be restored, no unused transferred annual leave shall be restored. In no case shall the amount of annual leave restored to a leave donor exceed the amount transferred to the leave recipient by the leave donor.

(d) If the leave donor retires from Federal service, dies, or is otherwise separated from Federal service before the date unused transferred annual leave can be restored, the employing agency of the leave recipient shall not restore the unused transferred annual leave.

(e) At the election of the leave donor, unused transferred annual leave restored to the leave donor under paragraph (a) of this section may be restored by—

(1) Crediting the restored annual leave to the leave donor's annual leave account in the current leave year;

(2) Crediting the restored annual leave to the leave donor's annual leave account effective as of the first day of the first leave year beginning after the date of election; or

(3) Donating such leave in whole or part to another leave recipient.

(f) If a leave donor elects to donate only part of his or her restored leave to another leave recipient under paragraph (e)(3) of this section, the donor may elect to have the remaining leave credited to the leave donor's annual leave account under paragraph (e)(1) or (e)(2) of this section.

(g) Transferred annual leave restored to the account of a leave donor under paragraph (a) (1) or (2) of this section shall be subject to the limitation imposed by 5 U.S.C. 6304(a) at the end of the leave year in which the restored leave is credited to the leave donor's annual leave account.

§ 630.912 Prohibition of coercion.

(a) An employee may not directly or indirectly intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce, any other employee for the purpose of interfering with any right such employee may have with respect to donating, receiving, or using annual leave under this subpart.

(b) For the purpose of paragraph (a) of this section, the term "intimidate, threaten, or coerce" includes promising to confer or conferring any benefit (such as an appointment or promotion or compensation) or effecting or threatening to effect any reprisal (such as deprivation of appointment, promotion, or compensation).

§ 630.913 Records and reports.

(a) The Office of Personnel Management (OPM) shall require agencies to maintain records and may require agencies to report pertinent information to OPM concerning the administration of the voluntary leave transfer program for the purpose of evaluating the desirability, feasibility, and cost of a voluntary leave transfer program.

(b) Agencies shall maintain the following information:

(1) The number of applications approved for medical emergencies affecting the employee and the number of applications approved for medical emergencies affecting an employee's family member;

(2) The grade or pay level of each leave recipient and leave donor;

(3) The total amount of annual leave transferred to each leave recipient's annual leave account;

(4) The total amount of transferred annual leave used by each leave recipient;

(5) The estimated direct and indirect costs of processing leave transfer requests, transferring leave between the accounts of leave donors and leave recipients, monitoring the use of transferred leave, restoring unused leave to the accounts of leave donors, and other activities related to administering the voluntary leave transfer program; and

(6) Any additional information OPM may require.

§ 630.914 Continuation of temporary leave transfer program.

Until each agency establishes procedures to administer the voluntary leave transfer program established under 5 U.S.C. 6332, Pub. L. 100-566, and this subpart, the temporary leave transfer program authorized by Public Laws 100-102 and 100-440 shall remain in effect.

§ 630.915 Termination of voluntary leave transfer program.

(a) The voluntary leave transfer program shall terminate on October 31, 1993.

(b) If the voluntary leave transfer program terminates before the termination of the medical emergency affecting a leave recipient, any annual leave transferred to the leave recipient before the termination of the voluntary leave transfer program shall remain available for use by the leave recipient until the termination of the medical emergency.

[FR Doc. 89-2173 Filed 1-30-89; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 201

[Docket No. 88-001]

Federal Seed Act Regulations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Announcement of effective date of interim rule.

SUMMARY: This document announces an effective date of January 1, 1989, for the interim rule removing the origin staining requirements for seed of alfalfa or red clover grown in Canada and imported into the United States. The interim rule, previously published in the **Federal Register**, provided that it would become effective upon the entry into force of the United States-Canada Free-Trade Agreement. The Agreement entered into force on January 1, 1989, and accordingly, the interim rule is effective that date.

EFFECTIVE DATE: The effective date of the interim rule and request for comments published in the **Federal Register** on December 30, 1988 (53 FR 52973) is January 1, 1989. Written comments must be postmarked or received on or before February 28, 1989.

ADDRESSES: Send an original and two copies of written comments to Helene R. Wright, Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, Room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 88-208. Comments received may be inspected at USDA, Room 1141, South Building, 14th and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Frank E. Cooper, Senior Operations Officer, Port Operations, PPQ, APHIS, USDA, Room 632, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8393.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule published in the **Federal Register** on December 30, 1988 (53 FR 52973), Docket No. 88-208, we amended the Federal Seed Act Regulations (the regulations) by removing the requirement that one percent of each container of seed of alfalfa or red clover grown in the Dominion of Canada and imported into the United States be stained violet. In that document, we explained that the rule would become effective upon the entry into force of the United States-Canada Free-Trade Agreement (FTA) and that we would publish a document in the **Federal Register** announcing the effective date of rule. We further stated that the Office of the United States Trade Representative would confirm in a **Federal Register** notice the precise date of the FTA's entry into force. We anticipated that the FTA would enter into force on January 1, 1989.

In a notice published in the **Federal Register** on January 6, 1989 (54 FR 505), the United States Trade Representative confirmed that the FTA entered into force on January 1, 1989. Accordingly, this document announces January 1, 1989, as the effective date of the interim rule.

We will consider comments postmarked or received on or before February 28, 1989.

Done in Washington, DC, this 26th day of January 1989.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89-2226 Filed 1-30-89; 8:45 am]

BILLING CODE 3410-34-M

Agricultural Marketing Service

7 CFR Part 979

Melons Grown in South Texas; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule regarding South Texas melons authorizes expenses and establishes an assessment rate under Marketing Order 979 for the 1988-89 fiscal period. Authorization of this budget will allow the South Texas

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Melon Committee to incur expenses reasonable and necessary to administer the program. Funds for this program are derived from assessments on handlers.

EFFECTIVE DATE: October 1, 1988 through September 30, 1989.

FOR FURTHER INFORMATION CONTACT: Robert F. Matthews, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456, telephone 202–447–2431.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 156 and Marketing Order No. 979 (7 CFR Part 979), regulating the handling of melons grown in South Texas. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 35 handlers of Texas melons under this marketing order, and approximately 70 producers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of the handlers and producers may be classified as small entities.

The marketing order requires that an annual budget of expenses be prepared by the committee and submitted to the Department of Agriculture for approval. The members of the committee are handlers and producers of melons. They are familiar with the committee's needs and with the costs for goods, services and personnel in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the committee is derived by dividing anticipated expenses by expected shipments of regulated melons. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committee's expected expenses. A recommended budget and rate of assessment is usually acted upon by the committee before the season starts, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approval must be expedited so that the committee will have funds to pay its expenses.

The South Texas Melon Committee met on November 1, 1988, and unanimously recommended a 1988–89 budget of $308,438. This total exceeds last year's budget of $251,811 by $56,627, reflecting an increase in production research project expenses from $50,723 to $104,396. Administrative expenses are up $3,517 from last year to $94,040, and promotion expenses have been reduced $565 to $120,000.

The committee also unanimously recommended an assessment rate of 4 cents per carton, down one cent from the 1987–88 rate. The recommended assessment rate, when applied to anticipated regulated shipments of 7.7 million cartons, would yield $308,000 in assessment revenue. This amount, when added to $438 from the reserve, would be adequate to cover budgeted expenses. The current reserve minus $438 would result in a yearend reserve of $382,353. This total is within the limit of two fiscal periods' expenses allowed by the order.

While this action would impose some additional costs on handlers, the costs are in the form of uniform assessments on handlers. Some of the additional costs may be passed on to producers. However, these costs would be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

A proposed rule was published in the **Federal Register** (53 FR 49153, December 6, 1988). That document contained a proposal to add § 979.211 to establish expenses and an assessment rate for the South Texas Melon Committee. The proposal provided that interested persons could file comments through December 16, 1988. None were received.

It is hereby found that the specified expenses are reasonable and likely to be incurred and that such expenses and the specified assessment rate to cover such expenses will tend to effectuate the declared policy of the Act.

This action should be expedited because the committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. In addition, handlers are aware of this action which was recommended by the committee at a public meeting. Therefore, the Secretary also finds that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553).

List of Subjects in 7 CFR Part 979

Marketing agreements and orders, melons (Texas).

For the reasons set forth in the preamble, 7 CFR Part 979 is hereby amended as follows:

PART 979—MELONS GROWN IN SOUTH TEXAS

1. The authority citation for 7 CFR Part 979 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 979.211 is added to read as follows:

§ 979.211 Expenses and assessment rate.

Expenses of $308,438 by the South Texas Melon Committee are authorized and an assessment rate of $0.04 per carton of regulated melons is established for the fiscal period ending September 30, 1989. Unexpended funds may be carried over as a reserve.

Dated: January 26, 1989.

William J. Doyle,

Associate Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–2222 Filed 1–30–89; 8:45 am]

BILLING CODE 3410–02–M

Rural Electrification Administration

7 CFR Part 1772

REA Bulletin 345–22, REA Specification for Voice Frequency Loading Coils, PE–26

AGENCY: Rural Electrification Administration, USDA.

ACTION: Final rule.

SUMMARY: The Rural Electrification Administration (REA) hereby amends 7 CFR 1772.97, Incorporation by Reference of Telephone Standards and Specifications by issuing revised Bulletin 345–22, REA Specification for Voice Frequency Loading Coils, PE–26. The specification has been revised to: (1) Allow use of mini loading coils; (2) establish performance requirements for mini loading coils; (3) allow use of a universal loading coil; (4) clarify the quantity of test samples; (5) eliminate fuel oil from the environmental tests; and (6) update the specification to reflect current industry standards. This action allows REA borrowers to install a full range of loading coils at reduced loading coil costs without degradation in loading coil quality. The revision will not adversely affect load coil manufacturers because no design changes in presently manufactured products will be required.

EFFECTIVE DATE: January 19, 1989.

FOR FURTHER INFORMATION CONTACT: W. F. Albrecht, Director, Telecommunications Staff Division, Rural Electrification Administration, Room 2835, South Building, U.S. Department of Agriculture, Washington, DC 20250–1500, telephone (202) 382–8663. The Impact Analysis describing the options considered in developing this rule and the impact on implementing each option is available on request from the above office.

SUPPLEMENTARY INFORMATION: Pursuant to the Rural Electrification Act, as amended (7 U.S.C. 901 *et seq.*), REA hereby amends 7 CFR 1772.97, Incorporation by Reference of Telephone Standards and Specifications, by incorporating by reference a revised Bulletin 345–22 (previous issue dated October 1978), REA Specification for Voice Frequency Loading Coils, PE–26. This incorporation by reference was approved by the Director of the Federal Register on December 30, 1983. These materials are incorporated as they existed on the date of the approval and a notice of any change in these materials will be published in the **Federal Register**. Copies of the bulletin are available upon request from the address stated above. It is also available for inspection at the Office of the Federal Register Information Center, Room 8401, 1101 L Street, N.W., Washington, DC 20408.

This action will not (1) have an annual effect on the economy of $100 million or more; (2) result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; (3) result in significant adverse effects on competition, employment, investment or productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets and, therefore, has been determined to be "not major."

This action does not fall within the scope of the Regulatory Flexibility Act. REA has concluded that promulgation of this rule would not represent a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969 (42 U.S.C. 432 *et seq.* (1976)) and, therefore, does not require an environmental impact statement or an environmental assessment.

This regulation contains no information or record keeping requirement which requires approval under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507 *et seq.*).

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.851, Rural Telephone Loans and Loan Guarantees, and 10.852, Rural Telephone Bank Loans. For the reasons set forth in the Final Rule related Notice to 7 CFR Part 3015, Subpart V (50 FR 47034, November 14, 1985), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Background

REA has issued a series of publications titled "bulletins" which serve to implement the policy, procedures, and requirements for administering its loans and loan guarantee programs and the security instruments which provide for and secure REA financing. In the bulletin series REA issues standards and specifications for the construction of telephone facilities financed with REA loan funds. REA is revising Bulletin 345–22, REA Specification for Voice Frequency Loading Coils, PE–26. This specification was last issued in October 1978. The PE–26 designation is an arbitrary set of letters and numbers assigned by REA to identify telephone materials and equipment specifications.

The controlling objective in designing a telephone system is to provide adequate transmission between any two subscribers wherever located. Loading coils are used in situations where the estimated level of transmission for a proposed subscriber line design does not meet the limits necessary to provide satisfactory two-way conversations, and where it has been found that other means of improving the transmission are not satisfactory from an economic point of view in comparison with the loaded subscriber line.

Requirements for the design and electrical performance of mini loading coils resulted from extensive laboratory testing by REA personnel. The current REA loading coil specification does not permit the use of mini loading coils. This limitation was included because the performance of mini loading coils had not been proven, and further surge current testing was needed. The testing has been completed and mini loading coils have proven satisfactory in field applications.

Limits were set forth in the present specification which put restrictions on the application of loading coil assemblies with filled plastic cable stubs. The cable manufacturers are now making filled cable stubs capable of being installed in any application without danger of the filling compound dripping. The revised specification incorporates a universal loading coil assembly for all applications.

The quantity of loading coils to be tested by the manufacturers was not clear in the present specification. The revision eliminates this ambiguity.

One of the environmental tests in the existing specification requires the exposure of the load coil filling compound to fuel oil, and that the specimen cannot increase in weight by more than ten percent as a result of the exposure. It is not known that this is not a viable test and the test has been eliminated in the revision.

To summarize, the revision will: (1) Establish REA requirements for both standard and mini loading coils without affecting the current designs or manufacturing techniques of loading coil manufacturers, (2) provide REA borrowers use of a universal loading coil assembly for all types of installations at a reduced cost, (3) allow borrowers to select the type of loading coil which best meets their need, and (4) benefit the REA borrower in cost savings from the use of mini loading coils. This would be without any degradation in voice frequency transmission.

A Notice of Proposed Rulemaking was published in the **Federal Register** on August 19, 1986, Volume 51, No. 160, Page 29556. Several interested parties commented on this proposal. A summary of the areas addressed in their comments is as follows:

1. Inductance tolerance limits of mini loading coils should be increased.

2. The dc resistance of the 66 mH mini loading coil should be decreased to 7.5 ohms.

3. The dialectric strength and dialectric strength design capability requirements for mini loading coils should be decreased to 3 kv dc and 5 kv dc, respectively.

4. Current surge requirements for the mini loading coils should be decreased

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to 1000 amperes peak for the 66 mH mini coils and a 500 amperes peak for the 88 mH mini coil.

5. The overall outside diameter of the mini loading coils should be increased to a maximum of 2.0 inches.

REA's response to these comments is summarized as follows:

1. Since REA is aware that mini loading coils having wider inductance tolerance limits than those shown in the specification are providing satisfactory field performance in non-REA telephone systems, REA will widen the inductance tolerance limits. The new inductance tolerance limits for the mini coils will be as follows:

Inductance—Mini Coil

66 mH coils 66±2.3 mH
88 mH coils 88±3.7 mH

2. REA will not decrease the dc resistance of the 66 mH mini coil from 6.0 to 7.5 ohms because no technical justification for the change was presented by the commentator.

3. The reason for the requested change in the protection requirements was that more damage to the wire on the inside diameter of the coil would occur as a result of wire type, number, or wire turns and a faster fill of the "window" thru which the shuttle and slider pass while the coil is being wound. In addition, the commentator indicated the number of wire turns around the core to achieve the required inductance is dependent upon the inductance tolerance limit.

Since REA is going to widen the inductance tolerance, REA inferred from the comment that the number of wire turns can be reduced resulting in a slower filling of the "window" which in turn will reduce the possibility of damage to the wire on the inside diameter of the coil. Therefore, REA will not decrease the dielectric strength and dielectric strength capability requirements for the mini loading coils.

4. REA will not decrease the current surge requirements of the mini coils to the commentator's recommended values because service affecting problems as a result of damage from lightning strikes on long rural subscriber routes is our main concern with these products.

Although REA did not decrease the current surge requirements as recommended by the commentator, REA will change the surge value of the 66 mH mini coil from 1900 Amps (peak) to 1800 Amps (peak) to bring the current ratio of the mini coil in line with the current ratio of the standard coils.

5. Since REA is aware that mini coils are now being manufactured and supplied to the telephone industry having a maximum outside diameter of 2.0 inches, which exceeds the specification requirement, and are providing satisfactory field performance, REA will change the proposed 1.5 inch maximum outside diameter to 2.0 inch maximum outside diameter.

List of Subjects in 7 CFR Part 1772

Loan Programs—Communications, Telecommunications, Telephone. Incorporation by reference.

Part 1772—[AMENDED]

In view of the above, REA hereby amends 7 CFR Part 1772 by issuing a revised Bulletin 345–22.

1. The authority citation for Part 1772 continues to read as follows:

Authority: 7 U.S.C. 901 et seq., 7 U.S.C. 1921 *et seq.*

2. The table in § 1772.97 is amended by revising the entry for Bulletin 345–22 to read as follows:

§ 1772.97 Incorporation by reference of telephone standards and specifications.

* * * * *

REA Bulletin No.	Specification No.	Date last issued	Title of standard or specification
345-22	PE-26	Jan. 1989	REA specification for voice frequency loading coils.

* * * * *

Dated: January 19, 1989.

Jack Van Mark,

Acting Administrator.

[FR Doc. 89-1742 Filed 1-30-89; 8:45 am]

BILLING CODE 3410-15-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 210

[INS Number: 1110-88]

Special Agricultural Workers

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: Section 210(b)(3)(B)(ii) of the Immigration Reform and Control Act of 1986 (IRCA), Pub. L. 99–603, provides for the Attorney General to promulgate regulations relative to securing timely production of employment records from employers or farm labor contractors under the Special Agricultural Worker (SAW) program. This rule adopts as final the interim rule published at 53 FR 27335 (July 20, 1988) with changes resulting from a review of the comments received and the Service's operational experience with the SAW program.

EFFECTIVE DATE: January 31, 1989.

FOR FURTHER INFORMATION CONTACT: Aaron Bodin, Deputy Assistant Commissioner, Special Agricultural Workers (SAW), (202) 786–3658.

SUPPLEMENTARY INFORMATION: New § 210.3(b)(4) is added to establish procedures to secure the timely production of employment records from employers or farm labor contractors under the Special Agricultural Worker (SAW) program. This rule provides for the use of regulatory procedures already in place at 8 CFR 287.4(a)(2) which enable the Service to "issue a subpoena requiring the attendance of witnesses or the production of documentary evidence, or both, for use in any proceeding under this Chapter, other than under Part 335 of this Chapter, or any application made ancillary to the proceedings."

Written comments were received from a number of individuals and organizations in response to the interim rule published at 53 FR 27335 on July 20, 1988. Several commentors wrote on behalf of a variety of employers and growers associations, as well as special interest groups concerned with the rights of migrant and seasonal agricultural workers. The Service appreciates the constructive intent of the comments, suggestions, and recommendations submitted and wishes to thank all parties for their interest.

All commentors agreed that a need exists to compel production of employment records from employers who are reluctant or unwilling to

provide such records to SAW applicants. However, several commentors objected to the procedures to secure employment records outlined in the interim rule as being overburdensome for the applicant, and inconsistent with Congressional intent in legislating the SAW provisions of the Immigration Reform and Control Act of 1986 (IRCA).

Concern was expressed that the Service would resort to the subpoena issuance process only after an application has been filed, an interview has been conducted, the applicant's testimony appears credible and the Service has determined that the application cannot be adjudicated in the absence of the employment records. Some commentors suggested that this is too late in the application process to benefit the applicant and recommended that the subpoena issuing process be made available at the outset of the application process when the need to establish a claim to SAW status is most critical. The Service does not take its subpoena power lightly and seeks to ensure that every attempt has been made to secure employment records before it issues a subpoena to an employer or farm labor contractor. The interview is necessary to determine if the application is approvable in the absence of the employment records or, conversely, if it is deniable for reasons having to do with other than employment (e.g., if applicant is not admissible to the United States as an immigrant).

Several commentors objected to the prerequisite that the Service must determine that the application cannot be adjudicated in the absence of the employer or farm labor contractor records. They stated that if an applicant has given credible testimony in support of his or her claim for SAW status at the interview, the Service should approve the application, notwithstanding the absence of employment records. Both the statute and governing regulations require documentary evidence of employment apart from the applicant's own testimony. The intention of the Service in this provision is to require the production of records only if the application cannot be approved without them. That is, if documentation other than employment records is presented from which the performance of qualifying employment may be inferred, the application would be approved, if otherwise approvable, without resort to the use of subpoena authority. The Service trusts that the intent of this provision will be clarified by substituting the term "approved" for "adjudicated".

The majority of commentors expressed objection to granting District Directors discretion in issuing a subpoena to uncooperative employers and urged that District Directors be required to issue a subpoena to employers who fail to produce employment records after unsuccessful attempts for voluntary compliance. One commentor supported the exercise of the District Director's discretion in this area and suggested that the Service establish some prerequisites to be met by the applicant before an employer is subpoenaed to produce employment records. The Service has carefully considered these comments and is modifying its positions to require District Directors to issue a subpoena in cases where the applicant has met all of the conditions set forth in this final rule and attempts for voluntary compliance have been unsuccessful.

Some commentors suggested that the final rule state explicitly what types of employment records the Service will try to secure. They also stated that the demand for employment information should not be limited to employment records, but should include affidavits, other written statements, oral communications, depositions and any other form of evidence. The statute provides that these regulations shall secure the timely production of records "If an employer or farm labor contractor employing such alien has kept proper and adequate records respecting such employment." The Service does not want to unintentionally limit the types of records that would be subject to this regulation by specifically listing or defining them. Nor does the Service believe that expansion of the statutory authority by compelling the production of other forms of evidence is warranted. In its attempt to secure voluntary compliance, the Service will invite employers and contractors who cannot provide records to provide affidavits confirming the alleged employment of former employees. Affidavits are, under the governing regulations, acceptable evidence of employment. The record of correspondence, including any affidavits provided, will be used in adjudicating the performance of qualifying employment.

In accordance with 5 U.S.C. 605(b), the Commissioner of the Immigration and Naturalization Service certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. This rule is not a major rule within the meaning of section 1(b) of E.O. 12291, nor does this rule have federalism implications warranting the preparation of a Federal Assessment in accordance with E.O. 12612.

This rule contains information collection requirements which have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act. The OMB control numbers for these collections are contained in 8 CFR Part 299.5.

List of Subjects in 8 CFR Part 210

Aliens, Permanent resident status, Reporting and recordkeeping requirements, Temporary resident status.

Accordingly, Chapter I of Title 8 of the Code of Federal Regulations is amended as follows:

In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization Service certifies that this rule does not have a significant economic impact on a substantial number of small entities. This is not a major rule within the meaning of section 1(b) of E.O. 12291, nor does this have federalism implications warranting the preparation of a Federal Assessment in accordance with E.O. 12612.

PART 210—SPECIAL AGRICULTURAL WORKERS

1. The authority citation for Part 210 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1160, 8 CFR Part 2.

2. In § 210.3, paragraph (b)(4) is revised to read as follows:

§ 210.3 Eligibility.

* * * * *

(b) * * *

(4) *Securing SAW employment records.* When a SAW applicant alleges that an employer or farm labor contractor refuses to provide him or her with records relating to his or her employment and the applicant has reason to believe such records exist, the Service shall attempt to secure such records. However, prior to any attempt by the Service to secure the employment records, the following conditions must be met: a SAW application (Form I–700) must have been filed; an interview must have been conducted; the applicant's testimony must support credibly his or her claim; and, the Service must determine that the application cannot be approved in the absence of the employer or farm labor contractor records. Provided each of these conditions has been met, and after unsuccessful attempts by the Service for voluntary compliance, the District Directors shall

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utilize section 235 of the Immigration and Nationality Act and issue a subpoena in accordance with 8 CFR 287.4, in such cases where the employer or farm labor contractor refuses to release the needed employment records.

* * * * *

Richard E. Norton,
Associate Commissioner, Examinations Immigration and Naturalization Service.

Dated: November 9, 1988.

[FR Doc. 89-2202 Filed 1-30-89; 8:45 am]
BILLING CODE 4410-10-M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 77

[Docket No. 88-195]

Tuberculosis in Cattle and Bison: State Designation

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule.

SUMMARY: We are affirming without change an interim rule that amended the regulations governing the interstate movement of cattle and bison because of tuberculosis by raising the designation of the state of Arkansas from a modified accredited state to an accredited-free state.

EFFECTIVE DATE: March 2, 1989.

FOR FURTHER INFORMATION CONTACT: Dr. Ralph L. Hosker, Senior Staff Veterinarian, Cattle Diseases and Surveillance, VS, APHIS, USDA, Room 734, Federal Building, 6505 Belcrest Road, Hyattsville, Maryland 20782, (301) 436-8438.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule published in the **Federal Register** and effective September 20, 1988 (53 FR 36432-36433, Docket Number 88-132), we amended § 77.1 of the tuberculosis regulations by removing Arkansas from the list of modified accredited states and adding it to the list of accredited-free states. Comments on the interim rule were required to be postmarked or received on or before November 21, 1988. We did not receive any comments. The facts in the interim rule still provide a basis for the rule.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, federal, state or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

Cattle and bison moved interstate are moved for slaughter, for use as breeding stock, or for feeding. Changing the status of the state of Arkansas may affect the marketability of cattle and bison from the state since some prospective cattle and bison buyers prefer to buy cattle and bison from accredited-free states. This may result in some beneficial economic impact on some small entities. However, based on our experience in similar designations of other states, the impact should not be significant.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V.)

List of Subjects in 9 CFR Part 77

Animal diseases, Bison, Cattle, Transportation, Tuberculosis.

Accordingly, 9 CFR Part 77 is amended as follows:

PART 77—TUBERCULOSIS

Accordingly, we are adopting as a final rule, without change, the interim rule amending 9 CFR Part 77 that was published at 53 FR 36432-36433 on September 20, 1988.

Authority: 21 U.S.C. 111, 114, 114a, 115-117, 120, 121, 134b, 134f; 7 CFR 2.17, 2.51 and 371.2(d).

Done at Washington, DC, this 26th day of January 1989.

James W. Glosser,
Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89-2227 Filed 1-30-89; 8:45 am]
BILLING CODE 3410-34-M

9 CFR Part 77

[Docket No. 89-004]

Tuberculosis in Cattle and Bison; State Designation

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: We are amending the regulations concerning the interstate movement of cattle and bison because of tuberculosis by raising the designation of Alabama from a modified accredited state to an accredited-free state. We have determined that Alabama meets the criteria for designation as an accredited-free state.

DATES: Interim rule effective January 31, 1989. Consideration will be given only to comments postmarked or received on or before April 3, 1989.

ADDRESSES: Send an original and two copies of written comments to Helene R. Wright, Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, Room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 89-004. Comments received may be inspected at Room 1141 of the South Building, 14th and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Ralph L. Hosker, Senior Staff Veterinarian, Cattle Diseases and Surveillance Staff, VS, APHIS, USDA, Room 734, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-7717.

SUPPLEMENTARY INFORMATION:

Background

The "Tuberculosis" regulations contained in 9 CFR Part 77 (referred to below as the regulations) regulate the interstate movement of cattle and bison because of tuberculosis. The requirements of the regulations concerning the interstate movement of cattle and bison not known to be affected with, or exposed to, tuberculosis are based on whether the cattle and bison are moved from jurisdictions designated as accredited-free states, modified accredited states, or nonmodified accredited states.

The criteria for determining the status of states (the term state is defined to mean any state, territory, the District of Columbia, or Puerto Rico) or portions of states are contained in a document captioned "Uniform Methods and Rules—Bovine Tuberculosis Eradication," 1985 edition, which has been made part of the regulations via incorporation by reference. The status of either states or portions of states is based on the rate of tuberculosis infection present and the effectiveness of a tuberculosis control and eradication program.

Before publication of this interim rule, Alabama was designated in § 77.1 of the regulations as a modified accredited state. However, Alabama now meets the requirements for designation as an accredited-free state. Therefore, we are amending the regulations by removing Alabama from the list of modified accredited states in § 77.1 and adding it to the list of accredited-free states in that section.

Immediate Action

James W. Glosser, Administrator of the Animal and Plant Health Inspection Service, has determined that good cause exists for publishing this rule without prior opportunity for public comment. It is necessary to change the regulations so that they accurately reflect the current tuberculosis status of Alabama as an accredited-free state. This will provide prospective cattle and bison buyers with accurate and up-to-date information, which may affect the marketability of cattle and bison since some prospective buyers prefer to buy cattle and bison from accredited-free states.

Since prior notice and other public procedures with respect to this rule are impracticable and contrary to the public interest under these circumstances, there is good cause under 5 U.S.C. 553 to make it effective upon publication. We will consider comments postmarked or received within 60 days of publication of this interim rule in the **Federal Register**. As soon as possible after the comment period closes, we will publish another document in the **Federal Register** discussing any comments we receive and any amendments we make to the rule as a result of the comments.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in comformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

Cattle and bison moved interstate are moved for slaughter, for use as breeding stock, or for feeding. Changing the status of Alabama may affect the marketability of cattle and bison from the state, since some prospective cattle and bison buyers prefer to buy cattle and bison from accredited-free states. This may result in some beneficial economic impact on some small entities. However, based on our experience in similar designations of other states, the impact should not be significant.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Supart V.)

List of Subjects in 9 CFR Part 77

Animal diseases, Bison, Cattle, Transportation, Tuberculosis.

Accordingly, we are amending 9 CFR Part 77 as follows:

PART 77—TUBERCULOSIS

1. The authority citation for Part 77 continues to read as follows:

Authority: 21 U.S.C. 111, 114, 114a, 115-117, 120, 121, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

§ 77.1 [Amended]

2. Section 77.1, paragraph (2) of the definition for "Modified accredited state" is amended by removing "Alabama,".

3. Section 77.1, paragraph (2) of the definition for "Accredited-free state" is amended by adding "Alabama," immediately before "Alaska,".

Done in Washington, DC, this 26th day of January 1989.

James W. Glosser,
Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89-2225 Filed 1-30-89; 8:45 am]
BILLING CODE 3410-34-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88-NM-106-AD; Amdt. 39-6125]

Airworthiness Directives; Airbus Industrie Model A300-600 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Airbus Industrie Model A300-600 series airplanes, which requires repetitive inspections of the rear passenger/crew door for cracks, and modification, if necessary. This amendment is prompted by reports of cracks found during routine inspection of an airplane of similar design. This condition, if not corrected, could lead to separation of the door from the airplane and subsequent rapid decompression.

EFFECTIVE DATE: March 7, 1989.

ADDRESSES: The applicable service information may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

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FOR FURTHER INFORMATION CONTACT: Mr. Greg Holt, Standardization Branch, ANM-113; telephone (206) 431-1916. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations, to include a new airworthiness directive applicable to Airbus Industrie Model A300-600 series airplanes, which requires repetitive inspections of the rear passenger/crew door for cracks, and modification, if necessary, was published in the Federal Register on August 31, 1988 (53 FR 33496).

Interested parties have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the two comments received.

One commenter supported the proposed rule.

The other commenter supported the proposed rule, but suggested that the inspections required for the Model A300, A310, and A300-600 series airplanes should be addressed in one AD action, since the parallel French Airworthiness Directive encompassed all three airplanes in one document. The FAA does not concur. Since each required inspection and modification are described in separate service bulletins for each airplane, the FAA has determined that addressing the requirements for each airplane model in separate rulemaking actions will pose less confusion to affected operators.

Since service bulletins are always subject to change, the commenter suggested that, whenever the latest issue of the service bulletin is cited in the final rule, the words "or later approved revision" should be added. The FAA does not concur. Since service bulletins issued by foreign manufacturers and revisions thereto are not subject to approval by the FAA, use of such a phrase would be inappropriate. Furthermore, reference in AD's to future service bulletins is contrary to FAA policy. However, later revisions of the service bulletin may be used if they are approved as an alternate means of compliance, as provided by paragraph C. of the final rule.

This commenter also noted that all the service bulletins cited in the Notice have been revised, and the final rule should cite the latest revision to the service bulletins. The FAA concurs. Since the issuance of the Notice, Airbus Industrie has issued Service Bulletin A300-53-6024, Revision 1, dated July 8, 1988, and Service Bulletin A300-53-6019, Revision 3, dated October 13, 1988, which clarify and update the procedures for the inspections and the modifications. Paragraphs A. and B. of the final rule have been revised to reflect the latest revision to these service bulletins. The FAA has determined that these changes will not increase the economic burden on any operator, nor will they increase the scope of the AD.

The commenter also suggested that a separate paragraph be added to the final rule to require operators to contact the manufacturer for repair instructions if cracks exceeding 0.8 inch are found. The FAA does not concur, since to do so would be delegating FAA rulemaking authority to the manufacturer. Moreover, the FAA has determined that all cracks equal to or greater than 0.8 inch must be repaired prior to further flight, as was proposed in the Notice.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change noted above.

It is estimated that 3 airplanes of U.S. registry will be affected by this AD, that it will take approximately 9 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $1,080.

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities because of the minimal cost of compliance per airplane ($360). A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Airbus Industrie: Applies to Model A300-600 series airplanes, as listed in Airbus Industrie Service Bulletin A300-53-6024, Revision 1, dated July 8, 1988. Compliance required as indicated, unless previously accomplished.

To prevent separation of the rear passenger/crew door from the airplane and subsequent rapid decompression, accomplish the following:

A. Prior to the accumulation of 8,000 landings or within the next 1,000 landings after the effective date of this AD, whichever occurs later, inspect frame 73A RH and LH between beams 5 and 7 in accordance with Airbus Industrie Service Bulletin A300-53-6024, Revision 1, dated July 8, 1988.

1. If cracks are detected that are less than 0.4 inch, modify the frame within the next 2,500 landings, in accordance with Airbus Industrie Service Bulletin A300-53-6019, Revision 3, dated October 13, 1988. The inspection must be repeated at intervals not to exceed 1,250 landings until the modification is accomplished.

2. If cracks are detected that are equal to or more than 0.4 inch but less than 0.8 inch, modify the frame within the next 1,500 landings, in accordance with Airbus Industrie Service Bulletin A300-53-6019, Revision 3, dated October 13, 1988. The inspection must be repeated at intervals not to exceed 750 landings until the modification is accomplished.

3. If cracks are detected that are equal to or more than 0.8 inch, prior to further flight, modify the frame in accordance with Airbus Industrie Service Bulletin A300-53-6019, Revision 3, dated October 13, 1988.

4. If no cracks are detected, repeat the inspection at intervals not to exceed 4,000 landings.

B. The repetitive inspections required by paragraph A., above, may be terminated following completion of the modification of the door frame structure in accordance with Airbus Industrie Service Bulletin A300-53-6019, Revision 3, dated October 13, 1988.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note.—The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Standardization Branch, ANM-113.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective March 7, 1989.

Issued in Seattle, Washington, on January 12, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-2143 Filed 1-30-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 88-NM-105-AD; Amdt. 39-6124]

Airworthiness Directives; Airbus Industrie Model A310 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Airbus Industrie Model A310 series airplanes, which requires repetitive inspections of the rear passenger/crew door for cracks, and modification, if necessary. This amendment is prompted by reports of cracks found during routine inspection of an airplane of similar design. This condition, if not corrected, could lead to separation of the door from the airplane and subsequent rapid decompression.

EFFECTIVE DATE: March 7, 1989.

ADDRESSES: The applicable service information may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Holt, Standardization Branch, ANM-113; telephone (206) 431-1916. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations, to include a new airworthiness directive applicable to Airbus Industrie Model A310 series airplanes, which requires repetitive inspections of the rear/passenger crew door for cracks, and modification, if necessary, was published in the Federal Register on August 31, 1988 (53 FR 33495).

Interested parties have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the two comments received.

One commenter supported the proposed rule.

The other commenter supported the proposed rule, but suggested that the inspections required for the Model A300, A310, and A300-600 series airplanes be addressed in one AD action since the parallel French Airworthiness Directive encompassed all three airplanes in one document. The FAA does not concur. Since each required inspection and modification are described in separate service bulletins for each airplane, the FAA has determined that addressing the requirements for each airplane model in separate rulemaking actions will pose less confusion to affected operators.

Since service bulletins are always subject to change, this commenter suggested that, whenever the latest issue of the service bulletin is cited in the final rule, the words "or later approved revision" should be added. The FAA does not concur. Since service bulletins issued by foreign manufacturers and revisions thereto are not subject to approval by the FAA, use of such a phrase would be inappropriate. Furthermore, reference in AD's to future service bulletins is contrary to FAA policy. However, later revisions of the service bulletin may be used if they are approved as an alternate means of compliance, as provided by paragraph C. of the final rule.

This commenter also noted that all the service bulletins cited in the Notice have been revised, and the final rule should cite the latest revision to the service bulletins. The FAA concurs. Since the issuance of the Notice, Airbus Industries has issued Service Bulletin A310-53-2043, Revision 1, dated July 8, 1988, and Service Bulletin A310-53-2038, Revision 4, dated October 13, 1988, which clarify and update the procedures for the required inspections and the modifications. Paragraphs A. and B. of the final rule have been revised to reflect the latest revision of these service bulletins. The FAA has determined that these changes will not increase the economic burden on any operator, nor will they increase the scope of the AD.

This commenter also suggested that a separate paragraph be added to the final rule to require operators to contact the manufacturer for repair instructions if cracks exceeding 0.8 inch are found. The FAA does not concur, since to do so would be delegating FAA rulemaking authority to the manufacturer. Moreover, the FAA has determined that all cracks equal to or greater than 0.8 inch must be repaired prior to further flight, as was proposed in the Notice.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously noted.

It is estimated that 7 airplanes of U.S. registry will be affected by this AD, that it will take approximately 9 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $2,520.

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and it is further certified under the criteria of the Regulatory Flexibility Act that this rule does not have a significant economic impact, positive or negative, on a substantial number of small entities because of the minimal cost of compliance per airplane ($360). A final evaluation has been prepared for this regulation and has been placed in the docket.

BEST COPY AVAILABLE

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List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administrator amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 108(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Airbus Industrie: Applies to Model A310 series airplanes, as listed in Airbus Industrie Service Bulletin A310-53-2043, Revision 1, dated July 8, 1988. Compliance required as indicated, unless previously accomplished.

To prevent separation of the rear passenger/crew door from the airplane and subsequent rapid decompression, accomplish the following:

A. Prior to the accumulation of 8,000 landings or within the next 1,000 landings after the effective date of this AD, whichever occurs later, inspect frame 73A RH and LH between beams 5 and 7 in accordance with Airbus Industrie Service Bulletin A310-53-2043, Revision 1, dated July 8, 1988.

1. If cracks are detected that are less than 0.4 inch, modify the frame within the next 2,500 landings, in accordance with Airbus Industrie Service Bulletin A310-53-2038, Revision 4, dated October 13, 1988. The inspection must be repeated at intervals not to exceed 1,250 landings until the modification is accomplished.

2. If cracks are detected that are equal to or more than 0.4 inch but less than 0.8 inch, modify the frame within the next 1,500 landings, in accordance with Airbus Industrie Service Bulletin A310-53-2038, Revision 4, dated October 13, 1988. The inspection must be repeated at intervals not to exceed 750 landings until the modification is accomplished.

3. If cracks are detected that are equal to or more than 0.8 inch, prior to further flight, modify the frame in accordance with Airbus Industrie Service Bulletin A310-53-2038, Revision 4, dated October 13, 1988.

4. If no cracks are detected, repeat the inspection at intervals not to exceed 4,000 landings.

B. The repetitive inspections required by paragraph A., above, may be terminated following completion of the modification of the door frame structure in accordance with Airbus Service Bulletin A310-53-2038, Revision 4, dated October 13, 1988.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note.—The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Standardization Branch, ANM-113.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective March 7, 1989.

Issued in Seattle, Washington, on January 12, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-2144 Filed 1-30-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 88-NM-104-AD; Amdt. 39-6123]

Airworthiness Directives; Airbus Industrie Model A300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Airbus Industrie Model A300 series airplanes, which requires repetitive inspections of the rear passenger/crew door for cracks, and modification, if necessary. This amendment is prompted by reports of cracks found during routine inspection of this airplane. This condition, if not corrected, could lead to separation of the door from the airplane and subsequent rapid decompression.

EFFECTIVE DATE: March 7, 1989.

ADDRESSES: The applicable service information may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Holt, Standardization Branch, ANM-113; telephone (206) 431-1916. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations, to include a new airworthiness directive applicable to Airbus Industrie Model A300 series airplanes, which requires repetitive inspections of the rear passenger/crew door for cracks, and modification, if necessary, was published in the Federal Register on August 31, 1988 (53 FR 33495).

Interested parties have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the two comments received.

One commenter supported the proposed rule.

The other commenter supported the proposed rule, but suggested that the inspections required for the Model A300, A310, and A300-600 series airplanes be addressed in one AD action, since the parallel French Airworthiness Directive encompassed all three airplanes in one document. The FAA does not concur. Since each required inspection and modification are described in separate service bulletins for each airplane, the FAA has determined that addressing the requirements for each airplane model in separate rulemaking actions will pose less confusion to affected operators.

Since service bulletins are always subject to change, this commenter suggested that, wherever the latest issue of the service bulletin is cited in the final rule, the words "or later approved revision" be added. The FAA does not concur. Since service bulletins issued by foreign manufacturers, and revisions thereto, are not subject to approval by the FAA, use of such a phrase would be inappropriate. Furthermore, reference in AD's to future service bulletins is contrary to FAA policy. However, later revisions of the service bulletin may be used if they are approved as an alternate means of compliance, as provided by paragraph C. of the final rule.

This commenter also noted that all the service bulletins cited in the Notice have been revised, and that the final rule should cite the latest revision to the service bulletins. The FAA concurs. Since the issuance of the Notice, Airbus Industrie has issued Service Bulletin A300-53-220, Revision 1, dated July 8, 1988, and Service Bulletin A300-53-221, Revision 2, dated October 13, 1988, which clarify and update the procedures for the required inspections and the modifications. Paragraphs A. and B. of the final rule have been revised to reflect the latest revision of these service bulletins. The FAA has determined that these changes will not increase the economic burden on any operator, nor will they increase the scope of the AD.

This commenter also noted typographical error in paragraph A. of the proposed rule. The Notice cited Airbus Service Bulletin "A300-53-200;" it should have read "A300-53-220." The final rule has been revised accordingly.

This commenter also suggested that a separate paragraph be added to the final rule to require operators to contact the manufacturer for repair instructions if cracks exceeding 0.8 inch are found. The FAA does not concur, since to do so would be delegating FAA rulemaking authority to the manufacturer. Moreover, the FAA has determined that all cracks equal to or greater than 0.8 inch must be repaired prior to further flight, as was proposed in the Notice.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously noted.

It is estimated that 53 airplanes of U.S. registry will be affected by this AD, that it will take approximately 9 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $19,080.

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and it is further certified under the criteria of the Regulatory Flexibility Act that this rule does not have a significant economic impact, positive or negative, on a substantial number of small entities because of the minimal cost of compliance per airplane ($360). A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 108(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Airbus Industrie: Applies to Model A300 series airplanes, as listed in Airbus Industrie Service Bulletin A300-53-220, Revision 1, dated July 8, 1988. Compliance required as indicated, unless previously accomplished.

To prevent separation of the rear passenger/crew door from the airplane and subsequent rapid decompression, accomplish the following:

A. Prior to the accumulation of 8,000 landings or within the next 1,000 landings after the effective date of this AD, whichever occurs later, inspect frame 73A RH and LH between beams 5 and 7, in accordance with Airbus Industrie Service Bulletin A300-53-220, Revision 1, dated July 8, 1988.

1. If cracks are detected that are less than 0.4 inch, modify the frame within the next 2,500 landings, in accordance with Airbus Industrie Service Bulletin A300-53-221, Revision 2, dated October 13, 1988. The inspection must be repeated at intervals not to exceed 1,250 landings until the modification is accomplished.

2. If cracks are detected that are equal to or more than 0.4 inch but less than 0.8 inch, modify the frame within the next 1,500 landings, in accordance with Airbus Industrie Service Bulletin A300-53-221, Revision 2, dated October 13, 1988. The inspection must be repeated at intervals not to exceed 750 landings until the modification is accomplished.

3. If cracks are detected that are equal to or more than 0.8 inch, prior to further flight, modify the frame in accordance with Airbus Industrie Service Bulletin A300-53-221, Revision 2, dated October 13, 1988.

4. If no cracks are detected, repeat the inspection at intervals not to exceed 4,000 landings.

B. The repetitive inspections required by paragraph A., above, may be terminated following completion of the modification of the door frame structure, in accordance with Airbus Service Bulletin A300-53-221, Revision 2, dated October 13, 1988.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note.—The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Standardization Branch, ANM-113.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service document from the manufacturer may obtain copies upon request to Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This document may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective March 7, 1989.

Issued in Seattle, Washington, on January 12, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-2145 Filed 1-30-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 88-NM-133-AD; Amdt. 39-6135]

Airworthiness Directives; Cessna Model S550 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final Rule.

SUMMARY: This amendment revises an existing airworthiness directive (AD), applicable to Cessna Model S550 series airplanes, which currently requires repetitive checks of the main landing gear (MLG) torque link assemblies to verify that the torque link cotter pins are not broken or missing; and retorquing of the nut and replacement of the cotter pin, if necessary. This action provides for an optional modification of the MLG torque link assemblies which, if accomplished, eliminates the need for

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the repetitive checks. This action also limits the applicability of the AD only to airplanes, Serial Numbers S550-0001 through S550-0158.

EFFECTIVE DATE: March 15, 1989.

ADDRESSES: The applicable service information may be obtained from Cessna Aircraft Company, Citation Marketing Division, P.O. Box 7706, Wichita, Kansas 67277. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or FAA, Central Region, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas.

FOR FURTHER INFORMATION CONTACT: Mr. Douglas W. Haig, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, Central Region, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946-4409.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to revise AD 88-13-03, Amendment 39-5946 (53 FR 20826; June 7, 1988) applicable to Cessna Model S550 series airplanes, to provide for an optional modification of the MLG torque link assemblies which, if accomplished, eliminates the need for certain required repetitive checks of the main landing gear (MLG) torque link assemblies, and to limit the applicability of the AD to only certain airplanes, was published in the **Federal Register** on September 30, 1988 (53 FR 38301).

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received in response to the proposal.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 157 airplanes of U.S. registry will be affected by this AD, that it will take approximately 10.5 manhours per airplane to accomplish the optional terminating action, and that the average labor cost will be $40 per manhour. The cost of parts is estimated to be $125 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators who elect to install the optional modification is estimated to be $545 per airplane.

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities, because this action does not impose a requirement but provides an optional means of compliance with an existing regulation. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.15 [Amended]

2. By revising AD 88-13-03, Amendment 39-5946 (53 FR 20826; June 7, 1988), by revising the applicability statement, redesignating paragraph C. as D., and adding a new paragraph C., as follows:

Cessna: Applies to Model S550 series airplanes, Serial Numbers S550-0001 through S550-0158, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent loss of control of the airplane during landing or takeoff due to failure of the cotter pins securing the main landing gear torque link connections, accomplish the following:

A. Within 48 hours after the effective date of this AD, incorporate the following into the Limitations Section of the FAA-approved Airplane Flight Manual (AFM). This may be accomplished by including a copy of this AD in the AFM:

"Prior to the first flight of each day, verify that the cotter pins securing the left and right main landing gear torque link connections are installed. If either cotter pin is broken, missing, or exhibits any evidence of being cut or sheared by the nut, prior to further flight, accomplish paragraph B. of this AD."

B. If either cotter pin is broken, missing, or exhibits any evidence of being cut or sheared by the nut, the nut must be retorqued to 630 inch-pounds, then tightened to align the cotter pin(s) hole, up to a maximum torque of 810 inch-pounds, and a new cotter pin(s), P/N MS24665-287, installed. This must be accomplished in accordance with Cessna S550 Maintenance Manual Section 32-11-01, pages 403, 404, and 405.

C. Modification of the main landing gear torque link assemblies in accordance with Cessna Service Bulletin SB5550-32-5, dated August 26, 1988, constitutes terminating action for the requirements of paragraphs A. and B., above.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Wichita Aircraft Certification Office, FAA, Central Region.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Cessna Aircraft Company, Citation Marketing Division, P.O. Box 7706, Wichita, Kansas 67277. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or FAA, Central Region, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas.

This amendment becomes effective March 15, 1989.

Issued in Seattle, Washington, on January 23, 1989.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Northwest Mountain Region.

[FR Doc. 89-2142 Filed 1-30-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 88-CE-23-AD; Amendment 39-6130]

Airworthiness Directives; Dornier Models Do28 D and Do28 D-1 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final Rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to Dornier Models Do28 D and Do28 D-1 airplanes, which requires inspection of the horizontal tail bearing fitting. Loose rivets and cracks have been reported at rear fuselage frame

10420. The inspection specified in this AD will detect the loose rivets and cracks before the possible loss of the horizontal tail surface and preclude the loss of the airplane.

EFFECTIVE DATE: March 3, 1989.

Compliance: As prescribed in the body of the AD.

ADDRESSES: Dornier Service Bulletin (S/B) No. 1110-3204, dated April 15, 1988, applicable to this AD may be obtained from Dornier GmbH, P.O. Box 2160, D-8000 Munchen 60, Federal Republic of Germany. This information may also be examined at the Rules Docket, FAA, Office of the Assistant Chief Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Heinz Hellebrand, Aircraft Certification Staff, AEU-100, Europe, Africa, and Middle East Office, FAA, c/o American Embassy, B-1000, Brussels, Belgium; Telephone (322) 513.38.30; or Mr. Herman C. Belderok, Project Support Section Foreign Aircraft, Central Region, ACE-109, 601 East 12th Street, Kansas City, Missouri 64106; Telephone (816) 426-6932.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations (FAR) to include an AD requiring periodic visual inspections and repair as necessary of (a) the rivet connections between the LH and RH horizontal tail bearing fittings and the lateral skins for play; and (b) aft fuselage frame 10420 and the corner gusset for cracks on certain Models Do28 D and Do28 D-1 airplanes was published in the **Federal Register** on August 29, 1988 (53 FR 32920). The proposal resulted from Dornier receiving reports of loose rivet connections between the left hand (LH) and right hand (RH) horizontal tail bearing fittings and the lateral skins, and also reports of cracks in frame 10420 and the corner gusset. If uncorrected, these conditions may cause loss of the horizontal tail bearing fitting or failure of the frame which can lead to the loss of horizontal tail control functions. Consequently, Dornier issued S/B 1110-3204, dated April 15, 1988, which detailed initial and subsequent visual inspections every 100 hours time-in-service and repair as necessary of (a) the rivet connections between the LH and RH horizontal tail bearing fittings and the lateral skins for play; and (b) aft fuselage frame 10420 and the corner gusset for cracks. The Federal Republic of Germany, Civil Aviation Authority the Luftfahrt-Bundesamt (LBA), which has responsibility and authority to maintain the continuing airworthiness of these airplanes in the Federal Republic of Germany, classified this Service Bulletin and the actions recommended therein by the manufacturer as mandatory to assure the continued airworthiness of the affected airplanes in Germany.

On airplanes operated under LBA registration, this action has the same effect as an AD on airplanes certified for operation in the United States. The FAA relies upon the certification of the LBA combined with FAA review of pertinent documentation in finding compliance of the design of these airplanes with the applicabe United States airworthiness requirements and the airworthiness and conformity of products of this design certificated for operation in the United States.

The FAA examined the available information related to the issuance of Dornier S/B No. 1110-3204, dated April 15, 1988, and the mandatory classification of this Service Bulletin by the LBA, and concluded that the condition addressed by S/B No. 1110-3204 was an unsafe condition that may exist on other airplanes of this type certificated for operation in the United States. Accordingly, the FAA proposed an amendment to Part 39 of the FAR to include an AD on this subject.

Interested persons have been afforded an opportunity to comment on the proposal. No comments or objections were received on the proposal or the FAA determination of the related cost to the public. Therefore, the proposal is adopted without change.

The FAA has determined that this regulation involves 3 airplanes at an approximate single inspection cost of $40 (one man-hour) for each airplane, for a total fleet cost of $120 to the private sector. The cost of compliance with the proposed AD is so small that the expense of compliance will not be a significant financial impact on any small entities operating these airplanes.

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **"ADDRESSES"**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the FAR as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new AD:

Dornier: Applies to Models Do28 D and Do28 D-1 (all serial numbers) airplanes certificated in any category.

Compliance: Required within the next 100 hours time-in-service and every 100 hours time-in-service thereafter after the effective date of this AD, unless already accomplished.

To preclude the loss of the horizontal tail, accomplish the following:

(a) Visually inspect in accordance with Dornier Service Bulletin No. 1110-3204, dated April 15, 1988, as follows:

(1) Inspect the rivet connections between the left hand and right hand horizontal tail bearing fittings and the lateral skins for loose rivets. If loose rivets are found, before further flight replace the loose rivets in accordance with Dornier Service Bulletin No. 1110-3204, and

(2) Inspect the rear fuselage frame 10420 and the corner gusset for cracks. If cracks are detected, before further flight repair as follows:

(i) For cracks less than 25mm (.98 inch), stop drill the crack in accordance with Dornier Service Bulletin No. 1110-3204.

(ii) For cracks 25mm or longer (.98 inch or more), repair the airplane in accordance with instructions from Dornier approved by the Manager, Aircraft Certification Staff, AEU-100.

(b) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(c) An equivalent means of compliance with this AD may be used if approved by the Manager, Aircraft Certification Staff, AEU-100, Europe, Africa, and Middle East Office, FAA, c/o American Embassy, B-1000 Brussels, Belgium.

All persons affected by this directive may obtain a copy of the document referred to herein upon request to

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Aircraft Certification Staff, AEU-100, Europe, Africa, and Middle East Office, FAA, c/o American Embassy, B-1000 Brussels, Belgium; or Dornier GmbH, P.O. Box 2160, D-8000 Munchen 60, Federal Republic of Germany; or may examine this document at the FAA, Office of the Assistant Chief Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This amendment becomes effective on March 3, 1989.

Issued in Kansas City, Missouri, on January 20, 1989.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-2148 Filed 1-30-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 88-NM-87-AD; Amdt. 39-6137]

Airworthiness Directives; Boeing Model 757 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 757 series airplanes, which requires replacement of both spoiler wheel command units. This amendment is prompted by reports that a potential failure mode exists which could cause uncommanded deployment of three flight spoilers on one wing to their full up position. This condition, if not corrected, could result in a sudden large rolling moment and, after recovery by the pilot, diminished roll capability and a significant loss of lift.

EFFECTIVE DATE: March 15, 1989.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Henry A. Jenkins, Systems and Equipment Branch, ANM-130S; telephone (206) 431-1947. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive which requires replacement of both spoiler wheel command units on Boeing Model 757 series airplanes, was published in the **Federal Register** on August 23, 1988 (53 FR 32077).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the one comment received.

The Airline Transport Association (ATA) of America commented that several of its members had expressed concern regarding the ability of the vendor for the part being replaced in accordance with the AD to provide parts in a timely manner. The FAA was requested to verify that the vendor could provide parts to support the proposed compliance period. The manufacturer has advised FAA that adequate parts will be available to affected operators within the proposed compliance time, assuming an orderly demand.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

There are approximately 175 Model 757 series airplanes of the affected design in the worldwide fleet. It is estimated that 104 airplanes of U.S. registry will be affected by this AD, that it will take approximately 5 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. The costs required for replacement or modification of the required parts will be borne by the manufacturer. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $20,800.

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities, because few, if any, Model 757 series airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Boeing: Applies to Model 757 series airplanes, as listed in Boeing Service Bulletin 757-27-0076, dated May 19, 1988, certificated in any category.

Compliance is required within the next 24 months after the effective date of this AD, unless previously accomplished.

To prevent uncommanded extension of three flight spoilers on one wing, due to failure of a spoiler wheel command unit, accomplish the following:

A. Replace both spoiler wheel command units, in accordance with Boeing Service Bulletin 757-27-0076, dated May 19, 1988.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Seattle Aircraft Certification Office.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the inspections required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest

Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective March 15, 1989.

Issued in Seattle, Washington, on January 23, 1989.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-2139 Filed 1-30-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 88-NM-111-Ad; Amdt. 39-6134]

Airworthiness Directives; British Aerospace Model BAC 1-11 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes two existing airworthiness directives (AD), applicable to British Aerospace Model BAC 1-11 200 and 400 series airplanes, which currently require repetitive inspection procedures and repair, if necessary, of the main landing gear (MLG) support structure, and a one-time inspection and repair, if necessary, of a component in the nose landing gear (NLG). Those actions were prompted by reports of cracks in the MLG rear pintle support beam and the collapse of one NLG. This amendment adds additional model series to the AD applicability, and requires additional inspections and maintenance procudures for the MLG support structure. This amendment is prompted by a structural re-evaluation, which identified the need for additional procedures for some variations of the airplane to adequately detect cracking. Such cracking, if not corrected, could lead to collapse of the MLG and NLG.

EFFECTIVE DATE: March 15, 1989.

ADDRESSES: The applicable service information may be obtained from British Aerospace Inc., Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Standardization Branch, ANM-113; telephone (206) 431-1565. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations by superseding AD 86-04-07, Amendment 39-5235 (51 FR 4588; February 6, 1986) and AD 88-07-01, Amendment 39-5878 (53 FR 8869; March 18, 1988), applicable to British Aerospace Model BAC 1-11 200 and 400 series airplanes, to require additional inspections for cracks in the rear pintle support beam and repair, if necessary, and a one-time inspection of the nose landing gear and repair, if necessary, was published in the **Federal Register** on September 30, 1988 (53 FR 38297).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the two comments received.

Both commenters noted that the proposal would require the beam to be replaced, prior to further flight, if a crack is found that is equal to 0.6 inch in length; whereas, the service bulletin authorizes blending of a crack measuring 0.6 inch (or less) in length. The commenters requested that the final rule be revised to be consistent with the service bulletin. The FAA concurs that cracks equal to or less than 0.6 inch may be blended and still provide an adequate level of safety. Paragraph D.1. and D.2. of the final rule have been revised to identify the appropriate crack size and action to be taken, as well as to identify the specific paragraph in the service bulletin that specifies the repair procedures.

These commenters further noted that the proposal would require the beam to be replaced if cracks exceed 0.6 inch; whereas, the service bulletin instructs operators to consult British Aerospace for advice with regard to further action. The commenters requested that the final rule be revised to be consistent with the service bulletin instructions. The FAA does not totally concur. The FAA did not include a requirement to contact the manufacturer for further advice, since to do so would, in effect, be delegating our rulemaking authority to the manufacturer. However, the FAA has determined that if any crack exceeds 0.6 inch in length, the operator must either replace the cracked part prior to further flight, or repair the crack in a manner approved by the FAA. Paragraph D.2. of the final rule has been revised accordingly.

The FAA has determined that the compliance times in paragraphs A., B., and C. of the final rule may be extended by one landing in order to be in conformance with the recommendations of the manufacturer and to create less confusion to operators. This change will not compromise the safety of flight, expand the scope of the AD, or impose an additional economic burden on any operator.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously noted.

It is estimated that 70 airplanes of U.S. registry will be affected by this AD, that it will take approximately 3 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $8,400.

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11304; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities, because of the minimal cost of compliance per airplane ($120). A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

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§ 39.13 [Amended]

2. By superseding AD 86-04-07, Amendment 39-5235 (51 FR 4568; February 6, 1986), and AD 86-07-01, Amendment 39-5878 (53 FR 8890; March 18, 1988), with the following new airworthiness directive:

British Aerospace: Applies to Model BAC 1-11 200 and 400 series airplanes, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent a hazardous landing condition, accomplish the following:

A. For Model BAC 1-11 200 series airplanes [pre-modification PM3070; Modification PM3070 with main support beams, Part No. ED03-1001/2; or Modification PM5928]: At or prior to the accumulation of 80,000 landings or within the next 1,300 landings after April 25, 1988, (which is the effective date of AD 86-07-01, Amendment 39-5878), whichever occurs later, perform an eddy current or dye penetrant inspection for cracks in the rear pintle support beam, in accordance with the paragraph 2.1.1 of the accomplishment instructions of British Aerospace BAC 1-11 Alert Service Bulletin 57-A-PM5806, Issue Number 4, dated February 17, 1988. Thereafter, repeat the inspection at intervals not to exceed 3,200 landings.

Note: Airplanes that complied with paragraph A. of AD 86-07-01, Amendment 39-5878, are considered to have met the initial inspection requirements of this paragraph, and the inspection is to be repeated at intervals not to exceed 3,200 landings.

B. For Model BAC 1-11 400 series airplanes [pre-modification PM3070; Modification PM3070 with main support beams, Part No. ED03-1001/2; or Modification PM5928]: At or prior to the accumulation of 15,000 landings, or within 1,500 landings after March 17, 1988 (which is the effective date of AD 86-04-07, Amendment 39-5235), whichever occurs later, perform an eddy current or dye penetrant inspection for cracks in the rear pintle support beam, in accordance with paragraph 2.1.1 of the accomplishment instructions of British Aerospace BAC 1-11 Alert Service Bulletin 57-A-PM5806, Issue Number 4, dated February 17, 1988. Thereafter, repeat the inspection at intervals not to exceed 3,200 landings.

Note: Airplanes that complied with paragraph A. of AD 86-04-07, Amendment 39-5235, are considered to have met the initial inspection requirements of this paragraph, and the inspection is to be repeated at intervals not to exceed 3,200 landings.

C. For Model BAC 1-11 200 and 400 series airplanes [Modification PM3070 with main support beams, Part No. EN03-1239/60]: At or prior to the accumulation of 7,500 landings or within 60 days after the effective date of this AD, whichever occurs later, perform an eddy current or dye penetrant inspection for cracks in the rear pintle support beam, in accordance with paragraph 2.1.1 of the accomplishment instruction of British Aerospace BAC 1-11 Alert Service Bulletin 57-A-PM5806, Issue Number 4, dated February 17, 1988. Thereafter, repeat the inspection at intervals not to exceed 3,200 landings.

Note: Model BAC 1-11 200 series airplanes that complied with paragraph A. of AD 86-07-01, Amendment 39-5878; and Model BAC 1-11 400 series airplanes that complied with paragraph A. of AD 86-04-07, Amendment 39-5235; are considered to have met the initial inspection requirements of this paragraph, and the inspection is to be repeated at intervals not to exceed 3,200 landings.

D. If cracks are discovered during the inspections required by paragraph A., B., or C., above, accomplish the following:

1. If cracks are less than or equal to 0.6 inch on pre-modification PM3070 airplanes, or less than or equal to 0.2 inch on post-modification PM3070 airplanes, repair or replace the cracked part prior to further flight, in accordance with paragraph 2.5.1 of the Accomplishment Instructions of British Aerospace BAC 1-11 Alert Service Bulletin 57-A-PM5806, Issue Number 4, dated February 17, 1988. If cracks are repaired in accordance with the service bulletin, continue to perform eddy current or dye penetrant inspections at intervals not to exceed 800 landings, providing that, in the case of pre-modification PM3070 airplanes, if cracks are present in the aft half beam, cracked parts must be replaced prior to further flight.

2. If cracks exceed 0.6 inch in length on pre-modification PM3070 airplanes, or exceed 0.2 inch in length on post-modification PM3070 airplanes, repair or replace in a manner approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region. If the part is repaired, further inspection requirements will be determined by the Manager, Standardization Branch, at the time of repair approval. If the main landing gear pintle support beam is replaced, the inspection must be repeated at intervals not to exceed 3,200 landings.

E. Prior to June 17, 1988, (which is 90 days after the effective date of AD 86-04-07, Amendment 39-5235), inspect for damage of the toggle links' special bolt assembly, part number AB44A1275, in accordance with the accomplishment instructions of British Aerospace BAC 1-11 Alert Service Bulletin 32-A-PM5872, dated July 25, 1985. If the special bolt assembly is found damaged, replace with a servicable part before further flight.

Note: Airplanes that have complied with paragraph B. of AD 86-04-07, Amendment 39-5235, are considered to have met the requirements of this paragraph.

F. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Standardization Branch, ANM-113.

G. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to British Aerospace, Inc., Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, D.C. 20041. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This Amendment supersedes AD 86-04-07, Amendment 39-5235, and AD 86-07-01, Amendment 39-5878.

This Amendment becomes effective March 15, 1989.

Issued in Seattle, Washington, on January 23, 1989.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-2138 Filed 1-30-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 88-NM-182-AD; Amdt. 39-6133]

Airworthiness Directives; Cessna Model 650 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the **Federal Register** and makes effective as to all persons an amendment adopting a new airworthiness directive (AD) which was previously made effective as to all known U.S. owners and operators of Cessna Model 650 series airplanes by individual letters. This AD requires a revision of the FAA-approved Airplane Flight Manual (AFM) to restrict certain airplanes to a 45,000 foot maximum calibrated operating altitude until such time as the elevator balance has been checked and rebalanced, if necessary. This action is prompted by reports that certain airplanes may not have been manufactured with the correct static balance. This condition, if not corrected, could result in structural dynamic instability at flight levels above 45,000 feet.

EFFECTIVE DATE: February 21, 1989.

This AD was effective earlier to all recipients of Priority Letter AD 88-23-04, dated November 16, 1988.

ADDRESSES: The applicable service information may be obtained from Cessna Aircraft Company, Citation Marketing Division, P.O. Box 7706, Wichita, Kansas 67277. This material may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Wichita Aircraft Certification Office, FAA, Central Region, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas.

FOR FURTHER INFORMATION CONTACT: Mr. Douglas Haig, Aerospace Engineer, Wichita Aircraft Certification Office, Room 100, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946-4409.

SUPPLEMENTARY INFORMATION: On November 16, 1988, the FAA issued Priority Letter AD 88-23-04, applicable to certain Cessna Model 650 series airplanes, which requires restriction of the maximum calibrated operating altitude to 45,000 feet until such time as the elevator balance has been checked and rebalanced, if necessary. That action was prompted by reports that elevators on certain of these airplanes may not have been manufactured with the correct static balance. Analysis has shown that this improper balance could result in a structural dynamic instability at flight levels above 45,000 feet.

The FAA has reviewed and approved Cessna Alert Service Letter SLA650-27-20, dated November 11, 1988, which describes procedures for removing the elevators from the airplane, checking the elevator balance of each elevator, and rebalancing, if necessary.

Since a situation existed, and still exists, that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The Federal Aviation Administration has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required).

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Cessna: Applies to Model 650 series airplanes; Serial Numbers 650-0094, 650-0096, 650-0100 through 650-0103, 650-0105 through 650-0107, 650-0117, 650-0120, 650-0123, 650-0125 through 650-0129, 650-0131 through 650-0159, 650-0161, and 650-0162; certificated in any category. Compliance is required as indicated, unless already accomplished.

To prevent elevator flutter, accomplish the following:

A. Prior to further flight, incorporate the following into the Limitations Section of the FAA-approved Airplane Flight Manual (AFM). This may be accomplished by inserting a copy of this AD, or the Temporary AFM Change included as part of the Cessna Alert Service Letter SLA650-27-20, dated November 11, 1988, into the AFM:

"Enroute Operations Limits: 45,000 ft. Maximum Calibrated Operating Altitude."

B. Within the next 100 flight hours time-in-service or 60 days after the effective date of this AD, whichever occurs sooner, remove both elevators from the airplane and check for proper balance, in accordance with Cessna Alert Service Letter SLA650-27-20, dated November 11, 1988. Elevators not meeting proper balance specifications must be rebalanced, prior to further flight, in accordance with the Accomplishment Instructions of the service bulletin.

C. Accomplishment of the requirements of paragraph B., above, constitutes terminating action for the requirements of paragraph A., above, and the AFM revision may be removed.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Wichita Aircraft Certification Office, FAA, Central Region.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive may obtain copies of the applicable service information from Cessna Aircraft Company, Citation Marketing Division, P.O. Box 7706, Wichita, Kansas 67277. This material may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Wichita Aircraft Certification Office, FAA, Central Region, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas.

This amendment becomes effective February 21, 1989.

This AD was effective earlier to all recipients of Priority Letter AD 88-23-04, issued November 16, 1988.

Issued in Seattle, Washington, on January 23, 1989.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-2137 Filed 1-30-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 88-NM-174-AD; Amdt. 39-6127]

Airworthiness Directives; Fokker Model F-27 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revises an existing airworthiness directive (AD), applicable to certain Fokker Model F-27 series airplanes, which currently requires a revision to the Limitations Section of the Airplane Flight Manual (AFM) restricting the maximum turbulent air penetration airspeed for certain airplanes, and installation of a placard to this effect near each airspeed indicator. That action was prompted by a report of improper heat treatment of the wing structure, resulting in a reduction of the strength of the skin splice at Wing Station 7900. This condition, if not corrected, could result in reduced structural capability of the wing. This amendment expands the applicability statement to include additional Model F-27 airplanes that have been retrofitted with a new

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outerwing, wing serial number 246 or higher, and are subject to the same unsafe condition.

EFFECTIVE DATE: February 15, 1989.

ADDRESSES: The applicable service information may be obtained from Fokker Aircraft USA, Inc., 1199 N. Fairfax Street, Alexandria, Virginia 22314. This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Quam, Standardization Branch, ANM-113; telephone (206) 431-1978. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: On September 16, 1988, the FAA issued AD 88-17-02, Amendment 39-6035 (53 FR 37995; September 29, 1988), applicable to Fokker Model F-27 series airplanes, which requires a revision to the Limitations Section of the Airplane Flight Manual (AFM) restricting the maximum turbulent air penetration speed for certain airplanes, and installation of a placard to this effect near each airspeed indicator. That action was prompted by a report of improper heat treatment of the wing structure, resulting in a reduction of the strength of the skin splice at Wing Station 7900. This condition, if not corrected, could result in reduced structural capability of the wing.

Since the issuance of the AD, the FAA has been notified that additional Fokker Model F-27 series airplanes, serial numbers 10105 to 10345, may be subject to the same unsafe condition if they have been retrofitted with an outerwing having a serial number of 246 or higher.

For airplanes with Serial Number 10105 through 10345, since records may not reflect a wing change, the only way to identify the outerwing serial number is to remove the wing tip and perform a visual inspection of the serial number plate, which is attached to the wing end rib at Station 14300.

The Rijksluchtvaartdienst (RLD), which is the airworthiness authority of the Netherlands, has also issued Netherlands Airworthiness directive BLA No. 88-55, Issue 3, dated September 7, 1988, which calls for restricting the maximum turbulent air penetration airspeed of these Fokker Model F-27 series airplanes operating at weights of more than 32,000 lbs.

This airplane model is manufactured in the Netherlands and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD revises the applicability of AD 88-17-02 to add additional airplanes subject to the requirements of that AD. By this action, these additional planes are required to revise the Limitations Section of the Airplane Flight Manual (AFM) to restrict the maximum turbulent air penetration airspeed to 165 KIAS (168 KTS CAS) for airplanes operating at weights over 32,000 lbs., and to install a placard to this effect near each airspeed indicator.

Additionally, this action revises the existing AD by deleting two airplanes from the applicability statement since it has been determined that those planes have a completely different wing design that is not subject to the unsafe condition addressed. Both planes are Fokker Model 50 prototypes and will never be sold for commercial use.

Fokker has advised the FAA that it is revising Service Bulletin F27/57-63, which will describe inspection and repair procedures for Wing Station 7900. When this information is available, the FAA may consider further rulemaking action to address it.

Since a condition exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required.).

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By revising AD 88-17-02, Amendment 39-6035 (53 FR 37995; September 29, 1988), by amending the applicability statement, as follows:

Fokker: Applies to Model F-27 series airplanes, serial number 10046 to 10684, inclusive; 10686, 10687; 10689 to 10692, inclusive; and serial numbers 10105 to 10345, inclusive, if retrofitted with outerwing serial number 246 or higher; certificated in any category. Compliance is required within 24 hours after the effective date of this AD, unless previously accomplished.

To prevent reduced structural capability of the wing, accomplish the following:

A. Incorporate the following into the Limitations Section of the Airplane Flight Manual (AFM). This may be accomplished by inserting a copy of this AD into the AFM:

"For airplanes operating at weights over 32,000 lbs.:

Speed Limitation V_p: 165 KIAS (168 KTS CAS)"

B. Install a placard near each airspeed indicator, stating the following:

FOR AIRPLANES OPERATING AT WEIGHTS OVER 32,000 LBS.:

SPEED LIMITATION V_p: 165 KIAS (168 KTS CAS)

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Standardization Branch, ANM-113.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to Fokker Aircraft USA, Inc., 1199 N. Fairfax Street, Alexandria, VA 22314. This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective February 15, 1989.

Issued in Seattle, Washington, on January 18, 1989.

Steven B. Wallace,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-2149 Filed 1-30-89; 8:45 am]

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14 CFR Part 39

[Docket No. 88-NM-134-AD; Amdt. 39-6136]

Airworthiness Directives; SAAB-Scania Model SF-340A Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to SAAB-Scania Model SF-340A series airplanes, which requires installation of water traps and additional insulation pads in the main and standby pitot tubes. This amendment is prompted by reports of the intrusion of rain water into the pitot system, and the subsequent formation of ice causing a blockage in the pitot line. This condition, if not corrected, could lead to erroneous airspeed readings.

EFFECTIVE DATE: March 15, 1989.

ADDRESSES: The applicable service information may be obtained from SAAB-Scania, Product Support, S-58188, Linkoping, Sweden. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Quam, Standardization Branch, ANM-113; telephone (206) 431-1978. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations, to include a new airworthiness directive applicable to SAAB-Scania Model SF-340A series airplanes, which requires installation of water traps and additional insulation pads in the main and standby pitot tubes, was published in the **Federal Register** on October 20, 1988 (53 FR 41195).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter concurred with the intent of the proposed AD. However, the commenter stated that 76 airplanes would be affected by this AD, rather than a total of 68 affected airplanes, as reflected in the economic analysis paragraph in the preamble to the Notice. After investigating this point further with the manufacturer's representative, the FAA has determined that currently there are 76 U.S.-registered airplanes affected by this AD. Accordingly, the economic analysis paragraph below has been changed to reflect this information and to revise the total cost impact figure.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 76 airplanes of U.S. registry will be affected by this AD, that it will take approximately 4 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. The cost of required parts is estimated to be $175 per airplane. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $25,460.

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities because of the minimal cost of compliance per airplane ($335). A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

SAAB-Scania: Applies to Model SF-340A series airplanes, serial numbers -003 through -138, inclusive, certificated in any category. Compliance required within 30 days after the effective date of this AD, unless previously accomplished.

To prevent erroneous airspeed readings due to ice in the pitot system, accomplish the following:

A. Install water traps and insulation pads in the main and standby pitot systems, in accordance with SAAB-Scania Service Bulletin SF340-34-056, dated August 1, 1988.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Standardization Branch, ANM-113.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request of SAAB-Scania, Product Support, S-58188, Linkoping, Sweden. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

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This amendment becomes effective March 15, 1989.

Issued in Seattle, Washington, on January 23, 1989.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-2141 Filed 1-30-89; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230 and 274

[Release Nos. 33-6814; IC-16700; File No. S7-13-88]

Consolidated Disclosure of Variable Annuity Separate Account Expenses

AGENCY: Securities and Exchange Commission.

ACTION: Adoption of form amendments.

SUMMARY: The Commission is adopting revisions to the expense-related disclosure requirements of Forms N–3 and N–4, the registration forms under the Investment Company Act of 1940 and the Securities Act of 1933 for insurance company separate accounts that issue variable annuity contracts, and is publishing revisions to the staff guidelines accompanying these forms. The amendments consolidate the expense data in a tabular presentation near the front of the prospectus. The Commission is adopting these amendments to improve the quality of expense disclosure in variable annuity separate account prospectuses.

EFFECTIVE DATES: May 1, 1989. The amendments will become effective: (1) On May 1, 1989 for separate accounts offering variable annuity contracts whose registration statements become effective on or after that date and those with fiscal years ending December 31; and (2) for all other separate accounts offering variable annuity contracts, upon use of any prospectus contained in any post-effective amendment filed on or after May 1, 1989.

FOR FURTHER INFORMATION CONTACT: Nancy M. Rappa, Attorney, or Clifford E. Kirsch, Special Counsel, (202) 272–2061, Office of Insurance Products, Division of Investment Management, Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission today is amending Forms N–3 and N–4 [17 CFR 274.11b and 274.11c], the registration forms under the Investment Company Act of 1940 [15 U.S.C. 80a *et seq.*] (the "1940 Act") and the Securities Act of 1933 [15 U.S.C. 77a *et seq.*] for insurance company separate accounts that issue variable annuity contracts ("separate accounts"), and publishing revised guidelines to those forms. These revisions, proposed on July 15, 1988 (Investment Company Act Release No. 16462) ("Proposal"),[1] require a tabular presentation of expenses ("fee table") to be included as part of the synopsis at the beginning of the prospectus. The fee table will show transaction expenses paid directly by the shareholder, such as sales load; annual contract fees deducted from shareholder assets; and annual expenses deducted from separate account assets, such as management fees, whether paid from fund assets or deducted from shareholder accounts. The fee table will also provide an example of the cumulative amount of these fees over various investment periods ("Example"). In addition, the Commission is publishing amendments to Form N–1A that eliminate the fee table requirement for management investment companies offering shares exclusively to separate accounts.

Discussion

The Commission received 11 comment letters in response to the Proposal.[2] The commenters generally supported the objectives of the Proposal, but suggested that the Commission modify and clarify some portions. Many of the commenters objected to a fee table for variable annuity separate accounts that is patterned closely after the mutual fund fee table. Several pointed out what they characterized as fundamental differences between variable annuity contracts and mutual funds that make certain aspects of the fee table inappropriate for separate accounts. Those commenters believe that differences in the design, market, function, and tax treatment of mutual fund shares and variable annuity contracts, as well as the long-term nature of an annuity contract, warrant greater differences in the fee table than the Proposal provided. The Commission continues to believe that the proposed fee table for separate accounts will foster comparability among separate accounts offering variable annuity contracts, as well as between separate accounts and mutual funds.[3] Therefore, the Commission has decided to adopt the proposed amendments to Forms N–3 and N–4, but with clarifications and changes that address many of the comments received.

The first part of this release will discuss three issues that appear to have caused the most concern for commenters. These issues are the presentation of the annual contract fee in the Example, potential prospectus liability due to the requirement that trust account prospectuses list portfolio company expenses, and the presentation of sales load. The second part of the release deals with other comments relating to the fee table, and the third section discusses issues raised regarding the Example.

A. Major Issues

1. Presentation of Annual Contract Fee in the Example

Eight commenters objected to the proposed method of allocating contract fees in the Example.[4] The Commission proposed an instruction that would require the separate account to multiply the contract fee by the total number of contractowners that allocated amounts to a sub-account during the year.[5] This amount would be divided by the average net assets of the sub-account and the resulting percentage would be added to "Annual Expenses" in making the calculations required by the Example. Under this method, each investor is assumed to pay a full contract fee for each sub-account in which he or she is invested, a portion of which is deducted on a daily basis.[6]

[1] 53 FR 27672 (July 25, 1988). The Commission previously adopted revisions to Form N–1A for consolidated disclosure of mutual fund expenses in Investment Company Act Release No. 16244 (Feb. 1, 1988) (53 FR 2182 (Feb. 4, 1988)).

[2] The comment letters and a summary of comments prepared by the Commission staff are contained in File No. S7–13–88.

[3] While differences exist, mutual funds and variable annuities may be alternative investments for many investors. A survey of news reports reveals that variable annuity products are sold in direct competition with other investment vehicles, such as mutual funds. *See, e.g.*, Heyes, *If You Don't Understand It, Don't Buy It*, Forbes, Oct. 3, 1988, at 98. There are also substantial differences in design, market, function and tax treatment among mutual funds. Nonetheless, all mutual fund prospectuses must contain the fee table prescribed by Form N–1A.

[4] The Proposal defines "Contract Fee" to include any contract, account, or similar fee imposed on all contractowner accounts on any recurring basis.

[5] *See* proposed Instruction 16(e) to Item 2(a) of Form N–3 and Instruction 21(e) to Item 3(a) of Form N–4. General Instruction 5 to the Instructions for Item 3(a) of Forms N–3 and N–4 require a separate account to list separately the fee table data for each sub-account.

[6] The Proposal states that "[t]he assumption that each investor in a sub-account pays a contract fee has been proposed instead of allocating the total amount of contract fees collected among the sub-accounts because the latter method assumes that all contractowners allocated their contract value among all sub-accounts." Proposal at 27673, n.11. The Commission was concerned that the latter

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Commenters objected to the proposed allocation because they believe it invariably results in overstatement of the fee. The proposed method suggests that the contractholders are charged a fee for each sub-account in which they invest, even though typically one contract fee is charged regardless of participation in various sub-accounts. Two commenters argued that because sub-accounts have varying average contractowner account sizes, the proposed method would cause the contract fees in the Example to vary by sub-account. This would cause investors to conclude erroneously that the charge varies by sub-account.[7]

One commenter suggested a method under which separate accounts would calculate the fee by multiplying the annual contract fee by the total number of contractholders in all available sub-accounts, and dividing this amount by the total average net assets of all available sub-accounts.[8] The resulting percentage would be added to each sub-account's "Annual Expenses" in making the calculations required by the Example. While the proposed method assumes that an investor is charged a full contract fee for each sub-account in which he or she invests, this method takes the total amount of contract fees collected and allocates this total among all available sub-accounts as a percentage of total assets. The Commission believes that this method will more accurately reflect the impact of annual contract fees and has, therefore, decided to adopt this approach. The Commission believes that this method is less likely to distort the impact of fees on contractowners, and will more accurately reflect that a contract fee is assessed only once regardless of participation in two or more sub-accounts. Under the adopted method of calculation, total contract fees collected that are attributable to the contract offered by the prospectus is divided by the total average net assets of all available sub-accounts.[9]

2. Prospectus Liability

The proposed fee table for trust account prospectuses (Form N–4 fee table) divides "Annual Expenses" into two parts. One part lists annual expenses deducted from separate account assets and the other lists annual portfolio company expenses. This segregates separate account expenses from those of the portfolio company, providing a complete unfragmented depiction of expenses. The Proposal would require the trust account to disclose expense information and, in some cases, make estimates about portfolio company expenses. The Proposal invited comment on whether the listing of portfolio company expenses in the trust account prospectus would create potential prospectus liability for the trust account and, accordingly, whether separate fee tables should be required in both the separate account and the underlying fund prospectuses instead.

Several commenters expressed concern about potential prospectus liability if the separate account prospectus is required to list annual expenses incurred by the underlying fund. Although the Proposal suggests that indemnification provisions in participation agreements could reduce potential liability, some commenters argued that separate accounts investing in unaffiliated funds might not be protected by indemnification in participation agreements.[10] One commenter believed there could be no protection because (i) some indemnification agreements may predate the new requirements, and (ii) indemnification is not the legal equivalent of limitation of liability. For separate accounts that purchase shares of affiliated funds, however, this commenter acknowledged that the disclosure of portfolio company expenses would not present the same type of potential liability.[11]

The Commission has decided to adopt this part of the Form N–4 fee table as proposed. The Commission notes that separate accounts offering variable life insurance contracts typically factor into the hypothetical illustrations of account value an average of the investment advisory fees and certain other expenses of the portfolio company, whether affiliated or unaffiliated. The narrative disclosure accompanying these hypothetical illustrations usually sets forth the investment advisory fees and operating expenses of the underlying fund. In addition, trust account prospectuses offering either variable life insurance or variable annuity contracts typically disclose the investment objectives of unaffiliated portfolio companies. In these situations, the separate account and the unaffiliated underlying fund apparently have been able to resolve the separate account's potential prospectus liability in a manner satisfactory to both.

3. Presentation of Sales Load

a. *Sales Load in "Contractowner Transaction Expenses."* The Proposal requires that sales load include the maximum load imposed on purchase payments, but would permit a tabular presentation, within the large table, of the range of such sales loads. Deferred sales load must include the maximum contingent deferred sales load expressed as a percentage of purchase payments or amount surrendered, but a tabular presentation, within the larger table, of the range of contingent deferred sales loads over time is permitted.

Four commenters objected to the prominent presentation of sales loads in "Contractowner Transaction Expenses." In particular, commenters believed that presentation of contingent deferred sales loads in the fee table in a fashion similar to that of the Form N–1A table is unwarranted due to the long-term nature of an annuity contract as compared to

method would understate the fees, "especially for separate accounts having a large number of sub-accounts." *Id.*

[7] The other commenters that addressed this issue echoed these concerns. For example, one commenter believed that the overstatement of contract fees corresponded proportionately to the increased use of available investment options, arguing that the proposed method is accurate only for investors who have allocated their total assets to one option. Another commenter admitted that an understatement of fees may result where the fee is prorated among sub-accounts, but asserted that the proposed method would inflate the fee and falsely imply that different sub-accounts charge different fees.

[8] Five other commenters endorsed this alternative.

[9] Instruction 16(e) to Item 2(a) of Form N–3 and Instruction 21(e) to Item 3(a) of Form N–4 as adopted read: Reflect any [annual] contract fee by dividing the total amount of [annual] contract fees collected during the year that are attributable to the contract offered by the prospectus by the total average net assets of all the sub-accounts in the separate account that are attributable to the contract offered by the prospectus. Add the resulting percentage to "Annual Expenses," and assume that it remains the same in each year of the one, three, five, and ten-year periods. New Registrants should estimate [annual] contract fees collected.

[10] Footnote 16 of the Proposal states: "One possible approach a trust account might take to limit its exposure to liability is to provide for indemnification in its participation agreement (or other agreement) with the portfolio company with respect to information provided by the portfolio company."

A participation agreement sets forth the contractual obligations between an insurance company separate account that invests in shares of a fund and the underlying investment vehicle or fund. Many participation agreements contain indemnification provisions.

[11] Indeed, as stated in the Proposal, "[i]n circumstances where the separate account is a controlling person, there should be no question about the account's ability to satisfy itself as to the accuracy of the portfolio company expense data." Proposal at note 16.

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mutual fund shares.[13] Commenters also expressed concern that because many annuity contracts allow for free withdrawal of a percentage of account value or purchase payments during the life of the contract, consequences of surrender even for contracts with identical maximum CDSLs could differ, rendering the proposed illustration meaningless.

The Commission continues to believe that the proposed fee table disclosure of sales loads is appropriate. Even though an annuity contract may be designed and/or marketed as a long-term investment, it is important to prominently disclose the effects of early surrender. The Commission believes that the presentation of sales load in this manner will facilitate comparison among variable annuity products, as well as between variable annuity products and mutual funds.[14] Therefore, the Commission has decided to retain the proposed method of reflecting sales loads in the fee table, but will permit a footnote to the fee table regarding distinguishing characteristics, such as where contracts allow for free withdrawal of percentages of account value during the life of the contract.

b. *Sales Load in the Example.* The proposed Example illustrates the expenses an investor might expect to incur at different time intervals; sales load expenses are included in the Example's calculations. Several commenters objected to the presentation of the effect of sales loads in the Example; one commenter felt that the proposed approach ignored the "contingent nature" of the CDSL by focusing on shortened time periods. Another commenter argued against the use of the one, three, five, and ten-year investment periods, stating that depiction of sales loads at these intervals presented an inaccurate emphasis for variable annuity contracts, which are designed and sold as long-term investments.

The Commission has decided to adopt, in the Example, the proposed assumptions that the maximum sales load is deducted from purchase payments, and that surrender occurs on the last day of the year. As discussed in the adopting release for the amendments to the Form N–1A,[15] the Example provides a relatively simple means for investors to compare expense levels of funds with different fee structures over varying investment periods. The same rationale applies to the Example proposed for variable annuities. In response to concerns of the commenters, however, the Commission will not object if durations of time greater than ten years, for example, fifteen, twenty-five, thirty-year periods, are used in addition to the standard one, three, five, and ten-year periods.[16]

B. Comments on the Fee Table

1. Annual Contract Fee in the Fee Table

The second part of the proposed fee table would require a Registrant to list any recurring contractowner contract fees. Six commenters objected to the Proposal's inclusion of the contract fee in the table as a separate line item expressed as a flat dollar amount. Two commenters recommended that it would be more accurate to reflect the fee as a percentage of average account size, as is required for mutual funds.[16] One commenter felt that prominent disclosure of what it believes to be a comparatively low fee is unnecessary, and suggested that the instructions allow a *de minimis* exception to permit exclusion of minor fees, accompanied by appropriate narrative disclosure.

The Commission has decided to adopt the proposed method of reflecting annual contract fees in the fee table. The majority of separate accounts assess contract fees as a flat fee; if a separate account assesses the fee as a percentage of net assets, the fee table allows the fee to be expressed as a percentage. Prominent disclosure is appropriate; the contract fees charged by separate accounts are typically larger than similar fees assessed by mutual funds. However, where the annual contract fee is not assessed against some contractowners, or is waived in certain circumstances, the Commission would not object to a footnote or cross-reference to appropriate narrative disclosure that discusses those markets for which the fee is inapplicable. Similarly, where a separate account assesses a range of contract fees, the fee table should disclose the maximum contract fee assessed, but may contain a footnote or cross-reference to narrative disclosure discussing circumstances under which the fee may be reduced or waived.

2. Group Variable Annuity Contracts

Two commenters believed that because the proposed table appears to be designed specifically for individual variable annuity contracts, several elements are inapplicable to the group variable annuity contract market. For example, one commenter believed that it is inappropriate to isolate the contract fee as a separate line item where the fee is often waived or reduced for group contracts.[17] The commenter suggested that where aspects of the proposed fee table are inappropriate for group contracts, suitable, meaningful disclosure should be allowed instead. Another suggested alternative was permitting presentation of an additional table within the larger fee table highlighting expenses applicable to the group market. A third solution suggested permitting separate accounts offering both types of contracts to identify in the fee table the markets that can disregard the contract fee or other fee.

The Commission agrees that where different fee structures apply to group and individual annuity contracts offered by the same prospectus, it may be useful to investors if the fees charged to the group contract market are set out separately from the fees assessed to individual contractowners. Therefore, the Commission has determined that where one separate account prospectus offers a contract in both the individual and group contract markets, and assesses different fees for the two markets, a separate fee table may be provided for each. Where only minor variations in fees exist, Registrants may use one fee table, and highlight the lower fees applicable to group markets through a footnote to the fee table.[18]

[13] One commenter stated that unlike mutual funds, most separate accounts have CDSLs but no front-end sales load, so that sales loads will be reduced or waived entirely as a reward for long-term investment.

[14] The Commission believes that facilitating comparisons between variable annuity products and mutual funds would provide useful information to investors. There is evidence to suggest that variable annuity contracts and mutual funds compete for the same investment dollar. *See supra* note 3.

[15] Investment Company Act Release No. 16244 (Feb. 1, 1988).

[16] In any case, however, the Commission and staff will object if the presentation of non-standard time periods is unduly complex or confusing; generally speaking, no more than a few additional time periods should be added. The Commission would not object if registrants using the Form N–1A fee table also include durations of time greater than ten years in addition to those required by the form.

[16] On the other hand, two commenters felt that expressing the fee as a dollar amount, rather than as a percentage of average account size, would be more appropriate. Currently, similar fees assessed by mutual funds, such as account fees, are reflected in the Form N–1A fee table under "Other Expenses," calculated as a percentage of average net assets. The Commission is considering amending the Form N–1A fee table to conform the presentation of the annual contract fee in the mutual fund fee table to that required for Forms N–3 and N–4.

[17] Of course, this is a concern only when the fee is assessed against some contractowners but is reduced or waived for others. If a particular caption is not applicable to a Registrant at all, General Instruction 3 to Item 3(a) of both Forms N–3 and N–4 permit the caption to be omitted from the table.

[18] Proposed General Instruction 6 to Item 3(a) would require that a separate fee table (or separate column within the fee table) be provided for each

Contin ued

3. Variable Life Insurance Separate Accounts

Item 2(a)(ii) of Form N–1A permits portfolio companies of variable life insurance separate accounts to omit the fee table from their prospectuses. This provision was adopted because these separate accounts contain tables of hypothetical account values that serve similar purposes as the fee table. However, because these tables do not illustrate the effects of different portfolio company expenses, but rather illustrate an average of expenses among the portfolio companies, the Proposal invited comment on whether a portfolio company fee table should be required.

The three commenters that addressed this issue believe that inclusion of the fee table for variable life insurance prospectuses is unnecessary. One commenter opposed the inclusion of the fee table in the underlying fund prospectus because the separate account prospectus contains tables of hypothetical account value that serve a similar purpose as a fee table. Another commenter stated that inclusion of the fee table would be confusing to an investor where the portfolio company offers shares to both variable life and variable annuity separate accounts. The commenter felt that annuity contract investors may be confused because they may not understand why fund expenses are set out in both prospectuses; variable life investors may be confused because they may assume that the expenses set forth in the underlying fund prospectus are in addition to those factored into the tables of hypothetical account value. In light of these comments, the Commission has determined not to require that the prospectuses of funds that are used solely as funding vehicles for variable life insurance separate accounts, or both variable life and variable annuity separate accounts, contain a fee table.

C. Comments on the Example

As in the Form N–1A fee table, the proposed variable annuity fee table would provide an example of the cumulative amount of fees and expenses incurred over various investment periods.[19] The Example is intended to provide a simple means for investors to compare expense levels among different separate accounts, and would illustrate the value of a hypothetical $1,000 investment at the end of one-, three-, five-, and ten-year periods, assuming 5% annual return on assets. The illustration would show the expenses incurred on the $1,000 investment assuming redemption at the end of each period, and the expenses incurred if the contract is not redeemed.[20]

1. Adding 3rd Line to the Example to Assume Annuitization

The Proposal states that "the Example assumes that the annuity contract is held only during the accumulation period and that redemption is effected by surrender of the contract." The Proposal invited comment on whether a third line should be added to the Example to assume annuitization at the end of the one-, three-, five- and ten-year periods.

One commenter felt that addition of the third line to assume annuitization would demonstrate accurately that lower charges are incurred upon annuitization. However, this commenter suggested that incorporation of the additional line should be optional because of the potential complexity for unit investment trust separate accounts with more than one underlying fund and because, in some cases, the figures in the Example and the annuitization figures would be identical.

The Commission has determined that for those separate accounts with surrender charges or deferred sales loads assessed upon surrender that are identical to the charges imposed on annuitization, the additional line for annuitization is not necessary and should be omitted. However, inclusion of the additional line will be mandatory for those separate accounts charging different fees upon annuitization. In that case, appropriate disclosure should be added to the Example under the following caption: "If you annuitize at the end of the applicable time period."[21]

2. Additional Line of Information for Annual Return Necessary to Preserve Initial Investment

The Proposal invited comment on whether the Example for Forms N–3 and N–4 should include a line of information illustrating the annual return the fund must obtain to preserve the value of a shareholder's initial investment. The five commenters that addressed this issue responded negatively. Several indicated that the inclusion of the additional line would be confusing and duplicative. One commenter felt that the similarity between the proposed line of information and the percentage figure in the fee table for total expenses would render the addition of the line confusing. Another commenter echoed this sentiment, claiming that the proposed amendment was essentially a duplication of the expense disclosure itself. For similar reasons, three commenters opposed inclusion of a similar line in the Form N–1A fee table. The Commission believes that the commenters have raised significant issues regarding this aspect of the Proposal. In the interests of keeping the fee table as simple and as straightforward as possible, the Commission has decided not to incorporate the additional line of information in Forms N–3 and N–4 at this time. However, the Commission, through the staff's review of post-effective amendments, will monitor the need for inclusion of such a line, and whether the line would provide useful additional information.

3. Use of Different Terminology

The Example demonstrates the expenses paid at various intervals under two different scenarios: "If you redeem your shares at the end of the applicable time period" and "If you do not redeem your shares." Two commenters stated that "redeem" should be replaced with "surrender" or "terminate," which they

contract form offered by a prospectus that has different fees. This instruction as adopted states:

"Provide a separate fee table (or separate column within the table) for each contract form offered by the prospectus that has different fees. If a Registrant uses one prospectus to offer a contract in both the group and individual variable annuity contract markets, the Registrant may a) add narrative disclosure following the fee table identifying markets where certain fees are either inapplicable or waived or lower fees charged to contractowners in group markets, or b) provide a separate fee table for group and individual contracts."

[19] The majority of commenters did not question the use of the Example in the fee table. One commenter, however, believed that the inclusion of the Example would not enhance the quality of disclosure because it would unduly emphasize cash values rather than retirement income for the annuitant. This commenter also objected to the distortion that could result from the disparity between the 5% rate of return required by the Example and actual performance. This commenter concluded that the difficulties generated by inclusion of the Example outweigh any informative value that the Example would provide. Many of these issues were considered when the Form N–1A fee table was adopted. The Commission is adopting the proposed Example in the Forms N–3 and N–4 for the stated purpose of illustrating the cumulative amount of fees and expenses over various investment periods.

[20] One commenter raised a technical comment regarding the appearance of the Example. In the Proposal as it appeared in the Federal Register, the caption "If you do not redeem your shares" was inadvertently shifted to a position that made it less prominent than the caption "If you redeem your shares at the end of the applicable time period." This was unintended and is corrected in this Adopting Release.

[21] *See* Instruction 19(j) to Item 3(a) of Form N–3 and Instruction 21(j) to Item 3(a) of Form N–4, which state that the information provided by the caption "If you annuitize at the end of the applicable time period" should be set forth only if a Registrant charges fees upon annuitization that are different from those charged upon surrender.

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believe are more appropriate in the annuity context. Another commenter simply stated that the use of the term "redeem" is inappropriate.[39] The Proposal states that "* * * the Example assumes that the annuity contract is held only during the accumulation period and that redemption is effected by surrender of the contract." Also, in the portion of the fee table entitled "Contractowner Transaction Expenses," the Proposal uses the term "surrender." The Commission agrees with these commenters and therefore is changing the language in the Example to read "If you surrender your contract at the end of the applicable time period" and "If you do not surrender your contract."

D. Date of Effectiveness

As a compromise between the need to include this information in all separate account prospectuses as soon as possible and the burdens that would be imposed on funds and the Commission staff if all funds were required to amend their prospectuses immediately, the Commission is staggering the date when these revisions will become effective. For those separate accounts offering variable annuity contracts whose registration statements become effective on or after May 1, 1988, the revisions become effective for prospectuses used on or after May 1, 1989. For those with fiscal years ending on December 31, the revisions will become effective on May 1, 1989 as to any prospectuses used on or after that date, which is the date on which their post-effective amendments ordinarily must become effective. For all other separate accounts, today's revisions will become effective upon use of any prospectus contained in any post-effective amendment filed on or after May 1, 1989.

Regulatory Flexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Chairman of the Commission previously certified that these amendments will not have a significant economic impact on a substantial number of small entities. No comments were received on that certification.

List of Subjects in 17 CFR Parts 239 and 274

Investment companies, Reporting and recordkeeping requirements, Securities.

Text of Form Changes

The Commission is amending Chapter II, Parts 239 and 274, Title 17 of the Code of Federal Regulations as set forth below:

PART 239—[AMENDED]

PART 274—[AMENDED]

1. The authority citation for Part 239 continues to read, in part, as follows:

Authority: The Securities Act of 1933, 15 U.S.C. 77a, *et seq.*, * * *

2. The authority citation for Part 274 continues to read, in part, as follows:

Authority: The Investment Company Act of 1940, 15 U.S.C. 80a–1, *et seq.*, * * *

3. Section 274.11A is amended by amending Item 2 of Form N–1A by revising paragraph (a)(ii) to read as follows:

§ 274.11A Form N–1A, registration statement of open-end management investment companies.

* * * * *

Item 2.

(a) * * *

(ii) A Registrant that offers its share exclusively to one or more separate accounts may omit the table.

* * * * *

4. By amending General Instructions for Parts A and B by revising paragraphs 1 and 4(a) of General Instruction I to Form N–3, described in §§ 239.17a and 274.11b, to read as follows:

§ 274.11b Form N–3, registration statement of separate accounts organized as management investment companies.

* * * * *

I. Preparation of the Registration Statement or Amendment

* * * * *

General Instructions for Parts A and B

1. The information in the prospectus and the Statement of Additional Information should be organized to make it easy to understand the organization and operation of the Registrant and the variable annuity contracts. The information need not be in any particular order, with the exception that Items 1, 2, 3, and 4 (a) and (b) must be in numerical order in the prospectus and may not be preceded or separated by any other item.

* * * * *

4. * * *

(a). A Registration Statement on this Form may include any chart, graph, or table that is not misleading; however, with the exception of the fee table and the table of contents (required by Rule 481(c) [17 CFR 230.481(c)] under the 1933 Act), no chart, graph, or table should precede the condensed financial information specified in Items 4 (a) and (b).

* * * * *

5. By redesignating current paragraphs (a), (b), and (c) of Item 3 of Form N–3 as (b), (c), and (d), adding a new paragraph (a) to Item 3, and revising redesignated paragraph (b) as follows:

* * * * *

Item 3. Synopsis

(a) Include a table furnishing the following information, using the captions provided, in the format illustrated below:

Contractowner transaction expenses:	
Sales load imposed on purchases (as a percentage of purchase payments)	____%
Deferred sales load (as a percentage of purchase payments or amount surrendered, as applicable)	____%
Surrender fees (as a percentage of amount surrendered, if applicable)	____%
	____%
Exchange fee	____%
[Annual] Contract fee	____
Annual Expenses (as a percentage of average net assets):	
Management fees	____%
Mortality and expense risk fees	____%
Other expenses	____%
	____%
	____%
	____%
Total annual expenses	____%

Example	1 year	3 years	5 years	10 years
If you surrender your contract at the end of the applicable time period: You would pay the following expenses on a $1,000 investment, assuming 5% annual return on assets	$____	$____	$____	$____
If you annuitize at the end of the applicable time period: You would pay the following expenses on a $1,000 investment, assuming 5% annual return on assets	$____	$____	$____	$____
If you do *not* surrender your contract: You would pay the following expenses on a $1,000 investment, assuming 5% annual return on assets	$____	$____	$____	$____

[39] A third commenter stated that where different terms are used in a prospectus to describe expenses, a Registrant should be allowed to designate like items in a manner consistent with those used in the prospectus and contracts.

Instructions:

General Instructions

1. Immediately after the table, provide a brief narrative explaining that the purpose of the table is to assist the contractowner in understanding the various costs and expenses that a contractowner will bear directly or indirectly. Include, where appropriate, cross-references to the relevant sections of the prospectus for more complete descriptions of the various costs and expenses. Disclose that premium taxes may be applicable.

2. Assume that the annuity contract is owned during the accumulation period for purposes of the table (including the Example). If an annuitant would pay different fees or be subject to different expenses, disclose this in the brief narrative and provide a cross-reference to those portions of the prospectus describing these fees.

3. If a particular caption is not applicable to the Registrant, the caption may be omitted from the table.

4. Round all dollar figures to the nearest dollar and all percentages to the nearest hundredth of one percent.

5. If the Registrant has sub-accounts, list separately the data for each sub-account.

6. Provide a separate fee table (or separate column within the table) for each contract form offered by the prospectus that has different fees. If a Registrant uses one prospectus to offer a contract in both the group and individual variable annuity contract markets, the Registrant may (a) add narrative disclosure following the fee table identifying markets where certain fees are either inapplicable or waived or lower fees charged to contractowners in group markets, or (b) provide a separate fee table for group and individual contracts.

Contractowner Transaction Expenses

7. "Sales Load Imposed on Purchase Payments" includes the maximum sales load imposed upon purchase payments and may include a tabular presentation, within the larger table, of the range of such sales loads.

8. "Deferred Sales Load" includes the maximum contingent deferred sales load, expressed as a percentage of purchase payments or amount surrendered, and may include a tabular presentation, within the larger table, of the range of contingent deferred sales loads over time.

9. "Surrender fee" includes any fee charged for any surrender or partial surrender, but does not include any sales load charged upon surrender or partial surrender.

10. "Exchange Fee" includes the maximum fee charged for any exchange or transfer of account value from the Registrant to another investment company or from one sub-account of the Registrant to another sub-account or the insurance company's general account. The Registrant may include a tabular presentation of the range of exchange fees unless such a presentation would be so lengthy as to encumber the larger table, in which case the Registrant should only provide a cross-reference to the narrative portion of the prospectus discussing the exchange fee.

11. If the Registrant (or any other party pursuant to an agreement with the Registrant) charges any other transaction fee, add another caption describing it and list the (maximum) amount or basis on which the fee is deducted.

[Annual] Contract Fee

12. "[Annual] Contract Fee" includes any contract, account, or similar fee imposed on all contractowner accounts on any recurring basis.

Annual Expenses

13. "Management Fees" include investment advisory fees (including any component thereof based on the performance of the Registrant), any other management fees payable to the investment adviser or its affiliates, and administrative fees payable to the investment adviser or its affiliates not included as "Other Expenses."

14. "Mortality and Expense Risk Fees" may be listed separately on two lines in the table.

15. "Other Expenses" include all expenses (except brokerage commissions and other capital items, sales loads, or mortality and expense risk fees) that are deducted from separate account assets.

(a) "Other Expenses" do not include extraordinary expenses as determined by use of generally accepted accounting principles (*see* Accounting Principles Board Opinion No. 30). If extraordinary expenses were incurred that materially affected the Registrant's "Other Expenses," the Registrant should disclose in the narrative following the table what the "Other Expenses" would have been had extraordinary expenses been included.

(b) The Registrant may subdivide this caption into no more than three subcategories of the Registrant's choosing, but must also include a total of all "Other Expenses."

16. Except as provided in (a) or (b) below, the percentages expressing annual expenses should be based on amounts incurred during the most recent fiscal year.

(a) A New Registrant should state the basis on which payments will be made, except that "Other Expenses" should be estimated and stated (after any expenses reimbursement or waiver) as a percentage of net assets. Disclose in the narrative following the table that "Other Expenses" is based on estimated amounts for the current fiscal year. A New Registrant, for purpose of this instruction and Instructions 18(b), 19(e) and 19(f), is a Registrant (or series of the Registrant) the prospectus of which either (i) does not include financial statements reporting operating results as a registered investment company, or (ii) includes financial statements for the initial fiscal year of the Registrant that report operating results as a registered investment company for a period of less than ten months.

(b) If the Registrant has changed its fiscal year, and as a result the most recent fiscal year is less than three months, the Registrant should use the fiscal year prior to the most recent fiscal year as the basis for determining annual expenses.

17. If there have been any changes in the annual expenses that would materially affect the information disclosed in the table:

(a) Restate the expense information using the current fees that would have been applicable had they been in effect during the previous fiscal year; and

(b) In the narrative following the table, disclose that the expense information in the table has been restated to reflect current fees.

A change in annual expenses means either an increase or a decrease in expenses that occurred during the most recent fiscal year or that is expected to occur during the current fiscal year. It includes the elimination of any expense reimbursement or fee waiver arrangement, in which case the expenses that would have been incurred had there been no reimbursement or waiver should be listed, but does not include circumstances where separate account expenses decrease in relation to the size of the separate account so as to make any waiver or reimbursement arrangement inoperative. An expected decrease in expenses as a percentage of assets due to economies of scale or breakpoints in a fee arrangement for a separate account whose assets have increased is an example of a change that should not be treated as a change requiring restatement.

18. (a) If there were expense reimbursement or fee waiver arrangements that reduced any operating expenses and will continue to reduce them in the current fiscal year: (i) Revise the appropriate caption by adding "After Expense Reimbursements" or some similar phrase; (ii) state the amount of actual expenses incurred, (*i.e.*, net of the amount reimbursed or waived); and (iii) disclose in the narrative following the table the amount the expenses would have been absent the reimbursement or waiver.

(b) If there are expense reimbursement or waiver arrangements that are expected to reduce any operating expense or the estimate of "Other Expenses," a New Registrant should (i) revise the appropriate caption by adding "After Expense Reimbursements" or some similar phrase; (ii) state the amount of actual expenses expected to be incurred or the actual estimate (*i.e.*, net of the amount expected to be reimbursed or waived); and (iii) disclose in the narrative following the table what the expenses (or estimates) would have been absent the reimbursement or waiver.

Example

19. For purposes of the Example in the table:

(a) Assume that the percentage amounts listed under "Annual Expenses" remain the same in each year of the one, three, five, and ten-year periods, except that an appropriate adjustment to reflect reduced annual expenses from completion of organization expense amortization may be made;

(b) Assume the maximum sales load that may be deducted from purchase payments is deducted;

(c) For the purpose of any breakpoint in any fee, assume that the amount of the Registrant's assets remains constant at the level at the end of the most recently completed fiscal year;

(d) Assume no exchanges or other transactions;

(e) Reflect any [annual] contract fee by dividing the total amount of [annual] contract fees collected during the year that are attributable to the contract offered by the

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prospectus by the total average net assets of all the sub-accounts in the separate account that are attributable to the contract offered by the prospectus. Add the resulting percentage to "Annual Expenses," and assume that it remains the same in each year of the one, three, five, and ten-year periods. New Registrants should estimate [annual] contract fees collected;

(f) A New Registrant should complete only the one and three year period portions of the Example;

(g) Reflect any contingent deferred sales load by assuming a complete surrender on the last day of the year;

(h) Provide the information required in the third section of the Example only if a sales load or other fee is charged upon complete surrender;

(i) Prominently disclose that the Example should not be considered a representation of past or future expenses and that actual expenses may be greater or lesser than those shown; and

(j) Include in the Example the information provided by the caption "If you annuitize at the end of the applicable time period" only if the Registrant charges fees upon annuitization that are different from those charged upon surrender.

(k) The Registrant should include a synopsis of information contained in the prospectus when the prospectus is long or complex, except that the fee table must be included in all prospectuses. Normally, a synopsis should not be provided where the prospectus is twelve printed pages or less.

* * * * *

5. By amending Item 7 of Form N–3 by removing instruction 3 to paragraph (a), removing paragraph (e), redesignating paragraphs (f) and (g) as paragraphs (e) and (f), and revising redesignated paragraph (f) to read as follows:

* * * * *

Item 7. * * *

* * * * *

(f) Describe the types of operating expenses for which the Registrant is responsible. If organizational expenses of the Registrant are to be paid out of its assets, explain how the expenses will be amortized and the period over which the amortization will occur.

* * * * *

6. By adding a new Guideline 37 to Form N–3 as follows:

Guide 37. Fee Table

Item 3 requires inclusion of a fee table in the front of the prospectus. The amounts listed in the Example should represent cumulative expenses. Therefore, the Registrant should aggregate any sales load or other fee deducted from payments, together with cumulative annual expenses, and any sales load or other fee deducted upon surrender. The Registrant may compute annual expenses by multiplying average annual assets of the hypothetical $1,000 account for each year by total annual expenses (a percentage taken from the second part of the table). Compute the account's average annual assets by adding the beginning account value to the ending account value and dividing by two. Determine the ending account value by multiplying the beginning account value by the assumed growth rate less total annual expenses (5%−X%) and adding the result to the beginning account value. Determine the beginning account value in the first year by subtracting the maximum amount of any sales load deducted from payments from the hypothetical $1,000 payment; in each subsequent year, the beginning account value is the previous year's ending account value.

* * * * *

7. By amending General Instructions for Parts A and B by revising paragraphs 1 and 4(a), of General Instruction I of Form N–4, described in §§ 230.17b and 274.11c, to read as follows:

§ 274.11c Form N–4, registration statement of separate accounts organized as unit investment trusts.

* * * * *

I. Preparation of the Registration Statement or Amendment.

* * * * *

General Instructions for Parts A and B

1. The information in the prospectus and the Statement of Additional Information should be organized to make it easy to understand the organization and operation of the Registrant and the variable annuity contracts. The information need not be in any particular order, with the exception that Items 1, 2, 3, and 4(a) must be in numerical order in the prospectus and may not be preceded or separated by any other item.

* * * * *

4. * * *

(a). A Registration Statement on this Form may include any chart, graph, or table that is not misleading; however, with the exception of the fee table and the table of contents (required by Rule 481(c) [17 CFR 230.481(c)] under the 1933 Act), no chart, graph, or table should precede the condensed financial information specified in Item 4(a).

* * * * *

8. By redesignating current paragraphs (a), (b), and (c) of Item 3 of Form N–4 as (b), (c), and (d), adding a new paragraph (a) to Item 3, and revising redesignated paragraph (b) as follows:

* * * * *

Item 3. Synopsis

(a) Include a table furnishing the following information, using the captions provided, in the format illustrated below:

Contractowner Transaction Expenses:
- Sales load imposed on purchases (as a percentage of purchase payments) ____%
- Deferred sales load (as a percentage of purchase payments or amount surrendered, as applicable) ____%
- Surrender fees (as a percentage of amount surrendered, if applicable) ____%
- Exchange Fee ____%

[Annual] Contract Fee ____

Separate Account Annual Expenses (as a percentage of average account value):
- Mortality and expense risk fees ____%
- Account fees and expenses ____%
- Total Separate Account Annual Expenses ____%

[Portfolio Company] Annual Expenses (as a percentage of [portfolio company] average net assets):
- Management fees ____%
- Other expenses ____%
- ____ ____%
- ____ ____%
- ____ ____%
- Total [portfolio company] annual expenses ____%

Example	1 year	3 years	5 years	10 years
If you surrender your contract at the end of the applicable time period: You would pay the following expenses on a $1,000 investment, assuming 5% annual return on assets	$	$	$	$
If you annuitize at the end of the applicable time period: You would pay the following expenses on a $1,000 investment, assuming 5% annual return on assets	$	$	$	$
If you do *not* surrender your contract: You would pay the following expenses on a $1,000 investment, assuming 5% annual return on assets	$	$	$	$

Instructions:

General Instructions

1. Immediately after the table, provide a brief narrative explaining that the purpose of the table is to assist the contractowner in understanding the various costs and expenses that a contractowner will bear directly or indirectly, and that the table reflects expenses of the separate account as well as the portfolio company. Include, where appropriate, cross-references to the relevant sections of the prospectus and a cross-reference to the portfolio company prospectus for more complete descriptions of the various costs and expenses. Disclose that premium taxes may be applicable.

2. Assume that the annuity contract is owned during the accumulation period for purposes of the table (including the Example). If an annuitant would pay different fees or be subject to different expenses, disclose this in the brief narrative and provide a cross-reference to those portions of the prospectus describing these fees.

3. If a particular caption is not applicable to the Registrant, the caption may be omitted from the table.

4. Round all dollar figures to the nearest dollar and all percentages to the nearest hundredth of one percent.

5. If the Registrant has sub-accounts, list separately the data for each sub-account.

6. Provide a separate fee table (or separate column within the table) for each contract form offered by the prospectus that has different fees. If a Registrant uses one prospectus to offer a contract in both the group and individual variable annuity contract markets, the Registrant may a) add narrative disclosure following the fee table identifying markets where certain fees are either inapplicable or waived or lower fees charged to contractowners in group markets, or b) provide a separate fee table for group and individual contracts.

[Annual] Contract Fee

7. "[Annual] Contract Fee" includes any contract, account, or similar fee imposed on all contractowner accounts on any recurring basis.

Contractowner Transaction Expenses

8. "Sales Load Imposed on Purchase Payments" includes the maximum sales load imposed upon purchase payments and may include a tabular presentation, within the larger table, of the range of such sales loads.

9. "Deferred Sales Load" includes the maximum contingent deferred sales load, expressed as a percentage of the original purchase price or amount surrendered, and may include a tabular presentation, within the larger table, of the range of contingent deferred sales loads over time.

10. "Surrender fee" includes any fee charged for any surrender or partial surrender, but does not include any sales load charged upon surrender or partial surrender.

11. "Exchange Fee" includes the maximum fee charged for any exchange or transfer of account value from the Registrant to another investment company or from one sub-account of the Registrant to another sub-account or the insurance company's general account. The Registrant may include a tabular presentation of the range of exchange fees unless such a presentation would be so lengthy as to encumber the larger table, in which case the Registrant should only provide a cross-reference to the narrative portion of the prospectus discussing the exchange fee.

12. If the Registrant (or any other party pursuant to an agreement with the Registrant) charges any other transaction fee, add another caption describing it and list the (maximum amount or basis on which the fee is deducted.

Separate Account Annual Expenses

13. "Mortality and Expense Risk Fees" may be listed separately on two lines in the table.

14. "Account Fees and Expenses" include all fees and expenses (except sales loads and mortality and expense risk fees) that are deducted from separate account assets or charged to all contractowner accounts. The Registrant may subdivide the caption into no more than three subcategories of the Registrant's choosing, but must also include a total of all "Other Account Fees."

Portfolio Company Annual Expenses

15. The Registrant may substitute the term used in the prospectus to refer to the portfolio companies for the bracketed portion of the caption provided.

16. "Management Fees" include investment advisory fees (including any component thereof on the performance of the portfolio company), any other management fees payable by the portfolio company to the investment adviser or its affiliates, and administrative fees payable to the investment adviser or its affiliates not included as "Other Expenses."

17. "Other Expenses" include all expenses (except brokerage commissions and other capital items, and management fees) that are deducted from portfolio company assets.

(a) "Other expenses" do not include extraordinary expenses as determined by use of generally accepted accounting principles (*see* Accounting Principles Board Opinion No. 30). If extraordinary expenses were incurred that materially affected the portfolio company's "Other Expenses," the Registrant should disclose in the narrative following the table what the "Other Expenses" would have been had extraordinary expenses been included.

(b) The Registrant may subdivide this caption into no more than three subcategories of the Registrant's choosing, but must also include a total of all "Other Expenses."

18. Except as provided in (a) or (b) below, the percentages expressing annual expenses should be based on amounts incurred during the most recent fiscal year. If the portfolio company has a fiscal year different from that of the Registrant, base the expenses on those incurred during either the period that corresponds to the fiscal year of the Registrant, or the most recently completed fiscal year of the portfolio company.

(a) A New Registrant (or a Registrant on behalf of a new portfolio company) should state the basis on which payments will be made, except that "Other Expenses" should be estimated and stated (after any expense reimbursement or waiver) as a percentage of net assets. Disclose in the narrative following the table that "Other Expenses" is based on estimated amounts for the current fiscal year. A New Registrant, for purpose of this instruction and Instructions 20(b), 21(e) and 21(f), is a Registrant (or sub-account of the Registrant) the prospectus of which either (i) does not include financial statements reporting operating results as a registered investment company, or (ii) includes financial statements for the initial fiscal year of the Registrant that report operating results as a registered investment company for a period of less than ten months.

(b) If the Registrant or the portfolio company has changed its fiscal year, and as a result of the most recent fiscal year is less than three months, the Registrant should use the fiscal year prior to the most recent fiscal year as basis for determining annual fund operating expenses.

19. If there have been any changes in the annual expenses that would materially affect the information disclosed in the table:

(a) Restate the expense information using the current fees that would have been applicable had they been in effect during the previous fiscal year; and

(b) In the narrative following the table, disclose that the expense information in the table has been restated to reflect current fees.

A change in annual expenses means either an increase or a decrease in expenses that occurred during the most recent fiscal year or that is expected to occur during the current fiscal year. It includes the elimination of any expense reimbursement or fee waiver arrangement, in which case the expenses that would have been incurred had there been no reimbursement or waiver should be listed, but does not include circumstances where separate account expenses decrease in relation to the size of the separate account or portfolio company so as to make any waiver or reimbursement arrangement inoperative. An expected decrease in expenses as a percentage of assets due to economies of scale or breakpoints in a fee arrangement for a portfolio company whose assets have increased is an example of a change that should not be treated as a change requiring restatement.

20. (a) If there were expense reimbursement or fee waiver arrangements that reduced any operating expenses and will continue to reduce them in the current fiscal year: (i) revise the appropriate caption by adding "After Expense Reimbursement" or some similar phrase; (ii) state the amount of actual expenses incurred, (*i.e.*, net of the amount reimbursed or waived); and (iii) disclose in the narrative following the table the amount the expenses would have been absent the reimbursement or waiver.

(b) If there are expense reimbursement or waiver arrangements that are expected to reduce any operating expense or the estimate or "Other Expenses," a New Registrant should (i) revise the appropriate caption by adding "After Expense Reimbursements" or some similar phrase' (ii) state the amount of actual expenses expected to be incurred or the actual estimate (*i.e.*, net of the amount expected to be reimbursed or waived); and (iii) disclose in the narrative following the table what the expenses (or estimates) would have been absent the reimbursement or waiver.

Example

21. For purposes of the Example in the table:

(a) Assume that the percentage amounts listed under "Separate Account Annual Expenses" and "Portfolio Company Annual Expenses" remain the same in each year of the one-, three-, five-, and ten-year periods, except that appropriate adjustment to reflect reduced annual expenses from completion of organization expense amortization may be made;

(b) Assume the maximum sales load that may be deducted from purchase payments is deducted;

(c) For the purposes of any breakpoint in any fee, assume that the amount of the

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Registrant's (and the portfolio company's) assets remains constant at the level at the end of the most recently completed fiscal year;

(d) Assume no exchange or other transactions;

(e) Reflect any [annual] contract fee by dividing the total amount of [annual] contract fees collected during the year that are attributable to the contract offered by the prospectus by the total average net assets of all the sub-accounts in the separate account that are attributable to the contract offered by the prospectus. Add the resulting percentage to "Annual Expenses," and assume that it remains the same in each year of the one-, three-, five-, and ten-year periods. New Registrants should estimate [annual] contract fees collected;

(f) A New Registrant should complete only the one- and three-year period portions of the Example;

(g) Reflect any contingent deferred sales load by assuming a complete surrender on the last day of the year;

(h) Provide the information required in the third section of the Example only if a sales load or other fee is charged upon a complete surrender;

(i) Prominently disclose that the Example should not be considered a representation of past or future expenses and that actual expenses may be greater or lesser than those shown; and

[j] Include in the Example the information provided by the caption "If you annuitize at the end of the applicable time period" only if the Registrant charges fees upon annuitization that are different from those charged upon surrender.

(b) The Registrant should include a synopsis of information contained in the prospectus when the prospectus is long or complex, except that the fee table must be included in all prospectuses. Normally, a synopsis should not be provided where the prospectus is twelve printed pages or less.

* * * * *

9. By amending Item 6 of Form N–4 by removing paragraph (e), redesignating paragraphs (f) and (g) as paragraphs (e) and (f), and revising redesignating paragraph (f) to read as follows:

* * * * *

Item 6. * * *

* * * * *

(f) Describe the type of operating expenses for which the Registrant is responsible. If organizational expenses of the Registrant are to be paid out of its assets, explain how the expenses will be amortized and the period over which the amortization will occur.

* * * * *

10. By adding a new Guideline 13 to Form N–4 as follows:

Guide 13. Fee Table

Item 3 requires inclusion of a fee table in the front of the prospectus. The amounts listed in the Example should represent cumulative expenses. Therefore, the Registrant should aggregate any sales load or other fee deducted from payments, together with cumulative annual expenses, and any sales load or other fee deducted upon surrender. The Registrant may compute annual expenses by multiplying average annual assets of the hypothetical $1,000 account for each year by total annual expenses (a percentage taken from the second part of the table). Compute the account's average annual assets by adding the beginning account value to the ending account value and dividing by two. Determine the ending account value by multiplying the beginning account value by the assumed growth rate less total annual expenses (5%−X%) and adding the result to the beginning account value. Determine the beginning account value in the first year by subtracting the maximum amount of any sales load deducted from payments from the hypothetical $1,000 payment; in each subsequent year, the beginning account value is the previous year's ending account value.

By the Commission.

Jonathan G. Katz,

Secretary.

January 23, 1989.

[FR Doc. 89–2088 Filed 1–30–89; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 12

[T.D. 89–20]

Customs Regulation Amendment Imposing Import Sanctions Against the Toshiba Machine Co. and the Kongsberg Trading Co.

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Interim rule; solicitation of comments.

SUMMARY: This document amends the Customs Regulations to implement the import sanctions against products produced by the Toshiba Machine Company ("Toshiba") and the Kongsberg Trading Company ("Kongsberg") imposed by Executive Order No. 12661, pursuant to section 2443(a)(2) of the Omnibus Trade and Competitiveness Act of 1988 ("the Act"). Executive Order No. 12661 imposed a 3 year import prohibition, subject to certain exceptions, on products of Toshiba and Kongsberg. This document also contains a list of the exemptions from the sanctions and provides guidance to importers to whom the exemptions apply. Although the regulations will become effective upon publication in the **Federal Register**, comments from members of the public will be reviewed and considered prior to the publication of a final rule.

DATES: Interim rule effective January 31, 1989; comments must be received by April 3, 1989.

ADDRESS: Written comments (preferably in triplicate) concerning the rule should be submitted to and inspected at the Regulations and Disclosure Law Branch, U.S. Customs Service Headquarters, Room 2119, 1301 Constitution Avenue NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Kenneth Paley, Office of Regulations and Rulings, Commercial Rulings Division, United States Customs Service, at 202–566–5856.

SUPPLEMENTARY INFORMATION:

Background

Section 2443(a)(2) of the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100–418) ("the Act") requires the President to impose, for a period of 3 years, a prohibition on the importation into the United States of all products produced by the Toshiba Machine Company (Toshiba), the Kongsberg Trading Company (Kongsberg), and any other foreign person whom the President finds to have knowingly facilitated the diversion of advanced milling machinery and technology to the Soviet Union by Toshiba and Kongsberg. The President has issued Executive Order No. 12661, which announces the imposition of the sanctions required by section 2443(a)(2). These regulations are being adopted to implement the Executive Order.

Section 2443(a)(2) requires the President to prohibit the importation of products produced by Toshiba and Kongsberg. However, in order to prevent undue hardship to U.S. national security interests and minimize the collateral impact of sanctions on U.S. companies, exemptions were provided for a wide range of transactions. The regulations implement the import prohibition and provide necessary definitions and procedures whereby parties can import products exempted from the sanctions.

Comments

These interim regulations are effective immediately upon publication in the **Federal Register**. Such action is necessary to implement the sanctions made effective by the Executive Order. However, before adopting these interim regulations as a final rule, consideration will be given to any written comments (preferably in triplicate) timely submitted. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on normal business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations and Disclosure Law Branch, Customs Service Headquarters, Room 2119, 1301 Constitution Avenue NW., Washington, DC 20229.

Inapplicability of Notice And Delayed Effective Date

The effective date of the import sanctions imposed by Executive Order No. 12201 is December 28, 1988. In order to implement the import sanctions it is necessary that these regulations be effective on the date of publication. Accordingly, it is determined, pursuant to 5 U.S.C. 553(b)(B), that notice is impracticable. For the same reason, pursuant to 5 U.S.C. 553(d)(3), it is determined to dispense with a delayed effective date. In addition, notice is not necessary since these regulations involve a foreign affairs function. However, before adopting final regulations, consideration will be given to all written comments timely submitted.

Executive Order 12291

Because this amendment involves a foreign affairs function, it is not subject to E.O. 12291.

The Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for interim regulations, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*), do not apply.

Paperwork Reduction Act

This regulation is being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in this regulation has been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget (OMB) under control number 1515–0166.

Comments concerning the collection of information and the accuracy of estimated average annual burden, and suggestions for reducing the burden should be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for Customs.

The collection of information in this section is in § 12.143. This information is required by the U.S. Customs Service in order to properly determine the validity of claimed exemptions from the import sanctions imposed by § 12.140. This information will be used by the U.S. Customs Service to ensure that products being imported are, in fact, the products to which the exemptions apply. The likely respondents are business or other for-profit institutions, State and local governments, and Federal agencies.

Estimated total annual reporting and/or recordkeeping burden: 1,125 hours.

Estimated number of respondents: 2500.

Estimated annual frequency of responses: 1.

Drafting Information

The principal author of this document was Peter T. Lynch, Regulations and Disclosure Law Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 12

Customs duties and inspection.

Amendments to the Regulations

Part 12, Customs Regulations (19 CFR Part 12), is amended as set forth below:

PART 12—SPECIAL CLASSES OF MERCHANDISE

1. The authority citation for Part 12 continues to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (Gen. Hdnote 11, Tariff Schedules of the United States), 1624.

§§ 12.140–12.144 also issued under section 2443 of the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100–418).

2. Part 12, Customs Regulations (19 CFR Part 12) is amended by adding a new center heading entitled "Sanctions Against Toshiba Machine Company and Kongsberg Trading Company", which heading shall appear immediately before new, added §§ 12.140–12.144 as set forth below.

Part 12—Sanctions Against Toshiba Machine Company and Kongsberg Trading Company

Sec.

12.140 Applicability, Prohibited importations.
12.141 Exceptions.
12.142 Definitions.
12.143 Procedures for excepted products.

§ 12.140 Applicability, prohibited importations.

Except as otherwise provided by these regulations, the importation into the United States of products produced by Toshiba Machine Company (Toshiba) or Kongsberg Trading Company (Kongsberg) is prohibited for a period of three years following [effective date of Executive Order].

§ 12.141 Exceptions.

The prohibition contained in Section 12.140 shall not apply to:

(a) Products provided under contracts or other binding agreements entered into before June 30, 1987;

(b) Spare parts;

(c) Component parts, but not finished products, essential to United States products or production;

(d) Routine servicing and maintenance of products;

(e) Information and technology; and

(f) Excepted defense articles.

§ 12.142 Definitions.

For the purposes of these regulations:

(a) The term "products produced by Toshiba or Kongsberg" means products manufactured or produced by Toshiba, Kongsberg, their successors or assigns, or any other entity directly or indirectly owned or controlled by any of the foregoing, provided that such products are not subsequently substantially transformed by another party.

(b) The term "contracts or other binding agreements entered into before June 30, 1987" means:

(1) Written obligations entered into before June 30, 1987, and performed or to be performed on or after June 30, 1987, that require the purchase for delivery in the United States of products to which the prohibitions contained in Section 12.140 would otherwise apply, and that are without condition or qualification other than as provided by force majeure clauses or similar clauses;

(2) With respect to used products imported by or for the primary user, written obligations performed before June 30, 1987, whether or not they provide for delivery in the United States; and

(3) Agreements under which:

(i) Products are designed to a purchaser's specifications and marketed in the United States under the purchaser's trademark, brand, or name; and

(ii) The purchaser clearly documents a pattern of trade that began before June 30, 1987, and continued to the time of the importation.

For purposes of these regulations, no contract or other binding agreement may exist between Toshiba or Kongsberg and any entity directly or indirectly owned or controlled by Toshiba, Kongsberg, or by any parent or subsidiary of Toshiba or Kongsberg.

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(c) The term "spare part" means any individual piece, part, or subassembly which is intended for the logistic support or repair of a finished product and not as a finished product itself.

(d) The term "component parts" means any article which is not usable for its intended functions without being imbedded in or integrated into any other product and which, if used in the production of a finished product, would be substantially transformed in that process.

(e) The term "finished product" means any article which is usable for its intended function without being imbedded or integrated into any other product, but in no case shall such term be deemed to include an article produced by a person other than Toshiba or Kongsberg that contains parts or components produced by Toshiba or Kongsberg if the parts and components have been substantially transformed during their production of the finished product.

(f) An article is "substantially transformed" when, by means of a substantial manufacturing or processing operation, the article is converted or combined into a new and different article of commerce having a new name, character and use.

(g) The term "essential to United States products or production" with respect to component parts means component parts which are produced by Toshiba, Kongsberg, or both, that are necessary for the manufacture or processing of United States products, and for which there is no suitable alternative. The term "suitable alternative" refers to an article (1) that can be substituted for an article produced by Toshiba or Kongsberg, (2) that will perform the same functions or is capable of the same use, and (3) is available at a competitive price.

(h) The term "routine servicing and maintenance" means customary servicing and maintenance, including repairs or installation of spare parts or component parts. The term shall also include the temporary importation of tools and equipment necessary to perform such servicing or maintenance, as well as reimportation of products exported for routine servicing and maintenance.

(i) The term "information and technology" includes plans, drawings, and other written and pictorial data in any form or medium, and personal transmissions of any of the foregoing. The term shall also include component parts, finished products, or other articles to which these prohibitions would otherwise apply if temporarily imported under the provisions of item 864.30 of the Tariff Schedules of the United States (subheading 9813.00.30 of the Harmonized Tariff Schedule of the United States) solely to demonstrate such technology and which are thereafter exported.

(j) The term "excepted defense articles" means any defense article, as defined in section 47 of the Arms Export Control Act (22 U.S.C. 2794), that the Secretary of Defense or his designee certifies:

(1) Are procured under existing contracts or subcontracts, including exercise of options for production quantities to satisfy United States operational military requirements;

(2) Are essential defense articles of which Toshiba or Kongsberg is a sole-source supplier and for which no alternative supplier can be identified; or

(3) Are essential to the national security under defense coproduction agreements.

(k) The term "United States" includes its territories and possessions

§ 12.143 Procedures for exempted products.

Importers of products of Toshiba or Kongsberg under any of the exceptions set forth above in § 12.141, shall file with the U.S. Customs Service, at the time of making entry, a declaration setting forth a complete statement of the exception under which such article is imported, including a copy of any certification provided by the Secretary of Defense or his designee pursuant to § 12.142. An importer of articles claimed to be exempt as "component parts" pursuant to § 12.141 shall file with the U.S. Customs Service, at the time of making entry, a certificate that such importer has made reasonable efforts to obtain a suitable alternative. Such reasonable efforts may include (1) open and public solicitations of known suppliers, or (2) advertising in appropriate trade journals or periodicals of general circulation. Importers shall also provide any other information or documentation deemed necessary by Customs to determine the admissibility of the articles in question.

William von Raab,

Commissioner of Customs

Approved: January 25, 1989.

Salvatore R. Martoche,

Assistant Secretary of the Treasury

[FR Doc. 89-2190 Filed 1-30-89; 8:45 am]

BILLING CODE 4820-02-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6822]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule lists communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If FEMA receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the Federal Register.

EFFECTIVE DATES: The third date ("Susp.") listed in the fourth column.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646-2717, Federal Center Plaza, 500 C Street, Southwest, Room 416, Washington, DC 20472

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022), prohibits flood insurance coverage as authorized under the National Flood Insurance Program (42 U.S.C. 4001-4128) unless an appropriate public body shall have adopted adequate floodplain management measures with effective enforcement measures. The communities listed in this notice no longer meet that statutory requirement for compliance with program regulations (44 CFR Part 59 et. seq.). Accordingly, the communities will be suspended on the effective date in the fourth column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the Federal Register. In the interim, if you wish to determine if a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the fifth column of the table. No direct Federal financial assistance (except assistance pursuant to the Disaster Relief Act of 1974 not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas. (Section 202(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Administrator finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified. Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. For the same reasons, this final rule may take effect within less than 30 days.

Pursuant to the provision of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, FEMA, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. As stated in Section 2 of the Flood Disaster Protection Act of 1973, the establishment of local floodplain management together with the availability of flood insurance decreases the economic impact of future flood losses to both the particular community and the nation as a whole. This rule in and of itself does not have a significant economic impact. Any economic impact results from the community's decision not to (adopt) (enforce) adequate floodplain management, thus placing itself in noncompliance of the Federal standards required for community participation. In each entry, a complete chronology of effective dates appears for each listed community.

List of Subjects in 44 CFR Part 64

Flood insurance—floodplains.

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 et. seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

§ 64.6 List of eligible communities.

State and location	Community number	Effective dates of authorization/ cancellation of sale of flood insurance in community	Current effective map date	Date certain federal assistance no longer available in special flood hazard areas
Region III				
Pennsylvania: Deer Lake, Borough of, Schuylkill County.	422840	Jan. 22, 1976, Emerg.; Feb. 2, 1989, Reg.; Feb. 2, 1989, Susp.	Feb. 2, 1989	Feb. 2, 1989.
Kidder, Township of, Carbon County	421453	Aug. 29, 1975, Emerg.; Feb. 2, 1989, Reg.; Feb. 2, 1989, Susp.	Feb. 2, 1989	Do.
Penn Forest, Township of, Carbon County.	421457	July 9, 1976, Emerg.; Feb. 2, 1989, Reg.; Feb. 2, 1989, Susp.	Feb. 2, 1989	Do.
Ruscombmanor, Township of, Berks County.	421099	Aug. 6, 1975, Emerg.; Feb. 2, 1989, Reg.; Feb. 2, 1989, Susp.	Feb. 2, 1989	Do.
Westfall, Township of, Pike County	421970	July 30, 1975, Emerg.; Feb. 2, 1989, Reg.; Feb. 2, 1989, Susp.	Feb. 2, 1989	Do.
Region IV				
Kentucky: Carrollton, City of, Carroll County.	210232	Mar. 20, 1975, Emerg.; Sept. 4, 1985, Reg.; Feb. 2, 1989, Susp.	Feb. 2, 1989	Do.
North Carolina: Cherokee County, Unincorporated Areas.	370059	July 18, 1979, Emerg.; Feb. 2, 1989, Reg.; Feb. 2, 1989, Susp.	Feb. 2, 1989	Do.
Region V				
Indiana: Waterloo, Town of, Dekalb County.	180050	Mar. 6, 1975, Emerg.; Sept. 4, 1985, Reg.; Feb. 2, 1989, Susp.	Feb. 2, 1989	Do.
Michigan: Victor, Township of, Clinton County.	260720	May 11, 1981 Emerg.; Feb. 2, 1989, Reg.; Feb. 2, 1989, Susp.	Feb. 2, 1989	Do.
Wisconsin: Grantsburg, Village of, Burnett County.	550033	May 14, 1975 Emerg.; Feb. 2, 1989, Reg.; Feb. 2, 1989, Susp.	Feb. 2, 1989	Do.
Region I				
Maine: Lovell, Town of, Oxford County	230336	July 15, 1975 Emerg.; Feb. 17, 1989, Reg.; Feb. 17, 1989, Susp.	Feb. 17, 1989	Feb. 17, 1989.
Wilton, Town of, Franklin County	230083	June 11, 1975, Emerg.; Feb. 17, 1989, Reg.; Feb. 17, 1989, Susp.	Feb. 17, 1989	Do.

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State and location	Community number	Effective dates of authorization/ cancellation of sale of flood insurance in community	Current effective map date	Date certain federal assistance no longer available in special flood hazard areas
Vermont: Hartford, Town of, Windsor County.	500148	Feb. 11, 1972, Emerg.; July 2, 1979, Reg.; Feb. 17, 1989, Susp.	Feb. 17, 1989	Do.
Region II				
New York: Duanesburg, Town of, Schenectady County.	361191	Sept. 15, 1975 Emerg.; Feb. 17, 1989, Reg.; Feb. 17, 1989, Susp.	Feb. 17, 1989	Do.
Region III				
Pennsylvania: Brady, Township of, Huntingdon County.	421884	Nov. 26, 1975, Emerg.; Feb. 17, 1989, Reg.; Feb. 17, 1989, Susp.	Feb. 17, 1989	Do.
Burgettstown, Borough of, Washington, County.	420847	Feb. 18, 1976 Emerg.; Feb. 17, 1989, Reg.; Feb. 17, 1989, Susp.	Feb. 17, 1989	Do.
Fallowfield, Township of, Washington, County.	422148	Oct. 15, 1975, Emerg.; Feb. 17, 1989, Reg.; Feb. 17, 1989, Susp.	Feb. 17, 1989	Do.
Franklin, Township of, Greene County	422595	Feb. 7, 1977, Emerg.; Feb. 17, 1989, Reg.; Feb. 17, 1989, Susp.	Feb. 17, 1989	Do.
Franklin, Township of, Huntingdon County.	422573	Mar 23, 1977 Emerg.; Feb. 17, 1989, Reg.; Feb. 17, 1989, Susp.	Feb. 17, 1989	Do.
Greenwich, Township of, Berks County.	421087	Aug. 21, 1975, Emerg.; Feb. 17, 1989, Reg.; Feb. 17, 1989, Susp.	Feb. 17, 1989	Do.
Juniata, Township of, Huntingdon, County.	421892	Feb. 4, 1976 Emerg.; Feb. 17, 1989, Reg.; Feb. 17, 1989, Susp.	Feb. 17, 1989	Do.
Lenhartsville, Borough of, Berks County.	420139	Aug. 25, 1975, Emerg.; Feb. 17, 1989, Reg.; Feb. 17, 1989, Susp.	Feb. 17, 1989	Do.
Maryland: Sharptown, Town of, Wicomico County.	240081	Aug. 15, 1973, Emerg.; Sept. 27, 1988, Reg.; Feb. 17, 1989, Susp.	Sept. 27, 1988	Do.
Region IV				
North Carolina: Lumberton, City of, Robeson County.	370209	Mar. 5, 1975, Emerg.; Nov. 6, 1980, Reg.; Feb. 17, 1989, Susp.	Feb. 17, 1989	Do.
Region V				
Michigan: Lockport, Township of, St. Joseph County.	260715	Aug. 30, 1982, Emerg.; Feb. 17, 1989, Reg.; Feb. 17, 1989, Susp.	Feb. 17, 1989	Do.
Ohio: Byesville, Village of, Guernsey County.	390199	June 17, 1975, Emerg.; Feb. 17, 1989, Reg.; Feb. 17, 1989, Susp.	Feb. 17, 1989	Do.
Guernsey County, Unincorporated Areas.	390198	Mar. 22, 1976, Emerg.; Feb. 17, 1989, Reg.; Feb. 17, 1989, Susp.	Feb. 17, 1989	Do.
Lore City, Village of, Guernsey County	390202	Mar. 25, 1976, Emerg.; Feb. 17, 1989, Reg.; Feb. 17, 1989, Susp.	Feb. 17, 1989	Do.
Quaker City, Village of, Guernsey County.	390853	Aug. 29, 1980, Emerg.; Feb. 17, 1989, Reg.; Feb. 17, 1989, Susp.	Feb. 17, 1989	Do.
Cambridge, City of, Guernsey County	390200	July 10, 1975, Emerg.; July 10, 1975, Reg.; Feb. 17, 1989, Susp.	Feb. 17, 1989	Do.
Region X				
Oregon: Moiser, City of, Wasco County	410234	July 25, 1975, Emerg.; Feb. 17, 1989, Reg.; Feb. 17, 1989, Susp.	Feb. 17, 1989	Do.

Code of reading fourth column:

Emerg.—Emergency
Reg.—Regular
Susp.—Suspension

Harold T. Duryee,
Administrator, Federal Insurance Administration.

[FR. Doc. 89-2174 Filed 1-30-89; 8:45 am]
BILLING CODE 6718-21-M

NATIONAL SCIENCE FOUNDATION

45 CFR Part 606

Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the National Science Foundation

AGENCY: National Science Foundation.

ACTION: Final rule.

SUMMARY: This regulation provides for the enforcement of section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination on the basis of handicap, as it applies to programs or activities conducted by the National Science Foundation (NSF). This regulation does not apply to recipients of financial assistance from NSF or to programs or activities that receive a benefit from such assistance because those matters are covered by NSF regulations at 45 CFR Part 605. It sets forth standards for what constitutes discrimination on the basis of mental or physical handicap, provides definitions for "individual with handicaps" and "qualified individual with handicaps," and establishes a complaint mechanism for resolving allegations of discrimination.

EFFECTIVE DATE: April 3, 1989.

ADDRESSES: Comments received on the Notice of Proposed Rulemaking will be available for public inspection in the Office of Equal Opportunity, NSF, 1800 G Street, NW., Washington, DC, between the hours of 8:30 a.m. and 5:00 p.m., Monday through Friday except legal holidays until April 3, 1989. Copies of this regulation are available on cassette tapes for persons with impaired vision. They may be obtained from the address below.

FOR FURTHER INFORMATION CONTACT: Dr. Brenda M. Brush, Director, Office of Equal Opportunity, National Science Foundation, 1800 G Street, NW., Washington, DC 20550, Telephone (202) 357–9619 (Voice), (202) 357–9867 (TDD).

SUPPLEMENTARY INFORMATION:

Background

The purpose of this rule is to provide for the enforcement of section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), as it applies to programs and activities conducted by the National Science Foundation. Section 504 of the Rehabilitation Act of 1973 states that:

> No otherwise qualified individual with handicaps in the United States, * * * shall, solely by reason of his handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance *or under any program or activity conducted by any Executive agency or by the United States Postal Service. The head of each such agency shall promulgate such regulations as may be necessary to carry out the amendments to this section made by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978. Copies of any proposed regulation shall be submitted to appropriate authorizing committees of Congress, and such regulation may take effect no earlier than the thirtieth day after the date on which such regulation is so submitted to such committees.*
>
> (29 U.S.C. 794 (1978 amendment italicized).)

On April 4, 1988, the Foundation published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register**, 53 FR 10896. The period for receiving public comment expired on June 3, 1988. The Foundation received a total of two comments from national interest organizations and one from an individual. After analysis of these comments, the Foundation decided to adopt this final rule.

Section 504 requires that regulations that apply to the programs and activities of Federal Executive agencies shall be submitted to the appropriate authorizing committees of Congress and that such regulations may take effect no earlier than the thirtieth day after they have been so submitted. The Foundation is submitting these regulations to the Senate Committee on Labor and Human Resources and its Subcommittee on the Handicapped and to the House Committee on Education and Labor and its Subcommittee on Select Education. The regulation will become effective on April 3, 1989.

The substantive nondiscrimination obligations of the Foundation, as set forth in this rule, are virtually identical to those established by Federal regulations for programs or activities receiving Federal financial assistance. (*See* 28 CFR Part 41 (section 504, coordination regulations for federally assisted programs).) This general parallelism is in accord with the intent expressed by supporters of the 1978 amendment in floor debate, including its sponsor, Rep. James M. Jeffords, that the Federal Government should have the same section 504 obligations as recipients of Federal financial assistance. 124 *Cong. Rec.* 13,901 (1978) (remarks of Rep. Jeffords); 124 *Cong. Rec.* E2668, E2670 (daily ed. May 17, 1978) *id.*; 124 *Cong. Rec.* 13,697 (remarks of Rep. Brademas); *id.* at 38,552 (remarks of Rep. Sarasin).

Two commenters objected to language differences between this rule and the Federal Government's section 504 regulations for federally assisted programs. As explained in the preamble to the proposed rule, these changes are based on the Supreme Court's decision in *Southeastern Community College v. Davis*, 442 U.S. 397 (1979), and the subsequent circuit court decisions interpreting *Davis* and section 504. *See Dopico v. Goldschmidt*, 687 F.2d 644 (2d Cir. 1982); *American Public Transit Association v. Lewis*, 655 F.2d 1272 (D.C. Cir. 1981) (*APTA*); *see also Rhode Island Handicapped Action Committee v. Rhode Island Public Transit Authority*, 718 F.2d 490 (1st Cir. 1983).

These language differences are also supported by the recent decision of the Supreme Court in *Alexander v. Choate*, 469 U.S. 287 (1985), where the Court held that the regulations for federally assisted programs did not require a recipient to modify its durational limitation on Medicaid coverage of inpatient hospital care for handicapped persons. Clarifying its *Davis* decision, the Court explained that section 504 requires only "reasonable" modifications, *id.* at 300, and explicitly noted that "[t]he regulations implementing section 504 [for federally assisted programs] are consistent with the view that *reasonable* adjustments in the nature of the benefit offered must at times be made to assure meaningful access." *Id.* at 301 n.21 (emphasis added).

Incorporation of these changes, therefore, makes this regulation implementing section 504 for federally conducted programs consistent with the Federal Government's section 504 regulations implementing section 504 for federally assisted programs as they have been interpreted by the Supreme Court. Many of these federally assisted regulations were issued prior to the interpretations of section 504 by the Supreme Court in *Davis*, by lower courts interpreting *Davis*, and by the Supreme Court in *Alexander*; therefore their language does not reflect the interpretation of section 504 provided by the Supreme Court and by the various circuit courts. Of course, these federally assisted regulations must be interpreted to reflect the holdings of the Federal judiciary. Hence the Foundation believes that there are no significant differences between this rule for federally conducted programs and the Federal Government's interpretation of section 504 regulations for federally assisted programs.

This regulation has been reviewed by the Department of Justice. This regulation is an adaptation of a prototype prepared by the Department of Justice under Executive Order 12250 (45 FR 72995, 3 CFR, 1980 Comp., p. 298) and distributed to Executive agencies. This regulation has also been reviewed by the Equal Employment Opportunity Commission under Executive Order 12067 (43 FR 28967, 3 CFR, 1978 Comp., p. 206).

It is not a major rule within the meaning of Executive Order 12291 (46 FR 13193, 3 CFR, 1981 Comp., p. 127) and therefore, a regulatory impact analysis has not been prepared.

This regulation does not have an impact on small entities. It is not, therefore, subject to the Regulatory Flexibility Act (5 U.S.C. 601–612).

Section-by-Section Analysis and Response to Comments

Section 606.1 Purpose

Section 606.1 states the purpose of the rule, which is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 2973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

Section 606.2 Application

The regulation applies to all programs or activities conducted by the

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Foundation but not programs or activities conducted by recipients of Federal financial assistance from the Foundation. Under this section, a federally conducted program or activity is, in simple terms, anything a Federal agency does. Aside from employment, there are two major categories of federally conducted programs or activities covered by this regulation: Those involving general public contact as part of ongoing Foundation operations and those directly administered by the Foundation for program beneficiaries and participants. Activities in the first category include communication with the public (telephone contacts, office walk-ins, or interviews) and the public's use of the Foundation's facilities. Activities in the second category include programs that provide Federal services or benefits. This regulation does not, however, apply to programs or activities conducted outside the United States that do not involve individuals with handicaps in the United States.

Section 606.3 Definitions

"Assistant Attorney General." "Assistant Attorney General" refers to the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

"Auxiliary aids." "Auxiliary aids" means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in and enjoy the benefits of the Foundation's programs or activities. The definition provides examples of commonly used auxiliary aids. Although auxiliary aids are required explicitly only by § 606.60(a)(1), they may also be necessary to meet other requirements of the regulation.

A commenter suggested that the requirement for auxiliary aids in aspects of the Foundation's program other than those covered by § 606.60(a)(1) should be specifically stated in the regulation. The Foundation believes that such a statement is unnecessary, because the regulation makes the obligation not to discriminate clear and thus requires the provision of auxiliary aids whenever they are necessary to meet that obligation. Two commenters suggested that "attendant services" should be included in the list of examples of auxiliary aids appearing in the definition. The Foundation believes that attendant services are generally personal in nature and that they are therefore generally not required.

"Complete complaint." "Complete complaint" is defined to include all the information necessary to enable the Foundation to investigate the complaint. The definition is necessary, because the 180-day period for the Foundation's investigation (*see* § 606.70(f)) begins when the Foundation receives a complete complaint.

"Facility." The definition of "facility" is similar to that in the section 504 coordination regulation for federally assisted programs (28 CFR 41.3(f)) except that the term "rolling stock or other conveyances" has been added. The other exception is that the phrase, "or interest in such property," has been deleted because the term "facility," as used in this regulation, refers to structures and not to intangible property rights. It should, however, be noted that the regulation applies to all programs and activities conducted by the Foundation regardless of whether the facility in which they are conducted is owned, leased, or used on some other basis by the Foundation. The term "facility" is used in §§ 606.50, 606.51, and 606.70(e).

"Individual with handicaps." The definition of "individual with handicaps" is identical to the definition of "handicapped person" appearing in the section 504 coordination regulation for federally assisted programs (28 CFR 41.31). Although section 103(d) of the Rehabilitation Act Amendments of 1986 changed the statutory term "handicapped individual" to "individual with handicaps," the legislative history of this amendment indicates that no substantive change was intended. Thus, although the term has been changed in the regulation to be consistent with the statute as amended, the definition is unchanged. In particular, although the term as revised refers to "handicaps" in the plural, it does not exclude persons who have only one handicap.

"Qualified individual with handicaps." The definition of "qualified individual with handicaps" is a revised version of the definition of "qualified handicapped person" appearing in the section 504 coordination regulations for federally assisted programs (28 CFR 41.32).

Paragraph (1) deviates from existing regulations for federally assisted programs because of intervening court decisions. It defines "qualified individual with handicaps" with regard to any program under which a person is required to perform services or to achieve a level of accomplishment. In such programs a qualified individual with handicaps is one who can achieve the purpose of the program without modifications in the program that the Foundation can demonstrate would result in a fundamental alteration in its nature. This definition reflects the decision of the Supreme Court in *Southeastern Community College v. Davis*, 442 U.S. 397 (1979). In that case, the Court ruled that a hearing-impaired applicant to a nursing school was not a "qualified handicapped person" because her hearing impairment would prevent her from participating in the clinical training portion of the program. The Court found that, if the program were modified so as to enable the respondent to participate (by exempting her from the clinical training requirements), "she would not receive even a rough equivalent of the training a nursing program normally gives." *Id.* at 410. It also found that "the purpose of [the] program was to train persons who could serve the nursing profession in all customary ways," *id.* at 413, and that the respondent would be unable, because of her hearing impairment, to perform some functions expected of a registered nurse. It therefore concluded that the school was not required by section 504 to make such modifications that would result in "a fundamental alteration in the nature of the program." *Id.* at 410.

We have incorporated the Court's language in the definition of "qualified individual with handicaps" in order to make clear that such a person must be able to participate in the program offered by the Foundation. The Foundation is required to make modifications in order to enable an applicant with handicaps to participate, but is not required to offer a program of a fundamentally different nature. The test is whether, with appropriate modifications, the applicant can achieve the purpose of the program offered; not whether the applicant could benefit or obtain results from some other program that the Foundation does not offer. Although the revised definition allows exclusion of some individuals with handicaps from some programs, it requires that an individual with handicaps who is capable of achieving the purpose of the program must be accommodated, provided that the modifications do not fundamentally alter the nature of the program.

Two commenters argued that this definition of "qualified individual with handicaps" was unnecessary, because *Davis* was an interpretation of the definition in paragraph (2), which requires only that the individual meet "the essential eligibility requirements" for participation in the program. The Foundation believes that *Davis* clarifies the meaning of "essential eligibility requirements" with respect to programs, such as the one at issue in that case, in which an individual "is required to perform services or to achieve a level of accomplishment." In such a program, the Court held in *Davis*, an individual is not qualified if he or she cannot achieve the purpose of the program without modifications that would fundamentally alter its nature. The Foundation believes that it is appropriate to reflect this clarification in the regulation.

A commenter also suggested that the rule rather than the preamble should address when modifications to a program must occur. The Foundation believes that the obligation to make appropriate modifications or adjustments to enable individuals with handicaps to participate in its programs is made sufficiently clear in the substantive provisions of the regulation, so that a reference to it in this definition is unnecessary.

The Foundation has the initial burden of demonstrating that a proposed modification would constitute a fundamental alteration in the nature of its program or activity. Furthermore, in demonstrating that a modification would result in such an alteration, the Foundation must follow the procedures established in § 606.51(a) and § 606.60(d), which are discussed below, for demonstrating that an action would result in undue financial and administrative burdens. That is, the decision must be made by the Foundation Director or his or her designee in writing after consideration of all resources available for the program or activity and must be accompanied by an explanation of the reasons for the decision. If the Foundation Director or his or her designee determines that an action would result in a fundamental alteration, the Foundation must consider options that would enable the individual with handicaps to achieve the purpose of the program but would not result in such an alteration.

For programs or activities that do not fall under the first paragraph, paragraph (2) adopts the existing definition of "qualified handicapped person" with respect to services (28 CFR 41.32(b)) in the coordination regulation for programs receiving Federal financial assistance. Under this definition, a qualified individual with handicaps is an individual with handicaps who meets the essential eligibility requirements for participation in the program or activity.

Paragraph (3) explains that "qualified individual with handicaps" means "qualified handicapped person" as that term is defined for purposes of employment in the Equal Employment Opportunity Commission's regulation at 29 CFR 1613.702(f), which is made applicable to this part by § 606.40. Nothing in this part changes existing regulations applicable to employment.

"Section 504." This definition makes clear that, as used in this regulation, "section 504" applies only to programs or activities conducted by the Foundation and not to programs or activities to which it provides Federal financial assistance.

Section 606.10 Self-evaluation

The Foundation shall conduct a self-evaluation of its compliance with section 504 within one year of the effective date of this regulation. The self-evaluation requirement is present in the existing section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.5(b)(2)). Experience has demonstrated the self-evaluation process to be a valuable means of establishing a working relationship with individuals with handicaps that promotes both effective and efficient implementation of section 504.

One commenter suggested that among the post-evaluation material to be placed on file and made available to the public should be a list of the interested persons who provided comments during the self-evaluation. That list has been added at § 606.10(c)(1).

Section 606.11 Notice

Section 606.11 requires the Foundation to disseminate sufficient information to employees, applicants, participants, beneficiaries, and other interested persons to apprise them of rights and protections afforded by section 504 and this regulation. Methods of providing this information include, for example, the publication of information in handbooks, manuals, and pamphlets that are distributed to the public to describe the Foundation's programs and activities; the display of informative posters in service centers and other public places; or the broadcast of information by television or radio.

A commenter suggested that this provision be amended to include recruitment materials. Because this provision specifically mentions information available to "applicants . . . and other interested persons," the Foundation believes that recruitment information is already adequately covered by the notice provision, and for this reason this suggestion has not been adopted.

Section 606.30 General prohibitions against discrimination

Section 606.30 is an adaptation of the corresponding section of the section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.51).

Paragraph (a) restates the nondiscrimination mandate of section 504. The remaining paragraphs in § 606.30 establish the general principles for analyzing whether any particular action of the Foundation violates this mandate. These principles serve as the analytical foundation for the remaining sections of the regulation. If the Foundation violates a provision in any of the subsequent sections, it will also violate one of the general prohibitions found in § 606.30. When there is no applicable subsequent provision, the general prohibitions stated in this section apply.

Paragraph (b) prohibits overt denials of equal treatment of individuals with handicaps. The Foundation may not refuse to provide an individual with handicaps with an equal opportunity to participate in or benefit from its program simply because the person is handicapped. Such blatantly exclusionary practices often result from the use of irrebuttable presumptions that absolutely exclude certain classes of disabled persons (*e.g.*, epileptics, hearing-impaired persons, persons with heart ailments) from participation in programs or activities without regard to an individual's actual ability to participate. Use of an irrebuttable presumption is permissible only when in all cases a physical condition by its very nature would prevent an individual from meeting the essential eligibility requirements for participation in the activity in question. It would be permissible, therefore, to exclude without an individual evaluation all persons who are blind in both eyes from eligibility for a license to operate a commercial vehicle in interstate commerce; but it may not be permissible to automatically disqualify all those who are blind in just one eye.

In addition, section 504 prohibits more than just the most obvious denials of equal treatment. It is not enough to admit persons in wheelchairs to a program if the facilities in which the program is conducted are inaccessible. Paragraph (b)(1)(iii), therefore, requires that the opportunity to participate or benefit afforded to an individual with handicaps be as effective as that afforded to others. The later sections on program accessibility (§§ 606.50–606.52) and communications (§ 606.60) are specific applications of this principle.

Despite the mandate of paragraph (d) that the Foundation administer its programs and activities in the most integrated setting appropriate to the needs of qualified individuals with

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handicaps, paragraph (b)(1)(iv), in conjunction with paragraph (d), permits the Foundation to develop separate or different aids, benefits, or services when necessary to provide individuals with handicaps with an equal opportunity to participate in or benefit from the Foundation's programs or activities. Paragraph (b)(1)(iv) requires that different or separate aids, benefits, or services be provided only when necessary to ensure that the aids, benefits, or services are as effective as those provided to others. Even when separate or different aids, benefits, or services would be more effective, paragraph (b)(2) provides that a qualified individual with handicaps still has the right to choose to participate in the program that is not designed to accommodate individuals with handicaps.

Paragraph (b)(1)(v) prohibits the Foundation from denying a qualified individual with handicaps the opportunity to participate as a member of a planning or advisory board.

Paragraph (b)(1)(vi) prohibits the Foundation from limiting a qualified individual with handicaps in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving any aid, benefit, or service.

Paragraph (b)(3) prohibits the Foundation from utilizing criteria or methods of administration that deny individuals with handicaps access to the Foundation's programs or activities. The phrase "criteria or methods of administration" refers to official written Foundation policies and the actual practices of the Foundation. This paragraph prohibits both blatantly exclusionary policies or practices and nonessential policies and practices that are neutral on their face, but deny individuals with handicaps an effective opportunity to participate.

Paragraph (b)(4) specifically applies the prohibition enunciated in § 606.30(b)(3) to the process of selecting sites for construction of new facilities or selecting existing facilities to be used by the Foundation. Paragraph (b)(4) does not apply to construction of additional buildings at an existing site.

Paragraph (b)(5) prohibits the Foundation, in the selection of procurement contractors, from using criteria that subject qualified individuals with handicaps to discrimination on the basis of handicap.

One commenter objected to the omission of a paragraph from the regulation for federally assisted programs that prohibits a recipient from providing significant assistance to an organization that discriminates. To the extent that assistance from the Foundation would provide significant support to an organization, it would constitute Federal financial assistance and the organization, as a recipient of such assistance, would be covered by the Foundation's section 504 regulation for federally assisted programs. The regulatory "significant assistance" provision, however, would be inappropriate in a regulation applying only to federally conducted programs or activities.

Paragraph (c) provides that programs conducted pursuant to Federal statute or Executive order that are designed to benefit only individuals with handicaps or a given class of individuals with handicaps may be limited to those individuals with handicaps.

Paragraph (d), discussed above, provides that the Foundation must administer programs and activities in the most integrated setting appropriate to the needs of qualified individuals with handicaps, *i.e.*, in a setting that enables individuals with handicaps to interact with nonhandicapped persons to the fullest extent possible.

Section 606.40 Employment

Section 606.40 prohibits discrimination on the basis of handicap in employment by the Foundation. Courts have held that section 504, as amended in 1978, covers the employment practices of Executive agencies. *Gardner v. Morris*, 752 F.2d 1271, 1277 (6th Cir. 1985); *Smith v. United States Postal Service*, 742 F.2d 257, 259–260 (6th Cir. 1984); *Prewitt v. United States Postal Service*, 662 F.2d 292, 302–04 (5th Cir. 1981). *Contra McGuiness v. United States Postal Service*, 744 F.2d 1318, 1320–21 (7th Cir. 1984); *Boyd v. United States Postal Service*, 752 F.2d 410, 413–14 (9th Cir. 1985).

Courts uniformly have held that in order to give effect to section 501 of the Rehabilitation Act, which covers Federal employment, the administrative procedures of section 501 must be followed in processing complaints of employment discrimination under section 504. *Smith*, 742 F.2d at 262; *Prewitt*, 662 F.2d at 304. Accordingly, § 606.40 (Employment) of this rule adopts the definitions, requirements, and procedures of section 501 as established in regulations of the Equal Employment Opportunity Commission (EEOC) at 29 CFR Part 1613. Responsibility for coordinating enforcement of Federal laws prohibiting discrimination in employment is assigned to the EEOC by Executive Order 12067 (3 CFR, 1978 Comp., p. 206). Under this authority, the EEOC establishes government-wide standards on nondiscrimination in employment on the basis of handicap. In addition to this section, § 606.70(b) specifies that the Foundation will use the existing EEOC procedures to resolve allegations of employment discrimination.

Section 606.50 Program accessibility: Discrimination prohibited

Section 606.50 states the general nondiscrimination principle underlying the program accessibility requirements of §§ 606.51 and 606.52.

Section 606.51 Program accessibility: Existing facilities

This regulation adopts the program accessibility concept found in the existing § 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.57), with certain modifications. Thus, § 606.51 requires that each Foundation program or activity, when viewed in its entirety, be readily accessible to and usable by individuals with handicaps. The regulation also makes clear that the Foundation is not required to make each of its existing facilities accessible (§ 606.51(a)(1)). However, § 606.51, unlike 28 CFR 41.57, places explicit limits on the Foundation's obligation to ensure program accessibility (§ 606.51(a)(2)).

Paragraph (a)(2) generally codifies case law that defines the scope of the Foundation's obligation to ensure program accessibility. This paragraph provides that in meeting the program accessibility requirement the Foundation is not required to take any action that would result in a fundamental alteration in the nature of its program or activity or in undue financial and administrative burdens. A similar limitation is provided in § 606.60(d). This provision is based on the Supreme Court's holding in *Southeastern Community College v. Davis*, 442 U.S. 397 (1979), that section 504 does not require program modifications that result in a fundamental alteration in the nature of the program, and on the Court's statement that section 504 does not require modifications that would result in "undue financial and administrative burdens." 442 U.S. at 412. Since *Davis*, circuit courts have applied this limitation on a showing that only one of the two "undue burdens" would be created as a result of the modification sought to be imposed under section 504. *See, e.g., Dopico v. Goldschmidt*, 687 F.2d 644 (2d Cir. 1982); *American Public Transit Association v. Lewis, (APTA)*, 655 F.2d 1272 (D.C. Cir. 1981).

Paragraphs (a)(2) and 606.60(d) are also supported by the Supreme Court's recent decision in *Alexander v. Choate*, 469 U.S. 287 (1985). *Alexander* involved a challenge to the State of Tennessee's reduction of inpatient hospital care coverage under Medicaid from 20 to 14 days per year. Plaintiffs argued that this reduction violated section 504 because it had an adverse impact on handicapped persons. The Court assumed without deciding that § 504 reaches at least some conduct that has an unjustifiable disparate impact on handicapped people, but held that the reduction was not "the sort of disparate impact" discrimination that might be prohibited by section 504 or its implementing regulation. *Id.* at 299.

Relying on *Davis*, the Court said that section 504 guarantees qualified handicapped persons "meaningful access to the benefits that the grantee offers," *id.* at 301, and that "*reasonable adjustments* in the nature of the benefit being offered must at times be made to assure meaningful access." *Id.* at n.21 (emphasis added). However, section 504 does not require " 'changes,' 'adjustments,' or 'modifications' to existing programs that would be 'substantial' * * * or that would constitute 'fundamental alteration(s) in the nature of a program.' " *Id.* at n.20 (citations omitted). *Alexander* supports the position, based on *Davis* and the earlier, lower court decisions, that in some situations, certain accommodations for a handicapped person may so alter an agency's program or activity, or entail such extensive costs and administrative burdens that the refusal to undertake the accommodations is not discriminatory. Thus, failure to include such an "undue burdens" provision could lead to judicial invalidation of the regulation or reversal of a particular enforcement action taken pursuant to the regulation.

This paragraph, however, does not establish an absolute defense; it does not relieve the Foundation of all obligations to individuals with handicaps. Although the Foundation is not required to take actions that would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens, it nevertheless must take any other steps necessary to ensure that individuals with handicaps receive the benefits and services of the federally conducted program or activity.

It is our view that compliance with § 606.51(a) would in most cases not result in undue financial and administrative burdens on the Foundation. In determining whether financial and administrative burdens are undue, all Foundation resources available for use in the funding and operation of the conducted program or activity should be considered. The initial burden of establishing that compliance with § 606.51(a) would fundamentally alter the nature of a program or activity or would result in undue financial and administrative burdens rests with the Foundation. The decision that compliance would result in such alteration or burdens must be made by the Foundation Director or his or her designee and must be accompanied by a written statement of the reasons for reaching that conclusion. Any person who believes that he or she or any specific class of persons has been injured by the Foundation's decision or failure to make a decision may file a complaint under the compliance procedures established in § 606.70.

Two commenters argued that the decision that an action would result in undue burdens should be based on the resources of the Foundation as a whole. The Foundation believes that its entire budget is an inappropriate touchstone for making determinations as to undue financial and administrative burdens. Parts of the Foundation's budget may be earmarked for specific purposes and may simply not be available for use in making the Foundation's programs accessible to individuals with handicaps.

Paragraph (b) sets forth a number of means by which program accessibility may be achieved, including redesign of equipment, reassignment of services to accessible buildings, and provision of aides. In choosing among methods, the Foundation shall give priority consideration to those that will be consistent with provision of services in the most integrated setting appropriate to the needs of individuals with handicaps. Structural changes in existing facilities are required only when there is no other feasible way to make the Foundation's program accessible. (It should be noted that "structural changes" include all physical changes to a facility; the term does not refer only to changes to structural features, such as removal of or alterations to a load-bearing structural member.) The Foundation may comply with the program accessibility requirement by delivering services at alternate accessible sites or making home visits as appropriate.

Paragraphs (c) and (d) establish time periods for complying with the program accessibility requirements. As currently required for federally assisted programs by 28 CFR 41.57(b), the Foundation must make any necessary structural changes in facilities as soon as practicable, but in no event later than three years after the effective date of this regulation. Where structural modifications are required, a transition plan shall be developed within six months of the effective date of this regulation. Aside from structural changes, all other necessary steps to achieve compliance shall be taken within 60 days.

Section 606.52 Program accessibility: New construction and alterations

Overlapping coverage exists with respect to new construction and alterations under section 504 and the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157). Section 606.52 provides that those buildings that are constructed or altered by, on behalf of, or for the use of the Foundation shall be designed, constructed, or altered to be readily accessible to and usable by individuals with handicaps in accordance with 41 CFR 101–19.600 to 101–19.607. This standard was promulgated pursuant to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157). We believe that it is appropriate to adopt the existing Architectural Barriers Act standard for section 504 compliance because new and altered buildings subject to this regulation are also subject to the Architectural Barriers Act and because adoption of the standard will avoid duplicative and possibly inconsistent standards.

Existing buildings leased by the Foundation after the effective date of this regulation are not required by the regulation to meet accessibility standards simply by virtue of being leased. They are subject, however, to the program accessibility standard for existing facilities in § 606.51. To the extent the buildings are newly constructed or altered, they must also meet the new construction and alteration requirements of § 606.52.

Federal practice under section 504 has always treated newly leased buildings as subject to the existing facility program accessibility standard. Unlike the construction of new buildings where architectural barriers can be avoided at little or no cost, the application of new construction standards to an existing building being leased raises the same prospect of retrofitting buildings as the use of an existing Federal facility, and the Foundation believes the same program accessibility standard should apply to both owned and leased existing buildings.

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In *Rose v. United States Postal Service*, 774 F.2d 1355 (9th Cir. 1985), the Ninth Circuit held that the Architectural Barriers Act requires accessibility at the time of lease. The *Rose* court did not address the issue of whether section 504 likewise requires accessibility as a condition of lease, and the case was remanded to the District Court for among other things, consideration of that issue. The Foundation may provide more specific guidance on section 504 requirements for leased buildings after the litigation is completed.

Section 606.60 Communications

Section 606.60 requires the Foundation to take appropriate steps to ensure effective communication with personnel of other Federal entities, applicants, participants, and members of the public. These steps shall include procedures for determining when auxiliary aids are necessary under § 606.60(a)(1) to afford an individual with handicaps an equal opportunity to participate in, and enjoy the benefits of, the Foundation's program or activity. They shall also include an opportunity for individuals with handicaps to request the auxiliary aids of their choice. This expressed choice shall be given special consideration by the Foundation (§ 606.60(a)(2)(i)). The Foundation shall honor the choice unless it can demonstrate that another effective means of communication exists or that use of the means chosen would not be required under § 606.60(d). That paragraph limits the obligation of the Foundation to ensure effective communication in accordance with *Davis* and the circuit court opinions interpreting it (*see supra* preamble discussion of § 606.51(a)(2)). Unless not required by § 606.60(d), the Foundation shall provide auxiliary aids at no cost to the individual with handicaps.

The discussion of § 606.51(a), Program accessibility: Existing facilities, regarding the determination of undue financial and administrative burdens also applies to this section and should be referred to for a complete understanding of the Foundation's obligation to comply with § 606.60.

In certain circumstances, such as relatively simple requests for information by persons skilled in spoken or written language, a note pad and written materials may be sufficient to permit effective communication with a hearing-impaired person. In many circumstances, however, they may not be, particularly when the information being communicated is complex or exchanged for a lengthy period of time (*e.g.*, a meeting) or where the hearing-impaired applicant or participant is not skilled in spoken or written language and the potential for misunderstanding is high. Then a sign language interpreter may be appropriate. For vision-impaired persons, effective communication might be achieved by several means, including readers and audio recordings. In general, the Foundation intends to inform the public of (1) the communications services it offers to afford individuals with handicaps an equal opportunity to participate in or benefit from its programs or activities, (2) the opportunity to request a particular mode of communication, and (3) the Foundation's preferences regarding auxiliary aids if it can demonstrate that several different modes are effective.

The Foundation shall ensure effective communication with vision-impaired and hearing-impaired persons involved in hearings conducted by the Foundation. Auxiliary aids must be afforded where necessary to ensure effective communication at the proceedings. If sign language interpreters are necessary, the Foundation may require that it be given reasonable notice prior to the proceeding of the need for an interpreter. Moreover, the Foundation need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature (§ 606.60(a)(1)(ii)). For example, the Foundation need not provide eye glasses or hearing aids to applicants or participants in its programs. Similarly, the regulation does not require the Foundation to provide wheelchairs to persons with mobility impairments.

Paragraph (b) requires the Foundation to provide information to individuals with handicaps concerning accessible services, activities, and facilities. Paragraph (c) requires the Foundation to provide signage at inaccessible facilities that directs users to locations with information about accessible facilities.

One commenter recommended that the Foundation add a paragraph to § 606.60, Communications, requiring the agency to provide handicapped persons with information about their rights under section 504. Such a paragraph is unnecessary because it would duplicate § 606.11, Notice.

One commenter suggested that the Foundation add a paragraph to § 606.60, Communications, requiring the Foundation to provide captioning on films and videotapes that it produces. The regulation requires that the Foundation ensure that communications with hearing-impaired persons be effective. Although the captioning of films and videotapes is one means of ensuring effective communications, there are other, equally effective alternatives available. For this reason the Foundation has not adopted this suggestion.

Section 606.70 Complaint procedures

Paragraph (a) specifies that paragraphs (c) through (h) of this section establish the procedures for processing complaints other than employment complaints. Paragraph (b) provides that the agency will process employment complaints according to procedures established in existing regulations of the EEOC (29 CFR Part 1613) pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

Paragraph (c) designates the official responsible for coordinating implementation of § 606.70 and paragraph (d) provides an address to which complaints may be sent.

The Foundation is required to accept and investigate all complete complaints (§ 606.70(d)). If it determines that it does not have jurisdiction over a complaint, it shall promptly notify the complainant and make reasonable efforts to refer the complaint to the appropriate entity of the Federal Government (§ 606.70(d)).

One commenter on the compliance procedures suggested that the Foundation should be required to refer a complaint to the appropriate agency when the Foundation does not have jurisdiction over it. The proposed rule merely required the Foundation to make reasonable efforts to do so. The Foundation has not adopted this suggestion because of several possible circumstances in which the Foundation might not be able to refer a complaint successfully. For example, the Foundation might receive a complaint that no Federal agency would have jurisdiction over or that did not contain sufficient information to identify the appropriate agency.

A commenter suggested that the regulation should include procedures for handling complaints that are incomplete. The Foundation believes that it is not necessary to include such detailed procedures in the text of the regulation itself. The Foundation will, of course, develop methods for handling situations for which procedures are not spelled out in the regulation.

Section 606.70(e) requires the Foundation to notify the Architectural and Transportation Barriers Compliance Board upon receipt of a complaint alleging that a building or facility subject to the Architectural Barriers Act was designed, constructed, or altered in a manner that does not provide ready access to and use by individuals with handicaps.

Section 606.70(f) requires the Foundation to provide to the complainant, in writing, findings of fact and conclusions of law, the relief granted if noncompliance is found, and notice of the right to appeal. One appeal within the Foundation shall be provided (§ 606.70(g)). The appeal will not be heard by the same person who made the initial determination of compliance or noncompliance (§ 606.70(g)).

Two commenters suggested that the rule should incorporate a provision concerning judicial review, and one commenter suggested that the rule should state that a complainant is not required to exhaust the administrative remedies before bringing an action in court. It is beyond the Foundation's jurisdiction to specify the availability or scope of judicial review of agency actions. That issue is for the courts to decide.

One commenter requested the addition of a provision whereby the Foundation would award attorneys fees to complainants and two commenters requested the addition of a provision whereby compensation would be awarded to the prevailing parties in administrative proceedings. There is no general authorization in title V of the Rehabilitation Act for the agency award of attorney fees in agency administrative proceedings, or for the payment of compensation to prevailing parties in agency proceedings. For this reason the Foundation has not adopted either an attorneys fee provision or a compensation provision in the final regulation.

List of Subjects in 45 CFR Part 606

Blind, Buildings, Civil rights, Employment, Equal employment opportunity, Federal buildings and facilities, Government employees, Handicapped.

Erich Bloch,

Director, National Science Foundation.

For the reasons set forth in the preamble, Title 45, Public Welfare, of the Code of Federal Regulations is amended by adding Part 606 as follows:

PART 606—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE NATIONAL SCIENCE FOUNDATION

Sec.

606.1 Purpose.
606.2 Application.
606.3 Definitions.
606.4–606.9 [Reserved]
606.10 Self-evaluation.
606.11 Notice.
606.12–606.29 [Reserved]
606.30 General prohibitions against discrimination.
606.31–606.39 [Reserved]
606.40 Employment.
606.41–606.49 [Reserved]
606.50 Program accessibility: Discrimination prohibited.
606.51 Program accessibility: Existing facilities.
606.52 Program accessibility: New construction and alterations.
606.53–606.59 [Reserved]
606.60 Communications.
606.61–606.69 [Reserved]
606.70 Complaint procedures—general.
606.71—606.99 [Reserved]

Authority: 29 U.S.C. 794.

§ 606.1 Purpose.

The purpose of this part is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

§ 606.2 Application.

This part applies to all programs or activities conducted by the Foundation, except for programs or activities conducted outside the United States that do not involve individuals with handicaps in the United States. Programs and activities receiving Federal financial assistance from the Foundation are covered by 45 CFR Part 605.

§ 606.3 Definitions.

For purposes of this part, the term—

"Assistant Attorney General" means the Assistant Attorney General, Civil Rights Division, Department of Justice.

"Auxiliary aids" means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the Foundation. For example, auxiliary aids useful for persons with impaired vision include readers, Brailled materials, audio recordings, and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD's), interpreters, note takers, written materials, and other similar services and devices.

"Complete complaint" means a written statement that contains the complainant's name and address and describes the Foundation's alleged discriminatory action in sufficient detail to inform the Foundation of the nature and date of the alleged violation of section 504. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

"Facility" means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances, or other real or personal property.

"Foundation" means the National Science Foundation.

"Individual with handicaps" means any person in the United States who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. As used in this definition, the phrase:

(1) "Physical or mental impairment" includes—

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addiction and alcoholism.

(2) "Major life activities" includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) "Has a record of such an impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) "Is regarded as having an impairment" means—

(i) Has a physical or mental impairment that does not substantially

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limit major life activities but is treated by the Foundation as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in paragraph (1) of this definition but is treated by the Foundation as having such an impairment.

"Qualified individual with handicaps" means—

(1) With respect to any Foundation program or activity under which a person is required to perform services or to achieve a level of accomplishment, an individual with handicaps who meets the essential eligibility requirements and who can achieve the purpose of the program or activity without modifications in the program or activity that the Foundation can demonstrate would result in a fundamental alteration in its nature;

(2) With respect to any other program or activity, an individual with handicaps who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity; and

(3) "Qualified handicapped person" as that term is defined for purposes of employment in 29 CFR 1613.702(f), which is made applicable to this part by § 606.40.

"Section 504" means section 504 of the Rehabilitation Act of 1973 (Pub. L. 93–112, 87 Stat. 394 (29 U.S.C. 794)), as amended by the Rehabilitation Act Amendments of 1974 (Pub. L. 93–516, 88 Stat. 1617); and the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Pub. L. 95–602, 92 Stat. 2955); the Rehabilitation Act Amendments of 1986 (Pub. L. 99–506, 100 Stat. 1810); and the Civil Rights Restoration Act of 1987 (Pub. L. 100–259, 102 Stat. 28). As used in this part, section 504 applies only to programs or activities conducted by Executive agencies and not to federally assisted programs.

§§ 606.4–606.9 [Reserved]

§ 606.10 Self-evaluation.

(a) The Foundation shall, within one year of the effective date of this part, evaluate its current policies and practices, and the effects thereof, that do not or may not meet the requirements of this part, and, to the extent modification of any such policies and practices is required, the Foundation shall proceed to make the necessary modifications.

(b) The Foundation shall provide an opportunity to interested persons, including individuals with handicaps or organizations representing individuals with handicaps, to participate in the self-evaluation process by submitting comments (both oral and written).

(c) The Foundation shall, for at least three years following completion of the evaluation required under paragraph (a) of this section, maintain on file and make available for public inspection:

(1) A list of the interested persons who made comments;

(2) A description of areas examined and any problems identified; and

(3) A description of any modifications made.

§ 606.11 Notice.

The Foundation shall make available to employees, applicants, participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the programs or activities conducted by the Foundation and make such information available to them in such manner as the Director of the Foundation finds necessary to apprise such persons of the protections against discrimination assured them by section 504 and this regulation.

§§ 606.12–606.29 [Reserved]

§ 606.30 General prohibitions against discrimination.

(a) No qualified individual with handicaps shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the Foundation.

(b)(1) The Foundation, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap—

(i) Deny a qualified individual with handicaps the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified individual with handicaps an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified individual with handicaps with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits, or services to individuals with handicaps or to any class of individuals with handicaps than is provided to others unless such action is necessary to provide qualified individuals with handicaps with aid, benefits, or services that are as effective as those provided to others;

(v) Deny a qualified individual with handicaps the opportunity to participate as a member of planning or advisory boards; or

(vi) Otherwise limit a qualified individual with handicaps in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) The Foundation may not deny a qualified individual with handicaps the opportunity to participate in programs or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) The Foundation may not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would—

(i) Subject qualified individuals with handicaps to discrimination on the basis of handicap; or

(ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to individuals with handicaps.

(4) The Foundation may not, in determining the site or location of a facility, make selections the purpose or effect of which would—

(i) Exclude qualified individuals with handicaps from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity conducted by the Foundation; or

(ii) Defeat or substantially impair the accomplishment of the objectives of a program or activity with respect to individuals with handicaps.

(5) The Foundation, in the selection of procurement contractors, may not use criteria that subject qualified individuals with handicaps to discrimination on the basis of handicap.

(c) The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or Executive order to individuals with handicaps or the exclusion of a specific class of individuals with handicaps from a program limited by Federal statute or Executive order to a different class of individuals with handicaps is not prohibited by this part.

(d) The Foundation shall administer programs and activities in the most integrated setting appropriate to the needs of qualified individuals with handicaps.

§§ 606.31–606.39 [Reserved]

§ 606.40 Employment.

No qualified individual with handicaps shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity conducted by the Foundation. The definitions, requirements, and procedures of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), as established by the Equal Employment Opportunity Commission in 29 CFR Part 1613, shall apply to employment in federally conducted programs or activities.

§§ 606.41–606.49 [Reserved]

§ 606.50 Program accessibility: Discrimination prohibited.

Except as otherwise provided in § 606.51, no qualified individual with handicaps shall, because the Foundation's facilities are inaccessible to or unusable by individuals with handicaps, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the Foundation.

§ 606.51 Program accessibility: Existing facilities.

(a) *General.* The Foundation shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by individuals with handicaps. This paragraph does not—

(1) Necessarily require the Foundation to make each of its existing facilities accessible to and usable by individuals with handicaps; or

(2) Require the Foundation to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where Foundation personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the Foundation has the initial burden of establishing that compliance with § 606.51(a) would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the Foundation Director or his or her designee after considering all Foundation resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or burdens, the Foundation shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with handicaps receive the benefits and services of the program or activity.

(b) *Methods.* The Foundation may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by individuals with handicaps. The Foundation is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. The Foundation, in making alterations to existing buildings, shall meet accessibility requirements to the extent compelled by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), and any regulations implementing it. In choosing among available methods for meeting the requirements of this section, the Foundation shall give priority to those methods that offer programs and activities to qualified individuals with handicaps in the most integrated setting appropriate.

(c) *Time period for compliance.* The Foundation shall comply with the obligations established under this section within 60 days of the effective date of this part except that where structural changes in facilities are undertaken, such changes shall be made within three years of the effective date of this part, but in any event as expeditiously as possible.

(d) *Transition plan.* In the event that structural changes to facilities will be undertaken to achieve program accessibility, the Foundation shall develop, within six months of the effective date of this part, a transition plan setting forth the steps necessary to complete such changes. The Foundation shall provide an opportunity to interested persons, including individuals with handicaps or organizations representing individuals with handicaps, to participate in the development of the transition plan by submitting comments (both oral and written). A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum—

(1) Identify physical obstacles in the Foundation's facilities that limit the accessibility of its programs or activities to individuals with handicaps;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and

(4) Indicate the official responsible for implementation of the plan.

§ 606.52 Program accessibility: New construction and alterations.

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the Foundation shall be designed, constructed, or altered so as to be readily accessible to and usable by individuals with handicaps. The definitions, requirements, and standards of the Architectural Barriers Act (42 U.S.C. 4151–4157), as established in 41 CFR 101–19.600 to 101–19.607, apply to buildings covered by this section.

§§ 606.53–606.59 [Reserved]

§ 606.60 Communications.

(a) The Foundation shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public.

(1) The Foundation shall furnish appropriate auxiliary aids where necessary to afford an individual with handicaps an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the Foundation.

(i) In determining what type of auxiliary aid is necessary, the Foundation shall give primary consideration to the requests of the individual with handicaps.

(ii) The Foundation need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where the Foundation communicates with applicants and beneficiaries by telephone, telecommunications devices for deaf persons (TDD's) or equally effective telecommunication systems shall be used to communicate with persons with impaired hearing.

(b) The Foundation shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence

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and location of accessible services, activities, and facilities.

(c) The Foundation shall provide signage at a primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(d) This section does not require the Foundation to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where Foundation personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the Foundation has the initial burden of establishing that compliance with § 606.60 would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the Foundation Director or his or her designee after considering all Foundation resources available for use in the funding and operation of the conducted program or activity and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such an alteration or such burdens, the Foundation shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with handicaps receive the benefits and services of the program or activity.

§§ 606.61–606.69 [Reserved]

§ 606.70 Complaint procedures.

(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of handicap in programs or activities conducted by the Foundation.

(b) The Foundation shall process complaints alleging violations of section 504 with respect to employment according to the procedures established by the Equal Employment Opportunity Commission in 29 CFR Part 1613 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(c) The Director, Office of Equal Opportunity (OEO), shall coordinate implementation of this section.

(d) Persons wishing to submit complaints should submit complete complaints (see § 606.03) to the Office of Equal Opportunity, National Science Foundation, 1800 G Street NW., Washington, DC 20550. In accordance with the procedures outlined below, the Foundation will accept all complete complaints and will either undertake to investigate them if they are within the jurisdiction of the Foundation and submitted within 180 days of the alleged acts of discrimination or in the case of complaints not within the jurisdiction of the Foundation, it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate government entity. Complete complaints submitted after the 180 day time limit may also be acted upon at the discretion of the Foundation if good cause for the delay in submission is found.

(e) The Foundation shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or a facility that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), is not readily accessible to and usable by individuals with handicaps.

(f) Within 180 days of the receipt of a complete complaint, the Director, Office of Equal Opportunity (OEO), or his or her designee or delegate, will investigate the complaint and shall notify the complainant of the results of the investigation in a letter containing—

(1) Findings of fact and conclusions of law;

(2) A description of a remedy for each violation found; and

(3) A notice of a right to appeal to the Director of the Foundation.

(g)(1) A complainant may appeal findings of fact, conclusions of law, or remedies to the Director of the Foundation. Such appeals must be in writing and must state fully the basis for the appeal, proposed alternative findings of fact, conclusions of law, or remedies. They must be sent (as evidenced by an appropriate postmark or other satisfactory evidence) within 90 days after the date of receipt from the Foundation of the letter described in paragraph (f) of this section. The Foundation may extend this time for good cause.

(2) The Director shall notify the complainant of the results of the appeal within 30 days of the receipt of the appeal. If the Director determines that additional information is needed from the complainant, the Director shall have 30 days from the date such additional information is received from the complainant to make a determination on the appeal.

(h) The time limits for sending a letter to the complainant in paragraph (f) and for deciding an appeal in paragraph (g)(2) of this section may be extended with the permission of the Assistant Attorney General.

§§ 606.71–606.99 [Reserved]

[FR Doc. 89–2169 Filed 1–30–89; 8:45 am]

BILLING CODE 7555-01-M

HARRY S. TRUMAN SCHOLARSHIP FOUNDATION

45 CFR Part 1803

Nondiscrimination on the Basis of Handicap

AGENCY: Harry S. Truman Scholarship Foundation.

ACTION: Final rule.

SUMMARY: This regulation applies to programs or activities conducted by the Harry S. Truman Scholarship Foundation the provisions of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, which prohibits discrimination on the basis of handicap.

EFFECTIVE DATE: This regulation becomes effective upon the expiration of 30 days after this publication during which either or both Houses of Congress are in session.

FOR FURTHER INFORMATION CONTACT: Malcolm C. McCormack, Executive Secretary, Harry S. Truman Scholarship Foundation, 712 Jackson Place NW., Washington, DC 20006, (202) 395–4831 or (202) 566–2973 (TDD) (Treasury Department relay service).

SUPPLEMENTARY INFORMATION: On December 21, 1987 the Harry S. Truman Scholarship Foundation ("Foundation") published in the Federal Register, 52 FR 48297, a notice of proposed rulemaking. That notice solicited comments on a proposed regulation applying to programs and activities conducted by the Harry S. Truman Scholarship Foundation ("Foundation") the provisions of section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), as amended.

No comments were received. The Foundation therefore is adopting its earlier proposal as its final regulation with only minor changes to §§ 1803.10(a)(2), 1803.11(f), and 1803.11(i). These changes are made at the request of the Department of Justice. The preamble to the proposal explained the background for this regulation and analyzed each of its sections.

This regulation has been reviewed by the Department of Justice under Executive Order No. 12250 (45 FR 72 995, 3 CFR, 1980 Comp., p. 298). This regulation has also been reviewed by the Equal Employment Opportunity Commission under Executive Order 12067 (43 FR 28967, 3 CFR, 1978 Comp., p. 206). As noted in connection with publication of the proposed regulation, § 1803.9 provides that the standards, requirements and procedures of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), as elaborated in EEOC's regulations at 29 CFR Part 1613, are applicable under section 504 of the Act to employment by the Foundation.

This regulation is not a major rule within the meaning of Executive Order No. 12291 (46 FR 13193, 3 CFR, 1981 Comp., p. 127) and, therefore, a regulatory impact analysis has not been prepared.

This regulation does not have an impact on small entities. It is not, therefore, subject to the Regulatory Flexibility Act, 5 U.S.C. 601–612.

List of Subjects in 45 CFR Part 1803

Blind, Civil rights, Deaf, Disabled, Discrimination against handicapped, Equal employment opportunity, Federal buildings and facilities, Handicapped, Nondiscrimination, Physically handicapped.

Chapter XXVIII of Title 45 of the Code of Federal Regulations, entitled "Harry S. Truman Scholarship Program," is amended by adding Part 1803 as follows:

PART 1803—NONDISCRIMINATION ON THE BASIS OF HANDICAP

Sec.

1803.1 Purpose.
1803.2 Application.
1803.3 Definitions.
1803.4 Self-evaluation.
1803.5 Notice.
1803.6 General prohibitions against discrimination.
1803.7 Program accessibility: Existing facilities.
1803.8 Program accessibility: New construction and alterations.
1803.9 Employment.
1803.10 Communications.
1803.11 Compliance procedures.

Authority: 29 U.S.C. 794.

§ 1803.1 Purpose.

This part effectuates section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by executive agencies.

§ 1803.2 Application.

This part applies to all programs or activities conducted by the Foundation, except for programs or activities conducted outside the United States that do not involve individual(s) with handicaps in the United States.

§ 1803.3 Definitions.

For purposes of this part, the term—

"Assistant Attorney General" means the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

"Auxiliary aids" means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in and enjoy the benefits of programs or activities conducted by the Foundation.

"Complete complaint" means a written statement containing: (1) Date and nature of the alleged violation of section 504; (2) the complainant's name and address; and (3) the signature of the complainant or of someone authorized to act on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify, by name if possible, the alleged victims of discrimination.

"Executive Secretary" means the Executive Secretary of the Harry S. Truman Scholarship Foundation.

"Facility" means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances, or other real or personal property.

"Foundation" means the Harry S. Truman Scholarship Foundation.

"General Counsel" means the General Counsel of the Harry S. Truman Scholarship Foundation.

"Individual with handicaps" means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. As used in this definition, the phrase:

(1) "Physical or mental impairment" includes—

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addiction and alcoholism.

(2) "Major life activities" includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) "Has a record of such an impairment" means has a history of, or has been classified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) "Is regarded as having an impairment" means—

(i) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the Foundation as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in subparagraph (1) of this definition, but is treated by the Foundation as having such an impairment.

"Qualified individual with handicaps" means an individual with handicaps who meets the essential eligibility requirements for participation in, or receipt of benefits from, any Foundation program or activity. For purposes of employment, "qualified individual with handicaps" means "qualified handicapped person" as defined in 29 CFR 1613.702(f), which is made applicable to this part by § 1803.10.

"Section 504" means section 504 of the Rehabilitation Act of 1973, Pub. L. 93–112, 87 Stat. 394, 29 U.S.C. 794, as amended by the Rehabilitation Act Amendments of 1974, Pub. L. 93–516, 88 Stat. 1617; the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, Pub. L. 95–602, 92 Stat. 2955; and by the Rehabilitation Act amendments of 1986, Pub. L. 99–506, 100 Stat. 1810. As used in this part, section 504 applies only to programs or activities conducted by the Foundation and not to federally assisted programs.

§ 1803.4 Self-evaluation.

(a) The Foundation shall, within one year of the effective date of this part, evaluate, with the assistance of interested persons, including individuals with handicaps or organizations representing individuals with handicaps, its current policies and practices, and

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the effects thereof, that do not or may not meet the requirements of this part, and, to the extent modification of any such policies and practices is required, the Foundation shall proceed to make the necessary modification.

(b) The Foundation shall, for at least three years following completion of the evaluation required under paragraph (a) of this section, maintain on file and make available for public inspection—

(1) A description of areas examined and any problems identified; and

(2) A description of any modifications made.

§ 1803.5 Notice.

The Foundation shall make available to employees, applicants, participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the programs or activities conducted by the Foundation as the Executive Secretary finds necessary to apprise such persons of the protections against discrimination assured them by section 504 and this regulation.

§ 1803.6 General prohibitions against discrimination.

(a) No qualified individual with handicaps shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity subject to this part.

(b) The Foundation may not, either directly or through arrangements with others, on the basis of handicap—

(1) Discriminate against a qualified individual with handicaps in the award or renewal of scholarships, through selection criteria or otherwise;

(2) Deny a qualified individual with handicaps the opportunity to participate as a member of boards or panels used to screen scholarship applicants;

(3) Deny a qualified individual with handicaps the opportunity to participate as a member of planning or advisory boards; or

(4) Otherwise subject a qualified individual with handicaps to discrimination.

(c) The Foundation may not, either directly or through arrangements with others, utilize criteria or methods of administration the purpose or effect of which would—

(1) Subject qualified individuals with handicaps to discrimination on the basis of handicap; or

(2) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to individuals with handicaps.

(d) The Foundation shall administer programs and activities in the most feasibly integrated setting appropriate to the needs of qualified individuals with handicaps.

§ 1803.7 Program accessibility: Existing facilities.

(a) The Foundation shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by individuals with handicaps. This paragraph does not necessarily require the Foundation to make each of its existing facilities accessible to and usable by individuals with handicaps, but no qualified individual with handicaps shall be denied the benefit of, be excluded from participation in, or otherwise be subjected to discrimination under any of the Foundation's programs and activities because any of the Foundation's facilities are inaccessible to or unusable by individuals with handicaps.

(b) When the Foundation uses facilities leased or otherwise provided by the General Services Administration (GSA), it shall request GSA to make any structural changes that the Foundation determines are required to provide necessary accessibility for individuals with handicaps, and shall inform that agency of any complaints regarding accessibility by individuals with handicaps.

(c) The Foundation periodically uses meeting rooms or similar facilities made available by non-federal entities. In any instances in which such temporarily used facilities are not readily accessible to qualified individuals with handicaps, the Foundation shall make alternative arrangements so that such qualified individuals with handicaps can participate fully in the Foundation's activity.

(d) This section does not require the Foundation to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where Foundation personnel believe that the proposed action would fundamentally alter a program or activity or would result in undue financial and administrative burdens, the Foundation has the burden of proving that compliance with paragraph (a) of this section would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the Executive Secretary after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such an alteration or such burdens, the Foundation shall take other action not resulting in such an alteration or such burdens, but would nevertheless ensure that, to the maximum extent possible, individuals with handicaps receive the benefits and services of the programs or activities.

§ 1803.8 Program accessibility: New construction and alterations.

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the Foundation shall be designed, constructed, or altered so as to be readily accessible to and usable by individuals with handicaps. The definitions, requirements, and standards of the Architectural Barriers Act (42 U.S.C. 4151–4157), as established in 41 CFR 101–19.600 to 101–19.607, apply to buildings covered by this section.

§ 1803.9 Employment.

No qualified individual with handicaps shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity conducted by the Foundation. The definitions, requirements and procedures of § 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), as established by the Equal Employment Opportunity Commission in 29 CFR Part 1613, shall apply to employment in federally conducted programs or activities.

§ 1803.10 Communications.

(a) The Foundation shall take appropriate steps to assure that interested persons, including persons with impaired vision or hearing, can effectively communicate with the Foundation and obtain information as to the existence and availability of the Foundation's programs and activities.

(1) The Foundation shall furnish appropriate auxiliary aids where necessary to afford an individual with handicaps an equal opportunity to participate in the scholarship interview process or other programs or activities conducted by the Foundation.

(i) In determining what type of auxiliary aid is necessary, the Foundation shall give primary consideration to the requests of the individual with handicaps.

(ii) The Foundation need not provide individually prescribed devices or other devices of a personal nature.

(2) When the Foundation communicates with applicants and beneficiaries by telephone, the Foundation shall use, for persons with impaired hearing, a telecommunication device for deaf persons or equally effective telecommunication device.

(b) The Foundation shall take appropriate steps to provide individuals with handicaps with information regarding their § 504 rights under the Foundation's programs or activities.

(c) This section does not require the Foundation to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where Foundation personnel believe that the proposed action would fundamentally alter a program or activity or would result in undue financial and administrative burdens, the Foundation has the burden of proving that compliance with paragraphs (a) and (b) of this section would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the Executive Secretary after considering all Foundation resources available for use in the funding and operation of a conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such an alteration or such burdens, the Foundation shall take other action not resulting in such an alteration or such burdens, but would nevertheless ensure that, to the maximum extent possible, individuals with handicaps receive the benefits and services of the programs or activities.

§ 1803.11 Compliance procedures.

(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of handicap in programs or activities conducted by the Foundation.

(b) The Foundation shall process complaints alleging violations of § 504 with respect to employment according to the procedures established by the Equal Employment Opportunity Commission in 29 CFR Part 1613 pursuant to § 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(c) Responsibility for implementation and operation of this section shall be vested in the Executive Secretary.

(d) The Foundation shall accept and investigate all complete complaints for which it has jurisdiction. All complete complaints must be filed within 180 days of the alleged act of discrimination. The Foundation may extend this time period for good cause.

(e) If the Foundation receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate government entity.

(f) The Foundation shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or facility that is used by the Foundation that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), is not readily accessible to and usable by individuals with handicaps.

(g) The Foundation shall notify the complainant of the results of the investigation within 90 days of the receipt of a complete complaint over which it has jurisdiction. Notification must be in a letter, and must include—

(1) Findings of fact and conclusions of law;

(2) A description of a remedy for each violation discovered; and

(3) A notice of the right to appeal.

(h) Appeals of the findings of fact and conclusions of law or remedies must be filed by the complainant within 90 days of receipt from the agency of the letter required by paragraph (f) of this section. The Foundation may extend this time for good cause.

(i) Timely appeals shall be accepted and processed by the General Counsel.

(j) The Foundation shall notify the complainant of the results of the appeal within 90 days of the receipt of the request. If the Foundation determines that it needs additional information from the complainant, it shall have 90 days from the date it receives the additional information to make its determination on the appeal.

(k) The time limits cited in paragraphs (g) and (h) of this section may be extended with the permission of the Assistant Attorney General.

(l) The Foundation may delegate its authority for conducting complaint investigations to other federal agencies, but may not delegate to another agency the authority for making the final determination.

Malcolm C. McCormack,

Executive Secretary.

Dated: January 19, 1989.

[FR Doc. 89–2119 Filed 1–30–89; 8:45 am]

BILLING CODE 6820–AB–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 380

[90121–9021]

Antarctic Marine Living Resources Convention Act of 1984

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of final rule.

SUMMARY: The Secretary of Commerce (Secretary), on behalf of the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR), publishes notice of conservation and management measures promulgated by the Commission and accepted in whole by the United States Government to regulate catches in Convention for the Conservation of Antarctic Marine Living Resources (Convention) statistical reporting subarea 48.3. These measures restrict overall catches of certain species of fish, prohibit the taking of other species and require real-time reporting of the harvest of certain species.

EFFECTIVE DATE: January 31, 1989.

ADDRESS: A copy of the framework environmental assessment may be obtained from the Assistant Administrator for Fisheries, NOAA, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, Maryland 20910.

FOR FURTHER INFORMATION CONTACT: Robin Tuttle (NMFS International Science, Development and Polar Affairs Division), 301–427–2288.

SUPPLEMENTARY INFORMATION: At its annual meeting in Hobart, Tasmania, in 1986, CCAMLR, of which the United States is a member, adopted a conservation measure requiring the Commission at subsequent meetings to adopt limitations on catch, or equivalent measures, binding for species upon which fisheries are permitted in Convention statistical reporting subarea 48.3 (South Georgia) depicted at Figure 1, 50 CFR Part 380. These measures are implemented through measures set out at 50 CFR 380.26.

The measures for the 1988/89 fisheries season adopted by CCAMLR at its annual meeting in 1988 are based upon the advice of its Scientific Committee and take into account data resulting from recent fishery surveys around South Georgia. The measures were announced and public comment invited (until December 30, 1988) by Federal

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Register notice on November 30, 1988, 53 FR 48304. No comments were received.

For the 1988/89 fishing season, fishing for *Champsocephalus gunnari* (mackerel icefish) is prohibited from November 4, 1988, to November 20, 1989, in Convention statistical reporting subarea 48.3, except for scientific research purposes. In order to avoid bycatch of this species, fishing is also prohibited for other species of finfish normally taken on the same grounds. Therefore, no *Notothenia rossii* (marbled rockcod), *N. gibberifrons* (humped rockcod), *Chaenocephalus aceratus* (blackfin icefish), or *Pseudochaenichthys georgianus* (South Georgia icefish) may be taken in Convention statistical reporting subarea 48.3, from November 4, 1988, to November 20, 1989, except for scientific research purposes.

The reporting system for *C. gunnari* that was established at 50 CFR 380.24 for the 1977–88 fishing season is modified to require the reporing of *Patagonotothen brevicauda guntheri* (Patagonian rockcod) rather than *C. gunnari*. As required by 50 CFR 380.20 (a), the Secretary announces that the catch of *P. b. guntheri* in Convention statistical reporting subarea 48.3 for the 1988/89 season is limited to 13,000 tons. If this seasonal catch limitation for *P. b. guntheri* set by the Commission is reached before the end of the season the closure of the fishery will be announced in the **Federal Register** and NMFS will notify the designated representative of the holder of a permit to fish in Convention statistical reporting subarea 48.3 of the date of the closure of the fishery, pursuant to 50 CFR 380.20(b).

Classification

The Secretary of Commerce has determined that this rule is necessary to implement the Antarctic Marine Living Resources Convention Act of 1984 and to give effect to the conservation and management measures adopted by the Commission for the Conservation of Antarctic Marine Living Resources and agreed to by the United States.

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator) prepared a framework environmental assessment (EA) for the implementation of the Antarctic Marine Living Resources Convention Act of 1984 in 1987. NMFS has reviewed this rule and determined that the actions it requires were generally summarized in the framework EA and are thus excluded from further National Environmental Policy Act analysis.

This action is exempt from Executive Order 12291 and section 553 of the Administrative Procedure Act because it involves a foreign affairs function of the United States. Because notice and comment rulemaking is not required for this rule, the Regulatory Flexibility Act does not apply; therefore, a regulatory flexibility analysis has not been prepared. At present there are no U.S. vessels or vessels subject to the jurisdiction of the United States harvesting Antarctic marine living resources within the area to which these regulations apply, except for research purposes. Presently, the only Antarctic resources affected are scientific specimens taken under National Science Foundation permits and by the U.S. Antarctic Marine Living Resources directed research program. Accordingly, these regulations should not have an incremental impact on U.S. vessels harvesting or performing associated activities in the Convention area.

This rule contains a collection-of-information requirement subject to the Paperwork Reduction Act. The collection of information has been approved by the Office of Management and Budget under Control Number 0648–0194.

The annual reporting burden for this collection of information is estimated to average one-hour per harvester, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Robin Tuttle, National Marine Fisheries Service, 1335 East-West Highway, Room 7240, Silver Spring, Maryland 20910 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12812.

List of Subjects in 50 CFR Part 380

Antarctic, Fish and wildlife, Reporting and recordkeeping requirements.

Dated: January 26, 1989.

James W. Brennan,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble of this rule, 50 CFR Part 380 is amended as follows:

PART 380—ANTARCTIC MARINE LIVING RESOURCES CONVENTION ACT OF 1984

1. The authority citation for Part 380 continues to read as follows:

Authority: 16 U.S.C. 2431 *et seq.*

§§ 380.24 [Amended]

2. In § 380.24 of Subpart B, paragraph (b) is amended by substituting "*Patagonototothen brevicauda guntheri*" for "*Champsocephalus gunnari*" and "*P. b. guntheri*" for "*C. gunnari*" each time they appear.

3. New § 380.27 is added to Subpart B to read as follows:

§ 380.27 Closure of Convention statistical reporting subarea 48.3.

From November 4, 1988, until November 20, 1989, no *C. gunnari* (Mackerel icefish), *Notothenia rossii* (Marbled rockcod), *N. gibberifrons* (Humped rockcod), *Chaenocephalus aceratus* (Blackfin icefish), or *Pseudochaenichthys georgianus* (South Georgia icefish) may be taken in subarea 48.3.

[FR Doc. 89-2242 Filed 1-30-89; 8:45 am]

BILLING CODE 3510-22-M

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50 CFR Part 651

[Docket No. 81128-8007]

Northeast Multispecies Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: NOAA issues this final rule to amend the rule implementing the Fishery Management Plan for the Northeast Multispecies Fishery (FMP) Amendment 2 (Amendment) will improve the overall effectiveness of existing management measures and enhance the conservation of the groundfish stocks. The intended effect of the rule is to afford better protection of the groundfish stocks to support both commercial and recreational fisheries

EFFECTIVE DATE: February 27, 1989 except for the measure establishing a regulated mesh area on Nantucket Shoals (§ 651.20(a)(2)) which is effective January 27, 1989. Public inspection and the measure requiring 5½ inch mesh throughout the net (§ 651.20(b)(1)(ii)) which is effective January 1, 1990.

ADDRESSES: Copies of the Amendment, the environmental assessment (EA), the regulatory impact review (RIR), and other supporting documents are available from Douglas Marshall, Executive Director, New England Fishery Management Council, Suntaug Office Park, 5 Broadway, Saugus, MA 01906.

FOR FURTHER INFORMATION CONTACT: Jack Terrill (Resource Policy Analyst) 508–281–3600, ext. 252.

SUPPLEMENTARY INFORMATION: The New England Fishery Management Council (Council) prepared and submitted Amendment 2 to amend the FMP. A notice of availability was published on October 11, 1988 (53 FR 39627; corrected at 53 FR 44975, November 7, 1988) and the proposed rule on November 9, 1988 (53 FR 45301; corrected at 53 FR 47299, November 22, 1988). The amendment contains actions that are expected to improve the effectiveness of several of the existing FMP measures in relation to two major factors: (1) The promotion of regulatory compliance, and (2) the long-term achievement of management objectives. This amendment also adopts a management measure that had previously been implemented in February 1988 (53 FR 5773, February 26, 1988) as an emergency action.

Amendment 2 contains nine specific changes and additions to the management system. These are as follows:

1. An increase in the minimum fish size (total length, TL) for yellowtail flounder from 12 inches to 13 inches and for American plaice (dab) from 12 inches to 14 inches.

2. An indefinite postponement of the scheduled increase in regulated mesh (to 6 inches) in the Georges Bank portion of the Regulated Mesh Area. Alternatively, vessels operating in the Regulated Mesh Area will only be permitted to use nets with mesh no smaller than the regulated size throughout the net, effective January 1, 1990.

3. A modification to the language that allows nets of smaller than the regulated mesh aboard but not in use in the Regulated Mesh Area, by removing from § 651.20(f) paragraphs (3) and (4) and replacing them with "nets which are secured in a manner approved by the Regional Director".

4. Adopt regulatory language to facilitate non-reissuance of Exempted Fishery Program permits when participants have not complied with reporting requirements.

5. Establish a trip bycatch limit of 25 percent regulated species for vessels operating in the Exempted Fishery Program.

6. A prohibition on trawl vessels from entering Closed Area II during the period of seasonal closure.

7. The establishment of a minimum size of 9 inches (TL) for redfish.

8. Minimum fish sizes shall apply to both commercial and recreational fishermen.

Species	Recreational minimum size (inches)
Atlantic cod	19
Haddock	19
Pollock	19
Witch flounder (gray sole)	14
Yellowtail flounder	13
American plaice (dab)	14
Winter flounder (blackback)	11
Redfish	9

9. A Regulated Mesh area will be implemented for the months of December through March in an area designated as Nantucket Shoals.

Comments and Responses

Written comments were submitted by the U.S. Coast Guard, Department of the Interior, Portland Fish Exchange, New England Fishery Management Council and one individual. Several commenters supported approval of the Amendment.

Comment: The Portland Fish Exchange objected to the 25 percent bycatch by weight of regulated species allowed per trip in the Exempted Fisheries Program when shrimp is declared as the target species. They asked that shrimp landing slips be used rather than the actual amount on board the vessel upon landing to allow for the practice of holding over the regulated species for sale later. They asked for clarification of the measure and how it would be enforced.

Response: The measure was developed to respond to concerns that directed effort on regulated groundfish while in the exempted fisheries program would result in discard mortality of juvenile fish, and that the bycatch amount over the entire period of participation in the program was being used as an allocation rather than as true bycatch. Enforcement was hampered by the inability to enforce the bycatch provision at dockside where it applied to the entire time period. It was determined that a 25 percent bycatch of regulated species on a trip basis was necessary to protect juvenile regulated species and to insure attainment of Council intent. The determination of 25 percent was based on actual landing practices and was found to have a minimal impact. Exceptions to the measure could provide loopholes which would undermine effective enforcement and jeopardize the juvenile regulated species. The measure is implemented as proposed.

Comment: One commenter objected to the increased minimum sizes without a corresponding increase in mesh size which will result in discards. The commenter also requested a minimum mesh size of 3 inches for whiting.

Response: The minimum fish sizes specified agree more closely with the target retention levels of the other regulated species for a 5½ inch mesh net. The measures contained in the amendment are intended to insure the effective mesh in use is 5½ inches. A minimum mesh size in the Exempted Fishery Program has not been addressed in this amendment.

Comment: The Council commented that the preamble should note the need for early implementation of the regulated mesh area on Nantucket Shoals to protect large concentrations of juvenile Atlantic cod.

Response: Due to the large concentrations of juvenile cod presently occurring in the Nantucket Shoals area and the high mortality that will result from their discard, the Under Secretary for Oceans and Atmosphere, NOAA, (Under Secretary) has determined that it is in the best interest of the resource and the public to waive the Administrative Procedure Act delayed effectiveness period for this part of the Amendment.

Comment: The Council commented that the proposed rule failed to specify the implementation date of January 1, 1990 for the measure requiring the minimum mesh size throughout the net.

Response: The implementation date was stated in the preamble of the proposed rule and has been added as § 651.20(b)(1)(ii) of the final rule.

Comment: The Council made several comments of a minor technical or editorial nature.

Response: These comments are addressed in the body of the regulations.

Classification

The Director, Northeast Region, NMFS, (Regional Director) determined that this Amendment is necessary for the conservation and management of the Northeast multispecies fishery and that it is consistent with the Magnuson Fishery Conservation and Management Act and other applicable law.

The Council prepared an EA for the Amendment and concluded that there will be no significant impact on the environment as a result of this rule. You may obtain a copy of the assessment from the Council at the address listed above (see ADDRESSES).

The Under Secretary determined that this rule is not a "major rule" requiring a regulatory impact analysis under E.O. 12291.

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The Under Secretary also finds that, due to the possibility of high mortality of juvenile Atlantic cod in the Nantucket Shoals area and the high mortality that will result from their discards, there is good cause to make the measure establishing a seasonal regulated mesh area for this area immediately effective under section 553(d) of the Administrative Procedure Act.

The General Counsel of the Department of Commerce certified to the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities. As a result, a regulatory flexibility analysis was not prepared.

This rule does not contain a collection of information requirement subject to the Paperwork Reduction Act.

The Council determined that this rule will be implemented in a manner that is consistent, to the maximum extent practicable, with the approved coastal zone management programs of Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, and North Carolina.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

Changes to the Proposed Rule

1. In § 651.20(a)(1)(i), the table entries for Points F, L and M are revised to correct errors.

2. In § 651.20(a)(1)(ii), the table entry for Point A is revised to correct an error.

3. In § 651.20(b)(1), an expiration date for the present provision and a new § 651.20(b)(1)(i) and § 651.20(b)(1)(ii) have been added to clarify the effective date for the new provision which more accurately reflects Council intent under the FMP.

4. In § 651.20(f), the first sentence is revised to clarify the scope of the provision and to make it consistent with the prohibition on use of liners set forth in § 651.20(e)(2).

Other changes

1. In § 651.21(a)(1), a technical change has been made to the second table entry for Point A to correct an error contained in the final rule implementing Amendment 1 to the FMP (52 FR 35006).

List of Subjects in 50 CFR Part 651

Fishing, Fisheries, Vessel permits and fees.

Dated: January 26, 1989.

James E. Douglas, Jr.,

Deputy Assistant Administrator For Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, NOAA amends 50 CFR Part 651 as follows:

PART 651—[AMENDED]

1. The authority citation for 50 CFR Part 651 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. Section 651.7 is amended by adding new paragraph (b)(11) to read as follows:

§ 651.7 Prohibitions.

* * * * *

(b) * * *

(11) Enter the area described in § 651.21(a)(2) during a period in which that area is closed, unless allowed by § 651.21(a).

* * * * *

3. Section 651.20 is amended by revising paragraphs (a) (1) and (2), (b)(1), (c)(2), (d)(1) introductory text and (2), and (f) introductory text and (3) to read as follows:

§ 651.20 Regulated mesh area and gear limitations.

(a) * * *

(1) *Gulf of Maine/Georges Bank regulated mesh area* (Figure 1):

(i) Bounded on the east by the U.S.-Canada maritime boundary, defined by the following points in the order stated:

Point	Latitude	Longitude
L	Southward along the irregular U.S.-Canada maritime boundary from the territorial sea	
K	43°58' N.	67°22' W.
M	42°53.1' N.	67°44.4' W.
F	42°31' N.	67°28.1' W.
G	41°18.6' N.	66°24.8' W.

(ii) Bounded by straight lines connecting the following points in the order stated:

Point	Latitude, longitude	Loran C bearings
N1	40°55.8' N, 66°38.0' W.	9930-Y-30750 and 9960-Y-43500.
N2	40°45.5' N, 68°00 W.	9960-Y-43500 and 68°00' W.
N3	40°37.0' N, 68°00' W.	9960-Y-43450 and 68°00' W.
N4	40°30.5' N, 69°00' W.	9960-Y-43450 and 68°00' W.
N5	40°22.7' N, 69°00' W.	9960-Y-43400 and 68°00' W.
Z	40°18.7' N, 69°40' W.	9960-Y-43400 and 69°40' W.
A	40°33.5' N, 69°40' W.	
B	41°35.0' N, 69°40' W.	
C	41°35.0' N and the territorial sea.	

NOTE.—Loran lines are included for the convenience of fishermen.

(iii) Northward along the territorial sea of Massachusetts, New Hampshire, and Maine to the U.S.-Canada maritime boundary at Point L.

(2) *Nantucket Shoals regulated mesh area* (Figure 4): Bounded by straight lines connecting the following points in the order stated:

Point	Latitude, longitude	Loran C bearings
NS1	41°24.0' N, 69°59.0' W.	9960-Y-43650 and 69°59' W.
NS2	41°28.0' N, 69°40.0' W.	9960-Y-43650 and 69°40' W.
NS3	41°56.5' N, 69°40.0' W.	9960-Y-43650 and 69°40' W.
NS4	41°51.5' N, 70°14.0' W.	9960-Y-43650 and 9960-X-25175.
NS5	41°00.0' N, 70°17.5' W.	9960-Y-25175 and 41°00' N.
NS6	41°10.0' N, 70°19.0' W.	9960-X-25175 and 41°10' N.
NS7	41°15.5' N, 70°18.5' W.	9960-X-25175 and 41°15.5' N.

and then to NS1 following the seaward limit of the territorial sea.

NOTE.—Loran lines are included for the convenience of fishermen.

(i) This area will be in effect for the months of December through March, inclusive, unless suspended pursuant to § 651.20(a)(2)(ii).

(ii) The Regional Director may suspend this Regulated Mesh Area (RMA) by notice in the **Federal Register**, if he/she determines that concentrations of juvenile cod are not sufficiently abundant in the area to warrant protection by the RMA.

(b) *Trawl nets*—(1) *Diamond mesh.* (i) Except as provided for in §§ 651.20(b)(3), 651.20(d) and 651.22, the minimum mesh size for any trawl net, including midwater trawls, or Scottish seine used by a vessel fishing in the mesh area described in paragraphs (a)(1) and (a)(2) of this section is 5½ inches for at least 75 continuous meshes forward of the terminus of the net. This provision shall expire effective December 31, 1989.

(ii) Effective January 1, 1990, except as provided for in §§ 651.20(b)(3), 651.20(d) and 651.22, the minimum mesh size for any trawl net, including midwater trawls, or Scottish seine used by a vessel fishing in the mesh area described in paragraphs (a)(1) and (a)(2) of this section is 5½ inches throughout the entire net.

* * * * *

(c) * * *

(2) In other portions of the New England area not subject to minimum mesh size restrictions under paragraph (b) of this section, the mesh in bottom-tending gillnets must be the same during the months of November through February as that in effect in the Regulated Mesh Area, as defined in paragraph (a)(1) of this section.

(d) *Midwater gear exception.* (1) For the RMA south of 42° N. latitude, fishing for Atlantic herring or blueback herring, mackerel, and squids may take place throughout the fishing year with mesh sizes less than the regulated size provided that:

* * * * *

(2) For the RMA north of 42° 20' N. latitude, fishing for herring and mackerel may take place from December through May with mesh sizes less than regulated size, provided that the requirements of paragraphs (d)(1) (i) and (ii) of this section are met and that the bycatch of regulated species does not exceed 1 percent, by weight, of herrings and mackerel on board the vessel.

* * * * *

(f) Except as provided in paragraph (d) of this section, no vessel issued a permit under § 651.4 may have available for immediate use any net, or any piece of a net, not meeting the requirements specified in paragraphs (b) and (c) of this section, or mesh that is rigged in a manner that is inconsistent with § 651.20(e)(2), while in the areas described in paragraph (a) of this section. A net that conforms to one of the three following specifications and which can be shown not to have been in recent use is considered to be not "available for immediate use":

* * * * *

(3) Nets which are secured in a manner approved by the Regional Director. After review and approval, the Regional Director shall specify alternative manner(s) of securing nets by notice in the **Federal Register**.

§ 651.21 [Amended]

4. In § 651.21(a) the heading is revised to read "*Georges Bank*".

5. In § 651.21(a)(1), the second table entry for Point a is revised to read as follows:

Point	Latitude	Longitude
a	40°53' N.	68°53' W.

§ 651.22 [Amended]

6. In § 651.22(a)(1), the table entry for Point B is revised to read as follows:

Point	Latitude	Longitude
B	41°35' N.	69°40' W.

7. Section 651.22 is amended by revising paragraphs (c) and (e)(2) to read as follows:

§ 651.22 Exempted fishery program.

* * * * *

(c) *Certification.* (1) The Regional Director will certify in writing the entry of the applicant into the exempted fisheries program.

(2) Entry of the applicant into the exempted fisheries program cannot occur until the applicant receives written certification from the Regional Director.

(3) The Regional Director may suspend current participation or deny entry into the exempted fishery program, or both, to an applicant if:

(i) The Regional Director determines that the applicant has failed to file reports as required by § 651.22(f); or

(ii) The applicant violates any provision of these regulations or of the Magnuson Act, providing a notice of violation and assessment for such violation has been issued to the applicant.

(4) With respect to any suspension or denial for failure to report under paragraph (c)(3)(i) of this section, the Regional Director may reinstate the applicant or approve the applicant's request to enter the exempted fishery program for subsequent reporting periods; if the applicant submits, and the Regional Director receives, completed missing reports. For missing reports received within 5 calendar days of suspension or denial, the Regional Director shall decide whether reinstatement is appropriate within 14 calendar days of receiving the missing reports. For missing reports received after the 5 calendar days of suspension or denial, the Regional Director shall decide within 30 calendar days of receiving the reports. The Regional Director's authority to suspend participation in or deny entry into the exempted fishery program is separate and distinct from any civil penalty assessed under § 651.7(b)(8).

* * * * *

(e) * * *

(2) Participation in the exempted fisheries program is subject to seasonal limitations, exempted species, and maximum regulated species percentage restrictions as follows:

Period	Target species	Comments
June through November	Dogfish, herring, mackerel, ocean pout, red hake, silver hake, and squid.	Regulated species weight may not exceed 10% of the total landings of dogfish, herring, mackerel, ocean pout, red hake, silver hake, and squid during the reporting period. Regulated species weight may not exceed 25% of the combined weight of dogfish, herring, mackerel, ocean pout, red hake, silver hake, and squid on each trip.
December through January	Silver hake (whiting)	Regulated species weight may not exceed 10% of the total landings of silver hake and shrimp during the reporting period. Regulated species weight may not exceed 25% of the combined weight of silver hake and shrimp on each trip.
December through May, or as specified by ASMFC.[1]	Shrimp	Regulated species weight may not exceed 10% of the total landings of shrimp during the reporting period. Regulated species weight may not exceed 25% of the weight of shrimp on each trip.

[1] The Northern Shrimp Section of the Atlantic States Marine Fisheries Commission is responsible for the management of northern shrimp. The Section has designated a regulatory period from December through May within which it sets the annual fishing season for northern shrimp. The Section has the authority to adjust the regulatory period or add additional measures appropriate for the conservation of northern shrimp. The Section will consult with the New England Fishery Management Council regarding recommendations to adjust the regulatory period, with respect to the management of multispecies.

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8. Section 651.23 is amended by revising paragraph (a) to read as follows:

§ 651.23 Minimum fish size.

(a) The minimum fish sizes (total length) for certain regulated species follow:

	Inches
Cod, haddock, and pollock	19
Witch flounder (gray sole)	14
Yellowtail flounder	13
American plaice (dab)	14
Winter flounder (blackback)	11
Redfish	9

. . . . .

9. In Part 651, Figures 1 and 4 are revised to read as follows:

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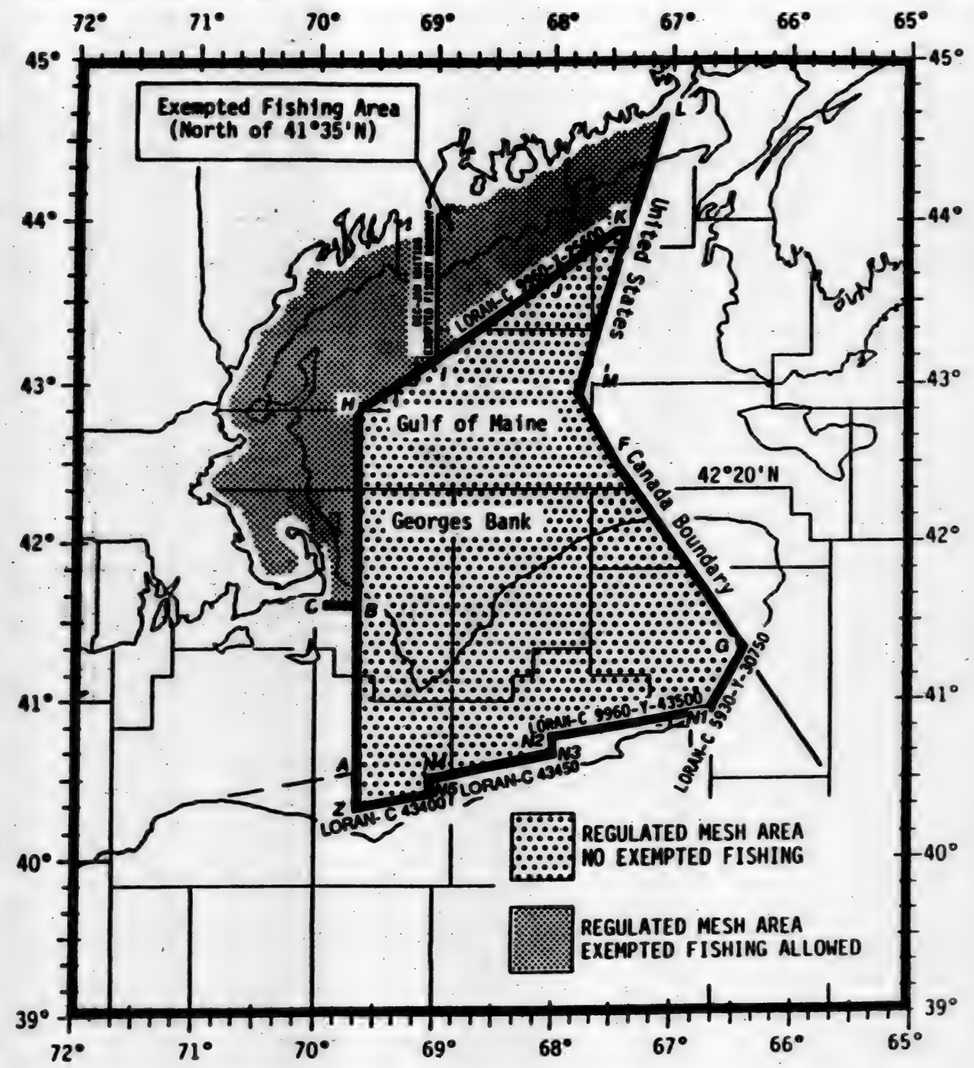


Figure 1. New England regulated mesh areas and areas of exempted and non-exempted fishing. See text for details. These areas are defined in 651.20(a)(1). Loran lines are included for the convenience of fishermen.

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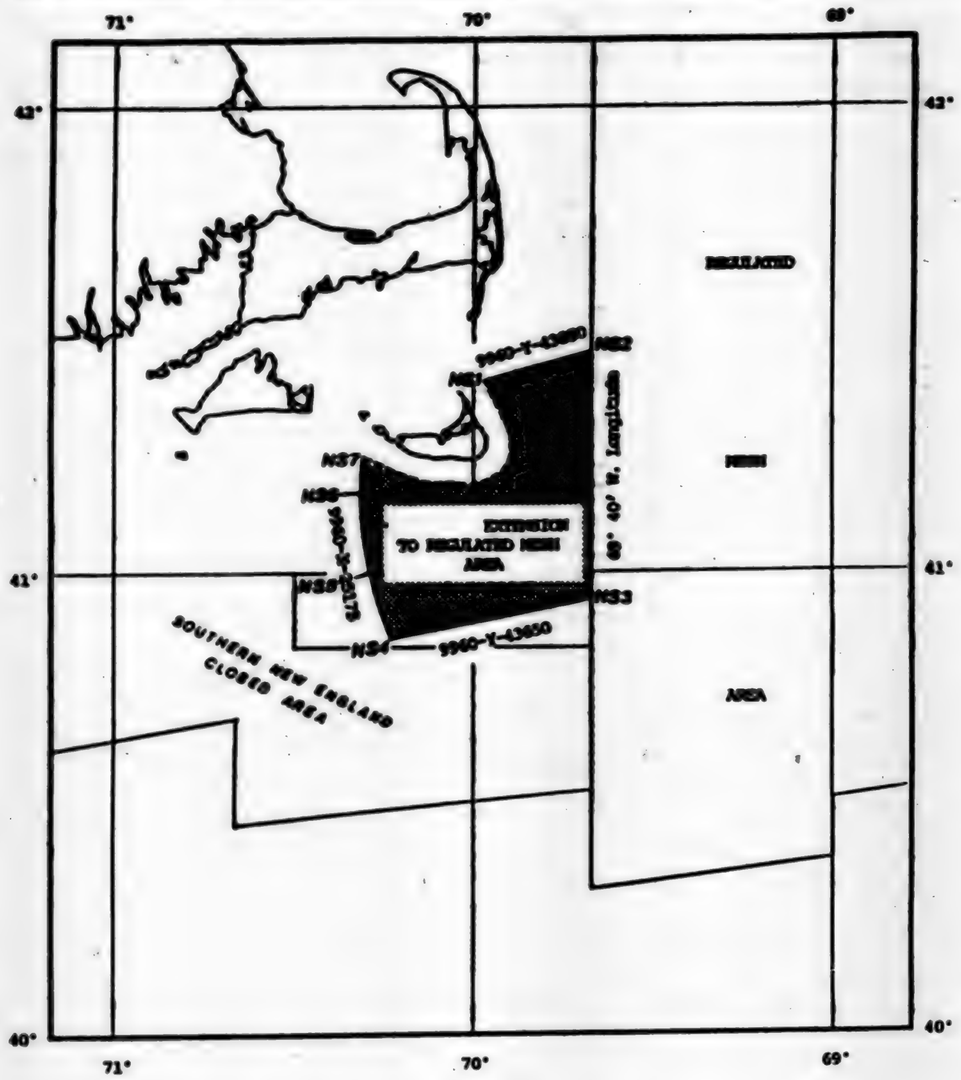


Figure 4. Nantucket Shoals regulated mesh area. See text for details. This area is defined in 651.20(a)(2). Loran lines are included for the convenience of fishermen.

[FR Doc. 89-2341 Filed 1-27-89; 10:41 am]

BILLING CODE 3510-22-C

Proposed Rules

Federal Register
Vol. 54, No. 19
Tuesday, January 31, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 949

[Docket No. FV-AO-88-2; AMS-FV-88-034 PD]

Texas-New Mexico High Plains Potatoes; Recommended Decision and Opportunity To File Written Exceptions to Proposed Marketing Agreement and Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This recommended decision proposes a marketing agreement and order regulating the handling of potatoes grown in the High Plains area of Texas and New Mexico. Interested persons may file written exceptions concerning the recommendations made in this recommended decision. The proposed order would authorize regulations to establish grade, size, quality, maturity, pack, container and marking standards for Irish potatoes grown in 21 designated counties in Texas and 10 designated counties in New Mexico. The program would be administered by a committee of six producers, four handlers and a public member, and would be financed by assessments levied on potato handlers. The primary objective of the program would be to improve the quality of potatoes shipped to fresh markets. This should reduce marketing losses, improve quality for consumers, and result in improved returns to growers.

DATE: Written exceptions to this recommended decision must be received by March 2, 1989.

ADDRESSES: Four copies of written exceptions should be sent to the Hearing Clerk, Room 1079, South Building, U.S. Department of Agriculture, Washington, DC 20250. All written submissions will be made available for public inspection at the office of the Hearing Clerk during regular business hours [7 CFR 1.27(b)].

FOR FURTHER INFORMATION CONTACT: Robert F. Matthews, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456, telephone 202-447-2431.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of Hearing—Issued March 30, 1988, and published in the Federal Register on April 4, 1988 [53 FR 10887].

Preliminary Statement

This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code, and therefore is excluded from the requirements of Executive Order 12291.

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to a proposed marketing agreement and order regulating the handling of potatoes grown in a designated area of Texas and New Mexico.

This recommended decision and opportunity to file exceptions is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601 *et seq.*], hereinafter referred to as the "Act", and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders [7 CFR Part 900].

The proposed marketing agreement and order were formulated on the record of a public hearing held at Hereford, Texas on April 19, 1988. Notice of the hearing was published in the April 4, 1988, issue of the Federal Register. The notice set forth a proposed order submitted by the Texas-New Mexico Potato Committee on behalf of potato producers and handlers in the proposed production area.

Small Business Consideration

In accordance with the provisions of the Regulatory Flexibility Act (RFA) [5 U.S.C. 601 *et seq.*], the Administrator of the Agricultural Marketing Service has determined that this action would not have a significant economic impact on a substantial number of small entities. Small agricultural producers have been defined by the Small Business Administration (SBA) [13 CFR 121.2] as those having average annual gross revenues for the last three years of less than $500,000. Small agricultural service firms, which would include handlers under this proposed order, are defined as those with gross annual revenues of less than $3.5 million.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders and rules issued thereunder are unique in that they are brought about through group action of essentially small entities for their own benefit. Thus, both the RFA and the Act have small entity orientation and compatibility. Interested persons were invited to present evidence at the hearing on the probable economic impact that the proposed order would have on small businesses.

The record indicates that there are approximately 30 handlers of potatoes in the High Plains area, who handled 2,848,000 hundredweight of potatoes for fresh market in 1986 with an estimated crop value of about $26.3 million. While there is a variance in size of individual handler operations, most, if not all, of the handlers that would be regulated under this proposed order would qualify as small firms under SBA's definition. Likewise, the majority of the 110 potato growers in the High Plains area could be classified as small businesses.

While the order recommended herein would likely impose regulations on handlers, the burden of these regulatory requirements should not be significant compared to the benefits which should accrue to such businesses. The expected impact on persons acting in a handling capacity who could be classified as small businesses is discussed in detail elsewhere in this recommended decision. In summary, the testimony is that the order should be operated in as efficient and economical a manner as will tend to effectuate the declared policy of the Act. In this way all entities, small and large, would be subject to minimal regulatory requirements as a result of the order. However, as discussed in the material issues, the proposed order would contain the authority to exempt from regulation special purpose shipments, as well as minimum quantities, and the order should be operated in a way that would incorporate sound business practices and efficiencies which would minimize the burden on all regulated business entities.

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The Act does not authorize the regulation of growers. However, some impact upon growers is likely. Regulations promulgated under the proposed order could be expected to remove from fresh market channels less desirable grades and sizes of potatoes and divert them to other outlets, such as livestock feed. The record indicates that an extensive cattle-feeding industry exists within the proposed production area which serves as an outlet for culls, or low grade potatoes. Moreover, as the lower grades and smaller sizes are removed from fresh market channels, prices to growers for the resulting higher quality supplies should increase reflecting consumer preference for this level of quality. This should outweigh any loss to growers for cull potatoes, since such quality even on the fresh market historically returns little or nothing to the producer.

Although a somewhat larger proportion of a producer's potatoes may be marketed in secondary outlets at a lower price, the greater part of production, which includes the higher or fresh market grades, should yield a greater return. Thus, the proposed order could be expected to have a positive impact on grower returns.

The impact of the proposed order upon handlers is also expected to be positive. Most handlers perform their services for an established fee based on the quantity of potatoes handled for a producer. It is anticipated that most potatoes shipped to fresh market will be required to meet certain quality and size requirements. It is also expected that an expansion of existing markets and the development of new ones will result from the increase in quality.

Further, testimony indicated that the burden placed on handlers by the proposed order with respect to reporting and recordkeeping requirements would be negligible. Most of the information that would be reported to the committee is already compiled by handlers for other uses and is readily available. In compliance with Office of Management and Budget (OMB) regulations [5 CFR Part 1320] which implement the Paperwork Reduction Act of 1980 [44 U.S.C. Chapter 35] and § 3504(h) of that Act, the information collection and recordkeeping requirements that may be imposed by this proposed order would be submitted to OMB for approval. These requirements would not become effective prior to OMB approval. Any requirements imposed would be evaluated against the potential benefits to be derived, and any added burden resulting from increased recordkeeping would not be significant when compared to those anticipated benefits.

Reporting and recordkeeping requirements issued under comparable potato marketing order programs impose an average annual burden on each regulated handler of about four hours. It is reasonable to expect that a comparable burden may be imposed under this proposed order on the estimated 30 handlers of High Plains potatoes.

The Act requires that prior to the issuance of a marketing order, a referendum be conducted of affected producers to determine whether they approve of the order. The ballot material that may be used in conducting a referendum on this proposed order for High Plains potatoes has been submitted to OMB for approval. It has been estimated that it would take an average of 10 minutes for each of the approximately 110 potato growers to participate in the voluntary referendum balloting.

In determining that the proposed order would not have a significant economic impact on a substantial number of small entities, all of the issues discussed above were considered. The proposed order provisions have been carefully reviewed and every effort has been made to eliminate any unnecessary costs or requirements. Although the order may impose some additional costs and requirements on handlers, it is anticipated that the programs under the proposed order would help to increase demand for potatoes grown in the High Plains area. Therefore, any additional costs should be offset by the benefits derived from expanded markets and sales benefiting handlers and producers alike.

Accordingly, it is determined that the proposed marketing order would not have a significant impact on small handlers or producers. Moreover, as discussed in material issue (3)(below), potatoes grown in more than one State would be regulated under the proposed order in order to effectuate the declared purposes of the Act. Thus, any marketing orders, or their equivalent, authorized under respective State statutes could not achieve the same results as an alternative to a Federal marketing order.

Material Issues

The material issues presented on the record of the hearing are as follows:

(1) Whether the handling of potatoes in the proposed production area is in the current of interstate or foreign commerce, or directly burdens, obstructs, or affects such commerce;

(2) Whether the economic and marketing conditions are such that they justify a need for a marketing agreement and order which will tend to effectuate the declared policy of the Act.

(3) What the definition of the commodity and the production area to be covered by the proposed order should be;

(4) What the identity of the persons and the marketing transactions to be regulated should be; and

(5) What the specific terms and provisions of the proposed order should be including:

(a) The definitions of terms used therein which are necessary and incidental to attain the declared policy and objectives of the Act;

(b) The establishment, maintenance, composition, procedures, powers, duties, and operation of a committee which shall be the local administrative agency for assisting the Secretary in the administration of the proposed order;

(c) The authority to incur expenses and the procedure to levy assessments on handlers to obtain revenue for paying such expenses;

(d) The authority to establish production and marketing research, and market development projects;

(e) The method of regulating the handling of potatoes grown in the production area;

(f) The authority for inspection and certification of shipments;

(g) The establishment of requirements for handler reporting and recordkeeping;

(h) The requirement of compliance with all provisions of the proposed order and with regulations issued under it; and

(i) Additional terms and conditions as set forth in §§ 949.82 through 949.92 of the Notice of Hearing published in the **Federal Register** of April 4, 1988 [53 FR 10887] which are common to all marketing agreements and marketing orders, and other terms and conditions published as §§ 949.97 through 949.99 which are common to marketing agreements only.

Findings and Conclusions

The following findings and conclusions on the material issues are based on the record of the hearing:

(1) Potatoes are an agricultural commodity within the group named in the Act to which its marketing regulatory authority may be applied. They are an important commercial vegetable crop in Texas and New Mexico. The Texas-New Mexico summer crop of potatoes is primarily grown in the production area, as defined in the proposed order. The area includes

the High Plains area of the Texas panhandle and eastern New Mexico. Data published by the New Mexico and Texas Departments of Agriculture show that growers in the High Plains area produced a summer-season potato crop in 1986 of 4 million hundredweight which had a farm value of $32.1 million.

The record indicates that potato harvest in the Texas portion of the production area begins in late June and continues into November, although weather conditions may result in some variation in harvest timing. The peak harvest period is early July through August. Harvest in New Mexico begins two weeks later, with the most active period from mid-July through mid-October. The record shows that production area potatoes move to nearby wholesale and retail outlets within the production area, and to such outlets in other parts of Texas and New Mexico and in other States.

A large portion of the potatoes grown in the proposed production area is marketed outside of that area. USDA Market News reports show that in 1986, there were 821,000 hundredweight of Texas and New Mexico potatoes unloaded in the leading 22 major U.S. markets. Dallas, Texas (which is outside the production area) accounted for 32 percent of the total reported Texas potato unloads and 61 percent of unloads reported from New Mexico. Substantial quantities of potatoes grown in the High Plains region were also reported in numerous markets in other States, such as Atlanta in the Southeast; New York City, Boston, Pittsburgh, and Baltimore in the East; Chicago and St. Louis in the Midwest; and New Orleans in the South. Some potatoes also moved to Western markets, including Los Angeles and Denver.

Record evidence shows that the High Plains area is an important domestic supplier of potatoes each year. For a brief period of several weeks in late June and early July, at the beginning of its season, there is little competition from other domestic areas in its major markets. However, High Plains producers encounter significant competition during most of the shipping season from potatoes grown in Washington and Colorado, where harvest begins soon after that in the proposed production area. Shipments of potatoes from Washington and Colorado are in large volume during the latter part of the Texas-New Mexico marketing period, and provide strong competition in most markets outside of Texas.

Record evidence shows that the Texas-New Mexico High Plains potato industry's market is the entire United States, and its members are in daily contact with buyers across the Nation. With modern communication and transportation systems, potato supplies and prices in any one location are promptly known elsewhere and have a direct effect on potato supplies and prices in all other locations. Record evidence also shows that these potatoes are shipped in foreign commerce.

There are few differences in sales between potatoes for use within the production area as compared with potatoes sold for use in other parts of the United States or other countries. If a program regulating only shipments to markets outside the production area were to be made effective, the market for potatoes within the production area would likely be overburdened with unregulated, lower quality potatoes resulting in unduly lower prices in the area. In turn, this would affect prices in other parts of Texas and New Mexico, and in other States. The evidence of record is that all movement of potatoes in marketing channels is inextricably intermingled and in direct competition, and hence it is concluded that the handling of potatoes grown within the production area is either in the current of interstate or foreign commerce or directly burdens, obstructs or affects such commerce. Hence, except as hereinafter otherwise provided, all handling of potatoes grown in the production area should be subject to the proposed order.

(2) The need for the proposed regulatory program for Texas-New Mexico High Plains potatoes is supported by the evidence in the record of hearing.

Irish potatoes are an important vegetable crop in the United States and are unique in that they are grown commercially in nearly every State. In 1986, the last year for which complete statistics are available, 1.22 million acres were harvested and U.S. production totalled 362 million hundredweight. The value of the crop was an estimated $1.8 billion. Over half the potatoes sold (59 percent) were sold to processors. Thirty-four percent was sold in fresh market channels, and the remaining 7 percent was sold for seed or livestock feed.

The U.S. potato crop is classified by four seasonal groupings according to the time of the harvest. The fall crop, harvested from October through December, is by far the largest and in 1986 accounted for almost 90 percent of total production. This crop is produced in the northern tier of States. Leading producers are Idaho, Washington, Minnesota, North Dakota, Oregon and Maine. The fall crop is referred to as a storage crop and with modern storage practices and facilities, supplies potatoes virtually all year round.

The winter crop, harvested from January through March, is grown primarily in Southern California and Southern Florida. This is the smallest crop of the four since it follows closely on large storage crop supplies that are usually ample. In addition, most crop land available for use during the cold months is planted to crops yielding a higher dollar crop. The 1986 winter crop was just under 3 million hundredweight, about average.

The spring crop is harvested from April through June. States shipping the most significant volume during this period are California, Florida and, toward the end of spring, North Carolina. In 1986 this crop totaled nearly 20 million hundredweight.

The summer season consists of the months of July through September. In 1986, the summer crop totaled nearly 21 million hundredweight. Leading producers were California, Colorado, New Jersey and the High Plains of Texas and New Mexico. Potatoes grown in the proposed production area accounted for about 20 percent of the 1986 summer crop and about 1 percent of total U.S. production.

According to the record, the origin of commercial potato production in the High Plains of Texas and New Mexico is uncertain, but one witness recalled growing potatoes as early as 1940. One of the major turning points in the Texas-New Mexico High Plains potato industry occurred about 20 years ago with the introduction of sprinkler irrigation. Until then, all of the potatoes were furrow irrigated, and potato production was restricted to heavier soils. On the lighter, sandier soils common in the proposed production area, irrigation water could not reach the end of the furrow. With the development of sprinkler irrigation, potato production shifted to the lighter soils of the High Plains area which are more suitable for the production of quality potatoes. The area of production also greatly expanded to include the Clovis area of New Mexico and the Seminole, Texas area to the south.

Production of potatoes in the proposed production area, as indicated by State data for the Texas and New Mexico summer potato crop, has trended upward during the last decade. During the five-year period 1977–81, potato acreage harvested in the Texas High Plains area averaged 8,280 acres and production averaged 2,067,000 hundredweight. However, during the period 1982–86 average acreage harvested had increased 11 percent to

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10,340 acres and average production had increased 20 percent to 2,474,000 hundredweight.

Likewise, during the 1977–81 period, New Mexico High Plains producers harvested an average of 2,048 acres and produced an average of 563,200 hundredweight of potatoes. During the five-year period 1982–86, average acreage was up 91 percent to 5,070 acres and average production rose 131 percent to 1,373,000 hundredweight. Increasing acreage was primarily responsible for the expansion that took place during this time.

The record indicates that while total average acreage in the High Plains area increased 29 percent and average produciton rose 45 percent during this time period, acreage has shown signs of stabilizing and production has levelled off. In the years 1984, 1985 and 1986, harvested acreage has totalled 17,000, 19,750 and 15,350 acres respectively. Production during the same three years was 4,392,500 hundredweight, 4,729,300 hundredweight, and 4,044,600 hundredweight.

Witnesses testified that planting of the High Plains potato crop begins as early as February and extends to mid-April. The princtpal variety grown is the Norgold Russet. Some red potatoes are also produced, including the Red Lasoda and Viking varieties. Seed is purchased primarily from northern producing States. The record indicates that only a limited amount of breeding research has been undertaken to develop varieties specifically suited to the unique growing conditions of the High Plains. At present, however, growers in the area are dependent upon varieties developed for use in other production areas. Production research is needed to develop new varieties able to produce large, high quality crops, under the hot summers prevalent in the proposed production area. Evidence also supports research to develop better methods of dealing with heat stress at harvest time and when the potoatoes are shipped. Also, because the costs associated with production keep rising, more research is needed to find ways of reducing those costs.

As with other potato producing areas, the cost of production for the High Plains has trended upward. A study by the Texas Agricultural Market Center at College Station, Texas, presented at the hearing provided some comparative cost information. According to this study, in 1980 the cost to produce an acre of potatoes in the High Plains was $1,123 for variable costs and $87 for fixed costs, for a total cost of $1,210 per acre. By 1986 those costs had risen to $1,360, $155, and $1,548 respectively, and in 1987 the variable costs were $1,665, and the fixed costs were $140, for a total cost of $1,805 per acre. In 1986, assuming an average yield of 225 hundredweight per acre, a producer would have needed to receive $6.88 per hundredweight in order to break even. Record evidence shows that the season average price for 1986 was $7.19 per hundredweight. Thus, the producer's profit was only 31 cents for each 100-pound sack of potatoes.

As is typical for summer crop potatoes, those grown in the proposed production area are limited in their storage capability. This is due to the fact that the major variety grown (the Norgold Russet) does not store well. In addition, the high temperatures in this area at harvest time cause heat stress which renders the potatoes less suitable for long-term storage.

The record indicates that when properly grown and handled, High Plains potatoes are marketable for only a month or two after harvest. For this reason, most of the crop is shipped immediately after packing, with the most active shipping period being the months of July and August. Witnesses testified that the relatively short life of their potatoes accentuates marketing risks by adding an urgency to move High Plains potatoes quickly into wholesale and retail channels without regard to existing supplies and prices in those markets.

The High Plains potato crop is primarily marketed in fresh outlets, although a small portion (about 10 percent in 1985), is used for processing into chips. Competition in the fresh market for High Plains potatoes comes mainly from the summer crops grown in California and Colorado and the early part of the fall crop from Washington. Record evidence in the form of shipment data shows that while High Plains potatoes are distributed in most major U.S. makets, they are most competitive in nearby southern and midwestern markets, including markets within the State of Texas. The largest market for High Plains potatoes is Dallas, followed, in descending order, by Saint Louis, Chicago, New Orleans, and Denver. Record evidence shows that in recent years the Texas-New Mexico share of these markets has eroded under the pressure of shipments from competing producing areas. For example, since 1982, the market share for High Plains potatoes in its principal market, Dallas, has trended downward. The High Plains market share in New Orleans and Denver has also trended downward since 1983.

The record indicates that potato markets are somewhat finite and can only absorb a certain volume of supplies before conditions deteriorate. Therefore, one shipping area can increase its share of a market only at the expense of another area. Such competition is both normal and desirable, inasmuch as it rewards those handlers and areas with the best product and the most efficient marketing systems. However, when an industry begins to lose its share of a market, it indicates a problem which needs to be resolved if that industry is to continue its viability. In its essence, loss of market share means that a competing area has a product that is in some way more desirable for purchase.

The record indicates that at the same time the High Planes potato industry has lost market share, prices have declined and are lower than those received in other areas.

During the ten-year period 1977–86, the total crop value of High Plains potatoes ranged from $17.3 million in 1979 to $49.8 million in 1984. In 1986 the crop value was $32.1 million. During this ten-year period, the season average price to growers in Texas and New Mexico ranged from a low of $4.60 per hundredweight, or 47 percent of parity in 1979, to a high of $12.97 per hundredweight, or 130 percent of parity in 1980. Prices received for Texas and New Mexico summer crop potatoes were moderately to substantially below parity in nine of the last ten years. Season aveage prices for potatoes exceeded parity in 1980, but otherwise ranged from 39 to 90 percent of parity and averaged 71 percent for the period. Prices have trended downward relative to parity in the last few years.

Testimony indicates that potatoes marketed early in each season often are of poor quality, but they return higher prices than those marketed later when competition occurs with higher quality potatoes from other areas. Due to the shipment of poor quality potatoes at the beginnig of the season, and to increasing supplies, prices for all High Plains potatoes tend to decline as the season progresses until growers at times receive little for their potatoes.

In 1986, for example, shipping point prices for 50-pound cartons of Norgold potatoes grown in the High Plains averaged $17.00 per hundredweight in July, and declined to $15.90 in August. Prices received for similar potatoes grown in Washington were higher, averaging $21.00 in July and $20.34 in August. Colorado shippers during those same two months received $17.30 and $19.50 per hundredweight, respectively.

The record indicates that a large percentage of High Plains potatoes shipped to fresh markets is packed in 50 or 100-pound cartons or bags. These potatoes are prepared for market by the usual commercial practices such as grading to eliminate inferior quality, sizing to achieve uniformity, and washing to eliminate adhering soil and decay-causing organisms and to improve appearance.

High Plains potatoes also move to market in bulk loads which are broken down into smaller packages by repackers for distribution. Bulk load shipments are of two basic types: potatoes that have been sized and graded, and field-run potatoes. Bulk loads that have been sized and graded account for a substantial part of the bulk load shipments. They are potatoes which are sorted during the normal grading process to remove those that are damaged, have defects such as irregular shape or mechanical injury, or are of a very small size. Such potatoes usually have a greater range of sizes and grades than packaged potatoes.

Bulk field-run potatoes are those loaded on trucks essentially as they come from the field. Some sorting may be done, but the typical field-run lots have a wider range of sizes, grades, and qualities. The record indicates that quality of such potatoes is generally below that of commercially graded and packaged potatoes.

At the hearing, representatives of the Texas-New Mexico High Plains potato industry identified the lack of consistent quality as a problem area that must be improved in both bulk loads and packed potatoes in order to maintain and regain lost market share and to increase returns to growers.

Experienced handlers testified that markets often are made and lost on buyer confidence, which is true with potatoes. Produce buyers place great value upon consistency, particularly with respect to quality. Consumers expect produce of a good quality at all times and in all seasons. Retailers are often under severe pressure to provide this consistency and tend to buy only from wholesalers who can supply the desired product. However, at the other end of the chain, the producer is faced with a crop as it naturally occurs consisting of all possible sizes and qualities.

Thus, in the normal course of business, in order to command the best price, it is necessary that the harvested potatoes be washed, sorted, sized and packed for market. Potatoes that do not meet fresh market requirements are typically moved to secondary markets such as chips or livestock feed. The standards to which the potatoes are graded and the care with which these tasks are performed help to establish an area's reputation for consistent quality. Witnesses testified that individual handlers and shippers in the High Plains area do this to varying degrees to enhance their business reputations. However, for an entire production area to earn and maintain such a reputation requires a concerted effort on the part of the entire industry. Conversely, if a few handlers lower their standards and ship less than acceptable quality, the reputation of the area as a whole suffers.

Handlers who ship ungraded, unsized potatoes of questionable quality may contribute to the generally unfavorable image of High Plains potatoes that currently exists.

On the other hand, developing and maintaining industry-wide quality requirements and shipping potatoes that consistently reflect these requirements can only enhance the image buyers have of potatoes from the High Plains. In fact, witnesses attributed the higher prices received for comparable potatoes grown in Washington and Colorado to the quality image earned through years of operating mandatory quality control programs similar to this one proposed for the Texas-New Mexico High Plains. Also, both Colorado and Washington provide promotional support which tends to enhance the image of their potatoes. Without similar tools, the record indicates High Plains shippers compete by offering lower prices, or discounting the product. Discounting is a method of dealing with competition common to all kinds of businesses. It is attractive to buyers for the obvious reason that they pay less for the product. Record evidence indicates that the seller, however, receives less for the product and this reduction is almost always passed on to the grower, the last in line. Thus, a quality control program that enables the product to compete in the market on the basis of quality ultimately yields higher returns at the grower level.

The record indicates that dealers of good quality potatoes in the market find it difficult to compete with dealers offering lower grades at discounted prices, and they must buy as cheaply as possible to compete successfully. Price adjustments are frequently requested on higher grade potatoes so that the receivers can move the potatoes into markets, depressed by lower prices of inferior grades. Thus, lower grade potatoes in the market depress market prices for better grade potatoes.

Witnesses testified that the marketing of low quality potatoes is not only detrimental to producers and shippers, but these potatoes, especially culls, are not as acceptable to consumers. The testimony indicated that these consumer preferences are reflected in reduced retail sales volume and lower prices that are passed back through distribution channels to shipping point. Because packing, transportation, wholesale handling, and retailer costs are about the same for lower grades or culls as for the the better grades, retail prices for low quality potatoes often are only slightly less than prices for top quality. However, grower prices for the lower grades often are only a small fraction of the price received for better grade potatoes.

Witnesses testified that without a mandatory industry-wide quality control program, it has been the practice for some members of the High Plains potato industry to offer and sell potatoes of poor or irregular quality at low prices, thereby having a detrimental effect upon the market and the price structure for all production area potatoes. Such disorderly maketing practices have been damaging to the industry as a whole. In the aggregate, the success of production area growers in the potato market is to a substantial degree dependent upon the quality of potatoes shipped, and any improvement in the growers' competitive economic situation requires the adoption of improved market practices. Therefore, the need exists to regulate the marketing of High Plains potatoes through grade, size, quality, pack, container, or marking standards, thereby improving quality which promotes more orderly marketing conditions and higher returns to producers with due regard to the interest of consumers.

The need also exists for research to improve quality by developing varieties better suited to the growing conditions typical of the proposed production area. Research should also include new production methods and materials as well as ways of improving grower returns by reducing production and marketing costs. Development of market research and promotion to complement the quality control program would enable the industry to better compete with other producing areas.

The need for a marketing agreement and order program, such as the proposed order, to eliminate certain price depressing practices with respect to potatoes grown in the production area is established in the record. The establishment of more orderly marketing conditions as may be brought about by the proposed marketing order and regulations that may be issued under its authority, will tend to improve prices to producers for potatoes grown in the production area.

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(3) The term "potatoes" should be defined to specify the commodity covered by the proposed order and to which the terms and provisions of the proposed order are applicable. The term "potatoes" has a specific meaning to all producers of the commodity in the High Plains area, and to other parties who purchase, ship and distribute the commodity. Such term should be defined to include all varieties of Irish potatoes, classified botanically as Solanum tuberosum, which are currently grown or which may be grown within the production area.

A definition of the term "production area" should be included in the proposed order to fix the area in which potatoes must be grown before the handling thereof is subject to regulation under the proposed order. Such term should be defined to include the following counties in Texas: Bailey, Briscoe, Castro, Cochran, Dallam, Donley, Deaf Smith, Floyd, Gaines, Hale, Hall, Hartley, Hockley, Lamb, Lubbock, Motley, Oldham, Parmer, Swisher, Terry, and Yoakum. This term should also include the following counties in New Mexico: Chaves, Curry, De Baca, Eddy, Guadalupe, Lea, Roosevelt, Torrance, Union, and Quay.

These counties comprise what is known as the High Plains area of each State. They are contiguous and share essentially the same climatic, growing, harvesting and marketing conditions for potatoes. While potatoes are grown in other areas of Texas and New Mexico, these other areas are distinct, and have different characteristics from the proposed production area such as growing condition and shipping season. All counties in the proposed production area produce potatoes.

It is therefore determined that all territory included within the boundaries of the production area constitutes the smallest regional production area that is practicable, consistent with carrying out the declared policy of the Act, and this production area should be defined as hereinafter set forth.

(4) The term "handler" is synonymous with the term "shipper", and should be defined to identify the persons who would be subject to regulation under the order. Such term should apply to any person except a common carrier transporting potatoes owned by another person, who performs any of the activities within the scope of the term "handle" as hereinafter defined. The definition identifies persons who are responsible for meeting requirements of the order and the regulations issued thereunder, such as meeting grade and size requirements, paying assessments, and submitting reports.

Common or contract carriers transporting potatoes which are owned by another person should not be considered as handlers, even though they transport potatoes, because such carriers do not have control over the grade, size, quality or pack of the potatoes being transported. Nor are they the persons who cause the introduction of such potatoes into the stream of commerce. The only interest of common or contract carriers in such potatoes is to transport them for a service charge to destinations determined by others.

Growers who handle their own potatoes would be considered handlers. Growers who sell or otherwise market potatoes directly from the field would be handlers under the proposed order. Any person who purchases potatoes from growers and performs any other handling function such as grading and packing such potatoes would be a handler.

The term "handle" should be defined in the proposed order to establish the specific marketing functions which place potatoes in the current of commerce within the production area, or between the production area and any point outside thereof, and to provide a basis for determining which functions are subject to regulation under authority of the proposed order. "Handle" and "ship" are used synonymously and the definition should so indicate.

The Act provides that no order shall be applicable to producers in their capacity as producers. Growing potatoes, which involves the planting and care of potatoes in the field through growth to a commercially marketable product that is turned over to a handler by sale, contract, or other means, should be considered a producer function.

Proponents of the order testified that harvesting should be included in the definition of "handle". However, the act of removing the potatoes from the ground does not result in them being introduced into the stream of commerce and so does not constitute handling. For this reason "harvesting" should not be included in the definition of handle.

Most of the potatoes grown in the production area are marketed through established packing sheds. Before a producer's crop can be harvested, the vines are killed, either mechanically or by an herbicide, to stop growth and hasten maturity of the tubers. After the vines are sufficiently dried, the potatoes are dug by machine. It is usual for a producer to do some preliminary grading in the field when the potatoes are being dug. This preliminary grading includes the removal of stones, dirt clods, and defective potatoes. A conveyor belt on the harvester loads the potatoes onto a truck, and the potatoes are then hauled, in bulk, to a packing shed. At the packing shed, the potatoes are washed and prepared for market by separating them into marketable grades, sizes, maturity, and packs.

For the last few years, a substantial quantity of field-run potatoes have been marketed in bulk directly by some producers to receivers, or repackers outside the area. These field-run potatoes are being transported directly to market without going through a packing shed and over conventional type grading equipment, although some grading may take place in the field to prepare them for the market.

High Plains producers sell their potatoes in various ways. Most production area potatoes are handled by shippers for the grower's account. Under customary arrangements, producers may turn their fields over to shippers who supervise the harvesting, then grade, pack, and sell the potatoes and pay the producer the net proceeds after deducting handling charges. The growers retain title to the potatoes until they are sold for them by the shippers. Settlement is made with the grower on the net proceeds of the sale, whether the sale is made at shipping point or at a subsequent point in the marketing chain. In other cases, the growers may harvest the potatoes themselves or hire others to do it.

The shipper or packinghouse operator is responsible for preparing the potatoes for market. The shipper determines the grade, size, quality, and container to be used for the potatoes entering market channels. The shipper packs the potatoes, making them a part of the marketable supply which is the subject of offer, acceptance, and sale in the current of the commerce in the commodity. The shipper also ships the potatoes, thus transporting them in the current of commerce. Sale of any potatoes, either grades and sizes customarily acceptable in established terminal markets, or those of less or unacceptable grades and sizes, constitutes an act on handling.

Occasionally, producers sell potatoes in the field to a handler either in or outside the production area prior to harvest. The producer may harvest such potatoes on behalf of the handler, or harvesting may be done by the handler. The harvested potatoes may then be transported in bulk to a packinghouse for preparation for marketing. If the potatoes are shipped out of the production area the producer would be the first handler, since the producer sold the potatoes, which is a handling activity, and was responsible for placing

the potatoes in the stream of commerce. The transportation, sale or delivery of potatoes within the production area, however, for the propose of having such potatoes prepared for market would not constitute handling.

Some producers have their own packing facilities; they grow, harvest, grade, pack, sell, and ship their own potatoes. Some perform all of the foregoing functions except selling, which is done by a broker for a fee.

Seed potatoes are produced under special conditions to insure their positive qualities and freedom from disease and then are certified by an appropriate State agency. The marketing process for seed involves many of the same activities, especially sale and transportation, as for potatoes distributed as tablestock through institutional and retail outlets.

Each of the foregoing activities by itself is a handling operation and, as such, makes the person responsible for it a handler, subject to the rules and regulations issued under the order. However, the sale, transportation, or delivery of field-run potatoes to a packinghouse located in the production area, according to record evidence, should be excepted from the definition of "handle." In this case the potatoes have not yet been prepared for market nor are they in their existing condition being transported to market. Most sellers and buyers do not consider them as yet suitable or appropriate for commercial transactions and, as such, they have not yet entered the stream of commerce.

(5)(a) Certain terms should be defined for the purpose of designating specifically their applicability and limitations whenever they are used in the proposed order. The definition of terms discussed below is necessary and incidental to attain the declared policy and objectives of the order and Act.

"Secretary" should be defined to mean the Secretary of Agriculture of the United States, or any officer or employee of the United States Department of Agriculture who has been or who may be delegated the authority to act for the Secretary.

"Act" should be defined to provide the correct statutory citation for the Agricultural Marketing Agreement Act of 1937, as amended. This is the statute under which the proposed regulatory program would be operative, and this definition avoids the need to refer to the citation throughout the order.

"Person" should be defined to mean an individual, partnership, corporation, association, or any other business unit. This definition is the same as that contained in the Act and insures that it has the same meaning in the order as it has in the Act.

A definition of "seed potatoes" or "seed" should be included in the order because different regulations may be appropriate for such potatoes. Special regulation of seed potatoes is justified because they are produced for a specialized use, even though they may be used as tablestock. Potatoes legitimately produced for seed purposes should be identified as "seed potatoes" and defined to include potatoes that have been certified and tagged, or otherwise appropriately identified, by the official seed certifying agency of the State of Texas or the State of New Mexico, or such other agency as the Secretary may recognize.

The term "producer" should be synonymous with "grower" and should be defined to identify those persons who are eligible to vote for, and serve as, producer members and alternates on the committee and those who may vote in any referendum. The term should mean any person engaged in a proprietary capacity in the production of potatoes for market within the production area.

The term "producer" should include any person who owns or shares in the ownership of potatoes such as a landowner, landlord, tenant or sharecropper. A person who owns and farms land resulting in that person's ownership of the potatoes produced on such land should be considered a producer. The same is true for a person who rents and farms land resulting in ownership of all or part of the potatoes produced on that land. Likewise, a person who owns land which that person does not farm, but as a rental for such land obtains the ownership of a portion of the potatoes produced, should be regarded as a producer of that portion received as rent, and the tenant on such land should be regarded as a producer for the remaining portion produced on such land. In each of these situations the person involved in production, regardless of whether an individual, partnership, joint venture, association, corporation, or other business unit, should be considered as one producer entitled to one vote in referenda and committee nominations. A joint venture is one whereby several persons contribute resources to a single endeavor to produce and market a potato crop. In such venture, one party may be the farmer who contributes one or more factors, such as labor, time, production facilities, or cultural skills, and the other party may be a handler who contributes money and cultural, harvesting and marketing supervision. Normally, a husband and wife operation would be considered a partnership. One test to determine if a person is a producer should be whether or not the person, that is, the individual or other business unit, has title to the potatoes that are produced.

A number of producers in the High Plains area own or operate packing sheds. A producer who owns or operates a packing shed should not be precluded from qualifying as a producer under the proposed order. However, for the purpose of serving on the committee and participating in committee nominations, a producer-handler must choose whether to serve and vote as a producer or as a handler.

The term "fiscal period" should be defined to mean the annual period for which financial records of the committee are maintained. This period should be established so as to allow sufficient time prior to the time potatoes are first shipped for the committee to organize and develop its budget for the ensuing season. However, it should minimize incurring expenses during a fiscal period prior to the time assessment income is available to defray such expenses. The Notice of Hearing proposed that "fiscal period" mean the 12-month period beginning January 1 and ending the following December 31. However, record evidence indicates that fresh market shipments of potatoes grown in the High Plains area do not begin until about July 1. With a fiscal period beginning January 1, more than half the period would have elapsed before any assessment income was received. Further, such a period would require the committee to project assessable shipments for the upcoming season and recommend an appropriate assessment rate prior to the time planting begins in February. To eliminate these difficulties, hearing testimony supported the fiscal period being established for a 12-month period beginning June 1 and ending May 31 of the next year. However, if necessary to improve the committee's management or for other reasons, based on experience once the order is established, it may be desirable to establish a fiscal period other than one ending on the last day of May. Thus, authority should be included in the order to provide for the establishment of a different fiscal year if recommended by the committee and approved by the Secretary. In any event, the beginning date of any new fiscal period should be sufficiently in advance of the harvesting season to permit the committee to formulate its marketing policy and perform other administrative functions. Also, it should be recognized that if at some future date there is a change in the fiscal year, such change

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would result in a transition year being more or less than 12 months. Also, if the order is issued after June 1, 1989, but is made effective in time to regulate the 1989 crop, the initial fiscal year should end on May 31, 1990, so that the subsequent fiscal period would begin June 1, 1990.

The term "Committee" should be defined to mean the administrative agency known as the Texas-New Mexico Potato Committee established under the provisions of the proposed order. Such a committee is authorized by the Act, and this definition is merely to avoid the necessity of repeating the full name each time it is used.

Definitions of "grade", "size" and "maturity" should be included in the proposed order to enable persons to determine the basis for application of grade and size limitations to the potatoes they handle. "Grade", "size" and "maturity" should be defined as encompassing the meanings assigned these terms in the United States Standards for Potatoes issued by the United States Department of Agriculture and found in Sections 51.1540 to 51.1556, inclusive, of Title 7 of the Code of Federal Regulations. Also, these definitions should include modifications or amendments to such standards, and any variations from such standards that may be used in regulations issued under the proposed order. In addition to the U.S. Standards, other standards could be used to define these terms. For example, it is conceivable that New Mexico or Texas could develop standards which would be more appropriate for High Plains potatoes. Regulations could then use such terms (grade, size and maturity) with the constant meanings given them in the applicable standards. Also the use of these terms in regulations may be varied by prescribing, for example, a percentage of a grade such as "85 percent U.S. No. 1." Federal and Federal-State inspectors are qualified to certify the grade, size and maturity of potatoes grown in the production area under the terms of the aforesaid standards, or as such standards may be amended or modified.

"Varieties" should be defined to mean and include all classifications or subdivisions of Irish potatoes according to those definitive characteristics recognized by the United States Department of Agriculture. The primary variety currently produced in the High Plains area is the Norgold Russet. Some red potatoes are also produced, such as the Red Lasoda and Viking varieties.

The term "pack" should be defined to mean a quantity of potatoes in any type of container, which falls within specific weight limits, numerical limits, grade limits, size limits, or any combination of these recommended by the Committee and approved by the Secretary. The term "pack" is commonly used throughout the production area and refers to a combination of these factors. For example, it is a common practice to refer to the 50-lb. or 100-lb. pack. Differences in packs are also recognized by grade, such as U.S. No. 1 pack or U.S. No. 2 pack. Packs may be recognized by particular sizes, such as Size A (minimum diameter of 1⅞") or Size B (1⅛" to 2¼"), or by the number of potatoes in a container, such as size 70 or 70 count per carton. It is essential that this term be defined in the proposed order so that appropriate regulations may be tailored to particular packs.

"Container" should be defined to mean a sack, bag, crate, box, basket, barrel or bulk load or any other receptacle used in the packaging, transportation, sale or other handling of potatoes. This definition serves as a basis for differentiating among the various receptacles in which potatoes move to market, and is necessary in the proposed authority to apply different regulations to different containers and to limit the types of containers that may be utilized. The principal containers used at present in marketing potatoes are burlap bags, paper bags, mesh bags, paper and mesh bags, polyethylene bags, boxes, pallets, and bulk loads.

A definition of the term "culls" was included in the Notice of Hearing. This term was used in connection with the section of the proposal establishing a general cull regulation. As discussed later, this Recommended Decision proposes the deletion of the general cull regulation. Therefore, it is unnecessary to define this term, and it should be deleted from the proposed order.

"District" should be defined in the proposed order to provide a basis for nomination and selection of committee members. It means each of the geographical divisions of the production area established pursuant to the order. The districts recommended to be initially established are discussed in material issue (5)(b), as is the proposed authority to reestablish these districts.

"Export" should be defined to mean any destination which is not within the 50 states or the District of Columbia of the United States. This definition is included because the proposed order authorizes exports to be regulated differently from domestic shipments.

(b) Pursuant to the Act, it is desirable to establish an agency to administer the order locally as an aid to the Secretary in carrying out the declared policy of the Act and to provide for effective and efficient operation of the order. The Texas-New Mexico Potato Committee should therefore be established and consist of 11 members (six producers, four handlers, and one public member). A committee composed of 11 members, with a like number of alternates, should provide adequate representation and should provide for reasonable judgment and deliberation with respect to recommendations made to the Secretary, and in the discharge of other committee duties. Because marketing orders benefit producers, it is appropriate that there be more producers than handlers on the proposed committee. However, since regulations under the proposed order would be imposed upon handlers, it is also appropriate and prudent for handlers to be represented on the committee.

The division of the production area into districts for the purpose of committee representation, and the number of members from each district were given thorough consideration by proponents of the proposed order. As later discussed, it is being recommended that two districts be established. One would encompass that part of the production area in the State of Texas, and the other that part in the State of New Mexico. In determining the number of representatives on the committee from each of the districts, consideration was given to potato acreage shown by the latest figures for each county within the district. Thus, the number of representatives for each district is related to such district's portion of the total potato acreage in the production area. According to acreage statistics for the past several years, approximately 66% of the acreage is located in District 1 (Texas) and 33% in District 2 (New Mexico). Accordingly, of the six producer members, four should be from District 1 and two should be from District 2. Three of the four handlers should represent District 1, and the remaining handler member should be from District 2. This should be a practicable and equitable method of allocating membership on the committee. Members would be familiar with supply and demand factors particularly affecting the sale of their potatoes and the effect of regulation upon such sales.

Each member and alternate selected to represent producers in a particular district should be an individual who is a producer, or an officer or employee of a corporate producer or other type of business unit engaged in producing potatoes in such district. Producer members should also be residents of the production area.

Such persons would be expected to have a strong interest in the effects of committee decisions on potato producers in the proposed production area. As a resident of the production area, such person would be familiar with the problems and concerns of producers.

Each member or alternate selected to represent handlers in a particular district should be an individual who is a handler, or an officer or employee of a corporate handler or other type of business unit, engaged in handling such district's potatoes. Handler members should also be residents of the production area.

The Notice of Hearing provided that officers or employees of cooperative marketing organizations could serve only as handler representatives. Witnesses opposed this provision, however, because a majority of growers in the High Plains area are members of a marketing cooperative and those that serve as officers of the cooperative should be eligible to serve as grower members. Thus, such persons should not be precluded from serving as grower representatives, and paragraph (b) of § 949.20 should be revised accordingly. Producers who are members of or hold honorary or non-administrative positions with the cooperative would also be eligible to serve as grower members. However, employees of the cooperative who are not growers in their own right would not qualify as growers but would be eligible to serve as handler members only.

Inasmuch as handlers would be the persons regulated under the proposed order, handler members should have a direct interest in the handling of potatoes. Moreover, as residents of the production area, such persons could be expected to be familiar with the local problems encountered by the industry.

In the event that an individual qualifies to serve as both a grower and handler member, or as a representative from either district, such person should choose the classification and district to represent on the committee.

Record evidence supports public representation on the administrative committee. While the influence of consumers would be implicitly present in the deliberations of the producer and handler committee members and all meetings would be public, the appointment of a public member would offer many advantages. One would be the direct communication between industry members and the public member, who would have no connection with the industry and whose opinions on regulatory standards would represent the general public. Another would be to afford the industry an opportunity to discuss their problems and concerns with someone who would view these problems and concerns from outside the potato industry.

Public representatives should not be permitted to have either a direct financial interest or be closely associated with the commercial production, processing, financing, buying, packing, or marketing of potatoes except as a consumer, nor be a director, officer or employee of any firm so engaged. Such public representatives should be able to devote sufficient time and express a willingness to attend committee activities regularly and to familiarize themselves with the background and economics of the industry. Residence in the production area is not deemed close association with the production or marketing of potatoes and would not preclude such person from nomination as a public member or alternate. On the contrary, public members should be residents of the production area, since such persons could be expected to be familiar with and knowledgeable about industry problems and practices.

To insure that all portions of the production area are adequately represented in the conduct of the committee's business and that the continuity of operation is not interrupted, the proposed order should provide for alternate members with the same qualifications as their respective members. They would act in the place and stead of their respective members during temporary absences, or in the case of death, removal, resignation, or disqualification of the members. The alternate should serve as member until a new member is selected. Also, the committee should be permitted to request the attendance of alternates at any or all meetings regardless of whether the members are present. This would be desirable especially when the committee is considering important matters and when it is necessary to have a greater expression of industry opinion.

If both the member and alternate for a particular committee position are absent from a meeting, the member, the alternate, or the committee, in that order, should be empowered to designate another alternate from the same group (i.e., grower or handler) and district to act in the place of the absent member. This procedure would further insure the proper and efficient operation of the committee.

With the exception of initial members, the term of office of committee members and their respective alternates should be for three years and should begin as of January 1 and end the last day of December or for such other three year period as the committee may recommend and the Secretary approve. A three-year term is appropriate because it gives members sufficient time to become familiar with committee operations and enables them to make meaningful contributions at committee meetings. Furthermore, a three-year term enables establishment of a rotation so that approximately one-third of the committee membership will terminate each year. Staggered terms would lend continuity to the committee by insuring that some experienced members would be on the committee at all times. Therefore, the order should provide that the terms shall be so determined that approximately one-third of the total committee membership shall terminate each year.

The effective date of the proposed order, if issued, may not coincide with the specified beginning date of the terms of office of committee members and alternates. Therefore, a provision is necessary to adjust the initial terms of office. To accomplish this, the order should provide that the term of office of the initial members and alternates shall begin as soon as possible after the effective date of the order. Approximately one-third of the initial committee members and alternates should serve for a one-year term and approximately one-third of the initial committee members and alternates should serve for a two-year term. The remainder of the initial committee members and alternates should serve for a three-year term. One method for determining how the initial membership should be apportioned would be for the initial committee member nominees to draw lots to determine which of them would be appointed to serve the initial one, two and three year terms. This would also determine the rotation for their successor members. The order also should provide that members serving initial terms of one year or less may serve two additional consecutive three-year terms.

In order to prevent unnecessary vacancies from occurring on the committee, the order should provide that members and alternates shall serve in such capacity for the portion of the term of office for which they are selected, and until their respective successors are selected. However, so that there is a continual turnover in membership and infusion of new ideas, the order should provide that no member or alternate may serve more than two full

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consecutive terms on the committee unless specifically exempted by the Secretary. After serving two consecutive terms, committee members who have served two terms should be eligible to serve as alternates, and alternates who have served two terms to serve as committee members.

As previously discussed, two districts should be established in the proposed order to provide a geographical basis for the selection of committee membership. District 1 should include all production area counties located within the State of Texas and District 2 should include all production area counties located within the State of New Mexico.

Redistricting authority is necessary in the proposed order to enable the committee and the Secretary to consider from time to time whether the basis for representation has changed or could be improved and how such improvement may be made. Future shifts in potato production in the Texas-New Mexico High Plains cannot be foreseen at the present time, since shifts may occur in the acreage planted from one year to another. As a result, the number of members allocated to a district may be disproportionate to the acreage or production in that district. Therefore, it is desirable to provide flexibility of operations so that if it would be in the best interests of the industry to reestablish districts or reapportion membership, the committee may so recommend and the Secretary may approve such action. Moreover, record evidence indicates that the committee should be required to consider district reestablishment and committee reapportionment at least every five years.

The guides and limitations set forth in the proposed order which should be considered in making changes in districts or reapportionment of members are appropriate and desirable. Recommendations for such changes should be made well in advance of the beginning of a new term of office. Changes should not be made effective less than 30 days prior to the date on which terms of office begin, and no recommendations for redistricting or reapportionment should be made less than six months prior to such date. These safeguards are desirable so that producers and handlers may become well acquainted with any redistricting or reapportionment of members prior to nominations.

The Secretary should have authority for the selection of the members and alternates of the committee, but the industry should have the responsibility for recommending nominees to the Secretary for selection. The nomination procedure outlined in the proposed order would provide a means of making available to the Secretary the names of prospective members and alternates desired by the industry to serve on the committee.

The order should provide that the Secretary conduct nomination meetings for initial committee members. At least one meeting should be held in each district. All growers and handlers in the production area should receive notice of such meetings in sufficient time to enable them to attend. Nominations will be received and voted upon at these meetings. The resulting nominations for each of the initial six grower and four handler members and their alternates will be promptly submitted to the Secretary.

The committee should be responsible for conducting subsequent nominations. These nominations may be conducted at meetings or with the approval of the Secretary through mail balloting. Nomination meetings may be held in conjunction with meetings of other industry organizations.

If meetings are held for nominating members and alternates of subsequent committees, they should be held no later than October 1 of each year or such other date as the Secretary may specify. Inasmuch as the term of office begins January 1 of each year, nomination meetings should be held in sufficient time to assure that nominations for members and alternates will be supplied the Secretary so appointments may be made prior to the beginning of each new term of office.

The committee should also be authorized to conduct nominations by mail. Procedures for such nominations would be recommended by the committee and would require approval by the Secretary.

Nominations should be supplied in such manner and form as the Secretary may prescribe. At least one nominee should be designated for each position which is to be filled the following January 1. Sufficient information about each nominee should be provided so the Secretary is able to determine if such person is qualified for position for which nominated.

Only producers should participate in designating nominees for producer members and alternates, and only handlers should participate in designating handler nominees. Such persons should be growers or handlers within the district in which they so participate. If a person produces or handles potatoes in more than one district, such person should elect the district within which such person wishes to participate in electing nominees for committee members and alternates. Likewise, a person who both grows and handles potatoes should choose whether to participate in nominations for grower or handler representatives. Each person would thereby have the same voice in the nomination of committee members.

Regardless of the number of districts in which a person produces or handles potatoes, each person is entitled to cast only one vote. This provision is deemed necessary as an appropriate safeguard for the protection of all growers and handlers participating in nominations, irrespective of the size of an individual's operations. This limitation, however, is construed to mean that one vote may be cast for each member and alternate member position which is to be filled in the district and classification that person has chosen to participate.

Provisions also should be made for the nomination and selection of a public member and alternate. The record indicates that nominees for the public member and alternate should be selected by the incumbent committee and should be forwarded to the Secretary no later than November 1 or such other date recommended by the committee and approved by the Secretary. The nominees would be selected under procedures recommended by the committee and approved by the Secretary. It is also reasonable to require that the names of nominees for the initial public member and alternate be submitted to the Secretary as soon as possible but not later than 90 days after the first regular meeting of the initial producer and handler members of the committee.

The order should provide that the members of the committee shall be selected by the Secretary from persons nominated or from among other qualified persons. In the event nominations are not made within the time and in the manner hereinafter specified in the recommended order, the Secretary may select members and alternates without regard to nominations. Such selection should be from qualified persons as provided in the order. Each person to be selected by the Secretary as a member or as an alternate member of the committee shall, prior to such selection, qualify by advising the Secretary that such person agrees to serve in the position for which nominated.

The order should provide a method for promptly filling any vacancies on the committee for the unexpired term. There may be vacancies caused by the death, removal, resignation, or disqualification of a member or alternate. The Secretary should be authorized to name a successor to fill an unexpired term from unselected nominees on the current nominee list or from nominations made in the same manner as provided for nominating all other members and alternates. Any nomination meetings for the purpose of filling vacancies should be held within a reasonable amount of time after the vacancy occurs.

Committee members and alternates will necessarily incur some expense while on committee business. Reasonable expenses, which may include travel, meals and lodging, should be reimbursed so as to avoid personal financial loss to members while attending committee meetings or performing other duties under the order. Therefore, the order should provide that members and alternates, when serving as members of the committee, shall serve without compensation but shall be reimbursed for such expenses authorized by the committee and necessarily incurred by them in attending committee meetings and in the performance of their duties under the order. Since the committee should be authorized to request the attendance of alternate members at meetings, even though the members may be present, the order should also authorize the committee to pay their expenses.

The order should specify a procedure for the committee to conduct its meetings. It should provide that a majority of all members of the committee shall be necessary to constitute a quorum or to pass any motion or approve any committee action. Accordingly, six members of the eleven member committee must be present in order to constitute a quorum and enable the committee to conduct a meeting. Six affirmative votes would be required to pass any motion or approve any committee action.

There may be times when it will be impossible to assemble the committee promptly to meet an emergency situation. Therefore, the order also should enable committee members, and alternate members when acting as members, to vote by mail, telegraph, telephone or other means of communication, provided that any vote cast orally be confirmed promptly in writing. If an assembled meeting is held, all votes should be cast in person. When voting is to take place at other than an assembled meeting, a reasonable effort should be made to contact each member or alternate. Records of such votes should indicate the efforts made to contact members, extent and tenor of discussion, and written confirmation of each vote cast. Each motion to be voted on or action to be taken should be explained fully and identically to each member or alternate member. The majority quorum and voting requirements should still apply when voting by mail, telegraph, telephone or other means of communication.

The committee should be given those specific powers which are set forth in section 608(7)(C) of the Act. Such powers are granted by the enabling statutory authority and are necessary for an administrative agency, such as the Texas-New Mexico Potato Committee, to carry out its proper functions.

The committee's duties as set forth in the proposed order are necessary for the discharge of its responsibilities. These duties are generally similar to those specified for administrative agencies under other programs of this nature. They pertain to specific activities authorized under the order, such as investigating potato marketing conditions, and to the general operation of the order including other activities relating to compliance as discussed in material issue (5)(h). They are reasonable and necessary if the committee is to function in the manner prescribed under the Act and the proposed order. It should be recognized that the duties specified are not necessarily all inclusive, and it may develop that there are other duties which the committee may need to perform which are incidential to, and not inconsistent with, these specified duties.

(c) The committee should be authorized under the order to incur such expenses as the Secretary finds are reasonable and likely to be incurred, during each fiscal year. Such a provision is necessary to assure the maintenance and functioning of the committee as well as finance production research and market promotion programs. Necessary expenses would include, but would not be limited to, such items as: Employee salaries and benefits; establishment of an office and equipping such office; telephone and mail services; and business related transportation for the committee staff. Expenses incurred by committee members and alternates in attending committee meetings should also be reimbursed as another expense. All such expenses would be incurred on an ongoing basis.

The committee should be required to prepare a budget showing estimates of income and expenditures necessary for the administration of the proposed order during a fiscal year. The budget, including an analysis of its component parts, should be submitted to the Secretary sufficiently in advance of each fiscal period to provide for the Secretary's review and approval. Such timely submission should include a recommendation to the Secretary of a rate of assessment designed to secure the income required for such fiscal year.

The Act authorizes the Secretary to approve the incurring of expenses by the administrative agency established under an order and states that the order must contain provisions requiring handlers to pay their pro rata share of such expenses.

The rate of assessment should be established by the Secretary on the basis of the committee's recommendation and other available information. In the event that an assessment rate is established which does not generate sufficient income to pay for the approved expenses, the committee should be authorized to recommend to the Secretary an increase in the rate of assessment in order to secure sufficient funds.

The Secretary may approve an assessment rate increase, and such increase should be applicable to all potatoes handled during the fiscal year to which that assessment rate applies.

The order should provide for the payment of assessments for maintenance and functioning of the committee throughout the time the order is in effect, irrespective of whether particular provisions of the order are suspended or are inoperative.

Witnesses estimated that the initial assessment rate would likely fall between one and three cents per cwt. When applied to 1986 production of 4,044,600 cwt., assessment income of $40,446 to $121,338 would be generated and would be sufficient to cover anticipated program expenses. Witnesses stated they were unable to foresee more precisely what the initial rate or volume of production would be.

It was proposed that the committee submit its budget 90 days prior to the beginning of each fiscal period. With such period proposed to begin June 1, the committee would therefore be required to submit its budget by March 1. Since planting of the potato crop in the High Plains continues until early April, proponents testified that an accurate estimate of production would be impossible to make this early in the year. Because crop production is a vital component used in formulating an assessment rate, a 60 day period prior to the fiscal period was supported. Section 949.41 should be revised accordingly. However, the Secretary should be authorized to specify an alternative time period if experience deems it necessary or desirable.

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The proponents recommended a provision that would allow the establishment of a continuing assessment rate that would be carried over to the next fiscal period and remain the same until amended. However, this request is not consistent with Departmental policy, which is to require annual assessment rate and budget recommendations be submitted by marketing order administrative committees. Departmental review and approval prior to each fiscal period promotes good fiscal practices and responsibility. Therefore, the provision proposed at the hearing to add a paragraph (h) to section 949.42 to allow an established assessment rate to continue in effect indefinitely is not being recommended for inclusion in the proposed order.

If a handler does not pay any assessment by the date it is due, the order should provide that the late assessment may be subject to a late payment charge or an interest charge at a rate set by the committee with the Secretary's approval. This interest charge or late payment charge would encourage timely payments. The time frame in which payments would be required to be remitted should be recommended by the committee and approved by the Secretary.

The committee should be authorized to accept advanced payment of assessments so that it may pay expenses which become due before assessment income is received. This would give the committee more flexibility in paying obligated expenses, particularly in the first part of a fiscal year before assessment funds are received.

The committee should also be able to borrow money to meet administrative expenses that would be incurred before assessment income is enough to defray such expenses. However, the committee should not borrow money to pay obligations if sufficient funds already exist in committee reserve funds or in other committee accounts.

The committee should also be authorized to receive voluntary contributions from persons other than those assessed under the order for the payment of production research or promotional marketing activities as described in the order. Such contributions should be received by the committee without any obligations to the donor, and the expenditure of such funds should be under the complete control of the committee. The committee should not receive a voluntary contribution from any person if that contribution could represent a conflict of interest.

With the approval of the Secretary, the committee should be authorized to carry over any excess assessment income into the following fiscal period as a reserve. If such excess income is not carried over as a reserve, handlers should be entitled to a refund proportionate to the assessments each handler paid. The reserve should not be allowed to exceed approximately two fiscal years' expenses.

One purpose of the reserve fund would be to provide stability in administration of the order in the case of a low crop year. Also, establishing a reserve should minimize the necessity of the committee borrowing money or raising the assessment rate during a season of less than anticipated production.

Finally, reserve funds could be used to cover necessary liquidation expenses in the event the order is terminated. Upon such termination, any funds not needed to defray liquidation expenses should be disposed of as determined by the Secretary. To the extent possible, however, these funds should be returned pro rata to the handlers from whom they were collected.

All funds collected by the committee through assessments or any other provision of the proposed order should be used only for the purposes set forth in the proposed order. The Secretary should at all times have authority to require the committee, its members and alternates, and its employees and agents to account for all receipts, disbursements, property or records of the committee for such person has been responsible. Likewise, when any such person ceases to act in the aforesaid positions, that person should account for all receipts, disbursements, property or records of the committee for which such person has been responsible. In the event the order is terminated or inoperative, the committee should appoint with the approval of the Secretary, one or more trustees for holding records, funds or other property of the committee.

(d) The proposed order should authorize the committee to establish and provide for the establishment of production research, marketing research, and market development projects, not including paid advertising, designed to assist, improve, or promote the marketing, distribution, consumption, or efficient production of potatoes. Funding for these programs should come from any authorized receipts of the committee, including assessment income, donations and miscellaneous income such as interest.

Testimony indicated that public funds for research are becoming scarcer and more difficult to obtain. Proponents of the marketing order proposal believe that the High Plains potato industry needs to finance research in the areas of breeding and cultural practices, as is conducted in most other important potato producing areas in the United States.

One specific area of research needed is the development of a potato variety better able to withstand the heat stress and other climatic conditions of the High Plains area. Currently, most seed potatoes used for planting in the production area originate in northern producing areas. These potatoes have not been developed with the specific needs of the High Plains producer in mind. Other areas of possible production research projects are the reduction of production costs and conservation of resources.

The record also supports the need for marketing research and promotion projects. Research would enable the High Plains potato industry to identify and analyze its current markets and find ways of regaining lost markets and developing new ones.

Expanding markets for production area potatoes could be accomplished by promotion activities to acquaint wholesalers, retailers and consumers with the high quality product available from the High Plains. Record evidence indicates that the establishment of quality standards for High Plains potatoes would complement such a promotion program.

The committee should distinguish between those types of promotion activities allowed under the Act, and paid advertising, which is not authorized for potatoes. Activities under the proposed order would therefore be limited to such things as distributing point-of-purchase materials to retailers, providing nutrition information to institutional outlets.

The committee should be authorized to conduct these types of activities itself, or to contract with other organizations to conduct them on its behalf. For example, it was indicated that the committee could contract with the State universities in Texas and New Mexico to conduct production and marketing research. Likewise, the committee could contract with the Texas Citrus and Vegetable Association or other organizations to conduct its promotion activities.

All research and promotion projects to be conducted under the proposed order in a given fiscal year would be submitted by the committee to the Secretary for approval prior to being undertaken. This will ensure that all

projects are appropriate given the order's authority, and that sufficient funds will be available for their funding. Further, the committee should be required to report at least annually on the progress of each project and at the conclusion of each project. Such reports should be available to growers and handlers and to the Secretary.

(e) The declared policy of the Act is to establish and maintain such orderly marketing conditions for potatoes, among other commodities, as will tend to establish parity prices to growers and be in the public interest. The regulation of the handling of potatoes by grade, size, maturity, quality, pack, or container, or any combination thereof, as authorized in the proposed order, would provide a means of carrying out such policy.

The procedures and methods outlined in the proposed order for the development of marketing policies provide a practical basis for the committee to obtain and compile appropriate and adequate information relating to potato marketing problems. As a prerequisite to making recommendations with respect to limitations of shipments in accordance with the proposed order, including any minimum grade and size regulation in effect on a continuous basis, the committee should be required to annually consider and develop a marketing policy for the handling of potatoes.

A marketing policy should set forth the over-all plan for the committee for orderly marketing of potatoes during the ensuing season, including, to the extent practical, the kinds of regulations that may be desirable. The committee should be required to publicly announce the submission of its marketing policy, and copies should be made available to producers and handlers in the production area in order to give them ample time to familiarize themselves with proposed regulations and plan their individual operations accordingly. Marketing policies should be submitted to the Secretary for review and for use in evaluating the committee's recommendations for regulations.

The factors set forth in the proposed order which the committee should consider in developing its marketing policy are necessary for a proper evaluation of the market outlook. The committee should have available all of the latest supply and price information for its area and competing areas. It should know, from information available and from the informed members themselves, the condition and quality of the crop in its area as well as in competing areas. The committee members themselves will be informed concerning problems peculiar to the area, such as prospective quality and maturity of the crop, and will be able to consider these factors in determining its marketing policy.

If the marketing policy should need to be amended or modified during a season, the committee should be authorized to do so and the Secretary should receive a report regarding the revised policy. The committee should give the same publicity to each revised policy report as is given to the initial report to notify producers and handlers of the changes.

The Texas-New Mexico Potato Committee, as the local administrative agency under the proposed order, should be authorized to recommend such grade, size, maturity, quality, pack and container regulations as are authorized by the proposed order, and as will tend to effectuate the declared policy of the Act. It is essential to the successful operation of the proposed marketing program that the committee should have such responsibility. The committee should reflect the thinking of the industry, and the committee should present to the Department its views and recommendations for promoting more orderly marketing conditions so as to improve growers' returns for production area potatoes. The committee should, therefore, have authority to recommend such regulations as are authorized whenever such regulations would, in the judgment of the committee, tend to improve returns to producers. With each recommendation for regulation, the committee should be required to submit to the Secretary the data and information on which its recommendation is predicated and such other information as may be requested by the Secretary.

Witnesses at the hearing supported including a general cull regulation in the proposed order (§ 949.52) to establish minimum quality and size standards. As established in that section this cull regulation would require that potatoes shipped to the fresh market meet a minimum grade of U.S. No. 2 and a minimum size of 1⅛ inches in diameter. The record indicates that these would be appropriate standards to impose initially to keep potatoes of undesirable quality and size off the market. The general cull regulation would apply on a continuous basis, unless suspended or modified, and as proposed in the notice of hearing, there would be no requirement that the committee review it in its annual marketing policy considerations.

While witnesses supported the cull regulation, they also supported including authority for that regulation to be modified or suspended upon recommendation of the committee and approval of the Secretary. Such recommendation would be based upon the committee's assessment of current and prospective growing and marketing conditions. For example, it was indicated that there may be seasons of adverse growing conditions that would result in a reduction of general quality and a higher portion of the crop that would not meet the requirements of the cull regulation. In such a situation, suspension of the regulation would appear appropriate.

Likewise, recommendations for modification of the cull regulation would also be based upon an appraisal of supply and demand conditions. Modifications could be recommended to either loosen or tighten the U.S. No. 2, 1½ inch requirements. For example, changes in consumer demand could necessitate allowing smaller sized potatoes of one or more varieties to be shipped to fresh market. On the other hand, it may be desirable to strengthen the minimum standards. For example, the standards for a U.S. No. 2 grade potato do not include a maturity requirement, which the industry may conclude is necessary.

The types of considerations that would lead to a modification or suspension of the proposed cull regulation are essentially the same as those required to be given in the committee's marketing policy.

Additionally, paragraph (a)(4) of § 949.53 of the proposed order would provide authority to establish in terms of grades, sizes, or both, minimum standards of quality and maturity recommended by the committee and established by the Secretary.

The record indicates that one reason the inclusion of a cull regulation in the proposed order was supported was that it would authorize continuance of grade and size requirements in the event season average prices were expected to exceed parity. The Act specifically prohibits any regulatory action that has as its purpose the maintenance of prices above the parity level. However, it provides that the Secretary may continue regulations for the remainder of a marketing season in an above parity situation if the Secretary finds that such regulations are necessary to provide for orderly marketing and are in the public interest. In the event of an over-parity situation, the Secretary would need to review current and prospective conditions to make the required findings to continue regulations. The inclusion of the proposed cull regulation would not,

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therefore, guarantee the maintenance of the U.S. No. 2, 1⅛ inch minimum regulatory requirements, as proposed at the hearing. For this reason, as well as those previously discussed, the cull regulation and all references to it should be deleted from the proposed order as being redundant, unnecessary and inconsistent with other provisions of the proposed order. However, to carry out the intent of the proponents, paragraph (a)(4) of § 949.53 should be revised to authorize minimum standards of quality and maturity when season average prices are expected to exceed the parity level.

Section 949.53 of the proposed order should authorize the Secretary, on the basis of committee recommendations or other available information, to issue various grade, size, quality, maturity, pack, and container regulations which are necessary for the improvement of marketing conditions for production area potatoes.

Such regulations could:

(1) Regulate the handling of particular grades, sizes, qualities, maturities, or packs of any or all varieties of potatoes, or any combination of the foregoing during any period;

(2) Regulate the handling of particular grades, sizes, qualities, maturities or packs of potatoes differently, for different varieties, for different containers, for different packs, for different purposes under § 949.55 or for any combination of the foregoing, during any period;

(3) Fix the size, capacity, weight, dimensions, pack or labeling of the container or containers which may be used in the packaging or handling of potatoes, or both.

The grade, size, quality, maturity, and pack of potatoes which are shipped to market at any particular time have a direct effect on returns to producers. Record evidence shows that the marketing of low quality potatoes harms the reputation of production area potatoes, thus decreasing the demand for them. The result is lower returns to all producers, even for the better grades and sizes.

By having authority to regulate shipments of potatoes by grade, size, quality, maturity and pack during any period, the shipment of low quality and undesirable sizes of potatoes could be restricted to the extent deemed necessary by the committee and in accordance with the particular preferences of buyers for grades, sizes, or packs during any period. This should enhance the reputation of Texas-New Mexico High Plains potatoes and result in higher returns for production area potatoes.

The proposed order should also authorize the Secretary to fix, through rules and regulations, the size, weight, capacity, dimensions, pack or marking of the containers that may be used in handling potatoes. Such rules could promote orderly marketing by standardization of packs and elimination of improper or misleading packaging techniques.

The proposed order should, however, specifically provide that nothing in the order shall authorize any regulation eliminating shipments of potatoes in bulk. As previously discussed, bulk shipments of potatoes to repackers outside the production area are important in the marketing of High Plains potatoes. While this type of movement should not be prohibited, bulkload shipments should be required to meet the same size and quality standards as are imposed upon other shipments. This provision, contained in paragraph (d) of § 949.54 of the notice of hearing, has been redesignated as paragraph (c) of § 949.53 to clarify that it applies to the issuance of all regulations.

At this point it is impossible to predict what kind of regulations would be recommended by the committee to the Secretary. However, a minimum grade of U.S. No. 2 and a minimum size of 1⅛ inches in diameter would be likely, given the cull regulation supported at the hearing. At the outset, the regulatory recommendations may be minimal, but standards could increases over subsequent marketing seasons as the committee gains experience and has the opportunity to study the marketing situation and reevaluate the types of regulations needed to solve the production area's potato marketing problems. The committee should have the broad spectrum of authority in the proposed order available to enable it to deal effectively with those problems.

The Secretary should not be precluded from using any available information which may or may not have been provided by the committee for consideration in issuing such regulations. Also, when the Secretary determines that any regulation no longer tends to effectuate the declared policy of the Act, the proposed order should provide authority to amend or terminate that regulation.

The proposed order should provide for prompt notification of the committee by the Secretary whenever action is taken with respect to regulations, and the committee should promptly notify all handlers of such actions. This requirement is appropriate and necessary for the proper and efficient administration of the program. This provision contained in paragraph (d) of § 949.54 has been redesignated as paragraph (b) of § 949.53 to clarify that it applies to the issuance of all regulations.

The proposed order should provide for the amendment, modification, suspension or termination of regulations by the Secretary whenever such action is warranted upon recommendation of the committee or other available information. The need for this authority is obvious in that flexibility is required to adjust regulations to effectuate the declared policies of the Act.

The proposed order is intended to improve marketing conditions with respect to commercial shipments, mainly carlots or truck lots, of potatoes going into fresh markets. However, some smaller shipments are occasionally made which constitute a very minor percentage of the total movement and are much smaller in volume than what is normally considered a commercial shipment. Regulation of such small volumes may not be necessary or cost effective. Therefore, authority should be contained in the proposed order to relieve such shipments from regulations, assessments, or inspection when such is in the best interest of the program.

The Secretary should be authorized upon the basis of the recommendations and information submitted by the committee to modify, suspend or terminate regulations with respect to the handling of potatoes for purposes other than for disposition in normal trade channels. Potatoes moving to or serving such outlets are usually handled in a different manner, or such outlets usually accept different grades, sizes, qualities, packs, and containers, or different prices are returned, or combinations of such considerations may apply. Such shipments usually do not have any appreciable effect on the marketing of the great bulk of potatoes handled in commercial markets. The proposed order should provide authority for the committee to give appropriate consideration to the handling of potatoes for such purposes so that every opportunity may be taken to facilitate such handling and improve marketing conditions for potatoes thereby tending to increase total returns to potato growers in the production area.

Such outlets would include relief, charity, livestock feed, export, seed, and other purposes which may become apparent in the future and which would be specified by the committee and approved by the Secretary. Shipments intended for relief or charity are usually by the way of donation, and the committee should have authority to recommend waiving of the requirements in regard to these shipments since they do not interfere with regular commercial movement. The same is true for potatoes utilized as livestock feed. Most of these are low quality potatoes, and should not be disposed of in fresh market outlets. Some export markets may accept or prefer certain grades or sizes which normally are discounted for domestic markets. The proposed order should provide for appropriate modification, suspension or termination of regulations with respect to movement of potatoes to export outlets so that these demands can be met and the sale of the potatoes grown in the production area will continue to such markets.

Seed potatoes are produced under special conditions to insure their positive qualities and freedom from disease. If properly qualified, these potatoes are certified by an appropriate State agency. Because of the difficulty in assuring that uncertified seed potatoes would be used for that purpose, the exemption authority in § 949.55 should apply only to such potatoes sold to a producer exclusively for planting within specific geographic limits.

The authority for modifying, suspending or terminating grade, size, quality, assessment, or inspection regulations should be accompanied by additional administrative authority for the committee to recommend, and the Secretary to prescribe, adequate safeguards to prevent shipments for such purposes from entering market channels contrary to provisions of such special regulations. Authority for the establishment of safeguards should include such limitations or appropriate qualifications on shipments which are necessary and incidental for proper and efficient administration of the proposed order.

(f) The record evidence is that inspection and certification of potato shipments are necessary and are the most practicable way to assure that the handling of potatoes complies with the regulations that may be issued pursuant to the proposed order. The Federal-State Inspection Service has inspectors in the production area and has operated in the High Plains area for many years. Potato producers and handlers throughout the production area are well acquainted with the Service and with the inspection they offer on shipments of potatoes. Inspection is available at potato packing sheds throughout the entire production area, and would be available for bulk shippers, either at central locations or at the bulk shipper's premises.

Inspection and certification requirements are necessary so that growers, shippers, the committee and other interested persons may determine if shipments comply with the regulations in effect. Effective regulation of the handling of potatoes grown in the production area requires evidence that each shipment is in compliance with regulations issued under the order. The provision for inspection and certification affords a practical means of establishing whether shipments comply and can be so identified. Compliance and identification of regulated potatoes are necessary for proper administration of the proposed order.

Responsibility for obtaining inspection would generally fall primarily upon the person who first handles regulated potatoes since that handler is usually responsible for the grade, size, quality, and pack of the potatoes being shipped.

It was testified that inspected potatoes subject to regulation may be regraded, resorted, or repacked, and that it may not always be possible to identify such potatoes with the applicable inspection certificate. Those lots could take on a whole new identity, and could not be identified with a previous inspection certificate obtained by a previous handler. Any handling of these lots should be in compliance with the requirements of the order. Otherwise, effective regulation would not be obtained, as there would be no assurance that order requirements were not circumvented. Therefore, the committee, with approval of the Secretary, should be authorized to issue rules requiring inspection on regraded, resorted or repacked lots, or providing for special inspection requirements or relief therefrom to cover situations when positive lot identity has not been maintained.

To facilitate monitoring compliance, the committee may find it necessary to require that potatoes which have been inspected and certified be identified by some means to indicate that such potatoes were inspected. Therefore, upon recommendation of the committee and approval by the Secretary, any or all potatoes inspected and certified should be identified by appropriate seals, stamps or tags to be affixed to the container by the handler under the direction and supervision of a Federal or Federal-State Inspector or the Committee. Master containers should be required to be so identified, and not each individual container within a master container. Since the purpose of this authority is to help the committee exercise surveillance over the shipment of potatoes from the production area and ascertain compliance with the inspection and certification requirements of the order, it is not necessary that individual containers within a master container be so identified. This should reduce the cost of identifying those shipments.

Although some potatoes can be stored for long periods of time, they are perishable in nature. Even those that are stored under optimum conditions undergo some changes, including deterioration and sprouting. Therefore, an inspection certificate may not reflect the true quality of a lot of potatoes which has been held for some time after it was inspected. Because of the necessity of valid representation by inspection certificates, the committee should be authorized to establish, with the approval of the Secretary, a length of time for which an inspection certificate is valid.

Promptly after inspection and certification, each handler would submit, or cause to be submitted, to the committee a copy of the certificate of inspection issued with respect to such potatoes. The certificate would verify that the potatoes meet the order requirements. Although the testimony is that the Inspection Service should be required to submit the certificates to the committee, it should be the handler's responsibility to do so. However, the handler may arrange with the Inspection Service for it to send in the certificates on behalf of the handler.

The committee should be authorized to recommend for the Secretary's issuance, regulations requiring that potatoes transported by motor vehicle or any other means be accompanied by a copy of the inspection certificate issued thereon or by other approved evidence of inspection. Such certificate or document shall be surrendered to such authority as may be designated. The committee is authorized under the proposed order to administer its terms and provisions and this procedure would enable the committee to apply the regulations in connection with the movement of potatoes through any compliance check points which may be set up along the boundaries of the production area.

(g) The committee should have authority, with the approval of the Secretary, to require that handlers submit to it such reports and information as are needed to perform its functions. It is difficult to anticipate every type of report, or kind of information, which the committee may need in administering the program, but it should have the authority, subject to the approval of the Secretary, to request reports and information if needed, of the type set forth in the proposed order. At the hearing, witness testimony modified the information collection list to include information on the number of acres by

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variety and approximate dates planted. Such information would provide the committee with the data necessary to help formulate its marketing policy and recommend a budget and assessment rate by enabling more accurate production forecasts.

The record evidence is that in the normal course of business, handlers have the necessary information in their possession and based on the experience of similar orders now in effect, the requirement that they furnish it to the committee in the form of reports should not constitute an undue burden. Reports are needed by the committee for such purposes as: Collecting assessments; collecting statistical data for use in marketing policy development and recommendations for regulations; and determining whether handlers are complying with order requirements.

Reports furnished to the committee should be submitted in such manner and at such times as the committee, with approval of the Secretary, may designate. Such reporting procedures should be in accord with the needs and requirements of the committee which are essential to administration of the order because changing conditions may warrant changes in the forms and methods of reporting.

Since it is possible that a question may arise with respect to compliance with the proposed order, each handler should maintain complete records of the handling and disposition of potatoes for a period of not less than two years after the end of each crop year.

In order to determine handlers' compliance with the proposed order and regulations issued thereunder, the committee with approval of the Secretary should be authorized to prescribe through rules and regulations, the kinds of records and documents which shall be maintained by each handler with respect to each sale of potatoes. Such authorization should include authority for requiring proof or evidence of sale for each lot of potatoes sold, including the date of sale, the name of the buyer, the quantity, price, grade and size, the buyer's confirmation and record of payment, and other pertinent information which may be required by the committee. This information should be available for inspection by an authorized agent of the committee or the Secretary.

All reports and records submitted for committee use by handlers shall remain confidential and be disclosed to none other than persons authorized by the Secretary except as required by law. Such reports would become part of the committee's and the Secretary's records. Any reported information released to the industry should be on a composite basis, and no information should be released under the Act that would disclose either the identity of an individual handler or that person's operations.

(h) No handler should be permitted to handle potatoes, the handling of which is prohibited by the proposed order or by regulations issued under the proposed order. If the program is to be effective, compliance with its requirements is essential, and no handler should be permitted to evade any of its provisions. Any such evasion on the part of even one handler, could be demoralizing to those handlers who are in compliance and would tend to impair the effective operation of the program.

The Notice of Hearing included a second paragraph in § 949.81 which pertained to the committee's authority to inspect handler records for compliance purposes. However, this authority is provided in the provision of the proposed order regarding reports and recordkeeping (§ 949.80), and therefore it should be deleted from § 949.81 as redundant and unnecessary.

(i) The provisions of §§ 949.82 through 949.92 of the order as contained in the Notice of Hearing and hereinafter set forth in the recommended order, are common to marketing agreements and orders now operating. All such provisions are incidental to and not inconsistent with the Act and are necessary to effectuate the other provisions of the recommended marketing order and marketing agreement and to effectuate the declared policy of the Act. The record evidence supports inclusion of each such provision as proposed in the Notice of Hearing, with the exception of § 949.84 as discussed below. Those provisions which are applicable to both the marketing agreement and the marketing order, identified by section number and heading are as follows: § 949.82 Right of the Secretary; § 949.84 Termination or suspension; § 949.85 Proceedings after termination; § 949.86 Effect of termination or amendment; § 949.87 Duration of immunities; § 949.88 Agents; § 949.89 Derogation; § 949.90 Personal liability; § 949.91 Separability; and § 949.92 Amendments. Those provisions applicable to the marketing agreement only are: § 949.97 Counterparts; § 949.98 Additional Parties; and § 949.99 Order with marketing agreement.

The order should provide that the Secretary conduct a periodic referendum every six years with the initial referendum conducted within six years of the effective date of the recommended order.

The Secretary of Agriculture has determined that continuance referenda are an effective means for ascertaining whether producers favor continuance of marketing order programs. The Act provides that the Secretary shall terminate a marketing order whenever, through the conduct of a referendum, it is indicated that a majority of all producers favor termination and such majority produced more than 50 percent of the commodity for market during a representative period.

Since less than 50 percent of all producers usually participate in a referendum, it is difficult to determine overall producer support or opposition to termination of an order. Thus, to provide a basis for determining whether producers favor continuance of the order, authority for continuance referenda should be included. Continuance should be based upon the affirmative vote of two-thirds of the producers voting or producers of two-thirds of the volume of potatoes represented in the referendum.

Hearing testimony favored the concept of conducting continuance referenda, but opposed a two-thirds vote requirement to continue the marketing order. It was stated that one-third of the industry should not determine the fate of the program, and that a majority vote would be more equitable.

The Act requires that in the promulgation or amendment of a marketing order, at least two-thirds of the producers voting, by number or volume represented in the referendum, must favor the issuance or amendment of a marketing order. Continuance referenda requirements are based on the same standard of industry support. The Secretary would consider termination of the order if less than two-thirds of the producers voting in the referendum or producers of less than two-thirds of the volume of potatoes represented in the referendum favor continuance. In evaluating the merits of continuance versus termination, the Secretary should not only consider the results of the referendum but also should consider all other relevant information concerning the operation of the order and the relative benefits and disadvantages to producers, handlers and consumers in order to determine whether continued operation of the order would tend to effectuate the declared policy of the Act. In this regard, in the event of an adverse vote by producers in a continuance referendum, the Secretary may solicit input from the public through meetings, press releases, or other means.

In any event, section 8c(16)(B) of the Act requires the Secretary to terminate the order whenever the Secretary finds that the majority of all producers favor termination, and that such majority produced more than 50 percent of the commodity for market. To be effective, termination of the order resulting from any referendum should be announced on or before the last date of the then current fiscal year. This date precedes the beginning of the committee's operations for a new fiscal year and is considered to be an appropriate time to terminate the operations of the program.

The Secretary's "Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders" provide for periodic referenda to allow producers the opportunity to indicate their support for or rejection of a marketing order. It is the position of the Department that periodic referenda ensure that marketing order programs continue to be accountable to producers, obligate producers to evaluate their programs periodically, and involve them more closely in their operation. The record evidence supports these goals.

Rulings on Briefs of Interested Parties

At the conclusion of the hearing the Administrative Law Judge fixed June 1, 1988, as the final date for interested persons to file proposed findings and conclusions, and written arguments or briefs based upon the evidence received at the hearing. No briefs were filed.

General Findings

Upon the basis of the evidence introduced at the hearing, and the record thereof, it is found that:

(1) The marketing agreement and order, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The said marketing agreement and order regulate the handling of potatoes grown in the production area in the same manner as, and are applicable only to persons in the respective classes of commercial or industrial activity specified in, a proposed marketing agreement and order upon which a hearing has been held;

(3) The said marketing agreement and order are limited in their applicability to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act;

(4) There are not differences in the production and marketing of potatoes grown in the production area which make necessary different terms and provisions applicable to different parts of such area; and

(5) All handling of potatoes grown in the production area, as defined in said marketing agreement and order, is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

List of Subjects in 7 CFR Part 949

Marketing agreements and orders, potatoes, Texas, New Mexico.

Recommended Marketing Agreement and Order

The following marketing agreement and order are recommended as the detailed means by which the foregoing conclusions may be carried out. Those sections identified with an asterick (*) apply only to the proposed marketing agreement and not to the proposed marketing order.

Therefore, Title 7, Chapter IX is proposed to be amended by adding Part 949 to read as follows:

PART 949—IRISH POTATOES GROWN IN THE HIGH PLAINS AREA OF TEXAS AND NEW MEXICO

Definitions

Sec.
949.1 Secretary.
949.2 Act.
949.3 Person.
949.4 Production area.
949.5 Potatoes.
949.6 Seed potatoes.
949.7 Handler.
949.8 Handle or ship.
949.9 Producer.
949.10 Fiscal period.
949.11 Committee.
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Authority: Sec. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601 et seq.

Definitions

§ 949.1 Secretary.

"Secretary" means the Secretary of Agriculture of the United States, or any officer or employee of the Department of Agriculture who has been delegated, or who may hereafter be delegated the authority to act for the Secretary.

§ 949.2 Act.

"Act" means Public Act No. 10, 73d Congress, as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended [Sec. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601 *et seq.*].

§ 949.3 Person.

"Person" means an individual, partnership, corporation, association, or any other business unit.

§ 949.4 Production area.

"Production area" means the counties of: Bailey, Briscoe, Castro, Cochran, Dallam, Donley, Deaf Smith, Floyd, Gaines, Hale, Hall, Hartley, Hockley, Lamb, Lubbock, Motley, Oldham, Parmer, Swisher, Terry, and Yoakum located in the State of Texas, and the counties of Chaves, Curry, De Baca, Eddy, Guadalupe, Lea, Roosevelt,

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Torrance, Union, and Quay located in the State of New Mexico.

§ 949.5 Potatoes.

"Potatoes" means and includes all varieties of *Solanum tuberosum*, commonly known as Irish potatoes, grown in the production area.

§ 949.6 Seed potatoes.

"Seed potatoes" or "seed" means any potatoes have been certified by the official seed certification agency of the States of Texas or New Mexico, or other seed certification agencies recognized by the Secretary, and which bear the official tags, seals, or other appropriate identification indicating such certification.

§ 949.7 Handler.

"Handler" is synonymous with "shipper" and means any person, except a common or contract carrier of potatoes owned by another person, who handles potatoes or causes potatoes to be handled.

§ 949.8 Handle or ship.

"Handle" or "ship" means to grade, package, sell, transport, or in any other way to place potatoes grown in the production area, or cuase such potatoes to be placed, in the current of commerce within the production area or between the production area and any point outside thereof. Such term shall not include the transportation, sale, or delivery within the production area of field-run potatoes to storage or to a person for the purpose of having such potatoes prepared for market.

§ 949.9 Producer.

"Producer" is synonymous with "grower" and means any person engaged in a proprietary capacity in the production of potatoes for market.

§ 949.10 Fiscal period.

"Fiscal period" means the 12-month period beginning on June 1 and ending May 31 of the following year, or such other period that may be recommended by the committee and approved by the Secretary.

§ 949.11 Committee.

"Committee" means the administrative committee known as Texas-New Mexico Potato Committee established pursuant to § 949.20.

§ 949.12 Grade, size and maturity.

"Grade" means any of the officially established grades of potatoes, "Size" means any of the officially established sizes of potatoes, and "Maturity" means any of the stages of development or condition of the outer skin (epidermis) of potatoes, as defined in the United States Standards for Potatoes issued by the United States Department of Agriculture (§§ 51.1540 to 51.1556, inclusive of this title), including amendments, modifications, or variations thereof, or, such other grades, sizes, and maturities as may be recommended by the committee and approved by the Secretary.

§ 949.13 Varieties.

"Varieties" means all classifications or subdivisions of Irish potatoes according to those definitive characteristics now or hereafter recognized by the United States Department of Agriculture.

§ 949.14 Pack.

"Pack" means a quantity of potatoes in any type of container, which falls within specified weight limits, numerical limits, grade limits, size limits, or any combination of these recommended by the committee and approved by the Secretary.

§ 949.15 Container.

"Container" means a sack, bag, crate, box, basket, barrel, or bulk load or any other receptacle used in the packaging, transportation, sale or other handling of potatoes.

§ 949.17 District.

"District" means each of the geographic divisions of the production area initially established pursuant to § 949.23 or as reestablished pursuant to § 949.24.

§ 949.18 Export.

"Export" means the shipment of potatoes to any destination which is not within the 50 States, or the District of Columbia, of the United States.

Committee

§ 949.20 Establishment and membership.

(a) There is hereby established a committee, consisting of 11 members, to administer the terms and provision of this part. Six members shall be producers, 4 members shall be handlers, and 1 shall be a public member. Each committee member shall have an alternate who shall have the same qualifications as the member.

(b) Each member, other than the public member, shall be an individual who is, prior to selection and during such term of office (1) a resident of the production area, and (2) a producer or handler, or an officer or employee of a producer or handler.

(c) Four members shall be producers from District 1 and 2 members shall be producers from District 2. Three members shall be handlers from District 1 and 1 member shall be a handler from District 2. Any person who operates in more than one district or is engaged in both producing and handling potatoes shall elect one classification, and one district from which to be represented on the committee.

(d) The public member shall be a resident of the production area and be neither a producer nor a handler and shall have no direct financial interest in the commercial production, financing, buying, packing and marketing of potatoes, except as a consumer, nor shall such person be a director, officer or employee of any firm so engaged.

§ 949.21 Alternates.

An alternate member of the committee shall act in the place and stead of the member for whom such person is an alternate, during such member's absence or when designated to do so by such member. In the event both a member of the committee and that member's alternate are unable to attend a committee meeting, the member, the alternate, or the committee, in that order, may designate another alternate from the same district and the same classification (handler or producer) to serve in such member's stead. In the event of the death, removal, resignation, or disqualification of a member, that member's respective altenate shall serve until a successor of such member is selected and has qualified. The Committee may request the attendance of alternates at any or all meetings, notwithstanding and expected or actual presence of the respective members.

§ 949.22 Term of office.

(a) Except as otherwise provided in paragraph (b) of this section, the term of office of committee members and their respective alternates shall be for three years and shall begin as of January 1 and end the last day of December or for such other three-year period as the committee may recommend and the Secretary approve. Members and alternates shall serve in such capacity for the portion of the term of office for which they are selected, and until their respective successors are selected. No member or alternate may serve more than two consecutive terms on the committee unless specifically exempted from this requirement by the Secretary.

(b) The term of office of the initial members and alternates shall begin as soon as possible after the effective date of this subpart. As determined by the Secretary, approximately one-third of the initial committee members and alternates shall serve for a one-year term and approximately one-third of the initial committee members and alternates shall serve for a two-year term. The remainder of the initial committee members and alternates shall serve for a three-year term. Those member serving initial terms of one year or less may serve two additional, consecutive three-year terms.

§ 949.23 Districts.

To determine a basis for selecting committee members, the following districts of the production area are hereby initially established:

District 1: All production area counties located within the State of Texas and;

District 2: All production area counties located within the State of New Mexico.

§ 949.24 Redistricting and reapportionment.

At least every five years the committee shall review the geographic distribution of potato production in the production area and, if warranted, recommend to the Secretary the reapportionment of members among districts, and the reestablishment of districts within the production area. In recommending any such changes, the Committee shall give consideration to:

(a) Shifts in potato acreage within the districts and within the production area during recent years;

(b) The importance of new production in its relation to existing districts;

(c) The equitable relationship of committee membership and districts; and

(d) Other relevant factors. No change in districting or in apportionment of members within districts may become effective less than 30 days prior to the date on which terms of office begin each year and no recommendations for such redistricting or reapportionment may be made less than 6 months prior to such date.

§ 949.25 Nominations.

(a) Initial members. The nomination process for the initial committee shall be conducted by the Secretary. The nominations for each of the 6 initial producer and 4 initial handler members of the committee, together with the nominations for the initial alternate members for each position, shall be made as soon as practicable after the effective date of this subpart. The nomines for the initial public member shall be submitted to the Secretary not later than 90 days after the first meeting of the committee.

(b) Successor members. (1) The committee shall hold or cause to be held not later than October 1 of each year, or such other date as may be specified by the Secretary, a meeting or meetings of producers and handlers in each district for the purpose of designating at least one nominee for each position as member and for each position as alternate member of the committee. In the alternative, the committee may conduct nominations by mail in a manner recommended by the committee and approved by the Secretary.

(2) The names of nominees shall be submitted to the Secretary at such time and in such manner and form as may be prescribed;

(3) Only producers may participate in designating producer nominees and only handlers may participate in designating handler nominees to the committee;

(4) Only producers and handlers who are present at such nomination meetings, or represented at such meetings by a duly authorized employee, may participate in the nomination and election of nominees for members and their alternates.

(5) Any person who operates in more than one district or is engaged in both producing and handling potatoes shall elect the classification, and the district in which to participate in designating nominees.

(6) Regardless of the number of districts in which a person produces or handles potatoes, such persons are entitled to cast only one vote for each position to be filled in the district and classification in which the person is eligible and elects to vote in designating nominees for committee members and alternates. Such vote would be cast on behalf of the voter, the voter's agents, subsidiaries, affiliates, and representatives.

(c) The public member shall be nominated by the members of the committee. The committee may establish procedures for receiving names of persons to be considered for nomination as the public member. The name of the person nominated as the public member shall be submitted by the incumbent committee to the Secretary by November 1, or such other date recommended by the committee and approved by the Secretary, of the year the term expires together with information deemed pertinent by the committee or as requested by the Secretary.

§ 949.26 Selection.

Committee members and alternates shall be selected by the Secretary on the basis of representation provided for in § 949.20 or as modified pursuant to § 949.24.

§ 949.27 Failure to nominate.

If nominations are not made within the time and manner prescribed in § 949.25, the Secretary may, without regard to nominations, select the members and alternates on the basis of the representation provided for in § 949.20 or as modified pursuant to § 949.24.

§ 949.28 Acceptance.

Any person prior to selection as a member or alternate member of the committee shall qualify by filing with the Secretary a written acceptance within the time period specified by the Secretary of the person's willingness to serve.

§ 949.29 Vacancies.

To fill any vacancy caused by the death, removal, resignation, or disqualification of a member or alternate, a successor for the unexpired term may be selected by the Secretary from nominations made pursuant to § 949.25, from previously unselected nominees on the current nominee list, or from other eligible persons.

§ 949.30 Expenses.

Members and alternates, when serving as members of the committee, shall serve without compensation but shall be reimbursed for such expenses authorized by the committee and necessarily incurred by them in attending committee meetings and in the performance of their duties under this part: Provided, that the committee at its discretion may request the attendance of one or more alternates at any or all meetings notwithstanding the expected, or actual, presence of the respective members and may pay expenses as aforesaid.

§ 949.31 Procedure.

(a) A majority of all members of the committee shall be necessary to constitute a quorum or to pass any motion or approve any committee action.

(b) The committee may provide for the members thereof, including the alternate members when acting as members, to vote by mail, telegraph, telephone, or other means of communication, provided that any such vote cast orally shall be confirmed promptly in writing. If any assembled meeting is held all votes shall be cast in person.

§ 949.32 Powers.

The committee shall have the following powers:

(a) To administer the provisions of this subpart as specified herein;

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(b) To make rules and regulations to effectuate the terms and provisions of this subpart;

(c) To receive, investigate, and report to the Secretary complaints of violation of the provisions of this part; and

(d) To recommend to the Secretary amendments to this part.

§ 949.39 Duties.

The committee shall have, among others, the following duties:

(a) As soon as practicable after the beginning of each term of office, to meet and organize, to select a chairman and such other officers as may be necessary, to select subcommittees, to adopt such rules, regulations, and bylaws for the conduct of its business as it deems necessary, and to recommend nominees for the public member and alternate;

(b) To act as intermediary between the Secretary and any producer or handler;

(c) To furnish to the Secretary such available information as may be requested;

(d) To appoint such employees, agents, and representatives as it may deem necessary, to determine the compensation and define the duties of each such person, and to protect the handling of committee funds.

(e) To investigate from time to time and to assemble data on the growing, harvesting, shipping, and marketing conditions with respect to potatoes;

(f) To recommend research and development projects to the Secretary in accordance with this part;

(g) To notify handlers of each meeting of the committee to consider recommendations for regulations and of all regulatory actions taken, and to provide such notification to producers through appropriate news releases or such other means as may be available to the committee;

(h) To give the Secretary the same notice of meetings of the committee and its subcommittee(s) as is given to its members;

(i) To prepare a marketing policy;

(j) To keep minutes, books, and records which clearly reflect all of the acts and transactions of the committee. Such minutes, books, and records shall be subject to examination at any time by the Secretary or the Secretary's authorized agent or representative. Mintues of each committee meeting shall be reported promptly to the Secretary;

(k) Prior to the beginning of each fiscal period, to submit to the Secretary a budget of projected income and expenses for such fiscal period, together with a report thereon;

(l) To prepare periodic statements of the financial operations of the committee and to make copies of each such statement available to producers and handlers for examination at the office of the committee;

(m) To prepare and submit to the Secretary, an annual report, and make a copy available to each producer and grower who requests it. This annual report shall contain at least:

(1) A complete review of the regulatory operations during the fiscal period;

(2) An appraisal of the effect of such regulatory operations upon the potato industry; and

(3) Any recommendations for changes in the program.

(n) To cause the books of the committee to be audited by a certified public accountant at least once each fiscal period and at such other times as the committee may deem necessary or as the Secretary may request. The report of such audit shall show the receipt and expenditure of funds collected pursuant to this part. Two copies of such report shall be furnished to the Secretary. A copy of each such report shall be made available at the principal office of the committee for inspection by producers and handlers; however, confidential information shall be removed from the report; and

(o) To consult, cooperate, and exchange information with other marketing order committees and other individuals or agencies in connection with all proper activities and objectives under this part.

Expenses and Assessments

§ 949.40 Expenses.

The committee is authorized to incur such expenses as the Secretary may find are reasonable and likely to be incurred during each fiscal period for its maintenance and functioning, and for purposes determined to be appropriate for administration of this part. Handlers shall share expenses upon the basis of a fiscal period. Each handler's share of such expenses shall be proportionate to the ratio between the total quantity of potatoes handled by such handler as the first handler thereof during a fiscal period and the total quantity of potatoes handled by all handlers as first handlers thereof during such fiscal period.

§ 949.41 Budget.

Sixty days prior to the beginning of each fiscal period, or at such other time as may be specified by the Secretary, the committee shall prepare an estimated budget of income and expenditures necessary for its administration of this part. The committee may recommend a rate of assessment calculated to provide adequate funds to defray its proposed expenditures. The committee shall submit such budget to the Secretary with an accompanying report showing the basis for its calculations. An amended budget may be submitted as provided in § 949.42(c).

§ 949.42 Assessments.

(a) The funds to cover the committee's expenses shall be acquired by the levying of assessments upon handlers as provided in this subpart or from voluntary contributions for projects pursuant to § 949.48. Each person who first handles potatoes under this part shall pay assessments to the committee which assessments shall be in payment of such handler's pro rata share of the committee's expenses.

(b) Assessments shall be levied upon handlers at rates established by the Secretary. Such rates may be established upon the basis of the committee's budget, recommendations, and other available information. Such rates may be applied to specified containers used in the production area.

(c) At any time during, or subsequent to, a given fiscal period the committee may recommend the approval of an amended budget and an increase in the rate of assessment. Upon the basis of such recommendations, or other available information, the Secretary may approve an amended budget and increase the established rate of assessment.

(d) The payment of assessments for the maintenance and functioning of the committee may be required under this part throughout the period it is in effect irrespective of whether particular provisions thereof are suspended or become inoperative.

(e) The committee may impose a late payment charge or an interest charge on any handler who fails to pay any assessment in a timely manner. Such time and the rates shall be recommended by the committee and approved by the Secretary.

(f) In order to provide funds for the administration of this part before sufficient operating income is available from assessments, the committee may accept advance assessments and may also borrow money for such purpose. Advance assessments received from a handler shall be credited toward assessments levied against that handler during the fiscal year.

§ 949.43 Accounting.

(a) If, at the end of a fiscal period, the assessments collected are in excess of

expenses incurred, such excess shall be accounted for in accordance with one of the following:

(1) If such excess is not retained in a reserve, as provided in subparagraph (2) of this paragraph, it shall be refunded proportionately to the persons from whom it was collected.

(2) The committee, with the approval of the Secretary, may carry over such excess into subsequent fiscal periods as a reserve: *Provided*, That the reserves are less than approximately two fiscal period's expenses. Such reserve funds may be used (i) to defray expenses, during any fiscal period, prior to the time assessment income is sufficient to cover such expenses; (ii) to cover deficits incurred during any fiscal period when assessment income is less than expenses; (iii) to defray expenses incurred during any period when any provisions of this part are suspended or are inoperative; (iv) to cover necessary expenses of liquidation in the event of termination of this part. Upon such termination, any funds not required to defray the necessary expenses of liquidation shall be disposed of in such manner as the Secretary may determine to be appropriate. To the extent practical, such funds shall be returned pro rata to the persons from whom such funds were collected.

(b) All funds received by the committee pursuant to the provisions of this part shall be used solely for the purposes specified herein. The Secretary may at any time require the committee and its members to account for all receipts and disbursements.

(c) Upon the removal or expiration of the term of office of any member of the committee, such member shall account for all receipts and disbursements and deliver all property and funds in such member's possession to the committee, and shall execute such assignments and other instruments as may be necessary or appropriate to vest in the committee full title to all of the property, funds, and claims vested in such member pursuant to this part.

(d) The committee may make recommendations to the Secretary for one or more of the members thereof, or any other person, to act as a trustee for holding records, funds, or any other committee property during periods of suspension of this subpart, or during any period or periods when regulations are not in effect and, upon determining such action is appropriate, the Secretary may direct that such person or persons shall act as trustee or trustees for such committee.

Research and Development

§ 949.48 Research and development.

The committee, with the approval of the Secretary, may establish or provide for the establishment of production research, marketing research, and development projects, not including paid advertising, designed to assist, improve, or promote the marketing, distribution, consumption, or efficient production of potatoes. The expenses of such projects shall be paid from funds collected pursuant to § 949.42

Regulation

§ 949.50 Marketing policy.

Prior to beginning of each fiscal year, the committee shall submit to the Secretary a report setting forth its marketing policy for the ensuing season. Additional reports shall be submitted if it is deemed advisable by the committee to adopt a new marketing policy because of changes in the demand or supply situation with respect to potatoes. The committee shall publicly announce the submission of each such marketing policy report and copies thereof shall be available at the committee's office for inspection by any producer or any handler. In determining each such marketing policy the committee shall give due consideration to the following:

(a) Supply of potatoes by grade, size, quality, and maturity in the production area;

(b) Estimates of supplies of potatoes in the production area and in competing areas;

(c) Estimates of supplies of other competing commodities;

(d) Market prices by grades, sizes, containers, and packs;

(e) Anticipated marketing problems;

(f) Level and trend of consumer income; and

(g) Other relevant factors.

§ 949.51 Recommendations for regulations.

(a) Whenever the committee's marketing policy considerations deem it advisable to regulate the handling of any variety or varieties of potatoes in a manner provided in §§ 949.53, 949.54, or 949.55 it shall recommend to the Secretary grade, size, quality, maturity, or pack regulation, or any combination thereof, or amendment thereto, or modification, suspension, or termination thereof.

(b) In arriving at its recommendations for regulation pursuant to (a) of this section, the committee shall give consideration to current information with respect to the factors affecting the supply and demand for potatoes during the period or periods when it is proposed that such regulations should be effective. With each such recommendation for regulation, the committee shall submit to the Secretary the data and information on which such recommendation is predicated and such other available information as the Secretary may request.

§ 949.53 Issuance of regulations.

(a) The Secretary shall issue regulations on the handling of potatoes whenever the Secretary finds from recommendations and information submitted by the committee, or from other available information, that such regulation would tend to effectuate the declared policy of the act. Such regulations may:

(1) Limit the handling of particular grades, sizes, qualities, maturities, or packs of any or all varieties of potatoes, or any combination of the foregoing during any period.

(2) Limit the handling of particular grades, sizes, qualities, maturities or packs of potatoes differently, for different varieties, for different containers, for different packs, for different purposes under § 949.55, or for any combination of the foregoing, during any period.

(3) Fix the size, capacity, weight, dimensions, pack or marking of the container or containers which may be used in the packaging or handling of potatoes, or both.

(4) Establish in terms of grades, sizes, or both, minimum standards of quality and maturity during any period when season average prices are expected to exceed the parity level.

(b) The Secretary shall notify the committee of each regulation issued pursuant to this section. The committee shall give reasonable notice thereof to handlers.

(c) Nothing in this subpart shall authorize any regulation eliminating shipment of potatoes in bulk.

§ 949.54 Modification, suspension, or termination of regulations.

(a) In the event the committee at any time finds that, by reason of changed conditions, any regulations issued pursuant to § 949.53 should be modified, suspended, or terminated, it shall so recommend to the Secretary.

(b) Whenever the Secretary finds, from the recommendations and information submitted by the committee or from other available information, that a regulation should be modified, suspended, or terminated with respect to any or all shipments in order to effectuate the declared policy of the act,

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the Secretary shall modify, suspend, or terminate such regulation. If the Secretary finds that a regulation obstructs or does not tend to effectuate the declared policy of the act, the Secretary shall suspend or terminate such regulation. On the same basis and in like manner the Secretary may terminate any such modification or suspension.

§ 949.55 Handling for special purposes.

(a) Upon the basis of recommendations and information submitted by the committee, or other available information, the Secretary, may modify, suspend, or terminate requirements in effect pursuant to § 949.52 or §§ 949.53 to 949.59 inclusive, or § 949.60 or any combination thereof, to facilitate handling of potatoes for:

(1) Relief or charity;

(2) Livestock feed;

(3) Export;

(4) Seed;

(5) Potatoes, other than certified seed, sold to a producer exclusively for planting within specific geographic limits;

(6) Other purposes recommended by the committee and approved by the Secretary.

(b) The committee, with the approval of the Secretary, shall prescribe rules and regulations to prevent potatoes handled pursuant to this section from entering trade channels other than those authorized by regulations and by such rules as may be necessary and incidental thereto.

Inspection

§ 949.60 Inspection and certification.

(a) During any period in which the handling of potatoes is regulated pursuant to §§ 949.53 and 949.55, inclusive, no handler shall handle potatoes unless such potatoes are inspected by an authorized representative of the Federal or a Federal-State Inspection Service and are covered by a valid inspection certificate, except when relieved of such requirements by §§ 949.54, 949.55, or 949.60(b).

(b) The committee may, with the approval of the Secretary, issue rules requiring inspection on regraded, resorted or repacked lots, or providing for special inspection requirements or relief therefrom. Such rules may provide distinctions, insofar as practical, between handling at shipping point and handling in receiving markets within the production area.

(c) Upon recommendation of the committee and approval by the Secretary, any or all potatoes so inspected and certified shall be identified by appropriate seals, stamps, or tags to be affixed to the container by the handler under the direction and supervision of a Federal or Federal-State Inspector or the committee. Master containers may bear the identification instead of the individual containers within said master container.

(d) Insofar as the requirements of this section are concerned, the length of time for which an inspection certificate is valid may be established by the committee with the approval of the Secretary.

(e) When potatoes are inspected in accordance with the requirements of this section, a copy of each inspection certificate issued shall be made available to the committee by the inspection service.

(f) The committee may recommend and the Secretary may require that no handler shall transport or cause the transportation of potatoes by motor vehicle or by other means unless such shipment is accompanied by a copy of the inspection certificate issued thereon, or other evidence of inspection acceptable to the Secretary such as a Positive Lot Identification stamp, to indicate that such inspection has been performed. Such certificate or document shall be surrendered to such authority as may be designated.

Reports and Recordkeeping

§ 949.80 Reports and recordkeeping.

Upon request of the committee, made with the approval of the Secretary, each handler shall furnish to the committee, in such manner and form and at such time as it may prescribe, such reports and other information as may be necessary for the committee to perform its duties under this part.

(a) Such reports may include, but are not necessarily limited to, the following:

(1) The quantities of potatoes received by variety by a handler during any or all periods of a season;

(2) The quantities disposed of by the handler, segregated as to quantities subject to regulation, and where necessary, segregated as to types of outlets and special or modified regulations applicable to alternative outlets, and including quantities not subject to regulation;

(3) The date of each such disposition and the identification of the carrier transporting such potatoes;

(4) Information essential to identification of any or all specific quantities, lots, and disposition or potatoes handled under §§ 949.52 to 949.55, inclusive, which may include identification of inspection certificates, exemption certificates, certificates of privilege, or other appropriate identification, including the destination of each special shipment, where necessary.

(b) All such reports shall be held under appropriate protective classification and custody by the committee, or duly appointed employees thereof, so that the information contained therein which may adversely affect the competitive position of any handler in relation to other handlers will not be disclosed. Compilations of general reports from data submitted by handlers is authorized, subject to the prohibition of disclosure of an individual handler identity or operations.

(c) Each handler shall maintain for at least 2 succeeding years such records and documents on potatoes received by such handler as may be necessary to verify reports submitted to the committee pursuant to this section.

(d) For the purpose of assuring compliance with recordkeeping requirements and verifying reports of handlers, the Secretary and the committee, through their duly authorized employees or agents, shall have access to any premises where applicable records are located, and where potatoes are handled, and at any time during reasonable business hours shall be permitted to inspect such handler's premises and any potatoes held by such handler and examine any and all records of such persons with respect to matters within the purview of this part.

Compliance

§ 949.81 Compliance.

No person shall handle potatoes except in conformity with the provisions of this subpart and the regulations issued thereunder.

Miscellaneous Provisions

§ 949.82 Right of the Secretary.

The members of the committee (including successors and alternates) and any agent or employee appointed or employed by the committee shall be subject to removal or suspension by the Secretary at any time. Each and every order, regulation, decision, determination or other act of the committee shall be subject to the continuing right of the Secretary to disapprove of the same at any time. Upon such disapproval, the disapproved action of the committee shall be deemed null and void, except as to acts done in reliance thereon or in compliance therewith prior to such disapproval by the Secretary.

§ 949.84 Termination or suspension.

(a) The Secretary may terminate or suspend the operation of any or all of the provisions of this part whenever the Secretary finds that such provisions do not tend to effectuate the declared policy of the Act.

(b) Producer referendum. (1) The Secretary shall terminate in accordance with section 8(c)(16)B of the Act, the provisions of this part at the end of any fiscal period whenever the Secretary finds that such termination is favored by a majority of producers, who during a representative period, as determined by the Secretary have been engaged in the production of potatoes for market: *Provided*, That such majority has, during such representative period, produced for market more than fifty percent of the volume of such potatoes produced for market: *Provided further*, That termination shall be announced before the beginning of the ensuing fiscal period.

(2) The Secretary shall conduct a referendum every sixth fiscal year with the first such referendum to be conducted within 6 years from the effective date of this section, to ascertain whether continuance of this subpart is favored by producers. The Secretary may terminate the provisions of this part at the end of any fiscal year in which the Secretary has found that continuance of this subpart is not favored by producers who, during a representative period determined by the Secretary, have been engaged in the production for market of potatoes in the production area. Such termination of the part shall be announced on or before the end of the fiscal year.

(c) The provisions of this part shall in any event terminate whenever the provisions of the Act authorizing them cease to be in effect.

§ 949.85 Proceedings after termination.

(a) Upon the termination of the provisions of this part the then functioning members of the committee shall continue as joint trustees for the purpose of liquidating the affairs of the committee of all funds and property then in the possession of or under control of the committee, including claims for any funds unpaid or property not delivered at the time of such termination. Action by said trusteeship shall require the concurrence of a majority of the said trustees.

(b) The said trustees shall continue in such capacity until discharged by the Secretary; shall from time to time account for all receipts and disbursements and deliver all property on hand, together with all books and records of said committee and of the trustees, to such person as the Secretary may direct; and shall upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title and right to all of the funds, property, and claims vested in said committee or the trustees pursuant to this part.

(c) Any person to whom funds, property, or claims have been transferred or delivered by the committee or its members pursuant to this section shall be subject to the same obligations imposed upon the members of the committees and upon the said trustees.

§ 949.86 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any regulation issued pursuant to this subpart or the issuance of any amendments to either thereof, shall not (a) affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provision of this subpart or any regulation issued under this subpart; or (b) release or extinguish any violation of this subpart or of any regulations issued under this subpart; or (c) affect or impair any rights or remedies of the Secretary or of any other person with respect to any such violations.

§ 949.87 Duration of immunities.

The benefits, privileges and immunities conferred upon any person by virtue of this part shall cease upon the termination of this part, except with respect to acts done under and during the existence of this part.

§ 949.88 Agents.

The Secretary may, by designation in writing, name any person, including any officer or employee of the United States, or name any agency in the United States Department of Agriculture, to act as the Secretary's agent or representative in connection with any of the provisions of this part.

§ 949.89 Derogation.

Nothing contained in this part is, or shall be construed to be, in derogation or in modification of the rights of the Secretary or of the United States to exercise any powers granted by the Act or otherwise, or in accordance with such powers, to act in the premises whenever such action is deemed advisable.

§ 949.90 Personal liability.

No member or alternate of the committee or any employee or agent thereof, shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any handler or to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate, agent, or employee, except for acts of dishonesty, willful misconduct or gross negligence.

§ 949.91 Separability.

If any provision of this part is declared invalid or the applicability thereof to any person, circumstance or thing is held invalid, the validity of the remainder of this subpart, or the applicability thereof to any other person, circumstance or thing shall not be affected thereby.

§ 949.92 Amendments.

Amendments to this subpart may be proposed from time to time by the committee or by the Secretary.

Marketing Agreement

***§ 949.97 Counterparts.**

This agreement may be executed in multiple counterparts and when one counterpart is signed by the Secretary, all such counterparts shall constitute, when taken together, one and the same instrument as if all signatures were contained in one original.

***§ 949.98 Additional parties.**

After the effective date thereof, any handler may become a party to this agreement if a counterpart is executed by such handler and delivered to the Secretary. This agreement shall take effect as to such new contracting part at the time such counterpart is delivered to the Secretary, and the benefits, privileges and immunities conferred by this agreement shall then be effective as to such new contracting party.

***§ 949.99 Order with marketing agreement.**

Each signatory hereby requests the Secretary to issue, pursuant to the act, an order providing for regulating the handling of potatoes in the same manner as is provided for in the agreement.

Dated: January 25, 1989.

J. Patrick Boyle,

Administrator.

[FR Doc. 89-2108 Filed 1-30-89; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Parts 959 and 980

[FV-89-010]

Onions Grown in South Texas and Onions Imported into the United States; Proposed Change in Effective Period of Handling Regulation and Import Regulation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would advance the effective period of the handling regulation for onions grown in South Texas to March 1 through May 20. The current period is from March 10 through June 15 of each season with all but container requirements terminating on May 31. A corresponding change in the dates for the import regulation would also need to be made. Earlier maturing varieties have enabled producers and handlers to harvest and ship earlier to take advantage of generally higher prices in early spring. The committee believes changing the effective period of quality requirements would help to maintain the quality of such early shipments. Terminating the handling regulation on May 20 would relieve restrictions on handlers during the latter part of the season. The onion import regulation also would be amended to make appropriate conforming changes.

DATE: Comments must be received by February 15, 1989.

ADDRESS: Interested persons are invited to submit written comments concerning this proposal. Comments should be sent to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2085–S, Washington, DC 20090–6456. Three copies of all written material shall be submitted, and they will be made available for public inspection at the office of the Docket Clerk during regular business hours. All comments should reference the date and page number of this issue of the Federal Register.

FOR FURTHER INFORMATION CONTACT: Robert F. Matthews, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456, telephone (202) 447–5331.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Agreement No. 143 and Marketing Order No. 959 (7 CFR Part 959), both as amended, regulating the handling of onions grown in designated counties of South Texas. The marketing agreement and order are authorized by the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposal on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 35 handlers of South Texas onions subject to regulation under the marketing order, and approximately 75 onion producers in the South Texas production area. Also, there are about 25 onion importers subject to the requirements of the onion import regulation. The Small Business Administration [13 CFR 121.2] has defined small agricultural producers as those having annual gross revenue for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of South Texas onions and importers of onions may be classified as small entities.

The South Texas Onion Committee met on October 19, 1988, and unanimously recommended a change on the effective period of the handling regulation. The regulation currently begins March 10 and ends June 15 of each season, with all but container requirements terminating on May 31.

The committee has proposed beginning the effective period 10 days earlier, on March 1 of each season. In recent years, several new varieties of onions have been developed that mature slightly earlier than older varieties in general use. The Texas spring crop provides the first new-crop onions for each season, previous shipments being drawn from storage stocks. Because of this, prices at the beginning of the spring season tend to be higher than later in the season. Thus, earlier maturing varieties can give shippers a competitive advantage by providing them with a product to ship when prices are the highest.

Moreover, because of a university-conducted selective onion breeding program that has been carried on for over a decade, even earlier varieties may soon be developed. Although early March shipments are not usually heavy relative to mid-season volume, they are, nevertheless, significant. The committee believes that the marketing order standards of quality should apply especially to early onions to forestall shipments of poorer quality produce.

The committee also recommended changing the termination date of all provisions of the regulation from June 15 to May 20. This would be of particular benefit to the late shippers, principally from the Laredo and Winter Garden districts. The early and mid-season crop is produced in the Lower Rio Grande Valley, which generally accounts for about 85 percent of the total. Shipments in the 1987–88 season totaled 5,781,287 fifty-pound equivalent bags. The remaining crop, generally 15 percent, is produced in the Laredo and the Winter Garden districts. Shipments in the 1987–88 season from those districts totaled 915,278 fifty-pound equivalent bags. These are the last regulated shipments to leave the production area each season. Shipments made toward the end of the season tend to bring lower, and sometimes much lower, prices, hence lower returns to growers. Moreover, inspection costs tend to be higher due to the distance of the Laredo and Winter Garden districts from Federal-State inspection facilities. It is believed that relieving handling restrictions during the latter part of the season when prices are generally low will be of benefit to late producers and handlers and is not expected to adversely affect the overall objectives of the program.

Section 8e of the Agricultural Marketing Agreement Act of 1937 requires that when certain domestically produced commodities, including onions, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, or maturity requirements. Section 8e also provides that whenever two or more marketing orders regulating a commodity produced in different areas of the United States are concurrently in effect, the Secretary shall determine which of the areas produces the commodity in most direct competition with the imported commodity. Imports then must meet the quality standards set for that particular area.

In the case of onions, the current onion import regulation [7 CFR 980.117], specifies that import requirements be based on those in effect for onions produced in designated counties in Idaho and Malheur County, Oregon [7 CFR Part 958] during the period June 1 through March 9 and on those produced in South Texas [7 CFR Part 959] during the period March 10 through May 31 of each year.

Changing the beginning date of the handling regulation would have no effect on the import regulation, 7 CFR 980.117. Although the South Texas handling regulation would begin March 1, it is found that onions from Idaho and Eastern Oregon would continue to be predominant in the marketplace and in direct competition with imported onions from mostly Mexico from March 1 through March 9 each season. Accordingly, no change to the import regulation is necessary based upon the earlier South Texas handling regulation.

However, since this change would terminate the South Texas handling regulation on May 20, it is found that imports are in most direct competition with Idaho and Eastern Oregon onions for the period May 21 through March 9 and South Texas onions for the period March 10 through May 20. Accordingly, onion import requirements would change to those grade and size requirements established under the marketing order regulating certain designated counties in Idaho and Malheur County, Oregon, 7 CFR Part 958, for the period May 21 through March 9 each year, and to those grade and size requirements established under the marketing order regulating onions grown in South Texas, 7 CFR Part 959, for the period March 10 through May 20 each year.

A change would therefore be required in the language of § 980.117 and paragraph (h) *Applicability to imports* of § 959.322.

Based on the above, the Administrator of AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

A 15-day comment period is deemed adequate to allow interested persons sufficient time to respond to this proposal. This amendment, if adopted, should become effective by March 1, the proposed beginning of the handling regulation, to be of maximum benefit to the industry. The action was recommended by the committee at a well-publicized, open meeting and area handlers are aware of it.

List of Subjects

7 CFR Part 959

Marketing agreements and orders, Onions, South Texas.

7 CFR Part 980

Vegetables, Import regulations, Onions.

For the reasons set forth in the preamble, it is proposed that 7 CFR Parts 959 and 980 be amended as follows:

1. The authority citation for 7 CFR Parts 959 and 980 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

PART 959—ONIONS GROWN IN SOUTH TEXAS

2. Section 959.322 is amended by revising the introductory paragraph and the first sentence of paragraph (i) to read as follows:

§ 959.322 Handling regulation.

During the period beginning March 1 and ending May 20, no handler shall package or load onions on Sunday, or handle any onions, except red varieties, unless they comply with paragraphs (a) through (d) or (e) or (f) of this section.

* * * * *

(i) *Applicability to imports.* During the period beginning March 10 and ending May 20 of each year * * *

PART 980—VEGETABLES; IMPORT REGULATIONS

3. Section 980.117 is amended by revising paragraphs (a)(2) and (b) (1) and (2) to read as follows:

§ 980.117 Import regulations; onions.

(a) * * *

(1) * * *

(2) Therefore, it is hereby determined that: Imports of onions during the May 21 through March 9 period are in most direct competition with the marketing of onions produced in designated counties of Idaho and Malheur County, Oregon, covered by Marketing Order No. 958, as amended (7 CFR Part 958), and during the march 10 through May 20 period the marketing of imported onions is in most direct competition with onions produced in designated counties in South Texas covered by Marketing Order No. 959, as amended (7 CFR Part 959).

(b) * * *

(1) During the period May 21 through March 9 of each marketing year, whenever onions grown in designated counties in Idaho and Malheur County, Oregon, are regulated under Marketing Order No. 958, imported onions shall comply with the grade, size, quality, and maturity requirements imposed under that order.

(2) During the period March 10 through May 20 of each marketing year, whenever onions grown in designated counties in South Texas are regulated under Marketing Order No. 959, imported onions shall comply with the grade, size, quality, and maturity requirements imposed under that order.

* * * * *

Dated: January 26, 1989.

William J. Doyle,

Associate Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–2223 Filed 1–30–89; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Part 979

[FV–89–013]

Melons Grown in South Texas; Proposed Amendment To Advance Termination Date of Handling Regulation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would advance the annual termination date for the South Texas melon handling regulation from June 30 to June 20. The current period is from May 1 through June 30 of each season. Late season melon shipments are from the Laredo-Coastal Bend district of the production area. Advancing the termination date would relieve restrictions on handlers during the latter part of the season.

DATE: Comments must be received by March 2, 1989.

ADDRESSES: Comments should be sent to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2085–S, Washington, DC 20090–6456. Three copies of all written material should be submitted, and they will be made available for public inspection in the office of the Docket Clerk during regular business hours. Comments should reference the date and page number of this issue of the Federal Register.

FOR FURTHER INFORMATION CONTACT: Robert F. Matthews, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456; telephone (202) 447–2431.

SUPPLEMENTARY INFORMATION:

This rule is proposed under Marketing Agreement No. 156 and Marketing Order

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No. 979 (7 CFR Part 979), regulating the handling of melons grown in South Texas. This order is authorized by the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposal on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act and rules issued thereunder are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 35 handlers of melons subject to regulation under the South Texas Melon Marketing Order and approximately 75 melon producers in the production area. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.2] as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of South Texas melons may be classified as small entities.

The South Texas Melon Committee in a telephone vote completed on November 10, 1988, unanimously recommended a change in the effective period of the handling regulation. The handling regulation currently is in effect from May 1 through June 30 of each season. Current requirements for cantaloups are a minimum of U.S. Commercial grade with not more than eight percent serious damage. For honeydew melons, at least 50 percent of each lot must be U.S. Commercial grade or better with a 20 percent tolerance for serious damage. Honeydew melons are also required to have a minimum of eight percent sugar. Container and marking requirements are also in effect.

The production area covered by the marketing order consists of two districts—the Lower Valley and the Laredo-Coastal Bend areas. By far, the larger portion of the crop is grown in the Lower Valley. During the 1988 season, this district shipped about 5.9 million cartons of cantaloups and 3.9 million cartons of honeydew melons, accounting for over 95 percent of the total volume of melons shipped from the production area. Harvest begins about the first of May, with peak volume from May 15 through June 20.

The Laredo-Coastal Bend district, in the northern part of the production area, has a somewhat later shipping season, with the bulk of its movement occurring in late June. Harvest begins about the first of June, with peak volume from June 15 through June 30.

South Texas is typically the first domestic supplier of cantaloups and honeydew melons each year, and for a brief period early in the season there is virtually no competition from other domestic sources. Later in the season, however, large volumes of melons are available from California and Arizona, as well as from the Trans-Pecos and Winter Garden areas of Texas.

The increased availability of melons is reflected in the prices received by South Texas shippers. According to the committee's 1988 annual report, for example, the f.o.b. price for a 15-count container of cantaloups averaged $22.00 during the week of May 9–15, and had declined to an average of $9.00 during the week of June 13–19. For the same two weeks, the average f.o.b. price for 8-count cartons of honeydew melons was $8.33 and $3.03 respectively.

Due to its later shipping season, the Laredo-Coastal Bend district faces a more competitive marketplace and generally receives lower prices for its melons than does the Lower Valley. At the same time, inspection costs tend to be higher due to distance of the Laredo-Coastal Bend district from Federal-State inspection facilities.

To recognize the different marketing situation existing in late June, the committee recommended ending the handling requirements (including mandatory inspection) on June 20. This action should enable late season shippers to compete more effectively and should improve returns to growers. In addition, not imposing the quality requirements on shipments made after June 20 should not have an adverse effect on the overall effectiveness of the program, because a relatively small volume (less than five percent in 1988) of melons is shipped after that date.

Based on the above, the Administrator of AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

A 30-day comment period is provided to allow interested persons sufficient time to respond to this proposal. All written comments timely received in response to this request for comments will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 979

Marketing agreements and orders, Melons, Texas.

For the reasons set forth in the preamble, it is proposed that 7 CFR Part 979 be amended as follows:

PART 979—MELONS GROWN IN SOUTH TEXAS

1. The authority citation for 7 CFR Part 979, Melons Grown in South Texas, continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 979.304 is amended in the introductory paragraph by revising the following text to read as follows:

§ 979.304 Handling regulation.

During the period beginning May 1 and ending on June 20 of each season* * *

* * * * *

Dated: January 26, 1989.

William J. Doyle,

Associate Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–2221 Filed 1–30–89; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 103

[INS Number 1117–88]

Availability of Decisions and Interpretive Material Under the Freedom of Information Act

AGENCY: Immigration and Naturalization Service (INS), DOJ.

ACTION: Proposed rule.

SUMMARY: INS proposes to eliminate the requirement to maintain a Public Reading Room at each district office. Since public use has been minimal, INS proposes to maintain a reading room only at its Central Office.

DATES: Comments must be received by March 2, 1989.

ADDRESS: Comments should be in triplicate to the Director, Policy Directives and Instructions, Room 2011, Immigration and Naturalization Service, 425 I Street, NW., Washington, DC 20536.

FOR FURTHER INFORMATION CONTACT: Russell Powell, Chief, FOIA/PA Section, Immigration and Naturalization Service, 425 I Street NW., Room 5056, Washington, DC 20536, (202) 633–1722 (FTS 633–1722).

SUPPLEMENTARY INFORMATION: To comply with the (a)(2) requirements of the Freedom of Information Act, INS promulgated regulations requiring maintenance of public reading rooms at Central Office and all district offices in the United States. The Act does not, however, mandate such a requirement and INS is the only component within the Department of Justice that maintains public reading rooms at offices other than it's headquarters. INS conducted a survey of public reading room use at thirty-three district offices nationwide during the first quarter of 1987. There were only three district offices that had more than nine visitors during this three month period. Since public use has been minimal, INS proposes to maintain a reading room only at its Central Office.

INS continues to provide copies of reading room material to the American Immigration Lawyers Association (AILA) who make this information available to the public for a nominal fee. In addition, the American Council For Nationalities Service (ACSN) publishes Interpreter Releases, an information service on immigration, naturalization and related matters. INS also created a collection of taped messages to answer public inquiries regarding immigration and citizenship. "Ask Immigration" Telephone Systems are located in more than two dozen metropolitan areas nationwide. Therefore, INS has determined that the cost of manhours duplicating, preparing, filing and auditing reading room material at district offices where public use has been negligible is not cost beneficial to the public. A complete INS public reading room will be maintained at the Central Office and individuals who desire information that is not available through AILA, ACNS and "Ask Immigration" may submit a Freedom of Information Act request to any INS office.

In accordance with 5 U.S.C. 606(b) the Commissioner of Immigration and Naturalization Service certifies that this rule does not have a significant economic impact on a substantial number of small entities. This is not a major rule within the meaning of section 1(b) of E.O. 12291, nor does this rule have federalism implications warranting the preparation of a Federal Assessment in accordance with E.O. 12612.

List of Subjects in 8 CFR Part 103

Administrative practice and procedure, Archives and records, Freedom of Information Act, Organization.

Accordingly, Chapter I of Title 8 of the Code of Federal Regulations is amended as follows:

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

1. Authority citation for Part 103 continues to read as follows:

Authority: 5 U.S.C. 522(a); 8 U.S.C. 1101, 1103, 1201, 1301–1305, 1351, 1443, 1454, 1455; 28 U.S.C. 1746; 7 U.S.C. 2243; 31 U.S.C. 9701; EO 12356; 3 CFR 1982 Comp., p. 166; OMB Circular A–25.

2. In § 103.9, paragraphs (b), (d) and (e) are revised to read as follows:

§ 103.9 Availability of decisions and interpretive material under the Freedom of Information Act.

* * * * *

(b) *Unpublished decisions.* The Central Office will maintain copies on a national basis of all unpublished Service decisions.

* * * * *

(d) *Statements of policy, interpretations, manuals, instructions to staff.* Statements of policy, interpretations and those manuals and instructions to staff (or portions thereof), affecting the public, will be made available at Central Office with an accompanying index of any material which is issued on or after July 4, 1967.

(e) *Public reading rooms.* The Central Office will provide a reading room where the material described in this section will be made available in the Public Reading Room, include the immigration and nationality laws, Title 8 of the United States Code Annotated, Title 8 of the Code of Federal Regulations—Chapter I, a complete set of the forms listed in Part 299 of this chapter, and the Department of State Foreign Affairs Manual, Volume 9—Visas. Fees will not be charged for providing access to any of these, but fees in accordance with § 16.10 of 28 CFR will be charged for furnishing copies.

* * * * *

Dated: September 19, 1988.

Elizabeth Chase MacRae,

Associate Commissioner, Information Systems, Immigration and Naturalization Service.

[FR Doc. 89–2203 Filed 1–30–89; 8:45 am]

BILLING CODE 4410–10–M

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8 CFR Part 214

[INS NUMBER: 1122–88]

School Approval and Withdrawal Regulations

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule.

SUMMARY: This proposed rule requires that schools approved by the Service for attendance by foreign students report any significant changes made to their names, addresses, or curricula to ensure effective monitoring of the Student School Program. The Service will withdraw the approval of a school on notice for failure to comply with this reporting requirement. This proposed rule also updates the regulation regarding withdrawal of school approval to reflect current school transfer procedures for F–1 nonimmigrant students.

DATES: Written comments must be submitted on or before March 2, 1989.

ADDRESS: Please submit comments in triplicate to the Director, Office of Policy Directives and Instructions, Immigration and Naturalization Service, 425 I Street NW., Room 2011, Washington, DC 20536.

FOR FURTHER INFORMATION CONTACT: Pearl B. Chang, Senior Examiner, Immigration and Naturalization Service, 425 I Street NW., Washington, DC 20536, Telephone: (202) 633–3946.

SUPPLEMENTARY INFORMATION: Regulations regarding the approval of schools for attendance by foreign students require that approved schools keep records of information about each of the F–1 or M–1 students enrolled on campus. Approved schools are also required to report the status of each of the enrolled F–1 or M–1 students on Form I–721 which is a computer generated form issued annually by the Service to all approved schools for updates of the student-school data base. Due to technical deficiencies, no Form I–721 was issued between 1985 and 1987. The Service resumed the issuance of Form I–721 in April, 1988. The recent issuance has brought to the Service's attention the fact that many schools have neglected to notify the Service of changes made to their names or addresses. Therefore, the Form I–721 were not deliverable. Since the Service relies on the currency of the student-school data base for effective monitoring of the student-school program, it is critical that the Service have the current name and address of all approved schools.

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Section 214.3 also provides that the approval of a school is contingent on the school's ability to continue its program in the manner represented in the petition for approval. To ensure that approved schools continue to meet eligibility requirements after obtaining approval, material changes in an approved curriculum must be reviewed by the Service. Schools are required to report any addition of work components or deletion of academic programs that will materially change the approved curriculum. Changes that are within the parameters of the regulations for school approval will automatically be included in the approval. Only when a change could adversely affect the school's eligibility for continued approval will the school be asked to submit a Form I-17 for determination of continued approval. Approval of the school will be withdrawn on notice in accordance with § 214.4 should an approved school fail to report any significant changes made to its name, address, or curriculum.

In accordance with 5 U.S.C. 605(b), the Commissioner certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule is not a major rule within the meaning of section 1(b) of E.O. 12291, nor does this rule have federalism implications warranting the preparation of a Federal assessment in accordance with E.O. 12612.

This rule contains information collection requirements which have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act. The OMB control number for these collections are contained in 8 CFR 299.5.

List of Subjects in 8 CFR Part 214

Administrative practice and procedure, Aliens, Employment, Schools, Student.

For the reasons set out in the preamble, Chapter I of Title 8 of the Code of Federal Regulations is amended as follows:

PART 214—NONIMMIGRANT CLASSES

1. The authority citation for Part 214 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1184, 1186a.

2. In § 214.3, paragraphs (e)(2) and (h) are revised to read as follows:

§ 214.3 Petitions for approval of schools.

* * * * *

(e) * * *

(2) *General.* Upon approval of a petition, the district director shall notify the petitioner. An approved school is required to immediately report to the district director having jurisdiction over the school any material modification to its name, address or curriculum for a determination of continued eligibility for approval. The approval of a school is valid as long as the school operates in the manner represented in the petition. The approval is valid only for the type of program and student specified in the approval notice. The approval may be withdrawn in accordance with the provisions of 214.4.

* * * * *

(h) *Review of school approvals.* The district director may periodically review the approval of a school in his or her jurisdiction for compliance with the reporting requirements of paragraph (g)(2) of this section and for continued eligibility for approval pursuant to paragraph (e) of this section. The district director shall also, upon receipt of notification, evaluate any changes made to the name, address, or curriculum of an approved school to determine if the changes have affected the school's eligibility for approval. The district director may require the school under review to furnish a currently executed Form I-17 without fee along with supporting documents, as a petition for continuation of school approval when there is a question about whether the school still meets the eligibility requirements. If upon completion of the review, the district director finds that the approval should not be continued, he or she shall institute withdrawal proceedings in accordance with 214.4(b).

* * * * *

3. In § 214.4, paragraph (a)(1)(iii) is revised, and paragraph (a)(1)(xviii) is added to read as follows:

§ 214.4 Withdrawal of school approval.

(a) * * *

(1) * * *

(iii) Failure of a designated school official to notify the Service of the attendance of an F-1 transfer student as required by § 214.2(f)(6)(ii).

* * * * *

(xviii) Failure of a designated school official to notify the Service of material changes to the school's name, address, or curriculum as required by § 214.3(e)(2).

* * * * *

Dated: November 4, 1988.

Richard E. Norton,

Associate Commissioner, Examinations, Immigration and Naturalization Service.

[FR Doc. 89-2204 Filed 1-30-89; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 91

[Docket No. 88-188]

Ports Designated for Exportation of Animals; Olympia, WA

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the "Inspection and Handling of Livestock for Exportation" regulations by adding Olympia, Washington, to the list of ports designated as ports of embarkation and by adding the Port of Olympia Facility as the export inspection facility for that port. The effect of this action would be to add an additional port through which animals may be exported. The agency believes that the facility meets the requirements of the regulations to be included in the list of export inspection facilities.

DATE: Consideration will be given only to comments postmarked or received on or before April 3, 1989.

ADDRESSES: Send an original and two copies of written comments to Helene R. Wright, Regulatory Analysis and Development, PPD, APHIS, USDA, Room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 88-188. Comments received may be inspected at USDA, Room 1141, South Building, 14th and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. M.J. Gilsdorf, Senior Staff Veterinarian, Import-Export Animals Staff, VS, APHIS, USDA, Room 763, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782; (301) 436-8383.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR Part 91, "Inspection and Handling of Livestock for Exportation" (referred to below as the regulations) prescribe conditions for exporting animals from the United States. We are proposing to amend § 91.14 by adding Olympia, Washington, to the list of ports designated as ports of embarkation and by adding the Port Olympia Facility as the export inspection facility for that port. With certain exceptions, all animals exported

are required to be exported through ports designated as ports of embarkation.

To receive approval as a port of embarkation, a port must have export inspection facilities available for inspecting, holding, feeding and watering animals prior to exportation in order to ensure that the animals meet certain requirements specified in the regulations. The regulations provide that approval of each export inspection facility shall be based on compliance with specified standards in § 91.14(c) concerning materials, size, inspection implements, cleaning and disinfection, feed and water, access, testing and treatment, location, disposal of animal wastes, lighting, and office and rest room facilities.

The agency believes that the Port of Olympia Animal Export Facility meets the requirements of § 91.14(c). The facility is located at 915 Washington Street NE., Olympia, Washington 98507-0827. Therefore, we propose to add Olympia, Washington, to the list of ports designated as ports of embarkation. Executive Order 12291 and Regulatory Flexibility Act.

We are issuing this proposed rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule.' Based on information compiled by the Department, we have determined that this rule would have an effect on the economy of less than $100 million; would not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; and would not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

There would be minimal economic effect because there are only about 6 ocean shipments a year out of the Northwest United States. This proposal would only affect owners exporting animals through the port of Seattle, Washington, or the port at Portland, Oregon, by giving these exporters another port from which to ship their animals.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This proposed rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V.)

List of Subjects in 9 CFR Part 91

Animal diseases, Animal welfare, Exports, Livestock and livestock products, Transportation.

PART 91—INSPECTION AND HANDLING OF LIVESTOCK FOR EXPORTATION

Accordingly, 9 CFR Part 91 would be amended as follows:

1. The authority citation for Part 91 would continue to read as follows:

Authority: 21 U.S.C. 105, 112, 113, 114a, 120, 121, 134b, 134f, 612, 613, 614, 618, 48 U.S.C. 466a, 466b; 49 U.S.C. 1509(d); 7 CFR 2.17, 2.51, and 371.2(d).

2. Section 91.14 would be amended by adding new paragraphs (a)(15)(iii) and (a)(15)(iii)(A) to read as follows:

§ 91.14 Ports of embarkation and export inspection facilities.

(a) * * *

(15) *Washington.*

* * * * *

(iii) Olympia—ocean port.

(A) Port of Olympia Animal Export Facility, 915 Washington Street NE., Olympia, Washington 98507-0827, (206) 586-6150.

* * * * *

Done in Washington, DC, this 26th day of January 1989.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89-2224 Filed 1-30-89; 8:45 am]

BILLING CODE 3410-34-M

FEDERAL RESERVE SYSTEM

12 CFR Part 225

[Regulation Y; Docket No. R-0652]

Bank Holding Companies and Change in Bank Control; Rescission of Existing Regulation Regarding Investments in Voting Shares of Nonbanking Companies by State Banks Owned by Bank Holding Companies

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Extension of public comment period and postponement of informal public hearing.

SUMMARY: On December 5, 1988, the Federal Reserve Board published for public comment a proposal to rescind a provision of Regulation Y that permits holding company state banks to acquire the shares of nonbank companies engaged in activities that the bank may conduct directly. 53 FR 48915 (December 5, 1988). The notice provided that the comment period regarding this matter would expire on January 30, 1989. The Board also proposed to hold an informal hearing at which members of the public could make presentations regarding this matter on February 3, 1989. The Board has received several requests from commenters to extend the public comment period and postpone the informal hearing regarding this matter in order to enable the public to prepare adequate comments on the proposal in writing and at the hearing. In response to these requests, the Board has decided to extend the public comment period on this matter until April 28, 1989. The Board has also determined to postpone the informal hearing regarding this matter until April 7, 1989.

DATES: The comment period has been extended, and now expires April 28, 1989. The informal hearing has been rescheduled for April 7, 1989. The hearing will begin at 10 a.m.

ADDRESSES: All comments, which should refer to Docket No. R-0652, should be mail to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, or delivered to Room B-2222, 20th and Constitution Avenue NW., Washington, DC, between 8:45 a.m. and 5:15 p.m. weekdays. Comments may be inspected in Room B-1122 between 8:45 a.m. and 5:15 p.m. weekdays.

The location of the informal hearing is Dining Room E, Fifth Floor of the Board's Martin Building, 20th and C Streets, NW., Washington, DC.

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FOR FURTHER INFORMATION CONTACT: J. Virgil Mattingly, Deputy General Counsel (202/452-3430), Scott G. Alvarez, Assistant General Counsel (202/452-3583), Legal Division; or Sidney M. Suesan, Assistant Director (202/452-2638), Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System, Washington, DC 20551. For the hearing impaired *only*, Telecommunications Service for the Deaf, Ernestine Hill or Dorothea Thompson (202/452-3544).

Board of Governors of the Federal Reserve System, January 25, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89-2115 Filed 1-30-89; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88-NM-195-AD]

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposed a new airworthiness directive (AD), applicable to certain Boeing Model 767 series airplanes, which would require inspection and replacement, if necessary, of the wing outboard leading edge slat control rods. This proposal is prompted by reports of fractures of the wing outboard leading edge slat control rods. Fracture of both control rods on one slat would result in loss of ability to control the position of the affected slat, which could adversely affect the controllability of the airplane.

DATES: Comments must be received no later than March 28, 1989.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 88-NM-195-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Stanton R. Wood, Airframe Branch, ANM-120S; telephone (206) 431-1924. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 88-NM-195-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

There have been numerous reports of cracked outboard wing leading edge slat control rods on Boeing Model 767 series airplanes. The crack, initiated at machining marks at the swaged ends of the rod. Fracture of two control rods on any slat would result in the inability to control the affected slat's position, which, in turn, would adversely affect the controllability of the airplane.

The FAA has reviewed and approved Boeing Service Bulletin 767-57-0021, dated August 25, 1988, which describes procedures for inspection of the control rods for cracks, and replacement, if necessary.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require inspection of the control rods, and replacement, if necessary, in accordance with the service bulletin previously mentioned.

There are approximately 132 Model 767 series airplanes of the affected design in the worldwide fleet. It is estimated that 60 airplanes of U.S. registry would be affected by this AD, that it would take approximately 3 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $7,200.

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because few, if any, Model 767 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Boeing: Applies to Model 767 series airplanes, listed in Boeing Service Bulletin 767-57-0021, dated August 25, 1988, certificated in any category. Compliance required as indicated, unless previously accomplished.

To detect cracks in the outboard wing leading edge slat control rods, accomplish the following:

A. Within the next 1,200 landings of 9 months, whichever occurs first after the effective date of this AD, unless accomplished within the last 800 landings of 6 months, whichever occurs later, visually inspect the wing outboard leading edge slat control rods in accordance with the Accomplishment Instructions of Boeing Service Bulletin 767-57-0021, dated August 25, 1988.

1. If the date of manufacture (stamped on the control rod) is June 1983 or later, no further action is required.

2. If the date of manufacture is illegible or is prior to June 1983, ultrasonically inspect the control rods in accordance with Figure 1 of Boeing Service Bulletin 767-57-0021, dated August 25, 1988. If cracks or fractures are detected, replace prior to further flight, in accordance with Figure 2 of the service bulletin. Repeat the ultrasonic inspection of the control rods manufactured prior to June 1983 at intervals not to exceed 2,000 landings or 15 months, whichever occurs first.

B. Installation of control rods manufactured June 1983 or later, terminates the inspection requirements of paragraph A.2., above.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Seattle Aircraft Certification Office.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on January 20, 1989.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-2150 Filed 1-30-89; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 162

Proposed Customs Regulations Amendments Relating to the Liability of Common Carriers for Failure To Exercise the Highest Degree of Care and Diligence To Prevent Unmanifested Narcotics and Marijuana

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: This document proposes amendments to the Customs Regulations relating to the liability of common carriers to penalties, seizure and forfeiture for unmanifested narcotic drugs or marijuana. The proposed changes would add to the regulations the statutory standard for the highest degree of care and diligence on the part of common carriers in preventing unmanifested drugs and marijuana. The changes further set forth specific duties and procedures by which the standard is defined and against which compliance with the standard can be determined. These duties and procedures include such security measures as background investigations of employees, access restrictions to cargo areas, use of lighting in storage areas, and other similar measures.

DATE: Comments must be received on or before April 3, 1989.

ADDRESS: Comments (preferably in triplicate) may be submitted to and inspected at the Regulations and Disclosure Law Branch, Room 2324, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Harriett D. Blank, Penalties Branch, Office of Regulations and Rulings, U.S. Customs Service (202) 566-5746.

SUPPLEMENTARY INFORMATION: Under 19 U.S.C. 1584(b) penalties are authorized for unmanifested narcotic and controlled drugs and marijuana found on vessels, vehicles and aircraft unless the master or person in charge could not have known by the exercise of the "highest degree of care and diligence" of the presence of such merchandise. Section 3124 of the Anti-Drug Abuse Act of 1986 (Pub. L. 99-570) extended the highest-degree-of-care-and-diligence standard to apply in connection with seizures and forfeitures of aircraft and other common carriers resulting from unmanifested narcotic drugs or marijuana in amendments to 19 U.S.C. 1594. In Senate Report No. 100-160, 100th Congress, 1st Session (September 17, 1987), the Senate Committee on Appropriations noted that there was no definition of the highest-degree-of-care-and diligence standard by which an airline can measure whether its precautions have satisfied the standard of care prescribed by statute. It was further indicated that the Customs Service should attempt to define the standard by specifying procedures and specific duties for airlines to follow.

The proposed changes would add the standard to the regulations and include specific duties and procedures against which compliance with the standard can be determined. These duties and procedures include such security measures as background investigations of employees, access restrictions to cargo areas, use of lighting in storage areas, and similar measures. The requirements are made equally applicable to sea and vehicular carriers as well as to air carriers, and are applicable with respect to seizures and forfeitures as well as penalties.

Section 162.65, Customs Regulations (19 CFR 162.65) relates to penalties under 19 U.S.C. 158(b) for failure to manifest narcotic drugs and marijuana. Inclusion of the highest-degree-of-care-and-diligence standard and the specific duties and procedures under which that standard may be defined and against which compliance may be determined are proposed to be set forth as amendments to § 162.65. It is further proposed to add a new § 162.67 to make the standard applicable to seizures and forfeitures under 19 U.S.C. 1595a and the definition for the standard applicable to 19 U.S.C. 1594(c).

Before adopting this proposal, consideration will be given to any written comments (preferably in triplicate) that are submitted to the Customs Service. Commenters are requested to address the clarity of the guidelines on security measures, the ability of common carriers to apply them in a standardized manner, other factors that should be taken into account, and the relative importance of individual factors. Submitted comments will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4) and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. At the Regulations and Disclosure Law Branch, Room 2324, Customs Headquarters, 1301 Constitution Avenue, NW., Washington, DC 20229.

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Executive Order 12291

This document does not meet the criteria for a "major rule" as specified in E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that the regulation amendments will not have a significant economic impact on a substantial number of small entities. Accordingly, they are not subject to the regulatory analysis or other requirements 5 U.S.C. 603 and 604.

Paperwork Reduction Act

These amendments do not provide for a collection of information as defined by 5 CFR 1320.7(c), and, therefore, the requirements of the Paperwork Reduction Act (44 U.S.C. 3504(b)) are not applicable.

Drafting Information

The principal author of this document was James C. Hill, Regulations and Disclosure Law Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 162

Customs duties and inspection, Law enforcement, Penalties, Reporting and recordkeeping requirements, Seizures and forfeitures.

Proposed Amendments

It is proposed to amend Part 162, Customs Regulations, as set forth below:

PART 162—RECORDKEEPING, INSPECTIONS, SEARCH, AND SEIZURE

1. The general authority citation for Part 162 is amended by the addition of further specific authority for §§ 162.65 and 162.67 in proper numerical sequence as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1624; * * *

Sec. 162. 65 also issued under 19 U.S.C. 1584, 1594, 21 U.S.C. 990, 991;

Sec. 162.67 also issued under 19 U.S.C. 1594, 1595a;

2. It is proposed to amend § 162.65 by redesignating paragraphs (c) through (e) as paragraphs (e) through (g) respectively.

3. It is proposed to further amend § 162.65 by inserting new paragraphs (c) and (d) to read as follows:

§ 162.65 Penalties for failure to manifest narcotic drugs or marijuana.

* * * * *

(c) *Liability of common carriers.* Common carriers are liable for the payment of penalties prescribed in 19 U.S.C. 1584 for failure to manifest narcotic drugs or marijuana unless the master or other person in charge of the conveyance, or the officers, or the owner of the conveyance can establish that they did not know and could not have known, by the exercise of the highest degree of care and diligence, that narcotic drugs were on board.

(d) *Highest degree of care and diligence.* The burden of proving that it has exercised the highest degree of care and diligence is on the common carrier. The determination as to whether or not a common carrier has carried this burden of proof will be made by Customs on a case-by-case basis. It will reflect the individual facts and circumstances, and will take into account measures taken at the foreign lading location, on board the conveyance while en route, and upon arrival in the United States. Depending on the particular facts and circumstances surrounding a carrier's failure to manifest narcotic drugs or marijuana, that carrier must submit evidence that it performed security measures such as, but not limited to, the following:

(1) Investigating background of each employee to determine whether the employee has engaged in criminal activities, activities related to narcotics smuggling, or has a standard of living which is inconsistent with the salary being paid by the carrier.

(2) Knowing identities of representatives of companies delivering merchandise to the foreign port of lading for shipment, and identities of company employees receiving cargo at the foreign port of lading. Special attention should be paid to first-time and infrequent shippers.

(3) Maintenance of a secure facility, including locking of doors and windows and maintenance of a secure perimeter.

(4) Restricting access to the cargo area to authorized personnel only, by use of such measures as uniforms, badges, or a card key system.

(5) Maintenance of 24-hour security by use of guard details and/or an alarm system to alert officials in the event the perimeter is violated when the facility is closed.

(6) Maintenance of adequate lighting in work areas and storage facilities.

(7) Maintenance of inventory control including serially numbered bills of lading and control of seals.

(8) Routine inspection of the facility or conveyance by management and security personnel, and the taking of appropriate action on the basis of observed deficiencies.

(9) Operation of a program to insure that narcotic drugs and marijuana are not concealed in the conveyance, e.g., sealing or securing compartments within a conveyance, such as rope lockers, chain lockers, or compartments within the lavatory, where this will not affect safety or operation of the conveyance.

(10) Prompt disclosure to Customs and other law enforcement officials of information which would lead directly or indirectly to the detection of narcotics.

(11) Operation of a program designed to insure that all packages and containers are manifested and that the marks, numbers, weights and quantities on the packages and containers agree with the manifest.

4. It is proposed to amend Part 162 by adding a new § 162.67 to read as follows:

§ 162.67 Seizures of common carriers.

For the purpose of seizure and forfeiture of a common carrier pursuant to 19 U.S.C. 1595a(a) as a result of the carrying of unmanifested narcotic drugs, controlled substances, or marijuana, or assisting in the carrying of such merchandise, the common carrier will be held to the same standard of the highest degree of care and diligence required under section 1594(c). The definition for that standard in § 162.65(d) of this part shall apply under either provision.

William Von Raab,
Commissioner of Customs.
Approved: October 5, 1988.
Salvatore R. Martoche,
Assistant Secretary of the Treasury.
[FR Doc. 89-2196 Filed 1-30-89; 8:45 am]
BILLING CODE 4820-02-M

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

29 CFR Part 530

Employment of Homeworkers in Certain Industries

AGENCY: Wage and Hour Division, Employment Standards Administration, Department of Labor.

ACTION: Revised schedule of public hearings.

SUMMARY: The Department of Labor has declined to revise the schedule and expand the locations of public hearings on the employment of homeworkers in the women's apparel industry which were announced in the **Federal Register** on December 30, 1988. The public hearings previously scheduled for San Antonio, Texas, for March 2–3, 1989, and Chicago, Illinois, for March 8–9, 1989, will be held as planned. The public hearings previously scheduled for Miami, Florida for February 22–23, 1989, will be rescheduled for a later date. The Department also will schedule additional hearings in the New York City and Los Angeles, California, areas. Another **Federal Register** notice will be published shortly to provide information on the dates, times, and locations for the hearings in Miami, New York and Los Angeles. The purpose of these hearings is to gather information about the characteristics of this industry and the kinds of enforcement mechanisms appropriate for a new regulation governing women's apparel homework.

DATES: The public hearings will be held in San Antonio, Texas, on March 2–3, 1989, and Chicago, Illinois, on March 8–9, 1989. The hearings will begin at 9:30 a.m. local time. Interested parties who wish to testify in person should so notify the Wage and House Administrator in writing no later than February 17, 1989. Oral testimony will be kept to a maximum of twenty minutes unless different arrangements are made in advance with the Administrator. However, persons testifying are free to submit more extensive written statements for inclusion in the hearing record. Also, such persons are asked to advise the Administrator on their need, if any, for translators.

All interested parties are invited to submit written comments on this matter to the Administrator on or before April 14, 1989.

ADDRESSES: The locations for the San Antonio and Chicago public hearings are as follows:

Institute of Texan Cultures, 801 South Bowie, Hemisfair Plaza, San Antonio, Texas 78206

2525 Ceremonial Courtroom, Everett McKinley Dirksen Federal Building, 219 South Dearborn, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Paula V. Smith, Administrator, Wage and Hour Division, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 523–8305. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: On December 30, 1988, the Department of Labor published in the Federal Register an advance notice of proposed rulemaking and notice of hearings on regulations at 29 CFR Part 530. (See 53 FR 53344). These regulations prohibit the employment of homeworkers in the women's apparel industry. That notice advised the public of hearings scheduled for Miami, Florida, San Antonio, Texas, and Chicago, Illinois. Interested parties who wished to testify at the hearings were asked to so advise the Administrator by February 2, 1989.

Decisions have been made to hold additional hearings in New York and California. Also, because of the workload implications in adding these hearings to the schedule, it has been necessary to reschedule the Miami, Florida, hearing for a later date. The Department will shortly publish a further notice on these three hearings.

The hearings planned for San Antonio, Texas, and Chicago, Illinois, will be held as previously scheduled. However, those persons who wish to testify at these hearings are now asked to so advise the Administrator by February 17, 1989. Also, the closing date for submitting written comments has been changed to April 14, 1989.

Persons who do not advise the Administrator that they wish to testify at the hearings will be heard as time permits following those who have been scheduled, but they may be limited to ten minutes each for their presentation.

This document was prepared under the direction and control of Paula V. Smith, Administrator, Wage and Hour Division, U.S. Department of Labor.

List of Subjects in 29 CFR Part 530

Employment, Investigation, Labor, Law enforcement, Minimum wages, Wages, Licenses.

Signed at Washington, DC on this 26th day of January, 1989.

Alan C. McMillan,
Acting Assistant Secretary for Employment Standards.
Paula V. Smith,
Administrator, Wage and Hour Division.
[FR Doc. 89–2237 Filed 1–30–89; 8:45 am]
BILLING CODE 4510–27–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 761

Areas Unsuitable for Mining; Areas Designated by Act of Congress; Applicability of the Prohibitions of the Surface Mining Act to the Surface Impacts of Underground Coal Mining; Public Hearings

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice of public hearings.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSMRE) has previously published a proposed rule which addresses the circumstances which constitute valid existing rights (VER) to mine in areas where Congress has otherwise prohibited mining under section 522(e) of the Surface Mining Control and Reclamation Act of 1977 (the Act). The proposed rule also contained provisions on the applicability of the prohibitions in section 522(e) of the Act to subsidence resulting from underground mining. OSMRE has received requests to hold public hearings on the proposed rule and has scheduled public hearings as specified below.

DATES: Public hearings have been scheduled in Denver, Colorado; Pittsburgh, Pennsylvania; St. Louis, Missouri; Washington, D.C.; Lexington, Kentucky; and Knoxville, Tennessee on February 16, 1989.

Combined hearings on the proposed rule and Environmental Impact Statement will begin at 9:00 a.m. local time in all places.

ADDRESSES: Public hearings are scheduled at the following locations:

Brooks Towers, Second Floor Conference Room, 1020 15th St., Denver, Colorado

The Parkway Center Inn, 875 Greentree Road, Pittsburgh, Pennsylvania

Park Terrace Airport Hilton, 10330 Natural Bridge Road, St. Louis, Missouri

First Floor Auditorium, South Interior Building, 1915 Constitution Avenue, NW., Washington, DC

The Kentucky Inn, 525 Waller Avenue, Lexington, Kentucky

The Holiday Inn Convention Center, Henley Street and Clinch Avenue, Knoxville, Tennessee

FOR FURTHER INFORMATION CONTACT: Patrick Boyd, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue, NW., Washington, DC 20240; Telephone 202–343–4561 (Commercial or FTS).

SUPPLEMENTARY INFORMATION: OSMRE published a proposed rule on December 27, 1988 (53 FR 52374) which would amend those portions of its permanent program regulations at 30 CFR Part 761 which address the circumstances which constitute VER to mine in areas where Congress has otherwise prohibited mining under section 522(e) of the Act. OSMRE undertook this action in response to a district court's decision in Round III of the litigation on OSMRE's permanent program regulations.

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Specifically, OSMRE proposed for review and comment two different options for the standard for VER: (1) VER exists when an applicant for a permit to conduct surface coal mining operations has, or had made a good faith effort to obtain, all necessary permits, or (2) VER exists when an applicant has a legal right to mine by the method intended, as determined by State law. The proposed rule would also reorganize the existing rule for clarity.

OSMRE also proposed for review and comment a rulemaking proposal on the applicability of the prohibitions in section 522(e) of the Act to subsidence resulting from underground mining. Section 522(e) prohibits surface coal mining operations on certain lands and within specified distances of certain structures and facilities.

Requests for hearings on these proposals have been received. OSMRE will also be conducting hearings at the same time on the Environmental Impact Statement (EIS) prepared for the proposed rule. The hearings on the proposed rule and the EIS have been combined for the convenience of the public and will begin at 9:00 a.m. local time in all places.

To assist the transcriber and ensure an accurate record, OSMRE requests that persons who testify at the hearings give the transcriber a copy of their testimony.

Dated: January 25, 1989.

Robert H. Gentile,

Director, Office of Surface Mining Reclamation and Enforcement.

[FR Doc. 89-2181 Filed 1-30-89; 8:45 am]

BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-1-FRL-3512-1]

Approval and Promulgation of Air Quality Implementation Plans; Massachusetts; Reasonably Available Control Technology for General Electric Co. Pittsfield, MA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a proposed State Implementation Plan (SIP) revision submitted by the Commonwealth of Massachusetts. This revision establishes and requires the use of reasonably available control technology (RACT) to control volatile organic compound (VOC) emissions from the General Electric Company in Pittsfield, Massachusetts. The intended effect of this action is to propose approval of a source specific RACT determination made by the Commonwealth of Massachusetts in accordance with commitments of its approved 1982 ozone attainment plan. This action is being taken under section 110 of the Clean Air Act.

DATE: Comments must be received on or before March 2, 1989. Public comments on this document are requested and will be considered before talking final action on these SIP revisions.

ADDRESSES: Comments may be mailed to Louis F. Gitto, Director, Air Management Division, Room 2313, JFK Federal Bldg., Boston, MA 02203. Copies of the State submittal and EPA's technical support document are available for public inspection during normal business hours at the Environmental Protection Agency, Room 2313, JFK Federal Bldg., Boston, MA 02203 and the Department of Environmental Quality Engineering, Division of Air Quality Control, One Winter Street, 8th Floor Boston, MA 02106.

FOR FURTHER INFORMATION CONTACT: Nam Nguyen (617) 565-3249; FTS 835-3249.

SUPPLEMENTARY INFORMATION: On February 4, 1988, the Massachusetts Department of Environmental Quality Engineering (DEQE) submitted a proposed revision to its State Implementation Plan (SIP) for the General Electric Company (General Electric) located in Pittsfield, Massachusetts. The revision consists of a proposed Plan Approval, dated January 21, 1988, imposing requirements to reduce VOC emissions from three operations at General Electric which are not subject to RACT under Massachusetts SIP regulations developed pursuant to EPA's Control Technique Guidlines (CTGs).

Massachusetts requested and was granted an extension until December 31, 1987 to come into attainment with the National Ambient Air Quality Standard (NAAQS) for ozone. Pursuant to EPA policy, the SIPs of all extension States must require RACT on all non-CTG sources with the potential to emit 100 TPY or ore of VOCs. EPA approved Massachusetts Regulation 310 CMR 7.18 (17), "Reasonably Available Control Technology (RACT)," on November 9, 1983 (48 FR 51480) as part of the Commonwealth of Massachusetts' 1982 ozone attainment plan. In a November 17, 1982 letter to EPA, the DEQE committed to submit each of the individual 100 TPY RACT determinations it made to EPA for incorporation into the Massachusetts SIP as source-specific SIP revisions.

Background

General Electric's Pittsfield facility is a large, multi-operation stationary source of VOCs. The majority of its VOC-emitting processes are subject to RACT under Massachusetts SIP regulations developed and approved in accordance with EPA's CTGs. However, General Electric has three non-CTG processes that have total potential VOC emissions in excess of 100 TPY. Those manufacturing processes are referred to as follows:

The Large Transformer Group
The Ordnance Systems Division
The Plastics Business Group

While the total, pre-RACT potential to emit of these three processes equals 502.9 TPY, the majority of those emissions, 444 TPY, are methylene chloride emissions from the Plastic Business Group's laminating resins manufacturing operations. Although EPA has stated that methylene chloride, because of negligible photochemical reactivity, can be exempted from control as a VOC in any SIP (44 FR 32042 and 45 FR 32424), the State of Massachusetts did not include methylene chloride as an exempt solvent in the definition of "volatile organic compounds" in its federally-approved Ozone Attainment Plan. Therefore, a source in Massachusetts which uses methylene chloride is subject to the same control requirements for that solvent as it is for its photochemically reactive VOCs. Therefore, DEQE's proposed Plan Approval imposed RACT, in accordance with SIP regulation 310 CMR 7.17(17), on General Electric's Plastics Business Group's operations to control methylene chloride in addition to the Large Transformer Group's and Ordnance Systems Division's operations which emit reactive VOCs.

Summary of DEQE's RACT Determination

DEQE's January 21, 1988 proposed Plan Approved imposes requirements which reduce VOC emissions from 502.9 TPY to 117.4 TPY (a 76.7% reduction) at General Electric's three non-CTG manufacturing processes as follows:

	Pre-RACT potential levels (TPY)	Post-RACT levels (TPY)
Large transformer group	15.0	7.5
Military ordnance division	10.6	8.3

	Pre-RACT potential levels (TPY)	Post-RACT levels (TPY)
Plastics business group	477.3	[2] 101.6
Totals	[1] 502.9	[2] 117.4

[1] 444 TPY are methylene chloride.
[2] 84 TPY are methylene chloride.

The DEQE First issued a conditional RACT Plan Approval to General Electric for its non-CTG processes on May 15, 1986. That Plan Approval was subsequently amended by the DEQE on June 17, 1986, October 17, 1986, and July 7, 1987. DEQE amended the Plan Approval on January 21, 1988 to incorporate changes in emissions calculated from the Plastic Business Group and to include the provisions of a Consent Agreement negotiated between the DEQE and General Electric regarding painting operations in the Ordnance Systems Division. The requirements of the DEQE's January 21, 1988 amended proposed Plan Approval are summarized below.

Large Transformer Group

The proposed Plan Approval requires the installation of a front panel and pot lid on the Gasket Dipping/Drying operation by September 1, 1988 to reduce process and fugitive emissions.

Ordnance System Division

1. The proposed Plan Approval requires General Electric to modify the Casting Impregnation process by September 1, 1988 to eliminate the use of kerosene and the hot oil cure bath. It further requires that any substitution for the kerosene and hot oil cure bath must be a non-VOC containing formulation.

2. The proposed Plan Approval requires that General Electric use low/no VOC formulations or a level of control equivalent to low/no VOC by December 31, 1991 for all existing Department of Defense (DoD) specified Ordnance coating operations. The Plan Approval further specifies that low/no VOC formulations means paints and coatings with less than 0.68 pounds of VOC per gallon of solids as applied.

3. The proposed Plan Approval requires that General Electric use low/no VOC formulations or a level of control equivalent to low/no VOC by December 31, 1987 for all non-DoD specified coating operations. Again, the Plan Approval specifies that low/no VOC formulations means paints and coatings with less than 0.68 pounds of VOC per gallon of solids applied.

4. The proposed Plan Approval restricts the total annual VOC emissions from the coating operations of the Ordnance Systems Division (regardless of whether the coatings used are DoD-specified or not) to 8.3 TPY.

5. The proposed Plan Approval requires that General Electric verify the use of low/no VOC coatings as required in 2 and 3, above, by January 12, 1992. The Plan Approval further specifies that General Electric perform the verification according to EPA Reference Test Method 24 as contained in Appendix A of 40 CFR Part 60, and submit a report summarizing the test results by March 1, 1992.

6. The proposed Plan Approval requires General Electric to track the coatings used in the Ordnance Division's RACT-subject operations. General Electric must maintain records of monthly and year-to-date total VOC emissions and VOC emissions expressed in pounds of VOC per gallon of solids applied for each coating. The Plan Approval further requires that each annual coating record be retained at General Electric's Pittsfield facility for at least two years, and be made available to DEQE upon request.

7. The proposed Plan Approval requires General Electric to continue to provide bimonthly reports, which began on September 1, 1988 to the DEQE which update progress made toward converting to low/no VOC coatings. These reports must include any communications General Electric has with DoD, EPA, suppliers, contractors, manufacturers, etc. regarding low/no conversion.

Further, the Plann Approval requires that these reports include a list of currenct coatings and the respective ratio of VOC to solids as applied, availability of low/no VOC substitutes, coating trials and results, expected dates of conversion, and final conversion dates.

Plastics Business Group

1. The proposed Plan Approval requires that General Electric install a carbon absorber by December 31, 1988 to control methylene chloride emissions from the condenser stack serving the laminating resins manufacturing operation. The Plan Approval specifies that the carbon adsorber be operated so that, minimally, a 90% recovery efficiency and a 90% system capture efficiency are achieved. Overall, an 81% capture and recovery efficiency (0.9×0.9=81%) must be achieved.

2. The proposed Plan Approval requires General Electric to install inlet and outlet test ports on the carbon absorber by December 31, 1988 which will allow for VOC emission testing according to EPA Reference Test Method 18 or 25A as contained in Appendix A of 40 CFR Part 60. The Plan Approval further specifies that General Electric will be required to test at the discretion of DEQE of EPA.

3. The Plan Approval requires that General Electric develop and implement a Leak Detection and Repair Program for controlling VOC emissions from the Plastics Business Group's manufacturing operations. A DEQE-approved Leak Detection and Repair Program shall be implemented by September 1, 1988 for the laminating resins operations of control methylene chloride emissions and by December 15, 1988 for the remainder of the Plastics Business Group's operations.

4. The Plan Approval requires that General Electric discontinue the manufacture of METHYLON resins no later than December 31, 1988.

EPA's Evaluation of DEQE RACT Determination

EPA has reviewed the proposed Plan Approval and supporting documents submitted as a SIP revision for parallel processing. EPA generally agrees with the DEQE RACT requirements to reduce VOC emissions from General Electric. However, EPA is requiring the DEQE to address the items identified below in the final, formal SIP revision submitted to impose RACT on General Electric to provide additional documentation to ensure that the RACT requirements are technically supportable and enforceable.

1. Standard operating procedures for the front panel cover and pot lid on the Large Transformer Group's Gasket Dipping/Drying operations must be required and made part of the Plan Approval to insure that the 50% reduction will be achieved and maintained.

2. The Leak Detection and Repair Program for controlling VOCs from the Plastic Business Group's manufacturing operations must specify a schedule for requiring monitoring of leaks that can only be repaired when the unit is shutdown.

3. The Plan Approval states that, as of December 31, 1987, General Electric may not exceed the current VOC content(s) of its applicable, existing DoD-specified coatings (an attachment to the Plan Approval provides the current VOC content of each existing coating in pounds of VOC per gallon of solids applied). The Plan Approval further requires that General Electric's DoD-specified coatings must all meet an emission rate of 0.68 pounds of VOC per gallon of solids as applied no later than December 31, 1991. In effect, DEQE has determined RACT for General Electric's DoD-specified coatings as their current VOC content(s) in pounds of VOC per

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gallon of solids applied. EPA has conferred with DoD, and that Agency provided information indicating that manufacturers of their ordnance equipment could comply with the use of low/no formulated coatings by December 31, 1987. Therefore, the DEQE's submittal must contain further justification for determining the current VOC content(s) of their DoD-specified coatings as RACT. Otherwise, DEQE must amend the Plan Approval to require General Electric to use DoD-specified coatings which meet 6.66 pounds VOC per gallon of solids applied by December 31, 1987.

4. The Plan Approval should require that the 8.3 TPY annual total VOC emission limitation, imposed on the Ordnance Systems Division RACT-subject painting/coatings operations, must be met over every consecutive twelve (12) month time period. The Plan Approval should clarify the final compliance date for this annual limit.

5. The Plan Approval must specifically require that the emission rate of 6.66 pounds of VOC per gallon of solids as applied be met on a continuous basis. This will prevent General Electric from using an emissions bubble to meet this emission rate until and unless the company is approved to do so.

These amendments to the Plan Approval must be addressed in the version of that document which is formally submitted as a revision to EPA for final approval and incorporation into the SIP. EPA is proposing to approve this SIP revision for General Electric in Pittsfield, which was submitted on February 4, 1988, if the DEQE makes the changes specified in this notice. EPA is soliciting public comments on the issues discussed in this notice or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the *Addresses* section of this notice.

This revision is being proposed under a procedure called parallel processing, whereby EPA proposes rulemaking action concurrently with the state's procedures for amending its regulations. If the proposed revision is substantially changed in areas other than those identified in this notice, EPA will evaluate those changes and may publish another notice of proposed rulemaking. If no substantial changes are made other than those areas cited in this notice, EPA will publish a Final Rulemaking Notice on the revisions. The final rulemaking action by EPA will occur only after the SIP revision has been adopted by Massachusetts and submitted formally to EPA for incorporation into the SIP.

Proposed Action

EPA is proposing to approve the DEQE's proposed RACT determination as imposed in the January 21, 1988 Conditional Plan Approval (Amended). EPA is proposing approval with the understanding that the DEQE's formal SIP revision submittal will adequately address the items indicated in this notice.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

The Administrator's decision to approve or disapprove the SIP revision will be based on whether it meets the requirements of section 110(a)(2)(A)–(K) and 110(a)(3) of the Clean Air Act, as amended, and EPA regulations in 40 CFR part 51.

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7642.

Date: September 29, 1988.

Michael R. Deland,

Regional Administrator Region I.

[FR Doc. 89–2185 Filed 1–30–89; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 261

[FRL–3512–2]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Extension of Comment Period

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule; extension of comment period.

SUMMARY: EPA is extending the comment period on a proposed delisting decision for Fisher Guide, formerly Fisher Body Division of General Motors Corporation, Flint, Michigan, which appeared in the **Federal Register** on December 16, 1988 (53 FR 50550). The RCRA Docket will be closed to the public from January 30, 1989 through February 3, 1989, during its relocation from LG–100 to M2427 at EPA Headquarters, 401 M Street, SW., Washington, DC 20460. This extension is provided to allow the public an adequate opportunity to review all information used to support the Agency's decision.

DATE: EPA will accept public comments on the previously proposed decision until February 6, 1989. This date reflects the period of time the RCRA Docket will be closed. Comments postmarked after the close of the extended comment period will be stamped "late".

ADDRESSES: Send three copies of your comments to EPA. Two copies should be sent to the Docket Clerk, Office of Solid Waste (OS–305), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. A third copy should be sent to Jim Kent, Variances Section, Assistance Branch, PSPD/OSW (OS–343), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. All comments must be identified at the top with docket number "F–88–FGDP–FFFFF".

The public docket where the information can be viewed for the proposed rule is located in the sub-basement of the U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. As of February 6, 1989, the RCRA Docket will be located in M2427 of the U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. The docket is open from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. Call (202) 475–9327 for appointments. The public may copy material from any regulatory docket at a cost of $0.15 per page.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline, toll free at (800) 424–9346 or at (202) 382–3000. For technical information, contact Scott Maid, Office of Solid Waste (OS–343), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382–4783.

SUPPLEMENTARY INFORMATION: On December 16, 1988, EPA proposed to deny a petition submitted by Fisher Guide, formerly Fisher Body Division of General Motors Corporation, Flint, Michigan, to exclude certain solid wastes generated at its facility from the list of hazardous wastes contained in 40 CFR 261.31 and 261.32. See 53 FR 50550–50556. This proposal was made pursuant to 40 CFR 260.20 and 260.22. The RCRA Docket will be closed from January 30, 1989, through February 3, 1989, to facilitate its relocation from the sub-basement (LG–100) to M2427, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. The Agency is hereby extending the public comment period for a period equal to the time the RCRA Docket will be closed.

The public comment period for the proposed rule was originally scheduled to end on January 30, 1989. Today's notice extends the public comment period for the proposed rule to allow the public an opportunity to review all information used to support the Agency's decision on Fisher Guide's delisting petition. The Agency will not accept public comments on the proposed rule until February 6, 1989.

Date: January 24, 1989.

Sylvia K. Lowrance,

Director, Office of Solid Waste

[FR Doc. 89–2186 Filed 1–30–89; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Child Support Enforcement

45 CFR Part 305

Child Support Enforcement Program Audit

AGENCY: Office of Child Support Enforcement (OCSE), HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: OCSE is proposing to amend the Child Support Enforcement program regulations governing the audit of State Child Support Enforcement (IV–D) Programs and the imposition of financial penalties for failure to substantially comply with the requirements of title IV–D of the Social Security Act (the Act). This proposal would improve and expedite the current process for auditing State and local IV–D programs by consolidating the criteria evaluated during the course of an audit and making other changes to the current requirements to allow flexibility in the audit approach. These changes are being proposed in order to simplify the current audit process by incorporating lessons learned since promulgation of the existing audit regulations, to ensure the initiation of audits as close as possible to the time period audited, and to shorten the elapsed time from audit initiation to issuance of a final report. For a detailed discussion of the changes, see **SUPPLEMENTARY INFORMATION.**

DATE: Consideration will be given to written comments and suggestions received by April 3, 1989.

ADDRESS: Address comments to: Associate Deputy Director, Office of Child Support Enforcement, Department of Health and Human Services, 370 L'Enfant Promenade, SW., Washington, DC 20447. Comments will be available for public inspection Monday through Friday, 8:30 a.m. to 5:00 p.m. in the Department's office at the above address.

FOR FURTHER INFORMATION CONTACT: Betsy Matheson, (202) 252–5362.

SUPPLEMENTARY INFORMATION:

Background

As a result of the enactment of Pub. L. 98–378, the "Child Support Enforcement Amendments of 1984," OCSE published final audit regulations on October 1, 1985, which affect the audits of State IV–D programs for FY 1984 and beyond. Section 9 of Pub. L. 98–378, and the implementing regulations, require that OCSE conduct an audit of the effectiveness of State Child Support Enforcement programs at least once every three years; require that OCSE use a substantial compliance standard to determine whether each State has an effective IV–D program; provide that any State found not to have an effective IV–D program in substantial compliance with the requirements of title IV–D of the Act be given an opportunity to take the corrective action necessary to achieve substantial compliance with those requirements; provide for the use of a graduated penalty of not less than 1 nor more than 5 percent of a State's Aid to Families with Dependent Children (AFDC) program funds if a State is not in substantial compliance; and specify the period of time during which a penalty is effective.

In order to be found to have an effective program in substantial compliance with the requirements of title IV–D of the Act, a State must meet the State plan requirements contained in 45 CFR Part 302. Under current regulations, there are separate audit criteria for each of the State plan requirements. The current regulations list 30 criteria (which include numerous related subcriteria) governing procedural requirements relating to the administration of the IV–D program which are evaluated to determine compliance with the State plan requirements. These procedural criteria must be fully met for a finding of substantial compliance. In addition, the regulations list 26 functional, or service-related, criteria which include numerous related subcriteria for purposes of evaluating State performance.

The required procedures under these service-related criteria must be used in 75 percent of the cases reviewed for the State's program to be found in substantial compliance. In accordance with the statute, a State's failure to fully comply with any of the audit criteria will result in a finding that the State failed to substantially comply with title IV–D requirements unless such finding is of a technical nature which does not adversely affect the performance of the State IV–D program.

OCSE auditors have followed this audit process in conducting audits beginning with FY 1984. The experience gained clearly indicates that a more efficient and more expeditious approach to the audit of State IV–D programs is necessary. The average audit under the current approach has taken 21 months, from the end of the period to be audited to issuance of the final report. One contributory factor has been the numerous requirements which must be individually evaluated. Combined with the statutory requirement for a triennial audit and the allowance for a corrective action period of up to one year, the current approach is unwieldy at best and postpones engaging the attention of State and local program administrators, and the accomplishment of remedial action to correct deficiencies noted, until much too long after the close of the time period subject to audit. We have found that in order to comply with the statutory requirement for a triennial audit, auditors must occasionally go back into a State to conduct a new audit even before that State has completed corrective action indicated by the prior audit.

OCSE has already taken administrative steps to ease this process but they do not go far enough in alleviating the problems. After extensive evaluation and analysis of operational experience encompassing better than three years, OCSE has determined that the regulatory changes proposed herein are necessary. The proposed rule will consolidate the current audit criteria by major program function. Thus, instead of auditing each criterion separately, two or more will be grouped under one performance standard for evaluation. This will allow the objective of the audit to be met in a less complex, more expeditious manner while maintaining the reliability and integrity of the audit. In addition, in the audit regulations published October 1, 1985 (50 FR 40120), we stated that additional performance indicator components measuring paternity establishment and cost avoidance would be added to the performance measurement portion of the audit. Those indicator components are included in this proposed regulation. To correspond with the additional indicator components, we are proposing a revised scoring system. We are also strengthening the standard by which we judge State performance on the three current performance indicator

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components which measure AFDC and non-AFDC cost effectiveness and AFDC cost recovery. The current standard for those performance indicator components was based on State performance during fiscal year 1983. We believe the proposed standard takes into consideration the significant improvements that have been made in the operation of State programs since fiscal year 1983 as a result of changes made in response to the "Child Support Enforcement Amendments of 1984."

This proposed rule is to be an interim step in perfecting the audit approach. We anticipate further revising the audit process at such time as standards for the provision of program services currently under development are implemented in final regulatory form. Therefore, these proposed rules present the most practical solution for immediate improvement of the audit process.

Statutory Authority

These proposed regulations are published under the authority of sections 1102, 402(a)(27), 452(a)(4) and 403(h) of the Act. Section 1102 authorizes the Secretary of HHS to publish regulations not inconsistent with the Act which may be necessary to efficiently administer the Secretary's functions under the Act. Section 402(a)(27) requires each State to operate a child support program in substantial compliance with the title IV–D State plan and section 452(a)(4) requires the audit of each State IV–D program to assure compliance with title IV–D requirements at least once every three years (or not less often than annually in the case of any State which is being penalized, or is operating under a corrective action plan). Finally, section 403(h) provides for the imposition of an audit penalty of not less than one nor more than five percent of a State's AFDC funding for any State which fails to substantially comply with title IV–D requirements, with an allowance for a corrective action period.

Regulatory Provisions

OCSE proposes to revise Part 305 of the current regulations governing the audit of State child support programs to provide flexibility in the timing of the audits; to streamline the evaluation criteria through consolidation of related criteria and elimination of duplicative and extraneous subcriteria; and to make other changes to strengthen and improve the audit process.

Audit Period

The current regulations at § 305.11 require audits of State child support programs to be conducted on a fiscal year basis. To provide greater flexibility in scheduling the audits and follow-up reviews, we propose to replace the current requirement that the audit cover the period of October 1 through September 30, of each fiscal year audited with a requirement that the audit cover a period comprised of not more than 12 nor less than three consecutive months. In addition, we propose to revise the current requirement that the follow-up review conducted in States operating under corrective action plans with respect to State plan criteria cover the first full quarter after the corrective action period with a requirement that such audits cover the first three-month period beginning after the corrective action period. With respect to the performance indicator, the follow-up review would cover the first full Federal fiscal year following the date on which the penalty notice was issued.

We propose to make a technical correction to the last sentence of this paragraph by replacing the provision that the audit may cover a shorter period at State request with the proviso that the audit may, at State request, be conducted prior to the end of the one-year period prescribed under section § 305.10(b).

State Comments

Current regulations at § 305.12(a) include a provision for informing the IV–D agency during the audit entrance conference of those political subdivisions of the State that will be audited. We propose to replace this provision with more general language indicating that any necessary arrangements for conducting the audit will be made at the audit entrance conference.

State Cooperation

States are required to cooperate with OCSE in the conduct of Federal audits by providing such records and documentation as requested, under current regulations at § 305.13(a). Paragraph (b) of the current regulation provides that a State,s failure to comply with the requirement for cooperation may necessitate a finding that the State has failed to comply with the particular criterion being audited.

The requirement for State cooperation has taken on increased importance because of program instructions (OCSE–AT–87–7), issued August 31, 1987, which made procedural changes relating to the preparation for State IV–D program audits. Under OCSE–AT–87–7, OCSE instituted a centralized audit approach whereby, effective for all program results audits and follow-up reviews initiated after October 1, 1987, States must provide a complete and accurate listing of all active and inactive IV–D cases. The IV–D case listing is used as a universe from which to randomly select case files for review. OCSE–AT–87–7 also requires States to submit, to a central location(s), copies of complete case files and related documentation for all sample cases selected for review.

State cooperation in the preparation for an audit, including compliance with the requirements of OCSE–AT–87–7, is essential for OCSE auditors to determine whether the State has an effective IV–D program which is in substantial compliance with Federal requirements. Therefore, we propose to revise paragraph (b) to indicate that failure to comply with the requirement for State cooperation in the conduct of the audit *will* necessitate a finding that the State has failed to substantially comply with title IV–D requirements. Such a finding could result in imposition of the audit penalty. Reference to the revised § 305.13(b) would be added to the list of criteria at § 305.20(a) which must be fully met as a condition of substantial compliance.

Effective Support Enforcement Program

Current regulations at § 305.20 provide the criteria which are evaluated to measure State compliance with the IV–D State plan requirements contained in part 302. Regulations at § 305.20(a) list selected criteria and related subcriteria that must be fully met or under which the procedures involved must be used in at least 75 percent of the cases reviewed for audits conducted in fiscal year 1984. Additional criteria and related subcriteria incorporated into the audit of State child support programs for audit periods subsequent to FY 1984 because of changes in title IV–D of the Act are listed in § 305.20 (b), (c), and (d). In total, the regulations list 30 operational criteria which must be fully met and 26 functional criteria where the required procedures must be used in 75 percent of the cases reviewed. Each of the 30 ? operational criteria must be reviewed separately and each of the 26 functional criteria must be reviewed and evaluated separately.

Experience from audits conducted using the above substantial compliance criteria revealed that the current audit process is cumbersome and inordinately time-consuming. Many of the criteria evaluated overlap, resulting in unnecessary, duplicative efforts and unavoidable delays in conducting the audits and issuing the findings.

Operational and Functional Criteria

To streamline and expedite the audit process, consistent with reliability and audit integrity, we are proposing to replace the current contents of § 305.20 (a) through (d) with new paragraphs (a), (b) and (c).

I. Operational Criteria

Paragraph (a) would list operational criteria which States must fully meet for audits conducted for any period beginning after publication of this regulation in final form. Operational criteria and related subcriteria are, with the exception of Expedited Processes, requirements which are procedural in nature.

The ten operational criteria proposed are:

(1) State Cooperation, under which the requirement for cooperating with the Office in the conduct of an audit under § 305.13 would be evaluated;

(2) Statewide Operation, under which the requirement for uniform statewide operation of the IV–D program under § 305.21 (a) and (c), publicizing child support enforcement services under § 305.44 and entering into cooperative arrangements under § 305.34 would be evaluated;

(3) Single and Separate Organizational Unit, under which the requirement for a single and separate unit to administer the State IV–D plan under § 305.23 would be evaluated;

(4) Reports and Maintenance of Records, under which the requirements for maintaining records, case files and required reports under § 305.35 (a), (b), and (c) would be evaluated;

(5) Financial Accountability, under which the following requirements would be evaluated as appropriate: collection and reporting of interest and all appropriate fees (including those provided under § 303.69(e), § 303.72(i), § 303.100 (d)(2)(iii) and (e)(3), § 303.102(f), § 303.105(c), § 305.31(b), § 305.33(b), § 305.48(b)(3), and § 305.55); fiscal policies and accountability under § 305.36; bonding of employees under § 305.37; separation of cash handling and accounting functions under § 305.38; and payment of incentives under § 305.46;

(6) Medical Support, under which the requirement for furnishing information to the State Medicaid Agency under § 305.56(b) would be evaluated;

(7) Child Support Guidelines, under which the requirement for guidelines under § 305.47 would be evaluated;

(8) Expedited Processes, under which the requirement to have and use an expedited process system for processing child support orders under § 305.50 would be evaluated;

(9) Interstate Cooperation, under which the requirements for cooperation with other States under § 305.32 (a) and (f) through (h) would be evaluated; and

(10) Continuation of Services, under which the requirement for providing services to former AFDC families under § 305.31(c) would be evaluated.

II. Functional Criteria

The proposed paragraph § 305.20(b) would provide functional criteria, under which, beginning with audits conducted for any period beginning after publication of this regulation as a final rule, as a condition for a finding of substantial compliance, States must use the required procedures for the criterion in at least 75 percent of the cases reviewed which required such service. Functional criteria and related subcriteria are service-oriented requirements which are evaluated through case review. Because separate efficiency rates are computed for each functional criterion, for any case reviewed, a State could receive credit for taking appropriate action under certain criteria and fail other criteria in which it took no action.

The five functional criteria proposed are:

(1) Paternity, under which the following requirements would be evaluated, as appropriate: The requirement for having and using procedures for obtaining the identity of the putative father and establishing paternity under § 305.24 (a) and (b), interstate paternity establishment under § 305.32(c) and providing location services under § 305.33(c);

(2) Support Obligations, under which the following requirements would be evaluated, as appropriate: establishment of a support order under § 305.25 (a) and (b), interstate cooperation in establishing a support order under § 305.32(d), location services under § 305.33(c), establishing a medical support order under § 305.56(a) and prohibition from retroactive modification of child support arrearages under § 305.57;

(3) Enforcement, under which the following requirements would be evaluated: providing enforcement services under § 305.26 (a), (b), and (c), interstate enforcement services under § 305.32(e), location services under § 305.33(c), spousal support enforcement under § 305.42, medical support enforcement under § 305.56(a) and making information available to consumer reporting agencies under § 305.54 and, when appropriate, use of one or more of the specialized enforcement techniques (withholding of unemployment compensation benefits under § 305.39 (b), (c), (d), and (e), Federal income tax refund offset under § 305.40, State income tax refund offset under § 305.51, imposition of liens under § 305.52, and posting security, bond or guarantee of support under § 305.53);

(4) Collection/Distribution, under which the following requirements would be evaluated, as appropriate: Support payments to the IV–D agency under § 305.27 (a), (b), and (c), distribution of support payments under § 305.28, payments to the family under § 305.29, collecting and forwarding interstate collections under § 305.32(e), recovery of direct payments under § 305.41, annual notice of collection of assigned support under § 305.45(a), and payment of support through the IV–D agency or other entity under § 305.48 (a) and (b) (1) and (2);

(5) Wage or income withholding, under which the requirements for carrying-out a program for withholding under § 305.49 would be evaluated.

Under this proposal, location, interstate cooperation and medical support enforcement functions are included under each separate functional criterion, i.e., paternity establishment, support order establishment and enforcement. In addition, provision of services to non-AFDC families are reviewed under each functional criterion.

Although wage withholding is an enforcement technique, we have made it a separate functional criterion because, while States have discretion with respect to the use of other enforcement techniques as long as there is compliance with Federal regulations, State written procedures and State guidelines, wage withholding must be implemented in all cases which meet the conditions for withholding. Therefore, if case circumstances meet the requirements for implementation of wage withholding and the State implements wage withholding for the case in accordance with Federal requirements, the State would meet the functional audit criterion for Wage Withholding in that case. However, if the case circumstances also met the State's guidelines for use of State tax refund offset but the case was not submitted, the State would not meet the functional audit criterion for Enforcement in that case. On the other hand, if the State's guidelines for posting security, bond or other guarantee of support indicate that it is inappropriate to post security, etc., if the case is under wage withholding, the State would not fail the Enforcement criterion in that

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case if it failed to post security, bond or other guarantee of support, in accordance with those guidelines. Therefore, while wage withholding must be implemented in all cases which meet the conditions for withholding in order to meet the Wage Withholding criterion, States must use the enforcement techniques included under the Enforcement criterion only when appropriate as determined by Federal regulations, State written procedures and State guidelines.

The rationale for deleting, retaining or consolidating the current criteria and related subcriteria is discussed in detail under each specific State plan requirement at § 305.21 through § 305.50.

The new paragraph (c) would require the criteria referred to in proposed § 305.96 (e) and (f) relating to the performance indicator in proposed paragraph (d) of that section to be fully met beginning with the fiscal year beginning after publication of the final rule.

State Plan Requirements

1. Statewide Operation

Current regulations at § 305.21 (a) through (d) provide four subcriteria evaluated to determine compliance with the State plan requirement for Statewide Operation under § 302.10.

We propose to delete paragraph (b) of the current regulations which requires that the State establish and utilize methods of informing staff of State policies, standards, procedures and instructions. This requirement is integral to the current requirement at paragraph (a) which provides for the uniform administration of the plan throughout the State and paragraph (d) which requires that the service and functions required by the plan are made available throughout the State.

In addition, under current regulations only the provision of paragraph (d) is a substantial compliance subcriterion. Under the proposed rule, paragraph (a) would also be a substantial compliance subcriterion under a separate criterion evaluating Statewide Operation under § 305.20(a). This is an important evaluation criterion which should be strengthened because compliance problems with this State plan requirement can lead to widespread service deficiencies.

2. State Financial Participation

Current regulations at § 305.22 provide subcriteria evaluated to determine compliance with the State plan requirement for State financial participation under § 302.11. We propose to make a technical change to paragraph (a) by deleting the specific percentage of program administrative costs representing the State share. We believe that inclusion of these percentages is superfluous as paragraph (a) requires the State to incur the applicable share of program costs. In addition, we propose to consolidate the current requirement at paragraph (b) regarding the nature of the funding of the State share of costs with the requirement at paragraph (a).

Under current regulations, subcriteria included under paragraph (a) and (b) of § 305.22 must be fully met under a separate operational criterion at § 305.20 for a substantial compliance finding. Under the proposed regulation § 305.22 would no longer be included as a substantial compliance criterion because State financial participation is routinely evaluated under the financial management function and problems of compliance are rarely identified.

3. Single and Separate Organizational Unit

Existing regulations at § 305.23 provide three subcriteria evaluated to determine compliance with the State plan requirement for a single and separate organizational unit to administer the plan found at § 302.12.

The first of these subcriteria, found at paragraph (a), requires that a State must have a unit which is responsible and accountable for the operation of the IV–D plan and no other program or activity. We propose to revise this provision by deleting the prohibition from operating other programs or activities. This change is being sought to allow the IV–D agency to track and monitor support payments for non-IV–D cases as authorized under § 302.57, and to take into consideration activities which are related to the enforcement of child support but which do not fall under the realm of the State plan. Such activities are allowable provided the State has a system for adequately allocating the costs of activities performed outside the State plan.

In addition, we are proposing to delete the current requirement under paragraph (c) for having staff perform the specified functions, as the requirements under paragraphs (a) and (b) for a single and separate organizational unit to administer the IV–D plan inherently include having personnel perform the necessary activities.

The criterion for a single and separate organizational unit is being retained under the operational criteria which must be fully met in order to achieve a finding of substantial compliance at § 305.20(a).

4. Establishing Paternity

Current regulations at § 305.24 include seven subcriteria evaluated to measure State compliance with the State plan requirement for establishing paternity under § 302.31(a) and § 302.33.

Under the proposed regulation only the subcriteria currently included under § 305.24 (a) and (b) would be retained.

The current paragraph (c) requires States to utilize procedures to establish the paternity of any child born out of wedlock whose paternity has not been previously established. We propose to delete this requirement because it is already covered under paragraph (b), which requires States to have and utilize written procedures to establish the paternity of any child at least until the child's 18th birthday.

Under the current paragraph (d), States must identify and list laboratories which perform acceptable tests and provide such lists to courts, law enforcement officials and the public. Current paragraph (e) requires the identification of State statutes for establishing paternity. Paragraph (f) requires attorneys to be available to work paternity cases and paragraph (g) requires the availability of additional personnel. We are proposing to delete these requirements for purposes of the audit because compliance problems with these subcriteria would be revealed in the evaluation of the State's actual performance in establishing paternity.

To correspond with these changes, we are also proposing to delete the corresponding operational subcriteria which must be fully met for a substantial compliance finding at § 305.20 under the current audit. Paragraphs (a) and (b) of the proposed regulation would remain functional subcriteria under the separate criterion evaluating Paternity at the proposed § 305.20(b).

5. Support Obligations

Current regulations at § 305.25 provide subcriteria evaluated to determine State compliance with the State plan requirement to establish support obligations found under § 302.50 and § 302.53.

Regulations at § 305.25(a) require States to establish and utilize procedures for establishing a child support obligation for any child: (1) With respect to whom there is an assignment under AFDC or Foster Care, or with respect to whom there is an application for services, and (2) who has not previously had a legally enforceable support obligation established. We propose to delete subparagraph (a)(1) to provide consistency with other requirements in Part 305 and because, unless otherwise stated, the requirements in Part 305 apply to the review of all IV–D cases. We also propose to delete subparagraph (a)(2) because States should modify existing orders under appropriate circumstances and the present rule could be construed as implying that such action was not required once an order was established.

In addition, we are proposing to delete § 305.25 (c) and (d) as both paragraphs prescribe staffing requirements which are not necessary because the requirement to establish support obligations inherently includes having the staff available to perform the necessary functions.

Regulations at § 305.25 (a) and (b) will remain functional subcriteria under the criterion evaluating Support Obligation at § 305.20(b), wherein a State must take appropriate action to establish a support obligation in at least 75 percent of the cases reviewed. Additional subcriteria to evaluate the location function with respect to cases requiring support order establishment, establishment of medical support orders, establishment of support orders with respect to interstate cases and prohibition from retroactive modification of child support arrearages will be added to the criterion evaluating Support Obligations at § 305.20(b). Under current regulations, these requirements are evaluated separately.

6. Enforcement of Support Obligation

Current regulations at § 305.26 provide the subcriteria evaluated to determine compliance with the State plan requirement for enforcing support obligations under § 302.31(b).

Under the current regulations at § 305.26(c), States are required to have identified and established written procedures to enforce support obligations. We propose to revise § 305.26(c) to require States to have established and be utilizing written procedures to enforce support obligations because the requirement to establish written procedures assumes that they must first be identified. In addition, adding the requirement for utilization of procedures would provide consistency with the wording of other criteria under Part 305. We would also delete § 305.26(e), which requires that appropriate action be taken using the State's procedures.

We are also proposing to delete paragraphs (f) and (g) under § 305.26. Both represent staffing requirements which are already implied under the functional requirements to enforce support obligations at (a), (b), and (c).

To correspond with these changes, we are proposing to delete the current operational subcriteria at § 305.26 (c) and (d) which must be fully met under § 305.20 for a substantial compliance finding with respect to the State plan requirement for enforcing support obligations. The proposed paragraph (c) would become a functional subcriterion along with paragraphs (a) and (b) under the operational criterion evaluating Enforcement. Additional subcriteria under the proposed Enforcement criterion at § 305.20(b) would be added to address the use of certain enforcement techniques and enforcement services pertaining to interstate, medical support and spousal support orders. Under the current regulations each of these services is a separate evaluation criterion.

7. Support Payments to the IV–D Agency

Current regulations at § 305.27 provide subcriteria evaluated to determine compliance with the State plan requirement of support payments to the IV–D agency under § 302.32.

Current regulations at § 305.27 (a) and (b) require States to have established and utilize procedures for the receipt of support payments by the IV–D agency with respect to cases where there is an AFDC or Foster Care assignment of support rights and with respect to cases where a non–AFDC application has been made, respectively. We propose to delete from paragraph (a) all that follows the word agency, which provides that the requirement applies to AFDC and Foster Care cases, and to delete paragraph (b) in its entirety, which provides that the requirement applies to non-AFDC cases except as provided under subparagraphs (1) and (2). We are proposing this change for consistency with other requirements in Part 305 and because, unless otherwise stated, the requirements in Part 305 apply to the review of all IV–D cases. In addition, the exceptions to the requirement for receipt of non-AFDC child support payments under (b) (1) and (2), which allow direct payments to the family if the State does not recover costs and if the State has an approved system for reporting the collections, respectively, are outdated. State IV–D agencies must have and utilize procedures for the receipt of child support collections made on behalf of *all* IV–D cases (emphasis added). Paragraphs (c) and (d) would be redesignated as paragraphs (b) and (c), respectively.

In addition, paragraph (e), which requires staff to perform these functions, would be deleted because the requirement to utilize procedures inherently includes having staff perform the necessary functions.

Under the revised regulation, paragraphs (a), (b), and (c) would be included as functional subcriteria under the criterion evaluating Collection/Distribution at § 305.20(b). Paragraphs (a), (b), and (d) are currently evaluated under a separate criterion of support payments to the IV–D agency.

8. Distribution of Support Payments

Regulations at § 305.28 provide subcriteria evaluated to determine compliance with the State plan requirement for distributing child support collections under §§ 302.51, 302.52 and § 302.32.

Current requirements at § 305.28(a) require States to have written procedures which if properly applied would result in proper distribution. Paragraph (b) of these regulations requires that States make distribution in accordance with the procedures established. We propose to revise paragraph (a) to require States to have and utilize procedures for the distribution of collections in accordance with regulations. This would be consistent with other audit evaluation criteria included under Part 305 and would consolidate two separate subcriteria. Accordingly, paragraph (b) would be deleted.

We are also proposing to delete the requirement at paragraph (c) which requires the State to have personnel distributing support collections. The requirement to utilize procedures for distributing collections inherently includes a requirement that staff perform the necessary functions.

We propose to delete the operational criterion of § 305.28 which must be fully met under the current § 305.20 as a condition of a substantial compliance finding. Because casework will reveal compliance problems, the procedural requirement is not necessary. Section 305.28 will become a functional subcriterion under the criterion evaluating Collection/Distribution at § 305.20(b) as proposed, wherein support payments must be properly collected and distributed in at least 75 percent of the cases reviewed. Under the current regulation this is a single evaluation criterion which is evaluated separately.

9. Payments to the Family

Current regulations at § 305.29 provide subcriteria evaluated to determine compliance with the State plan requirements for distributing payments to the family under §§ 302.32 and 302.51. Current requirements at § 305.29 would remain unchanged. However, for

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purposes of evaluating substantial compliance under § 305.20, the criterion would be consolidated as a functional subcriterion under the criterion evaluating Collection/Distribution wherein support must be properly collected and distributed in at least 75 percent of the cases reviewed. Under current regulations this criterion is evaluated separately.

10. Individuals Not Otherwise Eligible

Current regulations at § 305.31 provide subcriteria evaluated to determine compliance with the State plan requirement for providing services to individuals not otherwise eligible (non-AFDC applicants) under § 302.33.

Under the current paragraph (b), States must have established and be utilizing written procedures for providing all appropriate services under the State plan to non-AFDC applicants including locating absent parents, establishing paternity and securing support. We propose to delete this evaluation subcriterion as the provision of appropriate services for non-AFDC families is included under each specific service and need not be re-evaluated under a separate criterion. Paragraph (c) would accordingly be redesignated as paragraph (b).

We are proposing to add a new paragraph (c) to require that States have and utilize written procedures for providing appropriate title IV–D services to former AFDC families in accordance with § 302.51(e). This change would also be reflected in the introductory sentence by adding reference to § 302.51(e) following the reference to § 302.33. We are proposing this change because the requirement for continuing to provide services to former AFDC families is more appropriately evaluated under the requirement for non-AFDC services than under the requirement for distribution where it is currently evaluated.

In addition, we are proposing to delete the current requirement at paragraph (d), which requires that personnel perform support enforcement services for non-AFDC families. The requirement for States to provide such services inherently includes having personnel perform the required functions.

Under the current regulations at § 305.20, paragraphs (a), (b), and (c) of § 305.31 are functional subcriteria under a separate criterion for providing services to individuals not otherwise eligible. We propose to delete the separate review of services to individuals not otherwise eligible because each subcriterion is currently reviewed under the appropriate criterion: Paternity; Support Obligation; Enforcement; Collection/Distribution; Wage or Income Withholding; and Expedited Processes.

The requirement for the collection of fees and recovery of costs under the newly designated paragraph (b) would be reviewed under the proposed criterion at § 305.20(a) evaluating Financial Accountability. Paragraph (c), as proposed, would become a separate operational criterion evaluating Continuation of Services under the proposed § 305.20(a).

11. Provision of Services in Interstate IV–D Cases

Current regulations at § 305.32 provide subcriteria evaluated to determine compliance with the State plan requirement for interstate cooperation under § 302.36.

We propose to amend these regulations by deleting paragraphs (i) and (j). Both requirements pertain to staffing requirements which are inherent in utilizing the required procedures.

Under the current regulations at § 305.20, paragraphs (a) through (h) of § 305.32 are functional subcriteria under a separate criterion for providing services in interstate cases, wherein the required procedures must be utilized in at least 75 percent of the cases reviewed for a substantial compliance finding. We propose to delete the current separate functional criterion for providing interstate services and consolidate the current subcriteria at § 305.32 (c), (d), and (e) with the applicable service-related criterion under § 305.20(b): Paternity, Support Obligation, Enforcement and Collection/Distribution. In addition, we propose to add a new operational criterion under § 305.20(a) which would require that a State fully meet the requirements of paragraphs § 305.32 (a) and (f) through (h) in order to be found in substantial compliance.

The requirement at § 305.32(b) for locating absent parents in interstate cases has not been included as a subcriterion as the locate requirements under § 305.33 apply to interstate and intrastate cases and would, under the proposed regulation, be added to each of the service-related criteria.

12. State Parent Locator Services (PLS)

Current regulations at § 305.33 provide subcriteria measured to determine compliance with the State plan requirement for a parent locator service under § 302.35.

Current regulations at § 305.33(a) require States to have and utilize a central PLS office as required by § 302.35(a). Regulations at paragraph (e) further provide that States have procedures for accepting applications to use the PLS from authorized persons. We propose to delete paragraph (e) and to consolidate those requirements under paragraph (a) to provide that States must have and be utilizing a State PLS as required by § 302.35 (a) and (c).

Paragraph (b) of the current regulations requires a State to identify and utilize major local data sources. Current paragraph (c) requires the State to identify and utilize major State data sources. Current paragraph (d) requires the use of the Federal PLS when necessary. We propose to delete all three paragraphs because the requirements are included under current paragraph (g) which requires the State to use the names and identifying information of absent parents, the State and local locate data sources and the Federal PLS in an attempt to determine the whereabouts of the absent parent. Current paragraphs (f) and (g) would be redesignated as paragraphs (b) and (c), respectively. We propose to insert in proposed paragraph (c), after State and local locate data sources, the phrase, "such as those listed in § 303.3 of this chapter."

In addition, we propose to delete current paragraph (h) which provides staffing requirements because the requirement to use procedures and take action inherently includes a requirement to have personnel performing the required functions.

Under current regulations the requirements at paragraph (e) must be fully met under § 305.20 to substantiate a finding of substantial compliance. The current requirements at paragraph (a) and (c) are reviewed under a separate functional requirement wherein the required procedures must be utilized in 75 percent of the cases reviewed. We propose to delete both the operational and functional criteria for the State PLS from § 305.20 because the location function, except with respect to a minimal number of cases, is the initial step to providing all other major program services, i.e., paternity establishment, support order establishment and enforcement. Therefore, cases requiring absent parent location will be evaluated under the major service required for the case. Thus if a case required paternity services and the absent parent's whereabouts were unknown, the State must take all appropriate action to locate the absent parent. If the State did not take appropriate action to locate the absent parent and establish paternity, this would be counted against the State in computing the efficiency rate for paternity establishment. The requirement under the proposed paragraph (b) for collecting necessary fees would be reviewed under the proposed criterion at § 305.20(a) for evaluating Financial Accountability.

13. Cooperative Arrangements

Regulations at § 305.34 require as a measure of compliance with the State plan requirement for cooperative arrangements under § 302.34, that a State must enter into written cooperative agreements with appropriate courts and officials when necessary to provide required services. This proposed rule would not change this evaluation criterion for management purposes but would delete it at a separate operational criterion which must be fully met under § 305.20. We propose to consolidate this requirement as a subcriterion under the operational criterion evaluating Statewide Operation under the proposed § 305.20(a).

14. Reports and Maintenance of Records

Regulations at § 305.35 provide subcriteria evaluated to determine compliance with the State plan requirement for reports and maintenance of records under § 302.15.

We propose to add a new paragraph (b) to require States to utilize procedures for establishing and maintaining case file records containing all information pertaining to the case, in accordance with § 303.2. We are proposing this change because the establishment of a case file at intake and the proper documentation and maintenance of case file records is essential to providing appropriate services. In addition, unless a case is properly documented, auditors will not be able to identify what services are needed or what action has been taken. It is, therefore, in the State's best interest to ensure that all relevant information is included in the case file.

We propose to delete § 305.35(c), the requirement that the State have personnel performing the necessary functions, as the requirement to utilize procedures and maintain case files inherently includes that personnel perform the necessary functions.

In addition, the new paragraph (b) would be added, along with the requirements of paragraphs (a) and (c), as operational subcriteria under the operational criterion evaluating Reports and Maintenance of Records at § 305.20(a) which must be fully met as a condition of a substantial compliance finding.

15. Fiscal Policies and Accountability

Current regulations at § 305.36 provide subcriteria evaluated to determine compliance with the State plan requirement for fiscal policies and accountability under § 302.14.

We propose to delete § 305.36(b), the requirement that the State have personnel performing the functions specified in this section, as the requirement in paragraph (a), that the State establish and utilize an accounting system, assumes that the State will have personnel performing the required functions.

In addition, we propose to delete the operational criterion for fiscal policies under § 305.20 and to consolidate the requirement as a subcriterion under the new criterion evaluating Financial Accountability at § 305.20(a), as proposed.

16. Bonding of Employees

Regulations at § 305.37 provide subcriteria evaluated to determine compliance with the State plan requirement for bonding of employees under § 302.19. Paragraph (a) requires written procedures for ensuring that all appropriate personnel are covered by a bond and paragraph (b) requires that the State have written procedures for obtaining a bond in an adequate amount. Paragraph (c) requires the State to use the procedures referred to in paragraphs (a) and (b).

We propose to delete the requirements under paragraphs (a) and (b) for written procedures and to consolidate the requirements of paragraphs (a), (b), and (c) into one paragraph under § 305.37. The revised § 305.37 would require States to ensure that every person who has access to or control over funds collected under the program is covered by a bond in an amount the State deems adequate to indemnify the State IV–D program for loss resulting from employee dishonesty. We are proposing this change because the emphasis should be on whether employees were covered by a bond not on the State's procedures to do so.

In addition, we are proposing to delete the separate criterion for bonding of employees at § 305.20 and add the requirement as an operational subcriterion under the proposed criterion evaluating Financial Accountability at § 305.20(a).

17. Separation of Cash Handling and Accounting Functions

Regulations at § 305.38 provide subcriteria evaluated to determine compliance with the State plan requirement for the separation of cash handling and accounting functions under § 302.20.

Under paragraph (a), States are required to have written procedures, designed to assure (1) the separation of cash handling and accounting functions and (2) use of generally accepted accounting procedures. Paragraph (b) provides that the requirement under paragraph (a) does not apply to States which have been granted waivers under § 302.20(c) and paragraph (c) requires States to use the written procedures specified in paragraph (a).

We propose to revise § 305.38 to delete the requirement for written procedures under paragraph (a)(1), to delete paragraph (a)(2) in its entirety and to consolidate the remaining requirements under one paragraph. As revised, § 305.38 would require States to ensure that persons responsible for handling cash receipts of support do not participate in accounting or operating functions which would permit them to conceal the misuse of support payments except with respect to sparsely populated geographic areas granted a waiver under § 302.20(c) of this chapter. We are proposing this change because the emphasis should be placed on the actual separation of cash handling and accounting functions and not on the State's written procedures to do so.

In addition, we are proposing to delete the separate criterion for separation of cash handling and accounting functions at § 305.20 and add the requirement at § 305.38 as an operational subcriterion under the criterion evaluating Financial Accountability.

18. Withholding of Unemployment Compensation

Regulations at § 305.39 provide subcriteria evaluated to determine compliance with the State plan requirement for the withholding of unemployment compensation under § 302.65.

We propose to amend § 305.39 (b) through (h) by adding at each paragraph the requirement to use the procedures required. Under the current regulation, paragraph (i) requires the use of all procedures specified under § 305.39. However, because we propose to review only paragraphs (b), (c), (d) and (e) for purposes of determining substantial compliance under § 305.20, separate requirements for utilizing procedures are necessary in each paragraph. To correspond with this change paragraph (i) would be deleted.

In addition, we are proposing to delete § 305.39(j) which requires that staff perform the activities described throughout § 305.39 because the use of staff is inherent in the requirement to use procedures.

Under current regulations, requirements at § 305.39 (a) through (h) are operational subcriteria which must

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be fully met under § 305.20 as a condition of substantial compliance. We are proposing to delete the operational criteria because review of the State's actual use of withholding procedures under the functional criteria is a better measure of State compliance than a review of their written procedures. Current regulations at § 305.20 provide a separate functional criterion for evaluation of the requirements in § 305.39 (a) through (h). We are proposing to delete the separate criterion and to include the subcriteria at § 305.39 (b), (c), (d) and (e) under the proposed criterion evaluating Enforcement at § 305.20(b). We are only including these subcriteria because the remaining requirements are either not conducive to evaluation based on case file review or are of a technical nature.

19. Federal Tax Refund Offset

Regulations at § 305.40 provide subcriteria evaluated to determine compliance with the State plan requirement for Federal tax refund offset under § 302.60.

We propose to revise § 305.40 to consolidate the requirements of paragraphs (a) and (b) to provide that States must have and utilize procedures for the withholding of past-due support from Federal tax refunds. Under current regulations paragraph (b) requires use of the procedures required under paragraph (a). Because procedures are not in and of themselves a substantive measure of State performance, we believe that the criteria should be consolidated.

Paragraph (c) requires States to have personnel performing the functions required under § 305.40. We are proposing to delete this subcriterion as the requirement to utilize procedures inherently entails having personnel perform the necessary functions.

Under current regulations at § 305.20, the requirement to have written procedures providing for Federal tax refund offset is a separate operational criterion which must be fully met as a condition of substantial compliance. We are proposing to delete the operational criterion because the functional criterion to use the required procedures is a better measure of State performance and will disclose procedural deficiencies. The functional criterion which is currently evaluated separately would become a subcriterion under the proposed criterion evaluating Enforcement at § 305.20(b).

20. Recovery of Direct Payments

Regulations at § 305.41 provide subcriteria evaluated to determine compliance with the State plan requirement for recovery of direct payments under § 302.31(a).

We propose to revise § 305.41 by consolidating the requirement to have written procedures for the recovery of direct payments at paragraph (a) with the requirement at paragraph (b) to use such procedures. Because procedures are not in and of themselves a substantive measure of State performance, we believe the requirement need not be stated and reviewed independently.

In addition, we propose to delete the current requirement under paragraph (c) for having personnel perform the specified functions as the requirement to use procedures inherently includes having personnel perform the necessary activities.

Under the current regulations at § 305.20, the requirement to have written procedures for the recovery of direct payments is a separate operational criterion which must be fully met as a condition of substantial compliance. The requirement to use procedures is a separate functional criterion wherein the required procedures must be used in 75 percent of the cases reviewed. We propose to delete the operational criterion as casework reviewed under the functional subcriterion would disclose any procedural deficiencies. The requirement for using procedures would become a functional subcriterion under the criterion evaluating Collection/Distribution at § 305.20(b).

21. Spousal Support

Regulations at § 305.42 provide subcriteria evaluated to determine compliance with the State plan requirement for the collection of spousal support contained under § 302.31(a).

We propose to revise § 305.42 by consolidating the requirement to have written procedures for the collections of spousal support under paragraph (a) with the requirement at paragraph (b) to use such procedures. As the main emphasis in determining compliance is the actual provision of spousal support services, we believe the procedural requirement need not be stated or reviewed independently.

In addition, we propose to delete the current requirement under paragraph (c) for having personnel perform the specified functions as the requirement to use procedures inherently includes having personnel perform the necessary activities.

Under § 305.20, the requirement to have written procedures for enforcing spousal support is a separate operational criterion which must be fully met as a condition of a substantial compliance finding. The requirement to use such procedures is a separate functional criterion wherein the required procedures must be utilized in 75 percent of the cases reviewed. We propose to delete the operational criterion as casework reviewed under the functional standard will disclose procedural deficiencies and is indicative of State compliance. The requirement to use procedures for enforcing spousal support orders would become a functional subcriterion under the new criterion evaluating Enforcement.

22. 90 Percent Federal Financial Participation (FFP) for Computerized Enforcement Systems

Under current regulations at § 305.43, a computerized system eligible for enhanced Federal funding must meet the requirements in § 307.10. This is currently a separate operational criterion at § 305.20 which must be fully met as a condition of a finding of substantial compliance. We propose to delete § 305.43 from the list of operational criterion which must be fully met under § 305.20 because the certification procedures entailed in receiving such funding ensure compliance with the procedural requirements of § 307.10.

23. Publicizing the Availability of Services

Regulations at § 305.44 provide subcriteria evaluated to determine compliance with the State plan requirement for publicizing the availability of child support enforcement services under § 302.30. Currently this requirement is included as a separate operational criterion under § 305.20 which must be fully met as a condition of substantial compliance. We propose to delete the separate criterion for reviewing compliance with this requirement and to include it instead as a subcriterion under the criterion evaluating Statewide Operation as proposed under § 305.20(a). While we believe that this is an important requirement, we do not believe the substance of § 305.44 is a significant indicator of compliance and compliance with this statutory requirement can be adequately assessed under the criterion evaluating Statewide Operation.

We propose to make a technical correction to § 305.44, by replacing the period at the end of the introductory phrase with a colon.

24. Notice of Collection of Assigned Support

Regulations at § 305.45 provide subcriteria evaluated to determine compliance with the State plan requirement for providing notice of collection of assigned support under § 302.54.

We propose to revise § 305.45 by consolidating the requirement to have procedures for providing notice under paragraph (a) with the requirement at paragraph (b) to use such procedures. Because procedures are not in and of themselves a substantive measure of State performance, we believe the requirement need not be stated or reviewed independently.

Section 305.45(a)(1) requires States to send an annual notice of the amounts of support collected during the past year to individuals who have assigned their rights to support under § 232.11. We propose to clarify this requirement by prefacing it with the clause, "with respect to those cases where there is a support order or, in the absence of an order, voluntary support payments have been made." This change is proposed to clarify that, while such notices must be sent even if no support was collected pursuant to a support order, a notice need not be sent if a support order has not been established and voluntary payments have not been made.

We also propose to delete the current requirement under paragraph (c) for having personnel perform the specified functions, as the requirement to use procedures inherently includes having personnel perform the necessary activities.

Under the current regulations at § 305.20, the requirement to have written procedures for providing notice is a separate operational criterion which must be fully met as a condition of substantial compliance. We propose to delete the operational criterion as casework reviewed under the functional criterion is a better measure of State compliance and would disclose procedural deficiencies. The requirement for sending the notice under § 305.45(a) would become a functional subcriterion under the criterion evaluating Collection/Distribution as proposed under § 305.20(b). It is currently reviewed as a separate functional criterion.

25. Incentive Payments to States and Political Subdivisions

Regulations at § 302.46 provide subcriteria evaluated to determine compliance with the State plan requirement for incentive payments to States and political subdivisions under § 305.55.

We propose to revise § 305.46 by consolidating the requirement to have written procedures for passing State incentives down to political subdivisions at paragraph (a) with the requirement at paragraph (b) to use such procedures. As procedures are not in and of themselves a substantive measure of compliance, we believe the requirement need not be stated and reviewed independently.

We also propose to delete the contents of § 305.46(a)(2) which require the State to have procedures to consider the efficiency and effectiveness of political subdivisions in determining the amount of the incentive payable. We are proposing this change as the requirement is already embraced by paragraph (a)(1) which requires that incentive payments to political subdivisions be made as determined by the State in accordance with § 303.52(d). Regulations at § 303.52(d) provide that the determination of the amount of incentives payable to political subdivisions should be based on such subdivision's efficiency and effectiveness.

In addition, we propose to delete the current requirement under paragraph (c) for having personnel perform the specified functions because the requirement to use procedures inherently includes having staff perform the necessary activities.

Under current regulations at § 305.20, the requirement to have written procedures for passing incentives payments through to political subdivisions is a separate operational criterion which must be fully met as a condition of substantial compliance. In addition, the requirement to use such procedures is a separate functional subcriterion under § 305.20. We propose to delete the functional criterion because the current incentive structure is not conducive to review under the 75 percent standard. Instead we propose to review the requirement at § 305.46 to utilize procedures for the pass-through of incentive payments as a subcriterion under the proposed operational criterion evaluating Financial Accountability.

26. Payment of Support Through the IV–D Agency or Other Entity

Regulations at § 305.48 provide subcriteria evaluated to determine compliance with the optional State plan requirement for payment of support through the IV–D agency or other entity under § 302.57.

We propose to revise § 305.48 by deleting the requirement to use procedures at paragraph (c) and adding to paragraphs (a) and (b) the requirement to use the required written procedures providing for payment of support through the IV–D agency or other entity. We are proposing this change as procedures are not in and of themselves a substantive measure of State performance and need not be reviewed individually.

In addition, we propose to delete the current requirement under paragraph (d) for having personnel perform the specified functions as the requirement to utilize procedures inherently includes having personnel perform the necessary activities.

Under the current regulations at § 305.20, the requirements at paragraph (a) and (b) are operational subcriteria which must be fully met as a condition of substantial compliance. The requirement to use such procedures is a separate functional criterion wherein the required procedures must be used in 75 percent of the cases reviewed. We propose to delete the operational criterion as casework reviewed under the functional subcriterion will disclose any procedural deficiencies. The separate functional criterion for utilizing procedures would, with the exception of paragraph (b)(3), become subcriteria under the proposed criterion evaluating Collection/Distribution at § 305.20(b). The requirement for collecting fees under the proposed paragraph (b)(3) would be reviewed under the proposed criterion evaluating Financial Accountability at § 305.20(a).

27. Wage or Income Withholding

Regulations at § 305.49 provide subcriteria evaluated to determine compliance with the State plan requirement for wage or income withholding under § 302.70(a)(1).

We propose to revise § 305.49 by consolidating the requirement to have written procedures for carrying-out a program of withholding at paragraph (a) with the requirement at paragraph (b) to utilize such procedures. We are proposing this change because procedures are not in and of themselves a substantive measure of State performance and need not be reviewed separately.

In addition, we propose to delete the current requirement under paragraph (c) for having personnel perform the specified function as the requirement for using procedures inherently includes having staff perform the necessary functions.

Under the current regulations at § 305.20, the requirement to have written procedures providing for wage or income withholding at § 305.49(a) is a separate operational criterion which must be fully met as a condition of substantial compliance and the requirement under paragraph (b) to utilize such procedures is a separate functional criterion wherein the required procedures must be utilized in 75

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percent of the cases reviewed. We propose to delete the operational criterion as casework reviewed under the functional criterion will disclose any procedural deficiencies. The separate functional criterion for utilizing procedures for wage or income withholding would be retained under § 305.20(b).

28. Expedited Processes

Regulations at § 305.50 provide subcriteria evaluated to determine compliance with the State plan requirement for expedited process under § 302.70(a)(2).

We propose to revise § 305.50 by consolidating the requirement to have written procedures providing for an expedited process with the requirement at paragraph (b) to use such procedures. We are proposing this change because such procedures are not in and of themselves a substantive measure of State performance and need not be stated and reviewed separately.

In addition, we propose to delete the current requirement under paragraph (c) for having personnel perform the specified functions as the requirement to utilize procedures inherently includes having personnel perform the necessary activities.

The requirement for having an expedited process system will remain a separate operational criterion under § 305.20 which must be fully met as a condition of substantial compliance.

29. State Income Tax Refund Offset

Regulations at § 305.51 provide subcriteria evaluated to determine compliance with the State plan requirement for collection of overdue support by State income tax refund offset under § 302.70(a)(3).

We propose to revise § 305.51 by consolidating the requirement at paragraph (a) to have written procedures for State tax offset with the requirement under paragraph (b) to utilize such procedures. We are proposing this change because procedures are not in and of themselves a substantive measure of State performance and need not be stated or reviewed separately. In addition, we propose to delete from paragraph (a) all that follows the word "refunds," which provides that the requirement applies to AFDC, Non-AFDC and Foster Care cases. We are proposing this change for consistency with other requirements in Part 305 and because, unless otherwise stated, the requirements in Part 305 apply to the review of all IV–D cases.

We propose to delete paragraph (c) of § 305.51 which requires that personnel perform the specified functions because the requirement to utilize procedures inherently entails having personnel perform the necessary functions.

Under current regulations at § 305.20, the requirement to have written procedures providing for the offset of State tax refunds for collection of overdue support is a separate operational criterion which must be fully met to substantiate a finding of substantial compliance. The requirement to utilize those procedures is a separate functional criterion which must be met in 75 percent of the cases reviewed. We propose to delete the operational criterion as casework reviewed under the functional criterion will uncover any procedural deficiencies. The functional criterion, which is currently evaluated separately, would become a subcriterion under the proposed criterion evaluating Enforcement at § 305.20(b).

30. Imposition of Liens

Regulations at § 305.52 provide subcriteria evaluated to determine compliance with the State plan requirement for the imposition of liens against real and personal property under § 302.70(a)(4).

We propose to revise § 305.52 by consolidating the requirement at paragraph (a) to have procedures for the imposition of liens against real and personal property with the requirement at paragraph (b) to utilize such procedures. We are proposing this change because the major emphasis in determining State performance is the actual provision of services not the availability of written procedures.

In addition, we propose to delete paragraph (c) which requires the State to have personnel performing the specified functions. The requirement for utilizing procedures inherently includes having personnel perform the required functions.

Under current regulations at § 305.20, the requirement to have written procedures for the imposition of liens against property is a separate operational criterion which must be fully met to substantiate a finding of substantial compliance. The requirement to utilize those procedures is a separate functional criterion wherein the required procedures must be utilized in 75 percent of the cases reviewed. We propose to delete the operational criterion as casework reviewed under the functional criterion is a better measure of State compliance and will uncover any procedural deficiencies. The functional criterion which is currently evaluated separately would become a subcriterion under the proposed criterion evaluating Enforcement.

31. Posting Security, Bond or Guarantee

Regulations at § 305.53 provide subcriteria evaluated to determine compliance with the State plan requirement for posting security, bond or guarantee to secure payment of overdue support under § 302.70(a)(6).

We propose to revise § 305.53 by consolidating the requirement at paragraph (a) to have written procedures requiring an absent parent to give security, post a bond or give other guarantee to secure support with the requirement at paragraph (b) to use such procedures. We are proposing this change because such procedures are not in and of themselves a substantive measure of State performance and need not be stated and reviewed separately.

In addition, we propose to delete the current requirement under paragraph (c) for having personnel perform the specified functions because the requirement to utilize procedures for posting bonds or giving guarantee of support inherently includes having personnel perform the necessary activities.

Under the current regulations at § 305.20, the requirement to have written procedures providing for posting bonds or securing guarantees of support at § 305.53(a) is a separate operational criterion which must be fully met as a condition of substantial compliance and the requirement under paragraph (b) to utilize such procedures is a separate functional criterion wherein the required procedures must be utilized in 75 percent of the cases reviewed. We propose to delete the operational criterion as casework reviewed under the functional criterion will reveal the existence of any procedural deficiencies. The separate functional criterion for utilizing procedures would be consolidated as a subcriterion under the proposed criterion evaluating Enforcement.

32. Making Information Available to Consumer Reporting Agencies

Regulations at § 305.54 provide subcriteria evaluated to determine compliance with the State plan requirement for making information available to consumer reporting agencies under § 302.70(a)(7).

We propose to revise § 305.54 by consolidating the requirement at paragraph (a) to have written procedures for making information regarding the amount of overdue support owed by an absent parent to consumer reporting agencies with the requirement at paragraph (b) to use such procedures. We are proposing this change because such procedures are not in and of themselves a substantive measure of State performance and need not be stated and reviewed separately.

In addition, we propose to delete the current requirement under paragraph (c) for having personnel perform the specified functions as the requirement to utilize procedures inherently includes having personnel perform the necessary activities.

Under current regulations at § 305.20, the requirement to have procedures for informing consumer credit agencies of overdue support is a separate operational criterion which must be fully met as a condition of substantial compliance and the requirement under paragraph (b) to utilize such procedures is a separate functional criterion wherein the required procedures must be utilized in 75 percent of the cases reviewed. We propose to delete the operational criterion as casework reviewed under the functional criterion for utilizing procedures would reveal any procedural deficiencies. The separate functional criterion for utilizing procedures for informing consumer credit agencies of overdue support would be consolidated under the proposed functional criterion evaluating Enforcement.

33. Late Payment Fees

Regulations at § 305.55 provide subcriteria evaluated to determine compliance with the optional State plan provision for imposing late payment fees on absent parents who owe overdue support under § 302.75.

We propose to revise § 305.55 by consolidating the requirement at paragraph (a) to have written procedures providing for applying late payment fees uniformly throughout the State with the requirement at paragraph (b) to use such procedures. We are proposing this change as procedures are not in and of themselves a substantive measure of State performance and need not be stated and reviewed separately.

In addition, we propose to delete the current requirement under paragraph (c) for having personnel perform the specified functions as the requirement to utilize procedures inherently includes having personnel perform the necessary activities.

Under current regulations at § 305.20, the requirement to have written procedures for imposing late payment fees at § 305.55 is a separate operational criterion which must be fully met as a condition of substantial compliance and the requirement to utilize such procedures is a separate functional criterion wherein the required procedures must be utilized in 75 percent of the cases reviewed. We propose to delete the functional criterion because a systemic review under the operational criterion evaluating Financial Accountability under § 305.20(a), as proposed, would better identify widespread deficiencies in this area.

34. Medical Support Enforcement

Regulations at § 305.56 provide subcriteria evaluated to determine compliance with the State plan requirement for medical support enforcement under § 302.80.

We propose to revise § 305.56 by consolidating the requirement at paragraph (a) to have written procedures to secure medical support information and secure and enforce medical support obligations with the requirement at paragraph (b) to use such procedures. We are proposing this change as such procedures are not in and of themselves a substantive measure of State performance and need not be stated and reviewed separately.

In addition, we propose to delete the current requirement under paragraph (c) for having personnel perform the specified functions as the requirement to utilize procedures inherently includes having personnel perform the necessary activities.

We propose to add a new paragraph (b) which would require States to have and utilize written procedures for notifying the State Medicaid agency when a new or modified order for support includes medical support and for providing the information referred to at § 306.50(a) to the State Medicaid agency. We are proposing this change as the current criteria do not adequately measure State compliance with the requirements at §§ 306.50 and 306.51 for providing information to and communicating with the State Medicaid agency.

Under current regulations at § 305.20, the requirement for having written procedures providing for medical support enforcement is a separate operational subcriterion which must be fully met as a condition of substantial compliance. The requirement to utilize such procedures is a separate functional criterion wherein the required procedures must be utilized in 75 percent of the cases reviewed. We propose to replace the operational criterion currently reviewed for medical support enforcement at § 305.20(a) with the new subcriterion found under proposed paragraph (b). In addition, we propose to consolidate the separate functional criteria for utilizing procedures to secure and enforce medical support obligations as subcriteria under the proposed criteria evaluating Establishing an Obligation and Enforcement under § 305.20(b).

35. Prohibition From Retroactive Modification of Child Support Arrearages

Although regulations prohibiting the retroactive modification of child support arrearages at proposed § 305.57 have not been published in final yet, they will be by the time this proposal is published in final (see 52 FR 34689, September 14, 1987). Therefore, we are including reference to § 305.57 in this proposed regulation. Under proposed § 305.57, States must have written procedures prohibiting the retroactive modification of child support arrearages. We propose to include this requirement as a functional subcriterion under the criterion evaluating Support Obligations as proposed under § 305.20(b). We are proposing to add this as a substantial compliance subcriterion because it is an important State plan requirement.

Performance Indicator. Regulations at § 305.98(a) provide three performance indicator components which were effective beginning with the fiscal year 1986 audit period. Paragraph (b) provides four additional indicator components which were effective beginning with the fiscal year 1988 audit period. We propose to revise § 305.98 by redesignating current paragraph (d) as paragraph (f) and adding a new paragraph (d) which would include the performance indicator components in paragraphs (a) and (b) and add two new performance indicator components. The proposed performance indicator set forth in paragraph (d) would be effective beginning with the Federal fiscal year beginning after publication of these regulations in final form. We also propose to clarify in proposed paragraph (d) whether or not interstate collections are included in the collection amounts and that collections for a fiscal year will be used for purposes of computing the indicator components.

The first of the two proposed indicator components provided under § 305.98(d)(8) would be referred to as the Paternity Establishment Indicator and is calculated by dividing the total number of paternities established by the IV–D agency during a fiscal year by the total number of births to unmarried women in the State during the calendar year 2 years earlier (as reported to the National Center for Health Statistics). For example, the number of paternities for FY 1989 would be divided by the number of births to unmarried women for calendar year 1987. The number of births to unmarried women is not a

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perfect measure of the number of IV–D cases in which paternity must be established. Clearly not all unmarried women will seek services from the IV–D agencies within two years following the birth. Some will come immediately. Some will come at a later date. Some will never apply for services. Nevertheless, we believe that it is the best indicator of the demand for paternity services that currently exists. Further, no State is required to establish paternity in all or even a majority of these cases. To achieve a passing score, a State need only establish a number of paternities equivalent to 23 percent of the births to unmarried women. To achieve the maximum score, a State need only establish a number of paternities equivalent to 55 percent of the births to unmarried women.

We believe this indicator component is the best measure of the degree to which States are establishing paternity in cases that require such services, given available data. However, we are committed to obtaining data on the number of children in IV–D cases born out of wedlock and on the number of these children for whom paternity has been established. Further, once this data is available, we intend to substitute it in this indicator component.

The new ratio would be equivalent to the Paternity Establishment Percentage as defined in Section 111 of the Family Support Act of 1988. This percentage is, for each State, the number of children in IV–D cases who are born out of wedlock for whom paternity has been established divided by the number of children in IV–D cases who are born out of wedlock. A child who is receiving AFDC by reason of the death of a parent, or a child with respect to whom a mother is found to have good cause for refusing to cooperate in establishing or collecting support, is excluded from this equation.

We note that, unlike the other indicator components which focus either on AFDC or non-AFDC services, the paternity indicator component is a cross-cutting indicator component in which AFDC and non-AFDC paternities count equally. In 1985, there were 828,000 births to unmarried women. A majority of these women do not go on AFDC immediately. From this perspective, we might expect that there could be more non-AFDC than AFDC paternity establishments. However, in the past there have not been a large number of non-AFDC paternity establishments. But this is changing. Non-AFDC paternity establishments have increased 125 percent in the four years from 1983 to 1987. Non-AFDC paternities now comprise over 17 percent of all paternities established under the IV–D program (up from only 10 percent in 1983). In the future we expect that percentage to continue to increase.

The second additional indicator component proposed under § 305.99(d)(9) would be referred to as the Cost Avoidance Indicator and is calculated by multiplying the non-AFDC collections in a fiscal year (excluding collections made on behalf of other States) by 20 percent and dividing the result by the total IV–A assistance payments (excluding payment to families with unemployed parents) plus the amount of food stamps and Medicaid payments for these same families for the same fiscal year. The term cost avoidance refers to the financial savings to the taxpayer that occur when a family leaves public assistance, stays off assistance in the first instance or has their assistance reduced due to child support collections.

This proposed indicator component is based on recently completed research, performed by Advanced Sciences, Inc. Although this research was limited in scope and based on all female-headed households (not just IV–D cases), it found that the cost avoidance associated with child support collections was considerable. It was estimated that there was $1 in AFDC, food stamp and Medicaid costs avoided for every $5 in child support collections realized for families not receiving AFDC. In other words, there is 20 cents in cost avoidance for every dollar of child support collected by the IV–D agency on behalf of non-welfare families. The proposed indicator component would take into account the amount of cost avoidance in a State relative to the cash and medical assistance and food stamps paid in the State.

Although the research upon which this indicator component is based is a significant step forward in establishing actual welfare cost avoidance attributable to non-AFDC collections, it is not the definitive work on cost avoidance. Although problems remain in defining a cost avoidance measure, we propose to include this indicator component at this time in order to give States the benefit of their efforts to increase cost avoidance and will improve and revise this measure over time.

Ideally, a cost avoidance indicator component would measure only those cases in which the child support enforcement services actually made the difference between a family receiving and not receiving AFDC, Medicaid and food stamps. Unfortunately it would require extensive data collection to make this decision on a State by State basis. Instead we propose to use the average amount of cost avoidance per dollar of child support collected. We have set the standards for this indicator component so that States with very large non-AFDC caseloads do not receive excessive credit and so that States with smaller non-AFDC caseloads are not penalized. A State can achieve a passing score by achieving a level of cost avoidance equal to only 1.5 percent of AFDC, food stamp and Medicaid payments in the State.

In order to integrate the two additional indicator components proposed, with the seven indicator components currently in the regulation, we are proposing under paragraph (e) a new scoring system which would be effective, along with the new performance indicator, beginning with the Federal fiscal year beginning after publication of this regulation in final form. The proposed scoring system retains the 100-point scoring system, the equal weight for AFDC and non-AFDC indicator components, and the requirement that States achieve a minimum score of 70. Under the proposed system, up to 20 points each would be given for the Paternity Establishment, the AFDC Recovery Rate, and the Cost Avoidance indicator components. Up to 10 points each would be given for the AFDC and non-AFDC Cost Effectiveness indicator components. Finally, up to 5 points each would be given for the four Accounts Receivable indicator components (for a total of 20 points). In all, up to 40 points would be given for AFDC-related indicator components; up to 40 points for non-AFDC-related indicator components; and up to 20 points for the cross-cutting paternity establishment indicator component. The tables in proposed § 305.99(e)(1) (i) through (ix) show the scores which would be applied for different levels of performance on each performance indicator component.

The tables in subparagraphs (e)(1) (i) through (ix) are based on a computer simulation which showed the results which were obtained for alternative scoring systems. In developing the scoring tables, we looked at the performance of each State relative to the other States and relative to the national averages. Our purpose was not to develop scoring tables which were impossible to meet or to develop scoring tables which every State currently met. Rather our purpose was to develop individual scoring tables which were clearly achievable, which accurately reflected a minimum level of acceptable performance on each indicator component and which when taken together would define a minimum level of acceptable performance. We believe that the scoring tables, individually and taken together, meet these criteria. We note that a State need not attain a passing score on every indicator component. A State can make up, to a certain extent, its poor performance on one indicator component with above average performance on other indicator components.

Proposed paragraph (e)(2) provides that a State's total score must equal or exceed 70 and includes three examples of the scores typical States would receive under the proposed scoring system. The average score for the States which submitted complete data in fiscal year 1987 was 70. We believe that the proposed scoring system is a clear measure of the overall effectiveness of State child support enforcement programs and that a minimum score of 70 is clearly achievable for an effective IV–D program.

Using FY 1987 data for simulation purposes, 21 jurisdictions score 70 or more. Of the remainder, 24 score between 50 and 69, meaning that they can realize a passing grade with, in many instances, little effort. Further, 5 of the 9 other failing jurisdictions are hampered by missing data, for which they get a zero score.

Table 1 shows the individual scores on each performance indicator component and the total audit score a State would receive in fiscal year 1989 if it were to achieve the fiscal year 1987 national average on each of the performance indicator components.

TABLE 1

Performance indicator	FY1987 national average	Audit score
1. AFDC cost effectivsness (CE) ratio	$1.38	7
2. Non-AFDC CE ratio	$2.61	7
3. AFDC recovery rate	[1] 9.2	14
4. AFDC current accounts receivable	[1] 39.2	4
5. Non-AFDC current accounts receivable	[1] 55.0	4
6. AFDC past due accounts receivable	[1] 6.7	3
7. Non-AFDC past due accounts receivable	[1] 9.8	3
8. Paternity establishment	[1] 32.5	14
9. Cost avoidance	[1] 1.7	14
Total audit score		70

[1] Percent.

Table 2 shows the total audit scores which each State would receive if the proposed scoring system were applied to fiscal year 1987 data. Note that States marked with an asterisk are States for which complete fiscal year 1987 data were not available. When data were not available on any particular performance indicator component, the States were given no points for that indicator component.

TABLE 2

State	Total audit score
Alabama	79
Alaska	65
Arizona*	52
Arkansas	76
California	56
Colorado	51
Connecticut	79
Delaware*	71
D.C.*	28
Florida	56
Georgia	72
Guam*	32
Hawaii*	55
Idaho	82
Illinois*	51
Indiana*	58
Iowa	79
Kansas*	52
Kentucky	54
Louisiana	53
Maine	66
Maryland	58
Massachusetts	75
Michigan	92
Minnesota	83
Mississippi	50
Missouri	79
Montana	40
Nebraska*	60
Nevada	69
New Hampshire	76
New Jersey	67
New Mexico*	29
New York	49
North Carolina	85
North Dakota	79
Ohio	71
Oklahoma*	38
Oregon	80
Pennsylvania	85
Puerto Rico*	50
Rhode Island	61
South Carolina*	64
South Dakota	67
Tennessee*	73
Texas	33
Utah	75
Vermont	62
Virgin Islands*	48
Virginia*	53
Washington*	63
West Virginia	35
Wisconsin*	74
Wyoming*	52

Data used to compute the performance indicator components related to accounts receivable have been required to be reported to OCSE since FY 1988. Reporting by the States to date has been incomplete and, in some cases, clearly inaccurate. For instance, there have been substantial discrepancies between collections reported on the OCSE–56 and the same collections reported on the OCSE 41. In addition, some States have reported identical data year after year. For purposes of assigning score values to the accounts receivable performance indicator components or to any other performance indicator component, a zero value will be assigned when a State fails to report data required or when the data a State reports is clearly erroneous on its face. Accuracy and reliability of data reported and used to construct the performance indicator will be evaluated as part of the complete audit conducted of all States which fail to achieve a passing score on the performance indicator. An estimate, if possible, will be made as part of the audit for any performance indicator component which received a zero score as the result of no data reported or reported data that on its face is found to be erroneous.

The new performance indicator components as well as the proposed scoring system would be effective for the fiscal year beginning after publication of these proposed regulations as final regulations, allowing even more time for program improvement. States have had ample time to implement requirements that have been in effect since the inception of the program in 1975, as well as those enacted as part of the 1984 Child Support Enforcement Amendments. In addition, it should be noted that States have already shown improvement under the current performance indicator components. When first published, using FY 1983 data, the current scoring system showed 18 States as failing the 70 percent standard. However, experience for FY 1986, the initial year of applicability, indicated only three failures. Further, because child support data processing systems, funded at enhanced matching rates or otherwise, will be operational in increasing numbers of States, program performance and reporting capabilities will improve. Again, we feel any State with an effective program should be able to meet the 70 percent standard.

In addition, we propose to revise current paragraph (d) (which would be redesignated as paragraph (f)) by replacing the provision that a performance indicator scoring system will be described and updated by regulation every two years with a provision that the performance indicator scoring system will be described and updated by the Office in instructions.

The scoring system will be updated from time to time as necessitated by changing expectations. Changes in the scoring system will reflect progress made by the States in improving

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program performance. Scoring system revisions will be based on the actual performance of States with respect to indicator components. A passing score of 70 points will be retained. We will make any changes to the scoring system available to States for comment and will publish any changes in the **Federal Register** in advance of their effective date.

Notice and Corrective Action Period

We propose to make a technical change to § 308.99(b)(2) by replacing the reference to § 305.20 (a)(2), (b)(2) or (c)(2) with § 306.20(b). This change is consistent with the proposed changes to § 305.20.

In addition, we propose to amend paragraph (d)(1) to make a correction by replacing the word "maintain" where it appears, with the word "maintained." For clarity, we propose to add at the beginning of paragraph (d)(2), "during the corrective action period." Finally, in paragraph (d)(3), we propose to replace "quarter" with "three-month period"; to insert "first full" before "fiscal" where it first appears; and, to delete the word "fiscal" where it last appears. These changes are being proposed to correspond with the changes proposed to section § 308.11, Audit period.

Penalty for Failure to Have an Effective Program

We propose to make a technical correction to § 305.100(d) by replacing the word "and" where it appears after the word "notice" and before the word "maintain" with the word "or."

Paperwork Reduction Act

This rule does not require any information collection activities and, therefore, no approvals are necessary under the Paperwork Reduction Act.

Regulatory Impact Analysis

The Secretary has determined, in accordance with Executive Order 12291 that this rule does not constitute a "major" rule. A major rule is one that is likely to result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Executive Order requires that, for major rules, we prepare a regulatory impact analysis which describes the potential benefits and costs of the rule, together with the potential benefits and costs of any alternative approaches. This proposed rule will have little or no net economic effect, because it will not change the requirements of State Child Support Enforcement programs or the penalties which may be levied against programs which fail to substantially comply with the requirements. The net effect here is not on actual State program practices but rather, on how these practices will be evaluated. The number of States failing the audit is not expected to increase under this proposed rule, even with the inclusion of the proposed performance indicator components. The performance indicator is just one aspect of the program audit and, if a State were to fail to meet the performance indicator, it is likely that it would fail other aspects of the audit as well.

Under the Regulatory Flexibility Act of 1980 (Pub. L. 96-354), we are required to prepare a regulatory flexibility analysis for those rules which will have a significant economic impact on a substantial number of small entities. This proposed rule will not have a significant economic impact on a substantial number of small entities and, therefore, a regulatory flexibility analysis is not required. The only expected economic impact is comparatively small Federal savings as a result of reduced manhours per State audit.

List of Subjects in 45 CFR Part 305

Accounting, Child support, Grant programs/social programs, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Program No. 13.783, Child Support Enforcement Program)

Dated: June 7, 1988.

Wayne A. Stanton,

Director, Office of Child Support Enforcement.

Approved: December 16, 1988.

Otis R. Bowen,

Secretary.

For the reasons set out in the preamble, 45 CFR Part 305 is proposed to be amended as follows:

PART 305—[AMENDED]

1. The authority citation for Part 305 continues to read as set forth below:

Authority: 42 U.S.C. 603(h), 604(d), 651(a)(1) and (4), and 1302.

2. Section 305.11 is revised to read as follows:

§ 305.11 Audit period.

The audit will cover a period comprised of not more than 12 nor less than three consecutive months. When the State is operating under a corrective action plan, the review will cover the first three-month period beginning after the corrective action period. When the State fails to meet audit criteria related to the performance indicator, the review will cover the first full fiscal year following the date on which a determination was made that performance was not in substantial compliance. The audit may, at State request, be conducted prior to the end of the one-year period prescribed under § 305.10(b) of this part when the State is being penalized under § 305.100 of this part.

3. Section 305.12 is amended by revising paragraph (a) to read as follows:

§ 305.12 State comments.

(a) Prior to the start of the actual audit, the Office will hold an audit entrance conference with the IV-D agency. At that conference the Office will explain how the audit will be performed and make any necessary arrangements.

* * * * *

4. Section 305.13 is amended by revising paragraph (b) to read as follows:

§ 305.13 State cooperation in annual audit.

* * * * *

(b) Failure to comply with the requirements of this section will necessitate a finding that the State has failed to substantially comply.

5. Section 305.20 is revised to read as follows:

§ 305.20 Effective support enforcement program.

For the purposes of this part and section 403(h) of the Act, in order to be found to have an effective program in substantial compliance with the requirements of title IV-D of the Act, a State must meet the IV-D State plan requirements contained in Part 302 of this chapter measured as follows:

(a) For audits conducted for any period beginning after [Insert Date Final Regulation is Published], the following audit criteria must be fully met:

(1) State cooperation. (45 CFR 305.13)

(2) Statewide operation. (45 CFR 305.21 (a) and (c), 305.34 and 305.44)

(3) Single and separate organizational unit. (45 CFR 305.23)

(4) Reports and maintenance of records. (45 CFR 305.35)

(5) Financial accountability. (45 CFR 305.36, 305.37, 305.38, 305.46 and collection and reporting of fees and interest (including as appropriate, those provided under 45 CFR 303.69(e), 303.72(i), 303.100 (d)(1)(iii) and (e)(3), 303.102(f), 303.105(c), 305.31(b), 305.33(b), 305.48(b)(3), and 305.55))

(6) Medical support. (45 CFR 305.58(b))

(7) Child support guidelines. (45 CFR 305.47)

(8) Expedited processes. (45 CFR 305.50)

(9) Interstate cooperation. (45 CFR 305.32 (a) and (f) through (h))

(10) Continuation of services. (45 CFR 305.31(c))

(b) For audits conducted for any period beginning after [Insert Date Final Regulation is Published], the procedures required by the following audit criteria must be used in 75 percent of the cases reviewed for each criterion:

(1) Establishing paternity. (45 CFR 305.24, 305.32(c) and 305.33(c))

(2) Support obligations. (45 CFR 305.25, 305.32(d), 305.33(c), 305.56(a) and 305.57)

(3) Enforcement of support obligations. (Providing enforcement services under 45 CFR 305.28 (a), (b) and (c), 305.32(e), 305.33(c), 305.42, 305.54, 305.56(a) and, when appropriate, use of one or more of the specialized enforcement techniques under 45 CFR 305.39 (b), (c), (d), and (e), 305.40, 305.51, 305.52 and 305.53)

(4) Collection/Distribution. (45 CFR 305.27, 305.28, 305.29, 305.32(e), 305.41, 305.45(a) and 305.48 (a) and (b) (1) and (2))

(5) Wage or income withholding. (45 CFR 305.49)

(c) Beginning in [Insert Fiscal Year Beginning After Publication of Final Regulation], the criteria referred to in § 305.96 (e) and (f) of this part relating to the performance indicator prescribed in paragraph (d) of that section must be met.

§ 305.21 [Amended]

6. Section 305.21 is amended by removing paragraph (b) and redesignating paragraphs (c) and (d) as paragraphs (b) and (c).

7. Section 305.22 is revised to read as follows:

§ 305.22 State financial participation.

For the purposes of this part, in order to be found to be in compliance with the State plan requirement for State financial participation (45 CFR 302.11), a State must participate financially by incurring the applicable State share of the program's administrative costs with funds which are appropriated to the IV-D agency or transferred to the IV-D agency, or certified by the contributing public agency as representing expenditures under the State's IV-D plan.

8. Section 305.23 is amended by revising paragraph (a) and (b) and removing paragraph (c) to read as follows:

§ 305.23 Single and separate organizational unit.

* * * * *

(a) Is responsible and accountable for the operation of the IV-D plan; and

(b) Is responsible for securing compliance with requirements of the IV-D plan delegated to any other State or local agency or official performed under cooperative agreement or purchase of service agreement.

§ 305.24 [Amended]

9. Section 305.24 is amended by adding the word "and" after the semicolon in paragraph (a) and removing paragraphs (c) through (g).

§ 305.25 [Amended]

10. Section 305.25 is amended by replacing the colon at the end of paragraph (a) with "; and", removing subparagraphs (a) (1) and (2), removing paragraphs (c) and (d) and changing the semicolon to a period at the end of paragraph (b).

§ 305.26 [Amended]

11. Section 305.26 is amended by removing "identified and" and adding "and be utilizing" after "established" in the beginning of paragraph (c), adding the word "and" after the semicolon at the end of paragraph (c), replacing the semicolon at the end of paragraph (d) with a period and removing paragraphs (e) through (g).

12. Section 305.27 is amended by revising paragraph (a), removing paragraphs (b) and (e), and redesignating and revising paragraphs (c) and (d) as paragraphs (b) and (c), respectively, to read as follows:

§ 305.27 Support payments to the IV-D agency.

* * * * *

(a) Have established and be utilizing written procedures for the receipt of support payments by the IV-D agency;

(b) Have established and be utilizing written procedures to identify support payments that are not being received by the IV-D agency and to take corrective action; and

(c) Have established and be utilizing written procedures that meet the requirements of § 302.32(b) of this chapter for informing the State's IV-A agency of the amounts of collection so that the family's continued eligibility for assistance payments can be determined.

13. Section 305.28 is revised to read as follows:

§ 305.28 Distribution of support payment.

For the purposes of this part, in order to be found to be in compliance with the State plan requirements for distribution of support collections (45 CFR 302.51, 302.52 and 302.32), a State must have and utilize written procedures which, if properly applied, would result in a distribution of support collections which is in accordance with §§ 302.51, 302.52 and 302.32 of this chapter.

14. Section 305.31 is revised to read as follows:

§ 305.31 Individuals not otherwise eligible.

For the purposes of this part, in order to be found to be in compliance with the State plan requirement for providing support enforcement services to individuals not otherwise eligible (45 CFR 302.33 and 302.51(e)), a State must:

(a) Have established and be utilizing written procedures for accepting signed, written applications on a Statewide basis for support services from individuals not otherwise eligible under § 302.31 of this chapter;

(b) Have established and be utilizing written procedures for collection of any fees and recovery of any costs authorized by the State's plan; and

(c) Have established and be utilizing procedures for providing services to former AFDC recipients in accordance with § 302.51(e) of this chapter.

§ 305.32 [Amended]

15. Section 305.32 is amended by adding the word "and" at the end of paragraph (g), replacing the semicolon with a period at the end of paragraph (h) and removing paragraphs (i) and (j).

16. Section 305.33 is amended by revising paragraph (a), removing paragraph (b) through (e), redesignating and revising paragraph (f) as paragraph (b), and redesignating paragraph (g) as paragraph (c) and revising it to read as follows:

§ 305.33 State parent locator service.

* * * * *

(a) Have established and be utilizing a central State PLS office as required by § 302.35 (a) and (c) of this chapter;

(b) Have established and be utilizing written procedures for collecting any fees required by § 303.70(e)(2) of this chapter and the State's plan; and

(c) Have established and be using the names and other identifying information of absent parents, the State and local locate data sources, such as those listed in § 303.3 of this chapter, and the

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Federal PLS, in an attempt to determine the actual whereabouts of the absent parent, or determine that the whereabouts of the absent parent cannot be ascertained.

17. Section 305.35 is amended by removing paragraph (c), redesignating and revising paragraph (b) as paragraph (c), and adding a new paragraph (b) to read as follows:

§ 305.35 Reports and maintenance of records.

* * * * *

(b) Have established and be utilizing procedures for establishing and maintaining case file records containing all information pertaining to the case, in accordance with § 303.2; and

(c) Have established and be utilizing a system for insuring that reports required by the Secretary are provided when due, and are accurate and complete.

18. Section 305.36 is revised to read as follows:

§ 305.36 Fiscal policies and accountability.

For the purposes of this part, in order to be found in compliance with the State plan requirement for fiscal policies and accountability (45 CFR 302.14), a State must have established and be maintaining and utilizing an accounting system and supporting fiscal records that assure that claims for Federal funds are in accord with applicable Federal regulations and instructions issued by the Office.

19. Section 305.37 is revised to read as follows:

§ 305.37 Bonding of employees.

For the purposes of this part, to be found in compliance with the State plan requirement for bonding of employees (45 CFR 302.19), a State must ensure that every person, including the individuals prescribed in § 302.19(b) of this chapter, who, as a regular part of his or her employment, receives, disburses, handles or has access to or control over funds collected under the Child Support Enforcement program is covered by a bond in an amount which the State IV–D agency deems adequate to indemnify the State IV–D program for loss resulting from employee dishonesty.

20. Section 305.38 is revised to read as follows:

§ 305.38 Separation of cash handling and accounting functions.

For the purposes of this part, to be found in compliance with the State plan requirement for the separation of cash handling and accounting functions (45 CFR 302.20), a State must ensure that persons, including the individuals specified in § 302.20(b) of this chapter, responsible for handling cash receipts of support do not participate in accounting or operating functions which would permit them to conceal in the accounting records the misuse of support receipts, except with respect to sparsely populated geographic areas within the State granted a waiver under § 302.20(c) of this chapter by the Regional Office.

§ 305.39 [Amended]

21. Section 305.39 is amended by adding the words "and utilize" after the word "Have" in paragraphs (b) through (h), removing paragraphs (i) and (j), replacing the semicolon at the end of paragraph (g) with ", and" and replacing the semicolon at the end of paragraph (h) with a period.

22. Section 305.40 is revised to read as follows:

§ 305.40 Federal tax refund offset.

For the purpose of this part, to be found in compliance with the State plan requirement for Federal tax refund offset (45 CFR 302.60), a State must have and utilize written procedures to obtain payment of past-due support from Federal tax refunds in accordance with section 464 of the Act and § 303.72 of this chapter and regulations of the Internal Revenue Service at 26 CFR 301.6402–5.

23. Section 305.41 is revised to read as follows:

§ 305.41 Recovery of direct payments.

For the purposes of this part, to be found in compliance with the State plan requirement for recovery of direct payments (45 CFR 302.31(a)), a State must have and utilize written procedures to:

(a) Notify the IV–A agency whenever a determination is made that directly received payments have been retained, if the State elects the IV–A recovery method; or

(b) Recover retained direct support payments in accordance with the standards in § 303.80 of this chapter if the State elects the IV–D recovery method.

24. Section 305.42 is revised to read as follows:

§ 305.42 Spousal support.

For the purposes of this part, to be found in compliance with the State plan provision for the collection of spousal support (45 CFR 302.31(a)), a State must have and utilize written procedures for the collection of spousal support from a legally liable person when:

(a) A support order has been established for the spouse;

(b) The spouse or former spouse is living with the child(ren) for whom the individual is liable for child support; and

(c) The support order established for the child(ren) is being enforced under the IV–D plan.

§ 305.44 [Amended]

25. Section 305.44 is amended by replacing the period at the end of the introductory language with a colon.

26. Section 305.45 is revised to read as follows:

§ 305.45 Notice of collection of assigned support.

For the purposes of this part, to be found in compliance with the State plan requirement for providing notice of collection of assigned support (45 CFR 302.54), a State must have and utilize written procedures for:

(a) Sending, at least annually, with respect to those cases where there is a support order, or, in the absence of an order, voluntary support payments have been made, a notice of the amount of support payments collected during the past year to individuals who have assigned rights to support under § 232.11 of this title;

(b) Listing separately in the notice support payments collected from each absent parent when more than one absent parent owes support to the family; and

(c) Indicating in the notice the amount of support collected which was paid to the family.

27. Section 305.46 is revised to read as follows:

§ 305.46 Incentive payments to States and political subdivisions.

For the purposes of this part, to be found in compliance with the State plan requirement for incentive payments to States and political subdivisions (45 CFR 302.55), the State must have and utilize written procedures to require that if one or more political subdivisions of the State participate in the costs of carrying out the activities under the State plan during any period, each such subdivision shall be paid an appropriate share of any incentive payments made to the State for such period, as determined by the State in accordance with § 303.52(d) of this chapter.

§ 305.48 [Amended]

28. Section 305.48 is amended by adding "and utilize" after the word "Have" in paragraphs (a) and (b), adding "and" after the semicolon at the end of paragraph (a), replacing the semicolon with a period at the end of paragraph (b)(3) and removing paragraphs (c) and (d).

29. Section 305.49 is revised to read as follows:

§ 305.49 Wage or income withholding.

For the purposes of this part, to be found in compliance with the State plan requirement for wage or income withholding (45 CFR 302.70(a)(1)), a State must have and utilize written procedures for carrying out a program of withholding in accordance with § 303.100 of this chapter.

30. Section 305.50 is revised to read as follows:

§ 305.50 Expedited processes.

For the purposes of this part, to be found in compliance with the State plan requirement for expedited processes (45 CFR 302.70(a)(2)), a State must have and utilize written expedited procedures to establish and enforce child support obligations having the same force and effect as those established through full judicial process in accordance with § 303.101 of this chapter.

31. Section 305.51 is revised to read as follows:

§ 305.51 Collection of overdue support by State income tax refund offset.

For the purposes of this part, to be found in compliance with the State plan requirement for collection of overdue support by State income tax refund offset (45 CFR 302.70(a)(3)), a State must have and utilize written procedures for obtaining overdue support from State income tax refunds in accordance with § 303.102 of this chapter.

32. Section 305.52 is revised to read as follows:

§ 305.52 Imposition of liens against real and personal property.

For the purposes of this part, to be found in compliance with the State plan requirement for the imposition of liens against real and personal property (45 CFR 302.70(a)(4)), a State must have and utilize written procedures for the imposition of liens against the real and personal property of absent parents who owe overdue support in accordance with § 303.103 of this chapter.

33. Section 305.53 is revised to read as follows:

§ 305.53 Posting security, bond or guarantee to secure payment of overdue support.

For the purposes of this part, to be found in compliance with the State plan requirement for posting security, bond or guarantee to secure payment of overdue support (45 CFR 302.70(a)(6)), a State must have and utilize written procedures which require that an absent parent give security, post a bond or give some other guarantee to secure payment of support in accordance with § 303.104 of this chapter.

34. Section 305.54 is revised to read as follows:

§ 305.54 Making information available to consumer reporting agencies.

For the purposes of this part, to be found in compliance with the State plan requirement for making information available to consumer reporting agencies (45 CFR 302.70(a)(7)), a State must have and utilize written procedures for making information regarding the amount of overdue support owed by an absent parent available to consumer reporting agencies in accordance with § 303.105 of this chapter.

35. Section 305.55 is revised to read as follows:

§ 305.55 Imposition of late payment fees on absent parents who owe overdue support.

For the purposes of this part, to be found in compliance with the optional State plan provision for imposing late payment fees on absent parents who owe overdue support (45 CFR 302.75), a State must have and utilize written procedures for uniformly applying the late payment fee in accordance with § 302.75 of this chapter.

36. Section 305.56 is revised to read as follows:

§ 305.56 Medical support enforcement.

For the purposes of this part, to be found in compliance with the State plan requirement for medical support enforcement (45 CFR 302.80), a State must:

(a) Have and utilize written procedures to secure medical support information and secure and enforce medical support obligations in accordance with 45 CFR Part 306 Subpart B of this chapter; and

(b) Have and utilize written procedures for notifying the State Medicaid agency when a new or modified order for support includes medical support and for providing the information referred to at § 306.50(a) to the State Medicaid agency when available.

37. Section 305.98 is amended by revising paragraph (d) and redesignating it as paragraph (f) and adding new paragraphs (d) and (e) to read as follows:

§ 305.98 Performance indicator and audit criteria.

* * * * *

(d) Beginning in [Insert Fiscal Year Beginning After Publication of Final Regulation], the Office will use the following performance indicator components in determining whether each State has an effective IV–D program:

(1) AFDC IV–D collections for a fiscal year (including collections made on behalf of other States) divided by total IV–D expenditures for the same fiscal year (less laboratory cost incurred in determining paternity at State option);

(2) Non-AFDC IV–D collections for a fiscal year (including collections made on behalf of other States) divided by total IV–D expenditures for the same fiscal year (less laboratory cost incurred in determining paternity at State option);

(3) AFDC IV–D collections for a fiscal year (excluding collections made on behalf of other States) divided by IV–A assistance payments for the same fiscal year (less payments to unemployed parents);

(4) AFDC IV–D collections for a fiscal year (including collections made on behalf of other States) on support due for the same fiscal year divided by total AFDC support due for the same fiscal year;

(5) Non-AFDC IV–D collections for a fiscal year (including collections made on behalf of other States) on support due for the same fiscal year divided by total non-AFDC support due for the same fiscal year;

(6) AFDC IV–D collections for a fiscal year (including collections made on behalf of other States) on support due for prior periods divided by total AFDC support due for the same prior periods;

(7) Non-AFDC IV–D collections for a fiscal year (including collections made on behalf of other States) on support due for prior periods divided by total non-AFDC support due for the same prior periods;

(8) The number of paternities established by the State during a fiscal year divided by the total number of births to unmarried women in the State for the calendar year two years prior to the fiscal year (for example, the number of paternities esbtablished by the State during FY 1986 (October 1, 1985–September 30, 1986) divided by the total number of births to unmarried women in the State for calendar year 1984 (January 1–December 30, 1984)); and

(9) Non-AFDC IV–D collections for a fiscal year (excluding collections made on behalf of other States) multiplied by .2 and divided by the total IV–A assistance payments (less payments to unemployed parents) plus Food Stamps and Medicaid payments to the same families for the same fiscal year.

(e) Beginning in [insert fiscal year beginning after publication of final regulation], the Office shall use the following procedures and audit criteria to measure State performance

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(1) The ratio for each of the performance indicator components in paragraph (d) of this section will be evaluated on the basis of the scores in the tables in paragraphs (e)(1) (i) through (ix) of this section. The tables show the scores the States will receive for different levels of performance.

(i) The ratio provided under paragraph (d)(1) measuring AFDC cost effectiveness.

Level of performance:	Score
Less than $.20	0
At least $.20 but less than $.40	1
At least $.40 but less than $.60	2
At least $.60 but less than $.80	3
At least $.80 but less than $1.00	4
At least $1.00 but less than $1.20	5
At least $1.20 but less than $1.30	6
At least $1.30 but less than $1.40	7
At least $1.40 but less than $1.50	8
At least $1.50 but less than $1.60	9
$1.60 or more	10

(ii) The ratio provided under paragraph (d)(2) measuring non-AFDC cost effectiveness.

Level of performance:	Score
Less than $.20	0
At least $.20 but less than $.60	1
At least $.60 but less than $1.00	2
At least $1.00 but less than $1.40	3
At least $1.40 but less than $1.80	4
At least $1.80 but less than $2.10	5
At least $2.10 but less than $2.40	6
At least $2.40 but less than $2.70	7
At least $2.70 but less than $3.00	8
At least $3.00 but less than $3.30	9
$3.30 or more	10

(iii) The percentage provided under paragraph (d)(3) measuring AFDC recovery.

Level of performance (in percent):	Score
Less than 3%	0
At least 3% but less than 4%	2
At least 4% but less than 5%	4
At least 5% but less than 6%	6
At least 6% but less than 7%	8
At least 7% but less than 8%	10
At least 8% but less than 9%	12
At least 9% but less than 10%	14
At least 10% but less than 12%	16
At least 12% but less than 14%	18
14% or more	20

(iv) The percentage provided under paragraph (d)(4) measuring AFDC current accounts receivable.

Level of performance:	Score
Less than 5%	0
At least 5% but less than 15%	1
At least 15% but less than 25%	2
At least 25% but less than 35%	3
At least 35% but less than 45%	4
45% or more	5

(v) The percentage provided under paragraph (d)(5) measuring non-AFDC current accounts receivable.

Level of performance:	Score
Less than 20%	0
At least 20% but less than 30%	1
At least 30% but less than 40%	2
At least 40% but less than 50%	3
At least 50% but less than 60%	4
60% or more	5

(vi) The percentage provided under paragraph (d)(6) measuring AFDC past due accounts receivable.

Level of performance:	Score
Less than 2%	0
At least 2% but less than 4%	1
At least 4% but less than 6%	2
At least 6% but less than 8%	3
At least 8% but less than 10%	4
10% or more	5

(vii) The percentage provided under paragraph (d)(7) measuring non-AFDC past due accounts receivable.

Level of performance:	Score
Less than 4%	0
At least 4% but less than 6%	1
At least 6% but less than 8%	2
At least 8% but less than 10%	3
At least 10% but less than 12%	4
12% or more	5

(viii) The percentage provided under paragraph (d)(8) measuring paternity establishment.

Level of performance:	Score
Less than 2%	0
At least 2% but less than 4%	2
At least 4% but less than 8%	4
At least 8% but less than 12%	6
At least 12% but less than 16%	8
At least 16% but less than 20%	10
At least 20% but less than 25%	12
At least 25% but less than 35%	14
At least 35% but less than 45%	16
At least 45% but less than 55%	18
55% or more	20

(ix) The percentage provided under paragraph (d)(9) measuring cost avoidance.

Level of performance:	Score
Less than .25%	0
At least .25% but less than .5%	4
At least .5% but less than .75%	6
At least .75% but less than 1.0%	8
At least 1.0% but less than 1.25%	10
At least 1.25% but less than 1.5%	12
At least 1.5% but less than 2.0%	14
At least 2.0% but less than 3.0%	16
At least 3.0% but less than 4.0%	18
4.0% or more	20

(2) To be found to meet the audit criteria, a State's total score must equal or exceed 70.

Examples. The following tables show how typical States would be judged under the performance indicator components listed in paragraphs (d)(1) through (9).

STATE A

Indicator	Level of performance	Score
1. AFDC cost effectiveness (CE) ratio	$1.15	5
2. Non-AFDC CE ratio	$1.45	4
3. AFDC recovery rate	[1] 21	20
4. AFDC current accounts receivable	[1] 25	3
5. Non-AFDC current accounts receivable	[1] 25	1
6. AFDC past due accounts receivable	[1] 11	5
7. Non-AFDC past due accounts receivable	[1] 20	5
8. Paternity indicator	[1] 46	18
9. Cost avoidance indicator	[1] 5.5	20
Total audit score (points)		82

[1] Percent.

STATE B

Indicator	Level of performance	Score
1. AFDC CE ratio	$2.65	20
2. Non-AFDC CE ratio	$2.75	8
3. AFDC recovery rate	[1] 7.5	10
4. AFDC current accounts receivable	[1] 27	3
5. Non-AFDC current accounts receivable	[1] 42	3
6. AFDC past due accounts receivable	[1] 6.5	3
7. Non-AFDC past due accounts receivable	[1] 9	3
8. Paternity indicator	[1] 56	20
9. Cost avoidance indicator	[1] 1.2	10
Total audit score (points)		70

[1] Percent.

STATE C

Indicator	Level of performance	Score
1. AFDC CE ratio	$0.85	4
2. Non-AFDC CE ratio	$2.45	7
3. AFDC recovery rate	[1] 5.5	6
4. AFDC current accounts receivable	[1] 38	4
5. Non-AFDC current accounts receivable	[1] 59	4

STATE C—Continued

Indicator	Level of performance	Score
6. AFDC past due accounts receivable	[1] 5	2
7. Non-AFDC past due accounts receivable	[1] 9	3
8. Paternity indicator	[1] 10	6
9. Cost avoidance indicator	[1] 3.5	18
Total audit score (points)		54

[1] Percent.

In the above examples, State A would meet the audit criterion because it received a total audit score of 82; State B would also meet the audit criterion because it had a total audit score of 70; State C would not meet the audit criterion because it had achieved a score of only 54.

(f) The scoring system provided in paragraph (e) of this section will be described and updated periodically by the Office in instructions.

38. Section 305.99 is amended by revising paragraph (b)(2), and paragraphs (d) (1), (2) and (3) to read as follows:

§ 305.99 Notice and corrective action period.

(a) * * *

(b) * * *

(2) Identify any audit criteria listed in § 305.20(b) of this part that the State met only marginally (that is, in 75 to 80 percent of the cases reviewed);

* * * * *

(d) * * *

(1) The State has achieved substantial compliance with the unmet criteria cited in the notice and maintained substantial compliance with any marginally-met criteria cited in the notice;

(2) During the corrective action period, the State is not implementing its corrective action plan; or

(3) The State has implemented its corrective action plan but has failed to achieve substantial compliance with the unmet criteria cited in the notice and maintain substantial compliance with any marginally-met criteria cited in the notice. For State plan-related criteria, this determination will be made as of the first full three-month period after the corrective action period. For performance related criteria, this determination will be made as of the first full fiscal year following the year in which a determination was made that performance was not in substantial compliance.

* * * * *

§ 305.100 [Amended]

39. Section 305.100 is amended by replacing the word "and" with the word "or" in paragraph (d).

[FR Doc. 89-1605 Filed 1-30-89; 8:45 am]
BILLING CODE 4150-04-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 88-601, RM-6505]

Radio Broadcasting Services; Johannesburg, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Robert Adelman, permittee of Station KRAJ(FM), Channel 280A, Johannesburg, California, proposing the substitution of FM Channel 280B1 for Channel 280A and modificaiton of his permit accordingly, to provide that community with its first expanded coverage area FM service. The site coordinates for this proposal are 35-27-04 and 117-42-41.

DATES: Comments must be filed on or before March 20, 1989, and reply comments on or before April 4, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners counsel, as follows: David M. Hunsaker, Esq., Putbrese & Hunsaker, 6800 Fleetwood Road, P.O. Box 539, McLean, Virginia 22101.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88-601, adopted December 2, 1988, and released January 25, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-2170 Filed 1-30-89; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 69

[CC Docket No. 89-2; FCC 89-1]

Common Carrier Mergers and Acquisitions; Pooling; and Long Term and Transitional Support

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In a Notice of Proposed Rulemaking, the FCC proposed amending Part 69 of its rules to specify the effects of mergers and acquisitions among exchange carriers on common line pooling status and the long term and transitional support arrangements.

COMMENT DATES: Comments may be filed on or before February 16, 1989. Reply comments may be filed on or before March 3, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Douglas L. Slotten, Policy and Program Planning Division, Common Carrier Bureau, (202) 632-9342.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rulemaking* proposing to amend Part 69 of the Commission's rules, CC Docket No. 89-2, adopted January 10, 1989, and released January 17, 1989.

The full text of this decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

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Summary of Notice

On April 1, 1989, changes in the mandatory common line pooling arrangements that have governed the recovery of the non-traffic sensitive (NTS) costs of exchange carriers will be implemented. These changes will allow local exchange carriers (LECs) to leave the National Exchange Carrier Association (NECA) common line cost and revenue pool if they choose and file carrier common line (CCL) tariffs based on their own costs, subject to certain conditions. These conditions include the "affiliate withdrawal requirement," which provides that carriers that choose to leave the pool and file their own common line tariffs remove all their study areas, and that departing holding companies remove all their affiliated companies. Moreover, under the new rules, once a company (or group of affiliated companies) elects to leave the NECA common line pool and file its own common line tariff, it may not choose to participate in the NECA common line pool at a later date. LECs that withdraw from the NECA pool are required to contribute long-term support (LTs) to LECs that remain in the NECA pool to enable pooling companies to tariff a CCL charge equal to the charge that would have resulted if all LECs had remained in the pool. In addition, four years of transitional support (TRS) payments will be provided to qualifying LECs that withdraw from the pool. TRS would be paid by those non-pooling companies that were net contributors to the pool in 1988. *See, MTS and WATS Market Structure and Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board*, 2 FCC Rcd 2953 (1987), *aff'd on recon.*, 3 FCC Rcd 4543 (1988), *appeal pending sub non. Public Service Commission of the District of Columbia* v. *FCC*, D.C. Cir. No. 88-1601 (filed Sept 12, 1988).

The FCC initiated the rulemaking proceeding to consider what effect a LEC's involvement in a merger or acquisition should have on its participation in the revised pooling arrangements that will be implemented as part of the overall access charge plan. The FCC observed that any rules adopted must serve the four fundamental goals of the access charge proceeding: promoting economic efficiency, eliminating pricing discrimination, deterring bypass, and preserving universal service. The FCC also noted that any rules developed should be as "neutral" as possible in terms of their effect on the underlying business decisions, should not adversely affect the marketability of small telephone companies, and should not impede transactions that offer legitimate advantages to the companies and consumers involved. The FCC also stated that the approach adopted should not have the potential to cause material or unexpected changes in the pooling structure that has been developed. Finally, the FCC indicated that LECs should not be accorded flexibility to an extent that would cause major problems for NECA in administering the common line pool and associated TRS and LTS arrangements, or for Commission review of the LECs' tariff filings. The FCC invited comment on whether these concerns accurately describe the factors that should guide its decisions.

The FCC noted that the current rules governing the revised pooling arrangements do not adequately address issues relating to the pooling status of LECs involved in a merger or acquisition, and will require some modification to accommodate these circumstances. Indeed, the Federal/State Joint Board in CC Docket Nos. 78-72 and 80-286 recognized that the FCC would need to consider these matters on a more complete record. However, the FCC found a proposal from several LECs unacceptable. That proposal essentially would have permitted a LEC that acquired another LEC with a pooling status different from its own to determine at its option whether the acquired LEC should retain its current pooling status or convert to the status of its new affiliate(s). The FCC found that the industry proposal could have a substantial adverse impact on the revenue requirement of the common line pool, and thus on the LTS obligations of the non-pooling LECs because of the ability of LECs to structure transactions to take advantage of the support mechanisms. Second, the FCC determined that the procedure suggested by the industry for challenging transactions that would have a substantial impact on the LTS obligations, and hence the CCL charges, of non-pooling LECs is vague and undefined, and could well lead to uncertainty and controversy in virtually every transaction that contemplates any change in pooling status. Finally, the FCC was concerned that the broad scope of flexibility could result in a substantial number of holding companies having some of their affiliates in, and some out, of the NECA common line pool, thereby possibly substantially complicating NECA's rate calculation and billing functions and the FCC's tariff review process.

The FCC proposed modifications affecting three potential scenarios: (1) Both companies desire to operate outside the NECA pool; (2) both companies want to be included in the NECA common line pool; and (3) each company wants to retain its preexisting status. The FCC indicated that the effective date for any such change in common line pooling status must coincide with the effective date of the annual tariff filing following consumation of the relevant transaction.

The FCC indicated that if the acquiring LEC (or the surviving entity in a merger context) determines that all of the newly affiliated companies should leave the common line pool they could do so. The FCC determined that its rules providing that after the transition period LTS obligations will be allocated based upon the percentage of lines attributed to each non-pooling carrier will accommodate mergers and acquisitions. However, the FCC proposed specific rules governing the LTS or TRS arrangements that would apply to the new entity or entities outside the pool when the departure from the NECA pool occurred during the transition period. If the non-pooling Company was obligated to pay both LTS and TRS (and was not receiving TRS) prior to the transaction, the FCC proposed that the new entity (or affiliated entities) would likewise be obligated to pay LTS and TRS according to a formula that adds together the 1988 Base Years of the separate pre-transaction companies. If Company A had been receiving TRS based on Company A's 1988 Base Year (and had therefore not been required to pay LTS or TRS), the FCC proposed that TRS payments not be adjusted to reflect the effect of the merger or acquisition involving Company B. Thus, the new entity or affiliated entities would receive TRS based only on Company A's 1988 Base Year. Moreover, if Company B had been a net recipient in the NECA pool at the time of its departure, the FCC proposed not to require the surviving entity or entities to pay LTS or TRS during the transition period. However, if Company B had been a net contributor to the pool, the FCC proposed to require the surviving entity or entities to pay LTS and TRS based on the 1988 Base Year or Company B during the transition period.

The FCC also addressed the question of what LTS and TRS arrangements should apply when two companies outside the pool are involved in a merger or acquisition. It proposed that, if the companies involved are all LTS and TRS contributors, their new LTS and TRS obligations should be calculated based on the combined 1988 Base Years of the companies. Similarly, if all the companies involved are TRS recipients, their new TRS benefits should be based on the combined 1988 Base Years of the companies. If, however, a company that is an LTS/TRS contributor acquires or merges with a TRS recipient LEC, the FCC proposed that, for the duration of the transition period, the new entity continue to contribute to the LTS and TRS funds according to the 1988 Base Year formula of the pre-transaction contributor LEC, and continue to receive TRS according to the 1988 Base Year formula of the pre-transaction recipient LEC.

LECs with different pooling positions might also seek to have the LEC outside the pool reenter the pool, either through a merger with the LEC already in the pool or by being acquired as an affiliate of the pooling company. The FCC stated that it recognized that allowing a company that has left the pool to reenter the pool at a later date is inconsistent with our "no pool reentry" principle, but indicated that it believed it would be appropriate to apply a somewhat less restrictive rule in the circumstances of a merger or acquisition so that companies would not be unduly deterred from negotiating an otherwise desirable business transaction simply because their different pooling positions might require them to utilize separate corporate structures or administrative procedures that they considered less efficient. The FCC stated that certain safeguards must be applied when LECs seeks to reenter the pool in a merger or acquisition context in order to protect against any major adverse impact to the pool, and indirectly to the LTS obligations of non-pooling LECs. To address these concerns, the FCC proposed that if a non-pooling company wishes to reenter the pool because it is involved in a merger or acquisition with a LEC in the pool, it must seek and obtain a waiver from the FCC before it would be allowed to reenter the pool. To obtain such a waiver, LECs would have to demonstrate that the overall pooling structure would not be materially harmed. Specifically, the petitioning companies would have to show that the reentry of the non-pooling LEC(s) into the pool would not have a substantial adverse effect on the revenue requirement of the pool, and would also not significantly increase the LTS and/or TRS obligations of the remaining non-pooling LECs. In evaluating such waiver requests, the FCC stated that the Common Carrier Bureau would also take into account the comparative benefits that would flow to the public from consolidating the companies' operations within the NECA common line pool.

Finally, a LEC acquiring another company with a different pooling status may desire to have each party to the transaction retain its pre-transaction pooling position for either a transition period or for an indefinite period of time. While such an option would be inconsistent with the principles underlying the affiliate withdrawal rule, the FCC indicated that it considered that it might again be appropriate to provide for some flexibility in this respect to achieve sufficient neutrality regarding the marketability of telephone companies. The FCC accordingly proposed as a first option that, when LECs with different pooling positions are involved in an acquisition, those LECs should be permitted to retain their pre-transaction pooling positions for a three-year transition period following the consumation of the transaction. Alternatively, the acquired LEC could be permitted to remain in the pool indefinitely if its costs are greater than a fixed percentage of the nationwide average. For example, if the FCC's rules were to provide that companies with costs over 150 percent of the nationwide average that are acquired by a non-pooling LEC could stay in the pool indefinitely (or until its costs drop below the specified level), the higher cost companies that would be in greatest need of the risk sharing and administrative savings offered by participation in the pool would be able to avail themselves of this protection. The FCC tentatively concluded that, of these two alternatives, the three-year "transition period" proposal best serves the identified goals.

The FCC sought comment on the principles it had identified as guiding its proposed approach, and on the extent to which its proposal serves those goals. In addition, the FCC asked commenting parties to discuss logistical or administrative considerations involved in implementing its proposal, and to identify any practical implementation issues or other problems relating to the feasibility of the approach it proposed.

The FCC certified that the requirements contained in the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are not applicable to the rules adopted in this proceeding.

Paperwork Reduction

The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or record keeping, labelling, disclosure, or record retention requirements; and will not increase or decrease burden hours imposed on the public.

Ordering Clauses

Pursuant to sections 1, 4(i)–(j), and 403 of the Communications Act of 1934, as amended, and section 553 of the Administrative Procedure Act, notice is hereby given of a proposal to amend Part 69 of the Commission's Rules.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89-1574 Filed 1-30-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-600, RM-6468]

Radio Broadcasting Services; Colorado City, AZ

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Diana L. Le Baron, seeking the allotment of FM Channel 296C1 to Colorado City, Arizona, as that community's first local broadcast service. Reference coordinates for this proposal are 36-59-24 and 112-58-36.

DATES: Comments must be filed on or before March 20, 1989, and reply comments on or before April 4, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Diane L. Le Baron, 761 N. Valley View Dr., #34, St. George, UT 84770.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88-600, adopted November 30, 1988, and released January 25, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

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Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-2160 Filed 1-30-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-603, RM-6455]

Radio Broadcasting Services; Hot Springs Village, AR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed on behalf of Caddo Broadcasting Co., seeking the allotment of FM Channel 225A to Hot Springs Village, Arkansas, as that community's first local broadcast service. Reference coordinates for this proposal are 34-40-10 and 92-59-55.

DATES: Comments must be filed on or before March 20, 1989, and reply comments on or before April 4, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Tom Nichols, General Partner, Caddo Broadcasting Co., P.O. Box S, Glenwood, Arkansas 71943

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88-603, adopted December 2, 1988, and released January 25, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-2166 Filed 1-30-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-602, RM-6502]

Radio Broadcasting Services; Buena Vista, CO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Robert D. and Marjorie M. Zellmer, seeking the allotment of FM Channel 281A to Buena Vista, Colorado, as that community's first local FM broadcast service. Reference coordinates for this proposal are 38-50-30 and 106-07-54.

DATES: Comments must be filed on or before March 20, 1989, and reply comments on or before April 4, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, as follows: Robert D. and Marjorie M. Zellmer, Box 2224, Greeley, CO 80632.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88-602, adopted December 2, 1988, and released April 4, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-2167 Filed 1-30-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-603, RM-6502]

Radio Broadcasting Services; Buena Vista, CO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Robert D. and Marjorie M. Zellmer, seeking the allotment of FM Channel 281A to Buena Vista, Colorado, as that community's first local FM broadcast service. Reference coordinates for this proposal are 38-50-30 and 106-07-54.

DATES: Comments must be filed on or before March 20, 1989, and reply comments on or before April 4, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, as follows: Robert D. and Marjorie M. Zellmer, Box 2224, Greeley, CO 80632.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88-602, adopted December 2, 1988, and released April 4, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-2169 Filed 1-30-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-598, RM-6501]

Radio Broadcasting Services; Salem, IN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed on behalf of Gary Albarez, seeking the allotment of Channel 250A to Salem, Indiana, as that community's second local FM broadcast service. Reference coordinates for this proposal are 38-36-13 and 86-09-47.

DATES: Comments must be filed on or before March 20, 1989, and reply comments on or before April 4, 1989.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Daniel F. Van Horn, Esq., Arent, Fox, Kintner, Plotkin & Kahn, 1050 Connecticut Ave., NW., Washington, DC 20036-5339.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88-599, adopted December 2, 1988, and released January 25, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-2168 Filed 1-30-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-613, RM-6483]

Radio Broadcasting Services; Dickson, TN and Benton, KY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by American Communications, Inc., licensee of Station WQZQ(FM), Channel 273C2 at Dickson, Tennessee, proposing the substitution of Channel 273C1 for Channel 273C2 at Dickson and modifications of its license to specify operation on the higher class co-channel. In order to accomplish the Dickson substitution, the substitution of Channel 256A for Channel 272A (Station WCBL-FM) at Benton, Kentucky, is required. In addition the coordinates specified for the proposed use of Channel 273C1 at Dickson are 36-12-30 and 87-23-20. The restricted site is 14.4 kilometers (9.0 miles) north of Dickson.

DATES: Comments must be filed on or before March 20, 1989, and reply comments on or before April 4, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: John L. Tierney, Esquire, Ann Bavender, Esquire, Tierney & Swift, 1200 18th Street, NW., Suite 210, Washington, DC 20036 (Counsels for petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88-613, adopted December 2, 1988, and released January 25, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-2165 Filed 1-30-89; 8:45 am]

BILLING CODE 6712-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1103

[Ex Parte No. 55 (Sub-No. 70)]

Practitioners

AGENCY: Interstate Commerce Commission.

ACTION: Notice of extension of comment period.

SUMMARY: By advance notice of proposed rulemaking the Commission solicited comments on various proposals to change its procedures regarding the licensing of non-attorney ICC practitioners. (See 53 FR 53029, December 30, 1988) The Commission has received a joint request for extension of the comment period from the Association of Transportation Practitioners and the Transportation Lawyers Association. Those groups request the extension so that they can review the matter with their memberships before they submit their comments. That request for extension will be granted.

DATE: Comments must be received by March 31, 1989.

ADDRESS: An original and 15 copies of comments (and any replies) should be sent to: Ex Parte No. 55 (Sub-No. 70), Interstate Commerce Commission, Office of the Secretary, Case Control Branch, Washington, DC 20423.

List of Subjects for 49 CFR Part 1103

Administrative practice and procedure.

Decided: January 25, 1989.

By the Commission, Heather J. Gradison, Chairman.

Noreta R. McGee,

Secretary.

[FR Doc. 89-2180 Filed 1-30-89; 8:45 am]

BILLING CODE 7035-01-M

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Notices

Federal Register
Vol. 54, No. 19
Tuesday, January 31, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

International Trade Administration

[A-588-801]

Final Determination of Sales at Less than Fair Value: Certain All-Terrain Vehicles From Japan

ACTION: Notice.

SUMMARY: We determine that certain all-terrain vehicles (ATVs) from Japan are being, or are likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination and have directed the U.S. Customs Service to continue to suspend liquidation of all entries of certain ATVs from Japan as described in the "Suspension of Liquidation" section of this notice. The ITC will determine, within 45 days of the date of publication of this notice, whether these imports are materially injuring, or threaten material injury to, a U.S. industry.

EFFECTIVE DATE: January 31, 1989.

FOR FURTHER INFORMATION:
Contact Michael Ready or Louis Apple, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 377–2613 or 377–1769.

SUPPLEMENTARY INFORMATION:

Final Determination

We determine that certain ATVs from Japan are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1673d(a)) (the Act). The weighted-average dumping margin for each company is shown in the "Suspension of Liquidation" section of this notice.

Case History

Since our preliminary determination (53 FR 35220, September 12, 1988), the following events have occurred.

On September 8, 9 and 12, Honda Motor Co., Ltd. (Honda), Yamaha Motor Co., Ltd. (Yamaha), and Suzuki Motor Co., Ltd. (Suzuki) requested a postponement of the final determination until not later than 135 days after the date of publication of the preliminary determination pursuant to section 735(a)(2)(A) of the Act. On September 21, 1988, we issued a notice postponing the final determination until January 25, 1989 (53 FR 37618, September 27, 1988).

During the month of September, 1988, Honda, Yamaha and Suzuki replied to our cost of production questionnaire. Verification of both the sales and cost of production questionnaire responses was conducted in Japan, the United States, and Canada during the period between later September and early November, 1988.

A public hearing was held on December 14, 1988. Petitioner and respondents filed pre-hearing briefs on December 8, 1988, and post-hearing briefs were filed on December 21, 1988.

Scope of Investigation

The products covered by this investigation are certain all-terrain vehicles, assembled or unassembled, provided for in item 692.1090 of the *Tariff Schedules of the United States Annotated* (TSUSA) and classifiable under sub-heading 8703.21.0000 of the Harmonized Tariff Schedule.

Certain all-terrain vehicles are motor vehicles designed for off-pavement use by one operator and no passengers and contain internal combustion engines of less than 1000cc cylinder capacity. The ATVs under investigation are non-amphibious, have three or four wheels, and weigh less than 600 pounds. They have a seat designed to be straddled by the operator and handlebars for steering control.

Period of Investigation

The period of investigation is September 1, 1987, through February 29, 1988.

Such or Similar Comparisons

Pursuant to section 771(16)(C) of the Act, we established two categories of "such or similar" merchandise for all respondent companies: 1) Three-wheel ATVs; and 2) four-wheel ATVs. As noted below, Honda, Suzuki and Yamaha all lacked sufficient home market sales in either such or similar category to serve as the basis for calculating foreign market value. Therefore, for purposes of the preliminary determination, we based foreign market value on sales to a third country, Canada. For all three companies, sales to Canada reflect the largest sales volume of any country outside the home market or the United States.

The percentages of each respondent's total sales to the United States that were used for such or similar comparisons were: 61.0 percent for Honda, 79.8 percent for Yamaha; and, 92.6 percent for Suzuki.

Fair Value Comparisons

In order to determine whether sales of ATVs from Japan to the United States were made at less than fair value, we compared the United States price to the foreign market value as specified below. As noted in our preliminary determination, one of the manufacturers, Kawasaki Heavy Industries, Ltd. (Kawasaki), did not reply to the questionnaire. Therefore, we have determined, consistent with the best information available provisions of section 776(c) of the Act, that it is appropriate for the purposes of this determination to assign to Kawasaki the higher of either: (1) The highest margin indicated for Kawasaki in the petition; or, (2) the hightest weighted-average margin found for any company that did respond to the questionnaire. Following this approach for this determination, we have assigned Kawasaki the highest margin indicated for Kawasaki in the petition.

Another manufacturer, Honda, refused to reply to our cost of production questionnaire as it related to ATV models produced prior to the 1987 model year. As we determined for Kawasaki, we determined for Honda that it is appropriate to assign it the higher of: The highest weighted-average margin found for any responding firm, or the highest margin indicated in the petition for the non-responding firm. Following this approach, we have assigned to Honda's sales of pre-1987 models the highest margin indicated for Honda in the petition.

United States Price

For all sales by Honda, Yamaha, and Suzuki, we based United States price on exporter's sales price (ESP), in accordance with section 772(c) of the Act, because in each case the sale to the first unrelated purchaser took place after importation into the United States. We calculated ESP based on packed, f.o.b. seller's warehouse prices to unrelated purchasers in the United States. We made deductions, where appropriate, for brokerage and other export expenses in Japan, inland freight in Japan, ocean freight, marine insurance, U.S. customs duty and user's fees, inland freight and related expenses associated with moving the ATVs to the seller's warehouse in the United States, discounts, rebates, assembly and inspection allowances, credit expenses, advertising expenses, warranty expenses, and, pursuant to section 772(e)(2) of the Act, indirect expenses, including inventory carrying expenses incurred in both Japan and the United States.

Foreign Market Value

In order to determine whether there were sufficient sales of ATVs in the home (Japanese) market to serve as the basis for calculating foreign market value, we compared the volume of home market sales within each such or similar category to the total volume of third country sales within each respective such or similar category. For each of the three respondents, for both such or similar categories, we found that home market sales were insufficient to serve as the basis for foreign market value. Not having any grounds to believe or suspect that respondents' third country sales were below cost of production within the meaning of section 773(b) of the Act, we found that Canada was the appropriate third country market to serve as the basis for foreign market value for both such or similar categories in our preliminary determination.

On July 14, 1988, petitioner alleged that Canadian sales for all respondents were at prices below the cost of producing the merchandise. Having determined that these allegations were sufficiently documented, the Department initiated a cost investigation for Honda, Suzuki and Yamaha. We examined production cost data submitted by the respondents, including costs for materials, fabrication and general expenses. The cost of production (COP) calculation for each respondent was adjusted for those costs which were not appropriately quantified or valued in the response (see adjustments below).

In addition, an amount representing inventory carrying costs for 1987, was included in general expenses for all ATV models produced in that year and sold by the respondents during the period of investigation. The amount was determined as an estimate of the interest expense incurred in holding 1987 ATV models in inventory for an additional year (*i.e.*; for both 1987 and 1988). The estimate was based on the same methodology we used for calculating actual inventory carrying costs in 1988. It was calculated by multiplying the cost of carrying in inventory each 1987 ATV by an estimate of the 1987 internal borrowing rate for each of the three respondents. The amount calculated was then included in the cost calculation along with the actual interest expense reported as incurred by each respondent during 1988.

The following adjustments were made to the cost data submitted by each responent:

A. Honda

(1) General and administrative (G&A) expenses, including research and development (R&D) expenses and interest expenses, were reallocated using the cost of sales percentage (as reported in the Ministry of Finance Report) and the cost of manufacturing for each model)

(2) Reported interest income was excluded from the calculation of net interest expense due to the lack of documentation supporting the company's assertion that interest income was related to working capital and ATV operations.

(3) Foreign exchange gains reported as a credit against selling, general and administrative (S, G&A) expenses were excluded from the COP and constructed value (CV) calculations since it could not be demonstrated that such gains were related to working capital and ATV production.

(4) An adjustment was made to COP/CV to reflect the write-off of certain obsolete ATVs held in inventory.

(5) A portion of R&D expenses included in the cost of manufacturing was reallocated to G&A expenses. The portion reallocated represented R&D of a more general nature and was not considered to be a product-specific cost.

(6) An adjustment was made to the cost of materials in the COP/CV calculation to reflect more fairly the market value of items received from related parties.

(7) Movement expenses, such as ocean freight and maritime insurance, were excluded from the COP/CV calculations.

B. Suzuki

(1) Adjustments to cost variances for all 1987 Canadian models were submitted by Suzuki at verification. These adjustments were accepted since they were both verifiable and represented only slight differences from the variances submitted in the company's response.

(2) Total R&D expense was recalculated to include not only product specific R&D, but also an allocated portion of other, more general types of R&D expenses.

(3) G&A was adjusted to include legal fees incurred in the dispute over new U.S. ATV safety regulations.

(4) The respondent's adjustment eliminating profit on parts received from related suppliers was not accepted since it was not based on the actual profit realized on such transactions. Instead, no adjustment was allowed for profit on parts received from related suppliers.

(5) Interest expense percentage was calculated using consolidated interest expense and cost of goods sold from the Ministry of Finance Report.

(6) Reported interest income was excluded from the calculation of net interest expense due to the lack of documentation supporting the company's assertion that interest income was related to working capital and ATV operations.

(7) The G&A percentage was calculated using the ratio of total G&A expenses to total sales revenues rather than the ratio of total G&A to total export sales.

C. Yamaha

(1) Certain items included in G&A expenses, such as realized dividend income and gain on sales of marketable securities, were disallowed for the COP calculation as they were unrelated to the ATV manufacturing process.

(2) A portion of rental income was disallowed. The amount of rental income included in the COP calculation was that portion which related directly to rental expense as reported in the records of Shinba, a related company.

(3) Certain income items included in "other income" were disallowed for the COP calculation because they represented reimbursements for prior period expenses.

(4) Actual costs, rather than standard costs, were used for components transferred between related companies.

We compared the Canadian sales prices, net of all applicable movement expenses, Canadian duty, Canadian sales tax, discounts and rebates, to the cost of production. For Suzuki and Yamaha, we found sufficient Canadian sales above the cost of production to allow us to use these prices for foreign market value in accordance with section 773(a)(1)(A) of the Act. Therefore, we calculated foreign market value based on packed f.o.b. seller's warehouse or delivered prices to unrelated purchasers

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in Canada. We made deductions, where appropriate, for brokerage and other export expenses in Japan, inland freight in Japan, ocean freight, marine insurance, Canadian customs duty, Canadian Federal Sales Tax, inland freight and related expenses associated with moving the ATVs to the seller's warehouse in Canada, discounts, rebates, inland freight from seller's warehouse to customer, credit expenses, warranty expenses, and advertising expenses. We offset indirect selling expenses incurred on Canadian sales up to the amount of selling expenses incurred on sales in the U.S. in accordance with § 353.15(c) of our regulations.

In order to adjust for differences in packing between the two markets, we deducted Canadian packing costs from the foreign market value and added U.S. packing costs.

We made adjustments, where applicable, for differences in the physical characteristics of the merchandise in accordance with § 353.16 of the Regulations.

In the case of Honda's Canadian sales, we found an insufficient number above its cost of production. Therefore, foreign market value was based upon constructed value in accordance with section 773(e) of the Act. When calculating constructed value, the respondent's submission was used, except when reported costs were not appropriately quantified or valued. With the exception of certain Canadian selling expenses (such as warranty expenses), cost of materials, fabrication and general expenses were based upon production costs for U.S. sales.

In computing general expenses for constructed value, we added amounts for Canadian warranty expense, advertising, post-sale credit expenses and inventory carrying expenses associated with Canadian sales. Deductions were made for interest charged Canadian customers and, in order to avoid double counting, for the portion of estimated interest expense allocated to accounts receivable and inventory. With the exception of this latter deduction, all additions and deductions were calculated by model using a weighted-average methodology.

Since the calculated amount for general expenses was greater than the statutory minimum of ten percent of the cost of materials and fabrication as specified in section 773(e)(1)(B) of the Act, we used the calculated amount. Additionally, the amount of reported profit was less than eight percent of the sum of the cost of materials, fabrication and general expenses specified in section 773(e)(1)(B). We therefore, used the statutory minimum of eight percent. Finally, we added U.S. packing costs to arrive at the total constructed value for the product under investigation. We made appropriate deductions from the constructed value for credit expenses, warranties and advertising, in accordance with 19 CFR 353.15(a). In relevant circumstances, we added interest charged to customers to the constructed value. We also made an adjustment to constructed value for indirect selling expenses, in accordance with 19 CFR 353.15(c).

Currency Conversion

Since all U.S. sales were exporter's sales price transactions, we used the official exchange rates in effect on the date of sale, in accordance with section 773(a)(1) of the Act, as amended by section 615 of the Trade and Tariff Act of 1984. All currency conversions were made at rates certified by the Federal Reserve Bank of New York.

Verification

We verified the information used in making our final determination in accordance with section 776(b) of the Act. We used standard verification procedures including examination of relevant accounting records and original documents of the respondents.

Interested Party Comments

Honda

Comment 1

Petitioner argues that Honda's writedown of ATV inventory should be included as an expense in the COP/CV. The respondent advocates allocating only a portion of this total write-off on the basis of additional information submitted subsequent to the cost verification.

DOC Position

The Department agrees in principle that the value of obsolete inventory written off represents one of the costs incurred in producing ATVs. As such, it should be allocated over the period during which obsolescence is assumed to have occurred. An adjustment was made to allocate the cost of ATV inventory write-offs to the period's ATV production. Information submitted subsequent to verification was not considered in such calculations.

Comment 2

The respondent states that the reported cost of materials and components purchased from affiliated companies in which Honda has a 5–40% ownership interest should be accepted although the "market value" of these components was not fully supported. Respondent further states that it provided all documentation which was reasonably available. Respondent argues that these components were specifically designed for Honda products and, therefore, there are no market prices for identical merchandise. The respondent states that Honda's minority interest in these suppliers does not affect the price of purchased components and, in fact, the prices reflect an "arms length" transaction.

The petitioner argues that since Honda did not provide satisfactory evidence of the market value of components, the Department should base component values on the best information available.

DOC Position

The Department informed all respondents prior to verification of the need to establish that significant component purchases from related companies were conducted at arm's length, and that the prices charged reflected the component's true market value. Honda did not establish the arm's-length nature of the transactions, nor did the company provide adequate documentation of the components' market value. The company did provide financial statements for three of its related suppliers, nothing that each of the suppliers operated at a profit during the period of investigation. However, the financial statements were provided subsequent to our verification and since the suppliers provided parts and components for a number of purchasers, we could not ascertain that the particular parts sold to Honda were at market value. Therefore, the Department reviewed other respondents' direct material costs for similar models, and established a percentage factor representing the higher materials costs incurred by the other companies. This factor was added to Honda's direct materials costs as "best information available".

Comment 3

Respondent contends that the Department should include Honda's foreign exchange "gain" in its COP/CV calculation.

DOC Position

The Department disagrees. Exchange rate gains unrelated to the production of the merchandise under investigation are not properly considered credits to COP/CV. In Honda's case, net foreign exchange gains were not considered an offset against financial expenses since

they were not demonstrated to be directly related to the production of ATVs.

Comment 4

Respondent maintains that G&A expenses are properly functions of the sales value of the products and, therefore, should be allocated based on the c.i.f. value of the merchandise produced.

DOC Postion

G&A expense items are normally associated with the cost of producing merchandise and maintaining an organization's structure. For purposes of calculating COP and CV, G&A is determined as a percentage of total cost of manufacturing for all ATV products. This percentage is then applied to cost of manufacturing for each individual product. Calculating G&A expenses as a percentage of c.i.f. value, and then applying that percentage to cost of manufacturing, would be distortive in that it would understate the G&A incurred in producing and selling the ATVs under investigation.

Comment 5

R&D activities carried out by a related company are reimbursed by Honda based on the period's sales results. Honda therefore believes R&D allocated to the subject ATVs should be on the basis of c.i.f. value.

DOC Position

The Department believes that the nature of R&D activities is properly associated with the cost of manufacturing. In this case, the specific repayment terms between the related companies does not change the appropriate method of allocating these costs. Therefore, for the purpose of the COP and CV calculations, these costs were adjusted on a cost of manufacture basis.

Comment 6

Respondent contends that the Department should exclude all three-wheel ATVs from its fair value comparison. Honda contends that these models are obsolete and no longer being imported into, or sold in, the United States. Furthermore, consistent with a consent decree affecting ATV sales, Honda has no plans to resume United States imports or sales of three-wheel ATVs.

DOC Position

We disagree. The antidumping duty law is intended to eliminate unfair price discrimination—that is, the dumping of merchandise in the United States at prices below those in effect in the foreign producer's home or other export markets. To this effect, the law clearly contemplates that the Department will select a period during which sales of the subject merchandise have occurred and to establish, where justified, an estimated dumping margin which may or may not be reviewed and revised during later periods.

We have determined, and no one has contested, that a petition covering three and four-wheel ATVs was properly filed in this case. Therefore, three-wheel ATVs comprise part of the merchandise subject to investigation.

The Department will, on occasion, exclude certain U.S. sales from its fair value comparisons when those sales are not representative of the respondent's selling practices in the U.S. market, or where those sales are so small that they would have an insignificant effect on the margin. In this case, however, there is nothing particularly unusual about Honda's sales of three-wheel ATVs in the United States. It is not possible to conclude that Honda's pricing practices with respect to three-wheel ATVs are not representative of its behavior in the U.S. market.

In sum, the Department is required to take a snapshot of Honda's pricing practices during the period of investigation and to calculate a dumping margin based upon these sales. Since Honda sold three-wheel ATVs during the period of investigation in the United States, three-wheel ATVs are properly included within our dumping calculation.

Comment 7

The respondent contends that the Department should not use a sale-by-sale interest expense for inventory carrying and post-sale credit expenses in its calculation of COP and CV. It contends that the Department is required to use whatever amount appears in Honda's financial statements and records.

The petitioner states that it is essential for the Department to include so-called "imputed" interest expenses in the COP and CV calculations. In order to measure accurately the relative returns obtained by Honda, the petitioner argues that the Department must calculate credit and inventory carrying expenses on a sale-specific basis. The petitioner further states that the use of sale-specific data is consistent with generally accepted accounting principles.

DOC Position

We cannot accept respondent's argument that no adjustment to the fair value comparison should be made for *actual differences* in the extension of credit by the firm and the time for which finished merchandise is maintained in inventory. The fact that Honda has essentially chosen not to finance its accounts receivables and inventory carrying costs with short-term borrowings does not dispose of the fact that Honda has had differing credit and inventory carrying experiences in the United States and Canada. *See Silver Reed v. United States*, Slip Op. 88–5 (CIT, January 12, 1988). We also cannot embrace the calculation of interest expenses according to one methodology in the case of U.S. sales (*e.g.*, imputed interest expenses) and another methodology in the case of home or third country sales (*e.g.*, actual interest expense). Therefore, inventory carrying costs and post-sale credit expenses should be calculated (1) on a sale-specific basis, not as an allocation of total actual cash outlays and (2) the same way for both foreign market value (including constructed value) and United States price. The Department has, therefore, followed its usual practice and included an imputed interest expense for these items as part of selling expenses in constructed value, *see e.g., Final Determination of Sales at Less Than Fair Value; Certain Granite Products from Italy*, 53 FR 27187, 27191 (July 19, 1988), and adjusted for the actual differences in the extension of credit by the firm and the time finished merchandise is maintained in inventory. *See e.g., Color Televisions from Korea; Final Results of Administrative Review of Antidumping Duty Order*, 49 FR 50420, 50427, 50430 (Dec. 28, 1984); *Portable Electric Typewriters from Japan; Final Results of Administrative Review of Antidumping Order*, 48 FR 40761 (Sept. 9, 1983). To avoid double counting the portion of reported interest expense attributable to accounts receivable and inventory carrying costs was deducted from total interest charges in CV.

In the case of cost of production calculations, however, price discrimination and relative returns on sales are not at issue. When we calculate COP pursuant to section 773(b) of the Act, we are only interested in determining the actual costs incurred to produce the merchandise under investigation. Once those costs have been determined, the Department compares them with the revenue generated from the sale of the merchandise in the home or third country market to determine whether, in fact, these sales have been made at below cost. *See* 19 CFR 353.7. Because

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we are not comparing COP to United States sales, there is no need to measure the actual differences that may or may not exist between home market or third country selling expenses and U.S. selling expenses. Therefore, the methodology which leads us to impute interest expenses when making fair value comparisons is simply not present when calculating COP. As we explained in *Color Television Receivers from Korea; Final Results of Antidumping Duty Administrative Review*, 53 FR 24975, 24977 (July 1, 1988):

> In a cost of production calculation, we are not concerned with costs in the same way we are where there are differences in circumstances of sale and adjustments must be made in order to compare U.S. and home market prices on an 'apple-to-apple' basis. Therefore, whether imputed costs used for a circumstance of sale adjustment are higher or lower than respondents' actual financing costs is not relevant for purposes of determining cost of production.

Id. at 24977.

In certain recent final antidumping duty determinations, the Department did not apply this methodology. *See e.g., Final Determination of Sales at Less Than Fair Value; Certain Internal Combustion, Industrial Forklift Trucks from Japan*, 53 FR 12552, 12555 (April 15, 1988). After extensive consideration of this issue, and after reviewing the lengthy comments of the parties at the hearing and in their written briefs, we have determined to follow the methodology outlined in the Korean TV determination.

Comment 8

Respondent maintains that the Department should limit its COP/CV calculation to the 1987 and 1988 ATV models for which Honda supplied full and complete cost information. Respondent contends that it would have been enormously difficult, if not impossible, to report cost information for pre-1987 models. Petitioner urges the Department to reject this claim. It contends that the COP/CV for pre-1987 models should be based on the cost to produce current models as the best information available.

DOC Position

During the period of investigation, Honda sold in the United States ATVs produced for the model years 1983–1988. Honda only provided cost of production information for 1987 and 1988 models, which accounted for about 90 percent of Honda's sales to the U.S. during the period of investigation. Lacking cost data for the pre-1987 models, we were unable to determine whether or not these models were sold below their cost of production. Therefore, as noted above, for best information available pursuant to section 776(c) of the Act, we have assigned to Honda's sales of pre-1987 models sold in both the Canadian and U.S. markets, the highest margin indicated for Honda in the petition.

Yamaha

Comment 9

The petitioner raises a number of questions regarding the validity of the processing standards developed from a processing time study which Yamaha failed to retain in its records.

The respondent argues that it is impractical to maintain records of all the time studies on which the standards are based due to the large number of finished products and the number of parts and processing steps involved to produce ATVs. Respondent claims that since the variances among products in the motorcycle factories did not significantly differ, the standards must be fairly accurate to approximate actual costs so closely.

DOC Position

At verification: (1) The methodology for developing the standard costs, (2) the elements (i.e., depreciation, labor) of the standard costs, (3) the relationship of the standard costs to budgeted costs and (4) the use of the standard costs in YMC's normal accounting system, were tested. We determined that sufficient information was available to support the reasonableness of these processing standards.

Comment 10

The petitioner argues that adjusting standard costs for a single month by an annual variance is not an acceptable method for arriving at actual costs. It is not acceptable for Yamaha to submit costs only for the month of March, which is outside the period of investigation.

The respondent argues that Yamaha does not maintain a product-specific/assembly line ATV variance in its normal accounting practice. Yamaha uses full-year, rather than semi-annual variances because of the stability of actual material prices during the fiscal year, and because supplier rebates are included only in the full-year variance.

DOC Position

Shinba, Yamaha's related assembly plant, only accumulates product-specific costs during the month of March. Therefore, to facilitate verification, we accepted Yamaha's March standard cost information, which incorporated the cost data for Shinba. However, we also examined Yamaha's cost information for several months within the period of investigation to ensure that March standard costs were representative of cost standards during the period of investigation, and were not significantly higher, lower, or otherwise misleading. Since March standard costs were determined to be representative of the full 1988 fiscal year, applying the annual variance to those standards provides an accurate representation of the actual costs incurred.

Comment 11

The petitioner argues that use of factory-wide variance distorts the adjustment from standard costs to actual costs.

The respondent argues that there is little deviation from using a factory-wide variance instead of product-specific variances which the factory does not maintain. When Yamaha repurchases the fully-assembled ATV from Shinba, it reports the assembly cost as its cost of goods sold. Thus, the company feels that it is unnecessary to calculate a product-specific variance for ATV engines.

DOC Position

Although we agree with the petitioner that product-specific variances would be desirable, we verified that the respondent used a weighted average of the finished product variances within the factory, and therefore are satisfied that a factory-wide variance is an acceptable alternative.

Comment 12

The respondent argues that in order to support the "market value" of components obtained from related companies, it submitted adequate component cost information during verification which demonstrated that major components were purchased by Yamaha at prices above their costs.

DOC Position

We verified the cost of production of a number of major components at two related suppliers, and determined that costs were below the transfer price to Yamaha.

Comment 13

The respondent contends that it has adequately clarified that both the net loss on disposal of fixed assets and net interest expenses are included in the general and administrative expenses provided in Shinba's cost response.

DOC Position

We agree. During verification we identified these items as part of general and administrative expenses.

Comment 14

The petitioner argues that Yamaha did not provide a sufficient reason for not submitting Shinba's processing costs for models produced in 1987.

The respondent argues that it was justified in using actual 1988 processing costs as the basis of costs for both 1987 and 1988 model year units. Since the company does not develop information on assembly costs for particular models, the respondent would have had to calculate the cost of production for the year ended March 31, 1987 by developing assembly time for each model produced in 1987. Due to the enormous difficulty of these calculations, the company used 1988 costs as a substitute.

DOC Position

We verified the use of the assembly time study and the fiscal year 1988 processing costs used for the 1987 costs, and determined that fiscal year 1988 processing data provided an acceptable basis upon which to calculate 1987 processing costs.

Comment 15

The respondent argues that the omission of certain items from the general expenses of the two related suppliers which were reviewed, and the various methodologies used to allocate general expenses to product lines, are not issues for consideration since these items have no impact on the investigation. For the submission, Yamaha used an aggregate general expense ratio, which results in figures similar to the actual general expenses.

DOC Position

We determined that calculating general expenses using an aggregate general expense ratio produces virtually the same results as using actual general expenses. Therefore, no adjustment was made to the data in the questionnaire response.

Comment 16

The petitioner argues that material costs transferred to Shinba are based solely on the standard costs in Yamaha's inventory system, and that Yamaha has made no attempt to reconcile these standard costs to Shinba's actual costs or to include related variances. Thus, the petitioner believes the submitted costs are not Yamaha's actual costs.

The respondent argues that products transferred to Shinba for incorporation into a finished ATV are ultimately recorded in its costs of goods sold at the fully-assembled transfer price. For the purposes of Shinba's cost accounting system, as an independent accounting entity, it is impossible to pass through variances as in the case of the accounting methodology used for the so-called independent factories within Yamaha itself.

DOC Position

Although the engines were transferred to Shinba at standard cost, we verified the actual cost of the engines, which capture the variances. It is the actual costs that are included in the Department's COP calculation.

Comment 17

The petitioner argues that the per-unit standard times used in the calculation of Shinba's processing costs were not reconciled to total actual hours worked; therefore, the processing costs in the submission do not necessarily represent fully-absorbed, actual costs.

The respondent argues that it was not necessary to reconcile the per-unit standard times to the total actual hours worked since the basis of the per-second labor cost includes total labor costs, which includes the amount for total actual hours worked.

DOC Position

The Department verified the components included in the per-unit standard time calculation. One of the components verified was actual labor costs, including actual total hours worked. Therefore, if these costs were divided by standard hours, the full costs would be absorbed.

Comment 18

The petitioner argues that since Yamaha could identify those supplier penalties related to ATVs, it could have identified a separate materials-purchase variance for ATVs.

The respondent argues that supplier penalties are accumulated in a specific account and paid on a supplier-by-supplier basis. Isolating ATV-specific penalties is relatively easy. The materials variance is much more complex, and includes more than supplier rebates, such as the pass-through of variances from Yamaha's other factories.

DOC Position

We verified the calculation of the ratio of supplier penalties relating to ATVs to the cost of ATVs sold to determine the amount for supplier penalties included in general and administrative expenses. After viewing the production process, we agree that the respondent cannot isolate a product specific assembly line variance, even though it may maintain specific records pertaining to supplier penalties.

Comment 19

Respondent contends that the use of imputed interest rather than actual short term interest in calculating COP and CV is illogical and contrary to law. The Department should follow its prior decisions that reflect a preference for actual interest expenses over imputed costs. Furthermore, Yamaha argues that the use of imputed interest in the CV calculation unlawfully inflates the statutory eight percent minimum amount for profit. If the Department insists on using imputed interest expenses, it should account for the revenue that would have been generated by unused capital.

DOC Position

Because a sufficient number of Yamaha's Canadian sales were determined to be above COP, we did not base its foreign market value upon CV. Therefore, respondent's comments with respect to the propriety of utilizing so-called "imputed" interest expenses in CV are moot.

Regarding the use of imputed interest expenses in COP, we explain in response to Honda's comment 7 that the Department based inventory carrying costs and post-sale credit expenses upon each respondent's financial statements and records.

Comment 20

Respondent urges the Department to continue its decision from the preliminary determination and exclude from the fair value comparison all non-standard sales and sales of models with no corresponding Canadian models. Due to the burden placed on the respondent and the extremely small amount of sales involved, the Department should not produce calculations for the handful of accommodation sales, barter sales, promotional sales, sales of damaged merchandise, so-called "safety-education sales", and sales of repossessed models.

DOC Position

We have determined that an adequate number of comparisons are possible by limiting comparisons to those models which were sold in both the U.S. and Canadian markets. Due to the nature of the "non-standard" sales it is difficult and time consuming to find matches

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between the U.S. and Canadian markets. For administrative convenience, we have omitted these comparisons. Furthermore, the quantity of such sales is quite small compared to respondent's total U.S. sales. Therefore, we do not believe that omitting comparisons on non-standard sales has any significant effect on our margin calculations.

Comment 21

Respondent also contends that several hundred sales of three-wheel ATVs during the period of investigation should be excluded from the Department's fair value comparison.

DOC Position

We disagree. See our response to Honda's comment 6, above.

Comment 22

Petitioner contends that since information regarding the deduction of corporate income tax from Yamaha's Canadian indirect selling expenses was submitted after the preliminary determination, it should be rejected as untimely.

DOC Position

The information submitted by Yamaha regarding the deduction of corporate income tax from Canadian indirect selling expenses was verified by the Department and was used for this final determination.

Suzuki

Comment 23

The petitioner argues that transfer prices for parts purchased from related suppliers should not be reduced by a percentage based on the related supplier's overall profit. The petitioner argues that the actual profit or loss on the ATV parts may be entirely different from this average.

DOC Position

The respondent provided neither market price nor cost of production data for parts purchased from related suppliers. Consequently, no documentation was available to support the amount of profit deducted by the respondent in adjusting related supplier transfer prices to actual cost. We, therefore, disallowed the company's profit adjustment on parts received from related suppliers.

Comment 24

The petitioner argues that the methodology used to compute variance ratios at the processing department level was questionable. It argues that variance ratios should have been computed at the motorcycle group level instead of on a company-wide basis.

DOC Position

The Department was unable to verify variance ratios at the product division level since Suzuki's variance statistics are only kept by the processing department at the company level, rather than the division level.

Comment 25

The petitioner argues that general R&D, R&D for future ATV models, and R&D related to new safety features for ATVs, should have been included in the COP for purposes of the final determination.

DOC Position

We agree. R&D for general ATV purposes, for future development, and for new safety features, are all related to ATV production and were included in our calculation of COP.

Comment 26

The petitioner argues that G&A expenses should not be expressed as a ratio of sales revenue and then applied to the cost of manufacture on a per-unit basis.

DOC Position

Because Suzuki does not record cost of sales data on a product-specific basis, we were unable to verify the actual cost of sales for the ATVs under investigation using this method. As an alternative procedure, we compared the company's submitted ratio of general expenses to actual ATV sales to the ratio of general expenses to standard cost of sales for ATVs. The two ratios were approximately equal. We, therefore, accepted the company's ratio.

Comment 27

The petitioner argues that legal expenses incurred by the respondent in order to defend itself against the U.S. Consumer Product Safety Commission should be included in indirect selling expenses and not in G&A expenses.

DOC Position

The legal expenses are not considered related to the actual sale of the product and thus should be included in G&A expenses and not as an indirect selling expense.

Comment 28

The petitioner argues that all interest income should be ignored for the purpose of calculating cost of production for the following reason: a) information on interest income on a consolidated basis was not provided at verification; and b) long-term interest income should be considered related to investments rather than to the general operations of the company.

DOC Position

We agree. Interest income was not used as an offset to the interest expense included in the submission.

Comment 29

The petitioner argues that long-term interest expense should be included in the cost of production because it is related to the financing of plant and equipment and, as such, is clearly related to the production of ATVs.

DOC Position

We agree. We have included long-term interest expense in our cost of production calculation.

Comment 30

The respondent contends that the Department should not use a sale-by-sale interest expense for inventory carrying costs and post-sale credit expenses in its calculation of COP and CV. Citing U.S. Department of Commerce, *Treatment of Opportunity Costs in COP Cases*, Policy Paper No. 10 (1982) and U.S. Department of Commerce, *Summary of COP and Constructed Value Principles*, Policy Paper No. 47 (1982), respondent argues that the Department has explicitly repudiated the use of imputed or "opportunity" costs in either COP and CV.

The petitioner states that it is essential for the Department to include so-called "imputed" interest expenses in the COP and CV calculations. In order to measure accurately the relative returns obtained by Honda, the petitioner argues that the Department must calculate credit and inventory carrying expenses on a sale-specific basis. The petitioner further states that the use of sale-specific data is consistent with generally accepted accounting principles.

DOC Position

As we explain in response to Yamaha's comment 10 and Honda's comment 7, we based our calculation of interest expenses in COP upon the books and records of each respondent. Since Suzuki's foreign market value was based upon Canadian selling prices, its comment with respect to CV is moot.

Comment 31

The respondent contends that its sales of model LT125 in the United States during the period of investigation were

close-out sales which should not be included in the department's fair value comparison. Since Suzuki's sales of other models provide a more than adequate sample of U.S. sales, sales of the obsolete model should not be included.

DOC Position

We disagree. See our response to Honda's comment 6.

Comment 32

The petitioner argues that ATVs produced in the United States in a Foreign Trade Zone from both imported and domestic parts should be subject to antidumping duties.

DOC Position

We disagree. The completed ATVs produced by Kawasaki at its Lincoln, Nebraska facility are considered to be domestic products and therefore not subject to antidumping duties.

Comment 33

Suzuki argues that in calculating exporter's sales price, Suzuki's motorcycle incentive program should be disregarded as that program was totally unrelated to the ATVs subject to investigation. Petitioner argues that rebates on ATVs as a result of this program should be deducted by the Department in calculating United States price.

DOC Position

We disagree with respondent and agree with petitioner. The incentive program in question provided, among other things, that retailers would be paid a rebate on certain ATV purchases by dealers if the dealer's purchases of certain motorcycles exceeded certain levels. Respondent argues that at the time of sale of any given ATV, respondent did not know whether that particular unit would qualify for the rebate. Regardless of whether Suzuki knew that a particular ATV sale would qualify for the rebate, Suzuki did know that the sale was potentially eligible for the rebate and this potential was built into Suzuki's price structure. We therefore have deducted these rebates in the calculation of United States price.

Comment 34

The petitioner argues that the "viability test" (the determination of which market on which to base the calculation of foreign market value) should be made by comparing above-cost Canadian sales to all Canadian sales, with viability being established at ten percent. Alternatively, petitioner argues that above-cost Canadian sales be compared to all third country sales with viability being established at five percent. Petitioner additionally argues that above-cost Canadian sales must exceed five percent of total U.S. sales in order to meet the viability test.

DOC Position

We partially agree with petitioner. As noted above, we have determined that none of the respondents had a viable home market because their home market sales did not exceed five percent of their sales to third countries. We also determined that for each respondent the only viable third country market was Canada. When we compared the respondents' net selling prices to Canada with cost of production, we found that for Yamaha and Suzuki, more than 10 percent of their Canadian sales were above their cost of production. We therefore based foreign market value for Yamaha and Suzuki on their above-cost Canadian sales. Once this 10 percent threshold is reached, however, we disagree with petitioner's contention that we should then redetermine viability by comparing the amount of above-cost Canadian sales to the amount of sales in the U.S.

Continuation of Suspension of Liquidation

We are directing the U.S. Customs Service to continue to suspend liquidation of all entries of certain ATVs from Japan, as defined in the "Scope of Investigation" section of this notice, that are entered or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register**. The U.S. Customs Service shall continue to require a cash deposit or posting of a bond equal to the estimated amounts by which the foreign market value of the ATVs from Japan exceeds the United States price, as shown below. This suspension of liquidation will remain in effect until further notice. The weighted-average margins are as follows:

Manufacturer/producer/exporter:	*Weighted-average margin percentage*
Honda Motor Co., Ltd	32.89
Yamaha Motor Co., Ltd	8.47
Suzuki Motor Co., Ltd	14.11
Kawasaki Heavy Industries, Ltd	35.43
All Others	24–59

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

If the ITC will determine that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. However, if the ITC determines that such injury does exist, the Department will issue an antidumping duty order on ATVs from Japan entered, or withdrawn from warehouse, for consumption after the suspension of liquidation, equal to the amount by which the foreign market value exceeds the United States price.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)).

Jan. W. Mares,

Assistant Secretary for Import Administration.

January 25, 1989.

[FR Doc. 89-2220 Filed 1-30-89; 8:45 am]

BILLING CODE 3510-DS-M

Initiation of Antidumping and Countervailing Duty Administrative Reviews

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of initiation of antidumping and countervailing duty administrative reviews.

SUMMARY: The Department of Commerce has reached requests to conduct administrative review of various antidumping and countervailing duty orders and findings. In accordance with the Commerce Regulations, we are initiating those administrative reviews.

EFFECTIVE DATE: January 31, 1989.

FOR FURTHER INFORMATION CONTACT: Bernard T. Carreau or Richard W. Moreland, Office of Countervailing Compliance or Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2104/2786.

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SUPPLEMENTARY INFORMATION:

Background

On August 13, 1985, the Department of Commerce ("the Department") published in the **Federal Register** (50 FR 32556) a notice outlining the procedures for requesting administrative reviews. The Department has received timely requests, in accordance with §§ 353.53a (a)(1), (a)(2), (a)(3), and 355.10(a)(1) of the Commerce Regulations, for administrative reviews of various antidumping and countervailing duty orders and findings.

Initiation of Reviews

In accordance with §§ 353.53a(c) and 355.10(c) of the Commerce Regulations, we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews no later than January 31, 1990.

Antidumping Duty Proceedings and Firms	Periods to be reviewed
Argentina: Carbon Steel Wire Rods (A-357-007)	11/01/87-10/31/88
Acindar Industria	
Canada: Elemental Sulphur (A-122-047)	11/01/87-11/30/88
InterRedec Sulphur	
Sulco Chemicals	
Petro—Canada	
BP Resources Canada	
Cornwall Chemicals	
Suncor	
Home Oil	
Canada: Choline Chloride (A-122-019)	01/09/88-10/31/88
Chinook Chemical	
Hong Kong: Photo Albums and Filler Pages (A-582-001)	12/01/87-11/30/88
AICO	
Bernlaxia	
Chung Wai	
Climax Paper	
Consolidated Powers	
Evergreen & Pych	
Hoi Kun	
Lee Tung	
Marks International	
Mascotte	
Mirai Denshi (HK)	
Northvale	
Orient Consolidation	
Perfect Leather Ware	
Potex	
S&C Import Export	
Schenker (HK)	
Sun Woo	
Tradepower	
Union Paper Box & Printing	
Wah Luen	
World Wide	
South Korea: Photo Albums and Filler Pages (A-580-001)	12/01/87-11/30/88
Ace Trading	
Ahjun Industrial	
Atics	
Ilowon	
CAG	
Chinsung	
Chungwoo	
Cobra	
Co-Prosperity	
Chilmung	
Costco	
Daelim	
Daewoo	
Dae Young	
Daechun	
Daimyung	
Debo	
Donam	
Donghang	
Donghun	
Dong In	
Dong Woo	
Dongwoo	
Eulji	
Eun Jeong	
Eunjin	
Eunsung	
G.I.	
Hae Cang Marine	
Hando	
Han Duk Mul	
Han Yang	
Hyosung	
Hyundia	
Hyupdong	
Hankook	
Hansang	
Honey	
Hunil	
Hanyang	
Inwang	
J&C	
Jeil	
Jung Ang	
Jin Yang	
KMB	
Kang Gyung	
Kenny Trading	
Kuam Nam	
Keyoung	
Korea Binder	
Korea Enterprise	
Keywon	
Korea Export & Import	
Korea Trading	
Korea Trading International	
Kuil	
Kukje	
Kuksan	
Kyoungin	
Lee Tung	
Little Prince	
Lotte Shopping	
Lotte Trading	
Metro	
Mi-ji	
Mi Sung	
The More Stationary	
Nam Doo	
New Frontier	
Rayheung	
Raf Korea	
Royal	
Sam Bang	
Sam Sung	
Sang Ah	
Sung Kyung	
Sam Wang	
Samjin Merchandise	
Samjin Trading	
Sam Hwa	
Sam Joh	
Sang Jin	
Scandecor	
Sejin	
Seokyung	
Seoul Agabang	
Seoul Enterprise	
Seoul General	
Seyou	
Shin Won	
Shinla	
Sinhan	
Songwon	
Sooter	
Sung Jin	
Sung Ill	
Sung Pung	
Sungshin	
Soong	
Sunkyoung	
Three Leaf	
Tradepower	
The More Stationary	
Ujeon	
Union	
Universal	
Woomi	
Young Stationary	
Yuhan	
Yu Shin Enterprise	
Yangjisha	
Japan: Tapered Roller Bearings and Parts Thereof, Finished and Unfinished (A-588-804)	8/01/87-8/30/88
NTN	
Japan: Titanium Sponge (A-588-020)	11/01/87-10/31/88
Osaka Titanium	
Japan: Cellular Mobile Telephone and Subassemblies (A-588-455)	12/01/87-11/30/88
TDK	
Japan: Prestressed Concrete Steel Wire Strand (A-588-068)	12/01/87-11/30/88
Mitsui	
PRC: Greige Polyester Cotton Printcloth (A-570-101)	9/01/87-8/31/88
Chinatex	
Mexico: Porcelain-on-Steel Cookware (A-201-504)	12/01/87-11/30/88
Truqueles	
Cinsa	
New Zealand: Low-Fuming Brazing Copper Wire and Rod (A-670-003)	10/01/87-9/30/88
McKechnie Brothers	
Taiwan: Finished Carbon Steel Butt-Weld Pipe Fittings (A-583-601)	12/01/87-11/30/88
Rigid	
Chup Hsing	
Gei Bey	
Chung Ming	
West Germany: Animal Glue and Inedible Gelatin (A-428-082)	12/01/87-11/30/88
G. Conradt	

Countervailing Duty Proceedings	Periods to be reviewed
Argentina: Oil Country Tubular Goods (C-357-403)	1/1/87-12/31/87
Mexico: Pectin (C-201-007)	1/1/87-12/31/87
Mexico: Porcelain-on-Steel Cooking Ware (C-201-505)	1/1/88-12/31/88
Mexico: Toy Balloons and Playballs (C-201-004)	1/1/87-12/31/87
Singapore: Certain Refrigeration Compressors (C-559-001)	4/1/87-3/31/88

Interested parties are encouraged to submit applications for administrative protective orders as early as possible in the review process.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930 (19 U.S.C. 1675(a)) and 19 CFR 353.53.a(c) and 355.10(c).

Date: January 25, 1989.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 89-2219 Filed 1-30-89; 8:45 am]

BILLING CODE 3510-DS-M

Short-Supply Review on Certain Flat-Rolled Steel; Request For Comments

AGENCY: Import Administration/ International Trade Administration, Commerce.

ACTION: Notice and request for comments.

SUMMARY: The Department of Commerce hereby announces its review of a request for a short-supply determination under Article 8 of the U.S.-EC Arrangement Concerning Trade in Certain Steel Products, with respect to certain coater blade steel strip.

DATE: Comments must be submitted on or before February 10, 1989.

ADDRESS: Send all comments to Nicholas C. Tolerico, Director, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue NW., Washington, DC 20230, (202) 377-0159.

SUPPLEMENTARY INFORMATION: Article 8 of the U.S.-EC Arrangement Concerning Trade in Certain Steel Products provides that if the U.S. " * * * determines that because of abnormal supply or demand factors, the US steel industry will be unable to meet demand in the USA for a particular product, (including substantial objective evidence such as allocation, extended delivery periods, or other relevant factors), an additional tonnage shall be allowed for such product * * *."

We have received a short-supply request for certain coater blade steel strip, 1% carbon, cold-rolled, hardened, tempered, polished, coiled, in thicknesses ranging from 0.012 to 0.050 inch and in widths ranging from 2.50 to 4.25 inches.

Any party interested in commenting on this request should send written comments as soon as possible, and no later than February 10, 1989. Comments should focus on the economic factors involved in granting or denying this request.

Commerce will maintain this request and all comments in a public file. Anyone submitting business proprietary information should clearly so label the business proprietary portion of the submission and also provide a non-proprietary submission which can be placed in the public file. The public file willl be maintained in the Central Records Units, Room B-099, Import Administration, U.S. Department of Commerce, at the above address.

Dated: January 25, 1989.

Jan W. Mares,

Assistant Secretary for Import Administration.

[FR Doc. 89-2214 Filed 1-30-89; 8:45 am]

BILLING CODE 3510-DS-M

Short-Supply Review on Certain Semi-Finished Steel Billets; Request for Comments

AGENCY: Import Administration/ International Trade Administration, Commerce.

ACTION: Notice and request for comments.

SUMMARY: The Department of Commerce hereby announces its review of a request for a short-supply determination under Article 8 of the U.S.-Australia, the U.S.-EC, the U.S.-Spain, and the U.S.-Trinidad and Tobago steel arrangements, and the U.S.-Finland Understanding, with respect to certain semi-finished steel billets.

DATE: Comments must be submitted no later than February 10, 1989.

ADDRESS: Send all comments to Nicholas C. Tolerico, Director, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue NW., Washington, DC 20230, (202) 377-0159.

SUPPLEMENTARY INFORMATION: Article 8 of the U.S.-Australia Arrangement Concerning Trade in Certain Steel Products, the U.S.-EC Arrangement Concerning Trade in Certain Steel Products, the U.S.-Spain Arrangement Concerning Trade in Certain Steel Products, and the U.S.-Trinidad and Tobago Arrangement Concerning Trade in Certain Steel Products, and the U.S.-Finland Understanding Concerning Trade in Certain Steel Products, provides that if the U.S. determines that because of abnormal supply or demand factors, the United States steel industry will be unable to meet demand in the USA for a particular product (including substantial objective evidence such as allocation, extended delivery periods, or other relevant factors), an additional tonnage shall be allowed for such product or products.

We have received a short-supply request for basic oxygen furnace (or low residual) continuously cast carbon steel billets, of high carbon quality, welding quality, and special quality. The requested billets are of a square cross section measuring 130mm on each side, and in lengths of 30-34 feet and/or 31-35 feet.

Any party interested in commenting on this request should send written comments as soon as possible, and no later than February 10, 1989. Comments should focus on the economic factors involved in granting or denying this request.

Commerce will maintain this request and all comments in a public file. Anyone submitting business proprietary information should clearly so label the business proprietary portion of the submission and also provide a non-proprietary submission which can be placed in the public file. The public file will be maintained in the Central Records Unit, Room B-099, Import Administration, U.S. Department of Commerce, at the above address.

January 25, 1989.

Jan W. Mares,

Assistant Secretary for Import Administration.

[FR Doc. 89-2215 Filed 1-30-89; 8:45 am]

BILLING CODE 3510-DS-M

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Notice of Applications for Duty-Free Entry of Scientific Instruments; Medical University of South Carolina et al.

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with §§ 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5:00 p.m. in Room 2461, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket number: 88–024. Applicant: Medical University of South Carolina, 171 Ashley Ave., Charleston, SC 29425. Instrument: Electronic Microscope, Model H–7000. Manufacturer: Hitachi Scientific Instruments, Japan. Intended use: The instrument will be used for qualitative and quantitative microanalysis of cryo-frozen spinal cord tissue. The investigations will determine the exact cellular position and amount of calcium present after spinal cord injury and the effect of calcium inhibitors on calcium concentration. Application received by Commissioner of Customs: November 15, 1988.

Docket number: 88–025. Applicant: Texas A&M University, Department of Chemistry, College Station, TX 77843. Instrument: Stopped-flow Spectrophotometer. Manufacturer: Hi-Tech Scientific, United Kingdom. Intended use: Studies of the transient rates of enzyme catalyzed reactions; specifically the reactions catalyzed by bacterial luciferase, carbamoyl phosphate synthetase and phosphotriesterase. Transient-kinetic analyses will be conducted. The enzyme and substrates will be rapidly mixed and then the optical components of the instruments shall record and analyze the very rapid changes in chemical structures of the substrates, intermediates and products. The instrument will also be used in chemistry classes to teach undergraduate and graduate students the latest technology for solving biochemical problems at the cutting-edge of science. Application received by Commissioner of Customs: November 15, 1988.

Docket number: 88–026. Applicant: National Institutes of Health, Division of Procurement, Building 31, Room 3C07, Bethesda, MD 20892. Instrument: Electronic Microscope, Model EM902PC. Manufacturer: Carl Zeiss, West Germany. Intended use: The instrument will be used for molecular mass measurements on freeze-dried unstained specimens of the gp120/gp160 envelope protein of Human Immunodeficiency Virus using the global inelastic dark-field signal and other molecules and supramolecular assemblies of interest. Taken in conjunction with current knowledge of this molecule, the electron microscopically derived data will provide unique insights into the oligomeric status of this medically important molecule. In addition, there will be applications of low-electron dose microscopy of supramolecular assemblies in the frozen-hydrated (vitrified) state, a technique with unique potentialities for visualizing biological specimens in their native states. Target specimens include thin sections of muscle fibers, viral envelopes and fragments thereof, and cytoskeletal components such as intermediate filaments. Application received by Commissioner of Customs: November 15, 1988.

Docket number: 88–027. Applicant: Midwest Research Institute, 425 Volker Boulevard, Kansas City, MO 64110. Instrument: Mass Spectrometer, Model VG–70–250S. Manufacturer: VG Instruments, United Kingdom. Intended use: The instrument will be used for studies of environmentally and health-related organic compounds which include polychlorinated dioxins and furans, polychlorinated biphenyls, polybrominated dioxins and furans, and other highly toxic compounds. The investigations that will be conducted are designed to provide state and federal government agencies with the total concentrations of the selected compounds found in the various matrices in support of their research objectives and regulatory directives. Specific objectives include evaluation of operational parameters, determination of national trends, exposure assessments, and identification of new pollutants. Application received by Commissioner of Customs: November 17, 1988.

Docket number: 88–028. Applicant: Oklahoma State University, Chemistry Department, Stillwater, OK 74078–0447. Instrument: Mass Spectrometer, Model TS–250. Manufacturer: VG Instruments, United Kingdom. Intended use: The instrument will be used for a variety of research purposes including but not limited to the following:

(1) Identification of allelochemicals that mediate communication between plants and other plants, plant-microorganisms and plant-insects.

(2) Identification of reaction products from photochemically induced rearrangements and elucidation of reaction mechanisms by means of daughter ion identification and isotopic studies.

(3) Identification of unknowns in coal liquids, petroleum and shale oils and for characterization of anythetic intermediates and products to be used for thermodynamic, spectroscopic and separation studies.

(4) Characterization of intermediates in the biosynthesis of phytoalexins, compounds which may be responsible for plant resistance to bacterial pathogens.

(5) Characterization of complex carbohydrates obtained from plant cell walls after anhydrous HF solvolysis.

(6) Development of techniques for the analysis of peptides by modification of the sample target surface. Application received by Commissioner of Customs: November 29, 1988.

Docket number: 88–029. Applicant: National Center for Atmospheric Research, 1801 Table Mesa Drive, Boulder, CO 80307 Instrument: Multi-pass Absorption Cell. Manufacturer: Unisearch Associates, Canada. Intended use: The instrument will be used in conjunction with an infared laser to measure trace reactive atmospheric gases in the parts-per-trillion concentration range. Application received by Commissioner of Customs: November 29, 1988.

Docket number: 88–030. Applicant: University of North Carolina, School of Dentistry, Dental Research Center, Chapel Hill, NC 27599–7455. Instrument: Electronic Microscope, Model CM12S. Manufacturer: N.V. Philips, The Netherlands. Intended use: The instrument will be used for studies of ultrathin sections of biological samples: soft tissue (brain, embryonic craniofacial structures); bone and teeth with associated soft tissue interfaces; and the calcified structural matrix of non-vertebrate skeletons. Interactions and interfaces of tissues to implants and calcified crystalline samples grown in vitro will also be studied. In addition, the instrument will be used in the annual Dental Research Electron Microscopy Workshop to teach faculty and graduate level students the principles of electron microscopy and to introduce them to those related techniques that they might use in their

research. Application received by Commissioner of Customs: December 1, 1988.

Docket number: 88–031. Applicant: Lehigh University, 404 Adams Street, Bethlehem, PA 18015. Instrument: Mass Spectrometer, Model VG 1200. Manufacturer: VG Isotopes, Ltd., United Kingdom. Intended use: Studies of samples of minerals and rocks that are appropriate for K-Ar, U-He, fission-Xe, and other forms of noble-gas dating. Experiments will be conducted to determine the geological ages of samples, and the determination of the samples' temperature histories. In addition, the instrument will be used for educational purposes in the courses: Isotope Geology and Geochemistry, Isotope Thermochronometry, and Thesis Research. Application received by Commissioner of Customs: December 5, 1988.

Docket number: 88–032. Applicant: Regents of the University of California, Material Management Department, Riverside, CA 92521. Instrument: Mass Spectrometer, Model PRISM Series II. Manufacturer: VG Instruments, United Kingdom. Intended use: The instrument will be used to analyze isotopic ratios of Deuterium/Hydrogen, $^{13}C/^{12}C$, $^{15}N/^{14}N$, $^{18}O/^{17}O$, $^{17}O/^{16}O$ and $^{34}S/^{32}S$ in exceedingly small samples of nearly all important earth materials. Application received by Commissioner of Customs: December 6, 1988.

Docket number: 88–033. Applicant: Purdue University, West Lafayette, IN 47907. Instrument: Mass Spectrometer and Data System, Model MS–25. Manufacturer: Kratos, United Kingdom. Intended use: The instrument will be used for studies of a wide variety of chemical substances synthesized or isolated from natural sources. The experiments which will be performed will include: high resolution mass analysis, elemental composition determination, low resolution mass spectral analysis, linked-scan MS/MS analysis, gas chromatography/mass spectrometry analysis, electron and chemical ionization analysis, fast atom bombardment ionization and liquid chromatography/mass spectrometry analysis. These analyses will be conducted to determine the elemental composition and chemical structures of these substances. In addition, the instrument will be used for educational purposes in the courses: Analytical and Clinical Chemistry, Advanced Medical Chemistry Analysis and Advanced Topics in Mass Spectrometry. Application received by Commissioner of Customs: December 7, 1988.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 89–2216 Filed 1–30–89; 8:45 am]

BILLING CODE 3510–DS–M

Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments; NASA-Johnson Space Center, et al.

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 2841, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket number: 88–274. Applicant: NASA-Johnson Space Center, Houston, TX 77058. Instrument: Gas Isotope Ratio Mass Spectrometer, Model MAT 251 EM. Manufacturer: Finnigan MAT, West Germany. Intended use: See notice at 53 FR 39494, October 7, 1988. Reasons for this decision: The foreign article provides automated precision analysis of small sample size (0.03μ Mole CO_2 with a precision of 0.008‰).

Docket number: 87–048R. Applicant: University of Illinois, Urbana, IL 61801. Instrument: Cryostat System for Mossbauer Spectrometer. Manufacturer: Technology Systems Ltd., United Kingdom. Intended use: See notice at 51 FR 448825, December 12, 1986. Reasons for this decision: The foreign article provides a minimum source-detector distance of 8 inches.

Docket number: 88–148. Applicant: National Aeronautics and Space Administration, Pasadena, CA 91109. Instrument: Black and White Recorder and DEC Unibus Controller, Model FIRE 240 LBR. Manufacturer: MacDonald Dettwiler Technologies, Inc., Canada. Intended use: See notice at 53 FR 22684, June 17, 1988. Reasons for this decision: The foreign article provides recording of data at 8 bits per pixel with an output of 10 bits and is able to record up to 16 000 pixels by 16 000 lines.

Docket number: 87–140R. Applicant: Rutgers University, New Brunswick, NJ 08903. Instrument: Magnetic Field-Sensor Coil Eye Movement Monitoring Instrument, Model 3000. Manufacturer: Skalar Instrumenten B.V., The Netherlands. Intended use: See notice at 52 FR 12220, April 15, 1987. Reasons for this decision: The foreign instrument provides alignment fixtures for consistent head positioning and a supplementary set of field coils to permit calibration with the head in place.

Docket number: 88–013R. Applicant: Yale University, New Haven CT 06520. Instrument: Electron Spectrometer System, Model ELS–22. Manufacturer: Leybold-Heraeus, West Germany. Intended use: See notice at 52 FR 23780, December 9, 1987. Reasons for this decision: The foreign instrument provides analyzer rotation of 0 to 90° and a *background/peak intensity* $>10^{-6}$ of the main peak intensity.

Docket number: 88–099. Applicant: Miami University, Oxford, OH 45056. Instrument: Spectrophotometer, Model RA–401. Manufacturer: Otsuka Electronics Co., Ltd., Japan. Intended use: See notice at 53 FR 9959, March 28, 1988. Reasons for this decision: The foreign instrument provides a spectral range of 200nm–800nm, a spectral scanning rate of 1scan/1msec with a scanning interval of 0–1 sec.

Docket number: 88–111R. Applicant: National Aeronautics and Space Administration, Hampton, VA 23665–5225. Instrument: FT–IR Spectrophotometer. Manufacturer: BOMEM, Inc., Canada. Intended use: See notice at 53 FR 15102, April 27, 1988. Reasons for this decision: The foreign instrument provides an unapodized resolution of 0.05 cm^{-1}.

Docket number: 88–121R. Applicant: Marine Science Program, Chapel Hill, NC 27599. Instrument: Five Radon Gas Detectors, Model PMT–TEL. Manufacturer: Pylon Electronics, Canada. Intended use: See notice at 53 FR 15103, April 27, 1988. Reasons for this decision: The foreign instrument allows in situ measurements and is capable of detecting radon gas levels as low as 0.025 pCi/1.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as each is intended to be used, is being manufactured in the United States. The capability of each of the foreign instruments described above is pertinent to each applicant's intended purposes. We know of no instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 89–2217 Filed 1–30–89; 8:45 am]

BILLING CODE 3510–DS–M

VOL 54 ISS 19 JA 31 1989 UMI

Applications for Duty-Free Entry of Scientific Instruments; Pennsylvania State University et al

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Public Law 89–651; 80 Stat. 897; 15 CFR 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with §§ 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 2841, U.S. Department of Commerce, 14th and Constitution Avenue, NW, Washington, D.C.

Docket number: 88–269. Applicant: The Pennsylvania State University, Materials Research Laboratory, University Park, PA 16802. Instrument: Two (2) Crystal Growth Pulling Heads. Manufacturer: Crystalox, Ltd., United Kingdom. Intended use: The instrument will be used in a single-crystal fiber puller for studies of a wide and diverse family of ferric oxide crystals. The experiments are intended to give fundamental information concerning the materials' properties, and the feasibility of their use in a variety of sensor and transducer applications. In addition, the instrument will be used as a tool for graduate students to complete the research portion of their degree requirements. Application received from Commissioner of Customs: December 11, 1988.

Docket number: 88–034. Applicant: Veterans Administration, Lakeside Medical Center , 333 East Huron, Chicago, IL 60611. Instrument: Electron Microscope, Model H–600–3. Manufacturer: Nissei Sangyo America, Inc., Japan. Intended use: The article is intended to be used for biological/biomedical research, specifically examination of cells, cell fractions, viruses, macromolecules etc. Examples of the studies which will be conducted include: (a) Quantitative and qualitative ultrastructural studies of polyamine dependent cellular transport processes, (b) ultrastructural studies of Mallory body formation in alcoholic livers, both animal models and human autopsy specimens, (c) ultrastructural studies of heparin granule release from human mast cells following a variety of allergic stimuli, (d) distribution of antigens on the surface of cancer cells, and (e) distribution of actin filaments in corneal endothelium. Application received from Commissioner of Customs: December 11, 1988.

Docket number: 88–035. Applicant: University of Tennessee, Biology Consortium, Knoxville, TN 37996–0810. Instrument: Scanning Electron Microscope, Model S–800. Manufacturer: Hitachi, Japan. Intended use: The instrument will be used in fundamental studies of the mechanisms of electron interaction with solids including measurements of electron stopping powers and determination of secondary and backscatter electron yields. In addition, the instrument will be used in Zoology 5060 "Introduction to Electron Microscopy", a course which introduces students to the electron microscope, provides detailed hands-on experience in using the scanning electron microscope and teaches the basics of both biological and inorganic specimen preparation for the SEM. In the course Materials Science and Engineering 574 "Principles of Electron Scattering and Diffraction" the instrument will be used to illustrate the fundamentals of electron-beam solid interactions and the technique of x-ray microanalysis. Application received from Commissioner of Customs: December 15, 1988.

Docket number: 88–036. Applicant: University of Miami, Department of Civil and Architectural Engineering, P.O. Box 248294, Coral Gables, FL 33124. Instrument: Digital Controllers. Manufacturer: GDS Instruments Ltd., United Kingdom. Intended use: The instrument will be used for studies of the strength and deformation characteristics and failure mechanisms as a function of effective stresses, time and stress history of soil under static and dynamic load. Investigations will be conducted to evaluate the soil behavior under a variety of conditions and develop a unique constitutive model of soil behavior. In addition, the instrument will be used for the courses: Soil Mechanics Laboratory, Advanced Soil Mechanics Laboratory, and Geomechanics to understand and predict soil behavior. Application received from Commissioner of Customs: Decembr 16, 1988.

Docket number: 88–037. Applicant: University of California, Lawrence Livermore National Laboratory, P.O. Box 5012, L–850, Livermore, CA 94550. Instrument: Universal Streak Camera, Model C–2830 with Accessories. Manufacturer: Hamamatsu Photonics, Japan. Intended use: The instrument will be used to characterize fast optical pulses with a 1 to 20 picosecond pulse duration and wavelengths from 1053nM to 351nM. Application received from Commissioner of Customs: December 19, 1988.

Docket number: 88–038. Applicant: University of Nevada, Desert Research Institute, 7010 Dandini Boulevard, Reno, NV 89512. Instrument: Time Domain Electromagnetic Ground Conductivity Meter, Model Protem I and II. Manufacturer: Geonics Ltd., Canada. Intended use: The instrument will be used to investigate geologic formations at depths less than 100 meters with the objective of developing new methods for detecting the location of groundwater. Application received from Commissioner of Customs: December 19, 1988.

Docket number: 88–039. Applicant: Associated Universities, Inc., Brookhaven National Laboratory, Medical Department, 30 Bell Avenue, Upton, NY 11973. Instrument: Cytogenetic Scanning Analyzer System, Model Cytoscan. Manufacturer: Image Recognition Systems, United Kingdom. Intended use: The instrument will be used for studies of human blood cells to determine chromosome aberrations indicated as casual in baseline cancers. Application received from Commissioner of Customs: December 19, 1988.

Docket number: 88–040. Applicant: Department of the Interior, U.S. Geological Survey, Western Region, 345 Middlefield Road, MS–285, Menlo Park CA 94025. Instrument: Mass Spectrometer, Model MAT 261. Manufacturer: Finnigan MAT, West Germany. Intended use: The instrument will be used to determine isotopic ratios in geologic samples of rocks and various minerals from those rocks. The mineral types include zircon, monazite, apatite, feldspars, pyroxenes, amphiboles and micas. Isotopic ratios are measured to determine an absolute geologic age for the rocks and minerals analyzed and/or to understand more about the parts of the earth from which, or processes by which, the rocks and minerals were produced. Application received from Commissioner of Customs: December 20, 1988.

Docket number: 88–041. Applicant: Franklin and Marshall College, P.O. Box 3003, Lancaster, PA 17604–3003. Instrument: Thermal Demagnetizer, Model MMTDI. Manufacturer: Magnetic Measurements, United Kingdom. Intended Use: The instrument will be used to study rocks and archaeological materials. Both thermal demagnetization and paleointensity experiments will be conducted with the objective of understanding the ferromagnetic

minerals that these materials contain, the physical mechanism by which these materials become magnetized. In addition, the instrument will be used in the course Geology 337—Solid-Earth Geophysics and Geology 490—Independent Study. Application received from Commissioner of Customs: December 22, 1988.

Docket number: 88–042. Applicant: USDA/ARS, Children's Nutrition Center, 1100 Bates Street, Suite 7068, Houston, TX 77030. Instrument: Gas Isotope-Ration Mass Spectrometer, Model PRISM. Manufacturer: VG Instruments, Inc., United Kingdom. Intended use: The instrument will be used for the investigation of the isotopic abundances of hydrogen, carbon, nitrogen and oxygen in plasma, urine, saliva, breast milk, amino acids and cholesterol.

The objectives of the investigations are (a) To define the energy cost of pregnancy and lactation by measurements of total energy expenditure and changes in body composition using the doubly-labeled water method (b) to determine the energy requirement for optimal growth and development in infants by measurements of total energy expenditure, changes in body composition, and milk volume intakes using the doubly-labeled water method, (c) to determine intestinal maturation by measurements of oxidation and malabsorption of ^{13}C labeled substrates using $^{13}CO_2$ breath tests, and (d) to understand the metabolism of fatty acids, amino acids, and cholesterol by measurements of the fractional turnover rats of these metabolites in blood or breast milk. Application received from Commissioner of Customs: December 23, 1988.

Docket number: 88–043. Applicant: Duke University, Botany Department Durham, NC 27706. Instrument: Mass Spectrometer, Model, SIRA Series II. Manufacturer: VG Isogas, United Kingdom. Intended use: The instrument will be used for analysis of C, N, O, H metabolism in plants using natural abundance isotope composition. Application received from Commissioner of Customs: December 27, 1988.

Docket number: 88–044. Applicant: The Connecticut Agricultural Experiment Station, 123 Huntington St., P.O. Box 1106 New Haven, CT 06504. Instrument: Mass Spectrometer, Model Concept IS. Manufacturer: Kratos Analytical, United Kingdom. Intended use: The instrument will be used for the investigation of methods of analysis of dioxins and furans. Application received from Commissioner of Customs: December 28, 1988.

Docket number: 88–045. Applicant: Texas A&M, Electron Microscopy Center, Biological Sciences Bldg. West, Room 123, College Station, TX 77843–2257. Instrument: Scanning Electron Microscope, Model JSM–T330A. Manufacturer: JEOL Ltd., Japan. Intended use: The instrument will be used for a variety of studies of insects, plant tissues, minerals, polymers, ceramics, zeolites and metal alloys. Application received from Commissioner of Customs: December 28, 1988.

Frank W. Creel,

Director, Statutory Import Programs.

[FR Doc. 89–2218 Filed 1–30–89; 8:45 am]

BILLING CODE 3510–DS–M

Minority Business Development Agency

Indian Business Development Center Applications; State of Oklahoma

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Indian Business Development Center (IBDC) Program to operate an IBDC for a 3-year period, subject to available funds. The cost of performance for the first 12 months is estimated at $167,580 for the project performance period of August 1, 1989 to July 31, 1990. The IBDC will operate in the Oklahoma Statewide Area. The first year cost for the IBDC will consist of $167,580 in Federal Funds.

The funding instrument for the IBDC will be a cooperative agreement and competition is open to individuals, non-profit and for-profit organizations, local and state governments, American Indian tribes and educational institutions.

The IBDC will provide management and technical assistance to eligible clients for the establishment and operation of businesses. The IBDC program is designed to assist those Native American owned businesses that have the highest potential for success. In order to accomplish this, MBDA supports IBDC programs that can: coordinate and broker public and private sector resources on behalf of Native American individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of Native American individuals and firms; the resources available to the firm in providing management and technical assistance; the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The IBDC will operate for a 3-year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as satisfactory performance, the availability of funds, and Agency priorities.

Closing Date: The closing date for receipt of applications is March 3, 1989. Applications must be postmarked on or before March 3, 1989.

ADDRESS: Dallas Regional Office, Minority Business Development Agency, U.S. Department of Commerce, 1100 Commerce, Room 7B23, Dallas, Texas 75242–0709, (214) 767–8001.

FOR FURTHER INFORMATION CONTACT: Deselene Crenshaw, Business Development Clerk, Dallas Regional Office at the above address and phone number.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

11.801 American Indian Program (AIP)

(Catalog of Federal Domestic Assistance)

A pre-bid conference will be held in Dallas on February 17, 1989 at 1:00 p.m. Conference site information may be obtained by contacting the individual designated above.

Additional RFA will be available at the conference site.

Victor M. Casaus,

Deputy Regional Director, Dallas Regional Office.

Date: January 20, 1989.

Section B—Project Specifications

(To be completed by the Regional Offices)

BILLING CODE 3510–21–M

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PROJECT IDENTIFICATION	
1. Program Number and Title:	11.801 American Indian Business Development
2. Project Name:	Oklahoma IBDC (Geographic Area or SMSA)
3. Project Identification Number:	06-10-89010-01
PROJECT DURATION	
1. Budget Period (Check One):	First X Second ____ Third ____
2. Project Start Date:	August 1, 1989
3. Project End Date:	July 31, 1990
4. Project Duration (Months):	Twelve
PROJECT COST	
1. Required Federal Funding Level:	$ 167,580
2. Minimum Non-Federal Contribution:	$ N/A
3. Total Project Cost:	$ 167,580
PROJECT MINIMUM PERFORMANCE GOAL LEVELS	
1. Combined Financial Package and Procurement Minimum Goal Level:	$ 6,450,500
2. Hours of M&TA Minimum Goal Level:	2,200
3. Number of Clients Minimum Goal Level:	127

OTHER PROJECT SPECIFICATIONS

1. Closing Date for Submission of this Application: March 3, 1989

2. Geographic Specification: The Indian Business Development Center shall offer assistance in the geographic area of:
State of Oklahoma

3. Eligibility Criteria: There are no eligibility restrictions for this project, except that applicants must have documented experience in providing business development services to American Indian businesses and individuals, and have working relationships with organizations and agencies, and tribal governments unique to American Indians. Eligible applicants may include individuals, non-profit organizations, for-profit firms, American Indian tribes, state and local governments, and educational institutions.

4. Budget Period: The competitive award period will be for approximately three (3) years consisting of three (3) separate budget periods. Performance evaluations will be conducted, and funding levels will be established for each of three (3) budget periods. The IBDC will receive continued funding, after the initial competitive year, at the discretion of MBDA based upon the availability of funds, the IBDC's performance and Agency priorities.

[FR Doc. 89-1738 Filed 1-30-89; 8:45 am]
BILLING CODE 3510-21-C

Indian Business Development Center Applications; State of New Mexico

January 20, 1989.

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Indian Business Development Center (IBDC) Program to operate an IBDC for a 3-year period, subject to available funds. The cost of performance for the first 12 months is estimated at $167,580 for the project performance period of August 1, 1989 to July 31, 1990. The IBDC will operate in the New Mexico Statewide Area. The first year cost for the IBDC will consist of $167,580 in Federal Funds.

The funding instrument for the IBDC will be a cooperative agreement and competition is open to individuals, non-profit and for-profit organizations, local and state governments, American Indian tribes and educational institutions.

The IBDC will provide management and technical assistance to eligible clients for the establishment and operation of businesses. The IBDC program is designed to assist those native American owned businesses that have the highest potential for success. In order to accomplish this, MBDA supports IBDC programs that can: coordinate and broker public and private sector resources on behalf of Native American idividuals and firms; offer them a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of Native American individuals and firms; the resources available to the firm in providing management and technical assistance; the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The IBDC will operate for a 3-year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as satsifactory performance, the availability of funds, and Agency priorities.

Closing Date: The closing date for receipt of applications is March 3, 1989. Applications must be postmarked on or before March 3, 1989.

ADDRESS: Dallas Regional Office, Minority Business Development Agency, U.S. Department of Commerce, 1100 Commerce, Room 7B23, Dallas, Texas 75242-0790, (214) 767-8001.

FOR FURTHER INFORMATION CONTACT: Deselene Crenshaw, Business Development Clerk, Dallas Regional Office at the above address and phone number.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

11.801 American Indian Program (AIP)

(Catalog of Federal Domestic Assistance)

A pre-bid conference will be held in Dallas on February 17, 1989 at 1:00 P.M. Conference site information may be obtained by contacting the individual designated above.

Additional RFAs will be available at the conference site.

Victor M. Cassens,

Deputy Regional Director, Dallas Regional Office.

Section B—Project Specifications

(To be completed by the Regional Offices)

BILLING CODE 3510-21-M

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PROJECT IDENTIFICATION	
1. Program Number and Title:	11.801 American Indian Business Development
2. Project Name:	New Mexico IBDC (Geographic Area or SMSA)
3. Project Identification Number:	06-10-89008-01

PROJECT DURATION	
1. Budget Period (Check One):	First X Second ____ Third ____
2. Project Start Date:	August 1, 1989
3. Project End Date:	July 31, 1990
4. Project Duration (Months):	Twelve

PROJECT COST	
1. Required Federal Funding Level:	$ 167,580
2. Minimum Non-Federal Contribution:	$ N/A
3. Total Project Cost:	$ 167,580

PROJECT MINIMUM PERFORMANCE GOAL LEVELS	
1. Combined Financial Package and Procurement Minimum Goal Level:	$ 6,450,500
2. Hours of M&TA Minimum Goal Level:	2,200
3. Number of Clients Minimum Goal Level:	127

OTHER PROJECT SPECIFICATIONS

1. Closing Date for Submission of this Application: March 3, 1989

2. Geographic Specification: The Indian Business Development Center shall offer assistance in the geographic area of:
State of New Mexico

3. Eligibility Criteria: There are no eligibility restrictions for this project, except that applicants must have documented experience in providing business development services to American Indian businesses and individuals, and have working relationships with organizations and agencies, and tribal governments unique to American Indians. Eligible applicants may include individuals, non-profit organizations, for-profit firms, American Indian tribes, state and local governments, and educational institutions.

4. Budget Period: The competitive award period will be for approximately three (3) years consisting of three (3) separate budget periods. Performance evaluations will be conducted, and funding levels will be established for each of three (3) budget periods. The IBDC will receive continued funding, after the initial competitive year, at the discretion of MBDA based upon the availability of funds, the IBDC's performance and Agency priorities.

[FR Doc. 89-1739 Filed 1-30-89; 8:45 am]
BILLING CODE 3510-21-C

Indian Business Development Center Applications; State of North Dakota

January 20, 1989.

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Indian Business Development Center (IBDC) Program to operate an IBDC for a 3-year period, subject to available funds. The cost of performance for the first 12 months is estimated at $105,840 for the project performance period of August 1, 1989 to July 31, 1990. The IBDC will operate in the North Dakota Statewide Area. The first year cost for the IBDC will consist of $105,840 in Federal Funds.

The funding instrument for the IBDC will be a cooperative agreement and competition is open to individuals, non-profit and for-profit organizations, local and state governments, American Indian tribes and educational institutions.

The IBDC will provide management and technical assistance to eligible clients for the establishment and operation of businesses. The IBDC program is designed to assist those Native American owned businesses that have the highest potential for success. In order to accomplish this, MBDA supports IBDC programs that can: coordinate and broker public and private sector resources on behalf of Native American individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of Native American individuals and firms; the resources available to the firm in providing management and technical assistance; the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The IBDC will operate for a 3-year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as satisfactory performance, the availability of funds, and Agency priorities.

Closing Date: The closing date for receipt of applications is March 3, 1989. Applications must be postmarked on or before March 3, 1989.

ADDRESS: Dallas Regional Office, Minority Business Development Agency, U.S. Department of Commerce, 1100 Commerce, Room 7B23, Dallas, Texas 75242-0790, (214) 767-8001.

FOR FURTHER INFORMATION CONTACT: Deselene Crenshaw, Business Development Clerk, Dallas Regional Office at the above address and phone number.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

11.801 American Indian Program (AIP)

(Catalog of Federal Domestic Assistance)

A pre-bid conference will be held in Dallas on February 17, 1989 at 1:00 p.m. Conference site information may be obtained by contacting the individual designated above.

Additional RFAs will be available at the conference site.

Victor M. Casaus,
Deputy Regional Director, Dallas Regional Office.

Section B—Project Specifications

(To be completed by the Regional Offices)

BILLING CODE 3510-21-M

BEST COPY AVAILABLE

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PROJECT IDENTIFICATION	
1. Program Number and Title:	11.801 American Indian Business Development
2. Project Name:	North Dakota IBDC (Geographic Area or SMSA)
3. Project Identification Number:	08-10-89009-01
PROJECT DURATION	
1. Budget Period (Check One):	First X Second ___ Third ___
2. Project Start Date:	August 1, 1989
3. Project End Date:	July 31, 1990
4. Project Duration (Months):	Twelve
PROJECT COST	
1. Required Federal Funding Level:	$ 105,840
2. Minimum Non-Federal Contribution:	$ N/A
3. Total Project Cost:	$ 105,840
PROJECT MINIMUM PERFORMANCE GOAL LEVELS	
1. Combined Financial Package and Procurement Minimum Goal Level:	$ 4,074,000
2. Hours of M&TA Minimum Goal Level:	1,389
3. Number of Clients Minimum Goal Level:	79
OTHER PROJECT SPECIFICATIONS	
1. Closing Date for Submission of this Application:	March 3, 1989

2. Geographic Specification: The Indian Business Development Center shall offer assistance in the geographic area of:
State of North Dakota

3. Eligibility Criteria: There are no eligibility restrictions for this project, except that applicants must have documented experience in providing business development services to American Indian businesses and individuals, and have working relationships with organizations and agencies, and tribal governments unique to American Indians. Eligible applicants may include individuals, non-profit organizations, for-profit firms, American Indian tribes, state and local governments, and educational institutions.

4. Budget Period: The competitive award period will be for approximately three (3) years consisting of three (3) separate budget periods. Performance evaluations will be conducted, and funding levels will be established for each of three (3) budget periods. The IBDC will receive continued funding, after the initial competitive year, at the discretion of MBDA based upon the availability of funds, the IBDC's performance and Agency priorities.

[FR Doc. 89-1740 Filed 1-30-89; 8:45 am]
BILLING CODE 3510-21-C

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Levels for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Bangladesh

January 25, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing import levels for the new agreement year.

EFFECTIVE DATE: February 1, 1989.

FOR FURTHER INFORMATION CONTACT: Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

A copy of the current bilateral textile agreement between the Governments of the United States and the People's Republic of Bangladesh is available from the Textiles Division, Bureau of Economic and Business Affairs, U.S. Department of State, (202) 647-1998.

A description of the textile and apparel categories in terms of HTS numbers is available in the Correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 53 FR 44937, published on November 7, 1988).

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

January 25, 1989.

Commissioner of Customs

Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Cotton and Man-Made Fiber Textile Agreement of February 19 and 24, 1988, as amended, between the Governments of the United States and the People's Republic of Bangladesh; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on February 1, 1989, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in the following categories, produced or manufactured in Bangladesh and exported during the twelve-month period which begins on February 1, 1989 and extends through January 31, 1990, in excess of the following restraint limits:

Category and twelve-month restraint limit

338/339—674,160 dozen.
342/642—222,473 dozen.
638/639—870,790 dozen.
645/646—204,495 dozen.

Imports charged to these category limits for the period February 1, 1988 through January 31, 1989 shall be charged against the levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The levels set forth above are subject to adjustment in the future according to the terms of the current bilateral agreement between the Governments of the United States and the People's Republic of Bangladesh.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C.(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89-2134 Filed 1-30-89; 8:45 am]
BILLING CODE 3510-DR-M

Announcement of Requests for Bilateral Consultations with the Government of Thailand on Certain Cotton, Wool and Man-Made Fiber Textile Products

January 25, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on categories on which consultations have been requested, call (202) 377-3740.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Article 3 of the Arrangement Regarding International Trade in Textiles.

On January 1, 1989, the Government of the United States requested consultations with the Government of Thailand regarding cotton, wool and man-made fiber textile products in Categories 345, 347/348, 363, 369-D, 445/446, 448 and 635, produced or manufactured in Thailand.

The purpose of this notice is to advice the public that, if no solution is agreed upon in consultations with Thailand, the Commitee for the Implementation of Textile Agreements may later establish limits for the entry and withdrawal from warehouse for consumptions of textile products in Categories 345, 347/348, 363, 369-D, 445/446, 448 and 635, produced or manfactured in Thailand and exported during the twelve-month period which began on January 1, 1989 and extends through December 31, 1989, at the following levels:

Category and call levels

345—183,296 dozen.
347/348—262,382 dozen.
363—14,554,325 numbers.
369-D (dish towels)—120,524 kilograms.
445/446—15,765 dozen.
448—7,677 dozen.
635—67,217 dozen.

Summary market statements concerning these categories follow this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Categories 345, 347/348, 363, 369-D, 445/446, 448 and 635, or to comment on domestic production or availability of products included in these categories, is invited to submit 10 copies of such comments or information to James H. Babb, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230.

Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in reponse to this notice will be available for public inspection in the Office of Textiles and Apparel, Room H3100, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreement considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating

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to matters which constitute "a foreign affairs functions of the United States."

The United States remains committed to finding a solution concerning Categories 345, 347/348, 363, 369–D, 445/446, 448 and 635. Should such a solution be reached in consultations with the Government of Thailand, further notice will be published in the **Federal Register**.

All shipments of products in Category 369–D (dish towels) from Thailand shall continue to require a 369–O visa for entry for consumption into the United States until further notice.

A description of the textile and apparel categories in terms of HTS numbers is available in the Correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 53 FR 44937, published on November 7, 1988).

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Thailand—Market Statement

Cotton Sweaters—(Category 345)

January 1989.

Summary and Conclusions

U.S. imports of cotton sweaters (Category 345) from Thailand reached 163,298 dozen during the year ending October 1988, 10 percent above the 158,291 dozen imported a year earlier. During the first ten months of 1988, imports of Category 345 from Thailand reached 163,700 dozen, 21 percent above the 135,705 dozen imported during the same period in 1987, and 5 percent above the total imported in calendar year 1987.

The U.S. market for cotton sweaters is being disrupted by the sharp and substantial increase of imports from Thailand. This market is threatened with even greater disruption following the expiration of the U.S./Thailand bilateral agreement at the end of 1988, as imports from Thailand can be expected to continue to grow rapidly in the absence of restrictions. Thailand has ample capacity to increase these shipments as evidenced by the high level of imports attained in 1985. At that time Thailand exceeded its apparel group limit and the subsequent drop in imports in part reflected the reduction in quota available after deducting for the amount of the overshipments. With the group limit removed and the previous group overshipments already paid back, the market disruption in Category 345 threatens to become more widespread.

U.S. Production, Import Penetration and Market Share

U.S. production of cotton sweaters peaked in 1985 and has been on the decline ever since, dropping from 4,683,000 dozen in 1985 to 3,320,000 dozen in 1987, a 29 percent decline. Production continued to decline in 1988, dropping 27 percent in the first half of 1988 compared with the same period in 1987. The year ending June 1988 production level fell to 2,832,000 dozen, 15 percent below the calendar year 1987 level.

Imports of cotton sweaters on the other hand have increased in every year since 1982 reaching a record level 2,128,165 in 1987. Imports more than doubled between 1982 and 1985 and increased another 23 percent between 1985 and 1987. Imports are down slightly through the first ten months of 1988 from the comparable 1987 record level period, but remain at the second highest level ever.

The ratio of imports to domestic production increased 34 percentage points, rising from 37 percent in 1985 to 71 percent for the year ending June 1988. The U.S. manufacturers' share of the cotton sweater market fell from 73 percent in 1985 to 61 percent in 1987, and to 59 percent in the first half of 1988.

Duty-Paid Value and U.S. Producers' Price

Approximately 90 percent of Category 345 imports from Thailand during the first ten months of 1988 entered under TSUSA numbers 381.4160—men's cotton knit sweaters, not ornamented, and 384.2850—women's cotton knit sweaters not ornamented. These sweaters entered the U.S. at landed duty-paid values below U.S. producers' prices for comparable sweaters.

Thailand—Market Statement

Cotton Trousers, Slacks and Shorts—(Category 347/348)

January 1989.

Summary and Conclusions

U.S. general imports of cotton trousers, slacks and shorts—Category 347/348—from Thailand reached 262,227 dozen in the year ending October 1988 and were 232,532 dozen through the first ten months of 1988. Thailand's 1988 cotton trouser shipments to the U.S. were inhibited because Thailand overshipped its 1987 limit and the overshipment was charged against its 1988 limit. Thailand's 1988 Specific Limit for Category 347/348 was 262,362 dozen. Thailand's Category 347/348 imports embargoed on December 7, 1988.

The U.S. market for cotton trousers, slacks, and shorts—Category 347/348 is being disrupted by imports from Thailand. This market is threatened with even greater disruption following the expiration of the U.S./Thailand bilateral agreement at the end of 1988, as imports from Thailand can be expected to continue to grow rapidly in the absence of restrictions. Thailand has ample capacity to increase these shipments as evidenced by the fact that Thailand overshipped its 1987 Specific Limit and its 1988 imports embargoed in December. With the specific limit, the group limit, and the mechanism for paying back overshipments removed, the market disruption in Category 347/348 threatens to become more widespread.

U.S. Production, Market Share, and Import Penetration

U.S. production of cotton trousers, slacks, and shorts remained relatively flat between 1982 and 1986 while imports nearly doubled. The domestic manufacturers' share of the market dropped from 75 percent in 1982 to 61 percent in 1986. U.S. production increased in 1987 reaching 43,378,000 dozen and then fell during the first half of 1988 resulting in a year ending June 1988 production level of 42,153,000 dozen, three percent below the 1987 level. U.S. imports reached a record level 29,132,000 dozen in 1987, 14 percent above the 1986 level, and were up another five percent in the first half of 1988 over the January–June 1987 level. The domestic manufacturers' share of the market continued to drop, falling to 60 percent in 1987 and 56 percent for the year ending June 1988. The domestic manufacturers' share of the market fell to 55 percent in the first half of 1988. The ratio of imports to domestic production doubled, increasing from 33 percent in 1982 to 67 percent in 1987. The import to production ratio reached 80 percent in the first half of 1988.

Duty-Paid Value and U.S. Producers' Price

The majority of the Category 347/348 imports from Thailand during the first ten months of 1988 were entered under TSUSA numbers 361.6210—men's and boys' cotton woven shorts, not ornamented; 361.6240—men's cotton woven trousers and slacks except those of denim or corduroy, not ornamented; 384.4724—women's and girls' cotton woven shorts, not ornamented; and 384.4765—women's cotton woven trousers and slacks except those of denim, corduroy, and velveteen, not ornamented. These garments entered the U.S. at landed duty-paid values below U.S. producers' prices for comparable garments.

Thailand—Market Statement

Category 363—Cotton Towels

January 1989.

Summary and Conclusions

U.S. imports of cotton towels—Category 363—from Thailand were 15.3 million units during the year ending October 1988, nearly double the 8.9 million units imported a year earlier. Thailand is the third largest supplier, and the largest uncontrolled supplier, accounting for eleven percent of the total imports in the year ending October 1988. During the first ten months of 1988, imports from Thailand were 13.5 million units, up 62 percent from the 8.3 million units imported a year earlier.

The U.S. market for cotton towels is being disrupted by the sharp and substantial increase of imports from Thailand. With the expiration of the bilateral agreement at the end of 1988, restraints on these imports in effect during the latter half of 1988 are no longer in place. In the absence of these restraints, the rapid import growth in Category 363 from Thailand is expected to continue.

U.S. Production, Market Share, and Import Penetration

Between 1982 and 1987 U.S. production of cotton towels fluctuated, increasing in some years and declining in other years. U.S. production increased to 560.7 million units in 1987 but dropped five percent in the first half of 1988. U.S. imports on the other hand have increased in every year since 1982 reaching a record level 132.4 million units in 1987. U.S. cotton towel imports continue to increase through the first ten months of 1988, rising seven percent above the January-October 1987 level. The import to production ratio increased six percentage points, increasing from 18 percent in 1982 to 24 percent in 1987. The ratio increased another 3 percentage points in the first half of 1988, rising to 27 percent. The U.S. manufacturers' share of the cotton towel market declined from 85 percent in 1982 to 81 percent in 1987, and to 79 percent in the first half of 1988.

Duty Paid Import Values and U.S. Producer's Prices

Approximately 93 percent of Category 363 cotton terry towel imports from Thailand enter under TSUSA Nos. 366.1985 and 366.2460. These towels are being entered at duty-paid landed values well below U.S. producer prices for comparable towels.

Thailand—Market Statement

Category 369 Pt.—Cotton Dish Towels

January 1989.

Summary and Conclusions

United States imports of cotton dish towels—Category 369 Pt.—from Thailand were 337 thousand pounds (207 thousand dozen) during the year ending October 1988, double the 164 thousand pounds (156 thousand dozen) imported a year earlier. During the first ten months of 1988, imports from Thailand reached 304 thousand pounds (190 thousand dozen), more than three times the amount imported during the same period of 1987.

The U.S. market for cotton dish towels is being disrupted by the sharp and substantial increase of imports from Thailand. With the expiration of the bilateral agreement at the end of 1988, restraints on these imports in effect during the latter half of 1988 are no longer in place. In the absence of these restraints, the rapid import growth in Category 363 from Thailand is expected to continue.

U.S. Production, Market Share, and Import Penetration

U.S. production of cotton dish towels declined from 8.1 million dozen in 1984 to 6.6 million in 1985, a decrease of 19 percent. Production partially recovered in 1986, reaching 7.3 million dozen, but fell again in 1987 to a level of 5.2 million dozen, 28 percent below the 1986 level and 36 percent below the 1984 level. During the first half of 1988, production dropped 31 percent below the level in the comparable period of 1987.

U.S. imports of Category 369 Pt. cotton dish towels from all sources have been on the rise since 1984, reaching a record level 10.5 million dozens in 1987, an increase of 51 percent over the 1984 level. During the first ten months of 1988, imports of cotton dish towels were up one percent over the comparable period in 1987.

The ratio of imports to domestic production more than doubled between 1984 and 1987, increasing from 85 percent in 1984 to 202 percent in 1987. The ratio increased another 32 percent, reaching 266 percent during the first half of 1988.

The U.S. producers' share of the market for domestically produced and imported cotton dish towels declined in every year since 1984, falling from 54 percent in 1984 to 33 percent in 1987. The U.S. producers' share continued its decline during the first half of 1988, dropping to 27 percent.

Import Values

During the period January-August 1988, 69 percent of Thailand's Category 369 Pt. cotton dish towel imports entered under TSUSA No. 366.1720, cotton terry dish towels. The duty-paid landed values of Category 369 Pt. dish towels from Thailand are well below the U.S. producers' prices for comparable dish towels.

Thailand—Market Statement

Wool Sweaters—(Category 445/446)

January 1989.

Summary and Conclusions

U.S. imports of wool sweaters (Category 445/446) from Thailand reached 12,409 dozen during the year ending October 1988, 21 percent above the 10,263 dozen imported a year earlier. During the first ten months of 1988, imports of wool sweaters (Category 445/446) from Thailand reached 11,884 dozen, 32 percent increase above the 8,979 dozen imported during the same period of 1987 and 25 percent above the total imported in calendar year 1987.

The U.S. market for wool sweaters (Category 445/446) is being disrupted by imports from Thailand. This market is threatened with even greater disruption following the expiration of the U.S./Thailand bilateral agreement at the end of 1988, as imports from Thailand can be expected to continue to grow rapidly in the absence of restrictions. Thailand has ample capacity to increase these shipments as evidenced by the high level of imports attained in 1988. With the specific limit, the group limit, and other agreement mechanisms removed, the market disruption in Category 445/446 threatens to become more widespread.

U.S. Production, Market Share, and Import Penetration

U.S. production of wool sweaters (Category 445/446) has been on the decline since 1982, falling from 1,742,000 dozen in 1982 to 626,000 dozen in 1987, a 64 percent decline. Production in the first half of 1988 dropped 20 percent below the January-June 1987 level. Wool sweater imports increased from 2,582,000 dozen in 1982 to 3,185,000 in 1987, a 23 percent increase. The domestic manufacturers' share of the wool sweater market declined by 60 percent, falling from 40 percent in 1982 to 16 percent in 1987. The domestic manufacturers' share continued to fall in the year ending June 1988. The ratio of imports to domestic production increased nearly three and one-half times, increasing from 148 percent in 1982 to 509 percent in 1987. The import to production ratio reached 517 percent in the year ending June 1988.

Duty-Paid Value and U.S. Producers' Price

Approximately 95 percent of Category 445/446 imports from Thailand during the first ten months of 1988 entered under TSUSA number 381.7630—men's wool knit sweaters, valued over 5 U.S. dollars per pound, not ornamented; and 384.6371—women's wool knit sweaters, other than cashmere, valued over 5 U.S. dollars per pound, not ornamented. Approximately 28 percent of Thailand's shipments under TSUSA 381.7630 entered at an average landed duty-paid value of 212.45 U.S. dollars per dozen, while approximately 72 percent entered at 110.80 U.S. dollars per dozen on average. These sweaters entered the U.S. at landed duty-paid values below U.S. producers' prices for comparable sweaters.

Thailand—Market Statement

Women's and Girls' Wool Trousers, Slacks, and Shorts (Category 448)

January 1989.

Summary and Conclusions

U.S. imports of women's and girls' wool trousers, slacks, and shorts (Category 448) from Thailand reached 7,677 dozen during the year ending October 1988, 40 percent above the 5,496 dozen imported a year earlier. During the first ten months of 1988, Category 448 from Thailand reached 7,192 dozen, 35 percent above the 5,345 dozen imported during the same period in 1987 and 23 percent above the total imported in calendar year 1987.

The U.S. market for women's and girls' wool trousers, slacks, and shorts (Category 448) is being disrupted by imports from Thailand. This market is threatened with even greater disruption following the expiration of the U.S./Thailand bilateral agreement at the end of 1988, as imports from Thailand can be expected to continue to grow rapidly in the absence of restrictions. Thailand has ample capacity to increase these shipments as evidenced by the high level of imports attained in 1988. With the designated consultation level, the group limit, and other agreement mechanisms removed, the market disruption in Category 448 threatens to become more widespread.

U.S. Production, Market Share, and Import Penetration

U.S. production of women's and girls' wood trousers, slacks, and shorts has been on the decline since 1982 falling from 885,000 dozen in 1982 to 611,000 dozen in 1987, a 31 percent decline. Production in the first half of 1988 was down 21 percent from the January-June 1987 level. Women's and girls' wool trouser, slack, and short imports (Category 448) more than doubled between 1982 and 1987, increasing from 129,000 dozen in 1982 to 291,000 dozen in 1987. Imports through the first ten months of 1988 reached 316,000 dozen, 13 percent above the January-October 1987 level. The domestic manufacturers' share of the women's and girls' wool trouser, slack, and short market declined from 87 percent in 1982 to 68 percent in 1987. The domestic manufacturers' share of the market fell to 65 percent in the year ending June 1988. The ratio of imports to domestic production tripled, increasing from 15 percent in 1982 to 48 percent in 1987. The import to production ratio reached 53 percent in the year ending June 1988.

Duty-Paid Value and U.S. Producers' Price

Approximately 79 percent of Category 448 imports from Thailand during the first ten months of 1988 entered under TSUSA number 384.6365—women's, girls', and infants' wool knit trousers, slacks, and shorts, valued over 5 U.S. dollars per pound, not ornamented. These garments entered the U.S. at landed duty-paid values below U.S. producers' prices for comparable garments.

Thailand—Market Statement

Women's and Girls' Man-Made Fiber Coats—(Category 635)

January 1989.

Summary and Conclusions

U.S. imports of women's and girls' man-made fiber coats (Category 635) from Thailand reached 67,217 dozen during the year ending October 1988, 9 percent above the 61,977 dozen imported a year earlier. During the first ten months of 1988, imports of Category 635 from Thailand reached 49,037 dozen, 4 percent above the 46,971 dozen imported during the same period in 1987.

The U.S. market for women's and girls' man-made fiber coats is being disrupted by imports from Thailand. This market is threatened with even greater disruption following the expiration of the U.S./Thailand bilateral agreement at the end of 1988, as imports from Thailand can be expected to accelerate in the absence of restrictions. Thailand has ample capacity to increase these shipments as evidenced by the high level of imports attained in 1984. At that time Thailand exceeded its apparel group limit and the subsequent drop in imports in part reflected the reduction in quota available after deducting for the amount of the overshipments. With the Category 634/635 specific limit and the group limit removed, and the previous group overshipments already paid back, the market disruption in Category 635 threatens to become more widespread.

U.S. Production, Import Penetration and Market Share

U.S. production of women's and girls' man-made fiber coats peaked in 1983 and has been on the decline ever since, falling from 5,793,000 dozen in 1983 to 3,832,000 dozen in 1988, a 34 percent decline. Production recovered to 4,224,000 dozen in 1987 but is down 41 percent in the first half of 1988. The year ending June 1988 production level fell to 3,280,000 dozen, 14 percent below the 1988 level.

Imports increased from 3,454,000 dozen in 1982 to 4,023,000 dozen in 1987, a 16 percent increase. Imports through the first ten months of 1988 are up nearly nine percent over the January-October 1987 level.

The U.S. manufacturers' share of the women's and girls' man-made fiber coat market dropped from 62 percent in 1982 to 51 percent in 1987. The U.S. manufacturers' share fell to 41 percent in the first half of 1988. The ratio of imports to domestic production reached the record level of 147 percent during the first half of 1988, 60 percentage points above the 87 percent ratio for the first half of 1987.

Duty-Paid Value and U.S. Producers' Price

Approximately 70 percent of Category 635 imports from Thailand during the first ten months of 1988 entered under TSUSA Numbers 376.9612—women's, girls' and infants' coats and jackets coated, filled or laminated with rubber or plastics; 384.2316—women's and girls' coats of man-made fiber net or lace, whether or not ornamented; 384.9135—women's woven raincoats of man-made fiber, of three quarters in length or longer, not ornamented, and 384.9152—other women's woven coats of man-made fiber, not ornamented. These garments entered the U.S. at landed duty-paid values below U.S. producers' prices for comparable garments.

[FR Doc. 89-2133 Filed 1-30-89; 8:45 am]

BILLING CODE 3510-DR-M

Adjustment of an Import Limit for Certain Wool Textile Products Produced or Manufactured in Uruguay

January 25, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a limit.

EFFECTIVE DATE: January 20, 1989.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854)

The current limit for wool fabrics in Category 410 is being increased for carryover.

A description of the textile and apparel categories in terms of HTS numbers is available in the Correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 53 FR 44937, published on November 7, 1988). Also see 53 FR 2524, published on January 28, 1988.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

James H. Babb,

Chairman, Committee of the Implementation of Textile Agreements.

January 25, 1989

Commissioner of Customs
Department of the Treasury
Washington, DC 20229

Dear Mr. Commissioner:

This directive amends, but does not cancel, the directive issued to you on January 25, 1988 by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports into the United States of wool fabric in Category 410, produced or manufactured in Uruguay and exported during the period which began on February 1, 1988 and extends through January 31, 1989.

Effective on January 20, 1989, the directive of January 25, 1988 is amended to increase to 2,113,569 square meters the current limit for wool fabric in Category 410, as provided under the terms of the current bilateral agreement between the Governments of the United States and Uruguay.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions 5 U.S.C. 553(a) [1].

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89-2136 Filed 1-30-89; 8:45 am]

BILLING CODE 3510-DR-M

[1] The limit has not been adjusted to account for any imports exported after January 31, 1988.

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44. U.S.C. Chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: Defense Acquisition Regulation, Control Number 0704-0189.

Type of Request: Revision.

Average Burden Hours/Minutes Per Response: 24 Hours.

Frequency of Response: On occasion.

Number of Respondents: 40,000.

Annual Burden Hours: 3,520,000.

Annual Responses: 120,000.

Needs and Uses: This request concerns information supporting the administration of contracts (acquisition

programs) resulting from solicitations issued prior to April 1, 1984 and still containing Defense Acquisition Regulation clauses/provisions.

Affected Public: Businesses or other for-profit.

Respondent's obligation: Mandatory.

OMB Desk Officer: Ms. Eyvette R. Flynn.

Written comments and recommendations on the proposed information collection should be sent to Ms. Eyvette R. Flynn at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Pearl Rascoe-Harrison.

A copy of the information collection proposal may be obtained from, Ms. Rascoe-Harrison, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202-4302, telephone (202) 746-0933.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

January 26, 1989.

[FR Doc. 89-2250 Filed 1-30-89; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

DOD Advisory Group on Electron Devices; Advisory Committee Meeting

SUMMARY: Working Group C (Mainly Opto Electronics) of the DoD Advisory Group of Electron Devices (AGED) announces a closed session meeting.

DATE: The meeting will be held at 0900, Wednesday and Thursday, 15 & 16 February 1989.

ADDRESS: The meeting will be held at U.S. Army Strategic Defense Command, USASDC, Sensors Directorate, 106 Wynn Drive, Room 2D700, Redstone Arsenal, Huntsville, Alabama 35807.

FOR FURTHER INFORMATION CONTACT: Gerald Weiss, AGED Secretariat, 201 Varick Street, New York, 10014.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group C meeting will be limited to review of research and development programs which the military propose to initiate with industry, universities or in their laboratories. This opto-electronic device area includes such programs as imaging devices, infrared detectors and lasers. The review will include classified program details throughout.

In accordance with section 10(d) of Pub. L. No. 92-463, as amended, (5 U.S.C. App. II 10(d) (1982)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly, this meeting will be closed to the public.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

January 26, 1989.

[FR Doc. 89-2246 Filed 1-30-89; 8:45 am]

BILLING CODE 3810-01-M

DOD Advisory Group on Election Devices Advisory Committee Meeting

SUMMARY: Working Group B (Microelectronics) of the DOD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATE: The meeting will be held at 0900, Wednesday, February 22, 1989.

ADDRESS: The meeting will be held at Palisades Institute for Research Services, Inc., 2011 Crystal Drive, Suite 307, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Becky Terry, AGED Secretariat, 2011 Crystal Drive, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group B meeting will be limited to review of research and development programs which the military propose to initiate with industry, universities or in their laboratories. The Microelectronics area includes such programs as integrated circuits, charge coupled devices and memories. The review will include classified program details throughout.

In accordance with Section 10(d) of Pub. L. No. 92-463, as amended, (5 U.S.C. App. II 10(d) (1982)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly, this meeting will be closed to the public.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

January 26, 1989.

[FR Doc. 89-2247 Filed 1-30-89; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army

Notification of Availability of Draft Feasibility Study for Remediation of Landfill, Hamilton Air Force Base, Novato, CA

The U.S. Army Corps of Engineers made available for public review, on January 9, 1989, the Draft Feasibility Study for remediation of Landfill 26, Hamilton Air Force Base (AFB), Novato, California. This document specifically describes and addresses possible remedial alternatives to clean up the sale property landfill. The landfill was identified in the 1987 remedial investigation at Hamilton AFB as a site containing soil and refuse that, in some locations, exceeds criteria developed by the State of California for identification of hazardous waste.

The Draft Feasibility Study major findings include:

Landfill 26 presents insignificant health risks (both toxic and carcinogenic effects) to persons currently living or working at Hamilton AFB.

Left in its current condition, Landfill 26 will continue to pose no threat to human health. Development of Landfill 26 for residential or other restricted-use purposes requires extensive remediation within guidelines determined by Federal and State regulatory agencies to assure protection of human health.

The Draft Feasibility Study describes eight remedial alternatives for addressing contamination in the soil/refuse. These alternatives range from no action (requiring continued groundwater monitoring) to excavation and disposal of contaminated soil/refuse in appropriate commercial landfills and range in costs from $2.8 million to $53.5 million. The following eight remedial alternatives were identified:

No Action—No clean up actions taken at the landfill. Continued groundwater monitoring at the site would be necessary to establish and record that leachate is not moving off site. Cost is $2.8 million. Time frame is 30 years of monitoring.

Excavation and Disposal in a Commercial Landfill—All material equaling or exceeding State levels defining a hazardous waste would be

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removed from the site and transported to an off-site commercial Class I landfill. Materials not exceeding hazardous levels would be removed and transported to an off-site commercial Class II landfill. Excavated material would be replaced with clean fill. Cost is $53.5 million. Time frame is 2 years.

Closure in Place as Class I Landfill—The site would be closed where it is as a Class I hazardous waste landfill. No material would be removed. A engineered cap would be placed over the landfill to prevent erosion and water infiltration. A slurry wall would be placed around the landfill to control groundwater flow in and out of the landfill. Public access would be restricted. Cost is $10.6 million. Time frame is less than 2 years.

Fixation of Hazardous Material, Closure as a Class II Landfill— Material equaling or exceeding State levels defining hazardous waste would be excavated and mixed with materials such as Portland cement to fix and bind the contaminants. These fixed materials would be redeposited into the landfill. The site would then be capped and closed as a Class II landfill. This closure would require a variance permit from the California Department of Health Services. Cost is $13.2 million. Time frame is 3 years.

Excavation of Hazardous Waste and Closure as a Class II Landfill—All material equaling or exceeding hazardous definition levels would be excavated and removed to an off-site commercial Class I landfill. An engineered cap would be constructed on the landfill and the site would be closed as a Class II landfill. Cost is $30.9 million. Time frame is 2.5 years.

Soil Washing and Closure as a Class II Landfill—All material equaling or exceeding hazardous definition levels would be excavated and processed over a period of 4 years in an above ground washing system to remove metals and pesticides. Cleaned material would be redeposited in the landfill area. The washing solution would be treated and recycled into the washing system, then treated and discharged either to the Novato Sanitary District or nearby surface waters. The site would be closed as a Class II landfill. Cost is $19.4 million.

Biological Treatment and Excavation and Commercial Landfill Disposal of Hazardous waste—All material equal or exceeding hazardous definition levels would be excavated and disposed on an off-site commercial Class I Landfill. Petroleum product-contaminated soil exceeding 100 parts per million (mg/kg) would be excavated and treated on site in a land farm operation that would allow naturally occurring micro-organisms to feed on the petroleum and reduce the contamination. This material would then be removed and, with other material not exceeding definition levels, would be disposed in a Class III landfill. Cost is $39.4 million. Time frame is 7 years.

Fixation and Class I Closure of Landfill—All material equaling or exceeding hazardous definition would be excavated and fixed with material such as Portland cement. This material would be redeposited into the landfill area. An engineered cap would be constructed, and a slurry wall constructed around the landfill area. Security would be required. Cost is $15.7 million. Time frame is 3.5 years.

Remediation of soil/refuse will subsequently require localized groundwater remediation at the landfill. The Draft Feasibility Study describes six groundwater remedial alternatives utilizing various processes ranging in cost from $4.7 million to $18 million.

The Corps of Engineers has been conducting environmental investigation of the sale property at Hamilton AFB since May, 1985. To date, clean up actions on the sale property have included removal of containerized hazards (1985) and removal of 65 underground fuel structures (1988). Total cost expenditure for the Hamilton AFB clean up and investigations to date has been $13.8 million.

Copies of the Draft Feasibility for Landfill 26 will be available on 9 January 1989. At that time, copies may be obtained by calling the Sacramento District Corps of Engineers, (916) 551–2234, or by writing the Sacramento District Corps of Engineers, ATTN: CESPK–ED–M, 650 Capitol Mall, Sacramento, California 95814–4794. A limited number of copies of the study will also be available at the Hamilton Army Airfield Installation Manager's Office, Building No. 501, Hamilton Army Airfield.

Due to its large size, the remedial investigation report for the landfill referenced in the feasibility study, as well as a copy of the feasibility study, is available for review by the public at the following locations:

Marin County Library, Civic Center, San Rafael, California

Santa Rosa City Library, Main Branch, Santa Rosa, California

Building 501, Hamilton Army Airfield, Novato, California

6th Army Public Affairs Office, Bldg. 38, Presidio of San Francisco, San Francisco, California

Presidio of San Francisco Public Affairs Office, Bldg. 37, Presidio of San Francisco, San Francisco, California

A public meeting to discuss the environmental investigations at Hamilton and receive public comment on the landfill feasibility study is scheduled for February 17, 1989. The public meeting will be held at Hamilton Army Airfield in the Post Theater, Building 507. The meeting time and further details will be published at a later date.

John O. Roach II,

Army Liaison Officer With the Federal Register.

[FR Doc. 89–2162 Filed 1–30–89; 8:45 am]

BILLING CODE 3710–08–M

Open Meeting; Coastal Engineering Research Board

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following committee meeting:

Name of committee: Coastal Engineering Research Board (CERB).

Date of Meeting: February 16, 1989.

Place: Pulaski Building, Washington, DC.

Time: 8:30 a.m. to 2:00 p.m.

Proposed agenda: A review of the Dredging Research Program will be conducted. The session will consist of presentations and discussions on the Background to the Development of the Dredging Research Program, Present Status of Dredging Research Program, and general discussion and questions.

This meeting is open to the public, but since seating capacity of the meeting room is limited, advance notice of intent to attend, although not required, is requested in order to assure adequate arrangements for those wishing to attend.

Inquiries and notice of intent to attend the meeting may be addressed to Dr. James R. Houston, Chief, Coastal Engineering Research Center, U.S. Army Engineer Waterways Experiment Station, P.O. Box 631, Vicksburg, Mississippi 39181–0631.

Kenneth L. Denton,

Department of the Army, Alternate Liaison Officer for the Federal Register.

[FR Doc. 89–2057 Filed 1–30–89; 8:45 am]

BILLING CODE 3710–08–M

Corps of Engineers, Department of the Army

Intent To Prepare a Draft Environmental Impact Statement (DEIS) on Proposed Flood Control for the Rio Guanajibo Basin Near Mayaguez/Hormigueros and San German, Puerto Rico

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The proposal consists of structural measures to control flooding within portions of the subject basin.

CONTACT FOR FURTHER INFORMATION: Questions about the proposed action and DEIS can be answered by: Dr. Gerald Atmar, Chief, Environmental Studies Section, U.S. Army Corps of Engineers, Post Office Box 4970, Jacksonville, Florida 32232–0019, (904) 791–2615.

SUPPLEMENTARY INFORMATION:

1. The proposal consists of structural measures such as channelization (with and without lining), levees, gabions, and debris basins. No dams or reservoirs are being considered.

2. The following action alternatives will be considered:

a. 25-year flood protection.

b. 100-year flood protection.

c. Standard Project Flood (SPF) protection (approximately 200 to 250 years).

3. a. Public involvement will be solicited through a Scoping letter. Comments on alternatives and environmental concerns are invited from any affected Federal, State, and local agencies, affected Indian tribes, and other interested private organizations and parties.

b. Significant issues to be analyzed in depth in the DEIS are means to protect the mangrove and *Pterocarpus* forest at Cano Corazones near the mouth of the Rio Guanajibo.

c. Coordination with appropriate Federal and State agencies is required under provision of the Endangered Species Act and the National Historic Preservation Act.

4. A Scoping meeting is not contemplated.

5. The DEIS is expected to be available for review in the 4th quarter of FY 89.

Dated: January 26, 1989.

John O. Roach II,

Army Liaison Officer with the Federal Register.

[FR Doc. 89–2163 Filed 1–30–89; 8:45 am]

BILLING CODE 3710–AJ–M

Army Corps of Engineers

Meetings: Inland Waterways Users Board

January 24, 1989.

AGENCY: Department of the Army, Corps of Engineers, DOD.

ACTION: Notice of open meeting.

SUMMARY: In accordance with section 10 (a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee meeting:

Name of Committee: Inland Waterways Users Board.

Date of Meeting: March 7, 1989.

Place: Quality Inn—Capitol Hill, 415 New Jersey Avenue NW., Washington, DC 20001.

Time: 9:00 a.m. to 5:00 p.m.

Proposed Agenda

A.M. Session

9:00 Business Session
- —Call to Order
- —Installation of Newly Appointed and Reappointed Members
- —Disposition of Prior Meeting Minutes
- —Summary of 1988 Activities and Second Annual Report

9:30 Presentation of Information to Board
- —State of the Ohio River System
- —Selection of Olmsted L&D Navigable Pass Design
- —Non-Federal Involvement in Planning, Design, and Construction
- —Summary and Explanation of 1988 Inland Waterways Review

11:30 Lunch

P.M. Session

12:30 Status of Appropriations Activities: The FY 90 Budget

1:00 Discusson of Congressional Testimony
- —FY 90 Budget Priorities
- —Supporting Rational and Policy Recommendations
- —Preparation and Presentation of Testimony
- —Board Objectives for 1989

3:15 Other Business

3:45 Public Comment Period

4:15 Instructions to Support Staff

4:45 Adjournment

This meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee.

For further information contact: Mr. William C. Holliday, Headquarters, U.S. Army Corps of Engineers, CECW–P, Washington, DC 20314–1000 at (202) 272–0146.

Wilbur T. Gregory, Jr.,

Colonel, Corps of Engineers, Executive Director of Civil Works.

[FR Doc. 89–2164 Filed 1–30–89; 8:45 am]

BILLING CODE 3710–92–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests Under OMB Review

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comment on or before March 2, 1989.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Jim Houser, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue SW., Room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster (202) 732–3915.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director, Office of Information Resources Management, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection,

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grouped by Office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: January 26, 1989.

Carlos U. Rice

Director for Office of Information Resources Management.

Office of Bilingual Education and Minority Languages Affairs

Type of Review: Reinstatement
Title: Annual Survey of Bilingual Education
Frequency: Annually
Affected Public: State or local governments
Reporting Burden:
Responses: 57
Burden Hours: 3420
Recordkeeping:
Recordkeepers: 0
Burden Hours: 0
Abstract: State Educational Agencies are required to collect, aggregate, analyze and publish data and information on their population of limited English proficient persons and report this data to the Department. The Department uses this information to make its annual report to Congress.

[FR Doc. 89-2183 Filed 1-30-89; 8:45 am]
BILLING CODE 4000-01-M

Advisory Council on Education Statistics; Meeting

AGENCY: Advisory Council on Education and Statistics (ACES).

ACTION: Notice of Meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Advisory Council on Education Statistics. This notice also describes the functions of the Council. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATE: February 16-17, 1989.

ADDRESS: 555 New Jersey Avenue NW., Room 326, Washington, DC 20208.

FOR FURTHER INFORMATION CONTACT: Iris Silverman, Executive Director, Advisory Council on Education Statistics, 555 New Jersey Avenue, Room 400J, Washington, DC 20208-5574. Telephone: (202) 357-6831.

SUPPLEMENTARY INFORMATION: The Advisory Council on Education Statistics is established under section 406(c)1) of the Education Amendments of 1974, Pub. L. 93-380. The Council is established to review general policies for the operation of the National Center for Education Statistics (NCES) in the Office of Educational Research and Improvement and is responsible for advising on standards to insure that statistics and analysis disseminated by NCES are of high quality and are not subject to political influence. The meeting of the Council is open to the public. The proposed agenda includes the following:

- NELS 88: Supplements to the First Follow-up
- Integrated Postsecondary Education Data System
- Standards for Acceptance of Outside Data
- Review of NCES Program Evaluation Efforts
- Linkages Between CCD and Census Mapping
- Council Business

Records are kept of all Council proceedings and are available for public inspection at the Office of the Executive Director, Advisory Council on Education Statistics, 555 New Jersey Avenue NW, Room 400J, Washington, DC 20208-5574.

Dated: January 24, 1989.

Patricia M. Hines,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 89-2189 Filed 1-30-89; 8:45 am]
BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Voluntary Agreement and Plan of Action to Implement the International Energy Program; Meetings

In accordance with section 252(c)(1)(A)(i) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(i)), the following meeting notices are provided:

I. A meeting of the Industry Board (IAB) to the International Energy Agency (IEA) will be held on Tuesday, February 7, 1989, at the offices of the IEA, 2, rue Andre Pascal, Paris, France, beginning at 10:00 a.m. The agenda for the meeting is as follows:

1. Opening remarks.
2. Approval of Record Note for IAB.
3. Proposal for streamlining IAB activities.
4. AST-6 follow-up:
A. AST-6 Appraisal Reports:
1. Report by the Industry Supply Advisory Group (ISAG).
2. Report by the Secretariat.
3. Reports by the National Emergency Sharing Organizations (NESOs).
4. Reports by Reporting Companies.
5. Draft Appraisal by the Standing Group on Emergency Questions (SEQ) to the Governing Board.
B. Work Program for Emergency Management Manual (EMM) update.
5. Other emergency preparedness issues—Seasonality in Trigger Calculation—a Canadian proposal.
6. Workshop—progress report on the workshop on "Practical Aspects of Stockdraw."
7. Future work program.
8. Date of next IAB Meeting.

II. A meeting of the IAB will be held on Wednesday, February 8, 1989, at the offices of the IEA, at the aforesaid address beginning at 9:30 a.m. This meeting is being held in order to permit attendance by representatives of U.S. company members of the IAB at a meeting of the IEA's Standing Group on Emergency Questions (SEQ) which is scheduled to be held at the aforesaid location on that date. The agenda for the meeting is under the control of the SEQ. It is expected that the following draft agenda will be followed:

1. Adoption of the Agenda.
2. Summary Record of the 60th Meeting.
3. AST-6 follow-up.
A. AST-6 Appraisal Reports:
1. Report by ISAG.
2. Report by the Secretariat.
3. NESO reports.
4. Reporting Company reports.
5. Draft SEQ appraisal to the Governing Board.
B. Work program for EMM update.
4. Other emergency preparedness issues—Seasonality in Trigger Calculation—a Canadian proposal.
5. Workshop—progress report on the workshop on "Practical Aspects of Stockdraw."
6. Other topics:
A. End-January Oil Market Report.
B. Base Period Final Consumption (4Q87-3Q88).
7. Any other business.
8. Date of next meeting.

III. A meeting of the IAB will be held on Thursday, February 9, 1989, and possibly will continue on Friday, February 10, 1989, at the aforesaid address. The meeting will commence on February 9, following completion of the SEQ meeting which is scheduled to commence on February 8, 1989. This meeting is being held to permit attendance by representatives of U.S. company members of the IAB at a meeting of representatives of Participating Countries which is scheduled to be held at the aforesaid location on those dates, for the purpose of advising the Secretariat in its preparation for a workshop on the subject of "Practical Aspects of Stockdraw." The agenda for the meeting is under the control of the Secretariat. It is expected that the agenda will cover the following items:

1. Terms of reference for workshop on "Practical Aspects of Stockdraw."
2. Relevant subjects for discussion and development of outlines.
3. Any other business.

As provided in section 252(c)(1)(A)(ii) of the Energy Policy and Conservation Act, the meetings are open only to representatives of members of the IAB, their counsel, representatives of members of the IEA's Standing Group on Emergency Questions (SEQ), representatives of the Departments of Energy, Justice, State, the Federal Trade Commission, and the General Accounting Office, representatives of Committees of the Congress, representatives of the IEA, representatives of the Commission of the European Communities, and invitees of the IAB, the SEQ, or the IEA.

Issued in Washington, DC, January 25, 1989.

Frank S. Ruddy,

General Counsel.

[FR Doc. 89-2206 Filed 1-30-89; 8:45 am]
BILLING CODE 6450-01-M

Economic Regulatory Administration

[ERA Docket No. 88-75-NG]

Coastal Gas Marketing Co., Application To Export Natural Gas to Mexico

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of applicaton for blanket authorization to export natural gas to Mexico.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on December 30, 1988, of an application filed by Coastal Gas Marketing Company (Coastal Gas), requesting blanket authorization to export up to 105 Bcf of natural gas from the United States to Mexico for short-term and spot market sales over a two-year period beginning on the date of first delivery.

The application is filed with the ERA pursuant to section 3 of the Natural Gas Act and DOE Delegation Order No. 0204-111. Protests, motions to intervene, notices of intervention and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed no later than March 2, 1989.

FOR FURTHER INFORMATION CONTACT:
Larine A. Moore, Natural Gas Division, Economic Regulatory Administration, U.S. Department of Energy, Forrestal Building, Room 3F-056, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-9478.
Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-6667.

SUPPLEMENTARY INFORMATION:

Coastal Gas, a Delaware corporation with its principal place of business located in Houston, Texas, proposes to export domestically produced natural gas to Mexico from the United States for resale to purchasers in Mexico on an interruptible or firm basis for a term of two years beginning with date of first delivery. Coastal Gas, a marketer of natural gas, states authority would be used primarily to make sales to Petroleous Mexicanos (Pemex) for the local distribution by Pemex to residential and industrial users.

Coastal Gas states it currently is negotiating a sales contract with Pemex for up to 140 MMcf/d at a base price of $2.53 (U.S.) per million Btu, adjusted monthly to an index of interstate gas pipeline sales. Because the applicant contemplates other sales, authorization is requested for 105 Bcf, plus an additional 41 Bcf for potential sales, during the two-year period. Applicant states that sales transactions, including the final arrangement with Pemex, will be the product of arm-length negotiations, and the terms of each arrangement will reflect prevailing market conditions. Coastal Gas intends to use existing facilities in order to export the natural gas requested, and notes it proposes using in connection with the Pemex transaction an interconnection between the pipeline facilities of Texas Eastern Transmission Corporation and Pemex near Reynosa, Tamailipas, Mexico. Coastal Gas intends to comply with the ERA's quarterly reporting requirements.

This export application will be reviewed pursuant to Section 3 of the Natual Gas Act and the authority contained in DOE Delegation Order No. 0204-111. The decision on whether this export of natural gas is in the public interest will be based upon the domestic need for the gas and other matters deemed to be appropriate. The applicant argues that current excess gas supplies evidence a lack of domestic need for this gas to serve regional and national markets. In addition, the applicant states that this export arrangement will reduce trade barriers between the U.S. and Mexico, and aid efforts to reduce the current U.S. trade deficit. Parties opposing this arrangement bear the burden of overcoming Coastal Gas' assertions.

All parties should be aware that if the ERA approves this export, it may permit the export of the gas at any international border point where existing transmission facilities are located.

Coastal Gas requests that an authorization be granted on an expedited basis. The ERA's decision on Coastal Gas' request for expedited treatment will not be made until all responses to this notice have been received and evaluated.

NEPA Compliance

On August 9, 1988, the DOE published in the **Federal Register** (53 FR 29934) a notice of proposed amendments to its guidelines for compliance with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, effective on an interim basis upon publication. In that notice, the DOE proposes to amend the agency's NEPA guidelines to add to its list of categorical exclusions the approval or disapproval of an import-export authorization for natural gas in cases not involving new construction. Application of the categorical exclusion in any particular case raises a rebuttable presumption that the ERA's action is not a major Federal action under NEPA. Unless the ERA receives comments indicating the presumption does not or should not apply in this case, no further NEPA review will be conducted by the DOE.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests,

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motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590.

Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room 3F-056, RG-23, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-9478. They must be filed no later than 4:30 p.m. e.s.t., March 2, 1989.

A decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR Sec. 590.316.

A copy of Coastal Gas' application is available for inspection and copying in the Natural Gas Division Docket Room, 3F-056 at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, January 25, 1989.

Anthony J. Como,

Acting Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 89-2208 Filed 1-30-89; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 89-04-NG]

Valero Industrial Gas, L.P.; Application To Amend an Authorization To Export Natural Gas to Mexico

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of application to amend a blanket authorization to export natural gas to Mexico.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on January 19, 1989, of an application filed by Valero Industrial Gas, L.P. (Vigas) requesting that the blanket authorization, previously granted in DOE/ERA Order No. 199 (Order 199), issued October 20, 1987, be amended to increase the 4.38 Bcf of natural gas authorized for export to Mexico by an additional 27.5 Bcf over the remainder of the current term ending November 1, 1989. Vigas requests expedited consideration and approval by February 23, 1989, of its application for amendment to ensure continuity of service to general service customers of Petroleos Mexicanos (Pemex).

The application is filed with the ERA pursuant to Section 3 of the Natural Gas Act and DOE Delegation Order No. 0204-111. Protests, motions to intervene, notices of intervention and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed no later than February 15, 1989.

FOR FURTHER INFORMATION:

Edward J. Peters, Jr., Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, U.S. Department of Energy, Forrestal Building, Room 3H-087, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-6162.

Diane J. Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-6667.

SUPPLEMENTARY INFORMATION: Order 199, issued on October 20, 1987, granted Vigas blanket authorization to export up to 4.38 Bcf of natural gas to Mexico over a two-year period, beginning on the date of first delivery, November 1, 1987, to November 1, 1989. This export volume was based on a contract between the applicant and Pemex for the sale and purchase of up to 6,000 MMBtu per day for a two-year term. Pemex resells the gas to general service customers, including residential, commercial and industrial customers, in the two of Piedras Negras, Coahuila, Mexico.

Vigas requests amended export authority in order to serve Pemex under a second agreement for a term that corresponds to its existing authorization. Pemex has requested additional gas in amounts up to 95,000 MMBtu per day at Reynosa for general service use in and near the city of Monterrey, Mexico. According to the application, additional service is necessary because deliverability from existing local reserves is not sufficient to meet growing requirements of Pemex's distribution customers in the Monterrey area. Vigas commenced additional daily sales of up to 95,000 MMBtu to Pemex at Reynosa on January 16, 1989. This maximum daily quantity correlates to the additional 27.5 Bcf fo.. which Vigas requests export authority through November 1, 1989.

According to Vigas, sales under both agreements are made on a short-term basis only if the gas is available to Vigas and only if Pemex needs and requests the gas. Vigas asserts that the specific terms of the Monterrey and any other contract will reflect arms-length negotiations and will depend on prevailing natural gas market conditions.

In support of its request for expedited action, Vigas states that it began delivery of gas at the new rate of 101,000 MMBtus on January 16, 1989. At such a rate, the balance of its authorized export volume will be depleted by February 23, 1989. Unless its authorization is amended as requested, Vigas will have to stop delivery of gas to Pemex which in turn will curtail Pemex's service to Piedras Negras and Monterrey. Vigas states that it currently is the only supplier for Piedras Negras and that it provides a significant portion of the Monterrey general service requirements. Based on this information, the initial intervention and comment period is limited to 15 days. Further procedures are not waived at this time and will be determined as necessary and appropriate to develop a decisional record.

This application for amendment will be reviewed pursuant to Section 3 of the Natural Gas Act and the authority contained in DOE Delegation Order No. 0204-111. The decision on whether the increased export of natural gas is in the public interest will be based upon the domestic need for the gas and on whether the arrangement is consistent with the DOE policy of promoting competition in the natural gas marketplace by allowing parties to freely negotiate their own trade arrangements. The applicant asserts that available gas supplies are more than adequate to provide the proposed increased export, and that the export arrangement will be competitive and in the public interest. Parties, especially those that may oppose this application, should comment in their responses on these matters.

All parties should be aware that if this amendment is granted, only the total additional amount of authorized volumes for the remainder of the term without any daily limit may be designated in order to provide Vigas with maximum flexibility of operation. In addition, the export of gas to Mexico may be permitted at any existing point of exit and through any existing transmission system.

NEPA Compliance

On August 9, 1988, the DOE published in the Federal Register (53 FR 29934) a notice of proposed amendments to its guidelines for compliance with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, effective on an interim basis upon publication. In that notice, the DOE proposed to amend the agency's NEPA guidelines to add to its list of categorical exclusions the approval or disapproval of an import/export authorization for natural gas in cases not involving new construction. Application of the categorical exclusions in any particular case raises a rebuttable presumption that the ERA's action is not a major Federal action under NEPA. Unless the ERA receives comments indicating the presumption does not or should not apply in this case, no further NEPA review will be conducted by the DOE.

Public Comment Procedures

In responses to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590.

Protests, motion to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Natural Gas Division, Office of Fuels Programs, Department of Energy, Room 3F-056, RG-23, Forrestal building, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 586-9478. They must be filed no later than 4:30 p.m., February 15, 1989.

It is intended that a decisional record be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or a trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Vigas' application is available for inspection and copying in the Natural Gas Division Docket Room, 3F-056, at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, January 27, 1989.

Anthony J. Como,

Acting Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 89-2333 Filed 1-30-89; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. EL87-37-002, et al.]

Arkansas Power & Light Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. Arkansas Power & Light Company

[Docket No. EL87-37-002]

January 25, 1989

Take notice that on Arkansas Power & Light Company (AP&L) tendered for filing a rate schedule applicable to North Arkansas Electric Cooperative, Incorporated containing the same terms and conditions as those contained in the Farmers Electric Cooperative Corporation Agreement pursuant to the Commission's order issued September 23, 1988.

Comment date: February 3, 1989, in accordance with Standard Paragraph E at the end of this notice.

2. Metropolitan Edison Company

[Docket No. ER87-34-004]

January 25, 1989

Take notice that on January 9, 1989, Metropolitan Edison Company (Met-Ed) tendered for filing its compliance filing pursuant to the Commission's Opinion and Order issued on July 13, 1988.

Comment date: February 7, 1989, in accordance with Standard Paragraph E at the end of this notice.

3. Coso Energy Developers (BLM Facility)

[Docket No. QF86-590-003]

January 26, 1989

On January 9, 1989, Coso Energy Developer (Applicant), c/o California Energy Company, Inc., 601 California Street, 9th Floor, San Francisco, California 94108, submitted for filing an application for recertification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility is located at the Naval Weapons Center of the United States Navy at China Lake, near Ridgecrest, California. The facility will consist of three steam turbine generating units. The primary energy source will be geothermal fluids.

The original application was filed by California Energy Company, Inc., and was granted on August 6, 1986 (36 FERC ¶ 62,149). A prior application for

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recertification was filed by Coso Energy Developers, and was granted on October 3, 1988 (45 FERC ¶ 61,003).

The instant recertification is requested due to transfer of the rights to construct, own and operate the transmission line and associated equipment to Coso Transmission Line Partners, a California general partnership. In addition, Public Services Enterprise Group Incorporated and Dominion Resources, Inc., two electric utility holding companies, will have equity interest in the facility.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

4. Coso Power Developers (Navy II Facility)

[Docket No. QF88-801-002]

January 26, 1989

On January 9, 1989, Coso Power Developer (Applicant), c/o California Energy Company, Inc., 601 California Street, 9th Floor, San Francisco, California 94108, submitted for filing an application for recertification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility is located at the Naval Weapons Center of the United States Navy at China Lake, near Ridgecrest, California. The facility will consist of three steam turbine generating units. The primary energy source will be geothermal fluids.

The original application was filed by California Energy Company, Inc., and was granted on August 8, 1988 (30 FERC ¶ 62,150). A prior application for recertification was filed by Coso Energy Developers, and was granted on October 3, 1988 (45 FERC ¶ 61,003).

The instant recertification is requested due to transfer of the ownership of the facility from Coso Energy Developers to the Applicant and transfer of the rights to construct, own and operate the transmission line and associated equipment to Coso Transmission Line Partners, a California general partnership.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-2228 Filed 1-30-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER89-177-000 et al.]

Florida Power Corp. et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

January 24, 1989.

Take notice that the following filings have been made with the Commission:

1. Florida Power Corporation

[Docket No. ER89-177-000]

Take notice that on January 12, 1989, Florida Power Corporation (Florida Power) tendered for filing the Contract for Interchange Service dated December 1, 1981 between Florida Power Corporation and the City of St. Cloud: (1) Service Schedule F, "Assured Capacity and Energy Interchange Service"; (2) Service Schedule H, "Reserve Interchange Service"; (3) Service Schedule I, "Regulating Interchange Service"; (4) Service Schedule X, "Extended Economy Interchange Service"; and (5) An amended Article IV of the Contract for Interchange Service listing Schedules F, H, I and X as Service Schedules under the Contract.

Florida Power requests that the filing be made effective as rate schedules retroactive to December 1, 1988, and therefore, requests waiver of the sixty day notice requirements. Alternatively, if the waiver is not granted Florida Power requests an effective date sixty days after the filing date. Copies of the filing have been served on the City of St. Cloud and the Florida Public Service Commission.

Comment date: February 7, 1989, in accordance with Standard Paragraph E at the end of this document.

2. Niagara Mohawk Power Corporation

[Docket No. ER89-178-000]

Take notice that on January 10, 1989, Niagara Mohawk Powser Corporation (Niagara Mohawk), tendered for filing, as a rate schedule, a supplement agreement between Niagara and Consolidated Edison Company of New York, Inc. (Consolidated Edison) dated September 28, 1988.

Niagara presently has on file an agreement with Consolidated Edison dated April 1, 1979 last amended December 4, 1987. The original agreement is to provide transmission service for the delivery of diversity power and energy from the Power Authority of the State of New York (PASNY) to Consolidated Edison. The diversity power and energy is in turn exchanged by PASNY with Hydro Quebec. This agreement is designated as Niagara Mohawk Power Corporation Rate Schedule FERC No. 113. This new agreement is being transmitted as a supplement to the existing agreement and supersedes and amends Supplement No. 10.

The September 28, 1988 agreement, which is a supplement to the original agreement, revises the transmission rates. Niagara requests a waiver of the Commission's prior notice requirements in order to allow the September 28, 1988 agreement to become effective April 1, 1988. Niagara Mohawk states that Consolidated Edison has agreed to the proposed effective date.

Copies of the filing were served upon Consolidated Edison Company of New York, Inc. and the Public Service Commission of New York.

Comment date: February 7, 1989, in accordance with Standard Paragraph E at the end of this notice.

3. Mississippi Power & Light Company

[Docket No. ER89-170-000]

Take notice that Mississippi Power & Light Company (MP&L), on January 9, 1989, tendered for filing three letter agreements for sale of energy to the Tennessee Valley Authority.

MP&L requests an effective date of December 5, 1988 for the First Letter Agreement, December 10, 1988 for the Second Letter Agreement, and January 1, 1989 for the Third Letter Agreement. MP&L requests waiver of the Commission's notice requirements.

Comment date: February 8, 1989, in accordance with Standard Paragraph E at the end of this notice.

4. Niagara Mohawk Power Corporation

[Docket No. ER89-175-000]

Take notice that Niagara Mohawk Power Corporation (Niagara Mohawk), on January 12, 1989 tendered for filing an agreement between Niagara Mohawk and Consolidated Edison Company of New York, Inc. (Con Ed) dated September 28, 1988, providing for certain transmission services to Con Ed. This agreement is designated as Niagara Mohawk Power Corporation Rate Schedule FERC No. 90. This new agreement is being transmitted as a supplement to the existing agreement.

Under Rate Schedule No. 90, Niagara delivers Fitzpatrick power and energy between the New York Power Authority and Con Ed. Paragraph 2.3 of Rate Schedule No. 90, as amended on August 28, 1980, states that Niagara Mohawk will recalculate the annual fixed-charge rate effective September 1 of each year for the ensuing 12-month period using previous year-end data and cost of capital data as determined by the New York State Public Service Commission in Niagara Mohawk's most recent retail electric rate proceeding. Niagara requests an effective date of September 1, 1988.

Copies of the filing were served upon Con Ed and the New York State Public Service Commission.

Comment date: February 7, 1989, in accordance with Standard Paragraph E at the end of this notice.

4. SEMASS Partnership

[Docket No. ER89-174-000]

Take notice that on January 11, 1989, SEMASS Partnership (SEMASS), a qualifying small power production facility, tendered for filing as a rate schedule change an executed Power Sale Agreement (the Agreement) between SEMASS and Commonwealth Electric Company (CEC) for a unit sale of capacity and energy from a solid waste resource recovery and electric generating facility to be located in Rochester, Massachusetts (the "Facility"). The Facility is composed of two parts: The Original Facility, which was the subject of the initial rate schedule (ER87-357-000), and the Expansion Facility, which is the subject of the rate schedule change. SEMASS is subject to the Commission's ratemaking jurisdiction because its power production capacity is in excess of 30 megawatts. SEMASS also requests waiver of the Commission's regulations requiring that the rate schedules be submitted no more than 120 days before the rates are to become effective.

The proposed rates, as set forth in the Agreement, are negotiated rates based on CEC's avoided costs of fuel and energy. The proposed rates are subject to credits due CEC in the event the weighted average of fees per ton received by SEMASS for refuse exceed a certain amount, as more particularly described in Article IV(b) of the Agreement. The proposed rates are further subject to change in the event CEC requires the Facility to operate at Full Capacity, which requires consumption of Alternate Fuel, as more specifically described in Article IV(g) of the Agreement.

Copies of the rate schedule change filing have been served upon CEC and the Massachusetts Department of Public Utilities.

Comment date: February 7, 1989, in accordance with Standard Paragraph E at the end of this notice.

6. Niagara Mohawk Power Corporation

[Docket No. ER89-183-000]

Take notice that on January 17, 1989, Niagara Mohawk Power Corporation (Niagara Mohawk) tendered for filing an agreement between Niagara Mohawk and Central Vermont Public Service Corporation (CVPS) dated November 8, 1988 providing for certain transmission services to CVPS. This agreement provides for the transmission and delivery by Niagara Mohawk of 10 MW of firm power purchased by CVPS from New York State Electric and Gas (NYSEG). The term of the agreement is from November 1, 1988 until April 30, 1989.

An effective date of November 1, 1988 is proposed. Niagara Mohawk states that waiver of the Commission's notice requirements is requested. Niagara Mohawk further states that CVPS has consented to the November 1, 1988 effective date.

Copies of this filing were served upon CVPS and the New York State Public Service Commission.

Comment date: February 7, 1989, in accordance with Standard Paragraph E at the end of this notice.

7. Pacific Gas and Electric Company

[Docket No. ER89-169-000]

Take notice that on January 6, 1989, Pacific Gas and Electric Company (PG&E) tendered for filing a Letter Agreement dated August 29, 1984, between PG&E and the Department of Water Resources of the State of California (DWR) which resolves a dispute regarding the 1982 Comprehensive Agreement between the Parties and the December 31, 1982 Settlement Agreement between the Parties. The Letter Agreement addresses operating and billing procedures during certain curtailment periods, and was effective during the period September 25, 1984 through April 30, 1987, after which time the provisions of the Letter Agreement became moot.

Copies of this filing were served upon DWR and the California Public Utilities Commission.

Comment date: February 7, 1989, in accordance with Standard Paragraph E at the end of this notice.

8. Arizona Public Service Company

[Docket No. ER89-181-000]

Take notice that on January 17, 1989, Arizona Public Service Company (APS) tendered for filing an Agreement or Sale of Economy Energy (Economy Energy Agreement and an Interconnection Agreement—Service Schedule A-3—Emergency Assistant Agreement) both between APS and Utah Power and Light (UP&L) executed December 1, 1988 and December 22, 1988, respectively.

The Economy Energy Agreement provides that Economy Energy sales by APS to UP&L shall be priced at one of the following rates: (a) A ceiling rate concept based in part on the fixed costs associated with facilities used to produce the costs associated with facilities used to produce the required energy; (b) a "split-the-savings" concept; or (c) a selling price based on 120 percent of cost to produce such energy. The Emergency Assistance Agreement provides for the supply of emergency power and energy at the rate level specified in the Economy Energy Agreement.

Both Agreements supersede similar such services currently provided pursuant to APS FERC Rate Schedule 26.

APS with the concurrence of UP&L has requested waiver of the Commission's notice requirements so that these agreements may become effective December 1, 1988 as agreed between the parties.

Copies of this filing are being served upon UP&L, the Arizona Corporation Commission and the Public Service Commission of Utah.

Comment date: February 7, 1989, in accordance with Standard Paragraph E at the end of this notice.

9. Sierra Pacific Power Company

[Docket No. ER88-553-000]

Take notice that on January 4, 1989, Sierra Pacific Power Company (Sierra) tendered for filing an amendment to its rate filing in which Sierra proposed changes in rates for wheeling services Sierra provides to Bonneville Power Administration. The amendment provides no changes to Sierra's

proposed rate filing, but only provides information in response to the Commission's October 6, 1988 deficiency letter.

Comment date: February 3, 1989, in accordance with Standard Paragraph E at the end of this notice.

10. Idaho Power Company

[Docket No. ER89-180-000]

Take notice that on January 13, 1989, Idaho Power Company (IPC) tendered for filing, a Short-term Agreement for Supply of Power and Energy (Agreement) dated September 12, 1988, between Sierra Pacific Power Company and Idaho Power Company. The term of the Agreement is from May 1, 1988, to May 31, 1989.

IPC requests waiver of the notice requirements in order to permit the agreement to become effective on December 1, 1988.

Comment date: February 7, 1989, in accordance with Standard Paragraph E at the end of this document.

11. Allegheny Power Service Corporation on Behalf of Monongahela Power Company, The Potomac Edison Company, West Penn Power Company (The APS Companies)

[Docket No. ER88-615-000]

Take notice that on December 27, 1988, Allegheny Power Service Corporation on behalf of Monongahela Power Company, the Potomac Edison Company and West Penn Power Company ("the APS Companies"), filed a response to the request of the Commission Staff for additional information in support of the filing in this docket.

Copies of the filing have been provided to AMP—Ohio, Elkem Metals Company, the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, and the West Virginia State Corporation Commission, and the West Virginia Public Service Commission.

Comment date: February 3, 1989, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protects will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-2177 Filed 1-30-89; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 485-017 Georgia]

Georgia Power Co.; Availability of Environmental Assessment

January 26, 1989.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing (OHL) has reviewed the application requesting approval for nonproject use of lands and waters of the Bartletts Ferry Project on the Chattahoochee River. The staff of OHL's Division of Project Compliance and Administration (DPCA) has prepared an environmental assessment (EA) for the proposed action. In the EA, staff concludes that approval of the nonproject use of project lands and waters would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, Room 1000, of the Commission's offices, located at 825 North Capitol Street NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 89-2234 Filed 1-30-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP89-691-000, et al.]

Northern Natural Gas Co., et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Northern Natural Gas Company Division of Enron Corp.

[Docket No. CP89-691-000]

January 25, 1989.

Take notice that on January 24, 1989, Northern Natural Gas Company, Division of Enron Corp. (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP89-691-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide a transportation service for Shell Gas Trading Company (Shell Gas Trading), a broker, under the blanket certificate issued in Docket No. CP86-435-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northern states that pursuant to a transportation agreement dated May 1, 1988, under its Rate Schedule FT-1, it proposes to transport up to 30,000 MMBtu per day equivalent of natural gas for Shell Gas Trading from point(s) of receipt offshore and onshore listed in Appendix "A" of the agreement to redelivery point(s), also listed in Appendix "A". The subject transportation service may involve interconnections between Northern and various transporters.

Northern further states that the average daily and annual quantities would be equivalent to 30,000 MMBtu and 10,950,000 MMBtu, respectively. Service commenced May 1, 1988, under the provisions of § 284.223(a) as reported in Docket No. ST89-1868 (filed January 24, 1989).

Comment date: March 13, 1989, in accordance with Standard Paragraph G at the end of this notice.

2. Northern Natural Gas Company Division of Enron Corp.

[Docket No. CP89-691-000]

January 25, 1989.

Take notice that on January 24, 1989, Northern Natural Gas Company, Division of Enron Corp. (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP89-691-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide a transportation service for OXY USA Inc. (OXY), a producer, under the blanket certificate issued in Docket No. CP86-435-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northern states that pursuant to a transportation agreement dated June 6, 1988, under its Rate Schedule IT-1, it proposes to transport up to 55,000 MMBtu per day equivalent of natural gas for OXY from point(s) or receipt offshore and onshore listed in Appendix "A" of the agreement to redelivery point(s), also listed in Appendix "A". The subject transportation service may involve interconnections between Northern and various transporters.

Northern further states that the average daily and annual quantities would be equivalent to 55,000 MMBtu and 20,075,000 MMBtu, respectively. Service commenced June 6, 1988, under the provisions of § 284.223(a) as reported in Docket No. ST89-1868 (filed January 24, 1989).

Comment date: March 13, 1989, in accordance with Standard Paragraph G at the end of this notice.

3. Northern Natural Gas Company Division of Enron Corp.

[Docket No. CP89-691-000]

January 25, 1989.

Take notice that on January 24, 1989, Northern Natural Gas Company, Division of Enron Corp. (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP89-691-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide a transportation service for Oxy USA Inc. (OXY), a producer, under the blanket certificate issued in Docket No. CP86-435-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northern states that pursuant to a transportation agreement dated June 6, 1988, under its Rate Schedule IT-1, it proposes to transport up to 55,000 MMBtu per day equivalent of natural gas for OXY from point(s) or receipt offshore and onshore listed in Appendix "A" of the agreement to redelivery point(s), also listed in Appendix "A". The subject transportation service may involve interconnections between Northern and various transporters.

Northern further states that the average daily and annual quantities would be equivalent to 30,000 MMBtu and 10,950,000 MMBtu, respectively. Service commenced May 1, 1988, under the provisions of § 284.223(a) as reported in Docket No. ST89-1868 (filed January 24, 1989).

Comment date: March 13, 1989, in accordance with Standard Paragraph G at the end of this notice.

3. Texas Eastern Transmission Corporation

[Docket No. CP89-612-000]

January 25, 1989.

Take notice that on January 13, 1989, Texas Eastern Transmission Corporation (Texas Eastern), P.O. Box 2521, Houston, Texas 77252, filed in Docket No. CP89-612-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of a pipeline facilities looping its Penn-Jersey system to render tranportation of natural gas for CNG Transmission Corporation (CNG), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Texas Eastern is requesting authority to:

(1) Construct and operate approximately 29.89 miles of 36-inch pipeline loop at three locations on its existing Penn-Jersey pipeline system located in Pennsylvania and additional measuring and regulating facilities at M&R Station No. 1744.

(2) Render for CNG firm transportation of natural gas up to a Maximum Daily quantity (MAXDQ) of 224,332 dekatherms (dt) and such additional quantities on an interruptible basis as Texas Eastern and CNG may mutually agree.

It is claimed that installation of the proposed facilities on Texas Eastern's system would provide increased capacity sufficient to transport and deliver for the account of CNG 224,332 dt per day at the interconnection of Texas Eastern's system and CNG's PL-1 line at Texas Eastern's Perulack compressor station.

Texas Eastern claims that it would receive natural gas from CNG at an existing point of interconnection located at the Oakford Storage Field in Westmoreland County, Pennsylvania, and transport and redeliver equivalent quantities, less applicable shrinkage (currently proposed to be 0%), to CNG at the existing interconnection between Texas Eastern and CNG's Pipeline No. PL-1 located at Perulack, Pennsylvania.

For all gas transported and delivered, Texas Eastern would charge CNG a monthly demand charge of $3.929 per dt for firm quantities and an excess charge of $.1292 per dt for deliveries in excess of the firm quantity.

It is alleged that the estimated cost of the proposed facilities would be $43,138,000. Texas Eastern would initially finance the cost of constructing the facilities from funds on hand or short term borrowings, and that permanent financing would be undertaken as part of Texas Eastern's overall long-term financing program at a later date.

Texas Eastern alleges that this application identifies a superior alternative to the facilities proposed by CNG in Docket No. CP88-871-000, wherein CNG sought authorization for pipeline facilities to connect its existing system to its PL-1 pipeline near Perulack, Pennsylvania. Texas Eastern asserts that Docket No. CP88-871-000 is related to CNG's sales and transportation project to serve 4 new customers in Virginia as proposed in Docket Nos. CP88-712-000 and CP88-712-001.

Texas Eastern claims that in economic terms its alternative is superior to CNG's proposal. Texas Eastern alleges that its proposed facilities would involve a capital outlay of $43,138,000 compared to CNG's estimated cost of $76,157,650 to deliver gas to Perulack. Texas Eastern further claims that translated to delivered cost, Texas Eastern would seek to recover $10,576,660 from its initial rate compared to the $17,346,374 for CNG's first full year cost of service, and thus, in the first year alone, CNG's customers would save almost $7,000,000 under Texas Eastern's proposal.

It is alleged that in terms of environmental impact, there would be no significant impact to the environment in constructing and operating Texas Eastern's proposed facilities because its facilities consist of only pipeline looping along its existing Penn-Jersey pipeline system. Texas Eastern asserts that it has *in hand* existing multiple-line-rights-of-way, for aproximately 28 miles or 87% of the required 29.89 miles right-of-way; approximately 3.9 miles, in ten tracts, of new rights-of-way would be acquired adjacent to the existing pipeline.

Comment date: February 16, 1989, in accordance with Standard Paragraph F at the end of this notice.

4. Paiute Pipeline Company

[Docket No. CP89-620-000]

January 26, 1989.

Take notice that on January 17, 1989, Paiute Pipeline Company (Paiute), P.O. Box 94197, Las Vegas, Nevada 89193-4197, filed in Docket No. CP89-620-000, a request pursuant to §157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for High Sierra Hotel/Casino (High Sierra), and end-user, under its blanket certificate issued in Docket No. CP87-307-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Paiute states that pursuant to a transportation agreement dated November 14, 1988, under its Rate Schedule IT-1, it would transport up to 250 MMBtu per day of natural gas for High Sierra from the point of receipt at the interconnection between the facilities of Paiute and Northwest Pipeline Corporation at the Idaho-Nevada border. Paiute further states that it would transport and redeliver the natural gas to Southwest Gas Corporation-Northern Nevada, a local distribution company, for the account of High Sierra at the Stateline City Gate No. 1 delivery point located in Douglas County, Nevada. Paiute indicates that it would transport approximately 220 MMBtu on an average day and approximately 80,000 MMBtu on an annual basis for High Sierra.

Paiute advises that is commenced the transportation of natural gas for High Sierra on November 22, 1988, as reported in Docket No. ST89-1364-000, for a 120-day period pursuant to section 284-223(a) of the Commission's Regulations (18 CFR 284.223(a)).

Comment date: March 13, 1989, in accordance with Standard Paragraph G at the end of this notice.

5. Williams Natural Gas Company

[Docket No. CP89-664-000]

January 26, 1989.

Take notice that on January 18, 1989, Williams Natural Gas Company (Williams), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP89-664-000, a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under its blanket certificate issued in Docket No. CP86-631-000 pursuant to section 7 of the Natural Gas Act for Lawrence Memorial Hospital (Lawrence), all as more fully

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set forth in the request on file with the Commission and open to public inspection.

Williams proposes to transport natural gas for Lawrence, an end user, on an interruptible basis, pursuant to a transportation agreement dated October 21, 1988. Williams explains that service commenced October 21, 1988, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89-1651-000. Williams further explains that the peak day quantity would be 150 MMBtu, the average day quantity would be 100 MMBtu, and that the annual quantity would be 36,500 MMBtu. Williams explains that it would receive natural gas for the account of Lawrence at receipt points located in Kansas, and Oklahoma and would redeliver the gas at various delivery points in Kansas.

Comment date: March 13, 1989, in accordance with Standard Paragraph G at the end of this notice.

6. Northern Natural Gas Company, Division of Enron Corp.

[Docket No. CP89-883-000]

January 26, 1989.

Take notice that on January 18, 1989, Northern Natural Gas Company, Division of Enron Corp. (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP89-883-000, a request pursuant §157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Trinity Pipeline, Inc. (Trinity), a broker of natural gas, under its blanket certificate issued in Docket No. CP86-435-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Northern states that it would transport natural gas for Trinity from points of receipt located in the states of Kansas, Texas, Oklahoma, Wisconsin, Iowa, South Dakota and Minnesota. Northern further states that the points of delivery would be located in the states of Kansas, Texas, Iowa, South Dakota, Nebraska, Minnesota, and Oklahoma. Northern indicates that the maximum daily volume of natural gas that would be transported for Trinity would be 30,000 MMBtu. Northern states that construction of facilities would not be required to provide the proposed service.

Northern states that it commenced the transportation of natural gas for Trinity on November 17, 1988, as reported in Docket No. ST89-1760-000 for a 120-day period pursuant to § 284.233(a) of the Commission's Regulations (18 CFR 284.233(a)).

Comment date: March 13, 1989, in accordance with Standard Paragraph G at the end of this notice.

7. U-T Offshore System

[Docket No. CP89-819-000]

January 26, 1989.

Take notice that on January 17, 1989, U-T Offshore System (U-TOS), Post Office Box 1396, Houston, Texas 77251, filed in Docket No. CP89-819-000, an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing (1) construction and operation of certain facilities by U-TOS to provide an interconnection, at U-TOS's Johnson's Bayou Plant in Cameron Parish, Louisiana (Johnson's Bayou Plant), with a pipeline to be constructed and operated by ANR Pipeline Company (ANR) in Cameron Parish; and (2) interruptible transportation of natural gas of up to the dekatherm equivalent of 50,000 Mcf per day for ANR from two points of receipt to a point of redelivery to ANR at the proposed interconnection with ANR's pipeline, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

U-TOS states that ANR has traditionally moved natural gas from the High Island Area on the High Island Offshore System (HIOS) to West Cameron Block 167 (Block 167) for redelivery to an ANR-owned pipeline at Block 167 for transportation to shore. U-TOS also states that ANR has advised U-TOS that during the winter period (November-March), the ANR-owned pipeline operates at substentially full capacity.

U-TOS asserts that the proposed arrangement will provide ANR with an alternate means of moving gas to shore. Such arrangements will enable ANR to reroute up to the dekatherm equivalent of up to 50,000 Mcf per day through U-TOS to a 1.5 mile, 12-inch diameter pipeline to be built by ANR which, in turn, will interconnect with ANR's existing 12-inch diameter West Cameron Lateral north of the Johnson's Bayou Plant. ANR will construct its pipeline and a meter station pursuant to its blanket certificate.

U-TOS also requests inclusion of a receipt point in West Cameron Block 116 to enable it to transport gas reserves committed to ANR in West Cameron Blocks 115 and 116.

Comment date: February 16, 1989, in accordance with Standard Paragraph F at the end of this notice.

8. Questar Pipeline Company

[Docket No. CP89-557-000]

January 26, 1989.

Take notice that on January 9, 1989, Questar Pipeline Company (Questar), 79 South State Street, Salt Lake City, Utah 84111, filed in Docket No. CP89-557-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing elective standby sales service for its Rate Schedule CD-1 customers, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Questar states that it requests authority to provide an elective standby sales service to customers who purchase natural gas under Rate Schedule CD-1 to its FERC Gas Tariff, First Revised Volume No. 1. Questar further states that its filing is made in accordance with the Commission's December 1, 1988, letter order in Docket Nos. RP88-93-005 and RP88-60-005 which required Questar to file for certificate authorization for standby sales service.

Comment date: February 16, 1989, in accordance with Standard Paragraph F at the end of this notice.

9. Natural Gas Pipeline Company of America

[Docket No. CP89-666-000]

January 26, 1989.

Take notice that on January 19, 1989, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP89-666-000 a request pursuant to §§ 157.205 and 284.223(b) of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on an interruptible basis for NICOR Exploration Company (NICOR), a producer of natural gas, under its blanket certificate issued in Docket No. CP88-582-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Natural states that it proposes to transport natural gas for NICOR between receipt and delivery points in offshore Texas.

Natural further states that the maximum daily, average and annual quantities that it would transport for NICOR would be 3,500 MMBtu equivalent of natural gas (plus any additional volumes accepted pursuant to the overrun provisions of Natural's Rate Schedule ITS), 3,072 MMBtu equivalent of natural gas and 1,121,280 MMBtu equivalent of natural gas, respectively.

Natural indicates that in a filing made with the Commission on January 19, 1989, it reported that transportation service for NICOR had begun on December 1, 1988 under the 120-day automatic authorization provisions of § 284.223(a).

Comment date: March 13, 1989, in accordance with Standard Paragraph G at the end of this notice.

10. Panhandle Eastern Pipe Line Company

[Docket No. CP89-641-000]

January 26, 1989.

Take notice that on January 17, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-641-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to transport natural gas for Mountain Iron and Supply Company (Mountain Iron), a marketer, pursuant to Panhandle's blanket certificate issued in Docket No. CP86-585-000 and section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Specifically, Panhandle requests authority to transport up to 100 dt equivalent of natural gas per day on an interruptible basis on behalf of Mountain Iron pursuant to a transportation agreement dated October 31, 1988, between Panhandle and Mountain Iron. Panhandle states that the transportation agreement provides for Panhandle to receive gas from various existing points of receipt points on its system in Illinois, Kansas, Oklahoma, Texas, Wyoming, and Colorado and redeliver the gas, less fuel used and unaccounted for line loss to Central Illinois Light Company (CILCO) in Tazewell, Edgar, Moultrie, Douglas, Vermilion, Logan, Champaign, Sangamon, Peoria, and Knox Counties, Illinois.

Panhandle indicates it would provide the service for a primary term of one month from the date in initial transportation and continue to provide the service on a month-to-month basis until terminated by either party upon at least six month's prior notice to the other. Panhandle states that it would charge the rates and abide by the terms and conditions of its Rate Schedule PT.

It is indicated that the estimated maximum daily volume, average volume, and annual volumes would be 100 dt equivalent of natural gas, 32 dt equivalent of natural gas, and 11,680 dt equivalent of natural gas, respectively. Panhandle states that it commenced a 120-day transportation service for Mountain Iron on December 14, 1988, as reported in Docket No. ST89-1633. It is also indicated that Panhandle would use existing facilities to implement the service.

Comment date: March 13, 1989, in accordance with Standard Paragraph G at the end of this notice.

11. ANR Pipeline Company

[Docket No. CP89-647-000]

January 26, 1989.

Take notice that on January 17, 1989, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP89-647-000 a request pursuant to §§ 157.205 and 284.223(2)(B) of the Commission's Regulations under the Natural Gas Act for authorization to provide an interruptible transportation service for Coastal Gas Marketing Company (Coastal Gas) under ANR's blanket certificate issued in Docket No. CP88-532-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open for public inspection.

ANR states that it would transport, on an interruptible basis, up to a maximum of 100,000 MMBtu of natural gas per day for Coastal Gas. ANR states that it would receive the gas at an existing point of receipt in the High Island Area, offshore, Texas, and redeliver the gas for the account of Coastal Gas at existing interconnections located in the state of Texas. ANR indicates that the total volume of gas to be transported for Coastal Gas on a peak day would be 100,000 MMBtu; on an average day would be 100,000 MMBtu; and on an annual basis would be 36,500,000 MMBtu. ANR indicates it would perform the proposed transportation service for Coastal Gas pursuant to a service agreement dated October 28, 1988, between ANR and Coastal Gas.

ANR states that it commenced the transportation of natural gas for Coastal Gas on December 4, 1988, at Docket No. ST89-1660-000 for a 120-day period pursuant to § 284.223(a)(1) of the Commission's Regulations. ANR states that it proposes to continue this service in accordance with §§ 284.221 and 284.223. ANR indicates that it proposes no new facilities in order to provide this transportation service.

Comment date: March 13, 1989, in accordance with Standard Paragraph G at the end of this notice.

12. Williams Natural Gas Company

[Docket No. CP89-671-000]

January 26, 1989.

Take notice that on January 19, 1989, Williams Natural Gas Company (Williams) P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP89-671-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Phillips 66 Natural Gas Company (Phillips 66), under its blanket authorization issued in Docket No. CP86-631-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Williams would perform the proposed interruptible transportation service for Phillips 66, a gatherer/processor of natural gas, pursuant to an ITS transportation service agreement dated November 8, 1988 (Reference No. TR-C0033). The term of the transportation agreement is from the date of execution and shall continue in full force and effect until January 1, 1993, and shall be considered as renewed and extended beyond such original term for additional periods of one year each unless either party gives the other written notice at least ninety days prior to the expiration date of the original or any succeeding or extended term of its intention to terminate the service agreement on that date. Williams proposes to transport on a peak day up to 40,000 MMBtu per day; on an average day up to 30,000 MMBtu; and on an annual basis 10,950,000 MMBtu of natural gas for Phillips 66. It is stated that Phillips 66 would pay Williams for all service rendered under the transportation agreement in accordance with William's Rate Schedule ITS, and/or any other applicable or superseding rate schedule(s) as filed with the FERC. Williams would receive the volumes from 2 receipt points in Oklahoma for transportation to various delivery points on Williams' pipeline system located in Oklahoma, Kansas, and Missouri.

It is explained that the proposed service is currently being performed pursuant to the 120-day self implementing provision of § 284.223(a)(1) of the Commission's Regulations. Williams commenced such self-implementing service on December 1, 1988, as reported in Docket No. ST89-1621-000.

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Comment date: March 13, 1989, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to apppear or be represented at the hearing.

G. Any person on the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 89-2229 Filed 1-30-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP89-659-000, et al.]

Texas Gas Transmission Corp. et al.; Natural gas certificate filings

January 25, 1989.

Take notice that the following filings have been made with the Commission:

1. Texas Gas Transmission Corporation

[Docket No. CP89-655-000]

Take notice that on January 18, 1989, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP89-658-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to provide an interruptible transportation service for Stand Energy Corporation (Stand) under the blanket certificate issued in Docket No. CP86-586-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Texas Gas requests authorization to transport on a peak day up to 28,000 MMBtu of natural gas for Stand, with an estimated average daily quantity of 1,000 MMBtu. On an annual basis, Stand estimates a volume of 10,220,000 MMBtu. The ultimate consumers of the gas have been identified by Stand as The Kroger Company.

Transportation service for Stand commenced December 1, 1988, under the 120-day automatic provisions of § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89-1386-000.

Comment date: March 13, 1989, in accordance with Standard Paragraph G at the end of this notice.

2. Natural Gas Pipeline Company of America

[Docket No. CP89-674-000]

Take notice that on January 23, 1989, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP89-674-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Apache Corporation (Apache), a producer, under the blanket certificate issued in Docket No. CP86-582-000, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Natural states that pursuant to a transportation agreement dated October 3, 1988, under its Rate Schedule ITS, it proposes to transport for Apache up to 100,000 MMBtu per day equivalent of natural gas (plus any additional volumes accepted pursuant to the overrun provisions of Natural's Rate Schedule ITS). Natural states that it would receive the gas at existing receipt points in Illinois, Texas, offshore Texas, Oklahoma, Louisiana, offshore Louisiana, Kansas, Nebraska and Wyoming, and that it would transport and deliver the gas in Louisiana, Illinois, Texas, offshore Texas, Oklahoma, Colorado, Iowa, Kansas and Nebraska.

Natural advises that service under § 284.223(a) commenced November 18, 1988, as reported in Docket No. ST89-1830. Natural further advises that it would transport 30,000 MMBtu on an average day and 10,950,000 MMBtu annually.

Comment date: March 13, 1989, in accordance with Standard Paragraph G at the end of this notice.

3. ANR Pipeline Company

[Docket No. CP89-649-000]

Take notice that on January 17, 1989, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP89-649-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to provide transportation service on behalf of National Energy Systems, Inc. (National), under ANR's blanket certificate issued in Docket No. CP88-532-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

ANR requests authorization to transport, on an interruptible basis, up to a maximum of 1,000 dekatherms (dt) of natural gas per day for National, a marketer of natural gas, from receipt points located in Kansas, Louisiana, offshore Louisiana, Oklahoma, Texas and offshore Texas to a point of delivery located in Washtenaw County, Michigan. ANR anticipates transporting, on an average day 1,000 dt and an annual volume of 365,000 dt.

ANR states that the transportation of natural gas for National commenced

December 22, 1988, as reported in Docket No. ST89-1662-000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations and the blanket certificate issued to ANR in Docket No. CP88-532-000.

Comment date: March 13, 1989, in accordance with Standard Paragraph G at the end of this notice.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 89-2235 Filed 1-30-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI88-46-004]

Chevron U.S.A. Inc.; Application for Extension of a Blanket Limited-Term Certificate With Pregranted Abandonment

January 26, 1989.

Take notice that on January 17, 1989, as amended by its filing of January 18, 1989, Chevron U.S.A. Inc. (Chevron) of P.O. Box 3725, Houston, Texas 77253-3725, filed an application pursuant to section 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for amendment of its blanket limited-term certificate with pregranted abandonment in Docket No. CI88-46-003 to extend such authorization for an unlimited term, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

By order issued March 31, 1988, in Docket No. CI85-685-003, et al., the Commission consolidated Chevron's authorization in Docket No. CI87-918-000 pertaining to the sale of contractually uncommitted gas with Chevron's limited-term blanket abandonment and blanket certificate with pregranted abandonment in Docket No. CI88-46-003 and extended such authorizations for a term expiring March 31, 1989. Chevron now seeks to extend its blanket limited-term certificate insofar as it pertains to contractually uncommitted gas for an unlimited term.

Any person desiring to be heard or to make any protest with reference to said application should on or before February 15, 1989, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Chevron to appear or to be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 89-2231 Filed 1-30-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM89-2-70-001]

Columbia Gulf Transmission Co.; Proposed Changes in FERC Gas Tariff

January 26, 1989.

Take notice that Columbia Gulf Transmission Company (Columbia Gulf), on January 17, 1989, tendered for filing the following substitute revised tariff sheet to its FERC Gas Tariff, Original Volume No. 1, with the proposed effective date of January 1, 1989:

Substitute Sixth Revised Sheet No. 5A

Columbia Gulf states that on December 16, 1988, it tendered for filing Sixth Revised Sheet No. 5A to its FERC Gas Tariff, Original Volume No. 1. This tariff sheet was filed to reflect the Gas Research Institute (GRI) funding unit as authorized by Opinion No. 320 issued by the Federal Energy Regulatory Commission (Commission) on November 30, 1988 in Docket No. RP88-162-000. This Substitute Revised tariff sheet is being filed to correct typographical errors discovered since the filing of December 16, 1988.

Copies of the filing were served upon the Company's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before February 3, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of Columbia Gulf's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-2232 Filed 1-30-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM89-3-6-000]

Granite State Gas Transmission, Inc.; Filing

January 26, 1989.

Take notice that on January 18, 1989, Granite State Gas Transmission, Inc. (Granite State), 120 Royall Street, Canton, Massachusetts 02021, tendered for filing with the Commission the following tariff sheet in its FERC Gas Tariff, First Revised Volume No. 1, for effectiveness on January 1, 1989:

First Revised Sheet No. 7-C

According to Granite State, the purpose of the instant filing is to comply with the Commission's order issued September 28, 1988 in this docket relating to the procedures pursuant to which Granite State will recover from its customers the fixed take-or-pay charges billed by Tennessee Gas Pipeline Company under the provisions of Order No. 500. Granite State proposes to track Tennessee's revised take-or-pay charges authorized by Commission order dated December 29, 1988 in Docket No. RP88-191-005. Granite State requests an effective date of January 1, 1989.

Granite State further states that copies of its filing were served upon its customers, Bay State Gas Company and Northern Utilities, Inc., and the regulatory commissions of the States of Maine, Massachusetts and New Hampshire.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with sections

BEST COPY AVAILABLE

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211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before February 3, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-2233 Filed 1-30-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. C87-223-003, et al.]

OXY USA Inc., et al.; Application for Extension of Blanket Limited-Term Certificates With Pregranted Abandonment [1]

Take notice that each Applicant listed herein has filed an application pursuant to section 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for amendment of its blanket limited-term certificate with pregranted abandonment previously issued by the Commission for a term expiring March 31, 1989, to extend such authorization for an unlimited term, all as more fully set forth in the applications which are on file with the Commission and open for public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before February 13, 1989, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,

Secretary.

Docket No.	Date Filed	Applicant
C87-223-003	1-10-89	OXY USA Inc., 110 West 7th Street, Tulsa, Oklahoma 74119.
C87-307-002	1-18-89	MidCon Marketing Corp., 701 E. 22nd Street, P.O. Box 1206, Lombard, Illinois 60148.

[FR Doc. 89-2230 Filed 1-30-89; 8:45 am]

BILLING CODE 6717-01-M

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3512-3]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202 382-2740).

SUPPLEMENTARY INFORMATION:

Office of Research and Development

Title: Application for Permit to Discharge Wastewater and Associated Regulations (EPA ICR #0226; OMB #2040-0086). This is a revision of a currently approved collection.

Abstract: Facilities intending to discharge any pollutant into national waters must obtain a permit. Applicants submit data, form(s), and/or supplemental information to permit authority, describing facility location, receiving waters, and nature of discharge. The permit authority approves/disapproves request and sets permit conditions.

Burden Statement: The estimated average public reporting and recordkeeping burden for this collection of information is 13 hours per respondent, per year. This estimate includes all aspects of the information collection, including time for reviewing instructions, gathering and maintaining the data needed, carrying out and analyzing tests, and submitting applications.

Respondents: Facilities that discharge pollutants into national waters.

Estimated No. of Respondents: 27,913.

Estimated Total Annual Burden on Respondents: 369,380.

Frequency of Collection: On occasion, every five years.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM-223), 401 M Street SW., Washington, DC 20460

and

Tim Hunt, Office of Management and Budget, Office of Information and Regulatory Affairs, 726 Jackson Place NW., Washington, DC 20503.

OMB Responses To Agency PRA Clearance Requests

EPA ICR #1028.03; Pesticide Manufacturing Facility Census for 1988; OMB #2040—0111; was approved 12/22/88; expires 04/30/90.

EPA ICR #1287; National Operations and Maintenance Excellence Awards Program Questionnaire; OMB #2040-0101; was approved 12/23/88; expires 12/31/91.

EPA ICR #0370.06; Underground Injection Control Program Information Collection; OMB #2040-0042; was approved 12/23/88; expires 09/30/91.

Dated: January 21, 1989.

Paul Lapsley,

Information and Regulatory Systems Division.

[FR Doc. 89-2187 Filed 1-30-89; 8:45 am]

BILLING CODE 6560-50-M

[OPP-180800; FRL-3512-4]

Pennsylvania Department of Agriculture Receipt of Applications for Emergency Exemptions To Use (±)-2-[4,5-Dihydro-4-Methyl-4-(1-Methylethyl)-5-OXO-1H-Imidazol-2-yl]-5-Ethyl-3-Pyridinecarboxylic Acid; Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUBJECT: EPA has received specific exemption requests from the Pennsylvania Department of Agriculture (hereafter referred to as the "Applicant") to use the active ingredient (±)-2-[4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1*H*-imidazol-2-yl]-5-ethyl-3-pyridinecarboxylic acid (Pursuit™) to control broadleaf weeds on 250 acres of lima beans, 8,000 acres of snap beans, and 2,800 acres on green peas in Pennsylvania. Pursuit™ contains an unregistered active ingredient and therefore, in accordance with 40 CFR 166.24, EPA is soliciting comment before making the decision whether or not to grant these exemptions.

DATE: Comments must be received on or before February 15, 1989.

ADDRESS: Three copies of written comments, bearing the identification notation "OPP-180800," should be submitted by mail to: Public Docket and Information Section, Field Operations Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

In person, bring comments to: Room 236, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information (CBI)." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for inspection in Room 236 at the address given above from 8 a.m. to 4 p.m., Monday through Friday excluding legal holidays.

FOR FURTHER INFORMATION: By mail: Robert Forrest, Registration Division (TS-767C), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Office location and telephone number: Room 716, Crystal Mall 2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-1806).

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at his discretion, exempt a State agency from any provisions of FIFRA if he determines that emergency conditions exist which require such exemption.

The Applicant has requested the Administrator to issue specific exemptions to permit the use of an unregistered herbicide, (±)-2-[4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1*H*-imidazol-2-yl]-5-ethyl-3-pyridinecarboxylic acid (CAS 81335-77-5), manufactured as Pursuit™, by American Cyanamid Company, on lima beans, snap beans, and green peas in Pennsylvania. Information in accordance with 40 CFR Part 166 was submitted as part of these requests.

On June 10, 1986 the Administrator cancelled all labeled uses of the herbicide dinoseb on beans and peas. According to the Applicant, dinoseb was used to control annual broadleaf weeds on almost all the acreages of lima beans, snap beans, and green peas grown in Pennsylvania. The Applicant states that other products that are labeled either do not control a broad spectrum of broadleaf weeds consistently or cannot be used in Pennsylvania without causing crop injury.

The Applicant indicates that weeds in bean and pea fields reduce yields by competing with the crop and cause additional problems. Weeds reduce harvest efficiency and result in field abandonment when weed problems are severe. Weeds interfere with insecticide applications and may result in increased insect problems or additional insecticide applications.

Pursuit™ will be applied preplant or preemergence to the crop at a maximum rate of 0.03125 pounds active ingredient per acre. A single application per crop will be made sometime between March 1, and September 31, 1989 to approximately 8,000 acres of snap beans, 250 acres of lima beans, and 2,800 acres of green peas.

This notice does not constitute a decision by EPA on the applications themselves. The regulations governing section 18 require publication of receipt of an application for a specific exemption proposing use of a new chemical (i.e., an active ingredient not contained in any currently registered pesticide). Such notice provides for the opportunity for public comment on the application.

Accordingly, interested persons may submit written views on this subject to the Field Operations Division at the address above.

The Agency, accordingly, will review and consider all comments received during the comment period in determining whether to issue the emergency exemptions requested by the Pennsylvania Department of Agriculture.

Dated: December 27, 1988.

Anne E. Lindsay,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 89-2188 Filed 1-30-89; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3506-6]

Underground Injection Control Program; Casing Cementing Pressure/Single Point Resistivity Log Mechanical Integrity Test for Class III In-Situ Uranium Injection Wells

AGENCY: Environmental Protection Agency.

ACTION: Notice of alternative method; request for comments.

SUMMARY: The Director of the Office of Drinking Water, Environmental Protection Agency (EPA), is proposing to grant approval for the use of a casing cementing pressure/single point resistivity log mechanical integrity test as an alternative to the test specified in 40 CFR 146.8(b) for the demonstration of no significant leaks in the casing. The Agency intends this approval to apply to Class III in-Situ uranium mining injection wells. The test is referred to as the Casing Cementing Pressure/Single Point Resistivity Test. The Agency is requesting comments and further data on the viability of this alternative.

DATES: Written comments and any referenced data must be submitted on or before March 2, 1989. If significant comments are received, EPA will publish a subsequent notice. If no significant comments are received which warrant changes to this notice, approval will become final on April 3, 1989.

ADDRESSES: Comments should be adddressed to Bruce J. Kobelski, Office of Drinking Water (WH-550), Environmental Protection Agency, 401 M, Street SW., Washington DC 20460. A copy of the comments and supporting documents will be available for review during normal business hours at the EPA, Room 1013 C, East Tower, 401 M Street SW., Washington DC, and at EPA Region VIII, 999 18th St., Suite 500, Denver, CO 80202-2405.

FOR FURTHER INFORMATION CONTACT: Bruce J. Kobelski, Office of Drinking Water (WH-550) U.S. EPA, Washington, DC 20460 at: (202) 382-7275 or Paul S. Osborne, Drinking Water Branch, U.S. EPA, Region VIII, 999 18th Street, Suite 500 (8WM-DW) Denver, CO 80202-2405 at: (303) 293-1418.

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SUPPLEMENTARY INFORMATION:

I. Background

The Safe Drinking Water Act (SDWA) (42 U.S.C. 300h, *et seq.*) is intended to protect underground sources of drinking water (USDWs) from contamination by underground injection. One of the cornerstones of the Underground Injection Control (UIC) Porgram is the mechanical integrity of the wells. Mechanical Integrity (MI) is defined as the absence of significant leaks in the casing, tubing, or packer, and the absence of significant fluid movement into an underground source of drinking water through vertical channels adjacent to the injection well bore. This movement can occur either from the injection zone or from other zones or aquifers. Acceptable methods of evaluating mechanical integrity are specified in 40 CFR 146.8 for State programs administered by EPA (direct implementation), and in the program applications of the States with primary enforcement responsibility (primacy) for injection wells. Section 146.8(d) states that the Director of the State UIC program may allow alternative mechanical integrity tests if the Adminsitrator approves the alternative methods. The Administrator has delegated the authority to approve alternative tests to the Director of the Office of Drinking Water.

The EPA intends to grant national approvl for the use of an alternative mechanical integrity test known as the Casing Cementing Pressure/Single Point Resistivity test. This test may be applied to Class III in-situ uranium wells constructed with PVC or fiberglass casing on a national basis. Today's action is being taken in response to a request from the Director of the Class I, III, IV, and V UIC programs for Wyoming that EPA approve this proposed test to demonstrate mechanical integrity as an alternative to the use of portable packers. EPA had previously approved the use of this alternative test for Class III in situ uranium mining wells in the State of Texas in 1983. The test has been utilized successfully in that State.

II. Application and Description of the Test

A. Application

The in-situ mining of uranium utilizes a series of injection and recovery wells to leach uranium from shallow mineralized sandstone units ("roll front uranium deposits"). The process consists of leaching uranium from the ore bodies in place by circulating ground water fortified with an oxidizing agent, such as oxygen and carbon dioxide, in the appropriate horizon via injection wells and recovering the leach fluid via pumping wells. The uranium-bearing solution recovered from the pumped wells is processed through an ion exchange facility where the uranium is removed from the solution and absorbed onto the surface of the ion exchange resin. The barren fluid leaving the ion exchange facility is enhanced with oxidants and is reinjected into the ore into the ore body to continue the mining cycle.

Well field units are designed such that injection and recovery wells are utilized for both purposes as mining proceeds through the unit. Wells are constructed out of either PVC or fiberglass casing, which is cemented by circulating cement from total depth to the surface. Both injection and recovery wells are operated without tubing and packers.

B. Testing Method

1. Phase I—Casing Cementing Pressure Test

After the casing is run into the hole and the cement pumped in, the cementer is used to displace the cement out of the casing with water and up into the annulus until cement returns to the surface. During this displacement, a pressure gauge is attached to the cementing head and the pressure required to displace the cement is measured.

The applied pressure is strictly a function of the depth of the well (or the height of the column to be displaced) and the density of the cement. With well depths of approximately 500 feet and a cement density of 90 lbs/ft³, the maximum casing head pressure required as about 100 psi. The pressure gauge is read during the first 10 to 14 minutes after the pressure stabalizes. The final pressure reading must fall within 5% of the initial shut-in pressure for the casing to pass.

It is important to note that the casing is in its weakest condition at this point in the well completion. The glue joints are not cured, and the cement in the annulus is still fluid, thus not supporting the casing except for the hydrostatic pressure. Therefore, if there is a break in the casing or weak glue joint, it is most likely to fail at this time. If the well passes the test, the pressure is held on the casing until the cement starts to cure, which is generally overnight.

2. Phase II—Single Resistivity Log

Following the overnight curing of the cement, the casing head is removed and the well is completed by drilling the cement in the base of the casing and drilling an open hole in the ore zone using an underreaming device. At this point, the casing and cement sheath exhibit significantly increased mechanical strength because the casing glue joints have cured, and the cement has cured sufficiently to support the casing. Damage to the casing during these last steps of installation, if it occurs, is generally massive in nature, such as smashing the casing wall with drill bit or splitting the casing with an underreaming tool with its blades stuck in the open position. Therefore, the final MIT is generally not conducted to detect subtle damage, but rather to detect massive damage. The resistance log is run after the liner assembly has been inserted into the casing and each time that drilling tools are run into the well.

The single point resistance logging is based on the insulating characteristic of the PVC theremoplastic casing material relative to the conductivity of the formation and the cement sheath. The resistance log, termed a "differential single-point resistance", is a measurement of the total electrical resistance between the lead nose and the casing of the probe. The current utilized in this measurement is high in frequency (5,000 to 10,000 Hz) and low in magnitude (microamperes). The unit of measurement is in ohms. Single point resistance measurements are common in the minerals industry because of the simplicity of the apparatus and the sharpness of definition. However, such measurements are subject to certain limitations: 1) they are difficult to quantify; and 2) they cannot be used to determine salinity or porosity. Single point resistivity logs are excellent for drill hoel correlation, stratigraphy, and fine detail discrimination.

With the logging probe inside the electrically-insulating casing, the applied electrical potential results in a current flowing between the electrode at the tip of the probe and the return path to the recording isntrumentation. This return path is through the fluid in the borehole to the upper part of the probe and to the shielding on the outside of the cable on which the probe is hung. If the casing is intact, the resistance of this electrical path (and therefore the current flow) is relatively constant. If, however, the casing has a crack or a small hole, the electrical return path is altered by the presence of the crack or hole. In this case, the crack or hole presents a small, locally conductive path relative to the normally intact PVC casing and borehold fluid interface. This small conductive path is recorded as a spike of lower resistance in the resistance record. The size of the recorded spike can be altered by changing the scale factor on the resistance meter.

In essence, the single-point resistivity test is an "electrical pressure test" of the casing. In explaining direct current (DC) circuits, the analogy between electrical flow and water flow in pipes is commonly used. Voltage (electrical potential) is analogous to pressure, and current is analogous to water flow. The fluid-filled casing is subjected to a voltage (pressure) and the current (flow) is recorded. At a constant applied voltage as the hole is logged, the electrical flow responds to changes in the insulating character of the casing, that is, cracks or holes. Therefore, the single-point resistivity is a pressure test which is very specific in pinpointing the casing defect.

III. Basis for Approval

Based on an evaluation of the supporting data for this test and previous experience with application of the test in the field in Texas, EPA believes this test will provide more information regarding the dept of casing failures than the pressure test.

The usual MIT method used for detecting leaks in a well casing utilizes a pressure test with a gas or liquid. For Class III uranium in-situ injection wells, operators typically have used inflatable packers run on a wireline inside the casing. The utilization of the standard pressure test with inflatable packers has been accompanied by difficulties: (1) The casing can be stressed or broken by inadvertently exceeding the maximum working pressure rating of the casing in order to properly seat the packer; (2) packer seating and data interpretation problems can be caused by residual cement inside the casing and casing extrusion imperfections; (3) packer retrieval is often difficult because of improper deflation of the packer or wedging of the wire line, which has often resulted in ultimate well failure; and (4) the sensitivity of the packer test is such that small holes may go undetected in special cases.

All technical documentation supporting the Casing Cementing Pressure/Single Point Resistivity Log will be available for public review at EPA offices mentioned in the Summary of this notice. EPA developed the requirements and limitations of the testing method for demonstrating mechanical integrity pursuant to 40 CFR 146.8(b), after considering data submitted as the result of testing the effectiveness of this alternative MIT at Everest Minerals Highland Uranium Mine in Wyoming.

IV. Special Conditions

A. Limitations for Conducting The Casing Cementing Pressure/Single Point Resistivity Test

The following are limitations for conducting the casing cementing pressure/single point resistivity test:

1. The use of this test is restricted to Class III uranium in-situ injection wells constructed with PVC or fiberglass casing.

2. Wells must be cemented by displacing cement through the casing with at least 10% excess over the calculated volume of the drill hole/casing annulus.

3. Water levels in the casing must be maintained within 10 feet of the surface during the running of the single-point resistivity log.

4. The single-point resistivity log should be run using a full-scale value which is greater than that of the most resistive bed in the wellbore, but no less than 500 ohm.

B. Determination.

The casing cementing pressure and single-point resistance test, subject to the conditions and procedures discussed in this notice, provides the necessary information to demonstrate reliably whether a well constructed out of PVC or fiberglass has casing leaks. This test is beign approved for Class III in-situ uranium wells nationally.

Dated: January 13, 1989.

Michael B. Cook,

Director of Office of Drinking Water.

[FR Doc. 89-1934 Filed 1-30-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to the Office of Management and Budget for Review

January 27, 1989.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, 44 U.S.C. 3507. Persons wishing to comment on this information collection request should contact Eyvette Flynn, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, telephone (202) 395-3785. For further information contact Doris Benz, Federal Communications Commission, telephone (202) 632-7513.

Please note: The Commission has requested expedited review of this item by January 31, 1989 under the provisions of 5 CFR 1320.18.

OMB No.: 3060-0093.

Title: Application for Renewal of Radio Station License in Specified Services.

Form No.: FCC 405.

Action: Revision.

Respondents: Business.

Frequency: On Occasion.

Estimated Annual Burden: 10,100 Respondents; 30 minutes each.

Needs and Uses: This renewal application must be filed by the licensee between 30 and 60 days prior to the expiration of the license. The data is used to renew the authorization. Additional information not currently on the form is being requested on certain renewal applications as follows:

Federal Communications Commission.

Donna R. Searcy,

Secretary.

Common Carrier Public Mobile Radio Service Information; Renewals

Pursuant to § 22.45(b) of the Rules, Station licenses for Public Land Mobile non-wireline common carriers will expire April 1, 1989. Section 22.11(b) requires that an application, FCC Form 405, be filed in duplicate by the licensee between thirty (30) and sixty (60) days prior to the expiration date of the license. Renewal applications will be accepted accompanied by the appropriate fee between February 1, 1989 to March 1, 1989. Untimely filed Renewal applications will be returned as unacceptable for filing.

There have been several inquiries from the public in regards to the proper response to Item 3(a) of FCC Form 405. The proper response for Item 3(a) will depend upon whether the station, in question is one where the initial license authorization was never issued or if it is a station with an existing license authorization but has one or more construction authorizations for which a license authorization was never issued.

In the first instance, where a license was never issued, the information submitted in response to Item 3(a) should include an exhibit listing the file number of the construction authorization and the date the Notification of Completion of Construction (FCC Form 489) was filed with the FCC. In the second instance, which involves an existing authorization but one or more construction authorizations for which licenses were never issued, the response to Item 3(a) should include an exhibit listing the file number of the latest license authorization, file numbers of all

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construction authorizations and dates on which the notifications of completion of construction (FCC Form 489) were filed with the FCC. The exhibit should also include the dates that all minor modifications and fill-in notification applications were filed.

A reminder, an original FCC Form 405 and duplicate is required for each call sign.

If there are questions concerning other items on the Form 405 for Public Land Mobile Service, please direct them to Garveyette Brown at 3202-653-5560.

[FR Doc. 89-2321 Filed 1-30-89; 8:45 am]
BILLING CODE 6712-01-M

Low Power Television and Television Translator Filing Window From March 6, 1989 Through March 10, 1989

AGENCY: Federal Communications Commission (FCC).

ACTION: Notice of filing window.

SUMMARY: This action gives notice of an application filing window for the tendering of applications for new construction permits and for major changes in existing facilities for low power television and television translator stations. This notice sets forth filing procedures including when and where to file and the applicable application form to be used, and information concerning application filing fees.

EFFECTIVE DATE: March 6, 1989 through March 10, 1989.

FOR FURTHER INFORMATION CONTACT: Keith A. Larson or Molly Fitzgerald, Low Power Television Branch, Mass Media Bureau (202) 653-3694.

SUPPLEMENTARY INFORMATION:

Commencing March 6, 1989, and continuing to and including March 10, 1989, the Commission will permit the filing of applications for new construction permits and for major changes in existing facilities for low power television and television translator stations. These applications must be filed at the below specified locations.

No more than five (5) applications for new low power television or television translator stations may be tendered for filing by any applicant, or by any individual or entity having an interest of one percent (1%) or greater in any applicant(s) filing in the March 6-March 10, 1989, window. This restriction does not apply to major change applications.

All applications must be "complete and sufficient" when tendered for filing, in accordance with § 73.3564 of the Commission's rules. As noted below, a fee of $375.00 must accompany each application. Further, applicants filing during this window period *MUST* use the February 1988 edition of FCC Form 346. See 53 FR 15225 (April 28, 1988). All applications filed on obsolete editions will be returned as defective and unacceptable for filing. FCC Form 346 can be obtained from the FCC's Operations Support Division, Services and Supply Branch, Room B-10, 1919 M Street NW., Washington, DC 20554, telephone number (202) 632-7272.

In this window application filing process, the Commission will utilize the facilities of the Treasury Department lockbox bank. Window application filings can be made, either by mail or by person, at the following locations *ONLY*:

If mailed—
Federal Communications Commission, Low Power Television Window Filing, P.O. Box 371904M, Pittsburgh, PA 15250-7995.

If hand-delivered—
Federal Communications Commission, Low Power Television Window Filing, Strip Commerce Center, 28th and Liberty Avenue, Pittsburgh, PA 15222.

Hand-carried or couriered applications can be delivered daily at the Strip Commerce Center location during normal business hours (8:30 a.m. to 5:00 p.m.). Detailed instructions to get to this location are included in this Public Notice as Attachment I. Submissions tendered after close of business (5:00 p.m.) on Friday, March 10th 1989, will not be accepted. Mailed applications must be *actually received* no later than March 10th. *Window application filings WILL NOT be accepted at the offices of the Federal Communications Commission in Washington, DC.*

An original and two copies of the application and all required exhibits must be filed. To facilitate the initial processing of these applications, all applicants are requested to enclose in a single envelope the original and duplicate copies of the application, with each duplicate copy clearly denoted as such by the applicant. Where more than one new station or major change application is being filed, separate envelopes enclosing the individual application (*i.e.*, an original and two copies) can be mailed in a single package. Receipts will not be provided by the lockbox bank facility. However, for mailed window application filings, a "return copy" of the application can be furnished *provided* the applicant clearly identifies the "return copy" and attaches to it a stamped, self-addressed envelope. For hand-carried or couriered applications delivered to the Strip Commerce Center location, bank personel, if requested in person, will date stamp as received a proffered copy of the application and return it to the requester.

Generally, applicants seeking to construct a new low power television or television translator station or to make a major change in the facilities of an existing low power television or television translator station are required to pay and submit a fee with the filing of the application. A *separate* fee payment of $375.00, attached to each original application, must be submitted for *each* new station or major change application filed during this window; a single fee payment for multiple applications will *not* be accepted. Payment of the required fee can be made by check, bank draft or money order payable to the Federal Communications Commission.

Applications submitted with insufficient payments or without any payments will be dismissed and returned, along with the insufficient payment, to the applicant without processing. See § 1.1107 of the Commission's rules. Following the fee review process, applications that are found to be patently defective, not "complete and sufficient," or filed on an obsolete edition of FCC Form 346 will be rejected and returned to the applicant.

Governmental entities are exempt from the $375.00 fee. As defined by the Commission's rules, governmental entities include "any possession, state, city, county, town, village, municipal corporation or similar political organization or subpart thereof controlled by publicly elected and/or duly appointed public officials exercising sovereign direction and control over their respective communities or programs." Also exempted from this fee are noncommercial educational FM and full service television broadcast station licensees seeking to make major change in the facilities of their existing low power television or television translator stations or to construct new low power television or television translator stations, provided those stations operate or will be operated on a noncommercial educational basis. See § 1.1112 of the Commission's Rules. To avail itself of any fee exemtpion an applicant must indicate its eligibility by checking the appropriate box on page 1 of FCC Form 346 (February 1988 edition).

Applicants are advised that on April 21, 1988, the Commission adopted a *Policy Statement* providing for limited consideration of terrain shielding in the evaluation of television translator and low power television applications. 3 FCC Rcd 2664, *recon. granted in part*, FCC 88-342, released December 15, 1988. In the *Policy Statement* the Commission described the limitations on its consideration of requests for waiver of its low power television service application acceptance requirements concerning interference protection standards and provided guidance for the submission of these waiver requests.

For further information concerning the filing window, contact Keith A. Larson or Molly Fitzgerald, Low Power Television Branch, Mass Media Bureau at telephone number (202) 632-3694.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

Attachment I

Directions to Strip Commerce Center

From Greater Pittsburgh International Airport and Interstate 79:
- Proceed east on Parkway (Interstate 279) towards downtown Pittsburgh.
- Go through the Fort Pitt tunnels and across the Fort Pitt bridge to Liberty Avenue.
- Take Liberty Avenue to 28th Street (28 blocks).
- Turn right on 28th Street and follow FCC signs to parking lot.
- Enter building at designated area and follow signs.

From Pennsylvania Turnpike:
- Take Exit 6 (Monroeville) to Parkway (Interstate 376). Go west on Parkway to the Grant Street Exit (Exit 3).
- Proceed on Grant Street to Liberty Avenue (Approximately 6-7 blocks).
- Bear right on to Liberty Avenue.
- Take Liberty Avenue to 28th Street.
- Turn right on 28th Street and follow FCC signs to parking lot.
- Enter building at designated area and follow signs.

[FR Doc. 89-2172 Filed 1-30-89; 8:45 am]
BILLING CODE 6712-01-M

Applications for Consolidated Hearing; Compass Rose Communications Corp. et al.

1. The Commission has before it the following mutually exclusive applications for a new TV station:

Applicant, City, and State	File No.	MM Docket No.
A. Compass Rose Communications Corp., Phoenix, Az.	BPCT-880610KG	88-581
B. Sun World Communications, Phoenix, Az.	BPCT-880621LJ	
C. Channel 61 Partners, Limited, Phoenix, Az.	BPCT-880801LX	
D. Maricopa Community Television Project, Phoenix, Az.	BPCT-880802KF	
E. Gregory R. Brooks d/b/a Brooks Broadcasting, Phoenix, Az.	BPCT-880802KI	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

Air Hazard—A, B, C, D, E
Duopoly—C
Comparative—A, B, C, D, E
Ultimate—A, B, C, D, E

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037 (Telephone No. (202) 857-3800).

Roy J. Stewart,

Chief, Video Services Division.

[FR Doc. 89-2171 Filed 1-30-89; 8:45 am]
BILLING CODE 6712-01-M

FEDERAL HOME LOAN BANK BOARD

Federal Home Loan Bank Board Adjudication Process

Date: January 18, 1989.

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice.

SUMMARY: The public is advised that the Federal Home Loan Bank Board ("Board") has submitted for extension, with revision, an information collection request, "Federal Home Loan Bank Board Adjudication Process," formerly titled "FSLIC Receivership Rules—Claims," to the Office of Management and Budget for approval in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The information provided allows the Office of General Counsel to adjudicate disputes between FSLIC as Receiver and either the claimant (in Requests for Review of the Claims Determinations) or petitioner (the Requests for Expedited Relief). Without it, the claimant or petitioner would be denied due process. We estimate it will take approximately 3 hours per respondent to complete the information collection.

DATES: Comments on the information collection request are welcome and should be received on or before February 15, 1989.

ADDRESS: Comments regarding the paperwork-burden aspects of the request should be directed to:

Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503, Attention: Desk Officer for the Federal Home Loan Bank Board.

The Board would appreciate commenters sending copies of their comments to the Board.

Request for copies of the proposed information collection requests and supporting documentation are obtainable at the Board address given below:

Director, Information Services Division, Office of Secretariat, Federal Home Loan Bank Board, 801 17th Street, NW., Washington, DC 20552, Phone: 202-653-2751.

FOR FURTHER INFORMATION CONTACT: Mary Ellen Mallonee, Office of General Counsel, 202-377-6472, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89-2239 Filed 1-30-89; 8:45 am]
BILLING CODE 6720-01-M

Federal Savings and Loan Advisory Council; Renewal of Charter

Date: January 12, 1989.

Pursuant to the provisions of section 8a of the Federal Home Loan Bank Act, as amended (12 U.S.C. 1428a), the following notice has been adopted by the Federal Home Loan Bank Board for publication in the Federal Register.

Pursuant to the provisions of section 9 of the Federal Advisory Committee Act (5 U.S.C. Appendix), and the implementing regulations issued by the

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Office of Management and Budget, the Federal Home Loan Bank Board, having determined, that the continuation of the Federal Savings and Loan Advisory Council is in the public interest in connection with the performance of the duties imposed on it by law, hereby renews the existence of the Federal Savings and Loan Advisory Council for two years to January 31, 1991, and in connection therewith reissues the following charter (which appears as section 8a of the Federal Home Loan Bank Act, as amended (12 U.S.C. 1428a)) to the said Council:

Federal Savings and Loan Advisory Council Charter

There is hereby created a Federal Savings and Loan Advisory Council, which shall continue to exist as long as the Bank Board bi-annually determines, as a matter of formal record, with timely notice in the Federal Register, to be in the public interest in connection with the performance of duties imposed on the Council by law. The Council shall, in all other respects, be subject to the provisions of the Federal Advisory Committee Act. The Council shall consist of one member for each Federal Home Loan Bank district to be elected annually by the board of directors of the Federal Home Loan Bank in such district and twelve members to be appointed annually by the Bank Board to represent the public interest. Each such elected member shall be a resident of the district for which he is elected. All members of the Council shall serve without compensation, but shall be entitled to reimbursement from the Bank Board for subsistence, and transportation and other incidental travel expenses in accordance with the Federal Travel Regulations, as amended. The Council shall meet in Washington, District of Columbia, at least twice a year and more often if requested by the Bank Board. The Council may select its chairman, vice chairman, and agenda committee chairman, and adopt methods of procedure, and shall have power—

(1) To confer with the Bank Board on general business conditions, and on special conditions affecting the Federal Home Loan Banks and their members and the Federal Savings and Loan Insurance Corporation.

(2) To request information, and to make recommendations, with respect to matters within the jurisdiction of the Bank Board and the Federal Savings and Loan Insurance Corporation.

Federal Home Loan Bank Board

The Federal Home Loan Bank Board also has directed, in connection with the foregoing, that—

1. The Federal Savings and Loan Advisory Council's estimated budget of $58,000 shall be paid for by the self-supporting Federal Home Loan Bank System, and none of its annual operating costs shall be charged to or paid by the United States;

2. The said Charter of the Federal Savings and Loan Advisory Council shall not be amended, altered, or repealed except by Congress or by the Federal Home Loan Bank Board, unless reissued prior to that date by the Federal Home Loan Bank Board.

The Federal Savings and Loan Advisory Council.

John M. Buckley, Jr.,

Executive Secretary.

The Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary for Technical Affairs.

[FR Doc. 89-2238 Filed 1-30-89; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202-002744-004
Title: Atlantic and Gulf/West Coast of South America Conference
Parties:
Compania Chilena De Navigacion Interoceania, S.A.
Compania Sud Americana De Vapores
Lykes Bros. Steamship Co., Inc.
Compania Peruana De Vapores
Lineas Navieras Bolivianas, S.A.M.
Naviera Neptuno, S.A.
Synopsis: The proposed modification would prohibit Members from taking independent action to enter into loyalty contracts.

Agreement No.: 203-010012-010
Title: Australia-Pacific Coast Rate Agreement
Parties:
Columbus Line
Australia Container Transportation (Australia) Ltd.
Synopsis: The proposed modification would prohibit member lines from taking independent action to enter into loyalty contracts.

Agreement No.: 202-010090-017
Title: United States Atlantic and Gulf/Ecuador Freight Association
Parties:
Crowley Caribbean Transport, Inc.
Lykes Bros. Steamship, Inc.
Ecuadorian Line, Inc.
Synopsis: The proposed modification would prohibit Members from taking independent action to enter into loyalty contracts.

Agreement No.: 211-011213-004
Title: Spain-Italy/Puerto Rico Island Pool Agreement
Parties:
Compania Trasatlantica Espanola, S.A.
Nordana Line AS
Sea-Land Service, Inc.
Synopsis: The proposed modification would delete language pertaining to specific Pool Point values established for the first Pool Period in connection with the Spanish and Italian Pool Sections. It would further clarify the procedure to which a member may withdraw from a Pool Section.

Agreement No.: 206-011228
Title: Israel Interconference Agreement
Parties:
Israel Eastbound Conference
Israel Westbound Conference
Synopsis: The proposed Agreement would permit the parties to agree upon, inter alia, rates, charges, terms, conditions, and practices for cargo moving in the trade between U.S. Atlantic, Gulf, Great Lakes and Pacific Coast ports and U.S. inland and coastal points via such ports, and Mediterranean ports of Israel, and Israeli inland and Mediterranean coastal points via such ports.

By order of the Federal Maritime Commission.

Dated: January 26, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 89-2209 Filed 1-30-89; 8:45 am]

BILLING CODE 6730-01-M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-011062-003
Title: Maryland Port Administration Terminal Agreement
Parties:
Maryland Port Administration (MPA)
Evergreen Marine Corporation (Taiwan) Ltd. (EMC)
Synopsis: The agreement provides that MPA will grant EMC a discount of $50.00 per loaded container moved by EMC into and out of the Port of Baltimore (the Port) and drayed to either CSX or CONRAIL railheads in Baltimore. The $50 discount is restricted to containers moving between the Port and Louisville, Kentucky or Chicago, Illinois or Detroit, Michigan.

Agreement No: 224-200087-001
Title: Port of Oakland Terminal Agreement
Parties:
Port of Oakland (the Port)
Maersk Line Pacific, Ltd.
Synopsis: The Agreement amends Agreement No. 224-200087, the basic nonexclusive preferential assignment agreement, by establishing a rental of $49,998.00 per month for Option area "A", based on an estimated total cost of improvements constructed upon Option area "A" of $2,363,000, a current land value of $6.00 per square foot and the Port's cost of financing.

By Order of the Federal Maritime Commission.

Dated: January 25, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 89-2110 Filed 1-30-89; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

The Frankford Corp., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than February 17, 1989.

A. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *The Frankford Corporation,* Horsham, Pennsylvania; to acquire 9.65 percent of the voting shares of Dime Financial Corp., West Chester, Pennsylvania, and thereby indirectly acquire The Bank of Chester County, formerly The Dime Savings Bank of Chester County, West Chester, Pennsylvania.

B. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street NW., Atlanta, Georgia 30303:

1. *LCB Corporation, Inc.,* Fayetteville, Tennessee; to acquire 37.5 percent of the voting shares of North Alabama Bank, Hazel Green, Alabama, a *de novo* bank.

C. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Lake Shore Bancorp, Inc.,* Chicago, Illinois; to acquire 100 percent of the voting shares of Illinois Center Bancorporation, Inc., Glen Ellyn, Illinois, and thereby indirectly acquire Center Bank-Glen Ellyn, Glen Ellyn, Illinois.

2. *Midlothian State Bank Employee Stock Ownership Trust,* Midlothian, Illinois; to acquire 12 percent of the voting shares of Midlothian State Bank, Midlothian, Illinois.

D. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *First Kansas Holding Company,* Junction City, Kansas; to acquire 100 percent of the voting shares of Valley Holdings, Inc., Junction City, Kansas, and thereby indirectly acquire First State Bank, Junction City, Kansas.

E. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. **First National Bowie Bancorp, Inc.,** Bowie, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of The First National Bank of Bowie, Bowie, Texas.

Board of Governors of the Federal Reserve System, January 25, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-2116 Filed 1-30-89; 8:45 am]

BILLING CODE 6210-01-M

Northwest Georgia Financial Corp., et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo,* either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound

banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 17, 1989.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street NW., Atlanta, Georgia 30303:

1. *Northwest Georgia Financial Corporation,* Dallas, Georgia; to engage *de novo* in management consulting regarding the location, construction, operation and marketing of branch banks located in supermarket stores pursuant to § 225.25(b)(11) of the Board's Regulation Y.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Irwin Union Corporation,* Columbus, Indiana; to engage *de novo* through its subsidiary, Irwin Union Capital Corporation, Columbus, Indiana, in consumer financial counseling pursuant to § 225.25(b)(20) of the Board's Regulation Y.

2. *Irwin Union Corporation,* Columbus, Indiana; to engage *de novo* through its subsidiary, Irwin Union Capital Markets, Inc., Columbus, Indiana, in securities brokerage activities pursuant to § 225.25 (b)(15) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, January 25, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-2117 Filed 1-30-89; 8:45 am]

BILLING CODE 6210-01-M

Change in Bank Control; Acquisitions of Shares of Banks or Bank Holding Companies; Bernard Weindruch et al.

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 14, 1989.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Bernard Weindruch,* Rock Island, Illinois, to acquire an additional 1.0 percent; Ira J. Weindruch, Rock Island, Illinois, to acquire an additional 1.0 percent; Benjamin D. Farrer, Aledo, Illinois, to acquire an additional 4.0 percent; Sandra & Douglas Kratz, Decorah, Iowa, to acquire an additional 1.0 percent; and Perry B. Hansen, Bettendorf, Iowa, to acquire an additional 1.0 percent of the voting shares of Financial Services Corporation of the Midwest, Rock Island, Illinois, and thereby indirectly acquire The Rock Island Bank, Rock Island, Illinois.

B. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *George L. Clark,* Alburquerque, New Mexico; to acquire an additional 11.6 percent of the voting shares of the Bank of New Mexico Holding Company, Albuquerque, New Mexico, and thereby indirectly acquire The Bank of Albuquerque, Albuquerque, New Mexico; The Bank of New Mexico, Las Vegas, New Mexico; and Western Bank, Springer, New Mexico.

C. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Sam K. Kendrick Testamentary Trust,* Dallas, Texas; to acquire 17.12 percent of the voting shares of Parker County Bancshares, Inc., Weatherford, Texas, and thereby indirectly acquire First National Bank of Weatherford, Weatherford, Texas.

D. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Theodore E. Gildred,* Solana Beach, California; to acquire an additional 1.9 percent of the voting shares of Torrey Pines Group, Solana Beach, California, and thereby indirectly acquire Torrey Pines Bank, Solana Beach, California.

2. *M. Dale Rust,* Sandy, Utah; to acquire an additional 0.93 percent of the voting shares of Guardian Bancorp, Salt Lake City, Utah, and thereby indirectly acquire Guardian State Bank, Salt Lake City, Utah.

Board of Governors of the Federal Reserve System, January 25, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-2116 Filed 1-30-89; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: JAN. 9, 1989 AND JAN. 19,1989

Name of Acquiring Person/Name of Acquired Person/Name of Acquired Entity	PMN No.	Date terminated
Donal J. Trump/Caesars World, Inc./Caesars World, Inc.	89-0694	01/09/89
JWP Inc./James F. Hart/Superior Engineering Corporation	89-0760	01/09/89
The Tokio Marine and Fire Insurance Co., Ltd./The Continental Corporation/First Insurance Company of Hawaii, Ltd	89-0777	01/[illegible]/89

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: JAN. 9, 1989 AND JAN. 19,1989—Continued

Name of Acquiring Person/Name of Acquired Person/Name of Acquired Entity	PMN No.	Date terminated
China National Chemicals Import & Export Corporation/USX Corporation/USX's Agri-Chemicals Division	89-0779	01/09/89
Arthur Goldberg/Checker Motors Corporation/Checker Motors Corporation	89-0792	01/09/89
Albertsons, Inc./Morgan Stanley Group, Inc./Cullum Companies, Inc	89-0632	01/10/89
Samuel J. Heyman/Cabot Corporation/Cabot Corporation	89-0783	01/10/89
Kinder-Care, Inc./Kysor Industrial Corporation/Kyser Industrial Corporation	89-0803	01/10/89
Northwestern Steel & Wire Company/Armco, Inc./Armco, Inc	89-0816	01/10.89
Leggett & Platt, Incorporated/Culp Industries, Inc./Culp's Aluminum Smelting Division	89-0826	01/10/89
Mitsubishi Mining and Cement Co., Ltd./Gregory J. Burden/Owl Rock Products Co	89-0767	01/12/89
Gerald L. Wolfarth/The Kroger Co./Superx Druge Corporation	89-0778	01/12/89
Midel S.A./Nestle S.A./The Original Cookie Company, Inc. (OCC)	89-0798	01/12/89
Gould Investors L.P./One Liberty Properties, Inc./One Liberty Properties, Inc	89-0810	01/12/90
Fiskars OY AB/Cooper Industries, Inc./RTE Delsec Corporation	89-0724	01/13/89
Sun Alliance and London Insurance plc/Guardian Royal Exchange plc/Royal Exchange Assurance of America, Inc	89-0725	01/13/89
Transamerica Corporation/WMR-I Leasing Corp./Interpool Limited	89-0812	01/13/89
Harken Oil & Gas, Incorporated/Tejas Power Corporation/Tejas Power Corporation	89-0820	01/13/89
First Pacific Company Limited/Crown Corporation Limited/Crown Richter, Inc., c/o Corporate Service Company	89-0824	01/13/89
Household International, Inc./Great American Corporation/American Bank & Trust Company	89-0648	01/13/89
Motel Associates, L.P./Donald E. Sodaro/Sixpence Inns of America, Inc	89-0725	01/15/89
Pennzoil Company/Kaiser Steel Resources, Inc./Kaiser Coal Corp., Kaiser Coal of New Mexico and York	89-0689	01/16/89
Gerald S. Fahringer/General Electric Company/General Electric Company (Electric Systems Project)	89-0787	01/17/89
Aaron Spelling/American Financial Corporation/Worldvision Enterprises, Inc	89-0838	01/17/89
American Financial Corporation/Aaron Spelling/Spelling Entertainment, Inc	89-0839	01/17/89
Soyland Power Cooperative, Inc./Western Illinois Power Cooperative, Inc./Western Illinois Power Cooperative, Inc	89-0483	01/18/89
Robert E. Tuden—Everett I. Mundy/Communications & Cable Inc./Village Communications, Inc	89-0827	01/18/89
Everett I. Mundy/Communications & Cable Inc./Village Communications, Inc	89-0828	01/18/89
American Telephone and Telegraph Co./Eaton Financial Corporation/Eaton Financial Corporation	89-0802	01/18/89
Tele-Communications, Inc./CSI Management, Inc./CSI Management, Inc	89-0807	01/18/89
Capital Blue Cross/Plan Investment Fund, Inc./Plan Investment Fund, Inc	89-0837	01/18/89
BIA-OOR Holdings, Inc./Texas Air Corp./Eastern Air Lines, Inc. and New York Airlines, Inc	89-0850	01/18/89
Newell Co./NACCO Industries, Inc./WearEver-Proctor Silex, Inc	89-0734	01/19/89
Marcel Bleustein-Blanchet/Foote, Cone & Belding Communications, Inc./Foote, Cone & Belding Communications, Inc	89-0736	01/19/89
Advanced Telecommunications Corporation/Clayton W. Williams, Jr., c/o Clajon Holding Corporation/ClayDesta Communications, Inc	89-0751	01/19/89
The Fulcrum Partnership/Ceachmen Industries, Inc./Mariette Homes, Inc	89-0769	01/19/89
Smiths Industries Public Limited Company/LPL Investment Group Inc./Times Microwave Systems, Inc	89-0793	01/19/89
Affiliated Publications, Inc./Lin Broadcasting Corporation/Lin Broadcasting Corporation	89-0794	01/19/89
Craig O. McCaw/Lin Broadcasting Corporation/Lin Broadcasting Corporation	89-0795	01/19/89
Boston Ventures Limited Partnership/POA Acquisition Corporation/POA Acquisition Corporation	89-0800	01/19/89
John W. Kluge/Stanadyne Holdings Corp./Precision Products Division	89-0801	01/19/89
Ohio River Associates Inc./Jeremy M. Jacobs Family Trust/Aluminum Smelting & Refining Company, Inc	89-0805	01/19/89
Sun-Times Partners, c/o Adler & Shaykin/Marshall Field V, c/o The Field Corporation/Pioneer Press Limited Partnership	89-0817	01/19/89
The Seagram Company, Ltd./Brown-Forman Corporation/Brown-Forman Corporation	89-0823	01/19/89
Boston Ventures Limited Partnerships II/John W. Hartman/Bill Communications, Inc	89-0830	01/19/89
Takata Corporation/Hafe & Stiegitz, Inc./Irvin Industries, Inc	89-0831	01/19/89
Blue Cross of Iowa/Blue Shield of Iowa/Blue Shield of Iowa	89-0833	01/19/89
Blue Cross of Iowa/Blue Cross of Western Iowa and South Dakota/Blue Cross of Western Iowa and South Dakota	89-0834	01/19/89
Salant Corporation/Goldome/Denton Mills, Inc	89-0853	01/19/89

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, Contact Representative, Premerger Notification Office, Bureau of Competition, Room 303, Federal Trade Commission, Washington, DC 20580, (202) 326-3100.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 89-2114 Filed 1-30-89; 8:45 am]

BILLING CODE 6750-01-M

Enforcement of Nondiscrimination on the Basis of Handicap in Programs and Activities Conducted by the Federal Trade Commission

AGENCY: Federal Trade Commission.

ACTION: Notice of self-evaluation; request for comments.

SUMMARY: The Federal Trade Commission is evaluating its current policies and practices to determine if discrimination against handicapped persons occurs in its programs and activities. Interested persons, including handicapped persons and organizations representing handicapped persons, are invited to participate in this evaluation by submitting comments.

DATE: Comments must be received on or before March 2, 1989.

ADDRESS: Written comments may be submitted to the Secretary, Federal Trade Commission, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580, telephone (202) 326-2515, or TDD (202) 326-2502. These are not toll-free numbers.

Oral comments may be submitted to Jerome A. Tintle, Office of the General Counsel, Federal Trade Commission, at the above address or by telephone (202) 326-2456 or TDD (202) 326-2502. These are not toll-free numbers.

FOR FURTHER INFORMATION CONTACT: Jerome A. Tintle, Office of the General Counsel, Federal Trade Commission, at the address and telephone number listed above.

SUPPLEMENTARY INFORMATION: Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), prohibits Federal Executive agencies from discriminating on the basis of handicap in agency programs and activities and requires each agency to promulgate implementing regulations. On December 1, 1987, the Commission published its implementing regulations as Part 6 of the Commission's Rules of Practice, 16 CFR Part 6, effective February 1, 1988. 52 FR 45619 (Dec. 1, 1987). Section 6.110 of the regulations requires the Commission to conduct a self-evaluation of its compliance with the regulations within one year of their effective date and to provide interested persons an

opportunity to participate in this self-evaluation by submitting comments.

As part of the self-evaluation process, the Commission's Executive Director has prepared a report detailing the progress on the making of alterations to existing Commission facilities and on the Commission's compliance with its implementing regulations in other respects. A copy of the Executive Director's report and related background papers is on file and available for inspection in the Commission's Public Reference Room, Room 130, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580.

The Executive Director's report indicates that the Commission's facilities already have been renovated to make them accessible to and usable by handicapped persons. Specifically, all buildings occupied by the Commission are accessible to handicapped persons at the street level. Ramped entrances and automatic door openers have been installed where necessary. Restrooms and drinking fountains accessible to and usable by handicapped persons also have been installed. All buildings occupied by the Commission have elevators accessible to the handicapped. Finally, a telecommunications advice (TTY/TDD) for the hearing impaired has been installed in the Commission's headquarters, and the telephone number of this device appears on all Commission press releases.[1]

Commission job announcements include language indicating that applicants for Commission positions will be considered without regard to disability, and at the present time 20 of the Commission's 920 employees are handicapped persons.

In addition, other improvements are planned for introduction within the next few months. It is planned that by April 1, 1989, notices will be posted in the Commission headquarters and regional offices notifying employees, applicants, and other interested persons of the provisions of section 504 of the Rehabilitation Act, as amended, and the Commission's regulations implementing those provisions. It is also planned that by July 1, 1989, toilet seat cover dispensers, paper towel dispensers, and wastepaper containers will be made accessible to handicapped persons in restrooms which otherwise have been made accessible to and usable by handicapped persons. In sum, the Commission believes that it has been operating its programs and activities so that, when viewed in their entirety, such programs and activities are readily accessible to and usable by handicapped persons.

Comments are invited on the Commission's programs and policies as they affect handicapped persons and on the Commission's self-evaluation, a summary of which is set forth above. Written or oral comments may be submitted as indicated above.

Upon completion of the comment period, the Commission will review all comments and, to the extent warranted, take appropriate steps to address matters brought to its attention. In addition, the Commission will maintain on file its self-evaluation, comments received, a description of any areas examined and any problems identified, and a description of any modifications made. This file will be made available for public inspection upon request in the Commission's Public Reference Room, Room 130, Federal Trade Commission, 6th Street and Pennsylvania Avenue, Washington, DC 20580, for a period of three years following the completion of this evaluation.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 89-2113 Filed 1-30-89; 8:45 am]

BILLING CODE 6750-01-M

[1] The Commission does not plan to install telecommunications devices in its regional offices. A telecommunications message intended for a regional office can be received on the Commission headquarter's TDD and then transmitted by regular telephone to the regional office. The reverse of this procedure can be followed with respect to a message from a regional office to a hearing impaired recipient.

GOVERNMENT PRINTING OFFICE

Depository Library Council to the Public Printer; Meeting

The Depository Library Council to the Public Printer will meet March 8-10, 1989, at the Pittsburgh Hilton, 600 Commonwealth Place, Pittsburgh, PA 15220. Reservations: (412) 391-4600 or 1-800-HILTONS.

The purpose of the meeting is to discuss the Depository Library Program.

The meeting is open to the public. Anyone who wishes to attend should notify the Conference Manager, David H. Brown, U.S. Government Printing Office (SM), Washington, DC 20401. Telephone: (202) 275-2255.

General participation by members of the public, or questioning of Council members or other participants, shall be permitted with approval of the Chair.

Dated: January 18, 1989.

Joseph E. Jenifer,

Acting Public Printer.

[FR Doc. 89-2236 Filed 1-30-89; 8:45 am]

BILLING CODE 1520-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 88N-0023]

Drug Export; Haldol® (Haloperidol) Decanoate Injection

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that McNeil Pharmaceutical has filed an application requesting approval for the export of the human drug HALDOL® (haloperidol) Decanoate Injection to Canada.

ADDRESS: Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Room 4-62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Rudolf Apodaca, Division of Drug Labeling Compliance (HFD-310), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8043.

SUPPLEMENTARY INFORMATION: The Drug Export Amendments Act of 1986 (Pub. L. 99-660) (section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382)) provides that FDA may approve applications for the export of drugs that are not currently approved in the United States. The approval process is governed by section 802(b) of the act. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that McNeil Pharmaceutical, Spring House, PA 19477-0776, has filed an application requesting approval for the export of the drug HALDOL® (haloperidol) Decanoate Injection, to Canada. The application was received and filed in the Center for Drug Evaluation and Research on January 12, 1989, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by (February 10, 1989), and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802, Pub. L. 99-660 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44).

Dated: January 19, 1989.

Daniel L. Michels,

Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 89-2122 Filed 1-30-89; 8:45 am]

BILLING CODE 4160-01-M

Public Health Service

Office of the Assistant Secretary for Health; Delegation of Authority

Notice is hereby given that in furtherance of the delegation of authority to the Assistant Secretary for Health on November 23, 1981, by the Secretary of Health and Human Services, the Assistant Secretary for Health has delegated all of the authorities under Title XIX, Part D, of the Public Health Service Act (42 U.S.C. 300w *et seq.*), as amended, pertaining to the Immunosuppressive Drug Therapy Block Grant, to the Administrator, Health Resources and Services Administration, with authority to redelegate, excluding the authorities to issue regulations, to submit reports to Congress or a congressional committee, to establish advisory committees or councils, or to appoint members to advisory committees for councils.

Redelegation

Provision was made for all delegations and redelegations under Title XIX to continue in effect.

Effective Date

This delegation became effective on January 18, 1989.

Dated: January 18, 1989.

Robert E. Windom,

Assistant Secretary for Health.

[FR Doc. 89-2120 Filed 1-30-89; 8:45 am]

BILLING CODE 4160-15-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. D-89-892; FR-2589]

Delegation of Authority to the President of the Government National Mortgage Association; et al.

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of delegation of authority.

SUMMARY: On October 7, 1988, the Department published in the **Federal Register** (53 FR 39535) a notice of delegation of authority which became effective October 1, 1988. That delegation, which designates debarring and suspending officials for the agency, is being amended to also delegate to the President of the Government National Mortgage Association (GNMA) the authority to impose debarments and suspensions of contractors and participants.

EFFECTIVE DATE: January 23, 1989.

FOR FURTHER INFORMATION CONTACT: Marylea W. Byrd, Office of General Counsel, Room 10266, Department of Housing and Urban Development, Washington, DC 20410. Telephone (202) 755-9888 (this is not a toll free number).

Authority Delegated

The Secretary of Housing and Urban Development delegates to the President of GNMA, the Assistant Secretaries, and the Inspector General the authority to impose suspension or debarment on contractors and participants pursuant to the provisions of 24 CFR Part 24.

Dated: January 23, 1989.

J. Michael Dorsey,

Acting Secretary.

[FR Doc. 89-2111 Filed 1-30-89; 8:45 am]

BILLING CODE 4210-32-M

[Docket No. D-89-893; FR-2595]

Delegation of Authority to the Office of General Counsel

AGENCY: Office of the Secretary, HUD

ACTION: Notice of Delegation of Authority.

SUMMARY: This Delegation of Authority pertains to the Office of General Counsel. It consolidates and updates past delegations from the Secretary to the General Counsel.

EFFECTIVE DATE: January 19, 1989.

FOR FURTHER INFORMATION CONTACT: David D. White, Office of General Counsel, Department of Housing and Urban Development, Room 10244, Washington, DC 20410, phone (202) 755-7205. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Delegations of Authority from the Secretary to the General Counsel are being updated and consolidated into a single instrument.

Accordingly, the Secretary delegates the following authority to the General Counsel:

Section A. *Authority delegated.* The General Counsel, the Deputy General Counsel and the Deputy General Counsel (Operations) each is authorized to exercise the following authority of the Secretary of Housing and Urban Development (Secretary).

1. To interpret the authority of the Secretary and to determine whether the issuance of any rule, regulation, statement of policy, or standard promulgated by the Department is consistent with that authority. However, nothing contained in this subsection shall affect the validity of any rule, regulation, statement of policy or standard once it has been promulgated by the Department.

2. To direct all litigation affecting the Department and to sign, acknowledge and verify on behalf of and in the name of the Secretary all declarations, bills, petitions, pleas, complaints, answers, and other pleadings in any court proceeding brought in the name of or against the Secretary or in which he is named as a party.

3. To direct the referral of cases and other matters to the Attorney General for appropriate legal action and to transmit information and material pertaining to the violation of law or Department rules and regulations. There are excepted from this authority, however, those referrals and transmittals which the Inspector General is authorized to make by law or by delegation of authority.

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4. To accept on behalf of the Secretary service of all summons, subpoenas, and other judicial, administrative, or legislative processes directed to the Secretary or to an employee of the Department in an official capacity.

5. Where not inconsistent with other regulations pertaining to proceedings before administrative law judges, to approve the issuance of subpoenas or interrogatories pertaining to investigations for which responsibility is vested in the Secretary.

6. To consider, ascertain, adjust, determine, compromise and settle claims under the Federal Tort Claims Act, 28 U.S.C. 2671, and the Military Personnel and Civilian Employees' Claims Act of 1974, 31 U.S.C. 241–3.

7. To act upon the appeals and issue final determinations on appeals of denial of access or record correction under the Privacy Act of 1974 (Pub. L. 93–579), 5 U.S.C. 552(c).

8. To act upon appeals under the Freedom of Information Act, 5 U.S.C. 552, except appeals from decisions of the office of the Inspector General.

9. To appoint, and fix the compensation of, foreclosure commissioners and alternate commissioners, in accordance with the Multifamily Mortgage Foreclosure Act of 1981, 12 U.S.C. 3701, *et seq.*, and to promulgate regulations necessary to carry out the provisions of the Act.

10. To act as the designated official under: (a) Section 6(a) of Executive Order 12612, *Federalism*, issued October 26, 1987 (52 FR 41685, October 30, 1987), and the Notice implementing the Order for HUD's programs (153 FR 31920, August 22, 1988);

(b) Executive Order 12606, *The Family*, issued September 2, 1987 (52 FR 34188, September 9, 1987); and

(c) Section 5(a) of Executive Order 12630, *Governmental Actions and Interference With Constitutionally Protected Property Rights*, issued March 15, 1987, (53 FR 8859, March 18, 1988).

Section B. *Authority to redelegate.* The General Counsel is authorized to redelegate to employees of the Department any of the authority delegated under Section A of this document.

Section C. *Additional authority delegated.* In addition to the authority delegated in Section A:

1. The General Counsel, the Deputy General Counsel, the Deputy General Counsel (Operations) and the Associate General Counsel for Litigation each is authorized (a) to approve the production or disclosure of HUD material or information by HUD employees or former employees in response to subpoenas or demands of courts or other authorities, pursuant to regulations of the Department set forth in 24 CFR Part 15, Subpart H and (b) to waive any policy or procedure prescribed by the regulations of the Department set forth in 24 CFR Part 15, Subpart I, concerning testimony of HUD employees in legal proceedings.

2. In response to subpoenas or demand of courts or other authorities pursuant to the regulation set forth in 24 CFR Part 15, Subpart H:

(a) Each Associate General Counsel is authorized to approve the release of documents by HUD Headquarters employees for those programs for which the Associate provides legal advice.

(b) Each Regional Counsel is authorized to approve the release of documents by HUD employees within the territorial jurisdiction of his region.

3. The General Counsel shall serve as the Designated Agency Ethics Official under the Ethics in Government Act of 1978 (Pub. L. 95–521, as amended). The Associate General Counsel for Administrative and General Law shall serve as Alternate Agency Ethics Official in accordance with regulations of the Office of Government Ethics. The designated Agency Ethics Official and the Alternate Agency Ethics Official are authorized to coordinate and manage the ethics programs of the Department.

4. The General Counsel and the Associate General Counsel for Administrative and General Law may determine, in accordance with 18 U.S.C. 208(b), whether a financial interest is so substantial as to be deemed likely to affect the integrity of the services which the Department may expect from an officer or employee.

5. The General Counsel, Deputy General Counsel, Associate General Counsel for Administrative and General Law, and Assistant General Counsel for Administrative Law may make the determinations and certifications required under section 1114 of the Right to Financial Privacy Act, 12 U.S.C. 3401 *et seq.*

Section D. *Authority to Designate.* The General Counsel is authorized to:

1. Designate one or more employees to serve as Acting General Counsel during the absence of the General Counsel.

2. Designate one or more employees to serve as an acting capacity during the absence of an appointee to a position in the Office of General Counsel or during a vacancy in such a position.

Delegations Revoked

1. 36 FR 11052 (June 8, 1971) [Docket No. D–71–102], as amended by
39 FR 29212 (August 14, 1974) [Docket No. D–74–283],
41 FR 13960 (April 1, 1976) [Docket No. D–76–616],
52 FR 27859 (July 24, 1987) [Docket No. D–87–854; FR 2373], and
52 FR 41782 (October 30, 1987) [Docket No. D–87–854; FR 2373];
2. 47 fR 5468–9 (February 5, 1982) [Docket No. D–82–663];
3. 46 FR 43312 (August 27, 1981) [Docket No. D–81–655];
4. 46 FR 21450 (April 2, 1981) [Docket No. D–81–644];
5. the unpublished delegation of authority of November 4, 1969, pertaining to determinations under 18 U.S.C. 208(b);
6. 29 FR 31356 (August 20, 1974) [Docket No. D–74–19687]; and
7. 45 FR 27996 (April 5, 1980) [Docket No. D–80–12893].

Authority: Sec. 7(d), Department of HUD Act (42 U.S.C. 3535(d)).

Dated: January 19, 1989.

Samuel R. Pierce, Jr.,

Secretary, U.S. Department of Housing and Urban Development.

[FR Doc. 89–2112 Filed 1–30–89; 8:45 am]

BILLING CODE 4210–32–M

DEPARTMENT OF THE INTERIOR

Great Lakes Coastal Barrier Act of 1988; Extension of the Comment Period

AGENCY: Department of the Interior.

ACTION: Notice.

SUMMARY: This notice announces the extension of the public review and comment period for draft maps that identify undeveloped, unprotected coastal barriers along the Great Lakes shoreline which will be recommended to Congress for inclusion in the Coastal Barrier Resources Seytem.

These maps were made available on January 12, 1989 (see **Federal Register**, Vol. 54, No. 8, pages 1250–1251). Comments originally were to be received no later than February 6, 1989.

DATE: Comment period will close on March 14, 1989.

ADDRESS: Great Lakes Coastal Barriers Study Group, U.S. Department of the Interior, National Park Service—473, Washington, DC 20013–7127.

FOR FURTHER INFORMATION CONTACT: Dr. Albert G. Greene, Jr., Great Lakes Coastal Barriers Coordinator, National Park Service, Washington, DC 20013–71217, (202) 343–5661.

Date: January 26, 1989.

Becky Norton Dunlop,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 89–2200 Filed 1–30–89; 8:45 am]

BILLING CODE 4310–70–M

Privacy Act of 1974—Revision of Notices of Systems of Records

Pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a), notice is hereby given that the Department of the Interior is revising two notices describing systems of records maintained by the Office of Congressional and Legislative Affairs in the Office of the Secretary. Except as noted below, all changes being published are editorial in nature, and reflect minor administrative revisions which have occurred since the previous publication of the material in the **Federal Register**. The two notices being revised, which are published in their entirety below, are:

1. Private Relief Claimants, Department—Interior, Office of the Secretary—12 (Previously published at 46 FR 12146 on February 12, 1981).

2. Personnel Correspondence Files—Interior, Office of the Secretary—99 (Previously published at 43 FR 49579 on October 24, 1978).

The notice titled "Private Relief Claimants, Department" is being revised to reflect the establishment of a computer database system to facilitate the tracking, filing, and retrieval of the records. In the notice titled "Personnel Correspondence Files," the statement describing the categories of records in the system has been revised, and the existing routine disclosure to congressional offices is clarified.

In both notices, the existing routine disclosure statement for litigation purposes is revised to incorporate the clarification on such disclosures prescribed by the Office of Management and Budget (OMB) in its supplementary guidelines dated May 24, 1985, for implementing the Privacy Act. Also, in both notices the retention and disposal statements are amended to conform to guidelines issued by the Assistant Archivist for Records Administration, National Archives and Records Administration, in his memorandum to Agency Records Officers dated June 11, 1985.

Since these changes do not involve any new or intended use of the information in the systems of records, the notices shall be effective on January 31, 1989. Additional information regarding these revisions may be obtained from the Department Privacy Act Officer, Office of the Secretary (PMI), Room 2242, Main Interior Building, U.S. Department of the Interior, Washington, DC 20240.

Oscar W. Mueller, Jr.,

Director, Office of Management Improvement.

Date: January 24, 1989.

INTERIOR/OS–12

SYSTEM NAME:

Private Relief Claimants, Department—Interior, Office of the Secretary—12.

SYSTEM LOCATION:

Office of Congressional & Legislative Affairs, Legislative Counsel, U.S. Department of the Interior, 18th and C Streets NW., Washington, DC 20240.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individual claimants against the United States seeking remedy through private relief bills for claims involving the programs and activities of the Department of the Interior.

CATEGORIES OF RECORDS IN THE SYSTEM:

Copies of relief bills and congressional committee reports. Department reports on bills, correspondence, comments of bureaus and offices.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, U.S.C. 1457, 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary use of the records is to support legislation for the relief of private claimants. Disclosures outside the Department of the Interior may be made (1) to Congress to report on the basis and validity of claims; (2) to another Federal agency having a subject matter interest in the claim; (3) to the Office of Management and Budget in connection with the review of private relief legislation as set forth in OMB Circular No. A–19, at any stage of the legislative coordinates and clearance process as set forth in that Circular; (4) to the Congressional sponsor of a private relief bill and to representatives of the individual who is the subject of the legislation; (5) to the U.S. Department of Justice or in a proceeding before a court or adjudicative body when (a) the United States, the Department of the Interior, a component of the Department, or, when represented by the government, an employee of the Department is a party to litigation or anticipated litigation or has an interest in such litigation, and (b) the Department of the Interior determines that the disclosure is relevant or necessary to the litigation and is compatible with the purpose for which the records were compiled.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained manually in file folders, and in computer media.

RETRIEVABILITY:

Cross-indexed by name of claimant, through a computer legislative tracking database.

SAFEGUARDS:

Maintained with safeguards meeting the requirements of 43 CFR 2.51 for manual and computer records.

RETENTION AND DISPOSAL:

Retired to Federal Records Center after two Congresses. Office of the Secretary, Records Disposal Schedule, Category H, Items 3 and 6 govern the disposal of records.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Congressional & Legislative Affairs, U.S. Department of the Interior, Washington, DC 20240.

NOTIFICATION PROCEDURE:

An individual may inquire whether or not the system contains a record pertaining to him by addressing a written request to Legislative Services Center, Office of Congressional & Legislative Affairs, Office of the Secretary, U.S. Department of the Interior, Washington, DC 20240. The inquiry must be in writing and state that the individual seeks information concerning records pertaining to him. See 43 CFR 2.60.

RECORD ACCESS PROCEDURE:

Same as Notification. See 43 CFR 2.63 for additional content requirements for requests.

CONTESTING RECORD PROCEDURES:

A petition for amendment should be addressed to the System Manager and must meet the requirements of 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Congress, individual claimants, bureaus and offices of the Department.

INTERIOR/OS–99

SYSTEM NAME:

Personnel Correspondence Files—Interior, Office of the Secretary; OS/99.

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SYSTEM LOCATION:

Office of the Secretary, Office of Congressional and Legislative Affairs, Division of Congressional Services, U.S. Department of the Interior, 18th and C Streets NW., Washington, DC 20240.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Those who have corresponded directly or indirectly through Members of Congress with the Office of Congressional and Legislative Affairs concerning personnel and employment matters within the Department.

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence is filed in State files in alphabetical order under Members of Congress names. Correspondence may contain applications, résumés, or other personal materials in support of the reason for the individual's inquiry.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 44 U.S.C. 3101; 43 U.S.C. 1457; and Reorganization Plan 3 of 1950.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary use is to maintain a temporary record of the personal interest of the subject of the correspondence. Usually the correspondence is advising the constituent of the status of his or her application for a position with the Department, or advising of the current availability of opportunities, or of the procedures for applicant must undergo in order to be eligible for Federal work within the Department. These records are maintained alphabetically by calendar year basis and are destroyed after the yearly file has become 2 years old. The applications submitted may be provided in the subject's wishes to other personnel authorities within the Department for current consideration should there be possible opportunities or vacancies of possible interest to the applicant.

Disclosures outside the Department of the Interior may be made (1) to a Federal agency so that the agency may respond to an inquiry from the named individual; (2) to the U.S. Department of Justice or in a proceeding before a court or adjudicative body when (a) the United States, the Department of the Interior, a component of the Department, or, when represented by the government, an employee of the Department is a party to litigation or anticipated litigation or has an interest in such litigation, and (b) the Department of the Interior determines that the disclosure is relevant or necessary to the litigation and is compatible with the purpose for which the records were compiled; (3) of information indicating a violation or potential violation of a statute, regulation, rule, order or license, to appropriate Federal, State, local or foreign agencies responsible for investigation or prosecuting the violation or for enforcing or implementing the statute, rule, regulation, order or license; and (4) to a congressional office from the record of an individual in response to an inquiry the individual has made to the congressional office.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in metal file cabinets in locked rooms.

RETRIEVABILITY:

Filing system maintained on yearly basis in alphabetical name order.

RETENTION AND DISPOSAL:

Filing system maintained on calendar year basis and the 2d yearly file is destroyed December 31 at the end of the 2d year. General Records Schedule 1, Items 3, 15, and 33b govern the disposal of records.

SYSTEM MANAGER(S) AND ADDRESS:

Congressional Liaison Officer, Office of the Secretary, Office of Congressional and Legislative Affairs, 18th and C Streets NW., Washington, DC 20240.

NOTIFICATION PROCEDURE:

To determine if records are maintained on you in this system write to the System Manager. See 43 CFR 2.60 for submission requirements.

RECORD ACCESS PROCEDURE:

Same as above. See 43 CFR 2.63 for submission requirements.

CONTESTING RECORD PROCEDURES:

Same as above. See 43 CFR 2.71 for submission requirements.

RECORD SOURCE CATEGORIES:

Correspondence or documents signed within the Office of the Secretary, Office of Congressional and Legislative Affairs, or presented to the Office in person by constituents and this material became a record of the interview or visit, etc.

[FR Doc. 89-2123 Filed 1-30-89; 8:45 am]

BILLING CODE 4310-RB-M

Bureau of Land Management

[NM 65730; NM 060-4709-60]

Availability Planning Area Analysis; Realty Action Direct Sale of Public Lands, Guadalupe County, NM

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability: planning area analysis/notice of realty—noncompetitive sale of public lands.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the National Environmental Policy Act, the following parcel of land has been evaluated through a Planning Area Analysis/Environmental Assessment and found suitable for direct sale at no less than appraised fair market value of $250.

T.8 N., R.19 E., N.M.P.M.,
Sec. 9, NE¼NE¼NW¼NW¼, Containing 2½ acres

The land is to be offered to the County of Guadalupe for use as a sanitary landfill near the Village of Pastura, New Mexico. The land described is hereby segregated from appropriation under the pubic land laws, including the mining laws, until a patent is issued or 270 days from the date of publication of this notice, whichever occurs first. The above described lands will be sold to the County of Guadalupe, New Mexico, at 10:00 p.m., on March 17, 1989, at the Roswell Resource Area Conference Room, Federal Building, 5th and Richardson Streets, Roswell, New Mexico.

The patent, when issued, will be subject to all valid and existing rights and will contain the following reservations:

1. A right-of-way to the United States for ditches and canals constructed under the authority of the Act of August 30, 1890 (27 Stat., 391, 43 U.S.C. 945).

2. All minerals, together with the right to prospect for, mine, and remove the minerals shall be reserved to the United States.

3. The patent will be subject to a 20' buried telephone line right-or-way, NM 58338, granted to Eastern New Mexico Rural Telephone Cooperative, Inc.

DATE: Interested parties may submit comments regarding this realty action through March 14, 1989, to the District Manager, Roswell District, P.O. Box 1397, Roswell, New Mexico 88201. Any adverse comments will be evaluated by the District Manager who may sustain, vacate or modify this action. Any person who participated in the planning process and has an interest which may be adversely affected by the Planning Area Analysis may submit a protest through March 14, 1989. Any protest must be filed with the Director (760) Bureau of Land Management, Department of the Interior, 18th and C Streets, Washington DC 20240.

SUPPLEMENTARY INFORMATION: Detailed information concerning the sale, and planning and environmental documents are available for review at or may be obtained upon request from the Roswell Resource Area Office, Federal Building, 5th and Richardson Streets, Roswell, New Mexico.

Dated: January 20, 1989.

Monte G. Jordan,

Associate State Director.

[FR Doc. 89-2125 Filed 1-30-89; 8:45 am]

BILLING CODE 4310-FB-M

[MT-060-09-4410-02]

Resource Management Plans; Judith, Valley and Phillips Resource Areas, MT

AGENCY: Bureau of Land Management—Lewistown District Office, Interior.

ACTION: Notice of call for Area of Critical Environmental Concern (ACEC) nominations to be addressed through the Judith, Valley, Phillips Resource Managment Plan.

SUMMARY: Nominations of areas to be considered for ACEC designation within the Judith, Valley, and Phillips Resource Areas of the Lewistown District, Montana are requested at this time. An ACEC is defined under 43 CFR 1610.0–5(a) as an area within the public lands where special management attention is required to protect and prevent irreparable damage to important historic, cultural, or scenic values, fish and wildlife resources, or other natural systems or processes, or to protect life and safety from natural hazards. Nominations much meet both the relevance and importance criteria under 43 CFR 1610.7–2(a) to be considered as a potential ACEC.

SUPPLEMENTARY INFORMATION: The Judith, Valley, Phillips Resource Managment Plan geographic area is in north-central Montana and consists of BLM-administered lands in Valley, Phillips, Fergus, Petroleum, and Judith Basin counties, and the southern half of Chouteau county. This notice complies with new public notice standards contained in the Bureau of Land Management 1613 ACEC Manual, finalized on October 13, 1988.

Public nominations for potential ACECs at this point include: Seven Blackfoot Area, Azure Cave, Itchpair Slough, Larb Hills, Ole Scraggy Peak, Shed Lake, Lower Judith River, Rock Creek Canyon, Beaver Creek Ponds, Joiner Coulee, and Woody Island Coulee.

Nominations should be sent to: District Manager, Bureau of Land Management, Lewistown District Office, 80 Airport Road, Lewistown, MT 59457.

DATES: Nominations will be accepted at any time however, they would be timely to the planning process if submitted prior to March 31, 1989.

FOR FURTHER INFORMATION CONTACT: Wayne Zinne, District Manager at (406) 538–7461 or write to: Lewistown District, 80 Airport Road, Lewistown, Montana 59457–0909.

Dated: January 23, 1989.

Wayne Zinne,

District Manager.

[FR Doc. 89-2124 Filed 1-30-89; 8:45 am]

BILLING CODE 4310-DN-M

Minerals Management Service

Pacific Northwest Outer Continental Shelf Task Force; Establishment

This notice is published in accordance with section 9(a)(2) of the Federal Advisory Committee Act (5 U.S.C. Appendix). Following consultation with the General Services Administration, notice is hereby given that the Secretary of the Interior is establishing the Pacific Northwest Outer Continental Shelf (OCS) Task Force Charter.

The purpose of the Pacific Northwest OCS Task Force is to provide advice to the Secretary of the Interior and other officers of the Department of the Interior in the performance of discretionary functions of the OCS Lands Act, as amended (43 U.S.C. 1331 *et seq.*), including all aspects of leasing, exploration, development, and protection of the resources of the OCS off Washington and Oregon.

Further information regarding the Committee may be obtained from the Pacific Regional Director, Minerals Management Service, Department of the Interior, 1340 West 6th Street, Suite 244, Los Angeles, California 90017.

The certification of establishment is published below.

Certification

I hereby certify that the establishment of the Pacific Northwest Outer Continental Shelf Task Force Charter is in the public interest in connection with the performance of duties imposed on the Department of the Interior by 43 U.S.C. 1331 *et seq.*

Dated: January 19, 1989.

Donald Paul Hodel,

Secretary of the Interior.

[FR Doc. 89-2059 Filed 1-30-89; 8:45 am]

BILLING CODE 4310-MR-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Joint Committee on Agricultural Research and Development of the Board for International Food and Agricultural Development

Pursuant to the provisions of the Federal Advisory Committee Act, notice is hereby given of the Meeting of the Joint Committee on Agricultural Research and Development (JCARD) of the Board for International Food and Agricultural Development (BIFAD) on February 22, 1989 from 1:30 p.m. to 4:30 p.m.

The purposes of the Meeting are to update and review the CRSPS; to review the Agency's Procurement/Acquisition/Contracting Process for university services; and to update on the subject of sustainable agriculture.

The February 22nd Meeting will be held in the Department of State, Room 1205, 21st and Virginia Avenue, Washington, DC 20523. Any interested person may attend and may present oral statements in accordance with procedures established by the Board and to the extent the time available for the meeting permits.

Dr. Keys MacManus, BIFAD Support Staff, is the designated ALD. Advisory Committee Representative at the meetings. It is suggested that those desiring further information write to her in care of the Agency for International Development, BIFAD/S, Washington, DC 20523–0068.

Date: January 24, 1989.

Keys MacManus,

Deputy Executive Director, BIFAD Support Staff.

[FR Doc. 89-2210 Filed 1-30-89; 8:45 am]

BILLING CODE 6116-01-M

Board for International Food and Agricultural Development; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act, notice is hereby given of the Ninety Second Meeting of the Board for International Food and Agricultural Development (BIFAD) on February 24, 1989.

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The purposes of the Meeting are: (a) To hear a Report on the Nutrition CRSP, (b) to be presented a report on the African Study Groups including African Universities and Agricultural Policy and Marketing, (c) to hear a soils CRSP Report and (d) to discuss items for the Board's Action such as the CRSP Program Expansion.

The February 24, 1989 Meeting will be held in the Department of State, Room 1107, 21st and Virginia Avenue, Washington, DC 20523. Any interested person may attend and may present oral statements in accordance with procedures established by the Board and to the extent the time available for the meeting permits.

Curtis Jackson, Bureau of Science and Technology, Office of University Relations, Agency for International Development is designated as A.I.D. Advisory Committee Representative at this Meeting. It is suggested that those desiring further information write to Dr. Jackson, in care of the Agency for International Development, Rm. 309, SA 18, Washington, DC 20523–1807, or telephone him on (703) 235–8929.

Date: January 24, 1989.

Dr. Lynn Pascoe,

Executive Director, BIFAD.

[FR Doc. 89-2344 Filed 1-30-89; 8:45 am]

BILLING CODE 6116-01-M

INTERSTATE COMMERCE COMMISSION

[Section 5a Application No. 75 [1] (Amendment No. 2)]

Pacific Motor Tariff Bureau, Inc.—Agreement

AGENCY: Interstate Commerce Commission.

ACTION: Notice of decision and request for comments.

SUMMARY: Pacific Motor Tariff Bureau, Inc. (PMB or Bureau) has filed, pursuant to section 14(a) of the Motor Carrier Act of 1980 (MCA), an application for approval of its ratemaking agreement under 49 U.S.C. 10706(b). Because several modifications are required before the agreement receives final approval, and because new and complex questions are involved in determining whether the agreement is consistent with the MCA and the decision implementing it, the Commission solicits public comment on its interpretation and application of specific rate bureau provisions. Copies of PMB's proposed amendment

[1] Section 5a was recodified as section 10706.

agreement are available for public inspection and copying at the Office of the Secretary, Interstate Commerce Commission, 12th St. and Constitution Avenue NW., Washington, DC 20423, and from PMB's representative: Eldon M. Johnson, Esq., 825 Van Ness Ave. (Suite 601), San Francisco, CA 94100.

DATES: Comments from interested persons are due March 2, 1989. Replies are due 15 days thereafter.

ADDRESS: An original and 10 copies, if possible, of comments referring to Section 5a Application No. 75 should be sent to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Richard Felder, (202) 275–7691. [TDD Services for hearing impaired (202) 275–1721]

SUPPLEMENTARY INFORMATION: Pacific Motor Tariff Bureau, Inc. (PMB), has filed an application for approval of its proposed amended collective ratemaking agreement as required by section 14(a) of the Motor Carrier Act of 1980, Pub. L. 96–296 (MCA). Since filing its application, PMB has been obligated to observe the requirements of the MCA and the standards set forth in our decisions implementing section 14, found in Ex Parte No. 297 (Sub-No. 5), *Motor Carrier Rate Bureaus—Implementation of P.L. 96–296*, 364 I.C.C. 464 (1980), and 364 I.C.C. 921 (1981) (*Rate Bureau*).

We have provisionally approved PMB's agreement as consistent with 49 U.S.C. 10706(b) and *Rate Bureau, supra*, subject to certain modifications in the following subject areas: submission of by-laws and rules of procedure; identification and description of member carriers; proxy voting; final disposition of cases; subcommittees; and emergency procedures. We have also offered comments and imposed requirements concerning the agreement generally. PMB has been directed to file a revised agreement conforming to the imposed conditions within 120 days of the service date of the decision, and to comply with those conditions pending final approval.

In light of the complexity of interpretation involved in determining whether PMB's agreement is consistent with the MCA and the *Rate Bureau* case, *supra*, we request PMB and other interested parties to comment on our interpretation of the controlling statutory and administrative criteria and their application to PMB's agreement.

A copy of any comments filed with the Commission shall also be served on PMB, which shall have 15 days from the expiration of the comment period to reply. These comments will be considered in conjunction with our review of the modifications that PMB must submit to the Commission as a condition to final approval of its agreement.

Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write to, call, or pick up in person from: Office of the Secretary, Room 2215, Interstate Commerce Commission, Washington, DC 20423. Telephone: (202) 275–7428. [Assistance for the hearing impaired is available through TDD services (202) 275–1721.]

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Authority: 49 U.S.C. 10321 and 10706, and 5 U.S.C. 553.

Decided: January 24, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Andre, Lamboley and Phillips.

Noreta R. McGee,

Secretary.

[FR Doc. 89-2178 Filed 1-30-89; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31012; Docket No. 31012]

Railroad Operation; Feeder Line Acquisitions; Cheney Railroad Co. et al.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of findings.

SUMMARY: Pursuant to 49 U.S.C. 10910, Feeder Railroad Development Program, the Commission finds that Cheney Railroad Company (CRC) and Tyson Foods, Inc. (Tyson) are financially responsible and able to provide adequate service. CSX Transportation, Inc. must negotiate a sale with: (1) Either CRC for a 1.46-mile segment, at Ivalee, AL or Tyson for a 1.61-mile segment at Ivalee; and (2) CRC for the remainder of the 54.61 miles of its rail lines between Greens and Ivalee, AL.

DATES: CRC and Tyson must notify the Commission and CSX accepting or rejecting the Commission's determination by February 9, 1989. If CRC and Tyson accept the Commission's determination, CSX must select the applicant with whom it wishes to transact business and notify the Commission and applicants by February 14, 1989.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245. [TDD for hearing impaired (202) 275–1721]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, Telephone: (202) 289–4357/4359.

[Assistance for the hearing impaired is available through TDD services (202) 275–1721.]

Decided: January 10, 1989.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Simmons, Lamboley, and Phillips. Commissioner Lamboley dissented in part with a separate expression.

Noreta R. McGee,

Secretary.

[FR Doc. 89-2179 Filed 1-30-89; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Joint Newspaper Operating Agreement; Manteca News and Manteca Bulletin, CA

Notice is hereby given that the Attorney General, by Order of January 19, 1989, has extended the period for public comment on the application for a Joint Operating Agreement between the Manteca *News* and Manteca *Bulletin*, filed pursuant to the Newspaper Preservation Act, 15 U.S.C. 1801 *et seq.* The period for public comment has been extended until March 3, 1989. The period in which persons may reply in writing to the report of the Antitrust Division and to other comments is extended until April 2, 1989. Comments should be filed by mailing or delivery five copies to the Assistant Attorney General, Justice Management Division, Department of Justice, Washington, DC 20530.

Date: January 23, 1989.

Harry H. Flickinger,

Assistant Attorney General for Administration.

[FR Doc. 89-2128 Filed 1-30-89; 8:45 am]

BILLING CODE 4410-01-M

Lodging Two Final Judgments by Consent Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act; Gerald L. Moore et al.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on January 23, 1989 two proposed Settlement Agreements in *United States v. Gerald L. Moore, et al.*, Civil Action No. 87–101–NW, were lodged with the United States Court for the Eastern District of Virginia.

The complaint filed by the United States alleged that Gerald L. Moore, Bonnie F. Moore, Moor-Fite Corporation of Virginia, Patrick O'Brien, Certified Testing Corporation, and Gary Moore were responsible to reimburse the United States for costs incurred by the Environmental Protection Agency ("EPA") in responding to the release and threatened release of hazardous substances from 2463–2469 Pembroke Avenue, Hampton, Virginia (the "site") in June 1983. The complaint alleged that Gerald and Bonnie Moore arranged for the transport and disposal of approximately 3750 compressed gas cylinders and 17 drums containing hazardous substances at the site. The complaint also alleged that Gerald and Bonnie Moore were the owners and operators of the site; that Moor-Fite Corporation of Virginia was an operator of the site; and that Gary Moore, Patrick O'Brien, and Certified Testing Corporation arranged for the transport to and disposal of the cylinders and the drums at the site. The United States, on behalf of EPA, sought judgment against the Defendants jointly and severally for reimbursement of response costs in excess of $289,800, under section 107(a) of CERCLA, 42 U.S.C. 9607(a). The United States, on behalf of the Department of Defense, Defense Logistics Agency, sought contribution from Defendants under section 113 of CERCLA, 42 U.S.C. 9613(f), in the amount of $200,000, as a result of payment by the Department of Defense, Defense Logistics Agency, of $200,000 into the Hazardous Substances Response Trust Fund on or about November 26, 1986, pursuant to a Memorandum of Understanding and Agreement with EPA dated August 6, 1986.

The United States also sought an injunction and civil penalities of up to $25,000 per day of violation against Gerald Moore for failure to respond to information requests under section 3007(a) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. 6927(a) and section 104(e) of CERCLA, 42 U.S.C. 9604(e).

In their Settlement Agreement, Gerald Moore, Bonnie Moore, and Moor-Fite Corporation of Virginia, have agreed to reimburse the Hazardous Substance Response Trust Fund in the amount of $57,000, and to dismiss with prejudice their four counterclaims against the United States brought under the following theories: Fifth Amendment taking, breach of contract or warranty, indemnification, and contribution under CERCLA. The United States, on behalf of the Department of Defense, Defense Logistics Agency, has agreed to dismiss its claims for contribution under section 113 of CERCLA, 42 U.S.C. 9613(f). The United States, on behalf of EPA, has also agreed to dismiss its claims for penalties under section 3007(a) of RCRA, 42 U.S.C. 6927(a) and section 104(e) of CERCLA, 42 U.S.C. 9604(e), against Gerald Moore.

In a separate Settlement Agreement, Defendant Patrick O'Brien has agreed to confess judgment in favor of the United States in the amount of $10,000.

The Department of Justice will receive comments relating to the proposed Settlement Agreements for a period of thirty days from the date of publication of this notice. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. Gerald L. Moore, et al.* Civil Action No. 87–101–NN, Ref. No. 90–11–3–51. The proposed Settlement Agreements may be examined at the office of the United States Attorney, Eastern District of Virginia, U.S. Courthouse, 600 Granby Street, Norfolk, Virginia 23510. Copies of the Settlement Agreements may also be examined and obtained in person at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 6314, Tenth and Pennsylvania Avenue, NW., Washington, DC. A copy of the proposed Consent Decree may be obtained by mail from the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Box 7611, Ben Franklin Station, Washington, DC 20044.

Donald A. Carr,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89-2128 Filed 1-30-89; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to the Clean Air Act; New York State Office of Mental Health, et al.

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States v. New York State Office of Mental Health, et. al.*, Civ–87–1066L was lodged in the United States District Court for the Western District of New York on January 24, 1989.

The proposed Decree concerns alleged violations of the Clean Air Act ("Act"), 42 U.S.C. 7401 *et seq.*, and the smoke emission limits set forth in Part 227 of the New York State Implementation Plan ("SIP") established pursuant to

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section 110 of the Act, 42 U.S.C. 7410. The alleged violations occurred during the operation of four coal-fired boilers at the Rochester Psychiatric Center in Rochester, New York. The proposed Decree requires the Defendants to comply with the New York SIP and to convert the boilers from coal to natural gas under a conversion schedule. Stipulated penalties for failure to meet the conversion schedule are provided. The proposed Decree also requires the Defendants to pay a $10,000 civil penalty for past violations.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Decree. Comments should be addressed to the Assistant Attorney General for the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to the *United States v. New York State Office of Mental Health, et al.*, D.J. No. 90-5-2-1-954.

The proposed Decree may be examined at the Office of the United States Attorney, 233 United States Courthouse, 100 State Street, Rochester, New York 14614, and at the Region II Office of the Environmental Protection Agency, 26 Federal Plaza, New York New York 10278. Copies of the proposed Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW Washington, DC 20530. A copy of the proposed Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice.

Donald A. Carr,

Acting Assistant Attorney General, Land and Natural Resources Division, Department of Justice.

[FR Doc. 89-2127 Filed 1-30-89; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to the Clean Air Act; Ottumwa, IA, et al.

In accordance with Departmental policy, 28 50.7, notice is hereby given that on *24 January 1989* a proposed Partial Consent Decree in *United States v. City of Ottumwa, Iowa, et al.*, (S.D. Iowa) Civil Action No. 88-164-E was lodged with the United States District Court for the Southern District of Iowa, Central Division. The Partial Consent Decree concerns violations of the Asbestos National Emission Standards for Hazardous Air Pollutants ("NESHAP"), 40 CFR 61.140, *et seq.*, and the Clean Air Act, 42 U.S.C. 7401 *et seq.* The proposed Partial Consent Decree requires defendants City of Ottumwa, Iowa and the Ottumwa Industrial Airport Authority, among other things, to comply with the requirements of NESHAP for asbestos in 40 CFR 61.140, *et seq.*, to pay a civil penalty of $50,000 to pay costs to the United States of $1,102.64, to initiate an asbestos control program, and to initiate an EPA-approved asbestos training program.

The Department of Justice will receive comments relating to the proposed Partial Consent Decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. City of Ottumwa, Iowa, et al.*, D.J. No. 90-5-2-1-1143.

The proposed Partial Consent Decree may be examined at the office of the United States Attorney for the Southern District of Iowa, 115 U.S. Courthouse, Des Moines, Iowa 50309 and the U.S. Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101. The Decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Partial Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $5.30 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Donald A. Carr,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89-2128 Filed 1-30-89; 8:45 am]

BILLING CODE 4410-01-M

Antitrust Division

National Cooperative Research Act of 1984; Cooperative Research and Development Project; Industrial Consortium for Research and Education

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et. seq.* (the "Act"), the University of Illinois at Urbana-Champaign has filed a written notfication on behalf of itself and other members of the Industrial Consortium for Research and Education ("ICRE") simultaneously with the Attorney General and with the Federal Trade Commission disclosing a change in the membership of ICRE. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the notifications stated that Exxon Prodduction Company, P.O. Box 2189, Houston, Texas 77252, will be added as a member of ICRE.

Accordingly, at present the members of ICRE are those companies listed below:

University of Illinois at Urbana-Champaign (Department of Geology).
Exxon Production Company.
Mobile Research and Development Corporation.
Union Oil Company of California.

On November 8, 1988, the University of Illinois at Urbana-Champaign filed its original notification on behalf of itself and the other members of ICRE pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on December 8, 1988, 53 FR 49613.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 89-2130 Filed 1-30-89; 8:45 am]

BILLING CODE 4410-01-M

Immigration and Naturalization Service

[INS # 1132-88]

Legalization; English Language/Civics Standard Test

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice of program.

SUMMARY: The Immigration and Naturalization Service (INS) previously published two notices in the Federal Register concerning the development and implementation of a standardized English language/basic citizenship skills test. These notices appeared as follows: Notice of Proposed Solicitation, 53 FR 8702, published on March 16, 1988, and Notice of Solicitation, 53 FR 21535, published on June 8, 1988. This notice announces the proposals that the INS has accepted under this program and extends the opportunity for participation in this effort by interested and capable entities. To avoid confusion over the use of the term "Notice of Solicitation" which appeared as the type of action in the previous two notices and was not intended to imply a contract or procurement action, the type of action is now listed as "Notice of Program."

DATE: Written proposals from parties interested in developing and administering an alternative testing process based on the criteria in the supplementary information may be submitted any time within six (6) months from the date of publication of this notice. In order for a proposal to be considered, it must be received by close of the business day (5:00 p.m.) on or before July 31, 1989.

ADDRESS: Written proposals should be mailed in triplicate to the Deputy Assistant Commissioner, Legalization, Immigration and Naturalization Service, 425 "I" Street NW., Washington, DC 20536, or delivered to Room 5250 at the same address.

FOR FURTHER INFORMATION CONTACT: Mr. Terrance M. O'Reilly, Deputy Assistant Commissioner, Legalization, (202) 786-3658.

The information collection requirements contained in this notice of proposed rulemaking are being submitted to OMB for clearance in accordance with the provisions of the Paperwork Reduction Act.

Comments concerning and questions regarding the public use information collection contained in this notice should be directed to: Office of Management and Budget, Office of Information Regulatory Affairs, 3225 17th Street and Pennsylvania Avenue, Washington, DC 20010, Attention: DOJ Desk Officer, Room 3203; and to the Department of Justice Clearance Office.

SUPPLEMENTARY INFORMATION: The Immigration and Naturalization Service (INS) previously announced its consideration of and intention to pursue the development and implementation of a standardized English language/basic citizenship skills test for legalization purposes via public notices published in the **Federal Register** (Notice of Proposed Solicitation, 53 FR 8702, March 16, 1988, and Notices of Solicitation, 53 FR 21535, June 8, 1988). Although the non-financial nature of the agreement by INS to accept any qualified testing program was stated in these notices, some confusion has arisen as a result of the use of the term "solicitation". This term was not intended to imply a contract or procurement action. This is not a competitive action. INS intended, by means of these notices, to announce an open program. The Service has not limited the number of proposals it will accept for consideration or approve under this program.

Section 245A(b)(1)(D)(i) of the Immigration and Nationality Act, as amended by the Immigration Reform and Control Act of 1986, Pub. L. 99-603 ("Act") provides in pertinent part that legalized aliens seeking adjustment of status to permanent resident under section 245A(a) of the Act must, unless otherwise exempt, demonstrate that they "* * * meet the requirements of section 312 (relating to minimal understanding of ordinary English and a knowledge and understanding of the history and government of the United States)". In order to facilitate the manner in which legalized aliens can demonstrate that they comply with these requirements, the INS is pursuing the development and implementation of a standardized English language (reading and writing) and basic citizenship skills examination as an alternative testing method. The passing of a standardized "section 312" type examination authorized by INS will serve to relieve the individual of the basic citizenship skill requirement at the time of application to petition for naturalization.

The Service received a total of six written submissions in response to the July 8, 1988 **Federal Register** notice. The Service carefully reviewed each of the submissions and found that only two were actual proposals responsive to the criteria and requirements specified in the notice.

One respondent was unable to submit a proposal timely but expressed interest in participating in any future initiative to provide testing services. One respondent did not address the criteria and requirements as specified in the June 8, 1988 notice. Two respondents provided comment only. One urged that any test approved by INS be reasonable and not unnecessarily burden either the applicant or the examination process. The other suggested that the Service examine the applicant's knowledge of issues that he or she needs to know about in order to function in American society and recommended that the test establish minimal language requirements and be written with a finite vocabulary.

One of the actual proposals was submitted by the Legalization Assistance Board with the Educational Testing Service (ETS). The other actual proposal was submitted by the California State Department of Education with the California Adult Student Assessment System (CASAS). The Service carefully evaluated these proposals and found both entities capable of participating in this program. The Service has approved both proposals and has authorized the Legalization Assistance Board with ETS and the California State Department of Education with CASAS to proceed with implementation of the standardized English language/civics examination.

Those respondents who expressed interest in participating in this effort but were unable to submit their proposals timely, are welcome to do so under the provisions of this notice. Acceptance of a particular program will not restrict the INS from accepting or developing other alternative testing methods. The agreement by INS to accept any alternative testing program will be non-financial. The INS shall incur no financial liability and intends to make no payments to any entity participating in this program. The INS agrees to accept the test results of the program or programs it has approved.

The following criteria and requirements are provided for submission of proposals: (1) The testing entity must have demonstrated experience in developing and administering reliable standard examinations in the English language and Civics areas (for example, tests are currently recognized and accepted by an established public or private institution of learning recognized as such by a qualified state certifying agency); (2) The testing entity will be required to meet with INS representatives to review the test copy and to set the standards for passing test scores. The test should be structured as a pass/fail and should be accomplished within a maximum of thirty (30) minutes; (3) Once the INS approves a test, the contents will not be changed by the testing entity unless explicitly approved or otherwise directed by the INS; (4) The content of test questions must come from the revised (1987) Federal Textbooks on Citizenship. The level of the test questions must be compatible with the lowest level of readability of these textbooks; (5) The testing entity will be required to field test the examination prior to implementation in cooperation with the INS; (6) The testing entity must be capable of administering the examination over a broad geographical area of not less than a statewide basis. In administering the examination, the testing entity will be responsible for obtaining and managing adequate testing locations, controlling the time period in which the testing is to be accomplished, staffing the administration of the test, and furnishing supplies; (7) Any fee charged the applicant by the testing entity to cover the cost of the administration and scoring of the test will be a reasonable fee to be agreed upon by INS and the

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testing entity. If the applicant fails the test, he/she shall be given the opportunity to be re-tested one time at no additional cost. The re-test shall be a variance of the initial test; (8) The testing entity will be required to publicize the availability of the examination to legalization applicants. The INS will also maintain a register of the approved entity or entities. This register will be made available to the public; (9) The testing entity will be responsibile for scoring the examination and must provide the results to the applicant and INS within fifteen (15) business days from the date of the test; (10) The testing entity must provide for test security. INS will review the procedures the entity has or will establish to provide for test security and integrity; (11) INS reserves the right to determine, through inspection or other means, the continued reliability and integrity of the test. Any testing entity approved by INS may be removed from the register for good cause. The testing entity will be notified of its removal from the register in writing and must cease administering the examination immediately upon receipt of the notice; (12) The testing entity will be responsible for verifying the identity of the person taking the test; and (13) The testing entity must provide INS with quarterly management reports throughout the duration of the testing entity's participation in this program.

Richard E. Norton,

Associate Commissioner, Examinations.

Date: December 9, 1988.

[FR Doc. 89-2201 Filed 1-30-89; 8:45 am]

BILLING CODE 4410-10-M

Antitrust Division

Notice Pursuant to the National Cooperative Research Act of 1984; Software Productivity Consortium

Notice is hereby given that pursuant to section 6(a) of the National Cooperative Research Act of 1984, Pub. L. No. 98-462 ("Act"), the Software Productivity Consortium, on December 27, 1988, filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing a change in the membership of the Software Productivity Consortium by the withdrawal of Science Applications International Corporation and correcting the membership roster in the following respects: (1) Ford Aerospace & Communications Corp. has changed its name to Ford Aerospace Corporation, and (2) Grumman Aerospace Corporation has erroneously been identified in previous notifications and Federal Register notices as a member of Software Productivity Consortium, when, in fact, it was Grumman Corporation that, in 1985, became a member of Software Productivity Consortium and that has continued to be a member since that time. The additional notification was filed for the purpose of maintaining the protections of the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to Software Productivity Consortium and its general areas of activity are given below.

Software Productivity Consortium, with the withdrawal of Science Applications International Corporation, consists of the following firms as of December 27, 1988: Allied Corporation; The Boeing Company; Ford Aerospace Corporation; General Dynamics Corporation; Grumman Corporation; Harris Corporation; Lockheed Missiles & Space Company, Inc.; Martin Marietta Corporation; McDonnell Douglas Corporation; Northrop Corporation; TRW Inc.; United Technologies Corporation; and Vitro Corporation. The nature and objectives of the venture remain as described in the original notification of December 21, 1984 to the Attorney General and the Federal Trade Commission: to undertake research and developmental engineering in advanced technologies relating to productivity tools and techniques to be used in the development of complex computer software.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 89-2211 Filed 1-30-89; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review

As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Office will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in. Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Office, Paul E. Larson, telephone (202) 523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N-1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 3208, Washington, DC 20503 (Telephone (202) 395-6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

New Collection

Department of Labor, Bureau of Labor Statistics

May, August and November 1989, February 1990 CPS Supplement on Unemployment Insurance Compensation

1220 CPS-1

On occasion

Individuals or households

1000 respondents per survey; 34 hours per FY; 1 minute per response; 1 form

This supplement will provide data on why a growing proportion of the unemployed are not receiving or have not been applying for benefits under the Unemployment Insurance (UI) Program. Information of this type will assist the Labor Department in managing the UI program and will be useful to Congress for legislative purposes.

New Collection

Occupational Safety and Health Administration

Operation and Maintenance of Electric Power Generation, Transmission, and Distribution Installations (Part 1910)

On occasion

State or local government; Business or other for-profit; Federal agencies or employees; Small business or organizations

35 respondents; 2800 total hours; 80 hours per response

This information is needed by employers to enable them to provide specific control measures and documented procedures for employee protection when working conditions expose employees to the hazards of unexpected energization, start-up, or the release of stored energy of machines, equipment, or process.

Revision

Employment Standards Administration

Claims for Compensation by Dependents and Dependents Information Reports

1215-0155; CA-5, CA-5b; CA-1031; CA-1074; CA-1085; CA-1093; CA-1615; CA-1617; CA-1618

Form No.	Affected public	Respondents	Frequency	Average time per respondent
CA-5	Individuals or households	235	On occasion	90 minutes.
CA-5b	do	70	do	Do.
CA-1617	do	300	Semiannual	30 minutes.
CA-1085	do	450	On occasion	45 minutes.
CA-1031	do	1700	do	15 minutes.
CA-1074	do	70	do	60 minutes.
CA-1093	do	50	do	30 minutes.
CA-1618	do	160	Semiannual	30 minutes.
CA-1615	do	120	On occasion	Do.

Note: 1,835 total hours.

Reports are claims for compensation by survivors due to the death of a Federal employee, and supplemental reports concerning dependency status in various types of cases.

Revision

Employment Standards Administration

Application for a Farm Labor Contractor Certificate of Registration

1215-0038; WH-510

Annually

Individuals or households; Farms; Businesses or other for profit; small businesses or organizations

9600 respondents; 4,500 total hours; .5 hours per response; 1 form

The Migrant and Seasonal Agricultural Worker Protection Act provides that no individual may perform labor contracting activities without a certificate of registration. Form WH-510 is the application form which provides the Department of Labor with the information necessary to issue a certificate specifying the farm labor contracting activities authorized.

Signed at Washington, DC, this 26th day of January, 1989.

Terry O'Malley,

Acting Departmental Clearance Officer.

[FR Doc. 89-2213 Filed 1-30-89; 8:45 am]

BILLING CODE 4510-30-M

Occupational Safety and Health Administration

Alaska State Standards

1. Background

Part 1953 of Title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called the Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On August 10, 1973, notice was published in the Federal Register (38 FR 21628) of the approval of the Alaska plan and the adoption of Subpart R to Part 1952 containing the decision.

The Alaskan plan provides for the adoption of State standards which are at least as effective as comparable Federal standards promulgated under Section 6 of the Act. Section 1953.20 provides that where any alteration in the Federal program could have an adverse impact on the at least as effective status of the State program, a program change supplement to a State plan shall be required.

In response to Federal standards changes, the State has submitted by letter dated September 6, 1988 from Tom Stuart, Director, to James W. Lake, Regional Administrator, and incorporated as part of the plan, a State standard comparable to 29 CFR 1910.272, Grain Handling Facilities Standard, as published in the Federal Register (52 FR 49625) on December 31, 1987, and subsequently corrected on May 18, 1988 (53 FR 17696).

This State standard, which is contained in AAC 16., Grain Handling Facilities, was adopted on June 23, 1988. A public hearing was held on June 13, 1988. Notifications of the hearing was published in statewide media on May 6 and 13, 1988. The public comment period was open for thirty days by Tom Stuart, Director, under authority vested by AS 19.60.020. The State incorporated editorial modifications, replacement of parentheses with commas, the word *shall* has been changed to *must*, and the words *shall not* have been replaced by *may not* throughout the standard as required by Alaska's Attorney General.

2. Decision

The above State standard has been reviewed and compared with the relevant Federal standard. OSHA has

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determined that the State standard is at least as effective as the comparable Federal standard, as required by section 18(c)(2) of the Act. OSHA has also determined that the differences between the State and Federal standards are minimal and that the standards are thus substantially identical. OSHA therefore approves this State standard; however, the right to reconsider this approval is reserved should substantial objections be submitted to the Assistant Secretary.

3. Location of Supplement For Inspection and Copying

A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of Regional Administrator, Occupational Safety and Health Administration, Room 6003, Federal Office Building, 909 First Avenue, Seattle, Washington 98174; State of Alaska, Department of Labor, Office of the Commissioner, Juneau, Alaska 99802; and the Office of State Programs, Occupational Safety and Health Administration, Room N-3476, 200 Constitution Avenue NW., Washington, DC 20210.

4. Public Participation

Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Alaska State plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reason:

1. The standards were adopted in accordance with the procedural requirements of State law which included public comments and further public participation would be repetitious.

This decision is effective January 31, 1989. (Sec. 18, Pub. L. 91-596, 84 STAT. 6108 (29 U.S.C. 667)).

Signed at Seattle, Washington this 20th day of October, 1988.

Ryan E. Knebelkhel,

Acting Regional Administrator.

[FR Doc. 89-2212 Filed 1-30-89; 8:45 am]

BILLING CODE 4510-26-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-325]

Carolina Power & Light Co., Brunswick Steam Electric Plant, Unit 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC or the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-71 issued to the Carolina Power & Light Company (the licensee), for operation of Brunswick Steam Electric Plant, Unit 1, located in Brunswick County, North Carolina.

Environmental Assessment

Identification of Proposed Action

The proposed amendment would revise the provisions in the Technical Specifications (TS) relating to extended fuel irradiation.

The proposed action is in accordance with the licensee's application for reload dated August 1, 1988. Environmental related information on extended fuel irradiation was also previously provided by letter dated September 25, 1987. An Environmental Assessment for Unit 2 was placed in the Federal Register on September 6, 1988 (53 FR 34357).

The Need for the Proposed Action

The proposed changes are needed to allow the licensee the flexibility of extending the fuel irradiation, thereby permitting operation with longer fuel cycles.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revisions to the TS. The proposed revisions would permit use of fuel that would be irradiated to levels above 33 gigawatt days per metric ton (GWD/MT) but not to exceed 60 GWD/MT. The safety considerations associated with reactor operation with extended irradiation have been evaluated by the NRC staff. The staff has concluded that such changes would not adversely affect plant safety. The proposed changes have no adverse effect on the probability of any accident. The increase burnup may slightly change the mix of fission products that might be released in the event of a serious accident, but such small changes would not significantly affect the consequences of serious accidents. No changes are being made in the types or amounts of any radiological effluents that may be released offsite. There is no significant increase in the allowable individual or cumulative occupational radiation exposure.

With regard to potential nonradiological impacts of reactor operation with extended irradiation, the proposed changes to the TS involve systems located within the restricted area, as defined in 10 CFR Part 20. They do not affect nonradiological plant effluents and have no other environmental impact.

The environmental impacts of transportation resulting from the use of higher enrichment fuel and extended irradiation are discussed in the staff assessment entitled, "NRC Assessment of the Environmental Effects of Transportation Resulting from Extended Fuel Enrichment and Irradiation," which was published in the Federal Register on August 11, 1988 (53 FR 30355) in connection with the Shearon Harris Nuclear Power Plant, Unit 1, Environmental Assessment and Finding of No Significant Impact. As indicated therein, the environmental cost contribution of transportation of the increases in the fuel enrichment up to 5% and irradiation limits up to 60 GWD/MT are either unchanged or may, in fact, be reduced from those summarized in Table S-4, as set forth in 10 CFR 51.52(c). These findings are applicable to this amendment for the Brunswick Steam Electric Plant, Unit 1.

Therefore, the Commission concludes that there are no significant radiological or nonradiological environmental impacts associated with the proposed amendment.

Alternative to the Proposed Action

Since the Commission has concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendment. This would not reduce environmental impacts of plant operation and would result in reduced operational flexibility.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the "Final Environmental Statement related to the continued construction and proposed issuance of an operating license for the Brunswick Steam Electric Plant, Units 1 and 2," dated January, 1974.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further information with respect to this action, see the application for the amendment dated August 1, 1988 and letter dated September 25, 1987, which is available for public inspection at the Commission's Public Document Room, 2122 L Street, NW., Washington, DC 20555 and at the University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297.

Dated at Rockville, Maryland this 24th day, January 1989.

For the Nuclear Regulatory Commission.

Edward A. Reeves, Jr.,

Acting Director, Project Directorate II-1, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 89-2190 Filed 1-30-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-461]

Illinois Power Co., et al.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to the Illinois Power Company * (IP), Soyland Power Cooperative, Inc. and Western Illinois Power Cooperative, Inc., (the licensees) for Clinton Power Station, Unit 1, located in DeWitt County, Illinois.

Environmental Assessment

Identification of Proposed Action

The licensees have requested a license amendment that would revise the Technical Specifications (TS) related to four issues. First, the proposed license amendment would allow the Clinton Power Station (CPS) to perform its first reactor refueling, in which new types of reactor fuel will be utilized, and to proceed with subsequent reactor operation with the reloaded core. Second, the licensees propose to expand the current power flow operating domain to permit flows up to 107% of rated core flow and with core flows less than 100%. Additionally, operation is requested for feedwater temperatures down to 370°F at rated conditions. Third, the proposed license amendment would revise the Remote Shutdown System Controls to include additional control switches for valves 1E12-F068B and 1E12-F014B and circuit breaker 252-AT1AA1. Fourth, a change is requested that will modify the jet pump surveillance requirement.

This revision to the Clinton Power Station license would be made in response to the licensees' application for amendment dated September 6, 1988 as supplemented December 22, 1988.

The Need for the Proposed Action

Pursuant to 10 CFR 50.50, IP, et al. have proposed an amendment to Facility Operating License No. NPF-62 which consists of changes to the TS concerning four issues.

The first change consists of various revisions to allow CPS to perform its first reactor refueling (in which new types of nuclear fuel will be utilized) and to proceed with subsequent reactor operation with the reloaded core. Two new G.E. BWR fuel types will be utilized for the CPS reload. These fuel types have specified MAPLHGR-vs-Core Exposure requirements. Additionally, General Electric Standard Application for Reactor Fuel (GESTAR), NEDE-24011-P-A-6, which established the MCPR Safety Limit of 1.06 (1.7 for single recirculation loop operation) for the initial fuel cycle for CPS, requires this safety limit to be increased by 0.01 for reload cores. As the reload analysis includes an evaluation of plant operation (including postulated responses to design basis accidents or transients), the Technical Specifications must be changed to reflect the revised safety or power distribution limits. Some of the changes identified as reload-related are not unique to the first reload (for Cycle 2) as they apply to reloads in general. They should, however, minimize the number of Technical Specification changes that would otherwise be required for future reloads.

The second change consists of revisions to various TS to expand the power flow operating domain. The current power flow operating domain is depicted in Technical Specification Bases Section 3/4.2.3 (Bases Figure B3/4.2.3-1, "Reactor Operating Map"). This operating map was developed based on restrictions such as recirculation pump NPSH, plant control characteristics and core thermal power and flow limits. Safe operation in this region is justified by the accident and transient analyses described in Final Safety Analysis Report (FSAR) Chapters 6 and 15. In order to improve the operating flexibility and the capacity factors for CPS, IP contracted General Electric to evaluate the accident and transient scenarios for the modified operating map in the regions of the Maximum Extended Operating Domain (MEOD). Expanding the operating domain allowed on the power flow map can result in greater operational flexibility and improved unit capacity factors. From a core operations and fuel management standpoint, the chief benefits are: 1) better power shaping and fuel preconditioning, 2) xenon compensation, and 3) compensation for reactivity reduction due to exposure. An additional change was requested to support operating the reactor with a feedwater temperature from 420 °F down to 370 °F at rated conditions. This is deisred to allow continued operation with the loss of certain portions of feedwater heating.

The third change consists of a revision to Technical Specification Table 3.3.7.4-2, REMOTE SHUTDOWN SYSTEM CONTROLS, to add controls for motor-operated valves 1E12-F068B and 1E12-F014B and circuit breaker 252-AT1AA1. Current operation of these components, when the normal control switch is inaccessible, requires them to be operated manually. The circuitry is therfore being modified to add control switches for these components. The addition of these cotnrol switches will enhance the operation of the Remote Shutdown System according to the acceptable methods recognized by the NRC for satisfying GDC-19.

The fourth change consists of various revisions to the TS 3.4.1.2 surveillance requirements for the jet pumps. The licensees propose to delete the current prerequisite for performing the surveillance "when both recirculation loop flows are operating at the same flow control valve position." This is a restriction which does not provide any allowance for differences between flow control valve (FCV) positions (or recirculation loop flows) even though Specification 3.4.1.3 allows for some miamatch (within specified limits) between recirculation loop flows. In addition, the wording of the current Specification requires performance of the jet pump surveillances prior to exceeding 25% RATED THERMAL POWER (RTP). However, attempts to perform these surveillances at less than

* Illinois Power Company is authorized to act as agent for Soyland Power Cooperative, Inc. and Western Illinois Power Cooperative, Inc. and has exclusive responsibility and control over the physical construction, operation and maintenance of the facility.

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25% RTP do not provide reliable or consistent data. Therefore, the licensees propose to change the words "prior to THERMAL POWER exceeding 25% of RATED THERMAL POWER and at least once per 24 hours" to "at least once per 24 hours when THERMAL POWER is greater than or equal to 25% of RATED THERMAL POWER."

The fourth change also includes a proposal to condense the wording of the Specification by combining the two existing sections, which separately address single and double reactor recirculation loop operation, into a single section, and a revision of the Surveillance to allow monitoring either jet pump (diffuser-to-lower plenum) differential pressure or jet pump flow with a different (but consistent) acceptance criteria to be specified for each.

Environmental Impacts of the Proposed Action

The first of the proposed changes applies to the Clinton Power Station Cycle 2 (CPSC2) reload. The CPSC 2 will retain 456 GE fuel assemblies from Cycle 1, and add 168 new GE fuel assemblies. The new fuel for Cycle 2 has been approved in the Safety Evaluation Report for Amendment 16 to 'General Electric Standard Application for Reactor Fuel,' (GESTAR II). LOCA analyses have been performed for the retained and reload fuel using the SAFE/REFLOOD methods approved by the Staff. Clinton still complies with 10 CFR 50.46, Appendix K. The nuclear design for CPSC2 has been performed by GE with the approved methodology described in GESTAR II. Since the CPSC2 nuclear design parameters have been obtained with previously approved methods and fall within expected ranges, the nuclear design is acceptable. The thermal-hydraulic design for CPSC2 has been performed by GE with the approved methodology described in GESTAR II. The transient and accident analysis methodologies used for CPSC2 are described in GESTAR II. The results are applicable to Clinton. The corewide and the local transient analysis methodologies and results are acceptable because they fall within expected ranges. The limiting pressurization event, the main steam isolation valve closure with flux scram, analyzed with standard GESTAR II methods, gave results for peak vessel pressure of 1247 psig, which is below the ASME Section III limit of 1375 psig.

The General Electric Company analysis of "Maximum Extended Operating Domain and Feedwater Heater Out-of-Service Analysis of Clinton Power Station" describes the results of an evaluation of the safety impact of the second proposed change, operation in the MEOD with reduced feedwater temperatures. This evaluation included consideration of abnormal operating transients, LOCAs, containment pressures, load impact on vessel internals, flow induced vibration, and fuel mechanical performance. Many transients of Chapter 15 of the FSAR were considered for operation in the MEOD. It was concluded that the current power dependent Minimum Critical Power Ratio (MCPR) limit bounded these cases in the MEOD. The analysis of the loss of feedwater heating (LFWH) transient in the MEOD indicated that the LFHW transient is bounded by the reload anaylsis. For operation in the MEOD, a slow recirculation flow runout transient was reanalysed on a generic basis (BWR/6) with approved methods to account for initial operation at low flows and a higher power rod line of the ELLR. The two new flow dependent MCPR developed were found acceptable by the staff. The generic analysis of a LOCA in the MEOD obtained with approved methods were considered acceptable by the staff. A conservative containment analysis for operation in the MEOD with feedwater hearters out-of-service (FWHOS) resulted in a peak drywell pressure below the design limit of 30 psig. Calculations of an MSIV closure event with flux scram for operation in the MEOD indicated a peak vessel pressure of 1245 psig, well below the same code limit of 1375 psig.

The General Electric Company analysis supplied with the submittal includes results from analyses made to determine the new initial conditions of fuel thermal limits that would be needed to safisfy the pertinent licensing criteria if APRM setdown were eliminated. The evaluation included operation in the MEOD with reduced feedwater temperature. The new Minimum Critical Power Ratio and Maximum Average Planar Linear Heat Generation Rate factors were found to be acceptable by the staff.

The third proposed change supports the addition of control switches in the control circuits of certain components in the Remote Shutdown System. These modifications were previously reviewed and approved by the staff. The addition of control switches to the division 2 RHR heat exchanger valves and division 1 power supply circuit breaker controls provided a diverse and redundant means of controlling the remote shutdown systems and thus will facilitates remote operation of these components. The proposal stated that the control switches meet the same quality standards and will be installed in accordance with the same requirements as the existing components on the Motor Control Centers and the Remote Shutdown Panel. The proposal also indicated that the normal control and operation of the circuit breaker and the valves will not be affected by the addition of these switches, and the ability to manually operate these components will remain unchanged. The staff concludes the proposed changes to the technical specification represent the modification that was previously approved by the staff, do not involve an unreviewed safety question and, therefore, are acceptable.

The fourth porposed change is a revision to the jet pump operability specifications to allow present Surveillance Requirement 4.4.1.2 to be performed with Thermal Power in excess of 25% of Rated Thermal Power instead of the present prior to exceeding 25% of Rated Thermal Power. The proposed Surveillance Requirement 4.4.1.2 will allow entry into Operational Conditions 1 and 2 without having to perform persent Surveillance Requirement 4.4.1.2; however, jet pump Operability is required to be determined after entering Operational Condition 2 (OC–2) and at least once every 24 hours thereafter by verifying that the diffuser to lower plenum differential pressure is within specified limits. Entry into OC–2 is necessary in order to perform the surveillance required to demonstrate jet pump operability. OC–2 opeation is neede to achieve power levels sufficient for meaningful measurements of flow and differential pressure (dp). When power and flow conditions are too low, the effects of natural circulation, moderator subcooling changes and varying core differential pressure result in large data uncertainties. The changes proposed are acceptable because they are necessary for meaningful surveillance measurements. This proposed change also revises Surveillance Requirement 4.4.1.2 by deleting the requirement that the recirculation flow control valves be in the same position when performing the surveillance. The staff has reviewed the proposal and note that even at the same FCV position, relative loop flows are different because of differing flow path resistances and individual pump characteristics. The effect of the proposed change on measured parameters is, therefore, expected to be insignificant. We conclude that the proposed changes are acceptable. A proposed change to the specified acceptable deviation from patterns established for individual jet pump diffuser-to-lower plenum differential pressure from 10% to 20% is consistent with the recommendations of both NUREG/CR–3062 and General Electric Service Information Letter (SIL) No. 330 which established 20% as an acceptable indication of jet pump operability. Therefore, the changes are acceptable.

The Commission has concluded that these changes do not significantly increase the probability or consequences of any accident and that potential radiological releases during normal operations, transients would not be increased. With regard to non-radiological impacts, the proposed amendment involves systems located entirely within the restricted area as defined in 10 CFR Part 20. They do not affect non-radiological plant effluents and have no other environmental impact. Therefore, the staff also concludes that there are no significant non-radiological environmental impacts associated with the proposed amendment.

Accordingly, the Commission findings in the "Final Environmental Statement related to the operation of Clinton Power Station, Unit No. 1" dated May 1982 regarding radiological environmental impacts from the plant during normal operation or after accident conditions, are not adversely altered by this action. IP is committed to operate Clinton, Unit 1 in accordance with standards and regulations to maintain occupational exposure levels "as low as reasonably achievable."

The Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with the action was published in the Federal Register on November 22, 1988 (53 FR 47285). No request for hearing or petition for leave to intervene was filed following this notice.

Alternative to the Proposed Actions

The principal alternative would be to deny the requested amendment. This alternative, in effect, would be the same as a "no action" alternative. Since the Commission has concluded there are no significant environmental effects that would result from the proposed action, any alternative with equal or greater environmental impact need not be evaluated.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in connection with the Nuclear Regulatory Commission's Final Environmental Statement dated May 1982 related to this facility.

Agencies and Persons Consulted

The NRC staff reviewed the licensees' request of September 6, 1988, as supplemented December 22, 1988, and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement of the proposed license amendment.

Based upon this environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the request for amendment dated September 6, 1988 as supplemented December 22, 1988, and the Final Environmental Statement for the Clinton Power Station dated May 1982, which are available for public inspection at the Commission Public Document Room, 2120 L Street NW., Washington, DC 20055 and at the Vespasian Warner, 120 West Johnson Street, Clinton, Illinois 61727.

Dated at Rockville, Maryland this 25th day of January 1989.

For the Nuclear Regulatory Commission.

Daniel R. Muller,

Director, Project Directorate III–2, Division of Reactor Projects—III, IV, V and Special Projects.

[FR Doc. 89–2194 Filed 1–30–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–458]

Gulf States Utilities Co.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–47, issued to Gulf States Utilities Company (the licensee), for operation of River Bend Station, Unit 1, located in West Feliciana Parish, Louisiana.

The proposed amendment would modify the Technical Specifications (TSs) to provide one-time exceptions to the provision of TS 3.0.4 for three TSs for use during the second refueling outage scheduled to begin March 15, 1989. These exceptions are applicable in Operations Conditions 4 or 5 to allow entry into specified operational conditions without meeting the Limiting Condition for Operation (LCO), provided that the requirements of the associated action statements are met.

TS 3.0.4 states: 3.0.4 Entry into an OPERATIONAL CONDITION or other specified condition shall not be made unless the conditions for the Limiting Condition for Operation are met without reliance on provisions contained in the ACTION requirements. This provision shall not prevent passage through or to OPERATIONAL CONDITIONS as required to comply with ACTION requirements. Exceptions to these requirements are stated in the individual Specifications.

The proposed changes to the TSs would provide exceptions to TS 3.0.4 during the second refueling outage for the following TSs: (1) TSs 3.4.9.2 and 3.9.11.2. These TSs specify the shutdown cooling mode loop LCO's for COLD SHUTDOWN and for low water level during REFUELING OPERATIONS, respectively. The proposed change will add new Action "c" to these TSs to state that provisions of TS 3.0.4 are not applicable. A footnote will be added to each of these new Action statements to state that the change is applicable until startup from the second refueling outage. (2) TS 3.7.2, Main Control Room Air Conditioning System. This TS specifies the LCO for the main control room air conditioning system for all operational conditions. The proposed change will add a new Action "b.3.", to state that the provisions of TS 3.0.4 are not applicable. This change is applicable in COLD SHUTDOWN, REFUELING, and when irradiated fuel is being handled in the primary containment or Fuel Building. A footnote will also be added to this new Action statement to state that the change is applicable until startup from the second refueling outage.

During the second refueling outage presently scheduled to begin in March 1989, various combinations of RHR shutdown cooling mode subsystems and main control room air conditioning subsystems will be made inoperable to perform required maintenance, surveillance testing, and inspections and to make design changes. These activities will require the plant to enter Action statements for these systems at various times during the outage. These proposed changes will provide one-time exceptions to the provisions of TS 3.0.4 for these specifications for the second refueling outage only to allow the plant to enter Operational Conditions 4 and 5 to allow reactor head detensioning and tensioning, reactor cavity draining, and modifications to control building chilled water systems. With the present TS requirements, the above activities would

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have to be suspended during a change in Operational Conditions to make the systems operable as required by the LCO. After completing the change in Operational Conditions, the systems would again be made inoperable and the Action statements entered to complete the required maintenance testing and modification activities.

The proposed TS changes will represent a significant savings in the time required to complete the second refueling outage by allowing reactor vessel head tensioning activities, reactor cavity draining evolutions, and modifications to the control building chilled water systems while in Action statements. These changes will result in decreasing the length of the outage by approximately 6–8 days while maintaining the level of safety of the plant in accordance with the appropriate Action statements.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the request for amendment involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

The licensee has provided an analysis that addressed the above three standards in the December 16, 1988 license application. The licensee's analysis for the three proposed TS changes is provided below.

1. No significant increased n the probability or the consequences of any accident previously evaluated results from this request because:

The proposed exceptions to the provisions of Specification 3.0.4 will allow a change in Operational Conditions or other specified conditions at River Bend Station during the second refueling outage only while complying with the Action requirements of the above Technical Specifications. This operation flexibility would be allowed following implementation of Generic Letter 87-09. The proposed changes will affect the Action statements for: RHR shutdown cooling mode and main control room air conditioning system. The proposed changes provide an acceptable safe alternative to meeting the LCO requirements as evidence by the current requirements in which compliance with the remedial action upon entering a condition is the same as compliance after having been in that condition.

During the second refueling outage at River Bend Station [RBS] various combinations of the above systems/subsystems will be made inoperable to perform required maintenance, surveillance testing and inspections and to make design changes. These activities will require the plant to enter Action statements for these systems at various times during the refueling outage. The proposed changes will provide one-time exceptions to the provisions of Specification 3.0.4 for the above Technical Specifications Action requirements for the second refueling outage only to allow the plant to enter Operational Conditions 4 and 5 by allowing reactor head tensioning and detensioning and allow reactor cavity draining while complying with these Action statements. With the present Technical Specification requirements, the above activities would have to be suspended during a change in Operational Conditions in order to make the systems operable as required by the LCO. After completing the change in Operational Conditions, the systems would again be made inoperable and the Action statements entered to complete the required maintenance and testing activities.

The current schedule for the second refueling outage relies upon approval of the proposed changes to Technical Specifications 3.4.9.2 and 3.9.11.2.

As discussed above, the Action requirements for the RHR shutdown cooling mode Technical Specifications (3.4.9.2 and 3.9.11.2) require establishing an alternate method for the functions(s) of the RHR shutdown cooling mode loop(s) required by the LCO (heat removal capability or coolant circulation, as applicable) within one hour. As such, the alternate method(s) completely replaces the function(s) of the RHR shutdown cooling mode loop(s) required by the LCO and therefore, provides the single failure protection as required by each LCO. Additionally, the proposed changes in Operational Conditions have no effect on decay heat generation or removal capability.

The Action requirements for the main control room air conditioning System (Technical Specification 3.7.2) require that with one subsystem inoperable, placing the operable subsystem in operation in the emergency mode and with both subsystems inoperable, suspending CORE ALTERATIONS, handling irradiated fuel in the primary containment and Fuel Building and operations with a potential for draining the reactor vessel. The only design basis accident conditions for which this system would be required to operate in Operational Conditions 4 or 5 is a fuel handling accident. The required actions eliminate those conditions during which an accident is assumed to occur while in Operational Conditions 4 or 5 and hence, greatly reduced the chance of needing this system. The likelihood of needing the inoperable subsystem(s) while complying with the Action requirements is small and even smaller that they would be needed during the short period of time during the mode change.

As previously stated, the only design basis accident postulated to occur during Operational Conditions 4 or 5 is a fuel handling accident. The proposed changes in no way alter the plant design or administrative controls designed to prevent a fuel handling accident or the current Technical Specification requirements for the minimum equipment required to be operable to mitigate a fuel handling accident. Therefore, the proposed exceptions to the provisions of Specification 3.0.4 do not significantly increase the probability or the consequences of any accident previously evaluated.

2. This request would not create the possibility of a new or different kind of accident from any accident previously evaluated because:

The proposed exceptions to the provisions of Specification 3.0.4 do not result in any change to the plant design or Technical Specification requirements while in any Operational Condition or other specified condition. These proposed changes will provide one-time exceptions to the provisions of the Specification 3.0.4 for the second refueling outage only to allow the plant to enter Operational Condition 4 and 5 by allowing reactor head tensioning and detensioning and allow reactor cavity draining while complying with these Action statements. With the present Technical Specification requirements, the above activities would have to be suspended during a change in Operational Conditions in order to make the systems operable as required by the LCO. After completing the change in Operational Conditions, the systems would again be made inoperable and the Action statements entered to complete the required maintenance and testing activities.

The proposed changes do not result in any new operating modes, only a change in the level of protection provided by these required systems during a change in plant conditions. The required actions eliminate those conditions during which an accident is likely to occur while in Operational Conditions 4 or 5 and hence, greatly reduce the chance of needing the safety systems required by their respective LCOs. The likelihood of needing these systems while complying with the Action requirements is small and even smaller that they would be needed during the short period of time during the mode change.

Therefore, the proposed exceptions to the provisions of Specification 3.0.4 do not create the possibility of a new or different kind of accident from any previously evaluated.

3. This request would not involve a significant reduction in the margin of safety because:

The proposed exceptions to the provisions of Specification 3.0.4 do not result in a change to the plant design or administrative controls designed to prevent a fuel handling accident. Additionally, the proposed changes do not result in a change to any operating limits. The only requirement affected by the proposed change is the availability of systems currently required to be operable when making a change in plant conditions. The proposed changes will affect the Action statements for: RHR shutdown cooling mode and main control room air conditioning system.

The only design basis accident postulated to occur during Operational Conditions 4 or 5 is a fuel handling accident. The proposed changes in no way alter the plant design or administrative controls designed to prevent a fuel handling accident or the current Technical Specification requirements for the minimum equipment required to be operable to mitigate a fuel handling accident. The proposed changes only alter the requirements for the minimum equipment required to be operable during a change in plant conditions. The proposed changes provide an acceptable safe alternative to meeting the LCO requirements as evidenced by the current requirements in which compliance with the remedial actions upon entering a condition is the same as compliance after having been in that condition.

As shown above, the Action requirements for the RHR shutdown cooling mode Technical Specifications (3.4.9.2 and 3.9.11.2) require establishing an alternate method for the functions(s) of the RHR shutdown cooling mode loop(s) required by the LCO (heat removal capability or coolant circulation, as applicable) within one hour. As such, the alternate method(s) completely replaces the function(s) of the RHR shutdown cooling mode loop(s) required by the LCO and therefore, provides the single failure protection as required by each LCO. Additionally, the proposed changes in Operational Conditions have no effect on decay heat generation or removal capability.

The Action requirements for the main control room air conditioning system (Technical Specification 3.7.2) require that with one subsystem inoperable, placing the operable subsystem in operation in the emergency mode and with both subsystems inoperable, suspending CORE ALTERATIONS, handling irradiated fuel in the primary containment and Fuel Building and operations with a potential for draining the reactor vessel. The only design basis accident conditions for which this system would be required to operate in Operational Conditions 4 or 5 is a fuel handling accident. The required actions eliminate those conditions during which an accident is assumed to occur while in Operational Conditions 4 or 5 and hence, greatly reduce the chance of needing this system. The likelihood of needing the inoperable subsystems while complying with the Action requirements is small and even smaller that they would be needed during the short period of time during the mode change.

Therefore, the proposed exceptions to the provisions of Specification 3.0.4 do not result in a significant reduction in the margin of safety.

Based upon the above considerations, the proposed changes do not result in a significant increase in the probability or the consequences of any accident previously evaluated, do not create the possibility of a new or different kind of accident than previously evaluated and do not result in a significant reduction in the margin of safety. Therefore, the licensee proposes that no significant hazards considerations are involved with approval of the proposed changes.

The staff has reviewed the licensee's no significant hazards consideration determination. Based on that review and the above discussion, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration and Resource Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this Federal Register notice. Written comments may also be delivered to Room P–216, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 8:15 a.m. to 4:00 p.m. Copies of written comments may be examined at the NRC Public Document Room, 2120 L Street NW., Washington, DC 20555. The filings of requests for hearing and petitions for leave to intervene is discussed below.

By March 2, 1989, the licensee may file a request for a hearing with respect to issuance to the amendment to the subject facility operating license, and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene must be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board Panel will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene must set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extend of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which the petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the

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first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, the petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the request for amendment involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and state comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Jose A. Calvo: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel-Rockville, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Troy B. Conner, Jr., Esq., Conner and Wetterhan, 1747 Pennsylvania Avenue NW., Washington, DC 20006, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555, and at the Local Public Document Room, Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803.

Dated at Rockville, Maryland, this 25th day of January 1989.

For the Nuclear Regulatory Commission.

Jose A. Calvo,

Director, Project Directorate—IV, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89-2191 Filed 1-30-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-361 and 50-362]

Southern California Edison Co., et al, San Onofre Nuclear Generating Station, Units 2 and 3; Denial of Amendments to Facility Operating Licenses and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) has denied in part a request by the licensees for amendments to Facility Operating Licenses Nos. NPF-10 and NPF-15, issued to Southern California Edison Company, San Diego Gas and Electric Company, the City of Anaheim, California and the City of Riverside, California (the licensees), for the operation of San Onofre Nuclear Generating Station, Units 2 and 3 (the facilities), located in San Diego County, California.

The application for amendments was dated May 6, 1988, as supplemented by letters dated August 25 and December 7, 1988. The Notice of Consideration of Issuance of Amendments was published in the Federal Register on September 9, 1988 (53 FR 35138).

The amendments, as proposed by the licensees, would revise (1) License Conditions 2.C(14) and 2.C(12) (Fire Protection) of Units 2 and 3 respectively to reflect the revised fire protection program; (2) License Conditions 2.G (Reporting Requirements) of both units to exempt fire protection program violations from the 24-hour reporting requirement; (3) Table 3.3.9, "Remote Shutdown Monitoring Instrumentation," to allow for plant instrument improvements; and (4) several technical specifications related to the revised fire protection program.

Generic Letter 86-10 allows licensees to make changes to their approved fire protection program without prior Commission approval if those changes would not adversely affect the ability to achieve and maintain safe shutdown. Therefore, that portion of the proposed fire protection license condition change is acceptable. However, Generic Letter 86-10 also adequately defines changes which would adversely affect the ability to achieve and maintain safe shutdown; therefore, it is not appropriate to include in the license condition the definition proposed by the licensees. Therefore, that portion of the proposed fire protection license condition has been denied. In addition to the above partial denial, three other provisions in the proposed fire protection license condition were not included because they were satisfied by the licensee's submittal of August 25, 1988. Also, the proposed addition of Technical Specification 6.9.3 was not included because it is not required.

The licensees were notified of the Commission's denial of this request by letter dated January 20, 1989. The other changes requested by the application have been approved by the issuance of Amendments No. 69 and 38.

By March 2, 1989, the licensees may demand a hearing with respect to the denial described above and any persons whose interest may be affected by this proceeding may file a written petition for leave to intervene.

A request for a hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 2120 L Street, NW, Washington, DC, by the above date.

A copy of the petition should also be sent to the General Counsel, U.S. Nuclear Regulatory Commission, Washington, D.C., 20555, and to Charles R. Kocher, Assistant General Counsel and James Beoletto, Esq., Southern California Edison Company, P.O. Box 800, Rosemead, California 91770, attorneys for the licensees.

For further details with respect to this action, see (1) the application for amendment dated May 6, 1988, as supplemented by letters dated August 25 and December 7, 1988, and (2) the Commission's letter and Safety Evaluation issued with Amendment No. 69 and Amendment No. 38 to NPF 10 and NPF-15, respectively. These documents are available for public inspection at the Commission's Public Document Room 2120 L Street, NW, Washington, DC, and at the General Library, University of California, P.O. Box 19557, Irvine, California 92713. Single copies of Item (2) may be obtained upon request address to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Division of Reactor Projects—III, IV, V and Special Projects.

Dated at Rockville, Maryland, this 20th day of January, 1989.

For the Nuclear Regulatory Commission.

Donald E. Hickman,

Project Manager, Project Directorate V, Division of Reactor Projects—III, IV, V and Special Projects.

[FR Doc. 89-2192 Filed 1-30-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-361 and 50-362]

Southern California Edison Co., et al.; Issuance of Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 69 to Facility Operating License No. NPF-10 and Amendment No. 38 to Facility Operating License No. NPF-15, issued to Southern California Edison Company, San Diego Gas and Electric Company, The City of Riverside, California and The City of Anaheim, California (the licensees), which revised the Technical Specifications for operation of the San Onofre Nuclear Generating Station, Units 2 and 3, located in San Diego County, California.

The amendments were effective as of the date of issuance.

These amendments revised (1) License Conditions 2.C(14) and 2.C(12) of Units 2 and 3 respectively and the related Technical Specifications to reflect the revised fire protection program; (2) License Conditions 2.G of both units to exempt fire protection program violations from the 24 hour reporting requirement; and (3) Technical Specification table 3.3.9, "Remote Shutdown Monitoring Instrumentation," to allow for plant instrument improvements in response to an application for amendments designated as PCN-243 and PCN-244.

Several portions of the licensee's request were either denied or not acted on. The following is a discussion of these items. Generic Letter 86-10 allows licensees to make changes to their approved fire protection program without prior Commission approval if those changes would not adversely affect the ability to achieve and maintain safe shutdown. Generic Letter 86-10 also defines changes which would adversely affect the ability to achieve and maintain safe shutdown. The licensee has proposed a definition different from that contained in the Generic Letter; the proposed definition has been found unacceptable. Therefore, that portion of the proposed fire protection license condition has been denied. In addition to the above partial denial, three other provisions in the proposed fire protection license condition were not included because they were satisfied by the licensees' submittal of August 25, 1988. Also, the proposed addition of Technical Specification 6.9.3 was not included because it is not required.

The application for amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendments.

Notice of Consideration of Issuance of Amendments and Opportunity for Hearing in connection with this action was published in the Federal Register on September 9, 1988 (53 FR 35138). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined that an environmental impact statement will not be prepared and that issuance of the amendments will have no significant adverse effect on the quality of the human environment.

For further details with respect to the action see (1) the application for amendments dated May 6, 1988, as supplemented by letters dated August 25 and December 7, 1988 (2) Amendment No. 69 to License No. NPF-10 and Amendment No. 38 to License No. NPF-15, (3) the Commission's related Safety Evaluation and (4) the Commission's Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., and at the General Library, University of California, P.O. Box 19557, Irvine, California 92713. A copy of items (2), (3) and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects—III, IV, V and Special Projects.

Dated at Rockville, Maryland this 20th day of January, 1989.

For the Nuclear Regulatory Commission.

D.E. Hickman,

Project Manager, Project Directorate V, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89-2193 Filed 1-30-89; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

International Trade in Commercial Launch Services; Guidelines for Implementation of the Memorandum of Agreement With the People's Republic of China

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of guidelines for U.S. implementation of the Memorandum of Agreement Between the United States of America and the Government of the People's Republic of China Regarding International Trade in Commercial Launch Services (the Agreement).

DATES: These guidelines are effective upon entry into force of the Agreement, which shall occur upon notification by the Government of the United States of America to the Government of the People's Republic of China that a U.S. license for the export of the ASIASAT or AUSSAT satellite(s) or any other satellites, to the People's Republic of

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China for launch therein, has been approved.

FOR FURTHER INFORMATION CONTACT: Bruce Wilson (395–7320), Steve Falken (395–4647), Angus Simmons (395–5090), or Warren Maruyama (395–6800), of the Office of the United States Trade Representative, 600 17th Street NW., Washington, DC 20506.

SUMMARY: Pursuant to the Administration's notification to Congress on September 12, 1988 regarding its intent to issue licenses for the export of three U.S.-made satellites to the PRC, subject to certain conditions, the United States of America and the People's Republic of China signed on January 26, 1989 a Memorandum of Agreement regarding international trade in commercial launch services. The United States Trade Representative considers the Agreement to be a trade agreement for purposes of section 301(a)(1) of the Trade Act of 1974, as amended. (Copies of the Agreement may be obtained from the officials designated above.) In order to assist in the successful operation of the Agreement, certain guidelines that the U.S. government intends to follow to the maxium extent practicable in implementing the Agreement have been elaborated. This notice sets out these guidelines, which have been approved by the Trade Policy Staff Committee (TPSC) and by the United States Trade Representative.

Guidelines

I. Designation of Responsibility

Subject to the direction of the TPSC, the TPSC Subcommittee on Commercial Launch Services (the Subcommittee) will be responsible for overall implementation of the Agreement.

II. Subcommittee Organization

For purposes of carrying out its responsibilities with respect to overall implementation of the Agreement, the Subcommittee will be chaired by the Office of the USTR and will be composed of TPSC agencies and such other departments and agencies as may be invited by the Chairman to participate. A Working Group on Information (the Working Group) will be established to assemble such information as is necessary to enable the Subcommittee to carry out its responsibilities. The Working Group will be chaired by the Department of Transportation and will include the Department of Commerce, the Department of State and such other departments or agencies as are designated by the Chairman of the Subcommittee.

III. Subcommittee Functions and Procedures

1. Data Collection and Monitoring of the Agreement

The Subcommittee will monitor PRC compliance with the Agreement. To this end, the Subcommittee will review market and other information relevant to participation in the commercial launch services market by PRC launch service providers and to compliance by those providers with the terms of the Agreement. This information will be assembled, together with a preliminary assessment, and presented to the Subcommittee by the Working Group. Particular attention will be given to information relevant to PRC obligations under the Agreement with respect to the number of launches committed and carried out by the PRC; the distribution of commitments to launch; promotional prices; prices, terms, and conditions of PRC launch commitments; PRC government supports and inducements; insurance; non-discrimination; and launch delays.

The Subcommittee will review and determine which information is to be provided to the PRC to comply with U.S. obligations under the Agreement. This information will be assembled, together with a preliminary assessment, and presented to the Subcommittee by the Working Group. Particular attention will be given to U.S. obligations under the Agreement with respect to the provision of publicly releasable information to the PRC on prices, terms, and conditions prevailing in the international market for commercial launch services, including insurance arrangements relating to such services; U.S. views regarding prevailing international market conditions and likely future developments; U.S. and other government supports or inducements; and the number of commitments U.S. launch service providers have undertaken for international customers.

The Working Group will periodically produce information and preliminary assessments of conditions in the commercial launch services market, including prices, terms and conditions, commitments, and market forecasts, for the Subcommittee as needed to implement effectively the Agreement and at least ninety days prior to annual consultations, or the comprehensive review provided for in Article VII of the Agreement.

The Working Group will also provide to the Subcommittee such additional information and preliminary assessments on compliance by PRC providers of launch services with the provisions of the Subcommittee as needed, and at least sixty days prior to annual consultations or the comprehensive review provided for under Article VII of the Agreement.

2. Annual Consultations

The Subcommittee will meet at least seventy-five days in advance of the annual consultations prescribed in the Agreement to begin preparations for such consultations. After each annual consultation, the Subcommittee will report on the results of the consultations and recommend any follow-up actions to the TPSC and, as appropriate, to other government officials or agencies.

The Subcommittee will seek to hold annual consultations under the Agreement during March of each year and to exchange information with the PRC at least thirty days in advance of such consultations.

3. Application of Market Principles Under Certain Provisions of the Agreement

The Subcommittee will consider ways to carry out Article IV(4) of the Agreement and be prepared to address this issue with the PRC during the first annual consultation under the Agreement.

4. Discussions with Other International Parties

At least annually, the Subcommittee will consider whether discussions with other international parties could be beneficial. If the Subcommittee determines that discussions could be beneficial, it will recommend to the TPSC and to the U.S. Trade Representative that such discussions be initiated.

IV. Consultations With Domestic Interests

The Subcommittee and the Working Group will, in carrying out the functions and procedures set forth in section III above, consult with and seek the advice of representatives of U.S. commercial launch service providers, launch vehicle manufacturers and satellite manufacturers, and, as appropriate, interested Congressional committees, the user community, and other interested parties, including the relevant private sector advisory committees. Such contacts will be made in conjunction with the information and assessments referred to in section III(1) above and U.S. preparation for, and follow-up on the results of, meetings with the PRC held under the Agreement. The Subcommittee will also, as appropriate, inform such interests of significant requests or notifications made by the PRC under the Agreement, or significant developments under the Agreement.

V. Information Sharing

In the course of consulting with domestic interests, in particular prior to annual consultations under the Agreement, the Subcommittee may provide such information provided by the PRC as is allowed by the Agreement.

VI. Treatment of Business Confidential Information

A. General

(1) The Department of Transportation (DOT), as Chairman of the Working Group, will have primary responsibility for soliciting and receiving, and will maintain, information to be collected and reviewed by the Working Group for purposes of this Agreement.

(2) Proprietary or other information collected by the Working Group for which business confidential treatment has been requested as provided in subsection (B) below shall not be made available to the Subcommittee except as determined by the Chairman of the Subcommittee to be necessary, and shall not be released to the PRC or any other party. The Chairman of the Working Group will work with anyone submitting such information to assure that it is not disclosed to any unauthorized person.

B. Procedures

(1) Proprietary or other information submitted to the Working Group through the Chairman of the Working Group may be designated as business confidential by the person or agency furnishing such information.

(2) A request that information be given business confidential treatment shall be made in writing at the time that the information is submitted to the Working Group, and shall state the period of time for which business confidential treatment is required.

(3) Information for which business confidential treatment is requested shall be clearly marked with an identifying legend, such as "Proprietary Information" or "Business Confidential Treatment Requested." Where such a marking proves impracticable, a cover sheet containing the identifying legend shall be securely attached to the compilation of information for which business confidential treatment is requested.

(4) Business confidential treatment requested for information submitted to the Working Group shall not be available to the extent such information is already in the public domain.

VII. Remedies

(1) If, as a result of information obtained in any annual consultation or the comprehensive review required under Article VII of the Agreement or, on the basis of information presented to it by the Working Group, the Subcommittee is of the view that PRC providers of launch services are not in compliance with the terms of the Agreement, the Subcommittee will notify the TPSC and recommend consultations with the PRC if appropriate. If consultations proceed and satisfactory resolution is not achieved with the PRC, or, if consultations are deemed to be inappropriate in the circumstances, based on recommendations of the Subcommittee, the section 301 Committee may recommend that the USTR initiate an investigation pursuant to the authority set forth in section 310(a)(1) of the Trade Act of 1974, as amended. The recommendation to the USTR may also be accompanied by such additional advice as the Subcommittee deems appropriate.

(2) Any petition filed under section 320(a)(1) of the Trade Act of 1974, as amended, by a representative of the U.S. commercial launch services industry or any other person with standing alleging a denial of U.S. rights under the Agreement or a violation of the Agreement shall be filed with the section 301 Committee pursuant to USTR regulations for complaints filed under section 302. Upon receipt of the petition, the section 301 Committee will notify the Subcommittee of the petition, and, in addition to its own review of the petition, will seek the advice of the Subcommittee on the petition. If the Subcommittee is of the view that PRC providers of launch services are not in compliance with the terms of the Agreement, it will make such recommendations to the section 301 Committee as it deems appropriate.

(3) If an investigation under section 302 leads to a determination by the USTR that a violation of the Agreement has occurred, the USTR will take such action, subject to the specific direction of the President, if any, as is appropriate under section 301.

(4) The USTR will, from time to time, advise the Secretary of State of the status of the implementation of the Memorandum of Agreement in order that this information may be available to the Secretary with respect to export license responsibilities under the Arms Export Control Act and the implementing regulations, the International Traffic in Arms Regulations, 22 CFR Parts 120–130.

Alan F. Holmer,
Acting United States Trade Representative.

[FR Doc. 89–2281 Filed 1–30–89; 8:45 am]

BILLING CODE 3190–01–M

PRESIDENT'S COMMISSION ON FEDERAL ETHICS LAW REFORM

ACTION: Notice of Meeting.

SUMMARY: This notice announces an upcoming meeting of the President's Commission on Federal Ethics Law Reform. The purpose of the meeting is to begin work on the Commission's assigned task, which is the provision of recommendations to the President regarding any necessary changes and/or improvements in the government wide ethics program. Also included is an explanation of why 15 days notice of the date of this meeting was not provided to the public. Notice is required by the Federal Advisory Committee Act, 5 U.S.C. App. II, and its implementing regulation, 41 CFR Part 101–6.

DATE: February 7, 1989, 9 a.m.

ADDRESS: U.S. Department of Justice, 10th Street and Constitution Avenue, NW., Conference Room B, Washington, DC 20530.

FOR FURTHER INFORMATION CONTACT: Janis A. Sposato, General Counsel, Justice Management Division, at 202–633–3452.

SUPPLEMENTARY INFORMATION: It was not possible to provide 15 days notice of this meeting due to the fact that the advisory committee was not established until Wednesday, January 25, 1989, and the Executive Order requires a report by March 9, 1989.

The meeting, which is open to the press and public, is for the purpose of receiving testimony concerning issues related to the Federal ethics program. Members of the public who wish to present written statements are invited to send such statements to the Commission at the following address:

President's Commission on Federal Ethics Law Reform, U.S. Department of Justice, Tenth and Constitution Avenue, NW., Washington, DC 20530.

Persons who wish to attend should contact Jean Schmidlin at 202–633–4667 prior to the meeting in order that building access may be facilitated. Visitors should use the entrance at the center of the Constitution Avenue side of the building, midway between Ninth and Tenth Streets.

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Date: January 27, 1989.
Dick Thornburgh,
Attorney General.
[FR Doc. 89-2371 Filed 1-30-89; 8:45 am]
BILLING CODE 4410-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-26466; File No. SR-NASD-88-9]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Fees for the Association's Trade Acceptance and Reconciliation Service

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on January 17, 1989, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The NASD has designated this proposal as one establishing or changing a fee under section 19(b)(3)(A)(ii) of the Act which renders the fee effective upon the Commission's receipt of this filing. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change to section A.6. of Part IX of Schedule D to the Association's By Laws establishes a $50 per month fee for those TARS subscribers averaging less than 30 trades per day may access TARS through the facilities of an NASD service desk.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change imposes a $50 per month flat fee for those TARS subscribers averaging less than 30 trades per day who access TARS through the facilities of an NASD service desk. The proposed rule change deletes a current provision of section 8 which waives message charges for subscribers averaging 10 or fewer trades per day during any month. The purpose of the proposed rule change is to enable the NASD to implement section 66 of the NASD's Uniform Practice Code which requires that each member that is a participant in a registered clearing agency for purposes of clearing over-the-counter transactions subscribe to and reconcile all eligible transactions through facilities of TARS. The amendment is intended to more equitably allocate the costs of TARS participation for those subscribers having a small number of over-the-counter transactions which would not make procuring the equipment generally necessary for TARS participation economically feasible.

The proposed rule change is consistent with the provisions of section 15A(b)(5) of the Securities Exchange Act of 1934 which requires that the rules of the Association provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system the Association operates or controls.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Association does not anticipate that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received with respect to the proposed rule change contained in this filing.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act and subparagraph (e) of Rule 19b-4 thereunder in that it affects assessments and fees imposed by the Association exclusively upon its members.

At any time within 60 days of the filing of a proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provision of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by February 21, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR Part 200.30-3(a)(12).

Dated: January 25, 1989.
Jonathan G. Katz,
Secretary.
[FR Doc. 89-2176 Filed 1-30-89; 8:45 am]
BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

High Density Traffic Airport Slots by Lottery; Meeting

AGENCY: Federal Aviation Administration (FAA), Department of Transportation, (DOT).

ACTION: Notice of meeting to allocate High Density Traffic Airport slots by lottery.

SUMMARY: In December 1985, the Secretary of Transportation issued a rule establishing procedures for the allocation and transfer of operating slots at the four airports designated as high denisity traffic airports: Kennedy International, LaGuardia, O'Hare International, and Washington National Airports. The rule provides that unallocated and returned slots will be distributed by lottery. The previous lottery was conducted on July 22, 1987. This notice announces a meeting to conduct lotteries to allocate air carrier and commuter slots which have become available at three of the four airports since July 1987. Slots are not available in both commuter and air carrier categories at all airports.

DATES:

Meeting: The meeting will be held on Wednesday, March 8, 1989. The air carrier slot lottery will begin at 9:00 a.m. The commuter slot lottery will begin at 10:30 a.m.

Requests to participate: Notice of intent to participate must be received by 5:00 p.m. on the following dates:

Incumbent operators: March 6, 1989
New entrant operators: February 21, 1989

ADDRESSES: The meeting will be held at FAA Headquarters, Third Floor Auditorium, 800 Independence Avenue SW., Washington, DC.

Request to participate in the lottery should be submitted to:

Office of the Chief Counsel, Slot Administration Office, AGC-200, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT:
David L. Bennett, Manager, Airspace and Air Traffic Law Branch, AGC-230, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591. Telephone: (202) 267-3491.

SUPPLEMENTARY INFORMATION:

Availability of Document

Any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Public Affairs, 800 Independence Avenue SW., Washington, DC 20591; or by calling (202) 267-8058. Communications must identify the notice number of the document.

Background

On December 16, 1985, the Department of Transportation issued Amendment No. 93-49, "High Density Traffic Airports; Slot Allocation and Transfer Methods; Final Rule" (50 FR 52180, December 20, 1985), adding new Subpart S to Part 93 of the Federal Aviation Regulations (FAR), 14 CFR Part 93, Subpart S. The rule established procedures for the allocation and transfer of operating slots at the four airports designated as high density traffic airports under the High Density Rule, 14 CFR Part 93, Subpart K: Kennedy International, LaGuardia, O'Hare International, and Washington National Airports. The rule provides that unallocated and returned slots will be distributed by lottery.

On July 22, 1987, a lottery of air carrier and commuter slots at all four high density traffic airports was conducted under the provisions of Subpart S. Even though slots are extremely limited at most airports, a few slots have become available, through operation of the use-or-lose provisions of 14 CFR § 93.227 and through the failure of some carriers to use the slots obtained in previous lotteries within the required time. The final rule issued in December 1985 states that lotteries will be held when sufficient slots are available for general distribution, but normally not more than twice each year. In consideration of the availability of slots and the fact that no lottery has been held since July 1987, a lottery of air carrier and commuter slots will be held on March 8, 1989.

The list of slots available for distribution by lottery will be determined as of Friday, March 3, 1989.

General Slot Lotteries Under 14 CFR 93.225

Time

Air carrier lottery: 9:00 a.m., March 8, 1989.

Commuter operator lottery: 10:30 a.m., March 8, 1989.

Requests to Participate

For each of the high density airports, each air carrier and commuter operator operating at that airport will be included in the appropriate lottery for the airport upon written notification to the FAA by 5:00 p.m. on March 6, 1989, of the operator's desire to participate.

Any air carrier or commuter operator which (i) is not operating at the airport and (ii) has not failed to operate slots obtained in the previous lottery, but wishes to initiate service at the airport, shall be included in the lottery if that operator notifies the Office of the Chief Counsel in writing. To be eligible to participate, the operator must hold appropriate economic authority under Title IV of the Federal Aviation Act of 1958, as amended, and must hold or have made substantial progress in obtaining FAA operating authority under Part 135 or Part 121 of Title 14 of the Code of Federal Regulations. "Substantial progress" for this purpose is defined in 14 CFR 93.225(g). The notification must also include a statement as to whether there is any common ownership or control of, by, or with any other carrier as defined in 14 CFR 93.213(c). The notification must be in duplicate and must be received by 5:00 p.m. on February 21, 1989, as additional notification time for new entrants is needed to confirm the certification status of applicants.

All notifications of intent to participate in the lottery must be submitted to the address listed above under "ADDRESSES."

Availability of slots: Slots available for distribution by lottery are extremely limited. However, there have been requests for some of the available slots, and the FAA is conducting a formal lottery procedure for the purpose of allocating these slots in accordance with agency rules. A preliminary list of slots available is as follows:

Airport	Air carrier	Commuter
National	0	[2] 14
Kennedy	0	0
LaGuardia	2	4
O'Hare	[1] 2	[3] 19

[1] Both 0645.
[2] 13 STOL slots.
[3] 4 at 0645; 14 at 2045.

A final list of the air carrier and commuter slots to be allocated will be prepared by the FAA and will be available by March 6, 1989.

Lottery Procedures

Slots will be allocated in accordance with the lottery procedures set forth in 14 CFR Subpart S, § 93.225. The procedures for the lottery at each airport may be summarized as follows:

1. A random lottery will be held to determine the order of slot selection.
2. During the first selection sequence, 25 percent of the slots available at each airport but no fewer than two slots (or 1 slot if only 1 wil be allocated) shall be reserved for selection by new entrant carriers.
3. Each carrier will make its selection in the order determined in the initial sequence lottery, except that only new entrant carriers will be permitted to make selections until the percentage of slots set aside for new entrants is selected. The normal sequence will resume at that time, beginning with the first incumbent carrier passed over during the new entrant selections.
4. An operator may select any two slots available at the airport during each selection sequence, except that new entrant carriers may select four slots, if available, in the first sequence.
5. Each operator must make its selection within 5 minutes after being called or it shall lose its turn. If capacity remains after each operator has had an

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opportunity to select slots, the allocation sequence will be repeated in the same order.

Public Process

The meeting is open to the public and all interested persons are invited to attend. All lotteries will be held at FAA Headquarters in the Third Floor Auditorium.

Issued in Washington, DC, on January 25, 1989.

John M. Walsh,

Acting Chief Counsel.

[FR Doc. 89-2148 Filed 1-30-89; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: January 25, 1989.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0057
Form Numbers: 1024
Type of Review: Extension
Title: Application for Recognition of Exemption Under Section 501(a) or for Determination Under Section 120
Description: Organizations wanting to be exempt from Federal income tax under section 501(a) as organizations described in most paragraphs of section 501(c), or a legal service plan described in section 120, must apply to IRS for a determination or ruling letter. The information supplied is used to determine whether the organization qualifies for exempt status.
Respondents: Non-profit institutions
Estimated Number of Respondents: 16,056
Estimated Burden Hours Per Response/Recordkeeping:
Recordkeeping: 46 hours 17 mintues
Learning about the law or the form: 3 hours 3 minutes
Preparing the form: 4 hours 53 minutes
Copying, assembling, and sending the form to IRS: 16 minutes
Frequency of Response: On occasion
Estimated Total Recordkeeping/Reporting Burden: 578,778 hours
OMB Number: 1545-0220
Form Numbers: 6008 and 6009
Type of Review: Extension
Title: Fee Deposit for Outer Continental Shelf Oil: Quarterly Report of Fees Due on Oil Production
Description: Forms 6008 and 6009 are used to compute and deposit fees due on oil that is produced on the Outer Continental Shelf. Information is used to verify that the correct fees have been paid.
Respondents: Businesses or other for-profit
Estimated Number of Respondents: 100
Estimated Burden Hours Per Response/Recordkeeping:
Form 6008: 1 hour 28 minutes
Form 6009: Recordkeeping—11 hours 14 minutes
Learning about the law or the form: 22 minutes
Preparing the form: 1 hour 30 minutes
Copying, assembling, and sending the form to IRS: 16 minutes
Frequency of Response:
On occasion (Form 6008)
Quarterly (Form 6009)
Estimated Total Recordkeeping/Reporting Burden: 7,104 hours
Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Conatitution Avenue NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 89-2131 Filed 1-30-89; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Date: January 25, 1989.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0056
Form Number: 1023 and 872-C
Type of Review: Extension
Title: Application for Recognition of Exemption Under section 501(c)(3) of the Internal Revenue Code; Consent Fixing Period of Limitation Upon Assessment of Tax Under section 4940 of the Internal Revenue Code
Description: Form 1023 is filed by applicants seeking Federal income tax exemption as organizations described in section 501(c)(3). IRS uses the information to determine if the applicant is exempt and whether applicant is a private foundation. Form 872-C extends the statute of limitations for assessing tax under section 4940.
Respondents: Non-profit institutions
Estimated Number of Respondents: 40,670
Estimated Burden Hours Per Response/Recordkeeping:

	1023	872-C
Recordkeeping	78 hours 27 minutes	2 hours 9 minutes.
Learning about the law or the form	11 hours 10 minutes	24 minutes.
Preparing the form	13 hours 19 minutes	16 minutes.
Copying, assembling, and sending the form to IRS	16 minutes	0

Frequency of Response: On occasion
Estimated Total Recordkeeping/Reporting Burden: 2,213,045 hours
OMB Number: 1545-0735
Form Number: None
Type of Review: Extension
Title: Amortization of Reforestation Expenditures
Description: Section 194 of the Internal Revenue Code allows taxpayers to elect to amortize certain reforestation expenditures over a 7-year period if the expenditures meet certain requirements. The regulations implement this election provision and allow the Internal Revenue Service to determine if the election is proper and allowable.
Respondents: Individuals or households, Farms, Businesses or other for-profit, Small businesses or organizations
Estimated Number of Respondents: 12,002
Estimated Burden Hours Per Response: 30 minutes
Frequency of Response: Annually
Estimated Total Reporting Burden: 6,001 hours
Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 89-2132 Filed 1-30-89; 8:45 am]

BILLING CODE 4810-25-M

VETERANS' ADMINISTRATION

Advisory Committee on Readjustment Problems of Vietnam Veterans; Notice of Meeting

The Veterans' Administration gives notice under Pub. L. 92-463 that a meeting of the Advisory Committee on Readjustment Problems of Vietnam Veterans will be held February 22 and 23, 1989. This is a regularly scheduled meeting for the purpose of reviewing Agency and other relevant services to Vietnam veterans and to formulate Committee recommendations and objectives. The meeting will be held in the Omar Bradley Conference Room at VA Central Office, 810 Vermont Avenue NW., Washington, DC 20420.

The meeting February 22 will begin at 8 a.m. and conclude at 4 p.m. The day's agenda will consist of a summary of the Disabled American Veterans National Survey of VA Programs, an update on the development of a new National Center for Stress Recovery, current status of the Department of Medicine and Surgery treatment programs for substance abuse and post-traumatic stress disorder, a review of the findings of the final report of the National Vietnam Veterans Readjustment Study, and an update of Readjustment Counseling Service. The meeting on February 23 will begin at 8:30 a.m. and conclude at 4 p.m. The second day's agenda will consist of a report on the findings of the Columbia University—American Legion, Vietnam Veterans Study, an update regarding various pending Committee reports and projects, and a report on the extension of delimiting periods for VA educational programs by reason of alcohol conditions vis-a-vis Pub. L. 100-689, Sec. 109. Both day's meetings will be open to the public to the seating capacity of the room.

Due to the limited seating capacity of the room, those who plan to attend or who have questions concerning the meeting should contact Arthur S. Blank Jr., M.D., Director, Readjustment Counseling Service, Veterans' Administration Central Office, (phone number 202 233-3317/3303).

Dated: January 24, 1989.

By direction of the Secretary:

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 89-2207 Filed 1-30-89; 8:45 am]

BILLING CODE 8320-01-M

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Sunshine Act Meetings

Federal Register
Vol. 54, No. 19
Tuesday, January 31, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ENERGY REGULATORY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: January 25, 1989, 54 FR 3720.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: January 25, 1989, 10:00 a.m.

CHANGE IN THE MEETING: The following Docket Numbers have been added to Item CAG–2 for the agenda January 25, 1989:

Item No., Docket No., and Company

CAG–2
RP88–228–000, Tennessee Gas Pipeline Company

Lois D. Cashell,
Secretary.
[FR Doc. 89–2240 Filed 1–26–89; 4:41 p.m.]
BILLING CODE 6717–01–M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 12:00 Noon, Monday, February 6, 1989.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street Entrance between 20th and 21st Streets NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposed purchase of computer equipment within the Federal Reserve System.
2. Proposed purchase of reader/sorter equipment within the Federal Reserve System.
3. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
4. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Jennifer J. Johnson,
Associate Secretary of the Board.
Date: January 27, 1989.
[FR Doc. 89–2315 Filed 1–27–89; 3:24 p.m.]
BILLING CODE 6210–01–M

NATIONAL LABOR RELATIONS BOARD

Notice of Meeting

TIME AND DATE: 9:30 a.m., Tuesday, February 7, 1989.

PLACE: Board Conference Room, Sixth Floor 1717 Pennsylvania Avenue, NW., Washington, DC 20570.

STATUS: Part of this meeting will be open to the public. The remainder of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Portion open to the public
Casehandling procedures
Portion closed to the public
Personnel matters

CONTACT PERSON FOR MORE INFORMATION: John C. Truesdale, Executive Secretary, National Labor Relations Board, Washington, DC 20570.

By direction of the Board.

John C. Truesdale,
Executive Secretary.
[FR Doc. 89–2316 Filed 1–27–89; 3:25 pm]
BILLING CODE 7545–01–M

NATIONAL SCIENCE BOARD

DATE AND TIME: February 10, 1989:

8:30 a.m. Closed Session
6:45 a.m. Open Session

PLACE: National Science Foundation, 1800 G Street, NW. Room 540, Washington, DC 20550.

STATUS:
Most of this meeting will be open to the public.
Part of this meeting will be closed to the public.

MATTERS TO BE CONSIDERED FEBRUARY 10:

Closed Session (8:30 a.m. to 6:45 a.m.)

1. Minutes—December 1988 Meeting
2. NSB and NSF Staff Nominees
3. Vannevar Bush Award
4. Grants and Contracts

Open Session (6:45 a.m. to 12:00 noon)

Swearing-in Ceremony of New NSB Members
5. Chairman's Report.
6. Minutes—December 1988 Meeting.
7. Director's Report.
8. Inspector General Act Implementation.
9. Presentation by Dr. Kathryn Levin: "Perspectives on High Temperature Superconductivity Theory".
10. Other Business.

Thomas Ubois,
Executive Officer.
[FR Doc. 89–2245 Filed 1–27–89; 8:50 am]
BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of January 30, February 6, 13, and 20, 1989.

PLACE: Commissioners' Conference Room, 11555 Pikeville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of January 30

Thursday, February 2

10:00 a.m.
Periodic Briefing on EEO Programs (Public Meeting)
2:00 p.m.
Briefing on Proposed Rulemaking on Substandard Components (Public Meeting)
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Final Rule on Informal Procedures for Materials Licensing Adjudications
b. Final Rule on Immediate Effectiveness Procedures and Related Federal Register Notice on TMI–Related Policy Statements
c. Shoreham—Intervenor Motion to Admit New Contention on Medical Services for Contaminated Injured Individuals

Week of February 6—Tentative

Monday, February 6

2:00 p.m.
Briefing on Status of Peach Bottom (Public Meeting)

Tuesday, February 7

2:00 p.m.
Briefing on Final Rule on Fitness for Duty (Public Meeting)

Wednesday, February 8

10:00 a.m.
Briefing on Final Rule on Fitness for Duty (Public Meeting)

Thursday, February 9

10:00 a.m.
Briefing on Final Rule on Early Site Permits, Standard Design Certification; and Combined Licenses for Nuclear Power Reactors (Public Meeting)
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

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Friday, February 10

2:00 p.m.
Oral Argument on Sanction Issue in Shoreham Proceedings (Public Meeting)

Week of February 13—Tentative

Friday, February 17

11:30
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of February 20—Tentative

Tuesday, February 21

10:00 a.m.
Briefing on Staff Proposal on Continuity of Government Program (Closed—Ex. 1)
2:00 p.m.
Briefing on Safety Goal Implementation Plan (Public Meeting)

Wednesday, February 22

10:00 a.m.
Briefing on Status of West Valley Project (Public Meeting)

Thursday, February 23

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

ADDITIONAL INFORMATION: Affirmation of "Final Rule on Emergency Preparedness for Fuel Cycle and Other Radioactive Material Licensees" scheduled for January 26, *postponed.*

Note.—Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING): (301) 492-0292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 492-1661.

William M. Hill, Jr.,
Office of the Secretary.
January 26, 1989.

[FR Doc. 89-2287 Filed 1-27-89; 2:33 pm]
BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

Agency Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of January 30, 1989.

A closed meeting will be held on Tuesday, January 31, 1989, at 2:30 p.m. An open meeting will be held on Thursday, February 2, 1989, at 2:00 p.m., in Room 1C30.

The Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Cox, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Tuesday, January 31, 1989, at 2:30 p.m., will be:

Dismissal of injunctive action.
Settlement of injunctive action.
Institution of administrative proceeding of an enforcement nature.
Formal orders of investigation.
Litigation matter.

The subject matter of the open meeting scheduled for Thursday, February 2, 1989, at 2:00 p.m., will be:

The Commission will meet with representatives of the American Society of Corporate Secretaries to discuss the following issues: The corporate electoral system, shareholder rights plans, the effects of takeovers/leveraged buy-outs on debtholders, the section 16 release, management's responsibilities for financial statements and controls, and Form S-8. For further information, please contact Lina Angelici at (202) 272-3097.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Anthony Ain at (202) 272-2400.

Jonathan G. Katz,
Secretary.
January 25, 1989.

[FR Doc. 89-2285 Filed 1-27-89; 2:32 am]
BILLING CODE 8010-01-M

Corrections

Federal Register
Vol. 54, No. 19
Tuesday, January 31, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP-38145D; FRL 3502-6]

Interim Policy for Sulfiting Agents on Grapes; Extension of Policy Statement

Correction

In rule document 89-191 beginning on page 382 in the issue of Thursday, January 5, 1989, make the following correction:

On page 982, in the third column, in the second complete paragraph, in the fifth line, "January 1, 1989" should read "January 1, 1988".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 61 and 763

[AD-FRL-OPTS-3468-4]

Asbestos NESHAP Revision, Including Disposal of Asbestos Containing Materials Removed From Schools

Correction

In proposedrule document 89-494 beginning on page 912 in the issue of Tuesday, January 10, 1989, make the following corrections:

1. On page 917, in the third column, in the second complete paragraph, in the third line, "lead-tight" should read "leak-tight".

2. On page 918, in the 1st column, in the 1st paragraph, in the 13th line, "training" should read "trained"; and the 15th line should read "site at all times but must be present for a".

3. On the same page, in the 2nd column, in the 2nd complete paragraph, the 21st line should read "job being delayed while notifying EPA are".

4. On page 919, in the second column, in the fourth complete paragraph, in the third line, "million" should read "milling".

5. On page 921, in the table, in the subject heading above the second and third columns, "removable" should read "removal".

§ 61.141 [Corrected]

6. On page 925, in the 1st column, the 12th line should read as follows:" 'record,' and 'Working days.' The".

§ 61.145 [Corrected]

7. On page 927, in the first column, in § 61.145(a)(2), in the seventh line, "in" should read "on".

8. On the same page, in the second column, in § 61.145(b)(3)(iii), in the third line, "asbestos" was misspelled.

9. On page 928, in the second column, in § 61.145(c)(3)(i)(A), in the first line, "administrator" should read "Administrator".

20. On page 929, in the first column, in § 61.145(c)(7)(i), in the fourth line, "paragraph (c)(e)" should read "paragraph (c)(3)".

§ 61.149 [Corrected]

21. On page 930, in the first column, in § 61.149(c)(1)(iii), in the third line, "then" should read "than".

22. On the same page, in the second column, in § 61.149(e)(1)(vi), in the first line, "names" should read "name".

23. On the same page, in the same column, in § 61.149(e)(2), in the second line, "record" should read "records".

§ 61.151 [Corrected]

24. On page 931, in the third column, in § 61.151, at the beginning of the fourth line, two section twist symbols should appear, rather than one.

25. On page 932, in the first column, in § 61.151(b)(3), the sixth line should read "adequately deters access by the general public.".

§ 61.152 [Corrected]

26. On the same page, in the same column, in § 61.152(a), in the third line, "61.145(c)(3)(i)(B)(*i*)" should read "61.145(c)(3)(i)(B)(*1*)".

27. On the same page, in the same column, in § 61.152(a)(3), in the second line insert "January 10, 1989".

28. On the same page, in the second column, in § 61.152(b)(1), in the first line insert "January 10, 1989".

29. On page 935, under **Figure 3. Notification of Demolition and Renovation**, in the third column, in designated paragraph XI., in the eighth line, "broke" should read "broken".

30. On page 936, in the first column, under **Figure 4. Asbestos Waste Tracking System**, in item 1, remove the last line.

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 8E3661/P475; FRL-3501-2]

Pesticide Tolerance For Fluazifop-Butyl

Correction

In proposed rule document 88-30080 beginning on page 53017 in the issue of Friday, December 30, 1988, make the following correction:

On page 53017, in the second column, in the first complete paragraph, in the sixth line, "(R)-2-[14-[[5-" should read "(R)-2-[4-[[5-".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 798 and 799

[OPTS-46017; FRL-3495-7]

Mouse Visible Specific Locus Test Requirement; Proposed Amendment in Test Rules

Correction

In proposed rule document 88-29496 beginning on page 51847 in the issue of Friday, December 23, 1988, make the following correction:

On page 51848, in the first column, under **DATES**, in the second line, "January 23, 1989" should read "February 21, 1989".

BILLING CODE 1505-01-D

BEST COPY AVAILABLE

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3464-8]

Proposed Guidelines for Exposure-Related Measurements

Correction

In notice document 88-27667 beginning on page 48830 in the issue of Friday, December 2, 1988, make the following corrections:

1. On page 48845, equation (3-3) should read as follows:

$$E = \sum_{i=1}^{N} I_i t_i = I_1 t_1 + I_2 t_2 + \ldots + I_N t_N \qquad (3\text{-}3)$$

2. On the same page, equation (3-4) should read as follows:

$$E = \sum_{i=1}^{N} I_i t_i = \sum_{i=1}^{N} (C_i)(CR_i) t_i \qquad (3\text{-}4)$$

3. On the same page, equation (3-5) should read as follows:

$$T = \sum_{i=1}^{N} t_i \qquad (3\text{-}5)$$

4. On the same page, equation (3-6) should read as follows:

$$ED = \sum_{i=1}^{N} t_i \qquad (3\text{-}6)$$

5. On the same page, equation (3-9) should read as follows:

$ER_c = \overline{I}ED/T$ (3-9)

6. On the same page, equation (3-10) should read as follows:

$ER_c = (\overline{C})(CR)(ED)/T$ (3-10)

7. On the same page, in equation (3-11), after "(BW" insert ")".

8. On page 48847, in the first column, equation (3-15) should read as follows:

$$E = (CR) \sum_{i=1}^{N} C_i t_i \qquad (3\text{-}15)$$

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-51723; FRL-3505-3]

Toxic and Hazardous Substances; Certain Chemicals Premanufacture Notices

Correction

In notice document 89-704 beginning on page 1231 in the issue of Thursday, January 12, 1989, make the following corrections:

1. On page 1231, in the first column, under **DATES**, in the 17th line, "December 29, 1989" should read "December 29, 1988".

2. On page 1232, in the second column, under **P 88-304**, in the third line, "polyester" was misspelled.

3. On the same page, in the third column, under **P 88-310**, in the second line, "Pyradine" should read "Pyridine".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Human Development Services

Administration for Children, Youth and Families; Allotment Percentages for Child Welfare Services State Grants

Correction

In notice document 88-30108 beginning on page 53071 in the issue of Friday, December 30, 1988, make the following correction:

On page 53071, in the third column, in **FOR FURTHER INFORMATION CONTACT**, in the fifth line, the phone number should read (202) 755-7460.

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ-020-07-4321-01; AZA-23330]

Realty Action; Exchange of Mineral Estate; Arizona

Correction

In notice document 88-19864 beginning on page 33879 in the issue of Thursday, September 1, 1988, make the following correction:

On page 33879, in the second column, under "T. 16 N., R. 26 E.,", the second line should read "S½SE¼."

BILLING CODE 1505-01-D

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

SMALL BUSINESS ADMINISTRATION

Interim Policy Directive

Correction

In notice document 88-29089 beginning on page 52889 in the issue of Thursday, December 29, 1988, make the following corrections:

1. On page 52890, in the 3rd column, under **C. Executive Order 12291**, in the 13th line, "not" should read "no".

2. On page 52892, in the third column, in the first complete paragraph, in the eighth line, "any" should read "an".

3. On page 52898, in the table, in the first table-column, under "II. Refuse Sysyems and Related Services:", below the first entry (PSC S205), insert "III. Architectural and Engineering Services (including mapping and surveying)".

BILLING CODE 1505-01-D

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federal register

Tuesday
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Part II

Drug-Free Workplace Requirements; Notice and Interim Final Rules

Office of Management and Budget
Department of Agriculture
Department of Commerce
Department of Defense
Department of Education
Department of Energy
Department of Health and Human Services
Department of Housing and Urban Development
Department of the Interior
Department of Justice
Department of Labor
Department of State
Department of Transportation
Department of the Treasury
ACTION
African Development Foundation
International Development Cooperation Agency, Agency for International Development
Commission on the Bicentennial of the United States Constitution
Enviromental Protection Agency
Federal Emergency Management Agency
Federal Home Loan Bank Board
Federal Mediation and Conciliation Service
General Services Administration
National Foundation on the Arts and the Humanities, Institute of Museum Services
Inter-American Foundation
National Aeronautics and Space Administration
National Archives and Records Administration
National Foundation on the Arts and the Humanities
National Endowment for the Arts
National Endowment for the Humanities
National Science Foundation
Peace Corps
Small Business Administration
United States Information Agency
Veterans Administration
Department of Defense / General Services Administration / National Aeronautics and Space Administration

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OFFICE OF MANAGEMENT AND BUDGET

Governmentwide Implementation of the Drug-Free Workplace Act of 1988

AGENCY: Office of Management and Budget.

ACTION: Notice.

SUMMARY: This Notice provides information, in the form of nonbinding questions and answers, to assist the public in meeting the requirements of the Drug-Free Workplace Act of 1988. The Office of Management and Budget (OMB) has coordinated regulatory development with over 30 Federal agencies to ensure uniform, governmentwide implementation of this Act. As a consequence, OMB is offering this non-regulatory guidance.

Part of the omnibus drug legislation enacted November 18, 1988 is the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D). This statute requires contractors and grantees of Federal agencies to certify that they will provide drug-free workplaces. Making the required certification is a precondition of receiving a contract or grant from a Federal agency beginning on March 18, 1989.

Regulatory requirements pertaining to contractors are detailed in an interim final rule appearing in today's **Federal Register**. This rule amends the Federal Acquisition Regulation (FAR) at 48 CFR Subparts 9.4, 23.5 and 52.2. Regulatory requirements pertaining to grantees are detailed in an interim final common rule also appearing in today's **Federal Register**. The grantee common rule, unlike the contractor FAR rule, includes an extensive common preamble which addresses in detail the application and requirements for grantees. The common rule amends the governmentwide nonprocurement debarment and suspension common rule. Under the Drug-Free Workplace Act, the ultimate consequence of noncompliance with the Act's requirements is debarment or suspension.

FOR FURTHER INFORMATION CONTACT: For grants, contact Barbara F. Kahlow, Financial Management Division, 10225 New Executive Office Building, OMB, Washington, DC 20503 (telephone 202-395-3053). For contracts, contact Donna Fossum, Office of Federal Procurement Policy, 9025 New Executive Office Building, OMB, Washington, DC 20503 (telephone 202-395-3300).

SUPPLEMENTARY INFORMATION: See the common preamble and the common rule for detailed information on requirements for grantees.

1. *Question*—What contracts are covered under the Drug-Free Workplace Act?

Answer—Under the Act, only procurement contracts, including purchase orders, awarded pursuant to the provisions of the Federal Acquisition Regulation (FAR) that are to be performed, in whole or in part, in the United States are subject to the Act. In addition, under the Act, there is a $25,000 threshold for contracts subject to the Act, except for contracts awarded to individuals for whom all contracts are covered.

2. *Question*—Are contracts performed partly inside the U.S. and partly outside the U.S. covered by the Drug-Free Workplace Act?

Answer—Yes. OMB reads the statute to require a contractor to have a Drug-Free Workplace program for those portions of the contract performed inside the United States.

3. *Question*—Are Medicare third-party reimbursements to hospitals covered by the Drug-Free Workplace Act?

Answer—No, because such third party reimbursements are not made via a procurement contract or a grant. However, hospitals that receive procurement contracts or grants must meet the requirements of the Act.

4. *Question*—Are banks and other financial institutions selling U.S. Treasury bonds covered by the Drug-Free Workplace Act?

Answer—No, because such sales are not made via a procurement contract or a grant. However, such institutions that receive procurement contracts or grants must meet the requirements of the Act.

5. *Question*—Under what circumstances will an existing contract become subject to the requirements of the Drug-Free Workplace Act?

Answer—OMB reads the statute to require that if a contract is modified on or after March 18, 1989, in such a manner that it would be considered a new commitment, the requirements of the Drug-Free Workplace Act apply.

6. *Question*—Are contracts awarded with non-appropriated funds subject to the provisions of the Drug-Free Workplace Act?

Answer—No. Only those funds explicitly identified as non-appropriated are excluded from the FAR and, therefore, are not subject to the Drug-Free Workplace Act.

7. *Question*—Are contractors or grantees performing work in Federal facilities required to have Drug-Free Workplace programs?

Answer—Yes.

8. *Question*—Will additional regulations governing suspension and debarment actions be issued as a result of section 5152(b)(2)(B) of the Drug-Free Workplace Act?

Answer—OMB is unaware of any plans to do so.

9. *Question*—How do the provisions of the Drug-Free Workplace Act relate to the provisions contained in section 628 of the Treasury/Postal Service Appropriations Act (Pub. L. 100-440)?

Answer—Section 5150 of the Drug-Free Workplace Act repealed section 628(b) of the Treasury/Postal Service Appropriations Act which, like the Drug-Free Workplace Act, also contained drug-free workplace requirements pertaining to Federal contractors and grantees. Section 628(a) of the Treasury/Postal Service Appropriations Act, which contains drug-free workplace requirements for Federal departments, agencies, and instrumentalities, went into effect January 16, 1989. Several authorization acts contain sections similar to section 628(b). OMB reads the legislative history of these collective acts such that the requirements of those sections may be met by complying with the Drug-Free Workplace Act.

10. *Question*—Do either the Drug-Free Workplace Act or its implementing regulations published today require contractors or grantees to conduct drug tests of employees?

Answer—No.

11. *Question*—What is the status of the September 28, 1988, Department of Defense interim rule detailing drug-free workforce requirements on a select group of contractors?

Answer—The interim rule became effective October 31, 1988, and only pertains to selected Defense contractors and their employees in sensitive positions. Both rules, published in today's **Federal Register**, implementing the Drug-Free Workplace Act apply governmentwide to Defense *and* other Federal agencies, and cover contractors *and* grantees and their employees in nonsensitive *and* sensitive positions. Only the Defense interim rule requires drug testing.

12. *Question*—Are there any other agency-specific (versus governmentwide) rules with drug-free workplace requirements?

Answer—Not at this time.

Date: January 19, 1989.

Joseph R. Wright, Jr.,

Director.

[FR Doc. 89-3064 Filed 1-30-89; 8:45 am]

BILLING CODE 3110-01-M

Department of Agriculture
7 CFR PART 3017

Department of Energy
10 CFR PART 1036

Federal Home Loan Bank Board
12 CFR PART 516

Small Business Administration
13 CFR PART 146

National Aeronautics and Space Administration
14 CFR PART 1265

Department of Commerce
15 CFR PART 26

Department of State
22 CFR PART 137

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29 CFR PART 1471

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44 CFR PART 17

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45 CFR PART 76

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45 CFR PART 620

National Foundation on the Arts and the Humanities

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45 CFR PART 1154

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ACTION
45 CFR PART 1229

Commission on the Bicentennial of the United States Constitution
45 CFR PART 2016

Department of Transportation
49 CFR PART 29

Governmentwide Requirements for Drug-Free Workplace (Grants)

AGENCIES: Department of Agriculture, Department of Commerce, Department of Defense, Department of Education, Department of Energy, Department of Health and Human Services, Department of Housing and Urban Development, Department of the Interior, Department of Justice, Department of Labor, Department of State, Department of Transportation, Department of the Treasury, ACTION, African Development Foundation, Agency for International Development, Commission on the Bicentennial of the United States Constitution, Environmental Protection Agency, Federal Emergency Management Agency, Federal Home Loan Bank Board, Federal Mediation and Conciliation Service, General Services Administration, Institute of Museum Services, Inter-American Foundation, National Aeronautics and Space Administration, National Archives and Records Administration, National Endowment for the Arts, National Endowment for the Humanities, National Science Foundation, Peace Corps, Small Business Administration, United States Information Agency, Veterans Administration.

ACTION: Interim final rule; request for comments.

SUMMARY: Congress recently enacted the Drug-Free Workplace Act of 1988. This statute requires that all grantees receiving grants from any Federal agency certify to that agency that they will maintain a drug-free workplace, or, in the case of a grantee who is an individual, certify to the agency that his or her conduct of grant activity will be drug-free. This governmentwide rule is for the purpose of implementing the statutory requirements. It directs that grantees take steps to provide a drug-free workplace in accordance with the Act.

DATES: This rule is effective March 18, 1989. Comments should be received by April 3, 1989. Late-filed comments will be considered to the extent practicable.

ADDRESS: Comments should be sent to Docket Clerk, Docket No. 46084, Department of Transportation, 400 7th Street SW., Room 4107, Washington, DC 20590. Commenters are requested to provide an original and four copies of their comments. Commenters wishing to have their comments acknowledged should enclose a stamped, self-addressed postcard with their comment. The docket clerk will time and date stamp the card and return it to the commenter.

FOR FURTHER INFORMATION CONTACT: See agency-specific preambles for the contact person for each agency.

SUPPLEMENTARY INFORMATION: As part of the omnibus drug legislation enacted

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November 18, 1988, Congress passed the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D). This statute requires contractors and grantees of Federal agencies to certify that they will provide drug-free workplaces. Making the required certification is a precondition for receiving a contract or grant from a Federal agency.

Requirements pertaining to contractors will be found in a separate interim final rule amending the Federal Acquisition Regulation (FAR; 48 CFR Subparts 9.4, 23.5, and 52.2). This governmentwide common rulemaking concerns only grants (including cooperative agreements). This common rule will be the sole authority for implementing the Act, i.e., there will be no separate agency guidance issued. Because the statute makes use of existing suspension and debarment remedies for noncompliance with drug-free workplace requirements, the agencies have determined to implement the statute through an amendment to the existing governmentwide nonprocurement suspension and debarment common rule. Using this vehicle will allow the agencies to take advantage of existing administrative procedures and definitions, minimizing regulatory duplication.

In a matter unrelated to the Drug-Free Workplace Act, the May 26, 1988, common rule on nonprocurement suspension and debarment (53 FR 19161) contained interim final language concerning coverage of international transactions. The comment period on this language ended July 25, 1988. There were no comments. As a result, the international transactions language will remain unchanged.

Section-by-Section Analysis

The core of the drug-free workplace rule is a new Subpart F, which will be added to the current nonprocurement suspension and debarment common rule. Conforming changes are being made to other affected portions of the nonprocurement suspension and debarment common rule. The title of the part, as well as the authority citations, are being modified to refer to the drug-free workplace requirements being added to the regulation. Section ____.305, which concerns grounds for debarment, is being amended to add violation of drug-free workplace requirements as a ground for debarment.

Section ____.320, concerning the period of debarment, is being amended to conform with the longer period for debarment authorized by the statute for a violation of drug-free workplace requirements. Generally, debarments for other than a violation of the drug-free workplace requirements do not exceed three years. In view of the seriousness with which Congress takes drug abuse, Congress authorized debarments of up to five years for a violation of drug-free workplace requirements.

Subpart F is intended to carry out the Drug-Free Workplace Act of 1988, as it applies to Federal grant programs. Section ____.600, "Purpose," states this intent, indicating the requirement for both individuals and other grantees to make the certification required by the statute.

Section ____.605 includes several definitions. Since Subpart F is part of the suspension and debarment regulation, the definitions of the overall regulation (from § ____.105) apply to Subpart F, except where amended in this section.

The definitions of "controlled substance," "conviction," "criminal drug statute" and "employee" are taken verbatim from the statute. The definition of "drug-free workplace" is also taken directly from the statute, with the word "grantee" used in place of the undefined statutory "entity" in order to ensure terminological consistency throughout the regulation. The term "site for the performance of work" within this definition is not further defined. It is intended that the grantee will determine what the "site for the performance of work" is and specify such in the grantee's certification.

The definition of "grant" is adapted from the definition of this term in the grants management governmentwide common rule ("Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments"). Four points should be highlighted. First, for the purpose of the Drug-Free Workplace Act, grants include block grants and entitlement grant programs, whether or not exempted from coverage under the grants management common rule. Second, nonprocurement transactions entered into under Pub. L. 93-638, the "Indian Self-Determination and Education Assistance Act," are included under the subpart's requirements. Third, the term grant includes *only* assistance from an agency *directly* to a grantee. That is, if a Federal agency provides financial assistance to a State agency, which in turn passes through the assistance to several local agencies, only the State agency that receives the assistance directly from the Federal agency, and not the local agency, gets a "grant."

Consequently, it is only the State agency that is required to make a drug-free workplace certification under the regulation.

Fourth, section 5301 of Subtitle G, Title V of the Anti-Drug Abuse Act of 1988 (Pub. L. 100-690) specifies that "Federal benefits" may (or shall) be withheld, in certain circumstances, from convicted drug offenders. The term "Federal benefit," however, is defined by section 5301(d) to exclude "any * * * veterans benefits," a term which is defined, in turn, to include "all benefits provided to veterans, their families, or survivors by virtue of the service of a veteran in the Armed Forces of the United States." Consequently, it is clear that, under Public Law 100-690, Federal agencies may not deny veterans' benefits to individuals on the basis of actual drug convictions.

Consistent with the intent of section 5301, the agencies have determined that veterans' benefits may not be denied to individuals on the basis of drug abuse which does not result in a conviction for violating a criminal drug statute or on the basis of the individual's failure to certify that he or she will refrain from drug abuse. Consequently, the definition of the term grant specifically excludes "any veterans' benefits to individuals—i.e., any benefit provided to veterans, their families, or survivors by virtue of the service of a veteran in the Armed Forces of the United States."

"Grantee" is defined as a person who applies for or receives a grant directly from a Federal agency. This definition clarifies the statutory definition of this term, which refers to "the department, division, or other unit of a person responsible for section. "Individual" is defined in this section, however, to mean "a natural person." This wording emphasizes that an individual differs both from an organization made up of more than one individual and from corporations, which can be regarded as a single "person" for some legal purposes. An individual who receives a grant directly from a Federal agency (e.g., the individual gets a Federal agency award and grant check made out in his or her name) is covered by this rule, and must make the certification provided for grantees who are individuals, even if another party (e.g., a university) has a purely administrative role in distributing the funds. The agencies intend that a "principal investigator" in a research or similar grant be viewed as an individual only if the grant is awarded directly to the investigator (as distinct from being awarded to a university or other organization).

The § ____.105 definition of "person," it should be pointed out, includes individuals. Since a "grantee" is a "person" who applies for or receives a grant, a grantee may be either an individual or an organization. When context requires, as in distinguishing between the certifications that individuals and organizations must submit, phrases like "grantees, other than individuals" and "grantees who are individuals" are used.

The definition of "Federal agency" or "agency" is taken from 5 U.S.C. 552(f) and is intended to cover a broad range of government entities. In various places in the regulation, "the agency" is used in the context of a particular grantor agency (e.g., § ____.630(a); "each grantee shall make the appropriate performance under the grant." The agencies view the regulatory definition as avoiding confusion among the terms "grantee," "person" and "individual" that might otherwise occur.

At the same time, the use of "grantee" in this regulation is intended to be consistent with the statutory sense of the term. For example, in determining the level of organization at which a sanction should be imposed in case of a violation of the requirements of this subpart, the agencies intend, where appropriate, to focus on the "department, division, or other unit" of the grantee responsible for performance under the grant. For example, if several different organizational units of a State agency receive grants from a Federal agency, and one of the State organizational units violates a requirement of the regulation, sanctions could be imposed on that organizational unit, not on the entire State agency. On the other hand, where it is appropriate, in the context of a particular Federal grant program, to view the entire grantee organization as responsible for the implementation of drug-free workplace requirements under this rule, the entire grantee organization could be subject to sanctions.

As in the definition of "grant," the use of the word "directly" emphasizes that it is only a "prime grantee," and not "subgrantees," who are covered by requirements under this subpart. This is true even when the prime grantee is only an office that passes Federal funds through to subgrantees who actually do the work of the program.

Words like "State" and "person" are already defined in § ____.105, so definitions of these terms are not repeated in this certification to the agency"). In such contexts, the term is not intended to mean Federal agencies in general.

Section § ____.610 applies the provisions of the subpart to any grantee of an agency. The remainder of the suspension and debarment rule applies to suspensions and debarments under subpart F. In the event of any conflict or inconsistency, subpart F provisions are deemed to control with respect to drug-free workplace matters.

Section ____.615 lists the grounds for which sanctions can be imposed. The imposition of sanctions requires a written determination of violation from the "agency head" or designee.

The first ground for which a grantee can be sanctioned is for making a false certification. The second ground is to violate the certification by failing to comply with the requirements of the certification (e.g., an organization that never publishes a drug-free workplace statement).

The third ground for sanctions is that "such a number of employees of the grantee" have been convicted of criminal drug violations occurring in the workplace "as to indicate that the grantee has failed to make a good faith effort to provide a drug-free workplace." This is a standard that must be applied by agencies on a case-by-case basis. The facts and circumstances of grantees and employee drug problems vary so much that it would be virtually impossible to prescribe an across-the-board standard for how many convictions it would take before an agency would find a grantee in violation. It is clear, however, that criminal drug violations by employees not occurring in the workplace would not trigger this determination. Likewise, evidence of drug abuse by employees in the workplace that does not result in criminal convictions would not trigger this determination.

Section ____.620 provides three kinds of sanctions for grantees who are found in violation under § ____.615. The first is suspension (i.e., withholding) of payments under the grant. The second is suspension or termination of the grant itself. The third is suspension or debarment of the grantee. The decision of which sanction or sanctions to apply in a particular case is left to the discretion of the Federal grantor agency. As with other debarments, the debarred grantee is ineligible for any grant award from any Federal agency during the term of the debarment, which may be up to five years in the case of a debarment for a violation of this subpart.

Section ____.625 allows the agency head—but no other official in the agency—to waive a sanction imposed under § ____.620 if the agency head finds the sanction to be not in the public interest. The determination of the "public interest" ground for the waiver is within the discretion of the agency head. The waiver must be in writing.

Section ____.630 establishes what grantees must do in order to receive grants, in light of drug-free workplace requirements. Each grantee shall make the appropriate certification (as set forth in Appendix C) as a "prior condition" of being awarded a grant. This means that the agencies may not award the grant unless the certification has been made. Normally, the agencies would make the certification part of the grant application or proposal process, so that each grantee would make the certification in the process of seeking to obtain the funds.

The agencies are aware that, in some grant programs, there are no formal applications or proposals for funding in which a certification could be included (e.g., formula grant programs in which grantees are entitled to receive Federal funds). Also, as this regulation goes into effect, applications will already have been submitted for some grant programs, and only the actual award has to take place before the grant becomes effective. In both cases, grantees are required to make their certifications before the actual award of a grant can take place.

A grantee is required to make the required certification for each grant. The one exception to this rule is for a grantee which is a State (as defined in § ____.105), including a State agency. A State may elect to make a single annual certification to each agency from which it obtains grants, rather than making a separate certification for each grant or each workplace. Only one such annual certification need be made to each Federal grantor agency, which would cover all of that State agency's workplaces. Consequently, if a State agency receives grants under a number of different programs from the same Federal agency, only one certification, rather than multiple, annual certifications, has to be made to that Federal agency.

Grantees are not required to make certifications in order to continue receiving payments under existing grants. That is, if a grant has been approved and awarded before the effective date of this regulation, the grantee does not have to take any action under this regulation in order to continue receiving payments under the grant. On the same rationale, grantees would not be required to make a certification before a no-cost time extension of an existing grant. The requirements of this rule operate only prospectively.

The text of the certification required to be submitted by § ____.630 is found in Appendix C. There are two different

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versions of the Appendix C certification. One of them is for grantees other than individuals; the other is for individuals. Grantees must choose the appropriate certification and make it as provided in § ____.630.

The Appendix C certification for grantees other than individuals (Alternate I) incorporates the statutory requirements for a drug-free workplace program. These requirements are largely self-explanatory. Grantee's costs incurred specifically to comply with the requirements of subpart F are regarded as allowable costs under the grant. The agencies point out that, under subparagraph (f)(2), employers are not required by the common rule to provide or pay for rehabilitation programs.

The applicable Appendix C certification for grantees who are individuals (Alternate II) provides that the individual will not engage in prohibited practices with respect to drugs in conducting any activity with the grant. Again, this certification simply incorporates the statutory requirement for individual grantees.

Regulatory Process Matters

This rule is a non-major rule under Executive Order 12291. The agencies have evaluated the rule under Executive Order 12612, pertaining to Federalism. The statute requires drug-free workplace certifications to be made by all grantees, including State agencies. The rule does reduce burdens on State grantees by allowing State agencies to elect an annual certification to each Federal grantor agency in lieu of a certification for every grant. For these reasons, the agencies have determined that the rule will not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

As a statutory matter, this rule must apply to all grantees, regardless of size. (The statute does provide a shorter, less burdensome certification to be made by grantees who are individuals, however.) Costs incurred by grantees for drug-free workplace programs are directly mandated by statute; the agencies have minimal regulatory discretion in designing this regulation.

This rule contains information collection requirements subject to the Paperwork Reduction Act. The information collection requirements concern employees reporting drug offense convictions to grantees, grantees reporting these convictions to the agencies, and grantees listing the location(s) of their workplace(s) as part of the certification. These requirements have been reviewed and approved by the Office of Management and Budget, with OMB Control Number 0991–0002.

The agencies find that publishing a notice of proposed rulemaking on this matter would be impracticable, unnecessary, and contrary to the public interest, since it would prevent compliance with the statutory deadline (90 days from the statute's date of enactment) for issuance of final rules. This finding is also based on the agencies' view that, given the urgency of implementing appropriate means to combat the nation's serious drug problem, the additional time involved with the publication of a notice of proposed rulemaking would adversely affect the achievement of the national objective established by Congress.

In addition, this rulemaking pertains only to agency grants. For this reason, under 5 U.S.C. 553(a)(2), the rulemaking is exempt from the requirement for prior notice and comment (except for those agencies that do not assert this exemption).

Consequently, this rule is published as an interim final rule. As an interim final rule, this regulation is fully in effect and binding after its effective date. No further regulatory action by the agencies is essential to the legal effectiveness of the rule. In order to benefit from comments that interested parties and the public may make, however, the agencies will keep the rulemaking docket open for 60 days. Comments are invited, on all portions of the rulemaking, through April 3, 1989. Following the close of the comment period, the agencies will publish a notice responding to the comments and, if appropriate, amending provisions of this rule.

Text of the Common Rule

The text of the common rule, as adopted by the agencies in this document, appears below.

PART ____—GOVERNMENTWIDE DEPARTMENT AND SUSPENSION (NON-PROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

§ ____.305 Causes for debarment.

* * * * *

(c) * * *

(3) Violation of any requirement of Subpart F of this part, relating to providing a drug-free workplace, as set forth in § ____.615 of this part.

* * * * *

§ ____.320 Period of debarment.

(a) Debarment shall be for a period commensurate with the seriousness of the cause(s). If a suspension precedes a debarment, the suspension period shall be considered in determining the debarment period.

(1) Debarment for causes other than those related to a violation of the requirements of Subpart F of this part generally should not exceed three years. Where circumstances warrant, a longer period of debarment may be imposed.

(2) In the case of a debarment for a violation of the requirements of Subpart F of this part (*see* ____.305(c)(5)), the period of debarment shall not exceed five years.

* * * * *

Subpart F—Drug-Free Workplace Requirements (Grants)

____.600 Purpose.
____.605 Definitions.
____.610 Coverage.
____.615 Grounds for suspension of payments, suspension or termination of grants, or suspension or debarment.
____.620 Effect of violation.
____.625 Exception provision.
____.630 Grantees' responsibilities.

Subpart F—Drug-Free Workplace Requirements (Grants)

§ ____.600 Purpose.

(a) The purpose of this subpart is to carry out the Drug-Free Workplace Act of 1988 by requiring that—

(1) A grantee, other than an individual, shall certify to the agency that it will provide a drug-free workplace;

(2) A grantee who is an individual shall certify to the agency that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance in conducting any activity with the grant.

(b) Requirements implementing the Drug-Free Workplace Act of 1988 for contractors with the agency are found at 48 CFR Subparts 9.4, 23.5, and 52.2.

§ ____.605 Definitions.

(a) Except as amended in this section, the definitions of § ____.105 apply to this subpart.

(b) For purposes of this subpart—

(1) "Controlled substance" means a controlled substance in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812), and as further defined by regulation at 21 CFR 1300.11 through 1300.15.

(2) "Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine

violations of the Federal or State criminal drug statutes;

(3) "Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use or possession of any controlled substance;

(4) "Drug-free workplace" means a site for the performance of work done in connection with a specific grant at which employees of the grantee are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance;

(5) "Employee" means the employee of a grantee directly engaged in the performance of work pursuant to the provisions of the grant;

(6) "Federal agency" or "agency" means any United States executive department, military department, government corporation, government controlled corporation, any other establishment in the executive branch (including the Executive Office of the President), or any independent regulatory agency;

(7) "Grant" means an award of financial assistance, including a cooperative agreement, in the form of money, or property in lieu of money, by a Federal agency directly to a grantee. The term grant includes block grant and entitlement grant programs, whether or not exempted from coverage under the grants management governmentwide regulation ("Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments"). The term does not include technical assistance which provides services instead of money, or other assistance in the form of loans, loan guarantees, interest subsidies, insurance, or direct appropriations; or any veterans' benefits to individuals, i.e., any benefit to veterans, their families, or survivors by virtue of the service of a veteran in the Armed Forces of the United States;

(8) "Grantee" means a person who applies for or receives a grant directly from a Federal agency;

(9) "Individual" means a natural person.

§ ____.610 Coverage.

(a) This subpart applies to any grantee of the agency.

(b) This subpart applies to any grant, except where application of this subpart would be inconsistent with the international obligations of the United States or the laws or regulations of a foreign government.

(c) The provisions of Subparts A, B, C, D and E of this part apply to matters covered by this subpart, except where specifically modified by this subpart. In the event of any conflict between provisions of this subpart and other provisions of this part, the provisions of this subpart are deemed to control with respect to the implementation of drug-free workplace requirements concerning grants.

§ ____.615 Grounds for suspension of payments, suspension or termination of grants, or suspension or debarment.

A grantee shall be deemed in violation of the requirements of this subpart if the agency head or his or her official designee determines, in writing, that—

(a) The grantee has made a false certificaiton under § ____.630;

(b) The grantee has violated the certification by failing to carry out the requirements of subparagraphs (A.)(a)-(g) of the certification for grantees other than individuals (Alternate I to Appendix C) or by failing to carry out the requirements of the certification for grantees who are individuals (Alternate II to Appendix C); or

(c) Such a number of employees of the grantee have been convicted of violations of criminal drug statutes for violations occurring in the workplace as to indicate that the grantee has failed to make a good faith effort to provide a drug-free workplace.

§ ____.620 Effect of violation.

(a) In the event of a violation of this subpart as provided in § ____.615, and in accordance with applicable law, the grantee shall be subject to one or more of the following actions:

(1) Suspension of payments under the grant;

(2) Suspension or termination of the grant; and

(3) Suspension or debarment of the grantee under the provisions of this part.

(b) Upon issuance of any final decision under this part requiring debarment of a grantee, the debarred grantee shall be ineligible for award of any grant from any Federal agency for a period specified in the decision, not to exceed five years (*see* § ____.320(a)(2) of this part).

§ ____.625 Exception provision.

The agency head may waive with respect to a particular grant, in writing, a suspension of payments under a grant, suspension or termination of a grant, or suspension or debarment of a grantee if the agency head determines that such a waiver would be in the public interest. This exception authority cannot be delegated to any other official.

§ ____.630 Grantees' responsibilities.

(a) As a prior condition of being awarded a grant, each grantee shall make the appropriate certification to the agency, as provided in Appendix C to this part.

(b) Except as provided in this paragraph, a grantee shall make the required certification for each grant. A grantee that is a State may elect to submit an annual certification to each Federal agency from which it obtains grants in lieu of certifications for each grant during the year covered by the certification.

(c) Grantees are not required to provide a certification in order to continue receiving funds under a grant awarded before the effective date of this subpart or under a no-cost time extension of any grant.

Appendix C to Part ____—Certification Regarding Drug-Free Workplace Requirements

Instructions for Certification

1. By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

2. The certification set out below is a material representation of fact upon which reliance was placed when the agency determined to award the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, the agency, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.

3. For grantees other than individuals, Alternate I applies.

4. For grantees who are individuals, Alternate II applies.

Certification Regarding Drug-Free Workplace Requirements

Alternate I

A. The grantee certifies that it will provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing a drug-free awareness program to inform employees about—

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance

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of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will—

(1) Abide by the terms of the statement; and

(2) Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction;

(e) Notifying the agency within ten days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction;

(f) Taking one of the following actions, within 30 days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee, up to and including termination; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

B. The grantee shall insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

Alternate II

The grantee certifies that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance in conducting any activity with the grant.

Adoption of Common Rule

The text of the common rule, as adopted by the agencies in this document, appears below.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 3017

FOR FURTHER INFORMATION CONTACT: Julius Jimeno, Chief, Resources Management and Analysis Division, Office of Finance and Management, (202) 382–6969.

ADDITIONAL SUPPLEMENTARY INFORMATION: Any State agency electing to submit an annual drug-free workplace certification to the U.S. Department of Agriculture (USDA), as specified in § 3017.630(b), should forward its certification to: U.S. Department of Agriculture, Office of Finance and Management, Federal Assistance Team, Room 1361, South Building, Washington, DC 20250–6020.

List of Subjects in 7 CFR Part 3017

Grant programs (Agriculture), Debarment and suspension (nonprocurement), Drug abuse.

Title 7 of the Code of Federal Regulations is amended as set forth below.

January 19, 1989.

Peter C. Myers,
Deputy Secretary.

PART 3017—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The title of Part 3017 is revised to read as set forth above.

2. The authority citation for Part 3017 is revised to read as follows:

Authority: E.O. 12549; Sec. 5151–5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D; 41 U.S.C. 701 et seq.); 5 U.S.C. 301.

§ 3017.305 [Amended]

3. Section 3017.305 is amended by removing "or" at the end of paragraph (c)(3); by removing the period at the end of paragraph (c)(4) and adding "; or"; and by adding paragraph (c)(5) to read as set forth at the end of the common preamble.

§ 3017.320 [Amended]

4. Section 3017.320(a) is revised to read as set forth at the end of the common preamble.

5. Subpart F and Appendix C are added to Part 3017 to read as set forth at the end of the common preamble.

Subpart F—Drug-Free Workplace Requirements (Grants)

Sec.

3017.600 Purpose.
3017.605 Definitions.
3017.610 Coverage.
3017.615 Grounds for suspension of payments, suspension or termination of grants, or suspension or debarment.
3017.620 Effect of violation.
3017.625 Exception provisions.
3017.630 Grantees' responsibilities.
* * * * *

Appendix C to Part 3017—Certification Regarding Drug-Free Workplace Requirements.

DEPARTMENT OF ENERGY

10 CFR Part 1036

FOR FURTHER INFORMATION CONTACT: Edward F. Sharp, (202) 586–8192.

ADDITIONAL SUPPLEMENTARY INFORMATION: In the Department of Energy's (DOE) implementation of the Nonprocurement Debarment and Suspension common rule, a Subpart F was included providing for additional DOE procedures not included in the common rule. Because the common rule for the Drug-Free Workplace Act makes changes to the nonprocurement debarment and suspension common rule by adding a Subpart F, DOE is amending its version of the common rule to designate old Subpart F as Subpart G and to incorporate the new Subpart F.

DOE joins in the determination by the agencies in the preamble to the common rule that publication of a notice of proposed rulemaking would be impracticable and contrary to the public interest. In addition, pursuant to 42 U.S.C. 7191(c), DOE hereby concludes that an opportunity for oral presentation of comments is not necessary because there are neither substantial issues of law or fact nor likely substantial impacts on the nation's economy or on large numbers of individuals or businesses of which DOE independently could take account consistent with the Drug-Free Workplace Act of 1988.

List of Subjects in 10 CFR Part 1036

Debarment and suspension (nonprocurement), Drug abuse, Grant programs, Copyrights.

Title 10 of the Code of Federal Regulations is amended as set forth below.

Barton J. Roth,
Deputy Assistant Secretary for Procurement and Assistance Management.

PART 1036—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The title of Part 1036 is revised as set forth above.

2. The authority citation for Part 1036 is revised to read as follow:

Authority: E.O. 12549; Sec. 5151–5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D; 41 U.S.C. 701 et seq.); Secs. 644 and 646, Pub. L. 95–91, 91 Stat. 599 (42 U.S.C. 7254 and 7256); Pub. L. 97–258, 96 Stat. 1003–1005 (31 U.S.C.) 6301–6308.

§ 1036.305 [Amended]

3. Section 1036.305 is amended by removing "or" at the end of paragraph (c)(3); by removing the period at the end of paragraph (c)(4) and adding "; or"; and by adding paragraph (c)(5) to read as set forth at the end of the common preamble.

§ 1036.320 [Amended]

4. Section 1036.320(a) is revised to read as set forth at the end of the common preamble.

5. Subpart F is redesignated as Subpart G. The sections within Subpart F are redesignated as follows:

Old section No.	New section No.
1036.600	1036.700
1036.605	1036.705
1036.610	1036.710
1036.615	1036.715

6. A new Subpart F and Appendix C are added to Part 1036 to read as set forth at the end of the common preamble.

Subpart F—Drug-Free Workplace Requirements (Grants)

Sec.

1036.600 Purpose.
1036.605 Definitions.
1036.610 Coverage.
1036.615 Grounds for suspension of payments, suspension or termination of grants, or suspension or debarment.
1036.620 Effect of violation.
1036.625 Exception provisions.
1036.630 Grantees' responsibilities.
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Appendix C to Part 1036—Certification Regarding Drug-Free Workplace Requirements.

FEDERAL HOME LOAN BANK BOARD

[Res. No.: 88–86]

12 CFR Part 516

Date: January 24, 1989.

FOR FURTHER INFORMATION CONTACT: Caroline Morris, Office of General Counsel, Legal Counsel Division, (202) 377–6431.

List of Subjects in 12 CFR Part 516

Administrative practice and procedure, Controlled substances, Debarment and suspension (nonprocurement), Drug abuse, Fraud, Grant programs—FHLBB, Grants administration, Reporting and recordkeeping requirements.

Title 12 of the Code of Federal Regulations is amended as set forth below.

By the Federal Home Loan Bank Board.

John M. Buckley,
Secretary.

PART 516—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENT REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The title of Part 516 is revised to read as set forth above.

2. The authority citation for Part 516 is revised to read as follows:

Authority: E.O. 12549; Sec. 5151–5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D; 41 U.S.C. 701 et seq.); 12 U.S.C. 1437(a).

§ 516.305 [Amended]

3. Section 516.305 is amended by removing "or" at the end of paragraph (c)(3); by removing the period at the end of paragraph (c)(4) and adding "; or"; and by adding paragraph (c)(5) to read as set forth at the end of the common preamble.

§ 516.320 [Amended]

4. Section 516.320(a) is revised to read as set forth at the end of the common preamble.

5. Subpart F and Appendix C are added to Part 516 to read as set forth at the end of the common preamble.

Subpart F—Drug-Free Workplace Requirements—Grants

Sec.

516.600 Purpose.
516.605 Definitions.
516.610 Coverage.
516.615 Grounds for suspension of payments, suspension or termination of grants, or suspension or debarment.
516.620 Effect of violation.
516.625 Exception provisions.
516.630 Grantees' responsibilities.
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Appendix C to Part 516—Certification Regarding Drug-Free Workplace Requirements

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SMALL BUSINESS ADMINISTRATION

13 CFR Part 145

FOR FURTHER INFORMATION CONTACT: Katherine C. Power, (202) 653–5628.

List of Subjects in 13 CFR Part 145

Debarment and suspension (nonprocurement), Drug abuse, Grant programs.

Title 13 of the Code of Federal Regulations is amended as set forth below.

James Abdnor,
Administrator.

PART 145—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The title of Part 145 is revised to read as set forth above.

2. The authority citation for Part 145 is revised to read as follows:

Authority: E.O. 12549; Secs. 5151–5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D; 41 U.S.C. 701 et seq.); 15 U.S.C. 634(b)(6).

§ 145.305 [Amended]

3. Section 145.305 is amended by removing "or" at the end of paragraph (c)(3); by removing the period at the end of paragraph (c)(4) and adding "; or"; and by adding paragraph (c)(5) to read as set forth at the end of the common preamble.

§ 145.320 [Amended]

4. Section 145.320(a) is revised to read as set forth at the end of the common preamble.

5. Subpart F and Appendix C are added to Part 145 to read as set forth at the end of the common preamble.

Subpart F—Drug-Free Workplace Requirements (Grants)

Sec.

145.600 Purpose.
145.605 Definitions.
145.610 Coverage.
145.615 Grounds for suspension of payments, suspension or termination of grants, or suspension or debarment.
145.620 Effect of violation.
145.625 Exception provisions.
145.630 Grantees' responsibilities.
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Appendix C to Part 145—Certification Regarding Drug-Free Workplace Requirements

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NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1265

FOR FURTHER INFORMATION CONTACT: David K. Beck, Telephone: (202) 453–8250.

List of Subjects in 14 CFR Part 1265

Administrative practice and procedure, Controlled substances, Debarment and suspension

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(nonprocurement), Drug abuse, Fraud, Government grant programs.

Title 14 of the Code of Federal Regulations is amended as set forth below.

Date: January 19, 1989.

Dale D. Myers,

Deputy Administrator.

PART 1265—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The title of Part 1265 is revised to read as set forth above.

2. The authority citation for Part 1265 is revised to read as follows:

Authority: E.O. 12549; Secs. 5151–5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D; 41 U.S.C. 701 et seq.); National Aeronautics and Space Act, Pub. L. 85–568, July 29, 1958, as amended, sec. 203(c)(1).

§ 1265.305 [Amended]

3. Section 1265.305 is amended by removing "or" at the end of paragraph (c)(3); by removing the period at the end of paragraph (c)(4) and adding "; or"; and by adding paragraph (c)(5) to read as set forth at the end of the common preamble.

§ 1265.320 [Amended]

4. Section 1265.320(a) is revised to read as set forth at the end of the common preamble.

5. Subpart F and Appendix C are added to Part 1265 to read as set forth at the end of the common preamble.

Subpart F—Drug-Free Workplace Requirements (Grants)

Sec.

1265.600 Purpose.
1265.605 Definitions.
1265.610 Coverage.
1265.615 Grounds for suspension of payments, suspension or termination of grants, or suspension or debarment.
1265.620 Effect of violation.
1265.625 Exception provision.
1265.630 Grantees' responsibilities.

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Appendix C to Part 1265—Certification Regarding Drug-Free Workplace Requirements

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DEPARTMENT OF COMMERCE

15 CFR Part 26

[Docket No. 90112-9012]

FOR FURTHER INFORMATION CONTACT: Robert M. McNamara, Telephone: (202) 377–5617.

List of Subjects in 15 CFR Part 26

Administrative practice and procedures, Debarment and suspension (nonprocurement), Drug abuse, Grant programs.

Part 26 of Title 15 of the Code of Federal Regulations is amended as set forth below.

Sonya G. Stewart,

Director for Finance and Federal Assistance.

PART 26—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The title of Part 26 is revised to read as set forth above.

2. The authority citation for Part 26 is revised to read as follows:

Authority: Executive Order 12549; Sec. 5151–5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D; 41 U.S.C. 701 et seq); 5 U.S.C. 301.

§ 26.305 [Amended]

3. Section 26.305 is amended by removing "or" at the end of paragraph (c)(3); by removing the period at the end of paragraph (c)(4) and adding "; or "; and by adding paragraph (c)(5) to read as set forth at the end of the common preamble.

§ 26.320 [Amended]

4. Section 26.320(a) is revised to read as set forth at the end of the common preamble.

5. Subpart F and Appendix C are added to Part 26 to read as set forth at the end of the common preamble.

Subpart F—Drug-Free Workplace Requirements (Grants)

Sec.

26.600 Purpose.
26.605 Definitions.
26.610 Coverage.
26.615 Grounds for suspension of payments, suspension or termination of grants, or suspension or debarment.
26.620 Effect of violation.
26.625 Exception provisions.
26.630 Grantees' responsibilities.

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Appendix C to Part 26—Certification Regarding Drug-Free Workplace Requirements

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DEPARTMENT OF STATE

22 CFR Part 137

FOR FURTHER INFORMATION CONTACT: James Tyckoski, Tel. (703) 875–7046.

List of Subjects in 22 CFR Part 137

Administrative practice and procedure, Controlled substances, Debarment and suspension (nonprocurement), Drug abuse, Fraud, Grant programs—foreign relations, Grants administration, Reporting and recordkeeping requirements.

Title 22 of the Code of Federal Regulations is amended as set forth below.

January 17, 1989.

John J. Conway,

Procurement Executive.

PART 137—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The title of Part 137 is revised to read as set forth above.

2. The authority citation for Part 137 is revised to read as follows:

Authority: E.O. 12549; Sec. 5151–5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D; 41 U.S.C. 701 et seq.); 22 U.S.C. 2658.

§ 137.305 [Amended]

3. Section 137.305 is amended by removing "or" at the end of paragraph (c)(3); by removing the period at the end of paragraph (c)(4) and adding "; or"; and by adding paragraph (c)(5) to read as set forth at the end of the common preamble.

§ 137.320 [Amended]

4. Section 137.320(a) is revised to read as set forth at the end of the common preamble.

5. Subpart F and Appendix C are added to Part 137 to read as set forth at the end of the common preamble.

Subpart F—Drug-Free Workplace Requirements (Grants)

Sec.

137.600 Purpose.
137.605 Definitions.
137.610 Coverage.
137.615 Grounds for suspension of payments, suspension or termination of grants, or suspension or debarment.
137.620 Effect of violation.
137.625 Exception provisions.
137.630 Grantees' responsibilities.

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Appendix C to Part 137—Certification Regarding Drug-Free Workplace Requirements

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INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

22 CFR Part 208

FOR FURTHER INFORMATION CONTACT: Kathleen O'Hara at (703) 875–1534.

List of Subjects in 22 CFR Part 208

Debarment and suspension (nonprocurement), Drug abuse, Grant programs.

Title 22 of the Code of Federal Regulations is amended as set forth below.

John F. Owens,

Associate Assistant to the Administrator for Management.

Date: January 18, 1989.

PART 208—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The title of Part 208 is revised to read as set forth above.

2. The authority citation for Part 208 is revised to read as follows:

Authority: E.O. 12549; Sec. 5151–5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D; 41 U.S.C. 701 et seq.); Sec. 621, Foreign Assistance Act of 1961, 22 U.S.C. 2381.

§ 208.305 [Amended]

3. Section 208.305 is amended by removing "or" at the end of paragraph (c)(3); by removing the period at the end of paragraph (c)(4) and adding "; or"; and by adding paragraph (c)(5) to read as set forth at the end of the common preamble.

§ 208.320 [Amended]

4. Section 208.320(a) is revised to read as set forth at the end of the common preamble.

5. Subpart F and Appendix C are added to Part 208 to read as set forth at the end of the common preamble.

Subpart F—Drug-Free Workplace Requirement (Grants)

Sec.

208.600 Purpose.
208.605 Definitions.
208.610 Coverage.
208.615 Grounds for suspension of payments, suspension or termination of grants, or suspension or debarment.
208.620 Effect of violation.
208.625 Exception provisions.
208.630 Grantees' responsibilities.

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Appendix C to Part 208—Certification Regarding Drug-Free Workplace Requirements.

PEACE CORPS

22 CFR Part 310

FOR FURTHER INFORMATION CONTACT: John K. Scales, 202–254–3114 (FTS 254–3114).

List of Subjects in 22 CFR Part 310

Debarment and suspension (nonprocurement), Drug abuse, Grant programs, Cooperative agreements.

Title 22 of the Code of Federal Regulations is amended as set forth below.

Loret Miller Ruppe,

Director.

PART 310—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The title of Part 310 is revised to read as set forth above.

2. The authority citation for Part 310 is revised to read as follows:

Authority: E.O. 12549; Sec. 5151–5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D; 41 U.S.C. 701 et seq.); 22 U.S.C. 2503.

§ 310.305 [Amended]

3. Section 310.305 is amended by removing "or" at the end of paragraph (c)(3); by removing the period at the end of paragraph (c)(4) and adding "; or"; and by adding paragraph (c)(5) to read as set forth at the end of the common preamble.

§ 310.320 [Amended]

4. Section 310.320(a) is revised to read as set forth at the end of the common preamble.

5. Subpart F and Appendix C are added to Part 310 to read as set forth at the end of the common preamble.

Subpart F—Drug-Free Workplace Requirements (Grants)

Sec.

310.600 Purpose.
310.605 Definitions.
310.610 Coverage.
310.615 Grounds for suspension of payments, suspension or termination of grants, or suspension or debarment.
310.620 Effect of violation.
310.625 Exception provisions.
310.630 Grantees' responsibilities.

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Appendix C to Part 310—Certification Regarding Drug-Free Workplace Requirements

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UNITED STATES INFORMATION AGENCY

22 CFR Part 513

FOR FURTHER INFORMATION CONTACT: Darwin Roberts, United States Information Agency, Office of Contracts, Policy and Procedures Staff, Room 1611, 330 C Street, SW., Washington, DC 20547, Telephone: (202) 485–6410.

List of Subjects in 22 CFR Part 513

Administrative practice and procedure, Controlled substances, Debarment and suspension (nonprocurement), Drug abuse, Grant monitoring, Grant programs, Grants administration, Ineligible grantees.

Title 22 of the Code of Federal Regulations is amended as set forth below.

Henry E. Hockeimer,

Associate Director for Management.

PART 513—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The title for Part 513 is revised to read as set forth above.

2. The authority citation for Part 513 is revised to read as follows:

Authority: E.O. 12549; 40 U.S.C. 486(c); Sec. 5151–5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D; 41 U.S.C. 701 et seq.).

§ 513.305 [Amended]

3. Section 513.305 is amended by removing "or" at the end of paragraph (c)(3); by removing the period at the end of paragraph (c)(4) and adding "; or"; and by adding paragraph (c)(5) to read as set forth at the end of the common preamble.

§ 513.320 [Amended]

4. Section 513.320(a) is revised to read as set forth at the end of the common preamble.

5. Subpart F and Appendix C are added to Part 513 to read as set forth at the end of the common preamble.

Subpart F—Drug-Free Workplace Requirements (Grants)

Sec.

513.600 Purpose.
513.605 Definitions.
513.610 Coverage.
513.615 Grounds for suspension of payments, suspension or termination of grants, or suspension or debarment.
513.620 Effect of violation.
513.625 Exception provisions.

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Sec.
513.630 Grantees' responsibilities.
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Appendix C to Part 513—Certification Regarding Drug-Free Workplace Requirements

INTER-AMERICAN FOUNDATION

22 CFR Part 1006

FOR FURTHER INFORMATION CONTACT: Charles Berk at 703–841–3812.

List of Subjects in 22 CFR Part 1006

Debarment and suspension (nonprocurement), Drug abuse, Grant programs.

Title 22 of the Code of Federal Regulations is amended as set forth below.

Charles M. Berk,
General Counsel.

PART 1006—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The title of Part 1006 is revised to read as set forth above.

2. The authority citation for Part 1006 is revised to read as follows:

Authority: E.O. 12549; Sec. 5151–5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D; 41 U.S.C. 701 et seq.); 22 U.S.C. 290f.

§ 1006.305 [Amended]

3. Section 1006.305 is amended by removing "or" at the end of paragraph (c)(3); by removing the period at the end of paragraph (c)(4) and adding "; or "; and by adding paragraph (c)(5) to read as set forth at the end of the common preamble.

§ 1006.320 [Amended]

4. Section 1006.320(a) is revised to read as set forth at the end of the common preamble.

5. Subpart F and Appendix C are added to Part 1006 to read as set forth at the end of the common preamble.

Subpart F—Drug-Free Workplace Requirements (Grants)

Sec.
1006.600 Purpose.
1006.605 Definitions.
1006.610 Coverage.
1006.615 Grounds for suspension of payments, suspension or termination of grants, or suspension or debarment.
1006.620 Effect of violation.
1006.625 Exception provisions.
1006.630 Grantees' responsibilities.
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Appendix C to Part 1006—Certification Regarding Drug-Free Workplace Requirements

AFRICAN DEVELOPMENT FOUNDATION

22 CFR Part 1508

FOR FURTHER INFORMATION CONTACT: Paul S. Magid, General Counsel at (202) 673–3916.

List of Subjects in 22 CFR Part 1508

Debarment and suspension (nonprocurement), Drug abuse, Grant programs.

Title 22 of the Code of Federal Regulations is amended as set forth below.

Leonard H. Robinson, Jr.,
President.

PART 1508—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The title of Part 1508 is revised to read as set forth above.

2. The authority citation for Part 1508 is revised to read as follows:

Authority: E.O. 12549; Sec. 5151–5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D; 41 U.S.C. 701 et seq.); Sec. 535(a)(4) of Title V of the International Security and Development Cooperation Act of 1985 (Pub. L. 98–533)

§ 1508.305 [Amended]

3. Section 1508.305 is amended by removing "or" at the end of paragraph (c)(3); by removing the period at the end of paragraph (c)(4) and adding "; or "; and by adding paragraph (c)(5) to read as set forth at the end of the common preamble.

§ 1508.320 [Amended]

4. Section 1508.320(a) is revised to read as set forth at the end of the common preamble.

5. Subpart F and Appendix C are added to Part 1508 to read as set forth at the end of the common preamble.

Subpart F—Drug-Free Workplace Requirements (Grants)

Sec.
1508.600 Purpose.
1508.605 Definitions.
1508.610 Coverage.
1508.615 Grounds for suspension of payments, suspension or termination of grants, or suspension or debarment.
1508.620 Effect of violation.
1508.625 Exception provisions.
1508.630 Grantees' responsibilities.
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Appendix C to Part 1508—Certification Regarding Drug-Free Workplace Requirements

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 24

FOR FURTHER INFORMATION CONTACT: Marylea W. Byrd, Office of General Counsel, Department of Housing and Urban Development, Room 10296, 451 Seventh Street, SW., Washington, DC 20410. (202) 755–0686 [This is not a toll-free number.)

ADDITIONAL SUPPLEMENTARY INFORMATION: By publication of this separate preamble the Department adopts the interim amendments to the common rule on nonprocurement debarment and suspension.

The Drug-Free Work Place Act of 1988 requires that regulations be issued not later than 90 days after the date of enactment and that the Act will become effective 120 days after enactment. Since enactment occurred after HUD's most recent Agenda submission to the Congressional oversight committees, this rule was not included in that agenda and would normally be subject to legislative review under section 7(o) of the Department of Housing and Urban Development Act. Because of the limited time periods involved, HUD will be unable to comply with the Congressional review requirements and also meet the legislative mandate for early effectiveness. Therefore, the Department is joining in the common rule.

The provisions of this subpart apply to recipients of all HUD grants including CDBG formula grant recipients not otherwise subject to sanctions under Part 24. Certifications required under this subpart should be submitted by formula grant recipients in conjunction with other required certifications.

Additionally, Public Housing Authorities (PHAs) that receive HUD grants through annual contributions contracts are grantees who are subject to the requirements in this subpart. The certification required by this subpart is in addition to the requirement that PHAs include a provision in tenants' leases making drug-related criminal activity grounds for terminating the lease.

On December 28, 1988, the Department published a Federal Register Notice implementing amendments to the Comprehensive Homeless Assistance Plan (CHAP) (53 FR 52600) contained in the Stewart B. McKinney Homeless Assistance Amendments Act of 1988 (Pub. L. 100–628), approved November 7, 1988). One of these provisions required all applicants for assistance under the McKinney Act (including the Emergency Shelter Grants, Supportive Housing, Single Room Occupancy, and Supplemental Assistance for Facilities to Assist the Homeless programs) to include in their CHAPS an assurance that the homeless facility would be drug- and alcohol-free. The Notice further advised applicants that additional drug-related requirements might apply to the McKinney homeless assistance programs under the Anti-Drug Abuse Act of 1988. Applicants should note that they must comply with the requirements of this common rule and with the certification provisions under the 1988 CHAP Notice.

The existing Subpart F Limited Denial of Participation, has been redesignated as Subpart G.

List of Subjects in 24 CFR Part 24

Administrative practice and procedure, Debarment and suspension (nonprocurement), Drug abuse, Government contracts, Organization and functions (Government Agencies), Government procurement, Grant programs: housing and community development, Loan programs: housing and community development.

Title 24 of the Code of Federal Regulations is amended as set forth below.

Samuel Pierce,
Secretary, United States Department of Housing and Urban Development.

PART 24—GOVERNMENT DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The title of part 24 is revised to read as set forth above.

2. The authority citation for Part 24 is revised to read as follows:

Authority: E.O. 12549; Secs. 5151–5160, Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D; 41 U.S.C. 701 *et seq.*); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

§ 24.305 [Amended]

3. Section 24.305 is amended by removing "or" at the end of paragraph (c)(3); by removing the period at the end of paragraph (c)(4) and adding "; or"; and by adding paragraph (c)(5) to read as set forth at the end of the common preamble.

§ 24.320 [Amended]

4. Section 24.320(a) is revised to read as set forth at the end of the common preamble.

5. Subpart F is redesignated as Subpart G. The sections within Subpart F are redesignated as follows:

Old Section Number	New Section Number
24.600	24.700
24.605	24.705
24.610	24.710
24.611	24.711
24.612	24.712
24.613	24.713

6. A new Subpart F and Appendix C are added to Part 24 to read as set forth at the end of the common preamble.

Subpart F—Drug-Free Workplace Requirements (Grants)

Sec.
24.600 Purpose.
24.605 Definitions.
24.610 Coverage.
24.615 Grounds for suspension of payments, suspension or termination of grants, or suspension or debarment.
24.620 Effect of violation.
24.625 Exception provisions.
24.630 Grantees' responsibilities.
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Appendix C to Part 24—Certification Regarding Drug-Free Workplace Requirements

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 601

Office of the Secretary

31 CFR Part 19

FOR FURTHER INFORMATION CONTACT: John Blair, (202) 343–0249.

ADDITIONAL SUPPLEMENTARY INFORMATION: On May 26, 1988, the Internal Revenue Service, Department of the Treasury, published regulations governing Governmentwide nonprocurement debarment and suspension (53 FR 19187–19188), codified at 26 CFR Part 601, Subpart I. The Department of the Treasury has determined that these regulations should be published in Title 31 of the Code of Federal Regulations as a Departmentwide regulation. Therefore, in addition to adopting Departmentwide the common regulation implementing the Drug-Free Workplace Act of 1988, this final rule transfers the suspension and debarment regulations originally published by the Internal Revenue Service in Title 26, and redesignates them as Departmentwide regulations to be codified at 31 CFR Part 19. The sections are redesignated as follows.

For the convenience of the user, the following table shows the relationship of the old CFR section numbers under 26 CFR Part 601 to the new section numbers in 31 CFR Part 19.

REDESIGNATION TABLE

Old section (26 CFR)	New section (31 CFR)
General	**Subpart A—General**
601.901	19.100
601.902	19.105
601.903	19.110
601.904	19.115
Effect of action	**Subpart B—Effect of action**
601.910	19.200
601.911	19.205
601.912	19.210
601.913	19.215
601.914	19.220
601.915	19.225

REDESIGNATION TABLE—Continued

Old section (28 CFR)	New section (31 CFR)
Debarment	**Subpart C—Debarment**
601.920	19.300
601.921	19.305
601.922	19.310
601.923	19.311
601.924	19.312
601.925	19.313
601.926	19.314
601.927	19.315
601.928	19.320
601.929	19.325
Suspensions	**Subpart D—Suspensions**
601.930	19.400
601.931	19.405
601.932	19.410
601.933	19.411
601.934	19.412
601.935	19.413
601.936	19.415
601.937	19.420
Responsibilities of GSA, agency and participants	**Subpart E—Responsibilities of GSA, agency and participants**
601.940	19.500
601.941	19.505
601.942	19.510
Appendix A	Appendix A to Part 19
Appendix B	Appendix B to Part 19

List of Subjects

28 CFR Part 601

Debarment and suspension (nonprocurement).

31 CFR Part 19

Debarment and suspension (nonprocurement), Drug abuse, Grant programs.

Titles 28 and 31 of the Code of Federal Regulations are amended as set forth below.

Jill E. Kent,

Assistant Secretary (Management).

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

TITLE 31—[AMENDED]

PART 19—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. Part 19 is added to Title 31 of the Code of Federal Regulations, its title to read as set forth above.

2. The authority citation for Part 19 is added to read as follows:

Authority: E.O. 12549; Sec. 5151–5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D; 41 U.S.C. 701 et seq.); 31 U.S.C. 321.

3. The regulations found in Subpart I of 28 CFR Part 601 are redesignated as new 31 CFR Part 19 as set forth below.

The Subpart I heading and undesignated center headings of Subpart I are removed.

a. 28 CFR 601.901 through 601.904 are redesignated in 31 CFR 19 as Subpart A—General, §§ 19.100, 19.105, 19.110, 19.115, respectively.

b. 28 CFR 601.910 through 601.915 are redesignated in 31 CFR Part 19 as Subpart B—Effect of Action, §§ 19.200, 19.205, 19.210, 19.215, 19.220, 19.225, respectively.

c. 28 CFR 601.920 through 929 are redesignated in 31 CFR Part 19 as Subpart C—Debarment, §§ 19.300, 19.305, 19.310, 19.311, 19.312, 19.313, 19.314, 19.315, 19.320, 19.325, respectively.

d. 28 CFR 601.930 through 601.937 are redesignated in 31 CFR Part 19 as Subpart D—Suspension, §§ 19.400, 19.405, 19.410, 19.411, 19.412, 19.413, 19.415, 19.420, respectively.

e. 28 CFR 601.940 through 601.942 are redesignated in 31 CFR Part 19 as Subpart E—Responsibilities of GSA, Agency and Participants, §§ 19.500, 19.505, 19.510, respectively.

f. Appendices A and B to Subpart I of Title 28, Part 601, are redesignated as Appendix A to Part 19 and Appendix B to Part 19 of Title 31, respectively.

§ 19.305 [Amended]

4. In Subpart C, § 19.305 is amended by removing "or" at the end of paragraph (c)(3); by removing the period at the end of paragraph (c)(4) and adding "; or"; and by adding paragraph (c)(5) to read as set forth at the end of the common preamble.

§ 19.320 [Amended]

5. Section 19.320(a) is revised to read as set forth at the end of the common preamble.

6. Part 19 is amended by adding a new Subpart F immediately following § 19.510 and a new Appendix C to Part 19 to read as set forth at the end of the common preamble.

Subpart F—Drug-Free Workplace Requirements (Grants)

Sec.

19.600 Purpose.
19.605 Definitions.
19.610 Coverage.
19.615 Grounds for suspension of payments, suspension or termination of grants, or suspension or debarment.
19.620 Effect of violation.
19.625 Exception provisions.
19.630 Grantees' responsibilities.

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Appendix C to Part 19—Certification Regarding Drug-Free Workplace Requirements

TITLE 28—[AMENDED]

7. The authority citation for 28 CFR Part 601 is revised to read as follows:

Authority: 5 U.S.C. 301 and 553, unless otherwise noted.

DEPARTMENT OF JUSTICE

28 CFR Part 67

FOR FURTHER INFORMATION CONTACT: Cynthia J. Schwimer, (202) 724–3186.

ADDITIONAL SUPPLEMENTARY INFORMATION: The Department of Justice has adopted a uniform system of implementing the Drug-Free Workplace common rule that will be applicable to the nonprocurement assistance activities of the offices, bureaus, and divisions of the Department of Justice which have grantmaking authority. These include: The Office of Justice Programs (including the Office for Victims of Crime, the National Institute of Justice, the Bureau of Justice Assistance, the Office of Juvenile Justice and Delinquency Prevention, and the Bureau of Justice Statistics), the Bureau of Prisons, the U.S. Marshals Service, the Immigration and Naturalization Service, the Federal Bureau of Investigation, the Drug Enforcement Administration and the Community Relations Service.

List of Subjects in 28 CFR Part 67

Administrative practice and procedures, Controlled substances, Debarment and suspension (nonprocurement), Drug abuse, Fraud, Grant programs—Law, Grants administrations, Reporting and recordkeeping requirements.

Title 28 of the Code of Federal Regulations is amended as set forth below.

Dick Thornburgh,

Attorney General.

PART 67—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The title of Part 67 is revised to read as set forth above.

2. The authority citation for Part 67 is revised to read as follows:

Authority: E.O. 12549; Sec. 5151–5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D; 41 U.S.C. 701 *et seq.*), Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. 3711, *et seq.* (as amended), Juvenile Justice and Delinquency Prevention Act of 1974, 42 U.S.C. 5601, *et seq.* (as amended), Victims of Crime Act of 1984, 42 U.S.C. 10601, *et seq* (as amended); 18 U.S.C. 4042; and 18 U.S.C. 4351–4353.

§ 67.305 [Amended]

3. Section 67.305 is amended by removing "or" at the end of paragraph (c)(3); by removing the period at the end of paragraph (c)(4) and adding "; or"; and by adding paragraph (c)(5) to read as set forth at the end of the common preamble.

§ 67.320 [Amended]

4. Section 67.320(a) is revised to read as set forth at the end of the common preamble.

5. Subpart F and Appendix C are added to Part 67 to read as set forth at the end of the common preamble.

Subpart F—Drug-Free Workplace Requirements (Grants)

Sec.

67.600 Purpose.
67.605 Definitions.
67.610 Coverage.
67.615 Grounds for suspension of payments, suspension or termination of grants, or suspension or debarment.
67.620 Effect of violation.
67.625 Exception provisions.
67.630 Grantees' responsibilities.

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Appendix C to Part 67—Certification Regarding Drug-Free Workplace Requirements

DEPARTMENT OF LABOR

29 CFR Part 98

FOR FURTHER INFORMATION CONTACT: Theodore Goldberg on (202) 523–9174 (FTS 523–9174).

List of Subjects in 29 CFR Part 98

Debarment and suspension (nonprocurement), Drug abuse, Grant programs.

Title 29 of the Code of Federal Regulations is amended as set forth below.

Ann McLaughlin,

Secretary of Labor.

PART 98—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The title of Part 98 is revised to read as set forth above.

2. The authority citation for Part 98 is revised to read as follows:

Authority: E.O. 12549; Sec. 5151–5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D; 41 U.S.C. 701 et seq.); 5 U.S.C. 552–556.

§ 98.305 [Amended]

3. Section 98.305 is amended by removing "or" at the end of paragraph (c)(3); by removing the period at the end of paragraph (c)(4) and adding "; or"; and by adding paragraph (c)(5) to read as set forth at the end of the common preamble.

§ 98.320 [Amended]

4. Section 98.320(a) is revised to read as set forth at the end of the common preamble.

5. Subpart F and Appendix C are added to Part 98 to read as set forth at the end of the common preamble.

Subpart F—Drug-Free Workplace Requirements (Grants)

Sec.

98.600 Purpose.
98.605 Definitions.
98.610 Coverage.
98.615 Grounds for suspension of payments, suspension or termination of grants, or suspension or debarment.
98.620 Effect of violation.
98.625 Exception provisions.
98.630 Grantees' responsibilities.

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Appendix C to Part 98—Certification Regarding Drug-Free Workplace Requirements

FEDERAL MEDIATION AND CONCILIATION SERVICE

29 CFR Part 1471

FOR FURTHER INFORMATION CONTACT: Lee Buddendeck, 202/653–5320.

List of Subjects in 29 CFR Part 1471

Debarment and suspension (nonprocurement), Drug abuse, Grant programs.

Title 29 of the Code of Federal Regulations is amended as set forth below.

Kay McMurray,

Director.

PART 1471—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The title of Part 1471 is revised to read as set forth above.

2. The authority citation for Part 1471 is revised to read as follows:

Authority: E.O. 12549; Sec. 5151–5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D; 41 U.S.C. 701 et seq.) Pub. L. 95–524, Oct. 27, 1978, 29 U.S.C. 175a.

§ 1471.305 [Amended]

3. Section 1471.305 is amended by

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removing "or" at the end of paragraph (c)(3); by removing the period at the end of paragraph (c)(4) and adding "; or"; and by adding paragraph (c)(5) to read as set forth at the end of the common preamble.

§ 1471.320 [Amended]

4. Section 1471.320 (a) revised to read as set forth at the end of the common preamble.

5. Subpart F and Appendix C are added to Part 1471 to read as set forth at the end of the common preamble.

Subpart F—Drug-Free Workplace Requirements (Grants)

Sec.
1471.600 Purpose.
1471.605 Definitions.
1471.610 Coverage.
1471.615 Grounds for suspension of payments, suspension or termination of grants, or suspension or debarment.
1471.620 Effect of violation.
1471.625 Exception provisions.
1471.630 Grantees' responsibilities.
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Appendix C to Part 1471—Certification Regarding Drug-Free Workplace Requirements

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DEPARTMENT OF DEFENSE

32 CFR Part 280

FOR FURTHER INFORMATION CONTACT: Ms. J. Carney, Office of the Deputy Director, Defense Research and Engineering (Research and Advanced Technology) (ODDDRE/R&AT), Room 3E114, the Pentagon, telephone 202–694–0205.

ADDITIONAL SUPPLEMENTARY INFORMATION: The Department of Defense (DoD) is adopting the following interim final rule establishing government requirements for a drug-free workplace for DoD grantees, and will proceed with internal agency coordination, the results of which will be reflected in the final common rule. It is DoD's objective to establish uniform practices within the Office of the Secretary of Defense, the Military Departments and the Defense Agencies that would be consistent with those being established by other Executive Departments and Agencies in adopting this government-wide common rule.

List of Subjects in 32 CFR Part 280

Administrative practice and procedures, Controlled substance, Debarment and suspension (nonprocurement), Drug abuse, Fraud, Grant programs, Reporting and recordkeeping requirements.

Title 32 of the Code of Federal Regulations is amended as set forth below.

Linda M. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.

PART 280—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The title of Part 280 is revised to read as set forth above.

2. The authority citation for Part 280 is revised to read as follows:

Authority: E.O. 12549; Sec. 5151–5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D; 41 U.S.C. 701 et seq.)

§ 280.305 [Amended]

3. Section 280.305 is amended by removing "or" at the end of paragraph (c)(3); by removing the period at the end of paragraph (c)(4) and adding "; or"; and by adding paragraph (c)(5) to read as set forth at the end of the common preamble.

§ 280.320 [Amended]

4. Section 280.320 (a) revised to read as set forth at the end of the common preamble.

5. Subpart F and Appendix C are added to Part 280 to read as set forth at the end of the common preamble.

Subpart F—Drug-Free Workplace Requirements (Grants)

Sec.
280.600 Purpose.
280.605 Definitions.
280.610 Coverage.
280.615 Grounds for suspension of payments, suspension or termination of grants, or suspension or debarment.
280.620 Effect of violation.
280.625 Exception provisions.
280.630 Grantees' responsibilities.
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Appendix C to Part 280—Certification Regarding Drug-Free Workplace Requirements

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DEPARTMENT OF EDUCATION

34 CFR Part 85

FOR FURTHER INFORMATION CONTACT: Mary Jane Kane at 202–732–7400 (FTS 732–7400).

List of Subjects in 34 CFR Part 85

Debarment and suspension (nonprocurement), Drug abuse, Grant programs.

Title 34 of the Code of Federal Regulations is amended as set forth below.

Lauro F. Cavazos,
Secretary of Education.

PART 85—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The title of Part 85 is revised to read as set forth above.

2. The authority citation for Part 85 is revised to read as follows:

Authority: E.O. 12549; Sec. 5151–5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D 41 U.S.C. 701 et seq); 20 U.S.C. 3474, 1221e-3(a)(1).

§ 85.305 [Amended]

3. Section 85.305 is amended by removing "or" at the end of paragraph (c)(3); by removing the period at the end of paragraph (c)(4) and adding "; or"; and by adding paragraph (c)(5) to read as set forth at the end of the common preamble.

§ 85.320 [Amended]

4. Section 85.320(a) is revised to read as set forth at the end of the common preamble.

5. Subpart F and Appendix C are added to Part 85 to read as set forth at the end of the common preamble.

Subpart F—Drug-Free Workplace Requirements (Grants)

Sec.
85.600 Purpose.
85.605 Definitions.
85.610 Coverage.
85.615 Grounds for suspension of payments, suspension or termination of grants, or suspension or debarment.
85.620 Effect of violation.
85.625 Exception provisions.
85.630 Grantees' responsibilities.
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Appendix C to Part 85—Certification Regarding Drug-Free Workplace Requirements

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NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1209

FOR FURTHER INFORMATION CONTACT: John Constance or Nancy Allard at 202–523–3214 (FTS 523–3214).

List of Subjects in 36 CFR Part 1209

Administrative practice and procedure, Controlled substances, Debarment and suspension (nonprocurement), Drug abuse, Fraud, Grant programs—Archives and records, Grants administration, Reporting and recordkeeping requirements.

Title 36 of the Code of Federal Regulations is amended as set forth below.

Don W. Wilson,
Archivist of the United States.

PART 1209—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The title of Part 1209 is revised to read as set forth above.

2. The authority citation for Part 1209 is revised to read as follows:

Authority: E.O. 12549; Sec. 5151–5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D; 41 U.S.C. 701 et seq); 44 U.S.C. 2104(a).

§ 1209.305 [Amended]

3. Section 1209.305 is amended by removing "or" at the end of paragraph (c)(3); by removing the period at the end of paragraph (c)(4) and adding "; or"; and by adding paragraph (c)(5) to read as set forth at the end of the common preamble.

§ 1209.320 [Amended]

4. Section 1209.320(a) is revised as set forth at the end of the common preamble.

5. Subpart F and Appendix C are added to part 1209 to read as set forth at the end of the common preamble.

Subpart F—Drug-Free Workplace Requirements (Grants)

Sec.
1209.600 Purpose.
1209.605 Definitions.
1209.610 Coverage.
1209.615 Grounds for suspension of payments, suspension or termination of grants, or suspension or debarment.
1209.620 Effect of violation.
1209.625 Exception provisions.
1209.630 Grantees' responsibilities.
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Appendix C to Part 1209—Certification Regarding Drug-Free Workplace Requirements

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VETERANS ADMINISTRATION

38 CFR Part 44

FOR FURTHER INFORMATION CONTACT: Linda M. Combs, Acting Associate Deputy Administrator for Management (004), Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420 (202) 233–2227.

ADDITIONAL SUPPLEMENTARY INFORMATION: The Drug-Free Workplace Act of 1988, requires, among other things, that all Federal grantees certify to the granting agency that they will maintain a drug-free workplace, or, in the case of individual grantees, certify that the activities conducted with grant assistance will be drug free. Consistent with the statutory provisions of the Anti-Drug Abuse Act of 1988, the definition of "grant" set forth in the common rule, however, makes it clear that, for purposes of the provisions applicable to individuals, the term "grant" shall not be construed to include "any veterans benefit—i.e., any benefit provided to veterans, their families, or survivors by virtue of the service of veteran in the Armed Forces of the United States." Accordingly, individual beneficiaries of "veterans benefits" will not be required to comply with the Drug Free Workplace Act of 1988 as a condition to the receipt of such benefits.

Otherwise, the common rule shall apply to grant programs administered by the VA, such as the State Veterans Home Program and the State Cemetery Grants Program, which provide for the granting of assistance other than "veterans benefits" to recipients such as State governments. In such cases, the VA will require from such grantees compliance with the Drug-Free Workplace Act of 1988, including its certification requirements, as a condition for the future receipt of such assistance.

List of Subjects in 38 CFR Part 44

Accounting, Administrative practice and procedures, Agreements, Debarment and suspension (nonprocurement), Drug abuse, Drug-free workplace, Grant programs—State cemetery and State veterans homes, Insurance, Loan guaranty, Reporting and recordkeeping requirements, Scholarships, Veterans, Vocational rehabilitation and education.

Title 38 of the Code of Federal Regulations is amended as set forth below.

Approved: January 18, 1989.

Thomas K. Turnage,
Administrator.

PART 44—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The title of Part 44 is revised to read as set forth above.

2. The authority citation for Part 44 is revised to read as follows:

Authority: E.O. 12549; Sec. 5151–5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D; 41 U.S.C. 701 et seq.); 38 U.S.C. 210(c).

§ 44.305 [Amended]

3. Section 44.305 is amended by removing "or" at the end of paragraph (c)(3); by removing the period at the end of paragraph (c)(4) and adding "; or"; and by adding paragraph (c)(5) to read as set forth at the end of the common preamble.

§ 44.320 [Amended]

4. Section 44.320(a) is revised to read as set forth at the end of the common preamble.

5. Subpart F and Appendix C are added to Part 44 to read as set forth at the end of the common preamble.

Subpart F—Drug-Free Workplace Requirements (Grants)

Sec.
44.600 Purpose.
44.605 Definitions.
44.610 Coverage.
44.615 Grounds for suspension of payments, suspension or termination of grants, or suspension or debarment.
44.620 Effect of violation.
44.625 Exception provision.
44.630 Grantees' responsibilities.
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Appendix C to Part 44—Certification Regarding Drug-Free Workplace Requirements

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 32

FOR FURTHER INFORMATION CONTACT: Robert Meunier, at 202–475–8025 (FTS–475–8025).

List of Subjects in 40 CFR Part 32

Debarment and suspension (nonprocurement), Drug abuse, Government grant programs.

Title 40 of the Code of Federal Regulations is amended as set forth below.

Date: January 18, 1989.

Lee M. Thomas,
Administrator.

PART 32—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The title of Part 32 is revised to read as set forth above.

2. The authority citation for Part 32 is revised to read as follows:

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Authority: E.O. 12549; Sec. 5151–5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D; 41 U.S.C. 701 et seq.); 7 U.S.C. 136 et seq.; 15 U.S.C. 2601 et seq.; 20 U.S.C. 4011 et seq.; 33 U.S.C. 1251 et seq.; 42 U.S.C. 300f, 4901, 6901, 7401, 9601 et seq.

§ 32.305 [Amended]

3. Section 32.305 is amended by removing "or" at the end of paragraph (c)(3); by removing the period at the end of paragraph (c)(4) and adding "; or"; and by adding paragraph (c)(5) to read as set forth at the end of this common preamble.

§ 32.320 [Amended]

4. Section 32.320(a) is revised to read as set forth at the end of the common preamble.

5. Subpart F and Appendix C are added to Part 32 to read as set forth at the end of the common preamble.

Subpart F—Drug-Free Workplace Requirements (Grants)

Sec.

32.600 Purpose.
32.605 Definitions.
32.610 Coverage.
32.615 Grounds for suspension of payments, suspension or termination of grants, or suspension or debarment.
32.620 Effect of violation.
32.625 Exception provisions.
32.630 Grantees' responsibilities.

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Appendix C to Part 32—Certification Regarding Drug-Free Workplace Requirements

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 101–50 and 105–68

FOR FURTHER INFORMATION CONTACT: Ida M. Ustad at 202–566–1224 (FTS 566–1224).

ADDITIONAL SUPPLEMENTARY INFORMATION:

REDESIGNATION TABLE

[For the convenience of the user, the following table shows the relationship of the old CFR Section numbers in 41 CFR Part 101–50 to the new CFR Section numbers in 41 CFR Part 105–68.]

Old section	New section
Subpart 101–50.1—General	Subpart 105–68.1—General
101–50.100	105–68.100
101–50.105	105–68.105
101–50.110	105–68.110
101–50.115	105–68.115

REDESIGNATION TABLE—Continued

[For the convenience of the user, the following table shows the relationship of the old CFR Section numbers in 41 CFR Part 101–50 to the new CFR Section numbers in 41 CFR Part 105–68.]

Old section	New section
Subpart 101–50.2—Effect of Action	Subpart 105–68.2—Effect of Action
101–50.200	105–68.200
101–50.205	105–68.205
101–50.210	105–68.210
101–50.215	105–68.215
101–50.220	105–68.220
101–50.225	105–68.225
Subpart 101–50.3—Debarment	Subpart 101–50.3—Debarment
101–50.300	105–68.300
101–50.305	105–68.305
101–50.310	105–68.310
101–50.315	105–68.315
101–50.320	105–68.320
101–50.325	105–68.325
Subpart 101–50.4—Suspension	Subpart 101–50.4—Suspension
101–50.400	105–68.400
101–50.405	105–68.405
101–50.410	105–68.410
101–50.415	105–68.415
101–50.420	105–68.420
101–50.425	105–68.425
Subpart 101–50.5—Responsibilities of GSA, Agency and Participants	Subpart 101–50.5—Responsibilities of GSA, Agency and Participants
101–50.500	105–68.500
101–50.505	105–68.505
101–50.510	105–68.510
101–50.515	105–68.515
101–50.520	105–68.520
101–50.525	105–68.525

List of Subjects 41 CFR Part 105–68

Debarment and suspension (nonprocurement), Drug abuse, Grant programs.

Title 41 of the Code of Federal Regulations is amended as set forth below.

January 19, 1989.

Richard G. Austin,

Acting Administrator of General Services.

PART 105–68 GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. Part 101–50 is redesignated as Part 105–68. The part heading is revised to read as set forth above.

2. The authority citation for Part 105–68 is revised to read as follows:

Authority: E.O. 12549; Sec. 5151–5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D; 41 U.S.C. 701 et seq); 40 U.S.C. 486(c).

§ 105–68.305 [Amended]

3. Section 105–68.305 is amended by removing "or" at the end of paragraph (c)(3); by removing the period at the end of paragraph (c)(4) and adding "; or"; and by adding paragraph (c)(5) to read as set forth at the end of the common preamble.

§ 105–68.110 [Amended]

4. Section 105–68.110(b) is amended by removing "Subpart B" and adding "Subpart 105–68.2".

§ 105–68.135 [Amended]

5. Section 105–68.135(b) is amended by removing "Subpart E" and adding "Subpart 105–68.5".

§ 105–68.320 [Amended]

6. Section 105–68.320(a) is revised to read as set forth at the end of the common preamble.

7. Subpart 105–68.6 and Appendix C are added to read as set forth at the end of the common preamble.

Subpart 105–68.6—Drug-Free Workplace Requirements (Grants)

Sec.

105–68.600 Purpose.
105–68.605 Definitions.
105–68.610 Coverage.
105–68.615 Grounds for suspension of payments, suspension or termination of grants, or suspension or debarment.
105–68.620 Effect of violation.
105–68.625 Exception provisions.
105–68.630 Grantees' responsibilities.

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Appendix C to Part 105–68—Certification Regarding Drug-Free Workplace Requirements

DEPARTMENT OF THE INTERIOR

43 CFR Part 12

FOR FURTHER INFORMATION CONTACT: Cecell Coleman, Phone (202) 343–6431.

List of Subjects in 43 CFR Part 12

Cooperative agreements, Debarment and suspension (nonprocurement), Drug abuse, Grant programs, Grants administration.

Title 43 of the Code of Federal Regulations is amended as set forth below.

Date: January 19, 1989.

Rick Ventura,

Assistant Secretary—Policy, Budget and Administration.

PART 12—ADMINISTRATIVE REQUIREMENTS AND COST PRINCIPLES FOR ASSISTANCE PROGRAMS

1. The authority citation for Part 12 is revised to read as follows:

Authority: E.O. 12549; Sec. 5151–5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D; 41 U.S.C. 701 *et seq.*); 5 U.S.C. 301; Pub. L. 98–502; OMB Circulars A–102 and A–110; and OMB Circular A–128.

Subpart D—Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)

2. The title of Subpart D is revised to read as set forth above.

§ 12.305 [Amended]

3a. In Subpart D, § 12.305 is amended by removing "or" at the end of paragraph (c)(3); by removing the period at the end of paragraph (c)(4) and adding "; or"; and by adding paragraph (c)(5) to read as set forth at the end of the common preamble.

b. Newly added § 12.305(c)(5) is further amended by removing "Subpart F of this part" and adding "the drug-free workplace requirements for grants."

§ 12.320 [Amended]

4a. In Subpart D, § 12.320(a) is revised to read as set forth at the end of the common preamble.

b. Newly revised § 12.320(a) (1) and (2) are amended by removing "Subpart F of this part" and adding "the drug-free workplace requirements for grants of this subpart."

5. Subpart D is amended by adding a new heading and seven new sections immediately following § 12.510 and a new Appendix C to Subpart D to read as set forth at the end of the common preamble.

Drug-Free Workplace Requirements (Grants)

Sec.

12.600 Purpose.
12.605 Definitions.
12.610 Coverage.
12.615 Grounds for suspension of payments, suspension or termination of grants, or suspension or debarment.
12.620 Effect of violation.
12.625 Exception provisions.
12.630 Grantees' responsibilities.

* * * * *

Appendix C to Subpart D—Certification Regarding Drug-Free Workplace Requirements

§§ 12.600, 12.605, 12.610, 12.615, 12.620, 12.625 and 12.630 [Amended]

6. Sections 12.600, 12.605, 12.610, 12.615, 12.620, 12.625, and 12.630 are further amended by removing "this subpart" and adding "the drug-free workplace requirements for grants" wherever "this subpart" appears, by removing "this part" and adding "Subpart D" wherever "this part" appears.

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 17

FOR FURTHER INFORMATION CONTACT: Arthur E. Curry at 202–646–3719.

List of Subjects in 44 CFR Part 17

Governmentwide Debarment and suspension (nonprocurement), Drug abuse, Grant programs.

Title 44 of the Code of Federal Regulations is amended as set forth below.

Arthur E. Curry,

Chief, Policy Division, Office of the Comptroller.

PART 17—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The title of Part 17 is revised to read as set forth above.

2. The authority citation for Part 17 is revised to read as follows:

Authority: E.O. 12549; Sec. 5151–5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D; 41 U.S.C. 701 et seq.).

§ 17.305 [Amended]

3. Section 17.305 is amended by removing "or" at the end of paragraph (c)(3); by removing the period at the end of paragraph (c)(4) and adding "; or"; and by adding paragraph (c)(5) to read as set forth at the end of the common preamble.

§ 17.320 [Amended]

4. Section 17.320 is revised to read as set forth at the end of the common preamble.

5. Subpart F and Appendix C are added to Part 17 to read as set forth at the end of the common preamble.

Subpart F—Drug Free Workplace Requirements (Grants)

Sec.

17.600 Purpose.
17.605 Definitions.
17.610 Coverage.
17.615 Grounds for suspension of payments, suspension or termination of grants, or suspension or debarment.
17.620 Effect of violation.
17.625 Exception provisions.
17.630 Grantees' responsibilities.

* * * * *

Appendix C to Part 17—Certification Regarding Drug-Free Workplace Requirements

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Part 76

FOR FURTHER INFORMATION CONTACT: Neil Steyskal at 202–245–0729.

List of Subjects in 45 CFR Part 76

Debarment and suspension (nonprocurement), Drug abuse, Grant programs.

Title 45 of the Code of Federal Regulations is amended as set forth below.

Approved: January 18, 1989.

Otis R. Bowen,

Secretary, Department of Health and Human Services.

PART 76—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The title of Part 76 is revised to read as set forth above.

2. The authority citation for Part 76 is revised to read as follows:

Authority: E.O. 12549; Sec. 5151–5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D; 41 U.S.C. 701 et seq); 5 U.S.C. 301.

§ 76.305 [Amended]

3. Section 76.305 is amended by removing "or" at the end of paragraph (c)(3); by removing the period at the end of paragraph (c)(4) and adding "; or"; and by adding paragraph (c)(5) to read as set forth at the end of the common preamble.

§ 76.320 [Amended]

4. Section 76.320(a) is revised to read as set forth at the end of the common preamble.

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5. Subpart F and Appendix C are added to Part 76 to read as set forth at the end of the common preamble.

Subpart F—Drug-Free Workplace Requirements (Grants)

Sec.
76.600 Purpose.
76.605 Definitions.
76.610 Coverage.
76.615 Grounds for suspension of payments, suspension or termination of grants, or suspension or debarment.
76.620 Effect of violation.
76.625 Exception provisions.
76.630 Grantees' responsibilities.
* * * * *
Appendix C to Part 76—Certification Regarding Drug-Free Workplace Requirements

NATIONAL SCIENCE FOUNDATION

45 CFR Part 620

FOR FURTHER INFORMATION CONTACT: J. Rom, 357–7560.

List of Subjects in 45 CFR Part 620

Debarment and suspension (nonprocurement), Drug abuse, Grant programs.

Title 45 of the Code of Federal Regulations is amended as set forth below.

Jeff Fountammacher,
Assistant Director for Administration.

PART 620—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The title of Part 620 is revised to read as set forth above.

2. The authority citation for Part 620 is revised to read as follows:

Authority: E.O. 12549; Sec. 5151–5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D; 41 U.S.C. 701 et seq.); Sec. 11(a) of the National Science Foundation Act of 1950, as amended (42 U.S.C. 1870(a)).

§ 620.305 [Amended]

3. Section 620.305 is amended by removing "or" at the end of paragraph (c)(3); by removing the period at the end of paragraph (c)(4) and adding "; or"; and by adding paragraph (c)(5) to read as set forth at the end of the common preamble.

§ 620.320 [Amended]

4. Section 620.320(a) is revised to read as set forth at the end of the common preamble.

5. Subpart F and Appendix C are added to Part 620 to read as set forth at the end of the common preamble.

Subpart F—Drug-Free Workplace Requirements (Grants)

Sec.
620.600 Purpose.
620.605 Definitions.
620.610 Coverage.
620.615 Grounds for suspension of payments, suspension or termination of grants, or suspension or debarment.
620.620 Effect of violation.
620.625 Exception provisions.
620.630 Grantees' responsibilities.
* * * * *
Appendix C to Part 620—Certification Regarding Drug-Free Workplace Requirements

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

45 CFR Part 1154

FOR FURTHER INFORMATION CONTACT: Arthur Warren, Deputy General Counsel, 202–682–5418.

List of Subjects in 45 CFR Part 1154

Controlled substances, Debarment and suspension (nonprocurement), Drug abuse, Grant programs.

Title 45 of the Code of Federal Regulations is amended as set forth below.

Peter J. Basso,
Deputy Chairman for Management.

PART 1154—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The title of Part 1154 is revised to read as set forth above.

2. The authority citation for Part 1154 is revised to read as follows:

Authority: E.O. 12549; Secs. 5151–5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D; 41 U.S.C. 701 *et seq.*); 20 U.S.C. 959(a)(1).

§ 1154.305 [Amended]

3. Section 1154.305 is amended by removing "or" at the end of paragraph (c)(3); by removing the period at the end of paragraph (c)(4) and adding "; or"; and by adding paragraph (c)(5) to read as set forth at the end of the common preamble.

§ 1154.320 [Amended]

4. Section 1154.320(a) is revised to read as set forth at the end of the common preamble.

5. Subpart F and Appendix C are added to Part 1154 to read as set forth at the end of the common preamble.

Subpart F—Drug-Free Workplace Requirements (Grants)

Sec.
1154.600 Purpose.
1154.605 Definitions.
1154.610 Coverage.
1154.615 Grounds for suspension of payments, suspension or termination of grants, or suspension or debarment.
1154.620 Effect of violation.
1154.625 Exception provisions.
1154.630 Grantees' responsibilities.
* * * * *
Appendix C to Part 1154—Certification Regarding Drug-Free Workplace Requirements

National Endowment for the Humanities

45 CFR Part 1169

FOR FURTHER INFORMATION CONTACT: David J. Wallace, (202) 786–0494.

List of Subjects in 45 CFR Part 1169

Debarment and suspension (nonprocurement), Drug abuse, Grant programs.

Title 45 of the Code of Federal Regulations is amended as set forth below.

Lynne V. Cheney,
Chairman, National Endowment for the Humanities.

PART 1169—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The title of Part 1169 is revised to read as set forth above.

2. The authority citation for Part 1169 is revised to read as follows:

Authority: E.O. 12549; Secs. 5151–5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D; 41 U.S.C. 701 et seq.); 20 U.S.C. 959(a)(1).

§ 1169.305 [Amended]

3. Section 1169.305 is amended by removing "or" at the end of paragraph (c)(3); by removing the period at the end of paragraph (c)(4) and adding "; or"; and by adding paragraph (c)(5) to read as set forth at the end of the common preamble.

§ 1169.320 [Amended]

4. Section 1169.320(a) is revised to read as set forth at the end of the common preamble.

5. Subpart F and Appendix C are added to Part 1169 to read as set forth at the end of the common preamble.

Subpart F—Drug-Free Workplace Requirements (Grants)

Sec.
1169.600 Purpose.
1169.605 Definitions.
1169.610 Coverage.
1169.615 Grounds for suspension of payments, suspension or termination of grants, or suspension or debarment.
1169.620 Effect of violation.
1169.625 Exception provisions.
1169.630 Grantees' responsibilities.
* * * * *
Appendix C to Part 1169—Certification Regarding Drug-Free Workplace Requirements

Institute of Museum Services

45 CFR Part 1185

FOR FURTHER INFORMATION CONTACT: Rebecca Danvers, Institute of Museum Services, Room 609, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, (202) 786–0539.

List of Subjects in 45 CFR Part 1185

Debarment and suspension (nonprocurement), Drug abuse, Grant programs.

Title 45 of the Code of Federal Regulations is amended as set forth below.

Lois Burke Shepard,
Director.

PART 1185—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENT WIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The title of Part 1185 is revised to read as set forth above.

2. The authority citation for Part 1185 is revised to read as follows:

Authority: E.O. 12549; Sec. 5151–5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D; 41 U.S.C. 701 *et seq.*); 20 U.S.C. 961–68 as amended.

§ 1185.305 [Amended]

3. Section 1185.305 is amended by removing "or" at the end of paragraph (c)(3); by removing the period at the end of paragraph (c)(4) and adding "; or"; and by adding paragraph (c)(5) to read as set forth at the end of the common preamble.

§ 1185.320 [Amended]

4. Section 1185.320(a) is revised to read as set forth at the end of the common preamble.

5. Subpart F and Appendix C are added to Part 1185 to read as set forth at the end of the common preamble.

Subpart F—Drug-Free Workplace Requirements (Grants)

Sec.
1185.600 Purpose.
1185.605 Definitions.
1185.610 Coverage.
1185.615 Grounds for suspension of payments, suspension or termination of grants, or suspension or debarment.
1185.620 Effect of violation.
1185.625 Exception provisions.
1185.630 Grantees' responsibilities.
* * * * *
Appendix C to Part 1185—Certification Regarding Drug-Free Workplace Requirements

ACTION

45 CFR Part 1229

FOR FURTHER INFORMATION CONTACT: Margaret M. McHale, Acting Chief, Grants Branch, at 202–634–9150.

List of Subjects in 45 CFR Part 1229

Accounting, Administrative practice and procedures, Debarment and suspension (nonprocurement), Drug abuse, Grant programs—Volunteer Services, Grants administration, Insurance, Reporting and recordkeeping requirements.

Title 45 of the Code of Federal Regulations is amended as set forth below.

Donna M. Alvarado,
Director.

PART 1229—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The title of Part 1229 is revised to read as set forth above.

2. The authority citation for Part 1229 is revised to read as follows:

Authority: E.O. 12549; Sec. 5151–5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D; 41 U.S.C. 701 *et seq*); Pub. L. 93–113; 42 U.S.C. 4951, *et seq*; 42 U.S.C. 5060.

§ 1229.305 [Amended]

3. Section 1229.305 is amended by removing "or" at the end of paragraph (c)(3); by removing the period at the end of paragraph (c)(4) and adding "; or"; and by adding paragraph (c)(5) to read as set forth at the end of the common preamble.

§ 1229.320 [Amended]

4. Section 1229.320(a) is revised to read as set forth at the end of the common preamble.

5. Subpart F and Appendix C are added to Part 1229 to read as set forth at the end of the common preamble.

Subpart F—Drug-Free Workplace Requirements (Grants)

Sec.
1229.600 Purpose.
1229.605 Definitions.
1229.610 Coverage.
1229.615 Grounds for suspension of payments, suspension or termination of grants, or suspension or debarment.
1229.620 Effect of violation.
1229.625 Exception provisions.
1229.630 Grantees' responsibilities.
* * * * *
Appendix C to Part 1229—Certification Regarding Drug-Free Workplace Requirements

COMMISSION ON THE BICENTENNIAL OF THE UNITED STATES CONSTITUTION

45 CFR Part 2016

FOR FURTHER INFORMATION, CONTACT: Patrick O'Meara, Director of Administration, (202) 653–5326.

List of Subjects in 45 CFR Part 2016

Debarment and suspension (nonprocurement), Drug Abuse, Grant programs, Grants administration, Reporting and recordkeeping requirements.

Title 45 of the Code of Federal Regulations is amended as set forth below.

Ronald Trowbridge,
Acting Staff Director.

Part 2016—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The title of Part 2016 is revised to read as set forth above.

2. The authority citation for Part 2016 is revised to read as follows:

Authority: E.O. 12549; Sec. 5151–5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D; 41 U.S.C. 701 et seq); Pub. L. 98–101, as amended; and Title V of Pub. L. 99–194.

§ 2016.305 [Amended]

3. Section 2016.305 is amended by removing "or" at the end of paragraph (c)(3); by removing the period at the end of paragraph (c)(4) and adding "; or "

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and by adding paragraph (c)(5) to read as set forth at the end of the common preamble.

§ 2016.320 [Amended]

4. Section 2016.320 (a) is revised to read as set forth at the end of the common preamble.

5. Subpart F and Appendix C are added to Part 2016 to read as set forth at the end of the common preamble.

Subpart F—Drug-Free Workplace Requirements (Grants)

Sec.
2016.600 Purpose.
2016.605 Definitions.
2016.610 Coverage.
2016.615 Grounds for suspension of payments, suspension or termination of grants, or suspension or debarment.
2016.620 Effect of violation.
2016.625 Exception provisions.
2016.630 Grantees' responsibilities.
* * * * *
Appendix C to Part 2016—Certification Regarding Drug-Free Workplace Requirements

DEPARTMENT OF TRANSPORTATION

49 CFR Part 29

FOR FURTHER INFORMATION CONTACT: Robert C. Ashby, (202) 366-9306.

List of Subjects in 49 CFR Part 29

Debarment and suspension (nonprocurement), Drug abuse, Grant programs.

Title 49 of the Code of Federal Regulations is amended as set forth below.

Jim Burnley,
Secretary.

Part 29—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The title of Part 29 is revised to read as set forth above.

2. The authority citation for Part 29 is revised to read as follows:

Authority: E.O. 12549; Sec. 5151–5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D; 41 U.S.C. 701 *et seq.*); 49 CFR Part 322.

§ 29.305 [Amended]

3. Section 29.305 is amended by removing "or" at the end of paragraph (c)(3); by removing the period at the end of paragraph (c)(4) and adding "; or"; and by adding paragraph (c)(5) to read as set forth at the end of the common preamble.

§ 29.320 [Amended]

4. Section 29.320 (a) is revised to read as set forth at the end of the common preamble.

5. Subpart F and Appendix C are added to Part 29 to read as set forth at the end of the common preamble.

Subpart F—Drug-Free Workplace Requirements (Grants)

Sec.
29.600 Purpose.
29.605 Definitions.
29.610 Coverage.
29.615 Grounds for suspension of payments, suspension or termination of grants, or suspension or debarment.
29.620 Effect of violation.
29.625 Exception provisions.
29.630 Grantees' responsibilities.
* * * * *
Appendix C to Part 29—Certification Regarding Drug-Free Workplace Requirements

[FR Doc. 89-2065 Filed 1-30-89; 8:45 am]

BILLING CODES 3410-08-M; 8420-01-M; 6725-01-M; 8025-01-M; 7510-01-M; 3510-FE-M; 4710-24-M; 6116-01-M; 6091-01-M; 6230-01-M; 7025-01-M; 6117-01-M; 4210-32-M; 4910-62-M; 4410-10-M; 4510-23-M; 6373-01-M; 3001-01-M; 4000-01-M; 7515-01-M; 6320-01-M; 6560-50-M; 6820-01-M; 4510-07-M; 6718-01-M; 4150-04-M; 7555-01-M; 7537-01-M; 7530-01-M; 7530-01-M; 6050-38-M; 6540-01-M; 4910-60-M.

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 9, 23, and 52

[Federal Acquisition Circular 84-43]

Federal Acquisition Regulation (FAR); Drug-Free Workplace Act of 1988

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comments.

SUMMARY: Federal Acquisition Circular (FAC) 84-43 implements the requirements of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690). The Act requires that certain contractors certify that they will maintain a drug-free workplace.

DATES: *Effective date:* March 18, 1989, for contracts awarded on or after that date.

Comment date: Comments on this interim rule should be submitted to the FAR Secretariat, at the address below, on or before April 3, 1989, to be considered in the formulation of a final rule. Please cite FAC 84-43 in all correspondence on this subject.

ADDRESS: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW., Room 4041, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Margaret A. Willis, FAR Secretariat, Room 4041, GS Building, Washington, DC 20405, (202) 523-4755. Please cite FAC 84-43 in all correspondence on this subject.

SUPPLEMENTARY INFORMATION:

A. Background

The FAR revisions included in this interim rule implement the Drug-Free Workplace Act of 1988 (Pub. L. 100-690) and are applicable to all Federal agencies. Under the regulation, all offerors on contracts expected to equal or exceed $25,000 will be required to certify that they will maintain a drug-free workplace by compliance with the following:

(1) Publishing a statement notifying employees that drug abuse in the workplace is prohibited.

(2) Establishing a drug-free awareness program to inform its employees of the dangers of drug abuse, the contractor's drug-free workplace policy, the availability of drug counseling programs, and the possible penalties for convictions for drug abuse violations occurring in the workplace.

(3) Requiring each employee directly involved in the performance of a Government contract to notify the employer of any criminal drug statute conviction occurring in the workplace, and requiring the contractor to so notify the Government.

(4) Requiring the imposition of sanctions or remedial measures for an employee convicted of drug abuse violations in the workplace.

(5) Require the contractor to continue, in good faith, ongoing compliance with the above requirements.

With respect to contractors consisting of only one individual, regardless of dollar value, the regulation requires the individual to certify that he/she will not engage in unlawful conduct related to controlled substances in the workplace. Development or promulgation of a drug-free awareness program is not required for contractors consisting of only one individual. The agencies intend that a "principal investigator" in a research or similar contract, be viewed as an individual, only if the contract is awarded directly to the investigator.

The regulation also provides various remedies to the Government for a contractor's false certification, violation of the certification, or failure to make a good faith effort to provide a drug-free workplace program. The remedies provided are suspension of payments, termination of the contract for default, and suspension or debarment of the contractor.

B. Determination to Issue an Interim Rule

A determination has been made under authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) to issue the regulation in FAC 84-43 as an interim rule. This action is necessary because the Drug-Free Workplace Act requires issuance of implementing coverage in the FAR within 90 days of enactment. The Act became law on November 18, 1988.

DoD, GSA, and NASA have determined that compelling reasons exist to promulgate an interim rule without prior opportunity for public comment. However, pursuant to Pub. L. 98-577 and FAR 1.501, public comments received in response to this interim rule will be considered in formulating a final rule.

C. Paperwork Reduction Act

This interim rule, FAC 84-43, is deemed to contain information collection requirements. Accordingly, a Paperwork Reduction Act clearance was requested from OMB pursuant to 5 CFR Part 1320 and was granted under OMB Control No. 9000-0101. Public comments concerning this request were invited in the **Federal Register** on January 23, 1989 (54 FR 3102).

D. Regulatory Flexibility Act

This interim rule, FAC 84-43, may have a significant economic impact on a substantial number of small entities. The actual impact is not known. Publication of this rule will afford the public the opportunity to comment on its economic impact on small entities and such comments will be considered in the formulation of the final regulatory flexibility analysis and the final rule. An Initial Regulatory Flexibility Analysis (IRFA) has been prepared and will be submitted to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the FAR Secretariat.

List of Subjects in 48 CFR Parts 1, 9, 23, and 52

Government procurement.

Dated: January 24, 1989.

Harry S. Rosinski,
Acting Director, Office of Federal Acquisition and Regulatory Policy.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 84-43 is effective March 18, 1989 for contracts awarded on or after that date.

Eleanor Spector,
Deputy Assistant Secretary for Procurement, DoD.

Richard G. Austin,
Acting Administrator, GSA.

S.J. Evans,
Assistant Administrator for Procurement, NASA.

Federal Acquisition Circular (FAC) 84-43 amends the Federal Acquisition Regulation (FAR) as specified below:

Item—Drug-Free Workplace

FAR 1.105, 9.405, 9.406-1, 9.406-2, 9.406-4, 9.407-1, 9.407-2, and Part 23 are revised, and Subpart 23.5, a provision at 52.223-5, and a clause at 52.223-6 are added to implement the Drug-Free Workplace Act of 1988 (Pub. L. 100-690). The Act was passed to ensure that Government contractors establish and maintain a drug-free workplace. The Act requires Government contractors to certify, in order to be eligible for award,

that they will provide a drug-free workplace by certain enumerated acts. The Act provides specified remedies to the Government for failure of the contractor to comply. Special rules apply to contracts with individuals.

This requirement is effective for all contracts awarded on or after March 18, 1989.

Therefore, 48 CFR Parts 1, 9, 23, and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 1, 9, 23, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2473(c).

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

2. Section 1.105 is amended by adding in numerical order, a FAR segment and corresponding OMB Control Number to read as follows:

§ 1.105 OMB approval under the Paperwork Reduction Act.

* * * * *

Far Segment	OMB Control No.
* * * * *	
52.223-6(b)(5)	9000-0101
* * * * *	

PART 9—CONTRACTOR QUALIFICATIONS

9.405 [Amended]

3. Section 9.405 is amended by removing at the end of the first sentence in paragraph (a) the parenthetical phrase "(see 9.405–2, 9.406–1(c), and 9.407–1(d))" and inserting in its place the parenthetical phrase "(see 9.405–2, 9.406–1(c), 9.407–1(d), and 23.506(e))".

4. Section 9.406–1 is amended by revising paragraph (c) to read as follows:

9.406–1 General.

* * * * *

(c) A contractor's debarment shall be effective throughout the executive branch of the Government, unless an acquiring agency's head or a designee (except see 23.506(e)) states in writing the compelling reasons justifying continued business dealings between that agency and the contractor.

5. Section 9.406–2 is amended by redesignating existing paragraph (c) as (d) and by adding a new paragraph (c) to read as follows:

9.406–2 Causes for debarment.

* * * * *

(c) Violations of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690), as indicated by—

(1) The offeror's submission of a false certification;

(2) The contractor's failure to comply with its certification; or

(3) Such a number of contractor employees having been convicted of violations of criminal drug statutes occurring in the workplace, as to indicate that the contractor has failed to make a good faith effort to provide a drug-free workplace.

* * * * *

6. Section 9.406–4 is amended by revising paragraph (a) to read as follows:

9.406–4 Period of debarment.

(a) Debarment shall be for a period commensurate with the seriousness of the cause(s). Generally, debarment should not exceed 3 years, except that debarment for violation of the provisions of the Drug-Free Workplace Act of 1988 (see 23.506) may be for a period not to exceed 5 years. If suspension precedes a debarment, the suspension period shall be considered in determining the debarment period.

* * * * *

7. Section 9.407–1 is amended by revising paragraph (d) to read as follows:

9.407–1 General.

* * * * *

(d) A contractor's suspension shall be effective throughout the executive branch of the Government, unless an acquiring agency's head or a designee (except see 23.506(e)) states in writing the compelling reasons justifying continued business dealings between that agency and the contractor.

8. Section 9.407–2 is amended by redesignating existing paragraph (a)(4) as (a)(5) and by adding a new paragraph (a)(4) to read as follows:

9.407–2 Causes for suspension.

(a) * * *

(4) Violations of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690), as indicated by—

(i) The offeror's submission of a false certification;

(ii) The contractor's failure to comply with its certification; or

(iii) Such a number of contractor employees having been convicted of violations of criminal drug statutes occurring in the workplace, as to indicate that the contractor has failed to make a good faith effort to provide a drug-free workplace.

* * * * *

PART 23—ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

9. Part 23 is amended by revising the title to read as set forth above.

10. Section 23.000 is revised to read as follows:

23.000 Scope of part.

This part prescribes acquisition policies and procedures supporting the Government's program for ensuring a drug-free workplace and for protecting and improving the quality of the environment through pollution control, energy conservation, identification of hazardous material, and use of recovered materials.

11. Subpart 23.5, consisting of sections 23.500 through 23.506 is added to read as follows:

Subpart 23.5—Drug-Free Workplace

Sec.

23.500 Scope of subpart.
23.501 Applicability.
23.502 Authority.
23.503 Definitions.
23.504 Policy.
23.505 Solicitation provisions and contract clause.
23.506 Suspension of payments, termination of contract, and debarment and suspension actions.

23.500 Scope of subpart.

This subpart implements the Drug Free Workplace Act of 1988 (Pub. L. 100–690).

23.501 Applicability.

This subpart applies to all contracts except—

(a) Contracts valued below $25,000; however, the requirements of this subpart shall apply to contracts of any value if the contract is awarded to an individual;

(b) Contracts or those parts of contracts that are to be performed outside of the United States, its territories, and its possessions;

(c) Contracts by law enforcement agencies, if the head of the agency or designee determines that application of this subpart would be inappropriate in connection with the law enforcement agency's undercover operations; or

(d) Where application would be inconsistent with the international obligations of the United States or with the laws and regulations of a foreign country.

§ 23.502 Authority.

Drug-Free Workplace Act of 1988 (Pub. L. 100–690).

§ 23.503 Definitions.

"Controlled substance," as used in this subpart, means a controlled substance in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812), and as further defined in regulation at 21 CFR 1308.11–1308.15.

"Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes.

"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, possession, or use of any controlled substance.

"Drug-free workplace" means a site for the performance of work done in connection with a specific contract at which employees of the contractor are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

"Employee" means an employee of a contractor directly engaged in the performance of work under a Government contract.

"Individual" means an offeror/contractor that has no more than one employee including the offeror/contractor.

§ 23.504 Policy.

(a) No offeror other than an individual shall be considered a responsible source (see 9.104–1(g)) for a contract that equals or exceeds $25,000, unless it has certified, pursuant to 52.223–5, Certification Regarding A Drug-Free Workplace, that it will provide a drug-free workplace by—

(1) Publishing a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the contractor's workplace, and specifying the actions that will be taken against employees for violations of such prohibition;

(2) Establishing a drug-free awareness program to inform its employees about—

(i) The dangers of drug abuse in the workplace;

(ii) The contractor's policy of maintaining a drug-free workplace;

(iii) Any available drug counseling, rehabilitation, and employee assistance programs; and

(iv) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(3) Providing all employees engaged in performance of this contract with a copy of the statement required by subparagraph (a)(1) of this section;

(4) Notifying all employees in the statement required by subparagraph (a)(1) of this section, that as a condition of employment on a covered contract, the employee will—

(i) Abide by the terms of the statement; and

(ii) Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;

(5) Notifying the contracting officer within ten (10) days after receiving notice under subdivision (a)(4)(ii) of this section, from an employee or otherwise receiving actual notice of such conviction;

(6) Within 30 days after receiving notice under subparagraph (a)(4) of this section of a conviction, imposing the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace:

(i) Taking appropriate personnel action against such employee, up to and including termination; or

(ii) Requiring such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency.

(7) Making a good faith effort to maintain a drug-free workplace through implementation of subparagraphs (a)(1) through (a)(6) of this section.

(b) No individual shall be awarded a contract of any dollar values unless that individual certifies, pursuant to the provision at 52.233–5, Certification Regarding A Drug-Free Workplace, that the individual will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in the performance of a covered contract.

(c) Failure of the offeror to provide the certification required by paragraph (a) or (b) of this section renders an offeror unqualified and ineligible for award. (See 9.104–1(g) and 19.602–1(a)(2)(i).)

§ 23.505 Solicitation provision and contract clause.

(a) Unless one or more of the conditions in paragraph (b) of this section applies, contracting officers shall insert the provision at 52.223–5, Certification Regarding A Drug-Free Workplace, in solicitations—

(1) Of any dollar value if the contract is expected to be awarded to an individual; or

(2) Expected to equal or exceed $25,000, if the contract is expected to be awarded to other than an individual.

(b) Contracting officers shall not insert the provision at 52.223–5, Certification Regarding A Drug-Free Workplace, in solicitations if—

(1) The resultant contract is to be performed entirely outside of the United States, its territories, and its possessions;

(2) The resultant contract is for law enforcement agencies, and the head of the agency or designee determines that application of the requirements of this subpart would be inappropriate in connection with the law enforcement agency's undercover operations; or

(3) Inclusion of these requirements would be inconsistent with the international obligations of the United States or with the laws and regulations of a foreign country.

(c) Contracting officers shall insert the clause at 52.223–6, Drug-Free Workplace, in all contracts described in paragraph (a) of this section and in purchase orders with individuals, unless; the conditions of paragraph (b) of this section apply.

(d) In any instance where a contract meeting the requirements of paragraphs (a) and (b) of this section, or a purchase order with an individual results from procedures that do not involve a solicitation containing the certification at 52.223–5, Certification Regarding a Drug-Free Workplace, the contracting officer shall obtain that certification prior to award.

§ 23.506 Suspension of payments, termination of contract, and debarment and suspension actions.

(a) After determining in writing that adequate evidence to suspect any of the causes at paragraph (d) of this section exists, the contracting officer may suspend contract payments in accordance with the procedures at 32.503–6(a)(1).

(b) After determining in writing that any of the causes at paragraph (d) of this section exists, the contracting officer may terminate the contract for default.

(c) Upon initiating action under paragraph (a) or (b) of this section, the contracting officer shall refer the case to the agency suspension and debarment official, in accordance with agency procedures, pursuant to Subpart 9.4.

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(d) The specific causes for suspension of contract payments, termination of a contract for default, or suspension and debarment are—

(1) The offeror has submitted a false certification in response to the provision at 52.223–5, Certification Regarding A Drug-Free Workplace;

(2) The contractor has failed to comply with its certification; or

(3) Such a number of contractor employees having been convicted of violations of criminal drug statutes occurring in the workplace, as to a indicate that the contractor has failed to make a good faith effort to provide a drug-free workplace.

(e) A determination under this subpart to suspend contract payments, terminate a contract for default, or debar or suspend a contractor may be waived by the agency head for a particular contract, in accordance with agency procedures, only if such waiver is necessary to prevent a severe disruption of the agency operation to the detriment of the Federal Government or the general public (see Subpart 9.4). The waiver authority of the agency head cannot be delegated.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

12. Section 52.223–5 is added to read as follows:

§ 52.223–5 Certification Regarding A Drug-Free Workplace.

As prescribed in 23.505, insert the following provision:

Certification Regarding a Drug-Free Workplace (March 1989)

(a) Definitions. As used in this provision,

"Controlled substance" means a controlled substance in schedules I through V of section 202 of the Controlled Substances Act [21 U.S.C. 812) and as further defined in regulation at 21 CFR 1308.11–1308.15.

"Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes.

"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, possession or use of any controlled substance.

"Drug-free workplace" means a site for the performance of work done in connection with a specific contract at which employees of the Contractor are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

"Employee" means an employee of a Contractor directly engaged in the performance o work under a Government contract.

"Individual" means an offeror/contractor that has no more than one employee including the offeror/contractor.

(b) By submission of its offer, the offeror, if other than an individual, who is making an offer that equals or exceeds $25,000, certifies and agrees, that with respect to all employees of the offeror to be employed under a contract resulting from this solicitation, it will—

(1) Publish a statement notifying such employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition;

(2) Establish a drug-free awareness program to inform such employees about—

(i) The dangers of drug abuse in the workplace;

(ii) The Contractor's policy of maintaining a drug-free workplace;

(iii) Any available drug counseling, rehabilitation, and employee assistance programs; and

(iv) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(3) Provide all employees engaged in performance of the contract with a copy of the statement required by subparagraph (b)(1) of this provision;

(4) Notify such employees in the statement required by subparagraph (b)(1) of this provision, that as a condition of continued employment on the contract resulting from this solicitation, the employee will—

(i) Abide by the terms of the statement; and

(ii) Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;

(5) Notify the contracting officer within ten (10) days after receiving notice under subdivision (b)(4)(ii) of this provision, from an employee or otherwise receiving actual notice of such conviction; and

(6) Within 30 days after receiving notice under subparagraph (a)(4) of this provision of a conviction, impose the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace:

(i) Take appropriate personnel action against such employee, up to and including termination; or

(ii) Require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency.

(7) Make a good faith effort to maintain a drug-free workplace through implementation of subparagraphs (b)(1) through (b)(6) of this provision.

(c) By submission of its offer, the offeror, if an individual who is making an offer of any dollar value, certifies and agrees that the offeror will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in the performance of the contract resulting from this solicitation.

(d) Failure of the offeror to provide the certification required by paragraph (b) or (c) of this provision, renders the offeror unqualified and ineligible for award. (See FAR 9.104–1(g) and 19.602–1(a)(2)(i).)

(e) In addition to other remedies available to the Government, the certification in paragraphs (b) and (c) of this provision concerns a matter within the jurisdiction of an agency of the United States and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code, Section 1001.

(End of provision)

13. Section 52.223–6 is added as follows:

52.223–6 Drug-Free Workplace.

As prescribed in 23.505(c), insert the following clause:

Drug-Free Workplace (Mar. 1989)

(a) Definitions. As used in this clause,

"Controlled substance" means a controlled substance in schedules I through V of section 202 of the Controlled Substances Act [21 U.S.C. 812) and as further defined in regulation at 21 CFR 1308.11–1308.15.

"Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes.

"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, possession or use of any controlled substance.

"Drug-free workplace" means a site for the performance of work done in connection with a specific contract at which employees of the contractor are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

"Employee" means an employee of a contractor directly engaged in the performance of work under a Government contract.

"Individual" means an offeror/contractor that has no more than one employee including the offeror/contractor.

(b) The Contractor, if other than an individual, shall—

(1) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition;

(2) Establish a drug-free awareness program to inform such employees about—

(i) The dangers of drug abuse in the workplace;

(ii) The contractor's policy of maintaining a drug-free workplace;

(iii) Any available drug counseling, rehabilitation, and employee assistance programs; and

(iv) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace.

(3) Provide all employees engaged in performance of the contract with a copy of the statement required by subparagraph (b)(1) of this clause;

(4) Notify such employees in the statement required by subparagraph (b)(1) of this clause, that as a condition of continued employment on this contract, the employee will—

(i) Abide by the terms of the statement; and

(ii) Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction.

(5) Notify the contracting officer within ten (10) days after receiving notice under subdivision (a)(4)(ii) of this clause, from an employee or otherwise receiving actual notice of such conviction;

(6) Within 30 days after receiving notice under subparagraph (a)(4) of this clause of a conviction, impose the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace:

(i) Taking appropriate personnel action against such employee, up to and including termination; or

(ii) Require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency.

(7) Make a good faith effort to maintain a drug-free workplace through implementation of subparagraphs (b)(1) through (b)(6) of this clause.

(c) The Contractor, if an individual, agrees by award of the contract or acceptance of a purchase order, not to engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in the performance of this contract.

(d) In addition to other remedies available to the Government, the Contractor's failure to comply with the requirements of paragraphs (b) and (c) of this clause may, pursuant to FAR 23.506, render the contractor subject to suspension of contract payments, termination of the contract for default, and suspension or debarment.

(End of clause)

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Part III

Department of Labor

Occupational Safety and Health Administration

29 CFR Part 1910

Electric Power Generation, Transmission, and Distribution; Electrical Protective Equipment; Proposed Rule

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DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. S-015]

Electric Power Generation, Transmission, and Distribution; Electrical Protective Equipment

AGENCY: Occupational Safety and Health Administration (OSHA), Department of Labor.

ACTION: Proposed rule.

SUMMARY: OSHA is proposing in this document a new standard addressing the work practices to be used during the operation and maintenance of electric power generation, transmission, and distribution facilities. The proposal includes requirements relating to confined spaces, hazardous energy control, working near energized parts, grounding for employee protection, work on underground and overhead installations, work in substations and generating plants, and other special conditions and equipment unique to the generation, transmission, and distribution of electric energy. OSHA is proposing to apply these new requirements only to electric utilities; however, the Agency is considering extending the scope of the standard to all electric power generation, transmission, and distribution installations. Compliance with these requirements will prevent injuries to employees working on electric power systems.

OSHA is also proposing to revise the electrical protective equipment requirements contained in the General Industry Standards. The current standards for the design of electrical protective equipment adopt several national consensus standards by reference. The proposed revision would replace the incorporation of these out-of-date consensus standards with a set of performance-oriented requirements, which are consistent with the latest revisions of these consensus standards. Additionally, OSHA is proposing new requirements for the safe use and care of electrical protective equipment to complement the equipment design provisions. These revisions will update the existing OSHA standards and will prevent accidents caused by inadequate electrical protective equipment.

DATE: Written comments and requests for a hearing on these proposed rules must be postmarked by May 1, 1989.

ADDRESS: All comments, objections, and hearing requests must be sent in quadruplicate to the Docket Officer; Docket No. S015, Rm. N3670; U.S. Department of Labor, Occupational Safety and Health Administration; 200 Constitution Ave., NW.; Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Foster; U.S. Department of Labor; Occupational Safety and Health Administration; Rm. N3637; 200 Constitution Ave. NW., Washington, DC 20210 (202-523-8151).

SUPPLEMENTARY INFORMATION:

I. Background

A. Need for Proposed Regulation

Employees performing operation or maintenance work on electric power generation, transmission, or distribution installations are not adequately protected by current OSHA standards, though these employees face far greater electrical hazards than those faced by other workers. The voltages involved are generally much higher, and a large part of their work involves exposure to energized parts of the power system.

The existing electrical regulations contained in Subpart S of the General Industry Standards address electric utilization systems—installations of electric conductors and equipment which use electric energy for mechanical, chemical, heating, lighting, or similar purposes. Subpart S protects most employees from the hazards associated with electric utilization equipment and with the premises wiring that supplies this equipment. However, Subpart S does not contain requirements protecting employees from the hazards arising out of the operation or maintenance of electric power generation, transmission, or distribution installations.

In contrast, telecommunications workers, who face similar hazards, are covered under a specific telecommunications standard in § 1910.268. This regulation protects employees performing communications work (no matter what industry is involved) from the two major hazards of falling and electric shock. These are the same two hazards accounting for most of the accidental deaths in electric power transmission and distribution work.

Employees engaged in the construction of electric power transmission or distribution systems are protected by the provisions of Subpart V of the Construction Standards (Part 1926). However, this standard does not address operation or maintenance work, nor does it cover work in electric power generating plants.

The electric utility industry has requested several times in recent years that OSHA adopt a set of rules on the operation and maintenance of power generation, transmission, and distribution systems. Toward this end, representatives of Edison Electric Institute (EEI) and of the International Brotherhood of Electrical Workers (IBEW) developed a draft standard, submitted it to OSHA, and suggested that it be used as a proposed rule. The Agency accepted the draft standard and used it to begin the development of this proposal.

B. Accident Patterns

Related accident data must be collected and analyzed to establish a basis for the development of safety standards. OSHA can look to several sources for information on accidents in the electrical utility industry. Besides OSHA's own accident investigation files, statistics on injuries are compiled by the Edison Electric Institute and by the International Brotherhood of Electrical Workers (an association of investor-owned electric utilities and a union representing electric utility workers, respectively). Additionally, the Bureau of Labor Statistics (BLS) publishes such accident data as incidence rates for total cases, and lost workday cases, and lost workdays. (An analysis of accident data for electric utility workers can be found in section 4 of Eastern Research Group's (ERG) "Preparation of an Economic Impact Study for the Proposed OSHA Regulation Covering Electric Power Generation, Transmission, and Distribution," June 1986, which is available for inspection and copying in the Docket Office.)

Accident incidence rates for the electric services industry (SIC 491) are slightly lower than corresponding rates for the private sector as a whole. Furthermore, these rates are much lower than the traditionally more hazardous manufacturing, construction, and mining industries. However, although accident incidence rates can be used to compare relative risk between industries, they are not specific enough to be used to determine the types of hazards that need to be addressed by an occupational safety standard.

OSHA realized during the development of this proposal that, except for electrical hazards, the electric utility industry is no more hazardous than most other industries. At the same time, OSHA recognized that the risk faced by some employees during certain electric-utility-type operations is greater than the risk faced by other general industry employees. For example, the risk of electric shock to an electric power line worker or cable repairer performing his or her routine duties is far greater than that faced by any other occupational group.[1] It is the particularly hazardous operations that are being addressed by OSHA's standard.

BLS's Supplementary Data System (SDS) provides some detail on the characteristics of accidents in the electric service (i.e., electric utility) industry. SDS files indicate that the three major sources of injury within SIC 491 are falls, overexertion, and being struck by or against an object. Information on the nature of injuries also can be obtained from SDS. For example, from these data, sprains/strains, cuts/lacerations, and contusions/bruises are the most frequent injuries encountered in the electric services industry. It is noteworthy that electric shock cases do not constitute a major injury category and are grouped under "all other classifiable." Although these data do indicate hazards that must be addressed by a standard, they do not provide enough information to provide specific guidance for writing the standard's requirements.

More specific information on fatal and other serious accidents was gathered from IBEW, EEI, and OSHA files. Contrasting with the SDS data, these files indicate that electrical accidents are the most frequent type of fatal and other serious injuries, accounting for approximately one half of these. According to EEI and IBEW data, other accident types that occur frequently include motor vehicle accidents, falls, and "struck by/crushed." Of the accident information in the OSHA, IBEW, and EEI files used during the development of the proposal, only EEI and IBEW accident descriptions were used to judge the adequacy of the standard's provisions. The OSHA records were not used in the development of the proposal because they were being compiled and analyzed during the development process. However, these records will be submitted into the record of this rulemaking and will be considered in the formulation of the final rule.

[1] JACA Corp., "Regulatory Assessment of the Impact of the Proposed Electrical Safety-Related Work Practices Standard, Final Report," October 1983, pp. 4-6 to 4-10. (This report did not distinguish between electric power line workers and cable repairers employed by electric utilities and these types of workers employed by other industries.) This document is available for inspection and copying in Docket S-015 in the Docket Office.

C. Significant Risk

OSHA must show that the hazards the Agency proposes to address in a safety regulation present significant risks to employees. As part of the regulatory analyses for this proposal, OSHA has determined the population at risk, the occupations presenting major risks, and the incidence and severity of injuries attributable to the failure to follow established standards. In keeping with the purpose of safety standards to prevent accidental injury and death, OSHA has estimated the number of accidents that would be prevented by the proposed regulation.

Although nearly all workers in the electric utility industry are exposed to various hazards common to the industry, some are at much greater risk than others. Eastern Research Group, Inc. (ERG), in their "Preparation of an Economic Impact Study for the Proposed OSHA Regulation Covering Electric Power Generation, Transmission, and Distribution," June 1986, characterized the frequency with which accidents occur in the industry and tabulated the relative risk among electric utility occupations. According to the ERG report, "there were more accidents associated with transmission and distribution [lines] than with substations or power generation [installations]." Within the first category, more fatal and serious lost-time accidents occurred among line workers, apprentice line workers, and working line foremen. Within the latter two categories, substation electricians and general utility mechanics experienced the most accidents. (See p. 4-23 of the ERG report.)

The hazards that are directly covered by the proposed standard are those of an electrical nature, causing electrocution and injuries due to electric shock. In addition, the proposed standard would directly affect fatalities and injuries associated with four other types of accidents: (1) Struck by or struck against; (2) fall; (3) caught in or between; and (4) contact with temperature extremes. The proposal addresses the wide range of injuries common to general industry work.

OSHA has estimated that an average of 21,175 lost-workday injuries to and between 68 and 75 fatalities of electric utility and utility contractor operation and maintenance employees occur annually. (See Section IV of this preamble.) OSHA has also estimated the number of injuries which could be prevented by the proposed regulations. Taking into account such factors as existing regulation and the differences in training levels among utilities, OSHA estimated that 860 lost-workday injuries and between 24 and 28 deaths could be prevented each year through compliance with the provisions contained in the proposal. (A detailed analysis of the benefits of the proposed standard and a description of the methodology used can be found in the Preliminary Regulatory Analysis (PRIA) for the proposal, which is available for inspection and copying in the Docket Office.) Based on this analysis, OSHA has made a preliminary determination that hazards in the electric utility workplace pose a significant risk to employees covered by the proposal.

II. Development of Proposed Standard

A. Present Standards

OSHA adopted regulations applying to the construction of power transmission and distribution lines and equipment in 1972 (Subpart V of Part 1926). The term "construction" is broadly defined in § 1926.950(a)(1) to include alteration, conversion, and improvement, as well as the original installation of the lines and equipment. However, Subpart V does not apply to the operation or maintenance of transmission or distribution installations.

OSHA has found, in reviewing the construction regulations, that the provisions of Subpart V of Part 1926 are suitable for use as a base in the development of rules for operation and maintenance work. Important safety considerations for electric utility employees have been addressed in Subpart V including tools and protective equipment, mechanical equipment, grounding for employee protection, and overhead and underground installations. These are topics that would have to be addressed in a comprehensive standard for the operation and maintenance of electric utility facilities. However, the construction rules do have some disadvantages. During the 15 years Subpart V has been in effect, areas of ambiguity have developed, making parts of the standard difficult for employees and employers to understand and for OSHA compliance officers to enforce. Additionally, some of the requirements are specifically related to the initial construction of lines and equipment and are not readily adaptable to maintenance operations.

The National Electrical Safety Code (American National Standards Institute Standard ANSI C2; also known as the NESC) must also be taken into consideration in the development of rules for the operation and maintenance of electric power generation,

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transmission, and distribution systems. This national consensus standard contains requirements specifically addressing this type of work. The 1987 version of ANSI C2 is much more up-to-date than Subpart V of the Construction Standards. However, ANSI C2 is primarily directed to prevention of electric shock, although it does contain a few requirements for the prevention of falls. Other hazards common to the electric utility industry are not discussed.

Another related OSHA standard is § 1910.268, pertaining to telecommunications work. Much of the field work covered in this regulation is similar in nature to the type of field work performed by electric utility employees, and the hazards faced in the performance of this type of work are frequently the same in both industries. In any situation in which the hazards are the same and in which there is no clear coverage in the other existing standards, the provisions in the telecommunications standard have been used as a basis for developing requirements to protect employees performing electric-utility-type work.

B. Industry-Union Draft Standard

As previously noted, representatives of EEI and IBEW developed a draft standard, submitted it to OSHA, and represented it as being a negotiated standard that could be used in a rulemaking activity. This draft standard was essentially a continuation of the existing requirements of Subpart V of Part 1926 in which the hazards addressed are those found in transmission and distribution installations after the construction phase is completed and the electrical system becomes operational. Additionally, based on existing industry practice, EEI and IBEW added provisions addressing generating plants, substations, confined spaces, and hazardous energy control to supplement the rules on transmission and distribution work.

In the development of this proposal, OSHA evaluated the draft submitted by EEI and IBEW to determine its suitability as a base document. In areas which overlapped existing OSHA standards, the draft was reviewed to see if equivalent safety was provided. For example, provisions in the draft standard dealing with ladders were compared to the regulations in Subpart D of Part 1910. OSHA also reviewed the draft to determine if its requirements were as effective as the requirements of national consensus standards addressing the same hazards and to determine if definitions of terms common to several other OSHA standards were identical. For example, the draft provisions on hazardous energy control were checked against the equivalent ANSI standard, ANSI Z244.1–1982, to be sure that OSHA's proposal would better effectuate safety.

After thoroughly analyzing the EEI–IBEW draft, OSHA determined that, together with ANSI C2 and Subpart V of Part 1926, it could provide a basis from which a proposal could be developed. OSHA met with representatives of EEI and IBEW several times to obtain their advice. OSHA then clarified some of the language involved, revised unenforceable wording, and resolved most of the conflicts with other OSHA regulations and with national consensus standards. The remaining conflicts are discussed in detail, and OSHA's preliminary position is justified in the Summary and Explanation of the Proposed Standard section of this preamble (Section III).

III. Summary and Explanation of Proposed Standard

This section discusses the important elements of the proposal, explains the purpose of the individual requirements, and explains any differences between the proposal and existing standards.

Section 1910.137

Electrical protective equipment is in constant use during electric utility work; and, appropriately, the EEI/IBEW draft standard contained provisions related to this equipment. Because the existing OSHA standards for electrical protective equipment are contained in § 1910.137, the Agency has determined that relevant requirements in the EEI/IBEW draft relating to such equipment should be addressed within the format of the current standards rather than in the newly proposed § 1910.269. Further, OSHA believes that these updated provisions should apply throughout industry, wherever such equipment is necessary for employee safety, and that these provisions should not be limited to electric utility work. Therefore, OSHA is proposing the revision of §1910.137, which currently incorporates by reference the following six American National Standards Institute (ANSI) standards:

Item	Standard
Rubber insulating gloves	J6.6–1987
Rubber matting for use around electric apparatus	J6.7–1936 (R1962)
Rubber insulating blankets	J6.4–1970
Rubber insulating hoods	J6.3–1960 (R1962)
Rubber insulating line hose	J6.1–1950 (R1962)
Rubber insulating sleeves	J6.5–1962

These ANSI standards were originally developed and adopted as American Society for Testing and Materials (ASTM) standards. (In fact, the latest revisions of these standards use the ASTM designations, rather than using separate designations for both standards-writing organizations.) As is typical of national consensus standards, the ASTM standards are filled with detailed specifications for the manufacture, testing, and design of electrical protective equipment. Additionally, these standards are revised frequently, making existing § 1910.137 up to a quarter century out of date. For example, the most recent ANSI standard listed in the existing OSHA requirement is dated 1970. The most recent ASTM version available is a 1984 edition of specifications on rubber insulating gloves. The complete list of current ASTM standards corresponding to the ANSI standards is as follows:

ASTM D 120–87, Specification for Rubber Insulating Gloves.
ASTM D 178–81, Specification for Rubber Insulating Matting.
ASTM D 1048–87, Specification for Rubber Insulating Blankets.
ASTM D 1049–83, Specification for Rubber Insulating Covers.
ASTM D 1050–85, Specification for Rubber Insulating Line Hose.
ASTM D 1051–87, Specification for Rubber Insulating Sleeves.

Additionally, ASTM has adopted standards on the in-service care of insulating line hose and covers (ASTM F 478–87), insulating blankets (ASTM F 479–83), and insulating gloves and sleeves (ASTM F 496–85).

In an attempt to retain the quality of protection afforded by the ASTM standards, OSHA has developed a proposed revision of § 1910.137 which has been derived from the ASTM documents but which has been written in performance terms. OSHA recognizes the importance of the ASTM standards in defining basic requirements for the safe design and manufacture of electrical protective equipment for employees. The proposed revision of § 1910.137 would maintain the protection presently afforded to employees by the referenced ASTM standards. While carrying forward ASTM provisions which are considered necessary for employee safety, OSHA is providing greater flexibility for compliance with these provisions to the extent that worker safety warrants. OSHA has determined, therefore, that the requirements contained in this proposed revision of §1910.137 are reasonably necessary to protect employees from electrical hazards posing significant risks in the workplace.

There are several reasons why adopting the ASTM standards in toto would be inappropriate. First, it should be noted that ASTM has revised each of the currently referenced standards several times since they were adopted in the existing OSHA regulation. Because of the continual process by which ASTM periodically revises its standards, any specific editions that OSHA might adopt would likely be outdated within a few years. Additionally, since the rulemaking process is lengthy, a complete revision of OSHA's electrical protective equipment requirements every three years or so to keep pace with the changes in the consensus standards is not practical. To remedy this problem, OSHA has proposed a revision of § 1910.137 to make the standards flexible enough to accommodate changes in technology, obviating the need for constant revision. Additionally, where possible, the proposal is written in performance terms in order to allow alternative methods of compliance if they provide comparable safety to the employee.

Another difficulty with incorporation of the ASTM standards by reference is that they contain many details which are not directly related to employee safety. In this proposed revision of § 1910.137, OSHA has tried to carry forward only provisions which are relevant to employee safety in the workplace. Futhermore, OSHA has attempted to simplify those provisions to make the standards easier for employers and employees to use and understand. Because the proposed revision places all relevant requirements in the text of the regulations, employers would no longer have to refer to the ASTM documents to determine their obligations under OSHA.

In striving for this degree of simplification, the Agency has tried to use an approach which will accept new methods of protection which may appear in future editions of the ASTM standards. OSHA recognizes that such future editions of these standards might contain technological advances providing significant improvement in employee safety which might not be permitted under the revised § 1910.137. However, due to the performance-oriented nature of the OSHA standard as compared to the ASTM standards, conflicts between the two standards in areas affecting employee safety are expected to be infrequent.

An employer who followed the updated ASTM standards would be covered by OSHA's *de minimis* policy as set forth in OSHA Instruction CPL 2.45A (Field Operations Manual). Under that policy, a *de minimis* condition exists where an employer's workplace has been updated in accordance with new technology or equipment as a result of revisions to the latest consensus publications from which OSHA standards were derived, where the updated versions result in a "state of the art" workplace, technically advanced beyond the requirements of the applicable OSHA standard, and where equal or greater safety and health protection is provided.

In view of the limitations imposed by the continued incorporation by reference of the outdated ASTM standards, OSHA has determined that relevant requirements for electrical protective equipment for workers should be placed within the body of § 1910.137 and that these provisions should be updated and clarified to facilitate their application to workplaces.

There currently exists several relatively new ASTM standards on other types of electrical protective equipment. For example, ASTM has adopted specifications for fiberglass-reinforced plastic rod and tube used in live-line tools. However, the standards writing organization has not developed corresponding requirements on the use and care of this equipment. Similarly, ASTM Standard F712 sets forth test methods for electrically insulating plastic guard equipment for the protection of workers, but this standard does not contain provisions on the design, use, or care of the guards. ASTM is currently working on standards for the use and care of some of this equipment and on additional specifications for still other types of equipment.

Most electrical protective equipment presently being manufactured meets existing ASTM standards. Because of this, OSHA's adoption of these newer ASTM design and test specifications would have little impact on employee safety without the adoption of corresponding requirements on the use and care of the equipment. Therefore, to maximize efficient use of the Agency's available resources, this proposed revision does not include provisions covering these other types of electrical protective equipment, but such provisions are being considered for future rulemaking. In this way, all of the newer types of equipment can be dealt with at one time, and provisions on care and use can be included.

Paragraph (a)

Paragraph (a) of the proposed revision to § 1910.137 addresses the design and manufacture of insulating blankets, matting, covers, line hose, gloves, and sleeves made of rubber (either natural or synthetic). For the reasons noted earlier, other types of equipment are not covered. However, the proposal does not preclude their use.

Under paragraph (a)(1)(i), blankets, gloves, and sleeves would have to be made without seams. This method of making the protective equipment minimizes the chances of separation of the material. Because they are used to permit workers to handle energized lines, blankets, gloves, and sleeves are the only defense an employee has against electric shock. The other three types of electrical protective equipment (covers, line hose, and matting) generally provide a more indirect form of protection—they protect against accidental contact.

Paragraph (a)(1)(ii) would require electrical protective equipment to be marked to indicate its class and type. The class marking gives an indication of the voltage with which the equipment can be used; the type marking indicates whether or not the equipment is ozone resistant. This will enable employees to know the uses and voltages for which the equipment is suited.

Paragraph (a)(1)(iii) proposes that the marking be nonconductive and be applied so that the properties of the equipment are not impaired. This will ensure that the required markings do not interfere with the protection to be provided by the equipment.

Paragraph (a)(1)(iv) proposes that the marking on gloves be provided only in the cuff area. Markings in other areas could possibly be worn off. Moreover, having the markings in one place will allow the employee to determine the class and type of glove quickly.

Under the national consensus standards (both the currently referenced and the newer versions), electrical protective equipment must be capable of passing certain electrical tests. In § 1910.137(a)(2), OSHA is proposing to continue these requirements. The tests specified in the ASTM standards are very detailed. Through the use of performance language, the proposal establishes the same level of protection without a lengthy discussion of test procedures. In the development of this performance language, OSHA has

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attempted to avoid conflicts between the proposal and the ASTM standards. Comments are requested on whether the OSHA proposal has accomplished the goal of protecting workers with test criteria that eliminate unnecessary detail and that are written in performance-oriented language.

Paragraph (a)(2)(i) proposes that electrical protective equipment be capable of withstanding the a-c proof-test voltages in Table I-2 or the d-c proof-test voltages in Table I-3 (depending, of course, on whether an a-c proof test or an equivalent d-c proof test is performed). The proof-test voltages listed in these tables have been taken from the current ASTM standards, which also contain details of the test procedures used to determine whether electrical protective equipment is capable of withstanding these voltages. These details have not been included in the proposal. Paragraph (a)(2)(i) replaces them with a performance-oriented requirement that whatever test is used must reliably indicate that the equipment can withstand the proof-test voltage involved. To meet the requirements of the OSHA performance standard, employers would have to get the assurance of the manufacturer that the equipment is capable of withstanding the appropriate proof-test voltage. The manufacturer, in turn, would likely look to the ASTM standards for guidance in determining the testing procedure.

Paragraph (a)(2)(i) also would require that the proof-test voltage be applied for 1 minute for insulating matting and for 3 minutes for other insulating equipment. Tests using shorter times would not give a reliable indication of the voltage-withstanding capabilities of the protective equipment.

When an a-c proof test is used on gloves, the current through the gloves gives an indication of the insulating value of the material used. Paragraph (a)(2)(ii) would require that gloves subjected to an a-c proof-test not pass current greater than allowed in Table I-2. Again, the currents listed in the table have been taken from the current ASTM standard (namely, ASTM D 120-87). For a-c voltages at frequencies other than 60 hertz, the current would be computed from the direct ratio of the frequencies.

Since the relatively high voltages used in testing electrical protective equipment for minimum breakdown voltage can actually damage the insulating material under test (even if it passes), paragraph (a)(2)(iii) would prohibit protective equipment that has been subjected to such a test from being used to protect employees from electrical hazards.

Around high voltage lines and equipment, a luminous discharge, called electric corona, can occur due to ionization of the surrounding air caused by a voltage gradient which exceeds a certain critical value. The blue corona discharge is accompanied by a hissing noise and by ozone, which can cause damage to certain types of rubber insulating materials. Therefore, when there is a chance that ozone may be produced at a work location, electrical protective equipment made of ozone-resistant material is frequently used. To ensure that ozone-resistant material will, in fact, be resistant to the damaging effects of the gas, paragraph (a)(2)(iv) would require this type of material to be capable of withstanding an ozone test. Standardized ozone tests are given in the ASTM specifications. The proposal also lists signs of failure of the test, such as checking, cracking, breaks, and pitting.

Paragraph (a)(3) applies to the workmanship and finish of electrical protective equipment. Because physical irregularities can interfere with the insulating properties of the equipment, paragraph (a)(3)(i) would prohibit the presence of harmful defects which can be detected by test or inspection. However, some minor irregularities are nearly unavoidable in the manufacture of rubber goods, and these imperfections may be present in the insulating materials without significantly affecting the insulation. Proposed paragraph (a)(3)(ii) lists the types of imperfections that would be permitted. Even with these imperfections, electrical protective equipment would still be required to be capable of passing the electrical tests specified in paragraph (a)(2).

Since paragraph (a) of proposed § 1910.137 is written in performance-oriented language, OSHA believes that it is important for employers and manufacturers to have some guidance in terms of what is acceptable under the proposed standard. OSHA also realizes that the current ASTM specifications on electrical protective equipment are currently accepted by industry as providing safety to employees and that existing electrical protective equipment is normally made to these specifications. Furthermore, the proposal is based on the provisions of the national consensus standards, although the requirements are stated in performance terms. OSHA has therefore proposed a footnote at the end of paragraph (a) which states that rubber insulating equipment meeting the requirements of the present ASTM standards for this equipment would be considered as conforming to the requirements contained in proposed § 1910.137.

Paragraph (b)

Although the existing § 1910.137 does not contain provisions for the care and use of insulating equipment, OSHA believes provisions of this type can contribute greatly to employee safety. Electrical protective equipment is, in large part, manufactured in accordance with the latest ASTM standards. This would probably be the case even in the absence of OSHA regulations. However, improper use and care of this equipment can easily reduce, or even eliminate, the protection afforded by this equipment. Therefore, OSHA is proposing to add to § 1910.137 requirements on the in-service care and use of electrical protective equipment. These new provisions will help ensure that these safety products retain their insulating properties.

Paragraph (b)(1) proposes that electrical protective equipment be maintained in a safe and reliable condition. This general, performance-oriented requirement, which applies to all equipment addressed by proposed § 1910.137, would help ensure that employees are fully protected from electric shock.

Detailed criteria for the use and care of specific types of electrical protective equipment are contained in the following ASTM standards:

ASTM F 478-87, Specification for In-Service Care of Insulating Line Hose and Covers.

ASTM F 479-83, Specification for In-Service Care of Insulating Blankets.

ASTM F 496-85, Specification for In-Service Care of Insulating Gloves and Sleeves.

Paragraph (b)(2), which has been derived from the ASTM standards, would apply only to rubber insulating blankets, covers, line hose, gloves, and sleeves. These are the only types of electrical protective equipment addressed by consensus standards on the care and use of the equipment.

Although the rubber insulating equipment addressed in proposed § 1910.137(a) is currently designed to be capable of withstanding voltages of up to 40 kilovolts, such equipment is actually intended to be used at lower voltages. The use of insulating equipment at voltages less than its actual breakdown voltage provides a margin of safety for the employee to protect against voltage surges and against gradual deterioration of the equipment between tests. In paragraph (b)(2)(i) and Table I-4, the OSHA proposal has adopted the margins of safety recognized in the ASTM standards, restricting the use of insulating equipment to voltages lower than the proof-test voltages given in Table I-2 and I-3.

Paragraph (b)(2)(ii) would require insulating equipment to be visually inspected before use each day and immediately after any incident which might be suspected of causing damage. In this way, obvious defects can be detected before an accident occurs. Possible damage-causing incidents would include exposure to corona and exposure to possible direct physical damage. Additionally, rubber gloves would be required to be subjected to an air test. In the field, this test usually consists of rolling the cuff toward the palm so that air is entrapped within the glove. In a testing facility, a mechanical inflater may be used. In either case, punctures and cuts can easily be detected.

During use, electrical protective equipment may become damaged and lose some of its insulating value. Proposed paragraph (b)(2)(iii) lists types of damage which would cause the insulating value to drop. The equipment would not be permitted to be used if any of these defects are present.

Defects other than those listed in paragraph (b)(2)(iii) may develop during use of the equipment and could also affect the insulating and mechanical properties of the equipment. If such defects are found, the equipment would be required to be removed from service and tested in accordance with other requirements in paragraph (b)(2). The results of the tests would determine if it is safe to return the items to service.

Foreign substances on the surface of rubber insulating equipment can degrade the material and lead to damage to the insulation. Paragraph (b)(2)(v) would require the equipment to be cleaned as needed to remove any foreign substances.

Over time, certain environmental conditions can also cause deterioration of rubber insulating equipment. Paragraph (b)(2)(vi) proposes that insulating equipment be stored so that it is protected from injurious conditions and substances, such as light, temperature extremes, excessive humidity, and ozone. This requirement would help the equipment retain its insulating properties as it ages.

Rubber insulating gloves are particularly sensitive to physical damage during use. Through handling conductors and other electrical equipment, an employee can damage the gloves and lose the protection they provide. For example, a sharp point on the end of a conductor could puncture the rubber. To protect against damage, protector gloves (usually made of leather) are worn over the rubber gloves. Paragraph (b)(2)(vii) recognizes the extra protection afforded by leather gloves and would require their use over rubber gloves, except under limited conditions. Protector gloves would not be required with Class 0 gloves if high finger dexterity is needed for small parts manipulation. The maximum voltage on which Class 0 gloves can be used is 1000 volts. An employee is protected against electric shock at this voltage as long as a live part does not puncture the rubber and contact the employee's hand. Small parts are not likely to do this. Even if there is a tiny crack or puncture in the glove, current will not arc through the glove at 1000 volts or less.

The other exception to the requirement for protector gloves is granted if the possibility for damage is low and if gloves at least one class higher than required for the voltage are used. For example, if a Class 2 glove is used at 7500 volts or less (the maximum use voltage for Class 1 equipment), if high dexterity is needed, and if the possibility of damage is low, then protector gloves need not be used. In this case, the additional thickness of insulation provides a measure of additional physical protection. However, to ensure that no loss of insulation occurred, the proposal would require any gloves used under this exception to be tested before being used at a voltage higher than that permitted for the lower class of insulating equipment.

To ensure that electrical protective equipment retains its insulating properties over time, paragraph (b)(2)(viii) and Tables I-4 and I-5 would require insulating equipment to be tested periodically. Table I-4 lists the retest voltages that would be required for the various classes of protective equipment, and Table I-5 presents the testing intervals for the different types of equipment. These test voltages and intervals were taken from the relevant ASTM standards. OSHA requests comments on whether the proposed tables are reasonable and whether they would adequately protect workers.

Paragraph (b)(2)(ix) proposes the performance-oriented requirement that the method used for the periodic tests give a reliable indication of whether or not the electrical protective equipment can withstand the voltages involved. In a performance-oriented standard, it would not be appropriate to spell out detailed procedures for the required tests, which vary depending on the type of equipment being tested. On the other hand, OSHA believes that it is important for employers to have some guidance in terms of what is acceptable under the proposed standard. Therefore, under proposed paragraph (b)(2)(ix), OSHA has included a note stating that electrical test methods given in the various ASTM standards on rubber insulating equipment meet the performance requirement. OSHA requests comments on whether the listed ASTM standards are appropriate and on whether there are other acceptable test methods that should also be listed.

Once the equipment has been tested, it is important to ensure that any failed equipment is not returned to service. Paragraph (b)(2)(x) would prohibit electrical protective equipment that failed the required tests from being used by employees, unless the defects can be safely eliminated.

For electrical protective equipment that failed the test, proposed paragraph (b)(2)(x) also lists acceptable means of rendering the equipment fit for use. Sometimes defective portions of rubber line hose and blankets can be removed. The result would be a smaller blanket or a shorter length of line hose. Obviously, gloves and sleeves cannot be repaired in this manner; however, there are methods of patching them if the defects are minor. Rubber blankets can also be patched. The patched area must have electrical and physical properties equal to those of the material being repaired. To minimize the possibility that a patch will loosen or fail, the proposal would not permit repairs to gloves outside the gauntlet area.

Once the insulating equipment has been repaired, it must be retested to ensure that any patches are effective and that there are no other defects present. Such retests would be required under proposed paragraph (b)(2)(xi).

Employers, employees, and OSHA compliance staff must have a method of determining whether or not the tests required under paragraphs (b)(2)(viii) and (b)(2)(xi) have been performed. Paragraph (b)(2)(xii) proposes that this be accomplished by means of certification by the employer that equipment has been tested in accordance with the standard. The certification would be required to identify the equipment that passed the test and the date it was tested. Typical means of meeting this requirement include logs and stamping test dates on the equipment.

Section 1910.269

OSHA is proposing a new section to be added to the General Industry

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Standards. This new section would be added to Subpart R, Special Industries, and would be designated § 1910.269. Proposed § 1910.269 contains requirements for the prevention of injuries to employees performing operation or maintenance work on electric power generation, transmission, or distribution installations. Individual provisions contained in the proposed section are discussed below.

Paragraph (a)

Paragraph (a)(1) of proposed § 1910.269 sets forth the scope of the proposal. Under the terms of proposed paragraph (a)(1)(i), the provisions of § 1910.269 would apply to the operation and maintenance of electric power generation, transmission, and distribution systems and to electrical testing of such systems. Although the proposal does not define "operation" or "maintenance," OSHA intends that the standard cover all activity, other than construction work covered by Part 1926, associated with electric power generation, transmission, and distribution installations owned by electric utilities. The proposal would primarily cover the following types of work operations:

(1) Inspection,
(2) Switching (connection and disconnection of facilities),
(3) Routine maintenance of lines and equipment,
(4) Line-clearance tree trimming,
(5) Testing and fault locating,
(6) Streetlight relamping,
(7) Chemical cleaning of boilers, and
(8) Other routine operation and maintenance activities.

Proposed § 1910.269 would apply to the parts of an electric utility operation that are directly involved with the generation, transmission, or distribution of electric power. Installations in buildings not used for one of these purposes would not be covered by the standard. For example, office buildings, warehouses, machine shops, and other installations which are not an integral part of generating plant, substation, or control center would not be covered by proposed § 1910.269. Work performed in these installations would not be of a type addressed by the proposal. However, paragraph (a)(1)(i)(B) lists installations that are not integral to the generation of electric power, but that would be covered nonetheless. Such installations include the fuel handling operations, water and steam spaces, and walking and working surfaces within the generating station.

Paragraph (a)(1)(i)(D) of proposed § 1910.269 explains the application of the standard to tree-trimming operations. The entire section, except paragraph (r)(1), would apply to tree-trimming operations performed by qualified employees, i.e., employees who are knowledgeable in the operation of electric power generation, transmission, or distribution equipment and the hazards involved. These employees typically perform tree-trimming duties as an incidental part of their normal work activities. However, only paragraphs (a), (b), (c), (g), (k), (p), and (r) would apply to line-clearance tree-trimming work performed by other employees (line-clearance tree trimmers).

Most tree-trimming operations, which are often performed by employees of outside contractors, do not involve routine line-maintenance activities. Although these employees work near the power lines, they do not work directly on them. For activities other than the actual tree-trimming work, these employees would not be qualified employees for the purposes of this standard. Therefore, many of the requirements proposed in § 1910.269 are not relevant to their work. Since these employees would not be trained as qualified linemen, OSHA feels that the application of rules written expressly for electric utility-type work could expose these other types of workers to hazards which they are not adequately trained to face. For example, proposed paragraph (1) would allow qualified employees to come closer than 2 feet to a 7600-volt overhead distribution line if the employee is wearing rubber insulating gloves. Because line-clearance tree trimmers are not usually trained in the proper use of this equipment, it would not be appropriate to allow them to wear rubber gloves in order to get closer than 2 feet to the same line.

On the other hand, if employees performing line-clearance tree-trimming work are also "qualified employees," with the necessary training and experience in dealing with power lines, all of proposed § 1910.269 could be applied to their work.

Paragraphs (a), (b), (c), (k), and (p) are general requirements addressing training, medical services and first aid, job briefing, material handling, and mechanical equipment. OSHA has determined that the requirements in these areas are necessary and appropriate for line-clearance tree-trimming work performed by other than qualified employees. The remaining provisions of proposed § 1910.269 are not necessary for the safety of these employees and are not related to the type of work they would be performing. If information is submitted demonstrating that some of the listed provisions are inappropriate or that additional rules are necessary, OSHA will consider possible revisions to the final standard.

So as not to overlap the regulations in the Construction Standards, the proposal would not apply to operations involving construction work. This "exemption" is set forth in proposed § 1910.269(a)(1)(ii)(A). "Construction work" is defined in § 1910.12(b) as "work for construction, alteration, and/or repair, including painting and decorating." In § 1910.12(d), the term is further defined as including "the erection of new electric transmission and distribution lines and equipment, and the alteration, conversion, and improvement of existing transmission and distribution lines and equipment." None of the types of work covered by these two definitions is covered by proposed § 1910.269.

In § 1910.269(a)(1)(ii)(B), OSHA is proposing not to apply the regulation to installations for the generation, transmission, or distribution of electric energy not owned or operated by electric utilities nor to work performed on such installations not owned by a utility. The scope of the draft proposal submitted by EEI and IBEW was limited to utilities only, and OSHA has decided to propose that the standard be applied in the same manner. However, industrial generation, transmission, and distribution systems are essentially the same as those of a utility, and the work performed on industrial systems is nearly identical to that performed on electric utility installations. One might assume that electric utility systems are of larger capacity than those operated by industrial plants. In general this is true, but not always. For example, one generating facility for a large steel plant in Sparrows Point, Maryland, has a generating capacity of 140 megawatts with a generating voltage of 13 kilovolts and with distribution voltages of 34.5 and 69 kilovolts. This system is larger than those of many rural electric cooperatives that would be covered by the proposal. Additionally, the existing OSHA and national consensus standards, Subpart V of Part 1926 and ANSI C2, respectively, do extend their coverage to anyone doing electric-utility-type work. Consideration is being given to expanding the scope of the standard within this rulemaking procedure. Therefore, OSHA is soliciting comments on the appropriateness of extending coverage of the standard to all power generation, transmission, and distribution systems. OSHA also requests data on the costs and benefits of expanding the scope in this manner.

Existing regulations contained in Subpart S of Part 1910 apply to the installation and design of electric utilization systems. Although § 1910.302(a)(2)(v) states that electric utility "installations * * * for the purpose of communication or metering; or for the generation, control, transformation, transmission, and distribution of electric energy" are not covered by Subpart S, electric utility installations used for other purposes (i.e., those for the electric utilization systems) are covered by Subpart S. (See *Edison Electric Institute v. Occupational Safety and Health Administration*, No. 86-1486 (DC Cir., June 7, 1988.) This current differentiation in coverage between electric utilization installations, which are covered by Subpart S, and generation, transmission, and distribution installations, which are not covered by Subpart S, is carried forward in paragraph (a)(1)(ii) (C), which states that § 1910.269 would not apply to electrical installations, safety-related work practices, or maintenance considerations covered by Subpart S.

OSHA published a Proposed Rule in the **Federal Register** on November 30, 1987, proposing a new standard on electrical safety-related work practices for general industry. The electrical safety-related work practice requirements would be added to the existing installation requirements in Subpart S of the General Industry Standards (Part 1910). A major issue in that rulemaking concerns the scope of the standard, i.e., whether or not OSHA should separate coverage within an electric power generating station based on whether or not electric equipment is directly involved with the generation of electric power as opposed to the utilization of electric power.

For example, under the two current proposals (§ 1910.331 of Subpart S, Part II and § 1910.269), work on a motor in the heating and air conditioning system would be covered by the work practices in Subpart S, but work on a similar motor used in the generating system would be covered by §1910.269. While these motors may seem identical, the hazards each presents may be quite different, necessitating different work practices. The utilization-system motor must meet the requirements of existing Subpart S for grounding, guarding of live parts, and overcurrent protection, among other provisions. The work practices in the Subpart S proposal are based on the assumption that the utilization system is in compliance with the existing installation requirements of Subpart S, which have been in effect for the last 17 years. On the other hand, the generating-system motor is not required to meet any OSHA electrical standards. For example, the motor is not required to be grounded; live parts may be exposed; and protection against overcurrent is not required. An employee working on or near a generating-system motor cannot assume that its frame is grounded and therefore safe to touch. Accordingly, the work practices in the Subpart S proposal are not necessarily appropriate for work on this motor.

At the public hearing on the Subpart S proposal (August 9 and 10, 1988, in Washington, DC), the issue was raised as to whether or not it is appropriate to have two electrical work practice standards (i.e., § 1910.269 and Subpart S work practices) in effect at electric power generating stations. Therefore, OSHA is considering the incorporation of all of the requirements contained in the electrical safety-related work practices proposal that are appropriate for electric power generating stations into the final standard for electric power generation, transmission, and distribution. This would eliminate the need for employers to use two separate standards for electrical safety-related work practices in generating stations. OSHA requests comments on whether or not this approach should be taken and, if it is, whether or not there are any requirements in the Subpart S proposal that are not appropriate for work in electric power generating stations.

Paragraph (a)(1)(iii) of proposal § 1910.269 explains the application of the section with respect to the rest of Part 1910. All other General Industry Standards would continue to apply to installations covered by this proposal unless an exception is given in § 1910.269. For example, proposed § 1910.269(p)(1)(i) would require the critical components of mechanical elevating and rotating equipment to be inspected before each shift. This proposed provision would not supersede existing § 1910.180(d), which details specific requirements for the inspection of cranes. Reference in § 1910.269 to other sections of Part 1910 are provided only for emphasis.

Paragraph (a)(2) of proposed § 1910.269 addresses training for employees. Since it is widely recognized that electric-utility-type work requires special knowledge and skills, OSHA is proposing, in paragraph (a)(2)(i), to require training of employees in the safety-related work practices, safety procedures, and other personnel safety requirements in the standard that pertain to their respective job assignments. Employees would also be required to be trained in and familiar with any other safety practices necessary for their safety, including applicable emergency procedures. OSHA has not proposed to require periodic follow-up training; however, public comment is requested on the need for and effectiveness of this type of training.

Paragraph (a)(2)(ii) of proposed § 1910.269 contains additional requirements for the training of qualified employees. Because qualified employees are allowed to work very close to electric power lines and equipment and because they face a high risk of electrocution, it is important that they be specially trained. Towards this end, the proposal would require that these employees be trained in distinguishing live parts from other parts of electric equipment, in determining nominal voltages of lines and equipment, in the clearance distances set forth in the proposal, and in the techniques involved in working on or near live parts.

Under paragraph (a)(2)(iii), the proposal would permit classroom or on-the-job training or a combination of both. This would allow employers to continue the types of training programs that are currently in existence. Additionally, if an employee has already been trained (through previous job assignments, for example), the employer would not have to duplicate previous instruction. However, the employer would be required, by paragraph (a)(2)(iv), to certify that each employee has been trained. This certification should not necessitate the employer's completing forms or creating new records; existing personnel records would normally suffice, or the employer could simply make out a certification for each employee upon completion of training.

The proposal would not require follow-up training for employees. However, OSHA is requesting information on the need for such training. If the rulemaking record supports the need for follow-up training, the final rule will require it.

Paragraph (a)(3) of proposed § 1910.269 would require that conditions existing in the work area be determined before work is started. Frequently, the conditions present at a jobsite can expose employees to unexpected hazards. For example, the grounding system available at an outdoor site could have been damaged by the weather or by vehicular traffic, or communications cables in the vicinity could reduce clearances to an unacceptable level. To protect employees from such adverse situations,

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the conditions present in the work area should be known so that appropriate action can be taken. The proposed language has been taken from § 1928.950(b)(1). A similar requirement can be found in ANSI C2-1987, Section 420D.

Paragraph (b)

Paragraph (b) of § 1910.269 proposes requirements for medical services and first aid. In accordance with proposed § 1910.269(a)(1)(iii), paragraph (b) emphasizes that the requirements of § 1910.151 apply. That existing section includes provisions for available medical personnel, first aid training and supplies, and facilities for drenching or flushing of the eyes and body in the event of exposure to corrosive materials.

Paragraph (b)(1)(i) of proposed § 910.269 would require that persons trained in cardiopulmonary resuscitation (CPR) and first aid be available when two or more employees are working with energized lines or energized equipment. For field work, two trained persons would be required. For plant work, there would have to be enough trained persons to provide a 4-minute response time in case of accident. Because of the hazard of electric shock when work is performed with energized lines and equipment, cardiopulmonary resuscitation often becomes necessary so that employees who may be injured by electrical shock can be revived. CPR must be started within 4 minutes to be effective in reviving an employee whose heart has gone into fibrillation. OSHA requests comments on whether the requirement as proposed is reasonable and, if changes are suggested, on what the costs and benefits of the suggested changes would be.

Paragraph (b)(1)(ii) or proposed § 1910.269 would require that first aid training be equivalent to the training provided by the American Red Cross. This provision is proposed so that the quality of first aid training is defined. The Red Cross is recognized as having effective training programs. OSHA requests comments on whether there are additional training programs that provide equivalent training and that should also be listed in the regulation.

In § 1910.269(b)(2), OSHA is proposing that first aid supplies which have been recommended by a physician be placed in weatherproof containers, unless stored indoors, and that these containers be readily accessible. This is to ensure that proper first aid supplies are available and are in good condition when needed.

Paragraph (b) (3) of proposed § 1910.269 would require that first aid kits be maintained ready for use and be inspected at least annually in accordance with an established schedule. This is to ensure that first aid kits are maintained with all of the proper equipment.

Paragraph (c)

Paragraph (c) of proposed § 1910.269 would require a job briefing to be conducted before each job. Most of the work performed under the proposal requires planning in order to ensure employee safety (as well as to protect equipment and the general public). Typically, jobs involve working near exposed electric conductors energized at thousands of volts. If the work is not thoroughly planned ahead of time, the possibility of human error is increased greatly. To avoid problems, the task sequence is prescribed before work is started. For example, before climbing a pole, the employee must determine if the pole is capable of remaining in place and if clearances are sufficient, and he or she must determine what tools will be needed and what procedure should be used for performing the job. Without job planning, the worker may ignore the clearance requirements or may have to reclimb the pole to retrieve a forgotten tool, resulting in increased exposure to the hazards of falling and contact with energized lines.

When more than one employee is involved, the job plan must be communicated to all the affected employees. If the job is planned but the plan is not discussed with the workers, one employee may perform his or her duties out of order, endangering the entire crew. Therefore, OSHA is proposing to require a job briefing before work is started. The briefing would cover: Hazards and work procedures involved, special precautions, energy source controls, and requirements for personal protective equipment.

As proposed by paragraph (c)(1), at least one briefing would be required to be conducted before the start of each shift. However, only one briefing in a shift would be needed if all the jobs are similar in nature. Additional planning discussions must take place for work involving significant changes in routine. For example, if the first two jobs of the day involve working on energized lines with live-line tools and the third job involves working on a deenergized line, separate briefings should be conducted for each type of job.

Under paragraph (c)(2), the required briefing would normally consist of a concise discussion outlining the tasks to be performed. However, if the work is particularly hazardous or if the employees may not be able to recognize the hazards involved, then a more thorough discussion must take place. With this provision, OSHA recognizes that employees are familiar with the tasks and hazards involved with routine work. However, it is important to take the time to carefully discuss unusual work situations that may pose additional or different hazards to workers.

Proposed paragraph (c)(3) exempts employees working alone from the requirements for job briefings. It would still be important for the employee to plan the work; however, work procedure discussions would not have relevance for a single worker inasmuch as there would be no one else available for discussion. (If more than one employee are present, then an employee is not considered to be "working alone," regardless of how many employees are actually working.) Although it may not be practical to enforce a requirement for job planning, OSHA requests comments on the need for and desirability of such a requirement.

Paragraph (d)

Paragraph (d) of § 1910.269 proposes hazardous energy control (lockout/tagout) requirements. The provisions of this proposed paragraph essentially are patterned after the national consensus standard of the American National Standards Institute, ANSI Z244.1-1982, "American National Standard for Personal Protection—Lockout/Tagout of Energy Sources—Minimum Safety Requirements." In addition, the provisions of this proposed paragraph are consistent and compatible with the generic procedures to be established by OSHA's general industry standard for control of hazardous energy sources (lockout/tagout), which was published on April 29, 1983 (53 FR 15496). Because the provisions of proposed § 1910.269(d) address aspects of utility work that are not necessarily unique to the electric utility industry, it may be desirable to cover lockout and tagging of hazardous energy sources (other than electric power transmission and distribution lines and equipment) under OSHA's generic lockout standard. In fact, installations that are not within the scope of this standard would be covered by the generic standard. OSHA requests public comment on whether the hazards addressed in proposed § 1910.269(d) would be more appropriately covered by proposed § 1910.147, the generic lockout and tagging standard.

OSHA will take all comments, data, and testimony received in response to both the generic lockout/tagout proposal and this proposal into consideration in the development of a final rule for electric power generation, transmission, and distribution. If it is determined that this final standard will contain lockout and tagging provisions, these requirements will be the same as those in the final generic lockout/tagout standard, except as necessary to provide for unique situations in electric power generation work.

Paragraph (d)(1) would limit the application of the provisions of paragraph (d) to the control of energy sources in installations for the purpose of electric power generation, including related equipment for communication or metering. Procedures for the control of electric energy used for purposes of transmission and distribution would be addressed by proposed § 1910.269(m).

Paragraph (d)(2) lists general requirements. Paragraph (d)(2)(i) would require that the employer ensure that all potentially hazardous energy is isolated and locked out, or tagged out, or otherwise disabled in accordance with the provisions of this standard, before an employee performs any activity during which energization, start-up, or release of stored energy could occur and cause injury.

Paragraph (d)(2)(ii) would require that a procedure be developed, documented, and implemented for the control of potentially hazardous energy.

Paragraph (d)(2)(iii) proposes requirements for the procedure, including coverage of the scope, purpose, responsibility, authorization, rules, and techniques to apply. This paragraph also lists specific minimum elements of coverage.

Paragraph (d)(2)(iv) would require periodic inspections to ensure that the provisions of the standard are followed. OSHA requests comments on whether a minimum frequency for such inspections should be specified in the standard.

Paragraph (d)(2)(v) would require that the inspections be performed by authorized employees and be designed to correct observed deviations or inadequacies.

Paragraph (d)(2)(vi) would require that the employer certify that the inspections have been performed. However, if records of normal work schedule and operation demonstrate adequate inspection activity, no additional certification would be required. OSHA invites public comment on the feasibility and adequacy of the proposed provision.

Paragraph (d)(2)(vii) would require employees to be trained to ensure their understanding of the procedures. Separate training provisions are listed for authorized employees, affected employees, and other employees who may have access to covered energy sources or their controls.

(The terms "authorized employee" and "affected employee" are defined in proposed § 1910.269(x). An authorized employee is an employee who has the authority and responsibility to perform a specific assignment and who is knowledgeable in the construction and operation of the equipment and the hazards involved. An affected employee is one who erects, installs, constructs, repairs, adjusts, inspects, operates, or maintains a process or equipment.)

Paragraph (d)(2)(viii) would require annual retraining for all authorized and affected employees, either by regular on-the-job work assignments or by specific training.

Paragraph (d)(2)(ix) would require the employer to certify that the employee training has been accomplished and has been kept up to date.

Paragraph (d)(3) lists requirements for locks and tags. Paragraph (d)(3)(i) would require that locks or tags or both be provided by the employer and be the only authorized devices used for lockout/tagout of energy sources.

Other provisions in paragraph (d)(3) would require that locks and tags be capable of withstanding the environment to which they are exposed; be standardized in color, shape, size, format, or any combination of these elements; and include provisions for the identification of the employees authorizing the application of devices or applying them. Locks would be required to be of such key code complexity that removal by any means other than the regular key would require excessive force or unusual techniques. Tags and their attachment mechanisms would be required to be of such design that the possibility of accidental removal is minimized. Specific requirements for information to be placed on tags are contained in § 1910.145, OSHA's general tag requirements.

Paragraph (d)(4) lists requirements for energy isolating devices. Paragraph (d)(4)(i) would require each device to be labeled or marked to indicate its purpose, unless it is located and arranged so its purpose is evident, and paragraph (d)(4)(ii) would require that the devices be operated only by authorized persons or under their direct supervision.

Paragraph (d)(5) lists requirements regarding notification to affected employees of the application and removal of lockout/tagout controls when the controls directly affect the employees' work activities. Paragraphs (d)(5) (i), (ii), and (iii), respectively, would require that notification be made by the employer or an authorized employee, before the application of lockout/tagout controls, and before the removal of lockout/tagout controls.

Paragraph (d)(6) lists requirements for lockout/tagout application. Paragraphs (d)(6) (i), (ii), and (iii), respectively, would require that the pertinent operating controls be turned off or to neutral position by designated employees, that the energy isolating devices be operated so as to isolate the equipment or process from energy sources, and that a lock or tag or both be applied to each energy isolating device by an authorized employee.

Paragraph (d)(6)(iv) would require that locks be attached in such a manner as to hold the energy isolating devices in a safe position or that tags be attached in such a manner as to inhibit operation of the energy isolating devices. Tags would be required to be attached to the energy isolating device unless the installation precludes such attachment, in which case the tags would be required to be located so as to be immediately obvious to anyone attempting to operate the energy isolating devices.

Paragraph (d)(6)(v) would require that, following the application of locks or tags or both to energy isolating devices, all potentially hazardous stored or residual energy be detected and be relieved, disconnected, or restrained so as to be rendered safe.

Paragraph (d)(6)(vi) would require, if there is a possibility of reaccumulation of stored energy to a hazardous level, that verification of isolation be continued until the work is completed or until there is no longer a possibility of such accumulation.

Paragraph (d)(6)(vii) would require that an authorized employee take steps to verify that isolation and deenergizing of locked out or tagged out equipment or processes has been accomplished before work is started on the equipment or processes. If direct contact is to be made with a normally energized part during the work, a test would be required to be performed to ensure that the parts are deenergized.

Paragraph (d)(6)(viii) would require the verification action to ensure that affixing locks or tags or both to the energy isolating devices has positioned or located the devices so that the equipment or process has been isolated and deenergized effectively and so that any stored energy has been rendered safe.

The steps of the procedure proposed under paragraphs (d)(6) (vii) and (viii) may involve a deliberate attempt to

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start up equipment which should not be capable of activation because of the application of control procedures. These provisions are intended to assure the employee that energy from the main power source has been effectively isolated and blocked and that injury could not result from inadvertent activation of the operating controls. Another means of testing the equipment or process is by the use of appropriate test instrumentation. This method would be appropriate for use in cases involving electric circuits and equipment, for example, where verification of isolation could be accomplished by determining the relative energy level readings involved by using a voltmeter. Similar test equipment could be applied to other energy types and sources.

OSHA also considers the use of inspection procedures to be of critical importance throughout the lockout/tagout control process. Visual inspection can confirm that switches, valves, and breakers have been properly moved to and secured in the "off" or "safe" position. Observing the position of the main electric power disconnect switch can, for example, confirm that the switch is either in the "off" (open) or "on" (closed) position. Visual inspection can also verify whether or not locks and other protective devices have been applied to the control points in a manner that would impede the unsafe movement of the switches or valves. Finally, an inspection can be used to verify that isolation has taken place by a determination that all motion has stopped and that all coasting parts such as flywheels, grinding wheels, and saw blades have come to rest.

Paragraph (d)(7) lists the requirements for release from lockout/tagout. Paragraphs (d)(7) (i) and (ii), respectively, would require that an authorized employee first make a visual inspection of the work area to determine that all nonessential items have been removed, that all components are operationally intact, and that no inadvertent equipment start-up will result; and then verify that employees are in the clear, before energy is restored to the equipment or process.

It cannot be overemphasized that employees performing tasks on deenergized equipment may be exposed to hazards involving serious injury or death if the status of lockout/tagout control conditions can be changed without their knowledge. For this reason, OSHA is proposing in paragraph (d)(7)(iii) that, as a general rule, locks and tags be removed by the employees who applied them. An exception is provided for two types of situations in which the device may be removed under the direction of an authorized employee using specific procedures. Paragraph (d)(7)(iii)(A), as proposed, permits the use of the exception when the employee who applied the lock or tag is not available to remove it. This provision is intended to cover situations such as those that might arise from the sudden sickness or injury of an employee or other emergency conditions. Proposed paragraph (d)(7)(iii)(B) would permit use of the exception for unique operating activities involving complex systems, if the employer could demonstrate that it is not feasible to have the device removed by the employee who applied it.

Paragraph (d)(8) lists requirements for special lockout/tagout situations. Paragraph (d)(8)(i) would require that if there is a need for testing or positioning of the equipment or process after the energy isolating devices are locked or tagged, the following actions be taken in sequence: Clear the equipment or process of tools and materials; clear the employees from the equipment or process area; clear the controls of locks and tags according to the established procedure; energize and proceed with the testing or positioning; deenergize all systems; and reapply energy control measures to continue the work.

Paragraph (d)(8)(ii) would require that, when group locks or tags are used, the procedures must afford affected employees protection equivalent to that provided by personal locks or tags.

Paragraph (d)(8)(iii) would require that specific procedures be implemented to provide for continuity of lockout/tagout protection during shift or employee changes.

Paragraph (d)(8)((iv) would require the employer to ensure that contractors and their employees follow the lockout/tagout procedures in place at the work site. If the contractor does not provide qualified persons who have been trained properly in the procedures in use, the employer would be required to provide a qualified employee to operate or direct the operation of the energy isolating devices and installation of the locks and tags.

Paragraph (e)

Paragraph (e) proposes requirements for entry into and work in enclosed spaces. An "enclosed space" is defined to be a space that has a limited means of entry or egress, that is designed for periodic entry by employees under normal operating conditions, and that is not expected to contain a hazardous atmosphere, but may contain one under unusual conditions. In this paragraph, OSHA intends to cover only the types of enclosed spaces that are routinely entered by employees engaged in electric power generation, transmission, and distribution work and are unique to underground utility work. Such locations include manholes and vaults that provide employees access to electric generation, transmission, and distribution equipment. This paragraph does not address other types of confined spaces, such as boilers, tanks and coal bunkers, that are common to other industries as well. These locations will be addressed in OSHA's generic confined spaces standard, which is currently being developed for general industry.

Electric utility companies have an estimated 14,350 employees engaged in underground transmission and distribution work (where most of the work covered by paragraph (e) occurs).[8] Underground repair crews, in which these employees work, can typically expect to enter a manhole once or twice a day.[9] The enclosed space entry procedure addressed by the proposal is a day-to-day part of the routine of these workers. This type of work is unique to underground utilities (such as electric, telephone, and gas utilities), and the hazards presented by these spaces are widely recognized by these industries and their workers. Practices in use in these industries include testing for the presence of flammable gases and vapors, testing for oxygen deficiency, ventilation of the enclosed space, controls on the use of open flames, and the use of an attendant outside the space. Existing § 1910.268(o) sets forth regulations addressing these areas in the telecommunications industry, which exposes its employees to the same non-electrical hazards as the electric utility industry. Consistent with these industry-specific regulations, OSHA has decided to propose separate requirements in this standard for employee entry into enclosed spaces that are unique to the performance of electric power generation, transmission, and distribution work. However, other types of enclosed and confined spaces (such as boilers and tanks) are not addressed in this proposal, but will be addressed in the forthcoming generic confined spaces standard.

As the non-electrical hazards found in manholes, underground vaults, and similar enclosed spaces are the same in both telecommunications work and

[8] ERG, "Preparation of an Economic Impact Study for the Proposed OSHA Regulation Covering Electric Power Generation, Transmission, and Distribution," p. 8-8.

[9] *Ibid.* p. 8-21.

electric power generation, transmission, and distribution work, requirements relating to these hazards should be similar. (In joint-use manholes, where both telecommunications and electric distribution equipment are present, telecommunications employees and electric utility employees have to work in the same manholes—though not necessarily at the same time.) Therefore, the provisions in proposed § 1910.269(e) are based, in large part, on the requirements of existing § 1910.268(o) relating to telecommunications work on underground installations. In carrying them over to this proposal, OSHA has modified and added to the existing telecommunications regulations. The Agency has also drawn from provisions in ANSI C2 and the EEI/IBEW draft that relate to enclosed space hazards.

The introduction to paragraph (e) sets forth the scope of the enclosed space provisions. As previously noted, enclosed spaces are defined as spaces that have limited means of entry or egress, that are designed for periodic entry by employees under normal operating conditions, and that are not expected to contain hazardous atmospheres but may contain them under unusual conditions. These spaces include manholes and unvented vaults. (The ventilation in vented vaults prevents a hazardous atmosphere from accumulating, so vented vaults are not covered.) OSHA requests information on other types of enclosed spaces that would or should be addressed by paragraph (e) of the standard.

Paragraph (e)(1) proposes the general requirement that employers ensure the use of safe work practices by their employees. (Training in these practices would be required by proposed § 1910.269(a) (2).) The safe work practices include procedures for complying with the specific regulations contained in paragraphs (e)(2) through (e)(12).

Some conditions within an enclosed space, such as high temperature and high pressure, make it hazardous to remove any cover from the space. For example, if high pressure is present within the space, the cover could be blown off in the process of removing it. To protect employees from such hazards, paragraph (e)(2) would require a determination of whether or not it is safe to remove the cover. This determination should take the form of a quick check of the conditions expected to be in the enclosed space. The cover should be checked to see if it is hot and, if it is fastened in place, should be loosened gradually to release any residual pressure. An evaluation should also be made of whether conditions at the site could cause a hazardous atmosphere to accumulate in the space. Any conditions making it unsafe for employees to remove the cover would be required to be eliminated (i.e., reduced to the extent that it is no longer unsafe).

Paragraph (e)(3) would require that openings to enclosed spaces be guarded to protect employees from falling into the space and to protect employees in the enclosed space from being injured by objects entering the space. The guard could be in the form of a railing, a temporary cover, or any other temporary barrier that provides the required protection. This provision was taken from existing § 1910.268(o)(1)(i), which sets forth the equivalent requirement for underground telecommunications work.

Paragraph (e)(4) proposes to prohibit employees from entering enclosed spaces that contain a hazardous atmosphere. Once the hazardous atmosphere is removed (e.g., by ventilating the enclosed space) or if protection is provided (e.g., through the use of a respirator for a toxic atmosphere), employees would be allowed to enter.

Paragraph (e)(5) addresses the use of an attendant outside the enclosed space to provide assistance in an emergency. An attendant would be required any time there is reason to believe that a hazard exists because of traffic patterns near the opening or if a hazard exists within the space. For example, a manhole that is subject to uncontrolled flooding would require an attendant. The purpose of the attendant would be to provide assistance in an emergency; however, he or she would not be precluded from performing other duties outside the enclosed space, as long as those duties do not interfere with the person's function as an attendant. The provisions of paragraph (e)(5) are based on existing § 1910.268(o)(1)(ii). (See also proposed paragraph (t)(3) for requirements addressing the need for attendants outside underground installations containing energized electric equipment.)

Paragraph (e)(6) would require test instruments used to monitor atmospheres in enclosed spaces to be kept in calibration. This would ensure that test measurements are accurate so that hazardous conditions will not be overlooked. OSHA requests public comment on whether a specific level of accuracy (e.g., plus or minus 10 percent) should be required in this provision.

Because of the lack of adequate ventilation, enclosed spaces can accumulate hazardous concentrations of flammable gases and vapors, or an oxygen deficient atmosphere could develop. It is important to keep concentrations of oxygen and flammable gases and vapors at safe levels; otherwise, an explosion could occur while the employees are in the space, or an oxygen deficiency could lead to the suffocation of an employee. Toward these ends, paragraphs (e)(7), (e)(8), (e)(9), (e)(10), and (e)(11) address the testing of the atmosphere in the space and ventilation of the space.

Paragraph (e)(7) would require the internal atmosphere of the enclosed space to be tested for flammable gases and vapors. The results of the test would have to indicate that the atmosphere is safe before employees could enter. So that the results are accurate and relevant to the atmosphere in the space at the time of employee entry, testing would be required to be performed with a direct reading meter or similar instrument. Test equipment that samples the atmosphere so that the samples can be forwarded to a laboratory for analysis would not meet the requirements proposed in paragraph (e)(7).

Paragraph (e)(8) proposes an equivalent requirement for testing the concentration of oxygen in the atmosphere in an enclosed space. However, continuous forced air ventilation is permitted as an alternative to testing. Such ventilation would ensure that there would be sufficient oxygen in the manhole. (See also proposed paragraph (e)(10) for requirements relating to the length of time ventilation must be provided before employees are allowed to enter the manhole.)

If flammable gases or vapors are detected or if an oxygen deficiency is found, paragraph (e)(9) would require the employer to provide forced air ventilation to assure safe levels of oxygen and to prevent a hazardous concentration of flammable gases or vapors (one which exceeds 10 percent of the lower explosive limit) from accumulating. As an alternative, the employer could use a continuous monitoring program that ensures that no hazardous atmosphere develops and no increase in flammable gas or vapor concentration occurs.

The provisions of paragraphs (e)(7), (e)(8), and (e)(9) are based on the requirements contained in existing § 1910.268(o)(2) and on ANSI C2–1987, Section 426B.

Paragraph (e)(10) proposes specific requirements for the ventilation of enclosed spaces. When forced air ventilation is used, it would be required to be maintained for a period of time

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long enough to purge the atmosphere within the space of hazardous amounts of flammable gases and vapors and long enough to supply an adequate concentration of oxygen. After the ventilation has been maintained for this amount of time, employees can then safely enter the space. OSHA requests public comment on whether the Agency should specify what number of air changes of the atmosphere within the enclosed space should be required before employees are allowed to enter.

Paragraph (e)(10) would also require the air provided by the ventilating equipment to be directed at the area within the enclosed space where employees are at work. The forced air ventilation would be required to be maintained the entire time the employees are present within the space. These provisions ensure that a hazardous atmosphere does not reoccur where employees are working.

In order to ensure that the air supplied by the ventilating equipment will provide a safe atmosphere, paragraph (e)(11) would require the air supply to be from a clean source and would prohibit it from increasing the hazards in the enclosed space. For example, positioning the air intake for the ventilating equipment near the exhaust from a gasoline or diesel engine would contaminate the atmosphere in the enclosed space. This practice would not be allowed under the proposal.

The use of open flames in enclosed spaces is safe only when flammable gases or vapors are not present in hazardous quantities. For this reason, paragraph (e)(12) would require additional testing for flammable gases and vapors if open flames are to be used in enclosed spaces. The tests must be performed immediately before the open flame device is used and at least once per hour while the device is in use. OSHA requests comments on whether the frequency of testing is appropriate or whether the frequency should be increased or decreased. This requirement is based on existing § 1910.266(o)(5)(i).

Paragraph (f)

Paragraph (f) of proposed § 1910.269 addresses trenching and excavating operations. This paragraph simply references the appropriate existing regulations in the Construction Standards (Part 1926) pertaining to trenching and shoring, which are contained in 29 CFR Part 1926, Subpart P. Since trenching work and excavating work are typically considered construction operations and since construction regulations dealing with the hazards involved already exist, OSHA considered it appropriate to refer to the construction requirements directly. This would ensure that the regulations are the same whether or not the work is "construction work" as defined in § 1910.12, as the hazards involved are common to all types of trenching and excavating operations. Employers covered by this proposal should already be familiar with these requirements because they frequently perform the type of work covered under Subpart V of Part 1926 (which contains a similar reference in § 1926.956(c)(2)).

OSHA has proposed, in a separate rulemaking project, to revise the regulations contained in Subpart P of Part 1926. This proposal was published on April 15, 1987 (52 FR 12286). Operations covered by proposed § 1910.269 would be required to follow whatever is promulgated as a final standard under the Construction Standards rulemaking.

Paragraph (g)

Paragraph (g) of proposed § 1910.269 proposes requirements for personal protective equipment (PPE), which includes eye and face protection, respiratory protection, head protection, foot protection, protective clothing, electrical protective equipment, and personal fall protection equipment. In accordance with proposed § 1910.269(a)(1)(iii), proposed paragraph (g)(1) emphasizes that the requirements of Subpart I of Part 1910 apply. It should be realized that OSHA considers PPE which meets the requirements of later editions of the American National Standards referenced in Subpart I to be in compliance with the current requirements of this subpart. For example, Subpart I of Part 1910 references American National Standard (Z89.1–1969) for Industrial Head Protection, although other later editions have been published for head protection (i.e., ANSI Z89.2–1971 and Z89.1–1981). OSHA considers equipment meeting these newer standards to be acceptable. Subpart I of Part 1910 is scheduled for revision, and the updating of the PPE requirements with the latest American National Standards will be accomplished at that time.

Paragraph (g)(2) of proposed § 1910.269 proposes requirements for personal fall protection systems including fall arrest equipment (body belts and life lines) and work positioning equipment (body belts and safety straps).

In paragraphs (g)(2)(i) and (g)(2)(ii), OSHA is proposing that body belts, lifelines, and lanyards for fall arrest, and body belts and safety straps for work positioning, meet the requirements of § 1926.104 and § 1926.959 of this chapter. Although these regulations are contained in the Construction Standards, OSHA believes that they apply equally as well to personal fall protection systems and to work positioning equipment used in overhead electric line work. Additionally, body belts, lifelines, lanyards, and safety straps used in overhead line work are currently required to comply with pertinent regulations of Part 1926, including §§ 1926.104 and 1926.959, during the construction of transmission and distribution lines and equipment. Since the same personal fall protection systems and work positioning equipment are used during all phases of overhead electric line work (maintenance work and construction work alike), the proposal's reference to existing construction standards is appropriate.

OSHA has proposed, in a separate rulemaking project, Safety Standards for Fall Protection in the Construction Industry (November 25, 1986, 51 FR 42718), to revise and simplify most of the existing fall protection regulations for construction, which are currently scattered throughout 29 CFR Part 1926, and to consolidate them in Subpart M of that Part. Requirements corresponding to § 1926.104 were proposed to be placed in § 1926.502(d).

OSHA is also developing a general industry standard for fall protection. When this proposal is published, the Agency may wish to consolidate the existing general industry requirements dealing with this subject.

Paragraph (g)(2)(iii) of proposed § 1910.269 would require that body belts, safety straps, lanyards, lifelines, and body harnesses be inspected before use each day to determine if the equipment is in safe working condition. This provision would also prohibit the use of defective equipment. Derived from section 4.2 of American National Standard Requirements for Safety Belts, Harnesses, Lanyards, Lifelines, and Drop Lines for Construction and Industrial Use (ANSI A10.14–1975), this requirement helps ensure that the protective equipment in use will, in fact, be able to protect employees when called upon to do so.

Paragraph (g)(2)(iv) of proposed § 1910.269 would require lifelines to be protected against being cut or abraded since either of these conditions will reduce the strength of the lifelines and could cause them to fail during use.

In § 1910.269(g)(2)(v), OSHA is proposing requirements covering the use of fall arrest, work positioning, and travel restricting equipment. Unless

another type of fall protection is provided, one of these systems must be used by employees when they are working at heights more than 4 feet (1.2 m) above the ground on poles, towers, trees, or structures or when they are working from vehicle-mounted elevating and rotating work platforms. The provision further clarifies that the use of fall protection equipment would not be required when a qualified employee (who meets the requirements of proposed § 1910.269(h)(5)) is climbing or changing location on poles, towers, or similar structures which have steps or step bolts. Such step bolts or ladders must meet the design requirements proposed in § 1910.269, as well as the applicable requirements in Subpart O for fixed ladders. However, OSHA is proposing that fall protection equipment (safety straps) be used by employees climbing word poles not containing step bolts except when climbing around obstructions, such as crossarms, pins, or braces. This paragraph is proposed to clarify when the use of personal fall protection is required and when exceptions to its use are permitted.

The current OSHA telecommunications standard, in § 1910.268(g)(1), requires the use of personal fall protection equipment when work is performed at heights more than 4 feet (1.2 m) above the ground. The existing standards in Subpart D of Part 1910 also require fall protection (usually in the form of guard rails) for situations where employees are exposed to falls of more than 4 feet (1.2 m), but EEI and IBEW have asserted that there are problems with the use of personal fall protection equipment at heights of less than 10 feet (3.1 m). For example, it was claimed that it is not always possible, under some conditions, for the worker to tie off in a manner whereby he or she will not contact the ground (or a lower level) during the arrest of a fall. However, because the infeasibility of using fall protection at the lower level was not proven, OSHA is proposing to retain the 4-foot (1.2 m) requirement, but is requesting comments on unique situations in personal fall protection for electric utilities.

Paragraph (g)(2)(vi) of proposed § 1910.269 would require that, when stopping or preventing a fall, fall arrest systems not produce an arresting force on an employee of more than ten times the employee's weight or 1800 pounds (8 kN), whichever is lower. Based on section 3.3.5 of ANSI A10.14–1975, and a National Bureau of Standards report, *A Study of Personal Fall-Safety Equipment*, (NBS IR 76–1146), as well as other literature on fall arrest forces, this requirement is intended to minimize injury to an employee in the event of a fall. (This requirement, as well as others in paragraph (g)(2) of proposed § 1910.269, was contained in Appendix D of OSHA's proposed rulemaking for powered platforms, § 1910.66, published on January 22, 1985 (50 FR 2990).)

Paragraph (g)(2)(vii) of proposed § 1910.269 would require that, when vertical lifelines or droplines are used, not more than one employee be attached to any one lifeline. This limitation (based on section 3.2.6 of ANSI A10.14–1975) recognizes that it is inherently unsafe to use a single vertical lifeline to tie off two or more employees performing separate tasks. Movement by one employee could cause the lifeline to be pulled to one side. This could, in turn, cause the other employee to lose balance. Therefore, if one employee did fall, movement of the lifeline during the arrest of the fall would very likely cause other employees connected to the lifeline to fall.

In paragraphs (g)(2)(viii) and (g)(2)(ix), OSHA is proposing that snaphooks not be connected to loops in webbing lanyards or to each other. This provision would prohibit two methods of attachment which are considered unsafe because snaphooks could accidentally disengage during use. These provisions are based on sections 3.2.5 and 3.2.3.2 of ANSI A10.14–1975, respectively.

Paragraph (h)

Paragraph (h) of proposed § 1910.269 addresses ladders, platforms, stepbolts, and manhole steps. Paragraph (h)(1) emphasizes that the requirements for ladders in Subpart D of Part 1910 would continue to apply.

Paragraph (h)(2) proposes requirements for special ladders and platforms used for electrical work. Because of the nature of overhead line work and the limitations of structures available for ladder support, OSHA proposes that §§ 1910.25(d)(2)(i), 1910.25(d)(2)(iii), and 1910.28(c)(3)(iii), which deal with ladder support and placement, not apply to portable hook ladders and other special ladders used on structures or on overhead lines. To provide employees with protection which approximates that afforded by the "exempted" Subpart D provisions, proposed paragraphs (h)(2)(i) through (h)(2)(iv) would apply to these special types of ladders. These same paragraphs would also apply to platforms designed for and used in this type of work. The proposed requirements set forth the need to secure the special ladders and special platforms, specify the acceptable loads and proper strength of this equipment, and provide that it be designed for the particular types of application for which it is used. OSHA believes that the proposed alternative criteria provide for the safe use of this special equipment; however, comments are requested on whether the proposal provides adequate safety to employees.

In § 1910.269(h)(3), OSHA is proposing that portable metal and other portable conductive ladders not be used near exposed energized lines or equipment. This proposed paragraph addresses the hazard to employees of contacting energized lines and equipment with conductive ladders. However, in specialized high-voltage work, the use of nonconductive ladders could present a greater hazard to employees than the use of conductive ladders. The clearances between live parts operating at differing voltages and between the live parts and grounded surfaces are large enough that the possibility of accidentally contacting a live part with a conductive ladder is small. In such circumstances, using a conductive ladder can minimize the voltage differences between objects within an employee's reach, reducing the hazard to the employee. Therefore, the proposal would allow using a conductive ladder if the use of a nonconductive ladder would present a greater hazard.

Paragraph (h)(4) of proposed § 1910.269 addresses step bolts and manhole steps. The existing OSHA standards do not specifically address step bolts or manhole steps; rather, they address fixed ladders which are not normally used in manholes or on poles. OSHA proposes that step bolts and manhole steps for general use meet paragraphs (h)(4)(i) through (h)(4)(xiv) and the requirements of § 1910.27 for ladder safety devices. However, the step bolts or manhole steps would not need to be provided with ladder safety devices or equivalent fall protection, if only qualified employees (see discussion of proposed § 1910.269(h)(5)) climb them. The requirements of proposed paragraph (h)(4) address the design, installation, maintenance, and strength of step bolts and manhole steps. Current industry practices, existing § 1910.268(h), and ASTM C478–82a formed the basis for these requirements. Recognizing the potential hazards to employees associated with step bolts and manhole steps used in wet, damp, or corrosive atmospheres, OSHA solicits public comment on the following: (1) The need for separate design and installation criteria for these devices under such unique conditions; (2) the problems associated with using the existing ladder standards or the requirements proposed in § 1910.269(h)(4) to regulate these

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devices; (3) injury or fatality data related to employee falls from these devices due to inadequate design or installation; and (4) whether or not existing step bolts and manhole steps and their related standards would comply with OSHA's proposed regulations.

Paragraph (h)(5) of proposed § 1910.269 sets forth the requirements for qualified employees. OSHA proposes that ladders or step bolts on triangulation, telecommunication, electrical power, and similar towers, and ladders on poles and other structures (including stacks and chimneys) be exempt from the requirements in Subpart D of this part for ladder safety devices and cages if only qualified employees use these ladders. The requirements that address cages and ladder safety devices are presently contained in § 1910.27(d)(1) and (d)(5) of the General Industry Standards. OSHA is developing a proposed revision of all of Subpart D of Part 1910. Because this revision will likely result in a renumbering of the relevant sections and paragraphs, OSHA is proposing in § 1910.269 to reference Subpart D generally rathe than reference the specific regulations in question.

To be recognized as qualified under paragraph (h)(5) of proposed § 1910.269, an employee would be required to have successfully completed a hands-on training program in the safe climbing of this type of equipment and would be required to have climbing as one of his or her routine job duties. OSHA recognizes that these ladders, as well as most step bolts and manhole steps, are used only a few times a year (or even less frequently) and then normally by trained employees who climb such devices on a routine basis. If OSHA were to require compliance with the existing fixed ladder standard in Subpart D, it would impose significant costs on employers for the installation, maintenance, and inspection of fall protection systems that would seldom be used. The exposure of employees installing and maintaining this equipment would likely exceed the exposure of the employees climbing the ladders without personal fall protection. As an alternative, OSHA believes it appropriate to allow qualified employees to climb these ladders, step bolts, or manhole steps without fall protection under certain conditions, as set forth in proposed paragraph (h)(5). First, the employer would have to require the employee to complete a training program in the safe climbing of ladders, step bolts, or manhole steps; and, second, the exemption would apply only to employees who climb on a routine basis. Additionally, such an employee would not be permitted to carry objects in his or her hands while climbing. Once the employee reaches a work station, the employer would be required to provide appropriate fall protection equipment, and the employee would be required to use such protection. OSHA requests comments on this aspect of the proposal and invites commentors to submit suggested alternatives or additional safeguards which may be necessary.

Paragraph (i)

Proposed § 1910.269(i) addresses hand and portable power tools. Also, portable and vehicle-mounted generators supplying cord-and plug-connected equipment would be covered by proposed § 1910.269(i).

Electric tools connected by cord and plug would be required to meet proposed paragraph (i)(2). If the equipment is supplied by the wiring of a building or other premises, existing Subpart S of Part 1910 would continue to apply as it does currently. If premises wiring is not involved (in which case Subpart S does not currently apply), proposed paragraph (i)(2)(ii) would require that the tool frame be grounded or that the tool be double insulated or that the tool be supplied by an isolating transformer with ungrounded secondary. Any of these three methods can protect employees from electric shock, which could directly injure the employee or which could cause an involuntary reaction leading to a secondary injury.

In the preproposal stage of this document, OSHA received several comments suggesting that ground-fault circuit interrupter (GFCI) protection be allowed as an additional option. However, although a GFCI can prevent electrocution, the device cannot by itself prevent an initial electric shock to an employee before it interrupts the circuit. This initial shock could lead to injury from involuntary reaction. Therefore, OSHA has not proposed allowing the use of a GFCI alone to protect employees using cord- and plug-connected equipment.

Paragraph (i)(3) of proposed § 1910.269 would essentially extend the requirements of existing § 1926.404(f)(3) to electric transmission and distribution field operations. The proposal would basically require that portable and vehicle-mounted generators provide a means for grounding cord- and plug-connected equipment and would allow the frame of the generator to serve as the grounding electrode (reference ground).

Proposed § 1910.269(i)(4) applies to pneumatic and hydraulic tools. Safe operating pressures would be required by paragraph (i)(4)(i).

If a pneumatic or hydraulic tool is used where it may contact exposed energized parts, the tool would be required to have a nonconductive hose (paragraph (i)(4)(ii)). A pneumatic tool would also have to have an accumulator to collect moisture (paragraph (i)(4)(iii)). These two requirements would protect employees from electric shock by restricting current flow through hoses.

Paragraphs (i)(4)(iv) and (i)(4)(v) propose work-practice requirements to protect employees from the accidental release of pressure and from injection of hydraulic oil into the body. The first of these two provisions would require the release of pressure before connections in the lines are broken, unless the quick-acting, self-closing connectors commonly found on tools are used. The other would prohibit employees from attempting to use their bodies in order to locate or stop a hydraulic leak.

Paragraph (j)

Paragraph (j) of proposed § 1910.269 contains requirements for live-line tools, some of which are commonly called "hot sticks." This type of tool is used by qualified employees to handle energized conductors. The tool insulates the employee from the energized line, allowing the employee to safely perform the task at hand. For example, a wire tong, a slender insulated pole with a clamp on one end, is used to hold a conductor at a distance while work is being performed. Common types of live-line tools include wire tongs, wire tong supports, tension links, and tie sticks.

Paragraph (j)(1) proposes that live-line tools be designed and constructed to be able to withstand 100,000 V/ft if made of fiberglass, 75,000 V/ft is made of wood, or other equivalent tests. Since the proposed withstand voltages are consistent with those in existing § 1926.951(d) and with ASTM F 711–81, *Standard Specification for Fiberglass-Reinforced Plastic (FRP) Rod and Tube Used in Live-Line Tools*, tools complying with standards currently in use in the industry would continue to be acceptable. Together with the clearance distances in proposed § 1910.269(1), paragraph (j)(1) protects employees from electric shock during use of these tools.

The performance criteria given in proposed paragraph (j)(1) are intended to be "design standards" and are to be met at the time of manufacture. The test voltages and length of time that they are applied are not appropriate for periodic retesting of the hot sticks because the live-line tools could sustain damage during the test. OSHA requests information on whether retesting should be required, what values of voltage and time should be used for retests, and what period of time should be allowed between retests.

Paragraph (j)(2) proposes the daily visual inspection of live-line tools. If any contamination or defect that could lower the insulating value of the live-line tool exists, it could be discovered during this inspection, and the tool would have to be removed from service. This paragraph would protect employees from the failure of live-line tools during use.

Paragraph (k)

Paragraph (k) proposes requirements for material handling and storage, with the general provision that Subpart N of Part 1910 would continue to apply except as modified in the paragraph.

Paragraphs (k)(1) and (k)(2) address the handling and storage of materials in the vicinity of energized lines and exposed parts of energized equipment. In general, as is the case through most of the General Industry Standards, material is not allowed to be taken or stored within 10 feet of the lines or exposed parts of equipment. This distance must be increased by 4 inches for every 10 kilovolts over 50 kilovolts. For materials storage, the clearance distance must also be increased to account for the maximum sag and side swing of any conductor and to account for the use of material handling equipment. Maintaining these clearances protects unqualified employees, who are not trained in the recognition and avoidance of the hazards involved, from contacting the energized lines or equipment with materials being handled.

In recognition of the need for certain employees to approach energized parts more closely than 10 feet in order to perform their work, paragraphs (k)(1)(i), which addresses materials storage, and (k)(2), which addresses materials handling, regulate only the exposure of unqualified employees to the hazards involved. The storage requirement proposed in paragraph (k)(1)(i) would not apply in areas which are restricted to qualified employees. Paragraph (k)(2) would not apply to qualified workers at all because clearance requirements for qualified workers are contained in proposed § 1910.269(1), which covers work on or near energized parts.

Paragraph (k)(1)(ii) proposes that material not be stored in the working space around energized lines or equipment. (See the discussion of paragraphs (u)(1) and (v)(3) of proposed § 1910.269 for an explanation of the requirements for access and working space.) Storing materials in this space would tempt employees to work on energized equipment in cramped quarters if access were necessary in an emergency. Alternatively, if materials stored in the working space had to be moved so that adequate room could be provided, accidents could result from the movement of the material.

Paragraph (l)

Paragraph (l) of proposed § 1910.269 covers the hazards of working on or near exposed parts of energized lines or equipment. Paragraph (l)(1) proposes to prohibit unqualified employees from working on exposed live parts of electric lines or equipment. Lacking any training in the construction and operation of the lines and equipment and in the electrical hazards involved, these workers would likely be electrocuted attempting to perform this type of work and would also expose others to injury as well. Similarly, in areas containing unguarded live parts energized at more than 50 volts, such untrained employees would not be familiar with the practices that are necessary to avoid contact with these parts.

However, employees in training, under the direct supervision of a qualified employee, would be permitted to perform work on live parts and in areas containing unguarded live parts. OSHA believes that the close supervision of trainees will reveal errors "in the act," before they cause accidents. Allowing these workers the experience of performing tasks under actual conditions may also better prepare the employees to work safely.

Paragraph (l)(2) of proposed § 1910.269, along with Tables R–6 and R–7, sets forth the clearance requirements for work near exposed energized parts. The language of this paragraph has been taken from existing § 1926.950(c)(1). Basically, the proposal would require employees to maintain the clearances listed in the tables, unless the employee is insulated from the live part or the part is insulated from the employee or the employee is insulated from all other conductive objects.

The first exception to maintaining the listed clearance is that the employee be insulated from the energized part. This insulation could take the form of rubber insulating gloves or rubber insulating gloves with sleeves. This equipment protects the employees from electric shock as he or she works on the line or equipment. Even though uninsulated parts of the employee's body may come closer to the live part than would otherwise be permitted by proposed Tables R–6 or R–7, the employee's hand would be insulated from the live part, and the working distances involved would be sufficient protection against arc-over. (The proposed tables include a significant safety factor for inadvertent movement, which is unnecessary for employees using rubber insulating equipment.) OSHA does, however, request public comment on whether rubber insulating sleeves should be required when gloves are used on lines or equipment energized at more than a given voltage.

Of course, the insulation used would have to be designed for the voltage. (The proposed revision of § 1910.137 gives use voltages for electrical protective equipment.) As a clarification, paragraph (l)(2)(i) notes that the insulation is considered as protection only against parts upon which work is being performed; the required clearances would have to be maintained from other exposed energized parts.

Existing § 1926.950(c)(1)(i), from which proposed § 1910.269(l)(2)(i) was taken, also specifically permits the employee to be guarded from the live parts. However, the introductory language in proposed paragraph (l)(2) requires clearances to be maintained from "exposed" energized parts. Guarded live parts would not be addressed by the rule. Similarly, redundancies in paragraphs (c)(1)(ii) and (iii) of § 1926.950 have not been carried forward into paragraphs (l)(2)(ii) and (iii) of proposed § 1910.269.

As a second opinion to maintaining the clearances, paragraph (l)(2)(ii) of proposed § 1910.269 allows the energized part to be insulated from the employee. Such insulation could be in the form of insulating blankets or line hose or other suitable insulating equipment. Again, the insulation would have to be adequate for the voltage.

Paragraphs (l)(2)(i) and (ii) recognize the protection afforded to the employee by an insulating barrier between the employee and the energized part. As long as the insulation is appropriate and is in good condition, current will not flow through the worker, and he or she is protected.

The third option (proposed paragraph (l)(2)(iii)) to the maintenance of clearance distances is to insulate the employee from conductive objects other than the live part upon which work is to be performed. Much of the work performed under this option is called "live-line bare-hand" work. (For specific practices for this type of work, see the discussion of proposed § 1910.269(q)(3).) In this type of work, the employee is in

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contact with the energized line, like a bird on a wire, but is not contacting another conductive object at a different potential. Because there is no complete circuit, current cannot flow through the worker, and he or she is protected.

The clearance distances in Table R-6 are for AC voltages up to 765 kilovolts, nominal. Taken in large part from existing Table V-1 in Part 1926, each of these distances provide a sufficient gap between the worker and the line so that current cannot arc to the employee under the most adverse transient conditions, plus an extra amount for inadvertent movement on the part of the employee. To make it clear that direct contact with live parts is not permitted, OSHA is proposing to add to the distances given in the existing standard an "avoid contact" entry under the lowest voltage. Additionally, to make the proposal more consistent with ANSI C2, OSHA is proposing to adopt a clearance distance of 2 feet for voltages between 1.1 and 15 kilovolts. Table V-1 gives no clearance distances below 2100 volts.

Table R-7 applies to DC voltages between 250 and 750 kilovolts, nominal. These distances have been taken directly from Tabel 422-3 of ANSI C2-1984. Since systems of DC voltages other than those listed are rare, no distances are presented for them in the table. If further information is supplied during the course of this rulemaking supporting clearances for other voltages, OSHA will consider adding them to the table.

For the highest voltages, the two proposed tables contain notes permitting clearance distances smaller than those listed. The smaller clearance must be at least the length of the line insulator, and the smaller clearance must be necessary to perform the work. In the existing Construction Standards, Subpart V uses a similar note. In contrast, ANSI C2-1984 has separate tables for AC voltages of 345 to 765 kilovolts, nominal, and for all DC voltages of systems with a known transient overvoltage factor. (For further information, see ANSI C2-1984, Tables 422-2 and 422-4.) The ANSI C-2 tables use clearances which increase with increasing surge factors and provide for greater clearances, in many cases, than the footnotes in OSHA's proposed tables. OSHA requests comments on whether it would be more appropriate to use the ANSI clearances for the affected voltages and whether the ANSI tables provide better protection for employees than the OSHA proposal.

Paragraph (1)(3) of proposed § 1910.269 would require employees to position themselves so that a shock or slip will not cause the worker's body to move towards exposed parts at a potential different from that of the employee. Since slips, and even electric shocks, are not entirely preventable, it is important for the employee to take a working position so that such an event will not increase the severity of any incurred injury. This proposed requirement does not come from existing Subpart V; it has been taken from ANSI C2-1984, Section 422F.

Paragraph (1)(4) addresses the practices of connecting and disconnecting lines and equipment. Common industry practice, as reflected in ANSI C2-1984: Section 422G, is to make a connection so that the source is connected as the last item in sequence and to break a connection so that the source is removed as the first item in sequence. In this way, conducting wires and devices used to make and break the connection are deenergized during almost the entire procedure. Since these wires and devices must be handled during the procedure, the proposed requirement would reduce the chance for an electrical accident.

Taken from ANSI C2-1984, Section 42012, proposed § 1910.269(1)(5) would prohibit the wearing of conductive articles by employees working near exposed live parts of equipment if these articles would increase the hazards associated with accidental contact with the live parts. This requirement is not intended to preclude workers from wearing metal rings or watch bands if the work being performed already exposes them to electric shock hazards, and the wearing of metal would not increase the hazards. (For example, for work performed on an overhead line, the wearing of a ring does not increase the likelihood that an employee would contact the line, nor would it increase the severity of the injury should contact occur.) However, this requirement would protect employees working on energized circuits with small clearances and high current capacities (such as some battery-supplied circuits) from severe burn hazards to which they would not otherwise be exposed. The proposal would also protect workers who are only minimally exposed to shock hazards from being injured as a result of a dangling chain's making contact with a energized part.

In a matter related to the clothing worn by electric utility workers, it has come to OSHA's attention that certain clothing fabrics are easily ignited and can pose severe burn hazards. Since qualified employees are commonly exposed to electric arcs, it has been suggested that clothing made of these materials be prohibited for exposed employees. Additionally, American Society for Testing and Materials Committee F-18 on Electrical Protective Equipment for Workers is exploring possible standards for application to clothing. However, since no standards currently exist, OSHA is requesting public comment on the desirability of adopting requirements in this area and on the costs and benefits of any suggested provisions.

To protect employees from contacting energized parts, paragraph (1)(6) of proposed § 1910.269 would require fuses for circuits over 300 volts to be installed and removed using insulated tools or gloves. Additionally, employees installing expulsion-type fuses would be required to wear eye protection and would have to stand clear of the fuse's exhaust path. This requirement has been taken from ANSI C2-1984, Section 4200.

Paragraph (1)(7) explains that covered conductors are treated under the proposal as uninsulated. (See the definition of "covered conductor" in proposed § 1910.269(x).) The covering on this type of wire protects the conductor from the weather but does not provide adequate insulating value.

Since ungrounded metal frames of equipment can become energized, paragraph (1)(8) of proposed § 1910.269 would require the testing of these metal parts for voltage before they can be treated as deenergized.

Paragraph (m)

Paragraph (m) of proposed § 1910.269 addresses the deenergizing of electric transmission and distribution lines and equipment for the protection of employees. Because paragraph (m) would cover this area, the general requirements for hazardous energy control in paragraph (d) of proposed § 1910.269 would not apply to the disconnection of transmission and distribution lines and equipment from sources of electrical energy. In addition to setting forth the application of proposed § 1910.269(m), paragraph (m)(1) explains that conductors and equipment that have not been deenergized under the procedures of either paragraph (d) or (m) of proposed § 1910.269 would have to be treated as energized. Therefore, there are no gaps in the coverage of these two paragraphs.

Proposed § 1910.269(m)(2) outlines how the individual provisions in paragraph (m)(3) would apply under various conditions. The entire paragraph (m)(3) would apply to situations in which the employee must depend on others for deenergizing the circuits or in which the employee must obtain authorization to perform the task himself of herself. All of paragraph (m)(3) would also apply if a single employee, other than the system operator, is in complete control of the lines or equipment and of their means of disconnection. In this case, the employee in charge would be required to take the place of the system operator, as necessary. [The system operator is a qualified person, commonly located in a control room, who operates the system or its parts.]

If an employee is working alone and if the means of disconnection are visible to the employee, the only requirements of paragraph (m)(3) which would apply would be those directly pertaining to the deenergizing and reenergizing of lines and equipment. Unnecessary provisions for tagging and for communication with others would not apply.

Under any of the preceding scenarios, disconnecting means that are accessible to people not under the employer's control would be required to be rendered inoperable. For example, a switch handle mounted at the bottom of a utility pole that is not on the employer's premises would have to be locked in the open position while the overhead line was deenergized. This requirement would prevent a member of the general public from closing the switch.

Paragraph (m)(3) of proposed § 1910.269 sets forth the exact procedure which would have to be followed in the order presented in the rule. Except as noted, the proposed rules are consistent with existing § 1926.950(d)(1), although the language has been taken in large part from ANSI C2-1984, Section 423. OSHA has attempted to simplify the language of the consensus standard and to write the requirements in performance-oriented terms whenever possible.

Paragraph (m)(3)(i), the first requirement, proposes that the system operator be requested to deenergize a particular section of line or equipment. In order for control to be maintained over authority, a single designated employee would be assigned this task. This designated employee thus becomes the employee in charge and is responsible for the clearance for work.

The second step (paragraph (m)(3)(ii)) would be to open all switches through which electrical energy could flow to the section of line or equipment. Also, the switches would be required to be tagged to indicate that employees are at work. This paragraph would ensure that the lines are disconnected from their sources of supply and would protect against the accidental reclosing of the switches.

Paragraph (m)(3)(iii) would also require the tagging of automatically and remotely controlled switches. An automatically or remotely control switch would also have to be rendered inoperable if the design of the switch allows for it to be made inoperable. This provision would also protect employees from the accidental operation of switches. OSHA requests public comment on whether it is appropriate to require all new and replacement switches that are to be automatically or remotely controlled to be designed so that they could be rendered inoperable and on whether it is feasible for such switches to be so designed.

Paragraph (m)(3)(iv) proposes that tags prohibit operation of the switches to which they are attached. They would also be required to state that employees are at work.

After the previous four requirements have been met and after the employee in charge of the work has been given a clearance by the system operator, the employee in charge would be required, by paragraph (m)(3)(v), to test the lines or equipment. This test would ensure that the lines had in fact been deenergized and would prevent accidents resulting from someone's opening the wrong disconnect. Existing § 1926.950(d)(1)(iii) permits visual inspection in lieu of tests. However, because of the increasing amount of cogeneration (electric generation of power by customers of the utility), which can unknowingly supply lines with electricity, a visual determination of the state of energization is not always accurate. OSHA believes it is important that lines and equipment on which work is to be performed always be tested for an energized condition, so that employees will not falsely believe that the line or equipment is dead.

Paragraph (m)(3)(vi) proposes the installation of the protective grounds required by proposed § 1910.269(n) at this point in the sequence of events. Since the lines or equipment have been deenergized and tested in accordance with the previous provisions, it is now safe to install a protective ground.

After the six previous rules have been followed, paragraph (m)(3)(vii) would permit the lines or equipment to be treated as deenergized.

Paragraph (m)(3)(viii) proposes that each independent crew separately follow the steps outlined in § 1910.269(m)(3) to ensure that a group of workers does not make faulty assumptions about what steps have been or will be taken by another group to deenergize lines or equipment.

In some cases, as when an employee in charge has to leave the job because of illness, it may be necessary to transfer a clearance. Under such conditions, paragraph (m)(3)(ix) would require the system operator and the employees in the crew to be informed of the transfer. The new employee in charge would then be responsible for the clearance. It is important that only one employee at a time be responsible for any clearance; otherwise, independent action by any worker could endanger the entire crew.

Once work is completed, the clearance will have to be released so that the lines or equipment can be reenergized. Paragraph (m)(3)(x) covers this procedure. To ensure that it is safe to release the clearance, the employee in charge must: (1) Notify workers in the crew of the release, (2) determine that they are clear of the lines and equipment, (3) determine that grounds have been removed, and (4) notify the system operator that the clearance is to be released.

According to paragraph (m)(3)(xi), action may be taken to reenergize the lines or equipment only after grounds and tags have been removed, after all clearances have been released, and after all employees are in the clear. This protects employees from the possibility that the line or equipment could be reenergized while employees are still at work.

Paragraph (m)(3)(xii) proposes that the employee releasing the clearance be the one who was responsible for requesting it. This rule would ensure that any one clearance is always under the control of a single employee.

Paragraph (n)

Paragraph (n) of proposed § 1910.269 addresses protective grounding. As noted in paragraph (n)(1), the entire paragraph (n) would apply to the grounding of deenergized transmission and distribution lines and equipment for the purpose of protecting employees. Sometimes, normally energized lines and equipment which have been deenergized to permit employees to work become accidentally energized by contact with another energized circuit or by failure of the clearance system outlined in § 1910.269(m). Grounding is used to protect employees from injury should such reenergizing occur. Grounding also provides protection against static charges on a line and induced voltages. (These static and induced voltages can be high enough to endanger employees, either directly from electric shock or indirectly from involuntary reaction.)

Additionally, paragraph (n)(1) indicates that paragraph (n)(4) would apply both to the grounding of transmission and distribution lines and equipment and to the protective

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grounding of nonelectrical equipment such as aerial lift trucks. Under normal conditions, such equipment would not be connected to a source of electric energy. However, to protect employees in case of accidental contact of the equipment with live parts, protective grounding would be required elsewhere in the proposal (in § 1910.269(q)(3)(x), for example); and, to ensure the adequacy of this grounding, the provisions of paragraph (n)(4) would have to be followed.

The general requirement proposed in paragraph (n)(2) states the conditions under which lines and equipment must be grounded. Basically, in order for lines or equipment to be treated as deenergized, they must be deenergized under paragraph (m) of proposed § 1910.269 and grounded. Grounding could be omitted only if the installation of a ground is impracticable or if the conditions resulting from the installation of a ground would introduce more serious hazards than work without grounds. Since it is expected that conditions warranting the absence of protective grounds would be rare, OSHA invites public comment on what conditions are appropriate for this exception and on whether the standard should list the specific types of conditions for which grounding would not be required.

If grounds are not installed and the lines and equipment are to be treated as deenergized, however, additional precautions would have to be observed. Obviously, the lines and equipment would still have to be deenergized by the procedures of proposed § 1910.269(m). Also, there may be no possibility of contact with another source of voltage, and the hazard of induced voltage may not be present. Since these precautions do not protect against the possible reenergizing of the lines or equipment, the lack of grounding would be permitted only in very limited circumstances, as mentioned in the previous paragraph.

Paragraph (n)(3) of proposed § 1910.269 would require protective grounds to be installed at the work location. Under most fault conditions, this grounding location minimizes the voltage to which the worker would be exposed. However, if it is not feasible to provide a ground where the employee is working, grounds would be required on both sides of the work location. This type of situation could arise when an employee is working from an aerial lift between two structures supporting a transmission or distribution line. Providing a personal ground at the lift may not be feasible; and, in such an instance, grounding the line at each adjacent structure would nearly always provide the worker with adequate protection.

Paragraph (n)(4) proposes requirements which grounding equipment must meet. So that the protective grounding equipment does not fail, it would be required to have an ampacity high enough so that the fault current would be carried for the amount of time necessary to allow protective devices to interrupt the circuit. The impedance of the grounding equipment would be required to be low enough to ensure the quick operation of the protective devices. Although the grounding equipment alone cannot prevent the worker from receiving a perhaps lethal electric shock, these proposed rules would help ensure the prompt clearing of the circuit supplying voltage to the point where the employee is working. The grounding equipment would limit the duration and reduce the severity of any electric shock, but would not itself prevent shock from occurring. For this reason, the proposal does not recognize the use of protective grounds as the sole method of protection against electric shock. Other methods of protection, such as insulation or procedures for the deenergization of lines and equipment, are used in conjunction with protective grounding to protect employees adequately.

Paragraph (n)(5) of proposed § 1910.269 would require lines and equipment that are to be grounded to be tested for voltage. If a previously installed ground is evident, no test need be conducted. These proposed requirements prevent energized equipment from being grounded, which could result in injury to the employee installing the ground.

Paragraphs (n)(6) and (n)(7) set forth the proposed procedure for installing and removing grounds. To protect employees in the event that the "deenergized" equipment to be grounded is or becomes energized, the proposal would require the "equipment end" of the grounding device to be applied last and removed first and that insulating equipment be used for both procedures in order to protect workers.

With certain underground cable installations, a fault at one location along the cable can create a substantial potential difference between the earth at that location and the earth at other locations. Under normal conditions, this is not a hazard. However, if an employee is in contact with a remote ground (by being in contact with a conductor that is grounded at a remote station), he or she can be exposed to the difference in potential (because he or she is also in contact with the local ground). To protect employees in such situations, proposed paragraph (n)(8) would prohibit grounding cables at remote locations if a hazardous potential transfer could occur under fault conditions.

Proposed paragraph (n)(9) would permit the removal of grounds for test purposes. To protect workers, though, the previously grounded lines and equipment would have to be treated as energized while they remain ungrounded.

Paragraph (o)

Paragraph (o) of proposed § 1910.269 would set forth safety practice requirements covering electrical hazards arising out of the special testing of lines and equipment (namely, in-service and out-of-service, as well as new lines and equipment) to determine maintenance needs and fitness for service. Generally, the need to conduct tests on new and idle lines and equipment as part of normal checkout procedures, in addition to maintenance evaluation, is specified in the National Electrical Safety Code (ANSI C2–1984). Basically, as stated in paragraph (o)(1), the proposed rules would apply only to testing involving interim measurements utilizing high voltage, high power, or combinations of both, as opposed to testing involving continuous measurements as in routine metering, relaying and normal line work.

For the purposes of the proposed requirements, high-voltage testing is assumed to involve voltage sources having sufficient energy to cause injury and with magnitudes generally in excess of 1000 volts, nominal. High-power testing involves sources where fault currents, load currents, magnetizing currents, or line dropping currents are used for testing, either at the rated voltage of the equipment under test or at lower voltages. Paragraph (o) would cover such testing in laboratories, in shops and substations under the exclusive control of the electric utility, and in the field and on lines at sites also as part of the utility operation.

Examples of typical special tests in which either high-voltage sources or high-power sources are used as part of an electric utility's operation and maintenance activity include cable-fault locating, large capacitive load tests, high current fault-closure tests, insulation resistance and leakage tests, direct-current proof tests, and other tests requiring direct connection to power lines.

Excluded from the scope statement of proposed paragraph (o)(1) are routine inspection and maintenance measurements made by qualified employees in accordance with established work practice rules where the hazards usually associated with the use of intrinsic high-voltage or high-power sources require only those normal precautions peculiar to such periodic work. Two typical examples of such excluded test work procedures would be "phasing-out" testing and testing for a "no voltage" condition.

Paragraph (o)(2)(i) of proposed § 1910.269 explains that employers would be required to establish additional work practices governing employees engaged in certain testing activities. These work practices are intended to delineate precautions that employees must observe to be protected from the hazards of high-voltage or high-power testing. For example, if high-voltage sources are used in the testing, employees would be required to follow established safety practices to protect against such typical hazards as inadvertent arcing or voltage overstress destruction, as well as accidental contact with objects which have become residually charged by induced voltage from electric field exposure. If power sources are used in the testing, employees would be required to follow established safety practices to protect against such typical hazards as ground voltage rise as well as exposure to excessive electromagnetically-caused physical forces associated with the passage of heavy current.

These practices would apply to work performed at both permanent and temporary test areas, i.e., areas permanently located in the controlled environment of a laboratory or shop and in areas temporarily located in the non-controlled field environment. As a minimum, the safety work practices would be required to cover the following types of test associated activities:

(1) Guarding the test area to prevent inadvertent contact with energized parts,

(2) Safe grounding practices to be observed,

(3) Precautions to be taken in the use of control and measuring circuits, and

(4) Periodic checks of field test areas.

Paragraph (o)(2)(ii) complements the general requirement regarding the use of safe work practices in test areas by proposing that all employees involved in this type of work be trained in these safety test practices, and further proposing that a periodic review of these practices by the employees be conducted from time to time as a means of providing reemphasis and updating.

Although specific work practices used in test areas are generally unique to the particular test being conducted, three basic elements affecting safety are commonly found to some degree at all test sites: guarding, grounding, and the safe utilization of control and measuring circuits. By considering safe work practices in these three categories, OSHA has attempted to achieve a performance-oriented standard applicable to utility work involving testing and test facilities.

OSHA believes that guarding can best be achieved when it is provided both around and within test areas. By controlling access to all parts, which are likely to become energized by either direct or inductive coupling, accidental contact by employees will be averted. Paragraph (o)(3)(i) proposes the guarding of permanent test areas by having them completely enclosed by walls or some other type of physical barrier. In the case of field testing, paragraph (o)(3)(ii) attempts to achieve a level of safety for temporary test sites comparable to that achieved in laboratory test areas. For these areas, a barricade of tapes and cones or observation by an attendant would be acceptable methods of guarding.

Since the effectiveness of the guarding means employed can be severely compromised by failing to remove them when they are not required, frequent safety checks must be made to monitor its use. For example, leaving barriers in place for a week at a time when testing is performed only an hour or two per day is likely to result in disregard for the barriers.

Within test areas, whether temporary or permanent, additional safety can be achieved by observing guarding practices that control access to test areas. Paragraph (o)(3)(iii) would therefore require that such guarding be provided if the test equipment or apparatus under test is likely to become energized as part of the testing by either direct or inductive coupling. A combination of guards and barriers, preferably interlocked, is intended to provide protection to all employees in the vicinity.

Suitable grounding is another important work practice that can be employed for the protection of personnel from the hazards of high-voltage or high-power testing. If high currents are intentionally employed in the testing, an isolated ground-return conductor, adequate for the service, would be required so that no intentional passage of heavy current, with its attendant voltage rise, is permitted in the ground grid or in the earth. Another safety consideration involving grounding is that all conductive parts accessible to the test operator during the time that the equipment is operating at high voltage shall be maintained at ground potential, except portions of the equipment that are isolated from the test operator by suitable guarding.

Paragraph (o)(4)(i) would require that grounding practices be established and implemented for particular test facilities and that the basic grounding practice be to treat as energized all ungrounded terminals of test equipment or apparatus under test until reliably determined otherwise. Paragraph (o)(4)(ii) proposes that visible grounds be properly applied before work is performed on the circuit or item or apparatus under test. Paragraph (o)(4)(iii) addresses the hazards resulting from the use of inadequate ground-returns in which a voltage rise in the ground grid or in the earth can result whenever high currents are employed in the testing. Test personnel who may be exposed to such potentials would be required to be protected by establishing an essentially equipotential safe area by employing an isolated ground-return system. Another grounding situation is recognized by paragraph (o)(4)(iv) in which grounding through the power cord of test equipment may be inadequate and actually increase the hazard to test operators. Normally, good practice requires the use of an equipment grounding conductor in the power cord to connect the equipment to a ground connection in the power receptacle. However, in some circumstances, this practice can prevent satisfactory measurements, or current induced in the grounding conductor can cause a hazard to personnel. If these conditions exist, the use of the equipment ground conductor is not mandatory and paragraph (o)(4)(iv) requires that an equivalent safety ground be provided. Paragraph (o)(4)(v) would further require that a ground be placed on the high-voltage terminal and any other exposed terminals when the test area is entered after deenergizing. Finally, in the case of high capacitance equipment or apparatus, before a direct ground could be applied, the initial grounding discharge would be required to be accomplished through a resistor having an adequate energy rating.

Paragraph (o)(4)(vi) recognizes the hazards associated with field testing in which test trailers or vans are used. In these cases, consideration must always be given to the possibility of voltage gradients developing in the earth during impulse, short-circuit, inrush, or oscillatory conditions. Such voltages may appear between the feet of an observer, or between his or her body and a grounded object, and are usually

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referred to as "step" and "touch" potentials. Thus, in addition to requiring the chassis of such vehicles to be grounded, paragraph (o)(4)(iv) provides for a performance-oriented approach by requiring that protection be provided against hazardous touch potentials by bonding, by insulation, or by isolation. The protection provided by each of these methods is described in the following examples:

(1) Protection by bonding can be effected by providing, around the vehicle, an area covered by a metallic mat or mesh of substantial cross-section and low impedance which is bonded to the vehicle at several points and is also bonded to an adequate number of driven ground rods or, where available, to an adequate number of accessible points on the station ground grid. All bonding conductors should be of sufficient electrical size to keep the voltage developed during maximum anticipated current tests at a safe value. The mat should be of a size which precludes simultaneous contact with the vehicle and with the earth or with metallic structures not adequately bonded to the mat.

(2) Protection by insulation can be accomplished, for example, by providing around the vehicle an area of dry wooden planks covered with rubber insulating blankets. The physical extent of the insulated area should be sufficient to prevent simultaneous contact with the vehicle, or the ground lead of the vehicle, and with the earth or with metallic structures in the vicinity.

(3) Protection by isolation can be implemented by providing effective means to exclude personnel from any area where simultaneous contact can be made with the vehicle (or conductive parts electrically connected to the vehicle) and with other conductive materials. A combination of barriers together with effective, preferably interlocked, restraints to prevent the inadvertent exit from the vehicle during the testing may be employed.

Finally, a third category of safe work practices applicable to employees performing testing work, which complements the first two safety work practices of guarding and grounding, involves work practices associated with the installation of control and measurement circuits utilized at test facilities. Practices necessary for protection of personnel and equipment from the hazards of the high-voltage or high-power testing must be observed for every test where special signal-gathering equipment is used, i.e., meters, oscilloscopes, and other special instruments. In addition, special settings of protective relays and the re-examination of backup schemes may be necessary to ensure an adequate level of safety during the tests or to minimize the effects of the testing on other parts of the system under test. As a consequence, paragraphs (o)(5)(i) through (o)(5)(iii) address the principal safe work practices involving control and measuring circuit utilization within the test area. Generally control and measuring circuit wiring should remain within the test area. If this is not possible, however, paragraph (o)(5)(i) covers requirements to minimize hazards should it become necessary to have the test wiring routed outside the test area. Paragraph (o)(5)(ii) covers the avoidance of possible hazards arising from inadvertent contact with energized accessible terminals or parts of meters and other test instruments. Work practices involving the proper routing and connection of the temporary wiring to protect against damage are covered in paragraph (o)(5)(iii). This paragraph would also require the safety work practice of keeping separate, to the maximum extent possible, the various functional wiring used for the test set-up to minimize the coupling of hazardous voltages into the control and measuring circuits. A final work practice requirement for employee safety is covered in paragraph (o)(5)(iv) which would require, if employees are present within the guarded test area during the test, a test observer who can, in cases of emergency, immediately deenergize all control and measuring test circuits for safety purposes.

Since the environment in which field tests are conducted differs in important respects from that of the laboratory tests, extra care must be taken to ensure appropriate levels of safety. Permanent fences and gates for isolating the field test area are not usually provided, nor is there permanent conduit for the instrumentation and control wiring. As a further hazard, there may be other sources of high-voltage electric energy in the vicinity in addition to the source of test voltage.

It is not always possible in the field to prevent ingress of persons into a test area physically, as is accomplished by the fences and interlocked gates of the laboratory environment. Consequently, readily recognizable means are required to actively discourage such ingress.

Before test potential or current is applied to a test area, the test operator in charge would be required to ensure that all necessary barriers are in place.

As a consequence of these safety considerations, proposed paragraph (o)(6)(i) calls for a safety check to be made at temporary or field test areas at the beginning of each group of continuous tests. Paragraph (o)(6)(ii) would require that, as a minimum for the safety check, the person responsible for the testing verify, before the initiation of a continuous period of testing, the status of a general group of safety conditions.

Paragraph (p)

Requirements for mechanical equipment are proposed in § 1910.269(p).

Paragraph (p)(1) proposes general requirements for mechanical equipment used in the generation, transmission, or distribution of electric power. Paragraph (p)(1)(i) would require that the critical safety components of mechanical elevating and rotating equipment be inspected on each shift during which such equipment is used.

Paragraph (p)(1)(ii) would require a reverse signal alarm or a designated employee to signal when it is safe to back up the vehicle for vehicles operated under certain conditions exposing an employee to hazards. This provision is based on existing §§ 1926.601(b)(4) and 1926.602(a)(9)(ii), which apply to construction. Because electric utilities use the same equipment for maintenance work and for construction and because the type of work being performed is similar in both situations, OSHA believes it is appropriate to make the requirements applying to this equipment the same whether maintenance or construction work is being performed. As is the case in the construction standards, the proposed requirement would only apply to off-highway jobsites (not open to public traffic). The Department of Transportation has jurisdiction over the operation of vehicles on public roads. (It should be noted that the provision would apply to highway vehicles used at off-highway jobsites.)

Paragraph (p)(1)(iii) would prohibit the operator of an electric line truck from leaving his or her position at the controls while a load is suspended if doing so might endanger any employee, including the operator.

Paragraph (p)(1)(iv) would require roll-over protective structures for certain types of mechanical equipment. This equipment is frequently used by electric utilities during construction work, and Subpart W of Part 1926 requires it to have such protection. The proposal would extend the protection afforded by the construction standards to operations that do not involve construction work. The roll-over protective structures would be required to conform to Subpart W of Part 1926.

Paragraph (p)(2) proposes requirements for outriggers. Paragraph (p)(2)(i) would require that vehicular equipment which is provided with outriggers be operated with the outriggers extended and firmly set. It would also require that the outriggers not be extended or retracted outside the clear view of the operator unless all employees are outside the range of possible equipment motion.

Paragraph (p)(2)(ii) applies where the work area or terrain precludes the use of outriggers and would limit the operation of the equipment only within the maximum load ratings as specified by the manufacturer for the particular configuration without outriggers.

Paragraph (p)(3) would limit the applied load for lifting equipment to loads within its maximum load rating for the conditions under which it is actually being used.

Even in electric-utility operations, contact with live parts through mechanical equipment causes many fatalities each year. Typical industry practice and existing rules in Subpart V of the Construction Standards require aerial lifts and truck-mounted booms to be kept away from exposed energized lines and equipment distances greater than or equal to those in proposed Table R–6. However, some contact with the energized parts does occur during the hundreds of thousands of operations carried out near overhead power lines each year. If the equipment operator is distracted briefly or if the distances involved or the speed of the equipment towards the line is misjudged, contact with the lines is the expected result, especially when the clearance distances are relatively small. (It should be noted that many accidents of this type occur in general industry even though a 10-foot clearance is required. Increasing the clearance distances would probably not reduce the number of accidents.) Because these types of contacts cannot be totally avoided, OSHA believes that additional requirements are necessary for operating mechanized devices near exposed energized lines. Paragraph (p)(4) of proposed § 1910.269 addresses this problem.

Paragraph (p)(4)(i) would require that the clearance distances in Table R–6 be maintained between the equipment and the live parts while equipment is being operated near exposed energized lines or equipment. This is consistent with current practices. If the clearance cannot be accurately determined by the operator, an extra person would be required, by paragraph (p)(4)(ii), to observe the operation and give warnings when the specified clearance distance is approached. In addition, if it is possible during operation for the equipment to come closer to the live parts than this clearance, one of two alternative protective measures would also have to be taken under proposed paragraph (p)(4)(iii). The first alternative is for the mechanical equipment and any attached load to be treated as live parts. The second alternative is for the equipment to be insulated for the voltage involved. Under this alternative, the mechanical equipment would have to be positioned so that uninsulated portions of the equipment could not come within the specified clearance distance of the line. The proposal would thus protect against contact with the energized parts and would protect employees from electric shock in case contact was made.

In the development of paragraph (p)(4), OSHA considered other methods of protecting employees from accidental contact with exposed energized lines. For example, OSHA considered allowing the mechanical equipment to be grounded as an additional option to the two alternatives proposed in paragraph (p)(4)(iii). However, grounding does not provide sufficient protection for employees, because if contact is made with a line of common distribution voltage, the equipment will still rise to a hazardous voltage with respect to earth only a few feet from the grounding point. OSHA is requesting comments and suggestions on the proposed rule and any additional methods of protecting employees from contact with energized parts through mechanical equipment.

Paragraph (q)

Paragraph (q) of proposed § 1910.269 would apply to work involving overhead lines or equipment. The types of work performed on overhead lines and addressed by this paragraph include the installation and removal of overhead lines, live-line bare-hand work, and work on towers and structures. While performing this type of work, employees are exposed to the common hazards of falls and electric shock.

Paragraph (q)(1)(i) would require the employer to determine that elevated structures such as poles and towers are of adequate strength to withstand the stresses which will be imposed by the work to be performed. For example, if the work involves removing and reinstalling an existing line on a utility pole, the pole will be subjected to the weight of the employee (a vertical force) and to the release and replacement of the force imposed by the overhead line (a vertical and possibly a horizontal force). The additional stress involved may cause the pole to break, particularly if the pole has rotted at its base. If the pole or structure could not withstand the loads to be imposed, it would be required to be reinforced so that failure does not occur. This rule would protect employees from falling to the ground upon failure of the pole or other elevated structure.

When poles are handled near overhead lines, it is necessary to protect the pole from contact with the lines. Paragraph (q)(1)(ii) would require this and would also require employees handling the poles to be insulated from the pole. These requirements protect the employees from hazards caused by falling power lines and by contact of the pole (which could be of wood, metal, or reinforced concrete) with the line. These requirements are in addition to the requirements in paragraph (p)(4) for operations involving mechanical equipment.

To protect employees from falling into holes into which poles are to be placed, paragraph (q)(1)(iii) proposes that the holes be guarded by barriers or attended by employees.

The provisions contained in proposed § 1910.269(q)(2) have been taken, in large part, from existing § 1926.955(c), on stringing and removing lines, and § 1926.955(d), on stringing adjacent to energized lines. However, the proposal has combined these provisions into a single paragraph (q)(2).

Paragraph (q)(2)(i) would require precautions to be taken to prevent the line being installed from contacting existing energized lines. Although specific measures are not listed in the proposal, common practice includes the use of the following techniques: stringing conductors by means of the tension stringing method (which keeps the conductors off the gound and clear of energized circuits) and the use of rope nets and guards (which physically prevent one line from contacting another). These precautions, or equivalent measures, are necessary to protect employees against electric shock and against the effects of equipment damage resulting from accidental contact of the line being installed with energized parts.

Even though the precautions taken under paragraph (q)(2)(i) minimize the possibility of accidental contact, there is still a significant risk that the line being installed could make contact with energized lines. Paragraph (q)(2)(i)(A) would require the line being installed, plus any connected equipment, to be treated as energized if any of several listed accident situations could energize the line being installed. This would ensure that, in the event of contact with other energized lines, these workers would be handling the equipment (which would now be energized as a result) only through insulating devices.

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Paragraph (q)(2)(i)(B) would allow employees working aloft to be protected by grounding the line being installed. Unlike employees on the ground, those working on an elevated structure or in an aerial lift would not be exposed to a hazardous voltage gradient upon energization of the conductor being strung as long as the conductor was grounded at the work location.

Paragraph (q)(2)(ii) of proposed § 1910.269 would require the disabling of the automatic-reclosing feature of the devices protecting any circuit of more than 600 volts which would be passed over by the conductors being installed. If it were not made inoperative, this feature would cause the circuit protective devices to reenergize the circuit after they had tripped, exposing the employees to additional or more severe injury.

Paragraph (q)(2)(iii) proposes rules protecting workers from the hazard of voltage induced on lines being installed near (and usually parallel to) other energized lines. These rules, which provide supplemental provisions on grounding, would be in addition to those elsewhere in the proposal. In general, when there exists a hazard because of induced voltage on overhead lines, the lines being installed must be grounded to minimize the voltage and to protect employees handling the lines from electric shock.

OSHA has not provided guidelines for determining whether or not a hazard exists due to induced voltage. The hazard depends not only on the voltage of the existing line, but also on the length of the line being installed and the distance between the existing line and the new one. OSHA requests comments on what guidelines can be used to determine if an induced voltage presents a hazard to employees.

Paragraph (q)(2)(iv) proposes that reel handling equipment be in safe operating condition and be leveled and aligned. Proper alignment of the stringing machines will help prevent failure of the equipment, conductors, and supporting structures, which could result in injury to workers.

Prevention of the failure of the line pulling equipment and accessories is also the purpose of proposed paragraphs (q)(2) (v), (vi), and (vii). These provisions respectively would require the operation to be performed within the load limits of the equipment, would require the repair or replacement of defective apparatus, and would prohibit the use of conductor grips not specifically designed for use in pulling operations.

When the tension stringing method is used, the pulling rig (which takes up the pulling rope and thereby pulls the conductors into place) is separated from the reel stands and tensioner (which pay out the conductors and apply tension to them) by one or more spans (the distance between the structures supporting the conductors). In an emergency, the pulling equipment operator may have to shut down the operation.

Paragraph (q)(2)(viii) of proposed § 1910.269 would require communication to be maintained between the reel tender and the pulling rig operator, so that in case of emergency at the conductor supply end, the pulling rig operator can shut the equipment down before injury-causing damage occurs. This paragraph would also prohibit the operation of the pulling rig under unsafe conditions.

Paragraph (q)(2)(ix) would prohibit employees from unnecessarily working directly beneath overhead operations or on the cross arm to minimize exposure of employees to injury resulting from the failure of equipment, conductors, or supporting structures during pulling operations.

Under certain conditions, work must be performed on transmission and distribution lines while they remain energized. Sometimes, this work is accomplished using rubber insulating equipment or live-line tools. However, this equipment has voltage and other limitations which make it impossible to insulate the employee performing work on live lines under all conditions. In such cases, usually on medium- and high-voltage transmission lines, the work is performed using the live-line bare-hand technique. If work is to be performed "bare handed," the employee works from an insulated aerial platform and is electrically bonded to the energized line. Since there is essentially no potential difference across the worker's body, he or she is protected from electric shock. Proposed paragraph (q)(3) addresses the live-line bare-hand technique.

Paragraph (q)(3)(i) proposes that employees using or supervising the use of the live-line bare-hand method on energized lines be trained in the use of the technique. Periodic retraining, as necessary, would also be required. Without this training, employees would not be able to perform the highly specialized work safely.

Before work can be started, the voltage of the lines on which work is to be performed must be known. This voltage determines the clearance distances and the types of equipment which can be used. If the voltage is higher than expected, the clearances will be too small and the equipment may not be safe for use. Therefore, paragraph (q)(3)(ii) would require that a determination be made of the voltage of the circuit, of the clearance distances involved, and of the voltage limitations of equipment to be used.

Paragraph (q)(3)(iii) proposes that insulated tools and equipment be designed, tested, and intended for live-line bare-hand work and that they be kept clean and dry. This requirement is important to ensure that equipment does not fail under constant contact with high voltage sources.

Paragraph (q)(3)(iv) would require the automatic-reclosing feature of circuit protective devices to be made inoperative. In case of a fault at the work site, it is important for the circuit to be deenergized as quickly as possible and for it to remain deenergized once the protective devices have opened the circuit. This would prevent any possible injuries from becoming more severe.

Sometimes the weather makes live-line bare-hand work unsafe. For example, lightning strikes on lines being worked can create severe transient voltages, against which the proposed clearance distances may not provide complete protection. Additionally, the wind can reduce the clearance below acceptable values. To provide protection against environmental conditions which can increase the hazards by an unacceptable degree, paragraph (q)(3)(v) would prohibit live-line bare-hand work in the midst of a thunderstorm or under any conditions which reduce the clearance distances below required values. If insulating guards are provided to prevent hazardous approach to other energized parts and to ground, then work may be performed under conditions reducing the clearance distances.

Paragraph (q)(3)(vi) would require the use of a conductive device, usually in the form of a conductive bucket liner, which creates an area of equipotential in which the employee can safely work. The employee would be bonded to this device by means of conductive shoes or leg clips or by another effective method. Additionally, if necessary to protect employees further, electrostatic shielding would be required.

To avoid receiving a shock caused by charging current, the employee must bond the conductive bucket liner (or other conductive device) to the energized conductor before he or she touches the conductor. Typically, a hot stick is used to bring a bonding jumper (already connected to the conductive bucket liner) into contact with the live line. This connection brings the equipotential area surounding the

employee to the same voltage as that of the line. Paragraph (q)(3)(vii) would require the bonding of the conductive device before any employee contacts the energized conductor and would require this connection to be maintained until work is completed.

Paragraph (q)(3)(viii) would require aerial lifts used for live-line bare-hand work to be equipped with upper controls that are within reach of any employee in the bucket and with lower controls which permit override operation at base of the boom. Upper controls are necessary so that employees in the bucket can exactly control the lift's direction and speed of approach to the live line. Control by workers on the ground responding to directions from those in the bucket could lead to contact by an employee in the lift with the energized conductor before the bonding jumper is in place. Controls are needed at ground level so that employees in the lift who might be disabled as a result of an accident or illness could be promptly lowered and assisted.

For this reason, paragraph (q)(3)(ix) proposes that ground level controls not be operated except in case of emergency. OSHA requests comments on whether there are operations involving live-line bare-hand work that require the use of the lower controls in lieu of the ones in the lift.

Paragraph (q)(3)(x) would require aerial lift controls to be checked to ensure that they are in proper working order.

To protect employees on the ground from the electric shock that would be received upon touching the truck supporting the aerial lift, paragraph (q)(3)(xi) would require the truck to be grounded or treated as energized.

Aerial lifts that are used in live-line bare-hand work are exposed to the full line-to-ground voltage of the circuit for the duration of the job. To ensure that the insulating value of the lift being used is high enough to protect employees, paragraph (q)(3)(xii) would require a boom-current test to be made before work is started each day. The test would also be required when a higher voltage is encountered and when conditions change to a degree that warrants retesting the equipment.

Under the proposal, the test would consist of placing the bucket in contact with a source of voltage equal to that being encountered during the job and keeping it there for at least 3 minutes. To provide employees with a level of protection equivalent to that provided by American National Standard for Vehicle-Mounted Elevating and Rotating Aerial Devices (ANSI A92.2–1979), proposed § 1910.269(q)(3)(xii) would permit a leakage current of up to 1 microampere per kilovolt of nominal phase-to-*ground* voltage. In contrast, the corresponding provisions in Subpart V of Part 1926 (§ 1926.955(e)(11)) and in the draft submitted to OSHA by EEI and IBEW allow up to 1 microampere of current for every kilovolt of phase-to-*phase* voltage. (For a three-phase, Y-connected system, the phase-to-phase voltage equals 1.73 times the phase-to-ground voltage.) Because of the inconsistency between the proposal and OSHA's existing standard, the Agency requests comments on the appropriateness of the leakage current level permitted by the proposal.

Paragraph (q)(3)(xii) would require the suspension of related work activity any time (not only during tests) a malfunction of the equipment is evident. This requirement is intended to prevent the failure of insulated aerial devices during use.

Paragraphs (q)(3)(xiii), (q)(3)(xiv), and (q)(3)(xv) of proposed § 1910.269 would require the clearance distances specified in Table R–8 to be maintained from grounded objects and from objects at a potential different from that at which the bucket is energized. Under paragraph (q)(3)(xiii), the clearance distances in Table R–8 would not apply if the objects are protected by insulating guards. The distances listed in this table are basically the same as those in Table V–2 in Subpart V of the Construction Standards. It should be noted that the phase-to-ground clearances are the same as those proposed in Table R–6. Both the phase-to-ground and phase-to-phase clearances are based on equations which provide sufficient distance for arc-over protection plus a constant amount for inadvertent movement.

If work is being performed on the highest three voltages listed, the footnote to Table V–2 allows the clearance distance for a phase-to-phase exposure to be reduced to the smallest distance between the phase to which the employee is bonded and a grounded surface. However, this distance is engineered into the system based on a phase-to-ground voltage; a phase-to-phase voltage should result in a clearance higher by a factor of 1.73, at least, to account for the higher voltage involved. Since the clearances permitted by the footnote to Table V–2 are too small for phase-to-phase exposures, OSHA has proposed to increase the minimum distances under the footnote for phase-to-phase exposures by a factor of 1.73. OSHA invites comments on the appropriateness of the proposed footnote and requests suggestions alternative approaches. (For additional discussion of the distances in the proposed tables and the rationale for proposing them, see the explanation of proposed § 1910.269(l).)

Paragraph (q)(3)(xvi) would prohibit the use of hand lines between the bucket and boom and between the bucket and ground. Such use of lines could set up a potential difference across the employee in the bucket. If a non-conductive line is supported by the energized conductor, as permitted by the proposed paragraph, no potential difference is generated at the bucket. Unless the rope is insulated for the voltage, employees on the ground must treat it as energized.

For similar reasons, paragraph (q)(3)(xvii) would prohibit passing uninsulated equipment or materials to an employee bonded to an energized part.

Paragraph (q)(3)(xviii) would require a durable chart reflecting the clearance distances prescribed by Table R–8 to be mounted so that it would be visible to the operator of the boom. Of course, a table with clearances greater than those required would also be acceptable. Paragraph (q)(3)(xix) would require a non-conductive measuring device to be available to the employee in the lift. Compliance with these proposed provisions will assist the employee in determining the clearances required by the standard.

Paragraph (q)(4) of proposed § 1910.269 addresses the hazards associated with towers and other structures supporting overhead lines.

To protect employees on the ground from the hazards of falling objects, paragraph (q)(4)(i) would prohibit workers from standing under a tower or other structure, unless their presence is necessary to assist employees working above.

Paragraph (q)(4)(ii) relates to operations which involve lifting and positioning tower sections. The first proposed provision would require tag lines or other similar devices to be used to control tower sections being positioned. The use of tag lines protects employees from being struck by tower sections that are in motion.

Paragraph (q)(4)(iii) would require loadlines to remain in place until the load is secured so that it cannot topple and injure an employee.

Some weather conditions can make work from towers and other overhead structures more hazardous than usual. For example, icy conditions may make slips and falls much more likely, in fact even unavoidable. Under such conditions, work from towers and other structures would generally be prohibited

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by proposed § 1910.269(q)(4)(iv). However, when emergency power restoration work is involved, the additional risk may be necessary for public safety, and the proposal would allow such work to be performed even in bad weather.

Paragraph (r)

Paragraph (r) of proposed § 1910.269 addresses safety considerations related to line-clearance tree trimming. As can be seen from the definition in proposed § 1910.269(x), line-clearance tree trimming is the trimming of any tree or brush that is within 10 feet (305 cm) of an electric power line. Since proposed § 1910.269 addresses hazards unique to electric utility operations, general tree trimming is not covered by this proposed paragraph. For example, tree trimming contractors performing work at a residence where there were no overhead power lines within 10 feet of any trees would not be required to follow proposed § 1910.269(r).

The requirements for this paragraph have been taken, in large part, from ANSI Z133.1–1982, *American National Standard Safety Requirements for Pruning, Trimming, Repairing, Maintaining, and Removing Trees, and for Cutting Brush.*

Paragraph (r)(1) covers the electrical hazards associated with line-clearance tree trimming. As proposed, this paragraph would not apply to qualified employees. These employees are highly trained and are adequately protected by other provisions in the proposal, including the requirements for personal protective equipment in paragraph (g) and for working on or near exposed energized parts in paragraph (l). Tree trimming workers, on the other hand, do not have such extensive training, and more stringent requirements dealing with electrical hazards are necessary and appropriate. Proposed paragraph (r)(1) sets forth such requirements.

In addressing these employees (who are not "qualified employees"), the proposal separates them into two groups: Line-clearance tree trimmers and other tree workers. The standard would allow only "line-clearance tree trimmers," as defined in paragraph (x), to perform tree trimming within 10 feet of power lines. Line-clearance tree trimmers have training in the techniques necessary to trim trees safely near overhead power lines. This training instructs these employees in methods of trimming trees so that the cut limbs will not contact the power lines. However, training in the use of electrical protective equipment is usually lacking. (For the purposes of paragraph (r), trainees working under the supervision of a qualified line-clearance tree trimmer are considered to be qualified line-clearance tree trimmers.) Other employees have received little or no instruction in the safe practices necessary for line-clearance tree trimming. The proposal treats these two groups of employees separately, taking their different degrees of training into account.

Paragraph (r)(1)(i) would require an inspection to be made of the tree on which work is to be performed to see if an electric conductor passes within 10 feet of the tree. This inspection will give an indication of whether an electrical hazard exists.

Not all employees possess the requisite knowledge and skills to enable them to work safely very close to energized electric power lines. Employees who are not line-clearance tree trimmers would be required by proposed paragraph (r)(1)(ii) to stay at least 10 feet (305 cm) from energized conductors and equipment. This distance would increase by 4 inches (10 cm) for every 10 kilovolts that the equipment is energized over 50 kilovolts. This rule would protect the worker who is not familiar with the electrical hazards involved from being electrocuted.

Paragraph (r)(1)(iii) would require that employees working on trees within 10 feet (305 cm) of exposed energized overhead conductors or equipment be line-clearance tree trimmers. This requirement would prevent employees who are not completely familiar with the hazards involved or the safety practices to be followed from working where an electrical hazard exists.

Paragraph (r)(1)(iv) lists the conditions under which a second qualified line-clearance tree trimmer would be required to be present. The listed conditions are: If the employee is to come closer than 10 feet (305 cm) to the energized part; if a branch or limb is closer to the live parts than the distances listed in Tables R–6 and R–7; or if roping must be used to remove branches or limbs from live parts. Under these conditions, a line-clearance tree trimmer is placed in a more hazardous environment than is usual, and errors are more likely to lead to an electrical accident. The second employee would be able to assist an employee in trouble or would be able to summon help readily.

In general, line-clearance tree trimmers do not have the experience or training for work on overhead electric power lines. However, they do have the training and skills necessary to be able to perform work safely near these lines. By using special techniques and equipment, these workers trim trees that are close to the overhead lines without bringing their bodies or other conductive objects within the danger zone. Therefore, paragraph (r)(1)(v) proposes the same clearance distances (listed in proposed Tables R–6 and R–7) for line-clearance work as those for regular line work, but the proposal does not permit line-clearance tree trimmers to come closer than the clearances in the tables even when using protective equipment.

Employees could receive an electric shock through the branches of the trees they are trimming if the branch, once it is cut or breaks free, contacts an energized conductor. To prevent electric shock to an employee if this should occur, paragraph (r)(1)(vi) would require branches that are closer to the lines than permitted under Table R–6 or R–7 to be removed by the use of insulating equipment in accordance with the requirements of proposed § 1910.269(j).

Paragraph (r)(1)(vii) would prohibit ladders, platforms, and aerial devices from coming closing to energized lines than the distances listed in Tables R–6 and R–7. This provision is intended to prevent electric shock to line-clearance tree trimmers, who are not familiar with the practices necessary to contact the lines safely.

Paragraph (r)(1)(viii) would prohibit line-clearance tree-trimming operations during storms and under emergency conditions. Line-clearance tree trimmers do not have sufficient training to enable them to work safely under such conditions.

In § 1910.269(r)(2), OSHA is proposing requirements for brush chippers. These proposed requirements would specify that chippers be equipped with a locking ignition system, that access panels be in place during operation, that the inlet feed hopper be of sufficient length to prevent workers from contacting the blades during operation, that trailer chippers be chocked or secured when not attached to a vehicle, and that employees wear proper eye and face protection in the area of operation. (Because no specific exemption is given in proposed paragraph (r)(2), the existing general machine guarding requirements of § 1910.212 would continue to apply to brush chippers.) The proposed requirements are derived from Section 5.3 of ANSI Z133.1–1982 and are intended to prevent injury to employees operating or maintaining brush chippers.

In § 1910.269(r)(3), OSHA is proposing requirements for sprayers and associated equipment. These proposed provisions would require walking and working surfaces to be slip-resistant. If the slippery conditions cannot be

removed, slip-resistant footwear or handrails meeting the requirements of Subpart D of Part 1910 would be required to be used to prevent employees from slipping. In addition, if the spraying operation takes place with the vehicle in motion, the area from which the operator works must be provided with guardrails to protect him or her from falling from the vehicle. These proposed requirements are based on the requirements of Section 5.4 of ANSI Z133.1–1982.

Paragraph (r)(4) proposes requirements for stump cutters. These proposed requirements would specify that cutters be equipped with enclosures or guards to protect employees from the blades and debris, and that employees wear eye and face protection in the immediate area of stump grinding operations. These requirements are essentially the same as those contained in Section 5.5 of ANSI Z133.1–1982.

Paragraph (r)(5) proposes requirements intended to protect employees from the hazards presented by power saws. Proposed paragraph (r)(5) emphasizes that the requirements of § 1910.266(c)(5) apply (dealing with instructions for power saw operations). In addition, § 1910.269(r)(5) proposes requirements for starting saws, saw design relative to chain movement and idling speed, saw operation, refueling, cleaning, and other saw maintenance. These requirements are based on Section 6.2 of ANSI Z133.1–1982 and on requirements contained in the draft standard recommended by EEI and IBEW.

In § 1910.269(r)(6), OSHA is proposing requirements for backpack power units. To protect employees operating or maintaining this equipment and other employees in the area, the proposed requirements specify that no one other than the operator be within 10 feet (305 cm) of the cutting head of the brush saw, that the unit be equipped with a quick shutoff switch, and that power unit engines be stopped for all cleaning, refueling, adjustments, and repairs. These requirements are based on requirements contained in Section 6.3 of ANSI Z133.1–1982.

Paragraph (r)(7) proposes requirements for climbing rope. To protect employees from hazards posed by rope breakage, these requirements propose that ropes have a specified minimum strength (taken from section 7.9 of the ANSI standard), that defective or damaged rope not be used, that rope contact with chemicals be avoided, that climbing rope not be spliced to effect repair, that rope ends be secured to prevent unraveling, and that ropes be stored properly. If there exists a possibility that the rope will be taken closer to exposed energized lines than the clearances specified in Table R–6 or R–7, employees on the ground or in contact with ground must treat the rope as energized and may not contact it unless electrical protective equipment is used.

Paragraph (s)

Proposed § 1910.269(s) addresses communication facilities associated with electric power generation, transmission, and distribution systems. Typical communications installations include those for microwave signaling and power line carriers.

Microwave signaling systems are addressed by proposed paragraph (s)(1). To protect employee's eyes from being injured by microwave radiation, paragraph (s)(1)(i) would prohibit employees from looking into an open waveguide or antenna which is connected to an energized source of microwave radiation.

Existing § 1910.97, which covers non-ionizing radiation, prescribes a warning sign with a special symbol indicating non-ionizing radiation hazards. Paragraph (s)(1)(ii) of proposed § 1910.269 would require areas which contain radiation in excess of the radiation protection guide set forth in § 1910.97 to be posted with the warning sign. Also, the proposal would require the lower half of that sign to be labeled as follows:

> Radiation in this area may exceed hazardous limitations and special precautions are required. Obtain specific instructoin before entering.

The sign would warn employees about the hazards present in the area and would inform them that special instructions would be necessary to enter the area.

In § 1910.97, the radiation protection guide is advisory only. Proposed § 1910.269(s)(1)(iii) would make the guide mandatory for electric utilities by requiring the employer to institute measures that prevent any employee's exposure from being greater than that set forth in the guide. These measures may be of an administrative nature (such as limitations on the duration of exposure) or of an engineering nature (such as a design of the system that limits the emitted radiation to that permitted by the guide) or may involve the use of personal protective equipment.

Power line carrier systems use the power line itself to carry signals between equipment at different points on the line. Because of this, OSHA is proposing, in paragraph (s)(2), that work associated with power line carrier installations be performed according to the requirements for work on energized lines.

Paragraph (t)

In many electric distribution systems, electrical equipment is installed in enclosures, such as manholes and vaults, set beneath the earth. Proposed § 1910.269(t) addresses safety for these underground electrical installations. The requirements proposed in this paragraph are in addition to requirements contained elsewhere in the proposal because paragraph (t) only contains considerations unique to underground facilities. For example, paragraph (e), relating to confined spaces, would also apply to underground operations involving entry into a confined space.

Paragraph (t)(1) would require the use of ladders or other climbing devices for entrance into and exit from manholes and subsurface vaults that are more than 4 feet (122 cm) deep. Because employees can easily be injured in the course of jumping into subsurface enclosures or in climbing on the cables and hangers which have been installed in these enclosures, the proposal would require the use of appropriate devices for employees entering and exiting manholes and vaults. The practice of climbing on equipment such as cables and cable hangers would be specifically prohibited by paragraph (t)(1). OSHA requests public comment on the appropriateness of requiring ladders or other climbing devices for subsurface enclosures more than 4 feet (122 cm) deep, as opposed to requiring them for shallower enclosures or for deeper enclosures.

Paragraph (t)(2) would require equipment used to lower materials and tools into manholes or vaults to be capable of supporting the weight and would require this equipment to be checked for defects before use. Along with head protection requirements contained in Subpart I, this provision would protect employees against falling tools and material. To provide additional protection for employees in the manhole or vault, paragraph (t)(2) would require these employees to be in the clear when hot solder or other hot compounds are lowered into the enclosure, because of the possibility of burns in case of a spill. OSHA requests comments on whether the lowering of other materials poses hazards to employees that are not addressed in the proposal.

Paragraph (t)(3) proposes a requirement for attendants for manholes. During the time work is being

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performed in a manhole which contains electric equipment energized at more than 250 volts, an employee would be required to be available in the immediate vicinity (but not normally in the manhole) to render emergency assistance as may be needed. However, the attendant would be allowed to enter the manhole, for brief periods, to provide other than emergency assistance to those inside. Also, an employee working alone would be permitted to enter a manhold briefly for the purpose of inspection, housekeeping, taking readings, or other similar work, if this work could be performed safely. OSHA requests comments on whether employees should ever be allowed to enter manholes alone and, if so, under what conditions and for what length of time. Direct communications would be required to be maintained among all employees involved in the job, including any attendants, the employees in the manhole, and employees in separate manholes working on the same job.

The provisions proposed in paragraph (t)(3) are necessary so that assistance can be provided in emergencies to employees working in manholes, where the employees work unobserved and where undetected injury is likely to occur. Taken from existing § 1928.956(b)(1), these requirements have been accepted as protecting employees within the manhole without exposing the attendants outside to a greater risk. The existing and proposed standard apply to manholes containing equipment energized at any voltage. However, EEI and IBEW suggested that OSHA required attendants only if the voltage exceeds 250 volts. Although it might seem safe to allow employees to work alone in manholes containing equipment energized at 250 volts or less, employees could be seriously injured at these lower voltages under certain conditions. OSHA requests public comment on whether an attendant is necessary for entry into manholes or vaults containing electric equipment energized at 250 volts or less.

To install cables into the underground ducts, or conduits, which will contain them, employees use a series of short jointed rods or a long flexible rod inserted into the ducts. The insertion of these rods into the ducts is known as "rodding." The rods are used to thread the cable-pulling rope through the conduit. After the rods have been withdrawn and the cable-pulling ropes have been inserted, the cables can then be pulled through by mechanical means.

Paragraph (t)(4) of proposed § 1910.269 would require the duct rods to be inserted in the direction presenting the least hazard to employees. To make sure that the rod does not contact live parts in the far manhole or vault, the proposed rule would also require an employee to be stationed at the remote end of the rodding operation.

If any energized cables are to be moved during underground operations, paragraph (t)(5) would require them to be inspected for possible defects that could lead to a fault. (If a defect is found, the requirements of paragraph (t)(7) would apply.) Then, the cables could be moved only under the supervision of a qualified employee. These provisions would protect employees against possibly defective cables, which could fault upon being moved, leading to serious injury.

To prevent accidents resulting from working on the wrong cable, one that may be energized, paragraph (t)(6) would require the identification of the proper cable when multiple cables are present in a work area. The identification must be made by electrical means, unless the proper cable is obvious because of appearance or location.

Since defective energized cables may fail with an enormous release of energy, precautions must be taken to minimize the possibility of such an occurrence while an employee is working in a manhole. Therefore, paragraph (t)(7) proposes to prohibit employees from working in a manhole which contains an energized cable with a defect that could lead to a fault. Typical abnormalities that could expose employees to injury are listed as: oil or compound leaking from a cable or joint (splice), a broken cable sheath or joint sleeve, hot localized surface temperatures on a cable or joint, or a joint that is swollen so much that its circumference exceeds 3.5 times the standard sleeve diameter. OSHA invites comments on whether there are additional defects which should be listed (though the performance language of the rule includes any obvious major abnormality, regardless of whether it is listed). OSHA also invites data on whether any of the listed defects could not possibly lead to a fault in the cable system.

Under some service load conditions, it may not be acceptable for the electric utility to deenergize the cable with the defect at the same time that another line is deenergized for maintenance work. In such cases, the proposal would allow the defective cable or splice to remain energized as long as the employees in the manhole are protected against the possible effects of a failure. For example, a ballistic blanket wrapped around a defective splice can protect against injury from the effects of a fault in the splice.

Paragraph (t)(8) would require metallic sheath continuity to be maintained while work is performed on underground cables. Bonding across an opening in a cable's sheath protects employees against shock from a difference in potential on either side of the opening.

Paragraph (u)

Paragraph (u) of proposed § 1910.269 addresses work performed in substations. As is the case elsewhere in the proposal, the provisions of this paragraph apply in addition to the requirements contained in other portions of the proposal, such as paragraph (1) on clearances.

Paragraph (u)(1) would require that enough space be provided around electric equipment to allow ready and safe access to and operation and maintenance of the equipment. This rule would prevent employees from contacting exposed live parts as a result of insufficient maneuvering room. A note has been proposed to recognize, as constituting compliance, the provisions of ANSI C2-1987 for the design of workspace for electric equipment. OSHA realizes that older installations may not meet the exact dimensions set forth in the latest version of the national consensus standard. The Agency believes that the language of proposed § 1910.269(u)(1) is sufficiently performance oriented that older installations built to specifications in the standards that were in effect at the time they were constructed would likely meet the requirement for sufficient workspace.

Proposed paragraph (u)(2) would require draw-out-type circuit breakers to be inserted and removed while the breaker is in the open position. Additionally, if the design of the control devices permits, the control circuit for the circuit breaker would have to be rendered inoperative. (Some circuit breaker and control device designs do not incorporate a feature allowing the control device for the breaker to be rendered inoperative.) These provisions are intended to prevent arcing which could injure employees.

Because voltages can be impressed or induced on large metal objects near substation equipment, paragraph (u)(3)(i) would require conductive fences around substations to be grounded. Continuity across openings would also be required in order to eliminate voltage differences between adjacent parts of the fence.

Paragraph (u)(3)(ii) proposes the locking of unattended substations. Although this provision appears to be related to public safety, worker safety could also be affected by undeterred public access to stations. For example, an unauthorized person in a substation could accidentally energize circuits which have been deenergized for work to be performed.

Paragraph (u)(4) addresses the guarding of energized parts. Rooms and spaces containing electric supply conductors or equipment would be required to be enclosed within fences, screens, partitions, or walls to prevent unqualified persons from entering. The entrances to such rooms and spaces would be required to be locked or attended, and warning signs would have to be posted. These provisions, which are proposed in paragraph (u)(4)(i), are intended to prevent unqualified persons from gaining access to high voltage equipment and from contacting exposed live parts.

Paragraph (u)(4)(ii) would require live parts operating at more than 150 volts to be guarded, by physical guards or by location, or insulated. This provision would protect qualified employees from accidentally contacting energized parts. Guidance for clearance distances appropriate for guarding by location can be found in ANSI C2. Installations meeting the ANSI provisions comply with paragraph (u)(4)(ii). Paragraphs (u)(4) (i) and (ii) are based on Sections 110A and 124A.1, respectively, of ANSI C2-1987.

Paragraph (u)(4)(iii) would require the guarding of live parts within a compartment to be maintained during operation and maintenance functions. This guarding is intended to prevent accidental contact with energized parts and to prevent objects from being dropped on energized parts. However, since access must be gained to energized equipment by qualified employees, an exception to this proposed requirement would allow the removal of guards for this purpose. In such cases, paragraph (u)(4)(iv) would protect other employees nearby by requiring the installation of protective barriers around the work area.

So that employees can receive pertinent information on conditions that affect safety at the substation, paragraph (u)(5)(i) would require employees who do not regularly work at the station to report their presence, usually to the employee in charge. Typical conditions affecting safety in substations include the location of energized equipment in the area and the limits of any deenergized work area. Paragraph (u)(5)(ii) proposes that this specific information be communicated to employees during the job briefing required by proposed §1910.269(c).

Paragraph (v)

Paragraph (v) of proposed § 1910.269 contains requirements pertaining to electric power generating plants and to work practices used in these plants. As is the case elsewhere in the proposal, the provisions of paragraph (v) would apply in addition to the other requirements of the standard.

Paragraph (v)(1)(i) would require the employer to maintain interlocks and other safety devices (such as relief valves) in a safe and operable condition. This requirement would ensure that these devices perform their intended function of protecting workers when called upon to do so. To ensure further that these devices remain operable, paragraph (v)(1)(ii) would prohibit them from being modified to defeat their function, except as necessary for the test, repair, or adjustment of the device.

Sometimes the brushes on a generator or exciter must be replaced while the machine is in operation. This work is unusually hazardous, and extreme caution must be observed by employees performing the job. To protect these workers, paragraph (v)(2) proposes extra requirements for replacing brushes while the generator is in service. Since filed windings and exciters are operated in an underground condition, there is no voltage with respect to ground on the brushes as long as there is no ground fault in the circuit. So that no voltage to ground is present while employees are changing the brushes, paragraph (v)(2)(ii) would require the exciter-field circuit to be checked to ensure that a ground condition does not exist. Additionally, any ground detection devices must be disconnected and tagged.

Paragraph (v)(3) would require that enough space be provided around electric equipment to allow ready and safe access to, and operation and maintenance of, the equipment. this rule would prevent employees from contacting exposed live parts as a result of insufficient maneuvering room. A note has been proposed to recognize, as constituting compliance, the provisions of ANSI C2-1987 for the design of workspace for electric equipment. OSHA realizes that older installations may not meet the exact dimensions set forth in the latest version of the national consensus standard. The Agency believes that the language of proposed § 1910.269(v)(3) is sufficiently performance oriented that older installations built to specifications in the standards that were in effect at the time they were constructed would likely meet the requirement for sufficient workspace.

Paragraph (v)(4) addresses the guarding of energized parts. Rooms and spaces containing electric supply conductors or equipment would be required to be enclosed within fences, screens, partitions, or walls to prevent unqualified persons from entering. The entrances to such rooms and spaces would be required to be locked or attended, and warning signs would have to be posted. These provisions, which are proposed in paragraph (v)(4)(i), are intended to prevent unqualified persons from gaining access to high voltage equipment and from contacting exposed live parts.

Paragraph (v)(4)(ii) would require live parts operating at more 150 volts to be guarded, by physical guards or by location, or insulated. This provision would protect qualified employees from accidentally contacting energized parts. Guidance for clearance distances appropriate for guarding by location can be found in ANSI C2. Installations meeting the ANSI provisions comply with paragraph (v)(4)(ii). Paragraphs (v)(4) (i) and (ii) are based on Sections 110A and 124A.1, respectively, of ANSI C2-1987.

Paragraph (v)(4)(iii) would require the guarding of live parts within a compartment to be maintained during operation and maintenance functions. This guarding is intended to prevent accidental contact with energized parts and to prevent objects from being dropped on energized parts. However, since access must be gained to energized equipment by qualified employees, an exception to this proposed requirement would allow the removal of guards for this purpose. In such cases, paragraph (v)(4)(iv) would protect other employees nearby by requiring the installation of protective barriers around the work area.

Paragraph (v)(5) of proposed § 1910.269 addresses the breaking of pressure connections. If hazardous pressures or temperatures may be present on a line, paragraph (v)(5)(i) would require that the line be isolated, drained, and locked out or tagged in accordance with proposed § 1910.269(d) before a valve bonnet or suffing box gland is moved or removed and before a flanged joint or other pressure connection is broken.

Paragraph (v)(5)(ii) would require that the bolts, nuts, or other fasteners then be loosened. However, before they are removed, special care must be exercised to ensure that the connection is not under pressure. For example, once the

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fasteners are loosened, the cover should carefully be tapped loose to allow any residual pressure to be relieved.

Boilers are an essential part of steam-driven electric generating plants. Water is heated and converted to steam, which in turn drives the steam turbine generating equipment. Boilers, whether of the watertube or firetube type, contain spaces that must be entered periodically for maintenance.

To ensure that work can be safely initiated, paragraph (v)(6)(i) would require an inspection to be undertaken by a designated person. To protect employees who may have to reenter the work area from hazards arising from incomplete work or other problems which may have occurred during the course of work, this paragraph would require a similar inspection to be performed after work is completed. As a further precaution, this paragraph proposes a requirement for eye protection during cleaning operations.

Proposed paragraph (v)(6)(ii) would require that provision be made to adequately shield employees working near the end of water or steam tubes during cleaning operations.

In § 1910.269(v)(7), OSHA is proposing requirements for chemical cleaning of boilers and pressure vessels. These proposed requirements specify that areas be cordoned off to restrict access during cleaning and that the number of workers in the area be limited to those needed to do the operation. Because of the flammability of chemicals used in cleaning and the possibility of flammable gases in the boiler or pressure vessel, the proposal would prohibit smoking, welding, and other ignition sources during cleaning operations. In addition, requirements are proposed for the use of protective clothing, goggles, boots, and gloves and for the availability of clean water or emergency showers in the general area of work. These proposed provisions recognize the hazards of chemical cleaning and are intended to minimize risks to employees during these operations.

In § 1910.269(v)(8), OSHA is proposing requirements for chlorine system safety. (These requirements would, of course, be in addition to other provisions in Part 1910 addressing the hazards of exposure to chlorine, such as those in Subparts I and Z.) OSHA proposes that gaseous chlorine system enclosures be posted with signs restricting entry and warning of the hazards. Entry into the restricted area would be permitted only for designated employees equipped with personal protective equipment and would be limited to the number required to perform the task. In addition, OSHA proposes that emergency repair kits for repair of chlorine leaks be available and that chlorine tanks, pipes, and equipment be purged and isolated from other sources of chlorine before employee operations begin. Lastly, OSHA proposes that the employer take precautions to prevent accidental mixing of chlorine with reactive materials which could produce a hazardous situation.

Paragraph (v)(9) of proposed § 1910.269 proposes requirements for boiler repair work. These proposed requirements specify that boiler furnaces and ash hoppers be inspected for possible falling objects, such as failed liners, before repair work is begun. If this hazard exists, overhead protection would be required to be provided. Additionally, OSHA proposes that employees stand clear of the opening of an operating boiler when opening the door to prevent injury which may be caused by hot gases escaping from the open door.

In § 1910.269(v)(10), OSHA is proposing requirements for turbine-generator systems. Turbine generators are typically cooled by air or hydrogen circulated by fans mounted on the generator rotor. The requirements proposed in paragraph (v)(10) address the fire and explosion hazards of hydrogen in turbine generators and are based on requirements in the draft standard recommended by EEI and IBEW. These proposed requirements would prohibit smoking or other ignition sources near hydrogen or hydrogen sealing systems and require the posting of signs warning of the explosion hazard. In addition, conditions of excessive hydrogen makeup or abnormal pressure loss would be considered to be an emergency situation requiring correction, and a quantity of inert gas suitable for purging hydrogen from generators would be required to be available.

In paragraph (v)(11), OSHA is proposing requirements for the handling of coal and ash, including the use of railroad equipment and conveyors. Paragraph (v)(11)(i) would permit only designated persons to operate railroad equipment. Designated persons are persons who are qualified to perform a given task (in this instance, operate railroad equipment) and who are assigned by the employer to perform this task.

Restricting the running of railroad equipment to persons who are knowledgeable of the way to operate the equipment and of the accepted rules, such as right-of-way and signalling, will prevent accidents by assuring that the equipment operator is competent.

In paragraph (v)(11)(ii), a warning is required to be given before a locomotive or locomotive crane is moved. This warning will allow employees the opportunity to stand clear of the train and track before the equipment moves.

The proposal would require, in paragraphs (v)(11)(iii) and (iv), that drawheads not be aligned by employees kicking the drawheads (to prevent injury to or loss of the employees' feet) and that drawheads and knuckles not be shifted while railroad equipment is in motion (to prevent runaway rail cars). (A drawhead is the body of the automatic coupler, and the knuckle is the movable arm which connects with the drawhead to form the coupling on cars and locomotives.)

Paragraph (v)(11)(v) proposes that railroad cars, when stopped for unloading, be blocked to prevent the cars from moving.

In paragraph (v)(11)(vi), the standard would require an emergency means to enable employees to stop railcar dumping during this operation. In the event an incident occurs, this safeguard will allow interruption of the dumping operation to preclude or minimize injury to employees.

Paragraph (v)(11)(vii) proposes that employees be trained and knowledgeable if they work in areas where coal- and ash-handling conveyors operate. For example, their training and knowledge should be thorough in the subjects of the operation of the conveyor system, the hazards associated with conveyors, how to minimize these hazards, and in the requirements of this standard that pertain to conveyor operation.

The standard would require, in paragraph (v)(11)(viii), that employees be prohibited from riding on coal- or ash-handling conveyors. Belt conveyors are not designed to carry persons and riding the conveying medium can be very hazardous. This paragraph would further require that employees only be allowed to cross over a belt conveyor at walkways, unless the conveyor is locked out or tagged in accordance with proposed § 1910.269(d).

Paragraph (v)(11)(ix) addresses the hazard of unexpected startup of conveyors. If a conveyor could cause injury when it is started, the proposal would require that personnel in the area be alerted by a signal or by a designated employee that the conveyor is about to start. For automatically and remotely controlled conveyors, an audible warning device that could be heard at all points along the conveyor where personnel could be present would be required. However, a visual warning would be permitted if it would be more effective in alerting employees.

Exceptions to the requirement for warning devices would be given if the system function would be seriously hindered by the required time delay or if the intent of the warning could be misinterpreted (as when many different conveyors and allied devices are used). In such cases, warning signs would be required to be provided at locations along the conveyor where it is not guarded by position or location. These exceptions protect employees at conveyor installations that cannot have warning devices installed for design reasons. OSHA requests information on safer alternatives to warning signs.

The provisions of paragraph (v)(11)(ix) are intended to protect employees from getting caught in and injured by a conveyor that is started unexpectedly. This paragraph is based on provisions in Safety Standards for Conveyors and Related Equipment, ASME/ANSI B20.1–1967.

Paragraph (v)(11)(x) addresses hazards associated with emergency situations involving automatically and remotely controlled conveyors. These conveyors would be required to have emergency stop devices so that the equipment could be deenergized in case an employee becomes endangered by its operation. However, if the design, function, and operation of a conveyor is not hazardous to personnel, an emergency stop would not be required.

The emergency stop devices would have to be easily identifiable and would have to be placed anywhere the conveyor is not guarded. They would also be required to act directly on the control of the conveyor (not dependent on the stopping of other intermediate equipment) and to be installed so that they cannot be overridden.

The requirements proposed in paragraph (v)(11)(x) are also based on ASME/ANSI B20.1–1967.

In § 1910.269(v)(11)(xi), OSHA is proposing that, where a combustible atmosphere may be produced in coal-handling operations, sources of ignition be eliminated or controlled to prevent ignition of combustible gases. This requirement is proposed to mitigate the hazard of fire and explosion in coal-handling operations and would indicate that a combustible atmosphere may occur in these operations. An area in which this may occur must be considered a Class II location as far as ignition sources are concerned. (See Subpart S of Part 1910 for requirements pertaining to the control of electrical ignition sources in Class II locations, which are locations that are hazardous because of the presence of combustible dust, such as coal dust.)

In paragraphs (v)(11)(xii) and (xiii), OSHA is proposing that employees not be allowed to work on or beneath overhanging coal, and that employees entering a bunker or silo wear a safety harness with lifeline attached to a fixed support outside the bunker attended at all times by a standby employee. Based on requirements contained in the draft standard recommended by EEI and IBEW, these requirements address the hazards of being struck or crushed by falling coal and of suffocating by being buried in coal.

Paragraph (v)(12) proposes requirements for walking and working surfaces. Proposed paragraph (v)(12)(i) emphasizes that the requirements of Subpart D of Part 1910 would continue to apply. However, paragraph (v)(12)(ii) would provide an exception to the Subpart D requirements whereby a floor hole, through which passes machinery, piping, or other equipment that may expand or contract in the hole, is permitted to be guarded by a toeboard if the opening around the machinery or pipe is 12 inches (30.5 cm) or less. This provision recognizes the need to provide for expansion and contraction of equipment, and OSHA believes that a toeboard will normally prevent an employee's foot from entering the opening as well as prevent tools from falling through the hole. However, OSHA recognizes that this condition is not unique to electric utility workplaces, and comments are requested on whether this exception to an existing general industry requirement is warranted and whether it will provide adequate protection.

Paragraph (v)(13) proposes that employees working near gates, valves, intakes, or flumes of a hydroplant would be required to be warned before changes are made in water flow rates, if such a change would pose a hazard to employees.

Paragraph (w)

Paragraph (w) proposes requirements for special conditions that are encountered during electric power generation, transmission, and distribution work.

Since capacitors store electric charge and can release electrical energy even when disconnected from their sources of supply, some additional precautions to those proposed in paragraphs (m) (deenergizing lines and equipment) and (n) (grounding) of § 1910.269 may be necessary when work is performed on capacitors or on lines which are connected to capacitors. Paragraph (w)(1) proposes precautions which will enable this equipment to be considered as deenergized. Under paragraph (w)(1)(i), capacitors on which work is to be performed would have to be disconnected from their sources of supply and short-circuited. This would not only remove the sources of electric current but would relieve the capacitors of their charge as well. However, for work on individual capacitors in a series-parallel capacitor bank, each unit would have to be short-circuited between its terminals and the capacitor tank or rack, with the rack grounded; otherwise, individual capacitors could retain a charge. This consideration is proposed in paragraph (w)(1)(ii). Lastly, paragraph (w)(1)(iii) would require lines to which capacitors are connected to be short-circuited before the lines can be considered deenergized.

Although the magnetic flux density in the core of a current transformer is usually very low, resulting in a low secondary voltage, it will rise to saturation if the secondary circuit is opened while the transformer primary is energized. If this occurs, the magnetic flux will induce a voltage in the secondary winding high enough to be hazardous to the insulation in the secondary circuit and to personnel. Because of this hazard to workers, paragraph (w)(2) would prohibit the opening of the secondary circuit of a current transformer while the primary is energized. If the primary cannot be deenergized for work to be performed on the secondary, then the secondary circuit would have to be bridged so that an open-circuit condition would not result.

In a series streetlighting circuit, the lamps are connected in series, and the same current flows in each lamp. This current is supplied by a constant-current transformer, which provides a constant current at a variable voltage from a source of constant voltage and variable current. Like the current transformer, the constant current source attempts to supply current even when the secondary circuit is open. The resultant open-circuit voltage can be very high and hazardous to employees. For this reason, paragraph (w)(3) proposes a requirement, similar to that in paragraph (w)(2), that either the streetlighting transformer be deenergized or the circuit be bridged to avoid an open-circuit condition.

Frequently, electric power generation, transmission, and distribution employees must work at night or in enclosed places, such as manholes, that are not illuminated by the sun. Since inadvertent contact with live parts can be fatal, good lighting is important to the

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safety of these workers. Therefore, paragraph (w)(4) proposes that sufficient illumination be provided so that work can be performed safely. Specific guidance is not provided in the proposal, but OSHA requests comments and supporting data with respect to levels of illumination that are necessary for safety.

To protect employees working in areas that expose them to the hazards of drowning, paragraph (w)(5) would require the provision and use of personal flotation devices. Additionally, to ensure that these devices will provide the necessary protection upon demand, they would have to be approved by the U.S. Coast Guard, be maintained in safe condition, and be regularly inspected for defects that render them unsuitable for use. Employees would not be permitted to cross streams unless a safe means of passage is provided.

Employees working in areas exposed to pedestrain or vehicular traffic are exposed to additional hazards compared to those working on the employer's premises, where public access is restricted. One serious additional hazard faced by workers exposed to the public is that of being struck by a vehicle (or even by a person). To protect employees against being injured as a result of traffic mishaps, paragraph (w)(6) would require the placement of warning signs or flags or other warning devices to channel approaching traffic away from the work area if the conditions in the area pose a hazard to employees. If warning signs are not sufficient protection or if employees are working in an area in which there are excavations, barricades would have to be erected. Additionally, warning lights would be required for night work.

Paragraph (w)(7) would caution employees about the hazards of voltage backfeed due to sources of cogeneration or due to the configuration of the circuit involved. Under conditions of voltage backfeed, the lines upon which work is to be performed remain energized after the main source of power has been disconnected. As noted by this section, the lines would have to be worked as energized, under the provisions of paragraph (1) of proposed § 1910.269, or could be worked as deenergized, following paragraphs (m) and (n) of proposed § 1910.269. The referenced paragraphs contain the appropriate precautions to be taken in case of voltage backfeed.

Sometimes electric power generation, transmission, and distribution work involves the use of lasers. Appropriate requirements for the installation, operation, and adjustment of lasers are contained in existing § 1926.54 of the Construction Standards.

Rather than develop different requirements for electric power generation, transmission, and distribution work, OSHA has proposed to adopt the construction regulation by reference in paragraph (w)(8) of § 1910.269.

To ensure that hydraulic equipment retains its insulating value, paragraph (w)(9) would require the hydraulic fluid used in insulated sections of such equipment to be of the insulating type.

Paragraph (x)

Proposed § 1910.269(x) contains definitions of terms used in the proposal. Since these definitions have been taken, in large part, from consensus standards and existing OSHA regulations and since the definitions included are generally self-explanatory, OSHA expects these terms to be well understood, and no explanation is given here. However, in the discussion of the proposed provision in which the term first appears, the Agency has provided an explanation of any term whose meaning may not be readily apparent. OSHA requests public comment on these definitions and welcomes any suggestions offered by the public.

IV. Summary of the Preliminary Regulatory Impact and Regulatory Flexibility and Environmental Impact Assessment

Introduction

Executive Order 12291 (46 FR 13197, February 19, 1981) requires that a regulatory impact analysis be conducted for any rule having major economic consequences for the national economy, individual industries, geographical regions, or levels of government. In addition, the Regulatory Flexibility Act of 1980 (Pub. L. 96-353, 94 Stat. 1164 [5 U.S.C. 601, *et seq.*]) requires OSHA to determine whether a proposed regulation will have a significant economic impact on a substantial number of small entities, and the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321, *et seq.*) requires the agency to assess the environmental consequences of regulatory actions.

In order to comply with these requirements OSHA has prepared a Preliminary Regulatory Impact and Regulatory Flexibility Assessment (PRIA) for the proposed electric power generation, transmission, and distribution standard. This assessment includes a profile of the industries that would be affected, the estimated number of employees who would be affected and the technological feasibility, costs, benefits, and overall economic impact of the proposed standard. The PRIA is available in the OSHA Docket Office.

Since the proposed standard is not likely: (1) To have an annual effect on the economy of $100 million; (2) to result in a major increase in costs or prices for consumers, industries, government agencies, or geographic regions; or (3) to have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises, the proposal does not constitute a major rule under the cost criteria of Executive Order 12291.

Data Sources

The primary source of information used for this assessment is a June 1988 report by the Eastern Research Group (ERG) entitled, "Preparation of an Economic Impact Study for the Proposed OSHA Regulation Covering Electric Power Generation, Transmission, and Distribution." (This document is also available in the Docket Office.) OSHA welcomes additional comments, and all information supplied will be carefully reviewed and evaluated for incorporation into the Regulatory Impact Assessment (RIA) that will accompany the final rule.

Industry Profile

The three distinct phases in supplying electricity to an electric utility's customers are: (1) Generation; (2) transmission, and (3) distribution. Electric power generation is the use of generating plants to convert the energy from fossil fuel, water, nuclear fuel, geothermal sources, the sun, etc. to electricity. Electric power transmission carries the huge quantities of generated elecricity to the systems that deliver the electricity. Electric power distribution carries the electricity to its industrial, commercial, and residential users.

The proposed standard would primarily affect electric utilities, electrical contractor line crews, and line-clearance tree-trimming contractors. There are approximately 3,200 companies and organizations that comprise the electric utility industry. Of these, 273 are privately owned, 958 are rural cooperatives, and about 2,000 are publicly owned. Private utilities are the largest entities within the electric utilities as evidenced by the fact that the largest 163 private utilities generate about 75 percent of the electricity in the United States. Of these 163 electric utilities, 145 are vertically integrated (i.e., they own generating plants, transmission systems, and distribution networks), 26 have only generation plants, 3 have only transmission systems, and 9 have transmission systems and distribution networks. Electric utilities are found in two SIC codes. SIC 911 (Electric Services: "Establishments engaged in the generation, transmission, and/or distribution of electric energy for sale") and SIC 4931 (Electric and Other Services Combined: "Establishments primarily engaged in providing electric services in combination with other services, with electric services as the major part though less than 95 percent of the total").

The market structure in which electric utilities function is best described as a regulated monopoly. There are substantial economies of scale in electric power operations within a given geographical area so that the most technologically efficient system is to have one or a few electric power suppliers. The rates that electric utilities can charge, however, are subject to approval by state or local government agencies. In general, these agencies allow a utility to recoup its expenditures plus a percentage of its capital assets. Included within these expenditures are those spent upon the safety and health of the employees.

OSHA estimates that the revenue from the electric power operations of all electric utilities was about $170 billion in 1985. Of this revenue, the 183 largest private electric utilities received about $135 billion and had an average revenue of about $738 million from electric power operations.

Electrical contractor line crews are used by electric utilities to perform operation, maintenance, and construction activities. Most of the approximately 1,800 contractors who do this work for electric utilities are medium-sized electrical contractors who also work on other projects for other clients.

Line-clearance tree-trimming contractors are used by electric utilities to perform routine tree-trimming around power lines. There are 55 larger and medium size landscaping companies that have about 95 percent of this business and between 1,500 and 2,000 small companies that perform the rest of this work.

OSHA has no information concerning the revenues received by these two types of contractors from work performed for electric utilities. OSHA requests information concerning these revenues, and any information received will be reviewed for incorporation into the RIA that will accompany the final rule.

Population-at-Risk

The data currently available to OSHA indicate that the proposed standard would affect 657,775 employees. Of these, 608,575 are employed by electric utilities, about 13,200 are employed by electrical contractors, and about 36,000 are employed by line-clearance tree-trimming contractors. Of the 608,575 electric utility employees who perform electrical power operations, 136,399 are operation and maintenance personnel who face the most risk from hazards that are the primary focus of this proposed standard. (A total of 284,210 employees would face some risk from these hazards.)

Technological Feasibility

OSHA has determined that the proposed standard is technologically feasible. The proposal would not require the installation of large-scale, state-of-the-art capital equipment. All of the provisions of the proposal involve equipment, evaluations, and work practices that are widely used and readily available. In this regard, it should be noted that the proposal is based substantially upon three source documents: A draft proposal jointly submitted by the Edison Electric Institute and the International Brotherhood of Electrical Workers; a national consensus standard, the National Electrical Safety Code (ANSI C-2); and the requirements of Subpart V of OSHA's current construction standards in 29 CFR Part 1926.

Summary of Cost

OSHA has used current work practices as its baseline for estimating the cost of attaining full compliance with the proposed standard, and these estimates are summarized in Table A. As seen in the table, OSHA has estimated that the annual cost of full compliance with the proposed standard would be about $20.723 million of which $16.341 million would be spent by electric utilities, $1.606 million would be spent by contractor line crews, and $2.774 million would be spent by line-clearance tree-trimming contractors. As shown in Table A, the provision having the highest annual cost (i.e., $5.805 million) is the requirement for initial and refresher safety training. The next highest annual cost (i.e., $3.380 million) is for inspecting mechanical elevating equipment, such as bucket and boom trucks working in enclosed and entry-permit confined spaces.

Benefits

The proper use of safety equipment and appropriate work practices will prevent fatalities in electric utilities. About 70-percent of the fatalities occurring in electric utilities are a consequence of employee contact with electric wiring or an electrical apparatus. This is particularly hazardous because the electricity is transmitted at thousands and hundreds of thousands of volts.

OSHA has estimated that there are between 68 and 75 fatalities occurring annually among electric utility and electric utility contractor employees. In addition, there are an estimated 43,725 annual injuries, of which 21,175 are lost-workday injuries and 22,560 are non-lost-workday injuries. The number of annual lost workdays is about 367,255.

TABLE A.—COST OF COMPLIANCE WITH THE PROPOSED STANDARD BY INDUSTRY AND BY PROVISION

[In millions of 1986 dollars]

Industry (provision)	Cost [1]
Electric utilities:	
Refresher safety training	4.307
Safety enforcement	3.380
CPR and first aid training	.119
Enclosed spaces	2.486
Lockout/tagout procedures	.007
Mechanical elevating equipment inspection	2.539
Working on overhead lines	1.271
Insulating blanket retesting	.485
Line clearance procedures	1.067
High-voltage testing safety procedures	.009
Isolation and depressurization of connections	.639
Subtotal	16.341
Contract linemen:	
Refresher safety training	.831
CPR and first aid training	.230
Mechanical elevating equipment inspection	.368
Working on overhead lines	.179
Subtotal	1.606
Line-clearance tree-trimming contractors:	
Initial safety training	.467
CPR and first aid training	2.307
Subtotal	2.774
Total	20.723

[1] Annual cost of compliance.

The proposed standard would not cover electrical utilization hazards currently covered by existing Part 1910 but would address those work practices involving the generation, transmission, and distribution of electricity. In particular, the proposed standard is designed to reduce the hazards that cause fatalities and serious lost-workday injuries. The hazards that are

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directly covered by the proposed standard are electrocution and injuries due to electric shock. In addition, the proposed standard would directly affect fatalities and injuries associated with four other types of accidents: (1) Struck by or struck against; (2) fall; (3) caught in or between; and (4) contact with temperature extremes. OSHA has determined that in electric utilities 95-percent of all fatalities, 56.2-percent of all injuries, 48.2-percent of the lost-workday injuries, and 59.6-percent of the non-lost-workday injuries are due to electric shock or to one of these 4 types of accidents. After adjusting for the injuries that are caused by hazards that are not addressed by the proposed standard or that are already addressed by the existing General Industry Standards, OSHA has determined that the proposed standard could address the hazards that annually cause 30 to 34 fatalities and 3,260 injuries (of which 1,290 are lost-workday injuries, involving 22,345 annual lost workdays, and 1,970 are non-lost-workday injuries) incurred by electric utility and electric utility contractor employees.

OSHA has determined that of these fatalities and injuries, about 80-percent of the electrocutions, 60-percent of the other fatalities, and two thirds of the injuries would be prevented by compliance with the proposed standard. Thus, OSHA has estimated that compliance with this proposed standard would annually prevent between 24 and 28 fatalities and 2,175 injuries of which 860 are lost-workday injuries, involving 14,920 prevented lost workdays, and 1,315 are non-lost-workday injuries.

Economic Impact

The proposed standard would have an economic impact upon electric utilities; however, the $16.341 million annual cost of compliance is about 0.1-percent of the estimated $18.764 billion in annual net income after taxes. In addition, the expenditures upon employee safety would be considered to be a cost of electric power production that public utility rate commissions would allow electric utilities to capture through minimum rate increases. OSHA believes that the proposed standard would have no significant economic impact upon the electrical contract line crews and line-clearance tree-trimming contractors. Their increased costs would be passed onto the electric utility which, in turn, would pass these costs onto its customers. OSHA requests information concerning this conclusion, and any comments received will be reviewed and evaluated for incorporation into the final rule and into the RIA that will accompany the final rule.

Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act of 1980 (5 U.S.C. 601), the Assistant Secretary has preliminarily determined that the proposed standard would not have a significant impact upon a substantial number of small entities. OSHA solicits comments and information on this issue, and any comments received will be reviewed and evaluated for incorporation into the RIA of the final rule.

Environmental Impact Assessment—Finding of No Significant Impact

The proposed standard and its alternatives have been reviewed in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321, *et seq.*), the regulations of the Council on Environmental Quality (CEQ) (40 CFR Part 1500), and the Department of Labor's NEPA Procedures (29 CFR Part 11). As a result of this review, the Assistant Secretary for OSHA has determined that the proposed standard will have no significant environmental impact. The procedures and applications of the proposed provisions do not impact on air, water or soil quality, plant or animal life, the use of land, or other aspects of the environment and therefore are not anticipated to have any significant effect on the environment.

V. Federalism

This proposed standard has been reviewed in accordance with Executive Order 12612 (52 FR 41685, October 30, 1987), regarding Federalism. This Order requires that agencies, to the extent possible, refrain from limiting State policy options, consult with States before taking any actions that would restrict State policy options, and take such actions only when there is clear constitutional authority and the presence of a problem of national scope. The Order provides for preemption of State law only if there is a clear Congressional intent for the agency to do so. Any such preemption is to be limited to the extent possible.

Section 18 of the Occupational Safety and Health Act (OSH Act) expresses Congress' clear intent to preempt State laws relating to issues with respect to which Federal OSHA has promulgated occupational safety or health standards. Under the OSH Act a State can avoid preemption only if it submits, and obtains Federal approval of, a plan for the development of such standards and their enforcement. Occupational safety and health standards developed by such Plan-States must, among other things, be at least as effective in providing safe and healthful employment and places of employment as the Federal standards.

The Federally proposed electric power generation, transmission, and distribution standard is drafted so that employers in every State would be protected by general, performance-oriented standards. To the extent that there are State or regional peculiarities caused by the terrain, the climate, or other factors, States with occupational safety and health plans approved under Section 18 of the OSH Act would be able to develop their own State standards to deal with any special problems. Morevover, the performance nature of this proposed standard, of and by itself, allows for flexibility by all States and employers to provide as much safety as possible using varying methods consonant with conditions in each State.

In short, there is a clear national problem related to occupational safety in electric transmission and distribution work. While the individual States, if all acted, might be able collectively to deal with the safety problems involved, most have not elected to do so in the seventeen years since the enactment of the OSH Act. States which have elected to participate under Section 18 of the OSH Act would not be preempted by this proposed regulation and would be able to deal with special, local conditions within the framework provided by this performance-oriented standard while ensuring that their standards are at least as effective as the Federal standard. State comments are invited on this proposal and will be fully considered before a final rule is promulgated.

VI. OMB Review Under the Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (454 U.S.C. 3501, *et seq.*) and the regulations issued pursuant thereto (5 CFR Part 1320), OSH certifies that it has submitted the information collection requirements contained in paragraphs (d)(2)(ii) and (d)(2)(iii) of this proposed standard to the Office of Management and Budget (OMB) for review under section 3504(h) of that Act.

Public reporting burden for this collection of information is estimated to be 80 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Docket Office at the address listed in the Public Participation section of this preamble and to the Office of Information and Regulatory Affairs; Office of Management and Budget, Washington, DC 20503.

VII. Public Participation

Interested persons are invited to submit written comments with respect to this proposal and all issues involved therein. The data, views, and arguments must be postmarked on or before May 1, 1989 and submitted in quadruplicate to the Docket Officer; Docket No. S-015, Rm. N3670; U.S. Department of Labor, Occupational Safety and Health Administration; 200 Constitution Ave., NW.; Washington, DC 20210. Written submissions must clearly identify the provisions of the proposal which are addressed and the position taken with respect to each issue.

The data, views, and arguments that are submitted will be available for public inspection and copying at the Docket Office. All timely written submissions received will be made part of the record of this proceeding.

Additionally, under section 6(b)(3) of the OSH Act (29 U.S.C. 657(b)(3)) and 29 CFR 1911.11, interested persons may file objections to the proposal and request an informal public hearing. The objections and hearing requests should be submitted in quadruplicate to the Docket Office at the aforementioned address and must comply with the following conditions:

1. The objections must include the name and address of the objector;
2. The objections must be postmarked on or before May 1, 1989 and submitted to the Docket Office at the previously mentioned address;
3. The objections must specify with particularity the provisions of the proposed rule to which objection is taken and must state the grounds therefor;
4. Each objection must be separately stated and numbered; and
5. The objections must be accompanied by a detailed summary of the evidence proposed to be adduced at the requested hearing.

If objections and requests for a hearing are timely filed, a hearing will be scheduled under section 6(b)(3) of the OSH Act.

OSHA recognizes that there may be interested persons who, through their knowledge of safety or their experience in the operations involved, would wish to endorse or support certain provisions in the standard. OSHA welcomes such supportive comments, including any pertinent accident data or cost information which may be available, in order that the record of this rulemaking will present a balanced picture of the public response on the issues involved.

VIII. State Plan Standards

The 23 States and 2 Territories with their own OSHA-approved occupational safety and health plans must adopt a comparable standard within 6 months of the publication date of a final standard. These States are: Alaska, Arizona, California,[4] Connecticut,[4] Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, New York,[4] North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Virgin Islands, Washington, Wyoming. Until such time as a State standard is promulgated, Federal OSHA will provide interim enforcement assistance, as appropriate.

IX. List of Index Terms

List of Subjects in 29 CFR Part 1910

Electric power, Fire Prevention, Flammable materials, Occupational safety and health, Occupational Safety and Health Administration, Safety, Signs and symbols, and Tools.

X. Authority

This document was prepared under the direction of John A. Pendergrass, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Accordingly, pursuant to sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (84 Stat. 1593, 1599, 29 U.S.C. 653, 655, 657), Secretary of Labor's Order No. 9-83 (48 FR 35736), and 29 CFR Part 1911, it is proposed to amend 29 CFR Part 1910 as set forth below.

Signed at Washington, DC, this 24th day of January 1989.

John A. Pendergrass,

Assistant Secretary of Labor.

Part 1910 of Title 29 of the Code of Federal Regulations would be amended as follows:

PART 29—[AMENDED]

1. The authority citation for Subpart I of Part 1910 would be revised to read as follows:

Authority: Secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12-71 (36 FR 8754), 8-76 (41 FR 25059), or 9-83 (48 FR 35736), as applicable.

[4] Plan covers only State and local government employees.

Sections 1910.134 and 1910.137 also issued under 29 CFR Part 1911.

2. By revising § 1910.137 to read as follows:

§ 1910.137 Electrical protective equipment.

(a) *Design requirements.* Insulating blankets, matting, covers, line hose, gloves, and sleeves made of rubber shall meet the following requirements:

(1) *Manufacture and marking.* (i) Blankets, gloves, and sleeves shall be produced by a seamless process.

(ii) Each item shall be clearly marked as follows:

(A) Class 0 equipment shall be marked Class 0.

(B) Class 1 equipment shall be marked Class 1.

(C) Class 2 equipment shall be marked Class 2.

(D) Class 3 equipment shall be marked Class 3.

(E) Class 4 equipment shall be marked Class 4.

(F) Non-ozone-resistant equipment other than matting shall be marked Type I.

(G) Ozone-resistant equipment other than matting shall be marked Type II.

(H) Other markings, such as the manufacturer's identification and the size of the equipment, may be provided, as appropriate.

(iii) Markings shall be nonconducting and shall be applied in such a manner as not to impair the insulating qualities of the equipment.

(iv) Markings on gloves shall be confined to the cuff portion of the glove.

(2) *Electrical requirements.* (i) Equipment shall be capable of withstanding the a-c proof-test voltage specified in Table I-2 or the d-c proof-test voltage specified in I-3. The proof test shall reliably indicate that the equipment can withstand the voltage involved. The test voltage shall be applied continuously for 3 minutes for equipment other than matting and shall be applied continuously for 1 minute for matting.

(ii) When the a-c proof test is used on gloves, the 60-hertz proof-test current may not exceed the values specified in Table I-2 at any time during the test period. If the a-c proof test is made at a frequency other than 60 hertz, the permissible proof-test current shall be computed from the direct ratio of the frequencies.

(iii) Equipment that has been subjected to a minimum breakdown voltage test may not be used for electrical protection.

(iv) Material used for Type II insulating equipment shall be capable of

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withstanding an ozone test, with no visible effects. Any visible signs of ozone deterioration of the material, such as checking, cracking, breaks, or pitting, is evidence of failure to meet the requirements for ozone-resistance material.

(3) *Workmanship and finish.* (i) Equipment shall be free of harmful physical irregularities which can be detected by thorough test or inspection.

(ii) Surface irregularities that may be present on all rubber goods because of imperfections on forms or molds or because of inherent difficulties in the manufacturing process and that may appear as indentations, protuberances, or imbedded foreign material are acceptable under the following conditions:

(A) The indentation or protuberance tends to blend into a smooth slope when the material is stretched.

(B) Foreign material remains in place when the insulating material is folded and stretches with the insulating material surrounding it.

(C) No irregularities occur in the palm-side of a glove, exclusive of the gauntlet, or in the finger or thumb crotches.

Note: Rubber insulating equipment meeting the following national consensus standards is deemed to be in compliance with paragraph (a) of this section:

American Society for Testing and Materials (ASTM) D 120-87, Specification for Rubber Insulating Gloves.
ASTM D 178-81, Specification for Rubber Insulating Matting.
ASTM D 1048-87, Specification for Rubber Insulating Blankets.
ASTM D 1049-83, Specification for Rubber Insulating Covers.
ASTM D 1050-85, Specification for Rubber Insulating Line Hose.
ASTM D 1051-87, Specification for Rubber Insulating Sleeves.

(b) *In-service care and use.* (1) Electrical protective equipment shall be maintained in a safe, reliable condition.

(2) The following specific requirements apply to insulating blankets, covers, line hose, gloves, and sleeves made of rubber:

(i) Maximum use voltages shall conform to those listed in Table I-4.

(ii) Insulating equipment shall be inspected for damage before each day's use and immediately following any incident that can reasonably be suspected of having caused damage. Insulating gloves shall also be given an air test.

(iii) Insulating equipment with any of the following defects may not be used:

(A) A hole, tear, puncture, or cut;

(B) Ozone cutting or ozone checking;

(C) An embedded foreign object;

(D) Any of the following texture changes: swelling, softening, hardening, or becoming sticky or inelastic.

(E) Any other defect that damages the insulating properties.

(iv) Insulating equipment found to have other defects that might affect its insulating properties shall be removed from service and returned for testing under paragraphs (b)(2)(viii) and (b)(2)(ix) of this section.

(v) Insulating equipment shall be cleaned as needed to remove foreign substances.

(vi) Insulating equipment shall be stored in such a location and in such a manner as to protect it from light, temperature extremes, excessive humidity, ozone, and other injurious substances and conditions.

(vii) Protector gloves shall be worn over insulating gloves, except as follows:

(A) Protector gloves need not be used with Class 0 gloves, under limited-use conditions, where small equipment and parts manipulation necessitate unusually high finger dexterity.

(B) Any other class of glove may be used for similar work without protector gloves if the possibility of physical damage to the gloves is small and if the class of glove is one class higher than that required for the voltage involved. Insulating gloves that have been used without protector gloves may not be used at a higher voltage until they have been tested under the provisions of paragraphs (b)(2)(viii) and (b)(2)(ix) of this section.

(viii) Electrical protective equipment shall be subjected to periodic electrical tests. Test voltages and the maximum intervals between tests shall be in accordance with Tables I-4 and I-5.

(ix) The test method used under paragraphs (b)(2)(viii) and (b)(2)(xi) of this section shall reliably indicate whether the insulating equipment can withstand the voltages involved.

Note: Standard electrical test methods considered as meeting this requirement are given in the following national consensus standards:

American Society for Testing and Materials (ASTM) D 120-87, Specification for Rubber Insulating Gloves.
ASTM D 1048-87, Specification for Rubber Insulating Blankets.
ASTM D 1049-83, Specification for Rubber Insulating Covers.
ASTM D 1050-85, Specification for Rubber Insulating Line Hose.
ASTM D 1051-87, Specification for Rubber Insulating Sleeves.
ASTM F 478-87, Specification for In-Service Care of Insulating Line Hose and Covers.
ASTM F 479-83, Specification for In-Service Care of Insulating Blankets.
ASTM F 496-85, Specification for In-Service Care of Insulating Gloves and Sleeves.

(x) Insulating equipment failing to pass inspections or electrical tests may not be used by employees, except as follows:

(A) Rubber insulating line hose may be used in shorter lengths with the defective portion cut off.

(B) Rubber insulating blankets may be repaired using a compatible patch that results in physical and electrical properties equal to those of the blanket.

(C) Rubber insulating blankets may be salvaged by severing the defective area from the undamaged portion of the blanket. The resulting undamaged area may not be smaller than 22 inches by 22 inches (560 mm by 560 mm) for Class 1, 2, 3, and 4 blankets.

(D) Rubber insulating gloves and sleeves with minor physical defects, such as small cuts, tears, or punctures, may be repaired by the application of a compatible patch. Also, rubber insulating gloves and sleeves with minor surface blemishes may be repaired with a compatible liquid compound. the patched area shall have electrical and physical properties equal to those of the surrounding material. Repairs to gloves are permitted only in the gauntlet area.

(xi) Repaired insulating equipment shall be retested before it may be used by employees.

(xii) The employer shall certify that equipment has been tested in accordance with the requirements of paragraphs (b)(2)(viii), (b)(2)(ix), and (b)(2)(xi) of this section. The certification shall identify the equipment that passed the test and the date it was tested.

TABLE I-2.—A-C PROOF-TEST REQUIREMENTS

Class of Equipment	Proof-Test Voltage rms V	Maximum Proof-Test Current, mA (gloves only)			
		267-mm (10.5-in) Glove	356-mm (14-in Glove	406-mm (16-in) Glove	457-mm (18-in) Glove
0	5,000	8	12	14	16
1	10,000		14	16	18
2	20,000		16	18	20
3	30,000		18	20	22
4	40,000			22	24

TABLE I-3.—D-C PROOF-TEST REQUIREMENTS

Class of equipment:	Proof-test voltage, avg V
0	20,000
1	40,000
2	50,000
3	60,000
4	70,000

NOTE.—The d-c voltages listed in this table are not appropriate for proof testing rubber insulating line hose or covers. For this equipment, d-c proof tests shall use a voltage high enough to indicate that the equipment can be safely used at the voltages listed in Table I-4. See ASTM D 1050-85 and ASTM D 1049-83 for further information on proof tests for rubber insulating line hose and covers.

TABLE I-4.—RUBBER INSULATING EQUIPMENT, VOLTAGE REQUIREMENTS

Class designation	Maximum use voltage [1] a-c—rms	Retest voltage a-c—rms	Retest voltage d-c—avg
0	1,000	5,000	20,000
1	7,500	[2] 10,000	40,000
2	17,000	[2] 20,000	50,000
3	26,500	[2] 30,000	60,000
4	36,000	[2] 40,000	70,000

[1] The maximum use voltage is the a-c voltage (rms) classification of the protective equipment that designates the maximum nominal design voltage of the energized system that may be safely worked. The nominal design voltage is equal to the phase-to-phase voltage on multiphase circuits. If there is no multiphase exposure in a system area and if the voltage exposure is limited to the phase-to-ground potential, the phase-to-ground potential is considered to be the nominal design voltage.

[2] If use is limited to nominal voltages less than the maximum use voltage, the voltage at which other than Class 0 equipment is tested may be reduced according to the following formula:

Retest voltage (a-c, rms) = nominal use voltage + 2000 + (0.05 × retest voltage given in Table I-4)

TABLE I-5.—RUBBER INSULATING EQUIPMENT TEST INTERVALS

Type of equipment	When to test
Rubber insulating line hose.	Upon indication that insulating value is suspect.
Rubber insulating covers.	Upon indication that insulating value is suspect.
Rubber insulating blankets.	Before first issue and every 12 months thereafter.[1]
Rubber insulating gloves.	Before first issue and every 6 months thereafter.[1]

TABLE I-5.—RUBBER INSULATING EQUIPMENT TEST INTERVALS—Continued

Type of equipment	When to test
Rubber insulating sleeves.	Before first issue and every 12 months thereafter.[1]

[1] If the insulating equipment has been electrically tested but not issued for service, it may not be placed into service unless it has been electrically tested within the previous 12 months.

3. The authority citation for Subpart R of Part 1910 would be revised to read as follows:

Authority: Secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12-71 (36 FR 8754), 8-76 (41 FR 25059), or 9-83 (48 FR 35736), as applicable.

Sections 1910.261, 1910.262, 1910.265, 1910.266, 1910.267, 1910.268, 1910.269, 1910.274, 1910.275 also issued under 29 CFR Part 1911.

4. By adding § 1910.269 to Subpart R to read as follows:

§ 1910.269 Electric power generation, transmission, and distribution.

(a) *General*—(1) *Application.* (i) This section covers work practices, installations, and equipment associated with the operation and maintenance of electric power generation, control, transformation, transmission, and distribution lines and equipment. These provisions apply to:

(A) Power generation, transmission, and distribution installations, including related equipment for the purpose of communication or metering, which are under the exclusive control of the utility and are accessible only to qualified employees as part of the utility operation; and

(B) Other installations at an electric power generating station, as follows:

(*1*) Fuel and ash handling and processing installations, such as coal conveyors and crushers,

(*2*) Water and steam installations, such as penstocks, pipelines, and tanks, providing a source of energy for turbine generators,

(*3*) Chlorine and hydrogen systems, and

(*4*) Walking and working surfaces within an electric power generating station.

(C) Test sites under the exclusive control of electric utilities where electrical testing, involving temporary measurements associated with electric power generation, transmission, and distribution, is performed in laboratories, in the field, in substations, and on lines, as opposed to metering, relaying and routine line work; and

(D) Line-clearance tree-trimming operations, as follows:

(*1*) The entire § 1910.269, except paragraph (r)(1), applies to line-clearance tree-trimming operations performed by qualified employees (those who are knowledgeable in the construction and operation of electric power generation, transmission, or distribution equipment and the hazards involved).

(*2*) Paragraphs (a), (b), (c), (g), (k), (p), and (r) of this section apply to line-clearance tree-trimming operations performed by line clearance tree trimmers who are not qualified employees.

(ii) Notwithstanding paragraph (a)(1)(i) of this section, § 1910.269 does not apply:

(A) To construction work, as defined in §1910.12;

(B) To work performed on electric power generation and distribution equipment contained in industrial establishments and non-utilities; or

(C) To electrical installations, electrical safety-related work practices, or electrical maintenance considerations covered by Subpart S of this part.

(iii) This section applies in addition to all other applicable standards contained in this Part 1910. Specific references in this section to other sections of Part 1910 are provided for emphasis only.

(2) *Training.* (i) Employees shall be trained in and familiar with the safety-related work practices, safety procedures, and other personnel safety requirements in this section that pertain to their respective job assignments. Employees shall also be trained in and familiar with any other safety practices, including applicable emergency

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procedures, which are not addressed by this section but which are necessary for their safety.

(ii) Qualified employees shall also be trained and competent in:

(A) The skills and techniques necessary to distinguish exposed live parts from other parts of electric equipment,

(B) The skills and techniques necessary to determine the nominal voltage of exposed live parts,

(C) The clearance distances specified in this section corresponding to the voltages to which the qualified employee will be exposed, and

(D) The proper use of the special precautionary techniques, personal protective equipment, insulating and shielding materials, and insulated tools associated with working on or near exposed energized parts of electric equipment.

Note.—For the purposes of this section, a person must have this training in order to be considered a qualified person.

(iii) The training required by paragraph (a)(2) of this section shall be of the classroom or on-the-job type.

(iv) The employer shall certify that each employee has received the training required by paragraph (a)(2) of this section. This certification shall be made when the employee successfully completes the training and shall be maintained for the duration of the employee's employment.

(3) *Existing conditions.* Existing conditions shall be determined before work is started. Such conditions include, but are not limited to, the nominal voltages of lines and equipment, including switching transients, induced voltages, integrity of grounds, condition of poles, environmental conditions relative to safety, and the locations of circuits and equipment, including power and communication lines, CATV, and fire alarm circuits.

(b) *Medical services and first aid.* The employer shall provide medical services and first aid as required in § 1910.151. In addition to the requirements of § 1910.151, the following requirements also apply:

(1) *Cardiopulmonary resuscitation and first aid training.* (i) When employees are working on or with energized lines or equipment, persons trained in first aid including cardiopulmonary resuscitation (CPR) shall be available as follows:

(A) For field work involving two or more employees at a work location, at least two trained persons shall be available.

(B) For fixed work locations such as generating stations, the number of trained persons available shall be sufficient to enable emergency treatment to begin within 4 minutes of an accident.

(ii) The first aid training shall be equivalent to that provided by the American Red Cross multimedia course.

(2) *First aid supplies.* First aid supplies recommended by a physician shall be placed in weatherproof containers, unless stored indoors, and containers shall be readily accessible.

(3) *First aid kits.* Each first aid kit shall be properly maintained, shall be readily available for use, and shall be inspected at least once per year in accordance with an established schedule.

(c) *Job briefing.* Before starting each job, the employer shall ensure that the employee in charge shall conduct a job briefing with the employees involved. The briefing shall cover such subjects as: Hazards associated with the job, work procedures involved, special precautions, energy source controls, and personal protective equipment requirements.

(1) *Number of briefings.* If the work or operations to be performed during the work day or shift are repetitive and similar, at least one job briefing shall be conducted before the start of the first job of the day or shift. Additional job briefings shall be held if significant changes, which might affect the safety of the employees, occur during the course of the work.

(2) *Extent of briefing.* A brief discussion is satisfactory if the work involved is routine and if the employee, by virtue of training and experience, can reasonably be expected to recognize and avoid the hazards involved in the job. A more extensive discussion shall be conducted:

(i) If the work is complicated or particularly hazardous, or

(ii) If the employee cannot be expected to recognize and avoid the hazards involved in the job.

(3) *Working alone.* Paragraph (c) of this section does not apply if an employee is working alone.

(d) *Hazardous energy control (lockout/tagout) procedures*—(1) *Application.* The provisions of this paragraph apply to the use of lockout/tagout procedures for the control of energy sources in installations for the purpose of electric power generation, including related equipment for communication or metering. Locking and tagging procedures for the deenergization control of electric energy sources which are used exclusively for purposes of transmission and distribution are addressed by paragraph (m) of this section.

Note.—Installations in electric power generation facilities that are not for the purpose of generation are covered under § 1910.147.

(2) *General.* (i) The employer shall ensure that, before an employee performs any activities where the unexpected energization, start-up, or release of stored energy could occur and cause injury, all potentially hazardous energy sources shall be isolated, locked out/tagged out, and otherwise disabled, in accordance with this paragraph (d).

(ii) A procedure shall be developed, documented, and implemented by the employer for the control of potentially hazardous energy sources covered by this paragraph (d).

(iii) The procedure shall clearly and specifically outline the scope, purpose, responsibility, authorization, rules, and techniques to be applied to the control of hazardous energy, and measures to enforce compliance including, but not limited to, the following:

(A) A specific statement as to the intended use of this procedure;

(B) Specific procedural steps for the shutting down, isolating, blocking and securing of energy sources;

(C) Specific procedural steps for the removal and transfer of locks or tags or both and the responsibility for them; and

(D) Specific requirements for testing a system to determine and verify the effectiveness of lockout/tagout and other energy control measures.

(iv) The employer shall conduct periodic inspections to ensure that the provisions of paragraph (d) of this section are being implemented.

(v) The inspections shall be performed by authorized employees and shall be designed to correct any deviations or inadequacies observed.

(vi) The employer shall certify that the inspections required by paragraphs (d)(2)(iv) and (d)(2)(v) of this section have been accomplished. If normal work schedule and operation records demonstrate adequate inspection activity, no additional certification is required.

(vii) The employer shall provide training to ensure that the purpose and function of the energy control procedures are understood by employees and that the knowledge and skills required for the safe application and removal of energy controls are available as needed.

(A) Authorized employees shall receive training in the recognition of applicable hazardous energy sources and in the use of adequate methods and means for energy isolation and control.

(B) Affected employees shall be instructed in the purpose and use of the energy control procedure.

(C) Other employees who may have access to the area containing the equipment or the controls shall be instructed about the energy control procedure being used and about how it affects their work operations.

(viii) Periodic retraining, either by regular on-the-job work assignment or by specific training, shall be provided by the employer for all authorized and affected employees at least on an annual basis to maintain employee proficiency and to introduce new or revised control methods and procedures.

(ix) The employer shall certify that employee training has been accomplished and has been kept up to date.

(3) *Locks and tags.* (i) Locks or tags or both shall be provided by the employer and shall be the only authorized devices used for lockout/tagout of energy sources.

(ii) Locks and tags shall be capable of withstanding the environment to which they are exposed for the maximum period of time that exposure is expected.

(iii) Locks and tags shall be standardized in at least one of the following criteria: Color, shape, size, type, or format.

(iv) Locks shall be of such key code complexity that removal by any other means than the regular key would require excessive force or unusual techniques, such as metal cutting tools. Tags and attachment mechanisms shall be of such design that the possibility of accidental removal is minimized.

(v) Locks and tags shall include provisions for the identification of the employees applying or authorizing the application of the device.

(vi) Tags shall warn against hazardous conditions if the equipment is reenergized and shall include one of the following legends: Do Not Start, Do Not Open, Do Not Close, Do Not Energize, or similar language.

Note.—For specific provisions covering accident prevention tags, see § 1910.145.

(4) *Energy isolating devices.* (i) Each energy isolating device shall be labeled or marked to indicate its purpose, unless it is located and arranged so its purpose is evident.

(ii) Energy isolating devices may be operated only by authorized employees or under the direct supervision of authorized employees.

(5) *Notification.* Affected employees shall be notified of the application and removal of lockout/tagout controls whenever such controls directly affect the employees' work activities. Notification shall be made as follows:

(i) By the employer or an authorized employee;

(ii) Before the application of lockout/tagout controls; and

(iii) Before the removal of lockout/tagout controls from the equipment or process.

(6) *Lockout/tagout application.* (i) Operating controls that would allow the operation of the equipment upon which work is being performed shall be turned off or to the neutral position by designated employees.

(ii) Energy isolating devices shall be operated in such a manner as to isolate the equipment or process from energy sources.

(iii) A lock or a tag or both shall be applied to each energy isolating device by an authorized employee.

(iv) Locks shall be attached in such a manner as to hold energy isolating devices in a safe position, or tags shall be attached in such a manner as to inhibit the operation of energy isolating devices. Tags shall be attached to the energy isolating device unless the installation precludes this attachment. In such cases, the tags shall be located as to be immediately obvious to anyone attempting to operate the energy isolating devices.

(v) Following the application of locks or tags or both to energy isolating devices, all potentially hazardous stored or residual energy shall be detected and shall be relieved, disconnected, or restrained so as to be rendered safe.

(vi) If there is a possibility of reaccumulation of stored energy to hazardous level, verification of isolation shall be continued until the activity is completed or until the possibility of such accumulation no longer exists.

(vii) Before work is started on equipment or processes that have been locked out or tagged out, an authorized employee shall inspect the equipment or processes and take other steps necessary to verify that isolation and deenergization of the equipment or process has been accomplished. If direct contact is to be made with normally energized parts during work, a test shall be performed to ensure that these parts are deenergized.

(viii) The steps taken under paragraph (d)(6)(vii) of this section shall ensure that the locks or tags or both are so positioned or located that the energy isolating or disconnecting means has isolated and deenergized the equipment or process effectively and that any stored energy has been rendered safe.

(7) *Release from lockout/tagout.* (i) Before energy is restored to the equipment or process, an authorized employee shall make a visual inspection of the work area to determine that all nonessential items have been removed, that all components are operationally intact, and that no inadvertent equipment start-up will result.

(ii) Before energy is restored to the equipment or process, verification shall be made by an authorized employee that employees are in the clear.

(iii) A lock or tag may be removed from each energy isolating device only by the employee who applied the lock or tag. However, locks and tags may be removed under the direction of an authorized employee under the following conditions, only if the authorized employee follows specific procedures which have been developed for those conditions:

(A) If the employee who applied a personal lock or tag is not available to remove it; or

(B) If unique operating conditions involving complex systems are present and the employer can demonstrate that it is not feasible to do otherwise.

(8) *Additional requirements.* (i) If the energy isolating devices are locked or tagged, and if there is a need to test or position the equipment or process, the following sequence of actions shall be implemented:

(A) Clear the equipment or process of tools and materials;

(B) Clear the employees from the equipment or process areas;

(C) Clear the controls of locks and tags according to the establishing procedure;

(D) Energize and proceed with the testing or positioning; and

(E) Deenergize all systems, reapply energy control measures in accordance with paragraph (d)(6) of this section to continue the work.

(ii) When locks or tags belonging to a crew, craft, department, or other group are used, the procedures shall afford affected employees a level of protection equivalent to that provided by personal locks or tags.

(iii) Specific procedures shall be implemented to provide for the continuity of lockout/tagout protection during shift or employee changes.

(iv) The employer shall ensure that contractors and their employees follow the lockout/tagout procedures in place at the work site. If the contractor does not provide authorized persons who have been properly trained in the lockout/tagout procedure in use, the employer shall provide an authorized employee to operate or direct the operation of the energy isolating devices and installation of the locks and tags.

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(e) *Enclosed spaces.* This paragraph covers enclosed spaces that may be entered by employees. It does not apply to vented vaults.

(1) *Safe work practices.* The employer shall assure the use of safe work practices for entry into and work in enclosed spaces.

(2) *Evaluation of potential hazards.* Before any entrance cover to an enclosed space is removed, the employer shall determine whether it is safe to do so after evaluating any atmospheric pressure or temperature differences and whether there might be a hazardous atmosphere in the space. Any conditions making it unsafe to remove the cover shall be eliminated before the cover is removed.

(3) *Removal of covers.* When covers are removed from enclosed spaces, the opening shall be promptly guarded by a railing, temporary cover, or other temporary barrier intended to prevent an accidental fall through the opening and to protect employees working in the space from objects entering the space.

(4) *Hazardous atmosphere.* Employees may not enter any enclosed space while it contains a hazardous atmosphere, unless the employee is protected from the hazards that exist or may develop within the space.

(5) *Attendants.* While work is being performed in the enclosed space, a person with basic first aid training shall be immediately available to render emergency assistance if there is reason to believe that a hazard may exist in the space or if a hazard exists because of traffic patterns in the area of the opening used for entry. That person is not precluded from performing other duties outside the enclosed space.

(6) *Calibration of test instruments.* Test instruments used to monitor atmospheres in enclosed spaces shall be kept in calibration.

(7) *Testing for flammable gases and vapors.* Before an employee enters an enclosed space, the internal atmosphere shall be tested for flammable gases and vapors with a direct-reading meter or similar instrument capable of collection and immediate analysis of data samples without need for off-site evaluation.

(8) *Testing for oxygen deficiency.* Before an employee enters an enclosed space, the internal atmosphere shall be tested for oxygen deficiency with a direct-reading meter or similar instrument, capable of collection and immediate analysis of data samples without need for off-site evaluation. If continuous forced air ventilation is provided, oxygen deficiency testing is not required.

(9) *Ventilation and monitoring.* If flammable gases or vapors are detected or if an oxygen deficiency is found, forced air ventilation shall be used to maintain oxygen at a safe level and to prevent a hazardous concentration of flammable gases and vapors from accumulating. A continuous monitoring program to ensure that no increase in flammable gas or vapor concentration occurs may be followed in lieu of ventilation, if flammable gases or vapors are detected at safe levels.

(10) *Specific ventilation requirements.* If continuous forced air ventilation is used, it shall begin before entry is made and shall be maintained long enough to ensure that a safe atmosphere exists before employees are allowed to enter the work area. The forced air ventilation shall be so directed as to ventilate the immediate area where employees are present within the enclosed space and shall continue until all employees leave the enclosed space.

(11) *Air supply.* The air supply for the continuous forced air ventilation shall be from a clean source and may not increase the hazards in the enclosed space.

(12) *Open flames.* If open flames are used in enclosed spaces, a test for flammable gases and vapors shall be made immediately before the open flame device is used and at least once per hour while the device is used in the space.

(f) *Trenches and excavations.* Trenching and excavation operations shall comply with §§ 1926.650, 1926.651, 1926.652, and 1926.653 of this chapter.

(g) *Personal protective equipment.*—(1) *General.* Personal protective equipment shall meet the requirements of Subpart I of this Part. Head protection meeting the requirements of American National Standard for Industrial Protective Helmets for Electrical Workers (ANSI Z89.2–1971) is deemed to be in compliance with § 1910.135.

(2) *Fall protection.* (i) Body belts, lifelines, and lanyards for fall arrest shall meet the requirements of § 1926.104 of this chapter.

(ii) Body belts and safety straps for work positioning shall meet the requirements of § 1926.959 of this chapter.

(iii) Body belts, safety straps, lanyards, lifelines, and body harnesses shall be inspected before use each day to determine that the equipment is in safe working condition. Defective equipment may not be used.

(iv) Lifelines shall be protected against being cut or abraded.

(v) Fall arrest equipment, work positioning equipment, or travel restricting equipment shall be used by employees working at elevated locations more than 4 feet (1.2 m) above the ground on poles, towers, trees, or structures and by employees working from vehicle-mounted elevating and rotating work platforms if other fall protection has not been provided. The use of fall protection equipment is not required when a qualified employee who meets the requirements of paragraph (h)(5) of this section is climbing or changing location on poles, towers, or similar structures containing steps or step bolts. Fall protection equipment shall be used by all employees climbing wood poles not containing step bolts except when they are climbing around obstructions, such as crossarms, pins, or braces.

(vi) When stopping or arresting a fall, fall arrest systems may not produce an arresting force on an employee of more than ten times the employee's weight or 1800 pounds (8kN), whichever is lower.

(vii) If vertical lifelines or droplines are used, not more than one employee may be attached to any one lifeline.

(viii) Snaphooks may not be connected to loops made in webbing-type lanyards.

(ix) Snaphooks may not be connected to each other.

(h) *Ladders, platforms, step bolts, and manhole steps.*—(1) *General.* Requirements for ladders contained in Subpart D of this part apply, except as specifically noted in paragraphs (h)(2) and (h)(5) of this section.

(2) *Special ladders and platforms.* Portable ladders and platforms used on structures or conductors in conjunction with overhead line work shall meet the following requirements in lieu of paragraphs (d)(2)(i) and (d)(2)(iii) of § 1910.25 and paragraph (c)(3)(iii) of § 1910.26:

(i) Ladders and platforms shall be secured to prevent their becoming accidentally dislodged.

(ii) Ladders and platforms may not be loaded in excess of the working loads for which they are intended.

(iii) Ladders and platforms shall be designed for the application for which they are used.

(iv) In the configurations that they are used, ladders and platforms shall be capable of supporting without failure at least four times the maximum intended load.

(3) *Conductive ladders.* Portable metal ladders and other portable conductive ladders may not be used near exposed energized lines or equipment. However, in specialized high-voltage work, conductive ladders shall be used where the employer demonstrates that nonconductive ladders would present a greater hazard than conductive ladders.

(4) *Step bolts and manhole steps.* (i) Step bolts and manhole steps shall be equipped with a ladder safety device meeting the requirements of § 1910.27 unless the step bolts and manhole steps are used only by qualified employees who meet the requirements of paragraph (h)(5) of this section.

(ii) Step bolts and manhole steps shall be spaced uniformly not less than 8 inches (20 cm) apart nor more than 16 inches (40 cm) apart. A 36-inch (91.4-cm) spacing between step bolts on one side of the supporting member, where there is an alternating pattern with the other side, meets this requirement.

(iii) The spacing between the first or last step bolt or manhole step and the entry or exit surface shall vary no more than 2 inches (5.1 cm) from the spacing between step bolts or manhole steps, and employees shall be made aware of any variation.

(iv) The minimum step width of step bolts shall be 4.5 inches (11.4 cm). The minimum clear step width of manhole steps shall be 10 inches (25.4 cm).

(v) For manhole steps, a minimum toe clearance of 4.5 inches (11.4 cm) from the point of embedment on the wall to the outside face of the step shall be provided.

(vi) For step bolts, the minimum toe clearance shall be 7 inches (17.8 cm). Where an obstruction cannot be avoided, the toe clearance may be reduced but shall be at least 4.5 inches (11.4 cm).

(vii) Step bolts and manhole steps shall be designed to prevent the employee's foot from slipping or sliding off the end of the step bolt or manhole step.

(viii) Manhole steps and step bolts installed after [6 months after the effective date of the rule] and used in corrosive environments shall be constructed of or coated with a material that will retard corrosion of the step or bolt.

(ix) Manhole steps installed after [6 months after the effective date of the rule] shall be provided with slip-resistant surfaces, such as corrugated, knurled, or dimpled surfaces.

(x) Each step bolt shall be capable of withstanding, without failure, at least four times the intended load calculated to be applied to the bolt.

(xi) If installed after [6 months after the effective date of the rule] a manhole step shall be capable of remaining solidly secured after being subjected to a separate application of a horizontal pullout load of 400 pounds (1780 N) and a vertical load of 800 pounds (3560 N). Any permanent set in the step resulting from this test may not exceed 0.375 inches (0.95 cm). No cracking or fracture of the step, no spalling of the concrete may be visible. The test loads shall be applied over a width of 3.5 inches (8.9 cm) centered on the step and applied at a uniform rate until the required load is reached.

(xii) Manhole steps installed before [6 months after the effective date of the rule] shall be capable of supporting their maximum intended loads.

(xiii) Step bolts and manhole steps shall be maintained in a safe condition and shall be visually inspected before each use.

(xiv) Step bolts which are bent greater than 15 degrees below the horizontal shall be removed and replaced with bolts that meet the requirements of paragraph (h) of this section. Manhole steps that are bent to such an extent as to reduce the step's projection from the wall to less than 4.5 inches (11.4 cm) shall be removed and replaced with steps meeting the requirements of paragraph (h) of this section or with another climbing device meeting the requirements of Subpart D of this part.

(5) *Qualified employees.* Ladders on triangulation, telecommunication, electrical power, and similar towers, and ladders on poles and structures, including stacks and chimneys, are exempt from the requirements in Subpart D of this part for ladder safety devices and cages if only qualified employees use these ladders. Such qualified employees shall meet the following requirements:

(i) Qualified employees shall have successfully completed a training or apprenticeship program that included hands-on training in the safe climbing of ladders, step bolts, or manhole steps.

(ii) Qualified employees shall have climbing duties as one of their routine work activities.

(iii) Qualified employees may not carry objects in their hands while the employees are in the act of climbing.

Note.—The provisions for appropriate fall protection in paragraph (g) of this section also apply. See specifically paragraph (g)(2)(v) regarding the use of fall arrest equipment, work positioning equipment, and travel restricting equipment.

(i) *Hand and portable power tools*—(1) *General.* Paragraph (i)(2) of this section applies to electric equipment connected by cord and plug. Paragraph (i)(3) of this section contains requirements for portable and vehicle-mounted generators used to supply cord- and plug-connected equipment. Paragraph (i)(4) of this section contains requirements for hydraulic and pneumatic tools.

(2) *Cord- and plug-connected equipment.* (i) Cord- and plug-connected equipment supplied by premises wiring is covered by Subpart S of this part.

(ii) Any cord- and plug-connected equipment supplied by other than premises wiring shall comply with one of the following in lieu of § 1910.243(a)(5):

(A) It shall be equipped with a cord containing an equipment grounding conductor connected to the tool frame and to a means for grounding the other end (however, this option may not be used where the introduction of the ground into the work environment increases the hazard to an employee);

(B) It shall be of the double-insulated type conforming to Subpart S of this part; or

(C) It shall be connected to the power supply through an isolating transformer with an ungrounded secondary.

(3) *Portable and vehicle-mounted generators.* Portable and vehicle-mounted generators used to supply cord- and plug-connected equipment shall meet the following requirements.

(i) The generator may only supply equipment located on the generator or the vehicle and cord- and plug-connected equipment through receptacles mounted on the generator or the vehicle.

(ii) The non-current-carrying metal parts of equipment and the equipment grounding conductor terminals of the receptacles shall be bonded to the generator frame.

(iii) In the case of vehicle-mounted generators, the frame of the generator shall be bonded to the vehicle frame.

(iv) Any neutral conductor shall be bonded to the generator frame.

(4) *Hydraulic and pneumatic tools.* (i) Safe operating pressures for hydraulic and pneumatic tools, hoses, valves, pipes, filters, and fittings may not be exceeded.

(ii) A hydraulic or pneumatic tool used where it may contact exposed live parts shall have a nonconductive hose.

(iii) A pneumatic tool used on energized electrical lines or equipment or used where it may contact exposed live parts shall have an accumulator to collect moisture.

(iv) Pressure shall be released before connections are broken, unless quick acting, self-closing connectors are used. Hoses may not be kinked.

(v) Employees may not use any part of their bodies to locate or attempt to stop a hydraulic leak.

(j) *Live-line tools*—(1) *Design of tools.* Live-line tool poles shall be designed and constructed to withstand the following minimum tests:

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(i) 100,000 volts per foot (3281 volts per centimeter) of length for 5 minutes if the tool is made of fiberglass, or

(ii) 75,000 volts per foot (2461 volts per centimeter) of length for 3 minutes if the tool is made of wood, or

(iii) Other equivalent tests.

(2) *Condition of tools.* (i) Each live-line tool shall be visually inspected for defects before use each day.

(ii) If any defect or contamination that could adversely affect the insulating qualities of the live-line tool is present, the tool shall be removed from service.

(k) *Materials handling and storage.* Material handling and storage shall conform to the requirements of Subpart N of this part, except as modified in this paragraph.

(1) *Materials storage near energized lines or equipment.* (i) In areas not restricted to qualified persons only, materials or equipment may not be stored closer to energized lines or exposed energized parts of equipment than the following distances plus an amount providing for the maximum sag and side swing of all conductors and providing for the height and movement of material handling equipment:

(A) For lines and equipment energized at 50 kV or less, the distance is 10 feet (305 cm).

(B) For lines and equipment energized at more than 50 kV, the distance is 10 feet (305 cm) plus 4 inches (10 cm) for every 10 kV over 50 kV.

(ii) In areas restricted to qualified employees, material may not be stored within the working space about energized lines or equipment.

Note.—Requirements for the size of the working space are contained in paragraphs (u)(1) and (v)(3) of this section.

(2) *Material handling near energized lines or equipment.* Unqualified employees may not bring materials closer to energized lines or exposed energized parts of equipment than the distances given in paragraphs (k)(1)(i)(A) and (k)(1)(i)(B) of this section.

(l) *Working on or near exposed energized parts.* This paragraph applies to work on exposed live parts, or near enough to them, to expose the employee to any hazard they present.

(1) *General.* Only qualified employees and trainees working under the direct supervision of a qualified employee may work on or with exposed energized lines or parts of equipment. Only qualified employees and trainees working under the direct supervision of a qualified employee may work in areas containing unguarded, uninsulated energized lines or parts of equipment operating at 50 volts or more. Electric lines and equipment shall be considered and treated as energized unless the provisions of paragraph (d) or paragraph (m) of this section have been followed.

(2) *Clearances.* No employees may approach or take any conductive object without an insulating handle closer to exposed energized parts than set forth in Table R–6 or R–7, unless:

(i) The employee is insulated from the energized part (gloves rated for the voltage involved are considered insulation of the employee only with regard to the energized part upon which work is being performed), or

(ii) The energized part is insulated from the employee and any other conductive object at a different potential, or

(iii) The employee is insulated from any other conductive object, as during live-line bare-hand work.

(3) *Working position.* Employees may not work on equipment or lines in any position from which a shock or slip will tend to bring the body toward exposed parts which are at a potential different from the employee's body.

(4) *Making connections.* In connecting deenergized equipment or lines to an energized circuit by means of a conducting wire or device, employees shall first attach the wire to the deenergized part. When disconnecting, employees shall remove the source end first. Loose conductors shall be kept away from exposed energized parts.

(5) *Conductive apparel.* When work is performed in the vicinity of exposed energized parts of equipment, employees shall remove or render nonconductive all exposed conductive articles, such as key or watch chains, rings, or wrist watches or bands, if such articles increase the hazards associated with inadvertent contact with the energized parts.

(6) *Fuse handling.* When fuses must be installed or removed with one or both terminals energized at more than 300 volts, tools or gloves rated for the voltage shall be used. When installing expulsion-type fuses, employees shall wear safety glasses or safety goggles and shall stand clear of the exhaust path of the fuse barrel.

(7) *Covered (noninsulated) conductors.* The requirements of this section which pertain to the hazards of exposed live parts apply when work is performed in the proximity of covered (noninsulated) wires.

(8) *Ungrounded metal parts.* Ungrounded metal parts of equipment or devices, such as transformer cases and circuit breaker housings, shall be treated as energized at the highest voltage to which they are exposed, unless these parts are known by test to be free from voltage.

TABLE R–6.—AC MINIMUM CLEARANCE FROM LIVE PARTS

Nominal voltage in kilovolts phase to phase	Distance phase to employee [1]	
	ft	(cm)
	Avoid contact	
1 or less	2.00	(61)
1.1 to 15	2.33	(71)
15.1 to 35	2.50	(76)
35.1 to 46	3.00	(91)
46.1 to 72.5	3.33	(102)
72.6 to 121	3.50	(107)
138 to 145	3.67	(112)
161 to 169	5.00	(152)
230 to 242	7.00	(213)
345 to 362 [2]	11.00	(335)
500 to 550 [2]	15.00	(457)
700 to 765 [2]		

[1] This is the minimum air gap or live-line tool distance to be maintained. The clear live-line tool distance is the distance measured longitudinally along the live-line tool from the conductive device or the working end of the tool to the employee's hand.

[2] The minimum clearance distance may be reduced to the length of the line insulator, if a smaller clearance is needed to do the work.

TABLE R–7.—DC MINIMUM CLEARANCE FROM LIVE PARTS

Maximum voltage conductor to ground kilovolts	Distance [1, 2]	
	ft	(cm)
250	3.5	(107)
400	6.0	(183)
600	8.5	(259)
750	16.0	(488)

[1] This is the minimum air gap or clear live-line tool distance to be maintained. The clear live-line tool distance is the distance measured longitudinally along the live-line tool from the conductive device or the working end of the tool to the employee's hand.

[2] The minimum clearance distance may be reduced to the length of the line insulator, if a smaller distance is needed to do the work.

(m) *Deenergizing lines and equipment for employee protection*—(1) *Application.* Paragraph (m) of this section applies to the deenergization of transmission and distribution lines and equipment for the purpose of protecting employees. Control of hazardous energy sources used in the generation of electric energy is covered in paragraph (d) of this section. Conductors and parts of electric equipment that have been deenergized under procedures other than those required by paragraph (d) or (m) of this section, as applicable, shall be treated as energized.

(2) *General.* (i) If an employee must depend on others to operate switches to deenergize lines or equipment on which the employee is to work or if the employee must secure special authorization before operating such switches, all of the requirements of paragraph (m)(3) of this section shall be observed, in the order given, before work is begun.

(ii) If an employee other than the system operator is in sole charge of the lines or equipment and of the means of disconnection, that employee shall also comply with all of the requirements of paragraph (m)(3) of this section, in the order given, taking the place of the system operator as necessary.

(iii) If an employee is working alone and the means of disconnection are accessible and visible to the employee, the requirements of paragraphs (m)(3)(ii), (m)(3)(v), (m)(3)(vi), (m)(3)(vii), and (m)(3)(xi) of this section shall be observed. However, tags required by these provisions need not be used.

(iv) Any disconnecting means that are accessible to persons outside the employer's control (for example, the general public) shall be rendered inoperable while they are open for the purpose of protecting employees.

(3) *Deenergizing lines and equipment.* (i) A designated employee shall make a request of the system operator to have the particular section of line or equipment deenergized. The designated employee becomes the employee in charge (as this term is used in paragraph (m)(3) of this section) and is responsible for the clearance.

(ii) All switches, disconnectors, jumpers, taps, and other means through which electric energy may be supplied to the particular lines and equipment to be energized shall be opened. Such means shall be rendered inoperable, as design permits, and appropriately tagged to indicate that employees are at work.

(iii) Automatically and remotely controlled switches that could cause the opened disconnection means to close shall also be tagged at the point of control and shall be rendered inoperable, if design permits.

(iv) Tags shall prohibit operation of the disconnecting means and shall indicate that employees are at work.

(v) After the applicable requirements in paragraphs (m)(3)(i) through (m)(3)(iv) of this section have been followed and the employee in charge of the work has been given a clearance by the system operator, the employee in charge shall verify by test that the lines and equipment to be worked are deenergized.

(v) Protective grounds shall be installed as required by paragraph (n) of this section.

(vii) After the applicable requirements of paragraphs (m)(3)(i) through (m)(3)(vi) of this section have been followed, the lines and equipment involved may be worked as deenergized.

(viii) If two or more independent crews will be working on the same lines or equipment, each crew shall independently comply with the requirements in paragraph (m)(3) of this section.

(ix) To transfer the clearance, the employee in charge (or, in case of forced absence, the employee's supervisor) shall inform the system operator; employees in the crew shall be informed of the transfer; and the new employee in charge shall be responsible for the clearance.

(x) To release a clearance, the employee in charge shall:

(A) Notify employees under his or her direction that the clearance is to be released;

(B) Determine that all employees in the crew are clear of the lines and equipment;

(C) Determine that all protective grounds installed by the crew have been removed; and

(D) Report this information to the system operator, thus releasing the clearance.

(xi) Only after all protective grounds have been removed, all protective tags have been removed from points of disconnection, all crews working on the lines or equipment have released their clearances, and all employees are clear of the lines and equipment, may action be initiated to reenergize the lines or equipment.

(xii) The identity of the person requesting tag removal shall be the same as that of the employee requesting placement, unless responsibility has been transferred under paragraph (m)(3)(ix) of this section.

(n) *Grounding for the protection of employees*—(1) *Application.* Paragraph (n) of this section applies to the grounding of transmission and distribution lines and equipment for the purpose of protecting employees. Paragraph (n)(4) of this section also applies to the protective grounding of other equipment as required elsewhere in this section.

(2) *General.* For the employee to work lines or equipment as deenergized, the lines or equipment shall be deenergized under the provisions of paragraph (m) of this section and shall be grounded as specified in paragraphs (n)(3) through (n)(9) of this section. However, if the installation of a ground is impracticable or if the conditions resulting from the installation of a ground would present greater hazards than working without grounds, the lines and equipment may be treated as deenergized provided all of the following conditions are met:

(i) The lines and equipment have been deenergized under the provisions of paragraph (m) of this section.

(ii) There is no possibility of contact with another energized source.

(iii) The hazard of induced voltage is not present.

(3) *Location.* Temporary protective grounds shall be placed at the work location. However, if the installation of temporary protective grounds at the work location is infeasible, grounds shall be installed on each side of the work location and as close to it as possible.

(4) *Protective grounding equipment.* (i) Protective grounding equipment shall be capable of conducting the maximum ground-fault current that could flow at the point of grounding for the time necessary to clear the fault. This equipment shall have an ampacity greater than or equal to that of No. 2 AWG copper.

(ii) Protective grounds shall have an impedance to ground low enough to permit prompt operation of protective devices in case of accidental energizing of the lines or equipment.

(5) *Testing.* Before any ground is installed, lines and equipment shall be tested and found absent of voltage, unless a previously installed ground is present.

(6) *Order of connection.* When grounds are to be attached to lines or equipment, the ground-end connection shall be attached first, and then the other end shall be attached by means of live-line tools or other insulated devices.

(7) *Order of removal.* When grounds are to be removed, the grounding device shall first be removed from the lines or equipment using live-line tools or other insulated devices.

(8) *Additional precautions.* When work is performed on a cable at a location remote from the cable terminal, the cable may not be grounded at the cable terminal if there is a possibility of hazardous transfer of potential should a fault occur.

(9) *Removal of grounds for test.* Grounds may be removed temporarily during tests. During the test procedure, the previously grounded lines and equipment shall be considered as energized.

(o) *Testing and test facilities*—(1) *Application.* Paragraph (o) of this section provides for safe work practices for high-voltage and high-power testing performed in laboratories, in shops, and in substations under the exclusive control of an electric utility, in the field, and on lines at sites accessible only to qualified personnel as part of the utility operation. It applies only to testing involving interim measurements utilizing high voltage, high power, or combinations of both, as opposed to

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testing involving continuous measurements as in routine metering, relaying, and normal line work.

(2) *General requirements.* (i) The employer shall establish and enforce additional work practices for the protection of workers from the hazards of high-voltage or high-power testing at all test areas, temporary and permanent. Such work practices shall include, as a minimum, test area guarding, grounding, and the safe use of measuring and control circuits. A means providing for periodic safety checks of field test areas shall also be included. (See paragraph (o)(6) of this section.)

(ii) Employees shall be trained in safe work practices upon their initial assignment to the test area, with periodic reviews and updates provided on a continuing basis.

(3) *Guarding of test areas.* (i) Permanent test areas shall be guarded by walls, fences, or barriers.

(ii) In field testing, or at a temporary test site where permanent fences and gates are not provided, the test area shall be guarded by the use of distinctively colored safety tape which is supported approximately waist high and to which safety signs are attached, or the test area shall be guarded by one or more test observers stationed so that the entire area can be monitored. These barriers shall be removed when the protection they provide is no longer needed.

(iii) Guarding shall be provided within test areas to control access to test equipment or apparatus under test likely to become energized as part of the testing by either direct or inductive coupling, in order to prevent accidental employee contact with energized parts.

(4) *Grounding practices.* (i) The employer shall establish and implement safe grounding practices for the particular test facility. All conductive parts accessible to the test operator during the time the equipment is operating at high voltage shall be maintained at ground potential except for portions of the equipment that are isolated from the test operator by guarding. Wherever ungrounded terminals of test equipment or apparatus under test may be present, they shall be treated as energized until determined by tests to be deenergized.

(ii) Visible grounds shall be applied, either automatically or manually with properly insulated tools, to the high-voltage circuits after they are deenergized and before work is performed on the circuit or item or apparatus under test. Common ground connections shall be solidly connected to the test equipment and the apparatus under test.

(iii) If high currents are intentionally employed in the testing, an isolated ground-return conductor system shall be provided so that no intentional passage of current, with its attendant voltage rise, is permitted in the ground grid or in the earth.

(iv) In tests in which the grounding of test equipment by means of the equipment grounding conductor located in the equipment power cord cannot be used due to increased hazards to test personnel or the prevention of satisfactory measurements, an equivalent safety ground shall be provided and the condition clearly indicated in the test set-up.

(v) When the test area is entered after deenergization, a ground shall be placed on the high-voltage terminal and any other exposed terminals. High capacitance equipment or apparatus shall be discharged through a resistor rated for the available energy. A direct ground shall be applied to the exposed terminals, when the stored energy drops to a level at which it is safe to do so.

(vi) If test trailers or vans are used in field testing, the chassis shall be grounded. Protection against hazardous touch potentials with respect to the vehicle, instrument panels, and other conductive parts accessible to employees shall be provided by bonding, insulation, or isolation.

(5) *Control and measuring circuits.* (i) Control wiring, meter connections, test leads and cables may not be run from a test area unless they are contained in a grounded metallic sheath and terminated in a grounded metallic enclosure, or unless other precautions are taken to ensure equivalent safety.

(ii) Meters and other instruments with accessible terminals or parts shall be isolated from test personnel to protect against hazards arising from such terminals and parts inadvertently becoming energized during testing. Where this isolation is provided by test equipment being located in metal compartments with viewing windows, interlocks shall be provided to interrupt the power supply if the compartment cover is opened.

(iii) The routing and connections of temporary wiring shall be made secure against damage, accidental interruptions and other hazards. To the maximum extent possible, signal, control, ground, and power cables shall be kept separate.

(iv) If employees will be present in the test area during testing, a test observer who is capable of implementing the immediate deenergization of test circuits for safety purposes shall be present.

(6) *Safety check.* (i) Safety practices governing employee work at temporary or field test areas shall provide for a routine check of such test areas for safety at the beginning of each group of continuous tests.

(ii) The test operator in charge shall conduct routine safety checks of temporary or field test facilities before each group of continuous tests, to verify at least the following conditions:

(A) That barriers and guards are in workable condition and are properly placed to isolate hazardous areas;

(B) That system test status signals, if used, are in operable condition;

(C) That test power disconnects are clearly marked and readily available in emergency;

(D) That ground connections are clearly identifiable;

(E) That personal protective equipment is provided and used as required by Subpart I of this Part and by this section;

(F) That signal, ground, and power cables are properly separated.

(p) *Mechanical equipment*—(1) *General requirements.* (i) The critical safety components of mechanical elevating and rotating equipment shall be inspected on each shift on which such equipment is used.

(ii) No vehicular equipment having an obstructed view to the rear may be operated on off-highway jobsites where any employee is exposed to the hazards created by the moving vehicle, unless:

(A) The vehicle has a reverse signal alarm audible above the surrounding noise level, or

(B) The vehicle is backed up only when a designated employee signals that it is safe to do so.

(iii) The operator of an electric line truck may not leave his or her position at the controls while a load is suspended if doing so might endanger any employee.

(iv) Rubber-tired, self-propelled scrapers, rubber-tired front-end loaders, rubber-tired dozers, wheel-type agricultural and industrial tractors, crawler-type tractors, crawler-type loaders, and motor graders, with or without attachments, shall have roll-over protective structures that meet the requirements of Subpart W of Part 1928 of this chapter.

(2) *Outriggers.* (i) Vehicular equipment, if provided with outriggers, shall be operated with the outriggers extended and firmly set as necessary for the stability of the specific configuration of the equipment. Outriggers may not be extended or retracted outside of clear view of the operator unless all employees are outside the range of possible equipment motion.

(ii) If the work area or the terrain precludes the use of outriggers, the equipment may be operated only within the maximum load ratings as specified by the manufacturer for the particular configuration of the equipment without outriggers.

(3) *Applied loads.* Lifting equipment shall be used within its maximum load rating for the conditions under which the work is being done.

(4) *Operations near energized lines or equipment.* (i) Mechanical equipment shall be operated so that the clearance distances of Tables R–6 and R–7 are maintained from exposed energized lines and equipment.

(ii) If it is difficult for the operator to accurately determine the distance between the equipment and the energized parts, another person shall observe the clearance and give timely warnings when the minimum clearance distance is approached.

(iii) If it is possible for the mechanical equipment or any attached load to be taken closer to exposed energized lines or equipment than the clearance specified in Table R–6 or R–7, the operation shall also comply with one of the following provisions:

(A) The equipment and attached load shall be treated as energized by employees on the ground. Employees on the ground may not contact the equipment or load unless they use electrical protective equipment.

(B) The equipment shall be insulated for the voltage involved. The equipment shall be positioned so that its uninsulated portions cannot approach the lines or equipment any closer than the clearance specified in Table R–6 or R–7.

(q) *Overhead lines.* This paragraph provides additional requirements for work performed on or near overhead lines and equipment.

(1) *General.* (i) Before elevated structures, such as poles or towers, are subjected to such stresses as climbing or the installation or removal of equipment may impose, the employer shall ascertain that the structures are capable of sustaining the additional or unbalanced stresses. If the pole or other structure cannot withstand the loads which will be imposed, it shall be braced or otherwise supported to prevent failure.

(ii) When poles are set, moved, or removed near overhead conductors, direct contact of the pole with the energized conductors shall be avoided. Employees shall wear electrical protective equipment or use insulated devices when handling poles, and the employees may not contact the poles with uninsulated parts of their bodies.

(iii) Pole holes shall be attended or physically guarded in areas where employees are working.

(2) *Installing and removing overhead lines.* The following provisions apply to the installation and removal of overhead conductors or cable.

(i) Precautions, such as the use of barriers or the tension stringing method, shall be taken to minimize the possibility that conductors and cables being installed or removed will contact energized lines or equipment.

(A) Conductors, cables, and pulling and tensioning equipment shall be considered as energized when the conductor or cable is being installed close enough to energized conductors that any of the following failures could energize the pulling or tensioning equipment or the wire or cable being installed:

(*1*) Failure of the pulling or tensioning equipment,

(*2*) Failure of the wire or cable being pulled, or

(*3*) Failure of the previously installed lines or equipment.

(B) Employees working on poles or structures or working in aerial lifts need not treat the installed conductors as energized if the conductors are grounded at the work locations.

(ii) If the conductors being installed or removed cross over energized conductors in excess of 600 volts, the automatic-reclosing feature for the energized lines shall be made inoperative.

(iii) Before lines are installed parallel to existing energized lines, the employer shall make a determination of the voltage to be induced in the new lines. If the lines being installed are subject to the induction of a hazardous voltage, the following requirements also apply:

(A) Each bare conductor shall be grounded in increments so that no point is more than 2 miles (3.22 km) from a ground.

(B) The grounds required in paragraph (q)(2)(iii)(A) of this section shall be left in place until the conductor installation is completed between dead ends.

(C) The grounds required in paragraph (q)(2)(iii)(A) of this section shall be removed as the last phase of aerial cleanup.

(D) If employees are working on bare conductors, grounds shall also be installed at each location where these employees are working, and grounds shall be installed at all open dead-end or catch-off points or the next adjacent structure.

(E) If two bare conductors are being spliced, the conductors to be spliced shall be bonded and grounded.

(F) When grounds are to be attached to lines or equipment, the ground-end connection shall be attached first, and then the other end shall be attached by means of live-line tools or other insulated devices, unless no induced voltage hazard is present.

(G) When grounds are to be removed, the grounding device shall first be removed from the lines or equipment using live-line tools or other insulated devices, unless the induced voltage hazard is no longer present.

(iv) Reel handling equipment, including pulling and tensioning devices, shall be in safe operating condition and shall be leveled and aligned.

(v) Load ratings of stringing lines, pulling lines, conductor grips, load-bearing hardware and accessories, rigging, and hoists may not be exceeded.

(vi) Pulling lines and accessories shall be repaired or replaced when defective.

(vii) Conductor grips may not be used on wire rope, unless the grip is specifically designed for this application.

(viii) Reliable communications between reel tender and pulling rig operator shall be maintained. The pulling rig may only be operated when it is safe to do so.

(ix) While the conductor or pulling line is being pulled (in motion) with a power-driven device, employees are not permitted directly under overhead operations or on the cross arm, except as necessary to guide the stringing sock or board over or through the stringing sheave.

(3) *Live-line bare-hand work.* In addition to other applicable provisions contained in this section, the following requirements apply to live-line bare-hand work:

(i) Before using or supervising the use of the live-line bare-hand technique on energized circuits, employees shall be trained in the technique and in the safety requirements of paragraph (q)(3) of this section. Employees shall receive refresher training as necessary.

(ii) Before any employee uses the live-line bare-hand technique on energized high-voltage conductors or parts, the following information shall be ascertained:

(A) The nominal voltage rating of the circuit on which the work is to be performed,

(B) The clearances to ground of lines and other energized parts on which work is to be performed, and

(C) The voltage limitations of equipment to be used.

(iii) The insulated equipment and tools used shall be designed, tested, and intended for live-line bare-hand work.

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Tools and equipment shall be kept clean and dry.

(iv) The automatic-reclosing feature of circuit-interrupting devices protecting the lines shall be made inoperative.

(v) Work may not be performed when adverse weather conditions (for example, thunderstorms in the immediate vicinity or snow or ice storms) make the work unusually hazardous. Additionally, work may not be performed when winds reduce the phase-to-phase or phase-to-ground clearances at the work location below that specified in paragraph (q)(3)(xii) of this section, unless the grounded objects and other lines and equipment are covered by insulating guards.

(vi) A conductive bucket liner or other conductive device shall be provided for bonding the insulated aerial device to the energized line or equipment.

(A) The employee shall be connected to the bucket liner or other conductive device by use of conductive shoes, leg clips, or other means.

(B) Where necessary, electrostatic shielding designed for the voltage being worked shall be provided.

(vii) Before the employee contacts the energized part, the conductive bucket liner or other conductive device shall be bonded to the energized conductor by means of a positive connection. This connection shall remain attached to the energized conductor until the work on the energized circuit is completed.

(viii) Aerial lifts to be used for live-line bare-hand work shall have dual controls (lower and upper) as follows:

(A) The upper controls shall be within easy reach of the employee in the basket. On a two-basket-type lift, access to the controls shall be within easy reach from either basket.

(B) The lower set of controls shall be located near the base of the boom, and they shall be so designed that they can override operation of the equipment at any time.

(ix) Ground level lift controls may not be operated with an employee in the lift, except in case of emergency.

(x) Before employees are elevated into the work position, all controls (ground level and bucket) shall be checked to determine that they are in proper working condition.

(xi) Before the boom of an aerial lift is elevated, the body of the truck shall be grounded, or the body of the truck shall be barricaded and treated as energized.

(xii) A boom-current test shall be made before work is started each day, each time during the day when higher voltage is encountered, and when changed conditions indicate a need for an additional test. This test shall consist of placing the bucket in contact with an energized source equal to the voltage to be encountered for a minimum of 3 minutes. The leakage current may not exceed 1 microampere per kilovolt of nominal phase-to-ground voltage. Work operations shall be immediately suspended upon indication of a malfunction in the equipment.

(xiii) The minimum clearance distances specified in Table R–8 shall be maintained from all grounded objects and from lines and equipment at a potential different from that to which the live-line bare-hand equipment is bonded, unless such grounded objects and other lines and equipment are covered by insulating guards.

(xiv) While an employee approaches, leaves, or bonds to an energized circuit, the minimum distances in Table R–8 shall be maintained between the employee and any grounded parts, including the lower boom and portions of the truck.

(xv) While the bucket is positioned alongside an energized bushing or insulator string, the minimum phase-to-ground clearances of Table R–8 shall be maintained between all parts of the bucket and the grounded end of the bushing or insulator string.

(xvi) Hand lines may not be used between the bucket and the boom or between the bucket and the ground. However, non-conductive-type hand lines may be used from conductor to ground if not supported from the bucket. Ropes used for live-line bare-hand work may not be used for other purposes.

(xvii) Uninsulated equipment or material may not be passed between a pole or structure and an aerial lift while an employee working from the bucket is bonded to an energized part.

(xviii) A minimum clearance table reflecting the clearance distances listed in Table R–8 shall be printed on a plate of durable non-conductive material. This table shall be mounted so as to be visible to the operator of the boom.

(xix) A non-conductive measuring device shall be available to assist employees in maintaining the required clearance distance.

TABLE R–8.—AC MINIMUM CLEARANCE FOR LIVE-LINE BARE-HAND WORK

Nominal voltage in kilovolts phase to phase	Distance			
	Phase to ground		Phase to phase	
	feet	(cm)	feet	(cm)
1.0 to 15.0	2.00	(61)	2.00	(61)
15.1 to 36.0	2.33	(71)	2.33	(71)
36.1 to 46.0	2.50	(76)	2.50	(76)
46.1 to 72.5	3.00	(91)	3.00	(91)
72.6 to 121	3.33	(102)	4.50	(137)
138 to 145	3.50	(107)	5.00	(152)
161 to 169	3.67	(112)	5.50	(168)
230 to 242	5.00	(152)	8.33	(254)
345 to 362 [1]	7.00	(213)	13.33	(610)
500 to 552 [1]	11.00	(335)	20.00	(406)
700 to 800 [1]	15.00	(457)	31.00	(945)

[1] The minimum phase-to-ground clearance distance may be reduced to the length of the line insulator, if a smaller distance is needed to do the work. The minimum phase-to-phase clearance distance may be reduced to 1.75 times the length of the line insulator, if a smaller clearance is needed to do the work.

(4) *Towers and structures.* The following requirements apply to work performed on towers or other structures which support overhead lines.

(i) No employee may be under a tower or structure while work is in progress, except as necessary to assist employees working above.

(ii) Tag lines or other similar devices shall be used to maintain control of tower sections being raised or positioned, unless the use of such devices would create a greater hazard.

(iii) The loadline may not be detached from a member or section until the load is safely secured.

(iv) Except during emergency power restoration procedures, work shall be discontinued when adverse weather conditions (for example, thunderstorms in the immediate vicinity, high winds, or snow or ice storms) make the work unusually hazardous.

(r) *Line-clearance tree-trimming operations.* This paragraph provides additional requirements for line-clearance tree-trimming operations and for equipment used in these operations.

(1) *Electrical hazards.* This paragraph does not apply to qualified employees.

(i) Before any employee climbs, enters, or works around any tree, a close inspection shall be made to determine whether an electric conductor passes within 10 feet of the tree.

(ii) Employees other than line-clearance tree trimmers shall maintain the following minimum clearances from energized conductors and equipment:

(A) For lines and equipment energized at 50 kV or less, the minimum clearance distance is 10 feet (305 cm).

(B) For lines and equipment energized at more than 50 kV, the minimum clearance distance is 10 feet (305 cm) plus 4 inches (10 cm) for every 10 kV over 50 kV.

(iii) Only a line-clearance tree trimmer may perform the work if it is found that an electrical hazard exists or if parts of the trees are within 10 feet (305 cm) of exposed energized overhead conductors or equipment.

(iv) There shall be a second line-clearance tree trimmer within normal voice communication under any of the following conditions:

(A) If the line-clearance tree trimmer is to approach more closely than 10 feet (305 cm) any conductor or electrical apparatus energized at more than 750 volts, or

(B) If branches or limbs being removed are closer to lines energized at more than 750 volts than the distances listed in Tables R–6 and R–7 (excluding the notes to those tables), or

(C) If roping is necessary to remove branches or limbs from such conductors or apparatus.

(v) Line clearance tree trimmers shall maintain the clearances from energized conductors given in Tables R–6 and R–7, excluding the notes to those tables.

(vi) Branches that are contacting exposed energized conductors or equipment or that are within the distances specified in Table R–6 or R–7 (excluding the notes to those tables) may be removed only through the use of insulating equipment.

(vii) Ladders, platforms, and aerial devices may not be brought closer to an energized part than the distances listed in Tables R–6 and R–7 (excluding the notes to those tables).

(viii) Line-clearance tree-trimming operations may not be performed during storms or under emergency conditions.

(2) *Brush chippers.* (i) Brush chippers shall be equipped with a locking device in the ignition system.

(ii) Access panels for maintenance and adjustment of the chipper blades and associated drive train shall be in place and secure during operation of the equipment.

(iii) Brush chippers not equipped with a mechanical infeed system shall be equipped with an infeed hopper of length sufficient to prevent employees from contacting the blades or knives of the machine during operation.

(iv) Trailer chippers detached from trucks shall be chocked or otherwise secured.

(v) Employees in the immediate area of an operating chipper feed table shall wear eye and face protection meeting the requirements of Subpart I of this part.

(3) *Sprayers and related equipment.* (i) Walking and working surfaces of sprayers and related equipment shall be covered with slip-resistant material. If slippery conditions cannot be eliminated completely, slip-resistant footwear or handrails and stair rails meeting the requirements of Subpart D may be used instead of slip-resistant material.

(ii) Equipment on which employees stand to spray while the vehicle is in motion shall be equipped with guardrails around the working area. The guardrail shall be constructed in accordance with Subpart D of this part.

(4) *Stump cutters.* (i) Stump cutters shall be equipped with enclosures or guards to protect employees.

(ii) The stump cutter operator and others in the immediate area of stump grinding operations shall wear eye and face protection meeting the requirements of Subpart I of this part.

(5) *Gasoline-driven power saws.* Gasoline-driven power saw operations shall meet the requirements of § 1910.266(c)(5) and the following:

(i) Power saws weighing more than 15 pounds (6.8 kilograms, service weight) that are used in trees shall be supported by a separate line, except when work is performed from an aerial lift and except during topping or removing operations where no supporting limb will be available. Proper clearance distance from energized lines, as provided elsewhere in this section, shall be maintained at all times.

(ii) Power saws shall be equipped with a control that will return the saw to idling speed when released.

(iii) Power saws shall be equipped with a clutch and shall be so adjusted that the clutch will not engage the chain drive at idling speed.

(iv) The operator shall have secure footing when starting the saw. Drop starting of saws over 15 pounds (6.8 kg) is permitted outside of the bucket of an aerial lift only if the area below the lift is clear of personnel.

(v) Power saw engines may be started and operated only when all co-workers are clear of the saw.

(vi) Power saws may not be running when being carried up into a tree by an employee.

(vii) Power saw engines shall be stopped for all cleaning, refueling, adjustments, and repairs to the saw or motor, except as the manufacturer's servicing procedures require otherwise.

(6) *Backpack power units for use in pruning and clearing.* (i) While a backpack power unit is running, no one other than the operator may be within 10 feet (305 cm) of the cutting head of a brush saw.

(ii) A backpack power unit shall be equipped with a quick shutoff switch readily accessible to the operator.

(iii) Backpack power unit engines shall be stopped for all cleaning, refueling, adjustments, and repairs to the saw or motor, except as the manufacturer's procedures require otherwise.

(7) *Rope.* (i) Climbing ropes shall be used by employees working aloft in trees. These ropes shall have a minimum diameter of 0.5 inch (1.2 cm) with a minimum breaking strength of 2300 pounds (10.2 kN). Synthetic rope shall have elasticity of not more than 7 percent.

(ii) Rope made unsafe by damage or defect may not be used.

(iii) Rope shall be stored away from cutting edges and sharp tools. Rope contact with corrosive chemicals, gas, and oil shall be avoided.

(iv) When stored, rope shall be coiled and piled, or shall be suspended, so that air can circulate through the coils.

(v) Rope ends shall be secured to prevent their unraveling.

(vi) Climbing rope may not be spliced to effect repair.

(vii) If there is a possibility that rope may be taken closer to exposed energized lines than the clearance distance specified in Table R–6 or R–7, the rope shall be treated as energized by employees on the ground or in contact with ground.

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(s) *Communication facilities*—(1) *Microwave transmission.* (i) Employees may not look into an open waveguide or antenna which is connected to an energized microwave source.

(ii) If the electromagnetic radiation level within an accessible area associated with microwave communications systems exceeds the radiation protection guide given in § 1910.97, the area shall be posted with the warning symbol described in § 1910.97(a)(3). The lower half of the warning symbol shall include the following or its equivalent:

"Radiation in this area may exceed hazardous limitations and special precautions are required. Obtain specific instruction before entering."

(iii) When an employee works in an area where the electromagnetic radiation could exceed the radiation protection guide, the employer shall institute measures that ensure that the employee's exposure is not greater than that permitted by that guide. Such measures may include administrative and engineering controls and personal protective equipment.

(2) *Power line carrier.* Power line carrier work, including work on equipment used for coupling carrier current to power line conductors, shall be performed in accordance with the requirements of this section pertaining to work on energized lines.

(t) *Underground electrical installations.* This paragraph provides additional requirements for work on underground electrical installations.

(1) *Access.* Ladders or other climbing devices shall be used to enter and exit manholes and subsurface vaults exceeding 4 feet (122 cm) in depth. Employees may not climb into or out of manholes or vaults by stepping on cables or hangers.

(2) *Lowering equipment into manholes.* Equipment used to lower materials and tools into manholes or vaults shall be capable of supporting the weight to be lowered and shall be checked for defects before use. Before hot solder or other hot compounds are lowered into the opening for a manhole or vault, employees working in the manhole or vault shall be clear of the area directly under the opening.

(3) *Attendants for manholes.* (i) While work is being performed in a manhole containing energized electric equipment, an employee shall be available on the surface in the immediate vicinity to render emergency assistance.

(ii) Occasionally, the employee on the surface may briefly enter a manhole to provide assistance, other than emergency.

(iii) For the purpose of inspection, housekeeping, taking readings, or similar work, an employee working alone may enter, for brief periods of time, a manhole where energized cables or equipment are in service, if such work can be performed safely.

(iv) Communications (visual, voice, or signal line) shall be maintained among all employees involved in the job.

(4) *Duct rods.* If duct rods are used, they shall be installed in the direction presenting the least hazard to employees. An employee shall be stationed at the far end of the duct line being rodded to ensure that the required clearance distances are maintained.

(5) *Moving cables.* Energized cables that are to be moved shall be carefully inspected for defects and moved only under the direct supervision of a qualified employee.

(6) *Multiple cables.* When multiple cables are present in a work area, the cable to be worked shall be identified by electrical means, unless its identity is obvious by reasons of distinctive appearance or location. Cables other than the one being worked shall be protected from damage.

(7) *Defective cables.* Where cables in manholes appear defective by the presence of abnormalities which could lead to or be an indication of an impending fault (such as oil or compound leaking from cable or joints, broken cable sheaths or joint sleeves, hot localized surface temperatures of cables or joints, or swollen joints whose circumference exceeds 3.5 times the standard sleeve size diameter), no employee may work in the manhole while the defective cable is energized. However, if the defective cable or splice cannot be deenergized due to service load conditions, employees may enter the manhole provided they are protected from the possible effects of a failure by shields or other devices that are capable of containing the adverse effects of a fault in the joint.

(8) *Sheath continuity.* When work is performed on buried cable or on cable in manholes, metallic sheath continuity shall be maintained.

(u) *Substations.* This paragraph provides additional requirements for substations and for work performed in them.

(1) *Access and working space.* Sufficient access and working space shall be provided and maintained about electric equipment to permit ready and safe operation and maintenance of such equipment.

Note.—Guidelines for the dimensions of access and workspace about electric equipment in substations are contained in American National Standard—National Electrical Safety Code, ANSI C2–1987. Installations meeting the ANSI provisions comply with paragraph (u)(1) of this section.

(2) *Draw-out-type circuit breakers.* When draw-out-type circuit breakers are removed or inserted, the breaker shall be in the open position. The control circuit shall also be rendered inoperative, if the design of the equipment permits.

(3) *Substation fences.* (i) Conductive fences around substations shall be grounded. When a substation fence is expanded or a section is removed, fence grounding continuity shall be maintained, and bonding shall be used to prevent electrical discontinuity.

(ii) Gates to unattended substations shall be kept locked.

(4) *Guarding of energized parts.* (i) Rooms and spaces in which electric supply conductors or equipment are installed shall be so enclosed within fences, screens, partitions, or walls as to minimize the possibility that unqualified persons will enter. Entrances not under the observation of an attendant shall be kept locked. Signs warning unqualified persons to keep out shall be displayed at entrances.

(ii) Guards shall be provided around all live parts operating above 150 volts to ground without an insulating covering, unless the location of the live parts gives sufficient horizontal or vertical or a combination of these clearances to minimize the possibility of accidental employee contact.

Note.—Guidelines for the dimensions of clearance distances about electric equipment in substations are contained in American National Standard—National Electrical Safety Code, ANSI C2–1987. Installations meeting the ANSI provisions comply with paragraph (u)(4)(ii) of this section.

(iii) Except for fuse replacement or other necessary access by qualified persons, the guarding of energized parts within a compartment shall be maintained during operation and maintenance functions to prevent accidental contact with energized parts and to prevent tools or other equipment from being dropped on energized parts.

(iv) When guards are removed from energized equipment, barriers shall be installed around the work area to prevent employees who are not working on the equipment, but who are in the area, from contacting the exposed live parts.

(5) *Substation entry.* (i) Upon entering an attended substation, employees other than those regularly working in the station shall report their presence to the employee in charge in order to receive information on special system conditions affecting employee safety.

(ii) The job briefing required by paragraph (c) of this section shall cover such additional subjects as the location of energized equipment in or adjacent to the work area and the limits of any deenergized work area.

(v) *Power generation.* This paragraph provides additional requirements and related work practices for power generating plants.

(1) *Interlocks and other safety devices.* (i) Interlocks and other safety devices shall be maintained in a safe, operable condition.

(ii) No interlock or other safety device may be modified to defeat its function, except for test, repair, or adjustment of the device.

(2) *Changing brushes.* Before exciter or generator brushes are changed while the generator is in service, the exciter or generator field shall be checked to determine that a ground condition does not exist. If the equipment has ground protecting devices, the protective devices shall be disconnected and tagged before brushes are changed.

(3) *Access and working space.* Sufficient access and working space shall be provided and maintained about electric equipment to permit ready and safe operation and maintenance of such equipment.

Note.—Guidelines for the dimensions of access and workspace about electric equipment in generating stations are contained in American National Standard—National Electrical Safety Code, ANSI C2–1987. Installations meeting the ANSI provisions comply with paragraph (v)(3) of this section.

(4) *Guarding of energized parts.* (i) Rooms and spaces in which electric supply conductors or equipment are installed shall be so enclosed within fences, screens, partitions, or walls as to minimize the possibility that unqualified persons will enter. Entrances not under the observation of an attendant shall be kept locked. Signs warning unqualified persons to keep out shall be displayed at entrances.

(ii) Guards shall be provided around all live parts operating above 150 volts to ground without an insulating covering, unless the location of the live parts gives sufficient horizontal or vertical or a combination of these clearances to minimize the possibility of accidental employee contact.

Note.—Guidelines for the dimensions of clearance distances about electric equipment in generating stations are contained in American National Standard—National Electrical Safety Code, ANSI C2–1987. Installations meeting the ANSI provisions comply with paragraph (v)(4)(ii) of this section.

(iii) Except for fuse replacement or other necessary access by qualified persons, the guarding of energized parts within a compartment shall be maintained during operation and maintenance functions to prevent accidental contact with energized parts and to prevent tools or other equipment from being dropped on energized parts.

(iv) When guards are removed from energized equipment, barriers shall be installed around the work area to prevent employees who are not working on the equipment but who are in the area from contacting the exposed live parts.

(5) *Breaking pressure connections.* (i) Before a valve bonnet or stuffing box gland is moved or removed and before a flanged joint or other pressure connection is broken, if hazardous pressures or temperatures may exist, the line shall be isolated, drained, and locked out or tagged in accordance with paragraph (d) of this section.

(ii) The bolts, nuts, or other fasteners shall then be loosened; and, before they are removed, special care shall be exercised to ensure that the connection is not under pressure.

(6) *Water or steam spaces.* (i) A designated employee shall inspect conditions before work is permitted and after its completion. Eye protection shall be worn at all times when condenser, heater or boiler tubes are being cleaned.

(ii) Where it is necessary for employees to work near tube ends during cleaning, shielding shall be installed.

(7) *Chemical cleaning of boilers and pressure vessels.* The following requirements apply to chemical cleaning of boilers and pressure vessels:

(i) Areas where chemical cleaning is in progress shall be cordoned off to restrict access during cleaning. Additionally, the area shall be posted with signs restricting entry and warning of the hazard to health and the hazards of fire and explosion. Smoking, welding, and other possible ignition sources are prohibited in these restricted areas.

(ii) The number of personnel in the restricted area shall be limited to those necesary to accomplish the task safely.

(iii) There shall be ready access to clean water or temporary emergency showers for emergency use.

(iv) Employees in restricted areas shall wear protective equipment meeting the requirements of Subpart I of this part and including, but not limited to, protective clothing, boots, googles, and gloves.

(8) *Chlorine systems.* (i) Chlorine system enclosures shall be posted with signs restricting entry and warning of the hazard to health and the hazards of fire and explosion.

(ii) Only designated employees may enter the restricted area. Additionally, the number of personnel shall be limited to those necessary to safely accomplish the task.

(iii) Emergency repair kits shall be available near the shelter or enclosure to allow for the prompt repair of leaks in chlorine lines, equipment or containers.

(iv) Before normal repair procedures are started, chlorine tanks, pipes, and equipment shall be purged with dry air and isolated from other sources of chlorine.

(v) The employer shall ensure that precautions are taken to prevent the accidental mixing of chlorine with materials which would react with the chlorine in a dangerously exothermic or other hazardous manner.

(9) *Boilers.* (i) Before internal furnace or ash hopper repair work is started, overhead areas shall be inspected for possible falling objects. If the hazard of falling objects exists, overhead protection such as planking or nets shall be provided.

(ii) When opening an operating boiler door, employees shall stand clear of the opening of the door to avoid the heat blast and gases which may escape from the boiler.

(10) *Turbine generators.* (i) Smoking and other ignition sources are prohibited near the hydrogen or hydrogen sealing systems, and signs warning of the danger of explosion and fire shall be posted.

(ii) Excessive hydrogen makeup or abnormal loss of pressure shall be considered as an emergency and shall be corrected.

(iii) A sufficient quantity of inert gas shall be available to purge the hydrogen from the largest generator.

(11) *Coal and ash handling.* (i) Only designated persons may operate railroad equipment.

(ii) Before a locomotive or locomotive crane is moved, a warning shall be given to employees in the area.

(iii) Employees engaged in switching or dumping cars may not use their feet to line up drawheads.

(iv) Drawheads and knuckles may not be shifted while locomotives or cars are in motion.

(v) When a car is stopped for unloading, the car shall be held in place by blocks.

(vi) An emergency means of stopping dump operations shall be provided at railcar dumps.

(vii) Employees who work in coal- or ash-handling conveyor areas shall be trained and knowledgeable in conveyor

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operation and in the requirements of paragraphs (v)(11)(viii) through (v)(11)(xi) of this section.

(viii) Employees may not ride a coal- or ash-handling conveyor belt at any time. Employees may not cross over the conveyor belt, except at walkways, unless the conveyor's energy source has been deenergized and has been locked out or tagged in accordance with paragraph (d) of this section.

(ix) A conveyor that could cause injury when started may not be started until personnel in the area are alerted by a signal or by a designated person that the conveyor is about to start.

(A) If a conveyor that could cause injury when started is automatically controlled or is controlled from a remote location, an audible device shall be provided that can be clearly heard at all points along the conveyor where personnel may be present. The warning device shall be actuated by the device starting the conveyor and shall continue for a period of time before the conveyor starts that is long enough to allow employees to move clear of the conveyor system. A visual warning may be used in place of the audible device if it would provide an equally effective warning in particular circumstances.

(B) If the system's function would be seriously hindered by the required time delay, or if the intent of the warning could be misinterpreted, warning signs shall be provided in place of the audible warning device. The warning signs shall be clear, concise, and legible and shall indicate that conveyors and allied equipment may be started at any time, that danger exists, and that personnel must keep clear. These warning signs shall be provided along the conveyor at areas not guarded by position or location.

(x) Remotely and automatically controlled conveyors, and conveyors that have operating stations which are not manned or which are beyond voice and visual contact from drive areas, loading areas, transfer points, and other locations on the conveyor path not guarded by location, position, or guards shall be furnished with emergency stop buttons, pull cords, limit switches, or similar emergency stop devices. However, if the design, function, and operation of the conveyor is not hazardous to personnel, an emergency stop device is not required.

(A) Emergency stop devices shall be easily identifiable in the immediate vicinity of such locations.

(B) An emergency stop device shall act directly on the control of the conveyor involved and may not depend on the stopping of any other equipment. Emergency stop devices shall be installed so that they cannot be overridden from other locations.

(xi) Where coal-handling operations may produce a combustible atmosphere from fuel sources or from flammable gases or dust, sources of ignition shall be eliminated or safely controlled to prevent ignition of the combustible atmosphere.

(xii) Employees may not work on or beneath overhanging coal in coal bunkers, coal silos, or coal storage areas.

(xiii) Employees entering a bunker or silo to dislodge the contents shall wear a safety harness with lifeline attached. The lifeline shall be secured to a fixed support outside the bunker and shall be attended at all times by an employee located outside the bunker or facility.

(12) *Walking and working surfaces.* (i) The walking and working surface requirements of Subpart D of this part apply, except as noted in paragraphs (h) and (v)(12) of this section.

(ii) A floor hole presenting a falling hazard of 4 feet (122 cm) or more to a lower level shall be guarded by a fall protection system in accordance with Subpart D of this part to prevent employees from falling into the opening. A floor hole which is more than 2 inches (5.1 cm) and less than 12 inches (30.5 cm) in its least dimension and which is provided solely for passage of machinery, piping, or other equipment that may expand and contract, vibrate or move in a similar manner shall be guarded by a toeboard or equivalent means to prevent employees' feet from entering the hole and to prevent tools from falling through the opening and onto employees below.

(13) *Hydroplants and equipment.* Employees working on or close to water gates, valves, intakes, forebays, flumes, or other locations where increased or decreased water flow or levels may pose a significant hazard shall be warned before water flow changes are made.

(w) *Special conditions*—(1) *Capacitors.* The following additional requirements apply to work on capacitors and on lines connected to capacitors.

(i) Before employees work on capacitors, the capacitors shall be disconnected from the energize source and short-circuited.

(ii) Before the units are handled, each unit in series-parallel capacitor banks shall be short-circuited between all terminals and the capacitor case or its rack. If the cases of capacitors are on ungrounded substation racks, the racks shall be bonded to ground.

(iii) Any line to which capacitors are connected shall be short-circuited before it is considered deenergized.

(2) *Current transformer secondaries.* The secondary of a current transformer may not be opened while the transformer is energized. If the primary of the current transformer cannot be deenergized before work is performed on an instrument, a relay, or other section of a current transformer secondary circuit, the circuit shall be bridged so that the current transformer secondary will not be opened.

(3) *Series streetlighting.* If the open-circuit voltage exceeds 600 volts, the series streetlighting circuit shall be worked in accordance with paragraph (q) or (t) of this section, as appropriate. A series loop may only be opened after the streetlighting transformer has been deenergized and isolated from the source of supply or after the loop is bridged to avoid an open-circuit condition.

(4) *Illumination.* Whenever natural light is insufficient to illuminate the worksite, sufficient artificial illumination shall be provided to enable the employee to perform the work safely.

(5) *Protection against drowning.* (i) Whenever employees are engaged in work where they may be pulled or pushed or may fall into water and where the danger of drowning exists, they shall be provided with and shall use U.S. Coast Guard approved personal flotation devices.

(ii) Personal flotation devices shall be maintained in safe condition and shall be inspected on a regularly scheduled basis for rot, mildew, water saturation, and other conditions which could render the device unsuitable for use.

(iii) Employees may cross streams or other bodies of water only if a safe means of passage is provided.

(6) *Employee protection in public work areas.* (i) Before work is begun in the vicinity of vehicular or pedestrian traffic which may endanger employees, warning signs or flags and other traffic control devices shall be placed in conspicuous locations to alert and channel approaching traffic.

(ii) Where additional employee protection is necessary, barricades shall be used.

(iii) Excavated areas shall be protected with barricades.

(iv) At night, warning lights shall be prominently displayed.

(7) *Backfeed.* If there is a possibility of voltage backfeed from sources of cogeneration or from the secondary system (for example, backfeed from more than one energized phase feeding

a common load), the requirements of paragraph (1) of this section apply if the lines or equipment are to be worked as energized, and the requirements of paragraphs (m) and (n) of this section apply if the lines or equipment are to be worked as deenergized.

(8) *Lasers.* Laser equipment shall be installed, adjusted, and operated in accordance with § 1926.54 of this chapter.

(9) *Hydraulic fluids.* Hydraulic fluids used for the insulated sections of equipment shall provide insulation for the voltage involved.

(x) *Definitions.*

Affected employee. An employee whose job includes activities such as erecting, installing, constructing, repairing, adjusting, inspecting, operating, or maintaining the equipment or process.

Attendant. An employee assigned to remain immediately outside the entrance to an enclosed or other space to render assistance as needed to employees inside the space.

Authorized employee. An employee to whom the authority and responsibility to perform a specific assignment has been given by the employer, who can demonstrate by experience or training the ability to recognize potentially hazardous energy and its potential impact on workplace conditions, and who has the knowledge to implement adequate methods and means for the control and isolation of such energy.

Automatic circuit recloser. A self-controlled device for interrupting and reclosing an alternating current circuit with a predetermined sequence of opening and reclosing followed by resetting, hold-closed, or lockout operation.

Barricade. A physical obstruction such as tapes, cones, or A-frame type wood or metal structures intended to provide a warning about and to limit access to a hazardous area.

Barrier. A physical obstruction which is intended to prevent contact with energized lines or equipment or to prevent unauthorized access to a work area.

Bond. The electrical interconnection of conductive parts designed to maintain a common electrical potential.

Bus. A conductor or a group of conductors that serve as a common connection for two or more circuits.

Bushing. An insulating structure, including a through conductor or providing a passageway for such a conductor, with provision for mounting on a barrier, conducting or otherwise, for the purposes of insulating the conductor from the barrier and conducting current from one side of the barrier to the other.

Cable. A conductor with insulation, or a stranded conductor with or without insulation and other coverings (single-conductor cable), or a combination of conductors insulated from one another (multiple-conductor cable).

Cable sheath. A conductive protective covering applied to cables.

Note.—A cable sheath may consist of multiple layers of which one or more is conductive.

Circuit. A conductor or system of conductors through which an electric current is intended to flow.

Clearance (for work). Authorization to perform specified work or permission to enter a restricted area.

Clearance (from hazard). Separation from energized lines or equipment.

Communication lines. (See *Lines, communication.*)

Conductor. A material, usually in the form of a wire, cable, or bus bar, suitable for carrying an electric current.

Covered conductor. A conductor covered with a dielectric having no rated insulating strength or having a rated insulating strength less than the voltage of the circuit in which the conductor is used.

Current-carrying part. A conducting part intended to be connected in an electric circuit to a source of voltage. Non-current-carrying parts are those not intended to be so connected.

Deenergized. Free from any electrical connection to a source of potential difference and from electric charge; not having a potential different from that of the earth.

Note.—The term is used only with reference to current-carrying parts, which are sometimes energized (alive).

Designated employee (designated person). An employee (or person) who is designated by the employer to perform specific duties under the terms of this section and who is knowledgeable in the construction and operation of the equipment and the hazards involved.

Electric line truck. A truck used to transport personnel, tools, and material for electric supply line work.

Electric supply lines. (See *Lines, electric supply.*)

Electric utility. An organization responsible for the installation, operation, or maintenance of an electric supply system.

Enclosed space. A working space, such as a manhole, vault, tunnel, or shaft, that has a limited means of egress or entry, that is designed for periodic employee entry under normal operating conditions, and that under normal conditions does not contain a hazardous atmosphere, but that may contain a hazardous atmosphere under abnormal conditions.

Note.—Spaces that are enclosed but not designed for employee entry under normal operating conditions are not considered to be enclosed spaces for the purposes of this section. Similarly, spaces that are enclosed and that are expected to contain a hazardous atmosphere are not considered to be enclosed spaces for the purposes of this section.

Energized (alive, live). Electrically connected to a source of potential difference, or electrically charged so as to have a potential significantly different from that of earth in the vicinity.

Energy isolating device. A physical device that prevents the transmission or release of energy, including, but not limited to, the following: A manually operated electrical circuit breaker, a disconnect switch, a manually operated switch, a slide gate, a slip blind, a line valve, blocks, and any similar device with a visible indication of the position of the device. (Push buttons, selector switches, and other control-circuit-type devices are not energy isolating devices.)

Energy source. Any electrical, mechanical, hydraulic, pneumatic, chemical, nuclear, thermal, or other energy source that could cause injury to personnel.

Equipment (electrical). A general term including material, fittings, devices, appliances, fixtures, apparatus, and the like used as part of or in connection with an electrical installation.

Exposed. Not isolated or guarded.

Ground. A conducting connection, whether intentional or accidental, between an electric circuit or equipment and the earth, or to some conducting body that serves in place of the earth.

Grounded. Connected to earth or to some conducting body that serves in place of the earth.

Guarded. Covered, fenced, enclosed, or otherwise protected, by means of suitable covers or casings, barrier rails or screens, mats, or platforms, designed to minimize the possibility, under normal conditions, of dangerous approach or accidental contact by persons or objects.

Note.—Wires which are insolated, but not otherwise protected, are not considered as guarded.

Hazardous atmosphere. An atmosphere presenting a potential for death, disablement, injury, or acute illness from one or more of the following causes:

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(1) A concentration of flammable gas, vapor, or mist in excess of 10 percent of its lower flammable limit;

(2) A concentration of airborne combustible dust that obscures vision at a distance of 5 feet (152 cm) or less;

(3) A concentration of oxygen less than 19.5 percent or more than 23.5 percent;

(4) A concentration of any substance listed in Subpart Z of this part that exceeds the listed permissible exposure limit (PEL);

(5) A concentration of a substance above the numerical limit in the Material Safety Data Sheet provided by the manufacturer to employers in conformance with § 1910.1200(g)(2)(vi), or that is otherwise known to the employer to present a safety or acute health hazard; or

(6) Any other condition immediately dangerous to life or health.

High-power tests. Tests in which fault currents, load currents, magnetizing currents, and line-dropping currents are used to test equipment, either at the equipment's rated voltage or at lower voltages.

High-voltage tests. Tests in which voltages of approximately 1000 volts are used as a practical minimum and in which the voltage has sufficient energy to cause injury.

Immediately dangerous to life or health (IDLH). Any condition that poses an immediate threat to life or that is likely to result in acute or immediate severe health effects.

Insulated. Separated from other conducting surfaces by a dielectric (including air space) offering a high resistance to the passage of current.

Note.—When any object is said to be insulated, it is understood to be insulated for the conditions to which it is normally subjected. Otherwise, it is, within the purpose of this section, uninsulated.

Insulation (cable). That which is relied upon to insulate the conductor from other conductors or conducting parts or from ground.

Line-clearance tree trimming. The pruning, trimming, repairing, maintaining, removing, or clearing trees or cutting brush that is within 10 feet (305 cm) of electric supply lines and equipment.

Line-clearance tree trimmer. An employee who, through related training or on-the-job experience or both, is familiar with the special techniques and hazards involved in line clearance. An employee who is regularly assigned to a line-clearance tree-trimming crew and who is undergoing on-the-job training and who, in the course of such training, has demonstrated an ability to perform duties safely at his or her level of training and who is under the direct supervision of a line-clearance tree trimmer is considered to be a line-clearance tree trimmer.

Lines—(1) *Communication lines.* The conductors and their supporting or containing structures which are used for public or private signal or communication service, and which operate at potentials not exceeding 400 volts to ground or 750 volts between any two points of the circuit, and the transmitted power of which does not exceed 150 watts. If the lines are operating at less than 150 volts, no limit is placed on the transmitted power of the system. Under certain conditions, communication cables may include communication circuits exceeding these limitations where such circuits are also used to supply power solely to communication equipment.

Note.—Telephone, telegraph, railroad signal, data, clock, fire, police alarm, cable television, and other systems conforming with this definition are included. Lines used for signaling purposes, but not included under this definition, are considered as electric supply lines of the same voltage.

(2) *Electric supply lines.* Conductors used to transmit electric energy and their necessary supporting or containing structures. Signal lines of more than 400 volts are always supply lines within this section, and those of less than 400 volts are considered as supply lines, if so run and operated throughout.

Manhole. A subsurface enclosure which personnel may enter and which is used for the purpose of installing, operating, and maintaining submersible equipment or cable.

Manhole steps. A series of steps individually attached to or set into the walls of a manhole structure.

Qualified employee (qualified person). One knowledgeable in the construction and operation of electric power generation, transmission, and distribution equipment and the hazards involved.

Rubber. A generic term that includes elastomers and elastomer compounds, regardless of origin.

Step bolt. A bolt or rung attached at intervals along a structural member and used for foot placement during climbing or standing.

Switch. A device for opening and closing or for changing the connection of a circuit. In this section, a switch is understood to be manually operable, unless otherwise stated.

System operator. A qualified person designated to operate the system or its parts.

Vault. An enclosure, above or below ground, which personnel may enter and which is used for the purpose of installing, operating, or maintaining equipment or cable.

Vented vault. A vault that has provision for air changes using exhaust flue stacks and low level air intakes operating on differentials of pressure and temperature providing for airflow which precludes a hazardous atmosphere from developing.

Voltage. The effective (rms) potential difference between any two conductors or between a conductor and ground. Voltages are expressed in nominal values unless otherwise indicated. The nominal voltage of a system or circuit is the value assigned to a system or circuit of a given voltage class for the purpose of convenient designation. The operating voltage of the system may vary above or below this value.

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Tuesday
January 31, 1989

Part IV

Department of Education

34 CFR Part 73

Standards of Conduct; Final Regulations

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DEPARTMENT OF EDUCATION

34 CFR Part 73

Standards of Conduct

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary revises the regulations governing the Standards of Conduct of the Department of Education. The regulations implement the Department's ethics program for current and former employees, in accordance with Office of Personnel Management (OPM) and Office of Government Ethics (OGE) requirements and guidance. The revisions update the regulations to implement the Ethics in Government Act of 1978 as amended and regulations thereunder, and delete nonregulatory information contained in the previous regulations.

EFFECTIVE DATE: These regulations take effect on March 2, 1989.

FOR FURTHER INFORMATION CONTACT: Steven Y. Winnick, U.S. Department of Education, 400 Maryland Avenue, SW., Room 4087, FOB-6, Washington, DC 20202-6177. Telephone: 732-2606.

SUPPLEMENTARY INFORMATION: Under the Ethics in Government Act, as amended, Executive Order 11222 of May 8, 1965, and OPM and OGE implementing regulations, agencies are required to establish an ethics program and issue regulations governing standards of conduct for their employees. These regulations are issued to fulfill that mandate. The guiding principle behind the standards is that Department employees must be persons of unquestioned integrity and maintain ethical standards of the highest order. The regulations provide guidance and restrictions for employees to ensure that certain personal or outside activities or interests do not create an actual or apparent conflict of interest with their official duties. In addition, they identify how employees are informed and may obtain guidance about the standards, and how disciplinary action may be taken for violations of the standards. The regulations include procedures for confidential reporting of employment and financial information; however, these provisions will be modified, as appropriate, after OGE issues its final regulations on confidential reporting requirements.

Employees who, in the course of their duties, come to know of criminal violations or violations of the standard of conduct regulations committed by other employees or another person or organization should report the violations to their supervisor, the Office of Inspector General, or the Designated Agency Ethics Official. Reports to the Office of Inspector General may be made through its "hot-line."

The major changes in these regulations are:

- The sections are reworded and their ordering rearranged to simplify and clarify the existing regulations. The regulations delete provisions that provided specific examples or merely paraphrased statutory requirements.
- The definition of "employee" is revised to include members of federal advisory committees, consistent with existing practice and interpretation, and to include "special Government employees," rather than having a separate subpart devoted only to these employees.
- Provision for acceptance of reimbursable travel for an employee is made in the section on "Gifts, entertainment, and favors."
- The provisions on outside employment have been simplified.
- New provisions require employees to comply with Department procedures concerning release of official information to the press, Congress, or the public.
- A new section on conduct relating to drugs has been added as part of the Department's program to achieve a drug-free workplace, in accordance with Executive Order 12564.

Rulemaking procedure

Since these regulations relate to agency management and personnel, they are exempt from notice and comment requirements under 5 U.S.C. 553(a).

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

List of Subjects in 34 CFR Part 73

Conflict of interest, Education Department, Government employees, Standards of conduct.

Dated: January 12, 1989.

(Catalog of Federal Domestic Assistance Number does not apply.)

Lauro F. Cavazos,

Secretary of Education.

The Secretary amends Title 34 of the Code of Federal Regulations by revising Part 73 to read as follows:

PART 73—STANDARDS OF CONDUCT

Subpart A—General Provisions

Sec.

73.1 Standards of conduct.
73.2 Definitions.
73.3 Employee notification.
73.4 Interpretation, advisory services, and counseling.
73.5 Disciplinary and other remedial action.

Subpart B—Conduct and Responsibilities

73.10 General standards of conduct.
73.11 Financial interests.

Subpart C—Gifts, Travel, and Outside Activity

73.20 Gifts, entertainment, and favors.
73.21 Acceptance of travel expenses and awards.
73.22 Outside employment and other activities.

Subpart D—Specific Prohibitions

73.30 Criminal conflict of interest prohibitions.
73.31 Political activity.
73.32 Conduct related to drugs.
73.33 Use of Government property.
73.34 Gambling, betting, and lotteries.
73.35 Misuse of information.
73.36 Indebtedness.
73.37 Miscellaneous statutory prohibitions.

Subpart E—Confidential Reporting Requirements—Employment and Financial Interests

73.40 Confidential reporting of employment and financial interests—regular Government employees.
73.41 Confidential reporting of employment and financial interests—special Government employees.
73.42 Reviewing statements of financial interest.

Subpart F—Post-Employment Conflicts of Interests

73.50 Disciplinary proceedings for post-employment conflicts of interests.

Appendix—Code of Ethics for Government Service

Authority: 5 U.S.C. Appendix 4, 5; 18 U.S.C. 201–209; 28 U.S.C. 535; E.O. 11222 of May 8, 1965, 3 CFR, 1964–1965 Comp., p. 306; 5 CFR 735.104; 5 CFR 735.201(a); 5 CFR 737.27; 5 CFR 738.103, unless otherwise noted.

Subpart A—General Provisions

§ 73.1 Standards of conduct.

(a) The Secretary finds that—

(1) The maintenance of high standards of honesty, integrity, impartiality, and conduct by employees is essential to assure the proper performance of Government business and the maintenance of confidence by citizens in their Government; and

(2) The avoidance of misconduct and conflicts of interest on the part of employees through informed judgment is indispensable to the maintenance of these standards.

(b) The regulations in this part implement the findings in paragraph (a) of this section by—

(1) Establishing standards of conduct to which each employee must adhere; and

(2) Describing actions the Secretary may take if an employee violates a particular standard.

(Authority: E. O. No. 11222, May 8, 1965, as amended; 5 CFR 735.101, 5 CFR 735.104)

§ 73.2 Definitions.

The following definitions apply to this part:

"Act" means the Ethics in Government Act, as amended.

"Counselor" means—

(a) The person designated by the Secretary to provide interpretation of the standards of conduct and advisory services to Department employees under § 73.4; or

(b) Any deputy counselor designated by the Secretary.

"Day" means calendar day.

"Department" means the United States Department of Education.

"Designated Agency Ethics Official" or "DAEO" means—

(a) The person appointed by the Secretary and charged with—

(1) Ensuring departmental compliance with the requirements of the Ethics in Government Act of 1978, as amended;

(2) Coordinating and managing the Department's ethics program, as described in 5 CFR 738.203; and

(3) Serving as liaison to the Office of Government Ethics with regard to all aspects of the Department's ethics program.

(b) An alternate DAEO designated by the Secretary.

"Employee."

(a) This term means—

(1) Any officer or employee of the Department or of an advisory committee to the Department; or

(2) A special Government employee, unless specifically provided otherwise.

(b) The term does not mean an independent contractor under a personal services contract.

"Foreign government" means—

(a) Any unit of foreign governmental authority, including any foreign national, State, local, or municipal government;

(b) Any international or multinational organization whose membership is composed of any unit of foreign government described in paragraph (a) of this definition; or

(c) A person acting as agent or representative of any unit or organization described in paragraph (a) or (b) of this definition.

"Member of the employee's immediate household" means a resident of the employee's household who is related to the employee by blood or law.

"Nominal" means $25.00 or less, unless the Counselor, in a given case, approves a higher amount.

"Person" means an individual, corporation, company, association, firm, partnership, society, joint stock company, or any other organization or institution.

"Principal officer" means an individual who heads a principal operating component or an official of the principal operating component acting for the principal officer under a delegation of authority.

"Principal operating component" means an office in the Department headed by an Assistant Secretary, a Deputy Under Secretary, or an equivalent departmental officer who reports directly to the Secretary.

"Secretary" means the Secretary of Education or an official or employee of the Department acting for the Secretary under a delegation of authority.

"Senior employee" means—

(a) An employee compensated at a rate of pay specified for Executive Schedule positions under 5 U.S.C., chapter 53, subchapter II or at a comparable or greater rate of pay under other authority; or

(b) An employee in a position designated by the Director of the Office of Government Ethics as involving significant decision-making or supervisory responsibility, in accordance with 18 U.S.C. 207(d)(1)(C).

"Special Government employee."

(a) This term means an employee who is retained, designated, appointed, or employed by the Department to perform temporary duties—

(1) On a full-time or intermittent basis;

(2) With or without compensation; and

(3) For not more than 130 days during any period of 365 consecutive days.

(b) The term includes a consultant, expert, or member of a Department advisory committee who meets the conditions of paragraph (a) of this definition.

"Tax-exempt organization" means an organization exempt from taxes under section 501(c)(3) of the Internal Revenue Code, relating to non-profit educational, religious, charitable, and other specified organizations that may not engage in propaganda or legislative lobbying as a substantial part of their activities or participate in political campaigns.

(Authority: 5 CFR 735.104; 18 U.S.C. 202; 26 U.S.C. 501(c)(3))

§ 73.3 Employee notification.

(a) The Secretary provides a copy of this part to each employee.

(b) The Secretary makes available for inspection by Department employees copies of Executive orders, regulations, and statutes referred to in this part, together with related explanatory materials.

(Authority: 5 CFR 735.104)

§ 73.4 Interpretation, advisory services, and counseling.

(a) An employee shall become familiar with the provisions of this part.

(b) In any case of doubt as to the proper application or interpretation of a provision of this part, the employee may consult with the Counselor.

(c) On an annual basis or, in the case of a new employee, at the time of entrance on duty, the Secretary notifies employees of the availability of counseling services.

(d) The Secretary, as appropriate, issues notices—

(1) Containing more specific guidance on practices and procedures to carry out this part; and

(2) Serving to remind employees of their responsibilities and of particular prohibitions under this part.

(Authority: 5 CFR 735.105)

§ 73.5 Disciplinary and other remedial action.

(a) A violation of any provision of this part by an employee may be cause for appropriate disciplinary action, which may be in addition to any penalties prescribed by law.

(b) If, after considering the employee's explanation for any conflict or apparent conflict of interest, or any other violation of this part, the Secretary decides that remedial action is required, the Counselor ensures that the employee and his or her principal officer take immediate action to end the conflict or apparent conflict of interest or other violation.

(c)(1) Whether disciplinary or otherwise, the remedial action must be in accordance with any applicable laws, Executive orders, and regulations.

(2) Remedial action may include, but is not limited to—

(i) Changes in assigned duties;

(ii) Divestment by the employee of his or her conflicting interest;

(iii) Disciplinary action, including possible removal from the Federal service; or

(iv) Disqualification of the employee for a particular assignment.

(Authority: 5 CFR 735.107)

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Subpart B—Conduct and Responsibilities

§ 73.10 General standards of conduct.

(a) In all circumstances an employee shall conduct himself or herself so as to exemplify the highest standards of integrity.

(b) The employee may not engage in criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct, or other conduct prejudicial to the Government.

(c) The employee shall avoid any action, whether or not specifically prohibited by this part, that might result in, or create the appearance of—

(1) Using public office for private gain;

(2) Giving preferential treatment to any person;

(3) Impeding Government efficiency or economy;

(4) Losing complete independence or impartiality;

(5) Making a decision on behalf of the Government outside official channels; or

(6) Affecting adversely the confidence of the public in the integrity of the Government.

(d) The employee shall comply with the "Code of Ethics for Government Service" (House Concurrent Resolution 175, 85th Congress, 2nd Sess. 312), which is attached as an Appendix to this part.

(Authority: 5 CFR 735.201(a))

§ 73.11 Financial interests.

(a) An employee may not—

(1) Have a direct or indirect financial interest that conflicts, or appears to conflict, substantially with the employee's official duties and responsibilities; or

(2) Engage in, directly or indirectly, a financial transaction as a result of, or primarily relying on, information obtained as a Federal employee.

(b) This section does not preclude the employee from having a financial interest or engaging in financial transactions to the same extent as a private citizen not employed by the Federal Government so long as the interest or transaction is not prohibited by law, Executive order, or regulations.

(c) Financial interests of a spouse, minor child, or member of the employee's immediate household are regarded, for purposes of this section, as financial interests of the employee.

(Authority: 5 CFR 735.204, 735.407)

Subpart C—Gifts, Travel, and Outside Activity

§ 73.20 Gifts, entertainment, and favors.

(a) *General Prohibitions.* (1) Except as provided in paragraph (b) of this section and in § 73.21, an employee may not solicit or accept from a prohibited source—directly or indirectly on his or her own behalf or on behalf of the Department—any gift, gratuity, favor, entertainment, loan, or other thing of monetary value.

(2) For purposes of this section, a "prohibited source" means a person who—

(i) Has, or is seeking to obtain, contractual, grant, or other business or financial relations with the Department;

(ii) Conducts business or financial operations or activities that are regulated by the Department; or

(iii) Has business or financial interests that may be substantially affected by the performance or nonperformance of the employee's official duties.

(b) *Exceptions.* Notwithstanding paragraph (a) of this section, the employee may—

(1) Accept a gift, gratuity, favor, entertainment, loan, or other thing of monetary value from a friend, parent, spouse, child, or other close relative if it is clear that the family or personal relationship involved is the motivating factor;

(2)(i) Accept food or refreshments of nominal value on infrequent occasions—

(A) In the ordinary course of a luncheon or dinner meeting or other meeting or on an inspection tour at which the employee may properly be in attendance; or

(B) At a widely attended gathering of mutual interest to the Government and industry—such as a reception, seminar, conference, or training session—if attendance at the gathering is approved in advance by the employee's supervisor on the basis that—

(*1*) It is in the Department's interest that the employee attend; and

(*2*) The timing or reasons for the event do not create an appearance of impropriety;

(ii) A meeting under paragraph (b)(2)(i)(A) of this section may include a large group meeting at which the employee is the guest speaker or a working meeting at which food is brought in to facilitate continuance of the work and is not itself the focus of the meeting but does not include a meeting between a small number of individuals at a restaurant or private club at which business may be discussed;

(3) Accept a loan from a bank or other financial institution on customary terms to finance a proper or usual activity of the employee, such as a home mortgage loan; and

(4) Accept unsolicited advertising or promotional material of nominal value, such as a pen, pencil, note pad, or calendar.

(c) *Gifts between employees.* (1)(i) An employee may not solicit contributions from another employee for a gift to a supervisory employee.

(ii) An employee may not accept a gift from an employee who receives less pay than he or she receives.

(iii) An employee may not make a donation as a gift to a supervisory employee.

(2) As used in paragraph (c) of this section, "supervisory employee" means an employee who directly or indirectly supervises or has authority over the soliciting or contributing employee.

(3) Nothing in paragraph (c) of this section prohibits a voluntary gift of nominal value or donation in a nominal amount on a special occasion such as marriage, illness, or retirement.

(d) *Foreign governments.* (1) Except as provided in paragraph (d)(2) of this section, an employee—

(i) May not accept from a foreign government any emolument, office, or title; and

(ii) Shall submit to the DAEO for transmittal to the General Services Administration, for use and disposal as property of the United States, any present, decoration, or other gift that the employee is unable to refuse from a foreign government.

(2) An employee may accept from a foreign government—

(i) Certain gifts of minimal value, as established by regulation (41 CFR Part 101–49);

(ii) Specified military decorations; or

(iii) Payment for travel expenses, to the extent permitted in § 73.21 of this part.

(Authority: U.S. Constitution, Art. 1, sec. 9, para. 8; 5 U.S.C. 7342, 7351; 5 CFR 735.202)

§ 73.21 Acceptance of travel expenses and awards.

(a) *Official travel.* (1) Except as provided in paragraph (a)(2) of this section, an employee may not accept from any source other than the Government payment for travel or expenses incident to travel on official business.

(2) The employee may accept the type of payment referred to in paragraph (a)(1) of this section if—

(i) Acceptance is approved in advance in accordance with Department procedures; and

(ii) The payment is from—

(A) A tax-exempt organization for expenses incident to training or attendance at meetings, subject to the provisions of 5 U.S.C. 4111 and 5 CFR 410.702;

(B) A donor whose donation is accepted under section 421 of the Department of Education Organization Act, which contains the Secretary's gift acceptance authority; or

(C) A foreign government for travel taking place entirely outside the United States, subject to the restrictions of 5 U.S.C. 7342.

(3) The employee may accept payment in cash only if it is the type of payment referred to in paragraph (a)(2)(ii)(A) or (a)(2)(ii)(C) of this section.

(b) *Non-official travel.* (1) An employee may accept payment in cash or kind for travel or expenses incident to travel of a non-official nature if acceptance is compatible with the other standards contained in this part, including, for example, the provisions on accepting gifts in § 73.20(a).

(2)(i) The employee should refer to his or her supervisor any question as to whether the employee's travel is of an official or non-official nature.

(ii) In determining whether the employee's travel is of an official or non-official nature, the supervisor considers such factors as the relationship of the trip's purpose to the employee's official duties, the Department's interest in the employee's participation in the activity for which travel is taken, and the employee's independent interest in the activity or relationship to the sponsor of the trip.

(3)(i) Unless it raises a question under paragraph (b) (1) or (2) of this section, the employee's acceptance of payment for non-official travel is not subject to approval procedures referenced in paragraph (a) of this section.

(ii) However, the non-official travel may be subject to prior approval as an outside activity under § 73.22.

(c) *Awards.* An employee may accept an award for a meritorious public contribution or achievement from a charitable, religious, professional, social, fraternal, non-profit educational, recreational, public service, or civic organization if acceptance of the award is compatible with the other standards in this part.

(Authority: 5 U.S.C. 4111; 5 CFR 735.203)

§ 73.22 Outside employment and other activities.

(a) *General.* (1) An employee may not engage in outside employment or other outside activity incompatible with the full and proper discharge of the duties and responsibilities of his or her Government employment.

(2) Incompatible activities include, but are not limited to—

(i) Acceptance of a fee, compensation, gift, payment of expenses, or any other thing of monetary value in circumstances in which acceptance would—

(A) Result in, or create the appearance of, a conflict of interest; or

(B) Otherwise violate the standards in this part;

(ii) Outside employment or other outside activity that tends to impair the employee's mental or physical capacity to perform assigned Government duties in an acceptable manner; or

(iii) Outside activity that—

(A) Conflicts with the interests of the Government; or

(B) Could reasonably be construed by the public to be official acts of the Government.

(b) *Prior approval.* (1) Except as provided in paragraph (b)(2) of this section, an employee who intends to engage in outside employment or in other outside activity shall obtain prior approval from his or her principal officer in accordance with procedures of the Department.

(2) Prior approval is not required if the outside activity will not—

(i) Be performed during the employee's regular work hours;

(ii) Aggregate 10 or more hours a week;

(iii) Involve public writing or speaking;

(iv) Involve services for a prohibited source, as defined in § 73.20(a)(2), or services that relate to any matters funded by or regulated by another Federal agency; and

(v) Reasonably raise questions under the standards in this part.

(3) The principal officer files in his or her immediate office a record of each approval under this paragraph.

(4) The Secretary issues guidelines giving specific examples of outside activities that are incompatible with Government duties.

(5) The requirement of paragraph (b)(1) of this section does not apply to a special Government employee.

(c) *Disclaimer*—(1) *General.* (i) In engaging in an outside activity—including speaking, teaching, or writing—an employee may not use his or her official title or affiliation with the Department except as provided in paragraph (c)(1)(ii) of this section.

(ii) An employee may mention his or her official title or affiliation with the Department to identify the employee's background or experience in a manner that does not suggest or convey official endorsement of the activity.

(2) *Outside activity related to official duties.* If the employee engages in any outside activity related to his or her official duties or to programs of the Department and if the employee's title and affiliation are used or known by the audience, the employee shall include a disclaimer stating that—

(i) The activity was undertaken by the employee in his or her private capacity; and

(ii) No official support or endorsement by the Department is intended or should be inferred.

(d) *Speaking, teaching, or writing.* (1) Either for or without compensation, the employee may not engage in making speeches, teaching, or writing that is dependent on information obtained as a result of his or her Government employment, unless—

(i) The Government has made the information available to the general public or will make it available on request; or

(ii) The employee receives written approval from an authorized Department official for the use of the information on the basis that the use is in the public interest.

(2) The prohibition in paragraph (d)(1) of this section includes lecturing or writing for the purpose of special preparation of a person or class of persons for an examination of the Office of Personnel Management or the Board of Examiners for the Foreign Service.

(e) *Certain Presidential appointees.* An employee who is a Presidential appointee covered by section 401(a) of E.O. 11222 may not receive compensation or anything of monetary value for any consultation, lecture, discussion, writing, or appearance if the subject of this activity—

(1) Is devoted substantially to the responsibilities, programs, or operations of the Department; or

(2) Draws substantially on official data or ideas that have not become public information.

(f) *Monetary limitations.* (1)(i) An employee may not accept an honorarium in excess of $2,000 for any appearance, speech, or article.

(ii) The maximum amount permissible under paragraph (f)(1)(i) of this section does not include amounts the employee may accept for actual travel and subsistence expenses for the employee and his or her spouse or aide.

(iii) Any honorarium, or any part thereof, paid by or on behalf of the employee to a charitable organization is deemed not to be accepted for purposes of paragraph (f)(1)(i) of this section.

(2)(i) An employee compensated at a pay grade of GS–16 or above who occupies a full-time PAS position, as defined in paragraph (f)(2)(ii) of this section, may not in any calendar year have outside earned income attributable to that calendar year in excess of 15 percent of the employee's salary.

(ii) As used in paragraph (f)(2)(i) of this section, "PAS position" means a

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position that is required to be filled by Presidential appointment by and with the advice and consent of the Senate.

(g) *Updates.* If an employee wishes to renew approval of outside employment or other outside activity, the employee must file an annual update for approval by the principal officer in accordance with applicable procedures of the Department.

(Authority: 2 U.S.C. 441i, 5 CFR 735.203, 734.501)

Subpart D—Specific Prohibitions

§ 73.30 Criminal conflict of interest prohibitions.

An employee who violates any of the following prohibitions contained in the Federal criminal code is subject to punishment by fine, imprisonment, or both and to penalties for violating the standards in this section:

(a) *Compensation in matters affecting the Government.* (1) Except as provided by law for the proper discharge of official duties, an employee may not receive or agree to receive directly or indirectly compensation for any service rendered or to be rendered by the employee or another person in relation to any proceeding in which the Government is a party or has a direct and substantial interest.

(2) As used in paragraph (a)(1) of this section—

(i) The word "receive" also means to ask, demand, solicit, or seek; and

(ii) The word "proceeding" also means application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter before any department, agency, court-martial, or officer or any civil, military, or naval commission.

(Authority: 18 U.S.C. 203)

(b) *Claims against or matters affecting the Government.* (1) Except as provided by law for the proper discharge of official duties, an employee may not—

(i) Act as an agent or attorney for prosecuting any claim against the United States; or

(ii) Act as an agent or attorney for anyone before any department, agency, court, court-martial, officer, or any civil, military, or naval commission in connection with any proceeding in which the United States is a party or has a direct and substantial interest.

(2) As used in paragraph (b)(1) of this section—

(i) The words "prosecuting any claim" also mean receiving any gratuity—or any share of or interest—in a claim for assisting in its prosecution; and

(ii) The word "proceeding" also means application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter.

(Authority: 18 U.S.C. 205)

(c) *Special Government employee.* (1) A special Government employee is subject to the prohibitions in paragraphs (a) and (b) of this section only in relation to a particular matter involving a specific party or parties—

(i) In which the employee has at any time participated personally and substantially as a Government employee or as a special Government employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise; or

(ii) That is pending in the Department.

(2) Paragraph (c)(1)(ii) of this section does not apply to a special Government employee who has served in the Department no more than 60 days during the immediately preceding period of 365 consecutive days.

(Authority: 18 U.S.C. 203, 205)

(d) *Permissible activities.* Notwithstanding the prohibitions in paragraphs (a)–(c) of this section, an employee may—

(1) If not inconsistent with the faithful discharge of the employee's duties, act without compensation as agent or attorney for any person who is the subject of a disciplinary, loyalty, or other personnel administration proceeding—including an equal employment opportunity complaint—in connection with that proceeding;

(2) With the approval of the Government official responsible for the employee's appointment to his or her position, act, with or without compensation, as agent or attorney for the employee's parents, spouse, child, or any person for whom, or for any estate for which, the employee is serving as guardian, executor, administrator, trustee, or other personal fiduciary, except in those matters—

(i) In which the employee has participated personally and substantially as a Government employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise; or

(ii) That are the subject of the employee's official responsibility.

(3) Give testimony under oath or make statements required to be made under penalty for perjury or contempt; and

(4) In the case of a special Government employee, act as agent or attorney for another person in the performance of work under a grant by or a contract with, or for the benefit of, the Government, if the head of the agency concerned with the grant or contract certifies in the **Federal Register** that the national interest requires this.

(Authority: 18 U.S.C. 203, 205)

(e) *Disqualification of former employees.* (1)(i)(A) A former employee may not represent any other person before the Government with respect to a particular matter involving a specific party or parties in which the employee was personally and substantially involved in his or her Government service.

(B) The prohibition in paragraph (e)(1)(i)(A) of this section is a permanent bar for the former employee.

(ii)(A) A former employee may not represent any other person before the Government on a particular matter involving a specific party or parties that was actually pending under the employee's official area of responsibility during the last year of that responsibility.

(B) The prohibition in paragraph (e)(1)(ii)(A) of this section applies for two years after leaving the responsibility described therein.

(2) Subject to the exemptions in 18 U.S.C. 207, a former senior employee—for one year after leaving the senior employee position—may not appear before or communicate to the Department on behalf of anyone in an attempt to influence a particular matter pending before the Department or in which the Department has a direct and substantial interest.

(3)(i) A former senior employee may not assist by personal presence in representing any other person in connection with a particular matter—

(A) Involving a specific party or parties;

(B) In which the United States has a direct or substantial interest; and

(C) In which the senior employee participated personally and substantially.

(ii) The prohibition in paragraph (e)(3)(i) of this section applies for two years after leaving the senior employee position.

(4) These restrictions are further defined by regulation (5 CFR Part 737).

(Authority: 18 U.S.C. 207)

(f) *Acts affecting a personal financial interest.* (1) An employee may not participate personally and substantially in a particular matter in which—to the employee's knowledge—the employee, the employee's spouse, minor child, or partner, or a profit or non-profit

enterprise in which the employee is serving as an officer, director, trustee, partner, or employee—or any person or enterprise with which the employee is negotiating or has an arrangement concerning prospective employment—has a financial interest.

(2) If a financial interest arises from ownership by the employee—or other person or enterprise referred to in paragraph (f)(1) of this section—of stock in a widely diversified mutual fund or other regulated investment company that in turn owns stock in another enterprise, that financial interest is exempt from the prohibition in paragraph (f)(1) of this section.

(3) The Secretary may grant an exemption to the prohibition in paragraph (f)(1) of this section in other cases if the financial interest is not so substantial as to affect the integrity of the employee's services.

(Authority: 18 U.S.C. 208)

(g) *Supplementation of salary.* Except for payments made under the authority in 5 U.S.C. 4111, an employee other than a special Government employee may not receive any contribution to or supplementation of his or her salary for services rendered for the Government.

(Authority: 18 U.S.C. 209)

§ 73.31 Political activity.

(a) *General prohibitions.* (1) An employee may not use official authority or influence to interfere with or affect the result of an election.

(2)(i) A covered employee may not take an active part in partisan political management or in partisan political campaigns, except as provided in paragraph (d) of this section.

(ii) For purposes of this section, the term "covered employee" includes every employee—including competitive and excepted service and Schedule C employees—except an employee who—

(A) Is appointed by the President by and with the advice and consent of the Senate; and

(B) Determines policies to be pursued by the United States in the nationwide administration of Federal laws.

(iii) A special Government employee is subject to the restriction in paragraph (a)(2)(i) of this section only when the employee is in active duty status and for the entire 24 hours of any day when in that status.

(3) The penalties for violation of this section include suspension without pay for a minimum of 30 days and removal.

(b) *Prohibited activities.* Types of activities prohibited by paragraph (a)(2)(i) of this section include, but are not restricted to, the following:

(1)(i) Being a candidate or campaigning for or against a candidate in a partisan election.

(ii) As used in this section, "partisan election" means an election for public office in which any candidate is running as a representative of a political party whose candidate for President of the United States received electoral votes in the last Presidential election.

(2) Making a campaign speech or engaging in a campaign activity in a partisan election.

(3) Collecting contributions for a political party or candidate or selling tickets to political fund-raising functions.

(4) Holding office in political clubs.

(c) *Permissible activities.* Types of activities not prohibited by paragraph (a)(2)(i) of this section include, but are not restricted to, the following:

(1) Registering and voting—including voting in a party primary or caucus—and signing nominating petitions.

(2) Expressing opinions about candidates and issues.

(3) Attending political rallies and meetings or political fund-raising functions.

(4) Contributing money to political organizations.

(5) Participating in the nonpartisan activities of a civic, community, social, labor, or professional organization, or of a similar organization.

(6) Being a member of a political party or other political organization.

(7) Taking an active part as a candidate or in support of a candidate in a nonpartisan election.

(d) *Partial exemption in designated communities.* An employee living in a community designated by OPM may participate—as, or on behalf of, an independent candidate—in political management and political campaigns in a partisan election involving that community, so long as that participation does not result in neglect of or interference with the performance of the employee's duties or create a conflict, or apparent conflict, of interests.

(Authority: 5 U.S.C. Chapter 73; 5 CFR Part 733)

§ 73.32 Conduct related to drugs.

(a) An employee may not use an illegal drug or participate in illegal drug activities.

(b)(1) As used in this section, the term "illegal drug" means a controlled substance—

(i) Defined by 21 U.S.C. 802(6) and included in Schedule I or II of 21 U.S.C. Chapter 13, Subchapter I, Part B; and

(ii) The possession of which is unlawful under chapter 13 of title 21.

(2) The term does not include a controlled substance used—

(i) According to a valid prescription; or

(ii) For another purpose authorized by law.

(c) As used in this section, the term "illegal drug activity" includes, but is not limited to, possession, distribution, or sale of an illegal drug.

(Authority: E.O. 12564)

§ 73.33 Use of Government property.

(a)(1) An employee may not directly or indirectly use, or allow the use of, Government property of any kind—including property leased to the Government—for other than an officially approved activity.

(2) The employee shall follow departmental directives prohibiting the unauthorized use of Government property for personal purposes.

(b) The employee shall protect and conserve Government property, including equipment, supplies, and other property entrusted or issued to the employee.

(c) As used in this section, property includes, but is not restricted to, telephones, office supplies, copying machines and other office equipment, official identification and credit cards, official stationery and envelopes, secretarial support, and vehicles.

(Authority: 5 CFR 735.205)

§ 73.34 Gambling, betting, and lotteries.

(a) While on Government-owned or Government-leased property or while on duty for the Government, an employee may not participate in any gambling activity.

(b) As used in paragraph (a) of this section, gambling activity includes, but is not restricted to, operating a gambling device, conducting a lottery or pool, participating in a game for money or property, and selling or purchasing a numbers slip or ticket.

(Authority: 5 CFR 735.208)

§ 73.35 Misuse of information.

(a) For the purpose of furthering a private interest, an employee may not use or allow the use of official information that the employee has obtained through or in connection with his or her Government employment, unless the Government has made the information available to the general public or will make it available on request.

(b) Subject to 5 CFR 1250.3 (protecting particular "whistleblowing" activities) and 5 U.S.C. 7211, the employee shall comply with the Department's

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established procedures governing the release of official information to the press, the Congress, or the public, including referral of requests for documents or other materials to the Department's Freedom of Information Act Officer under 34 CFR Part 5.

(Authority: 5 CFR 735.208)

§ 73.36 Indebtedness.

(a)(1) An employee's indebtedness is primarily a matter of the employee's own concern.

(2) The Secretary does not determine the validity or amount of an employee's contested debts or act as a collection agent for those debts.

(b) In the absence of good reason, an employee is responsible, in a proper and timely manner, for—

(1) Honoring debts acknowledged by him or her to be valid or reduced to judgment by a court; and

(2) Making and adhering to satisfactory arrangements for the settlement of those debts.

(c) An employee shall meet his or her responsibilities for paying Federal, State, and local taxes and debts.

(Authority: 5 CFR 735.207)

§ 73.37 Miscellaneous statutory prohibitions.

An employee shall comply with each statute that relates to conduct as an employee, including prohibitions against the following activities: (a) Bribery, graft, and conflict of interest (18 U.S.C. chapter 11).

(b) Lobbying with appropriated funds (18 U.S.C. 1913).

(c) Disloyalty and striking (5 U.S.C. 7311 and 18 U.S.C. 1918).

(d) The disclosure of—

(1) Classified information (18 U.S.C. 798 and 50 U.S.C. 783); and

(2) Confidential information (18 U.S.C. 1905).

(e) The habitual use of intoxicating beverages to excess (5 U.S.C. 7352).

(f) The misuse of a Government vehicle (31 U.S.C. 1349).

(g) The misuse of penalty mail or the franking privilege (18 U.S.C. 1719).

(h) The use of deceit in an examination or personnel action in connection with Government employment (18 U.S.C. 1917).

(i) Fraud or false statements in a Government matter (18 U.S.C. 1001–1030).

(j) Mutilating or destroying a public record (18 U.S.C. 2071).

(k) Counterfeiting or forging transportation requests (18 U.S.C. 508).

(l)(1) Embezzlement of Government money or property (18 U.S.C. 641);

(2) Failing to account for public money (18 U.S.C. 643); and

(3) Embezzlement of another person's money or property in the possession of an employee by reason of his or her employment (18 U.S.C. 654).

(m) Unauthorized use of documents relating to claims by or against the Government (18 U.S.C. 285).

(n) Proscribed political activities (Subchapter III of Chapter 73, 5 U.S.C. and 18 U.S.C. 602, 603, and 607).

(o) Acting as the agent of a foreign principal under the Foreign Agents Registration Act (18 U.S.C. 219).

(p) Engaging in riots and civil disorders (5 U.S.C. 7313).

(q) Arbitrarily or capriciously withholding information requested under the Freedom of Information Act (5 U.S.C. 552(a)(4)(F)).

(r) Willfully violating the Privacy Act of 1974 (5 U.S.C. 552a(i)).

(s) Discrimination on the basis of race, color, national origin, sex, religion, age, or handicapping condition (42 U.S.C. 2000d–2000d–4; 42 U.S.C. 6101; 20 U.S.C. 1681; 29 U.S.C. 791, 793, 794; 42 U.S.C. 2000e).

(Authority: 5 CFR 735.104, 735.308)

Subpart E—Confidential Reporting Requirements—Employment and Financial Interests

§ 73.40 Confidential reporting of employment and financial interests—regular Government employees.

(a)(1) Except as provided in paragraphs (e), (h), and (k) of this section, not later than 30 days after entering duty in a position described in paragraph (a)(2) of this section, an employee shall submit in a sealed envelope to the appropriate principal officer a report—

(i) On a form made available by the Department; and

(ii) Containing the information specified in this section.

(2) As determined by the principal officer of the principal operating component in which the position is located, positions that are subject to reporting under this section include a position classified as GS–13 or above—or at a comparable pay level under other authority—

(i) That requires the incumbent to exercise judgment in making a Government decision or in taking Government action with regard to—

(A) Procurement activities;

(B) Administering or monitoring grants or subsidies;

(C) Regulating or auditing private or other non-Federal enterprise; or

(D) Other activities if the decision or action has an economic impact on the interest of any person outside the Government; or

(ii) That presents possible conflict-of-interest problems.

(b) The report shall include—

(1) A list of the names of all corporations, companies, firms, or other business enterprises, partnerships, nonprofit organizations, and educational or other institutions with or in which the employee, spouse, minor child, or other member of the employee's immediate household has—

(i) Any connection as an employee, officer, owner, director, member, trustee, partner, adviser, or consultant;

(ii) Any continuing financial interest, through a pension or retirement plan, shared income, or other arrangement as a result of any current or prior employment or business or professional association; or

(iii) (A) Any financial interest—except for those financial interests exempted elsewhere in this part—through the ownership of stock, stock options, bonds, securities, or other arrangements including trusts.

(B) The employee need not report shares in savings and loan associations that are in the nature of savings deposits;

(2) A list of the names of the creditors of the employee, spouse, minor child, or other member of the employee's immediate household, other than those creditors to whom they may be indebted by reason of a mortgage on property which they occupy as a personal residence or to whom they may be indebted for current and ordinary household and living expenses such as those incurred for household furnishings, an automobile, education, or vacations; and

(3) A list of the employee's interests and those of the employee's spouse, minor child, or other member of the employee's immediate household in real property or rights in lands, other than property that he or she occupies as a personal residence.

(c) By such date as the Secretary prescribes, the employee shall annually file a new report meeting the requirements of paragraph (b) of this section with information current through June 30 of that year.

(d) If the employee does not know, but another person does know, any information required to be included on a statement of employment and financial interests or supplementary statement, including holdings placed in trust, the employee shall request the other person to submit the information on the employee's behalf.

(e)(1) Paragraph (a) of this section does not require an employee to submit any information relating to a connection with, or interest in, a professional society or a charitable, religious, social, fraternal, recreational, public service, civic, or political organization or a similar organization not conducted as a business enterprise.

(2) For the purpose of this section, the term "business enterprise" includes an educational or other institution doing research and development or related work involving a grant of money from or contract with the Government.

(f) The principal officer of the principal operating component in which the employee works—

(1)(i) Maintains each statement of employment and financial interests in confidence according to the filing, recording, notification, and other requirements of the Privacy Act of 1974 (Pub. L. 93–579);

(ii) Reviews each report and coordinates resolution of any conflict of interest or appearance of conflict of interest; and

(iii) May seek the advice and guidance of the DAEO.

(2) The principal officer and the DAEO do not disclose information from a statement except as the Office of Government Ethics or the DAEO may determine for good cause shown.

(g) The employee's submission of a statement of employment and financial interests and supplementary statements is—

(1) In addition to, and not in substitution for, or in derogation of, any similar requirement imposed by law, order, or regulation; and

(2) Does not permit anyone to participate in a matter if participation is prohibited by law, order, or regulation.

(h) This section does not apply to special Government employees, who are subject to the provisions of § 73.41.

(i) The Counselor may exclude from the reporting requirement an employee in a position that meets the criteria in paragraph (a) of this section if—

(1) The employee submits a written request for exclusion to the Counselor through the principal officer; and

(2) The Counselor determines that—

(i) The duties of the position make it unlikely that the employee would be involved in a conflict-of-interest situation; or

(ii) A statement of employment and financial interests is unnecessary because of—

(A) The degree of supervision and review over the incumbent; or

(B) The inconsequential effect of any potential conflict-of-interest on the integrity of the Government, given the employee's level of responsibility.

(j) If an employee believes that his or her position has been improperly included under paragraph (a) of this section, the employee may file a grievance under the Department's grievance procedure.

(k) An employee who is required to file a Public Financial Disclosure Report under Title II of the Ethics in Government Act is not required to file a report under this section.

(Authority: 5 U.S.C. App. 4, E.O. 12565)

§ 73.41 Confidential reporting of employment and financial interests—special Government employees.

(a) At the time of entering Government employment, a special Government employee shall submit in a sealed envelope to the appropriate principal officer on a form supplied by the Department a statement of employment and financial interests that discloses—

(1) All current Government employment;

(2) The names of all corporations, companies, firms, or other business enterprises, research organizations, and educational or other institutions in or for which he or she is an employee, officer, member, owner, trustee, director, adviser, or consultant, with or without compensation;

(3) The names of all corporations in which he or she holds stocks or bonds; and

(4) The names of all partnerships in which he or she is engaged.

(b) By such date as the Secretary prescribes, the special Government employee shall annually file a new report meeting the requirements of paragraph (a) of this section with information current through June 30 of that year.

(Authority: 5 U.S.C. App. 4, E.O. 12565)

§ 73.42 Reviewing statements of financial interests.

(a) The principal officer reviews the statements of employees in his or her principal operating component required by §§ 73.40 and 73.41 to determine whether there is a conflict, or appearance of conflict, between the interests of each employee and the performance of the employee's service for the Government.

(b) If the possibility of a conflict or appearance of conflict exists, the principal officer provides the employee with an opportunity to explain the conflict or appearance of conflict.

(c) If remedial action is indicated, the principal officer consults with the Counselor and an appropriate management official of the Department.

(d) The principal officer directs whatever appropriate remedial action he or she deems necessary (see § 73.5) after—

(1) The review referred to in paragraph (a) of this section;

(2) Consideration of the employee's explanation; and

(3) Any investigation the principal officer considers appropriate.

(Authority: 5 U.S.C. App. 4, E.O. 12565)

Subpart F—Post-Employment Conflicts of Interest

§ 73.50 Disciplinary proceedings for post-employment conflicts of interest.

(a) *Transmittal of allegations.* (1) An employee who initiates or receives an allegation that a former employee has violated 18 U.S.C. 207 (a), (b), or (c) or any regulations of the Office of Government Ethics or the Department implementing these statutory provisions shall submit the allegation and any supporting evidence to the Counselor.

(2) If the former employee was a member of the Counselor's office, the Secretary designates another employee, not connected with the Counselor's office, to perform the functions of the Counselor under this subpart.

(b) *Privacy.* Until the Counselor determines there is sufficient cause to initiate an administrative disciplinary proceeding, the Counselor safeguards the allegation and evidence in order to protect the privacy of the former employee.

(c) *Involvement of Department of Justice and Office of Government Ethics.* (1) If the information concerning a possible violation does not appear to be frivolous, the Counselor expeditiously provides all relevant evidence, any appropriate comments, and copies of applicable agency regulations to the Director, Office of Government Ethics, and to the Criminal Division, Department of Justice.

(2) Unless the Department of Justice informs the Counselor that it does not intend to initiate criminal prosecution, the Counselor coordinates any investigation or administrative action with the Department of Justice in order to avoid prejudicing criminal proceedings.

(d) *Initiation of disciplinary proceedings.* If the Counselor determines after appropriate review that there is reasonable cause to believe that the former employee has committed a violation, the Counselor may—

(1) Initiate an administrative disciplinary proceeding; and

(2) Designate an individual to represent the Department in the proceeding.

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(e) *Notice.* (1) The Counselor or an individual designated under paragraph (d)(2) of this section provides the former employee with written notice of the Department's intention to institute a proceeding and of the former employee's opportunity for a hearing.

(2) The notice includes the following:

(i) A statement of allegations, and the basis for the allegations, in sufficient detail to enable the former employee to prepare an adequate defense.

(ii) Notification of the former employee's right to a hearing and to submit an answer within 30 days of receipt of the notice.

(iii) An explanation of the method by which a hearing may be requested.

(iv) A notification that if the former employee fails to submit an answer within 30 days of receipt of the notice, the presiding official may render a decision by default against the former employee.

(f) *Hearing.* The former employee may obtain a hearing by submitting a written request to the Counselor within 30 days of receipt of the notice.

(g) *Examiner.* The Secretary designates as the presiding official at the proceedings a hearing examiner who—

(1) Is impartial;

(2) Did not participate in the decision to initiate the proceedings; and

(3) Is authorized by the Secretary to make an initial decision.

(h) *Time, Date, and Place.* (1) The hearing examiner conducts the hearing at a reasonable time, date, and place.

(2) In setting the date, the hearing examiner considers the former employee's need for—

(i) Adequate time to properly prepare a defense; and

(ii) An expeditious resolution of allegations that may be damaging to the former employee's reputation.

(i) *Hearing rights.* The hearing includes, as a minimum, the right of each party to—

(1) Represent himself or herself or be represented by counsel;

(2) Introduce and examine witnesses and submit physical evidence;

(3) Confront and cross-examine adverse witnesses;

(4) Present oral argument; and

(5) On request, have a transcript or recording of the proceedings.

(j) *Burden of Proof.* The Department has the burden of proof and must establish substantial evidence of a violation.

(k) *Decision.* The hearing examiner—

(1) Makes a decision based exclusively on the record of the proceedings; and

(2) Discloses all findings of fact and conclusions of law relevant to the decision.

(l) *Appeal within the Department.* (1) Within 30 days of the date of the hearing examiner's decision, either party may appeal the decision to the Secretary.

(2) The Secretary makes a decision on the appeal based solely on the record of the proceedings or on those portions of the record agreed to by the parties to limit the issues.

(3) If the Secretary modifies or reverses the hearing examiner's decision, the Secretary specifies the findings of fact and conclusions of law that are different from those of the hearing examiner.

(m) *Administrative Sanctions.* (1) The Secretary may take administrative sanctions if—

(i) The former employee fails to answer or request a hearing after receipt of adequate notice; or

(ii) The hearing examiner or the Secretary has made a final administrative determination that the former employee had violated 18 U.S.C. 207 (a), (b), or (c) or regulations of the Office of Government Ethics or the Department under these statutory provisions.

(2) If the former employee does not file an answer within 30 days of receipt of the notice, the Counselor may render a decision by default against the former employee.

(3) The Secretary may—

(i) Prohibit the former Government employee from appearing before or communicating with the Department on behalf of any other person for a period that does not exceed five years; or

(ii) Take other appropriate disciplinary action.

(n) *Judicial Review.* If the Department's administrative decision finds that the former employee participated in a violation of 18 U.S.C. 207 (a), (b), or (c) or regulations of the Office of Government Ethics or the Department issued under these statutory provisions, the former employee may seek judicial review of the administrative decision.

(Authority: 18 U.S.C. 207)

Appendix—Code of Ethics for Government Service

Any person in Government service should:

Put loyalty to the highest moral principles and to country above loyalty to persons, party, or Government department.

Uphold the Constitution, laws, and regulations of the United States and all governments therein and never be a party to their evasion.

Give a full day's labor for a full day's pay; giving to the performance of his duties his earnest effort and best thought.

Seek to find and employ more efficient and economical ways of getting tasks accomplished.

Never discriminate unfairly by the dispensing of special favors or privileges to anyone, whether for remuneration or not; and never accept, for himself or his family, favors or benefits under circumstances that might be construed by reasonable persons as influencing the performance of his governmental duties.

Make no private promises of any kind binding upon the duties of office, since a Government employee has no private word which can be binding on public duty.

Engage in no business with the Government, either directly or indirectly, that is inconsistent with the conscientious performance of his governmental duties.

Never use any information coming to him confidentially in the performance of governmental duties as a means for making private profit.

Expose corruption wherever discovered.

Uphold these principles, ever conscious that public office is a public trust.

(This Code of Ethics was agreed to by the House of Representatives and the Senate as House Concurrent Resolution 175 in the Second Session of the 85th Congress. The Code applies to all Government employees.)

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Tuesday
January 31, 1989

Part V

Department of Transportation

Federal Highway Administration

49 CFR Parts 383 and 391
Commercial Driver's License Standards; Disqualifications; Proposed Rule

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DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Parts 383 and 391

[FHWA Docket No. MC-86-14]

RIN 2125-AC19

Commercial Driver's License Standards; Disqualifications

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking; request for comments.

SUMMARY: The FHWA is proposing to amend Parts 383 and 391 of the Federal Motor Carrier Safety Regulations (FMCSRs) to address certain questions that were posed in the final rule [Docket MC-125; Notice No. 87-06] published in the **Federal Register** on June 1, 1987. Specifically, in this document, the FHWA proposes to define "excessive speeding," "reckless driving" and "other serious traffic violations," and proposes to clarify certain other issues pertaining to the disqualification of commercial motor vehicle (CMV) drivers.

DATE: Written comments must be received on or before April 3, 1989.

ADDRESS: All written comments must be signed, refer to the docket number that appears at the top of this document, and be submitted to Room 4232, HCC-10, 400 Seventh Street SW., Washington, DC 20590. All comments received will be available for examination at the above address from 8:30 a.m. to 3:30 p.m., ET, Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Ms. Jill L. Hochman, Chief, Standards Review Division, Office of Motor Carrier Standards, (202) 366-4001, or Mr. Thomas P. Holian, Office of the Chief Counsel, (202) 366-0834, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION:

Background

On October 27, 1986, the Commercial Motor Vehicle Safety Act of 1986, Title XII of Pub. L. 99-570, (the Act) was signed into law by the President. As a first step in implementing the requirements of the Act, a final rule and request for comments on "Commercial Driver Licensing Standards; Requirements and Penalties" was published in the **Federal Register** on June 1, 1987, implementing certain provisions of the Act required to be effective on July 1, 1987.

The FHWA received a total of 260 comments in response to the June 1, 1987 request for comments (Docket MC-125, Notice Number 87-06), which included:

171 from farmers and relatives of farmers;
21 from agricultural firms and farmer organizations;
18 from State agencies;
11 from private industry and trade associations (4 of which represented motor carriers of either property or passengers);
6 from individual truck drivers;
4 from public interest groups;
4 from motor carriers of property;
4 from Federal agencies and/or their advisory committees;
3 from labor unions;
2 from owner-operator driver associations;
2 from truck renting and leasing companies;
2 from safety/regulatory compliance consultants;
2 from the insurance industry;
1 from a foreign government;
1 from a church organization;
1 from an individual bus driver;
1 from a member of the U.S. House of Representatives; and
1 from a city transit agency.

It should be noted that there were five organizations who submitted multiple responses. Each of these five organizations had more than one representative or official submit their own individual comments; hence the above listing totals only 255 rather than 260. Also, a major portion of the commenters requested exemptions from the Commercial Driver's License (CDL) requirements instead of addressing the questions which were posed.

Although the final rule requested comments on a number of issues, this notice would amend 49 CFR Parts 383, Commercial Driver Licensing Standards; Requirements and Penalties, and 391, Qualifications of Drivers, to clarify the definitions of excessive speeding, reckless driving and other serious traffic violations found in § 383.5, Definitions. It would amend § 383.31 to clarify certain notification requirements, especially how such requirements would apply to casual, intermittent, or occasional drivers. Section 383.51, Disqualification of Drivers, would be modified to allow reduction of lifetime disqualification under certain circumstances. Finally, a conforming amendment is proposed for § 391.15, Disqualification of Drivers. No changes are proposed for those sections of 49 CFR Part 383 that define the gross vehicle weight rating (GVWR) at which a vehicle would be a CMV, that require notification of previous employment, that state the applicability of Part 383 as it relates to drivers of vehicles which carry hazardous materials, or that address drivers who are domiciled in foreign countries.

Each of these proposals is discussed in the following sections along with the nature of the responses to the various questions that were asked in the docket and the FHWA's proposed rulemaking action for each of the issues.

Some of the regulatory changes included in this Notice of Proposed Rulemaking (NPRM) were addressed in a separate final rulemaking, Blood Alcohol Concentration Level for Commercial Motor Vehicle Drivers, published on October 4, 1988 (53 FR 39044). The proposed changes of this NPRM follow the changes made in that final rule. Both changes are included in the appropriate places in the proposed regulatory text, in order to make it easier to follow the changes proposed in this notice as well as the regulatory changes of the Blood Alcohol Concentration final rule.

Discussion of responses to the questions

Background

Question Area 1. Drivers Domiciled in Contiguous Foreign Countries:

The FHWA is reviewing the licensing standards of foreign jurisdictions to determine if they are consistent with United States' standards. If their standards are not consistent, section 12009(a)(12) of the Act would allow States to issue commercial drivers' licenses to foreign motor vehicle drivers who are not domiciled in a State. Canadian licensing standards were determined to be consistent with United States standards so that a Canadian classified license will be accepted. Effective July 1, 1987, and until the FHWA review is completed, a Mexican commercial driver's license is accepted as a single commercial vehicle driver's license within the meaning of the Act.

To assist in the review of the ways in which foreign jurisdictions test and license CMV drivers and the methods by which the FHWA can include foreign CMV drivers in the CDL program, the FHWA requested comments to the following questions:

Question 1(a). How do Canadian and Mexican licensing standards compare to United States' standards?

The overwhelming majority of the docket respondents did not comment on this question; those who did were unable to furnish any detailed comparisons. The commenters suggested that the FHWA make a detailed study of Canadian and Mexican CMV driver testing and licensing standards.

Question 1(b). What process should be used for a State to issue a commercial driver's license to foreign drivers?

Again, very few respondents addressed this question; and those that did, were mainly concerned about issues of reciprocity both in the areas of license acceptance and reporting of violations committed while in the host country. It was generally stated that if the FHWA determined that foreign licensing practices were at least equal to those envisioned by the Act, then the FHWA should accept those licenses as adequate for operating CMVs in this country; but, with the proviso that such foreign drivers be issued some form of a "certificate" by a port-of-entry State's licensing agency. This certificate would provide the means by which to establish a unique identifier for each such driver to be entered into the Commercial Driver License Information System (CDLIS), thus providing a means for tracking all traffic violation convictions of these foreign drivers.

If the foreign licensing jurisdiction's regulations were not up to the standards that will eventually be promulgated under the Act, the commenters stated that those drivers should be tested and licensed (if qualified) by a port-of-entry State that is a participant in the CDL system, with that driver's data entered into the CDLIS.

Question 1(c). If foreign drivers retain their foreign licenses, how should they be included in the information systems to enforce the single record concept?

The few comments received in response to this question, for the most part, suggested two possible methods. Some respondents suggested that the foreign drivers be tested and issued a CDL by a port-of-entry State and the driver's data entered into the CDLIS by that State. Other respondents suggested that if the foreign country's standards were found to be equivalent of those of the CDL system in the United States, then a unique identifier should be established for the driver, which would also identify him/her as a "foreign driver" and a CDL certificate would then be issued to the driver. This certificate would enable the issuing State to enter each such driver into the Commercial Driver License Information System (CDLIS), thus providing a means for tracking all of their traffic violation convictions. Another concern was the related issue of full reporting of all foreign convictions of U.S. drivers to the CDLIS.

Proposed Rulemaking Action

The related Final Commercial Driver Testing and Licensing Standards issued on July 15, 1988 (53 FR 27628), included a method by which foreign drivers could be licensed according to Federal standards. In the docket related to that final rule (Docket No. 87-18), the FHWA received comments which indicated that issuance of a "nonresident license" to drivers from foreign jurisdictions which do not test and license consistent with the Federal standard would resolve this issue. The FHWA incorporated this suggestion which is more fully explained in the Preamble to that final rule.

Background

Question Area 2. Vehicles with a GVWR under 26,001 pounds:

"Commercial motor vehicle" is defined in § 383.5 as a vehicle with a gross vehicle weight rating of 26,001 or more pounds, or one designed to transport more than 15 passengers (including the driver), or any vehicle which is transporting hazardous materials in an amount that requires it to be placarded under the Hazardous Materials Transportation Act.

In the preamble to the final rule published on June 1, 1987 (52 FR 20574), the FHWA estimated that this definition will result in approximately 5.5 million drivers being required to be licensed under these requirements. This definition (1) targets regulation of those drivers that pose the greatest hazard to the public, (2) enhances the States' ability to implement and enforce the commercial motor vehicle driver's license program within the mandated timeframe, and (3) limits the economic impact and compliance burden on drivers, motor carriers, and States.

The definition of a commercial motor vehicle was specified in the Act as a vehicle with a GVWR of 26,001 pounds or more. However, in section 12019(6)(A) of the Act, Congress authorized the Secretary to lower the threshold to 10,001 pounds, if safety warrants. The Act further requires that inclusion of any vehicles below the 26,001 pounds threshold be handled by regulation. Therefore, the FHWA requested comments on the following questions pertaining to these issues:

Question 2(a). Is a GVWR of 26,001 pounds an appropriate threshold for applicability of this rule?

Approximately one-fifth of the respondents addressed the question directly; the majority of these were against a lowering of the weight threshold. The National Transportation Safety Board (NTSB), 22 percent of the State agencies who responded and about half of the comments from truck drivers expressed a desire to lower the threshold to 10,001 pounds, or some intermediate level. On the other hand, farmers, farm organizations, some motor carrier industry associations, and truck renting and leasing companies and their trade organizations expressed opposition to lowering the threshold.

Question 2(b). What are the potential safety benefits and economic implications of using a 10,001 pound GVWR or an intermediate GVWR threshold?

Only a few (about 10 percent) of the respondents commented directly upon this question, generally stating that there would be few safety benefits and considerable adverse economic impact if the threshold were lowered to 10,001 pounds GVWR. Offsetting this was the argument made by some respondents that not lowering the GVWR threshold for the CDL system to match the threshold used for other parts of the Federal Motor Carrier Regulations (FMCSRs), generally 10,000 pounds, could result in confusion for enforcement personnel as well as drivers and motor carriers.

Question 2(c). What current data should the FHWA consider in its analysis of the respective risk profiles of vehicles in the 10,001 to 26,001 pounds GVWR range as compared to the safety performance of vehicles above 26,000 pounds GVWR?

Again, very few respondents (about 9 percent) addressed this question. Generally, the comments suggested that: (1) The FHWA undertake some detailed accident studies, with some States offering to make available their own accident record system for analysis; or (2) they quoted data generated by the National Highway Traffic Administration's Fatal Accident Reporting System.

Question 2(d). How many additional vehicles would be subject to the rule at 10,001 pounds GVWR?

This question was addressed by only a few (about 7 percent) respondents, most of whom quoted the Bureau of Census 1982 Truck Inventory and Use Survey, which estimates that there are 2 million trucks in the 10,000 to 26,000 GVWR range.

Question 2(e). For vehicles below 26,001 pounds GVWR, should the number of articulation points be a determinant for inclusion as a commercial motor vehicle? Should "hot shot" vehicles below 26,001 pounds GVWR, be defined as a commercial motor vehicle?

Very few respondents commented on this two-part question and of those who commented only a small minority were in favor of using articulation points as a determinant for including a vehicle in the definition. On the other hand, several respondents thought that "Hot Shot" type vehicles should be included

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as a commercial motor vehicle. An owner-operator organization stated:

> . . . These hot shot vehicles are very similar in their physical dimensions and handling characteristics to traditional Class 7 and 8 trucks. Therefore, the association believes that the drivers of these vehicles should be subject to the same requirements as drivers of vehicles in these classes. While detailed data is not available, Association members report that drivers of these vehicles are frequently less experienced in handling large vehicles than other over-the-road drivers.

Question 2(f). Should the number and kind of axles be a consideration?

Although very few respondents addressed this question, those that did were overwhelmingly against using the number and/or kind of axles as a determining factor and suggested keeping the classification simple.

Question 2(g). Should a combination of items—GVWR, axles, and articulation points be considered?

With very few comments received, the negative responses were more than twice the number of comments favoring such a scheme. Generally, these commenters argued that the classification be kept simple.

Proposed Rulemaking Action

The FHWA does not propose to change the present definition of a commercial motor vehicle, as set forth in § 383.5. The data available to the FHWA do not support extending the CDL program to vehicles in the 10,000 to 26,000 pound weight range, including "hot shot" vehicles. Moreover, the FHWA has practical concerns that, at least during the "start up" period of the CDL program, lowering the threshold below 26,001 pounds GVWR could overload the States' driver licensing agencies beyond their capacity.

Using the existing definition of a CMV, the FHWA originally estimated that 9.5 million drivers would be affected by the CDL requirements. Until all States have implemented their own programs, however, an accurate count of affected drivers will not be available. Such a count would decline if States decide to grant waivers to firefighters and certain farmers, but would increase if States decide to include drivers not covered under the minimum Federal standards. For example, Michigan has included any vehicle towing another vehicle over 10,000 pounds in its Class A vehicle group, regardless of the gross combination weight rating. This is a more expansive definition for a group or class A than that included in the final commercial driver testing and licensing published on July 21, 1988 (53 FR 27628). Regardless of the State-by-State decisions on waivers and CMV definitions, the number of drivers which States must include by April 1, 1992, in their new programs and in the related information system will be a significant challenge to licensing officials.

In addition, the accident statistics available to the FHWA show a much more serious safety problem for drivers of vehicles above 26,001 pounds GVWR. These drivers, compared to statistics for drivers of vehicles in the 10,000 to 26,001 pound GVWR category, cause several times as many fatalities per driver and are involved in significantly more fatal accidents per vehicle mile traveled. These statistics imply that we can expect a greater increase in the lifesaving benefits from applying the CDL requirements to the drivers of vehicles above 26,001 pounds GVWR. Extending the CDL requirements to drivers of vehicles in the 10,000 to 26,001 pound GVWR category would have substantially less lifesaving potential per driver. Indeed it appears from these data that drivers of vehicles in the 10,000 to 26,001 pound GVWR range are even less likely than drivers of passenger vehicles to be involved in fatal accidents. However, as required by the Act and because of the special potential hazards involved, the FHWA has required States to include drivers of vehicles transporting 16 or more persons or drivers of vehicles with placarded quantities of hazardous materials (HM) to be included in their CDL programs regardless of vehicle weight.

Meanwhile, the FHWA will continue to monitor the vehicle weight threshold issue closely, to determine whether safety or programmatic reasons, such as easier compliance with other Federal motor carrier regulations or consistency with CDL programs implemented by the States, warrant a change in the weight threshold. Both independent assessments and consultations with the various State agencies about the progress of implementation and enforcement of the CDL requirements will be used to determine whether the weight threshold should be lowered. Also, the FHWA will continue to investigate and enforce noncompliance with the parts 380 to 399 of the FMCSRs for vehicles which are subject to those regulations but not to Part 383—i.e., vehicles with GVWRs between 10,000 and 26,000 pounds.

Background

Question Area 3. Vehicles Transporting Hazardous Materials:

The Act defines a commercial motor vehicle, in part, as any vehicle, regardless of size, that transports most types of hazardous materials. Congress exempted vehicles transporting certain hazardous materials of limited quantity, consumer commodity (ORM–D), and certain hazardous substances (ORM–E). These exemptions are limited, however, and the Act applies to millions of drivers who operate vehicles that are less than the 26,001 pounds GVWR threshold. If the broad definition of hazardous materials under the Act is used, the FHWA estimated in the June 1, 1987, final rule that the total number of drivers subject to the requirements would increase from 5.5 million to 11.0 million drivers.

Since enactment, the FHWA has received comments about the coverage of drivers of vehicles transporting hazardous materials. At its public session on February 4, 1987, the National Motor Carrier Advisory Committee (NMCAC), Subcommittee on Safety, proposed a limitation to include only those vehicles requiring placarding. The full NMCAC endorsed this proposal in a formal vote of its members.

Similar suggestions were made by the State representatives at the January 22, 1987, public workshop. State officials indicated that if all vehicles transporting any nonexcluded hazardous materials were covered by the requirements, State and local law enforcement agencies would have difficulty in distinguishing between vehicles carrying the exempted hazardous material from those which were not. Moreover, enforcement agencies would have no way of distinguishing those non-placarded vehicles below 26,001 pounds GVWR that are carrying non-exempted hazardous materials from other vehicles below 26,001 pounds GVWR. The State representatives indicated that it would be impractical to enforce against anything except placarded vehicles.

After due consideration of these comments and the facts available to it, the FHWA determined that the regulation should be applied to vehicles below a GVWR of 26,001 pounds only if the vehicle is transporting hazardous materials in an amount which would require it to be placarded in accordance with the hazardous material regulations. Thus, § 383.5 defines a commercial motor vehicle transporting hazardous materials as any vehicle, regardless of its size, which is transporting hazardous materials in an amount requiring it to be placarded under the Hazardous Materials Transportation Act and related regulations (49 CFR Parts 100 through 199). Vehicles larger than 26,001 pounds GVWR transporting hazardous materials (regardless of placarding requirements) are subject to the regulations due to their GVWR. However, because of differences between the Act's definition and the definition § 383.5, the FHWA requested comment on the following questions in order to elicit additional information on the best means of administering and enforcing the Act's provision for hazardous materials laden vehicles:

Question 3(a). How many additional individuals will be subject to the provisions of the rule if all vehicles, regardless of size, which are transporting hazardous materials, exclusive of limited quantities, ORM–D and ORM–E, are included?

Only 3 percent of the respondents attempted to quantify the number of drivers that would be affected, with several estimates running as high as 2.3 million drivers for just those vehicles involved in agricultural activities. California's response was: "the State of California is estimating that 300,000 Class 3 drivers may have to obtain CDL's since they haul placarded materials." Some other States estimated very large increases in their own CDL driver population if the threshold were to be lowered. There were no overall estimates given by any respondent.

Question 3(b). What is the reasonable break distinguishing point between vehicles requiring placarding and vehicles with smaller amounts of hazardous materials being transported? Should it conform to some current criteria which excludes non-bulk shipments of 100 gallons or less? Should United Nations' packaging limits which could exclude hazardous materials quantities in packages of 450 liters (118.88 gallons) or 400 kilograms (881.84 pounds) or less be considered? Should there be an intermediate cutoff such as 50 pounds or 10 gallons?

Only 12 percent of the respondents commented on this question, the majority of whom believed that trying to deal with anything less than placarded vehicles, under the present regulations (49 CFR Parts 100 through 199), would become a difficult, if not impossible task, especially as far as enforcement is concerned.

Question 3(c). Are there entire hazardous materials classes or chemicals within classes that, because of accident experience or potential hazard in transportation, should be included or excluded from the requirements of the Act?

Only 7 percent of the respondents directly addressed this question, and of those, very few had any suggestions pertaining to the inclusion and/or reduction of the amount of a chemical that they felt should require placarding. Also, no supporting evidence was offered for any suggested changes.

Question 3(d). What accident and incident information is available that would make it necessary to include some smaller quantities of certain hazardous materials that will not be covered by this rulemaking (placarded amounts)?

Less than 4 percent of the respondents offered information on this, but they did not offer any statistical evidence. However, a national organization representing motorists stated:

> A recent study (U.S. Congress, Office of Technology Assessment, *Transportation of Hazardous Material*, OTA–SET–304) found that as a general matter, the dividing line between non-bulk (small) and bulk (large) containers is 100 gallons or 1,000 pounds. According to the study, non-bulk containers make up about half of the highway traffic, but comprise about 80 percent of the containers cited by the United States DOT's Hazardous Materials Information System as being involved in highway releases. The study further states: releases from non-bulk packages of hazardous materials, while numerous, generally do not have serious consequences because of the small amounts of materials in the packages.

This same respondent also stated that it concurs

> * * * with the FHWA that the regulations should apply to vehicles below a GVWR of 26,001 pounds *transporting hazardous materials requiring placarding.* We suggest, however, that the FHWA conduct a study to see the extent of driver contribution to accidents involving non-placarded hazardous materials transportation. Until we can be sure that there is a problem and know the extent of that problem, [we believe] that including those millions of drivers in the [CDL] system may be unnecessary and therefore burdensome. [Emphasis added.]

Question 3(e). What accident data are available which indicates deaths, injuries, or property damage accidents during the transportation of certain hazardous materials? Are these data sufficiently comprehensive and valid to be considered in any future rule?

The few responses to this question can best be summarized by the comments from two respondents. The first was from a State, which stated that no reliable data was available. The second, from a large public interest group, stated:

> In 1984 there were more than 4,000 truck involved fatal accidents. Only four deaths resulted from the release of hazardous materials. We believe that most of the fear concerning qualifications of drivers transporting hazardous materials will be reduced once we are assured that all commercial drivers have one license, one record, are qualified to drive a truck, and pass a knowledge exam on hazardous materials.

Question 3(f). How can the provisions of the Act be enforced for hazardous material laden vehicles below 26,001 gross vehicle weight rating, other than placarded vehicles? Would enforcement be practicable if all vehicles above a certain weight rating, such as 10,000 pounds, were included?

All the respondents who addressed this question (8 percent), said the only practical way to enforce the hazardous materials provisions of the Act, for vehicles under 26,000 pounds GVWR, was by limiting it to those vehicles whose lading required the use of placards. Only 2 of the 255 docket respondents suggested lowering the quantities of hazardous materials currently required to be placarded. One nationwide motor carrier (with a fleet of trucks under 26,000 pounds) stated: "We believe that inclusion of vehicles carrying placardable quantities is the only practical definitional criteria that can be used." Several other respondents made similar comments. As mentioned previously, for example, a national organization representing motorists stated that it:

> concurs with FHWA that the regulations should apply to vehicles below 26,001 pounds transporting hazardous materials requiring placarding. We suggest, however, that the FHWA conduct a study to see the extent of driver contribution to accidents involving non-placarded hazardous materials transportation. Until we can be sure that there is a problem and know the extent of that problem, [we believe] that including those millions of drivers in the [CDL] system may be unnecessary and therefore burdensome.

Related Issues

(1) Administrative Problems

The FHWA estimated that as many as eleven million drivers would be affected by this rule if a broader definition of "commercial vehicle" is used. Prior to, during and subsequent to the writing of the June 1, 1987, regulations, there was considerable contact with representatives of State agencies involved in this activity. Almost without exception, State agencies expressed considerable concern about administering the CDL program if too many drivers were included. They believe that the processing time for testing and licensing CMV drivers would become excessive. Many State officials believe that they will be better able to assess their capacity to serve more CDL applicants after a phase-in period. The comments to the docket reflect these concerns.

The FHWA understands these concerns. The Act requires the

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establishment of an electronic information system which is referred to as a clearinghouse. This system will be designed to allow States, the Secretary and potential employers access to CMV driver's records from all participating licensing jurisdictions. Not only will each State need to gather and store similar CMV driver record information, but such data will need to be reported in a timely manner. Thus, the administrative burden on the States is large.

(2) Enforcement Problems

With the inclusion of an estimated 5.5 million drivers in the testing/enforcement progam, the current level of staffing at both the Federal and State level will be under extreme pressure. The CDL regulations impose new and stringent penalties on errant drivers. For example, a driver who is convicted of operating a CMV while under the influence of alcohol or drugs will be suspended from operating a CMV for a year for the first violation and for life for a subsequent conviction. There are also disqualification provisions for lesser violations. If the FHWA, based on experience with the CDL program, were to broaden the definition of a commercial vehicle, it was estimated in the Final Rule issued on June 1, 1987, that the numbers of drivers that would be subject to the requirement could increase from 5.5 million to 11 million. Considering the resources currently available to licensing the enforcement agencies to implement the CDL program, the task could very quickly overwhelm the States' abilities to implement the CDL program.

(3) Accident Information

A prime consideration in the decision to limit the applicability of the commercial motor vehicle definition for drivers transporting hazardous materials was available accident data. Motor vehicle accident and HM incident reports received by the Department for the years 1983, 1984, and 1985 show that an average of seven fatalities per year were a *direct* result of HM transportation. It is important to note here the caveat, "a direct result of HM transportation." Had these accidents occurred during the transportation of nonhazardous materials, the fatalities may not have occurred. Considering the fact that there are hundreds of thousands of HM shipments made daily, which account for over four billion tons of HM material moved annually, this is an enviable safety statistic. Although even seven deaths are tragic, the number is very small when considered against the tens of thousands of fatalities caused by all drivers involved in accidents while under the influence of alcohol.

Another important factor to be considered is that *all* of these reported accidents occurred during the transportation of *bulk* HM. When looking at the overall picture and realizing that eighty-five percent of all HM shipments are "small" (non-bulk) shipments, a practical limitation to the definition of commercial vehicles appears justified.

Proposed Rulemaking Action

After consideration of all of the comments and data currently available, the FHWA is proposing that the definition of a commercial motor vehicle, as presently set forth in § 383.5, remain unchanged for the immediate future. The FHWA believes that broadening the definition of commercial vehicle to include "all vehicles transporting any amount of hazardous materials, exclusive of limited quantities, ORM-D and ORM-E," would add several million more drivers to the CDL system than would otherwise occur.

The addition of these drivers could overload the States' driver licensing agencies far beyond their current, and for the foreseeable future, capacity to deal with CDL applicants. This could result in large numbers of unqualified drivers being able to continue to operate their vehicles to the endangerment of all.

Background

Question Area 4. Definition of Conviction and Serious Traffic Violations:

Section 383.5 defines "Conviction" as meaning

an unvacated adjudication of guilt, or a determination that a person has violated or failed to comply with the law in a court of original jurisdiction or by an authorized administrative tribunal, an unvacated forfeiture of bail or collateral deposited to secure the person's appearance in court, a plea of guilty or nolo contendere accepted by the court, the payment of a fine or court cost, or violation of a condition of release without bail, regardless of whether or not the penalty is rebated, suspended, or probated.

Section 383.5 also defines a "Serious traffic violation" as meaning

a conviction, when operating a commercial motor vehicle, of:

(a) Excessive speeding;

(b) Reckless driving, as defined under State or local law; or

(c) A violation of a State or local law relating to motor vehicle traffic control (other than a parking violation) and arising in connection with a fatal accident.

(Serious traffic violations exclude vehicle weight and vehicle defect violations.)

The FHWA requested comment on the following questions in order to elicit additional information on how to best clarify the meaning of these terms, and to facilitate uniform methods for administering and enforcing the CDL driver penalties as stipulated in the Act:

Question Area 4. Definition of Conviction and Serious Traffic Violations:

Convictions

The FHWA asked two questions related to the definition of Conviction and used the comments received as part of the change to the definition that was proposed in the notice of proposed rulemaking entitled Blood Alcohol Concentration Level for Commercial Motor Vehicle Drivers, published on May 10, 1988 (53 FR 16656). Further discussion of this definition is included in that document and the final rule published on October 4, 1988 (53 FR 39044).

Excessive Speeding

Question (a). Should the FHWA define excessive speed as any speed in excess of a posted speed limit?

The majority of the respondents addressing this question (11.7 percent) held that a lack of any tolerance for the posted speed limits, considering the severity of the penalties involved, would be far too harsh and/or unreasonable. However, several other respondents commented that "any speed in excess of the limit" should be considered as excessive speeding. The National Transportation Safety Board (NTSB) summed-up these viewpoints in stating:

Given the longer distances required to stop trucks, it is especially important that truck drivers adhere to the posted speed limit. Thus, no regulation should create any implication that any speed in excess of the posted is acceptable. However, some States do create a second, more severe speeding offense for drivers who exceed the posted limit by a specified amount. This second, "excessive speeding" violation is treated more harshly with penalties often akin to reckless driving. The use of such a system creates the risk of leaving an impression with drivers that some measure of speeding is acceptable thereby aggravating the existing practice among much of the driving public, of exceeding the posted limit by 5 to 7 miles per hour because they know that there is little enforcement against these violations. However, it does enable FHWA to more precisely define the nature of speeding violation charged against a commercial driver. For example, with this offense, it would be possible to identify those who commit the most egregious speeding

violations and disqualify them after a single offense. The creation of an excessive speeding offense would be acceptable to the Safety Board if it were done in such a way as to minimize the perception that speeds above the posted limit but not considered "excessive" are acceptable.

Question (b). Should FHWA define excessive speed as a certain speed above the speed limit? 10 m.p.h.? 15 m.p.h.? 20 m.p.h.?

Of those commenters who directly addressed this question, there was no consensus on the level at which to set "excessive" speeding. For example, about one-third suggested defining excessive speed as 10 m.p.h. over the limit; almost half suggested 15 m.p.h.; about 10 percent favored either something under 10 or over 15 m.p.h.; and the remaining respondents held that *any* speed above the limit should be deemed to be excessive speeding.

Question (c). Should the definition be adjusted for different types of highway facilities or adjacent land use development, i.e., Interstate System or freeways with a national posted speed limit as opposed to travel in a town or near a school?

Only a few of the respondents commented on this, and all of them, except for one State, felt that there should be no adjustment made. The majority of the comments against the use of an adjustment, cited the fact that the speed limits had been established by taking into account all of the necessary mitigating factors such as adjacent land use. Additionally, many of them observed the difficulty this would pose for uniform CDL enforcement and/or application of penalties.

Question (d). What limits should be written into the rule which address speeding under adverse driving conditions? Should anything above a designated speed, such as 70 m.p.h., be considered excessive speeding?

There was great diversity of opinion among the few (about 10 percent) respondents who addressed this issue. Regarding adverse conditions, the majority of the responses indicated that it would be extremely difficult, if not impossible, to write a rule that could properly and adequately address such an infinite variety of different situations, as may be covered in the term "adverse conditions". Most of the commenters who opposed the idea mentioned that only the arresting officer at the scene could make a qualified judgment as to whether or not the offender's speed was "too fast for conditions" at the time. The NTSB commented: "* * * any speed, even of below the posted speed limit, which is unsafe for the conditions at that time, should be considered excessive." The NTSB went on to suggest that the FHWA incorporate the language used in the *Uniform Vehicle Code and Model Traffic Ordinance* (UVCMTO), 1987 Edition, published by the National Committee on Uniform Traffic Laws and Ordinances, which states in Chapter 11, Rules of the Road, at § 11-801 that: "No person shall drive a vehicle at a speed greater than is reasonable and prudent under the conditions and having rgard to the actual and potential hazards then existing * * *."

In response to the issue of designating a specific speed, as constituting excessive speed by definition, there were suggestions ranging from a low of 70 m.p.h. to a high of 86 m.p.h. The majority, however, were in favor of keeping the rule simple by merely stating that, "any speed of 10 or 15) m.p.h. over the posted limit" should be the sole definition of excessive speed.

Reckless Driving

Question (a). Should reckless driving constitute any driving violation which is contrary to State or local law?

Again, relatively few comments (12.9 percent) responded to this question, of which a minority advocated a different definition from that in current State laws. Instead, the majority wanted to retain the State definitions of this offense. Seven respondents made a direct plea for the FHWA to define reckless driving as set forth in the UVCMTO. The 1987 Edition of the UVCMTO, published by the National Committee on Uniform Traffic Laws and Ordinances, in Chapter 11, Rules of the Road, at § 11-901 Reckless Driving (a) states that: "Any person who drives any vehicle in willful or wanton disregard for the safety of persons or property is guilty of reckless driving." Several commenters emphasized the potential problems created by the lack of a definition of what constitutes reckless driving. These were well summarized by the comments of a truck driver who claimed 31 years of driving experience, who stated: "Reckless driving should be defined * * * because some places you could get a ticket just for changing lanes without a signal light. Some places that is reckless driving." Several other respondents stated that even though they did not favor any definition that differed from State laws, they felt that a "Federal definition" (of reckless driving) would be necessary to facilitate the exchange of data within the CDLIS because of the differences in State laws.

Question (b). Should reckless driving mean only those violations which result in injury or death?

Of the few (10.5 percent) of the respondents who directly addressed this question, only one thought that reckless driving should mean only those violations which result in injury or death. The majority expressed comments similar to those of a major trucking association, which state that:

Most state laws define reckless driving as violations which are excessive enough to be a high potential for a serious accident, regardless of whether injury or death results. Federal regulation should not require injury or death to be part of the criteria. The decision should be left to the states.

Question (c). Should reckless driving include endangerment of the public which does not result in injury or death but only property damage?

Of the relatively few (10.1 percent) respondents who directly addressed this question, the majority thought that reckless driving should include endangerment, not resulting in injury or death but only in property damage, and the rest thought it should not. One State expressed its opposition by stating:

Endangerment is the key concept here, not the damage, injury, or death possibly resulting from it. It follows that reckless driving should include cases where, fortuitously, no damage resulted.

Question (d). Should reckless driving be determined by the State or local jurisdiction in which the violation occurred?

Most respondents favored using the State's definitions of reckless driving, but at the same time expressed apprehension about the differences between those laws. An insurance industry association reflected these concerns, when it stated:

* * * the *Uniform Vehicle Code* defines reckless driving as driving "any vehicle in willful or wanton disregard for the safety of persons or property." This concept, if not the exact language, is present in virtually all the state laws. However, the FHWA should be aware that there are states that have additional language in reckless driving provisions that describes less serious violations than those contemplated by the Act. Furthermore, it is common practice for those charged with alcohol-related driving offenses to plead guilty to reckless driving. Rather than attempting to analyze all violations to identify those that should be classed as reckless driving, the FHWA should follow state law on the matter and identify those states that include less serious behavior within the definition of reckless driving. Drivers who are subject to disqualification due to reckless driving convictions from those states should be allowed an opportunity to demonstrate that the behavior resulting in the conviction did not constitute a serious violation as contemplated by the Act. Finally, all drivers convicted of reckless driving should be

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required to notify the FHWA of the original charge giving rise to the conviction. Otherwise, drivers will be able to shield alcohol-related offenses from the agency by pleading guilty to reckless driving.

Other Violations

Question. What other violations should be considered serious traffic violations?

A total of 18 respondents addressed this question directly. Three of these representing truck and bus drivers or owner-operators, requested that nothing be added to the present rule. The other 15 (7 of which were State agencies) requested one or more of the following types of violations be added:

—Driving while operating privilege is suspended or revoked;
—Improper/erratic lane changes;
—Unsafe passing;
—Illegal transportation of alcohol;
—Following too closely;
—Willful violation of out-of-service orders;
—Failing to stop for a blue light;
—Passing on a hill or a curve;
—Using a motor vehicle as a deadly weapon;
—Speeding in a school zone;
—Passing a stopped school bus with flashing red lights;
—Racing or drag racing on public highways;
—Fleeing and/or attempting to elude a police officer;
—Improper passing; and
—Operating a commercial vehicle while suspended, revoked, canceled, or without a commercial class license;

Some of the respondents supported their requests with the argument that the violation(s) which have serious accident potential, and which are dangerous enough to make them (the suggested violation) equivalent to excessive speeding, should be included.

Proposed Rulemaking Action

The FHWA believes that Congress intended that the definition for "excessive speeding" be used to identify and penalize the most severe cases of speeding violations because the offense is included in the Act in the same category as "reckless driving". Therefore, the proposed definition is based on a specified value which separates the more serious speeding violations which would warrant penalties commensurate to those assigned to violations of reckless driving from other speeding violations. The FHWA proposes that excessive speeding violations would occur at any speed of 15 miles per hour or more above the posted speed limit.

While developing the proposed definition of excessive speeding, the FHWA considered whether to include in the definition repeated speeding at amounts below this specified value. Although the FHWA believes that driving too fast, regardless of the number of miles over the speed limit, is a violation that should not be taken lightly, current State systems penalize habitual speeders. Thus, a dual-part definition is not proposed as part of the Federal minimum standard.

The need to place importance on speeding violations of all kinds and to impose more stringent penalties on the drivers that are convicted of these violations is currently recognized by most jurisdictions. A review of the States' existing "safety point systems" shows that States already distinguish between speeding violations that occur at lower speeds and those that occur at levels that far exceed the speed limit. For example, in Maine, a driver convicted of speeding between 1–10 miles per hour over the speed limit is assessed 2 penalty points. That same driver would be assessed 6 penalty points for a conviction of 15 miles per hour over the limit. An FHWA analysis of the point systems used by 20 different States shows that violations for speeds of 15 miles per hour or more above the posted limits receive a greater number of points—i.e. are treated as a more serious offense—than violations for lower speeds. The proposed definition for excessive speeding would create a needed uniform national penalty for the more serious speeding violation. The States would retain, however, responsibility for penalties associated with speeding violations below the 15 miles per hour threshold.

The FHWA notes that the CDL telecommunication system (AAMVAnet) is now operational. States will be required to use the system to check commercial driver's licenses and to transmit traffic violation convictions, including all convictions for speeding, to the driver's home State. These requirements should resolve the current problem of drivers not being penalized for traffic infractions, particularly speeding violations, which occur in other jurisdictions. The FHWA believes that these systems in conjunction with a State's point system for lower level speeding violations, will adequately control the problems associated with repeated speeding at amounts below the specified value (15 miles per hour above the posted speed limit).

The FHWA believes that the proposed definition meets the intent of the Commercial Motor Vehicle Safety Act. The proposed definition would subject drivers to disqualification for "excessive" speeding, as the Act requires. While several commenters advocated penalizing all drivers who exceed the speed limit, the FHWA believes that Congress did not intend the disqualification provisions to apply for all speeding convictions, but only for those that involve particularly serious offenses. We invite comments on this issue and on the following specific questions:

Is the standard of 15 MPH or more above the speed limit appropriate for the entire range of speeds of concern? Should a conviction of driving 15 MPH over the posted limit in a 20 MPH school zone be treated the same as a conviction of driving 15 MPH over the 65 MPH limit of a rural interstate? What other standard could be adopted that would recognize the varying hazards, yet be simple enough for all parties to readily understand? Would it be appropriate to propose a more stringent value, such as 10 miles over posted limits per hour instead of 15 miles per hour, that would constitute a disqualifying violation?

Regarding the definition of "Reckless Driving", Section 12019 of the Act states that: "reckless driving shall be as defined under State or local law." To promote uniformity and because a majority of the States are already using the UVCMTO definition, the FHWA proposes to amend the definition of reckless driving to incorporate the language used in the UVCMTO, 1987 Edition, published by the National Committee on Uniform Traffic Laws and Ordinances. Such language states that (in Chapter 11, Rules of the Road, at § 11–901—Reckless Driving (a)) "Any person who drives any vehicle in willful or wanton disregard for the safety of persons or property is guilty of reckless driving." The FHWA also proposes to amend the definition of reckless driving to clarify that it would include two additional traffic offenses, both of which are frequently associated with excessive speeding and/or reckless driving. These two additional offenses, also based on definitions in the UVCMTO, are:

1. Improper/erratic lane changes (UVCMTO § 11–304 through § 11–306); and
2. Following the vehicle ahead too closely (UVCMTO § 11–310).

The FHWA is also proposing to amend "Driver Disqualifications" as defined in § 383.51 (c)(2) to conform with the changes pertaining to "excessive speed" and "reckless driving".

The FHWA seeks comments on whether these two infractions should be listed as "other serious traffic violations" instead of including them under "reckless driving".

Background

Question Area 5. Notification of Convictions for Driver Violations:

Section 383.31, as mandated by the Act, requires a CMV operator to report all convictions of disqualifying offenses committed in another State to his/her employer and to the State which issued the CMV operator's license. The driver must notify the employer and the State within 30 days of the date of his/her conviction.

One purpose of the driver notification requirements to the State is to alert a State of violations which, when considered with other violation convictions, warrant the suspension or revocation of a driver's license. When State-to-State reporting of traffic violations, required by Section 12009(a) of the Act, is fully operational, a comprehensive system to ensure complete single license records would exist. However, it should be noted that several State representatives indicated that a license cannot be suspended or revoked based upon a driver's notification. States require direct and official notification from other States regarding convictions for traffic violations before the State can suspend a license. In order to accommodate this concern, it was suggested to the FHWA that the driver notification requirements to the State be waived if a State belongs to the Driver License Compact (DLC). Presently, 35 States and the District of Columbia belong to the DLC. However, because 15 States do not belong to the DLC and because many States in the DLC do not fully comply with its major provisions, the FHWA specifically requested comments on the following questions concerning its use:

Question 5(a). Can the DLC adequately serve the purpose of the driver notification requirements to the State?

A majority of the direct respondents to this question did not believe that the DLC could adequately serve this purpose. However, of the 13 States that directly commented there was no clear consensus—6 of them said "yes" and 7 said "no." The concerns of several respondents were reflected in the comments of the National Transportation Safety Board which wrote:

> As for the DLC, the Safety Board views it as an important means of preventing driver abuse of the license privilege, but it cannot serve as a substitute for the notification provision of the current rule. Not only is State participation in the Compact insufficient for such substitution, but so is the amount of information exchanged under the program. Many types of violations are not transmitted under the DLC, because of lack of uniformity in the way individual States categorize those violations. For example, States such as Nevada have had a 55-m.p.h speed limit, but if a driver there is stopped for traveling between 55- and 70-m.p.h, that offense is given a designation other than speeding. Therefore, when reporting speeding violations to another State, those occurrences would not be included.

Question 5(b). What level of State participation in the DLC and what level of State compliance with the terms of the DLC should be met, before the DLC is considered as an alternative to the notification requirements?

There was a nearly equally divided response between various States and other organizations who directly addressed this question. Generally, the comments were that the DLC could not be considered as a viable alternative, unless all States were forced to join the DLC, and forced to report all moving violations, without making any modifications to the nature of the violations being reported.

Proposed Rulemaking Action

It is clear both from the FHWA's own investigation and the comments to the docket, that the Driver License Compact does not currently serve the purpose of the driver notifications of the Act. Therefore, the FHWA does not propose to consider it as an option at this time.

Background

Question Area 6. Notification of Employment History:

The Act allows the FHWA to establish the length of the employment history period, which CMV operators must provide to prospective employers, by regulation. The Congress directed that this period shall not be less than a 10-year period ending on the date of application. The Act places the burden on the job applicant to provide the employment history. It also requires that employers request the information from all applicants seeking employment as a CMV operator. The FHWA realizes that it may be impossible for a potential employer to comply with the requirement without assistance from the applicant. Accordingly, § 383.35 of the rule, requires an applicant for a job as a CMV driver to inform the prospective employer of any previous employment as an "operator of a commercial motor vehicle," if any, for the 10-year period before the application date. The applicant must include the name(s) of his/her previous employer(s), dates of employment, and the reason for leaving the job(s).

Question 6(a). Should the FHWA require an applicant for employment as a commercial motor vehicle operator to provide the employer information on all jobs, not just jobs as a commercial driver, he/she had for the 10-year period prior to the date of application?

A minority (40 percent) of the respondents who directly addressed this question were in favor of a complete 10-year history and the rest were against it. One trucking industry association suggested that it be all inclusive; but for a period of 5-years, instead of 10 years. A major bus industry association stated:

> (it) believes that operator applicants should be required to provide information on all jobs, not just jobs as a commercial driver, for the ten year period prior to the application date. Such information could quite often be relevant to overall qualifications for a driver position.

An insurance industry association commented that:

> It is essential that the employer have a complete record of a driver's license history that includes violations occurring during personal and commercial driving as well as a full employment history. Without a complete record, the employer will not have an adequate basis upon which to make decisions about a driver's safety performance. Furthermore, it would be inappropriate to require that drivers only report employment history as commercial drivers because former employers are a valuable source of information on matters that bear on safety performance and reliability even if the prior employment is unrelated to commercial driving. For example, employers often identify possible substance abuse problems before they result in convictions or incidents that appear on official records.

Question 6(b). Should the FHWA require the applicant's employment history for a period longer than 10 years?

Most of the respondents who directly responded to this question were opposed to increasing the period beyond 10 years because of current record-keeping practices and the possible administrative burdens that would result.

Question 6(c). Should the FHWA require an applicant for employment as a commercial motor vehicle operator to provide the employer with information about his/her driving license status and details on past license suspensions, revocations, etc.?

The majority of the responses to this question agreed that the applicant should provide such information. Two of the respondents were opposed, one a bus driver and the other an organization representing owner-operators.

Proposed Rulemaking Action

Based on the FHWA's own investigation and its review of the comments to the docket, the FHWA believes that § 383.35 as presently written, will adequately serve the purposes intended by the Act. The FHWA notes that employers and

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prospective employers will have access to the information contained in the CDL information system and information on the driver's record through the State of licensure. This should enhance the employer's/prospective employers' ability to check on an employee's or an applicant's past driving history. From the information in the docket, the FHWA believes that a 10-year history of commercial driving experience is sufficient. Therefore, the FHWA does not consider any further rulemaking action necessary.

Background

Question Area 7. Disqualification of Drivers:

Section 383.51 prescribes minimum driver disqualification provisions, as included in the Act. It specifies that drivers can not operate a CMV if disqualified, and that employers shall not knowingly allow or require drivers to operate a CMV, if they are disqualified.

The Act also provides that the FHWA may issue regulations which establish guidelines (including conditions) under which a lifetime disqualification may be reduced to a period of not less than 10 years. In order to assist the FHWA in determining whether the lifetime disqualification should be reduced, and whether the disqualifying offenses should be changed, the FHWA asked for comments on the following questions:

Question 7(a). Should the disqualification offense, leaving the scene of an accident, be limited only to accidents which involve an injury or death?

Of the docket comments which directly addressed this question, a majority were against limiting "leaving the scene" to only those accidents involving injury or death. About one-fourth thought that it should be limited to just those kinds of accidents. The majority of the States who commented upon this queston thought that leaving the scene of any accident was serious enough to be considered as a disqualifying offense. However, concerns about applying the same penalty for leaving the scene of a minor property damage accident, as would be applied for leaving an accident involving either an injury or a fatal injury were expressed. Both an owner-operator organization and a motor carrier association reflected the views of many respondents when they stated that the results of the accident (whether property damage only or injury/death) should *not* be the governing criteria, rather it should be whether or not the driver had *knowingly* and *willfully* left the scene of an accident.

Question 7(b). Is there a simple way to differentiate minor from serious incidents of leaving the scene of an accident?

Of the few respondents to this question (10.9 percent), there was an almost equal split between those who stated that there was a way to do so, those who said there was not and those who did not know or were unsure of a way to do so. One State suggested that a way to accomplish this would be to copy its law, which stipulates that leaving the scene of an accident involving injury or death is a felony, whereas leaving the scene of an accident involving property damage only, is classified as a misdemeanor. However, the majority of State respondents who felt there was a way to differentiate, suggested different dollar amount thresholds. Several respondents referred back to the previous question (7a) stating that the driver should be subjected to the penalty only if he/she knowingly and deliberately had left the scene, regardless of the accident results. Several respondents pointed out that it was entirely possible for the operator of a large commercial motor vehicle to be involved in a minor property damage accident of which he/she was genuinely unaware. Considering the severity of the penalty involved, many respondents felt it would be unfair to exact such a penalty upon a driver who had not intentionally left the scene.

Question 7(c). Should the FHWA reduce the lifetime disqualification for second offenders of any combination of (1) driving under the influence, (2) leaving the scene of an accident, or (3) the use of a commercial motor vehicle in the commission of a felony?

Most of the respondents who addressed this question directly were in opposition to a reduction for each item. The viewpoints expressed, however, did not follow any pattern within the respondent groups represented. For example, the comments of the State respondents were evenly divided on this issue. Also some motor carrier groups thought the penalties too severe; while some driver groups did not. Several respondents thought a "progressive" type of penalty system should be used. For example, a first offense meriting a 5-year disqualification, the second infraction a 10-year penalty, and the third offense would be a lifetime disqualification. Furthermore, several respondents suggested that drunk driving penalties should be treated somewhat more leniently than leaving the scene of an accident or the commission of a felony. Some respondents (including several States) suggested that the drunk driving penalty period should be a period of 10 or 15 years for the second offense, with a lifetime disqualification only applied to the third offense. Another State opposed this concept when it wrote: ". . . These are very serious offenses. This is the 'teeth' of the law. Giving the driver a third chance to operate a commercial motor vehicle would be hard to defend after two previous DWI convictions." A State driver licensing agency raised a very important question regarding sanctions, when it commented: "First of all, we would like to comment that leaving the scene could be considered less severe than D.U.I. or commission of a felony. Secondly, some consideration should be given to counting "incidents" instead of just violations because of certain circumstances. For instance, a D.U.I. operator could leave the scene of an accident. *Would this be considered for two penalty sanctions or would they serve concurrently?*" (Emphasis added.) The respondent then went on to a recommend that:

> the lifetime disqualification provision be reduced to a time definite period, i.e., 10 years. Otherwise, there is no incentive for the operator to comply with any future requirements. By providing a potential reward (future reinstatement) we are encouraging the operator to comply with the imposed sanctions.

Many of the comments made in opposition to any reduction can be reflected by the NTSB comment that:

> Each of these offenses cited represents an extremely serious violation deserving of a serious penalty. A second infraction indicates a fundamental disregard for the law, and merits a lifetime disqualification.
> * * * Indeed, the probability of a drunk driver being arrested is so small that an individual must drive drunk many times in order to be arrested and convicted twice. Thus, any repeat offender drunk driver should be subject to extensive rehabilitation and a lengthy disqualification period prior to any consideration of reinstatement. Certainly, no reinstatement should be considered unless there is clear evidence that the driver's alcohol problem has been completely overcome.

Question 7(d). What types of guidelines or conditions, such as successful completion of a rehabilitation program, should be established in order to reduce the lifetime disqualification?

Very few respondents addressed this question directly. Most of the direct responses were in favor of some form of rehabilitation, with many methods suggested for reduction of the lifetime disqualification. The other 40 percent were against attempting rehabilitation because the current sanctions already allow the driver two infractions, prior to the imposition of a lifetime

disqualification. Three trucking associations wanted some form of rehabilitation to reduce the lifetime penalty, while a bus industry association and a driver association were against reducing the penalty. The majority of those favoring rehabilitation generally advocated that the driver undergo a 10-year disqualification period, during which time he/she would have a clean arrest/driving record, and submit some form of evidence that they had undergone successful treatment for their alcohol/controlled substances, if that had caused the disqualification. There was a conspicuous absence of recommendations for the rehabilitation of drivers convicted of leaving the scene of an accident or the commission of a felony using a commercial motor vehicle. A national public interest group suggested the following:

> * * * 1. For a second violation occurring *within* 5 years of the first violation, driving under the influence of alcohol or a controlled substance, or leaving the scene of an accident should result in disqualification for life. 2. For second violations occurring *after* 5 years from the conviction for the first violation, the Secretary should establish guidelines under which the penalty could be [reduced].

Question 7(e). Should a commercial motor vehicle operator who is convicted of the transportation, possession, or unlawful use of a Schedule I controlled substance (in contrast to being under the influence or distributing such substances) be disqualified from operation of such vehicle? Should the offense also cover Schedule II through V controlled substances? What should be the period of disqualification for such offenses? Should the period be more severe for offenses involving hazardous materials laden vehicles?

This question was directly addressed by only a few (10.1 percent) respondents. Of these, most thought that Schedule I controlled substances felony offenders should be disqualified. The question about whether or not Schedule II–V controlled substances should also be included, most believed that they should be included as a disqualifying offense. Only about half of the respondents directly answered the question about the length of the disqualification period. Suggestions ranged from 1-year to lifetime disqualification, with most advocating a lifetime penalty. The question regarding offenses involving vehicles transporting hazardous materials was addressed by most of the group, with no clear consensus.

The exact position of some respondents on these issues was often difficult to assess, as some answered by repeating the question in total, and then simply responding with a "yes" or a "no" to cover all four of the questions. Other respondents addressed all, or nearly all, four of the questions, but, stated both that any driver convicted of the transportation, possession, or unlawful use of a Schedule I controlled substance (in contrast to being under the influence or distributing such substances) should be disqualified for life, and that a lifetime penalty was too severe and that FHWA should reduce the penalty via required rehabilitation. It is unclear whether these respondents suggested rehabilitation for drug users or were also recommending it for drug dealers and/or distributors.

Question 7(f). Should the 1-year or 3-year disqualification requirements be reduced for successful completion of a rehabilitation program? If so, what sort of rehabilitation or evidence should be provided?

The majority of the respondents who directly addressed this issue opposed any reduction in the lifetime penalty and the others favored some form of reduction based upon rehabilitation. Of the States that commented, 10 were in favor and 4 were opposed to a reduction of the penalty. A national trucking organization reflected the comments of many other respondents when it stated:

> It is clearly the intent of Congress to provide these disqualifications as a deterrent to committing the associated violations and to protect the public. [We support] these provisions and feel that disqualified drivers who seek rehabilitation need the disqualification period to prove that they can safely return to commercial driving.

An organization representing owner-operator drivers felt that there should be provision made for "probationary release" from the sanctions after having completed a rehabiliation program.

Question 7(g). Consistent with our questions regarding requirements for vehicles carrying hazardous materials, how can the minimum 3-year disqualification be applied to vehicles transporting hazardous materials that are not placarded?

There was nearly unanimous agreement that trying to enforce the program would be extremely difficult, if not impossible, unless it involved only placarded vehicles. Most believed that the rule should apply only to placarded vehicles, while some suggested expanded the placarding rules to cover all vehicles carrying any amount of hazardous materials. A few also had other suggestions such as, "checking waybills during roadside checks of commercial motor vehicles," "showing hazardous materials on all traffic summons issued to commercial vehicles drivers," etc.

Question 7(h). Should there be a mechanism to lift lifetime or 10-year suspensions for disqualifications violations listed under § 383.37 (cite should have read § 383.51)?

About two-thirds of the respondents to this question favored some form of reduction, while one-third were against any reduction of the penalties. Among the 12 State respondents directly addressing this question, 8 favored some type of reduction, and 4 opposed it. One State's driver licensing agency stated:

> No, the basis for the Act was to remove problem drivers from the road. Any modifying of the disqualifications would deter from the goal of the Act.

A national organization representing motor carriers of passengers also voiced opposition by stating:

> Does not believe that FHWA should attempt at this time to establish regulations for reducing lifetime disqualifications. The statue already provides that drivers get a second chance after committing one of these very serious violations and we do not see any basis for an administrative determination that further chances should be given.

Respondents who favored some form of penalty reduction generally suggested that the FHWA consider rehabilitation programs to enable lifetime sanctions to be reduced, but not to reduce the penalty to less than 10 years. Those same respondents favoring a reduction of the lifetime penalty also expressed concerns about how it would be accomplished. For example, a State commented:

> Yes, but only after a minimum of 10 years has expired on a lifetime revocation or 2 years on a 10-year revocation and then only after having been processed through a State administration hearing (by Department) for possible reinstatement on a restricted basis.

Question 7(i). If a State expunges convictions as part of a rehabilitation program, for example, after successfully completing an alcohol rehabilitation program, should FHWA lift a long term suspension because there is no longer a "conviction?"

One-third of the respondents to this question favored lifting a long term suspension, and two-thirds were opposed. There were 14 States which directly addressed this issue, of which 4 favored lifting the sanctions and 10 were opposed. One State voiced its opposition by stating:

> It is frequent practice for a court to order the expungement of a conviction for an individual who has completed a rehabilitation program. Regardless of the expungement, the individual was convicted in a court of law and therefore the FHWA should not lift a long term suspension

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because of the expungement and the record should stand.

The National Transportation Safety Board reflected the position of other dissenters by stating:

No. The disqualification is triggered by the conviction. It is the Safety's Board's understanding that there is nothing in the Act which allows the elimination of this requirement.

The only respondents who favored the lifting of sanctions were 5 driver organizations, 1 driver leasing company and 4 States. One State expressed its desire to lift sanctions as follows:

The rehabilitation program should be a condition of the dismissal. The conviction should not become a part of the driver's record unless he fails to complete an approved rehabilitation program.

Proposed Rulemaking Action

The FHWA agrees with the respondents that it is not appropriate to eliminate accidents which involve only property damage rather than personal injury or death from the definition of disqualifying offenses. Thus, the FHWA has not proposed to amend the list of disqualifying offenses to exclude property damage only accidents. Also, there is no precise way to differentiate so called "minor" from "serious" incidents of leaving the scene of an accident. Any driver who intentionally leaves the scene of any accident, regardless of the outcome of that particular event, should be punished for his/her failure to comply the with law. Conversely, the FHWA recognizes that under certain (usually rare) circumstances, it may be possible for the driver of a large commercial motor vehicle to be involved in a minor accident of which he/she may be genuinely unaware, and that under such circumstances a driver should not be penalized. Therefore, the FHWA proposes to amend § 383.51(b)(2)(iii) *Disqualifying Offenses*, to include "knowingly and willfully leaving the scene of an accident while operating a commericial motor vehicle." To remain consistent with this proposed change, § 391.15(c)(2)(iv) would similarly be changed.

With respect to the issue of reducing the lifetime disqualifications, the FHWA proposes to amend § 383.51(b)(3), by allowing States the option of providing an opportunity for sanctioned drivers to apply for a reduction of their *lifetime penalties only* after they serve a minimum disqualification period of ten years, and only after they successfully complete a requisite rehabilitation program, as determined by their State's driver licensing agency. Second, the FHWA suggests that the States form a committee to develop appropriate CMV driver rehabilitation programs and standards along with standardized procedures for monitoring the performance of reinstated drivers. Once these programs are operational, those CDL drivers who enroll in and successfully complete a rehabilitation program that meets standardized procedures could qualify for a reduction in their lifetime sanctions after they serve a minimum disqualification period of 10 years. Third, to remain consistent with the intent of the Act, the lifetime disqualification would not be expunged from the driver's record for any reason even after successful rehabilitation and reinstatement. Accordingly, the FHWA proposes that any commercial driver's convictions of disqualifying offenses, as set forth in § 383.51, would be permanently retained in the driver's CDL record, regardless of whether the State expunges its driver records. This proposal would require that a CMV driver who completes a rehabilitation program after being disqualified for life continues to be subject to the penalties included in this Act.

Therefore, any such reinstated driver who may be convicted of another disqualifying offense, would be permanently disqualified for life.

Congress specifically distinguished between the duration of disqualification for CMV drivers which use their vehicles in the commission of a controlled substance felony and for CMV drivers which are convicted of other types of offenses in section 12008(b) of the Act. Accordingly, the FHWA has not proposed to allow CMV drivers to use their vehicles in commission of controlled substance felonies to get a reduction of a lifetime disqualification.

With regard to disqualification for convictions for the transportation, possession, or use of controlled substances, section 12008(a) of the Commercial Motor Vehicle Safety Act of 1986 requires a one year disqualification for a person "who uses a commercial motor vehicle in the commission of a felony (other than a felony described in subsection (b))." A second conviction for an offense of this type requires a lifetime disqualification. Felony drug convictions for transportation, possession, or use of controlled substances would be covered by this provision, which was codified in the June 1, 1987, final rule.

Discussion of Other Issues

Item 1. Proposed clarification of how to apply sanctions when more than one disqualifying offense occurs simultaneously:

Several commenters have asked how sanctions should be applied when two (or more) disqualifying offenses occur simultaneously, or as part of a single incident, such as leaving the scene of an accident during the commission of a felony with a commercial motor vehicle. Although the FHWA did not raise any specific questions on this issue in the final rule published on June 1, 1987, the issue is addressed with respect to disqualification for life by the Model CDL Law Subcommittee of the American Association of Motor Vehicles Administrators (AAMVA) in their most recent (sixth) draft of the "Model Uniform Commercial Driver License Act" (section 12). The approach taken in the model law is to disqualify for life a person who is convicted of two or more violations of the nature which result in a lifetime disqualification only where the convictions arise from two or more separate incidents. The FHWA believes that this approach is consistent with the intent of Congress because the Act mandates a series of increasingly stringent periods of disqualification for second and subsequent offenses. The FHWA believes that these increasingly stringent periods of disqualifications were intended to address subsequent, separate offenses rather than multiple offenses arising out of a single incident. Thus, the FHWA proposes to clarify that the driver be disqualified for life if he or she is convicted for offenses which arise from two or more separate incidents. This clarification is included in § 383.51(b)(3)(iv). Similar language is included in § 383.51(c)(2) (i) and (ii) dealing with serious traffic violations.

Item 2. Proposal to amend § 383.1 (b)(2) and (b)(5) to clarify reporting requirements:

As currently written, § 383.1(b) specifies the requirement to report "certain violations and suspensions" and penalties for various "violations." It fails to identify the specific types of "violations" being addressed and that the requirement is limited to the reporting of *convictions* of certain criminal offenses, serious traffic violations (with the exception of parking violations, vehicle weight and equipment defects), and any suspensions, revocations, or cancellations of certain driving privileges. The FHWA proposes, therefore, to amend § 383.1(b)(2) to clarify that a driver is required to notify both his/her employer and his/her State of domicile of *all convictions* of certain criminal offenses, serious traffic violations, and any suspensions, revocations, or cancellations of certain driving privileges. The FHWA also proposes to amend § 383.1(b)(5) to clarify that the penalties pertain to *convictions* of certain criminal offenses, serious traffic violations, and any suspensions, revocations, or cancellations of certain driving privileges. Additionally, FHWA proposes to amend § 383.31 (a) and (b) to clarify that such notification must be given within 30 days after the person is convicted.

Item 3. Proposal to clarify the requirements for casual, intermittent or occasional type driver employees under Part 383:

Due to the fact that a casual, intermittent or occasional type of driver has no "regular employer" per se, the present regulations are unclear as to whom such casual, intermittent or occasional drivers should report their convictions of disqualifying offenses, as set forth in § 383.51. Therefore, the FHWA proposes to amend § 383.5 definition of *"Employee"* to include all casual, intermittent or occasional type drivers. It is also proposed to amend §§ 383.1(b) and 383.31(b) to clarify that drivers must notify their current employer and State of licensure of any such convictions. If the driver is not currently employed, he/she must still notify the State of licensure.

Item 4. Proposal to impose penalties for falsification of required information under Part 383:

All States currently have laws which deal with falsification of information on license documents. These laws, however, are not consistent. As part of the minimum standards for licensing and testing CMV operators, the FHWA included a requirement that States must impose a penalty on a CDL applicant who is discovered by the State to have falsified information required for the CDL. The FHWA believes that a minimum level for such penalties needs to be established to ensure similar treatment of CMV operators across the country. Such penalties would also help deter an applicant from attempting to get a second license or a new CDL during the time he/she is disqualified. Therefore, the FHWA is proposing to amend § 383.53 to provide minimum penalties of at least a 60-day license suspension, revocation or cancellation for States to apply to those persons who knowingly falsify or evade submitting required information when applying for an initial CDL, a CDL renewal or a CDL from a new State of domicile.

Item 5. Proposal to clarify when the period of disqualification should begin:

Several questions have been raised to the FHWA about whether the period of time for which a driver may be disqualified is to begin on the date of the violation or the date of conviction. Because the Act requires that drivers be disqualified when they are "found to have committed" certain offenses, the FHWA believes that the disqualification period should begin at the time when the driver is convicted of the disqualifying offense. Thus, the FHWA proposes to amend both § 383.51 (b)(1) and (c)(1) to clarify, in the general rule statement, that the driver would be disqualified at the time he/she is convicted.

Regulatory Impact

This notice is based on comments made on the procedures promulgated June 1, 1987, to implement the statutory provisions of the Commercial Motor Vehicle Safety Act of 1986. At that time, the FHWA determined that these actions did not constitute a major rule under Executive Order 12291. The amendments to the final rule that would result from this notice are not expected to result in an annual effect on the economy of $100 million or more, or lead to a major increase in costs or prices, or have significant adverse effects on the United States economy. Because of the public interest in the issue of commercial motor vehicle safety and the expected benefits of improved transportation safety, however, this notice is considered significant under the regulatory policies and procedures of the DOT. For this reason and pursuant to Executive Order 12498, this rulemaking action has been included on the Regulatory Program for significant rulemaking actions.

The economic impacts of this rulemaking that will occur are primarily mandated by the statutory provisions themselves. For this reason, a full regulatory evaluation is not required. However, since an analysis of impacts, including economic factors, is necessarily involved in the preparation of related motor vehicle safety regulations, a regulatory evaluation was prepared for the rulemaking actions needed to implement the Act. This evaluation addresses the provisions contained in this notice, has been placed in the public docket and is available for inspection in the Headquarters office of the FHWA, 400 Seventh Street, SW., Washington, DC 20590.

A significant part of the motor carrier industry and other employers covered by the Act are made up of small firms, from one-person, one-truck operations of some owner-operators, to the thousands of small fleet operators throughout the country. For this reason, the benefit and cost considerations described in the regulatory evaluation/regulatory flexibility analysis as applicable to employers and the motor carrier industry in general, are equally applicable to the small entity component of the industry. Small entities have been represented at public meetings held to discuss the Act and small entities have had the opportunity to submit comments to the public docket established in conjunction with FHWA's August 1, 1986, ANPRM as well as the several other rulemaking notices required by the Act. The FHWA is fully committed to doing all that it can to ensure that no undue burdens are placed on small entities as a result of this notice.

Federalism Impact

The FHWA has reviewed the proposed changes to the Commercial Driver Licensing Standards in light of the purposes of the Act and the President's Executive Order on Federalism (Executive Order 12612, October 26, 1987). In enacting the Commercial Motor Vehicle Safety Act of 1986, the Congress found that it is in the public interest to enhance commercial motor vehicle safety. Congress identified commercial motor vehicle safety as a matter of national importance and included requirements for a single license and driver disqualifications as part of the mandates in the Act.

In his Executive Order on Federalism, the President ordered Executive Departments and agencies to be guided by certain fundamental federalism principles in formulating and implementing policies that have federalism implications. These policies have been taken fully into account in the development of the proposal. This proposal would limit the policy making discretion of the States only in narrow ways, and does so only to achieve the national purposes of the act. For example, States would continue to have sole discretion as to whether or not to license any CMW operator and what specific procedures, tests, fees or penalty applications are applicable. Thus, it is certified that the policies contained in this document have been assessed in light of the principles, criteria, and requirements of the Federalism Executive Order, and accord fully with the letter and spirit of the President's Federalism initiative.

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified agenda.

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For the foregoing reasons and under the criteria of the Regulatory Flexibility Act, the FHWA hereby certifies that, if promulgated, this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The collection of information required by the final rule published on June 1, 1987, to implement the single license and certain reporting and notification requirements has been approved by the Office of Management and Budget (OMB No. 2125-0542). No additional burdens are expected to result from this rulemaking.

List of Subjects in 49 CFR Parts 383

Commercial driver's license standards requirements and penalties, Highways and roads, Motor carriers' Motor vehicle safety, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Program Number 20.217, motor carrier safety.)

Issued on: January 24, 1989.

Robert E. Farris,

Federal Highway Administrator.

In consideration of the foregoing, the FHWA hereby proposes to amend Title 49, Code of Federal Regulations, Subtitle B, Chapter III, as set forth below:

PART 383—COMMERCIAL DRIVER'S LICENSE STANDARDS; REQUIREMENTS AND PENALTIES

1. The authority citation for 49 CFR Part 383 continues to read as follows:

Authority: Title XII of Pub. L. 99-570, 100 Stat. 3207-170; 49 U.S.C. 3102; 49 U.S.C. App. 2505; 49 CFR 1.48

2. Sections 383.1(b) (2) and (5) are revised as follows:

§ 383.1 Purpose and scope.

* * * * *

(b) * * *

(2) Requires a driver to notify the driver's current employer and the driver's State of domicile of certain convictions;

* * * * *

(5) Establishes periods of disqualification and penalties for those persons convicted of certain criminal offenses and serious traffic violations, or subject to any suspensions, revocations, or cancellations of certain driving privileges;

* * * * *

3. Section 383.5 is amended by adding one definition entitled "UVCMTO" and revising five definitions, and placing them in alphabetical order as follows:

§ 383.5 Definitions.

* * * * *

"Controlled substance" has the meaning such term has under section 102(6), of the Controlled substances Act (21 U.S.C. 802(6)) and includes all substances listed on Schedules I through V of 21 CFR Part 1308, as they may be revised from time to time. Schedule I substances are identified in Appendix D of this subchapter and Schedules II through V are identified in Appendix E of this subchapter.

* * * * *

"Driver's license" means a license issued by a State or other jurisdiction, to an individual which authorizes the individual to operate a motor vehicle on the highways.

* * * * *

"Employee" means any operator of a commercial motor vehicle, including full time, regularly employed drivers; casual, intermittent or occasional drivers; leased drivers and independent, owner-operator contractors (while in the course of operating a commercial motor vehicle) who are either directly employed by or under lease to an employer.

* * * * *

"Serious traffic violation" means convictions, when operating a commercial motor vehicle, of:

(a) Excessive speeding, involving any single charge for any speed of 15 miles per hour or more, above the posted speed limit.

(b) Reckless driving, as defined by State or local law or regulation, including charges for the offenses of driving a commercial motor vehicle in willful or wanton disregard for the safety of persons or property (UVCMTO, § 11-901), improper or erratic traffic lane changes (UVCMTO, § 11-304 and 308) or following the vehicle ahead too closely (UVCMTO, § 11-310); or

(c) A violation of State or local law relating to motor vehicle traffic control (other than a parking violation) and arising in connection with a fatal accident. (Serious traffic violations exclude vehicle weight and defect violations.)

* * * * *

"UVCMTO" means the Uniform Vehicle Code and Model Traffic Ordinance, 1987 Edition published by the National Committee on Uniform Traffic laws and Ordinances, as it may be amended from time to time.

4. Section 383.31 is amended by revising paragraphs (a), (b) and (c)(4) as follows:

§ 383.31 Notification of convictions for driver violations.

(a) Each person who operates a commercial motor vehicle, who has a commercial driver's license issued by a State or jurisdiction, and who is convicted of a State or local law relating to motor vehicle traffic control (other than a parking violation) in a State or jurisdiction, other than the one which issued his/her license, shall notify an official designated by the State or jurisdiction which issued such license, of such conviction. The notification must be made within 30 days after the date that the person has been convicted.

(b) Each person who operates a commercial motor vehicle, who has a commercial driver's license issued by a State or jurisdiction, and who is convicted of a State or local law relating to motor vehicle traffic control (other than a parking violation), shall notify his/her current employer of such conviction. The notification must be made within 30 days after the date that the person has been convicted. If the driver is not currently employed, he/she must notify the State or jurisdiction which issued the license according to § 383.31(a).

(c) * * *

(4) The specific criminal offenses and serious traffic violations for which the person was convicted and any suspension, revocation, or cancellation of certain driving privileges which resulted from such conviction(s);

* * * * *

5. Section 383.51 is amended by revising paragraph (b) and (c) to read as follows:

§ 383.51 Disqualification of drivers.

* * * * *

(b) *Disqualification for driving while under the influence, leaving the scene of an accident, or commission of a felony*—(1) *General rule.* A driver who is convicted of a disqualifying offense specified in paragraph (b)(2) of this section, is disqualified at the time of such conviction for the time specified in paragraph (b)(3) of this section, if the offense was committed while operating a commercial motor vehicle.

(2) *Disqualifying offenses.* The following offenses are disqualifying offenses:

(i) Driving a commercial motor vehicle while under the influence of alcohol. This shall include:

(A) Driving a commercial motor vehicle while the person's alcohol concentration is 0.04 percent or more; or

(B) Driving under the influence of alcohol, as prescribed by State law; or

(C) Refusal to undergo such testing as is required by any State or jurisdiction in the enforcement of § 383.51(b)(2)(i) (A) or (B), or § 392.5(a)(2);

(ii) Driving a commercial motor vehicle while under the influence of a controlled substance;

(iii) Knowingly and willfully leaving the scene of an accident involving a commercial motor vehicle;

(iv) A felony involving the use of a commercial motor vehicle, other than a felony described in paragraph (b)(2)(v) of this section; or

(v) The use of a commercial motor vehicle in the commission of a felony involving manufacturing, distributing, or dispensing a controlled substance.

(3) *Duration of disqualification for driving while under the influence, leaving the scene of an accident, or commission of a felony.* (i) First offenders. A driver is disqualified for 1 year after the date the driver is found to have committed an offense described in paragraphs (b)(2)(i) through (b)(2)(iv) of this section, provided the vehicle was not transporting hazardous materials required to be placarded under the Hazardous Materials Transportation Act (49 U.S.C. App. 1801-1813).

(ii) First offenders transporting hazardous materials. A driver is disqualified for 3 years after the date the driver is found to have committed an offense described in paragraphs (b)(2)(i) through (b)(2)(iv) of this section, if the vehicle was transporting hazardous materials required to be placarded under the Hazardous Materials Transportation Act (49 U.S.C. App. 1801-1813).

(iii) First offenders of controlled substance felonies. A driver is disqualified for life after the driver is found to have committed an offense described in paragraph (b)(2)(v) of this section.

(iv) Subsequent offenders. A driver is disqualified for life after the date the driver is found to have committed an offense described in paragraphs (b)(2)(i) through (b)(2)(iv) of this section, if the driver had been found to have committed once before in a separate incident any offense described in paragraphs (b)(2)(i) through (b)(2)(iv) of this section.

(v) Any driver disqualified for life under § 383.51(b)(3)(iv) of this paragraph, who has both voluntarily enrolled in and successfully completed, an appropriate rehabilitation program which meets the standards of his/her State's driver licensing agency, may apply to the licensing agency for reinstatement of his/her commercial driver's license. Such applicants shall not be eligible for reinstatement from the State unless and until such time as he/she has first served a minimum disqualification period of 10 years and has fully met his/her State's standards for reinstatement of commercial motor vehicle driving privileges. Should a reinstated driver be subsequently convicted of another disqualifying offense, as specified in paragraphs (b)(2)(i) through (b)(2)(iv) of this section, he/she shall be permanently disqualified for life, and shall be ineligible to again apply for a reduction of the lifetime disqualification.

(c) *Disqualification for serious traffic violations*—(1) *General rule.* A driver who is convicted of a serious traffic violation is disqualified at the time of such conviction for the applicable period of time specified in paragraph (c)(2) of this section.

(2) *Duration of disqualification for serious traffic violations*—(i) *Second violation.* A driver is disqualified for 60 days if, during any 3-year period, the driver commits two serious traffic violations in separate incidents for which he/she is subsequently convicted.

(ii) *Third violation.* A driver is disqualified for 120 days if, during any 3-year period, the driver commits three serious traffic violations in separate incidents for which he/she is subsequently convicted.

* * * * *

6. Section 383.53 is amended to add penalties for falsification of information and is revised to read as follows:

§ 383.53 Penalties.

(a) *General.* Any person who violates the rules set forth in Subparts B and C of this part may be subject to civil or criminal penalties as provided for in 49 U.S.C. 521(b), as amended by section 12012 of Pub. L. 99-570.

(b) *Disqualification for falsification of information.* Any person who knowingly falsifies information or certifications required to be provided to a State in Subpart E is subject to the penalties associated with such falsification in that State. At a minimum, such penalty will be the suspension, revocation, or cancellation of his/her CDL or a disqualification from operating a commercial motor vehicle for a period of at least 60 consecutive days.

PART 391—QUALIFICATIONS OF DRIVERS

7. Section 391.15(c)(2)(iv) is revised as follows:

§ 391.15 Disqualification of drivers.

* * * * *

(c) * * *

(2) * * *

(iv) Knowingly and willfully leaving the scene of an accident while operating a commercial motor vehicle; or

* * * * *

[FR Doc. 89-2136 Filed 1-30-89; 8:45 am]

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Part VI

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Part 1 et al.
Federal Acquisition Regulation (FAR); Miscellaneous Amendments; Interim Rule With Request for Comments and Final Rules

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 4, 6, 14, 15, 16, 17, 19, 22, 25, 28, 32, 37, 46, and 52

[Federal Acquisition Circular 84-42]

Federal Acquisition Regulation (FAR); Miscellaneous Amendments

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comments and final rules.

SUMMARY: Federal Acquisition Circular (FAC) 84-42 amends the Federal Acquisition Regulation (FAR) with respect to the following: Small Business Competitiveness Demonstration Program; Publicizing Proposed Regulations; Clarification of Records Retention Requirements; Sealed Bid Documentation; Documentation of Firm-Fixed Price Contracts; Five-Year Option Limitation; Approval and Option Clauses; Small Business Size Standards; Walsh-Healey Eligibility; Nonpersonal Healthcare Services; Value Engineering and OMB Circular A-131; and Diversion of Shipment under F.o.b. Destination Contracts.

DATES: *Effective date:* March 2, 1989, except for Subpart 19.10 which is effective January 31, 1989.

Comment date: Comments on the interim rule, Subpart 19.10, should be submitted to the FAR Secretariat, at the address below, on or before April 3, 1989 to be considered in the formulation of a final rule. Please cite FAC 84-42 in all correspondence on this subject.

ADDRESS: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets NW, Room 4041, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Margaret A. Willis, FAR Secretariat, Room 4041, GS Building, Washington, DC 20405, (202) 523-4755. Please cite FAC 84-42 in all correspondence on this subject.

SUPPLEMENTARY INFORMATION:

A. Determination To Issue an Interim Rule

FAC 84-42, Item I. A determination has been made under authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) to issue the regulations in Item I of FAC 84-42 as an interim rule. This action is necessary because—

The Office of Management and Budget (OMB), Office of Federal Procurement Policy (OFPP), published in the Federal Register on December 29, 1988, (53 FR 52889) an interim policy directive with comments due February 15, 1989, implementing the requirements of Pub. L. 100-656, Title VII of the "Business Opportunity Development Reform Act of 1988."

DoD, GSA, and NASA have determined that compelling reasons exist to promulgate an interim rule without prior opportunity for public comment. However, pursuant to Pub. L. 98-577 and FAR 1.501, public comments received in response to this interim rule will be considered in formulating a final rule.

B. Public Comments

FAC 84-42, Item II. On January 15, 1985, an interim rule was published in the Federal Register (50 FR 2268). The comments that were received were considered by the Councils in the development of this final rule.

FAC 84-42, Item XI. On January 27, 1988, a proposed rule was published in the Federal Register (53 FR 2464). The comments that were received were considered by the Councils in the development of this final rule.

FAC 84-42, Item XII. On September 2, 1986, a proposed rule was published in the Federal Register (51 FR 31190). The comments that were received were considered by the Councils in the development of this final rule.

C. Paperwork Reduction Act

FAC 84-42, Item I. The applicability of the Paperwork Reduction Act (Pub. L. 96-511) is addressed by OFPP in their notice of interim policy directive published in the Federal Register on December 29, 1988 (53 FR 52839).

FAC 84-42, Items II through XIII. The Paperwork Reduction Act (Pub. L. 96-511) does not apply because these final rules do not impose any reporting or recordkeeping requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, et seq.

D. Regulatory Flexibility Act

FAC 84-42, Item I. The applicability of the Regulatory Flexibility Act (Pub L. 96-354) is addressed by OFPP in their notice of interim policy directive published in the Federal Register on December 29, 1988 (53 FR 52889).

FAC 84-42, Item II. A Final Regulatory Flexibility Analysis has been prepared and will be submitted to the Chief Counsel for Advocacy of the Small Business Administration.

FAC 84-42, Items III, IV, V, VI, VII, VIII, X, XII, and XIII. DoD, GSA, and NASA certify that the Regulatory Flexibility Act (Pub. L. 96-354) does not apply because each revision is not a "significant revision" as defined in FAR 1.501-1; i.e., it does not alter the substantive meaning of any coverage in the FAR having a significant cost or administrative impact on contractors or offerors, or a significant effect beyond the internal operating procedures of the issuing agencies. Accordingly, and consistent with section 1212 of Pub. L. 98-525 and section 302 of Pub. L. 98-577 pertaining to publication of proposed regulations (as implemented in FAR Subpart 1.5, Agency and Public Participation), solicitation of agency and public views on the revisions is not required. Since such solicitation is not required, the Regulatory Flexibility Act does not apply.

FAC 84-42, Item IX. DoD, GSA, and NASA certify that this final rule will not have a significant economic impact upon a substantial number of small entities within the meaning of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601, et seq., because the changes only implement in the FAR the final rules issued by the Department of Labor at 41 CFR 50-201.101(b) on March 10, 1988.

FAC 84-42, Item XI. DoD, GSA, NASA certify that this rule will not have a significant economic impact upon a substantial number of small entities within the meaning of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601, et seq. The majority of nonpersonal services contracts currently awarded contain provisions requiring health care providers to maintain liability insurance and indemnify the Government for liability producing acts by the contractor arising during contract performance. In addition, most states have adopted statutory provisions with respect to liability insurance coverage by practitioners within their jurisdictions. The rule is not expected to affect insurance rates which are based upon the medical specialty involved and locale of practice, as opposed to the class of beneficiary affected.

List of Subjects in 48 CFR Parts 1, 4, 6, 14, 15, 16, 17, 19, 22, 25, 28, 32, 37, 46, and 52

Government procurement.

Dated: January 26, 1989.

Harry S. Rosinski

Acting Director, Office of Federal Acquisition and Regulatory Policy.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 84-42 is effective March 2, 1989 except for Subpart 19.10 which is effective January 31, 1989.

Eleanor Spector,

Deputy Assistant Secretary for Procurement, DOD.

January 24, 1989.

Richard G. Austin,

Acting Administrator, General Services Administration.

S.J. Evans,

Assistant Administrator for Procurement, NASA.

Federal Acquisition Circular (FAC) 84-42 amends the Federal Acquisition Regulation (FAR) as specified below:

Item I—Small Business Competitiveness Demonstration Program

FAR Subpart 19.10 is added to further implement the joint Office of Federal Procurement Policy (OFPP) and Small Business Administration (SBA) policy directive implementing Title VII of the "Business Opportunity Development Reform Act of 1988," Pub. L. 100-656, published in the Federal Register on December 29, 1988 (53 FR 52889).

Title VII of the "Business Opportunity Development Reform Act of 1988" seeks to test the effectiveness of eliminating set-asides in certain industries through the establishment of a new program entitled the "Small Business Competitiveness Program." The program has two primary objectives: (a) To demonstrate whether small business firms in certain industry groups can compete successfully on an unrestricted basis for Federal contracts; and (b) to demonstrate whether targeted goaling and management techniques can expand Federal contract opportunities for small business in industry categories where such opportunities historically have been low, despite adequate numbers of small business contractors in the economy. The following agencies have been identified as participants in the demonstration program: the Departments of Agriculture, Defense (except the Defense Mapping Agency), Energy, Health and Human Services, and Transportation, and the Environmental Protection Agency, the General Services Administration, the National Aeronautics and Space Administration, and the Veterans' Administration.

Item II—Publicizing Proposed Regulations

This item converts to a final rule the interim rule that was published as Item I of FAC 84-6 in the Federal Register on January 15, 1985 (50 FR 2268), implementing section 302 of the Small Business and Federal Competition Enhancement Act of 1984 (Pub. L. 98-577).

The final rule differs from the interim rule in that it provides additional guidance in FAR 1.301 concerning the Paperwork Reduction Act and the Regulatory Flexibility Act, pursuant to recommendations received in response to the publication of the interim rule.

Item III—Clarification of Records Retention Requirements

FAR 4.803(a)(8), 4.803(a)(10), and 4.805(n) are revised to clarify that the nonunique portions of unsuccessful offers and quotations need not be retained in the official contract file.

Item IV—Sealed Bid Documentation

FAR 6.401 requires contracting officers to document their reasons for not using the sealed bid method of contracting. The Competition in Contracting Act (CICA) of 1984 requires that sealed bidding be used if certain criteria are met. The Councils have determined that clarification of the existing FAR requirement for additional documentation is necessary. In its place, the Councils have modified the coverage to require only that the contracting officer briefly explain, in writing, which of the four conditions in FAR 6.401(a) was not met.

Item V—Documentation of Firm-Fixed Price (FFP) Contracts

FAR 16.103(d) is revised to clarify when contract file documentation showing why the particular contract type was selected is required. For firm-fixed price type contracts, documentation is only required for major systems and research and development contracts.

Item VI—Five-Year Option Limitation

FAR 17.204(e) is revised to clarify that the 5-year limitation on contracts containing options is not based on statute. The authority to waive the requirements in FAR 17.204(e) shall be approved in accordance with agency procedures.

Item VII—Approval and Option Clauses

The prescription at FAR 17.208(g) and the title of the clause prescribed therein; i.e., the clause at 52.217-9, are revised to eliminate terminology that restricts use of the clause to solicitations and contracts for services.

The clauses at 52.204-1 and 52-217-6 through 52.217-9 and related clause prefaces are revised to make them "fill-in-the-blank" type clauses rather than requiring necessary additional information to be provided elsewhere in the contract (i.e., in the contract Schedule, rather than in Section I).

Item VIII—Small Business Size Standards

FAR 19.102 is revised to incorporate changes made to the size standards regulations as published in the Federal Register by the Small Business Administration. The modified size standard in the SIC Code 8731 of Major Group 87 pertaining to Miscellaneous Services was effective by issuance of a final rule on October 27, 1988 (53 FR 43422).

Item IX—Walsh-Healey Eligibility

FAR 22.608-2, 22.608-3, and 22.608-4 are revised to permit the award of a contract under the urgency or substantial hardship conditions permitted by the Department of Labor (DOL) regulations (41 CFR 50-2011(b)(iii)(A)) when it is found that an otherwise qualified small business concern may be ineligible due to the provisions of Section 35(a) of the Walsh-Healey Act and the case has been forwarded to the Small Business Administration or DOL for review and final disposition. The DOL issued a final rule in the Federal Register, March 10, 1988 (53 FR 7741) on Walsh-Healey eligibility procedures, effective May 9, 1988.

Item X—Restrictions on Federal Public Works Projects

FAR Subpart 25.10, Restrictions on Federal Public Works Projects, the provision at 52.225-12, Restrictions on Federal Public Works Projects Certifications, and the clause at 52.225-13, Restrictions on Federal Public Works Projects are deleted.

Pub. L. 100-202 contained restrictions concerning the use of Federal funds for construction services and products on public works. The restrictions, which applied only to Japanese contractors, were implemented as Item I, FAC 84-36, published as an interim rule in the Federal Register on April 12, 1988 (53 FR 12128).

Item XI—Nonpersonal Healthcare Services

FAR 28.301 is revised, and Subpart 37.4 and the clause at 52.237-7 are added to prescribe uniform procedures

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regarding nonpersonal services contracts for health care services. Among other things, the revisions prescribe a contract clause requiring that health care providers (i.e., physicians, dentists, and other medical practitioners) maintain medical liability insurance as a contract requirement and indemnify the Government against liability producing acts or omissions by the contractor, its agents, and employees occurring during contract performance. Additionally, the clause clarifies the relationship of the parties, by providing the professional services rendered by the contractor are rendered in its capacity as an independent contractor.

Item XII—Value Engineering and OMB Circular A-131

FAR 48.001, 48.101, 48.102, 48.103, 48.104-1, 48.105, 48.201, and the clauses at 52.248-1 and 52.248-3 are revised to (1) include the changes that were in the proposed rule; and (2) implement OMB Circular A-131, Value Engineering, dated January 26, 1988, and published by the Office of Management and Budget (OMB). The Circular, addressed to Heads of Executive Departments and Establishments, requires the use of value engineering, as appropriate, by Federal departments and agencies to identify and reduce nonessential procurement and program costs. The OMB Circular was published in the Federal Register on February 3, 1988 (53 FR 3140).

Item XIII—Diversion of Shipment Under F.O.B. Destination Contracts

FAR 52.247-54 is revised to require (when carrier rates are not publicly filed with any regulatory body) that contractors supply documentation supporting proposals for adjustment submitted under the Changes clause when the place of delivery is changed by the performance. Permissible documentation includes copies of the transportation contract, letter agreement, or other written communication quoting the rates/charges which would have been applied had the destination not been charged.

Therefore, 48 CFR Parts 1, 4, 6, 14, 15, 16, 17, 19, 22, 25, 28, 32, 37, 48, and 52 are amended as set forth below:

1. The authority citation for all Parts in Chapter 1 of Title 48 is revised to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2473(c).

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

2. Section 1.301 is amended by revising the first sentence of paragraph (b); by redesignating the existing paragraph (c) as (d); and by adding a new paragraph (c) to read as follows:

1.301 Policy.

* * * * *

(b) Agency heads shall establish procedures to ensure that agency acquisition regulations are published for comment in the **Federal Register** in conformance with the procedures in Subpart 1.5 and as required by section 22 of the Office of Federal Procurement Policy Act, as amended (41 U.S.C. 418b), and other applicable statutes, when they have a significant effect beyond the internal operating procedures of the agency or have a significant cost or administrative impact on contractors or offerors. * * *

(c) When adopting acquisition regulations, agencies shall ensure that they comply with the Paperwork Reduction Act (44 U.S.C. 3501, et seq.) as implemented in 5 CFR Part 1320 (see 1.106) and the Regulatory Flexibility Act (5 U.S.C. 601, et seq.). Normally, when a law requires publication of a proposed regulation, the Regulatory Flexibility Act applies and agencies must prepare written analyses or certifications as provided in the law.

* * * * *

PART 4—ADMINISTRATIVE MATTERS

3. Section 4.803 is amended by revising paragraph (a)(8) and by adding a third sentence to the introductory text of paragraph (a)(10) and by adding paragraphs (a)(10)(i), (a)(10)(ii), (a)(10)(iii), and (a)(10)(iv) to read as follows:

4.803 Contents of contract files.

* * * * *

(a) * * *

(8) A copy of the solicitation and all amendments thereto.

* * * * *

(10) * * * The only portions of the unsuccessful offer or quotation that need be retained are—

(i) Completed solicitation sections A, B, and K;

(ii) Technical and management proposals;

(iii) Cost/price proposals;

(iv) Any other pages of the solicitation that the offeror or quoter has altered or annotated.

* * * * *

4. Section 4.805 is amended by revising the introductory text of paragraph (a) to read as follows:

4.805 Disposal of contract files.

* * * * *

(a) Solicited and unsolicited unsuccessful offers and quotations above the appropriate small purchase limitation in Part 13.

* * * * *

PART 6—COMPETITION REQUIREMENTS

5. Section 6.401 is amended by revising the introductory text to read as follows:

6.401 Sealed bidding and competitive proposals.

Sealed bidding and competitive proposals, as described in Parts 14 and 15, are both acceptable procedures for use under Subparts 6.1, 6.2, and when appropriate, under Subpart 6.3. Contracting officers shall exercise good judgment in selecting the method of contracting that best meets the needs of the Government. If the choice is to use competitive proposals rather than sealed bidding, the contracting officer shall briefly explain, in writing, which of the four conditions in paragraph (a) of this section has not been met. No additional documentation or justification is required.

* * * * *

PART 14—SEALED BIDDING

14.201-6 [Amended]

6. Section 14.201-6 is amended in paragraph (b)(3) by removing the words "Acknowledgment of".

PART 15—CONTRACTING BY NEGOTIATION

15.407 [Amended]

7. Section 15.407 is amended in paragraph (c)(4) by removing the words "Acknowledgment of".

PART 16—TYPES OF CONTRACTS

8. Section 16.103 is amended by revising paragraph (d) to read as follows:

16.103 Negotiating contract type.

* * * * *

(D) Each contract file shall include documentation to show why the particular contract type was selected. Exceptions to this requirement are: (1) Small purchases under Part 13, (2) contracts on a firm fixed-price basis other than those for major systems or research and development, and (3)

awards on the set-aside portion of sealed bid partial set-asides for small business or labor surplus area concerns.

PART 17—SPECIAL CONTRACTING METHODS

9. Section 17.204 is amended by revising paragraph (e) to read as follows:

17.204 Contracts.

* * * * *

(e) Unless otherwise approved in accordance with agency procedures, the total of the basic and option periods shall not exceed 5 years in the case of services, and the total of the basic and option quantities shall not exceed the requirement for 5 years in the case of supplies. Statutes applicable to various classes of contracts may place additional restrictions on the length of contracts.

* * * * *

17.208 [Amended]

10. Section 17.208 is amended in paragraph (g) by removing the word "—Services".

PART 19—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

11. Section 19.102 is amended by revising Major Group 87, SIC Code 8731, the description and corresponding size standard and Footnote 19 to read as follows:

19.102 Size standards.

* * * * *

SIC	Description	Size
8731	Commercial Physical and Biological Research [19].	
	Aircraft	1,500
	Aircraft Parts, and Auxiliary Equipment, Aircraft Engines and Engines Parts.	1,000
	Space Vehicles and Guided Missiles, their Propulsion Units, their Propulsion Unit Parts, and their Auxiliary Equipment and Parts.	1,000
	Other Commercial Physical and Biological Research.	500

* * * * *

[19] SIC-8731: For research and development contracts requiring the delivery of a manufactured product, the appropriate size standard to use is that of the manufacturing industry in which the specific product is classified.

Research and development, as defined in the SIC Manual, means laboratory or other physical research and development on a contract or fee basis. Research and development for purposes of size determinations does not include the following: economic, educational, engineering, operations, systems, or other nonphysical research or computer programming, data processing, commercial and/or medical laboratory testing.

For purposes of the Small Business Innovation and Research (SBIR) program, SBA has adopted a different definition. See Part 121.7 of 13 CFR.

Research and development for guided missiles and space vehicles includes evaluation and simulation, and other services requiring thorough knowledge of complete missiles and spacecraft.

* * * * *

12. Subpart 19.10, consisting of sections 19.1001 through 19.1005, is added to read as follows:

Subpart 19.10—Small Business Competitiveness Demonstration Program

Sec.
19.1001 General.
19.1002 Definition.
19.1003 Purpose.
19.1004 Participating agencies.
19.1005 Applicability.

Subpart 19.10—Small Business Competitiveness Demonstration Program

19.1001 General.

The Small Business Competitiveness Demonstration Program was established by Title VII of the "Business Opportunity Development Reform Act of 1988," Pub. L. 100-656. The program consists of two major components: (a) a test of unrestricted competition in four designated industry groups, and (b) a test of enhanced small business participation in 10 agency targeted industry categories. The program will be conducted over a period of 4 years, from January 1, 1989, through December 31, 1992. The procedures for implementing the test are set forth in the Office of Federal Procurement Policy (OFPP) policy directive and test plan as published in the **Federal Register** on December 29, 1988 (53 FR 52889), and in any participating agency supplements. Pursuant to sec. 714(a) of Pub. L. 100-656, the requirements of the FAR that are inconsistent with the OFPP policy directive and test plan are waived.

19.1002 Definition.

"Emerging small business," as used in this subpart, means a small business concern whose size is no greater than 50 percent of the numerical size standard applicable to the standard industrial classification code assigned to a contracting opportunity.

19.1003 Purpose.

The purpose of the demonstration program is to—

(a) Test the ability of small businesses to compete successfully in certain industry categories without competition being restricted by the use of small business set-asides. This portion of the program is limited to the four designated industry groups listed in section 19.1005.

(b) Measure the extent to which awards are made to a new category of small businesses known as emerging small businesses (ESB's), and to provide for certain acquisitions to be reserved for ESB participation only.

(c) Expand small business participation in 10 targeted industry categories through continued use of set-aside procedures, increased management attention, and specifically tailored acquisition procedures, as implemented through agency procedures.

19.1004 Participating agencies.

The following agencies have been identified as participants in the demonstration program:

The Department of Agriculture.
The Department of Defense, except the Defense Mapping Agency.
The Department of Energy.
The Department of Health and Human Services.
The Department of Transporatation.
The Environmental Protection Agency.
The General Services Administration.
The National Aeronautics and Space Administration.
The Veterans Administration.

19.1005 Applicability.

(a) *Designated industry groups.* The following industry groups have been designated to demonstrate whether the competitive capabilities of small business firms in certain industry groups will enable them to successfully compete on an unrestricted basis for Federal contracts:

(1) Construction contracts under standard industrial classification (SIC) codes that comprise Major Groups 15, 16, and 17 (excluding dredging-Federal Procurement Data System (FPDS) service codes Y216 and Z216).

(2) Refuse systems and related services contracts under SIC code 4212 or 4953, limited to FPDS service code S205.

(3) Architectural and engineering services (including surveying and mapping) under SIC codes 7389, 8711, 8712, or 8713 (limited to FPDS service codes C111 through C219, T002, T004, T008, T009, T014, and R404).

(4) Nonnuclear ship repair.

(b) *Targeted industry categories.* Each participating agency shall designate its own targeted industry categories.

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

13. Section 22.608-2 is amended by revising paragraph (f)(3) to read as follows:

22.608-2 Determination of eligibility.

* * * * *

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(f) * * *

(3) If the contracting officer forwards the case to DOL or SBA for review of eligibility, the award should normally be held in abeyance until the contracting officer receives a final determination from the DOL or a certificate of eligibility from the SBA. However, see 22.608-4 for circumstances that permit award pending final determination.

* * * * *

14. Section 22.608-3 is amended by revising paragraph (b)(2); by adding paragraph (b)(3); and by removing paragraph (c) to read as follows:

22.608-3 Protests against eligibility.

* * * * *

(b) * * *

(2) If the offeror is a small business concern, and the contracting officer has determined the offeror ineligible, to the Administrator of the SBA; or

(3) If the offeror is a small business concern, and the contracting officer has determined the offeror to be eligible, to the DOL, Administrator of the Wage and Hour Division, without referring the matter to the SBA.

15. Section 22.608-4 is revised to read as follows:

22.608-4 Award pending final determination.

(a)(1) If a small business offeror's eligibility case is forwarded to SBA for review under 22.608-2 or 22.608-3, the contracting officer shall comply with Subpart 19.6, Certificates of Competency and Determinations of Eligibility. The contracting officer may not make award until (i) receipt of a Determination of Eligibility from SBA or (ii) receipt of notification from SBA that the case has been forwarded to DOL (but see paragraph (b) of this subsection), whichever is earlier.

(2) If there is exigency for award at the time the case is to be forwarded to SBA, the contracting officer may send with the case a brief statement of urgency and a request for earliest processing and determination.

(b)(1) If the contracting officer or the SBA has forwarded an offeror's eligibility case for review to the DOL under 22.608-2 or 22.608-3, award shall be held in abeyance until the contracting officer receives a final determination from the DOL, except that award may be made immediately if the contracting officer certifies in writing, and the certification is approved as required by agency regulation, that—

(i) The items to be acquired are urgently required; or

(ii) Delay of delivery or performance by failure to make the award promptly will result in substantial hardship to the Government.

(2) When award is made, the contracting officer shall document the contract file to explain the need for making the award before a determination of the offeror's eligibility by the DOL and give prompt written notice of the decision to award to the DOL and, as appropriate, the protester, the SBA, and other concerned parties.

PART 25—FOREIGN ACQUISITION

Subpart 25.10—[Removed]

10. Subpart 25.10, consisting of sections 25.1000 through 25.1003, is removed.

PART 28—BONDS AND INSURANCE

17. Section 28.301 is amended by adding paragraph (c) to read as follows:

28.301 Policy.

* * * * *

(c) Contractors awarded nonpersonal services contracts for health care services are required to maintain medical liability insurance and indemnify the Government for liability producing acts or omissions by the contractor, its employees and agents (see 37.400).

PART 32—CONTRACT FINANCING

32.503-6 [Amended]

18. Section 32.503-6 is amended by removing in paragraph (g)(4) Section II the figures "$1,000,000" and "120,000" and inserting in each place, respectively, "$000,000" and "300,000".

PART 37—SERVICE CONTRACTING

19. Subpart 37.4, consisting of sections 37.400 through 37.403 is added to read as follows:

Subpart 37.4—Nonpersonal Health Care Services

Sec.
37.400 Scope of subpart.
37.401 Policy.
37.402 Contracting officer responsibilities.
37.403 Contract clause.

Subpart 37.4—Nonpersonal Health Care Services

37.400 Scope of subpart.

This subpart prescribes policies and procedures for obtaining health care services of physicians, dentists and other health care providers by nonpersonal services contracts, as defined in 37.101.

37.401 Policy.

Agencies may enter into nonpersonal health care services contracts with physicians, dentists and other health care providers under authority of 10 U.S.C. 2304 and 41 U.S.C. 253. Each contract shall—

(a) State that the contract is a nonpersonal health care services contract, as defined in 37.101, under which the contractor is an independent contractor;

(b) State that the Government may evaluate the quality of professional and administrative services provided, but retains no control over the medical, professional aspects of services rendered (e.g., professional judgments, diagnosis for specific medical treatment);

(c) Require that the contractor indemnify the Government for any liability producing act or omission by the contractor, its employees and agents occurring during contract performance;

(d) Require that the contractor maintain medical liability insurance, in a coverage amount acceptable to the contracting officer, which is not less than the amount normally prevailing within the local community for the medical specialty concerned; and

(e) State that the contractor is required to ensure that its subcontracts for provisions of health care services, contain the requirements of the clause at 52.237-7, including the maintenance of medical liability insurance.

37.402 Contracting officer responsibilities.

Contracting officers shall obtain evidence of insurability concerning medical liability insurance from the apparently successful offeror prior to contract award and shall obtain a certificate of insurance evidencing the required coverage prior to commencement of performance.

37.403 Contract clause.

The contracting officer shall insert the clause at 52.237-7, Indemnification and Medical Liability Insurance, in solicitations and contracts for nonpersonal health care services. The contracting officer may include the clause in bilateral purchase orders for nonpersonal health care services awarded under the procedures in Part 13.

PART 48—VALUE ENGINEERING

20. Section 48.001 is amended by revising the introductory text of the definition "Acquisition savings"; by removing in paragraph (b) the word "measurable"; and in the second sentence of paragraph (c) the word "all"; and by revising the definition "Sharing base" to read as follows:

48.001 Definitions.

"Acquisition savings," as used in this part, means savings resulting from the application of a value engineering change proposal (VECP) to contracts awarded by the same contracting office of its successor for essentially the same unit. Acquisition savings include—

* * * * *

"Sharing base," as used in this part, means the number of affected end items on contracts of the contracting office accepting the VECP.

* * * * *

21. Section 48.101 is amended by revising the third sentence in paragraph (b)(2) to read as follows:

48.101 General.

* * * * *

(b) * * * No value engineering (VE) sharing is permitted in architect-engineer contracts. All other contracts with a program clause share in savings on accepted VECP's, but at a lower percentage rate than under the voluntary approach. * * *

22. Section 48.102 is amended by revising paragraphs (a), (b), and (c); by removing existing paragraph (e); by redesignating paragraphs (d), (f), and (g) as paragraphs (e), (g), and (h); and by adding new paragraphs (d) and (f) to read as follows:

48.102 Policies.

(a) Agencies shall provide contractors a substantial financial incentive to develop and submit VECP's. Contracting activities will include value engineering provisions in appropriate supply, service, architect-engineer and construction contracts as prescribed by 48.201 and 48.202 except where exemptions are granted on a case-by-case basis, or for specific classes of contracts, by the agency head.

(b) Agencies shall: (1) establish guidelines for processing VECP's; (2) process VECP's objectively and expeditiously; and (3) provide contractors a fair share of the savings on accepted VECP's.

(c) Agencies shall consider requiring incorporation of value engineering clauses in appropriate subcontracts.

(d)(1) Agencies other than the Department of Defense shall use the value engineering program requirement clause (52.248-1, Alternates I or II) in initial production contracts for major systems programs (see definition of major system in 34.001) and for contracts for major systems research and development except where the contracting officer determines and documents the file to reflect that such use is not appropriate

(2) In Department of Defense contracts, the VE program requirement clause (52.248-1, Alternates I or II), shall be placed in initial production solicitations and contracts (first and second production buys) for major system acquisition programs as defined in DoD Directive 5000.1, except as specified in subdivisions (d)(2)(i) and (ii) of this section. A program requirement clause may be included in initial production contracts for less than major systems acquisition programs if there is a potential for savings. The contracting officer is not required to include a program requirement clause in initial production contracts—

(i) Where, in the judgment of the contracting officer, the prime contractor has demonstrated an effective VE program during either earlier program phases, or during other recent comparable production contracts.

(ii) Which are awarded on the basis of competition.

* * * * *

(f) Generally, profit or fee on the instant contact should not be adjusted downward as a result of acceptance of a VECP. Profit or fee shall be excluded when calculating instant or future contract savings.

* * * * *

23. Section 48.103 is amended by revising paragraphs (a) and (b) to read as follows:

48.103 Processing value engineering change proposals.

(a) Instructions to the contractor for preparing a VECP and submitting it to the Government are included in paragraphs (c) and (d) of the value engineering clauses prescribed in Subpart 48.2. Upon receiving a VECP, the contracting officer or other designated official shall promptly process and objectively evaluate the VECP in accordance with agency precedures and shall document the contract file with the rationale for accepting or rejecting the VECP.

(b) The contracting officer is responsible for accepting or rejecting the VECP within 45 days from its receipt by the Government. If the Government will need more time to evaluate the VECP, the contracting officer shall notify the contractor promptly in writing giving the reasons and the anticipated decision date. The contractor may withdraw, in whole or in part, any VECP not accepted by the Government within the period specified in the VECP. Any VECP may be approved, in whole or in part, by a contract modification incorporating the VECP. Until the effective date of the contract modification, the contractor shall perform in accordance with the existing contract. If the Government accepts the VECP, but properly rejects units subsequently delivered or does not receive units on which a savings share was paid, the contractor shall reimburse the Government for the proportionate share of these payments. If the VECP is not accepted, the contracting officer shall provide the contractor with prompt written notification, explaining the reasons for rejection.

* * * * *

24. Section 48.104-1 is amended by removing the second sentence in paragraph (a)(1); by remving the fifth sentence in paragraph (a)(2); by revising the fourth sentence in paragraph (a)(6); and by revising the second sentence in paragraph (b) to read as follows:

48.104-1 Sharing acquisition savings.

(a) * * *

(6) * * * For future contract savings calculated under the optional lump-sum method, the sharing base is an estimate of the number of items that the contracting office will purchase for delivery during the sharing period.

(b) * * * The Government's share of savings is determined by subtracting Government costs from instant contract savings and multiplying the result by (1) 45 percent for fixed-price contracts; or (2) 75 percent for cost-reimbursement contracts.

25. Section 48.105 is amended by revising the second sentence to read as follows:

48.105 Relationship to other incentives.

* * * To that end, when performance, design-to-cost, or similar targets are set and incentivized, the targets of such incentives affected by the VECP are not to be adjusted because of the acceptance of the VECP. * * *

26. Section 48.201 is amended by revising paragraphs (a)(6), (f)(1), and (f)(3), and by removing paragraph (g) to read as follows:

48.201 Clauses for supply or service contracts.

(a) * * *

(6) When the agency head has exempted the contract (or a class of contracts) from the requirements of Part 48.

* * * * *

(f) *Architect-engineer contracts.* (1) The clause at 52.248-1, Value Engineering, shall not be used in solicitations and contracts for architect-engineer services.

* * * * *

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(3) When the clause at 52.248-2, Value Engineering Program—Architect-Engineer, is used, the contract schedule shall show the program requirement as a separately priced line item (this clause makes no provisions for sharing of savings resulting from the program effort).

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

27. Section 52.204-1 is revised to read as follows:

52.204-1 Approval of contract.

As prescribed in 4.103, insert the following clause:

Approval of Contract (Mar. 1989)

This contract is subject to the written approval of . . . . . [*fill in the name of the agency official*] and shall not be binding until so approved.

(End of clause)

28. Section 52.217-6 is revised to read as follows:

52.217-6 Option for increased quantity.

As prescribed in 17.208(d), insert a clause substantially the same as the following:

Option for Increased Quantity (Mar. 1989)

The Government may increase the quantity of supplies called for in the Schedule at the unit price specified. The Contracting Officer may exercise the option by written notice to the Contractor within . . . . . [*insert in the clause the period of time in which the Contracting Officer has to exercise the option*]. Delivery of the added items shall continue at the same rate as the like items called for under the contract, unless the parties otherwise agree.

(End of clause)

29. Section 52.217-7 is revised to read as follows:

52.217-7 Option for increased quantity—separately priced line item.

As prescribed in 17.208(e), insert a clause substantially the same as the following:

Option for Increased Quantity-Separately Priced Line Item (Mar. 1989)

The Government may require the delivery of the numbered line item, identified in the Schedule as an option item, in the quantity and at the price stated in the Schedule. The Contracting Officer may exercise the option by written notice to the Contractor within . . . . . [*insert in the clause the period of time in which the Contracting Officer has to exercise the option*]. Delivery of added items shall continue at the same rate that like items are called for under the contract, unless the parties otherwise agree.

(End of clause)

30. Section 52.217-8 is revised to read as follows:

52.217-8 Option to extend services.

As prescribed in 17.208(f), insert a clause substantially the same as the following:

Option to Extend Services (Mar. 1989)

The Government may require continued performance of any services within the limits and at the rates stated in the Schedule. The Contracting Officer may exercise the option by written notice to the Contractor within . . . . . [*insert in the clause the period of time in which the Contracting Officer has to exercise the option*].

31. Section 52.217-9 is revised to read as follows:

52.217-9 Option to extend the term of the contract.

As prescribed in 17.208(g), insert a clause substantially the same as the following:

Option To Extend the Term of the Contract (Mar. 1989)

(a) The Government may extend the term of this contract by written notice to the Contractor within * * * [*insert in the clause the period of time in which the Contracting Officer has to exercise the option*]; *provided*, that the Government shall give the Contractor a preliminary written notice of its intent to extend at least 60 days before the contract expires. The preliminary notice does not commit the Government to an extension.

(b) If the Government exercises this option, the extended contract shall be considered to include this option provision.

(c) The total duration of this contract, including the exercise of any options under this clause, shall not exceed . . . . . (months) (years).

(End of clause)

52.225-12 and 52.225-13 [Removed]

32. Sections 52.225-12 and 52.225-13 are removed.

33. Section 52.237-7 is added to read as follows:

52.237-7 Indemnification and Medical Liability Insurance.

As prescribed in 37.403, insert the following clause:

Indemnification and Medical Liability Insurance (Mar 1989)

(a) It is expressly agreed and understood that this is a nonpersonal services contract, as defined in Federal Acquisition Regulation (FAR) 37.101, under which the professional services rendered by the Contractor are rendered in its capacity as an independent contractor. The Government may evaluate the quality of professional and administrative services provided, but retains no control over professional aspects of the services rendered, including by example, the Contractor's professional medical judgment, diagnosis, or specific medical treatments. The Contractor shall be solely liable for and expressly agrees to indemnify the Government with respect to any liability producing acts or omissions by it or by its employees or agents. The Contractor shall maintain liability insurance issued by a responsible insurance carrier in the amount of not less than [*] per occurrence during the term of this contract.

(b) An apparently successful offeror, upon request by the Contracting Officer, shall furnish prior to contract award evidence of its insurability concerning the medical liability insurance required by paragraph (a) of this clause.

(c) Liability insurance may be on either an occurrences basis or on a claims-made basis. If the policy is on a claims-made basis, an extended reporting endorsement (tail) for a period of not less than 3 years after the end of the contract term must also be provided.

(d) A certificate of insurance evidencing the required coverage shall be provided to the Contracting Officer prior to the commencement of services under this contract. If the insurance is on a claims-made basis and evidence of an extended reporting endorsement is not provided prior to the commencement of services, evidence of such endorsement shall be provided to the Contracting Officer prior to the expiration of this contract. Final payment under this contract shall be withheld until evidence of the extended reporting endorsement is provided to the Contracting Officer.

(e) The policies evidencing required insurance shall also contain an endorsement to the effect that any cancellation or material change adversely affecting the Government's interest shall not be effective until 30 days after the insurer or the Contractor gives written notice to the Contracting Officer. If during the performance period of the contract the Contractor changes insurance providers, the Contractor must provide evidence that the Government will be indemnified to the limits specified in paragraph (a) of this clause, for the entire period of the contract, either under the new policy, or a combination of old and new policies.

(f) The Contractor shall insert the substance of this clause, including this paragraph (f), in all subcontracts under this contract for health care services and shall require such subcontractors to provide evidence of and maintain insurance in accordance with paragraph (a) of this clause. At least 5 days before the commencement of work by any subcontractor, the Contractor shall furnish to the Contracting Officer evidence of such insurance.

(End of clause)

34. Section 52.247-54 is amended by inserting in the introductory paragraph a colon following the word clause and removing the remainder of the paragraph; by removing in the title of the clause "(APR 1984)" and inserting in its place "(MAR 1989)"; by adding a second sentence in paragraph (a)(2); and by removing the derivation line

*Contracting Officer insert the dollar value(s) of standard coverage(s) prevailing within the local community as to the specific medical specialty, or specialties, concerned, or such higher amount as the Contracting Officer deems necessary to protect the Government's interests.

following "(End of clause)" to read as follows:

52.247-54 Diversion of Shipment under F.o.b. Destination Contracts.

* * * * *

(a) * * * If carrier rates are not publicly filed with any regulatory body, (e.g., interstate shipments moving by rail piggyback service) the Contractor shall provide a copy of the contract, letter agreement, or other written communication from carriers quoting the rates/charges that would have been applied for shipments to the original or old destination.

* * * * *

35. Section 52.248-1 is amended by removing in the title of the clause the date "(APR 1984)" and inserting in its place the date "(MAR 1989)"; by revising the definitions "Acquisition savings" and "Sharing base"; and by removing the derivation lines following "(End of clause)" to read as follows:

52.248-1 Value engineering.

* * * * *

(b) *Definitions.* "Acquisition savings," as used in this clause, means savings resulting from the application of a VECP to contracts awarded by the same contracting office or its successor for essentially the same unit. Acquisition savings include—

* * * * *

(2) Concurrent contract savings, which are net reductions in the prices of other contracts that are definitized and ongoing at the time the VECP is accepted; and

(3) Future contract savings, which are the product of the future unit cost reduction multiplied by the number of future contract units scheduled for delivery during the sharing period. If this contract is a multiyear contract, future contract savings include savings on quantities funded after VECP acceptance.

* * * * *

"Sharing base," as used in this clause, means the number of affected end items on contracts of the contracting office accepting the VECP.

* * * * *

36. Section 52.248-3 is amended by inserting a colon in the first sentence of the introductory text following the word "clause" and removing the remainder of the paragraph; by removing in the title of the clause the date "(APR 1984)" and inserting in its place the date "(MAR 1989)"; by revising paragraphs (f)(1) and (f)(2)(iii); and by removing the derivation line following "(End of clause)" to read as follows:

52.248-3 Value Engineering—Construction.

* * * * *

(f) *Sharing.* (1) *Rates.* The Government's share of savings is determined by subtracting Government costs from instant contract savings and multiplying the result by (i) 45 percent for fixed-price contracts or (ii) 75 percent for cost-reimbursement contracts.

(2) * * *

(iii) Provide the Contractor's share of savings by adding the amount calculated to the contract price or fee.

* * * * *

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Part VII

Department of Transportation

Federal Aviation Administration

Public Meetings; Notice and Extension of Comment Period

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DEPARTMENT OF TRANSPORTATION

[Docket No. 25727]

Public Meetings

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meetings; extension of comment period.

SUMMARY: This notice announces a series of meetings to solicit information from the public concerning the need and utilization of Special Use Airspace (SUA). The United States Congress has directed that the Secretaries of Transportation and Defense, in consultation with aviation users, jointly conduct a natioal review of the need and utilization of SUA with a view to determining its impact on civil aviation operations and on the quality of the environment. In compliance with this request and consistent with the principles of consultation, the FAA and DOD now seek factual information from the public to determine what, if any, impact SUA has on civil aviation operations and the quality of the environment. The objective of these meetings is only to obtain public input on these topics for the required report to Congress, which is due June 30, 1989.

DATES: Comments must be received on or before March 27, 1989. The public meetings will be held on February 21, 1989, in Alta-Loma, CA; February 22, 1989, in Las Vegas, NV; February 23, 1989, in Reno, NV; February 24, 1989, in Salt Lake City, UT; and February 27, 1989, in Fort Worth, TX.

ADDRESSES: Send or deliver comments in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket [AGC-204], Docket [25727], 800 Independence Avenue SW., Washington, DC 20591.

Comments may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

The public meeting locations are as follows:

Alta-Loma, CA

Date: February 21, 1989
Time: 7:00 p.m.
Location: Alta-Loma High School, 8880 Baseline Road, Alta-Loma, CA

Las Vegas, NV

Date: February 22, 1989
Time: 7:00 p.m.
Location: Gold Coast Hotel, 4000 West Flamingo Road, Las Vegas, NV

Reno, NV

Date: February 23, 1989
Time: 7:00 p.m.
Location: Airport Plaza Hotel, 1981 Terminal Way, Reno, NV

Salt Lake City, UT

Date: February 24, 1989
Time: 7:00 p.m.
Location: Utah Air National Guard Theater, 765 North 2200 West, Salt Lake City, UT

Fort Worth, TX

Date: February 27, 1989
Time: 7:00 p.m.
Location: Holiday Inn North, 2540 Meacham Boulevard (I35 at Meacham Boulevard), Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: For advance requests to be heard at the meetings and for questions regarding the logistics of the meetings, contact Mr. John Broderick or Mr. Paul Gallant, Military Operations Branch (ATO-140), Room 426, Operations Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, D.C. 20591; telephone: (202) 267-9361 or Lt. Col. Charles, R. Linn, DOD/USAF, HQ USAF/XOORF, Washington, D.C. 20330-5054; telephone (202) 697-4399.

SUPPLEMENTARY INFORMATION:

Background

The Airport and Airway Safety and Capacity Expansion Act of 1987, Public Law 100-223, directs the Departments of Transportation and Defense to jointly conduct a special use airspace (SUA) review and provide a report of this review to Congress. Specifically:

"The Secretary (of Transportation) and the Secretary of Defense, in consultation with aviation users, shall jointly conduct a national review of the need and utilization of special use airspace with a view to determining its impact on civil aviation operations and on the quality of the environment."

Due to an administrative error, not all of the individual mailings advertising previous meetings were made in a timely manner. This action, therefore, schedules additional meetings in the affected locations and extends the period for public comment on Docket No. 25727.

Meeting Procedures

(a) The meetings will be informal in nature and will be conducted jointly by a representative of the Administrator of the FAA in behalf of the Secretary of Transportation and representatives of the Secretary of Defense. Each participant will be given an opportunity to make a presentation.

(b) The meetings will be open to all persons on a space-available basis. All efforts will be made to provide a meeting site with sufficient seating capacity for the expected participation. There will be no admission fee or other charge to attend and participate.

(c) Any person wishing to make a presentation to the panel will be asked to sign in and estimate the amount of time needed for such presentation. This will permit the panel to allocate an appropriate amount of time for each presenter. The panel may allocate the time available for each presentation in order to accommodate all speakers. The meeting will not be adjourned until everyone on the list has had an opportunity to address the panel. The meeting may be adjourned at any time if all persons present have had the opportunity to speak.

(d) Any person who wishes to present a position paper to the panel pertinent to the topic of special use airspace for consideration with public presentation may do so.

(e) Persons wishing to hand out pertinent position papers to the attendees should present three copies to the representatives from the FAA and DOD. The FAA and DOD representatives will retain one copy each, with the third being placed in the meeting files. There should be an adequate number of copies of each handout available for all attendees.

(f) The meetings will not be formally recorded. However, informal tape recordings will be made of presentations to ensure that each respondent's comments are accurately noted. A summary of the comments at each meeting will be made and used in the final report.

Materials relating to this subject for presentation at the meetings will be accepted at the individual meetings. Every reasonable effort will be made to hear every request for presentation consistent with a reasonable closing time for the meeting. Written materials may also be submitted to the docket up to 30 days after the close of the last meeting.

Agenda

Opening Remarks and Discussion of Meeting Procedures
Public Presentations
Closing Comments.

Issued in Washington, DC, on January 24, 1989.

Joseph C. Foster,
Acting Director, Air Traffic Operations Service, Federal Aviation Administration.

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Part VIII

Department of Education

34 CFR Parts 653 and 682

Paul Douglas Teacher Scholarship Program and Guaranteed Student Loan and PLUS Programs; Proposed Rule

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DEPARTMENT OF EDUCATION

34 CFR Parts 653 and 682

Paul Douglas Teacher Scholarship Program and Guaranteed Student Loan and PLUS Programs

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes regulations governing the designation of teacher shortage areas under the Guaranteed Student Loan, Supplemental Loans for Students, and Paul Douglas Teacher Scholarship programs authorized by the Higher Education Act of 1965 (HEA), as amended. Public Law 100-297 has renamed the Guaranteed Student Loan (GSL) Program, the Stafford Loan Program. This change will be reflected in a later document. The Supplemental Loans for Students (SLS) program is a continuation of the predecessor student PLUS program. Accordingly, the provisions of the regulations in this package apply to loans made under the Supplemental Loans for Students (SLS) program, except where inconsistent with the Act. The proposed regulations would implement certain provisions of the Higher Education Amendments of 1986 that permit the deferment of repayment or a reduction in the teaching obligations of recipients under the affected programs. The proposed regulations would also increase the time frame during which a guarantee agency would, in general, have to institute a civil suit against a borrower on a defaulted loan under the GSL, SLS, PLUS, and Consolidation programs (the Part B programs).

DATE: Comments must be received on or before April 3, 1989.

ADDRESSES: Comments should be addressed to Mr. Saul Moskowitz, Chief, Guaranteed Student Loan Branch, Division of Policy and Program Development, Department of Education, (Room 4310, ROB-3), 400 Maryland Avenue, SW, Washington, DC 20202.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this Preamble.

FOR FURTHER INFORMATION CONTACT: Ms. Patricia Newcombe, Policy Section, Guaranteed Student Loan Branch, Division of Policy and Program Development, Department of Education, (Room 4310, ROB-3), 400 Maryland Avenue, SW, Washington, DC 20202, telephone 202-732-4242.

SUPPLEMENTARY INFORMATION:

Targeted Teacher Deferment and Reduction in Teaching Obligation

The Secretary proposes to amend the regulations for the Guaranteed Student Loan (GSL) and Supplemental Loans for Students (SLS) programs to implement the new targeted teacher deferment enacted by the Higher Education Amendments of 1986, Pub. L. 99-498 (October 17, 1986). *See* sections 427(a)(2)(C)(vi), 428(b)(1)(M)(vi), and 428(b)(4)(A) of the HEA, as amended. Under these provisions, a borrower is allowed a deferment in repayment of principal owed on a loan under the Guaranteed Student Loan Program (GSLP) or Supplemental Loans for Students (SLS) Program for up to three years during which the borrower is engaged as a full-time teacher in a teacher shortage area in a public or nonprofit private elementary or secondary school. The loan repayment deferment is available only to new borrowers. A new borrower is a borrower who has no outstanding balance on a GSL, PLUS, SLS, or Consolidation Program loan on the date he or she signs the promissory note for a loan that is either (1) made for a period of enrollment beginning on or after July 1, 1987, or (2) disbursed on or after July 1, 1987. The statute also provides for reduction in the teaching obligation of a scholar under the Paul Douglas Teacher Scholarship Program for full-time teaching in a shortage area. *See* section 553(b)(4)(A) of the HEA, as amended. The proposed regulations would establish criteria and procedures governing the designation of teacher shortage areas for purposes of the GSL, SLS, and Paul Douglas Teacher Scholarship Program. The proposed regulations would also establish procedures for a Douglas scholar to follow to qualify for a reduction in the scholar's teaching obligation for full-time teaching service in a teacher shortage area.

These proposed regulations would also establish procedures and define the guidelines to be used by States in identifying areas they wish the Secretary to designate as teacher shortage areas, and would specify the criteria that the Secretary would use to designate teacher shortage areas.

The statute defines the term "shortage areas" to mean (1) geographic areas of the State in which there is a shortage of elementary and secondary school teachers, and (2) areas of shortage of elementary and secondary school teachers in specific grade levels and in specific academic, instructional, subject matter, and discipline classifications. The term teacher "shortage," as used in these proposed regulations, means an inadequate supply of teachers.

Since "teacher shortage area" is not defined with precision in the statute, the Secretary has reviewed the methods that other entities, including the State of California, have used to assess the adequacy of their supply of teachers and identify teacher shortage areas. Based on this review, the Secretary has found that these methods have resulted in the designation of an average of five percent of the total FTE teaching positions in a State as being in shortage areas in that State. Therefore, for purposes of this regulation, the Secretary has elected to use five percent of the total full-time equivalency (FTE) teaching positions in a State as the maximum percentage that a State could automatically designate as being in shortage areas. In identifying shortage areas, the State must develop and apply objective written standards.

Requests by a State for approval by the Secretary of designation of a larger percentage of positions as being in shortage areas would require submission by the State of supporting documentation showing the methods used for identifying shortage areas and showing that the designation of more than the five percent maximum is necessary due to unique circumstances in the State. The Secretary particularly invites comments regarding this aspect of the proposed regulations.

In identifying teacher shortage areas to propose for designation, the Chief State School Officer shall employ data that includes: (a) Teaching positions that are unfilled, (b) teaching positions that are filled by irregularly certified teachers, and (c) teaching positions that are filled by certified teachers not prepared for the subjects they are teaching.

Under the proposal, a State might, for example, propose to designate (1) several counties in which there is a general shortage of teachers, and (2) a given field of study, such as high school physics, in which there is a statewide shortage of teachers. The State would then determine the percentage that the total unfilled FTE positions in the proposed areas (adjusted to count positions appearing in both types of shortage areas only once) constitute of the total FTE teaching positions in the State, using the following formula:

$$\frac{\text{Number of unfilled* FTE teaching positions in the designated counties} + \text{Number of unfilled* FTE teaching positions in specific subject areas outside the designated counties}}{\text{Total number of FTE (filled and unfilled) teaching positions in the State}} = X\%$$

*Unfilled FTE teaching positions include: (a) Teaching positions that are unfilled, (b) teaching positions that are filled by irregularly certified teachers, and (c) teaching positions that are filled by certified teachers teaching in academic subject areas other than the academic subject areas in which they have been trained.

If the resulting percentage equals five percent or less, the Secretary would designate the State's proposed shortage areas. If the state wished to propose designated shortage areas in which the total number of unfilled FTE teaching positions exceeded five percent of the total number of FTE teaching positions in the State, the State would be required to submit documentation to the Secretary to support its proposal. The Secretary, after reviewing the materials provided by the State, would make a determination on the State's recommendation of shortage areas to be designated for that State.

Each State would submit a list of recommended shortage areas to be designated by the Secretary. The list would be due by January 1 of each year and would be based on data for the current school year. The Secretary's designation of shortage areas from the list would be applicable to the following school year. The purpose of the January 1 deadline would be to allow review and approval of shortage area designations early in the school year, so that the information regarding the final designations would be made available in a timely manner to teachers wishing to sign teaching contracts for the following school year. Each State would be responsible for notifying the schools affected by the Secretary's designation of shortage areas for the year, the State agency administering the Douglas Scholarship Program, and the appropriate guarantee agency of the State.

For a borrower to obtain a deferment, or for a scholar to obtain a reduction in the teaching obligation, for teaching in a designated shortage area, the borrower or scholar would be required to obtain a certification from the chief administrative officer of the school district indicating that the borrower is a full-time teacher. A borrower, or scholar teaching outside of the State in which he or she received a Douglas Scholarship, would also be required to obtain a certification from the Chief State School Officer that the position held by the teacher is within an area designated by the Secretary as a shortage area. For Douglas scholars to reduce their teaching obligations in the States in which they were awarded their scholarships, the State agency administering the Paul Douglas Scholarship Program in those States will need to verify that the position held by the scholar is within a designated teacher shortage area. The certification would cover one year, with a new certification required for each subsequent year of service for which deferment or a reduction in teaching obligation is requested. The certification may be renewed, even if the area is undesignated after the first year, if the borrower continues to be employed during subsequent years in the same teacher shortage area that originally qualified him/her for the deferment up to the maximum number of years allowed for the deferment or reduction. Therefore, a Douglas scholar may renew this certification for an additional three years or a GSL/SLS borrower may renew this certification for an additional two years if he/she continues to teach in the same teacher shortage area that originally qualified him/her for the deferment or reduction in teaching obligation.

The Secretary wishes to emphasize that the deferment and the reduction in the teaching obligation is available only for service in a designated teacher shortage area. Service in a low-income area not designated as a teacher shortage area does not satisfy this requirement. Further, the reduction in the teaching obligation under the Douglas Scholarship Program is for service in elementary and secondary schools only. It does not include service in a preschool unless, by State law, the State's elementary education program includes preschool education.

Guarantee Agency Collection Efforts

The revised GSL regulations published in final form on November 10, 1988, established rules for guarantee agencies to follow in their efforts to collect on defaulted loans they hold under the GSL and PLUS Programs. *See* 34 CFR 682.410(b)(4) (51 FR 40910-40911). A number of guarantee agencies have since expressed concern that the 225-day period after payment of a default claim during which an agency must institute a civil suit against a borrower on a defaulted loan does not allow an agency sufficient time to pursue all avenues of collection, including offset against Federal tax refund, or to assess adequately the cost efficiency of filing suit, before filing such a suit. Therefore, the Secretary proposes to amend the current regulation to extend to 545 days the period within which a guarantee agency must institute a civil suit against a borrower. In the case of a loan assigned to the Secretary before the 545th day, that is returned to the guarantee agency after the 365th day, the guarantee agency would have 180 days from the day it receives the loan back from the Secretary to file suit. This change is intended to give each guarantee agency sufficient time to evaluate the feasibility of suit, to use private collection firms, and to use the Department's tax refund offset program before commencing suit on a loan.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are classified as non-major because they do not meet the criteria for major regulations established in the order.

Regulatory Flexibility Act Certification

The Secretary certifies that these regulations will not have a significant economic impact on a substantial number of small entities.

Many provisions of the regulations repeat statutory requirements. Certain reporting, recordkeeping, and compliance requirements are imposed on guarantee agencies, lenders, and schools by the regulations. These regulations, however, are modeled on existing regulations for the GSL and PLUS Programs and will not have a significant economic impact on these institutions.

Paperwork Reduction Act

Sections 682.210 and 653.40 contain information collection requirements. As required by of the Paperwork Reduction Act of 1980, the Department of

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Education will submit a copy of these proposed regulations to the Office of Management and Budget (OMB) for its review. (44 U.S.C. 3504(h)).

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 3002, New Executive Office Building, Washington, DC 20503; Attention: James D. Houser.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in ROB-3, Room 4310, 7th and D Streets, SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, the Secretary invites comment on whether there may be further opportunities to reduce any regulatory burdens found in these regulations.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects

34 CFR Part 653

Education, grant programs, Education, state-administered, Education, student aid.

34 CFR Part 682

Administrative practice and procedure, colleges and universities, Education, Loan programs-education, Reporting and recordkeeping requirements, Student aid, Vocational education.

Dated: January 25, 1989.

Lauro F. Cavazos,

Secretary of Education.

(Catalog of Federal Domestic Assistance Number 84.032, Guaranteed Student Loan Program and PLUS Program; 84.178, Paul Douglas Teacher Scholarship Program.)

The Secretary proposes to amend Part 653 and Part 682 of Title 34 of the Code of Federal Regulations as follows:

PART 653—PAUL DOUGLAS TEACHER SCHOLARSHIP PROGRAM

1. The authority citation for Part 653 continues to read as follows:

Authority: 20 U.S.C. 1111–1111h, unless otherwise noted.

2. Section 653.40 is amended by revising paragraph (b) to read as follows:

§ 653.40 What agreement must a scholar have with the State agency?

* * * * *

(b)(1) The requirement to teach two years for each year of scholarship assistance is reduced by one-half in the case of individuals who teach on a full-time basis in a teacher shortage area that is designated by the Secretary as provided by 34 CFR 682.210 (j)(2) through (j)(4).

(2) To qualify for a reduction in the teaching obligation, a scholar teaching in the State from which he or she received scholarship assistance must—

(i) Provide to the State agency a statement by the chief administrative officer of the public or nonprofit private elementary or secondary school in which the scholar is teaching, certifying that the scholar is employed as a full-time teacher; and

(ii) Be teaching in a teacher shortage area designated by the Secretary as provided by 34 CFR 682.210(j) (2) through (4), as determined by the State agency.

(3) To qualify for a reduction in the teaching obligation, a scholar teaching in a State other than the State from which he or she received scholarship assistance must provide to the State agency—

(i) A statement by the chief administrative officer of the public or nonprofit private elementary or secondary school in which the scholar is teaching, certifying that the scholar is employed as a full-time teacher; and

(ii) A statement by the Chief State School Officer for the State in which the scholar is teaching, certifying that the area in which the scholar is teaching is a teacher shortage area designated by the Secretary as provided by 34 CFR 682.210(j) (2) through (4).

(4) If a scholar who receives a reduction in his or her teaching obligation continues during subsequent school years to be employed in the same teacher shortage area that originally qualified him or her for the reduction in teaching obligation, the scholar may continue to receive the reduction in teaching obligation for those subsequent years even if his or her position does not otherwise fall within an area designated by the Secretary as a teacher shortage area in those subsequent years. To continue to receive the reduction in teaching obligation for a subsequent year, the scholar shall provide the State agency with a statement by the chief administrative officer of the public or nonprofit private elementary or secondary school in which the scholar is teaching certifying that the scholar continues to be employed as a full-time teacher in the same teacher shortage area for which the reduction in teaching obligation was approved for the previous year.

* * * * *

PART 682—GUARANTEED STUDENT LOAN AND PLUS PROGRAMS

3. The authority citation for Part 682 continues to read as follows:

Authority: 20 U.S.C. 1071 to 1087–2, unless otherwise noted.

4. Section 682.210 is amended by removing the word "or" following the semicolon at the end of paragraph (b)(9), removing the period at the end of paragraph (b)(10) and adding "; or" in its place, and adding new paragraphs (b)(11) and (j) to read as follows:

§ 682.210 Deferment.

* * * * *

(b) * * *

(11) Up to three years of service as a full-time teacher in a public or nonprofit private elementary or secondary school in a teacher shortage area designated by the Secretary under paragraph (j) of this section.

* * * * *

(j) *Targeted teacher deferment.* (1)(i) To qualify for a targeted teacher deferment under paragraph (b)(11) of this section, the borrower shall provide to the lender—

(A) A statement by the chief administrative officer of the private school or public school district that employs the borrower certifying that the borrower is employed as a full-time teacher in a public or nonprofit private elementary or secondary school; and

(B) A statement by the Chief State School Officer for the State in which the borrower is employed, certifying that the position being held by the borrower falls within a teacher shortage area designated by the Secretary. This certification statement would cover a maximum of one school year, with a new certification being required for each subsequent school year of service for which a deferment is requested.

(ii) If a borrower who received this deferment in one school year continues during subsequent school years to be employed in the same teacher shortage area that originally qualified him or her for this deferment, the borrower may continue to receive the deferment for those subsequent years, up to the three year maximum deferment period, even if his or her position does not otherwise fall within an area designated by the Secretary as a teacher shortage area in those subsequent years. To continue to receive the deferment in a subsequent year under this paragraph, the borrower shall provide the lender with a statement by the chief administrative officer of the private school or school district that employs the borrower certifying that the borrower continues to be employed as a full-time teacher in the same teacher shortage area as that for which the deferment was received for the previous year.

(2) For purposes of this section, a teacher shortage area is—

(i)(A) A geographic region of the State in which there is a shortage of elementary or secondary school teachers; or

(B) A specific grade level, academic, instructional, subject matter, or discipline classification in which there is a statewide shortage of elementary or secondary school teachers; and

(ii) Designated by the Secretary under paragraph (j)(3) of this section.

(3)(i) In order for the Secretary to designate one or more teacher shortage areas in a State for a school year, the Chief State School Officer shall by January 1 of the calendar year in which the school year begins, and in accordance with objective written standards, propose teacher shortage areas to the Secretary for designation. With respect to private, nonprofit schools included in the recommendation, the Chief State School Officer shall consult with appropriate officials of the private, nonprofit schools in the State prior to submitting the recommendation.

(ii) In identifying teacher shortage areas to propose for designation under paragraph (j)(3)(i) of this section, the Chief State School Officer shall consider data from the school year in which the recommendation is to be made with respect to—

(A) Teaching positions that are unfilled;

(B) Teaching positions that are filled by teachers who are certified by irregular, provisional, temporary, or emergency certification; and

(C) Teaching positions that are filled by teachers who are certified, but who are teaching in academic subject areas other than their area of preparation.

(iii) If the total number of unduplicated full-time equivalent (FTE) elementary and secondary teaching positions identified under paragraph (j)(3)(ii) of this section in the shortage areas proposed by the State for designation does not exceed five percent of the total number of FTE elementary and secondary teaching positions in the State, the Secretary designates those areas as teacher shortage areas.

(iv) If the total number of unduplicated FTE teaching positions in the shortage areas proposed by the State for designation exceeds five percent of the total number of elementary and secondary FTE teaching positions in the State, the Chief State School Officer shall submit, with the list of proposed areas, supporting documentation showing the methods used for identifying shortage areas, and an explanation of the reasons why the Secretary should nevertheless designate all of the proposed areas as teacher shortage areas. The explanation must include a ranking of the proposed shortage areas according to priority, to assist the Secretary in determining which areas should be designated. The Secretary, after considering the explanation, determines which shortage areas to designate as teacher shortage areas.

(4) For purposes of paragraph (j) of this section—

(i) The definition of the term "school" in § 682.200 does not apply;

(ii) "Elementary school" means a day or residential school that provides elementary education, as determined under State law;

(iii) "Secondary school" means a day or residential school that provides secondary education, as determined under State law. In the absence of applicable State law, the Secretary may determine, with respect to that State, whether the term "secondary school" includes education beyond the twelfth grade;

(iv) "Teacher" means a professional who provides direct and personal services to students for their educational development through classroom teaching;

(v) "Chief State School Officer" means the highest ranking education official for elementary and secondary education for the State; and

(vi) "School year" means the period from July 1 of a calendar year through June 30 of the following calendar year.

(vii) "Teacher shortage area" means an area of specific grade, subject matter or discipline classification, or a geographic area in which the Secretary determines that there is an inadequate supply of elementary or secondary school teachers.

5. Section 682.410 is amended by revising paragraph (b)(4)(vii) to read as follows:

§ 682.410 Fiscal, administrative, and enforcement requirements.

* * * * *

(b) * * *

(4) * * *

(vii) One hundred eighty-one-545 days:

(A) Except as provided in paragraphs (b)(4)(vii) (B) and (C) of this section, during this period, but not sooner than 30 days after sending the notice described in paragraph (b)(4)(vi) of this section, the agency shall institute a civil suit against the borrower for repayment of the loan.

(B) Except as provided in paragraph (b)(4)(vii)(C) of this section, in the case of a loan which was assigned to the Secretary prior to the 545th day and returned to the agency less than 180 days prior to that 545th day, the agency has 180 days from the date it receives the returned loan to institute the civil suit.

(C) The agency need not file suit if the agency determines and documents in the borrower's file that—

(1) The cost of litigation would exceed the likely recover if litigation were commenced; or

(2) The borrower does not have the means to satisfy a judgment on the debt or a substantial portion thereof.

* * * * *

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